

Sentencing and Correctional Policies

June 1991

Program Evaluation Division
Office of the Legislative Auditor
State of Minnesota

Program Evaluation Division

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STATE OF MINNESOTA

OFFICE OF THE LEGISLATIVE AUDITOR

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JAMES R. NOBLES, LEGISLATIVE AUDITOR

June 1991

Representative Ann Rest, Chair
Legislative Audit Commission

Dear Representative Rest:

In May 1990, The Legislative Audit Commission directed the Program Evaluation Division to evaluate correctional policies and practices in Minnesota, focusing particularly on state jail standards, sentencing guidelines, and the community corrections program. Interest in these issues was prompted by growing use of correctional facilities and programs.

Correctional problems are less severe in Minnesota than in other states, partly because of Minnesota's innovative sentencing and community corrections programs. But several factors, including policy decisions made by the Legislature, have increased pressure on state correctional institutions and programs. State policy makers need to address these factors and consider a variety of actions.

We recommend improvements in the sentencing guidelines structure and renewed emphasis on community corrections programs, including alternatives to incarceration. Such steps will provide greater flexibility in the criminal justice system and, in the long run, may reduce costs. Finally, state jail standards need to be updated but they do not block local jail expansion nor add unnecessarily to local costs.

We received the full cooperation of the Minnesota Department of Corrections and the Sentencing Guidelines Commission.

The report was researched and written by Elliot Long (project manager), Marlys McPherson, and Jim Ahrens, with assistance from Jo Vos and Deborah Wemette.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Jim Ahrens", written over the name of the Legislative Auditor.

James R. Nobles
Legislative Auditor

A handwritten signature in black ink, appearing to read "Roger Brooks", written over the name of the Deputy Legislative Auditor.

Roger A. Brooks
Deputy Legislative Auditor

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SENTENCING AND CORRECTIONAL POLICY

Executive Summary

Minnesota's corrections policies have been credited with helping the state avoid problems that have reached the crisis point in other states during the 1980s. For example, overcrowded prisons and jails have resulted in federal court intervention in 41 states (not including Minnesota), and corrections is now one of the fastest growing segments of state budgets.

Meanwhile, the goal of state policy in Minnesota has been to sanction offenders fairly, effectively, and efficiently. Both the Community Corrections Act of 1973 and the 1978 legislation establishing sentencing guidelines were aimed at reserving state prisons for dangerous, repeat offenders and encouraging local sanctions for less dangerous offenders.

While these programs may have helped to control prison populations and correctional costs, now there are indications that they may not be working as well as originally intended. Although Minnesota's incarceration rate remains one of the lowest in the country, the state's prisons and jails are full despite the beds that have been added during the past ten years. State expenditures for corrections have been growing, and county spending has increased even more rapidly than the state's. In May 1990, the Legislative Audit Commission asked for a review of state corrections issues. Our report addresses the following questions:

- **How serious is the correctional overcrowding problem in Minnesota? What are the causes of the rapid increase in the number of people in prisons, jails, and on probation? Is the problem likely to get better or worse in the future?**
- **Is the Department of Corrections effective in regulating jails, and do the state's jail standards permit economical solutions to the problem of jail overcrowding?**
- **To what extent are the Community Corrections Act and sentencing guidelines achieving their intended goals? What changes may be needed?**

- **Do sufficient alternatives to incarceration exist and are they being used? What is known about the relative cost and effectiveness of these alternatives, and how do they compare to prison and jail?**

To answer these questions, we interviewed corrections administrators and state and local officials. We visited jails and attended meetings of the Sentencing Guidelines Commission and the Jail Standards Task Force, which will be recommending changes to the current standards in 1991. We surveyed probation officers and corrections administrators, and collected and analyzed information describing corrections problems in Minnesota and the U.S.

We found that Minnesota's overcrowding problems are not as severe as those in most other states. But, paralleling national trends, Minnesota has experienced a substantial increase in the number of offenders in prisons and jails and on probation. Minnesota has managed to avoid serious problems until recently largely because there was excess capacity in prisons and jails when the period of growth in incarceration began. But now state and local correctional facilities are at or over capacity and probation caseloads have grown to critical levels.

The growth in the offender population has accelerated since 1986, and is projected to continue. The main reason for the growth is that more people are being punished in more serious ways than in the past. The state faces a choice: build more jails and prisons or make changes in sentencing and correctional policies which would manage the expected increase in offenders more efficiently.

MINNESOTA'S CORRECTIONAL PROBLEMS

The evidence suggests that Minnesota's corrections system is under growing stress.

- **In 1990, Minnesota's state prisons operated at 102 percent of capacity, and local jails operated at 92 percent.**

**Minnesota's
prisons and
jails are full.**

Ideally, according to the Department of Corrections, jail use should average between 60 percent and 80 percent of capacity because extra beds are needed to segregate different types of inmates and to accommodate peak demand. Larger facilities need less excess capacity. In 1989, over 60 percent of jails and other local detention facilities had average daily populations in excess of the Department of Corrections' suggested limits, and nine jails regularly exceeded 100 percent of capacity.

Probation services may be even more overburdened than prisons or jails.

Probation staff are over- burdened.

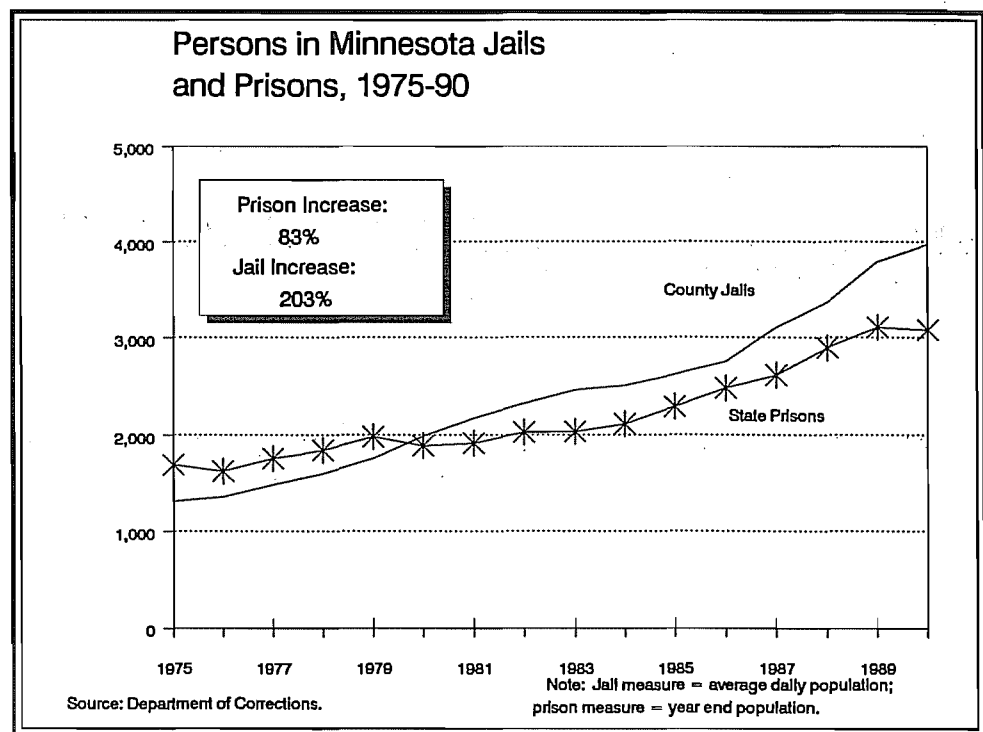
- The average caseload for each of the state's 600 probation officers was approximately 98 offenders in 1990.

Some probation officers, especially those in the metro area, have seen their caseloads double in the past six years.

Also, in the past six years, the number of people in prisons and jails and on probation has increased more rapidly in Minnesota than in the nation as a whole.

- Since 1983, correctional populations in Minnesota have increased 104 percent, while the increase in the nation as a whole has been 93 percent.

Minnesota's incarcerated population grew more slowly than the national average during the late 1970s to mid-1980s. But a sharp upward trend in prison, jail, and probation populations is evident since 1986.

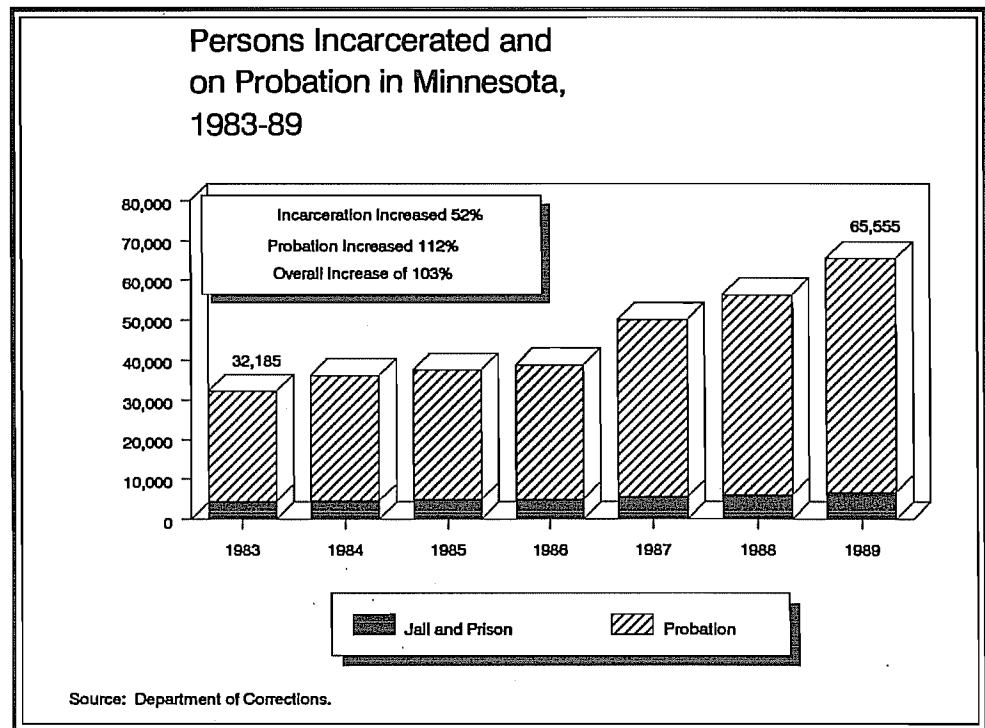


The number under correctional supervision doubled in the past six years.

- Compared to other states, proportionately more offenders in Minnesota are sanctioned at the local rather than the state level. Hence, jail and probation populations have grown more than state prison populations.

The division of responsibility between the state and counties in Minnesota places a significant burden at the local level. Sentences of more than one year are served in a state prison, while those one year or less are served in county correctional facilities. Nearly 80 percent of felony sentences and all

Most people are punished locally rather than in state prisons.



misdemeanor sentences are served in a jail or under the supervision of a probation officer.

In addition to existing facilities filling up, over 2,300 beds have been added in the past ten years. The Department of Corrections expects continued expansion in both the state prison system and local jails to accommodate projected increases in the number of prisoners and jail inmates. A total of 31 counties are now planning or building new jail facilities or expanding existing ones.

Causes of the Problem

We examined various factors that contribute to correctional system overcrowding: population growth and composition, the incidence and mix of crime, state sentencing policy, judicial sentencing practice, law enforcement

Minnesota Correctional Facilities Capacity

	1979-80		Number Beds Added Since 1979-80	1990		Projected New Beds Needed By 1995
	Capacity	Utilization Rate		Capacity	Utilization Rate	
State prisons	2,040	97%	1,020	3,060	102%	900
Local jails	2,991	59	1,319	4,310	92	1,300-1,600
Total	5,031	74%	2,339	7,370	96%	2,200-2,500

Source: Department of Corrections.

practices, and other factors that affect correctional resources, such as pretrial release requirements and legislative mandates that increase probation workloads. Some of these factors are within the control of state or local officials, while others are not.

Trends in Minnesota Crime and Corrections, 1980-89

	Percent Change 1980-89
Total state population	6.2%
"At Risk" population	
Males aged 15-24	-21.4
Males aged 25-34	18.6
Index crime rate (per 100,000 population)	-7.7
Violent crime rate (per 100,000 population)	27.9
Index crimes cleared by arrest	16.3
Felony convictions per 1,000 index crimes	47.2 ^a
Prison population	64.5
Jail population	90.7
Probation population	111.4 ^b
Incarceration rate (per 100,000 population)	67.6

Sources: Bureau of Criminal Apprehension, Department of Corrections, Sentencing Guidelines Commission, U.S. Bureau of the Census, U.S. Bureau of Justice Statistics.

^aPercent change 1981-89.

^bPercent change 1983-89.

Crime and demographic changes have contributed to overcrowding, but are not the major causes.

First, changes in the age composition of the population do not generally explain the sharp upward trend in incarceration since 1986. Crime rates increased as the number of persons in the high-crime years (age 15 to 24) rose during the 1960s and 1970s. But since the mid-1980s, when the size of the crime-prone population declined, incarceration rates have increased and the problems of prison and jail crowding have developed.

Second, overall crime rates have remained relatively stable during the period in which the population under correctional control has more than doubled. But the rate of violent crime in Minnesota (which ranked 37th in the nation in 1989) shows a steady increase, up 28 percent between 1980 and 1989. Aggravated assault shows the greatest increase (up 57 percent), followed by rape (up 36 percent). Robbery and homicide rates, however, have declined slightly (down 2 to 3 percent).

Since violent crimes are more likely to be punished with a prison or jail sentence, we suspect that at least some of the growth in the incarcerated population is the result of increased criminal activity or better reporting and enforcement of certain violent crimes, such as domestic abuse.

Third,

The criminal justice system has responded to public opinion with a tougher stance toward crime.

- **Part of the observed increase in the incarcerated population is the result of increased law enforcement activities, especially crackdowns on crimes related to alcohol and drug abuse.**

Overall, both arrests and felony convictions per reported crime are up on a statewide basis. The number of arrests doubled in the past 15 years, and felony convictions increased 45 percent from 1981 to 1989. A similar increase in volume is evident at the misdemeanor level. Most people convicted of felony or gross misdemeanor drug or alcohol offenses serve some time; DWI offenders usually spend time in jail while drug offenders are sent to jail or prison.

Fourth,

- **A major change affecting the jails has been the greater use of jail time as a sanction, particularly for DWI offenses.**

Proportionately more people are in jail serving a sentence now than 10 to 15 years ago. Judges are increasingly sentencing both felony and gross misdemeanor offenders to serve time in jail, often in addition to a period of probation. The imprisonment rate for convicted felons has remained fairly stable at about 20 percent since 1980. But the use of jail time in felony cases has increased from 35.4 percent in 1978 to 58.5 percent in 1988. Also, DWI offenders make up a disproportionate share of the increase in jail time: DWI and traffic offenders constitute almost half the sentenced inmates and use over one-third of the bed days.

Fifth,

- **Conditions of probation have become tougher. As a result, there are more offenders in prison and jail because they have violated the terms of their probation.**

From 1985 to 1988, the average length of probation pronounced by judges has increased from 20 to 22 months for gross misdemeanors and 49 to 52 months for felonies. Many of the intermediate sanctions, such as fines, day fines (which are based on an offenders' ability to pay), restitution, and treatment are typically used in addition to a jail sentence.

Nearly half of new prison commitments arrive with less than one year to serve, and one-third of these were sent to prison because of technical violations of probation or supervised release as opposed to a new conviction. In addition, excluding the Hennepin and Ramsey County facilities and the Mesabi Work Release and Northeast Regional Correctional Center, approximately 10 percent of jail bed days were used by probation violators in 1989.

Finally,

- **State legislative changes made during the 1980s, particularly those involving criminal sanctions, have directly increased correctional populations.**

The Legislature has defined new crimes and reclassified others into higher legal categories for which the prescribed penalties are more severe. It has also increased the statutory maximum sentences for about 25 crimes and has enacted more mandatory minimum sentences.

Determinate sentencing, especially mandatory minimums, is often cited as a major cause of prison and jail overcrowding. In Minnesota, mandatory minimum sentences have been enacted for drug and alcohol offenses, such as repeat DWI and second offense possession and sale of illegal drugs. Several mandatory minimum sentences affect local jails because they mandate sentences of less than one year.

Other legislative actions that affect local correctional resources include: pre-sentence investigation requirements, victim notification, sentencing guidelines worksheets, restitution hearings, chemical abuse assessments, and DNA analyses of sex offenders. These requirements increase the time that must be spent on each case. Given the increased number of offenders supervised by each officer, less time is available for each one.

Actions taken by the Sentencing Guidelines Commission primarily affect the use of state prisons, although they may have indirectly caused some jail population growth as well. The guidelines' presumptive prison sentences have been substantially lengthened; sentences for some crime categories have been doubled. Many of these changes were made in 1989, and their full effects have yet to be felt in the prison system.

Taking all of these factors into account and considering the contribution of each to the correctional crowding problem in Minnesota, we conclude that:

- Policy decisions made at the state level and the practices of judges, prosecutors, law enforcement agencies, and other criminal justice officials at the local level constitute the major reasons that the offender population—in prison, in local jails, and on probation—has grown.

Overall, these policy decisions have affected the growth of correctional populations more than changes in demographics or crime rates.

SENTENCING GUIDELINES

Through sentencing policy, state policymakers can influence the use of prisons, jails, and other correctional facilities and programs. Like much of the nation, Minnesota enacted significant sentencing reforms in the 1970s. The 1978 sentencing guidelines legislation is regarded as a national landmark of sentencing reform.

Based on the severity of the crime and the offender's criminal history, the guidelines specify, within narrow ranges, an appropriate punishment that

Correctional crowding is partly the result of state policy decisions and local practices.

judges are supposed to follow in sentencing. As articulated by the guidelines themselves, and various reports and studies by the Sentencing Guidelines Commission throughout the 1980s, the principal goals of sentencing guidelines are:

Guidelines were designed to promote uniform and proportional sentences and to control the use of state prisons.

- ***Uniformity.*** Similar offenses should carry similar sentences.
- ***Proportionality.*** Sentences should be proportional to the severity of the offense; more serious crimes should carry longer sentences.
- ***Control of Resource Use.*** State prison should be reserved for serious, repeat offenders. Incarceration in state prison should be used only where necessary. Sentencing policy should be set with resource limitations in mind.

Our study evaluated the degree to which these goals have been met.

Uniformity

To achieve uniformity in sentencing, the guidelines specify that offenders who commit the same crime and who have similar criminal histories should receive the same punishment. The guidelines' framers expected that judges would depart infrequently from the specified sentences. They required judges to justify departures in writing, and prohibited departures based on race, gender, and social factors such as marital status, educational attainment, or employment history.

The guidelines specify two things: whether a convicted offender should serve a prison term and, if so, for how long. We examined the frequency with which judges depart from the guidelines. In 1988, judges disagreed with the guidelines on who should go to prison in about 10 percent of all felony cases, and disagreed with the prescribed sentence length in about 21 percent of the cases.

Judicial departures are rare for repeat, violent offenses and for relatively minor, first-time property crimes. But, we found that:

- **Judges depart from the imprisonment guidelines in 20 to 50 percent of the cases involving: a) serious crimes against the person by offenders with no prior felony convictions, and b) property crimes by offenders with lengthy criminal records.**

In the first instance, judges tend to sentence offenders to jail or probation instead of the lengthy prison term called for in the guidelines. In the second, judges tend to sentence offenders to prison even though the guidelines do not call for it.

The guidelines explicitly state that departures should be infrequent and based on substantial and compelling circumstances. The guidelines anticipate that only a small number of cases will require departures. Departure rates as high

as those currently experienced exceed the level that the commission now finds acceptable, although its thinking about departures has evolved over the years. Departures are not viewed as negatively as in the past or as the language of the guidelines themselves suggests. We think that departure rates as high as these signal a problem with the guidelines that requires attention by commission members or other policymakers.

Proportionality

Proportionality in sentencing means that more serious crimes should receive more serious sanctions, as measured by higher imprisonment rates and longer sentences. In 1981, the first full year the guidelines were in effect, the percent of offenders given prison sentences rose with each increase in severity level of crime. However, by 1988, offenders were more likely to be imprisoned at the lowest crime severity level than at the next severity level. Similar inconsistencies were evident among higher severity levels as well. These anomalies lead us to conclude that:

- Overall, sentences are roughly proportional, but there are significant exceptions.

Trial court judges have disagreed with the guidelines on the proper severity rankings of a number of offenses. The commission helped to correct a significant proportionality problem recently when it reclassified auto theft at a higher severity level.

Resource Control

A key purpose of the guidelines was to establish a clear relationship between sentencing policy and the use of correctional resources, especially the use of state prison. The guidelines have helped policymakers understand the impact of sentencing changes on the prison population. But for several reasons, the guidelines have not been as effective as anticipated in controlling resource use:

- The 1980s were a period of increased criminal sanctions in Minnesota and across the nation. In 1989, the sentences specified in the guidelines were materially lengthened.
- Guidelines eliminated the use of parole, which in the past was used to control prison and jail crowding.
- Since the guidelines prescribe proportional sentences, when penalties for one crime are increased, the tendency is for other penalties to be adjusted upward. This happened in 1989, for example, when sentences for most crimes were proportionately lengthened.

Departures from the guidelines are higher than originally expected, and there are exceptions to proportionality in sentencing.

Guidelines have helped to predict the prison population, but not to control it.

Consequently, the commission has shifted away from resource *control* to resource *management* as a goal. Estimates are made of the additional beds required by sentencing guidelines changes, and these are communicated to state policymakers.

We conclude that Minnesota's sentencing guidelines are only partially achieving their primary goals of uniformity, proportionality, and resource control. Judges depart frequently from the guidelines when they pronounce sentences and the use of jails and prisons has increased.

Discussion

The reasons why sentencing guidelines have not fully accomplished their goals are complex, but clearly judges and prosecutors have found ways to circumvent the guidelines. The Legislature may wish to materially increase the guidelines' authority, but before doing so, we think it should consider some of the legal and philosophical reasons, and practical circumstances, that have led to this situation.

The guidelines are built on the principle of uniform and proportional punishment. Imprisonment is specified for more serious crimes, with locally administered sanctions for lower-severity crimes. But even felony offenders and the crimes they commit are complex and the sentences that are actually handed down by judges aim to achieve multiple purposes. These include retribution (punishment), but also deterrence, incapacitation, rehabilitation, and restitution.

Over the decade in which guidelines have been in effect:

- **Appeals court decisions have undermined sentencing guidelines.**

For example, as noted, the guidelines formally list educational attainment and employment history as factors not to be considered as the basis for departures from the guidelines, but the appeals court has allowed "amenability to probation" as a basis for some departures.

Appellate decisions also have allowed more latitude in computing the criminal history score that enters into the calculation of a guidelines sentence. This has given prosecutors greater leeway in bargaining for guilty pleas. The guidelines can be circumvented through departures, appeals, and plea bargaining when they interfere with the sentence that the trial court seeks to obtain.

We believe these developments stem partly from the desire of judges and others to pursue sentencing goals other than uniform and proportional punishment. Potential for rehabilitation, threat to public safety, and deterrence of repeat offenses, are all considerations that enter into the sentencing decision. The guidelines may be too narrowly constructed to accommodate the range of varied and complex criminal cases that confront judges and prosecutors. And, as a practical matter, the calculation of criminal history scores, which can have a major effect on sentencing, is unreliable due to gaps in recordkeeping.

We recommend modifying the guidelines to permit greater flexibility.

We do not recommend that Minnesota abandon sentencing guidelines, although their promise of uniformity and proportionality in sentencing has not been fully achieved. However, they can promote fairness when sentences are set or revised, permit monitoring of sentencing practices against standards of fairness, and help in planning for needed facilities. The Sentencing Guidelines Commission can see that sentencing disparities by race, gender, and social class are regularly monitored.

But none of these essential goals requires sentencing ranges as narrow as currently specified by the guidelines. In fact, the ranges in sentence lengths contained in the guidelines are smaller than the 15 percent leeway allowed by the enabling legislation. We think the discretion permitted judges in determining sentence lengths should be broadened somewhat, at least up to that allowed by the enabling legislation. In addition, we recommend a “gray zone” presuming neither imprisonment nor nonimprisonment for borderline offense categories that are now characterized by high rates of departure from the guidelines. The gray zone should nevertheless contain a proportional continuum of sanctions like the rest of the grid. This would provide judges with a range of sentencing options that better matches the variation encountered in criminal cases and acknowledges the multiple goals to be achieved at sentencing.

STATEWIDE JAIL STANDARDS

We examined the content and enforcement of the state’s jail standards because of concerns that the standards are out-of-date and might be hampering economical solutions to the problem of jail crowding. Jail construction and operating standards are specified in rules promulgated and enforced by the Minnesota Department of Corrections (DOC).¹ State standards have been in effect since 1978, and they were last revised in 1981.

Minnesota and about 30 other states use jail standards to ensure proper inmate treatment and to limit legal liability. Where standards are absent, courts have shown a willingness to impose stringent requirements of their own.

The average annual operating cost for Minnesota jails is \$14,778 per bed, compared with the national average of \$10,639. Jail standards covering the physical plant, staffing ratios, and staff training can affect jail construction and operating costs.

A number of counties, including Hennepin, Ramsey, Washington, and St. Louis, need to construct new jails. In several cases, the jail planning process has gone on for years despite crowded and inadequate facilities. But, in our view,

- **State jail standards are not a major source of delays in planning, siting, and building new facilities.**

¹ *Minn. Rules*, Ch. 2900 and Ch. 2910.

In most cases, the main impediments to jail construction are local. Jails are built with county funds, and local decisions revolve around issues like whether to build or remodel, how many beds to add, and where to locate the facility. These issues, not state jail standards, have slowed progress in a number of counties.

The Department of Corrections has adopted a pragmatic, although somewhat permissive, approach to jail standards enforcement.

- The department has allowed counties temporarily to place more offenders in their jails than allowed by the standards if the counties are making progress toward a permanent, legal solution to crowding.

Since counties are financially responsible for the construction and operation of jails, the Department of Corrections favors negotiation and persuasion, as a rule, over the use of sanctions and penalties. The department grants variances that allow counties time to make improvements to their facilities. In 1990, a dozen local detention facilities were operating under DOC variances. Unfortunately, as a result of the department's permissive approach, long-standing noncompliance with state jail standards can and does persist.

The state's jail standards do not unnecessarily hamper counties from adding needed jail space.

As this report shows, state policy contributes to the need for expanded jail capacity and the state jail standards specify construction and staffing requirements that must be met. But many new jails have been built since the standards took effect. In fact, we conclude that much of the physical upgrading of jails that has taken place can be attributed to the promulgation and enforcement of statewide jail standards. Since the 1970s, many outmoded facilities have been shut down, and 47 counties have built new facilities that conform with the standards.

It is also true, however, that the current standards are out-of-date and in need of revision.

- There are unsettled questions about jail design and operating requirements. The areas of greatest controversy are physical space, staffing, and staff training requirements.

A task force is currently at work on a jail standards revision project that began in January 1990 and is due to be completed in July 1991. The task force, which represents county boards, sheriffs, jail administrative and program staff, and other corrections officials, will try to develop a consensus on jail standards and recommend changes to the Commissioner of Corrections.

Neither the task force nor the Department of Corrections has made any final decisions, but so far the task force has decided to recommend: strengthening training requirements; varying custodial requirements by jail design and inmate observability but making few other changes in overall staffing requirements; and preserving the physical space requirements in effect since 1978.

Jail standards are in the process of being updated.

Also, the department is in the process of defining new standards for double occupancy cells. The American Correctional Association, which sets national professional standards for correctional facilities, has recently issued standards for double cells. It appears likely that the department will follow its lead. The controversy in Minnesota, therefore, between counties and the DOC over double cells may soon be settled.

A DISCUSSION OF ALTERNATIVES

A wide range of alternatives to incarceration may enable the state to reach multiple correctional goals and do so in an economical way. Traditionally, Minnesota has relied heavily on probation as a sanction. The trend nationally is toward expanding *intermediate sanctions*, which provide more supervision and control than probation but less than jail and prison. Intermediate sanctions include house arrest (with or without electronic monitoring), halfway houses, residential and outpatient treatment programs, intensive supervision probation, day centers, community service, restitution, and fines or day fines (which are based on an offender's ability to pay).

Evaluations of these programs have shown some of them to be modestly effective, although more research is needed. Most of these programs cost less per offender than incarceration. They tend to add to overall correctional costs in the short-run, however, because of program development and administrative costs.

In order to determine whether a sufficient number of alternatives to incarceration exist and are being used in Minnesota, we surveyed probation officers and local corrections administrators. The survey results indicate that:

- Many treatment-oriented programs established in the 1970s remain in place. However, there are a number of treatment needs that remain unmet.

Many people who need treatment do not receive it.

Outpatient alcohol and drug abuse programs are available in many areas of the state. But funding for treatment is inadequate in some areas, while in less populous areas of the state, programs are sometimes inaccessible. As a result, many offenders in need of treatment do not receive it. Also, residential sex offender treatment and halfway houses are unavailable in nearly half of local jurisdictions. Finally, there are few treatment programs available that deal with growing problems like family violence, anger control, intrafamilial abuse, or programs for women offenders. Less than 10 percent of the counties have these programs available.

We also found that most counties have community work service and restitution programs, although they may not be used as extensively as they could be. In addition, electronically monitored house arrest is available in over 60 percent of local jurisdictions. This program is new, however, so relatively few offenders have been placed in it. Sentencing to service, a program started by

the Department of Corrections in 1986, is available in 50 percent of local jurisdictions, with another 30 percent planning to institute the program. At the same time,

- **Other alternative programs, such as intensive probation supervision and day fines, are just beginning to be developed in Minnesota. Less than 30 percent of local jurisdictions have these programs.**

There is great interest in expanding the range and number of alternative programs. Our survey revealed that local corrections officials considered "more intermediate sanctions" to be their second greatest need (after "more probation officers"). "Insufficient resources" was the main reason cited for program unavailability, although some programs (house arrest, sentencing to service, and day fines) also lack support from local policymakers in some areas.

For the most part, alternatives to incarceration are used at the discretion of judges, which means that their use varies depending on the crime, the offender, and the judge. According to corrections officials, however, there is a tendency for these sanctions to be used in addition to some jail time. This is particularly true with restitution, day fines, and intensive probation.

Overall, we conclude that:

- **Alternatives to incarceration could be expanded significantly in Minnesota. Efforts to promote them may be required, however, and policies governing their use may be needed.**

As noted, an expansion of alternative programs could help control overall correctional costs and encourage the state to maximize correctional goals other than simple punishment. To ensure that these programs are used as alternatives to incarceration rather than in addition to it, policy guidelines may need to be developed simultaneously.

We recommend expanding intermediate sanctions, but also developing policies governing their use.

COMMUNITY CORRECTIONS ACT

The Community Corrections Act (CCA) of 1973 was enacted "for the purpose of more effectively protecting society and to promote efficiency and economy in the delivery of correctional services."² The program encourages counties to develop community corrections programs so that less serious offenders can be sanctioned locally, reserving state prison space for dangerous repeat offenders. Through the CCA, the state has turned over considerable responsibility and autonomy for correctional programming to participating counties, which, in turn, receive a financial subsidy from the state.

At the present time, 30 counties organized into 15 units participate in the CCA. Participating counties represent two-thirds of the state's population and three-quarters of the reported crime. In 1990, the total CCA subsidy was

2 *Minn. Laws* (1973), Ch. 354.

\$18.2 million. In these 30 counties, all probation and supervised release services, treatment, community work service, victim restitution, and other correctional programs are administered by a community corrections agency, which is the direct recipient of the CCA subsidy. In the remaining 57 counties, the state finances and administers all or part of correctional services through the Department of Corrections.

As a general rule, the cost of correctional facilities and programs rises with the amount of supervision and control provided. For example, state prisons, which are designed and staffed for long-term offenders, cost more to operate than jails, which are more costly than work release facilities. In order to be cost effective, therefore, correctional programs should not provide more control over offenders than necessary. In a similar vein, the American Correctional Association recommends that states should adopt sanctions that are "the least restrictive consistent with public and individual safety and maintenance of social order."

Applying this standard, we found that Minnesota does not use its jails and prisons efficiently. For example, many new prison commitments are short-termers and probation violators, not dangerous criminals. Similarly, jails are used largely for punishment of offenders who do not pose serious threats to public safety rather than for offenders who require the high level of supervision and control that jails provide. In some counties, offenders wait as long as a year to serve their jail sentences. Also, most sentenced inmates are DWI and traffic offenders, and the biggest growth is in work-release beds, not secure beds.

Prisons and jails could be used more efficiently.

Other policies that contribute to the inefficient use of correctional resources include: "good-time" policies for jails that are more punitive than for state prisons, leading offenders to request prison instead of jail; and levy limits that provide counties with incentives to build and operate jails rather than to develop lower cost community alternatives.

- **Sentencing changes made during the 1980s have emphasized uniform punishment. This can conflict with the goal of economy and efficiency in the use of correctional resources.**

Emphasizing the use of prisons and jails for offenders who pose threats to public safety requires individualized assessments of the appropriateness of sanctions based upon the risk each offender poses. To some degree, this may require treating like offenses differently. Under mandatory and determinate sentencing (including the state's sentencing guidelines), in order to insure the proper placement of those offenders who pose the greatest threat, all offenders must be treated harshly. This dispenses justice uniformly, but it contributes to the uneconomical use of correctional resources. This is a basic trade-off involved in corrections policy.

In our view, the Community Corrections Act has not been responsible for the greater use of incarceration in Minnesota. In fact, the CCA has probably

been a countervailing force. Our analysis of jail use since 1975 (controlling for crime) shows that:

CCA remains a viable policy, despite trends in the opposite direction.

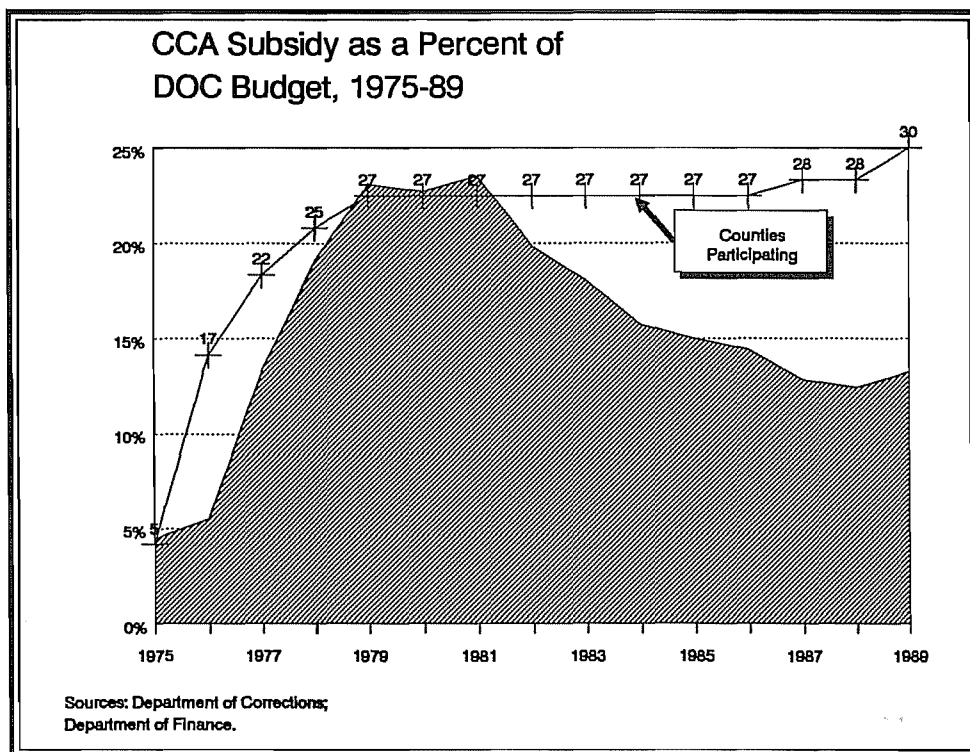
- The use of jail has increased more rapidly in counties that are not participating in the CCA. Conversely, there are more alternatives to incarceration available in CCA counties.

The rate of increase in jail use is more than twice as high in non-CCA counties as in CCA counties. This is true in both metropolitan and rural areas of the state. Also, there are more community-based programs in CCA areas than in counties where the Department of Corrections provides correctional services and where the department and the county share responsibilities. The typical CCA jurisdiction has 8.7 programs available for adult offenders, while other jurisdictions have an average of 6.5 programs. This does not necessarily mean that CCA is responsible for higher program levels. The fact that CCA counties also tend to have higher populations and more crime than nonparticipating counties could account for the observed difference. But the data support the conclusion that the CCA has been reasonably effective in achieving its goals, despite trends in the opposite direction.

We also found that:

- State funding for the Community Corrections Act has not kept pace with the additional correctional expenditures borne by the counties.

The data show that counties have paid a proportionately larger share of the increased correctional costs incurred during the 1980s. Counties spent ten times more for corrections in 1988 than they did in 1975, compared to a seven-



**The state-local
relationship is
in a state of
flux.**

fold increase by the state. In 1979, the CCA subsidy represented 37 percent of county spending for corrections, while in 1990 it accounted for only 25 percent.

The overall CCA subsidy has increased when new counties joined. But instead of maintaining the CCA appropriation at a level commensurate with the new counties, the CCA subsidy has steadily declined as a proportion of the total DOC budget during the 1980s. Meanwhile, the share of the department budget spent on institutions has increased slightly (from 70 to 74 percent).

Increasing the Community Corrections subsidy could encourage counties to develop alternatives to incarceration, especially in the metropolitan area where the need for alternative programs is greatest, provided it is clear that that is the purpose of the funding increase. In other words, we think that increased funding should be tied to more explicit state goals (see below).

In addition, we found the following problems with the Community Corrections Act:

- **Presently, there is no clear demarcation between the state and CCA counties regarding which offenders should be whose financial responsibility.**
- **The state's purpose in the CCA is no longer clear. The Department of Corrections believes that counties have no incentive to sanction offenders locally. Meanwhile, the CCA counties have come to rely on the subsidy and tend to view it like a revenue-sharing program.**
- **The subsidy distribution formula results in an inequitable distribution of the CCA funds. It does not distribute the subsidy so that counties with the greatest correctional needs get an appropriate share.**
- **There has been a drift toward DOC-sponsored programs, instead of using the CCA as a means of expanding community-based programs. The department makes minimal effort to promote CCA participation or to foster innovation in CCA counties, except by example.**
- **Current data collection and analysis capabilities, which would permit regular assessments of correctional needs on a statewide basis, are inadequate. As a result, decisions like whether to increase prison bed space, expand jail capacity, add to probation staff, or expand intermediate sanctions are made without sufficient information about what is needed and where needs are the greatest.**

If the state wants to expand the range of alternative sanctions in an economical way, the CCA appears to be a good vehicle for doing so. However, the credibility and vitality of CCA needs to be reestablished. At a minimum, the Legislature should reassess and clarify the goals of Minnesota's overall correc-

**CCA is in need
of legislative
attention.**

tional policy and determine how community corrections fits into it. We recommend that the Legislature consider the following issues:

- *The appropriateness of the current structure and purpose of CCA, and how CCA relates to sentencing policy:* How can the CCA be revitalized so that it promotes correctional innovation and the continued development of alternatives to incarceration?
- *The state-local relationship for the financing and delivery of correctional services:* Which level of government should be responsible—financially and administratively—for what kinds of offenders?
- *The subsidy distribution formula:* How can the formula be improved so that the subsidy is given directly in relation to spending needs and inversely in relation to revenue-raising capacity?
- *Statewide correctional planning capabilities:* How can statewide correctional planning be improved, and which agency should be responsible for it?

INTRODUCTION

Minnesota is looked to as a state that has managed to avoid the serious prison and jail overcrowding problems and costly litigation that have plagued the nation for the past decade.¹ The two state policies credited with helping to keep both inmate populations and correctional costs under control are the 1973 Community Corrections Act and the 1978 legislation establishing Sentencing Guidelines, which took effect in 1980.² An explicit goal of both policies is to reserve state prison space for the most violent and dangerous repeat offenders and encourage low-cost local sanctions for offenders posing less serious threats.

Over the past several years, however, it has become increasingly clear that Minnesota's correctional facilities and programs are at or over capacity. The Department of Corrections (DOC) has discontinued its practice of renting excess prison space to other states and has received additional funds from the Legislature to expand the capacity of the state prison system. Increasing numbers of counties have proposed to build or expand jails and workhouses, seeking bonding authority to do so from the Legislature. This led some legislators in 1989 to question whether existing jail space was being appropriately utilized and whether sufficient alternatives to incarceration exist.³

Concern has been mounting that Minnesota's correctional policies may not be working as well as intended. Correctional officials at both the state and local levels are worried that Minnesota has strayed from the goals established in the 1970s. They believe the state is heading down the path taken by others, a path that has led to record numbers of incarcerated people, serious overcrowding, inadequate supervision of offenders, and spiraling correctional costs.

Meanwhile, local officials have complained that state legislative mandates, levy limits, and administrative rules have adverse financial effects on counties. Many believe that counties are paying an unfair share of the increased correctional costs. Others would like to add more beds to existing prison and jail

¹ See Fred Strasser, "Making the Punishment Fit the Crime ... and the Prison Budget," *Governing*, January 1989; Jack B. Coffman, "Packed prisons find a solution in Minnesota," *St. Paul Pioneer Press Dispatch*, November 5, 1989; Kay Pranis and James Read, "Sentencing Our Way Out: Creative Alternatives to Incarceration," *Blueprint for Social Justice*, Volume XLIII, No. 7 (March 1990).

² *Minn. Stat.* §§401.01 through 401.16, *Minn. Stat.* §§244.01 through 244.11.

³ The House Judiciary Committee designated the Facilities Assessment Subcommittee to study the problem of jail overcrowding. The subcommittee's report was published in February 1990.

facilities ("double-bunking") and think that the Department of Corrections' jail standards prohibit such a practice.

It is in this context that the Legislative Audit Commission asked for a study of state corrections policy. Our study is designed to answer the following questions:

- **How serious is the correctional overcrowding problem in Minnesota? What are the causes of the rapid increase in the number of people in prisons and jails and on probation? Is the problem likely to get better or worse in the future?**
- **Is the Department of Corrections effective in regulating jails, and do the state's jail standards permit economical solutions to the problem of jail overcrowding?**
- **How well are the two pillars of corrections policy in Minnesota—Community Corrections and Sentencing Guidelines—working, given the changes of the past decade? Do they remain viable policies today? What changes in correctional policy may be needed?**
- **Is building new prisons and jails the appropriate solution to the problem? Do sufficient alternatives to incarceration exist and are they being used? What is known about the relative cost and effectiveness of these alternatives, and how do they compare to prison and jail? How are other states dealing with the problem?**

Several methods were used to answer these questions. We interviewed correctional administrators and practitioners, representatives of professional organizations, state and local officials, and people who have studied correctional policy in Minnesota and elsewhere. We visited jails and accompanied DOC jail inspectors to observe the inspection process first hand. In addition, we attended meetings of the Sentencing Guidelines Commission and the Jail Standards Task Force, which was established by the Commissioner of Corrections to recommend changes to the current standards. We conducted a survey of administrators and probation officers to determine what programs and services are available at the local level. We collected and analyzed information on costs and the numbers of people under correctional control. We also conducted an extensive literature search, contacted national organizations involved in corrections policy and research, and reviewed legislation, agency documents, and evaluations pertinent to Minnesota's sentencing and correctional policies.

The scope of our study is limited in the following ways. We examined correctional policies with respect to adult offenders only. We did not look at the structure or management of the Department of Corrections, beyond examining the department's role in setting and enforcing jail standards and in administering the Community Corrections Act. Nor did we examine operations or programs at the state prisons. We summarize current research on the

effectiveness of alternative strategies, but this study is not designed to determine whether specific correctional programs in Minnesota have been effective in rehabilitating offenders, preventing or deterring crime, or ensuring public safety.

In Chapter 1 of this report we provide an overview of corrections issues and policies. Chapter 2 looks at the causes of the correctional overcrowding problem, identifying those that are under the control of state policymakers. Chapter 3 discusses sentencing policy, in particular sentencing guidelines, and Chapter 4 looks at jail standards. Chapter 5 summarizes what we learned about the availability and use of alternatives to incarceration, while Chapter 6 reviews the Community Corrections Act.

AN OVERVIEW OF CORRECTIONS

Chapter 1

We are looking at corrections policy today because the number of people under correctional supervision, especially the number behind bars, has increased substantially over the past 10 to 15 years. In this chapter we discuss several corrections issues and policies. We asked:

- How much growth has occurred in Minnesota's prison, jail, and probation populations? What has been the effect of that growth on correctional institutions and probation agencies? on costs?
- How serious is Minnesota's correctional overcrowding problem, especially in comparison to other states?
- What are the major state policies governing corrections? How is responsibility for corrections structured and organized?

Briefly, we show that Minnesota's correctional overcrowding problem is not as severe as what other states are facing, in part because Minnesota had excess prison and jail capacity when the recent period of increased incarceration began. Now, however, Minnesota's prisons and jails are at capacity and its probation agencies are overburdened, with additional bed space being added to prisons and jails. We believe that state policies may not be working as well as originally intended to promote the efficient and economical use of correctional resources.

**There is a
national crisis
in corrections.**

A NATIONAL CRISIS

Nationally, the number of people in prisons and jails and on probation or parole has more than doubled since 1980. Because it can take from five to seven years to plan, build, and staff correctional institutions, new construction has not kept pace with the rapid increase in the number of inmates. In virtually every state in the nation, prisons and jails are overcrowded.¹ In 1989, jails

¹ The evidence on the national situation is abundant. Correctional overcrowding has been the subject of several U.S. Department of Justice monographs; see, for example, Bureau of Justice Statistics, "Jail Inmates 1989," *Bulletin* (Washington D.C., June 1990); Bureau of Justice Statistics, "Prisoners in 1989," *Bulletin* (Washington D.C., May 1990). For overviews of the problem, see National Conference of State Legislatures, *State Legislatures and Corrections Policies: An Overview* (Denver, 1989); and Stacie M. Alexander, *Why Prisons are Packed and What States Can Do, A Report of the Midwestern Legislative Conference* (January 1989).

nationwide operated at 108 percent of their rated capacity, while prisons were between 107 and 127 percent of capacity.

Simultaneously, an active prisoners' rights movement has developed. Inmates have brought suit against state and local units of government and correctional administrators charging violations of their Eighth Amendment constitutional rights ("cruel and unusual punishment"). The federal courts have intervened to improve prison and jail conditions. In 1989:

- **Prisons and/or jails in 41 states (not including Minnesota) were under court order to reduce inmate populations and/or improve conditions.**
- **Nationally, one out of every four local jurisdictions was under court order to reduce overcrowding.**
- **Population caps (Florida) and across-the-board early release of prisoners (Texas) were ordered by the courts; elsewhere (Connecticut, Tennessee, and Illinois), across-the-board early release has been used voluntarily to relieve the most severe overcrowding.**

One response to overcrowding has been new prison and jail construction. A recent survey found that the 52 prison systems in the United States were spending over \$6.7 billion during 1989-90 on new prison construction. This would add 128,000 new beds to prisons and represents a 73 percent increase in new construction from the 1987-88 period.²

The experience of states that have undertaken large-scale building projects, however, is that as soon as new facilities are opened they quickly fill up.³ There is evidence to support the "capacity model," which suggests that expanding prison capacity influences sentencing decisions and results in more prisoners to fill that capacity.⁴

When prisons and jails are full, another response to court-ordered limits is for judges to use probation or parole as alternative sanctions. But additional funding for these services often has not materialized. In some cases, state and local governments have decided to build new correctional institutions, committing themselves to continuing operating expenditures as well as new construction costs. With high expenditures for institutions, less money has been spent

² This figure includes the 50 state prison systems, plus Washington D.C. and the federal prisons. It does not include spending for new jails. See Cega Services, *Corrections Compendium* (Lincoln, Nebraska, September-October 1989).

³ Examples include California, Texas, Michigan, Louisiana, New York, Florida, Georgia, Virginia, Connecticut, and Ohio. In 1990 former Governor James Blanchard said that Michigan would not build any more prisons after 1992 when the facilities currently under construction are completed (cited by Cal Thomas, "Conservatives should adopt alternate sentencing issue," *St. Paul Pioneer Press*, May 14, 1990).

⁴ Kenneth Carlson, et al., "Population Trends and Projections," *American Prisons and Jails II* (Washington, D.C.: U.S. Department of Justice, 1980).

Minnesota's problems have been slower to develop.

for probation, parole, and other community-based services. Nationally, the proportion of corrections spending that goes for probation and parole has declined from 17 percent in 1977 to 11 percent in 1988.⁵

The result has been large increases in probation officer caseloads and a corresponding decrease in the ability to provide adequate supervision and control of offenders in the community. This, in combination with increased random drug testing, has caused probation and parole failure rates to rise. More offenders are returning to prison for technical violations (as opposed to new criminal convictions). In California, for example, 45 percent of the new admittees to state prison are parole violators.⁶ This, in turn, leads to more prison and jail overcrowding, and the cycle begins anew. The result is correctional spending that spirals beyond the control of policymakers. Nationally, corrections is the fastest growing segment of state budgets.

THE PROBLEM IN MINNESOTA

Against this national backdrop, Minnesota is cited by many correctional experts as a state that has managed to avoid the cycle described above. It is one of only nine states not under a court order in 1989 to reduce overcrowding. When we look at the data, however, it is evident that this praise is only partially deserved.

Changes in Offender Populations

Figures 1.1 and 1.2 illustrate the increases in the populations under the three main forms of correctional control: imprisonment, incarceration in local jails, and probation supervision. These figures show that:

- Like the rest of the country, Minnesota has experienced substantial growth in its prison, jail, and probation populations.

But the state's prison, jail, and probation populations have grown rapidly since 1986.

While the number of offenders incarcerated has been steadily increasing since the mid-1970s, the growth has accelerated more rapidly since 1986. This is true both for state prisons and local jails, although jails have experienced a greater rate of increase than the state prison system.

The Department of Corrections began keeping data on probation populations in 1983. In the past six years, the number of people on probation has increased even more rapidly than the incarcerated population. The same pattern of accelerated growth after 1986 is evident.

On December 31, 1989, the total number of people under correctional control (in prison, in jail, or on probation) was 65,555, a record high. It

⁵ Bureau of Justice Statistics, "Justice Expenditure and Employment, 1988," *Bulletin* (Washington, D.C., July 1990), 5.

⁶ State of California, Blue Ribbon Commission on Inmate Population Management, *Final Report* (Sacramento, January 1990), 24.

The number of people punished at the county level has increased faster than the number in state prisons.

Figure 1.1: Persons in Minnesota Jails and Prisons, 1975-90

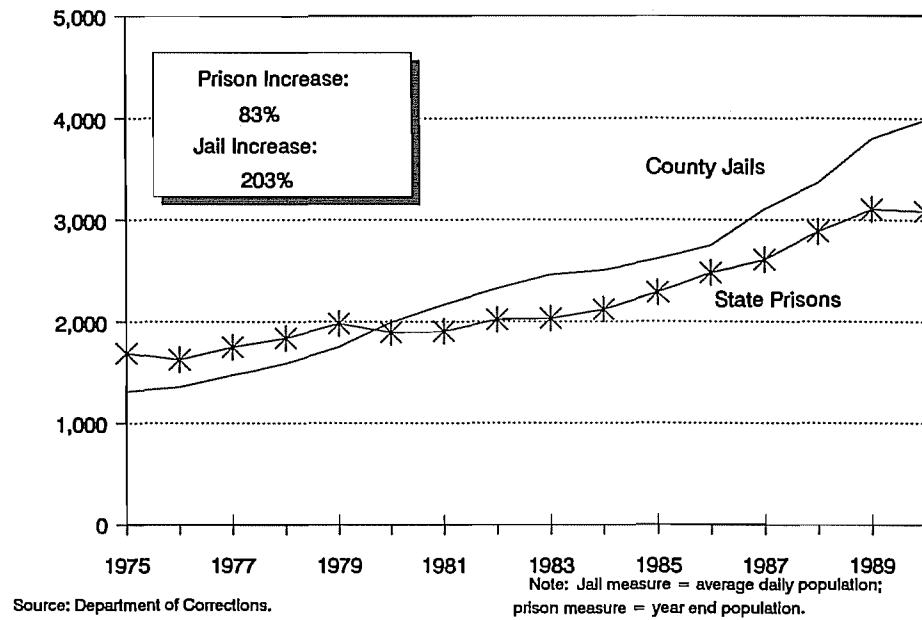
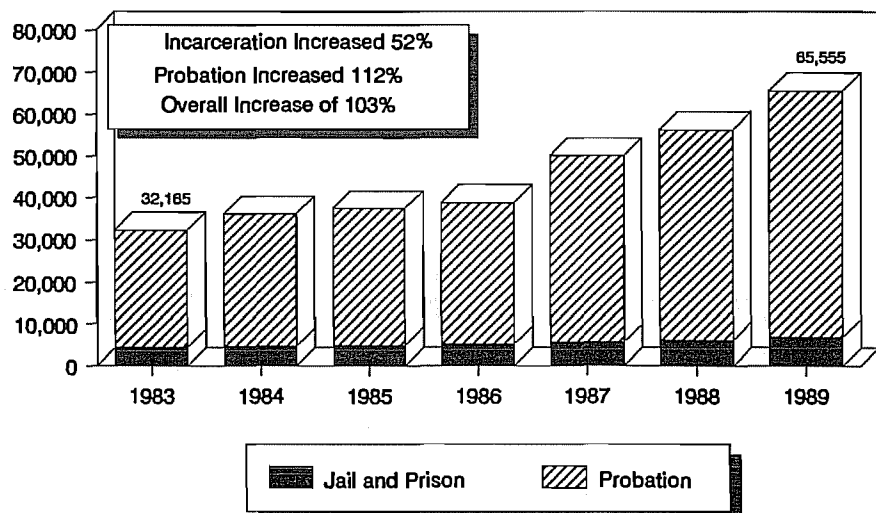


Figure 1.2: Persons Incarcerated and on Probation in Minnesota, 1983-89



represented 2.1 percent of the adult population in the state, and was twice the number under correctional control just six years before.

In 1990, twice as many people were under correctional supervision in Minnesota as in 1983.

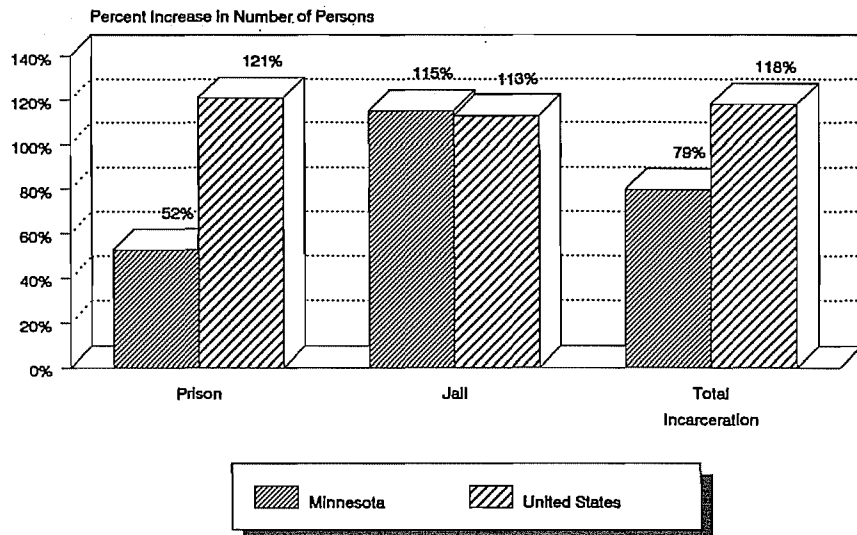
Comparisons to Other States

The pattern of growth in the offender population here is different from other states. The observed pattern may be a reflection of state policy and the division of responsibility between state and county governments, a topic discussed more fully later in this chapter.

- **Minnesota's rate of increase in offenders under correctional control is higher than the nation as a whole, mainly due to greater use of probation and jails rather than state prisons.**

As shown in Figure 1.3, Minnesota's rate of increase in prison populations is lower than the national average, while Minnesota's rate of increase in the average daily population in jails is slightly higher than the national pattern. Jail populations in the Midwest region, of which Minnesota is a part, increased 28 percent from 1983 to 1988, suggesting that Minnesota, with a 65 percent increase, has been incarcerating offenders in jails at a much faster pace than such nearby states as Iowa (23 percent), North Dakota (19 percent), Nebraska (37 percent), Missouri (10 percent), and Ohio (29 percent).⁷

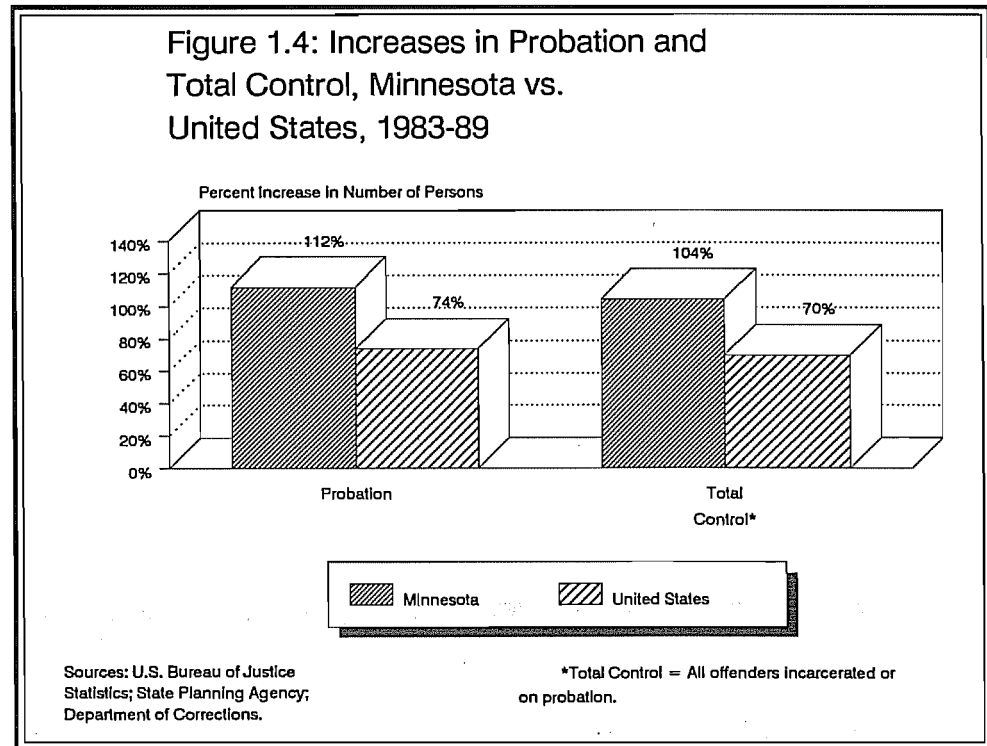
Figure 1.3: Increases in Incarceration, Minnesota vs. United States, 1978-88



Source: U.S. Bureau of Justice Statistics.

⁷ U.S. Department of Justice, *Census of Local Jails, 1988* (Washington, D.C., 1990).

As shown in Figure 1.4, offenders on probation are increasing at a considerably *higher* rate than the nation as a whole. Minnesota has a long tradition of relying upon community sanctions, and the data reflect this. Overall, Minnesota's rate of increase in the number of people under correctional control exceeds the national average, suggesting Minnesota has become increasingly more punitive, just as the rest of the country has.



The state's incarceration rate is low partly because its violent crime rate is low.

Table 1.1 compares Minnesota to other states on alternative measures of correctional control. As this table illustrates, Minnesota's incarceration rate is one of the lowest in the country. This was the case in the 1970s and it remains so today. In part this is due to state policy, as suggested above, but it is also because Minnesota has less violent crime than most other states. Our violent crime rate ranked 37th in the country in 1989.

When community sanctions are added to derive an overall control rate, Minnesota's ranking jumps to 21st. Finally, if we control for the amount of crime that a state experiences, Minnesota is shown to be more punitive than most others: we rank 12th among the 50 states and Washington, D.C. According to the total control/crime ratio, for every 100 reported index crimes in 1987, there were 26.6 people under correctional control in Minnesota, compared to 25.3 nationwide. Given the increases the state has experienced since 1986, which are higher than the national average, these numbers may be higher today.

Table 1.1: Population Under Correctional Control (by State)

Incarceration ^a			Total Control ^b			Total Control/ Crime Ratio ^c		
Rank	State	Rate	Rank	State	Rate	Rank	State	Ratio
1	Washington, D.C.	1,533	1	Washington, D.C.	3,885	1	Washington, D.C.	.460
2	Nevada	679	2	Texas	2,512	2	Delaware	.424
3	Louisiana	599	3	Georgia	2,424	3	Georgia	.418
4	Alaska	515	4	Maryland	2,213	4	Massachusetts	.409
5	California	515	5	Delaware	2,096	5	Pennsylvania	.408
6	Arizona	505	6	Massachusetts	1,935	6	Maryland	.404
7	South Carolina	498	7	Washington	1,794	7	Indiana	.338
8	Florida	494	8	Florida	1,792	8	Texas	.325
9	Delaware	481	9	Michigan	1,681	9	Connecticut	.323
10	Georgia	473	10	Connecticut	1,615	10	North Carolina	.305
11	Alabama	440	11	California	1,532	11	Vermont	.281
12	Maryland	430	12	Louisiana	1,441	12	Minnesota	.266
13	Tennessee	395	13	North Carolina	1,419	13	Michigan	.260
14	Oklahoma	392	14	Indiana	1,391	14	Missouri	.260
15	Texas	385	15	Nevada	1,368	15	Washington	.256
16	Virginia	381	16	New Jersey	1,307	16	South Dakota	.249
17	New Jersey	375	17	Pennsylvania	1,291	17	New Jersey	.248
18	New York	375	18	South Carolina	1,281	18	South Carolina	.248
19	Michigan	372	19	Arizona	1,238	19	Arkansas	.247
20	North Carolina	366	20	Oregon	1,235	20	Alabama	.246
21	Kansas	342	21	Minnesota	1,226	21	Louisiana	.245
22	Ohio	335	22	Missouri	1,224	22	Tennessee	.242
23	Arkansas	321	23	Vermont	1,198	23	Kansas	.242
24	Oregon	314	24	Kansas	1,185	24	Nebraska	.235
25	Mississippi	313	25	New York	1,185	25	California	.235
26	Indiana	305	26	Oklahoma	1,166	26	Ohio	.230
27	New Mexico	305	27	Hawaii	1,137	27	Nevada	.215
28	Wyoming	304	28	Tennessee	1,130	28	Wisconsin	.213
29	Illinois	297	29	Illinois	1,125	29	Florida	.211
30	Missouri	295	30	Alaska	1,101	30	Illinois	.208
31	Kentucky	289	31	Alabama	1,097	31	Alaska	.205
32	Washington	277	32	Ohio	1,053	32	Mississippi	.204
33	Colorado	276	33	Arkansas	1,050	33	Virginia	.200
34	Wisconsin	259	34	Rhode Island	1,028	34	New York	.199
35	Pennsylvania	256	35	Nebraska	973	35	Hawaii	.195
36	Connecticut	241	36	Wisconsin	886	36	Rhode Island	.195
37	South Dakota	234	37	Virginia	792	37	Oklahoma	.193
38	Montana	226	38	Colorado	766	38	West Virginia	.193
39	Idaho	223	39	Wyoming	753	39	Wyoming	.187
40	Hawaii	223	40	Iowa	732	40	New Hampshire	.185
41	Nebraska	222	41	Idaho	703	41	Oregon	.177
42	Iowa	213	42	Mississippi	701	42	Iowa	.177
43	Massachusetts	191	43	Montana	695	43	Kentucky	.175
44	Utah	189	44	South Dakota	666	44	Arizona	.172
45	Maine	178	45	New Mexico	651	45	Idaho	.169
46	New Hampshire	170	46	New Hampshire	624	46	Maine	.160
47	Rhode Island	156	47	Utah	604	47	Montana	.151
48	Minnesota	147	48	Kentucky	571	48	North Dakota	.132
49	West Virginia	145	49	Maine	566	49	Colorado	.119
50	Vermont	141	50	West Virginia	423	50	Utah	.107
51	North Dakota	111	51	North Dakota	374	51	New Mexico	.099
U.S. TOTAL		368	U.S. TOTAL		1,406	U.S. TOTAL		.253

Source: National Council on Crime and Delinquency, based on 1987 data.

^aAdult prison and jail inmates per 100,000 population.^bIncarcerated population plus adults on probation and parole, per 100,000 population.^cTotal control rate divided by number of reported FBI index crimes.

Differences between Prisons and Jails

While people tend to use the terms “prisons” and “jails” interchangeably, they are not synonymous. The major differences between prisons and jails—or local detention facilities—are summarized in Figure 1.5. In brief, a “prison” is a state-run facility for felony offenders sentenced to a term of one year or

Figure 1.5: Differences Between Minnesota Prisons and Jails

Prisons

- Financed and operated by the state (Department of Corrections).
- Felony sentences of more than one year are served in a state prison.
- Separate facilities for men and women, adults and juveniles, and different security risks (maximum and medium).
- More costly to operate than jails because they are designed for longer periods of confinement (require more staff and programs). Per diem costs for adults range from \$52 at Stillwater to \$101 at Oak Park Heights.

Jails

- Includes the following facilities: full-service, one-year jails (house both pretrial and sentenced offenders), adult detention centers (pretrial only), adult correctional facilities (sentenced offenders only), 90-day lock-ups, 72-hour holding facilities, and work release/jail annexes.
- Financed and operated by local units of government, primarily county sheriff departments and corrections agencies, but also municipal police departments. There is one jail run by a private nonprofit agency (Volunteers of America).
- Licensed and inspected annually by the Department of Corrections; separate rules and regulations apply to the different types of facilities.
- Jails house people at varying stages of the criminal justice process and with diverse characteristics in the same facility: pretrial detainees, those convicted and awaiting sentence or transport to prison, and sentenced offenders (felons, gross misdemeanants, and misdemeanants); males and females; some juveniles (pretrial detention only, but being phased out); and of varying (and initially unknown) security risks.
- Felony sentences of one year or less and all gross misdemeanor and misdemeanor sentences are served in jails or adult correctional facilities.
- Less costly to operate than prisons because fewer programs and services are available due to shorter lengths of confinement. Per diem costs range from \$14 to \$70; average is about \$40 per day in Minnesota (Bureau of Justice Statistics jail survey, 1988).
- Diverse mix of people in them requires that adequate segregation is provided; DOC recommends they operate at between 60 percent (small facilities) and 85 percent (large facilities) of capacity.

County jails cost less to operate than state prisons.

**In Minnesota,
most felony
sentences are
served in
county jails.**

more. A “jail” is a county facility holding pretrial detainees and offenders sentenced to one year or less of incarceration. There are several kinds of detention facilities that are all commonly referred to as “jails.” Differences among facilities affect how they can be used, who pays for the costs of incarceration, and how “capacity” and “overcrowding” are defined.

The sharing of responsibilities for corrections between the state and local units of government is common throughout the U.S. State governments have taken over control of jails in only six states. In all others the arrangement resembles that found in Minnesota, with one important qualification: state policies defining where offenders serve their sentences vary. For example, in some states all felony sentences are served in state prisons. In Minnesota, on the other hand, approximately 20 percent of felony sentences are served in state facilities, with the remainder served in local jails or under the control of local correctional officers.

Adequacy of Correctional Facilities

As indicated above, nearly all of the states have experienced severe prison and jail overcrowding problems. Minnesota has not escaped these problems, although they have been later to develop here. We found that:

- **Until recently, the growth in the incarcerated offender population has been accommodated without extensive building of new facilities, in part because Minnesota began this 15-year period with excess capacity (bed space) in both its state prison system and its local jails.**

State Prisons

Throughout the 1980s, Minnesota rented its excess prison bed space to other states and the U.S. government. Between 1981 and 1990, over \$41 million in revenues was earned by renting prison space. Now this program is being phased out as existing beds have become filled with Minnesota prisoners.

During 1988 and 1989, prison bed space continued to be rented, but much of it was paid for by Minnesota counties which contracted with state facilities at Stillwater, Shakopee, and Oak Park Heights to house their jail inmates. According to a survey of jail contracting conducted by the department,

- **Counties paid nearly \$750,000 to the Department of Corrections in 1989 for the housing of jail inmates.**

Most of this was paid by Hennepin County where jail capacity has been inadequate for several years. This pattern is in direct contrast to other states where prison overcrowding has resulted in payments to counties for housing state prisoners in local jails.

This practice helps counties manage jail overcrowding in the short run, but it is not a long-run solution to the problem. Prison populations are projected to

increase, suggesting that any empty beds will be needed for offenders sentenced to prison. In addition, prisons are more costly to operate than jails, on average, because they are designed and staffed for offenders who will be there longer than one year.

In addition to phasing out the state's rental program, over 1,000 new beds have been added to the state prison system since 1980. State prison operational capacity at the end of 1990 stood at 3,060 beds. Two new state prisons have been built during this time period, but much of the expansion has been accomplished by expanding and remodeling existing facilities.

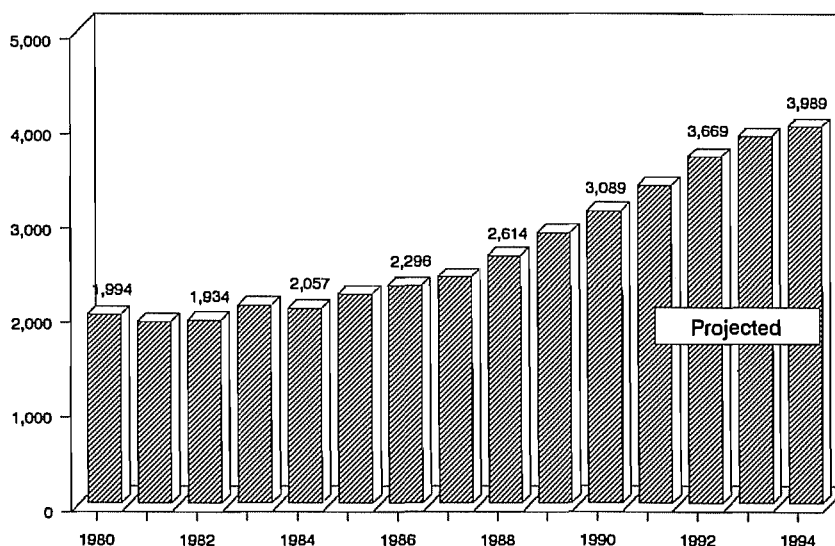
The 1,020 new beds that have been added to the state prison system since 1980 include: 375 maximum security beds at the correctional facility at Oak Park Heights; 72 new beds added when the women's facility at Shakopee was replaced; 487 beds added to facilities at St. Cloud, Willow River/Moose Lake, Red Wing, Lino Lakes, and Stillwater; and 86 of the planned 500 medium-security beds at the converted Faribault Regional Treatment Center.

According to the Department of Corrections, the state prison system was operating at 60 inmates over its funded capacity on December 31, 1990. The most severe crowding problems are occurring at the Stillwater prison, where 270 beds were recently added to accommodate the increased number of inmates.

In 1990, state prisons operated over capacity.

The department projects continued expansion of the state prison system due to an expected increase in the number of prisoners. The department's projections, along with past increases in the state prison population, are illustrated in Figure 1.6. Current forecasts call for expanding state prison bed capacity by 900 additional beds from 1990 to 1994.

Figure 1.6: Minnesota Prison Populations and Projections, 1980-94



Source: Department of Corrections.

Local Jails

In 1975, the total capacity of the local jails was 2,787, while the average daily population was 1,297. The utilization rate, therefore, was 47 percent. However, we found that:

- Both the capacity and use of local jails have increased significantly in the past 15 years.

By 1990, total jail capacity had increased by 1,523 beds to 4,310. Of this number, however, only 3,925 were "approved" beds, meaning they met the state's jail standards (see below). More important, with an average daily population of 3,978, the jails operated at 92 percent of existing capacity (and 102 percent of rated or approved capacity) during 1990, despite the 55 percent capacity increase. As with prisons, existing capacity was expanded and empty jail beds filled up.

In contrast to the state prisons, the past 15-year period has been marked by considerable replacement and remodeling of older facilities (most built between 1900 and 1930). In the process of modernizing antiquated facilities, capacity has been expanded as well.

Much of the physical upgrading of the jails can be attributed to the promulgation and enforcement of statewide jail standards. Before jail standards took effect in 1978, the average age of the state's jails was 40.2 years; by 1989 it was 17.9 years. Forty-seven counties have built full-service jails or other kinds of detention facilities since 1975. As discussed in Chapter 4, the Department of Corrections began enforcing the standards by using its condemnation powers and taking counties to court to force compliance in the most egregious cases. Today, the department feels that most of the serious physical-plant problems have been resolved, although the department is concerned about potential overcrowding.

During the past 15 years, 47 new jails have been built.

Standards for Overcrowding

Correctional officials, the courts, and others have defined "crowded" or "overcrowded" in different ways. All definitions involve evaluating current conditions against some standard of normal or safe operation. For example, a crowded facility may be defined as one where the number of inmates exceeds the design capacity of the facility or, alternatively, where the institution fails to meet mandated space requirements.

The Department of Corrections uses the criterion of "existing" capacity, which represents the number of beds in the facility that conform to the state's jail standards ("approved" capacity), plus those additional beds for which the department has granted a variance. A variance permits a facility experiencing population pressures to add beds without adhering to the square-footage requirements specified in the jail standards. Variances are not granted for an indefinite time period, however. Facilities are expected to remedy the situation in a reasonable amount of time so as to comply with the standards.

The existing capacity standard has allowed counties to place more offenders in existing jails without requiring commensurate physical space expansion. In Hennepin and Ramsey counties, for example, the DOC permits double-bunking in 237 single cells and 52 dormitory-style bunks. In 1990, a dozen local detention facilities were operating under DOC variances.

Current Status of Jails

In contrast to state prisons, which have fairly stable populations, jails need extra bed space to permit segregation of inmates by security risk, sex, and status (pretrial versus sentenced), to meet peak demands (Friday and Saturday nights), and to deal with high and unpredictable population turnover. The department has developed “recommended” guidelines—they are not part of the mandatory jail standards—for “safe” levels of jail operation. These range from 60 percent of existing capacity for small facilities (less than 15 beds) to 80 percent of capacity for large facilities (100 beds or more).

Table 1.2 lists the counties with detention facilities whose average daily populations in 1989 exceeded the department’s recommended guidelines. We found that:

- During 1989, over 60 percent of the local detention facilities were operating over the capacity levels recommended as “good correctional practice” by the Department of Corrections and other professionals.⁸

Several jail facilities are experiencing severe capacity problems. Most notable is the Hennepin County Jail, which is a pretrial detention facility only. In 1989, it contracted with 11 different facilities as far away as Carlton and Aitkin Counties to board its prisoners (over 15,000 prisoner days). A couple of jails report waiting lists, with the most serious being Washington County. In 1990, its jail had a list of over 350 offenders waiting up to one year to serve their time.

We explored the possibility that some jails may be seriously overcrowded, while others are underutilized. An analysis of a survey of county auditors conducted by the Department of Corrections (80 of the 87 counties responded) leads us to conclude that:

- Existing jail bed space is being maximally utilized.

County sheriffs have devised informal procedures for sharing bed space. In 1989, almost all Minnesota counties either bought jail space from others, sold space, or both on an “as needed” basis. Figure 1.7 shows counties that were major sellers (net income of \$10,000 or more) and major buyers (net cost of \$10,000 or more) of jail beds. The Department of Corrections was the biggest seller of bed space in 1989. Among counties, Scott County earned the most money (over \$356,000) by renting jail space to other counties. Hennepin County was the biggest buyer, paying \$890,350 in jail bed rental costs. Some

⁸ This number would be higher if “approved” capacity were used as the standard.

Table 1.2: Operational Status of Local Detention Facilities, 1989

NO FACILITY		
Big Stone	Lake	Rock
Dodge	Red Lake	Wilkin
Grant	Renville	Yellow Medicine

OPERATED AT OR BELOW DOC RECOMMENDED CAPACITY

Aitkin	Kittson	Polk: Annex
Beltrami	Koochiching	Pope
Blue Earth	Lac Qui Parle	Redwood
Clearwater	Lincoln	Roseau
Cook	Mahnomen	Scott: Annex
Cottonwood	Marshall	Sibley
Crow Wing: Annex	Martin	Stevens
Dakota	Mower	Traverse
Fillmore	Murray	Wadena
Freeborn	Norman	Washington
Hubbard	Ottertail	Watsonwan

OPERATED OVER DOC RECOMMENDED CAPACITY

Anoka: Jail, Annex	Isanti	Pipestone
Becker	Itasca	Polk: Jail
Benton	Jackson	Ramsey: ADC/Annex,
Brown	Kanabec	Workhouse,
Carlton	Kandiyohi	VOA Woodview
Carver	Lake of the Woods	Rice
Cass	Le Sueur	Scott: Jail
Chippewa	Lyon	Sherburne
Chisago	McLeod	St. Louis: Jail, NERCC
Clay	Meeker	Stearns
Crow Wing: Jail	Mille Lacs	Steele
Douglas	Morrison	Swift
Faribault	Nicollet	Todd
Goodhue	Nobles	Wabasha
Hennepin: ADC (jail), ACF-M	Olmsted	Waseca
ACF-F, Work Release	Pennington	Winona
Houston	Pine	Wright

Source: Department of Corrections.

counties are both significant buyers and sellers. Stearns County, for example, bought \$68,625 of jail bed space, but also sold \$152,100 of its own bed space.

- **Because the demand for jail beds currently exceeds the available supply in many counties, a market system has developed that permits contracting for space.**

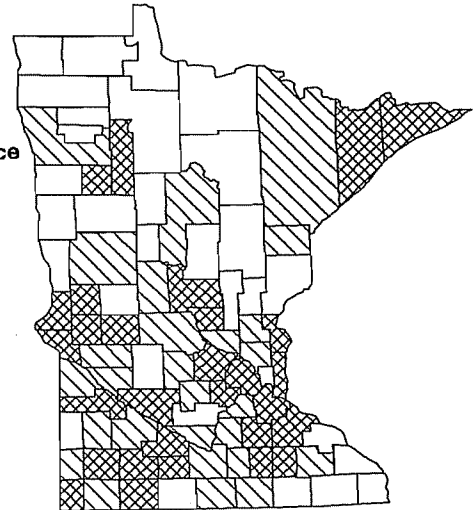
This practice is growing: from 1987 to 1989, jail bed contracting doubled state-wide. During this three-year period, 62,611 jail bed days were bought and sold, and just over \$5 million changed hands.

Most counties contract with each other or the DOC to provide needed jail beds.

Figure 1.7: Jail Contracting, 1989

Contracting Activity

- ☐ No/minor buying or selling
- ☒ Bought more than \$10,000 of space
- ☒ Sold more than \$10,000 of space



Source: Department of Corrections Survey.

However, the department is concerned that some counties are exceeding recommended population limits because there is a financial incentive to do so, not because of their own jail needs. Furthermore, some counties may build facilities that are larger than they need because they hope to recoup costs or make money by renting beds to others. This informal arrangement may provide counties with a financial incentive to overbuild and, once they are built, with an incentive to incarcerate more people.

Projected Jail Expansion

We asked the Department of Corrections to assess the current status of jail construction in Minnesota on a county-by-county basis. The results of this assessment suggest that:

- In addition to the building and remodeling that has already occurred, 31 counties are currently in varying stages of planning or building new jail facilities or expanding existing ones.
- A total of 1,300 to 1,600 additional new jail beds are projected in the near future. The number could go higher, depending on the final size of the planned Hennepin County Jail.

All of the Twin Cities metropolitan-area counties have recently added space or are planning to do so: Scott, Dakota, and Anoka have built facilities since 1980; Hennepin, Ramsey, Washington, and Carver are in varying stages of planning new facilities. Past growth in the average daily jail population and the future growth projected by the department are shown in Figure 1.8. This

Statewide, jails are at capacity; more beds will be needed soon.

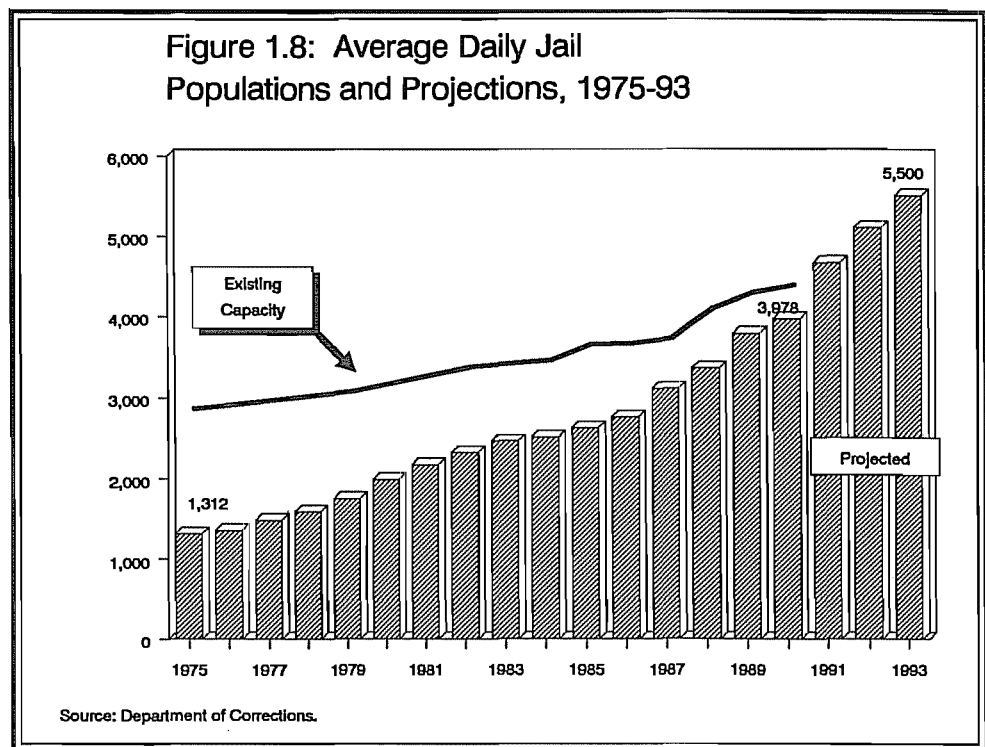


figure also shows how capacity has changed, and illustrates that more capacity will be needed soon if these projections prove accurate.

One notable trend in the recent period of jail expansion is toward jail annexes, which are dormitory-style, minimum- to medium-security facilities. Even in full-service jails, more space is being devoted to work release beds, which are dormitory living arrangements where minimum-security inmates reside when they are not at their jobs.

Adequacy of Probation Services

Data presented above showed that the number of offenders under the supervision of probation/parole agents has more than doubled in the past six years. This raises the issue of whether funding and staffing for these services have kept pace with the increased numbers of offenders.

We were unable to answer this question definitively because no historical data exist on the number of probation/parole agents, which would permit an analysis of caseloads over time.⁹ Also, assessing the seriousness of the problem across jurisdictions is difficult because case assignment procedures vary from one place to another. Cases require different levels of supervision, depending upon offenders' risks and needs. Hence, caseload information by itself is

⁹ The Department of Corrections keeps such information on its own agents but does not do so for county agents, although the department pays for most probation costs through county agent salary reimbursement or Community Corrections Act grants. Reimbursement records are destroyed once they have been audited.

difficult to interpret without additional information on case mix (the types and seriousness of offenses committed and criminal histories of offenders).

Keeping these qualifications in mind, the evidence we were able to gather strongly suggests that:

- **Probation services may be even more overburdened than prisons and jails.**

The State Planning Agency estimates that there are about 600 probation/pa-
role officers in the state. Given the size of the probation population, the aver-
age caseload for a probation officer is about 98 offenders. This estimate of
caseload size was substantiated in a sample survey of probation officers con-
ducted by the agency, which found the average caseload in the sample to be
97.3. In our survey of probation officers and local correctional administrators,
most told us that caseloads have increased beyond the point where they can
provide adequate supervision for offenders sentenced to probation.¹⁰

In combination with additional responsibilities mandated by the Legislature,
Sentencing Guidelines, and the Department of Corrections—such as pre-sen-
tence investigations, alcohol assessments, sentencing guidelines worksheets,
bail investigations, non-imprisonment guidelines calculations—even less time
is available for offender supervision. “More probation officers” was the high-
est priority correctional need identified in our survey.

Currently, Department of Corrections agents who supervise felony cases are
working at 12 percent over what the department considers a “full workload.”
The number of felony agents increased 20 percent from 1981 to 1990, while
the number of offenders supervised increased 36 percent.¹¹

**The number of
probation
officers has not
kept pace with
the increase in
offenders.**

- **In counties where all probation services are provided by local agents (Community Corrections Act participants), which tend to be the more populous, growing, and higher-crime counties, the situation is likely to be even more serious than in counties serviced by the Department of Corrections.**

For example, in Hennepin County the average caseload of felony probation
agents went from 63 in 1984 to 105 in 1988, a 67 percent increase in four
years. Caseloads doubled in Anoka County from 1977 to 1988, increasing
from 60 to 130 per agent. In 1988, Dakota County felony probation agents
supervised 109 offenders in 1988, on the average.¹²

The growth in offender populations, particularly in counties where the gen-
eral population is also growing, is forcing counties to reorganize the way in
which probation services are provided. Anoka County, for example, recently

¹⁰ Survey methods and results are discussed in Chapter 5.

¹¹ Increases in the DOC-supervised offenders are not as high as the state average because two counties left the state system during this time period and DOC provides probation services in smaller, less populous counties. See the subsequent discussion on the organization of corrections.

¹² Information obtained from the 1990 Community Correction Act plans.

reorganized its field services so that most low-risk offenders report together every three months to the corrections department, as opposed to having probation agents contact offenders individually, which is the traditional approach to supervision. All of the low-risk probation population in Anoka County, which represents the bulk of the cases, is supervised by only three agents (average caseload per agent for this group is over 500).

MINNESOTA'S CORRECTIONAL POLICIES

**Minnesota
relies heavily
on counties to
provide
correctional
services.**

We now turn to a brief summary of the policies that govern sentencing and corrections in Minnesota in order to relate policy to the situation described above.

The responsibility for providing correctional services, in Minnesota and throughout the nation, is shared between the state and local units of government, primarily counties. It reflects the traditional belief that crime (and its control) is essentially a local issue. Because the standards governing crime and punishment may vary from one community to another, many people believe that most correctional decisions should be made by local governments.

This cultural tradition is particularly strong in Minnesota. It has resulted in policies and an organizational structure that places a high level of responsibility at the local level, a degree of responsibility that is higher than in most other states.

The Community Corrections Act

The Community Corrections Act (CCA), enacted by the Legislature in 1973, is the principal state policy that outlines correctional goals and defines the state-local relationship for achieving those goals.¹³ The major themes of the CCA are summarized in Figure 1.9. The goals of the Community Corrections Act are to "more effectively protect society and to promote efficiency and economy in the delivery of correctional services." These goals are to be achieved by giving counties money to develop community-based correctional programs and services. In order to discourage counties from sending felons to state prison, the most costly alternative, participating counties were charged for these offenders initially.

When the Legislature enacted Sentencing Guidelines, which took effect in 1980, the chargeback provision became obsolete because the guidelines specify which offenders are presumptively sent to state prisons and which shall be sanctioned locally.¹⁴ The chargeback provision was abolished in 1982. Aside from this change, the Community Corrections Act has not been significantly modified since its inception.

¹³ *Minn. Laws* (1973), Ch. 354.

¹⁴ *Minn. Laws* (1978), Ch. 723.

Figure 1.9: Major Themes of the 1973 Community Corrections Act

- **The main goal of the CCA was to promote the efficient and economical delivery of correctional resources.**

It was based on the assumption that state prison space—the most costly correctional resource—should be reserved for dangerous, repeat offenders; less serious offenders should be sanctioned at less cost at the local level.

In order to achieve this goal, the act specified the objective of increasing the number of community-based correctional services available.

- **The act was premised on a belief in rehabilitation.**

It was assumed that offenders were more likely to be rehabilitated if they remained in their own communities where they had access to the support of family and friends.

- **The act defined the state-local relationship with respect to corrections.**

It provided financial subsidies—block grants—to participating counties for the development of needed correctional services and programs. As an incentive to retain offenders locally, the act provided for off-setting chargebacks, which were deducted from each county's subsidy, for felony offenders sent to the state prison system.

Source: Department of Corrections and Crime Control Planning Board, *Minnesota Community Corrections Act Evaluation* (St. Paul, January 1981).

The CCA was evaluated by the Department of Corrections and the Crime Control Planning Board in 1980. Briefly, this evaluation found that the CCA was “modestly successful” in retaining offenders at the local level, but it did not lead to lower overall correctional costs.¹⁵ The results of this evaluation are discussed more fully in Chapter 5. The funding formula that divides the total subsidy among participants is fairly complex. Along with the original basis for determining the CCA subsidy, it was the subject of another study that was presented to the 1981 Legislature.¹⁶ Although changes were recommended, no action was taken.

Organizational Structure

Participation in the Community Corrections Act is voluntary. All counties in the state are eligible to participate, either individually or in groups (a minimum of 30,000 population is required). At the present time, 30 counties organized into 15 units participate in the CCA. These counties include the most

¹⁵ Minnesota Department of Corrections and Crime Control Planning Board, *Minnesota Community Corrections Act Evaluation, General Report* (St. Paul, January 1981).

¹⁶ Committee to Study the Financing of Correctional Services and the Community Corrections Act in Minnesota, *Report to the 1981 Minnesota Legislature: Recommendations Concerning the Financing of Correctional Services in Minnesota* (March 1981).




populous areas of the state, however, so that two-thirds of the state's population is served by the CCA. They also tend to be the high-crime counties, accounting for 73 percent of Minnesota's reported crime in 1989.

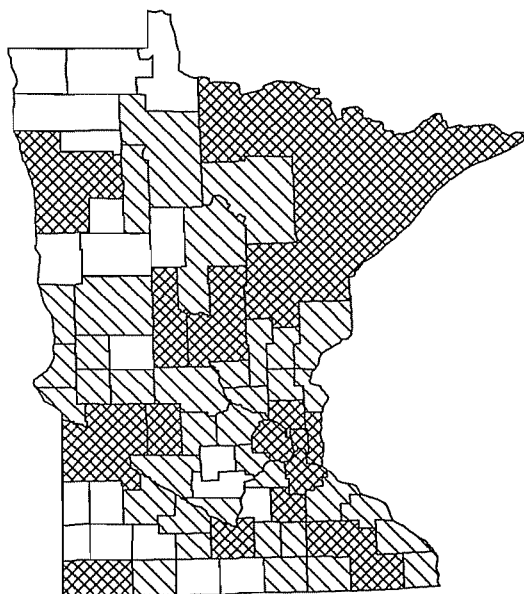
In these 30 counties, all probation and parole (supervised release) services, treatment programs for offenders, community work service, victim restitution, and other nonimprisonment sanctions are administered by a community corrections agency. Although parole was abolished with the implementation of sentencing guidelines, prisoners may earn "good time" (time off for good behavior). They can reduce the amount of time they spend in prison by up to one-third, but remain under correctional control for the full length of the sentence pronounced by the judge. They serve the "supervised release" portion in the community under the supervision of probation officers.

Two alternative systems exist in the remaining 57 counties to provide these same services for non-prison bound offenders and those under supervision upon release from state prison. The Department of Corrections provides probation and supervised release/parole supervision for all adult felony offenders in the 57 non-CCA counties.¹⁷ Twenty of these counties contract with the department to provide the same services for misdemeanants and juveniles as well. Hence, in these 20 counties, all probation, supervised release, and community services are provided by the DOC. Figure 1.10 illustrates the organization of correctional services in Minnesota.

Figure 1.10: Organization of Correctional Services in Minnesota

Type of Organization

-  Department of Corrections
-  Shared DOC-County
-  Community Corrections Act



Source: Department of Corrections.

¹⁷ Parole still exists for persons sentenced prior to the effective date of sentencing guidelines.

Misdemeanant and juvenile services are provided in the remaining 37 counties by county probation agents who work for court services departments under judicial supervision. We refer to these 37 counties as "split jurisdictions" because the Department of Corrections and the county share in the provision of services. In all non-CCA counties, the DOC reimburses the counties for up to 50 percent of the salaries of all probation agents.¹⁸

Sentencing Guidelines

Minnesota's sentencing guidelines, enacted by the Legislature in 1978 and in effect since 1980, are the second major correctional policy operating in the state.¹⁹ Most states undertook sentencing reforms during the 1970s and 1980s. The reform movement that swept the nation replaced the indeterminate sentencing systems that had been in effect in this country since the early 1900s.²⁰ Indeterminate sentencing was rooted in a belief in individualized punishment. The direction of reform was toward determinate sentencing, which sought to produce more uniform and predictable sentences for persons convicted of a given crime. In part, it was a reaction to evidence that rehabilitation does not work. But it was also a reaction to perceived unfairness in sentencing, the belief that some criminals were treated harshly while others were not. Hence, determinacy had the positive goal of reducing sentencing disparities. The particular form that determinant sentencing took varied considerably from state to state.

The Sentencing Guidelines Commission approach adopted in Minnesota is almost unique. Only one other state (Washington) has a guidelines system that is identical, although a number of states have sentencing guidelines systems. Its special features are described in Figure 1.11.

The sentencing guidelines that became effective in 1980, and which have been modified over the years, specify the prison sentence that goes with each felony offense. Sentencing policy is set by a Guidelines Commission consisting of 11 members, eight of whom are appointed by the Governor and three by the Chief Justice of the Supreme Court. Changes to the guidelines are reviewed by the state Legislature. The changes automatically go into effect unless the Legislature takes action to the contrary.

Minnesota's sentencing guidelines system has been widely praised.²¹ It has also been studied extensively: several comprehensive evaluations have been completed by Sentencing Guidelines Commission staff and external

¹⁸ Minn. Stat. §260.311.

¹⁹ Minn. Laws (1978), Ch. 723.

²⁰ For a brief discussion and history, see Norval Morris and Michael Tonry, *Between Prison and Probation* (New York: Oxford University Press, 1990), 18-33.

²¹ See, for example, Michael H. Tonry, *Sentencing Reform Impacts* (Washington, D.C.: U.S. Department of Justice, 1987); Sandra Shane-Dubow, et al., *Sentencing Reform in the United States: History, Content and Effect* (Washington, D.C.: U.S. Government Printing Office, 1985); and Morris and Tonry, *Between Prison and Probation*.

Figure 1.11: Unique Features of Minnesota's Sentencing Guidelines

- **The guidelines are presumptive, not voluntary.**

In states that enacted voluntary guidelines, whether sentencing or parole, the reform typically failed because judges or parole boards deviated from them a significant proportion of the time. In contrast, Minnesota's guidelines specify for all felony offenses which offenders go to prison and the duration of the sentence. The presumption is that judges will follow the guidelines.

- **They provide for a legal process by which judicial departures are reviewed.**

Judges may depart from the guidelines, but only for sufficient mitigating or aggravating reasons. Judicial departures must be in writing and are subject to appellate court review.

- **The guidelines provide for very small ranges in the sentences prescribed for each cell in the sentencing grid. Sentence lengths increase with increasing levels of offense severity and offenders' criminal history scores.**

In some states that adopted sentencing guidelines, wide ranges of discretion were provided that differed little from the indeterminate sentences they replaced. The narrow range of judicial discretion permitted under Minnesota's guidelines was designed to reduce sentencing disparities and produce uniformity and equity, as well as to facilitate the forecasting of future prison populations.

- **Both Minnesota's and Washington's guidelines are explicitly tied to available correctional resources. The enabling legislation directed the Sentencing Guidelines Commission (SGC) to "take into substantial consideration current correctional resources, ... including ... the capacities of state and local correctional facilities" when setting the presumptive sentences.**

This directive was aimed at avoiding the prison crowding problems believed to be associated with mandatory and determinate sentencing reforms. With their discretionary releasing power, traditionally parole boards acted as a "safety valve" for prison administrators, helping to keep prison populations within manageable limits. The DOC and SGC staff work together to forecast future inmate populations. In theory, the impact of proposed sentencing changes can be assessed and resources can be appropriated simultaneously to pay for them.

evaluators.²² These evaluations found that disparity was reduced and sentencing became more uniform under the guidelines. Sentencing guidelines have not been looked at closely since 1984, however, although commission staff routinely monitor judicial compliance and departures. Chapter 3 of this report assesses the extent to which the objectives of the guidelines are being achieved today.

²² Kay Knapp, *The Impact of the Minnesota Sentencing Guidelines* (St. Paul: Sentencing Guidelines Commission, 1984); Terance D. Miethe and Charles A. Moore, *Evaluation of Minnesota's Felony Sentencing Guidelines*, Final Report to the National Institute of Justice (May 1987).

THE COST OF CORRECTIONS

Increasing Expenditures for Corrections

Minnesota spends less per capita on corrections than most other states. In 1987, Minnesota ranked 31st of all the states, spending \$49 per capita, compared to the U.S. average of \$73 per capita.²³

But budgets for corrections have been steadily increasing during the 1980s to pay for the larger numbers of offenders under correctional supervision. Figure 1.12 illustrates the growth in spending (in constant 1988 dollars) at both the state (Department of Corrections budget) and the county levels. In 1988, \$128 million of state funds and another \$111.3 million of county monies was spent on corrections. The total represents almost \$56 per capita of population in 1988, compared to \$31 per capita in 1975 (adjusted for inflation).

Spending for corrections has been increasing rapidly.

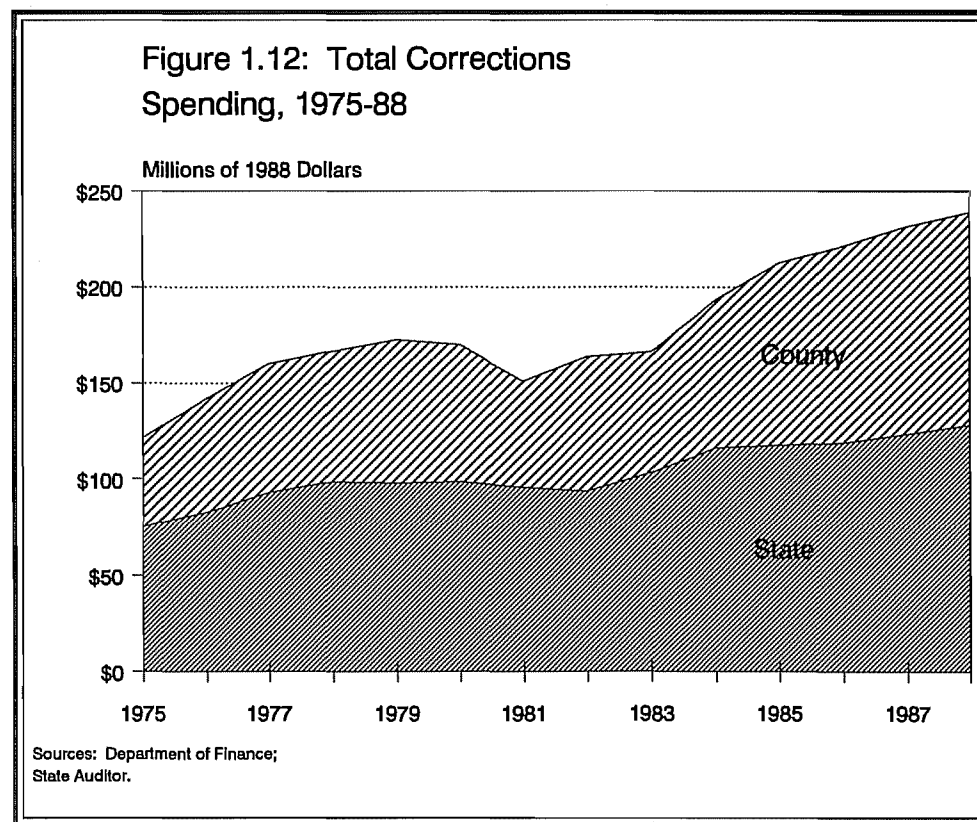
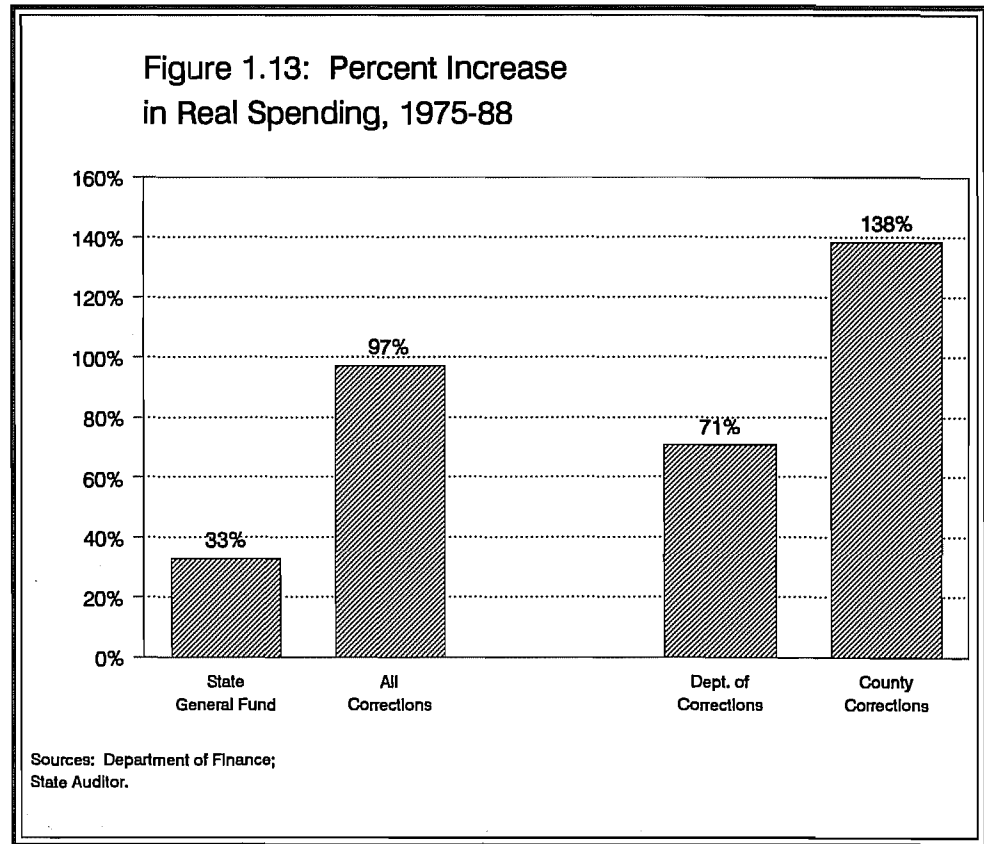


Figure 1.13 compares the increase in corrections spending to increases in the state's general fund. As illustrated, spending for corrections has been increasing at a faster rate than overall state spending. In 1979, DOC's budget represented 1.9 percent of state general fund expenditures; by 1989 it was 2.3 percent. In current dollars, the department's budget has nearly doubled in the period 1975 to 1990.

²³ Hindelang Criminal Justice Research Center, *Sourcebook of Criminal Justice Statistics, 1989* (Washington, D.C.: U.S. Department of Justice, 1990), 5.



The bulk of state monies goes for operation of the state's prisons and other correctional institutions. Of the total DOC budget, approximately 74 percent is spent on institutions, and 23 percent for community services. The proportion of the budget spent for institutional operations has increased slightly since 1975, when it represented 70.5 percent of the department's budget.

State-Local Sharing of Costs

Financing corrections in Minnesota reflects the policies described above. Costs are shared between the state and local units of government, primarily counties. Given the reliance on community-based sanctions, a larger portion of correctional expenditures are borne at the local level in Minnesota compared to elsewhere in the U.S. As Table 1.3 illustrates, the state's share of correctional expenditures is lower in Minnesota than in all other states.

Figure 1.13 also shows that spending for corrections at the county level has increased at an even faster rate than at the state. Corrections is also taking up a larger portion of counties' expenditures for public safety. In 1982, corrections represented just over 30 percent of county public safety expenditures, increasing to over 40 percent just six years later.

Most correctional dollars in all states are spent on the operation of prisons and other institutions because imprisonment is the most expensive form of punishment. As one would expect, given the state's approach to corrections,

County expenditures for corrections have grown faster than the state's.

Table 1.3: State Spending on Corrections as a Percentage of Total State-Local Corrections Expenditures, Fiscal Year 1987

<u>State</u>	<u>State's Percentage of Total Spending</u>	<u>State</u>	<u>State's Percentage of Total Spending</u>
New England		Southeast, continued	
Connecticut	99.9%	Georgia	74.5
Maine	75.8	Kentucky	68.5
Massachusetts	80.5	Louisiana	78.1
New Hampshire	65.1	Mississippi	83.4
Rhode Island	100.0	North Carolina	89.8
Vermont	99.8	South Carolina	90.7
Middle Atlantic		Tennessee	73.3
Delaware	100.0	Virginia	69.1
Maryland	77.8	West Virginia	65.3
New Jersey	65.8	Southwest	
New York	54.6	Arizona	70.8
Pennsylvania	51.2	New Mexico	74.5
Great Lakes		Oklahoma	91.6
Illinois	75.5	Texas	56.8
Indiana	78.6	Rocky Mountain	
Michigan	78.8	Colorado	64.8
Ohio	75.4	Idaho	73.7
Wisconsin	65.8	Montana	82.6
Plains		Utah	85.5
Iowa	76.1	Wyoming	70.4
Kansas	82.7	Far West	
Minnesota	45.2	Alaska	99.1
Missouri	72.3	California	53.1
Nebraska	72.8	Hawaii	100.0
North Dakota	71.0	Nevada	47.4
South Dakota	79.2	Oregon	53.9
Southeast		Washington	60.9
Alabama	75.7		
Arkansas	83.2		
Florida	56.8	U.S. Average	64.7%

Source: Martha Fabricius and Steven Gold, *State Aid to Local Governments for Corrections Programs* (Denver: National Conference of State Legislatures, April 1989), 12.

a higher proportion of overall corrections spending (state and local combined) in Minnesota goes for community services than in most other states. Approximately 20 percent goes for community services in Minnesota, compared to a national average of 11 percent.²⁴

SUMMARY

In this chapter we examined the corrections problems that Minnesota policy-makers are currently facing. Minnesota is fortunate in that its problems are not as serious as they are elsewhere. We believe that much of the praise that

²⁴ Hindelang Criminal Justice Research Center, *Sourcebook of Criminal Justice Statistics, 1989*, 7-9.

Minnesota has received for its correctional policies is deserved. Our correctional system remains one of the more economical ones in the country.

Yet, we also see indications of stress in Minnesota's correctional system. Increases in the numbers of offenders under correctional supervision in Minnesota have paralleled those found throughout the U.S. The number of people under correctional control in Minnesota has doubled in the past six years. However, the pattern of growth is different in Minnesota: state prison populations have increased at lower rates while local jail and probation populations have increased at higher rates. This probably reflects state corrections policies (the Community Corrections Act and Sentencing Guidelines) and the way in which responsibilities are shared between the state and counties.

**The state's
correctional
crowding
problems are
likely to get
worse in the
future.**

One reason why Minnesota has not faced serious overcrowding problems until recently is that there was considerable excess capacity in prisons and jails when the period of increased incarceration began. Now, however, Minnesota's correctional facilities and programs are under strain, despite the bed space that has been added to both prisons and jails during the past ten years. All available punitive sanctions, from state prisons to local jails to state and county probation offices, are at or over capacity. Probation is probably the most strained since responsibilities and caseloads have expanded without similar increases in staff.

The sharp upward trend in incarcerated and probationary populations since 1986 is particularly worrisome. It suggests that the correctional system will be facing far more serious problems in the future. The Department of Corrections forecasts substantial increases in both prison and jail populations, assuming no change in current policies or sentencing practices. At both the state and local levels, additional capacity is being added to prisons and jails. Correctional costs can be expected to continue increasing.

FACTORS BEHIND CORRECTIONAL OVERCROWDING

Chapter 2

This chapter is an effort to place our study covering sentencing policy, jail standards, and community corrections in a broader context. We identify and discuss what we believe to be the factors behind the rapid growth in the number of people under correctional supervision in recent years. Some of the factors we identify are controllable through state corrections policies and programs. Others are outside the ability of state government to influence, except indirectly or over the long run.

This chapter looks at the following questions:

- **Why has the number of people in prisons and jails and on probation increased so rapidly in the past six years? To what extent do changes in the amount and types of crime account for the observed increases? What other factors are responsible for the increases?**
- **How has the composition of the state prisons and jails changed over time? How have the lengths of prison, jail, and probation sentences changed?**
- **To what extent are the factors responsible for corrections overcrowding under the control of state policymakers?**

We examined factors that have been identified in other studies as contributing to correctional overcrowding. These factors include: changes in demography and crime, sentencing policy and judicial sentencing practices, and actions taken by the Legislature and others in the criminal justice system (police, courts, and prosecutors) that affect correctional facilities and workloads. We discuss each factor in turn and make tentative judgments about its contribution to the problem.

We analyzed data from the Department of Corrections, the Bureau of Criminal Apprehension, the Sentencing Guidelines Commission, the State Planning Agency, and House Research. We completed a detailed analysis of the jail data base maintained by the Department of Corrections. This data base includes information about every individual who is booked into local jails, with the exception of Hennepin and Ramsey County facilities, the Northeast Regional Correctional Center, and the Mesabi work release facility. In conjunction with House Research and State Planning Agency staff, we obtained

separate information from these facilities and integrated it into the data base. Finally, information obtained from site visits to local jail facilities and interviews with corrections and law enforcement officials is included where appropriate.

We found that more people are in prisons and jails, on probation, or under some other form of correctional supervision today largely because legislators, police, prosecutors, judges, and corrections professionals have all responded to public sentiment in favor of a tougher stance toward crime. Mandatory and determinate sentencing policies, the upgrading of crimes, and a greater willingness of judges to incarcerate more people are major factors behind the increase in prison and jail populations. Another is the crackdown on drugs and substance abuse, especially cocaine and other hard drugs (which has increased prison populations) and alcohol-related crimes like driving while intoxicated (which has increased jail populations). Some unknown, but smaller portion of the increase can be attributed to increases in violent crime and the aging of the baby boom generation.

CAUSES OF CORRECTIONAL OVERCROWDING

An Overview

Minnesota can learn from other states about why its prisons and jails are full and its probation officers overburdened. The problem has been slower to develop here, and the situation is not yet as severe as it is elsewhere. Other states have a head start on understanding the problem and developing solutions. For example, special commissions have been appointed to study the overcrowding problem in a number of states.¹ These studies concur in identifying the major factors contributing to the problem. They are summarized in Figure 2.1, which is reproduced from a National Institute of Corrections research publication.²

Among these factors, the one that has received the most attention is legislation, particularly changes in sentencing policy. The authors of a study of the impact of sentencing legislation on prison and jail overcrowding conclude:

¹ Blue Ribbon Commission on Inmate Population Management, State of California, *Final Report* (Sacramento, January 1990); Commonwealth of Virginia, *Final Report of the 1989 Commission on Prison and Jail Overcrowding* (Richmond, December 1989); and Governor's Task Force on Corrections Planning, *A Strategic Corrections Plan for Oregon: Restoring the Balance* (Salem, August 1988). See also a case study of overcrowding in Massachusetts: U.S. General Accounting Office, *More Than Money is Needed to Solve Problems Faced by State and Local Corrections Agencies* (Washington, D.C., September 1981). As mentioned in Chapter 1, it has also been the subject of extensive research on a national level.

² James M. Byrne, Arthur J. Lurigio, and Christopher Baird, "The Effectiveness of the New Intensive Supervision Programs," *Research in Corrections* (September 1989).

Figure 2.1: Overview of the Extent and Likely Causes of Correctional Crowding Problems

Problems

Primary Causes

Prison Crowding

- Prison population has doubled in the past decade; prison capacity has not increased at the same rate.
- The rate of incarceration has doubled since 1970.
- The rate of commitments per 100 serious crimes increased by 50 percent between 1980 and 1984.
- The rate of commitments per 100 adult arrests for serious crimes increased by 25 percent between 1984 and 1985.
- An increasing percentage of new prison admissions are parolees who have failed while under supervision.
- The nation's federal and state prisons are between 10 and 20 percent over capacity.
- At last count, 37 states were under some type of court order related to crowding.
- Changes in both sentencing statutes and sentencing practices have resulted in longer sentences for many offenders, and increased use of short-term confinement before probation supervision (i.e., split sentencing).
- Changes in the age composition of the U.S. population affect prison populations: the number of people in the "prison-prone" mid-20s has increased steadily since 1960.
- Changes in return-to-prison rates have resulted in a greater proportion of new admissions who failed under community supervision.
- Interstate variations in imprisonment rates can be linked to variations in crime rates and arrest rates.

Jail Crowding

- The U.S. jail population has increased dramatically over the past several years.
- Increases in jail population have occurred in both the convicted and pretrial jail population.
- Many jails are overcrowded and under federal court orders limiting their capacity.
- There have been changes in local sentencing policies for specific offender groups (e.g., drunk drivers, drug users, repeat minor offenders), including short jail terms and split sentences.
- Pretrial detention policies have been "toughened" to reflect public safety concerns.
- Age composition shifts are related to changes in the jail population for both pretrial detainees and sentenced offenders.
- Prison crowding has resulted in jail crowding in many states due to (1) the practice of housing state inmates in local jails, (2) delays in transferring state-bound convicted offenders, and (3) the need to hold offenders in jail who would normally be returned to prison as probation or parole violators.

Probation Crowding

- Almost 2/3 of all convicted adult offenders are placed on probation, yet probation receives less than 1/3 of the correctional resources.
- The probation population doubled in the past decade, with no significant capacity increases.
- Probation populations are increasing at a slightly higher rate than prison, jail, and parole populations: the adult imprisoned population increased by 47.7 percent between 1979 and 1984, while the adult probation population increased by 57.75 percent.
- Nationwide, about 15 percent of new probationers are committed to prison within one year due to technical violations, rearrest, or reconviction. However, there is much interstate variation in the subsequent imprisonment rate for probationers.
- A subgroup of high-risk probationers can be identified who fail at very high rates (over 60 percent rearrested in the first year on probation).
- The increased use of split sentencing is transforming probation into a parole agency.
- Changes in sentencing statutes have directly and indirectly affected probation via (1) the increased rate of probation (i.e., net widening), (2) the use of split sentences, and (3) the need to use probation as an alternative to prison.
- Changes in age composition have placed more offenders "at risk" for probation.
- In general, states with higher reported crime rates and higher arrest rates also have higher rates of all forms of correctional control, including probation.
- Prison crowding leads to the use of back-door early release strategies.
- When these offenders fail (i.e., are reconvicted), they are placed on probation as a front-door diversionary strategy. The cycle continues unabated as prison failures become probation failures who get returned to prison.

Source: Byrne, Lurigio, and Baird, *Research in Corrections*, September 1989, 3-4.

Nationally, the overcrowding problem has not been caused by increased crime.

What is causing these recent phenomenal increases? It is not increases in the nation's population, which has grown by about 10 percent since 1975, nor crime rates, which have been fairly constant for the last 10 years. Prison populations have more than doubled in the same period.... The evidence suggests that sentencing legislation, approved by elected officials, has resulted in courts sending a higher percentage of persons convicted of felonies to prison and for longer terms of imprisonment.³

It is worth noting that crime is not identified as a cause of increased incarceration at the national level. The reason is that nationally the crime rate has not been increasing during the period that the prisons and jails have become overcrowded. It is the case, however, that states with higher crime rates also tend to have higher rates of incarceration.

Table 2.1 summarizes information on changes in population, crime, and law enforcement, prosecutorial, and judicial activity over the past ten years in Minnesota. As this table suggests, arrest and conviction rates, as well as prison and jail populations, have increased much more rapidly than changes in the state's population (including the at-risk population) and crime rates. This is consistent with patterns of change in other states.

In the following sections, we examine data relevant to each of the identified factors as it applies to the current situation in Minnesota, beginning with crime.

Crime

One difficulty in reconciling the public's views of crime with official crime statistics is that "crime" means different things to different people. For example, the crimes set out in statutes are not the same as the figures published as "the crime rate." Figure 2.2 summarizes the most common definitions of crime.

The legal definitions of crime are contained in Minnesota law, most of which are found in *Minn. Stat.* §609, the Criminal Code of 1963. But there are many crimes listed in other parts of the statutes as well.⁴ The criminal statutes distinguish between broad levels of severity (felonies, gross misdemeanors, and misdemeanors) and specific levels of seriousness in individual crimes. For example, the law specifies that assault in the first degree is different, and more serious, than second, third, or fourth degree assault.

State law specifies maximum terms of imprisonment and fines for each individual crime. These maximum sentence lengths were a part of the old indeterminate sentencing structure. Now they coexist with the specific sentences set out in the sentencing guidelines. The presumptive guidelines sentences are shorter than the statutory maximums.

³ John Irwin and James Austin, *It's About Time: Solving America's Prison Crowding Problem* (San Francisco: National Council on Crime and Delinquency, 1987), 8-9, quoted in Byrne, Lurigio, and Baird, "The Effectiveness of the New Intensive Supervision Programs," 5.

⁴ Narcotics crimes, for example, are set out in *Minn. Stat.* §152, and driving related offenses, such as DWI, are listed in *Minn. Stat.* §169.

Table 2.1: Trends in Minnesota Crime and Corrections, 1980-89

	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	Percent Change 1980-89
Total State Population	4,055,375	4,077,148	4,082,339	4,128,257	4,139,841	4,161,580	4,188,402	4,205,759	4,246,000	4,306,000	6.2%
"At Risk" Population											
Males aged 15-24	397,000	390,000	380,000	369,000	360,000	352,000	342,000	331,000	322,000	312,000	-21.4
Males aged 25-34	339,000	357,000	361,000	367,000	375,000	383,000	390,000	394,000	401,000	402,000	18.6
Total Reported Index Crime	195,992	194,933	185,319	168,265	160,864	174,909	185,719	198,084	187,000	191,989	-2.0
Total Index Crime Rate (per 100,000 inhabitants)	4,832.9	4,781.1	4,539.5	4,075.9	3,885.8	4,203.0	4,434.1	4,709.8	4,404.2	4,458.6	-7.7
Violent Crime Rate (per 100,000 inhabitants)	227.8	229.2	222.1	191.9	212.7	258.6	287.0	288.9	294.1	291.2	27.9
Index Crimes Cleared by Arrest	35,991	33,762	37,589	36,336	35,885	37,817	40,985	43,516	41,326	41,848	16.3
Felony Convictions	N/A	5,500	6,066	5,562	5,791	6,236	6,032	6,674	7,572	7,974	45.0 ^a
Felony Convictions per 1,000 Index Crimes	N/A	28.2	32.7	33.1	36.0	35.7	32.5	33.7	40.5	41.5	47.2 ^a
Felony Convictions per 1,000 Index Crimes Cleared by Arrest	N/A	162.9	161.4	153.1	161.4	164.9	147.2	153.4	183.2	191.2	17.3 ^a
Prison Commitments	845	1,021	1,232	1,282	1,297	1,397	1,387	1,555	1,800	1,937	129.2
Prison Population on December 31	1,892	1,909	2,022	2,033	2,117	2,290	2,483	2,616	2,896	3,113	64.5
Jail Population (ADP)	1,991	2,167	2,328	2,463	2,509	2,626	2,758	3,106	3,365	3,796	90.7
Probation Population	N/A	N/A	N/A	27,700	31,444	32,548	33,670	44,363	50,184	58,546	111.4 ^b
Incarceration Rate	95.8	100.0	106.6	108.9	111.7	118.1	125.1	136.1	147.5	160.5	67.6

Sources: Bureau of Criminal Apprehension, Department of Corrections, Sentencing Guidelines Commission, U.S. Bureau of the Census, U. S. Bureau of Justice Statistics.

^aPercent change, 1981-89.

^bPercent change, 1983-89.

It is a common belief that all convicted felons in Minnesota are punished by the state. In fact, only about 20 percent of those convicted of a felony go to state prisons. The remainder are punished at the county level.

When the police and the media speak of crime, they are usually referring to "Part I" or "index" crimes. These are compiled annually by the Federal Bureau of Investigation and include serious crimes such as homicide, rape,

Figure 2.2: Alternative Definitions of Crime**FBI Index Crimes****Part I Crimes****Violent Crimes**

Criminal homicide
 Forcible rape
 Robbery
 Aggravated assault

Property Crimes

Arson
 Burglary (breaking and entering)
 Larceny/theft
 Motor vehicle theft

Part II Crimes**Most Other Crimes, Including**

Narcotics
 Fraud and embezzlement
 Simple assault
 Vandalism
 Prostitution
 Other sex crimes
 (adultery, indecent exposure, etc.)
 DWI

Types of Statutory Crimes

<u>Type</u>	<u>Length of Incarceration</u>	<u>Fine</u>
Felony	More than 1 year	Varies; over \$3,000
Gross misdemeanor	Up to 1 year	Up to \$3,000
Misdemeanor	Up to 90 days	Up to \$700
Petty misdemeanor	None	Up to \$200

burglary, and robbery. The statistic that is usually reported as “the crime rate” is the number of Part I crimes known to the police per 100,000 people.

The state’s legal definitions of crimes cut across the FBI’s crime index definitions. For example, not all Part I offenses are felonies. Although all thefts are counted as Part I crimes by the FBI, only thefts of greater than \$500 are felonies in Minnesota.

The crimes that show up in the crime rates are only those that are known to law enforcement. But not all instances of criminal behavior are reported. Therefore, victimization rates, which measure how many people have been victims of a crime during a given period, are usually quite a bit higher than reported crime. The National Institute of Justice conducts national victimization surveys regularly to determine whether victimization is rising or falling, especially in relation to the reported crime rate. Victimization surveys are too expensive to conduct at a state or local level, however.

A final category is “public order” or “victimless” crimes. There is no direct victim, in the usual sense of the word, who reports the crime to the police. These types of behavior are considered criminal because they are seen as threats to order or are contrary to accepted morals. Examples of this type of crime are prostitution, possession of drugs, and vagrancy.

The number of these crimes that show up in the statistics are better indicators of law enforcement priorities than of the actual incidence of the behavior. A classic example of this effect occurs with DWI. The majority of DWI arrests are not the result of someone calling 911 to report a drinking driver. They are instead the outcome of the police specifically looking for that type of behavior. If the number of these crimes reported goes up, it does not necessarily mean there are more drinking drivers on the road. It is more likely to mean that the police are making a greater effort to catch them.

Figures 2.3 and 2.4 compare changes in the Part I crime rate to changes in the incarceration rate for the United States and Minnesota. Several observations can be made. First, the pattern of change in both crime and incarceration rates in Minnesota is remarkably similar to that for the nation as a whole.

- **Reported crime rates have been fairly stable over the past decade, with slight year-to-year fluctuations. The 1989 crime rate was slightly lower than the 1980 rate in Minnesota, however, just as it was for the nation. Meanwhile, incarceration rates show a steady upward climb.**

The major differences are that Minnesota's crime and incarceration rates are both lower than the national average and the slope of incarceration increase in Minnesota is not as steep as it is for the nation as a whole.⁵

Minnesota's violent crime rates, especially the aggravated assault rate, are increasing.

When we look at particular types of crime, a somewhat different pattern emerges. We see in Table 2.2 that violent crimes overall have been increasing during this period. The violent crime rate, while still low in comparison to other states (as noted, Minnesota ranks 37th nationally), is higher than it was in 1980, mainly due to increases in assault and rape. In contrast, the property crime rate shows minor fluctuations but is lower than it was in 1980.

But focusing on the total Part I crime rate, which is composed primarily of property crime, masks the increase in crime that has been occurring. It is, of course, violent crime that the public is most fearful of, and for which a convicted offender is most likely to go to prison. Hence, we conclude that:

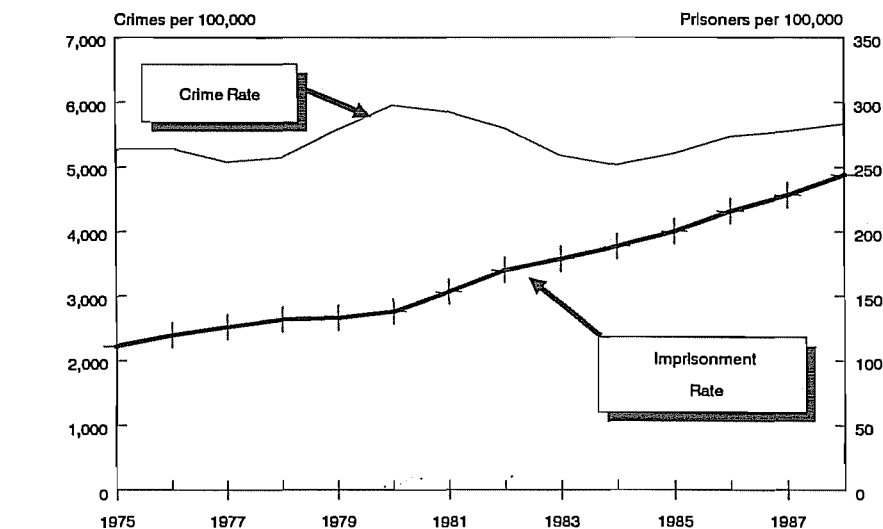
- **At least part of the increase in prison and jail populations appears to be a result of an overall increase in violent crime since 1980.**

Our final analysis, presented in Figure 2.5, examines the make-up of violent crime and compares trends over time in Minneapolis, St. Paul, and the rest of the state. We see from this figure that:

- **violent crime is predominantly a big-city problem; and**
- **increases in aggravated assault account for most of the increase in the violent crime rate in Minnesota.**

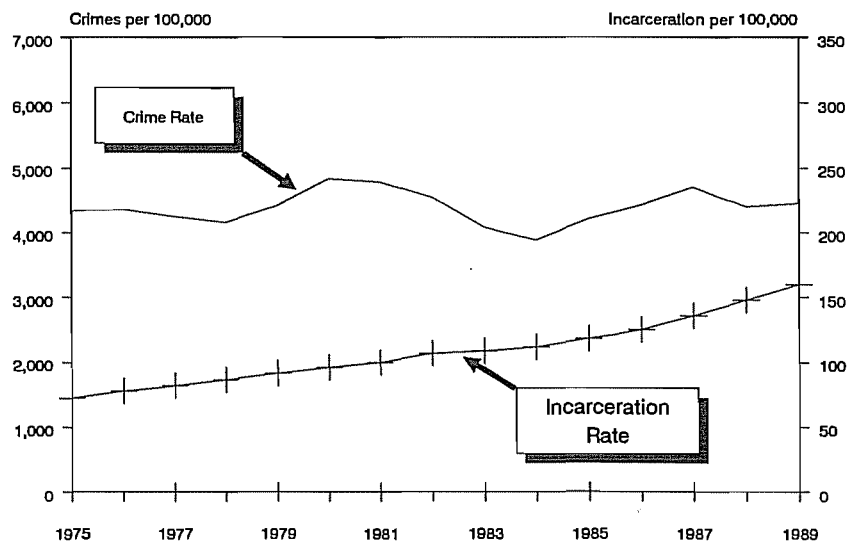
⁵ The U.S. figure includes offenders sentenced to prison only because national data on jails were not available prior to 1983. The Minnesota figure includes both prison and jail inmates because we rely heavily on local facilities for housing sentenced prisoners.

Figure 2.3: U.S. Index Crime Rate and Imprisonment Rate, 1975-88



Source: U.S. Bureau of Justice Statistics.

Figure 2.4: Minnesota Index Crime Rate and Incarceration Rate, 1975-89



Sources: Department of Corrections; Bureau of Criminal Apprehension.

Table 2.2: Change in Index Crimes in Minnesota, 1980-89

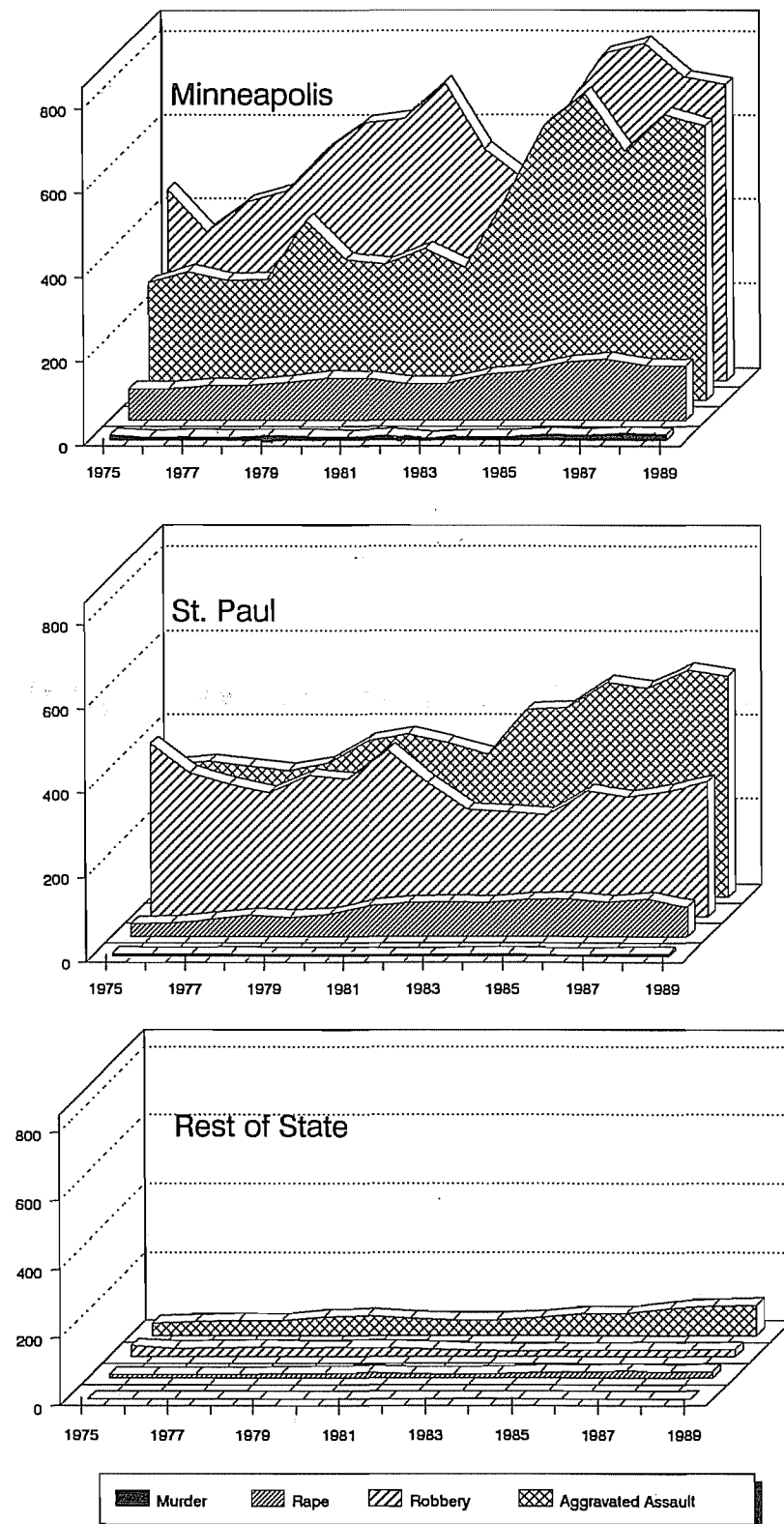
	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>	<u>1986</u>	<u>1987</u>	<u>1988</u>	<u>1989</u>	Percent Change 1980-89
TOTAL VIOLENT CRIME											
Number	9,237	9,344	9,067	7,922	8,804	10,763	12,021	12,150	12,487	12,540	35.8%
Rate	227.8	229.2	222.1	191.9	212.7	258.6	287.0	288.9	294.1	291.2	27.9
Homicides											
Number	104	83	95	66	74	85	100	110	123	108	3.8
Rate	2.6	2.0	2.3	1.6	1.8	2.0	2.4	2.6	2.9	2.5	-2.2
Forcible Rapes											
Number	942	1,055	938	932	1,049	1,243	1,348	1,445	1,333	1,357	44.1
Rate	23.2	25.9	23.0	22.6	25.3	29.9	32.2	34.4	31.4	31.5	35.7
Robberies											
Number	4,022	4,268	4,190	3,299	2,962	3,603	4,303	4,351	4,079	4,129	2.7
Rate	99.2	104.7	102.6	79.9	71.5	86.6	102.7	103.5	96.1	95.9	-3.3
Aggravated Assaults											
Number	4,169	3,938	3,844	3,625	4,719	5,832	6,270	6,244	6,952	6,946	66.6
Rate	102.8	96.6	94.2	87.8	114.0	140.1	149.7	148.5	163.7	161.3	56.9
TOTAL PROPERTY CRIME											
Number	186,755	185,589	176,252	160,343	152,060	164,146	173,698	185,934	174,513	179,449	-3.9
Rate	4,605.1	4,551.9	4,317.4	3,884.0	3,673.1	3,944.3	4,147.1	4,420.9	4,110.1	4,167.4	-9.5
Burglaries											
Number	50,507	52,231	48,899	44,585	41,221	42,727	42,484	45,563	39,154	39,021	-22.7
Rate	1,245.4	1,281.1	1,197.8	1,080.0	995.7	1,026.7	1,014.3	1,083.3	922.1	906.2	-27.2
Larcenies											
Number	122,728	121,652	116,425	106,106	101,166	109,299	117,769	126,255	119,520	122,640	-0.1
Rate	3,026.3	2,983.8	2,851.9	2,570.2	2,443.7	2,626.4	2,811.8	3,002.0	2,814.9	2,848.1	-5.9
Motor Vehicle Thefts											
Number	12,008	10,305	9,819	8,674	8,594	11,008	12,168	12,850	14,603	16,536	37.7
Rate	296.1	252.8	240.5	210.1	207.6	264.5	290.5	305.5	343.9	384.0	29.7
Arsons											
Number	1,512	1,401	1,109	978	1,079	1,112	1,277	1,266	1,236	1,252	-17.2
Rate	37.3	34.4	27.2	23.7	26.1	26.7	30.5	30.1	29.1	29.1	-22.0
TOTAL PART I CRIME											
Number	195,992	194,933	185,319	168,265	160,864	174,909	185,719	198,084	187,000	191,989	-2.0
Rate	4,832.9	4,781.1	4,539.5	4,075.9	3,885.8	4,202.9	4,434.1	4,709.8	4,404.1	4,458.6	-7.7

Note: Rates are per 100,000 population.

Source: Bureau of Criminal Apprehension.

Violent crime is concentrated in the Twin Cities, but assaults and rapes are increasing throughout the state.

Figure 2.5: Comparative Violent Crime Rates, 1975-89



Source: Bureau of Criminal Apprehension.

Most of the change in the violent crime rate statewide is due to increases in violent crime in Minneapolis, and to a much lesser extent, St. Paul. Because the bulk of violent crime occurs in the Twin Cities, it appears that there has been little change in the remainder of the state. In fact, the violent crime rate has been steadily increasing throughout the state during the 1980s. There has been a 42 percent increase in the violent crime rate (1980 to 1989) in Minneapolis and a 22 percent increase in St. Paul, compared to 33 percent for the rest of the state.

Most of the increase in violent crime is due to increases in reported aggravated assaults. This is true throughout the state, not just in the Twin Cities. In addition, the rate of reported rapes has been increasing. This particular crime, however, is subject to changes in reporting; some of the observed increase could be the result of an increased willingness of victims to report the crime.

The robbery rate, on the other hand, has declined in St. Paul and the rest of the state but has increased in Minneapolis. The homicide rate has declined slightly from 1980; however, the numbers are too small to identify reliable statistical trends.

We attempted to investigate further what is responsible for the increase in aggravated assault. We were unable to come to a definitive conclusion because of limitations in crime reporting and analysis practices. But based on the available data and our interviews with police and jail administrators, we conclude that:

There is a greater willingness to treat domestic abuse as a crime.

- **Some of the observed increase in aggravated assault is due to heightened concern, increased reporting, and changes in law enforcement policy with respect to the handling of domestic abuse cases, which has resulted in a greater willingness to pursue these cases as crimes.**

An analysis of the victims of violent crime in Minnesota found that in most cases of aggravated assault (55 percent), the victim and offender knew each other. Stranger-to-stranger assaults, on the other hand, account for 33 percent of all aggravated assaults, with the victim-offender relationship unknown in the remaining 12 percent of cases.⁶ In short, most assaults occur between family members, friends, or acquaintances, not strangers.

Following a highly publicized national experiment conducted in the early 1980s by the Police Foundation and the Minneapolis Police Department, law enforcement policies with respect to domestic abuse changed. The experiment found that mandatory arrest was associated with a lower recidivism rate. As a result, many police departments adopted mandatory arrest policies. Prior to that time, police responding to a domestic call would often simply ask the offending party to leave the premises, and the incident would not be

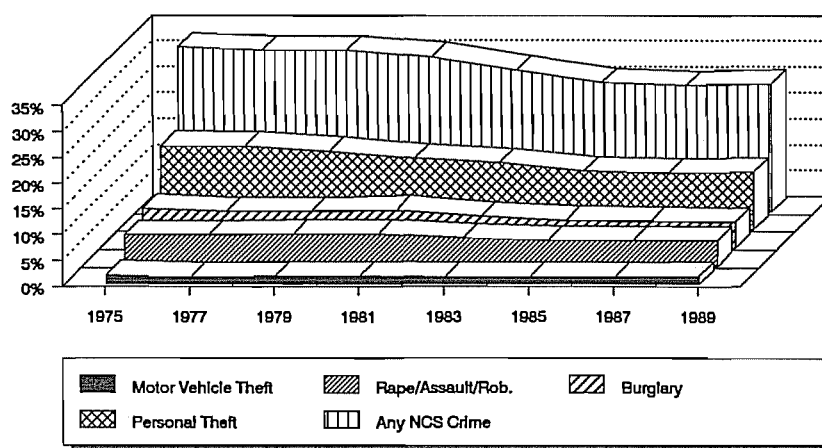
⁶ Criminal Justice Statistical Analysis Center, *Victims of Violent Crimes* (St. Paul: Minnesota State Planning Agency, 1989), 4. The analysis was based upon 1986 crime data. This type of information is not analyzed regularly, so we do not know how the victim-offender relationship may be changing.

counted in the statistics as a crime. In addition, a 1983 amendment to Minnesota law gave police greater latitude in making probable cause arrests in the case of domestic assaults.⁷ Domestic assaults may be charged as either aggravated or simple assault depending on the circumstances, and simple assaults are also increasing.

We were told by several jail administrators that more arrests for domestic violence was one of the main sources of jail population increases. In the Hennepin County Jail, it is the largest and fastest growing offense category, representing about 12 percent of total bookings. The number of bookings for domestic assault went from 0 in 1983 to 3,664 in 1988.⁸ Minneapolis Police Department officials confirm that domestic assaults represent a substantial part of the increase in aggravated assaults in that city. In the Ramsey County Jail, domestic assault bookings nearly doubled between 1985 and 1988, and the average length of stay for this offense increased as well.

Because part of the increase in assault is likely to be the result of changing public attitudes toward domestic violence, which has led to more reporting of these behaviors as "crimes" in the official statistics, we do not know whether the actual incidence of these behaviors is increasing or not. Results from national victimization surveys suggest that the victimization rate for aggravated assault has not been increasing like the reported statistics have.⁹ Figure 2.6 illustrates national victimization rates over time by crime type. To the extent

Figure 2.6: Percent of Households Nationally Experiencing Selected Crimes, 1975-89



Source: National Crime Survey,
U.S. Department of Justice.

⁷ Minn. Laws (1983), Ch. 226.

⁸ Part of this dramatic increase may be due to changes in the way domestic assaults are categorized.

⁹ Aggravated assault victimization rates have declined slightly since 1981. See Bureau of Justice Statistics, "Criminal Victimization 1989," *Bulletin* (Washington, D.C.: U.S. Department of Justice, October 1990).

**The connection
between drugs,
gangs, and
violence
warrants
further study.**

that Minnesota's crime patterns follow national trends, at least some of the observed increase in assault may be due to higher reporting, as opposed to real increases in the behaviors themselves.

There are also suspicions, particularly on the part of law enforcement officials, that some of the increase in aggravated assault is caused by gangs that have recently moved to the Twin Cities to sell drugs. As we see in the following section, there have been increased arrests and convictions for illegal drugs. It proved to be impossible to obtain data to substantiate law enforcement claims because of inadequacies in offense reporting systems. This is a problem that should be studied further, however, since it is likely to be a major factor behind public demands for harsher sanctions.

Drugs and Crime

Crime and drugs, including alcohol, directly affect correctional resources in three ways. First, many drug-related behaviors are defined as crimes (e.g., possession and/or sale of hard drugs, driving while intoxicated). Second, it is assumed that a substantial number of offenders commit crimes because they have a drug habit to support. Finally, drug and alcohol abuse are seen as contributing factors in many personal crimes, especially assaults, in which the influence of alcohol or drugs contributes to the offender's violent behavior.

We did not examine the extent to which drug and alcohol use contributes to criminal behavior. Anecdotal evidence and self-reports imply the connection is fairly strong. Based on survey data, for example, the U.S. Department of Justice estimated that 47 percent of state prison inmates had been convicted of a drug crime or were daily users of illegal drugs immediately preceding their imprisonment, and 40 percent of incarcerated youth were under the influence of drugs at the time of their offense.¹⁰

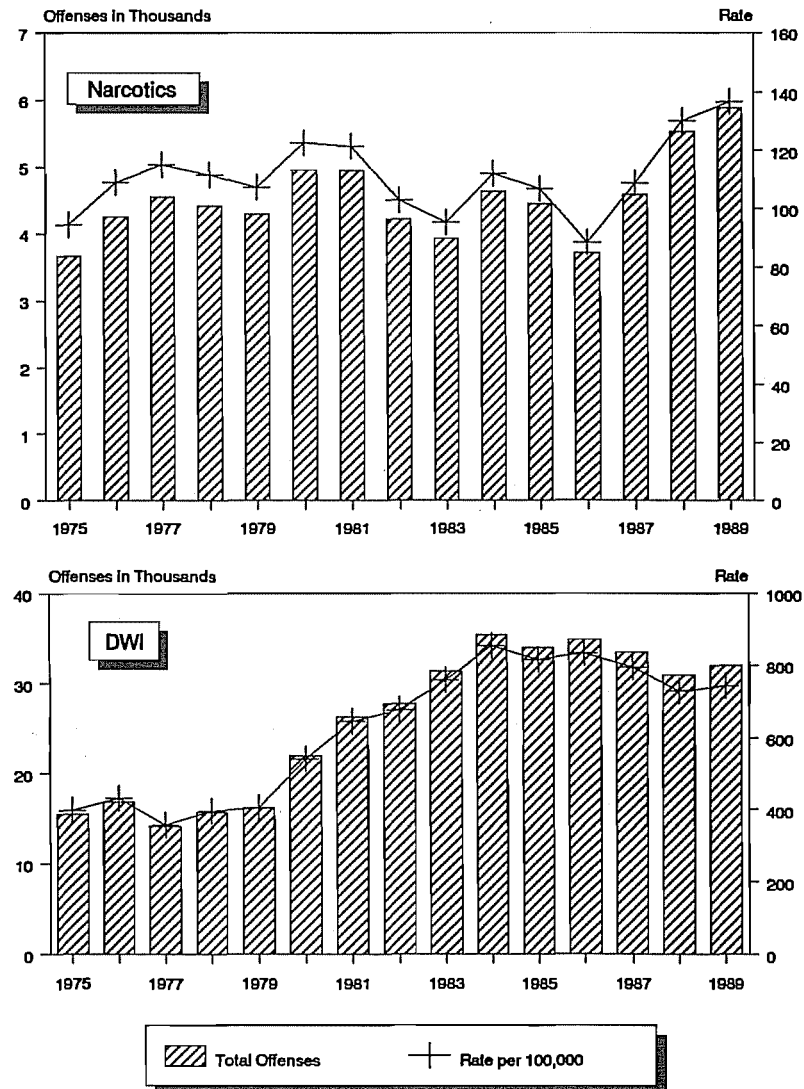
We did look at the trends in drug and alcohol-related crimes, however. Figure 2.7 illustrates changes in the incidence of narcotics and DWI offenses.

- **From 1975 to 1989, narcotics offenses increased by 61 percent and DWIs by 107 percent.**

These crimes are largely enforcement-driven: they become known to the police and arrests are made primarily through actions taken by law enforcement officers, rather than in response to reports by victims. This is especially the case with driving while intoxicated. Some illegal drug cases originate with calls from citizens who believe that drug dealing is going on in their neighborhood. But most drug offenses become part of the official crime statistics when police initiate aggressive actions that typically involve informants and undercover drug buys. The extraordinarily high rates at which these crimes are cleared by an arrest—88 percent for narcotics offenses and 99 percent for DWI—reflect this. In comparison, arrests are made in about 20 to 22 percent of all reported Part I criminal cases.

¹⁰ Bureau of Justice Statistics, *Drugs and Crime Facts, 1989* (Washington, D.C.: U.S. Department of Justice, January 1990), 6-7. See also The Governor's Select Committee on the Impact of Drugs on Crime, Education, and Social Welfare, *A Plan of Action for the State of Minnesota* (October 1989).

Figure 2.7: Changes in Narcotics and DWI Offenses, 1975-89



Source: Bureau of Criminal Apprehension.

Enforcement of narcotics and DWI offenses has increased.

Self-reports on alcohol and drug usage suggest that the use of these substances in the general population may be declining. A U.S. Department of Justice report on the regular monitoring of illegal drug use by high school seniors indicates that drug use peaked in 1985 and by 1988 had fallen to its lowest level since the survey began in 1975.¹¹ A similar finding was obtained by the National Institute on Drug Abuse (NIDA) in their national household surveys. In a survey released in 1989, the NIDA found that regular drug use had declined by 37 percent from an earlier survey; similar, or better, findings were

¹¹ Bureau of Justice Statistics, *Drugs and Crime Facts*, 1989, 17.

predicted for Minnesota.¹² Surveys show that Minnesotans use alcohol at a higher rate than national figures, but their use of other substances, including cocaine, is lower.¹³

Population and Demographic Changes

The aging of the baby boom may be showing its effects on the state prison system and the local jails. We believe that:

- Some portion of the increase in incarcerated offenders is probably the result of the baby-boom bulge working its way through the correctional system.

Demographic changes are responsible for some correctional growth.

The effects of the baby boom generation have been felt throughout society. It is reasonable that as this population bulge moves through the high-crime ages, its greater numbers will be observed in the prison, jail, and probation populations as well. It appears that some of the observed increase in these populations during the 1980s was a consequence of this. The average age of the state prison population increased from 26.9 years in 1980 to 31.6 years in 1989, which is consistent with the aging of the baby boom.

But it does not appear to be the major source of the observed population increases in more recent years. The Department of Corrections, through its Jail Inspections Unit, has regularly developed projections of future jail bed needs on a county-by-county basis. In making these projections, the department used past average daily population figures and changes in the age-at-risk population, defined as the projected number of individuals in the crime-prone years of 18 to 29. The increase in this age group was cited by the department as the main source of the increase in jail populations in the early 1980s.¹⁴

Throughout the 1980s, however, actual jail populations consistently exceeded the department's projections by considerable amounts. The DOC has abandoned its projection model because it now believes that public policies, not age-specific population changes, have been the main source of jail population increases. Changes in policies are more difficult to plan for and anticipate. Projections of prison populations made in other states have fallen far short for the same reason that changes in sentencing policy could not be foreseen.¹⁵

To the extent that demographic changes account for some portion of the past increase, the more important issue involves projected population trends and their implications for future correctional needs. The direct effects of the baby boomers on prison and jail needs should be waning because the 18 to 29 age group was projected to reach peak numbers between 1982 and 1987.

¹² The Governor's Select Committee on the Impact of Drugs, *A Plan of Action*, iii.

¹³ Minnesota Department of Human Services, *1989 Minnesota Household Survey of Drug and Alcohol Use among Adults* (St. Paul, November 1989).

¹⁴ Department of Corrections, *Statewide Jail Report Summary—1983* (St. Paul, January 1983).

¹⁵ Douglas C. McDonald, "The Cost of Corrections: In Search of the Bottom Line," *Research in Corrections* 2, no. 1 (February 1989): 1-25.

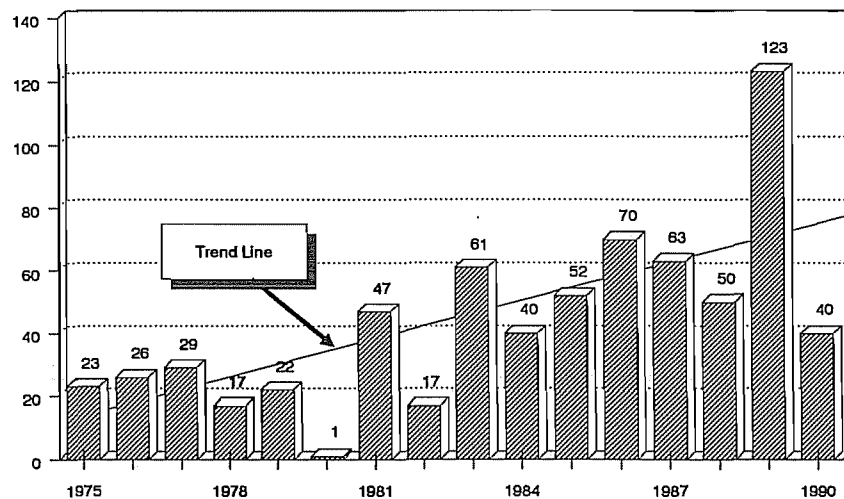
Of concern in the 1990s, however, is the possible effect of the “echo boom,” the children of the baby boom generation. Projections based on demographic changes may be useful. However, these should be combined with additional information on in-migration and differential birth rates within population subgroups. Studies have shown that it is important to capture the subtle interactions among age, race, crime, and criminal justice processing. For example, the growth of the baby boom has not stopped within the Black and American Indian communities.¹⁶

If used for planning purposes, however, projections of population changes should be made in conjunction with anticipated changes in the more important variables affecting corrections population growth. These are discussed below.

State Sentencing Policies

The Legislature has taken great interest during the 1980s in the topic of crime and the possibility of controlling it through sentencing and correctional policy. The increase in legislative activity is illustrated in Figure 2.8, which shows the number of changes to *Minn. Stat. §609*, the 1963 Criminal Code and its amendments. This figure understates the actual volume of legislative activity since DWI, narcotics, substance abuse, and other related legislation is included elsewhere in the statutes. In the initial five years of this period (1975-79), the Legislature made an average of 23 changes to the code per session.

Figure 2.8: Amendments, Repeals, and New Sections Added to the 1963 Minnesota Criminal Code, 1975-90



Source: Minnesota Session Laws.

¹⁶ For a discussion and analysis, see Stephen Coleman and Kathryn Guthrie, *Minnesota 2010: A Projection of Arrests and Convictions* (St. Paul: Minnesota State Planning Agency, 1986).

By the 1985-89 period, the volume of changes had more than tripled to an average of 72 changes per session. A record number of changes to the code was enacted in the 1989 session. Legislative actions over the past decade were consistent with the public's "get tough" sentiments. The effect of these changes has been to incarcerate more people for longer periods of time.

The state's sentencing guidelines will be discussed in a separate chapter. Here, we list the most relevant actions that the Legislature has taken that affect criminal sentences. These are summarized in Figure 2.9. Several trends are evident.

- There has been a gradual upgrading of crime severity. Many specific crimes have been reclassified into a higher legal category for which the prescribed penalties are more severe.

Figure 2.9: Legislative Changes to Criminal Law, 1975-89

• Changes to the Criminal Code

- **Increased volume of changes to the Criminal Code of 1963:**
Number of changes increased from 23 in 1975 to 123 changes in 1989.
- **Creation of over 100 substantive new felonies:**
These represent both enhancements of existing crimes and new crimes.
- **Doubling the number of gross misdemeanors:**
Of the 51 gross misdemeanors listed in the Criminal Code of 1963, 27 were enacted between 1975 and 1989.
- **Tougher sanctions for DWI and other substance-related crimes:**
Second offense DWI became a gross misdemeanor in 1983, and a mandatory minimum penalty was required in 1988. Increased interest in narcotics crimes led to many revisions since 1979 and the addition of mandatory minimums.
- **Increased statutory maximum sentences and fines.**
- **More mandatory minimum sentences.**

• Directives to the Sentencing Guidelines Commission

- **Ordered the commission to increase presumptive sentences at severity levels IX and X.**
- **Established new aggravating factors for the guidelines.**
- **Allowed courts to depart up to the statutory maximum sentence for career offenders.**

Spurred by public opinion, the Legislature has enacted harsher criminal sanctions.

It is particularly evident at the gross misdemeanor level, a category which was almost nonexistent ten years ago. The most prominent example is driving while intoxicated, second offense within five years. This crime was upgraded to the gross misdemeanor level in 1983, and 78 percent of the 6,612 gross misdemeanors cases in 1989 were DWIs.¹⁷

The upgrading of crimes contributes to longer sentences handed down by judges, which in turn affects jail and prison populations. Also, when crimes are reclassified at higher levels of seriousness, higher bail amounts are required by judges. This results in a larger number of people who cannot post bail and must remain in jail until trial.

- Over 150 new crimes have been created by the Legislature since 1975.

For the most part, this has involved revising the criminal code to distinguish among different degrees of seriousness within crime types. This may be a by-product of the sentencing guidelines grid structure, which classifies crimes into only ten levels of seriousness. For broad categories of crime—for example, aggravated assault—it becomes necessary to split up that single crime into multiple new ones that can be reclassified among the ten guidelines categories so that degrees of seriousness can be differentiated. The result of splitting crimes tends to be some crime upgrading and, hence, longer sentences and higher bail.

The Sentencing Guidelines Commission has made most presumptive prison sentences longer.

Another effect of creating entire new crimes is that by definition new classes of criminals are generated. This leads to more arrests and more detainees in jail. One example, provided by Hennepin County in its 1990 report to the Legislature, was legislation under consideration to make it a gross misdemeanor to be a passenger in a stolen car. Where only the driver would be arrested and booked under existing law, the creation of this new crime could increase the number of arrests and jail bookings by three or four per incident.¹⁸

- Prison sentences contained within the sentencing guidelines grid have been substantially lengthened.

Sentencing guidelines and the changes that have been made to them are discussed in Chapter 3 of this report. But it is important to note here that significant changes have been made to the guidelines over the decade, and the net effect has been to increase sentence lengths. In fact, for some crimes with presumptive prison sentences, the length of the sentence has doubled. The effects of these changes, many of which were made in 1989, have yet to be felt in the prison system.

The Legislature's relationship to the Sentencing Guidelines Commission has also changed. When the guidelines were first instituted, the legislative role was one of review and approval: changes made to the guidelines by the commission stood unless the Legislature took action to the contrary. In recent

¹⁷ Based on offender-based tracking system data maintained by the State Planning Agency.

¹⁸ Hennepin County Board of Commissioners, et al., *Report to the Minnesota Legislature on Hennepin's Criminal Justice System and the New Public Safety Facility* (January 1990), 31.

years, however, the Legislature has influenced the content of the guidelines through direct orders to the commission.

- The Legislature has increased the maximum penalties for about 25 different crimes.

Mandatory sentences for drug and alcohol-related crimes have contributed to jail and prison growth.

This type of change is mostly symbolic, although judges and the Sentencing Guidelines Commission probably have been influenced by such changes. Indirectly, therefore, the effect is likely to have been longer sentences.

- The Legislature has enacted more mandatory minimum sentences, which have been cited in the research as a major cause of prison and jail overcrowding.¹⁹

Sentencing guidelines exist to determine who shall go to prison, for what crimes, and for how long. In addition, the Legislature has enacted a number of mandatory sentences for certain crimes. These are outlined in Table 2.3. Some of these sentences affect only crimes (and criminal histories) for which the guidelines do not apply, for example, misdemeanors and gross misdemeanors. In these cases, the effect is on local correctional resources, particularly jails. The most notable example is the mandatory 30-day jail sentence or 240 hours of community service for a second-time DWI. Other mandatory sentences, however, are in conflict with the guidelines (i.e., in the case of felonies and criminal history scores that lie above the imprisonment line).

We were told by jail administrators that harsher penalties for drunk drivers were a major reason for the increase in jail inmates. We cannot assess the separate impact of legislative mandates on jails, independent of other factors operating, such as the effects of law enforcement crackdowns that net more drunk drivers and judges handing down tougher sentences. A study of the mandatory DWI law by the State Planning Agency, for example, showed that judges were typically sentencing repeat DWI offenders to more than 30 days in jail before the mandatory minimum law was enacted. The effect of the law appears to have been to increase the average length of the jail sentence handed down from 58 to 64 days.²⁰

The sentencing guidelines staff studied sentencing practices for felony drug offenders. They found that over 90 percent of drug offenders (sale and possession) in 1988 served some time in prison or jail as a consequence of their criminal conviction.²¹ Again, it is difficult to know if these sentences were the result of legislative action. Data on commitments to prison suggest that judges were already sentencing many drug offenders to prison before the mandatory sentencing laws took effect.

¹⁹ Byrne, Lurigio, and Baird, "The Effectiveness of the New Intensive Supervision Programs."

²⁰ Stephen Coleman, *Evaluation of the Mandatory Minimum Sentence for Habitual Drunken Drivers: A Report to the Minnesota Legislature* (St. Paul: State Planning Agency, December 1989).

²¹ Minnesota Sentencing Guidelines Commission, *Summary of 1988 Sentencing Practices for Felony Drug Offenders* (St. Paul, March 1990).

Table 2.3: Minimum Mandatory Sentences, 1990

<u>Crime</u>	<u>Sentence</u>	<u>Year Enacted</u>
MANDATORY PRISON SENTENCES		
Treason	Life/parole in 17 years	1963
Murder 1	Life/parole in 30 years	1963
Murder 1 (with previous conviction for heinous crime)	Life/no release	1989
Murder 2 (with previous conviction for heinous crime)	40 years	1989
Murder 3 (with previous conviction for heinous crime)	25 years	1989
Possession/use of hazardous weapon—first offense	366 days	1969
Possession/use of hazardous weapon—subsequent offense	3 years	1969
Controlled substance crime 1—second offense	4 years	1989
Controlled substance crime 2—second offense	3 years	1989
Controlled substance crime 3—second offense	2 years	1989
Criminal sexual conduct 1 through 4—second offense	3 years	1975
Criminal sexual conduct 1 or 2—with two or more previous convictions for criminal sexual conduct 1, 2, or 3	37 years	1989
MANDATORY PRESUMPTIVE JAIL SENTENCES		
Burglary of a dwelling—first offense	90 days	1983
Burglary of an occupied dwelling	6 months	1986
DWI—second offense	30 days	1986
Sale of alcohol to a minor resulting in death or great bodily harm by non-licensed person	90 days	1989
Controlled substance crime 4—second offense	1 year	1989
Controlled substance crime 5—second offense	6 months	1989

Note: Heinous crimes are murder or criminal sexual assault when carried out with violence or force.

Judicial sentencing practices have “widened the net.”

Judicial Sentencing Practices

The sanctions imposed by judges affect state and local correctional resources differently, depending upon judicial district policies and the discretion of individual judges. Judicial practices affect both pretrial and sentenced offenders. We are referring here to sentencing decisions that are not covered by the state’s sentencing guidelines. These comprise the greatest volume of cases: most misdemeanors and gross misdemeanors and 80 percent of felonies.²²

In general, judges have also responded to public concern about crime through more restrictive bail requirements and tougher sentences.

- **Judges are increasingly sentencing offenders—both felons and gross misdemeanants—to serve some time in jail, in addition to a period of probation.**

Table 2.4 illustrates how judicial sentencing practices have changed from 1981 to 1988. As shown, the use of jail time as a sanction for convicted felons has increased from 46.2 percent in 1981 (and 35.4 percent in 1978) to 58.5 percent in 1988. In combination with those felons sentenced to prison under the guidelines, nearly 80 percent of felons were incarcerated as a consequence of their crime in 1988, compared to 56 percent in 1978. Most of those who escaped incarceration were first-time offenders convicted of low-level offenses.

Table 2.4: Changes in Felony Sentences Pronounced, 1981-88

Percent of Offenders Sentenced To:	1981	1982	1983	1984	1985	1986	1987	1988
Prison	15.0%	18.6%	20.5%	19.6%	19.0%	19.9%	21.6%	20.9%
Jail	46.2	44.5	50.0	53.1	53.3	54.7	55.4	58.5
Restitution	13.5	16.7	14.9	16.9	19.5	24.3	26.0	23.9
Fine	9.3	10.0	9.4	10.0	8.6	8.0	10.9	16.4
Residential Treatment	8.4	8.0	9.1	9.9	8.2	8.7	5.4	5.8

Source: Sentencing Guidelines Commission.

The data in this table strongly suggest that:

- **The use of multiple sanctions for individual offenders has increased, e.g., some jail time, plus additional conditions of probation, like fines, restitution, mandatory treatment, and community work service.**

Even while the proportion of nonprison-bound felons receiving jail time has been increasing, so too has the use of other sanctions. Only the use of

²² It should be noted that the guidelines commission staff monitor sentencing practices for felonies only. Data on misdemeanor sentencing practices are limited. Most of the information presented here comes from the Offender Based Tracking System (OBTS) data collected by the State Planning Agency, which is about individual offenders, not judicial sentencing directly.

mandated residential treatment has declined, from 8.4 percent in 1981 to 5.8 percent in 1988. A recent study by the Sentencing Guidelines Commission of a sample of felony cases found that jail time was pronounced as a condition of probation in nearly 71 percent of the cases, and in 83 percent of those cases additional sanctions were imposed as well.²³

The increasing use of multiple sanctions, especially jail time plus probation, which is referred to as a "split sentence," is a national trend. It has a direct effect on jail resources, but it also affects probation officers, who must monitor the multiple conditions of probation following the jail sentence. Probation, as a sanction, becomes more like parole because it follows a period of incarceration. Although probation violators can be sent back to jail, judges may be more likely to impose a prison sentence.

The conditions of probation, as a sanction, have also gotten tougher. The routine use of drug testing to monitor compliance with the prohibition of alcohol and/or drug use while on probation, or as part of the drug and alcohol treatment process, is also increasing. We learned from our survey of probation officers that random drug testing is fairly routine in most programs.²⁴ In more than half of the intensive probation programs, house arrest programs, half-way houses, residential and outpatient treatment programs, offenders are routinely tested for drug and/or alcohol use.

The only exceptions are community work service and sentencing to service; random drug testing is not typically part of these programs. Most probation officers are unable to cite what proportion of offenders fail random drug tests. In combination with multiple sanctions applied as conditions of probation, the result is likely to be higher failure rates, with more offenders violating the technical conditions of their probation and returning to jail or prison as a consequence. Data presented later substantiate this conclusion.

- In addition to increasing numbers of sanctions and tougher probationary conditions, the average length of most sentences handed down by judges has also increased.

Probationary conditions have gotten tougher; random drug testing is now fairly routine.

Figure 2.10 shows how the lengths of sentences have changed over time. In the case of felonies, the average length of prison sentences has remained about the same, although these data do not reflect the doubling of presumptive sentence lengths that occurred in 1989. The average length of probation pronounced by judges in felony cases has gone from 48.9 months in 1985 to 52.2 months in 1988. In combination with the increased volume of offenders receiving probationary sentences, however, this represents an increase of 58,199 person-months (or 4,850 person-years) added to probation staff workloads in the three-year period, 1985 to 1988.

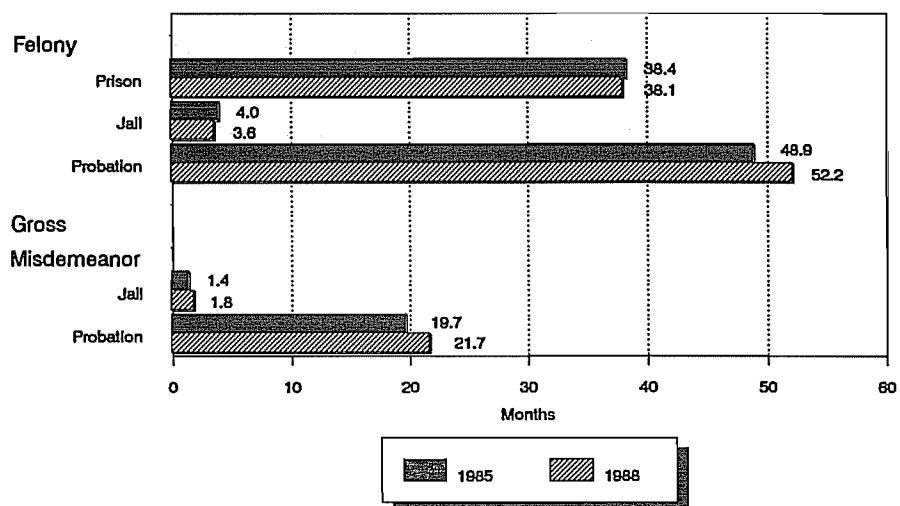
The average length of jail time for felonies has declined from 197 days in 1978 to 108 days in 1988. This pattern is consistent with the phenomenon known

²³ Minnesota Sentencing Guidelines Commission, *Report to the Legislature on Intermediate Sanctions* (St. Paul, February 1991), 12.

²⁴ Survey methods and results are discussed in Chapter 5.

Judges are pronouncing longer sentences, particularly those involving community sanctions.

Figure 2.10: Change in Average Sentence Lengths, 1985 and 1988



Sources: Sentencing Guidelines Commission; State Planning Agency.

as “net-widening,” which refers to an increased use of more severe sanctions (particularly incarceration) for people whose crimes would not have received such a harsh penalty previously. As more people are sentenced to jail for less serious offenses, the average jail sentence can be expected to decrease.

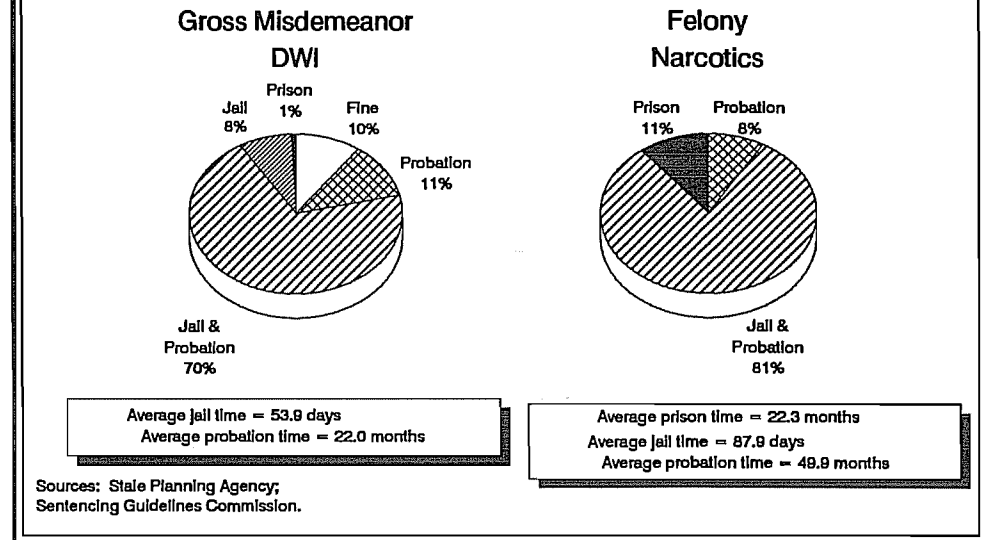
In the case of gross misdemeanors, the trend in average sentence lengths is upward. In the three-year period for which data are available (1985 to 1988), both jail and probation sentences for gross misdemeanor offenses have lengthened.

These trends—greater use of jail, longer sentences, especially to probation, and tougher probationary conditions—are the judges’ responses to public demands, especially for tougher DWI and drug enforcement. Figure 2.11 illustrates the sentences handed down by judges in 1988 for gross misdemeanor DWI (total cases = 5,165) and felony narcotics, which include both possession and sale (total cases = 1,180). As this figure shows, most people convicted of drug-related offenses—felony narcotics and gross misdemeanor DWI—serve time in prison or jail: 79 percent of DWI offenders and 92 percent of drug offenders. The most common sentence is some jail time, plus a period of probation, which in drug cases is over four years.

Local Law Enforcement Practices

Legislative changes to the criminal code and changes in sentencing policy and judicial sentencing practices represent the most direct factors responsible for the increases in the incarcerated and probation populations. Other criminal

Figure 2.11: Sentences for Substance Abuse Crimes, 1988



justice actors, however, have also adopted a more aggressive stance toward crime, thereby contributing to the overcrowding problem.

- The number of arrests is up on a statewide basis, and arrests are made in a higher proportion of crimes.

The number of arrests has nearly doubled in the past 15 years, increasing from 94,610 in 1975 to 181,476 in 1989. The clearance rate, which is the proportion of total reported Part I crime cleared by arrest, has gone up slightly during the 1980s. During the 1970s, the clearance rate remained steady at approximately 19 percent. It vacillated during the early 1980s, but has remained at approximately 22 percent during the latter half of the decade.

In part, the increased number of arrests may be the result of more law enforcement officers. For example, both the Minneapolis and St. Paul police departments have added new police officers over the past several years. In Minneapolis, 72 new officers joined the force in 1989 and 1990, with more new officers to be added in 1991. The addition of 15 new police officers in St. Paul was cited by the Criminal Justice Workgroup as a factor contributing to the increase in Ramsey County jail populations.²⁵

A higher number of arrests may also be a consequence of local law enforcement policies and priorities. For example, under Chief Bouza in Minneapolis, police resources were reallocated to put more patrol officers on the street. During his tenure, the department operated under a policy of "aggressive

²⁵ The Criminal Justice Workgroup, *Recommendations for Managing Overcrowding in Ramsey County's Adult Detention Center and Annex* (April 1989), E-3.

Police are making arrests in a higher proportion of crimes.

arrests," with officer performance evaluated in part on the basis of the number of Part I arrests. In addition, there have been major crackdowns on drugs, street crime, prostitution, and DWI. The Minneapolis Police Department has been noted for its controversial robbery decoy unit and celebrated drug raids using front-loaders to bulldoze into suspected crack houses. Crackdowns on prostitution by the St. Paul Police Department have contributed to a 453 percent increase in the number of people booked into the Ramsey County Jail for sex offenses.²⁶ In Anoka County, law enforcement officers have conducted random stops and tests of drivers in a concerted effort to uncover drunk drivers. The Minnesota Highway Patrol as well has adopted more aggressive policies with respect to stopping DWIs.

As suggested above, the type of offenses showing the largest increase are those that are law-enforcement driven, where the clearance rate is 90 percent or better. Drugs, street crimes, prostitution, and DWI are all crimes of this type.

- **In addition, prosecutors have demonstrated an increased willingness to pursue criminal cases.**

The sentencing guidelines staff attribute much of the increase in offenders sentenced to prison to the increase in the number of felony convictions handed down by the courts, which is a reflection of prosecutorial priorities. Felony convictions increased 45 percent from 1981 (5,500 convictions) to 1989 (7,974 convictions). A similar increase in volume is evident at the misdemeanor/gross misdemeanor level.²⁷

- **In some jurisdictions, judges have instituted more restrictive policies about what constitutes releasable offenses and have delegated less authority to release on minor crimes.**

Court administrative procedures, which vary from one jurisdiction to another, affect the amount of time an offender spends in jail in pretrial detention. In some places, only judges conduct bail evaluations, while in other jurisdictions this authority is given to third parties, particularly for less serious offenses. This practice helps to speed up the process and decrease the average time spent in pretrial detention. Court procedures present special problems in Hennepin and Ramsey Counties because of the volume of offenders and the fact that their jails house pretrial offenders only, thereby permitting less flexibility.

Other Legislative Changes Affecting Local Resources

The Legislature's role with respect to defining criminal behavior and determining the appropriate punishment is paramount. But the Legislature has

²⁶ *Ibid.*, 21.

²⁷ The number of gross misdemeanor cases, for example, increased 25 percent in the three-year period 1985-88.

enacted other policies since the mid-1970s that also affect local correctional resources. These are summarized in Figure 2.12. Perhaps the most significant of these are pre-sentence investigation requirements. The information contained on these forms, which is used by judges in making sentencing decisions, is gathered by probation officers. Legislative changes extend mandatory pre-sentence investigations to lower level crimes and increase the amount of information required on them (e.g., victim impact assessments). Rule 25 chemical abuse assessment changes have also affected probation officer workloads in a similar way.

To the extent that probation staff are not increased to accomplish these additional responsibilities, the net effect is to cut down on the amount of time

Figure 2.12: Other Legislative Mandates Affecting Local Correctional Resources, 1978-90

Pre-Sentence Investigations

- 1978 — Required for all felonies.
- 1979 — For misdemeanors and gross misdemeanors at judge's request.
- 1983 — Victim impact statements and other victim input required.
- 1988 — Data on harm to the community for drug crimes required.
- 1988 — For gross misdemeanors at prosecutor's request.
- 1989 — Data on economic loss to victim and offender's financial resources for restitution required.

Sentencing Guidelines Worksheets

- 1981 — Required for all felonies.

Chemical Abuse Assessments

- 1976 — Required for all DWI offenders in large counties.
- 1987 — Required in all counties.

Restitution

- 1986 — Probation hearing required if offender has not paid within 60 days of probation expiration.
- 1989 — Probation officer or court administrator must develop payment schedule.
- 1989 — Victim may request hearing if payment schedule not followed.

Sex Offenders

- 1989 — Victim must be notified orally and in writing when sexual abuse defendants are released pretrial.
- 1989 — Probation officers must report address of sex offenders under supervision to local law enforcement whenever offender is released from incarceration or moves.
- 1989 — Everyone convicted of a sex offense must provide a specimen for DNA analysis; probation officer usually must arrange for specimen collection.
- 1989 — Requirement that all probation officers and corrections agents supervising sex offenders have specialized training.

Domestic Abuse

- 1978 — All persons charged with domestic abuse must be arrested; they cannot be given a ticket in lieu of arrest.
- 1983 — Police must arrest suspects without a warrant if there is probable cause that an offender violated an order for protection.
- 1983 — Victims must be notified orally and in writing when domestic abuse suspects are released pretrial.
- 1990 — Arrest for violation of an order for protection must occur even if the violation did not take place in an officer's presence.

Day Fines

- 1990 — All judicial districts must develop a day fine system by 1992.

Staff levels have not kept pace with additional probation responsibilities mandated by the Legislature.

spent directly supervising offenders. These changes affect the time it takes for probation officers to complete the required investigations, assessments, and forms. Hence, they put additional strain on existing probation staff resources. They also have an impact on jail resources, since it takes between 30 to 45 days to complete a pre-sentence investigation.²⁸ Individuals who are unable to post bond or who are denied bail spend this time in jail.

We do not wish to imply that any of this legislation represents bad policy. To the contrary, these changes appear reasonable and designed to accomplish worthy goals. But any legislation that places additional responsibilities on probation staff also increases local correctional costs directly, and may indirectly increase jail populations and, hence, jail costs. The direct supervision of offenders may suffer unless resources are appropriated to pay for the costs associated with the new responsibilities.

CHANGES IN JAIL AND PRISON POPULATIONS

In this final section, we look at the impacts of the changes just described on prison and jail populations. We look at who is in these facilities and why they are there. We also examine how inmate characteristics have changed over time.

State Prisons

As indicated previously, there has not been a significant increase in the overall imprisonment rate over the past several years. Since 1982, about 20 percent of convicted felons have been sent to prison. The steady increase in the volume of felony cases processed by the courts has been the primary factor leading to prison population increases. Indirectly, of course, this is also a function of increased crime, and increased law enforcement and prosecutorial activity. As a consequence, new commitments to prison have increased from 849 in 1980 to 1,932 in 1989, which represents a 128 percent increase over the ten-year period.

Figures 2.13 and 2.14 summarize information about new prison commitments. Figure 2.13 shows that:

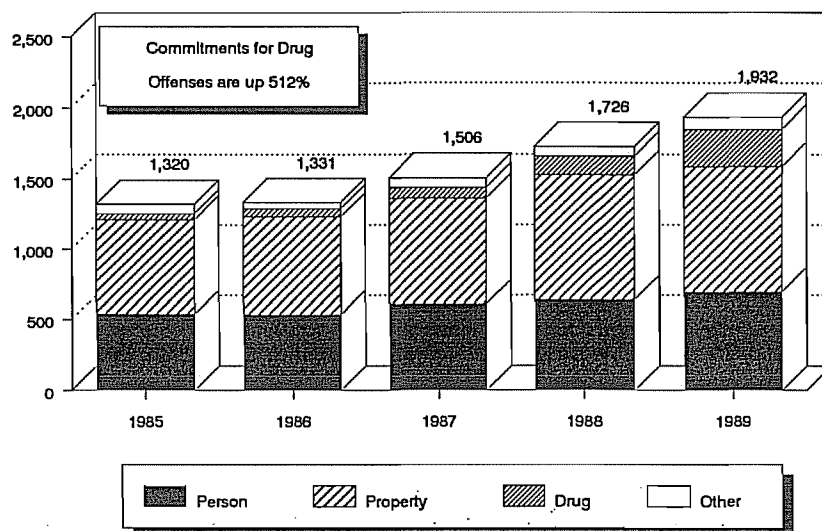
- With respect to the types of crime for which people are sent to prison, the largest increase has been in the number of drug offenders who receive prison sentences.

Of new prison commitments in 1985, 42 or 3.2 percent were convicted of drug offenses; in 1989, 261 or 13.5 percent of new commitments were drug offenders. This represents more than a five-fold increase in just four years.

²⁸ Subcommittee on Facility Assessment, House Judiciary Committee, *Existing Sentencing Alternatives in Minnesota Counties, Survey of Court Service Directors* (St. Paul, March 1989).

More drug offenders and car thieves now serve time in prison.

Figure 2.13: Annual Commitments to Prison by Offense Type, 1985-89



The data also indicate a greater willingness of judges to sentence property crime offenders to prison, particularly those convicted of auto theft. This practice conflicts with the expressed goal of sentencing guidelines, which calls for reserving state prison space for offenders convicted of violent personal crimes.

These changes in sentencing practices are reflected in the current composition of the prison population. Drug offenders, who made up less than two percent of the state prison population in 1985, have increased to almost seven percent in 1989. Reflecting the high concentration of violent crime and illegal drugs in the Twin Cities, over half the new commitments to prison in 1989 were from Hennepin and Ramsey Counties. New commitments to prison from Hennepin County have increased the most, more than doubling between 1981 (338) and 1989 (722).

As Figure 2.14 states,

- **There are significantly more blacks and women in prison than there were ten years ago.**

New female commitments to state prison have doubled over the past four years. Females still represent a

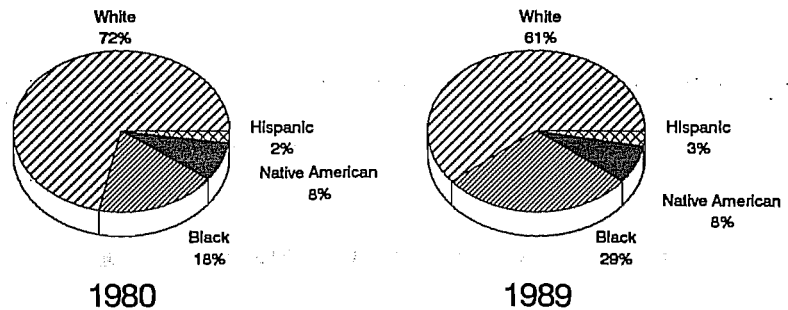
Figure 2.14: Changes in New Commitments to State Prisons

- More drug offenders and property crime offenders, especially car thieves
- More offenders from Hennepin and Ramsey Counties
- More women
- More blacks
- More short-term commitments with less than one year to serve

very small proportion of the total prison population—less than 5 percent—because they tend to be convicted of less serious crimes and serve shorter sentences. As with males, the offense type that shows the greatest proportionate increase among females is illegal drugs.

The greatest change has been in the racial composition of the prisons during the 1980s, as illustrated in Figure 2.15. While the proportions who are American Indian and Hispanic have remained relatively constant, the proportion that is black has increased significantly while the percent white has declined.

Figure 2.15: Adult Prisoners in State Facilities by Race, 1980 and 1989



Source: Department of Corrections.

Half the people sent to prison have less than one year to serve.

Three factors appear to account for the racial shift. First, there has been a higher than average growth of the black population in Minnesota since 1980. The black population grew by 78 percent, compared to an overall population increase of 7 percent for the state between 1980 and 1990. The second factor is the increased imprisonment of convicted drug offenders, particularly for crimes involving crack cocaine where over 90 percent of the offenders are black.²⁹ Finally, blacks are more likely to be convicted of crimes (such as robbery) that receive presumptive prison sentences under the guidelines.³⁰

Another trend, which is of concern to the Department of Corrections, is the increase in short-term commitments. These are people who come to the state prisons with less than one year to serve. Prisons are designed and staffed to accommodate people serving more than one year and, consequently, are more

²⁹ See The Governor's Select Committee on the Impact of Drugs, *A Plan of Action for the State of Minnesota*.

³⁰ For a discussion, see Joan Petersilia and Susan Turner, *Guideline-Based Justice: The Implications for Racial Minorities*, prepared for the National Institute of Corrections (Washington, D.C.: U.S. Department of Justice, November 1985).

expensive to operate than jails. It is not economical to house offenders in them for short terms, nor are they there long enough to benefit from the additional programs available.

- **At least two-thirds of the short-term prison commitments are the result of tougher sanctions or probationary conditions imposed by local criminal justice officials. The remainder appear to be a consequence of net-widening, i.e., imprisoning less serious offenders who receive shorter sentences.**

According to the department, almost half of all new prison commitments in 1989 (49 percent) had less than one year to serve. Approximately one-third of this group received a presumptive guidelines prison sentence, but after their jail time was credited they had less than one year left to serve. One-third were sent to prison because of technical probation or parole violations. The remaining third were "upward," or aggravated, departures from the guidelines.

Local Jails

Because jails perform different functions than prisons, much higher volumes of people are processed through them during a given time period. A substantial number of individuals, for example, are arrested by police, brought to the county jail, and released within 6 to 12 hours with no charges brought against them. In 1988, 40 percent of the bookings at the Hennepin County Jail fell into this category. The high turnover of people in jails makes it much more difficult to get an accurate picture of who is in jail, why, and how this may have changed over time.

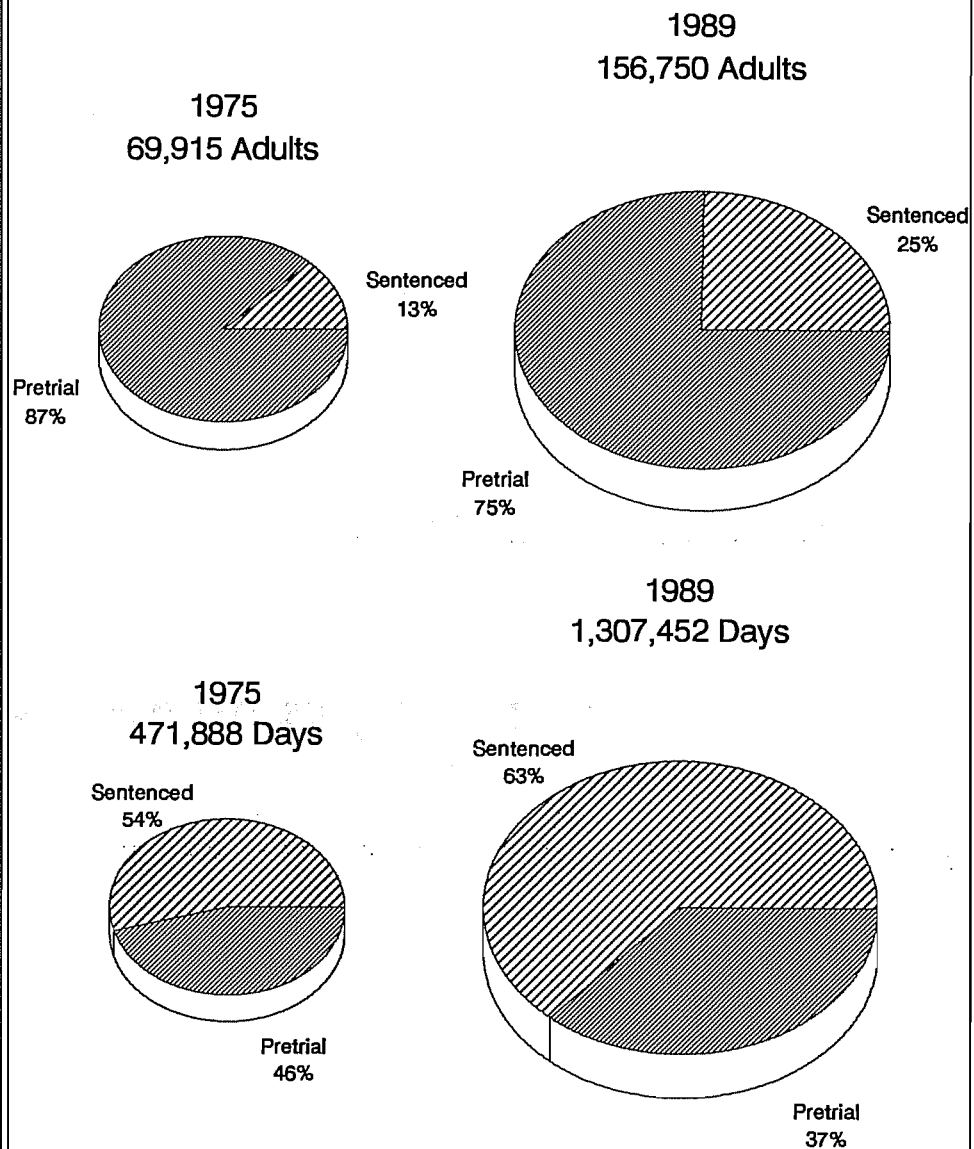
We have already seen that there has been a substantial increase in the number of people in jails during the 1980s, as measured by the average daily population figures. An examination of the total number of individuals booked and released from Minnesota jails during 1975 compared to 1989 shows a similar trend, more than doubling in this period, as indicated in Figure 2.16.

The first question to be answered is the extent to which this increase is due to factors related to pretrial detention versus sentenced offenders. Comparing 1989 figures to similar ones for 1975, as we have done in Figure 2.16, shows that not only has the volume of jail inmates increased significantly, but use patterns have changed as well.

- **Proportionately more of the growth in jail populations is accounted for by sentenced offenders, as opposed to those who are detained on pretrial status.**

Figure 2.16 shows that three times as many people were in jail on a pre-sentence basis in 1989, but they used just over one-third of the bed days. The average number of jail days spent by people serving sentences is six to seven times higher than those who are detained there prior to sentencing.

Figure 2.16: Total Jail Days and Number of Adult Inmates by Status, 1975 and 1989



Sources: Department of Corrections; local jurisdictions.

The change that has taken place is in the greater use of jail time as a sanction. Today, a proportionately higher number of people are in jail serving a sentence than was the case in the past. The number of inmates has increased 124 percent since 1975, but proportionately more of them were serving a sentence and taking up a larger share of the bed days in 1989.

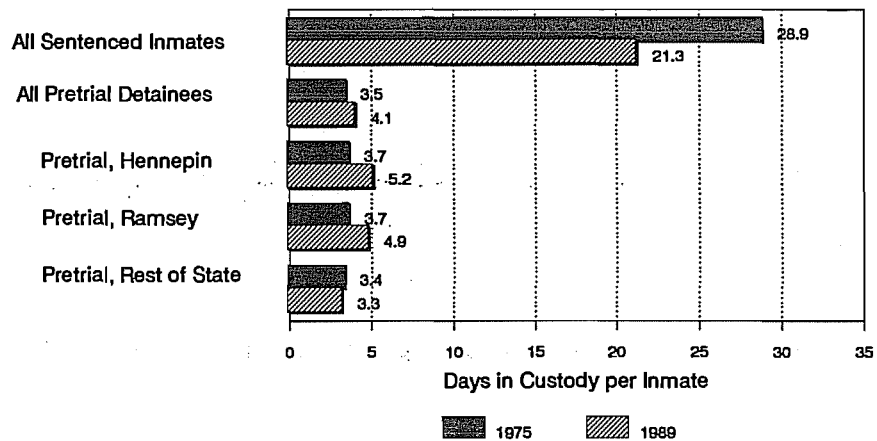
- **Pretrial processing and bail and release procedures by jail and/or court personnel do not appear to be major causes of the jail**

overcrowding problem in most areas of the state, although they may be in individual counties.

The volume of pretrial detainees has increased significantly over the past 15 years, but the average length of stay in pretrial detention has not changed in most counties. Figure 2.17 shows that in 1975 the average length of pretrial stay, excluding the Hennepin and Ramsey County Jails, was 3.4 days compared to 3.3 days in 1989.

Generally, pretrial detention policies are not the cause of jail overcrowding.

Figure 2.17: Average Days in Jail Custody by Inmate Status, 1975 and 1989



Sources: Department of Corrections; local jurisdictions.

Separate data for Hennepin and Ramsey Counties show that the average pretrial detention stay has increased, going from 3.7 days in 1975 to 4.9 days in Ramsey and 5.2 in Hennepin in 1989. In combination with much higher volumes of individuals, this has a definite impact on the crowding problem in these two counties. In Hennepin County, for example, with over 31,000 individuals arrested and booked annually, the additional 1.5 days per average stay results in a need for 127 more beds.

The pretrial facilities in Hennepin and Ramsey Counties are seriously overcrowded.

The higher average stays in the Hennepin and Ramsey County Jails, which are exclusively pretrial detention facilities, are probably the result of a combination of factors that make the problems these counties face much more serious than the rest of the state. Due to more serious crime problems, for example, these two counties are likely to have higher proportions of felony defendants than other facilities. This means higher bail amounts and a larger proportion of defendants remaining in custody between booking and sentencing. Defendants may also be less able financially to post bail. In addition, the higher volumes of activity in these counties may cause more problems for court administration. Improvements to pretrial procedures, such as alternative intake

procedures and expanded court availability, can help to alleviate the overcrowding problem, according to corrections experts.³¹

As Figure 2.17 also illustrates, the average length of stay by sentenced offenders has decreased from approximately 29 days in 1975 to just over 21 days in 1989. This is consistent with data reported earlier; it implies that in 1989 proportionately more inmates were serving jail time for less serious offenses.

Figure 2.18 is a breakdown of the specific types of crimes for which offenders served time in 1989. This figure shows that:

- **DWI and traffic offenders make up the largest proportion of the sentenced jail inmates (46 percent) and over one-third of the total bed days on a statewide basis.**

The number of sentenced offenders in 1989 who are probation/parole violators—9 percent of the people and 10 percent of the bed days—is also notable. In all likelihood, this represents the consequence of more stringent probation policies and increased use of random drug testing. (The reported figures exclude the Hennepin and Ramsey County facilities, Mesabi and Northeast Regional Correctional Center, which report separately and for which comparable data on probation violators are not maintained.)

The next question concerns whether there has been a change in the mix of sentenced offenders serving time in local jails. This question cannot be answered definitively, given the quality of the data over time. We can conclude, however, that the most serious offenders—felons—make up roughly the same proportion as in the past. In 1975, 18 percent of the jail inmates serving a sentence had been convicted of a felony; in 1989, the comparable figure is 20 percent. Of course, in sheer numbers, there are more than twice as many felons in jail today.

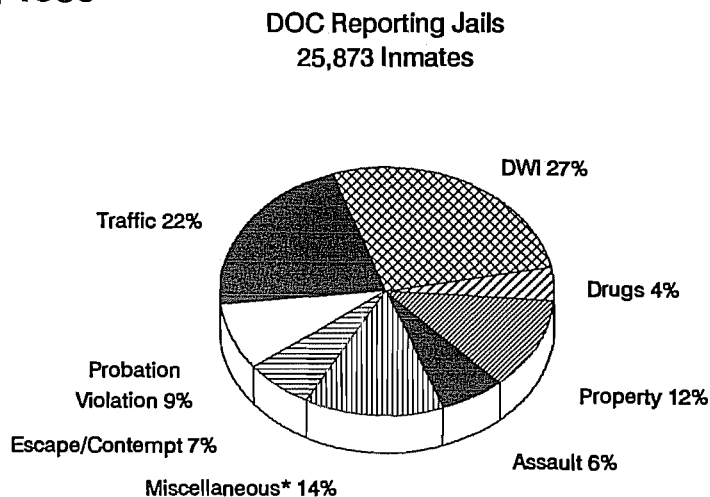
- **The largest growth has occurred in the number of gross misdemeanants serving a jail sentence in 1989.**

This is primarily the result of upgrading second-offense DWI to the gross misdemeanor level. It suggests that proportionately more of sentenced jail inmates today are there because of DWI offenses. Unfortunately, the data do not permit a determination of how much of the jail population increase is due to DWI. In 1975, DWI was included in the “traffic” category. If DWI is combined with traffic in 1989 and then compared to 1975, as we have done in Figure 2.19, the tentative conclusion is that proportionately more of the increase in jail inmates is a consequence of aggressive enforcement and tougher sanctions applied to the offense of driving while intoxicated.

Today, more people are in jail serving a sentence.

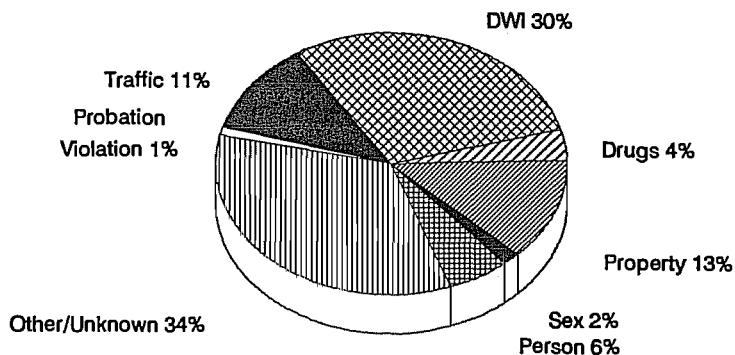
³¹ See, for example, The Criminal Justice Workgroup, *Recommendations for Managing Overcrowding in Ramsey County's Adult Detention Center and Annex*.

Figure 2.18: Sentenced Jail Inmates by Type of Offense, 1989



*Miscellaneous includes crimes with <2% of the total.

Hennepin, Ramsey & Arrowhead**
13,063 Inmates

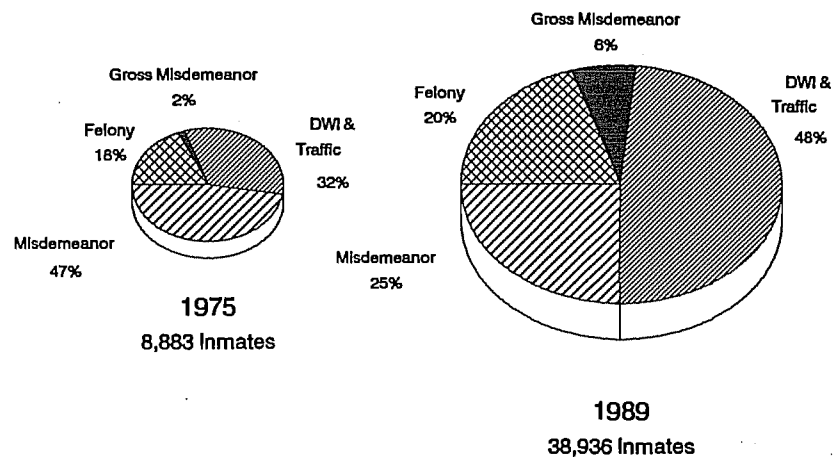


**These jurisdictions do not report to DOC, and do not uniformly record probation violators.

Sources: Department of Corrections; local jurisdictions.

Nearly half of sentenced jail inmates are serving time for DWI and traffic offenses.

Figure 2.19: Sentenced Adult Inmates
in Local Jails by Offense Level,
1975 and 1989



Sources: Department of Corrections;
local jurisdictions.

SUMMARY

The factors responsible for correctional growth are largely within the control of policymakers.

The data and information we have examined point to the general conclusion that the bulk of the increase in the offender population—in prison, in local jails, and on probation—is the result of deliberate policy decisions at the state level and the practices of multiple criminal justice institutions and individuals at the local level. It is apparently not the result of a general crime wave, large increases in the volume of crime, or demographic changes. Some unknown, but smaller, portion of the increase, however, can be attributed to increases in violent crime and the aging of the baby boom generation. The increase in violent crime warrants further study to determine its causes and implications for the future.

We conclude that much of the corrections overcrowding problem is under the authority and control of state and local policymakers and criminal justice officials, who themselves have contributed to the current situation. The large increase in the number of people under correctional control cannot be attributed to a single policy change or practice, however. In direct response to heightened public concern about crime, virtually everyone with criminal justice responsibilities has adopted a more punitive stance.

Much of the increase in the prison and jail populations can be attributed to a crackdown on illegal drugs and alcohol-related crimes, primarily DWI. A large increase in the prison population is the result of drug offenders, and we tentatively conclude that DWI has had a similar effect on the local jails. Police, prosecutors, judges, and the Legislature have all responded to public

pressure by instituting aggressive enforcement of these offenses, harsher penalties, and mandatory prison and jail sentences.

The result of a tougher stance toward crime has been a gradual widening of the net, that is, more people being sanctioned in more serious ways today than they were 15 years ago. The public's concern is in part fueled by an increase in violent crime in Minnesota, primarily aggravated assault, some of which may be the result of increased reporting. But the public reaction goes beyond the objective rise in crime. It reflects a lower tolerance for crime as well.

SENTENCING POLICY AND PRACTICE

Chapter 3

This chapter examines felony sentencing policy and practice. Sentencing policy is one of the factors affecting Minnesota's use of jail, prison, and other correctional resources that is within the control of state policy makers. As we have seen, the correctional system is increasingly overburdened. Sentencing policy and practice is also important in its own right because it is a basic element of our system of justice. Sentencing policy in Minnesota is designed to achieve certain formal goals including efficient use of correctional resources, fair sentencing of offenders through uniform treatment of similar offenders, and proportional sentencing of offenders based on the severity of their offense.

Minnesota's sentencing policy is embedded in a formal system of sentencing guidelines. The guidelines and the way they operate are complicated but a full discussion of Minnesota corrections policy requires an understanding of how they work. The sentencing guidelines enacted in 1978 and effective in 1980 are widely regarded as a national landmark of sentencing reform.

Sentencing guidelines have established a generally rational and proportional sentencing structure.

This chapter:

- Describes the Minnesota sentencing guidelines system, and the Minnesota Sentencing Guidelines Commission that developed the guidelines and revises them in light of changes in law and sentencing policy.
- Evaluates how effectively the guidelines have achieved the formal goals they were designed to serve.
- Makes recommendations to improve the system.

Our examination of these issues leads us to conclude that the guidelines have succeeded in establishing a generally rational and proportional sentencing structure. In addition, they establish a basis on which sentences can be appealed, and a process by which sentencing practices are regularly monitored against the goals of the system. The significance of this accomplishment should not be minimized. A lot of skepticism and opposition stood in the way of accomplishing these goals.

But the guidelines have not achieved what they set out to accomplish in other areas. The guidelines' effectiveness in achieving uniformity and proportionality in sentencing has been eroded over time. As in many other states, the problem of rapid growth in incarceration has not been solved.

The beneficial aspects of the system can be preserved and the source of problems minimized if the structure is relaxed somewhat and the complexity of sentencing goals is openly acknowledged. This will not result in an erosion of the guidelines' effectiveness in our view, and may well enhance the long-term viability of the system.

SENTENCING REFORM AND ESTABLISHMENT OF THE GUIDELINES COMMISSION

**Sentencing
Guidelines
replaced an
indeterminate
sentencing
system where
release from
state prison
was decided by
a parole board.**

Minnesota sentencing guidelines represent a fundamental change from previously dominant sentencing policy. For most of the twentieth century, the dominant form of sentencing in Minnesota and the rest of the country was indeterminate sentencing. Under this system, offenders were sentenced to an indefinite term of incarceration, specified by statutory minimums and maximums. For example, a convicted burglar might be sentenced to "from zero to five years" in state prison. Once the offender had begun serving the sentence, his case would be reviewed periodically by a parole board to determine whether or not he should be released.

Under this model, sentences were not necessarily the same for like offenses, or even necessarily determined at the time of sentencing. Each offender presented a different problem to be solved by individualized treatment.

The indeterminate model fell out of favor by the 1970s. Some critics were concerned by the disparities that could accompany the indeterminate sentences. Average sentences were believed to vary between different jurisdictions, and even among judges within the same jurisdiction. Even if the sentences pronounced by judges were the same, decisions made by the parole board could mean that people with the same sentence might serve different amounts of time. Not only did this apparent inequity worry people on philosophical grounds, some felt that it increased unrest among inmates who were aware of these disparities. One particular concern was disparity by race and social class, although research results were inconclusive on this point. The Minnesota Sentencing Guidelines Commission's examination of 1978 practices found some variation by race, but concluded that "there did not ... appear to be systematic racial bias in sentencing."¹

At the same time that these concerns surfaced, serious questions were being asked about the effectiveness of rehabilitation programs. Increasingly, the re-

¹ Minnesota Sentencing Guidelines Commission, *Report to the Legislature* (St. Paul, 1980), 5.

search community was beginning to doubt that rehabilitation was possible in most cases.² Coupled with this was a growing belief in the validity of retribution—punishment—as the primary purpose of incarceration and correctional control.

Legislative proposals for determinate sentencing in Minnesota came out of this environment. The first bill was introduced in 1975, and after much legislative discussion and several other attempts, the law establishing the sentencing guidelines was passed into law in 1978.³

The law established a nine member commission with membership drawn from the judiciary, prosecutors and defense attorneys, the Commissioner of Corrections, and citizen representatives. The membership was increased to 11 in 1982, with the addition of law enforcement and probation officer representatives. The commission was to establish:

- (1) The circumstances under which imprisonment of an offender is proper; and
- (2) A presumptive, fixed sentence for offenders for whom imprisonment is proper, based on each appropriate combination of reasonable offense and offender characteristics.

In establishing the sentencing guidelines, the 1978 Legislature also advised the commission to:

take into substantial consideration current sentencing and release practices and correctional resources, including but not limited to the capacities of local and state correctional facilities.⁴

In addition to this, the law made some basic changes to the criminal justice system that set the stage for guidelines-based justice—including the elimination of parole, provision for good time, and appellate review of sentences.

There were some who felt that determinate sentencing was a prescription for crowded prisons. They argued that elimination of parole would make this worse. As an early evaluation of the guidelines put it, "...critics of determinate sentencing argue that the lengths of sentences will increase, and without the 'release valve' of parole, this will lead to overcrowded correctional facilities."⁵

But parole is incompatible with a determinate system, and many believed it helped to perpetuate unacceptable disparities in sentencing. Once the guidelines went into effect, prisoners were still allowed to earn time off for good behavior. This allowed corrections personnel some control over the inmates, without reintroducing the disparities of the past.

² See Chapter 5 for a discussion of this trend and its current re-examination.

³ *Minn. Laws* (1978) Chapt. 723.

⁴ *Minn. Laws* (1978) Ch. 723, Section 9, Subd. 5 (1) & (2).

⁵ Lynne Goodstein, "Sentencing Reform and the Correctional System," *Law and Policy Quarterly* 5, no. 4 (October 1983): 481.

A second change involved expanding the appellate review of sentencing decisions. Under the old sentencing system, rarely did the courts hear sentencing appeals (usually only on procedural issues). Some people were disturbed by this failure to hold public officials accountable for such important decisions affecting individual liberty.⁶

Minnesota's sentencing guidelines are called "presumptive" because it is presumed that judges will follow the guidelines. Recognizing that not all cases fit the norm, the guidelines legislation provides that judges may depart for justifiable reasons (see below). Any judicial departures from the guidelines, however, are subject to appellate review. That is, either the offender or the prosecutor may appeal any sentence that does not conform with the guidelines.

Formulating the Guidelines

Guidelines were enacted to fundamentally change sentencing policy.

One of the first decisions the commission had to make was whether the guidelines would primarily codify current sentencing practice, or fundamentally change sentencing policy. Descriptive guidelines (the approach more often taken elsewhere) were designed to reduce disparities by discovering what the average sentence for any particular crime was, and then establishing a guideline sentence at that average sentence. Those who preferred a prescriptive approach argued that this was not feasible. The commission's enabling legislation had fundamentally changed the way the criminal justice system would work in Minnesota. The abolition of parole had forced a change from many of the standard practices of indeterminate sentencing.

Some members also felt that the makeup of the guidelines commission, as set in statute, meant that the Legislature intended that sentencing policy should not only reflect the views of judges. According to the first commission staff director:

...the broadly representative nature of the commission reflected the view that sentencing policy should not be determined solely by judges, but should involve executive, judicial, public, and—through their ability to amend or reject the guidelines—legislative perspectives. The cross-system membership assured that a variety of interests and values would influence guideline development.⁷

After considerable discussion, the commission decided to take the prescriptive approach. A majority of members felt that "while judicial sentencing decisions are a very important factor in establishing sentencing guidelines, they are not the only important factor."⁸

⁶ Norval Morris and Michael Tonry, *Between Prison and Probation* (New York: Oxford University Press, 1990), 21.

⁷ Dale G. Parent, *Structuring Criminal Sentences: The Evolution of Minnesota's Sentencing Guidelines* (Stoneham, Massachusetts: Butterworth Legal Publishers, 1988), 37.

⁸ Minnesota Sentencing Guidelines Commission, *Report to the Legislature* (St. Paul, 1980), 3.

As the commission developed the guidelines, they eventually took the principle of just deserts, or retribution, as the conceptual basis of sentencing policy.

To some extent, [this decision] followed the legislation creating the commission. Although there was no explicit statutory language making punishment the dominant goal, legislators and criminal justice officials had stressed that view.⁹

A further consideration of the commission was prison capacity. The commission interpreted the legislative mandate to consider state and local correctional resources to mean that "the guidelines should produce prison populations that do not exceed the current capacity of state correctional institutions."¹⁰

In the course of guidelines development, the commission collected data on existing sentencing practices and conducted public hearings. On January 1, 1980, they presented the guidelines to the Legislature. The guidelines went into effect on May 1 of that year.

**Guidelines
were designed
to promote
uniformity and
proportionality
in sentencing.**

THE SENTENCING GUIDELINES

The sentencing guidelines govern the sentences given to all convicted felons in the state. The sentence is based on the severity of the offense and the previous criminal history of the defendant. The principles set out in the guidelines state that:

- (1) Sentencing should be neutral with respect to the race, gender, social, or economic status of convicted felons.
- (2) While commitment to the Commissioner of Corrections is the most severe sanction that can follow conviction of a felony, it is not the only significant sanction available to the sentencing judge....
- (3) Because the capacities of state and local correctional facilities are finite, use of incarcerative sanctions should be limited to those convicted of more serious offenses or those who have longer criminal histories. To ensure the appropriate use of finite resources, sanctions used in sentencing convicted felons should be the least restrictive necessary to achieve the purposes of the sentence.
- (4) While the sentencing guidelines are advisory to the sentencing judge, departures from presumptive sentences established in the guidelines should be made only when substantial and compelling reasons exist.¹¹

⁹ *Ibid.*, 37-38.

¹⁰ Minnesota Sentencing Guidelines Commission, *Report to the Legislature* (St. Paul, 1980), 2.

¹¹ Minnesota Sentencing Guidelines, I 1-4.

The guidelines themselves are in the form of a grid, as shown in Figure 3.1. Along the vertical axis of the grid are listed the ten severity levels into which felonies have been classified, along with representative crimes from each level. Virtually all the felony crimes in Minnesota have been ranked by the Sentencing Guidelines Commission at one of the ten levels.¹²

Figure 3.1: Sentencing Guidelines Grid – Presumptive Sentence Lengths in Months

		Criminal History Score						
Severity Level		0	1	2	3	4	5	6 or more
Sale of a simulated controlled substance	I	12*	12*	12*	13	15	17	19 18-20
Theft related crimes (\$2,500 or less) Check forgery (\$200-\$2,500)	II	12*	12*	13	15	17	19	21 20-22
Theft crimes (\$2,500 or less)	III	12*	13	15	17	19 18-20	22 21-23	25 24-26
Nonresidential burglary Theft crimes (over \$2,500)	IV	12*	15	18	21	25 24-26	32 30-34	41 37-45
Residential burglary Simple robbery	V	18	23	27	30 29-31	38 36-40	46 43-49	54 50-58
Criminal sexual conduct 2nd degree (a) & (b)	VI	21	26	30	34 33-35	44 42-46	54 50-58	65 60-70
Aggravated robbery	VII	48 44-52	58 54-62	68 64-72	78 74-82	88 84-92	98 94-102	108 104-112
Criminal sexual conduct, 1st degree Assault, 1st degree	VIII	86 81-91	98 93-103	110 105-115	122 117-127	134 129-139	146 141-151	158 153-163
Murder, 3rd degree Murder, 2nd degree (felony murder)	IX	150 144-156	165 159-171	180 174-186	195 189-201	210 204-216	225 219-231	240 234-246
Murder, 2nd degree (with intent)	X	306 299-313	326 319-333	346 339-353	366 359-373	386 379-393	406 399-413	426 419-433

Note: Italicized numbers within the grid denote the range within which a judge may sentence without the sentence being deemed a departure. An example of an offense classified at each sentencing level is provided.

*One year and one day.

¹² A small number of felonies, judged by the commission to be rarely prosecuted, are not ranked. Murder in the first degree is specifically excluded from the guidelines by the enabling legislation. A list of felony offenses and their severity level is included in Appendix A.

Under the guidelines, sentences depend on the severity of the offense and the known criminal history of the offender.

Criminal history scores run across the top of the grid. The criminal history score (CHS) is determined by the number of previous felony sentences recorded for the defendant. Until 1989, each previously sentenced conviction counted for one point in the CHS. In 1989, the commission weighted criminal history scores. Prior offenses at higher severity levels now carry a greater weight in the sentencing decision. Since 1989, the points have been calculated as follows:

- 1/2 point for convictions at Levels I and II,
- 1 point for convictions at levels III to V,
- 1 1/2 points for levels VI to VIII, and
- 2 points for levels IX and X.

A “custody status” point is added to the CHS if the offender was under some type of community control (such as probation or supervised release) at the time of the offense. Previous misdemeanor and gross misdemeanor convictions add 1/4 point (1/2 point in the case of some gross misdemeanor DWI convictions) up to a total of one point for prior non-felony convictions.¹³

Once the criminal history score has been calculated, the judge finds the cell on the grid where the severity level and the criminal history score intersect, and pronounces the sentence found in that cell. Whether that state prison sentence is carried out depends on where the cell is in relation to the dispositional line.

The *dispositional line* is the heavy black line running roughly diagonally through the grid on page 72. If the cell is below the line, it is presumed that the sentence will be executed—that is, the term will be served in full (with time off for good behavior) in a state prison. If the cell is above the line, the judge must pass a sentence within the range listed, unless there are specific reasons for a more or less severe sentence (see below). These ranges are relatively narrow—they range from around 17 percent (Level VII with 0 CHS) to 3 percent (Level X with 6+ CHS). Minnesota statutes allow variation of 15 percent above and below a guidelines norm, but the guidelines have never contained ranges as wide as 30 percent.

If the cell is above the line, it is presumed that execution of the sentence will be stayed. That is, the judge will pass sentence equal to the number in the cell, but the sentence is then stayed, providing the offender fulfills one or more conditions set by the judge. These conditions can include probation, treatment, intermediate sanctions such as community service or restitution, or up to one year in jail. If the conditions of the stay are violated by the offender, the judge can send him to prison to complete his sentence.

¹³ In calculating the CHS, the points are always rounded down. For example, an offender who had one previous felony conviction at level VI (1 1/2 points), was on probation at the time of the current offense (1 point), and had one prior misdemeanor conviction (1/4 point), would be sentenced with a CHS of 2, even though the elements added up to 2 3/4.

Punishment in proportion to a crime's severity or "just deserts" is the dominant goal of Minnesota's sentencing guidelines.

The placement of the dispositional line is one indicator of the just deserts orientation of the guidelines. In its study of 1978 data, the commission found that the two most significant determinants of a prison sentence (compared to a lesser sanction) were prior criminal history and the severity of the crime. Concern with criminal history reflects, in part, the goal of incapacitation, the concept that prison should be used for those who are most likely to offend again. The dispositional line in a guidelines system more aligned with the goal of incapacitation would be nearly vertical. Even if a serious crime were committed, the offender would not be sent to prison unless his previous history suggested he was likely to commit another crime.

Under a retribution-oriented philosophy, though, there are some crimes that always deserve prison and some that almost never do. The dispositional line in a purely retributational set of guidelines would be horizontal. Once a certain severity level was reached, the presumed sentence would be prison, regardless of criminal history.

The line finally chosen by the commission reflected the dominant purpose of retribution, modified by concern with incapacitation. As the commission reported when it introduced the guidelines in 1980,

The dispositional line finally adopted by the commission is based on a modified just deserts approach. The line indicates that imprisonment is presumptive for any persons convicted of [violent person crimes]....For these offenses, it was the position that the severity of the offenses, by themselves, were sufficient to merit a presumption of imprisonment....The dispositional line also provides a presumption against state imprisonment for all severity Level I offenses.¹⁴

As noted above, judges cannot depart from the presumptive sentence without "substantial and compelling circumstances."¹⁵ For example, a sentence might be aggravated if the victim were particularly vulnerable, or it might be mitigated if the victim was the aggressor in an incident. When judges deviate from the guidelines, they must explain their reasons in writing.

The guidelines specifically prohibit a judge from using some factors as a basis for deviation. These factors are:

- a. Race
- b. Sex
- c. Employment factors, including:
 - (1) occupation or impact of sentence on profession or occupation;
 - (2) employment history;
 - (3) employment at time of offense;
 - (4) employment at time of sentencing.

¹⁴ Minnesota Sentencing Guidelines Commission, *Report to the Legislature* (St. Paul, 1980), 9-10. When originally promulgated, the dispositional line ended at severity Level II. No Level I crime was below the line. In 1981, the line was changed to its present form.

¹⁵ Minnesota Sentencing Guidelines, I-4.

- d. Social factors, including:
 - (1) educational attainment;
 - (2) living arrangements at time of offense or sentencing;
 - (3) length of residence;
 - (4) marital status.
- e. The exercise of constitutional rights by the defendant during the adjudication process.¹⁶

The commission specifically excludes these factors because its policy is that:

sentencing should be neutral with respect to offenders' race, sex, and income levels. Accordingly, the commission has listed several factors which should not be used as reasons for departure from the presumptive sentence because these factors are highly correlated with sex, race, or income levels.¹⁷

To summarize, the major goals of sentencing policy as articulated by the guidelines commission are:

1. **Proportionality.** Sentences are to be proportional to the severity of the offense as determined by the Legislature and ranked by the guidelines commission.
2. **Uniformity.** Guidelines were designed to increase the extent to which like offenses receive a like sentence. The guidelines commission has specifically listed certain factors that are *not* to be considered in sentencing because they were thought to create disparity rather than uniformity in sentencing. As noted, these include race, sex, class, employment history, drug or alcohol abuse, marital or family factors, and other social characteristics of the offender.
3. **Control of Correctional Resource Use.** Guidelines were designed to improve understanding of the connection between criminal sanctions and the need for prison capacity, and to limit the use of state prison, the most costly sentencing alternative. The 1989 Legislature restated this objective to emphasize the rational use rather than the limited use of state prison.

In addition, two other basic goals have been stated:

4. **Truth and Certainty.** Guidelines were designed to improve understanding of the sentence accompanying a conviction for a particular crime. Prior to the guidelines, sentencing was indeterminate—for example, 1-10 years. Release was controlled both by judicial determination at sentencing and the decision of a parole board, based on behavior or cooperation in prison programs.

¹⁶ Minnesota Sentencing Guidelines, II.D.03.

¹⁷ *Ibid.*, II.D.101.

5. **Accountability of Actors in the System.** This goal refers to the fact that departures from the guidelines need to be justified in writing and are subject to appellate review.

Over the years there have been some changes in emphasis among these goals. One clear aspect of uniformity emphasized from the start was that sentencing should be neutral with respect to race, sex, and social class. In 1989, the Legislature de-emphasized control of resource use as a goal and promoted the importance of public safety. The last two goals listed above are treated as secondary in importance to the first three. We will discuss Minnesota sentencing philosophy and the three major goals of the system in greater detail when we examine data measuring how well they have been met.

Minnesota guidelines are presumptive, not voluntary. Judges are expected to pronounce the sentence stated in the grid; if they depart from this sentence, it must be for permitted reasons and be justified in writing. Departures from guidelines' sentences are appealable. As we will later discuss, grounds for departure have been widened somewhat through appellate court decisions since 1980. But Minnesota's system is designed to be quite strict and the guidelines commission has repeatedly asserted that departures from the specified sentences ought to be rare and based on "compelling" factors. The guidelines commentary on departures states:

The purposes of the sentencing guidelines cannot be achieved unless the presumptive sentences are applied with a high degree of regularity. Sentencing disparity cannot be reduced if judges depart from the guidelines frequently. Certainty in sentencing cannot be attained if departure rates are high. Prison population will exceed capacity if departures increase imprisonment rates significantly above past practice.¹⁸

The framers of the guidelines system expected departures to be rare.

The guidelines were developed by having commission members rank crimes and sort them into one of ten severity levels. The commission continues to rank newly-enacted crimes and revisit past decisions. It has recently undertaken a project to develop a better sense of the principles that lie behind the rankings, and to test current rankings against these principles.

In its early history, the commission emphasized the following purpose of the guidelines:

- **Limited state prison capacity should be reserved for repeat and violent offenders. Property offenses were viewed as less serious and even repeat property offenses would not typically result in a prison sentence (although up to a year in county jail, fines, and probation are possibilities for any felony offense).**

As the grid in Figure 3.1 shows, a record of many convictions of a Level I or II offense must be accumulated (in addition to juvenile or misdemeanor convictions) in order to yield a criminal history score of six or more and a presumptive prison sentence. As convictions are now counted, Level I and II felonies

¹⁸ Sentencing Guidelines II.D.01.

count 1/2 point. Conceivably, an offender could be convicted of theft or fraud involving \$2,500 or less on ten occasions and receive, per presumptive policy, no prison. (Again, the great likelihood is that this offender would be sentenced to jail for up to a year or to prison on a revocation of probation before his criminal career got this far.) Crimes against the person are treated much more harshly. Level VII provides a 48-month prison sentence for a first offender of aggravated robbery, second degree criminal sexual conduct, or first degree burglary.

The argument that the guidelines system promotes proportionality and uniformity rests on whether sentences pronounced are in fact proportional to its ranking of crimes, and whether people convicted of the same crime (with the same criminal history) receive the same sentence. Thus, if the system is working, there should be a reasonably low rate of departure from the prescribed sentence, and stepping up each severity level, sentences should get tougher. As we will see, neither of these conditions prevails to the extent hoped for by the architects of the system.

The guidelines grid specifies a prison sentence for offenses below the dispositional line. About 80 percent of felony offenses are above the line, however. Since 1980, the guidelines commission has debated whether or not to establish sentencing guidelines for offenses above the line, but has rejected this idea so far. Above the line, the guidelines specify a prison term in months, but the presumptive sentence is a stay of execution. The offender, as a condition of the stay, is sentenced to jail, probation, or some other locally-administered sentence.

DATA ANALYSIS

We now analyze how well Minnesota has achieved the stated goals of sentencing guidelines in Minnesota. First, we review some basic descriptive information; then we review data on proportionality, uniformity, resource use, and the other goals of Minnesota sentencing policy.

Sentencing guidelines specify whether or not convicted felons with a given criminal history go to state prison or not, and if so, for how long. Table 3.1 shows the number of felony convictions 1978 to 1988 and the rate of imprisonment for felony offenses. The guideline commission has assembled data for 1978 (a pre-guidelines benchmark year) and 1981-88, the post guidelines period for which data are available at this writing. The number of offenders sentenced for felony convictions grew from 4,369 in 1978 to 5,500 in 1981 to 7,572 in 1988. In 1988, 1,586 or 20.9 percent of these convictions resulted in a state prison sentence. The imprisonment rate has varied little over this period; 20.4 percent of felony convictions resulted in prison in 1978, and the rate is 20.9 percent in 1988. There was a significant drop in the prison rate in the first two years after guidelines went into effect; but since 1983, the imprisonment rate has remained about steady.

Table 3.1: Imprisonment Rates, 1978-88

<u>Year</u>	<u>Percent</u>	<u>Number</u>	<u>Total Felony Convictions</u>
1978	20.4%	891	4,369
1981	15.0	825	5,500
1982	18.6	1,128	6,066
1983	20.5	1,140	5,562
1984	19.6	1,134	5,791
1985	19.0	1,186	6,236
1986	19.9	1,198	6,032
1987	21.6	1,443	6,674
1988	20.9	1,586	7,572

Source: Minnesota Sentencing Guidelines Commission.

The number of felony convictions increased sharply between 1978 and 1988, but the imprisonment rate has remained about the same.

Use of Prison under Sentencing Guidelines

In this section, we ask:

- Is state prison used for serious, repeat offenders compared to the pre-guidelines era?

Table 3.2 compares Level I and II crimes (mainly property crimes) by offenders with a significant prior record (approximately three to five prior felony convictions) with Level VII to X crimes (serious person offenses) by offenders with either no record or one conviction.¹⁹ See Appendix A for a list of crimes classified by severity level. The guidelines were designed to increase the use of prison for Level VII to X crimes. These crimes include offenses such as second degree murder, manslaughter, rape, aggravated robbery, and kidnapping. Level VII is the lowest level carrying a presumptive prison term upon conviction for a first offense.

As Table 3.2 shows, there was a big shift between 1978 and 1981, the first guidelines year, in the imprisonment rate at both these levels. In 1978, 53.8 percent of Level I and II offenders (with a history score of 3 to 5 points) went to prison. In 1981, this percentage dropped sharply to 15 percent and subsequently it has risen to about 24 percent. On the other hand, 44.8 percent of serious person offenders (Level VII to X) went to prison in 1978 (most of the rest presumably served time in jail). This number rose to 78 percent in 1981 but has fallen to 58 percent in 1988.

- These numbers suggest that the guidelines at first had a sharp, measurable impact on sentencing in the intended direction. They succeeded at first in restricting the use of prison for violent, repeat offenders. But this effect has eroded somewhat over the years.

¹⁹ During the period covered in Table 3.2, a prior felony conviction counted as one criminal history score point.

The guidelines' initial effect was to reduce the imprisonment of property offenders and increase the imprisonment of repeat person offenders.

Table 3.2: Imprisonment Rate by Area of the Grid, 1978-88

Year	Severity Levels I-II Criminal History Scores 3-5		Severity Levels VII-IX Criminal History Scores 0-1	
	Percent	Number	Percent	Number
1978	53.8%	64	44.8%	104
1981	15.0	28	78.4	174
1982	15.5	39	78.2	187
1983	21.8	57	59.9	130
1984	20.8	54	59.2	161
1985	21.7	70	57.5	157
1986	21.6	72	63.4	161
1987	24.3	91	66.1	181
1988	24.2	95	58.0	177

Source: Minnesota Sentencing Guidelines Commission.

This point is also clear from other data produced annually by the guidelines commission staff. Table 3.3 presents data by three severity level groups. At Levels I-IV, 15.2 percent of offenders were imprisoned in 1978. This dropped to 8.1 percent in 1981, but increased to 15 percent by 1988. At Level VII to X the imprisonment rate was 61.1 percent in 1978. This jumped to 85.9 percent in 1981, the first guidelines year, but fell to 73.5 percent by 1988. Thus,

- The guidelines not only resulted in a clear change in sentencing practice, but at first a less harsh set of sanctions on the whole.

Overall rates of imprisonment decreased and the state prison population declined in the early 1980s as Figure 1.1 on page 8 showed. Adult commitments to state prison declined from 1,045 in 1979 to 849 in 1980 and 931 in 1981. In

Table 3.3: Imprisonment Rate by Severity Level Groups, 1978-88

Year	Severity Levels I-IV		Severity Levels V-VI		Severity Levels VII-X	
	Percent	Number	Percent	Number	Percent	Number
1978	15.2%	518	25.8%	157	61.1%	217
1981	8.1	363	22.7	146	85.9	317
1982	11.5	563	25.3	186	87.8	382
1983	14.6	643	26.3	199	76.5	300
1984	13.0	547	22.6	254	72.5	333
1985	13.0	588	20.2	252	72.5	346
1986	14.0	629	23.2	258	74.8	311
1987	16.1	783	22.7	308	77.4	352
1988	15.0	812	22.5	363	73.5	411

Source: Minnesota Sentencing Guidelines Commission.

the mid-1980s, a survey showed that judges, defense attorneys, and prosecutors overwhelmingly agreed that the effect of the guidelines system was greater leniency in treatment of offenders. Ninety-two percent thought the guidelines favored defendants.²⁰ This view was widely shared, even though these groups held sharply different views on the benefits of the guidelines and other aspects of sentencing policy.

The guidelines emphasize the goal of retribution or punishment, also called "just deserts." This goal does not exclude other sentencing goals, but it does limit the degree to which the goals of rehabilitation, incapacitation, or deterrence can simultaneously be achieved. The guidelines specify prison sentences for about 20 percent of felony convictions where punishment makes the most sense as a dominant sentencing philosophy.

Punishment fits least well for first-time offenders and others who are not career offenders. In these cases, the preference of many judges is to reform the offender, set an example, require restitution or reparations, but not to impose harsh punishment for its own sake. Table 3.4 presents data from a national opinion survey on the purposes of sentencing. The data suggest that the public endorses a variety of utilitarian goals (deterrence, boundary setting, rehabilitation, or incapacitation) over pure retribution. Even rehabilitation is identified by 71.5 percent of respondents as a "very important" purpose of sentencing. (This figure is an average of the responses given for a variety of offense types involving person and property crime and varying levels of harm to victims.) We attach no particular significance to the levels of importance attached to various goals, but make only the point that the public endorses a variety of purposes, not any one to the exclusion of others.

Utilitarian goals such as deterrence, rehabilitation, and incapacitation, never absent in any case, are very important for low severity offenses and noncareer criminals (the upper left part of the guidelines grid on page 72). In any case, the 80 percent of felony convictions that fall above the line are still sentenced in an indeterminate fashion that remains unchanged by the guidelines, except that state policy limits jail incarceration to 12 months.

In principle, the guidelines structure can be as harsh or lenient as policy makers want. Since 1981, when guidelines were established, criminal sanctions have been considerably toughened. Table 3.5 shows changes to the guidelines along with a simplified guidelines grid that shows midpoints but not the permitted sentencing range within each cell.

Tables 3.5 and 3.6 show that guidelines sanctions were materially toughened between 1980 and 1989 in Level VII through Level X (these offenses carry prison terms for a first offense) and reduced somewhat for repeat lower level felonies. Table 3.5 shows sentences in months; Table 3.6 shows net changes to sentences 1980-89. Penalties were approximately doubled in many cells. For example, at Level VII, with no prior convictions, the sentence is now 48 months, as Table 3.5 shows, having been increased by 24 months, as Table 3.6 shows. In making the changes, the effect of criminal history on presumptive

20 Terance D. Miethe and Charles A. Moore, *Evaluation of Minnesota's Felony Sentencing Guidelines*, National Institute of Justice (May 1987) 91.

Table 3.4: Attitudes Toward the Purpose of Punishment for Any Offense, United States, 1987^a

Question: "When you chose the sentence for this crime, how important was it for you . . . ? Was it very important, somewhat important, or not at all important?"

<u>Purpose^b</u>	<u>Total</u>	<u>Very Important</u>	<u>Somewhat Important</u>	<u>Not At All Important</u>	<u>Don't Know</u>
To scare the offender so he/she will not do it again (special deterrence)	100%	79.2%	11.6%	7.7%	1.6%
To make a public statement that this kind of behavior will not be tolerated (boundary setting)	100	77.5	13.1	8.1	1.3
To treat the offender, to change whatever in him/her made him/her do the crime (rehabilitation)	100	71.5	13.0	13.3	2.0
To give the offender what he/she deserves (desert)	100	69.8	19.5	9.0	1.6
To scare off other people who might do the same thing (general deterrence)	100	69.1	18.3	11.3	1.2
To lock up the offender so while he/she is in prison he/she won't be able to commit more crimes (incapacitation)	100	58.2	13.3	23.4	5.1
To respond as my religion or morality requires (morality)	100	48.3	21.2	28.2	2.3
To get even with the offender by making him/her suffer for what he/she has done (retribution)	100	25.0	21.3	52.4	1.2

Note: These data represent the purpose of punishment given by each respondent for all offense types. N = 1,920.

Source: Table adapted by the 1988 Sourcebook of Criminal Justice from Joseph E. Jacoby and Christopher S. Dunn, "National Survey on Punishment and Criminal Offenses."

^aPercents may not add to 100 due to rounding.

^bLabels used by the Sourcebook to describe each purpose of punishment are represented in parentheses next to the corresponding question asked of respondents.

sentences was reduced, so that penalties do not rise as sharply with criminal history score as they used to.

In summary, the immediate effects of guidelines were to raise the imprisonment rate for violent crimes; reduce the use of prison for repeat property crimes; and, in general, lower criminal sanctions and reduce the level of commitments to state prison. By the early 1980s, however, penalties began to be toughened. In 1989, they were materially strengthened.

Table 3.5: Guideline Sentences Effective August 1989 to Present

Severity Level	Criminal History Score						
	0	1	2	3	4	5	6
I	12	12	12	13	15	17	19
II	12	12	13	15	17	19	21
III	12	13	15	17	19	22	25
IV	12	15	18	21	25	32	41
V	18	23	27	30	38	46	54
VI	21	26	30	34	44	54	65
VII	48	58	68	78	88	98	108
VIII	86	98	110	122	134	146	158
IX	150	165	180	195	210	225	240
X	306	326	346	366	386	406	426

Note: Sentence in months. Shaded area represents presumptive execution of prison sentences.

Guidelines' sentences were sharply increased in 1989. Penalties were doubled in many cells of the guidelines' grid.

Table 3.6: Net Changes in Presumptive Sentences, 1980-89 (in months)

Severity Level	Criminal History Score						
	0	1	2	3	4	5	6
I	0	0	0	-2	-3	-4	-5
II	0	0	-1	-2	-3	-4	-6
III	0	0	-1	-2	-3	-5	-7
IV	0	0	0	0	0	0	0
V	0	0	0	0	0	0	0
VI	0	0	0	0	0	0	0
VII	24	26	27	29	23	17	11
VIII	43	44	45	46	39	33	26
IX	53	46	53	46	34	20	10
X	190	186	184	163	143	122	102

Note: Shaded area represents presumptive execution of prison sentences.

Proportionality

To the extent that the guidelines are proportional, Level II crimes should carry a higher imprisonment rate and longer prison terms than Level I. Each higher severity level should carry tougher penalties in practice, not just in theory. Table 3.7 shows that while this is generally true, there are "reversals" in the imprisonment rate across severity levels of the guidelines grid. For example, in 1988, 14.8 percent of Level I convictions resulted in prison terms, but only 9.8 percent of Level II and 14.8 of Level III offenses. By this measure, therefore, there is *reverse proportionality* in this area of the grid. Other

Table 3.7: Percent of Felony Offenders with Pronounced Prison Sentences by Severity Level, 1978-88

Severity Level	1978	1981	1982	1983	1984	1985	1986	1987	1988
I	11.6%	3.5%	6.3%	9.2%	9.7%	11.6%	12.1%	15.9%	14.8%
II	12.6	4.7	6.6	9.5	6.1	7.4	8.3	9.5	9.8
III	16.9	9.6	12.5	15.7	16.3	16.1	15.8	17.9	14.8
IV	18.2	11.7	16.0	18.7	16.7	15.6	17.9	19.4	19.7
V	32.8	17.6	22.2	31.4	23.6	20.9	26.5	25.5	24.4
VI	22.3	25.1	26.7	24.2	21.9	19.7	20.2	20.6	21.2
VII	60.1	84.5	86.5	83.3	74.8	74.4	74.8	83.0	72.1
VIII	55.8	87.0	87.1	59.0	65.4	64.6	69.9	65.4	70.8
IX	67.7	92.9	100.0	100.0	100.0	100.0	100.0	100.0	100.0
X	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Average	20.4	15.0	18.6	20.5	19.6	19.0	19.9	21.6	20.9

Source: Minnesota Sentencing Guidelines Commission.

Note: Italics indicate "reverse proportionality."

reversals occur in 1988 between Level V and VI and Level VII and VIII, as Table 3.7 shows.

The guidelines commission argues that these data are misleading for several reasons. During the time period covered by Table 3.7, unauthorized use of a motor vehicle was classified at Level I, and was the most common Level I offense. While this crime was conceived as "joyriding" rather than car theft, and ranked accordingly by the commission, judges were treating it as car theft and sentencing offenders more severely. In 1989 a comparable offense was classified at Level III. The guidelines commission also points out that some prison sentences at Levels I and II represent requests by offenders to serve their sentences in prison either because they prefer prison or because they are going to prison anyway on another charge. An offender might prefer a one-year prison term to a one-year jail term because of better prison programs and facilities, a more favorable "good time" policy, and because a jail term can be accompanied by additional conditions upon release.

Nevertheless, the guidelines have not achieved complete proportionality. In fact, if cases involving unauthorized motor vehicle use and requests for prison are eliminated, reversals in proportionality still exist between Level I and Level II, Level V and Level VI and Level VII and Level VIII. But it would be incorrect in any case to remove these cases from pre-1989 data. As we discuss later, if judges are not sentencing particular offenses in a way that is consistent with the guidelines, either the classification of the offense should be changed, or the guidelines commission should communicate its reasoning more effectively to the trial court.

Thus, there are important exceptions to proportionality in sentencing. In 1981 and 1982, there were no such reversals; each higher severity level carried

On the whole, sentences are proportional to severity of the offense; however, there are exceptions.

a higher imprisonment rate. There were reversals in 1978, a benchmark pre-guidelines year, between Levels V and VI and VII and VIII. While the guidelines "straightened" this out temporarily in 1981 and 1982, this accomplishment was short-lived.

The guidelines structure with its sharp dispositional line and narrow sentencing limits is based on the premise that there are real severity differences between levels. For example, in 1988, a Level VII offense carried a presumptive prison sentence of 24 months, Level VIII carried 43 months. These sentences were not just nominal penalties; they were really supposed to be carried out. But in 1988, the imprisonment rate at Level VIII was a little lower than Level VII—70.8 percent compared to 72.1. And in 1987, the rate was a lot lower, 83 compared to 65.4 percent. The guidelines commission points out that the problem in this area of the grid is due to lack of experience and consensus on how to sentence cases of intra-familial sexual abuse.

Proportionality in Sentence Length

Table 3.8 presents data on the average length of prison terms. Looking at the length of prison sentences, the numbers are proportional to severity level with a few minor exceptions; that is, higher severity levels, on average, are characterized by longer average prison sentences. But the difference between some levels is less than a month while between others it is much larger.

Table 3.9 presents data on offenders who are not sentenced to prison and shows if they receive jail time in proportion to the severity level of the offense they committed. Table 3.9 shows that there were some reversals of proportionality between Level I and II between 1984 and 1988, and between Level V and VI through 1983, but not subsequently. As we have seen in other data, the difference in sentencing between levels is sometimes small, sometimes large.

The difference in imprisonment rates and length of prison and jail time can reflect the criminal history of offenders as well as the severity of the crime and the extent to which judges and the guidelines commission view severity in a comparable way. Although the analysis is not shown here, when criminal history is statistically controlled, there are still reversals of proportionality worth worrying about. Level I offenders with the same score as Level II offenders receive prison less often, for example. These reversals still occur between Levels I and II, V and VI, and VII and VIII, controlling for criminal history and removing requests for prison, commitments due to mandatory minimum sentences, and unauthorized use of motor vehicle offenses. Removing these offenses, however, tends to diminish the differences appearing in Tables 3.7, 3.8, and 3.9.

These findings suggest either that specific crimes are ranked incorrectly in terms of severity, or if consistent with the commission's ranking principles, then the commission's view differs from the collective decisions of judges around the state.

Table 3.8: Average Length of Pronounced Prison Sentences for Felonies (in months) by Year and Level of Severity

	1981		1982		1983		1984		1985		1986		1987		1988	
Level	Sentence Number Length Sentenced	Sentence Number Length Sentenced	Sentence Number Length Sentenced	Sentence Number Length Sentenced	Sentence Number Length Sentenced	Sentence Number Length Sentenced	Sentence Number Length Sentenced	Sentence Number Length Sentenced	Sentence Number Length Sentenced	Sentence Number Length Sentenced	Sentence Number Length Sentenced	Sentence Number Length Sentenced	Sentence Number Length Sentenced	Sentence Number Length Sentenced	Sentence Number Length Sentenced	Sentence Number Length Sentenced
I	16.86	34	18.23	58	19.70	73	16.92	89	16.29	117	15.77	125	16.47	151	17.00	138
II	20.55	40	22.17	68	20.92	77	18.27	51	19.18	72	18.09	83	19.01	102	18.30	131
III	22.72	96	21.13	145	20.64	172	18.99	165	19.12	170	19.31	166	18.13	239	19.95	219
IV	24.81	194	27.01	288	26.11	321	27.07	242	27.70	229	27.48	255	28.04	291	28.01	324
V	30.07	36	32.38	49	32.37	69	33.74	115	36.81	119	35.88	138	36.08	151	35.72	163
VI	34.61	110	37.85	137	40.26	130	35.78	139	35.97	133	36.83	120	36.05	157	36.25	200
VII	40.80	212	52.63	238	49.36	184	45.10	181	48.72	166	45.78	181	48.27	186	49.17	238
VIII	79.99	80	76.12	108	62.38	79	68.89	123	71.49	135	68.63	102	72.22	123	83.07	136
IX	108.19	13	145.67	6	97.00	1	119.83	12	131.93	29	137.92	13	113.43	21	134.58	18
X	162.96	12	145.03	30	142.11	36	119.65	17	120.41	16	149.33	15	186.30	22	193.58	19
Average Length of Sen- tence	38.32		40.95		36.49		36.23		38.4		35.37		36.29		38.06	
Total Number Sentenced	827		1,127		1,142		1,134		1,186		1,198		1,443		1,586	

Source: Guidelines Commission.

Table 3.9: Average Length of Pronounced Jail Sentences for Felonies (in days), by Year and Level of Severity

Severity Level	1978	1981	1982	1983	1984	1985	1986	1987	1988
I	170.17	140.16	121.18	101.21	92.45	85.01	80.36	95.11	76.65
II	138.30	135.14	121.10	110.44	87.88	84.21	79.71	80.23	76.63
III	196.31	148.98	119.30	104.13	94.94	89.02	92.11	85.35	85.11
IV	196.98	165.64	144.38	127.94	113.96	116.83	109.77	109.10	100.18
V	237.76	248.99	217.09	199.16	159.28	158.62	142.88	152.83	140.56
VI	236.67	223.33	202.23	195.52	207.09	181.38	186.09	179.49	164.47
VII	283.40	301.96	305.52	264.61	260.43	267.40	274.22	243.22	242.01
VIII	279.53	288.33	220.46	276.88	325.09	293.20	228.11	298.37	288.74
IX	365.00	365.00							
Average	196.94	164.31	143.66	132.12	126.04	120.18	112.63	116.04	107.94

Source: Guidelines Commission.

We observed some of the commission's discussion of principles underlying the ranking of crimes, and we asked commission representatives about the apparent anomalies in the severity of punishment by level. Commission representatives cited treatment of particular crimes, such as criminal sexual conduct or second-degree assault, in explaining the reverse proportionality between Levels V and VI and VII and VIII. The commission chair does not feel the commission should automatically change the ranking of offenses based on judges' sentencing behavior, but the commission is now discussing the principles on which rankings ought to be based, and is prepared to modify rankings as a result of this analysis.

We think the sentencing decisions of judges ought to be carefully weighed. Presumably, judges have moved away from sentences prescribed in the guidelines because the circumstances of the crime are not reflected in the guidelines. Prescribed sentences are based on a concept of "the typical crime," but in the real world, the circumstances of offenses and offenders are complex and varied.

The commission's discussion of principles, however, is very useful. The commission is considering factors such as the type of harm, level of harm, and vulnerability of the victim. But in the analysis we are familiar with, none of it finalized yet, factors like these are weighted and combined to yield severity estimates that range widely. In our view, the collective sentencing decisions of judges should ultimately influence the guidelines. When they result in persistent reversals of proportionality, crimes should probably be reclassified, a study undertaken to provide an explanation of why the situation exists, or the guidelines should be modified. Reverse proportionality tends to contradict the guidelines' goals.

Uniformity

A second principal goal of the sentencing guidelines is to achieve similar sentencing of people who commit offenses ranked at the same severity level. In operational terms, this means that departures from sentences specified in the guidelines ought to be minimal, and departures ought to be made for reasons having to do with the crime rather than the offender. Also, sentencing and the incidence and direction of departures should be neutral with respect to race, gender, or social class.²¹

We now turn to an examination of how judges depart from the guidelines. “*Dispositional departures*” refers to the decision to sentence an offender to state prison, and “*durational departures*” refers to the length of the prison term. Table 3.10 presents dispositional departure rates. An upward (aggravated) dispositional departure involves imprisonment where the presumptive guidelines sentence is a stay of imprisonment. A downward (mitigated) departure represents no prison where the guidelines call for prison.

Table 3.10: Dispositional Departure Rate, 1981-88

Year	Total Number of Cases	Total Dispositional Departures		Upward		Downward	
		Percent	Number	Percent	Number	Percent	Number
1981	5,500	6.2%	339	3.1%	170	3.1	169
1982	6,066	7.0	423	3.4	205	3.6	218
1983	5,562	8.9	494	4.5	250	4.4	244
1984	5,792	10.2	592	4.0	229	6.3	363
1985	6,236	10.8	675	3.4	211	7.4	464
1986	6,032	10.4	629	4.1	248	6.3	381
1987	6,674	10.7	717	4.5	297	6.3	420
1988	7,572	10.4	788	3.5	267	6.9	521

Dispositional Departures

The overall dispositional departure rate was around 10 percent in 1988, as Table 3.10 shows. The overall rate has changed little in recent years, but is up from 6.2 percent in 1981. About 6.9 percent of 1988 departures were downward and 3.5 percent were upward in severity. There have been more downward than upward departures in recent years.

The overall rate of dispositional departures seems well within acceptable limits. But most sentencing decisions do not really put the guidelines’ imprisonment prescriptions to a test. There is almost no chance of imprisonment for first-offense shoplifting. At the other extreme, there is almost no prospect for avoiding prison by a violent, repeat offender.

²¹ See Guidelines Section II D for official policy on departures.

In some areas of the grid, the departure rate is higher than the framers of the Guidelines Commission anticipated.

Dispositional departures, therefore, need to be examined within areas of the sentencing grid where either an executed prison sentence or a stay of execution is a realistic possibility. Table 3.11 presents dispositional departures within the grid. Table 3.11 shows dispositional departure rates of zero or close to it in both the upper left and lower right areas of the grid. Below the line, a departure represents a downward (mitigated) departure (since imprisonment is the presumptive sentence in this area); above the line, most departures are upward (aggravated).²² Also, each cell of Table 3.11 contains the number of sentenced cases in 1988.

While the departure rate is above zero in all but the lower right part of the grid (repeat serious offenders), it is highest in cells adjacent to or one cell removed from the dispositional line. In fact, the departure rate is 53 percent at Level VII with no criminal history (criminal history score of zero) and typically above 20 percent along the dispositional line.

The fact that dispositional departures are high around the line is, in part, a reflection of the variability of offenses and offenders. Negligent vehicular homicide, for example, is a crime recently ranked at Level VII. It now carries a presumed four-year prison term for offenders with no prior record. Many cases at Level VII do not strike trial court judges as meriting such a punishment. One recent case involved the negligent, but accidental, death of a child caused by his mother. If the high departure rates around the dispositional line were just a matter of reclassifying a few crimes, that would be the solution. But we think high departure rates may reflect the basic variation that occurs in the circumstances surrounding almost any specific offense, and the need at sentencing to vary the punishment accordingly. The sharp line separating two adjacent cells, one carrying a presumptive four-year prison term (at Level VII) and the next carrying no prison term (Level VI, up to three criminal history points) is an illustration of the problem.²³

Rigid or mechanistic implementation of the sentences prescribed by the guidelines grid requires the following assumptions:

- Severity level assignments are valid;
- Offenses similarly classified are similar;
- Criminal history points are accurately computed and reflect the same degree of moral culpability and likelihood of recidivism.

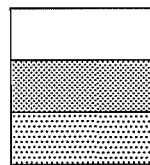
None of these assumptions is well supported by our analysis and review of the literature. One problem not yet mentioned is that criminal history data are often unreliable according to the Department of Corrections, yet the guidelines require accurate data. In the previous section, we saw reversals of proportionality and widely different increments in sentencing between different levels. Also, as we will see later, criminal history scores are often the product of plea negotiations rather than objectively-measured criminal behavior.

²² In a few cases involving mandatory minimum sentences, departures can be downward.

²³ Morris and Tonry, *Between Prison and Probation*, make a similar recommendation for similar reasons.

Table 3.11: Dispositional Departure Rates, 1988

Severity Level		Criminal History Score						
		0	1	2	3	4	5	6
I	Number of Cases	425	129	115	76	68	39	83
	Departure Rate	0.94%	0.78%	5.22%	19.74%	33.82%	35.90%	9.64%
II	Number of Cases	713	196	136	87	75	47	87
	Departure Rate	0.00%	2.55%	8.0%	17.24%	21.33%	25.53%	17.24%
III	Number of Cases	829	176	150	96	81	61	89
	Departure Rate	0.72%	1.14%	4.67%	17.71%	25.93%	18.03%	14.61%
IV	Number of Cases	788	224	175	170	108	58	121
	Departure Rate	2.79%	4.46%	9.71%	22.94%	24.07%	10.35%	9.09%
V	Number of Cases	283	114	97	54	51	33	35
	Departure Rate	2.12%	6.14%	10.31%	29.63%	23.53%	9.09%	8.57%
VI	Number of Cases	572	128	110	49	34	20	31
	Departure Rate	23.60%	32.81%	30.00%	32.65%	11.77%	5.00%	22.58%
VII	Number of Cases	124	45	52	41	18	17	33
	Departure Rate	53.23%	22.22%	19.23%	7.32%	5.56%	11.77%	0.00%
VIII	Number of Cases	92	31	16	16	17	9	11
	Departure Rate	50.00%	19.36%	6.25%	12.50%	5.88%	0.00%	0.00%
IX	Number of Cases	12	1	3	0	0	1	1
	Departure Rate	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
X	Number of Cases	11	3	3	0	1	0	1
	Departure Rate	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%



Presumptive Stay

Presumptive Imprisonment

"Gray Area"—Greater than 20% Departure

Source: Sentencing Guidelines Commission data.

Durational Departures

About 21 percent of sentences depart from guidelines' recommendations for length of sentence.

The measurement of durational departures is difficult to define for stayed sentences (sentences that do not include a term in state prison), although it can matter if the stay is later revoked and the offender is sent to prison. We will not further analyze data on total durational departures, except to cite the fact that 556 of 7,572 felonies in 1988 received a durational departure—of which 360 were downward departures (4.8 percent) and 196 were upward (2.6 percent).

About twice as many departures reduce sentence length as increase it.

Table 3.12 presents durational departure statistics for executed prison sentences. Again, these are only those sentences where time is served in state prison. In 1988 the durational departure rate was 21.2 percent; and as Table 3.12 shows, this rate has not varied much during the time the guidelines have been in effect. There are nearly twice as many downward departures as upward departures each year. In 1988, 13.9 percent were downward, and 7.4 percent were upward.

Table 3.12: Durational Departures for Executed Sentences, 1981-88

Year	Total Number of Cases	Total Durational Departures		Upward		Downward	
		Percent	Number	Percent	Number	Percent	Number
1981	827	23.6%	195	7.9%	65	15.7%	130
1982	1,127	20.4	229	6.6	74	13.8	155
1983	1,142	22.9	261	6.0	68	16.9	193
1984	1,134	21.7	246	8.7	99	13.0	147
1985	1,186	19.4	230	5.2	62	14.2	168
1986	1,198	19.1	229	5.2	62	14.0	168
1987	1,443	20.8	300	7.1	102	13.7	198
1988	1,586	21.2	337	7.4	117	13.9	220

This is the same pattern as we saw in the case of dispositional departures. There is a downward tendency in judges' sentencing practices. If there were not, we would have observed an equal likelihood of departures going either way.

The greater use of downward departures suggests that while sentencing policy favors longer sentences, the inclination of judges is toward mitigating those sentences. Overall, we conclude that a durational departure rate of 20 percent is understandable given the narrow permissible range allowed by the guidelines. These narrow ranges require a fairly high incidence of dispositional and durational departure.

Race, Gender, Region

One of the primary reasons for a sharp (prison-no prison) dispositional line and narrow sentencing ranges was the view that pre-guidelines sentencing policy permitted intolerable disparities by race, region, and social or economic characteristics. This section will review guidelines monitoring data on these points, along with information from other sources.

Table 3.13 presents durational departure rates by race and sex for executed prison sentences for 1988. The durational departure rates show little meaningful difference in level or direction by race or sex. Table 3.14 presents dispositional departure rates by race and sex. Again, we do not see noteworthy

There is little evidence of systematic sentencing disparities by race or gender.

Table 3.13: Durational Departures for Executed Sentences by Race and Gender, 1988

	Total Number of Cases	Total Durational Departures		Upward		Downward	
		Percent	Number	Percent	Number	Percent	Number
White	1,005	20.3%	204	6.6%	66	13.7%	138
Black	418	24.2	101	10.0	42	14.1	59
American Indian	112	16.1	18	3.6	4	12.5	14
Other	51	27.5	14	9.8	5	17.6	9
Male	1,496	20.8	311	7.4	111	13.4	200
Female	90	28.8	26	6.7	6	22.2	20

Table 3.14: Dispositional Departure Rates by Race and Gender, 1988

	Total Number of Cases	Total Dispositional Departures		Upward		Downward	
		Percent	Number	Percent	Number	Percent	Number
White	5,483	9.3%	510	3.1%	168	6.2%	342
Black	1,437	12.9	186	4.8	69	8.1	117
American Indian	397	15.1	60	6.0	24	9.1	36
Other	255	12.5	32	2.4	6	10.2	26
Male	6,358	11.1	706	3.6	232	7.5	474
Female	1,214	6.8	82	2.9	35	3.9	47

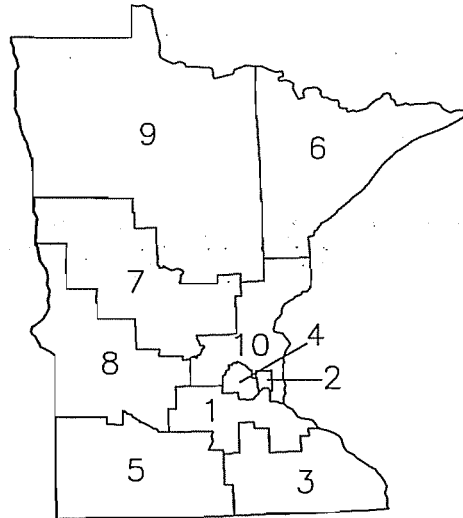
variation in the level or direction of departures. Downward departures exceed upward departures for both women and men.

We looked at commission data on dispositional departure rates by judicial district. These data are presented in Table 3.15. To the extent that guidelines are promoting uniformity, departure rates should be the same across the state. The numbers suggest that departure rates do not, in fact, vary much by judicial district. District 4 (Hennepin County), however, has a somewhat higher total departure rate and a higher downward departure rate than other districts.

Table 3.15: Dispositional Departure Rate by Judicial District, 1988

There is some variation in departure rates across the state.

District	Total Number of Cases	Total Dispositional Departures		Upward		Downward	
		Percent	Number	Percent	Number	Percent	Number
1	624	9.3%	58	1.9%	12	7.4%	46
2	1,133	7.9	90	3.4	39	4.5	51
3	452	10.2	46	2.2	10	8.0	36
4	2,213	14.4	319	4.0	88	10.4	231
5	314	6.1	19	3.5	11	2.5	8
6	424	9.7	41	4.2	18	5.4	23
7	713	8.3	59	3.1	22	5.2	37
8	141	10.6	15	2.1	3	8.5	12
9	605	10.9	66	7.3	44	3.6	22
10	953	7.9	75	2.1	20	5.8	55



Plea Bargaining and Case Law Developments

Analysts of sentencing policy have noted the tendency for sentencing reforms to be circumvented through actions taken elsewhere in the system, beyond the regular control of state sentencing policy.²⁴ Prescriptive sentencing guidelines with narrow permissible ranges and restricted grounds for departures cannot work if other actors in the criminal justice system are successful in circumventing them when they choose to. Plea bargaining has always been an important instrument for obtaining convictions, notwithstanding the uneasiness with which the practice is viewed from time to time. About 95 percent of felony convictions are obtained through guilty pleas rather than convictions at trial. The two questions we raise here are:

²⁴ See Miethe and Moore, *Minnesota's Felony Sentencing Guidelines*, for an extensive analysis of this issue.

- **Has the implementation of sentencing guidelines been accompanied by an increase in plea bargaining? In other words, has plea bargaining eroded the effectiveness of Minnesota's sentencing guidelines?**
- **Has case law established through appellate review of sentences under the guidelines eroded the intended effect of the guidelines?**

The short answer to these questions appears to be yes. Case law has eroded the efficacy of guidelines by allowing the use of offender characteristics and amenability to probation as legitimate bases for appeals. And plea bargaining has also become more frequent, abetted by a court decision allowing criminal history scores to include multiple counts relating to the offense for which sentencing is being pronounced.²⁵

The guidelines commission has expressed the view that plea bargaining has increased, both in writing and in discussions with us. In their August 1988 report on sentencing practices for serious person offenses, the commission concluded:

Prosecutorial discretion has been greatly enhanced under the sentencing guidelines. The prosecutor has direct control over the presumptive sentence in that the severity level of the offense is dependent on the level of the conviction pursued by the prosecutor.²⁶

The Sentencing Guidelines Commission does not regularly monitor plea bargaining, but the 1988 study cited above presented some data on this issue. The data showed an increase in charge reductions between 1978, a pre-guidelines year, and 1987, the latest year for which data were presented for criminal sexual conduct (Level VII) and first degree assault (Level VIII). The 1987 levels were down, however, from 1984. No completely satisfactory explanation was offered for these numbers.

Plea bargaining is a concept that covers diverse practices, not all of which are inconsistent with the sentencing policy embedded in the guidelines. Charge reductions or dismissals because of inability to develop a credible case are not inconsistent. Charging multiple felony counts in order to provide maximum bargaining leverage can thwart the purpose of guidelines, however, since guidelines-based sentencing assumes the offense committed is reflected by the conviction obtained. Data reviewed here, along with data on sentencing departures reviewed earlier, suggest that judges and prosecutors have responded over time in ways that work around or avoid the narrow, prescriptive sentencing ranges of the guidelines grid.

²⁵ *State v. Hernandez*, 311 NW 2d 478, 1981.

²⁶ Summary of sentencing practices for offenders convicted of certain serious person offenses at severity Levels VII and VIII. Minnesota Sentencing Guidelines Commission, August 1988.

Case Law Developments

Case law has eroded some basic premises of sentencing guidelines.

The judicial system has reacted to the guidelines with several important legal decisions. The evolution of case law has undermined some of the basic premises on which the guidelines were based. We think these decisions, however, were a realistic and practical adaptation to the needs of the trial court. It took little time after enactment of guidelines for the judicial system to reassert its authority over sentencing.

Two case law developments are of paramount importance. The Hernandez decision mentioned earlier allows simultaneous convictions on multiple counts to enter into the determination of the criminal history score (*State v. Hernandez*, 1981). Prior to the Hernandez case, conviction on multiple counts could only influence sentencing for subsequent convictions.

As a result of the Hernandez decision, the prosecutor has great bargaining leeway over sentencing. The exercise of prosecutorial discretion is inconsistent with the narrow sentencing ranges specified in the grid and the proportional increases in sanctions as severity level and criminal history score are increased. Proportionality in the guidelines assumes consistency in charging practices. It is also inconsistent with the guidelines requirement that departures be for substantial and compelling reasons, justified in writing and subject to appellate review. This requirement is undone if departures can be obtained through the alternative means of plea bargaining.

In our view, the second major case law development that challenges the premises and formal requirements of the guidelines system concerns the use of social factors as justification for sentence departures. Guidelines Section II-D covers departures. The policy stated therein anticipates that only a small number of cases will require departures and that these must be cases where substantial and compelling aggravating or mitigating factors are present. The guidelines and commentary state:

The purposes of the sentencing guidelines cannot be achieved unless the presumptive sentences are applied with a high degree of regularity. Certainty in sentencing cannot be assured if departure rates are high (II.D.03).

Case law has allowed the use of factors proscribed by the guidelines.

According to the guidelines, factors that should not be used as reasons for departure include employment factors, such as the impact of a sentence on profession or occupation; and social factors such as educational attainment, marital status, and length of residence.

These proscribed factors include those that many people assume will be weighed at sentencing; historically such considerations as employment or family responsibility have been taken into account. The reason they are proscribed under the guidelines is concern that they are correlated with race and class, and in the case of employment, the commission was concerned that employment records can be manipulated by defendants seeking a lighter sentence.

Despite the guidelines' prohibition against using social factors such as these, the court quickly moved to admit "amenability to probation" as a justification for dispositional departures. In concept, this is contradictory to the "just deserts" emphasis of the Minnesota guidelines.

A supreme court opinion establishing this point reads in part:

Numerous factors, including the defendant's age, his prior record, his cooperation, his attitude while in court, and the support of friends and/or family, are relevant to a determination whether a defendant is particularly suitable to individualized treatment in a probationary setting. All these factors were present in this case and justify the dispositional departure.²⁷

The fact that "amenability to probation" has been legitimized as grounds for a departure from the prison sentence specified in the guidelines is incompatible with the design of the guidelines system. The guidelines' method for guaranteeing proportionality and uniformity rests on narrow sentencing ranges, and the proscription of social factors from the sentencing decision. Of course, characteristics of the individual offender, like employment or educational attainment, are central to presentence estimation of amenability to probation. Thus, when the court allows a concept like amenability to probation, it rejects the conceptual foundation on which the guidelines were built.

The court in *Trog* was acknowledging that multiple goals exist at sentencing, even if Minnesota's sentencing policy is strongly built around proportionality and uniformity of punishment. The criminal justice system, through a high departure rate and appeals court decisions, is affirming an observation made by Morris and Tonry about sentencing systems based on the singular goal of just desert. They write:

Few, if any, policy makers or decision makers subscribe to such theories in any strong form. Many view retribution and commensurate desert as appropriate considerations to be taken into account at sentencing; few view these as the only appropriate considerations.²⁸

The guidelines system thus has been challenged by the judiciary and by the increased exercise of prosecutorial discretion. We conclude that:

- The origin of these challenges is ultimately the practical operational requirements of the criminal justice system. Thus, the consequent erosion of the guidelines has been adaptive and may have fostered its survival.

The practical requirements of the criminal justice system could not tolerate a rigid sentencing structure that ignored the kinds of social and individual factors that common sense requires be taken into consideration at sentencing.

We conclude that appeals court decisions reflect the practical considerations of handling a variety of cases and multiple objectives at sentencing.

²⁷ *State v. Trog*, 323 NW 2d 28, 1982. The court has consistently ruled, however, that social factors are not appropriately applied in durational departures. See *Minnesota Sentencing Guidelines Annotated*, 47-69, for case law and commentary on sentencing departures.

²⁸ Morris and Tonry, *Between Prison and Probation*, 86.

In addition, there is some evidence that the assumption that proscribing individual status factors like employment, marital status, and drug use will promote racial neutrality in sentencing is itself an erroneous premise. A study by the guidelines commission in 1980 of pre-guidelines sentencing practices failed to find racial disparity in sentencing.²⁹ Nevertheless, the guidelines were expected to help remove unwanted sentencing disparities (especially racial disparity) from the system.

In Minnesota, blacks comprise about 1.5 percent of the population but 29 percent of the prison population. Critics of the system claim this is due to the fact that the system treats minority offenders more harshly than white offenders. This reasoning was important to the decision in Minnesota to establish guidelines and to prohibit use of social factors, such as employment history, alcohol, or drug use in sentencing decisions.

A recent Rand Corporation study for the National Institute of Justice was motivated by growing concern over the concentration of blacks in the nation's prisons.³⁰ Using data from California, this study came to the unexpected conclusion that guidelines-based sentencing policy does not overcome racial disparities in sentencing and may actually widen them. The authors suggested this effect is probably an intractable result of basing sentencing on the severity of the offense and criminal history to the exclusion of other factors like marital or family status, employment history, and other social status variables. Most of these factors, according to the Rand study, are not adversely correlated with race, or less strongly correlated than the two factors formally built into Minnesota's guidelines system, offense severity and criminal history.

If sentencing decisions operate the same way in Minnesota, then proscribing the consideration of individual status factors is not likely to promote racial neutrality. The Rand study found that of the factors correlated with the prison-probation decision, all but one of the status factors (employment history) tended to "favor" blacks whereas factors relating to the prior criminal record and aggravating factors relating to the offense considered at sentencing (such as weapon use or injury to the victim) tended to adversely affect blacks. Under Minnesota's guidelines system, weapon use, violence, injury, and vulnerability of the victim can all be used as a justification for an aggravated departure in sentencing.

Of course, one study from another state is not a good basis for a fundamental shift of policy in Minnesota. However, we think the study raises important issues for the guidelines commission to consider. In any case, as we saw in Chapter 2, minority representation in Minnesota prisons increased significantly during the 1980s. Of course, the minority population has grown rapidly during the decade, and the age distribution of the minority population compared to the white population is more concentrated in the high-crime years. In other words, there are reasons beyond sentencing policy for the growth of the minority population in prisons. However, some of this growth may be the

²⁹ Minnesota Sentencing Guidelines Commission, *1980 Report to the Legislature*.

³⁰ Joan Petersilia and Susan Turner, *Guideline-Based Justice: The Implications for Racial Minorities*, Nov. 1985.

result of policy implemented to accomplish exactly the opposite purpose. In any case, this is an issue that deserves further study and discussion.

Control of Resource Use

The guidelines were designed to control the use of prisons and jails. One of the basic principles articulated in the guidelines' statement of purpose and principle reads:

Because the capacities of state and local correctional facilities are finite, use of incarcerative sanctions should be limited to those convicted of more serious offenses or those who have longer criminal histories. To ensure such usage of finite resources, sanctions used in sentencing convicted felons should be the least restrictive necessary to achieve the purposes of the sentence.³¹

Many states that enacted determinate sentencing reforms in the 1970s saw their prison populations increase rapidly as a result. In order to avoid this, the Minnesota law establishing sentencing guidelines directed the guidelines commission to "take into substantial consideration ... correctional resources, including but not limited to the capacities of local and state correctional facilities." This aspect of Minnesota's guidelines has been cited by outside observers as a key feature that has helped to keep prison populations within manageable limits in Minnesota.³²

As we saw in Figure 1.5, the initial effect of the guidelines was a slight decrease in the prison population in 1981 and 1982, followed by gradual increases through the mid-1980s. However, in our view, the determinate sentencing philosophy of the guidelines, coupled with political sentiment in favor of tougher sanctions, has sown the seeds of a growing prison population for years to come.

Figure 1.5 shows that the prison population grew from 1,994 in 1980 to 3,089 in 1990. While this growth is modest in comparison to some other states, there is little comfort to be taken. Minnesota's prison population is projected to grow to nearly 4,000 by 1994. And state prison is the slow growing component of the system. Jail populations grew 189 percent between 1975 and 1989 compared to 85 percent growth in the prison population. In the last six years, the population on probation grew even more rapidly than the incarcerated population.

Minnesota's sentencing guidelines have not successfully prevented growth in incarceration, nor could they have by themselves. Incarceration, as Chapter 2 showed, is due to many factors outside the control of policy makers. The guidelines, as a concept, and the guidelines commission and staff as a corporate entity, succeeded for a time in deflecting sentiment in favor of stronger penalties. The guidelines commission continues to successfully oppose many bills calling for tougher sanctions. However, in 1989, guidelines sentences

³¹ Guidelines, Sect. I.

³² Norval Morris and Michael Tonry, *Between Prison and Probation*, 27.

were materially increased for many offenses, as Table 3.5 shows. Now that these penalties have been enacted, it may be that they will be hard to bring down.

In part, the trend toward tougher sentencing has been accompanied by increased involvement of the guidelines commission in the political debate. One feature of Minnesota's guidelines system that has received praise is its organizational structure and the presumed objectivity and rationality that go with it. The logic behind creating an administrative agency with primary responsibility for formulating sentencing policy, according to Tonry and Morris, was that it

provided an institution much better situated than any legislature to accumulate specialized expertise to develop comprehensive sentencing policies and sufficiently removed from the glare of day-to-day legislative policies to approach these often-controversial matters in a principled and thoughtful way.³³

The commission remained relatively immune from political pressure until 1986 or 1987, according to its staff director. Now, however, the commission and the decisions it makes are clearly "in the limelight."

The guidelines' rational sentencing structure means that a change in one penalty can require changes in other penalties to maintain consistency.

At least during the 1980s, the increased public profile of the guidelines commission has been associated with a toughening of sanctions, resulting in the need for expanded prison and jail capacity. First, it leads to sentences that are based upon egregious cases instead of typical ones because the victims who come to testify before the commission tend to be those most seriously affected by crime. The logic of the guidelines structure, with its narrow ranges in each cell, is that the prescribed sentence should be based upon the typical case. Atypical cases—those where the circumstances are either more or less serious than the average—are supposed to be handled through judicial departures. The commission cannot simultaneously respond to the desire for a harsh sentence in a single case and maintain the other pressures of the guidelines grid system—namely, that departures be infrequent and based on narrowly prescribed grounds.

Once the sentence length in a single cell is set higher in response to pressure for tougher sanctions, the lengths of sentences in other cells must be revised upward in order for the guidelines structure to maintain proportionality. Thus, making one sentence longer may tend to result in lengthening sentences across the board. The commission recognizes this natural tendency of the guidelines structure. It is one of the reasons the commission is reviewing its crime rankings and sentences to see if its past decisions can be objectified.

As the commission has had to respond to political and public pressure with presumptive imprisonment for more crimes and longer sentences, it has retreated from resource control as an objective. In 1989, the Legislature revised the law to replace the statutory language cited above with the following: "In establishing and modifying the sentencing guidelines, the primary consideration of the commission shall be public safety. The commission shall also

³³ *Ibid.*, 28.

consider ... correctional resources, including but not limited to the capacities of local and state correctional facilities."³⁴

While this legislative change represents a change in emphasis more than substance, it has had an effect on how the commission views itself. According to the commission, it is now clear to the Legislature that the guidelines sentences can be as short or long as the Legislature wants. The commission's role is "to estimate and plan for the effects of sentences on resources ... and to convey the resource implications of its actions to the Legislature." This implies that resource planning and coordination, rather than resource limitations, is what the guidelines commission is directed to do.

Guidelines commission staff have developed models that enable the commission, along with the Department of Corrections, to forecast the likely effect of guidelines changes on state prison populations. This process has worked fairly well so far, by which we mean that when sentences were substantially lengthened in 1989, plans were made simultaneously to expand state prison capacity. There are two unavoidable problems with the commission's forecasting model: it relies on data that are two years old, and it is based upon assumptions of the number of future felony cases.

In the past, the commission has not regularly assessed the implications of its sentencing decisions on local correctional resources. One reason is that the commission has not moved to establish non-imprisonment guidelines, which would have a direct effect on local correctional resources. Beginning with its 1990 Report to the Legislature, however, the commission has begun making tentative projections of the likely impact on jails of its policy changes. We believe this is a step in the right direction, since it recognizes explicitly that guidelines changes affect not only state prisons but local correctional resources as well. At least some of the increase in jail populations that has occurred during the 1980s can be attributed, indirectly, to the guidelines.

Non-Imprisonment Guidelines

Another development, motivated in part by concern over resource use, is the debate over whether to extend sentencing guidelines to the approximately 80 percent of felony offenses that are locally sentenced. These are the offenses that receive a stayed prison sentence, and receive instead a local sentence that involves some mix of jail, treatment, community service, fines or probation with or without conditions.

The reasons for local guidelines are several: the concerns previously discussed about proportionality and uniformity apply, as well as a desire to use guidelines in order to control the growth of the jail and probationary populations. To some extent, support for local guidelines is based on what we think is a misreading of the success of state guidelines in accomplishing these objectives.

³⁴ *Minn. Laws* (1989), Ch. 290, Sec. 8, Subd. 5(2).

From the start, the guidelines commission was authorized to establish sentencing guidelines covering lower severity felonies that carry locally administered sentences. The commission has never taken on this task, although the issue has been regularly debated over the years. The commission does feel that local sentencing is not equitable and that guidelines would help if political obstacles to their implementation could be overcome.

The Minnesota Department of Corrections (DOC) provides felony probation services in counties that do not provide them under the Community Corrections Act. DOC has started a guidelines program in these counties. These guidelines, called "standards" by DOC, govern the sentencing recommendations provided by probation officers to judges and do not limit the judges' sentencing authority. It is hoped, however, that they will guide sentencing decisions.

DOC local sentencing standards cover non-imprisonment sanctions such as house arrest, drug or alcohol treatment, fines, and jail. A major technical issue concerns how to equate sentences that do not all involve incarceration, for example, jail, house arrest, mandatory drug or alcohol treatment and abstinence, probation of varying intensity, restitution, fines, community service, or work release. Each of these alternatives involve punishment, but also an additional purpose. One combines punishment with treatment, another punishment with incapacitation; another punishment with restitution to victim or community; another is punishment with deterrence. The appropriateness of the sanctions depends in part on the offense but also on characteristics of the offender. For example, if an offender has a job and does not pose a threat to public safety, incarceration with work release might make sense. If a similar offender has a drug problem, has not undergone treatment, wants treatment or is judged amenable to treatment, treatment might very well make sense as part of a sentence. Similar arguments can be made for sentencing one offender but not another to community service, a monetary fine, or house arrest.

It is difficult to equate treatment, probation, community service, jail time, and the other sentences just described. But most people can agree that sentencing decisions should be pronounced fairly, considering the needs of the individual offender and the community he or she has offended.

DOC proposes to solve the equivalency problem by stipulating a set of equivalences between various forms of punishment and then using the currency of "sanction units" in a sentencing grid. If these equivalences are applied in a rigid fashion, or followed by probation officers or judges as the path of least resistance, sentencing may not necessarily become more equitable than in their absence.

But, as it happens, judges are not following the probation officers' recommendations with high consistency. As of October 1990, DOC agents followed the sentencing standards about 80 percent of the time, but judges followed the recommendations in only 30 percent of cases. These numbers are based on 900 cases through October 12, 1990. About equal numbers of departures were up and down in severity from the DOC standards.

Local guidelines should promote thoughtful placement of offenders in often-scarce slots in facilities and programs. But jails are crowded, and so is space in other correctional programs. Data reviewed earlier has noted the tendency to sentence offenders to multiple programs such as jail, treatment, service, and probation. Multiple sentences are hard to justify if resources are scarce. In addition, locally available program resources vary. Local preferences vary also. As a result, local guidelines should be developed that take local community standards and resources into account.

Local sentencing standards or guidelines ought to articulate a uniform and coherent sentencing policy to be pursued by corrections officials and judges. This goal might be achieved more successfully if guidelines are locally developed with active participation by district court judges, probation officers, and others involved in community corrections.

SUMMARY

We conclude that the state sentencing guidelines covering felony offenses need to be modified, but that the guidelines and the commission administering the guidelines are successful reforms, the beneficial aspects of which should not be discarded with the part of the system that does not work. In brief, the guidelines work well in the following ways:

- They help to establish a rational, proportionate sentence for each felony offense, by relating sentences to one another and to principles that govern sentencing decisions;
- They establish a broadly representative commission and staff with ongoing responsibility to monitor sentencing practices and study and debate sentencing policy.
- They help legislators assess the resource implications of changes in sentencing policy.

Our analysis and critique of the guidelines would not, in fact, be possible without the commission's own data. Crime is easily demagogued and precipitous decisions taken. In the past, these decisions have been quietly undone or circumvented, but Minnesota's current system is open and rational. Some of the traditional escape hatches are unavailable, such as early release from a ferocious-sounding (but indeterminate) sentence.

In our view,

- The guidelines do not sufficiently accommodate a multiplicity of sentencing goals, including punishment, deterrence, rehabilitation, and public safety (incapacitation).

- As a result, the narrow sentencing limits permitted within the guidelines ought to be loosened, and a gray zone presuming neither prison nor non-imprisonment ought to replace the sharp dispositional line.

We recommend greater flexibility in sentencing guidelines for several reasons:

- Even if the dominant goal of sentencing is just deserts, other goals, such as deterrence, rehabilitation, or incapacitation are valid and may be important in many cases. We think the sentencing practices of trial court judges and appeals court decisions also say that multiple goals are important. Therefore, the guidelines should more easily accommodate these additional purposes of sentencing.
- As a practical matter, crime and criminals are more variable than the idealized “typical case” that the guidelines commission has in mind when classifying offenses and setting penalties. Even a specifically defined crime covers a range of behavior, and a high rate of judicial departures signals a need to review the existing guidelines.

JAIL STANDARDS

Chapter 4

The Minnesota Department of Corrections (DOC) licenses and inspects county jails and other local detention facilities. In recent years, legislators have been drawn into local jail planning issues for several reasons:

- **Jails in the Twin Cities area, St. Louis County, and many other counties around the state are operating at or over capacity.**
- **It is expensive to add jail capacity. The Legislature has to approve county bonding authority to build jails. Added jail capacity drives up operating costs for years to come.**
- **Virtually every inmate in jail is there because he or she violated (or is accused of violating) a state law. Minnesota sentencing policy limiting the number of offenders sentenced to state prison has contributed to growth in the number incarcerated in county jails, as have tougher sanctions for Driving While Intoxicated (DWI) and other offenses.**
- **There is tension between counties and the state over which level of government is responsible for local correctional costs.**

In our view, legislators have been drawn into the issue of jail regulation because crowded jails require costly solutions and often provoke disputes over jail planning that eventually involve county legislative delegations.

For this reason, we wanted to learn if rules promulgated by the Department of Corrections, or other DOC policies and practices, are impeding or promoting economical solutions to jail crowding where it is occurring. And we sought to learn:

- **Are jail standards comprehensive and up-to-date?**
- **Is DOC's enforcement of standards reasonable and effective?**

Some legislators expressed concern about jail standards restricting double celling of inmates. Others were concerned whether high construction costs were caused by DOC standards. Concerned with some of the same issues, DOC re-

cently convened a task force to advise the department on a thorough revision of standards.

To carry out our study objectives, we attended the jail standards task force meetings from July 1990 to February 1991. A half-dozen or more day-long meetings of this group were held during this period. We interviewed jailers, sheriffs, county officials, and DOC licensing and inspection staff. We visited county jails, sometimes accompanying DOC inspectors. And we reviewed DOC data and files on jail use and compliance with regulations.

HISTORY OF JAIL REGULATION

The Commissioner of Corrections inspects and licenses all correctional facilities throughout the state, public or private, under the authority of *Minn. Stat.* §241.021. The commissioner is directed to promulgate rules establishing minimum standards covering management, operation, physical condition, security, safety, and other areas of jail administration. The commissioner has authority to restrict the use of facilities which do not substantially meet minimum standards or, in extreme cases, to revoke the facility's license to operate.

Prior to 1959, when the Department of Corrections was organized, jail regulation was the responsibility of the Department of Public Welfare (now the Department of Human Services). In 1978, several years after the passage of the Administrative Procedure Act, formal standards with the force of law were enacted to replace department guidelines. In 1981, the jail operational (but not construction) standards were amended. The current rules are essentially unchanged since that time. Evolution of case law on prisoners' rights, changes in jail design and construction technology, and other factors have caused existing standards to become out-of-date in important respects.

For several years, the DOC has been planning a revision of the standards. As noted, a task force advising the DOC is now at work on revising the standards, with a July 1991 target for completion.

The Legal Development of Prisoners' Rights

Jail standards were developed as a response to social developments in the sixties and seventies. Perhaps the most important influence was (and continues to be) the "prisoners' rights" movement. Since the mid-sixties, civil rights suits brought by prisoners have increased dramatically. Standards for jail construction, staff training, and other aspects of jail administration are a response to a substantial body of case law that helps define constitutional conditions of confinement.

For example, prisoners' rights lawsuits forced the Harris County, Texas (Houston) jail to release 254 inmates in a two-week period in 1990.¹ In another case, a federal court judge in Rhode Island gave each prisoner in the state sys-

The state Department of Corrections licenses and inspects jails and other local detention facilities.

1 Robert Suro, "As Inmates are Freed, Houston Feels Insecure," *New York Times*, October 1, 1990.

tem an automatic 90 days extra good time to ease crowding at the state's Intake Service Center.² Both of these orders were the result of prisoners' lawsuits that alleged violation of their civil rights because of the conditions of their confinement.

Throughout the nineteenth century, the courts said prisoners had no rights under the constitution. An inmate was a "slave of the state," with none of the rights of an ordinary citizen.³ But by the middle of this century, judicial thought had moved away from this point of view. In *Coffin v. Reichard*, the court held that "a prisoner retains all rights of an ordinary citizen except those expressly, or by necessary implication taken from him by law."⁴

Although it was acknowledged that prisoners had rights, there was still no way for them to enforce those rights in court. State and local governments were held to have "sovereign immunity" protecting them and their employees from civil suits. For many years, the only legal recourse prisoners had was to file a writ of habeas corpus. But habeas corpus could only allege wrongful imprisonment. It could not address the conditions of a prisoner's confinement.

In the early sixties, the civil rights movement discovered a long-neglected federal statute, which prisoners soon found could apply to their cases as well. Originally a part of the *Ku Klux Klan Act of 1871*, this statute provides that:

Every person, who under color of any statute, ordinance, regulation, custom or usage, of any state or territory, subjects or causes to be subjected, any citizen of the United States, or any person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.⁵

Under Section 1983, prisoners can sue individuals, including employees of a government, in civil court for violating their civil rights.

The discovery of Section 1983 and its applicability to prisoners' rights opened the floodgate for inmate-initiated lawsuits. In 1965, 218 suits were brought by state and local prisoners under this act. By 1981, the number of these cases had increased to 17,775, an increase of over 7,000 percent. In 1977, 16.5 percent of all cases filed in federal courts were actions taken by prisoners against those holding them prisoner.⁶

Originally, states, counties, and local governments were themselves exempt from these suits under the doctrine of "sovereign immunity." But in 1979, the United States Supreme Court held that municipal corporations (county and

Prisoners' rights litigation increased rapidly during the sixties and seventies.

² "To Ease Crowding, Rhode Island Inmates Get 90 Days 'Good Time'," *Criminal Justice Newsletter* 21, no. 12 (June 15, 1990): 2-3.

³ *Ruffin v. Commonwealth*, 62 Va. 780 (1871).

⁴ *Coffin v. Reichard*, F143 F.2d.

⁵ U.S.C. Title 42, Sect. 1983.

⁶ Thomas Loneragan, *Correctional Law* (Washington, D.C.: National Institute of Corrections, 1980), 1.

municipal governments) could also be liable for damages in Section 1983 cases.⁷

Issues in Prisoners' Rights Suits

Lawsuits filed by prisoners under Section 1983 always allege some violation of constitutional rights. They frequently allege that the conditions of their detention constitute "cruel and unusual punishment" under the Eighth Amendment.⁸ Issues in the suits include access to medical care, freedom of religion, and illegal searches. Many of the cases involve overcrowding. Sometimes, crowding is cited as a violation of civil rights in itself. It is also a factor that exacerbates other deficiencies in an institution.⁹

The suits seek two things: monetary damages and injunctive relief. The cost of the damages can be high, and the potential liability can reach elected officials. Supervisory personnel such as sheriffs have been found liable for failure to supervise and failure to train. On rare occasions, members of county boards have been fined and jailed for not correcting jail conditions.

Potentially more expensive for governments is the cost of complying with injunctions issued by the court to change unconstitutional practices. In cases of overcrowding, for example, the court can force the government to close institutions and release prisoners. As a judge wrote in one case, the court

cannot require voters to make available resources needed to meet constitutional standards of confinement, but it can and must require release of persons held under such conditions, at least where a correction of them is not brought about within a reasonable amount of time.¹⁰

In their rulings, the courts have defined what conditions of incarceration are constitutional by specifying acceptable conditions in each individual case. Court orders in prisoners' rights cases can be quite detailed, setting out specific requirements for staff size and training, ventilation, or what personal hygiene provisions the institution must supply to prisoners. The case law on overcrowding, for example, is filled with specific square footage requirements.

In recent years there has been some movement away from imposing specific requirements. For example, in *Bell v. Wolfish* the court has used the "totality of conditions" approach, which means that prison conditions are viewed as a whole in determining whether a constitutional violation exists.¹¹ Specific conditions such as double celling or exceeding design capacity are themselves not evidence of unconstitutional conditions.

⁷ See *Monell v. Department of Social Services*, 98 S. Ct. 2018.

⁸ Pre-trial detainees seek protection under due process considerations deriving from the Fourteenth Amendment.

⁹ Jail Information Center, National Institute of Corrections, interview.

¹⁰ *Rehm v. Malcolm*, 507 F. 2d 222 (1974).

¹¹ *Bell v. Wolfish*, 441 U.S. 520.

The courts also hold jails housing pretrial detainees to stricter standards than facilities that house only convicted offenders. Pretrial inmates have not been convicted of any crime, and the purpose of their incarceration is not punishment. Restrictions placed upon pretrial prisoners cannot be greater than is required by the need for ensuring that the prisoners appear in court and running a safe institution.¹²

The Development of Jail Standards

Jail standards first appeared in the 1970s as a response to the increasing number of legal decisions against corrections systems. The standards that were developed started as a codification of the various requirements set out in case law. The first set of jail standards were developed by the American Correctional Association (ACA) in 1974.¹³

In part, jail standards were developed in response to the threat of litigation.

Jail standards serve a number of purposes. One is to help ensure humane treatment of prisoners. Jail standards can also provide administrators with a guide to constitutionally required standards and practices. In addition, the existence of standards can provide evidence of a "good faith" attempt to ensure that prisoners retain their constitutional rights. This can be a partial defense in prisoner lawsuits.

At one time, a total of thirty-three states had jail standards of some sort in existence. Four have since repealed their standards. An example is Washington, whose standards were allowed to lapse about two years ago because local officials felt they were too great a burden. As soon as the standards were done away with, a number of suits were filed by prisoners. In the absence of state guidelines, the courts held the county jails to ACA standards (which are stricter than the expired Washington guidelines).¹⁴

MINNESOTA JAIL STANDARDS

Minnesota's local detention facility standards cover the physical plant and space allocation, staffing levels and other personnel requirements, staff training, records and reporting, prisoner welfare, security, food service, and environmental and personal health.¹⁵

The most often debated issues relate to the first three of these areas. Rules on physical space allocation—square feet per cell or per person, for example—limit the capacity of a facility and require counties to arrange for additional capacity at significant expense if the standards are not met. Staffing requirements that specify the ratio of staff to prisoners can significantly affect the cost of operating a jail. Training requirements take

¹² See, for example, *Bell v. Wolfish*, 441 US 520.

¹³ The ACA standards exist to this day and are periodically revised.

¹⁴ National Institute of Corrections, interview.

¹⁵ *Minn. Rules* Ch. 2900 and Ch. 2910.

time to meet and affect both the wages paid to staff and their bargaining leverage.

The other areas are important, but less the subject of contention. Jail administrators in Minnesota, from our observation, are committed to a high standard of safety, security, and for that matter, health and welfare of inmates. Adherence to standards helps jailers control inmates, makes their jobs easier, and minimizes their exposure to criticism and litigation. There is relatively little disagreement over standards governing practices in these areas.

The most controversial areas of jail regulation are physical design, and staffing and training requirements.

We will not extensively review the standards either in Minnesota Rules Chapter 2900, which cover design and construction of new facilities, or in Chapter 2910, which cover operation of all adult detention facilities. These rules set standards for records, recreation, hot water temperature, admission and release practices, dietary requirements, and so forth.

We will discuss the three areas of controversy noted above, present general measures of compliance and effectiveness, and discuss the style and substance of DOC's licensing and inspection activities.

One other introductory note: Minnesota regulations designate standards as either "mandatory" or "not mandatory." Noncompliance with mandatory standards is not permitted beyond a period of time allowed for correction. But noncompliance with other standards can persist indefinitely despite continued noncompliance findings by DOC because practice must be in "substantial," rather than total, compliance with non-mandatory standards. The operational definition of substantial compliance is 70 percent compliance with the standards.

General Indicators of Effectiveness

We examined several indicators in our effort to assess Minnesota's overall jail conditions. We looked at jail expenditures, overall rates of compliance with standards, the removal of antiquated facilities, and the current facility improvement needs and priorities. We found:

- **Minnesota spends considerably more per inmate to operate jails than the national average and more than most Midwest states.**
- **The overall level of compliance with standards is high and has gone up since 1975.**
- **In the early years of DOC regulation, antiquated facilities were condemned and closed. Only one facility, the St. Louis County jail, is now classified by DOC as potentially condemnable.**

Minnesota's operating expenses were \$14,778 per inmate in 1988 compared to the U.S. average of \$10,639, and the Midwest average of \$11,036.¹⁶ DOC

¹⁶ Bureau of Justice Statistics, "Census of Local Jails 1988," *Bulletin* (Washington, D.C., February 1990).

Minnesota has made considerable progress since the 1970s in closing and upgrading inadequate facilities.

Important deficiencies still exist, however.

is unable to provide county-by-county data on jail operating costs, but we learned from our discussions with DOC and county officials around the state that these range from around \$14 per day in smaller outstate jails to over \$70 per day in Twin Cities area counties. Many counties contract for jail services at about \$35 per day. The \$14,778 annual cost per bed just cited, divided by 365, yields a per diem cost of \$40. This is a plausible average figure (for 1988) for Minnesota.

The Department of Corrections has compiled data on the overall extent of compliance with Minnesota jail regulations. The data show a high degree of compliance with "non-mandatory" standards. Mandatory standards, if not complied with, result in license revocation or limited operating use agreements. Data from the most recent inspections show only ten of 73 facilities statewide with compliance rates below 95 percent. These are jails in Chipewewa, Douglas, Goodhue, Sibley, St. Louis, Brown, Steele, Washington, and Wright Counties, and the Ramsey County Adult Correctional Facility.

This does not mean that there are not important deficiencies in jail operations in Minnesota. DOC's grading system tends to result in high compliance rates. But the data on compliance support DOC's view that they have generally eliminated facilities that ought to be shut down, and the remaining problems are those typical of basically adequate facilities.

The department is concerned about chronic noncompliance with certain standards and is alert to formalistic compliance rather than meaningful, substantive compliance. It is urging the Jail Standards Task Force now at work on standards revision to tighten up the standard by which "substantial" compliance with non-mandatory standards is judged from 70 percent to 90 percent. And both by technical assistance and by the threat of tighter standards, DOC is urging meaningful compliance with standards.

DOC has made measurable progress since assuming responsibility for jail inspection, especially since 1978 when formal jail standards were enacted. Table 4.1 shows the status of Minnesota's local detention facilities between 1973 and 1988.¹⁷

DOC has recently issued statewide facility improvement priorities that cover the situation in each Minnesota county. These are presented in Appendix B. DOC evaluates both the adequacy of the facility and the population pressure on varying types of facilities. A one-year jail meets higher standards than a 90-day lockup, and a lockup in turn must meet a higher standard than 72-hour holding facilities. DOC considers that counties with facilities one or two levels below that needed have relatively high priority improvement needs.

Five counties have level one priority needs. The St. Louis County Jail is potentially condemnable because of fire danger. Facilities in Benton,

¹⁷ Most counties have jails that house both pretrial detainees and sentenced offenders. The state's two adult detention facilities (in Hennepin and Ramsey) house pretrial detainees only, and these counties have Adult Correctional Facilities that house sentenced offenders only. The Northeast Regional Correctional Center (NERCC) in St. Louis County also houses sentenced offenders only and serves several Northeast counties. Annexes are dormitory-like facilities for minimal security risks. Holding facilities and lockups are licensed for shorter detention periods than one-year jails.

Table 4.1: Existing Facility Status Changes, 1973-86

Classification	1973	1976	1979	1982	1984	1985	1986	1988
Adult correction facility	3	3	3	3	3	3	3	3
Adult detention center	0	1	2	2	2	2	2	2
Adult detention center annex	0	0	0	0	0	1	1	1
Jails	0	8	20	29	32	39	40	46
Jail annex	0	0	0	0	0	1	1	1
Non-governmental jail	0	0	0	0	0	1	1	1
Lockups	22	23	24	23	22	22	22	16
Holding facilities	17	17	16	17	17	17	17	16
Work release facilities	0	0	0	2	2	1	1	1
Condemned facilities	0	5	6	1	1	1	0	0
Condemnable facilities	<u>38</u>	<u>26</u>	<u>13</u>	<u>8</u>	<u>6</u>	<u>0</u>	<u>0</u>	<u>0</u>
Total	80	83	84	85	85	88	88	87

Source: Department of Corrections, *Statewide Jail Report Summary*, June 1986.

Clearwater, and Kandiyohi counties and the Ramsey Adult Detention Center Annex are seriously inadequate in light of the level and capacity of facilities needed.

There are nine additional counties with facilities classified at the second priority level. Brown, Carver, Goodhue, Olmsted, Steele, and Washington Counties have facilities classified at levels lower than they need (for example, a lockup instead of a one-year jail) and are experiencing facility population pressure. Fillmore, Mower, and the Hennepin County facility for women also fail to meet standards for the needed classification level but are not experiencing urgent capacity shortages.

The remaining counties of the state are judged by DOC to have less urgent facility improvement needs. See Appendix B for details. Many counties have no facilities, but are able to meet their needs by contracting with other counties.

Jails cannot run at 100 percent of capacity since various types of inmates need to be separated.

Physical Space

As noted in Chapter 1, the population incarcerated in jail in Minnesota has grown rapidly in recent years. In 1975, jail capacity in Minnesota was 2,787, and the average daily population was 1,312. On a given day, less than half of the jail beds statewide were used. By 1990, the population had grown 203 percent to 3,978, and jails were operating at 92 percent of capacity.

An operating level of 92 percent does not seem like a critical problem at first glance, but jails need excess capacity to provide proper segregation of inmates by sex and security level. A jail could operate close to 100 percent if the mix of men and women, adults and juveniles, maximum and minimum security inmates, and admissions and releases were in the proper balance. Smaller jails need more unused cells to operate smoothly and large jails fewer, but if any

jail is chronically over 80 percent of capacity, jail administrators are faced with constraints on their ability to manage the population properly. DOC guidelines (not formal standards) specify that utilization should not exceed 60 percent for jails with an average population of less than 15, and should not exceed 80 percent for jail with average populations of 100 or more.

Regulation of jail capacity and use is complicated by the fact that DOC licenses jails for a certain number of beds, but also conditionally approves some beds that do not fully meet the standards. The utilization rate of 92 percent is the average occupancy rate of “existing beds.” These include approved beds and others operated under a DOC variance.

Existing and Approved Beds

DOC has established “existing” and “approved” bed capacity ratings for each facility across the state. These terms are defined as follows for facilities built before 1978:

- **Approved beds** are those that meet the following conditions: single-occupancy cells must be at least 50 square feet in size, dormitories must contain 60 square feet per inmate.
- **Existing beds** are counted without regard to square footage requirements per inmate or multiple-occupancy conditions. A 64 square foot cell could be used to house four inmates if it was built before 1978 and otherwise meets applicable standards.
- Neither existing nor approved capacity counts beds used in intake or medical or disciplinary segregation.

Facilities built since promulgation of jail standards in 1978 are required to meet the following criteria in order to be approved.

- Single-occupancy cells must be 70 square feet in size.
- Minimum security cells may be 50 square feet with unrestricted access to a day room area.
- Dormitories must provide 60 square feet per inmate.

Since there are currently no DOC-approved two-person cells, all double occupancy cells are operated through a variance and counted as two existing beds and one approved bed. Over time, DOC has sought to reduce the number of beds approved through a variance, both by changing standards and by pressuring counties to expand and remodel facilities. The department is currently revising jail standards and may allow double-occupancy cells that meet new standards. In the past, DOC has approved double occupancy only on an interim basis.

Physical space requirements are different for facilities built before 1978.

Table 4.2 shows the total number of licensed beds (existing beds), and the percent approved 1979 through 1990. In 1978, 78 percent of beds fully met DOC standards. By 1986, this number had reached 87 percent, and grew to 91 percent by 1990. This shows progress, but the situation in Hennepin, Ramsey, St. Louis and certain other counties is not as positive. In 1990, there were 4,310 existing beds of which 3,925 were approved and 385 were not. Table 4.3 shows which counties contributed at least 10 beds to the non-approved totals. Together 278 of the 385 non-approved beds were in Hennepin, Ramsey, and St. Louis Counties.

Table 4.2: Percentage of Beds Approved, 1979-90

	<u>1979</u>	<u>1982</u>	<u>1984</u>	<u>1986</u>	<u>1988</u>	<u>1990</u>
Percent approved	78%	82%	84%	87%	90%	91%
Total licensed beds	2,991	3,302	3,381	3,582	4,002	4,310

Source: 1979-88, Department of Corrections, *Statewide Jail Report Summary*. 1990, Department of Corrections 1992-93 Biennial Budget.

As Table 4.3 shows, several large counties (Ramsey, St. Louis, and Hennepin) have quite a few non-approved beds. But some outstate counties—for example Steele, Clay, and Goodhue—also have a high proportion of beds that do not meet current standards.

Over time, beds not meeting current standards have been removed from the system.

Table 4.3: Counties With Ten or More Non-Approved Beds

<u>County</u>	<u>Existing</u>	<u>Approved</u>	<u>Not Approved</u>
Blue Earth	51	36	15
Clay	46	31	15
Goodhue	32	20	12
Hennepin	955	920	35
Mower	72	45	27
Ramsey	489	395	94
St. Louis	268	212	56
Steele	20	10	10
Washington	61	47	14
Total			278

These data do not adequately reflect the extent to which county facilities are crowded nor how much capacity needs to be added because many counties place their inmates in other county jails where excess capacity exists. Hennepin County, for example, placed inmates in Stillwater Prison and in nine county jails in 1989, including jails as far away as Aitkin and Carlton Counties. Washington County has a 100-day waiting list of people waiting to serve sentences.

The issue of whether double-occupancy cells should be allowed has been debated for many years.

Double Celling

The issue of physical space is the focus of a national debate and one that is more urgent due to the crowded conditions that widely prevail. In 1980, DOC received requests from Hennepin and Ramsey to convert single-occupancy cells to double cells. DOC has granted variances to these and other counties with the understanding that the arrangement is temporary.

The DOC position on double cells should not be confused with its willingness to accept dormitory arrangements for minimum security prisoners with three or more beds per room. DOC has reasoned that observation is improved and the likelihood of assault minimized in dormitories compared to double occupancy cells.

DOC's position on double celling has been undermined by several factors:

- the practical necessity of solving the crowding problem in Hennepin, Ramsey, and elsewhere by double occupancy of cells on a temporary basis;
- requests to build new facilities with double-occupancy cells from counties planning to add capacity;
- case law recognizing the legality of double-occupancy cells; and
- development of standards for double occupancy by the American Corrections Association, whose accreditation standards are regarded by DOC and others as a model of professional practice that will withstand court challenges or liability litigation.

ACA Standards

DOC jail standards (and those of other states) are influenced by the accreditation standards for local detention facilities of the American Corrections Association (ACA).

ACA accreditation is a difficult standard to achieve and only the Hennepin County Adult Detention Facility among Minnesota jails now receives accreditation. ACA standards and the national policy debate around them have influenced the development of state standards in Minnesota and elsewhere.

ACA standards call for 60 square feet per single occupant in existing facilities and 70 square feet for inmates (such as those in segregation) who are confined for more than 10 hours per day. New detention facilities should have 70 square feet for each single cell or room. Dormitory rooms in existing facilities are to house no fewer than four inmates and require 50 square feet per person.

DOC may lift its long-standing opposition to double-cells as part of the standards revisions now underway.

In August 1989, ACA approved standards for multiple occupancy cells, including two-person cells, that require 35 square feet of unencumbered space per occupant (exclusive of bunks and other fixtures) and a minimum dimension of seven feet for this space.

In defense of its regulation on double occupancy and use of space, DOC emphasizes the relationship of its standards to inmate control, health, safety, and the risk of intervention by the federal or state courts which have ordered early release and major construction in other states.

DOC has viewed the double occupancy issue as potentially leading to system-wide crowding; but standards for new facilities similar to ACA's have passed a strict test of professional approval by gaining ACA approval. The issue of double celling in old facilities and pressure on DOC to grant variances and to phase out non-approved facilities remain unchanged.

Small facilities are excused from some staffing requirements that large facilities must meet.

DOC is currently debating the question of regulations governing double-occupancy cells. They believe the ACA requirement of 35 square feet of unencumbered space per person translates into about 100 square feet of total space per double cell, and their thinking now is to formulate any double-cell space requirements in terms of the total dimension of the cell. It appears likely that standards for double cells will be promulgated as part of the rule revision process now underway.

Staffing

The cost of staff is a major part of the cost of jail operations. Thus, DOC requirements affecting staff levels, inmate-staff ratios, and program staff requirements are a key and controversial area covered by state jail standards. Staffing requirements are most troublesome for small jails whose daily populations are around 15; tougher standards pertain if a jail is certified to hold more than 15 inmates. Complicating the job of setting staffing requirements are design factors that limit or enhance the ability of jail staff to observe inmates. Thus, the adequacy of staffing levels is partly dependent on jail design.

This section reviews existing requirements both for custody and program staff and discusses the issues under deliberation by the Jail Standards Task Force currently at work revising the standards.

Current Staffing Level Requirements

State regulations require a staffing plan that indicates staff positions and their duties, and an administrator designated as chief executive officer of each facility. Someone has to be in charge and on duty at all times. The ratio of custody staff to prisoners must be at least 1 to 25 when prisoners are not secured in cells, dormitories, or detention rooms.

There are 12 one-year jails and 16 additional detention facilities in Minnesota operating under what is known as a jailer-dispatcher system where one person is on duty supervising the jail, but also answering emergency calls and commu-

nications with sheriff's deputies and other department employees. Current regulations require a custody staff person in addition to the dispatcher when the daily population exceeds 15 inmates and inmates are not in lockup status. Table 4.4 shows *program* staff requirements currently in force. These requirements are in addition to custody and other staff requirements noted at the bottom of Table 4.4.

Table 4.4: Program Staff Requirements

<u>Jail Population</u>	<u>Program Staff (can be volunteers)</u>
Under 25	One part-time person
25-50	One full-time
51-100	Two full-time
Over 100	Three full-time

Note: Jails with 50 persons or more are required to have the equivalent of one full-time recreation director.

Adult corrections facilities (county or regional facilities for sentenced offenders only) are required to have a full-time program coordinator and one full-time program staff person for every 30 inmates.

The foregoing staff requirements refer to program staff only. Additional personnel are required as necessary for intake, transportation, court escort, etc.

Source: Department of Corrections.

The Jail Standards Task Force has discussed the revision of staffing standards. One proposal they considered appears in Table 4.5. This proposal varies custody staffing requirements by jail design, size, population type, and inmate status.

Jail design determines how many inmates can be observed by a single staff person. The direct observation jail places an unarmed deputy in the middle of

Staff requirements vary by the type of jail.

Table 4.5: Proposed Custodial Staffing Ratios

<u>Facility Type</u>	<u>General Population Units</u>		<u>Special Population Units</u>	
	<u>Not Locked In (Days/Eves)</u>	<u>Locked In Night</u>	<u>Not Locked In</u>	<u>Locked In</u>
Direct observation	1:48	1:96	1:25	1:25
Remote observation or intermittent direct	1:36	1:72	1:25	1:25
Linear	1:25	1:50	1:25	1:25
Small jails (50 beds or less)	1:25	1:50	1:25	1:25

Source: Jail Standards Task Force.

the day area occupied by inmates. Cells are arranged around the periphery of this area. The jailer has more or less total observation and knowledge of what is going on and can observe more effectively than in traditional linear design jails where cells are strung along a connecting corridor and not directly observable. As shown in Table 4.5, the proposed staff ratio for linear design jails is nearly twice the staff level proposed for the “pure direct” design (1 to 25 compared to 1 to 48).

A third design type is recognized by the proposed regulations—a “remote observation” design. In this case, the jailer is separated from the population, but can observe more effectively since the physical design is not linear. The required staff-prisoner ratio of this design, one to 36, lies between the two designs described above.

Staff requirements are lower overnight when the general population is locked into sleeping quarters for all design types, as Table 4.5 shows. Special populations, such as those segregated for disciplinary reasons, require higher staff allocations. The ratios described above pertain to housing unit custodial supervision. Other staff are needed for booking, escort, and supervision. Overall, proposed facility-wide ratios are 1 to 15 during the day and 1 to 20 at night.

Bigger jails enjoy greater staffing flexibility. If DOC staffing requirements change from 1 to 25 to 1 to 20, a 22-person jail might have to double its custody staff; a 300-person jail would at most experience a small percentage change.

Twenty-eight detention facilities in Minnesota use a jailer-dispatcher staff arrangement, where one person handles communications between headquarters and deputies, emergency calls from the public, and serves as jailer. Currently, there are twelve one-year jails, six 90-day lockups, nine 72-hour holding facilities, and one 24-hour holding facility using this system on one or more shifts. Many of these facilities incarcerate only a few inmates at any given time, but some, like Koochiching or Kanabec, have average daily populations around 15.

In the smallest jails, one person serves as jailer and dispatcher.

Jails of this scale are vulnerable to major cost increases from more rigorous staffing requirements. It is presumably not possible for a single jailer-dispatcher to handle an emergency call on 911 and a jail emergency properly if they occur simultaneously. But, it can nearly double staffing costs to add a second person on each shift.

The solution to this problem is one not often chosen: consolidation of small jails into a regional facility. Counties do share prisoners through contracted services, and there are a few regional facilities, but quite a few small facilities survive in Minnesota. It is not clear that consolidation will be economical in that per day costs can be predicted to be lower in larger facilities. Small facilities tend to have low per diem costs. It is likely that both cost and program quality would be higher in larger regional facilities. We conclude that consolidation should be undertaken in order to achieve improved jail conditions rather than on an assumption of increased efficiency or economy.

In summary, the jail standards task force is in the process of revising staff requirements. ACA standards are not much help in this process since they consist of generalities rather than specific ratios. Indeed, current thinking is that staff ratios depend on size, design, and type of detention facility. Staff requirements can significantly affect jail operating costs, especially in small, jailer-dispatcher facilities.

Training

The third area of potential controversy is staff training requirements. Training is potentially expensive because staff are taken away from line responsibility during training, the training itself costs money, and an employee once trained can bargain for increased compensation.

Regulations now in force require:

- a training plan;
- twenty-four hours of orientation training for custodial staff within 90 days of employment;
- probationary period training (unspecified hours); and
- sixteen hours of in-service training per year.

The American Correctional Association (ACA) standards specify the requirements appearing in Table 4.6. These standards are far more specific and exacting than requirements now on the books in Minnesota.

Table 4.6: American Correctional Association – Summary of Orientation and Minimum Training Hours

<u>Title</u>	<u>Position</u>	<u>Prior to Job</u>	<u>First Year On the Job</u>	<u>Each Year Thereafter</u>
CLERICAL/SUPPORT (minimum contact)	Secretaries, clerks, typists, PBX operators, computer and warehouse personnel, accountants, personnel staff	24	16	16
SUPPORT (regular or daily contact)	Food service, industry work supervisors, farm work supervisors, maintenance work supervisors	40	40	40
CORRECTIONAL OFFICERS	All staff assigned to full-time custodial and/or security posts	40	120	40
ADMINISTRATIVE/MANAGEMENT PERSONNEL	Facility administrators, business managers, personnel directors, or other supervisors	—	40	24
EMERGENCY UNIT STAFF	Members of emergency or confrontation units	40	—	16

Source: American Correctional Association Standards for Adult Local Detention Facilities, Second Edition, 1981, p. 21.

DOC and the Jail Standards Task Force have discussed and debated new training requirements. While the rule revision process is still underway, DOC, with apparent support of the task force, is calling for a sharp increase in training standards and requirements.

Based on the debate so far, the revised rules might require that:

- **Orientation training be completed prior to a job assignment; and be increased from 24 to 40 hours.**
- **The probationary period training requirement be deleted in favor of increased orientation and first-year in-service training.**
- **The in-service training requirement be increased from 16 to 40 hours per year.**

Training requirements are also being discussed for managerial and part-time staff that are more specific and time consuming.

DOC feels that current training requirements should be strengthened.

The jail environment is highly structured, but there are a number of known hazards. Among other things, staff need to know fire safety, first aid, and when and how to intervene in disputes among inmates. Obviously, they need to know state rules and prisoners' rights. When a prisoner requests a supply of toothpaste, a record needs to be entered in the log in a correct, legible fashion. When a recreation opportunity is given, as it must be according to the rules, the fact has to be recorded.

DOC's training specialist is a strong advocate of increased training requirements. DOC has indicated that paper compliance with training requirements is not what the department is looking for. Nor is classroom training the best environment for providing jail staff with the knowledge and techniques they need to know to avoid the threat of "failure to train" lawsuits and to do their job properly.

DOC is critical of training materials and manuals that nominally meet requirements but gather dust. They are also critical of canned training programs that have little relationship to the environment in which staff will work. DOC argues that much of the training that new, more stringent standards will require is already being done on the job and should continue to be done in this way, but with proper documentation.

We think DOC's approach is practical and sensible and demonstrates sensitivity to the predictable failures of training requirements. DOC feels that with the designation of a training officer and development of a manual specifying needed areas of competence, training requirements can be met on the job to the advantage of all.

Over the longer run, DOC believes jail staff should be substantially trained and certified, as peace officers are now, through community college training programs. The cost of general training would be borne by the prospective cor-

rections officer. This change would involve a significant upgrading of the job description for custody staff and might require smaller counties to offer higher wages and benefits.

In summary, DOC is proceeding methodically and reasonably to revise Minnesota's jail standards, which are acknowledged by all to be out-of-date. DOC has assembled a task force and has met monthly to work through the issues. This committee is making detailed recommendations to DOC.

The task force is making progress, but it is in danger of missing its July 1991 deadline unless it picks up momentum. The result of the process is likely to be tougher standards governing training, but no net change in overall staffing ratios. Physical space requirements that formally allow for double-occupancy cells might also be allowed.

We conclude that DOC jail standards are not preventing counties from economically solving their jail crowding problems.

One issue we addressed at the outset of our examination of jail standards is the extent to which jail standards are making it difficult to economically solve the crowded conditions that exist in many counties. Some county officials have made this argument. Without categorically dismissing the possibility that this can happen, we do not think that current standards, proposed standards, or DOC's style of enforcement has had this effect. In summary, this is why:

- **DOC regulations have always and continue to permit dormitory-style jail areas for minimum security inmates and work-release inmates. Stricter DWI enforcement has meant a growth in the number of prisoners who do not present a high security risk in jail.**
- **DOC standards allow pre-1978 facilities to operate that do not meet standards enacted subsequent to their construction. DOC's plan to upgrade the state's jails is a long-term project, not a crackdown on old-fashioned, but otherwise sound, institutions.**
- **DOC has sought wide input in the jail standards revision process.**
- **If DOC is to be faulted, our criticism would be for its failure to apply more pressure to expedite needed renovation or capacity additions in several counties.**

DOC'S STYLE OF REGULATION AND ENFORCEMENT

The department's approach to regulation is flexible and recognizes that facilities can be out of compliance with subsequently enacted standards, yet be well run and safe facilities.

DOC has adopted a strategy of bringing local detention facilities into compliance over time. As Table 4.1 shows, and as we point out in Chapter 1, in the

DOC's enforcement of jail standards is effective. Its enforcement style emphasizes negotiation and compromise.

early years of DOC regulation, outmoded facilities were condemned and substantial building and renovation took place. Forty-seven counties built new facilities since 1975. The department now feels that even the worst facilities are at least habitable if used properly.

We accompanied DOC inspectors on several inspection visits, reviewed inspection files, visited other facilities on our own, and talked to many jailers, sheriffs, and county officials about DOC regulation.

We have concluded that DOC's approach is reasonable and effective. But it should be noted that under the current system, some violations of non-mandatory standards can remain in a chronic state of noncompliance. It remains to be seen if newly-revised standards can improve DOC's ability to obtain compliance on important, but nonessential standards. This is certainly a DOC goal.

DOC has proposed renaming non-mandatory standards "essential," and to require 90 percent compliance rather than 70 percent compliance in order to meet its requirement of "substantial" compliance. As we saw earlier, relatively few counties (ten as of fiscal year 1989) have non-mandatory compliance rates of under 95 percent. Nominally high compliance rates can be misleading. There are chronic jail problems that need attention, high apparent rates of compliance notwithstanding.

Counties pay for the construction and operation of jails. County sheriffs and jail staff do not have a fundamentally different view than DOC of the need for safety, security, or protection of prisoners. In fact, some of the strongest voices for strict jail standards are jail administrators and program staff who have to justify their budgets to skeptical county boards.

Ultimately, the debate over standards is not a debate over whether daily calorie allowance should be 2,700 or some other number, or whether cells should be 60 or 70 square feet. It is a debate over the use of authority by various important actors: the state corrections department, county sheriffs, county board members, and others. Several of these actors have the legitimacy to exercise authority that comes from having been elected. Elected county officials, accountable to local taxpayers and voters, can resist state corrections officials even if the latter possess legal authority and are technically correct about compliance with a particular standard.

In any case, DOC does not operate detention facilities, or build or pay for them. DOC does not serve prisoners meals, classify inmates upon intake, or suffer the consequences of a bad decision. For these reasons, we think that DOC's philosophy of enforcement is appropriate and likely to be more effective than a rigid and inflexible approach, which discourages good faith compliance and long-term progress for technical adherence to standards.

There are occasions, however, when lack of progress in solving jail needs reaches a critical level. Arguably, this point has been reached in Hennepin, Ramsey, Washington, St. Louis, and several other counties. Legislators have asked whether state jail standards are impeding a solution; our opinion is that

The risk of DOC's approach is that needed reforms will be deferred and delayed indefinitely.

the impediments are mainly local. In Hennepin and Ramsey, for example, the need for new facilities has long since been agreed upon but the size and site of proposed facilities continue to be debated.

The cost of delays in adding capacity are several. Counties need to place their surplus prisoners in county jails around the state or release them when they should be held. Use of outlying jails requires transportation and can interfere with inmate access to counsel or visitors. In Hennepin, the fact that the Adult Detention Center is crowded may help explain high failure-to-appear rates of those released on recognizance or even a cash bond. In Washington county, the result of overcrowding is a waiting list of people unable to serve their sentence immediately. In St. Louis, the jail's design is out of compliance with contemporary standards of fire safety.

From what we can tell, all these jails are nevertheless well run. Hennepin County meets ACA accreditation standards. St. Louis County's physical plant is out-of-date, but the program is well run according to DOC. As matters stand, DOC cannot easily condemn facilities that provide essential capacity, although they enter into a limited-use agreement in relatively serious situations. Five jails, including St. Louis, are now operating under such agreements.

We conclude that DOC standards are not impeding counties from adding needed capacity, but DOC's style of regulation and limited technical assistance in planning for future needs does not provide enough impetus for change. Arguably, DOC has not pushed as hard as it should to get counties to do what they need to do.

CONCLUSIONS

DOC is effectively performing its responsibility to promulgate standards and inspect and license facilities. While effective, the department's performance is not perfect. Steps now being taken reflect, in large measure, what needs to be done. These steps include:

- **revision of outdated construction and operating jail standards,**
- **development of sanctions short of condemnation but more coercive than negotiations, especially when negotiations last indefinitely, and**
- **stepped up pressure on local situations where state pressure is needed to prompt faster local action.**

We reviewed a number of claims by counties that state jail standards were responsible for local inability to construct needed jail capacity. We conclude, however, that the main impediments to timely jail construction are local in origin. DOC is willing to negotiate with counties in order to meet their facility needs. This includes allowing temporary variances from standards while new jail facilities are being planned and built. In the case of Hennepin, Ramsey

and St. Louis counties and in other counties as well, it is easier to argue that DOC has been too accommodating than too exacting in its requirements.

COMMUNITY PROGRAMS AND INTERMEDIATE SANCTIONS

Chapter 5

Correctional programs that provide for more direct supervision and control than traditional probation, but less than incarceration in prison or jail, are growing in popularity around the country. These programs are called “intermediate sanctions” or “intermediate punishments.” They are typically administered at the local level, and they have been promoted as a less costly alternative to prisons and jails and as a means of reducing institutional overcrowding. In this chapter, we look at the extent to which these programs exist in Minnesota and explore how they are being used. We focus on the following questions:

- **What types of community-based programs are available in Minnesota? Are the newer types of intermediate sanctions being developed?**
- **Are intermediate sanctions being used as alternatives to incarceration or in addition to jail or prison time?**
- **What does the research literature say about the relative cost and effectiveness of intermediate sanctions? Do they represent a realistic solution to prison and jail overcrowding in Minnesota?**
- **Do enough community-based programs and services exist to meet current needs? What programming needs remain unmet?**

To obtain current information about the availability of community-based programs, as well as opinions about correctional needs, we conducted a mail survey of community corrections officials and probation officers. We sent questionnaires to Department of Corrections (DOC) felony probation agents, court services directors responsible for misdemeanor probation in counties where services are jointly provided by the county and the DOC, and all Community Corrections Act (CCA) administrators. Of the 92 questionnaires sent out, 83 were returned for a 90 percent return rate. The respondents included 46 DOC agents, 22 county agents, and 15 corrections administrators representing the 30 CCA counties. We obtained information about programs in all 87 counties. A copy of the questionnaire can be found in Appendix C.

In general, we found that many of the community programs that were developed in the 1970s as a result of CCA remain in place, including drug and

alcohol treatment programs, restitution, and community work service. But the newer forms of intermediate sanctions, such as house arrest, intensive probation supervision, and day fines are not fully developed. Where these programs exist, they are often used in addition to rather than as an alternative to incarceration.

INTERMEDIATE SANCTIONS

Alternatives to incarceration are being expanded throughout the country.

"Intermediate sanctions," also called "intermediate punishments," "alternatives to incarceration," "community sanctions," or "community-based alternatives," include the following programs: intensive supervision probation, house arrest, day centers, halfway houses, residential and outpatient treatment, day fines, restitution, community work service, and sentencing to service. Each of these programs is described briefly in Figure 5.1.

Figure 5.1: Description of Intermediate Sanction Options

Community Service

This program requires offenders to perform unpaid public service, such as volunteering at a local hospital or an agency serving the poor. Supervision is provided by the service agency, not correctional personnel. Sentencing usually sets a specific number of service hours required.

Day Centers

Nonincarcerated offenders are required to report regularly to a specific location where appropriate programming is provided. This can be used in conjunction with house arrest or electronic monitoring.

Day Fines

Rather than a fine structure that specifies standard dollar amounts for different crimes, day fines are designed to take into account the offender's capacity to pay. This concept originates from the philosophy that offenders should pay fines based on "a day's wage," thus equalizing the economic impact.

Halfway Houses

These residential facilities located within the community are designed to ease the transition between incarceration and community living. Offenders participate in community programs and activities while still under the direct daily supervision of corrections personnel.

House Arrest

Offenders serve their sentences at home and are allowed to leave only for approved activities such as work, treatment programs, or community service. This program is often used in conjunction with an electronic monitoring system to help law enforcement officials track the offender. House arrest is generally a short-term sanction and is most often used for felony offenders convicted of nonviolent or property crimes.

Figure 5.1, continued**Intensive Supervision Probation**

As with traditional probation, the offender is released to community supervision, but monitoring, surveillance, and program support are greatly increased. It is often used in conjunction with programs such as community service, electronic monitoring, and drug testing.

Restitution

Offenders are required to repay the victim in money or services to compensate for losses resulting from the crime.

Sentencing to Service

In this Department of Corrections program, selected nondangerous offenders are assigned to supervised work crews to carry out governmental or nonprofit agency projects such as river cleanup or recreational trail development. This program is different from community service in that the work is directly supervised by Sentencing-to-Service personnel.

Treatment Programs

Offenders are required or ordered by the court to participate in formalized residential or outpatient intervention programs dealing with such problems as substance abuse, domestic abuse, and sex offenses.

Work Release

Inmates are allowed to leave prison or jail on a daily basis for their regular work commitments within the community.

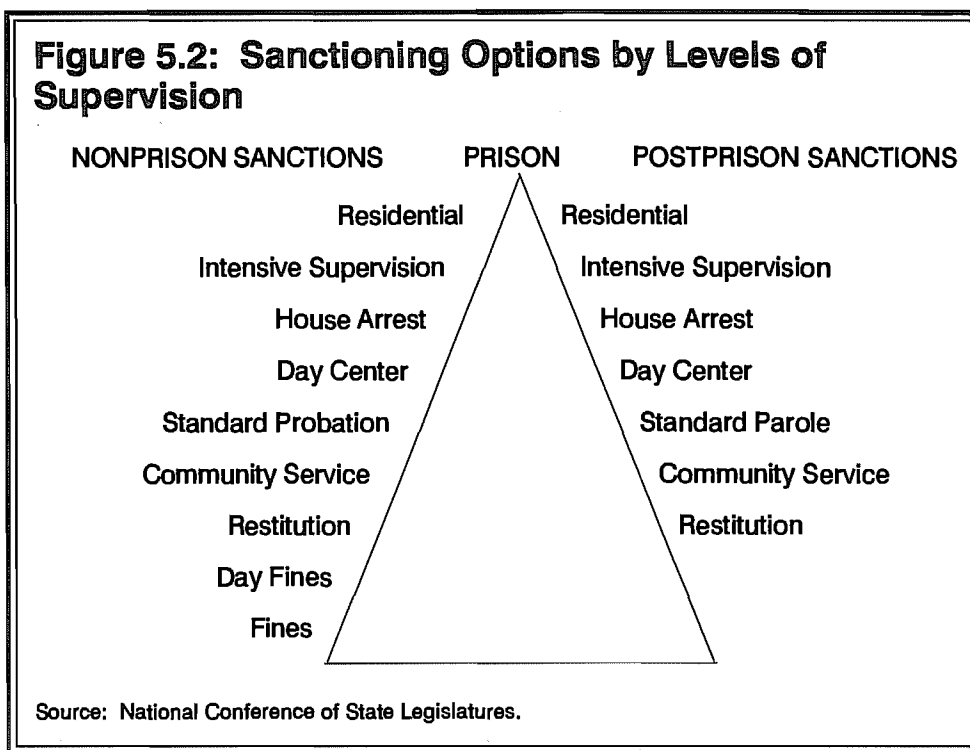
Intermediate sanctions provide a range of offender supervision and control.

Intermediate sanctions are based on the view that some people currently in (or typically sentenced to) prison and jail need not be there and that some people on probation or parole require more supervision and control than they usually receive. They are designed to provide a range of sentencing options that matches offender needs for supervision, control, and treatment with appropriate sanctions, while also meeting the public's desire for safety. A continuum of programs and sanctions—from progressively less to more surveillance and restriction of freedom—also provides corrections officials with meaningful threats of successively more severe punishment to use in their efforts to modify offender behavior.

Several of these programs can be used either as a "front-end" (pre-sentence or nonimprisonment) sanction or as a "back-end" early release mechanism from prison. Figure 5.2 illustrates how these sanctioning options may be used and the levels of offender supervision they provide.¹

¹ For a discussion, see Norval Morris and Michael Tonry, *Between Prison and Probation* (New York: Oxford University Press, 1990), and James M. Byrne, Arthur J. Lurigio, and Christopher Baird, "The Effectiveness of the New Intensive Supervision Programs," *Research in Corrections* (September 1989).

Figure 5.2: Sanctioning Options by Levels of Supervision



The Cost of Intermediate Sanctions

Corrections costs are growing rapidly, and the cost implications of corrections policy are a significant concern. Intermediate sanctions are often advocated as a means of achieving savings, but the issue is complex. Most cost figures reported in national studies do not include all of the real costs associated with them, making comparisons among alternative sanctions difficult. Estimates of jail and prison costs, for example, typically do not include construction, financing, institutional improvement and repairs, indirect operating expenses, or staff benefits.² Also, there are important differences between average operating costs and marginal costs. If a facility is operating under capacity, for example, the marginal cost of an additional inmate is considerably less than the average per diem cost. Overcrowded jails or high probation officer caseloads, on the other hand, tend to underestimate the real costs of these alternatives.

Keeping these qualifications in mind, the average costs for selected sanctions, as calculated by the Rand Corporation from a California study in 1985, are presented in Table 5.1. Operating costs for Minnesota jails and prisons are higher than those cited in this table (Minnesota jails cost \$14,778 per inmate to operate in 1988, and the state prisons ranged from \$18,000 to \$37,000 per prisoner in 1989).³ But the Rand information is useful for relative cost comparisons. It suggests that:

² See Douglas C. McDonald, "The Cost of Corrections: In Search of the Bottom Line," *Research in Corrections* 2, no. 1 (February 1989): 1-25.

³ Bureau of Justice Statistics, "Census of Local Jails, 1988," *Bulletin* (Washington, D.C., February 1990). State prisoner costs obtained from the Minnesota 1990-91 Biennial Budget.

Table 5.1: Per Offender Annual Cost of Sentencing Options, 1985

<u>Option</u>	<u>Annual Cost</u>	
Routine probation	\$ 300 -	2,000
Intensive supervision	1,500 -	7,000
House arrest		
Without electronics	1,350 -	7,000
With passive system	2,500 -	6,500
With active system	4,500 -	8,500
Local jail	8,000 -	12,000
Local detention center	5,000 -	15,000
State prison	9,000 -	20,000

Note: Exclusive of construction costs.

Source: The Rand Corporation, *Expanding Options for Criminal Sentencing*, 1985.

These sanctions cost less than incarceration, but more than probation.

- Intermediate punishments typically cost less than incarceration in prisons or jails, but more than traditional probation.

An exception is residential treatment, which can cost upwards of \$100-150 per day (or \$36,500 to \$54,750 annually per offender), making it more expensive than prison. As a general rule, the cost of alternative sanctions tends to rise as the amount of direct offender supervision increases.

In the short run, intermediate sanctions are likely to increase overall correctional costs because of initial development and administrative costs.⁴ Some analysts believe that intermediate sanctions can lead ultimately to lower correctional costs if they are used as alternatives to incarceration. On the other hand, if intermediate sanctions are used primarily to provide more control over people sentenced to probation, they may simply increase overall costs. Finally, it is quite likely that overall costs will increase if these programs are used as an additional sanction before or after incarceration in prison or jail and in addition to probation.

Minnesota experienced this when it established the Community Corrections Act. An overall cost savings was expected, but in fact CCA increased costs. The savings from offenders diverted from prison did not offset CCA start-up and administrative costs. Furthermore, an expansion of local programs appeared to result in diversions from less costly options, such as probation, to more costly ones, such as incarceration in jails.⁵

Other evidence suggests that when a new sanction is introduced as an alternative to a more severe one, it tends to be used instead as a more severe

⁴ Cindy Simon Rosenthal, *Opportunities in Corrections* (Denver: National Conference on State Legislatures, July 1989), 11. Tonry and Morris make a similar point in *Between Prison and Probation*.

⁵ Minnesota Department of Corrections and the Crime Control Planning Board, *Minnesota Community Corrections Act Evaluation General Report* (St. Paul, January 1981), 80-81.

sanction for those who would otherwise have received less serious punishment.⁶ This is partly why some researchers argue that the introduction of new sanctions should be tied to guidelines governing or rationing their use.

A positive feature of several intermediate sanctions, which can help to defray their costs, is provision for offender payments or other offsetting economic benefits. Restitution, sentencing to service, community work service, fines, and day fines all involve offender payments of one sort or another. They are based on the idea that both the community and the individual offender are "restored" when criminals repay some of their debts to the victims or to society generally. In the case of treatment and house arrest programs, and even some intensive supervision probation programs, it is not uncommon for offenders to pay part or all of the costs.

The Effectiveness of Intermediate Sanctions

In the 1970s, many people concluded that "nothing works" in corrections, contributing to a punishment philosophy during the 1980s. For example, Robert Martinson's influential article, published in 1974, raised fundamental questions about the rehabilitation philosophy.⁷ This study of the rehabilitative effects of programs on criminals became the intellectual justification for the movement away from treatment and other community-based programs toward punishment, defined as incarceration, as the primary goal of corrections policy.

But Martinson's study has now been reexamined and another conclusion is evident. What Martinson showed was that we did not know for sure if rehabilitative programs worked or not.⁸ However, our review of the literature suggests that:

Some—but not all—programs have been shown to be effective.

- There is growing evidence that *some* programs have *some* beneficial results for *some* individuals. Furthermore, it is becoming increasingly possible to identify characteristics associated with effective treatment.

During the 1980s, a second generation of community-based programs sprang up, mostly as a response to prison and jail overcrowding, and they have been carefully scrutinized and evaluated. There are now many empirical studies available, and their results are modestly encouraging: offenders who participate in certain programs are less likely than nonparticipants to commit new crimes. This conclusion has been found in evaluations of probation programs as well as some treatment programs. For example, an evaluation of four drug treatment programs found that recidivism rates for participants were well below the average for untreated offenders. This study also identified features of successful programs, including staff who demonstrate genuine concern for

⁶ This was the conclusion of the Canadian Sentencing Commission in its 1987 report on the effects of intermediate sanctions, cited in Tonry and Morris, *Between Prison and Probation*, 224-7.

⁷ Robert Martinson, "What Works? Questions and Answers about Prison Reform," *Public Interest* (Spring 1974).

⁸ John J. DiIulio, Jr., "Getting Prisons Straight," *The American Prospect* (Fall 1990): 54-64.

offenders, the development of clear rules and penalties, and provision of offender aftercare.⁹

For several reasons, however, scholars believe it is important to be cautious about these findings. First, the best studies have involved relatively low-level offenders, and there is less evidence that serious, repeat offenders can be rehabilitated. Furthermore, only some offenders show positive results from program participation. In addition, a recent evaluation by the U.S. General Accounting Office (GAO) found methodological problems that prohibit final answers about the effectiveness of intermediate sanctions. The GAO concluded that:

Society seems less and less willing to place criminals in programs where the extent of supervision is a monthly phone call. At the same time, it seems that even intensively supervising offenders in community-based programs does not eliminate all danger to the community. Finally, incarcerating offenders does not seem to diminish their propensity to engage in criminal activity after release.¹⁰

One finding emerging from several studies is that the rate of failure is highest for offenders released from prison (parolees), lowest for offenders on traditional probation, and in the middle for those on intensive probation supervision. This is true even when researchers have controlled for age, criminal history, and type of offense.¹¹

Minnesota State Planning Agency staff have analyzed the criminal records of thousands of Minnesota felons and gross misdemeanants, including individuals convicted of aggravated assault, sexual assault, robbery, and driving while intoxicated. They also found the highest recidivism rates among offenders who were sentenced to prison and concluded that "jails and prisons are not effective at reducing criminality among those who have been incarcerated."¹²

**People
sentenced to
prison tend to
have the
highest
recidivism
rates.**

PROGRAM AVAILABILITY IN MINNESOTA

We surveyed state and local corrections officials to determine the availability of the following intermediate sanctions: residential and outpatient treatment and counseling programs, halfway houses, house arrest (with and without

⁹ *Ibid.*, 58.

¹⁰ U.S. General Accounting Office, *Intermediate Sanctions: Their Impacts on Prison Crowding, Costs, and Recidivism are Still Unclear* (Washington, D.C., September 1990), 46.

¹¹ *Ibid.* The first such study included carefully matched samples and statistical controls for variables related to recidivism. It found higher recidivism rates for offenders sentenced to prison than for those sentenced to probation, and the increased probability was statistically significant for property offenders. See Joan Petersilia, Susan Turner, with Joyce Peterson, *Prison versus Probation in California: Implications for Crime and Offender Recidivism*, prepared for the U.S. Department of Justice (Santa Monica: Rand Corporation, July 1986).

¹² Stephen Coleman and Kathryn Guthrie, *Sentencing Effectiveness in the Prevention of Crime* (St. Paul: Minnesota State Planning Agency, 1988). Among DWI offenders, there was no difference in recidivism (after three years) between those sentenced to jail and those who were not. With respect to length of sentence, only DWI offenders with the longest sentences had statistically different recidivism rates, and they were higher rather than lower.

electronic monitoring), intensive probation supervision, community work service, sentencing to service, day fines, and restitution.

For purposes of analysis, we divided these programs into two types: treatment programs and other intermediate sanctions. Treatment programs are those that address specific problems, such as alcoholism, chemical dependency, violent behavior, inappropriate sexual behavior, and other psychological problems, as well as programs that try to provide skills, such as job, education, or parenting skills. We also included halfway houses in the treatment category. Halfway houses are residential programs designed to help ease offenders back into society after prison or jail (although they may be used for other purposes, such as a secure pretrial facility).

Treatment programs tend to be older than the other intermediate sanctions. They are the types of programs that the Community Corrections Act was designed to foster. Also, most treatment programs are not run by correctional personnel, but by other public or private agencies. The role of the probation officer tends to be limited. Typically, the officer assesses the offender's amenability to treatment, recommends placement in the pre-sentence investigation, and may keep track of the offender's progress. But the probation officer is not an active part of the treatment regimen.

All other intermediate sanctions are included in the second category. They tend to be newer than treatment programs, and generally they involve the probation officer more actively. In community work service, for example, it is the probation officer who typically arranges for work service assignments and who monitors offender compliance with the judge's order. In the case of restitution as well, the probation officer monitors restitution payments. House arrest and intensive supervision usually involve frequent face-to-face and telephone contact with the offender, often by a probation officer. There are private agencies that provide electronic monitoring services, but violations and additional supervision are typically handled by probation staff.

Treatment Programs

Table 5.2 shows the availability of treatment-oriented programs in Minnesota. As indicated, drug and alcohol treatment programs are widely available in the state, and outpatient sex offender treatment is available in most areas. Halfway houses and residential sex offender programs are not as widely available; nearly half the respondents said there were no programs of this sort available to them.

Corrections professionals estimated that their agencies had put approximately 4,700 offenders through treatment programs in the six months ending June 30, 1990. Almost three-quarters of those offenders (73 percent) participated in outpatient programs of some type, with 18 percent undergoing residential treatment and 8 percent in a halfway house.¹³

Drug and alcohol treatment programs are widely available in the state.

¹³ These numbers are estimates only; they are not based on actual case records. They represent estimates for the jurisdiction as a whole, not for the individual respondent. In addition, persons who participated in multiple programs could be counted more than once.

Table 5.2: Availability of Treatment Programs

	Percent of Respondents	
	With Operating Programs	Program Being Planned
Residential treatment:		
Drug/alcohol	81.0%	0.0%
Sex offender	51.2	1.2
Family violence/domestic abuse	1.2	0.0
Mental health	3.6	0.0
Employment/education counseling	1.2	0.0
Other	2.4	0.0
Outpatient treatment:		
Drug/alcohol	95.2	0.0
Sex offender	75.0	0.0
Family violence/domestic abuse	9.5	0.0
Mental health	2.4	0.0
Other	3.6	0.0
Halfway houses	52.4	1.2

N = 83.

Source: Office of the Legislative Auditor Community Corrections Survey.

In most cases, treatment programs are run by outside parties. Our respondents identified 45 different residential treatment providers and 104 different outpatient providers. Those listed included hospitals, area mental health centers, county human services organizations, and other nonprofit organizations. These programs have been in use longer in counties that receive Community Corrections Act (CCA) subsidies than in other counties: on the average, CCA administrators started using these programs in 1979, compared to 1982 for non-CCA respondents.

There are many cases in which offenders are not getting the treatment they need, according to the local corrections officers we surveyed. For example, some offenders cannot afford the programs that are available. Most treatment programs require that the offender be responsible for all or part of the costs (82 percent of outpatient programs and 47 percent of residential programs, according to our respondents). If the offender has inadequate insurance or does not qualify for medical assistance, the program may not be affordable.

Funding for treatment is typically provided through county social service agencies (Department of Human Services' Rule 25 funding). Many offenders "fall through the cracks," according to some respondents, because they do not have the resources to pay for treatment themselves, yet they are not eligible for funding through the counties. In some counties, the funds available are inadequate to meet existing needs. As one agent in southeastern Minnesota

Not everyone in
need of
drug/alcohol
treatment
receives it.

told us, "More funding for treatment programs is needed. The people who need it the most are often the least able to afford it."

In cases where the offender or the county cannot pay for treatment, the alternative is likely to be jail time. Many corrections officials feel that jail time alone is an inappropriate sanction for offenses or offenders where the underlying causes are responsive to treatment. In a report evaluating the effectiveness of the state's alcohol safety program, a judge was quoted as saying that "almost 100 percent of the people jailed or imprisoned eventually get out, still untreated and even more antisocial."¹⁴

Information on funding and costs is sketchy, however, because probation officers and corrections officials do not control the funding for treatment programs. Hence, they are generally unaware of the costs of the basic treatment regimens. In the words of a Department of Corrections probation agent, "We are not involved in the money issues, nor do we have contact with treatment facilities regarding anything other than the progress of our specific clients."

Even when money—either the offender's or the county's—is available for treatment, in some areas the programs simply may not exist. Survey respondents told us that:

- **Often treatment programs are nonexistent, far away, or difficult for offenders to get to, especially in rural areas of Minnesota.**

Programs for sex offenders, for example, do not exist in many communities. Statewide, nearly half the jurisdictions do not have a residential sex offender program. According to our respondents, one reason is that the number of offenders is so small that it is not economical to maintain one. Yet the person convicted of a sex crime in a rural county may need the treatment as much as one in the metropolitan area. In areas where halfway houses and sex offender treatment programs do not exist, most respondents said these programs are needed but the resources are not available. As one probation officer put it,

Treatment and counseling resources are a problem in Greater Minnesota. Because often we do not have enough offenders to support a local program, [offenders are] forced to travel quite a distance. This becomes a problem when one notes that many of our clients do not have a driver's license [because of DWI convictions].

The comments of those we surveyed also indicate that some specific treatment needs remain unmet. In particular,

- **There is a significant need for treatment programs that address emerging issues, such as family violence and domestic abuse.**

Almost all the available treatment programs deal with either substance abuse or sex offenses. Respondents indicated there are some emerging needs that

Accessibility is a problem in rural parts of the state.

¹⁴ David Anderson, et al., *Effectiveness of the Minnesota Alcohol Safety Programs, Final Report* (St. Paul: Minnesota Department of Public Safety, State Planning Agency, and Department of Human Services, 1990), 16.

currently are not being met by the treatment community. For example, less than 10 percent of the respondents had any treatment programs available that address family violence and domestic abuse. Respondents also indicated that more treatment programs are needed for female offenders and ones dealing with intrafamilial sexual abuse and anger control.

Other Intermediate Sanctions

Table 5.3 shows the availability of other intermediate sanction programs. Community work service is widely available, and over 60 percent of the jurisdictions have house arrest programs. Sentencing to service is available in half of local jurisdictions, and is being planned in another 30 percent.

Table 5.3: Availability of Other Intermediate Sanctions

	Percent of Respondents	
	With Operating Program	Program Being Planned
House arrest with electronic monitoring	64.3%	10.7%
Intensive probation supervision	14.3	19.0
Sentencing to service	50.0	29.8
Community work service	92.9	1.2
Day fines	28.6	2.4
Supervised restitution	29.8	1.2

N = 83.

Source: Office of the Legislative Auditor Community Corrections Survey.

The other intermediate sanctions, however, are relatively rare in Minnesota. For example, only 14 percent of our respondents have an intensive probation supervision program, and only 29 percent have a day-fine program in operation. Although less than 30 percent reported having a supervised restitution program, this is misleading. Many of our survey respondents said they did not know what was meant by "supervised" restitution because they did not consider it a formal program. Rather, monitoring restitution payments was a routine part of a probation officer's job responsibilities.

Except for community work service and restitution, most intermediate sanctions have been started within the past year or two.¹⁵ These programs are growing in acceptance, however, and they show the most potential for future growth. Table 5.4 compares the current use of various types of programs to past use.¹⁶ This table shows that the use of monitored house arrest and restitution is growing the most, followed by outpatient treatment programs

¹⁵ Sentencing to service was initiated by the Department of Corrections in 1986. Recently, additional funds were appropriated for STS and more counties have adopted the program. A 50 percent local matching of funds is required.

¹⁶ Several programs—intensive probation, sentencing to service, and day fines—are not included because the number of respondents with the program was very small or the program did not exist the previous year.

Table 5.4: Use of Intermediate Sanction Programs Over Time

Program Type	Use in Period 1/1 to 6/30/90 Compared to Previous Year			Number of Respondents
	Fewer Offenders	About the Same	More Offenders	
Residential drug and alcohol treatment	21.4%	62.5%	16.1%	56
Outpatient drug and alcohol treatment	12.7	60.6	26.8	71
Residential sex offender treatment	20.5	69.2	10.3	39
Outpatient sex offender treatment	21.1	54.4	24.6	57
Halfway houses	11.5	69.2	19.2	26
Monitored house arrest	11.5	30.8	57.7	26
Community work service	14.3	60.0	25.7	70
Supervised restitution	4.8	52.3	42.9	21

Source: Office of the Legislative Auditor Community Corrections Survey.

(alcohol/drugs and sex offender). Also, nearly all of the programs that respondents said were in the planning stage (97 percent) were the newer types of intermediate sanctions.

Factors Related to Program Availability

The number of programs appears to be fairly uniform throughout the state, with each jurisdiction averaging about seven programs. The jurisdiction with the most programs is Anoka County, with 22 programs. Lincoln County has the least, with only a community service program. Over half of the jurisdictions have between five to nine programs. We looked at three factors that might account for variation in the availability of intermediate sanction programs in Minnesota: local factors, amount of crime, and who provides corrections programs.

Local Factors

In our survey, we asked corrections officials to identify the reasons that programs were not available in their community. As shown in Table 5.5, "lack of resources" and "too few offenders to justify the program" were the main reasons given for program unavailability. In counties with a relatively large amount of crime (over 3,000 Part I crimes in 1989), "lack of resources" was cited as the most important factor for not having a particular program.

Table 5.5 also shows that some programs lack the support of local policymakers. This is particularly the case with the newer intermediate sanctions. For

Counties lack the resources to expand intermediate sanctions.

Table 5.5: Reasons for Program Unavailability

<u>Program</u>	<u>No Strong Need/Not Enough Offenders</u>	<u>Not Enough Resources</u>	<u>Lacks Support of Policy- makers</u>	<u>Not Enough Offenders or Resources and Lacks Support</u>	<u>Other Reason</u>	<u>Number Respondents Without Program</u>
Treatment Programs:						
Residential drug and alcohol	10.0%	60.0%	—	10.0%	20.0%	10
Residential sex offender	51.5	42.4	3.0	3.0	—	33
Other residential	33.3	66.7	—	—	—	3
Outpatient sex offender	35.7	42.9	7.1	—	14.3	14
Halfway houses	21.2	48.5	—	9.1	21.2	33
Other Intermediate Sanctions:						
House arrest/no monitoring	40.0	12.0	32.0	8.0	8.0	25
Monitored house arrest	11.1	33.3	33.3	11.1	11.1	9
Intensive supervision	63.0	14.8	3.7	—	18.5	54
Sentencing to service	12.5	37.5	31.3	6.3	12.5	16
Day fines	19.0	4.8	28.6	—	47.6	42
Supervised restitution	14.3	35.7	7.1	2.4	40.5	42

Source: Office of the Legislative Auditor Community Corrections Survey.

example, 31 percent of survey respondents from jurisdictions without sentencing to service and 33 percent of those without monitored house arrest said that “lack of support” from judges, local policymakers, and corrections officers was a major reason for not having the program.

Another example is day fines. In the 1990 session, the Legislature ordered the Sentencing Guidelines Commission to develop a model day-fine system. All judicial districts are to adopt either that model or their own system for day fines by the beginning of 1992.¹⁷ Yet this type of sanction is not very popular among local policymakers and corrections workers. According to our respondents,

- **Day fines lack the support of judges, county boards, and corrections staff in some parts of the state.**

Some programs are unpopular with local policymakers.

Of those jurisdictions without day fines, officials from 29 percent said that opposition from policymakers was a major factor. Another 43 percent said they had simply “never considered the idea.”

The main reason supervised restitution was unavailable (included in the “other” category) was it is already considered part of the probation officer’s responsibility and is not a formal program.

¹⁷ Minn. Laws (1990), Ch. 568, Article 2.

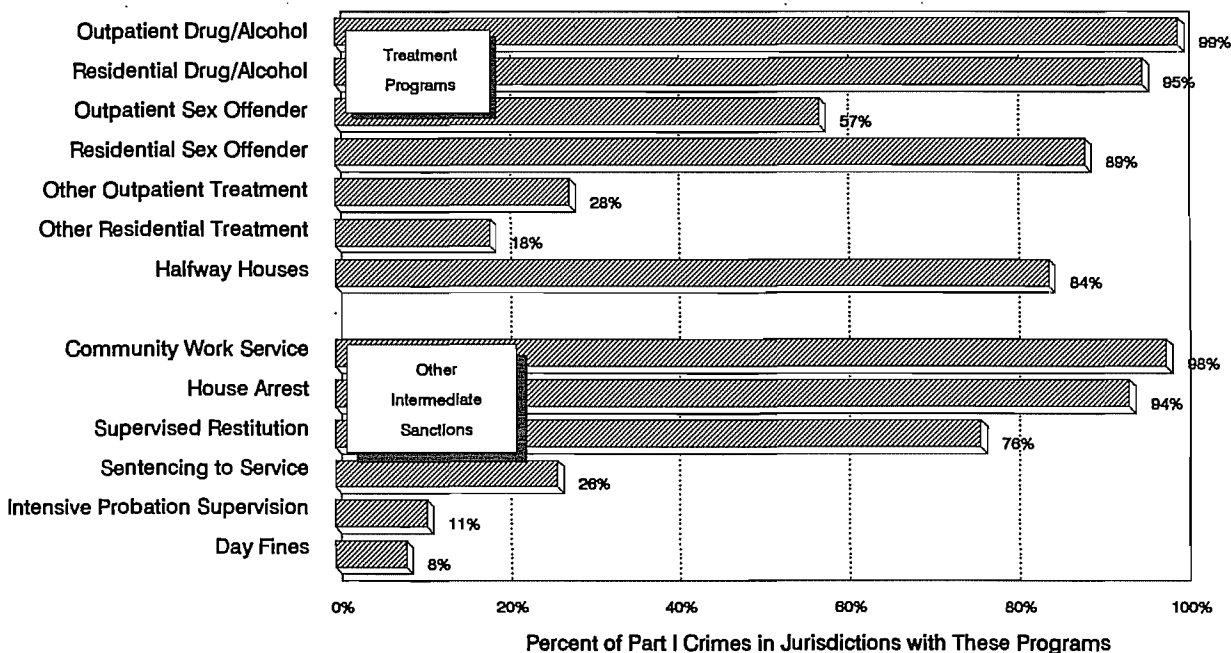
Amount of Crime

There are indications that certain programs are not available where they are most needed. We found that:

- The jurisdictions with the most crime, and therefore the greatest need for programs, are less likely to have several of the newer intermediate sanctions.

Figure 5.3 shows the availability of community programs in Minnesota by amount of crime. It suggests that programs such as sentencing to service, intensive probation supervision, and day fines are largely unavailable in higher-crime jurisdictions. For example, only 8 percent of the state's Part I crimes occur in jurisdictions that have a day-fine program and 11 percent occur in jurisdictions with intensive supervision.¹⁸ One reason that high-crime areas do not have these services may be that many of Minnesota's community programs have been initiated by the Department of Corrections, which tends to provide services in smaller, rural counties that have less crime. Thus, smaller counties are more likely to have the newer sanctions, even though they have fewer offenders who would use them. One exception is house arrest with electronic monitoring. This sanction tends to be more prevalent in high-crime areas where jail crowding is likely to be a problem.

Figure 5.3: Percent of Minnesota Part I Crimes Committed in Jurisdictions with Various Types of Community Programs



Source: Office of the Legislative Auditor Community Corrections Survey.

¹⁸ Part I crimes include homicide, rape, robbery, aggravated assault, burglary, theft, and motor vehicle theft.

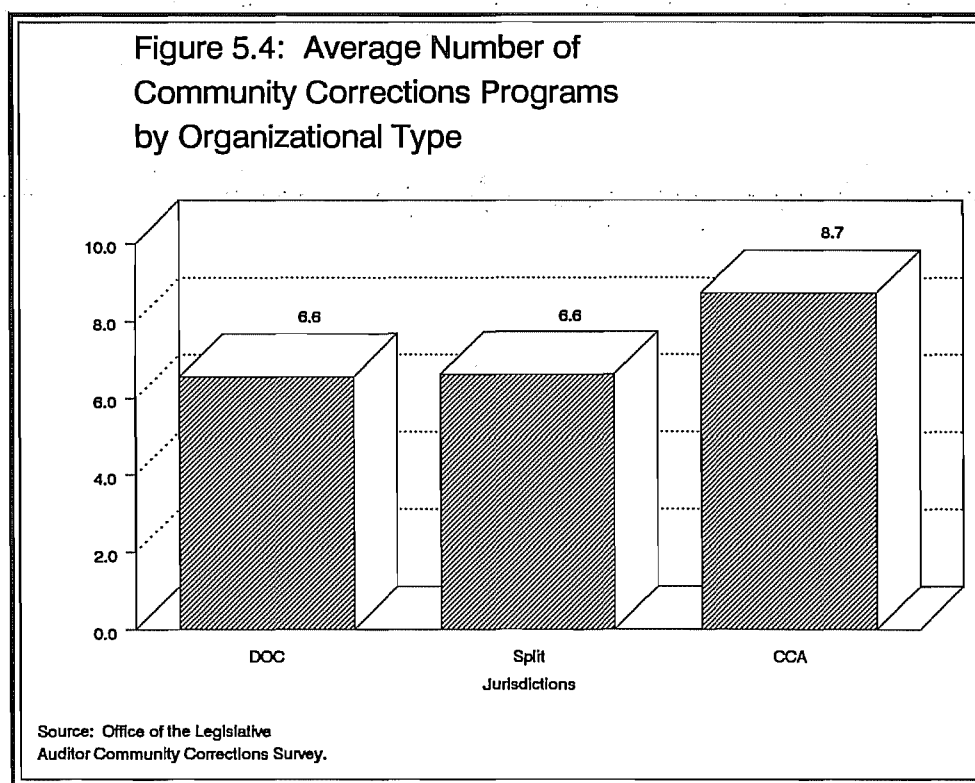
Correctional Organization

We also looked at the relationship between program availability and who provides corrections services. As discussed in Chapter 1, there are three alternative ways in which probation services and other community programs are provided, and counties can decide which one best suits their needs: 1) in 20 counties, the Department of Corrections (DOC) provides all felony and misdemeanor probation for both adults and juveniles; 2) in 37 counties, the DOC and the county share responsibilities, with the department providing adult felony probation services and the county providing misdemeanor and juvenile services (we refer to this group as "split jurisdictions"); and 3) the remaining 30 counties, organized into 15 units, are Community Corrections Act (CCA) participants.

There are more programs in Community Corrections Act counties.

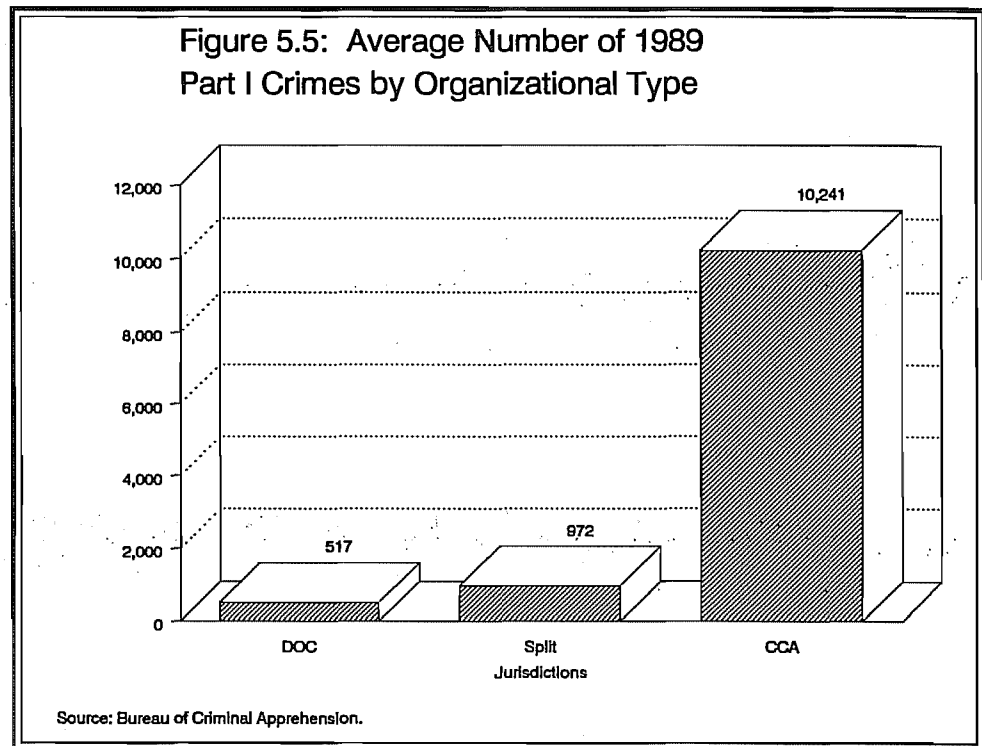
Figure 5.4 shows that the number of programs available varies by the way correctional services are provided in a jurisdiction.

- **There are more programs in CCA areas than in either all-DOC counties or split jurisdictions.**



The typical CCA jurisdiction has 8.7 programs available for adult offenders while other jurisdictions have an average of 6.5 programs. There is virtually no difference in the number of programs available in DOC versus split jurisdictions. Even eliminating CCA counties in the metropolitan area, the remaining CCA counties still have an average of 1.2 more programs than DOC and split jurisdictions.

This does not necessarily mean that CCA is responsible for higher program levels. The CCA counties tend to have higher populations and more crime than those that do not participate in CCA. As shown in Figure 5.5, the CCA counties had 10 to 15 times the number of reported Part I crimes than other counties. Higher levels of crime translate into greater demand and need for correctional programs. A high-crime area will also have enough offenders to support programs for such comparatively rare crimes as criminal sexual conduct. Overall, 80 percent of all reported Part I crimes in 1989 were in CCA counties.



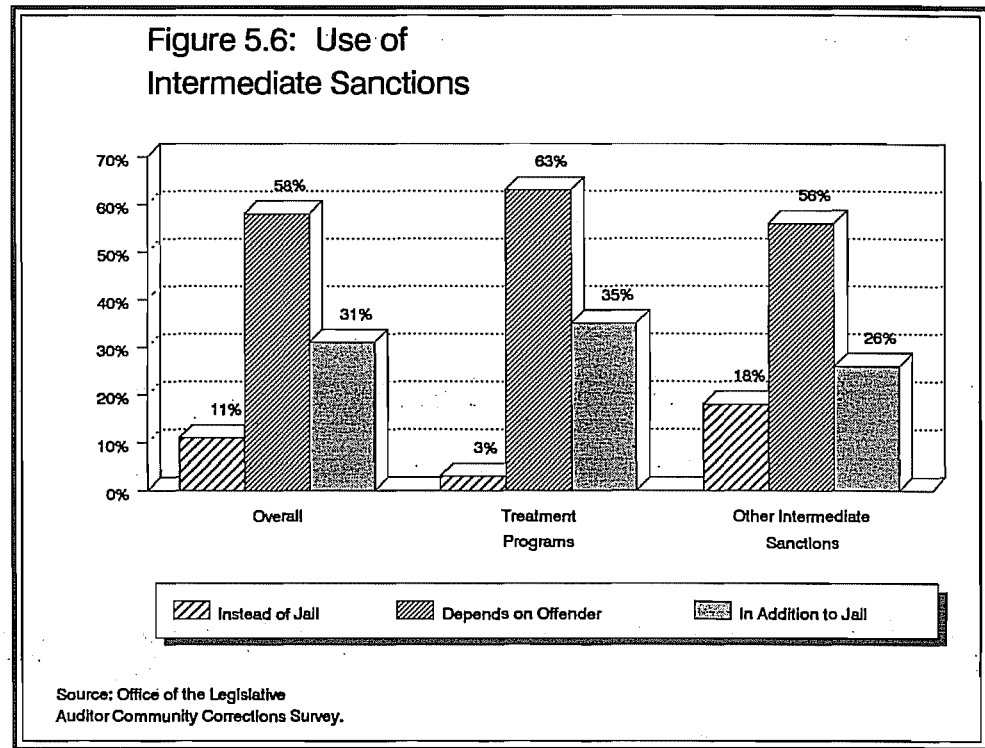
The pattern of higher crime, more programs, and CCA participation applies throughout the state. The DOC's southwestern supervisory district covers 19 counties, and is almost equally divided among the three types of correctional organization. In that district, CCA jurisdictions have an average of 7.3 programs, compared to 4.4 for all-DOC counties and 6.4 for split jurisdictions. Yet the CCA counties in this area also have an average of more than twice as much crime (811 reported Part I crimes in 1989, compared to 350 in DOC counties and 392 in split jurisdictions).

The Use of Intermediate Sanctions

If intermediate sanctions are used mainly in addition to jail or prison and as an add-on to probation, expanding intermediate sanctions is unlikely to lead to cost savings or alleviate overcrowding. Hence, we asked respondents who had programs to tell us whether these programs were used primarily instead of jail time, in addition to jail time, or whether their use varied, depending on the

offender and/or the crime. Their responses are shown in Figure 5.6. We conclude that:

- Because intermediate sanctions are used at the discretion of judges, their use varies.



Overall, 58 percent of the respondents said that the use of intermediate sanctions depends on the offender. We infer from this finding that most judges make individualized assessments of the appropriateness and need for these programs, and these assessments vary depending on characteristics of the crime and the offender. Consequently, intermediate sanctions are used in addition to jail sometimes and instead of incarceration other times.

Intermediate sanctions are often used in addition to some jail time.

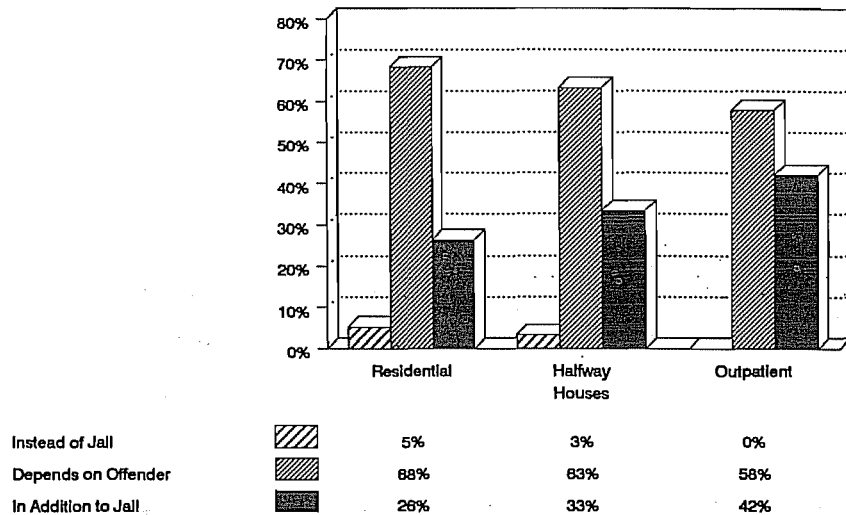
At the same time, the remaining respondents say that it is more likely that intermediate sanctions, as a group, will be used as an add-on to jail time.

- Only 11 percent of respondents said that intermediate sanctions overall were used mainly as alternatives to incarceration, compared to 31 percent who said they were used primarily in addition to jail.

It appears unlikely that intermediate sanctions are used mainly as alternatives to jail or prison in Minnesota. The newer intermediate sanctions were more likely to be viewed as alternatives than were treatment programs, where only 3 percent said they are used mainly instead of jail. Still, only 18 percent of our respondents saw intermediate sanctions as being used mainly instead of jail, compared to 26 percent who said they were used primarily in addition to incarceration.

Figures 5.7 and 5.8 illustrate how the individual intermediate sanctions are used, according to our respondents. These figures show that each sanction is used differently, and some are much more likely to be used as alternatives to incarceration than others. For example, house arrest is more likely to be used instead of jail time (35 percent of the respondents) than in addition to jail (6

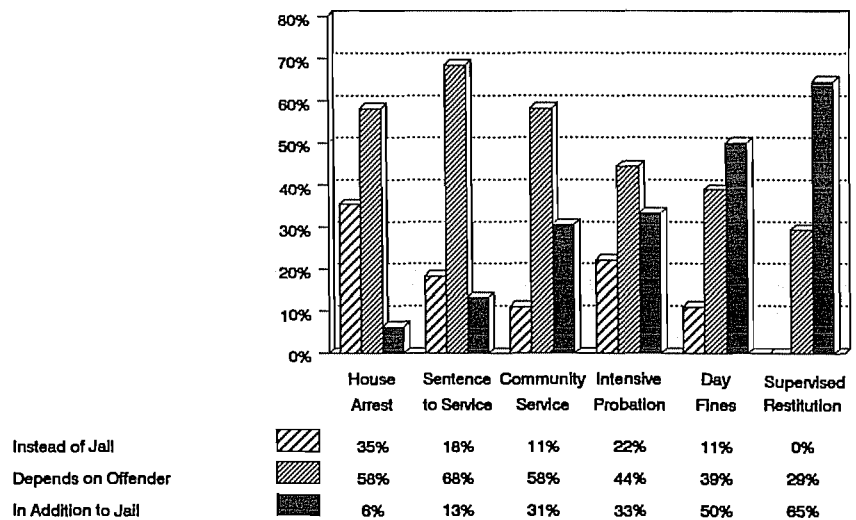
Figure 5.7: Use of Treatment Programs



Source: Office of the Legislative Auditor Community Corrections Survey.

Monitored house arrest is more often used as an alternative to jail.

Figure 5.8: Use of Other Intermediate Sanctions



Source: Office of the Legislative Auditor Community Corrections Survey.

percent). In the case of intensive supervision, on the other hand, more respondents said it was used in addition to time behind bars (33 percent) than as an alternative to incarceration (22 percent). This may be because most of our respondents have the DOC's intensive supervision program available, which is explicitly designed as a post-prison early release program.

The monetary sanctions—restitution and day fines—are clearly more likely to be used in addition to jail time (65 percent and 50 percent, respectively). None of our respondents said that restitution was used primarily as an alternative to jail, and only 11 percent said that day fines were used instead of incarceration.

These results may be disappointing to some. One purpose of intermediate sanctions and community corrections is to provide effective, less-expensive alternatives to incarceration. But our respondents indicated that the programs now in use do not necessarily divert offenders from jails or prisons. Some of these programs may shorten the time an offender spends behind bars, but they do not always keep offenders from serving some time.

Program Costs

Intermediate sanctions have been promoted partly because they are presumed to be less costly than incarceration on a per diem basis and they often involve offender payments. Hence, we tried to obtain information from our respondents about program costs and the extent to which offenders pay part or all of these costs. Unfortunately, we were largely unsuccessful because probation officers are unaware of program costs (especially those provided by third parties) or the costs are contained within corrections budgets (staff salaries) and have not been calculated separately.

Although there are exceptions, the costs of treatment-oriented programs typically are not paid by the corrections agency. Those corrections professionals who gave treatment cost estimates (between 35 percent to 60 percent of our respondents) provided the following average costs: \$92 per day for residential treatment and \$45 per day for outpatient treatment. The responses also indicate that offenders or their insurance companies pay at least part of the costs of most treatment programs (about 65 percent). Costs are borne by county social service, community corrections agencies, or other funding sources in the remaining 35 percent of the cases.

Outpatient treatment programs are more likely to include offender payments: almost 80 percent of these programs involved some client payment, compared to 40 percent for residential treatment. In most instances, client payments are based on a sliding fee scale that depends on ability to pay.

We were unable to obtain reliable information on program costs in the case of the other intermediate sanctions. The reason, as suggested, is that these services are typically part of probation staff responsibilities and program costs are buried in existing corrections budgets. Hence, in addition to "do not know," another common response to the question of "how much does this

Offender fees help offset correctional costs, but may discriminate against poor offenders.

program cost?" was "nothing." This was especially the case with community work service, day fines, restitution, and intensive probation. We conclude that:

- Offenders are required to pay "variable costs" associated with their probation, electronic monitoring fees, for example, or a particular course of treatment. They are not expected to bear any of the "fixed cost" services that are performed by corrections personnel, such as monitoring compliance with restitution or work-service orders.

Since the costs of most intermediate sanctions cannot be identified, it is not surprising that offenders are rarely assessed fees (outside of the financial payments required by restitution, fines, and day fines). The only exception is monitored house arrest. Monitoring is often done by private and nonprofit organizations. Their charges, or at least the costs of renting the units, are identifiable and consequently are passed on to offenders. According to respondents, the offender pays all or part of the costs in 74 percent of these programs, and in 60 percent of house arrest programs the offender is responsible for all costs. Excluding those who said that the cost of house arrest was "nothing," the average cost was \$10 per day.

Offender fees may help to reduce costs, but there is a trade-off involved. It can contribute to differential treatment that discriminates against poor offenders. Offenders who are unemployed, uninsured, or for other reasons unable to pay for treatment or the fees associated with house arrest, may be more likely to serve time in jail or prison. It is probable that sanctions are applied differentially, depending upon an offender's economic situation. For example, work release is designed explicitly for offenders who have jobs. Several respondents volunteered that community work service was typically used in lieu of fines for indigent offenders.

Needs Identified by Corrections Professionals

We asked respondents to tell us what they felt the most pressing needs were in their corrections systems. We asked them to rank a list of eight possible needs from highest to lowest (8=most important, 1=least important). Respondents' average rankings, broken out by amount of crime and type of organization, are shown in Table 5.6.

Overall, respondents ranked four of the eight options very high: the need for more probation officers, more intermediate sanctions, more treatment programs, and more minimum-security jail space. The remaining four received somewhat lower overall rankings: more maximum-security jail space, more pretrial diversion, greater use of financial sanctions (restitution, day fines), and expanded state prison capacity, which received the lowest overall ranking.

There are some differences in the rankings, depending on organizational type and crime level. Respondents from high-crime areas and CCA counties ranked the need for more probation staff higher and the need for more maximum-security jail space and expanded state prisons lower than other respondents. In contrast, respondents from low-crime areas and DOC and split

Table 5.6: Corrections Professionals' Rankings of Needs, by Level of Crime and Type of Jurisdiction

<u>Need</u>	<u>Part I Crime Rate</u>			<u>Type of Jurisdiction</u>			<u>Overall Ranking</u>
	<u>Low</u>	<u>Medium</u>	<u>High</u>	<u>DOC</u>	<u>Split</u>	<u>CCA</u>	
More probation officers	5.1	6.8	7.0	5.0	6.1	6.1	5.8
More intermediate sanctions	5.9	5.4	6.1	5.8	5.6	6.1	5.8
More treatment programs	6.0	5.0	5.3	5.6	5.7	5.6	5.6
More minimum-security jail space	5.2	4.8	5.6	5.6	5.1	4.6	5.1
More maximum-security jail space	4.2	4.0	2.7	3.8	4.2	3.5	4.0
More pretrial diversion programs	4.0	4.0	3.5	3.7	3.9	4.2	3.9
More restitution and day fines	3.9	2.7	3.9	3.6	3.3	3.9	3.5
Expanded state prison capacity	3.0	3.8	2.6	3.7	3.3	2.5	3.2

N = 83.

Source: Office of the Legislative Auditor Community Corrections Survey.

jurisdictions ranked more treatment programs and additional jail space as higher needs. More intermediate sanctions received a high ranking from all respondents, although expanding the financial sanctions (restitution and day fines) received consistently lower rankings. The high-ranked needs are discussed individually below.

More Probation Officers

The need for additional probation officers is the result of several factors. First, the Legislature has increased the mandatory responsibilities of probation staff. Rule 25 assessments, victim impact statements, and other requirements outlined in Chapter 2 have all meant that an officer must spend more time per case. Among Department of Corrections agents, additional departmental paperwork requirements seem to have increased as well, particularly in connection with their new nonimprisonment guidelines. As one DOC agent put it, "Current policy seems to be turning corrections into a bureaucratic, paper-filled nightmare! We were hired to use our good sense and discretion. Let us use it."

Corrections officials say they need more probation officers.

In Chapter 2, we also saw that county corrections personnel must supervise rapidly increasing numbers of offenders. Tougher laws and enforcement practices have led to more people going through the probation system, and harsher sentencing has led to offenders being carried on caseloads for longer periods. According to these respondents, the number of probation officers has not kept pace with the increased numbers of offenders. One officer told us that the average adult caseload in his agency was 196 individuals (not cases), which was impossible to manage without either more probation officers or alternate methods and programs.

The newer intermediate sanctions also require more involvement by the probation officer in monitoring program compliance and completion. Again, this

means that the time an officer should spend on each offender has increased, yet caseloads have increased simultaneously. We were told by a DOC agent that "there is rarely a trade-off; any new responsibility or task is in addition to existing job responsibilities."

Most respondents said that the need for more officers, and thus lower caseloads that would permit more offender supervision, was more important than any program.

More Intermediate Sanctions

Respondents also ranked the need for more intermediate sanctions very high. Those jurisdictions that do not have sanctions like sentencing to service or house arrest would like to have them available. Since many of the newer intermediate sanctions are unavailable in counties with larger numbers of offenders, expansion into unserved areas would be useful.

New and more innovative intermediate sanctions are needed.

However, even those respondents whose counties already have four or more intermediate sanction programs gave this need a high score, despite the fact that most (72 percent) believe existing programs are already serving most eligible offenders. This implies that simply expanding existing intermediate sanction programs may not be the best way to meet the needs.

This response may be due to the restrictive design of some existing programs. The intensive community supervision program operated by the DOC is a case in point. The restrictive eligibility qualifications for offender participation, and the small caseload requirements for probation officers supervising the offenders, may make such a program unworkable for most counties. As concern for public safety increases, the admission requirements for community sanctions become tougher, which means that fewer offenders qualify for them.

Because of restrictive participation requirements or other limitations in program design, existing intermediate programs may not be able to serve more people in their present form. But differently designed sanctions, with less stringent eligibility requirements, and alternative levels of supervision might help ease the strain on existing correctional resources. There are indications from some corrections professionals of a willingness to experiment with new approaches in providing probation services, including group probation, day centers, and contracting with third-party providers to perform functions such as administering community work service. These efforts should be encouraged.

More Treatment Programs

In areas with less crime and few programs, treatment was ranked as the highest need, with sex offender treatment programs identified most often. A small number of offenders and the distances involved in rural Minnesota complicate the problems that some corrections professionals face. One rural probation officer told us that the need for residential sex offender treatment was

“overwhelming,” claiming that “since 1985, I have been unable to refer an offender due to unreasonable waiting lists.”

Insufficient funding for treatment programs is also a major factor. A probation officer in eastern Minnesota said that “many times treatment programs exist but funding is inadequate or unavailable,” and a corrections agent from the southern part of the state told us that “most of our clients can’t afford treatment or can’t afford to travel to get it.”

More Minimum-Security Jail Space

Minimum-security jail space is at a premium in some parts of the state. Several respondents clarified that the need for more local jail space was not because they wanted to see more offenders sentenced to more jail time. Instead, as one respondent put it, “Crowding hampers our ability to enforce conditions of probation.” Particularly in counties where jails are full or have waiting lists, probation officers say they need more bed space in order to make alternative sanctions work (there must be swift consequences for offenders who violate probationary conditions).

However, most corrections officials also feel that jail is not the ultimate answer. As one metro-area respondent put it,

Minnesota relies heavily on community resources to control jail and prison populations and to control criminal behavior. However, there is not sufficient financial support for probation to meet this growing demand. There is a danger to placing a higher priority on providing financial support to institutions, thereby diverting funds from the growth of incarceration alternatives and basic probation services.

There is a consensus among the corrections professionals we surveyed that the solution to Minnesota’s overcrowding problems does not lie in building more state prisons, as the low ranking for expanding prison capacity suggests. These people are familiar with the types of offenders currently being sanctioned and have experience with community-based programs. Many of them expressed concern that Minnesota has started down the road where overcrowded facilities lead to building new prisons and jails, and less money is available for probation, community programs, and crime prevention. One CCA administrator told us, “Minnesota needs to make a public commitment to [early and sustained intervention and prevention] in order to avert the corrections crisis facing other states.”

Prison and jail capacity may have grown at the expense of community-based programs.

SUMMARY

We learned that there are not enough community-based and intermediate sanction programs available. Some types of programs, particularly the treatment programs established in the 1970s, are available, while others, such as newer intermediate sanctions like intensive probation and day fines, are

relatively rare. In general, the professionals we surveyed see current community corrections programs and policies as inadequate.

Most probation staff have outpatient alcohol and drug abuse treatment programs accessible to them. Beyond this, however, respondents identify a number of treatment needs that are not being met at the present time. In some areas, existing programs are at capacity or funding is inadequate so that offenders with the most need do not receive treatment. In rural areas, the distances involved and the relative scarcity of clients mean that certain offenders, such as those convicted of sexual offenses, do not receive the treatment they need. Also, there are few programs anywhere in the state that deal with emerging problems like family violence, anger control, intrafamilial abuse, or programs for women offenders.

In the case of other intermediate sanctions, community work service is very common, and we suspect that restitution is as well. Although it is a recently adopted program (within the past two years in most areas), house arrest with electronic monitoring is also becoming popular, as is sentencing to service. But the other programs we asked about, for example, intensive probation supervision and day fines, are available in less than 30 percent of the jurisdictions. Furthermore, there are indications that high-crime areas, which have the greatest need for programs, do not have some of these intermediate sanctions. The main reason cited is "lack of resources." In some areas, however, these programs do not exist partly because judges, local policymakers, and corrections representatives do not support them.

The responses also imply that different and more creative programs may be needed, ones that have yet to be devised. There are indications from some respondents of a willingness to be innovative and change the ways in which probation services are provided. This may be a response to high caseloads that cannot be managed using traditional methods of supervision.

In general, corrections professionals believe that probation has been squeezed beyond the point where staff can provide adequate offender supervision. Also, there are some areas in the state where crowded jails represent a problem. But these respondents favor building minimum- to medium-security facilities, more for the purpose of having a succession of sanctions available than for the sake of punishing more people.

While there is an apparent need to expand the range of sanctions, and local corrections professionals support this solution to the overcrowding problem, we offer the following cautionary comment. Expanding intermediate sanctions may increase correctional costs and these programs could be used in addition to incarceration, rather than as alternatives, unless steps are taken simultaneously to control or ration their use.

THE COMMUNITY CORRECTIONS ACT

Chapter 6

In this chapter we review the Community Corrections Act (CCA) of 1973, which is the primary state policy governing the organization and operation of corrections. The CCA was enacted “for the purpose of more effectively protecting society and to promote efficiency and economy in the delivery of correctional services.”¹ This purpose was to be achieved by encouraging the development of corrections programs and services at the local level, based on the belief that sanctioning nonviolent felony offenders locally would cost less than sending them to the state prison system. This objective is consistent with the growing acceptance of intermediate sanctions, which are being developed throughout the country as a means of reducing prison populations. We learned in the previous chapter that many of the programs that were developed as a result of CCA remain in place, but some of the newer types of intermediate sanctions—intensive probation supervision, day fines, and house arrest—are in their infancy in Minnesota.

We focus on the following questions in this chapter:

- **Is Minnesota’s Community Corrections Act still working as originally intended to promote the efficient delivery of correctional services and to stimulate and support the development of community-based programs?**
- **Does CCA remain an appropriate and effective policy in light of the current environment? What changes to it may be needed?**

The analysis and information presented in this chapter come from a variety of sources. We reviewed all of the annual plans for 1990 submitted by Community Corrections Act counties to the Department of Corrections. We interviewed department officials, as well as a number of CCA administrators and their staffs. We met with the Minnesota Association of Community Corrections Act Counties to obtain information and opinions from all of the CCA counties. We also consulted with the executive board of the Minnesota Association of County Probation Officers. Finally, we analyzed data from the DOC, the State Auditor, and other sources, and we reviewed literature and research about community-based programs.

¹ *Minn. Stat.* §401.01.

As shown in previous chapters, Minnesota policymakers, judges, and other criminal justice officials have responded to public sentiment by toughening sanctions and applying them to more people (widening the net). In the process, the state has strayed from the goals of the Community Corrections Act. During the 1980s, other states have been pushed into community alternatives by overcrowded prisons and jails. Meanwhile, Minnesota is becoming more like the rest of the nation in its increasing reliance on incarceration. In principle and structure, the CCA remains a viable policy, one which is consistent with cultural traditions in Minnesota and with the growing national trend toward intermediate sanctions. At the present time, however, the CCA is in need of legislative attention. The state needs to decide whether it wants to revitalize the CCA, and if so, how to integrate it into a coherent, comprehensive corrections policy for the state.

BACKGROUND AND OVERVIEW OF CCA

Minnesota was the first state in the nation to pass a community corrections act.² The act dramatically restructured the state-local financial and administrative relationship for correctional programming. The CCA is administered by the Department of Corrections, and funding for it is included in the department's budget. In 1990, the total CCA subsidy was \$18.2 million.

Structure and Purpose

As noted above, the primary purpose of the CCA was to protect society while promoting the efficient and economical delivery of correctional services. The act was based on two principles:

- Local responsibility for program planning and development is preferable to centralized state control.
- State prison space—the most costly and coercive alternative—should be reserved for the most dangerous offenders, while less serious criminals should be sanctioned in their own communities.

The enactment of the CCA was motivated by a concern about increasing institutional costs at the state level and the limited availability of local correctional programs. It was also felt that correctional services were not being delivered in an efficient manner, partly because of the reliance on expensive state institutions, and partly because of the number of overlapping jurisdictions

² California developed a now-defunct subsidy program for county probation innovations in 1966, which has been described as the forerunner of the CCA.

CCA was designed to promote efficiency and economy.

CCA aimed to restrict the use of state prisons and encourage community-based sanctions.

involved in corrections.³ Similar concerns have led other states to copy Minnesota's CCA, in the hopes of reducing prison populations and encouraging less costly community-based sanctions.⁴

The act does not specify the goal of rehabilitating criminals, but the philosophy of rehabilitation and its presumed relationship to public safety were implied in the CCA.⁵ Many people at the time believed that offenders were more likely to be rehabilitated if they remained in the community where they lived, could keep their jobs, and could have access to family and friends for support. This, coupled with the development of the necessary correctional programs, services, and treatment opportunities, would "facilitate reintegration into community life."⁶ This approach was also thought to be cost-efficient because community services cost less than state incarceration and offenders' families would not require welfare support.

Others supported the CCA not because they believed in the efficacy of rehabilitation, but because they assumed that the offenders who would be sanctioned in the community were "unlikely to commit any (or any serious) offenses"; hence, "for cost, humanitarian or other reasons, it is best to keep them in the community."⁷

The State-Local Relationship

The purposes of the CCA were to be accomplished primarily through financial incentives and disincentives. The act gave the Commissioner of Corrections the authority to make subsidy grants to participating counties. It also specified the types of programs for which the monies could be used: "crime prevention and diversion programs, probation and parole services, community corrections centers, and facilities to detain, confine and treat offenders of all age groups."⁸

The original legislation required participating counties to pay the state a per diem fee for certain felony offenders sent to the state prison system. These fees or "chargebacks," which were subtracted from the subsidy amount, were designed to encourage counties to sanction offenders at the local level, thereby saving state prison space for dangerous felons. Hence, an unstated objective of the CCA was to limit or control prison admissions as a means of achieving the goal of economy and efficiency in the use of correctional resources.⁹

³ For a discussion of the legislative history leading up to the act and a clarification of its goals and objectives, see Minnesota Department of Corrections and Crime Control Planning Board, *Minnesota Community Corrections Act Evaluation, General Report* (St. Paul, January 1981), 1-10.

⁴ Cindy Simon Rosenthal, *Opportunities in Corrections* (Denver: National Conference of State Legislatures, July 1989).

⁵ Department of Corrections and Crime Control Planning Board, *Minnesota Community Corrections Act Evaluation*, 7-9.

⁶ *Ibid.*, 7.

⁷ *Ibid.*

⁸ *Minn. Stat.* § 401.01.

⁹ Department of Corrections and Crime Control Planning Board, *Minnesota Community Corrections Act Evaluation*.

The enactment of sentencing guidelines removed the need for the chargebacks, since the guidelines specify which offenders should go to prison and which should be sanctioned locally. The chargeback provision for adult offenders (but not juveniles) was deleted in 1982. The question of whether the state or counties should be financially responsible for departures from the guidelines has emerged as a current source of controversy.

In order to reduce fragmentation and improve coordination in the delivery of correctional services, thereby increasing cost-efficiency, the act encouraged counties to form multi-county organizations. Counties with a minimum of 30,000 in population are eligible to participate in CCA, while those under 30,000 must join in combination with one or more contiguous counties. Participation is strictly voluntary.

One of the original objectives was to encourage all 87 counties to join by 1980, but this objective proved unrealistic. A total of 27 counties, combined into 12 CCA units, joined during the period 1974 to 1979. Three additional counties joined in the 1980s, making the total number of participating counties 30 today, organized into 15 CCA units. As noted, the more populous counties that have higher crime rates—especially the more serious Part I crime—tend to be CCA participants. Table 6.1 shows the participating counties (and CCA units) and includes population, crime, and felony conviction data. Counties may withdraw from the CCA at any time, but so far none have done so.

Table 6.1: Crime and Population in Community Corrections Act Counties

CCA Unit	1988 Population	Total Reported Crime	1989		
			Part 1 Crime	Part 2 Crime	Felony Convictions
1. ARROWHEAD					
St. Louis	200,027	20,938	7,002	13,936	426
Aitkin	13,332	841	501	340	25
Carlton	28,600	3,093	944	2,149	50
Lake	11,075	351	168	183	16
Cook	4,245	721	186	535	4
Koochiching	15,637	2,326	586	1,740	14
TOTAL	272,916	28,270	9,387	18,883	535
2. 6W					
Chippewa	14,318	323	139	184	37
Lac Qui Parle	9,796	321	118	203	3
Swift	12,096	489	187	302	7
Yellow Medicine	12,405	412	167	245	13
TOTAL	48,615	1,545	611	934	60
3. TRI-COUNTY					
Norman	8,882	384	124	260	5
Polk	33,727	3,255	1,007	2,248	95
Red Lake	4,942	335	85	250	3
TOTAL	47,551	3,974	1,216	2,758	103

Today, 30 counties organized into 15 units participate in CCA.

Table 6.1: Crime and Population in Community Corrections Act Counties, continued

		1989			
CCA Unit	1988 Population	Total Reported Crime	Part 1 Crime	Part 2 Crime	Felony Convictions
4. Dodge	15,237	1,214	315	899	17
Fillmore	21,354	342	112	230	8
Olmsted	<u>101,974</u>	<u>8,400</u>	<u>3,949</u>	<u>4,451</u>	<u>120</u>
TOTAL	138,565	9,956	4,376	5,580	145
5. Rock	10,339	20	10	10	9
Nobles	<u>21,410</u>	<u>762</u>	<u>435</u>	<u>327</u>	<u>40</u>
TOTAL	31,749	782	445	337	49
6. Todd	25,353	1,436	459	977	27
Wadena	<u>13,741</u>	<u>1,201</u>	<u>351</u>	<u>850</u>	<u>30</u>
TOTAL	39,094	2,637	810	1,827	57
7. Crow Wing	44,141	4,522	2,229	2,293	127
Morrison	<u>30,478</u>	<u>2,144</u>	<u>663</u>	<u>1,481</u>	<u>37</u>
TOTAL	74,619	6,666	2,892	3,774	164
8. Anoka	229,648	30,134	11,368	18,766	438
9. Blue Earth	52,917	5,259	2,022	3,237	48
10. Dakota	252,690	25,322	9,533	15,789	434
11. Hennepin	989,956	133,861	72,044	61,817	2,183
12. Kandiyohi	40,542	3,100	1,377	1,723	62
13. Ramsey	472,683	45,125	30,986	14,139	1,212
14. Rice	48,220	4,864	1,833	3,031	69
15. Washington	<u>136,880</u>	<u>14,604</u>	<u>4,713</u>	<u>9,891</u>	<u>233</u>
CCA TOTALS	2,876,645	316,099	153,613	162,486	5,792
CCA Rate		10,988.5	5,340.1	5,648.5	201.3
State Total	4,306,550	429,124	191,766	237,358	7,974
State Rate		9,964.4	4,452.9	5,511.5	185.2
CCA Totals as Percent of State	66.8%	73.7%	80.1%	68.5%	72.6%

Note: Crime figures do not include Highway Patrol and Capitol Security. Rates are per 100,000 population.

Sources: State Planning Agency, Bureau of Criminal Apprehension, Sentencing Guidelines Commission.

As discussed in Chapter 1, two alternative systems exist in the remaining 57 counties to provide probation and other correctional services. Both involve state financial support, but less local administration and control over program content than CCA. The Department of Corrections provides all probation services in 20 counties, with the juvenile and misdemeanor services provided on a contract basis. In the remaining 37 counties, the department provides adult felony probation services, while the county provides juvenile and

The more populous, higher-crime counties are CCA participants.

misdemeanant probation services. The latter work for court services departments under judicial control.

The state reimburses all non-CCA counties up to one-half the salary plus fringe benefit costs of juvenile and misdemeanor probation officers. The funding source for this subsidy—revenues earned through drivers' license reinstatement fees—is not guaranteed, which represents a potential problem.¹⁰ All non-CCA counties (and with some programs CCA counties as well) are eligible to participate in other department-sponsored programs, which typically include some provision for local matching of funds.

The act also mandated that participating counties establish local corrections advisory boards to serve planning and coordinating functions. Each board is required to submit an annual plan detailing how CCA monies will be spent. These plans are reviewed by DOC staff. Regular financial and progress reports are also required. The department has established minimum operating standards through the administrative rules procedure that participating counties must comply with in order to remain eligible for the subsidy. In addition, counties may not reduce their own local spending levels for corrections; any increase in the CCA subsidy amount must be matched by local spending increases.

While the range of local programs eligible for CCA funding is broad, there are some specific exclusions, which are spelled out in department policy, not in the act itself. Excluded are "bricks-and-mortar" projects, like building jails, and victim services programs. CCA monies may be used to pay partial salary costs of jail program staff, but not for jail operations (including custodial staff). According to department rules, therefore, the CCA is intended to promote and support alternatives to local jail incarceration as well as alternatives to state imprisonment. Beyond these requirements, the counties were given autonomy to determine administrative structure and program content.

CCA provides considerable local autonomy.

The original amount allocated to the CCA program was based on the breakdown of how the Department of Corrections spent its money in 1973: approximately 70 percent of its budget went for state institutions and 30 percent (or \$15 million) was spent on community corrections services (i.e., probation and parole). A formula for distributing the CCA subsidy among the participating counties is included in the act. It contains measures of need (per capita correctional expenditures and at-risk population) and ability to pay (per capita income and per capita net tax capacity).

¹⁰ For a discussion and recommendations, see Report to the Legislative Commission on Planning and Fiscal Policy, *The Role of the Community Corrections Act Block Grant in Minnesota Corrections, Draft Report* (St. Paul, January 1991), 16-7.

Prior studies found the subsidy distribution formula "inadequate."

Prior Evaluations of the CCA

In the years since its inception, the CCA has been the subject of a study commissioned by the Legislature and of a comprehensive evaluation by the Department of Corrections and the Crime Control Planning Board.¹¹ It was also included as a case study in an evaluation of block grant programs by the Office of the Legislative Auditor.¹² The main findings of these studies are summarized here.

The amount of the CCA subsidy and its distribution formula have been issues of dispute almost since the inception of the act. A committee was established by the Legislature in 1979 to study the financing of community corrections and report back with recommendations. This committee found that the total state subsidy was not sufficient to meet the needs of participating counties, in part because the subsidy amount had not kept pace with inflation rates. It also found that the subsidy distribution formula was "not equitable," and the chargeback provision was not effective. The committee recommended to the 1981 Legislature that:

- the total CCA subsidy should be increased to account for the impact of inflation on an annual basis (commencing with subsequent appropriations because of the projected state budget deficit in 1981);
- CCA's goals and objectives should be revised to make them "more realistic and appropriate";
- additional study of unmet correctional needs should be undertaken;
- adult chargebacks should be eliminated; and
- the distribution formula should be replaced with a new formula based on total population and better measures of need (e.g., state district court convictions averaged over three years and the juvenile population), and including a hold-harmless provision.¹³

Of these recommendations, the only one acted upon was the elimination of chargebacks, which were made unnecessary by sentencing guidelines.

The Legislative Auditor's evaluation was also critical of the funding formula, agreeing with the committee's conclusion that the formula inadequately

¹¹ Committee to Study the Financing of Correctional Services and the Community Corrections Act in Minnesota, *Report to the 1981 Minnesota Legislature: Recommendations Concerning the Financing of Correctional Services in Minnesota* (March 1981); Department of Corrections and Crime Control Planning Board, *Minnesota Community Corrections Act Evaluation*.

¹² Office of the Legislative Auditor, Program Evaluation Division, *Evaluation of State Human Service Block Grants* (St. Paul, June 1984).

¹³ Committee to Study the Financing of Correctional Services, *Report to the 1981 Minnesota Legislature*, 7-11.

measures correctional needs and is "overly complex and difficult to understand," but disagreeing that measures of ability to pay should be eliminated entirely.¹⁴ This study also identified problems with the local matching requirements, which do not provide counties with an incentive to respond to unmet needs.¹⁵

A comprehensive evaluation of the Community Corrections Act by the department and the Crime Control Planning Board was also completed in 1981. This evaluation found that the CCA succeeded in:

- expanding the range and quantity of local correctional programs available;
- retaining a modest number of offenders (about 4 percent) in the community without a risk to public safety; and
- improving local planning and correctional administration.

On the negative side, however:

- CCA had almost no effect on the appropriateness of sanctions given to offenders;
- the primary alternative used under CCA was jail incarceration, which was used as an alternative not only to prison but to less restrictive community sanctions as well; and
- the CCA increased rather than decreased overall correctional costs because the savings from prison diversions did not offset the additional costs of locally run programs.

CCA expanded community programs, but failed to reduce costs.

The language in the act itself, plus a review of reports that summarize the legislative history, suggest that a major goal of the CCA was efficiency and economy in the delivery of correctional services. It was envisioned that the state would be able to close one or more prisons after CCA became fully operational, thereby permitting a reduction in correctional expenditures statewide.¹⁶ In fact, as we saw in Chapter 1, not only were no prisons closed, but new prisons have been built, bed space has been added, and correctional costs have risen considerably since the CCA took effect. In a narrow sense, it would appear that the CCA has not achieved greater cost efficiency.

In all fairness to the CCA, however, it was enacted at the beginning of the period that has been characterized by harsher sanctions and greater use of incarceration. This has been a national trend, one to which Minnesota has not been immune. In fact, when Minnesota is viewed against the experiences of

¹⁴ Legislative Auditor, *Human Service Block Grants*, 34-5.

¹⁵ *Ibid.*, 36-7.

¹⁶ Committee to Study the Financing of Correctional Services, *Report to the 1981 Minnesota Legislature*, 38-9.

other states, it compares favorably (see Chapters 1 and 2). State spending for corrections, measured on a per capita basis, is lower in Minnesota than in most other states. As indicated previously, Minnesota ranks 31st among the 50 states.

In combination with early actions taken by the Sentencing Guidelines Commission, CCA may have depressed the rate of increase in state prison incarceration. The problem of overburdened correctional resources that Minnesota is facing today might be worse had the CCA not been enacted, but it is impossible to know with certainty what might have happened in the absence of this policy.

THE COMMUNITY CORRECTIONS ACT TODAY

**CCA remains a
viable policy
today.**

We have not tried to assess comprehensively whether CCA has met its original goals. Rather, we looked at the Community Corrections Act as it operates today, with particular emphasis on its relevance to the overcrowding problems that Minnesota is facing. In 1991, the most serious problem that policymakers must deal with is the sharp upward trend in prison, jail, and probation populations that has occurred since 1986. This trend has been accompanied by rapidly escalating correctional costs, which can be projected to continue unless policymakers take corrective actions. In this section, we evaluate CCA's viability as current policy, and we assess its potential to lower costs and alleviate correctional overcrowding problems.

In general, our review of the evidence and discussions with state and local policymakers, corrections administrators, and national experts in corrections lead us to conclude that:

- **The concept of community corrections remains viable. The basic structure of Minnesota's CCA is still a good model that is consistent both with the political traditions of the state and with the best advice of corrections experts nationally.**

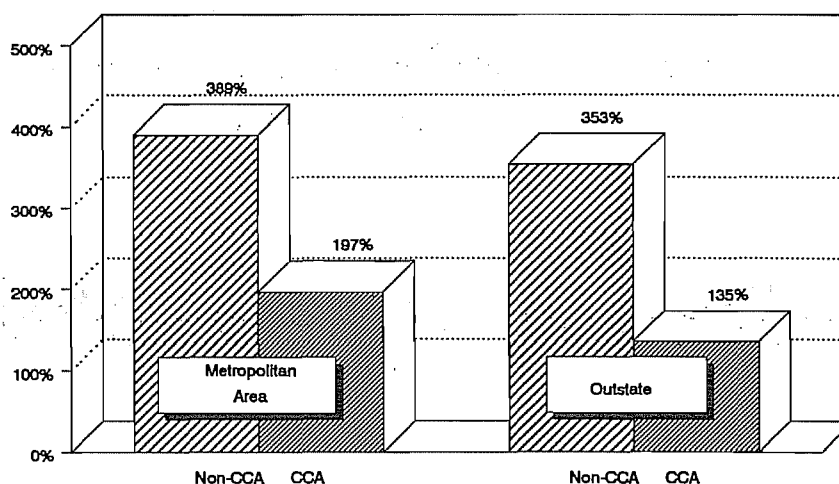
Minnesota has a long history of commitment to community corrections that predates the CCA. In part, this commitment is rooted in the Minnesota tradition of local autonomy in many areas of governmental operation. Support for the concept of community corrections remains strong among state corrections personnel. During the 1980s, other states have increasingly turned to community-based, intermediate sanctions as a possible solution to prison and jail overcrowding. The evidence presented in Chapter 5 suggests that CCA has been effective in developing and maintaining community-based alternatives to imprisonment.

Further, the CCA may have helped to limit the growth in jail incarceration as well. Our analysis of the increased use of jail since 1975, by CCA status and controlling for amount of crime, shows that:

- The use of jail has increased much more rapidly in non-CCA counties than in counties that participate in the CCA.

This relationship, which is illustrated in Figure 6.1, holds in both metro-area and nonmetropolitan counties. It suggests that the trend toward greater use of jail as a sanction should not be attributed to the CCA. Unfortunately, the CCA evaluation design was not adequate to conclude definitively that CCA caused the observed increase in jail time as a sanction. Rather, the influence of CCA may have been in the opposite direction, acting to encourage the use of alternatives to both prisons *and* jails as its initiators had hoped.

Figure 6.1: Average Percent Change in Jail Inmates per Part I Crime by CCA Status, 1975-89



Sources: Department of Corrections;
Bureau of Criminal Apprehension.

Note: CCA figures exclude two counties that joined in 1989.

CCA may have helped depress the rate of increase in jail population growth.

Minnesota's CCA was the first in the U.S., with several states following Minnesota's lead in the mid-to-late 1970s and more in the late 1980s. Currently, there are at least 15 states with community corrections acts, with most of them modeled after Minnesota's.¹⁷

Figure 6.2 summarizes important aspects of CCA legislation for the 12 states with such programs in 1989. As indicated, all CCAs provide financial incentives to local units of government to operate community programs for certain targeted offenders. The form of the financial payments—block grants, contracts, or formula subsidies—as well as the formulas used to apportion funds (where applicable) vary from state to state. Most states do not have a chargeback provision.

But, in our opinion:

¹⁷ Workshop on Community Corrections Acts, National Conference on Alternative Sentencing, sponsored by National Community Service Sentencing Association and Minnesota Association of Restitution Services, Minneapolis, September 19-22, 1990.

Figure 6.2: Major Provisions of Community Corrections Acts

<u>State and Citation</u>	<u>Administering Agency</u>	<u>Local Involvement</u>	<u>Funding Arrangement</u>	<u>Target Offender</u>	<u>Chargeback</u>
Colorado CRS 17-27-101 (1976)	DOC administers; DOC or local units of government contract for or run services in conjunction with judicial districts.	Voluntary participation. A local corrections board may be established to run programs, to advise on standards or needs, and to screen offenders for placement.	Direct DOC contracts.	Any felony or misdemeanor offender except those convicted of violent crimes or acts involving deadly weapon. Includes parole/probation violators.	No
Connecticut CS 18-101 et seq. (1978)	DOC administers through 5 regional service areas.	Local units of government may be contracting service providers.	Formula allocation to each service area; specific requests based on private sector match, client population, facility/program criteria.	Not specified.	No
Indiana IN Code 11-12-1-1 et seq (1979)	DOC with county or cooperating counties.	Voluntary participation. Counties must create advisory board to develop annual plan; monitor programs; evaluate and recommend contracts.	Formula allocation to participating counties. Formula criteria must be approved by state budget agency.	Not specified, however, 11-12-2-9 lists felonies for which chargeback is triggered.	Yes
Iowa IA Code Chap. 905 (1977)	Judicial district departments of correctional services.	District participation required. District boards must include county, program, court, and citizen representatives.	State DOC allocates on basis of an offender/workload formula.	Offenders charged or convicted of a felony, aggravated or serious misdemeanor.	No
Kansas KSA 75-5290 et seq. (1978)	DOC through county or cooperating counties.	Voluntary participation. Local advisory board must develop annual plan.	Formula subsidy based on per capita income and valuation, crime rate, and at-risk population.	Juveniles and adults convicted first or second time of nonviolent felonies. Excludes sex offenses, aggravated assault, mandatory prison commitments.	Yes
Minnesota MN Statutes 401.01-401.16 (1973)	DOC through county or cooperating counties.	Voluntary participation. Local advisory board must develop identified needs for DOC biennial plan.	Formula subsidy based on per capita income and valuation, and at-risk population.	Juveniles. Adult felons committed to community supervision under sentencing guidelines.	Yes
Missouri RSMO 217.777 (1983)	Board of Probation and Parole.	Local advisory boards identify the need for special services/programs.	Separate and specific appropriations for each selected program.	Offenders who in the absence of community-based programs would be incarcerated.	No
New Mexico NMA 33-9-1 et seq. (1978)	DOC administers; DOC, private providers, or local units of government contract for or run programs.	Voluntary participation. Local officials must be included in grant application review.	Direct grants to providers up to 95% of program costs.	Adjudicated juvenile delinquents. Adult felons, except those convicted of offenses involving firearms. State or local panel screens offenders for appropriateness.	No

Figure 6.2: Major Provisions of Community Corrections Acts, continued

<u>State and Citation</u>	<u>Administering Agency</u>	<u>Local Involvement</u>	<u>Funding Arrangement</u>	<u>Target Offender</u>	<u>Chargeback</u>
Ohio ORC 5149.30-.37 (1979)	Department of Rehabilitation and Corrections through cities, counties or cooperating counties.	Voluntary participation. Local boards must develop comprehensive plan.	Formula subsidy based on per capita income and valuation, population, local corrections expenditures. Special grants provided.	Any adult felony or misdemeanor offender except those convicted of specified violent crimes.	Yes
Oregon ORS 423.500-.560 (1979)	DOC through county.	Voluntary participation. Local advisory board must develop biennial plan. Three levels of participation provided.	Formula subsidy based on crime rate, at-risk and total population.	Adult felons except those convicted of specified violent offenses.	Yes, though repeal is recommended.
Tennessee TCA 40.36-101 et seq. (1985)	DOC through county or cooperating counties.	Voluntary participation. Local advisory board develops plan, monitors programs, recommends sub-contracts, educates public.	Direct grants up to 100% based on documented local needs.	Prison-bound offenders convicted of property, drug/alcohol, or nonviolent felonies. Excludes sex offenders, prior violent offenses.	No
Virginia Code of VA 53.1-180-185 (1980)	DOC administers; DOC, private providers, or local units of government contract for or run programs.	Voluntary participation. Local advisory board develops plan, monitors and evaluates programs, purchases or develops services and programs, screens and places offenders.	Direct state contracts with providers or grants to local units to operate or purchase services.	"Nonviolent offenders who may require less than institutional custody but more than probation supervision."	No

- **The environment in which the Community Corrections Act operates has changed, and Minnesota's CCA has not kept up with these changes. It is in need of legislative attention.**

As a result of our study, we think the purpose and goals of CCA, including how it relates to other state correctional policies, need to be clarified. We also recommend attention to: the state-local fiscal relationship, the distribution formula, and means of strengthening statewide correctional planning and innovation in programming, including the development of less costly alternatives to incarceration.

Purpose and Goals

The evidence presented in this report suggests there has been erosion of the original goals of the CCA. In our judgment,

- **The trend toward harsher sanctions has resulted in a deemphasis of the goals of economy and efficiency in the delivery of correctional services.**

We encountered evidence, much of which has already been presented, to suggest that at the present time, correctional resources are not being used economically. First, there is evidence of inefficiency in the way state prisons are used. Prisons are designed and staffed to hold individuals serving sentences of more than one year. They cost more to operate than jails because they provide higher levels of security and more inmate programs. The CCA was aimed at using state prisons to house only the most dangerous offenders.

But over the past several years, state prisons have increasingly been used to house the overflow from crowded jails (on a contract basis) and short-term offenders. As noted, nearly half of the new commitments to state prison arrive with less than one year to serve. These individuals do not remain in the prison system long enough to obtain benefits from correctional programs, nor do they necessarily require the high levels of supervision they receive.

This has occurred in part because of population pressures on local jails caused by increased punitiveness and changes in sentencing policy and practice. In contrast to other states where the greatest population pressure has been on state prisons, which has resulted in spillover to local jails, the reverse has happened in Minnesota. In the face of strong countervailing forces, CCA has not succeeded in reserving state prisons for offenders who pose serious threats to public safety. Tellingly, the beds now being added to the state prison system are minimum- and medium-security, not maximum-security beds.

A similar phenomenon is occurring with respect to jails. CCA is supposed to provide a range of local alternatives to both prison and jail incarceration. The rationale is that jail, the most restrictive and punitive local sanction, should be reserved for individuals convicted of more serious crimes, or who need a high level of supervision and control, or who have failed in less restrictive programs.

But the data presented in Chapter 2 show that jail is not reserved for these purposes. Rather, some jail time is routinely pronounced for offenders convicted of any felony or gross misdemeanor, whereas in the past many of these people received only a probationary sentence. To the extent that jail is used as an initial punishment prior to a period of probation, judges may be less willing to view jail as a meaningful sanction for individuals who violate probationary conditions. This may contribute to the short-term state prisoner problem described above, where one-third of short-term prison commitments are probation violators.

The evidence suggests that increasingly jails are being used to house individuals who do not need to be locked up for reasons of public safety or because they have failed under less restrictive sanctions (i.e., violated court-imposed conditions). The existence of waiting lists, with individuals living and working freely for months before they serve their jail time, is a case in point. Also, the greatest jail expansion is in minimum-security and work-release beds.

There are incentives to use more restrictive and costly sentencing options.

The fact that "good-time" policies for jails are more punitive than for prisons also contributes to the inefficient use of state correctional resources. Although good-time policies in local jails vary somewhat from one jurisdiction to another, generally jail inmates earn five days off their sentence for every month served with good conduct.¹⁸ State prisoners, on the other hand, earn up to one-third off their sentence (one day of early release for every two days without disciplinary action).

This provides offenders with an incentive to seek prison instead of jail sentences under some circumstances, and probably contributes to the increased numbers of offenders requesting execution of their presumptive prison sentences. In 1989, the Legislature added a section to the statutes prohibiting offenders from demanding a prison sentence if the time left to serve is less than nine months.¹⁹ This change may discourage some short-term prison commitments, but it does not directly address the problem of inconsistent good-time policies for jails versus prisons.

State policy with respect to levy limits also provides counties with an incentive to rely more on jails as opposed to developing lower cost community alternatives to incarceration. In response to growing correctional costs, especially for counties that recently built new jails, the 1990 Legislature granted an exemption from the state levy limits for jail operating costs in all counties. Community corrections costs, meanwhile, are subject to more restrictive levy limits placed on counties by the state.

In sum, a number of policy actions taken since CCA was enacted, at both the state and local levels, may have inadvertently contributed to the inefficiencies observed. Perhaps the most significant of these, however, have involved sentencing policy.

Sentencing Policy and the Incompatible Goals of Corrections

The American Correctional Association (ACA) notes that correctional facilities and programs are "a costly and limited resource, with the most restrictive ones generally the most expensive." Accordingly, the ACA recommends:

The sanctions and controls imposed by courts and administered by corrections should be the least restrictive consistent with public and individual safety and maintenance of social order.²⁰

The goals of the Community Corrections Act and the state's sentencing guidelines generally affirm this approach. Of course, it is often hard to determine which offenders pose the greatest and least risks to society and, therefore, to

¹⁸ *Minn. Stat.* §643.29. But there are varying local practices, for example, when inmates earn good time during the initial 30 days of a sentence or when partial credit is given for segments of less than one month in length.

¹⁹ *Minn. Stat.* §609.135.

²⁰ American Correctional Association, *A Handbook for Decision-Makers: Public Policy for Corrections* (College Park, Maryland, 1986), 67.

place offenders at the appropriate level of supervision and control. But it does require individualized assessments and sentences that are tailored to each offender. This may mean treating like offenses somewhat differently and meting out sentences based on relevant characteristics of the individual offender, such as level of supervision and type of treatment required.

This suggests the possibility that the goals of using correctional resources economically and of promoting public safety through appropriate individual placement of offenders conflict with the goal of providing equal punishment. The latter is the primary goal of determinate sentencing, including mandatory sentences and the state's sentencing guidelines. Mandating the same prison or jail sentence for everyone convicted of a certain crime (equal punishment) means that some offenders in prison or jail may not need to be there for reasons of public safety. While this dispenses justice evenly, it contributes to the uneconomical use of correctional resources.

The goal of equal punishment conflicts with that of economy.

Under Minnesota's current sentencing guidelines system, presumptive prison sentences are intended to apply to dangerous, repeat offenders who have already demonstrated they are a serious threat to public safety, and the guidelines do not specify locally administered sanctions. Thus, the guidelines need not, in principle, conflict with the goal of efficient use of correctional resources (although they may in practice).

In accordance with the resource-management provision in the guidelines' legislation, state monies have been appropriated to expand prison capacity. Legislative concern about the resource implications of changes in state policy on local resources, such as laws mandating jail time, has been growing. So far, however, the state has not acted to appropriate monies for counties to cover state-mandated services that fall into the category of "system growth mandates," which most of those in corrections do.²¹ This implies there have been unintended effects of state policy on the state-local fiscal relationship in corrections, a subject to which we now turn.

The State-Local Fiscal Relationship

In addition to the trend toward incarceration, there has been a drift toward programs operated directly by the Department of Corrections. This may have occurred at the expense of community-administered programs. One indication of this trend is the increase in the number of counties contracting with the department for the provision of all probation services. Since the consolidation of the court system, this number has gone from none to 20 counties. Meanwhile, only three new counties have joined the CCA during this same period.

Moreover, the DOC has initiated more intermediate sanction programs, including sentencing to service and intensive probation supervision, than CCA counties. As the probation survey data showed, more community programs are available in CCA counties, but CCA participants tend to have the older,

²¹ Report to the Legislative Commission on Planning and Fiscal Policy, *The Role of the Community Corrections Act*.

treatment-oriented types of community-based programs. The newer intermediate sanctions tend to be available in counties with less crime, where the DOC provides field services.

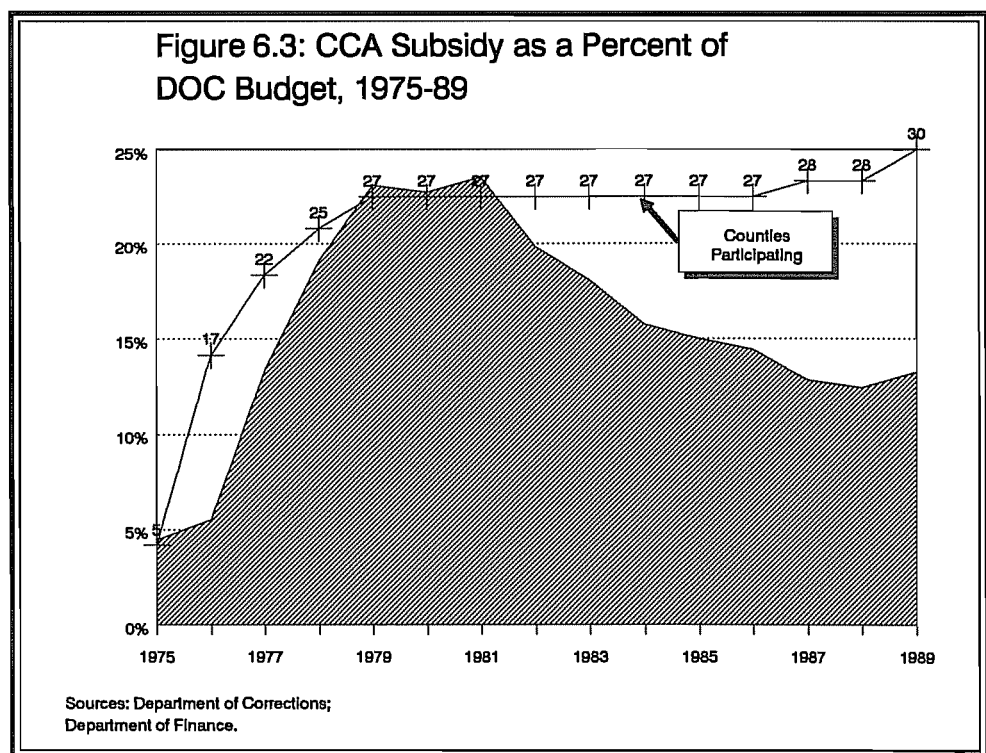
We do not wish to imply that CCA counties have not been innovative. Some of the most innovative programs, for example, can be found in Anoka County, which is a CCA participant. But in general, it appears that intermediate sanctions like intensive probation and sentencing to service have been slower to develop in the CCA counties. According to our survey respondents, counties have lacked adequate resources.

The drift toward state sponsorship of community-based programs is not a problem, except that the need for community programs is much higher in CCA counties than in counties where the DOC provides services. This is because the CCA counties contain the bulk of the offender population. Furthermore, the greatest growth in the offender population in recent years has been in the metropolitan counties, almost all of which are CCA participants. Although the DOC budget for community programs has increased at a similar rate for CCA (29 percent) and non-CCA counties (27 percent) since 1985, needs have grown faster in the former counties.

Figure 6.3 illustrates how the CCA subsidy amount, as a proportion of the DOC budget, has changed over time. The large increase from 1977 to 1979 is the result of nine counties (including Hennepin) joining the CCA in this period. Instead of maintaining the CCA appropriation at a level commensurate with the new counties that joined, however, we found that:

- The CCA subsidy has steadily declined as a proportion of the total DOC budget during the 1980s.

The proportion of correctional dollars spent on CCA has declined.



The state's purpose behind the CCA is no longer clear.

Comments made to us by Department of Corrections staff suggest that the DOC continues to view CCA as a vehicle for helping to control and manage growth in state prison populations. Most CCA counties, on the other hand, have come to rely heavily on the CCA subsidy, which finances substantial portions of their probation and other correctional services. To them, the CCA has become more like a revenue-sharing program, rather than a policy aimed at achieving state goals. In short, the state's interest and purpose behind the subsidy are no longer as clear as they were.

To the extent that state funding has shifted toward DOC-administered facilities and programs, the uneasy alliance between state and local corrections administrators is threatened. The competition for funding between state and local corrections officials can be expected to intensify in the future, as the state faces budget limits and agency heads are asked to cut expenditures.

In addition, the experience of other states suggests that the decision to expand state prison space commits the state to continued operational costs, which are fixed. The tendency elsewhere has been for state funding for community-based programs to decline as a result. As indicated in Chapter 1, nationally the proportion of state corrections spending for probation and parole has gone down from 17 percent in 1977 to 11 percent in 1988. The decline has not been as great in Minnesota, but the proportion of the DOC budget spent on state institutions has increased since the CCA took effect (up from 70 percent to 74 percent in 1989).

Our analysis suggests that:

- **Overall state funding for CCA has not kept pace with the additional correctional expenditures borne by the counties.**

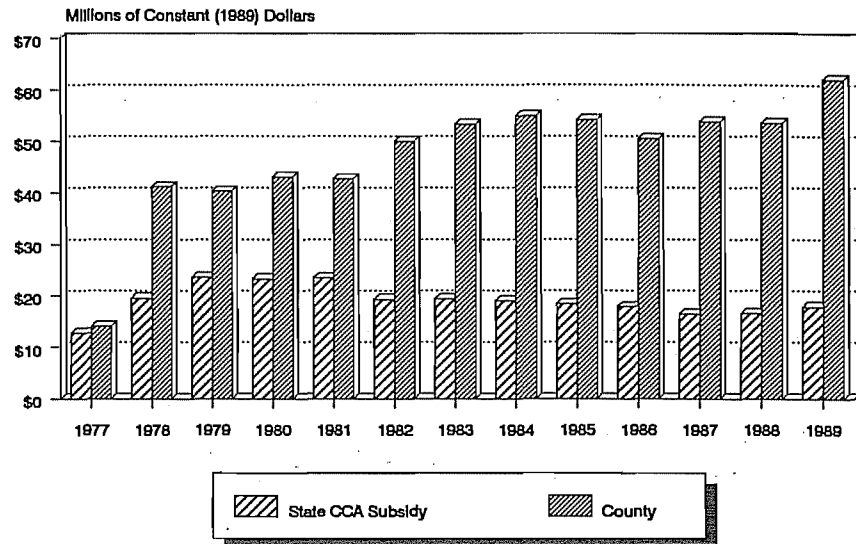
Figure 6.4 shows county expenditures for corrections, with the state and county shares broken out. These data suggest that a disproportionate share of the increase in correctional expenditures has been paid by county governments. In 1979, the CCA subsidy represented 37 percent of county spending for corrections, but by 1990, it accounted for only 25 percent. The CCA counties experienced an apparent windfall in 1981-82 after sentencing guidelines took effect and the chargeback provision was abolished. The data suggest, however, that the net financial effect of the guidelines on county correctional costs has probably been negative (see below).

The county share of correctional expenditures has increased more than the state's.

There are multiple causes of the substantial increases in the offender population under local correctional control, as outlined in Chapter 2. Some, like law enforcement and prosecutorial priorities, represent primarily local actions. To the extent that increased county correctional costs are a consequence of local decisions, it is reasonable that counties be responsible for determining how to pay for them.

On the other hand, other actions have been initiated at the state level, such as mandatory sentencing laws, sentencing guidelines, and legislative mandates affecting probation workloads, that have contributed to higher county correc-

Figure 6.4: County Corrections
Spending by Source, 1977-89



Source: Department of Corrections.

tional costs. In these cases, the state should make the effort to assess the financial impacts on counties of actions to be taken, and may want to appropriate funds accordingly to pay for the additional costs.

Unfortunately, the relative weight of state versus local policy changes on correctional spending is difficult to assess. For example, in the case of DWI, we saw in Chapter 2 that judges were already sentencing offenders to more than the 30 days mandated by the Legislature, and the effect of the mandatory sentencing law appears to have been to add about six days to the amount of time a DWI offender was already serving.

Similarly, to the extent that the guidelines have worked (at least initially) to keep state prison populations lower than they would otherwise be, they have done so because the counties have assumed a larger burden for punishing the increased numbers of felony offenders in local jails and programs. From the counties' point of view, they have also assumed financial responsibility for those offenders who must be sanctioned locally when judges pronounce more lenient sentences than specified by the guidelines grid. These individuals would have been the responsibility of the state had the guidelines been followed (and probably would have been if local jail facilities and community programs had not been available). There are more of these "mitigated" departures than there are "aggravated" departures (judges imposing a prison sentence when the guidelines presume a local sanction). It seems reasonable to us that:

- Any cost savings accrued to the state because of mitigated departures from the guidelines (offset by aggravated departures) should be shared with the counties.

This raises the issue of the incentives and disincentives provided to counties for retaining and sanctioning offenders at the local level. Underlying the incentive/disincentive issue are the questions of how to divide fiscal and program responsibilities between the state and the counties and who should be responsible for what type of offender.

Whether some type of chargeback provision for adult offenders should be added back into CCA has recently become a source of controversy between the DOC and local corrections administrators. Sentencing guidelines supposedly removed the need for adult chargebacks, which were eliminated in 1982. Now, however, the department believes that CCA counties have no incentive to keep certain offenders at the local level, in particular, felony offenders who have less than one year of their sentence left to serve. In exchange for recommending a higher CCA appropriation in the 1990-91 biennium, the commissioner proposed reinstituting chargebacks for offenders with less than one year to serve. Many of these are probation violators who are not covered by the guidelines.

The state-local relationship for corrections is in a state of flux.

This proposal was opposed by CCA counties on the grounds that state prison is the appropriate sanction for offenders who "fail" in community-based programs. Furthermore, counties believe they are already handling the bulk of the increase in offenders.

Experience with CCA, here and elsewhere, suggests that chargebacks are not effective in discouraging counties from sending nondangerous felony offenders to state prisons.²² The reason is that sentencing decisions are not under the control of community corrections agencies. In Minnesota, district court judges—aided by the guidelines—decide whether offenders are sent to state prison, local detention facilities, community-based residential programs, or are placed on probation. It is not reasonable to expect that financial disincentives to county corrections agencies will have a direct impact on judicial sentencing practices.

- At the present time, there is no clear demarcation between the state and CCA counties regarding which offenders should be whose financial responsibility.

The issues of who is responsible for which offenders and how the costs of punishment and correctional services should be shared between the state and the counties was settled in the original CCA and modified by the guidelines. Now, the issue needs to be resolved again. The current arrangement neither clarifies the state-local relationship nor provides for the appropriate

²² Department of Corrections and the Crime Control Planning Board, *Minnesota Community Corrections Act Evaluation*, 76; Committee to Study the Financing of Correctional Services, *Report to the 1981 Minnesota Legislature*, 38. The Department of Corrections maintains that chargebacks for juvenile offenders have been effective, although it is not clear that the chargeback provision has directly influenced judicial sentencing decisions. See also the Governor's Task Force on Corrections Planning, *A Strategic Corrections Plan for Oregon: Restoring the Balance* (Eugene: State of Oregon, August 1988).

placement of offenders apart from the financial issue. It is possible that some sentencing and offender placement decisions are being made based upon who will pay the costs, rather than on what the appropriate sentence should be.

The CCA Subsidy Distribution Formula

The formula that is used to distribute the CCA subsidy among participating counties is written into the act and would require legislative action to change it. Despite the criticisms about the formula made by the committee appointed the Legislature (1979) and our office (1984), the formula has not been changed.

The criticisms about the subsidy distribution formula are equally valid today. The formula is inadequate. In addition to being complex and cumbersome, the formula results in an inequitable distribution of the CCA funds, as the previous studies have concluded. The formula is based upon two purported measures of correctional needs (per capita correctional expenditures and percent of population aged 6 to 30 years) and two of ability to pay (per capita income and per capita net tax capacity). All 87 counties receive a score by dividing each county's measure on these four factors by the statewide average, then totaling the four quotients and dividing by four. (The exact formula appears in Appendix D.)

The 1979 study committee found three of the four measures to be inadequate. The per capita correctional expenditures measure is not based upon actual expenditures, but is derived from multiplying the number felons under county supervision at the end of the year by a set dollar amount, to which some additional fixed costs are added. This does not measure either actual costs or correctional needs, and the committee found it omitted many correctional expenditures that counties incur. Further, it works to the disadvantage of counties where labor costs are higher and actual costs exceed the set dollar amounts in the formula (e.g., \$50 for each pre-sentence investigation). The committee concluded that both measures of counties' ability to obtain revenues to pay for correctional costs, "in fact do not with reasonable accuracy and fairness measure ability to pay."²³

The subsidy distribution formula results in an inefficient use of correctional dollars.

Figure 6.5 shows the CCA subsidy as a percent of total correctional expenditures for each participating CCA unit. It shows there is wide variation in the extent to which the CCA subsidy covers correctional costs, ranging from 92 percent in Crow Wing-Morrison to 16 percent in Ramsey and 15 percent in Hennepin County. These data suggest that:

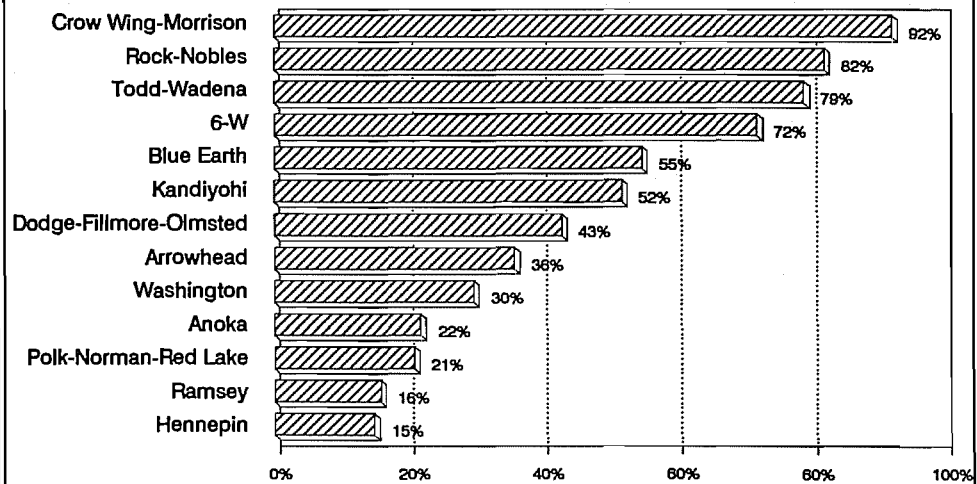
- **The current formula results in an inequitable distribution of the CCA funds. It does not distribute the state subsidy so that the counties with the greatest correctional needs get a fair share.**

The current distribution formula tends to favor the smaller, rural counties where there is less serious crime and, hence, need. This conclusion is

²³ Committee to Study the Financing of Correctional Services, *Report to the 1981 Minnesota Legislature*, 13.

Counties with the greatest correctional needs do not get their fair share.

Figure 6.5: State Subsidy as a Percent of Total Community Corrections Expenditures, 1989

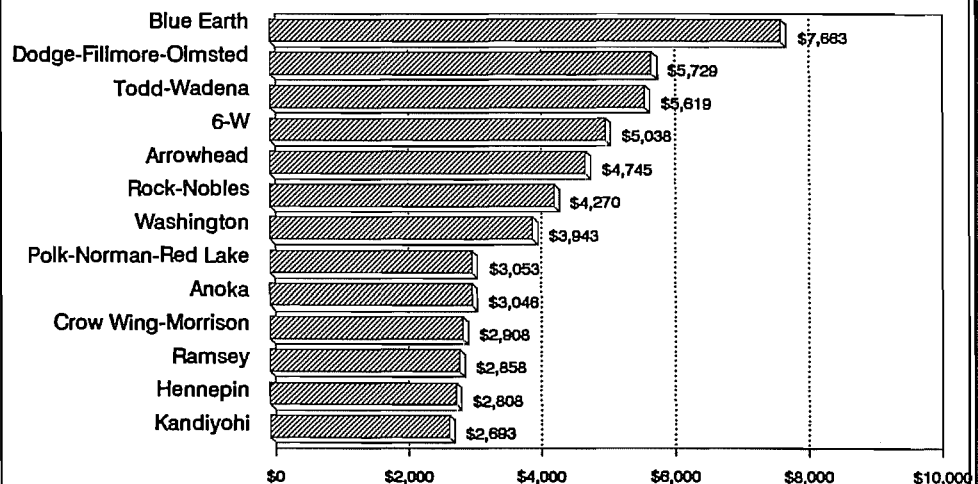


Note: Excludes Dakota and Rice Counties, which joined the CCA in 1989.

Source: Department of Corrections.

substantiated by looking at the average CCA subsidy per felony conviction, as illustrated in Figure 6.6. Again we see considerable variation in the average CCA subsidy, ranging from \$2,693 per felony conviction in Kandiyohi County to \$7,663 in Blue Earth. But these data substantiate that it is the larger, metro-area counties that tend to receive a smaller average CCA subsidy per felony conviction and, consequently, where the county pays proportionately more of the costs.

Figure 6.6: Amount of CCA Subsidy per Felony Conviction, 1989

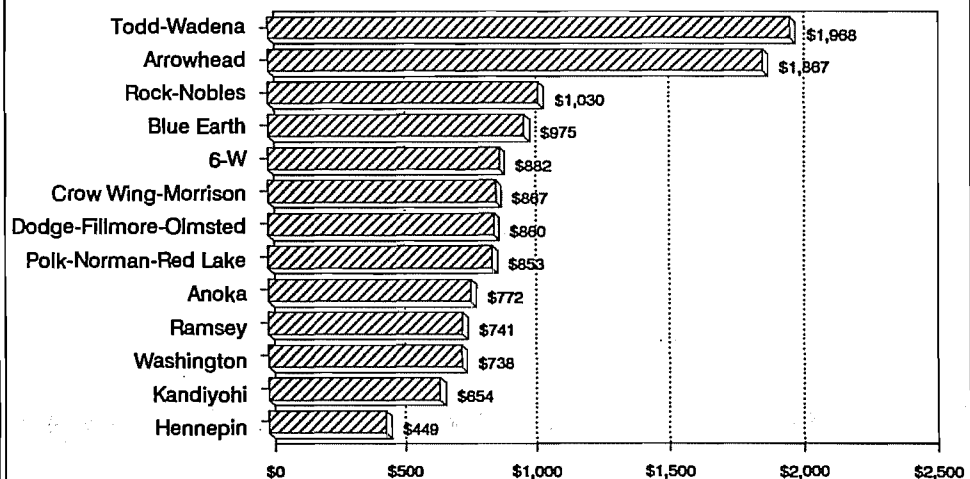


Note: Excludes Dakota and Rice Counties, which joined the CCA in 1989.

Sources: Sentencing Guidelines Commission; Department of Corrections.

The CCA subsidy is also designed to compensate for counties with low revenue-raising capacity. Since county tax revenue comes almost exclusively from the property tax, county property tax base is a good measure of revenue-raising ability. Figure 6.7 shows that the CCA subsidy is not distributed equitably by revenue-raising capacity either. As the formula now works, Hennepin, Ramsey, and other metro-area counties do not get a proportional share in relation to expenditure need (based on measures of crime or felony convictions) or in relation to the property tax base.

Figure 6.7: CCA Subsidy per \$100,000 Tax Capacity, 1989



Note: Excludes Dakota and Rice Counties, which joined the CCA in 1989.

Sources: Department of Corrections; Department of Revenue.

The CCA subsidy is not distributed equitably by revenue-raising capacity.

Only one or two states allocate CCA monies using a formula like Minnesota's. Most states with formula subsidies use simpler formulas that weight correctional needs more heavily in the equation. They tend to be based upon total population and one or two measures of correctional need (e.g., crime rate, at-risk population, number of felony convictions, number of offenders, or measures of workload).

The 1979 committee proposed a new formula that included three factors: number of adult district court convictions, number of persons between the ages of 5 to 17, and total county population. Our earlier report agreed these measures were superior, but suggested that some measure of ability to pay should be included as well.²⁴ It would be possible to design a formula that more effectively takes account of corrections needs and revenue-raising ability, although some counties would benefit at the expense of others unless the overall subsidy was increased simultaneously.

²⁴ Legislative Auditor, *Human Service Block Grants*, 35.

Administration of the CCA

Our comments in this section are based primarily on interviews and our review of the 1990 CCA plans. We did not look at the role or effectiveness of the local advisory boards. We believe that generally:

- **The Department of Corrections' administration of the CCA is adequate.**

The department's approach to administering CCA is much like that of enforcing jail standards. It views CCA as a "cooperative venture" and sees itself in an advisory rather than authoritarian role. As noted, the act was based on the premise of local autonomy in planning and administration, and the department has not used its authority in establishing administrative requirements to restrict that autonomy. Similarly, the DOC does not take a strict, bureaucratic view of the plan review process. Rather, it allows variation in the type and format of the information provided in the plan. It would like the annual plans to be "useful, working documents" for the counties, rather than simply the means to fulfill grant requirements. Although this approach appears reasonable to us, if the department has erred, it has been on the side of allowing too much autonomy.

At the same time, CCA suffers from many of the problems that come with program aging and routinization.

- **The Department of Corrections could provide more technical assistance to CCA counties and take a more active role in providing leadership, disseminating ideas and information, and fostering innovation and creativity through the CCA.**

It may be that the department's administration of CCA reflects what has happened to CCA itself. Because the state has strayed from CCA's original goals, the department's role with respect to assessing the adequacy of CCA plans in achieving state goals and purposes has become less clear. In permitting considerable local autonomy, the department has minimized its leadership role with respect to developing and testing new program ideas through the CCA. The DOC has developed new programs of its own, which CCA counties may participate in if they provide the required matching funds, but the department has not opted to utilize the CCA *as a vehicle* for encouraging creativity and innovation.

- **Without making unnecessary CCA annual plan requirements, the department should establish uniform data reporting that would provide better statewide information on correctional needs and resources and the existence and use of community alternatives.**

The Community Corrections Act specifies that some portion of each county's subsidy amount must be spent on information systems, research, and evaluation. Therefore, the DOC has the mechanism, with funding already in place,

CCA no longer helps expand community sanctions or encourage innovation.

Minimal efforts are made to expand CCA participation.

to collect and analyze data and information systematically and regularly on a statewide basis. Yet, it makes little use of this authority. All of the annual plans contain information, but the specific data provided vary from plan to plan. This makes it difficult for the department to make statewide assessments of correctional needs or to engage in long-term planning for the CCA counties as well as those in which the department provides services. For example, despite the fact that the department reimburses counties for probation officer salaries or pays for probation staff through the CCA subsidy, it does not maintain data over time on the number of probation officers there are in the state nor how probation workloads have changed over time.²⁵

- The department makes minimal effort to encourage additional counties to join the CCA.

At the beginning of each biennium the department sends a letter to each non-participating county inviting it to join. If requested, it will make a presentation to a county board. Beyond these minimal actions, it does not encourage additional counties to join the CCA. The department says it makes little effort to increase CCA participation because it believes it would be difficult to secure funding for new counties.

The evidence suggests, however, that CCA has been relatively effective in developing and maintaining community-based alternatives to imprisonment and may have helped to limit the growth in jail incarceration as well. The CCA provides a means for several counties to join together to provide community programs on a cooperative basis, making CCA a reasonable alternative to contracting with the DOC. In light of the current overcrowding problems statewide, expanding CCA appears to be a reasonable alternative to consider, particularly if funding is tied to specific state goals and objectives.

SUMMARY AND RECOMMENDATIONS

The CCA was designed to achieve economy and efficiency in the delivery of correctional services, primarily through the development of community-based alternatives to incarceration. The CCA also restructured the state-local relationship with respect to financing and delivering correctional services, providing for state financial support and local autonomy in program design and implementation.

In structure and purpose, the CCA appears to be a viable policy that could be used to help solve the state's current overcrowding problems. Many of the programs started as a result of CCA remain in place, and there are more community programs, on average, in CCA counties than in nonparticipating counties. Further, the existence of these alternatives may have helped CCA counties keep their increases in jail populations lower than in counties where fewer alternatives exist. At least the data support the interpretation that the

²⁵ The Department of Corrections keeps these data on its own probation officers, and it maintains a reporting system on the number of offenders on probation. Periodically, it makes estimates of the number of probation officers statewide.

CCA has been reasonably effective in achieving its goals, despite trends in the opposite direction. We found that the CCA remains popular among state and local corrections officials.

But we also encountered evidence that the state has strayed from the original goals of CCA. There are signs that both prisons and jails are being used inefficiently. Other state policies have mandated or created incentives for offenders to be sentenced to more secure—and more expensive—supervision than they need for reasons of public safety. These actions have not been taken in conjunction with CCA, but they have contributed to a movement away from CCA's goals. We think the emphasis on equal punishment, as exemplified in mandatory sentences and sentencing guidelines, may make it more difficult to achieve efficiency and economy in the use of correctional resources.

In addition, the state has not maintained its financial commitment to CCA. The data show that state funding has not kept pace with the additional expenses incurred by CCA counties. The results of our survey of local corrections professionals indicate that there is a need for more community-based programs, particularly those that provide a spectrum of supervisory control and which would allow participation by greater numbers of offenders. Current program offerings are inadequate to meet demands, especially in high-crime areas where the needs are greater. There has been a slight drift to state-run programs, operated through the Department of Corrections, which may have occurred at the expense of increased funding for CCA counties. It is the CCA counties, however, that contain most of the crime problems and the greatest growth in the offender population.

Furthermore, the current distribution formula tends to distribute the CCA subsidy inequitably so that counties with the greatest correctional needs do not receive their fair share of the funds, nor are funds fairly targeted in relation to revenue-raising capacity. On a statewide basis, these trends contribute to the uneconomical use of correctional resources.

**CCA is in need
of legislative
attention.**

If the state wants to expand the range of alternative sanctions, and do so in an economical way, the CCA appears to be a good vehicle for accomplishing this. However, the credibility and vitality of CCA needs to be reestablished and the state's purpose in the act evaluated and redefined. At a minimum, the Legislature should reassess and clarify the goals of Minnesota's overall correctional policy and determine how community corrections fits into it. We recommend that the Legislature consider the following issues:

- *The appropriateness of the current structure and purpose of CCA, and how CCA relates to sentencing policy: How can the CCA be revitalized so that it promotes correctional innovation and the continued development of alternatives to incarceration?*
- *The state-local relationship for the financing and delivery of correctional services: Which level of government should be responsible—financially and administratively—for what kinds of offenders?*

- ***The subsidy distribution formula:*** How can the formula be improved so that the subsidy is given directly in relation to spending needs and inversely in relation to revenue-raising capacity?
- ***Statewide correctional planning capabilities:*** How can correctional planning be improved, and is the Department of Corrections the appropriate agency to be responsible for it?

In conjunction with the overall policy reassessment and a clarification of the state's goals, funding for CCA that is commensurate with the desired goals needs to be appropriated and progress toward those goals should be monitored. Increasing the community corrections subsidy could encourage counties to develop alternatives to incarceration, especially in the metropolitan area where the need for alternative programs is the greatest. Given the tendency for alternative sanctions to be used in addition to incarceration, however, policies governing the use of alternative sanctions may need to be developed simultaneously.

OFFENSE SEVERITY REFERENCE TABLE

Appendix A

First Degree Murder is excluded from the guidelines by law, and continues to have a mandatory life sentence.

X Adulteration—609.687, subd. 3(1)
 Murder 2—609.19(1)
 Murder 2 of an Unborn Child—609.2662(1)

IX Murder 2—609.19(2)
 Murder 2 of an Unborn Child—609.2662(2)
 Murder 3—609.195(a)
 Murder 3 of an Unborn Child—609.2663

VIII Assault 1—609.221
 Assault 1 of an Unborn Child—609.267
 Controlled Substance Crime in the First Degree—152.021
 Criminal Sexual Conduct 1—609.342
 Death of an Unborn Child in Commission of Crime—609.268, subd. 1
 Kidnapping (w/great bodily harm)—609.25, subd. 2(2)
 Manslaughter 1—609.20(1) & (2)
 Manslaughter 1 of an Unborn Child—609.2664(1) & (2)
 Murder 3—609.195(b)
 Prostitution (Patron)—609.324, subd. 1(a)
 Receiving Profit Derived from Prostitution—609.323, subd. 1
 Solicitation of Prostitution—609.322, subd. 1

VII Aggravated Robbery—609.245
 Arson 1—609.561
 Burglary 1—609.582, subd. 1(b) & (c)
 Controlled Substance Crime in the Second Degree—152.022
 Controlled Substance Crime in the Third Degree—152.023, subd. 2(1) & (2)

Criminal Sexual Conduct 2—609.343, subd. 1(c), (d), (e), (f), & (h)
Criminal Sexual Conduct 3—609.344, subd. 1(c), (d), (g), (h), (i), (j), & (k)
Fleeing Peace Officer (resulting in death)—609.487, subd. 4(a)
Great Bodily Harm Caused by Distribution of Drugs—609.228
Kidnapping (not in safe place)—609.25, subd. 2(2)
Manslaughter 1—609.20(3) & (4)
Manslaughter 1 of an Unborn Child—609.2664(3)
Manslaughter 2—609.205(1)
Manslaughter 2 of an Unborn Child—609.2665(1)

VI Arson 2—609.562
 Assault 2—609.222
 Bringing Stolen Goods into State (over \$2,500)—609.525
 Burglary 1—609.582, subd. 1(a)
 Controlled Substance Crime in the Third Degree—152.023, subd. 1 and subd. 2(3), (4), & (5)
 Criminal Sexual Conduct 2—609.343, subd. 1(a), (b), & (g)
 Criminal Sexual Conduct 4—609.345, subd. 1(c), (d), (g), (h), (i), (j), & (k)
 Criminal Vehicular Operation—609.21, subd. 1 & 3
 Escape from Custody—609.485, subd. 4(5)
 Failure to Affix Stamp on Cocaine—297D.09, subd. 1
 Failure to Affix Stamp on Hallucinogens or PCP—297D.09, subd. 1
 Failure to Affix Stamp on Heroin—297D.09, subd. 1
 Failure to Affix Stamp on Remaining Schedule I & II Narcotics—297D.09, subd. 1

Fleeing Peace Officer (great bodily harm)—
609.487, subd. 4(b)
Kidnapping—609.25, subd. 2(1)
Precious Metal Dealers, Receiving Stolen
Goods (over \$2,500)—609.526, (1)
Precious Metal Dealers, Receiving Stolen
Goods (over \$300)—609.526, second or
subsequent violations
Price Fixing/Collusive Bidding—325D.53,
subd. 1(2)(a)
Theft over \$35,000—609.52, subd. 3(1)

V Bringing Stolen Goods into State (\$1,000-
\$2,500)—609.525
Burglary—609.582, subd. 2(a) & (b)
Check Forgery over \$35,000—609.631, subd.
4(1)
Criminal Sexual Conduct 3—609.344, subd.
1(b), (3) & (f)
Criminal Vehicular Operation—609.21,
subd. 2 & 4
Financial Transaction Card Fraud over
\$35,000—609.821, subd. 3(1)(i)
Manslaughter 2—609.205(2), (3), & (4)
Manslaughter 2 of an Unborn Child—
609.2665(2), (3), & (4)
Perjury—609.48, subd. 4(1)
Possession of Incendiary Device—299F.79;
299F.80, subd. 1; 299F.811; 299F.815;
299F.82, subd. 1
Price Fixing/Collusive Bidding—325D.53,
subd. 1(1), and subd. 1(2)(b) & (c)
Prostitution (Patron)—609.324, subd. 1(b)
Receiving Profit Derived from Prostitution—
609.323, subd. 1a
Simple Robbery—609.24
Solicitation of Prostitution—609.322, subd. 1a
Tampering w/Witness—609.498, subd. 1

IV Accidents—169.09, subd. 14(a)(1)
Adulteration—609.687, subd. 3(2)
Assault 2 of an Unborn Child—609.2671
Assault 3—609.223
Bribery—609.42; 90.41; 609.86
Bring Contraband into State Prison—243.55
Bring Dangerous Weapon into County Jail—
641.165, subd. 2(b)
Bringing Stolen Goods into State (\$301-
\$999)—609.525
Burglary 2—609.582, subd. 2(c) & (d)
Burglary 3—609.582, subd. 3
Controlled Substance Crime in the Fourth
Degree—152.024

Criminal Sexual Conduct 4—609.345, subd.
1(b), (e), & (f)
False Imprisonment—609.255, subd. 3
Fleeing Peace Officer (substantial bodily
harm)—609.487, subd. 4(c)
Injury of an Unborn Child in Commission of
Crime—609.268, subd. 2
Malicious Punishment of Child—609.377
Negligent Fires—609.576, subd. 1(a)
Perjury—290.53, subd. 4; 300.61; & 609.48,
subd. 4(2)
Precious Metal Dealers, Receiving Stolen
Goods (\$301-\$2,500)—609.526(1) & (2)
Receiving Stolen Goods (over \$2,500)—
609.53
Receiving Stolen Property (firearm)—609.53
Security Violations (over \$2,500—80A.22,
subd.1; 80B.10, subd. 1; 80C.16, subd. 3(a)
& (b)
Sports Bookmaking—609.75, subd. 7
Tax Evasion—290.53, subd. 4 & 8
Tax Withheld at Source; Fraud (over
\$2,500)—290.92, subd. 15(5) & (12);
290A.11, subd. 2
Terroristic Threats—609.713, subd. 1
Theft Crimes-Over \$2,500 (*see Theft Offense
List*)
Theft from Person—609.52
Theft of Controlled Substances—609.52,
subd. 3(2)
Theft of Motor Vehicle—609.52, subd.
3(3)(d)(vi)
Use of Drugs to Injure or Facilitate Crime—
609.235

III Accidents—169.09, subd. 14(a)(2)
Arson 3—609.563
Check Forgery (over \$2,500)—609.631, subd.
4(2)
Coercion—609.27, subd. 1(1)
Coercion (over \$2,500)—609.27, subd. 1(2),
(3), (4), & (5)
Damage to Property—609.595, subd. 1(1)
Dangerous Smoking—609.576, subd. 2
Dangerous Trespass, Railroad Tracks—
609.85(1)
Dangerous Weapons—609.67, subd. 2;
624.713, subd. 1(b)
Depriving Another of Custodial or Parental
Rights—609.26, subd. 6(2)
Escape from Custody—609.485, subd. 4(1)
False Imprisonment—609.255, subd. 2
False Traffic Signal—609.851, subd. 2
Intentional Release of Harmful Substance—
624.732, subd. 2

Motor Vehicle Use without Consent—
609.52, subd. 2(17)
Negligent Discharge of Explosive—299F.83
Possession of Burglary Tools—609.59
Possession of Shoplifting Gear—609.521
Prostitution (Patron)—609.324, subd. 1(c)
Receiving Profit Derived from Prostitution—
609.323, subd. 2
Receiving Stolen Goods (\$2,500 or less)—
609.53
Security Violations (under \$2,500)—80A.22,
subd. 1; 80B.10, subd. 1; 80C.16, subd. 3(a)
& (b)
Solicitation of Children to Engage in Sexual
Conduct—609.352, subd. 2
Solicitation of Prostitution—609.322, subd. 2
Tax Withheld at Source; Fraud (\$301-
\$2,500)—290.92, subd. 25(5) & (12);
290A.11, subd. 2
Tear Gas & Tear Gas Compounds—624.731,
subd. 3(b)
Theft Crimes—\$2,500 or less (*see Theft Of-
fense list*)
Theft of Controlled Substances—609.52,
subd. 3(3)(b)
Theft of Firearm—609.52, subd. 3(3)(d)(v)
Theft of Public Records—609.52
Theft Related Crimes—Over \$2,500 (*see Theft
Related Offense List*)
Unauthorized Presence at Camp Ripley—
609.396, subd. 2

II Accidents—169.09, subd. 14(a)(3) & (b)(1)
Aggravated Forgery (misc) (non-check)—
609.625; 609.635; 609.64
Check Forgery (\$200-\$2,500)—609.631,
subd. 4(3)(a)
Coercion (\$300-\$2,500)—609.27, subd. 1(2),
(3), (4), & (5)
Controlled Substance in the Fifth Degree—
152.025
Damage to Property—609.595, subd. 1(2),
(3), & (4)
Failure to Affix Stamp on Remaining Sched-
ule I, II, & III Non-Narcotics—297D.09,
subd. 1
Negligent Fires (damage greater than
\$10,000)—609.576, subd. 1(b)(3)
Precious Metal Dealers, Regulatory Provis-
ions—325F.743
Riot—609.71
Terroristic Threats—609.713, subd. 2
Theft-Looting—609.52
Theft Related Crimes—\$2,500 or less (*see
Theft Related Offense List*)

I Accidents—169.09, subd. 14(b)(2)
Assault 4—609.2231, subd. 1
Assaults Motivated by Bias—609.2231, subd.
4(b)
Aiding Offender to Avoid Arrest—609.495
Cable Communication Systems Interfer-
ence—609.80, subd. 2
Check Forgery (less than \$200)—609.631,
subd. 4(3)(b)
Criminal Damage to Property Motivated by
Bias—609.595, subd. 1A, (a)
Depriving Another of Custodial or Parental
Rights—609.26, subd. 6(1)
Escape from Custody—609.485, subd. 4(2)
Failure to Affix Stamp on Marijuana/Hash-
ish/Tetrahydrocannabinols—297D.09,
subd. 1
Failure to Affix Stamp on Schedule IV Sub-
stances—297D.09, subd. 1
Financial Transaction Card Fraud—609.821,
subd. 2(3) & (4)
Fleeing a Police Officer—609.487, subd. 3
Forgery—609.63; and Forgery Related
Crimes (*see Forgery Related Offense List*)
Leaving State to Evade Establishment of Pa-
ternity—609.31
Nonsupport of Wife or Child—609.375,
subd. 2, 3, & 4
Sale of Simulated Controlled Substance—
152.097
Unlawful Acts Involving Liquor—340A.701
Solicitation of Prostitution—609.322, subd. 3
Terroristic Threats—609.713, subd. 3(a)
Voting Violations—201.014; 201.016; 201.054

Theft Offense List

It is recommended that the following property crimes be treated similarly. This is the list cited for the two THEFT CRIMES (\$2,500 or less and over \$2,500) in the Offense Severity Reference Table.

Altering Serial Number
609.52, subd. 2(10) & (11)
Computer Damage
609.88
Computer Theft
609.89
Diversion of Corporate Property
609.52, subd. 2(15 & (16)
Embezzlement of Public Funds
609.54
Failure to Pay Over State Funds
609.445

False Declaration of Claim
471.392
Permitting False Claims Against Govern-
ment
609.455
Rustling and Livestock Theft
609.551
Theft
609.52, subd. 2(1)
Theft by Soldier of Military Goods
192.36
Theft by Trick
609.52, subd. 2(4)
Theft of Public Funds
609.52
Theft of Trade Secret
609.52, subd. 2(8)

Theft Related Offense List

It is recommended that the following property crimes be treated similarly. This is the list cited for the two THEFT RELATED CRIMES (\$2,500 or less and over \$2,500) in the Offense Severity Reference Table.

Defeating Security on Personality
609.62
Defeating Security on Realty
609.615
Defrauding Insurer
609.611
Federal Food Stamp Program
393.07, subd. 10
Financial Transaction Card Fraud
609.821, subd. 2(1), (2), (5), (6), (7), & (8)
Fraud in Obtaining Credit
609.82
Fraudulent Long Distance Telephone Calls
609.785
Medical Assistance Fraud
609.466
Presenting False Claims to Public Officer or
Body
609.465
Refusing to Return Lost Property
609.52, subd. 2(6)
Taking Pledged Property
609.52, subd. 2(2)
Temporary Theft
609.52, subd. 2(5)
Theft by Check
609.52, subd. 2(3)
Theft of Cable TV Services
609.52, subd. 2(12)

Theft of Leased Property
609.52, subd. 2(9)
Theft of Services
609.52, subd. 2(13)
Theft of Telecommunications Services
609.52, subd. 2(14)
Wrongfully Obtaining Assistance
256.98

Forgery Related Offense List

It is recommended that the following property crimes be treated similarly. This is the list cited for the FORGERY and FORGERY RELATED CRIMES in the Offense Severity Reference Table.

Altering Livestock Certificate
35.824
Altering Packing House Certificate
226.05
Destroy or Falsify Private Business Record
609.63, subd. 1(5)
Destroy or Falsify Public Record
609.63, subd. 1(6)
Destroy Writing to Prevent Use at Trial
609.63, subd. 1(7)
False Bill of Lading
228.45; 228.47; 228.49; 228.50; 228.51
False Certification of Notary Public
609.65
False Information—Certificate of Title Ap-
plication
168A.30
False Membership Card
609.63, subd. 1(3)
False Merchandise Stamp
609.63, subd. 1(2)
Fraudulent Statements
609.645
Obtaining Signature by False Pretense
609.635
Offer Forged Writing at Trial
609.63, subd. 2
Use False Identification
609.63, subd. 1(1)

Misdemeanor and Gross Misdemeanor Offense List

The following misdemeanors and gross misdemeanors will be used to compute units in the criminal history score. All felony convictions resulting in a misdemeanor or gross misdemeanor sentence shall also be used to compute units.

Arson 3rd Degree
609.563; subd. 2

Assault
609.224

Burglary 4th Degree
609.582

Carrying Pistol
624.7143

Check Forgery
609.631

Contributing to Delinquency of Minor
260.315

Criminal Sexual Conduct 5th Degree
609.3451

Damage to Property
609.595

Dangerous Weapons
609.66

Fleeing a Police Officer
609.487

Furnishing Liquor to Persons Under 21
340A.503

Indecent Exposure
617.23

Interference with Privacy
609.746

Possession of Small Amount of Marijuana in Motor Vehicle
152.15

Possession of Stolen Property
609.53

Theft
609.52, subd. 2(1)

Trespass (gross misdemeanor)
609.605

Violating an Order for Protection
518B.01; subd. 14

DOC 1991 FACILITY IMPROVEMENT PRIORITIES

Appendix B

Since counties do not have equal needs and are not uniformly prepared to proceed with needed improvements, establishing priorities is necessary. Priorities have been established by the Inspection Unit on the basis of specified criteria used to more clearly identify urgency of need.

PRIORITY GROUP I:

- A. Facilities that have been condemned by District Court action or are classified potentially condemnable by the Inspection Unit.
- B. A facility that is classified by the Inspection Unit as adequate as a facility type two levels below the classification of facility the Inspection Unit believes is needed. For example, if the Inspection Unit had classified the county's existing facility as a holding facility and if a jail facility were determined to be needed by the county, such county would receive a Group IB priority.
- C. A facility that is classified by the Inspection Unit as adequate as a facility type one level below the classification of facility the Inspection Unit believes is needed. For example, if the Inspection Unit had classified the county's existing facility as a lockup and if a jail facility were determined to be needed by the county, such county would receive a Group IC priority if the following criteria were also met: Average daily populations are at or are expected to be at or above existing bed capacity levels by 1991. Current usage is not consistent with Inspection Unit facility classification. These facilities are also characterized by multiple occupancy cells, inadequate square footage per occupant and a lack of program and exercise-recreation space.

PRIORITY GROUP II:

- A. A facility that is classified by the Inspection Unit as adequate as a facility type one level below the classification of facility the Inspection Unit believes is needed. For example, if the Inspection Unit had classified the county's existing facility as a lockup and if a jail facility were determined to

be needed by the county, such county would receive a Group IIA priority if the following criteria were also met: Average daily populations are at or are expected to be above approved bed capacity levels but below existing bed capacity levels by 1991. Current usage is not consistent with Inspection Unit facility classification. These facilities have multiple occupancy, square footage and program and exercise-recreation space problems similar to Priority Group IC facilities; however, they are less severe at this time.

- B. A facility that is classified by the Inspection Unit as adequate as a facility type one level below the classification of facility the Inspection Unit believes is needed. For example, if the Inspection Unit had classified the county's existing facility as a lockup and if a jail facility were determined to be needed by the county, such county would receive a Group IIB priority if the following criteria were also met: Average daily populations are at and expected to remain at levels below the facility's approved bed capacity. Although multiple occupancy cell conditions and square footage per occupant on the basis of design are poor, the negative impact of such conditions is minimized or nonexistent based on actual and projected populations. These facilities are also characterized by a lack of program and exercise recreation space. Efforts should be made to develop such space within the existing security perimeter.

PROGRAM GROUP III:

- A. The facility is being used in a manner consistent with its classification by the Inspection Unit. The current classification and use are also consistent with the county's needs. The facility is experiencing or is likely to experience average daily populations at or greater than its approved bed capacity by 1991. Projections also indicate that average daily populations are likely to continue to increase. Plans for facility expansion, alternatives to incarceration and review of per diem contract services granted to other counties if applicable, should all be reviewed. Action plans should be developed for implementation on a fairly immediate basis, if projected needs are realized.
- B. The facility is being used in a manner consistent with its classification by the Inspection Unit. The current classification is also consistent with the county's needs. Current average daily populations and projections indicate that the facility is experiencing populations near its approved bed capacity or may experience populations near its approved bed capacity in 1990. Projections indicate that populations after 1990 should stabilize or decline. Counties operating these facilities should consider population pressures as short-term unless new evidence suggests a more long-term problem. Expansion or new construction should only be entered into after serious consideration of other alternatives to control what appears to be a short-term problem.

PRIORITY GROUP IV:

- A. A facility that is being used in a manner consistent with its classification by the Inspection Unit. The current classification and approved bed capacity appear adequate to meet the county's needs. Counties operating facilities in this group are considered self-sufficient with respect to detention and incarceration of adult offenders. They are unlikely to require assistance from other counties to meet their needs. Projected populations do not indicate the need for expansion in the foreseeable future.
- B. A facility that is being used in a manner consistent with its classification by the Inspection Unit. The current classification and approved bed capacity appear adequate to meet the county's needs. The adequacy of facilities in this group is directly related to each county's ability to meet its needs for detention beyond its capability. Each county in this group is reliant upon another county or counties to meet its needs. For example, if a county operated a 90-day lockup, it would rely on another or other counties for detention or incarceration of persons in excess of 90 days as appropriate. Some counties in this priority group operate without any facility and have chosen to contract for all needed services rather than build to meet all or part of their needs. While the Inspection Unit may not agree with the county's decision not to operate a facility, the inspection unit accepts the county's decision as an acceptable alternative as long as such an arrangement does not result in serious difficulty in finding a host county to meet the county's needs or result in overcrowding in a willing host county.

Priority Group Designation

Aitkin	IV-A	Dakota	IV-A
Anoka Jail	III-A	Dodge	IV-B
Anoka Annex	III-A	Douglas	III-A
Becker	IV-A	Faribault	IV-A
Beltrami	IV-A	Fillmore	II-B
Benton	I-B	Freeborn	IV-A
Big Stone	IV-B	Goodhue	II-A
Blue Earth	III-B	Grant	IV-B
Brown	II-A	Hennepin ADC	III-A
Carlton	IV-A	Hennepin ADC	
Carver	II-A	Men - Medium Security	III-A
Cass	IV-A	Hennepin - Women	II-B
Chippewa	IV-A	Hennepin - Work Release	III-A
Chisago	III-A	Houston	III-B
Clay	III-A	Hubbard	IV-A
Clearwater	I-B	Isanti	III-A
Cook	IV-B	Itasca	III-A
Cottonwood	IV-A	Jackson	IV-A
Crow Wing Jail	III-A	Kanabec	III-A
Crow Wing Annex	IV-A	Kandiyohi	I-C

Priority Group Designation, continued

Kittson	IV-B	Red Lake	IV-B
Koochiching	IV-A	Redwood	III-B
Lac Qui Parle	IV-B	Renville	IV-B
Lake	IV-B	Rice Jail	III-A
Lake of the Woods	IV-B	Rice Annex	IV-A
LeSueur	III-B	Rock	IV-B
Lincoln	IV-B	Roseau	IV-A
Lyon	III-B	St. Louis Jail	I-A
McLeod	III-A	NERCC	III-A
Mahnomen	IV-B	Scott	III-A
Marshall	IV-A	Scott Annex	IV-A
Martin	III-A	Sherburne	III-A
Mille Lacs	III-A	Sibley	III-B
Morrison	IV-A	Stearns	IV-A
Mower	II-B	Steele	II-A
Nicollet	IV-A	Stevens	IV-B
Nobles	III-A	Swift	IV-A
Norman	IV-B	Todd	IV-A
Olmsted	II-A	Traverse	IV-B
Otter Tail	IV-A	Wabasha	III-B
Pennington	III-B	Wadena	IV-A
Pine	III-A	Waseca	IV-A
Pipestone	III-A	Washington	II-A
Polk Jail	III-A	Watsonwan	III-A
Polk Annex	IV-A	Wilkin	IV-B
Pope	IV-B	Winona	III-A
Ramsey ADC	III-A	Wright	IV-A
Ramsey ADC Annex	I-B	Yellow Medicine	IV-B
Ramsey ACF	III-A	VOA Woodview	III-A

SURVEY OF COMMUNITY CORRECTIONS PROGRAMS

Appendix C

As part of our study of corrections policy, we want to learn more about the availability and use of community-based alternatives to incarceration. We ask that this form be completed by the individual with primary responsibility for administering the county court services department and/or the person who has major responsibility for adult probation services in the county.

Please answer the following questions with respect to the availability of programs for adult detainees and offenders only, for your county as a whole. If you are responsible for more than one county, please fill out a survey form for each county if the programs available are different. If multiple programs of the same type are available (e.g., more than one intensive supervision program), please xerox additional pages and answer the questions for each one.

Don't let the length of this questionnaire scare you. We are asking for a limited amount of information about each of the programs. You will find that many of the pages won't apply and you can skip them. We would like everyone to answer the questions on the last page, however. If you have any questions, contact Marlys McPherson at 612/296-8501.

County

Name of Individual Completing the Form

Position/Title and Phone Number

CCA Status

**PLEASE RETURN THE COMPLETED FORM IN THE ENVELOPE PROVIDED
BY OCTOBER 10, 1990.**

THANK YOU FOR YOUR HELP AND PARTICIPATION.

**Office of the Legislative Auditor
122 Veterans Service Building
St. Paul, Minnesota 55155
612/296-4708**

Are the following programs available to you for placement of offenders at the present time?

	<u>No</u>	<u>Yes</u>	<u>In Planning Stage</u>
A. Intensive probation supervision	0	1	2
B. House arrest			
— without electronic monitoring	0	1	2
— with electronic or video monitors	0	1	2
C. Half-way houses	0	1	2
D. Residential treatment programs			
— Drug and alcohol abuse	0	1	2
— Sex offenders	0	1	2
— Other (please identify)			
_____	0	1	2
_____	0	1	2
E. Out-patient treatment programs			
— Drug and alcohol abuse	0	1	2
— Sex offenders	0	1	2
— Other (please identify)			
_____	0	1	2
_____	0	1	2
F. Sentencing to service (supervised work crews)	0	1	2
G. Community work service (volunteer work in the community)	0	1	2
H. Day fines	0	1	2
I. Supervised restitution program	0	1	2
J. Please identify any other community- based programs that are available.			
_____	0	1	2
_____	0	1	2

Unavailable Programs

Referring back to the programs listed on page 1, list below all of the programs you indicated were NOT available in your county. (Please xerox and use additional pages, if necessary.) For each program, identify the reason(s) it is unavailable. Please check all answers that apply.

Program Name: _____

This Program Is Not Available Because:

- ☐ No strong need for it; not enough offenders to justify it.
- ☐ Significant need, but no available contractors/vendors.
- ☐ Significant need, but financing is not available.
- ☐ Program lacks support among policymakers (judges, county board, sheriff).
- ☐ Have not considered the idea.
- ☐ Other reason (specify). _____

Program Name: _____

This Program Is Not Available Because:

- ☐ No strong need for it; not enough offenders to justify it.
- ☐ Significant need, but no available contractors/vendors.
- ☐ Significant need, but financing is not available.
- ☐ Program lacks support among policymakers (judges, county board, sheriff).
- ☐ Have not considered the idea.
- ☐ Other reason (specify). _____

Program Name: _____

This Program Is Not Available Because:

- ☐ No strong need for it; not enough offenders to justify it.
- ☐ Significant need, but no available contractors/vendors.
- ☐ Significant need, but financing is not available.
- ☐ Program lacks support among policymakers (judges, county board, sheriff).
- ☐ Have not considered the idea.
- ☐ Other reason (specify). _____

Program Name: _____

This Program Is Not Available Because:

- ☐ No strong need for it; not enough offenders to justify it.
- ☐ Significant need, but no available contractors/vendors.
- ☐ Significant need, but financing is not available.
- ☐ Program lacks support among policymakers (judges, county board, sheriff).
- ☐ Have not considered the idea.
- ☐ Other reason (specify). _____

Program Name: _____

This Program Is Not Available Because:

- ☐ No strong need for it; not enough offenders to justify it.
- ☐ Significant need, but no available contractors/vendors.
- ☐ Significant need, but financing is not available.
- ☐ Program lacks support among policymakers (judges, county board, sheriff).
- ☐ Have not considered the idea.
- ☐ Other reason (specify). _____

Program Name: _____

This Program Is Not Available Because:

- ☐ No strong need for it; not enough offenders to justify it.
- ☐ Significant need, but no available contractors/vendors.
- ☐ Significant need, but financing is not available.
- ☐ Program lacks support among policymakers (judges, county board, sheriff).
- ☐ Have not considered the idea.
- ☐ Other reason (specify). _____

A. Intensive Probation Supervision

If your county has an Intensive Probation Supervision program, please answer the following questions about it. If this program is not available in your county, skip to Question B.1 on page 4.

A.1 What year did you start using this program?

A.2 Who operates this program? Please circle one.

- 1 Minnesota Department of Corrections
- 2 County Court Services Department
- 3 County Sheriff - Jail Personnel
- 4 Private Agency (please identify)

8 Other (please identify)

A.3 Approximately how many offenders has your county put through this program in the six-month period, January 1 through June 30, 1990?

A.4 How does this number compare to prior years? Please circle one.

- 1 Substantially less
- 2 Slightly less
- 3 About the same
- 4 Slightly more
- 5 Substantially more
- 8 Not applicable; program was not available prior to 1990

A.5 What kinds of offenders are recommended for participation in this program? Please check all answers that apply.

- ____ Pretrial detainees
- ____ Sentenced misdemeanants
- ____ Sentenced gross misdemeanants
- ____ Sentenced felons
- ____ Property-crime offenders
- ____ Personal-crime offenders
- ____ Probation/supervised release violators (technical violations)
- ____ DWI/DUI offenders
- ____ Drug offenders

A.6 Are any offenders specifically excluded from this program? Please circle one.

- 0 No
- 1 Yes (Please identify)

A.7 What is the approximate cost of this program to the county per client-day?

A.8 What proportion of this cost is paid by the client?

A.9 Is random drug testing a routine part of this program? Please circle one.

- 0 No
- 1 Yes If yes, what is the approximate failure rate?

A.10 How many other clients could benefit from this program if it were expanded? Please circle one.

- 1 None; everyone who is eligible and could benefit is being served.
- 2 Only a few; program already serves most of the eligible people.
- 3 A fair number of eligible people are not being served.
- 4 A large number of eligible people are not being served.

A.11 Which of the following statements best describes how this program is used? Please circle one.

- 1 The Intensive Probation Supervision program is used primarily instead of jail time.
- 2 It depends on the offender and/or the crime. Sometimes it is used instead of jail time and sometimes after an offender has served some jail time.
- 3 The Intensive Probation Supervision program is used primarily in addition to jail time.

B. House Arrest

If your county has a House Arrest program, please answer the following questions about it. If this program is not available in your county, skip to Question C.1 on page 5.

B.1 What year did you start using this program?

B.2 Who operates this program?

- 1 Minnesota Department of Corrections
- 2 County Court Services Department
- 3 County Sheriff - Jail Personnel
- 4 Private Agency (please identify)

8 Other (please identify)

B.3 Approximately how many offenders has your county put through this program in the six-month period, January 1 through June 30, 1990?

B.4 How does this number compare to prior years?

- 1 Substantially less
- 2 Slightly less
- 3 About the same
- 4 Slightly more
- 5 Substantially more
- 8 Not applicable; program was not available prior to 1990

B.5 What kinds of offenders are recommended for participation in this program? Please check all answers that apply.

- ☐ Pretrial detainees
- ☐ Sentenced misdemeanants
- ☐ Sentenced gross misdemeanants
- ☐ Sentenced felons
- ☐ Property-crime offenders
- ☐ Personal-crime offenders
- ☐ Probation/supervised release violators (technical violations)
- ☐ DWI/DUI offenders
- ☐ Drug offenders

B.6 Are any offenders specifically excluded from this program?

- 0 No
- 1 Yes (Please identify)

B.7 What is the approximate cost of this program to the county per client-day?

B.8 What proportion of this cost is paid by the client?

B.9 Is random drug testing a routine part of this program? Please circle one.

- 0 No
- 1 Yes If yes, what is the approximate failure rate?

B.10 How many other clients could benefit from this program if it were expanded? Please circle one.

- 1 None; everyone who is eligible and could benefit is being served.
- 2 Only a few; program already serves most of the eligible people.
- 3 A fair number of eligible people are not being served.
- 4 A large number of eligible people are not being served.

B.11 Which of the following statements best describes how this program is used? Please circle one.

- 1 The House Arrest program is used primarily instead of jail time.
- 2 It depends on the offender or the crime. Sometimes it is used instead of jail time and sometimes after an offender has served some jail time.
- 3 The House Arrest program is used primarily in addition to jail time.

B.12 Are electronic or video monitors utilized in conjunction with house arrest?

- 0 No
- 1 Yes If yes:

How many electronic monitors are in use?

How many video monitors are in use?

What proportion of house arrestees are monitored with this equipment? _____

C. Half-way Houses

If your county has a Half-way House program, please answer the following questions about it. If this program is not available in your county, skip to Question D.1 on page 6.

C.1 What year did you start using this program?

C.2 Who operates this program?

- 1 Minnesota Department of Corrections
- 2 County Court Services Department
- 3 County Sheriff - Jail Personnel
- 4 Private Agency (please identify)

8 Other (please identify)

C.3 Approximately how many offenders has your county put through this program in the six-month period, January 1 through June 30, 1990?

C.4 How does this number compare to prior years?

- 1 Substantially less
- 2 Slightly less
- 3 About the same
- 4 Slightly more
- 5 Substantially more
- 8 Not applicable; program was not available prior to 1990

C.5 What kinds of offenders are recommended for participation in this program? Please check all answers that apply.

- ☐ Pretrial detainees
- ☐ Sentenced misdemeanants
- ☐ Sentenced gross misdemeanants
- ☐ Sentenced felons
- ☐ Property-crime offenders
- ☐ Personal-crime offenders
- ☐ Probation/supervised release violators (technical violations)
- ☐ DWI/DUI offenders
- ☐ Drug offenders

C.6 Are any offenders specifically excluded from this program?

0 No

1 Yes (Please identify)

C.7 What is the approximate cost of this program to the county per client-day?

C.8 What proportion of this cost is paid by the client?

C.9 Is random drug testing a routine part of this program?

0 No

1 Yes If yes, what is the approximate failure rate?

C.10 How many other clients could benefit from this program if it were expanded? Please circle one.

- 1 None; everyone who is eligible and could benefit is being served.
- 2 Only a few; program already serves most of the eligible people.
- 3 A fair number of eligible people are not being served.
- 4 A large number of eligible people are not being served.

C.11 Which of the following statements best describes how this program is used? Please circle one.

- 1 The Half-way House program is used primarily instead of jail time.
- 2 It depends on the offender or the crime. Sometimes it is used instead of jail time and sometimes after an offender has served some jail time.
- 3 The Half-way House program is used primarily in addition to jail time.

D. Residential Treatment Programs

If your county uses Residential Treatment programs, please answer the following questions about them. If this type of program is not available in your county, skip to Question E.1 on page 7.

D.1 Please list the residential programs you use, the types of treatment involved, and the year you started using each program.

1. _____
2. _____
3. _____
4. _____

D.2 Please use the following key to identify who operates each of these programs. Write the appropriate number and name (if necessary) in the space provided.

- 1 Minnesota Department of Corrections
- 2 County Court Services Department
- 3 County Sheriff - Jail Personnel
- 4 Private Agency (please identify)
- 8 Other (please identify)

Program 1 _____
 Program 2 _____
 Program 3 _____
 Program 4 _____

D.3 Approximately how many offenders has your county put through each of these programs in the six-month period, January 1 through June 30, 1990?

Program 1 _____
 Program 2 _____
 Program 3 _____
 Program 4 _____

D.4 Please use the following key to identify how this number compares to prior years for each of these programs. Write the appropriate number in the space provided.

- 1 Substantially less
- 2 Slightly less
- 3 About the same
- 4 Slightly more
- 5 Substantially more
- 8 Not applicable; program was not available prior to 1990

Program 1 _____
 Program 2 _____
 Program 3 _____
 Program 4 _____

D.5 What kinds of offenders are recommended for participation in these programs? Please check all answers that apply for each program.

Program	1	2	3	4
Pretrial detainees	_____	_____	_____	_____
Misdemeanants	_____	_____	_____	_____
Gross misdemeanants	_____	_____	_____	_____
Felons	_____	_____	_____	_____
Property offenders	_____	_____	_____	_____
Person-crime offenders	_____	_____	_____	_____
Probation violators (technical)	_____	_____	_____	_____
DWI/DUI offenders	_____	_____	_____	_____
Drug offenders	_____	_____	_____	_____

D.6 Using the following key, please answer whether any offenders are specifically excluded from these programs.

- 0 No
- 1 Yes (Please identify)

Program 1 _____
 Program 2 _____
 Program 3 _____
 Program 4 _____

Residential Treatment Programs, continued

D.7 What is the approximate cost of each of these programs to the county per client-day?

Program 1 _____
 Program 2 _____
 Program 3 _____
 Program 4 _____

D.8 What proportion of this cost is paid by the client?

Program 1 _____
 Program 2 _____
 Program 3 _____
 Program 4 _____

D.9 Use the following key and space provided to answer the question of whether random drug testing is a routine part of these programs.

0. No
 1. Yes If yes, what is the approximate failure rate?

Program 1 _____
 Program 2 _____
 Program 3 _____
 Program 4 _____

D.10 Use the following key to answer the following question: how many other clients could benefit from each program if it were expanded?

1. None; everyone who is eligible and could benefit is being served.
 2. Only a few; program already serves most of the eligible people.
 3. A fair number of eligible people are not being served.
 4. A large number of eligible people are not being served.

Program 1 _____
 Program 2 _____
 Program 3 _____
 Program 4 _____

D.11 Which of the following statements best describes how these types of programs are used? Please circle one.

1. Residential treatment programs are used primarily instead of jail time.
 2. It depends on the offender or the crime. Sometimes they are used instead of jail time and sometimes after an offender has served some jail time.
 3. Residential treatment programs are used primarily in addition to jail time.

E. Out-patient Treatment Programs

If your county uses Out-patient Treatment programs, please answer the following questions about them. If this type of program is not available in your county, skip to Question F.1 on page 9.

E.1 Please list the out-patient programs you use, the types of treatment involved, and the year you started using each program.

1. _____
 2. _____
 3. _____
 4. _____

E.2 Please use the following key to identify who operates each of these programs. Write the appropriate number and name (if necessary) in the space provided.

1. Minnesota Department of Corrections
 2. County Court Services Department
 3. County Sheriff - Jail Personnel
 4. Private Agency (please identify)
 8. Other (please identify)

Program 1 _____
 Program 2 _____
 Program 3 _____
 Program 4 _____

E.3 Approximately how many offenders has your county put through each of these programs in the six-month period, January 1 through June 30, 1990?

Program 1 _____
 Program 2 _____
 Program 3 _____
 Program 4 _____

E.4 Please use the following key to identify how this number compares to prior years for each of these programs.

1. Substantially less
 2. Slightly less
 3. About the same
 4. Slightly more
 5. Substantially more
 8. Not applicable; program was not available prior to 1990

Program 1 _____
 Program 2 _____
 Program 3 _____
 Program 4 _____

Out-Patient Treatment Programs, continued

- E.5 What kinds of offenders are recommended for participation in these programs? Please check all answers that apply for each program.

Program	1	2	3	4
Pretrial detainees	___	___	___	___
Misdemeanants	___	___	___	___
Gross misdemeanants	___	___	___	___
Felons	___	___	___	___
Property offenders	___	___	___	___
Person-crime offenders	___	___	___	___
Probation violators (technical)	___	___	___	___
DWI/DUI offenders	___	___	___	___
Drug offenders	___	___	___	___

- E.6 Using the following key, please answer whether any offenders specifically excluded from these programs.

0 No
1 Yes (Please identify)

Program 1 _____
Program 2 _____
Program 3 _____
Program 4 _____

- E.7 What is the approximate cost of each of these programs to the county per client-day?

Program 1 _____
Program 2 _____
Program 3 _____
Program 4 _____

- E.8 What proportion of this cost is paid by the client?

Program 1 _____
Program 2 _____
Program 3 _____
Program 4 _____

- E.9 Use the following key to answer the question of whether random drug testing is a routine part of these programs.

0 No
1 Yes If yes, what is the approximate failure rate?

Program 1 _____
Program 2 _____
Program 3 _____
Program 4 _____

- E.10 Use the following key to answer the following question: how many other clients could benefit from each program if it were expanded?

1 None; everyone who is eligible and could benefit is being served.
2 Only a few; program already serves most of the eligible people.
3 A fair number of eligible people are not being served.
4 A large number of eligible people are not being served.

Program 1 _____
Program 2 _____
Program 3 _____
Program 4 _____

- E.11 Which of the following statements best describes how these types of programs are used? Please circle one.

1 Out-patient treatment programs are used primarily instead of jail time.
2 It depends on the offender or the crime. Sometimes they are used instead of jail time and sometimes after an offender has served some jail time.
3 Out-patient treatment programs are used primarily in addition to jail time.

F. Sentencing to Service

If your county has a Sentencing-to-Service program — where offenders work as members of supervised work crews — please answer the following questions about it. If this program is not available in your county, skip to Question G.1 on page 10.

F.1 What year did you start using this program?

F.2 Who operates this program?

- 1 Minnesota Department of Corrections
- 2 County Court Services Department
- 3 County Sheriff - Jail Personnel
- 4 Private Agency (please identify)

8 Other (please identify)

F.3 Approximately how many offenders has your county put through this program in the six-month period, January 1 through June 30, 1990?

F.4 How does this number compare to prior years?

- 1 Substantially less
- 2 Slightly less
- 3 About the same
- 4 Slightly more
- 5 Substantially more
- 8 Not applicable; program was not available prior to 1990

F.5 What kinds of offenders are recommended for participation in this program? **Please check all answers that apply.**

- ____ Pretrial detainees
- ____ Sentenced misdemeanants
- ____ Sentenced gross misdemeanants
- ____ Sentenced felons
- ____ Property-crime offenders
- ____ Personal-crime offenders
- ____ Probation/supervised release violators (technical violations)
- ____ DWI/DUI offenders
- ____ Drug offenders)

F.6 Are any offenders specifically excluded from this program?

- 0 No
- 1 Yes (Please identify)

F.7 What is the approximate cost of this program to the county per client-day?

F.8 What proportion of this cost is paid by the client?

F.9 Is random drug testing a routine part of this program?

- 0 No
- 1 Yes If yes, what is the approximate failure rate?

F.10 How many other clients could benefit from this program if it were expanded?

- 1 None; everyone who is eligible and could benefit is being served.
- 2 Only a few; program already serves most of the eligible people.
- 3 A fair number of eligible people are not being served.
- 4 A large number of eligible people are not being served.

F.11 Which one of the following statements best describes how this program is used?

- 1 The Sentencing-to-Service program is used primarily instead of jail time.
- 2 It depends on the offender and/or the crime. Sometimes it is used instead of jail time and sometimes after an offender has served some jail time.
- 3 The Sentencing-to-Service program is used primarily in addition to jail time.

G. Community Work Service

If your county has a Community Work Service program — where offenders perform volunteer service work in the community — please answer the following questions about it. If this program is not available in your county, skip to Question H.1 on page 11.

- G.1 What year did you start using this program?

- G.2 Who operates this program?
- 1 Minnesota Department of Corrections
 - 2 County Court Services Department
 - 3 County Sheriff - Jail Personnel
 - 4 Private Agency (please identify)
- _____
- 8 Other (please identify)
- _____
- G.3 Approximately how many offenders has your county put through this program in the six-month period, January 1 through June 30, 1990?

- G.4 How does this number compare to prior years?
- 1 Substantially less
 - 2 Slightly less
 - 3 About the same
 - 4 Slightly more
 - 5 Substantially more
 - 8 Not applicable; program was not available prior to 1990
- G.5 What kinds of offenders are recommended for participation in this program? Please check all answers that apply.
- ____ Pretrial detainees
- ____ Sentenced misdemeanants
- ____ Sentenced gross misdemeanants
- ____ Sentenced felons
- ____ Property-crime offenders
- ____ Personal-crime offenders
- ____ Probation/supervised release violators (technical violations)
- ____ DWI/DUI offenders
- ____ Drug offenders)
- G.6 Are any offenders specifically excluded from this program?
- 0 No
- 1 Yes (Please identify)
- _____
- G.7 What is the approximate cost of this program to the county per client-day?

- G.8 What proportion of this cost is paid by the client?

- G.9 Is random drug testing a routine part of this program?
- 0 No
- 1 Yes If yes, what is the approximate failure rate?
- _____
- G.10 How many other clients could benefit from this program if it were expanded?
- 1 None; everyone who is eligible and could benefit is being served.
 - 2 Only a few; program already serves most of the eligible people.
 - 3 A fair number of eligible people are not being served.
 - 4 A large number of eligible people are not being served.
- G.11 Which one of the following statements best describes how this program is used?
- 1 The Community Work Service program is used primarily instead of jail time.
 - 2 It depends on the offender and/or the crime. Sometimes it is used instead of jail time and sometimes after an offender has served some jail time.
 - 3 The Community Work Service program is used primarily in addition to jail time.

H. Day Fines

If your county has a Day Fine program — where offenders are assessed fines based on their ability to pay — please answer the following questions about it. If this program is not available in your county, skip to Question I.1 on page 12.

H.1 What year did you start using this program?

H.2 Who operates this program?

- 1 Minnesota Department of Corrections
- 2 County Court Services Department
- 3 County Sheriff - Jail Personnel
- 4 Private Agency (please identify)

8 Other (please identify)

H.3 Approximately how many offenders has your county put through this program in the six-month period, January 1 through June 30, 1990?

H.4 How does this number compare to prior years?

- 1 Substantially less
- 2 Slightly less
- 3 About the same
- 4 Slightly more
- 5 Substantially more
- 8 Not applicable; program was not available prior to 1990

H.5 What kinds of offenders are recommended for participation in this program? Please check all answers that apply.

- ☐ Pretrial detainees
- ☐ Sentenced misdemeanants
- ☐ Sentenced gross misdemeanants
- ☐ Sentenced felons
- ☐ Property-crime offenders
- ☐ Personal-crime offenders
- ☐ Probation/supervised release violators (technical violations)
- ☐ DWI/DUI offenders
- ☐ Drug offenders

H.6 Are any offenders specifically excluded from this program?

- 0 No
- 1 Yes (Please identify)

H.7 What is the approximate cost of this program to the county per client-day?

H.8 What proportion of this cost is paid by the client?

H.9 How many other clients could benefit from this program if it were expanded?

- 1 None; everyone who is eligible and could benefit is being served.
- 2 Only a few; program already serves most of the eligible people.
- 3 A fair number of eligible people are not being served.
- 4 A large number of eligible people are not being served.

H.10 Which one of the following statements best describes how this program is used?

- 1 Day fines are used primarily instead of jail time.
- 2 It depends on the offender and/or the crime. Sometimes they are used instead of jail time and sometimes after an offender has served some jail time.
- 3 Day fines are used primarily in addition to jail time.

I. Supervised Restitution Program

If your county has a Supervised Restitution program, please answer the following questions about it. If this program is not available in your county, skip to Question J.1 on page 13.

- I.1 What year did you start using this program?

- I.2 Who operates this program?
- 1 Minnesota Department of Corrections
 - 2 County Court Services Department
 - 3 County Sheriff - Jail Personnel
 - 4 Private Agency (please identify)
- _____
- 8 Other (please identify)
- _____
- I.3 Approximately how many offenders has your county put through this program in the six-month period, January 1 through June 30, 1990?

- I.4 How does this number compare to prior years?
- 1 Substantially less
 - 2 Slightly less
 - 3 About the same
 - 4 Slightly more
 - 5 Substantially more
 - 8 Not applicable; program was not available prior to 1990
- I.5 What kinds of offenders are recommended for participation in this program? Please check all answers that apply.
- ____ Pretrial detainees
- ____ Sentenced misdemeanants
- ____ Sentenced gross misdemeanants
- ____ Sentenced felons
- ____ Property-crime offenders
- ____ Personal-crime offenders
- ____ Probation/supervised release violators (technical violations)
- ____ DWI/DUI offenders
- ____ Drug offenders)
- I.6 Are any offenders specifically excluded from this program?
- 0 No
- 1 Yes (Please identify)
- _____
- I.7 What is the approximate cost of this program to the county per client-day?

- I.8 What proportion of this cost is paid by the client?

- I.9 How many other clients could benefit from this program if it were expanded?
- 1 None; everyone who is eligible and could benefit is being served.
 - 2 Only a few; program already serves most of the eligible people.
 - 3 A fair number of eligible people are not being served.
 - 4 A large number of eligible people are not being served.
- I.10 Which one of the following statements best describes how this program is used?
- 1 Supervised restitution is used primarily instead of jail time.
 - 2 It depends on the offender and/or the crime. Sometimes it is used instead of jail time and sometimes after an offender has served some jail time.
 - 3 Supervised restitution is used primarily in addition to jail time.
- I.11 Approximately what proportion of court-ordered restitution is collected from offenders, on the average?

J. Other Community Corrections Programs

If your county has any other community corrections programs available that you have not already described, please answer the following questions about them. If no other programs exist in your county, skip to page 15 to answer the last four questions.

J.1 Please list the additional community corrections programs you use and the year you started using each program.

1. _____
2. _____
3. _____
4. _____

J.2 Please use the following key to identify who operates each of these programs.

- 1 Minnesota Department of Corrections
- 2 County Court Services Department
- 3 County Sheriff - Jail Personnel
- 4 Private Agency (please identify)
- 8 Other (please identify)

Program 1 _____
 Program 2 _____
 Program 3 _____
 Program 4 _____

J.3 Approximately how many offenders has your county put through each of these programs in the six-month period, January 1 through June 30, 1990?

Program 1 _____
 Program 2 _____
 Program 3 _____
 Program 4 _____

J.4 Please use the following key to identify how this number compares to prior years for each of these programs.

- 1 Substantially less
- 2 Slightly less
- 3 About the same
- 4 Slightly more
- 5 Substantially more
- 8 Not applicable; program was not available prior to 1990

Program 1 _____
 Program 2 _____
 Program 3 _____
 Program 4 _____

J.5 What kinds of offenders are recommended for participation in these programs? Please check all answers that apply for each program.

Program	1	2	3	4
Pretrial detainees	_____	_____	_____	_____
Misdemeanants	_____	_____	_____	_____
Gross misdemeanants	_____	_____	_____	_____
Felons	_____	_____	_____	_____
Property offenders	_____	_____	_____	_____
Person-crime offenders	_____	_____	_____	_____
Probation violators (technical)	_____	_____	_____	_____
DWI/DUI offenders	_____	_____	_____	_____
Drug offenders	_____	_____	_____	_____

J.6 Using the following key, please answer whether any offenders specifically excluded from these programs.

- 0 No
 1 Yes (Please identify)

Program 1 _____
 Program 2 _____
 Program 3 _____
 Program 4 _____

J.7 What is the approximate cost of each of these programs to the county per client-day?

Program 1 _____
 Program 2 _____
 Program 3 _____
 Program 4 _____

J.8 What proportion of this cost is paid by the client?

Program 1 _____
 Program 2 _____
 Program 3 _____
 Program 4 _____

J.9 Use the following key to answer the question of whether random drug testing is a routine part of these programs.

- 0 No
 1 Yes If yes, what is the approximate failure rate?

Program 1 _____
 Program 2 _____
 Program 3 _____
 Program 4 _____

Other Community Corrections Programs - continued

J.10 Use the following key to answer the following question: how many other clients could benefit from each program if it were expanded?

- 1 None; everyone who is eligible and could benefit is being served.
- 2 Only a few; program already serves most of the eligible people.
- 3 A fair number of eligible people are not being served.
- 4 A large number of eligible people are not being served.

Program 1 _____
Program 2 _____
Program 3 _____
Program 4 _____

J.11 Which one of the following statements best describes how these types of programs are used? Please circle one.

- 1 These programs are used primarily instead of jail time.
- 2 It depends on the offender or the crime. Sometimes they are used instead of jail time and sometimes after an offender has served some jail time.
- 3 These programs are used primarily in addition to jail time.

General Questions

1. How important are the following correctional needs in your county? Please rank order the list from 1 to 8 in terms of importance, with 1 = most important and 8 = least important.

☐ More minimum-security jail capacity.
☐ More probation officers.
☐ More maximum-security jail capacity.
☐ More intermediate sanctions, like house arrest or intensive probation.
☐ Greater use of restitution and day fines.
☐ Expanded state prison capacity.
☐ More pre-trial diversion programs.
☐ More treatment programs.
Please specify type:

2. In your own words, what are the high priority correctional needs in your county at the present time?

3. What recent actions or policy changes at the state or local level have affected your job the most?

4. Are there any other comments you would care to make about correctional issues or policy in Minnesota?

CORRECTIONS ACT EQUALIZATION FORMULA

Appendix D

To determine the amount to be paid participating counties the commissioner of corrections will apply the following formula:

(1) All 87 counties will be scored in accordance with a formula involving four factors:

- (a) per capita income;
- (b) per capita net tax capacity;
- (c) per capita expenditure per 1,000 population for correctional purposes, and;
- (d) percent of county population aged six through 30 years of age according to the most recent federal census, and, in the intervening years between the taking of the federal census, according to the state demographer.

"Per capita expenditure per 1,000 population" for each county is to be determined by multiplying the number of persons convicted of a felony under supervision in each county at the end of the current year by \$350. To the product thus obtained will be added:

- (i) the number of presentence investigations completed in that county for the current year multiplied by \$50;
- (ii) the annual cost to the county for county probation officers' salaries for the current year; and
- (iii) 33-1/3 percent of such annual cost for probation officers' salaries.

The total figure obtained by adding the foregoing items is then divided by the total county population according to the most recent federal census, or, during the intervening years between federal censuses, according to the state demographer.

(2) The percent of county population aged six through 30 years shall be determined according to the most recent federal census, or, during the intervening years between federal censuses, according to the state demographer.

(3) Each county is then scored as follows:

- (a) Each county's per capita income is divided into the 87 county average;
- (b) Each county's per capita net tax capacity is divided into the 87 county average;
- (c) Each county's per capita expenditure for correctional purposes is divided by the 87 county average;
- (d) Each county's percent of county population aged six through 30 is divided by the 87 county average.

(4) The scores given each county on each of the foregoing four factors are then totaled and divided by four.

(5) The quotient thus obtained then becomes the computation factor for the county. This computation factor is then multiplied by a "dollar value," as fixed by the appropriation pursuant to sections 401.01 to 401.16, times the total county population. The resulting product is the amount of subsidy to which the county is eligible under sections 401.01 to 401.16. Notwithstanding any law to the contrary, the commissioner of corrections, after notifying the committees on finance of the senate and appropriations of the house of representatives, may, at the end of any fiscal year, transfer any unobligated funds in any appropriation to the department of corrections to the appropriation under sections 401.01 to 401.16, which appropriation shall not cancel but is re-appropriated for the purposes of sections 401.01 to 401.16.

SELECTED PROGRAM EVALUATIONS

<i>Board of Electricity, January 1980</i>	80-01
<i>Twin Cities Metropolitan Transit Commission, February 1980</i>	80-02
<i>Information Services Bureau, February 1980</i>	80-03
<i>Department of Economic Security, February 1980</i>	80-04
<i>Statewide Bicycle Registration Program, November 1980</i>	80-05
<i>State Arts Board: Individual Artists Grants Program, November 1980</i>	80-06
<i>Department of Human Rights, January 1981</i>	81-01
<i>Hospital Regulation, February 1981</i>	81-02
<i>Department of Public Welfare's Regulation of Residential Facilities for the Mentally Ill, February 1981</i>	81-03
<i>State Designer Selection Board, February 1981</i>	81-04
<i>Corporate Income Tax Processing, March 1981</i>	81-05
<i>Computer Support for Tax Processing, April 1981</i>	81-06
<i>State-sponsored Chemical Dependency Programs: Follow-up Study, April 1981</i>	81-07
<i>Construction Cost Overrun at the Minnesota Correctional Facility - Oak Park Heights, April 1981</i>	81-08
<i>Individual Income Tax Processing and Auditing, July 1981</i>	81-09
<i>State Office Space Management and Leasing, November 1981</i>	81-10
<i>Procurement Set-Asides, February 1982</i>	82-01
<i>State Timber Sales, February 1982</i>	82-02
<i>Department of Education Information System, March 1982</i>	82-03
<i>State Purchasing, April 1982</i>	82-04
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