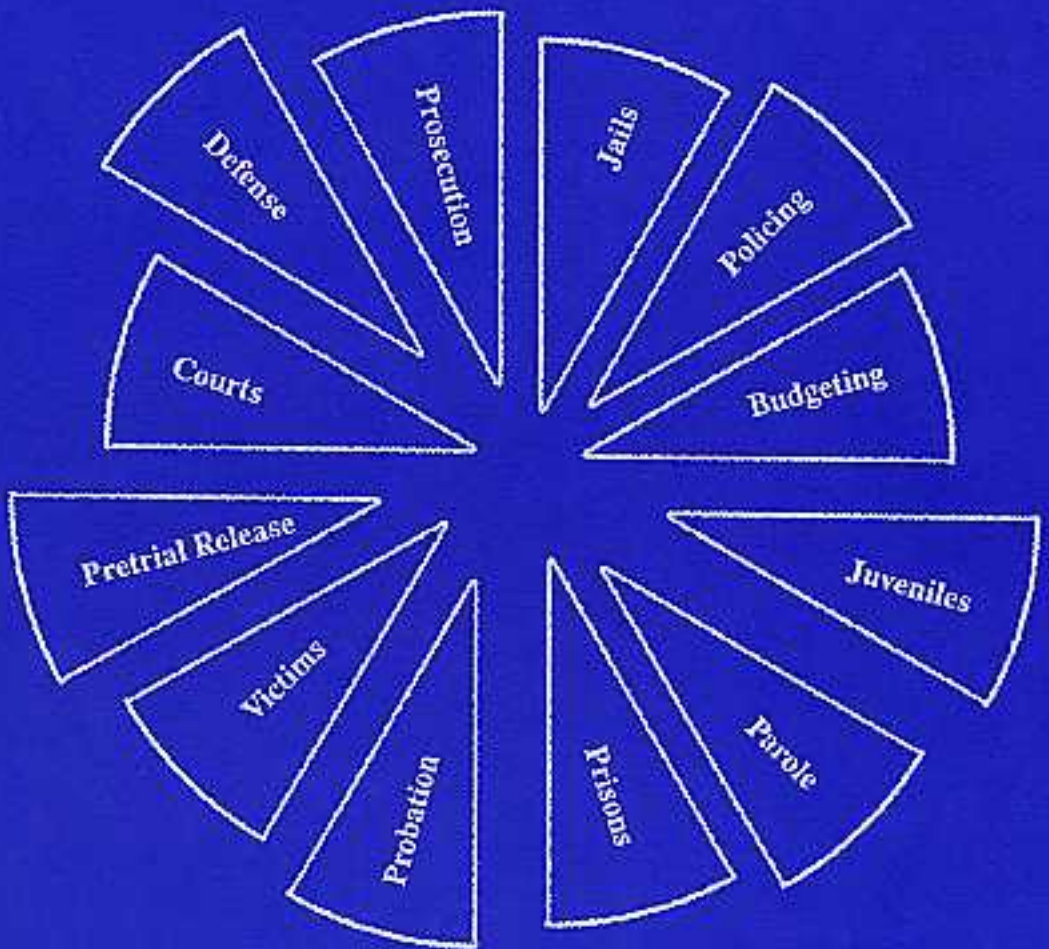
AN INFORMATION REPORT

Guide to the Criminal Justice System for General Government Elected Officials



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M-184
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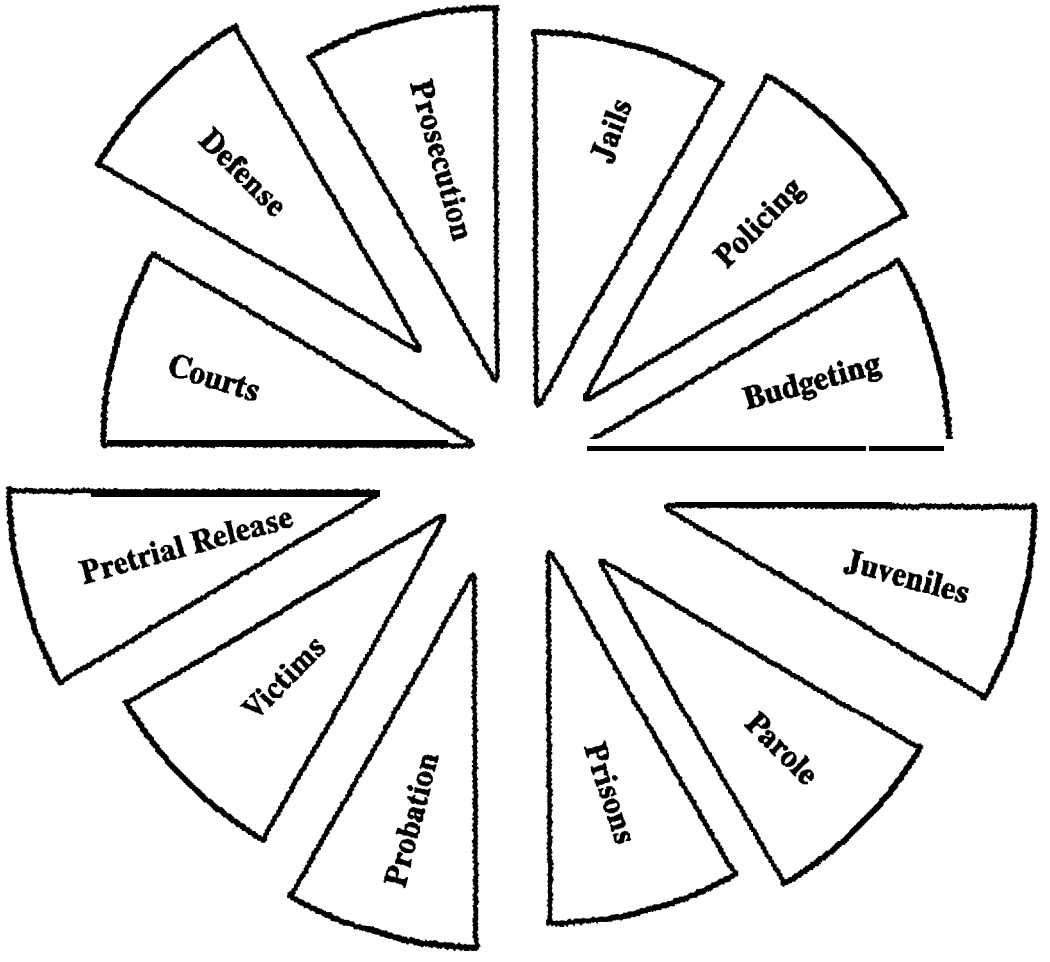

Supported by interagency agreement from the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. Points of view in this document are those of the Commission and do not necessarily represent the official position of the U.S. Department of Justice.

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ACKNOWLEDGMENTS

This guide was prepared as part of a project on the role of elected officials in the criminal justice system. The project director and author of the guide is Vivian E. Watts, a former Virginia legislator and Secretary of Public Safety.

ACIR commends the dedication of the following individuals in helping launch these studies: Donald Murray of the National Association of Counties, Nolan Jones of the National Governors' Association, Jon Felde of the National Conference of State Legislatures, Patrick V. Murphy of the U.S. Conference of Mayors' Police Policy Board, and Edwin W. Zedlewski of the U.S. Justice Department's National Institute of Justice.

At ACIR, Ronald D. Allen and Erica Jacoby Price provided research support for the project. Joan A. Casey edited the report for publication.

Funding for the project was assisted by the U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, under NIJ's program to facilitate the exchange of information to improve state and local criminal justice administration.

John Kincaid
Executive Director

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Director, Government Policy Research

Using This Guide

Each of the 14 sections that follow concentrates on a different aspect of the criminal justice system. Each provides a page of background information and a page of relevant questions, any one of which can be used by officials or their staff to begin exploring improvements within a particular agency and ways the agency can function better within the criminal justice system.

Each section is designed to stand alone as a ready reference when issues emerge. Reading them in order, however, will aid in understanding the criminal justice system.

Although specific functions are predominantly the responsibility of the county, state, or city, there are many overlapping concerns and impacts, as well as different assignment of responsibility from system to system. From each section, state, local, and federal officials all can gain understanding of the total governance challenge presented by each component of the criminal justice system.

For a more in-depth discussion of policy development and management oversight issues, see ACIR's report ***The Role*** of ***General Government Elected Officials in Criminal Justice.***

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INTRODUCTION

WHAT IS THE PURPOSE OF THIS GUIDE?

The purpose of this Guide is to assist general government officials in effective oversight of their criminal justice system. The Guide assumes that, even if crime rates could be cut in half, taxpayers are entitled to efficient, effective, and responsive government services. Criminal justice is no exception,

While comprehensive, the Guide:

- ***Is limited to actions once*** crime ***occurs.*** This does not underestimate the crucial role of prevention in reducing crime and the need for greater prevention efforts.
- ***Emphasizes state and local governments,*** reflecting the fact that the federal justice system handles only about 6 percent of criminal cases.
- ***Focuses on concerns that have major cost impacts across agencies*** *and* ***governments and over time.***
- ***Provides basic tools to*** *help* ***officials*** improve the functioning of criminal justice agencies.

WHAT ARE THE ROLES OF GENERAL GOVERNMENT OFFICIALS?

Much of what is written about criminal justice addresses officials inside the system, such as prosecutors, judges, police, and corrections administrators. Little has been done to inform officials whose responsibilities include the full breadth of government activities, officials who must be equally concerned about schools, sewage treatment, land use, tax policy, social services, business regulation, roads, and even barking dogs. These general government officials are:

- Elected Executives
  governors, county executives, mayors, and the President
- Legislators
  state legislators, county commissioners, members of city councils, and members of Congress
- Nonelected administrators and advisors, especially
  county and city managers, budget and planning directors, and key legislative and executive staff.

These general government officials play pivotal roles in many aspects of criminal justice, including:

- Supporting civil order and exemplifying a high standard of ethical behavior;
- Legislatively defining behaviors that constitute crime;
- Setting criminal penalties through sentencing legislation;
- Appropriating over $70 billion to fund criminal justice agencies;
- Serving as ombudsmen for the public;
- Holding program managers accountable for effective use of tax dollars;
- Arguing for adequate intergovernmental funding;
- Bringing together independent criminal justice officials and public and private agencies to focus on common goals;
- Setting social, economic, and educational policies that reinforce prevention; and
- Working with citizens to prevent and reduce crime.

WHAT IS THE "CRIMINAL JUSTICE SYSTEM"?

There is no one system of criminal justice. Each state and, to some extent, each local government, as well as the federal government has its own system. The U.S. Constitution originally left most criminal law to the states, with each state expected to reflect community standards through enforcement of its own criminal laws. State delegation of police protection to local governments and independent selection of local judges, prosecutors, and sheriffs further reflected a fear of centralized law enforcement. This diversity underscores that:

- No jurisdiction's criminal justice system can be understood without asking questions about it directly (as encouraged by this Guide).
- National criminal justice initiatives are limited by the constitutions of the United States and the states.
- Criminal justice in America is based on a system of checks and balances that presents unique challenges to general government officials.
- Lawmakers and chief executives must work with court officials and agency heads whom they have no authority to hire or fire.
- The independently selected criminal justice officials interact with police departments, public defenders, forensic services, parole boards, probation departments, and prison systems separately authorized and/or funded by municipal, county, state, or federal governments or the judiciary.
- Criminal sanctions and prevent@ efforts may need to involve other general government agencies and private sector initiatives that provide education, substance abuse, and employment services essential to offenders' successful reentry into society.

These components of the criminal justice system are depicted in Figure 1.

CRIMINAL JUSTICE RESPONSIBILITIES

THE PEOPLE

lawmakers
(State Legislators, County Commissioners, City Council, Congress)
. Enact laws that define crimes, set penalties, and establish procedures
- Define policy direction
- Fund program budgets
- Provide oversight

Public Opinion

Chief Executives
(Governors, County Executives, Mayors, President)
- Propose laws that define crimes and recommend penalties

. Set program policies
- Initiate program budgets
- Monitor results
- Hold agencies accountable

Crime Prevention
- Social climate
- Private services
- Public programs
- Community policing

Juvenile Justice System
- Separate facilities from adults

. Confidentiality
- Informal hearings
- Treatment

Non-Criminal Justice Treatment Programs
- Education
- Employment
- Family Services
- Alcohol & Drug Treatment
- Mental Health

CRIMINAL JUSTICE SYSTEM

Arrest and Investigation
- Police
  - 56% Municipal
  - Sheriff* or County Police Department
  - State Police

. Federal Agencies
. Crime Labs
. Coroners*

Court Activity
- Clerk of Court*

. Prosecutor*
- Indigent Defense
- victim/witness Programs
- Judges*
  - Magistrates
  - Court Administrator

Corrections
- County Jail/Sheriff*
  - Minor offenders (misdemeanants) sentenced to less than one year
  - Serious offenders awaiting transfer to prison
- State Prison
  - Serious offenders (felons) serving more than one year
- Federal Prison
  - 8% of all prison inmates

(No charges filed)

- Sheriff*
  - Provides court security
  - Holds pretrial detainees

Community Options:

- **Probation**
  - Determined by a judge in lieu of incarceration
- **Pretrial Release**
  - Determined by official of the court
- **Parole**
  - Determined by state executive agency based on prison record

• Usually are elected officials

—— Judicial Branch or sometimes administered by Judicial Branch

- - - Path of persons accused under state or local laws

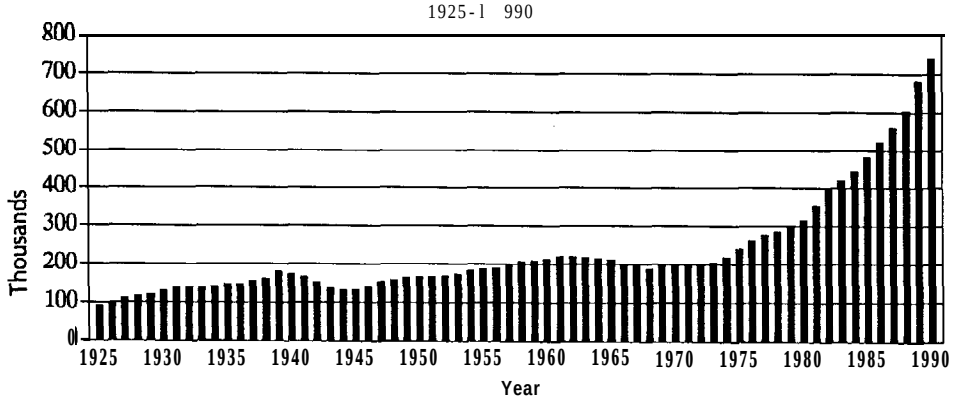
How Serious Is the Criminal Justice Challenge?

Unprecedented growth has occurred in all criminal justice agencies. The clearest picture of this growth is represented by the increase in prison populations since 1973, as shown in Figure 2.

Figure 2

SENTENCED PRISONERS IN STATE AND FEDERAL INSTITUTIONS

1925-1990

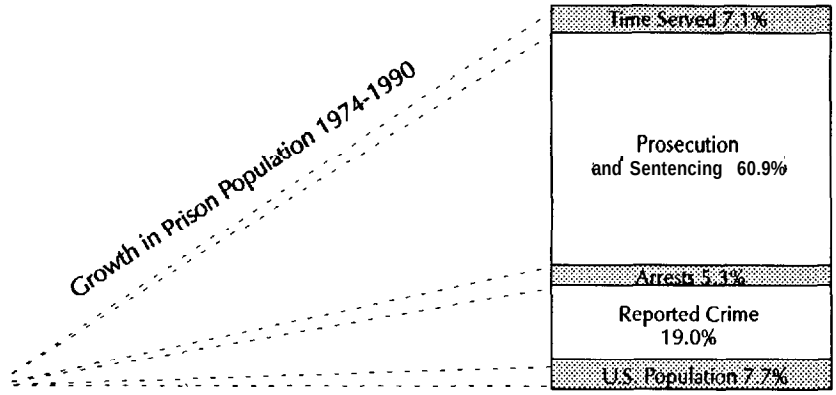


Source: U.S. Department of Justice, Bureau of Justice Statistics, Sourcebook of *Criminal* Justice Statistics, *1989,* 1991.

The growth pictured reflects the policies established by general government officials and the actions of the criminal justice system and has been driven by five elements in the approximate proportions shown in Figure 3:

Figure 3

FACTORS CONTRIBUTING TO PRISON GROWTH, 1974-1990



This estimate of contributing factors reflects the following statistics:

The total number of **people in prison** grew	238.2%
General **population growth* was**	18.3
Reports of **serious crime** (UCR felonies)* grew	**63.5**
Arrests* for felonies and drug offenses grew	**76.3**
The combined likelihood of arrests being **prosecuted,** of **conviction,** and of a **prison sentence** grew	221.2
The residual is a growth in **time actually served** of	17.0

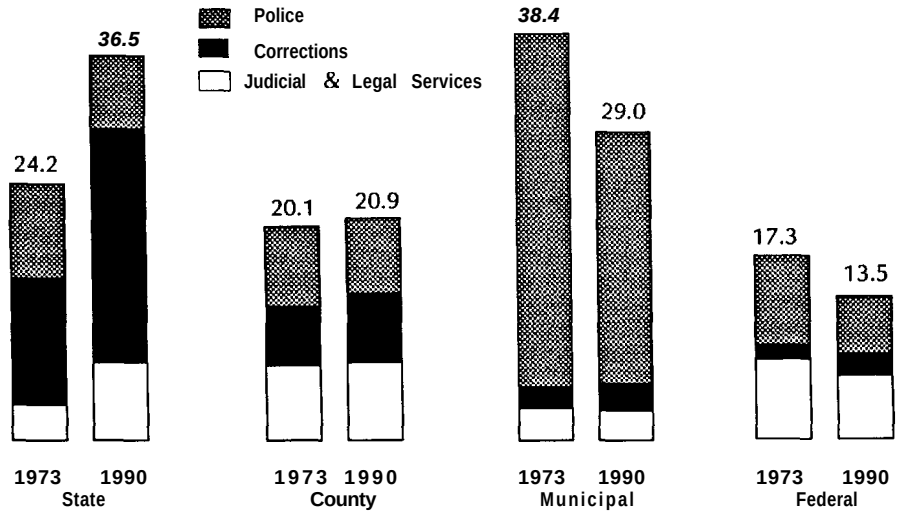
(* 973-1989, all other 1974-1990.)

Because of this extraordinary growth throughout the criminal justice system:

- The United States has more of its population behind bars than any other country in the world.
- Criminal justice is the fastest growing area of state and local spending. In constant dollars, expenditures grew 232% between 1970 and 1990. In comparison, public expenditures on hospitals and health care increased 71%; public welfare, 79%; and education, 32%.
- Spending pressures are not equal across governments (Figure 4).

figure 4

OWN-SOURCE FUNDING, BY GOVERNMENT, AS A PERCENTAGE OF TOTAL CRIMINAL JUSTICE SPENDING, 1973-I 990



Source: U.S. Department of Justice, Bureau of Justice Statistics, *Justice Expenditure and Employment, 1990.*

State own-source spending increased by 759%

State budgets now carry the largest total share of funding due to prison costs and state assumption of financial responsibility for county and municipal courts in many states.

County spending increased by 491%

Jail growth has been almost as great as prison growth, and many counties still bear significant court costs. Highly urbanized counties also bear some of the crime prevention costs noted below for municipalities.

Municipal spending increased by 330%

This growth is modest compared to that of states and counties, which have had to fund higher court and corrections costs associated with increased local police activity. This average also masks significantly higher increases for large cities and does not include expenditures to prevent crime, such as street lights, recreation programs, and social services.

Federal spending increased by 345%

Federal prisons house only 8% of inmates, and the federal justice system accounts for just 12% of total criminal justice spending. In 1973, 27% of federal criminal justice spending went for grants to state and local governments, compared to only 7% in 1990.

How Do Citizens Perceive Criminal Justice?

Public opinion polls and focus groups held across the country indicate that:

- Fear of crime causes many people to discount reported successes in crime fighting. This fear makes it difficult to establish correctional programs in community settings.
- Because people are concerned about safety, they are more interested in preventing future criminal activity than in punishment, and a majority favors restitution and alternatives to incarceration for nonviolent first offenders.
- People have more faith in the police to protect them from crime than in any other component of the criminal justice system.

What Is the Challenge to General Government Officials?

These and other beliefs challenge officials to educate their constituents and themselves about:

- Understanding crime statistics and criminal justice programs;
- Criminal justice system constraints and the potential to deal with management, personnel, facility, and/or turf problems;
- The need to support a response capability throughout the criminal justice system to gain full value from expanded police resources;
- The make-up of jail and prison populations in order to realistically judge the potential for relief from sentencing options; and
- The cost of program and security options versus the cost of incarceration.

Because lawmakers and chief executives raise and allocate tax revenues, they ultimately are held accountable if funds are not spent economically and individual programs do not produce results.

This Guide emphasizes the need to measure the success of each agency by its contribution to the ability of the whole system to control costs and reduce crime. Officials also will gain insight into how their sentencing policies and budget priorities contribute to these goals.

THE CRIMINAL JUSTICE SYSTEM

POLICING

There are more than 17,000 police and sheriff departments in the United States. More than half of the 15,000 local forces have fewer than 10 sworn officers. Municipal governments account for 55.9% of the funds spent on policing; counties, 16.8%; states, 14.6%, and federal, 12.7%.

IS CRIME INCREASING?

Policymakers often get contradictory answers to this question, depending on whether the answer reflects:

- ***The number of crimes or the crime rate—***
  Changes in the crime rate per 100,000 people always will be less than the number of additional crimes if a jurisdiction's population is growing.
- ***The time frame—***
  For example, nationally, the crime rate in 1990 was lower than in 1980 but higher than in 1985.
- ***Reported crime versus an estimate of crimes actually committed—***
  In part because the likelihood of victims reporting crime increased from 32% in 1973 to 38% in 1990, the FBI's **Uniform Crime Reports** (UCR) shows an increase in crime rates. However, the annual **National Crime Victimization Survey** (NCVS) estimates that the average number of crimes actually committed against households has not increased.
- ***The type of crime—***
  Violent crime rates increased 33% from 1982-1990; however, the overall crime rate showed little change because property crimes are far more numerous, and their rate increased only 2%. Violent crime committed by juveniles is one of the fastest growing categories.

CATEGORIES OF CRIME

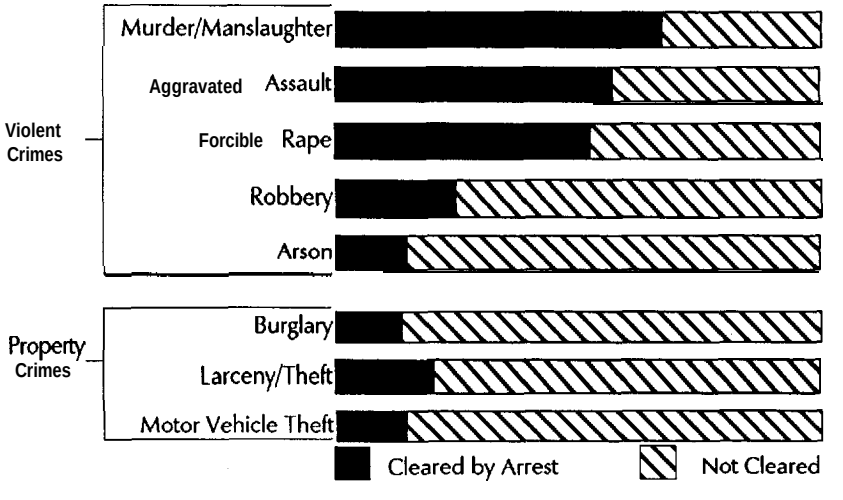
Acts that legislatures have defined as crimes are grouped as follows:

Misdemeanors-minor crimes that may be punished by jail time but not by time in a state prison.
Felonies-crimes that may be punished by more than one year in prison. Types of felonies include:
Violent Crime-crimes that can result in personal injury, such as manslaughter, robbery, rape, assault, and arson, which are included in the UCR.
Nonviolent (or Property) Crime-crimes that involve intent to take property and are typically committed when no one is present. The UCR covers burglary, larceny/fraud, and auto theft.
"White Collar" Crime-crimes involving violation of trust or position, such as embezzlement, bribery, and fraud.
Drug Crimes-crimes that involve possession, use, sale, distribution, cultivation, and manufacture of controlled substances. ***Crime statistics never reflect drug crimes*** because victims do not report them. ***Drug crime is reflected only in arrest statistics.***

WHY AREN'T ALL ARRESTS PROSECUTED?

Police and sheriffs' deputies have the authority to choose to arrest or not arrest and what crime(s) to charge the suspect for violating. Arrests are made on "probable cause." However, conviction requires "proof beyond reasonable doubt." Evidence problems (no witnesses, victim reluctance to testify), constitutional issues (no search warrant), and overcharging (arresting everyone at a drug scene, arrests related to other crimes) may lead prosecutors to not prosecute some arrests.

REPORTED CRIMES CLEARED BY ARREST, By Offense Category, 1990



Source: U.S. Department of justice, Federal Bureau of Investigation, *Uniform Crime Reports*, 1991.

QUESTIONS AN ELECTED OFFICIAL MIGHT ASK ABOUT

POLICING

NEIGHBORHOOD RESPONSE

- *What are the differences in reported crime and arrests between precincts or neighborhoods?*
- *How do patrol officers feel about "community policing"? Do supervisors feel the same way?*

Targeted use of limited resources and equitable protection of all citizens are important policy issues. Many departments are refocusing policies toward building positive relationships with the community. The concept of community policing encourages police officers to be seen, to take preventive action at sites of repeated criminal activity, to enlist other agencies in meeting community needs, and to encourage citizen help. Instituting community policing raises a variety of personnel issues, from how to evaluate patrol officers/deputies to the concerns of senior officials that they will lose control over patrol officers' priorities. Special training of both patrol officers/deputies and senior officials may be necessary.

MANAGEMENT AND TECHNOLOGY

- *What proportion of time is spent on activities, such as paperwork, court appearances, patrol, traffic enforcement, 911 responses, criminal investigations, VIP duties, and community relations?*

This analysis is essential for identifying system bottlenecks and establishing priorities. Court schedules should focus on efficient use of all participants' time. Jurisdictions with high levels of criminal activity may benefit from having magistrates and prosecutors available on weekends or at night.

- *What available technology has been brought on-line?*
- *Has increased effectiveness been documented?*

Some of the systems available include computerized fingerprint identification (AFIS), career criminal (ROPES) and residential burglary (ReBES) profiling, patrol car laptop computers, or computer-aided dispatch.

CONVICTION RATES

- *What is the conviction rate for the department?*
- *How do these rates compare with neighboring police departments working with the same prosecutor's office?*
- *Is there regular communication with the prosecutor's office to improve conviction rates?*

Most departments keep data only on arrests. They do not track the prosecutor's refusal to file charges and/or the effectiveness of police practices in achieving convictions. A large number of arrests not resulting in prosecution wastes police/sheriff, prosecutor, and court time and requires additional jail (detention) beds to hold suspects.

PLANNING

- *Does the department participate, at least annually, in reviewing projections for jail or prison bed needs?*

Lack of correctional options also can waste funds spent on policing. It is important that forecasts for prison and jail needs reflect current priorities and criminal activity, not just historic trends.

INTERGOVERNMENTAL COOPERATION

- *How many different agencies can make arrests in this community and what are their responsibilities?*

Response to citizens, effectiveness, efficiency, and action by the rest of the criminal justice system are affected by how many police agencies operate in a community. Authority may be spread over several municipal police forces, county police, county sheriff departments, constables, state police, plus approximately 50 federal agencies, campus security, park police, and transportation authorities.

- *How is performance enhanced through intergovernmental cooperation?*

Multijurisdictional and local/state/federal cooperative efforts are used to combat drugs and support rural departments. Computer networks give immediate access to expanded criminal data banks. Training academies and consolidated forensic services provide greater professionalism. Intergovernmental arrangements should be set forth in formal negotiated agreements.

JAILS

MOST ARE IN LARGE JAILS

Although almost every county operates a jail, over 80% of all inmates are housed in the jails of 508 urban jurisdictions with an average daily jail population of over 100 inmates.

THE CRIMINAL JUSTICE CROSSROADS

Many criminal justice agencies converge at the jail. Here, arrestees are brought for booking, magistrates charge suspects and set bail, prosecutors review information with arresting officer(s), defense attorneys interview indigent clients, and pretrial services screen defendants for release eligibility. Jails do not control how long they will hold offenders awaiting trial or, in most instances, how quickly state-sentenced felons will be transferred out. During 1990, there were nearly 20 million jail admissions and releases.

AVERAGE LENGTH OF STAY

The average length of stay for jail inmates is 110 days. The average stay for pretrial inmates is 66 days and for sentenced inmates, 156 days.

COMPARATIVE GROWTH OF JAIL AND PRISON POPULATIONS

Year	Jail Population	Prison Population
1983	223,551	436,855
1990	405,320	771,243
Growth	74%	77%

JAILS UNDER COURT ORDER

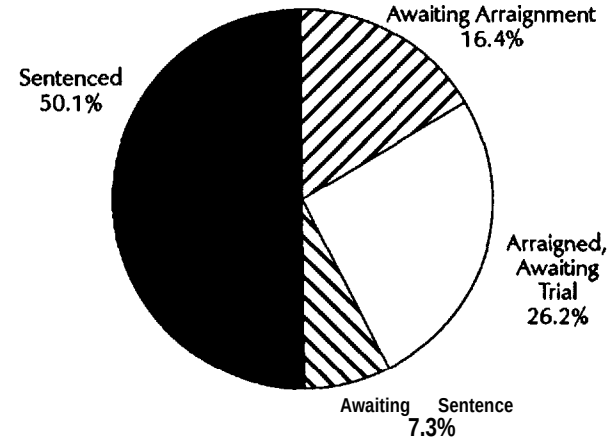
128 jurisdictions, with 25% of all large jails, had at least one facility under court order to reduce crowding, while 23% of all jails were ordered to improve conditions.

PROFILE OF JAIL INMATES

Jails house many populations with special needs, including the mentally ill, drug and alcohol abusers, females, and juveniles under special circumstances. The range of criminal types varies from those serving sentences for drunk driving to approximately 1 in 5 who are violent career criminals awaiting trial.

Between 1983 and 1989, increases occurred in the percentage of females (9.5%), high school graduates (46.2%), those employed full time (64.5%), blacks (41.7%), and Hispanics (17.4%). These shifts were due in part to an increase from 9.3% to 22.8% in those being held for drug offenses.

POPULATION PROFILE OF LOCAL JAILS, 1989

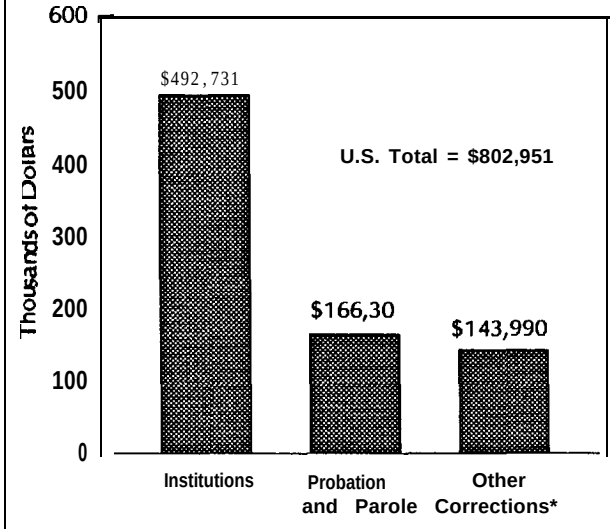


Source: "Profile of Jail, Inmates, 1989," *BJS Bulletin*, April 1991

STATE AID TO JAILS

In 1987, states provided $932 million in corrections aid to local governments. Of this amount, 61.3% went for jails. Twenty states accounted for 97% of the intergovernmental aid; assistance ranged from $27 per capita to $1.50.

STATE AID TO LOCAL CORRECTIONS, FY 1985



* Includes juvenile, construction, and training programs.

Source: National Conference of State Legislatures, "State Aid to Local Government." 1989.

QUESTIONS AN ELECTED OFFICIAL MIGHT ASK ABOUT

JAILS

SPACE

- *How is the number of inmates the jail will hold determined?*

The number of inmates held in any jail is affected by court orders, state standards, the sheriff's management philosophy, the original design of the facility, physical limits (such as lavatories), and security needs. These and other valid concerns make it necessary to approach comparisons between facilities and systems with care.

INMATE CLASSIFICATION

- *How are inmates classified?*
- *How is information about arrestees obtained?*
- *What are the most critical concerns in separating people?*

Separating the populations held in a local jail is a critical management challenge. Lack of access to information, space limitations, and the priorities of the sheriff or jail administrator are concerns. Some jails still hold juveniles, despite the resulting loss of federal funds. Many jails report difficulty handling the larger numbers of mentally ill persons in the system. A separate detention facility for persons awaiting trial reduces some of these problems, and some municipalities operate holding cells for arrestees who have not been charged.

SENTENCED PRISONERS

- *What has been done to provide less costly bed space for people sentenced for misdemeanors?*

Misdemeanors are minor offenses, such as shoplifting, drunk and disorderly conduct, drunk driving, and violations of local ordinances involving noise, litter, etc. Some jurisdictions house these inmates in renovated motels, schools, or other surplus space. Weekend or evening sentences, however, must be scheduled so as not to further crowd the jail when the number of arrestees being detained is the highest.

- *What determines whether a misdemeanant will serve a full sentence in jail?*
- *Is early release in line with reductions given state felons?*

By definition, misdemeanors are punished by a sentence of less than one year in a local jail; felonies are punished by at least one year in a state prison. Several states are more generous to prison inmates in deducting days for "good time" than they are to people serving misdemeanor jail sentences. Such a policy can add to jail crowding.

MOVING TO TRIAL

- *Have you been able to work with the prosecutor and the court to reduce crowding on weekends?*

The availability of assistant prosecutors and court magistrates may reduce the number of arrestees being held awaiting arraignment.

- *How do you work with the court to assure that persons arraigned are moved to trial as quickly as possible?*
- *What improvements have you discussed with the prosecutor, public defender, and defense bar?*

Some sheriffs provide the court with daily reports of the status of each prisoner awaiting trial or sentencing. Counties whose jails are not physically close to their courts may be able to cut transportation and security costs and speed preliminary proceedings through closed-circuit television or other technology.

FINANCING

- *How does the state or federal government make payments related to the jail?*

When federal authorities use a local jail to hold persons awaiting trial, it is done under the terms of a mutually agreed upon contract that sets the per diem payment. State payments can take many forms, including:

- The actual cost of housing inmates for whom the state is responsible or a flat rate per diem;
- Payments for all persons charged with a state felony or only for sentenced felons;
- A fixed percentage of actual construction costs or a fixed amount; and/or
- The sheriff's salary and the salaries of all state-authorized deputies or no salary assistance.

(See additional questions in sections on Prison and Jail Programs, Prison and Jail Construction, and the Juvenile System.)

PROSECUTION

The prosecutor's office is the key to how many people will be in the criminal justice system, where, for how long, at what level of security and, therefore, at what cost.

SOME OBSERVERS MAINTAIN THAT THE PROSECUTOR IS THE MOST POWERFUL OFFICIAL IN THE CRIMINAL JUSTICE SYSTEM:

PROVIDING COUNSEL DURING CRIMINAL INVESTIGATIONS AND OBTAINING WARRANTS strengthen major cases by assuring that police work is conducted according to the law.

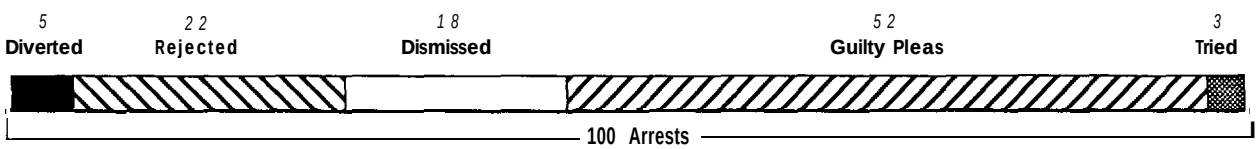
CHARGE SCREENING practices vary by region. In most large jurisdictions and in the West and Midwest, the prosecutor decides whether an arrestee will be charged, based on probable cause that the charge will hold up in court. In the South and Northeast, the prosecutor typically is not informed until after charges are filed in a special "police court." After the charge is filed-even if the prosecutor agreed-the prosecutor has the power to drop a charge (*nolle prosequi*) at any point.

Charge screening also depends on the prosecutor's philosophy. One survey reported a range from zero to 47% for arrests declined for prosecution. Typically, the higher the number of arrests rejected by the prosecutor, the higher the number of convictions in the remaining cases.

BAIL SETTING AND PRETRIAL RELEASE are other points at which most prosecutors play a significant role. The prosecutor's input as to whether it is safe to let the defendant await trial in the community has a strong influence on the magistrate or other court official making the decision.

GUILTY PLEAS produce 91% of all felony convictions, and at least one-third result from PLEA BARGAINING. This is a process of negotiation with the defense, in which the prosecutor can reduce the charges and/or agree to recommend a reduced sentence to the judge in exchange for a guilty plea. Because the judge can sentence based only on the charges and the facts presented by the prosecutor (e.g., did the offender "brandish" or merely "possess" a weapon), mandatory sentencing guidelines have not diminished plea bargaining.

AVERAGE DISPOSITION OF ARRESTS IN STATE CRIMINAL JUSTICE SYSTEMS



Source: U.S. Department of Justice, Bureau of Justice Statistics, *BJS Annual Report, 1988.*

CRIMINAL JUSTICE SYSTEM PROCEDURES CHECK THF PROSECUTOR'S POWER:

A PRELIMINARY OR PROBABLE CAUSE HEARING, depending on state law, must take place from 24 hours to 10 days after an arrest and determines whether the defendant is to be charged and/or detained. In a preliminary hearing, the prosecutor must merely show probable cause to proceed with the case. In a trial, it must be proven beyond reasonable doubt that the accused is guilty.

GRAND JURIES allow a body of citizens to decide whether to indict the accused. In 18 states, grand juries must be used in all felony cases unless the accused waives this right. In other states, grand juries are used only in selected cases. In over half the states that use this system, the prosecutor must file charges before the case is referred to the grand jury for indictment.

SPEEDY TRIAL LAWS establish specific restrictions on how long an accused may be held before charges are filed, before being brought to court for the first time, and before being tried. The constitutional right to a speedy trial and a trial by jury protect the accused in plea bargaining.

LEGISLATORS prescribe minimum and maximum penalties, and JUDGES have the discretion to reject a prosecutor's pleadings.

QUESTIONS AN ELECTED OFFICIAL MIGHT ASK ABOUT

PROSECUTION

CASELOADS

- *How many felony cases are handled by the prosecutor's office now compared to 5 years ago?*
- *What types of cases are expedited?*
- *How has the increase in drug cases been handled?*
- *How are seasonal caseload fluctuations handled?*
- *Who decides if a new attorney's position should be added and on what basis?*

Sound management of the prosecutor's office is crucial to reducing the cost of holding people in jail longer than is warranted at most steps in court processes. Case management changes also may reduce the need for new positions.

SUPPORT SERVICES

- *What support does, or should, the prosecutor3 office receive for training and legal research?*

Almost two-thirds of all prosecutor offices employ two or fewer assistant prosecutors (some have none). Some states have established computerized legal research systems that can be accessed by these small offices. In addition, the state may organize in-service training.

IMPROVING CASE MANAGEMENT

- *Does the chief prosecutor meet regularly with the chief judge or court administrator, the sheriff or jail administrator, chiefs of police, the clerk of court, and the public defender?*
- *Have they engaged in a thorough case management analysis?*

The policies and procedures of the prosecutor's office affect the size of the local jail population and court efficiency. Significant elements include:

- Early case screening, including weekends;
- Access to a coordinated criminal record base;
- Support of pretrial release alternatives;
- Expedited processing of detained defendants;
- Document transmission;
- Case tracking and review; and
- Appearance of witnesses and defendants.

- *Have forensic laboratory backlogs delayed trials because evidence is not analyzed in a timely manner?*

Criminal evidence analysis varies greatly. Services may be provided by the state health department, by an elected county coroner or a medical examiner, in a municipal police laboratory, or by a regional service contract with the laboratory in the largest jurisdiction. Staffing may not have increased with the rise in criminal caseloads.

- *How does the prosecutor work with the police andlor sheriff's department to keep cases that cannot be prosecuted from entering the system?*

Routine feedback on why cases are being rejected and in-service training for prosecutors can reduce costs and frustration.

DEVELOPING COMMUNITY SANCTIONS

- *Does the prosecutor participate in the development of sentencing options and pretrial release strategies?*

If prosecutors lack confidence in these programs, they will reject them in plea bargaining and argue against their use before the judge or magistrate. In contrast, some prosecutors have initiated deferred prosecution and will drop the charge if the defendant participates in a treatment program. Others have championed improved data gathering and risk assessment models to enable pretrial release decisions to be made on more than just the criminal record.

INDIGENT DEFENSE

RIGHT TO COUNSEL

U.S. Supreme Court rulings on the Sixth Amendment to the U.S. Constitution and more stringent rulings by some state courts require that counsel be provided to any indigent accused of a crime if the charge can result in a prison sentence. Counsel may be assigned as early as a police lineup or as late as a probable cause hearing. Usually, this takes place at the first court appearance, when bond or bail is set and indigence is determined.

TYPES OF SYSTEMS

There are three types of indigent defense systems. In 1986,

- **Assigned Counsel** was used in 52% of counties;
- **Public Defenders** in 37%; and
- **Contract Attorneys** in 11%.

The most populous counties have public defender offices; they cover over 2/3 of the nation's population.

IMPACT ON CRIMINAL JUSTICE SYSTEM

Public defenders play an important role in protecting individual rights. Their role in the efficient functioning of the criminal justice system also is important, if less obvious. Mishandled, the indigent defense process can produce a chain of events that drives up costs throughout the criminal justice system. For example:

- Indigent persons represented by lawyers who are not prepared because of heavy caseloads or lack of experience may have more serious charges brought against them.
- This can result in higher bail being set and indigents being more apt to remain in jail.
- The more serious the charge, the weaker will be the defendants' negotiating position in plea bargaining.

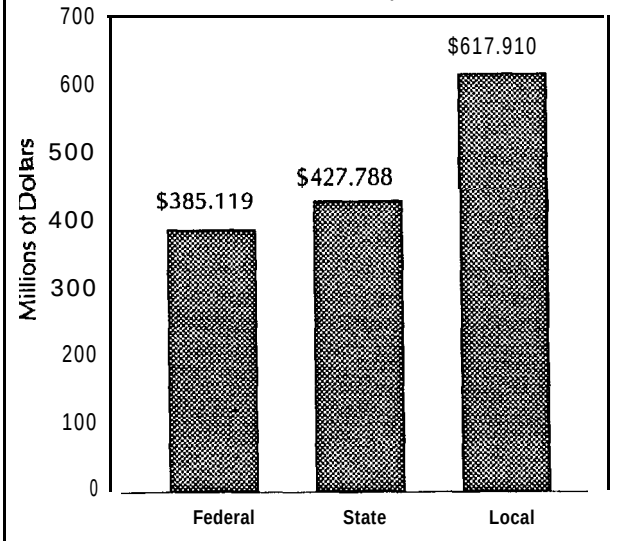
This makes it more likely that indigent defendants will receive longer sentences and be incarcerated compared to nonindigent persons committing the same act.

INDIGENT DEFENSE SYSTEMS: WHO PAYS WHAT?

Although public defense consumes only 2% of the total criminal justice system's budget, it is important to determine which type of system (public defender or assigned counsel) is more cost effective. A 1986 study* of three jurisdictions compared per case costs for public defenders (PD) and assigned counsel (AC). PD costs were approximately 2-5 times lower than AC costs. The study also suggests that by centralizing funding cost differentials between the systems can be reduced. When AC billing was not handled by the same budget office as PD billing, greater differences between the rates occurred. Thus, if there were two funding sources, one local government and the other judiciary, neither seemed aware of the costs incurred by the other.

*Joan E. Jacoby, *Costing Indigent Defense Services: Who Pays? How Much?* (Washington, DC: Jefferson Institute for Justice Studies, 1986).

EXPENDITURE FOR INDIGENT DEFENSE BY GOVERNMENT, 1988



Source: *Justice Expenditure and Employment, 1988.*

FUNDING

There is no uniform funding approach. In 18 states, indigent defense is funded fully by the state; in 10 states, it is supported by county funds; in the remaining 22 states, it is funded by a combination of both. Most systems also received some assistance from municipalities, the federal government, and private grants.

INTERGOVERNMENTAL CHALLENGE

Counties with high concentrations of poor people often have high crime rates, resulting in a need for more public defenders. Typically, the same communities have weak tax bases. States are being criticized because their support has not kept up with actual costs. These states as well as those that provide no support need to consider the impact on prison budgets if defendants are not diverted.

QUESTIONS AN ELECTED OFFICIAL MIGHT ASK ABOUT

INDIGENT DEFENSE

USE OF PRIVATE ATTORNEYS

- *How are public defense attorneys selected?*
- *What level of criminal law experience is usually represented?*

Some courts assign counsel from a list of attorneys who volunteer. It is not uncommon for these lawyers to be inexperienced or, for other reasons, not be able to attract many private clients. Other courts assign counsel at random from a list of bar members. Under this system, criminal law experience may be lacking and/or indigent cases may be competing with heavy private caseloads.

- *How do public &fender fees, fees paid assigned counsel, and fees paid by private clients compare?*
- *Are fees set in the state budget or local budget?*
- *When were they last adjusted?*

Eighteen states use only state funding, 10 states use only local, and the remainder are jointly funded. In some states, such as Alabama and Louisiana, the system is funded largely through fees and court costs imposed on litigants.

USE OF PUBLIC DEFENDER'S OFFICE

- *How many cases are handled by the public defender's office compared to 5 years ago?*
- *How do prosecutor and the public defender caseloads compare?*
- *Who decides whether a new attorney's position should be added and on what basis?*

The total caseload reported nationwide for 1986 was about 4.4 million cases, an increase of approximately 40% between 1982 and 1986.

- *What is the experience level of staff attorneys?*
- *What training and research support does the state provide?*
- *Does the public defender's office have the same legal research capability as the prosecutor's office?*

Competent representation can ensure that jail or prison time will be served only for cause.

IMPROVING THE PROCESS

- *Is the public defender's office and/or representatives of the private bar included in meetings or task forces on criminal justice problems?*

Efforts to deal with system problems usually concentrate on judges, prosecutors, and sheriffs. Including the public defender's office, probation office, and clerk of court/court administrator will add more experience in handling large numbers of cases.

- *What is the most crucial change needed in the indigent defense system to assure both speedy and just court action?*

Public defenders and assigned counsel frequently raise issues about lack of resources for expert witnesses, investigation, and legal research. Steps to improve court case management by moving cases more quickly often exacerbate concerns about perfunctory client contact and lack of familiarity with each case because of large caseloads.

- *Are indigents represented by counsel when charges are filed?*

In counties utilizing public defenders, representation is most likely within 24 hours of arrest and usually results in earlier dispositions and less jail time.

DEVELOPING COMMUNITY SANCTIONS

- *Is the public defender's office and/or the local bar association involved in the development of community sanctions and pretrial release options?*

Typically, alternatives to jail or prison do not have a broad base of support and advocacy. Especially, the private defense bar can play a role in urging policy consideration of long-term cost savings through effective alternative programs.

PRETRIAL RELEASE

The decision to release a defendant to await trial in the community and the conditions of that release traditionally have been based on the likelihood of the defendant appearing for court dates. By 1984, 32 states and the federal government had enacted laws directing courts also to consider danger to the community. General government support of pretrial programs must balance similar concerns: confidence that programs protect public safety, while using costly jail space wisely and supporting efficient court proceedings.

BAIL

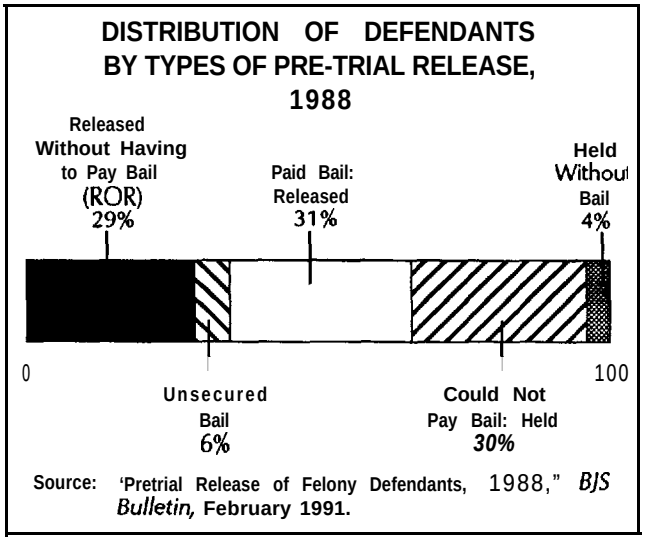
Until the 1960s, bail was the principal form of pretrial release. The basic forms of bail are:

- **Full Cash Bond-The** defendants must deposit the full amount of bail. In a 1988 study of felony defendants in the 75 largest counties, 43% of those who were fugitives (failed to appear after one year) had been released on full cash bonds.
- **Surety Bond-The** defendant pays a bondsman a nonrefundable fee to post bail, and the bondsman pays the court the full amount of the bond if the defendant fails to appear. In the 1988 study, 26% failed to appear after one year.
- **Deposit Bond-The** defendant pays the court a specified percentage of the full bail. This deposit is refunded after the trial, minus a small administrative fee.
- **Unsecured Bond-The** defendant pays no money at first, but is liable for the full amount if he or she fails to appear for court.

OTHER RELEASE OPTIONS

A presumption in favor of release without bail was included *in* the 1966 ***Federal Bail Reform Act.*** At least 18 states passed similar statutes. Options include:

- **Release on Recognizance (ROR)-The** defendant is released on good faith that he or she will return for trial.
- **Third-Party Custody-The** defendant is released into the custody of a third party. For example, a juvenile often will be released into the custody of parents.
- **Supervised Release-The** defendant is required to meet court conditions (e.g., drug testing). Failure to do so can result in incarceration.
- **Citation Release-The** arrestee is issued a citation to appear in court. This option is being used increasingly for minor offenses other than traffic.



REFORMS

Manhattan Bail Project, developed in the early 1960s, was the first notable bail reform project. The project established Risk Assessment Models that identified factors relating to the likelihood of defendants appearing for trial. The project was the first to document that a defendant with roots in the community was not likely to flee, whether or not he or she had the ability to pay a bondsman. This led to establishment of **Release on Recognizance,** which is used for approximately half of the felony defendants released before trial.

Pretrial Services Programs investigate defendants'backgrounds, make recommendations for release and conditions, and may monitor those who are released. In some jurisdictions, the initial investigation includes voluntary drug testing, To counter simple negligence in remembering court dates, some jurisdictions find it cost-effective to hire personnel to remind defendants when to appear.

Although not technically pretrial release, there also are programs, such as **Treatment Alternatives to Street Crime (TASC),** that divert offenders from trial. Criminal charges are suspended and will be dropped if the offender meets certain conditions. When used for minor drug arrests, fees charged for drug treatment typically equal the fines that would have been paid if the offender was found guilty.

QUESTIONS AN ELECTED OFFICIAL MIGHT ASK ABOUT

PRETRIAL RELEASE

ACCOUNTABILITY

- ***Who is accountable for developing and managing each aspect of pretrial release?***

There are three components of pretrial release: ***defendant information, a decision to release the defendant, and release options.*** While the release decision usually is made by a court official, the responsibility to establish release options and to provide better offender information varies considerably from one jurisdiction to another. The questions that follow help identify who is taking the initiative.

Police

- ***How often do police use the pretrial option of summons-in-lieu-of-arrest?*** • ***Has use increased?***

Traffic tickets are a familiar use of summons. Extending the use of summons to other minor offenses saves all the costs related to bringing arrestees to the detention intake, charging (booking) them, and then making a routine decision to release them to await trial.

Sheriff

- ***Is the information gathered by jail intake officers used for risk assessment to determine pretrial release?*** • ***If not, why not?***

Typically, the information gathered at intake is targeted to meet the need to separate (classify) jail inmates. To reduce jail overcrowding, however, some sheriffs obtain information at intake that also will support use of a "risk assessment model." The degree to which this information is used by the court — and not challenged by the prosecutor — depends on whether staffing levels are adequate to validate what the arrestee says and to access criminal data banks.

The *Court*

- ***What information does the court rely on in making pretrial release decisions?*** • ***Who provides it?***

The person or agency responsible for providing the court with pretrial release information varies, although several national organizations caution that defendant information should be gathered by a neutral source, and not by the police, prosecutor, or public defender.

Tradition often governs in small systems. The person who provides the information could be in the clerk of court's office, a sheriff's deputy, or a court employee, or the court may simply rely on what is said by the prosecutor and/or arresting officer. At least 500 systems have established pretrial screening units; 38% of them are administered by courts, 24.5% by probation offices, and 10% by sheriffs. A few courts have contracted with private agencies for these services.

Especially where staffing is a problem, simple cases may be sorted out initially, based on a judgment that background information is not necessary for a pretrial release decision.

Prosecutor

- ***Does the prosecutor support the use of summons-in-lieu-of-arrest? conditional release? deferred prosecution? using risk assessment rather than the nature of the crime to determine release?***

In our adversarial criminal justice system, the prosecutor's support of pretrial options can be crucial to how much they are used.

Public Defender or Court

- ***Are indigents represented by counsel in the pretrial release decision?***

See section on Indigent Defense for discussion of the added cost to the criminal justice system when offenders do not have adequate initial representation.

Jail or Court

- ***How long are people who will be released pretrial held in jail before release actually occurs?*** • ***What is the range?***

In 1988, in the 75 largest counties, 23% were released on the day of their arrest, another 23% were released the next day, and 13% were released on the third day, while 22% spent more than a week in jail before they could meet the conditions of release. Each day saved, at any point, by altering procedures or using different options can save unwarranted jail costs.

COURTS

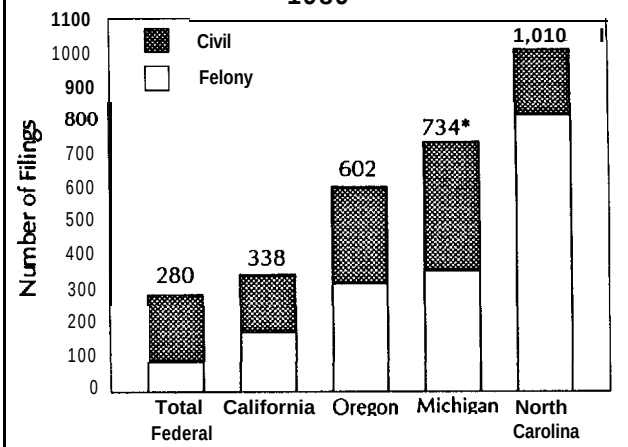
STRUCTURE OF JUDICIAL SYSTEM

State-94% of criminal cases are heard in state courts, which are organized with three levels of jurisdiction:

- **Appellate** Courts hear appeals from lower courts; they do not try criminal cases.
- **Courts of General Jurisdiction,** also known as major trial courts, hear criminal and civil cases unlimited by type.
- **Courts of Limited Jurisdiction hear** minor offenses, such as misdemeanors, traffic and ordinance violations, and small civil cases. Within this category, Family or Juvenile Courts hear most charges brought against juveniles.

Federal-The federal judiciary has jurisdiction over federal laws and U.S. constitutional appeals. It consists of the Supreme Court, 12 U.S. Courts of Appeal, and 94 District Courts. Organized crime, federal regulation, and five anticrime bills during the 1980s are major factors in the shifting of cases from state to federal jurisdiction. More than 3,000 acts are defined as federal crimes; the Constitution named only treason and counterfeiting.

FELONY AND CIVIL FILINGS PER JUDGE, U.S. DISTRICT COURT AND FOUR STATES, 1989



* Includes misdemeanors.

Source: National Center for State Courts, State Court Caseload Statistics, 1989 *Annual* Report, 1991.

COURT CASELOADS

Because each state determines the jurisdiction of its courts differently, caseloads are hard to compare. The graph above provides one valid comparison of the caseloads of the federal district courts and four state courts that handle similar cases. Although only about 1 out of 10 arrests in which charges are filed ultimately results in trial, judges pass sentence in all cases or dismiss the charges.

FUNDING

State shares of state/local courtfundingvaryfrom 11% to 100%. Almost two-thirdsof all court systems (31 states)received less than a third of their budgets from the state. In most systems, counties provide the remaining funds. Local governments fund courts of limited jurisdiction in 21 states and family courts in 9 states.

KEY COURT OFFICERS

In addition to judicial decisions, other court activities significantly affect the functioning of the criminal justice system:

- A **Court Administrator** can improve efficiency through professional administration of budget, court personnel, information and record systems, and court scheduling.
- **Magistrates** are lay persons selected by the court to set bail or other conditions for release based on the information they receive and options available. Their decisions have a significant impact on how many people the jail must hold.
- **The Clerk of the** Court is responsible for all paperwork between the court, the prosecutor, the defendant, the jail, and state prison system. The fact that clerks of court are independently elected can create friction.
- **Probation Officers** prepare pre-sentence reports and supervise releases. Pre-sentence reports can cause a judge to disregard plea bargaining agreements. Probation officers may be employees of the court, the state, or the locality. Court probation departments are the most dependent on judicial leadership to establish community sanctions.

NEW PROGRAMS IMPROVE CASE PROCESSING

The Expedited Drug Case Management (EDCM) and Differentiated Case Management (DCM) programs have had impressive results in reducing court backlog by utilizing the cooperation of all agencies in the court system. By having public defenders, prosecutors, court administrators, and judges sit down and efficiently review and place new cases on "tracks," case backlog has been drastically cut. In the Philadelphia Court of Common Pleas, the average time from indictment to disposition for all cases dropped from 163 to 120 days. This resulted in freeing up a maximum of 420 beds per day in the jail.

* Joan E. Jacoby, et. al., *An Evaluation of the Expedited Drug Case Management Program* (Washington, DC: Jefferson Institute for Justice Studies, 1992).

QUESTIONS AN ELECTED OFFICIAL MIGHT ASK ABOUT

COURTS

CASELOADS

- *Have criminal caseloads grown in the last 5 years?*
- *Has this delayed civil cases?*
- *Are certain types of cases expedited?*
- *Who decides whether new judgeships are created and on what basis?*

Because speedy trial laws require that cases be heard or dismissed, in some jurisdictions the flood of criminal cases virtually has eliminated hearing civil suits, which do not have time constraints. Alternatives include special courts to hear drug possession charges, using hearing examiners, and encouraging police to use summons-in-lieu-of-arrest to eliminate preliminary court procedures for minor offenses.

SCHEDULING AND APPEARANCES

- *How are criminal cases scheduled?*

During the 1970s, many state court systems reorganized and established fewer courts with greater administrative support. Professional administration, along with the computer capability to track all the components of case scheduling, can reduce bottlenecks. Cost savings accrue from freeing jail beds, reducing the time police spend waiting for their cases to be taken up, and reducing the need to reschedule cases because all parties are not present.

- *What is the average time between arraignment and cases being decided for released defendants accused of misdemeanors? of felonies?*
- *What is the average time for defendants held in jail?*

State law stipulates the maximum time that can elapse; however, it is equally important for the system to analyze average and median times to uncover case management problems.

- *What technological innovations are under consideration to expedite court procedures?*

Records can be kept on an integrated computer system from arrest through sentencing.Closed-circuit television can reduce the need to transfer defendants from the jail for preliminary court appearances. Computer access can give defense attorneys and prosecutors immediate information on case scheduling.

- *How are persons reminded of court appearances?*

Even if the original charge was minor, nonappearance in court can lead to jail time. Some systems have avoided jail costs by funding notification initiatives.

CASE MANAGEMENT ANALYSIS

- *Has the court participated in a thorough case management analysis with the police, prosecutor, public defender private bar, chief probation officer, jail administrator or sheriff, and clerk of court?*

The more the courts and other agencies can understand each other's constraints and coordinate initiatives to reduce delays and institute other case management improvements, the better they can carry out their functions. Accountability for improvements must be established.

- *How does the state judicial system help local courts improve case management?*

Many court reorganizations established a state court administrator. This has facilitated in-service training and consultation to local courts. However, annual statistical summaries were not always revised to allow monitoring of local court compliance with performance standards.

DEVELOPING COMMUNITY SANCTIONS

- *Do judges participate in the development of community sanctions and pretrial release strategies?*

Within limits set by the legislature, judges make the sentencing and pretrial release decision. Even if the prosecutor, defense, probation officer, and pretrial services recommend a community option, if judges do not have confidence in the program, it will be underutilized. Court-run probation departments are especially dependent on judicial leadership.

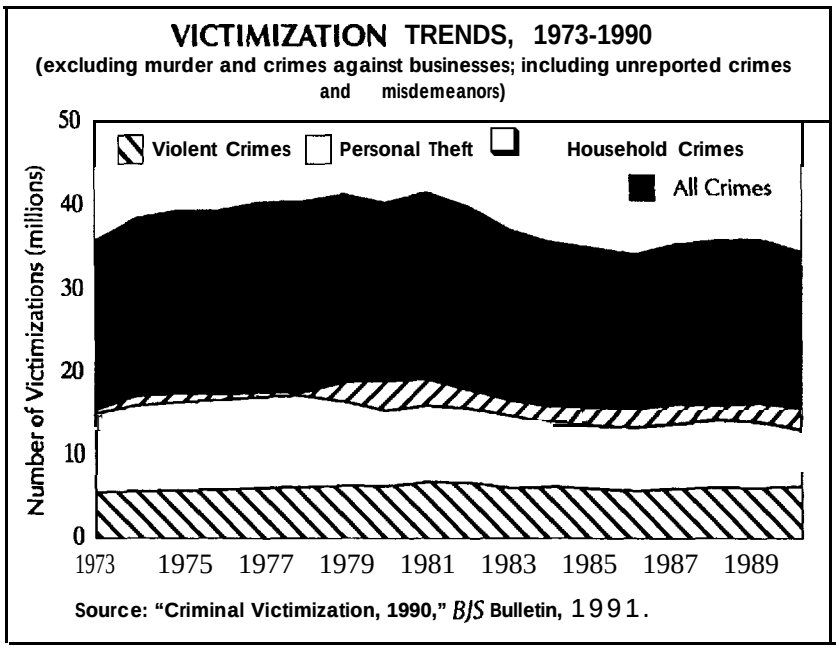
VICTIMS AND WITNESSES

The *National Crime Victimization* Survey (NCVS) estimated that more than 36 million crimes occurred in 1989; almost 20 million involved violence and/or personal theft. Since the 1970s, programs have been developed to cope with the physical, emotional, and economic pain to victims, in addition to helping victims and witnesses cope with criminal justice processes. General government elected officials may need to serve as ombudsmen to help victims get their needs addressed and to ensure that funds are spent responsibly.

VICTIMS' BILL OF RIGHTS

45 states have adopted a Victims' Bill of Rights, which includes:

- Notification of case status and scheduling;
- Information about financial aid and social services;
- Reducing legal jargon to lay terms;
- Protection from harassment and intimidation; and,
- Speedy return of property held as evidence.



PROGRAMS

No single approach is appropriate for all victims, and demand for targeted programs is high. The women's movement initiated programs dealing with rape, but different considerations are involved in domestic violence and child abusecases. The anti-drunk driving movement produced demands for greater court and sentencing access. Finally, demographic shifts are producing more pressure to respond to the vulnerabilities and special needs of the elderly.

VICTIM IMPACT STATEMENTS

Impact statements give victims or their survivors input into the ultimate outcome of the case (sentencing). In a 1988 survey, 84% of the judges report routinely requesting information about the physical, economic, and mental impact of the crime on the victim. Usually, this information is gathered in writing by the probation officer who prepares the pre-sentence report, but sometimes it is requested of the prosecutor. Some systems provide for notification of and statements from victims or their survivors when offenders are eligible for parole.

VICTIM COMPENSATION

During the 1980s, most states established programs to provide compensation for medical bills, lost wages, and funeral services. As of 1987, recovery limits ranged from $10,000 to $50,000. Funds usually are generated by court fees. In addition, compensation for property losses can occur if the judge orders restitution as part of the sentence and ensures that the offender pays it.

RESTITUTION PROGRAMS

Public surveys show strong support for restitution. In 1986, half of the sentences for felony property crimes required that the offender pay restitution to the victim; restitution was ordered in 25 percent of the sentences for violent crimes. While the average amount was $3,368, half of the orders were under $500.

NEIGHBORHOOD WATCH AND COMMUNITY POLICING

In the 1980s, citizens working with the police through Neighborhood Watch programs were very effective in preventing crime in cohesive residential and business communities. Community policing extends this concept to high-crime areas by helping repeatedly victimized residents regain control. Community policing emphasizes:

- Enlisting other government agencies in meeting the neighborhood's needs;
- Treating witnesses with respect;
- Targeting frequent crime scenes rather than just reacting to calls; and
- Working with residents to organize neighborhood watch assistance.

QUESTIONS AN ELECTED OFFICIAL MIGHT ASK ABOUT

VICTIMS AND WITNESSES

SPECIAL PROGRAMS

- *What victim/witness services are provided?*
- *Are there special programs for the elderly? for victims of domestic violence? for victims of sexual crimes?*
- *Are core services coordinated to improve the level of service of each program?*

In many jurisdictions, citizens started individual victim programs before the state or county provided services for all court users. If public funds are received by all programs, one program for basic assistance may save funds and expand service.

- *Have any crime prevention aspects of community policing been tried?*
- *If not, why not?*
- *If community policing is used, how is its success evaluated?*

By the fall of 1990, it was estimated that more than 250 departments were considering instituting community policing. Some departments resist community policing as a catch phrase, but many, especially small departments, may have been using its concepts for years.

Building a law enforcement partnership with citizens where none exists includes establishing credible review processes for officer conduct, repairing damage done during arrests or searches, and training employees who receive crime reports, in addition to working with community residents to take responsibility.

COMPENSATION/RESTITUTION

- *Is there a compensation program for personal injuries suffered by victims?*
- *Who administers it?*
- *How is it publicized?*
- *How is it funded?*
- *If it is funded from a dedicated source of revenue (e.g., court fees), what is the fund balance?*

An excessive fund balance generally indicates lack of use of the program. There may be problems with lack of publicity, victims not being informed of their rights, complex application procedures, and inappropriate approval standards.

- *How often is restitution ordered for violent felonies? for nonviolent felonies (burglary, fraud, etc.)? for misdemeanors (shoplifting, vandalism, purse snatching, etc.)?*
- *What is the collection rate?*

The use of restitution varies with the sentencing judge's philosophy and assessment of the offender's ability to pay. Collection rates often reflect the probation agency's priorities. Payment may be regarded as secondary to keeping the offender from new criminal activity and participating in work, education, or drug treatment programs. If fees and court costs help fund the agency's budget, collecting restitution amounts may have low priority.

In a 1989 survey of offenders given probation in 1986, 60% of those who were not imprisoned for another crime had paid the restitution in full.

AGENCY RESPONSIBILITY/SUPPORT

- *What agency or agencies are responsible for victim/witness programs?*
- *What are the sources of funding?*

Many programs are built on a base of private contributions. Where state funding is provided, matching federal block grant funds are available under the federal *Victim of Crimes Act* (VOCA). Local budget support is a common outgrowth of citizen initiatives.

- *How does the court support victim/witness programs?*
- *How are victims assisted by the police department in making contact with support services?*
- *Has the local bar been involved in setting program goals?*
- *How does the prosecutor's office keep victims informed of the progress of a case?*

A major reason for the formation of victim/witness programs was the perception that the criminal justice system was bewildering, if not intentionally intimidating. Official acceptance is important to their success.

PROBATION AND SANCTION OPTIONS

WHAT IS PROBATION?

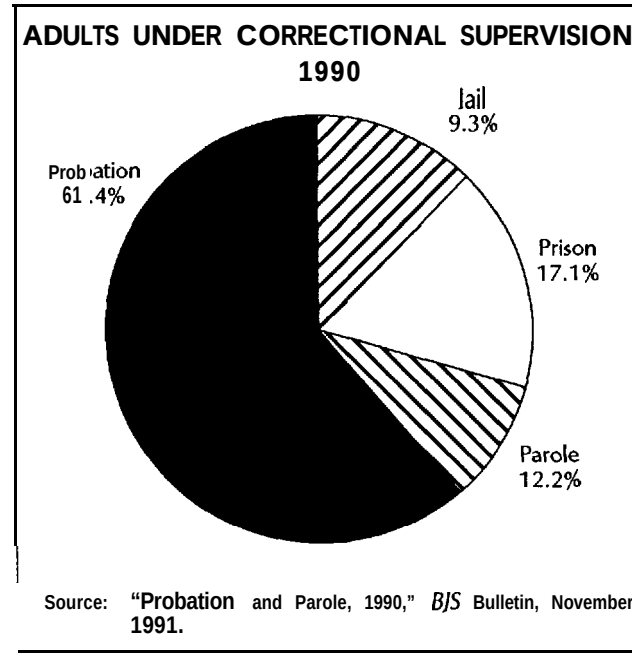
Probation is correctional supervision in the community, which judges can order instead of or in addition to tune in prison or jail. An offender who is arrested for a new crime or violates conditions of probation may serve the entire sentence in jail or prison.

WHO DECIDES?

The judge specifies how long the offender will be on probation and establishes conditions, such as participation in a drug abuse program, community service, curfew, travel restrictions, and paying a fine, court fees, and/or restitution to the victim. The judge often gets recommendations from the prosecutor, the defense attorney, and/or the probation department's pre-sentence report.

THE MOST COMMON SENTENCE

Probation is the most common criminal sentence, received by almost 2 out of 3 offenders. Nearly 9 out of 10 misdemeanants are put on probation, but only 1 out of 3 felons receives straight probation with no prison or jail time. However, because serious offenders are on probation longer, about half of those on probation at any given time are felons.



Source: "Probation and Parole, 1990," *BJS* Bulletin, November 1991.

SUPERVISION

Probation officers oversee both rehabilitation and law enforcement. They monitor behavior and decide when to bring offenders back before the court to have the probation revoked for serious violations. They also may play an active role in getting probationers into appropriate job counseling, drug treatment, or education programs.

VIOLATORS

According to a survey of felons placed on probation in 1986, after 3 years, 38% had no disciplinary hearing or rearrest, while 19% had only a disciplinary hearing. A total of 46% had been sent back to prison or jail, or absconded, with over 80% of these having at least one new felony arrest.

PROBATION PROGRAMS

Intermediate Sanctions are more punitive than traditional probation, yet less severe than long-term imprisonment. Some involve reduced incarceration, such as boot camp or work release programs, but most take place in the community, such as:

- **Residential Drug** Treatment-confinement for 30 days to a year in a therapeutic environment with professionally trained staff;
- **Intensive Supervision Probation** (ISP)-greater control and monitoring of an offender than traditional probation (e.g., at least once a week rather than once every 2 months or less);
- **Electronic Monitoring-using** telephone and signal devices to check offenders' whereabouts;
- **Home** Detention-may or may not involve electronic monitoring;
- **Day Reporting Centers-used** for job training, drug treatment, and education programs;
- **Urine Screens-used** to detect drug abuse (one dirty urine is seldom a basis for probation revocation);
- **Community Service-a** specified number of hours of work, such as hospital aide or cleaning up litter.

COMMUNITY CORRECTIONS ACTS (CCA)

At least 18 states have CCAs that provide financial incentives to local governments for planning and operating intermediate sanction options in the home communities of offenders.

QUESTIONS AN ELECTED OFFICIAL MIGHT ASK ABOUT

PROBATION AND SANCTION OPTIONS

CASELOADS

- *How have total caseloads per probation officer changed in the last 5 years?*
- *Has this affected the number of contacts with offenders?*

During the 1980s, in many jurisdictions, the number of probation officers increased at only half the rate of the number of probationers. Therefore, although the national survey summarized below indicates that only 40% of probationers are ordered to see their probation officer more than once a month, the same survey points out that actual contact may be less:

Initial supervision level	Prescribed number of contacts	Percentage of caseload
Intensive	9 per month	10%
Maximum	3 per month	32
Medium	1 per month	37
Minimum	1 per 3 months	12
Administrative	None required	9

COSTS

- *What are probation program costs per offender compared to jail or prison costs?*
- *What are rearrest (recidivism) rates for similar offenders who participated in various programs?*

Many agencies target funds to reducing caseloads rather than evaluation. However, even when programs are evaluated, caution should be exercised in looking at reported good results. Frequently, low recidivism reflects the criminal histories of the participants selected more than the success of the program. A Florida study found that for those who could have been placed on regular probation, intensive supervision did not reduce recidivism; likewise, for those who could have been placed on intensive supervision, imprisonment did not reduce recidivism.

- *What is the agency's success in collectingfinancialpenalties?*

In 1986, judges ordered 84% of felony probationers to pay an average of $1,812 in fees and penalties. Three years later, less than half of these probationers had paid their obligations in full.

SECURITY

- *Are there any state codes or regulations that bar local officials from placing certain types of offenders in community programs?*

Typical restrictions include absolute bars on offenders who have a history of violent action (e.g., sex offenders and murderers) rather than all who threaten violence (e.g., robbers).

COOPERATION

- *Does the chief probation officer* meet *regularly to discuss alternative programs with the chief judge, district attorney, the sheriff, andlor the defense bar?*

Use of community sanctions often depends on the confidence that court officials have in their management. Busy attorneys and criminal justice officials may not know all the options.

- *Are the police notified about the status and location of probationers?*

Involvement of police in monitoring probationers can assist their crime investigations, improve enforcement, and refocus more of the probation officers' efforts on rehabilitation.

- *How have the probation department, the court, and general government officials addressed concerns of educators, treatment providers, and public employment programs?*

Agencies outside the criminal justice system often resist working with offenders because:

- They may feel that reporting probationers for nonparticipation compromises their treatment goals.
- There may be conflicts in treatment philosophy.
- Probationers have multiple problems that make progress difficult.
- They fear their existing client services and priorities will suffer.

PRISONS

State prisons hold 92% of all prison inmates; federal prisons hold the remainder. From 1974 to 1984, state prison populations increased over **100%** while the federal prison system grew only **14%,** in large part because the federal system handled predominantly white collar crime compared to the street crimes handled by the states. From 1988 to 1992, however, due to increased drug convictions and sentencing reform, the federal prison population doubled, state prison populations grew 44%.

WHAT FACTORS AFFECT IMPRISONMENT RATES?

- **Crime and the Criminal Justice Response—A** state's imprisonment rate is affected by reported crime, arrest rates, conviction rates, use of probation, length of court-ordered sentences, release policies, parole enforcement, and state legislation that controls sentencing and release.
- War on Drugs -The number of persons sentenced to prison for drug offenses increased 150% from 1986 to 1991.
- **Baby** Boom-Prison populations did not fall as the "baby boom" generation moved through the prime crime age (15-35) during the 1980s. While criminal activity peaks at age 21, those who continue to commit crimes spend increasing time in prison.

INTERNATIONAL COMPARISONS

United States	**426**
South Africa	**333**
Soviet Union	**268**

In comparison, inmates per 100,000:

United Kingdom	**97**
France	**81**
Denmark	**68**
Japan	**45**

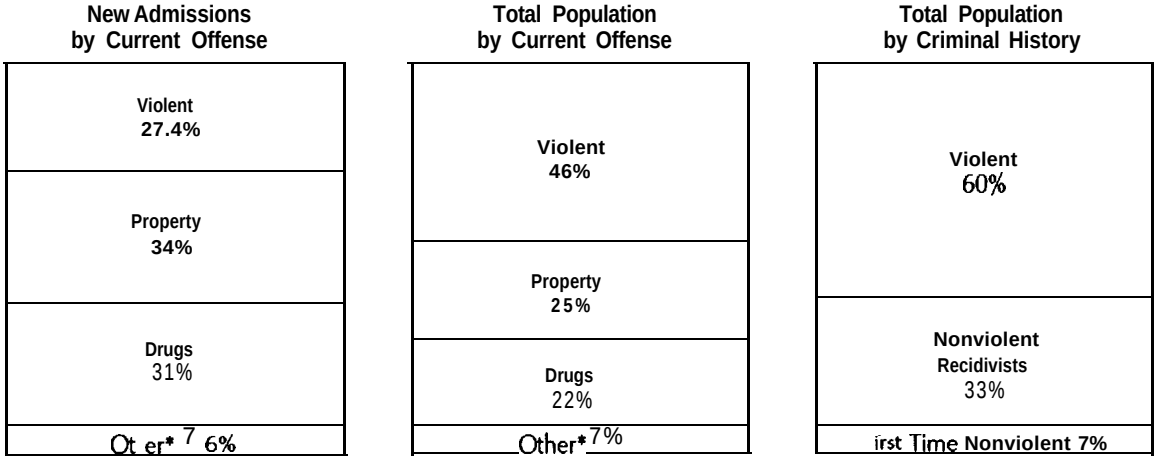
Source: Marc Mauer, *Americans Behind Bars: A Comparison of International Rates of Incarceration* (Washington, DC: The Sentencing Project, 1991).

WHO IS IN PRISON?

Age-Half are over 28.
Race-47% are black, 38% white, 12% Hispanic, and 3% other.
Education-Only 38% have completed high school.
Marital Status-20% are married and 54% were never married; 80% of the females have at least one child, and over 40% of them had their first'child before age 18.
Drug and Alcohol Use-54% admitted to being under the influence of drugs and/or alcohol at the time of the crime; drug testing surveys show a higher percentage.
Family Crime-About 40% had an immediate family member with a prior incarceration record.
Prior Criminal Record-82% had a prior felony conviction. Almost half of inmates with nonviolent records were in prison for at least the third time. Only 7% were nonviolent first offenders, and over 25 percent of these were convicted of drug trafficking.

As the charts below demonstrate, because of the length of time served by violent and repeat offenders, prison populations as a whole have more violent offenders than new admissions.

1991 STATE PRISON POPULATIONS



* Gambling, weapon offense, DUI, nonviolent sex crime, commercial vice, etc.

Derived from U.S. Department of Justice, Bureau of Justice Statistics, Prisons *and Prisoners in the United States,* 1992

QUESTIONS AN ELECTED OFFICIAL MIGHT ASK ABOUT

PRISONS

INMATES AND SENTENCING

- *What have been the effects of new sentencing laws over the last decade?*
- *Are impact statements required?*
- *What can be done to enhance their effectiveness?*

The 221% increase in prison populations has been influenced by legislation leading to increased prosecution and prison sentences. Some states now require budget appropriations to accompany new sentencing laws; however, impacts typically do not occur until after current terms of office.

- *What is the profile of inmates in the state's prison system?*

On average, only 7% of prison inmates are nonviolent, first-time offenders, and 25 percent of these are drug traffickers; 60% are either serving or have previously served time for a violent offense. Of recidivist property offenders, almost half have served time in prison at least twice before.

- *How can inmate classification be improved?*

Good classification can save security costs and improve correctional programming. Answers might include:

- Lack of classification personnel or space increases have compromised initial screening.
- Space is not available to separate out groups of inmates within the prisons.
- Better background information from police and court records would be useful.

SPACE NEEDS

- *How many convicted felons are in local jails awaiting transfer to state prison?*
- *What agreements are there with local jails regarding removal of convicted state felons?*

Backups of state prisoners in overcrowded local jails, often produced by prison overcrowding, has generated significant controversy in many states. Lawsuits have resulted. Increased state payments to cover full costs of keeping state prisoners in local jails may mitigate local reaction. In addition, if prison officials work with sheriffs, administrative changes can reduce tension. Examples include pooled transportation, priority transfers of medical and security problems, and agreement among sheriffs on a formula for determining how many inmates are taken from each jail.

- *What are projections for the types of offenders that need to be housed in the next 2, 5, and 10 years?*
- *Is there a long-range building and program plan that reflects the levels of security required?*

Prison population projections require complex tracking of sentencing trends, parole policies, and criminal histories of offenders as they differ among offense categories, Tracking only total prison population growth masks trends.

- *Do police, court, prosecution, parole board, and legislative representatives, along with criminal justice statistical experts from outside the department of corrections, review prison population projections?*

Insight into policy directions regarding arrest, prosecution, and sentencing priorities will be at least as predictive of future space needs as historic trends.

MANAGEMENT

- *What is the projected need for corrections personnel?*
- *How long does it take to recruit and train officers?*
- *How often is overtime used to staff all security posts because of personnel vacancies?*
- *What is being done to develop future managers?*

Rapid population growth in most prison systems has put great pressure on personnel management. Increased cost and decreased security can result.

- *How does the private sector work with the state prisons?*

It is common to contract for medical services, prison industries, and construction. Security and liability issues are major concerns in turning over an entire facility to a private contractor.

PRISON AND JAIL PROGRAMS

Probation programs do not require prison or jail bed space, but space also can be freed through programs for offenders whom the courts have determined must be confined. Goals of these programs are shorter periods of incarceration and/or less likelihood of reincarceration for new crimes.

TYPICAL PROGRAMS

Work Crews and Trustees—Most jails and prisons try to keep inmates busy simply to reduce security problems. It also is possible to realize operational cost savings.

Prison/Jail Industries--Only 10% to 15% of state prisoners are involved in prison industries; the federal prison system has a 25% to 30% participation rate. Almost all programs are limited by state or federal law to providing products for government agencies (license plates, printed material, furniture, uniforms, etc.) and not for sale to the public.

Work Release- Jail inmates may be released to work in the community. Supervision methods vary throughout the country and may include probation officers, private security firms, sheriffs' deputies, or the inmates' employers in cooperation with the sheriff.

Vocational Training and Apprenticeships-Prisons may use skilled instructors in structured classrooms to teach such subjects as electronics, mechanical engineering, sewage plant operation, or cosmetology. Only about 25 percent of state prison inmates are involved in full- or part-time academic or vocational education programs.

Basic Literacy-At least 20 states encourage prison inmates to participate in literacy programs. Inducements include favorable parole review, additional "good time," or a higher paying prison job.

GED (High School Graduate Equivalency Diploma)-More than half of those in jail failed to complete high school. Jail GED programs conducted in conjunction with the community's adult education agency assure that the inmate will continue working toward a GED after release. Prison programs typically are conducted **by** prison personnel.

CONFLICTING MISSIONS OF PROGRAMS

Keeping all inmates busy working at anything for security and as punishment
VERSUS
Concentrating resources to develop job skills and meet the education and substance abuse therapy needs of those near release

Running farm, construction, and industry activities to maximize output
VERSUS
Training unskilled inmates

Eliminating all potential security risks while the inmate is legally under penal control
VERSUS
Staged release through less costly reduced custody and community based work programs and halfway houses

Drug Therapy-Long-term positive results require at least six months of treatment. Very few treatment programs exist in prisons; most involve only counseling and group therapy.

Mental Health Programs-Mental health services can include treatment for depression, schizophrenia, and other clinical disorders. Therapy for sex offenders also is important. However, because most prisons are located in rural areas, it is difficult to attract professionals to work in prison settings even part time.

Boot Camp/Shock Incarceration—In exchange for a reduced sentence, first-time, nonviolent offenders are voluntarily subjected to the rigors of military-type discipline. Programs also may include drug counseling, education, and employment training. Although ongoing research by the National Institute of Justice finds no evidence that the strict regimen reduces recidivism, recidivism is not increased and the shortened stays save prison costs.

QUESTIONS AN ELECTED OFFICIAL MIGHT ASK ABOUT

PRISON AND JAIL PROGRAMS

REHABILITATION

- ***How can we get individuals who have industrial, educational, or mental health and drug therapy expertise to work in corrections?***

Approaches include hiring experts, training existing correctional personnel, contracting for services from the private sector, and contracting with public agencies.

- ***What efforts are made to track the success of rehabilitation programs in reducing recidivism?***

Budget pressures created by rapid prison and jail growth and lack of coordination with other criminal justice agencies have tended to limit follow-ups and evaluations of correctional programs.

- ***Is pre-release programming conducted in cooperation with parole authorities to assure that inmates will be realistically prepared while in a controlled setting and will be in contact with follow-up in the community immediately on release?***

Especially, if there are no prison institutions near urban settings, contact between the prison and the parole personnel who will supervise released inmates is minimal. This can undercut the effectiveness of programming efforts.

- ***Describe efforts to involve local government agencies that can provide adult education, drug treatment, alcohol abuse, and employment services in jail programming.***

As with prisons, lack of coordination and follow-up can undercut the effectiveness of any programming begun in the jail. Given the proximity of a jail to local services, it also may not be cost-effective to develop. additional staff within the jail.

PRISON INDUSTRIES

- ***Describe legislation that limits sale of prison and jail products.***
- ***What would be the potential for increased inmate work if these restrictions were removed?***

Federal legislation affects state and local programs because it applies to products sold over state lines or for interstate use. Many states also have laws that limit sales of prison and jail products in order to reduce competition with private firms and with labor. Some systems allow private companies to bid to run a prison/jail shop as a branch of their business.

SECURITY

- ***How are decisions made about which inmates will participate in reduced security programs?***
- ***Are there written guidelines? When were they last reviewed and by whom?***
- ***How is institutional understanding and application of these guidelines tracked?***

It only takes one incident to set back a program. However, guaranteeing security would eliminate most programs outside of an institution's secure perimeter, such as work release, furloughs, and halfway houses.

- ***What are the security requirements for private halfway houses and work release contracts?***
- ***How do you enforce those requirements?***

As in the previous question, assuring the capability for and performance of ongoing monitoring is important for the long-term viability of alternative programming and to answer concerns about public safety.

INTERAGENCY COOPERATION

- ***Do corrections department representatives regularly participate in meetings of the state's judicial council and the bar?***

Understanding the current efficacy and operational constraints of prison and jail programs may influence sentencing. It also could lead court officials to back initiatives to assure effective carry-through of intended sentences.

SENTENCING AND PAROLE

SENTENCING

Legislatures determine criminal acts and the minimum and maximum penalties that a judge may impose.

Indeterminate Sentencing-The judge designates a minimum and maximum range of incarceration (e.g., 3 to 6years in prison). The release date within that range is determined by parole authorities. In most states, the majority is not released at the first parole hearing, and there is usually a subsequent annual review.

Determinate Sentencing-The judge designates a fixed period of incarceration that must be served (minus "good time" credit). Ten states and the federal government have adopted determinate sentencing.

Sentencing Guidelines-Sentencing guidelines restrain judicial discretion through a grid of prescribed sentences, which correlates the nature of the offense and the offender's criminal background. In some states, the guidelines are advisory; in other states and in the federal courts, judges must impose a penalty consistent with the criteria or provide a written explanation. Departures may be appealed.

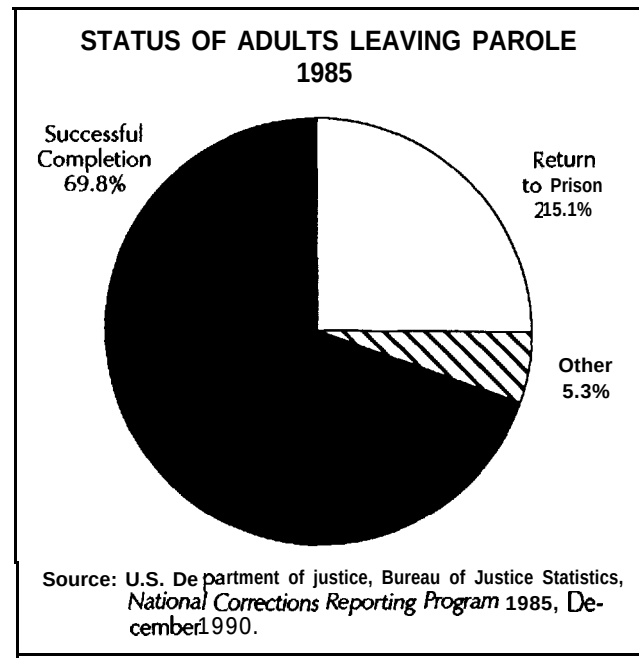
Mandatory Sentencing Laws-Some legislatures have prescribed mandatory sentence lengths for specific crimes. The judge may not suspend the sentence or give probation. However, in states with an indeterminate system, the offender may be paroled.

GOOD TIME

Good time is a reduction in the sentence given by the judge, based on good behavior while in prison or jail. The amount of time by which a sentence can be reduced usually is limited by legislation.

PAROLE

Offenders typically are released from prison by a parole board before their sentences (as reduced by good time) are completed. Parolees are required to follow certain rules (e.g., report whereabouts, obtain counseling) while serving the remaining portion of their sentences in the community.



Source: U.S. Department of justice, Bureau of Justice Statistics, *National Corrections Reporting Program* 1985, December1990.

PAROLE SUPERVISION

Like probation officers, parole officers perform both "cop" and "social worker" roles. However, parolees generally have far more serious criminal histories than probationers, requiring greater levels of surveillance and supervision. Parole officers can arrest parole violators and return them directly to jail or prison to await the parole board's review of the violation. As rehabilitation counselors, parole officers may make job training or drug treatment referrals and assist in the reestablishment of family and community ties.

TRENDS IN USE OF PAROLE

State and federal determinate sentencing policies have led to a decrease in discretionary parole from almost 72% of all releases in 1977 to only 39% in 1989. The proportion of inmates serving their full sentence has stayed at 17%. However, the drop in discretionary parole has been countered almost completely by mandatory releases brought about by prison overcrowding.

MORE PAROLEES BEING SENT BACK TO PRISON

Parole and probation violators made up less than 10% of prison admissions in 1974; in 1989, they accounted for over 25%. Reasons for this increase include

- The relatively indiscriminate conditions of mandatory or emergency releases to relieve overcrowding;
- Increased emphasis on enforcing conditions of parole; and
- Large caseloads for parole officers, preventing them from focusing on rehabilitation.

QUESTIONS AN ELECTED OFFICIAL MIGHT ASK ABOUT

SENTENCING AND PAROLE

GRANTING PAROLE

- *What percentage of inmates is granted parole on the first eligibility date? Second? Third? Fourth or more?*
- *What factors govern the granting of parole?*
- *Does the board have guidelines?*

The most misleading impression of indeterminate sentencing is that an inmate eligible for parole will be granted parole. In many states, this is the exception rather than the rule. However, state parole rates and procedures for subsequent reviews vary considerably.

- *How many cases were reviewed last year? What is the total time spent per case?*
- *How has the amount of time spent per case changed in the last 5 years?*

Parole personnel review the inmate's prison disciplinary record, past offense record, rehabilitative program participation, and plan on release (e.g., residence, job prospects, and community contacts). A victim impact statement also may be available, as well as letters on the inmate's behalf. Parole authorities may agree to hear such appeals directly. Prison population growth means parallel growth in parole caseloads and can compromise the procedures outlined above.

- *Are there statutory requirements for notification of an inmate's parole eligibility?*
- *Are there notification requirements before an inmate is released?*

State laws include routine notification of the prosecutor and sentencing judge, the local law enforcement agency, and, on request, of the victim or immediate family.

- *What authority should the parole board have in directing that offenders participate in treatmentprograms?*

Paroling authorities often would like to see inmates given a trial period in reduced security settings before they are granted parole. Prison authorities may feel that as long as they will be held responsible for the security of these inmates, they will determine placement. Once inmates are released, paroling authorities often do not have the ability to ensure that community treatment is available for parolees.

MANAGEMENT

- *Could an inmate who has been granted parole still be behind bars after the parole eligibility date?*
- *How automated is the system to compute an inmate's eligibility date, schedule a hearing, reach a board decision and, if parole is granted, complete the paperwork for timely release?*

Delays in releasing inmates can add significantly to prison costs. In a prison system of 10,000 inmates, 5,000 on average are released during the year. Even a one-day average delay would add $250,000 to the prison budget, computed at an average annual cost of $18,000 for a minimum security bed.

CASELOADS

- *What is a parole officer's caseload?*
- *How has this changed in the last 5 years?*
- *How many contacts per month take place between parole officer and parolee?*
- *What percentage of prisoners successfully completes parole?*

This information is important in judging whether growth in the percentage returned to prison for parole violations is the result of a direct policy decision to increase enforcement or the inadvertent result of weakened parole supervision.

- *In budget development, are parole caseload projections coordinated with techniques used to project the prison population?*

Many states have realized the need for ongoing sophisticated tracking of prison population growth trends to assure timely construction of needed space. If parole agencies use these data in developing their budget requests, bottlenecks in timely review and release could be avoided.

PRISON AND JAIL CONSTRUCTION

NEED FOR PRISON SPACE

Prison populations grew 134% during the 1980s. The average annual increase was 8.9%. Growth in 1990 translated into a need for over 1,100 new prison beds every week. As the table indicates, growth and the need for additional prison beds are not limited to one region or to highly urbanized states:

10 STATES WITH THE LARGEST RECENT INCREASES IN PRISON POPULATION

1990-91	Percent Increase	1985-91	Percent Increase
Rhode Island	15.9%	Colorado	129.9%
Washington	14.5	New Hampshire	124.5
New Hampshire	14.2	Connecticut	112.3
Arkansas	13.9	New Jersey	107.2
Idaho	12.7	Michigan	105.1
Ohio	12.3	California	104.0
New Jersey	11.1	Kentucky	96.7
Tennessee	10.7	Rhode Island	81.6
Nevada	10.5	Arizona	79.4
Louisiana	10.0	Massachusetts	74.4

Source: "Prisoners in 1991," *BJS Bulletin,* May 1992.

NEED FOR JAIL SPACE

The average annual increase in local jail populations was 8.9% from 1983-1990, although greater changes occurred in some years. Record growth of over 15% was reported in 1988 and in 1989. This growth reflected increased demands to hold drug arrestees for trial and, in some states, large numbers of state inmates awaiting transfer into overcrowded prisons. In 1990, the growth in jail populations was only 5.9%, due in part to the fact that there were 17% fewer state inmates awaiting transfer.

COURT OVERCROWDING SUITS

Eighty percent of jail inmates are in 508 jurisdictions with large jails holding more than 100 inmates, and 25 percent of these large systems have at least one jail under court order to reduce overcrowding. Thirty-three states are under federal court order to relieve overcrowding in prisons.

HOW IS CAPACIN MEASURED?

Different definitions of prison and jail capacity often frustrate policymakers and make comparisons between systems confusing. Most overcrowding suits are based on interpretations of Supreme Court rulings in 1979 and 1981, which held that two inmates in a 75-square foot cell or even a 63-square foot cell was not unconstitutional, depending on the totality of conditions.

Prisons or jails built before these rulings may have an original **design capacity** based on fewer square feet, but their **operating capacity** to meet court standards will be less. In contrast, the design capacity of other facilities, such as those in the federal prison system, may exceed court standards. These systems may report that they are operating **over capacity** at levels other systems would not.

Capacity also may be determined by interpretations of **totality of conditions.** For example, American Correctional Association (ACA) standards cover items such as out-of-cell space and hygiene requirements, as well as availability of individual cells to isolate prisoners for safety. Adherence to ACA standards generally is regarded as important in defending liability suits. Finally, Clean Water Act requirements may limit capacity because the institution cannot exceed sewage discharge limits.

COST SAVINGS IN DESIGN

Lifetime operating costs are about 10 times the cost of construction. Reducing the number of required security posts required can produce real savings. Standardized components save design and engineering costs, improve construction bids, and support better management and personnel training in large prison systems.

QUESTIONS AN ELECTED OFFICIAL MIGHT ASK ABOUT

PRISON AND JAIL CONSTRUCTION

SPACE NEEDS

- *How is need for future space projected?*
- *Does the projection include the types of inmates expected and the mix of security levels required?*

Computer technology has fostered development of several sophisticated projection models. These models require jurisdiction-specific data to track trends, such as the types of crime committed and, for each major class of crime, the likelihood of arrest and sentencing to prison or jail, the length of sentence, and the likelihood of early release. Modeling can project security needs, thus avoiding unnecessarily costly construction and poor program support.

- *What criminal justice system changes have been made to reduce the need for new space?*
- *Have all key criminal justice officials reviewed population projections to determine whether they are in line with their insights and intentions?*

These questions are particularly appropriate for jails because they are affected by all other elements of the criminal justice system. Need for more jail space represents an opportunity for general government officials to press for system coordination, planning, and use of alternative procedures.

- *What is the need for juvenile facilities?*

At this time, juvenile facilities do not have the overcrowding problems of the adult system. On average, juvenile institutions operated at 87% of capacity in 1987. These facilities tend to be old, however, and the 15% that are designed to hold more than 100 youths may not serve current programming goals.

SITING

- *What are the prime operating concerns about the location of the new facility?*

Depending on the type of facility, concerns will vary from the availability of a large enough labor pool to access to the community for offender reintegration and work release.

- *Is this jurisdiction working with other localities to develop a regional jail facility?*

In rural counties, regional facilities can replace substandard jails and cut operating costs. In other areas, they often supplement existing jails to avoid siting controversies and/or to provide less costly housing for sentenced misdemeanants who do not require the security precautions needed for repeat or violent felons awaiting trial.

STAFFING

- *What is the current inmate/staff ratio?*
- *What policy options can reduce that ratio and what are the estimated cost savings?*

If the inmate/staff ratio is decided before design work is started, correctional professionals can maintain control over the type of facility design that meets their management philosophies, while long-term operating costs are kept down. Over 30 years, operating costs will be at least 10 times more than the cost of construction.

FUNDING

- *What assistance is available?*

States that fund a portion of jail operating costs are particularly active in helping localities avoid long-term inefficiencies. In addition, the National Institute of Justice has a ***National Directory of Corrections*** *Construction,* which enables states and localities to review the design of facilities throughout the nation. Standardized prototype design elements are being developed to save construction time and money.

THE JUVENILE SYSTEM

JUVENILE OFFENSES

There are two types of juvenile offenses:

- **Delinquent** Acts-acts that would be considered crimes if committed by adults; and
- **Status** Offenses-acts that are illegal only when committed by children, such as truancy, curfew violation, alcohol and tobacco use, and ungovemability.

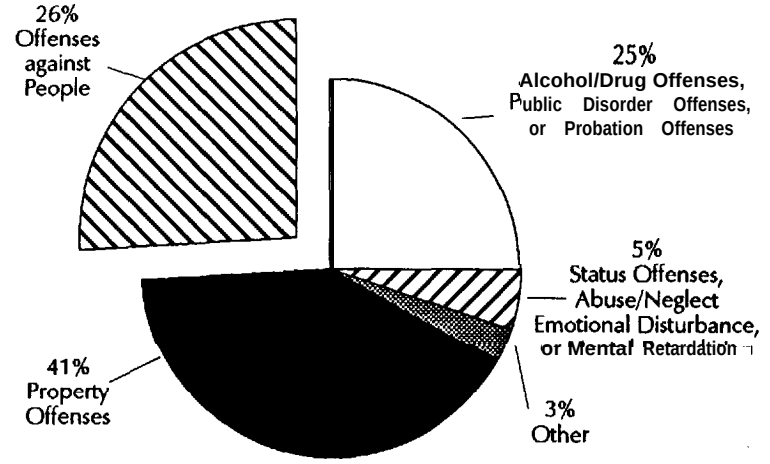
Children in Need of Services **(CHINS, CINAs,** or **other acronyms)** are children brought into the juvenile justice system usually as status offenders and have not committed serious crimes. Status offenders sometimes are kept in juvenile facilities more often and for longer periods than delinquents.

REFORMS

In 1974, Congress passed the Juvenile ***Justice and Delinquency Prevention Act*** (JJDP) to remove status offenders from detention centers and training institutions and to keep juveniles out of local jails or lose federal funding. In 1989, $46 million was given to the states to support the mandates of JJDI? Its success is measured by the fact that 95% of the juveniles in publicly run facilities in 1989 were committed for a delinquent act.

In 1972, Massachusetts became the first state to close its large state juvenile justice institutions and establish a system of small ***community-based*** facilities ***and*** services. More states are moving in this direction. Evaluations indicate that this approach is less expensive and at least as effective as institutionalization for most juveniles.

TYPES OF OFFENSES AND OTHER REASONS FOR WHICH JUVENILE OFFENDERS WERE HELD IN PUBLIC JUVENILE FACILITIES, 1989



Source: "Children in Custody, 1989," *Juvenile* justice Bulletin, January 1991.

DIFFERENCES BETWEEN JUVENILE AND ADULT SYSTEMS

- An **arrest is not necessary** to bring a juvenile into the criminal justice system. Juveniles can be referred by police officers, school officials, social services agencies, neighbors, and even parents.
- **Most cases are handled informally** by an intake unit staffed by either the juvenile court, a general government agency, or the prosecutor's office.
- For a juvenile case to proceed to court adjudication, the intake unit must file a petition. If the juvenile is detained, there is **no bail system** in most states.
- The informality of juvenile procedures has raised **concerns about due process.** For example, **less than 50% of juveniles are represented by a lawyer.**
- On a finding of **"not innocent,"** the judge may use many alternatives, including probation, restitution, foster care, treatment programs (drug rehabilitation, shoplifting prevention, driver education), or commitment to a juvenile correctional institution.
- **Juvenile court proceedings are closed to the public** to protect the child.
- **A person's juvenile record remains confidential** under the assumption that a person should not be marked for life because of youthful indiscretion.

TREATING JUVENILES AS ADULTS

Of the juveniles arrested, 5% are transferred from the system and are tried as adults if the juvenile court judge agrees. The growing number of juveniles being arrested for serious crimes, combined with research documenting high levels of juvenile crime in the backgrounds of adult career criminals, has opened new debate over whether the adult justice system should gain access to the juvenile record the first time a person is charged with a felony as an adult.

QUESTIONS AN ELECTED OFFICIAL, MIGHT ASK ABOUT

THE JUVENILE SYSTEM

COMPLIANCE WITH FEDERAL LAW

- *Is this jurisdiction in compliance* **with** *the federal* **Juvenile Justice and Delinquency Prevention Act** *to remove status offenders from detention centers and training institutions and to remove juveniles from the adult jail?*

The 1988 Children in Custody census reported that only 9,741 status offenders were being held in secure detention, a 95% drop since 1977. There were still 18,417 juveniles in adult jails, with two states accounting for almost 14,000 of that number.

TRENDS

- *What is the pattern of growth in the number of juveniles in the juvenile justice system?*

From 1975 to 1982, juvenile courts handled 8% fewer cases, due in large part to the 37% reduction in status offender cases. However, from 1985 to 1989, admissions to juvenile facilities increased 14%, even though the number of 10- to 19-year-olds in the general population has decreased since 1980.

- *What percentage of juvenile cases is removed to adult courts for trial?*
- *What are current trends in juvenile crime?*

The percentage of juveniles tried as adults varies greatly among court systems. This may reflect the treatment alternatives available through the adult courts as much or more than the type of crime committed. Disturbing trends in crimes committed by juveniles include:

- In 1990, 19.2% of the arrests for violent crime were juveniles, compared to only 8.5% in 1987.
- Arrests of males under 18 for murder increased from 1,178 in 1982 to 2,352 in 1990, despite only a 3% increase in the total number of juvenile arrests.
- In 1987, 48% of the juveniles in state-operated correctional facilities reported at least 6 prior arrests; 58% had a current or prior history of a violent offense.

PLACEMENT

- *How many juveniles are housed outside their home area in state facilities? in private facilities?*
- *What policies determine these placements?*
- *Does one office approve private facilities used by all education, mental health, and juvenile agencies?*

Many state facilities were developed under a philosophy of equal access to treatment. However, systems without the coordination necessary for a juvenile's effective transition back into the community are putting more emphasis on local public and private facilities and programs. Centralized approval and oversight of private treatment facilities can save costs.

INTERAGENCY COOPERATION

- *Is there a coordinated effort to identify the needs of and provide services to families of juveniles?*

"New Beginnings" in San Diego County is one example of an integrated program. It uses facilities on school grounds for the delivery of health, welfare, education, and juvenile justice services to families. The goal is to reduce the red tape that discourages families from pursuing help and to coordinate services.

- *What mechanisms exist for cooperation among all agencies serving juveniles?*
- *Are there regular procedures for coordination on individual cases? for agency budgeting, planning, and innovation?*

If a facility's education program is not provided by or conducted in close cooperation with the local school system, juveniles may be discouraged when their efforts are rejected on return to a regular school. The National Institute of Medicine found that a follow-up period of least 6 months is necessary for drug treatment. Community and victim restitution programs must be organized to assure that juveniles take court orders seriously.

FINANCING

FASTEST GROWING AREA OF SPENDING

Criminal justice has been the fastest growing area of state/local expenditures. From 1973 to 1990:

- State own-source funding increased by 759% due to prison population growth and, in many states, the merging of local courts into state systems.
- County own-source funding growth was held to 491%, despite jail growth, due to increased state funding.
- Municipal own-source funding, which is principally for policing, increased by 330%.
- Federal funding increased by 345%. Although federal direct costs grew more, federal aid to states and localities dropped.

PER CAPITA SPENDING BY STATE AND LOCAL GOVERNMENTS ON MAJOR PROGRAMS 1970-1990

Governmental Functions	Per Capita Spending in Constant 1985 Dollars 1970	1975	1980	1985	1990	Percent Change 1970-1990
Education	$710	$807	$824	$807	$934	32%
Public Welfare	209	268	292	300	374	79
Hospital and Health Care	148	182	193	208	253	71
Highways	247	204	189	189	207	-16
Police Protection	70	[illegible]	[illegible]	[illegible]	[illegible]	49
Corrections	25	[illegible]	[illegible]	[illegible]	[illegible]	232
Court Related	na	na	na	34	48	na

Source: Compiled from U.S. Department of Commerce, Bureau of the Census data.

URBAN FISCAL STRESS

These averages mask the stress on urban counties and cities. Spending for police has increased significantly faster in large cities than in small municipalities, and urban counties have experienced equal growth in courts and jails. Urban governments that do not fund schools may spend half their budgets on criminal justice agencies. The fiscal stress of expanding criminal justice demands has been greater on many urban budgets than on most states, where criminal justice comprises only 10% of the budgets.

CRIMINAL JUSTICE RNENUES

Criminal justice often takes surpluses that could be used for more popular programs or tax relief. Therefore, many officials want to raise more revenue through criminal justice activities. To help budget these potential revenues realistically, the following list is presented in the order of likelihood of collection and of meeting full program costs. The actual amount **of fees, fines, court costs, and restitution collected will depend on ability to pay, collection rate, the amount of the fee, and judicial priorities:**

Prison and Jail Industry Sales-The price of goods made by inmates or wages paid by their employers can be set to cover total program costs.

DUI Fines and Counseling Fees-Most drunk drivers are employed; therefore, court-ordered drunk driving programs usually can be supported completely by fees.

Drug Treatment Fees-Although it is estimated that 2/3 of all persons illegally using drugs have jobs, drug and alcohol abuse treatment programs also need to serve all types of criminals.

Supervisory Fees-It is increasingly common to charge offenders a fee for their supervision:

NUMBER OF STATE CORRECTIONAL FEE ENABLING STATUTES

Years	Prison Inmates	Jail Inmates	Parolees	Probationers
Before 1970	12	17	3	8
1970-1987	15	9	12	20
Total	36	26	15	28

Court Costs and Fines-The less serious the crime, the more criminal justice costs can be covered by court costs and fines. Day fines relate the amount of the fine to a person's income.

Restitution-In a 1986 survey, 24% of violent offenders and 50% of property offenders were ordered to pay restitution. Only half were order to pay more than $500.

Drug Assets-Nearly every state has a civil asset forfeiture statute; however, procedures are highly technical and revenues for localities and most states can vary considerably year to year.

INTERGOVERNMENTAL FUNDING

In 1988, on average, state governments funded 40% of state/local criminal justice expenditures. Six states funded more than 60% (Alaska, Delaware, Kentucky, North Carolina, Vermont, and Virginia). Although 7% of federal criminal justice spending went to state and local governments in 1990, this constituted only 1% of total state-local criminal justice expenditures. In 1973, 27% of federal funds went to state and local assistance and made up 5% of their expenditures.

QUESTIONS AN ELECTED OFFICIAL MIGHT ASK ABOUT

FINANCING

FUNDING RESPONSIBILITIES

- *What criminal justice agencies are funded by this unit of government?*
- *What is the funding arrangement for each agency?*

There are wide differences between states and between urban and rural localities in the criminal justice agencies for which they are responsible. It also is common for the state and localities to fund only some aspects of court-related agencies and of juvenile services. Split responsibilities require that governments agree on budgeting assumptions related to caseload, staffing, and facility needs.

REVENUES

- *What portion of fines, fees, and court costs actually are collected?*

Generally, the amount collected is higher if enforcement is perceived to help fund the collecting agency's budget or support its program goals. Fines and court costs for misdemeanors and traffic offenses often equal the cost of adjudication and collection. In contrast, felony courts generate a much smaller percentage of their costs.

- *Who and what determines the size of fines, restitution, or fees charged for criminal justice services?*

Ability-to-pay affects collection rates, program participation, and relative punishment. Day fines are an alternative that multiplies units of punishment as determined by a judge times ability-to-pay as determined administratively; however, legislative limits on fine amounts may need to be removed to be able to charge high-income offenders the relatively higher penalties.

SAVINGS

- *How can costs be cut?*

See questions related to budgeting issues under individual agency and program discussions. Important considerations in financing criminal justice and controlling system impacts include:

- Projecting personnel needs to maintain program quality and control overtime;
- Statistical modeling for long-term facility needs and to project policy impacts; and
- Improved case management.

To assure true cost savings, private sector contracts need to contain specific performance standards, and liability and contract monitoring costs need to be fully estimated.

- *What mutual aid arrangements exist or are being explored to save costs?*

Many localities share expensive seldom-used investigative tools; crime lab services; detention or jail facilities to house women and juveniles; and innovative programs for sex offenders or other special populations.

INTERGOVERNMENTAL AID

- *How is the amount of money localities receive from the state determined? If by formula, how could the formula be improved?*

Many states pay a portion of local services through formula allocations for costs such as indigent defense, community corrections, per diem jail payments, or selected salaries. Regular increases to reflect actual local costs is key. Block grant formulas that combine crime rates and poverty measures target funds to where criminal justice needs are the greatest, while formulas that reflect local justice expenditures or prime crime age population support law enforcement generally.

- *What determines how much federal funding the state receives?*
- *What proportion of federal funding is used for state programs? for local programs?*

Federal funds typically are allocated to states based on population and must be suballocated to localities in the same proportion as existing state/local criminal justice funding.

APPENDIX A

CRIME DEFINITIONS

FELONIES

Widely defined as crimes that have the potential of being punished by more than one year in prison. The major felony catagories are:

Violent *felonies*

Murder

Intentionally causing the death of another person without extreme provocation or legal justification; causing the death of another while committing or attempting to commit another crime. Murder excludes any type of manslaughter, conspiracies to commit murder, solicitation of murder, and attempted murder,

Non-negligent (voluntary) manslaughter

Intentionally and without legal justification causing the death of anotherwhen acting under extreme provocation.

Rape

Forcible intercourse (vaginal, anal, or oral) with a female or male. Includes forcible sodomy or penetration with a foreign object (which is sometimes called deviate sexual assault); excludes statutory rape or any other nonforcible sexual acts with a minor or with someone unable to give legal or factual consent. Includes attempts.

Robbery

The unlawful taking of property that is in the immediate possession of another, by force or the threat of force. Includes forcible purse snatching, but excludes nonforcible purse snatching, which is classified as larceny/theft. Includes attempts.

Aggravated assault

Intentionally and without legal justification causing serious bodily injury, with or without a deadly weapon, or using a deadly or dangerous weapon to threaten, attempt, or cause bodily injury, regardless of the degree of injury if any. Includes attempted murder, aggravated battery, felonious assault, and assault with a deadly weapon.

Property Felonies

Burglary

The unlawful entry of a fixed structure used for regular residence, industry, orbusiness, with or without the use of force, to commit a felony or theft. Includes attempts.

larceny

The unlawful taking of property other than a motor vehicle from the possession of another, by stealth, without force or deceit. Includes pocket picking, nonforcible purse snatching, shoplifting, and thefts from motor vehicles. Excludes receiving and/or reselling stolen property (fencing) and thefts through fraud or deceit. Includes attempts.

Motor vehicle theft

The unlawful taking of a self-propelled road vehicle owned by another. Includes theft of automobiles, trucks, and motorcycles but not theft of boats, aircraft, or farm equipment (which are classified as larceny/theft). Also includes receiving, possessing, stripping, transporting, and reselling stolen vehicles and unauthorized use of a vehicle (joyriding). Includes attempts.

Drug trafficking

Includes manufacturing, distributing, selling, smuggling, or "possession with intent to sell." Includes attempts.

Other Felonies

All felony offenses not listed above. Includes drug possession, forgery or fraud, arson, weapon possession, negligent manslaughter, receiving stolen property, statutory rape, and sexual assault (excluding rape). Includes attempts.

MISDEMEANORS

An offense that is punishable by less than one year of incarceration in a county or city corrections facility, including drunk driving, minor drug offenses, simple assaults, drunkenness, vandalism, and shoplifting.

APPENDIX B

GLOSSARY

ADJUDICATION

The point in the criminal process at which a judge renders the official judgment of the trial court as to the defendant's guilt or innocence.

ALTERNATIVE SANCTIONS

Punishments used mainly for nonviolent offenders that serve as an alternative to jail or prison time. See Intermediate Sanctions, Community Service, Intensive Supervision Probation, Electronic Monitoring, Residential Drug Treatment.

ARRAIGNMENT

A court proceeding in which the defendant is informed of the formal charges and asked to enter a plea. This proceeding normally occurs after the issuance of an indictment or information but, for certain crimes, may take place during the initial appearance.

AUTOMATED FINGERPRINT IDENTIFICATION SYSTEM (AFIS)

A system that utilizes computers for extensive searches of fingerprint files for close matches to a fingerprint. Without computerization, manual searches can be made using only a suspect's name.

BAIL

A sum of money or other security that is posted to assure the future appearance of the defendant at every stage of the criminal proceedings. Such money or security is to be forfeited if the defendant does not appear in court as directed. Includes Full Cash Bond, Surety Bond, Deposit Bond, and Unsecured Bond.

CASE MANAGEMENT

Differentiating types of cases by processing requirements and monitoring and facilitating the movement of the case by continuing contact and coordination.

CHARGE SCREENING

Usually undertaken by the prosecutor. The decision is made whether or not an arrestee is charged with a crime based on a review of the legal elements of the case and whether there is probable cause that the charge will hold up in court.

CITATION

An order issued by a law enforcement officer directing that a person appear in court at a later date to answer criminal charges. Often refers to orders issued to traffic offenders which may require only payment of a fine.

COMMUNITY CORRECTIONS

Encompasses a range of residential and nonresidential programs and services including those that are designed to divert prison-bound nonviolent offenders, control and supervise offenders with community sentences (i.e., probation with conditions), and supervise offenders at the conclusion of prison terms. Probation and parole with varying levels of supervision remain the mainstays of community-based corrections.

COMMUNITY POLICING

Encourages police officers to be seen, take preventive action at sites of repeated criminal activity, enlist other agencies to solve problems for the community, and build positive relationships with the community.

COMMUNIN SERVICE

Requires offenders to perform public service work, such as assisting in a hospital emergency room or collecting trash in parks, as a means of alternative sentencing.

COMPLAINT

A prosecution document filed with the court listing criminal charges.

CONCURRENTE SENTENCES

The total sentence time is the same as the time for the longest sentence. Concurrent means "at the same time."

CONDITIONAL RELEASE

Requires a defendant to meet court conditions (i.e. drug testing) in order to be released into the community. Failure to meet the conditions usually results in incarceration.

Consecutive Sentences

The total sentence time is the sum of the sentence lengths. Consecutive means "one after another."

Court Costs

A flat, monetary rate that a person who has been convicted of a crime is required to pay to the court.

Court Orders

Orders initiated by the court, usually to change the policy of any one of the criminal justice branches. Widely used to change jail or prison inmate capacity policies.

Determinate Sentencing

The judge sets the type and length of prison sentences within statutory limits, but the parole board may not release prisoners before their sentences have expired, minus time off for good behavior or "good time."

Discretionary Parole Release

Release date is decided by a parole board or other administrative authority.

Diversion

The suspension at any point of formal criminal processing of an alleged offender and the referral of that person to a treatment program inside or outside the criminal justice system. Successful completion of treatment results in dismissal of the case; violations of conditions set at the time of diversion may result in reactivization of the case.

Electronic Monitoring

Electronic technology that allows law enforcement or corrections personnel to determine whether an offender remains at home during house arrest; used as alternative sanction to jail or prison.

Emergency Release

Legislation, a court order, or an executive order that automatically releases certain prisoners when prison capacity exceeds institutional limits.

Fee

An amount of money a person must pay in return for some type of service (e.g., counseling, drug treatment, or supervision).

Felony

Widely defined as crimes that have the potential of being punished by more than one year in prison.

Fine

The penalty imposed on a convicted person by a court, requiring the payment of a specified sum of money to the court. Fines are used as a punishment to the convicted person and may be utilized with other punishments.

Good Time

Days earned for good behavior by prisoners that are used to reduce the stay in prison.

Grand Jury

A jury of citizens that decides whether or not to charge an accused person with a crime. The police, prosecutor, and some witnesses are present. The defendant is never present.

Halfway House

A facility in which offenders are housed within the community under some form of supervision. Used generally for offenders just released from prison (halfway out) or offenders considered too risky for probation but not dangerous enough for prison (halfway in).

House Arrest

Alternative sentence under which offenders serve their sentences at home and are allowed to leave only for approved activities, such as work or community service.

Indeterminate Sentencing

The judge has primary control over the upper and lower bounds of the length of prison sentences within statutory limits, but actual time served is determined by the parole board.

INDEX CRIMES (PART I OFFENSES)

Eight classes of offenses included by the FBI in Part I of its Uniform Crime Report. They are labeled the "serious" crimes and include criminal homicide, forcible rape, robbery, aggravated assault, burglary, larceny/theft, motor vehicle theft, and arson (see also Part II Offenses).

INDICTMENT

A document by which a grand jury formally files charges against a person. It arises out of matters placed before the grand jury by a prosecutor.

INDIGENT DEFENSE SYSTEMS

Counsel is provided to those accused of crimes who cannot afford a lawyer to defend them. Includes three types of defenders: assigned counsel, who are randomly appointed by the court from a list of practicing lawyers; public defenders, who work specifically with indigent cases; and contract attorneys, who are contracted out to the courts.

INFORMATION

A document filed by a prosecutor with the court formally charging the accused with a specific crime.

INTENSIVE SUPERVISION PROBATION (ISP)

Increased supervision, surveillance, and program support for offenders on probation; caseloads for supervising officers are smaller than regular probation caseloads.

INTERMEDIATE SANCTIONS

Sanctions issued to offenders that do not involve jail time. Includes community service, intensive supervision probation, day reporting centers, home detention, intensive drug treatment with urine screens, boot camp, and work release programs.

JAIL

Secure facility, usually operated by local governments, to hold persons awaiting trial or offenders sentenced to a term of one year or less (those charged with misdemeanors). In some instances, jails are used to house overflow prisoners from state prison facilities.

MANDATORY SENTENCING

Law requires the court to impose a sentence of incarceration (usually including length of incarceration) for specific crimes or certain categories of offenders.

MISDEMEANOR

An offense less serious than a felony that is punishable by less than one year of incarceration in a county or city corrections facility. Misdemeanors include drunk driving, minor drug offenses, simple assaults, drunkenness, vandalism, and shoplifting.

NATIONAL CRIME VICTIMIZATION SURVEY

A U.S. Justice Department survey that attempts to gather data on all categories of crime committed against individuals, including those unreported to the police. Does not include drug crimes, murder, or crimes committed against businesses.

NEIGHBORHOOD WATCH

Program established to utilize citizens working with police in crime detection and prevention within a neighborhood.

NOLLE PROSEQUI

Literally defined "do not wish to prosecute," this is the withdrawal or dropping of charges against a defendant by the prosecutor.

NOLO CONTENDRE

Literally defined "no contend," this is a plea in which the defendant does not contest the charges. While not strictly an admission of guilt, it is the equivalent of such and subjects the accused to the same criminal sanctions.

PAROLE

A program whereby prisoners are released prior to normal expiration of their sentences but are placed under the supervision of the paroling authority. The offenders retain their freedom as long as they meet the conditions agreed on at the time of release.

Parole Guidelines

A set of standards or criteria to assist parole boards and correctional agencies in determining a parole release date.

Part II Offenses

All felonies and misdemeanors not classified as Part I offenses (see Index Crimes) in the annual FBI Uniform Crime Report. These include simple assaults, forgery and counterfeiting, fraud, embezzlement, stolen property, vandalism, possessing or carrying weapons, prostitution, sex offenses (except forcible rape), drug abuse violations, gambling, offenses against family and children, driving under the influence, drunkenness, liquor laws, disorderly conduct, and vagrancy.

Plea

A defendant's formal answer in court to the charges brought in a complaint, information, or indictment.

Plea Bargaining

The practice involving negotiation between prosecutor and defendant and/or defense attorney over leniency in treatment in exchange for a guilty plea or cooperation with the government in the prosecution of other offenders. Leniency may mean a reduction or dismissal of charges or a promise that the prosecutor will recommend a lighter sentence than would otherwise be imposed.

Preliminary Hearing

A hearing before a judge to determine if there is sufficient probable cause to hold or bind over an accused person for trial. It is generally limited to persons arrested on felony or high misdemeanor charges, and is conducted as an adversary proceeding. If the judge orders the release of the accused, it does not, in most places, prohibit the subsequent adjudication of the accused on formal charges,

Pretrial Release

Includes the investigation of an offender's background using risk assessment models; recommendations for release, bail, or detention; and recommendations and initiation of Treatment Alternatives to Street Crime (TASC). These activities usually take place in pretrial release centers.

Prison

A secure facility operated by the state or federal government to house convicted offenders. Offenders are held under a sentence of one year or more.

Probable Cause Hearing

A hearing that generally occurs from 24 hours to 10 days after an arrest. Its main function is to determine whether there is probable cause for the defendant to be charged and/or whether the defendant should be detained. Limited testimony to show probable cause is presented. The complaining witness or victim, the police, the defense counsel, and the defendant are all present.

Probation

A form of sentence whereby offenders may remain free of confinement so long as they obey certain conditions imposed by the sentencing court and probation authority.

Property Crime

Crimes that involve intent to take property, such as burglary and auto theft, and are typically committed when the victim is not present. These also include white collar crimes and drug crimes that involve possession, use, sale, distribution, cultivation, and manufacture of controlled substances.

Recidivism

Variously defined as the rearrest, reconviction, or reincarceration of a previously imprisoned offender for a new criminal offense.

Release on Recognizance

Release from custody of an arrested person without bail on a promise to appear for trial at a later date.

Restitution Programs

Offenders repay their victim in money or, in some cases, by performing a service for losses resulting from the crime.

Sentencing Guidelines

A set of standards used in determining sentences for convicted offenders. Typically, guidelines are based on the crime and

the offender's criminal history and are developed by an independent commission or judicial body. In some states, guidelines are advisory only; in other states, the court must give a written reason for diverting from the guidelines. The court's reasons may be appealed.

UNIFORM CRIME REPORTS

Produced by the Federal Bureau of Investigation, it provides data on eight major types of felony crimes reported to the police (see Index Crimes).

VIOLENT CRIME

Crimes that can result in personal injury or death, such as murder, rape, robbery, and assault.

WORK RELEASE

A program that allows an inmate to leave prison daily in order to work in the community.

APPENDIX C
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