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Felony Sentencing and Jail Characteristics

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Foreword

The Bureau of Justice Statistics (BJS) introduced this series of discussion papers in February 1992 to promote the exchange of information, analyses, and ideas on issues related to justice statistics and the operations of criminal justice systems both domestically and abroad. In the future, BJS will address issues that arise from ongoing analyses of BJS statistical data but that are not covered in our standard Bulletins or Special or Technical Reports. The Discussion Paper series will also provide a forum for scholarship, research, and analyses addressing selected topics of special interest and relevance to the justice community.

In this discussion paper, BJS statistician John M. Dawson explores the possible relationship between sentencing State felons to jail and jail conditions such as crowding and other issues that resulted in court orders. While many of his findings remain tentative, or even inconclusive, we hope his innovative use of two statistical reporting series will encourage others to join the discussion.

BJS looks forward to future statistical discussion papers testing alternative viewpoints and ideas.

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Felony Sentencing and Jail Characteristics

This article concerns the impact that local jail conditions may have on a judge's choice of sentence in a felony case, particularly the decision to sentence a felon to jail rather than to prison or probation. On average, in State felony courts in the Nation's counties, jail sentences are infrequent: about 1 in 5 felony cases. In contrast, about half of convicted defendants receive a prison sentence, on average, and about a third receive straight probation (that is, no incarceration). Whether the felony court judges take jail conditions into account in sentencing may be evaluated statistically by comparing county sentencing rates in light of what is known about differences in conditions between those places.

An analysis of sentencing rates was conducted using 1988 data collected for the Bureau of Justice Statistics by the Bureau of the Census in a national survey of felony cases sentenced in State courts and in a census of county jails.

The hypothesis considered in this analysis was that the jail sentence rate might be high or low depending on certain characteristics of the county jails. If certain jail characteristics could be found to correlate with sentencing, the correlation would support the inference that judges are influenced by such characteristics.

The data show that the likelihood of a jail sentence is lower in counties with jails under court order to limit the number of inmates. While this is true in the Nation as a whole, no relationship is found between such orders and use of jail sentences in the 75 largest counties that accounted for approximately half of all felony convictions.

The data show, however, even after accounting for such court orders, that certain opportunities and resources available to jail inmates may influence judges to sentence more felons to jail. This influence is manifested statistically in three ways:

1. more split probation sentences among probation cases
2. more jail terms among split probation cases
3. more jail and fewer prison sentences among nonprobation cases.

The positive-influence model holds up for property crimes and drug trafficking, but not for violent felony cases. It also holds more strongly in cases involving only a single conviction charge than in cases with multiple conviction charges. In other words, the availability of opportunities and resources in county jails appears to have less effect on sentencing in the more serious cases.

The model does not hold uniformly across States. This issue was examined in a formal analysis of variance of work release using the data for the 27 States with sampled counties falling into both the with and without work release

categories. The model fits in 9 of those States, fails to do so in 7, and is ambiguous in the other 11.

Because the jail and sentencing variables are both for 1988, any conclusions about direction of causality between them are purely judgmental.

Introduction

Most felons convicted in the State court systems located in the Nation's 3,109 counties are normally sentenced to prison, jail, probation, or some combination of the three. If sentenced to incarceration, felons will ordinarily serve time in a State prison rather than a county jail. On average, in State felony courts in the Nation's counties, jail sentences are given in about 1 in 5 felony cases. In contrast, about half of convicted defendants receive a prison sentence, on average, and about a third receive straight probation. According to the most recent national statistics, about 25% of felony cases involved a jail sentence, compared to 44% a prison sentence, and 31% a sentence to straight probation or other sanction without incarceration.

A sentencing judge usually has the option of committing a defendant to custody of the county sheriff or municipal authority rather than to the State department of corrections. For the person being sentenced, jail may be preferable because it is closer to home and family. Jail may also offer more opportunity than prison for rehabilitation or for a productive means of serving time. From the judge's perspective, the drawback is that a jail is not ordinarily as secure a place of confinement as a prison and is even less so if it has programs such as work release in which inmates enjoy some freedom from confinement.

Data and methods

The data used to explore impacts of jail conditions on sentencing decisions are two nationwide county data collections conducted in 1988. Because the jail and sentencing data are contemporaneous, any inferences about causal paths between the two types of factors are judgmental.

The sentencing data are from the National Judicial Reporting Program (NJRP) survey. The jail data are from the Census of Local Jails. Both surveys were conducted by the Bureau of the Census on behalf of the Bureau of Justice Statistics (BJS). Both data collections are described fully in reports published by the BJS.[1]

The NJRP data give the sentences received by approximately 80,000 felons during 1988 in a nationwide probability survey of 300 out of the Nation's 3,109 counties and independent cities. Of those 300, 54 were chosen to be statistically representative of the 75 largest counties, in which 37% of the population resided. Those 75 largest counties accounted for about half of the crimes reported to police, and about half of felony convictions, during 1988. Sentence information was available in virtually all case records.

The jail census covered all of the Nation's 3,316 jails. The counties surveyed in NJRP accounted for 545 of them. In 9 counties out of 10 there was but a single jail; places elsewhere had a system made up of a combination of county and municipal jails, sometimes including facilities

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[1] *Felony Sentences in State Courts, 1988*, BJS Bulletin, NCJ-126923, December 1990; *Census of Local Jails, 1988*, BJS Bulletin, NCJ-121101, February 1990.

for women or for various levels of security. In single-jail counties, a judge considering a jail sentence knows where the person would be confined. In multijail counties, it is assumed for this analysis that the judge would not know which facility would be used. In the 75 largest counties, the mean number of jails in a county was 4, contrasting with a mean of 1 jail per county elsewhere. The subject of jail systems is therefore more complex in the largest counties.

The data from 279 counties in each of the 2 sources were merged. Twenty of the NJRP counties could not be used in this analysis because they had no jails within their boundaries or because they had consolidated jail and prison systems. Another county could not be used because it had no felony cases during 1988.

For each county the following sentencing rates were computed:

Percentage of felons in 1988 sentenced to —

• *Straight probation*: Percentage sentenced to probation without an incarceration term (STR8).

• *Split probation*: Percentage sentenced to probation following some term of incarceration (SPLT).

— STR8 + SPLT = The overall probation rate.

Split probation — prison: Percentage sentenced to be on probation following a prison term (SP/PRIS).

Split probation — jail: Percentage sentenced to be on probation following a jail term (SP/JAIL).

— SP/PRIS + SP/JAIL = SPLT

• *No probation or incarceration*: Percentage not sentenced to either probation or incarceration (sentenced to restitution, fine, community service, or drug treatment) (OTHER).

• *Incarceration*: Percentage sentenced to a term in either jail or prison, without probation (INCR).

Incarceration — prison: Percentage sentenced to prison and not probation (PRIS).

Incarceration — *jail*: Percentage sentenced to jail and not probation (JAIL).

— PRIS + JAIL = INCR

— STR8 + SPLT + INCR + OTHER = 100%

An aggregate rate for each statistic was computed as a weighted mean of the percentages for the 279 sample counties (table 1). The weight for each county was the inverse of its probability of random selection in the NJRP survey. For example, if a county had a 1 in 5 chance of being chosen, it represented itself and 4 other counties, and its weight was 5.

Table 1. **Mean sentencing rates by type of sentence: Weighted mean county percent of felony cases in 1988**

	Mean percent
Probation sentence	
Straight probation	31%
Split sentence	
Total	23
Prison	9
Jail	14
Nonprobation sentence	
No incarceration	2%
Incarceration	
Total	44
Prison	40
Jail	4

Findings

The sentencing rates introduced above were separately averaged for counties with and without each of the characteristics canvassed in the jail census. The results are presented for variables where a *with* versus *without* comparison appears to bear on felony sentencing. At some points in the discussion, differences in results between the 75 largest counties and the Nation as a whole will be noted.

Court orders limiting number of inmates

In 1988 about 11% of jails were under court orders to limit the number of inmates housed, usually a response to crowding. Counties under such orders had more straight probation and less split probation with jail sentences (table 2). While these statistical connections between court orders

and jail use were found in the Nation as a whole, no clear pattern was found in the 75 largest counties.

Table 2. **Mean sentencing rates for eight types of sentences, by whether a county had any jail under court order to limit the number of inmates**

	One or more jails under court order	No court order
Probation sentence		
Straight probation	39%	30%
Split sentence		
Total	18	24
Prison	8	9
Jail	10	15
Nonprobation sentence		
No incarceration	1%	2%
Incarceration		
Total	42	44
Prison	38	40
Jail	4	4

Court orders relating to jail conditions

In addition to asking about court orders limiting the number of jail inmates, the jail census questionnaire asked whether a facility was under a court order to improve any of the following:

- crowding
- recreation
- counseling
- fire safety
- education
- grievance procedures

- jail administration
- jail staffing
- visitation
- library facilities
- inmate classification
- food
- medical services.

With few exceptions, the existence of court orders coincides with a higher mean rate of straight probation and a lower mean rate of split probation than when such problems were not present.

Opportunities and resources available to jail inmates

The jail census asked about resources, opportunities, and services available to inmates. This section of the report concerns differences in mean sentencing rates between counties with and without those opportunities.

Availability of work release

Work release refers to programs that permit inmates to work in jobs outside their place of incarceration. Half of all counties had jail inmates participating in work release in 1988. A higher mean percentage of cases was sentenced to jail (with or without probation) in counties with work release inmates, and these counties had a lower use of straight probation or prison sentences. As in the analysis of court orders limiting the number of inmates, the connection between work release and jail sentencing applies to the Nation as a whole but is not found in the 75 largest counties (table 3).

Table 3. **Mean sentencing rates for eight types of sentences, by whether counties had any jail with work release**

	Work release	No work release
Probation sentence		
Straight probation	28%	34%
Split sentence		
Total	28	19
Prison	9	10
Jail	19	9
Nonprobation sentence		
No incarceration	1%	3%
Incarceration		
Total	43	44
Prison	37	41
Jail	6	2

Weekend release and alternative-to-incarceration programs had no consistent relationship to the sentencing percentages, considering the Nation as a whole. In the 75 largest counties, however, availability of alternative-to-incarceration programs correlates positively with jail sentencing.

Availability of professional or technical jail staff

About a third of counties had one or more jails employing professional or technical staff members, such as psychiatrists, psychologists, social workers, counselors, medical doctors, nurses, and paramedics. A higher mean percentage of cases was sentenced to jail (with or without probation) in counties with professional or technical jail staff, and these counties had a lower use of straight probation or prison sentences (table 4).

Table 4. **Mean sentence rates for eight types of sentences, by whether the county jail system included professional or technical staff members**

	Professional/technical staff members	
	Yes	No
Probation sentence		
Straight probation	28%	33%
Split sentence		
Total	24	23
Prison	6	11
Jail	18	12
Nonprobation sentence		
No incarceration	1%	3%
Incarceration		
Total	48	41
Prison	40	39
Jail	7	2

Availability of educational staff

About 1 in 5 counties had one or more jails employing educational staff, such as academic or vocational teachers. A higher mean percentage of cases was sentenced to jail (with or without probation) in counties with educational jail staff, and these counties had a lower use of straight probation or prison sentences (table 5).

Table 5. **Mean sentence rates for eight types of sentences, by whether the county jail system included educational staff members**

	Educational staff members	
	Yes	No
Probation sentence		
Straight probation	24%	32%
Split sentence		
Total	25	23
Prison	3	10
Jail	22	12
Nonprobation sentence		
No incarceration	1%	3%
Incarceration		
Total	50	42
Prison	40	39
Jail	10	3

Availability of health unit with beds

About 1 in 7 counties had one or more jails with health units equipped with beds for overnight stay. The pattern is similar to those above — greater use of jail and less prison in counties with health units, although the differences in this case are smaller. The use of probation was about the same in both categories of counties (table 6).

Table 6. **Mean sentence rates for eight types of sentences, by whether county jail system had health units equipped with beds for overnight stay**

	Health units with beds for overnight stay	
	Yes	No
Probation sentence		
Straight probation	32%	31%
Split sentence		
Total	24	23
Prison	8	9
Jail	16	14
Nonprobation sentence		
No incarceration	1%	2%
Incarceration		
Total	43	44
Prison	38	40
Jail	5	4

Other variables tested do not show a clear-cut correlation between jail characteristics and sentencing. These variables include availability of weekend release and alternative-to-incarceration programs. The availability of a psychiatric unit or detoxification unit was correlated with more probation and prison and less jail.

Discussion

A model of judicial decisionmaking

The above findings suggest a model of judicial decision-making in felony cases in which certain characteristics of a county's jail system will encourage felony judges to use the jail sanction more versus prison or straight probation. Such inferences are speculative, of course, because the sentencing and jail data correspond to the same year.

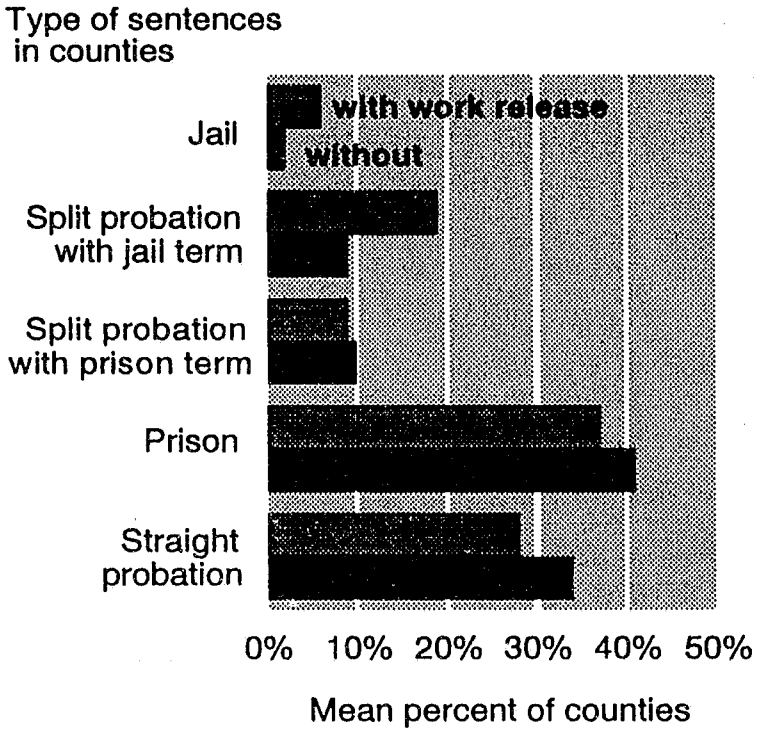
With respect to the sentencing variables discussed above, the positive-influence model predicts that we should find the following statistical phenomena when we compare counties with such resources and opportunities against counties without them:

Among probation cases:
(1) less straight probation
(2) more split probation

Among split probation cases:
(3) fewer prison terms
(4) more jail terms

Among nonprobation cases:
(5) fewer prison terms
(6) more jail terms.

A higher mean percentage of felony cases was sentenced to jail with or without probation in counties with work release programs. These counties had lower use of straight probation or prison sentences.



Counties offering work release to their jail inmates had higher parcentages than other counties for the following types of sentences:
- jail term split with probation
- jail without probation.

Counties offering no work release had higher percentages for the following sentence types:
- straight probation
- prison term split with probation
- prison without probation.

Figure 1

Because all six relationships are found, work release can be said to agree fully with the positive-influence model. Plainly, a convicted person sent to jail can use work release only if a job can be found for that inmate, which may mean that work release filters out the poor-risk candidates.

Two other types of inmate opportunities considered — availability of weekend incarceration and alternative-to-incarceration programs — agree with the model only in the limited respect of a greater use of jails in split probation cases (SP/JAIL) and less use of prison (SP/PRIS). These programs afford inmates considerably more freedom in the community than work release, and judges may be more reluctant to use them than work release in felony cases.

• *Applicability to jail resources.* The findings on type of specialized jail staff members (tables 4 and 5) are also consistent with the model, although less fully than in the case of work release. Whether considering professional staff or education staff, places with such staff, compared to those without, had the following sentencing patterns:

— less straight probation, more split probation
— in split probation, more use of jail
— in nonprobation sentencing, more use of jail.

All relationships are found, at least marginally, but the differences in percentages relating to split probation (SPLT) and straight prison (PRIS) fall within the range of sampling error.

The findings on availability of health units with beds are also consistent with the model, though marginally so. Places with health units, compared to those without, have the following sentencing patterns:

— in split probation, more use of jail
— in nonprobation sentencing, more use of jail.

Absent is the finding of less straight probation where health units are available.

The data on two other types of jail resources — existence of a detoxification or a psychiatric unit — do not agree with the model.

These data indicate that judges may be aware of particular attributes of a jail system and that they may be positively influenced by them.

• *Negative-influence model: court orders.* The jail census data on court orders limiting the number of inmates illustrate how the judicial influence model can apply in reverse. A model reversal should be expected because the essence of such orders is the self-imposed restraint on use of the jail sanction. The judges who sentenced the felons either set the orders themselves or were likely aware of them.

Court orders relating to particular conditions affect the rates of straight versus split probation, as the negative version of the model would predict, but the data are otherwise inconclusive.

Further analysis of factors that might influence sentence choice

Data on work release and staffing factors were used to evaluate whether the model still holds when other factors that could affect sentencing are considered: felony seriousness, as indicated by type of offense or number of convictions charged, or by State-by-State variations in laws and other characteristics affecting felony sentencing.

Type of conviction offense. The analysis was repeated with sentencing rates computed county by county for each of four categories of felony conviction offense:

- *Serious violent* — murder, nonnegligent manslaughter, rape, robbery, and aggravated assault
- *Property* — larceny and burglary
- *Drug trafficking*
- *Other* — residual category, including other violent, property, drug, and public-order offenses.

For property and drug trafficking convictions, the model agrees with the data in all aspects enumerated above. For serious violent crime, the data agree in the sense of more split probation, less straight probation, but as regards the use of jail in split or nonprobation cases, the results are ambiguous. In the residual category, the model fits in most respects, but not as regards jail as a fraction of non-probation cases. These results imply that the positive-influence model does not fit as well where the most serious violent crimes are concerned. (The "other" category, as noted, includes some crimes of violence).

Figure 2 depicts the data from Table 2, with one bar chart representing the rates for counties with court orders and one for the others. A comparison between the two charts shows the enumerated relationships to be reversed, but to be equivocal as regards use of prison in split probation (SP/PRIS) and jail with no probation (JAIL).

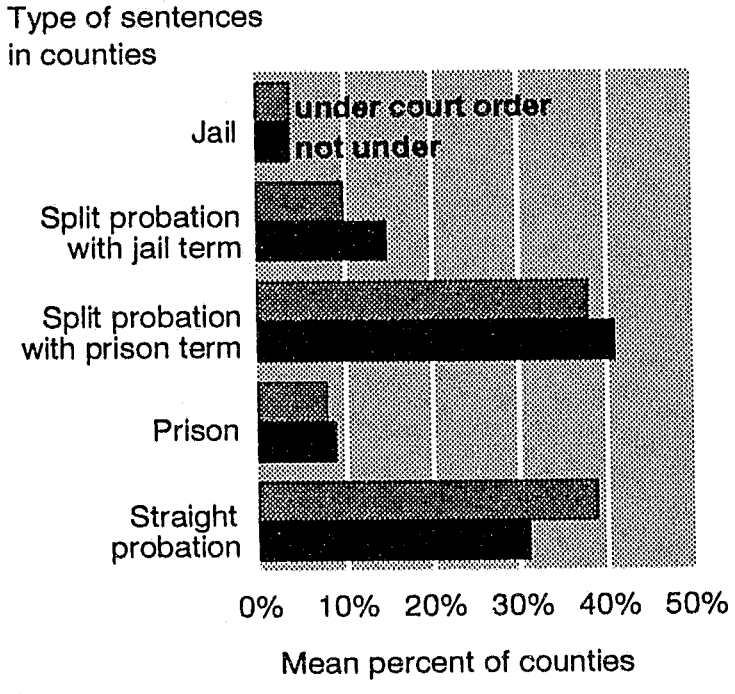


Figure 2

In the case of the staffing factors, the model again agrees with the data as regards property crimes, and surprisingly, in the case of professional/technical staff, also as regards serious violent cases. The results are otherwise ambiguous.

Number of conviction charges. The analysis was also repeated with sentencing rates computed county by county with cases dichotomized as —

- Single conviction offense
- Multiple conviction offenses.

The premise was that, all other things being equal, cases having more than one conviction offense are more serious than those with just one.

The model again fits in the case of work release, both in the single-offense and multiple-offense categories. Otherwise, it appears that it fits better in the single- than multiple-offense category.

Variation among States. State-by-State differences in sentencing rates may have been so great that they obscured any differences associated with jail characteristics. Analysis of this issue was exploratory only, since the NJRP counties were not sampled to represent particular States. In the calculations on this issue, the county data were not weighted.

About half of the States had to be eliminated from this analysis because they had only one county in the NJRP sample or because their NJRP counties were uniform with respect to whether work release was present in their jail systems. Twenty-seven States, accounting for 214 of the 279 NJRP counties, had some NJRP counties with, and some without, work release. These 27 were used to group counties within State into those with work release and

those without; then the sentencing rates were averaged within group within State.

Among the 27 States analyzed, only 9 with a total of 71 counties had rates that agreed with the positive-influence model. Another 7 with 45 counties contradict the model. In the remaining 11 States with 98 counties, the patterns are not clearly interpretable. A similar picture emerges from an analysis of variance (ANOVA) in which the straight probation sentencing rate is the dependent variable, while work release and State are treatment factors applied with, respectively, 2 and 27 levels. The ANOVA results were as follows:

- The State main effect was statistically significant — that is, we reject the hypothesis that apart from chance variations the straight probation rate is truly the same among States.

- The work release main effect was not statistically significant — that is, an analysis that examines that variable simultaneously within State, the difference between counties with and without work release is no greater than would be expected by chance alone.

- The interaction of State and work rel was statistically significant, meaning that a difference in straight probation rate may in fact exist in some places, but not others.

An ANOVA was also performed with the split sentencing rate as the dependent variable, and again the State differences are statistically significant, *with* work release versus *without* being not significant, but the interaction of the two was. When jail or prison without probation was considered, the same results were found as to main effects,

but not the interactions. The ANOVA results are summarized below:

Dependent variable	Statistical significance found as to — State?	Work release?	Interaction?
Straight probation	Yes	No	Yes
Split probation	Yes	No	Yes
Jail without probation	Yes	No	No
Prison without probation	Yes	No	No

The ANOVAs suggest that the relationship between felony sentencing and jail characteristics may be not at all uniform across the Nation.

Problem of inferring causation without time series data

The National Academy of Sciences studied the problem of trying to infer causation in cross-sectional data, which are those data are from one slice of time rather than from time series.[2] The model used in this report assumes that the causal path, if one exists, runs from jail to judge. Since the data on jail and judge deal with the same year, 1988, we cannot rule out the possibility that the jail conditions resulted from earlier sentencing practices. The jail data are collected in all counties once every 5 years — 1983 being the last one prior to 1988; the sentencing data once every 2 years, but 1988 was the first sentencing survey for the 279

[2]See generally *Deterrence and Incapacitation: Estimating the Effects of Criminal Sanctions on Crime Rates*, National Academy of Sciences, Washington, D.C. (1978). The problem addressed was that of drawing inferences about causal connections between sentencing and crime rates from cross-sectional and time series data.

counties in this study. The direction of the causal path is necessarily determined by judgment rather than empirical findings.

Conclusions

The data show that judges may be aware of opportunities for and beneficial services to local jail inmates, and that this awareness may incline them to sentence felons to jail rather than to some other sanction. This pattern is found in the case of work release and also with respect to the existence of professional or education personnel in the county jail system. Not all types of resources and opportunties appear to have such an effect, however, and the reasons for this are not clear.

It appears that this model of positive judicial influence fits the data better for property and drug trafficking convictions than for the more serious violent crimes. It also appears that it fits better in the cases which are less serious in the sense of a single conviction charge, versus multiple charges — the exception being that work release seems to fit the model in both the single and multiple conviction offense categories. This greater likelihood of sentencing less serious felons to local jail lends further credence to the model, as common sense suggests that the seriousness of the crime has bearing on whether the person will be sentenced to a place where confinement is less secure than a State prison. Similarly, seriousness has bearing on whether the person is likely to benefit from the available resources and opportunities for rehabilitation and productive use of time.

For particular conditions, such as library facilities, food service conditions, or visitation privileges, the existence of court orders may not be as well known among felony court judges or as compelling to all the judges. Particular conditions, in other words, may carry less weight than a bottom-line limit on the number of inmates that can be housed in the county's jails.

As indicated in the earlier presentation of findings, the patterns are still found when counties are first separated into those with court orders limiting the number of jail inmates and those without. In either group of counties the effect of work release and jail staffing are independent of the effect of presence or absence of court orders.

*U.S. G.P.O.:1993-342-471:80002