User Report

ALTERNATIVE STRATEGIES TO INFLUENCE PENTIENTIARY POPULATION

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TABLE OF CONTENTS

CHAPTER 2 - (2.B SENTENCING - cont'd.)

CHAPTER 2 - (cont'd)

CHAPTER 3 - (cont'd)

CHAPTER 1 - INTRODUCTION

1.A PURPOSE

This report is intended as a descriptive catalogue of strategies to influence the size of penitentiary populations. It's purpose is six-fold:

- To provide a comprehensive listing from the literature identifying and describing alternative strategies to control penitentiary populations, with examples of programs and policies from other jurisdictions;

- To provide opinions and empirical evidence from the literature regarding the impact of various strategies upon key determinan of penitentiary populations;

- To evaluate the effectiveness of various strategies in influencing size of carceral populations, using existing data from the literature;

- To highlight the complex interactions among such strategies wi in the criminal justice system;

- To provide ideas from the literature regarding the political a administrative variables that either encourage or act as barriers to the development of such strategies;

and most importantly,

- To stimulate discussion about the application of carceral population control strategies in the Canadian context among crimi justice policymakers, practitioners and laypersons.

A.1 Emphasis on Restriction of Population Growth

The report emphasizes strategies that restrict the growth of populations, rather than merely influence them in a general fashion, for two reasons. First, correctional administrators throughout North Americ and Europe have indicated a serious concern about the inability of depleting resources to house rapidly increasing prison populations.

An American study of the rapid growth phenomenon completed for the U.S. National Institute of Justice (Mullen, 1980) found a rate of increase in many state prison populations between 1973 and 1978 that "coul only be described as alarming".[1] More recent research (Krajick, 1981; U.S. Department of Justice, 1982) demonstrates that the American prison population "boom" has not abated. By 1981, the incarceration rate of sentenced prisoners rose to 154 per 100,000 resident population. Prisor space has not kept pace with increasing housing demand, forcing many jurisdictions to employ emergency confinement facilities, to "double and triple bunk" prisoners into cells designed for one inmate and ultimately to search for methods of reducing the imprisoned population.

European countries began experiencing overcrowding problems in the late 1960's and early 1970's as archaic institutions deteriorated. To cope with a threatened rising prison population in the face of public recalcitrance to approve spending for new institutions, many European governments have experimented with novel and far-reaching control polic:

Although the increase in Canadian Provincial and Federal incarcerated populations in the past ten years has not been as dramatic as in the U.S., and although institutions in this country are generally not

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[1]The net increase for total state prison populations in the six-year period was 54 percent, higher than in any other historical period since the 1940's. Moreover, the U.S. prison population grew at a much faster rate than the general population, increasing the incarceration rate from 98.6 persons per 100,000 in 1970 to 124 persons per 100,000 in 1978 (Mullen, 1980: 13-16).

as deteriorated as those in Europe, supply and demand problems are surfacing. The penitentiary population rose by 10.6 percent in the five years from the end of 1974/75 (8,317) to the end of 1978/79 (9,202 - and by a further 10.3 percent in the 3 years from the end of 1978/79 to the end of 1981/82 (10,154). During the past ten years, the Canadia imprisonization rate has risen from approximately 84 per 100,000 population to over 100 per 100,000 population. According to interviews with corrections administrators throughout the country, these increases in incarcerated populations have recently placed considerable strains on the capacities of existing Canadian institutions. Furthermore, a depressed economy and rising imprisonization costs have made large capital expenditures unpopular and impractical.

In a period of rapid growth in incarcerated populations, combined with static or declining corrections resources, corrections officials' search for strategies to maintain or reduce population size is indeed justified. For this reason, we have directed our report toward those policy responses which appear to hold promise for maintaining or decreasing the size of penitentiary populations.

Second, the reduction of incarcerated populations is consistent with current correctional philosophy. Exhaustive research has seriousl questioned whether imprisonment has any rehabilitative or deterrant effects. Many criminal justice authorities feel that imprisonment can be rationalized only on the basis of "incapacitation" or "just deserts". However, even these latter two purposes are recognized as having seriou shortcomings. The achievement of any significant crime prevention bene fits from incapacitation (i.e., physically removing offenders from society) may require the incurring of social and financial costs that far outweigh those benefits. Similarly, even the rationale of "just deserts", (the concept that offenders must pay for serious offences against society in an equally serious way) has come under attack by those pointing to extreme discrepancies in sentencing patterns for similar offenders committing similar crimes.

Given this evidence, many persons from all areas of the criminal justice system have urged that imprisonment be used only as a last resort, and only for as short a period as possible. In accordance with this change, corrections administrations and parole boards have begun to adopt a reintegrative philosophy, which sees the function of incarceration as primarily preparing offenders for as quick and safe a reentrance into society as possible.

A.2 Emphasis on Medium to Long-Term Strategies

Although some of the strategies introduced in this document may have an immediate impact upon penitentiary populations (for example, large-scale re-classification programs), the majority influence populations gradually and may require several years before their full impact is felt. We have purposefully emphasized medium to long-term strategies in order to avoid "band-aid" approaches to overpopulation problems. Such approaches tend to be initiated by the corrections authority itself to provide temporary relief from overcrowding or other prison management crises. When the crisis is over, the policy is often discontinued and the forces which encourage population growth reassert themselves.

This document encourages a different approach to prison population issues, one which involves goal-setting and policy change at a more bas level. Although such an approach may be time-consuming, the resulting strategies are more likely to have a permanent impact on carceral population growth.

A.3 Criminal Justice Goals and Carceral Population Control

Several discussions in this report point to the inherent competiti between criminal justice system goals and the more specific goal of limiting prison populations. Few of the strategies mentioned affect only the size of prison populations; many also affect public safety, offender rights, judicial independence or community responsibilities.

The implementation of a particular policy may involve small or substantial trade-offs in other areas. For example, the encouragement of plea bargaining may involve the sacrifice of certain defendant rights. Wherever applicable, these trade-offs are defined and weighed.

1.B SCOPE

The report presents a variety of program ideas and policy options to be used at each major step in the criminal justice process and by each set of actors in that process. Our original intent was to concentrate on those strategies which could be developed and implemented by corrections administrations and parole boards. However, such strategie tend to impact only variables which affect releases from penitentiaries By omitting strategies implementable by police, crown attorneys, the judiciary and legislators, we would have ignored the effect of pre-incacerative actions upon the second type of variables determining populations, those affecting admission to penitentiary. A number of studie commissioned to examine alternative policies to stem prison population growth,[1] evaluations of the many community corrections programs encouraged by the U.S. Law Enforcement Assistance Administration,[2] as well as the recent proliferation of scholarly research on prison population problems, have produced a large volume of literature identifying a long list of innovative population control strategies, from legislating criminal actions to revising criteria for prison release.

In one researcher's words,

> The decisions to put people in and take people out of prisons and jails involve scores of discretionary transactions among actors with independent goals, following policies which may or may not be uniformly defined and implemented...

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[1] See for example, Rutherford et al, 1977; Krisberg and Galvin, 1980; Mullen, 1980; Great Britain, Home Office, 1974.

[2] For example, the Montgomery County, Maryland Work-Release Program evaluated by Rosenblum and Whitcomb (1978).

> These decisions only begin with legislative efforts to define and prescribe sanctions for criminal behaviour. The full chain includes police decisions to arrest or ignore an offender, a prosecutor's choice of whether and how to charge, a judge's sentencing policy, and release decisions generally made by parole boards.
>
> (Mullen, 1980: 2,25)

To adequately explore the myriad of possible strategy choices, and to reflect the current level of knowledge on the subject, we thus broadened the scope of the project. Our resulting report emphasizes the importance of strategies regulating admissions as well as releases of prisoners, covering a wide range of decisions made throughout the criminal justice system.

We refer to the criminal justice system in its broadest sense, and in particular include the public among its major actors. Countless research documents have shown that without public support, most policy reforms are unsuccessful. The majority of strategies suggested within this report require a public commitment to lowered imprisonment rates and to "community corrections". At present, Canadian attitudes toward crime and criminals preclude such a commitment. Therefore, a number of discussions are devoted to the role of public resistance and public education in implementing various strategies.

Next, although the focus of the report is on strategies for influencing Federal penitentiary populations (i.e., populations of offenders serving incarcerative sentences of 2 years or more), this focus has bee relaxed somewhat to encompass certain strategies to affect Provincial prison populations (i.e., populations of offenders serving incarceratio sentences of less than 2 years). This broader scope better recognizes the possible interactions between penitentiary and prison populations.[1]

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[1] For example, the introduction of fine option programs will impact primarily provincial prisons, but the increased beds made available throu such programs may be made available to federal authorities under feder provincial exchange agreements.

The final point regarding project scope concerns the trade-off between breadth and depth of analysis. Those familiar with the literatur in this area will recognize that one could devote the whole of a report to describing variants of any one strategy to influence incarcerated populations. However, such an approach would not be appropriate here. In this report, we are more concerned with presenting information relevant to establishing broader policies and initiatives in the area, policies and initiatives developed in the context of the full range of options available. For this reason, we have consciously traded depth for breadth of coverage. References are nonetheless provided for readers interested in following up on the details of particular strategies.

1.C METHOD

This report was envisioned as a logical follow-up to Determinants of Penitentiary Populations (Hann, 1982).[1] As part of that project, a mail survey of departments of correction in all Canadian provinces and U.S. states was conducted to (among other objectives) identify and investigate alternative policy and program strategies for affecting variables that determine correctional populations. Our method of research for this report involved first analyzing those survey responses containing innovative ideas for influencing incarcerated populations. This process was supplemented by telephone interviews of responding corrections administrators where necessary and by reviews of any supple mentary materials or articles on program implementation recommended to us.

Our second task entailed an extensive literature review of crimina justice journals, key works in the corrections area and evaluations of

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[1] Determinants of Penitentiary Populations identifies the intervening variables through which changes in policies and programs and other factors determine penitentiary populations; presents data on historica trends in and interrelationships among those variables, and explores the susceptibility of these variables to policy influence.

non-carceral sentence alternatives. In addition, requests were made to the primary law enforcement research funding agencies in the United States, the American Bar Association and several provincial corrections authorities for additional information on specific subjects.

Arranging the large volume of data produced by the above methods within discreet stages of the criminal justice process was extremely difficult. The criminal justice process does not easily lend itself to orderly decomposition. To further complicate the problem, definitions of terms and machinations of the criminal justice system varied by author and jurisdiction. As well, the alternating dearth or wealth of information about particular strategies made even coverage of their impact upon the variables which determine prison populations at each stage in the process impossible. For example, the impact of American determinate sentencing laws upon U.S. prison populations has been the subject of several hundred exhaustively researched articles, while the impact of the deferred sentence upon British prison populations has not yet been thoroughly evaluated. The resulting unevenness in presentation does not in any way reflect judgements about the preference of any one strategy over any other.

When all strategies were identified and appropriately placed in the criminal justice continuum, our final methodological struggles revolved around predicting what strategy would affect what specific determinants of penitentiary populations. We followed the typology presented in Hann's (1982) work, condensing the several time and rate variables defined in that document into seven "Key Penitentiary Population Determinant" categories.[1] Our ability to discern the relationship between

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[1] New Offender Admission Rate, Time Between Admission and Release, Parole Release Rate, Parole Revocation Rate, MS Release Rate, MS Revocation Rate and Return Rate After Successful Completion of the Parole or MS period or after Direct Discharge. Definitions of these rates and times are provided in the Appendix.

population influencing strategies and those determinants was dependent on several factors, including whether the strategy had ever been considered as a population influencing mechanism, the lifespan of the strategy in its originating jurisdiction and the quality and quantity of research about its effects. The lack of quality evaluative research in the area particularly hindered our efforts, as noted in the resultin Table 4.1 of the concluding chapter.

1.D ORGANIZATION

The report is organized in the following manner:

In general, each section identifies the strategy or strategies appropriate to a particular step in the criminal justice process, describes the goals of that strategy,[1] and discusses its probable influenc on penitentiary populations. Where available, examples of programs and policies using the strategy, particularly those which have been evaluated, are included and underscored.

Chapter 2 presents and describes strategies to influence penitentiary populations which are implemented prior to incarceration, encompassing those initiated by the community, the police, prosecutors, the judicary and the legislature. Included are community diversion programs, policies affecting enforcement resources and the targeting of those resources, prosecutorial plea bargaining and diversion, community sentence options and judicial sentencing practices.

Special emphasis is placed on the impact of determinant sentencing statutes upon incarcerated populations.

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[1] These goals do not necessarily include influencing penitentiary populations. Instead, they may be designed to be more humane or just to offenders, to make the system more efficient, etc.

Chapter 3 discusses post-incarceration strategies, including policies governing federal-provincial control over inmates, classification and assignment, remission, pre-release programs and conditional release through parole or mandatory supervision. These strategies are generally under the authority of corrections administrators, the parole board and the legislature.

Chapter 4 first reviews the strategies presented in the previous two chapters. A summary table highlights the relationships between the various strategies and key penitentiary population determinants. Second, several conclusions are made regarding the most appropriate choice of strategies to control Canadian penitentiary populations, and methods for encouraging their implementation. Finally, directions for further research in both general and specific areas are proposed.

CHAPTER 2 - PRE-INCARCERATION INITIATIVES

INTRODUCTION

This chapter focusses on strategies influencing penitentiary populations that are implemented at steps in the criminal justice process prior to incarceration. They are divided into two policy types:

- those employed before trial, including community diversion programs, changes in police resources and activities, the use of alternatives to pre-trial detention, and prosecutorial programs; and
- those employed at the sentencing juncture, including the use of conditional discharge, deferred sentence, various community corrections alternatives and shorter sentences. In this section, legislative and other strategies which support or undermine various sentencing practices are also examined.

The majority of policies described herein are considered preventative in nature, exerting control primarily over institutional admissions rates. However, many of the sentencing alternatives described also affect sentence lengths. In reference to supports for sentencing policies, such as legislation and education, those strategies which affect admissions rates are difficult to separate from those which affect sentence lengths.

As much as possible, this chapter is organized chronologically by stage in the criminal justice process. However, the criminal justice process does not always lend itself to this strictly linear approach. Offenders often move through the system in illogical sequences and may assume several roles at various decision points. Therefore, the progression in this chapter from one step to another and the boundaries between policy-types are sometimes arbitrary.

2.A PRE-TRIAL LEVEL

Recent literature has shown that policies initiated by the community, the police, bail courts and prosecutors have important implications for the decision to incarcerate or not to incarcerate offenders. If the criminal justice system is viewed as a series of screening processes, each of these policies functions as a method of further limiting the available pool of imprisonable offenders.

The process and programs which permit an offender to bypass one or more aspects of the traditional criminal justice system and remain within the community are usually referred to as diversion.[1] At the pre-trial stage, these processes and programs involve social service organizations, the police, prosecutors' offices and hearing judges. The point of contact may be prior to arrest, at arrest, at a pre-trial hearing or conference, or between that hearing or conference and the formal trial. Diversion may be informal, involving no official contract or conditions set by criminal justice agencies, or formal, usually involving terms agreed upon by both offender and the police, prosecutor's office or hearing judge.

Although diversion processes and programs have now been popularly adopted as easy and inexpensive cure-alls for many criminal justice problems, their actual utility in decreasing incarceration remains relatively unstudied. Considering the large disparity between the number of reported offences and those arrested, as well as between the arrestee population and those brought to trial, the lack of empirical research regarding the potentially enormous impact pre-trial diversion agents have upon prison and penitentiary commitments is surprising. Because of the paucity of scientific investigation in this area, our review yielded primarily a sampling of diversionary strategies which appear to hold promise for reducing incarceration. Many of our observations in this section, however, are speculative in nature.

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[1] Great Britain's Crime Police Planning Unit (1974) defines the objective of diversion:...to provide means of dealing with offenders at some stage of the process before conviction or sentence in such a way that it becomes unnecessary to proceed to trial and/or to a substantive sentence.

In the following discussion, each type of process or program is identified by the initiating agent within the criminal justice system, and evaluated in terms of its diversionary capabilities. Emphasis is placed on those strategies which deal with serious offenders and which therefore are more likely to affect Federal penitentiary populations.

A.1 Community Diversion

Reviews of North American community diversion projects[1] note that while many claim to be community controlled, to address serious crime and to direct individuals away from the criminal justice system, they in fact are usually tightly controlled by criminal justice agencies address only the problems of minor middle-class offenders and as such actually extend the arm of the criminal justice system to interfere with the lives of those individuals who otherwise would remain free of its grasp. Another often mentioned problem with diversionary programs is their reliance on psychological counselling, which is unfortunately limited in applicability to the verbally well-equipped middle class. Critics have also charged that individual rights are violated through forced participation in diversion programs. Most objective research in the area has rejected claims by advocates that diversion substantially reduces recidivism, lightens court workloads or decreases criminal justice system costs.

However, evaluations suggest that some diversion projects may be instrumental in reducing the level of incarceration for a particular group. Those programs successful in keeping clients free of arrest, re-arrest or trial, thus reducing their likelihood of imprisonment, appear to have the following elements in common:

- The program is aimed at serious delinquents in poor neighbourhoods who are considered "high risks" for interaction with the criminal justice system;

- Participation in the program is not coerced (either directly or by inference);

- The primary mode of diversion is not counselling but advocacy helping clients protect their rights if accosted by an enforcement agent, accompanying them to police stations,

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[1] See, for example, Roesch, 1978; Andriessen, 1980; Palmer and Lewis, 1980a and 1980b.

speaking on their behalf at pre-trial conferences or at sentencing conferences and in general fostering a community identity and pride among participants;

. The emphasis of any counselling component is material help, (enabling clients in every possible way to act and live independently, by assisting in the search for schooling, jobs, finances and housing), rather than psychological or social change.

Examples of community-based diversion projects modelled on the above criteria and claiming some ability to reduce client contact with the criminal justice system include:

. A California Youth Authority sponsored recreational and advocacy program in the Mexican-American barrio area of a Los Angeles suburb;[1]

. A Netherlands urban delinquent diversion program set up by Andriessen, based on her observations of the California Youth Authority projects (Andriessen, 1980);

. The Philadelphia House of Umoja, a series of independently-run residences for primarily black ghetto youth. The program emphasizes the creation of a simulated family environmen job-finding and conformance with peer-set rules to accomplish its goals (Morris, 1976: 169-170);

. The San Francisco Delancey Street Foundation, a self-supporting "family" of ex-prisoners, a privately owned and operated group of residences and companies providing jobs, educational supports, community identities and advocacy for those agreeing to conditions of residence (Morris, 1976: 170-172).

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[1]Andriessen (1980) named the La Colonia, California project "Mar Vista" in her critique of American diversion programs. This project, as well as other California Youth Authority sponsored projects, is the subject of two evaluative studies by Palmer and Lewis (1980a and 1980b).

The impact of community-based diversion projects upon prison or penitentiary populations is difficult to assess, in part because no standardized criteria have been formulated for comparison purposes. Another problem is the apparent lack of reliable data on program attendance and subsequent contact with the criminal justice system.[1]

To predict the ability of such programs to impact Canadian penitentiary populations, more information and a rigorous evaluation design would be required. Only if the clients are from high-risk groups most likely to be committed to penitentiary, that is older unemployed youth and young adults who have already come to the attention of criminal justice agencies, and only if contact with the program prevented either commission of a serious offence or imprisonment as a result of that offence, would community-based diversion programs be likely to influence penitentiary populations. Additionally, an evaluation must demonstrate that potential community delinquents who do not enter the program are more likely to be incarcerated than those who do. Given the informal nature of most projects, the methodological barriers to such a rigorous evaluation are probably insurmountable.

Employment Programs

Given the broad parameters of what constitutes "community diversion", many neighbourhood-based social service and employment programs which serve high risk clients, specifically poor males between the ages of 18 and 24, could potentially play a role in reducing incarcerated populations. To understand that role, however, we must define the impact of unemployment and poverty upon levels of incar-

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[1]For example, Umoja House claimed that during a seven-year period, only ten of its 300 clients were known to have been arrested since leaving the shelter, while the Delancey Street Foundation reported that "of the hundreds of men and women who have been Delancey Street members, only one has been arrested while a resident", and that "the drop out rate is under 40 percent" (Morris, 1976: 170-171). Of Mar Vista, Andriessen (1980: 78) wrote only that, "...the YSP stood out in a statewide evaluation of diversion as one of the most successful projects, especially because of its own efforts to keep clients out of the justice system", while her own model project in Holland has not yet been objectively evaluated.

ceration. The correlation of such factors with prison population levels has been established by Cox and Carr (1975), Jankovic (1977); Frank (1975), Greenberg (1977) and confirmed by Yaeger (1979). A number of jurisdictions[1] have incorporated unemployment and income indices into predictive models of imprisonization, with varying levels of success.

The relationship between unemployment and re-incarceration has been recognized by Krisberg and Galvin in their research for the National Council on Crime and Delinquency. As part of their strategy to reduce the California prison population, the authors suggested that the State Department of Corrections fund the use of community-run skill training, job placement and career development programs linked to the necessary educational resources, for the up to 10,000 offenders leaving California's prison system each year. Krisberg and Galvin suggested that the programs "would be a complex and expensive undertaking, but they would be cheap compared to the proposed capital budget of $903 million" (Krisberg and Galvin, 1980a: 50).

Under the Comprehensive Emplovment and Training Act (CETA), the U.S. government funded a number of job creation and employment training programs for diverted arrestees and ex-convicts during the mid-1970's. An evaluation of nine such programs was impeded by a recurring failure among local program administrators to include proper control groups in outcome comparisons.[2] However, for the one project designed to solve that methodological problem, the national evaluators concluded

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[1] Including Illinois, Arizona, Colorado, Florida, Kentucky, Mississippi, Missouri, Nebraska, New Mexico, North Dakota and Tennessee, whose methods are explained in detail by Miller, D., (1981) Prison Populatic Projections, distributed by the Illinois Department of Corrections.

[2] Most administrators compared re-arrest and employment rates between those who completed the program successfully and those who quit or wer dismissed prior to program completion. However, since one of the crucial reasons for early dismissal was re-arrest, such a comparison w invalid. The only valid control group was one composed of arrestees processed in the normal court manner.

> ...the use of this project as an alternative to traditional criminal justice process did not increase the level of risk to the community, and may in fact have decreased that risk in the short-run,

and that

> participants' employment prospects (particularly property offenders') appeared to be substantially higher than those for the comparison group at least over the short-term.
>
> (Abt Associates, 1978: 181, 184-185)

Given the large percentage of returnees to penitentiary in Canada[1], a similar program might be initiated in pilot form by the Ministry working in co-operation with the Department of Employment and Immigration. However, the necessity of intensive counselling resources for higher risk participants, the importance of providing quality, upwardly mobile jobs for enrollees and the value of a rigorous evaluation should be considered in any employment program plans (Ibid: 179-189).

A.2 Police Activities

The police obviously play a pivotal role in either forwarding individuals through the criminal justice system, thereby increasing their probability of imprisonment, or diverting those individuals from further official attention. Several policies may be important at this stage in influencing the size of penitentiary populations.

i) Public Expenditures and Police Priorities

First, public expenditures for police protection, which in turn affect the size of the police force and its priorities, appear to increase or decrease arrests, at

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[1]According to Hann (1982: 8.7), 42 to 48 percent of all offenders released from the federal system between 1964/65 and 1977/78 returned to penitentiary.

least in certain categories (Greenwood and Wadycki, 1973: 138-151), enlarging the available pool of imprisonable offenders. Great Britain's Home Office Crime Policy Planning Unit (1974: paragraph 11) hypothesized that as the size of a police force (or the proportion committed to crime investigation and control) decreases, the level of reported crime decreases and fewer people are apprehended and ultimately imprisoned. In terms of police priorities, the Unit (Ibid: paragraph 12) has noted that an emphasis on preventive policing or on deployment of police manpower to (high crime) areas may lead to the discovery of more known offenders and a higher imprisonment rate.

If theories about the relationship between police expenditures, arrest and imprisonment rates are valid, then Canada's increasing imprisonment rate may be partially attributable to its vastly increased enforcement budgets and police manpower. Police expenditures, by far the largest component of Canadian crime control budgets, exponentially increased at all levels of government during the twenty-two year period, 1955-1977, while the number of police officers rose from 1.5 to 2.3 per 1,000 population.[1] The change in police expenditures and police manpower is linked to a concomitant three-fold increase in reported crimes during the same period, a doubling in the annual number of "persons charged", and a 65 percent increase in prison and penitentia populations (Chan and Ericson, 1981).[2]

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[1] "The number of officers rose from about 28,000 in 1962 to more than 52,000 in 1977."(Chan and Ericson, 1981: 50) Chan and Ericson's data were compiled from Statistics Canada reports.

[2] The authors note that the number of persons charged per police officer remained stable throughout the period, suggesting three possible trend one, that officers are not arresting in certain situations, such as "domestic quarrels"; two, that the "clearance rate" has been low for most property offences, which account for most of the increase in reported crimes; or three, that police are becoming more involved in pet occurrences where charges are unlikely (Ibid: 52-53).

ii) Surveillance of Ex-Convicts

Second, a police change toward increased or decreased surveillance and control of ex-convicts could substantially impact penitentiary populations. Hann (1982: 8.7 and A.8), citing statistical evidence that 33 percent of penitentiary populations consist of offenders who have been previously admitted to penitentiary, and that from 1964/65 and 1977/78 between 42% and 48% of all offenders released from penitentiary returned to penitentiary, alluded to at least the potential impact that policy instruments to influence that rate of return could have.

Many of these policy instruments involve substantial trade-offs between criminal justice goals. If, for example, names and addresses of new releasees from penitentiary were no longer automatically given to police, the ex-offender re-arrest rate might drop dramatically. However, such a policy change is obviously inconsistent with a primary objective of the criminal justice system, the protection of the public. Conversely, increasing the information exchange between releasing authorities and the police[1] could result in enhanced surveillance of parolees and increased re-arrest rates, at the sacrifice of privacy for a large number of citizens. We are aware of no research conducted on this subject.

iii) Changes in Screening Practices

Third, strategies designed to affect the decision to arrest or not to arrest, usually referred to as police "screening" or "selection", may influence penitentiary populations, at least indirectly. As Aaronson, et al (1977) note,

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[1]For example, at least one large urban police force now keeps a computerized roster of all parolees.

> Most police departments have informal non-arrest policies. If they attempted to enforce all the laws in the Code, they would process more people than the system could handle...Moreover, in some cases, adequate enforcement of the law poses a virtual impossibility.

If, for example, police uniformly enforced drug laws, arresting all cannabis users known to them, provincial prisons would be pressed to accomodate an influx of those convicted for possession of the illegal drug, in turn inhibiting federal-provincial prisoner exchange agreements. Although only 4 percent of convictions for simple possession of cannabis resulted in prison terms in 1977, these represented over 1,300 prison sentences. Assuming the drug laws remain unchanged, increased or decreased police activity in this area could therefore have a pronounced effect upon incarcerated populations in Canada.

At least one jurisdiction has openly changed police arrest patterns to lower prison commitments. A publicly announced non-arrest policy, developed regarding cultivation of marijuana plants for personal use, directly affected the number of cases entering (and presumably incarcerated by) Oregon's criminal justice system (Aaronson, et al 1977: 43).

In other areas of law, increased police selectivity could affect prison and penitentiary populations. For example, Iowa police "make virtually no effort to arrest the citizen gambler and in most jurisdictions do not enforce, (or enforce selectively) the gambling laws for offences involving private, non-commercial gambling". (Ibid: 43).

To encourage acknowledgement of police selectivity in Canada, the Federal Law Reform Commission (1976b: 61)

recommended that the Criminal Code and appropriate provincial legislation recognize the existence of police discretion in responding to crime and require the police authorities to publish guidelines for the exercise of discretion.

iv) Co-operation with Community-Based Diversion Projects

Fourth, police co-operation with community-based diversion projects may be instrumental in keeping penitentiary-eligible offenders away from further criminal justice contact. In Canada, an experiment with pre-arrest police referral to a neighbourhood-run mediation centre illustrates the potential for such co-operation. According to John Hogarth, then Research Director of the East York Diversion Project, diversion worked in the following manner:

> We took an existing police district, an eight by ten block area, and the police officers were instructed by the Department of the Attorney General and the Justice Minister, supported by the Police Chief, that they did not have to, if they did not wish to, lay criminal charges in any case (regardless of the seriousness) if in their judgement the public interest would be better served by an alternative...If there was a crime where there was a specific victim, both the victim and the offender must agree to the alternative way of handling the situation. (Morrison, 1973: 93).

To keep the project within the community setting, a 24-hour investigation and mediation service was established in a neighbourhood rental house. From this base, project workers responded to referrals from both the police and later, from local community centre staff. In all cases, the workers attempted to mediate an informal settlement among the concerned parties before pursuing any formal criminal justice avenues.

In terms of ability to decrease prison or penitentiary commitments, the East York project appeared to be promising.

Hogarth claimed that a comparison with a neighbouring police district showed the project was able "to keep about one third of the cases ordinarily destined for court out of court". Cases diverted included many of a serious nature which may otherwise have resulted in penitentiary confinement. (Ibid: 97-102)

A.3 Alternatives to Pre-Trial Detention

Strategies to control pre-trial detainee populations might appear to be unrelated to the control of penitentiary populations. However, studies have shown that arrestees who are detained prior to trial because of inability to meet bail (also known in Canada as judicial interim release) requirements are more likely to be convicted and more likely to receive a severe sentence if convicted than their pre-released counterparts.[1,2] The encouragement of liberal pre-release criteria, publicly and privately sponsored pre-release programs and other bail reforms may therefore affect penitentiary as well as prison and jail populations.

A popular alternative to cash bail is Release on Recognizance, the use of which has increased tremendously in North America since the Vera Institute of Justice developed criteria to assess the accused's likelihood of appearing for trial. Other programs

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[1] For example, a 1973 study of a Canadian Court jurisdiction (Hann) distinguished between the offender's being in custody at the first court appearance and his/her being in custody at the verdict or sentencing appearance. The first custody variable (one more dependent on police arrest/summonsing policies) was found to have (in a multiple regression analysis) a significant impact on the probability of a finding of guilt. The second custody variable was found to have a significant impact on both the type and severity of sentence.

[2] In his exhaustive study of Washington, D.C. sentencing practices, Rhodes (1979: 365) found that individuals released prior to trial were sentenced significantly more leniently than their unreleased counterparts.

enabling higher pre-court release rates include community bail funds, which provide cash bail or sureties to indigent defendants, and organized third-party custody, a procedure by which individuals provide selected defendants (not personally known to them) with release assistance (Aaronson, et al 1977: 104-105).

As a result of the Vera Institute's and similar programs, the number of defendants in the U.S., including felony defendents, released on non-cash bonds rose dramatically during the 1960's and early 1970's (Roesch, 1976: 33).[1] However, the exact effect of those releases upon U.S. prison admissions is unknown. If bail reform is not accompanied by a reduction in police surveillance and arrests, it is unlikely to substantially impact incarceration rates.

The impact of bail reform on Canadian penitentiary commitments is difficult to predict. Statistics indicate that 40 to 50 percent of provincial jail prisoners are there on remand. It has been suggested that if the provisions of the Bail Reform Act were utilized to their full extent and community alternatives to bail were increased to meet the demand, the percentage of detainees might decrease appreciably. Those criminals allowed through such a policy change to remain free would be more likely to receive non-carceral and lower prison sentences possibly reducing the number of penitentiary admissions.

A.4 Prosecutorial Policies

Experience in other jurisdictions has demonstrated that several policies regarding pre-trial actions on the part of prosecutor's offices may have significant impacts on prison admissions, whether or not they are intended for that purpose.

i) Changes in Prosecutorial Resources

Increasing monetary and/or manpower resources available to prosecutors may significantly influence penitentiary

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[1] Between 1962 and 1971, for example, the number of felony defendants released by all possible methods rose from 47 percent to 67 percent.

populations. For example, as a result of the State of Illinois' strategy to "keep pace with rising crime levels" by increasing the number of public prosecutors, prison commitments rose quickly and considerably. Similarly, a 1975 South Carolina legislative policy decision to eliminate the backlog of court cases by appropriating monies for extra prosecutorial and court staff resulted in a large increase in incoming state prisoners (Krisberg and Galvin, 1980b: 40, 53). Ironically, as Roesch (1976) noted, one of the purposes, and accomplishments, of such policies is often to depopulate overcrowded jails and detention centres. However, decreasing the pressure on pre-trial incarcerative institutions appears to increase the pressure on prisons and penitentiaries.

ii) Plea Bargaining

The impact of plea bargaining upon penitentiary populations is less clear. Research on the subject leads to contradictory conclusions, but in general points to plea bargainin deficiencies as a reliable population control mechanism. Various studies have indicated that:

. Entering into the plea bargaining process significantly reduces the probability of incarceration for all types of crimes, but particularly for crimes against the person (Britt and Larntz, 1980);

. Entering into the plea bargaining process has no bearing on type or length of sentence, except for the crime of robbery, charges for which are frequently lowered through out-of-court bargaining (Rhodes, 1979);

. Charge reduction through plea bargaining, particularly lowering the charge from indictable offence (punishable by 2 or more years imprisonment) to summary conviction offence (punishable by less than 2 years imprisonment) is more likely to occur with alcohol related driving offences than other offences and when the defendant has legal representation (Hartnagel, 1979);

. Other actors in the criminal justice system tend to compensate for the reduced sentence promised by the prosecutor in plea bargaining. For example, judges often consider whether the charge is a lowered one in their sentencing decision, resulting in a sentence served that is frequently longer than it would have been upon conviction for the original crime. Sentences reduced through negotiated lesser charges have also become objects of readjustment by the Crown itself, parole authorities and other correctional decision-makers (Genova, 1981).[1]

In summary then, aside from its questionable moral and ethical aspects, the encouragement of plea bargaining appears to hold little promise as a penitentiary control strategy. Although it may be effective in gaining reduced sentences for those accused of some crimes in some jurisdictions, the large majority of defendants electing to plea bargain may not obtain sentencing "deals", and in fact may increase their chances of imprisonment by not going to trial.

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[1] In at least two well-documented Canadian cases, not only did the Crown appeal the very sentence it had recommended in exchange for a guilty plea, thereby repudiating its bargain with the accused, but also the appeal court ignored the original bargain and increased the sentence as requested (Ibid: 33).

The opposite strategy, a policy change prohibiting plea bargaining, also seems unlikely to significantly influence the size of penitentiary populations. In Alaska, where plea bargaining has been outlawed since 1975, the conviction rates and sentence lengths for serious crimes of violence such as murder, rape, robbery and felonious assault have been unaffected. Sentences have become more severe, however, for less serious offences (Alaska Judicial Council, 1978).

iii) Administration of Prosecutorial Caution

To decrease its incarcerated population, Great Britain has encouraged prosecutor's offices to administer cautions as alternatives to prosecution (Great Britain, Home Office Crime Policy Planning Unit, 1974). However, the frequency of use and success of cautions in accomplishing their stated goal has not been explored.

iv) Official Prosecutorial Diversion Programs

The majority of official diversion programs administered by prosecutor's offices are unlikely to affect penitentiary populations. As Roesch (1976) and others have concluded, such programs usually focus on first and in some cases second offenders, charged with less serious offences, and therefore "divert" those who would most likely receive probation if normally processed through the courts.

However, a few broad-based programs appear to be more promising in addressing the needs of serious offenders. The Columbus, Ohio Night Prosecutor Program[1] screens out

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[1] From Aaronson, D.E. et at (1977: 49); Interview with Scott Dewhurst, Assistant City Attorney and Director of Intake for the Night Prosecutor Program, Columbus, Ohio; descriptive materials from the program; and, Palmer, J.W. (1974: 12-18).

cases deemed inappropriate for criminal prosecution and refers them to mediators for dispute settlement. Because the program has been given the freedom to handle almost any offence brought to the attention of the prosecutor's Citizen Complaint Bureau, it has been able to divert thousands of very serious criminal cases which might ordinarily have resulted in prosecution and imprisonment. Such cases include a large volume of domestic violent acts and threats of violent acts, many of which involve stabbings and sexual abuse, inter-gang conflicts of a violent nature, criminal damage to property, burglaries and thefts.

In the majority of cases, the summons procedure used by the program avoids any arrest record for the respondents.

In terms of recidivism, less than 3 percent of the people originally referred to the Columbus Night Prosecutor have returned as either complainants or respondents a second time, a rate significantly lower than system returns for convicted offenders.

Although no study has been conducted to assess its impact upon Ohio prison commitments, the Columbus program has successfully prevented <u>any</u> increase in the surrounding county's jail population for the last three years. The value of the program is demonstrated by its record of successfully diverted interpersonal disputes reverting back to normal court channels.[1]

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[1] In 1980, the program successfully diverted 9,190 cases, of which only 5.4 percent reverted back to normal court channels.

To capitalize on the experience gained in Columbus, other jurisdictions, including Denver, Houston, Boston, Cleveland and Indianapolis, have adopted the Night Prosecutor model. The Oklahoma Department of Corrections has initiated and funded a similar program in its urban counties, specifically to reduce the state prison population. As of 1981, the New South Wales, Australia Attorney General has operated three "Night Prosecutor" type programs in both urban and rural communities (American Bar Association, 1980).

Because of the seriousness of incidents addressed, the success in diverting potential criminal cases and the low recidivism of participants, a program such as Columbus, Ohio's appears to have great potential for controlling Canada's penitentiary (as well as prison) population.

2.B SENTENCING

The post-trial sentencing decision directly affects penitentiary populations in terms of the level of new offender and repeat offender admissions. Data examined by Hann (1982) indicate that both these types of admissions are particularly susceptible to policy change, although primarily through criminal justice areas not within the direct jurisdiction of the Solicitor General. However, strategies which have been employed in other jurisdictions suggest that the Ministry could indirectly affect penitentiary admissions by influencing the policies of other criminal justice agencies, particularly the courts and the legislatures.[1]

The court's sentencing decision is also the major factor in "sentence length", the amount of time an inmate spends in prison. "Sentence length", in turn, is an important determinant of prison population size, and, because of is historical instability, is par-

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[1] See especially Chapters 4, 5, 6 and 8 of Determinants of Canadian Penitentiary Populations (Hann, 1982).

ticularly amenable to policy direction (Ibid: Chapter 6). Because their effect is cumulative over time, the longer penitentiary sentences have the most significant impact upon population growth. Therefore, consistently increased or decreased terms for serious crimes are likely to make a long-term difference in penitentiary population growth patterns.

The sentencing strategies discussed in this section are:

1. Use of non-carceral sentencing alternatives;
2. Changes to the Criminal Code and Related Legislation;
3. Educating the Judiciary.

B.1 Use of Non-Carceral Sentencing Alternatives

A broad range of sentencing options has been developed in Canada and elsewhere to reduce prison commitments and to place more responsibility for the corrections process on the community from which the offender originates. Several options discussed below have also been designed to encourage convicted offenders to "pay" for their crimes, either symbolically or in real terms, and to consider the needs of crime victims. The types of sentences which hold promise for reducing penitentiary populations and which are described in this section include:

- absolute and conditional discharge;
- deferred sentence;
- suspended sentence;
- probation;
- fines;
- restitution orders;
- community service orders; and,
- community residential placements.

The ability of an alternative or set of alternatives[1] to impact penitentiary populations depends upon its availability, private and public support, success in reducing recidivism and use by the courts for offenders convicted of serious, "penitentiary-eligible" offences. For each type of non-carceral sentence, those factors are examined in detail.

i) Absolute and Conditional Discharge

Use of the absolute discharge and conditional discharge, although not legally a sentence, is controlled by the courts. The judiciary may use either type of discharge when guilt is proven, but "the circumstances of the offence do not warrant any denunciation and assignment responsibility beyond the trial itself", providing, in the case of the conditional discharge, that the offender "keep the peace" and "be of good behaviour" (Law Reform Comission of Canada, 1976b: 36). In some cases, the Bench may also impose restitution or probation supervision as a condition of discharge.

1978 court data from two provinces indicate that the discharge is a relatively rare case disposition, composing 3.4 percent of dispositions in British Columbia and 1.4 percent in Quebec (Statistics Canada, Justice Statistics Division, 1980).

Both the Ouimet Committee (1969: 194-195) and the Federal Law Reform Commission (Ibid: 16-17) noted the potential

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[1] At present, it is unusual for any of these sentence types to be used alone in Canada. Probation supervision is frequently required to ensure completion of other sentence requirements.

of absolute and conditional discharges to reduce carceral commitments if their use were increased. To our knowledge, no research has been conducted to explore this possibility.

ii) Deferred Sentence

Since 1972, courts in England and Wales have had the power to defer sentence for up to six months after conviction, with or without terms of supervision (usually by probation officer or social service worker) included. A 1980 study (Corden and Nott) revealed that even for "high risk" offenders, that is, those with previous convictions and known to probation departments, a term of deferment reduced the risk of custodial sentence. In the majority of cases, the sampled courts were willing to use the deferred sentence option despite recommendations of social inquiry reports (pre-sentence reports) for incarcerative sentences and despite the commission of further offences during the deferment period.[1]

Because of its record of use for serious offences, the deferred sentence may be particularly attractive as a strategy to control Canadian penitentiary populations. Both burglary and theft were disproportionately chosen by British courts for deferment. Since 1967/68, 19 to 24 percent of Canada's penitentiary population has been composed of offenders convicted of those crimes (Hann, 1982: A.6).

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[1]Corden and Nott raised the possibility that deferment may be used as a form of compromise when the court is confronted with a recommendation in the social inquiry report which it finds unacceptable. Rather than go entirely against the advice of the report, courts may choose deferment to assess the suitability of a particular recommendation.

iii) Suspended Sentence

In terms of severity, the suspended sentence lies between an absolute discharge and probation. The defendant is found guilty and therefore has a record, but is usually subjected to no form of supervision and usually only one condition, that she/he not be found guilty of any subsequent offence during the period of suspension. However, the suspended offender may be placed under probation supervision and may be required to pay restitution to the victim. If the offender is convicted of another crime, the Court has the power to review the case and impose other sentence options. At present, the suspended sentence may be used only for first offenders.

According to 1971 Toronto provincial court data, the suspended sentence was used as a single disposition in 12.6 percent of cases and in combination with probation or restitution in 9.2 percent of cases. Next to prison/fines combinations, the suspended sentence was the most common sentence imposed in that year (Hann, 1973: 419).

Although the suspended sentence may be inappropriate for the large majority of penitentiary-eligible offenders, it may be useful in controlling provincial prison populations which in turn could free space for federal prisoners. Also, federal inmates who are first time offenders may have been kept in society through this means. However, no research has been conducted on its population impact.

In Great Britain, the suspended sentence is permitted for repeat offenders and, under the 1972 Criminal Justice Act, is clearly to be used as an alternative to incarceration, even for long-term recidivists. Its success in controlling prison commitments has not been thoroughly explored, but

recent research indicates its increasing use by English courts for this purpose. However, its function, at least for ex-prisoners, may be to merely "buy time" for those offenders who will eventually be re-incarcerated for violation of suspended sentence conditions or new offences (Soothill, 1981).

iv) Probation

Probation entails supervision of an offender by an authority within his/her community setting according to terms set by the Court. Traditionally, those terms have been to report regularly (usually once a month) to a court or correctional service-employed officer and to remain arrest-free. Until recently, probation was usually imposed upon only those considered excellent street risks, first-time property offenders with little or no previous police contact. However, since the early 1970's, many innovative probation programs and approaches have been designed to include the serious, penitentiary-eligible offender. Evidence from other jurisdictions suggests that these new approaches as well as traditional type probation programs may be used effectively for "high risk" offenders.

If used as a true alternative to incarceration, that is, only for offenders who otherwise would be imprisoned, expanding probation would be a viable strategy for controlling both prison and penitentiary populations.

An additional rationale for expanding the use of probation is its applicability to the type of offender currently imprisoned. Great Britain's Home Office Crime Policy Planning Unit noted that:

...a substantial proportion of the present (prison) population (25 to 40 percent are figures often mentioned) could be acceptably dealt with in the community by probation treatment or variations on it; and it is probably common ground that the use of probation as a method of treatment has not yet been maximized...(1974: paragraph 50)

Another advantage of probation versus imprisonment is cost. Research conducted for the National Council on Crime and Delinquency (Krisberg and Galvin, 1980a: 44) estimated that even intensive probation supervision, with model services and surveillance techniques, would cost less than 700 dollars (U.S.) per year, as opposed to the 10-20,000 dollars per year required to keep one prisoner.

Probation strategies that may increase the use of that disposition, particularly for serious offenders, and thus increase its impact on penitentiary populations include:

a. Case Classification and Screening

There is some evidence that probation programs can also reduce criminal recidivism, again affecting prison and penitentiary commitments, if adequate planning, case classification and screening techniques are employed. Following this theory, the Adult Parole and Probation Service of the (State of) Washington's Division of Adult Corrections implemented a specialized probation intake project designed to improve the success of violent and other serious offenders on probation and increase the number of convicts retained in the community. The project utilizes diagnostic teams to oversee preparation of pre-sentence reports, identify and match community resources with offenders and give offenders immediate assignment to such resources pending their formal court order.

Regarding reduction of prison commitments, Washington's experiment was extremely successful. Within two years of project commencement, recommendations for prison sentences dropped from 24 percent to 14 percent of felony cases. At the same time, the rate of court concurrence with project staff recommendations increased from 83 percent to 93 percent. Among those accepted by the project, violations increased only slightly compared to low-risk probationers, indicating that public safety was not jeopardized by retaining serious offenders within the community (Ibid: 51-52).

b. Client Specialization and Intensive Supervision

According to several reports, probation projects specializing in particular client groups appear to be more effective than those accepting a broad range of offenders. The intensive supervision provided by such projects may also be tailored to the needs of offenders who otherwise would rarely be considered for probation and who in Canada, would frequently receive penitentiary sentences. For example, the San Jose, California Juvenile Probation Department has initiated a Child Sexual Abuse Treatment Program for cases of child molestation, the majority of which include rape. Using a therapeutic approach for both victim and abuser, the program has been able to reunite 90 percent of the families or marriages involved within the first month after reported abuse, in all cases retaining the offender in the community. In families receiving ten or more hours of treatment, no recidivism was reported (Morris, 1976: 156-157).

The Polk County Probation Program in Des Moines, Iowa has established a component specializing in serious

violent criminals, including even those convicted of manslaughter. It has successfully retained the majority of such offenders within the community and in productive jobs (Ibid: 125).

In Saskatchewan, a Natives Probation Program operated by the provincial federation of Indians through the Department of Social Services, has provided probation to residents of reservations since 1975.[1] The program, which hires Indian-origin probation officers to maintain community rapport, has been responsible for increasing the number of Indians and Metis on probation while maintaining a stable (although still comparatively high) Native incarceration rate. The courts have assigned many serious offenders to the program who previously almost certainly would have been incarcerated in provincial or federal institutions. Because Indians and Metis are disproportionately represented in the Federal penitentiary population (accounting for 8% of the inmate population in 1979, according to Hann, (1981: A.11)), this program may be of special interest to the Ministry.

c. Using Voluntary Resources

In the face of diminishing funds, high caseloads and the need for more community involvement, probation departments in many jurisdictions have turned to volunteers for aid. Several of these programs have demonstrated the ability of volunteers to deal with even very serious offenders. For example, a "one-to-one" volunteer program developed in Royal Oak, Michigan exhibited a recidivism rate half that of state courts not using

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[1] From information provided by the Saskatchewan Department of Social Services and Larry Wilson, Chief Probation Officer in that department.

volunteers (Morris, 1976: 125, 201). Similarly, a group of probationers receiving services from a Law Enforcement Assistance Administration - funded volunteer program for high-risk offenders in Lincoln, Newbraska had a substantially lower rate of recidivism than those served by regular probation officers (Krisberg and Galvin, 1980b: 53).

In Sweden, a world leader in use of voluntary correctional resources, there are about 10,000 voluntary probation workers, roughly 1 for every prisoner discharged each year and over 100 for every 100,000 of the total population. An English criminologist has speculated that:

> ...Sweden's reliance on volunteers is part of the reason for the liberal attitude toward penal policy in that country (Wright, 1980: 13).

Axon (1978: 60) has speculated that the reason for volunteers' success is their ability to spend more time with clients than paid officers.[1] For example, in an Ottawa court probation program, clients received nine times the amount of contact from their assigned volunteer supervisors as from their probation officers.

d. Early Discharge of Probation Orders

Another way to free staff resources for the intense supervision of serious offenders is to discharge minor offenders from their reporting responsibilities prior to the official date of termination. In Great Britain, the practice of applying for early discharge is a common and fairly informal one, although the Crime Policy Planning Unit (1974: paragraphs 65-68) recommended a

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[1] Other reasons for volunteer effectiveness have been elaborated by Andrews (1982).

more uniform and positive early discharge policy. Early termination of probation is permitted under the Canadian Criminal Code, but only upon application through the Crown to the sentencing judge, who may order a hearing into the matter. According to the Ontario Ministry of Corrections, such applications are entered very infrequently. A more usual practice is for an officer to administratively close a case while it technically remains in force. However, neither the frequency of administrative discharge nor its impact upon probation caseloads has been investigated.

e. Increasing Probation Support Facilities

To expand its probation service capability with the objective of reducing prison populations, Great Britain's Home Office has funded both day training centres and probation hostels. The former type of establishment provides intensive supervision as well as education and skills training for probation clients, without the necessity of overnight custody. Hostels, on the other hand, are intended as residences but still retain offenders in community settings. Information about the current offence and previous criminal record of those sent to hostels suggest that but for the hostel's existence, those probationers would have been committed to prisons (Great Britain, Home Office, 1974: paragraphs 75 and 90).

f. Supported Work

To help prepare probationers for private employment while assuring their financial independence, a number of government and private entities have set up subsidized work programs. Usually intended for poorly motivated, high risk clients who would be expected to violate normal terms of probation, the programs generally provide

vocational training, assessment, job referrals and supportive counselling as well as full-time jobs on public works projects. Examples include the Wildcat Service Corporation established by the Vera Institute of Justice, New York City's Transitional Employment Program and the El Paso, Texas Regional Probation Department's Project WORK, all of which serve the type of offender who in Canada could receive a penitentiary term upon violation of probation. Unfortunately, evaluative data on the programs are sparse, except for the Vera Institute's project, which claimed both a reduction in arrest rates and a 40 percent advancement to unsubsidized employment for project participants (Krisberg and Galvin, 1980b: 56-59).

v) Fines

As a strategy to control incarcerated populations, fines "have a far greater potential than their current application would suggest". (Krisberg and Galvin, 1980b: 60).

As a just sentence, the fine has several advantages. It is clearly defined, easy to comprehend, predictable, can be imposed with varying severity according to the severity of the offence and the offender's financial circumstances and, upon payment, ends the intrusion of the state into the life of the offender.

In North America, fines have usually been reserved for traffic violations and petty offences on one extreme, and major organizational and business crimes on the other. Under Canadian law, fines may not be imposed for any crime punishable by more than five years imprisonment in lieu of imprisonment or in lieu of any mandatory prison term. Although

fines are frequently levied as part of "sentence packages," in general, they have composed a relatively small percentage of single sentence dispositions for convictions on indictable offences.[1]

Many other jurisdictions use the fine over a much broader range of offences and as a disposition in a far greater number of cases than Canada, as illustrated by the table below:

Jurisdiction	Fine Use[2]
Sweden	83% of dispositions, principal sanction for drug, property and traffic offences
Holland	66% of dispositions
New Zealand, Japan, Finland, West Germany	most frequently applied punishment
Pennsylvania	29% of dispositions, may be imposed for all crimes but murder
Denmark	29% of dispositions

The day-fine system, pioneered in Sweden and adopted by several other countries,[3] appears to be an especially

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[1]Hann's (1973) study of Toronto court practices found that fines were ordered as single sentence dispositions in less than 1 percent of cases. However, according to a recent study (Scanlon and Beattie, 1979) focussing on Canadian sentencing practices, use of fines has in fact increased as a disposition in place of imprisonment for certain offences. During the ten-year study period, incarceration rates for theft steadily declined while fines as the alternative sentence increased. Fines were also increasingly used to replace incarceration for violations of the Narcotic Control Act. Their use for robbery, breaking and entering and assault offences remained relatively very low during the same period.

[2]Sources are Krisberg and Galvin (1980b : 61-63) and Morris (1976: 123).

[3]Including Austria, Cuba, Bolivia, Brazil, Costa Rica, Denmark, Peru, and West Germany.

important tool in reducing incarcerated populations. Basically, it uses a 120-point (day) numerical scale of offence severity to determine an offender's just fine level, and a simplified calculation of .1 percent of the offender's annual income to determine his/her per diem payment. The calculation of payment may be altered for financial circumstances such as presence of dependents. Sweden's particularly low rate of imprisonment has been partially attributed to the court's large-scale use of day-fines, which are designed to prevent imprisonment for default (Ibid: 61-63).

In contrast, Canada imprisons a very large percentage of persons in provincial institutions who are serving terms simply because of their inability to pay fines.[1] In cases where fines are levied, an alternate prison term for the offence in question is almost always contained in the original disposition as "insurance" for the courts should the fine not be paid promptly. Since no second hearing is mandatory before action on presumed default,[2] the court frequently merely issues a warrant of commital for the imprisonment of the defaulter. His/her term is calculated proportionately to the amount owing, usually on "a day for a dollar" ratio. The result is widespread use of expensive prison space for those who have neither committed particularly heinous crimes nor pose any special risk to the community (Ouimet, 1969: 198).

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[1] According to Haley and Larette, 21 to 40 percent of admissions to provincial institutions are fine defaulters.

[2] However, for defaulters between the ages of 16 and 21, the Court "must obtain and consider a report concerning the conduct and means to pay of the accused" before issuing a warrant of commital (Section 646(9) for the Criminal Code).

The Ouimet Committee (1969: 198-199), followed by the Law Reform Commission (1976b: 25-26, 64-65) recommended adoption of the day-fine system and a number of other reforms to encourage more prevalent and more just fine sentencing in Canada, including:

- the imposition of substantial, rather than nominal fines for "casual offences" committed by people "with general law-abiding tendencies", and for crimes in which an offender has benefitted financially from the commission of an offence;

- the imposition of fines for any offence "where a restitution order would be inappropriate, or where the offence is detrimental to society in general rather than to an individual";

- the repeal of all code restrictions on the use of fines, making them available in all cases;

- the end of the court's practice of imposing a term of imprisonment in default of payment, at the time of fine imposition;

- the appointment of an administrative official by the court, empowered to calculate the appropriate day-fine unit, determine terms of payment, and, in cases of default, to review ability to pay for the purposes of extending the payment time or referring the case to court;

- the empowerment of the court within the Code to order attachment of wages or property if wilful default is proven;

and

. the use of imprisonment for fine default only as a last resort.

In response to the Law Reform Commission's recommendations, a survey regarding the applicability of day-fines to Canada was conducted in 1974. While the concept of such a system was generally appealing, it was rejected because of potential difficulties in calculating offenders' incomes (Mitchell-Banks, 1981: 15).

Other recommendations regarding the prevention of imprisonment for fine defaulters have been implemented by some provinces. As of 1979, New Brunswick, Quebec, Saskatchewan and Alberta had initiated Fine Option Programs, which basically allow offenders who are unable to pay fines the option of performing public service rather than going to prison for default. Most of these programs have claimed high completion rates, resulting in the benefits to taxpayers of decreased imprisonment costs as well as money saved for public services (Mitchell-Banks, 1981: 27).[1]

vi) Restitution Orders

The restitution order, under which the offender compensates the victim for harm done by commission of a crime, may lower prison commitments in certain communities if used as a substitute for a prison sentence. The rationale behind restitution orders, that offenders should be required to repair damage inflicted on innocent victims and that repairing that damage creates a "clean slate" for offenders, is

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[1]Commenting on the Saskatchewan Fine Option Program, Margery Heath (1979: 25) stated her belief that "the first 3 years of operation have resulted in a steady decline in the days of incarceration as well as reducing the number of admissions to the provincial correctional centres".

appealing from both criminal and victim justice viewpoints. Moreover, if restitution is less costly to administer than a prison or penitentiary sentence,[1] it makes sense for the offender to pay his/her "debt" while remaining in the community rather than to avoid financial responsibility for the offence in an expensive taxpayer-supported carceral setting.

A number of programs have demonstrated that restitution can be appropriately and effectively applied to a wide range of imprisonable offences:

- The Georgia Sole Sanction Restitution Program, operated through the state Department of Corrections and Offender Rehabilitation, serves offenders convicted of non-violent (but not necessarily minor) offences who can be expected to complete their restitution requirements within 18 months. A probation officer works with the offender to develop a restitution plan, which is then submitted to the court for consideration in sentencing. Full financial repayment to the victim is required where feasible, and when completed, is usually rewarded by an end to formal probation supervision (Krisberg and Galvin 1980b: 70).

- The Victim Offender Reconciliation Project (VORP);[2] operated since 1975 by the Mennonite Central Committee of Kitchener, Ontario, concentrates its services on med-

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[1] Operating costs for a model program in the U.S. combining both community service orders and restitution for 250 referrals per month costs an average of $34 to $68 per client, while prison (in that state) costs $9,215 per client (Krisberg and Galvin, 1980b: 70).

[2] Information in this section is from Morris (1976: 121-122), Statistical Report of the Victim Offender Reconciliation Project (April 1/1980 - March 27/1981), The Development of the Victim Offender Reconciliation Project (1980) and interview with Mark Yantzi, Co-ordinator of the project, February 24, 1981.

iation of a just restitution agreement between the offender and the victim, although the program does follow all cases to completion. The agreement is usually negotiated prior to sentencing and becomes part of a probation order. 29 percent of cases (for the 1980-81 year) involved break and enter and 24 percent involved theft over $200, several of which could have resulted in prison or penitentiary terms. As the project has developed credibility with the courts, the judiciary has been willing to entrust it with more serious cases.[1]

The program's success in reducing incarcerative commitments may, however, be in part due to the nature of the host community, a comparatively close-knit city highly influenced by the local Mennonite population.

Like fines, the potential of restitution orders for affecting Canadian prison and penitentiary populations has not been fully exploited. At least three reasons may be cited for this:

. First, provisions do not yet exist in the Criminal Code for monetary restitution to the victim as a separate disposition. Under Section 655, the court is instructed to order restoration to the victim of any property "obtained by commission of the offence", if that property has been detained for court purposes. Otherwise, restitution must be imposed as a condition of probation or other sentence. It has been argued that unless it

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[1]For example, the project recently successfully mediated a restitution agreement involving a theft of $10,000 committed by three repeat offenders, two with previous convictions for serious offences. Prior to the existence of VORP, the offenders very likely would have been confined in penitentiary; because of the program, each has repaid the victim $3,000 and remained in the community.

attains the status of sole sanction, restitution is likely to be used an an attractive "add-on" to conventional probation orders, widening the criminal justice net, rather than as a substitute for imprisonment.[1]

In light of this problem, the Law Reform Commission of Canada (1976b: 64) recommended a model sentencing code that defines restitution as a separate disposition.

Second, the fair amount of restitution is often difficult to determine, especially in cases where physical harm to the victim is involved or where a serious crime causing more dollars worth of damage than the offender could possibly afford has occurred (Krisberg and Galvin, 1980b: 72-73). As the Kitchener Victim Offender Reconciliation Program has demonstrated, this problem can be addressed through mediation of the settlement between victim and offender. An alternative is moving restitution determination to the civil courts. U.S. civil courts have become increasingly more willing to address victim compensation issues, even in cases of personnally violent offences.[2] However, litigation of such issues has

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[1]A review of restitution programming in the U.S. found that:

> restitution has been used in an add-on fashion, even where the original program objectives included reducing the intrusiveness of the system.
>
> (Harland, Warren and Brown, 1979: as quoted by Krisberg and Galvin 1980b: 72)

[2]For example, in 1976, a state court awarded a Maryland rape victim a $350,000 judgement from her attacker (Morris, 1976: 145).

several disadvantages, including both financial and psychological costs to the complainant.

Third, arrangements for payments to the victim, incentives for completion of requirements, sanctions for non-compliance and other operational issues can often be troublesome (Krisberg and Galvin 1980b: 72-73). A program such as VORP, which accepts these responsibilities as an unbiased third party, may be the most fruitful approach to operational problems.

There is no evidence, however, that even if the above barriers to the broader use of restitution orders were removed, the increasing use of the sanction would result in lowered prison or penitentiary commitments. Several studies have concluded that restitution not only tends to widen the criminal justice net, but also may increase the likelihood of offender commitment due to the closer supervision of those receiving the sanction (Smandych, 1981).

vii) Community Service Orders

In cases where the victim is an organization, where there is no direct victim, or where the offender cannot afford to pay restitution in a monetary fashion, courts may order the offender to perform a set number of hours of community service or volunteer labour. The rationale behind community service orders is similar to that supporting restitution. The offender pays back his/her "debt" to society in a constructive way and thereby relieves his/her guilt. In addition, the offender becomes more closely associated with the community, performs work which otherwise may not be done and provides a needed source of energy to non-profit organizations (Krisberg and Galvin, 1980b: 74-75).

The community service order can have an impact on carceral commitments. In 1972, Great Britain enacted legislation (The Criminal Justice Act) supporting several measures to reduce its burgeoning prison population, including the community service order as a distinct and separate sentence. The order was intended to replace most prison sentences of up to one year's length with 40 to 240 hours of community work.[1]

In terms of reducing prison commitments, British community service orders have been somewhat successful. A report on one of the most long-standing programs indicated that a substantial percentage of offences for which the sentence was applied were imprisonable, including theft, burglary, robbery, forgery, fraud, assault and weapons possession. Between one- third and one-half of offenders who performed community service in the first six experimental districts had served previous custodial sentences, and 90 percent had prior criminal convictions (Krisberg and Galvin 1980b: 77).

However, its impact in Britain has not been as great as predicted. According to a 1976 Home Office evaluation, 44 percent of C.S.O. sentenced-offenders were reconvicted of new offences or of violating the terms of their orders within the first year of program implementation. Also, the courts have not used community service solely as an alternative to

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[1] Its features include: the service is normally done on weekends, allowing the offender to remain employed; efforts are made to place offenders alongside non-offender volunteers to encourage communication and education; emphasis is placed on work of a personal service nature rather than on menial jobs; for non-compliance with the order, the offender may be returned to court and fined, or the order may be revoked and a different sentence imposed (Wright 1980: 19-21).

imprisonment; evaluators have estimated that approximately half the offenders receiving community service orders would otherwise have faced fines or less intrusive sentences (Wright: 20).

At least two jurisdictions in the United States have capitalized on the British experience and designed community service order programs to include clients who otherwise would be imprisoned:

- Salano County, California instituted its Volunteer Work Program for all types of offenders. In the first three years of operation, approximately one-third of referrals to the program had been convicted of serious crimes, including theft, drug possession and sale, assault, rape and manslaughter. Statistical examinations of the program found no correlation between the defendant's offence and his/her potential for success or failure. According to Krisberg and Galvin (1980a): 52), the program achieved a high rate of successful client completions with very low risk to public safety.

- Pima County, Arizona initiated the Community Restitution in Service Program (CRISP) now labelled the Commmunity Volunteer Action Program, solely for probationers convicted of serious crimes. If an assessment of loss to the victim, court costs and the offender's financial status indicates that a conventional restitution order would be inappropriate, the offender may be assigned to a private, non-profit governmental agency. Supervised by an agency official, the offender then performs services to "work off" the cost of his/her offence to taxpayers and/or victims. During a nine-and-a-half year observation period, about 4 percent of the total Pima County probation population was assigned to the program. As yet, its

success in serving high-risk offenders and reducing local prison commitments has not been evaluated (Krisberg and Galvin 1980b: 77-78).[1]

- The community service order has also been instituted in Canada, as possible components of probation orders in both British Columbia and Ontario. In Ontario, the program was introduced as a potentially viable alternative to incarceration for minor offenders.[2] However, despite its widespread use as a condition of probation in that province, the community service order has not fulfilled its promise in reducing provincial prison commitments. Statistical profiles of the approximately 8,000 offenders assigned to the program indicate that most participants would have received conventional probation orders, suspended sentences or lesser penalties had the program not existed. Evaluators of the program have preliminarily concluded that the community service order has in fact widened Ontario's criminal justice net.[3]

Ontario's experience indicates that community service orders are appealing to the judiciary, who are likely to use it for a large number of minor offences when a new program is introduced. That factor alone does not diminish the order's potential for reducing prison commitments. As the judiciary

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[1]However, a recent interview with program administrators revealed that the program serves only those offenders deemed "good probation risks", that is, those unlikely to be imprisoned. The Director does not believe that the program has made any impact on state prison commitments.

[2]From Community Service Orders: a statement by the Honourable R. Roy McMurtry, Attorney General.

[3]From interview with Mike Crowley, Executive Assistant to the Director of Probation and Parole Services, Ontario Ministry of Corrections.

gains experience with the new program, it may feel confident in using service orders for more offenders who otherwise would be imprisoned. Programs such as Pima County, Arizona's, designed specifically for serious offenders, may also encourage use of community service orders as true alternatives to prison and penitentiary sentences. To create further possibilities for its use, the Law Reform Commission of Canada (1976b: 63) has recommended that the community service order be designated a separate and distinct sentence in the Criminal Code.

viii) Community Residential Placements

Orders of confinement need not be to secure facilities outside an offender's community. Experience in other jurisdictions has demonstrated that residence in a designated community facility may be imposed as a condition of probation or other sentence. If used for offenders whose only other alternative is a prison or penitentiary term, community residential placements may be instrumental in controlling incarcerated populations.

A new emphasis on community residential placements reflects dissatisfaction with the rehabilitative corrections philosophy. It recognizes that although some offenders must be separated from their immediate social milieus, imprisonment will inadequately prepare them for re-entry into that milieu. An environment which more closely resembles "real life" and is geographically closer to home assists the offender in maintaining emotional, social and occupational links. At the same time, residence in such an establishment can provide an acceptable level of accountability to the court (Krisberg and Galvin, 1980b: 84-86).

Great Britain has experimented with both probationary sentences and separate sentences (custody and control orders)

to community residential units. The intensive supervision needed by high-risk offenders receiving either type of sentence is provided by publicly or privately-run probation hostels. According to the Home Office Crime Policy Planning Unit (1974: paragraphs 20-123), a direct power of committal to a hostel is preferable to residence as a probation condition.

At least three U.S. states have initiated hostel-type programs for prison-eligible offenders:

- Georgia's Restitutional Diversion Centres provide room, board, job counselling, job placement and supervision to offenders whose only other option is prison. Referrals to the centres are made by two methods. Either the offender is sentenced to a prison term, in which case the Diversion Program which selects him approaches the sentencing court for an amendment of the sentence to probation; or, the offender is recommended for the program by a probation officer who states that imprisonment would be the only other likely sentencing choice. During the 4 to 6 months offenders are assigned to centres, they work at normal jobs to pay family support, taxes, room, board and other living expenses. In addition, clients pay restitution to victims, court costs and fines. In 1979, program participants repaid $80,445 to crime victims (Krisberg and Galvin, 1980b: 93).

- Mississippi operates a similar program designed to prevent "marginal risk" offenders from serving time at the state prison. The Restitution-Correctional Centres function essentially as minimum security work release units, except that offenders are sentenced directly to the facilities rather than to prisons. Typical program clients are

first offence, non-violent felony offenders with an average of a 5-year custodial sentence prior to diversion. In order to maintain residence at a center, clients must keep full-time jobs and pay restitution to victims (Ibid: 94).

- Washington State's residential supervision and intensive caseload supervision programs have recently been expanded with the specific goal of diverting 700 to 1,000 offenders from state institutions. The programs are not limited to first-time or non-violent offenders and in fact include many offenders with past records of violent crimes (Ibid: 95).

Because of the lack of evaluative data from these programs, their impacts upon recidivism, public safety and prison commitments cannot be ascertained. Costs are also difficult to assess. Krisberg and Galvin (Ibid: 97) note that if supervised residences are used as replacements for incarceration, program costs may be legitimately compared to prison costs. However, if the residences are substituted for conventional probation supervision, "program costs must be compared to (probation) supervision costs, in which case the program is less likely to appear so favourably in financial terms".

Residential supervision units experience one problem typical of many correctional programs operating at the community level. Citizens of neighbourhoods in which such facilities are planned usually fear a drop in property values and a rising crime rate when residences become operational. Neighbourhood reticence or hostility often continues long after residences are opened. To counter this problem, Krisberg and Galvin (Ibid: 102) suggest that programs, especially those planning to serve serious offenders, carefully select location, improve their facilities, and participate in community activities

ix) Barriers Against and Supports for Non-Carceral Sentence Alternatives

The above sentence alternatives appear to have promise for reducing penitentiary and prison commitments, whether or not they have been used for that purpose.

a) Barriers

However, as the preceding discussion has point out, certain program, client and community characteristics may prevent the non-carceral sentences from resulting in reductions in penitentiary populations. These include:[1]

- Use of the program for first-time and petty offenders, rather than for serious, prison-eligible offenders, thus "widening the criminal justice net";

- Use of the program for extremely high-risk offenders with no accompanying specialized program component to accommodate their needs. Such a gap can increase failure rates to the point that the total carceral sentences may well surpass those which would have been served under original carceral sentence terms;

- Surveillance of clients far beyond what is included in conventional probation programs, creating more opportunities for discovering violations of program conditions, again producing a high "fall-out" rate and greater likelihood of carceral sentences exceeding those which would have been meted out by the courts at the primary sentencing juncture. It has been suggested that combining alternative sentences such as community service orders or restitution with intensive probation services contributes to this effect;

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[1]For a fuller discussion of these points, see Greenberg, D., (1975) "Problems in Community Corrections," Issues in Criminology 10(1).

. Inability of the program to provide adequate job placements for clients, a factor which is related to community economic conditions and community tolerance of the program;

. Isolation of the program from its host community or inability of the program to gain community acceptance;

. Lack of knowledge about or support for the program among the judiciary, resulting in judicial hesitancy to use the program for more than the lowest risk offender.

Evidence from many jurisdictions suggests that certain mechanisms or factors also act as catalysts to widespread adoption and application of sentencing alternatives by the judiciary and by the community. These catalysts, the first two of which are detailed below, include:

. Legislative supports, particularly Community Corrections Acts;

. Judicial training and education;

. Favourable program evaluations; and,

. in some jurisdictions, severe prison overcrowding.

b) Legislative Supports: Community Corrections Acts

Since 1973, at least five U.S. States[1] have passed Community Corrections Acts to stimulate the use of non-carceral sentencing alternatives and thereby reduce carceral commitments. The key elements of such legislation include:

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[1] Iowa, Minnesota, Oregon, Kansas and Ohio.

- financial incentives to counties to develop local correctional programs and keep offenders in their communities;

- financial disincentives against committing non-violent adults or juveniles to state institutions;[1]

- institution of local decision-making structures to insure better correctional services; and

- provisions for technical assistance from state agencies to interested communities (Krisberg and Galvin, 1980: 31-37).

Experience under the new laws indicates that they can be instrumental in increasing the use of community alternatives and in reducing prison commitments. Under the Iowa Act, for example, the proportion of convicted felons receiving non-carceral sentences increased from 69 percent to 88 percent (Rutherford, et al, 1977: 78).[2]

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[1]For example, under the Minnesota Act, counties are required to pay per diem costs of confinement in state institutions when they commit adults convicted of offences carrying statutory sentences of 5 years or less.

[2]According to a Minnesota Department of Corrections study, counties participating under that state's Community Corrections Act sent significantly fewer inmates to prisons and jails than non-participating counties. During the first two years of CCA subsidies, the percentage of convicted adults sentenced to probation, community residences or unsupervised release increased from 70 to 85. During the same period, non-participating counties reduced their use of these options from 80 percent to 75 percent (Krajick, 1977: 51).

Oregon's Act has successfully encouraged the retention of several hundred convicted offenders in the community, resulting in a 17 percent state prison population reduction in one year alone (Krajick, 1981: 19-20

Despite its advantages, the Community Corrections Act model has not limited prison populations in all jurisdictions where it has been implemented. Iowa, for example, which passed its Act in 1973, has experienced substantial growth in its prison population in the past five years (Ibid: 18-19). This failure is primarily due to the Act's inability to control for a variety of factors which tend to increase incarcerated populations:

- mandatory or increased minimum mandatory prison sentences;[1]

- changes in parole practices, which are sometimes inaugarated as a backlash to the Community Corrections Act itself;

- lack of financial and planning support from the Department of Corrections or the legislature.

The Community Corrections Act may also be very limited as a long-term strategy to control prison populations. A predictive model developed by Rutherford et al (1977: 232-236) indicated that a proposed U.S. "federal aid to prison alternatives" bill[2] would initially result in diversion to community-based residential corrections of 50 percent of first time offenders who otherwise would have been imprisoned. At first, no new facilities would be necessary because non-prison residences tend to be

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[1] In 1978, the Iowa legislature passed a new criminal code that includes heavy mandatory minimum prison terms for illegal users of guns and for "habitual" offenders.

[2] The bill was basically intended to perform the same functions for states as state Community Corrections Acts do for counties.

underutilized. However, the percentage of diversions was predicted to decline as spaces in community residential centers and non-residential programs filled. According to the model, after 4 years under the proposed bill, prison populations would return to their former high levels unless new community "hostels" or intensive probation programs could be established. The authors predicted that those residences and programs would not be purchased if current social program "belt-tightening" policies continued. Because of economic conditions, the same pattern could occur under Community Corrections Act regimes in Canada.

An additional long-term problem with Community Corrections Acts may occur with costing and payback formulas within the legislation. If inflation and consequently community program support costs exceed allowable subsidies under the Act, the financial incentive to lower prison commitments will disappear. For example, after five years under Calfornia's Probation Subsidy legislation,[1] participating counties were actually losing money from the state by retaining offenders within the community who could have been in prison.

Because of the limitations of the Community Corrections Act model, the Federal Government of Canada may find it advisable to perform further evaluative research on proposed sentence alternatives legislation before endorsing it. Although such legislation may in the short-term decrease prison commitments for non-violent property offences and fine default, in the long-term its impact is more difficult to assess. Moreover, unless the legislation

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[1]The Minnesota Community Corrections Act was based on this model, which was passed by the California legislature in 1966.

contains provisions to counteract "law and order" sentencing and parole policies, it may be unable to prevent increased carceral commitments even in the short-term. To ascertain possible outcomes of the legislation, various scenarios of criminal justice and community responses could be explored.

c) Informing the Judiciary

Experiences of other jurisdictions indicate that alternative sentences are not used unless the judiciary is both aware of their presence and impressed by their performance. In this area, corrections administrators can exert considerable influence, by providing to the judiciary:

. statements of correctional objectives;

. complete listings of all non-carceral alternatives available; and,

. descriptions of individual programs and goals.

The Ouimet Committee (1969: 208) recommended that a document with these three components be published for the judiciary and updated annually. A step in this direction has been accomplished by the Ontario Ministry of Corrections, which recently (1981) published a comprehensive Community Programmes Inventory and catalogue of Community Resource Centres to assist the judiciary in finding appropriate alternative sentences. In fact, most of the provinces and territories have issued catalogues of this type.

An expanded judicial role in furthering knowledge about the broad range of sentences available and about sentencing goals is also considered crucial to the acceptance of

alternative sentences by the courts. In the interest of fostering "a consistent body of sentencing principles and a common level of knowledge among the judiciary regarding those principles..." (Divorski, 1981), the Canadian Association of Provincial Court Judges has recently prepared a Sentencing Handbook. The Handbook includes listings of both carceral and non-carceral alternatives available throughout the country, as well as general suggestions for their appropriate use.

The Handbook has not been issued for the purpose of reducing the use of incarceration, nor do the majority of Canadian judges see this function as necessarily appropriate to their independent role. However, the increased awareness of correctional objectives and of non-carceral alternatives made possible by this document may encourage the judiciary to use community sentences for some offenders who otherwise would have been imprisoned. At the same time, if judges use punitive community sanctions for those who would have remained free, the increased knowledge afforded by the document may produce a "net-widening" effect.

B.2 Changes to the Criminal Code and Related Legislation

The adoption and appropriate application of non-carceral sentence alternatives would impact penitentiary population size primarily by lowering admission rates. However, in order to influence both admission rates and another important determinant of population size, sentence length, other reforms would be necessary. These include broad changes in the Criminal Code and related legislation.

More restrictive sentencing legislation could limit or eliminate the use of non-carceral alternatives as well as increase minimum sentence lengths for certain offences, thereby quickly and forcefully raising both penitentiary commitments and the amount of time sentenced offenders remain imprisoned. If such laws increase penalties only

for violent offenders and recidivists, they may also radically change the composition of penitentiaries, forcing the federal system to cope with a more homogenous population of violent, institutionalized criminals. The impact of restrictive sentencing legislation upon prisons has been experienced in the U.S. as a result of broad-based determinate sentencing laws.

In contrast, liberalized sentencing legislation could encourage and even dictate the use of non-carceral alternatives, as well as radically decrease the sentence lengths of imprisoned offenders. The examples of Holland, certain Scandinavian countries and a few U.S. states provide evidence of the profound impact of liberalized changes in the Criminal Code.

The implications of both restrictive and liberalized changes in the Criminal Code and related legislation for penitentiary populations are discussed in more detail below. (Sections B.2 i and ii).

A third type of legislated change would impose sentencing guidelines on the courts. Amendments to the Criminal Code could compel the Bench to seriously consider all other alternatives before imprisoning an offender, to order pre-sentence reports for young adult offenders or for every imprisonable offender and to state in writing complete reasons for carceral sentences. Such guidelines are reviewed in Section B.2 iii.

The final legislative change with implications for penitentiary populations assigns sentence rule-making and evaluative responsibilities to a Sentencing Commission. Section B.2 iv examines this strategy.

i) Restrictive Changes in the Criminal Code

Until recently, most North American jurisdictions followed an "indeterminate sentencing" model, granting in law substantial, if not complete, sentencing discretion to the judiciary. In the past five years in the United States, however, this trend has changed away from judicial sentencing discretion and toward increased specification or determin-

ation of sentence by law. In order to counteract their potentially massive impact upon both size and composition of incarcerated populations, the history of determinate sentences and their relationship to other components of the criminal justice system must be understood. The following discussion is intended to impart that understanding as background for the introduction of appropriate controlling strategies.

To counter charges of parole inequities, regional and intercourt sentencing disparities, as well as criticisms of judicial leniancy in the face of rising crime rates, at least 27 U.S. states have recently adopted determinant sentencing laws.[1] The emphasis of most of these laws has been the violent or "dangerous" offender, the armed offender and the repeat offender, although many criminal code changes have also been directed toward property offenders and those importing or marketing drugs. The features of such statutes include:

. mandatory prison sentences for certain offences, or second convictions for offences, which previously resulted in a range of sentence alternatives (probation, fines, restitution, imprisonment, etcetera), varying according to judicial discretion. A total of 27 states now have mandatory sentencing laws;

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[1] See Kannensohn, Michael, (1979) A National Survey of Parole-Related Legislation Enacted During the 1979 Legislative Session; Rubin, Sol, (1979) "New Sentencing Proposals and Laws in the 1970's, Federal Probation 43(6), 3-8; Petersilia, Joan and Greenwood, Peter W. (1978), "Mandatory Prison Sentences: Their Projected Effects on Crime and Prison Populations", Journal of Criminal Law and Criminology 69(4): 604-615.

- Fixed sentences (labelled presumptive sentences by Kannensohn) for each class of offence, which, if prison is chosen by the judge as the appropriate mode of punishment, may be increased or decreased only within the constraints of narrow sentencing ranges;

- "Determinate discretionary" sentences which, for each class of offence, establish a range of terms which broaden considerably as the severity of the offence increases, but which require judges to impose fixed, non-parolable terms within those ranges. (For example, Indiana Class A felony - murder, manslaughter, rape - terms vary from forty to eighty years.)

- Revised minimum parole eligibility dates, which generally increase the terms served by certain offenders before parole eligibility.

Although originally intended by reformers to increase the fairness and humanity of the sentencing process (Kennedy, 1979: 353-382) and in many cases, to actually decrease or eliminate prison terms for most crimes (Rubin, 1979: 5-6), the statutes have almost uniformly eliminated non-carceral options and increased mandatory minimum sentences for the majority of indictable offences. Rubin claims that prosecutorial lobbying combined with public pressure to lower crime rates was responsible for influencing legislators to vastly increase levels of punishment. Hoffman and Stover (1979: 89) blame public reaction to particularly brutal rob-

beries or other incidents coincidentally occuring close to election time for the harsh legislated penalties.[1,2]

Whatever the origin, the end result of determinate sentencing legislation in the U.S. appears to be a long-term upward movement in incarcerated populations. Both before and after such laws have been enacted, social scientists have recognized their impact and have predicted the consequent prison population trends.[3]

Pointing to the extreme sensitivity of prison systems to even small upward changes in mandatory minimum sentence length, Petersilia and Greenwood (1978: 604-615) estimated the trade-offs between crime reduction through incapacitation of various types of felony offenders and consequent prison growth. Their analysis indicated that:

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[1]Judge Marvin Frankels's remarks on this point are often quoted: "Many of our criminal laws are enacted in an excess of righteous indignation, with legislators fervidly outshouting each other, with little thought or attention given to the large number of years inserted as maximum penalties. Written at the random, accidental times when particular evils come to be perceived, the statutes are not harmonized or coordinated with each other. The resulting jumbles of harsh anamolies are practically inevitable". (from Hoffman and Stover, 1979: 89)

[2]For an interesting study of the development of the California law, see Brewer, D., Beckett, G. E. and Holt, N. "Determinate Sentencing in California."

[3]For example, Rutherford, et al (1977: 190-200) predicted that a general law and order philosophy of criminal justice, applying tougher mandatory minimum punishment laws across the full range of felony offences, would translate into a 15% increase in the probability of imprisonment given conviction for any crime, and would yield a 20 percent increase in both sentence length and median time served for each crime. The scenario's overall result as applied to hypothetical models of California, Iowa, Masschusetts, South Carolina and federal prison growth, was to substantially raise prison populations in all five jurisdictions.

> Mandatory-minimum sentence policies can reduce crime through incapacitation effects, but substantial increases in prison populations will be required to achieve modest reductions in adult crime. Our analysis indicates that for a one percent reduction in crime, prison populations must increase by three to ten percent, depending on the target population to be sentenced. (Petersilia and Greenwood, 1978: 615)

However, the impact of determinate sentencing statutes upon prison populations may be substantially diluted by reactive measures originating from other actors in the criminal justice system. For example, Miller (1981: 64) hypothesized that a determinate sentencing law dictating extremely strict minimum sentences of imprisonment but leaving the discretion to imprison or not with the judiciary, might provoke judges to impose probationary terms for offenders who previously would have been imprisoned for a shorter period than the new law permits. In fact, judicial use of discretion appears to have moderated the potential effects of California's new restrictive sentencing law.[1]

Other research (Alschuler, 1977: 72-73) has predicted a "bargainer's paradise" resulting from the broadened prosecutor's role made possible by determinate sentencing laws. Because penalties under the determinate regime would be greater and imprisonment more certain for specific

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[1] In not imposing available sentence enhancements for violence and weapons use during the commission of serious crimes, or for previous prison terms, California judges have kept sentence lengths to their prior-determinancy levels. Also, judges have tended to impose only the minimum prescribed terms for opiates offences, yielding lower mean sentence lengths for the opiates-charge convicted population than before passage of the bill. Nevertheless, even in the first year under the new law, prison commitments rose appreciably. (Brewer, Beckett and Holt, 1981: 225-226)

crimes, Alschuler projected more frequent, more conclusive and less (in terms of denial of trial and opportunities for political influence) plea bargaining practices.[1]

In summary, the negative effects of legislated determinate sentencing have been established as increased prison commitments,[2] longer terms for at least some serious crimes, and ultimately, dramatically increased incarcerated populations. Moreover, experience in several states indicates that once legislatures have proposed such laws, they will tend to amend them with increasingly severe punishments for most crimes, creating further pressure on prison systems.[3] However, changes in other parts of the criminal justice system may mitigate these effects. Among these changes are more intense and frequent plea bargaining on the part of prosecutors, and compensating judicial practices such as granting probation rather than imposing harsh prison sentences, or refusing to add legislated sentence enhancements to already harsher sentences.[4]

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[1]For the first two years after passage of the California law, Justice Department data showed that 86 to 88 percent of superior court convictions, a higher percentage than previous to the law's adoption, were based on a guilty plea rather than trial. (Brewer, Beckett and Holt: 226)

[2]Krajick (April, 1981) reported that all 27 states which had passed mandatory-minimum sentencing laws and 14 states which had passed determinate sentencing laws experienced sudden and significant increases in prison commitments for the first year following passage of the laws.

[3]For example, the California Assembly Bill (Referred to as the Boatwright amendment) which amended the original Senate Bill proposing determinate sentencing in that state, contained 44 pages further expanding both the offences to be covered by the law and the severity of prison terms to be imposed. See McGee (1978) and Brewer, Beckett and Holt (1981).

[4]Another mitigating factor has frequently been included in the Statutes themselves, provisions for increased "good time", or time subtracted from sentence length for good behaviour. The impact of these provisions will be discussed in Chapter 3, Section D.

The experience gained under severe determinate sentencing regimes in the U.S. may or may not be applicable to the Canadian context, depending upon what expert is consulted. Many agree with John Evans, (1979: 9) who speculated that:

> For a number of reasons it seems unlikely such major changes (as in the U.S.) will be introduced in the near or perhaps even distant future. Some of the reasons for this belief relate to the structure of the Canadian criminal justice system and its stability over time. Others relate to the considerable differences between the U.S. and Canada with respect to the nature and scope of the problems of crime and the level and intensity of public debate over incapacitation policies. Leaving aside these structural arguments, a most important reason for not expecting major changes is simply that the consequences of changing incapacitation policies are not clear.

However, changes in federal penitentiary populations, recent Criminal Code additions and evidence of increasingly "law and order" oriented public opinion provide fuel for the opposing argument.

Hann's review of historical penitentiary population trends implies considerable change in Canadian sentencing patterns, with a recent trend toward longer mean penitentiary sentences. (The mean sentence for new offenders has increased by over 31 percent in the past ten years.) Expressed in terms of percent of yearly admissions since 1963-64 with sentences of specific lengths,

- sentences of 25 months to 3 years have increased from 27 percent to 34 percent of admissions;
- sentences of 37 months to 4 years have increased from 9 percent to 17 percent of admissions;
- fixed sentences over 5 years have increased from 8 percent to over 16 percent of admissions; and,
- special non-fixed sentences (life and other indeterminate) increased from under 2 percent to over 4 percent of admissions.

At least some of these changes are associated with more severe sentences dictated by the Criminal Code and related laws for certain offences. Examples include legislation directed at murderers, drug importers and offenders using weapons in the commission of a crime.[1,2,3]

This legislation has been developed in an atmosphere of increasingly conservative public opinion toward crime and criminals.[4] Historical research has demonstrated that a more pronounced tendency toward retribution for deviant behaviour occurs during times of economic uncertainty. It is therefore not surprising that a "law and order" attitude has become more prevalent and acceptable since the end of Canada's economic "boom".

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[1]The sentence served until parole eligibility for murderers has been increased three times in the past fifteen years, from 7 to 10 years in 1968, from 10 years to a 10-20 year period (subject to judicial review only after 15 years) and from that period to 25 years (subject to Judicial Review only after 15 years) in 1976 (Sections 669-674).

[2]The minimum mandatory sentence for importation of many drugs, including cannabis, was increased to 7 years in 1968 (Narcotic Control Act, R.S.C. 1979).

[3]As of 1978, possession of a weapon for the purpose of committing an offence became a crime punishable by up to 10 years imprisonment. Under the same amendment, carrying a concealed weapon without a permit became an offence liable to a 5-year term of imprisonment. More importantly, use of a firearm during the commission of another indictable offence made the bearer liable to an additional prison term of from 1 to 14 years, depending upon whether the weapons or other offence was the first or subsequent committed by the offender (Sections 83-89 of the Criminal Code).

[4]As noted earlier, Axon (1978: 99) for example, postulates that Canada is currently experiencing a "swing to the right", in which calls for the protection of society and tougher treatment for those who offend against society are prevalent.

Given harsher attitudes toward offenders, attitudes which are difficult to change, and the uncertain economic climate, a move toward strict determinate sentencing legislation in Canada seems likely. The implications of such legislation, in terms of rising incarcerated populations and costs to house those populations, might well be further explored by the Ministry of the Solicitor General and related ministries before a more punitive regime is adopted.

ii) Liberalized Changes in the Criminal Code and Related Legislation

In contrast to the markedly more punitive determinate legislation recently passed in the U.S., and the relatively less harsh but still historically more severe penalties for serious crimes recently added to the Canadian Criminal Code, most northern European sentencing legislation in the past ten years has radically decreased prison terms across the entire range of criminal offences.

The northern European philosophy toward punishment may be stated as:

> Imprisonment is an act of revenge which fosters hatred of society and increases crime, and which therefore should be used as sparingly as possible. (Krisberg and Galvin, 1980a: 11-12)

In line with that philosophy, several countries have adopted policies of "down penalization" and decriminalization to lower prison populations.[1] Examples of their success include:

. Holland now boasts the lowest incarceration rate in the world (22 prisoners per 100,000 population in 1972) as as a result of legislation that sharply decreased prison sentences to an average time served of one month.

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[1]For a detailed discussion of these policies and their effects, see Krisberg and Galvin (1980b: 10-15).

- After the Working Group of the Swedish Council for Crime Prevention recommended that sanctions involving the deprivation of liberty be made fewer, shorter and milder, Sweden introduced significantly lower minimum terms for most crimes, including the now popularly used one-week term for many criminal code violations. The average number of prisoners held has dropped appreciably.

- A number of fundamental changes instituted in 1973 in Danish penal law, including elimination of all indeterminate sanctions, much shorter sentences for property offenders, shorter "times served before release" and legalization of pornography and the possession of certain drugs, lowered that country's average daily prison population by approximately 14 percent (Brydensholt, 1980).

The chart below[1] indicates the dominance of very low prison terms in Denmark, Holland, Sweden, and Canada compared to the high proportion of longer prison sentences in the U.S.

SENTENCES TO PRISON

Country	0-3 months	4-12 months	More than 1 yr.
United States	12%	2%	86%
Canada	73%	14%	13%
Denmark	25%	56%	19%
Holland	75%	20%	4%
Sweden	69%	20%	11%

[1]From Dodge (1979) A World Without Prisons (Lexington, Mass.: D.C. Heath and Co.) and Doleschal "Crime and Criminal Justice in the United States, the Netherlands, Denmark, Sweden and Great Britain" (Hackensack, N.J.: N.C.C.D.) as cited by Krisberg and Galvin (1980b: 11). U.S. statistics have been compiled from U.S. National Criminal Justice and Statistics Service (NCJISS) Census of Jails and Survey of Jail Inmates, 1978. Canadian figures have been compiled from Justice Information Report: Correctional Services in Canada: 78-79, prepared by the National Work Group on Justice Information and Statistics, Ottawa, 1981 and from the Federal Historical Reporting System September, 1982, using the Offender Information System, Correctional Service of Canada.

Liberalized sentencing is not without support in the United States. Discussing the impact of decreased sentences upon various models of U.S. prison growth, Rutherford et al (1977: 236-237) noted that, "Changes in the range of 15 to 20 percent at sentencing and release junctures seem quite sufficient to bring current capacities and populations into line during the (6-year) forecast period." In other words, rather small legislated decreases in sentence length could have stalled the massive American prison population increases during the 1970's.

The report concludes however, that mere changes in justice priorities, dictating shorter sentences for drug and property offenders, but longer sentences for violent and repeat offenders, will probably not lower prison populations, and in fact, may tend to raise them over time. The only effective alternative is lowered incarcerative penalties across the range of all offences. The American Bar Association urged the acceptance of such an alternative in 1968,[1] but was unable to halt the flow of law-and-order legislation in the United States.

Because of increased pressure upon its prison system, Great Britain may be leaning toward the general reductions in sentences common to continental Europe.[2] The Home Office

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[1] Standards Relating to Sentencing Alternatives and Procedures, as cited in Rubin, Sol (1979: 4-5).

[2] As Brydensholt (1980: 41) reports, England's prison population growth might also have been arrested by legislative sentencing changes. In the beginning of 1970's, the number of prisoners in England and in Denmark were comparable. England, with its 50 million inhabitants, had about 35,000 incarcerated, whereas Denmark, with about 5 million inhabitants, had approximately 3,500 inmates. England did not depenalize; if anything, the sentences became longer. The result is that Great Britain now has more than 42,000 prisoners and severe problems in the prison system.

Crime Policy Planning Unit (1974: paragraph 107) examined the theoretical advantages and disadvantages of shorter sentences, concluding that while a prison sentence has a greater deterrent effect than a fine or a period of com-service for serious offences, "a short prison sentence marks disapproval of the offence in some special way and so serves the purpose of public reassurance." Furthermore, a substantial scaling-down of prison sentences would require no counter-balancing provision of alternative resources to produce a rapid reduction in the prison population (Ibid: paragraph 112). Three years later, the Advisory Council on the Penal System, proposing that sentences for most crimes be lowered, argued that "nothing is likely to be lost" by a general reduction in the length of medium-term sentences for "run-of-the-mill" offences, a point well accepted by the country's major criminologists (Ashworth, 1977: 577-581).

As seen in the above table, Canadian sentencing patterns have generally followed the European model, reserving longer prison terms for a relatively small proportion of imprisoned offenders. However, the Criminal Code permits extremely long sentences for many crimes, and contains few of the reduced sentence options available in other jurisdictions. Many organizations and individuals interested in decreasing incarceration have recommended lowered penalties for selected offences and offender groups. Examples and their predicted impacts upon penitentiary populations include:

. Repeal of Mandatory Minimum Sentences of Imprisonment

In 1969, the Ouimet Commission (210) recommended the repeal of all statutory provisions (except that for murder) which impose minimum / mandatory sentences of imprisonment upon conviction. This recommendation was

repeated by the Law Reform Commission of Canada, seven years later (1976d: 66) but has not been implemented. Such a change would have a large and long-term impact upon penitentiary populations if alternative sentences were available and embraced by the judiciary for serious offenders.

- Reduction or Removal of High Maximum Penalties

As a result of his comprehensive study of Canadian sentencing patterns, Professor John Hogarth concluded that the very high maximum penalties provided in the Criminal Code for at least seven offences could be substantially lowered to reflect prevailing public sentiment and court practice.

> It seems absurd that for some offences, breaking and entering for example, the maximum penalties (life imprisonment) are so high that less than one percent of the sentences actually imposed are in excess of one half the maximum provided. (1971: 386-387)

None of the maximum penalties referred to have been lowered. In view of current sentencing patterns which do not reflect the maxima, however, the impact of lowering the penalties is difficult to predict.[1]

- Special Provisions for the Young Adult Offender

In 1969, the Canadian Committee on Corrections (Ouimet: 383-388) proposed the enactment of special provisions for the young adult offender between the ages of 18 and 21,

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[1] Although the effects of such changes could probably be estimated using the Ministry of the Solicitor General's simulation model of penitentiary population growth (The Federal Corrections Simulation Model, FCSM), to our knowledge such estimates have not been made.

including mandatory pre-disposition reports for any case where a prison sentence is considered, a presumption against imprisonment "unless all other courses are considered and rejected", and the imposition of a requirement to record verbatim the court's reasons for imposing a prison sentence should that course be followed. Despite the repetition of these recommendations (and their extension to apply to all convicted offenders) by the Law Reform Commission of Canada (1976: 42-43, 66-67), none of the proposed changes has been implemented.

Depending upon the age group encompassed, Criminal Code revisions affecting the imprisonment of young adult offenders might have a substantial impact upon the federal penitentiary population. Approximately 5 percent of current inmates are under 20 years old, while about 26 percent are under 24 (Hann, 1982: A5), indicating a large volume of admissions from these age groups. To accurately predict the legislation's impact, however, it would be necessary to first assess the effect of such requirements as pre-sentence reports upon disposition (see Section B.2 iii of this chapter).

The proposed legislation does not approach the measures taken by other jurisdictions to prevent the incarceration of young adults. In California, for example, a convicted person may be referred to the Youth Authority rather than adult institutions until the age of 24. In fact, most states have passed laws creating presumptions against incarceration of young adults except in extreme circumstances.

Repeal of Indeterminate Sentences

The Ouimet Committee (1969: 246-258) also recommended the repeal of legislation which mandated the preventive

detention of habitual offenders or dangerous sexual offenders for indeterminate periods. Research for the committee indicated that indeterminate sentences had been incorrectly applied to non-violent criminals, many convicted of only minor property offences, and, in the case of habitual offenders, even to those with very broad spacing between convictions for serious crimes. Moreover, the designation of a convicted person as a "dangerous sexual offender", expanding any existing sentence by as much as life imprisonment, was based on only two brief interviews by psychiatrists who tended to overestimate risk.

As a result of the Ouimet Committee's work, both types of legislation were repealed and replaced by the Dangerous Offender section of the Criminal Amendment Act (1977), which allows the court to impose indetermiate penitentiary sentences only for those convicted of serious personal injury offences and likely to pose substantial risk to other people (Ouimet 1969: 258-260 and Canadian Criminal Code, 1980 Sections 687-695).

To our knowledge, the impact of neither the repealed sections nor the new "dangerous offender" section upon penitentiary populations has been assessed. Research examining the numbers of persons imprisoned and receiving non-carceral sentences under each section would be needed in order to understand the population implications of the provisions.

Reduction or Elimination of Penalties for Marijuana Use and Sale

Since the early 1970's, a number of groups, including the Commission of Inquiry into the Non-Medical Use of Drugs (in its Interim Report, 1970 and Cannabis, 1972)

have urged the reduction or elimination of penalties for offences involving possession and sale of marijuana. Despite persistent recommendations for decriminalization, penalties for cannabis offences have not been lowered. However, the Criminal Code was amended to permit the use of absolute and conditional discharge as sentencing options for those crimes in 1972.[1]

Reduced penalties for cannabis possession and importation could have a pronounced impact on prison populations.[2] The impact on penitentiary populations would depend, however, upon the retroactivity of provisions and upon exchange-of-service agreements between the federal and provincial government, as well as on the reaction of prosecutors, who may tend to lay more serious drug charges or at least avoid plea bargaining under a liberalized regime.

The experience of states which have decriminalized marijuana usage suggests that the change in law may influence prison population growth. Of eleven states which have decriminalized, nine have experienced either population reductions or comparatively small increases since

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[1] This brief summary of the Le Dain Commission's findings and subsequent government action is taken from the Ministry of the Solicitor General, Research Division, Highlights of Federal Initiatives in Criminal Justice: 1966-1980 (1981: 15)

[2] Although only 4 percent of convictions for simple possession resulted in prison terms in 1977, they represented over 1,300 prison sentences, including 10 persons who received more than a year, and 18 who received indefinite sentences. Imprisonment has been imposed in over 10,000 convictions for cannabis possesion during the past decade, primarily for default in payment of the large fine required under the Criminal Code. Data from British Columbia and Ontario Ministries of Correction indicate that more people are incarcerated for default in payment of such fines than are originally sentenced to incarceration. For a more detailed discussion of this phenomenon, see J. Blackwell, M. Green and R. Solomon, Cannabis Control Policy: A Discussion Paper (unpublished research study for the Department of National Health and Welfare, 1979: 56).

the law's change.[1] The actual impact of the law, as opposed to other factors, upon prison populations has however, not been scientifically investigated.

iii) Legislated Sentencing Guidelines for the Judiciary

In addition to changes in the Criminal Code itself, one frequently recommended strategy to reduce disparities in sentencin as well as to reduce prison commitments is the issuance of sentencing guidelines to the judiciary. Before recommending guidelines in 1969, the Canadian Committee on Corrections described the judicial sentencing dilemma:

> The Canadian Criminal Code does not contain a general definition of the words "sentence" and "sentencing"... No guidelines are provided, except in some few cases where a statutory minimum sentence does away partly with discretionary power of the courts, and in all cases where a maximum penalty draws the line. The degree of "punishment" is otherwise left to the discretion of the court...(Ouimet, 1969: 188)

Since that report, a number of experts and the Law Reform Commission of Canada (Hogarth, 1971; Law Reform Commission of Canada, 1976a and 1976b), have reiterated these inadequacies and made recommendations for various reforms, including the implementation of legislated sentencing guidelines.

Legislative requirements state a coherent national policy to which the judiciary must adhere. Possible contents of amendments to the Criminal Code accomplishing this purpose include:

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[1] Alaska, California, Colorado, Maine, Minnesota, Mississippi, Newbraska, New York, North Carolina, Ohio and Oregon have decriminalized. Particularly in Alaska, where penalties for private use in the home have been eliminated, the change in the law appears to be related to a drop in the prison population. Information from the U.S. National Organization for the Reform of Marijuana Laws (NORML) and Krajick (1981).

a) A presumption against incarceration, unless extenuating factors exist to warrant removal from society and unless no other appropriate alternative is justified, as recommended by the Ouimet Committee (1969), Hogarth (1971) and the Law Reform Commission (1976b).[1]

The legislative scheme proposed by the Law Reform Commission (1976b: 65) provides that imprisonment be imposed only to achieve one of three objectives: separation of the offender for the protection of society; denunciation of highly reprehensible behaviour; or, punishment of those who have wilfully refused to comply with the conditions of their sentences.

Such an approach has been embraced by the American Bar Association in its policy statement regarding proposed changes in the U.S. Federal Criminal Code (1979) and has been adopted by at least one state. The New Jersey Code of Criminal Justice (in effect as of September 1, 1979) contains a presumption in favour of non-custodial sanctions (which are specified in the Code) for third and fourth degree crimes, when the offender has no record unless the judge believes imprisonment is necessary for the protection of the public. (Krisberg and Galvin, 1980b: 16-18). As yet, the effect of the New Jersey law on the state's prison population has not been assessed.

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[1] As a result of his survey of judicial attitudes and sentencing practices, Hogarth suggested a reversal in the present emphasis of the Code, under which "the courts are placed in the position of having to justify the use of non-institutional measures", to legislation which clearly states that fines, suspended sentences, and probation are the appropriate dispositions to make, unless the court can show that circumstances of the case justify imprisonment (Hogarth, 1971: 387).

Great Britain implemented a legal presumption against incarceration for first offenders under the Criminal Justice Act of 1972, Section 14,

> under which the court is enjoined not to pass a first sentence of imprisonment unless it is of the opinion, having considered information about the circumstances, that no other methods of dealing with the offender is appropriate. (Great Britain, Home Office, 1974: paragraph 33)

No evaluative data on the impact of this measure has been found.

b) Required use of pre-sentence reports for either selected groups of offenders, as the Ouimet Committee proposed for young adult offenders when a prison sentence is seriously considered by the Court (1969: 383-388), or for every offender who might be imprisoned by the Court, as recommended by the Law Reform Commission of Canada (1976a: A18; 1976b: 67).

c) A requirement to state completely and record all reasons "in fact as well as in law" for sentences of imprisonment, as recommended by the Ouimet Committee (1969: 192, 209-212) and the Law Reform Commission of Canada (1976b: 66-67).

The actual effects of sentencing guidelines on judicial sentencing behaviour is difficult to gauge. Will the legislative changes endorsed by reform groups actually accomplish the intended purpose of reducing penitentiary commitments? Or will judges minimize the intent of the law, continuing past sentencing practices? Evidence is sketchy at best, indicating the need for in-depth research

investigating both the current relationship between the use of such mechanisms as pre-sentence reports or stated sentencing reasons and Court dispositions, and the experience of jurisdictions which have already implemented legal sentencing reforms. Certainly, whether or not they influence penitentiary populations, legislated guidelines hold promise as measures which may reduce sentencing disparity and encourage accountability for sentencing upon the judiciary.

iv) Formation of a Sentencing Commission

To further reduce sentencing disparity and enhance the state's ability to control prison populations, some jurisdictions have implemented legislation which assigns sentence rule-making and evaluative functions to a Sentencing Commission. The Commission both determines a narrow range of penalties structured according to a broad legislatively set grid, and assesses the impact of any sentencing guidelines it promulgates upon the incarcerated population.[1]

Because the Commission is mandated to consider the size of prison populations when it formulates guidelines, it may have a considerable impact on prison growth. Minnesota and Pennsylvania legislatures have recently established Sentencing

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[1] Such an arrangement represents an effective compromise between indeterminate and determinate sentencing schemes, for several reasons (Kannensohn: 1979: 7):

- Proposed sentencing ranges under guidelines set by Commissions have tended to permit more discretionary latitude although they are still narrower than most indeterminate systems;
- Judges are not restricted to exact terms but must only stay within the prescribed range;
- Variations outside the prescribed range are also permitted, if compelling reasons exist and are justified in writing, but are automatically appealable by either the prosecutor, if the judge goes below range, or the defendant, if the judge goes above the range;
- Parole release decision-making is abolished under the scheme, but the Commission is presumably sensitized to correctional needs because of its removal from the public eye.

Commissions. However, the bodies have not existed long enough to assess their impact upon state prison commitments or sentence lengths (Kannensohn, 1979: 7-8; Miller, 1981: 71).

No organization in Canada regularly evaluates either proposed or enacted criminal law changes from the perspective of penitentiary population control. Without such an evaluation, criminal justice officials have no basis for objecting to or planning system accommodations to the legislation. In the same vein, no body exists which could counter a legislative tendency to lengthen sentences. One resolution to these problems may be the establishment of a Sentencing Commission similar to that created by the Minnesota and Pennsylvania legislatures. The Solicitor General might follow the Commission's progress in Minnesota and Pennsylvania. Whether or not such an arrangement would be appropriate under the division of powers and responsibilities within the Canadian system of Criminal Justice would of course also require consideration.

2.B.3. EDUCATING THE JUDICIARY

Educating the judiciary regarding sentencing practices and the impact of those practices is often mentioned as a strategy to change sentencing patterns and thus influence the size of penitentiary populations. Certainly, legislative and administrative changes in sentencing requirements or sentence options can have little impact without ongoing judicial education programs. These programs may take several forms: sentencing conferences or seminars; short-term and sabbatical training courses; and, formal internships or attendance in a range of correctional programs.

i) Sentencing Conferences or Seminars

The Law Reform Commission of Canada (1976b: 47) suggested that the Chief Justice of a court take the leadership role

in periodically convening sentencing judges in institutes or seminars to develop "statements of purposes" defining sentencing objectives.

> The particular goal of such proceedings should be to develop criteria for the imposition of sentences, to provide a forum in which newer judges can discuss problems with more experienced judges, and to inform all sentencing judges of current information and developments in sentencing.

Such sentencing conferences now take place on a regular basis in most provinces.

The Law Reform Commission's recommendation follows in spirit that of the Ouimet Committee (1969: 215), to correct the "ignorance of the judiciary" by holding periodic conferences of judges and magistrates with other criminal justice professionals. An example of such a conference, convened by the Centre of Criminology, University of Toronto, was held in 1972.[1] The conference was attended by judges, lawyers, criminologists and professionals in many correctional fields. One of the recurring themes of that gathering was the appropriate utilization and justification for various criminal sanctions.

Involving the judiciary in the formation and dissemination of sentencing procedures is considered essential for their success. In Mississippi, where the Bench itself convened regular conferences to respond to the federal court order prohibiting prison overcrowding, judicially imposed incarcerative sentences decreased appreciably and the use of other sentence options correspondingly increased (Rutherford et al, 1977: 67).

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[1] See Proceedings of the National Conference on the Disposition of Offenders in Canada, May 14th-May 17th, 1972.

ii) Short-Term and Sabbatical Training Courses

Concluding that most magistrates and judges sentence "in the dark", and that "no effective mechanism exists at present for bringing new information to the attention of the courts", Hogarth (1971: 389-390) recommended the establishment of a federal-provincial institute to provide short-term training (up to three months) in sentencing for newly appointed judiciary and refresher courses for practicing judges. He further suggested that participation in such refresher courses or in leaves of absences for the purpose of studying corrections, be made a requirement of continued appointment. The Ouimet Committee (1969: 215) also suggested granting judicial sabbatical leaves for criminological study.

A number of jurisdictions have implemented this type of program. In the state of California, for example, university-sponsored courses to cover judicial training needs have existed since 1964 (Ibid: 215). The U.S. regularly publishes a directory of all available judicial education programs in that country.

iii) Attendance or Internships at Corrections Institutions

Another recommendation in the educational area made by the Ouimet Committee (Ibid: 215) was the extension of invitations to the judiciary on a regular basis to visit federal and provincial institutions. This recommendation was expanded by the Law Reform Commission of Canada to specify the content of such visits, which

> should include familiarization with the process by which an offender is admitted to an institution, the conditions that affect his sentence, and release procedures (1976b: 48).

Because of Great Britain's prison overpopulation crisis, the Parliamentary Committee on Prisons has proposed that before and during their tenure on the Bench, judges undergo formal training as attaches to their regional probation and corrections services and facilities.[1]

Whether or not training and education has appreciably altered sentencing practices is an unanswered question. Although no evaluative studies have been conducted, the "dramatically increased" willingness of the judiciary to imprison convicted offenders in Calfornia, despite the extensive judicial training implemented in that state, indicates that other factors, specifically attitudes, may be more important in determining sentencing behaviour (Krisberg and Galvin, 1980a: 67).

CHAPTER 3 - POST INCARCERATION INITIATIVES

INTRODUCTION

Chapter 2 concentrated on strategies to influence penitentiary populations that are implemented prior to imprisonment. Those strategies, if effective, decrease or increase the available pool of criminal offenders to be committed to penitentiary, penitentiary admission rates, and the length of sentence to be served within penitentiary walls.

Chapter 3 examines policy and program options that are implemented after incarceration. Some post-incarcerative strategies influence the jurisdiction and conditions under which prisoners are housed; others impact the size of penitentiary populations primarily by affecting prisoner release rates and times or rates of return to prison after release.[1]

The main actors initiating post-incarceration strategies are prison officials, departments or ministries responsible for corrections services and policy, and parole boards. However, their choices are circumscribed by judicial decisions, and by legislation, which are in turn subject to the actions of legislators and to public attitudes toward offenders. In describing various strategies, Chapter 3 attempts to clarify the roles of each of these actors.

Section A discusses changes in federal-provincial jurisdiction over inmates, reviewing the impact of exchange of service agreements, expanded federal authority over inmates and removal of "2-year rule" anomolies.

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[1]The relationship between various forms of release and penitentiary population size are well documented in Determinants of Penitentiary Populations (Hann, 1982). The relevant times and rates referred to here are "Time Between Admission and Release", "Parole Release Rate", "Parole Revocation Rate", "Mandatory Supervision Release Rate", "Mandatory Supervision Revocation Rate", and "Return Rate After Parole or MS Completion or Direct Discharge". See text explaining these rates in Appendix.

The following section covers classification and assignment strategies designed to speed an inmate's progress through the prison system or limit the number of maximum security cells.

Section C investigates strategies that involve four types of pre-release programs, educational, vocational, community residential and earned remission.

Section D examines parole policies, those that govern eligibility, parole board decision-making, availability of support services and revocation decisions.

The final section of this chapter discusses the effects of various mandatory supervision policies on prison populations.

3.A CHANGES IN FEDERAL-PROVINCIAL JURISDICTION OVER INMATES

A.1 Exchange of Service Agreements

Several of the previously mentioned strategies to influence incarcerated populations presume that a reduction in provincial prison commitments will yield a reduction in the federally incarcerated population. In fact, that possibility cannot be realized without comprehensive exchange of service agreements between federal and provincial corrections authorities.

As early as 1969, the Canadian Committee on Corrections (Ouimet: 283) recommended that provision be made "for the federal government to contract for prison service from a province and for a province to contract for prison service from the federal government." That recommendation was implemented in 1973 with the initiation of exchange of service agreements between the two levels of government. However, those agreements have been used relatively infrequently by federal corrections in response to capacity problems, despite occasional ex-

cess capacity in provincial prison space.[1,2] Corrections officials in both Federal and Provincial jurisdictions have claimed that the stipulations for prisoner exchange are not well-defined and are not easily applied. If the agreements were broadened and improved, they could stimulate the movement of prisoners from overcrowded penitentiaries to less populous provincial facilities.

Large-scale movements from one jurisdiction to another may solve overcrowding problems but may raise more complicated issues. Improved exchange of service agreements might encourage the unequal treatment of Federal (or Provincial) prisoners by keeping those originating in poorer regions within substandard provincial institutions rather than in better Federal facilities in other regions. Moreover, use of the agreements might provoke inmate-administration hostilities if those benefitting or planning to benefit from penitentiary training or work programs are chosen for transfer to certain provincial prisons with fewer or poorer programs.

The judiciary may also react negatively to correctional changes in sentencing via exchange of service agreements. As Hann's (1982: 6.5) data demonstrate, there is compelling evidence to suggest that judges frequently add one day to the 2 years less a day sentence, not for the additional day's rehabilitative or punitive potential, but because they have specifically wanted certain offenders to serve their terms in federal penitentiaries.[3] If some of those offenders

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[1]For example, in 1977-78, there were approximately 1,000 empty provincial prison beds (Canada-wide) on any given day. However, the situation has changed in the past two years. Figures from the Ontario Ministry of Corrections, for example, indicate that the prison population in that province has exceeded operational capacity since 1980.

[2]The exception being the housing of Quebec Federal female inmates in Quebec Provincial institutions.

[3]In recent years, approximately 18% of inmates admitted to Federal penitentiaries had sentences of exactly two years.

are then allowed to serve their terms in provincial prisons, judges may increase sentences accordingly or may recommend the commitment of offenders directly to the desired institution rather than to federal authorities.

A.2 Expanded Federal Authority Over Inmates

Different impacts on federal penitentiary populations would result from the expansion of either federal or provincial authority over convicted offenders.

The Sub-Committee on the Penitentiary System in Canada (MacGuigan, 1977: 39) deplored the inequalities of resources, unstandardized procedures and lack of coherence in treatment philosophies made possible by a two-tiered prison system arbitrarily divided at the 2-year sentence point. The Sub-Committee recommended that the federal government initiate discussions with the provinces to standardize correctional operations across the country. It also recommended that consideration be given to a much more radical solution to the same group of problems noted 21 years earlier by the Fauteux Report (1956: 50): that the Federal Government assume responsibility for the custody of all persons sentenced to imprisonment for more than six months.[1] Any expansion of federal authority such as that envisioned by the Fauteux or MacGuigan Committees could substantially increase penitentiary populations.

A.3 Removal of 2-Year Rule Anomolies

The removal of current anomolies in the 2-year sentence dividing line between the Federal and Provincial imprisonment could also increase penitentiary populations. At present, the following types of offenders who technically receive sentences of at least 2 years confinement are committed to Provincial institutions:

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[1] According to Quimet (1969: 280) the Federal government made the offer to implement this recommendation at a Federal/Provincial conference to consider the Fauteux Report in 1958.

- those with 2 concurrent sentences, each under 2 years, but which total more than 2 years;
- those who are mentally ill or suffering from tuberculosis, regardless of sentence length;
- those awaiting disposition of appeals from sentences longer than 2 years; and,
- those detained for violation of supervision following release from penitentiaries, until the Parole Board makes the decision to re-commit such offenders (Ouimet, 1969: 275-276).

For the purposes of this report, we did not ascertain the numbers under each category who would be transferred to the opposite jurisdiction if the 2-year dividing line were strictly followed. Considering the potentially large numbers involved, that subject appears to be worthy of investigation.

3.B CLASSIFICATION, ASSIGNMENT AND TRANSFER

Two types of decisions are initiated by corrections authorities as soon as a prisoner is received by the Federal system. First, he is classified according to several criteria as a maximum, medium or minimum security risk.[1] Second, he is assigned to an appropriate institution. Third, that assignment may change several times during an inmate's career through transfers to other institutions. All three of these decisions are extremely complex and involve several types of variables.[2] Classification, assignment and transfer choices play a large role

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[1] These criteria are explained in simple form in MacGuigan (1977: 129-132.) The many theories and variables which enter into various classification schemes are discussed in A Review of Offender Classifications and Typologies (Axon, 1981).

[2] These variables include the geographical origin of the offender, perceived dangerousness and managability, institutional attributes such as the availability of educational or work programs or physical security, administrative factors such as the need to prevent a predicted violent incident, and inmate requests.

in determining the extent of a prisoner's stay in the penitentiary system.[1] More generally, classification and assignment and transfer choices are important correlates of population size and density which in turn may be related to prison violence and to correctional effectiveness. The literature suggests that appreciable changes made in policies affecting these three decisions could significantly influence penitentiary populations.

B.1 Existing Classification, Assignment and Transfer Policies

Clements (1982: 78) noted that North American correctional policy has created a presumption against the use of the lower security options by requiring substantial justification for each classification below that of maximum security. In the presence of an unknown quantity (the new inmate), corrections officials tend to follow the path of at least resistance and over-classify, resulting in a large number of inmates with maximum security status.

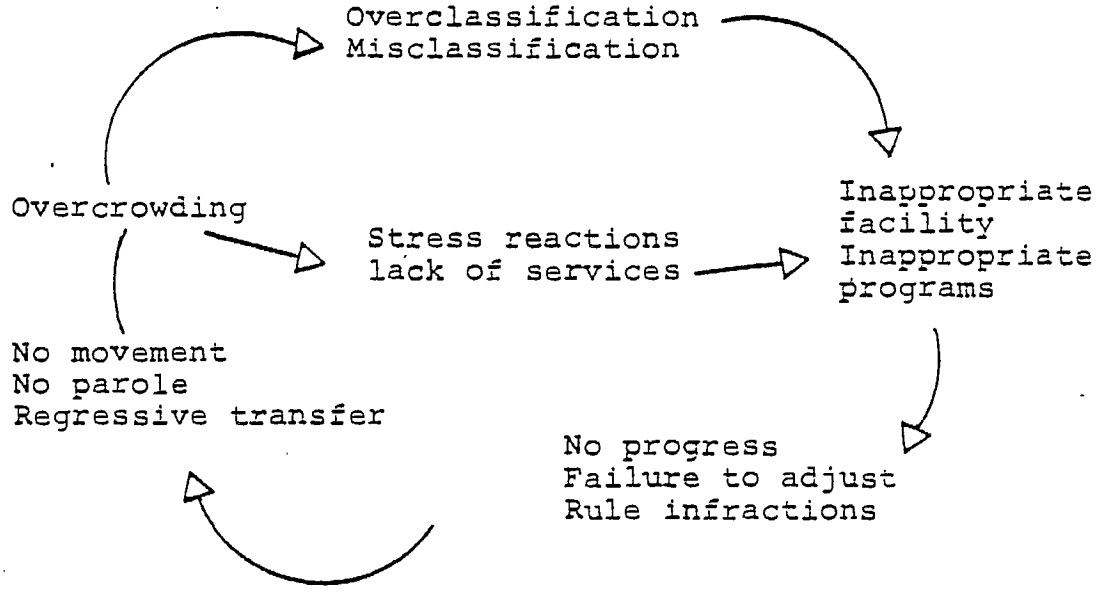
Specific inmate program requirements are often given second priority to security requirements, resulting in the assignment of inmates with maximum security status to the most appropriate security-oriented (as opposed to service-oriented) institutions. The ability to match other incoming inmates' needs with training, counselling and work programs is further reduced by the decreased availability of certain types of security institutions. In Canada, this process is complicated by uneven program availability among penitentiaries. The majority of sought after educational and work programs are located in maximum and medium security-type institutions, rather than in minimum-type institutions.

One impact of these choices may be increased sentence length, or time between commitment and release, a significant determinant of population size. Because downward classification, transfer to less secure institutions, temporary absence and parole decisions

[1] For instance, parole decisions have been found to be influenced by the current institutional security classification of the applicant.

are often based on enrollment and progress in educational and work programs (Heinz, et al, 1976: 10-11), maximum security inmates tend to become "stuck" in the system.

Concommitant negative effects of overclassification have been discussed by Clements (1982: 74-80), who argues that the upward pressure on maximum security prison populations created by overclassification leads to rising densities within those institutions. When maximum security inmates do not flow quickly through the system, increasing numbers of residents in secure institutions are forced to compete for smaller and smaller participatory shares in available programs. As a result, even more inmates fail to obtain changes in classification status and transfers, compounding overcrowding. Evidence indicates that disciplinary infractions and regressive transfers[1] rise under crowded conditions. Such infractions also prevent movement through the system (as discussed in Section 3.C.3), further contributing to overcrowding. Finally, the presence of overcrowding itself influences corrections authorities to become more conservative in classification decisions and place inmates in more restrictive settings, again increasing pressure on already overcrowded institutions. Clements' "vicious circle" (below) summarizes the synergistic effects of classification errors and prison overcrowding.



[1]Also known as "back door" classification (Ibid: 79). This occurs when a prisoner, subsequent to transfer to more desirable quarters, is cited for disciplinary infractions and returned to the more restrictive setting.

Overcrowding, in turn, has been correlated with increased prison violence and with reduced correctional effectiveness. In a review of the literature in this area, Farrington and Nuttall (1980) found some evidence that overcrowding produces violent or disruptive behaviour in prison, although confounding variables such as prisoner age and commitment offence had not been sufficiently examined. Their own data, which controlled for inmate personal attributes, suggests that overcrowding is directly and positively related to higher post-release reconviction rates.[1]

As Krisberg and Galvin (1980b: 29-30) point, out the "vicious circle" initiated by overclassification may have an extremely serious long-range impact on prison planning. If construction needs are based on population estimates for each classification stratum, the system will build a far greater number of expensive maximum security facilities than technically necessary, using resources which could be devoted to minimum security community-based facilities. Once built, the secure facilities will attract inmates labelled as high security risks, perpetuating the overclassification phenomenon.

Krisberg and Galvin's point is substantiated by evidence that California's use of minimum security work camps and all types of community placement has declined despite severe overcrowding in that state's prisons. To accommodate the growing "high risk" population, California plans (but cannot afford) to build several new maximum security facilities (Krisberg and Galvin, 1980a: 21).

B.2 Re-Classification Screening Programs

Several efforts to break the overclassification-overcrowding cycle have been successful in not only placing a higher proporation of prisoners in less secure (and less costly) prisons, but also in reducing incarcerated populations.

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[1] The authors speculated that this relationship may be due to increased "contamination", a decreased availability of rehabilitative activities or to increased stress and aggression under overcrowded conditions.

As a result of U.S. Federal court orders to reduce prison populations, a number of states have implemented large-scale re-classification screening programs,[1] including:

- Alabama, where a team from the University of Alabama retained for six months re-classified 4,444 prisoners. The group previously classified as maximum security risks fell from 34 percent to 2 percent of the population, while those previously classified as amenable to community custody rose from 9 percent to 32 percent. The State Board of Corrections disagreed with only a small number of changes (Krisberg and Galvin, 1980b:29).

- Mississippi, where convicted felons are submitted to a newly derived classification procedure conducted by the State Department of Corrections. Recently enacted legislation allows the Department to return felons classified as low-risk to court with a recommendation for a sentence other than imprisonment (Ibid: 29).

- Tennessee, where two-thirds of those classified as medium security risks were found to require only minimum security, using criteria developed by the United States Bureau of Prisons (Clements, 1982: 75).

Because of mounting costs for secure prison cells, many states, including California, have adopted criteria and procedures similar to those developed by the U.S. Bureau of Prisons for assessing super-

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[1] It should be noted that the consequences of placing large numbers of formerly medium-security status prisoners in minimum security facilities have not been evaluated. Other jurisdictions that have experimented with such a process claim a greatly increased AWOL rate from the less secure institutions.

vision requirements of prisoners.[1] These criteria and procedures take into account indicators of dangerousness and the likelihood of escape attempts, assaultive behaviour and other institutional misbehaviour such as trafficking in drugs. Using this classification system, the California Department of Corrections determined that approximately 40 percent of the currently incarcerated population was suitable for minimum security housing or community-based programs (Krisberg and Galvin, 1980a: 65-69).

New classification and assignment criteria and procedures[2] have also been applied to the Canadian context as part of the Correctional Service of Canada's efforts both to develop a more objective and practical classification scheme and to reduce the number of maximum security inmates. These policies stem in part from recommendations issued by a series of committees investigating the penitentiary system. As early as 1969, the Canadian Committee on Corrections (Ouimet: 312-313) noted that although only 15 percent of U.S. prisoners were classified as maximum security risks, fully 35 percent of the Canadian penitentiary population were classified as such. The Committee recommended that the overclassification problem be given immediate attention.

By 1977, few changes had been made. Between 35 and 40 percent of the federal inmate population were housed in institutions classified as maximum security,[3,4] and only 13 percent were in insti-

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[1] Much more sophisticated classification schemes have been developed by other states (e.g., Wisconsin, Florida), as detailed by Axon (1981). However, these schemes were not developed specifically to down-classi and their progress toward that goal is not known.

[2] As part of the new procedures, a risk assessment matrix is applied to imprisoned offenders at frequent intervals.

[3] The 40 percent maximum reported by MacGuigan differs from the 35 perc reported by Hann for the same year (Hann, 1982: A9). The actual numb is therefore presumed to lie between the two.

[4] It should be noted that a distinction must be made between the securi classification of inmates and the security classification of the inst tutions in which the inmates are resident. Since we have no data on former, the discussion in this and subsequent sections regarding Canadian penitentiary populations refers to the latter measure only.

tutions classified as minimum security, despite available spaces in low security institutions. To alleviate what was termed "a bottleheck in the system", the Parliamentary Sub-Committee on the Penitentiary System (MacGuigan, 1977: 132) concluded that "a major review of the approach to classification is required....".

In 1978, the Correctional Service began its "cascading" policy, which was designed to offer incentives to both corrections officials and inmates for progressive de-classification and transfer to lower security institutions. The policy appears to have been partially successful, reducing the portion of inmates residing in maximum security institutions to 32 percent by 1979 (Hann, 1982: A9).

However, a number of barriers to "cascading's" success have been recognized (Axon, 1981: 129; Needham, 1981: 53). Canada's dispersed population and uneven geography are not conducive to the development of any broad-based classification system. As well, facility choices vary considerably by region and locale. Minimum security institutions are often not preferred by inmates because of their lack of program options and general emphasis on hard physical labour. A further barrier to "cascading" may be the type of inmate entering the system. If incoming prisoners are generally younger and more violent than in previous eras, then increased use of lower security categories may not be feasible. The large number of protective custody cases in the federal system may also impede the progress of "cascading".[1] Finally, the impact of "cascading" may eventually be limited by the presence of empty maximum and medium security cells. Unless those cells can be converted to minimum security spaces or eliminated, correctional officials will likely feel some economic pressure to fill them.

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[1]The number of such cases has been estimated to be currently over 1,000.

Recognizing the inability of long-term gradual de-classification schemes to significantly lower the number of inmates labelled medium or maximum security risks, Krisberg and Galvin (1980: 81-84) recommended a different course for the State of California, a statutory ceiling on the number of available higher security beds. The ultimate objective of the proposed policy was to reduce the reliance on secure prisons for routine classification and assignment of non-assaultive felons, and therby eliminate the need for substandard institutions and double-celling. The ceiling limits could be periodically adjusted according to criminal justice indicators such as arrest and conviction rates for various crimes. As yet, the limits have not been implemented.

3.C PRE-RELEASE PROGRAMS

The relationships between institutional pre-release programs and penitentiary population variables is indirect. The following two sections discuss evidence from the literature that indicates enrolment in three types of programs (educational/vocational, work and community residential) affect both earned remission credits and parole decisions.[1] At the same time, participation in such programs may enhance possibilities for outside employment and decrease the likelihood of recidivism. As well, some pre-release programs allow offenders to re-establish family and community ties. Strategies which increase the availability of pre-release programs could therefore influence the rapidity with which inmates move through the system and thereby the size and density of incarcerated populations.

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[1] According to the Solicitor General's Study of Conditional Release (Needham, 1981: 30), "There is some evidence that inmates do engage in prison programs in hopes of increasing their chances of early release. (When, for example, the U.S. Parole Commission... removed participation in prison programs as an element in parole criteria, program participation in penitentiaries declined)".

The fourth section discusses earned remission, the portion of an inmate's sentence that is routinely eliminated or served on the street as a reward for good behaviour and participation in prison work programs. In Canada, earned remission can reduce the portion of a sentence served in penitentiary by up to one-third, making its use an important determinant of population size. Four types of strategies regarding earned remission policies are examined.

C.1 Educational, Vocational and Work Programs

According to recent research, participation in educational, vocational and work programs may have an impact on parole decisions, post-confinement recidivism, and re-commitment to prisons (Heinz et al 1976: 10,13-14) noted that "participation in these [educational] programs improved an inmate's probability of release by almost 13 percent", primarily because institutional sociologists place such great weight on course enrollment in their prognosis of inmate risk for the parole board. Data collected by Blackburn (1981), comparing prisoners who enrolled in a local college to a matched control group of prisoners who did not, suggest that enrollment in the courses significantly lowers the probability of post-confinement recidivism and the probability of re-commitment to prison.

However, neither research project established whether those who enrolled in educational programs are self-selected for parole and post-parole success because of other personal characteristics, or whether the program itself exerts an independent effect on parole selection and later street success. Until this question is answered, the value of educational programs in population reduction remains speculative. If personal characteristics are responsible for program enrollment, parole selection and lowered recidivism, expansion of educational opportunities will have no impact on release decisions or re-commitments.

According to Heinz et al (1976: 10), enrollment and participation in institutional vocational training programs appears to have no bearing on later decisions in an inmate's career, largely because "neither the (Parole) Board members nor the (insitutional) sociologists place much faith in the rehabilitative effects of these programs". This hypothesis is echoed by the report of the Parliamentary Sub-Committee on the Penitentiary System in Canada, which concluded that vocational training in Federal institutions inadequately prepares inmates for outside employment, largely because of outdated machinery, unqualified instructors, poorly planned programs and lack of official government recognition for apprenticeship or licencing qualification upon graduation (MacGuigan, 1977: 111-112).

To improve the situation, the Sub-Committee recommended that training given in workshops be monitored by outside trade groups, that markets for prison products be more selectively considered and that arrangements be made with the provinces for apprenticeships, licencing and certification (Ibid). The Correctional Service of Canada has moved toward increased emphasis on quality vocational programs since the report's publication. As yet, however, we do not know the impact of this policy change upon release decisions.

Several types of inmate work programs in the U.S. and Canada appear to have affected early release rates, recidivism or other variables associated with the reduction of incarcerated populations. In addition, some programs appeared to improve prison-community relationships, thereby providing more employment opportunities for released offenders. Examples include:

- The Volunteer Program of the Rideau Correctional Centre, an Ontario medium security institution, that provides long-

term programming for provincial offenders. Under the terms of the program, inmates volunteer to work five days a week in either a local centre for the retarded or the geriatric unit of a local psychiatric hospital. An extensive evaluation showed several benefits associated with participation in the program, including more serious consideration for temporary absence, parole and other forms of release (Gendreau, et al, 1980).

- A tobacco harvesting work-release program in Southwestern Ontario, which uses inmates from two provincial institutions for contracted work with local farmers. Evaluated in terms of community acceptance, the program was highly rated. The program was not examined for its effect on release decisions, but the willingness of participating farmers to re-employ criminal offenders to fill future labour needs indicates a potential impact in this area (Boydell, et al, 1981).

- South Carolina's earned work credit program, through which inmates earn remission for productive work performed outside the institution. Under the State's Litter Control Act, (1978), the Department of Corrections may grant up to 180 days of extra remission credit per year to inmates assisting the highway department in keeping roadsides clean and performing other upkeep tasks. The new program effectively reduced the state's prison population during the first two years of its existence (Krisberg and Galvin, 1980b: 41-42).

In terms of applicability to the Canadian Federal context, the establishment of relevant educational, work, temporary absence and residential programs for penitentiary inmates is supported by the National Parole Board's and the Ministry's developing philosophy

of gradual re-integration into the community.[1] It is also consistent with the "shared responsibility" model of criminal justice as a joint responsibility of the offender and society (Vantour, 1981: 20-24).

In fact, pilot projects to expand inmate employment options have been in operation from some time at several Federal institutions. Computer programming and forestry projects (at least one of which is financially supported by inmates and has corporation status) are two examples. Along with these and other pilot projects, the Correctional Service of Canada has also recently reclassified jobs performed by inmates and revised pay scales accordingly.[2]

South Carolina's example of rewarding work with extra remission is particularly interesting as a method of increasing incentives to participate in penitentiary work programs while reducing populations. The Parliamentary Sub-Committee on the Penitentiary System recommended that a number of changes be implemented to encourage prisoner productivity in work projects, including extra privileges and increased earned remission (MacGuigan, 1977: 11). These recommendations have not been fully implemented.[3]

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[1] See, for example, the Solicitor General's Study of Conditional Release (Ibid: 20-26) for a partial explanation of the National Parole Board's goal of gradual release. The basic objectives of gradual release are risk reduction and "decompression" of the inmate in a controlled situation.

[2] It should also be noted in reference to the discussion of incentives for "cascading" earlier, that the focus of this re-design was to allow inmate pay scales to increase as inmates moved to jobs in lower security level institutions.

[3] As of 1977, a Penitentiary Act amendment has tied earned remission to program participation. However, the amendment did not alter the loss-punishment nature of the system nor did it go so far as to allow extra remittable days to be earned beyond the standard one-third sentence already available. The remission program is discussed in greater detail in Section 3C3.

According to the Solicitor General's Working Group on Conditional Release, absence permits (TA's) and day parole provide more effective incentives for program participation than increased earned remission. However, a 1977 legislative change has tightened regulations for TA eligibility and divided granting authority between correctional authorities and the parole board, thus reducing the program's value as a reward for work. In addition, day parole has sometimes been granted in such an untimely fashion that work projects, for which permission to leave institutional premises is needed, have been cancelled or delayed (Needham, 1981: 35, 57).

C.2 Community Residential Pre-Release Programs

The goal of community residential pre-release programs is to reintroduce inmates to the pressures of "real life" living situations while providing them with needed supports and exposing the community to minimal risk. Community pre-release centres are important components of a reintegrative approach to corrections, which addresses the fact that many offenders are outsiders to mainstream society, particularly to the normal labour market. The rationale for their establishment is based on research which indicates that:

> the first 90 days after release are the most critical for the individual in terms of recidvism. ...For many, the transition to freedom from a highly restrictive environment, and the desperation which may accompany the harsh realities of lack of money, family support or knowledge about available resources, are highly stressful situations. (Krisberg and Galvin, 1980b: 235).[1]

Programming therefore emphasizes job training, job readiness and job placement efforts, as well as the alleviation of personal adjustment problems.

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[1]Krisberg and Galvin's conclusion is based on Keldgord, (1971) and Miller and Montilla (1977: 213).

Under the usual terms of community residential palcement, the inmate agrees to live in a designated pre-release centre, work-release centre or half-way house during the final 3 to 6 months before parole eligibility or release, keep a job, pay living expenses and family support payments and in some cases, pay restitution to crime victims. In turn, the centre gives pre-release residents a structured living environment, employment counselling, job placement services, and social counselling. Violations of the terms may result in return to the prison setting.

Experience in some jurisdictions has indicated that increased commitments to pre-release centres can reduce incarcerated populations if the cheaper community facilities are used as replacements for expensive prisons, and if the programs demonstrate the ability to reduce recidivism. Examples of various types of programs include:

. South Carolina's "extended work release" program. Authorized by the legislature in 1977 to relieve overcrowding in the state's prisons, the program abolished the requirement of living at a minimum security facility while participating in outside employment and instead allowed inmates authorized absences within six months of parole eligibility or release to live in community corrections facilities or, in some cases, in their own homes. The program accomplished its intended goal of reducing the prison population by a daily average of 100 offenders. (Krisberg and Galvin, 1980b: 42).

. The "halfway in-halfway out" house in Skejby, Denmark. The concept of the program is that interaction between offenders and non-offenders is necessary to provide healthy, positive reinforcement for offenders and to introduce members of the community to inmate problems. Two-thirds of the residents are prisoners and one-third are social work students

All residents pay room and board, work locally and participate in frequent group counselling sessions (Krisberg and Galvin, 1980b: 96).

- Montgomery County, Maryland's Work Release/Pre-Release Centre. Designated as an exemplary program by the Law Enforcement Assistance Administration, the centre serves local residents from Federal, state and county correctional institutions whose offences range from violent crimes and serious drug offences to shop-lifting and non-support (approximately 50 percent are felons with sentences of more than one year). The Pre-Release Center emphasizes employment interview skill training and job placement services. Although 26 percent of participants are returned to prison for revocation of program conditions, the centre claims a low walk-off rate (less than 5 percent) and a low recidivism rate among the 74 percent of clients who are released successfully (Rosenblum and Whitcomb, 1978).[1]

- Minnesota's Restitution Centre. Located in a Minneapolis Y.M.C.A., the Centre serves primarily property offenders with sentences over two years in length who could not afford to pay restitution debts without the benefits of the program. Under a contractual agreement, made with the victim's input when possible, each offender agrees to pay a specific amount of the salary he earns at an ordinary job into a bank account until restitution is completed. In a 3-year period after the program's commencement, approximately one-half of the agreed upon restitution amounts

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[1] However, the centre's evaluation used no control group. It is therefore impossible to ascertain whether the recidivism rate is "low" or not, and whether that rate is due to effects of the program or the rather stringent selection process.

were actually paid to victims, and 65 percent of clients had completed the program without violating program conditions. (Krisberg and Galvin, 1980b: 92; Serrill, 1975).

- San Francisco's Transitions to Freedom, Inc. Largely funded through private contributions, the San Francisco program is unusual in that it provides vocational training for only those positions which employers have made previous commitments to fill. Through this method, Transitions to Freedom claims that the 6 to 9 months of pre-release training it provides are fruitfully used. During the training period, the program also provides lodgings and temporary jobs such as housepainting and gardening for local residents (Axon, 1978: 51).

- The U.S. Bureau of Prisons Pre-Release Halfway Houses. The U.S. Federal pre-release program is noteworthy because of its enormity. Almost half (47 percent) of Federal prisoners[1] are pre-released through community placements to over 400 publicly and privately supported residential facilities throughout the country (Krisberg and Galvin, 1980a: 47).

The effectiveness of residential pre-release programs in reducing prison populations, finding permanent jobs for clients and reducing recidivism among offenders appears to depend on several factors. Research suggests that one of the most important of these factors is employment availability in the host community. Until recently, Mississippi, for example, released only 5 percent of its inmates through work-release centres because of the dif-

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[1] In 1978, 8,826 inmates were pre-released in this fashion.

ficulty of securing employment for eligible prisoners in the economically depressed state (Rutherford, 1977a: 66). On the other hand, Maryland, which contains two of the wealthiest counties in the U.S. in terms of average family income, places 23 percent of its inmates in pre-release centres (Krajick, 1981: 20).

A second factor highly related to program effectiveness is community acceptance. Potter (1979) noted that although 48 of 50 states now have laws permitting work-release programs, the majority of programs involve less than 10 percent of inmates because of inability to gain community approval for pre-release establishments. One or two spectacularly violent incidents caused by inmates in pilot facilities have often encouraged citizen opposition and forced cutbacks of programs. Citizen hostility against such programs also results from outrage against perceived sentencing changes,[1] fears of lost property values and fears of lost community job resources.

However, Potter and others blame lack of commitment and weak promotions on the part of correctional administrators for the failure of pre-release centres to gain public acceptability and to reduce prison populations in most jurisdictions. In California, for example, Krisberg and Galvin noted that a large number of beds are unused in existing private and public halfway house facilities which are willing to take pre-release offenders.

Even if residential pre-release programs make optimal use of employment resources, are well accepted by the community and ag-

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[1]The permission to allow participation in a pre-release program is often seen as correctional authority or Parole Board "tampering" with the intended sentence of the court.

gressively supported and promoted by corrections officials, they do not necessarily reduce incarcerated populations. Analysis of correctional practices in both the U.S. and Canada (Hylton, 1980; Greenberg; 1975) suggest that, in fact, the prison spaces vacated by releasees are quickly filled by new inmates, with the consequent effect of "widening the criminal justice net". The only solution to this problem is limiting the number of secure beds in the prison system as a whole, while increasing the number of available pre-release centres.

The Solicitor General's Study of Conditional Release indicates that Canadian residential pre-release programs have expanded too slowly in the Federal system, have not met community demand and may be increasing rather than decreasing corrections control over the population. Approximately 400 inmates under Federal jurisdiction reside in Community Residential Centres (CRC's).[1] Even when the 4 percent of inmates in Community Correctional Centres (legally classified as penitentiaries) are added to the pre-released population, the resulting ratio of pre-released inmates to the total penitentiary population is extremely low compared to many other North American and European jurisdictions. To increase the number and use of pre-release facilities, the Working Group recommends that larger per diem fees be paid by the Correctional Service of Canada for CRC use and that block funding be granted for community services supplied by private agencies (Needham, 1981: 61).

A specific "widening the net" influence of pre-release facilities may result from the practice of extending day parole (to allow inmates to use CRC facilities) for the purpose of "testing"

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[1]The number of inmates who are actually pre-releasees in CRC's is lower than this figure because CRC's also house inmates released on full parole.

inmate eligibility for full parole, rather than granting inmates full parole at their normal eligibility dates. The Working Group concluded that "day parole with CCC or CRC residence should be used more where there is a real need for resources or a perceived need for short-term extra structure", and should not be used as a prerequisite for full parole. (Ibid: 60).

A more general conclusion may be drawn that the use of residential pre-release facilities in Canada has not influenced the growth of penitentiary populations. Whether this inability is due to the relatively low number and usage of such facilities or the tendency to fill empty penitentiary space with newly admitted offenders is not known.

C.3 Earned Remission Policies

Various strategies may be instituted to manipulate earned remission programs. This section examines the impact of increasing allowable remission, abolishing remission and changing the method of administering remission programs upon penitentiary populations.[1]

i. Increasing Allowable Remission

First, the length of allowable remittable portion of sentence itself has an obvious effect on population size and density. If increased, it may operate as a safety valve to prevent or inhibit institutional overcrowding. Many U.S. states introducing determinate sentencing laws have increased provisions for "good time" to one-half of sentence to compensate for the increased prison commitments and longer terms generally resulting from such legislation (Kannensohn, 1979).

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[1] For this section, extensive use was made of the Solicitor General's Working Group on Conditional Release Report (Needham, 1981), which should be consulted for more details on the strategies.

More immediate increases in available remission credits have also been used in the U.S. as emergency measures to ease institutional overcrowding. For example, a retroactive 1978 Illinois law automatically increasing the good conduct credits available to state prison inmates, allowed 474 prisoners who would otherwise have remained in prison to be freed at the end of the following year. At the same time, the provision entitled hundreds of inmates to earlier Parole Board appearances and eased institutional tensions by reducing the amount of time to be served for all remaining inmates. A similar legislative provision was suggested to California as one method of quickly lowering its prison population (Krisberg and Galvin, 1980b: 43).[1]

However, legislatively increasing available remission time may have at least three negative impacts on the system. If, as concluded by the Solicitor General's Working Group on Conditional Release (Needham, 1981: 89), the judiciary already considers remission time in its choice of sentence, an increase in available remission credits could result in judicial expansion of prison terms to counteract the new provisions.

Increasing remission would also concentrate more power in penitentiary officials. The same Canadian report noted the lack of recent support for any corrections model which places more release discretion "in the hands of authorities who already have almost full control over virtually all other aspects of an inmate's life". (Ibid: 137)

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[1] See also, the discussion on page 100 of South Carolina's earned work credit program; which allowed up to 180 days of extra remission credit for inmates assisting in highway upkeep.

A third possible negative impact of increasing available remission time is a rising rate of return after release to mandatory supervision. Opponents of increased remission provisions point to the fact that at present, approximately one-third of persons released through remission are returned through revocation before warrant expiry. (Needham, 1981: 89) Certainly, the revocation rates in other jurisdictions that have increased available remission should be examined before any change is implemented.

ii. Abolition of Remission

On the other hand, decreasing or abolishing earned remission would probably have more negative impacts upon penitentiary populations than increasing remission. Although there is substantial evidence that remission does not motivate inmates to exceptional conduct or participation, it may discourage inmate unemployment and misconduct within institutions (Ibid: 34). Its removal might therefore result in more severe institutional management problems.

Furthermore, abolition of remission might yield larger incarcerated populations if judges did not compensate for the lack of remission in setting sentence. Again, the experience of jurisdictions that have abolished remission (Kannensohn, 1979) should be reviewed before changing policy in such a radical way.

iii. Changes in Administration of Earned Remission

Policies regarding the administration of earned remission also have an impact upon penitentiary populations. As previously mentioned, the equitable administration of remission credits is dependent upon officials of the Correctional Service, who have the power to remove earned days for dis-

ciplinary infractions and/or failure to participate in certain programs or activities.[1] Disparate use or overuse of this power can create inmate tensions and overcrowding on an institutional level, and increase sentence length on an individual level. As well, because disciplinary infractions and "good time" losses influence parole decisions, remission administration policies can significantly affect several of the variables which determine penitentiary population size.

The Solicitor General's Working Group on Conditional Release reported several disparities in remission granting rates according to region, security level and individual penitentiary involved (Ibid: 85-86). The overuse or inappropriate punishment of disciplinary infractions leading to loss of remission time has also been criticized.[2]

Finally, the relationships among disciplinary policies, earned remission policies and parole decisions have also been documented. Heinz et al (1976: 10-12) noted that "disciplinary actions appear to play an important role in the [Illinois] Parole Board decisions", and that "the

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[1]The Solicitor General's Working Group on the subject noted that remission is in fact not an earned-reward system but a loss-punishment system. Even after the 1977 Penitentiary Act amendment designed to create a more positive system, "senior CSC officials concluded that the resources necessary to perform the surveillance, evaluation and recording needed to make the system truly earned were not available." (Needham, 1981: 33)

[2]For example, while investigating several penitentiary disturbances, the Sub-Committee on the Penitentiary System in Canada, (MacGuigan, 1977: 91) discovered cases in which inmates had been dissociated (solitarily confined) for long, seemingly unjustifiable periods, during which, under existing rules, they would not earn remission credits.

few who had lost good time were least likely to be paroled". The relationship between "good behaviour" and a favourable parole decision was reinforced by the weight placed on disciplinary infractions in the parole prognosis completed by the institutional social worker. Despite evidence that institutional behaviour is a poor predictor of adjustment to the outside world,[1] the social workers were much more likely to label an inmate as a "guarded" or "unfavourable" parole risk if he had a record of infractions and lost remission. In turn, Heinz, et al found that the Parole Board's decision was highly influenced by the institutional prognosis.[2]

Because of the weight disciplinary and remission practices appear to carry in parole decisions, and the previously discussed disparities in Canadian remission practices by region, inmate security level and institution, strategies both to change the way disciplinary infractions are invoked and to reduce their role in parole decisions might be considered. For example, the Solicitor General's Working Group on Conditional Release recommended that loss of remission be appealable to the National Parole Board for independent review (Needham, 1981: 87).

However, the relationships between Canadian Parole Board decisions and either institutional disciplinary records or remission credits have not been adequately studied. Before any strategies to mitigate the effects of such a relationship can be proposed, research into the various aspects of parole decision-making in the country must be completed.

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[1] See, for example, O'Leary and Glaser, "The Assessment of Risk in Parole Decision-Making", in The Future of Parole: 135-158.

[2] For a similar conclusion with respect to Canadian Federal Parole, see Attack, W.A.J., and A. Bonhomme-Beaulieu, "A Comparative Analysis of NPS recommendations and NPB decisions, 1974, 1975, 1976 and 1977", Correctional Service of Canada (unpublished), 1979.

3.D PAROLE POLICIES

Several components of parole policy - eligibility dates, grant rates, release rates and revocation rates - have a marked influence on penitentiary populations. Hann's (1982) data revealed that changes in these rates have been correlated with both short term and medium term variations in population growth. Moreover, because few offenders are now released by direct discharge, Parole Board decisions have assumed even greater significance in determining both population size and composition.

As one of the most widely fluctuating determinants of penitentiary populations, parole release rates are obvious candidates for policy change. In the past ten years alone, parole release rates have varied from 56 percent in 1970/71 to 27 percent in 1976/77. According to Hann,

> (That) analysis strongly supports the hypothesis that parole release behaviour in the past has been strongly influenced by policy direction, and as such, merits special consideration as a focus for policies to influence institutional populations. (1982: 7.12)

The following sections discuss four types of strategies to influence penitentiary populations through changes in parole policy. The first strategy is a legislative or regulatory change in parole eligibility dates; the second, policy changes in the methods by which Parole Boards make release decisions; third, expansion of parole resources and services; and fourth, changes in revocation policies. Examples from other jurisdictions illustrate various ways of implementing each strategy and its possible consequences.

A caution is issued regarding any of these strategies as panaceas to control or reduce penitentiary populations. Although it may be possible to release greater numbers of prisoners at

earlier dates, as long as cells remain available, parole strategies may not be able to overcome the criminal justice system's tendency to fill empty prison space with new commitments. A recently completed study for the U.S. National Institute of Justice (Mullen, 1980), suggests that the size of prison populations may be more a function of available capacity than of any other variable.

D.1 CHANGES IN PAROLE ELIGIBILITY

Legislatively and judicially set sentence lengths determine eligibility dates. With the passage of increasingly punitive determinate sentencing statutes, eligibility dates have become further removed from term commencement, resulting in a cumulative upward pressure on incarcerated populations. Because sentence enhancements under such statutes are typically added to terms for violent crimes, weapons offences and repeat offences, for which long sentences are already typical, that upward pressure on populations builds over a period of several years and is extremely difficult to diffuse. For example, the impact of a 1976 Canadian legislative change increasing time served prior to parole eligibility for murder from 10 to 25 years will not be fully appreciated until 1991, when new murderers admitted after 1976 (who could otherwise have been freed from 1986 to 1991) will all still remain imprisoned.[1]

The cumulative impact of determinate sentencing statutes is even broader when parole boards are abolished, the case in most U.S. states which have passed such laws (Kannensohn, 1979). By delegating more sentencing responsibilties to the prosecutor, less to the judiciary and none to the parole board, determinate sentencing laws increase the likelihood of offenders serving longer

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[1] Because judicial review of parole eligibility for murder is permitted at 15 years, a certain percentage will probably be paroled from 1991 to 2000. If none are paroled, the full impact will not be felt until 2001.

sentences and sentences to pre-set release dates, no matter what overcrowding or other population factors exist in the prison system. In effect, the abolition of parole boards removes what Muller (1981) labels an important "feedback loop" capable of reducing incarcerated populations. In the absence of parole boards, prison populations rise in an uncontrollable manner.

Jurisdictions which have retained parole boards have been able to implement strategies shortening parole eligibility dates and consequently reducing incarcerated populations. For example:

- to relieve intense overcrowding of the State's prisons, Mississippi passed a temporary measure to allow "early parole" of property offenders, reducing time served until parole eligibility by one year. Within the first year of its passage, early parole provided for the premature release of 250 prisoners, saving the State 250 inmate years worth of expenses. In 1977, Mississippi also passed a companion measure allowing "supervised earned release", under which the majority of offenders who had served at least one year of their sentence were eligible for parole. In the six months following its implementation, the law was responsible for the early parole of another 50 prisoners (Rutherford, 1977: 66);

- Great Britain has experimented with two types of early parole eligibility proposed by the Home Office Crime Policy Planning Unit in 1974 (paragraph 118). The first type was intended to shorten sentences of young adult offenders serving terms of less than 3 years in length. Under early parole guidelines, they become eligible for parole almost immediately and the procedure for granting parole is simplified and decentralized. The second type creates a

"mini-parole" for adults with shorter sentences who normally would not be released because of the extended period needed for case preparation and presentation;

- Saskatchewan has successfully implemented a "short" parole program to early release the high percentage of impaired drivers in the Province's prisons. By law, repeat offenders must serve 90 days of their minimum sentence in prison for the offence. However, by obtaining permission for offenders to "serve" a large portion of that prison sentence as parolees in the custody of the treatment program, and by speeding the parole granting process to allow parole to the program after only a short time, the provincial corrections service has saved an average of 45 inmate-days in institutional expenses for each of the 800 participating individuals. In the one and a half years since its inception, the program has recorded few new violations within six months of release. Because of the success of this program, the province is now planning to implement "short" parole for property offenders sentenced to up to 9 months in prison.[1]

Any of these strategies could have a noticeable impact on Canadian penitentiary populations. For example, if property offenders who are federally held were permitted to apply for parole earlier than at present, the time served in penitentiaries by up to 220 inmates could be decreased.[2] A policy

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[1]Information in this paragraph is from interview with Larry Wilson, Chief Probation Officer, Saskatchewan Department of Social Services, March 24, 1982. eligible for day parole after six months and full

[2]According to Hann (1982: A6), approximately 22 percent of the roughly 10,000 federal inmates are serving terms for break and enter, theft, possession of stolen goods and fraud. Of course, certain of those inmates are serving 'relatively short' sentences now (i.e. less than 3 years) and become eligible for day parole after six months and full parole within 1 year of admission. A decrease of 1 year in time before eligibility (as in Mississippi) would be extremely unlikely for these inmates, but even 2 or 3 month's change in the eligibility date would have a pronounced impact on population size.

change following the British model to allow young offenders earlier parole eligibility could affect the early release of the over one-quarter of Federal prisoners between the ages of 16 and 24 (Hann, 1982: A5). Similarly, the easing of parole eligibility restrictions from one-third to one-sixth of sentence for inmates serving sentences of exactly 2 years could have institutional costs related to at least 95 inmates per year.[1,2] The encouragement of provincial "short" parole programs similar to Saskatchewan's might also be worthwhile from the Federal viewpoint. "Short" parole could free prison spaces to house Federal prisoners if Federal-Provincial agreements were reached on the issue.

. Lowering parole eligibility dates for murderers, a strategy which has generally not been employed by North American jurisdictions because of potentially negative public reaction, could also be very effective in reducing penitentiary populations over the long term. As noted above, due to the long sentences involved, the impact of parole changes would be both large and cumulative for this offence. The relatively modest number of inmates who would be released each year

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[1]Of the roughly 4,500 admissions to penitentiaries in 1979/80 (Ibid: 5.4), at least 18% had sentences of exactly 2 years (Ibid: E.12). Assuming a parole release rate of 35%, reducing the parole eligibility date from 1/3 to 1/6 of sentence would result in a reduction of (4,500 x .18) x ((1/3 - 1/6) x 2) x .35 = 95 inmate years served in institutions.

[2]Of course, these offenders are now eligible for day parole after 1/6 of sentence, meaning that case preparation must be completed within 4 months of sentence commencement. The argument has been made that such offenders need not be sent to penitentiary at all if they are meant to serve less than 4 months confinement. However, the literature has pointed out that the value of imprisonment lies primarily in its certainty and its shock value, both of which are experienced within the first two months of confinement. Holland, among other countries, has found that a very short prison term serves the same purpose as, and is often more effective than, a long prison term.

through such a change could over time free many times their numbers in bed spaces and expenses.[1]

In 1969, the Canadian Committee on Corrections recommended that the parole regulations passed the previous year which disallowed those convicted of capital or non-capital murder from parole for 10 years, "be changed so that such convicts can be considered for parole earlier in their sentences" (Ouimet, 1969: 344). Morris (1976: 134) made a similar proposal after reviewing a four-year study conducted by the U.S. Uniform Parole Reports indicating that murderers are the best parole risks of any type of offender.[2]

This finding has been corroborated by a Canadian National Parole Board recidivism study of murderers released from federal penitentiaries over a 5-year period.[3] Despite lack

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[1]Although we do not have estimates of the numbers of admissions for murder each year, we do know that in 1979/80, roughly 4% of admissions had sentences over 20 years in length. To be extremely conservative, we could take ½ of this percent or (.02 x 4,500) = 90 admissions as being the number of admissions for murder each year. If each of these admissions served 20 years, then after 20 years, there would be (90 x 20) = 1,800 murderers in the inmate population. Reducing the time served before parole to 10 years would reduce penitentiary populations by some 900 inmates (roughly 10% of the total penitentiary population).

[2]According to the study of 6,908 murders released on parole during 1965-1969 across the United States, only .3 percent committed murder again and only 1.8 percent were found guilty of any new major offence. See "Questions and Answers", Crime and Delinquency Literature, June 1974.

[3]During the 1975-1979 period, 134 capital and non-capital murderers were released, of which 6 were returned for commission of a new offence (Break and Enter, Trafficking or Theft), 3 for technical violations and 1 for parole revocation.

of evidence regarding the dangerousness of paroled murderers, sentence served before parole eligibility for that offence has been increased since the Ouimet Committee's recommendation.

D.2 PAROLE BOARD DECISION-MAKING

In recent years, many jurisdictions have attempted to change the methods by which Parole Boards make release decisions through both legislative and administrative policies. These policies have been implemented in order to decrease what some see as arbitrariness and disparity in parole decision-making. In some cases, the purpose of the policies has also been to increase the number of parolees and thereby decrease prison populations. In other jurisdictions, Boards have adopted policies to enhance their visibility, responsiveness and accountability to the corrections system and to the public.

The new paroling policies have generally taken three forms:

i. Presumptive Parole Statutes

Presumptive parole statutes shift responsibility from the prisoner, who under most parole regimes must show why he or she should be released, to the Parole Board, which must show why the prisoner should not be released. The State of New Jersey was the first North American jurisdiction to enact legislation creating a presumption for release on parole at the date of first eligibility, unless "a preponderance of the evidence" indicates that the prisoner will commit a crime if released. Under the New Jersey law, the Board may postpone a prisoner's parole release only if he or she persistently violates specifically defined institutional rules or engages in indictable conduct while incarcerated. Because the statute has been

in force for only a short time, its impact on the New Jersey prison population is not yet known (Krisberg and Galvin, 1980b: 44).

ii) Parole Guidelines

Under the parole guidelines model, Parole Boards follow decision making criteria based on certain offender characteristics such as criminal history, nature of the offences committed and statistical assessment of risk to society. In the past four years, several U.S. states have adopted parole guidelines, many following examples set by the U.S. Parole Commission.[1] For example, the Washington Board of Prison Terms and Paroles (Burnoski, 1979) with assistance from the Law Enforcement Assistance Administration, developed a Public Safety (PS) Scoring system to be used in release and parole revocation decisions.[2]

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[1] See Hoffman and Stover (1979) for a description of the U.S. Federal guidelines.

[2] The PS Score considers the following factors:

- offender sex
- classification of the severity of commitment offence (offences are grouped in five classes: 1. murder, manslaughter, sexual offences and/or assault; 2. robbery; 3. property crimes; 4. drug offences; and 5. parole violations with no new criminal offence)
- type of initial sentence received
- history of drug abuse
- employment record during two years prior to admission
- personal support/living arrangement
- total previous felony convictions
- "serious" institutional infraction record ("serious" infractions are assault, riot, carrying contraband, escape or "other")
- verifiied employment plans at release and participation in work/training release programs.

According to the Public Safety Scoring system, an offender earns points for values assigned to the above criteria.[1] A total score above a certain number entitles the offender to parole release upon eligibility. The Board may go outside the guidelines provided it gives written reasons for doing so. To ensure that the guidelines are relevant to criminal justice changes, regulations direct the Board to review them six months after adoption and at least annually thereafter.

In Canada, some consideration has been given to the adoption of parole guidelines based on recidivism risk assessment criteria. To identify possible criteria for decision guidelines, Nuffield (1979) studied the variables considered in a sample of 2,500 full parole decisions made by the National Parole Board over a 3 year period. The relationship between various offender characteristics and recidivism probability was also examined.[2] Using those variables found to be related to the probability of recidivating, the author designed two statistical instruments for predicting whether the offender would be re-arrested within 3 years of release. The first instrument was intended to predict re-arrest for any indictable offence, the second, to predict re-arrest for violent offences.

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[1] For example, in "history of drug abuse", the offender earns no points for opiate addiction, 2 points for other (non-marijuana) drug use, 4 points for marijuana use and 6 points for no indication of any illega drug use.

[2] Interestingly, Nuffield found "that the seriousness of the offence was not related in a consistent fashion to the rate at which parole was granted", contrary to the findings of most U.S. studies on the subject.

Because the second instrument was, in fact, more able to accurately identify non-violent recidivists than violent recidivists, Nuffield proposed that it be used to grant presumptive parole to all those offenders falling within the "low risk" categories.[1] About two-thirds of parolable offenders could thus be considered for release at first eligibility date. In Nuffield's sample of previous Parole Board cases, about 25 percent of offenders with a two-year sentence and 35 percent of those with longer sentences normally received parole at or near their first eligibility date (Ibid: 50). In effect, then, adoption of the proposed guidelines would increase parole rates, thus lowering penitentiary populations.

Because of the danger of over-predicting recidivism or violent recidivism,[2] Parole Boards (such as Washington) adopting

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[1]Those offenders falling within the narrow "poor risk" categories would receive a presumption against automatic parole, but would also receive opportunities for "graduated conditional releases" early in their terms to demonstrate their abilities to handle conditional freedom.

[2]The difficulties Nuffield encountered in accurately predicting violent recidivism illustrate what has been identified as the "base rate problem" common to risk assessment. Such a problem results when the probability of an act occurring is very low. Studies have shown that among the entire incarcerated population, only a very small percentage commit a violent crime after release (Ibid: 47). A study of the success and failure of 500,000 men paroled in the U.S. in 1969, for example, found that only 1.1% of recommitments were for violent offences (Morris, 1976: 133-134 citing the American Psychiatric Association (1974) Report of the Task Force on Clinical Aspects of the Violent Individual).

Therefore, only a small number of offenders with certain "violence-predictive" characteristics will in fact be violent. If those characteristics formed the basis for negative parole decisions, a great number of false-positives (those classified as violence-prone who actually are not) would be kept in prison needlessly.

guidelines have generally elected to use risk assessment procedures primarily for predicting those unlikely to commit violent offences if released.

Many opponents of presumptive parole based on risk assessment believe that increasing parole release rates will lead to significant increases in the risk assumed by the society to which the offenders are released. In fact, higher parole release rates achieved through the adoption of various strategies[1] do not appear to adversely affect recidivism or return rates (Axon, 1980: 119, Great Britain, 1976: paragraph 118). Looking at 14 years of recidivism data for inmates released from Canadian Federal penitentiaries, Hann (1982) concluded that although (lagged) rates of return to penitentiary after commission of a new offence for parole releasees are directly and closely correlated with parole release rates (Ibid: 9.4 to 9.7), changes in parole release rates did not affect the total rates of return (i.e., return after parole, mandatory supervision or direct discharge). Hann concluded that, although early release on parole may affect the timing of subsequent offences, it does not significantly increase public risk (Ibid: 8.7).

iii. Responsive Decision-Making

Although the trend in parole decision-making has been toward the adoption of formal guidelines and the use of risk assess-

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[1] For example, the State of Minnesota reduced its prison population by 7 percent within one year of adoption of guidelines partly because the Parole Board "released a larger than usual number of prisoners who were incarcerated before the guidelines took effect" (Krajick, 1981: 20).

ment procedures, many parole boards have not accepted these practices. Some have instead chosen to informally change their decision-making processes to promote accountability and become more responsive to the needs of other components in the criminal justice system.

The first step in such changes has often been stimulated by a study of decision-making such as that conducted by Heinz et al (1976) for the Illinois Parole Board. The discovery that institutional disciplinary record and especially institutional prognosis had a much greater impact on parole decisions than previously thought, prompted the Illinois Board to re-examine its policies and formulate more relevant and accountable criteria for decisions.

A frequent catalyst for change has been a marked increase in incarcerated populations leading to prison overcrowding. Because of federal court decisions ordering an end to prison overcrowding,[1] parole boards in several U.S. states have temporarily or permanently adopted informal procedures to release more prisoners at earlier dates. For example, to reduce overcrowding in Mississippi, the State Parole Board implemented a more lenient policy toward border-line cases, which as a result of the change are now uniformly decided for the prisoner's release (Rutherford, 1977: 66-67). Others have responded to overcrowding with a temporary administrative shortening of the minimum time required for prisoners to serve before case consideration or between consideration and release (Gettinger, 1976).

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[1] According to the American Civil Liberties Union foundation (1981), 24 states are now under federal court to improve prison living conditions and/or close some inadequate facilities.

The willingness of parole boards to become more responsive to institutional needs depends in part on attitudes toward the role of parole. Many Boards have questioned the legitimacy of prison population control as a proper parole function However, the majority of research on the subject has recognized the importance of parole release in regulating prison populations, at least at times of crisis. That function has indeed been emphasized in the United States as one of the primary reasons for not abolishing parole boards altogether.[1]

Beginning with the Ouimet Commission (1969), several Canadian sources have advocated the greater use of parole release to reduce prison populations. Ouimet (Chapters 17 and 18) recommended "an increased use of parole", as well as any other cost-saving measure which could reduce penitentiary populations without substantially increasing public risk.[2] This recommendation was echoed by the Huguessen Committee (1973: 57) and the Goldenberg Committee of the Senate (1974: 43).

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[1] In arguing for the maintenance of a dual authority (both judicial and parole) sentencing model, Hoffman and Stover (1979: 89) note that:

> To alleviate overcrowding, a parole authority can make immediate but smaller changes more equally throughout the prison population. It is not suggested that a parole authority should be routinely used for adjusting institutional populations; rather, the unique ability afforded by the dual authority model to react equitably to severe overcrowding in a manner not possible under the single authority model is emphasized.

[2] As Nuffield (1979: 13) points out, "at the time of Ouimet's deliberations, the parole rate of the National Parole Board was in a major upswing: in the year of the publication of the Report the parole grant rate was at its second highest point ever".

Despite these official endorsements of more liberal parole release policies, and even though penitentiary populations are reaching or exceeding capacity levels, the National Parole Board has not appreciably increased the percentage of positive release decisions during the past ten years (Jobson, 1977; Hann, 1982; Nuffield, 1979; Needham, 1981).[1]

D.3 EXPANSION OF PAROLE SUPPORT SERVICES

In order to encourage increased use of parole, several jurisdictions and private organizations have increased program supports or introduced innovative parole program concepts. Many of these programs have been formulated to meet special offender needs. Those which appear to hold promise for influencing certain types of penitentiary populations include:

i. Intensive care preparation projects, such as the Parole Impact Program implemented by the State of Massachusetts. The PIP program is intended to assist inmates in the preparation of their parole plans, specifically in locating adequate housing and finding a job, in order to increase their chances of a positive release decision at or before the first scheduled eligibility date. Under the terms of the program, younger inmates (between the ages of 17 and 26) have ongoing contact with junior parole staff, beginning several months prior to release and continuing through the initial period in the community. Results of the program are encouraging. It was credited with reducing the Concord prison population by enabling 36 percent of program participants to obtain early release and reducing "action pending" decisions (parole postponements) by 6 percent within its first year of operation. An evaluation of the program showed

[1] Recent evidence indicates that although the Board moderately increased its parole release rate in 1977, it has again become more conservative since that year.

a recidivism rate of 21.8 percent for Impact clients as compared with 28.6 percent for a control group of regularly released parolees from the same institution (Nelson, et al 1978: 23-24).

The PIP concept may also be effective in Canadian penitentiaries. 26 percent of the institutionalized population is under 25 (Hann, 1982), the majority of whom are unemployed at entry. Intensive personalized assistance in case preparation may better prepare that "at-risk" population for both parole hearings and actual release. Furthermore, a broad program of early case preparation may decrease the documented lag time between parole eligibility and parole release,[1] potentially saving expensive incarceration costs.

ii. The Use of Volunteer Parole Service Supports, as successfully tried by the American M-2 Programs. Under the aegis of M-2 Sponsors, Inc., volunteers from the community are matched on a one-to-one basis with inmates in all major California correctional institutions. The volunteer sponsors, who have no special training in counselling or human sciences, pledge to make once per month visits to inmate participants for the purposes of alleviating prisoner feelings of alienation and providing assistance in formulating parole plans. According to an outside evaluation, inmate participants in the California M-2 programs were significantly less likely to recidivate than their non-participant counterparts during the first 24 months on parole, despite the fact that the parolees involved were considered to be among the highest risks. In addition,

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[1] Hann (1982: 7.26) noted that "although most offenders become eligible for parole at the 33 percent point in their sentence, since 1964/65 the mean proportion of sentence served before parole release (by year of release) has fallen below 41 percent in only three years (1970/71 through 1972/73)".

results of a cost-benefit study indicated that direct benefits (saved law enforcement, court, jail, state institutions, welfare and victimization expenses) outstripped program costs by 4:1. Other benefits include the creation of community links and the promotion of public education and understanding of corrections problems (Dabel, 1977).

The implementation of a similarly comprehensive citizen volunteer program has been suggested as one method of expanding parole services in Canada (Axon, 1978: 118). Thus far, the use of volunteers has been limited in this country, although interest appears to be growing slowly. For example, 12 percent of the Ontario Ministry of Corrections' probation and parole caseload is now assisted by volunteers, a percentage which has increased at the rate of 1 percent per year.[1]

iii. Ex-Offender Parole Officer Programs, such as the Law Enforcement Assistance Administration's exemplary projects begun in Des Moines, Iowa and Ohio. The Des Moines program and others have found that,

> ex-offenders are often more understanding and more helpful than are regular corrections officials. Participants in the various programs and even program supervisors have often rated ex-prisoner aides as being superior to other correctional personnel for many tasks. (Axon, 1978: 63)

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[1] Interview with Mike Crowley, Executive Assistant to the Director of Probation and Parole, Ontario Ministry of Corrections, March 11, 1982.

Evidence from the Ohio Parole Officer Aide Program suggests that "parolees under the supervision of (ex-offender) aides present no greater risk to the community than their counterparts on regular caseloads", and that "ex-offender aides have proven to be no more of an employment risk than regularly recruited parole officers". (Nelson, et al 1978: 29). To our knowledge, this approach to parole supervision has not been tested in Canada.

iv. Residential parole support services, like those developed in the State of Massachusetts. Usually known as half-way houses, residential parole programs serve inmates with no or problematic family ties who otherwise might not gain release, as well as other clients who meet criteria for enrollment (e.g., history of drug abuse or alcoholism). In 1972, about 13 percent of all Massachusetts parolees were required to accept residential placement in half-way houses such as Brooke House, part of a system of facilities run by Massachusetts Half-way Houses, Incorporated. Brooke House emphasizes the material needs of ex-offenders, particularly job placement, work habits and sound financial planning. To encourage savings and help clients re-establish credit ratings in the community, the parent organization operates the only U.S. Federal Credit Union chartered specifically to serve ex-offenders. It also provides a very structured format for the "high risk" enrollees who typically enter Brooke House after long periods of incarceration for serious crimes.

A methodologically rigorous evaluation of the impact of Brooke House (Beha, 1977),[1] revealed no net effect for the program in terms of reducing recidivism of clients. However, Beha concluded that such facilities perform a crucial function in the criminal justice organizational context:

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[1]The evaluation compared outcomes for House releasees at two different time periods with those for all state parolees.

> Brooke House provided an avenue by which men who would otherwise not then gain release from prison could do so, and men released through Brooke House did not return to prison with any greater frequency than those who obtained direct release. (Ibid: 349)

v. Programs for sex offenders, like Alternative House in Albuquerque, New Mexico, established by the Bernalillo County Mental Health Centre. Open to all "sexual aggressives", including convicted rapists, the program requires enrollees to participate in closely supervised individual and group therapy for one year. Failure to participate as agreed upon by contract between the program and the client results in re-imprisonment. Of the approximately 300 clients served by Alternative House in its first three years of existence, 3 (1 percent) had been recharged with rape at the time of program evaluation. (Morris, 1976: 152; Krisberg and Galvin, 1980b: 95-96).

According to Hann (1982: A6), approximately 7 percent of Canadian Federal inmates have been committed for rape or other sex offences, representing a group of 700 people who might be parolable with the assistance of an Alternative House type program.

vi. Programs for older offenders, such as Project 60, a statewide private organization in Pennsylvania. Since 1973, Project 60 staff have provided counselling and parole plan assistance to elderly prison inmates, acted as advocates at parole hearings and followed released clients into the community to help them readjust and re-establish themselves. Approximately half the clients served are first-time violent offenders, usually committed for murder; the other half are habitual criminals with long prison

records. Project 60 tackles the difficult job of finding residences and work for such people, who normally would not be paroled because of inability to make viable release plans. After five years of operation with over 100 elderly offenders, the program claimed a zero recidivism rate (Krajick, 1979).

A program to assist elderly parolable inmates might be beneficial in reducing the Canadian penitentiary population. Six percent or approximately 600 of the 10,000 Federal prisoners on register are 50 or more years old (Hann, 1982: A5). The characteristics of this group - their commitment offences, family ties, employment histories and parole prospects - could be studied to determine whether a Project 60-type program would increase their chances of release and parole success.

D.4 CHANGES IN REVOCATION POLICIES

Other parole-related strategies that may influence penitentiary populations involve policy changes in setting the criteria for parole violations and making revocation decisions. Compared to other types of admissions, a relatively small percentage of Canadian penitentiary commitments are parolees returned before completion of the parole period.[1] However, those returns are among the most controllable of factors affecting penitentiary populations, because they result directly from policies regarding what type of parole behaviour merits re-imprisonment, what supervision standards are applied to parolees and what kind of procedures take place prior to re-commitment.

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[1] According to Hann (1980: 8.1), that percentage fell from 23 percent in 1971/72 (when the mandatory supervision program came into effect) to 8 percent in 1979/80.

i. Technical Violations

Before being released on parole, an offender must typically agree to several conditions or requirements.[1] Not satisfying any of these conditions is a technical violation subject to parole suspension, and if the Board chooses, revocation. Between 101 and 293 penitentiary admissions in each of the last ten years (Hann, 1982: E. 10) have been of this type.

Some U.S. studies of parole performance have indicated that avoidance of re-commitment for technical violations of parole is dependent not upon conformance with the conditions per se, but upon the level of supervision available, the willingness of parole supervisors to report violations and changing Board policies. For example, Beha (1977) found that although the absconding rate from Boston's Brooke House half-way facility did not change appreciably between two study periods, the percent of residents re-imprisoned for leaving the program without permission dropped substantially. He credited this change with relaxation in the Parole Board policy to automatically revoke the parole of "early splits", apparently as a response to overcrowding within the state prison system.

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[1] These include:

- obtaining permission before changing job or residence, leaving the jurisdiction, marrying, assuming substantial indebtedness or buying a car;
- keeping employment;
- submitting written reports and keeping appointments for interviews as instructed by the parole supervisor;
- complying with all reasonable instructions of the parole supervisor. The Parole Board also has the authority to attach special conditions such as avoiding use of alcohol or drugs to excess, keeping "reasonable" hours, maintaining residence in a half-way house, avoiding "disreputable places" and avoiding contact with certain associates (National Parole Board, 1978).

Accordingly, changing the consequences for parole violations, reducing the number of conditions to which a parolee must agree or abandoning conditions altogether has been suggested by various researchers (Jobson, 1977; Axon, 1978, Needham, 1981). For example, the Working Group on Conditional Release (Needham, 150-151) recommended that general conditions be narrowed to reporting to the parole office, remaining in a designated area, obtaining permission to carry a firearm and notifying the parole officer of a change of address or employment status. Because of complaints about revocation prior to breach of conditions, the Group also recommended that "preventive" revocations not be permitted. In California the law was recently liberalized in that area, prohibiting the re-imprisonment of a technical violator for longer than six months (McGee, 1978: 5). Very little research has been done on the impact of such strategies.

ii. Revocation with New Offence

As Canadian parole policy stands at present, conviction for an indictable offence while on parole results in almost automatic reincarceration, with a new sentence composed of the remainder of the previous term and the sentence for the new offence. Commitments for parole revocation with conviction for an indictable offence have accounted for 3 to 10 percent of penitentiary admissions over the past seven years (Hann, 1982: 8.2). One result of such revocations is that re-convicted parolees can serve longer total sentences (i.e., the sentence for the new offence plus the remaining part of the previous sentence) than they would have if they had committed the new offence after parole supervision terminated. The effect on penitentiary populations is much greater than that for technical violations.

The Ouimet Committee (1969: 347) recommended that rather than be required under the law to immediately revoke parole, the Board should have the power to decide each case on its merits according to the seriousness of the new crime committed.[1]

Since the Ouimet Committee's recommendation, the Board has instituted post-suspension hearings before making final decisions on revocation and on recredited remission.[2] However, The Working Group on Conditional Release (Needham, 1981: 83-84) observed that the time lapse between parole suspension and the actual hearing is sometimes inordinately long and that (according to inmates) "suspended parolees often do not bother to request their post-suspension hearing, presumably because little benefit for them is perceived to occur from hearings". To maintain both "the appearance and reality of justice" in this procedure, the Working Group recommended appropriate changes to the Parole Act.

3.E MANDATORY SUPERVISION POLICIES

Mandatory supervision is a federal program through which offenders who have served two-thirds of their sentence (barring lost remission) are placed under parole-type supervision on the street

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[1] As an example of the necessity for a policy change in this area, the Committee cited the following hypothetical case:

> An offender serving a sentence of twenty years for armed robbery might have been released on parole having served say twelve years. If he is convicted on indictment for dangerous driving while on parole, it does not seem to the Committee that his parole should automatically be forfeited and that he be returned to the penitentiary to serve the oustanding balance of his twenty year term.

[2] Due to a change in legislation in 1977, parolees, after revocation, no longer have to automatically 're-serve' the portion of their sentence served on the street between release and revocation.

for the remainder of their terms. The program was inaugarated in 1970 in part to comply with a recommendation of the Ouimet Committee (1969: 350) that the Parole Board should provide some supervision for the group of high risk offenders who are not granted parole, but who are normally released at the two-thirds sentence point.[1] An additional objective of mandatory supervision was to eliminate the inequities in control over parolees versus those released directly to the street. (Committee on Mandatory Supervision, 1981: 6-8).[2]

Mandatory supervision has affected the size of penitentiary populations in two ways. First, the initiation of mandatory supervision has been credited for encouraging parole authorities to lower parole release rates of "higher risk" offenders, thus lengthening time served in penitentiary for a larger number of inmates.[3]

The second population impact of mandatory supervision is related to the "net-widening" effect of expanded supervision of ex-offenders, resulting in increased criminal justice system costs, incurred for longer periods of the supervision itself and for the re-commitment

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[1]The Correctional Service of Canada (rather than the National Parole Board) now has responsibility for supervision of parole or MS release

[2]Parolees had remained under supervision until the date of sentence expiry, while offenders directly released after two-thirds sentence were completely free of surveillance, making parole a less attractive option to some inmates.

[3]Hann (1982: 8.11) concluded from historical data that:

> ...Falling parole release rates in the mid-1970's for instance did result in lower total rates of return after parole release and may have delayed the commission of supervision violations or new offences committed by offenders not released to parole. However, the cost of that delay was definitely a considerable increase in penitentiary accommodation costs to contain the offenders not paroled, possibly a net increase in the rate of return for non-parole releases, and possibly an eventual increase in the overall rate of return for all releases as well.

of MS violators. Since 1974/75, admissions for revocation of mandatory supervision have accounted for between 20 and 26 percent of all admissions each year, substantially enlarging penitentiary populations (Hann, 1982: 10.1).[1]

Proposed changes in mandatory supervision that will either weaken or strengthen these impacts include more restrictive revocation policies, more liberal revocation policies and the abolition of the entire program.

E.1 REVOCATION POLICIES

To decrease a perceived risk of violent crime to the public, the Committee on Mandatory Supervision (1981: 49) favoured consideration of permitting only one revocation to MS releasees, after which revoked offenders would serve their entire remanet in penitentiary without accumulating remission, but retaining normal eligibility for parole.

In terms of increasing incarcerated populations, the suggested model could be quite costly. Moreover, it might result in the holding of over ten times the number of incapacitated offenders as "false-positives", that is, those who would not commit violent crimes had they been released to MS a second time (Ibid: 65).

On the other hand, if more liberal revocation policies were introduced, reducing the number of re-commitals for MS violations,

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[1] The Committee on Mandatory Supervision (1981: 16) observed that 36 to 39 percent of MS releasees are revoked and returned to penitentiary, 25 percent for commission of a new offence and 10 to 13 percent for technical violations, some of which have been used to prevent (through incapacitation) "imminent" criminal acts.

penitentiary populations would be lowered accordingly. Those seeking to make the program more just have argued against the imposition of restrictive technical conditions for MS, and against the use of revocation for "imminent" violations or petty violations of conditions. The Working Group on Conditional Release (Needham, 1981: 90-93) recommended that treatment of MS cases be investigated to determine whether MS releasees are subject to more "harrassment" than parolees.

E.2 ABOLITION OF THE MANDATORY SUPERVISION PROGRAM

Inmates and some correctional administrators have recommended that MS be completely abolished for justice and humaneness reasons. Before the program was initiated, inmates' earned remission time was not spent under surveillance. Offenders and correctional staff interviewed for a recent study agreed that the MS program had furthered offender bitterness, making penitentiary staff's and parole officers' jobs more difficult in many cases (Ibid: Appendix A). The abolition of MS would almost certainly reduce penitentiary populations in the short term.

However, the ending of controls may also increase public risk. If the measure of risk is violent activity, participation in the MS program appears to present almost exactly the same percentage public risk as parole participation. From 1973 to 1975, for example, 27.5 percent of revoked parolees returned for the violent crime of robbery, as opposed to 27.7 MS returns for that offence.[1]

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[1] It should be noted that parolees serve a much longer time under supervision than do MS releasees. Comparing return rates for violent offences committed during a fixed period of time after release may yield different results.

To completely answer the risk question, a study must be designed to estimate the number of crimes prevented through MS surveillance that would have occurred without the program. If MS also influences the Parole Board to keep higher risk prisoners incarcerated for longer periods (as statistics above indicate), the study must also evaluate the incapacitative effect of those months upon crime rates of the detained inmates. Thus far, such a research project has not been carried out.

Many of those who advocate ending the MS program also advocate the abolition of remission. This policy (as discussed above) would significantly increase penitentiary populations.

CHAPTER 4 - SUMMARY CONCLUSIONS AND DIRECTIONS FOR FURTHER RESEARCH

This chapter first summarizes the various strategies to influence penitentiary populations which have been discussed throughout the report, and secondly, presents them in tabular form according to their influence upon the penitentiary population determinants developed by Hann, et al (1976). Third, it notes the interrelationships among the several types of actions which may be taken by different actors and at different steps in the criminal justice process. Conclusions are drawn regarding what combinations of strategies appear to be appropriate to the Canadian context. The final section presents recommendations for further research in specific areas.

4.A SUMMARY OF STRATEGIES

The strategies to influence penitentiary populations examined in this report have been organized according to where they might be utilized in the criminal justice process. On a broad scale, we have reviewed two types of strategies: those which are implemented prior to incarceration and those which can be implemented only after incarceration. More narrowly, pre-incarceration initiatives are appropriate at the pre-trial level and at the sentencing level, while post-incarceration initiatives may take place at time of classification and assignment, when an inmate becomes eligible for pre-release programs, and at the time of parole or MS eligibility. A summary of strategies at each level which appear to influence penitentiary population growth, with example programs or policies from the literature, are summarized in the following chart.

Description of Strategy	Example Programs or Policies[1]
Pre-Incarceration Initiatives	
. Pre-Trial Level	
1. Community diversion programs, including localized employment projects for "at risk" populations.	California Youth Authority La Colonia project; Netherlands program; Philadelphia House of Umoja; San Francisco Delancy Street Foundation (15); CETA program (17)
2. Policing policies, regarding:	
(a) public expenditures and police priorities	Increased police expenditures in Canada (19)
(b) surveillance of ex-convicts	
(c) changes in screening practices	Oregon "non-arrest for cultivation of marijuana for personal use" policy (21); Iowa non-enforcement of gambling laws (21)
(d) co-operation with community-based diversion projects	Pre-arrest diversion to East York project (22)
3. Use of alternatives to pre-trial detention	ROR, community bail funds, third-party custody (23-24)
4. Prosecutorial policies:	
(a) changes in prosecutorial resources	Illinois, South Carolina increases in number of public prosecutors (25)
(b) encouragement or prohibition of plea bargaining	Alaska prohibition (27)

[1] Full descriptions may be found in the text on the page(s) shown in parentheses.

Description of Strategy	Example Programs or Policies
Pre-Incarceration Initiatives (cont'd.)	
4. (c) Administration of cautions	Great Britain's encouragement of prosecutor cautions (27)
(d) official diversion programs	Columbus Night Prosecutor Program (27-29)
. Sentencing Level	
5. Use of non-carceral sentencing alternatives, including:	
(a) absolute and conditional discharge (b) deferred sentence	English and Welsh deferred sentence policies (32)
(c) suspended sentence (d) probation	Use for repeat offenders in Great Britain (33-34)
. Case classification and screening	State of Washington Division of Adult Corrections specialized probation intake project (35)
. Client specialization	San Jose, California Child Sexual Abuse Treatment Program; Polk County, Iowa special probation program for violent offenders (36-37); Saskatchewan Natives Probation Program (37)
. Using voluntary resources	Nebraska a volunteer program for high-risk offenders; Sweden (38)
. Early discharge of probation orders	Great Britain's policy (38-39)

Description of Strategy	Example of Programs or Policies
Pre-Incarceration Initiatives (cont'd.)	
5. (cont'd) . Increasing probation support facilities	Great Britain's use of day training centres and probation hostels (39)
. Supported work	New York City's Wildcat Service Corporation and Transitional Employment Program; El Paso Texas Regional Probation Department's Project WORK (40)
(e) fines	Swedish day-fine system (41-42); New Brunswick, Quebec, Saskatchewan and Alberta Fine Option Programs (44)
(f) restitution orders	Georgia Sole Sanction Restitution Program (45); Kitchener, Ontario Victim Offender Reconciliation Project (45-46)
(g) community service orders	Great Britain's use of the CSO as a separate sentence (49-50); Salano County, California Volunteer Work Program (50); Pima County, Arizona Community Volunteer Action Program (50); British Columbia and Ontario Programs (51)
(h) community residential placements	Great Britain's use of custody and control orders to community residential units (52-53); Georgia's Restitutional Diversion Centres (53); Mississippi's Restitution-Correctional Centres (53-54); Washington State's residential and intensive caseload supervision program (54)
(i) supports for and barriers against non-carceral sentence alternatives	
. Community Corrections Acts	Iowa, Minnesota, Oregon, Kansas and Ohio (56-60)
. Informing the Judiciary	Ontario Ministry of Corrections Community Programmes Inventory (60)

Description of Strategy	Example of Programs or Policies
Pre-Incarceration Initiatives (cont'd.)	
6. Changes to the Criminal Code and Related Legislation:	
(a) restrictive changes	Determinate sentencing in the United States statutes (63-67)
(b) liberalized changes	Holland, Finland, Sweden, Denmark use of shorter sentences for most crimes (70-71), proposed repeal of mandatory minimum sentences of imprisonment, reduction or removal of high maximum penalties, special provisions for the Young Offender, repeal of indeterminate sentences, reduction or elimination of Penalties for Marijuana Use and Sale (73-77)
(c) legislated sentencing guidelines for the judiciary	
. Presumption against incarceration	New Jersey Code of Criminal Justice (79) Great Britain's presumption for first offenders (80)
. Required use of pre-sentence reports	
. Requirement to state completely and record all reasons for sentences of imprisonment	
(d) formation of a sentencing commission	Minnesota and Pennsylvania (81-82)
7. Educating the Judiciary	
(a) sentencing conferences or seminars	Mississippi sentencing conferences (83)
(b) short-term and sabbatical training courses	California University-sponsored courses (84)

Description of Strategy	Example Programs or Policies
Pre-Incarceration Initiatives (cont'd)	
7. (c) internships at corrections institutions	Great Britain's proposed requirement that judicial training include attachment to correction service before and during tenure (85)
Post-Incarceration Initiatives	
8. Changes in Federal-Provincial Jurisdiction Over Inmates	
(a) exchange of service agreements (b) expanded Federal or Provincial authority over inmates (c) removal of 2-year rule anomolies	
9. Classification and Assignments	
(a) re-classification screening programs	Alabama, Mississippi, Tennessee, and California re-classification programs (94-95); Canadian "cascading" policy (96)
(b) statutory ceiling on available higher security beds	Proposed ceiling for California (97)
10. Pre-Release Programs	
(a) educational, vocational and work programs	Illinois educational programs (98); Rideau Correctional Centre Volunteer Work Program; South-

Description of Strategy	Example Programs or Policies
Post-Incarceration Initiatives (cont'd)	
10. (a) (continued)	western Ontario tobacco harvesting program; South Carolina's earned work credit program; CSC pilot employment projects in forestry and computer programming (99-101)
(b) community residential pre-release programs	South Carolina's "extended work release" program; Skejby, Denmark "halfway in-halfway out" house; Montgomery County, Maryland's Work Release/Pre-Release Centre, Minnesota's Restitution Centre; San Francisco's Transitions to Freedom; U.S. Bureau of Prisons Pre-Release Halfway Houses (103-105)
11. Earned Remission Policies	
(a) increasing allowable remission	U.S. determinate sentencing laws' inclusion of increased good time (108); Illinois emergency measure automatically increasing good conduct credits (109)
(b) abolition of earned remission	U.S. states that have abolished remission (110)
(c) changes in administration of earned remission	Solicitor General's Working Group on Conditional Release proposals (112)

Description of Strategy	Example Programs or Policies
Post-Incarceration Initiatives (cont'd)	
12. Parole Policies	
(a) changes in parole eligibility	Mississippi "early parole" of property offenders (115); Great Britain's early parole for young adult offenders and for those with short sentences (115-116); Saskatchewan's "short" parole program for impaired drivers (116); lowering parole eligibility dates for murderers (117)
(b) changes in Parole Board decision-making	New Jersey presumptive parole statute (119); Washington State's Parole guidelines (120-121)
(c) responsive decision-making	Mississippi State Parole Board leniency toward border-line cases (124)
(d) expansion of parole support services	Massachusetts PIP (126); American M-2 Programs (127); Iowa and Ohio Ex-Offender Parole Officer Programs (128-129); Massachusetts residential support services (129); Albuquerque, New Mexico's program for sex offenders (130); Pennsylvania's program for older offenders (130) California prohibition of re-imprisonment for technical violation for more than 6 months (133)
13. Mandatory Supervision Policies	
(a) revocation policies	Committee on MS proposal to permit only one MS revocation per release (136); counter-proposal of more liberal MS revocation policies (136-137)
(b) abolition of MS program	

4.B STRATEGIES TO INFLUENCE PENITENTIARY POPULATIONS: THEIR RELATIONSHIP TO DETERMINANTS OF PENITENTIARY POPULATIONS AND POPULATION SIZE

Evidence cited in the text from other jurisdictions and the literature indicate that the above strategies all affect variables which in turn affect the size of penitentiary populations. Hann (1982: Chapter 4) reviewed several 'key rates' and 'time delays' that had been identified (by Hann et al: 1976) as "describing the major conditions (intervening variables) that determine penitentiary populations". Historical values of these determinants were used successfully by the Federal Corrections Simulation Model (FCSM) to generate accurate population level estimates for each year of the fifteen year period under study.

For the purposes of this project, the determinants of penitentiary populations outlined by Hann are compressed into a more simplistic framework, [1,2] which is then correlated with the strategies developed within the report. Figure 4.1 on the following pages is intended to illustrate those correlations or relationships. It will thus serve as a guide for policy makers and researchers focussing on particular penitentiary population issues (e.g., parole release decisions), as well as planners attempting to design innovative correctional programs that will reduce incarcerated populations.

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[1] For a complete listing and definitions of these rates and time delays, see Appendix.

[2] At an even more simplistic level, intervening variables could be separated into "inflow" determinants and "outflow" determinants. Pre-incarceration initiatives impact primarily the inflow determinants, while post-incarceration initiatives impact primarily outflow determinants.

The table (Figure 4.1) is organized in the following manner. Vertically-placed headings on the far left side designate broad strategy types according to stage in the criminal justice process. Specific strategies are grouped under each type. Seven key penitentiary population deterinants are identified on the top right-hand side of the table. To understand the particular impact of a strategy type upon penitentiary populations, merely follow the strategy type row horizontally from left to right, noting what population determinants are affected. Using this method, the reader will find for example, that prosecutorial policies affect primarily "New Offender Admission Rates", but that increased plea bargaining may impact "Time between admission and release" and "Parole release rates" as well.

The various symbols in the key assist the reader in determining how the strategy affects each penitentiary population determinant. For example, expanding prosecutorial resources tends to increase new offender admissions rates, while the nature of the relationship between increased plea bargaining and population determinants is unknown. Any circled symbol highlights inconclusive findings in the literature and a need for further research in the area.

The table indicates that the vast majority of strategies to influence penitentiary populations are extremely narrow in application, that is, they affect only one or two of the key determinants of those populations. Strategies implemented prior to sentencing, including most of those within the jurisdiction of the community, the police and the prosecutor, are influential in controlling only admissions and in some cases, re-admissions to penitentiary. Even recently popularized community sentencing alternatives appear to affect only the influx of new offenders, and some evidence indicates that certain community alternatives

STRATEGIES TO INFLUENCE PENITENTIARY POPULATIONS: THEIR RELATIONSHIPS TO PENITENTIARY POPULATION DETERMINANTS

Figure 4.1 (1 of 5)

STRATEGY TYPE		KEY PENITENTIARY POPULATION DETERMINANT						
		New Offender Admission rate (no pen. admission)	Time between admission and release	Parole Release Rate	Parole Revocation Rate	MS Release Rate	MS Revocation Rate	Return rate after Parole or MS Completion or Direct Discharge
Pre-trial community diversion and employment programs		⊖						⊖
POLICE	Increased police expenditures and manpower	+						+
	Decreased surveillance of ex-convicts					○		⊖
	More selective arrest policies	⊖						⊖
	Co-operation with community diversion programs	-						
Use of alternatives to pre-trial detention		-						
PROSECUTOR	Expanded prosecutional resources	+						+
	Increased plea bargaining	○	○	○				○
	Administration of Prosecutor Caution	-						
	Prosecutor Diversion Mediation Programs	-						

KEY

+ Evidence from other jurisdictions indicates this strategy can increase this rate or time delay.

- Evidence from other jurisdictions indicates this strategy can decrease this rate or time delay.

⊕ Evidence is inconclusive on the impact of this strategy upon this rate or time delay, but impact presumed to be positive.

⊖ Evidence is inconclusive on the impact of this strategy upon this rate or time delay but impact presumed to be negative.

○ This strategy may affect this rate or time delay but evidence regarding the nature of the relationship is either unavailable or contradictory.

Figure 4.1 (2 of 5)

STRATEGY TYPE		KEY PENITENTIARY POPULATION DETERMINANT						
		New Offender Admission rate (no pre-pen. adm.)	Time between admission and release	Parole Release Rate	Parole Revocation Rate	MS Release Rate	MS Revocation Rate	Return rate after Parole or MS Completion or Direct Discharge
SENTENCING ALTERNATIVES	Use of Absolute and Conditional Discharge*	-						
	Use of Deferred Sentence*	-						-
	Use of Suspended Sentence*	⊖						⊖
	Use of Probation*	-	○					
	Use of Fines*	-	○					
	Use of Restitution orders*	○	○					
	Use of Community service orders*	⊖	○					
	Use of Community residential placements*	⊖	○					

KEY

\+ Evidence from other jurisdictions indicates this strategy can increase this rate or time delay.

\- Evidence from other jurisdictions indicates this strategy can decrease this rate or time delay.

⊕ Evidence is inconclusive on the impact of this strategy upon this rate or time delay, but impact presumed to be positive.

⊖ Evidence is inconclusive on the impact of this strategy upon this rate or time delay but impact presumed to be negative.

○ This strategy may affect this rate or time delay but evidence regarding the nature of the relationship is either unavailable or contradictory.

*If used for penitentiary-eligible offenders.

Figure 4.1 (3 of 5)

STRATEGY TYPE		KEY PENITENTIARY POPULATION DETERMINANT						
		New Offender Admission rate (no pre-pen. adm.)	Time between admission and release	Parole Release Rate	Parole Revocation Rate	MS Release Rate	MS Revocation Rate	Return rate after Parole or MS Completion or Discharge
SENTENCING ALTERNATIVES	Community Corrections Acts	-						
	Informing the Judiciary	⊖						⊖
	Restrictive Sentencing Laws	+	+	◯		⊕		+
	Liberalized Sentencing Laws	-	-	◯				⊖
	Legislated Formation of Sentencing Commission	◯	◯					◯
	Legislated Sentencing Guidelines for Judiciary	◯	◯					◯
	Training and Educating the Judiciary	◯	◯					◯
JURISDICTION	Exchange of Service Agreements	⊕						
	Expanded federal authority over provincial prisoners	◯						⊖
	Removal of 2-year rule anamolies	⊕						

KEY

\+ Evidence from other jurisdictions indicates this strategy can increase this rate or time delay.

\- Evidence from other jurisdictions indicates this strategy can decrease this rate or time delay.

⊕ Evidence is inconclusive on the impact of this strategy upon this rate or time delay, but impact presumed to be positive.

⊖ Evidence is inconclusive on the impact of this strategy upon this rate or time delay but impact presumed to be negative.

◯ This strategy may affect this rate or time delay but evidence regarding the nature of the relationship is either unavailable or contradictory.

Figure 4.1 (4 of 5)

STRATEGY TYPE		KEY PENITENTIARY POPULATION DETERMINANT						
		New Offender Admission rate (no pre-pen. adm.)	Time between admission and release	Parole Release Rate	Parole Revocation Rate	MS Release Rate	MS Revocation Rate	Return rate after Parole or MS Completion or Discharge
PRE-RELEASE	Re-classification screening programs		-	+				
	Statutory ceiling on high security beds		(-)	(+)				
	Pre-release Educational Programs		(-)	(+)				(-)
	Pre-release work programs		-	+				(-)
	Pre-release Community Residential Programs		-	+				-
REMISSION	Increase in allowable earned remission		(-)			(+)		◯
	Decreasing or abolishing earned remission		(+)					
	More leniant administration of remission		(-)	(+)		(+)		
	Reduced role of lost remission in parole decisions			(+)				

KEY

+ Evidence from other jurisdictions indicates this strategy can increase this rate or time delay.

- Evidence from other jurisdictions indicates this strategy can decrease this rate or time delay.

(+) Evidence is inconclusive on the impact of this strategy upon this rate or time delay, but impact presumed to be positive.

(-) Evidence is inconclusive on the impact of this strategy upon this rate or time delay but impact presumed to be negative.

◯ This strategy may affect this rate or time delay but evidence regarding the nature of the relationship is either unavailable or contradictory.

Figure 4.1 (5 of 5)

STRATEGY TYPE		KEY PENITENTIARY POPULATION DETERMINANT						
		New Offender Admission rate (no pre-pen. admission)	Time between admission and release	Parole Release Rate	Parole Revocation Rate	MS Release Rate	MS Revocation Rate	Return rate after Parole or MS Completion or Discharge
CONDITIONAL RELEASE	Abolition of Parole Board		+	-				
	Earlier parole eligibility		-	+	◯			◯
	Presumptive parole statutes		⊖	⊕				
	Parole guidelines based on risk assessment		⊖	+				
	System responsive parole decision-making		-	+				
	Expansion of parole support services		-	+	-			-
	Liberalized parol revocation policies				⊖			
	More restrictive MS revocation penalties		+	◯			⊕	
	Liberalized MS conditions and revocation policies			◯			⊖	
	Abolition of MS		⊕	-				◯

KEY

+ Evidence from other jurisdictions indicates this strategy can increase this rate or time delay.

- Evidence from other jurisdictions indicates this strategy can decrease this rate or time delay.

⊕ Evidence is inconclusive on the impact of this strategy upon this rate or time delay, but impact presumed to be positive.

⊖ Evidence is inconclusive on the impact of this strategy upon this rate or time delay but impact presumed to be negative.

◯ This strategy may affect this rate or time delay but evidence regarding the nature of the relationship is either unavailable or contradictory.

may function more as a delay of longer prison sentences than as a preventative of prison commitments. Similarly, those strategies initiated after sentencing by corrections authorities and parole boards, affect only release times and rates and have no impact on admission rates (although some programs may lower return rates).

4.C THE IMPORTANCE OF INTEGRATION AND CO-ORDINATION

Many previous efforts to influence incarcerated population levels have focussed on the formally recognized corrections administration. However, a growing body of research on the relationship of prison population factors[1] to public policy changes has verified what is highlighted in the summary table, that,

> the important gatekeepers and controllers of institutional populations are outside the corrections system, rather than within it. Populations are regulated by the number of people who arrive, and the length of time they stay before being released...corrections administrators have little more than indirect influence over either of these processes. (Mullen, 1980: 111)

The table illustrates how easily a strategy initiated by one group of criminal justice actors may be counteracted by another group of actors. For example, the introduction of risk-based parole guidelines by the Parole Board and a concommitant increase in the parole release rate may provoke a reaction by the judiciary to keep offenders in prison by increasing sentence lengths. The Parole Board action may successfully reduce the population for a short while, but the ultimate effect of the two policy changes will be maintenance of the population level or even a growth in incarcerated populations.

These observations lead to our first conclusion:

Strategies to influence penitentiary populations initiated at any specific step in the criminal justice process or by any specific group of actors in the criminal justice system may affect certain

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[1] See Mullen (1980); Krisberg and Galvin (1980); Rutherford, et al (1977); Illinois.

population determinants and thereby temporarily lower or raise populations. However, they will probably not affect penitentiary population over the long-term and may even provoke compensatory mechanisms on the part of other actors to counteract the original measures. To be effective in influencing penitentiary populations, strategies intended for that purposes must be co-ordinated by all key actors in the criminal justice system and integrated into every step in the criminal justice process.

Those falling within the rubric of "key actors" or "critical decision-makers" in the criminal justice system to be considered in any effective co-ordinated strategy include:

- legislators
- police
- prosecutors
- judiciary
- provincial corrections administrations
- federal corrections administrations
- federal and provincial parole boards
- social service agencies
- offenders
- the public

A review of policy implications for prison growth published by the U.S. National Institute of Law Enforcement and Criminal Justice (Rutherford et al: 1977a) emphasized the importance of co-ordination among these key actors in preventing and reducing prison overcrowding. Examples of the disastrous effects of lack of co-ordination were provided by Illinois and South Carolina, where actions by the state attornies general and the judiciary successfully offset official state departments of corrections' policies

to lower prison populations, creating severely overcrowded institutions in both states. In contrast "working relationship collaboration" among a Mississippi Federal judge initiating a court order to alleviate state prison conditions, the legislature, officials of a newly created State Department of Corrections, the judiciary, state prosecutors and the parole board led to the implementation of a series of reforms which (at least temporarily) abated prison population growth.

The Canadian Committee on Corrections (Ouimet: 1969) made several recommendations to improve co-ordination among criminal justice agencies concerned with imprisonment in this country, specifically by improving communications. Finding that the judiciary sentenced in the absence of adequate information about either offenders or available sentencing options, that correctional officials frequently had insufficient knowledge about the effectiveness of various social agency sponsored programs and that, in general, barriers between various criminal justice professions and agencies inhibited information passage, the Committee proposed that advisory committees be set up and information systems be modernized to encourage the co-ordination necessary for coherent policy formation (Ouimet, 1969: 204-209, 430-432).

Since the Ouimet Report's publication, several advisory commitees to the Federal government, composed of representatives from a broad range of criminal justice agencies, have been formed. In addition, major efforts to improve information and communications links among those agencies have been mounted. However, barriers to the formation of inter-agency communications links still exist.

It has been suggested that philosophical differences are the most important barrier to effective communication among the several key criminal justice actors responsible for strategies to influence penitentiary populations. A survey of criminal justice practitioners in California found a wide divergence of attitudes about the use of sanctions other than imprisonment in that state. Probation officers and some state correctional officials supported the use of non-prison sentences on the basis that most offenders neither deserve to be nor need to be incarcerated. Prosecutors, judges and law enforcement officials, on the other hand, were more likely to hold the view that "alternatives allow defendants to escape proper punishment" and expose society to greater risks. The gap between those holding the more liberal philosophy and those holding the more conservative philosophy has inhibited the formation of any co-ordinated strategy to alleviate the state's prison overcrowding problem (Krisberg and Galvin, 1980b: 278-294). A study of this type completed in Canada might be very useful to assess barriers to corrections policy changes.

4.D THE ROLE OF PUBLIC OPINION

The summary table does not illustrate the impact of public opinion upon various strategies to influence penitentiary populations. The California survey (Krisberg and Galvin, 1980b) as well as several other North American studies have concluded that criminal justice policies, including those dealing with population growth, are reflections of current public attitudes about crime and criminals.

For at least the past five years, American public opinion on these matters has become less tolerant, leaning toward a "law and order" scenario which advocates harsher treatment for offenders, especially those who commit violent crimes or recidivate. As

the section on determinate sentencing (Chapter 2, earlier) documents, this attitude has been at least partially responsible for legislation in many jurisdictions dictating mandatory imprisonment and longer terms across the entire range of criminal offences. According to some researchers, Canadian public opinion has exhibited a similar shift, resulting in similarly harsher criminal justice policies (Axon, 1978).

In the presence of harsher attitudes and resulting more punitive treatment of offenders, we conclude that:

Strategies to influence penitentiary populations, particularly those to control or reduce such populations, will be successful only if they are supported by the public. To achieve that support, policymakers must attempt to educate and involve the public in correctional problems and in all aspects of the criminal justice process.

Krisberg and Galvin recommended several approaches to public education and involvement designed to increase acceptance of prison population control strategies, including:

- Inform the public about the numbers and rates of persons confined, their commitment offences, the racial and class imbalances in the prison populations, and the costs associated with various sentencing options;
- Counter the public expectation that the criminal justice system can control crime, compel lawful behaviour and alter personal values for the better;
- Emphasize that no solid, logical basis exists for the continuance of present practices;
- Attempt to gain support for a gradual transition in policies over a 5 year period, rather than for an immediate switch in direction;

. Use the media as well as intensive educational/ organizational efforts to gain support for new strategies.

(Krisberg and Galvin, 1980a: 73-75, 101-102)

If the government of Canada entertains the possibility of implementing population control strategies, these approaches might be worth further exploration.

E. THE "AVAILABLE-SPACE" PHENOMENON

The summary table points to another major problem in formulating strategies to influence penitentiary populations. None of the policy alternatives introduced at the post-incarceration level affect new offender admissions rates. Even if all these alternatives were implemented and were effective in emptying penitentiaries of all but the most violent repeat offenders, the cells would remain.

Recent research conducted for the U.S. National Institute of Justice (Mullen, 1980) suggests that system forces tend to fill those spaces. Historical data from all states between 1955 and 1976 found the relationship between population and capacity to be strong in every case. The data indicate that when criminal justice officials attempt to alleviate prison overcrowding by building more prisons, the new space is filled to capacity within two years of opening, and to 130 percent of capacity within five years of opening. Alternatively, where policies have explicitly taken capacity limitations into account, "it has generally been possible to control the degree of crowding". In Mullen's judgement,

> This finding does not conclusively prove that increased capacity drives population, but does suggest that it may diminish reliance on non-custodial dispositions and inhibit other mechanisms that regulate and control prison population. (Mullen, 1980: 25, 94-95)

Mullen's analysis lends credence to Rutherford's (1977) market analogy of four policy choices to deal with expanding incarcerated populations. Three of the broad based policy choices discussed by Rutherford involve reducing the demand for prison spaces through:

(1) decreasing imprisonment rates and time served;

(2) subjecting prisons to court standards which have generally closed prisons (ensuring that the demand, convicted imprisonable offenders, does not outrun the reduced supply), and

(3) diversion of a portion of demand to a different market, community corrections.

The most successful of these choices in controlling prison populations is the court-ordered reduction of available prison spaces. The fourth option expands the supply of prison capacity through new construction. Models built to predict prison population growth in states which have chosen this policy show that the expanded space is quickly filled and that the population again exceeds capacity within a short time. (Rutherford, et al 1977a: 236).

Our third conclusion is based on the results of these studies:

Building new cells is a possible strategy to influence penitentiary populations. However, the increased capacity will not produce the often intended effect of decreasing institutional overcrowding. Instead, it will encourage rapid population growth in the form of increased admissions and longer sentences. If the goal of policymakers is to eventually lower or stabilize incarcerated populations, resources are better devoted to strategies that reduce available space, admissions rates and sentence lengths.

This conclusion points to a need for involvement of legislators and the judiciary in the development of strategies to reduce penitentiary populations. Such involvement could begin with workshops among several types of criminal justice practitioners, legislators and judges to discuss the implications of this report.

Strategies to reduce available space, such as a moratorium on penitentiary building,[1] have not been discussed in this report. Once considered radical and politically unfeasible, this type of option to control incarcerated populations appears to be gaining acceptability. It has become more attractive as capital and operating costs of prisons rise, while available correctional budgets dwindle. A few U.S. states, including Iowa, have made conscious policy decisions to avoid increasing prison spaces. (Rutherford, et al 1977: 73-76). However, in the current American atmosphere of "law and order", it is difficult to predict how far these states will go in maintaining, destroying or failing to replace cell space.

According to evidence presented in Chapter 2, strategies which appear to influence admissions rates and sentence length include changes in police arrest activities, prosecutor-sponsored diversion

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[1] Proponents of this type of strategy include Nagel (1977); Jobson (1977); Hylton (1981); and Morris (1976).

programs, the use of some community sentencing options, training the judiciary and especially determinant sentencing legislation. All of these options are applicable to the Canadian federal context.

4.F DIRECTIONS FOR FURTHER RESEARCH

Perhaps the most salient finding of this report is that, among numerous examples of policies and programs raised as possible strategies to influence incarcerated populations, few are conclusively proven to actually affect the size of those populations. As the summary table illustrates, the impact of many of the strategies is presumed, in the absence of evaluative research, to be either positive or negative, while the impact of others is either unstudied or subject to conflicting reports. The impact of a third group of strategies, for example, community alternatives to imprisonment, may not be limited to increasing or decreasing the intended penitentiary population determinant, but its impact on other population variables is as yet unknown.

Our fourth and final conclusion addresses these inadequacies:

The impact of various strategies to influence penitentiary populations is largely unstudied. Before embarking on any specific or general course of action, further research must be undertaken.

Several suggestions for further study and experimentation in specific program areas are contained in this report. More generally, research is needed to:

- assess the relationship between community-based diversion programs and penitentiary admissions;
- more adequately investigate the role of police selectivity in reducing or increasing admissions;

- examine the impact of plea bargaining on all key penitentiary population determinants;
- evaluate community sentencing alternatives in terms of their feasibility in the Canadian context, net-widening effect, ability to divert potential prisoners and impact on other population variables such as sentence length;
- investigate the relationships among the implementation of determinate sentencing legislation, parole release rates and penitentiary population growth;
- survey the attitudes of key criminal justice decision-makers about crime and correctional policy; and assess the ability of sentencing guidelines, training and education to change those attitudes or affect sentencing behaviour;
- explore the potential of changed Federal/Provincial relationships for the control of both penitentiary and prison populations;
- assess the ability of various proposed conditional release strategies to influence the size of penitentiary populations.

Additionally, the relationships between combined or integrated strategies[1] and penitentiary population variables should be tested. The simulation model (FCSM) presently used by the Ministry to forecast penitentiary populations would seem ideally suited for investigating the effects of implementing many single and combined policies on key population determinants and over-all population growth trends.

In view of Canada's dearth of quality experimental criminal justice research, we also recommend the commencement of studies

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[1] For example, a co-ordinated program among prosecutors, the judiciary and the Parole Board to reduce both the number of committals to penitentiary and sentence length, such as that used to reduce prison populations in Mississippi.

to examine the relationship of various correctional alternatives and program participant outcomes. Such research should be augmented by the setting up and testing of pilot programs.

Finally, the above research will benefit significantly from the development of liaisons with other jurisdictions that have begun to address prison growth problems. Many of these jurisdictions have created offices within corrections departments,[1] specifically to find and encourage the implementation of strategies to control or reduce prison populations.

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[1]For example, the Oklahoma Department of Corrections.

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APPENDIX A

KEY RATES USED BY FCSM TO DESCRIBE LEVELS OF AFFECTING OFFENDER POPULATIONS AND FLOWS

KEY RATES USED BY FCSM TO DESCRIBE LEVELS OF DECISIONS OR ACTIVITIES AFFECTING OFFENDER POPULATIONS AND FLOWS

Rate Number	Event or Decision(s) Described	Rate Name and Definition
R1	Admission of Offenders, with no previous penitentiary history, to penitentiaries.	The New Offender Entry Rate is defined as the number of male offenders, with no previous penitentiary history, admitted to a penitentiary each fiscal year.
	Parole Related	
R2	Parole Board action regarding the granting or denial of parole to federal inmates, and action to release those granted parole.	The Parole Release Rate is defined as the percentage of offenders who become eligible for parole each fiscal year who are subsequently released to parole.
R3	Federal Parolees violating or not violating conditions of parole, and parole board action regarding revoking of such paroles	The Parole Revocation Rate is defined as the percentage of offenders released to parole each fiscal year who subsequently revoke their parole period and are returned to a penitentiary.
R4	Parolees committing or not committing offences while on parole, and parole board action regarding the forfeiture of such paroles.	The Parole Forfeiture Rate is defined as the percentage of offenders released to parole each fiscal year, who subsequently forfeit their parole period and are returned to a penitentiary.
R5	Persons who have successfully completed parole subsequently returning or not returning to a penitentiary for a subsequent offence.	The Return After Parole Rate is defined as the percentage of offenders released to parole each fiscal year who successfully complete their parole period but are subsequently returned to a penitentiary.
	Mandatory Supervision-Related	
R6	Federal ex-inmates on MS violating or not violating conditions of MS, and parole board actions regarding revocation of MS.	The MS Revocation Rate is defined as the percentage of offenders released to mandatory supervision each fiscal year who subsequently revoke their MS period and are returned to a penitentiary.

Source: Hann, Robert (1982) Determinants of Canadian Penitentiary Populations.

Rate Number	Event or Decision(s) Described	Rate Name and Definition
	Mandatory Supervision-Related (continued)	
R7	Federal ex-inmates on M/S committing or not committing offences while on M/S, and parole board action regarding forfeiture of M/S.	The M/S Forfeiture Rate is defined as the percentage of offenders released to mandatory supervision each fiscal year who subsequently forfeit their M/S period and are returned to a penitentiary.
R8	Persons who have successfully completed M/S subsequently returning or not returning to a penitentiary for a subsequent offence.	Return After M/S Rate is defined as the percentage of offenders released to mandatory supervision each fiscal year, who complete their M/S period successfully but are subsequently returned to a penitentiary.
	Direct Discharge	
R9	Persons who have been directly discharged subsequently returning or not returning to a penitentiary for a subsequent offence.	The Return After Direct Discharge Rate is defined as the percentage of offenders discharged directly into the community each fiscal year, who subsequently are returned to a penitentiary.

Source: Hann, Robert (1982) Determinants of Canadian Penitentiary Populations.

SELECTED KEY TIME DELAYS USED BY FCSM TO DESCRIBE FACTORS AFFECTING OFFENDER POPULATIONS AND FLOWS

Time Delay Number	Activity/Event Described	Corresponding Time Delay Name/Definition
	Penitentiary Related	
T1	Judicial Sentencing defining a maximum length of time an offender may spend on correctional programs for a particular set of offences.	Sentence Length as assigned by the courts (in months).
T2	Offender involved in programs within a pentitentiary prior to release to parole.	Time served in a penitentiary between admission and release to parole (expressed as a percentage of T1).
T3	Offender involved in a program within a penitentiary prior to release to Mandatory Supervision.	Time served in a penitentiary between admission and release to Mandatory Supervision (expressed as a percentage of T1).
	Parole Related	
T4	Offender involved in a parole program prior to revoking or forfeiting his parole.	Time spent on parole between release and parole revocation or forfeiture (expressed as a percentage of parole period).
T5	Offender involved in a parole program prior to successful completion of the program.	Time spent on parole between release and successful completion (predetermined as sentence length less time served in penitentiary).
	MS Related	
T6	Offender involved in an MS program prior to revoking or forfeiting his MS.	Time spent on MS before release and revocation or forfeiture (expressed as a percentage of potential MS period).
T7	Offender involved in an MS program prior to successful completion of the program.	Time spent on MS between release and successful completion (predetermined as sentence length less time served in penitentiary).
	Recidivism-Related	
T8	Offender free from authority after parole and committing another offence for which a penitentiary sentence is given.	Time spent in the community between successful completion of parole and re-admission to a penitentiary (in months).

Source: Hann, Robert (1982) Determinants of Canadian Penitentiary Populations.

Time Delay Number	Activity/Event Described	Corresponding Time Delay Name/Definition
	Recidivism-Related (continued)	
T9	Offender free from authority after MS and committing another offence for which a penitentiary sentence is given.	Time spent in the community between successful completion of MS and re-admission to a penitentiary (in months).
T10*	Offender free from authority after direct discharge and committing another offence for which a penitentiary sentence is given.	Time spent in the community between direct discharge from a penitentiary and re-admission to a penitentiary (in months).

*This time delay is used only for Offenders who were admitted to a penitentiary prior to the implementation of the Mandatory Supervision program in 1970.

Source: Hann, Robert (1982) Determinants of Canadian Penitentiary Populations.