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STATE OF MAINE
113TH LEGISLATURE
SECOND REGULAR SESSION

FINAL REPORT OF THE
JOINT SELECT COMMITTEE
ON CORRECTIONS

December 1988

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* Denotes Chairs

Staff: Annika Lane, Legislative Analyst

Office of Policy and Legal Analysis
Room 101, State House--Sta. 13
Augusta, Maine 04333
(207) 289-1670

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DECEMBER 1988

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I EXECUTIVE SUMMARY

The Joint Select Committee on Corrections was established in December, 1986 to make recommendations to the 113th Legislature on how to allocate the proceeds of a \$16 million bond authorization for prison construction and renovation. The bonds were allocated in response to critical overcrowding in Maine's correctional institutions.

During this process it was concluded that further study was needed to review correctional policies in the State of Maine. The Joint Select Committee on Corrections was given a broad mandate to develop a long range plan for corrections.

The Committee concluded in its interim report to the Legislature (February, 1988), that some form of future construction is probably inevitable. Recent population projections indicate a shortfall of 700 beds by 1995, despite the allocation of funds from the 1986 bond issue.

The Committee believes that the primary goal of corrections, which is to ensure public protection, is most effectively accomplished through a comprehensive system of risk and needs assessment and management. Such a system manages the offender population by placing offenders in appropriate corrections strategies depending on his or her level of risk. Strategies which take into account the need for public protection may range from maximum security imprisonment to imposition of fines.

During the study process, the Committee has identified the following needs for effective management of the corrections system in the long term:

- A. Greater emphasis and investment on probation;
- B. Thorough understanding of the nature of the offender population. Comprehensive data collection system and information flow on the nature of the offender population. Information about the risks posed by offenders and needs of offenders is crucial for placement in appropriate corrections strategies. Program evaluation and tracking offender progress through the system is also vital to effective long range systems management;
- C. A range of corrections strategies providing multiple options for dealing with risk and need;
- D. Consistent sentencing practices;
- E. Ongoing dialogue among the community and the executive, judicial and legislative branches of government;

- F. Training opportunities for staff in accordance with professional standards;
- G. Recognition of and appropriate treatment for the special needs offender (sex offender, substance abuse, mental health/retardation, etc.); and
- H. New construction to manage an increasing corrections population and alleviate overcrowded conditions at already antiquated corrections facilities.

This report defines the problems within the system, describes the current system in Maine, outlines goals and needs for the system and proposes a set of strategies for dealing with the issues in the long run.

The Committee thanks the National Institute for Sentencing Alternatives (NISA) for its assistance with this study. The expertise provided by Director Mark Corrigan, Assistant Director Donna Reback and members of NISA's staff have proved to be invaluable to the Committee's work.

The Committee also thanks the Corrections Commissioner and his staff for their cooperation and willingness to help with this study. Much of the Committee's work would not have been achieved without the consistent flow of information and expertise provided by the Department of Corrections.

Discussions over the past year have also included members of the public, judiciary and law enforcement community, as well as clinicians in the field of substance abuse, sex offenses and other special needs offenses, for which appropriate treatment is necessary.

II SUMMARY OF RECOMMENDATIONS

- A. The Joint Select Committee on Corrections proposes legislation to request the Department of Corrections to undertake an extensive study of its probation management system, determine the needs of the system and resources required to improve and expand it. The Committee proposes that funds be appropriated from the General Fund to allow the Department to contract for expert assistance for the study. Furthermore, the Joint Select Committee requests the Department to submit its findings, with appropriate funding requests, to the 114th Legislature, during the second regular session. (Appendix 9)

- B. During the study process, the committee has identified the need for a closer look at Maine's sentencing system. In response to a proposal outlined by Supreme Court Justice Daniel E. Wathan, the committee proposes legislation: AN ACT to Establish a Law Court Sentence Review Mechanism Relative to Sentences Involving Terms of Imprisonment of One Year or More. (Appendix 5)

This Act would change Maine's current appellate review of sentences to permit the development of a law of sentencing by the judiciary - a case by case evaluation of the current sentencing system to develop sentencing guidelines through an evolutionary process, using Maine's highest court, rather than the legislature, to develop guidelines.

- C. The Committee has identified the need for a comprehensive system of risk and needs assessment and management. In order to place offenders in appropriate strategies according to their risks to society and rehabilitation needs, Maine needs a comprehensive data collection system and information flow between the courts and executive department.
- D. The State also needs to support corrections alternatives in order to provide judges with a range of strategies to be considered during the sentencing process. Alternative strategies are also needed to deal with special needs offenders.

The committee supports the development of the following pilot programs:

1. Sex offender treatment proposals as outlined by the Task Force for Management and Treatment of the Adult Sex Offender Under Custody to the Department of Corrections. (Appendix 8)

NOTE: Program locations must be chosen with full consideration of the availability of qualified specialists to staff them.

2. Support for the recommendations of the advisory committee to the Alcohol and Drug Abuse Planning Committee's study concerning expansion of the Kennebec County Alternative Sentencing Program statewide.
 3. That some method be adopted to punish and treat offenders with substance abuse problems other than incarcerating them in county jail facilities.
- E. Further study of other corrections strategies that have been discussed during the study process. Some of these strategies include:
- Day Fines
 - Diversion/Restitution Centers
 - Victim/Offender Reconciliation Programs
 - Shock Probation
 - Community Corrections Legislation
 - Community Service Programs
- F. To ensure continuation of its work and to create a forum for ongoing dialogue between the community, Legislature, judiciary and the Department of Corrections, the Joint Select Committee on Corrections proposes the following:
1. AN ACT relating to the Maine Correctional Advisory Commission. (Appendix 12)

This legislation would enable the existing commission to be more representative of persons and agencies involved with the correctional system. It mandates specific study topics and provides resources necessary for it to better carry out its responsibilities.
 2. That the Joint Select Committee on Corrections be extended until the end of the 114th Legislative Second Regular Session in order to hear bills relating to this study and that of the Juvenile Justice Advisory Commission, ensure continuation of the momentum spurring corrections reform and to keep issues alive until the new Corrections Policy Commission is established and active.
 3. That the Sentencing Institute Forum be held at least biennially instead of every three years. This educational forum is sponsored by the Maine Judicial Council. If it is held biennially at a time

convenient for the Legislature to attend, it will facilitate the flow of dialogue between the branches of government.

4. That whenever the Criminal Law Advisory Commission submits any proposed changes to criminal and juvenile law to the Legislature, that it includes an impact statement outlining clearly any long term implications for the corrections system caused by the proposed changes.
- G. The Committee encourages and supports proposed changes to training standards for corrections officers. The Committee recommends that any bills relating to this issue be referred to the Joint Select Committee on Corrections.
- H. The Committee recognizes that some additional construction is needed in addition to the above recommendations for long-range management of the corrections system. Existing facilities are overcrowded, with a projected shortfall of 700 beds by 1995. Conditions at Maine State Prison must be improved.

However, the Committee believes that projected bed needs within existing facilities - particularly with respect to lower risk offenders - may be reduced in the long run by improvements to the probation system, an eventual broader range of corrections sanctions, and changes in sentencing practices due to enhanced appellate review.

The Committee makes the following recommendations with respect to housing:

- A. Support Department of Corrections (DOC) proposals to build 400 new beds at S. Warren, in addition to the 100 beds currently under construction. This would effectively result in a 500-bed maximum security facility.
- B. No construction unless payment in lieu of taxes. This means that some mechanism should be set up so that the state will reimburse any municipality affected by loss of taxes resulting from state construction versus private.
- C. Support DOC proposals to upgrade life/safety systems at Maine State Prison in Thomaston.

- D. Plans for prison construction must be premised on the following:
1. Elimination of the East wing at Maine State Prison as a residential facility in its present configuration.
 2. New maximum security beds must be utilized to allow for renovation of the East Wing at Maine State Prison.
- E. Support for Department proposals to build 50 additional minimum security beds at the Bolduc Unit in S. Warren.
- F. Recommend upgrading and expansion of program space at Maine State Prison.
- G. That the Department establish a secure treatment unit for offenders with substance abuse problems within one or more of its facilities.
- H. Support 76 contracted community beds plus any necessary funds for additional beds that may be indicated by the DOC probation study due by February 15, 1990, to the 2nd Session of the 114th Legislature.
- I. Any future planning should place emphasis on increasing the probation component of the system to ensure that offenders that could feasibly be diverted into the community are not using up valuable prison space.

III PROBLEMS WITHIN THE SYSTEM

The Joint Select Committee on Corrections has identified the following problems within Maine's correctional system:

- A. Overcrowding within the institutions
- B. Threat of litigation
- C. A large special needs offender population
- D. A limited range of corrections alternatives
- E. Inadequate information system on the offender population
- F. Limited dialogue among the judiciary, executive and legislature in dealing with corrections policy issues on an ongoing basis.
- G. Problems with Maine's sentencing system - particularly with respect to split sentences.

A. Overcrowding

Maine has experienced unprecedented growth in its inmate population over the last several years, with a 60% increase from 1980 to 1988.

In 1985, the State of Maine contracted with the Ehrenkrantz Group and Allied Engineering to determine population projections and develop proposals for architectural and planning services to the Department of Corrections. A Statewide Correctional System Master Plan was developed. Since then, 300 beds are being added to the system as a result of a successful Corrections Bond issue in 1986.

Still, updated projections indicate that, despite the 300 beds currently being added to the system, the Department of Corrections faces a shortfall of upwards of 700 beds by 1995.(1)

The growing population is putting pressure on Maine's facilities. The Maine Correctional Center at Windham (MCC) was established in 1919, and the present Maine State Prison in Thomaston (MSP) was reconstructed in 1924. Both facilities are currently operating well over capacity. Security, support staff and staffing for institutional programs have not kept pace with the growing offender population.

B. Threat of Litigation

Although Maine has a relatively low incarceration rate compared with other states, the steady increase in its offender population, coupled with poor facility and physical plant conditions may result in court proceedings.

Source: (1) The Ehrenkrantz Group & Eckstut, Maine Statewide Correctional System Master Plan Update: Capital Options, October 1988.

According to the National Bureau of Justice Statistics, the entire prison systems of eight states were operating under court order as recently as 1987. In each of 25 additional states, at least one major institution was operating under court intervention. Given this trend and the current state of corrections in Maine, litigation may be imminent.(2)

C. Special Needs Population

Sex Offenders:

Tougher sentencing practices have led to a dramatic increase in the number of sex offenders committed to Department of Corrections facilities.

Recent statistics indicate that sex offenders now represent approximately one-third of the prisoner population (3). The large proportion of sex offenders creates a need for specialized programming within the institutions. Probation personnel also need specialized treatment capabilities to manage these offenders once they are released on probation for supervision in the community.

Substance Abuse:

There is growing recognition of the need to improve policies and procedures within the correctional system for dealing with the large number of offenders with substance abuse problems.

Department of Corrections officials estimate that 75% of offenders within the system have substance abuse problems. The Maine Alcohol and Drug Abuse Planning Committee (ADPC) has estimated that more than 80% of the over 30,000 individuals admitted to Maine's county jails each year have problems with drugs (including alcohol).

Data is not available to clearly identify the number of first, second, and third time operating under the influence (OUI) offenders on probation, however ADPC staff indicate that a large percentage of second and third time offenders are also having other social/behavioral problems and may already be on probation. Data collected in Kennebec County

Source: (2) The Ehrenkrantz Group & Eckstut, Maine Statewide Correctional System Master Plan Update: Capital Options, October 1988.

(3) Task Force Report for Management and Treatment of the Adult Sex Offender Under Custody to The Department of Corrections. May 11, 1988.

suggests that 35-40% of the second/third offenders are on probation and almost 40% of the individuals who fail to comply with probation conditions do so while involved with alcohol.

Current corrections substance abuse programs appear isolated and do not necessarily reflect the needs of the client as he/she moves through the correctional system and back into the community.

D. Limited Range of Corrections Sanctions

Maine lacks many alternatives to incarceration. Limited programs, treatment and rehabilitation options contribute to overcrowded institutions. Judges simply do not have many options for sentencing. Newly implemented programs such as the Intensive Supervision Program (ISP) and the County Jail program for offenders with short term sentences provide some relief to overcrowded institutions, but not enough. The ISP program provides judges with the option of allowing certain offenders to serve part of their sentence under intensive probation supervision, as an alternative to incarceration. The County Jail Program requires offenders with short term sentences to be incarcerated in county jails, rather than sentenced to state prisons. Short term offenders are those sentenced to less than six months, to be changed to nine months in January, 1989.

E. Inadequate Information System

The Joint Select Committee concluded in its interim report to the Legislature (February, 1988), that the primary responsibility of the government, in its involvement in corrections, is to ensure public protection. This goal is most effectively accomplished through a system of risk and needs assessment and management. Such a system uses certain risk assessment tools to determine the extent of an offender's risk to society. An offender is placed in an appropriate corrections alternative depending on his or her level of risk.

Maine's corrections system lacks detailed knowledge of the nature of the offender population which is crucial to the task of determining how best to create placement alternatives for those offenders not requiring incarceration and to most effectively utilize Maine's expanding correctional capacity.

The Department's information system is limited, although in the process of being updated and computerized. An improved data collection process is vital for offender tracking, program evaluation, risk/needs assessment, appropriate offender classification and understanding the nature of the offender population.

F. Policy Controls

The Joint Select Committee has identified a pressing need for ongoing cooperation among the judiciary, executive and legislature on corrections policy issues.

There is no ongoing mechanism that is representative of all branches of government and other persons and agencies involved in or with an interest in the correctional system.

G. Sentencing

It appears that an evaluation of current sentencing practices is needed - particularly with respect to split sentencing, length of sentencing and abolition of parole.

There is some evidence of disparity in sentencing practices - particularly with respect to sentences for comparable offenders.

There is no policy standard for the use of the split sentence.

IV STATUS OF THE CURRENT SYSTEM

A: Capital Options (4)

Population Projections:

- Current construction projects will increase Department of Corrections (DOC) capacity to 1436 beds
- Population bedspace projections suggest the Department will need 2147 correctional beds by 1995, a shortfall of more than 700 beds when current construction projects are completed.

Comparison of Current Planned DOC Capacity with Projected Population Requirements.

Security Level	Current	Projected
Maximum	467	642
Medium	396	636
Minimum	370	574
Community	116	192
Segregation	87	103
TOTAL	1436	2147

Projections include bed savings resulting from the use of the Intensive Supervision Program and County Jail program which incarcerates offenders serving less than six months (to be extended to 9 months in January 1989) in county jails; projections do not include the impact of recent legislation doubling allowable Class A crime penalties from 20 to 40 years.

Average daily prison population statistics have exceeded projections by 6 percent, 3 percent and 5 percent in 1986, 1987 and the first quarter of 1988.

Options for and Cost of Meeting Bedspace Needs

The Ehrenkrantz Group & Eckstut, suggests that the most pressing DOC need is additional bedspace. The firm's Master Plan update notes that Maine State Prison (MSP) is classified as a maximum security prison, but does not meet maximum security standards. The firm has suggested the following options to the Commissioner of Corrections. To a large extent the options focus on the location for new maximum security housing, as well as future use of MSP.

Source: (4) Maine Statewide Correctional System - Master Plan Update: Capital Options (October 1988) by The Ehrenkrantz Group and Eckstut.

Option A: Change MSP's security classification from maximum to medium/maximum security and maintain population level at 428 beds; build 400 new maximum security beds at South Warren site (expanding total number of beds at this site to 500);

Option B: Change MSP's security classification from maximum to medium/maximum and maintain population level at 428 prisoners; build 200 new maximum security beds at South Warren (expanding total number of beds there to 300); and build 200 new maximum security beds somewhere along I-95; or

Option C: Change MSP's security classification from maximum to all medium; reduce MSP to 302 beds (285 Med & 17 Seg); build 300 new maximum security beds at South Warren for a total of 400 maximum beds on the South Warren site; build 270 maximum security beds along I-95.

THE EHRENKRANTZ GROUP & ECKSTUT COST ESTIMATES

<u>OPTION A:</u>	• Build 400 Maximum beds at Max South Warren	\$53,800,000
	• Upgrade Life Safety Systems at MSP	9,000,000
	• Upgrade/expand program space at MSP	8,400,000
	• Build 42 new Medium beds at Downeast Correctional Facility (DECF)	4,100,000
	• Build program space for 42 at (DECF)	1,200,000
	• Build 204 new Minimum beds at existing facilities	8,700,000
	• Contract for 76 additional Community beds (Halfway Houses) (Requires \$1,000,000 annual budget - not included in Capital Cost estimate)	
	TOTAL COST: OPTION A	\$85,200,000

<u>OPTION B:</u>	• Build 200 Maximum beds at Max. South Warren	\$26,900,000
	• Build 200 Maximum beds along the I-95 corridor	26,900,000
	• Upgrade Life Safety Systems at MSP	9,000,000
	• Upgrade/expand program space at MSP	8,400,000
	• Build 42 new Medium beds at DECF	4,100,000

- Build program space for 42 at DECF 1,200,000
 - Build 204 new Minimum beds at existing facilities 8,700,000
 - Contract for 76 additional Community beds (Halfway Houses) (Requires \$1,000,000 annual budget - not included in Capital Cost estimate)
- TOTAL COST: OPTION B \$85,200,000

OPTION C:

- Build 300 Maximum bed at Max. South Warren 40,300,000
 - Build 270 Maximum security facility along I-95 corridor 36,300,000
 - Upgrade Life Safety Systems at MSP 6,300,000
 - Upgrade/expand program space at MSP 6,000,000
 - Build 204 new Minimum beds at existing facilities 8,700,000
 - Contract for 76 additional Community beds (Halfway Houses) (Requires \$1,000,000 annual budget - not included in Capital Cost estimate)
- TOTAL COST: OPTION C \$97,600,000

B: Probation

October 1987 - 6,305 offenders under supervision
 September 1988 - 7,020 offenders under supervision

Staffing ratios are often in excess of 100 cases per probation officer. The Department has indicated that a 1 to 75 ratio for adult supervision and a 1 to 35 ratio for juvenile supervision, coupled with enough clerical assistance to handle anticipated work load increases, would alleviate some of the difficulties arising from such a large number of cases per officer.

The committee's interim report recommended that the Department request funding for 29 additional field officers, 12 additional clerical staff, and the creation of two additional supervisory districts to maintain a ratio of 16 field officers for one district supervisor. Two additional supervisors would also be needed. (Appendix 1)

Yet, despite an increase in the number of offenders on probation since the Committee released its interim report, there have been no significant changes to relieve high case loads.

The Division of Probation and Parole has submitted the following request to the Department for inclusion in the FY 1990/91 budget requests to the Legislature. It focuses primarily on the need for an additional district with 17 new positions.

<u>ITEM</u>	<u>POSITIONS 1990</u>	<u>POSITIONS 1991</u>
New District	(17) \$540,525	(17) \$290,017
Drug Testing	3,000	3,000
Capital Equip.	1,500	
<u>TOTAL</u>	(17) \$545,025	(17) \$293,017

Intensive Supervision Probation

The Intensive Supervision Program took effect on August 29, 1986. The first offender was sentenced to the program in March of 1987. There are presently five, two-person teams supervising 45 offenders on the program. The statutes allow for a maximum of 150 offenders on the program.

During the Second Regular Session of the 113th Legislature, the Joint Select Committee on Corrections heard and supported legislation to reduce sentencing requirements for the program (P.L. 1987, C.672 AN ACT Relating to Sentences with Intensive Supervision). The original law specified that an individual must be sentenced to a minimum of three years to the Department of Corrections, one year to be served under intensive supervision followed by two years' suspended sentence while on probation. However, a first-time felon would not usually receive a 3-year sentence.

Because of this, some defense attorneys were hesitant to advise their first-time felony clients to agree to a three-year sentence in order for them to be sentenced to the Intensive Supervision Program.

The new legislation, which was enacted, reduced the requirement to 6 to 18 months on the program, followed by a minimum of one year's suspension while on probation. This change allows the courts more flexibility in considering people for the program, enabling the program to more effectively do what it was designed to do - relieve overcrowding within correctional facilities.

C: Substance Abuse Treatment: (5)

Problems:

1. Public Policy - There seems to be no real public policy commitment which defines policy and procedures with regard to institutional and community substance abuse treatment. A systematic approach is needed to treat offenders as they move through the various levels of correctional programs. Appropriate treatment strategies can reduce the probability of repeat offenses.
2. Current Department of Corrections employee training and assistance programs appear to be inadequate to meet the needs of corrections employees.
3. Current Department of Corrections substance abuse programs tend to appear isolated and do not necessarily reflect the needs of the client as he/she moves through the correctional system and back into the community.
4. More counseling staff is needed.

D: Jails - OUI offenders:

It has been estimated that more than 80% of the over 30,000 individuals admitted to our county jails each year have problems with drugs (including alcohol)(6). The offender population analysis produced by the National Institute for Sentencing Alternatives, also indicates a large number of OUI offenders taking up limited space in Maine's county jails. (Appendix 3)

A major issue behind a growing interest in Maine's OUI county jail population is the desire to reduce the in-jail population.

Overview of current situation:(6)

1. Only four of the 15 Maine county jails have formalized substance abuse programs (Kennebec, Androscoggin, Oxford and Franklin Counties).

Source: (5) Summary of problems presented to the Committee at a panel discussion with substance abuse treatment providers in June, 1988.

(6) Report to the Joint Select Committee on Corrections Concerning the Feasibility of a Statewide OUI First Offender Model Program and a Detention/Rehabilitation Center for the Chronic OUI Offender. State of Maine Department of Human Services, Alcohol and Drug Abuse Planning Committee, October, 1988. (Advisory committee findings Appendix 10).

2. The number of OUI offenders in Maine's county jails in FY 1987 was: first time offenders 2,876, second time offenders 759, and third time offenders 146, for a total of 3,781. Note: 2,624 first time offenders were convicted of OUI but did not serve time in jail.
3. Only two county jails (Kennebec and York) have alternative sites for selected 1st offenders and one (York) for multiple offenders.

The Offender(7)

1. First Time Offender: In 1987 the 2,876 first offenders served a minimum of 48 hours and paid a minimum fine of \$300. They had an average length of stay of 5 days (due to "aggravated" condition) (7) and represented an average daily population of 40.4. They represented 75% of the OUI jail population and approximately 32% of the average daily OUI beds in the county jails.
2. Second Time Offender: The 759 second offenders served a minimum of 7 days and paid a minimum \$500 fine. However, the average length of stay was 22 days with an average daily population of 50.6. They represented 20% of the OUI jail population and approximately 35% of the daily OUI beds in the county jails.
3. Third Time Offender: The 146 third offenders served a minimum of 30 days and paid a \$750 fine. However the average length of stay was 98 days with an average daily population of 42.3. They represent approximately 4% of the OUI population and approximately 33% of the daily OUI beds in the county jails.
4. Summary: In terms of actual jail space utilized, each of these groups represent approximately 1/3 of the OUI daily population.

E: Program Needs for Incarcerated Offenders

Programs: A summary of program needs for incarcerated offenders is attached as Appendix 2. A detailed breakdown of items needed within each category is available from the Office of Policy and Legal Analysis and/or the Department of Corrections.

There appears to be a real need for more resources for incarcerated offenders, particularly with regard to psycho/social and vocational programs within the prisons. Security is also a pressing issue for a Department operating under crisis management conditions.

Source: (7) Due to "aggravated conditions, the sentences exceed the minimum of 48 hours and a \$300 fine.

F: Managing the Sex Offender:

The Problem:(8)

During the past eight years, according to an April, 1988 survey, Maine has experienced a dramatic increase in the number of identified sex offenders committed to the Department of Corrections.

"Identified sex offender" refers to a prisoner who is convicted of a sex offense on his or her current conviction. A prisoner who was convicted of a sexual offense on a prior sentence, who has been discharged, and has returned for a non sex-related offense is not included. In addition, a prisoner whose criminal action was predicated with a sexual intent was not counted if the criminal behavior did not result in a conviction for a sex offense. For example, an assault motivated by sexual intent was not included in the survey if the prisoner was only convicted of assault. The prisoner was included if the offense resulted in conviction for attempted rape.

In spite of these conservative parameters, statistics still indicate a substantial increase in the number of sex offenders sentenced to incarceration. The increase is most apparant upon examining the proportion of sex offenders to other prisoners.

Graph 1 shows that sex offenders represented 8% of the incarcerated population in 1980. In 1987, 21% of the incarcerated population were sex offenders.

Graph 2 shows the proportion of sex offender to other prisoners at each Department of Corrections facility on April 12, 1988.

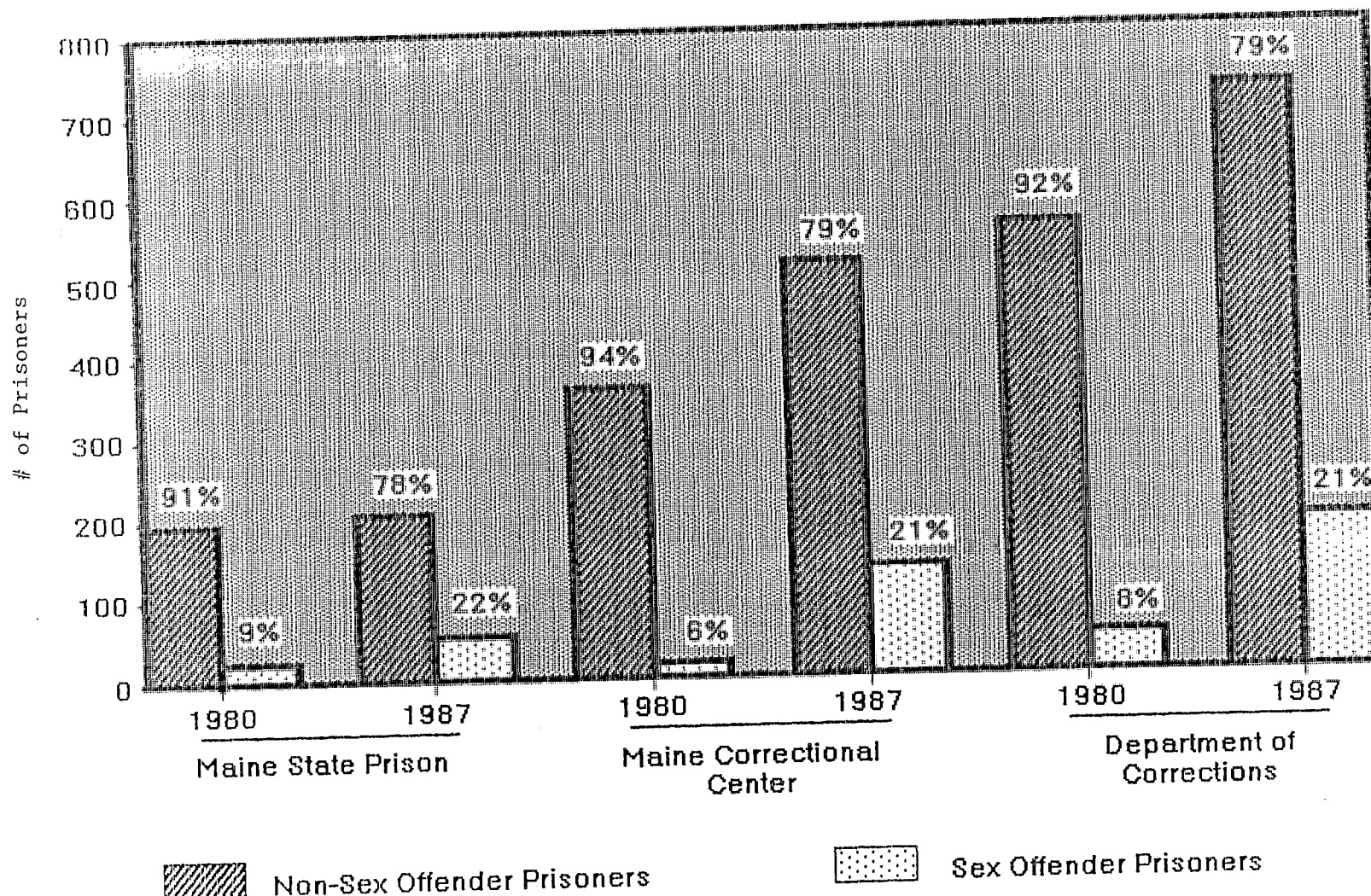
1. 21% of the prisoners sentenced for incarceration to the Department of Corrections in 1987 were convicted of a sexual offense.
2. The impact of sentencing practices results in the finding that 27% of the prisoners in Department of Corrections facilities on April 12, 1988 were incarcerated for a sex offense as shown in Table 2.

Source: (8) May 11, 1988 Task Force Report For Management And Treatment Of The Adult Sex Offender Under Custody To The Department Of Corrections.

Presentation to the Committee by a panel of specialists in June, 1988.

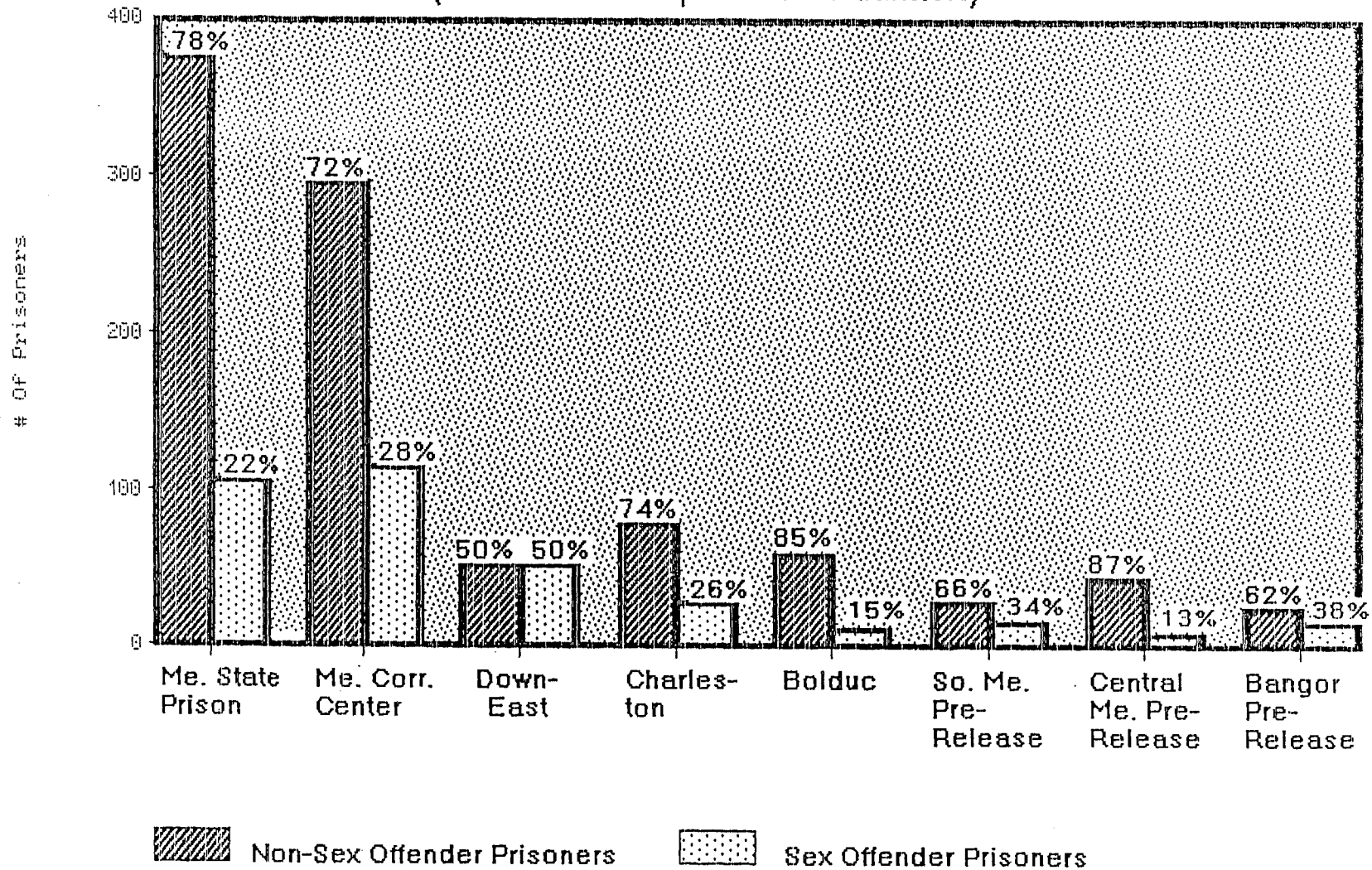
GRAPH 1.

PRISONER COMMITMENTS:
DEPARTMENT OF CORRECTIONS FACILITIES,
BY NON-SEX OFFENDER AND SEX OFFENDER.
 (Sex Offender refers only to those convicted of a sex offense.)



GRAPH 2.

IDENTIFIED SEX OFFENDERS IN
DEPT. OF CORRECTIONS FACILITIES (APRIL 12, 1988)
(Sex Offender refers only to those convicted of a sex offense)
(Does not include prisoners on transfers)



3. When prior convictions and offender intent is included in determining the number of sex offenders in Department of Corrections facilities, the percentage of sex offenders to prisoner population increases from 27% to an estimated 33%, or one-third of the prisoner population.

Current Status

Previous attempts to develop management strategies for sex offenders in the Maine Department of Corrections have resulted primarily from individual and small group efforts of staff at Maine Youth Center, Maine Correctional Center, Maine State Prison and Downeast Correctional Facility. There has been no prior comprehensive Department of Corrections strategy for the design and implementation of a system for managing sex offenders. In 1986, recognition of such a need by the Commissioner produced the Department of Corrections Standing Committee on Sex Offender Management.

In January of 1988, the Commissioner mandated the formation of a statewide task force on the correctional management of the sex offender in Maine. The charge of the task force was to review existing resources and current management of the sex offender.

The Joint Select Committee on Corrections discussed sex offender management with specialists from the task force and has reviewed information provided by both the Department of Corrections and specialists working in the field.

The current status of the sex offender in Maine can be summarized as follows:

1. Probation and Parole:

The Division currently supervises approximately 6,500 people, both juveniles and adults. Approximately 15%, or 975 people are identified sex offenders.

Periods of probation for sex offenders have increased, reducing the rate of turnover for those placed on probation. Two years ago, for the first time, the Division of Probation and Parole had funds allocated for treatment services for identified sex offenders under supervision in the community.

Most probation officers who have sex offenders on their caseloads are untrained in this field, have caseloads in the hundreds and are unable to effectively monitor potential for reoffending.

Minimal services currently exist, especially in terms of the range of services necessary to treat sex offenders, according to state-of-the-art methods. There is also no coordination of services or quality assurance. (Contracts for sex offender treatment as of June, 1988, are attached as Appendix 4).

2. Maine State Prison:

Of about 485 felons at Maine State Prison, 22% (108) are incarcerated for a sex offense. It is estimated that 33% or one third of the prisoner population are identifiable as sex offenders. Of these, 32, or about 20% of these sex offenders are treated within the Sex Offender Project (April 1988).

There are two treatment phases, one involving a four-month educational component which focuses on the effects of sexual victimization, as well as other issues.

The second phase involves group therapy. Delivery of treatment is believed to require a minimum of two years. The average length of stay is two to three years.

Program participants are encouraged to continue treatment throughout incarceration and after discharge. Post-release referrals to community-based treatment programs are made when available.

At present, 29 sex offenders have completed at least two years of treatment and have been released. They have been discharged for periods of from four and a half years to three months. Two now have been convicted of sexual assaults which occurred since their release.

There have been no formal attempts at evaluating the program's effectiveness, because of limited resources and funds.

3. Maine Correctional Center:

Of the 411 prisoners at the Maine Correctional Center, 28% (116) are incarcerated for a sex offense. It is estimated that one-third of the prisoner population at Maine Correctional Center are identifiable as sex offenders. Thirty-one currently participate in a sex offender treatment program which began in 1985. The program is generally voluntary, although recently some sex offenders have been mandated to participate by their conditions of probation served concurrent with a sentence of incarceration.

NOTE: There are nine women currently incarcerated for sex offenses, with no treatment program.

4. Downeast Correctional Facility:

A treatment program has existed for less than one year, administered by two part-time consultants. Fifty percent of the prisoners at the Facility are incarcerated for a sex offense. When related offenses and prior convictions are included, it is estimated that sex offenders make up about two-thirds of the entire Facility population.

Of these, 12 sex offenders, or 15% of the sex offenders, are in programs similar to programs offered at Maine State Prison and Maine Correctional Center.

5. Charleston Correctional Facility:

No specific treatment for sex offenders exists. There is a psychologist at the facility four hours per week, who sees a few sex offenders for individual counselling. Individual therapy is usually not considered the treatment of choice for sex offenders - especially in the absence of group therapy.

6. Bangor Pre-Release Center:

A new sex offender treatment group exists in the community. It is available to a very small number of Bangor Pre-Release offenders.

7. Central Maine Pre-Release Center:

Sex offender residents are referred to programs in the Augusta area in a limited fashion.

8. State Forensic Service

In the second special session of the 112th Legislature, a law was enacted to establish the State Forensic Service within the Department of Mental Health and Mental Retardation. The legislation mandated specialized forensic evaluations of sex offenders prior to sentencing.

The Service began accepting referrals for sex offender evaluations in March, 1987. As of March, 1988, 141 referrals for sex offender evaluations have been received. The referral rate has increased in recent months and it is expected that it will increase even further because the district court judges have only recently been made aware of the Sex Offender Evaluation Program.

There is a scarcity of evaluators in some areas. However, most of the offenders are not incarcerated at the time of their evaluation, and can usually drive to their appointments. A small number of additional clinicians have expressed interest and are participating in the State Forensic Service training program.

The State Forensic Service is not part of the Department of Corrections. The service provides pre-sentence evaluations of only those sex offenders the courts select for referral.

These evaluations are utilized by probation officers and can be made available to treatment providers as well. However, because these evaluations are forensic in nature, and are not included on all sex offenders committed to the Department of Corrections, they cannot be substituted for quality intake assessments which are necessary for treatment and good program evaluation.

Some Primary Issues Regarding Maine's Sex Offender Management System (9)

The three institutionally housed programs at Maine State Prison, Maine Youth Center and Maine Correctional Center appear to be as good as the best of other programs nationally in many clinical treatment aspects.

However:

1. Maine's treatment programs need improved evaluation techniques to include psychological and physiological measures - e.g. plethysmograph. This device is the best method for obtaining accurate information on the range and strength of sexual deviant arousal patterns (treatment is more successful when the problem is defined). There is only one plethysmography lab located at the University of Maine at Orono and there is no funding for most offenders to be evaluated.
2. Community-based and contractual programs in Maine looked at from the perspective of an "integrated system" whose purpose is the protection of communities from dangerous sexual offenders, suffer from the absence of a centrally located office, a clearly articulated "mission statement" coordinated training efforts and sequential development of assessment, treatment and data collection phases that provide for quality assurance.
3. Maine lacks adequate data gathering of the sex offender population. There is no central data bank and "offender profile construction" based on thorough before, during and after treatment assessment data. It is irresponsible to request funding and increased funding for treatment (abuse prevention programs) if few attempts are made to be accountable for results of such data gathering and analysis.

Sources: (9)

a) Panel discussion with the following specialists, June 3. 1988.

Dr. Arnold Fuchs, Ph. D. Maine Correctional Center
Dr. Sue Righthand, Ph.D, State Forensic Services
Dr. Ken Jacobs, Ph.D., Kennebec Valley Mental Health Center

b) Dr. Arnold Fuchs - Observations of the 7th Annual Research and Data Conference on Evaluation and Treatment of Sexual Abusers. September 22-25, 1988. Atlanta, Georgia.

4. Medical evaluations are needed for some offenders with possible hormonal imbalances. Physicians are needed who are willing and available to prescribe and monitor chemotherapy treatment, such as Depo Provera in special cases. There is one physician in Maine who will do a "workup", none that will prescribe and monitor. This is because of fears of possible long-term side effects and/or litigation as a result. This intervention is accepted and commonly used for some offenders in many programs in other states, but in Maine there is little funding for this intervention
5. "No contest" pleas with treatment "mandated" are problematic because they provide no incentive for the offender to accept responsibility for his/her abusive behavior nor do they provide accountability with a judgment of guilty. Many offenders deny their offense when they enter treatment and continue to deny their offenses even after a reasonable period of treatment. It is difficult if not impossible to treat someone for something they do not believe exists.

There is an apparent lack of understanding in the criminal justice system of the need to have some eventual admission of "guilt" from the offender to have effective treatment.

6. Long term aftercare is a problem. Some offenders appear to need long term or even lifetime monitoring in order to prevent relapse and thus create additional victims. Many offenders in this category recognize their need to have long term monitoring but no funding exists to pay for long term treatment. In some cases, when probation and/or treatment is over, there may be a high probability of repeat offense. This may be associated with some offenders who have mental deficits such as "borderline" mental retardation or other cognitive deficits.
7. Continuing inter-disciplinary high quality training for professionals engaged in treatment of sexual offenders is a paramount issue nationwide and in Maine. Sex offender treatment is described as a special field for which very few of the existing graduate schools of psychology, psychiatry, social work, nursing, or any other professional programs prepare their graduates.
8. Laws protecting rights of privacy interfere with the free-flow of information needed to provide effective and continual monitoring and treatment of offenders. Many offenders have problems with impulse control and coordinated intervention needs to happen rapidly in response to any lapses in control. For example, lack of access to juvenile records which demonstrate a history of sex offense can result in underestimates of the violence potential of an offender.

G: Sentencing

Current System/Background:

1. Sentencing - Historically, Maine's judges have had broad discretion in sentencing practices. In 1976, Maine adopted a criminal code whereby the Legislature created five classes of offenses, plus murder, ranging from Class A offenses, which are punishable by imprisonment for a definite period ranging from zero to ten years, to Class E offenses which are punishable for a period ranging from zero to six months (MRSA 17-A @ 1252).

The range of sentences under the Criminal Code gives considerable discretion to the sentencing judge, which increased when the code abolished parole and introduced determinate sentences.

Some statutory limitations have been placed on the use of sentencing provisions. For example, if an offender does not meet certain criteria to be eligible for probation, it cannot be part of the sentence. Mandatory sentencing exists for some crimes such as Murder, OUI and Firearm Use Against A Person; but, in general the judges have a great deal of discretion.

2. Sentencing Guidelines: - Overcrowding in Maine's institutions and perceived disparity in sentencing practices led to the concept of establishing sentencing guidelines in Maine. In 1983 the Legislature created the Sentencing Guidelines Commission. The Commission produced a final report in November 1984 which proposed guidelines for Maine, but also proposed the establishment of another Commission to begin working toward that goal.

The new Commission was established on January 10, 1986, but due to an error in the legislation, the bill establishing the Commission mandated a report due January 5, 1986 - five days before the Commission was even established! Since then, the issue has gone no further.

V MAINE'S OFFENDER POPULATION

A. Offender Population Management - Current Risk and Needs Assessment and Management System and Classification System:

One of the biggest obstacles encountered by the Joint Select Committee in its study of Maine's corrections system, is the lack of adequate information on Maine's offender population. In order to make any recommendations regarding housing, programs and community alternatives to incarceration, it is important to know the nature of the offender population and the risks and needs associated with that population.

There is currently no computerized, systematic data collection process to store information about offenders, evaluate programs and classify them according to risk and need. However, the Department of Corrections is in the process of computerizing its information system.

A synopsis of Maine's sentencing structure and the Department's classification guidelines and placement procedure is as follows:

The Maine Criminal Code:

The Code (MRSA 17-A) classifies all crimes other than murder as A, B, C, D. Murder and A, B, and C crimes were formerly felonies; D and E crimes were formerly misdemeanors. A range of penalties (10) are attached to each (17-A MRSA @1251, 1252, 1301):

murder: natural person - may be sentenced to imprisonment for life or for any term of not less than 25 years

organization - may be sentenced to pay a fine of any amount

(10) The Code provides some exceptions to the specified range of penalties. If a statute, within the Code or outside it, sets a different penalty for the crime, whatever its classification, and states that the penalty may not be suspended, then the judge must follow the statute's scheme rather than the classification scheme. The Code also permits the judge to set a fine, regardless of the crime's classification, of no more than twice the pecuniary gain derived from the crime by the offender. See 17-A MRSA @1301. Additional sentencing alternatives the judge may use include: probation (@1201 et seq.); intensive supervision (@1261 et seq.); restitution (@1321 et seq.); and county jail reimbursement (@1341 et seq.). See also @1203 concerning the requirement of offenders sentenced to certain periods of imprisonment being placed in county jails.

Class A: natural person - may be sentenced to imprisonment for a term not to exceed 20 years (PL 1987, c. 808 will increase the possible term to 40 years effective July 1, 1989)

organization - may be sentenced to pay a fine not to exceed \$50,000

Class B: natural person - may be sentenced to imprisonment for a term not to exceed 10 years; may be sentenced to pay a fine not to exceed \$10,000

organization - may be sentenced to pay a fine not to exceed \$20,000

Class C: natural person - may be sentenced to a term of imprisonment not to exceed 5 years; may be sentenced to pay a fine not to exceed \$2,500

organization - may be sentenced to pay a fine not to exceed \$10,000

Class D: natural person - may be sentenced to a term of imprisonment not to exceed 364 days; may be sentenced to pay a fine not to exceed \$1,000

organization - may be sentenced to pay a fine not to exceed \$5,000

Class E: natural person - may be sentenced to a term of imprisonment not to exceed 6 months; may be sentenced to pay a fine not to exceed \$500

organization - may be sentenced to pay a fine not to exceed \$5,000

Crimes outside the Criminal Code

1. A crime created in statute outside the Criminal Code may be designated a Class A, B, C, D, or E crime. This designation means that the relevant sentencing provisions of the Code will apply. 17-A MRSA @4-A.
2. A crime created in statute outside the Criminal Code which carries no classification will still be treated as a classified crime depending on the periods of imprisonment provided for in the statute. See 17-A MRSA 4-A (3) for how the classification is determined based on the imprisonment provided.

Maine Department of Corrections Classification System:

Each state correctional facility has a classification committee which is the recommending board to the head of that facility as it pertains to a prisoner's program, assignment of housing areas and security level.

1. Initial Placement: Once a judge has sentenced an individual, the Division of Probation and Parole, using the Department's initial placement criteria, makes a determination if the prisoner is to be initially placed at the Maine State Prison or the Maine Correctional Center. The placement criteria includes case history, personality assessment, substance abuse etc. A prisoner is given a score for each criteria and placed in Minimum, Medium or Close (maximum) security on the basis of the sum of these scores. Placement and classification forms and procedures are attached as Appendix 13).
2. Classification Reviews: Within six weeks after arrival at the Maine State Prison or the Maine Correctional Center, an initial classification meeting is held with the prisoner. The initial and annual classification reviews, which cannot be ensured due to overcrowding, may make decisions, with the institution head's approval, as to the prisoner's security level, program, and housing assignment areas. Staff and/or prisoner may request a classification review, based on need, which the committee will consider, usually reviewing only the specific areas that have been asked in the request to be reviewed.

Prisoners housed at contractual agencies or in county jails are encouraged to be reviewed annually and once again upon written request of the facility's director or the prisoner. Most of the time, due to logistics, the prisoner will not be present at that review. The decision of the Classification Committee, once approved by the institution head, will be forwarded to the person in charge of that facility housing the prisoner and a copy to the prisoner of the decision of the Board. The person in charge of the facility where the prisoner is housed is expected to implement the recommendations as it pertains to that particular prisoner.

Prisoners housed in county jails are expected to be governed by all of that facility's procedures and protocols, except when it comes to the approval for furloughs and work release. The Classification Committee of the sending institutions must approve all furloughs and work release of state prisoners housed in county jails.

B. Offender Population Analysis (11)

The National Institute for Sentencing Alternatives, located at Brandeis University, Waltham, Massachusetts, agreed to collect and review certain corrections data that would provide a description of the State's prison, probation, and jail population in terms of seriousness, risk and need. The Institute also agreed to compare prison and probation groups.

Policy questions underlying the analysis were:

1. Is there a pool of offenders confined in the prison system which appears to present a relatively low risk to public protection goals?
2. If such a pool exists, does that fact suggest a need to clarify the state's policies concerning sentencing purposes, in terms of when and how the justice system distinguishes goals of public protection and punishment?
3. Are low risk offenders who go to prison different from or similar to offenders who are currently supervised on probation?

(11) This section is a synopsis of the Institute's analysis. The full report is attached as appendix 3.

4. If there is a similarity between the prison and probation groups, does that fact suggest that, with more resources in probation, and a clarification of purpose, the lower risk offenders could be supervised in the community in a manner that further limits the state's reliance on prison?
5. Has the abolition of parole impacted the state's use of probation?
6. Should length of sentence and time served be a matter of concern to policy makers who are addressing the question of resources for state corrections?

Three sample groups were established, with cooperation from Legislative and Department of Corrections staff.

The 778 offenders sampled included:

PRISON: The analysis examined offenders who were admitted to the prison system between November, 1987, and May, 1988. The prison analysis is of the entire eligible population and is therefore descriptive of that group.

Maine State Prison	130
Maine Correctional Center	151
Prison Total	281

PROBATION: The analysis examined a representative sample of persons on active probation.

Regular Probation	304
Intensive Supervision	43
Probation Total	347

JAIL: The jail sample was selected from persons admitted during the same time period as the prison sample.

Jail Total	150
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Table 1 illustrates the distribution of offense types as found in the sample analyzed, throughout the Maine corrections population, and the proportion each type represents within prison, probation and jails, respectively.

Table 1-A shows a distribution of the "C" felony group within the prison population.

TABLE 1

DISTRIBUTION OF CURRENT OFFENSE TYPES
WITHIN THE MAINE CORRECTIONS POPULATION

Valid Offense Sample - n = 774

Missing Cases = 4

OFFENSE TYPE		POPULATION		
		Prison	Probation	Jail
Against Persons	#	74	66	11
	%	26.4%	19.1%	7.4%
Against Property	#	54	60	5
	%	19.3%	17.4%	3.4%
Drugs	#	42	17	3
	%	15.0%	4.9%	2.0%
Sexual	#	47	24	0
	%	16.8%	7.0%	0.0%
OUI	#	2	92	95
	%	.7%	26.7%	63.8%
Other	#	33	48	17
	%	11.8%	13.9%	11.4%
Traffic	#	28	38	18
	%	10.0%	11.0%	12.1%
Total Offenses	#	280	345	149
	%	100%	100%	100%

TABLE 1-A

DISTRIBUTION OF C FELONY OFFENSE TYPES WITHIN THE PRISON SAMPLE

C FELONY OFFENSE TYPE	#	% of C Felony Group	% Total Prison Sample
Against Persons	15	12.4%	5.0%
Against Property	35	28.9%	12.5%
Drugs	9	7.4%	3.5%
Sexual	10	8.3%	4.0%
OUI	0	0.0%	0.0%
Other	26	21.5%	9.0%
Traffic	26	21.5%	9.0%
Total C Felony Offenses	121	100%	43.0%

PRISON POOL:

The analysis findings show that the low seriousness offenders within the Class "C" prison group (persons convicted of "property", "other" and "traffic" offenses) represent 30.5% of the prison admissions pool. While a sizeable proportion of this group has a record of prior offenses, the nature of these priors tends not to be so serious (C or D offenses) as to prohibit them from punishment in the community given an appropriate range of sanctions.

In summary, although the size of the Class "C" pool is limited, the State's ability to divert this pool from prison through the expanded use of community based punishments, could result in the avoidance of a need for some additional cells.

Some qualifications about the data should be noted:

1. The Department's data base remains limited and does not include the capability to provide information required for complete analysis of risk and need.
2. The quality of manual records within probation, jails and prison is somewhat uneven. In general the quality of data kept in records at the prison was rather high. Probation and jail records were much less complete and consistent than the prison data. Specifically, analysts experienced difficulty identifying a probation admissions sample within the same time period identified for the prison and jail samples. There is no uniformity in record keeping throughout the system. No chronological records of admissions are maintained in probation, for example, although they are in the prisons and jails.
3. Furthermore, much of the vital information regarding the probation group's criminal history was not available in the probation record.
4. Data found in records within the jail sample was so limited that analysts were unable to examine several of the issues which had been built into the design.

However, despite the important limitations of the data and the analysis, the Committee agreed with the Institute that the information suggests the following facts:

1. That there does exist in prison a pool of low risk offenders who appear to be confined for reasons of punishment. Their criminal history profile suggests that, with more refined analysis, they would hold up as possible candidates for community placement.

2. Any legislative initiative which is designed to ensure that expensive prison space is reserved for public protection purposes and the confinement of high risk offenders should include a requirement to closely monitor and evaluate the pool of Class "C" offenders.

PROBATION POOL:

In comparing the probation and prison pools with regard to the number and nature of prior offenses, the analysis suggests that although there are important differences between the prison and probation samples, especially in relation to the number of prior offenses, there appears to be some overlap between C offender probationers and prisoners with respect to the nature of prior offenses. In both prison and probation pools, C offenders primarily have a history of reoffending in a similar manner to the current offenses, thus potentially presenting a low risk to public safety, given adequate community based resources. (Pages 13-17, Appendix 3).

Split Sentencing: - The analysis revealed that the split sentence (part prison/part probation) is employed in 53% of prison cases. The Institute suggests that it appears that probation in Maine has become a replacement system for parole which was abolished. Under the indeterminate sentencing system, judges knew that the actual time served in prison would be determined by a parole board with gradual re-entry to the community through supervised release. It now appears that when policy makers abolished parole in Maine, judges determined that it was possible to ensure post-release supervision by employing the split sentence. That factor may explain why the percentage of offenders on probation in Maine is about 10% above the national average.

The Institute's report indicates that two problems result from the current split sentence practice. First, when judges sentence an offender to a split sentence, there is no control in the system which allows a determination of the offender's readiness for release. In some cases as much as five years pass before the probation term begins automatically, with no review. Secondly, since there is no policy standard for the use of the split sentence, the amount of time required on probation varies sharply among offenders and offense types. (Refer to pages 18-21, appendix 3 for more detail).

In summary, the Institute argues that the split sentence provides no policy controls or policy guidance on the length of time an offender should be incarcerated or supervised, based on the risk the offender poses to public safety, the seriousness of the offense, or the offender's needs, nor does it take into account the

readiness of offenders to move into the community. Furthermore, sentenced probation periods impose on probation authorities the burden of supervision of offenders for long time periods, with no additional resources.

If reliance on split sentences in their current form continues, two questions need to be carefully considered:

1. How is the length of each component of the split sentence determined?
2. What kind of resources are needed in the community in order to enable probation authorities to adequately supervise offenders?

JAIL SAMPLE:

Despite the limited and uneven quality of the data on the jail sample, the analysis suggests that nearly two-thirds of persons incarcerated in the jail sample were being held for drunk driving charges. This extremely high incidence of offenders jailed for alcohol/motor vehicle offenses warrants further refined analysis and evaluation of how Maine uses its resources to accommodate and treat the drunk driver population. Tables 4-A and 4-B illustrate the distribution of offenses within jails and distribution of sentence length.

SUMMARY

The Institute's analysis of Maine's corrections population, although limited, indicates that effective long range planning for Maine's corrections system depends on the following:

- A. The availability of a probation system which has the resources to provide community based corrections strategies and services for those low risk offender who may not require prison.
- B. A clearer understanding of the sentencing system that currently exists in Maine.
- C. A clearer understanding of who is in the jail population from the perspective of risk and need.
- D. Investment of resources in development of information systems for the purposes of informed decision making.

TABLE 4-A
DISTRIBUTION OF OFFENSES TYPES WITHIN JAIL

Valid Jail Sample - n = 140

Missing Cases = 10

JAIL OFFENSE TYPE		SEVERITY OF CURRENT OFFENSE			
		B Felony	C Felony	D Misd.	E Misd.
Against Persons	#	0	1	10	0
	%	.0%	.7%	7.1%	.0%
Against Property	#	0	1	3	1
	%	.0%	.7%	2.1%	.7%
Drugs	#	1	1	1	0
	%	.7%	.7%	.7%	.0%
OUI	#	0	0	93	0
	%	.0%	.0%	66.4%	.0%
Other	#	0	0	6	7
	%	.0%	.0%	4.3%	5.0%
Traffic	#	0	5	10	0
	%	.0%	3.6%	7.1%	.0%
Total Jail Offenses	#	1	8	123	8
	%	.7%	5.7%	87.9%	5.7%

TABLE 4-B
DISTRIBUTION OF SENTENCE LENGTH WITHIN JAIL

Valid Jail Sample - n = 149

Missing Cases = 1

JAIL OFFENSE TYPE		SENTENCE LENGTHS					
		to 48 hrs.	to 1 mo.	1-11 mo.	12 mo.	13-24 mos.	25-48 mos.
Against Persons	#	0	4	1	3	2	1
	%	.0%	2.7%	.7%	2.0%	1.3%	.7%
Against Property	#	0	1	1	0	1	2
	%	.0%	.7%	.7%	.0%	.7%	1.3%
Drugs	#	0	0	0	2	0	1
	%	.0%	.0%	.0%	1.3%	.0%	.7%
OUI	#	46	21	7	19	1	1
	%	30.9%	14.1%	4.7%	12.8%	.7%	.7%
Other	#	3	10	1	2	1	0
	%	2.0%	6.7%	.7%	1.3%	.7%	.0%
Traffic	#	3	9	5	0	1	0
	%	2.0%	6.0%	3.4%	.0%	.7%	.0%
Total Jail Offenses	#	52	45	15	26	6	5
	%	34.9%	30.2%	10.1%	17.4%	4.0%	3.4%

VI GOALS FOR THE SYSTEM

In its Interim Report of February, 1988, the Committee identified the following underlying beliefs about the mission of corrections in Maine:

- A. Public protection is the highest priority. It should be accomplished through a system of risk control.
- B. Within the context of public protection, prisons, jails and probation should address those human needs of offenders which contribute to criminal behavior. They include alcohol and substance abuse, mental health, employment and education.
- C. All corrections programs and strategies should be responsive to public concern about punishment. However, punitive strategies should be designed to restore the victim and the community rather than do further harm and damage to the offender. A primary goal in punishment should be restitution not retribution.
- D. All correctional strategies should recognize the important concerns of the victim and the newly established place of the victim in justice decision making.
- E. Cost is and will be a legitimate concern in determining correctional priorities. Prison and jail space represent a limited valuable resource which must be reserved and available for those who pose a threat to public protection.

Within the context of the above principles, the Committee recognized the importance of the following guidelines.

- A. Corrections strategies should always incorporate the least restrictive measure necessary based on a belief in and use of systematic, formal risk assessment. Through analysis of information relating to criminal history factors, it is possible to categorize offenders by a measure of risk. Such analysis can be incorporated in decision making tools including pre-sentence investigations, classification instruments and pre-release procedures.
- B. Corrections at the state and local level should incorporate a range, continuum, or set of strategies which provides multiple options for dealing with risk and need.
- C. With adequate resources and effective management practices it is possible to eliminate inmate idleness. The primary tools should be the development of work and educational opportunities within prisons and jails.

- D. There should exist within the corrections system, a comprehensive classification system which formally and objectively assesses risk and need; and provides objective data for the basis of decision making at times of sentencing, institutional placement and movement, probation case management and pre-release.
- E. There must be available within all institutions, programs and services sufficient to ensure constitutional compliance, humane treatment of offenders and adequate response to the problems of alcohol/substance abuse, mental health and employment.
- F. In the development and maintenance of a range of corrections strategies, community resources should be maximized in the most efficient and cost effective way possible.
- G. The staffing of institutions and probation should be in compliance with recognized professional standards.
- H. There should exist training opportunities for staff in accordance with professional standards. In addition, opportunities for the development of supervisors and managers within the system, especially in a time of complex growth and change, should be maintained as a high priority.
- I. Sentencing, classification and pre-release decision making should be premised upon a gradual re-entry to society.
- J. The corrections field is changing rapidly, promoting a need for public understanding of the nature of offenders and the purpose of the corrections system. This demands a government investment in public education and communications strategies.
- K. There exists a critical need to improve the data and information that is generated by sentencing and corrections agencies for policymakers, managers and the public. Primary among those needs is information about the risks and needs posed by offenders.

VII WHAT'S NEEDED

The principles and guidelines outlined in the mission statement have driven the Committee's study process during the past year. Evaluation of the current corrections system has led to the following conclusions about what is needed within the system for effective long range management:

A. A Clearer Picture of Maine's Offender Population:

The Committee has concluded that public protection is best accomplished through a system of risk control. Through analysis of information relating to criminal history factors, it is possible to categorize offenders by a measure of risk and need.

However, evaluation of the current system has indicated a lack of information flow on the nature of the offender population. Without adequate data it is impossible to adequately classify and place offenders according to risk and need, to evaluate existing and proposed programs and to manage the offender population in a cost-effective manner.

Analysis of information relating to criminal history factors should be incorporated in decision making tools including pre-sentence investigations, classification instruments and pre-release procedures.

B. Consensus on Purpose:

The Executive, Judicial and Legislative branches of Government need to agree on the purpose of corrections as a system which is responsive to public concern about punishment. However, punitive strategies should be designed to restore the victim and the community rather than do further harm and damage to the offender. A primary goal in punishment should be restitution, not retribution.

An investment in public education and management strategies is needed to promote public understanding of the nature of offenders and the purpose of the corrections system.

C. Policy Controls:

There is a pressing need for ongoing cooperation between the judiciary, executive and legislature on corrections policy issues. Improved communication between these entities is needed to ensure effective use of limited prison and jail space for offenders who pose a threat to public protection, and effective corrections alternatives for those who are low risk and pose little or no threat to public protection.

D. Broader Range of Corrections Sanctions:

As defined in the Committee's mission statement, corrections at the state and local level should incorporate a range, continuum, or set of strategies which provides multiple options for dealing with risk and need. Effective offender population management incorporates a system whereby an offender is placed in an appropriate corrections strategy depending on his or her level of risk. Strategies which take into account the need for public protection may range from maximum security imprisonment to imposition of fines.

Maine needs a wider range of sanctions (see next page). The current system relies primarily on overcrowded correctional institutions, an overtaxed probation division which needs to be expanded, and limited community corrections resources.

E. Improved Training Opportunities for Corrections Staff:

Improved training opportunities for corrections officers is necessary for ensuring effective management of the offender population. Corrections officers should be provided pre-service and in-service training in accordance with professional standards.

Current certification requirements focus more on the number of hours completed versus performance evaluation and knowledge.

F. Consistency in Sentencing:

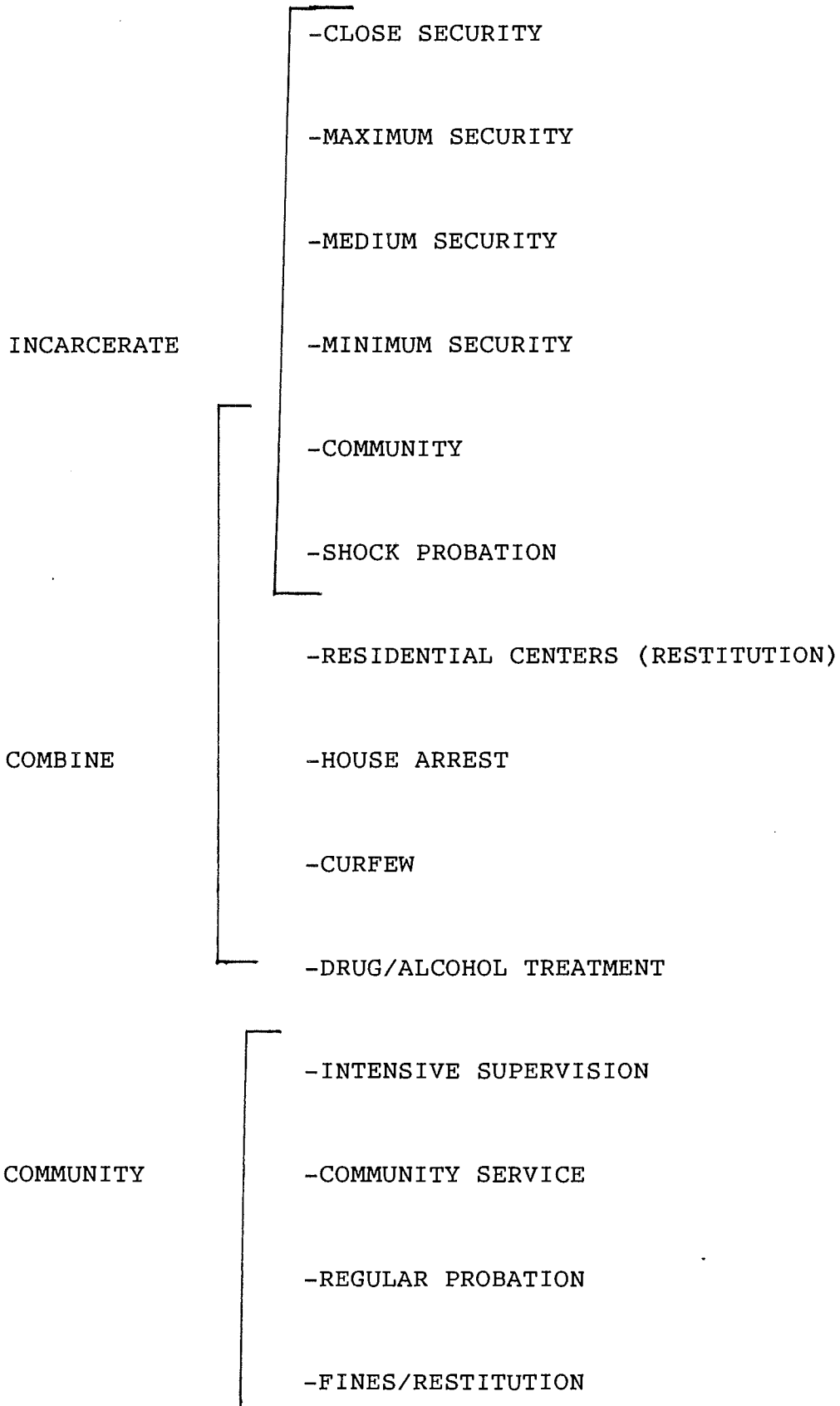
The National Institute for Sentencing Alternatives offender population analysis suggests a need for evaluation of Maine's current sentencing system - particularly with respect to split sentencing (Appendix 3, page 18).

Honorable Daniel E. Wathan, Justice, Maine Supreme Judicial Court suggests in a recent Maine Law Review article (see page 33) that Maine's present system of appellate review needs to be expanded to provide an alternate procedure for constructing an effective set of sentencing guidelines.

G. Recognition of, and Appropriate Treatment for Special Needs Offenders

Appropriate treatment of special needs offenders within correctional facilities, on probation and during their transition into the community should be improved to reduce the probability of repeat offense, and to ensure public protection upon their eventual release into the community.

RANGE OF POSSIBLE ADULT CORRECTIONS STRATEGIES



VIII STRATEGY - RECOMMENDATIONS

PROBATION MANAGEMENT

The Committee's research during the study process combined with results from the National Institute for Sentencing Alternatives analysis of Maine's offender population reveals that Maine's probation system is severely strained and in need of additional resources and development.

The ability to ensure that sufficient cell space is available for high risk offenders who require confinement is directly linked to the availability of a probation system which has the resources to provide community based corrections strategies and services for those low risk offenders who may not require prison.

Recognizing the need to invest in program development, increased staffing and an improved information and classification system, the committee makes the following recommendations:

Recommendations:

The Department of Corrections should undertake an extensive study of its probation management system, determine the needs of the system and resources required to improve and expand the system. (Legislation attached as Appendix 9).

The Joint Select Committee on Corrections requests the Department to report its findings, to the Second Regular Session of the 114th Legislature, by February 15, 1990.

Issues that should be addressed as part of the study are:

- A. Focus on improved data collection concerning information about the risks posed by offenders on probation and needs associated with those offenders. Criminal history data and offender tracking is crucial for effective offender management and program evaluation within the Division of Probation and Parole. Full consideration should be given to the adoption of a pre-sentence investigation system which provides detailed and specific recommendations to judges at the time of sentencing. A thorough review of probation's classification system is also needed, including the need for uniformity in record keeping.

- B. Staffing needs. Evaluation of the current system has indicated a pressing need to improve the staff/offender ratio. Current staffing ratios are often in excess of 100 cases per officer. The Department has indicated that a 1:75 ratio for adult supervision and a 1:35 ratio for juvenile supervision, coupled with enough clerical assistance to handle anticipated workload increases, would alleviate some of the difficulties arising from such a large number. The Committee supports the need for 17 additional officers requested by the Division of Probation and Parole in the FY 1990/91 budget (see page 13). The probation management study should focus on the need to reduce ratios to 1:75, with the long-range objective of 1:50.
- C. A management review should look closely at a full range of probation programming. It should ask what the probation system currently does, what other probation departments do, which can be studied and used by Maine's probation system, and what resources would probation need to undertake such programs. Furthermore, it should be clear how such programs could effectively target prison-bound offenders that could feasibly be diverted into the community.
- D. Any consideration of investment in program development should enable the Department to move beyond the traditional forms of supervision to the incorporation of a range of sanctions which are responsive to goals of community based punishment and treatment. A probation management study should look not only at high-level supervision projects such as Intensive Supervision and Home Detention, but also a full range of intermediate and lower levels of supervision. The committee urges the study to include, but not be limited to, consideration of the following options:
- Day Fines
 - Restitution/Diversion Centers
 - Victim/Offender Reconciliation Programs
 - Community Service Programs.
 - Private Sector Delivery of Non-Confinement Penalties.
- E. The study should also set up an evaluation procedure to monitor prison space management versus probation management, reporting to the Legislature on a regular basis to ensure that offenders that could feasibly be diverted into the community are not using up valuable and expensive prison space.

- F. Full consideration should be given to the training for Probation Officers who supervise offenders with special needs (Sex offenders, substance abuse, mental health and retardation, etc.)
- G. The study should also address the issue of prevention and consider the need for and development of a criminal prevention model for young adults within the State of Maine.

RECOMMENDATIONS

ENHANCED APPELLATE REVIEW

The National Institute for Sentencing Alternatives offender population analysis suggests that an evaluation of current sentencing practices is needed - particularly with respect to split sentencing, length of sentencing and abolition of parole.

Honorable Daniel E. Wathen, Justice, Maine Supreme Judicial Court, has proposed an enhanced appellate review system for Maine. In a recent Maine Law Review article (12), he argues that appellate review of criminal sentences, as it currently exists in Maine, has had a very limited effect in guiding the exercise of discretion by the sentencing judge. He suggests that expanding the appellate review of sentences provides an alternative procedure for constructing an effective set of sentencing guidelines.

His proposals include:

Establishment of a Sentence Review panel of the Supreme Judicial Court, which would provide the vehicle for:

- A. Correction of sentence, where deemed justifiable.
- B. Increasing the fairness of the sentencing process by correcting abuses of sentencing power
- C. Reducing the possibility of inequalities among the sentences of comparable offenders
- D. Promoting the development and application of criteria for sentencing which are both rational and just.

Justice Wathan suggests that the Legislature should change Maine's present system of appellate review in order to permit the development of a law of sentencing by the judiciary - a case by case evaluation of the current sentencing system to develop sentencing guidelines through an evolutionary process. He proposes that using Maine's highest court rather than the Legislature to develop guidelines would be a more effective alternative to legislatively imposed sentencing guidelines.

Through the proposed enhanced appellate review system, a reviewing body could gather enough information to establish if serious sentencing disparity exists, and why it does so. Judges are already required to articulate their reasons for sentencing, so the information is already available. It simply needs to be collected and reviewed on a consistent basis.

Source: (12) Honorable Daniel E. Wathen, Justice, Maine Supreme Judicial Court, "Disparity And The Need For Sentencing Guidelines In Maine: A proposal For Enhanced Appellate Review." Maine Law Review, Vol 40, No. 1, 1988.

Recommendation:

Assistant Attorney General Charles Leadbetter discussed Justice Wathan's proposals with the Committee at a July 11 meeting. The Committee voted to support an enhanced appellate review system. Legislation is attached as Appendix 5.

NOTE: The legislation does not include provisions designed to specifically address computerization of sentences and statistics gathering by the Judicial Department nor a provision dealing with the continuing need for the Department of Corrections informed as to population and other correctional requisites.

The Joint Select Committee stresses the need for appropriate data collection and information sharing in order to ensure efficient management of the offender population with respect to risk needs assessment, classification and space utilization.

RECOMMENDATIONS

CAPITAL CONSTRUCTION

The Committee recognizes the need for additional beds based on projections that indicate a shortfall of over 700 beds by 1995.

However, committee members stress that for long-range management of the corrections population, construction must be combined with other efforts to manage the offender population.

Keeping in mind that population projections that were based on the current system may be affected in the long term by increased investments in the probation system, community corrections alternatives, changes in sentencing practices and improved information flow, the committee recommends the following housing strategies:

- A. Support DOC proposals to build 400 new beds at S. Warren, in addition to the 100 beds currently under construction. This would effectively result in a 500-bed maximum security facility.
- B. No construction unless payment in lieu of taxes. This means that some mechanism should be set up so that the state will reimburse any municipality affected by loss of taxes resulting from state construction versus private.
- C. Support DOC proposals to upgrade life/safety systems at Maine State Prison in Thomaston.
- D. This plan for prison construction must be premised on the following:
 - 1. Elimination of the East wing at Maine State Prison as a residential facility in its present configuration.
 - 2. New maximum security beds must be utilized to allow for renovation of the East wing at Maine State Prison.
- E. Support for the need for 50 additional minimum security beds at the Bolduc Unit in S. Warren.
- F. Recommend upgrading and expansion of program space at MSP.
- G. That the Department establish a secure treatment unit for offenders with substance abuse problems within one or more of its facilities.

- H. Support 76 contracted community beds plus any necessary funds for additional beds that may be indicated by the DOC probation study due by February 15, 1990 - to the 2nd Session of the 114th Legislature.
- I. Any future planning should place emphasis on increasing the probation component of the system to ensure that offenders that could feasibly be diverted into the community are not using up valuable prison space.

RECOMMENDATIONS

PILOT PROGRAMS

The Joint Select Committee on Corrections has obtained information on a number of corrections alternatives, including, but not limited to:

- A. Day Fines
- B. Electronic Monitoring
- C. House Arrest
- D. Community Service Programs
- E. Diversion/Restitution Centers
- F. Victim/Offender Reconciliation
- G. Half Way Houses
- H. Residential Treatment Centers

In response to this information, the Committee recommends implementation of pilot programs designed to achieve the goals of restitution, punishment and relieving overcrowding, while ensuring public protection. Appropriate treatment of offenders with special needs is important to lower the probability of reoffending.

A synopsis of some of the above alternatives is attached as Appendix 6. More detailed information is available through the Office of Policy and Legal Analysis, and Criminal Justice organizations within the State and the Nation.

This report includes some specific program proposals. The Committee hopes that information collected on other programs will be used in ongoing studies.

The specific proposals recommended by the Committee in this report are:

- A. Pilot programs for sex offenders
- B. Community corrections alternatives for OUI offenders.

Managing the Sex Offender Population - Recommendations

The Task Force for Management and Treatment of the Adult Sex Offender Under Custody to the Department of Corrections submitted recommendations to the Commissioner that identify four phases of sex offender treatment.

The Joint Select Committee on Corrections supports the recommendations, but stresses the need to ensure that the location for the programs be chosen with full consideration of the availability of qualified specialists to staff them.

The recommendations are based on extensive study by the Task Force of the current management system and review of numerous nationally recognized projects for the treatment of the sex offender. Four projects were considered outstanding and have been used as models for the programs recommended by the Task Force. These are located in Minnesota, Vermont, California, Georgia. The models focus on relapse prevention as a primary treatment component, which uses a system whereby specialized care is provided during the offender's transition from prison to the community. (A synopsis of the programs is attached as Appendix 7).

The Task Force identified four phases of sex offender treatment for the incarcerated offender, stressing the need for a research component that will focus on program design and evaluation for both pilot and ongoing studies and programs. There is no current program evaluation component in Maine.

a) Long Term Offender Treatment Services

The Task Force recommended a treatment program for the long-term offender (sentence of more than five years). The treatment focus would center on education and preparation for an intensive treatment phase.

The Task Force has recommended that this program should be located at Maine State Prison, where long-term prisoners are sent under the current classification system.

b) Intensive Treatment Phase:

The Task Force has recommended that intensive treatment program participants be housed and receive treatment in an area separate from the general population. Separation enables more

open participation of the sex offender in treatment and decreases the sex offender's fear of victimization within the correctional environment. It also enables the Department of Corrections to provide specially trained correctional officers to supervise these housing units.

A cost-benefit analysis by Vermont researchers indicates that substantial savings can be achieved by providing intensive treatment. In Vermont, researchers have estimated that each reoffense, or reincarceration prevented by effective treatment saves society between \$110,768 and \$117,118. (13)

The Task Force has recommended that intensive program participants be housed and receive treatment at Maine Correctional Center and Downeast Correctional Facility.

These locations enable access to all the resources and programs which may assist in other areas of rehabilitation. For example, substance abuse counselling, vocational counselling, education, psychiatric services etc.

The Joint Select Committee on Corrections is supportive of the program location at Maine Correctional Center, but not at Downeast Correctional Facility. The need to attract qualified staff is of primary concern to committee members, and Downeast Correctional Facility is not in a location conducive to attracting that staff. The committee stresses the need, however, to locate the program in an area that can provide appropriate staff back up and support. (Anticipated costs are attached as Appendix 8).

c) Transitional Phase:

This would be achieved through expansion of community release options statewide. The Task Force has recommended that community correctional residences and half-way houses be established for treatment of the sex offender to strengthen the connection with community services and Probation and Parole, and to address the transitional needs of sex offender treatment. (Costs attached as Appendix 8)

Source: (13) Estimated Cost of Sexual Offenses in Vermont, William D. Pithers, Ph.D. Appendix (7)

In the transitional phase the sex offender is trained to balance community responsibilities, such as work and family, with his treatment responsibilities.

d) Community-Based Treatment Phase

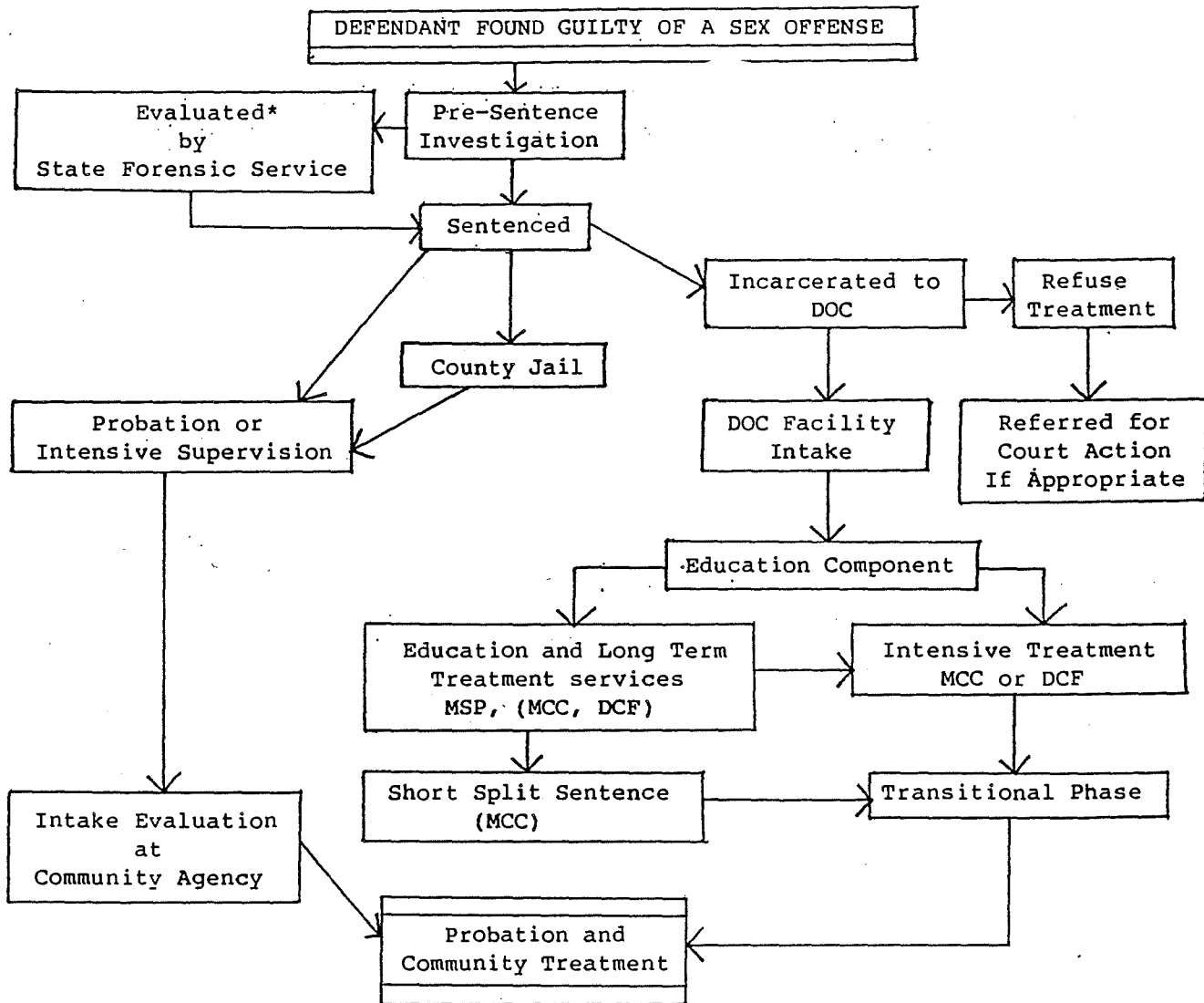
The task force has recommended the provisions of services for sex offenders who are placed directly on probation at the time of sentencing, those who have completed a short period of incarceration and those who are re-entering the community after completion of the intensive treatment phase.

Three important components within community-based treatment which should be improved are:

- 1) The Division of Probation and Parole must have specialized training and expertise in the supervision of sex offenders. Caseloads must be limited to ensure that supervising officers can maintain an active working relationship with community treatment services to include the monitoring and evaluation of the sex offender's behavior and participation in the treatment program. It is anticipated that this will require additional probation staff and staff training.
- 2) Community services must be substantially increased to ensure statewide availability of prompt, comprehensive, and long-term services for the sex offender. These services must have basic standard and quality assurance provisions, and include physiological assessment services and behavioral treatment whenever necessary.
- 3) Whenever possible offenders will pay for their treatment, or for whatever portion of their treatment which it is determined that they can afford. This is not only a financial issue. Clients often value treatment more and make better use of treatment when they pay for it.

TASK FORCE

RECOMMENDED FLOW CHART FOR THE MANAGEMENT OF THE ADULT SEX OFFENDER



*Recommended Criteria for State Forensic Service Evaluation

- First offenders
- Offenders considered for diversion or community-based programs
- Offenders considered for sentences that would put them back in the community in a relatively short period of time
- Offenders with a psychiatric history or suspected of having a psychiatric illness, and
- Juvenile offenders.

Increasing Community Options:

Community Corrections for OUI Offenders.

During the second regular session of the 113th Legislature, the Joint Select Committee on Corrections supported a bill which requested the Maine Department of Human Services Alcohol and Drug Abuse Planning Committee (ADPC) to examine the feasibility of establishing a detention and rehabilitation system for chronic OUI offenders, and expanding the Kennebec County Community Alternative Sentencing Program statewide (PL 1987, Chapter 107).

The bill was signed by the Governor on April 7, 1988, and the ADPC has submitted its findings to the Joint Select Committee on Corrections.

In order to address the study mandate, the Alcohol and Drug Abuse Planning Committee took the following steps:

- a) Reviewed the extent of the OUI and other alcohol problems in Maine county jails (14).
- b) Reviewed existing Maine OUI offender programs to determine their capacity and flexibility to respond to the various OUI populations. This included the Kennebec Jail first offender program, the York County Shelter alternative site program, the Androscoggin County Jail program, and the state-operated Driver Education and Evaluation (DEEP) programs (including the weekend program for multiple offenders).
- c) Contracted with the Human Services Development Institute, University of Southern Maine, to conduct a national survey to identify current fine, incarceration, treatment/education, etc. practices as they relate to first, second and third (chronic) OUI offenders.
- d) Established an advisory committee to provide expertise related to a Maine system, review/comment concerning the results of the national survey and recommendations concerning a Maine approach.

SOURCE: (14) Maine County Jails: A survey of substance abuse treatment needs of inmates. The Alcohol and Drug Abuse Planning Committee, October 1986.

Study findings, including the feasibility of establishing a detention and rehabilitation facility for the chronic OUI offender are attached as Appendix 10.

Kennebec County Alternative Sentencing Program:

The program is for first time OUI offenders only - with no prior criminal history. On average, about 50 inmates participate in the program. Offenders are sentenced to 72 hours; they complete 16 hours of community service, and participate in eight hours of education. Although they are sentenced to three days, if they complete 16 hours of community service, they have their sentence shortened by one day, thus serving a 48 hour sentence. Judges give stays of execution for first time offenders and sentence the offender to the designated location provided by the Sheriff. A breakdown of costs and savings of this program is attached as Appendix 11.

As the result of the national survey and review of Maine's programs, the Advisory Committee developed the following observations.

1. The primary issue is to relieve overcrowding within county jails.

2. We must first address the OUI first-time offenders. They represent seventy-five percent of the OUI population and occupy one third of the OUI jail beds. Maine data shows that their prognosis is good if they complete an alternative site and DEEP program involving screening, education and referral. The alternative site programs could be accomplished through a re-distribution of existing county jail funds and new funds for in-jail programs.

3. There is no evidence that a specialized facility for the third-time OUI offender would adequately serve the offender or the State. This population, which represents approximately 43 daily beds in the county jail system, could be served in the county jails if we address the first-time offender.

4. Base funding, to provide in jail substance abuse counselors and support services (approximately \$25,000 per jail), would be sufficient to establish a first offender program and a screening/education/referral program for second and third offenders. The cost would total \$250,000 per year, and would provide on the average, one counselor for each of the eleven county jails that lack formal substance abuse programs. The state has funded four county jail projects (Kennebec, Androscoggin, Oxford and Franklin Counties).

5. It would be inappropriate to make major investments in the second and third offender populations until first and second offender alternative site programs and screening/education/referral programs are established for all OUI populations.

6. Although various models may be acceptable, all programs must meet pre-established standards developed by the Office of Alcohol and Drug Abuse (DHS), and must be monitored and evaluated. For example, one successful OUI program provides sixteen hours of public service and eight hours of education/assessment within the forty-eight hour jail sentence. Standardized content, time frames, etc., are important.

Advisory Committee Recommendations:

1. First: establish a legislatively mandated in-jail basic program. This would focus upon the first offender, but also provide basic education/screening programs for second/third offenders. The cost would be approximately \$250,000, which would be used to establish the basic program.

2. Second: Expand the basic in-jail program to include a forty-eight hour optional program for OUI first offenders. This should not result in additional costs.

NOTE: This program should be standardized. DEEP and the jail programs must coordinate their efforts in order to reduce time between conviction, jail, DEEP and treatment (if necessary). Legislation may be required to address this issue (e.g. the individual is required to enter DEEP within x days following conviction). Data is needed to show that DEEP is effective if this is to be mandated.

3. Third: Establish a second and third offender program by utilizing the basic in-jail program and formalizing existing relationships. For example, for individuals already on probation, or who will be on, probation post-jail, include participation in the OUI jail program, DEEP and treatment (if necessary) as part of probation.

NOTE: This will not increase the probation/parole client load. Legislation may be required to address the time issues, e.g. the person must attend DEEP and treatment within x days following release from jail. The ADPC will survey county jails to determine the number of second/third offenders that are currently on, or will be on, probation post-jail.

4. Overall: The focus is upon establishing a basic in-jail capacity to address screen/education needs of first, second and third OUI offenders and a first OUI offender alternative site program. Second and third offender models can be developed using existing resources and without increasing demands upon

existing systems. This involves formalizing and systemizing existing relationships between the jails, probation and parole and DEEP.

5. Other: alternative site program models should include the following four components:

- First offense OUI should involve a 72 hour sentence which is reduced to 48 hours if the individual participates in an alternative program.

- Offenders must be classified as minimum security risks.

- Offenders should pay for being part of the program (e.g. \$20/day.)

- Allowing use of county and municipal facilities for alternative housing of prisoners.

Recommendations:

The Joint Select Committee on Corrections has evaluated the advisory committee's findings and recommends the following:

1. That the ADPC recommend some other method to punish and treat offenders with substance abuse problems rather than incarcerating them in county jail facilities.
2. While the committee agrees with and supports the advisory committee's recommendations to expand the Kennebec County Jail program and other such programs on a statewide basis, provisions need to be made with respect to housing offenders in locations other than jail facilities.
3. That this is an issue of particular concern to the Joint Select Committee on Corrections. Any legislation relating to the ADPC study should be referred to the committee during the 114th Legislative Session.

RECOMMENDATIONS

POLICY CONTROLS

1. Corrections Policy Advisory Commission:

Committee members have invested a great deal of energy during the past year in studying corrections issues, and are concerned that their efforts go forward. To ensure that the momentum spurring corrections reform in Maine will not lapse, the Committee proposes to enable the existing Maine Correctional Advisory Commission to be more representative of persons and agencies involved with or with an interest in the correctional system. In addition the Committee proposes to mandate that the Commission carry out specific duties and study topics, and to provide it with the resources necessary for it to better carry out its responsibilities. (Legislation is attached as Appendix 13). Furthermore, the committee proposes that the Department and Legislature consider the possibility of a future independent commission to continue monitoring corrections policy issues in Maine.

2. Joint Select Committee on Corrections:

The Committee further proposes to extend the Joint Select Committee on Corrections until the end of the Second Regular Session of the 114th Legislature:

- a) Hear bills relating to this study and that of the Juvenile Justice Advisory Commission.
- b) Ensure continuation of the momentum spurring corrections reform in Maine
- c) Keep issues alive until the Corrections Policy Advisory Commission is established and active.

3. Maine Judicial Council - Sentencing Institute Forum:

The Sentencing Institute Forum is an educational forum sponsored by the Maine Judicial Council. It is currently held once every three years for a two-day period. Its primary function is to provide a forum for the exchange of ideas concerning corrections issues.

The Joint Select Committee on Corrections has requested Forum organizers to consider making it a biennial event at a time of year that would be more convenient for legislators to attend.

4. Criminal Law Advisory Commission

The Criminal Law Advisory Commission (MRSA 17A @1351) is a technical advisory commission which has the responsibility to evaluate criminal and juvenile law and propose such changes as it may deem appropriate. It works mostly with the Joint Standing Committee on the Judiciary, and its members are qualified by their experience and knowledge of criminal and juvenile law.

The Joint Select Committee on Corrections supports the work of the Criminal Law Advisory Commission. It proposes that any proposed changes to criminal and juvenile law include an impact statement that outlines clearly any long term implications for the corrections system caused by the proposed changes.

RECOMMENDATIONS

TRAINING FOR CORRECTIONS OFFICERS

Under State law, the Maine Criminal Justice Academy Board of Trustees is responsible for preparing and publishing mandatory training standards for the entry-level corrections officers in Maine. (MRSA, Title 25, chapter 341)

In early 1986, the Board of Trustees articulated a need to improve training standards for all corrections officers. A Corrections Officer Task Analysis/Training Standards committee was established to develop a statewide training plan for corrections.

The following training standards have since been adopted by the Academy. Note, that there appears to be substantial attention given to relations between staff and offender, with focus on stress, sexuality, substance abuse and mental emotional problems.

TRAINING STANDARDS

To attain and maintain correctional officer certification, full and part-time correctional officers must demonstrate through written and/or performance tests that they have obtained through training efforts which include entry-level, basic and in-service, the requisite knowledge and skills described below:

1. INSTITUTIONAL POLICIES AND PROCEDURES

Familiarity with pertinent policies and procedures for their current facility of employment.

2. SECURITY, including but not limited to:

a) Searches

- 1) Persons
- 2) Clothing
- 3) Packages
- 4) Areas
- 5) Vehicles

b) Contraband

- 1) Definition of contraband, what can be transformed into contraband
- 2) Proper handling of contraband and evidence
- 3) How contraband can be hidden in a vehicle

c) Security Equipment and Its Use

- 1) Restraints
- 2) Weapons Handling

d) Physical Security

- 1) Ways Security Perimeter Can be Compromised
- 2) How Inmates/Offenders Compromise Security and Create Safety Hazards
- 3) How to Observe and Inspect Secure Areas

e) Key Control

f) How to Analyze Security Risk Potential

g) Inmate/Offender Transportation

h) Maintaining Security and Non-Secure Settings

i) How to Defend Self and Restrain Others

3. SAFETY AND EMERGENCIES, including but not limited to:
 - a) Ways Inmates/Offenders Escape, Prevention and Responses
 - b) Fire Safety
 - 1) Fire/Fuel Incendiary Devices and Fire Control Equipment
 - 2) Life Safety Code - fire safety, electrical safety
 - 3) Use and Maintenance of Fire Safety Equipment
 - c) Hostage and Negotiation Principles/Skills
 - d) Inmate/Offender Disturbances
 - 1) Mob Psychology and Control
 - 2) Managing Hostile Groups
 - e) Explosive Devices
4. LEGAL ISSUES, STATUTES AND STANDARDS, including but not limited to:
 - a) Legal Issues
 - 1) Inmate/Offender Constitutional Rights
 - 2) Grievances
 - 3) Privacy
 - 4) Discipline
 - 5) First Aid
 - b) Statutes
 - 1) Maine Statutes
 - 2) Use of Force
 - 3) Juvenile Issues
 - 4) Privacy, Access and Confidentiality
 - 5) Medication
 - c) Standards
 - 1) Searches
 - 2) Use of Force
 - 3) Rules and Discipline
5. SUPERVISION AND RELATIONS (STAFF - INMATE/OFFENDER), including but not limited to:
 - a) Patterns of Inmate/Offender Behavior
 - b) Causes of Stress, Responses
 - c) Sexuality in the Correctional Setting

- d) Signs of Drug Use/Abuse
 - e) Indicators of Suicidal Thought and Behavior
 - f) Mental Health/Disorders
 - g) Signs of Medical Distress, Trauma, Needs
 - h) Issues Associated with Inmate/Offender Work
 - i) Human Relations/Interpersonal Skills
 - 1) Interpersonal Communication (Listening, Verbal, Nonverbal)
 - 2) How to Mediate and Resolve Conflicts
 - 3) Alternative Responses to Physical Confrontation
 - j) Supervision Skills
 - 1) Principles of Rule and Discipline
 - 2) Directing/Coordinating the Actions of Others
 - 3) Training Methods
 - k) How to Empathize with Inmates/Offenders
6. SPECIAL MANAGEMENT INMATES/OFFENDERS, including but not limited to:
- a) Physical and Mental Handicaps and Special Needs of the Handicapped
 - b) Signs of Drug Use/Abuse
 - c) Indicators of Suicidal Thought/Behavior
 - d) Juveniles
 - e) Signs of Medical Distress/Needs
7. INMATE/OFFENDER PROGRAMS AND SERVICES, including but not limited to:
- a) Programs and Services Available to Inmates/Offenders
 - b) Medical Care (First Aid, Drug Classification, Proper Handling of Medications)
 - c) Food Service Practices
8. SANITATION AND INMATE/OFFENDER HYGIENE, including but not limited to:
- a) Insects/Vermin/Pests

- b) Inmate/Offender Personal Hygiene
- c) Laundry
- 9. CLASSIFICATION, including but not limited to:
 - a) Principles of Classification
- 10. OTHER KNOWLEDGE AND SKILLS, including but not limited to:
 - a) Documentation of Inmate/Offender Admission/Release Transfer
 - b) How to Write Reports and Maintain Logs/Journals
 - c) How to Analyze Reports, Logs, Directives and Other Written Material
 - d) Courtroom Practices and Testifying in Court Cases
 - e) Fundamentals of Decision-Making
 - f) How to Use Discretion/Judgment
 - g) Training Methods

Two bills relating to training issues will probably be introduced next session on behalf of the Department of Corrections.

- A. The Attorney General's office is drafting legislation to change current certification procedures.

Under the present system corrections and law enforcement officers are certified once they have completed academy training. They are required to participate in in-service training to maintain certification. However, the burden is on the authorities to revoke certification if someone does not obtain in-service training. There are so many "loopholes" that the in-service training requirement has little effect.

The proposed statutory changes would bring certification for corrections and law enforcement officer more in line with licensing provisions of other professionals - such as doctors, teachers, etc. Certification would essentially become a licensing provision that has to be renewed annually. The burden is therefore placed on the officer to get his/her certificate renewed by going through in-service training.

B. Next session, a Department of Public Safety Bill will be introduced on behalf of the Maine Criminal Justice Academy that would amend requirements for training standards. The proposed legislation would ensure that certification is based on performance evaluation and knowledge rather than simply the number of hours of training undertaken by officers.

Also, current law stipulates a 6 month period to complete training requirements. The proposed changes would amend the statutes to require a 12-month period to complete training requirements.

A bill that proposed a similar package was introduced last session but was not passed.

Recommendation:

The Joint Select Committee on Corrections supports any steps taken to improve training standards. Furthermore, the committee believes any bills introduced relating to training for corrections officers should be referred to the Joint Select Committee.

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4. "Disparity and the Need for Sentencing Guidelines in Maine: A Proposal for Enhanced Appellate Review." Honorable Daniel E. Wathan, Justice, Maine Supreme Judicial Court. Maine Law Review, Vol. 40, No.1, 1988.
5. "Phase Two Report: Entry-Level Correction Officer Task Analysis and Training Standards Validation." Maine Criminal Justice Academy Board of Trustees, January 1987.

APPENDIX A

PROBATION AND PAROLE PROGRAM NEEDS

PROBATION AND PAROLE DIVISION

PROGRAM DESCRIPTION/NEEDS

(From Joint Select Committee Interim Report - Feb. 1988)

CURRENT PROGRAM NEEDS - 1987	Total Population	Required for Full Programming	
<u>16</u> additional adult field officers	4,000 (approx.)	Description of Program 1	<u>Cost</u>
		Space	16,000
		Personal Services	390,656
		Equipment	21,290
		All other	<u>53,312</u>
		Total:	481,258
<u>13</u> juvenile field officers	2,000 (approx.)	Description of Program 2	<u>Cost</u>
		Space	19,500
		Personal Services	317,408
		Equipment	17,810
		All other	<u>43,316</u>
		Total:	398,034
<u>12</u> clerical 11 Clerk Typist II 1 Clerk Typist I		Description of Program 3	<u>Cost</u>
		Space	18,000
		Personal Services	177,515
		Equipment	14,040
		All other	<u>7,092</u>
		Total:	216,647
<u>2</u> District Supervisors		Description of Program 4	
		Space	3,000
		Personal Services	60,198
		Equipment	2,740
		All other	<u>6,046</u>
		Total:	71,984

6483m

08/19/88

PROBATION AND PAROLE

Request for Inclusion in 1990/91 Budget

<u>ITEM</u>	<u>POSITIONS 1990</u>	<u>POSITIONS 1991</u>
CO/ New District	(17) \$540,525	(17) \$290,017
Drug Testing	3,000	3,000
Capital Equip.	1,500	
<u>TOTAL</u>	(17) \$545,025	(17) \$293,017

APPENDIX B

INCARCERATED OFFENDERS PROGRAM NEEDS

DEPARTMENT OF CORRECTIONS
JANUARY 1988 PROGRAM NEEDS ASSESSMENT
FOR
ADULT CORRECTIONAL FACILITIES
(Not prioritized/no cost restrictions)

MAINE STATE PRISON

MEDICAL:	104,773
PSYCHO/SOCIAL	371,302
ADMINISTRATION	29,610
ACADEMIC	58,566
VOCATIONAL	64,476
LIBRARY	1,000
SECURITY	351,599
TOTAL	981,326

MAINE CORRECTIONAL CENTER

MEDICAL	143,299
PSYCHO/SOCIAL	131,146
ADMINISTRATION	42,329
ACADEMIC	22,471
VOCATIONAL	257,090
RECREATION	25,838
SECURITY	898,947
TOTAL	1,521,120

DOWNEAST CORRECTIONAL FACILITY

MEDICAL	127,947
PSYCHO/SOCIAL	136,273
ADMINISTRATION	28,066
VOCATIONAL	100,000
RECREATION	35,876
SECURITY	108,155
TOTAL	536,317

Program Needs Assessment.....continued.

CHARLESTON CORRECTIONAL FACILITY

MEDICAL	23,920
PSYCH/SOCIAL	24,658
ADMINISTRATION	16,860
ACADEMIC	27,336
VOCATIONAL	80,122
KITCHEN	6,000
RECREATION	38,007
SECURITY	203,658
TOTAL	420,561

BOLDUC MINIMUM SECURITY UNIT

MEDICAL	14,648
PSYCHO/SOCIAL	93,361
ADMINISTRATION	18,061
ACADEMIC	3,920
VOCATIONAL	101,000
SECURITY	98,977
TOTAL	329,967

CENTRAL MAINE PRE-RELEASE UNIT

PSYCHO/SOCIAL	9,000
ADMINISTRATION	59,960
KITCHEN	9,723
RECREATION	500
SECURITY	42,422
TOTAL	121,605

BANGOR PRE-RELEASE

MEDICAL	11,142
PSYCHO/SOCIAL	10,400
ADMINISTRATION	20,286
WORK/STUDY RELEASE	16,000
FOOD SERVICE	92,099
SECURITY	31,946
TOTAL	181,873

Program Needs Assessment.....continued

CENTRAL OFFICE

RELEASE PROGRAMS	435,000
COMPUTER PROGRAM DEVELOPMENT	8,000
TOTAL	443,000

TOTAL COST

<u>INSTITUTION</u>	<u>TOTAL COST/INSTITUTION</u>
Maine State Prison	981,326
Maine Correctional Center	1,521,120
Downeast Correctional Facility	536,317
Charleston Correctional Facility	420,561
Bolduc Unit	329,967
Central Maine Pre-Release Center	121,605
Bangor Pre-Release Center	181,873
Department Of Corrections	443,000
TOTAL	4,535,769

APPENDIX C

**MAINE'S OFFENDER POPULATION - AN ANALYSIS BY THE
NATIONAL INSTITUTE FOR SENTENCING ALTERNATIVES**

NATIONAL
INSTITUTE FOR
SENTENCING
ALTERNATIVES



BRANDEIS UNIVERSITY
FLORENCE HELLER
GRADUATE SCHOOL

FORD HALL
WALTHAM
MASSACHUSETTS
02254-9110

(617) 736-3980

To: Senator Beverly Bustin

11/28/88

From: Mark D. Corrigan *MDC*

Re: Corrections Population Analysis

The purpose of this memorandum is to summarize the results of our limited population analysis and to provide a set of recommendations to the Committee as you finalize plans for the 1989 session.

As you know, six months ago, based on the Committee's consensus, NISA agreed to collect and review certain corrections data in a manner that would:

- Provide a description of the State's prison, probation and jail population in terms of seriousness, risk and need;
- Establish a comparison between the prison and probation groups.

The policy questions underlying our analysis were:

- Is there a pool of offenders confined in the prison system which appears to present a relatively low risk to public protection goals?

- If such a pool exists, does that fact suggest a need to clarify the state's policies concerning sentencing purposes, in terms of when and how the justice system distinguishes goals of public protection and punishment?

- Are low risk offenders who go to prison different from or similar to offenders who are currently supervised on probation?

- If there is similarity between the prison and probation groups, does that fact suggest that, with more resources in probation, and a clarification of purpose, the lower risk offenders could be supervised in the community in a manner that further limits the state's reliance on prison?

Although our objectives did not include an analysis of sentencing factors, as the study progressed, data pertaining to length of time served, and use of the split sentence, revealed such important findings that we expanded our consideration to include two questions?

- Has the abolition of parole impacted the state's use of probation?

- Should length of sentence and time served be a matter of concern to policymakers who are addressing the question of resources for state corrections?

Prior to discussing our findings, a note on methodology is important.

With extraordinary cooperation from your staff and the Department of Corrections, three separate sample groups were established.

The sample included:

PRISON: The analysis examined offenders who were admitted to the prison system between November, 1987 and May, 1988. The prison analysis is of the entire eligible population and is therefore descriptive of that group.

Maine State Prison	130
Maine Correctional Center	151
Prison Total	281

PROBATION: A much greater number of persons are

sentenced to and supervised on probation than those incarcerated. Therefore the analysis examined a representative sample, versus the entire population, of persons on active probation. Corrections officials identified three District offices which, in their minds, would provide a representative picture from the perspective of demography (rural vs. urban), offense types and caseload management issues, of the active probation population. They included District 1 (Portland), District 3 (Augusta and four satellite offices) and District 4 (Bangor and two satellite offices).

Regular Probation	304
ISP	43
Probation Total	347

JAIL: The jail sample was selected from persons admitted during the same time period as the prison sample. Corrections officials identified three county jails which were believed to be representative of the jail population from the above perspectives. The three jails were Penobscot, Lincoln and Hancock.

Jail Total	150
TOTAL SAMPLE SIZE	778

Table 1 illustrates the distribution of offenses types as found in the sample analyzed, throughout the Maine corrections population, and the proportion each type represents within prisons, probation and jails, respectively.

TABLE 1				
DISTRIBUTION OF CURRENT OFFENSE TYPES WITHIN THE MAINE CORRECTIONS POPULATION				
Valid Offense Sample - n = 774			Missing Cases = 4	
OFFENSE TYPE		Prison	POPULATION Probation	Jail
Against Persons	#	74	66	11
	%	26.4%	19.1%	7.4%
Against Property	#	54	60	5
	%	19.3%	17.4%	3.4%
Drugs	#	42	17	3
	%	15.0%	4.9%	2.0%
Sexual	#	47	24	0
	%	16.8%	7.0%	0.0%
OUI	#	2	92	95
	%	.7%	26.7%	63.8%
Other	#	33	48	17
	%	11.8%	13.9%	11.4%
Traffic	#	28	38	18
	%	10.0%	11.0%	12.1%
Total Offenses	#	280	345	149
	%	100%	100%	100%

Certain qualifications should be noted about the data.

Although the Department has made important strides in the development of a computerized data base, that system remains limited and does not include the capability to provide information required for the complete analysis of risk and need.

The quality of manual records within probation, jails and prison, is somewhat uneven. In general, the quality of data kept in records used for the prison sample was rather high. Primarily, most information sought for the analysis was recorded

and present in the records. Probation and jail records were much less complete and consistent than the prison data. Specifically, analysts experienced difficulty identifying a probation admissions sample within the same time period identified for the prison and jail samples. No chronological records of admissions are maintained. As a result, the sample had to be derived from the large group of those actively on probation at the time of the analysis and then reduced the pool through examination of the record, to those actually admitted between November 1987 and May 1988.

Furthermore, much of the vital information regarding the probation group's criminal history was not available in the probation record. Specifically, information on: prior record was missing for 29% of the sample; severity of prior record was absent for 39% of the sample; number of prior incarcerations was missing for 38%; number of prior probation supervisions was missing for 39%; number of prior parole supervisions was absent for 46%; and finally, number of prior revocations was missing for 43% of the probation sample.

Condition of records within the jail sample was so limited that analysts were unable to examine several of the issues which had been built into the design. On the variables just listed above, those related to criminal history, the percentage of missing information ranged between 62% and 79% for the jail sample.

Recognizing the important limitations of the data and the analysis, the facts which are presented in the following

discussion are reliable and clear. To us, they suggest that firm, decisive action is warranted by your Committee and the legislature at this time.

Although Maine's incarceration rate is low, when compared with most other jurisdictions, our analysis suggests that there does exist in prison a pool of low risk offenders who appear to be confined for reasons of punishment. Their criminal history profile suggests that, with more refined analysis, they would hold up as positive candidates for community placement.

Any legislative initiative which is designed to ensure that expensive prison space is reserved for public protection purposes and the confinement of high risk offenders should include a requirement to closely monitor and evaluate the pool of Class "C" felons.

While it must be noted that there is no correlation between the nature of an offense and the probability of re-offense, we have purposely chosen to omit consideration of certain "high seriousness" categories which appear to warrant prison simply because of the nature of the offense.

Table 1-A shows a distribution of the "C" felony group within the prison population.

TABLE 1-A DISTRIBUTION OF C FELONY OFFENSE TYPES WITHIN THE PRISON SAMPLE			
C FELONY OFFENSE TYPE	#	% of C Felony Group	% Total Prison Sample
Against Persons	15	12.4%	5.0%
Against Property	35	28.9%	12.5%
Drugs	9	7.4%	3.5%
Sexual	10	8.3%	4.0%
OUI	0	0.0%	0.0%
Other	26	21.5%	9.0%
Traffic	26	21.5%	9.0%
Total C Felony Offenses	121	100%	43.0%

Conventional wisdom would suggest that many of the "C" felons are confined because of prior criminal history factors.

That fact is partly true. There follows a set of tables which describe the "C" felony pool on the basis of several additional factors. They include number and nature of prior offenses, age and involvement with alcohol or substance abuse.

TABLE 1-B

DISTRIBUTION OF PRIOR OFFENSES WITHIN C FELONY PRISON GROUP
 Valid C Felony Sample - n = 92 Missing Cases = 29

C FELONY OFFENSE TYPE		Number of Prior Offenses			
		0	1	2-5	6+
Against Persons	#	2	2	3	5
	%	2.2%	2.2%	3.3%	5.4%
Against Property	#	2	3	12	13
	%	2.2%	3.3%	13.0%	14.1%
Drugs	#	1	0	2	4
	%	1.1%	0%	2.2%	4.3%
Sexual	#	2	2	4	1
	%	2.2%	2.2%	4.3%	1.1%
Other	#	1	4	8	2
	%	1.1%	4.3%	8.7%	2.2%
Traffic	#	0	4	7	8
	%	0%	4.3%	7.6%	8.7%
Total C Felonies	#	8	15	36	33
	%	8.7%	16.3%	39.1%	35.9%

Table 1-B shows that a large proportion of offenders convicted of and incarcerated for C Felony offenses have a history of two or more convictions: 39.1% have 2 to 5 priors and 35.9% have 6 or more priors. However, it is important to understand the **nature** of these prior offenses - were these offenders committing crimes against persons, or do many of them repeatedly commit crimes of a lower degree of severity? In order to continue our determination of the degree of risk low seriousness offenders currently incarcerated may reflect, the analysis attempted to develop a picture of the level of severity of these offenders' prior records. **Very limited** information regarding this factor was available for the analysis - records reviewed addressed severity of prior record for only 56 of the 281 offenders examined in the prison population. The information

available, however, indicates that the majority of prior offenses for incarcerated C Felony offenders were C felonies and D misdemeanors. Table 1-C below elaborates.

TABLE 1-C						
DISTRIBUTION OF PRIOR OFFENSES BY SEVERITY						
WITHIN C FELONY PRISON GROUP						
Valid C Felony Sample - n = 56				Missing Cases = 65		
C FELONY OFFENSE TYPE		Severity of Prior Record (Felony Type)				
		0	A	B	C	D
Against Persons	#	2	2	1	4	0
	%	3.6%	3.6%	1.8%	7.1%	0%
Against Property	#	1	0	7	8	2
	%	1.8%	0%	12.5%	14.3%	3.6%
Drugs	#	0	0	2	4	0
	%	0%	0%	3.6%	7.1%	0%
Sexual	#	2	1	0	1	0
	%	3.6%	1.8%	0%	1.8%	0%
Other	#	1	0	2	3	3
	%	1.8%	0%	3.2%	5.4%	5.4%
Traffic	#	0	2	2	4	2
	%	0%	3.2%	3.2%	7.1%	3.2%
Total C Felonies	#	6	5	14	24	7
	%	10.7%	8.9%	25.0%	42.9%	12.5%

Table 1-D indicates that approximately 80% of the C Felony group fall between 19 and 39 years of age. Amongst the less serious offenders, traffic violators tend to be older than persons convicted of "other" offenses, while property offenders tend to follow the distribution trend of the larger C group.

TABLE 1-D
AGE AT SENTENCING WITHIN C FELONY PRISON GROUP
Valid C Felony Sample - n = 118 Missing Cases = 3

C FELONY OFFENSE TYPE	16-18		19-24		25-29		30-39		40-66	
Against Persons	#	1		3		1		5		4
	%	.8%		2.5%		.8%		4.2%		3.4%
Against Property	#	1		11		9		10		4
	%	.8%		9.3%		7.6%		8.5%		3.4%
Drugs	#	0		4		2		1		1
	%	0%		3.4%		1.7%		.8%		.8%
Sexual	#	0		0		2		2		5
	%	0%		0%		1.7%		1.7%		4.2%
Other	#	1		13		5		4		3
	%	.8%		11.0%		4.2%		3.4%		2.5%
Traffic	#	0		2		8		12		4
	%	0%		1.7%		6.8%		10.2%		3.4%
Total C Felonies	#	3		33		27		34		21
	%	2.5%		28.0%		22.9%		28.8%		17.8%

Tables 1-E and 1-F demonstrate the degree to which offenders in this group report that they abuse alcohol or drugs. Two points of interest should be noted: 1) there is a significant amount of substance abuse self-reported by this group; and 2) alcohol abuse exists at least twice as frequently for C felony offenders as does drug abuse.

TABLE 1-E
PRESENCE OF ALCOHOL ABUSE WITHIN C FELONY PRISON GROUP
Valid C Felony Sample - n = 118 Missing Cases = 3

C FELONY OFFENSE TYPE		Yes	No
Against Persons	# %	14 11.9%	1 .8%
Against Property	# %	21 17.8%	13 11.0%
Drugs	# %	7 5.9%	2 1.7%
Sexual	# %	4 3.4%	5 4.2%
Other	# %	17 14.4%	8 6.8%
Traffic	# %	19 16.1%	7 5.9%
Total C Felonies	# %	82 69.5%	36 30.5%

TABLE 1-F
 PRESENCE OF DRUG ABUSE WITHIN C FELONY PRISON GROUP
 Valid C Felony Sample - n = 115 Missing Cases = 6

C FELONY OFFENSE TYPE		Yes	No
Against Persons	#	7	8
	%	6.1%	7.0%
Against Property	#	10	22
	%	8.7%	19.1%
Drugs	#	5	4
	%	4.3%	3.5%
Sexual	#	3	6
	%	2.6%	5.2%
Other	#	9	16
	%	7.8%	13.9%
Traffic	#	4	21
	%	3.5%	18.3%
Total C Felonies			
	#	38	77
	%	33.0%	67.0%

Summary:

The analysis findings show that the low seriousness offenders in this group (persons convicted of "property", "other" and "traffic" offenses) represent 30.5% of the prison admissions pool. While a sizeable proportion of this group has a record of prior offenses, the nature of these priors tends not to be so serious (C or D offenses) as to prohibit them from punishment in the community given an appropriate range of sanctions.

In summary, although the size of the "C" felony pool is limited, the State's ability to divert this pool from prison through the expanded use of community based punishments, could result in the avoidance of a need for some additional cells.

It must be emphasized that the ability to alter the current use of prison for lower risk offenders will depend on

a new investment in probation, and the establishment within probation of supervision strategies, case management models and risk assessment procedures which can ensure appropriate levels of community based punishment and control.

A second stage of the analysis involved the comparison of the prison pool with the probation group. If it can be demonstrated that the probation agency is already supervising offenders who are similar to state prisoners, then it is possible to argue for more consistency in sentencing.

In this context, the analysis indicates that within the "C" felon group there are important differences between the prison and probation samples, especially in relation to the number of prior offenses.

The tables below follow the sequence of the prison data presented. Table 2-A shows that C Felonies represent 24% of the offenses within the total probation sample. Property offenders make up 27.8% of this group - a proportion similar to that of incarcerated C Felons. Of the other low seriousness categories, traffic offenders represent a slightly higher proportion (30%) of the group than prisoners, while persons on probation for "other" category offenses represent a much lower percent (7.5) than their incarcerated counterparts.

TABLE 2-A DISTRIBUTION OF C FELONY OFFENSE TYPES WITHIN PROBATION			
C FELONY OFFENSE TYPE	#	% of C Felony Group	% Total Probation Sample
Against Persons	7	8.8%	2.1%
Against Property	22	27.5%	6.6%
Drugs	5	6.3%	1.5%
Sexual	9	11.3%	2.7%
OUI	7	8.8%	2.1%
Other	6	7.5%	1.8%
Traffic	24	30.0%	7.2%
Total C Felonies	80	100.0%	24.0%

Table 2-B demonstrates that C Felons on probation tend to have fewer prior offenses compared to those in prison.

Thirty-one percent had no prior record, compared to 8.7% of recently incarcerated offenders in this category. 25% of C Felons given a probation term had 1 prior offense. However, 42.6% of probationers had a history of 2 or more priors compared to 75% of C Felon prisoners.

TABLE 2-B				
DISTRIBUTION OF PRIOR OFFENSES WITHIN C FELONY PROBATION GROUP				
Valid C Felony Sample - n = 54			Missing Cases = 26	
C FELONY OFFENSE TYPE	Number of Prior Offenses			
	0	1	2-5	6+
Against Persons	# 1 % 1.9%	3 5.6%	2 3.7%	0 .0%
Against Property	# 5 % 9.3%	4 7.4%	1 1.9%	1 1.9%
Drugs	# 1 % 1.9%	0 .0%	3 5.6%	0 .0%
Sexual	# 8 % 14.8%	0 .0%	0 .0%	1 1.9%
OUI	# 0 % .0%	4 7.4%	1 1.9%	1 1.9%
Other	# 2 % 3.7%	1 1.9%	0 .0%	0 .0%
Traffic	# 0 % .0%	2 3.7%	5 9.3%	8 14.8%
Total C Felonies	# 17 % 31.5%	14 25.9%	12 22.2%	11 20.4%

Information on the severity of prior offenses for the C Felon probationers exists for only 60% of the group. Table 2-C demonstrates that over 60% of the reporting group have committed prior offenses of the same or less serious nature as their current offense. More importantly, we see an overlap in this area, between C Felon probationers and prisoners.

TABLE 2-C
DISTRIBUTION OF PRIOR OFFENSES BY SEVERITY
WITHIN C FELONY PROBATION GROUP
Valid C Felony Sample - n = 48 Missing Cases = 32

C FELONY OFFENSE TYPE	Severity of Prior Record (Felony Type)				
	0	A	B	C	D
Against Persons	# 1 % 2.1%	0 .0%	1 2.1%	2 4.2%	2 4.2%
Against Property	# 2 % 4.2%	0 .0%	1 2.1%	1 2.1%	2 4.2%
Drugs	# 1 % 2.1%	0 .0%	0 .0%	2 4.2%	1 2.1%
Sexual	# 7 % 14.6%	0 .0%	0 .0%	0 .0%	1 2.1%
Other	# 2 % 4.2%	0 .0%	0 .0%	0 .0%	1 2.1%
OUI	# 0 % .0%	0 .0%	0 .0%	6 12.5%	0 .0%
Traffic	# 0 % .0%	1 2.1%	1 2.1%	8 16.7%	3 6.3%
Total C Felonies	# 13 % 27.1%	1 2.1%	3 6.3%	19 39.6%	10 20.8%

TABLE 2-D
AGE AT SENTENCING WITHIN C FELONY PROBATION GROUP
Valid C Felony Sample - n = 71 Missing Cases = 9

C FELONY OFFENSE TYPE

	16-18	19-24	25-29	30-39	40-66
Against Persons	# 1 % 1.4%	0 .0%	2 2.8%	3 4.2%	1 1.4%
Against Property	# 1 % 1.4%	15 21.1%	0 .0%	4 5.6%	0 .0%
Drugs	# 0 % .0%	3 4.2%	0 .0%	1 1.4%	1 1.4%
Sexual	# 0 % .0%	0 .0%	0 .0%	2 2.8%	4 5.6%
OUI	# 0 % .0%	1 1.4%	4 5.6%	1 1.4%	0 .0%
Other	# 1 % 1.4%	2 2.8%	2 2.8%	0 .0%	0 .0%
Traffic	# 0 % .0%	6 8.5%	9 12.7%	4 5.6%	3 4.2%
Total C Felonies	# 3 % 4.2%	27 38.0%	17 23.9%	15 21.1%	9 12.7%

Age at Sentencing: Table 2-D shows the distribution of ages of C Felons at their sentence to probation. The group is distributed heavily between the ages of 19 to 39, and is somewhat similar to the prison group (see Table 1-D). More specifically, C Felons on probation and incarcerated between the ages of 25 to 29 represent a little less than 1/4 of their respective groups. A slightly higher proportion of younger offenders (19 - 24) are placed on probation, while a similarly higher proportion of older offenders (30 - 39) are incarcerated.

Substance Abuse within the Probation sample:

Tables 2-E illustrates a significant self-reported involvement with alcohol (55.6%).

TABLE 2-E			
PRESENCE OF ALCOHOL ABUSE WITHIN C FELONY PROBATION GROUP			
Valid C Felony Sample - n = 72		Missing Cases = 8	
C FELONY OFFENSE TYPE		Yes	No
Against Persons	#	3	3
	%	4.2%	4.2%
Against Property	#	8	10
	%	11.1%	13.9%
Drugs	#	2	2
	%	2.8%	2.8%
Sexual	#	2	6
	%	2.8%	8.3%
OUI	#	7	0
	%	9.7%	.0%
Other	#	2	3
	%	2.8%	4.2%
Traffic	#	16	8
	%	22.2%	11.1%
Total C Felonies	#	40	32
	%	55.6%	44.4%

Table 2-F demonstrates much lower proportion of the sample reporting an abusive relationship with drugs (18.8%).

TABLE 2-F			
PRESENCE OF DRUG ABUSE WITHIN C FELONY PROBATION GROUP			
Valid C Felony Sample - n = 64		Missing Cases = 16	
C FELONY OFFENSE TYPE		Yes	No
Against Persons	#	0	7
	%	.0%	10.9%
Against Property	#	6	11
	%	9.4%	17.2%
Drugs	#	1	3
	%	1.6%	4.7%
Sexual	#	0	7
	%	.0%	10.9%
OUI	#	0	5
	%	.0%	7.8%
Other	#	0	5
	%	.0%	7.8%
Traffic	#	5	14
	%	7.8%	21.9%
Total C Felonies	#	12	52
	%	18.8%	81.3%

In summary, recognizing the differences which are outlined above, it is important to acknowledge some overlap between the probation and prison pools in regards to the nature of past record. In both cases, C Felons primarily have a history of offending in a similar manner to the current offense, thus potentially presenting a low risk to public safety, given adequate community based resources.

Two suggestions can be derived from the analysis. First, with more aggressive policy control and more effective targeting of resources, it would be possible to divert some low

risk offenders from prison to probation. Such action would require no change in public protection priorities, but merely a recognition of the fact that similar offenders should be supervised under similar conditions.

Secondly, the findings suggest that if the probation agency had resources for more middle range punishment options for low risk offenders, it is possible that judges would utilize probation sentences more regularly and more consistently.

Since the prison pool shows a relatively low risk to public safety and appears to be in prison for purposes of punishment, it can be suggested that Maine needs additional probation programs and strategies which are perceived as safe and punitive.

Among the models which have been routinely incorporated in probation services but which are limited or non-existent in Maine's probation system are residential restitution centers, and community based residential work programs.

The Split Sentence:

The state's ability to further reduce reliance on prison by expanding probation options will also require a re-examination of current sentencing practices pertaining to the use of the split sentence.

The analysis revealed that the split sentence (part prison/part probation) is employed in 53% of prison cases. In fact, closer scrutiny suggests that probation, in Maine, has become a replacement system for parole which was abolished.

Under the indeterminate sentencing system, judges knew that the actual time served in prison would be determined by a parole board with a gradual re-entry to the community through supervised release. It now appears that when policymakers abolished parole in Maine, judges determined that it was possible to ensure post-release supervision by employing the split sentence. That factor may explain why the percentage of offenders on probation in Maine is about 10% above the national average.

Two problems result from the current split sentence practice. First, when judges sentence an offender to a split sentence, there is no control in the system which allows a determination of the offender's readiness for release. In some cases as much as five years pass before the probation term begins automatically, with no review. Secondly, since there is no policy standard for the use of the split sentence, the amount of time required on probation varies sharply among offenders and offense types. The following tables, which describe all offense types analyzed, illustrate the problem.

Of the 280 persons admitted to state correctional facilities during the analysis period, 147 were given split sentences. Tables 3-A and 3-B demonstrate the length of sentences for this group to incarceration and to probation respectively.

TABLE 3-A
DISTRIBUTION OF SPLIT INCARCERATION SENTENCE LENGTHS
WITHIN PRISON GROUP

Total Sample - n = 147

ALL OFFENSE TYPES		LENGTH OF INCARCERATION SENTENCE			
		to 11 mos.	12-24 mos.	25-48 mos.	48+ mos.
Against Persons	#	0	0	10	32
	%	.0%	.0%	6.8%	21.8%
Against Property	#	3	1	13	6
	%	2.1%	.7%	8.8%	4.1%
Drugs	#	0	1	8	12
	%	.0%	.7%	5.4%	8.2%
Sexual	#	0	0	4	34
	%	.0%	.0%	2.7%	23.1%
Other	#	2	0	7	2
	%	1.4%	.0%	4.8%	1.4%
Traffic	#	0	2	7	3
	%	.0%	1.4%	4.8%	2.0%
Total C Felonies	#	5	4	49	89
	%	3.4%	2.7%	33.3%	60.5%

Less than four percent of the prison group received incarceration and/or probation terms under one year. Ninety-four percent of the group received sentences to incarceration greater than two years. Of interest, however, in terms of the additional time and resources required of probation supervision is the fact that almost 97% of the group were sentenced to more than one year on probation. Of that, two-thirds of those persons given split sentences received additional probation terms greater than two years.

TABLE 3-B
DISTRIBUTION OF SPLIT PROBATION SENTENCE LENGTHS
WITHIN PRISON GROUP

Valid Sample - n = 143

Missing Cases = 4

ALL OFFENSE TYPES		LENGTH OF PROBATION SENTENCE			
		to 11 mos.	12-24 mos.	25-48 mos.	48+ mos.
Against Persons	#	0	14	21	7
	%	.0%	9.8%	14.7%	4.9%
Against Property	#	1	10	8	2
	%	.7%	7.0%	5.6%	1.4%
Drugs	#	1	5	15	0
	%	.7%	3.5%	10.5%	.0%
Sexual	#	0	3	16	19
	%	.0%	2.1%	11.2%	13.3%
Other	#	1	5	3	0
	%	.7%	3.5%	2.1%	.0%
Traffic	#	2	6	4	0
	%	1.4%	4.2%	2.8%	.0%
Total C Felonies	#	5	43	67	28
	%	3.5%	30.1%	46.9%	19.6%

The split sentence appears to have been informally adopted as a replacement for parole, therefore giving judges some assurance that post-release supervision is available for a large percentage of convicted felons. However, the split sentence provides no controls or policy guidance on the length of time an offender should be incarcerated or supervised, based on the risk he poses to public safety, the seriousness of his offense, or his needs, nor does it take into account the readiness of offenders to move into the community. Furthermore, sentenced probation periods impose on probation authorities the burden of supervision of offenders for long time periods, with no additional resources.

If reliance on split sentences in their current form continues, two questions need to be carefully considered:

- Ø how is the length of each component of the split sentence determined?
- Ø what kind of resources are needed in the community in order to enable probation authorities to adequately supervise offenders?

Jails:

As referenced earlier, the data on the jail sample was extremely limited and uneven in quality. Inadequate information was available in jail records regarding the nature or extent of the sample's prior offense history, the distribution of the sample's age at sentencing or the extent of

involvement persons had with alcohol or substance abuse. In addition to the high degree of information not available, the sample size was relatively small compared to the high volume of persons who passed through the Maine county jail system during the sampling exercise. Coupled with the diverse nature of separate counties in the state, the vast distances between jails made the concept of gathering a "representative" sample in a short time frame a difficult goal to achieve. While corrections officials did their best to identify jails which were placed in geographically and demographically distinct portions of the state, a valid concern exists over how fully representative any three jails sampled might be.

However, the most striking finding which warrants further more refined analysis pertains to the extremely high incidence of offenders who are jailed for alcohol/motor vehicle offenses.

Table 4-A demonstrates the distribution of offenses throughout the jail sample. Nearly two-thirds of persons incarcerated in the jail sample were being held for drunk driving charges.

TABLE 4-A
DISTRIBUTION OF OFFENSES TYPES WITHIN JAIL

Valid Jail Sample - n = 140		Missing Cases = 10			
JAIL OFFENSE TYPE		SEVERITY OF CURRENT OFFENSE			
		B Felony	C Felony	D Misd.	E Misd.
Against Persons	#	0	1	10	0
	%	.0%	.7%	7.1%	.0%
Against Property	#	0	1	3	1
	%	.0%	.7%	2.1%	.7%
Drugs	#	1	1	1	0
	%	.7%	.7%	.7%	.0%
OUI	#	0	0	93	0
	%	.0%	.0%	66.4%	.0%
Other	#	0	0	6	7
	%	.0%	.0%	4.3%	5.0%
Traffic	#	0	5	10	0
	%	.0%	3.6%	7.1%	.0%
Total Jail Offenses	#	1	8	123	8
	%	.7%	5.7%	87.9%	5.7%

The average length of sentence for jailed offenders by type of offense is shown in Table 4-B. Sixty-five percent of the sample received sentences of one month or less, and of those, at least half were sentenced up to 48 hours. In keeping with the high proportion of OUI offenders incarcerated in jails, the vast majority of those serving short sentences were OUI offenders.

TABLE 4-B
DISTRIBUTION OF SENTENCE LENGTH WITHIN JAIL

Valid Jail Sample - n = 149		Missing Cases = 1					
JAIL OFFENSE TYPE		SENTENCE LENGTHS					
		to 48 hrs.	to 1 mo.	1-11 mo.	12 mos.	13-24 mos.	25-48 mos.
Against Persons	#	0	4	1	3	2	1
	%	.0%	2.7%	.7%	2.0%	1.3%	.7%
Against Property	#	0	1	1	0	1	2
	%	.0%	.7%	.7%	.0%	.7%	1.3%
Drugs	#	0	0	0	2	0	1
	%	.0%	.0%	.0%	1.3%	.0%	.7%
OUI	#	46	21	7	19	1	1
	%	30.9%	14.1%	4.7%	12.8%	.7%	.7%
Other	#	3	10	1	2	1	0
	%	2.0%	6.7%	.7%	1.3%	.7%	.0%
Traffic	#	3	9	5	0	1	0
	%	2.0%	6.0%	3.4%	.0%	.7%	.0%
Total Jail Offenses	#	52	45	15	26	6	5
	%	34.9%	30.2%	10.1%	17.4%	4.0%	3.4%

While Maine mirrors the practice of most other states in terms of pressure to get tough on drunk driving, the use of jail alone as a sanction may not be the most effective remedy for the problem of drunk driving.

Recommendations

Our limited analysis of Maine's corrections population indicates that your legislative committee has an extraordinary opportunity to advance a set of workable policy recommendations which are designed to more clearly establish the purpose of corrections in the state, and begin to ensure that adequate resources are available for operation of a safe, affordable system.

We are proposing that any report your committee adopts concentrate on three major areas of need:

- Probation
- Sentencing policy
- Jails

Probation:

The ability to ensure that sufficient cell space is available for high risk offenders who require confinement is directly linked to the availability of a probation system which has the resources to provide community based corrections strategies and services for those low risk offenders who may not require prison.

While much attention has been directed toward Maine's crowded prison system, our analysis reveals that the probation system is severely strained and in need of additional resources and development.

There is a recognized need to increase staffing for case management to ratios which ensure adequate supervision levels. Beyond that, there is a need for the development of information systems which enable probation managers to assess risk and need more thoroughly and reliably. Full consideration should also be given to the adoption of a pre-sentence investigation system which provides detailed and specific recommendations to judges at the time of sentencing. Also there is a need for investment in program development which would enable the Department to move beyond the traditional forms of supervision to the incorporation of a range of sanctions which are responsive to goals of community based punishment and treatment.

Recognizing the complexity of these tasks, we are recommending that the committee call for the development of a probation masterplan. Monies could be allocated to the Department with a clear, specific mandate to develop the plan and submit recommendations to the 1990 legislative session.

Sentencing:

As indicated earlier our analysis was not designed to address sentencing issues and problems. However, our review of the split sentencing issue and the data pertaining to length of sentence, as well as the limited "crossover" between prison and

probation populations indicates that a comprehensive study of sentencing must be conducted if Maine is to control its investment in corrections.

From our limited review, it is clear that the abolition of parole has resulted in impacts on the justice system which were not anticipated by policymakers who enacted the law.

Any decisions to invest in new prisons or to improve probation services should be guided by a clearer understanding of the sentencing system than currently exists in Maine.

The need for such understanding should not be blocked by earlier problems associated with sentencing guidelines initiatives.

If the objective of the legislative committee is to understand and control the state's investment in the corrections system, that goal is simply not attainable without further consideration of current policies.

Therefore, we are recommending that your report include a call for the establishment of a sentencing study commission which would be charged to analyze current practice and develop policy recommendations designed to ensure that Maine has a safe, rational, affordable system. Those recommendations would be submitted to the 1990 session.

Jails:

Two points should be considered as Maine evaluates policies concerning the uses of corrections resources.

In order to gain a better understanding of what specific resources and sanctions should be developed, there needs to be a

clearer understanding of who is in the jail population from the perspective of risk and need. A strong recommendation follows that resources be invested in development of information systems for the purposes of informed decision making.

Secondly, by housing an unusually high percentage of OUI offenders, county jails invest most of their time and resources into housing the drunk driver population. From the perspective of corrections policy, the committee needs to consider whether jails are the appropriate resource for the punishment of this population? Or, should the state consider developing sanctions intended to punish and treat the OUI offender. Residential models such as secure hospital-based settings developed in Massachusetts, may prove to be a more effective use of resources for this population, which frequently has serious treatment needs related to its criminal behavior. Developing specialized resources for the most troubled part of this population would free up a large proportion of jail space for a larger proportion of the less serious offender population.

In conclusion, we strongly recommend that any recommendations of the legislative committee should include efforts to improve probation and develop more structured form of sentencing.

In our efforts to continue our work with the special legislative committee, we are prepared to come to the committee meeting on December 5 to further the discussion of our recommendations. We are looking forward to your response.

APPENDIX D

PROBATION AND PAROLE - CONTRACTS FOR SEX OFFENDER TREATMENT

SEX OFFENDERS

Division of Probation and Parole contracts for sex offender treatment as of June 8, 1988:

<u>DISTRICT</u>	<u>SPECIALIST</u>	<u>CONTRACT AMOUNT</u>
1	Stephan Thomas	\$37,500 - Pending
2	Fox & Doucette	\$28,400
3	Kennebec Valley Mental Health Center	\$30,000 + \$5,000 (amendment pending)
	James McKenzie Thomas	\$15,000
	Crisis & Counselling	\$15,000 - pending
4.	William DiTullio	\$15,000
	Community Health & Counselling	\$15,000 - pending
5.	Washington County Psychological Assoc.	\$30,000
	Aroostock Menatal Health Center	\$16,830
	Washington County Psych. Assoc.	\$10,410
6.	York County Counselling	\$25,000 - pending
	Emergency funds - as needs basis	\$13,755
TOTAL		\$256,895

APPENDIX E

ENHANCED APPELLATE REVIEW LEGISLATION

A. Lane
7390*

FIRST REGULAR SESSION

ONE HUNDRED AND FOURTEENTH LEGISLATURE

Legislative Document

No.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY NINE

AN ACT to Establish a Law Court Sentence
Review Mechanism Relative to Sentences
Involving Terms of Imprisonment of One
Year or More

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 15 MRSA §2141, as last amended by P.L. 1979, c.
13, §8, is repealed.

Sec. 2. 15 MRSA §2142, as last amended by P.L. 1979, c.
541, §A, 141, is repealed.

Sec. 3. 15 MRSA §2143, as last amended by P.L. 1977, c.
510, §7, is repealed.

Sec. 4. 15 MRSA §2144, as last amended by P.L. 1977, c.
510, §8, is repealed.

Sec. 5. 15 MRSA c. 306-A is enacted to read:

CHAPTER 306-A
LAW COURT SENTENCE REVIEW

§ 2151. Application to the Law Court by a defendant for a review of certain sentences.

In cases arising in the District Court or the Superior Court in which a defendant has been convicted of a criminal offense and sentenced to a term of imprisonment of one year or more, the defendant may, except in any case in which a different term of imprisonment could not have been imposed, apply to the Supreme Judicial Court, sitting as the Law Court, for review of the sentence.

§2152. Sentence Review Panel of the Law Court.

There shall be a Sentence Review Panel of the Supreme Judicial Court to consider applications for leave to appeal from sentence, and no appeal of the sentence may proceed before the Law Court unless leave to appeal is first granted by the panel. The Sentence Review Panel shall consist of 3 justices of the Supreme Judicial Court to be designated from time to time by the Chief Justice of the Supreme Judicial Court. Leave to appeal shall be granted if any one of the three panelists votes in favor of granting leave. If leave to appeal is denied, the decision of the panel shall be final and subject to no further review.

§2153. Procedure for application.

The time for filing an application for leave to appeal and the manner and any conditions for the taking of the appeal shall be as the Supreme Judicial Court shall by rule provide.

§2154. Purposes of sentence review by the Law Court.

The general objectives of sentence review by the Law Court are:

- (1) to correct the sentence which is excessive in length, having regard to the nature of the offense, the character of the offender, and the protection of the public interest;
- (2) to promote respect for law by correcting abuses of the sentencing power and by increasing the fairness of the sentencing process;
- (3) to facilitate the possible rehabilitation of an offender by reducing manifest and unwarranted inequalities among the sentences of comparable offenders; and
- (4) to promote the development and application of criteria for sentencing which are both rational and just.

§2155. Factors to consider by the Law Court.

In reviewing a criminal sentence, the Law Court is authorized to consider:

- (1) the propriety of the sentence, having regard to the nature of the offense, the character of the offender, and the protection of the public interest; and
- (2) the manner in which the sentence was imposed, including the sufficiency and accuracy of the information on which it was based.

§2156. Relief.

(1) If the Law Court determines that relief should be granted, it is authorized to:

- (a) substitute for the sentence under review any other disposition that was open to the sentencing court, provided however, that the sentence substituted shall not be more severe than the sentence appealed from; or
- (b) remand the case to the court imposing the sentence for any further proceedings that could have been conducted prior to the imposition of the sentence under review and for resentencing on the basis of such further proceedings, provided however, that the sentence shall not be more severe than the sentence originally imposed.

(2) If the Law Court determines that relief should not be granted, it shall affirm the sentence under review.

§2157. Sentence not stayed nor bail authorized for a sentence appeal.

An appeal under this chapter shall not stay the execution of a sentence. Further, bail has no application to an appeal under this chapter.

STATEMENT OF FACT

This Act specifically seeks to implement the proposed changes in sentence review in Maine as reflected in the recent Maine Law Review article authored by Associate Justice Daniel E. Wathen - namely, Disparity and the Need for Sentencing Guidelines in Maine: a Proposal for Enhanced Appellate Review, 40 Me. L. Rev. 1-40 (1988). This Act additionally addresses in section 2157 two technical points not mentioned by that article relative to this new review of sentence by the Supreme Judicial Court, sitting as the Law

Court. First, an appeal pursuant to chapter 306-A does not stay the execution of a sentence. Second, bail is not available to a defendant relative to a chapter 306-A sentence appeal. Section 2157 mirrors the current law on these two points applicable to appeals of sentence to the Appellate Division. See generally, 15 MRSA §2142 (1980) and State v. Colby, CR-87-173 (Me. Super. Ct., Wal. Cty., Oct. 28, 1988).

This appendix was prepared and submitted to the committee by Assistant Attorney General Charles Leadbetter.

A GUIDE TO UNDERSTANDING AND APPLYING THE
SENTENCE REVIEW MECHANISMS OF DIRECT APPEAL,
RULE 35, POST-CONVICTION REVIEW AND
APPELLATE REVIEW OF SENTENCE UNDER PRESENT
MAINE LAW

I. INTRODUCTION

A. CLASSIFICATION OF ALL MAINE SENTENCE REVIEW
MECHANISMS; THREE GENERAL CATEGORIES

1. Category One - sentence review mechanisms which provide a forum in which to test the "legality" of a sentence;

(a) direct appeal from the underlying criminal judgment (15 M.R.S.A. §§ 2111 and 2114), M.D.C. Crim. R. 37 and M.R. Crim. P. 93 relative to appeals to the Superior Court in criminal cases and 15 M.R.S.A. § 2115 and M.R. Crim. P. 37 relative to appeals from the Superior Court to the Maine Law Court);

(b) Rule 35(a) & (c) (both Maine Rules of Criminal Procedure and District Court Criminal Rules);

(c) post-conviction review (15 M.R.S.A. ch. 305-A & M.R. Crim. P. Part XI); and,

(d) appellate review of sentence pursuant to 15 M.R.S.A. §§ 2141-2144 and M.R. Crim. P. 40.¹

2. Category Two - sentence review mechanisms which provide a forum for modification of specific sentence alternatives or specific aspects thereof focused entirely upon post-sentencing circumstances and thus in no way seek to attack the "legality" of that sentence as of the time of its actual imposition by the sentencing court:

(a) 17-A M.R.S.A. § 1202(2) (court authorized as to probation to "modify the requirements imposed, add further requirements authorized by section 1204, or relieve the person on probation of any requirement that, in his opinion, imposes an unreasonable burden on him");

¹ For reasons which I will later discuss, I choose to include appellate review of sentence in "Category One" notwithstanding the Maine Law Court's own characterization of this forum as one which serves to test the "propriety" of the term of imprisonment rather than its "legality." See, e.g., Smith v. State, 479 A.2d 1309, 1311 (Me. 1984); State v. Farnham, 479 A.2d 887, 888-889 (Me. 1984).

(b) 17-A M.R.S.A. § 1202(3) (termination of term of probation "if warranted by the conduct of... [the person on probation]");

(c) 17-A M.R.S.A. § 1305(1) (revocation of fine in whole or in part, or modify the time and method of payment "[i]f the court finds that the circumstances which warranted the imposition of the fine have changed, or that it would otherwise be unjust to require payment");²

(d) 17-A M.R.S.A. § 1328(1) (revocation of restitution in whole or in part, or modify the time and method of payment "[i]f the court finds the circumstances which warranted the imposition of the restitution have changed, or that it would otherwise be unjust to require payment");

(e) 17-A M.R.S.A. § 1341(3) (modification of fee to help defray county jail expenses "to reflect any changes in the financial status of the offender").

3. Category Three - sentence review mechanisms which provide a forum for sentence reduction or modification based upon clemency considerations rather than a vehicle for attacking the legality of the sentence.

(a) Governor's commutation power, pursuant to Me. Const. art. V, part 1, § 11;

(b) Rule 35(b) (both the Maine Rules of Criminal Procedure and the District Court Criminal Rules; a recognition of the traditional inherent judicial power to reduce a lawful sentence while still "in the bosom of the court." State v. Hunter, 447 A.2d 797, 802 (Me. 1982); and,

(c) (b) through (e) of "Category Two" potentially.³

² See also 17-A M.R.S.A. § 1304(2).

³ Although these provisions can be construed broadly enough to come within "Category Three," to do so, except with respect to the termination of probation (cf., Gilbert v. State, 505 A.2d 1326 (Me. 1986)), arguably raises a serious separation of powers question in view of the Governor's exclusive power to commute sentences. See generally, State v. Hunter, 447 A.2d 797 (Me. 1982) (finding that portion of now-repealed 17-A M.R.S.A. § 1255(2) allowing for reduction of the term of imprisonment based upon post-sentencing conduct to be unconstitutional); Bossie v. State, 488 A.2d 477 (Me. 1985) and

B. OUTLINE OF FORTHCOMING EXAMINATION OF CATEGORY ONE MECHANISMS.

1. Each of the Four Mechanisms Explained; and,
2. Impact of One Mechanism Upon Another.

II. CATEGORY ONE SENTENCE REVIEW MECHANISMS ANALYZED.

A. EACH OF THE FOUR MECHANISMS EXPLAINED.

1. Direct Appeal.

(a) cognizability.

The Law Court's jurisdiction on direct appeal to examine claims relative to sentences is limited. See 4 M.R.S.A. § 57.

This limited jurisdiction is for the purpose of reviewing sentences which allegedly have been imposed in violation of constitutional guarantees, based on the theory that where acts of a sentencing justice prejudicially deprive a criminal defendant of constitutional safeguards the court loses its jurisdiction to impose sentence.

State v. Chesnel, 358 A.2d 381, 382 (Me. 1976) (citing State v. Staples, 354 A.2d 771, 777 (Me. 1976)). Or put in slightly different terms,

The Supreme Judicial Court, sitting as the Law Court, has no jurisdiction to review sentence except to the extent that there may be involved in the appeal a claim that an illegal sentence was imposed. ...

State v. Brasslett, 452 A.2d 973 (Me. 1982); State v. Parker, 372 A.2d 570 (Me. 1977); State v. Capitan, 363 A.2d 221, 224 (Me. 1976) (citing State v. Carver, 330 A.2d 785, 786 (Me.

Chestnut v. State, 524 A.2d 1216 (Me. 1987) (finding that attempt to award good-time credits retrospectively on the basis of 17-A M.R.S.A. §§ 1253(3) (Supp. 1983) or 1254(3) (Pamph. 1976) was unconstitutional).

1975)). See also State v. Farnham, 479 A.2d 888, 889 (Me. 1984); Smith v. State, 479 A.2d 1303, 1311 (Me. 1984); State v. Lax, 482 A.2d 466 (Me. 1984); State v. Bunker, 436 A.2d 413, 418 (Me. 1981); State v. Samson, 388 A.2d 60, 66 (Me. 1978); 3 Glassman, Maine Practice: Rules of Criminal Procedure Annotated § 40.1 (1967)

The inquiry to determine whether the merits can properly be addressed by the Law Court does not end here, however, since it yet must be determined whether the record discloses the alleged jurisdictional sentencing infirmity in accordance with the standard of proof requisite to authorize cognizance of it on a direct appeal. State v. Parker, 372 A.2d 570, 572 (Me. 1977); State v. Chesnel, 358 A.2d 381, 383-384 (Me. 1976); cf., Dow v. State, 275 A.2d 815 (Me. 1975)

To be cognizable on direct appeal the "jurisdictional" sentencing infirmity must appear on the face of the appeal record so plainly that its existence is shown as a matter of law. That is to say that the relevant facts must appear on the record on appeal so plainly as to preclude rational disagreement as to their existence; only then would the facts be shown as a matter of law. The sentence must be established on the fact of the appeal to be beyond the statutory powers of the sentencing justice.

State v. Rich, 395 A.2d 1123, 1133 (Me. 1978); see also State v. Lax, 482 A.2d 466 (Me. 1984); State v. Farnham, 479 A.2d 887, 888-889 (Me. 1984); Smith v. State, 479 A.2d 1311 (Me. 1984); State v. Dumont, 507 A.2d 164, 166 (Me. 1986); State v. Beaudoin, 503 A.2d 1289, 1290 (Me. 1986); State v. Hudson, 470 A.2d 786, 787 (Me. 1984); State v. Ginn, 462 A.2d 17 (Me. 1983); State v. Smith, 455 A.2d 428, 430 (Me. 1983); State v. Plante, 417 A.2d 991, 996 (Me. 1980); State v. Flemming, 409 A.2d 220, 224 (Me. 1979); State v. Gleason, 404 A.2d 573, 586 (Me. 1979); State v. Sutherburg, 402 A.2d 1294, 1297 (Me. 1979); State v. Kee, 398 A.2d 384, 387 (Me. 1979); State v. Satow, 392 A.2d 546, 548 n.1 (Me. 1978). Or stated in a slightly different manner,

[E]ven though illegality in a sentence may qualify for review in a direct appeal, as a "jurisdictional" infirmity, yet because the review in a direct appeal is confined strictly to the record brought before the

court, the claimed illegality of a sentence can be given ultimate cognizance on direct appeal only where the alleged sentencing infirmity appears so plainly on the face of the record that there can be no rational disagreement as to its existence.
(citations omitted)

State v. Blanchard, 409 A.2d 229, 233 (Me. 1979).

(b) illegal sentence encompasses both an "unlawful sentence" and a "sentence unlawfully imposed."

The "jurisdictional" sentencing infirmity can be either an "unlawful sentence" or a "sentence unlawfully imposed." "An unlawful sentence" is one not authorized by statutory or constitutional law. It is ab initio illegal. Examples of the same are as follows:

1. a sentence greater than the maximum authorized by the legislature;

2. imposition of a sentence the provisions of which constitute an ex-post facto law as to the defendant, or a violation of the Double Jeopardy Clause of the State or Federal Constitutions;

3. a sentence which violates the proportionality requirement of the Maine (Me. Const. art. I, § 9) or Federal (U.S. Const. amend. VIII) Constitutions;

4. a sentence which omits statutory requisites as, for example, the failure to impose sentencing alternatives mandated by the legislature for a specific crime, the failure to impose a mandatory minimum sentence or to make sentences consecutive when required to do so by law;

5. internally contradictory sentence provisions as, for example, imposition of two split sentences to be served consecutively except where the period of probation relative to the 1st sentence is solely for the duration of the initial unsuspended portion;

6. an ambiguity in the time or manner in which a sentence is to be served; and,

7. an ambiguity as to the substance of the sentence.⁴

A "sentence unlawfully imposed" is "a 'legal' sentence insofar as its length or amount is authorized by law, but the procedure by which it was imposed does not comply with the... [criminal] rules or otherwise is unlawful." 1 Cluchey & Seitzinger, Maine Criminal Practice § 35.2 at 35-12 (1987). Examples of the same are as follows:

1. a sentence imposed where the defendant has not affirmatively been afforded the right of allocution as required by M.R. Crim. P. 32(a)(2);

2. a sentence imposed that is inconsistent with a plea agreement;

3. a sentence imposed in violation of Federal or State due process, as for example, the failure of a court to afford a defendant the opportunity to deny or explain information considered in determining the appropriate sentence, or the failure of the court to rely solely on accurate information.

2. Rule 35(a) and (c).

(a) substance.

Rule 35(a) and (c) provides as follows:

(a) Correction of Sentence. On motion of the defendant or the attorney for the state, or on the court's own motion, made within one year after a sentence is imposed, the justice who imposed sentence may correct an illegal sentence or a sentence imposed in an illegal manner.

. . . .

(c) Reduction of Sentence After Commencement of Execution.

(1) Timing of Motion. Within one year after a sentence is imposed and before the execution of the sentence is completed, on motion of the defendant

⁴ See generally, United States v. Becker, 536 F.2d 471 (1st Cir. 1976).

or the attorney for the state, or on the court's own motion, the justice who imposed sentence may reduce a sentence.

(2) Ground of Motion. The ground of the motion shall be that the original sentence was influenced by a mistake of fact which existed at the time of sentencing.

(d) Definitions. A sentence is the entire order of disposition, including conditions of probation, suspension of sentence, and whether it is to be served concurrently with, or consecutively to, another sentence.

A revision of sentence from imprisonment to probation is a permissible reduction of sentence.

A reduction of sentence is either an obvious reduction or a change of sentence to which the defendant consents.

(b) cognizability.

The Rule 35 forum allows direct access by a defendant to the sentencing court to test the "legality" of a sentence, be the claimed sentence infirmity an "unlawful sentence" or a "sentence unlawfully imposed."⁵ In addition, this Rule 35 forum (unlike that of the direct appeal) allows for the development of an adequate record at a hearing both for purposes of issue resolution as well as for ultimate appellate cognizance.

⁵ In this regard, reduction of a sentence under 35(c) is a "sentence unlawfully imposed." It exists as a separate provision in part to emphasize the fact that any sentence modification made thereunder should reflect a "reduction" of sentence. See M.R. Crim. P. 35(c) advisory committee's note to 1985 amend., Me. Rptr., 479-487 A.2d LV. The provision constitutes the embodiment of that portion of now-repealed 17-A M.R.S.A. § 1255(2) which was not found by the Hunter court to be unconstitutional. Id. Note that unlike sentence "correction" under Rule 35(a), a sentence "reduction" under Rule 35(c) can only take place before the execution of sentence is completed.

Finally, the Rule 35 forum is available to a defendant for one (1) year following the oral imposition of sentence. This time limitation is both mandatory and jurisdictional. As to Rule 35(a), the one-year time limitation relates only to the filing of the motion. As to Rule 35(b), however, the time limitation relates both to the filing of the motion and the court action thereon. 1 Cluchey & Seitzinger, Maine Criminal Practice § 35.4 at 35-17 (1987).

(c) appeal.

Any appeal taken from the denial of a Rule 35 motion is controlled by M.R. Crim. P. 37. Since such an appeal may or may not coincide with a direct appeal from the underlying criminal judgment, Rule 37(c) contemplates the following relative to the Rule 35(a) or (c) motion. If the Rule 35 motion is filed within 20 days after the entry of judgment, any appeal filed following the entry of an order denying the motion is taken from the judgment rather than from the post-trial order -- the denial of the motion constituting potentially an issue on appeal from the judgment. See generally, 1 Cluchey & Seitzinger, Maine Criminal Practice § 37.4 at 37-30. On the other hand, if the Rule 35 motion is timely (i.e., filed within one year after the sentence imposed) but is filed beyond 20 days after the entry of judgment, any appeal filed following the entry of an order denying the motion is not from the judgment, but rather is restricted to challenging the denial of that post-trial order. See generally, id. at n.57; State v. Farnham, 479 A.2d 887, 888-889 (Me. 1984); State v. Mudle, 508 A.2d 119 (Me. 1986).

3. Post-Conviction Review.

(a) cognizability.

Post-conviction review (15 M.R.S.A. §§ 2121-2132) allows any petitioner "under present restraint or impediment" as specified in section 2124 to challenge a sentence as "unlawful or unlawfully imposed" unless the operation of section 2125⁶ precludes such a challenge.

⁶ 15 M.R.S.A. § 2125 provides as follows:

A person who satisfies the prerequisites of section 2124 may show that the challenged criminal judgment or sentence is unlawful or unlawfully imposed, or that the impediment resulting from the challenged post-sentencing procedure[sic] is unlawful, as a

This latter section, in addition to barring relief if the alleged sentencing infirmity constitutes harmless error, renders post-conviction relief "unavailable" in the event "remedies incidental to proceedings in the trial court... [or] on appeal" are not "exhausted" as specified in section 2126⁷ or in the event of "waiver" as described in subsections 1 through 5 of section 2128.⁸

result of any error or ground for relief, whether or not of record, unless the error is harmless or unless relief is unavailable for a reason provided in section 2126 or 2128.

⁷ 15 M.R.S.A. § 2126 reads in its entirety as follows:

A person under restraint or impediment specified in section 2124 must also demonstrate that he has previously exhausted remedies incidental to proceedings in the trial court, on appeal or administrative remedies. A person who has taken an appeal from a judgment of conviction or a juvenile adjudication is not precluded from utilizing the remedy of this chapter while the appeal is pending, provided that the post-conviction review proceeding is automatically stayed pending resolution of the appeal unless the Appellate Court on motion and for good cause otherwise directs.

⁸ 15 M.R.S.A. § 2128 provides as follows:

A person under restraint or impediment specified in section 2124 shall demonstrate that relief is not unavailable on the basis of waiver as described in subsections 1 to 5.

1. Errors claimable on direct appeal. Errors at the trial which have been or could have been raised on a direct appeal, whether or not such an appeal was taken, may not be raised in an action for post-conviction review under this chapter, provided that if the failure of the convicted or adjudicated person to take an appeal or to raise certain issues on appeal is excusable and the errors not appealed may result in reversal of the criminal judgment, the court may order that an appeal be taken as provided in section 2130.

2. Errors claimable in federal habeas corpus. The assertion of a right under the Constitution of the United States shall not be held waived by its nonassertion at trial or on appeal if the assertion of the right would be held not waived in a federal habeas corpus proceeding brought by the convicted or adjudicated person, pursuant to the United States Code, Title 28, section 2241 to 2254.

3. Waiver of grounds not raised. All grounds for relief from a criminal judgment or from a post-sentencing proceeding shall be raised in a single post-conviction review action and any grounds not so raised are waived unless the State or Federal Constitutions otherwise require or unless the court determines that the ground could not reasonably have been raised in an earlier action.

4. Prior challenges. A person who has previously challenged a criminal judgment or a post-sentencing proceeding under Title 14, sections 5502 to 5508 or its predecessors shall not challenge the criminal judgment or post-sentencing proceeding by post-conviction review unless the court determines that a ground claimed in the action for post-conviction review could not reasonably have been raised in the earlier action.

5. Delay. If the court finds that delay in the bringing of an action for post-conviction review or delay in raising certain grounds for relief has caused it to be seriously hindered in its ability to determine necessary facts, it shall deny relief unless it finds that the delay caused by the person seeking relief is excusable.

Note that to the extent this section addresses issue preclusion resulting from "procedural default," the "cause and prejudice" test of waiver enumerated in Wainwright v. Sykes, 433 U.S. 72, reh'g denied, 434 U.S. 880 (1977), rather than the "deliberate by-pass" standard of Fay v. Noia, 372 U.S. 391 (1963),

Thus, absent application of these "exhaustion" and "waiver" limitations, the post-conviction review forum allows access by a defendant to a court to test the "legality" of a sentence, be the claimed sentence infirmity an "unlawful sentence" or a "sentence unlawfully imposed." In addition, like the Rule 35 mechanism (but unlike direct appeal), the post-conviction review forum allows for the development of an adequate record at a hearing both for purposes of issue resolution as well as for possible ultimate appellate cognizance.

(b) appeal process.

Any appeal to the Maine Law Court by a defendant from a final judgment in a post-conviction review proceeding is contingent upon the Court issuing a certificate of probable cause. 15 M.R.S.A. § 2131(1). The time limitations for taking an appeal as specified in M.R. Crim. P. 76(c) are no different than those prescribed by M.R. Crim. P. 37(c) for taking a direct appeal. Such limitations are both mandatory and jurisdictional.

4. Appellate Review of Sentence.

(a) cognizability.

The Appellate Division of the Supreme Judicial Court is comprised of three (3) members of the Supreme Judicial Court designated by the Chief Justice. It is wholly a creature of statute (15 M.R.S.A. §§ 2141-2144). Of the numerous forms of authorized sentencing alternatives applicable to natural persons, pursuant to 17-A M.R.S.A. § 1152, only those alternatives that involve a term of imprisonment are potentially reviewable - i.e., a split sentence (section 1152(2)(B)), a suspended term of imprisonment (section 1152(2)(D)), a split sentence with intensive supervision (section 1152(E)), or a straight term of imprisonment (section 1152(2)(F)). To be cognizable, the term of imprisonment actually imposed (rather than the potential term which could have been imposed) must be:

controls. Freeman v. State, No. 3032 (Me. Aug. 10, 1982) (unreported decision). Note further that in addition to addressing issue preclusion resulting from procedural default, the section also addresses issue preclusion resulting from collateral estoppel. In this regard, to the extent the section's use of the word "waiver" might suggest that the section covers procedural default alone, the word is an apparent misnomer.

1. a term of one year or more;
2. the place of confinement must be a county jail or one of two State correctional facilities - i.e., the Maine State Prison or the Maine Correctional Center; and,
3. the Appellate Division must have open to it the possibility of substituting a different sentence - e.g., if the trial court imposes a term which reflects a mandatory minimum under 17-A M.R.S.A. § 1252(5) [Class A, B or C crimes committed with the use of a firearm against a person], the authority of the Appellate Division would be limited to increasing it.⁹

Once the Appellate Division obtains jurisdiction over a sentence meeting the conditions described above, then it automatically has the power, pursuant to 15 M.R.S.A. § 2142, to review "any other sentence [term of imprisonment] imposed when the sentence appealed from was imposed, notwithstanding the partial execution of any such sentence."

As to any sentence or sentences within its jurisdiction, the Appellate Division has the power "to amend the judgment by ordering substituted therefore a different appropriate sentence or sentences or any other disposition of the case which could have been made at the time of the imposition of the sentence or sentences under review." (15 M.R.S.A. § 2142)

(b) Scope of review

The Maine Law Court continues to describe the scope of review in this forum as one wholly unique from that utilized in the other three forums. Specifically, the Court observes that instead of testing the challenged term of imprisonment for "legality" the Appellate Division applies a "propriety" test - a test following "within the exclusive jurisdiction of the Appellate Division of the Supreme Judicial Court, created by 15 M.R.S.A. § 2141." Smith v. State, 479 A.2d 1309, 1311 (Me. 1984); see also State v. Farnham, 479 A.2d 887, 888-889 (Me. 1984). This distinction in substance appears to statutorily endow the Appellate Division with the power to substitute a different sentence in place of an

⁹ As long as the term of imprisonment meets these three conditions, it is presently no bar that such a sentence was imposed pursuant to an M.R. Crim. P. 11(e) plea agreement involving an agreed upon sentence. Further, it obviously makes no difference as to whether there has been partial execution of the sentence appealed.

entirely "legal" sentence (i.e., a lawful sentence, lawfully imposed). Although the power to modify a "legal" sentence, even after commencement of its execution, may not have posed a serious constitutional question in the 1960's and 1970's (see e.g., Glassman, § 40.1 at 347, quoted in State v. Samson, 388 A.2d 60, 66 (Me. 1978); State v. Carver, 330 A.2d 785, 786 (Me. 1975)) at least to the extent that such process purports to allow the Appellate Division to substitute a different lesser sentence in place of the entirely "legal" sentence, it would appear to constitute impermissible encroachment by the Judicial Department unto the Governor's exclusive power to commute sentences. See State v. Hunter, 447 A.2d 797 (Me. 1982). However, at least since the 1980's, the Appellate Division has itself never sought to assert its jurisdiction in this way. Instead, it has both by way of explanation and by practice, defined its scope of review as incidentally that of correcting blatantly illegal sentences, and primarily that of reviewing the exercise of the sentencing court's broad discretion to ensure that such court has been guided in his sentencing decision by application of the relevant and proper legislative or constitutional sentencing standards. 1 Cluchey & Seitzinger, Maine Criminal Practice § 40.1 at 40-8 and 40-9 (1987). Of particular concern in this review is the apparent mandate of article 1, section 9 of the Maine Constitution as well as the statutory mandate of 17-A M.R.S.A. § 1151(6) that any sentence imposed be proportional, not only to the crime in the abstract, but also to the defendant's own individual culpability. In carrying out its function, the Appellate Division of the 1980's never modifies the term of imprisonment upward or downward unless it first concludes as a matter of law that the sentencing court has abused his sentencing discretion. Such a precondition for sentence modification avoids any possible conflict with the Governor's power to commute in those cases where a different "lesser" sentence is imposed since a sentence which is a product of an abuse of sentencing discretion is, as a matter of law, an illegal sentence.

(c) Appeal process.

The notice of appeal must conform to Form 12 of the Appendix of Forms unless the sentence is imposed upon a plea entered pursuant to Rule 11A, in which case the notice shall conform to Form 14 of the District Court Appendix of Forms. The notice of appeal must be signed by the appellant personally. Stated otherwise, if counsel purports to sign in behalf of the appellant, such is wholly ineffective to trigger jurisdiction. The notice must be filed with the clerk of the court in which sentence was imposed.

The time limitations for taking an appeal as specified in M.R. Crim. P. 40(c) are no different than those prescribed by M.R. Crim. P. 37(c) for taking a direct appeal. Such limitations are both mandatory and jurisdictional.

An appeal must be filed within 20 days after the sentence has been entered on the criminal docket. A further period, not to exceed 30 days from the original 20-day period (i.e., a total of 50 days) may be obtained "upon a showing of excusable neglect."

The standard of "excusable neglect" has been interpreted by the Law Court very strictly. State v. Williams, 510 A.2d 537 (Me. 1986). It will be found ordinarily only under circumstances where, without actual fault on the part of the party charged to act, such party is not informed of the entry of the criminal judgment, order or ruling in time to file a timely appeal. See generally, State v. One 1977 Blue Ford Pick-Up Truck, 457 A.2d 1226, 1229, 1230 (Me. 1982). Other than in the context of such blameless "failure to learn," only in extraordinary cases "where injustice would otherwise result" will excusable neglect be found. Id.; see also, Casco Bay Island Transit Dist. v. Public Utilities Comm'n, 528 A.2d 448, 451 (Me. 1987); Begin v. Jerry's Sunoco, Inc., 435 A.2d 1079, 1082 (Me. 1981). Such extraordinary cases involve "genuine emergency conditions such as death, sickness [and] undue delay in the mail." State v. Williams, 510 A.2d 537, 539 (Me. 1986).

(d) dismissal.

Once the Appellate Division's jurisdiction is triggered by a timely notice of appeal, the appellant may not unilaterally dismiss or withdraw the appeal; such dismissal or withdrawal can only occur with leave of the Appellate Division as reflected in M.R. Crim. P. 40(d)(3). See Stack v. State, 492 A.2d 599, 602 n.3 (Me. 1985).

(e) time for review.

The Appellate Division has the affirmative duty to review "as soon as practicable after obtaining jurisdiction." M.R. Crim. P. 40(d)(1) This same provision of the rule, however, disables that Body from conducting such review during the pendency of "a motion for new trial, a motion for judgment of acquittal after verdict, a motion in arrest of judgment, a motion to correct or reduce a sentence pursuant to Rule 35 or an appeal to the Law Court pursuant to Rule 37."

(f) hearing.

In the vast majority of cases the review is conducted without a hearing because no change by the Appellate Division is contemplated. However, a hearing is required, at which the defendant must be in attendance (unless he requests otherwise) if a sentence modification is contemplated. (M.R. Crim. P. 40(d)(2)) Further, the parties must be given ten (10) days advance notice as to the time and place of the hearing, although the time requirement may be waived by the parties.

(g) final action; no appeal.

The final disposition of the sentence appeal may not be appealed to the Supreme Judicial Court, sitting as a Law Court. (15 M.R.S.A. § 2142)

B. IMPACT OF ONE MECHANISM UPON ANOTHER

1. The Impact of the Other Three Mechanisms Upon the direct appeal.

The Rule 35 mechanism impacts on the direct appeal in two obvious ways. First, potentially it is a much faster and efficient process for disposition of the alleged sentencing infirmity. Second, even if the Rule 35 motion is denied, any appeal then taken to the Law Court has an adequate appellate record to ensure ultimate appellate cognizance.¹⁰

The post-conviction review mechanism impacts on the direct appeal only tangentially by virtue of 15 M.R.S.A. § 2126. Section 2126 allows a post-conviction review proceeding to be filed during the pendency of a direct appeal, but such is automatically stayed pending resolution of the appeal "unless the Appellate Court on motion and for good cause otherwise directs." As a matter of tactics, if the sentencing issue were to be the sole issue in both fora, a defendant might seek to

¹⁰ Obviously if, on appeal, a claimed sentencing infirmity (not raised in the Rule 35 motion), is asserted for the first time, such may not be cognizable. See, e.g., State v. Mudie, 508 A.2d 119, 121 (Me. 1986) (contention that sentence was cruel and unusual punishment or a disproportionate sentence in violation of the United States and Maine Constitutions not addressed because not raised in the Rule 35 proceeding below). As a consequence, if a Rule 35 motion is brought, care should be taken to raise every contention relative to sentence legality.

stay the direct appeal in an effort to allow for the development of an adequate record at a hearing both for purposes of issue resolution as well as for ultimate appellate cognizance.

The appellate review of sentence has no impact on the direct appeal, it being completely sui generis and, in fact, stayed during any such appeal by operation of M.R. Crim. P. 40(d)(1).

2. The Impact of the Other Three Mechanisms Upon the Rule 35.

The direct appeal impacts on the Rule 35 mechanism only to the extent that the timely denial of a Rule 35(a) or (c) motion may allow for its inclusion in the direct appeal from the criminal judgment, pursuant to M.R. Crim. P. 37(c).

The post-conviction review mechanism impacts on the Rule 35 only in the event of exceptional circumstances. Specifically, although Rule 35 preempts the operation of post-conviction relief during the period it is available - i.e., "within one year after a sentence is imposed" - if the Rule 35 proceeding cannot provide a fair opportunity to present the alleged sentence infirmity, post-conviction can nonetheless be utilized. For example, since relief under Rule 35 can only be accorded by the judge or justice who imposed sentence, if the sentence infirmity alleged involved personal bias on the part of the sentencing court, the post-conviction review mechanism offers the only appropriate forum in which to litigate the claim.

The appellate review of sentence has no impact on the Rule 35, it being completely sui generis and, in fact, stayed during the pendency of a Rule 35 motion by operation of M.R. Crim. P. 40(d)(1).

3. The Impact of the Other Three Mechanisms Upon Post-Conviction Review.

As to Rule 35's impact respecting exhaustion - although where it does apply, post-conviction review is the exclusive remedy,¹¹ except when a Rule 35 proceeding cannot provide a fair opportunity to present the alleged

¹¹ 15 M.R.S.A. § 2122; see generally, Fernald v. Maine State Parole Bd., 447 A.2d 1236 (Me. 1982); State v. Colson, 472 A.2d 1381 (Me. 1984).

sentencing infirmity, the post-conviction review forum is available only after more than one year has elapsed since sentence imposition. Rule 35 wholly preempts the operation of post-conviction relief during the period it is available - i.e., "within one year after a sentence is imposed." Rule 35 is expressly designed to preempt the post-conviction review mechanism for two reasons. First, underlying Rule 35 are the assumptions that sentencing infirmities generally come to light within a year and that the justice who imposed sentence is likely to recall the facts and circumstances surrounding its imposition. As a consequence, Rule 35 can more quickly (potentially even before an appeal from the judgment is taken) and efficiently dispose of the claim than the more cumbersome post-conviction remedy. Second, post-conviction review requires that all grounds for relief from a criminal judgment be raised in a single post-conviction review action; any grounds not so raised being treated as waived (15 M.R.S.A. § 2128(3)). Rule 35 provides a forum to address the alleged sentence infirmity wholly free of the waiver concerns presented by the post-conviction remedy.

As a consequence of this preemption, for a year following sentence imposition, post-conviction review is rendered unavailable (except as noted) as a forum in which to challenge the legality of a sentence by operation of the exhaustion limitations specified in 15 M.R.S.A. § 2126.

As to Rule 35's impact respecting waiver - 15 M.R.S.A. § 2128 does not contemplate that a failure to utilize the sentence review mechanism of Rule 35 constitutes a procedural default rendering post-conviction review unavailable.¹² Stated otherwise, the fact that a defendant could have timely filed a Rule 35 motion does not serve to bar that same defendant from utilizing the mechanism of post-conviction review once the Rule's one-year limit has expired.¹³ However, if a defendant in fact chooses to utilize the Rule

¹² Note that Rule 35 is not unique in this regard. For example, the "failure" to make timely use of M.R. Crim. P. 33 (motion for new trial) does not result in a procedural default within the contemplation of 15 M.R.S.A. § 2128.

¹³ In deciding whether to forego Rule 35 in favor of post-conviction review a defendant should keep in mind that direct appeal is conditioned upon the issuance of a certificate of probable cause in post-conviction review, pursuant to 15 M.R.S.A. § 2131(1), while direct appeal is a right from the denial of a Rule 35 motion. State v. Sutherburg, 402 A.2d 1294 (Me. 1979); State v. Farnham, 479 A.2d 887, 888 (Me. 1984) (implicit).

35 mechanism, such exercise does render post-conviction review unavailable as a forum in which to challenge a sentence as unlawful or unlawfully imposed by operation of the waiver limitation specified in 15 M.R.S.A. § 2128(1).

The appellate review of sentence impacts upon the post-conviction review mechanism insofar as an allegation of ineffective assistance of appellate review counsel is a matter properly cognizable in a post-conviction review proceeding. See Stack v. State, 492 A.2d 599 (Me. 1985).

4. The Impact of the Other Three Mechanisms Upon the Appellate Review of Sentence.

The direct appeal and Rule 35 have a direct appeal upon the appellate review of sentence mechanism since the latter is stayed during the pendency of the other two mechanisms by operation of M.R. Crim. P. 40(d)(1). The existence of a pending post-conviction review proceeding does not automatically serve to stay the appellate review; the Appellate Division could, in the proper instance, do so. See 1 Cluchey & Seitzinger, Maine Criminal Practice § 40.7 at 40-15 (1987).

APPENDIX F

A SYNOPSIS OF CORRECTIONS ALTERNATIVES

COMMUNITY CORRECTIONS LEGISLATION

A statewide mechanism through which funds are granted to local units of government to plan, develop, and deliver correctional sanctions and services at the local level.

GOALS

Reduce or Stabilize
Prison Population Growth

Reduce or Contain
Correctional Costs

Rehabilitate Offenders
and Maintain
Public Safety

Increase
Local Control

Expand
Punishment Options

KEY ELEMENTS

A clearly defined target group
of prison-bound offenders:
(generally nonviolent).

A subsidy to a local
unit of government.

A performance factor or
enforcement mechanism.

Local involvement
in planning.

An annual
comprehensive plan.

A formula for calculating
subsidy amounts.

Voluntary participation
on the part of localities.

Restrictions on the use
of subsidy funds.

A. Lane
3/2/88

SUMMARY OF COMMUNITY CORRECTIONS LEGISLATION

DEFINITION:

* A statewide mechanism through which funds are granted to local units of government to plan, develop, and deliver correctional sanctions and services at the local level.

GOALS:

- * Reduce Or Stabilize Prison Population Growth
- * Reduce Or Contain Correctional Costs
- * Rehabilitate Offenders And Maintain Public Safety
- * Increase Local Control
- * Expand Punishment Options

KEY ELEMENTS THAT CHARACTERIZE MOST COMMUNITY CORRECTIONS LEGISLATION:

1. A clearly defined target group of prison-bound offenders: (generally nonviolent).
2. A subsidy to a local unit of government:
 - Legislation is generally administered by the state's department of corrections, while local units of government receive the funds to develop local correctional alternatives.
3. A performance factor or enforcement mechanism:
 - The amount of funding depends on the community's ability to reduce its commitments of target offenders to state institutions.
 - Can be done through:
 - a) "Chargeback" scheme, where funding eligibility is reduced each quarter by the per diem costs of confinement for target offenders committed
 - b) A per head subsidy.
4. Local involvement in planning:
 - a) Community establishes local advisory board representing law enforcement, judiciary, prosecution, defense, probation, and the general community.
 - b) Communities can choose programs, run them themselves or contract out to private agencies

5. An annual comprehensive plan:

- Local advisory boards prepare plans detailing correctional needs, proposed programs, and projected reduction of state commitments.

- Plan must be approved by local government and commissioner of corrections

- New plan submitted every year

6. A formula for calculating subsidy amounts:

- Legislation specifies formula used for calculating subsidy amount for each locality.

- Department of corrections calculates amounts which may change annually if the factors change

7. Voluntary participation on the part of localities:

8. Restrictions on the use of subsidy funds:

- Subsidy is not to be used for jail construction, ongoing correctional expenditures such as jail operating costs or existing probation officer's salaries. It is meant for new correctional alternatives.

SOURCE: Patrick D. McManus, Lynn Zeller Barclay.
Community Corrections Act, Technical Assistance Manual
The American Correctional Task Force on Community
Corrections Legislation.

A. Lane
3-30-88

DAY FINES

A summary of the concept of day fines as a sentencing option.

CONCEPT:

As a matter of public policy, courts in Sweden, West Germany, and England have moved towards fines as a sentence of choice in most critical cases and as a major alternative to imprisonment.

The day-fine system originated in Scandanavia, and is popular in Western Europe. The idea is to fine offenders in proportion to the gravity of the offense, while ensuring that the fine is appropriate with respect to the offender's financial resources. It is referred to as the "Day-Fine System" because in some courts the fine amount is linked to an offender's daily income.

DESCRIPTION:

The Judge first sentences an offender to a number of fine units (eg 10, 50, 125 units), which reflects the Judge's view of the appropriate degree of punishment. The monetary value of each unit is then calculated according to the means of the offender.

SWEDISH SYSTEM: Values units in a precise manner, resulting in an amount which is about one third of the offender's daily income, adjusted for significant expenditures. The maximum number of day fines imposed is 120 units = approximately \$20,000. The Swedish Parliament has authorized this as the normal sanction for lesser offenses, although it can be used as a sanction across a broader range of crimes.

WEST GERMAN SYSTEM: Establishes day-fine unit's value as the offender's net daily income. Substitutes day fine for imprisonment by setting a scale with a maximum of 360 units, allowing for a single unit maximum value of up to approximately \$6,000, so day fines could total up to as much as \$2.1 million.

West Germany has also established a day's wage for a jail day fine unit at or near the offender's daily take-home pay.

U.S. PILOT PROGRAM: The Richmond County (Staten Island, New York) Criminal Day-Fine Planning Project, is a pilot program to replace the Court's current fixed-fine system with a method of setting fines tailored to the Court, that would permit means, as well as offense severity, to be taken into account in sentencing.

The project began in the Fall of 1986, supported by the National Institute of Justice, with input from the Vera Institute of Justice, American, Swedish and German legal scholars, Policymakers, and Criminal Justice Practitioners. By early 1988, day fines were being substituted for virtually all fixed fines now used by the Court.

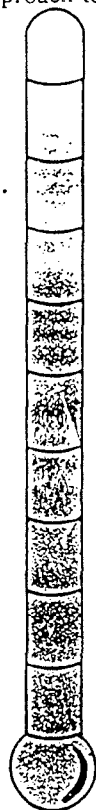
The project uses a combination of the Swedish and West German systems. The day-fine unit scale has a 360-unit range, but caps the lower court range at 120 units. The value of a single day-fine unit is based on net daily income, but is adjusted by a formula to account for personal and family responsibilities, then reduced by a discount rate at one third for those above the Federal poverty line and one-half for those below.

The resulting lower court discount rate runs from a low of \$25 for a welfare recipient with three children, with the lowest severity crime, to a high of \$4,000 for a single offender with a gross annual income of \$35,000, no dependents, most serious crime, sentenced to a 120 unit cap.

The fine scales for middle-to-upper offense ranges are increasingly high when compared to the previous patterns of fine use in the court. One purpose of this scaling structure is to provide a monetary penalty that judges can use to substitute for jail sentences in some cases.

Source: Improving the Use and Administration of Criminal Fines:
A Report of the Richmond County (New York) Criminal
Court Day Fine Planning Project.
Vera Institute of Justice, New York, New York.

Georgia's continuum of options allow for the appropriate degree of punishment and a balanced approach to corrections.



Prison

Special Alternative Incarceration
(Shock Program)

Probation Detention Center

Diversion Center

Intensive Probation

Community Service

Basic Probation Supervision

- Levels of Supervision
 - Minimum
 - Medium
 - Maximum
- Special Conditions
 - Community Service
 - Fines
 - Restitution
 - Treatment
 - Dependent Support
 - Prison Awareness

For more information concerning Georgia's Sentencing Options, write to the Department of Information:

Georgia Department of Corrections

Vince Fallin, Deputy Commissioner

Probation Division

Floyd Veterans Memorial Building

Room 954 — East Tower

Special Alternative Incarceration

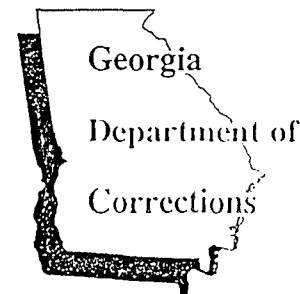
Also known as "shock incarceration," the purpose of the SAI program is to offer the courts an alternative by combining a brief prison experience (90 days) with subsequent probation supervision. The program addresses the needs of the sentencing judge faced with a young, impressionable offender who does not need long-term incarceration, but needs a short period of confinement to experience the harsh realities of prison life. Activities are patterned after that of military basic training; physical activity is stressed as the major part of the program experience.

Probation Detention Center

A new concept, to be referred to as a Probation Detention Center, is in the planning stages. In contrast to the Diversion Center, this option will eliminate work release and weekend passes. The security and restriction of movement will be increased. The probationer will be required to work on a non-paid community work detail under the supervision of a Correctional Officer.

The primary target population will be the non-violent felons who are facing revocation to prison for technical violations of probation as well as the habitual DUI offenders now entering the state prison system.

Turning Up The Heat
In Probation



Georgia's Turning Up the Heat in Probation

Georgia, like many states, is faced with the problem of jail and prison overcrowding. The Georgia Department of Corrections has taken steps to ease the overcrowding problem by emphasizing a balanced approach to corrections through the use of sentencing options within probation in addition to the expansion of available prison beds. Historically, the public has viewed a probation sentence as being "soft on crime." In response, the Georgia Department of Corrections is "turning up the heat" in probation to improve judicial and public confidence that a probated sentence does, in fact, address the deterrent, retributive, punishment and rehabilitative goals of the sentencing process.

With the establishment of several new and innovative conditions of probation, a judge can now attach special conditions to a probated sentence which range from minimum contact with a Probation Officer to 24-hour supervision and control in a community-based facility. These mid-range options between traditional probation and prison have afforded the judiciary the capability of tailoring a probated sentence which provides accountability and control while sparing scarce prison beds for the violent and habitual criminal.



Commissioner David C. Evans

Basic Probation

All probationers are classified by the Probation Officer using a validated classification instrument which predicts risk of failure on probation. Dependent upon the score, the probationer may be placed in one of four levels of supervision — minimum, medium, high or maximum. The higher the level, the more the supervision. Judges may specify several additional special conditions which could include fines, restitution to the victim, drug screening, etc. Most probationers are handled under "Basic Probation Supervision." Others who require closer control and accountability may be ordered even more strict conditions such as those which follow:

Community Service

As an additional special condition, some probationers may be ordered to perform Community Service. Community Service is defined in the law as "uncompensated work by an offender with an agency for the benefit of the community." This option promotes the work-ethic approach to punishment.

Probationers perform various work projects for communities throughout the state.

Intensive Probation Supervision

The Georgia IPS Program has been identified by national criminal justice experts as the "strictest form of probation supervision in the country." Two probation employees use a team approach in supervising a small caseload of 25 probationers. Contact with the probationer is increased to five times per week to include nights and weekends. A curfew is imposed to limit the probationers' movement outside his residence other than during working hours. The Intensive Probationers must also perform Community Service and are given random drug screens for drug abuse.

Diversion Centers

As a condition of probation, a judge may require that a probationer be assigned to a Diversion Center for approximately 120 days. The probationer is required to reside at the Center but is allowed to work on a regular job in the community. The probationer must turn in his/her paycheck to the Center. Room and board, fines, restitution and family support are deducted from the pay. The probationer participates in various educational and counseling programs while at the Center.

Electronic Monitors

BY ANNESLEY K. SCHMIDT

*Research Analyst, National Institute of Justice, United States Department of Justice**

ELECTRONIC MONITORS are a new telemetry device designed to verify that an offender is at a specified location during specified times. This technological option is stimulating a great deal of interest from jurisdictions considering the approach and from manufacturers entering the market. While the concept of electronic monitoring has been discussed in the literature and small experimental efforts have been undertaken since the sixties, the earliest of the currently operating programs only started in December 1984.¹

In the short time since that first program began in Palm Beach County, Florida, many jurisdictions have considered whether to develop monitoring programs and some have ordered equipment. Programs have been established in locations as diverse as Kenton County, Kentucky and Clackamas County, Oregon and by organizations as diverse as the Administrative Office of the Courts in New Jersey and the Utah Department of Corrections.

As the National Institute of Justice (NIJ) has monitored these developments, we have found that the growth of programs has coincided with the entry of manufacturers into this field. The accompanying table (see page 59) provides a list of the manufacturers who are known to us. They have come to our attention through responses to a solicitation in the *Commerce Business Daily* for manufacturers willing to participate in the NIJ-sponsored equipment testing program at the Law Enforcement Standards Laboratory of the National Bureau of Standards. We also learned of manufacturers when they responded to requests for bids made by jurisdictions seeking to purchase equipment, when they requested information from us, and by word of mouth. The list reflects information current as of the date it was prepared. However, given the rate of development thus far, additional manufacturers may have entered the field before this article is printed.

As shown on the table, there are four basic technologies presently available; two use the telephone at the monitored location and two do not. Each of the technologies reflects a different approach to the problem of monitoring offenders in the community. In fact, even products within the same general technological group have important differences. These differences, and the cost and desirability of particular features, are a small part of the decisions that must be made when establishing a monitoring program.

The technology is so new and the research is, thus far, so limited that there are many questions about monitors of all kinds, on all levels. Some of these questions are: Should equipment be purchased? Can it be used legally? On whom should it be used? Will the community accept it? Will monitors provide the community with additional protection? The National Institute of Justice, through its Fiscal Year 1986 Solicited Research Programs, is seeking to support experimental projects that will provide some answers to some of these and other important questions. In the meantime, programmatic and technological questions remain.

Programmatic Questions

Monitors, at least in theory, could be used on any number of offender groups. They could be used on sentenced or unsentenced offenders. They could be used before sentencing, immediately after sentencing, or at a later point in the sentence when problems appear. They could be used to monitor house arrest, as an alternative to jail, as part of an intensive supervision program, or in the context of a work release program. All of these program possibilities have been discussed, and most of them are presently operational. However, we do not yet know if monitors are effective in these program applications much less where they are most effective.

We also do not know which offenders should be the focus of the program. There are clearly some offenders that nobody wants in the community, such as those who are violent. These offenders should go to prison. However, there are other offenders who are not so clearly dangerous and are not so obviously candidates for confinement. Can they be punished or deterred by other means? Can they be monitored in the community? Should they be monitored in the community? We do not know.

Whether particular types or groups of offenders can be monitored in a given community will depend, in part, on what that community, its judges, and its elected and political officials consider acceptable and appropriate punishment. For example, in some communities there may be strong pressure to jail drunk drivers; other communities may be satisfied if drunk drivers are required to stay home during their nonworking hours with monitors used to assure that they do so.

Another consideration related to who can and should be monitored in the community may depend on the type

*Points of view or opinions stated in this article are those of the author and do not necessarily represent the official position of the United States Department of Justice.

¹Ralph K. Switzgebel, "Electronic Alternatives to Imprisonment," *Lex et Scientia*, Vol. 5, No. 3, July-September 1968, 99-104.

Daniel Ford and A. K. Schmidt, "Electronically Monitored Home Confinement," *NIJ Reports*, SNI 194, November 1985, 2-6.

ELECTRONIC MONITORS

of equipment selected and the structure of the program in which it is used. Some equipment monitors the offender continually while others do so only intermittently. Some devices send a signal if tampered with and some do not, so that removal of or damage to the equipment is only detected with visual inspection. And, if the equipment indicates that the offender is not where he is supposed to be or that some other problem has occurred, has the program been designed so that there will be an immediate response or does the program staff review these indicators on weekdays during the day? A few present programs have the base computer located in a facility that is staffed 24-hours a day, 7 days a week. They then know immediately that a problem has occurred and can send staff to the offender's house to check and, if necessary, attempt to locate him. In other programs, the print-out is reviewed in the morning, and offenders are contacted to explain abnormalities found the previous night.

Next, how long *will* the offenders be monitored by the equipment? Here again the equipment is too new and the experience too limited to provide an answer. Officials at Pride, Inc. in West Palm Beach, Florida believe that offenders can tolerate the monitors for about 90 to 120 days. After that, they feel, offenders begin to chafe under the restriction. And, how long *should* they be kept on the equipment? This question must be answered in the context of why the program is being operated. The answer would be quite different if the goal is retribution as opposed to fulfilling the requirement of the law. In Palm Beach County, it has been decided that 3 days on the monitor is the equivalent of 1 day in jail to fulfill the required mandatory sentence for a second conviction for driving while intoxicated. For other offenses, the proscribed sentence is a range, and, therefore, the appropriate time on the monitor is not so clear.

Can electronic monitors solve or alleviate prison and jail crowding? The answer to this question is probably "no" for a variety of reasons. First, in addition to issues related to what a community can, will, and should be expected to tolerate, it should be reiterated that monitors are technological devices potentially useful in a variety of program contexts. The population selected as the focus of monitoring programs may or may not be one that might otherwise be sent to jail or prison if monitors were not available. Second, consideration needs to be given to the likely impact on the total problem. In a thousand-man jail, the release of 20 monitored inmates would reduce the population by only 2 percent. One hundred monitored inmates would have to be released before the population would be affected by 10 percent. In a smaller

jail, more impact would be achieved by a system with a capacity for monitoring 20 inmates, the typical size of the initial equipment purchase being made. In the prison systems of many states with much larger populations, more monitored inmates would have to be released before a significant reduction in population could occur. Furthermore, the cost of a monitoring program cannot be directly compared to per diem costs of incarceration. The largest component of per diem costs is staff salaries. Therefore, until the number of released inmates is large enough to affect staffing of the facility, the only savings achieved are in marginal categories such as food.

The inverse to the question about jail crowding is the question of net-widening. Will offenders be sanctioned who otherwise would not be? Will offenders be more severely sanctioned? These issues deserve attention. If offenders are being monitored who would not otherwise have been incarcerated, the cost benefit equation on the use of the equipment is changed. If, on the other hand, offenders are monitored who might otherwise receive probation with little direct supervision, the question becomes "Is the community being better protected?" At present, the answer to that question is also unknown.

Taken together, the questions of reducing prison population and net-widening lead to the more basic question: Why is a monitoring program being established? Any jurisdiction establishing a program should be able to answer this. Clearly there are a wide variety of possible reasons. Reduction of prison or jail population is only one. Net-widening is a possibility but is more likely an unintended byproduct. Another possible answer is to better protect citizens from those offenders already in the community on some form of release. If the question cannot be answered, then the situation is equipment in search of a program, perhaps the most inappropriate way for program development to proceed.

Whatever the rationale for the monitoring program, another issue that must be considered is the legality of the use of monitors, the subject of another article in this issue. However, it should be noted that there are no known test cases. Furthermore, the question of legality obviously would differ in each jurisdiction depending on statute and appellate decisions.

Another question is: "How much will it cost?" The answer, of course, depends on the type of equipment, the number of units, and whether the equipment is purchased or leased. In addition, there may be telephone charges and personnel costs. The In-House Arrest Work Release Program of the Sheriff's Stockade in Palm Beach County Florida charges participants in the voluntary program \$9 per day.² Within the first 14 months of program operation, the program's investment in equipment had been returned by offender fees. However, if the initial amount invested is more or less, if fees are charged

² Lt. Eugene D. Garcia, personal communication and "In-House Arrest Work Release Program," report of the Sheriff's Stockade, Palm Beach County, Florida, February 15, 1986, 6 pp.

Electronic Monitoring Equipment

(Purpose: To monitor an offender's presence in a given environment where the offender is required to remain)

Devices that use a telephone at the monitored location

Devices that do not use a telephone

Continuously signaling

A miniaturized **transmitter** is strapped to the offender and it broadcasts an encoded signal at regular intervals over a range.

A **receiver-dialer**, located in the offender's home, detects signals from the transmitter and reports to a central computer when it stops receiving the signal from the transmitter and when it starts receiving the signal again; it also provides periodic checks.

A central **computer or receiver** accepts reports from the receiver-dialer over the telephone lines, compares them with the offender's curfew schedule, and alerts correctional officials to unauthorized absences.

Manufacturers/Distributors:

CSD Home Escort. Corrections Systems, Control Data Corporation, 7600 France Avenue, Edina, MN 55435. Telephone 612-921-6835.

Supervisor. CONTRAC, Controlled Activities Corp., 93351 Overseas Highway, Tavernier, FL 33070. Telephone 305-852-9507.

In-House Arrest System. Correctional Services Inc., P.O. Box 2941, West Palm Beach, FL 33402. Telephone 305-683-7166.

Contac. Computrac Systems, Inc., 420 East South Temple, Suite 340, Salt Lake City, UT 84111. Telephone 801-531-0500.

Prisoner Monitoring System. Controlec, Inc., Box 48132, Niles, IL 60648. Telephone 312-966-8435.

ASC II b.* Advanced Signal Concepts, P.O. Box 1856, Clewiston, FL 33440. Telephone 813-983-2073.

Home Incarceration Unit.*

American Security Communications, P.O. Box 5238, Norman, OK 73070. Telephone 405-360-6605.

Programmed contact

A **computer** is programmed to call the offender during the hours being monitored either randomly or at specifically selected times. It prepares reports on the results of the calls.

Strapped on the offender's arm is a **wristlet**, a black plastic module.

When the computer calls, the wristlet is inserted into a **verifier box** connected to the telephone to verify that the call is being answered by the offender being monitored.

Manufacturer/Distributor:

On Guard System. Digital Products Corporation, 4021 Northeast 5th Terrace, Ft. Lauderdale, FL 33334. Telephone 305-564-0521.

The computer functions similarly to that described above, calling the offender and preparing reports on the results of the call.

However, **voice verification** technology assures that the telephone is answered by the offender being monitored.

Manufacturer/Distributor:

Provotron. VoxTron Systems Inc., 190 Seguin St., New Braunfels, TX 78130. Telephone 512-629-4807.

Continuously signaling

A **transmitter** is strapped to the offender which sends out a constant signal.

A **portable receiver**, in the car of the officer who is monitoring the offender, is tuned to receive the signal from the specific transmitter when the officer drives within one block of the offender's home.

Manufacturer/Distributor:

Cost-Effective Monitoring System. Dr. Walter W. McMahon, 2207 Grange Circle, Urbana, IL 61801. Telephone Day 217-333-4579 or Evening 217-367-3990.

Radio signaling

The **link** is a small transmitter worn by the offender.

The **locator unit**, placed in the offender's home or other approved location, receives the signal from the link, records it and relays the information by radio signals to the local area monitor.

The **local area monitor** is a microcomputer and information management system. This equipment is placed with the network manager (the leader of a small group of people who supervise the offender and encourage him to succeed). It receives information from the offender and coordinates communications among the network members. Each local network can handle 15 to 25 people.

If required, a **central base station** can be added to provide increased security and back-up functions.

Manufacturer/Distributor:

LENS System. Life Sciences Research Group, 515 Fargo Street, Thousand Oaks, CA 91360. Telephone 805-492-4406.

ELECTRONIC MONITORS

This chart is included because it is referenced in the article. However, it is out of date and has been replaced by the booklet entitled "Electronic Monitoring Equipment."

*This device can transmit to the central unit over either telephone lines or long-range wireless repeater system.

Annesley K. Schmidt
U.S. Department of Justice
National Institute of Justice
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at a lower or higher rate or not at all, or if the equipment is in use a greater or lesser proportion of the time, then the pay-back period will change.

Existing programs using monitors in the community function as part of the criminal justice system. Therefore, they require the cooperation of the courts and probation and parole, at a minimum. Additionally, many times, they also may involve the sheriff, other law enforcement agencies, and others. As with any multi-agency effort, the lines of responsibility must be clear and the cooperation between them developed. For example, if the results of the monitoring are to be reviewed around the clock, then the base is optimally located where 24-hour staffing is already present. This facility might be a jail operated by the sheriff. The program, on the other hand, is being operated by the probation office. In this case, the division of responsibilities and expectations should be specified, preferably in writing.

Technological Questions

The questions above can be viewed at a theoretical, philosophical, or program planning level. However, there are also questions or potential problems that should be considered related to the functioning of the equipment itself. These questions emanate from the preliminary results of a study conducted at the Law Enforcement Standards Laboratory of the National Bureau of Standards supported by the National Institute of Justice. Information also has been gained from the experience of some of the monitoring programs. It should be noted that the comments are preliminary and often reflect results of testing of what is now the *previous* generation of equipment, since the technology itself is developing so rapidly.

One problem found was telephone line compatability. Telephone lines carry electric current, and the characteristics of the current can vary with different telephone systems. Additionally, some telephone exchanges use very modern switching equipment and can handle pulses such as those from touch-tone phones. Others use older equipment that may have trouble handling the electronic signals transmitted by some of the monitoring systems. Whether this is a problem can only be determined specifically through a test of the local system and local exchanges and/or consultation with the local telephone company.

Another problem that appears remediable and has been addressed by some manufacturers is the effects of

weather conditions. During wind storms and thunderstorms, both electric lines and telephone lines are whipped around and may come into contact with other lines. This may lead to arcing of the power and power surges. In the same way that most users of home computers have surge protectors on the incoming power lines, these monitoring devices may have surge protectors placed on the incoming electrical and telephone lines. It appears that most manufacturers have installed surge protectors on their current equipment. In addition, uninterruptable power supplies are also provided by some manufacturers to guarantee power to the system even during power outages.

Many devices use radio frequency signals for communication between components of the system. In some locations, radio landing beacons from airports and radio station broadcasts can interfere with the functioning of the device. Whether this is a problem is dependent on the other radio transmissions in the area where the equipment is being used and the radio frequency that the device uses.

Another potential problem noted is the effect of iron and steel which may block signal transmission or create an electromagnetic field. This can occur in steel trailers or in stucco houses. It can also occur in houses which have large appliances such as refrigerators and cast iron bathroom fixtures. In some places, the problems can often be dealt with by moving the receiving equipment. In other settings, it may limit the offender's mobility to less than had been expected. At least one manufacturer provides repeater stations within the house to forward and amplify the signal.

These are some of the technological problems that have come to light and many of them have been solved. In other cases, ways to avoid them and minimize their effects have been noted. It is not surprising that they have developed, given the newness of the technologies. It would also not be surprising if additional problems come to light as broader experience with these devices is gained. It seems reasonable to assume that manufacturers will seek to solve any future problems as they have in the past.

In summary, monitors are new technological devices that offer exciting possibilities for controlling offenders in the community. However, there are still many unknowns, many issues which should be considered by those establishing programs and many questions yet to be asked and answered.



National Institute of Justice

CRIME FILE Study Guide

James K. Stewart, Director

House Arrest

by Joan Petersilia, The Rand Corporation

What Is House Arrest and Why Is It So Popular?

As prison crowding worsens, the pressure to divert non-dangerous offenders to community-based alternatives has increased. Since it is generally agreed that the public is in no mood to coddle criminals, such alternatives must be tough and punitive and not compromise public safety. House arrest sentencing is seen by many as meeting these criteria.

House arrest is a sentence imposed by the court in which offenders are legally ordered to remain confined in their own residences. They are usually allowed to leave their residences only for medical reasons and employment. They may also be required to perform community service or to pay victim restitution or probation supervision fees. In at least 20 States, "electronic bracelets" are being used to detect violations of house arrest.

While the goal of "house arrest" is easily understood—to restrict freedom—the mechanisms used to confine an offender to his home vary considerably. Typically, offend-

ers participating in Intensive Probation Supervision programs are required to be in their residences during evening hours and on weekends. House arrest programs of this type now exist in Georgia, New Jersey, and Illinois.

In some instances, curfews are added to the offender's court-ordered parole or probation conditions. While curfews permit individual freedom in the community except for particular hours, more intrusive home incarceration programs restrict the offender's freedom in all but court-approved limited activities. These more intrusive programs now exist in Kentucky, Utah, Michigan, Oregon, and California. Several have been modeled on the house arrest program operated by the State of Florida.

Florida's Community Control Program

Florida's house arrest program, known as "Community Control," was established in 1983 to help alleviate prison crowding in the State. It is the most ambitious program of its type in the country, with about 5,000 offenders "locked up" in their homes on any one day. Leonard Flynn, a panelist on this Crime File segment, oversees the program's operations for the Florida Department of Corrections.

Florida's program targets "incarceration-bound" offenders, including misdemeanants and felons. Each offender is supervised by a community control officer, whose primary function is to ensure that the offender is adhering to court-ordered house arrest restrictions. The community control officer works nights and weekends to monitor compliance. For the more serious offenders, an electronic monitoring system is used. This system operates by having a central computer randomly telephone the offender during designated hours. The offender responds to the telephone call by placing a receiving module (contained in a watch-like wristband) into a modem. The computer verifies the action via a remote printer.

Offenders are permitted to leave their residences only for court-approved employment, rehabilitation, or community service activities. Participants must pay monthly supervision fees of \$30 to \$50 to offset the costs of supervision.

Moderator: James Q. Wilson, Collins Professor of Management,
University of California, Los Angeles

Guests: Alvin Bronstein, National Prison Project,
American Civil Liberties Union
Leonard Flynn, Florida Department of Corrections
Joan Petersilia, The Rand Corporation

House arrest programs have been established in many States. They are seen by advocates as an intermediate form of punishment that could bring some relief to prison crowding problems and be a positive force in rehabilitation of offenders. House arrest's critics fear that house arrest programs may result in reduced efforts to rehabilitate offenders and in increased intrusions on civil liberties.

pay restitution to victims, and provide for their own and their family's support.

Officials in Florida consider the house arrest program to be a resounding success. Since 70 percent of those 10,000 persons were believed likely to have been sent to prison otherwise, real cost savings have been realized. In Florida, it costs about \$3 per day to supervise a house arrest offender, compared with \$28 per day for imprisonment.

Florida's success, coupled with the intense pressure that nearly every State is feeling to reduce prison commitments, ensures that interest in house arrest will continue to grow. An additional impetus is provided by manufacturers of electronic monitoring equipment, who promote their products as a means to achieve public safety without incurring exorbitant costs. Consequently, it is important to consider the major advantages and disadvantages of house arrest programs as well as the larger conceptual issues that such sentencing practices raise.

Advantages of House Arrest

Cost effectiveness. The surge of interest in house arrest programs has come primarily from their financial appeal. House arrest (particularly without electronic monitoring) is thought to be highly cost effective. If the offender was truly prison bound, then the State saves not only the yearly cost of housing the offender (on average about \$10,000 to \$15,000 per year) but also reduces the pressure to build new prisons (at about \$50,000 per bed).

If electronic monitoring equipment is used, house arrest is not as cost effective. The equipment is currently quite expensive. For instance, Kentucky spent \$32,000 for 20 electronic devices, and Albuquerque, New Mexico, paid \$100,000 for its first 25 monitor/bracelet sets.

However, manufacturers argue that such figures are misleading, since they reflect high "startup" costs that will decline as usage increases. Manufacturers also say that it is misleading to look only at the system's direct costs. Most house arrest programs require the offender to be employed. Such offenders continue to pay taxes and may be required to make restitution payments and pay probation supervision fees. Moreover, offenders can continue to support their families, saving the State possible welfare expenditures.

We do not now have sufficient information to compute the actual costs of house arrest programs. Nationwide figures show that house arrest programs without electronic monitoring cost anywhere from \$1,500 to \$7,000 per offender per year. House arrest with electronic monitoring costs \$2,500 to \$8,000. But these operational costs do not include the cost of processing any recidivists. According to recent estimates, the cost averages \$2,500 for each recidivist rearrested and processed.

At this point we know that administering house arrest costs less than confinement in either State or local facilities, but the indirect costs that such programs entail have not been quantified.

This program brought to you by the National Institute of Justice. James K. Stewart, Director.
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Social benefits. Most advocates believe that house arrest programs are "socially cost effective." A defendant who had a job before he was convicted can keep it during and after house arrest. By preventing the breakup of the family and family networks, house arrest can also prevent psychological and physical disruptions that may have lasting effects on the offender, the spouse, the children, and even the next generation.

Furthermore, house arrest has none of the corrupting or stigmatizing effects associated with prison. This is a particular advantage for first offenders who may not yet be committed to a life of crime. They will not come under the influence of career criminals or be exposed to the physical or sexual assaults of prison inmates. Keeping offenders from the criminogenic effects of prison was one of the major reasons Oregon and Kentucky officials devised house arrest programs for drunken drivers.

Most of those operating house arrest programs view the foregoing as an important advantage. While prisons are not designed to scar inmates psychologically, many believe this happens. If it does, avoiding this psychological damage is a desirable social goal, especially for young, inexperienced, or first-time offenders. If we could devise a sentence that would make such emotional scars less likely or less common without compromising public safety, surely it would be preferred.

Responsiveness to local and offender needs. House arrest is flexible. It can be used as a sole sanction or as part of a package of sentencing conditions. It can be used at almost any point in the criminal justice process—as a diversion before an offender experiences any jail time, after a short term in jail, after a prison term (usually joined with work release), or as a condition for probation or parole.

House arrest can also be used to cover particular times of the day, or particular types of offenders. This is an attractive option for controlling offenders who are situationally dangerous. The drunk driver, the alcoholic who becomes assaultive in a bar, and the addict may all be likely candidates for house arrest.

House arrest also has potential applications for offenders with special needs—such as the terminally ill and the mentally retarded. For example, Connecticut is exploring use of house arrest for pregnant offenders. Another program includes an AIDS victim whose needs cannot be met in jail. Several States are developing programs for elderly offenders.

Implementation ease and timeliness. Pressure to reduce prison crowding is immediate, and jurisdictions are looking for alternatives that can be developed quickly. Because house arrest sentencing requires no new facilities and can use existing probation personnel, it is one of the easier programs to implement (particularly if no electronic monitoring devices are used). House arrest programs, for the most part, do not require legislative changes and can be set up by administrative decisions. The conditions of house arrest are usually easy to communicate, facilitating implementation.

Policymakers also like the notion that the offender can be removed from the community quickly, at the first sign of misbehavior. House arrestees are usually on some type of suspended jail or prison sentence; the suspension can be revoked quickly and the offenders incarcerated if they fail to meet house arrest requirements. The "suspended sentence" status makes the process of revocation much simpler

and faster than if the offender were simply on probation or parole.

Advocates of house arrest believe that the sentence is worth trying because it is less intrusive and less expensive than prison. But house arrest is not without critics.

Disadvantages of House Arrest

House arrest may widen the net of social control. Non-violent and low-risk offenders are prime candidates for house arrest; these offenders are least likely to have been sentenced to prison in the first place. As judges become more familiar with house arrest, they may well use it for defendants who would normally have been sentenced to routine probation with nominal supervision. Hence, a sentence originally intended to reduce crowding might instead "widen the net" of social control without reducing prison and jail populations significantly. Alternatively, house arrest may be used as an "add on" to the sentence the judge would normally have imposed, thus lengthening the total time the offender is under criminal sanction.

In the long run, "widening of the net" with house arrest programs is a realistic possibility. If we begin to regard homes as potential prisons, capacity is, for all practical purposes, unlimited. Such possibilities have widespread social implications.

Alvin Bronstein, head of the American Civil Liberties Union's National Prison Project says: "We should be looking for ways to place fewer controls on minor offenders, not more. If these devices are used as alternatives to jail, then maybe there's no problem with them. If you're sending the same people to jail and putting people who otherwise would be on probation on them, it's a misuse. We're cautiously concerned."

If house arrest does widen the net of social control, it will have increased, rather than decreased, the total cost of criminal sanctions. However, some net-widening may be appropriate in some jurisdictions. One cannot assume that all offenders—particularly felons being supervised by overworked probation staff—are receiving supervision commensurate with the risk they pose to the community.

House arrest may narrow the net of social control. Some critics of house arrest are concerned that a sentence of house arrest is not sufficiently severe to constitute an appropriate punishment for many crimes. In many States, house arrest programs are intended for use as punishment in lieu of prison. If that intention is realized, some critics argue that the result will be, in effect, to depreciate the seriousness with which crimes are treated. Mothers Against Drunk Driving (MADD) has been particularly critical of house arrest for drunk drivers and sees such sentencing as a step backward for efforts to stiffen penalties. *Drunk drivers are frequent house arrest participants.* The lessened severity of punishment, in theory, may reduce the criminal law's deterrent effects. In addition, critics could argue, because some offenders will commit new offenses while on house arrest, the crime preventive effects that prison sentences achieve by incapacitation will not take place.

House arrest focuses primarily on offender surveillance. Some worry that house arrest, particularly if implemented with electronic devices, will strike the final blow to the rehabilitative ideal. As probation officers focus more heavily on surveillance of offenders, human contact

is reduced and the potential for helping offenders is diminished. Most probation officers monitoring house arrest participants admit they have little time for counseling.

Although the research evidence does not urge optimism about the rehabilitative effects of probation officers' efforts, many believe that it is important that humane efforts be made, and be seen to be made, to reform offenders.

While it is true that counseling is reduced in most house arrest programs, employment or enrollment in school is often required. It could be argued that having a job or a high school diploma may do more than counseling to reduce the long-term prospects of recidivism.

House arrest is intrusive and possibly illegal. Some critics object to the state's presence in individuals' homes, long regarded as the one place where privacy is guaranteed and government intrusion is severely restricted by law. The use of electronic devices raises the fear that we may be headed toward the type of society described in George Orwell's book, *1984*. In *1984*, citizens' language and movement are strictly monitored and used as tools of government oppression.

But house arrest, with or without electronics, is quite different from the *1984* scenario. House arrest is used as a criminal sentence and is imposed on offenders only after they have been legally convicted. It is imposed with full consent of the participant. And, indeed, its intent is to be used as an *alternative* to incarceration. Surely a prison cell is more intrusive than any house arrest program can be.

There have been no formal challenges to date concerning the legality of house arrest. But legal analyses prepared by officials in Utah and Florida conclude that house arrest, with or without electronic monitoring, will withstand constitutional challenges as long as it is imposed to protect society or rehabilitate the offender, and the conditions set forth are clear, reasonable, and constitutional.

Race and class bias may enter into participant selection. Because house arrest programs are in the experimental stage, administrators are extremely cautious in selecting participants. Most programs limit participation to offenders convicted of property crimes, who have minor criminal records and no history of drug abuse. Such strict screening makes it difficult to identify eligible offenders, and those who are eligible tend disproportionately to be white-collar offenders.

American Civil Liberties Union officials say the programs also discriminate against the young and the poor because, to qualify for most house arrest programs, a person generally needs to be able to pay a supervision fee, typically \$15 to \$50 a month. If electronic monitors are used, the fee is higher, and the offender needs to have a home and a telephone. Persons without these resources may have no alternative but prison.

This situation raises possible "equal protection" concerns and concerns about overall fairness. Some programs have instituted sliding scale fee schedules, and a few others provide telephones for offenders who do not have them.

House arrest compromises public safety. Some critics seriously question whether house arrest programs can adequately protect the public. Regardless of stringency, most advocates admit that house arrest cannot guarantee crime-free living, since the sanction relies for the most part on the offender's willingness to comply. Can a criminal really be trusted to refrain from further crime if allowed to remain in his home?

To date, both recidivism and escape rates for house arrest participants are quite low. Generally less than 25 percent of participants fail to complete the programs successfully. But the low rates result, in part, from such programs' selection of good risks. Eligibility requirements often exclude drug addicts and violent offenders. Profiles of house arrestees show that most have been convicted of relatively minor offenses. Such offenders have lower than normal recidivism rates, with or without the house arrest program. Without a controlled scientific experiment, it is impossible to know whether house arrest programs themselves or the characteristics of participants account for initial success. As house arrest sentencing becomes more widespread and is extended to other types of offenders, the public safety question will undoubtedly resurface.

On the Need To Proceed Cautiously

The evolution and performance of house arrest sentencing invite close scrutiny. Such sentencing represents a critical and potentially far-reaching experiment in U.S. sentencing policy. If successful, house arrest could provide a much needed "intermediate" form of punishment. If unsuccessful, house arrest could lead to more punitive and expensive sanctions for a wider spectrum of offenders. Which scenario proves true in the long run will depend on whether policymakers take the time to develop programs that reflect the needs and resources of local communities.

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Discussion Questions

1. What is house arrest sentencing, and why is it attracting the attention of criminal justice policymakers?
2. What are the principal advantages and disadvantages of sentencing convicted offenders to house arrest?
3. What is "net widening," and what are its possible effects on our criminal justice system?
4. Are neighborhoods being placed at risk when they serve as "community prisons?" What would your reaction be if house arrest programs were implemented in your neighborhood?
5. Most house arrest programs require that participants pay a "supervision fee" in order to offset some of the program costs. What are the pros and cons of this practice?

This study guide and the videotape, *House Arrest*, is one of 32 in the Crime File series of 28½-minute programs on critical criminal justice issues. They are available in VHS and Beta format, for \$17 and in ¼-inch format for \$23 (plus postage and handling). For information on how to obtain *House Arrest* and other Crime File videotapes, contact Crime File, National Institute of Justice/NCJRS, Box 6000, Rockville, MD 20850, or call 800-851-3420 or 301-251-5500.

The Assistant Attorney General, Office of Justice Programs, provides staff support to coordinate the activities of the following program Offices and Bureaus: National Institute of Justice, Bureau of Justice Statistics, Bureau of Justice Assistance, Office of Juvenile Justice and Delinquency Prevention, and Office for Victims of Crime.

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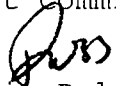
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Memorandum

TO: Members of Select Committee on Corrections

FROM: Russ Immarigeon 
Director of Public Policy Research
Maine Council of Churches

RE: Victim-Offender Reconciliation Programs
Volunteer Programs (Offender Aid and Restoration)

DATE: May 24, 1988

At the last Committee meeting, Rep. Cushman Anthony, responding to comments I made before the Committee, asked to see further information about victim-offender reconciliation and probation volunteer programs.

In brief, victim-offender reconciliation programs allow victim and their offenders to meet on a voluntary basis with a neutral third party. The primary purpose of these meetings is have both the victim and the offender address their feelings about the criminal event and its consequences. The goal of this meeting is to make amends; the means of making amends ranges from an apology to some form or amount of restitution. Originally, victim-offender programs were started and operated by local religious organizations, but more recently local probation departments have increasingly used this new form of sanctioning. Victim-offender reconciliation can be used as an alternative to incarceration, but more usually it is used as an alternative or an add-on to probation. How the program is used is a primary a matter of program and implementation design. Victim-offender cases are usually involve non-violent, property offenses, but increasingly practitioners have been using victim-offender reconciliation with violent offenses (an arduous process but one which has brought extremely positive results).

Numerous publications and articles are available which describe the program and its consequences. If any member of the Committee is interested in learning more about this program, please contact me (871-7114) and I'd be glad to supply you with more information which will address specific questions you may have. In the meantime, I have enclosed the following materials for your review:

- "Mediating the Victim-Offender Conflict" by Howard Zehr;
- "VORP: A Look at the Past and Future" by Dave Worth;
- "VORP - Part 1: Reconciliation Begins in Canada" by John Bender;
- "VORP - Part 2: Reconciliation Spreads to the U.S." by John Bender;

- "Victim-Offender Mediation: A National Survey" by Mark S. Umbreit;

- "After Crime, Reconciliation" by Brook Larmer;

- "Mediation May Not Be As Bad As You Think; Some Victims Do Benefit" by Mark Umbreit;

- "VORP and the Criminal Justice System: Conflict and Challenge" by Russ Immariageon (with commentary by Howard Zehr and Mark Chupp); and

- "Research Summary: Offender Meets Victim" by Robert Coates.

In addition, I have also enclosed an article about the Offender Aid and Restoration program, a national effort to bring volunteers into the criminal justice system. Information about the use of volunteers in the criminal justice system is more diffuse than some initiatives. However, Committee members wanting more information about the use of volunteers should contact me and I will be glad to locate addition information to address their questions.

The article I have enclosed is:

- "OAR - Volunteers in Local Jails" by Neil Vance.

I hope this information is useful to you. I can be reached at the following address and number:

Russ Immariageon
Director of Public Policy Research
Maine Council of Churches
Criminal Justice Committee
85 Park Street, Apt. 6
Portland, ME 04101

207/ 871-7114

APPENDIX G

SYNOPSIS OF NATIONAL SEX OFFENDER TREATMENT PROGRAMS

SURVEY OF SEX OFFENDER TREATMENT MODELS NATIONWIDE

The attached "state-of-the-art" programs nationwide form the basis of recommendations for the management of the sex offender in Maine.

They are:

- Sex Offender Treatment Program in Minnesota;
- Treatment Program for Sexual Aggressors in Vermont
- Sex Offender Treatment and Evaluation Project in California
- Behavioral Therapy Treatment Program at Emory University, Atlanta, Georgia.

Each program has four essential components:

1. Comprehensive Assessment - where an individual offender's treatment needs are identified and treatment plan prescribed.
2. Treatment Component - where the goal is the reduction of sexually abusive behavior.
3. Transitional Experience - providing gradual and controlled re-entry into the community, with close communication between the institutional environment and community resources with intensive monitoring by the Division of Probation and Parole.
4. Evaluation Component - to assess the efficacy of treatment and provide information for program improvements. The evaluation component must be client-specific, detailed and computerized.

Also attached is a pamphlet describing the New England Forensic Associates Treatment Program.

VERMONT TREATMENT PROGRAM FOR SEXUAL OFFENDERS
VERMONT DEPARTMENT OF CORRECTIONS

DESCRIPTION OF THE PROGRAM

The Vermont program began six years ago, when the legislature appropriated \$45,000 to the Department of Corrections for this purpose. The program is designed to "correct" behavior that is socially inappropriate and unacceptable. A major component of the program is focused on relapse prevention, a system of specialized intervention strategies used during the offender's transition from prison to the community. Most institutional treatment programs do not help offenders prepare for their transition to the community. The Vermont program begins therapy before the existing stage of treatment is phased out.

The goal of the program is to protect the public through:

- a) Decreasing sexually assaultive behavior
- b) Enhancing procedures for coping with distress
- c) Increasing self-control abilities

The program uses a comprehensive assessment, treatment and evaluation system. The system includes a full range of contemporary psychological interventions; coordination of correctional and mental health services; provisions for program and treatment evaluation; flexible design so that programs can be changed depending on a given situation; and follow up services.

Participants are voluntary. Following residential treatment there is a gradual phase-in/transition into the community via time-limited passes, furloughs and work release. If successful, an extended furlough to approved locations is carried out. Parole supervision follows, which includes mandated outpatient group therapy. General problem-solving groups, and support groups are added in order to increase the likelihood of successful transition into the community.

INITIAL OUTCOME DATA

In the past six years, the Vermont Treatment Program for Sexual Aggressors has treated 167 offenders (147 pedophiles and 20 rapists), all of whom were convicted of their crimes. During this time span, six offenders have relapsed, a seventh stands accused of reoffending and awaits trial.

Considering seven relapses, the relapse rate for 167 offenders over six years is four percent.

NOTE: The research indicates that there is a greater frequency of relapse among rapists than pedophiles. Of the 20 rapists in the follow-up sample, three (15%) performed an additional sexual assault during the six year follow-up period. In comparison, of the 147 pedophiles, four (3%) have reoffended, indicating a greater frequency of relapse among rapists than pedophiles. However, these differences may be due to the underlying dynamics of men who rape or engage in child sexual abuse and require further study.

NEW LEGISLATIVE ACTION

The State of Vermont is establishing the Center for Prevention and Treatment of Sexual Abuse. Their Departments of Corrections and their equivalent to Maine's Department of Human Services have been leaders in submitting this initiative.

Two hundred thousand dollars will be used for starting this agency. There will be a Director, an Administrative Assistant, a Program Coordinator for offender interventions and one for treatment interventions, and possibly a staff person in charge of the prevention of sexual abuse. These individuals will be involved in reviewing all contracts for sex abuse interventions, reviewing RFP's, the process of developing contracts, monitoring treatment providers and evaluators, and reviewing the protocols which are used when intervening with victims' families and offenders (both juvenile and adult). The agency will attempt not to control, but to assist the efforts being put forth by treatment providers. It will also be the location for resources and will house film and literature libraries, etc.

SOURCE:

1. Vermont Treatment Program for Sexual Offenders, Vermont Department of Corrections, January 1987.
2. Can Relapses Be Prevented? Initial outcome data from the Vermont Treatment Program for Sexual Aggressors. William D. Pithers, Ph.D and Georgia F. Cumming.
3. May 11, 1988 Task Force Report for Management and Treatment of the Adult Sex Offender - Maine.
4. Conversations with William D. Pithers, Ph.D.

ESTIMATED COST OF SEXUAL OFFENSES IN VERMONT

(Parameters: Married offender with two children, adjudicated to 10 year maximum sentence (5 years in prison with two years parole), one victim who receives treatment for 2 years).

SOURCE	COST	TOTAL COST
Intake Investigation	\$250	\$250
Child in SRS Custody	\$3,000-10,000/year	\$6-20,000
Police Investigator	\$120	\$120
Emergency Room Physician	\$210	\$210
Emergency Room Tests	\$150	\$150
Prosecutor's Investigator	\$575	\$575
Defender's Investigator	\$575	\$575
Evaluation of Victim	\$350-600	\$350-600
Victim Treatment	\$2,500/year	\$5,000
Presentence Investigation	\$250	\$250
Offender Psychosexual	\$500-600	\$500-600
Prosecuting Attorney	\$1,200	\$1,200
Public Defender	\$1,200	\$1,200
District Court Judge	\$888	\$888
Incarceration of Offender	\$17,000/year	\$85,000
Welfare to Offender's Family	\$6,600/year	\$33,000
Parole Supervision	\$1,500/year	\$3,000
TOTAL COST		\$138,268 - \$152,618
 Additional Cost of 5 years treatment		 \$27,500
Total Cost Including Treatment		\$165,768 - \$180,118

Cost Comparison Per Offender

5 years of treatment while incarcerated	\$27,500
5 years incarceration without treatment	\$138,268 - \$152,618
5 years incarceration with treatment	\$165,768 - \$180,118
10 years incarceration without parole	\$253,268 - \$267,618
Release without treatment and reimprisonment	\$276,536 - \$305,236

* For an additional \$5,500 per year during a sexual offender's incarceration, intensive treatment may be provided to significantly lessen the likelihood of his continuing to sexually victimize others and potentially returning to prison.

* Each reoffense, or reincarceration, prevented by effective treatment saves society between \$110,768 and \$117,118 (cost of reincarceration for 5 years without treatment - cost of treatment during initial 5 years incarceration = savings).

* The cost of 5 years of effective treatment is approximately one-fifth the cost of an additional 5 year term of incarceration ($\$27,500/\$138,268 = .20$).

* Savings would be higher in states where annual expenses of incarcerating one inmate exceed \$17,000. For example, in New York state, where the annual expense of incarceration is \$46,000 per inmate, savings derived from effectively treating one sex offender could fall between \$255,768 and \$327,618.

* If 80 offenders are treated with an efficacy rate of 85% (assuming 15% of all treated offenders recommit), 68 offenders will refrain from further sexual abuse. Considering that the 5 year treatment program for 80 offenders would cost \$2,200,000, the actual savings resulting from effective treatment could be between \$7,202,224 and \$8,178,024 (savings created by avoiding reincarceration of 68 nonrecidivists - cost of treating 80 sex offenders = savings attributable to treatment). Of course, this analysis makes the faulty assumption that all untreated sex offenders reoffend.

* More conservatively, if one assumes that long term recidivism of untreated sexual offenders reaches 50%, while the recidivism rate of treated offenders is 15%, savings resulting from treatment in Vermont would fall between \$1,671,504 and \$2,073,304 (savings created by the 35% reduction in recidivism - cost of treating 80 offenders = savings attributable to treatment).

SOURCE: William D. Pithers Ph.D, Vermont Treatment Program for Sexual Aggressors, Vermont Department of Corrections

CALIFORNIA'S SEX OFFENDER TREATMENT & EVALUATION PROJECT

DESCRIPTION

The project is a six-year clinical research program mandated by the California State Legislature. The program began in 1985, formal reports on treatment outcomes are submitted biennially to the Legislature over the six-year period, with a final report due in 1991.

The objectives of the program are:

- a) To operate an innovative state hospital unit for sex offenders who volunteer for treatment during the last two years of their prison terms.
- b) To evaluate the effectiveness of the methods used in the experimental program.

The treatment model is Relapse Prevention, which is a prescriptive and multimodal approach designed to train offenders to interrupt and control the chain of events leading to relapse (recidivism).

The project consists of a 46-bed treatment unit at Atascadero State Hospital, the Department of Mental Health's most secure treatment facility. There are 44 staff positions which are directly involved with the assessment and treatment of program participants. The Evaluation Project is housed separately and is staffed by research professionals.

An important feature of the program is that the project excludes incest offenders. Participants are all male inmates from the California Department of Corrections who have been convicted of one or more violations pertaining to rape and child molestation. In addition, there are a number of other criteria for inclusion. Careful selection is accomplished by teams that visit the various institutions in California to select volunteers.

The treatment and experimental design includes three groups matched for basic data.

- 1) Treatment Group - experimental group consisting of sex offenders who have volunteered to participate and who are randomly selected.

- 2) Volunteer Control Group - a group of sex offenders in prison who volunteer but are not randomly selected for treatment (a control for the factor of volunteerism). These offenders are matched to the previous group on the basis of type of offense, criminal history and age.

3) Non-Volunteer Control Group - a second control group of prisoners who are matched with the other groups but who do not volunteer for treatment.

The core of the treatment program consists of daily group meetings, individual meetings and other structured groups such as sex education, relaxation training, social skills, life style modification etc. Most participants have a 30-hour work assignment and approximately 24 hours of program activities per week.

Assessments and treatment includes physiological measurements of arousal (plethysmograph). In the after care phase, offenders who have been discharged are on probation and attend two sessions a week in the Aftercare Program, which is a condition for the first year. These services are contracted and provided at no cost to the patient.

FOLLOW-UP DATA

1. Treatment Group: - The mean time in the community for 32 Treatment Group participants was 6.5 months (range = 1.5 - 12.4 months). One participant was returned to prison for violation of parole. No arrests for sex crimes occurred, and none of the aftercare providers reported suspected reoffenses.

2. Volunteer Control Group: - The mean time in the community for 32 members of the Volunteer Control Group was 4.5 months (range = .1 -12.4 months). Two were returned to prison for parole violations. No arrests for sex crimes were reported.

3. Nonvolunteer Control Group: - As Treatment Group participants are released into the community, matched subjects are selected from the pool of individuals who qualified for the project but did not volunteer. The mean time in the community for these people was 6.9 months (range = 1.8 - 12.4 months). Of these subjects, three had their paroles revoked and were returned to prison. Again, there was no record of any arrests for sex crimes.

As of July, 1988, 28 offenders have completed the program. Although prerelease data indicate that the program is producing expected treatment effects, sufficient follow-up data are not yet available to determine if treatment is successful in reducing recidivism among these offenders.

SOURCES: 1). The Sex Offender Treatment and Evaluation Project Progress Report, California State Department of Mental Health, July 1, 1988.

2) Marques, Janice K. The Sex Offender Treatment and Evaluation Project, California's New Outcome Study. Presented at New York Academy of Sciences, January 1987.

SEX OFFENDER TREATMENT PROGRAMS IN MINNESOTA

Few states have developed well-coordinated statewide management programs for sex offenders. Minnesota is one state which takes into consideration management needs of convicted sex offenders from incarceration through transition and release.

The Department of Corrections in Minnesota has established sex offender treatment programs in four of their institutions.¹ The Sex Offender/Chemical Dependence Program at the Minnesota Correctional Facility in Oak Park Heights offers treatment to inmates very early in their sentence. Sexual assault education, assessment for support services and group therapy are offered. Similarly, inmates at the Minnesota Correctional Facility at Stillwater are provided with group and individual therapy designed to prepare them for subsequent, more intensive treatment. This more intensive treatment is provided by the Transitional Sex Offender Program. Housed at the medium-security Minnesota Correctional Facility at Lino Lakes, the Transitional Sex Offender Program accepts inmates with ten to twelve months of incarceration remaining and continues four to six months into their release. After a 30-day orientation phase, inmates spend nine to eleven months working 40-hour work weeks in the institution's industry program. Every evening and on weekends, they participate in various therapy and sexual assault education activities. After their release, men live in one of two half-way houses where they attend weekly individual or couples therapy for at least four months.

As is true elsewhere, services for the smaller number of convicted female sex offenders are less well developed. The Minnesota Correctional Facility at Shakopee has provided group therapy since 1984 through contracted services to female sex offenders.

Perhaps the best known sex offender treatment program in Minnesota is housed at the Minnesota Security Hospital.² This Intensive Treatment Program for Sexual Aggressives (ITPSA) was established in 1975, and over the years has documented their development and results in available annual reports.³ In general, the program is designed as a therapeutic community in a state psychiatric hospital setting. The program is unique in its significant emphasis on positive human sexuality. Group therapy, family therapy, and substance abuse counseling are frequently used modalities. Release is gradual through increasingly greater amounts of time spent off the locked hospital unit. Partial and full work release programs and family therapy facilitate transition to the community.

Finally Minnesota has several private and public organizations which provide sexual offender treatment programs within the community. Perhaps the best known of these, Alpha

House, is a residential, community corrections program which has provided services to county probation and parole divisions and the State of Minnesota since 1973.⁴ Its parent organization, Alpha Human Services, is a private non-profit corporation licensed by the Minnesota Department of Corrections. Alpha House is a highly structured, residential corrections program specializing in treatment of sexually deviant offenders. A variety of treatment modalities are provided during three phases of inpatient treatment and a final outpatient phase. Median length of residential stay is seventeen months and median outpatient treatment is five months.

In summary, it seems that in Minnesota, the Department of Corrections has become an integral component of a statewide network of sex offender treatment services. Within prisons, services are provided to Department of Corrections clients with an understanding that the most intensive treatment is appropriate for only a portion of their total client pool. The Department of Corrections is also a major consumer of private, specialized residential and outpatient treatment services for probation and parole clients and incarcerated offenders nearing release.

References:

Minnesota Department of Corrections. "Programs for Sex Offenders: Summary Descriptions." October, 1984.

Minnesota Security Hospital. "Description of the Intensive Treatment Program for Sexual Aggressives." September, 1980.

Knopp, F.H. Retaining Adult Sex Offenders: Methods and Models. Ch. 11, Intensive Treatment Program for Sexual Aggressives, p. 211-237, Syracuse, NY: Safer Society Press, 1984.

Alpha Human Services. Program Description. No date given.

BEHAVIORAL THERAPY TREATMENT PROGRAM
EMORY UNIVERSITY, ATLANTA, GEORGIA

Abel et al. (1985) point at that, "[S]ex offenders commit crimes primarily because of excessive interest in, or arousal to, deviant objects or behavior," (p. 200). Thus, in order to reduce the likelihood of recidivism in the form of repeated sexual offenses, this inappropriate sexual interest and arousal must be reduced. By learning to utilize various techniques, sex offenders can be helped to reduce and manage their deviant sexual interests and behaviors. The techniques are standard behavior therapy approaches designed to reduce deviant sexual arousal and increase age appropriate, consensual sexual activity.

It is not sufficient to assist the offender in reducing interest in inappropriate sexual activities without assisting the offender in developing appropriate sexual outlets. Some of the sex offenders who lack sufficient sexual arousal to age appropriate partners, as well as some of those who are sufficiently aroused by adults, do not have sufficient social skills to effectively establish and maintain interpersonal relationships with peers, especially intimate ones. Some of these offenders may turn to children for social and sexual contacts, others may force sexual acts on peer-aged individuals. Thus, social skills training and assertiveness training are considered an integral part of the treatment program.

Sex offenders appear to have, or develop, attitudes or beliefs which support their perpetration of sexual offenses. These thinking errors, or cognitive distortions may be corrected through various techniques. It is not uncommon to find that sex offenders have deficits in their knowledge about what is considered appropriate sexual behavior in our society. Sometimes, they have problems with sexual dysfunctions. Either, or both, of these problems can interfere with appropriate sexual behavior. Sex education and treatment for sexual dysfunction is used to alleviate these specific problems.

Abel et al. (1985) note that substance abuse can reduce an offender's control over his sexual deviant urges. Thus, treatment for substance abuse must be conducted when indicated.

Abel and his colleagues (1984, 1985) provide their treatment, both in inpatient and outpatient settings. As a first step, a specialized sex offender evaluation is conducted. Psycho-physiological assessment is utilized routinely as part of the assessment process. Dr. Abel and his colleagues utilize sex offender groups for their interventions. Dr. Abel noted (1987) that the group format can be helpful in confronting the distorted beliefs and attitudes held by many sex offenders. He also noted that groups are time and cost effective.

Outcome data reported by Dr. Abel and his colleagues include a study of child molesters conducted by Abel et al. (In press). The results of recidivism at six and twelve months after the completion of treatment were as follows. Of ninety-eight child molesters, eighty-six did not recidivate, twelve did. These findings are consistent with other studies (e.g. [Marshall, (1987)]) which utilize longer follow-up periods.

References:

Abel, G.G.; Becker, J.V.; Cunningham - Rathrer, J.; Rouleau, J.L.; Kaplan, M.; Reich, J. (1984). The Treatment of Child Molesters. Behavioral Medicine Institute, Atlanta, Georgia.

Abel, G.G.; Mittelman, M.S.; Becker, J.V. (1985). Sex Offenders: Results of Assessment and Recommendations for Treatment. In: M.H. Ben-Aren; S.Z. Hucker; C.D. Webster (Eds). Clinical Criminology: The Assessment and Treatment of Criminal Behavior. Toronto, MtM Graphics, Ltd.

Abel, G.G.; Mary Mittelman; Becker, J.V.; Rathrer, J.; Raileau, J.L. (In press) Predicting Child Molesters' Response to Treatment. Pre-publication.

Marshall, W. (1987). Paper presented at the New York Academy of Sciences Conference on Human Sexual Aggression. N.Y., N.Y.

Abel, G.G. (1987). Presentation at the Maine State Sentencing Institute, Augusta, Maine.

APPENDIX H

PROPOSED SEX OFFENDER TREATMENT PROGRAM COSTS

Intensive treatment program for sex
offenders on grounds of MCC (Windham)
Demonstration project for 1 year
of sex offenders = 30

		<u>Sex Offender Program Needs</u> for 5/10/88		<u>Maine Correctional Center (MCC)</u> (Institution)			Remarks
Personal Services	Personal Services Costs	All Other	All Other Costs	Capital	Capital Costs	Total Costs	
Psychologist III*	N/A-on staff	Tape Recorder Bookcase	50.00 93.00	4 Drawer File	156.00		
1 MSW	33,219.00	Chair Tape Recorder Telephone Bookcase	86.00 50.00 548.00 93.00	Desk	399.00		
1 Education Group leader (20 hrs/week) (16 hrs. currently = +4 hrs. wk)	2,919.00						Currently funded at 16 hrs./wk
1 Psych Assistant (Behavioral Lab Tech	22,739.00	Chair Telephone	86.00 548.00	Desk	399.00		
1 Caseworker/Transition Coordinator (Part-time at MCC, Part-time at SMPRU)	26,182.00	Chair Tape Recorder Telephone	86.00 50.00 548.00	Desk 4 Drawer File	399.00 156.00		
1 Clerk Typist II	18,150.00	Chair Telephone Hook-up for hardware	86.00 548.00 50.00	Desk Typewriter Transcriber Terminal Printer Input/Output Board Line Drivers	399.00 459.00 250.00 500.00 1,000.00 600.00 180.00		
		20 chairs @ 34.20 each 2X5 Chalk Board	684.00 125.00	VCR Camcorder VCR VCR Monitor Plethysmograph & Accessories	1,000.00 450.00 500.00 10,000.00		
		Staff Training Funds and Program Speaker	4,000.00				Includes C.O. training
Subtotal	103,209.00		7,731.00		16,847.00		Subtotal Maine Correctional Center 127,787.00

*Current contract funds for sex offender treatment (\$32,816) will be utilized to provide contract psychological services for general population

6938m

*(200 Phones Installed)
 *(348 Monthly Charge (12))

Includes:

1. Central office costs
2. Pre release centers
3. Probation & Parole contracts
 - community follow up

<u>Sex Offender Program Needs</u> for 5/10/88				<u>Department of Corrections</u> (Institution)			
Personal Services	Personal Services Costs	All Other	All Other Costs	Capital	Capital Costs	Total Costs	Remarks
Statewide Coordinator of Sex Offender Treatment Services (Psych III level)	37,640.00	Travel 250 miles/ wk = 12,500 miles Chair	2,750.00 86.00	Desk 4 Drawer File	399.00 156.00		
Computer Programmer (20 hrs/wk)	11,370.00	Tape Recorder Book Case Telephone Chair Telephone	50.00 93.00 548.00* 86.00 548.00	Desk	399.00		
Clerk Typist II (20 hrs/wk)	9,075.00	Chair Type Platform Telephone	66.00 105.00 548.00	Desk Typewriter Transcriber File Computer Terminal Input/Output Board	399.00 459.00 250.00 156.00 500.00 600.00		
Software Package		Participant Information Management System Community Services Treatment Funds	30,000.00 300,000.00				Statewide System with feeds from MCC, MSP, DCF and P&P to Central Office of DOC Additional treatment for sex offenders who have completed the transition phase or incarceration and are in community sex offender treatment and under the supervision of Probation/ Parole

Personal Services	Personal Services Costs	All Other	All Other Costs	Capital	Capital Costs	Total Costs	Remarks
Transition Beds							
Total projected participants for transition phase is 120/year. Transition period is \pm 6 months per participant. 120 participants for 6 months each = 60 transition phase beds/year. It is anticipated that half of this need (30) can be met with existing pre-release unit resources (SMPRU, CMPRU, Bangor Pre-Release Unit).		30 Transition Phase Beds (Half-way house) (Supervision by Probation & Parole)	435,000.00				
		Community Services Treatment at \$45/hr (est.) 2 hrs/wk for all participants (x60) hrs wk x 52 weeks	280,800.00*				
SUBTOTAL	58,085.00		1,050,680.00		3,318.00		Subtotal Central Office 1,112,083.00

*Partial reimbursement from prisoner's work release funds should be considered.

APPENDIX I

**AN ACT TO REQUEST THE DEPARTMENT OF CORRECTIONS TO
UNDERTAKE A PROBATION SYSTEMS MANAGEMENT STUDY**

FIRST REGULAR SESSION

ONE HUNDRED AND FOURTEENTH LEGISLATURE

Legislative Document

No.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY NINE

AN ACT to Request the Department of Corrections to Undertake a
Probation Systems Management Study.

Emergency preamble Whereas, Acts of the Legislature do not
become effective until 90 days after adjournment unless enacted
as emergencies; and

Whereas, this study needs to begin immediately to determine
appropriate strategies within probation for effective
long-range management of Maine's offender population.

Whereas, in the judgment of the Legislature, these facts
create an emergency within the meaning of the Constitution of
Maine and require the following legislation as immediately
necessary for the preservation of the public peace, health and
safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec 1. Establishment; duties. The Department of
Corrections shall undertake a comprehensive study of its
probation system. The study shall include, but not be limited
to, the following:

- A. Improvements to the existing information system,
including focus on improved data collection concerning
information about the risks posed by offenders on
probation and needs associated with those offenders,
program evaluation and offender tracking. Full
consideration should be given to the adoption

of a pre-sentence investigation system which provides detailed and specific recommendations to judges at the time of sentencing.

- B. A thorough review of probation's classification system, including the need for uniformity in record keeping.
- C. An evaluation of the current staff/offender ratio. Current staffing ratios are often in excess of 100 cases per officer. The Department has indicated that a 1:75 ratio for adult supervision and a 1:35 ratio for juvenile supervision, coupled with enough clerical assistance to handle anticipated workload increases, would alleviate some of the difficulties arising from such a large number. The probation management study should focus on the need to reduce ratios to 1:75, with the long-range objective of 1:50.
- D. A review of a full range of probation programming. The study should include a review of what the probation system currently does, what other probation departments do which can be studied and used by Maine's probation system, and what resources probation would need to undertake such programs. Furthermore, it should recommend how such programs could effectively target prison-bound offenders that could feasibly be diverted into the community.
- E. A review of alternatives to traditional probation programs. Any consideration of investment in program development should enable the Department to move beyond the traditional forms of supervision to the incorporation of a range of sanctions which are responsive to goals of community based punishment and treatment. A probation management study should look not only at high-level supervision projects such as Intensive Supervision and Home Detention, but also a full range of intermediate and lower levels of supervision. The study shall include, but not be limited to, consideration of the following options:
 - Day Fines
 - Restitution/Diversion Centers
 - Victim/Offender Reconciliation Programs
 - Community Service Programs.
 - Private Sector Delivery of Non-Confinement Penalties.

- F. Develop an evaluation procedure to monitor prison space management versus probation management, to ensure that offenders that could feasibly be diverted into the community are not using up valuable and expensive prison space.
- G. Review training options for Probation Officers who supervise offenders with special needs (Sex offenders, substance abuse, mental health and retardation etc.)
- H. Review strategies for criminal prevention and consider the need for and development of a criminal prevention model for young adults within the State of Maine.

Sec. 2. Assistance. The department may contract for those professionals it requires to assist it with this study.

Sec. 3. Report. The Department shall report its findings to the Joint Standing Committee of the Legislature having jurisdiction over corrections by February 15, 1990.

Sec. 4. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

1988-89

CORRECTIONS, DEPARTMENT OF

Administration - Corrections

All Other	\$150,000
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Provides funds to
contract for services
to assist the
department in
conducting this study.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

STATEMENT OF FACT

This bill provides an appropriation to the Department of Corrections so it may enter into a contractual agreement to undertake a comprehensive study of its probation system.

APPENDIX J

FINDINGS OF THE ADPC STUDY OF THE FEASIBILITY OF ESTABLISHING A DETENTION AND REHABILITATION FACILITY FOR CHRONIC OUI OFFENDERS AND EXPANDING THE KENNEBEC COUNTY ALTERNATIVE SENTENCING PROGRAM STATEWIDE

An overview of findings prepared by Al Anderson, October 1988.

APR 7 '88

107

BY GOVERNOR

P & S LAW

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-EIGHT

H.P. 1597 - L.D. 2183

AN ACT to Request the Alcohol and Drug Abuse
Planning Committee to Examine the
Feasibility of Establishing a Detention
and Rehabilitation System for Chronic
Operating-Under-the-Influence Offenders
and Expanding the Kennebec County
Community Alternative Sentencing Program.

Be it enacted by the People of the State of Maine as
follows:

Sec. 1. Establishment; duties. The Alcohol and Drug Abuse Planning Committee shall examine the feasibility of a facility to detain, and provide rehabilitation and treatment services for, chronic offenders of the operating-under-the-influence laws, Title 29, chapter 11, subchapter V of the Maine Revised Statutes. The committee shall examine the concept of separate detention and rehabilitation facilities for chronic operating-under-the-influence offenders and how to implement such a system in this State. The committee shall also examine existing projects in other states and other countries, including the facilities in Maryland, Massachusetts and Arizona, and shall specifically report on the projected effectiveness and feasibility of starting a similar pilot project in Maine. The study shall include, but not be limited to, the following:

A. The feasibility of having the facility operational no later than October 1, 1990;

B. The feasibility of establishing the facility at an existing state-owned location, preferably in an existing building or facility;

C. Costs involved in establishing the facility; and

D. The feasibility of using the facility as part of the overall sentencing mechanism available to courts. Attention should be paid to the possible need for change to the current laws if this option is recommended. This part of the study shall include, but not be limited to, the feasibility of the following aspects of the system:

(1) Whether the time which a convicted offender is sentenced to serve in the facility shall be the sole sentence for operating under the influence or whether the facility shall be used in conjunction with other correctional facilities to allow for transfer when the offender fails or refuses to cooperate in the treatment and rehabilitation program at the facility;

(2) Whether an offender may serve the sentence at the facility before the offender has completed all terms of imprisonment sentenced for any convictions for murder or Class A, B or C crimes; and

(3) The conditions of probation after completion of the sentence in the facility has been served, including: the length of probation, participation in an aftercare program and the possibility of reimbursement to the State for the cost of the offender's sentence at the facility.

Sec. 2. Statewide programs. The Alcohol and Drug Abuse Planning Committee shall examine the Kennebec County Community Alternative Sentencing Program, which provides an alternative to incarceration for first offenders, and study the feasibility of implementing similar programs

statewide. The study shall include, but need not be limited to, options for funding mechanisms for such programs, and training needs.

Sec. 3. Report. The committee shall report its findings and recommendations, together with suggested implementing legislation, to the Joint Select Committee on Corrections by October 15, 1988.

OVERVIEW OF FINDINGS

1. The County Jails

- a. It has been estimated that over 80% of the over 30,000 individuals admitted to our county jails each year, have problems with drugs (including alcohol).
- b. Only four (4) of the fifteen (15) Maine county jails have formalized substance abuse programs (Kennebec, Androscoggin, Oxford, and Franklin Counties).
- c. The number of OUI offenders in our county jails in FY'87 was: 1st offenders 2,876, 2nd offenders 759, and 3rd offenders 146 for a total of 3,781. Note: 2,624 first offenders were convicted of OUI but did not serve time in jail.
- d. Without question, a major issue behind the interest in the OUI county jail population is the reduction of the in-jail population.
- e. Only two (2) county jails (Kennebec and York) have alternative sites for selected 1st offenders and one (York) for multiple offenders. Kennebec has a proposal for 2nd offenders.

2. The Offender

- a. First Offender: In 1987 the 2,876 first offenders served a minimum² of 48 hours and paid a minimum fine of \$300. They had an average length of stay of 5 days (due to aggravated condition) and represented an average daily population of 40.4. They represented 75% of the OUI jail population and approximately 32% of the average daily OUI beds in the county jails.
- b. Second Offender: The 759 second offenders served a minimum of 7 days and paid a minimum \$500 fine. However, the average length of stay was 22 days with an average daily population of 50.6. They represented 20% of the OUI jail population and approximately 35% of the daily OUI beds in the county jails.
- c. Third Offender: The 146 third offenders served a minimum of 30 days and paid a \$750 fine. However, the average length of stay was 98 days with an average daily population of 42.3. They represent approximately 4% of the OUI population and approximately 33% of the daily OUI beds in the county jails.
- d. Summary: In terms of actual jail space utilized, each of these groups represent approximately 1/3 of the OUI daily population. The 3rd offender is spending 3 times the minimum sentence due to factors in addition to the OUI.

²Due to "aggravated" conditions, the sentences exceed the minimum of 48 hours and a \$300 fine.

3. Maine Programs and Outcomes

- a. First Offender: Through screening, the Kennebec County Jail program accepts over 95% of the 1st OUI offenders for their alternative weekend program. Approximately 1/3 are referred for treatment. A 6-month follow-up shows an extraordinarily high success rate (not a second OUI). Over 85% of these individuals have also completed DEEP which must be considered in the "success" equation. Note: The jail and DEEP programs involve education, assessment, and referral. They do not involve treatment.

The York County Shelter program has an agreement to accept selected 1st offenders from the York County Jail. The program involves housing and "community" work in the York County Shelter program.

- b. Second/Third Offenders: Kennebec County is proposing an alternative setting of one (1) week for selected 2nd offenders. York County, through the York County shelter, provides an alternative site and community service program for multiple offenders. DEEP has its 2nd/3rd offender weekend program which is related to the return of the driving license and is required in addition to jail time.

Approximately 35% of the potential DEEP weekend clients enter treatment directly and circumvent the DEEP weekend. Approximately 85% of the DEEP weekend clients are referred to treatment. Note: The DEEP and proposed Kennebec alternative program involve screening, education and referral. York County involve housing and work, which compensates for the housing, for selected multiple offenders. These are not treatment programs.

- c. Probation: Data is not available to clearly identify the number of 1st, 2nd, and 3rd OUI offenders who are also on probation. However, members of the advisory committee and ADPC staff have found that a large percentage of the 2nd and 3rd offenders are also having other social/behavioral problems and may already be on probation. The Kennebec County data suggests that 35-40% of the 2nd/3rd offenders are on probation and almost 40% of the individuals who break probation do it while involved with alcohol (including OUI).
- d. Summary: Maine has a few model alternative site programs for 1st and 2nd offenders. However, mandated treatment is limited to the return of the license. In some county jail projects (e.g., Androscoggin), although alternative sites are not involved, some judges are mandating treatment and probation as part of the sentencing.

4. Other States - Programs and Outcomes: Based upon the results of 19 states which responded to the survey questionnaire, there are a number of consistent ideas.

- a. Most Common Approaches:

(1) First Offender: Community services, probation and treatment/education.

- (2) Second Offender: Community service, work release, probation, flexible jail time, and treatment/education.
- (3) Third Offender: Work release, probation, flexible jail time and treatment.
- (4) Overall: Incarceration followed by treatment. Payment by the individual for all phases including incarceration and treatment. Most activities aimed at reducing the use of jail space. Overall, they trend to include pre-sentence investigation and screening, treatment/education, and the collection of fees/fines.

b. Problem Areas:

- (1) Few of these programs have been evaluated. We were unable to obtain outcome information related to any of the programs..
- (2) Increased mandated treatment has resulted in treatment waiting lists.
- (3) Wisconsin repealed its ^{mandated} work release because of local liability, poor work by offenders, etc.

5. Other States - Special Facilities: Three states have special OUI facilities:

- a. Massachusetts: Serves primarily late-stage alcoholics (3rd offense) convicted of OUI felony, and without a violent history. Sentence of 2 months to 2 years. Treatment involves a 5-6 week treatment program (similar to our 28-day rehabilitation program) followed by community service work and A.A.
- b. Arizona: Serves primarily chronic offender (3rd offender), convicted of OUI felony, with an average length of stay of 1.2 years. Minimal treatment (4 1/2 hours/week for 8 weeks) with an emphasis upon a 40-hour public service work week. Income from public services paid to Corrections.
- c. Maryland: Serves individuals convicted of less than an OUI felony. Most continue with previous employment and return to facility at night. First offenders serve 7 days and repeat offenders serve 14-21 days. Program is 3 hours an evening and 1 hour each weekend day. Incarceration is followed by 1-year probation including mandated treatment. Twenty (20) percent are late-stage alcoholics. Inmates are charged \$33.85 a day. If sentenced to jail, inmates could spend last 21 days in the special facility.
- d. Summary: Only the Maryland approach appears to be compatible with our county jail system, including length of sentence. Treatment/education appear to be secondary to work. "Treatment" in the Arizona and Maryland programs appear to be educational programs and A.A.

APPLICATION TO MAINE

1. Lack of Substance Abuse Programs in Maine County Jails: We have not addressed the overall basic problem of alcohol and drug abuse of individuals sentenced to our county jails.
 - a. An ADPC study revealed that it would cost approximately \$250,000 to institute basic substance abuse screening and referral programs in the eleven (11) county jails that lack these programs. These funds also would provide, on the average, one (1) counselor per jail who could provide the screening/referral, some counseling and institute a 1st offender OUI program. Note: The State is currently funding the only formal substance abuse programs in the county jails (Kennebec, Androscoggin, Oxford and Franklin Counties).
 - b. If such a program was funded, it would provide an of average of one (1) counselor per jail.
 - c. The existing county jails ^{substance abuse programs} are contracting with substance abuse agencies, which meet OADAP standards. This would be the preferred approach.
2. First offenders (N=2,876): We are not addressing the needs of the population that has the greatest chance for success.
 - a. First offenders represent 75% of the jailed OUI offenders and occupy 1/3 of the OUI beds.
 - b. Addressing the needs of this population could be a major prevention strategy in reducing 2nd and 3rd offender populations.
 - c. Kennebec County data suggests that over 95% of the 1st offenders who are involved in their alternative site program (and the existing DEEP program) do not commit a second OUI within a 6 month period.
 - d. First offenders currently pay for their DEEP program. The Kennebec County and York County programs are self-supporting through the redistribution of existing resources and free services resulting from community service (Kennebec) or working as part of the alternative site program (York).
 - e. The removal of the 1st offender population from the jails would result in a ~~significant~~ ^{1/3 rd} reduction in the OUI ^{bed} population.
 - f. There is a need for flexibility to respond to the uniqueness of the counties e.g., Kennebec and York Counties have different models. Jails could pool their resources and develop cooperative programs that serve more than one jail. This is being explored by Kennebec County. However, the State would establish standards.
 - g. If basic substance abuse screening/referral staff were in all county jails, programs (optional site, screening, education and referral) could be developed for each county. DEEP requirements (including mandated treatment when appropriate) for the return of driver licenses, may be ^a sufficient incentive without requiring treatment and probation as a condition of sentencing for the 1st offender.

- h. The Kennebec County program includes a 72-hour sentence being reduced to 48 hours if the person enters the alternative site program. This may be a necessary incentive to enhance the use of alternative site programs.
3. Second Offenders (N=759): This population represents both extremes of the OUI population. DEEP data shows that over 85% of their multiple offenders are referred to treatment. The county jail data shows that they occupy approximately 1/3 of the OUI beds on a daily basis.
- a. It would be premature to make a relatively extensive financial commitment involving this population until a 1st offender program is established. Based upon current information, a 1st offender program may significantly reduce this population.
- b. Regardless of the program, there is a need to screen this population. As in other states, the advisory committee recommended that eligible inmates would be only those in jail primarily for OUI. This is an OUI program and it's potential effectiveness must be assessed in terms of current behavior and past history.
- c. The Androscoggin and Kennebec County type of programs (in-jail screening, education and referral) serve as potential models for in-jail resources which would be utilized at a later date to develop 2nd/3rd offenders alternative site programs. The costs would be included in the previously referred to \$250,000.
- d. Utilizing the in-jail proposal of \$250,000, alternative site programs for 2nd offenders could be developed through the redistribution of existing resources. The Kennebec County proposal for 2nd offenders involves a 7-day alternative site (Y-camp) community services program. The existing York County program involves alternative site with work in the York County shelter program. Both involve reduced costs due to "community services" and the redistribution of existing resources.
- e. The Advisory Committee recommended that 2nd offender programs include mandatory post incarceration treatment as a condition of probation. The appropriateness of in-jail treatment was questioned.
- f. Probation presents a problem. We do not have appropriate data to assess the extent of the need for probation. Our best guess is that approximately 50% of the 2nd (and 3rd) offenders are already on probation for reasons other than OUI.
- g. DEEP data suggests that over 90% of the 2nd offenders enter DEEP. However, the data also suggests that they wait until their license suspension is almost over before they enter the DEEP program. There is a need to reduce/eliminate this wait.
- h. Although DEEP refers 85% of this population to treatment as a condition of the return of the license, we don't know how many actually enter treatment. Further, this population is responsible for their costs related to DEEP and treatment.

- i. Summary: It is clear that we lack information concerning the size and needs of the 2nd offender. If in-jail substance abuse staff were available, this information and initial alternative site programs could be developed. We could maximize the use of DEEP programs (e.g., weekend) and incentives (mandatory treatment) related to return of license. When we have had the opportunity to address the 1st offender and identify the size and needs of the 2nd offender population, we could better determine the costs associated with mandatory treatment as a condition of probation.

It is also important to realize that a major goal is the reduction of in-jail populations. The Kennebec proposal and the York program accomplish this task for the 2nd offender. However, there are problems due to time delay between the conviction, jail time, and treatment. Community service may also present a number of problems e.g., supervision and the value of the work in terms of the cost and quality.

Any future expansion must consider cost related to probation, treatment, community service (e.g., if the community service is reimbursed, where do we obtain the funds) etc.

4. Third Offender: This involves approximately 146 individuals with an average daily jail population of 42.3. The group represents approximately 1/3 of the OUI jail beds.
 - a. At this time there is no evidence that a specialized OUI program (including a facility), would benefit this population or Maine. See Appendix D for responses to the Legislative Committees questions concerning a special facility.
 - b. The prognosis for this population is poor. The fact that their average length of stay (98 days) is three (3) times the minimum sentence, suggests that OUI is only one of many problems.
 - c. If this population was screened, and programs established only for those who could benefit from an OUI program, the population would be relatively small. At the current time, if all 3rd OUI offenders were appropriate for our OUI program, the daily jail population would be 42.3.
 - d. If the 1st offender population was removed from the jail through alternative site programs, the 3rd offender population would present less of a problem.
 - e. With the previously identified \$250,000 for in-jail screening, education and referral (see Androscoggin and Kennebec Jails), initial steps could be taken to address the needs of this population. If we included a minimal educational and A.A. program, this would be similar to the Arizona and Maryland programs except that it would be conducted in the jails.
 - f. Future: After addressing the needs of the 1st offender, 3rd offender programs could include post incarceration treatment as a condition of probation. However, rather than establishing and funding specialized facilities, funds could be made available to purchase services from existing community substance abuse treatment programs. For example, although the majority of these individuals

may require long-term inpatient services, many could potentially benefit from less costly 28-day rehabilitation or outpatient services, ~~which are less costly.~~

It is clear that the states surveyed felt that long-term post-incarceration treatment was necessary. Further, in-jail education may be appropriate but members of the Advisory Committee questioned the appropriateness of in jail treatment. It was also felt that the majority of these individuals are already on probation due to problems other than OUI and probation services would not significantly expand.

Regardless of the many issues, it would be inappropriate to commit funds until the size and needs of this population are identified.

- g. Summary: At this time, the 1st offender program is the priority and specialized programs are not recommended for this population. If funds are available, in-jail screening/education/referral programs could be established and post jail treatment could be purchased from existing community agencies for this population. If the 1st offender population was removed from the jails, this would reduce the pressure due to over-population.

The Feasibility of Establishing A Detention
and Rehabilitation Facility for
The Chronic OUI Offender

1. Is there a need for a specialized facility for chronic OUI offender?
Current information does not support the need for a specialized facility in Maine.
 - a. The county jails serve only approximately 146 3rd OUI offenders per year.
 - b. The average daily population is 42. That is, on a daily basis, they occupy a total of 42 beds in our 15 county jails.
 - c. If we established a preventative program (1st offender) and screened out inappropriate 3rd offenders, the 3rd offender population for a "specialized" facility would be significantly reduced.
 - d. If a 1st offender alternative site program was established, the overcrowding of county jails would be significantly reduced. This appears to be a (if not the) major reason for promotion of optional site programs.
 - e. If jail space is made available through the reduction of the 1st offender in-house population, and in-house educational, screening and referral programs are implemented, Maine could establish 3rd offender jail programs equal to those in Arizona and Maryland within the Maine county jail system. The major components are work release or community service, screening, a minimal educational program (e.g., 4 hrs. an evening) and referral for post incarceration treatment. Probation with mandated treatment is another issue. Existing information suggests that a large percentage of this population is on probation and has been referred to treatment (DEEP).
 - f. If jail space is available, many individuals would remain in closer proximity to their community and work (if work release was appropriate), the need for community service "jobs" would be spread around, continuity between in and post jail substance abuse services would be better, etc.
2. If a specialized facility was appropriate, what is the feasibility of utilizing an existing state facility?
 - a. If the OUI 3rd offender population was reduced by 1/2 through prevention/screening, a facility of approximately 25 beds would be required.
 - b. A staff person of the ADPC visited and evaluated Bishop Hall at Pineland. The following presents a summary of his report.
 - (1) The facility could house approximately 20 individuals, including both living and program space.
 - (2) Extensive renovations (including a roof and security fence), furniture, etc., are required.
 - (3) Female accommodations must be made. The current structure could be renovated.

- (4) The location is in appropriate for many reasons.
- (a) Pineland is the residence for over 200 retarded individuals. Bishop Hall is within 200 yards of one of the housing units which allows residents complete access to Pineland grounds. It would be inappropriate to place correctional clients in such close proximity to the intellectually handicapped. This involves safety, treatment and philosophical issues. The 3rd offender is not simply a person that has 3 OUI arrests.
 - (b) As with any single facility located a great distance from an urban area, most inmates would be removed from their immediate family, jobs, etc. Thus, a rural facility must be viewed as a relatively closed facility/program that usually employs it's own staff rather than drawing upon community resources.
 - (c) A single facility, in a rural location, would depend primarily upon "community service jobs". The value of community service jobs has been seriously questioned in terms of income, quality of work, etc. Further, would a place like Pineland reimburse the OUI Program? Arizona has multiple community service contracts which result in many state agencies reimbursing the Department of Corrections.
- c. Although other states (Maryland, Massachusetts and Arizona) have utilized specialized facilities, only the Maryland program involves a population similar to the population in our county jails. Further, the Maryland program emphasizes continuation of employment rather than community service jobs. Thus the location of the facility (State or other) is important. Two of the states (Maryland and Arizona) emphasize work (work release or community service). Education, A.A. etc., are secondary while incarcerated.
- d. Our county jails (if the 1st offender populations are removed) could provide a "local" facility which allows for work, night programs, and lock-up similar to the Maryland model.
3. If such a facility was established, what would be the costs and how would we generate funding? The costs are highly dependent upon the program. Funding is highly dependent upon the capacity of the individual to pay or the "community service" agencies to reimburse for work completed. However, most states that responded to the survey recommended that the individual pay directly (work release) or indirectly (community service) for all expenses from arrest through post-incarceration treatment. An ability to pay approach needs to be established as many late stage alcoholics are unable to earn an adequate wage.
- a. The Maryland program would be quite similar to a county jail program that allowed for work release (which Maine jails do) and a 4 hour evening educational program. The inmates are required to reimburse the jail for all costs. The charge of \$34 a day is high in order to cover non-paying inmates.

- b. The Arizona (minimal program) and Massachusetts programs (similar to 28-day rehabilitation) did not provide cost figures. Their estimates of client income etc., presented some problems as many clients did not earn the expected income.
- c. A Maine 28-day residential rehabilitation program located in a free-standing facility costs about \$200/day or \$5,600 for the 28 day program..
- d. Estimate yearly operational cost for a 25 bed specialized chronic OUI offender (not including security) would be:
 - (a) County jail type: \$310,250/yr: (25 bed x \$34 x 365 days)
 - (b) Twenty-eight day rehabilitation: \$1,725,000/yr: (25 bed x \$200 x 365 days)
 - (c) Options: If the \$1.7 million were set aside, services could be purchased post-incarceration from existing community programs. The previously identified \$250,000 could provide the in-jail program.
- 4. The feasibility of using the facility as part of overall sentencing mechanism available to the courts.
 - a. All states screen individuals before allowing them to enter the specialized program. Pre-sentence screening would be required if the individual was to be sentenced directly to the facility.
 - b. States utilize these as the facility for the total sentence and as an optional site at the end of the sentence. However, the latter groups involve felons and do not reflect the OUI population in Maine County Jails.
 - c. Although two states (Massachusetts and Arizona) allow felons to transfer to these facilities, they screen-out individuals with a history of violent crimes. Also, it is questionable if treatment post prison would be more effective if provided post-incarceration in a halfway-house and/or as a condition of probation.
 - d. Members of the advisory committee recommended that treatment be primarily post-jail (education in jail) and as a condition of probation.
 - e. Treatment, as a condition of jail time and probation, must be based upon an appropriate assessment. Thus, although the length and conditions of jail time and probation are set at the time of sentencing, the specific type of treatment may not be determined until the person has served jail time. Thus, in some cases, pre-sentencing investigations can establish probation time while in other cases probation must be of sufficient time to allow flexibility in treatment time.
 - f. A decision has to be made concerning the populations to be served. The questions suggest that we may be attempting to mix populations that have very diverse needs and program requirements. The Maryland program is very specific in terms of sentence (7-21 days)

MAINE DEPARTMENT OF CORRECTIONS
JAIL INSPECTION DIVISION
O.U.I. POPULATION DATA
JULY 1987

COUNTY	1st X Offenders			2nd X Offenders			3rd X Offenders			Total 1st, 2nd, 3rd	
	#	ALOS	ADP	#	ALOS	ADP	#	ALOS	ADP	#	ADP
ANDRO.	196	2	1.0	54	15	2.2	5	88	1.2	255	4.4
AROOS.	272	3	2.2	76	25	5.2	20	61	3.3	368	10.7
CUMB.	425	3	3.5	110	27	8.1	14	74	2.8	549	14.4
FRANK.	26	11	0.8	7	10	0.2	1	180	0.5	34	1.5
HANCO.	89	3	0.7	23	8	0.5	3	30	0.2	115	1.4
KENN.	307	12	10.0	110	30	9.0	33	161	14.5	450	33.5
KNOX	102	8	2.2	27	56	4.1	3	130	1.1	132	7.4
LINC.	108	5	1.5	18	50	2.5	4	188	2.1	130	6.1
OXFO.	64	3	0.5	19	8	0.4	1	364	1.0	84	1.9
PENB.	433	5	6.0	122	25	8.4	18	103	5.1	573	19.5
PISC.	48	11	1.4	17	63	2.9	5	183	2.5	70	6.8
SAGA.	52	13	1.9	13	41	1.5	2	120	0.7	67	4.1
SOME.	60	12	2.0	17	42	2.0	4	103	1.1	81	5.1
WALDO.	69	2	0.4	19	8	0.4	4	165	1.8	92	2.6
WASH.	112	7	2.1	25	10	0.7	7	38	0.7	144	3.5
YORK	513	3	4.2	102	9	2.5	22	61	3.7	637	10.4
Totals	2,876	5	40.4	759	22	50.6	146	98	42.3	3,781	133.3

Sent. Length
1-364 days

Sent. Length
1-364 days

Sent. Length
2-364 days

#; Number of Admissions

ALOS: Average Length of Sentence

ADP: Average Daily Population

Maine Department of Corrections

County Jail, Rated Capacity
August, 1988

<u>County</u>	<u>Adult</u>		<u>Juvenile</u>		<u>Total Capacity</u>
	<u>Male</u>	<u>Female</u>	<u>Male</u>	<u>Female</u>	
Androscoggin	30	0	4	or 4	34
Aroostook	46	2	0	0	48
Cumberland	65	8	5	0	
Annex	22				100
Franklin	17	2	2	or 2	21
Hancock	16	2	or 2	0	18
Kennebec	40	4	0	0	
Halfway House	12		0	0	
Annex	10		0	0	66
Knox	9	6	or 6	0	
Halfway House	10		0	0	25
Lincoln	16	2	1	or 1	19
Oxford	24	3	or 3	or 3	27
Penobscot	88	0	0	0	
Annex	0	18	0	0	106
Piscataquis	11	2	0	0	13
Sagadahoc	No Jail				
Somerset	51	5	2	or 2	58
Waldo	12	4	0	0	16
Washington	25	7	0	0	32
York	55	3	0	0	58
ALL	559	68	14	or 9	641

Advisory Committee

Attendance CUI Multiple Offender
October 4, 1988

Carl Allen
P.O. Box 632
Ellsworth, Maine 04605

Robert O'Connell
Motor Vehicle Division
State House Station #29
Augusta, Maine 04333

Paul McDonnell
Community Alcoholism Services
107 Elm Street
Portland, Maine 04101

Donald Gean
York County Alcoholism Shelter
Rt. #202, P.O. Box 20
Alfred, Maine 04002

Linwood K. Oakes, Sr.
DEEP/OADAP
State House Station #11
Augusta, Maine 04333

Annika Lane
Office of Policy & Legal
Analysis
State House Station #13
Augusta, Maine 04333

Marilyn Robb
MADD
P.O. Box 8821
Portland, Maine 04104

Rep. Charles Priest
9 Bowker Street
Brunswick, Maine 04011

Sheriff Frank Hackett
115 State Street
Augusta, Maine 04330

Neill Miner
OADAP
State House Station #11
Augusta, Maine 04333

Chief Ronald Whary
16 Benton Avenue
Winslow, Maine 04901

William Tanner
New Directions/KVRHA
122 State Street
Augusta, Maine 04330

Bill Hayden
Substance Abuse Project
Androscoggin County Jail
2 Turner Street
Auburn, Maine 04210

Commissioner John Atwood
Dept. of Public Safety
State House Station #42
Augusta, Maine 04333

Chris Almy
District Attorney
Penobscot County
97 Hammond Street
Bangor, Maine 04401

OUI - Chronic Offenders Comm.

Donald Gean
York County Alcoholism Shelter
Rt. #202, P.O. Box 20
Alfred, Maine 04002

Rev. Douglas MacDonald
P.O. Box 50
Acton, Maine 04001

Carl Allen
P.O. Box 632
Ellsworth, Maine 04605

Annika Lane
Office of Policy & Legal
Analysis
State House Station #13
Augusta, Maine 04333

Cathy Manchester
RR#1 - Box 198
Bridgton, Maine 04009

Paul McDonnell
Community Alcoholism Services
107 Elm Street
Portland, Maine 04101

Rep. Charles Priest
9 Bowker Street
Brunswick, Maine 04011

John McElwee
District Attorney
Aroostook County
240 Sweden Street
Caribou, Maine 04736

Lirwood K. Oakes, Sr.
DEEP/OADAP
State House Station #11
Augusta, Maine 04333

Neill Miner
OADAP
State House Station #11
Augusta, Maine 04333

Senator Beverly Bustin
10 Middle Street
Hallowell, Maine 04347

Marilyn Robb
MADD
P.O. Box 8821
Portland, Maine 04104

William Tanner
New Directions/KVRHA
122 State Street
Augusta, Maine 04330

Rep. Harlan Baker
440 Cumberland Ave
Portland, Maine 04101

Sheriff Frank Hackett
115 State Street
Augusta, Maine 04330

Commissioner John Atwood
Dept. of Public Safety
State House Station #42
Augusta, Maine 04333

George Storer
Driver Licensing & Control
State House Station #29
Augusta, Maine 04333

Chief Ronald Whary
16 Benton Avenue
Winslow, Maine 04901

Chris Almy
District Attorney
Penobscot County
97 Hammond Street
Bangor, Maine 04401

Sgt. Anne P. Schaad
Dept. of Public Safety
State House Station #42
Augusta, Maine 04333

Bill Hayden
Substance Abuse Project
Androscoggin County Jail
2 Turner Street
Auburn, Maine 04210

Honorable Alan C. Pease
District VI Court
Rockland, Maine 04841

Ralph Nichols
Department of Corrections
State House Station #111
Augusta, Maine 04333

Robert O'Connell
Motor Vehicle Division
State House Station #29
Augusta, Maine 04333

David Kee, Chair
Substance Abuse Comm.
Maine Bar Association
P.O. Box 370
Bucksport, Maine 04416

David Finn, President
MAAMC
30 Mellen Street
Portland, Maine 04101

Wesley Davidson
Aroostook Mental Health Center
P.O. Box 1018
Caribou, Maine 04736

Harry Bailey
SR 1271
Belfast, Maine 04915

APPENDIX K

**KENNEBEC COUNTY JAIL PROGRAM FOR
FIRST TIME OUI OFFENDERS**

Kennebec County Jail Program

for

For First Time OUI Offenders

Friday 6:00 p.m. Arrival and Admissions
 7:00 p.m. Introduction: Sheriff Frank Hackett
 7:15 p.m. Comments: District Attorney David Crook
 7:30 p.m. Program: Bill Tanner and Barbara McVety
 10:30 p.m. End of Session
 11.00 p.m. Lights Out

Saturday 6:00 a.m. Wake Up Call
 6:45 a.m. Breakfast
 7:30 a.m. Work Assignments
 8:00 a.m. Work Details Begin
 12:00 noon Lunch
 12:30 p.m. Work Details Resume
 4:30 p.m. Work Details End (Return to School)
 5:00 p.m. Dinner
 6:00 p.m. Program Begins: Major Ronald Raymond
 6:30 p.m. Film: (Guidelines) Fr. Martin
 7:30 p.m. Program: Bill Tanner and Barbara McVety
 10:30 p.m. End of Session
 11:00 p.m. Lights Out

Sunday 6:00 a.m. Wake Up Call
 6:45 a.m. Breakfast
 7:30 a.m. Work Assignments
 8:00 a.m. Work Details Begin
 12:00 noon Lunch
 12:30 p.m. Work Details Resume
 4:30 p.m. Work Details End (Return to School)
 5:30 p.m. Closing Remarks
 6:00 p.m. Dismissal

KENNEBEC COUNTY ALTERNATIVE PROGRAM

for

First Time OUI Offenders

The average number of inmates participating in the First Time Offender Program is 50. Inmates are sentenced to 72 hours; they complete 16 hours of community service, and participate in the eight hours of education. Although inmates are sentenced to three days, if they complete 16 hours of community service, they have their sentence prorated by one day. Inmates serve a 48 hour sentence. Judges give stays of execution on first time offenders and sentence the offender to the designated location provided by the Sheriff. The breakdown in costs and savings is as follows:

Number of Inmates	50
Recommended Sentence	3 days
Actual Days Served	2 days
Total Number of Inmate Days	100 days
Cost Per Day to Board	<u>x \$45</u> \$4,500
Transportation costs to nearest jail	\$15 per inmate <u>x 50 (number of inmates)</u> \$750
TOTAL COST TO BOARD 50 INMATES	\$5,250

EXPENSES:

School Rental - No charge in exchange for inmate labor	\$.00
Education Program - Contracted by New Directions	150.00
Commodities - 80¢ per meal/five meals per inmate	200.00
Staffing Costs - (See enclosed form "Staffing for 'KCAP' Program")	<u>1,664.20</u>
	\$2,014.20
Board and Transportation Cost	\$5,250.00
Expenses (less)	<u>2,014.20</u>
Total Savings	\$3,235.80

SAVINGS TO SCHOOL DEPARTMENT:

Number of Inmates	50
Hours mandated to Community Service	<u>16</u>
Total number of Hours Worked	800
800 hours worked x \$3.65 minimum wage =	\$2,920.00

STAFFING FOR "KCAP" PROGRAM

		# GUARDS		SHIFT/HRS		TOTAL	HR. RATE	TOTAL
Friday	4 p.m. to Midnight	4	x	8 hrs.	=	32	x \$6.05	= \$193.60
Saturday	Midnight to 8 a.m.	3	x	8 hrs.	=	24	x 6.05	= 145.20
Saturday	8 a.m. to 4 p.m.	5	x	8 hrs.	=	40	x 6.05	= 241.60
Saturday	4 p.m. to Midnight	4	x	8 hrs.	=	32	x 6.05	= 193.60
Sunday	Midnight to 8 a.m.	3	x	8 hrs.	=	24	x 6.05	= 145.20
Sunday	8 a.m. to 6 p.m.	5	x	10 hrs.	=	50	x 6.05	= <u>302.50</u>
TOTAL COST FOR GUARDS								\$1,221.70

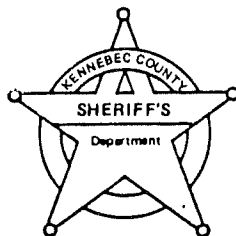
Shift Supervisors for Weekends:

Six shifts or 50 hours x \$6.55 = \$327.50 327.50

COOK

	hours	rate	
Saturday	1 x 12 = 12	x \$5.75	= \$69.00
Sunday	1 x 8 = 8	x 5.75	= <u>46.00</u>
TOTAL COST FOR COOKS			\$115.00
			<u>115.00</u>
TOTAL COST FOR STAFFING \$1,664.20			

FRANK A. HACKETT
SHERIFF



115 STATE STREET
AUGUSTA, MAINE 04330
623-3591

OFFICE OF THE SHERIFF
KENNEBEC COUNTY, MAINE

COMPARISONS OF PROGRAMS

Buker School
August 1986
47 Participants
35 Males
12 Females

Hodgkins School
April 1987
29 Participants
22 Males
7 Females

Hodgkins School
February 1988
45 Participants
29 Males
16 Females

OCCUPATIONS

<u>Buker '86</u>	<u>Hodgkins '87</u>		<u>Hodgkins '88</u>
9	6	Unemployed	9
6	2	Laborers	1
1	1	Salesman	2
1	2	Teachers	0

AVERAGE AGES

30	38	Males	33
30	29	Females	31

HOURS WORKED PROVIDING
COMMUNITY SERVICE (Combined)

752	464	720
-----	-----	-----

EDUCATION HOURS (Combined)

376	232	360
-----	-----	-----

RESIDENCES OF PARTICIPANTS

10	13	Augusta	11
1	2	Gardiner	3
6	3	Waterville	8
0	0	Winslow	4
2	2	Oakland	7

RESIDENTS OF KENNEBEC COUNTY

31 of 47 (66%)	23 of 29 (79%)	39 of 45 (87%)
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APPENDIX L

AN ACT RELATING TO THE MAINE CORRECTIONAL ADVISORY COMMISSION

1. Composition. The commission shall consist of 22 members to be appointed as follows:

A. Three members from the House of Representatives appointed by the Speaker of the House;

B. Two members from the Senate appointed by the President of the Senate; and

C. One member from the Juvenile Justice Advisory Group appointed by the Governor;

D. One member from the Criminal Law Advisory Commission appointed by the Attorney General;

E. One member from the Maine Police Chiefs Association appointed by the Governor;

F. One member from the Maine Sheriffs Association appointed by the Governor;

G. One member from the District Attorneys Association appointed by the Governor;

H. One member from the Department of the Attorney General appointed by the Attorney General;

I. One attorney experienced in criminal defense appointed by the Governor; and

J. Ten other persons appointed by the Governor, including at least:

(1) one full-time nonadministrative employee from the state correctional system;

(2) at least one former inmate of the correctional system;

(3) at least two nongovernmental providers of correctional services;

(4) at least two persons who have a demonstrated interest in the correctional system and who are representatives of nongovernmental organizations or groups; and

(5) at least one representative of a nongovernmental organization or group of victims.

K. After the Commission is established it shall ask the Chief Justice of the Supreme Judicial Court to designate a judge from the District Court and a judge from the Superior

Court, both of whom serve on the Maine Judicial Council, to act as advisors to the Commission.

2. Chairperson. The commission shall elect a chairperson from its membership.

3. Duration of appointments. The duration of appointments is determined as follows.

A. Of the first appointments, 6 shall be for terms of 3 years, 6 shall be for terms of 2 years and 5 shall be for terms of one year.

B. Appointments after the first appointments shall be for terms of 3 years, plus the time period until a successor is appointed.

C. Legislative appointments shall be for the legislative term of office of the person appointed.

4. Expenses. Commission expenses shall be treated as follows.

A. Each member of the commission shall be compensated according to the provisions of Title 5, chapter 379.

B. The commission may receive public and private grants to aid in defraying the expenses of its operation.

C. The Commission may employ a full-time correctional specialist, who shall serve at the pleasure of the Commission, and such additional staff as necessary.

D. Clerical staff shall be employed subject to the Civil Service Law.

5. Meetings. The commission shall meet at least each month. Additional meetings may be held as necessary and may be convened at the call of the chairman or any 2 members. A representative of the department shall act as liaison between the commission and the department and shall act as an ex officio member of the commission.

6. Duties. The commission shall:

A. Regularly advise the Governor, Commissioner of Corrections, the Legislature and the Judiciary on issues concerning corrections policy.

B. Prepare a report which shall be submitted to the Commissioner and the joint standing committee of the Legislature having jurisdiction over corrections by December 31st of each year.

The report shall include:

1) A detailed assessment of existing and needed resources within correctional institutions, the Division of Probation and Parole, and community corrections services. The assessment shall include an evaluation of population growth management, with respect to appropriate utilization of corrections facilities and community resources.

2) An evaluation of existing programs for incarcerated and non-incarcerated offenders, including recommendations for improvements and/or new programs.

3) Evaluation of the current offender classification system and any necessary proposals for a comprehensive classification system which formally and objectively assesses risk and need, and provides objective data for the basis of decision-making at times of sentencing, institutional placement and movement, probation case-management, and pre-release.

4) Recommendations for effective management of the offender population within a range, or set of strategies which provide multiple options for dealing with risk and need.

To assist in the development of recommendations, the Commission may undertake studies of offender population management options in other states including, but not limited to:

a) Utilization of probation and parole

b) Fining systems (including day fines)

c) Community corrections

d) State/local relationships; and

e) Alternative sentencing methodologies.

5) Recommendations for appropriate prevention strategies for young adults

6) Recommendations for an effective long-range evaluation procedure for Maine's corrections system.

Sec. 4. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

	<u>1989-90</u>	<u>1990-91</u>
CORRECTIONS, DEPARTMENT OF		
Administration-Corrections		
Positions	(2.0)	(2.0)
Personal Services	\$56,034	\$60,338
All Other	8,231	6,900
Capital Expenditures	<u>2,994</u>	<u>--</u>
TOTAL	67,259	\$67,238
Provides funds for a Correctional Planning Analyst, a Clerk Typist II, per diem, office expenses, and related commission costs.		

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved...

STATEMENT OF FACT

This legislation has three purposes:

1. To enable the Maine Correctional Advisory Commission (renamed to Maine Correctional Policy Advisory Commission) to be more representative of persons and agencies involved in or with an interest in the correctional system.
2. To ensure ongoing evaluation and assessment of programs and resources within the corrections system and continued study of options for the effective management of the offender population.
3. To give the Commission the resources necessary for it to carry out its responsibilities as set out in the statute.

APPENDIX M

DEPARTMENT OF CORRECTIONS CLASSIFICATION AND PLACEMENT SYSTEM

DEPARTMENT OF CORRECTIONS
INITIAL PLACEMENT FORM

The initial placement will be reviewed by the receiving institution Classification Committee within 6 weeks for assignment of security level/program/work assignment/location.

Name: _____ Sex: _____ Date of Birth: _____
(Sentenced Person)

Offense: _____

Sentence: _____

All adult females sentenced to the Department of Corrections will be sent to the Maine Correctional Center.

All adult males will be sent to Maine Correctional Center unless one or more of the following criteria are known:

A through H should be made out with an SBI sheet available to the officer. If the SBI sheet is not available, then the officer should check with the Central Office of P&P, MSP, or MCC to see if any known criminal record is available for verbal verification. If no criminal record is obtained, then an interview with the prisoner to obtain his version of his criminal history should be done to complete this form.

☐ A through H completed solely on interview with prisoner.

Maine State Prison Placement Criteria
(relevant items checked)

- A. ☐ Sentence over five years excluding suspended portion and good time.
- B. ☐ Any felony detainees.
- C. ☐ Prior commitment(s) to an adult maximum security prison (state or federal excluding county jails). Information concerning security levels of correctional facilities may be found in the ACA Juvenile and Adult Correctional Departments, Institutions, Agencies, and Paroling Authorities Directory.
- D. ☐ Escape conviction(s) or known escape attempt(s) within the last three (3) years unless the conviction or attempt was committed as a juvenile or the prisoner escaped as a juvenile and was bound over.
- E. ☐ Three (3) or more previous sentences/placements at Maine Correctional Center.
- F. ☐ Two or more previous felony convictions for crimes resulting in risk of injury or injury to persons excluding motor vehicle convictions.
- G. ☐ Substantiated reports indicating endangerment to self or others within the last six (6) months.
- H. ☐ Prisoners with special needs will be referred to the Director of Programs, the Associate Commissioner, or Commissioner (in that order), for determination of initial placement. Prisoners with special needs include subjects with severe mental, emotional, or physical disabilities.

Justification for out-of-category placement: _____

Placement: Maine Correctional Center ☐ Maine State Prison ☐

____ Telephone call made to receiving institution of assignment.

____ Signature of Officer Making Placement

____ Date

____ One copy sent to receiving institution.

____ Title

____ Copy of SBI sheet is attached.

STATE OF MAINE
DEPARTMENT OF CORRECTIONS
PROBATION AND PAROLE

SUPERVISING PPO _____ COMMITMENT NAME _____

ADDRESS _____ TELEPHONE # _____

DIRECTIONS _____

LIVING ARRANGEMENT _____

PROBATION _____ PAROLE _____ OOS _____ ADULT _____ JUVENILE _____

WORK RELEASE _____ RESID. RELEASE _____ SOCIAL SECURITY# _____

D.O.B. _____ AGE _____ BIRTH-
PLACE _____ HEIGHT _____ WEIGHT _____

HAIR _____ EYES _____ SEX _____ RACE _____ IDENT. MARKS _____

DATES
ADMITTED _____ RELEASED _____ SENTENCED _____ STARTED _____

ATTORNEY _____ C.A. YES _____ NO _____ D.A. _____

COURT OR INSTITUTION _____ JUDGE _____ INVESTIGATING DEPT. _____

DOCKET #S	OFFENSE/CLASS/COUNTS	SENTENCES
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

SPECIAL CONDITIONS _____

PRIOR CRIMINAL RECORD _____

EDUCATION 1 - 5 6 7 8 9 10 11 12 College 1 2 3 4 Voc Ed 1 2 3 4 School _____

HEALTH HISTORY _____

SUBSTANCE ABUSE _____

MILITARY HISTORY _____

OFFENSE STATEMENT _____

COMMENTS: _____

NAME	RELATIONSHIP	AGE	ADDRESS
	Father		
	Mother		
	Spouse		

FROM	TO	EMPLOYER-ADDRESS	EMPLOYMENT JOB	WAGE	REASON FOR LEAVING

RISK PREDICTION			
DATE COMPLETED	OFFICER	Score	
A. Severity of Instant Offense (Class E=1, D=3, C=8, B=12, A=15)			
B. Prior Record (2 points for ea. conviction - Maximum 20 points)			
C. Education 0-High School; 5-9th-11th grade; 10-8th grade or less			
D. Occupation 0-Regular; 4-Intermittent; 8-Seldom; 13-Unoccupied			
E. Substance Abuse 0-None; 8-Occasional; 15-Frequent			
F. Family Relationships 0-Stable; 4-Somewhat Stable; 8-Unstable/ Nonexistent			
G. Residence 0-Stable; 2-Occasional Changes; 4-Frequent Changes			
H. Mental Stability 0-No Problems; 8-Some problems--able to function adequately; 15-Unable to function adequately			
Supervision Level: 46-100 High 13-45 Med 0-12 Low			
Circle category			TOTAL

NEEDS ASSESSMENT	
ASSESSMENT NARRATIVE	CASE PLAN (Including Resources to be Utilized)

SUMMONS/ WARRANT ISS. COURT COMMITMENT REV. & COMM. TERMINATED SUPVSR'S REVIEW					
ENTER DATES				INIT	FINAL

CRITERIA GOVERNING SCORING OF INITIAL AND RECLASSIFICATION GUIDELINES

Case file data shall be weighed by the designated scores on the attached Initial and Reclassification guidelines. An individual's score shall be the sum of the scores for the specific elements rated in his case.

The Department has adopted for use the following criteria for the various categories in the Initial and Reclassification process:

1. Subjects being evaluated by the Initial process will fall into Minimum, Medium and Close categories on the basis of these scores. A Minimum category will be assigned those subjects attaining scores of 34 and below. Medium scores will be those ranging between 35 and 49. Close scores will be 50 and above.
2. In the Reclassification scoring system, Minimum scores will be 44 and below. Medium will range between 45 and 59. Close will be those scores of 60 and above.
3. It is understood and emphasized that the security judgments which are made by the Committee are objectively clinical and qualitative as well quantitative and are thereby not to be made solely by the specifics of number standards. Overriding factors such as time, escape history or outstanding warrants/charges may cause a person to be placed in a category where numerical factors might alone have dictated a less stringent designation. Comparably, positive personality changes, short time remaining or other variables might necessitate a lesser security classification than the numerical score would call for. It shall be the policy of the Committee when the judgments of a security classification mandate placement in categories other than those attained through the scoring system that the Committee enunciate the specific reasons and rationale for the placement, e.g. such overriding factors as may be operative to mandate the classification.

Case File Data Shall be Weighted by the Designated Scores

Inmate Name

Number

Class. Committee Member

Date

INITIAL AND/RECLASSIFICATION GUIDELINES

MINIMUM	YES	UNV	MEDIUM	YES	UNV	CLOSE	YES	UNV
1. <u>Not likely to escape if opportunity arises</u>			1. <u>Not active escape risk but might take opportunity</u>			1. <u>Likely to attempt escape</u>		
a. No history of violating institution trust 1			a. Previous but remote history of escape or furlough violation 4			a. Recent escape or escape attempt (within 3 years) 9		
b. Remaining time on sentence short -- less than 3 years 3			b. Remaining time on sentence potential threat to custody status: 3-6 years 6			b. Remaining time on sentence long (6 or more years) or outstanding warrants/charges 9		
c. First offense 2			c. One or two prior felonies 5			c. Multiple prior felonies 8		
d. No prior parole/probation violations or bail jumping 1			d. One prior parole/probation/bail violation 5			d. Multiple parole/probation/bail violations 8		
II. <u>Free of significant personality problems</u>			II. <u>Controlled maladjustment or fluctuating levels of control</u>			II. <u>Material demonstrating inmate is likely to be dangerous, disruptive, or inept</u>		
a. No evidence of current problems 1			a. Data indicating significant personality maladjustment and/or fluctuating levels of control 5			a. Data demonstrating inmate is likely to be dangerous or disruptive, inept 9		
b. No severe acting out in criminal history or well being of others not jeopardized by crime(s) 1			b. Criminal history with one crime against person(s) 5			b. Multiple crimes against person(s) 9		
c. Close family/community relationships 1			c. Family/community relationships maintained 4			c. Failure or absence family/community relationships 7		

	YES	NO	CLOSE	YES
d. No history of substance abuse or related offenses 1		d. Currently in substance abuse treatment or apparently recovered/recovering 4	d. Untreated substance abuse in prison and/or community 7	
e. No evidence uncontrolled sexual deviation 1		e. Sexual problems in community or within institution 5	e. Sexual acting-out causing discipline problems within institution 8	
f. Clearly defined trade or vocation 1		f. Limited vocational skills/work experience 4	f. Unskilled worker, or no work experience 7	
g. Used institution/community educational resources consistent with potential 1		g. Used some community/institution educational resources 4	g. Failure to reach/use educational potential in institution and community 7	

Initial Classification Score _____

RECLASSIFICATION GUIDELINES

MINIMUM	MEDIUM	CLOSE
III. <u>Conforms regularly to institutional rules</u> 1	III. <u>Behavior pattern in institution that does not threaten institutional security</u>	III. <u>Demonstrates continued pattern of failure to conform to prison</u>
a. Favorable work/attitude reports for prior 6 months 1	a. Favorable work/attitude reports for prior 4 months 4	a. Unfavorable work/attitude reports for prior 4 months 7
b. No institutional disciplinary convictions for 6 months 1	b. Nonviolent disciplinary convictions within past 4 months 5	b. Violent misconduct and/or major disruptive behavior of marked intensity, duration or frequency 9
c. 3 months participation in constructive activity 1	c. Occasional contact with recommended constructive activities 4	c. Documented negative inmate influences or isolated from supportive staff 7
d. No history of inmate pressure 1	d. Absence current need for protective custody 4	d. Under inmate pressure or needs protective custody 8

Reclassification Score _____

Total Score _____

INSTRUCTIONS ON CLASSIFICATION GUIDELINES

Case data shall be checked yes when verified or checked unverified when rumor or inmate statement is the source of the Classification judgment. In any case the score assigned will be the same.

- I. a. (Medium) A remote history of escape or furlough violation means an event that took place more than three years prior to the rating.
- b. (Close) The outstanding warrants which may earn a person a Close score should be evaluated on an individual qualitative basis so that discriminations are made between severe charges of a felony caliber and less significant charges such as traffic offenses or short term probation violation charges so that persons are not automatically penalized for warrants which are, in fact, of little significance to their security. Contacts with the warrant sender will be pursued in questionable cases.
- c. (Medium-Close) Although in any given case there may be only one sentence, each count of multiple charges will be counted toward a medium or close rating.
- II. a. (Minimum) Two (a) is a current status judgment on the person's condition. As such, persons who have had severe emotional upsets and are in current remission over a significant period of time i.e. one year, can be rated as experiencing no evidence of current problems (score: 1).

Subjects who show significant personality maladjustment or fluctuating levels of control necessitating psychological or psychiatric intervention or evaluation call for medium score (5). Similar subjects who show evidence of being dangerous (to self or others), disruptive or inept earn a close score (9). Ineptitude is judged on the basis of repeated failures of adjustment/adaptation occasioned by personality inadequacy, intellectual limitations, or chronic psychiatric disorder. Subjects are characterized by poor judgment and inadequate coping ability even in the limited challenge of the prison situation where poor judgments create problems/stress either for them or other persons.

- b. This item refers to crimes against person(s) in the broader sense of not only explicit physical assaults on others such as murder, robbery, or rape but also less explicitly assaultive behavior such as child molestation or other sex crimes against defenseless or vulnerable persons. Included here also are crimes where the threat to the well-being of others is implicit in wanton recklessness by the destruction of property e.g. arson, driving to endanger, similar offenses.

- c. Subjects earning a minimum score here have close family relationships as evidenced by visitation, expression of concern by the inmate or continuing frequent correspondence or phone calls when free world contacts live distances from the institution or have other circumstances that preclude frequent visit. If family are not available, community, or other friends in the community can serve as surrogates where an intimate, close, protective relationships of mutual concern appears to be present. The prospect of furlough address or residence upon release could be a contributing factor.

In the medium family/community relationships, the contacts appear to be more formal than intimate or close and may be characterized by casualness on the side of the inmate, infrequency of correspondence or visitation, and lack of sustained communication of feeling.

Failure or absence of community relationships is indicated when there are no significant contacts for the inmate in the free world community, where he communicates estrangement from his family and the absence of any consistent other supportive persons, portraying the image of the social isolate.

- d. With respect to substance abuse, subjects who show a Close rating (7) are persons who have demonstrated a substance abuse problem historically by criminal/personal record or by their own admission. Subjects who show a history of substance abuse either by their own admission or by verified history and make no effort to seek or benefit from substance abuse treatment services in prison or the free world society earn a Close score (7). Subjects who show prison disciplinary infractions involving possession of contraband abusable substances within the last year are rated as Close (7). A Medium score (4) is earned by subjects who have a history of substance abuse but who have participated in or are currently participating in substance abuse over a period of at least three months and/or are apparently recovered. A minimum score is earned by such subjects who have no history of substance abuse or related criminal offenses.
- e. Persons who have any sex crimes in their history earn a medium score (5) within the II.e. section. Rumor, gossip, or group judgment may be used to give a subject an unverified score in the sexual problems medium category. Subjects whose sexual behavior is such that they are written-up obviously earn a Close score because of their discipline problems within the institution. This shall include subjects whose sexually-related behavior is such as to cause disciplinary conflicts with or among other inmates.

- f. A minimum security classification here of a clearly defined trade or vocation shall also include consistent semi-skilled work which the subject has done over a 5-year period of time for a particular employer or within a given area of work experience. A Medium score (4) shall include limited vocational skills or work experience where work experience of a year or more is involved in skills which are less than semi-skilled. A Close score shall include work for which no experience/skill is necessary or presented.
- g. Minimum score here would be the attainment of the GED or high school diploma in the institution or outside or other attainment of educational potential. A Medium score (4) suggests the desultory use of the free world or institutional educational opportunity so that an incomplete program accomplishment record is presented. The standard here is that the prisoner has made some efforts at developing potentials but has not completed them. The criteria in the Close category (7) is that the subject has made no significant efforts to improve his educational standing.

III. Reclassification guidelines are to be used on the (1) annual or (2) ad hoc basis, e.g. when subjects are returned to the institution or are otherwise reevaluated.

- a. Both work and attitude elements are to be considered.
- b. The absence of institutional disciplinary convictions for a period of six months earns a subject a minimum stroke (1). Presence of disciplinary convictions but the absence of violence toward others in those disciplinary convictions within a preceding period of four months will earn the subject a Medium rating (5). Significant aggressive or disruptive behavior and major misconduct violations will earn a subject a Close score (9). This is not restricted to violent behavior but may include behavior which consistently violates rules and standards of the institution and disrupts discipline and good order.
- c. In earning a Minimum score (1) the subject should participate in constructive activities for three months including such things as participating in treatment programs, counseling under various disciplines, church or other activities and generally engaging in activities which go beyond the work - a-day or passive recreation type of activity, i.e. activity would tend to expand horizons or inner growth. This may include crafts if subject's accomplishments in the Craft Program are significant as reflected in the Craft Room Officer's report. Team sports or body building may be included if they have not taken place in the absence of following necessary committee prescribed treatment programs e.g. school or substance abuse counseling or other counseling.

The occasional contacts with recommended constructive activities which earns a Medium score (4) includes crafts or sports in the absence of the adhering to prescribed constructive therapeutic or enriching programs. A Close score (7) is earned when the inmate is reportedly or definitely associated with coercive inmate gangs or is completely isolated from either treatment or custodial staff in a way that makes him unmanageable in critical situations or prone to manipulation by negative inmate influence.

- d. A Minimum score (1) means the absence of inmate pressure in the subject's known institutional experience, i.e. the record of a need for protective custody or vulnerability to coercion. A Medium score (4) means that the subject does not at this time have a current need for protective custody, although this may have been a factor in his institutional history. A Close score (8) obtains when the subject is currently in protective custody/Ad Seg or is under force of inmate pressure at the present time.

APPENDIX N

MINORITY REPORT STATEMENT LETTER



HOUSE OF REPRESENTATIVES

STATE HOUSE AUGUSTA 04333
289-1400

Ernest C. Greenlaw
P.O. Box 331
Sebago Lake, Maine 04075

MINORITY REPORT PRESENTED BY REPRESENTATIVE ERNEST C. GREENLAW
TO THE MAJORITY REPORT OF THE JOINT SELECT COMMITTEE ON CORRECTIONS

The Joint Select Committee on Corrections was established in December 1986 to make recommendations to the 113th Legislature on how to allocate the proceeds of a \$16 million authorization for prison construction and renovation. The bonds were allocated in response to critical overcrowding in Maine's correctional institutions.

It is now two years later, thousands of tax dollars have been spent on site location in Warren, and no construction on a new prison has been started and very well may never start.

I am opposed to the re-structuring of the Maine Correctional Policy Advisory Commission. I believe people are sentenced by the Courts to be incarcerated under the care of the Department of Corrections, and at present there are other ways for non-government organizations to be involved. The cost of re-organization could be excessive.

I am opposed to proposed legislation - An Act to Establish a Law Court Sentencing Review Mechanism. I am not aware of any great injustices being committed in sentencing at this time. Every case and the people involved are different, so Justices must have leeway in sentencing. Video taping in Court cases would be a move forward.

The Department of Corrections is so constructed that if the Commissioner was given the financing that he believes is necessary, any deficiencies in incarceration and rehabilitation could be addressed.


Rep. Ernest C. Greenlaw

ECG/vlg