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Prisoner Populations & Custody Options

CALIFORNIA LEGISLATURE'S
COMMISSION ON
CORRECTIONAL NEEDS
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Approach Associates 5297 College Avenue Oakland CA

2 Prisoner Populations & Custody Options

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APPROACH ASSOCIATES
5297 College Avenue, Oakland, California 94618 (415) 652-2842

Approach(apa)Associates

Approach Associates Study Team

Alan S. Kalmanoff, Ph.D., Co-Director
Carol A. Kizziah, Co-Director

Mimi H. Silbert, Ph.D., Principal Consultant

Population Projections

Louis Radner, Ph.D.
Manuel E. Nestle

Alternatives to Incarceration

Mark O. Morris, Ph.D.
Virginia Jeronimus, Ph.D.
Velia Garcia
Brenda Pillors

Institutional Programs

Roger Baron, Ph.D.
Judy Greene
Susanne Lea
Mike Luger

Facilities

Raymond Craun
Michael McNamara
Kaplan/McLaughlin Architects - Special Consultants
Herbert McLaughlin
John Kibre
Eric Elsesser, Forell/Elsesser Engineers, Inc.
Peter Osborn Adamson, Adamson Associates

Special Consultants

Sheldon Messinger, Ph.D.
Caleb Foote
Richard Fine, M.D.
Jack Curtin, Ph.D.
Abe Irizzary
Sylvester Herring

Julie Simon - Editor
Raymond Craun - Graphics

ABBREVIATIONS

The following abbreviations for institutions have been used throughout this report:

CCC	California Correctional Center, Susanville
CIM	California Institution for Men, Chino
CIW	California Institution for Women, Frontera
CMF	California Medical Facility, Vacaville
CRC	California Rehabilitation Center, Corona
CMC	California Men's Colony, San Luis Obispo
Folsom	Folsom State Prison, Represa
San Quentin	San Quentin State Prison, San Quentin
CTF	Correctional Training Facility, Soledad
DVI	Deuel Vocational Institution, Tracy
SCC	Sierra Conservation Center, Jamestown
CCI	California Correctional Institution, Tehachapi

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INTRODUCTION

In this report Consultants summarize findings, conclusions, and recommendations concerning prisoners in the California state prison system.

Section A of the report is descriptive: it summarizes Consultants' projections of future prison populations, and presents the findings of a special prisoner profile study, designed to analyze what degrees of supervision and custody are appropriate to the current prison population.

In Section B, Consultants analyze other contingencies -- pending legislation, possible policy changes, and possible changes in state/county correctional relationships -- which might alter the situation detailed in Section A.

Section C evaluates current prisoner management procedures, including classification, custody levels, and parole supervision, and suggests options for responding to basic problems facing the correction system. Particular attention is devoted to the prisoner "extremes" -- violent prisoners requiring some form of disciplinary actions, and "minimum security" prisoners who could be placed in some mode of supervision and custody other than incarceration in "high security" prisons.

In this volume, Consultants have focused on main decision points affecting how many and what kinds of prisoners enter the corrections system, and how they take a number of pathways through it.

This report concentrates primarily on the effect of formal governmental and criminal justice institutions and their policies and practices. As shown schematically in Figure A, CDC commitments are affected directly by judicial sentencing policies, which must, in turn, be understood in the context of options or resources available at the county or local level of corrections. Once committed to the custody of the Department of Corrections, the prisoner's situation and needs within the prison system are determined through a series of classification and reclassification (or transfer) decisions. Finally, for most prisoners, corrections supervision continues following release from custody, through the mechanism of parole supervision.

Additionally, Consultants respond to various discussions in the California Department of Corrections' Program Planning Report, although Consultants' report is intended not as a point-by-point

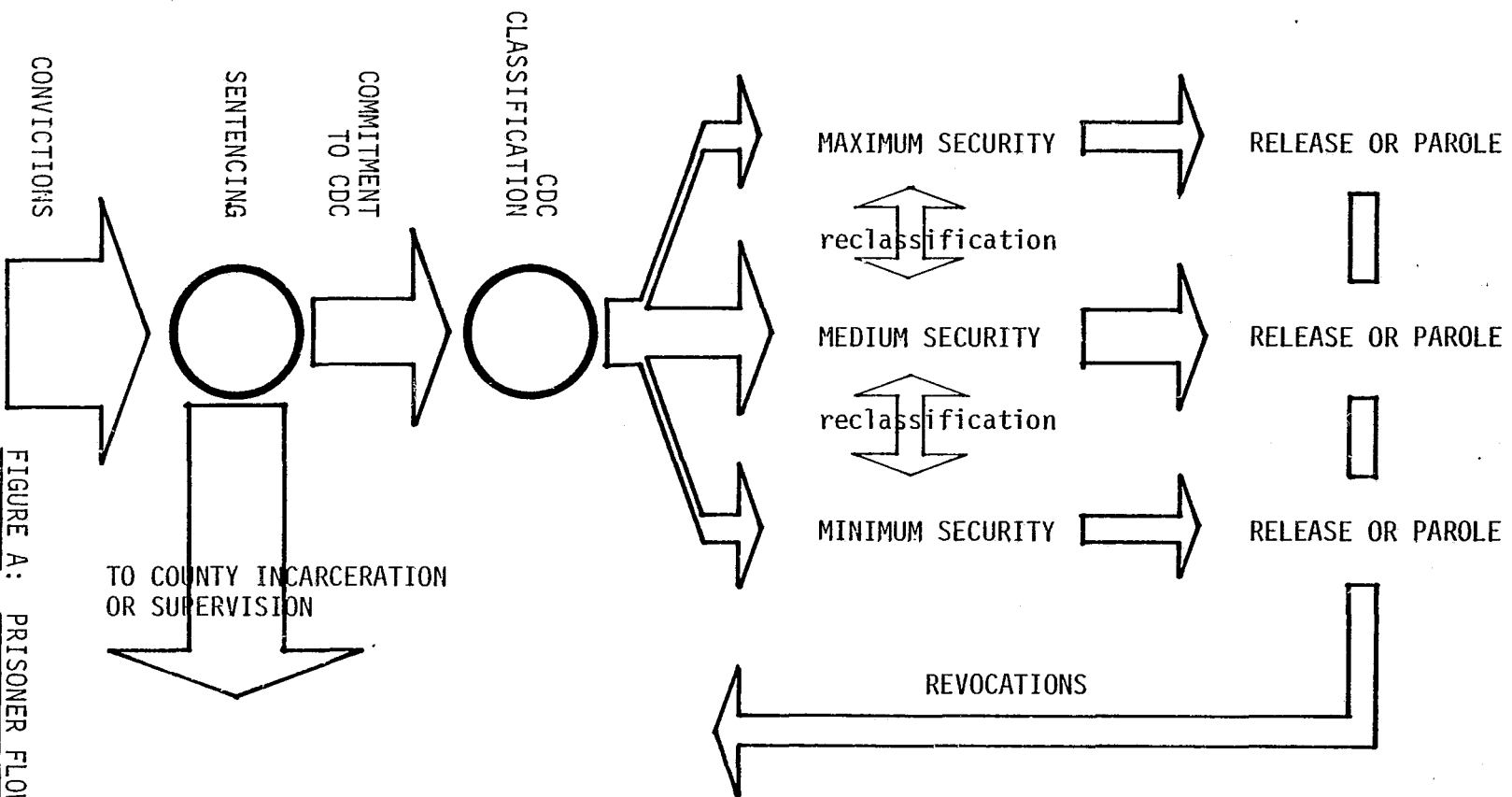


FIGURE A: PRISONER FLOW -- DECISION POINTS AFFECTING CUSTODY

commentary on the CDC report, but rather as a review of the issues which any planning effort regarding the directions for the state prison system should address. In some instances, Consultants have arrived at conclusions which are in disagreement with current or planned CDC policies. However, it must be strongly emphasized that overall, Consultants share the Department's concern that the system faces real, and perhaps intractable, problems in providing an effective and humane prison system within present limitations of resources. In general, Consultants support the directions the Department is seeking to take.

It must also be emphasized that many of the issues addressed in this report are extremely complex; where recommendations are offered, Consultants are under no illusion that easy, complete solutions are possible. The tenor of the report, therefore, is to attempt to think through basic issues in the management and placement of prisoners, and, in accordance with basic planning procedures, to examine all reasonable options for responding to prison problems.

This report is, in many respects, a series of self-contained discussions. Although there is a logical progression from description and analysis to problem statement and recommendations, the separate sections each address distinct kinds of issues and distinct decision points in the corrections and criminal justice process.

Summary of Recommendations

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SUMMARY OF RECOMMENDATIONS

The following discussion summarizes the primary findings and recommendations found in this report.

In Section A, Consultants present an analysis of basic data on the prisoners in the state system.

Chapter 1. Alternative Population Projections, Analysis, and Recommendations. Consultants' projections of future populations are contrasted to the CDC projections. Whereas the CDC predicts a prison population of 26,250 by 1983, Consultants present a "probability envelope" of high and low projections. The probability envelope ranges from a low of 17,400 prisoners in 1983 to a high of 22,800 -- still 3,450 less than the CDC projections.

- Consultants recommend that CDC's projections not be used as a basis of planning decisions at this time.
- Consultants recommend that the CDC projection methodology be improved by developing more realistic input data and by using a more refined demographic analysis, and that future presentations of projections include high and low projections.

Given remaining areas of uncertainty about the ultimate effect of the Determinate Sentencing Law (DSL), quarterly checks on projections are advisable.

Chapter 2. Prisoner Profile. A special prisoner profile study by Consultants is analyzed; the number of prisoners eligible for minimum security custody, using several different sets of assumptions, is derived from this data. Under highly restrictive screening criteria, approximately 13 percent of male felon commitments are eligible for minimum security housing. Using somewhat less restrictive -- but still highly cautious -- assumptions, 35 percent of male felon commitments are eligible. The prisoners found eligible under the most restrictive criteria, which screen out any prisoner with any conviction for violent or drug offenses, as well as any prisoners with escape or drug addiction

histories, can be seen as a new classification level -- "low minimum security."

Chapter 3. Implications for Future Housing Requirements. The classification results of the prisoner profile are adjusted to reflect differing lengths of stay in prison, to derive true proportions among the average daily prisoner population who would be eligible for minimum security custody under the criteria applied in the prisoner profile. Under the most restrictive criteria, 8.9 percent of the ADP for male felons would be in low minimum security, and 7.9 percent of the ADP of women felons. Under the highest projections for 1983, this would total approximately 1,750 low minimum security prisoners. When recommended pre-release placements are added to the total number of prisoners in minimum security status (on the basis of the profile analysis and adjustment), over 30 percent of male felon prisoners would be in minimum security housing (including low minimum housing), and nearly 54 percent of female felon prisoners. According to this exercise, under high projections for 1983, nearly 2,500 additional minimum and low minimum security beds would be needed by 1983.

In Section B, Consultants analyze the interrelationship of state corrections and other parts of the criminal justice system. On the grounds that correctional needs are in part determined by practices and policies governing sentencing and county corrections, this section of the report reviews certain key issues or decision points which are pertinent to the number and kinds of prisoners committed to CDC custody.

Chapter 4. Pending Legislation. A number of pending bills are reviewed, to evaluate their potential effect on state corrections. Consultants think that most of the legislation reviewed would have only a marginal effect on prison populations. SB 709 appears to be an exception; it is predicted that the net impact of SB 709 would be an increase in prison populations by approximately 1,250 by 1983.

Chapter 5. Probation Subsidy. In recent years, the effect of the Probation Subsidy Program on adult commitments to state correctional facilities has waned, to the point that currently the program results in only negligible reductions in commitments. AB 90, legislation proposing to change several aspects of the program, would not have any significant effect on adult commitments.

Chapter 6. Alternatives to Incarceration at Sentencing. Alternatives to incarceration at sentencing are often advocated, on grounds that they are more effective in rehabilitation and less costly than imprisonment. This report offers no specific recommendations for sentencing alternatives, because full examination of sentencing practices is beyond the scope of the present study. However, inconsistencies in sentencing

practices across the State are noted. It is possible, indeed likely, that more effective use of both probation supervision and restitution programs could somewhat reduce commitments to state prisons.

Chapter 7. County Correctional Resources. In view of the need to use all correctional resources in the State optimally, Consultants surveyed county correctional systems to determine whether resources exist there which could effectively be used for state prisoners. On the basis of interviews and Board of Corrections reports, Consultants conclude that there are over 5,000 minimum security beds at the county level which are not currently being used for county jail prisoners. Recommendations regarding use of 1,000 of these beds for state minimum security prisoners are contained in Chapter 9.

Chapter 8. Planning for Corrections and Criminal Justice. Consultants' review of the criminal justice system and its impact on corrections affirms the areas of uncertainty in corrections planning. Consultants think rational corrections planning must have some grounding in criminal justice system planning; therefore, an ongoing systemwide planning and policy analysis capability should be developed.

- Consultants recommend that an expanded criminal justice policy review responsibility be assigned to a special commission formed under the auspices of the State Board of Corrections, with representatives from interested agencies and citizens included.

This special commission would collect and analyze information regarding trends in criminal justice practices; it would monitor, audit, and evaluate system performance in meeting specified full objectives; prepare policy analyses of Legislative policy options; and make regularly scheduled reports to the Legislature.

In Section C, Consultants address issues concerning the supervision and placement of prisoners in CDC custody.

Chapter 9. Prisoner Classification. Security classification is the crucial administrative process by which prisoners are assigned to housing within the system. Consultants think the present system results in frequent cases of "overclassification"; that is, placement of prisoners in higher security housing than is required for public protection. These instances of overclassification have detrimental consequences for the system -- they contribute to inflexibility in medium and maximum security housing -- and they present obstacles to the effective preparation of prisoners for reintegration into society upon release.

- Consultants recommend that written, explicit criteria be developed to govern classification decisions.
- Classification decisions should be based, where possible, on past conduct. Predictions of the risk of future behavior (such as violence or escape) are highly unreliable, and should be employed with care. There should be safeguards against the overuse of such predictive classifications.
- Prisoners should be presumed eligible for minimum security custody unless clearly defined reasons to the contrary can be stated.
- Prisoners should be able to appeal classification decisions to an external authority, such as the Community Release Board (CRB).
- The Legislative Analyst's office should conduct periodic audits of a sample of classification decisions, to determine whether the decisions are consistent and whether they follow legislative policy regarding corrections.

Chapter 10. Prison Violence and Gangs. Prison violence and gangs are a major problem in California's prison system. The rate of violent incidents and the influence of gangs have been increasing rapidly. Consultants think a well-defined strategy, addressing the sources of violence and of gang strength in all aspects of prison life, is needed.

- Consultants recommend that although strict and swift punishment should be meted out for violent incidents in the prisons, preventive responses which are equivalent to disciplinary action should be minimized. Punishment should be based on actual -- not anticipated -- misconduct.
- Consultants recommend that the legitimacy and importance of gang leaders within the prisons be combated through encouragement of alternative forms of prisoner leadership, both formal and informal.

- Consultants recommend improved recruitment and training of correctional staff, in order to upgrade staff skills in resolving tensions, managing conflicts, and controlling the prisons.

It is emphasized that the causes of violence in the prisons include inadequate facilities and programs, and that although violence may never be eliminated from the prison, it could be reduced by improving the environment of prison life. Programming and facilities issues are addressed in companion reports to this volume.

Chapter 11. Alternate Modes of Incarceration. In this chapter, Consultants address alternative ways in which the Department of Corrections can meet its assigned role of providing for the custody and containment of convicted felons, consistent with other correctional goals (e.g., providing for the rehabilitation or reintegration of offenders upon release). In view of the prisoner profile data, Consultants think the Department has an opportunity to provide more flexible and effective custody through the development of two kinds of local correctional facilities.

- Consultants recommend that the Department of Corrections contract for 1,000 minimum security county jail beds, to be used for pre-release and other minimum security programming.
- Consultants recommend that the Department of Corrections contract for 1,000 beds in privately operated local correctional facilities. These facilities, termed generically "Urban Skills Centers," should be designed and programmed specifically for the reintegration of offenders into the community.

There would be two channels of referral into the local correctional options: the referral, immediately upon commitment to the CDC, of those who qualify for a new custody level -- low minimum security prisoners; and the placement, through present classification procedures, of prisoners in pre-release status.

- Consultants recommend the establishment of a new intake screening procedure. This screening would be done before the prisoner is transferred to a CDC Reception Center. Screening would be the responsibility of the CDC classification personnel, and should be supplemented by personal interviews with prisoners by representatives of the CDC and the local correctional facilities.

- Consultants recommend that all state prisoners (with the exception of prisoners who have a serious history of institutional misconduct) be placed in minimum security pre-release programs for at least the final three months of their terms.
- Consultants recommend that the CDC establish and enforce fiscal, administrative, and program standards for local correctional facilities. Both technical assistance and frequent audits should be used to ensure fiscal accountability.
- Local advisory boards should be established in communities with Urban Skills Centers, to consult with CDC and Center administrators about programs and prisoner eligibility criteria.

Chapter 12. Parole. Parole supervision can emphasize either surveillance, control and public protection, or counseling, referrals, and parolee assistance. However, evidence to date is inconclusive regarding whether any of these approaches has a significant effect upon parolee "success" -- that is, return to society without resorting to further criminal activity.

- Consultants recommend that parole services and resources should be redirected. With a few "high risk" exceptions, parolees should be placed on summary parole, and parole surveillance activities deemphasized.
- Consultants recommend that various new or expanded service and referral roles be developed, including coordination of cash assistance programs, and coordination with and supervision of local correctional facilities for pre-release and minimum security prisoners.

Prisoner Population

SECTION A: PRISONER POPULATION -- PROJECTIONS AND PROFILE

In this section, Consultants summarize anticipated population levels for the next six years (Chapter 1) and analyze the proportions of prisoners requiring varying levels of custody or security (Chapter 2). The projections and profile results are then integrated (Chapter 3) into a statement of estimated future prison system capacity needs by security levels.

CHAPTER 1

POPULATION PROJECTIONS

CDC PROJECTIONS

Population projections made by the California Department of Corrections (CDC) in 1977 predict a rise in institutional population from present levels (20,132 in May, 1978) to 26,245 in 1983.* This increase in population is the CDC's major argument for the request for new facilities.

Consultants are of the opinion that CDC's current projections are extremely improbable and should not be used as a basis for planning decisions at this time.

Information contained in the Inventory Report previously presented by Consultants as part of this study** demonstrated that, over the last nine years, the CDC projections have shown a significant tendency to over-estimate prison populations by large amounts:

- a. Of 36 projections made during this time period, 26 were over-estimations;
- b. The median error on all projections was 4,431, equivalent to 19 percent of the population;
- c. Errors increase with the lead time of the projection; for lead times of more than 5 years, median error ranged from 9,000 to 15,500;

*The California Department of Corrections, Program Planning Report for the 1978-79 Fiscal Year, Vol. II, Program Analysis and Recommendations (April, 1978), p. 68.

**Approach Associates, California Legislature's Study of Correctional Needs, Inventory Report, "An Analysis of the Accuracy of the California Department of Corrections Population Projections, 1969 to 1977; and the Effect of Determinate Sentencing Legislation on Incarceration Time" (March, 1978).

d. Of 21 projections made with lead times of more than two years, not one has been within 1,000 or 5 percent of the actual population.

In light of these circumstances, and especially considering the importance of the decisions to be made, it is prudent to examine alternative projections.

ALTERNATIVE POPULATION PROJECTIONS

Given that the nature of population projections is inexact and that projections tend to become obsolete with frightening speed, it is highly undesirable to base decisions on any one projection -- in effect, on a single scenario of the future. The risks of error are particularly high during the current period of uncertainty caused by the introduction of the Determinate Sentencing Law (DSL).

As a more appropriate approach, Consultants recommend that population projections be considered in terms of a range of future probabilities. Consultants performed population projections using two distinct methodologies:*

1. A time series regression line, which yielded a best case projection based on the most optimistic feasible assumptions concerning future population levels, as one boundary of this range of probabilities; and,
2. A modified flow analysis, which yielded a worst case projection based on the most pessimistic feasible assumptions, as the other boundary. (See Figure 1.1 and 1.2 for a comparison of Consultants' projections with the CDC projections.)

*The following analysis of the California correctional system has been undertaken in the context of the laws in effect as of June 1, 1978. The potential effects of some of the most important pending legislation are discussed in Chapters 4 and 5 of this report.

For reference data on Consultants' projections, see Appendix B.

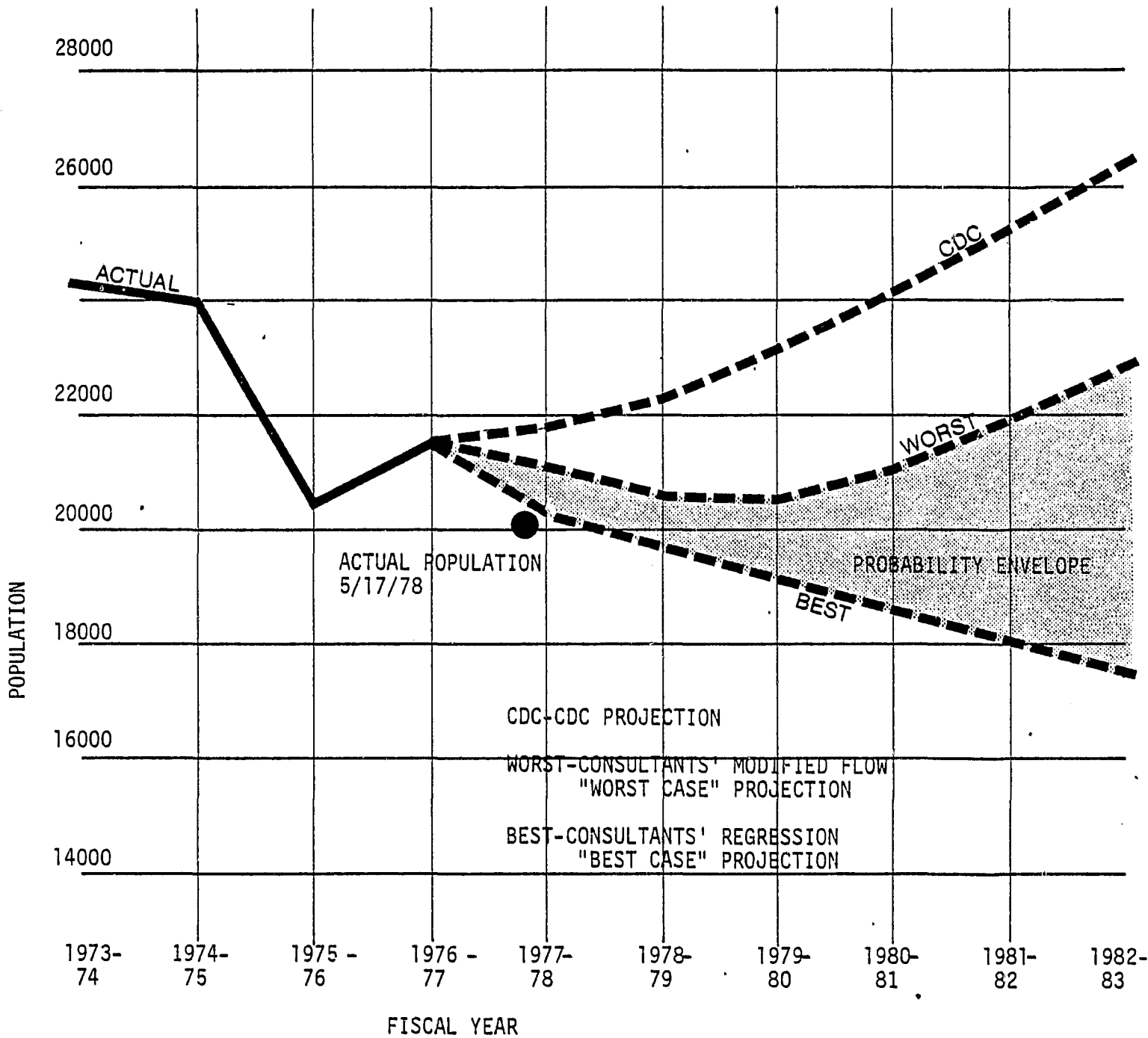


FIGURE 1.1

ALTERNATE COMPARISON OF PROJECTIONS OF THE INSTITUTIONAL POPULATION

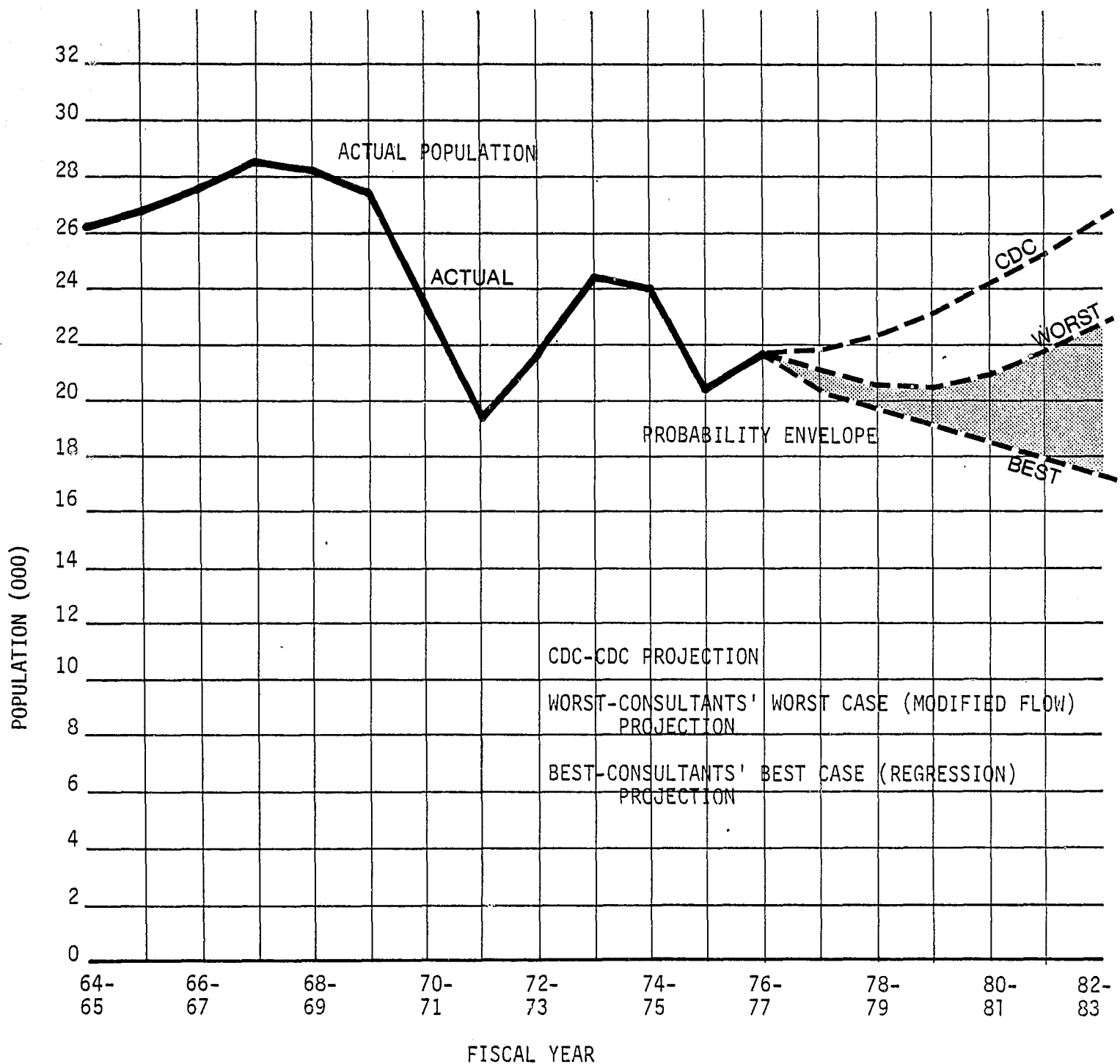


FIGURE 1.2

ALTERNATE COMPARISON OF PROJECTIONS OF THE INSTITUTIONAL POPULATION

Regression

An alternative projection technique, regression, involves the use of best fit lines with the historical pattern of institutional population. (see Figure 1.3) Of various regression methods (some of them quite complex), the simplest and most mechanical is a time series linear regression. This method is mechanical in the sense that: (1) no attempt is made to consider causal factors underlying the historical changes in population level and (2) the only predictive variable is the passage of time itself.

To test the validity of the regression technique, a best fit line was applied to the population history as it existed in 1972, yielding projected populations for the years 1973 through 1977. These regression predictions were then compared in accuracy to the CDC projections also made in 1972. The regression projections were more accurate in four of the five years than were the CDC projections. As of mid-May, 1978, the actual population level (20,132) was very close to the regression line prediction (20,337).

Modified Flow Projection

A second alternative projection is produced by modifying the input data for the CDC projection model. The CDC projection methodology uses a flow model which breaks down the correction's population into detailed components, and tracks the movement of these components in the form of inputs and outputs. The input variable of greatest weight in the calculation of institutional population is the number of felons received from the courts.

The CDC projection of felons received from court conforms to an assumption of increasing commitment rates for the 18-49 age group of the state population.* Applying an increasing commitment rate to a population age group which is also increasing produces an accelerated increase in projected commitments.

This represents a significant problem in the CDC approach to projected court admissions. The 18-49 age group is too broad and diverse a category to be used as a population base for the validation of commitment projections. The 18-49 age range includes a number of age groups with vastly different commitment rates.

*CDC Program Planning Report for the 1978-79 Fiscal Year, Vol. II, pp. 61, 64-66.

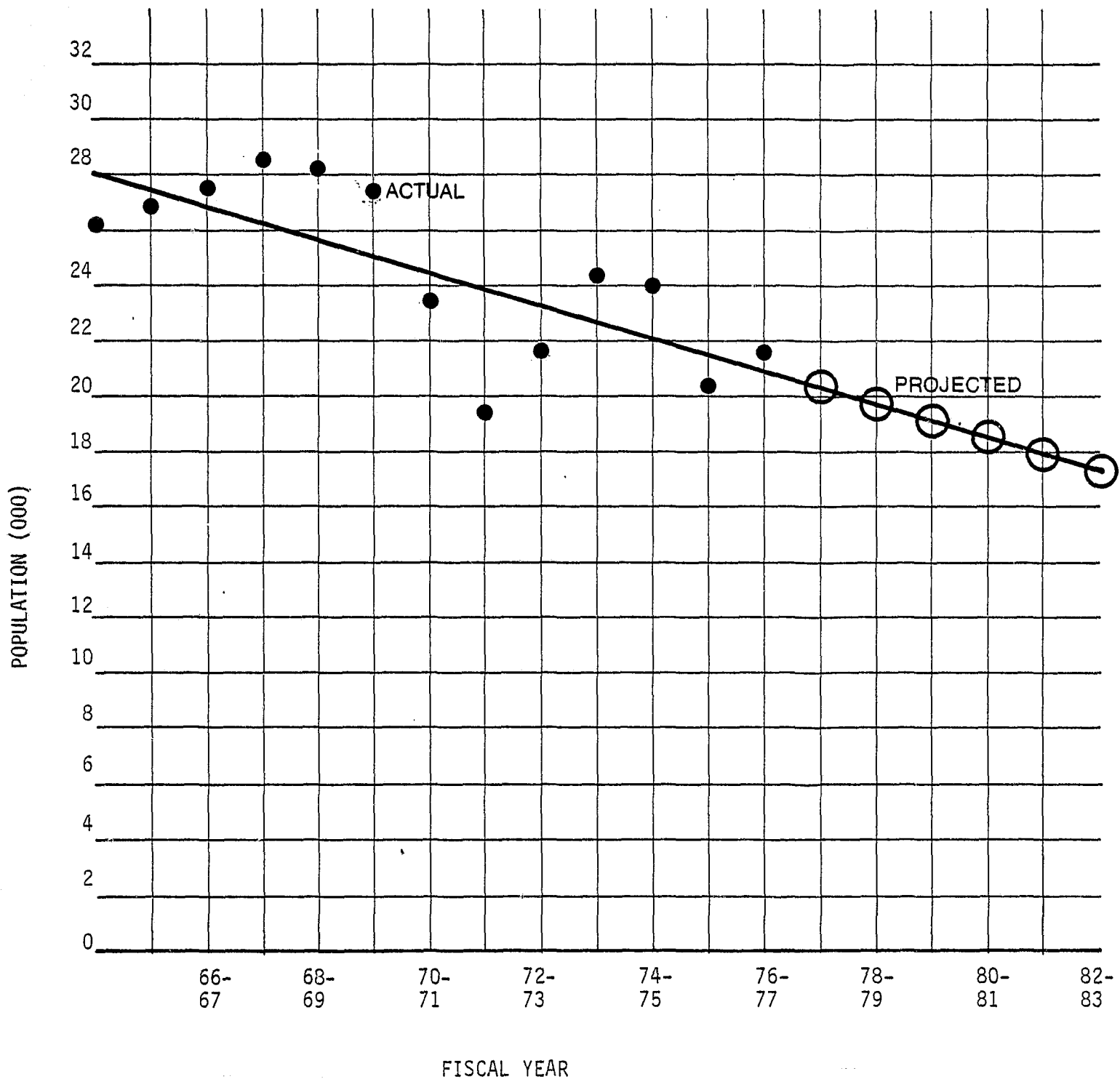


FIGURE 1.3

BEST FIT REGRESSION LINE FOR THE INSTITUTION POPULATION

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The younger age groups have much higher commitment rates than have the older groups. For example, the commitment rate for the 20-24 age group is four times that of the 40-44 age group; yet both groups are lumped together in the 18-49 age group and assigned a common commitment rate. This unrealistically inflates the commitment rate and input numbers used in the CDC projection. Consultants refined this category by breaking the ages down into smaller units corresponding to standard demographic sources. Then, an alternative commitment projection was calculated by applying estimated 1977 commitment rates for each age group* to the projection of the size of that age group in the California State population for the next six years (according to California Department of Finance estimates). This procedure increases the precision of the commitment estimates in two ways: (1) it makes use of differential commitment rates for the specific age groups and (2) it tracks the predicted growth patterns for these groups in future years. Thus, Consultants' refined flow methodology will reflect a more realistic commitment rate.

The results of the calculations in Table 1.1 show how sensitive the projections of court commitments are to the specific assumptions regarding commitment rates and age groups. Use of the more precise age group commitment rates results in court commitment projections which are significantly lower than the estimates based on CDC assumptions for both men and women. When the alternative court commitment figures are substituted into an approximation of the CDC flow model, the resultant population projections show a relatively stable population until 1982, followed by an upswing to the 22,800 level in 1983 (Table 1.2). This 1983 level is only 1,300 more than the actual 1977 level, and 3,500 less than the CDC projection for that year.

EFFECT OF THE DETERMINATE SENTENCING LAW

As of April 19, 1978, the California prison population was 19,851; the net effect of the first nine months under DSL has been a drop in

*The age groups used consisted of the following ages: 18-19, 20-24, 25-29, 30-34, 35-39, 40-44, 45-49, and 50-59.

TABLE 1.1

PROJECTIONS OF FELON COURT COMMITMENTS UNDER TWO
CONTRASTING ASSUMPTIONS REGARDING POPULATION GROWTH

End Year June 30	Court Commitments			
	Male Felons		Female Felons	
	Increasing Rate*	Age Cohort	Increasing Rate*	Age Cohort
1978	7,614	7,162	590	510
1979	8,080	7,300	670	522
1980	8,498	7,427	719	532
1981	8,832	7,553	736	538
1982	9,133	7,658	752	547
1983	9,396	7,761	778	558

*The increasing rate admissions are based on the CDC assumption of an increasing commitment rate for the 18-49 age group.

TABLE 1.2CDC PROJECTION OF INSTITUTION POPULATION
COMPARED TO TWO ALTERNATIVE PROJECTIONS

End Year	CDC Projection	Regression Projection	Modified Flow Projection
1978	21,805	20,337	21,160
1979	22,265	19,748	20,543
1980	23,105	19,159	20,506
1981	24,105	18,570	21,068
1982	25,205	17,981	21,976
1983	26,245	17,392	22,795

population of 1,700. As seen in Table 1.3, there was a decrease in all population categories except women felons. The drop was especially severe for civil narcotic addicts, with the male population down 32 percent and the female population down 25 percent. The CDC projections for the first three quarters under DSL was an overestimation of 1,519, equivalent to 8 percent of the population.

Table 1.4 contains a summary of population movement for the first nine months of Fiscal Year 1977-78, as compared to the same period during the previous year. The most significant movement trends for the first nine months under DSL were:

1. A 6 percent increase in court commitments for felons, balanced by an equivalent decrease in parolees returned, resulting in a zero net change in intake compared to the previous year.
2. A 43 percent increase in parolees occurred due to the retro-active provisions of DSL; and
3. A 45 percent decrease in civil narcotic commitments.

To provide further data on the effect of DSL, an analysis was conducted of the sentencing patterns of felony court commitments covering the period from July 1, 1977, to March 17, 1978. In addition, interviews were conducted with judges, prosecutors, and defense attorneys in several of California's more populous counties, to see what changes "practitioners" report in their policies under DSL. (These interviews are summarized in Appendix A of this report.) Sentence length and jail credit time for specific crime types were extracted from a random sample of 1,120 cases chosen from the total of approximately 2,400 DSL cases.*

For men, the average sentence length under DSL was 41.1 months; average credit for jail time was 2.8 months. Credit for good time was estimated by the conservative assumption that 75 percent of available good time would be earned. When jail credit and estimated good time are subtracted from the average sentence length, the average length of stay for male felons is 28.7 months, slightly less than the median length of stay for male felons first paroled in 1977 (which was 30 months).

For female felons, the equivalent figures under DSL are: 35.8 months for average sentence, 2.3 months for jail time, and 25.1 months for average length of stay. This average length of stay represents an increase over the 1977 average length of stay for female felons first paroled (20 months). Generalization from the data on women should be carried out with caution because of the very small number of women in the sample. Women felons constituted only 1.5 percent (17 cases) of the

*For details, see Appendix B.II.

TABLE 1.3

ACTUAL INSTITUTION POPULATION FOR APRIL, 1978
 COMPARED TO PREVIOUS YEAR AND TO CDC 1977 PROJECTION

Population Component	Institutional Population				
	6/30/77	4/19/78	Net Change	CDC 1977 Pro- jection for 3rd Qtr 77-78	Error
Male Felons plus Other	18,482	17,499	-983	18,265	+766
Female Felons plus Other	727	751	+24	795	+44
Male Civil Narcotic Addicts	1,919	1,303	-616	1,880	+577
Female Civil Narcotic Addicts	397	298	-99	430	+132
TOTAL	21,525	19,851	-1,674	21,370	+1,519

TABLE 1.4

POPULATION MOVEMENT FOR THE FIRST THREE QUARTERS OF 1977-78
COMPARED TO THE FIRST THREE QUARTERS OF 1976-77

Offender Type	Movement	First 3 Quarters 76-77	First 3 Quarters 77-78	Gain/Loss	% Change
Felons	<u>Intake</u>	7,225	7,233	+8	+0.1
	Court Commitments	5,464	5,795	+331	+6.1
	Parolees Returned	1,761	1,438	-323	-18.3
	<u>Outgo</u>				
	Paroled	5,501	7,846	+2,345	+42.6
Civil Narcotic Addicts	<u>Intake</u>	3,582	2,563	-1,019	-28.4
	Court Commitments	1,512	837	-675	-44.6
	Outpatients Returned	2,070	1,726	-344	-16.6
	<u>Outgo</u>				
	Outpatients	3,093	2,845	-248	-8.0

sample, markedly less than the proportion of women in the Fiscal Year 1976-77 court commitments (6.6 percent).

The relative proportion of crimes of violence did not show any increase when compared to the male felon's newly received from court in 1975 (the most recent data available). There is, however, some possibility of a bias in the sample due to under-representation of crimes involving longer sentence lengths, which take longer to process through the judicial system. A balancing source of error in the sample may have been caused by duplicative counting of individuals sentenced in different proceedings.

It is still too early to predict the long-term effects of DSL; however, at this point in time, the transitional effects of the changeover in sentencing systems should be weakening rapidly. Specifically, the pool of prisoners with retroactive parole eligibility should be almost exhausted, and the majority of new commitments should be receiving sentences under DSL. Corrections population flow and sentencing data during the next six months to a year should provide a much better basis for the estimation of long-term trends.

Consultants sent their alternative population projections and the CDC's projections to the National Clearinghouse on Criminal Justice Planning and Architecture. The Clearinghouse is the Congressionally designated Department of Justice Law Enforcement Assistance Administration (LEAA) evaluator of all jail and prison construction planning. It is funded through Omnibus Crime Control monies, and represents the highest level of expertise on the subject of corrections projections. The Clearinghouse has evaluated population projection methodologies for over 250 local jurisdictions and 10 statewide corrections plans.

The Clearinghouse evaluated Approach Associates' and the CDC's projection methodology, and concluded that Consultants' methodology was superior.

RECOMMENDATIONS

Consultants are of the opinion that the population projections contained in the CDC report to the Legislature are extremely improbable, and should not be used as a basis for planning decisions at this time. The reasons for this conclusion can be summarized as follows:

1. According to the CDC report, the computerized projection methodology used to generate the latest CDC projections is "very similar" to

the methodology used previously to 1977.* The previous CDC projections showed a significant tendency to overestimate; any part of this tendency associated with the methodology therefore would continue to operate.

2. The fact that the actual population level is below the CDC projection for this period of time means that, even if the population should suddenly begin to increase at the rate projected by the CDC, the population levels could not catch up to the projections by 1983.

In order to attain the population levels projected by the CDC, commitment rates would have to show large increases to unprecedented levels in future years. There is no evidence for increases of the required magnitude at this point in time.

The 6 percent increase in felon commitment during the first nine months under DSL falls far short of the levels required to reach CDC projections. Reports from the field of very high commitment rates from specific jurisdictions over short time intervals are not confirmed when statewide totals are examined for the entire year to date. Commitment rates should be monitored carefully to detect possible changes in this situation.

3. The CDC's methodology, which includes the lumping together of all those aged 18-49 into one age group, creates an artificial inflation of commitment rates. When this is corrected for by estimating court figures from the predicted growth pattern of specific age groups, the commitment rates are altered. Since the growth rate is slowing down for the younger age groups with the higher crime rates, this effect should act as a brake on future commitment rates.

4. To a certain extent, an increase in commitments under DSL is expected to be balanced by a decrease in parolees returned because of the limitation imposed by DSL on the length of the parole period. Employing the first three quarters of 1976-77 data, parole violators account for almost a total of one-third of the input into the prisons (1,761 parole violators out of a total of 5,464 prison commitments). This suggests that a reduction in parole violators should have a significant effect on commitments.

*CDC Program Planning Report for 1978-79 Fiscal Year, Vol. II, p. 61.

5. The CDC projections include increases in both male and female civil narcotic addicts. Population flow for this year to date shows a 45 percent decrease in civil narcotic commitments under DSL. Interviews of key judges in the larger counties attribute the decrease in commitments to California Rehabilitation Center (CRC) to a judicial preference for local drug programs, a defendant preference for these programs or even relatively short prison commitment, and a prosecutor preference for prison commitment over CRC.

The CDC projections for women felons reach levels never before achieved in the history of the California corrections system. Population flow for this year to date shows no increase for female felons over the previous year. Interviews of judges suggest that women will continue to receive lighter sentences than men for the same offenses.

Consultants therefore make the following recommendations:

- CDC's projections should not be used as the basis for planning decisions (particularly when costly new prisons are involved); and
- Consultants' population projection methodology should be used when calculating future projections. Actual population levels should be compared with the limits of the probability envelope at quarterly intervals.

The probability envelope is not proposed as a static concept: depending on the actual curve of population growth, the probability range could be broadened, narrowed, or retained unchanged as a result of periodic review.

Improvement in the CDC Flow Model

Consultants think the CDC computer flow model has a good long-term potential for more accurate projections, and that the use and refinement of the model should be continued with emphasis on the reduction of sources of previous error. Some specific suggestions for improvement are as follows

1. More realistic input data is needed. Input characteristics (e.g., commitment rate, distribution of offense types, and average length of stay) should reflect current trends. The computerization of the flow model provides an opportunity for frequent updating of these variables as

data becomes available from current population flow; a continuing effort should be made to keep input data current. Improvement in the accuracy of input assumptions is especially necessary in the case of the relatively small population categories (e.g., women, civil narcotic addicts, and "other") which have been particularly prone to overestimations, producing, in the aggregate, an inflationary effect on population projections.

2. A refined demographic analysis should be used. The model should accurately reflect the differential commitment rates and growth patterns for specific age cohorts. In addition to age, a supplementary demographic approach would use the portion of the general population which has a previous commitment record. This technique is based on the fact that, in recent years, over 80 percent of the male felon court admissions have a record of previous institutional commitment (including federal or state prison, county or local jail, or juvenile facilities. The percentage with a previous commitment is 58 percent for women felons, but the same basic methodology would be applicable). The state population can therefore be thought of as consisting of two components: (1) a very large segment, the population with no previous commitment record and a very low commitment rate, and (2) a relatively small segment, the previously committed population, with a very high commitment rate. Making a rough estimate that the previously committed population was 300,000 in 1975 leaves about 21,200,000 as the population with no commitment record. When these two populations are divided by the appropriate number of court admissions in 1975, the previously committed population has a commitment rate 296 times that of the previously uncommitted population (1,466 per 100,000 population as against 5 per 100,000).

The underlying causes for the higher commitment rate for previously committed offenders are extremely complex and cannot be addressed adequately in this study. It should be noted that, even with the higher commitment rate, only 1.5 percent of the previously committed population are resented to prison in any given year; accordingly, the vast majority of the previously committed population will not return to prison during their lifetimes.

It is unmistakable that previous commitment is a very strong predictive factor. The accuracy of projection of future commitment levels could be improved by taking into consideration not only the size of the overall state population and the population age profile but also the size of the population segment with a previous commitment record. (This improvement in prediction would apply solely to the demographic determinants of commitment -- other factors such as socio-economic conditions will also be exerting an influence.)

There is a good possibility that reasonably accurate estimations of the present size and future growth of the previously committed population in the State can be derived from existing criminal justice information

sources. A sophisticated analysis of the data would be necessary, taking into consideration death rates, migration, duplication among commitment types, and the currentness of existing records. (As the analysis would involve only grouped data and statewide totals, no invasion of privacy would be involved.) This type of situation presents an ideal opportunity for the CDC computer modeling capability, with a potentially high payoff in terms of increased accuracy of projections.

3. Another area calling for improvement is the use of relationships among the different population variables within the model as an internal check on the plausibility of the projections. An example of such a relationship is the extremely high negative correlation between the institution population and the parole population ($r = - .90$). Also, CDC projections of the parole population have been much more accurate than its projections of the institution population.*

Taken together, these two factors mean that projections of institution population can be generated indirectly from projections of the parole population. When this was done, using 1972 data, the indirect projections differed significantly from the direct projections of institution population made the same year -- in fact, the indirect projections were more accurate than the direct projections for all five intervening years. If this indirect comparison had been used by CDC as an internal check, the lack of correspondence between the two projections would have acted as a warning signal that modification in the direct flow project of institution projection was needed.

4. Given the dangers intrinsic to the use of a single scenario of the future, the CDC flow model should be used in a parametric analysis mode to test alternative assumptions regarding future contingencies. There is no reason why the model could not be used to generate a "worst case," "a best case," and a "probability envelope."

*See Appendix B. IV.

CHAPTER 2

PRISONER PROFILE AND CLASSIFICATION

FUNCTIONS AND ISSUES IN CLASSIFICATION

In planning for future correctional needs, it is essential to predict how many and what kinds of prisoners will come under the jurisdiction of the Department of Corrections (CDC). In Chapter 1, Consultants challenged the projections developed by the Department. Based on the total number of prisoners projected, there is no need for any net increase in prison space. However, to fully evaluate the need for future prison space, it is necessary to refine these projections by analyzing whether needs for particular kinds of housing will go unmet. The CDC request for additional housing focused primarily on "high security," or medium and maximum security housing. There is, however, no statistical showing in CDC documentation of any particular need for this kind of space; there is, for example, no demonstration that in the future, the proportions or absolute numbers of prisoners requiring high security housing will increase to a degree that, whatever the overall system capacity, there will be a need for new high security beds.*

Procedures for classifying prisoners are crucial to determinations of security level requirements. The classification system is the administrative mechanism whereby prisoner placements are accomplished. Classification is based on a "matching" of prisoner characteristics with system capabilities, both regarding housing and programming; it is essentially a process of estimating how much risk a prisoner poses to the safety of staff, other prisoners, and him or herself; and, what prisoner needs should and can be maximized within available resources, (e.g., for a particular geographic placement or program enrollment).

In order to develop the most current information regarding the characteristics of prisoners committed to the CDC and their potential security classification designations, Consultants conducted a profile study of

*There are, of course, other possible reasons than sheer numbers for requesting more high security space. Most of these reasons refer either to management effectiveness (discussed in Chapters 9 and 10 of this report) or programming effectiveness (discussed in Volumes III and IV of Consultants' Final Report).

recent court commitments to the CDC, which is described in detail in this chapter. This classification exercise focused mainly on those prisoners who could be classified as minimum security, since maximum security designations are related primarily to institutional misconduct. With the profile study, Consultants have attempted to present concise information which can be used for corrections planning -- a step beyond the descriptive data presented in Consultants' Inventory Report on Alternatives to Incarceration (March, 1978).

Consultants' profile study found proportions of security classifications somewhat different than current CDC classification proportions. In particular, the number of prisoners deemed eligible for minimum security settings is higher in this profile than current CDC placements in that classification.

An analysis of CDC classification procedures will be presented in Chapter 9 of this report. The present exercise should not be seen as a full classification system, but rather as a rough approximation for determining minimum security status. However, Consultants will suggest in Chapter 9 that there are several elements of the current classification system which lead to overclassification; that is, classification at levels of security higher than are really necessary, even under very conservative "risk" levels.

In the profile analysis presented here, Consultants focused particularly on classification issues related to the construction proposals set forth by the Department of Corrections. Consultants sought to analyze two facets of the prisoner population: those who would, under various criteria, seem to require incarceration within a state prison, and those who, because they would not require such incarceration, would be eligible for alternate modes of incarceration. The first group is termed the "high security" population, and corresponds approximately to medium and maximum security settings as the terms are used by the CDC. In determining the other group, various criteria were applied for designating prisoners as eligible for minimum security settings -- that is, modes of custody in which supervision and other forms of control could be applied, but in which the use of physical barriers was not an essential element of control for community protection.

PRISONER PROFILE RESEARCH STUDY

After developing a profile of prisoners being committed to the CDC, Consultants undertook a classification exercise to determine how many prisoners

would be good candidates for minimum security custody, due either to punishment or risk variables.

Two general methods were used: one employed a "past actions" set of assumptions, the other a base expectancy approach. Several variations of each approach were developed. The "past actions" method refers simply to past behavior or offenses, and applies the concept that persons convicted of certain types of crimes should be "locked up" in a prison. The base expectancy approach screens offenders according to the degree of risk of recidivism they would be predicted to pose if placed in the community. Prediction is based on a number of factors related to recidivism; for example, education, employment, age, and juvenile criminal history.

Design

An inmate data information sheet was devised (Appendix C.1) to include sociodemographic factors, as well as data regarding current offense, prior record, and institutional history. Information was sought which would predict success in alternate modes of incarceration; such information was available from a prisoner's central file. This data -- most of which could be obtained from an inmate's "Cumulative Summary" -- was comparable to that used in other studies of this nature.

Sample

The sample was drawn from all men officially committed to California Department of Corrections -- excluding 90-day observation cases -- and in custody at either the Northern (California Medical Facility - Vacaville) or Southern (California Institution for Men - Chino) Reception Centers. A sample of 108 was randomly taken (selecting every third case from the files) from Vacaville on April 5th through April 7th, 1978. Similarly, a random sample of 238 was obtained at Chino -- April 17th through April 21st, 1978.

From a sample of this size, and with the entire California Department of Corrections intake having the same probability of being a test case, inferences regarding prisoners coming into the state correctional system can definitely be made with significant levels of confidence. The belief that this is a representative sample of intake is given further credence

when the data is compared to the Department of Corrections profile information for felons received from court. This comparison indicates the similarities of distributions with respect to offense groups, age, ethnicity, and prior commitment records. (See Appendix C.2, Tables 1-4).

On April 13th and April 14th, 1978, a sample of 89 women was randomly drawn from the entire population at the California Institution for Women. Thus, this sample represents women currently in the California Corrections system, as opposed to intake only. It must be remembered that the sample of men is drawn from intake and may not therefore be totally representative of the incarcerated population. The adjustment of the intake to ADP population profiles is addressed in Chapter 3. The representativeness of the sample of women is again supported by a comparison with the Department of Corrections profile data. (See Appendix C.3, Tables 1-4. Table 1, for example, indicates that the distribution of offense groups in Consultants' sample is very similar to the last set of figures given by the Department of Corrections.)

Method

Classification decisions can be made by a variety of instruments. This study uses a number of different techniques, yet two general approaches or methods were followed. The first method entailed dividing all offenders into two groups: Group A, those eligible for minimum security placement, and Group B, those not meeting the criteria for such placement. This method is based on a straightforward "past actions" or punishment approach. Inmates who have engaged in what many would regard as very serious crimes or misconduct, measured by convictions and escape histories, are excluded from eligibility. The percentages of inmates eligible for non-prison placement vary according to the criteria selected. The following diagrams illustrate how this method can be applied to the present sample.

METHOD 1 - ELIGIBILITY FOR MINIMUM SECURITY CUSTODY BASED ON ACTUAL BEHAVIOR
 (Sample Size: 346 men [drawn from intake] ; 89 women [drawn from average daily population]).

VARIATION A: ELIGIBILITY FOR MINIMUM SECURITY CUSTODY

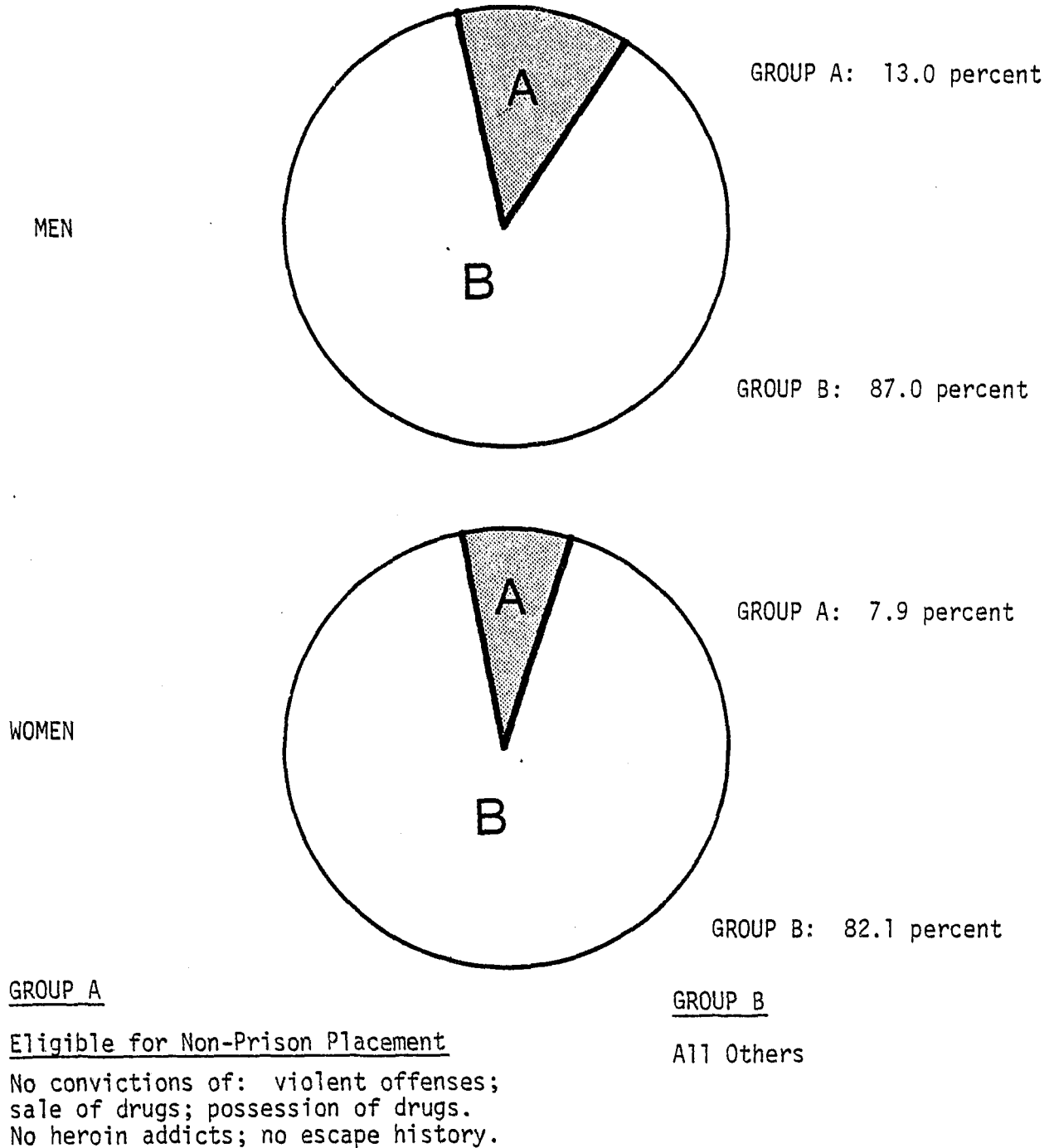


FIGURE 2.1

VARIATION B: ELIGIBILITY FOR MINIMUM SECURITY CUSTODY

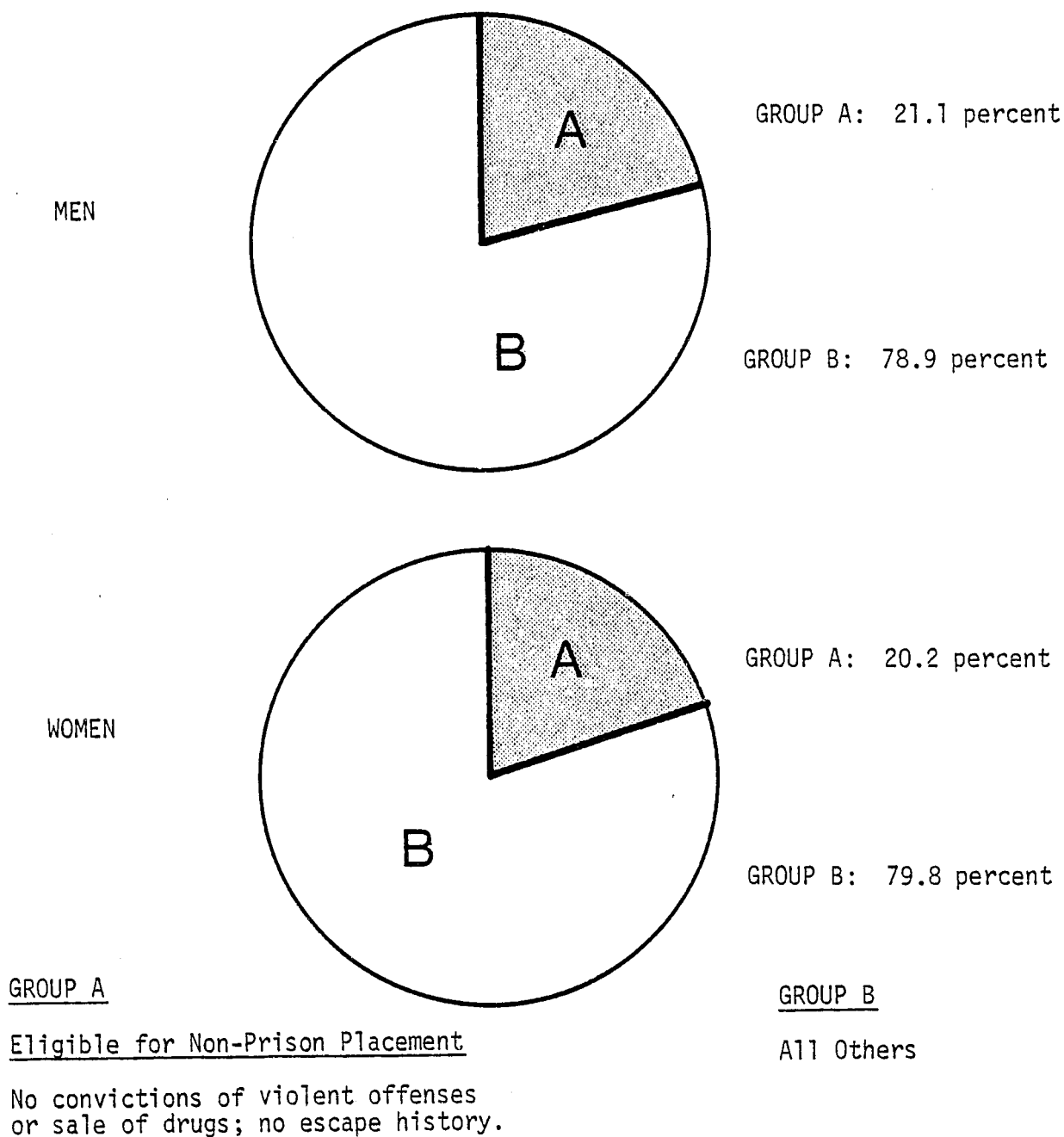
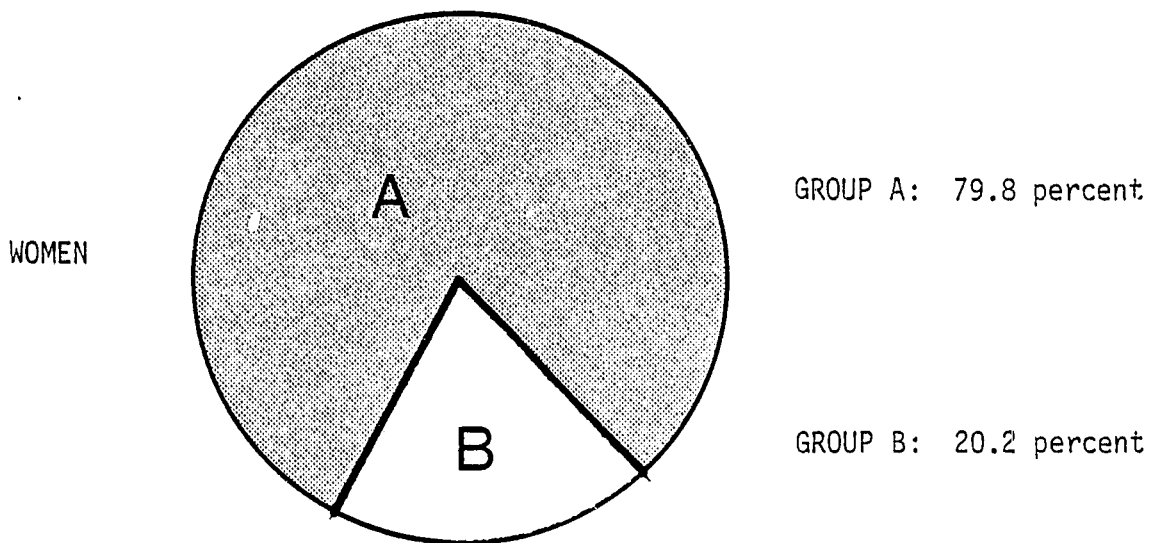
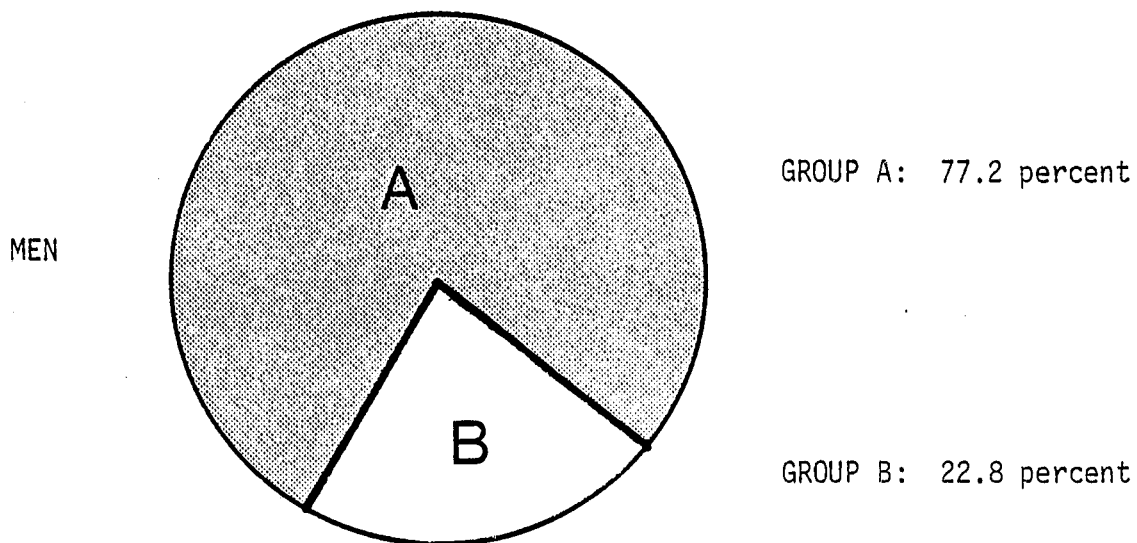


FIGURE 2.2

VARIATION C: ELIGIBILITY FOR MINIMUM SECURITY CUSTODY

GROUP AEligible for Non-Prison Placement

Less than two convictions of violent offenses.

GROUP BTwo or more convictions
of violent offenses.FIGURE 2.3

The most conservative estimate -- Figure 2.1 -- eliminates any offender convicted of a violent crime (including, for purposes of this study, all robberies) or convicted of sale or possession of drugs. Furthermore, prisoners are excluded if they are drug addicts or have an escape history. (For a listing of offenses considered violent, see Appendix C.4.) The other extreme -- Variation C -- only excluded from eligibility for minimum security placement prisoners with two or more convictions of violent offenses. This is the type of classification endorsed by the National Council on Crime and Delinquency, based on that organization's philosophy that only repeat violent offenders need to be incarcerated. This approach, which would place close to 80 percent of the present prison population in "community alternatives," is considered by Consultants as too drastic for California at this time, and in consideration of public preference, is not used in any of Consultants' planning applications of the profile. However, the technique can be useful in the sense that it screens out those prisoners for whom minimum security placement is most unacceptable.

Figure 2.2 represents a moderate version of assignment to minimum security custody based on no convictions of any violent offense, no conviction of drug sales, and no escape history. This approach appears reasonable in that it screens out those convicted of crimes best described as repugnant to society. The results of Figure 2.3 indicate that approximately one-fifth of the male intake population and one-fifth of the women currently in the California Institution for Women could be in minimum security custody.

This method of classifying eligibility for minimum security programs by actual prior behavior clearly ignores some predictive factors related to success in such settings; on the other hand, there is some justification in placement of prisoners only on the basis of their past behavior. As an initial screening tool, all the variations of this method indicate that many prisoners currently in the system could be placed in minimum security programs.

The second method for analyzing the data -- the base expectancy approach -- takes into account many variables related to recidivism (as indicated by parole prediction studies) and risk for placement in minimum security programs. A raw score is assigned to each prisoner, points are cumulatively added if favorable predictive variables are not present. The more points a prisoner receives, the higher is the risk of placing him or her in a minimum security setting. The development of the scoring method takes into account factors related to predicting success: older age at time of arrest, marriage, employed at time of arrest, education above the tenth grade, non-violent commitment offense, older age at first commitment, no escape history, no delinquency history, no extensive alcohol or drug use, etc. Thus, procedures used by such researchers as Mannheim and

Wilkins, and Gottfredson and Bonds, are followed; yet the specific weighting and coding of items have been specifically formulated for this study.* (See Appendix C.5 for a summary of Consultants' Base Expectancy Scoring System and Coding Schedule.)

Base expectancy scores do correlate with success on parole. Consultants are confident that this method is equally applicable to prediction of success in minimum security settings (in the sense of not escaping and then committing further crimes). The validity of this prediction method has been tested in numerous studies; base expectancy scores are presently being used to determine eligibility for a variety of minimum security programs -- from pretrial release to work furlough.

Base expectancy scores predict propensity for recidivism (e.g., future criminal behavior). Recidivism with respect to violence is difficult to predict. Yet, Consultants have used a base expectancy approach because it can be used as a conservative screening technique for minimum security placement. In essence, the method overpredicts. A proportion of prisoners will remain in prison settings, even though they would commit no further violent acts if released. In a recent paper by John Monahan, studies predicting violence are reviewed. The summary is stated as follows:

"The conclusion to emerge most strikingly from these studies is the great degree to which violence is overpredicted. Of those predicted to be dangerous, between 54 and 99 percent are false positives -- people who will not, in fact, be found to have committed a dangerous act. Violence, it would appear, is vastly overpredicted, whether simple behavioral indicators or sophisticated multivariate analyses are employed, and whether psychological tests or thorough psychiatric examinations are performed."**

The validity of Consultants' particular research application of the base expectancy method could only be fully tested if it were applied in practice, comparing scores and performance. However, Consultants are confident that the correlations will be high, in part because of the caution in the method and the criteria applied.

*H. Mannheim and L. Wilkins, Prediction Methods in Relation to Borstal Training (London: Her Majesty's Stationery Office, 1955). D.M. Gottfredson and J.A. Bonds, A Manual for Intake Base Expectancy Scoring, Form CDC-BE-61A, (Sacramento, Ca.: Research Division, California Department of Corrections, April, 1961).

**John Monahan, "The Prediction of Violent Criminal Behavior: A Methodological Critique and Prospectus," reprinted from Deterrence and Incapacitation: Estimating the Effects of Criminal Sanctions on Crime Rates (Washington, D.C.: National Academy of Sciences, 1978), p. 250.

Table 2.1 shows the breakdown of base expectancy raw scores for both men and women. One of the advantages of the base expectancy technique is that policy-makers can set the cutoff point for eligibility for minimum security custody at whatever risk level they desire. A very conservative screening process could be achieved, for example, by setting the cut-off scores below 20, with any prisoner receiving a score higher than that deemed ineligible. The percentage of men with scores below 20 was 15.9, for women it was 21.0. (See Figures 2.4 and 2.5.) There were 55 male prisoners in this group, characterized as follows:

1. 75 percent of the men had no prior delinquency histories. Of those who had juvenile records, over 50 percent were non-felony offenses.
2. The median age for the group was 28.
3. The majority had no prior convictions of violence (98.2 percent). There was only one exception. None in this group had been convicted of two violent offenses.
4. Approximately 75 percent of this group were committed for non-violent offenses. The most common violent offense was robbery (which was classified as a "violent" offense for this study).
5. The majority had no prior prison commitment (60 percent) or jail time only (36.3 percent). There were only two exceptions.

There were many prisoners with scores between 20 and 24, who are also very good risks for minimum security custody. In Variation E, the cut-off point is set at scores below 25. The percentage of men with scores below 25 was 34.7, for women it was 48.3. (Again see Figures 2.4 and 2.5.) Looking more closely at the characteristics of inmates with base expectancy scores between 20 and 24, there were 65 male inmates in this category, characterized as follows:

1. Typically this group had prior delinquency histories; the nature of the juvenile offenses varied in severity from runaway and incorrigible status offenses to felonies.
2. The median age for the group was 26.
3. The majority had no prior convictions of violence (92.3 percent). There were only five exceptions. None in the group had been convicted of two violent offenses.
4. Approximately two-thirds of this group were committed for non-violent offenses. The most common violent offense was robbery.

TABLE 2.1
BASE EXPECTANCY SCORES

Raw Score	Men		Women	
	Total Number	% in Category	Total Number	% in Category
0-4	0	0	0	0
5-9	9	2.6	4	4.5
10-14	22	6.4	6	6.7
15-19	24	6.9	7	7.9
20-24	65	18.8	26	29.2
25-29	50	14.5	18	20.2
30-34	56	16.2	12	13.5
35-39	53	15.3	10	11.2
40-44	35	10.1	4	4.5
45-49	19	5.5	2	2.2
50-54	7	2.0	0	
55-59	5	1.4	0	
60-65	1	.3	0	
TOTALS	346	100.0%	89	99.9%

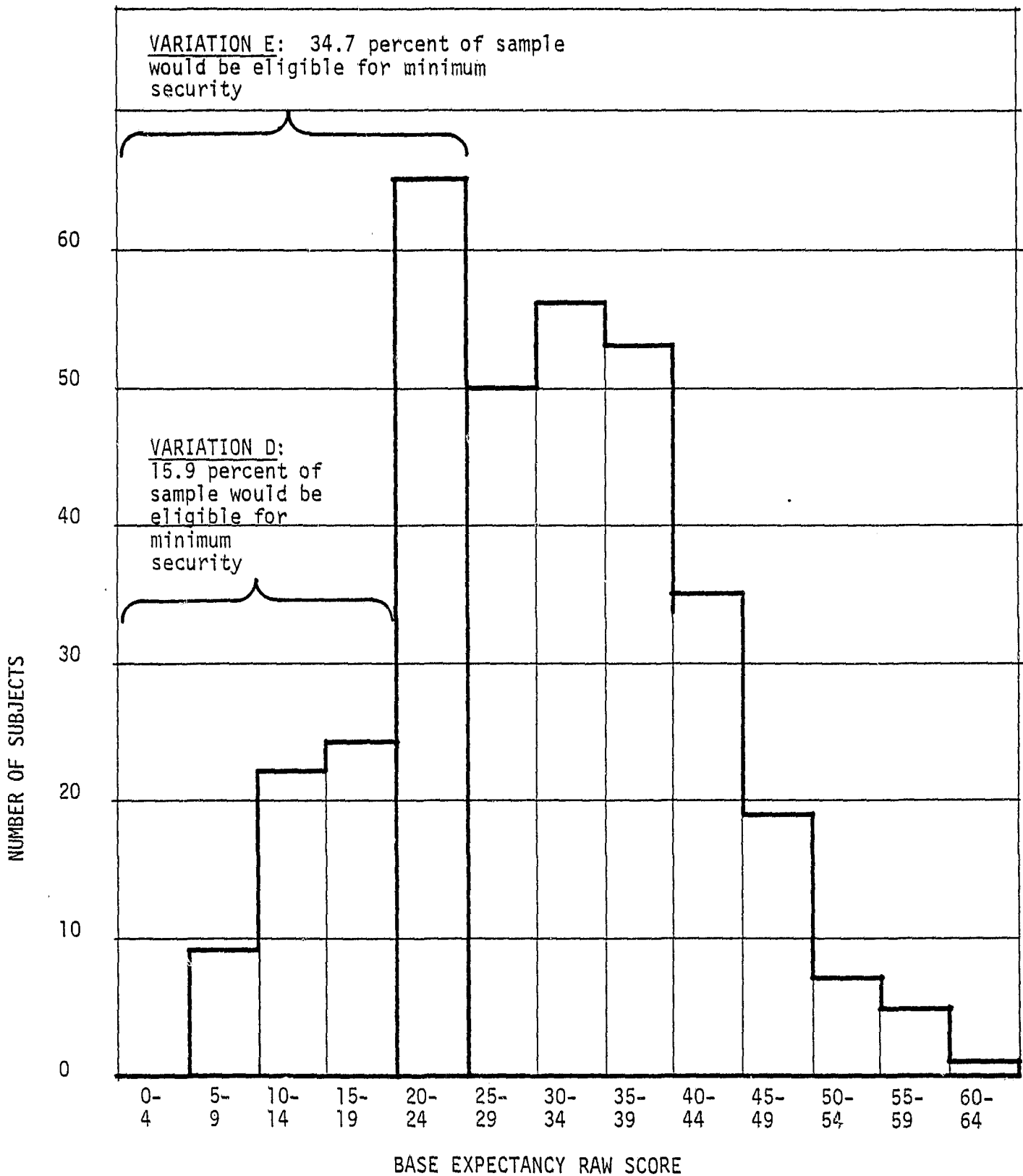


FIGURE 2.4

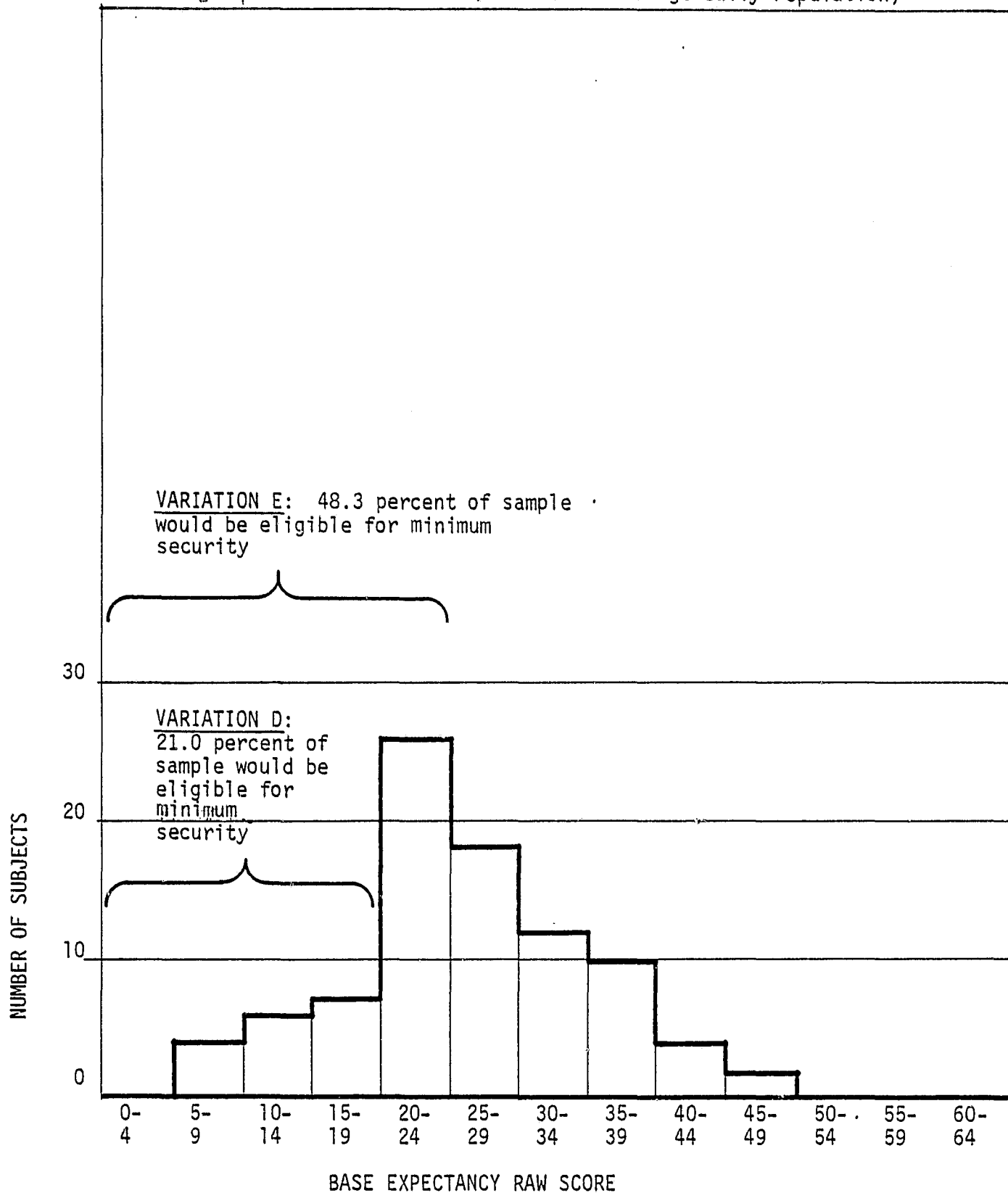


FIGURE 2.5

5. The majority of the group had either no prior prison commitment (48.3 percent) or county jail time only (40.9 percent). There were seven exceptions.

Consultants believe that setting the cutoff point at a score of 20, in effect, over-controls under the criteria of public protection. In the study sample, a large proportion of the 65 men with scores between 20 and 24 would have been incarcerated in prison without reasonable justification in terms of public protection.

The base expectancy scoring method can also be used to determine what proportion of the current prisoner population would require placement in medium or maximum security custody (that is, at a minimum, physically secure perimeter) settings. On the criteria of public protection, these prisoners are inappropriate for minimum security custody. Prisoners with scores of 40 or over are representative of this group. There are 66 male inmates in this category. The following characteristics of this group are considerably different from those described for the minimum security placement groups.

1. 95 percent of the group had prior delinquency records; of those who had juvenile records, 76 percent were felony offenses.

2. The median age for the group was 32.

3. The majority (71.6 percent) had prior convictions of violence; 70.8 percent of this group had prior convictions of two or more violent offenses.

4. Approximately one-half of the group were committed for violent offenses. The major violent offenses were robbery (30.3 percent), rape (24.2 percent), murder or manslaughter (15.2 percent), and assault (15.2 percent).

5. 75 percent of the group had prior prison commitments; all but six (12 percent) of these prisoners had been in prison at least twice.

Based on the cutoff point of scores 40 or over, 19.4 percent of the men, and 6.7 percent of the women would fall into this high-risk category. (See Variation 1 on Figures 2.6 and 2.7.) Moving the cutoff point to scores of 35 or over (Variation 2 on Figures 2.6 and 2.7), would place 34.7 percent of the men, and 18.0 percent of the women in the high-risk category.

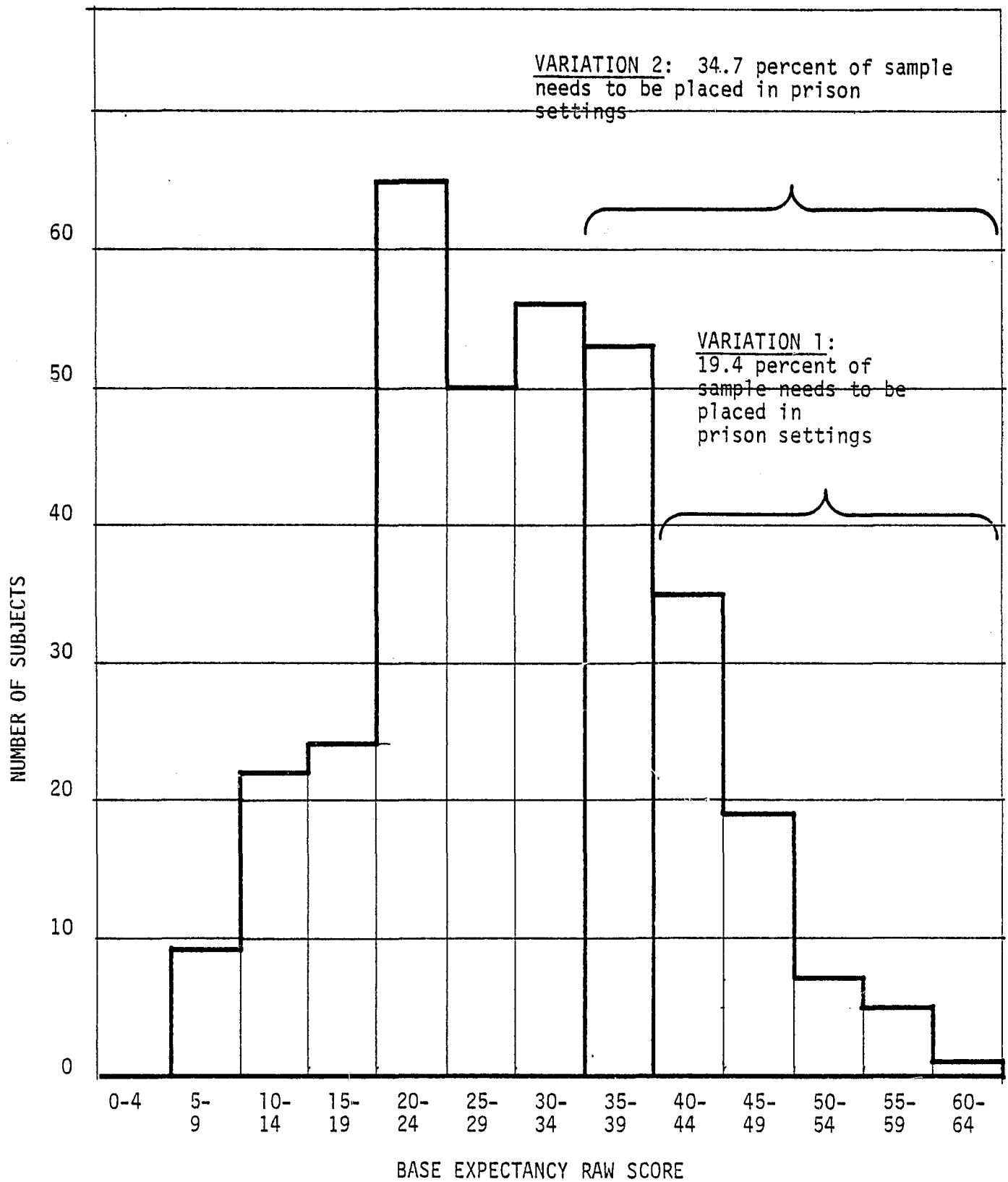


FIGURE 2.6

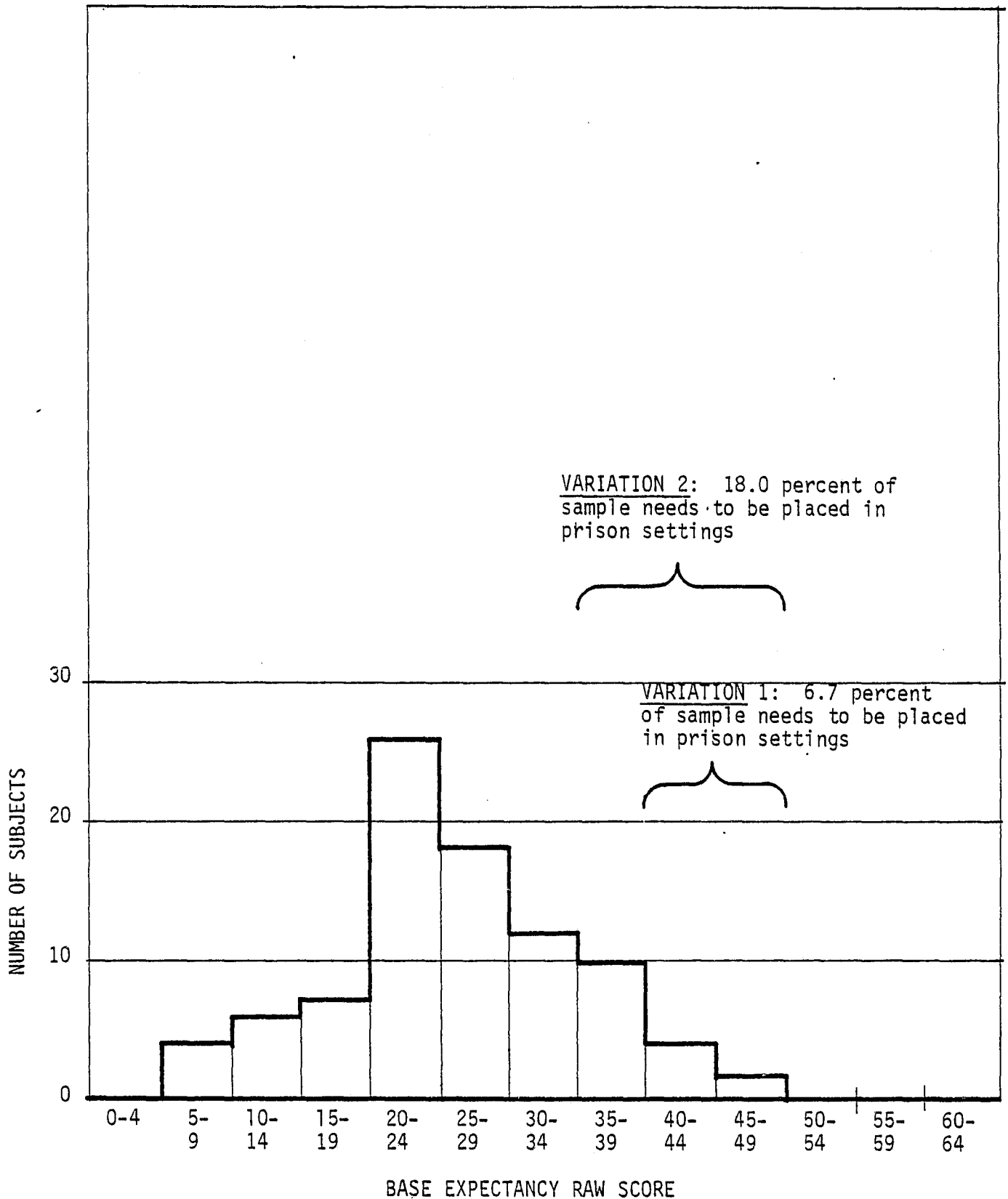


FIGURE 2.7

SUMMARY

Screening and classification decisions regarding both the placement of prisoners in minimum security custody and the determination of which prisoners require incarceration in prisons can be made in a variety of ways. Two such methods, along with a number of variations, have been examined in this study. A summary of the findings of the various approaches is found in Tables 2.2 and 2.3.

Consultants do not recommend that any specific procedure used here should be followed, although the implications of this study regarding current CDC classification procedures are discussed in Chapters 3 and 11 of this report.*

From Consultants* prisoner profile research study, the conclusion is drawn that even the most conservative, and hence restrictive, techniques indicate that there are many inmates currently in the system who could be placed in minimum security options. The most conservative estimates for the male intake population are 13 percent and 15.9 percent. Yet, the Department of Corrections assigned only 9.2 percent of our sample to the minimum custody level.

*Chapters 3 and 11, Variation A, will be identified as a new classification level -- "low-minimum security."

TABLE 2.2
ELIGIBILITY FOR NON-PRISON PROGRAMS*

Method 1 - Actual Behavior

Eligibility Screening Criteria	% Eligible for Non-Prison Programs*	
	Men (346)	Women (89)
<u>Variation A</u> No convictions of violent offenses No convictions of sale of drugs No convictions of possession of drugs No heroin addicts No escape history	13.0%	7.9%
<u>Variation B</u> No convictions of violent offenses No convictions of sale of drugs No escape history	21.1%	20.2%
<u>Variation C</u> Less than 2 convictions of violent offenses	77.2%	79.8%

Method 2 - Base Expectancy

<u>Variation D</u> Raw scores below 20	15.9%	21.0%
<u>Variation E</u> Raw scores below 25	34.7%	48.3%

*The sample of men was drawn from intake; the sample of women was drawn from average daily population.

TABLE 2.3
HIGH RISKS FOR NON-PRISON PROGRAMS*

Method 1 - Actual Behavior

Eligibility Screening Criteria	% Inappropriate for Non-Prison Custody	
	Men (346)	Women (89)
<u>Variation 1</u>		
Convicted of two or more violent offenses	22.8%	20.2%

Method 2 - Base Expectancy

<u>Variation 1</u>		
Raw scores 40 or above	19.4%	6.7%
<u>Variation 2</u>		
Raw scores 35 or above	34.7%	18.0%

*The sample of men was drawn from intake; the sample of women was drawn from average daily population.

CHAPTER 3

IMPLICATIONS FOR FUTURE HOUSING REQUIREMENTS

INTRODUCTION

In the Introduction to Chapter 2, it was noted that prisoner profile information can be employed to refine gross population projections, in order to evaluate the proportionate need for prison housing of various custody levels. The Department of Corrections' Program Planning Report contains a series of discussions about this issue. Medium and maximum security spaces are regarded as needed, both to accommodate increasing proportions of violent or unruly prisoners and to provide more flexibility in the separation or placement of prisoners, particularly those creating management problems. On the other hand, the Department believes that there is currently a surplus of minimum security housing.*

In this chapter, Consultants review the implications of the population projections presented in Chapter 1 regarding total prison space needs and then examine, in particular, the need or potential for minimum security housing, based on the findings of the prisoner profile in Chapter 2. Additional analysis of housing for maximum security is contained in Chapter 9.**

To summarize the findings presented in this chapter:

Consultants think current housing capacities in the prison system are adequate to meet even the worst case projections of prison populations through 1983. However, Consultants also conclude that the prison system may be facing a shortage of minimum security housing. Applying Consultants'

*California Department of Corrections, Program Planning Report for 1978-79 Fiscal Year, Vol. II: Program Analysis and Recommendations (Sacramento, Calif., April 1, 1978), p. 76. The "minimum security" discussion in the CDC report notes that the surplus of minimum security housing results, in part, from the fact that many minimum security prisoners are housed in medium and maximum security prison areas, in which they are assigned particular work.

**It is particularly difficult to estimate statistically the need for maximum security housing, because this housing is primarily for disciplinary or protective custody purposes, and thus reflects management policies as much as it does trends in the prisoner population.

prisoner profile results to the present population, and allowing for additional minimum security housing to accommodate specifically pre-release programming, as many as 5,900 minimum security beds will be needed for male and female felons by 1983 -- almost 2,000 more than are presently available.*

POPULATION PROJECTIONS AND TOTAL SYSTEM CAPACITY**

As indicated in Figure 3.1, present prison capacity will be adequate to accommodate the aggregate number of prisoners anticipated under Consultants' population projections through 1983. Table 3.1 shows the anticipated effects of population projections on current housing capacity by security level, using Department of Corrections custody classifications for prisoners.

Table 3.1 demonstrates that the present prison capacity (for felons) is operating at approximately 80 percent of capacity. The only custody level for which there are currently as many prisoners as beds is minimum security custody. Assuming a uniform 14 percent*** increase in prisoners in each custody classification, there would continue to be excess capacity in medium and maximum security housing through 1983, but a 13 percent deficit in minimum security housing.

Based on the prisoner profile, Consultants think that more prisoners could be classified minimum security than are now so classified by the CDC; if this were done, the result would be that the excess space in male felon medium security housing will be greater than indicated in Table 3.1, and the shortage of male felon minimum security beds would be significantly more than the 600 indicated in Table 3.1

*It must be stressed that there is flexibility in the security rating of CDC beds. Table 3.1 shows current designations, but some beds could be designated differently. For example, Susanville was intended as a minimum security prison, but under current policies, there are a number of "medium security" beds there.

**A more detailed review of present prison facilities and their capacities is contained in Volume V of Consultants' Final Report.

***The 14 percent increase is based on Consultants' worst case projection, which shows a 14 percent increase overall by 1983. It must be reiterated that these computations are intended as rough approximations only.

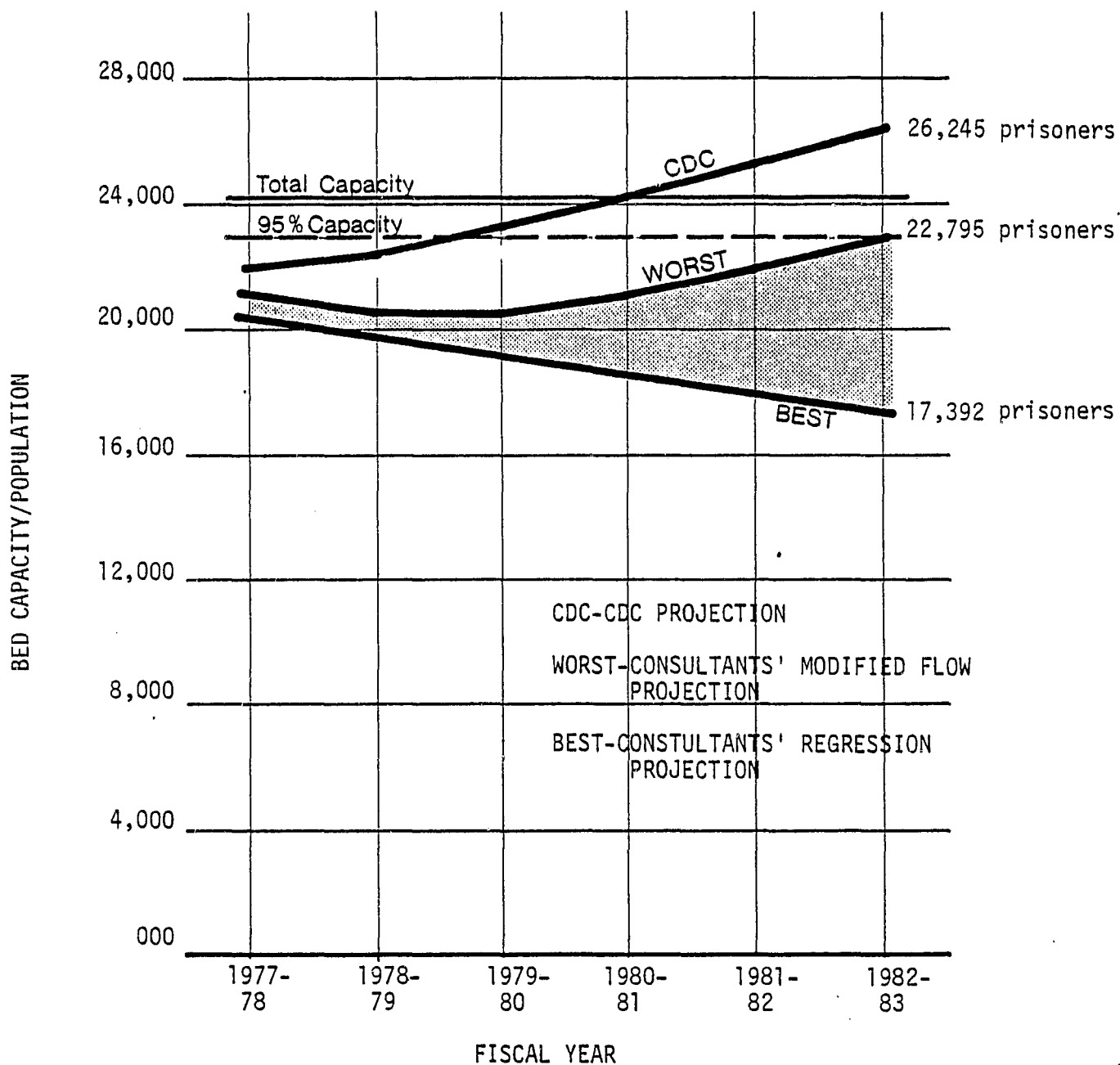


FIGURE 3.1

PROJECTIONS AND CURRENT PRISON CAPACITY

TABLE 3.1

A COMPARISON OF CDC HOUSING SECURITY RATING AND PRISONER CUSTODY
CLASSIFICATIONS WITH 1983 PROJECTIONS OF INMATE POPULATION

Custody Level	Current Bed Capacity (male felons)*	Prisoner Custody Classification (9/30/77)**	1983 Prisoners Classification Consultants' Worst Case	Numbers of Beds Available
maximum	2,081 (10.0%)	1,615 (9.5%)	1,844	237 beds
medium	14,779 (70.6%)	11,257*** (66.5%)	12,912	1,867
minimum	4,065 (19.4%)	4,057 (24.0%)	4,660	(595)
Total	20,925****	16,929	19,416	1,509 beds

*Bed Capacity security classifications are based on current use of housing units in the ten major prisons for male felons as reported in CDC survey dated October 15, 1977.

**Classification of male felon prisoners reported in CDC Quarterly Management Review, September 30, 1977.

***"Close" and "other" categories have been included as medium custody prisoners, see Table 3, p. 10 of Consultants' Inventory Report, Facilities.

**** The capacity of 20,925 beds for male felons includes 78 minimum security beds for male felons located at the California Rehabilitation Center.

MINIMUM SECURITY HOUSING

Methodology: Computations of Capacity Requirements from Profile Data

As indicated in Chapter 2, the proportions of males committed to the Department of Corrections custody who should be considered eligible for minimum security settings ranged, under various sets of assumptions about eligibility, from 13 percent to 35 percent. (One set of criteria, which resulted in 77 percent of male commitments being eligible for minimum security custody, was excluded from further consideration because it appeared excessively lax as a screening mechanism.) Among women, the comparable proportions ranged from approximately 8 to 48 percent.

In order to estimate the housing implications of these profile findings, however, it is necessary to adjust intake or commitment proportions to reflect actual proportions among imprisoned offenders. Because of different sentence lengths, the prison populations at any given time will, presumably, have a higher proportion of prisoners committed for serious offenses or with lengthy records of prior convictions than will the intake population.*

Consultants devised a solution for translating intake into prison population proportions; it was assumed that the difference in proportions of intake and prison populations eligible for minimum security placement would correspond with the difference in selected profile characteristics -- specifically, age and number of prior commitments -- between the two groups.

The following data, obtained from the Management Information Section of the CDC, formed the basis for the adjustment formula:

<u>Profile Characteristic</u>	<u>Intake</u>	<u>Male Prisoner</u>	<u>Pop. as % Intake</u>
Age 18 through 24	42.1%	23.5%	55.8%
No prior convictions	19.1%	15.4%	80.6%

*For example, one prisoner with a four-year term requires as much "space" as two prisoners with two-year terms, because of the more rapid "turnover" among the latter category.

If the population/intake percentages for age and prior record variables are averaged, the adjustment factor is 68.2 percent. That is, the proportion of prison population eligible for minimum security will be 68.2 percent of the proportion so eligible among the intake population. For example, if 4,000 prisoners meet the criteria for minimum security based on an intake sample, when the criteria are applied to the prison population, the figure will be 68.2 percent of 4,000, or 2,728 prisoners.

No comparable adjustments are required for the sample of women, because the sample was drawn from the CIW population, not intake records.

This is, of course, a rough approximation. It must be regarded as a conservative procedure for estimating minimum security eligibility, since many prisoners with violent offenses or with extensive prior records presumably become eligible for minimum security housing after a period of imprisonment. These prisoners are excluded from Consultants' tally, on the grounds that a consistently cautious approach should be used. In any event, the calculation does afford some prudent estimates of the proportions of prisoners who could, under various assumptions, be considered eligible for minimum security placements, beyond what is offered by unsupported generalizations based on aggregate or total population projections.

Table 3.2 presents the numbers of male and female felon populations (excluding civil narcotics addicts and "other" prisoners) deemed eligible for minimum security custody when adjusted proportions are applied to 1983 projections. Under extremely restrictive criteria, approximately 10 percent of the male felon prison population would be eligible for minimum security custody; under less restrictive, but still prudent criteria, between 15 and 25 percent of men and as many as 50 percent of women could be considered eligible for minimum security placements.

Pre-Release Populations

Chapter 11 discusses the desirability of pre-release or re-entry programming in minimum security settings for all prisoners. The recommendation is presented there that at least three months of such programming, in a minimum security, decentralized setting, be provided for most

TABLE 3.2

FUTURE POPULATIONS CONTINGENCY TABLE -- MINIMUM SECURITY ASSIGNMENTS

Eligibility Assumptions	Male Felons		Female Felons	
	1983 Best Case (14,578)	1983 Worst Case (18,843)	1983 Best Case (544)	1983 Worst Case (851)
<u>I. "PAST ACTIONS" METHOD</u>				
<u>Variation A</u> (Exclusions: Prior conviction for violent offense, or sale or possession of drugs; prior heroin addiction; prior escape history) Men: $13.0\% \times 68.2\% = 8.9\%$ Women: 7.9%	1,297	1,677	43	67
<u>Variation B</u> (Exclusions: Prior violent offenses or sale of drugs; prior escape history) Men: $21.1\% \times 68.2\% = 14.4\%$ Women: 20.2%	2,099	2,713	110	172
<u>Variation C</u> (Exclusions: 2 or more convictions for violent offenses) Men: $77.7\% \times 68.2\% = 53\%$ Women: 79.8%	7,726	9,987	434	679
<u>II. BASE EXPECTANCY METHOD</u>				
<u>Variation D</u> (Raw scores below 20) Men: $15.9\% \times 68.2\% = 10.8\%$ Women: 21.0%	1,574	2,035	114	179
<u>Variation E</u> (Raw scores below 25) Men: $34.7\% \times 68.2\% = 23.7\%$ Women: 48.3%	3,455	4,466	263	411

prisoners.* To adjust the minimum security housing requirements to reflect this pre-release component, the following logic was employed.

As discussed in Chapter 1, the average length of stay anticipated for prisoners committed to CDC under determinate sentencing is 28.7 months for men and 25.1 months for women. Using these estimates as a basis, a three-month placement in pre-release settings would constitute approximately 10.5 percent of men's average term of imprisonment and 12 percent of women's. Since the profile data are based on the assumption that the "minimum security" prisoners identified would serve their entire term in minimum security settings, they were not included in the pre-release calculation. The resulting number of prisoners indicates those theoretically placed in minimum security settings for pre-release activities; this number would be added to the previously determined minimum security population to derive the total minimum security placements. Put in "formula" format, the procedure is as follows:

1. 10.5 percent male felon population minus population classified in profile as minimum security = male pre-release placements;
2. Profile population classified as minimum security plus pre-release placements = total minimum security placements for male felons.

Table 3.3 summarizes the results of this procedure when applied to 1983 projection ranges.

Minimum Security Housing Requirements

The preceding calculations must obviously be regarded as very rough and conservative approximations of the numbers of prisoners who are eligible for minimum security placements or housing. However, the analysis is sufficient to underline the need for careful planning regarding housing requirements for various security levels.

*As discussed in Chapter 11, it would be unrealistic to assume that all prisoners could or should be placed in pre-release settings. It is also noted in that discussion, however, that many and perhaps most prisoners should receive more than the minimum three-month program. Therefore, it is assumed for the purposes of the rough planning estimates presented here that the two factors balance out, and that a three-month pre-release placement in minimum security will be the average placement.

TABLE 3.3
FUTURE POPULATIONS CONTINGENCY
MINIMUM SECURITY PLACEMENTS
(CLASSIFICATION ASSIGNMENTS PLUS PRE-RELEASE)

Eligibility Assumptions	Male Felons		Female Felons	
	1983 Best Case (14,578)	1983 Worst Case (18,843)	1983 Best Case (544)	1983 Worst Case (851)
<u>I. "PAST ACTIONS" METHOD</u>				
Variation A (Exclusions: Prior conviction for violent offense, or sale or possession of drugs; prior heroin addiction; prior escape history)	Classification: 1,297 (Pre-release: 1,395) Total: 2,692	1,677 1,802 3,479	43 53 96	67 82 149
Variation B (Exclusions: Prior violent offenses or sale of drugs; prior escape history)	2,099 1,310 3,409	2,713 1,694 4,407	110 46 156	172 71 243
Variation C (Exclusions: 2 or more convictions for violent offenses)	8,557 632 9,189	11,061 817 11,878	434 12 446	679 18 697
<u>II. BASE EXPECTANCY METHOD</u>				
Variation D (Raw scores below 20)	1,574 1,365 2,939	2,035 1,765 3,800	114 45 159	179 71 250
Variation E (Raw scores below 25)	3,455 1,168 4,623	4,466 1,510 5,976	263 30 293	411 46 457

At present, approximately 20 percent of CDC's total male felon housing (or 4,000 beds) is characterized as "minimum security"; about 24 percent of the prison population is currently so classified by the CDC. Actions based on the analysis of the profile information presented in Chapter 2 would place at least 25 percent of men (and a higher percentage of women) in the minimum security category; when additional minimum security capacity for pre-release activities is included, at least 30 percent of CDC housing should be dedicated to minimum security placements. Under the worst case projections for 1983, this would mean that 5,976 minimum security beds for male felons would be required, an increase of 1,900 minimum security beds.

SUMMARY

Even with the restrictive conditions set throughout Consultants' translation of profile results into housing consequences, the profile and resulting housing proportions have significant ramifications for other issues in the prison system. The findings reported here suggest that at least 10 percent of the prison population could be moved from present medium or "mainline" housing to minimum security settings. This reduction in mainline populations would make renovation and rehabilitation of many of the current prisons more feasible (See Volume V of Consultants' Final Report.)

More importantly, the potential for increased placements in minimum security housing raises complex implementation and management issues. Chapter 11 of this report presents Consultants' analysis of the kinds of minimum security housing and programs which could and should be developed, together with an analysis of the relative advantages and disadvantages of minimum versus higher security housing. Chapter 9 discusses the implications of the prisoner profile study and other information regarding the current CDC classification system, which Consultants' believe should be altered in certain respects, to avoid underutilization of minimum security housing.

It should be reiterated that the percentages applied here are rough approximations. They do not, for example, reflect detailed analysis of administrative needs, such as the employment of minimum security (or "trusty" type) prisoners in and around medium and maximum security institutions. However, Consultants' analysis does point out that there are alternative measures for significant numbers of prisoners which can and should be explored prior to expansion of medium and maximum security prisons.

Justice System

SECTION B: CORRECTIONS AND THE CRIMINAL JUSTICE SYSTEM

Section A provided descriptive and analytical data regarding the kinds and number of prisoners committed to CDC custody. The unifying theme in the following chapters is that the flow of prisoners into CDC jurisdiction is contingent upon a number of other criminal justice system variables.

In Chapters 4 and 5, Consultants discuss issues pending before the Legislature, and analyze their potential impact on corrections.

In Chapter 6, Consultants review alternatives to incarceration or imprisonment which do or could affect sentencing patterns in California. Particular attention is given to disparities in sentencing in the State, and to the benefits and costs of incarceration when compared with alternative dispositions of felony offenders.

In Chapter 7, Consultants examine State and county correctional relationships; based on the premise that prudent planning requires a systemwide examination of correctional resources, this chapter reviews the availability of county jail and work furlough programs.

Finally, in Chapter 8, Consultants note the importance of such systemwide perspectives for corrections planning, and propose that certain review and reporting functions be institutionalized, to enable ongoing advice to the Legislature regarding the effectiveness of correctional services in the State and the interrelationship between corrections and other criminal justice functions.

Most of the discussions in Section B are brief; because these issues fall at the "borders" of Consultants' primary task of reviewing the State prison system, the treatments here are intended to be illustrative or exploratory.

CHAPTER 4

PENDING LEGISLATION

INTRODUCTION

A number of new criminal laws are now under consideration by the Legislature; the final form of these laws is as yet undetermined, and the effect on the correctional system is, therefore, uncertain.

In the following discussion, SB 709 is singled out for detailed analysis because of the high current interest in this bill, and because of its obvious potential impact on the corrections system. Other bills, which are at an earlier stage of legislative discussion or which have a lesser potential impact, are described briefly. Chapter 5 following contains a separate discussion of Probation Subsidy and AB 90, which would replace that program.

SB 709

Method

The range of sentencing alternatives for each offense contained in the most current version of SB 709 (as amended April 27, 1978) were assigned a probability of future occurrence. This probability, 10 percent lower, 60 percent middle, and 30 percent upper, was based on data provided by the Community Release Board,* and on the results of a study of present sentencing patterns under the Determinate Sentencing Law (DSL). (The study was conducted by Consultants and described in Chapter 1 of this report.)

The average sentences for each offense obtained in this manner were increased by an enhancement factor, also derived from Consultants' study of

*Preliminary Review of DSL Sentencing, Community Release Board (Sacramento, Calif: Health and Welfare Agency, February, 1978).

DSL sentencing patterns. This process indicated an increase in sentence for the seven major types of offenses shown in Table 4.1, plus a group of miscellaneous offenses with very low commitment rates. Credit for jail time and estimates of good time were subtracted from the sentence length to obtain an estimate of actual time served. The jail credit was the actual figure obtained for each offense in Consultants' DSL sentencing study; earned good time was once again conservatively estimated at 75 percent of total available good time.

For those offenses which have sentence lengths unchanged by SB 709, the estimates of time served obtained in the DSL sentencing study were used.

Finally, an average length of stay for the male felon population was calculated by weighing the time served for each offense by the percentage of that offense in the sample of DSL sentencing cases. The number of women felons in the DSL sample was too small to enable a separate calculation of average length of stay: instead, the proportionate increase obtained for men felons was also applied to women felons.

Results

The end result of this process indicates an increase in the average length of stay for male felons from an estimated 28.7 months under the present DSL (SB 42) to 33.9 months under SB 709, an increase of 18.1 percent. When this percentage increase is applied to the data for women felons, the average length of stay increases from 25.1 months under DSL to 29.6 months under SB 709.

When these increases in average length of stay are inserted into the calculation of input and output for Consultants' worst case projection, an estimate of the impact of SB 709 on institution population is obtained. As seen in Table 4.2, there is no impact on the male felon population until 1982. There are several reasons for this delay: (a) SB 709 would only apply to crimes committed after January 1, 1979; (b) for at least a year after this starting date, the percentage of cases falling under SB 709 will increase very gradually due to the time intervals consumed by the various stages of the legal processes; and (c) even after entering prison, there will be a certain minimum time served under both laws before the longer sentences of SB 709 begin to have an effect on population levels.

For male felons, SB 709 begins to have an effect in 1982, increasing the population by approximately 600 that year and 1,200 the following year.

TABLE 4.1
ESTIMATED SENTENCE LENGTH AND TIME SERVED
FOR OFFENSES AFFECTED BY SB 709

OFFENSE	AVERAGE SENTENCE UNDER DSL	ESTIMATED SENTENCE UNDER SB 709	ESTIMATED JAIL CREDIT	ESTIMATED GOOD TIME	TIME SERVED
MURDER, 2nd	87.5	109.1	4.2	26.2	78.7
MANSLAUGHTER, VOL.	51.0	65.4	3.7	15.4	46.3
RAPE	71.0	96.2	2.9	23.3	70.0
ASSAULT W.D.W.	46.0	60.4	3.1	14.3	43.0
ROBBERY, 1st	61.0	75.4	3.3	18.0	54.1
ROBBERY, 2nd	41.2	55.6	3.1	13.1	39.4
BURGLARY, 1st	50.4	64.8	2.9	15.4	46.5

*All figures in table are expressed in months.

TABLE 4.2
ESTIMATED IMPACT OF SB 709 ON
PROJECTED INSTITUTION POPULATION

YEAR	ORIGINAL WORST CASE PROJECTION	INCREASE IN MALE FELONS	INCREASE IN FEMALE FELONS	REVISED PROJECTION
1978	21,160	0	0	21,160
1979	20,543	0	0	20,543
1980	20,506	0	0	20,506
1981	21,068	0	44	21,112
1982	21,976	619	88	22,683
1983	22,795	1,249	133	24,177

For women felons, the effect will be felt a year earlier, in 1981, with an increase of 44 that year, 88 in 1982, and 133 in 1983.

To determine the effect these potential increases would have on bed capacity requirements, the SB 709 projections must be compared to the bed capacity currently available for male and female felons. Projections of male and female Civil Narcotic Addicts are assumed to be unaffected by SB 709, and therefore would remain the same as those previously projected. Table 4.3 singles out the male and female felon populations, showing Consultants' original worst case forecast and adding the projected increases due to SB 709 for the appropriate years.

The current capacity for male felons (and "Other" category) is 20,925 beds; operating at the recommended 95 percent utilization level, this figure is reduced to 19,879 beds. Comparing this number to the 20,665 male felons projected for 1983 indicates a shortage of 786 beds -- this would be the first year that the population rose above the 95 percent utilization level.

For female felons, the capacity at CIW (884 beds at the 95 percent utilization level) would be exceeded for the first time in 1982, with a shortage of 97 beds. This shortage would increase to 163 beds by 1983.

Consultants have made several recommendations which will modify the effect these increases would have on the system. The first is Consultants' recommendation regarding the development and use of alternative modes of correctional programming (see Chapter 11). If it is assumed that a minimum of 10 percent of the felon population originally projected is transferred out of the prisons to pre-release centers and other forms of local correctional programs, the actual number of male felons utilizing prison bed capacity would be reduced by 1,942 prisoners in 1983. Similarly, there would be a reduction of 91 female prisoners in 1983. This reduction would lower the male felon population in prison to 18,723 in 1983 -- well within the present 95 percent utilization level of 19,879 beds. (There would be a total of 2,200 vacant beds in the ten prisons for male felons.)

The effect of alternative programs would not eliminate the need for increased capacity for female felons; with a 10 percent decrease in prison population due to alternative programming, there would still be a shortage of 8 beds for females in 1982, increasing to 72 beds in 1983.

Without considering the potential effects of alternative correctional programming or Consultants' prison renovation recommendations, the net effect of SB 709 -- based on Consultant's worst case projections as modified in Table 4.3 -- would result in a need for two additional 400-bed prisons for males by 1983. For females, approximately 200 beds would be required;

TABLE 4.3

EFFECT OF SB 709 ON MALE AND FEMALE FELON POPULATIONS PROJECTED
(USING CONSULTANTS' WORST CASE PROJECTIONS)

CATEGORY	1978	1979	1980	1981	1982	1983
Male felon and Other	18,206	17,694	17,615	18,003	18,714	19,416
Additional (SB 709)	--	--	--	--	619	1,249
Total	18,206	17,694	17,615	18,003	19,333	20,665
Female felon and Other	724	724	762	836	893	914
Additional (SB 709)	--	--	--	44	88	133
Total	724	724	762	880	981	1,047

in this case the proposed co-correctional facility located at CIM (Chino) would be sufficient to meet the projected need in 1983.

OTHER PENDING LEGISLATION

Consultants have also reviewed the following pending bills; overall it is estimated that they will effect only relatively small numbers of offenders, and will not effect the major determinants of population flow.

SB 1057

SB 1057 would rewrite the parole provisions to increase parole periods from one to three years for the general prison population, and from three to five years for those sentenced to life terms. It provides for definite periods of six or twelve months confinement on revocation rather than "up to six months," as is currently provided, and increases the maximum total parole period (time on parole and time in custody for parole violation) from eighteen months to four years for non-lifers, and from four to seven years for lifers.

There are now contradictory factors that make it impossible to predict, with any expectation of accuracy, the effect of the parole change brought about by SB 42 and AB 476. These include, on the one hand, a shorter parole period, which may result in fewer revocations. This shorter parole period may, however, also encourage prosecution of a greater proportion of new offenses committed while on parole, in comparison with previous practices, in which prosecutors were frequently content to have the offense treated as a parole violation. To some extent, the same could be said about SB 1057. However, SB 1057 appears to more nearly approximate what occurred under the Indeterminate Sentencing Law (e.g., longer parole periods, with somewhat greater likelihood of revocation).

SB 1840

SB 1840 would provide that any sex crime (violation of PC 261, 286, 288, or 288a) resulting in "great bodily harm" to a child under 14 years of age

is punishable by a life term, to be served consecutively to any other sentence and, on subsequent similar conviction, to life without possibility of parole. There would be too few convictions of this offense to have any appreciable effect on average daily prison population.

SB 1842

SB 1842 would prohibit plea bargaining and dismissals in furtherance of justice, and would require consecutive sentencing as to any felony listed in PC 290, which is the provision for registration of sex offenders. The effects of changes in plea bargaining are impossible to determine. If, indeed, plea bargaining were successfully curtailed, prison commitments would depend on the nature of the adjustments made to respond to changes in prosecution and judicial workloads.

The sentencing procedures would not affect appreciable numbers of offenders in a way which significantly changes current practices under DSL.

AB 2429

Currently, the DSL provides for enhanced sentences for offenders with prior prison terms. AB 2429 would change that to prior felony convictions, so that trial courts could enhance a prison sentence for a prior felony conviction for which the defendant did not serve time in prison. Furthermore, prior conviction of a "wobbler," an offense punishable under the statute by sentence either to prison or to county jail, would be considered a felony conviction, notwithstanding that the judge in the prior proceeding declared it to be a misdemeanor. Both the number of cases affected by this legislation and the frequency with which judges would avail themselves of it are unclear at this point. Consultants think that the "smoothing" effect of judicial sentencing patterns (see Appendix A) would mitigate any major impacts.

AB 2444

AB 2444 provides for a life sentence, and ineligibility for release on parole for ten years, for a person convicted of a felony with force that produced

or was likely to produce great bodily injury, who had at least two separate prior convictions for enumerated violent offenses. Since people with this kind of background are already likely to have their present sentences aggravated and enhanced with violent priors, and are quite likely to receive consecutive sentences and weapons enhancements, most would undoubtedly be incarcerated for ten years under current sentencing provisions. Therefore, this bill is considered to have minimal effect on average daily population.

AB 2475

AB 2475 would extensively revise the DSL. It would increase the tripartite terms for many offenses, would add enhancements, and would make other changes that also appear separately in other pending bills.

Since the Senate counterpart of this bill, SB 709, is analyzed in some detail in this Section, no separate analysis of AB 2475 is undertaken.

AB 2762

AB 2762 would provide for enhanced sentences for prior convictions rather than the current provisions for enhancement for prior prison terms. It would also provide for a consecutive life sentence for conviction of a violent felony, with two or more separate prison terms for violent priors.

No major effects are foreseen from this bill, for reasons similar to those cited in regard to AB 2429.

SB 1715

SB 1715 would prohibit probation for any person convicted of violent or forcible rape, sodomy, or oral copulation, with one similar prior conviction. There are few such cases, and of those which occur, probation is infrequent, suggesting a minimal effect on population.

SUMMARY

It should be stressed that Consultants' estimates are provisional. Regarding many of the preceding measures, major sources of uncertainty exist: whether they will be enacted; if enacted, how their effects will interact with the consequences of other measures, including bills not considered here; how they will be implemented in prosecutorial and judicial practice; etc.

In general, Consultants do not anticipate any major impact of these bills on State prison populations. This conclusion is based on: the limited number of cases fitting the statutory criteria; the overlap between statutes; the greater overall effect of SB 709; and the "smoothing" or "leavening" effect which judges (including many of those interviewed) appear to exercise on new legislation affecting sentencing (see Appendix A).

CHAPTER 5

PROBATION SUBSIDY

Probation subsidy has been in existence in California for over a decade, and after an initial period of considerable acclaim and interest around the country, has been increasingly criticized. Probation subsidy was passed in 1966 with the intention of improving probation services in the counties, and in the hope that improvement would result in reduced prison commitments. During its early years, many attributed the decline in prison populations and the trend, within commitments, to lower proportions of property offenders, to the existence of probation subsidy. However, these conclusions remain open to question; certainly in recent years the effect on adult commitments has waned. In light of renewed Legislative interest in probation subsidy, and in view of the basic questions of state/county criminal justice relationships entailed, Consultants reviewed the history and prospects for the probation subsidy concept in California.

PRESENT LEGISLATION

The Legislature established the Probation Subsidy Program with the purpose of allocating state funds to participating counties for development of adequate special supervision probation services. Prior to the program, these funds would have been used to incarcerate offenders in state institutions, and to provide subsequent parole supervision. Participation by the counties in the program was made voluntary.

The subsidy program uses a statutory formula to determine a participating county's "earnings," based on a county's reduction of adult and juvenile commitments to the State Department of Corrections and the Department of the Youth Authority (CYA). The yardstick by which a county's "earnings" are computed is its past commitment performance over a five-year period, beginning in 1959 and continuing through 1963, or the two years 1962-63, whichever is higher. This five-year or two-year average commitment rate is a constant baseline commitment rate for the county.

The baseline commitment rate is applied annually against the county's population to determine its expected number of commitments. A county is then entitled to subvention if its total commitments for any given year are fewer than its expected number. The amount of subvention is determined by a formula that provides from \$2,080 to \$4,000 per case, with the

amount increasing as the county reduces commitments in relation to its initial rate.

A county's earnings are computed annually, and are paid by the State as reimbursement for expenses incurred. Earnings may be spent over a three-year span. Anyone placed on probation by the juvenile or criminal courts is eligible to be assigned to special supervision units. CYA is charged with administering the Probation Subsidy Program to promote four specific legislative goals: to reduce commitments to state institutions; to encourage a more even administration of justice among counties; to rehabilitate offenders; and to increase the protection of the citizens of the State.*

In order to evaluate the impact of the program, Consultants reviewed available reports, and interviewed several county probation officials, legislative staff, and CDC and CYA personnel. Evaluating the effects of probation subsidy in any detail is difficult, because of the unreliability of the available data. Moreover, those interviewed by Consultants had conflicting opinions regarding the laws' impact, perhaps reflecting differential levels of county participation. Data on the impact of the program is flawed in that the number of juveniles and adults kept out of state correctional institutions cannot accurately be determined. The problem is a methodological one; it is difficult to determine which offenders, and how many, would be sent to institutions if, in fact, probation subsidy did not exist.

However, certain trends appear to be significant enough that basic characterizations of the overall impact of probation subsidy can be made.

The Probation Subsidy Program has reduced the total number of commitments to state correctional facilities in each of the years since its enactment. But, as Table 5.1 shows, the Probation Subsidy Program has clearly worked better for youths than it has for adults. Table 5.1 shows that, in percentage terms, the reduction in adult commitments to state prisons has fallen in every year since 1968-69. By 1976-77, the effect of the Probation Subsidy Program on adult commitments was negligible. This trend can be attributed to at least two factors: (1) the adult crime rate had been rising at least through the first half of the 1970s,** and (2) there is

*California Youth Authority, California's Probation Subsidy Program: A Progress Report to the Legislature, Report No. 4 (Sacramento, California, March, 1977).

**In the calculation of the subsidies to be subvented to counties, a bare commitment rate is determined. This rate is valid only so long as the crime rate does not change.

TABLE 5.1
PROBATION SUBSIDY PROGRAM
COMMITMENT REDUCTION BY DEPARTMENT

Fiscal Year	Decrease in Commitment Total	CYA Decrease	%	CDC Decrease	%
1966-67	1,398	460	32.9	938	67.1
1967-68	2,416	1,194	49.4	1,222	50.6
1968-69	3,319	1,432	43.1	1,887	56.9
1969-70	3,557	1,793	50.4	1,764	49.6
1970-71	4,495	2,542	56.6	1,953	43.4
1971-72	5,266	3,203	60.8	2,063	39.2
1972-73	5,449	3,431	63.0	2,018	37.0
1973-74	5,027	3,302	65.7	1,725	34.3
1974-75	4,868	3,235	66.5	1,633	33.5
1975-76	3,961	2,804	70.8	1,157	29.2
1976-77	2,970	2,898	97.6	72	2.4

Source: California Youth Authority. Provided by Ronald Hayes, Sacramento, California. February, 1978.

increasing pressure in the communities for counties to "get adult offenders off the streets and into prisons."* The reduced subventions to counties because of this trend have reportedly forced probation departments to reduce specialized program alternatives and other program support functions. Some argue that for this reason, between 1975 and 1976 alone, there was a 6 percent reduction in probation cases in California.**

In various reports, the existing Probation Subsidy Program has been criticized on other grounds. The CYA, for instance, is criticized for its failure to change or develop new standards for the Probation Subsidy Program, and for not updating eligibility criteria. Thus, counties can meet the existing standards by simply stating their procedures. As a result, there is no assurance that state subsidy funds are being spent on those persons the program was designed to serve.

In a report to the California Legislature, the Auditor General subjected the Probation Subsidy Program to one further criticism: whereas four goals were specified, only one is being met -- the reduction of commitments.***

AB 90

In response to these and other criticisms, the State Legislature is now considering replacing the Probation Subsidy Program. AB 90, if enacted, would allocate monies to "County Justice System Advisory Groups" on a per capita basis, for use in a wide variety of law and justice programs.

*From interviews with Walter Morse (April 27, 1978) and Lawrence Walker (April 28, 1978), Chiefs of Adult Probation in San Francisco and Alameda Counties, respectively.

**California's Probation Subsidy Program: A Progress Report to the Legislature, op. cit.

***Joint Legislature Audit Committee, Report to the California Legislature on the Probation Subsidy Program, Report 293 (Sacramento, California, March 23, 1977).

Every county in California which committed fewer prisoners to state prisons than they were permitted by quota would be eligible for this payment. The quota for each county would be calculated by the CYA on the basis of average 1973-76 commitment rates. The counties, when applying for the funds, would be able to reduce actual commitment figures by excluding certain kinds of offenders, primarily violent offenders.

The following are noteworthy considerations regarding the proposed bill.

Commitments to the CDC

Although the effects of AB 90 on CDC commitments are difficult to fully anticipate, in view of the discretion given to counties, Consultants think the legislation would have little effect on CDC commitment rates. The bill is written almost exclusively with reference to juvenile offenders, and would -- like probation subsidy -- impact primarily on juvenile commitments to CYA. Since juvenile probation caseloads are typically lower than adult probation caseloads, additional cases could (theoretically) be more easily absorbed in the juvenile area; moreover, it seems likely that public sentiment toward juvenile offenders is less severe than toward adult offenders, with the result that there would be less preference for state commitments of juveniles than for adults.

More generally, the legislation really provides no incentive for counties to minimize the number of offenders sent to state facilities. Counties would need to send only one less person to the CYA or the CDC than allowed by the quota in order to receive their subvention. A county sending 1,000 fewer commitments is rewarded no more than a county sending only one or ten fewer commitments. Indeed, the greater the number of offenders (beyond minimal meeting of the quota) retained at the local level, the greater the "penalty" incurred -- in unreimbursed expenses for local incarceration or supervision. This structure of incentives and penalties led the Legislative Analyst's Office to conclude that AB 90 may well inflate the state prison population relative to present levels.**

*See pages 9-10 of Assembly Bill 90, California Legislature -- 1978-79 Regular Session.

**Interview with William Mosely, California Legislative Analyst (April 28, 1978).

Quota Computations

As with probation subsidy, the new set of quotas will not change over time as characteristics of the population change. Thus, just as with the Probation Subsidy Program, the "allowed" rate of commitments would not reflect changes in the age distributions, in county populations, the composition of crime rates and patterns, and so on. More importantly, perhaps, the quota system under AB 90, like that under Probation Subsidy, may have some effect of penalizing those counties which have in the past been most efficient in developing local alternatives. Given prior low commitment rates, which may reflect prior policies, such counties would have a more difficult time than previously inefficient counties in meeting the quota established.

Such problems are, perhaps, unavoidable in the absence of other standards against which to compare county "performance." It would be possible to imagine -- although difficult to devise -- such standards. "Funding formulas" in other areas of social policy are typically more complex than the AB 90 formula; they involve multiple indicators of performance with indicators of need as well. Funding formulas typically are designed to further specific public policy goals or purposes. The substantive policy purposes of AB 90 are not, in Consultants' view, clear and precise enough to be easily translated into a funding formula. Although the apparent goal is to maintain convicted persons at the local level, there is little specification of how or for whom this is to be done.

Legislative Purposes

The effect of the proposed legislation on correctional and criminal justice effectiveness is difficult to predict. On the one hand, the law appears to encourage local involvement and decision-making regarding the most effective applications of the subvention. While such an approach is intended to make public programs more accountable and responsive to local conditions, it involves trade-offs which must be acknowledged. Unless accompanied by explicit standards and priorities, AB 90 may well tend to have a "more of the same" effect, in which existing distributions of resources are maintained at slightly higher levels, but major departures from existing practice are discouraged. Particularly as subventions are "distributed" to various agencies or groups, potential effects are diffused. According to at least some local officials,* the Probation Subsidy Program,

*Interview with Walter Morse, op. cit.

however flawed, is preferable to AB 90 if the goal is to encourage innovation and risk-taking in local corrections and probation because state funds are channeled through a single agency.

In short, there are a number of legislative purposes which might be served through subventions to the counties. The goals of such subventions could be to reduce commitments to state institutions, to encourage use of local alternatives to incarceration, to encourage use of local jails, to reduce disparities in sentencing, etc. In each case, however, direct regulatory or statutory responses might be more effective than the loosely targeted fiscal incentives currently used.

Whatever the Legislature's choice, it seems highly unlikely that AB 90 as currently written will have an appreciable effect on state prison populations or on adult county correctional practices.

CHAPTER 6

ALTERNATIVES TO INCARCERATION AT SENTENCING

INTRODUCTION

The options available to the courts at sentencing have obvious implications for the numbers and kinds of prisoners committed to the CDC. If judges have viable options to prison, they will, within limits, use these options for offenders who might otherwise have been committed to state prison.

The Department of Corrections' Program Planning Report for 1978-79 Fiscal Year implies that the use of sentencing alternatives to prison is very high in California.* Contrary evidence is found in Consultants' prisoner profile study in which nearly 10 percent of the prisoners studied would, in many jurisdictions, have been placed on probation. Comparison of County Superior Court disposition data also suggests that there is, in fact, significant variation in the use of prison and non-prison options. There is substantial disparity among counties regarding prison commitment rates.**

In short, some individuals are sent to prison who would, in another county, clearly be kept in the community, while others remain free of prison, who would in some counties be incarcerated in prison.

During the past few decades, the growth of community alternatives has been, in part, a development of correctional imagination -- seeking new ways to impose sanctions and protect society, while at the same time avoiding the detriments of incarceration. The purposes of this chapter are to reiterate frequently noted shortcomings of traditional incarceration, and contrast imprisonment to the reintegrative benefits of local alternatives; to discuss the impact of such programs on correctional system costs; and, to describe a number of models which could be further developed in California to keep a greater percentage of prisoners outside of prison settings.

*California Department of Corrections, Program Planning Report for 1978-79 Fiscal Year, Volume II, Program Analysis and Recommendations (Sacramento, California, April, 1978).

**Note from Table 6.1 that the percentage of Superior Court convictions committed to State prison varies from 11 percent in El Dorado to 49 percent in Butte.

TABLE 6.1*

NAME OF COUNTY	PERCENT OF SUPERIOR COURT CONVICTIONS SENTENCED TO STATE PRISON
Alameda	14
Butte	49
Contra Costa	14
El Dorado	11
Humboldt	13
Imperial	22
Kern	33
Los Angeles	14
Marin	16
Merced	13
Monterey	27
Orange	18
Placer	16
Riverside	22
Sacramento	23
San Bernardino	23
San Diego	17
San Francisco	20
San Joaquin	22
San Luis Obispo	47
San Mateo	18
Santa Barbara	23
Santa Cruz	19
Shasta	20
Solano	27
Sonoma	25
Stanislaus	20
Tulare	29
Ventura	15
Yolo	21
Yuba	18

Note: Counties with less than 100 Superior Court convictions are excluded from the table.

*Percentages were computed from data in the "1976 Offender-Based Transaction Statistics (OBTS) in Fifty-Seven California Counties" (Sacramento, California: Bureau of Criminal Statistics, Division of Law Enforcement, Department of Justice, 1977).

These programs are based on the concept that no person should be kept in a more restricted status than his or her punishment or the public's protection dictates and that there are various forms of punishment, other than total incarceration, which can serve valid criminal justice purposes.

PRISONS, CRIME, AND REHABILITATION

It is appropriate to begin a discussion of sentencing alternatives to imprisonment by reviewing findings as to what purposes prisons can, and cannot, effectively accomplish. Prisons obviously meet a basic sentencing objective -- punishment. It is open to doubt, however, whether they serve any other criminal justice purposes as clearly or as well.

Incarceration is often seen as an important element in crime control or prevention. However, the evidence on this point is far from clear. Studies comparing states according to crime rates and incarceration rates demonstrate that there is no correlation between high rates of incarceration and lower crime rates. For example, Florida and Georgia have incarceration rates two to three times higher than Wisconsin, Minnesota, Connecticut, and Iowa, even though the latter states have far lower crime rates.* Conversely, those states making extensive use of alternatives to incarceration are not noticeably different regarding crime rates from states which concentrate resources on prisons.**

While these comparisons may suggest that high incarceration rates are a result of high crime rates, they cast doubt on claims that high incarceration rates in turn reduce crime rates. Given the complexity of the roots of criminal behavior, in fact, it is unlikely that current incarceration policies would have any material affect on crime.

The only realistic, and perhaps logical, relationship between crime prevention and imprisonment occurs through isolation -- that is, the temporary incapacitation of offenders through incarceration. This may, however, be but a short-term gain -- with long-term costs. Although

*John P. Conrad and Milton G. Rector, "Should We Build More Prisons?" (Hackensack, New Jersey: NCCD, 1977).

**William Nagel, "On Behalf of a Moratorium on Prison Construction," reprinted from Crime and Delinquency (Hackensack, New Jersey: NCCD, April, 1977).

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difficult to demonstrate statistically, because of the difficulty of constructing an appropriately controlled "experiment," recent criminological literature emphasizes the conclusion that prolonged periods of confinement in correctional institutions lead to increased criminalization of prisoners when they are released.* For example, The President's Commission on Law Enforcement and the Administration of Justice reported that "The conditions in which (prisoners) live are the poorest possible preparation for their successful reentry into society, and often merely reinforce in them a pattern of manipulation or destructiveness."** Such observations appear justified, for research has shown that incarceration, and especially lengthy incarceration, does not deter or reduce recidivism.***

The National Advisory Commission on Criminal Justice Standards and Goals also notes that treatment program tests conducted in a wide variety of prisons have failed to establish the rehabilitative value of any of these programs.****

Therefore, social reintegration of prisoners by way of local alternative programs was accorded legitimacy as the new correctional direction by the President's Crime Commission: "The goal of reintegration is likely to be furthered much more readily by working with offenders in the community than by incarceration."*****

*Robert Martinson, "The Paradox of Prison Reform (Part 1), New Republic (1972), pp. 23-25.

**United States President's Commission on Law Enforcement and Administration of Justice, The Challenge of Crime in a Free Society (Washington, D.C.: U.S. Government Printing Office, 1967), p. 159.

***California Legislature, Assembly Committee on Criminal Procedure, Deterrent Effects of Criminal Sanctions (Sacramento, 1968).

****National Advisory Commission on Criminal Justice Standards and Goals, Task Force on Corrections, Report (working draft), Chapter 17, "Research and Development, Information and Statistics" (Austin, Texas, 1972), p. 8.

*****President's Commission on Law Enforcement and Administration of Justice, The Challenge of Crime in a Free Society (Washington, D.C.: U.S. Government Printing Office, 1967), p. 165.

Since the Commission's report was issued in 1967, the benefits of reintegration and the view that corrections is best undertaken in a community setting have been reinforced by numerous official planning and policy-making bodies. The Wisconsin Council on Criminal Justice established, as its study committee's fundamental priority, the replacement of Wisconsin's existing institutional correction system with a community-based non-institutional system.* Likewise, an important recommendation emerging from the 1971 California Board of Corrections' study of the correctional system was that the bulk of the correctional effort (its programs and resources) should be moved to the community level.**

Given the view that prison is -- for some purposes -- less effective than local alternatives, it is important to add that prison is also more expensive, as discussed in the following section.

LOCAL CORRECTIONS AND CORRECTIONAL COSTS

Correctional costs can be considerably reduced when the many offenders who would otherwise be routinely incarcerated are supervised in the community. Although some heavily-staffed alternate modes of incarceration do incur costs similar to institutional costs, the supervision options of parole and probation are significantly less expensive. For example, a nationwide survey conducted by the National Council on Crime and Delinquency found that for adults, state institutional costs are approximately six times those of parole, and approximately fourteen times those of probation.*** In 1969, the California Assembly Office of Research reported the following findings regarding the major costs and effects of the California Criminal justice system:

*Wisconsin Council on Criminal Justice, Final Report to the Governor of the Citizen's Study Committee on Offender Rehabilitation (Madison, 1972).

**California Board of Corrections, Correctional System Study -- Co-ordinated California Corrections: The System (Sacramento, 1971).

***National Council on Crime and Delinquency (NCCD), Corrections in the United States: A Survey for the President's Commission on Law Enforcement and Administration of Justice (New York, 1966).

"1. Commitment to state institutions is the most expensive penal alternative in the state;

2. Local corrections is less expensive and permits the maximum rehabilitation potential and return of costs to the system by the offender;

3. At least 50 percent of the men entering prison each year may be no more dangerous than those placed on probation; and

4. The increased use of local corrections (probation or community treatment) . . . has been associated with no recorded increase at all in serious crime among those supervised."*

PROGRAM MODELS

Probation

Outcomes. Probation is the most extensively used alternative to prison, and many practitioners and researchers point to it as a safe and viable means for decarcerating a substantial number of offenders. Approximately 17.2 percent of convicted felons in California receive straight probation (with no county jail time). Disparities in county dispositions may suggest that if probation were consistently used at the same rate as is employed in San Bernardino County (26.7 percent, which is the highest in the State for counties with over 500 Superior Court felony convictions a year), the number of convicted felons incarcerated would be significantly reduced. Of course, such crude comparisons can be misleading, but other data on probation "success" -- as measured by recidivism and violation rates -- seem to support claims that probation could be more frequently employed, at little or no additional risk to public safety. Particularly if probation supervision were combined with restitution or other requirements, there might in fact be direct benefits from its increased use.

Findings in California on probation usage and violation indicated that violation rates are unaffected by the percentage of prisoners granted

*The California Legislature Assembly, The California Prison, Parole, and Probation System, a technical supplement prepared by James Robison for the Assembly report, "Preliminary Reports on the Cost and Effects of the California Criminal Justice System" (Sacramento, California, 1969).

probation.* Studies of offenders under normal probation supervision have indicated a relatively high success rate, ranging from 60-90 per-cent.**

Examples. Efforts to reduce the use of imprisonment by placing more prisoners on probation have succeeded. In Oakland County, Michigan, for example, the Community Treatment Project for Repeat Offenders demonstrated that community service (e.g., group and individual counseling, education and training, drug treatment, and volunteer help) can be effectively used with felons who repeatedly commit crimes and are otherwise unable to extricate themselves from the cycle of criminal acts, apprehension, conviction and imprisonment.*** The project retained offenders in the community at one-fifth the cost of imprisonment.

More recently, Britain solved its prison overpopulation problems by extending probation services. Under the Criminal Justice Act of 1972, the Britain Probation Service was given the authority and funds to finance, build, rent, maintain, manage, and staff its own residential establishments.

*California Assembly Office of Research, "Preliminary Report on the Costs and Effects of the California Criminal Justice System" and "Recommendations for Legislation to Increase Support of Local Police, Parole, and Probation System" (Sacramento, California: Assembly Office of Research, 1969), pp. 27-32. See also:

The California Prison and Probation System, op. cit., pp. 27-32.

**Frank R. Scarpitti and Richard M. Stephenson, "A Study of Probation Effectiveness," Journal of Criminal Law, Criminology, and Police Science, 59 (3) (1968), pp. 361-369. See also:

Ralph England, "What is Responsible for Satisfactory Probation and Post-Probation Outcomes?", Journal of Criminal Law, Criminology and Police Science, 47 (6) (1957), pp. 667-677.

***NCCD, A Halt to Institutional Construction in Favor of Community Treatment (Hackensack, New Jersey: NCCD, 1974).

The Act also provided for the establishment of day training centers for probationers, and provisions were made for community service by offenders.*

Caseload Distribution. It is often assumed that efforts to place more offenders on probation will require more probation officers, with smaller caseloads for supervision of at least some of the more serious offenders. Yet, despite the appeal of reducing caseloads to improve supervision, research has indicated that merely reducing caseload size does not reduce recidivism. A research project in Oakland, California, concluded that no overall difference was found in adult parole performance for reduced and full-size caseloads.**

California's Special Intensive Parole Unit studies similarly demonstrated that, regardless of caseload size, high-risk adult parolees violated the terms of their paroles extensively and low-risk adult parolees seldom violated them, while the middle-risk cases performed distinctly better in smaller caseloads.***

The implications of caseload size for deinstitutionalization efforts are clear. If offenders with a high potential for probation success are moved into large, minimally supervised caseloads (or given sentences such as fines, restitution orders, or other non-probation dispositions), the probation system will be able to concentrate supervision on medium and poor-risk probationers, while at the same time absorbing an increased total number of offenders.

Programs and Services. Some offenders will need access to a broad range of services and programs not usually provided under regular supervision, in order to avoid criminal activity and to adjust successfully in the community. Group or family counseling and special programs

*W. H. Pearce, "Community-Based Treatment of Offenders in England and Wales," Federal Probation, Volume 38, No. 1 (March, 1974), pp. 47-61.

**Bertram M. Johnson, "The Failure of a Parole Research Project," California Youth Authority Quarterly, 18 (3) (1965), pp. 35-39.

***California Department of Corrections, Special Intensive Parole Unit, "Research Report Phases I-IV" (Sacramento, 1953-1964). For a more extensive discussion of "risk" and "risk prediction," see Chapter 9 in this volume.

for the drug addict or problem drinker are among the programs and services to which probationers can be referred in the community for assistance. Other forms of assistance would be the use of live-in community residences or halfway houses, or the process of matching probationers with volunteers for specific purposes (e.g., tutoring and counseling).

State Subsidies. The variety of services available as an adjunct to probation can permit courts greater flexibility in the disposition of offenders for whom neither incarceration nor regular probation supervision is suitable. However, in many jurisdictions, the court has few available alternatives to incarceration or "straight" probation because of a lack of county services and programs.

State subsidies have been instituted (e.g., in Minnesota and Oregon) to reduce overcrowding in state prisons (by retaining offenders in the community at the county level) and to encourage local corrections options. This additionally reduces the overall cost of corrections.

Three to four offenders can be provided with intensive community supervision for the cost of maintaining one offender in prison.*

State subsidy programs have also been used to upgrade other services for probationers. In Oregon, for example, funds were used to develop small group housing facilities, while in Philadelphia, a day center was established.

Thus, state subsidies can finance improvements in probation services, and can also speed the development of a range of other community programs, thereby allowing the State to locate more offenders within the community. It must of course be noted that California's Probation Subsidy Program is intended to accomplish similar purposes (as is the subvention procedure in AB 90). However, the Probation Subsidy Program has met with only partial success, particularly in the area of developing imaginative variations in, or adjunct services for, adult probation supervision.

*National Council on Crime and Delinquency, Research Center, Research, Demonstration, and Social Action, prepared by Leslie T. Wilkins and Don M. Gottfredson for the Office of Juvenile Delinquency and Youth Development (Davis, California, 1969), pp. 43-70.

Restitution

Restitution as a program concept is grounded in making the offender responsible for the results of his or her crime. Restitution is payment in services or money by the offender, usually to the victim, and is made within the jurisdiction of the criminal court.

Interest has been growing in restitution as an imaginative punishment alternative because of the following features, which have been attributed to restitution:

1. Restitution requirements can be logically related to the damages done.

2. Restitution requires the offender to engage in constructive acts that may lead to greater integration with the social order and to improved self-esteem.

3. Restitution can be concrete and specific, allowing the offender to know where he or she stands relative to completing the adjudicated penalty.

4. Restitution addresses itself to the strength of the offender and rests on the assumption that individuals either possess or are able to acquire the requisite skills and abilities to redress wrongs done by them.*

In the United States, there is a discernible trend toward explicitly authorizing the courts by statute to require restitution as part of the sentence. In Delaware, Pennsylvania, and Iowa, legislation has passed which gives the court authority to order restitution as a sanction.**

The Iowa Legislature passed a bill in 1974 requiring that restitution be made to victims of crimes. The law requires restitution to be a condition of either probation or deferred sentence, and also requires that a formal court-approved restitution plan be developed. The plan specifies the

*David Fogel, Burt Galaway, and Joe Hudson, "Restitution in Criminal Justice: A Minnesota Experiment," Criminal Law Bulletin, 8 (8) (1972), pp. 681-691.

**Anne Newton, "Alternative to Imprisonment: Day Fines, Community Service Orders, and Restitution," Crime and Delinquency Literature (Hackensack, New Jersey: NCCD, 1976), p. 122.

amount of restitution to be paid to each victim, and contains a schedule of restitution payments. Partial restitution is allowed if the defendant cannot reasonably be expected to make full restitution. The restitution plan becomes a formal condition of the sentence after court approval. Failure to comply with the plan is considered violation of probation or deferred sentence, and results in imprisonment.*

The Minnesota Department of Corrections has conducted an experiment using restitution as a condition of parole. Established in 1972, the Minnesota Restitution Center is the first systematic attempt to apply the idea of restitution to a community-based correctional center. Basic principles underlying the program are that (1) estrangement from society is best prevented by supervising the offender in the community and that (2) the offender can best pay for his or her crimes by earning money to reimburse victims.**

When the Center opened, restitution was the sole focus of the program. Soon it was apparent that many of the inmates had chronically poor habits or severe personal problems. Changes were made and a "mutual restitution" program ensued, designed to give to the offender skills and opportunities needed to make restitution to the victim or society. Job training and a wide range of treatment programs are now available. Results have been encouraging, and thus other Minnesota programs (e.g., the PORT Project) have adopted the restitution concept, and are making it a key element of their programs.***

Based on the Minnesota Restitution Center experience, five other centers (four in Georgia and one in Iowa) have been funded by the LEAA. The target population of the Georgia program consists of both probationers and parolees. Any non-violent male offender whom the parole board or judiciary considers a marginal risk; who would normally be incarcerated; and; for whom financial or symbolic restitution is deemed appropriate, is eligible for the program. Typically, participants reside at a center

*Anne Newton, "Aid to the Victim," Crime and Delinquency Literature (Hackensack, New Jersey: NCCD, 1976), p. 382.

**Ibid.

***"The PORT Project: A Model for Minnesota," Corrections Magazine 1 (3) (1976), pp. 26-28.

until restitution is complete, although sometimes they may be transferred to regular probation or parole supervision and continue restitution payments.

Restitution provides an alternative between regular probation/parole supervision and incarceration. Variations of restitution programs include fines and community service orders.

Fines. The fine is a convenient form of sanction, entailing no expense to the public, no burden on the prison system, and no social dislocation for the offender. An effective and equitable system of fines should consider the offenders' access to financial resources; otherwise, fines could be taken lightly by the rich and highly skilled and present an undue hardship to the poor or unemployed. In the United States, the amount of a fine is fixed by statute or is determined by the judge within narrow limits, and does not take into account the offender's financial resources or income. In many European countries, however, fines are structured so as to impose equal financial burdens on all offenders. Moreover, fines are imposed for a variety of serious as well as minor offenses, and are considered to be as effective and just as prison terms for those on whom they are levied.*

Specific fines, such as "fines of income days," which would deprive all offenders of the same number of income days for the same offense, regardless of economic class, could be applicable to a variety of offenses. Such a fine could replace any term of imprisonment unless it was necessary to incarcerate the offender for purposes of public protection. One researcher notes that "there is no reason why even major crimes, such as assault, robbery, or some kind of homicide should not be punished by fines -- provided that fines are fashioned into serious punishments and disassociated from the trifling amounts imposed for trifling crimes.**

Community Service Orders. Community service orders allow sentencing authorities to exercise discretion in fashioning non-statutory sentences unique to the offense and circumstances of the offender. They can be in the form of non-monetary or symbolic restitution to a particular victim or the general public.

*Anne Newton, Alternatives to Imprisonment: Day Fines, Community Service Orders, and Restitution, reprinted from Crime and Delinquency Literature (Hackensack, New Jersey: NCCD, March, 1976).

**Ernest van den Haag, "Deterrence, Deterrability, and Effective Sanctions," in Ernest van den Haag and Robert Martinson, Crime Deterrence and Offender Career (New York: City College of the City of New York, 1976), p. 65.

In Alameda County, California, municipal court judges have made use of work placements at local voluntary and public agencies as an alternative or supplement to traditional sentencing. While many of these referrals are handled directly by the courts, the Court Referral Program is heavily relied upon as an intermediary placement service.*

In addition to the Alameda County program, approximately 45 similar efforts have developed in California. These community service programs have been administered in a variety of ways: by probation departments, volunteer bureaus, independent public agencies, private non-profit agencies, and through direct referral from judges to agencies where the offender will work.

To date, the judiciary in this county has not exhibited consistent interest in these alternatives where serious or felony charges are involved. Few state legislatures have written the community service option into state sentencing laws. The practical effect of not having such an option built into legislative sentencing authority is that its use becomes discretionary and variable. This pattern contrasts with the British use of the community service order, which is directed to offenses punishable by imprisonment and is intended for persons otherwise likely to receive a prison sentence. In England, both the offenses and the offenders in community service order cases are relatively serious -- 90 percent of the court-referred participants had a prior criminal record (with a median of between three and four prior convictions each), and 40 percent had previously been incarcerated.**

*James Beha, Kenneth Carlson, and Robert H. Rosenblum, Sentencing to Community Service, Law Enforcement Assistance Administration (Washington, D.C.: U.S. Government Printing office, October, 1977). See also:

Sylvia Sullivan, "Convicted Offenders Become Community Helpers," Judicature, 56 (8) (1973), pp. 333-335.

**James Beha, et al., op. cit., p. 26.

SUMMARY

It is difficult to estimate the precise effect on CDC commitments of further use of probation in California, especially probation supervision augmented by more creative or flexible forms of punishment such as restitution and community service orders. Although alternatives to incarceration are used to a relatively high degree in the State, there is evidence from other states that greater use of alternatives for felons might make some difference.

It must be emphasized that small variations in commitments can have major effects. For example, if alternative supervision and punishment mechanisms grew to a degree that 2 percent of the commitments to CDC were prevented, the reduction in state prisoners would, under current prison population levels, amount to roughly 400 state prison beds -- the size, under current architectural standards -- of one new prison.

As indicated in Chapter 5, Consultants do not believe the Probation Subsidy Program is currently having much effect on State adult commitments; a similar lack of impact is predicted for AB 90, should it pass. The Legislature may wish, in view of the exploration presented in this chapter, to increase or "target" the incentives in the county subvention program in order to make a more definite impact on the direction of reducing commitments to state prison.

In any event, the issue of sentencing options does appear to Consultants to merit more study than was possible in the scope and time of the current project. Mechanisms by which that further investigation might occur are presented in Chapter 8, in which Consultants discuss the need for an expanded monitoring and analysis capability regarding systemwide criminal justice issues.

CHAPTER 7

COUNTY CORRECTIONAL RESOURCES FOR STATE PRISONERS

INTRODUCTION

In order to develop a perspective on the total correctional resources available in California, Consultants conducted a review of county correctional facilities and programs, with particular attention to those resources such as county jail and work furlough. On the basis of this facilities review, Consultants think the minimum security county correctional facilities, such as work furlough, rehabilitation centers, farms and camps, are a major and untapped resource to be considered in planning state corrections.

There are presently approximately 2,000 empty beds in the minimum security county facilities at this time which could be viewed as an existing resource to be used selectively to house selected state prisoners (see Table 7.1 on page 93). In addition, over 2,000 more minimum security beds exist in county facilities that have been closed. Even if not used regularly for state prisoners, such facilities could house state prisoners on a temporary basis in emergency situations if, for some reason, the population unexpectedly increased.

CDC indicated that it met with county law enforcement officials to explore the use of county bed spacing. CDC rejected the notion because of a "lack of existing or potential availability of space to accommodate state inmates."*

*California Department of Corrections, Program Planning Report, Vol. II: Program Analysis and Recommendations (April, 1978), p. 130.

In reviewing these conclusions, Consultants must disagree with CDC's rejection of the possibility of using county bed space.*

In its most recent report on local jails, the State Board of Corrections points out that, while 24 of the State's main county jails are presently overcrowded, "minimum security facilities . . . have an abundance of unused bed capacity."** Even though unused bed space does exist, several political, logistical, and other considerations could be anticipated, with the result that not all counties would be receptive to housing state

*Consultants discussed the findings of the brief survey of appropriate county jail space for state prisoners with the CDC, and were informed that the CDC now agrees that there is suitable bed space for "about 1,000" state prisoners, subject to the limitations discussed in the text. CDC performed their own analysis of these surplus beds, in reaction to Consultants' survey, and reviewed all minimum security empty beds identified in the Board of Corrections report. They deducted bed space where counties employed weekend sentencing, and also modified Board of Corrections tallies to account for vacancy rates considered necessary for county administrative purposes (e.g., population "peaks" typical of county jails). There were certain minor variances as to which beds might be suitable and which might not; these variances do not effect Consultants' total estimate because CDC identified some beds unknown to Consultants, and currently available. CDC calculations accounted for only male prisoners, as bed space for females is more difficult to derive from the Board of Corrections' reporting format. The following statistics reflect the CDC's estimate of currently available county bed space for minimum security male state prisoners:

90% vacancy rate	972 males
80% vacancy rate	857 males

Consultants observe that these calculations are compatible with the most conservative estimates set forth in the text, and mark a reversal of CDC's contention, in its Program Planning Report, that county jail space was not available (CDC Program Planning Report for 1978-79 Fiscal Year), Vol. II, Program Analysis and Recommendations (April, 1978), p. 130.

**State Board of Corrections, Report of Inspection of Local Detention to the California Legislature (March, 1978), p. 1.

prisoners. However, Consultants think that given the apparent county resources, the possibility of housing selected minimum security and pre-release state prisoners in county facilities certainly warrants further investigation.* As a first preliminary step in this investigation, Consultants reviewed available data concerning county bed space, and interviewed State Board of Corrections and local jail officials. Consultants were particularly concerned with the following issues: the suitability of vacant county space for prisoners of varying custody levels; the question of local acceptance of state prisoners; and the availability and potential for developing appropriate programming at the county level for state prisoners (e.g., educational, vocational, and work programming).

FINDINGS

State Board of Corrections Report

Consultants carefully reviewed the State Board of Corrections' biennial report to the Legislature concerning the status of compliance with standards of local detention facilities.** The report sets forth, by county, the salient developments in local corrections since the 1976 legislative report; delineates future plans; documents non-compliance with the Minimum Standards for Local Detention Facilities; and estimates costs for compliance. The study concludes with a recommendation for a ten-year state subsidy program, consisting of 18-20 million dollars per year to assist local governments in meeting jail standards. The report calls for state subsidies, coupled with local matching funds, to be used for a variety of projects, including construction of new local corrections facilities, remodeling, and improvement and expansion of existing facilities.

As noted previously, over its two-year survey period, the State Board of Corrections found that there was a great deal of empty bed space in the

*Prisoners eligible for alternate modes of incarceration as defined in Chapter 11 of this volume.

**State Board of Corrections, Report of Inspection of Local Detention Facilities to the California Legislature (March, 1978).

minimum security county facilities. The following table,* based on data from the biennial report, details surplus minimum security bed space for each applicable county.**

Interviews with State Board of Corrections Staff

In interviews with State Board of Corrections staff, a number of additional possibilities for housing state prisoners at the county level, which were not included in biennial report data, were noted. The following general information regarding three counties highlights the potential availability of county bed space.

San Diego County. There is a closed 20-bed women's work furlough facility and approximately 150 beds throughout the county camp system for a total of 170 empty beds.

Los Angeles County. At the Hall of Justice, in the downtown area, there are between 400-600 vacant beds, which would be usable for work furlough, due to proximity to employment and public transportation. Additionally, there are two fairly large closed facilities: the Lincoln Heights jail (1,000 beds) and the Biscailuz Center (a 660-bed medium/minimum security honor farm); Biscailuz may soon be reopened for local prisoners.*** These facilities are also suitable for work furlough.****

Lassen County. There is a surplus of 25 beds in the county jail, which are suitable for work furlough.

*Consultants cited only those facilities which were obviously minimum security (e.g., work furlough), since the report did not specify custody designation.

**Ibid., pp. 15-22.

***These facilities are not covered in the State Board of Corrections' report.

****See Final Report, Task Force to Study Feasibility of Lincoln Heights Jail, California Department of Corrections (October, 1968).

TABLE 7.1

MINIMUM SECURITY COUNTY FACILITIES: SURPLUS BED SPACE

County/Facility	Board Rated Capacity	Average Daily Population	Surplus
Alameda			
Work Furlough			
Men	190	133.7	56.3
Women	18	8.5	9.5
Total	208	142.2	65.8
Contra Costa			
Rehab. Center (Minimum)	216	166	50
Work Furlough	72	50	22
Total	288	216	72
Fresno			
Industrial Farm	318	205	113
Imperial			
Minimum Security	192	120	72
Los Angeles			
Wayside (Minimum)	1,060	880	180
Camp #13	90	77.5	12.5
Camp #14	90	75.8	14.2
Camp #15	90	74.2	15.8
Camp #18	90	70.8	19.2
Total	1,420	1,178.3	241.7
Marin			
Minimum Security	134	85	49
Mendocino			
Rehab. Center	76	14.6	61.4
Merced			
Rehab. Center	90	62.5	27.5
Monterey			
Rehab. Center	280	124	156

TABLE 7.1

MINIMUM SECURITY COUNTY FACILITIES: SURPLUS BED SPACE

(Continued)

County/Facility	Board Rated Capacity	Average Daily Population	Surplus
Orange Industrial Farm	200	96	104
Riverside Banning Rehab. Center	215	166	49
San Diego Honor Camps:			
Barret	96	88	8
Descanso	97	40	57
LaCima	85	81.6	3.4
Morena	86	62	24
West Fork	112	66.8	45.2
Viejas	96	67	29
Total	572	405.4	166.6
San Francisco Work Furlough	64	48	16
San Joaquin Honor Farm	336	178	158
San Mateo Honor Camp	96	94.5	1.5
Work Furlough	96	81.5	14.5
Total	192	176.0	16.0
Santa Barbara Honor Farm	120	62	58
Work Furlough	38	24	14
Total	158	86	72
Santa Clara Men's Rehab. Center	618 (apx.)	354 (apx.)	264
Santa Cruz Minimum Security	154	80	74
Women's Work Furlough	10	8.2	1.8
Total	164	88.2	75.8

TABLE 7.1

MINIMUM SECURITY COUNTY FACILITIES: SURPLUS BED SPACE

(Continued)

County/Facility	Board Rated Capacity	Average Daily Population	Surplus
Solano Rehab. Center	124	70	54
Sonoma Honor Farm	110	47	63
Stanislaus Honor Farm	210	130	80
Tulare Correctional Center	160 (apx.)	92 (apx.)	68
Ventura Work Furlough/Rehab. Center	<u>180</u>	<u>136</u>	<u>44</u>
Totals	6,309	4,220.2	2,088.8

Interviews with County Jail Officials

Consultants undertook a brief telephone survey of five metropolitan county jail systems in order to verify the Board of Corrections data and to determine the potential receptivity for housing California state prisoners in county facilities. The issue of housing state felons in county facilities has many political and fiscal overtones and Consultants did not attempt to fully explore and delineate the state and county stakes in such interjurisdictional corrections efforts. Consultants' only concern was to determine whether there was any county interest, assuming jurisdictional and fiscal issues could be worked out, if need be, in contracts with CDC.

Interviews with officials in the five counties resulted in estimates of the number of state prisoners each county might be willing and able to house (currently and subsequent to any new construction). This data is set forth in illustrative form through a series of commentaries regarding certain conditions and specific concerns for each county.

Contra Costa County. Contra Costa County would contemplate accommodating 125 minimum security state prisoners now. With the completion of the new main jail in July, 1979, the county could house an additional 80 minimum security prisoners, for a total of 205 state prisoners (including some women).

San Mateo County. San Mateo County could anticipate housing 15 maximum security women prisoners; 96 medium security male prisoners; and 50 minimum security male prisoners at this time. The County would also consider an additional 50 minimum/medium security prisoners in 1979. Total capacity for California prisoners in San Mateo would thus be over 200.

San Francisco County. San Francisco County would consider housing between 100-200 minimum/medium security males. However, it appears that the county would be unwilling to accomplish this on a per diem contract basis only; it is thought that capital improvement funds should be earmarked for specific improvements at Jail #2 in order to accommodate state prisoners.

Santa Cruz County. When the new jail is completed (1980), the county would consider housing some minimum security state prisoners. However, officials will not be able to estimate the number of prisoners until the new jail is in operation. Spokesmen said the Board of Supervisors would probably accept a proposal to accommodate state prisoners if there were sufficient financial incentives from the State for housing, programs, and staff. Currently, the county houses some state parolees in a half-way house.

Alameda County. Alameda County could foresee accepting 25 minimum security male prisoners at this time. Three years hence, when the county's building project is complete, the county will probably be able to accommodate 25 maximum security men; 25 medium security men; 50 minimum security men; and 25 minimum security women, for a total of 125 state prisoners.

ANALYSIS

There are two fundamental advantages of using minimum security county facilities to house selected state prisoners:

1. Particularly in light of simultaneous requests to the Legislature for funds for both county and state facilities, State use of vacant county space would be an economical alternative, enabling optimal use of existing space and reducing the chance of overexpansion and duplication of correctional resources.

2. By virtue of the location of county facilities, some state prisoners could be housed in their county of origin; access to family visiting, community services, and jobs would be enhanced. More generally, the transition from incarceration to parole would be more easily facilitated.

It appears that at least some counties would be receptive to housing state prisoners. Acceptance of state prisoners in county correctional facilities would probably be dependent on the following elements of a compensation and contract scheme:

1. Economic incentives (e.g., rent) for housing state prisoners, and perhaps funds for staff and programming as well. In some cases, capital improvement funds might also be required to raise specific jails to local code standards (e.g., in San Francisco, a fire code issue exists).

2. County participation in eligibility screening for placement of state prisoners in county correction facilities.

- In light of the county resources available, the positive attitude of the State Board of Corrections staff to the idea, and the receptivity of some counties to the prospect of housing state prisoners, Consultants recommend that CDC enter into contracts with counties for the purpose of housing a number of low minimum security state prisoners. (See Chapter 11 for further details.)

CHAPTER 8

PLANNING FOR CORRECTIONS AND CRIMINAL JUSTICE

INTRODUCTION

The number and type of prisoners committed to the Department of Corrections custody is determined by the policies of other criminal justice agencies, a fact which makes correctional planning difficult at times. It is, for example, a complex matter to attempt to predict changes in judicial or prosecution practices. Even under the Determinate Sentencing Law (DSL), a number of factors relating to charging policies, to judicial practices in regarding the choice of whether to send offenders to state prison or not, and if so, for what term within the statutory range, make predictions of future sentencing and commitment patterns uncertain.

Many of the preceding discussions in this section were intended to explore some of these areas of contingency. Others, however, were designed to emphasize Consultants' view that the criminal justice system as a whole can also be seen as providing resources for correctional purposes; county jails, for example, seem to present a resource for the housing of state prisoners. In fact, there are many aspects of the "resource" notion of the criminal justice system that Consultants have not touched upon in this report; regionalization of correctional, or probation and parole services, for example, would also involve shared or mutually supportive resources and purposes.*

The point to be made is this: rational corrections planning must have some basis in total criminal justice system planning and analysis. Consultants think such a systemwide planning capability should be developed because it is a function not presently fulfilled by any of the agencies or groups charged with criminal justice planning.

Systemwide Planning and Policy Analysis

A number of planning and policy analysis practices should be upgraded with a view to better evaluating how the criminal justice system as

*See Board of Corrections, Coordinated California Corrections: Correctional System Study, July 1971.

a whole is performing. The occasion of this recommendation is the present corrections planning project, but could as easily have been a review of court activities or of a specific criminal justice practice, such as plea bargaining.

Data On Offender Flow and Interrelationships Among Agencies

There are currently a number of agencies charged with collecting criminal justice data. The Bureau of Criminal Statistics for example, receives data on arrest and court disposition patterns; the Judicial Council is charged with certain more refined analyses of disposition patterns; the Board of Corrections receives data on county jail utilization; and the Department of Corrections collects information on offenders committed to its custody. With the possible exception of the Board of Corrections, none of these agencies is charged with pursuing the implications of data, collected for their own purposes, as it may relate to other criminal justice agencies. The impact of changing sentencing practices on correctional needs, for example, is not examined by the Judicial Council, but by the CDC.

Evaluation Issues

Currently, no single group is charged with evaluating interorganizational or interjurisdictional problems. The impact of DSL, for example, is an issue which subsumes prosecution practices and caseloads, judicial sentencing choices, CDC institutional needs, and parole and community services caseloads and practices. It would therefore be unlikely that any particular agency could provide a total review of the impact of DSL.

Policy Analysis Issues

When individual agencies evaluate the effects of policy, their evaluations are likely to be relevant primarily to their own, internal concerns. Such evaluations are likely, moreover, to be reactive to perceived constraints, and are less likely to properly feature systemwide tradeoffs. As one example, the Department of Corrections' response to the prison population increases that it believes will occur under DSL has been to propose an expansion of the prison system -- that is, to act within its traditional frame of reference and sphere of authority. Yet such a response is but one of many that could be considered: other, perhaps equally valid reactions, were seen as beyond the range of appropriate corrections responses.

Such alternative responses could range from legislative changes in a wide range of aspects of the sentencing system to judicial adjustments in sentencing patterns.

In short, no single agency is charged with integrating criminal justice data and with analyzing the tradeoffs or policy options in the entire system. The following recommendation is intended to encourage independent appraisal of Legislative policy options which would cast the net of possibilities somewhat more widely than the understandably limited view of any existing agency.

RECOMMENDATIONS AND IMPLEMENTATION

- Consultants recommend that an expanded criminal justice policy review responsibility be assigned to a special commission formed under the auspices of the State Board of Corrections, with representatives from interested agencies and citizens included.

This responsibility would be a continuation and expansion of those duties already assigned to the Board of Corrections, to study "the entire subject of crime . . . including causes of crime, possible methods of prevention of crime, methods of prosecution of persons accused of crime, the entire subject of penology . . ." (PC 6027) and to report on "findings, conclusions, and recommendations" to the Governor and the Legislature.

The commission should be charged with the following responsibilities:

1. To collect and analyze information, from existing or newly developed sources, regarding trends in criminal justice practices and emerging criminal justice problems. The commission should, for example, be charged with analyzing disposition data from the courts for potential effects on prison or county jail populations. As part of this analysis, the commission should develop the new population projections recommended in Chapter 1 of this report; these projections are necessary in order to evaluate the impact of DSL on the basis of more complete and definitive information about sentencing and administrative practice than is currently available.
2. To monitor, audit, and evaluate system performance in meeting specified policy objectives. Similar auditing or monitoring tasks are currently assigned to the Community Release Board (CRB) (regarding sentence disparities), and are recommended by Consultants in Chapter 9 for the Legislative Analyst's Office (to monitor CDC classification decisions). The specific concerns for which audits and evaluations would take place

should be determined by public policy priorities established by the Legislature and the Governor. Other concerns could vary from monitoring the consistency in sentencing between jurisdictions (one goal of DSL), to evaluating the effectiveness of probation subsidy or other programs supported by State monies. Particular attention should be given to issues regarding interagency or interjurisdictional relationships; for example, regarding the use of county jails for State prisoners.

3. To prepare policy analyses of Legislative decision options. Particularly when new issues of public policy are emerging, or problems are developing from the effects of prior policies, the commission should identify and analyze appropriate legislative policy choices. For example, if a situation should arise in which prison populations were beginning to rise significantly, the following options could be identified (together with full information on potential costs and effects of each option):

- a. appropriating money for construction;
- b. appropriating money for staffing alternate modes of custody;
- c. changing the statutory sentence ranges;
- d. changing the sanctions regarding specified crimes (e.g., the level at which theft is declared a felony);
- e. delegating discretion to administrative agencies to make necessary adjustments (as was one role filled by the Adult Authority under ISL).

4. To make regularly scheduled and special reports to the Legislature and, at the request of the Legislature or Governor, to make recommendations on criminal justice policy issues. The analysis of legislative options presupposes a reporting mechanism. The reports envisioned should be policy summaries; detailed planning is more properly handled by specific agencies or special contractors. Consultants think the primary purpose of the recommended commission is to ensure that the Legislature is apprised, in a professional and thorough manner, of the effects of prior legislation, and of specific areas of concern in the criminal justice system which are suitable for Legislative attention.

SUMMARY

These recommendations reflect Consultants' concern that corrections planning -- both in CDC's Program Planning Report and in the scope of Consultants' work -- is incomplete, and suffers from a failure to thoroughly review criminal justice system trends and resources. The recommendations are also consistent with the intent of the Legislature in PC 6027.

It is therefore recommended that the Legislature appropriate funds sufficient to staff and otherwise facilitate the establishment of a criminal justice policy review commission, to be under the auspices of the Board of Corrections.

Management & Supervision

SECTION C: PRISONER MANAGEMENT AND SUPERVISION

The preceding section addressed issues largely external to state corrections, but which bear on the demands placed on the prison system. The following section turns attention inward on the corrections system itself, and addresses a number of issues relating to the supervision and custody of prisoners committed to the Department of Corrections.

In Chapter 9, Consultants focus on prisoner classification, the process whereby decisions are made regarding where and in what kind of custody a prisoner will be placed. Classification is a critical process not only in corrections, but for the larger criminal justice system, for it determines "what kind of time" a prisoner will do, thereby affecting the severity of the sentence to state prison. Consultants think that the present CDC classification system needs revision. The present system is characterized by excessive precautions, which result in unnecessarily restrictive and detrimental custody of prisoners.

Chapter 10 contains discussions of an issue of particular concern in the classification system, and for prison administrators more generally -- violence and prison gangs. These concerns must be considered among the gravest facing the California prison system. Consultants do offer some recommendations which should help to ease the level of violence in the prisons and the influence of prison gangs.

In Chapter 11, Consultants discuss the need for alternative modes of incarceration. Recognizing the Department's obligation to provide the requisite confinement and control of prisoners committed to its custody, it is nevertheless necessary to explore the optimal modes of incarceration, as measured by cost and social effectiveness. Consultants present the concept of "Urban Skills Centers" -- highly structured, intensively staffed and programmed, minimum security settings which are designed to increase the chances of successful reintegration into society upon the prisoner's release. Consultants recommend, on the basis of the prisoner profile (Chapter 2) and analysis of current classification procedures (Chapter 10), that a significantly greater number of prisoners be placed in minimum security settings generally, and that approximately 10 percent of the prison population be assigned to the special minimum security setting of Urban Skills Centers.

Chapter 12 contains an analysis of the possible roles for Parole and Community Services. There is much doubt about which, if any, of the traditional functions of parole supervision are effective in either rehabilitating criminals or protecting society. An increased role in administration and operation of Urban Skills Centers is recommended, along with greater use of summary parole and referrals to social services.

CHAPTER 9

PRISONER CLASSIFICATION

The prisoner classification process is designed to control risks of institutional violence and escape, to place prisoners in facilities or locations where programs and other factors (such as proximity to the prisoner's family) can be used to best effect the reintegration of the prisoner, and to provide information (regarding specific prisoners) to corrections officials related to management and supervision concerns. Disciplinary actions are also an adjunct to the classification process, insofar as they entail housing assignment transfers.

There are good reasons for examining classification as part of a policy planning process. Most generally, classification should be seen as an administrative elaboration of the sentencing decision. Classification decisions determine in large part the "kind of time" a prisoner will serve. The judiciary sets the severity of a sentence by setting the length of a prisoner's term; but the Department of Corrections further influences the severity of that sentence through its classification decisions.

In addition to general criminal justice concerns, examination of classification procedures is an integral part of corrections planning, because classification involves a balance between optimal placement of individual prisoners and optimal use of facilities. Prison systems, like other public institutions, must in effect balance resources with individuals needs. As with other services involving heavy capital investment -- such as schools and hospitals -- this balancing of needs and resources is ultimately constrained by the degree of flexibility permitted by the physical plant. Prisons cannot be moved, nor can they be remodeled or renovated (without great expense) to accommodate changing populations or purposes.

The Department of Corrections addresses these issues to some extent in its analysis of its building needs. In proposing more and smaller prisons, each designed according to architectural concepts which permit flexible management of prisoners within the facilities, the Department suggests that a more flexible system overall will be created. In addition, by locating the additional prisons primarily in the southern part of the State, it is argued that more prisoners could be placed closer

to their home communities. In short, the CDC belief is that through the proposed building program, more flexible and effective classification will be possible.

The Department's Program Planning Report notes the need for a thorough review and revision of the present classification procedures. However, the CDC ties the review of classification to the development of the proposed facilities, commenting that revision of the classification system cannot be undertaken until future building plans are determined.*

Consultants concur with the Department's concern to create more flexibility in the prisons, individually and systemwide; such flexibility is a necessary precondition for effective classification procedures.**

- However, Consultants recommend that a thorough review of the classification system should be initiated immediately, and should not be contingent upon legislative approval of construction requests.

In view of the intrinsic importance of classification for correctional effectiveness (e.g., security), efficiency, and fairness, it should be subject to frequent review regardless of other considerations.

Prudent and careful planning dictates that review of classification procedures, with analysis of possible distorting effects regarding the perception of the need for various kinds of housing, should precede or coincide with development of construction or remodeling projects.

Both of the above considerations are, Consultants conclude, particularly important regarding California's prison system. Consultants think that

*The California Department of Corrections, Program Planning Report for 1978-79 Fiscal Year, Vol. II; Program Analysis and Recommendations (Sacramento, Calif., April, 1978), p. 137.

**Consultants believe that considerable flexibility can be gained through remodeling present prisons. See Volume V of Consultants' Final Report for recommendations in this regard.

present classification policies have resulted in frequent overclassification of prisoners, with the result that the effectiveness, efficiency, and fairness of the system have suffered. Moreover, overclassification -- that is, the placement of prisoners in higher security custody than is required -- has the consequence of greater crowding in medium and maximum security housing than is necessary.

This chapter addresses the sources and consequences of overclassification in California's prisons, and proposes several revisions in the present classification system. The analysis is based on the prisoner profile study conducted by Consultants (Chapter 2), together with extensive interviews with classification officials as well as other officials in the Department. A comprehensive review of the classification process was not, however, possible within the scope of the present project.* The present discussion is, therefore, intended to point to basic considerations in the development of a revised classification process and to suggest mechanisms by which more detailed review of the process could occur.

Certain special classification issues are addressed in subsequent chapters. Chapter 10 discusses violence and prison gangs, considerations which dominate current maximum security classification procedures. Chapter 11, on alternate modes of incarceration, focuses on certain categories of minimum security prisoners and procedures for placement of these prisoners.

SOURCES OF OVERCLASSIFICATION

Any classification system must be a reflection of the administrative policies it is designed to implement, and of the kinds of programs and housing available. Consultants think that in California's prison system,

*For example, it was not possible to examine disciplinary proceedings, which are a crucial adjunct to the basic classification processes. In addition, most Consultant interviews regarding classification were with officials at the Reception Centers. Classification processes and decisions continue after prisoners are assigned, from the Reception Centers, to particular prisons.

both of these factors -- administrative policy and system resources -- produce frequent overclassification of prisoners.

Although the classification manuals contain detailed descriptions of classification procedures (e.g., who makes which decisions, and how such decisions should be reviewed or may be appealed), there are no written or explicit guidelines delineating the basic rules for the classification decision itself. There are no consistent and public criteria which indicate what prisoner characteristics or behaviors would require a particular custody level assignment, and under what circumstances.

Lacking written or explicit criteria regarding the substance of classification, other factors (e.g., the present configuration of facilities) effectively shape custody decisions. Thus, according to the CDC, the majority of prisoners must be placed in large, medium or maximum security facilities; additionally, there is a tendency to avoid or minimize "risks" in placements of prisoners.

Facilities

The CDC uses four basic security level designations: maximum, close, medium, and minimum. Each level is further subdivided into A and B categories. The higher the security level, the greater the physical security, the more stringent the restrictions on prisoner movement and circulation, and the greater the restrictions in privileges and program access.* While "medium security" prisoners have greater freedom of movement within the prison than do "maximum security" prisoners, both groups are distinct from "minimum security" prisoners in that they are (in theory) housed within secure perimeters.

As noted in Chapter 3 of this volume, while at least 30 percent of prisoners could be classified as minimum security, only approximately 20 percent of the prison beds are so designated. The great majority of existing beds -- approximately 70 percent -- are medium and close.

*These custody levels often mean different levels in different institutions. This issue is further discussed in Volume V of Consultants' Final Report.

(It is perhaps appropriate to note here that in the prisoner profile sample reviewed by Consultants, CDC classification decisions placed less than 10 percent of the sample in minimum security; about 70 percent -- exactly matching bed capacity proportions -- were placed in medium security housing.)

Classification officers at the Reception Centers -- where basic custody level designations and assignments to particular institutions are first made -- reported that a basic consideration in their decisions is the availability of space, and that this criterion often has little to do with the particular program needs or security requirements for particular prisoners. At times, space considerations involve simply the matching of prisoners with institutional vacancies. At other times, according to classification officers, there will be a "push" to send more prisoners to a particular institution or custody level. As one officer put it: "It is complicated; it may be because a superintendent wants his count up. It may be because someone thinks they have too many problems in the camps. There are a lot of reasons for these trends."*

Consultants do not know how consistently or frequently classification is skewed, either through the necessities of matching prisoners to vacancies in the system or through "pushes" for a particular kind of placement. Both factors are, of course, administrative necessities at times. Yet both suggest certain irrationalities in the current classification system, and hence the danger of using current proportions among the custody levels as guides for future planning.

*Quotations are not actual verbatim quotes, but rather reconstructions and paraphrases of comments, on the basis of interview notes.

- A thorough review of prisoner classifications, with attention to the current degree and direction of misclassification, should be undertaken in order to determine the degree to which the present configuration skews classification proportions.*

If such a review were to be done, however, it should be done on the basis of revised and clearer classification criteria, for there are strong indications that there are various practices and assumptions related to minimizing or avoiding "risks" which lead to frequent overclassification.

Risk Avoidance

The tendency to minimize risks is succinctly expressed in the CDC Program Planning Report: "We will continue to err on the side of conservatism since our mistakes may result in the loss of life."** The minimization of risk, with consequent overclassification, runs throughout the classification system. Thus, minimum security assignments are denied for a number of prisoners on grounds of "possible escapes." Similarly, maximum security placements are used to prevent anticipated violence.***

*A similar review, done under Court order in Alabama, resulted in a reduction of maximum security proportions from over 30 percent of the population to less than 5 percent. Such a massive shift would certainly not occur in California's proportions, but the Alabama process does point to the importance of detailed review of classification habits.

**CDC Program Planning Report for 1978-79 Fiscal Year, Vol. II, p. 76.

***The preventive use of maximum security appears closely tied to prison gang violence. In order to prevent or intervene in anticipated or developing gang hostilities and reprisals, all members of gangs, suspected as well as admitted, are placed in maximum security or disciplinary housing, including those who have not actually committed any misconduct. This issue is discussed more fully in Chapter 10.

As the CDC comment suggests, there are sound administrative reasons for such caution. Prison officials have an obligation to protect prisoners, staff, and the public, so careful control and minimization of risks is a critical responsibility. However, as will be noted later in this report, there are also significant costs in using too much caution or control. The difficult problem is to determine what an unnecessary level of caution is, or, to decide what a reasonable or acceptable level of risk would be. These are matters of policy and judgment, and Consultants are reluctant to "second guess" the officials charged with making the judgments. Nevertheless, it appears that current estimates of, or reactions to, risk are based on informal, inconsistent, and often irrelevant considerations. While estimates and control of risks are sometimes necessary, they should conform to reasonable and consistent standards.

Classification is a continuous process, involving personnel at all levels of the corrections system; as such, it is a difficult process to fully review, since the "actual" procedures or decisions may and reportedly do vary considerably from institution to institution within the system, and among classification personnel individually. Nevertheless, on the basis of interviews, the following factors seem important in understanding the kinds of judgments made.

According to those interviewed, the tendency to avoid risks is rooted in the structure of organizational incentives and perceptions. Errors on the side of too little caution -- as when a prisoner escapes from a minimum security institution or when a prisoner commits a violent assault in the mainline population -- receive far more attention, and are remembered far longer, than are other cases. Public and political attention to these failures has created a perhaps understandable caution on the part of prison officials, who reported cases in which prisoners were denied minimum security placement (even though classification officers thought such an assignment was appropriate and involved no risk), because of anticipated reactions to minimum security placement.

The fact that placement failures receive considerably more attention than do successes must be seen as structuring the attitudes and perceptions of officials. Although successful placements -- that is, those without incident -- in minimum security settings are, for example, vastly higher than the failures, these receive little attention. The stronger memory of placements which had repercussions tends to distort and color officials' sense of the odds or likelihood of failure. Conversely, errors on the side of excessive caution have no repercussions for the official responsible, and mistaken overcaution is seldom discovered. In short, it appears that a kind of presumption of risk exists, at least in part, because the prisoners are convicted felons; however, the presumption is also based on a skewed perception of the degree of risk

posed by any prisoner, with the presumption of risk overriding in many cases clearer understanding of the prisoner's actual propensities.*

This presumption of risk is apparently supported by more generalized and pervasive concerns with the control of prisoners. Analysts of correctional occupations and prison settings have typically noted the preoccupation by prison staff with security, safety, and "control" of prisoners.**

This preoccupation is probably rooted in the stress of working in a prison environment, in which physical violence is a continual possibility and challenges to staff authority are frequent. However, the preoccupation seems to lead, as some officials noted, to a "lock them up" solution -- that is, increased security (and higher security custody assignment) is the simplest and easiest solution to potential or developing problems.

In short, there are a number of deeply rooted pressures toward what might be called preventive or predictive overrestriction or overclassification. These pressures are both understandable and, in some cases, justifiable, but they also appear to interfere with clear evaluation of particular prisoners and with realistic determinations of what kinds and levels of risks should be, in general, regarded as acceptable or even necessary for effective prison management.

*This presumption may also be based on prudential grounds, related to the difficulties of developing information on prisoners when they arrive at the Reception Centers. Classification officers noted that they frequently distrusted or did not receive information from local jurisdictions regarding the prisoners, and little time is spent with new prisoners in personal interviews. Therefore, as a precautionary measure, most are assigned to medium security facilities until a history of institutional conduct can be developed and the prisoner can be more fully appraised.

**See, for example, David Fogel, ". . . We Are the Living Proof . . ." (Cincinnati: Anderson Publishing Co., 1975); especially, "On Guarding Prisons."

METHODS AND POTENTIALS FOR RISK PREDICTION

There is no simple or easy correction for the tendencies noted above, because although there is a strong and perhaps inevitable predictive component to classification, the technology or tools for such predictions are at best unproven and most often quite misleading. The dangers of intuitive or subjective estimates of the risk of misconduct posed by prisoners were discussed above. On the other hand, the growing interest in, and controversy about, more formal mechanisms or procedures for predicting various kinds of prisoner behavior has become a major issue in penology.

Predictions of Institutional Violence and Escape

The most basic "risks" about which classification personnel and prison officials are concerned are those of institutional violence and escape.* However, the ability to predict either behavior is limited. Both behaviors are related to both personal and situational variables, and unless a prisoner has engaged in assaultive or escape behavior to establish a pattern of behavior, it is difficult to anticipate whether future misconduct will occur.

There are multiple sources of institutional violence and multiple reactions to imprisonment and to prison situations.** Although analysis and correction of situational sources of violence in prison -- architectural, population density, staff/prisoner relationships, and other factors all have some impact -- should be given close attention in the effort to reduce violence, individual prisoner characteristics associated with institutional violence can also be identified.

*It should be noted that the risk of violence and of escape involve different situations and, usually, different types of prisoners.

**See Hans Toch, Police, Prisons, and the Problem of Violence (National Institute of Mental Health, Center for Studies of Crime & Delinquency, 1977); Albert Cohen, George Cole, and Robert Mailey, editors, Prison Violence (Lexington Mass.: Lexington Books, 1976); and Robert Johnson, Culture and Crisis in Confinement (Lexington, Mass.: Lexington Books, 1976).

In studies of California's prisons, it has been found that younger prisoners, with prior histories of institutional violence and prior commitments for violent crimes, are more likely than other prisoners to be involved in prison violence. However, the prediction of violence by a prisoner solely because he or she has these characteristics would be highly suspect, in part because these factors interact with other variables -- cultural and situational -- in a complex pattern. The prediction of institutional violence on the basis of prisoner characteristics is also complicated by the high level of "false positives" -- that is, predictions from a variable which is not consistently or highly correlated with the actual occurrence of the predicted event. As stated in one study of violence in California prisons:

"In terms of individual characteristics and subsequent adjustment, care must be taken not to rush into a predictive device, for on the one hand such procedures assume the immutability of the personality and adjustment, and on the other hand lead to preventative action likely to be inappropriately applied because of the large number of false positives inevitable when one attempts to predict the rare event (of institutional violence). "*

In short, although it is possible to develop some tentative conclusions regarding the possibility of institutional violence by a particular prisoner, it is dangerous to do so without great attention to the inter-relationship of personality and situation.

Similar generalizations can be made regarding the risk of escape. It is highly possible to limit the opportunities and therefore the likelihood of escape attempts (not only through medium security prisons with secure perimeters, but also through adequate supervision of prisoners in minimum security settings), but it is extremely difficult to predict which individual prisoners will be escape risks. Even more than with "violence risks," past institutional behavior is the only basis for predicting subsequent behavior. However, escapes are far fewer in number and variety than incidents of institutional violence. Therefore, there is a less extensive "record" to build predictions upon; moreover, the record is highly suspect because it is so sensitive to situational

*Lawrence A. Bennett, "The Study of Violence in California Prisons; A Review With Policy Implications," in Cole, et al., ibid., p. 164.

variables (such as the kinds of facilities in which the prisoner has previously been incarcerated). Escape predictions, too, are beset with the problem of false positives. As noted in a study of escapes in California, "In the case of escapes, the best that can be done is to be correct about one-fourth of the time. In other words, four inmates will be predicted to escape in order to be right about one."*

In classification proceedings, a variety of considerations typically are related, informally, to "escape risk." The severity of the offense and the long periods of time remaining to be served (or "low term investment") are apparently used frequently as reasons to deny prisoners minimum security placements, on the grounds that they would be escape risks. However, such rule-of-thumb predictions have, at best, not been demonstrated as accurate. In any event, the difficulty of predicting escapes suggests that it is a highly unreliable classification consideration and should, if used at all, be weighed against other considerations, such as the potential effectiveness of a particular placement for the prisoner or the kinds of risks which might be entailed if the prisoner should escape. Certainly, the apparently extensive use now made of ungrounded "escape risk" classifications should be reevaluated.

VIOLENCE AND RECIDIVISM IN MINIMUM SECURITY SETTINGS

With respect to the placement of inmates in minimum security custody, it is not simply escape -- but more directly the consequences of escape -- that are important. The prediction of recidivism and violence thus become key issues. Two methods of prediction have most often been used: the clinical, case study method and the statistical, actuarial method. Clinical assessment typically is a procedure in which a broad range of information about the individual is gathered. The statistical method considers a narrower range of factors evaluated as specifically related to criminal behavior. While both methods have been designed for situations of full release from custody, they provide at least analogies for minimum security custody risk predictions regarding public safety.

*Norman Holt, "Escape from Custody" (Sacramento, Calif.: Research Division, California Department of Corrections, May, 1974), p. 51.

Statistical prediction studies have generally focused on parole success or failure. In this context, success in predicting undifferentiated recidivism (non-violent, as well as violent crimes) has been modest but clearly discernable.* Several factors have been found to be associated with these outcomes: age at the time of first arrest and conviction, age when individual left home, type of crime, employment record, family stability, prior records of recidivism, etc. "Offenders who committed crimes against persons appeared to be better parole risks than those who committed crimes against property. This is due, in part, to the fact that crimes of violence are frequently situational crimes of passion committed by otherwise law-abiding citizens. Yet, the greatest proportion of all serious violence is committed by repeaters who have committed less serious offenses in the past."**

Predicting Violence

Predicting the commission of violent crimes is considerably more difficult than predicting recidivism in general. Neither statistical or clinical methods have been very effective to date. Errors in prediction are most often in the direction of false positives. ("False negatives," which refer to individuals predicted to be nonviolent who do commit violent acts, occur far less frequently.)

Clinical predictions of violence. Clinical methods have been used by psychiatrists, social workers, and parole staffs in evaluating the potential for violent behavior among patient or inmate populations. But violent crimes by former prison inmates or mental patients have undermined the reliability of clinical prediction.

*H. Mannheim and L. Wilkins, Prediction Methods in Relation to Borstal Training (London: Her Majesty's Stationery Office, 1955). See also:

Don Gottfredson et al., The Utilization of Experience in Parole Decision Making (Davis, Calif.: National Council on Crime and Delinquency, 1973).

**Beverly Koerin, "Violent Crime: Prediction and Control," Crime and Delinquency (January, 1978), p. 53.

There are a number of studies which amply demonstrate that the prediction of dangerousness by psychiatrists are unreliable.* Professor Bernard Diamond, a noted psychiatrist in this field, writes that "One can only conclude that psychiatrists who make such judgments tended to overpredict dangerousness greatly, by a factor somewhere between 10 and 100 times the actual incidence of dangerous behavior."**

Some authors do qualify this, taking the position that the clinical prediction of dangerousness is possible.*** In support of this argument, two studies of violence are typically cited: one involving Massachusetts mental patients, the other of the Patuxent Institution in Maryland. These studies predicted not only dangerousness but also nondangerousness; the total accuracy of prediction was 88 percent in the Massachusetts Treatment Center study, and 60 percent in the Patuxent study.**** In the study of Massachusetts patients, the following conclusion was made: "It appears that dangerousness can be reliably diagnosed and effectively treated."*****

Critics, however, point out that while the assessment of dangerousness in that situation appeared to have some validity, the problem of false positives stood out. Sixty-five percent of the individuals identified as dangerous did not, in fact, commit a dangerous act. The clinicians were wrong in two out of every three predictions of dangerousness.*****

*B. Rubin, "Prediction of Dangerousness in Mentally Ill Criminals," Archives of General Psychiatry 27: 1972, p. 407.

**Bernard L. Diamond, "The Psychiatric Prediction of Dangerousness," University of Pennsylvania Law Review, Vol. 123, p. 447.

***Murray L. Cohen, A. Nicholas Groth, and Richard Siegel, "The Clinical Prediction of Dangerousness," Crime and Delinquency, January, 1978.

****Ibid., p. 35.

*****H. Kozol, R. Boucher, and R. Garafalo, "The Diagnosis and Treatment of Dangerousness," Crime and Delinquency 18: 1972, p. 392.

*****John Monahan, "The Prediction of Violent Criminal Behavior: A Methodological Critique and Prospectus," reprinted from Deterrence and Incapacitation: Estimating the Effects of Criminal Sanctions on Crime Rates (Washington, D.C.: National Academy of Sciences), 1978.

Statistical predictions of violence. Statistical prediction techniques evolved with the desire to improve predictive accuracy. Most predictive statistical tables are devised by a similar procedure. First, criterion categories of behavior are established (e.g., what behavior is to be predicted and what procedure is to be used for classifying persons on the basis of behavior). Second, the characteristics which are expected to be closely related to the predicted behavior are selected and defined. The procedure is then tested on a representative sample of the target population to determine the relationships between the criterion categories of behavior and the predictor factors. Before applying the prediction procedure in the setting for which it was developed, these relationships are retested on a sample population to cross-validate the results.*

The major difficulty in most statistical predictive techniques is that, as with clinical methods, violence, in particular, is vastly overpredicted. The California Department of Corrections devised a violence predictor scale, using as variables the number of previous offenses, length of imprisonment, drug use, and present commitment offense. On the basis of these factors, the researchers isolated a group of offenders who were three times more likely to commit a violent act than the general parolee population. Yet even of those in the high risk group, 86 percent did not commit a violent offense while on parole.** Two other massive studies (Wenk et al.) on the prediction of violence were undertaken in the California Department of Corrections, with even more disappointing results. In the second study, for every correct identification of a potentially aggressive individual, there were 326 incorrect ones. In the final study, the authors concluded that the parole decision-maker who used a history of actual violence as his sole predictor of future violence would have 19 false positives in every 20 predictions, yet "there is no other form of simple classification available thus far that would enable him to improve on this level of efficiency."***

*Ibid., p. 248.

**Ibid., p. 54.

***John Monahan, "The Prediction of Violent Criminal Behavior: A Methodological Critique and Prospectus," op. cit., p. 247.

The identification of violence-prone prisoners is, therefore, in the words of one corrections observer, "the greatest unresolved problem the criminal justice system faces."* At best, it is possible to suggest that while some modest successes can be achieved in predicting recidivism generally, it is impossible to predict violence with any degree of accuracy, particularly if the concern is to predict a prisoner's behavior upon release or escape from an institution.

As noted in Chapter 2, Consultants did use a predictive method for deriving minimum security eligibility proportions. It was stressed in that discussion that this was a conservative methodology, containing serious problems of false positives. In reference to predictions of behavior, it should be emphasized strongly that even in minimum security settings, supervision and other normal security measures further reduce probabilities of risk to the community, because predictions of recidivism are predicated on freedom from close supervision.

To the degree that classification is based on prediction of prisoner behavior, it is on very insubstantial and elusive footing.

- While such predictions are often administratively necessary, Consultants recommend that the limitations of prediction should be emphasized; particularly in view of the detrimental consequences and costs of overclassification, strong safeguards against improper or groundless preventive overclassification should be present in the classification system.

The following section discusses some of the costs of overclassification; the concluding section of this chapter then addresses recommended safeguards against improper classifications.

*Ibid., p. 244.

COSTS OF OVERCLASSIFICATION

The consequences of overclassification are potentially great. Although Consultants cannot determine the precise degree to which any of the following considerations apply in California's prisons, it is clear that all of the "costs" listed below are present.

Facilities. Consultants think revisions in the classification system would have major implications for the use and flexibility possible in current medium and maximum security prisons in the system. As noted in Chapter 3, at least 10 percent of the prisoners now in medium security could be placed in minimum security settings, thereby easing population pressures that may exist now or in the future on medium security housing. This would also facilitate badly needed remodeling of some prison facilities (see Volume V of Consultants' Final Report).

When interviewed by Consultants, some officials said that maximum security space is becoming overcrowded, in part due to preventive placements of gang members. In these officials' view, the original gradations in maximum security housing, between Security Housing Units (which are typically used as disciplinary housing) and Management Control Housing (intended in part as "decompression" housing in the transition from disciplinary to mainline housing) have been overwhelmed by the increased use of maximum security, with consequent limitations on the flexibility and effectiveness of disciplinary actions by administrators.

Fairness. A perhaps more important consideration for the long-term effectiveness of the prisons is that the normally tenuous staff/prisoner relationship is further weakened by overclassification. This is particularly true regarding preventive uses of maximum security; prisoners in such instances feel unjustly punished, since they have actually committed no illegal acts. It is, of course, dangerous to be naive regarding such issues, but it appears clear from Consultants' observations and interviews of CDC Staff that there are frequent instances in which preventive overclassification has become a self-fulfilling prophecy -- in which prisoners have become angry and violent in reaction to their classification.

Overclassification is, in short, one instance of the concept of "labeling" -- in which the prisoner becomes what others have "labeled" the prisoner as being.

It is important to instill the appearance of justice in all proceedings impinging on a person's life, liberty, and property as it is to instill justice itself. In Wright v. Enomoto (ND Cal, Sept. 30, 1976, No. C-73-1422 SAW), the three-judge federal district court noted (from uncontra-

dicted expert testimony) that implementation of fair procedures decreases tensions in prisons and eases the work of prison administrators. The reason for this is the existence in all of us of a sense of justice, which, if violated, diminishes our respect for societal institutions and causes us in various ways to settle our differences outside the normal channels created to resolve disputes.

Overclassification, in other words, frequently involves restrictions on prisoners' movements and access to programs, and has other "punitive" consequences more severe than necessary or warranted. In such cases, overclassification offends the sense of fairness which should be a guiding criterion in gauging the effectiveness of the criminal justice system.

Reintegration. As will be discussed in detail in Chapter 11, Consultants think that minimum security settings are likely to be more conducive to successful reintegration of prisoners into the community than are higher security settings. There are, of course, a number of factors which may affect a prisoner's adjustment upon release, and the level of prison security is only one of those factors. Nevertheless, to the degree that minimum security custody encourages such things as contacts with the prisoner's family, the development of resources in the community, and the adjustment to less restrictive (or more nearly "normal") physical environments, it can be presumed to increase the likelihood of successful adjustment by prisoners upon release.

Financial considerations. Finally, there are the literal costs to overclassification. Maximum security beds cost, in operating and other expenses, several thousand dollars per year more than do minimum security beds. In addition, to the degree that improvements in patterns of overclassification result in greater flexibility in medium and maximum security prisons, they may also help to reduce the need for, and thus the expense of, constructing new prisons.

RECOMMENDATIONS

The preceding discussion has been concerned primarily with identifying the sources and consequences of overclassification, and has suggested that the emphasis on risk avoidance should be reduced. The critical problem, as noted earlier, is where that balance should be drawn. Consultants are not able to evaluate this issue in detail, because full evaluation of the classification system was beyond the scope and resources of the present study. Nevertheless, in view of the consequences of over-

classification, some guidelines and checks should be developed to control glaring abuses of discretion and to encourage an informed, rational, and consistent approach to risk-taking.

It should be noted that in any classification system, the concerns with risks (e.g., escape, misconduct, and violence) emphasized in this chapter are but half of the system. The other half deals with program placement and other issues, all of which have been overwhelmed in current California classification processes by the concern with violence and risks, particularly that associated with gangs. In pointing out ways to avoid overclassification, Consultants are, by inference, also suggesting that as the preoccupation with risk is reduced, attention to program and other classification and housing assignment issues can and should be heightened.

The following measures are recommended as necessary elements of an accountable and rational classification system.*

In the totality of these recommendations, Consultants are urging expanded CDC development of classification criteria, together with legislatively established procedures for classification hearings and review of classification decisions. These procedures should be comprehensive and reasonable, and should provide consistency and fairness. Judicial decisions such as Wolff v. McDonnell (1974) 418 U.S. 539 and Wright v. Enomoto, supra, (and perhaps Davis on Habeas Corpus ((Crim 20252)) pending before the California Supreme Court), provide a constitutional floor, but additional procedures should be included, where appropriate, to provide both justice and the appearance of justice. The necessity to legislate is underscored by the fact that although the Department of Corrections insists that it has been following procedures mandated by the decisions cited, others insist equally that the Department has not. Therefore, Consultants recommend legislation to provide the following:

*These recommendations are applicable to all stages of the classification process, including both Reception Center custody level classification and institutional classification. They also apply to a proposed addition to the present classification system, a special intake screening function, which is recommended in Chapter 11 of this volume. It should be noted that Consultants have not reviewed the discipline process and rules in detail; many of the recommendations may well apply to that system also.

Recommendation One: CDC Classification Procedures

- Every person committed to the Department is presumed entitled to the least restrictive classification. Any other classification must be preceded by noticed hearing. The prisoner shall be given reasons in writing for any classification other than least restrictive.

Medium and maximum security housing typically involve restrictions and limitations on the privileges of prisoners: they should be understood as "punitive" vis-a-vis minimum security housing. Therefore, there should be a presumption of minimum security eligibility, unless adequate reasons to the contrary can be stated. The analogy of the Federal Bail Reform Act is appropriate here; under that act, decision makers are required to give reasons for the denial of the least restrictive option available to them in a particular case.* From this principle, criteria regarding re-classification procedures flow logically:

Change of classification.

1. Other than in cases of genuine emergency, any change to a more restrictive classification should also be preceded by a hearing with the identical panoply of rights afforded at initial classification.
2. All classifications other than the least restrictive should be reviewed periodically and, unless the classification is changed to one that is less restrictive, the prisoner should be given the reasons in writing and opportunity for a hearing.

Hearings. The following guidelines pertain to prisoner hearings.

1. In case of genuine emergency, where a prisoner's conditions of confinement were changed before a hearing could be held, the prisoner is entitled to written notice within 48 hours after the change, and hearing within 72 hours, subject to continuance of the hearing time on the prisoner's request to enable preparation.

*Of course, prisoners may request assignment to medium security housing for a number of reasons.

2. In all other cases, the prisoner should be given written notice at least five days in advance of the hearing.

3. Notices should include the proposed classification, reasons therefore in sufficient detail to enable the prisoner to prepare a response, and a summary of the evidence. The notices should also include a list of witnesses, except that the identity of an inmate witness may be withheld if revelation would place the witness in physical danger.

4. The prisoner is entitled to be present at the hearing, to present witnesses and documentary evidence, and to confront and cross-examine adverse witnesses, except those who would thereby be placed in physical danger.

5. The prisoner is entitled to the assistance of a fellow prisoner or member of the prison staff if the prisoner is illiterate or the issues so complex that it is unlikely that the prisoner can collect and present the evidence necessary for an adequate comprehension of the case. The prisoner may select the person to provide the assistance, and has the right to that selection except for good cause shown.

6. All hearings should be recorded; the prisoner should have access to a copy of the tape or other record of the proceedings for the purpose of seeking review of an adverse decision.

7. A written statement of the decision, including the reasons therefore and the evidence on which it is based, should be given to the prisoner within five days after the hearing. If the prisoner's conditions of confinement were changed before the hearing, the prisoner should be given this decision within 48 hours.

Recommendation Two: Review of Classification Appeals

- Consultants recommend that an agency, such as the Community Release Board (CRB), be empowered to review appeals of prisoners regarding classification decisions by the CDC.

Fundamental fairness requires a review procedure in order to provide consistency and to correct errors and abuses of discretion. The Department of Corrections currently has an internal review process. This process should be conducted in a timely and efficient manner, appropriate to allowing effective and expeditious review by an outside authority.

Review by the CRB is recommended in order to (a) ensure the fact and appearance of fairness in CDC procedures, and (b) provide a feasible and practical appeal short of the delay and expense of appeal to the courts. The CRB appears to Consultants to be the most logical review body for corrections decisions, since the CRB is both separate from the CDC yet is, in its current activities, aware of the procedures and operations of the Department.

CRB review should be based on CDC decisions and reasons, the record of the Departmental hearing, and any supplemental writings submitted by the prisoner. The review would thus be, in most cases, a review of the reasons provided in writing by the Department for its classification decision, and of the prisoner for disagreeing with the decision. The CRB hearing officer should also be provided with the tape recording of the original hearing.

It is assumed that prisoners would exhaust all of these administrative appeals procedures before seeking review in the courts by writ of habeas corpus. It is therefore important that each stage of the appeals process be completed within strict time limits.

Recommendation Three: External Classification "Audit"

- The Legislative Analyst's Office should conduct audits of randomly selected classification decisions.

Apart from the review of individual classification appeals from prisoners, there should be a general audit of classification decisions at all stages and at all levels of appeal, to determine the degree to which classification guidelines are being consistently applied. This audit should also be used to advise and report to the Legislature regarding the degree to which Legislative directives concerning appropriate classification criteria have been implemented.

Recommendation Four: Written Classification Guidelines

- Written guidelines regarding the substantive criteria to be applied in classification decisions should be developed by the California Department of Corrections.

As noted earlier, while there are detailed procedural guidelines regarding classification and appeals, there are no explicit statements regarding the characteristics of prisoners which shall be pertinent to classification, and how those characteristics shall be identified and weighed in the classification decision.

Without such substantive direction, predictability and consistency in classification would be difficult to determine, and appeals or review mechanisms would be less effective and consistent.

1. The classification guidelines so developed should reflect sound principles of corrections policy, and should be based on accurate, empirically supported information about prisoner behavior. The use of risk prediction in classification should be clarified, and inappropriate or invalid predictive considerations should be abandoned.

As indicated earlier, the use of predictions of prisoner behavior must be seen as extremely difficult in many, perhaps most, cases. Consultants think that to the degree possible, classification decisions should be based on prior, rather than predicted, conduct.

2. Predictions of future actions (or the risk of future misconduct) are necessary elements of prison management, however. Therefore, prediction-based classifications which result in medium or maximum security custody should be accountable in ways analogous to "disciplinary" placements on the basis of actual misconduct. For example, classification decisions based on risk predictions should also be subject to reasonable standards of proof. Although the nature of "evidence" is necessarily different in predictions than in disciplinary placements, such prediction-based placements should contain some showing that a risk is "demonstrably present and represents an actual threat to others."* The showing of risk should, moreover, reflect awareness of the developing knowledge about the various kinds and bases -- and weaknesses -- of predictive judgments.

In particular, judgments that a prisoner is an escape risk (and hence not eligible for minimum security housing) or is a "violence risk" (and hence, in some cases, should be placed in maximum security) are highly suspect. These predictions should be based, in almost all cases, on a history of institutional misconduct, such as attempted escapes or assaultive behavior.

*Edith E. Flynn, "Standards and Goals: Implications for Facilities Planning," Report on the Colloquium On Correctional Facilities Planning, (American Justice Institute, January 3, 1978), p. 100.

Recommendation Five: Review Agency Resources

- To ensure that the recommended external review procedure is implemented, the Legislature should appropriate funds sufficient to increase the staffing and other needed resources of the review agencies.

As currently staffed, neither the CRB nor the Legislative Analyst's Office would be able to meaningfully perform the functions recommended for them. Both agencies should have expanded legal and research staff, to review classification records and written appeals, respectively. Because it is difficult to predict the volume of work which will be entailed, both agencies should report back to the Legislature after one full year's operations, with recommendations and requests for further resource needs. For the initial year of operation, reasonably modest staffing increases would be appropriate, since much of this year should be spent in developing and testing procedures for the fulfillment of the recommended responsibilities.

CHAPTER 10

PRISON VIOLENCE AND PRISON GANGS

INTRODUCTION

Concerns with violence and prison gangs have come to dominate many crucial aspects of prison management in California. Prison administrators have felt compelled to isolate major groups of offenders from each other, often filling maximum security housing units and/or limiting the flexibility of their institutions. Classification officers report that housing and program placements are determined almost entirely by considerations of violence prevention and prison gang affiliation, not by criteria of optimal placements for the program or other needs of prisoners.

In short, prison management finds itself in the reactive situation of coping with crises or threats of crisis. The basic dilemma facing the Department is how to reverse this process, to become proactive in order to manage the prison system in a way consistent with effective and efficient corrections.

In this chapter, Consultants analyze the sources and severity of the violence and gang problem in California's prisons and recommend a strategy to reestablish more complete control over the prison violence situation. This strategy involves maintaining strict controls over gang leaders and activities, while at the same time developing alternative forms of prisoner leadership and organization. This approach contrasts with techniques typically used in California's prisons, such as stringent separation of all gang members and suspected gang members, which Consultants regard as a risk-laden overreaction, the effect of which is probably to strengthen gangs as often as it is to weaken and control them.*

*It must be noted that there is strong disagreement among corrections officials regarding the proper response to gang activities. Some of the recommendations Consultants make in this chapter are based on general measures already being taken in some prisons. The predominant administrative stance in the CDC, however, is as characterized in the text.

VIOLENCE AND GANGS: THE PROBLEM

In Consultants' Inventory Report,* the growth in the number of violent incidents in California's prisons was noted. Consultants noted that the incidence of violent and other disciplinary incidents in CDC facilities increased dramatically between 1970 and 1976. The total number of reported incidents increased nearly four-fold during that period, most notably in the categories of fights with weapons and narcotics. By all accounts of those interviewed in the Department and in the prisons, the gangs have been responsible for at least a substantial part of the increasing violence.

However, it may well be dangerously misleading to couple prison violence and prison gangs so simply. The problem of violence in the prisons may reach more deeply into the nature of prison life, and to attribute violence exclusively to gang activities poses the risk of responding to the "symptoms" without addressing the "causes" of violence.** On the other hand, to associate gangs primarily with incidents of overt violence may well be to understate the degree and nature of their influence in the prisons. As stated by John P. Conrad, the gangs appear to exert immense control in some of the prisons:

"To an extent that I still find hard to believe, these gangs control jobs, housing, and protective custody. The most credible kind of intimidation compels prisoners to request job changes so that a gang member can take over a desirable assignment. Men who belong to gangs not recognized by the dominant prisoner leadership must be immediately transferred out if they are to survive their terms. A gang leader can

*Approach Associates, California Legislature's Study of Correctional Needs, Inventory Report, "Alternatives to Incarceration and Security Classification"(March, 1978), pp. 36-45.

**This analogy is described more fully in Nora Harlow and M. Robert Montilla, "Summary Report: Colloquium on Correctional Facilities Planning," in Report on the Colloquium on Correctional Facilities Planning, (American Justice Institute, California Department of Corrections Program Planning Project, January 3, 1978), pp. 34-36. See also:

CDC Program Planning Report for Fiscal Year 1978-79, Vol. II, op. cit., p. 94.

order another convict into protective custody, an order that neither the warden nor the convict himself can safely defy . . . There may be exaggerations in what I have been told, but unless I have been systematically misinformed, the situation in broad outline is that at several California prisons . . . a substantial share of power has been seized and kept by gangsters."*

If there is anything unique about the violence perpetrated by gangs, it may be that it is violence designed not merely to accomplish the immediate ends which are frequently at stake in prison violence (such as for retribution or anger regarding debts or sexual favors), but a calculated attempt to create an atmosphere of fear in which more pervasive extortion and control by gangs can flourish.**

In responding to the problems of violence and gang influence, it is therefore important to act on many levels. Prison conditions which breed the tensions and grievances gangs can exploit must be corrected; the actions of gangs, whether through actual or threatened reprisals, should be controlled; and even the appearance of gang control over access to desired goods -- whether illicit goods (e.g., narcotics, sexual favors, or loans) or licit goods and rewards (e.g., such as housing, job, and program assignments) -- must be combated.

*John P. Conrad, "Who's In Charge? Control of Gang Violence in California Prisons," in Report on the Colloquium on Correctional Facilities Planning, op. cit., p. 196.

**Estimates of gang membership range from 5-10 percent of the male prison population (CDC Program Planning Report, Vol. II, p. 115) to less than 2 percent. The latter estimate is by James W. L. Park, Chief, Research and Planning Services, CDC. ("The Organization of Prison Violence," in Albert Cohen, George Cole, and Robert Bailey, editors, Prison Violence (Lexington, Mass.: Lexington Books), 1976, p. 91.) It should be noted that gangs may themselves control certain kinds of violence in prisons. Park, for example, writes that: "Curiously, the existence of these well-organized, highly disciplined groups probably has reduced the chances that large scale intergroup conflict will occur. The dangers in such outbreaks are so threatening that the occasional assaults between individual gang members are often resolved by negotiation."

CDC Response to Gangs

The Department of Corrections' foremost response to gangs has been an effort to physically isolate gang leaders, members, and many times, also suspected members. Within institutions, gang members and affiliates are removed from the mainline population and placed in special maximum security units, which are segregated by gang. The policy of separation also avoids mixing gang members at various institutions. For example, DVI houses members of the Nuestra Familia, while San Quentin and Soledad house members of the other main gangs. In addition, throughout the prison system there are rough "understandings" that a particular facility is an identifiable "gang line."

The Department believes that the policy of segregation has proven "an effective method of containing" gang violence.* One justification of the CDC request for additional prisons is that these will enable an extension of the segregation policy, with the ability to split up the leaderships of the gangs and dilute gang impact.

It is clear that the Department has an obligation to protect staff and inmates from violence within the institutions, and that caution and some preventive measures are needed. However, the process of separating hundreds of identified or suspected gang affiliates is not at all a conservative approach. It is, in fact, a dangerous policy which can strengthen gang membership and influence and can contribute to violence. Such drastic administrative reactions lend credence to gangs' claims of influence and importance, and give the gangs a dramatic place in the anti-authority values and myths of prisoners. More importantly and concretely, the policy of including suspected gang members in such separation creates gang membership: once administratively "labeled" as a gang member -- and particularly when housed separately with gang members -- a prisoner has little choice but to become a member, even though he was not a member and had not intended to become one. One high ranking prison official believes that as many as 50 percent of the current membership has been "recruited" through such labeling by staff.

Extended maximum security detention for preventive purposes is also employed in the response to gangs. Such actions can precipitate anger

*CDC Program Planning Report for 1978-79 Fiscal Year, op. cit., p. 115.

and violence on the part of prisoners who, having committed no illegal acts in prison, feel unjustly punished. This system of separating gang members and suspected affiliates thus becomes a negative, self-fulfilling and self-defeating prophesy, in which administration policies designed to control gangs actually perpetuate the very gang membership they seek to curtail. In addition, the policy of separation imposes severe problems for management. Segregation within special units in the prisons creates management problems concerning prisoner movement, since prisoners can be let out only one gang at a time. Segregation of different gangs by concentrating them in different facilities or prisons can also create the severe risk (unless unusually strong prison administrators are present) that the facility will be effectively controlled by the gang itself.

Whatever its merits or pitfalls, the policy of separation cannot of itself be an adequate solution to the gang problem. Dispersion of gangs into additional facilities may only spread the problem, unless the underlying conditions, upon which gangs develop strength and membership, are addressed.

The Department faces an extremely complex dilemma: how to reverse a reactive stance (e.g., separation) into a proactive and controlling position, in the face of real challenges to its authority and threats to the prisoners and staff. This will not be an easy matter, and much more thorough study by an independent observer is needed than was possible within the scope of the present research. However, the following recommendations constitute a broad, multifaceted strategy for reasserting control over the gangs.

RECOMMENDATIONS

It was noted earlier that adequate response to the problems of gangs must proceed on many levels: controlling illegal actions of gangs and gang members; combating even the appearance of gang importance and influence; and correcting the underlying conditions of tension, frustration, and idleness which lead to violence and which can be exploited by gangs. The following is a three-part strategy which addresses each of these levels; for brevity, the strategy is to control, divert, and defuse prison gangs.

Control

Gangs must be controlled in part through the traditional methods of discipline and separation.

1. Separation. Clearly identified gang leaders and members should be separated from the general population. This separation should not include prisoners for whom there are only unsupported suspicions regarding gang membership, nor should the separation be accompanied by the same degree of restrictions as disciplinary action unless there is actual misconduct warranting withdrawal of privileges or participation in programs.

It must be emphasized that the separation suggested here must be employed with restraint; placements in gang-related separation should be reviewed in the same manner, with the same process of appeals available, as was recommended for the classification system in Chapter 9, although given the problems of "labeling," such appeals should be expedited to the utmost.

2. Discipline. Punishment for violent or other incidents must, of course, be swift and consistent. All infractions should be immediately punished, with punishments for gang members the same as the punishments meted out to other prisoners for the same violations.

All violent or otherwise coercive behavior, whether gang-related or not, should be regarded as serious. To impart to prisoners a sense that their protection and well being is taken seriously by prison staff and administrators, investigations of incidents should be thorough and rigorous.

In some cases, closer cooperation by local law enforcement and prosecution personnel is desirable. As noted by Conrad, "The unwillingness of district attorneys to add to their workloads and the reluctance of criminal investigators to engage in the unrewarding process of crime detection on the prison yard must give way to a rigorous policy of law enforcement."*

*John P. Conrad, op. cit., p. 210.

3. Institutional Flexibility. Consultants have made renovation recommendations which would afford institution administrators greater flexibility by providing for smaller living units and for less cross-flow of prisoner movement between living units and program or services space.* Consultants share the concern of prison administrators that the large institutions almost require that staff "prepare for the worst." There is in such institutions difficulty in establishing close and continuing staff/prisoner contact, because of the staff preoccupation with dealing with large numbers of prisoners or supervising the complex logistics of prisoner movement.

The flexibility gained by renovation of the prisons should be accompanied by administrative policies designed to encourage greater staff/prisoner interaction. Moreover, each administrator should of course develop contingency plans so that in the event of an incident, implicated prisoners can be moved without general population disruption, and so that the smallest possible area of the prison can be "locked down" while control is being restored.

4. Contraband. Reasonable and lawful methods of interdicting the flow of contraband into the prisons should be applied, according to the guidelines and parameters being developed in case law governing visitation, correspondence, etc. Any persons involved in the introduction of contraband into the prison -- whether prisoner, visitor, or staff member -- should be prosecuted by local authorities.

Divert

While there is a small core of calculating and violent gang leaders and members, a good deal of the gangs' strength emanates from their ability to recruit prison newcomers by offering protection and access to desired goods (e.g., narcotics, sexual favors, housing, or miscellaneous other commodities or positions). While exploring the peripheral aspects of the gang, these newcomers are either drawn in by the gang before they know how dangerous and irreversible gang membership can be, or they are labeled by staff as gang affiliates. Once labeled, the prisoner, fearing reprisal by that or rival gangs, will have little choice but to become actively involved with the gang. It is crucial that a program be developed to divert new prisoners from affiliation with gangs before they are drawn into them.

*See Volume V of Consultants' Final Report.

1. Orientation. It is important that a program be developed to divert new prisoners from affiliation with gangs before they are drawn into association and membership. A thorough orientation depicting the realities and expectations of gang activity should be developed and provided by prisoners. One attempt at such an orientation is a film being made and distributed by prisoners at CMC. The Department should make funds available for this and other programs sponsored by prisoners to divert new inmates away from gangs.

2. Informal Leadership. In earlier periods of corrections, older and more mature convicts tended to have a restraining effect on younger prisoners. Consultants suggest age diversification of prison populations as a means of providing alternative sources of informal leadership in the prisons. For the most part, California's prisons presently have older prisoners or those serving longer terms separated from younger prisoners. All prisons should house some of the older, more stable prisoners, who can exert leadership and influence the structure of peer pressures in prisoner society. Although such alternative informal leadership must be allowed to develop naturally, it must also be acknowledged that prison administrators require the cooperation and advice of prison leaders. Therefore, once identified, the non-gang leaders should be encouraged to propose reward systems or mechanisms by which incentives for anti-gang attitudes can be developed.

Defuse

The conditions which contribute to violence in prisons and to recruitment of gang members should also be eliminated. In this and companion reports, Consultants address many of those conditions: renovation of facilities, improvement of programs, development of more and better work opportunities, changes in the classification system to improve the fairness and objectivity of that process, etc.* The Department of Corrections Program Planning Report proposes many measures similar in intent and direction.** If implemented, the recommendations by Consultants and by the Department should ease substantially the stress, idleness, and frustration which underlie violence and gang membership. One additional issue should also

*See Volumes III, IV, and V of Consultants' Final Report.

**See also Nora Harlow and M. Robert Montilla, "Summary Report: Colloquium on Correctional Facilities Planning," op. cit.

be addressed: the important role of correctional staff in ameliorating the conditions of violence in institutions.

Correctional officers should be trained prior to being placed on the job; this training should include, in addition to more traditional security and control techniques, conflict management, hostage negotiations, crime scene investigation, and job stress. A set of standards should be developed, and standardized training given to all officers. Those who do not meet the standards established should be terminated.

In addition, it is strongly recommended that recruitment for correctional officers be conducted statewide. This recommendation would encourage more officers of varied backgrounds and more minorities to enter the field. The recruitment of more minority officers should be given particular priority.

It is widely acknowledged in corrections that some officers contribute to tensions and violence through brutal or discriminatory behavior, through exacerbating rather than intervening in conflicts, and that contraband is introduced into prisons by staff. These injustices, committed by a small percentage of staff, encourage problems of violence and resentment which pose problems and risks for all employees.

Although close disciplinary controls are needed for staff, a more productive and effective strategy is to upgrade personnel selection and training. By improving staff skills and providing them specific crisis management techniques as well as other skills designed to maintain a stable control of the prison without the need to overreact or resort to violence themselves, such training and selection would contribute to the development of a more manageable and stable prison environment.

SUMMARY

None of the recommendations or measures proposed above would, alone, go very far in remedying the problems of violence and gangs in California's prisons. Together, however, they constitute a strategy which includes a broad range of actions. That is, they are intended to isolate violent prisoners in a way much more pervasive than mere physical separation.

CHAPTER 11

ALTERNATE MODES OF INCARCERATION

INTRODUCTION

Under current California sentencing legislation, the predominant philosophy of sentencing and corrections emphasizes punishment and community protection. Offenders are committed to CDC custody for containment and for separation from society.

CDC's first obligation is thus to provide the requisite punishment or containment through incarceration. It should also, presumably, seek to do so at reasonable cost, and should with as much effectiveness as possible meet various secondary goals -- preparation of prisoners for reintegration into society, provision of needed services and programs (e.g., job training), and should provide opportunities for restitution. These secondary goals should be seen as an additional criteria in decisions regarding the optimal mode of incarceration for prisoners.

Although current sentencing legislation removed discretion from administrative authorities regarding the time at which an offender may be released to parole, the Department retains considerable discretion regarding the level or kind of custody and supervision to exercise. It is the exercise of this discretion that this chapter addresses. In particular, Consultants discuss possibilities for alternate modes of incarceration to those presently used for minimum security prisoners. Penal Code sections 6250, 6251, 6253 and 6254 grant the Director authority to operate community correctional centers, for example, and to grant furloughs to prisoners. Under P.C. 6256, the Director is authorized to contract with "appropriate public or private agencies" to supply housing and supervision of prisoners, and to reimburse those agencies for their services.*

An excellent opportunity now exists to improve the flexibility and increase the options and effectiveness of the California prison system by developing a series of new placements for the local custody of selected minimum security prisoners. The application of the prisoner profile research study (reported in Chapter 3 of this report) demonstrated that nearly 10 percent of current CDC prisoners would be eligible for minimum

*For further discussion, see Consultants' "Alternatives to Incarceration and Security Classification": Inventory Report (March, 1978), pp. 2-3.

security housing, even under the most stringent of criteria. This group of prisoners, who have no convictions for violent offenses or for the sale or possession of drugs, and no history of escape, includes approximately 2,000 prisoners. These prisoners should be classified in a new classification level -- "low minimum security."

This chapter proposes two primary mechanisms for housing these prisoners in local correctional settings: county operated facilities, and privately operated facilities.

Consultants also recommend that local correctional settings be used to dramatically upgrade pre-release programming for other prisoners preparing to reenter society after serving periods of their sentenced terms in other CDC facilities. Together, these two groups of prisoners would comprise well in excess of 10 percent of the prison population.* Ultimately, the local correctional options may expand. However, for the immediate future, 10 percent is an appropriate and prudent level of development.

The concepts presented in this chapter bear some similarity to the Department of Corrections Program Planning Report commentary on "community bed" release centers and "regional jail camps."** However, the content of Consultants' local options appears to differ in many respects from that envisioned by the Department and, more importantly, Consultants place higher priority on the development of the local corrections options. This priority stems in part from Consultants' disagreement with CDC's analysis that minimum security space is already in excess supply: Consultants think that, on the contrary, there will be a major need for minimum security space by 1983.

*See Chapter 3 of this volume. It should also be noted that Consultants' methodology for assigning prisoners to "low minimum security" classifications -- or Variation A in Chapter 3 -- was quite conservative. There may well be, when a detailed reclassification of the prisoner population is accomplished, a higher percentage than that indicated by Consultants' profile exercise who would be eligible for minimum and low minimum classification. The figure of 10 percent is established here as a conservative level of utilization for local correctional options, on the grounds that careful planning would require some experience with the options proposed before expansion beyond that level.

**CDC Program Planning Report for 1978-79 Fiscal Year, Vol. II, op. cit., pp. 123-24 and 126.

Consultants' analysis and development of the concept of local correctional options was guided by the corrections missions mentioned at the outset of this chapter. The alternate modes of incarceration were judged according to whether they afforded adequate security (e.g., containment of prisoners and protection of the community), whether they provided viable opportunities for restitution and for the reintegration of prisoners into society, and whether they could be operated or contracted out at a reasonable cost.

DESCRIPTION OF COUNTY OPERATED FACILITIES

As described in Chapter 7, Consultants surveyed available data and conducted a series of interviews to determine whether there is usable surplus bed space in California's local corrections systems. From State Board of Corrections reports and interviews, it was determined that over 5,000 beds are currently not being used in specialized county programs such as work furlough facilities (including those operated out of jails), minimum security jail space, industrial farms, rehabilitation centers, honor farms, and county correctional centers.* Such space was identified in 20 counties throughout the State, including the major urban counties which account for the majority of CDC commitments.

Of these 5,000 vacant beds in specialized county facilities, it is reasonable to assume that at least 1,000 would be available and suitable for immediate use by state prisoners.

Interviews with local officials indicated that there are complex questions which would have to be resolved in at least some counties before those counties would willingly accept state prisoners. Acceptance

*Although the precise nature of the "regional jail camps" mentioned in the Program Planning Report (Volume II, p. 126) is not clear, there appear to be some significant differences between that idea and Consultants' focus in this discussion. The CDC apparently envisioned state-run facilities; Consultants recommend that local officials should continue to operate the facilities or programs, although State standards would be needed. In addition, the CDC concept appears to entail new facilities, while Consultants believe that existing facilities and programs should be used.

would be dependent upon the provision of adequate financial incentives. Acceptance would also be dependent upon the degree to which county authorities were able to participate in decisions regarding the type of prisoners referred to county facilities. In general, however, the county officials and Board of Corrections Staff interviewed by Consultants were favorably inclined toward greater use of county facilities for state prisoners.

Several significant benefits would result from use of county facilities. In terms of economical operation of corrections, the use of existing surplus space makes eminent sense -- particularly if it would reduce the need for major capital investments in new prisons.

More importantly, perhaps, the use of local corrections options would be in the interest of effective reintegration and restitution, since prisoners would be housed (in most cases) in their county of origin, and would have access to post-release employment opportunities, to more frequent family visits, and to a variety of other community services. To the degree that State compensation and participation facilitated provision of better services to the prisoners already in county jails, the effectiveness of corrections at all levels would be improved.

- For these reasons, Consultants recommend that the CDC begin immediately to develop a suitable compensation scheme and contracts with counties to use the specialized county corrections. The CDC should establish a target of contracting for 1,000 beds within the next two years.

Further recommendations regarding the implementation of this concept are included in the final section of this chapter.

PRIVATELY OPERATED LOCAL FACILITIES

Consultants conducted an extensive search for minimum security facilities and programs which stressed reintegration or restitution programming for prisoners. Consultants were seeking models for correctional centers in or near urban areas, which would typically provide intensive supervision and structure. Included in this survey were a literature review, interviews with spokespersons for a number of California correctional centers

and programs, and interviews with corrections officials in a number of states regarding pre-release and minimum security custody settings.*

- On the basis of this review, Consultants recommend that CDC contract with local private organizations for 1,000 low minimum security beds.

*For a partial listing of the literature consulted, see Consultants' "Alternatives to Incarceration and Security Classification," Inventory Report -- March, 1978, Appendix A. Additional citations are included in the discussion of sentencing alternatives to incarceration in Chapter 6 of this volume. To those citations should be added the following important sources of information and concepts: Koba Associates, Summary Report: Phase I -- Assessment of Coeducational Corrections (National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Administration, U.S. Department of Justice, September, 1977); Robert T. Carter and Leslie T. Wilkins, editors, Probation, Parole and Community Corrections (New York: John Wiley and Sons, Inc., 1976); E. Eugene Miller and M. Robert Montilla, Corrections in the Community: Success Models in Correctional Reform (Reston, Virginia: Reston Publishing Company, Inc., 1977); David Bookman, et al., Community-Based Corrections in Des Moines (Law Enforcement Assistance Administration; U.S. Department of Justice, 1976); Montgomery County Work Release/Pre-Release Program: An Exemplary Project (Law Enforcement Assistance Administration; U.S. Department of Justice, 1978); Charles Hampden-Turner, Sane Asylum (West Caldwell, New Jersey: William Morrow and Company, Inc., 1977); Richard Bass, An Analysis of the California Department of Corrections Work Furlough Program in Fiscal Year 1969-70 (Sacramento, California: CDC Research Unit, November, 1975).

Officials for a number of California programs were contacted or visited; the most useful information related to Consultants' concerns was derived from the two community correctional centers operated by the Parole and Community Service Division and the Volunteers of America Work Furlough program in Oakland for state prisoners.

A number of corrections officials in various states were contacted and interviewed, and descriptive literature was requested. Those states corrections officials contacted were in Minnesota, Michigan, Connecticut, Washington, Maine, Texas, and South Carolina; information was collected on litigation regarding decarceration in Alabama and restitution programs in Georgia. In addition, spokespersons for the U.S. Bureau of Prisons were interviewed.

In this discussion, the generic term "Urban Skills Center" will be used, to distinguish the correctional centers from the great majority of low structure and low supervision programs which currently abound under the general term "community corrections."

The Urban Skills Center

The Urban Skills Center concept should be seen as subsuming a fairly wide range of possible services and concentrations. Indeed, one primary reason Consultants recommend that these centers be privately operated is that this will encourage diversity and innovation in the array of options available.* The prisoners referred to the programs will have a variety of needs, and will stay for varying periods of time; likewise, programs will have different resources and special emphasis. However, certain characteristics are central to the concept of Urban Skills Centers.

1. Work and Vocational Training. The Urban Skills Centers should be strongly oriented toward vocational placements and work. This emphasis contributes not only to the eventual reintegration of the prisoner into society, but also permits restitution (if only in the form of payment for room and board, which is mandatory in most of the programs surveyed). The precise nature of the vocational or work opportunity varies, but the following list provides a sense of the scope of opportunities which should be explored:

a. Traditional work furlough. The variations in the kinds of work furlough programs possible is great, but most involve individual job placements of prisoners. These placements can be either to maintain

*This is not intended to exclude the CDC from direct operation of such programs. However, the great majority of programs should be run privately, with the CDC enforcing standards (as will be discussed subsequently). An additional rationale for privately managed facilities is that they are less costly, an issue which is also discussed later in this chapter.

or reestablish employment, to establish the prisoner in new employment, or to accomplish restitution.*

b. Program operated small businesses. Businesses operated by the correctional program and staffed by prisoners (or parolees) are becoming more common. These efforts are designed to produce revenue for the program, while at the same time training residents in proper work and job-holding habits, developing residents' skills, and gaining "credentials" -- such as union cards -- which would be of assistance upon release from the facility or program. In California, Delancey Street is an example of this approach.

c. Apprenticeship and job-development. A variety of relationships can be established between correctional centers and job preparation or job development programs, both public or private. These arrangements could involve joint efforts -- such as apprenticeship programs -- between the correctional center in which the prisoner is housed and some group specializing in vocational services or development. One example of such an arrangement is the growing number of special CETA programs for residents of community correctional programs and experimental efforts (for example, in Minnesota) to develop similar arrangements in minimum security units run by corrections agencies.

d. Other vocational training possibilities. There are many other possible work/custody arrangements. In some states, private industries have been "brought into" the prisons; the process might work in the other direction as well, with a particular correctional center associated with local business.

Regarding the emphasis on work and vocational training in the Urban Skills Centers, there are, of course, many practical problems. For example, organized labor may object to the activities of the center.

*Restitution is, as reported in Chapter 6, becoming more widely used. Minnesota has developed a restitution "contract" system, in which, as a condition of parole, property offenders can contract to make restitution. Georgia has reportedly developed ten "restitution centers"; for prisoners who are judged eligible for placement in the center, either direct restitution to victims or "symbolic restitution" (through community service) is permitted.

2. Other Activities and Services. To be successful, correctional centers should not be exclusively oriented to work and vocational training; they should, rather, be multifaceted, with a variety of services provided and activities required. Residents' non-work time should be occupied with education, counseling, and "social awareness instruction" geared toward development problem-solving, decision making and communications skills.*

Consultants think the Urban Skills Center concept offers hope of effective reintegration of prisoners through local custody. Such centers offer the benefit of maintaining ties with prisoners' families and of establishing connections with various social services. More generally, the destructive effects of traditional prison incarceration can be minimized or avoided altogether.

It would be naïve to assume that private centers such as those proposed here can be developed easily. As suggested above, there are stable, viable, and successful programs that appear to accomplish their goals of reintegrating prisoners. In most cases, they are characterized by strong leadership and peer pressures, creating commitment by prisoners or participants to the center; most also have stringent rules and regulations regarding the conduct of participants. It would be necessary to develop analogous strengths in the proposed Urban Skills Centers and to provide an adequate set of incentives -- such as job placements and penalties (e.g., return to prison) -- in order to provide programs sufficient control over prisoners. In addition, it would be necessary to subject the Urban Skills Centers themselves to strict standards of programmatic and administrative performance. Finally, it would be necessary to provide contract funds in sufficient amounts, and with sufficient future assurances, that the centers could develop the basic financial stability needed for sound planning and resource management.

3. Costs for Urban Skills Centers. A frequent justification of "community corrections" is that it is less costly than prison incarceration. It must be noted, however, that the proposed Urban Skills Centers do entail custody of prisoners and they are also, as envisioned, heavily staffed. As multifaceted programs, they would provide counseling

*For example, the Montgomery County Work Release/Pre-release Program requires weekly sessions with counselors, as well as attendance at workshops and classes in such things as employer/employee relations, housing, family planning, etc.

and services of various kinds. Some, if not all, of these costs would be offset by earnings of participants or of the enterprises the centers operated.

Cost estimates for the centers are difficult to derive, if only because of the variety of program offerings possible and because of variable offsets to operating expenses to be expected from revenues or prisoner earnings. Rough estimates are offered here, to afford some sense of the level of costs involved in Urban Skill Centers.

Available documentation* suggests that the typical range of costs for correctional settings comparable to the Urban Skills Centers is between \$15 and \$35 per resident day (in 1978 prices). Differences in costs reflect not only variations in program content, but also in the degree of economies to scale achieved (with minimum average costs achieved in programs within the range of 45-65 beds).

There is considerable evidence that privately operated programs are less expensive than public correctional centers. Among the three California correctional centers, the lowest per day cost was achieved by the privately operated Volunteers of America work furlough program, which costs approximately \$7,525 per resident year (or \$20-\$21 per day), at current utilization rates. Some economies are achieved in private programs because there is less expense for correctional personnel. More generally, however, Robert Montilla notes that:

"Private operators in the business for profit seem to provide a more effective service in terms of reintegrating the offender

*Information in the text is based on interviews with Parole and Community Service Division personnel regarding the current community correctional centers in California and on: Donald J. Thalheimer, Cost Analysis of Correctional Standards: Halfway Houses (Washington, D.C.: National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Administration, U.S. Department of Justice, 1975). Cost data in the latter source were adjusted by Consultants to reflect inflation (at 8 percent per annum). It should be noted that the two sources, one in California, and one nationwide, showed similar ranges of resident day costs.

into the community, and at less cost than do the state operated community residential centers or halfway houses."*

Consultants think that cost ranges of \$7,000 to \$9,000 per bed per year should be expected.

4. Urban Skills Centers and Public Protection. The above cost figures would not constitute a complete analysis of the true costs of Urban Skills Centers. Full analysis of the costs would include evaluation of cost savings which accrued to the extent that the need to construct new prisons were avoided; the costs in welfare, lost tax revenue, and other social services which would be avoided if participants were able to earn sufficient wages to make family support payments; and the savings to the public and the criminal justice system that result when prisoners are successfully reintegrated into society and do not return to crime.

On the other side of the cost balance, crimes committed by residents (who would, presumably, not have committed the crimes had they been housed in medium or maximum security incarceration) must be added to the debit side of the ledger. As noted in Chapter 6, the evidence is clear that long-range social protection is not well served by high security incarceration. The question is whether short term public protection can be satisfactorily accomplished in minimum security local facilities.

The restrictive eligibility criteria for Consultants' proposed low minimum security classification should be noted. Experiments in other states using similar criteria suggest that recidivism is minimal in a carefully screened population.** In addition, the Urban Skills Centers

*Robert Montilla, "Environment for Community Corrections," in Miller and Montilla, editors, Corrections in the Community: Success Models In Correctional Reform, op. cit., p. 23.

**Washington State is currently engaged in an "Intensive Parole Supervision Project" experiment, in which approximately 8 percent of commitments are released, following intake, back into the community with special parole contracts. In the first 26 months of operation, about 13 percent of the parolees have been returned to prison; most of these were for technical violations. Only 1.8 percent -- or 4 individuals -- were returned after new arrests, all for property crimes. It should be noted that similar results were achieved with a control group which received no special supervision.

would entail high levels of supervision and structure. Violations of rules or misconduct by offenders while a program participant would be grounds for removal of the participant to higher security incarceration. Of the several thousand prisoners and ex-offenders who have entered the Delancy Street program over the last several years, almost all of whom are far more serious and longer term offenders than Consultants have recommended for the Urban Skills Centers, none have been involved in an incident of violence, and while there has been one or two arrests, none have been convicted of new offenses while under Delancey Street supervision.

In short, with adequate screening and particularly with high levels of supervision, the Urban Skills Centers would pose little threat to public safety in the "short run." Given the greater likelihood of successful reintegration of participating prisoners, they should be seen as also providing enhanced public protection over the long run.

RECOMMENDATIONS FOR IMPLEMENTATION

Screening and Selection of Prisoners

As depicted in Figure 11.1, there would be two main channels by which prisoners could enter the proposed local alternate modes of incarceration. One channel involves the referral of low minimum security prisoners immediately upon their commitment to CDC. The second channel involves pre-release placements, similar in basic respects to current entry into minimum security and pre-release settings following some period of incarceration in other prison settings.

1. Intake Screening. Screening should occur immediately after offenders are sentenced to be committed to CDC custody, and before they are transported to CDC Reception Centers. The screening should consist of a review of the prisoners' current convictions and documentation of past criminal activities to determine whether prisoners have committed any violent offenses or pose any substantial risk of recidivism.

- Consultants recommend the implementation of this new process, which should be distinct from the current Reception Center classification procedures.

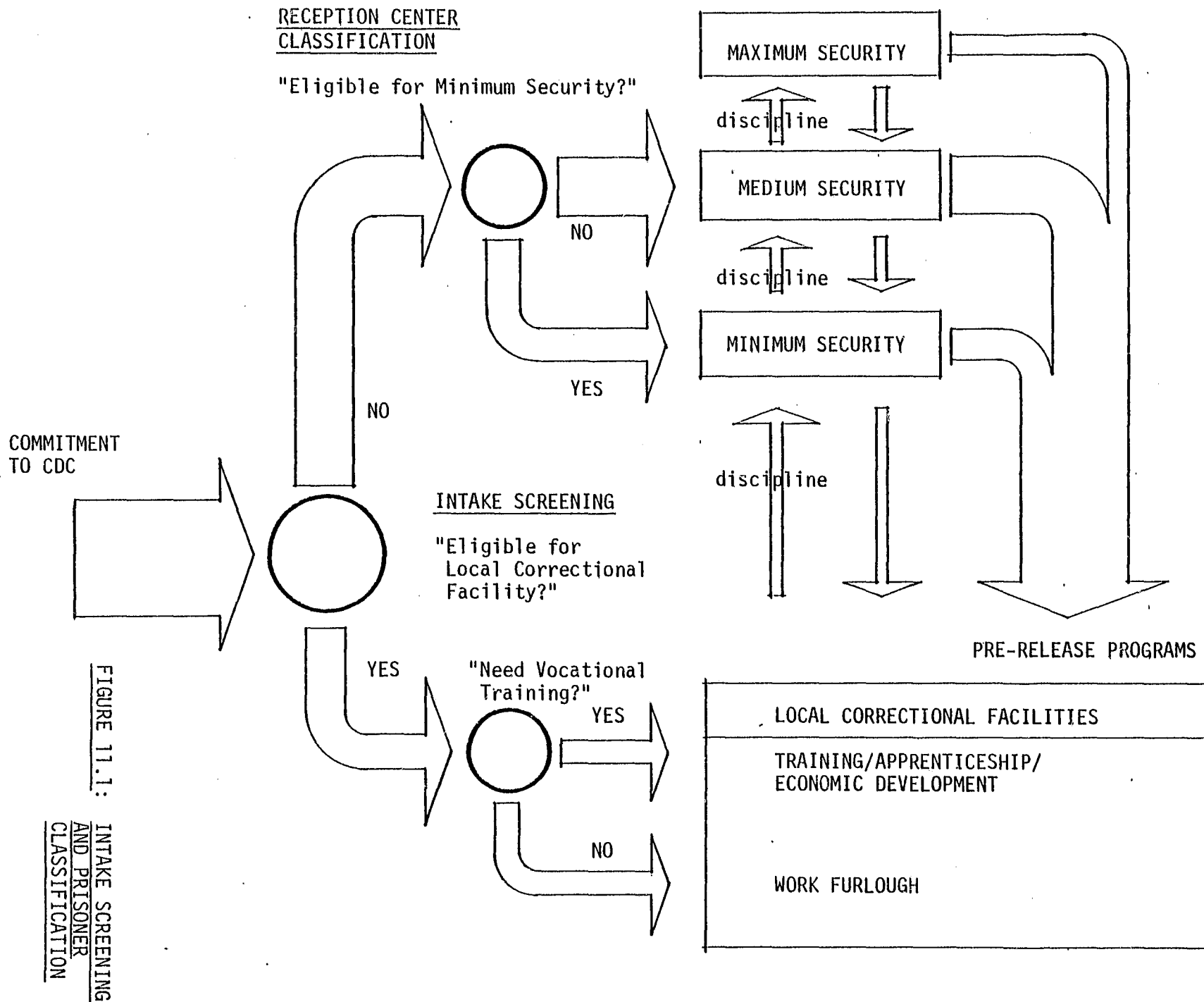


FIGURE 11.1: INTAKE SCREENING AND PRISONER CLASSIFICATION

Criteria to be applied in the intake screening stage, to exclude prisoners from eligibility for placement in a local correctional setting, should be set by the Legislature. Recommended grounds for exclusion include:

- a. Conviction of a violent felony, as defined in P.C. 667.5 (c), or as included in the listing of offenses in Appendix C.4 of this report;
- b. findings of engagement in activities set forth in P.C. 2961(b), as those which would result in loss of good time credit;
- c. known gang leadership, or membership;
- d. sale or possession of drugs, or history of drug addiction;*
- e. any other categories the Legislature believes to pose a threat to other persons or the security of the custodial facility.

There should be an affirmative finding of the existence of one of the enumerated criteria to exclude prisoners from local incarceration settings. Notwithstanding the existence of one of the enumerated criteria, if the facts of the particular case indicate that the individual should nevertheless be placed in the local facility, screening personnel should have the power to find the prisoner eligible. (One example would be a case in which the violent offense had occurred many years in the past, and all other information about the prisoner indicated that such conduct would not recur.) This is analogous to the "unusual case" provision of P.C. 1203 for probation eligibility.

Regular CDC classification personnel should conduct the screening. In addition to review of the prisoner's file, a personal interview by a Board (including CDC classification officials and representatives from local correctional facilities or Urban Skills Centers) is recommended. Where the prisoner being considered for local placement is not a local resident, county officials should have the right to refuse admission to the prisoner. Privately contracted programs should have a right to refuse admission to any prisoner.

*This is a cautious procedure; certain local correctional facilities may well be designed specifically for treatment of drug-involved offenders, in which cases drug usage might not be, in itself, grounds for denial of eligibility.

Intake screening decisions should be subject to the appeal and audit procedures delineated in Chapter 9 of this volume. Assuming that they were not involved in any disciplinary actions, prisoners referred at intake to the local correctional facilities would be expected to serve their entire terms of incarceration in those facilities.

2. Pre-Release Referrals and Placements. The second channel for entry into local correctional facilities would be for pre-release activities.

- Consultants recommend that CDC's concept of pre-release programming be enlarged; the local correctional centers should be understood, in light of their basic function of encouraging successful reintegration into the community, as pre-release centers with intensive programming.

Consistent with this principle, the duration of placements for "pre-release" programming should vary according to the particular needs of prisoners.

- A minimum of three months pre-release programming is recommended, with many placements extending to a year or more prior to release.

All prisoners should be deemed eligible for pre-release placement no later than one year prior to scheduled release.

If pre-release placement is not granted at this "one year" review, additional reviews should occur every three months thereafter. Except on demonstration that a prisoner has an extremely serious disciplinary record and would be disruptive or dangerous to the well-being of other prisoners and staff, every prisoner should be placed in a pre-release correctional setting no later than three months prior to release. This includes prisoners previously in medium and maximum security housing. This blanket rule is justified on the grounds that because even maximum security prisoners will be released, in any case, three months hence, it poses no significantly greater risk to society to place them in a minimum security pre-release facility for that short period. To the degree that the pre-release program is successful in facilitating reintegration, public protection should actually be enhanced.

The pre-release classification decisions should be subject to the same review and appeals procedures outlined in Chapter 9.

The Department of Corrections, in its report, is proposing the development of 600 community pre-release beds, with an average length of stay of 60 days.* (Under this mechanism, approximately 3,650 prisoners would pass through the pre-release centers each year -- or less than half of the number of prisoners released in 1977.)

Consultants recommend a longer length of stay in order to ensure adequate preparation of prisoners for release. Consultants recommendations are consistent with pre-release practices in many states, such as Maine (three to six months in pre-release for almost all prisoners); Connecticut (where pre-release programs typically last three to four months, including for some prisoners placement in county jails for the final two to three months of terms); and South Carolina (where the average stay in pre-release programs is somewhat shorter, but where prisoners are eligible for pre-release programs eighteen months prior to scheduled release dates).

Consultants' recommendations for pre-release programs would involve more prisoners, for longer periods of time, than would the CDC proposal, and thus the bed capacity required for pre-release activities would be well in excess of the 600 beds being considered by the CDC. (See Table 3.3 Chapter 3.) As noted earlier in this chapter, the combined numbers of prisoners to be diverted to local correctional centers at intake screening plus those referred for pre-release programming would exceed the 2,000 beds recommended here. This suggests the need to develop more extensive pre-release programming at existing minimum security facilities; it also is indicative of the degree of selectivity open to CDC classification personnel in making local placements.

3. CDC Implementation and Development Responsibilities.

- Consultants recommend that the Department of Corrections begin immediately to implement the necessary arrangements for contracting with local correctional facilities and local privately operated facilities for the placement of state prisoners.

*CDC Program Planning Report for 1978-79 Fiscal Year, Vol. II, op. cit., p. 124.

Implementation steps or tasks should include analysis and development of the financial incentives which would be required to provide satisfactory levels of service in local facilities, and to attract and support viable, privately operated, correctional programs. Where appropriate, the Department should enter as expeditiously as possible into agreements with local correctional authorities (as authorized under P.C. 1203.1), and with privately operated facilities (as authorized under P.C. 6256).

The Department should report to the Legislature in one years' time on the progress made in implementing these agreements regarding local incarceration options, and should propose any legislation the Department believes is required for more effective and efficient operation of its relationship with the programs.

4. Standards and Audits. Consultants stress the need to develop stringent standards for the design and operation of the local incarceration options, for both privately operated and county operated facilities.

- These standards should be developed by the Department, in consultation with experts from successful community correctional programs and facilities, and should address administrative and fiscal issues as well as minimum program and service levels, disciplinary codes, and prisoner supervision requirements. Before final implementation of standards, draft standards should be circulated and published for review by interested parties, such as appropriate Legislative committees, county correctional authorities, private contractors, other criminal justice officials, ex-offender and prisoner groups, and others.

Once developed, the CDC should emphasize both enforcement of standards and the provision of technical assistance. Enforcement of standards should include on-going audits, to be conducted either by the CDC or other appropriate State agencies. Where repeated violations of standards are noted, the CDC should immediately terminate the contract with the facility in violation.*

*To facilitate cooperation by local correctional authorities, the Legislature could condition allocation of state funds for the construction or remodeling of county facilities on adherence to State standards. This would, in practice, entail an expansion of certain of the standards the Board of Corrections is currently charged with enforcing.

5. Community Acceptance. As noted in the Department of Corrections Program Planning Report, there is a possibility of "strong adverse public reaction to the prospect of community-based facilities housing convicted felons."* Consultants think that the screening and supervision provisions of the present recommendations do provide, when viewed objectively, strong safeguards for the public. However, public concern is understandable, and citizen involvement in significant correctional activities in the community is to be desired.

- Therefore, Consultants recommend the establishment of local advisory boards in communities in which the alternate modes of incarceration recommended here are to be established.

The local advisory boards should be fully representative of citizens in the communities. They should review and participate in modification over time of the specific services offered in the local correctional facility.

The local advisory board mechanism would, Consultants believe, help to ensure that legitimate citizen concerns were considered. Conversely, it is hoped that the local advisory board would contribute to greater public understanding and cooperation in the difficult process of reintegrating prisoners into productive social life.

*CDC Program Planning Report for 1978-79 Fiscal Year, Vol. II, op. cit., p. 131.

CHAPTER 12

PAROLE

INTRODUCTION

Parole has long been associated with release from prison and the supervision of those released from prison. In some cases, parole authorities have been empowered to make decisions regarding release of persons from prisons, though this link has never been essential to the concept of parole. Indeed, the release decision has always more properly been within the realm of criminal sentencing and prison term setting. In changing from the Indeterminate Sentencing Law (ISL) to the Determinate Sentencing Law (DSL), California has now clearly separated parole from the release decision, and has limited the purpose of parole to supervision of released prisoners.*

Parole began in California as an alternative to the pardon -- a way of releasing people with excessively long sentences -- and as a tool for motivating prisoners to conform to the rules by holding out the promise of an early release. Used sparingly for many years, the first increase in its use was in response to severe prison over-population not alleviated by major prison expansion. Gradual expansion of parole followed, until more than 80 percent of the releases from prison were by parole.

Following World War II, California began to build a comprehensive parole system designed to control recidivism using extensive rehabilitative services.

Since then, the parole organization has become a major subdivision of the California Department of Corrections, supervising 17,742 (average daily population, 1978-79) prisoners at an annual cost of about \$29,222,737 (1978-79).**

Although difficult to predict, it is likely that DSL, which will result in a shortened term of parole for most parolees, will reduce caseloads of parole agents.

*An exception to this separation is the provision of indeterminate sentencing for those prisoners convicted of certain specific crimes; such commitments, however, are expected to be rare.

**Health and Welfare Agency, Governors Budget (1978), pp. 715 and 722.

Parole has now become a legal status to which all persons released from prison in California are assigned. This legal status makes it possible to return the person to prison in the absence of a criminal conviction and sentence to prison by means of administrative action for the violation of parole rules.

The Parole Division is charged with providing surveillance over parolees, and with providing services to them. The Community Release Board determines whether a person charged with violating the conditions of parole has done so, and if that violation merits a return to prison.

Parole could serve any one of four purposes, alone or in combination, including: (1) a procedure for granting release from prison by administrative action to alleviate sentencing disparities or prison overcrowding; (2) a means for returning former prisoners to prison in the absence of a criminal conviction; (3) surveillance by agents of the State to detect renewed criminal involvement; and (4) the provision of services. In addition, the CDC's Parole Division has had considerable experience in operating community-oriented correctional programs for prisoners (about to be released to parole). The following is keyed to the above actual or potential purposes of parole.

MODE OF RELEASE FROM PRISON

With the exception of those few people to be committed under an indeterminate sentence, DSL precludes the use of parole to grant release from prison, either to those given excessively long or disparate sentences by the committing court or to alleviate prison overcrowding by granting early release for all prisoners or selected cases. Nor may parole be used to promise or provide an administrative means for granting an early release for extra-meritorious good behavior.

Two major problems occurred in the past when parole was used to grant early releases from prison. First, parole (or pardon in some states) was sometimes used so extensively to relieve overcrowding that the public became alarmed. Second, the selective use of parole to grant early releases (for whatever reason) was inherently discretionary and thereby necessarily open to charges of various sorts of impropriety (e.g., political influence, racism, arbitrariness).

These sorts of actual and potential abuses aside, the problems of justice and administration which parole helped to alleviate remain. DSL recognized the problem of disparate sentencing, and provided a means for Community

Release Board (CRB) auditing of prison sentences, with the potential for returning cases to the sentencing court for reconsideration. As noted in earlier sections of the report, overcrowding is not likely in the near future, and if it should occur, there are a number of legislative and administrative options for response other than construction of additional prisons.

- One such option would involve parole supervision. It would be possible to provide statutory authorization for extraordinary remedies to be used only in the case of extreme overcrowding (as defined within the statute). The statute might require that the Department of Corrections formally petition for emergency relief, with the Department of Finance being required to certify the factual basis of the petition. The relief might be implemented by the Community Release Board, acting only upon the receipt of a certified petition, and only for so long as the period stipulated as being required to relieve the extreme overcrowding.

The effect would be to reduce the prison term of (virtually) all prisoners nearing the end of their sentence by a small amount, with the amount of time added to the parole period. Even a small reduction could have a major effect on the prison population size. Applied to all but those sentenced under PC 1168, according to explicit rules, and made proportional to the person's sentence, such a procedure would be defensible from criticism citing the use of improper discretion. Research on such modest reductions of prison terms indicates that they would have no effect upon recidivism.*

*John E. Berecochea, Dorothy R. Jaman, and Welton A. Jones, Time Served in Prison and Parole Outcome: An Experimental Study, Research Report No. 49 (Sacramento, California: California Department of Corrections, 1973).

REIMPRISONMENT BY STATE ACTION

Many people affirm the need for parole supervision on the grounds that it provides an additional measure of social protection and deterrence. It allows for some relief regarding the consequences to both the public (in expenses) and to the individual prisoner (who faces extended incarceration) because it affords "insurance" that if an ex-prisoner recidivates, special mechanisms for revocation (return to prison) will be available.

Critics of this parole purpose suggest that if an ex-prisoner commits new offenses, normal trial processes are both adequate and less susceptible to discretionary abuses. Moreover, critics argue that there is no evidence that parole supervision has any deterrent effects. The evidence available suggests, according to this view, that certain parolees will commit new crimes, regardless of the level or kind of parole supervision, while others will not recidivate, regardless of the particular parole supervision.

Two variables must be distinguished to review this issue thoroughly. One variable, the style or level of parole supervision, will be discussed in the next section. The second variable involves the status of being on parole. Does the mere status of parole supervision have any deterrent effect? And does and should that special status entail mechanisms of return to incarceration other than regular trial procedures, in which both crimes and "technical violations" are treated as "new offenses"? These mechanisms could range from a separate hearing structure for revocations (such as is now the case) to enhancements of sentences handed down upon conviction of offenses committed while on parole status.

There is no conclusive evidence from formal studies regarding whether the parole status per se has any deterrent effect. While it is a reasonable assumption that the possibility of revocation may inhibit parolees' future criminal behavior, studies to date have not clearly demonstrated any such deterrent effects overall. There are, at best, some indications that, for certain kinds of ex-prisoners, a strict revocation policy does correlate with somewhat reduced recidivism.* In short, pending further

*Robert Martinson, "What Works? -- Questions and Answers About Prison Reform," The Public Interest (Spring, 1974), pp. 22-54. Several studies have compared the recidivism of prisoners placed on parole with those discharged. The findings of these studies conflict (they all suffer from serious methodological problems). However, none show that the status of being a parolee has a substantially large effect on recidivism.

study, a cautious and tentative position is that if clear and firm revocation mechanisms are attached to the status of parole, in all likelihood some measure of public protection would be afforded.

The question remains, however, about the setting for such revocation mechanisms. The use of administrative versus judicial settings for revocation or recommitment actions is the subject of extensive case law, administrative rule-making, and statutory directives, and the complex considerations of equity, due process, and system efficiency involved have not been investigated by Consultants thoroughly enough to justify recommendations for change or retention of present procedures.

This issue should receive further attention. Not only does the choice regarding where to locate revocation proceedings have direct implications for the fairness and effectiveness of corrections, it is also relevant to the implementation of the determinate sentencing philosophy. Administrative practices regarding revocations may -- or may not -- be consistent with the philosophy of DSL; this is in part determined by whether the CRB includes consideration of prison capacity as one criterion in decision-making practices. To the degree that prison capacity does guide administrative revocation procedures, the system moves away from a straightforward determinate sentencing philosophy, toward a system which in some senses resembled Adult Authority procedures under ISL.

- Thus, Consultants recommend that evolving revocation patterns should be periodically reviewed and evaluated.

Surveillance

Assuming that the parole status may affect an ex-prisoners' behavior, questions remain regarding which supervision responsibilities and techniques should be employed by parole agents. There has traditionally been a tension in the job of parole agent, between "rehabilitative" expectations, which involve counseling, referrals, etc, and the "surveillance" or control responsibilities, which relate to community protection and the reimprisonment of recidivists. This discussion focuses on the surveillance component of parole agents' duties; the next section addresses other parole agent tasks.

Three separate studies have now shown that parole agents in California detect little criminal involvement by parolees.* If there is a rationale for surveillance techniques it must be that such activities detect criminal involvement. At least among reported parole violations, approximately 90 percent are detected by people other than parole agents, most often the police. Quite simply, the evidence is overwhelmingly contrary to the assumption that parole is directly effective in regard to detection of recidivism.

Available evidence also suggests that parole surveillance has little consistent effect in preventing or deterring recidivism. Even with reduced caseloads designed to permit closer surveillance (e.g., in such activities as direct observation of the parolee, urinalysis and other spot checks, and monitoring of job or family interactions), no significant effects on recidivism have been found in prior studies.** This question remains a matter of scholarly and professional controversy, however, so it would be inappropriate to draw any far-reaching conclusions. A report is due soon on a major Department study of the effect on recidivism of various styles of parole supervision. The study is well-designed and executed, and the results will be important. The study compares the impact on recidivism (by non-addicts) from various kinds and levels of supervision with the results from a "summary parole" project (e.g., a caseload in which no supervision was attempted). If this study replicates the results of similar studies (including a study of summary parole in California),*** the project will provide further

*Paul T. Takagi, Evaluation Systems and Adaptation in a Formal Organization: A Case Study of a Parole Agency, Doctoral dissertation, Stanford University, California (1967). See also:

Deborah Star, John E. Berocochea, and David Petrocchi, Return to Prison Ordered: Policy in Practice and Change (Sacramento, California: California Department of Corrections, Research Unit, 1978). See also:

Eliot Studdt, Parolees and Agents in Interaction (Berkeley, California: Center for the Study of Law and Society, 1970).

**Robert Martinson, Douglas Lipton, and Judith Wilks, The Effectiveness of Correctional Treatment -- A Survey of Treatment Evaluation Studies (New York: Praeger, 1975).

***California Department of Corrections, "Alternative Models of Parole Supervision Plan," Chapter 13, Volume II. Unpublished manuscript (Sacramento, California, 1975). See also:

California Department of Corrections, "Parole and Community Service Division Summary Parole, Program Implementation Plan." Unpublished manuscript (Sacramento, California, April, 1976).

evidence that the kinds of parole supervision and services typically used have no greater impact on recidivism (by non-addicts) than would summary parole status. In short, whatever deterrence does exist, it exists because of parole status per se, not because of parole agent activities.

Even should the result be as indicated, it would be premature to "eliminate" parole. First, research demonstrates only that summary parole is appropriate for some, but not necessarily all, offenders. Second, to the degree that increased use of summary parole is warranted, it could serve to free personnel and budget resources from unproductive surveillance and other supervision tasks for other potentially more effective uses of resources.

- In short, Consultants recommend that, if the results of the study are as anticipated, parole services and resources should be redirected. Resources should be freed by increased use of summary parole (or, in particular, by a decrease in surveillance activities) in many or most cases.

Some possible alternative uses of these resources are discussed in the next section. Also, experimentation and study should continue, in an effort to define the kinds of cases in which more than "summary parole" supervision is required.

PAROLE SERVICES

Past studies regarding the "rehabilitative" or counseling and referral aspects of parole responsibilities show results similar to studies dealing with "surveillance" and direct deterrence or crime prevention: that the kinds of levels of services seem to make little difference in terms of recidivism rates among clients.*

Again, these conclusions should be checked against the results of the forthcoming CDC study. However, certain possibilities for redirection of resources can be suggested here, for further study and experimentation. These suggestions reflect some studies of parole services not extensively used in California. In Chapter 11, Consultants recommended the development of Urban Skills Centers and use of other local correctional facilities for minimum security and pre-release prisoners; parole services generally should be initiated while prisoners are in these settings.

*Robert Martinson, op. cit.

Parole services should be judged not only in the light of prevention of recidivism, but also in view of the circumstances of parolees. The typical parolee has been out of touch with the outside world for several years. Approximately one-half of the ex-prisoners do not return to the community from which they were committed; only approximately one-fourth are married; these ex-prisoners do not have sufficient cash resources to survive for any extended period after release. While on parole, about one-half face periods of unemployment.

Surveys of parolees indicate that roughly one-half to three-fourths define their most pressing problem as physical survival.* The parolee's next most pressing problem is the need to find acceptance in the social world.** When compared to the full range of supports and services in the community, including the parolee's personal family and friends, neither the parole agent nor the parole system itself provides significant help in meeting these needs.***

These themes are reinforced in the following quotation from a recent study of California parole:

"The parolees see themselves as engaged in survival tasks for which they must assume full responsibility. Survival is their job, and their own lives are at stake."****

*Rosemary J. Erickson, W. J. Crow, L. Zarcher, and A. V. Connett, Paroled But Not Free: Ex-Offenders Look at What They Need to Make It Outside (New York: Behavioral Publications, 1973).

**Erikson, op. cit. See also:

Barry S. Brown, Ellen M. Markman, and Robert L. Dupont, "Released Offenders' Perceptions of Community and Institution," Corrective Psychitry and Journal of Social Therapy, 16 (1970). See also:

John Irwin, The Felon (New York: Prentice Hall, 1970).

***Brown, op. cit. See also:

Irwin, op. cit. See also:

Joseph D. Lohman, A. J. Wahl, R. M. Carter, and A. E. Elliott, "The Impact of Supervision: Officer and Offender Assessment" (Berkeley, California: The San Francisco Project, Research Report No. 13, 1970).

****Eliot Studdt, Surveillance and Service in Parole: A Report on the Parole Action Study (Washington, D.C.: U.S. Government Printing Office, 1973).

In view of this situation, it is appropriate to examine whether the "services" provided by parole can be extended in such a way as to more effectively assist ex-prisoners' readjustment process. Several mechanisms are worthy of exploration.

Volunteers

Volunteers are already working in a variety of corrections settings in California; it may be possible and useful to increase the use of volunteers in parole. Several studies have shown that volunteers are, in many respects, more effective in establishing rapport and providing assistance to parolees than are regular parole agents. Volunteers are less burdened by the many role expectations (e.g., preventing recidivism) felt by parole agents; they are more likely to be regarded by the parolee as a friend rather than as a "cop"; they are more likely to have practical job connections to exploit; they have more time to offer moral support and guidance when needed; and perhaps because they do not have to cope with a "caseload," they are more interested in the individual parolee's personal circumstances.*

Additionally, volunteer-worker projects (with probationers) have lower recidivism rates than are achieved in traditional programs.** The primary value of volunteers, however, may be that they seem to have helped people who wanted help and they do not constitute yet another bureaucracy. Their strength comes from their broad social connections which may be passed on to parolees.

*James D. Jorgensen, "John Augustus Revisited: The Volunteer Counselor in a Misdemeanor Court," Corrective Psychiatry and Journal of Social Therapy, 16, 1970. See also:

William Burnett, "The Volunteer Probation Counselor," Judicature, 57 (February, 1969).

Donald W. Beir, and Ellen Ryan Rest, The Evaluation of the Effectiveness of Volunteers and Probation Officers in Misdemeanor Services (Salt Lake City: University of Utah, n.d.).

**Burnett, op. cit.

The use of volunteers need not be seen as competitive with parole functions, but as a complement to formal public service referrals typically available through parole agents. Use of volunteers presumably extends the network of services into "private" or informal resource networks. It may also be assumed to have some impact in breaking down, however marginally, the tendency in society to isolate and neglect correctional institutions and ex-prisoners.

Direct Financial Assistance

Washington,* Minnesota,** California,*** New York**** and other states and jurisdictions have provided some occupational and direct financial assistance to parolees to help them meet their physical survival needs. This direct financial assistance has been substantially higher than that normally provided to ex-prisoners, but it has still been meager -- typically less than \$80 per week on a six-month basis, and under somewhat "demoralizing" conditions.

These projects have also stressed the need to upgrade occupational skills and opportunities of ex-prisoners. The following quotation from one of these projects captures well what they have tried to achieve:

*Cameron R. Dightman and Donald R. Johns, "The Adult Corrections Release Support Program in Washington," State Government, 47, Winter, 1974.

**Richard C. Erickson and David O. Moberg, The Rehabilitation of Parolees (Minnesota: Minnesota Rehabilitation Center, 1967).

***Craig Reinerman and Donald Miller, "Direct Financial Assistance to Parolees: A Promising Alternative in Correctional Programming," Research Report No. 55 (Sacramento, California: Department of Corrections, 1975).

****Leonard R. Witt, Project DEVELOP: Final Report (New York: New York State Division of Parole, 1968).

"The chief innovation of the project, from the perspective of traditional correctional practices, was its comprehensive inter-disciplinary team nature, the emphasis on vocational adjustment as a primary means to total life adjustment, the sophistication of the vocational evaluational process, the commitment to seeking education and training for high-risk clients, the provision of immediate comprehensive post-release services to all experimental parolees rather than only to selected clients, the availability of direct financial assistance during the immediate post-release period, and the use of an experimental design to compare outcomes of treated parolees with those of offenders receiving only normal parole supervision."*

Such innovations have not shown a consistent effect on recidivism levels. California's direct financial assistance project did show that those given assistance were less likely to recidivate (although the difference was not statistically significant). A carefully conceived and executed project in Maryland compared job placement services with direct financial assistance, and found a significant effect on recidivism rates (especially for property crimes) from direct financial assistance, but not from job placement services.** California has implemented certain elements of these (and related) studies in an innovative way by granting the equivalent of unemployment insurance to people released from prison on the basis of their work in prison.

Parole Agent Responsibilities

- Various new or expanded responsibilities for parole agents should be identified. These include coordination of volunteer efforts and of cash assistance programs.

*Ericson and Moberg, op. cit.

**Charles D. Maller and Craig V.D. Thornton, "A Comparative Evaluation of the Benefits and Costs from the LIFE Program" (New York: American Bar Association Commission on Correctional Facilities and Services, 1978).

In addition, parole agents would have additional responsibilities under recommendations contained in Chapter 11. Parole agents should be involved in pre-release or community reintegration programming, talking with parolees and initiating referral or volunteer service arrangements prior to release from custody. In addition, the Parole and Community Services Division of the CDC should be directly involved in various local correctional facilities, and should supervise those programs run under contract with private groups.

Correctional programs such as work furlough and halfway houses have not been shown to reduce recidivism in California or elsewhere.* From the perspective of rehabilitation, this constitutes a failure, but from the perspective of control, it holds a promise that prisoners could be managed in such settings without increasing the risk of crime among those selected for non-prison correctional programs. The Parole Division has had many years of experience with such programs. More recently, it has begun to experiment with contracting out such programs to private agencies. Although the record of performance is not yet well established, it would appear that such contracted programs are having no adverse effect upon the community.

*David T. Stanley, Prisoners Among Us: The Problem of Parole (Washington, D.C.: The Brookings Institute, 1976).

Appendices



APPENDIX A

SUMMARY OF INTERVIEWS WITH JUDGES, DISTRICT ATTORNEYS, PUBLIC DEFENDERS, AND PRIVATE DEFENSE ATTORNEYS

INTRODUCTION

After obtaining the most recent statistics on commitments under the Determinate Sentencing Law (DSL), Consultants interviewed a number of key superior court judges in the counties from which significant numbers of convicted felons are being committed to the Department of Corrections. These counties were Los Angeles, San Diego, Orange, Alameda, and San Francisco. Consultants also interviewed a number of prosecuting attorneys and defense attorneys in these counties. The interviews focused on their experiences with DSL, their prognosis, and their interpretation of the data.

VALIDITY OF CURRENT DSL SENTENCE STATISTICS

Responses virtually uniformly stated that substantial numbers of Indeterminate Sentencing Law (ISL) cases were still being processed. Viewing all cases, both ISL and DSL, the ISL cases were somewhat on the heavier side, reflecting the lengthy delays in processing those cases. However, the spread of ISL cases is not too dissimilar from DSL. Therefore, when sufficient time passes, so that remaining ISL cases are few, average time for DSL commitments may be slightly increased.

PROSECUTOR CHARGING AND CASE SETTLEMENT POLICIES

Most respondents stated that there was no change from policy under ISL. There seems to be an increased tendency of defendants to plead to definite prison sentences if the prosecutor agrees to reducing some enhancement time. In cases where the prosecutor is not willing to reduce much, defendants are insisting on trials because they have nothing to lose. These effects are balancing out -- the percentage of cases going to trial remains the same.

Prosecutor settlement policies vary significantly from county to county. Basically, prosecutors are seeking pleas to the major count or the "gravamen of the offense." If the defendant so pleads, some prosecutors will deal on all enhancements (e.g., for priors, consecutives, weapons). Some refuse to dismiss weapons enhancements, and most refuse to deal anything in aggravated cases or if the defendant is considered a serious offender. The availability of "career criminal" funds supports this approach.

SHIFT TOWARD STATE PRISON RATHER THAN PROBATION WITH COUNTY JAIL TIME

Most judges responded that they look at each case to decide whether the defendant should get a state prison commitment. If it's a "heavy offense," or if the defendant is a repeat offender or has not availed himself of previous opportunities to straighten out, he will be committed to prison. A few responses indicated that since statutory DSL prison time is much closer to county jail time, there would be a shift to state prison in a small number of cases. Some preference was stated for state prison over lengthy county jail time where county jail facilities and programs are considered inadequate. Conversely, the construction of new county jail facilities is viewed by some as resulting in a shift back to county jail commitments. Most disagree, stating again that the basic decision in each case is whether it is a "state prison" or "county jail" case, regardless of the facilities or programs. What is likely to occur, with new county jail construction, is that defendants, formerly given straight probation because of inadequate facilities, will be likely to do some county jail time.

As mentioned above, there is a tendency among defendants to plead to prison sentences, since the term is definite and not much longer than county jail time. An additional incentive is to avoid the probationary period, which includes the possibility of revocation and doing more time in the long run than with a straight prison sentence.

If these impressions continue to be accurate, this factor will increase prison sentences by a slight number for short-term offenses.

CALIFORNIA REHABILITATION CENTER (CRC) COMMITMENTS

Commitments to CRC have been diminishing for the following reasons:

a. The larger counties have local drug programs, which are preferred by judges and defendants.

b. Defendants prefer prison time to a CRC commitment with a seven year "tail."

c. Prosecutors prefer a prison commitment to a CRC commitment.

The change is so dramatic that several judges were of the opinion that CRC is likely to be phased out.

SENTENCING OF WOMEN

The response was uniformly that a woman with the same offense and the same type of involvement as a man would get the same sentence. However, most women offenders were viewed as acting under the influence of a man, and hence would receive shorter sentences than men though having been identically charged. Thus, there should be no change of women's prison time; women served shorter terms than men under ISL.

PROBATION INELIGIBILITY

The views of probation ineligibility statutes such as 1203.06, .07, .08, and .09, varied greatly. Some judges said that if the statutes are upheld as constitutional (the issue is currently before the California Supreme Court in People vs. Tanner), more defendants would be sentenced to state prison. These judges may otherwise grant probation in some of these cases, based on the particular situation. Other judges see little or no change because they would not grant probation in these cases in any event.

DISPARITY

On request by the Community Release Board (CRB) that the judges recall a case for disparity, most judges said they would stick with their original sentence, several would reconsider, and a few others would base their decision on the wording of the request.

EFFECT OF NEW LEGISLATION

If the tripartite terms are increased (as, for example, by SB 709), judges universally foresee a leavening effect. The current percentages of middle term sentence, aggravation, and mitigation, of 60 percent, 30 percent, and 10 percent are likely to become more even, so that the percentage being aggravated will likely equal those being mitigated.

APPENDIX BREFERENCE DATA FOR POPULATION PROJECTIONS, ANALYSIS AND RECOMMENDATIONSI. REGRESSION EQUATIONS

A. Time series linear regression for institution population, 1965-1977.

$$Y' = (11,460 - 589X')$$

$$X' = \text{YEAR (1971 = 0)}$$

$$Y' = (\text{INSTITUTION POPULATION} - 13,000)$$

$$n = 13$$

$$r = -.73$$

$$t = 3.538, df = 11, p < .0025$$

B. Time series linear regression for institution population, 1965-1972.

$$Y' = (12,771 - 413X')$$

$$X' = \text{YEAR (1968 = -1, 1969 = +1)}$$

$$Y' = (\text{INSTITUTION POPULATION} - 13,000)$$

$$n = 8$$

C. Regression of Institution Population on Parole Population, 1965-1977.

$$Y' = (15,867 - 1.189X')$$

$$X' = (\text{PAROLE POPULATION} - 13,000)$$

$$Y' = (\text{INSTITUTION POPULATION} - 13,000)$$

$$n = 13$$

$$r = -.90$$

$$t = 6.848, df = 11, p < .0005$$

CONTINUED

2 OF 3

D. Regression of Institution Population on Parole Population, 1965-1972.

$$Y' = (15,807 - 1.041X')$$

$$X' = (\text{PAROLE POPULATION} - 13,000)$$

$$Y' = (\text{INSTITUTION POPULATION} - 13,000)$$

$$n = 8$$

II. SENTENCING PATTERNS FOR A SAMPLE OF 1,103 MALE FELONS SENTENCED UNDER THE DETERMINATE SENTENCING LAW

OFFENSE	CASES	PER-CENT	MONTHS			
			Average Sentence	Jail Credit	Estimated Good Time	Estimated Time Served
Murder, 2nd	28	2.5	87.5	4.2	20.8	62.5
Manslaughter, Voluntary	20	1.8	51.0	3.7	11.8	35.5
Robbery	108	9.8	41.2	3.1	9.5	28.6
Robbery, Armed	53	4.8	58.1	3.4	13.7	41.0
Robbery, Use	103	9.3	60.8	3.2	14.4	43.2
Robbery, Bodily Injury	11	1.0	77.5	3.3	18.6	55.6
Assault w/ Deadly Weapon	61	5.5	46.0	3.1	10.7	32.2
Rape	22	2.0	71.0	2.9	17.0	51.1
Burglary, 1st	43	3.9	50.4	2.9	11.9	35.6
Burglary, 2nd	203	18.4	31.3	2.7	7.1	21.5
Forgery/Bad Checks	53	4.8	27.3	2.2	6.3	18.8
Grand Theft/ G.T. Auto	90	8.2	26.9	2.5	6.1	18.3
Receiving Stolen Property	44	4.0	29.6	2.3	6.8	20.5
Possession	19	1.7	24.2	3.1	5.3	15.8
Possession for Sale	22	2.0	34.5	2.3	8.1	24.1

II. SENTENCING PATTERNS FOR A SAMPLE OF 1,103 MALE FELONS SENTENCED UNDER THE DETERMINATE SENTENCING LAW

(Continued)

OFFENSE	CASES	PER-CENT	MONTHS			
			Average Sentence	Jail Credit	Estimated Good Time	Estimated Time Served
Sale	23	2.1	52.0	2.9	12.3	36.8
Miscellaneous Narcotic	17	1.5	28.9	2.1	6.7	20.1
Other	183	16.6	34.1	2.4	7.9	23.8
TOTAL	1,103	99.9	41.1	2.8	9.6	28.7

III. COMPONENTS OF POPULATION FOR THE BEST CASE AND WORST CASE PROJECTIONS

BEST CASE (Regression)

Year	78	79	80	81	82	83
Total	20,337	19,748	19,159	18,570	17,981	17,392
<u>Men</u>						
Felons	17,036	16,543	16,050	15,556	15,063	14,570
Narcotic Addicts	1,768	1,717	1,665	1,615	1,563	1,510
Other	502	487	473	458	444	430
<u>Women</u>						
Felons	636	618	599	581	562	544
Narcotic Addicts	327	317	308	298	289	280
Other	68	66	64	62	60	58

WORST CASE (Modified Flow)

Year	78	79	80	81	82	83
Total	21,160	20,543	20,506	21,068	21,976	22,795
<u>Men</u>						
Felons	17,748	17,218	17,148	17,496	18,178	18,843
Narcotic Addicts	1,828	1,736	1,726	1,792	1,897	1,976
Other	458	476	467	507	536	573
<u>Women</u>						
Felons	675	678	711	779	830	851
Narcotic Addicts	402	389	403	437	472	489
Other	49	46	51	57	63	63

IV. COMPARISON OF THE CDC 1972 PROJECTION OF INSTITUTION POPULATION
WITH AN INDIRECT PROJECTION BASED ON THE CORRELATION WITH THE
PAROLE POPULATION

YEAR	ACTUAL	CDC PROJECTION	ERROR	PAROLE CORRELATION PROJECTION	ERROR
1973	21,708	19,430	-2,278	22,119	+411
1974	24,233	19,120	-5,113	22,186	-2,047
1975	23,998	19,090	-4,908	21,702	-2,296
1976	20,345	19,180	-1,165	21,291	+946
1977	21,525	19,655	-1,870	20,900	-625

PRISONER PROFILE CODING SHEET

CASE NUMBER _____ COUNTY _____

AGE _____

RACE _____

OFFENSE(S): PRESENT COMMITMENT _____

CURRENT SENTENCE LENGTH _____ ISL _____ DSL _____

MARRIED: YES _____ NO _____

CHILDREN: AGE SUPPORT RESIDING

1
2
3
4

EDUCATION: CLAIMED GRADE _____ MEASURED GRADE _____

EMPLOYMENT: EMPLOYED AT ARREST: YES _____ NO _____

LONGEST PERIOD OF EMPLOYMENT AND TYPE OF JOB
_____SKILLS: _____

AGE AT 1ST ARREST: _____

AGE AT 1ST COMMIT.: _____

OFFENSE AND INST. OF 1ST COMMIT. _____

ESCAPE HISTORY _____

DELINQUENCY HISTORY: YES _____ NO _____ FELONY: YES _____ NO _____

ALCOHOL USE:

HEAVY _____

MODERATE _____

LIGHT _____

NONE _____

APPENDIX C.1 (cont.)

NARCOTICS AND DRUGS:

HEAVY _____ (Heroin Addict)

MODERATE _____

NONE _____

LIGHT _____

GANG AFFILIATION: YES _____ NO _____ IF YES, EXPLAIN _____

CUSTODY: MIN. _____ MED. _____ MAX. _____

INSTITUTION _____

CRIMINAL HISTORY:

PRIOR CONVICTIONS

A. Violent Felonies

1 _____

2 _____

3 or more _____

B. Sale/Drugs

1 _____

2 _____

3 or more _____

C. Other Felonies or misdemeanors

1 _____

2 _____

3 or more _____

PRIOR PRISON COMMITMENT

CJ Only _____

1 _____

2 _____

3 or more _____

INSTITUTIONAL HISTORY

A. Escape/Escape Attempts

1 _____

2 _____

3 or more _____

B. Misconduct Reports:

IncidentYear

C. Contraband Reports:

Drugs? _____

Alcohol? _____

Weapon? _____

D. Protective Housing?

Homosexual _____

Law Enforcement _____

Informant _____

Other _____

APPENDIX C.2TABLE 1OFFENSE GROUPS EXPRESSED IN PERCENTAGES*Male Felons Newly Received from Court

Offense	1974	1975	1978 Profile Sample
Number of Males	5,081	5,433	346
Total Percent	100.0	100.0	100.0
Homicide	10.5	10.7	6.1
Robbery	22.8	25.0	20.5
Assault	8.0	8.3	6.6
Burglary	16.5	17.2	22.2
Theft except Auto	7.4	7.5	9.0
Auto Theft	2.3	2.1	
Forgery and Checks	4.0	3.5	4.9
Rape	3.4	4.0	5.8
Other Sex	2.2	2.6	2.6
Controlled Substances & Marijuana	17.5	14.1	16.2
Escape	0.8	0.9	2.0
Other Offenses	4.6	4.1	4.1

*Data for 1974 and 1975 was taken from the Department of Corrections, California Prisoners, 1974 and 1975 - Summary Statistics of Felon Prisoners and Parolees (Sacramento, Ca.: 1978). 1978 data was taken from Consultants' Prisoner Profile Research Study Sample, p. 16.

APPENDIX C.2 (cont.)

TABLE 2
AGE AT ADMISSION*

Male Felons Newly Received from Court

Age at Admission in Years	1974		1975		1978 (Sample)	
	Number	Percent	Number	Percent	Number	Percent
Total	5,081	100.0	5,433	100.0	346	
<u>Under 20</u>	308	6.1	340	6.2	6	1.7
15-17	21	-	24	-	1	
18	77	-	105	-	1	
19	210	-	211	-	4	
<u>20-24</u>	1,827	35.9	1,949	35.9	95	27.5
20	280	-	307	-	13	
21	354	-	426	-	12	
22	442	-	423	-	25	
23	375	-	416	-	23	
24	376	-	377	-	22	
25-29	1,281	25.2	1,455	26.8	94	27.2
30-34	689	13.6	715	13.2	72	20.8
35-39	396	7.8	374	6.9	30	8.7
40-44	247	4.9	274	5.0	20	5.8
45-49	150	2.9	152	2.8	17	4.9
50 and Over	183	3.6	174	3.2	12	3.5
Median Age in Years	26.6		26.5		27.0	
Percent Under 21		11.6		11.9		5.5
Percent Under 25		42.0		42.1		29.2

*Ibid., p. 23.

APPENDIX C.2 (cont.)

TABLE 3

ETHNIC GROUPS*Male Felons Newly Received from Court

Ethnic Groups	1974		1975		1978 (Sample)	
	Number	Percent	Number	Percent	Number	Percent
Total	5,081	100.0	5,433	100.0	346	100.0
White	2,459	48.4	2,538	46.7	144	41.6
White, Mexican Descent	943	18.5	1,051	19.4	94	27.2
Black	1,574	31.0	1,751	32.2	102	29.5
Other	105	2.1	93	1.7	6	1.7
American Indian	61	1.2	46	0.8		
Chinese	17	0.3	10	0.2		
Filipino	13	0.3	20	0.4		
Hawaiian	3	0.1	6	0.1		
Japanese	7	0.1	4	0.1		
Other	4	0.1	7	0.1		

*Ibid., p. 24.

APPENDIX C.2 (cont.)

TABLE 4

PRIOR COMMITMENT RECORD*Male Felons Newly Received from Court

Type of Prior Commitment Served	1974		1975		1978 (Sample)	
	Number	Percent	Number	Percent	Number	Percent
Total	5,081	100.0	5,433	100.0	346	100.0
No Prior Commitment	880	17.3	1,035	19.1	29	8.4
Prior Jail or Juvenile Only	3,078	60.6	3,274	60.2	169	48.8
Prior Prison Commitment	1,123	22.1	1,124	20.7	148	42.8
One Prison	691	13.6	656	12.1	58	16.8
Two Prison	235	4.6	253	4.6	46	13.3
Three or more Prison	197	3.9	215	4.0	44	12.7

*Ibid., p. 25.

APPENDIX C.3TABLE 1OFFENSE GROUPS*Percentage Distribution of Women Felons in PrisonDecember 31, 1964, 1969, 1974, 1975, and April Sample, 1978

Offense	1964	1969	1974	1975	1978 Sample
Number of women*...	608	619	569	638	89
Total percent	100.0	100.0	100.0	100.0	100.0
Homicide	18.1	15.3	20.9	22.4	22.5
Murder 1st	3.8	3.7	5.8	6.0	
Murder 2nd	7.2	6.1	7.7	8.3	
Manslaughter	7.1	5.5	7.4	8.1	
Robbery	6.4	10.8	11.6	13.2	19.1
Assault	4.9	5.8	5.4	7.4	6.7
Burglary	5.9	8.6	6.3	6.1	9.0
Theft except Auto	7.7	10.0	9.7	9.2	10.1
Auto Theft	0.8	--	0.4	0.6	
Forgery and checks	24.3	18.9	16.0	14.1	11.2
Sex	0.3	0.8	0.7	0.9	0
Controlled Substances & Marijuana	25.8	23.8	24.2	22.8	19.1
Escape	2.1	1.9	1.1	0.5	2.2
All Other	3.7	4.1	3.7	2.8	

*Excludes felons in the Reception Centers and active parolees in the Controlled Substances Treatment Control Units.

*Ibid., p. 65.

APPENDIX C.3

TABLE 2

AGE*

Percentage Distribution of Women Felons in Prison

December 31, 1964, 1969, 1974, 1975, and April Sample, 1978

Age	1964	1969	1974	1975	1978 Sample
Number of women* ..	608	619	569	638	89
Total percent	100.0	100.0	100.0	100.0	100.0
Under 20	0.5	0.8	--	0.6	0
20-24	13.5	16.8	17.5	17.7	27.0
25-29	20.7	23.3	31.1	33.1	31.5
30-34	23.4	18.4	20.6	19.6	15.7
35-39	17.9	16.5	12.5	11.7	13.5
40-44	10.7	11.0	8.8	7.0	6.7
45-49	5.6	6.8	4.4	5.2	2.2
50-54	4.1	3.4	3.0	2.7	0
55-59	1.3	1.4	0.9	1.1	1.1
60 and over	2.3	1.6	1.2	1.3	2.2
Median Age in Years	33.3	32.5	30.3	29.8	27.0
Percent under 21	1.8	2.7	1.6	1.7	1.1
Percent under 25	14.0	17.6	17.5	18.3	27.0

*Excludes felons in the Reception Centers and active parolees in the Controlled Substances Treatment Control Units.

*Ibid., p. 71.

APPENDIX C.3TABLE 3ETHNIC GROUPS*Percentage Distribution of Women Felons in PrisonDecember 31, 1964, 1969, 1974, 1975, and April Sample, 1978

Ethnic Groups	1964	1969	1974	1975	1978 Sample
Number of women* ..	608	619	569	638	89
Total percent	100.0	100.0	100.0	100.0	100.0
White	52.5	57.5	56.8	50.7	36.0
White, Mexican descent	5.9	7.4	9.1	10.8	6.7
Black	38.5	32.0	31.8	36.2	51.7
Other	3.1	3.1	2.3	2.3	5.6

*Excludes felons in the Reception Centers and active parolees in the Controlled Substances Treatment Control Units.

*Ibid., p. 73.

APPENDIX C.3TABLE 4PRIOR COMMITMENT RECORD*Percentage Distribution of Women Felons in PrisonDecember 31, 1964, 1969, 1974, 1975, and April Sample, 1978

Type of Prior Commitment Served	1964	1969	1974	1975	1978 Sample
Number of women* ...	608	619	569	638	89
Total percent	100.0	100.0	100.0	100.0	100.0
No Prior Commitment	29.8	26.2	33.8	36.4	13.5
Prior Jail or Juvenile Only	41.3	47.2	46.4	45.6	56.2
Prior Prison Commitment	28.9	26.6	19.8	18.0	30.3
One Prison	18.6	20.0	13.9	13.0	19.1
Two Prison	7.7	4.0	4.2	3.9	9.0
Three Prison	1.6	1.3	0.5	0.3	2.2
Four or more Prison	1.0	1.3	1.2	0.8	

*Excludes felons in the Reception Centers and active parolees in the Controlled Substances Treatment Control Units.

APPENDIX C.4
VIOLENT OFFENSES

182/197	Conspiracy to commit murder
197/190	Murder
187/190.1	
187/190.2	Manslaughter (voluntary)
192.1/193	
192.2/193	Manslaughter (involuntary)
203/204	Mayhem
207/208	Kidnapping
209	Kidnapping for ransom, extortion, etc.
210	Kidnapping
211/213	Robbery
217	Assault with intent to commit murder
217.1	Attempt to kill or assault public officials
220	Assault with intent to commit rape, sodomy, mayhem, robbery or grand larceny
221	Assault to commit felonies not in section 220
240/241	Assault against peace officer or fireman
243	Battery with serious injury
244	Assault with caustic chemicals
245a	Assault with deadly weapon or assault
245b	Assault
245.2	Assault with deadly weapon on peace officer
261	Rape with force
264	Rape (victim injured)
264.1	Aiding in rape with force
273(a)	Willful cruelty to child
273(d)	Inflicting traumatic injury on (Wife) (Child)
286(c)	Sodomy-by force
286(d)	Aiding in sodomy by force
286.1	Crime vs. nature by force
288a	Aiding in sex perversion with force
288b	
288c	
288d	

APPENDIX C.5BASE EXPECTANCY SWING SYSTEM CODE SCHEDULEAge at Admission

5 0-19
 3 20-24
 2 25-29
 1 30-34
 0 35 or over

Juvenile Record

5 Yes
 0 No
 3 Felony

Commitment Offense

8 Violent
 5 Robbery
 4 Drug Use of Sale
 3 All Others

Alcohol Use

2 Heavy
 0 All Other

Marital Status

1 Unmarried
 0 Married (includes
 common law)

Drug Use

4 Heavy (Heroin Addict)
 2 Moderate
 0 All Other

Grade Level

1 0-9
 0 10+

Prior ConvictionsA. Violent Offenses

6 One (5 points for Robbery)
 10 Two
 15 Three or More

Employment

1 Not Employed at Time
 of Arrest
 0 Employed at Time of Arrest

B. Sale of Drugs

3 One
 6 Two
 9 Three or More

C. Other Felonies or Misdemeanors

2 One
 4 Two
 6 Three or More

APPENDIX C.5 (cont.)Age at First Commitment

5	Under 15
3	15-19
2	20-24
1	25-29
0	30 or over

The coding schedule for women has the same as for men except for the following:

Prior Prison Commitment

2	County Jail Only
4	One
6	Two
12	Three or More

Marital Status

2	Unmarried
0	Married

Escape/Escape Attempts

4	Any Prison Escape
2	County Jail or Court Escape
1	Juvenile Escape

Children

-1	If the Women's Children Were Residing with Her or Her Parents
----	---

Gang Affiliation

2	Yes
0	No

Employment

-1	Employed at Time of Arrest
0	Not Employed

END