



CJCAC

Study of Montana Sentencing Practices 1987

By
Susan Byorth, Project Director
David Elenbaas and Lois Menzies

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July, 1990

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I. STATEMENT OF THE PROBLEM

Background

One of the most critical issues confronting the criminal justice system today is prison overcrowding. The average year-to-year increase in the national prison population from 1980 to 1986 was 8.8 percent.¹ In 1986, only ten state prison systems operated below design capacities.² The prison population continues to rise despite declining crime rates and a leveling-off of the at-risk population (males ages 18 - 34).

Montana has not escaped the prison population boom. In fiscal year 1988, the state's incarcerated population reached an all-time high of 1,163. This population exceeded the design capacity of Montana's correctional facilities by 20 percent.

Recognizing the severity of Montana's overcrowding problem, Governor Ted Schwinden issued an executive order in August 1987 creating a 16-member Criminal Justice and Corrections Advisory Council. The order charged the Council to thoroughly review Montana's existing criminal justice and correctional systems; and to recommend modification of those systems that would better serve the public interest. The Council focused on parole, good time, sentencing alternatives and prison expansion. The Council delivered recommendations to Governor Schwinden in September 1988, and submitted the recommendations to Governor-elect Stephens in December 1988 for their recommendations in order to prepare for the 1989 Legislative Session. Governor Stephens reappointed the Council in July, 1989.

The Criminal Justice and Corrections Advisory Council included sentencing as an issue to be studied in the request for grant support. It was also included in the proposed study design, work plan, and both Governor Schwinden's and Governor Stephen's Executive Orders. The purpose of this sentencing study is to describe sentencing practices in Montana to discover if disparity exists and address the above concerns.

According to the study design and work plan, a review of sentencing practices should include: consistency of sentencing practices, the role of the Sentence Review Division in assuring consistency in sentencing, the impact of inconsistency on the prison population, review of the sentencing practices of other

states, and acceptable approaches for Montanans to consider. This sentencing study is the result and will be the basis of a discussion on sentencing in Montana.

Revamping sentencing practices is a monumental task. In this study, the Council and staff intend to review the status of sentencing practices in our state and in the states which have enacted new legislation, and to recommend whether Montana should pursue major changes in sentencing.

History of Corrections and Sentencing in the United States

The history of western punishment has been reflected mainly in the imposition of a fine, physical torture and death. Imprisonment, except for debtors, has only become popular in the last two hundred years.³

There are four basic rationales for sentencing: 1) to deter crime; 2) to incapacitate the offender; 3) to vindicate the social order; and 4) to rehabilitate the offender.⁴ The sentencing rational prior to the late eighteenth century seemed to have been vindication of the social order. Justice Brandeis observed that up to the eighteenth century, "[i]t was then believed that even capital punishment should be inflicted under conditions involving public disgrace. Largely for this reason, hangings were public, as in earlier days men had been drawn and quartered. If the life of an offender was spared, it was then thought that some other punishment involving disgrace must be applied to render his loss of reputation permanent."⁵

The philosophy of rehabilitation does not appear until after the American Revolution. It led to the development of the current penal system which became the tool for individualized reformatory incarceration, though incarceration can be justified by any of the above four rationales. The use of capital and corporal punishment which was popular in colonial America gave way to imprisonment in the late eighteenth century. Initial changes in statutes led to determinate prison sentences rather than severe corporal or capital punishments.

The rehabilitative model viewed crime as a "disease" which can be "cured." This view is a medical, scientific model based on the idea that humans are rational which is different from the past Calvinist philosophy that man

was depraved and needed to be punished for his sins.⁶

The correctional field accepted the rehabilitative model, yet, sentencing did not reflect this philosophy as judges continued to retain discretion and give determinate sentences. Within the determinate form of sentencing, a legislature set outside limits within which sentencing could be imposed, and allowed a specific sentence to be imposed by the court. The only allowed alteration was through commutation or pardon. Sentences were imposed proportionately to the severity of the offense, and not imposed with rehabilitation in mind. It was only towards the end of the nineteenth century that sentencing reform came about.

By mid-nineteenth century, the correctional system experienced failure in its reformation goals and in turn, faulted the courts. With a determinate sentence there was little motivation for good behavior within the institution and the correctional system experienced difficulties in custody and control. In the estimation of corrections, the courts could not expect to know how long it would take to rehabilitate an inmate. It was felt that this decision should be left up to administrative and correctional authorities.

In 1869, Michigan enacted the first explicit indeterminate-sentence law for crimes in a very limited fashion and eight years later, the first indeterminate-sentence law was enacted with more widespread penal application. In 1870, the National Prison Congress called for a sentencing system which reflected a rehabilitative purpose, rather than a punitive one. The legislature would still set permissibly broad limits, the judiciary would set indeterminate sentences, and an executive board would set release dates once "rehabilitation" had taken place. This is the general model that has stood for the last century. Also in 1870, New York followed in adopting provisions typical of statutes later enacted in most states. By 1922, only four states were without some form of indeterminate sentencing or parole system.⁷

The discretion which allowed authorities to release prisoners when rehabilitation was deemed accomplished, also allowed them to deny release and gave administrators control over the composition of the prisons by prolonging incarceration for whomever they decided.

By 1930, indeterminate sentencing existed in every state⁸ and continued until the attack on indeterminism began in the mid-sixties. The attack on indeterminism in sentencing was foreshadowed by changes in other fields.

The growth of psychiatry reinforced rehabilitative incarceration and therefore indeterminate sentencing, as crime could also be viewed as "mental illness". With the growth of behaviorism, though, there grew skepticism about rehabilitation. Actual conditions in mental hospitals brought further attention to this medical and scientific model and people began questioning "rehabilitation". The conditions in penology also were exposed at various times in this century. Draft resistors in the twenties and sixties, and civil rights demonstrators who were sent to jail and prison brought attention to the conditions behind bars. Prison riots also attracted attention. Judicial discretion had been questioned since the sixties, but did not receive widespread attention until the seventies.

By 1975, indeterminate sentencing began to be replaced. Some of the reasons indeterminate sentencing has been undermined are:

- 1) Disparities in sentencing. Often these were attributed, in part, to the lack of established general standards for sentencing and parole decisions;
- 2) Discretion and discrimination. Without established standards and wide-open discretion, the appearance of discrimination, whether established or not, brought calls for sentencing reform;
- 3) Rehabilitation and research. A substantial body of research was collected on treatment programs in the seventies and the conclusion was that research could not prove that rehabilitation either "worked", or did not work;
- 4) Prisoners' rights. Prison outbreaks in the sixties focused attention on prison conditions and on the deference of the courts to correctional officials;
- 5) Law reform proposals. Reforms for sentencing and parole release were called for in response to the other criticisms which were seen as symptomatic;

6) Crime control. Crime rates rose in the seventies and the charge of "coddling criminals" brought calls for longer sentences by passing mandatory sentencing and statutory determinate sentencing; and

7) Philosophy. By the eighties, the purpose of imprisonment as rehabilitation came into question and the justification for punishment turned to "just deserts" and retribution.⁹

There were also some judicial decisions in the early seventies regarding procedural safeguards and substantive constraints. The procedural safeguards involved due process as to when the indeterminate sentencing is imposed, the point at which the parole board makes the decision to release, and after conditional release regarding parole revocation.¹⁰

The procedural cases reflected a growing concern about the abuses of indeterminate sentencing but did not impose any direct constraints on such sentences.¹¹ The cases regarding substantive constraints may have an effect on the extent of indeterminacy in sentencing. In *In re Lynch*, "the court held that an indeterminate sentence of up to life in prison for a second indecent exposure conviction violated the cruel and unusual punishment prohibition of the California constitution because the maximum punishment was disproportionate to the underlying offense."¹² The court's opinion outlined "several factors to be considered in administering the open-end rule:

First, judges should examine the nature of the offense and/or the offender, with particular regard to the degree of danger both present to society. . .

Second, there should be a comparison of the challenged penalty with the punishments prescribed in the same jurisdiction for different offenses which, by the same test, must be deemed more serious. . .

Third, the challenged penalty should be compared with the punishments prescribed for the same offense in other jurisdictions having an identical or similar constitutional provision."¹³

In a second case, "the California Supreme Court was called upon to apply the Lynch

criteria to test the constitutionality of a state statute applying to recidivist drug offenders. . . The delayed parole provisions of the statute the court held, had been imposed without regard to the existence of possible mitigating circumstances. . . The court found this to be constitutionally invalid under the Lynch analysis and the statute was struck down."¹⁴ The two above cases were the strongest and, while not striking down indeterminate sentencing, do reflect dissatisfaction with indeterminacy and the beginning of a change.

Background of Sentencing and Release Practices in Montana

Article II, Section 28 of the Montana Constitution states: "Laws for the punishment of crime shall be founded on the principles of prevention and reformation."

Section 46-18-101, MCA, states that:

"(2) The correctional policy of the state of Montana is to protect society by preventing crime through punishment and rehabilitation of the convicted. The legislature finds that an individual is responsible for and must be held accountable for his actions. Corrections laws and programs must be implemented to impress upon each individual his responsibility for obeying the law. To achieve this end, it is the policy of the state to assure that prosecution of criminal offenses occurs whenever probable cause exists and that punishment of the convicted is certain, timely, and consistent. Furthermore, it is the state's policy that persons convicted of a crime shall be dealt with in accordance with their individual characteristics, circumstances, needs, and potentialities."

Sentences must be based upon the crime committed, the prospects of rehabilitation of the offender, the circumstances under which the crime was committed, and the criminal history of the offender. (46-18-101, MCA)

Additionally:

"(3)(b) Dangerous offenders who habitually violate the law and victimize the public shall be removed from

society and correctively treated in custody for long terms as needed. Other offenders shall be dealt with by probation, suspended sentence, or fine whenever such disposition appears practicable and not detrimental to the needs of public safety and the welfare of the individual. Whenever possible, sentences for offenders shall include restitution to the victim, payment of costs, ... and payment of costs of court-appointed counsel. . . ." (46-18-101, MCA)

The Montana sentencing policy is reflected above. It is a form of indeterminate sentencing based on the premise that each offender must be dealt with according to their individual circumstances. Part of the indeterminacy lies in statutes which give wide ranges from which a judge may sentence an offender. There are few prescribed minimums, only in violent and drug crimes, and for the most part, of two years. The minimum sentence for deliberate homicide is the highest at ten years. One year is the minimum sentence for all other crimes which are considered felonies, by definition.

The sentencing is different from many states which have indeterminate sentencing, in that the judge does specify a fixed term (i.e., 10 years with 5 suspended). The sentencing options include a prison sentence, a suspended sentence, a deferred sentence, fines, community service, restitution or a combination. The actual term spent in prison will be determined by parole eligibility and designations. Indeterminacy is also factored in the discretion held by the Board of Pardons on the parole of an inmate within the eligibility and designations set by the court in the sentence.

In Montana, the Governor's power to commute punishments, grant pardons and remit fines and forfeitures, subject to approval of a board of pardons, was authorized in the 1889 Constitution. The composition of the Board of Pardons, first determined in 1891, was the Secretary of State, Attorney General and the State Auditor and their duties were limited to advising the Governor in the constitutional power. The Board had no parole responsibilities.

In 1907, the State Board of Prison Commissioners was authorized to parole an inmate from Montana State Prison. The

Commission consisted of the Governor, Secretary of State and the Attorney General. The Board and the Commission co-existed until 1955 when their functions were merged and reconstituted to the Board of Pardons. This board consisted of three members appointed by the Governor with the advice and consent of the Senate. In addition to advising the Governor on clemency matters and administering paroles, the Board was charged with supervising probation and suspended sentences. A State Director of Probation and Parole was authorized to be appointed by the Board. Parole eligibility provisions were also refined.

In 1971, the Board was transferred to the Department of Institutions for administrative purposes only and the State Director of Probation and Parole became the Administrator of Probation and Parole. In 1975, the Legislature established statutory qualifications for the Board and responsibility for probation and parole field services was transferred to the Department of Institutions.¹⁵

An offender's parole eligibility status is determined at the time of sentencing. Two categories of offenders may not be paroled: those receiving death sentences and those who are designated as ineligible for parole by a sentencing judge. A judge may designate an offender as ineligible for parole if a sentence of imprisonment in the state prison for a term exceeding one year is imposed (46-18-202, MCA). For an offender who is parole-eligible, the sentencing judge must determine whether the offender is considered nondangerous for parole purposes.

The sentencing judge receives a presentence investigation (PSI) completed by the probation and parole office. The PSI consists of an offender's past record, both juvenile and adult, the official and the defendant's versions of the crime, social history, medical history, a psychological profile, and a recommendation for a sentence. This information is supplied to facilitate the judge's sentencing decision.

If the judge determines that an offender is to be designated as dangerous, he must make that determination a part of the sentence imposed and state the determination in the judgment. If the sentence and judgment do not contain this determination, the offender is considered to have been designated as nondangerous for parole purposes.

The length of an inmate's sentence, his dangerous or nondangerous designation, and the amount of good time earned while incarcerated are the major determinants of the inmate's parole eligibility date. An offender designated nondangerous is eligible for parole after serving one-quarter of his full term, less good time earned. An offender who does not receive this designation must serve one-half his full term, less good time, before being considered for parole.

Once paroled, the offender remains under supervision by probation and parole officers of the Community Corrections Bureau of the Department of Institutions. Certain conditions of parole must be met, and if a technical violation or a new crime occurs the offender will be returned to prison. If a portion of the sentence was suspended, an offender completes parole and continues under supervision on a probation status until completion of the suspended portion of the sentence.

There are also provisions for post-conviction relief. There is a Sentence Review Board, composed of district court judges, which will review a sentence and has the authority to increase, decrease or affirm the sentence. There is also an appeal process on the conviction to the Montana Supreme Court.

II. METHODOLOGY

Data Collection

Staff of the Criminal Justice and Corrections Advisory Council collected data on sentencing practices in Montana during the late summer and fall of 1988. A copy of the collection form is in Appendix A. The primary purpose of the study is to provide the Council with a description of sentencing practices around the state.

Sample

A 100% sample of felony filings for a one year period in selected counties/districts was chosen. The anticipated advantages of this sample were the ability to discern a description of district specific sentencing patterns, greater consistency of record-keeping by the use of a one-year period, greater availability of pre-sentence investigation reports, access to court records (did not have to use archives), greater ease of sampling for data collection, more complete data for a state with low population density and relatively few felony cases, and face validity for policy-makers for whom the study is being done. This sample will allow descriptions of sentences by offense type, between-district variation, and factors which affect sentencing. The disadvantages to this sample are that trend data will not be identified, and comparative data will have to be obtained from the Adult Correctional Information System (ACIS) and the State Judicial Information System (SJIS) to confirm reliability and to generalize findings to the future or past.

In order to have an adequate sample size, a 60% conviction rate was estimated for seven selected counties. The conviction rate for the study was 57% and one additional county was selected to assure sufficient numbers for analysis.¹⁶

Information was collected for eight counties in Montana on felony cases filed during calendar year 1987 resulting in felony convictions. Any felony case which was not disposed at the time of data collection was not included in the study. The average time for disposal of a criminal case in 1987 was 144 days (SJIS), therefore by collecting data in the fall of 1988, most cases should have been disposed.

The counties in the sample were chosen because of the population of the counties and area of the state. The six major population areas were studied; Butte-Silverbow County was the next largest area, but was not included because of lack of data availability. The two remaining counties are rural in nature. The counties studied represented the various differences in economics and terrain across the state, eastern plains and western mountains. As Montana is a large, sparsely populated state, data collection took place in the major population areas, in order to allow maximum collection with reasonable travel. The sample is therefore over-represented in urban areas across the state, though the population areas studied range from 12,700 to 118,800 persons (1984 estimates).

Even with collection in only eight of fifty-six counties, the counties selected for the sample accounted for approximately 60 percent of all felony filings in Montana during 1987. The selected counties account for 42 percent of Montana's population. These counties represent seven of twenty judicial districts and 21 (58%) of the 36 district court judges. Each county sampled in these districts accounts for an average of 91 percent (from 80-100%) of the filings in that district (in the Seventh Judicial District, two counties were sampled for 84% of filings in that district).

The eight counties, their respective judicial district, and the number of cases collected in parentheses, were: Cascade County, Eighth Judicial District, (167); Dawson (31) and Richland (21) Counties of the Seventh Judicial District; Flathead County, Eleventh Judicial District, (99); Gallatin County, Eighteenth Judicial District, (80); Lewis and Clark County, First Judicial District (78); Missoula County, Fourth Judicial District (234); and Yellowstone County, Thirteenth Judicial District (210).

Sources of Information

Lists were obtained from the State Court Administrator's Office from the State Judicial Information System (SJIS) on district court filings by county, caseload statistical reports for the state, each county, and district. Lists were also obtained from the individual counties, if available, on felony filings in 1987. A list, by county, of admissions to the correctional system, which included legal and demographic information, was obtained from

the Department of Institutions Corrections Division from the Adult Correctional Information System (ACIS). These lists were compared in order to estimate the size of the sample. Preliminary data collection was initiated in Helena. Data collection forms were filled out for those counties in which information was available on felony filings; demographic data was obtained through ACIS and filing data was obtained from SJIS.

If data was known on felony convictions, the Pre-Sentence Investigation Report (PSI) could often be obtained at the Central Office of the Department of Institutions. This information was filled out in advance of travel to the specific counties. Once at a specific county, previously collected data was double-checked and judgment data was obtained from the actual case files at the district Clerk of Court's office, as well as other information (RAP sheets, criminal history, other court documents) and some additional PSI's which were not available in Helena. Further information, if missing at the district court, was obtained through the Probation and Parole regional offices.

The Pre-Sentence Investigation consists of an offender's past record, both juvenile and adult, version of the crime, social history, medical history, a psychological profile, and a recommendation for a sentence. This information is supplied by the probation and parole office in order to assist the judge in making the sentencing decision. This was the most useful source of information regarding criminal history, behavior severity, demographics, needs and probation recommendation. The judgment supplied sentencing information, any sentencing enhancements and information on plea bargain agreements.

Further sentencing information was obtained from the Sentence Review Division files at the State Court Administrator's office on any 1987 felony conviction which was submitted and accepted for review from the counties in the study.

Variables

The variables list was derived from the questions the study hoped to answer:

>What are sentencing practices in Montana?

>What is the average and range of sentence lengths for different offense types?

>Who goes to prison and who to probation?

>How much do sentencing practices vary between and within districts?¹⁷

also collected on prior adult arrests or juvenile adjudications. Offender needs included mental health, drug and alcohol needs.

The Probation and Parole officer's recommendation categories included prison, non-prison, no PSI or no recommendation.

Data was collected in the areas of identification, current offense, sentencing enhancements, other provisions, social/demographic information, criminal history, offender needs, and the probation officer's recommendation. The first basic type of information was on the current offense of which most was taken from the district court judgment. These areas included: Identification which includes filing date and case number, county, department (judge), and status at arrest. Current offense recorded the charges resulting in conviction by statute number, offense type, counts, and the sentence given. Crimcs were grouped into nine categories for the analysis: homicide, sex crimes, robbery, assaultive crimes, burglary, theft, fraud, drug crimes, and other crimes. Appendix B identifies the crimes included in each of the crime groupings. Information was also collected on whether there was a plea agreement and on behavior severity. A scale of behavior severity was adapted from an Oregon sentencing study. Sentencing enhancements included persistent felony offender, committed with a weapon, dangerous designation or ineligible for parole, and any financial sanction (fine, fees, restitution, costs of prosecution or court-appointed defense). Other provisions included work release, community service, treatment, unsupervised probation, jail, Warm Springs, any jail credit and whether the offender was in jail at the time of sentencing.

The second type of information collected was on the description and history of the offender. Most of this information was collected from the Pre-Sentence Investigation (PSI), prison records and other documents in the court file. Social/demographics included sex, race, birthdate, marital status, employment status, and education (some of this data was collected from ACIS). Criminal history included age at first arrest, the total adult convictions and the number of felonies and violent felonies, the number of probation and parole revocations and the number of total prior prison incarcerations. Information was

III. RESULTS

1. IDENTIFICATION

A total of 1620 felony cases were filed in the selected counties. Of those, 920 filings collected for the study resulted in convictions for 1,054 felonies. The remainder of the caseload was not disposed, dismissed, or reduced to a misdemeanor. For this study, the conviction rate was 57 percent. (For the purposes of this report, multiple counts of the same crime are treated as one conviction. Multiple counts of the same crime occurred for 11.9 percent of the convictions.)

2. CURRENT OFFENSE

Types of Crimes

Crimes were grouped into nine categories for the analysis: homicide, sex crimes, robbery, assaultive crimes, burglary, theft, fraud, drug crimes, and other crimes.¹⁸

Missoula County had the most felony convictions, followed by Yellowstone and Cascade counties; Richland County had the fewest. Graph 1 shows the percentage breakdown by crime group in the study. As would be expected, a majority of the convictions are for burglary, theft, and fraud.

Table 1 shows the percentage breakdown of crimes by county. Flathead and Dawson counties had a much higher percentage of drug crimes compared to their total convictions, while Lewis and Clark County had a dramatically low percentage (3.1 percent) of drug convictions. Both Flathead County and the Glendive Police Department (Dawson County) received federal money from the Anti-Drug Abuse Act of 1987 through the Board of Crime Control. These local jurisdictions, in conjunction with the Montana Criminal Investigation Bureau, had more resources to actively address the drug problem. Flathead County had the highest percentage of felony convictions for sex crimes. This may be due to more active investigation by the Police and Sheriff's Departments, and awareness of sex crimes fostered through an inter-agency advisory team in Flathead County. Higher felony convictions point to stronger investigation and prosecution, rather than, necessarily, to the presence of more offenders.

TABLE 1
FELONY CONVICTIONS BY COUNTY
BY CRIME (PERCENT)

	<u>CASC</u>	<u>DAWS</u>	<u>FLAT</u>	<u>GALL</u>	<u>L&C</u>	<u>MSLA</u>	<u>RICH</u>	<u>YELL</u>	<u>TOTAL</u>
Homi	1.9	5.4	1.9	1.0	3.1	0.8	0.0	2.2	1.8
Sex	4.3	8.1	15.5	7.9	6.3	4.7	0.0	6.1	6.5
Rob	2.4	0.0	5.8	1.0	3.1	3.9	0.0	1.7	2.8
Aslt	4.3	2.7	5.8	3.0	8.3	9.0	17.4	7.4	6.7
Burg	20.1	16.2	11.7	18.8	21.9	12.2	21.7	23.5	18.0
Theft	28.2	5.4	16.5	30.7	33.3	29.4	34.8	22.2	26.1
Fraud	13.4	2.7	10.7	24.8	12.5	18.8	8.7	13.5	15.0
Drug	13.4	59.5	28.2	10.9	3.1	13.7	4.3	18.7	16.3
Other	12.0	0.0	3.9	2.0	8.3	7.5	13.0	4.8	6.8

Note: Felony filings resulting in convictions, calendar year 1987.

Type of sentence imposed

Of the 1,054 felony convictions, 30.9 percent (326) resulted in a sentence to prison, 28.1 percent (296) resulted in a suspended sentence, and 41.0 percent (432) resulted in a deferred sentence. In other words, in approximately one-third of all convictions, a sentence to prison was imposed. Table 2 shows the breakdown by crime type of the decision to impose a prison sentence, a suspended sentence, or a deferred sentence.

Although criminal histories are not taken into account in these data, the percentage of convictions resulting in prison sentences for property crimes (burglary, theft, and fraud) appears to be fairly high. The state of Washington, for example, under its determinate sentencing system, expects about 11 percent of property offenders to be sentenced to prison.¹⁹ For the eight counties in this survey, 28.2 percent of convictions for property crimes resulted in a sentence to prison.

TABLE 2
TYPE OF SENTENCE IMPOSED: PRISON, SUSPENDED, DEFERRED
FOR FELONY CONVICTIONS, BY CRIME (PERCENT)

<u>Crime Type</u>	<u>SENTENCE IMPOSED</u>		
	<u>To Prison</u>	<u>Suspended</u>	<u>Deferred</u>
Homicide	78.9%	10.5%	10.5%
Sex Crimes	45.6%	35.3%	19.1%
Robbery	79.3%	13.8%	6.9%
Assault	35.2%	31.0%	33.8%
Burglary	34.7%	23.7%	41.6%
Theft	28.0%	24.4%	47.6%
Fraud	20.9%	27.8%	51.3%
Drug Crimes	19.8%	38.4%	41.9%
Other Crimes	30.6%	30.6%	38.9%

Examining the sentencing decisions for the higher volume crimes of burglary, theft, fraud, and drug crimes, some variations by county are apparent (see Table 3). Yellowstone County had the largest percentage of its convictions in those crime groups result in sentences to prison or suspended sentences. Compared to the eight county average of 28.2 percent, 37.5 percent of convictions for property offenses in Yellowstone County resulted in a sentence to prison; in Missoula County, 22.1 percent resulted in a sentence to prison; and in Cascade County, 31.8 percent resulted in a sentence to prison. Appendix C contains sentencing decision data by crime group for each of the counties.

For drug crimes, 19.8 percent of felony convictions in the eight counties resulted in a sentence to prison. Yellowstone County imposed sentences to prison for drug crimes 25.6 percent of the time. In Missoula County, 17.1 percent of drug convictions resulted in a

sentence to prison, while 21.4 percent of drug convictions in Cascade County resulted in a sentence to prison.

For property crime convictions resulting in a suspended sentence, the eight county average was 25.0%. In Yellowstone County, 39.0 percent of property convictions resulted in a suspended sentence; in Missoula County, 25.3 percent; and in Cascade County, 27.9 percent.

For drug crimes, 38.4 percent of felony convictions in the eight counties resulted in a suspended sentence. Yellowstone County imposed suspended sentences for 60.5 percent of felony drug convictions; Missoula County imposed suspended sentences for 20.0 percent; and Cascade County imposed suspended sentences for 42.9 percent.

The above data seem to indicate that felony convictions for property and drug crimes are much more likely to result in a sentence to prison or a suspended sentence in

Yellowstone County than in the other counties.

On an offender basis, 29.7 percent (270) of felony offenders in the survey were given a sentence to prison; 27.9 percent (257) received a suspended sentence only; and 42.4 percent

(390) received a deferred sentence. A combination sentence, which included both a portion to be served in prison and a portion to be served on suspended sentence, was received by 17.4 percent (160) of the offenders.

TABLE 3
TYPE OF SENTENCE IMPOSED: PRISON, SUSPENDED, DEFERRED, COMB.
FOR FELONY OFFENDERS, BY COUNTY (PERCENT)

County	SENTENCE IMPOSED			
	To Prison	Suspended	Deferred	Comb.
Cascade	32.9%	26.9%	40.1%	18.0%
Dawson	25.8%	19.4%	54.8%	19.4%
Flathead	26.3%	33.3%	40.4%	22.2%
Gallatin	21.3%	18.8%	60.0%	23.1%
Lewis & Clark	26.9%	19.2%	53.8%	12.4%
Missoula	22.2%	27.4%	50.4%	38.1%
Richland	57.1%	9.5%	33.3%	18.6%
Yellowstone	39.0%	36.7%	24.3%	10.9%

Note: A combination sentence includes both a portion of the sentence to prison and a portion suspended. Those sentences also are recorded in the "To Prison" category.

Length of sentences

The maximum sentence imposed for one conviction was 300 years, excluding one life sentence. The maximum sentence imposed on one offender was 390 years. Table 4 shows average sentence for sentences to prison and suspended sentences. (One conviction may include one or more counts.) The median sentences are lower than the averages, indicating that there are some extreme cases which elevate the average.

receiving a sentence to prison. Prison sentences for assault ranged from one to 40 years, with an average prison sentence of eight years and a median sentence of five years. Missoula County had 23 convictions for assault, followed by Yellowstone County with 17.

Burglary: There were 190 convictions for burglary, with 66 (34.7 percent) of those receiving a sentence to prison. Prison sentences for burglary ranged from one to 40 years, with an average prison sentence of eight years and a median sentence of six years. Yellowstone County had 54 convictions for burglary, followed by Cascade County with 42.

Theft: There were 275 convictions for theft, with 77 (28.0 percent) of those receiving a sentence to prison. Prison sentences for theft ranged from one to 50 years, with an average prison sentence of 5.9 years and a median sentence of five years. Missoula County had 75 convictions for theft, followed by Cascade County with 59 and Yellowstone County with 51.

Fraud: There were 158 convictions for fraud, with 33 (20.9 percent) of those receiving a sentence to prison. Prison sentences for fraud ranged from two to ten years, with an average prison sentence of 5.8 years and a median sentence of five years. Missoula County had 48 convictions for fraud, followed by Yellowstone County with 31 and Cascade County with 28.

Drug Crimes: There were 172 convictions for drug crimes, with 34 (19.8 percent) of those receiving a sentence to prison. Prison sentences for drug crimes ranged from one to 25 years, with an average prison sentence of six years and a median sentence of three years. Yellowstone and Missoula counties had the most convictions for drug crimes, with 43 and 35 respectively.

Other Crimes: There were 72 convictions for other crimes, with 22 (30.6 percent) of those receiving a sentence to prison. Prison sentences for other crimes ranged from one to

50 years, with an average sentence of 11.6 years and a median sentence of five years. Cascade County had 25 convictions for other crimes, followed by Missoula County with 19.

TABLE 4
AVERAGE LENGTH OF SENTENCE BY CRIME
(IN YEARS)

	SENTENCES TO PRISON								
	<u>Homi</u>	<u>Sex</u>	<u>Rob</u>	<u>Aslt</u>	<u>Burg</u>	<u>Theft</u>	<u>Fraud</u>	<u>Drug</u>	<u>Other</u>
Average Sentence	63.2	11.8	15.2	8.3	7.8	5.9	5.8	6.0	11.6
Median Sentence	40	10	10	5	6	5	5	3	5

	SUSPENDED SENTENCES ONLY								
	<u>Homi</u>	<u>Sex</u>	<u>Rob</u>	<u>Aslt</u>	<u>Burg</u>	<u>Theft</u>	<u>Fraud</u>	<u>Drug</u>	<u>Other</u>
Average Sentence	8.0	9.8	8.0	5.8	6.4	7.5	6.5	5.2	6.3

Definitions: Average--or mean sentence, obtained by the sum of all sentences divided by the number of sentences.

Median- The score point below which 50% of the sentences fall.

Specific sentence ranges, by crime

The following selected crimes were analyzed for the number of offenses, the sentence range, the average total sentence, and the average prison sentence. (For example, a 10 year sentence with 5 years suspended would have a total sentence of 10 years and a prison sentence of 5 years.) Information regarding specific counties' averages is given if they differ from the mean. In all categories but deliberate homicide, multiple counts were considered to be one conviction. The average number of counts was one in all cases except sexual intercourse without consent (victim 16 or less); and provide, cultivate or sell dangerous drugs where the average number of counts was two.

Deliberate Homicide: There were seven cases for eleven counts of deliberate homicide convicted in 1987 from the counties surveyed. The sentence range was 55 to 100 years per count. The average sentence was 80.5 years per count and the average prison sentence was 80.5 years, indicating all of the total sentences were to prison. The sentences were from

Missoula County (avg. 38.3 yrs), Dawson County (avg. 100 yrs), and Cascade County (avg. 97.5 yrs).

Mitigated Deliberate Homicide: There were four cases of mitigated deliberate homicide for the first offense. The sentence range was 20 to 40 years. All four cases received some prison sentence. The average sentence was 28.75 years and the average prison sentence was 26.25 years. The sentences were from Flathead County and Yellowstone County. From Flathead County, both the average sentence and average prison sentence were 30 years. From Yellowstone County, the average sentence was 28 years and the average prison sentence was 25 years.

For the second offense, one case of mitigated deliberate homicide was convicted in Yellowstone County. The sentence was 30 years, all to prison.

Negligent Homicide: There were seven cases of negligent homicide. The sentence range was three to ten years. The average sentence was 6.4 years. The average prison sentence was 2 years, with four of the seven receiving prison sentences. The average

sentence varied from 3 years in Gallatin County to 8 years in Lewis & Clark and Yellowstone counties. Flathead County averaged 5 years.

Sexual Intercourse Without Consent (SIWOC): The convictions for SIWOC were for second and third offenses only. There were three second offense convictions and one third offense conviction. One reason for this low number may be that SIWOC is often plead down to sexual assault. The sentence was 40 years for the third offense. The range for second offense was 15 to 20 years. The average sentence was 16.6 years and the prison sentence average was 16.6 years, indicating all prison sentences. The second offense convictions from Cascade County averaged 15 years and from Yellowstone County averaged 20 years.

Sexual Intercourse Without Consent with the victim under 16 (SIWOCU): There were 11 first offense convictions for SIWOCU. The sentence range was 3 to 40 years with an average sentence of 14.6 years. The average prison sentence was 11.08 years, and ten of the eleven convictions received a prison sentence. The average ranged from 5.3 years in Missoula County to 24.5 years in Yellowstone County.

There was one second offense conviction for SIWOCU. The sentence was 10 years, 5 of which was a sentence to prison.

Sexual Assault: There were 40 convictions for sexual assault making it the largest category of sex offenses. The sentence range was 3 to 20 years with an average sentence of 10.25 years. The average prison sentence was 6.4 years which accounted for 50% of the sentences. Cascade County's average was 16.6 years, Gallatin County 11.5 years. Missoula County's average was 6.5 years and Yellowstone County's was 7.3 years.

Robbery: There were 25 first offense convictions for robbery. The sentence range was 3 to 40 years. The average sentence was 16.2 years. The average prison sentence was 10.25 with 24 of the 25 receiving prison sentences. The average ranged from 7 years in Gallatin and 9 years in Yellowstone counties to 25.5 in Cascade and 27.2 years in Flathead counties. There were three second offense convictions for robbery ranging from 12 to 30 years, average sentence 20.6 years with all receiving prison sentences averaging 20.6 years.

Aggravated Assault: There were 46 first offense convictions for aggravated assault. The sentence range was 1.5 to 20 years. The average sentence was 5.9 years. The average prison sentence was 3.6 including 34 of the sentences. Flathead County was the only county with a high average of 11.5 years. There were two second offense convictions of aggravated assault with a sentence range of 10 to 20 years and an average of a prison sentence of 15 years.

Assault: There were 10 assault convictions with a sentence range of 2 to 10 years and an average sentence of 4.6 years. Six of the ten received prison sentences with an average of 2 years. Flathead and Yellowstone counties' sentences were slightly above average at 5 and 5.5 years respectively. Lewis & Clark and Missoula counties were slightly below average at 2.5 and 3.6 years respectively.

Theft: This was the largest category of convictions with 222. The sentence range was from 1 to 40 years with an average of 5.6 years. 152 of the sentences included prison for an average prison sentence of 6 years. The extreme county averages were 2 years in Dawson County and 7.2 years in Lewis and Clark County. The average sentence of a second offenses convictions was 7.3 years, and average prison sentence was 4.8 years for 27 of the 44 cases.

Burglary: This is the second largest category with 154 cases. The range is 1 to 20 years and the average sentence was 5.4 years. The average prison sentence was three years for 104 cases. Dawson and Gallatin counties had low averages of 3.2 years and 3.8 years. Missoula County was the highest at 6.8 years. For second offenses convictions the average sentence was 7.75 years and for third offenses was 8.4 years. The average prison sentence for second convictions was 3.75 years and for third 3.3 years. Multiple convictions seem to increase the average total sentence but not average prison sentence.

Issuing Bad Checks: There were 75 convictions for bad checks. The range of sentence was one to 10 years, with an average sentence of 5.16 years. Forty-four cases received an average prison sentence of 2.2 years. There were four bad check second offense convictions with an average sentence of 7 years and two received an average prison sentence of 4 years. The average sentence by

county ranged from 1.5 years in Dawson County to 7.2 years in Flathead County.

Forgery: There were 56 forgery convictions with a range of sentence from 1 to 15 years. The average sentence was 5.5 years and the average prison sentence was 1.75 years accounting for 38 cases. There were five second offense convictions with an average sentence of 5.8 years, none received prison sentences. For one third offense conviction the average sentence was 10 years with a 4-year prison sentence. The average sentence ranged from 3 years in Gallatin County to 7.4 years in Cascade.

Criminal Mischief: There were 29 convictions for criminal mischief with a sentence range of 1.5 to 10 years. The average sentence was 4.4 years and the average prison sentence received by 18 offenders was .9 years (10.8 months). The average sentence ranged from 3 years on Gallatin County to 6.6 years in Flathead County.

Criminal Possession with Intent to Sell Drugs: This is the smallest of the drug category with 25 convictions. The average

sentence is 5.75 years with a range from 1 to 15 years. The average prison sentence is only .6 years (8 months) with 11 offenders receiving prison. Gallatin County has a low average of 4 years and Missoula and Yellowstone counties have higher averages of 7.3 and 7.5 years respectively. For second (2) and third offense (1) the sentences rise dramatically. The average sentence is 10 for second and 15 for third offense; and the average prison sentence is 7.5 for second and 10 for third offenses.

Possession of Dangerous Drugs: There were 57 convictions with a range of 1 to 10 years, and an average sentence of 3.6 years. The average prison sentence was .6 years (8 months). There were seven convictions for a second offenses with an average sentence of 4.75 years and an average prison sentence of 1.25 years. The county average sentences ranged from 2 years in Lewis & Clark County to 5 years in Dawson County.

Provide, Cultivate or Sell Dangerous Drugs: This is the largest drug category with 63 convictions. The range was from one to 25 years with an average sentence of 5.8 years.

TABLE 5
AVERAGE SENTENCE, BY SPECIFIC CRIME, BY COUNTY
(IN YEARS)

OFFENSE	COUNTY							
	Cascade	Dawson	Flathead	L&C	Missoula	Richland	Yellowstone	Gallatin
Del Hom	97.5	100	-	-	38.3	-	-	-
Mit Hom	-	-	30	-	-	-	28	-
Neg Hom	-	-	5	8	-	-	8	3
SIWOCU	-	6	-	20	5.3	-	24.5	10
Robber	25.5	-	27.2	14.3	17.4	-	9	7
Agaslt	4.2	-	11.5	4.5	6.4	6	5.9	5.3
Assaul	-	-	5	2.5	3.6	-	5.5	-
Theft	6.2	2	6.25	7.2	5.6	4.2	4.75	4.8
Burgla	5.2	3.2	5.8	6.2	6.8	5.2	5.25	3.8
PosISD	5.5	-	5.25	-	7.3	-	7.5	4
PossDD	4	5	4	2	3.3	-	4.1	3
BadCh	5.6	1.5	7.2	5.8	5.25	3.5	5.8	3.75
Mischf	5.3	-	6.6	2.5	4.6	3	2.8	3
PCSDD	6.6	4.8	2.5	-	8.6	-	4.75	13.5
SexAsl	16.6	10	10.4	10	6.5	-	7.3	11.3

The average prison sentence was 2.25 years with 43 cases receiving prison. There were four second offense convictions with a range from 3 to 25 years with an average sentence of 15.75 years. Three received some prison with an average prison sentence of thirteen years. The average sentence by County ranged from 2.5 years in Flathead County to 13.5 years in Gallatin County.

Behavior Severity

In addition to identifying convictions by crime, a behavior severity variable was collected for each case. This variable attempted to measure the severity of the offense based on a scale of behavior severities.

The scale ranged from 0 to 14, increasing in severity from verbal threats to increasing physical aggression to death. "0" indicated no documentation, "1" indicated no verbal or physical aggression and "14" indicated multiple deaths. Appendix D outlines the behavior severity scale which was taken from an Oregon sentencing study.

Revocations

Of the 920 offenders, 7% (71) of the first offenses were revocations, 3% (34) of which were revoked to prison and the remainder continued on their suspended or deferred sentence. Of the 122 second offenses, 7% (9) were revocations and 5% (6) were revoked to prison. Of the 18 third offenses 11% (2) were revoked to prison.

TABLE 6
SELECTED CRIMES BY AVERAGE BEHAVIOR SEVERITY SCORE,
AVERAGE SENTENCE AND AVERAGE PRISON SENTENCE

	Score	Avg. Sent (rank)	Avg.Pris (rank)
1. Deliberate Homicide	10	80.5 (1)	80.5 (1)
2. Mitigated Deliberate Homicide	9	28.75 (2)	26.25 (2)
3. SIWOC	8	15.0 (4)	15.0 (3)
4. SIWOC Under 16	6	14.6 (5)	14.6 (4)
5. Sexual Assault	6	10.25 (6)	6.4 (6)
6. Negligent Homicide	5	6.4 (7)	2.0 (12)
7. Robbery	5	16.16 (3)	10.25 (5)
8. Aggravated Assault	5	5.9 (8)	3.6 (9)
9. Assault	5	4.6 (15)	2.0 (12)
10. Criminal Mischief	3	4.4 (16)	0.9 (15)
11. Provide, Cultivate, Sell Drugs	1	5.8 (9)	2.25 (10)
12. Crim Poss w/ Intent to Sell	1	5.75 (10)	0.6 (16)
13. Theft	1	5.6 (11)	4.8 (7)
14. Forgery	1	5.5 (12)	1.75 (14)
15. Burglary	1	5.4 (13)	3.75 (8)
16. Bad Checks	1	5.16 (14)	2.2 (11)
17. Possession of Dangerous Drugs	1	3.6 (17)	0.6 (16)

Consecutive/concurrent sentencing

The 1989 Legislature changed the provision for a person serving a sentence who is again convicted from concurrent to consecutive sentencing for the second conviction (Ch. 76). Unless the judge orders otherwise, the second term shall not be merged with the other term. Prior to the enactment of this legislation, the shorter term, shorter remaining term or the remainder of a suspended sentence, was to be merged with the new sentence except when a prisoner is sentenced for an offense committed while on parole or supervised release (MCA 56-18-401).

If a person commits an offense while on parole or on supervised release, the new sentence runs consecutively with the remainder of the original sentence, and the prisoner starts serving the new sentence when the original sentence has expired or when he is released on parole. In the latter case, the sentences run concurrently from the time of his release on parole.

In the 1987 sentencing study, of the first offenses which had more than one count (122), twenty sentences were consecutive (19%) and 102 sentences were concurrent. For 122 second offenses, sixteen specified consecutive (15%) and 103 were specified concurrent. Of twelve third offenses, four were specified consecutive (60%) and seven concurrent. From these numbers it is clear that judges used consecutive sentences sparingly and most often in the case of multiple counts and offenses. The potential impact of consecutive sentences as default may be great when we take these numbers into consideration. Judges do have the discretion to make that decision, but if not specified, the sentences will be served consecutively, adding to the length of stay and increasing prison populations.

In a comparison of the population of inmates serving consecutive and concurrent sentences, the trend has been towards greater numbers of consecutive sentences. In 1980, 13.4 percent of the population was serving a consecutive sentence; by 1988, the percentage was 28.7 percent (Table 7). The percent of inmates admitted to serve consecutive sentences was 10.4 in 1984, and 17.4 by 1989.

TABLE 7

COMPARISON OF PERCENT TOTAL INMATES SERVING CONSECUTIVE AND CONCURRENT SENTENCES- MALE PRISON POPULATIONS

	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>	<u>1986</u>	<u>1987</u>	<u>1988</u>	<u>1989</u>
CS	13.4	13.8	16.0	18.8	19.2	21.8	25.2	29.1	29.0	28.7
CN	86.6	86.2	84.0	81.2	80.8	78.2	74.8	70.9	71.0	71.3

COMPARISON OF PERCENT TOTAL MALE PRISON ADMISSIONS WITH CONSECUTIVE AND CONCURRENT SENTENCES

	<u>1984</u>	<u>1985</u>	<u>1986</u>	<u>1987</u>	<u>1988</u>	<u>1989</u>
CS	10.4	16.0	19.8	20.5	21.8	17.4
CN	89.6	84.0	80.2	79.5	78.2	82.6

CS- Consecutive
CN- Concurrent

Source: Montana Department of Institutions (ACIS)

Several variables which provide additional information about the sentence imposed were collected. The following sections provide some information about each of those variables.

Misdemeanors: If an offender also was convicted of misdemeanors in the case, the total number of misdemeanors was recorded. In 102 (11.1 percent) cases, a misdemeanor conviction(s) was also present and two-thirds of those included one misdemeanor. Cascade and Missoula counties appeared to be most likely to convict an offender of misdemeanors, in addition to the felony conviction(s). The remaining counties rarely made misdemeanor convictions.

Status at Arrest: The status at arrest quite often will be taken into account by the sentencing judge in determining the sentence. An offender who already was on some sort of supervision at the time of arrest, such as probation (suspended or deferred sentence) or parole, or an offender who was on bail or escape status, was more likely to be sentenced to some prison sentence: 98 percent of those on parole received a prison sentence, 100 percent of those on escape status received a prison status, 86 percent on suspended and 81% on deferred sentences received a prison sentence. Approximately two-thirds of the remainder, which includes bail, other or unknown status received a prison sentence. Other includes anyone who was not currently under supervision, warrants, or other charges.

Seventy-two percent of the first offenses for those whose status at arrest was a suspended sentence, deferred sentence or parole status were property offenses. Using theft as an example of the first offense, those on parole received a greater portion of their sentence (73%) to prison, compared to those on a suspended sentence (65%), a deferred sentence (43%), or a person not on supervision (25%). Because of the small numbers of those on supervision, you cannot readily compare average sentence length, but the data would suggest that those on some sort of supervision at arrest do receive longer sentences.

3. SENTENCING ENHANCEMENTS

At the time of sentencing, the sentencing judge has the option to increase the sentence of the offender if certain conditions existed during the commission of the offense or if the offender's criminal history contains certain aspects. Enhancements that directly increase sentence length are the persistent felony offender (46-18-502 MCA) and committed with a dangerous weapon designations (46-18-221 MCA). The offender also can be designated a dangerous offender (46-18-404 MCA) or ineligible for parole (46-23-201 MCA), both of which increase the sentence length indirectly by affecting when the offender can be paroled or not paroled. Sentencing enhancements are used sparingly. Only 12 offenders received persistent felony offender designation, 34 received committed with a dangerous weapon, 23 received a dangerous designation and 6 were designated parole ineligible.

Persistent Felony Offenders. In this study, 12 of 920 offenders (1.3%) were designated as persistent offenders. This included 7 violent offenders, 3 property offenders, 1 drug offenders and 1 perjury offense.

"46-18-501. Definition of persistent felony offender. A "persistent felony offender" is an offender who has previously been convicted of a felony and who is presently being sentenced for a second felony committed on a different occasion than the first. An offender is considered to have been previously convicted of a felony if: (1) the previous felony conviction was for an offense committed in this state or any other jurisdiction for which a sentence to a term of imprisonment in excess of 1 year could have been imposed; (2) less than 5 years have elapsed between the commission of the present offense and either: (a) the previous felony conviction; or (b) the offender's release on parole or otherwise from prison or other commitment imposed as a result of the previous felony conviction; and (3) the offender has not been pardoned on the grounds of innocence and the conviction has not been set aside in a postconviction hearing." A sentence for persistent felony offender, if he was 21 years of age or older at the time of the commission of the present offense, is imprisonment in the state prison for a term not less than 5 years or more than 100 year

or shall be fined an amount not to exceed \$50,000, or both.

If the offender was a persistent felony offender at the time of his previous conviction, less than 5 years have elapsed between the commission of the present offense and either the previous felony conviction or release from commitment imposed, and was 21 years of age or older, the penalty is a prison term of not less than 10 years or more than 100 years or shall be fined an amount not to exceed \$50,000, or both. This sentence must run consecutive to any other sentence imposed.

Committed with a dangerous weapon. In this study, 34 of 920 offenders (3.6%) received a sentence for an offense committed with a dangerous weapon. Thirty-one were violent offenders and 3 were property offenders.

"46-18-221. Additional sentence for offenses committed with a dangerous weapon. (1) A person who has been found guilty of any offense and who, while engaged in the commission of the offense, knowingly displayed, brandished, or otherwise used a firearm, destructive device, as defined in 45-8-332(1), or other dangerous weapon shall, in addition to the punishment provided for the commission of such offense, be sentenced to a term of imprisonment in the state prison of not less than 2 years or more than 10 years, except as provided in 46-18-222." A second or subsequent offense can be sentenced to a term of imprisonment in the state prison of not less than 4 years or more than 20 years. The imposition or execution of the minimum sentences prescribed by this section may not be deferred or suspended; and an additional sentence prescribed by this section shall run consecutively to the additional sentence provided for.

Parole ineligibility. In this study, 6 of 920 offenders (0.6%) were designated parole ineligible. Four were violent offenders and two were property offenders.

An offender's parole eligibility status is determined at the time of sentencing. Two categories of offenders may not be paroled: those receiving death sentences and those who are designated as ineligible for parole by a sentencing judge. "46-18-202. Additional restrictions on sentence. (2) Whenever the district court imposes a sentence of imprisonment in the state prison for a term exceeding one year, the court may also impose the restriction that the defendant be ineligible for parole and participation in the supervised

release program while serving his term. If such a restriction is to be imposed, the court shall state the reasons for it in writing. If the court finds that the restriction is necessary for the protection of society, it shall impose the restriction as a part of the sentence and the judgement shall contain a statement of the reasons for the restriction."

The percentage of inmates who are designated ineligible for parole is relatively small. During the fiscal year 1989 4 percent of the inmate population was designated ineligible for parole. During fiscal years 1980 through 1988, the percentage of parole-ineligible inmates of the population rose each year from 2.8 percent in fiscal year 1980 to 3.9 percent in fiscal years 1988. The percentage of admissions has actually decreased from 1984 to 1989, from 2.5 percent to 1.1 percent, respectively.

Dangerous/nondangerous designation. In this study, 23 of 920 offenders (2.5%) were designated as dangerous. This included 13 violent offenders, 5 property offenders, 3 sex offenders and 2 others.

For an offender who is parole-eligible, the court must determine whether the offender is considered dangerous or nondangerous for parole purposes. "46-18-404. Designation as a nondangerous offender for purposes of parole eligibility. (1) Except as provided in subsection (4), the sentencing court must determine shall designate an offender a nondangerous offender for purposes of parole under part 2 of chapter 23 if: (a) during the five years preceding the commission of the offense for which the offender is being sentenced, the offender was neither convicted of nor incarcerated for an offense committed in this state or any other jurisdiction for which a sentence to a term of imprisonment in excess of one year could have been imposed; and

(b) the judge has determined, based on any presentence report and evidence presented at the trial and sentencing hearing, that the offender does not represent a substantial danger to other persons of society.

(2) A conviction or incarceration may not be considered under subsection (1) (a) if:

(1) the offender was less than 18 years of age at the time of the commission of the present offense; or

(2) the offender has been pardoned for the previous offense on the grounds of

innocence or the conviction for the offense has been set aside in a postconviction hearing.

(3) If the court determines that an offender is a dangerous offender, it shall make that determination a part of the sentence imposed and state the determination in the judgment. Except as provided in subsection (4), if the sentence and judgment do not contain a determination that the offender is a dangerous offender, the offender is considered to have been designated as a nondangerous offender for purposes of eligibility for parole.

(4) If an offender is given a probationary sentence that is subsequently revoked, the court may make the determination of whether the offender is a dangerous or nondangerous offender at the time of the revocation hearing."

The length of an inmate's sentence, his nondangerous designation, and the amount of good time earned while incarcerated are the major determinants of the inmate's parole

eligibility date. "46-23-201. Prisoners eligible for parole. (2) A convict serving a time sentence may not be paroled until he has served at least one-half of his full term, less the good-time allowance provided for in 53-30-105; except that a convict designated as a nondangerous offender under 46-18-404 may be paroled after he has served one-quarter of his full term, less good time allowance provided for in 53-30-105. Any offender serving a time sentence may be paroled after he has served, upon his term of sentence, 17 1/2 years."

During fiscal year 1989, 16.6 percent of the parole-eligible inmate population were designated dangerous. During fiscal years 1980 through 1989, the percentage of dangerous offenders in the prison population has almost doubled. Admissions of inmates designated dangerous has risen since 1984, rising 4.3 percent from 1988 to 1989 (Table 8).

TABLE 8

MALE INMATES DESIGNATED DANGEROUS
AS A PERCENT OF PRISON POPULATIONS AND ADMISSIONS-FYEND

	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989
Pop.	8.4	9.1	10.3	11.3	11.5	12.5	12.2	13.3	14.6	16.6
Adm.					4.9	6.5	7.0	6.9	7.6	11.9

Source: Montana Department of Institutions (ACIS)

Other provisions. Additional sentencing conditions can be imposed in suspended or deferred sentences. These conditions are quite often a means for the sentencing judge to individualize the sentence or make the sentence more effective in punishing and deterring the offender from future criminal involvement. Adding conditions to a probation sentence also can make a probation sentence severe enough in some cases to be an effective alternative to a prison sentence. Although imposing fines, fees, and restitution as additional conditions are used fairly often, work release, community service, and unsupervised probation are seldom used.

Fines can be imposed as provided by law for each offense (46-18-201, MCA). Fines also include payments required to a drug fund. Fees recorded in this study include the cost of incarceration, attorney fees, cost of prosecution, costs of court-appointed counsel, costs of psychiatric evaluation, extradition and crimestoppers. Restitution included money paid to a drug fund for cost of drugs purchased; costs of jury trial; costs for counseling, foster care and therapy for victims; and payments to the Crime Victims Fund. These different charges cannot be ordered unless a defendant is or will be able to pay them. Table 9 shows information about fines, fees, and restitution.

TABLE 9
IMPOSED FINANCIAL OBLIGATIONS
BY COUNTY

	Fines		Fees		Restitution		Any*	
	#	%	#	%	#	%	#	%
Cascade	30	22.6	43	32.3	98	58.7	112	67.1
Dawson	21	77.8	16	59.3	13	41.9	24	77.4
Flathead	44	58.7	7	15.9	44	44.4	75	75.8
Gallatin	19	24.0	1	1.3	56	70.0	66	82.5
Lewis & Clark	4	5.7	11	15.7	58	74.4	62	79.5
Missoula	48	24.6	157	80.5	140	69.6	201	85.9
Richland	4	44.4	3	33.3	11	52.4	15	71.4
Yellowstone	8	5.7	2	1.4	80	38.1	88	41.9
Total	183	25.1	230	31.6	500	54.3	643	69.9

*Percentages shown for fines, fees, restitution and any obligation are calculated based on all cases.

For all counties, the minimum fine imposed was \$50, the maximum was \$25,000, and the average was \$1,257. However, 77.0 percent (141) of the fines were for an amount of \$1000 or less. The minimum fee imposed was \$30, the maximum was \$4008, and the average was \$243. The minimum amount of restitution imposed was \$10, the maximum was \$89,042, and the average was \$2,831. In 13 sentences which required a fee, and 70 sentences which required restitution, the amount had yet to be determined.

The most common condition imposed in a probation sentence is a jail term. About 32.5 percent (210) of probation sentences include a jail term as a condition of probation. In 11 cases, a jail sentence was imposed concurrently with a prison sentence. However, in about one-third of the cases that a jail term is imposed, the jail term appears to be imposed in order to give the offender credit for time served in jail prior to sentencing. For example, if an offender has served 30 days in jail prior to sentencing, the sentencing judge may give the offender credit for those days, but also impose a 30 day jail term as a condition for probation.

Work release is occasionally permitted in conjunction with a jail term, usually allowing the offender to serve his jail time on weekends or when he/she is not working. Only 4 percent of offenders received work release. Flathead County allows an offender to participate in a work release program in almost all their sentences in which a jail term is imposed. Missoula and Lewis and Clark

counties do not utilize work release at all, while the other counties use it infrequently.

Community service is a condition imposed in which the offender is required to work a specified number of hours without pay for the community or other organization. Community service is imposed as a condition of probation in less than nine percent of probation cases and seven percent of all sentences. Missoula and Yellowstone counties use it the most of the eight counties, imposing it 11.8 percent and 10.7 percent of the time respectively.

Unsupervised probation is a probation sentence in which the offender is not placed under the supervision of the state probation and parole office, but remains under the supervision of the court. The only county that utilizes this option is Lewis and Clark County, using it in 30.0 percent of probation sentences. Less than 4 percent of the overall sentences gave unsupervised probation.

Whether an offender is in jail at the time of sentencing may have some bearing on the severity of the sentence that is given. If an offender was in jail at the time of sentencing, he/she was most likely to be sentenced to prison in Cascade and Richland counties. Of offenders sentenced to prison, 176 (64.5 percent) were in jail at the time of sentencing. Of course, this could be a reflection of the type of offense. For those given suspended or deferred sentences, 16.5 percent were in jail at the time of sentencing.

4. DEMOGRAPHICS

Demographic information was obtained both from the Adult Criminal Information System (ACIS) and pre-sentence investigations. Data from Lewis and Clark County are largely incomplete because of the relatively few pre-sentence investigations ordered in that county. Therefore, some summary statistics for the eight counties in total may be incomplete. Also, some offenders will be counted in the data more than once, if they were convicted on multiple case numbers.

Sex: The population of Montana in the 1980 Census was composed of 49.9 percent males and 50.1 percent females. Males were significantly over-represented in the study, compared to their proportion in the general population as almost 84 percent of the offenders in the study were males. Flathead, Gallatin, and Richland counties had the lowest percentage of female offenders, while Dawson, Cascade, and Missoula counties had the highest percentage.

Race: The race breakdown in Montana in the 1980 Census was 94.1 percent White, 4.7 percent Native American, 0.2 percent Black, and the remainder composed of other races. As Table 19 shows, Native Americans are over-represented in our study, compared to their proportion of the total state population and compared to their proportion within each of the counties. In the general population, only 4.7 percent are Native Americans compared to the 11.0 percent in the study. Cascade County had the largest proportion of Native Americans (18%) compared to 3.4 percent of its population. Richland County (14.3%) and Yellowstone County (12.9%) followed, while Dawson and Flathead counties had the lowest proportion. In the 1980 Census, Cascade County was composed of 3.4 percent Native Americans; Flathead County 1.0 percent; Lewis and Clark County 1.9 percent; Missoula County 1.9 percent; and Yellowstone County 2.2 percent.

Seventy-nine percent of the offenders in the study were white and 11% were Native American, this compared to FY87 prison admissions of 79.4 percent white and 12.8 percent Native American.

Age: The average age at the time of arrest was 28.6 years and the median age was 26 years. The range was from 16 to 79 years of age. ACIS data for FY87 average admission age was 28.1 years.

Marital Status: Almost three-fourths of the offenders were single (45%), separated or divorced (25.4%). About one-fourth of the

offenders in the study were married or in common-law relationships at the time of their arrest. ACIS admission data for fiscal year 1987 shows 40.9% single, 25.5% married, 5.3% common-law, 3.8% separated, 23.4% divorced and 1.1% widowed.

Employment Status: Over half (51.6%) of all the offenders were unemployed at the time of arrest. Cascade (59%) and Yellowstone (59%) counties had the largest proportion of unemployed offenders, while Flathead County had the fewest. There were 28.6% of the offenders who were fully employed.

Grade Levels Achieved: There were 15% of offenders who had some college, about 41 percent of the offenders had some high school, and 10.5% of the offenders completed 8 grades or less. The percentages would increase slightly if educational status information was available for all offenders. Dawson and Gallatin counties had the largest proportion of offenders who completed high school. Gallatin County had the highest percentage (33.8%) who had completed some college, compared to 16.2% from Missoula County.

Degree Attainment: Although over half of all offenders had not completed high school, a fairly large number of those went on to obtain their G.E.D. Almost 60 percent of the offenders had a high school diploma or a G.E.D., compared to only about 38 percent that had completed high school. Dawson, Gallatin, and Cascade counties had the largest proportion of offenders who had a high school diploma or G.E.D..

Age at First Arrest: Table 10 shows information on the age at first arrest or first encounter with law enforcement for the offenders in the study. Over 36 percent of the offenders in the study had their first contact with law enforcement before the age of 18, while over half of all offenders had their first contact before the age of 20. Less than 20 percent of the offenders had their first arrest after the age of 24.

TABLE 10
AGE AT FIRST ARREST
BY COUNTY, PERCENT

	<u>17<</u>	<u>18-19</u>	<u>20-24</u>	<u>25-29</u>	<u>30-34</u>	<u>35></u>	<u>Unk</u>
Cascade	37.1%	20.4%	22.8%	6.6%	6.0%	4.8%	2.4%
Dawson	25.8%	19.4%	22.6%	9.7%	0.0%	12.9%	9.7%
Flathead	40.4%	13.1%	21.2%	6.1%	2.0%	14.1%	3.0%
Gallatin	37.5%	18.8%	17.5%	16.3%	6.3%	3.8%	0.0%
Lewis & Clark	33.3%	11.5%	10.3%	1.3%	1.3%	5.1%	37.2%
Missoula	38.0%	15.8%	17.1%	10.7%	4.7%	5.1%	8.5%
Richland	0.0%	38.1%	28.6%	9.5%	0.0%	9.5%	14.3%
Yellowstone	39.0%	20.5%	14.8%	6.7%	6.2%	6.7%	6.2%
Total	36.6%	17.9%	17.9%	8.2%	4.6%	6.6%	8.2%

5. CRIMINAL HISTORY

The following tables present information that was collected regarding the criminal histories of the offenders. Appendix E contains related tables showing whether offenders in the study had arrests prior to the current conviction, and if so, for what crime(s).

Prior Felony Convictions: Table 11 shows the number and percent of felony convictions, by county, offenders had received prior to the present conviction. Almost 65 percent of the offenders in the study had not had any prior felony convictions.

TABLE 11
PRIOR FELONY CONVICTIONS
BY COUNTY

	Number					Percent				
	<u>0</u>	<u>1</u>	<u>2-4</u>	<u>5></u>	<u>Unk</u>	<u>0</u>	<u>1</u>	<u>2-4</u>	<u>5></u>	<u>Unk</u>
Cascade	105	26	28	5	3	62.9%	15.6%	16.8%	3.0%	1.8%
Dawson	27	1	0	1	2	87.1%	3.2%	0.0%	3.2%	6.5%
Flathead	74	13	9	2	1	74.7%	13.1%	9.1%	2.0%	1.0%
Gallatin	63	7	8	2	0	78.8%	8.8%	10.0%	2.5%	0.0%
Lewis & Clark	42	4	10	3	19	53.8%	5.1%	12.8%	3.8%	24.4%
Missoula	142	37	34	8	13	60.7%	15.8%	14.5%	3.4%	5.6%
Richland	10	4	2	3	2	47.6%	19.0%	9.5%	14.3%	9.5%
Yellowstone	131	38	34	3	4	62.4%	18.1%	16.2%	1.4%	1.9%
Total	594	130	125	27	44	64.6%	14.1%	13.6%	2.9%	4.8%

Total Violent Felonies: Table 12 shows information on the number and percent of offenders who had been convicted of violent felonies prior to their present conviction. Almost 90 percent of the offenders in the study had never been convicted of a violent felony.

TABLE 12
TOTAL NUMBER OF VIOLENT FELONIES IN CRIMINAL HISTORY
BY COUNTY

	Number				Percent			
	<u>0</u>	<u>1</u>	<u>2-4</u>	<u>Unk</u>	<u>0</u>	<u>1</u>	<u>2-4</u>	<u>Unk</u>
Cascade	155	6	3	3	92.8%	3.6%	1.8%	1.8%
Dawson	29	0	0	2	93.5%	0.0%	0.0%	6.5%
Flathead	94	3	1	1	94.9%	3.0%	1.0%	1.0%
Gallatin	79	1	0	0	98.8%	1.3%	0.0%	0.0%
Lewis & Clark	54	4	1	19	69.2%	5.1%	1.3%	24.4%
Missoula	205	13	3	13	87.6%	5.6%	1.3%	5.6%
Richland	18	1	0	2	85.7%	4.8%	0.0%	9.5%
Yellowstone	192	12	2	4	91.4%	5.7%	1.0%	1.9%
Total	826	40	10	44	89.8%	4.3%	1.1%	4.8%

Prior Misdemeanor or Felony Convictions:

Table 13 shows additional information about prior convictions, including any prior convictions for misdemeanors. Whereas almost 65 percent of offenders had no prior felony convictions, if you add convictions for misdemeanors, only about 25 percent of offenders had no criminal background.

TABLE 13
PRIOR CONVICTIONS (MISDEMEANOR & FELONY)
BY COUNTY

	Number					Percent				
	<u>0</u>	<u>1</u>	<u>2-4</u>	<u>5></u>	<u>Unk</u>	<u>0</u>	<u>1</u>	<u>2-4</u>	<u>5></u>	<u>Unk</u>
Cascade	43	16	46	59	3	25.7%	9.6%	27.5%	35.3%	1.8%
Dawson	5	1	7	15	3	16.1%	3.2%	22.6%	48.4%	9.7%
Flathead	37	16	21	22	3	37.4%	16.2%	21.2%	22.2%	3.0%
Gallatin	33	9	21	17	0	41.3%	11.3%	26.3%	21.3%	0.0%
Lewis & Clark	22	5	14	18	19	28.2%	6.4%	17.9%	23.1%	24.4%
Missoula	60	29	75	54	16	25.6%	12.4%	32.1%	23.1%	6.8%
Richland	2	1	5	9	4	9.5%	4.8%	23.8%	42.9%	19.0%
Yellowstone	26	21	75	74	14	12.4%	10.0%	35.7%	35.2%	6.7%
Total	228	98	264	268	62	24.8%	10.7%	28.7%	29.1%	6.7%

Prior Prison Incarcerations: Information on whether offenders had been incarcerated in a prison prior to the current offense is presented in Table 14. Fifteen percent of the offenders in the study had been incarcerated in prison at some time prior to their present conviction. Richland, Missoula and Cascade counties had the highest percentage of their offenders with prior prison incarcerations.

TABLE 14
TOTAL PRIOR PRISON INCARCERATIONS
BY COUNTY

	Number					Percent				
	0	1	2-4	5>	Unk	0	1	2-4	5>	Unk
Cascade	136	13	12	3	3	81.4%	7.8%	7.2%	1.8%	1.8%
Dawson	28	0	0	1	2	90.3%	0.0%	0.0%	3.2%	6.5%
Flathead	88	8	2	0	1	88.9%	8.1%	2.0%	0.0%	1.0%
Gallatin	71	5	4	0	0	88.8%	6.3%	5.0%	0.0%	0.0%
Lewis & Clark	54	4	6	0	14	69.2%	5.1%	7.7%	0.0%	17.9%
Missoula	178	26	12	4	14	76.1%	11.1%	5.1%	1.7%	6.0%
Richland	13	3	3	0	2	61.9%	14.3%	14.3%	0.0%	9.5%
Yellowstone	174	13	18	1	4	82.9	6.2%	8.6%	0.5%	1.9%
Total	742	72	57	9	40	80.7%	7.8%	6.2%	1.0%	4.3%

Revocations and Prior Arrests

Eighty-four percent of the offenders in the study had no prior probation revocations and 91% had no prior parole revocations. Table 15 shows the percentage of offenders who had prior adult arrests or juvenile adjudications recorded for selected crimes. The most common prior arrests were for the offenses of theft, burglary, drugs and forgery.

TABLE 15
PRIOR ADULT ARRESTS OR JUVENILE ADJUDICATIONS
FOR SELECTED CRIMES

Theft	44%
Burglary	22%
Drugs	16.5%
Forgery	16%
MV Theft	11%
Assault in the last five years	11%
Assault over five years	7.5%
Robbery	4%
Sex crime in the last five years	1.2%
Homicide	0.65%
Sex crime over five years	0.1%

6. OFFENDER NEEDS

Appendix F contains related tables showing whether the offenders in the study were determined to have special needs for mental health, alcohol, or drug treatment. If a self-reported or documented need was present it was recorded. Fifteen percent of the offenders in the study indicated a mental health need, 37.3% of the offenders indicated a drug problem need and 54.7% of the offenders indicated an alcohol problem need.

7. PROBATION AND PAROLE OFFICER'S SENTENCING RECOMMENDATION

Probation and Parole Officer's are responsible for the preparation of a Pre-Sentence Investigation Report (PSI) at the request of the court. The PSI includes legal status, identification information, background, criminal history, circumstances of the offense, defendant's statement, victim's impact, comments, and an evaluation/recommendation. The officer makes the recommendation based on the information compiled for the PSI. Statute requires that Pre-Sentence Investigation be completed on all cases in which an offender may be sentenced for one year or more (felonies), MCA 46-18-111. There is a Client Management Classification System available to Probation and Parole Officers, but it is very involved and time-consuming and is not used very often for that reason. There are not at this time any other guidelines to assist the probation and parole officer in developing the sentencing recommendation. This may be an area in which the department could internally set some guidelines to assist the probation officers in making their recommendation, which in turn will assist the judges in their sentencing decision.

The categories were 0-No PSI, 1-No recommendation, 2-Prison, and 3-Non-Prison. Of 920 cases, 475 or 50.5% of the recommendations were non-prison; 267 or 29% were a prison recommendation and 19% either had no PSI or no recommendation.

The percentages varied between counties. Yellowstone (210), and Dawson (31) counties had almost equal percentages of prison and non-prison recommendations. Yellowstone had 45% non-prison recommendations and 41% prison recommendations. Dawson County had 38% prison recommendations and 35% non-prison recommendations.

Gallatin (80), Missoula (234), Flathead (99) and Cascade (167) counties each had over 50% non-prison recommendations. Gallatin County had 75% non-prison and 22% prison recommendations. Missoula had 62% non-prison and 20% prison recommendations. Flathead had 58% non-prison and 30% prison recommendations. And Cascade had 56% non-prison and 31% prison recommendations.

Richland County (21) had 42% prison and 19% non-prison recommendations. Lewis and Clark County (78) had 15% prison and 10% non-prison recommendations. Lewis and Clark County had 75% (58) of cases with no PSI or no recommendation in 1987; and Richland County had no PSI or recommendation in 38% (8) of cases. The average was 19% of cases with no PSI or no recommendations.

Missoula County and Yellowstone County had similar sample sizes, yet were diverse in recommendations. These counties have almost equal numbers of property, sex, drug and other offenses. Missoula had almost twice as many violent offenses as Yellowstone County.

In Yellowstone County, twice as many violent crimes received prison recommendations (13) as non-prison (6). Slightly higher numbers of property crimes received non-prison (58) recommendations as prison (49), and sex crimes received roughly similar non-prison recommendations (8) and prison (6). Drug offenses received 18 prison recommendations and 15 non-prison.

In Missoula County, almost twice as many violent offenses (21) received non-prison recommendations as prison (13). Property crimes were recommended non-prison (85) to prison (24) almost four times to one. Drug offenses were also recommended non-prison (21) to prison (5) four times to one. Sex offenses were recommended non-prison (10) to prison (2) five times to one.

The differences between these two counties may be attributed to many reasons. Geographical and cultural differences no doubt are reflected. Criminal history and number of offenses have not been taken into account, but the fact that the differences are present may point to a need for standardizing practices.

The importance of these recommendations is highlighted in the numbers of sentences which follow the probation and parole officers recommendations. Of the 920 cases, 742 or 80% had recommendations. Thirty-six percent of the recommendations were for prison and sixty-four percent were non-prison. Thirty-

one percent of the cases received a prison sentence, 12% straight prison sentences and 19% split sentences. Sixty-four percent of the sample received suspended or deferred sentences. When a recommendation was present, it was followed 88% of the time; 8% of the sentences were more lenient and 3% of the sentences were more harsh.

When no PSI was present (145), 12 cases (8%) were sentenced to prison only; 31 cases (21%) were sentenced to suspended sentences only; 85 cases (59%) were sentenced to deferred sentenced only; and 17 cases (12%) received split prison and suspended sentences.

When a PSI was present, but there was no recommendation (33), 8 cases (24%) were sentenced to prison alone; 13 cases (39%) suspended sentences alone; 8 cases (24%) deferred alone; and 4 cases (12%) to a split sentence of prison and suspended sentence.

There were 267 prison recommendations of the 920 cases (29%). Of those recommended for prison, 206 (77%) received a prison sentence: 90 (44%) a straight prison sentence, and 116 (56%) a split prison and suspended sentence.

There were 475 non-prison recommendations (51%) of the 920 cases. Of those recommendations, 449 or 94% received some form of deferred or suspended sentence alone: 164 received a suspended sentence, 284 received a deferred sentence and one case received a suspended and a deferred sentence. Of the six percent who did not receive a non-prison sentence, three were sentenced to prison alone and 23 were given a split sentence of prison and a suspended sentence.

IV. SENTENCE REVIEW DIVISION

"Anyone sentenced to a year or more in the State Prison may request judicial review of the sentence. Application for sentence review must be made within sixty days from the date the sentence was imposed.

The Sentence Review Division of the Supreme Court consists of three District Court Judges appointed by the Chief Justice for three-year terms. The Chief Justice designates one of the Judges as chairman.

The Sentence Review Board meets at least four times each year in the Administrative Building at the State Prison in Deer Lodge (46-18-901).

The workload of the Sentence Review Board has increased steadily in the past few years. In 1985, 101 applications were filed with the Board, 128 in 1986, 140 in 1987, and 159 applications in 1988."²⁰

Upon imposition of sentence, the Clerk of the District Court shall give written notice to the person sentenced of the right to make such a request. The notice shall include a statement that review of the sentence may result in decrease or increase of the sentence within the limits fixed by law. The defendant has a right to counsel and may secure the aid of the Montana Defender Project, University of Montana School of Law, if unable to afford private counsel.

The Appellate Review of Legal Sentences (currently Title 46, Chapter 18, Part 9, MCA, 1987) was enacted in the Montana Code of Criminal Procedure by legislation passed in 1967, after study by the Montana Criminal Law Commission created in 1963. The statutes creating the Division were taken from the laws of Connecticut and Massachusetts, which at the time were the only other American jurisdictions which had a similar court.²¹

In order to correspond with the sentencing study of 1987 felony convictions accomplished by the CJAC staff, this report explores the 1987 sentences from the eight counties studied for which a sentence review was completed. A total of 42 defendants sentences was reviewed for 50 case filings. Forty-one sentences were affirmed, only one sentence was increased and eight sentences were decreased. Of the eight counties in the study, Cascade County had 21 defendants of the 42 which were reviewed, Yellowstone County had seven, Missoula County had six, Flathead County had four, Gallatin County had two, Lewis and Clark County and Richland County had one each and Dawson County had none.

The single sentence increased was from Gallatin County. The sentence was increased from a 10 year sentence for each of 5 counts to be served concurrently to a 10 year sentence (1 count) to be served consecutively with four concurrent 10 year suspended sentences. In essence, the defendant received 10 additional years of probation after the prison term. The conviction was for one count of writing bad checks, and four counts of deceptive practices.

The eight sentences which were decreased break down as follows:

Cascade County had three sentences decreased.

a. One sentence for bad checks was decreased from a 10 year prison sentence to 10 years suspended.

b. A sentence for kidnapping and sexual intercourse without consent was decreased from two 10 year sentences to be served

consecutively to two 10 year sentences to be served concurrently.

c. The third sentence for criminal mischief was decreased from a ten year sentence to ten years with five suspended. (This sentence is to be served concurrently with a twenty year sentence with ten suspended for theft and burglary.)

Yellowstone County had three sentences decreased.

All of these sentences were with the same defendant. Three 10 year sentences for burglary to be served concurrently were decreased to three ten year sentences with two years suspended to be served concurrently.

Missoula County had one sentence decreased.

This sentence for criminal possession with intent to sell drugs was reduced from fifteen years with thirteen suspended and a \$25,000 fine to five years suspended and a \$10,000 fine.

Gallatin County had one sentence decreased.

This sentence was two 25 year sentences to be served concurrently for the crime of providing, cultivating or sale of drugs to two 15 year sentences to be served concurrently.

In summary, forty-one sentences were affirmed, eight sentences were decreased and one sentence was increased. The decreased sentences resulted in the reduction of 43 years of prison sentences, an increase in 13 years of supervision on suspended sentences, and a decrease of \$15,000 in fines. The increased sentence resulted in an increase of 10 years of supervision on a suspended sentence.

V. CONCLUSION

Of the 1,054 Montana felony convictions in 1987, 30.9 percent resulted in a sentence to prison, 28.1 percent resulted in a suspended sentence and 41 percent resulted in a deferred sentence. In a national study of sentencing outcomes in 28 felony (urban) courts in 1985, 45 percent received a prison sentence, 26 percent received only a probation sentence, 22 percent received jail and probation and 7 percent received only a jail sentence.²² In Montana in 1987, 19.1 percent of probation sentences included a jail term (not jail credit). If jail credit is included, the number of sentences which include jail is 21 percent.

Of Federal offenders, convicted between July 1, 1985 and June 30, 1986, 51 percent were sentenced to prison terms and 37 percent were sentenced to probation only.²³ In 1986 state courts sentenced 46 percent of an estimated 583,000 persons convicted of felonies to state prison and 31 percent to straight probation.²⁴

Sixty percent of the convictions in Montana were for nonviolent offenses of burglary, theft (larceny), and drug offenses which compared to the 54 percent of the sentences in the study of 28 felony courts in 1985.

Montana percentages of convictions to prison are lower than those of the 28 felony courts. The average length of prison sentences is higher, though, than in the 28 Felony Courts study except for sex crimes and higher than the national average from a study of state courts in 1986.

TABLE 16
PERCENTAGE OF OFFENDERS RECEIVING PRISON SENTENCES
BY SELECTED CRIMES

<u>Crime</u>	<u>MT-1987</u>	<u>28 courts-1985</u>
Homicide	78.9%	84%
Sex crimes	45.6%	65%
Robbery	79.3%	67%
Assault	35.2%	42%
Burglary	34.7%	49%
Theft	28%	32%
Drug crimes	19.8% (inc.poss)	27% (not inc. poss)

TABLE 17
AVERAGE LENGTH OF PRISON SENTENCE, IN MONTHS

<u>Crime</u>	<u>MT-1987</u>	<u>28 Courts-1985</u>	<u>St. Courts-1986</u>
Sex crimes	141.6	189	151 (rape)
Robbery	146.4	127	139
Assault	99.6	96	97
Burglary	93.6	82	75
Theft	70.8	52	46
Drug crimes	72	67	69

The criminal statutes in Montana have a broad range for most offenses. The minimum of most crimes is one year and the maximum is 10-20 years. Some crimes now have mandatory minimums, usually 2 years for some drug and violent crimes, deliberate homicide has a minimum of 10 years. (See Appendix G) In addition there are the many sentencing enhancements which increase sentence length.

The data revealed in this 1987 Sentencing Study is offered for discussion of whether Montana sentencing practices are consistent. The difference in type of sentence imposed (Table 3) between counties ranges from 22.2 percent prison sentences in Missoula County to 57.1 percent. Suspended sentences range from 9.4 percent in Richland County to 36.7 percent in Yellowstone County. Sentence lengths range from two to 300 years for homicide to one to forty years for burglary.

All types of sentences imposed, prison, suspended and deferred, are present for all

crime types. This disparity may be due to criminal history, or circumstances of the crime, but as they appear different by county around the state, they may warrant a complete review of the criminal code to assure that punishment is "certain, timely, and consistent" as the correctional policy states (46-18-101, MCA).

The corrections policy also states that individual characteristics, circumstances, needs, and potentials are taken into consideration. This is consistent with indeterminate sentencing and parole systems. Many states have questioned this high level of discretion, intended for rehabilitation, when programs are not always available or funded adequately for treatment or rehabilitation.

Corrections resources have been stretched due to the increase in prison populations in the 1980's. Overcrowding in both the men's and women's correctional systems is continually a problem as admissions and length of stay increase, despite the crime rate remaining below 1980 levels, and a drop in the

at-risk population and overall state population since 1984-85.

From 1980 to 1989, the average daily prison population has risen from 726 to 1256, approximately 73 percent. Admissions have risen 70 percent from 359 to 611 from 1980 to 1989. The average length of stay has risen from 23.7 months in 1980 to 29.9 months in 1989. Public sentiment has demanded harsher punishment and the courts have responded even though a smaller percentage of prison admissions are for violent crime. There is also a higher percentage of first Montana felony convictions admitted to prison, from 39.8 percent in 1984 to 48.6 percent, almost half, in 1989.²⁵

Legislative mandates have increased sentence lengths and added mandatory minimums. Incarceration has not solved the crime problem and has cost taxpayers increasing funds for prison construction. Development of a comprehensive sentencing policy which outlines its goals, and provides a continuum of services from probation to incarceration should be a priority to ensure that punishment, rehabilitation, public safety and efficient use of resources. Prison should be reserved for violent and dangerous offenders and alternatives in our communities should be developed for property and drug offenders, especially first time offenders.

Sentence Review Division

The Sentence Review Division was instituted to review any offender's sentence of greater than one year in prison at the request of the offender. In 1987, 82 percent (41) of the sentences were affirmed, 2 percent (1) increased and 16 percent (8) decreased. Given the wide range of sentences allowed by statute, judicial discretion is presumed correct and the Sentence Review Board affects such a small percentage of cases per year (5%) that it cannot assure consistency in its limited role.

Changes in Sentencing

Sentencing policies determine the distribution of correctional resources. They determine who receives what sanctions and for how long, the amount of discretion in a system, and who really controls the length of incarceration. Past practices have been criticized for the disparity and disproportionality in sentencing. Correctional resources have been used to house not only violent offenders but increasingly large numbers of property offenders who may be

better served in a community setting. Correctional costs increase yet building continues and so does overcrowding.

Since the 1970's, many jurisdictions have changed their sentencing systems. Many have become more "determinate" in that parole release has been eliminated and the sentence length is determined at the time of sentencing. Discretion in both sentencing and parole has become more structured in many jurisdictions. The forms of sentencing changes range from parole abolition, parole guidelines, sentencing commissions, presumptive or determinate structured sentencing, voluntary sentencing guidelines, pleas bargain bans and rules, and mandatory sentencing laws.

In indeterminate sentencing, the release discretion lies with the paroling authority, within a range set by the legislature and sentenced by the judge. The jurisdictions which have changed their sentencing practices have removed discretion at the release end point of the system. Without system-wide change, discretion can simply be transferred, however, for example, to prosecutors and law enforcement who can exercise discretion in the charging of offenses.

The following is a brief description of the different forms that sentencing reform takes and the jurisdictions which have chosen them:

Parole reforms- Twelve states and the Federal system have abolished the release function of parole, nine of these jurisdictions in conjunction with sentencing guidelines, presumptive or determinate sentencing. Approximately 10 jurisdictions retained the supervisory and revocation functions. Seventeen states which have retained the parole release function have parole guidelines to structure discretion.

Sentencing Commissions- States such as Minnesota, Washington, Pennsylvania, Louisiana, Oregon, Tennessee, Delaware, Florida, New York, Massachusetts, and South Carolina have instituted sentencing commissions to develop sentencing guidelines, as well as the Federal system. The different states have had varied levels of success.

Sentencing guidelines- Sentencing guidelines have taken two basic forms. Presumptive sentencing, as in North Carolina, New Jersey and California, have established a single presumptive sentence. Whereas states such as Minnesota and Washington use a sentencing grid with a narrow range from which the judge may sentence. If the range is too wide, such as in Indiana, indeterminacy remains. In all systems, judges may sentence outside the guidelines, providing a written

statement of reasons why, and review of the sentence.

Sentencing rules must not only deal with the sentence length, but also the in-out decision. In California, for example, the percentage of persons sentenced to prison for burglary rose, yet two-thirds of those convicted for burglary received no prison sentence therefore not reducing disparity. Minnesota's matrix provides in-out guidelines and judges follow the guidelines in 91 to 94 percent of the cases.²⁶

Voluntary guidelines- In jurisdictions such as Michigan and Denver, voluntary guidelines developed by judges or commissions supply judges with information on the "usual" sentence, with no obligation to follow them.

The different forms of sentence reform have met with varying levels of success. Michael Tonry in an NIJ publication Sentencing Reform Impacts included the following assertions as those which seem supported by research evidence:

1. mandatory sentencing laws increase the proportion of offenders imprisoned among persons convicted of the pertinent offense but tend to elicit widespread efforts by judges and lawyers to circumvent their application;
2. voluntary sentencing guidelines, where evaluated, have generally not resulted in significantly altered sentencing patterns;
3. presumptive sentencing guidelines, like those in Minnesota and Washington, can, under favorable conditions, achieve substantial changes in sentencing patterns, compared with past practices, and can increase consistency in sentencing;
4. statutory determinate sentencing laws, like those in North Carolina, under certain circumstances, can produce demonstrable changes in sentencing outcomes, including increased consistency;
5. parole guidelines can achieve relatively high levels of accuracy, consistency, and accountability in decision-making and can offset disparities in the lengths of prison sentences imposed by judges;
6. neither jury trial rates, trial rates, nor average case disposition times necessarily increase under statutory determinate sentencing laws, presumptive sentencing guidelines, or pleas bargaining bans; and

7. appellate review of sentences need not generate a caseload that overwhelms the appellate courts."²⁷

Minnesota was one of the first states to develop sentencing guidelines, which were reviewed by the legislature and enacted into law. Washington followed Minnesota's lead, and in both states, a sentencing grid is used which looks at the seriousness of the crime and the criminal history of the offender. Judges sentence within a certain range, and in exceptional cases, are allowed to deviate from the grid, subject to appellate court review.

The problem of prison overcrowding has remained in many jurisdictions which have enacted some sentencing reforms, in some cases, exacerbated by the reforms themselves. Minnesota and Washington are exceptions and have shown that if prison resources are taken into account in the development of guidelines, prison populations can be somewhat controlled. Initially, the controlling of prison population was successful, but recent attempts to alter legislation and the alteration of charge and plea bargaining practices have seen their populations rise. However, both states were able to stem the overcrowding for a longer period of time than other states. With an on-going commission to monitor and realign the guidelines, both states are better able to plan for populations because they are tied to explicit policy.

In conclusion, an excerpt from a National Conference of State Legislatures paper sums up the opportunity sentencing reform in the form of structured sentencing offers:

"Structured sentencing presents an opportunity for states to gather information about sentencing practices and correctional resources and to develop a statewide sentencing policy that reflects the attitudes and mores particular to that state. Structured sentencing also encourages states to take a look at how best to use current criminal justice resources and where to invest additional dollars. There are four essential features of structured sentencing system:

- 1) A detailed policy that ties the severity of a sentence to the offense committed, the criminal history of the offender and aggravating and mitigating circumstances associated with the criminal act;
- 2) Guidelines for sentencing that transfer authority for the actual length of sentence from administrative agencies to judges;
- 3) A plan for monitoring the system's sentencing practices; and

4) A mechanism, such as appellate review, to enforce the policy.²⁸

FOOTNOTES

1. Bureau of Justice Statistics, U.S. Department of Justice, Historical Statistics on Prisoners in State and Federal Institutions, Yearend 1925 - 1986 (Washington, D.C.: U.S. Government Printing Office, 1988), p. 2.
2. James Austin and Aaron D. McVey, "The NCCD Prison Population Forecast: The Growing Imprisonment of America," NCCD Focus, (April 1988), p. 1.
3. Twentieth Century Fund Task Force on Criminal Sentencing. Fair and Certain Punishment. (New York: McGraw Hill), pg. 69.
4. Arthur W. Campbell, The Law of Sentencing, (New York: The Lawyers Co-operative Publishing Co.), pg. 21-2.
5. Ibid., pg.6.
6. There is further discussion of this concept in Singer, Just Deserts.
7. Twentieth Century Fund Task Force on Criminal Sentencing. Fair and Certain Punishment. (New York: McGraw Hill), pg. 95.
8. Michael H. Tonry. 1987. Issues and Practices Report: Sentencing Reform Impacts, National Institute of Justice, U.S. Department of Justice. (Washington, D.C.: U.S. Government Printing Office), pg, 6.
9. Ibid., pp. 7-9.
10. From Dershowitz in Fair and Certain Punishment, Report of the Twentieth Century Fund Task Force on Criminal Sentencing, (New York: McGraw-Hill Book Company 1976) pg. 107-115. (On due process: Specht v. Patterson 386 U.S. 605 (1967), Monks v. New Jersey State Parole Board 58 N.J. 238, 277 A.2d 193 (1971), Morrisey v. Brewer 408 U.S. 471 (1972).)
11. Ibid., p. 110.
12. Ibid. (In re Lynch 8 Cal. 3d 410, 503 P.2d 921, 105 Cal.Rptr. 217 (1972))
13. Ibid., p. 112.
14. Ibid., p. 112.
15. This report was condensed from, "An Overview of Parole in Montana," for CJCAC. By Lois Menzies, Project Director, 1/88.

16. Taken from "Montana Sentencing Study Research Design," by Mary J. Mande Ph.D., consultant to CJCAC.
17. Ibid.
18. Appendix A identifies the crimes included in each of the crime groupings.
19. Office of Financial Management, "Prison and Inmate Population Forecast, State of Washington, FY 1986 - FY 1999," February 1986, p. 60.
20. Taken from the 1988 Judicial Report on Montana Courts by the Supreme Court of the State of Montana State Court Administrator's Office.
21. Taken from a report by Philip C. Duncan, Presiding Judge, Sentence Review Division of the Supreme Court of Montana, dated September 6, 1969.
22. Mark Cunniff, Sentencing Outcomes in 28 Felony Courts, 1985, (US Dept. of Justice, BJS, 1987).
23. BJS Special Report, Sentencing and Time Served, (US Dept. of Justice, BJS, 1987).
24. BJS Bulletin, Felony Sentences in State Courts, 1986, (US Dept. of Justice, BJS, 1989).
25. Montana Department of Institutions, Corrections Division information from ACIS.
26. Singer, Richard. Crime File: Sentencing, NIJ Crime File Study Guide (US Dept. of Justice, NIJ).
27. Michael H. Tonry, Issues and Practices Report: Sentencing Reform Impacts, National Institute of Justice, U.S. Department of Justice. (Washington, D.C.: U.S. Government Printing Office, 1987).
28. State Legislatures and Corrections Policies: An Overview. Criminal Justice Paper #2, National Conference of State Legislatures.

5. SOCIAL/DEMOGRAPHIC

Sex Race
 1- Male 1- White
 2- Female 2- Native American
 3- Hispanic
 4- Oriental
 5- Black

DOB
 (mon, day, yr)

Marital Status
 1- Single, never married
 2- Married
 3- Common Law
 4- Separated/divorced
 5- Widowed

Employed at time of arrest
 1- Full-time
 2- Part-time
 3- Sporadic
 4- Unemployed
 9- Unknown

Last Grade Completed
 High School Diploma /GED
 0=no
 1=yes

6. CRIMINAL HISTORY

Age at First Arrest 88=Juvenile
 99=Unknown

Total Adult Convictions
 # Violent Felonies
 # Felonies

Revocations
 Probation (RSS, RDS)
 Parole (PV)

Total Prior
 Prison Incarcerations

ANY PRIOR ADULT ARRESTS OR
 JUVENILE ADJUDICATIONS FOR: 0=no
 1=yes

Robbery <input type="checkbox"/>	Sex Offense last 5 yrs <input type="checkbox"/>
Theft <input type="checkbox"/>	Sex Offense over 5 yrs <input type="checkbox"/>
MVTheft <input type="checkbox"/>	Assault last 5 yrs <input type="checkbox"/>
Drug Offense <input type="checkbox"/>	Assault over 5 yrs <input type="checkbox"/>
Burglary <input type="checkbox"/>	Forgery/bad checks <input type="checkbox"/>
Homicide <input type="checkbox"/>	

7. OFFENDER NEEDS

Mental Health 0=none
 1=self-reported or documented need

Drugs

Alcohol

8. PROBATION OFFICERS RECOMMENDATION

0- No PSI
 1- No Recommendation
 2- Prison
 3- Non-prison

**APPENDIX B
CRIME CATEGORIES
(CRIMES INCLUDED IN STUDY, M.C.A. CODES)**

Homicide	Deliberate Homicide (45-5-102) Mitigated Deliberate Homicide (45-5-103) Negligent Homicide (45-5-104)
Sex Crimes	Sexual Assault (45-5-502) Sexual Intercourse Without Consent (45-5-503) Deviate Sexual Conduct (45-5-505) Incest (45-5-507)
Robbery	Robbery (45-5-401)
Assault	Assault (45-5-201) Aggravated Assault (45-5-202) Intimidation (45-5-203) Domestic Abuse (45-5-206) Criminal Endangerment (45-5-207)
Burglary	Burglary (45-6-204) Aggravated Burglary (45-6-204) Possession of Burglary Tools (45-6-205)
Theft	Theft (45-6-301) Possession of Stolen Property (45-6-304) Failure to Return Rented or Leased Personal Property (45-6-309)
Fraud	Unregistered Securities (30-10-201) Fraudulent Practices (30-10-301) Issuing a Bad Check (45-6-316) Deceptive Practices (45-6-317) Forgery (45-6-325)
Drug Crimes	Criminal Possession with Intent to Sell (45-9-103) Criminal Possession of Dangerous Drugs (45-9-102) Criminal Sale of Dangerous Drugs (45-9-101) Criminal Sale of Imitation Dangerous Drugs (45-9-112) Fraudulently Obtaining Dangerous Drugs (45-9-104) Criminal Possession of Drug Paraphernalia
Other Crimes	Kidnapping (45-5-302) Aggravated Kidnapping (45-5-303) Criminal Mischief (45-6-101) Arson (45-6-103) Perjury (45-7-201) Tampering with Witnesses and Informant (45-7-206) Tampering with or Fabricating Physical Evidence (45-7-207)

**Tampering with Public Records or Information
(45-7-208)**
Escape (45-7-306)
Bail-Jumping (45-7-308)
Carrying Concealed Weapons (45-8-316)
Possession of Explosives (45-8-335)

APPENDIX C

**FELONY CONVICTIONS RESULTING IN SENTENCE TO PRISON
BY CRIME, BY COUNTY (PERCENT)**

	<u>CASC</u>	<u>DAWS</u>	<u>FLAT</u>	<u>GALL</u>	<u>L&C</u>	<u>MSLA</u>	<u>RICH</u>	<u>YELL</u>	<u>TOTAL</u>
Homi	100.0	100.0	50.0	0.0	66.7	100.0	0.0	80.0	78.9
Sex	100.0	66.7	25.0	62.5	33.3	8.3	0.0	57.1	45.6
Rob	100.0	0.0	100.0	100.0	66.7	60.0	0.0	75.0	79.3
Aslt	22.2	100.0	33.3	33.3	12.5	26.1	50.0	58.8	35.2
Burg	31.0	33.3	41.7	10.5	28.6	29.0	100.0	44.4	34.7
Theft	35.6	0.0	23.5	16.1	25.0	25.3	50.0	31.4	28.0
Fraud	25.0	0.0	18.2	16.0	16.7	12.5	50.0	35.5	20.9
Drug	21.4	13.6	10.3	27.3	33.3	17.1	100.0	25.6	19.8
Other	36.0	0.0	25.0	50.0	25.0	26.3	33.3	27.3	30.6

**FELONY CONVICTIONS RESULTING IN SUSPENDED SENTENCE
BY CRIME, BY COUNTY (PERCENT)**

	<u>CASC</u>	<u>DAWS</u>	<u>FLAT</u>	<u>GALL</u>	<u>L&C</u>	<u>MSLA</u>	<u>RICH</u>	<u>YELL</u>	<u>TOTAL</u>
Homi	0.0	0.0	0.0	0.0	33.3	0.0	0.0	20.0	10.5
Sex	0.0	33.3	56.3	25.0	50.0	33.3	0.0	35.7	35.3
Rob	0.0	0.0	0.0	0.0	0.0	30.0	0.0	25.0	13.8
Aslt	33.3	0.0	33.3	33.3	0.0	39.1	0.0	41.2	31.0
Burg	33.3	0.0	16.7	10.5	23.8	22.6	0.0	27.8	23.7
Theft	25.4	50.0	29.4	19.4	15.6	25.3	0.0	31.4	24.4
Fraud	25.0	0.0	27.3	24.0	25.0	27.1	50.0	35.5	27.8
Drug	42.9	27.3	44.8	18.2	0.0	20.0	0.0	60.5	38.4
Other	16.0	0.0	0.0	0.0	50.0	42.1	33.3	45.5	30.6

**FELONY CONVICTIONS RESULTING IN DEFERRED SENTENCE
BY CRIME, BY COUNTY (PERCENT)**

	<u>CASC</u>	<u>DAWS</u>	<u>FLAT</u>	<u>GALL</u>	<u>L&C</u>	<u>MSLA</u>	<u>RICH</u>	<u>YELL</u>	<u>TOTAL</u>
Homi	0.0	0.0	50.0	100.0	0.0	0.0	0.0	0.0	10.5
Sex	0.0	0.0	18.8	12.5	16.7	58.3	0.0	7.1	19.1
Rob	0.0	0.0	0.0	0.0	33.3	10.0	0.0	0.0	6.9
Aslt	44.4	0.0	33.3	33.3	87.5	34.8	50.0	0.0	33.8
Burg	35.7	66.7	41.7	78.9	47.6	48.4	0.0	27.8	41.6
Theft	39.0	50.0	47.1	64.5	59.4	49.3	50.0	37.3	47.6
Fraud	50.0	100.0	54.5	60.0	58.3	60.4	0.0	29.0	51.3
Drug	35.7	59.1	44.8	54.5	66.7	62.9	0.0	14.0	41.9
Other	48.0	0.0	75.0	50.0	25.0	31.6	33.3	27.3	38.9

**APPENDIX D
BEHAVIOR SEVERITY SCALE**

- 00- No documentation of offense behavior
- 01- No verbal or physical aggression
- 02- Verbal threats, directed at someone or other (e.g. intimidation, threatening phone calls, unlawful use of weapons, restricting or obstructing police officer)
- 03- Non-directed physical aggression (physical aggression against property rather than people, any damage to property)
- 04- Physical aggression directed at another which includes actual minor physical or emotional harm (e.g. battery, unlawful restraint, felonious use of a weapon, robbery)
- 05- Death, result of negligence (e.g. reckless homicide, involuntary manslaughter, negligent homicide)
- 06- Physical aggression directed at another which includes major physical and/or emotional harm; does not include use of a weapon (e.g. incest, indecent liberties with a child, sexual assault)
- 07- Death, direct participation by victim (e.g. crimes of passion, voluntary manslaughter and other deaths where there is evidence of provocation at the time of the commission of the offense)
- 08- Aggression against another person where there is use of a life-threatening force. Death is not an outcome, but there is the presence of severe trauma and/or torture, psychological or physical (e.g. rape, deviate sexual assault, aggravated battery, kidnapping, armed robbery, home invasion, attempted murder, use of weapon in commission of a felony against the person, aggravated incest, arson)
- 09- Death by murder without aggravating circumstances, no excessive deliberate force (Example: bank robber flees scene and shoots bank teller)
- 10- Death or severe life-threatening harm to a uniformed or known law enforcement officer.
- 11- Death by murder with severe trauma; actions calculated to induce terror in the victim without resulting in immediate death (e.g. clubbing, strangulation, multiple wounds)
- 12- Death by murder where victim was subjected to prolonged physical/emotional pain through the excessive use of force prior to act resulting in death
- 13- Death by murder for profit or personal gain
- 14- Multiple deaths by action of the murders described in the preceding categories 10-13.

APPENDIX E

PRIOR ARRESTS, ROBBERY
BY COUNTY

	Number			Percent		
	No	Yes	Unk	No	Yes	Unk
Cascade	157	7	3	94.0%	4.2%	1.8%
Dawson	29	0	2	93.5%	0.0%	6.5%
Flathead	94	2	3	94.9%	2.0%	3.0%
Gallatin	78	2	0	97.5%	2.5%	0.0%
Lewis & Clark	51	1	26	65.4%	1.3%	33.3%
Missoula	206	13	15	88.0%	5.6%	6.4%
Richland	17	1	3	81.0%	4.8%	14.3%
Yellowstone	182	14	14	86.7%	6.7%	6.7%
Total	814	40	66	88.5%	4.3%	7.2%

PRIOR ARRESTS, THEFT
BY COUNTY

	Number			Percent		
	No	Yes	Unk	No	Yes	Unk
Cascade	87	77	3	52.1%	46.1%	1.8%
Dawson	26	3	2	83.9%	9.7%	6.5%
Flathead	58	38	3	58.6%	38.4%	3.0%
Gallatin	53	27	0	66.3%	33.8%	0.0%
Lewis & Clark	27	27	24	34.6%	34.6%	30.8%
Missoula	103	115	16	44.0%	49.1%	6.8%
Richland	9	9	3	42.9%	42.9%	14.3%
Yellowstone	85	112	13	40.5%	53.3%	6.2%
Total	448	408	64	48.7%	44.3%	7.0%

PRIOR ARRESTS, DRUG OFFENSES
BY COUNTY

	Number			Percent		
	No	Yes	Unk	No	Yes	Unk
Cascade	128	36	3	76.6%	21.6%	1.8%
Dawson	26	3	2	83.9%	9.7%	6.5%
Flathead	82	14	3	82.8%	14.1%	3.0%
Gallatin	69	11	0	86.3%	13.8%	0.0%
Lewis & Clark	39	13	26	50.0%	16.7%	33.3%
Missoula	186	32	16	79.5%	13.7%	6.8%
Richland	14	4	3	66.7%	19.0%	14.3%
Yellowstone	157	39	14	74.8%	18.6%	6.7%
Total	701	152	67	76.2%	16.5%	7.3%

PRIOR ARRESTS, BURGLARY
BY COUNTY

	Number			Percent		
	No	Yes	Unk	No	Yes	Unk
Cascade	131	33	3	78.4%	19.8%	1.8%
Dawson	27	2	2	87.1%	6.5%	6.5%
Flathead	80	16	3	80.8%	16.2%	3.0%
Gallatin	68	12	0	85.0%	15.0%	0.0%
Lewis & Clark	34	18	26	43.6%	23.1%	33.3%
Missoula	160	59	15	68.4%	25.2%	6.4%
Richland	15	3	3	71.4%	14.3%	14.3%
Yellowstone	138	58	14	65.7%	27.6%	6.7%
Total	653	201	66	71.0%	21.8%	7.2%

PRIOR ARRESTS, HOMICIDE
BY COUNTY

	Number			Percent		
	No	Yes	Unk	No	Yes	Unk
Cascade	161	3	3	96.4%	1.8%	1.8%
Dawson	29	0	2	93.5%	0.0%	6.5%
Flathead	96	0	3	97.0%	0.0%	3.0%
Gallatin	79	1	0	98.8%	1.3%	0.0%
Lewis & Clark	52	0	26	66.7%	0.0%	33.3%
Missoula	218	1	15	93.2%	0.4%	6.4%
Richland	18	0	3	85.7%	0.0%	14.3%
Yellowstone	195	1	14	92.9%	0.5%	6.7%
Total	848	6	66	92.2%	0.7%	7.2%

PRIOR ARRESTS, SEX OFFENSE IN LAST FIVE YEARS
BY COUNTY

	Number			Percent		
	No	Yes	Unk	No	Yes	Unk
Cascade	163	1	3	97.6%	0.6%	1.8%
Dawson	28	1	2	90.3%	3.2%	6.5%
Flathead	94	2	3	94.9%	2.0%	3.0%
Gallatin	78	2	0	97.5%	2.5%	0.0%
Lewis & Clark	51	1	26	65.4%	1.3%	33.3%
Missoula	217	2	15	92.7%	0.9%	6.4%
Richland	18	0	3	85.7%	0.0%	14.3%
Yellowstone	194	2	14	92.4%	1.0%	6.7%
Total	843	11	66	91.6%	1.2%	7.2%

PRIOR ARRESTS, SEX OFFENSE OVER FIVE YEARS AGO
BY COUNTY

	Number			Percent		
	No	Yes	Unk	No	Yes	Unk
Cascade	160	4	3	95.8%	2.4%	1.8%
Dawson	28	1	2	90.3%	3.2%	6.5%
Flathead	95	1	3	96.0%	1.0%	3.0%
Gallatin	79	1	0	98.8%	1.3%	0.0%
Lewis & Clark	51	1	26	65.4%	1.3%	33.3%
Missoula	215	4	15	91.9%	1.7%	6.4%
Richland	18	0	3	85.7%	0.0%	14.3%
Yellowstone	192	4	14	91.4%	1.9%	6.7%
Total	838	16	66	91.1%	1.7%	7.2%

PRIOR ARRESTS, FELONY ASSAULT IN LAST FIVE YEARS
BY COUNTY

	Number			Percent		
	No	Yes	Unk	No	Yes	Unk
Cascade	144	20	3	86.2%	12.0%	1.8%
Dawson	28	1	2	90.3%	3.2%	6.5%
Flathead	86	10	3	86.9%	10.1%	3.0%
Gallatin	73	7	0	91.3%	8.8%	0.0%
Lewis & Clark	48	4	26	61.5%	5.1%	33.3%
Missoula	195	25	14	83.3%	10.7%	6.0%
Richland	17	1	3	81.0%	4.8%	14.3%
Yellowstone	165	31	14	78.6%	14.8%	6.7%
Total	756	99	65	82.2%	10.8%	7.1%

PRIOR ARRESTS, FELONY ASSAULT OVER FIVE YEARS AGO
BY COUNTY

	Number			Percent		
	No	Yes	Unk	No	Yes	Unk
Cascade	156	8	3	93.4%	4.8%	1.8%
Dawson	29	0	2	93.5%	0.0%	6.5%
Flathead	86	10	3	86.9%	10.1%	3.0%
Gallatin	73	7	0	91.3%	8.8%	0.0%
Lewis & Clark	49	3	26	62.8%	3.8%	33.3%
Missoula	197	23	14	84.2%	9.8%	6.0%
Richland	16	1	4	76.2%	4.8%	19.0%
Yellowstone	179	17	14	85.2%	8.1%	6.7%
Total	785	69	66	85.3%	7.5%	7.2%

APPENDIX F

MENTAL HEALTH TREATMENT NEEDS
BY COUNTY

	Number			Percent		
	No	Yes	Unk	No	Yes	Unk
Cascade	148	16	3	88.6%	9.6%	1.8%
Dawson	28	2	1	90.3%	6.5%	3.2%
Flathead	81	18	0	81.8%	18.2%	0.0%
Gallatin	71	9	0	88.8%	11.3%	0.0%
Lewis & Clark	42	19	17	53.8%	24.4%	21.8%
Missoula	178	41	15	76.1%	17.5%	6.4%
Richland	16	1	4	76.2%	4.8%	19.0%
Yellowstone	163	32	15	77.6%	15.2%	7.1%
Total	727	138	55	79.0%	15.0%	6.0%

DRUG TREATMENT NEEDS
BY COUNTY

	Number			Percent		
	No	Yes	Unk	No	Yes	Unk
Cascade	94	70	3	56.3%	41.9%	1.8%
Dawson	17	13	1	54.8%	41.9%	3.2%
Flathead	61	38	0	61.6%	38.4%	0.0%
Gallatin	53	27	0	66.3%	33.8%	0.0%
Lewis & Clark	30	30	18	38.5%	38.5%	23.1%
Missoula	154	66	14	65.8%	28.2%	6.0%
Richland	13	4	4	61.9%	19.0%	19.0%
Yellowstone	100	95	15	47.6%	45.2%	7.1%
Total	522	343	55	56.7%	37.3%	6.0%

ALCOHOL TREATMENT NEEDS
BY COUNTY

	Number			Percent		
	No	Yes	Unk	No	Yes	Unk
Cascade	60	104	3	35.9%	62.3%	1.8%
Dawson	16	14	1	51.6%	45.2%	3.2%
Flathead	32	67	0	32.3%	67.7%	0.0%
Gallatin	39	41	0	48.8%	51.3%	0.0%
Lewis & Clark	18	43	17	23.1%	55.1%	21.8%
Missoula	105	114	15	44.9%	48.7%	6.4%
Richland	7	10	4	33.3%	47.6%	19.0%
Yellowstone	85	110	15	40.5%	52.4%	7.1%
Total	362	503	55	39.3%	54.7%	6.0%

APPENDIX G

MONTANA CRIMINAL SENTENCE RANGES
By Code, Offense, Maximum and Minimum, and Fine

Offenses Against the Person

<u>STATUTE</u>	<u>OFFENSE</u>	<u>MINIMUM</u>	<u>MAXIMUM</u>	<u>FINE</u>
45-4-101	Solicitation			Maximum for offense solicited
45-4-102	Conspiracy			Maximum for offense which is object of conspiracy
45-4-103	Attempt			Maximum for offense attempted

<u>STATUTE</u>	<u>OFFENSE</u>	<u>MINIMUM</u>	<u>MAXIMUM</u>	<u>FINE</u>
45-5-102	Deliberate homicide	10 years	100 years	life, death *
45-5-103	Mit. deliberate homicide	2	40	\$50,000 *
45-5-104	Neg. homicide		10	\$50,000 (both)
45-5-105	Aid suicide		10	\$50,000 (both)
45-5-201	(2) Assault		6 mos (j)	\$500 (both)
	(3) Victim >14		5	\$50,000 (both)
45-5-202	Agg. Assault	2	20	\$50,000 *
	Fel. Assault		10	\$50,000 (both)
45-5-203	Intimidation		10	\$50,000 (both)
45-5-204	Mistreat prisoners		10	\$50,000 (both)
45-5-205	Neg. vehicular assault		1 (j)	\$1,000 (both)
45-5-206	Domestic abuse (1 or 2)		6 mos (j)	\$500 (both)
	Domestic abuse (3+)		5	\$50,000 (both)
45-5-207	Criminal Endangerment		10	\$50,000 (both)
45-5-208	Neg. Endangerment		1 (j)	\$1,000 (both)
45-5-301	Unlawful restraint		6 mos (j)	\$500 (both)
45-5-302	Kidnapping	2	10	\$50,000 *
45-5-303	Agg. Kidnapping (safe release)	2	100	\$50,000 *
45-5-304	Custodial Interference	2	10	\$50,000 *
45-5-401	Robbery		2	40 \$50,000 *
45-5-502	Sexual assault		6 mos (j)	\$500 (both)
	Victim <16/injury	20		\$50,000
45-5-503	Sex intercourse w/o con	2	20	\$50,000 *@
	Victim <16/injury	2	40	\$50,000
45-5-504	Indecent exposure		6 mos (j)	\$500 (both)
45-5-505	Deviate sexual conduct w/o consent	20	10	\$50,000 (both)
45-5-507	Incest		10	\$50,000 (both)@

Offenses against property

45-6-101	Criminal mischief >\$300		10	\$50,000 (both)
45-6-102	Neg. arson		6 mos (j)	\$500 (both)
	person in danger		10	\$50,000 (both)
45-6-103	Arson		20	\$50,000 (both)
45-6-202	Crim trespass-vehicles		6 mos (j)	\$500 (both)
45-6-203	Crim trespass-property		6 mos (j)	\$500 (both)
45-6-204	Burglary		20	\$50,000 (both)
	Agg. burglary		40	\$50,000 (both)

Offenses against property, cont.

<u>STATUTE</u>	<u>OFFENSE</u>	<u>MINIMUM</u>	<u>MAXIMUM</u>	<u>FINE</u>
45-6-205	Poss burglary tools		6 mos (j)	\$500 (both)
45-6-301	Theft >\$300		10	\$50,000 (both)
45-6-305-9	Various theft >\$300		10	\$50,000 (both)
45-6-316	Issuing a bad check >\$300		10	\$50,000 (both)
45-6-317	Deceptive practices		10	\$50,000 (both)
45-6-325	Forgery >\$300		20	\$50,000 (both)
45-7-303	Obstructing justice (w/felony)		10	
45-7-306	Escape		20	
45-6-308	Bail jumping (w/felony)		10	

Dangerous Drugs

<u>(dependent on drug, priors, etc)</u>				
45-9-101	Criminal sale of dangerous drugs	1	life	\$50,000 (both)*
45-9-102	Criminal possession of dangerous drugs	6 mos (j)	5	\$50,000 (both)*
45-9-103	Criminal possession w/intent to sell	2	20	\$50,000 (both)*
45-9-106	Fraud obtain dangerous drugs	1	10	
45-9-107	Criminal possession of precursors	2	20	\$50,000 (both)

* 46-18-222 Exceptions to mandatory minimum sentences and restrictions on deferred imposition and suspended execution of sentences.

@ 46-18-241-4 Restitution.

BIBLIOGRAPHY ON SENTENCING

Annotated Bibliography

1. American Friends Service Committee. Struggle for Justice. New York: Hill and Wang, Co. 1971.

The recommendations of this group are based on three premises. First, imprisonment is punitive. The distinguishing feature of punishment is the application of force to another person against his or her will. Based on the belief that all people have a right to autonomy and privacy, the very concept of criminal justice is an anomaly to this group. Though they accept the premise that some basic rules are needed to organize society and therefore require enforcement, they characterize all penal coercion as punishment and that it is imperative to regard punishment not as a potential benefit to society but invariably as a detriment imposed out of social necessity.

Second, treatment with coercion is scientifically unfeasible and morally objectionable. The treatment model is based on some assumptions. One assumption is that it relegates crime to individual pathology, not responsibility of the individual or society. Another presupposes that we can know the causes of crime and then treat them. Much of the treatment is based on incomplete research: comparison with control groups who are not treated and control of other variables are not accomplished. Treatment under coercion contradicts free choice, autonomy and self-determination.

Third, the discretionary power in the criminal justice and legal systems is undesirable. Though length of sentences increase and more people are imprisoned, recidivism rates remain consistent. The inmates experience greater frustration to no greater good, because they do not know how long they will be incarcerated and what they are working for.

The recommendations of this group are basically in four areas. 1) Punishment- They believe that the law must deal with the narrowest aspect of the individual, that of the criminal act(s). They believe that the punishment should fit the crime, not the criminal. The definition of the crime should include any mitigating factors and the number of acts considered crimes should be reduced. Those that commit the same act under the same circumstances should receive uniform punishment. The only exceptions allowed would be more intense punishment for repetitious offenses and the allotment of good time for good behavior to assist with the social control in prisons.

2) Restraint- Restraint should involve three areas. First, to determine what behavior to prohibit: for compelling social need, that there is no feasible but less costly method of compliance, and that the basis of punishment is that it will produce a greater benefit for society than doing nothing will. Second, that restraint is used with the principle of last resort. Third, that the severity of punishment is reduced.

3) Uniformity- Uniformity will maximize compliance by increasing certainty of some form of punishment for all offenses, and assure that the human costs of enforcement are shared by all.

4) Alternatives- there should be a range of services available to all people in society, including offenders. Any treatment should be on a truly voluntary basis. Plea-bargaining and bail should be abolished and also pre-trial for all but the very dangerous.

This book is not as organized or as comprehensive as others but the two final chapters sum up the recommendations well.

2. Campbell, Arthur W. The Law of Sentencing. New York: The Lawyers Co-operative Publishing Company. 1978.

This book presents relevant rules and rationales for sentencing in the style of a legal text. It includes a history of sentencing, rationales, alternatives, probation, incarceration, special offender sentencing such as juveniles and repeat offenders, constitutional considerations and basic sentencing principles. The role of presentence reports, the judge, probation officer, prosecutor, defense counsel and judicial and executive sentencing review is discussed relevant to sentencing. The appendices contain the American Bar Associations Standards Relating to Sentencing Alternatives and Procedures, Probation and Criminal Appeals.

This book is very informative because of the frequent referrals to court cases and historical information. This book is a good overview of sentencing in general and the reference to ABA standards offer well thought out alternatives.

Though the book was written in 1978, a November, 1988 cumulative supplement of the relevant court cases since then has been included in the book.

3. Greenwood, Peter W., Abrahamse, and Zimring. Factors Affecting Sentence Severity for Young Adult Offenders. Santa Monica, CA: The RAND Corporation. 1984.

In an analysis of three sites of offense data (armed robbery or residential burglary), juvenile and adult criminal record and disposition of case, in order to determine the relative severity with which young adult offenders are sentenced to criminal courts and the degree to which their juvenile records affect their sentencing.

"When we controlled for offense and prior record severity, we frequently find that young adult receiving harsher sentences than other age groups." pg 52.

"The availability of prior juvenile or adult records does not guarantee that they will be considered or have an effect." pg 52.

"A third point is that the effects of juvenile record availability are not one way. A reliable juvenile record index can be used to rebut a presumption of chronic criminality as well as to identify the chronic offender." pg 52.

"Consideration of juvenile records only at the time of sentencing may provide sufficient discrimination between chronic and occasional offenders." pg 52.

"The effects of juvenile record access are mediated by sentencing attitudes toward specific crime types and the emphasis on prior records of any type." pg. 56.

This book brings up two good questions:

1. Regarding when the prior records are available. "It has been the experience of Career Criminal Prosecution units that the early identification and targeting of particular defendants can increase their likelihood of conviction and eventual sentence. Postponing this identification until the time of sentencing would seem to eliminate the possibility of any such special prosecutor effects." pg 55.

2. Whether in using juvenile records to use arrest data for which no petition was filed or sustained. "There is a hazard that the use of unsubstantiated arrest information may impel incorrect assessments of past criminality or predictions of future criminality (both false positives.)"

Regarding our sentencing study, this may apply to adult prior records as well.

4. Kittrie and Zenoff. Sanctions, Sentencing and Alternatives. New York: The Foundation Press. 1981. (Taken from P. Hoffman and B. Stone-Meierhoefer, Application and Guidelines to Sentencing, 3 Law and Psych. Rev. 53, 58-62 (1977).)

1. "If the legislature makes its decision only on the basis of theoretical argument and the skimpy factual information it now possesses, it will inevitably draw unrealistic conclusions which will insure the wholesale discretionary avoidance of the legislative mandate by police, prosecutors and judges which has rendered so many prior reforms efforts nugatory."

2. "As Frankel has commented: Many of our criminal laws are enacted in an excess of righteous indignation, with little thought or attention given to the long number of years inserted as maximum penalties. Written at 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 anomalies are practically inevitable."

5. Myers, Martha A. and Susette M. Talarico. The Social Contexts of Criminal Sentencing. From the Research in Criminology Series. New York: Springer-Verlag, 1987.

In exploring the linkages between social order and sentencing this study focused on two questions: First, how do county court and temporal contexts affect sentencing outcomes? And second, do these contexts affect the role played by particular individual-level attributes in sentencing?

This study surveyed information about sentencing in Georgia based on a sample of felons convicted between January 1976 and June 1985. They concentrated on three outcomes: incarceration, probation, and split sentences. There are three basic conclusions of this study; the absence of evidence of system-wide bias or discrimination, variation in the power of legally relevant variables and the contextually based nature of sentencing processes.

1) "To be sure, the absence of evidence of system-wide discrimination does not mean that all courts and judges are blind in the administration of criminal law. Interactive analysis revealed context-specific patterns of discrimination. Importantly, however, there were many instances in which blacks received disproportionately lenient punishment. Although this pattern may suggest a paternalism that is just as discriminating as disproportionate punitiveness, it nevertheless indicates that courts in Georgia do not have a heavy hand with black defendants in the general systemic sense or in every context where differential treatment is observed."

2) The second feature of both the additive and interactive analyses is the power of legally relevant variables, especially seriousness of the offense on analysis of determining prison sentence length.

3) The results indicated quite graphically that aspects of the county, court and time condition the direction and intensity of the influence exerted by the attributes of central interest: race and offense.

The conclusions of the practical significance of this research are the most relevant to sentencing in general. The impact of legally relevant factors and the interactive effects of factors on sentencing variation point to the suggestion "that the legislature should reconsider the range of penalties it allows for major crimes. ...Some restriction in range might help to reduce the most extreme cases of differential treatment." "If the legislature is concerned with the fact that legally relevant variable account for small portions of variance in these two sentencing outcomes (probation and split sentences), they might consider clarifying the purpose ascribed for criminal law and the immediate objectives they hope will be realized by alternatives to incarceration." They also make the point that, "(p)otentially successful reform requires adequate data." Data that "consists of something more than simple additive analysis of sentencing outcomes", referring to interactive analysis. There conclusions are referring specifically to the Georgia legislature but are valid considerations in any state's reform efforts.

6. Revelle, George H., ed. Sentencing and Probation. Reno, Nevada: National College of the Judiciary, a publication of the American Bar Association. 1973.

This book is a collection of articles on the general areas of the philosophy of sentencing and probation, selecting the disposition, sentencing alternatives and procedures and the sentencing, probation and revocation hearing. It also includes an annotated bibliography on sentencing patterns and problems.

This book offers solid discussion on the rationales behind sentencing and the need for non-incarcerative alternatives. This book includes the second edition of the NCCD Model Sentencing Act (1972), and other NCCD guidelines. It offers discussion of the dangerous offender and guidelines of what punishment is appropriate. It also offers discussion of prediction of behavior on probation and parole.

7. Singer, Richard G. Just Deserts: Sentencing Based on Equality and Desert. Cambridge: Ballinger Publishing Company. 1979.

This book discusses sentencing reform based on equality and just deserts. An overview of indeterminate sentencing and its history is included as well as the author's recommendation for a sentencing commission to develop new standards. The author discusses areas of concern such as prison, parole, recidivists, aggravating and mitigating circumstances and prosecutorial discretion. There is a chapter which reviews sentencing reform by the standards of just deserts as reform existed in 1979 state-by-state. This is a good discussion which brings up many of the problems of reform, and asks if the reform to presumptive sentences is really more equal. Included is an appendix of the Sentencing Reform Act of 1979 and a good bibliography.

8. Task Force on Criminal Sentencing. Report of the Twentieth Century Fund Task Force on Criminal Sentencing: Fair and Certain Punishment. New York: McGraw Hill. 1976.

This report discusses two major structural reforms of the seventies "flat-time sentencing" and "mandatory minimums." (15-18) They conclude that neither provided the necessary structural change that they "consider essential as effective responses to the current problem of sentencing." (17) The conclusion is that both eliminate needed flexibility in sentencing. Flat-time sentencing gives automatic sentences to every defendant sentenced under the same statute, and many statutory definitions are very broad and inclusive. Mandatory minimums only address a small part of the disparity, that at the minimum end. It does nothing to address the disparity at the maximum end. Their conclusion is that some flexibility is warranted and "discretion cannot be reduced or controlled without thoroughgoing legislative (or legislatively authorized) redefinition and subcategorization of current crimes." (18)

The Task Force realized that sentencing reform must find the balance between inflexibility and total discretion. They recognize that, "The present discretion of the sentencing judge and parole board must be considerably limited and firmly guided; yet they must remain able to adapt the sentence reasonably to the particular circumstances of the crime and the peculiar characteristics of the criminal." (19)

The Task Force proposal is "presumptive sentencing". "The underlying presumption here is that a finding of guilty of committing a crime would predictably incur a particular sentence unless specific mitigating or aggravating factors are established." (20)

The legislature would make broad policy decisions, the sentencing judge would have guided discretion to weigh particular factors of the crime and criminal. The parole board would also have guided discretion to weigh only factors which are unavailable at the time of sentencing to tailor release decisions to the needs of the prisoner and society. (19)

"The process should start with the legislature (or legislative commission or judicial body), which would break crimes down into several subcategories. For each subcategory of crime, we propose that the legislature or a body it designates, adopt a presumptive sentence that should generally be imposed on typical first offenders who have committed the crime in the typical fashion." (20) Succeeding convictions should be treated on a geometric progression.

"The Task Force recommends that the legislature, or the body it designates, also define specific aggravating or mitigating factors, again based on frequently recurring characteristics of the crime and the criminal." (20) "The Task Force believes that sentencing hearings should be mandatory to establish any aggravating or mitigating circumstances and to have sentence pronounced." (21) Sentencing issues should be openly debated and which factors are relevant to sentencing should be decided and defined. Any deviation from the presumptive sentence would have to be justified in a written opinion. An absolute maximum should be set by the legislature.

On plea bargaining and simultaneous charges- The Task Force realizes that presumptive sentencing does not address plea bargaining. Plea bargaining may be reduced over a guilty plea, but bargaining on the charge may increase as well as over mitigating and aggravating factors. "A single transaction could not be broken down into separate crimes for purposes of imposing consecutive sentences. Nor could the sentence for such a transaction exceed the sentence for the single most serious crime. However, a series of unrelated criminal acts or transactions could be punished by consecutive sentences. . . The best solution would probably be to devise a sophisticated system in which every additional crime in a series carried an increment of punishment but not the full increment of a consecutive sentence." (27-8)

Other related recommendations include: "a periodic review of crime categories; of minimum, maximum, and presumptive sentences; and of mitigating and aggravating factors"; "that more imaginative approaches be taken to sentencing by imposing punishment that mitigates the crime-breeding effects of today's prisons"; and, for "the elimination of most current barriers to the employment of ex-convicts."

The Task Force includes an appendix of an Illustrative Presumptive-Sentencing Statute for Armed Robbery, an Illustrative List of Crimes and Presumptive Sentences, and a Background Paper on Sentencing.

9. Tonry, Michael H. Sentencing Reform Impacts. U.S. Dept. of Justice, National Institute of Justice, Office of Communication and Research Utilization. 1987. (Issues and Practice in Criminal Justices series.)

Michael Tonry in "Sentencing Reform Impacts" gives us a framework within which to explore the various types of sentencing reform and their impacts. He cautions though that there is a sparsity of impact evaluation in sentencing reform literature. He does survey research efforts in order to answer "which approaches work better and what difference it makes to change from one to another."

There are some assumptions which can give a foundation on which to place sentencing reform. The following assertions are included by Tonry as those which seem supported by research evidence:

1. mandatory sentencing laws increase the proportion of offenders imprisoned among persons convicted of the pertinent offense but tend to elicit widespread efforts by judges and lawyers to circumvent their application;
2. voluntary sentencing guidelines, where evaluated, have generally not resulted in significantly altered sentencing patterns;
3. presumptive sentencing guidelines, like those in Minnesota and Washington, can, under favorable conditions, achieve substantial changes in sentencing patterns, compared with past practices, and can increase consistency in sentencing;
4. statutory determinate sentencing laws, like those in North Carolina, under certain circumstances, can produce demonstrable changes in sentencing outcomes, including increased consistency;
5. parole guidelines can achieve relatively high levels of accuracy, consistency, and accountability in decision-making and can offset disparities in the lengths of prison sentences imposed by judges;
6. neither jury trial rates, trial rates, nor average case disposition times necessarily increase under statutory determinate sentencing laws, presumptive sentencing guidelines, or pleas bargaining bans; and
7. appellate review of sentences need not generate a caseload that overwhelms the appellate courts.

Sentencing reform has come in many forms. The six areas which he explores are:

1. plea bargain bans and rules;
2. mandatory sentencing laws;
3. voluntary sentencing guidelines;
4. the sentencing commission;
5. statutory determinate sentencing; and
6. parole guidelines.

Though topics such as plea bargaining and parole may not be sentencing per se, these areas influence indeterminacy in sentencing, and without keeping all steps in the process in mind, a change in one area will affect another, and the new problems may be harder to solve than the old ones.

10. Von Hirsch, Andrew. Doing Justice: The Choice of Punishments. New York: Hill and Wang. 1976.

This book is a report of the Committee for the Study of Incarceration, funded by the Field Foundation and the New World Foundation. The conclusions of the Committee are summarized briefly: 1) Stringent limitations on incarceration as punishment. Only offenders convicted of serious offenses would be confined and the duration would be strictly rationed. The committee would allow very few sentences exceeding three years. 2) Alternatives to incarceration for the bulk of criminal offenses (those not serious). The alternatives would not be rehabilitative measures but, simply and less explicitly, less severe punishments. 3) Sharply scaled down penalties for first offenders. The sentence would depend not only on the seriousness of the present conviction, but also on record of prior offenses. Where there was no prior convictions, sentences would diminish substantially (except for very serious crimes). 4) Reduction in sentencing disparity.

Offenders with similar criminal histories would receive similar punishments. 5) Narrowing of sentencing discretion. Sentencing guidelines would be established that prescribe standardized penalties for offenses of differing degrees of seriousness (with a limited amount of variation permitted for aggravating and mitigating circumstances).

6) Elimination of indeterminacy of sentence.

Problems in the rationales of rehabilitation, predictive restraint, individualization, general and individual deterrence as general justifications for punishment led the committee to adopt the desert principle as preeminent and deterrence as secondary. The rationale for allocation is basically that the severity of punishment should be commensurate with the seriousness of the wrong. The balance must be made between how to measure the effectiveness of deterrence and the justice of the punishment inflicted.

11. Wilkins, Leslie T. The Principles of Guidelines for Sentencing: Methodological and Philosophical Issues in Their Development. Washington, D.C.: National Institute of Justice, U.S. Dept of Justice, Office of Development, Testing and Dissemination. 1981.

This book gives a background on the development of sentencing guidelines and their relationship to the earlier development of parole guidelines. This piece includes theoretical and philosophical concepts behind the development as well as legal and administrative arrangements and management techniques. Policy and methodological issues and problems are also explored. This book is effective for setting up a framework with which to think about sentencing guidelines. Theoretical modeling and simulation methods were used as research tools to explore the prediction potential of developed guidelines.

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