LITTLE HOOVER COMMISSION

PUTTING VIOLENCE BEHIND BARS: REDEFINING THE ROLE *of* CALIFORNIA'S PRISONS

January 1994

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January 18, 1994

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The Honorable David Roberti
President Pro Tempore of the Senate
and Members of the Senate

The Honorable Kenneth L. Maddy
Senate Minority Floor Leader

The Honorable Willie L. Brown Jr.
Speaker of the Assembly
and Members of the Assembly

The Honorable James Brulte
Assembly Minority Floor Leader

Dear Governor and Members of the Legislature:

A young girl is snatched from the supposed safety of her bedroom and killed. People are gunned down on the streets even after they comply with muggers' demands for their valuables. Drive-by shootings proliferate and auto thefts turn into murderous car-jackings.

While statistics tell us that overall crime has held steady and even dropped slightly in the past few years, violent, senseless crime has escalated to the point where few Californians feel completely safe in their daily lives. Since a primary, fundamental responsibility of government is to protect its citizens, the Little Hoover Commission embarked on a study in mid-1993 that was designed to pinpoint state policies and procedures that could be revised to increase the effectiveness of the adult criminal justice system.

What the Commission found is that while the State has many tools at its disposal for tackling crime, its policies are not sharply focused on the need to maximize the effectiveness of those tools. All too often emotion rather than carefully considered, outcome-based goals guide decisions about fighting crime. This is particularly true when it comes to the operation of the State's prison system.

The Commission's report, which is being transmitted to the State's top policy makers with this letter, contains seven findings and 30 recommendations designed to redefine the role of California's prisons and reassure citizens that their government can and will protect them from violent criminals. Specifically, the report looks at:

Milton Marks Commission on California State Government Organization and Economy

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1. The sentencing structure, which has grown too complex and inequitable through constant, uncoordinated alterations.

   - The Commission recommends immediate steps to revamp sentencing and also a long-range system to monitor overall cohesiveness as reforms are made in the future.

2. The need for the State to treat violent criminals differently than non-violent offenders.

   - The Commission recommends indefinite sentences for violent criminals and habitual offenders, with restricted ability to earn reduced sentence time.

3. The parole system, which is no longer an effective deterrent that keeps parolees from returning to a life of crime.

   - The Commission recommends lengthening the time beyond the present limitation of one year that a parolee can be returned to prison for a violent crime and/or only suspending -- rather than eliminating -- the portion of a sentence reduced by work credits so that a parole violator has to return to serve out the remainder of his time.

4. The effectiveness of work programs in reshaping the lives of the 90 percent of the prisoners who are released back to the streets.

   - The Commission recommends refocusing work programs to instill a work ethic in prisoners and to give them actual skills that will make them employable in the outside world.

5. The effectiveness of education programs in turning around the huge rate of illiteracy among prisoners.

   - The Commission recommends denying paying jobs to prisoners who cannot read at the ninth-grade level.

6. The problems caused by the historical fragmentation of authority and responsibility among prisons, which often have operated as independent fiefdoms.

   - The Commission recommends continued standardization of policies and centralized accountability, including the creation of a separate Inspector General function and modifications to the warden selection process.

7. Stumbling blocks that keep the Department of Corrections from operating effectively and efficiently.

   - The Commission recommends modifying the Inmate Bill of Rights so that prisoners are restricted to the same level of protection afforded prisoners in the federal system and in most other states.

While the Commission acknowledges that there are no easy answers to crime, we believe it is critical to re-balance the way California uses its prison system so that the focus is on the violent criminal and the habitual offender. We believe that speedy enactment of the Commission's recommendations will put criminals on notice that California is serious about fighting crime and beating back the terror that now stalks our streets. The Commission stands ready to work with the Governor and the Legislature to make these policy changes a reality.

Sincerely,

Nathan Shapell
Chairman

Putting Violence Behind Bars:

Redefining the Role of California's Prisons

January 1994

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Executive Summary

Executive Summary

It is easy to be anti-crime, but much tougher to determine what steps California should take to keep its citizens safe. The adult criminal justice system is a complex web of interrelated components, ranging from the cop on the street to lawyers, judges and prison guards. Altering the numbers, status or powers of any of those individual pieces can have a dramatic effect on how crime is battled.

The tail-end of the anti-crime machine -- the state prison system -- is one of the most visible and costly components. After extensive study, the Little Hoover Commission believes that, targeted and used properly, the prison system has a high potential for putting a lid on violence and allowing citizens to feel safe in their homes once again. The Commission found, unfortunately, that all too often policies relating to prisons are driven by emotion rather than reason, divorced from cause and effect, and devoid of outcome-based strategies.

To address these problems, the Commission focused on three elements:

- The sentencing structure, which determines who will be placed in prison and for how long.

- Prisons programs, the single best chance the system has to affect the 90 percent of prisoners who are released back to the streets.

- Operational problems in the Department of Corrections, the agency that runs the second largest prison system in the world.

These three areas are addressed in the seven findings and 30 recommendations summarized below.

The Sentencing Structure

Finding #1: The sentencing system is complex and inequitable, frustrating the public's desire for consistency and certainty.

The bulk of the state's felony offenders are sentenced under the Determinate Sentencing Act of 1977, with finite sentences for each offense. The goals of the law included equity, consistency and simplicity. But the current system, due to inherent flaws in the original law, changes in public policy and piecemeal revisions, is not working. The state's tangle of sentencing statutes is so complex even experts make sentencing errors. It is a system that is inequitable to both victims and offenders, offering little in the way of certainty and nothing to a sense of fairness.

Recommendation 1: **The Governor and the Legislature should enact a compromise, short-term measure that will clarify and simplify sentencing in California.**

Recommendation 2: **A sentencing commission should be created in California either by action of the Governor and the Legislature or by ballot initiative.**

Recommendation 3: **The commission should be charged with creating a sentencing structure**

that meets the philosophical goals of the criminal justice system.

- ***Protecting the public safety***
- ***Tailoring the punishment to the crime***
- ***Addressing the needs of victims***
- ***Fostering responsibility in inmates***
- ***Balancing costs with benefits***

Recommendation 4: The structure recommended by the sentencing commission should organize felonies in an easily understood manner in order of severity.

Recommendation 5: The sentencing system created by the commission should be insulated from politically motivated, piecemeal tampering by using a passive legislative approval mechanism.

Recommendation 6: Once the sentencing structure has been adopted, the sentencing commission should monitor the structure and suggest modifications to maintain equity and consistency.

Recommendation 7: The sentencing commission should make recommendations to the Legislature on each sentencing bill and analyze it as to internal consistency with the sentencing structure and impact on inmate population and spending.

Finding #2: The degree to which the present criminal justice system distinguishes between violent and non-violent offenders is not sufficient to protect the public and maintain the credibility of the system.

In retaining indeterminate sentencing for some violent crimes, California recognized that to maximize public safety some criminals should be judged, incarcerated and released on a case-by-case, subjective basis rather than on the basis of rigid, objective standards. The present system, however, draws the line between crimes in such a way that the bulk of both violent and non-violent crimes falls under the determinate sentencing structure. This results in fixed release dates for the majority of prisoners that are unrelated to either the violence of their crime, their behavior in prison or their prospects for crime-free success after release.

The current split between indeterminate and determinate sentencing leads both to the public perception and the reality that prison's barred gates are actually revolving doors for too many violent felons. This conclusion is borne out by studies of criminals in general, inmates in California's prisons, sentences served, paroles revoked and recidivism rates. The current split also drives up costs, increases prison discipline problems and undermines the credibility of a system whose chief goals should be to protect the public, satisfy a societal sense of justice and cycle inmates back into the real world in a manner that maximizes their potential for a crime-free life.

Recommendation 8: **The Governor and the Legislature should shift the demarcation between indeterminate and determinate sentencing so that all or most violent crimes fall under a sentencing structure that ensures inmates are regularly evaluated, with the severity of their crime, their behavior in prison and their future prospects linked to their release date.**

Recommendation 9: **A Sentencing Commission, or alternatively the Governor and the**

Legislature, should authorize the use of a greater range of intermediate punishments for a narrow segment of non-violent offenders.

Recommendation 10: **The Governor and the Legislature should expand California's definition of habitual offender so that people who are repeatedly sentenced to prison remain there on indefinite terms until regular evaluation demonstrates that they have developed a potential to lead a crime-free life.**

Recommendation 11: **The Governor and the Legislature should enact legislation to reduce sentence reduction credit for violent offenders.**

Finding #3: The present parole system is not structured as an effective deterrent to criminal behavior.

The concept behind parole, a theoretically important element of the sentencing structure, is that a person released from prison needs some level of supervision as he becomes integrated into life in the free world. Parole provisions, in general, require a former prisoner to maintain a certain standard of good behavior or face a return to custody. In the era of indeterminate sentences, inmates were not released without forming a specific plan for housing, means of support and other daily living factors -- and the threat of parole revocation was a powerful mechanism to encourage parolees to follow the plan. But today, parole more often is a wrist-slapping exercise that drives up criminal justice costs, fails to protect the public, is subverted by authorities to hold down local costs, and does little to add structure to a former prisoner's life. Recent steps taken by the Department of Corrections to stem the flow of parolees back to prison have accomplished that finite goal at the expense of worsening the system's flaws.

Recommendation 12: **The Governor and the Legislature should enact parole reform that will provide a greater deterrent to continued criminal activity by parolees, including:**

a) **structuring the work-credit system so that the time earned off a sentence is suspended rather than eliminated and then is re-imposed if parole is violated.**

b) **lengthening the maximum parole violation sentence to longer than one year for violent crimes.**

Recommendation 13: **The Department of Corrections should institute comprehensive pre-release programs at all institutions that require inmates to focus on their life after prison and make plans for a crime-free life.**

Prison Programming

Finding #4: The effectiveness of prison work programs is hampered by the absence of statutory direction and lack of a unified management structure.

Although there is no statutory mandate for the Department to train or rehabilitate inmates, the public's desire and expectation is that criminals will work productively while they are imprisoned. There are a variety of programs to meet that expectation, but they are not driven by legislatively set goals for giving inmates the tools to refrain from a life of crime once they are released. The programs operate in an uncoordinated manner that hampers effectiveness and they lack the methodical evaluation, tracking and reform mechanisms necessary for success.

Lacking a unified structure and a clear vision of goals for work programs, the Department has placed illiterate inmates in jobs without first raising their education level, created an employment demand for lower-level inmates while higher-security inmates wait for assignments, and wasted state resources on unproductive job programs. The lack of statutory mandates and cohesive policy implementation has resulted in idle inmates and time-off credits granted with no commensurate effort on the part of the offenders. In addition, many inmates return to the real world at the end of their sentences no better equipped in terms of education, skills and the work ethic than when they entered prison.

Recommendation 14: **The Governor and the Legislature should reinstate rehabilitation as a goal of the corrections system, subordinate to the goal of public safety, and specifically target populations most likely to benefit.**

Recommendation 15: **The Governor and the Legislature should enact legislation that establishes a single, unified structure within the Department of Corrections for all work programs, including the Prison Industry Authority.**

Recommendation 16: **A program of part-time work, part-time education should be instituted systemwide.**

Recommendation 17: **Inmates should be screened and go through an interview process before they are placed in a work assignment.**

Recommendation 18: **Work assignments for higher security level inmates should be expanded.**

Finding #5: The Department's education program is neglected, unfocused and poorly structured.

One of the conspicuous traits common to many inmates is their lack of education. All too frequently, they are academic failures, unable to function at the level of a 12-year-old junior high school student. Researchers have gotten mixed results as to whether work training reduces recidivism, but studies are clear that upgrading *education* cuts return to crime. Education, therefore, could be expected to be a prominent part of the Department's program. The fact is, however, that despite the dedication of many correctional teachers, the Department's education program is in disarray. Goals are unclear. Budget cuts have fallen disproportionately on prison education. Policies are ignored. And the Department's management structure discourages, rather than encourages, its education program.

Recommendation 19: **The Department of Corrections should restructure its education program, either by creating a correctional school district with the assistance of the Governor and the Legislature, or by creating a superintendent of correctional education and placing that person in a top policy-making role.**

Recommendation 20: **Whether a district is formed or a superintendent's position established, that entity shall be the key decisionmaker on inmate education and should set short- and long-term goals involving literacy, testing and education priorities for all prison education programs.**

Recommendation 21: **No inmate shall be placed in a full-time job until he attains ninth grade literacy.**

Recommendation 22: **The Prisoner Literacy Act should be strengthened and amended so it is outcome-based.**

Department of Corrections' Operations

Finding #6: A long-standing practice of allowing each prison to operate independently has hindered accountability for performance and hampered standardization of policies, leaving the State open to charges of mistreating prisoners.

Historically, California's prisons have been headed by all-powerful wardens who set the tone of the institution, crafted policies to carry out their correctional philosophies and were answerable to few -- a system that was viable when there were only a half dozen institutions scattered around the State. While the massive growth that California's Department of Corrections has undergone has begun to force some centralization into the system, the progress has been slow, incremental and, in many cases, lawsuit-induced. The result is a system that has allowed appalling abuse of some prisoners, lax standards for daily operations and questionable practices that leave the State open to expensive liability. While the Department has taken significant steps to address problems, legislative support and guidance is critical to ensure reform is comprehensive and carried through.

Recommendation 23: **The Governor and the Legislature should support standardization of policies and centralized accountability for the prison system through the budget allocation process.**

Recommendation 24: **The Governor and the Legislature should establish a separate Inspector General function outside of the**

Department of Corrections to improve credibility of oversight of prison practices.

Recommendation 25: **The Governor and the Legislature should improve the warden selection process.**

Finding #7: The Department of Corrections is prevented in some instances from operating effectively, efficiently and safely.

State laws, federal practices and the more general "laws" of supply and demand in some instances stop the Department of Corrections from taking steps or implementing policies that are sound and cost-effective. This includes a statute known as the Inmate Bill of Rights, the structure of the compassionate release program, prohibitions on AIDS testing, the failure of the federal government to pay for incarcerated illegal aliens and the high cost of procuring health care services through contracts.

Recommendation 26: **The Governor and the Legislature should modify the Inmate Bill of Rights so that it reflects the federal standard of protection for prisoners.**

Recommendation 27: **The Governor and the Legislature should enact a carefully crafted medical parole program to allow the release of seriously ill prisoners who no longer constitute a threat to the public.**

Recommendation 28: **The Governor and the Legislature should enact legislation allowing mandatory testing for the AIDS virus of all prisoners.**

Recommendation 29: **The Governor and the Legislature should take every opportunity to remind the federal government of its**

obligation to pay the costs attached to illegal immigration.

Recommendation 30: **The Governor and the Legislature should direct the California Medical Assistance Commission to explore with the Department of Corrections all opportunities for reducing the cost of medical contracting in the prison system.**

Introduction

Introduction

Any study of California's adult criminal justice system has the potential for the exploitation of dramatic and emotion-laden anecdotes -- whether from the perspective of those who think crime has run amok and government is doing little about it, or from the position of those who find conditions in prisons inhumane and state policies so flawed that people who emerge from incarceration actually are a more violent threat to public safety than when they went in. Consider just a few examples gathered during the past nine months:

- Polly Hannah Klaas, a 12-year-old snatched in the middle of the night from her Petaluma bedroom, is dead. The killer -- who has confessed, according to his lawyer -- is a multiple kidnapper who in different times or places would have been dead or permanently incarcerated rather than free to commit this fresh tragedy. News accounts are full of statements by community leaders, politicians and the public expressing dismay about a system that does not keep proven criminals behind bars.

- Damian Monroe Williams is sentenced to 10 years for throwing a brick that struck trucker Reginald Denny in the head and assaulting four other people during the 1992 Los Angeles riots. Between the time he already has spent in jail while being tried and state laws that cut most sentences in half, he is expected to serve less than four years in state

prison. News accounts highlight frustration felt by officials and members of the public over "phantom" tough sentences that are levied but never meant to be fully served.

- A Sacramento woman's father is shot dead in broad daylight during a street robbery. The man arrested for the crime is on parole after serving time for a long list of prior armed robberies and, during the course of his parole, has been arrested for possession of a weapon and cocaine. The woman believes, based on state records, that he was continued on parole -- and thus free to kill her father -- rather than returned to state prison because prison overcrowding had caused bureaucrats to order sharp cutbacks on revocations for parole violators.

- Prison guards decide to bathe a possibly psychotic and certainly obnoxious prisoner who has smeared himself with fecal matter. The prisoner, held in the tub and scrubbed, emerges with third-degree burns over much of his legs, skin and flesh peeling off in chunks.

- A minimum-security inmate at Pelican Bay who is within one month of his release date is attacked by other inmates in the prison yard. A guard fires a shot to break up the fight but the bullet goes astray and kills the victim of the attack.

- A veteran of the Pelican Bay Security Housing Unit, where there are no efforts to provide counseling, training or education and where inmates spend 22.5 hours a day in their cells, is released directly to the streets of the Bay Area when his sentence ends. Within days, he assaults and rapes a woman.

It takes no particular genius to recognize that something is wrong with a system that produces these stories and many, many more like them. But sorting out what reforms are needed is a much more difficult task that quickly can become mired in philosophical differences. If crime stems from poverty, ignorance, drugs and neglectful or abusive upbringing, then should not society treat criminals as afflicted persons who need to be treated and cured? If many rise above similar dismal backgrounds without resorting to a life of crime, then should criminals be viewed as soulless deviants who must be segregated from society permanently? The argument between the

factions formed around these very different perspectives seems inexhaustible -- and does little to advance practical solutions for how California should cope with crime.

Beyond philosophical questions are the very real, practical concerns: Dealing with crime costs money, yet state resources are limited and much in demand across a broad spectrum of social needs. Public support for a "lock-'em-up-at-any-cost" policy runs headlong into public dissatisfaction when taxes are raised or education funding is cut. Anyone who enters the debate on coping with crime is soon constrained by what is financially doable and what is publicly acceptable.

With these factors in mind and at the request of Senator Robert Presley, the Little Hoover Commission embarked on a study of the adult criminal justice system in May 1993. The Commission's first task was to define issue areas where meaningful input could be directed to policymakers, and then to take a factual, analytical approach to the issues that sorted out esoteric theory from reality, weighed cause and effect, and focused on goals rather than emotion.

To begin, the Commission assembled a Criminal Justice Advisory Committee from among the top experts in both the public and private sectors of the criminal justice field (please see **Appendix A** for a list of those who participated). Through discussions with the advisory committee, two facts immediately became evident: 1) Criminal justice involves a vast interrelated system controlled by many different levels of government and 2) much comprehensive, authoritative work has been done already -- although not always followed by recommended reforms -- on many different issues.

The first fact (which is more thoroughly explored in this report's conclusion) means that proposed revisions of any single component of the system are likely to have ripple effects and unintended consequences if not placed carefully in context. Increasing law enforcement presence on the street, for instance, dramatically affects the clogged court system. Tinkering with parole laws can send the population in already-overcrowded prisons soaring. And keeping the counties' portion of the cost of sending felons to state prison low discourages counties from using cheaper (but more costly to counties), local options.

The second fact is most clearly illustrated by the January 1990 report of the Blue Ribbon Commission on

Inmate Population Management. This broad-ranging document, which has served as the springboard for emerging reforms in the past three years, is particularly definitive on the issues of substance abuse treatment and intermediate punishments (options that range somewhere between probation and prison time). Other extensive work has been done by public entities, such as the Legislative Analyst's Office and the Robert Presley Institute of Corrections Research and Training, and private researchers, such as Rand of Santa Monica and the National Council on Crime and Delinquency.

Based on this knowledge and with input from a wide variety of sources, the Commission chose to focus on the tail-end of the system: the state prisons, where 20 percent of those convicted of felonies are sent and where the fastest growing allocation of state funds -- almost $3 billion -- is expended. Specifically, the Commission decided to examine:

- ***The sentencing structure.*** Nothing is a more potent driver of state costs and nothing is more clearly linked in the public's mind to safety and justice than the amount of time criminals are kept off the streets. Yet California's sentencing rules change constantly at legislative whim, with no mechanism to ensure internal consistency and no assessment of the trade-offs that occur by default. The result is a system that is difficult to administer and that fails to meet public expectations for fairness, safety and retribution.

- ***Prison programs.*** The tough-on-crime wave of the '80s and '90s made "rehabilitation" a disfavored concept. The reasoning was blunt: Why should criminals be rewarded with free training and education? And since change can rarely be imposed from the outside, failure seemed to be the result more often than success. But the reality is that the present system puts almost 90 percent of prisoners back on the street at some point. Without some effort to make them literate, instill a work ethic or provide them mental stability, they all too often return to crime and simply prey upon the public yet again. Despite this widely acknowledged problem, the state prison system can only place a low priority on prison work and education programs.

- ***Operational problems in the Department of Corrections.*** The Department of Corrections runs

the second largest prison system in the world (eclipsed only by China) under increasing stress caused by restricted funding and an ever-growing population. While the Department is moving to correct shortcomings that have been criticized for years, a lack of accountability and standardization among the separate prison "fiefdoms" and legal restrictions on prudent policies hamper effective and efficient operation.

To explore these issues, the Commission held two public hearings, one on July 20 in Los Angeles focusing on sentencing reform and a second on September 21 in Sacramento to highlight management issues (please refer to **Appendix B** for a list of witnesses at each hearing). In addition, the Commission conducted a thorough review of the literature, numerous interviews with experts and on-site prison visits to complete its investigations.

In the course of its investigations, the Commission found many doubtful "truisms" about the criminal justice system. Because a handful of core concepts, reached after consideration by the Commission of a variety of data and material, provided a platform for the formation of findings and recommendations, it is important to lay out the Commission's perspective.

- ***The mechanisms society uses to cope with crime are too expensive.*** The entire criminal justice system in California -- law enforcement, prosecution, defense, courts, probation, jails, Department of Corrections and the Youth Authority -- cost about $12.7 billion in 1990-91.[1] Each time sentences are lengthened for specific crimes, police are added to a city's force and therefore make more arrests, or a parole is revoked the costs rise -- often out of proportion with whatever the crime committed is. The conclusion of some analysts: We cannot afford to continue to fight crime in traditional ways. The Commission, however, believes the cost of crime unhampered far outstrips the drain on the public purse for a role -- protecting public safety -- that goes to the very essence of why government exists.

The economic loss in California of all crime acts is difficult to determine. The same year the various levels of government spent almost $13 billion on dealing with criminals, the total value of all property reported stolen was $2.86 billion -- but that does not include medical costs for injuries, damages to property and unreported

crimes.[2] That last category is particularly important since, on a national level, about 31 million of the 34 million crimes committed are never reported. It is not difficult to imagine the total economic loss due to crime rapidly outpacing the cost of catching, prosecuting and punishing criminals.

Testifying to the Commission, State Attorney General Daniel Lungren cited a 1988 Rand study indicating that imprisoned criminals, when free, are responsible for between 200 and 300 crimes a year. Using a U.S. Department of Justice average cost of $2,300 per crime, the cost per inmate weighs in around $500,000 per year. The cost to house that inmate, Lungren pointed out, is around $22,000 a year -- and still nowhere near $500,000 when all of the other elements of the justice system are added in. In its long-time role of fiscal watchdog, the Commission believes funding needs to be well targeted and spent prudently -- but it also believes that the cost of coping with crime is well justified.

- ***Prisons don't work.*** California and the nation have spent the last decade on a massive prison construction binge (nationally 42 new prisons are built each year[3] -- California alone has built 20 new facilities or additions to existing facilities in the past nine years, with an additional seven prisons on the drawing boards[4]). Yet people tell pollsters they feel less safe today than ever before and that crime is their number one concern -- and this in a state whose economy is plagued by disappearing jobs and plunging real estate values. The conclusion of some analysts: Putting criminals in prison does not work. The Commission, however, disagrees.

The Commission's conclusion is partially based on data and partially on pragmatism. A U.S. Justice Department survey has found that crime has dropped in the past 20 years (from 35.7 million in 1973 to 33.6 million in 1992), but violent crime has risen dramatically (jumping from 15 percent to 20 percent), fueling the public perception of crime as an increasing threat to safety.[5] A National Academy of Sciences panel concluded that without the increased level of incarceration, the crime rate could have been 10 to 20 percent higher.[6] And keeping violent predators off the streets -- who by definition commit repeated, high levels of crime -- does, indeed, preclude their continued preying on the public.

- ***Only a prison sentence is a harsh enough punishment to deter crime.*** Anything short of a

prison sentence is a "soft-on-crime" sin that only encourages more law-breaking. Probation is a joke because programs are too overloaded to provide effective supervision of cases, and alternative programs -- if they existed -- are just a slap on the wrist that criminals can ignore. Conclusion of tough-on-crime advocates: Break a law, go to prison is the solution to crime.

The Commission is vigorously anti-crime. However, it is impossible to ignore the fact that prisons have a finite capacity, even when overcrowded to a maximum level. Flowing from that observation is the conclusion that, to get the best use of its prisons, California should be very carefully targeting who it places in them.

The director of the Department of Corrections has raised the prospect -- realistically, the Commission believes -- that if more criminals are jammed into the prisons by increasingly tough sentences, the court system eventually will rule, as it has in other states, that prisoners must be released because of overcrowding. The result could be rushed, wholesale releases of low-end criminals, rather than a reasoned, judicious choice arrived at through a legislative process about who belongs in prison and what punitive alternatives should be fashioned. If given a choice of who should have reserved prison space between habitual violent offenders or petty thieves, the Commission picks the habitual offender and believes other punitive measures should be developed for the thieves.

With these concepts in mind, the Commission has produced the following report, which includes seven findings and 30 recommendations. Beginning with the Executive Summary and this introduction, the report includes a chapter each on the sentencing structure, prison programs and Department of Corrections operations, each with a brief background followed by findings and recommendations. The report closes with a conclusion, appendices and endnotes.

Sentencing Structure

* *The current sentencing system is complex and inequitable.*

* *There is little distinction between the way violent and non-violent criminals are handled.*

* *The parole system is no longer an effective deterrent to recidivism.*

Recommendations:

* *Establish a sentencing commission to keep the sentencing structure cohesive and equitable.*

* *Place all violent offenses under the indeterminate sentence system.*

* *Strengthen punishment for parole violations.*

The Sentencing Structure

California courts are sending record numbers of adults to state prison and county jails. A sampling of comparative statistics shows:

- Judges in 1975 sentenced 5 percent of the felony offenders to state prison; in 1992 they were sending 22 percent. The courts in 1975 sentenced 40 percent of felony convictions to probation with a jail term first; by 1992 the figure had risen to 61 percent.[7]

- State prison inmate population jumped from 20,000 in 1975 to 115,000 in mid-1993. In that span of time the Department of Corrections has constructed 16 prisons to house the increasing prisoner population. Despite the building program, today California's institutions are filled to about 180 percent of capacity.

- Inmate population at the end of 1992 included 57 percent non-violent offenders, such as burglars, thieves, drug offenders and those who possess weapons or drive under the influence of controlled substances. Although record keeping at the Department has been modified since, closely comparable figures show 38 percent were non-violent offenders in 1975.

- In 1992, 43 percent of the inmates were sentenced for violent offenses including murder, assault, robbery, sex offenses and kidnap. The nearly comparable figures for 1975 show 62 percent were violent offenders.

- Parolees returned to prison after violating their terms of parole but without new felony convictions rose from a yearly figure of 900 in 1975 to 35,000 in 1992.[8]

- County jail population has increased from 23,000 in 1975 to 73,000 in mid-1993. The counties and the State have spent $1.5 billion to build 58 new jails.[9]

These California statistics mirror changes occurring in the rest of the country. Nationwide, in 1975 there were 241,000 sentenced prisoners, a rate of 111 per 100,000 residents. In 1990, the number of prisoners had risen to 771,243, a rate of 293 per 100,000.[10]

While much of the statistical change stems from a rising tough-on-crime attitude that swept the nation in the '80s and '90s, another key cause in California was a complete overhaul of the philosophy behind sentencing. In 1977, the State adopted the Determinate Sentencing Act, which established specific sentences for each offense. The law was passed to eliminate unfairness, uncertainty and the perceived failure of the rehabilitation model of the pre-1977 system, known as Indeterminate Sentencing.

Sentences used to be set on a case-by-case basis by a board

Since 1918, the state had operated under an Indeterminate Sentencing Law, in which felons were sentenced to a term range, such as 15 years to life, with their actual term set on a case-by-case basis by the state body called the Adult Authority. The Authority used no specific guidelines when making parole decisions, but made judgements based on factors such as the inmate's crime, his time in custody and his prison behavior. The Authority was not required to give an inmate reasons for its decisions.

The years prior to 1977 saw increasing opposition to the Indeterminate Sentencing Law. Critics charged that the Adult Authority was making unfair and subjective decisions regarding the length of prison terms and was holding prisoners who had committed similar crimes for widely different periods of time -- many believed racism was a factor. The Authority also was accused of holding

some prisoners longer than was warranted, considering the severity of their crimes.

While many critics believed the Authority was too prone to keeping people in prison, others had the opposite criticism, contending that the Authority released people too soon or for the wrong reasons. These views were based on several instances when the Authority "bulk" released large numbers of certain types of inmates to avoid prison overcrowding.

The various criticisms were not simply the mumbling of a few disgruntled observers. The California Supreme Court added its weight to the growing unhappiness with Indeterminate Sentencing when it upheld a 1975 case that found the Authority lacked standardized guidelines and was not making good decisions that were well linked to individual cases.[11]

The determinate system was designed to be uniform and fair

The Determinate Sentencing Act was the Legislature's answer to this problem, stripping away from the Authority the responsibility of setting precise sentences. The Legislature established uniformity of sentencing as the sentencing system's primary goal. The structure was designed to give concrete notice to offenders and their families, prosecutors, defense attorneys, judges and victims that sentencing would be based on specific guidelines.

The new sentencing structure set up four offense groupings, increasing in severity with the seriousness of the offense. Within each grouping were three possible terms, called a triad, for each offense. For instance, one triad consisted of terms of 16 months, 2 years or 3 years, with the middle term as the indicated sentence unless circumstances warranted a change. Limited flexibility was granted to the sentencing judge to impose the lower term if there were mitigating conditions and the higher term if aggravating circumstances existed.

When it passed the Legislature, the Determinate Sentencing Act also explicitly abandoned the long-standing purpose of prison as rehabilitation and instead established punishment as the stated goal. "There was no evidence that the state of the sciences enabled anyone to diagnose a criminal's crime-causing problem, treat it, cure it or predict non-repetition," said the act's drafters in a subsequent law review article.[12]

The drafters of the act also hoped it would:

- Help the Legislature resist piecemeal changes in sentencing.
- Reduce sentencing appeals.
- Decrease the number of parolees rearrested and returned to prison.
- Decrease the parole agent caseload.

The act left in place Indeterminate Sentencing for the most violent and serious crimes, including murder and kidnapping for ransom, extortion or robbery. Responsibility for setting terms for these serious cases was given to the commissioners of the newly created Board of Prison Terms. The board, which is appointed by the governor, also was given authority to rule on parole violations.

The determinate system has had a substantial impact on prisons

The impact of the Determinate Sentencing Act, which is still followed today, is felt throughout the criminal justice system, from top to bottom. For instance, legislation that mandates prison sentences for specific crimes and increases penalties is sending more offenders to state prisons. The Department of Corrections has been able to accommodate the upsurge not only with the most ambitious prison building program in the country but also by taking extraordinary means to add beds. Virtually all prisons that had gymnasiums have converted them to inmate dormitories, some housing as many as 200 prisoners. Although the Department's design policy calls for single bunking in cells, new prisons routinely are built with two installed bunks as another strategy in relieving overcrowding systemwide.

The effect ripples on beyond state prisons. Parole and probation officers are handling increasing caseloads once the inmates are sentenced by the court or released from prison. There are 85,000 inmates on parole from state prison, a ratio of 85 offenders to each parole officer. County probation officer caseloads vary, averaging about 300 to 1; however, the County of Los Angeles, struggling with budget problems, estimates an offender-to-officer ratio of 5,000 to 1.

Because the sentencing system has such a dramatic impact on the cost, efficiency, fairness and consistency of the criminal justice system, the Commission examined it closely. The result is the following three findings and 13 recommendations.

Finding #1: The sentencing system is complex and inequitable, frustrating the public's desire for consistency and certainty.

The bulk of the state's felony offenders are sentenced under the Determinate Sentencing Act of 1977, with finite sentences for each offense. The goals of the new law included equity, consistency and simplicity. But the current system, due to inherent flaws in the original law, changes in public policy and piecemeal revisions, is not working. The state's tangle of sentencing statutes is so complex even experts make sentencing errors. It is a system that is inequitable to both victims and offenders, offering little in the way of certainty and nothing to a sense of fairness.

Complexity of system has increased as Legislature has added terms

The Determinate Sentencing system did not suffer from complexity when it was created. Annual legislative tinkering with its provisions, however, has added layer-upon-layer of restrictions and requirements for computing sentences. From the original four offense groups, the Legislature has amended the law until there are now many times that number, some experts classifying 10 groups and others, 25.

The impact can be seen in how similar but slightly different crimes are now handled. For instance, all assaults with a deadly weapon originally fell under a triad that allowed for a sentencing option of two, three or four years, depending on the specific circumstances of the crime. In place of that single triad, there now are seven triads for various types of assaults with deadly weapons. The table on the next page gives some examples:

ASSAULT WITH A DEADLY WEAPON	
Triad	**Specific Crime**
Two, three or four years	Assault on a citizen
Three, four or five years	Assault on a peace officer
Three, six or nine years	Assault on a citizen with a semi-automatic rifle
Four, six or eight years	Assault on a peace officer with a firearm
Four, eight or 12 years	Assault on a citizen with a machine gun
Five, seven or nine years	Assault on a peace officer with a semi-automatic rifle
Six, nine or 12 years	Assault on a peace officer with a machine gun

Source: California Penal Code

The triads are not the only components of the system that have been expanded. In addition to the discretion left to judges to select the highest penalty provided by the triad, sentences also may be enhanced for specific conduct that the Legislature has determined adds to the seriousness of the crime. An estimated 80 statutes scattered across the penal, vehicle, institutions, and health and safety codes outline various enhancements. A sentence may be enhanced for weapons, injuries inflicted during the course of crime, extent of monetary loss, vulnerability of victims, narcotics, gangs, prior convictions, multiple victims and sex crimes.

For example, a one-year enhancement is added to the sentence of a second-degree robber if he uses a knife. A two-year enhancement is added to the sentence of a defendant who intentionally causes losses of more than $150,000. The varying enhancements connected with prior convictions are particularly lengthy and complex.

The felon who commits multiple crimes often serves no time for most

When a felon is tried and convicted for several crimes at once, the confusion is heightened by the statutes governing how to determine consecutive sentences. The offense that carries the longest base term -- usually the middle term -- plus any enhancements, is designated the principal term. All additional terms for non-violent felonies are computed at one-third the base term without enhancement, but cannot exceed five years or double the base term, whichever is more restrictive.

There are many exceptions to the method of determining consecutive sentences, including violent felonies and prison crimes, among others. But overall, the

formula means that someone who is convicted of a large number of crimes will escape serving time for most of them. The district attorney may not even prosecute some of the cases, because they will not add to the offender's prison sentence.

The following graph illustrates the operation of the restrictions involving consecutive terms. It assumes the offender has committed 10 home burglaries, for which the penalty is two, four or six years. The graph begins with the base prison term of 48 months (the middle term) already built in and adds each consecutive term of 16 months (one-third the middle term) up to the limit of an additional 48 months.

Effect of Restrictions on Consecutive Sentences

Source: California Penal Code

As the graph illustrates, after serving the 48-month base term and the three consecutive 16-month terms, the burglar will receive no additional time. Six offenses will go unpunished or be dismissed.

The proliferation of crime-specific triads, the multiplicity of enhancements and the artificial formulas for figuring consecutive sentences all add up to a sentencing structure that is fragmented and difficult to understand. Probably the most strongly worded summation of the current state of the sentencing law appeared in an appellate court decision:

> *As a sentencing judge wends his way through the labyrinthine procedures of section 1170 of the Penal Code [the Determinate Sentencing Act], he must wonder, as he utters some of its more esoteric incantations, if, perchance, the Legislature had not exhumed some long departed Byzantine scholar to create its seemingly endless and convoluted complexities. Indeed, in some ways it resembles the best offering of those who author bureaucratic memoranda, income tax forms, insurance policies or instructions for the assembly of packaged toys.*[13]

Judges and lawyers, both prosecutors and defense attorneys, must wade through this maze of sentencing laws, a process that is time consuming and fraught with error. The Judicial Council estimates that while nearly 80 percent of criminal appeals are upheld, 23 percent of the cases that are overturned involve sentencing errors.[14] These errors, most of which can be blamed on the complexity of the system, absorb the time of the courts and lawyers, resulting in significant public expense. The ripple effect of sentencing errors impacts the state Attorney General's Office (which assigns its lawyers to defend the state in appellate cases), the public defender and the publicly funded defense lawyers. Also affected are the appellate courts, where the cases are decided.

Besides being complex, the sentencing system is often inequitable for victims, criminals

In addition to its complexity, the sentencing structure can be criticized for its inequities, from the perspective of both the victim and the criminal. One example of the inequity involves consecutive sentences. As already noted, placing a maximum on the sentence of five years or double the basic term means that charges which push prison terms over the maximum often will be dismissed because the inmate gets no added time. The

dismissal appears inequitable to the citizen whose home was one of the last to be broken into by a busy serial burglar. And the burglar potentially will serve no more time than someone who broke into far fewer homes.

There are other inequities in the law. For instance, a residential burglary falls under a triad of two, four or six years, while the sentence for assault with corrosive acid with intent to disfigure is two, three or four years. Few would argue that burglary is a more serious crime than throwing acid in a victim's face, but that conclusion is what the sentencing structure implies. The reality, however, is that during the strengthening of various parts of the assault statute in the years after the passage of the Determinate Sentencing Act, assault with corrosive acid was never addressed.

Another example of the inequities is the different treatment accorded kidnapping. Kidnapping for robbery carries a life sentence, while kidnapping with intent to commit rape is not a life sentence crime but carries only an enhanced term of five, eight or 11 years.[15]

Yet a third area is the disparity between the sentencing statutes for drug and for alcohol offenders. A study by The Sentencing Project[16] concludes the direct harm caused by the two sets of offenders is about the same, with drunken drivers responsible for an estimated 22,000 deaths annually in the United States. Drug-related deaths due to overdoses, diseases and drug violence are estimated at 21,000 annually.

A first-time offender on a drunken driving offense in California faces a $390 fine while a first-time offender charged with drug possession faces up to three years in state prison and a $20,000 fine. On the second offense, the drunken driver could get 48 hours to 10 days in the county jail and a $375 fine while the drug offender faces three to six years in state prison, the study showed.

Even within the category of drug offenses, there are disparities between the sentences for crimes with little rationale for the difference. The widely differing penalties for possession of various drugs for sale is one example:

- Possession of methamphetamine for sale -- 16 months, two or three years.

- Possession of powdered cocaine for sale -- two, three or four years.

- Possession of rock cocaine for sale -- three, four or five years.[17]

A Sacramento Bee columnist put a human face on the effect of sentencing disparities when he wrote about a woman who received a nine-year sentence for arson in federal court:

> *Up the block in state court, a convicted arsonist might get six years and serve three. A first-offending child molester recently got six months in county jail. For their egregious violation of Rodney King's civil rights, former L.A. policemen Stacy Koon and Laurence Powell got 2 1/2 years. The civilized world awaits the sentence of Ellie Nesler, who won't get [nine years] for blowing a man's brains out.*[18]

The determinate system lacks a mechanism that would allow changes without chaos

It is ironic that the Determinate Sentencing Act is undermined by the very problems that reformers were trying to iron out of the old indeterminate system: complexity and inequity. But the outcome is not surprising, given the changing perception of how to deal with criminals over the last two decades and the resulting changes in sentencing laws. The flaw of the sentencing structure is that it lacks a mechanism to make adjustments that are in tune with those attitude shifts while at the same time ensuring that the changes are also in keeping with the overall philosophical goals underlying the system.

The shift in public attitude accelerated during the 1980s. The harsher attitude toward crime occurred despite the fact that the crime rate in California stayed nearly steady, rising slightly for violent crimes and declining somewhat for property crimes. California's trend reflects the national picture, with two exceptions: the number of rapes per 100,000 population has declined faster than the national average and auto theft has risen faster.[19]

While the reason for the shift in attitude cannot be found in crime rates, other statistics amply document the effect of the changing perceptions. The statistics noted at the beginning of this section showing the upsurge in offenders sent to California's prisons and probationers who serve jail time before release are results of the legislative response to the public's tougher stance on crime. Nationally, other states and the federal government were equally as aggressive as California in sentencing offenders to prison terms.

The most prominent example of the more stringent sentences is in the case of drug users and drug merchants, the target of the national War on Drugs. In 1980, California's prison system admitted 1,063 inmates for new drug offenses. During 1992, 12,791 new drug offenders were admitted to prison.

Common elements are foundation for effective sentencing system

The impact of the tough-on-crime attitude is demonstrated in the growing prison population, but its effect on the integrity of the underlying philosophical goals of the sentencing system is less evident. While the Determining Sentencing Act does not lay out a complete array of goals, many of those connected with the criminal justice system share a consensus about those goals, the Commission discovered during the course of its study. The same elements appeared, whether the Commission consulted its advisory committee experts, participated in a broad-based conference on building an effective corrections system, or perused academic literature.[20] The following summary contrasts the desirable goals expressed by experts to the Commission with the reality of how the sentencing system works today. Those experts in general agree that a well-coordinated sentencing system would:

- ***Protect the public safety.*** The public looks for long prison sentences that will keep violent criminals off the street. There is also the common belief that the potential of harsh punishment will serve as a deterrent to some degree to others who are tempted to engage in crime. The reality is that despite publicity about new laws extending sentences, the average time an offender released on parole has spent in prison is 21 months.[21] As for the deterrent effect, the system is so convoluted that not even judges and attorneys are certain about potential sentences -- let alone the criminal on the street who is supposed to have second thoughts about committing a crime when faced with a stiff penalty.

- ***Tailor the punishment to the crime.*** The public wants a criminal who has been particularly vicious to be treated differently than one who has merely stumbled into breaking the law. In that regard, the fragmentation of the sentencing system from four triads into a myriad of triads for very specific crimes actually reflects the public desire for accountability. But constraints such as artificial limits on consecutive sentences and the failure to

overhaul all sentences at once in relation to each other serve to create a system that is ultimately insensitive to the differences between crimes.

- ***Address the needs of victims.*** Most victims of crime, no matter how charitable, want to feel some sense of vindication and/or retribution. Instead, they are buffeted by a system that appears to pay little attention to their needs. "They (the criminal justice system) are lying to us in sentencing. It's a blatant lie," said Patty Tate, sister of Sharon Tate, the film actress who was murdered by the Charles Manson Gang. Patty Tate pointed out that Manson Gang killer Tex Watson, far from serving "hard time," has gotten a college degree, married and fathered three children, all while serving a life term.[22] The neophyte first encountering the system may presume that the convicted felon actually will serve the amount of time he is given in state prison. Instead, work and education credits most likely will cut in half the time spent in prison, while credit for time spent waiting in jail for the trial reduces prison time even further. Ideally, victims also would receive restitution for the losses they incur, but of the hundreds of millions or dollars lost to crime, only about $1.3 million was repaid in the last year by inmates in prison work programs.

- ***Foster responsibility in inmates.*** The public does not want a prison system with a revolving door, where criminals emerge no better off -- or sometimes worse -- than they entered. Not only should they not learn new "tricks of the trade" while incarcerated, they should show some level of remorse, learn skills and come out productive citizens. But the reality is that the Department of Corrections has no mandate to rehabilitate, only to punish. While the Department does offer some rehabilitative programs, they are a low priority. The bulk of the dollars are spent on building more cells to house inmates. The result can be seen in recidivism rates. In 1992, almost 60 percent of the inmates released on parole were returned to prison for technical parole violations or new felonies -- and that rate of return was the lowest in seven years. In contrast, when rehabilitation was a goal of the sentencing system in 1975, only 11.3 percent returned.[23]

- ***Balance costs with benefits in terms of public safety.*** A person who commits a crime should be punished, regardless of crowded conditions in prisons. But the overall scheme of sentencing can be tailored so that crimes that the public sees as less serious can be dealt with through alternative methods that relieve the pressure for added, expensive prison construction. The reality, however, is that sentencing legislation today is analyzed with little acknowledgement of costs versus benefits. The result is an exploding Department of Corrections budget and prison construction program that divert resources from other valuable, needed state programs. The only escape valve is early parole on a case-by-case basis, an option that undermines the certainty and equity that is sought through a determinate sentencing structure.

Such goals are an important element of setting up a sentencing structure, and the Little Hoover Commission heard that fact emphasized repeatedly in the course of its study. Once goals are set, they keep sentencing priorities clear and consistent over time. The executive director of the California Probation, Parole and Correctional Association said at the Commission's Los Angeles hearing:

> *We must look to a sentencing design which is flexible but holds the offender strictly accountable, in which the punishment fits the crime and the offender, and in which the victim is considered, and as greatly as possible, made whole again. We need a sentencing system which is clear about its goals; a sentencing system built on clear objectives as to what the corrections system is expected to accomplish with each offender.*[24]

How did reality drift so far from the philosophical goals of the sentencing system? One key factor is the lack of a mechanism that oversees the sentencing system as a whole and analyzes the impact on the total system of changes that occur over time. Instead, reacting to the widespread tough-on-crime sentiment, the State's Legislature has made piecemeal changes toughening the Determinate Sentencing Act -- many believe more in the name of political expediency than rational policy making.

Changes are made without anyone examining the overall effect

Between 1984 and 1991, more than 1,000 bills were passed to change felony and misdemeanor statutes.[25] Virtually none of the measures reduced sentences. These crime bills, many introduced in reaction to stories trumpeted in the newspapers or on television, became known as "crime of the month" legislation. Examples include:

- A drive-by shooting bill passed in 1993 that would make murdering a person from inside a car a death penalty offense. Determining a sentence based on where a criminal is standing is bad criminal law, opponents argued. A murderer who killed someone standing *beside* a car still could receive a lesser sentence.

- Legislation passed during the same session to create a new crime for vandalizing buildings with acid, despite current statutes that cover vandalism. The bill was aimed toward offenses that had been committed against abortion clinics, although abortion clinics were not cited specifically in the legislation.

- Tougher sentencing measures created in 1991 for "hate crimes," although district attorneys could get stiff sentences charging offenders under other existing statutes. A beating, for example, could be charged under assault statutes.

While these measures addressed real problems and attempted to pursue the goal of fitting punishments to specific crimes, there was no coordinated effort to analyze the impact on the whole criminal justice system or to assess how the longer sentence related to sentences for other crimes. Bill drafters and legislative analysts often face deadline pressures and lack the expertise to explore questions about the impact on the overall sentencing system.

The effects of the sentencing quagmire are serious. Victims and offenders are not treated in an evenhanded manner. Mistakes absorb government resources. And the difference between what the system is supposed to accomplish and what actually occurs generates anger and frustration in the public.

Ventura County Superior Court Judge Steven Z. Perren, a member of the Sentencing Advisory Committee to the California Judicial Council, summed up the condition

of the state's sentencing system during the Commission's public hearing in Los Angeles:

> *In California it seems to me...it is time to clear up a statute which is, by its nature, so Byzantine that the citizen who has come to rely upon it to protect his or her property or well-being can't understand what he or she is relying upon. That the defendant who is supposed to be deterred by the prospect of some form of punishment hasn't got a clue as to what that punishment is going to be. And that the judge who is supposed to impose it will probably call me at 8 o'clock in the morning before the sentence is imposed to ask me to see if he or she has structured the sentence properly.*[26]

Commissions have been established to keep sentencing systems balanced

California, of course, is not alone in coping with sentencing complexity and inequities. Other states and the federal government have similar problems and have tried different approaches as remedies, including the creation of sentencing commissions. Such commissions received a great deal of discussion during the 1980s, and various types of commissions were established. Commonly, a state's legislature set up a commission to study the state's entire criminal code and create a sentencing structure that would make sense. If the proposal was adopted, some states opted to continue the commission to maintain and monitor the system.

The concept of a commission answers the need for a mechanism to balance the sometimes-competing goals underlying a well-conceived sentencing structure. A properly constructed Commission with adequate authority would be able, in theory, to:

- Bring a holistic approach to sentencing, establishing penalties that are equitable and tailored to the level of specific crimes.
- Block piecemeal changes that introduce an imbalance to the structure and eventually spawn complexity and inequities.
- Provide needed expertise and institutional memory to analyze the systemwide impact of proposed changes.

- Remove decisions, to some extent, from the political arena where nuances and subtleties are often lost amid sound bites and posturing.

- Generate the respect needed to make cost-benefit analyses credible. Otherwise any attempt to balance the public desire to punish crime with the high cost of incarceration would bring criticism that government is going "soft on crime" to reduce program costs.

Most commissions across the nation have fallen short of this performance ideal. Commission efforts have included:[27]

- ***New York and South Carolina,*** where temporary commissions created binding sentencing structures only to have the proposals rejected by the legislatures.

- ***Maine and Connecticut,*** where the commissions decided against adopting sentencing guidelines. In the Maine experience, the judicial members of the commission argued the sentencing structure was a usurpation of judicial authority. At the end of its statutory term, the commission produced only an interim report. The commission was reauthorized by the Legislature, but it was never funded and commissioners were never appointed. Connecticut's advisory commission decided to oppose establishing sentencing guidelines and instead recommended passage of a determinate sentencing law.

- ***Pennsylvania,*** where the commission established a sentencing structure that has been criticized as too loose to be effective. One sentencing expert's opinion was that the system also suffers from leaving the ultimate release power with a parole board, undermining certainty and equity.

- ***The federal government.*** The U.S. Sentencing Commission generally is considered a failure, amply documented in 1990 by the Federal Courts Study Committee and the General Accounting Office. Their main objections centered on these issues:

  - Guidelines are too rigid and rob the judge of any discretion.

  - Guidelines are too complex.

- Sentencing procedures have become lengthy and time consuming.

- Work of the commission has become highly politicized.

The U.S. Sentencing Commission is up for reauthorization by Congress, but criticism has been so heavy that indications are it will not be continued.

Despite the dismal record of some commissions, there have been notable successes. These include:

- ***Delaware.*** Most states that have created voluntary -- rather than binding -- sentencing guidelines have seen their systems fail because the guidelines are widely disregarded by judges and have little effect on sentencing. But Delaware's Sentencing Accountability Commission has tracked a 90 percent compliance rate with its voluntary guidelines. While judges are not bound by the guidelines, the five-level structure of the punishments system -- including intermediate punishments -- was set in place by the administrative order of the Delaware Supreme Court. Judges must provide reasons if they deviate from the recommended level or length of sentence, which, together with the administrative order, could be a persuasive technique in maintaining conformity of sentencing without binding guidelines.

- ***Oregon.*** The 21-member Oregon Criminal Justice Council wrote the guidelines, which apply to crimes which occurred after Nov. 1, 1989. The council now serves the function of a sentencing commission, first in drafting revisions to the guidelines, then in administering the system. Goals of the sentencing revision include:

  - Truth in sentencing.

  - Appropriate punishment.

  - Reduction in sentence disparity.

  - Balance between sentencing policy and prison needs.

- Creation of a sentencing data base.

The guidelines generally have fulfilled the goals, according to Oregon officials. The imprisonment rate for offenders who committed "crimes against persons," i.e. violent crimes, increased from 34 percent before the new sentencing structure to 47 percent in 1992.[28] At the same time the imprisonment rate for property offenders dropped from 19 percent to 13 percent, and for driving offenses, from 9 percent to 3 percent. In addition, prison stays increased during the period, but most dramatically for violent crimes, from 34 to 48 months. With its database of felony cases, the state has developed a well-documented inmate population impact statement for every new crime proposed by the Legislature.

- ***Minnesota and Washington***, regarded by experts as the two most successful commission efforts. In each, the sentencing system is based on:

  - Sentences with a narrow range of judicial choice.

  - Sentence length taking into account the seriousness of the crime and the criminal history of the offender.

  - A structure to consider mitigating and aggravating factors in sentencing.

  - Emphasis on prison for violent offenders and alternatives for property offenders.

  - Appellate review of the sentences imposed.[29]

  While similar, the commissions also have marked differences. For instance, the Minnesota structure involved "freezing" the prison population at given levels, while the Washington system was set up to be "sensitive" to prison population.[30]

In Minnesota, while initially successful in that the rate of compliance remained high, the structure more recently has seen deviations of 25 percent by judges from the standard ranges. Most of the deviations have been to mitigate the sentences downward.[31]

The state has constructed an extensive database that monitors every sentenced felon. The database provides factual backup needed for the impact statement the commission provides for all legislative sentencing proposals. Legislators take the impact statement very seriously, according to the executive director of the commission, because the statements are extremely credible.[32]

The Minnesota commission does not merely monitor sentencing reform proposals. It also is proactive, proposing new or revised guidelines which are submitted by the commission to the Legislature for its passive review. In the passive review process, proposals are considered adopted after a period of time unless expressly denied by the Legislature.

Minnesota judges have the choice of significant number of intermediate punishments that avoid prison time for property and other non-violent offenders and conserve prison beds for violent felons. (An intermediate punishment is a sanction against an offender short of prison but more serious than probation.)

In the Washington version, judges are overwhelmingly conforming to the structure, with only 3.5 percent deviating from the guidelines.[33] Inequities present before the law's passage generally have been corrected. As with Minnesota, the Washington commission monitors and distributes analyses of legislation reflecting the measure's impact on prison population and the sentencing structure. In addition, it advises the Legislature and the executive branch on sentencing policy.

Unlike Minnesota, the sentencing structure in Washington lacks intermediate punishments options, and proposals are being made to establish them.

Commissions have been successful when given clear direction, authority

Is a sentencing commission appropriate for California? In the few states considered models, experts agree the commissions have been moderately successful in maintaining the cohesion of the sentencing structure and adopting a strong advocacy role with the Legislature regarding sentencing and prison population.

Perhaps even more important, the commissions have established themselves as respected voices in the coordination of statewide sentencing and policy innovation. Washington's commission, for example, drafted sentencing options to reduce criminal behavior

through intervention. Minnesota is developing two intermediate punishments, day fines and intensive community supervision.

But experts worry that without proper safeguards, a sentencing commission in California is likely to follow in the footsteps of states that have had little success with this mechanism. In a 1991 article, one expert highlights the New York commission's attempt to establish a sentencing structure and the U.S. Sentencing Commission's experience in highly politicized atmospheres as indicators of a turbulent future for a California commission:

> *If past be prologue, for example, the 14 years of legislative tinkering with California's Determinate Sentencing Law, generally on the side of 'tough-on-crime' posturing, may suggest that the auguries for sentencing guidelines in California are not good.*[34]

The successful models in Washington and Minnesota operate without the factionalism and highly political atmosphere present in California, a factor that was detrimental to the commission concept in other jurisdictions. Additional factors that contributed to success in these two states weigh against it in California. Washington and Minnesota are both small, homogeneous states with dramatically less prison population than California. Minnesota, for example, has a prison population of about 4,000. Washington's state prison system incarcerates 10,000 inmates.

California has used commission structure successfully in transportation arena

Despite the differences, however, there is evidence that a well-constructed commission effort can be successful in California. A wider look at the commission concept in general shows that they can be effective even in situations where politics are a substantial factor. In the case of two powerful commissions, they have functioned effectively because the item-by-item policy decisions have been taken out of the political arena. These two commissions deal with particularly sensitive issues. One, at the federal level, is the U.S. Base Closure and Realignment Commission and the other, at the state level, is the California Transportation Commission.

Authorized by Congress in 1990, the U.S. Base Closure and Realignment Commission was handed one of the most controversial issues to face any group of politicians -- the closure of military bases that provided

jobs to the communities that the elected officials represented. Once the law creating the commission and its structure was established, the base closure process specifically excluded action by Congress. The eight-member commission took base closure recommendations from the secretary of defense and reviewed them, "absent political or partisan influence," according to the commission's Report to the President.

Congress, in enacting the commission structure, implicitly admitted the impossibility of implementing difficult policy decisions in its fiercely politicized arena. While individual elected officials lobbied the commission to retain bases, they ultimately acceded the decision-making power to the commission.

The membership of the commission was made up of four persons selected by the Speaker of the House and the President Pro Tem of the Senate; two selected by the minority leadership of the House and Senate; and two by the president.

The California Transportation Commission is another example of a commission that has been given substantial authority untempered by the legislative process. For many years, the commission has made the decision as to what priority will be given to each proposed highway project in the multi-year State Transportation Improvement Program (STIP). Billions of dollars in federal and state highway construction funds are allocated in this decision-making process.

This process avoids a situation where highway priorities are decided in the Legislature, where lawmakers, looking out for local interests, might strike bargains to assure highway projects end up in their districts. Instead, the commission holds hearings to prioritize projects and legislators may testify on behalf of local projects. The final decision, however, rests with the commission after hearing from local agencies (Regional Transportation Agencies), CalTrans and elected officials.

Commission offers hope for improvement over problems with today's system

As to whether a commission might be a workable way to draft and administer a coherent, rational sentencing system for California, one sentencing expert, despite moderate pessimism, concludes problems with the Determinate Sentencing Act and prison overcrowding are bad enough to give it a try:

> *California needs to do something else. For all the risks attendant upon creation of a sentencing commission, there is no more plausible vehicle for comprehensive reform of California sentencing policies, and it probably makes sense to set one up.*[35]

Suggestions for the structure of a California commission that have been made include:

- An explicit rationale for punishment.
- Sentencing guidelines which will not fill the prisons to more than 95 percent of rated capacity.
- Appellate review of sentences.
- Full-time chairman and modestly paid part-time members.
- Three years for commission staff to write the guidelines.
- Repeal of present mandatory sentences upon passage of the guidelines.
- Guidelines to take effect six months after delivery to the Legislature unless expressly rejected by both houses.[36]

The sentencing commission concept is not new for California's policy makers. A previous attempt to establish a sentencing commission passed both houses of the Legislature in 1984. It was vetoed, however, at least partly because of the widespread feeling at the time that the determinate sentencing structure was working and that the problems under the indeterminate structure had been banished. This measure, authored by Senator Robert Presley, would have done the following:

- Set up a commission of 19 members, including four ex officio public officials.
- Developed sentencing guidelines for each felony.
- Established guidelines to take into account current sentencing range, violence of the crime and prison capacity.
- Given the commission ability to review trial court and appellate court sentencing decisions and

recommend adjustments if the sentence has been appealed.

- Developed recommended prosecuting standards.
- Established a Judicial Advisory Committee to assist the commission.

Repeated efforts to reform sentencing in the Legislature have failed

The Presley bill has not been the only effort to restructure sentencing. In 1988, 1990, 1992 and 1993, Senator Bill Lockyer attempted to reclassify crime and punishment into a more consistent structure. His bills have been part of an eight-year project by the California District Attorneys Association to reform, simplify and revamp the sentencing structure. Sentencing expert Perren lauded the effort in his testimony to the Little Hoover Commission, saying:

> *The virtue of this system was that it pulled together all of the crime punishment sections that are found in at least four different codes in the state of California, pulled them into one section of the penal code, which seems to me an eminently logical place for them to be found, and then said we're going to divide all crimes into five classes of offenses.*

The various bills ranged the five classes (the latest version has six classes) in order of severity and established a range of years (the latest version has triads) within each category. As with the present system, the middle year in each category was presumed to be the sentence unless other factors in aggravation or mitigation were under consideration. The lowest year in each class was the presumed sentence for each additional offense, greatly simplifying the current complex and poorly understood method of calculating added crimes. The bill also eliminated the limits on consecutive sentences and gave judges the discretion of imposing full, separate and consecutive sentences for each felony conviction.

Lockyer's bills also categorized sentencing enhancements, including those for prior offenses, in an organized way and established a two-level schedule for them, greatly simplifying and clarifying the enhancement structure.

By 1990 when a Lockyer bill was approved by the Legislature, the sense of complacency about the success

of the Determinate Sentencing Act had disappeared. The Lockyer measure, however, met defeat for reasons unrelated to the reorganization of sentencing formulas. Other provisions of the senator's bill providing for early inmate release to relieve prison overcrowding were unpopular with those who believed sentences should be served in full. The measure was vetoed. In 1992, Lockyer's similar bill was also vetoed. At the close of session in 1993, the latest version of the bill was in an Assembly committee and was still the focus of negotiations between various interest groups.

As problems with determinate system have worsened, need for reform is clear

Almost a decade after the veto of the Presley bill and more than a year after the latest Lockyer veto, there is more general agreement by both experts and the public that the sentencing structure under the Determinate Sentencing Act is not fulfilling the State's criminal justice goals. The complexity and inequity of the present system have become the driving factors in a growing debate of how sentencing can and should be reformed.

Recommendation #1: The Governor and the Legislature should enact a compromise, short-term measure that will clarify and simplify sentencing in California.

The concepts embodied in Senator Lockyer's long-running effort would provide relief from the many problems of inequity and complexity currently existing with the State's sentencing structure. In the long-run, however, there is nothing built into the new system that would preclude a growing imbalance and complexity to occur once again. Therefore, the Commission believes this reform should be adopted as a short-term solution while the other recommendations outlined below are given time to come into play.

Recommendation #2: A sentencing commission should be created in California either by action of the Governor and the Legislature or by ballot initiative.

The commission structure and authority should be patterned after successful models in other states and in other policy arenas. This includes providing a politically balanced membership with a wide range of expertise.

For instance, the membership of the commission could include seven members, three to be appointed by the governor and two each by the leadership of the Assembly and the Senate. The composition of the commission could include a former appellate or supreme court justice, district attorney, criminal defense attorney, law enforcement official, correctional authority (from corrections, parole, probation or the Board of Prison Terms); a victim's representative; and a prisoners' rights representative.

The commission also should be given a definite timeline, such as two years, to survey all felony and present state statutes and to develop a rational sentencing structure. Once the structure has been adopted, the commissioners could be empowered to monitor, maintain and make suggestions for improvement to the system.

Recommendation #3: The commission should be charged with creating a sentencing structure that meets the philosophical goals of the criminal justice system.

While the commission needs to have the independence and power to act outside the political arena, it also should be guided by parameters that have been agreed upon through public dialogue and the legislative process. It is anticipated that the goals that would emerge from such a process would be similar to those identified for the Little Hoover Commission by experts, including:

- ***Protecting the public safety*** as a top priority, both through removing criminals from the street and providing a deterrence through recognized consequences for breaking the law.

- ***Tailoring the punishment to the crime*** so that different crimes are treated with a sense of proportionate justice.

- ***Addressing the emotional and fiscal needs of victims and their families*** for vindication and/or retribution.

- ***Fostering responsibility in inmates*** by establishing meaningful incentives and disincentives for those convicted to show remorse, improve themselves and embrace a different lifestyle in the future.

- ***Balancing costs with benefits*** so that all crimes are appropriately punished within the context of limited resources to expand prison capacity.

By setting a goal of public safety as the top priority, the final product of the commission will be firmly anchored in protection of the citizens. By including the other factors in a comprehensive approach to sentencing, the commission will be able to structure a system that deals appropriately with victims, inmates and state budget priorities.

Recommendation #4: The structure recommended by the sentencing commission should organize felonies in an easily understood manner in order of severity.

A primary objective of the Commission should be eliminating the complexity of the present system, including simplifying the organization of different types of felonies, consolidating the enhancement system, allowing more flexibility in the calculation of consecutive sentences, and clarifying the use of prior offenses in determining sentences.

Recommendation #5: The sentencing system created by the commission should be insulated from politically motivated, piecemeal tampering by using a passive legislative approval mechanism.

One of the main reasons to create a commission is to avoid the gridlock of competing interests and philosophies that could bog down efforts to overhaul the sentencing system. But as the primary policy-making body in the State, the Legislature should

have a voice in the final formation of a new sentencing structure.

One mechanism that would balance these goals is to have the commission's plan take effect within 90 days of submission to the Legislature unless, before the end of that period, either house adopts a resolution by majority vote rejecting the entire proposal.

There is both academic support and existing state precedent for such a mechanism. One sentencing expert advises an adoption procedure that first presumes a list of structural requirements to be included in the proposal and then establishes a passive adoption by the Legislature within six months. In his proposal, rejection would have to be adopted by both houses. An existing model is the procedure well-established in California statute that is used for the adoption of a governor's reorganization plan. The law provides for the adoption of a reorganization plan 60 days after submission to the Legislature unless, before the end of the period, either house rejects it by a majority vote.[37] This system was used for the adoption of the California Environmental Protection Agency (Cal-EPA) in 1992.

Recommendation #6: Once the sentencing structure has been adopted, the sentencing commission should monitor the structure and suggest modifications to maintain equity and consistency.

An essential part of the Washington, Minnesota and Oregon sentencing systems is the database each state has developed to monitor felons and felony sentences. These information bases identify trends and weaknesses in the systems. They also provide information on which to develop quick, well-documented analyses of proposed changes in sentencing.

Following that pattern, California's sentencing commission could establish a statewide database. Such a computerized system would allow analysis of sentencing proposals not just relating to corrections but to all other parts of the law enforcement system. Santa Clara County currently is assisting Colorado in setting up a statewide operation based on a computer model it has developed.

Recommendation #7: The sentencing commission should make recommendations to the Legislature on each sentencing bill and analyze it as to internal consistency with the sentencing structure and impact on inmate population and spending.

California's decentralized law enforcement, court, prosecutorial and jail systems afford ample opportunities for the criminal justice system to become unbalanced if one element changes significantly. Large counties with a multiplicity of jurisdictions, such as Los Angeles, are already using informal coordinating councils to assist them.

The sentencing commission, with established expertise and a repository of data, would serve as the lead state agency coordinating criminal justice policy when it makes its recommendations to the Legislature on sentencing measures. Currently, sentencing laws -- dealing with mandatory sentences, for example -- often are enacted without regard for their impact on prison population or prison spending. At the same time, legislation may ignore its impact all along the criminal justice horizon: jails, lawyers, courts, parole and probation.

Finding #2: The degree to which the present criminal justice system distinguishes between violent and non-violent offenders is not sufficient to protect the public and maintain the credibility of the system.

In retaining indeterminate sentencing for some violent crimes, California recognized that to maximize public safety some criminals should be judged, incarcerated and released on a case-by-case, subjective basis rather than on the basis of rigid, objective standards. The present system, however, draws the line between crimes in such a way that the bulk of both violent and non-violent crimes falls under the determinate sentencing structure. This results in fixed release dates for the majority of prisoners that are unrelated to either the violence of their crime, their behavior in prison or their prospects for crime-free success after release.

The current split between indeterminate and determinate sentencing leads both to the public perception and the reality that prison's barred gates are actually revolving doors for too many violent felons. This conclusion is borne out by studies of criminals in general, inmates in California's prisons, sentences served, paroles revoked and recidivism rates. The current split also drives up costs, increases prison discipline problems and undermines the credibility of a system whose chief goals should be to protect the public, satisfy a societal sense of justice and cycle inmates back into the real world in a manner that maximizes their potential for a crime-free life.

Determinate sentences have not satisfied the desire to keep dangerous felons locked up

When the Determinate Sentencing Act was passed, a handful of crimes, including first degree murder, remained under the indeterminate structure. Almost immediately, many policymakers began to feel a need for a mechanism to keep a broader range of dangerous criminals in prison indefinitely. Reluctant to release criminals with dangerous potential, the Legislature began to move sentences for the most serious crimes back over the line to the indeterminate system. Since then, 25 statutes have been added moving determinate sentences to indeterminate. They include extremely serious crimes, such as torture and kidnap for robbery or ransom.

Echoing the major flaw in the determinate structure, however, these indeterminate sentencing changes were made piecemeal without coordinating the entire system. In cases like Lawrence Singleton, paroled after a relatively short determinate sentence for chopping off the arms of a teenaged girl, the Legislature changed his crime -- aggravated mayhem -- to an indeterminate sentence. Other crimes that many might consider equally serious -- such as manslaughter, assault with a deadly weapon, sex crimes and armed robbery -- remain in the determinate sentencing structure.

Portrait of criminals: To be effective, sentencing policies need to be based on information about criminals that is as accurate as possible. While a precise portrait of the life of a criminal is difficult to pin down, researchers have studied prison inmates, their background and their activities. In general, the career of the majority of inmates follows what some experts refer to as a crime curve, starting in their teens. These young people are most frequently from poor, inner city neighborhoods that provide an unlimited supply of street criminals, according to one critical discussion of correctional policy:

> *Similar to organized sports, most of these criminal operations have major leagues, minor leagues, and a bench. Children come up through the ranks, learn the game, and finally move into the starting lineup once they reach their adolescent years. When they are temporarily or permanently removed (that is, arrested, imprisoned or killed), they are replaced by others from the bench to continue the game.*[38]

Teenagers make up almost one-third of arrests for violent crimes

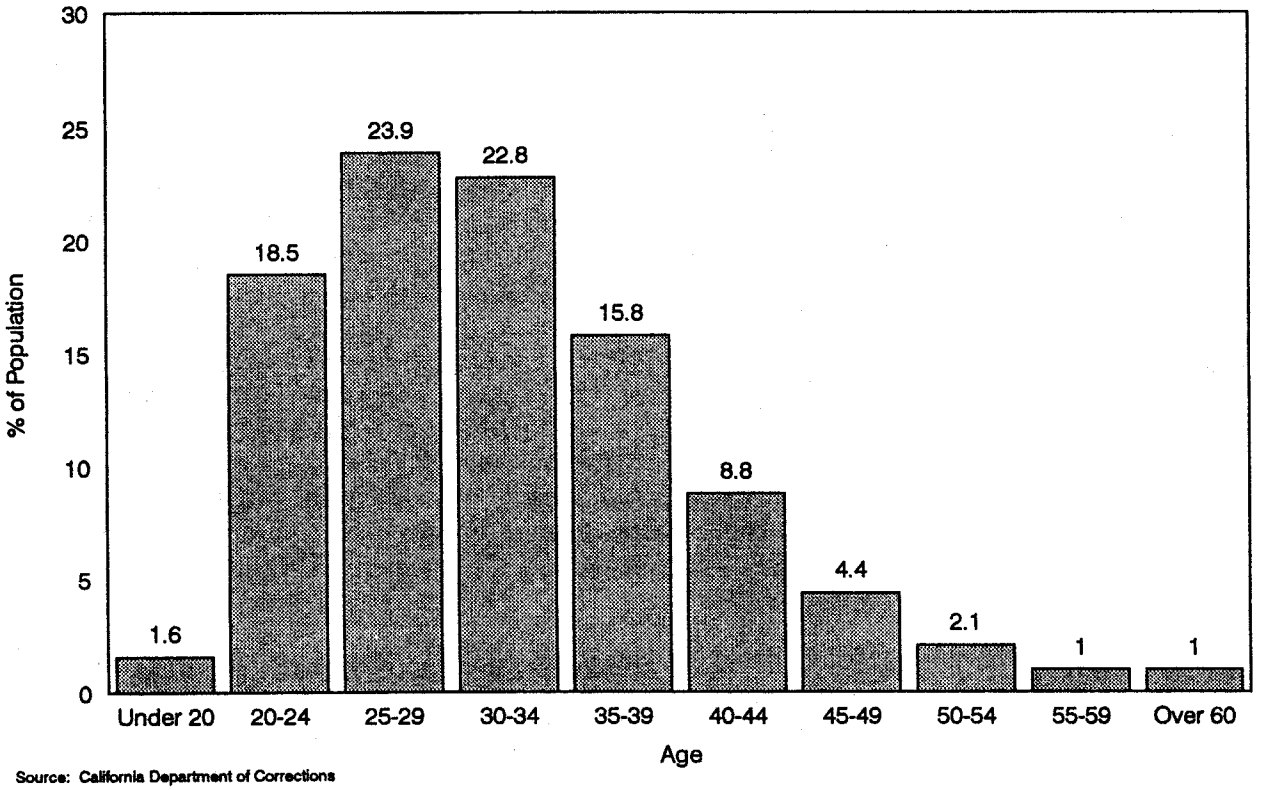
Some comparative statistics demonstrate how influential the under-18 age group is on the crime scene: They comprise one-fifth of the general population, one- fourth of those arrested and nearly one-third of all those arrested for the seven crimes that compose the nationally accepted Uniform Crime Index offenses. (Those offenses are homicide, forcible rape, robbery, aggravated assault, burglary, vehicle theft and larceny.) Studies have shown that a typical young criminal usually begins his career at 14 or 15 years old and continues to increase his criminal activity into his mid-20s. In California, the average age of first arrest is 17, leading experts to believe that the youthful criminal was committing crimes undetected, or at least unpunished, for some time. Youths are even more likely than adults to escape getting caught for criminal activity.[39]

(It is important to note that in the overwhelming number of cases, for both youth and adult criminals, the offenders have committed a great many crimes undetected or unpunished. In 1990 an estimated 34 million serious felonies were committed nationwide, but in 31 million of the cases, the crimes were unreported or unsolved.[40])

Ironically, studies show the offender's criminal activity tapers off in his late 20s and early 30s, coinciding with the average age of the first commitment to state prison. The result is that at the same time the offender is beginning to decrease his crime frequency, his criminal rap sheet has lengthened to the point where he will be committed to prison when found guilty of a crime.

The research findings are reflected in California statistics. The following graph shows the age groups of inmates in the California prison system as of December 31, 1992.

Percentage of California Prison Inmates by Age
(December 31, 1992)



Source: California Department of Corrections

As the graph illustrates, the two largest single group of inmates are in their mid- to late 20s and early 30s -- just when studies indicate their crime careers are likely to end. The average age of the California inmate is 31, and he was first committed to prison at 26.

A Rand Corporation study[41] sheds additional light on criminal behavior, outlining some of the characteristics that separate violent and non-violent criminals. The researchers studied 2,200 criminal offenders from Texas, Michigan and California. Using a combination of official records and self-reported criminal activity from the inmates, the study found that most criminals are specialists and can be categorized based on the types of crimes they commit. The crimes studied included drug, violent and property crimes, but did not include sex offenses or kidnapping.

The researchers found that the activity of criminal offenders could be grouped into 10 categories, from the most violent, high frequency offenders who concurrently rob, assault and deal drugs, to the lowest rate offenders who perpetrate occasional drug deals. In each category, whether it was burglars, robbers or drug dealers, a small percentage of high-rate criminals committed the overwhelming bulk of the crimes.

Violent predators commit a broad range of crimes at high rates

The most dangerous category of criminal identified in the Rand study was the violent predator, who committed crimes ranging from assaults and robberies to thefts and drug transactions. Not only did the violent predators commit crimes across the spectrum, they committed them at much higher rates than even the high-rate criminals in individual crime categories.

For example, in the category of burglar-dealers -- those criminals who break in and steal from buildings and also sell drugs -- 10 percent commit burglaries at a rate exceeding 148 a year and/or make drug deals at a rate exceeding 2,890 a year. In comparison, the 10 percent of the highest rate violent predators will commit burglaries at a rate exceeding 516 a year and carry out 4,088 drug deals.[42]

By comparison, the study showed, the majority of criminals commit crimes at low rates. For example, more than 60 percent of the inmates who do burglaries commit an average of 5.5 per year.[43] Most offenders hold some sort of job, even if sporadic, and non-violent offenders often work fairly steadily. The property and drug

offenders are good candidates for rehabilitation, the researchers found.

On the other hand, violent predators are poor candidates for rehabilitation and the most appropriate candidates for long prison terms:

> *The seriousness of their crimes, the rates at which they commit all crimes, and their violence have an inordinate effect on crime in our society. Their characteristics and consistent behavior imply that extended imprisonment is the only currently understood policy likely to substantially reduce crime rates for all the crimes they commit -- not just the crimes for which they are convicted.*[44]

Being able to recognize the violent predator is a top priority, said the study's authors. "In order to effectively and efficiently reduce crime, it is crucial to be able to differentiate the violent predators -- who are disproportionately high-rate offenders -- from others."[45]

Recognizing violent predators is difficult because of little information

But Rand found that official records are woefully inadequate in revealing information needed to identify the violent predators. Most crimes go unpunished and unreported. Cases are plea bargained down so it is difficult to tell what the actual original crime was. Juvenile records are incomplete and teens are much less likely to be caught in the first place.

To supplement the lack of records, the researchers developed a list of predictive characteristics for violent predators:

- Frequent violent crimes committed before age 18.
- Early onset of violent crimes, starting before age 16.
- Number of prior robbery convictions as adults.
- Being young, unmarried and persistently unemployed.
- High-rate multiple drug use.

Rand's conclusion that a small number of people commit a disproportionate share of crimes is reinforced by statistics gathered from a wide variety of sources:

- An earlier Rand study found that incarcerating the most active 8 percent of a group of robbers studied could prevent three times as much crime as imprisoning the least active half for the same amount of time.[46]

- Orange County officials, who have run three separate annual studies of juvenile crime, have found that roughly 9 percent of offenders commit the bulk of crime.

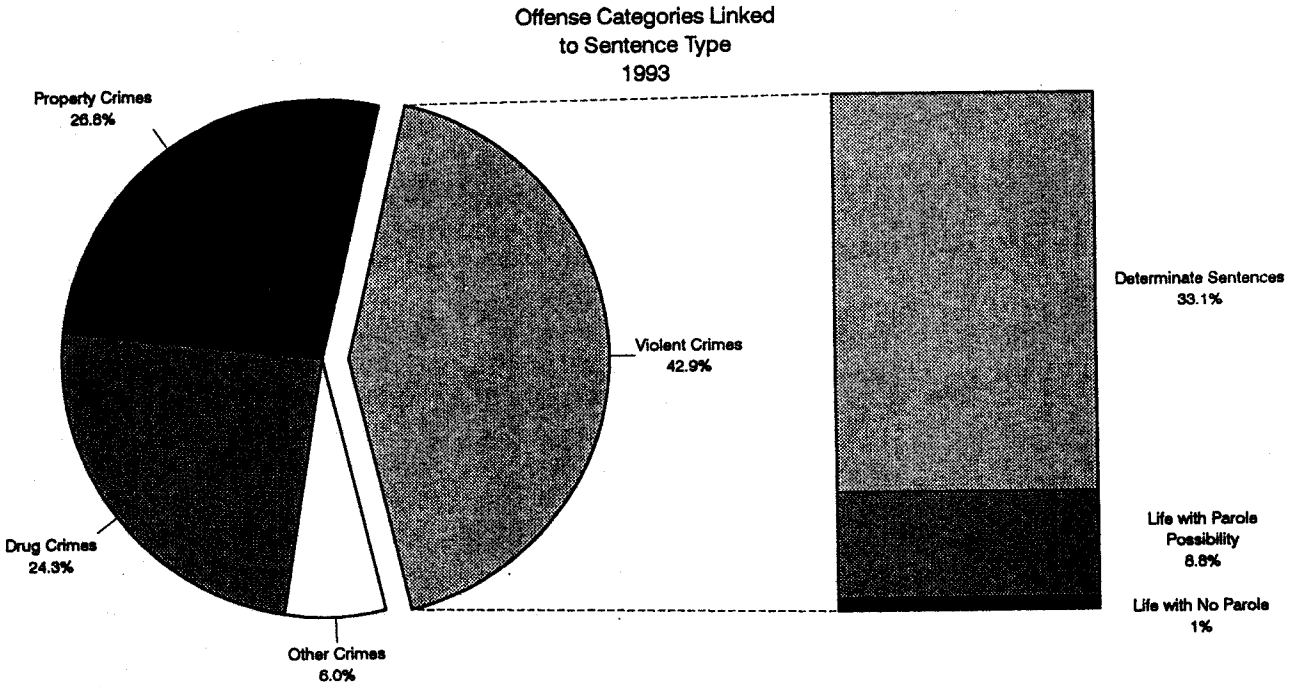
- Similar statistics were recently highlighted by the president of the Safe Streets Alliance in Washington D.C. He wrote that an exhaustive Philadelphia study showed that just 7 percent each of two different age groups committed two-thirds of all violent crime in the city, including three-fourths of the rapes and robberies and virtually all of the murders. He also cited the efforts of Oxnard, California, to target and imprison the city's 30 serious habitual offenders. "As a direct result, in 1987 violent crimes dropped 38 percent, more than double the drop in any other California city. By 1989, when all 30 active, serious habitual offenders were behind bars, murders declined by 60 percent, robberies by 41 percent and burglaries by 29 percent."[47]

Safe Streets Alliance argues that these and other studies show that society should concentrate on imprisoning those who are committing violent crimes and those who are repeat offenders. And to some degree that has occurred nationally, according to the group. In 1986, the nation's state prison population contained 55 percent violent offenders.[48] That statistic is not reflected in California today, however, where the prison population is composed of only 43 percent violent offenders. (Before the Determinate Sentencing Act was adopted, 61.8 percent of the population in prison were there for violent crimes.) And the system in California does not allow the State to focus on violent offenders, even if they are determined to be dangerous and a threat to public safety.

Most violent criminals are serving determinate sentences

While the split between crimes covered by determinate and indeterminate sentencing pays homage to the concept of separating more serious from less serious crimes, the reality is that most violent crimes come under the determinate structure. That structure still governs penalties for rape, child molestation, assault with a deadly weapon and armed robbery, among others. The result is that the majority of inmates in prison

are serving determinate sentences. The chart below shows the types of sentences being served in state prison by violent and non-violent offenders in mid-1993.



Source: Department of Corrections

As the chart indicates, 57 percent of the prisoner population are serving determinate sentences for crimes defined as non-violent in the state's Penal Code, including burglary, grand theft, auto theft and drug offenses ranging from possession of rock cocaine to sale of marijuana. The other 43 percent have been incarcerated for violent crimes, all but 9.8 percent serving determinate sentences. The 9.8 percent figure -- representing 11,396 prisoners -- includes 8.8 percent serving life terms with parole as a possibility and 1 percent serving life without possibility of parole. (Not counted for purposes of this discussion are the 366 condemned prisoners housed on Death Row.)[49]

The impact of the broad scope of determinate sentencing is that both violent and non-violent offenders are treated much the same, although the propensity for them to endanger public safety is quite different. For the small portion of the prison population who are under the indeterminate structure, there is a distinctive difference in management processes:

- Under determinate sentencing, as already discussed in Finding 1, the inmate receives a fixed sentence. This sentence may not reflect the full extent of crimes committed because of formulas that limit consecutive terms. The inmate's time served may be reduced substantially because of time already served in jail and because of work credits earned during imprisonment. No matter how the inmate behaves in prison, short of action that prompts new charges and a new sentence, the release date is fixed. And when that date arrives, the inmate is set free, without having to produce a plan for how he will support himself, stay away from drugs or remain crime-free.

- The indeterminately sentenced lifers must serve a mandatory amount of time before they are eligible to be considered for parole, but there is no assurance they will then be released. Parole is granted at the discretion of the Board of Prison terms, and the inmate could serve his full life term. Every lifer must, by statute, serve at least seven years, and some offenses have higher minimums. A first-degree murderer sentenced to 25 years to life, for example, must serve a minimum 16 years and eight months before becoming eligible for parole consideration. The attempted murder of a public official is a 15-year-to-life sentence with parole eligibility after seven years and six months. Reduced time for these two offenses and several other life terms is available through work incentives, but the most serious offenders are not eligible for work credits.[50]

The board fixes a parole date based on the type of crime, the number of victims, aggravating factors such as a pattern of significant criminal behavior and mitigating circumstances such as generally good performance on probation or parole on previous offenses. Also affecting the parole date are post-conviction credits that can be granted if an inmate studies, works and stays out of trouble while in prison.

Who should serve indeterminate terms is a decision that affects safety

The vast difference between the way determinately sentenced and indeterminately sentenced criminals are processed and managed is indicative of a belief that public safety is best ensured by taking a close look at certain inmates before they are released. A key policy question is who should be included in that pool of carefully monitored inmates. Statistics about the varying levels of security required to house inmates, length of sentences

served, parole revocations and recidivism provide relevant information for addressing the question.

Security Levels: To determine how to house inmates, the state prison system has developed a classification system that takes into account risk and stability factors that have proven over time to be good indicators of how intensive security measures must be to manage the inmate. The prisoner's classification is based on weighted scores for factors such as sentence time, personal history, prior incarceration behavior, medical history and flight risk. An inmate with a score of zero to 18 is a Level I or low-risk inmate; 19-28 is a Level II; 29-51 is a Level III; and 52 and above are Level IVs, or the highest-security inmates. Other factors may be used to override classification scores when making the final decision of where to place an inmate, but for the most part the classification score is a fair representation of how dangerous prison authorities believe an inmate is. The chart below shows a breakdown of inmates by security classification.

INMATES BY SECURITY CLASSIFICATION July 1993		
Security Level	**Number**	**Percent**
Level I	26,332	31.2
Level II	19,949	23.6
Level III	19,829	23.5
Level IV	13,277	15.7
Special Security*	2,271	2.7
Medical/Psych	2,743	3.3
Total**	**84,398**	**100**

Source: Department of Corrections

* Special Security prisoners are considered to be the most violent-prone and trouble-causing inmates in the state system.

** Excludes inmates awaiting classification.

As the chart indicates, almost one-third of the inmates who have been classified are viewed as minimal threats to security and another quarter are slightly more dangerous. The highlighted area shows the number of prisoners that correctional officials believe are the riskiest inmates -- a combined total of 41.9 percent of all inmates. When contrasted with the almost 10 percent

of inmates serving indeterminate sentences, it is clear that many inmates who are serving set terms and will be released on a fixed date have been assessed as extremely dangerous by knowledgeable corrections experts.

Length of Sentences: Beyond the question of what type of inmate is in California's prisons is how long they remain there and the impact that has on the prison system. Nationally, violent offenders receive an average sentence of seven years and 11 months but serve less than three years. Fifty-one percent of violent offenders are discharged in less than two years.[51] California figures are similar. The following chart breaks down the average number of months served by violent and non-violent offenders first released to parole during 1992. (First releases to parole include inmates paroled for their first time and parole violators returned with a new sentence by the courts and then paroled for the first time following the new offense.)

AVERAGE TIME SERVED IN MONTHS BY CALIFORNIA FELONS FIRST RELEASED TO PAROLE IN 1992

Offense	Time Served in State Prison	Time Served Prior to State Prison	Total Time Served
Violent Crimes	27.7	5.3	33.0
Property	14.2	3.7	17.9
Drug	14.2	4.4	18.6
Other	11.0	3.2	14.2
All Offenses	16.8	4.2	21.0

Source: California Department of Corrections

The table shows that among those violent offenders eventually paroled, both determinately and indeterminately sentenced, the average term served was less than three years. (The average terms for specific violent crimes ranged greatly above the 33 months -- such as 168.9 months for first-degree murder, 92.8 months for second-degree murder and 77.5 months for attempted first-degree murder -- but there are few prisoners in those categories compared to the large numbers serving average terms of 30.5 months for robbery and 27.1 months for assault, thus lowering the overall average.) The total time served included credit for jail time prior to sentencing.

As the table indicates, the time served by non-violent felons is even shorter, raising questions as to the cost-effectiveness of incarceration once the State pays for

processing them through the reception center, testing their education, work skills and health, classifying them for housing purposes and transporting them to the prison where they will serve their sentence. Categories of non-violent crime for which prisoners spent less than a year in a state prison on the average include second-degree burglary (11 months), theft (10.8 months), forgery and fraud (11.6 months), controlled substance possession (9.1 months), marijuana posssession (11.5 months) and driving under the influence (9.6 months).

Huge numbers of prisoners spend less than a year behind bars

The in-and-out syndrome does not just apply to a few prisoners. In 1988, 46,000 prisoners spent less than one year in prison, 32,000 spent less than six months and 20,000 spent less than three months. Part of the low numbers of months served stem from time spent in jail prior to sentencing and part are due to parole violators, who can only be returned for up to one year. But 18,000 of those spending less than a year in prison were new commitments, 8,000 of whom spent less than six months in prison and 5,000 who spent less than three months. About 50 percent of all new commitments to the prison system were sentenced to two years or less -- with time served to be reduced by jail time and work credit.[52]

Time off sentences for working cuts most prison stays in half

A large factor in the short duration of prison stays is a state law that allows prisoners to receive one day off for each day served as long as they stay out of trouble and have a work assignment (those on waiting lists for assignments receive one day off for each two days served). While a very limited number of prisoners who have committed severe crimes are not eligible for this reduction in sentence, known as worktime credit, for the most part there is no distinction between those who have committed violent crimes and those who are non-violent offenders.

While the program is an important management tool for prison officials -- limiting violence and providing an incentive for prisoners to behave responsibly -- the lack of differentiation between violent and non-violent offenders means that the criminals whom the public has the most interest in keeping behind bars can reduce their terms at the same rate as those who constitute a far lesser threat to safety. Several critics of the system have pushed for reform, including legislators who have advocated a 15 percent credit for violent offenders -- enough to allow a continuing prison management tool while stopping the wholesale early release of the portion of the prison population that appears to worry the public the most.

Parole revocation rates: The prison system's revolving door can be seen in parole revocation statistics, which will be discussed more thoroughly in Finding 3. Although some steps have been taken to reduce revocations -- largely by simply continuing people on parole despite violations -- the rate remains high. In 1992, about 53,000 parolees were returned to prison, a rate of 61 percent of those on parole.

The revocation rate has jumped to historical highs since the creation of the Determinate Sentencing Act. In 1975, prior to the change, only 11 percent of paroles were revoked. While some blame rising drug use and an increasingly violent society for the revocation increase, many parole experts believe the difference is that inmates who would have been retained in prison under the indeterminate structure are now automatically released back to the streets at the end of their term to commit new crimes. The "quality" of freed prisoner is not as good as it was under the old system.

Recidivism rates. The figures that show how often former prisoners return to a life of crime -- the true measure of the prison system's revolving doors -- are difficult to pin down in California. The yearly parole revocation rate gives a picture of how many offenders are returned to prison in one year, but a longer time period gives a truer picture.

A 1989 study by the National Council on Crime and Delinquency (NCCD)[53] found that over a two-year period, 65 percent of the inmates in the study sample were rearrested for either felonies or misdemeanors. A federal Bureau of Justice Statistics report came up with much the same result on a three-year study of 109,000 prisoners released from prison in 11 states in 1983: 62.5 percent were rearrested, with 46.8 percent reconvicted and 41.4 percent returned to prison. Those arrested after their 1983 release -- 68,000 -- were charged with 326,000 new crimes, including 50,000 new violent offenses.[54]

The same study pinpointed a prior arrest history as the most important factor linked to the likelihood of rearrest. Those who were first-timers in prison before 1983 showed a 38 percent rearrest rate, while those with two prior arrests were rearrested at a 48 percent rate and those with three to five prior arrests hit 57 percent.

Yet another Bureau of Justice Statistics report examined the history of felony defendants in 1990 in a sample of 14,000 cases. Fifty-nine percent of the

defendants had multiple prior arrest charges, including 39 percent with at least five prior arrest charges and 22 percent with 10 or more. Fifty-four percent were known to have at least one prior conviction.[55]

Similar statistics have led to a public push for "three times, you're out" laws targeted at habitual offenders, such as the ones recently approved in the state of Washington and the U.S. Senate. In both cases, criminals convicted of a third violent felony would be sentenced to life in prison. A California version would double the sentences of those convicted of two violent felonies in addition to imposing a life term for the third violent crime.

California has habitual offender laws but they apply to few felons

California is not a stranger to the habitual offender concept. Existing law provides for an indeterminate sentence of 20 years to life for those who have served two prior state prison terms for certain violent felonies and who inflict great bodily injury in the third commitment offense. Another law provides life without the possibility of parole if the person has served three prior terms and inflicts great bodily injury.[56] But the provisions are so narrow that many critics have pushed for expansion of the habitual offender concept for several years.

Among the proposals to reform the habitual offender statutes are to have any person who is sentenced to prison a second time placed under the indeterminate structure; broadening the scope of crimes included in the existing law to all violent felonies, both for prior offenses and for the current one; and giving an indeterminate 20-years-to-life sentence to anyone who commits a violent crime and who has served a prior sentence for a "serious" crime -- a lesser category of crimes as defined in the Penal Code.

Those who oppose tough sanctions on repeat offenders often decry the rush to impose severe penalties that comes after high-profile cases that become media circuses, like the Polly Klaas kidnapping-killing. But it takes little persistence to find case after case of violent crime that is perpetrated by someone who has already served one or more prison terms. In fact, such a background for criminals has become so mundane that it often is not treated as anything special by the media. Two examples:

- A recent small story buried deep inside the Sacramento Bee told of a 75-year sentence

imposed on a 49-year-old man for kidnapping and sexually assaulting an 11-year-old girl. Only the very last paragraph of the story indicated that the man "who has a history of violent crime dating back to 1963 for offenses including battery, assault and robbery, was sent to prison in 1981 for raping an 18-year-old Sacramento County woman..."[57] This man, who by any common definition would be considered an habitual offender, is being imprisoned under a determinate sentence and is capable of earning a reduced sentence.

- Similarly, a small story on the difficulty of tracking sexual predators because they fail to report their movements as required by parole conditions cited a September incident in Southern California. A parolee whose previous offense had been raping schoolchildren in Pacoima "returned after 11 years to the same intersection. He stalked and raped three children before he was caught in Inglewood while trying to attack another young girl."[58]

The release of violent criminals from prison undermines the system

The effect of California's failure to distinguish between its treatment of violent and non-violent offenders is multi-faceted: It ignores concern for public safety, drives up costs, increases prison discipline problems and undermines the credibility of the sentencing system:

- The Rand study on violent predators and other statistical data already highlighted indicate that public safety is best protected when violent criminals are targeted for long-term incarceration.

- The rapid return to prison -- either through parole revocations or recidivism -- of people who under an indeterminate sentencing system would never have been released from prison is extremely costly for the State. Processing costs to churn inmates in and out of the system run about $9,000 per inmate.

- Prior to 1977, a powerful disciplinary tool and disincentive for violence-prone prisoners to commit further crimes in prison was the fact that their release date was greatly affected by their behavior in prison. Today, Department of Corrections officials complain, there is no such linkage and prisoners know that they will be released in a short amount of time regardless of their behavior.

- That the system lacks credibility is evident from the frequent complaints by the public and officials:

  - The arrest of Polly Klaas' killer, a two-time kidnapper, prompted an array of comments including actress Winona Ryder ("It's infuriating. The fact that someone like this could be out of prison and walking around after he was convicted of kidnapping. It's outrageous.") and Governor Wilson ("After seeing the rap sheet for Richard Allen Davis, we know that had tougher measures been on the books, this vicious thug would still be behind bars.")[59]

  - The sentencing of Damien Monroe Williams to 10 years for participating in the vicious beating of truck driver Reginald Denny and others brought quick reaction from people like Los Angeles County District Attorney Gil Garcetti ("Mr. Williams will serve only about four years and will come out the same way you saw him, with a big smile on his face and waving to his friends and family. In our opinion, Mr. Williams deserves 10 years of actual time.").

  - A police lieutenant, commenting on Sacramento's 89th homicide of 1993, said criminals have no fear of the system and are increasingly unwilling to bargain away homicide information for reduced time behind bars because they do not mind doing time. "What does that tell you when they say, `Your system doesn't scare me'? If you are of gang mentality, what is a prison but a gang?"[60]

Recognizing the importance of the demarcation between determinate and indeterminate sentencing, the Legislature's Joint Committee for Revision of the Penal Code held a hearing in March 1990 on the advisability of shifting that balance. A Board of Prison Terms commissioner testified that additional crimes should be included under indeterminate sentencing. He advocated putting all crimes classified as "serious felonies" as defined in Penal Code Section 1192.7 under the indeterminate system. Those include: murder, voluntary manslaughter, mayhem, rape, sex crimes, lewd acts on a child under 14, crimes with great bodily injury, offenses with weapons,

robbery, arson, selling drugs to minors, residential burglary and exploding a destructive device.

The commissioner described a case about which he had first-hand knowledge. The inmate was a fourth-term prison gang member that everyone assumed would reoffend once he was released. Law enforcement unsuccessfully tried to track him when he walked out the prison gates.

> *Within two weeks he had committed over seven felonies involving firearms and the last time I went in to testify at a parole revocation hearing, I had a picture of him -- surveillance photo out of a bank -- with him holding a shotgun with a ski cap and I'm reminded of that. That's just one example of many that came about and we had no control.* [61]

Weighing in with support was an appellate court justice who testified, "I think that degree of danger exists in many other crimes and when we address it simply by lengthening the term, we're not addressing whether that person's going to be a danger when (he) gets out."[62]

All of the problems and the statistics outlined above are a powerful argument for shifting more violent crimes into the indeterminate sentencing structure. The result, however, would be to increase the time served and, potentially, the number of inmates in state prisons, which already are operating at almost double capacity. The strength of such an approach would be to keep violent inmates incarcerated until they appeared ready for parole, potentially reducing the extremely high return rates of failed parolees and increasing public safety.

Keeping violent felons in prison longer would add to overcrowding

Prison capacity -- even with a building program in progress -- is fairly finite, so any reform that adds to the prison population stress needs to be coupled with ways to free existing beds. The key to any change, then, in how violent offenders are treated is the other side of the coin: how the sentencing structure treats non-violent offenders. At present, there are few options. Experts have told the Commission that one of the most glaring problems of the current criminal sentencing structure is the lack of so-called intermediate punishments: The sentencing options that fall somewhere between probation and state prison.

The 1990 report of California's Blue Ribbon Commission on Inmate Population Management was particularly definitive on the needed development of intermediate punishments and, in particular, on drug treatment options. The Little Hoover Commission does not intend to duplicate the Blue Ribbon Commission's extensive work here, other than to highlight some of the options:

- ***Electronic monitoring:*** Nearly always combined with house arrest. An offender wears a bracelet on the ankle or wrist and, using an active or passive mechanism, verifies he is home at certain hours of the day.

- ***Intensive supervision:*** Offenders are monitored very closely by a parole or probation officer, with contact in some cases as often as once a day. Intensive supervision programs in Georgia, Iowa, Wisconsin and Ohio that diverted groups of offenders at sentencing were successful in posting lower recidivism rates than similar programs in which offenders served their time in prison, according to a 1990 General Accounting Office study.[63]

  The same study surveyed preliminary results on relatively similar intensive supervision programs in three California counties -- Los Angeles, Contra Costa and Ventura -- and concluded that despite the considerable resources committed to a population of high risk offenders, they did no better than probationers who did not get the added services.[64]

- ***Community drug treatment:*** The success of drug treatment is dependent on the duration of the program and regular drug testing.[65] According to the experts, the participants *will* relapse, but the outcome depends on the frequency and severity of the relapses. Community drug treatment may be cheaper, since it has been shown that locally treated drug addicts are less likely to violate probation.

- ***Community service orders:*** Mainly low-level offenders, in lieu of going to jail, serve on projects such as park and highway maintenance. Other community service orders may instruct offenders to do volunteer work or put in time with a non-profit agency. Virtually all California counties have used

community service as a punishment for many years. Jail overcrowding is a major inducement to establishment of community service orders.

- ***Fines:*** In England, 80 percent of all misdemeanor-level crimes (excluding traffic) involve fines as punishment. In the United States, federal felony fines now have been raised to a maximum of $250,000 per individual.[66]

- ***Restitution:*** If an offender is granted probation, the court may impose a restitution order of up to $10,000 to the State Victims of Crime Program or to the victim of up to the full economic damage.

In addition to the intermediate punishments mentioned above, other alternatives currently used only after prison commitment might be viable at the time of sentencing. These could include:

- ***Community Corrections Facilities:*** The Department has 5,000 beds in community correctional facilities. These "mini-prisons," ranging in capacity up to 450 inmates, include seven public facilities run by cities and five facilities operated by private correctional organizations. Inmates occupying these facilities are low-security inmates serving time for non-violent offenses, often first-time offenders and parole violators.

- ***Mother\Infant Program:*** Women offenders with children under six can remain in custody with them and participate in family skills classes, education and work furlough near the end of their sentences.

- ***Boot camps:*** The Department of Corrections under 1992 legislation established a boot camp program (called shock incarceration in some states) as a pilot project in six Bay Area counties. The participants are first-time non-violent felons with two years or less to serve who are released after a 300-day intensive work and training regimen. Twenty-six states have set up boot camps, but a study found that while they are too new for any definitive results, boot camps appear to reduce overall corrections costs by releasing prisoners earlier. The study said there appeared to be little improvement in recidivism.[67]

Alternatives to prison may not save money or reduce crowding

A major drawback to sentencing felons to such intermediate punishments is the issue of "net widening" --that is, sentencing offenders to intermediate punishments who ordinarily would have been sentenced to probation. Net widening would add, not subtract, from the state's criminal justice costs. In addition, few of the intermediate punishments are less expensive than incarceration. But if they are available for judges both legally and programmatically, these sentencing options could reduce costs over the long term by increasing chances of successful rehabilitation and free prison space to house violent criminals for longer periods.

While intermediate punishments are clearly a productive avenue for diverting offenders from prison, two policy issues need to be addressed in any scheme that is eventually put into place: Who among the non-violent offenders will be diverted and how can the programs be structured to satisfy public concerns?

The first question was addressed by a 1992 University of California, Berkeley, report that targeted parole failures, drug offenders and non-persistent property felons as the groups responsible for the major part of prison growth during the 1980s.[68] The report discussed mechanisms for dealing with these populations, including developing alternative programs. Parolees will be addressed in Finding 3 of this report; current statistics for drug and property offenders, as well as other non-violent offenders are discussed below.

Prisoners classified as non-violent offenders by statute fall into three main categories: property offenses, drug offenses and a catch-all entitled "other offenses:"

- Property offenders in mid-1993 comprised 26.8 percent of the prison population and include felons sentenced for burglaries, multiple petty thefts, vehicle thefts, fraud, forgery, grand theft or receiving stolen property. Petty thieves, who in prior years were charged as misdemeanants and sent to jail, are now sent to prison if they have a prior theft conviction. Just over 4,000 prison beds are currently occupied by petty theft offenders.

- Drug offenders, 24.3 percent of prisoners, include those convicted of possession, possession for sale, sale and manufacturing of a complex array of controlled substances plus marijuana. Simple

possession of a controlled substance was the sentencing offense for 7,000 inmates.

- The "other" grouping contains 6 percent of the inmates. Their offenses include escape, arson and possession of a weapon. Also classified in this category is driving under the influence of alcohol or drugs (DUI), with 2,600 inmates.

An important aspect of these statistics is that three of the non-violent crimes -- petty theft, possession of a controlled substance and driving under the influence, altogether comprising 13,600 inmates -- are offenses that formerly could be classified as either misdemeanors or felonies and were most often punished with jail time. The Legislature has increased the sentences, and the effect has been to move them into the State Prison system. Another 2,180 are serving sentences for receiving stolen property.

While these inmates -- almost 16,000 or 14 percent of today's prison population -- represent a potential pool to be diverted away from prison, the implementation of such a policy will require careful structuring to meet public concerns. At least one study indicates that the public views a far broader range of crimes as violent than does the Penal Code. The California Correctional Peace Officers Association in April 1993 commissioned a statewide survey on public attitudes concerning violent crime. The survey asked respondents whether they considered certain crimes to be violent crimes, although all of the offenses about which they were questioned are categorized in the prison system as non-violent crimes. The chart on the next page shows their answers.

PUBLIC PERCEPTION OF NON-VIOLENT CRIMES	
Non-Violent Crime	**Percent Who Say Violent**
Driving under influence	77%
Burglary	61%
Grand theft	61%
Possession of a weapon	59%
Vehicle theft	51%
Possession of a controlled substance	42%
Petty theft (with prior)	33%
Receiving stolen property	26%

Source: California Correctional Peace Officers Association

The highlighted areas of the chart indicate the five crimes now defined by statute as non-violent that the majority of the public feels are violent. The survey makes it clear that the public has strong feelings of personal violation about non-violent crime, even though they are not harmed physically by the act.

A key concept of diverting prison population would be to define narrowly the non-violent crimes involved. Another element would be to ensure that the alternative programs satisfy the public sense of justice and desire for punishment. While prison would be the "tough" answer to violent crime and the more intrusive non-violent crimes, the alternatives would have to be well designed to fit the crimes covered. For instance, extensive use of high-dollar-amount fines for white-collar crime could reassure the public that crime does not pay even if no prison time is involved. Alternatives for dealing with driving under the influence could include confiscation of a vehicle or mandatory use of a drug that causes alcohol consumption to make the person ill.

The Commission is aware of another example, in which a prisoner is serving a three-year term as a result of a fraudulent investment case, with the person's actual guilty plea only relating to a failure to file a consumer information form.[69] It is possible that much of the public would prefer to see the prison bed space now occupied by this inmate used for a violent, repeat offender, while the inmate's punishment could be a fine that roughly is equal to the money acquired through fraud and a strict probation

that precludes any further pursuit of the fraudulent business.

Prison beds need to be kept open for violent, repeat criminals

When all of the data about the results of releasing violent criminals according to a rigid calendar is examined, it becomes clear that a rebalancing of imprisonment goals is needed. Limited prison space should be reserved for the criminals that need to be kept away from society until they have shown some sign of change. Alternatives that punish creatively need to be developed and implemented so that offenders who are not a safety risk to the public do not take up needed beds in state prison.

Recommendation #8: The Governor and the Legislature should shift the demarcation between indeterminate and determinate sentencing so that all or most violent crimes fall under a sentencing structure that ensures inmates are regularly evaluated, with the severity of their crime, their behavior in prison and their future prospects linked to their release date.

Placing more violent crimes under the still-existing indeterminate sentencing structure would enhance public safety and change the perception that violent, habitual criminals are not being kept off the streets.

In the event a Sentencing Commission is created, the commission should establish the boundaries of such a change, coordinating it with the other parts of the criminal justice system. Alternatively, changing the demarcation also could be accomplished by the Governor and the Legislature through direct legislation. The reform should include careful guidelines for parole decisions and should be designed to reach decisions based on expertise rather than politics -- critical steps for avoiding the pitfalls of the Indeterminate Sentencing system before 1977.

Recommendation #9: A Sentencing Commission, or alternatively the Governor and the Legislature, should authorize the use of a greater range of intermediate punishments for a narrow segment of non-violent offenders.

Following in the footsteps of the Blue Ribbon Commission and acknowledging its powerful contribution in the alternative punishment and drug rehabilitation arena, the Commission backs this needed reform. The ability to place appropriate prisoners in intermediate sanction programs can be authorized in two different parts of the criminal justice system:

- Judges could have the power to use intermediate sanction options in place of determinate sentencing parameters.

- The Department of Corrections could be given the authority to divert appropriate prisoners into intermediate sanction programs.

The legislation should include the narrowly defined groups of crimes that would be suitable for the intermediate sanctions: Petty theft, driving under the influence, possession of drugs for use and receiving stolen property are possibilities.

Recommendation #10: The Governor and the Legislature should expand California's definition of habitual offender so that people who are repeatedly sentenced to prison remain there on indefinite terms until regular evaluation demonstrates that they have developed a potential to lead a crime-free life.

Statistics indicate that the more prior arrests and convictions a criminal has, the more likely he is to re-offend. Keeping these people behind bars has the potential for drastically reducing crime since they also frequently are the criminals who commit the highest levels

of crime. California's habitual offender laws are too narrow to be effective.

Recommendation #11: The Governor and the Legislature should enact legislation to reduce sentence reduction credit for violent offenders.

Work credit is a valuable incentive that is used by prison management to keep prison populations under control. But it also can be crafted to work as a deterrent to violent crime by ensuring that those who engage in violence serve close to their full term. Treating violent and non-violent offenders differently is also an issue of equity; punishment should be harsher and more difficult to elude for violent crime.

Finding #3: The present parole system is not structured as an effective deterrent to criminal behavior.

The concept behind parole, a theoretically important element of the sentencing structure, is that a person released from prison needs some level of supervision as he becomes integrated into life in the free world. Parole provisions, in general, require a former prisoner to maintain a certain standard of good behavior or face a return to custody. In the era of indeterminate sentences, inmates were not released without forming a specific plan for housing, means of support and other daily living factors -- and the threat of parole revocation was a powerful mechanism to encourage parolees to follow the plan. But today, parole more often is a wrist-slapping exercise that drives up criminal justice costs, fails to protect the public, is subverted by authorities to hold down local costs, and does little to add structure to a former prisoner's life. Recent steps taken by the Department of Corrections to stem the flow of parolees back to prison have accomplished that finite goal at the expense of worsening the system's flaws.

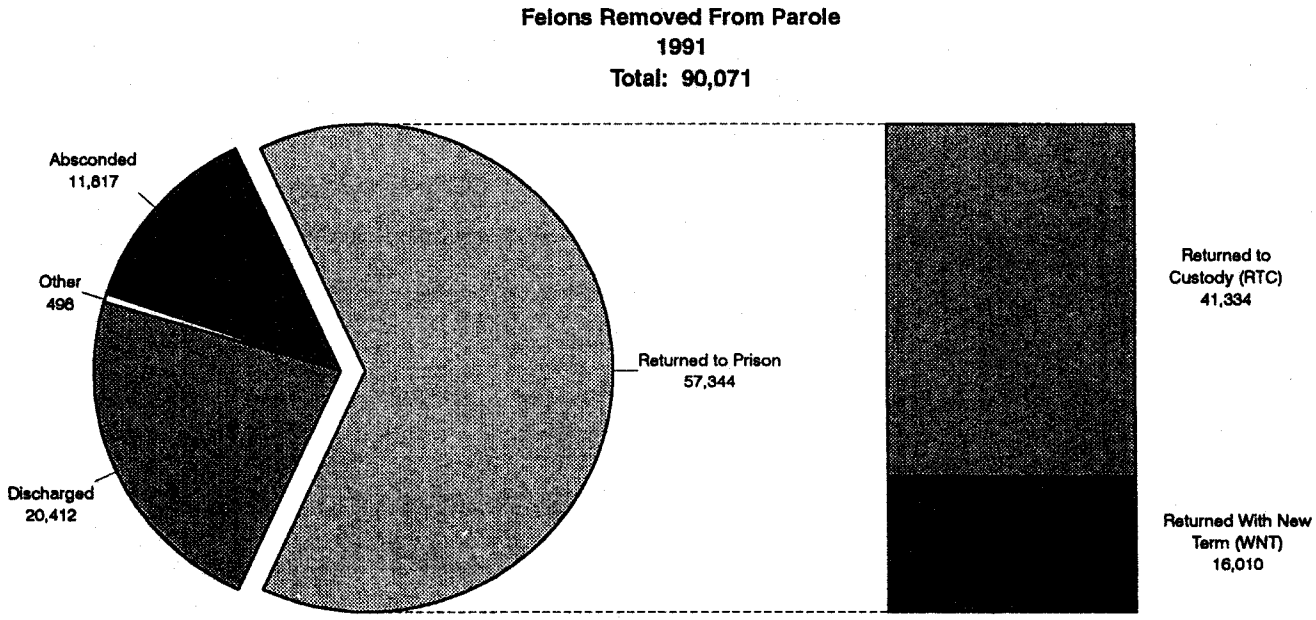
A statistical portrait that helps understand the population on parole is provided by the chart on the next page, which shows the offense categories for those on parole in 1991 (for whom information was available).

CONVICTION OFFENSE OF PAROLEES 1991		
Offense	**Number**	**Percent**
Total Violent Crimes	19,284	25
Homicide	2,051	2.7
Robbery	7,024	9.1
Assault	5,571	7.2
Sex offenses	4,306	5.6
Kidnapping	332	0.4
Total Property Offenses	24,978	32.4
Burglary	11,253	14.6
Theft	11,845	15.4
Forgery/Fraud	1,502	2
Other	378	0.5
Total Drug Offenses	25,719	33.4
Possession of controlled substance	10,531	13.7
Sales, etc., of controlled substance	13,472	17.5
Possession of marijuana	28	0
Sales, etc., of marijuana	1,688	2.2
Other Offenses	7,134	9.3
Total Parolees	**77,115**	**100**

Source: California Prisoners and Parolees 1991

As the highlighted areas of the chart reflect, roughly one-third of the people on parole are there for property offenses and another one-third for drug-related offenses. But fully one-quarter of those on parole have been released after serving terms for violent crimes.

Several other sets of statistics make it clear how much impact parolees have on the state's prison system: At the end of 1991, 82,603 people were on parole. During the course of that year, 96,640 felons were placed on parole and 84,877 were removed from parole supervision. The chart on the next page shows the reasons for removal:



Source: California Prisoners and Parolees 1991, Page 7-3

As the chart indicates, two of the largest categories left parole status by returning to custody in state prison. One group is termed the return to custody prisoners (RTCs), who have violated the conditions of their parole -- remaining drug free, for example -- but have been convicted of no new crime. The other group is the parole violators returned with a new term (WNTs) because of a conviction for a crime that occurred while they were on parole. Between them, these two groups made up 57,344 admissions to prison in 1991 -- a figure that constitutes a 69.7 percent return rate for the total parolee population and a number that is larger than the 38,253 people who entered prison as new felons that same year.

The return rate becomes even more startling when compared to the parole revocation rates in other large states: During 1991, the most recent statistics show, New York returned 14 percent; Pennsylvania, 26 percent; Illinois, 25 percent; Ohio, 42 percent; Texas 46 percent; and California 67 percent.

A third set of data brings some historical perspective to the State's experience with parolees. The chart below shows how many parolees have been returned to prison annually for the past 20 years.

RATE OF RETURN TO CUSTODY FOR PAROLE POPULATION, 1972-1992

Year	Total Parolees	Returned to Prison	Return Percentage
1972	14,848	3,245	21.85
1973	12,996	3,345	25.74
1974	11,549	2,383	20.63
1975	14,556	1,649	11.33
1976	13,049	2,233	17.11
1977	13,258	2,031	15.32
1978	9,102	2,585	28.4
1979	9,382	2,558	27.27
1980	10,460	2,995	28.63
1981	11,009	3,885	35.29
1982	13,176	6,009	45.61
1983*	18,268	8,435	46.2
1984	24,404	11,409	46.8
1985	28,892	16,311	56.5
1986	33,662	23,849	70.8
1987	40,020	31,584	78.9
1988	50,773	42,472	83.7
1989	59,675	51,016	85.5
1990	70,574	54,379	77.1
1991	82,247	57,344	69.7
1992	89,259	52,871	59.2

Source: California Prisoners & Parolees 1991, Data Section, Table 7

* Figures for 1983-1992 have been updated by the Department to incorporate Parolees At Large, those who escaped the system, in the total parolee population

As the chart indicates, not only the pure numbers of parolees returning to prison have escalated dramatically but also the percentage of the total parolee population in any one year that returns to prison has increased sharply. In 1975, two years before the Determinate Sentencing Act was adopted, 1,649 parolees returned to prison, for a rate of 11.33 percent. The peak came in 1991 when 57,344 parolees were returned (although the rate peaked in 1989 when 85.5 percent of the total parole population returned to prison). The reasons for the reduction in 1992 will be explored later in this finding.

What has changed over the past 20 years to cause the dramatic increase in revocations? While many people may point to an increasingly violent and crime-prone society or the high rate of drug usage, there are at least five factors that are brought up by parole experts: 1) the effect of switching to determinate sentencing, 2) the lack of pre-release planning, 3) the limited penalty for parole violation, 4) the effect of an overcrowded prosecutorial system and 5) a shift in Department of Corrections revocation policies.

Determinate Sentencing: Before the passage of determinate sentencing, an inmate was freed on parole at the behest of the Adult Authority, which could hold an inmate for up to the maximum of his indeterminate term. Although the Adult Authority had no specific guidelines to determine when a prisoner would be released, the group looked at factors such as the seriousness of the offense, the inmate's behavior in prison, his apparent remorse for the crime and his plan for employment and housing after release.

Parole used to be an important incentive for inmates to change

While most agree there were instances of favoritism in the decisions to release or retain a prisoner, the structure gave parole officials an important tool -- the ability to assess the inmate's readiness for release. The Adult Authority rejected for parole an offender who demonstrated he was unready by causing problems in prison, refusing to work or educate himself or refusing to confront his criminal behavior.

Determinate sentencing, on the other hand, allows the inmate to calculate to the day when he will be paroled. Freedom under the present structure makes no concessions to readiness and places none of the responsibility on the inmate. The result, according to many parole officials who spoke to the Commission, is that many prisoners are released with the all-but-certain

potential of returning to crime and eventually to prison. This observation is confirmed by the historical climb in revocation rates.

While the parole structure in place before determinate sentencing was created had theoretical advantages, the practical realities of off-the-cuff decisions made by political appointees made it a key element of why determinate sentencing was adopted. Criticisms of the system and court rulings about lack of standardized procedures led to the creation of the Board of Prison Terms to replace the Adult Authority when determinate sentencing was adopted. The Board, which handles the small proportion of prisoners with indeterminate sentences, today has written criteria and follows procedural guidelines that are designed to eliminate inequity and favoritism. Describing the current system, a Board commissioner said:

> *In making decisions to grant parole under the existing system, the Parole Board considers such factors as the nature of the crime or crimes committed by the prisoner, the prisoner's prior social and criminal history, psychiatric factors, in-prison behavior, the prisoner's efforts to upgrade himself educationally, whether or not the prisoner understands the underlying causes of his crime and has taken measures to prevent any reoccurrence, whether or not the prisoner expresses remorse for his criminal conduct, the prisoner's parole plans, and finally, the risk to the public if the prisoner is released.*
>
> *The existing system also has provisions which provide for uniformity and elimination of disparity in setting the terms of prisoners by the Parole Board by requiring the Board to rely on the rules of the Judicial Council and the Sentencing Guidelines of the Determinate Sentencing Law when granting parole dates and setting the terms for life prisoners. For example, the Parole Board must consider factors in mitigation or aggravation of the crime, prior prison terms, multiple offenses and a matrix of suggested ranges of terms.*[70]

As the Commission already has recommended in Finding 2, shifting violent criminals into the indeterminate

sentencing structure would place more prisoners under individualized scrutiny before they are released, without subjecting them to the unfairness of the old system.

Pre-release planning: With a fixed release date, prisoners have no particular incentive to participate in planning for their future, a requirement that could delay release under the old parole system. And general pre-release courses, which help familiarize inmates with skills like job hunting or applying for assistance, are a hit-and-miss offering at most institutions.

Lack of pre-release planning means former prisoners are set adrift

This results in two weaknesses: The prisoner is not forced to think through an adequate plan for living in the outside world, and the parole officer has no listing of commitments made or intentions formed by the freed felon as part of a release process.

Writing from the vantage point of someone who worked under both systems, a psychiatrist observed:

> *I recently interviewed a man serving a term for robbery who was to be released shortly, on the date set by the judge three years earlier. He told me that he was surprised to see me, and that he was not thinking about getting out of prison because it was hard to believe he soon would be out. A release plan had been prepared with his counselor according to routine, six months earlier, but he could not recall what it was that they had planned. He thought he would live with his mother for a while and was not sure whether he would look for work or join the gang he had belonged to before....*
>
> *Ten years earlier, his years in prison would have begun with a diagnostic study aimed at identifying the factors that contributed to his criminal behavior....Under the indeterminate sentencing program, there would have been records of several board hearings for which progress reports had been prepared. These would lead to a hearing, parole decisions would be made and the term fixed.*
>
> *This prisoner I describe has lost not only the benefits of specific rehabilitative efforts, but also the challenging of his own desire and resources for change. The old system,*

> *at least, asked him questions. The new system says, by its silence, that we have no interest in him, in what he did in the past, or in what he will do in the future. Many prisoners admittedly did not respond -- but some did; and for some of them, it helped them to choose not to return to criminal behavior.*[71]

The problem with the lack of pre-release planning is particularly compelling with inmates who are released directly from security housing units, the maximum-security segment of the prison system that much of the public would equate with "solitary confinement." By regulation, these prisoners -- who for the most part have assaulted other inmates or guards in prison or who belong to prison gangs -- have neither work nor education assignments and have limited contact with other people, even having outdoor exercising time alone. The practice of releasing them straight to the streets at the end of their terms was recently criticized in a "60 Minutes" piece, which told of one former inmate who within days of leaving Pelican Bay sexually assaulted a woman. Another news story referred to a Pelican Bay release who was homeless and curled in a fetal position for days after being put on the street. Critics of the prison system believe these types of prisoners should be given assistance and guidance before being released to live among an unsuspecting public.

Many parole officials who have been in the business long enough to know parole under both the indeterminate and determinate systems cautioned the Commission that the pre-release planning process often was manipulated by the clever con artists behind bars. But all who spoke to the Commission agreed some form of planning that addresses intended residences, means of support and other issues would be better than no planning at all. The criminals really know how the system works, one parole official told the Commission -- and what they know now is that there is a system in place that does not have the power to manage them and only addresses the lowest common denominator of criminal. In fact, he said, it is a system that actually benefits the career criminal.[72]

Limited penalties: The present parole system offers little in the way of discouragement to a parolee determined to return to a life of crime. Under the previous system, once he was released, the inmate had a powerful incentive to go "straight." Many inmates faced a lengthy period of parole, ranging up to 15 years. Some were on parole for life. If an offender violated his parole, he could be sent

back to prison for the remainder of his indeterminate term. A robber originally sentenced to a five-year to life term could go back for life as a result of his parole violation.

In fact, many critics at the time argued that the threat of sending a parolee back to prison for such a long time made the parole officer far too powerful, particularly since recommendations were usually followed by the Adult Authority. However, today due-process protection and standardization of criteria have all but eliminated the potential for abuse, according to many parole observers.

Prison time for parole revocation is limited to one year

At the same time, the drastic curtailment of the punitive aspects of parole has left the system with little clout over former prisoners. Currently, determinate sentences have a four-year total parole period, and the maximum time an inmate can spend in prison on a parole revocation is one year, whether he was sentenced determinately or indeterminately.

The one-year maximum penalty quickly gets chopped down to allow for a workable scale of punishments, according to Corrections officials. For instance, in 1991 the average amount of revocation time imposed on parole violators who were not sentenced to a new term was 7.3 months. The following chart shows the type of violations, the number of parolees returned and the average number of revocation months assessed:

REVOCATION TIME FOR PAROLE VIOLATORS WITHOUT NEW SENTENCES, 1991

Type of Violation	Number of Parolees	Percent of Returns	Average Revocation in Months
Violent crime	6,000	20	9.6
Property crime	5,298	17.7	8.5
Other	8,694	29	7.3
Drug Crime	7,164	24	5.8
Parole process*	2,788	9.3	4.1
Total	**29,994**	**100.0**	**7.3**

Source: California Prisoners and Parolees 1991

* Parole process violations are violations of the technical provisions of parole, such as not reporting one's whereabouts.

As the chart indicates, even violent action by a parolee earns less than 10 months in prison on the average, while parolees who ignore the technical provisions of their parole hardly settle into a new prison cell before they are ready for release, serving an average sentence of just over four months.

For some, the stay is even shorter. In 1991, 8,000 parolees were sent back to prison for Board of Prison Term consideration but their parole was not revoked and they were soon released. In 1992, of the 35,000 return-to-custody violators, more than 11,000 were released after investigation by the Board.

At one time, the standard practice would have been to house these violators in county jails while they waited for due-process procedures, but in recent years cell space limitations locally have forced the State to return the parolees whose parole may be revoked to state facilities. As a result, at any one moment, about 10,000 parole violators (without new terms) are housed in prisons and community corrections facilities. The cost of processing these people in and out of the sophisticated prison classification and evaluation system is excessive when so little time is served, many experts believe.

Parole agents told the Commission that not only do parolees have very little fear of being sent back to prison, but also in some cases homeless parolees make plans to provoke a violation report that will put a roof over their head during the winter months. The high failure rate of parolees is evidence that the system has too little teeth and is not designed to serve the purposes of parole.

Overcrowded prosecutorial system: Parole violations have climbed to such epidemic proportions that police, parole agents and prosecutors spend inordinate amounts of time arresting, processing and prosecuting violators.

In Shasta County, for example, the Redding Police Department keeps files on the 660 parolees in its area for use when investigating crimes. "It's a truism that recidivism keeps us in business," said Shasta County District Attorney Dennis Sheehy. "The number of parolees you have in your community will have a direct relation to your crime rate."[73]

New crimes sometimes not pursued when revocation occurs

But while the parole violators may jam the system, the return-to-custody process also offers the local components of the criminal justice system a way out that is quick, cheap and sure when new crimes are committed. Since there is no bail on parole violations and the parole hearing process allows looser standards of evidence, returning parolees suspected of crimes to state prison is a convenient method of removing them from society while prosecutors and police, at state housing expense rather than county cost, determine if there is enough evidence to bring them to trial. In some cases, when evidence may not be convincing enough for a jury trial or when the resultant verdict may not yield much in the way of a sentence, prosecutors forgo pressing charges, reasoning that the parole violation penalty will be more than they can win for their efforts.

Thus, parolees suspected of violent crimes may be simply returned to prison with a revocation penalty rather than tried, found guilty and sentenced for their new act. As the chart above reflects, in 1991 20 percent of the return-to-custody violators had their parole revoked for violent crimes. In 1992, that figure rose to 30 percent, including 141 murder suspects -- all of whom will be released in less than one year.

The effect of the use of the parole system in this way is two-fold: Criminals who should be punished for their new crimes escape with a light sentence. And parolees who are innocent of what they have been accused of are not allowed to have a trial based on the standard of guilty beyond a reasonable doubt. Both serve to undermine the credibility of a system that should be designed to carry out public policy rather than subvert it.

Shift in revocation policies: Although the historical rate of parole revocations has climbed rapidly, the rate began to drop in 1990, with a sharp decline in 1992. This is the result of policy changes that affected one segment of parole violations, those who are returned to prison without new terms, as the following chart shows:

RATE OF FELON PAROLEES RETURNED TO PRISON 1983-1992		
Year	Return-To-Custody (Without New Terms)	
	Number	Percent*
1983	5,275	28.9
1984	7,421	30.4
1985	11,269	39.0
1986	18,059	53.6
1987	25,207	63.0
1988	34,014	67.0
1989	39,976	67.0
1990	40,309	57.1
1991	41,334	50.3
1992	34,932	39.1

Source: Estimates and Statistical Analysis Section, Department of Corrections

* Percent of total parolee population (see previous chart on page 68 for figures).

As the highlighted area of the chart shows, the return rate of those violating parole but not convicted of new crimes fell in 1992 to just under 40 percent, compared to rates that had been running at 50 percent and above for several years.

The downturn in the revocation rate reflects a change in parole revocation policies. In 1989, the Department embarked on a policy overhaul aimed at standardizing the way in which parole agents made revocation decisions on return-to-custody inmates, that is, those offenders with no new felony convictions but with parole process violations or violations that could not be proven in court.

The standard process formerly had been that once the agent recommended the offender's parole be revoked, the felon was sent back to prison and a hearing was scheduled before the Board of Prison Terms. In the vast majority of the cases, the board upheld the agent's

recommendation and the inmate was imprisoned for a specific term of up to a year.

Using computerized comparisons of the revocation rates among parole agents, the Department found widely differing criteria used by agents to recommend revocation of parole to the Board of Prison Terms. For example, one agent might recommend revocation of an inmate's parole for a single positive drug test, while another agent might allow a series of positive tests and some petty crimes before moving to revoke parole.

"Standardizing" parole decisions resulted in sharp drop in revocation

The Department developed guidelines and by mid-1992 was training parole supervisors in casework decisionmaking. Behavior eligible for revocation proceedings included violence, weapons violations, fraud over $1,000, drug sales, serious mental illness, failure to register as a sex offender and other behavior the parole authorities believe to be very serious.

The effect was almost immediate. While the revocation rate for this population was more than 50 percent for 1991, the rate dropped sharply after the training. The following chart shows the quarterly revocation rates for late 1992 and early 1993:

PAROLE REVOCATION RATE FOR RETURN-TO-CUSTODY VIOLATORS

Calendar Quarter	Rate of Revocation
July-September 1992	41.6
October-December 1992	35.7
January-March 1993	35.5
April-June 1993	38.5

Source: Estimates and Statistical Analysis Section, Department of Corrections

The Department argues the guidelines were a "standardization" of revocation policy. Others claim the guidelines are meant to cut the parolee population in state prison by continuing violators on parole unless the violation is very serious. A Feb. 8, 1992 departmental memo to regional parole administrators bears out the contention that the goal of the new guidelines was to return to prison only the most flagrant parole violators:

> *As you are aware, the (Parole) Division used an excessive number of prison beds in the last four weeks putting us about 300 beds over our budgeted allocation. These and related issues were discussed in our conference call this afternoon and we agreed to take the following actions:.....3) staff will emphasize the need to exhaust community placement and program options unless the violation involves serious criminal misconduct...*[74]

Unfortunately, the standardization policy and the strong pressure to avoid returning violators to prison was not accompanied by an increase in community-level options, according to parole agents. All too often, they told the Commission, their only choice is to "counsel" a parolee to change his ways.

A second development in parole policy was the transfer in January 1993 of the parole revocation process from the Board of Prison Terms to the Department of Corrections. The Department now makes revocation decisions for the majority of the parolees and the board has jurisdiction over revocation for indeterminately sentenced inmates only.

The effect of the two changes has been to create an important "safety valve." Since the Department has no control over the inmates flowing into the system, revising parole policy gives the Department a lever over those who are returning. For 1992, the parolees returning to prison were reduced by about 4,500 after more than a decade of annual increases. With an average revocation term of slightly more than half a year and an annual cost of housing prisoners at about $20,000, the Department can argue that it has saved $45 million to address more serious criminals.

The reductions in inmate population are being made, however, among the failures of the parole process, and a strong argument can be made that as a result public safety is endangered. As the chart below shows, the sharp drop in commitments to prison of parole violators simply returned to custody has been accompanied by a rising number of parolees who are returned with crime convictions and new sentences.

NUMBERS OF PAROLEES RETURNED WITH NEW SENTENCES AND VIOLATIONS, 1991-92				
Year	Parolees Returned with New Sentence		Parolees Returned for Violation	
	Number	Percent*	Number	Percent*
1991	16,010	19.5	41,334	50.3
1992	17,939	20.1	34,932	39.1

Source: Estimates and Statistical Analysis Section, Department of Corrections

* Percent of the total parolee population.

As the chart reflects, at the same time the number of parolees returned for violations was dropping by some 6,000, the number of parolees convicted of new crimes increased by almost 2,000. It would be hasty to make a judgment based on one year's data rather than waiting for a historical trend to develop -- and it should be noted that there is no proof that the 2,000 new offenders would have been among those returned to custody for parole violations had there been no "standardization" of revocation policies. But there is anecdotal evidence that a price is being paid for reducing the number of parole violators:

- Leon Murphy, a parolee with prior convictions for voluntary manslaughter, possession of a dangerous weapon and possession of controlled substances, was charged with murdering a man in a Sacramento crack house February 24, 1992. Prior to the murder, Murphy was continued on parole and referred to a community treatment program after testing positive for drugs.

- Dennis Jones, a parolee with convictions for robbery and grand theft, was charged with severely beating and nearly killing an elderly Stockton man March 23, 1992. Jones committed the attack four days after he was continued on parole following his arrest for possession of rock cocaine.[75] Parole officials say they presumed he would be prosecuted for the new crime. His parole previously had been revoked on five occasions between 1989 and 1991.

- Cedrick Singleton, a parolee released in 1991 after serving a sentence for auto theft and possession of drugs for sale, was arrested in August 1992 for strangling a Pasadena man with an electric cord and raping, then riddling with bullets, the man's wife. Two weeks before, Singleton had been jailed for violating his

parole when his parole agent found him using marijuana and possessing a five-inch hunting knife. A week after the agent picked him up but before the murders, the Department freed Singleton pending his parole revocation hearing. Singleton's parole agent opposed the release, but the agent's supervisor overrode him. The double murder occurred six days later.[76]

- Glen Cornwell, a parolee released in September 1992 after serving eight years for multiple armed robberies, was arrested for the June 1993 murder of a Sacramento man during a day-time street robbery. In December 1992, he had been arrested for possession for sale of rock cocaine, possession of a firearm and possession of marijuana but was released from jail and continued on parole. His status as a "high-control" parolee was reduced to "control service supervision" in April -- after the drug/weapon arrest but before the murder -- by his parole agent, who noted in his record that Cornwell had made a "positive parole adjustment."[77]

Not all parolees returned to the system with new sentences have committed crimes that would be viewed by the public as violent or threatening to anyone other than the criminal himself. In 1991, 28.9 percent were returned with convictions for drug crimes, with 13.8 percent for simple possession of controlled substances. But many do come back into the system with crimes affecting others. The following chart shows data for the violent crimes and property crimes committed by parolees returned to the prison system with new sentences in 1991. Among the 16,010 parolees returned to prison with new sentences, violent crimes were the reason f 16.9 percent and property crimes, 44.7 percent.

VIOLENT AND PROPERTY CRIME COMMITTED BY PAROLEES RETURNED TO PRISON WITH NEW SENTENCES 1991	
Crime Conviction	**Number**
Violent Offenses	**2,705**
Homicide	136
Murder 1st	5
Murder 2nd	41
Manslaughter	77
Vehicular Manslaughter	13
Robbery	1553
Assault	751
Assault with deadly weapon	486
Other assault/battery	265
Sex offenses	233
Rape	80
Lewd act with child	82
Other sex acts	71
Kidnapping	32
Property Offenses	**7,156**
Burglary	2882
Theft	3975
Forgery/Fraud	247
Other	52

Source: California Prisoners and Parolees 1991

As the chart indicates, a total of 9,861 parolees were returned to prison in 1991 after committing new crimes that most of the public would agree are violent, dangerous and/or highly intrusive in the lives of victims.

As the data and opinions of those with long experience in the parole field that are cited in this finding

indicate, the consequence of the present parole structure is a system that releases a flood of parolees, returns over half to prison and overwhelms police and prosecutors -- all without providing the adequate "carrots and sticks" that would ensure public safety. Neither the criminal nor the public is well served.

Recommendation #12: **The Governor and the Legislature should enact parole reform that will provide a greater deterrent to continued criminal activity by parolees, including:**

a) structuring the work-credit system so that the time earned off a sentence is suspended rather than eliminated and then is re-imposed if parole is violated.

b) lengthening the maximum parole violation sentence to longer than one year for violent crimes.

If the Commission's recommendations in Finding 2 are followed, all violent crimes will be punished by an indeterminate sentence, with release to parole occurring only when a prisoner has been found ready for a crime-free life. Non-violent prisoners with determinate sentences will be released on fixed dates that are influenced by existing worktime credit statutes. Under current statutes, those released under both the determinate and indeterminate structures face a parole violation penalty of only one year, an insufficient deterrent in the opinion of the Commission.

Even in the absence of a decision to follow the recommendations in Finding 2, the major problems with the existing parole system should be addressed independently, particularly for those with a history of violence or habitual criminal offenses.

Under the present determinate structure, most inmates reduce up to one-half of their sentence through good behavior and work credits. If this time were suspended, rather than eliminated, then the parole system

would have a meaningful deterrent to remind a parolee that he needs to meet conditions of parole. Those who violated parole would return to prison to serve the rest of their terms.

In addition, for those who are not eligible for worktime credit, the present requirement limiting all parole violation punishments to one year in custody does not allow for a meaningful span of time for incremental punishments linked to various levels of violation. An expanded parole violation sentencing structure would add another tool to the parole system's mechanisms for ensuring good behavior by parolees.

Recommendation #13: The Department of Corrections should institute comprehensive pre-release programs at all institutions that require inmates to focus on their life after prison and make plans for a crime-free life.

Release from prison should not occur without an evaluation to determine suitability for parole, potential plans for living outside of prison and personal commitment to avoid criminal activity. However, under the determinate sentencing structure, releasing prisoners occurs on a fixed schedule. Therefore, the prison system should make every effort to ensure that prisoners are provided structure for planning for their future and that public safety is enhanced by equipping soon-to-be-released inmates with the tools for daily living in a free world.

The need to prepare inmates for the outside world is particularly evident for those in Security Housing Units, the inmates considered to be the most violent and dangerous in the prison system. They now may be released directly to the streets from the most restrictive confinement setting in the prisons without any preparation. The Department should instead institute a program of incorporating these inmates back into the general prison population before their determinate-sentence release dates.

Prison Programming

* *Prison work programs are fragmented and ineffective.*

* *Prison education programs are poorly focused and do not reach enough inmates.*

* *Work and education programs hold the potential for weaning inmates away from future crime.*

Recommendations:

* *Reinstate rehabilitation as a goal of prisons.*

* *Establish strong centralized management of work and education programs.*

* *Prohibit inmates from working if they are not literate.*

* *Make work program conditions similar to real-world jobs.*

Prison Programming

The 19th Century criminal sentence of doing "hard labor" -- splitting rocks or working on a chain gang -- seems as foreign to today's inmate work programs as a dungeon is to a modern prison. Yet there is still a strong expectation on the part of the public that criminals sent to prison should spend their time behind bars doing something more constructive than lifting weights and watching television.

Putting inmates to work is a much more difficult undertaking than it was in the days when the guard handed the inmate a sledgehammer and told him to get busy. A set of complex laws now governs prison work programs. A flood of new inmates outpaces the Department of Corrections' ability to create jobs and a stubborn economic downturn has resulted in a decrease in sales of prisoner-made goods.

Inmate education also has been a part of the prison program for many years. The model during the last century was the "Sabbath school," prison instruction conducted by visiting chaplains on Sunday after they had completed church services in their parishes. The goal of the Sabbath school was teaching inmates to read the Bible. Today, the challenges facing education in prisons are substantial: The goal is to prepare inmates for work inside and outside prison, but tens of thousands of

inmates are functionally illiterate and/or non-English speaking.

Currently in California and many other states, these two strands of the prison program, work and education, are linked by the reduced-time credits awarded to inmates who participate. A "working" inmate, as defined by the Department, is one who has a job assignment or is participating in academic or vocational education. The linkage of the two elements has a practical basis. With the limited education of many inmates, they are not suitable to be placed in many prison jobs until they improve their literacy skills. Education also serves as a way of expanding the number of "work" assignments when there are too few jobs to go around.

To discuss the work and education programs thoroughly, it is helpful to examine the laws that govern them.

■ ***Worktime Credits:*** The Penal Code[78] provides that an inmate receive a day off his sentence for every day spent in a work, training or education program. Certain lifers and a limited number of other offenders are not eligible for worktime credits based on their offense. Since the credits are of such vital importance to the inmates, the regulations on worktime are lengthy and complex, detailing exceptions and modifications of the credits.

It is important to note that not all inmates who are receiving work and education credits actually are working or going to school. Inmates who are on the waiting list to be assigned to work programs and inmates in the reception centers still receive one day credit for each two days served. Inmates found to be totally physically or mentally disabled will continue to receive work credits during the time they are disabled.

Inmates who have been accused of violence in prison or of being gang affiliated and who have been put in segregated housing receive one day credit for each two months served. Once they have been found guilty and sentenced for the violation, however, they receive no credit.

Those who refuse to work or refuse to take the assignment given to them also receive no credit.

■ ***Prison Literacy Act:*** This Penal Code[79] measure requires the Department to offer literacy programs designed to ensure that inmates are able to read at a ninth

grade level when they are paroled. The legislation set July 1, 1991 as the deadline for having literacy programs available to 25 percent of eligible inmates and Jan. 1, 1996 as the target date for having 60 percent in the program.

The act carefully skirts the issue of whether inmates should actually be able to read at an appropirate level by the deadlines or at any time in the future. The Department's only responsibility is to create programs and measure their availability, not obtain results. Computer-assisted training is recommended strongly in the legislation.

■ ***Prison Industry Authority:*** The Prison Industry Authority (PIA) was created in 1982 to operate industrial, service and agricultural businesses using inmate labor. The objective of the program is "to create and maintain working conditions within the enterprises as much like those which prevail in private industry as possible, to assure prisoners employed therein the opportunity to work productively, to earn funds and to acquire or improve effective work habits and occupational skills."[80]

The program was envisioned as an avenue for prison self-sufficiency by using the abundant, cheap labor to defray the cost of prison operation. By law, the authority could produce goods and services only for its own consumption or for sale to state and local governments. The law has created a pool of captive customers with its requirement that compels state government agencies to buy goods and services from PIA, if they are available, even though they may be poorer quality and more expensive.

■ ***Joint Venture Program:*** The Joint Venture Program (JVP) was established by a 1990 ballot initiative allowing private businesses to establish manufacturing and service enterprises on prison property using inmate labor. Prevailing wages paid to workers in similar businesses are paid to the prisoner work force. The overriding restriction on the JVP, recommended in the initiative but interpreted as a mandate by the Department, is that no working member of the public be displaced from a job as a result of the business moving into a prison environment.[81] Accordingly, the initiative targets businesses that will have the effect of retaining, reclaiming or creating jobs in California.

■ ***Inmate Day Labor:*** Inmate day labor is a relatively small work program authorized under the Penal Code[82] that

employs inmates, under the supervision of the Department's Planning and Construction Division, in capital improvement and repair work on existing prisons. Inmates are supervised by journeyman trades union members. The number of projects varies depending on the budget allocation for capital improvements. In 1993 an average of 225 to 275 inmates worked on 15 construction sites. An example of an inmate day labor project was an extensive upgrade of the plumbing system in 1987 at San Quentin Prison.

It is within the framework of these laws, which pertain to some of the least work-ready and most under-educated residents of California, that the Commission examined the work and education programs. The Commission studied how they can operate more efficiently, produce a better product and serve more inmates. In the long run, what happens to the inmates in these programs affects law-abiding citizens who otherwise may become their victims.

Finding #4: The effectiveness of prison work programs is hampered by the absence of statutory direction and lack of a unified management structure.

Although there is no statutory mandate for the Department to train or rehabilitate inmates, the public's desire and expectation is that criminals will work productively while they are imprisoned. There are a variety of programs to meet that expectation, but they are not driven by legislatively set goals for giving inmates the tools to refrain from a life of crime once they are released. The programs operate in an uncoordinated manner that hampers effectiveness and they lack the methodical evaluation, tracking and reform mechanisms necessary for success.

Lacking a unified structure and a clear vision of goals for work programs, the Department has placed illiterate inmates in jobs without first raising their education level, created an employment demand for lower-level inmates while higher-security inmates wait for assignments, and wasted state resources on unproductive job programs. The lack of statutory mandates and cohesive policy implementation has resulted in idle inmates and time-off credits granted with no commensurate effort on the part of the offenders. In addition, many inmates return to the real world at the end of their sentences no better equipped in terms of education, skills and the work ethic than when they entered prison.

Rehabilitation was discarded as a goal when determinate system was created

As noted earlier in this report, the concept of rehabilitation as a goal of the prison system was discarded when Determinate Sentencing went into effect in 1977. The previous Indeterminate Sentencing system was based on a philosophy that the direction of the lives of prisoners could be changed while they were in the hands of the State through education, counseling and training -- and that inmates should not be released until they were certifiably rehabilitated. When Indeterminate Sentencing became discredited as a system that was inequitable and tainted with favoritism, the concept of rehabilitation was labeled a failure -- a goal of an inexact science that could never be reached or judged reliably. This attitude was reflected in comments made by then-Governor Edmund G. Brown Jr. as he signed the new sentencing structure into law:

> *The [Indeterminate] system allows the sociologists and experts to decide when [inmates] are ready to leave. This bill recognizes the fact that we are not that smart, that we can't 'psych out' every individual.*[83]

But data accumulated since 1977, revisionist analysis of what rehabilitation accomplished in the '60s and '70s, and long experience by parole officials with the Determinate Sentencing structure are rehabilitating the concept of rehabilitation so that it is no longer synonymous with "soft on crime." While it is no doubt true that the prison system cannot be expected to produce a reformed inmate in every instance, the alternative is to simply churn criminals through the system without ever trying to induce change in behavior, attitudes or prospects.

As the Commission explored in Finding 3, the record of parole outcome following the enactment of Determinate Sentencing and the abandonment of rehabilitation has been strikingly poor. In 1975 under the old system, a total of 1,649 or 11.3 percent of those on parole were returned to prison for violations. By 1981 when the releases of the first Determinate Sentence inmates began to kick in, the number had escalated to 3,885 and began to climb exponentially until it peaked at 57,344 in 1991, a figure that neared 70 percent of those on parole.

Today's parolees often are inmates who would have been kept in prison before

While many have pointed to the increase in drug use during those years and the overall increase in violent crime to account for the rising parolee failure rate, parole officials who spoke to the Commission were blunt about that perspective: Many of today's parolees are people who never would have been let out of prison under the Indeterminate Sentencing Act because they have done little or nothing to change their behavior. Because prisoners are not required to meet any standards regarding education, job training and participation in counseling as a condition of their release, few make any progress toward reforming their lives.

That was not the case under the prior system. Writing compellingly about the track record of determinate sentencing versus indeterminate sentencing, a psychiatrist who bridged both systems said in 1982:

> *The rate of recidivism for released prisoners jumped with the introduction of the new policy and has risen every year since then. The prisoners released to parole in 1978*

> *have returned to prison with new felony convictions at a rate that is about twice the rate of those released in 1970. Even more significant is the fact that this rate of reconviction had declined steadily during the 1960s when rehabilitation was being pursued vigorously. A positive trend had been established that has been reversed, subsequent to the decline in interest in treatment and the cessation of paroling decisions based on evidence of rehabilitation. In spite of opinions to the contrary, the now-abandoned model of correctional treatment may have been working after all....*
>
> *Ten years ago, the men I saw coming out of prison were released only when they had an approved parole plan, including a job, a place to live and, when indicated, an appointment at a mental health clinic.*[84]

Experience, studies show rehabilitation can work with some inmates

The psychiatrist added that while not every inmate can be reached effectively, "we accurately can size up enough of them to make a difference." He is not the only one to conclude that rehabilitation works, albeit slowly and incompletely. The University of California at Los Angeles studied drug addicts committed to prison in the 1960s. Early tracking of the results of rehabilitation efforts for this population were not encouraging, with a high rate of recidivism (although an earlier benchmark in the study showed the state drug program did work effectively for a proportion of the inmates). By the end of its 24-year study, UCLA concluded that, while drug treatment is not a one-shot process, it does work: 22 percent of the addicts were abstinent at the time of the 24-year interview and had remained stable for about 10 years.[85]

Researchers for Rand believe that the key to rehabilitation is targeting the correct type of offenders:

> *Our findings suggest that the apparent failure of many rehabilitation programs may be due less to their content than to the nature of the offenders in the programs. Standard programs of vocational training and drug rehabilitation are better aimed at criminals who engage only in income-producing rather than in violent crimes. Most of them use crime as a substitute for*

> *legitimate sources of income, and we found that their crime commission rates go up when they are out of a job. They could probably benefit from vocational training programs, especially training in the fundamental skill of working steadily at a job....*
>
> *Superficially, violent predators seem to be the best candidates for rehabilitation. Most are relatively young drug users with unstable employment who have been convicted of their first adult offense. However, their patterns of criminal behavior were established at such young ages, persisted for so long, and reached such a degree of seriousness that conventional programs of rehabilitation can probably have little, if any significant effect on their lives.*[86]

The importance of rehabilitation became clear to the Commission not just through academic studies and statistical data but also through direct contact with current prisoners. A letter from one Vacaville inmate who has spent 30 years in Youth Authority and state prison facilities talked of his inability to get meaningful education or job training -- a lack that he believes is a key element in his continuing a life of crime each time he is released.[87]

Another inmate serving time in the Pelican Bay Security Housing Unit told the Commission he has no idea what he will do when he is released in 1998 because he will have no opportunity for any education or training during the next four years.[88] (Inmates in security housing are not eligible to participate in work or education programs.)

Offering education and training opens options for life without crime

While the Commission did not agree with these inmates' contention that the state "owes" them these services, the fact is that providing education and training at least gives inmates an option for a life free of crime -- a factor in protecting public safety.

There are some signs that rehabilitation as a concept no longer has to be hushed up to avoid the appearance of coddling criminals. At a two-day conference on making California's corrections system more effective,[89] a broad cross-section of attendees -- including law enforcement officials and others on the front-line of criminal action who might normally be considered as tough on crime -- never even addressed the question of "to

rehabilitate or not to rehabilitate." Instead, there was an underlying consensus that the opportunity for rehabilitation (or simply "habilitation" in the case of those who never received a stable upbringing) needed to be offered to prisoners. Most of those with long experience in the corrections system were quick to point out that rehabilitation will not work with all or even many criminals. But without some mechanism for encouraging change, the conference attendees agreed, the inmates almost certainly will commit new crimes when they return to society.

Work, education programs exist but are fragmented, uneven in effect

Although rehabilitation has not been a goal of the corrections system for the past 16 years, that does not mean that the basic components disappeared from prison life. Work and education programs continue to this day, primarily as a means of keeping prisoners busy and contributing to prison self-sufficiency rather than as tools for improving inmates. But without broader goals and cohesive management, the effect of the programs has been fragmented and uneven.

The following table shows the number of inmates with work or education assignments in the institutions in mid-1993. The statistics do not include inmates living outside the prisons in community correctional facilities or the work furlough centers, a total of about 5,500 offenders.

INMATES WORKING IN CALIFORNIA DEPARTMENT OF CORRECTIONS INSTITUTIONS June 1993	
Work Program	**Number of Inmates**
Support Services	33,230
Academic Classroom	8,729
Vocation Trades	8,464
Prison Industry Authority	6,109
Camps	5,259
Off Site Community Work	525
Other	242
Joint Venture Program	176
Total Workers	**61,558**

Source: "Inmate Work/Training Assignment Status Report," June 1993. Department of Corrections

The total inmate population in the institutions in mid-1993 was just over 108,000 but, as the table shows, less than two-thirds work or attend school. The programs they are involved in are described below.

■ ***Support Services:*** The largest category by far of work assignments is support services, composed of 33,230 inmates. These are the jobs that maintain the prisons: the cooks, janitors, groundskeepers, clerks and carpenters, among many others. Staff at the prisons joke about their competition for experienced and talented inmate cooks.

Since the advent of the present building boom in the prisons, the Department has established a policy of building separate minimum-custody housing on the each site for an inmate support crew as they have at Wasco and Delano. The crews range from 200 to 500 offenders. Inmates with high-security classifications are limited by their crimes and prison behavior from moving around the institution, so the support services crews generally are made up of Level I inmates. The higher-security inmates also work at maintenance tasks, but remain within the confines of their housing unit.

Prison officials acknowledge that there are not enough support services jobs, even "make work" assignments, to keep all offenders busy.

■ ***Academic and vocational education:*** Two other classes of inmates counted in the statistics as assigned to work programs are the 8,729 offenders in academic education and the 8,464 in vocational education. These programs will be discussed later in Finding 5, which deals with education programming in state prisons.

■ ***Prison Industry Authority:*** The Prison Industry Authority's 6,109[90] inmates work in 33 businesses located on prison property throughout the system. Enterprises range from fiberglass manufacturing to egg production. The Department of Corrections is the PIA's biggest customer, accounting for 55.3 percent of sales in the fiscal year ending in June 1992 (the most recent period for which statistics were available). The printing, food production, mattress manufacturing and laundry businesses, for example, provide the prisons with products needed to keep them running.

The next largest customer, with 10.6 percent of the sales, was the Department of Motor Vehicles, which purchases its license plates from the most well-known of the PIA enterprises, the license plate factory at Folsom State Prison. The license plate factory recently adapted its production line to accommodate the new reflective surfacing material now used in license plates. In addition, state hospitals purchased 9 percent of the PIA's output.[91]

The PIA operates several agricultural programs, but its efforts in that area have not been notably successful. Of the five agricultural enterprises operated in 1991-92, four of them lost a total of $1.6 million.

Overall sales have declined steeply in the last two fiscal years, dropping from $147.1 million in the fiscal year ending June 30, 1991, to $129.4 million in 1992 and then to $125 to $127 million (preliminary figure) in 1993. PIA posted a $2.4 million deficit for the 1991-92 fiscal year, but no figures are available as yet for 1992-93. The number of PIA-employed inmates in the two-year period has dropped 21 percent.[92] The authority's 1991-92 annual report cites a one-time spike in new projects and the state's economic downturn, including belt-tightening in government, as factors in the decline.

The program has been criticized heavily by a variety of sources, including the Little Hoover Commission and the

State Advisory Commission on Cost Control in State Government. The criticisms focus on these areas:

- ***Subsidization:*** Despite substantial advantages not afforded private industry, the PIA is still unable to break even or turn a profit. The authority, for example, pays pennies per month for office and factory space, gives its workers low prison wages, pays no insurance and sales tax and has a captive customer base.[93]

- ***Civil service:*** All of the staff except the general manager and his chief assistant are civil servants. A study of the PIA released in 1993 highlighted the cumbersome and inflexible civil service process as one of the barriers to managing the operation effectively. The bottom-line orientation and entrepreneurial spirit that should be the governing principles in the PIA are often missing from the candidates on the civil service list from which the authority is required to select its staff, the study said.[94]

- ***Effect on other state agencies:*** State agencies keep up a constant drumbeat of complaints about goods they are required to buy from PIA, goods they claim are sometimes inferior and almost always priced far above what they could be purchased for from private industry.[95] The hidden subsidy that this captive customer base gives to the PIA adds millions to the cost of operating state government. Of the PIA's $129.4 million in revenue during the 1991-92 fiscal year, $61 million was from state agencies outside the Department of Corrections.[96]

- ***Worker suitability:*** Of the inmates employed by the PIA in May 1991, 46 percent had at least sixth grade literacy, 20 percent were below sixth grade, and 33 percent had unknown levels, due to lack of record-keeping by the institution.[97]

- ***Program goals:*** PIA has been taken to task for its failure to provide "real world" job training for inmates. For example:

  - An obsolete vertical power saw in its now-discontinued wood shop at California State Prison, Sacramento. One private industry businessman told the Commission, "Nobody in private industry uses [the saws] any

more. I've seen them out in the rain getting rusty." The saw is too labor-intensive and is prone to cause worker injuries, he said.

- 1935-vintage equipment at the bakery operation at Vacaville Prison, used by inmates and supervised by people who did not know how to operate it.

- A pig farm at Avenal State Prison employed 40 inmates in an operation that lost $771,000 in the year ending in June 1992. The PIA program was discontinued in April 1993, but restarted within a few months as a successful Joint Venture Program business with 10 employees.

The authority, however, is under no mandate to provide cutting-edge job training. Its governing legislation says that in addition to creating a self-supporting business that will reduce correctional costs, the program should work "to create and maintain working conditions within the enterprises as much like those which prevail in private industry as possible, to assure prisoners employed therein the opportunity to work productively, to earn funds, and to acquire or improve effective work habits and occupational skills."[98]

■ ***Camps:*** Another major category of assigned inmates are the 4,259 firefighters living in the 38 minimum custody camps. The camp program, run by the California Department of Forestry and Fire Protection, houses inmates in dormitory housing in rural areas throughout the state. Television viewers watching coverage of California's yearly wildfires usually are unaware that the firefighters in the orange helmets are prison inmates. Those in the firefighter program, virtually all Level I inmates with a few carefully chosen Level IIs, are screened to weed out serious offenders, violent and sex offenders and arsonists. However, education level is not a criteria. The firefighter training program includes a curriculum for illiterate inmates so they can take an oral test for qualification.

During the non-fire season, firefighter inmates stay busy with community service projects such as cleaning parks and re-roofing public buildings.

■ ***Off-site and other:*** The small number of inmates involved in these two categories outside of the main work programs are usually low-level security risks.

■ ***Joint Venture Program:*** California's economic decline, just as the Joint Venture Program began, has hampered the program's growth. The program depends on attracting private businesses to the prison setting, where they lease space at reduced rates and employ inmates. The 176 inmates represent a tiny fraction of the work force and the JVP faces a substantial challenge in luring businesses away from the outside where owners do not have to deal with security hassles.

Ironically, one employer said the tight security and end-of-shift pat-downs at the prisons are an asset because they reduce employee thefts -- a significant problem on the outside -- to virtually nothing.

The track record of joint venture programs around the country is not impressive. There are no large joint venture programs, according to statistics from the American Correctional Association. Nationwide, certified joint venture programs employed only 1,138 inmates in June 1993. A combined PIA and Joint Venture program in Nevada with no restrictions on where the various businesses can market their products employs 300 inmates, 10 percent of the work-eligible prison population.

National proponents of the joint venture concept say the newness of the programs, most begun in the last four years, precludes any final assessment of their success.

In September 1993, California's Joint Venture Program had 15 participating businesses. Examples include a bulletproof glass project at California Institution for Men, Chino and a plastics product manufacturer at California State Prison, Sacramento.

Some inmates are ineligible for participation in work programs

In addition to the 61,558 working inmates, a second large group are ineligible to work. The following table gives a breakdown of these inmates living in the institutions.

INMATES INELIGIBLE TO WORK June 1993	
Reason For Ineligibility	**Number**
Reception Center Processing	15,518
Orientation Status	5,842
Administrative Segregation	2,982
Segregated Housing Unit (SHU)	2,443
Pre-Transfer or Pre-Release	2,293
Medical and Psychiatric	1,345
Other	1,097
Voluntary Unassigned (refuse to work)	517
Enroute Status	206
Total Non-Eligible Population	**32,243**

Source: Department of Corrections "Inmate Work/Training Assignment Report," June 1993.

As the table indicates, the largest group of inmates ineligible to work are the 15,518 offenders being housed in the reception centers. While these inmates receive a partial worktime credit, they are still unknown quantities as to their possibility for successful adjustment to prison life. Work assignments are put on hold until the inmates are evaluated, classified and tested, physically and educationally, at the reception centers before being sent to their long-term prison placement. The process takes an average of 45.5 days.[99]

Explanations for the other categories include:

- ***Orientation and enroute status*** refer to inmates transferring between prisons and being re-evaluated once they arrive at the new facility.

- ***Administrative segregation and segregated housing:*** Inmates who have gang affiliations or have committed violence in prison are isolated in administrative segregation and segregated housing where work assignments are unavailable.

- ***Pre-release*** inmates are unavailable for work because they are busy in a series of classes on job

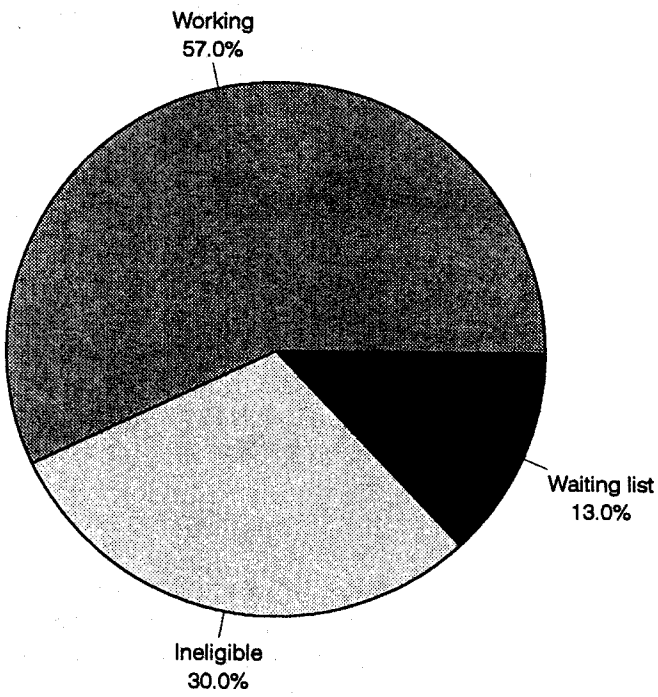
interviewing, filling out application forms, managing money and other topics to assist in their transition to freedom.

- ***Medical and psychiatric*** patients are not placed in work or education assignments if their conditions prohibit their participation.

- ***Voluntary unassigned:*** Because California has no mandatory work law, inmates may refuse to work and attend education classes.

The third piece of the work picture is the waiting list for work programs. All three categories -- working, ineligible and waiting list -- are illustrated in the following figure. Again, the percentages refer to offenders housed in the institutions, as opposed to those in CCF's and work furlough facilities.

Inmate Work Status (Institutions)
June 1993



Source: Department of Corrections

The chart illustrates that 43 percent of the inmate population is not working and that of those willing to work, 13 percent, or nearly 14,000, are idle because there are no jobs. Each collects credit, reducing their sentences, although they have no assignment and put forth no effort.

The waiting period varies with the prison and with the program. For instance, at Correctional Training Facility Central, Soledad, about 500 prisoners wait on the list four to five months for work programs. A correctional officer at another institution mentioned instances in which inmates had waited two years before getting into a work program.

The wait can be relatively short for lower-security inmates and longer for those with high-security classifications. The following percentages show that as their security level increases, fewer inmates have work assignments or are receiving worktime credits.[100]

INMATES RECEIVING WORK CREDITS BY CLASSIFICATION SCORE, 1993

Level	Receiving Credit
Level I (low security)	86%
Level II	78%
Level III	79%
Level IV (maximum security)	55%

Source: Department of Corrections

The figures highlight a declining trend. Lower level inmates are easier to place in jobs, since they can move more freely throughout the institution. Level I inmates, and a limited number of Level IIs, for example, can even work outside the institutions, while the movement of Level IIIs and IVs is tightly constricted, and jobs at those levels are more difficult to create.

The figures actually paint a misleading picture, since they include both those working and those on waiting lists. The Department's computer system does not track the classification status of the 14,000 inmates on waiting lists, but a breakdown of the waiting list by institution shows that facilities that primarily house low-security inmates have small waiting lists, while higher security prisons have large lists. The lack of precise figures makes it difficult to prove that many Level III and Level IV inmates are reducing their sentences each day without either working or attending classes. Correctional officials, however, say their experience is that the bulk of waiting inmates are higher-security prisoners.

Alternative programs hold promise of jobs but usually for low-security felons

Alternative programs are a source for job creation. Laws and administrative policies, however, have placed restrictions on the type of inmate eligible for alternative programs. Inmates eligible for boot camp must be non-violent first-time offenders, for example. To enter the fire camp program, inmates must be free of sex crimes, arson convictions, escapes and violent crimes. Those factors also are criteria for placement in the CCFs, which house primarily first-time offenders. Work furlough programs are looking for inmates with similar backgrounds. The mother/infant program also places restrictions on which women can participate.

The result of the Department's security considerations in job placement -- considerations designed to ensure the public's safety -- is competition between various entities of the prison system for the "good" inmates. "The Level Is and IIs are a hot commodity in the prisons," said a witness at the Commission's Sacramento hearing.[101]

Administrators of boot camps, mother/infant programs, CCFs, fire camps, support services and work furlough actively recruit eligible inmates for their low-security-level programs from among the limited number of "good" inmates who qualify. "It's a struggle to get the right type of inmate in the camps," said a camp administrator at Sierra Conservation Center. He echoes the frustration of other administrators of programs designed for low classification inmates. Of the inmates in the camps, 19 percent are administrative overrides, that is, offenders who would not qualify based solely on their classification score but who are allowed to participate after a thorough review by classification staff.

The jostling for eligible inmates by the various programs, each of which has its strong points and its supporters, is a manifestation of the fragmented way inmate work is structured and managed. The cost of each program also varies tremendously, as the following breakdown shows:

■ ***The Joint Venture Program*** is administered by a departmental deputy director. Three staff members market the program and expedite the paperwork for the private businesses who want to set up in the prisons. The head of the Joint Venture Program reports to the director of the Department. With 176 inmates in the program so far and a $325,000 annual budget, the cost per inmate is $1,846. From their wages, however, the inmates paid room and board, family support and victim restitution. Inmates also

saved $412,000 from their wages during the 1992-93 fiscal year.[102]

■ ***The PIA*** is an independent entity governed by a board appointed by the governor and the Legislature. The board hires a general manager, reviews an annual budget, enters into contracts and approves new enterprises. It had a non-inmate staff in January 1993 of 745. With a $2.4 million cost for 1992 (the last year for which figures are available) and employment of 6,899 for that corresponding year, the cost is $348 per inmate.

■ ***Support Services***, a third strand of the inmate work programs, is administered by the wardens at the individual prisons. The amount of work performed by the inmates depends not only on the prison administrator but also on the security level of the prison, which affects how free the inmates are to move about. In virtually all prisons, support services inmates cook and serve meals, clean, paint and maintain the landscaping.

Support services contribute significantly to prison self-sufficiency, sometimes despite opposition from businesses vying for lucrative state contracts. Corrections officials never have developed an estimate for the value of inmate labor in support services.

■ ***Fire camps*** are a separate branch of the prison work picture. The 38 camps are administered in three regions, north, central and south. Camps are jointly operated by the Department, the state Department of Forestry and Fire Protection and, in Southern California, by the Los Angeles County Fire Department. Training for the northern camps takes place at California Correctional Center, Susanville and for the central and southern camps at Sierra Conservation Center, Jamestown.

The inmate firefighters put in three million hours fighting fires at $1 an hour and saved the state $24 million in salaries and other costs.[103]

■ ***Alternative programs,*** while they are not work programs in the strict sense, impact the work programs because they compete for the lower-security inmates who are in biggest demand for work assignments. They include:

- **Boot camps** were funded in 1992 with an initial appropriation of $3.7 million for 176 inmates in a 300-day program. The per-inmate cost of just over $21,000 is virtually

the same as that of an inmate in the institutions.

- **Mother/infant program** cost per inmate is $28,000, for a total of $2.8 million. Despite flyers sent out to all women inmates, it has been difficult to fill the program slots, partially due to the location of some of the centers in industrial areas and partially due to lack of interest from the mothers.

- **Community correctional facilities** house more than 4,000 inmates at what at first glance appears to be lower cost than the institutions, partly due to the lower security of the inmate population and shorter incarceration time. However, a 1993 study draft comparing public and private correctional facilities with the Department's institutions concluded that the various prison facilities cost about the same to operate, especially when hidden costs such as construction, medical care, central office administration and Department staff were figured in.[104]

The presence of the alternative programs, plus the PIA, the JVP and the camps, creates a tug-of-war for "good" inmates with no central coordination of the impact of each on the various parts of the work system. The situation could become worse, in light of the Department's own population predictions. The Five-Year Facilities Master Plan, 1993-1998 raised the estimated percentage of Level IV inmates in the prisons from its original 7.2 percent in 1997 to 11.7 percent in 1998. The trend will be noticeable by December 1994, according to the Department's classification staff.

The effect of the increasing pool of Level IVs and diminishing numbers of low-security inmates would be fewer inmates working and a racheting upward of the current competition for the low-security inmates. Without a centralized work program authority, planning for the future and creating options to put more high-security inmates to work is unlikely to occur.

Job programs often do not provide real-world training

In addition to lacking enough slots to keep all inmates busy, the Department's work programs also fail -- in most instances -- to give productive job training to inmates. It is clear from an examination of the Department's work programs that their goal is prevention

of idleness and violence, not specific job training, as the following examples indicate:

- The PIA uses outdated equipment to make jobs more labor intensive.
- Firefighting camps, by many measures the most successful of the prison work programs, place no inmates in firefighting jobs once they leave prison.
- Neither the PIA nor the JVP have a clearcut mandate for job-specific training.
- The biggest PIA work program, license plate manufacturing, has no corresponding industry in which to place inmates outside prison walls.
- Testing to determine appropriate job placement is spotty and slipshod. A 1991 PIA survey showed that, of its employed inmates, 33 percent had unknown literacy levels due to a lack of record-keeping by the institution.[105]
- Illiterate inmates routinely are placed in jobs, and in fact, the inmate firefighting program has a curriculum modification specifically for illiterates.
- Inmates are placed in jobs without being screened. An inmate at Sierra Conservation Center who pleaded guilty after being charged with 28 fraud counts was placed in a work assignment involving inmate welfare funds.

Full-time work means a six-hour day for most inmates

Another drawback of the prison work programs is the limited number of hours most inmates work. Full-time work for most employees in the outside world means an eight-hour stint at their assignment, whether it is work or education. State regulations define full-time inmate work in the same way: eight hours for a full-time assignment and four hours for a part-time assignment. In practice, however, most inmate work assignments are six hours. Corrections officials say the movement of inmates, which involves escort by correctional officers, searches of inmates, locking and unlocking of security doors and the counting of offenders at the close of each shift, precludes prisoners from working a full eight-hour day. Accordingly, a loophole in the regulations modifies the full-time provision to "not less than six hours and the work week to no less than 30 hours."[106]

There are some notable exceptions to the six-hour day procedures. For example, inmates assigned to the fire camps often work around the clock or go several weeks at a time without a day off during the peak fire-fighting season. But many other prisons follow the format observed by the Commission at California State Prison, Sacramento, in which inmates complete their six-hour day at mid-afternoon.

Whether the inmates work a six-hour or an eight-hour day, all of them, since they have a work assignment, are eligible for the time-off credit. This contributes to a public perception that inmates are treated too softly and that sentences are reduced almost automatically rather than through "hard" work and inmate effort.

The Department's administration of the work program has some glaring flaws. Despite the instances of poor administration, however, the Department's implied goal -- keeping inmates busy and at least partially productive -- for the work programs is understandable, considering the difficulty in giving specific job training to a work force in which 56 percent of male inmates cannot function at a ninth grade level,[107] 20,000 don't speak English and the vast majority never have developed skills to hold a job successfully.

Fire camps offer solid work ethic, job skills

By many measures, the fire camps are an example of a successful work program. Inmates on fire duty are dispatched throughout the state on short notice for a demanding job that requires a high level of hard labor, long hours and teamwork. "For many inmates, this is their first job. They don't know how to get up in the morning and get to work on time. They don't know how to work as a team. They don't know how to use tools," said one firefighting instructor.

The program is so successful in teaching team-building that an inmate firefighter on Riverside County's Simpson fire in 1990 died trying to protect his crew chief when the blaze burned out of control. Two other inmates sacrificed their lives in the fire, as well.[108]

When they are in camp, the inmates are required to have their dormitory-style living areas spotless before they assemble to head out for the day. Non-firefighting work includes highway maintenance, cutting firebreaks in the wildlands and, in one area, reroofing a small-town police station. Inmates in a central California camp built most of the buildings, constructed retaining walls and installed the landscaping for the camp itself.

Inmates spend an average of eight months in a fire camp before they are paroled.

Some aspects of the fire camp program are unique and would be difficult to reproduce in other work programs. Teamwork skills, for example, are much easier to build in a crisis setting where people's lives depend upon each other. Also, inmates are eager for camp jobs. They are allowed outside the institution on work assignments, relieving the boredom of prison life, and they are paid $1 an hour, which is good money in the world of prison work programs.

The principles that characterize the camps -- hard work, good work habits, teamwork and pride in outcome -- could be replicated in work situations within the institution. Creating such a work environment, however, is a formidable task for the Department, taking into account the way in which inmates are placed in jobs. There is no question that the security of the institution is the first factor in matching inmates with job slots. But qualifications often are ignored in job assignments.

Inmates are given work assignments even when they do not meet literacy goal

The minimum literacy requirement for working is a 6.0 grade level, according to the Department's Operations Manual. Inmates achieving below this level are supposed to be assigned to education rather than work programs. Contrary to its own manual, however, the Senate's PIA study found Department allows the individual institutions to set their own requirements:

> *Each institution in the state prison system establishes its own minimum literacy requirements for inmates to be eligible for PIA work assignments. These requirements can range from none to tenth grade, depending on the institution and the enterprise. However, the institution may waive this requirement when the need for inmate labor exceeds the number of inmates that meet the minimum literacy requirement.*[109]

The Senate study found that where literacy requirements were a factor, inmates tended to pursue education to get the sought-after wages of PIA jobs.[110] That study and the Little Hoover Commission's earlier examination of the PIA[111] also found that many PIA enterprises had no application process, didn't require an interview, or both. While the PIA employs only a fraction of the inmates, it is a bellwether for the rest of the work

system, making its lack of rigor in selecting inmates a problem that permeates the Department.

One exception is JVP, where inmates go through a screening and interview process for the prevailing-wage level jobs, according to the program administrator. Another exception, the Senate study said, was California Men's Colony, San Luis Obispo, which requires the inmate to complete a formal application for PIA jobs. The application is forwarded to the Education Department for confirmation of the inmate's grade level before placement on the PIA waiting list.

The Little Hoover Commission in the course of its interviews with correctional personnel and visits to prisons heard repeated anecdotal evidence that job assignments were handed out at random or as favors. Such a practice, if widespread, undermines efforts to establish job assignments that promote hard work, good work habits, teamwork and pride in outcome.

Even with good procedures and realistic goals, a prison work program is ineffective if large numbers of inmates are idle. The problems faced by California in creating jobs are present in other prison systems as well.

- Arizona's mandatory inmate work statute, which read that each prisoner "shall" be assigned to a work crew unless sick or mentally ill, was revised in 1991. The Legislature passed a new version that provided the prisoner "may" be assigned.[112] The reason for the change was too many inmates and too few jobs, making it impossible to fulfill the original standard.[113] Of the 17,500 in the system as of September 1993, 15,000 inmates are working on any one day, primarily in institutional jobs. Arizona's prison industries program employs 700 inmates who produce goods and services sold to state and local governments.

- Texas also is struggling with rapid expansion in the prison system and the need to create more jobs. With 62,000 prisoners in September 1993, the Texas system has 6,000 inmates in its industries program. The industries program has no separate authority as it does in California. The program reports to the corrections administration along with the other separate branches of the Texas work program, construction and agriculture. "Every state doing prison manufacturing is producing about the same things and facing the same problems" in

profitability and quality, said a Texas correctional official.[114]

- Nevada's combined private sector and traditional PIA operation is considered very successful by those familiar with prison work programs. The programs have no restrictions as long as the products are sold within the state. Prison industries products can be sold to anyone. The Nevada Justice Department has said it is not necessary for prison work to pay unemployment insurance, and inmates cannot accrue workers' compensation benefits until they are out of prison. Of the 4,500 eligible inmates, only 300 work in JVP/PIA enterprises, despite the lack of marketing restrictions.[115]

- The Federal Bureau of Prisons operates Unicor, a prison industry program that employs 17,000 of the 80,000 federal inmates. Unicor sells only to the federal government, and its product specifications must meet the standards of the Department of Defense and Department of General Services. At first glance, Unicor appears to be immensely successful in the number of inmates it employs compared to other prison industry operations. The federal prisoners, however, are different as a group from inmates in state prisons. Sixty percent have been sentenced on drug charges and 41 of the system's 70 institutions are camps. Lower security, as evidenced in California's prisons, assists in the task of creating inmate jobs.

A conclusion to be reached from looking at other state work programs is that many prison systems are having difficulty creating enough jobs for inmates. There appear to be no simple solutions. Even the programs held up as models for success employ a limited number of inmates compared to the total population and the continuing influx.

Half work, half education program would stretch jobs

One partial solution to the lack of jobs may be the establishment of a part-time work, part-time education program. As discussed earlier, many inmates are unready for work, considering their low literacy level, ignorance of good work habits and lack of proficiency in English.

The Department's New Revision of the Standardized Literacy Plan distributed to the wardens in December 1992 addresses the part-time work issue from the education perspective:

There is additional emphasis in the revised plan to encourage the implementation of half-day assignment procedures, which will allow inmates the opportunity to combine a one-half day work assignment with a one-half day literacy assignment for full-time assignment credit.

The part-time assignment proposal, if implemented, is 12 to 18 months from being put into place, according to the Department. The delay in implementing the half-day proposal is due to the major shift that would be necessary in scheduling and added work in the inmate assignment offices, said a Department administrator.[116]

The strength of such a proposal is in creating more employment slots by splitting a certain number of the work assignments in half, so two inmates would be performing portions of one job. In tandem with the job, the inmate would be committing a concentrated block of time to upgrading his academic skills. The current Department expectation, however, that an inmate will become literate with one hour a day's time spent in a computerized self-help program is not a recipe for success, according to education experts. More intensive education is needed, as will be discussed in the next finding.

The Training, Industry and Education (TIE) program at the Central California Women's Facility, Madera County, has 240 inmates working part time and attending school part time. With its requirement of ninth grade literacy before obtaining a job assignment, the prison allows inmates with skills below that to put in a three-hour-a-day block in either work or vocational education, and three hours in academic education.

Part-time work allows inmates to get a small paycheck and jobs skills while bringing up their education level. "You double your bang for the buck with teachers," said the supervisor of education.[117] At CWWF, the 540 slots in academic education have 659 inmates, and the 489 vocational education slots have 559 inmates.

There are drawbacks, mainly in increased paperwork for the work supervisor and the records office. The warden and particularly the assignment lieutenant must be committed to the part-time plan for it to work, the TIE program administrator said. Others raise the problem of doubling the movement of inmates with a part-time work proposal.

Jobs are not structured to benefit system or prisoners

The discussion on the status of the work programs highlights the result of the current situation: Many inmates are idle, and many others work less and have more free time than the average free-world wage earner. Inmates are not contributing significantly to defraying the cost of incarceration through their work contributions. Inmates do not have the education skills to do many jobs and the job placement process does not encourage them to improve. And finally, inmates at lower security levels are readily placed in jobs while those at higher security often remain without a job assignment.

Recommendation #14: The Governor and the Legislature should reinstate rehabilitation as a goal of the corrections system, subordinate to public safety and specifically target populations most likely to benefit.

Since close to 90 percent of the present inmates are serving determinate sentences, almost all are released back into society. While the degree to which rehabilitation can be achieved is arguable, the fact is that making no attempt to equip criminals for life after prison contributes greatly to the number of repeat offenders -- and thus fails to protect the public safety.

To give the Department of Corrections appropriate guidance and focus for its work and education programs, state law should make it clear that during incarceration inmates should be offered the opportunity to participate in activities that have the potential for changing their lives: counseling, education and job training.

Because of limited resources, however, the wording of the law should make it clear that such rehabilitation opportunities can and should be targeted to populations most likely to benefit (for instance, a higher priority should be placed on raising a convicted burglar's literacy level to the ninth grade than on providing college-level courses to prisoners serving sentences of life without the possibility of parole). In addition, the law should expressly state that California is not creating a vested right for all prisoners to be provided all types and levels of service.

Recommendation #15: The Governor and the Legislature should enact legislation that establishes a single, unified structure within the Department of Corrections for all work programs, including the Prison Industry Authority.

The various job programs should be coordinated to meet the priorities set by a centralized authority. Those priorities would be expected to include job training, prison self-sufficiency, keeping inmates occupied to minimize violence and employing inmates for a full work day to the extent possible to better reflect real-world conditions and public expectations. The centralized authority also would be expected to evaluate each program's effectiveness, emphasizing measures that would put more inmates to work and cluster fewer job opportunities at the lower-security levels.

In addition, requirements for entry into work programs would be standardized from institution to institution and the existing regulations concerning work should be observed rather than undercut by random application. Finally, inmates should be thoroughly and systematically tested so that they can be placed appropriately.

Recommendation #16: A program of part-time work, part-time education should be instituted systemwide.

Inmates should be literate through the ninth grade level and understand English before they are placed in full-time work assignments. Full-time work should be used as an incentive to inmates to upgrade their education.

Recommendation #17: Inmates should be screened and go through an interview process before they are placed in a work assignment.

Screening should be done to put the inmate in the right job and to get the best job performance for the institution from the inmate. The interview should

educate him for the type of hiring process used in the outside world. The prison should also use the interview as a tool to prevent inappropriate placement.

Recommendation #18: Work assignments for higher security level inmates should be expanded.

With the predicted increase in the percentage of Level IV inmates by 1994 and into future years, the Department should concentrate its work assignment planning on the creation of work assignments for them. This should include reporting to the Legislature about the potential impact or effectiveness of any legislative proposals in the future that target the already much-competed-for minimum-security inmates.

Finding #5: The Department's education program is neglected, unfocused and poorly structured.

One of the conspicuous traits common to many inmates is their lack of education. All too frequently, they are academic failures, unable to function at the level of a 12-year-old junior high school student. Researchers have gotten mixed results as to whether work training reduces recidivism, but studies are clear that upgrading *education* cuts return to crime. Education, therefore, could be expected to be a prominent part of the Department's program. The fact is, however, that despite the dedication of many correctional teachers, the Department's education program is in disarray. Goals are unclear. Budget cuts have fallen disproportionately on prison education. Policies are ignored. And the Department's management structure discourages, rather than encourages, its education program.

According to a 1988 study, 56 percent of the male inmates and 52 percent of the female inmates read below the ninth grade level.[118] Applied to today's population, more than 55,000 inmates lack ninth grade skill.

An estimated 42 percent[119] of inmates are learning handicapped and would be in special education classes if they were of public school age. Only inmates under 22, however, are eligible for additional special education funding from federal sources. About 16,000 inmates are in that age bracket, and of those, about 6,720 would be eligible for special education services.

The federal funds are more accessible if the prison education system is designated a Local Education Agency (LEA), the equivalent of a school district. The Department's education system, however, is not an LEA. The feasibility and advisability of organizing as district will be discussed later in this finding.

Although 55,000 need services, only 17,000 receive classes

Only a fraction of the inmates in need of education services receive them. There were 17,193 prisoners in academic and vocational studies in mid-1993,[120] making the Department's program roughly the equivalent of Alum Rock Elementary District, a medium-sized San Francisco Bay Area elementary district.

An estimated 5,000 prisoners are enrolled full time in Adult Basic Education (ABE) and English as a Second

Language courses. At the Little Hoover Commission's public hearing, the Department's director said 20,000 inmates cannot speak English, surpassing the estimated 16,000 who are illegal aliens. ABE has three levels, bringing the student up to ninth grade, where he is ready to begin studies for either a formal high school diploma or high school General Equivalency Diploma (GED). Unlike the California Youth Authority, which focuses its educational efforts on high school graduation, the Department allows prisons leeway whether to offer a diploma or the GED. High school diploma programs must offer a wider range of courses, including science, which are more difficult to provide in the prisons.

The Department formerly offered community college and four-year college and university courses. Budget cutbacks forced the cancellation of these programs, even though they were partially paid for by federal funds.

With the high school and GED students, plus inmates who take pre-release classes in job interviewing and other skills, the total of inmates in academic programs was 8,729 students in mid-1993.

Vocational education, offering 48 programs at the various institutions, includes 8,464 students who are studying skills ranging from silk screening to plumbing.

The Department's spending on education comprises 3 percent of its budget, a total for the current fiscal year of $85.3 million. The various components of the education budget include: $51.6 million for teachers, supervisors, library staff and clericals; $10 million, education operating funds; $19.4 million, benefits and $762,000, headquarters staff.[121]

Education program lacks focus and sound management structure

In surveying the specifics of the education programs, there are three deficiencies that stand out: lack of focus on goals, neglect of programs and a faulty management structure.

■ ***Lack of Focus:*** The gap between policy and reality in education is a result of the lack of focus by the Department on the goal of the education program. It is clear that the goal should *not* be the establishment of education as a "holding tank" for inmates until work assignments open up. The Prisoner Literacy Act, in fact, establishes the goal: ninth grade literacy for all prisoners. The literacy statistics given earlier overwhelmingly support the appropriateness of this goal.

Statistics demonstrate that the education program is not providing a mechanism for meeting the goal. Although an estimated 56 percent of the men and 52 percent of the women fall below the Literacy Act standard, only 7 percent are in full-time academic education. Prisoners receiving literacy instruction under the Prisoner Literacy Act number about 11,000, according to the Department, including those in ABE, ESL and GED preparatory students below ninth grade level. The figure includes any inmates spending a minimum of one hour a day on literacy studies. An inmate pulled out from his vocational class for an unsupervised hour in front of a computer with a literacy program would be one of those tallied as a literacy student, for example.

In fairness to the Department, the Literacy Act, while establishing standards, provided no money to carry it out and mandated expansion of programming at the same time budget resources are shrinking.

Without added funding, the Department has turned to playing a numbers game to satisfy the requirements of the Prisoner Literacy Act. The Act requires the Department to have literacy programs available to 60 percent of eligible inmates by 1996. The Department counts students in its existing basic education programs toward the act's literacy instruction goal, and thus is required to spend no additional funds. The one-hour-a-day students also are included, expanding enrollment with minimum expenditure.

Literacy Act focuses on numbers instead of on prisoner outcome

While helping the Department move toward the goals set in the Act, the numbers game does little to meet what should be the real goal: an outcome of functional literacy. The one-hour-a-day computer study plan, although it is certainly better than no instruction at all, does not appear to be designed to move quickly enough to bring the inmate to ninth grade literacy by his release date, according to education experts.

Evidence of the Department's lack of focus on education is apparent. For instance, while it might seem logical that education would be the basis for the work assignments, as discussed previously in practice inmates often are given jobs without consideration of their educational level.

The Department's Operations Manual specifies, "It is Departmental policy that the Warden shall ensure that inmates achieving below a 6.0 grade level or with limited English proficiency are assigned to adult basic education or English as a Second Language (ESL) programs."[122]

Examples of disregard for the policy abound, including those cited earlier for the firefighter program and the PIA programs. The Commission staff heard ample anecdotal evidence from staff of illiterate inmates given jobs. One reason is that inmates push harder to be placed in jobs than in school. Inmates prefer to work rather than attend school. Although only a limited number of inmate jobs are wage-paying, having a job gives prisoners the potential of promotion into a position that includes a paycheck. The wages are very small, but they allow the inmates to make personal purchases, including items from the canteen and television sets from the outside.

In addition to allowing illiterate inmates into work assignments, the Department also is lax about removing from classes education students who do not apply themselves. At the Commission's public hearing, the director of the Department said a teacher would remove from classes any inmate refusing to do school work. Yet inmates in one institution's education program repeatedly were late, disruptive and asleep in class without being removed despite frequent write-ups by the instructor. One of the instructor's work sheets detailed the fact an inmate had not reported to his class for six weeks but had not been removed from the rolls.[123]

Staff at that particular institution told the Commission that despite scores of such incidents, not one inmate was removed as a result of write-ups. Inmates get the message, from incidents such as these, that the Department is not serious about education.

Literacy push varies from institution to institution

Literacy efforts have had mixed response at the various institutions. Successful in some prisons, they are ignored in others. In one institution, literacy training "never got off the ground," according to a staffer. That particular prison's sluggishness existed despite a memo from the Department's director nine months earlier detailing its Standardized Literacy Plan that mandated literacy testing and site literacy committees.

Of particular concern is the disarray in the Department's testing program. Testing is the diagnostic tool that should act as the starting point for assignment both to education and work. The Commission, in interviews with classification staff, were told educational testing was done at reception centers to determine an inmate's placement. There is evidence, however, that testing is not conducted, fails to follow inmates from one prison to another and is ignored by teachers.

A study of the education programs in three prisons (California Institution for Women, California Rehabilitation Center and Chuckawalla Valley State Prison) conducted by the Robert Presley Institute of Corrections Research and Training found in regards to testing :

- "No one knew what procedures were implemented at intake, and the procedures that were established to correct this situation were not monitored effectively."

- "No vocational interest or aptitude tests were systematically administered."

- "No special education records were solicited from the schools the students previously attended."

- Even when extensive test batteries, such as the Tests of Adult Basic Education (TABE) had been given, teachers often ignored test data, reporting they were too busy or didn't need it.

- Test data almost never was transmitted from one institution to another if the inmate was transferred.

- Prisons lacked systematic test data reporting. "As a result, there seemed to be no data to compare student learning rates at the various schools -- so anyone's guess about the relative value of various schedules, materials, or strategies was as good as anyone else's."[124]

All of the indications cited above add up to a program that is not as successful as it could be if the Department focused on clear education goals.

- ***Neglect of programs:*** The Department's education program is neglected. While other correctional operations, such as prison construction and hiring of correctional officers, have been shielded from deep budget cuts, education has taken a severe blow. Exacerbating the correctional education dilemma are cutbacks coupled with rising inmate population. There is little initiative from the top of the Departmental hierarchy to soften the impact or to obtain funding from other sources.

Cutbacks hit non-security positions, such as teachers, with disproportionate impact, since correctional officer positions had to be retained for safety reasons. The following table shows the effects of rising population and budget constraints:

CORRECTIONAL TEACHER CUTBACKS, 1990-1993			
Fiscal Year	Prison Population*	Total Teachers Budgeted	Student/Teacher Ratio
90-91	95,930	1,099.8	87.2/1
91-92	98,386	1,112.5	88.4/1
92-93	109,654	958.2	114.4/1

Source: Department of Corrections

*Figures are for the prison population, excluding community correctional and work furlough facilities.

The table documents the increase in the teacher workload as the number of inmates rose from 1990 to 1993. Three new prisons were opened and staffed during the the period illustrated by the table, so the impact was felt even more severely at the existing prisons.

Federal funding for special education has gone begging

In addition to allowing the decimation of teaching ranks, the Department has made little effort to obtain federal funding that is available. Currently, the Department augments state General Fund money used for education with funds from three federal sources: Chapter I money for disadvantaged students, $644,000; adult education funds, $892,644; and vocational education funds, $413,000, for a total of just under $2 million. Another source of federal money used to generate more correctional education money in other states is special education funds for educationally handicapped inmates under 22. But the Department has no program to obtain federal special education funds. Such monies could be used to augment the state's correctional education budget for approximately 6,720 inmates.

In 1991, the Department was fortunate to be awarded a $107,000 federal library grant for a model reading program. About $60,000 of the grant ultimately was returned to the federal government because the Department dragged its feet so long in hiring the personnel.

Priority for funding is not the only symptom of neglect. In-service training (IST), considered by educators to be essential for teacher professionalism, often is of poor quality. "Existing in-service programs were only tangentially related to the requirements of facilitating the learning of confined students," the Presley Institute report said. The report added that general Department workshops on AIDS, sexual harassment and security requirements

were passed off as in-service training and used over and over again, but few education-oriented sessions were offered. "To a person, all interviewed teachers reported that the IST program was boring and almost useless." The institute concluded:

> *As a result of all these conditions, and the current budget shortfall, staff morale was remarkably poor. Resigned to endure in a system that seemed not to prioritize student learning or the value of educational services, many teachers adopted a low-profile, 'Go with the system' attitude.*[125]

A reflection of the Department's attitude toward education is the fact that there is no top staff position filled by a correctional education administrator. In contrast, the California Youth Authority upgraded its education program early in 1993 by creating a superintendent of education position. The superintendent reports to the deputy director for institutions and camps, but also sits on the director's management team. The individual selected for the position had spent many years as a correctional teacher and correctional school administrator.

Neglect of the education programs, then, spans the range from fiscal matters to administrative credibility.

■ ***Faulty Structure:*** The Department's program is poorly structured for delivery of quality education. The lack of a top-level advocate for education means that the needs of academic and vocational programs are obscured by the constant pressure for additional construction and the political visibility of the correctional officers. Without an education advocate, the individual prisons have no coordinated vision.

Education effort is controlled at prison level instead of centrally

The academic programs, including spending priorities and hiring and firing of teachers, are controlled at the individual prisons. The education administrator, the equivalent of a school principal, reports to an administrative layer below that of the prison warden. A frequent criticism of this structure is that education decisions are made by non-educators. Teachers acknowledged to the Commission that on issues of prison security, education must take a back seat. They feel strongly, however, that when it comes to school, educators should be making decisions. Teachers raised the potential problem of correctional officers, for whom the basic job requirement is a high school education, deciding education questions.

Student placement is one example:

- "Some teachers described how [the] Classification Committee `dumped' students in the wrong program for the sake of expediency," the Presley Institute report said.[126]

- "Students were transferred from institution to institution and from assignment to assignment, almost without regard for learning continuity. For example, inmates assigned to outside work gangs were systematically denied access to education programs."[127]

Another situation indicating that non-educators are making education decisions at the prison level is that site education administrators have little idea about the size, funding sources and disbursement of their own budgets.[128]

Education is one program that pays off by reducing recidivism

The lack of focus on goals, top-level administrative neglect and faulty organizational structure result in an education program that is ineffective. Effort and money spent on education, however, will pay off, according to experts. A wide variety of studies show that educating inmates reduces recidivism. Sam Houston State University's College of Criminal Justice in Huntsville, Texas conducted a review of the scientific literature on education. The review analyzed 13 studies on recidivism conducted between 1948 and 1990, including in the review only those that used empirical data to back up their conclusions. While the studies were not unanimous, the review concluded, "The great majority of studies focusing on adult basic and secondary education show an inverse relationship between participation and recidivism."[129]

Studies in Illinois, Florida, Alabama and New York found that adult inmates in academic education had lower criminal involvement, less recidivism, higher employment and more likelihood of continuing their education once they were released.

In the area of vocational education, the range of studies revealed that vocational inmates caused fewer problems in prison and behaved better once they were out.

With the research results pointing the way, it is clear that inmates need to be placed in education programs and encouraged to progress toward academic goals. As an inducement, the enforcement of the current sixth grade prerequisite for entry into work assignments is of vital importance. Other states have made use of similar tools.

Virginia uses a carrot-and-stick approach, permitting part-time work with a sixth grade education and full-time work with a ninth grade education.

SB 693, enacted in 1993, is a small but positive proposal to expand California's education program. It sets up a two-year pilot study at three prisons to give inmates three hours of classroom study and three hours of cell study per day. Inmates participating will be housed in the same unit so educational supervision and inmate teaching assistants are available during cell study. The approach has potential to expand the education program at the same time classroom space and staff are limited.

Mentioned earlier, the TIE program at Central California Women's Facility, with its expansion of education capability by introducing part-time education coupled with part-time work, is another promising avenue.

Another approach to upgrade education, used in 14 other states, is the creation of a correctional school district. States use a variety of district structures, including the establishment of a separate state agency, placement of the district under the jurisdiction of the state department of education and creation of a semi-autonomous body under the wing of corrections.

Structure may vary but the goals are clear: (1) Make education a priority. (2) Insure educators make education decisions. (3) Put correctional schools in the education establishment loop.

Other states have centralized and focused their education programs

Virginia has gone the farthest in establishing its district, structuring its Department of Correctional Education as a separate state agency providing education services to both youth and adult institutions. One advantage of the independent structure is a better chance at funding. The Department's line item in the state budget ensures that any proposed cuts get full legislative review. A district staff member said if budget reductions are made, they are equitable and not disproportionate.[130]

The district is emphasizing that education be made a priority. For example, it has opposed the habit of correctional officers who pull students out of class for minor reasons and interrupt their studies.

Texas' Windham School District operates under the jurisdiction of the Texas Department of Criminal Justice. The Texas Board of Criminal Justice, the correctional governing board, appoints the superintendent of the

district. Windham has concentrated its efforts on adult basic education, and its results are impressive. The district awarded 3,400 GED certificates in the 1991-92 school year, the most recent statistics available.[131] Texas' prison population was 52,000 in 1991.[132] California, by comparison, awards 3,000 GED's a year for its 108,000-inmate institutional population.

The advantage of the district is its ability to attract outstanding teachers, according to its acting superintendent.[133] "A district structure keeps you in the category of professional educators rather than correctional personnel. It is a great recruiting tool, that Windham is a professional organization that just happens to operate in corrections," the acting superintendent said. Teachers move freely between the public schools and the correctional schools and 55 percent of teachers have masters degrees.

With Texas' correctional school district structure, the educational money cannot be diverted for other purposes, an important advantage. And the district attracts more non-state funding. The Texas district receives about $2 million a year from federal funds, about the same amount California receives for twice as many inmates.

One downside for the school district in Texas is the cost of maintaining its teachers at the public schools' salary scale and in the teachers' retirement system.

The California Youth Authority is considering the possibility of establishing a correctional school district. More than any fiscal advantages, the Youth Authority is seeking the resources, information and close ties to other education professionals, said the assistant superintendent for curriculum and instruction.[134] The CYA's primary responsibility for its youthful offenders is education, and, in fact, many of its institutions are called "schools." Educators at CYA want be included in the state Department of Education network with other public school districts for the latest methods, materials, workshops and information.

The CYA would oppose a structure such as that in Virginia where education services for both youth and adults are in the same agency. The missions of the two education programs are very different, the CYA contends, with the youth programs modeled on the traditional high school with the full range of courses, including history and

science, while the prisons work on an adult education model, emphasizing reading and math skills.

Based on information from a wide variety of sources, the advantages of educational districts appear to be:

- Shared information from educational experts.
- Priority for education among the many corrections functions.
- Additional sources of money for programs, although not in large amounts.

The apparent disadvantages to creating a district include:

- More bureaucracy, with the potential for stifling innovation.
- Possible increased costs.
- Isolation from day-to-day prison operations.

In summary, the Department's education program seems to have great unrealized potential. Its organizational structure, neglect by top management and lack of focus on goals has hampered its effectiveness as a tool in reducing recidivism.

Recommendation #19: **The Department of Corrections should restructure its education program, either by creating a correctional school district with the assistance of the Governor and the Legislature, or by creating a superintendent of correctional education and placing that person in a top policy-making role.**

Education should have a voice at the top of the Department of Corrections management structure, so that the program is not overlooked in the scramble to build prisons and hire correctional officers. A district model has worked successfully in other states and the strength of statutory authorization would protect education from diversions of funds to other priorities. The

superintendent of correctional education, should the governor and Legislature select that alternative, should be a person of recognized ability in the correctional education field.

Recommendation #20: **Whether a district is formed or a superintendent's position established, that entity shall be the key decisionmaker on inmate education and should set short- and long-term goals involving literacy, testing and education priorities for all prison education programs.**

The prisons need flexibility, considering their differing geography and inmate population, but the goals that underlie the education program should be observed at all institutions. Literacy should be the basic, fundamental purpose of the programs, and the goals should be milestones in accomplishing literacy. Testing and test results should be timely, accurate and available at all steps in the process.

Recommendation #21: **No inmate shall be placed in a full-time job until he attains ninth grade literacy.**

The Department should back up its commitment to literacy by requiring ninth grade literacy for full-time jobs and sixth grade literacy if the inmate is enrolled in a part-time work, part-time education program. The possibility of a paying work assignment should be used as an incentive to get inmates into the academic classes they badly need.

Recommendation #22: **The Prisoner Literacy Act should be strengthened and amended so it is outcome-based.**

Rather than generating numbers, the Department should produce results in its literacy program. The desired outcome should be inmates that can read at the level of the average ninth grader, not inmates spending one hour a day in front of a computer screen.

With a shift from percentages to proficiency, the Prisoner Literacy Act will make a commitment to real change.

Department of Corrections

* *Accountability and standardized best practices are hindered by the separate fiefdom nature of prisons.*

* *The Inmate Bill of Rights is too extensive, hampering efficient operation of prisons.*

* *Scarce resources could be used more effectively if appropriate prisoners were released on medical parole.*

Recommendations:

* *Create an independent Inspector General function.*

* *Require centralized control of prison operations.*

* *Modify the Inmate Bill of Rights to comply with federal standards.*

* *Institute a clearly defined medical parole system.*

Department of Corrections' Operation

The Department of Corrections has a $2.7 billion budget and 31,000 employees to manage a prison system that houses 115,000 inmates and a parole system that oversees an additional 84,000 convicted felons. The various facilities managed by the Department include:

- Twenty-six prisons, ranging from minimum to maximum security (108,000 inmates). Within these institutions there are 12 reception centers for processing new inmates, four licensed health facilities and special units for the treatment of those with AIDS.

- Thirty-eight conservation camps housing minimum security inmates who are trained as firefighters (3,700 inmates).

- Twelve Community Correctional Facilities, of which five are privately run (1,300 inmates) and seven are run by cities (2,700 inmates).

- Thirty-five private work-furlough facilities (1,500 inmates).
- One rehabilitation center for drug addicts (3,700 inmates).
- Seven mother/infant centers (100 inmates).

Administering this system is vastly more complex than managing a city of the same size because the Department is responsible for every facet of the residents' lives, from bed sheets to release dates. Just the sheer geographical spread of the system, from the California Correctional Center at Susanville in the far northeastern corner of the state to the Richard J. Donovan Correctional Facility hundreds of miles south in San Diego, makes the management of the prisons a challenge. In addition, the inmates themselves run the gamut from the State's most violent and dangerous felons at the Security Housing Unit in Pelican Bay to those who are considered such minimum risks that they work at jobs on the outside and sleep in work-furlough facilities at night.

To run the prison and parole systems, the Department employs 17,000 correctional peace officers, 5,000 supervisors, 3,000 clerical workers, 1,500 craft and maintenance workers, 1,000 administrators, 1,100 teachers and 2,800 medical workers, including 400 physicians and dentists.

Prison system growth has been massive and fast

The Department arrived at this point in 1993-94, not through steady, well-managed incremental growth, but through a massive explosion of responsibility during the 1980s that saw the construction of 16 prisons and the mushrooming of prison population from 22,000 in 1980 to today's 115,000, with 10 percent growth in the last year alone. There are many signs that holding together a system that was set up on a much smaller scale has taxed the Department's organization and administrative skills.

In addition to record-breaking growth, the Department also has been faced with a changing correctional climate, with the pendulum swinging from a time when prisoners had almost no rights to the current litigious atmosphere that at times seems to provide more protection for prisoners than for many people on the streets. The challenge for the Department has been to ensure the safety of the public and correctional staff without violating the court-granted rights of prisoners and their families.

Finally, the Department -- like all other state agencies -- has faced the budget pressures that are the outgrowth of a dismal economy and lowered state revenues. Although the Department's budget was one of the few in state government that grew in 1993-94, increasing 8.5 percent, funding has not kept up with the cost of contending with the increased population without cutting functions and programs.

The following two findings and eight recommendations address the problems generated for the Department by the rapid growth, changing conditions and fiscal shortfall.

Finding #6: A long-standing practice of allowing each prison to operate independently has hindered accountability for performance and hampered standardization of policies, leaving the State open to charges of mistreating prisoners.

Historically, California's prisons have been headed by all-powerful wardens who set the tone of the institution, crafted policies to carry out their correctional philosophies and were answerable to few -- a system that was viable when there were only a half dozen institutions scattered around the State. While the massive growth that California's Department of Corrections has undergone has begun to force some centralization into the system, the progress has been slow, incremental and, in many cases, lawsuit-induced. The result is a system that has allowed appalling abuse of some prisoners, lax standards for daily operations and questionable practices that leave the State open to expensive liability. While the Department has taken significant steps to address problems, legislative support and guidance is critical to ensure reform is comprehensive and carried through.

As a preface to developing this finding, the Commission acknowledges the broad spectrum of opinion regarding how prisoners should be treated, ranging from those who believe a society that imprisons criminals owes them every right, service and treatment to the opposite extreme of those who would just as soon throw prisoners in a pit and misplace the feeding schedule. Somewhere in the mixture is a vague constitutional standard that prisoners may not be subjected to cruel and unusual punishment, the definition of which is a moving target that is fleshed out by court decisions, bit by bit.

Commission looked for signs of Department efficiency and effectiveness

Having no desire to enter a philosophical debate that cannot be resolved or to put itself in place of those who render rulings on federal standards, the Commission in this finding skirts the issue of how prisoners should be treated on humanity, decency and constitutional grounds. Instead, the Commission clearly focuses on the need to run a prison system efficiently and effectively. The criteria used:

- Efficient. Repeated class action lawsuits that cost the State millions in attorney fees and individual lawsuits that result in high-dollar settlements for damages are a signal that the State is being reactive instead of pro-active in setting standards of performance. While any organization will suffer occasional violation of set standards, the lack of meaningful procedures to guide performance undermines the State's ability to argue in court that deviations from policy -- rather than policy itself -- are at fault.

- Effective. Since a major goal of the Department of Corrections is to safeguard the public, effectiveness is undercut by treatment of prisoners that further dehumanizes them and makes them a bigger threat to the public upon their release than when they entered prison. And under the current determinate sentencing structure, 90 percent of those in prison today will be released at some point to take their place in society.

The impact of lawsuits on the prison system is substantial. Inmates are particularly prone to file lawsuits, according to Department officials, because they have better access to law library materials than the average citizen, are exempted from paying filing fees, have time to devote to paperwork and receive substantial assistance from "jailhouse lawyers" and special-interest legal groups.[135] In a 1992 legislative hearing, officials estimated that $7 million is spent to employ 80 attorneys and 40 support staff in both the Attorney General's Office and the Department of Corrections to defend against litigation that is filed against the State at the rate of about 100 cases a month. About 95 percent of the cases eventually are dismissed as lacking merit, but each must be addressed by the State initially.[136]

In the area of medical care alone, the State saw 332 cases filed in 1992-93 and had about 790 cases open at any one time during that year. Staff time spent on the health care litigation totalled 29,818 hours. The State settled 10 health care cases (including four wrongful death suits) in 1992-93 at a cost of $900,500. By the middle of 1993-94, two cases had been settled at a cost of $32,500 (not including a $997,000 settlement for an inmate who was burned while being forcibly bathed by correctional officers since this was not actually a health care case).[137]

Lawsuits are costly but they also impact policy decisions

But the impact of lawsuits goes beyond the actual monetary cost of defending the State and paying out settlements when necessary. Often they drive policy and spending decisions. Officials for the Department described individual lawsuits about specific treatment as pretty well in line with what any organization providing health care to 115,000 people might incur. Class-action lawsuits, however, are recognized by the Department as having a different purpose. An official wrote to the Commission:

> *Unlike individual suits, in these cases the plaintiffs' goals are to reallocate governmental resources and reorganize the manner in which the Department provides services. Many times the Department is providing constitutional minima in medical care. Plaintiffs' attorneys are arguing that more is due the inmates than is due the unincarcerated, uninsured person.*[138]

Sometimes, however, the suits focus on simply obtaining the same protections for quality care that apply to any citizen walking into a health care facility in the free world. This is particularly evident in a series of class action lawsuits in the 1980s and early 1990s that have resulted in consent decrees and court orders because the State was not able to successfully defend the different practices and procedures at various prisons. Notable lawsuits include:[139]

- *Marin v. Rushen* (1982) and *Wright v. McCarthy* (1984), both required the Department of Corrections to move toward meeting state licensing standards in the provision of its health care. At one point the hospital at San Quentin became licensed but the license was "abandoned" in October 1986, according to officials. In December 1986, the court ordered the State to seek renewal of the license. A compromise plan eventually was put into effect that did not require licensure but met the approval of the court, the court's special monitor and the parties to the suit.

- *Duggan v. McCarthy* (1984) sought to make the Department meet acute-care hospital licensing standards or contract out to existing community hospitals for care of inmates. As a result, the Department took actions that resulted in the licensing of four system hospitals: California Medical Facility, California Men's Colony, California

Institution for Men and California State Prison at Corcoran.

- *Gates v. Deukmejian* (1988) charged the State with subjecting inmates to deficient conditions of confinement and denying them access to medical and mental health care, among other things. The 1990 consent decree required the Department to take specific steps to improve the provision of health care. While in compliance on some of the provisions, the State has not met other provisions of the decree relating to outpatient psychiatric services and a contempt of court hearing was held on September 2, 1993. As this report was being written, the Department had submitted a new plan for compliance to a mediator who was expected to make a recommendation to the court about the sufficiency of the new plan. The Gates case cost the State $337,000 in 1992-93 and $94,000 by mid 1993-94 in ongoing monitoring fees.

- *Henss v. Department of Health Services* (1991) sought to make the Department of Corrections contract out for medical care if facilities at 13 institutions were not licensed. The suit addressed the problem that while the Legislature had created a Correctional Treatment Center health facility licensing category, six years later the Department of Health Services has yet to issue regulations to implement the new license. The Department says it prevailed in the case because the court ruled that the Department was not at fault for not licensing the facilities. However, the court also indicated that it would take action if the State did not issue regulations and proceed with licensure "diligently."

- *Whisman v. Gomez* (1984) sought licensure of physical and mental health care provided at California Institution for Women. Under a settlement reached by the parties, the Department began contracting out for services because it was unable to meet licensing standards at the facility on the prison grounds. The result: In 1991-92, the first year affected by the settlement, even though the population at the facility declined 21 percent from 2,174 to 1,717 inmates, medical costs soared 97.9 percent or $3.8 million over the prior year spending.

Although the details vary, the gist of many of these lawsuits is similar: Prisoners should have the same quality of medical care, as ensured by licensing standards, as other citizens.

Present suit contends care at Pelican Bay is unconstitutional

A present class-action lawsuit goes beyond seeking licensure, contending instead that the Department's medical care at one institution -- Pelican Bay, a maximum security facility in Crescent City that is used to house the system's most violent prisoners -- is unconstitutional because the Department has displayed a pattern of being consistently indifferent to the health needs of inmates. The case, Madrid v. Gomez, was tried and submitted to a federal judge for a ruling in the closing days of 1993. Other contentions in the broad, sweeping case include that:

- The design and programming of the Security Housing Unit (SHU) of the prison constitutes cruel and unusual punishment because inmates are housed in a stark, windowless environment and cut off from socialization with peers during exercise time.

- Prisoners are sent into the isolation of SHU permanently without being able to confront their accusers or to mount an effective defense when they are identified as prison gang members.

- Guards use unwarranted brutality and excessive force.

- Double-celling of prisoners without consideration of their backgrounds or records subjects them to unnecessary inmate-upon-inmate assaults.

- Because of restrictions on the use of the law library and limited resources, inmates are denied adequate access to the courts and legal counsel.

The Commission reviewed 29 volumes -- almost 5,000 pages -- of trial transcript from the Madrid case, as well as a portion of the expert declarations filed in the case. The Commission is not interested in substituting its judgment for that of the federal judge on whether the operation of Pelican Bay is constitutional now and since opening in 1989, particularly regarding issues such as sensory deprivation, law library restrictions and due process for those accused of gang affiliation. However, the Commission believes that the tale unfolded in the Madrid case speaks to overall policies and procedures that

have a bearing on the effective and efficient operation of the Department -- especially on the statewide issues of medical care, parameters for use of force and oversight of performance.

Medical care: The multiplicity of successful class action lawsuits and the filing of the Madrid case prompted the Department to adopt a pro-active strategy to improve health care delivery processes rather than continuing to change policy on a piecemeal basis in response to court orders. The Department in 1992 moved to organize and control its far-flung health care system, which up until now had been under the direction of individual wardens at each institution. This prison-by-prison setup has been criticized over the years, particularly by health care professionals who felt that custody concerns often outranked the need to provide sound medical care when it came to wardens' decisions. To replace this system, centralized health care standards, polices and procedures are being instituted on a five-year time schedule. Department officials say some improvements and innovations may be delayed by budget constraints, but that the Department is moving toward a higher level of quality assurance and standardized practices.

Parameters for the use of force: The Madrid case involves many instances of the questionable use of force against prisoners. Prison officials admit that contradictory and incomplete policy directives caused many problems when Pelican Bay opened in 1989. In fact, Pelican Bay was the last of the State's prisons to open under a system that required each prison to establish and maintain a set of operational procedures unique to each individual prison. Procedures at that time were to be updated annually and approved by the administration in Sacramento, but each prison was left to develop its own policies within the parameters of the Penal Code, the California Administrative Code and Title 15 (specific regulations pertaining to prisons). It was these operational procedures, the responsibility of the facility itself, that were not complete and coordinated when Pelican Bay opened. Writing about the changes in conditions for prison openings since then, the director of the Department says:

> *The annual review and approval process was intended to provide some degree of standardization and uniformity among the individual prisons. However, as the Department's operation became more complex based on legislative and judicial*

> *mandates, it became apparent that significant change must be made to the operational processes of the Department.*[140]

A task force was created in 1987 and by 1990 the first of a multivolume, comprehensive, umbrella policy -- known as the California Department of Corrections Operations Manual -- was issued, followed by the remaining volumes in 1991. Today, prisons are required to follow the standardized procedures, except in cases where they have adopted two-page supplements to selected sections of the manual to address specific needs of each prison.

Oversight of performance: Recognized by both sides in the Madrid case is the need to have thorough and well documented reports and investigations of incidents that occur. Although the Madrid case cites multiple examples of problems with investigations, the State defended its reviewing practices as reasonable, in some cases saying that often there was not enough corroborating evidence to take disciplinary action. Indicating that steps have been taken to improve investigations, the Department director also explained that the Department's centralized internal affairs investigation unit -- the investigators who handle more serious incidents that officials feel should not be looked into by investigators at individual prisons -- was moved into a direct reporting relationship to the director's office two years ago to strengthen accountability.

Separate Inspector General office one way to gain credibility

Critics of the system have pushed for a separate Inspector General function that would be outside of the Department and have more credibility in carrying out investigations of all complaints about prison performance. The Department, however, has opposed such proposals in the past.

Many critics believe that the problems highlighted in the Madrid case and other class action lawsuits are an unsurprising outgrowth of a system that grants individual wardens too much discretion over how to run their prisons. While the Department moves in the direction of imposing more top-down order, the warden selection process continues to echo past practices and philosophies. Each warden is selected by the governor and confirmed by the Senate. Many believe that this causes fragmented power bases throughout the prison system that compete with the governor-appointed, Senate-confirmed Department Director. Department officials disagree, however, since the director has the power to fire wardens.

Department is moving toward standardized accountability

With the massive amounts of material submitted during the trial, no one is expecting a decision in the Madrid case soon. When it comes, the judge's determination about whether Pelican Bay is run properly will be based on constitutional standards for prisoner treatment. As noted at the beginning of this finding, the Commission's interest lies instead in assessing whether the Department of Corrections has operated in an effective and efficient manner. Two things are clear to the Commission, based on its examination of trial documents:

- The Department has pursued a reasonable policy in segregating the most dangerous and violent inmates in the state prison system so that they can be dealt with more effectively. While this has resulted in safer conditions at the system's other prisons, it has made Pelican Bay a flash point for problems. This has made it all the more imperative that the State have standardized, proper procedures in place for operating what is the toughest institution in the prison system.

- The State had a fragmented policy and accountability system in 1989 when Pelican Bay opened that resulted in operational problems, many of which were so clearly outside the standards of proper prison procedures that they became fodder for a costly and time-consuming lawsuit. Since then, however, the Department has moved to standardize policies and procedures throughout the prison system and has taken steps to centralize accountability and responsibility for medical care.

In the interests of running an effective and efficient correctional system, the Department needs to continue down the path of turning a fragmented collection of individual fiefdoms into an accountable, standardized system.

Recommendation #23: The Governor and the Legislature should support standardization of policies and centralized accountability for the prison system through the budget allocation process.

It is critical that the Department of Corrections continue with efforts to standardize policies affecting how prisons operate and with the long-range plan to

bring medical care under the line authority of a division focused on delivering constitutionally adequate health services. While the Department has started down the proper road for curbing the old system of prison fiefdoms, resources are needed to implement changes permanently. In addition, the Governor and the Legislature should express the clear intent of having a Department that centralizes accountability and responsibility so that future changes in leadership will not allow a reversion to prison-by-prison policy-setting.

Recommendation #24: The Governor and the Legislature should establish a separate Inspector General function outside of the Department of Corrections to improve credibility of oversight of prison practices.

Even when well done, investigations of a department's practices conducted by a department itself have less credibility than when an outside review takes place. Internal investigations are often hampered by workplace ties and loyalties. The Inspector General function could involve transferring knowledgeable, experienced investigators to a separate entity or to a newly created unit of the Bureau of State Audits.

Recommendation #25: The Governor and the Legislature should improve the warden selection process.

The goal of having a centrally accountable system is undermined by establishing appointments below the Department director that are outside of his control. Despite organization charts that place wardens under the Director, they have a co-equal status in terms of selection, both roles being filled through gubernatorial selection and Senate confirmation. Wardens should be selected by the Department director based on experience and ability and should be subject to removal by the director for failing to perform.

Finding #7: The Department of Corrections is prevented in some instances from operating effectively, efficiently and safely.

State laws, federal practices and the more general "laws" of supply and demand in some instances stop the Department of Corrections from taking steps or implementing policies that are sound and cost-effective. This includes a statute known as the Inmate Bill of Rights, the structure of the compassionate release program, prohibitions on AIDS testing, the failure of the federal government to pay for incarcerated illegal aliens and the high cost of procuring health care services through contracts.

Inmate Bill of Rights: For more than 100 years, California had a statute that suspended a prisoner's civil rights during the time spent in prison, a concept known as "civil death" that was rooted in practices in ancient Greece and that reflected the belief that someone who broke society's laws should not benefit from the protections afforded society under other laws. A prisoner could not vote, defend his interests in a lawsuit, enter valid contracts or contest a divorce, to cite a few examples.[141] Then in 1975, the statute was amended, completely reversing the effect. Under Penal Code 2600 and 2601, inmates expressly retain all the rights of law-abiding citizens.

The statute was broadly interpreted by the state Supreme Court in a 1986 case, according to Department experts, who say:

> *The State must not only provide convicted felons a fully functioning living environment at no cost to them, but it also cannot impose any responsibility or limitations on their behavior, unless in the words of Rose Bird, "it is the least restrictive alternative available." At best we can lock the outside door, and after far more due process than should be due, take away some good time credits for the more outrageous behavior.*[142]

California gives prisoners more rights than required under federal standards

The statute, coupled with the court's language, has set California apart from the federal government and most other states in its treatment of prisoners. Prisoners in other states instead are treated under the federal standards for constitutional protections outlined in *Turner v. Safley* in 1987, which allow restrictions on inmate rights "so long as the restrictions are rationally related to legitimate penalogical interests."[143]

The Department identified many problems that are created by the need to be "least restrictive" rather than limiting rights when there are legitimate reasons:

- Inmates are allowed to receive publications that advocate racial hostility, violence and sexual exploitation.

  Inmates frequently receive hard-core pornography, such as materials that graphically depict necrophilia, sado-masochism and bestiality. Materials that contain nude and provocative images of children ... are often ordered by convicted child molesters and other sex offenders. Prison employees have complained because they are required to view these materials when processing orders for such items and when searching the items for contraband. Ironically, current law now seems to elevate concern with whether forcing employees to view sexually explicit materials could be constructed as creating a hostile working environment, over and above the far more serious problem of the unquestionably adverse effect this material has on the behavior of the inmates.[144]

- In each instance when a mentally ill prisoner needs medication for his own safety and the safety of others but he refuses to take it or is incapable of giving informed consent, the Department must seek a court order. This process, known as Keyhea hearings after the court case that largely relied on the Inmate Bill of Rights for its logical underpinnings, is costly for the State in terms of legal staff time and tying up court calendars. Federal standards and court rulings in other states require instead that decisions to medicate involuntarily be made by panels of psychiatrists or

some other less costly mechanism to protect the prisoner's rights.

- While the Department is able to impose grooming standards on peace officers, it cannot do the same on prisoners. The Department argues that such uniformity of grooming reinforces discipline, personal responsibility and public perceptions, a concept long used by the country's military forces.

- Under state law, all citizens can challenge administrative regulations -- and prisoners have found this one more avenue of litigation.

  When the Administrative Law concept of allowing citizens to challenge or petition for regulations was developed, it was never anticipated that this situation would mushroom into an additional litigation forum for inmate complaints (there is already an elaborate inmate appeals system in place, plus far easier access to the courts than enjoyed by the vast majority of the law-abiding public). One particular inmate claimant alone takes up the effort of a full-time Deputy Attorney General and several [Department] employees with a continual stream of challenges to so-called "underground regulations." [145]

While the Department was unable to quantify the cost to the State for the problems stemming from the Inmate Bill of Rights, officials said eventual savings if the law were modified could be in the millions of dollars.

Advocates for prisoners, however, fear that any change will leave the inmates at the mercy of an uncaring bureaucracy. They also argue that the Department can control pornographic mail because there is a direct penalogical interest.

Compassionate release: Under current law, the Department can recommend to a judge that an inmate be released from serving the rest of his term if he is terminally ill (within six months of death) and poses little risk to the public. Department records show that out of 131 cases brought to the Director for consideration in the past three years, judges eventually agreed to release 43 inmates (five in 1991, 17 in 1992 and 21 in 1993 through October).

From a humanitarian point of view, the prisoners are allowed to die in their home setting -- a perspective that finds sympathy with some but opposition from others who feel punishment should be exacted regardless of the prisoner's condition, especially in the case of heinous crimes.

Wider use of releases for ill inmates would free resources

But the concept, especially if modified, has a far more practical application. Prisons have never been set up to deal with chronically, seriously ill patients -- such as those in the end-stages of AIDS and Alzheimer's disease or those who have sunk into vegetative states due to injuries. Thus, these inmates take a disproportionate share of the Department's resources to set up secure environments that will also provide the needed health care. Because they are often not within six months of dying by a doctor's estimation, they cannot be considered for compassionate release.[146]

In addition, federal law prohibits states from seeking Medicaid funding to cover the cost of care for prisoners. Once released, however, those on compassionate leave become eligible for programs that allow the State to bring in more federal dollars to pay for what typically is extremely expensive custodial health care. This frees state funding for other purposes, such as keeping violent criminals in prison longer.

Critics have argued that releasing more prisoners on compassionate leave might endanger public safety, particularly if the prisoner unexpectedly recovers and then cannot be brought back to a prison setting. Those familiar with a concept called medical parole, however, believe that criteria can be set that minimize public danger by only allowing those who are at a minimal functioning level to participate in the program. Medical parole would also allow the prisoner to be sent back into the system should recovery occur.

Department officials estimate that fewer than 100 inmates could be viewed as qualifying for a medical parole system -- but that they are some of the most expensive inmates now supported by the prison system.

One case that might be typical of those to be considered under a medical parole system is an inmate whose wife provided the Commission with extensive documentation. Serving a sentence for four first-degree murder convictions, the inmate was incarcerated in Pelican Bay where he was beaten almost to death by other inmates. After emerging from a comatose state, he was

left with such serve impairments that today he is bedridden, brain damaged and incapable of performing even limited functions. A neurological report by a doctor outside the prison system concluded there is not much that can be done for the inmate, but added:

> *The one recurrent situation that might speak for removal of [the inmate] from the Department of Corrections' setting at Vacaville to a private setting is the State's serious and significant budget crisis, with discussions of early releases and reduction of inmate populations. Certainly, [the inmate] is not a physical threat to anyone. He is not going to go anyplace but where he is placed.*[147]

AIDS testing: State law protects all citizens from being tested for AIDS without their permission, although prisoners who have attacked a guard with resulting injuries that may allow AIDS infection may be forced by court order to submit to a test. This is a politically explosive issue that pits those concerned on behalf of prisoners about privacy rights and potential discrimination against those who worry about chance contamination of correctional workers and other inmates.

The Department has conducted blind testing in the past, discovering in 1986-87 that between one and a half and three percent of prisoners were infected with the AIDS-causing virus. Blind testing is expected to occur again in 1994.

Those who are satisfied with the status quo argue that prisoners who test positive for AIDS would be treated differently -- and more poorly -- by both the Department and other inmates. They urge the Department to supply inmates with educational counseling about AIDS and to upgrade the treatment of those prisoners who are suffering from full-blown AIDS. Those two steps, they say, would encourage more prisoners to be tested voluntarily. In the meantime, proper procedures by health care providers, regardless of the AIDS status of the patient, should protect workers from infection, they argue.

Those who advocate routine testing of everyone who enters the system point out that forced testing is already legal for tuberculosis and sexually transmitted diseases. They argue that AIDS should be treated no differently since it, too, is a communicable disease. They

believe that workers protection is best provided if everyone is aware of a prisoner's AIDS status.

Illegal aliens: Not all of the barriers that keep the Department from operating cost-effectively are erected at the state level. At least one is -- or should be -- a federal problem: prisoners who are illegal aliens.

California is a magnet for immigrants coming into the United States -- many of them illegally. Although the federal government, in setting immigration policy and providing border control, has pledged to pick up the cost of illegal immigration, it has failed to do so. In the area of prisons, this has been particularly costly, diverting resources that are sorely needed for other Department responsibilities.

Illegal aliens make up more than 10 percent of prisoners

The Department estimates that there are 16,000 illegal aliens serving time for felony convictions. At an annual cost of $20,000 per inmate, this represents $320 million of the Department's budget. Since many are not fluent in English, it also creates added problems during the normal course of work.

While some have advocated returning these prisoners to their homelands immediately after conviction, others have questioned whether they would be incarcerated in their homelands or merely set free to return to the United States and a continued life of crime.

The federal government could live up to its obligation in one of two ways, according to other correctional experts. It could reimburse the State for the cost of housing the inmates. Or it could dedicate regional prisons that it is planning to build to housing all illegal aliens that enter the states' prison systems.

Health care contracting: A final problem facing the Department cannot be corrected by simply changing a state law or federal allocation since it involves the business concept of supply and demand. Department officials said they pay a high price for medical care in communities surrounding prisons because providers do not want to cope with the type of patient they will be treating and because providers know the Department has few alternatives.

The Department spends about $80 million annually on contracts with physicians and hospitals outside of prisons. Although the Department has begun to copy Medi-Cal's methods for trying to deal more aggressively

with health care providers, it is at a disadvantage because it does not have the leverage that comes with large numbers. (As the Commission has noted in previous studies on Medi-Cal, the State is able to bargain for low prices successfully when it threatens to take its large amount of business elsewhere.) Finding a way to link the State's responsibility to provide health care to inmates with its similar responsibility to provide health care for state workers and/or Medi-Cal recipients would give the Department greater leverage in bargaining for reasonably priced health care.

Recommendation #26: The Governor and the Legislature should modify the Inmate Bill of Rights so that it reflects the federal standard of protection for prisoners.

While prisoners should not be stripped of all their rights and left with no protection in a system that has the potential for abuse, there is no sound reason to afford them more rights than prisoners throughout the nation enjoy under federal court interpretations of the U.S. Constitution. That level of protection would guarantee them humane treatment without tying the hands of the Department in trying to run an effective and efficient prison system.

Recommendation #27: The Governor and the Legislature should enact a carefully crafted medical parole program to allow the release of seriously ill prisoners who no longer constitute a threat to the public.

By either altering the existing compassionate leave program or creating an additional program of medical parole, the State would have the flexibility to place inmates who are no longer a threat to public safety in less costly and more suitable settings. In the event the patient's status improved or the risk factor altered, the parole option would allow the return of the inmate to prison.

Recommendation #28: **The Governor and the Legislature should enact legislation allowing mandatory testing for the AIDS virus of all prisoners.**

Divorced from political arguments, AIDS testing should be treated as a health and working conditions issue comparable to tuberculosis and other contagious diseases. The legislation should include requirements of adequate and proper treatment of patients identified as carrying the virus and should specifically prohibit discriminatory actions based on test results.

Recommendation #29: **The Governor and the Legislature should take every opportunity to remind the federal government of its obligation to pay the costs attached to illegal immigration.**

Although resolutions and letters of demand have proved futile in the past, the Governor and the Legislature should continue to apply whatever pressure they can to force the federal government to address the cost of illegal immigration.

Recommendation #30: **The Governor and the Legislature should direct the California Medical Assistance Commission to explore with the Department of Corrections all opportunities for reducing the cost of medical contracting in the prison system.**

The California Medical Assistance Commission (CMAC) has saved the State billions of dollars by bargaining aggressively for low-cost hospital contracts to provide care for Medi-Cal patients. CMAC's extensive bargaining experience and leverage provided by the command of a large patient base should be put to work on behalf of the Department of Corrections.

Conclusion

Conclusion

How California uses its prison system and the procedures it follows to operate them has a substantial impact on public safety. In the preceding seven findings and 30 recommendations, the Commission has outlined an aggressive plan to rebalance the system so that violent crime is more compellingly targeted and incarceration becomes a more successful tool for dealing with the outcasts of society. But the prisons are only a single part of a complex criminal justice system and the answer to California's crime problems cannot be so narrowly focused.

The public often views the criminal justice system in terms of the people that make up its parts: the policeman on patrol, the district attorney prosecuting a case and the judge sentencing a convicted felon. Less familiar but just as important are the others who make up the system, including the lawyers who defend the accused, the sheriff's deputies and prison administrators and correctional peace officers who operate the state's jails and prisons, and the probation and parole officers who supervise criminals outside the lockup.

Each plays a role, from apprehension to release, in the operation of California's criminal justice system, which deals with 1 million reported crimes yearly and with the

estimated 188,000 offenders who will occupy the state's jails and prisons on any one day.

The building blocks of the criminal justice system are closely interrelated, a fact that is dimly perceived by the public and often ignored by those in government. Vigorous arrest policies by city police and county sheriffs mean more inmates are occupying cells in county jails. The cases of these jailed offenders pour into the courts, forcing an increased workload on the prosecutors, defense attorneys and judges. As the court backlog grows, jail populations surge due to the number of suspects awaiting trial.

The effect of vigorous police enforcement ripples beyond the county jails. In recent years, fewer low-level felons have received suspended sentences or county jail time, due in part to lack of space and in part to the "tough-on-crime" policies that have attracted widespread public support. In 1993, the Legislature introduced 138 sentencing bills, virtually all of them requiring tougher sentences, sending more offenders to superior courtrooms and adding more inmates to the already overcrowded prisons.

Probation and parole, the "caboose" at the end of the criminal justice "train," as one official put it, handle soaring caseloads as offenders are placed on probation by the court or are released to parole from the prisons. The parole population is enlarged as the eventual result of increased enforcement and tougher sentencing, because over half of all felons violate their parole or commit a new felony. These parolees feed back into the beginning of the system, soaking up police enforcement time.

Money to pay for the criminal justice system flows from different tributaries. Cities fund police. Counties pay for jails, sheriff's deputies, prosecutors, defense lawyers, and probation officers. The State funds most of the county court costs, the criminal appeals process, parole and the single biggest piece of the network -- the prisons.

Despite the interrelationship between the various parts of the criminal justice system and the huge cost of keeping pace with its growth, there is little coordination between the various jurisdictions to monitor how changes in one will impact another. One barrier to better coordination is the complexity of the system: 58 counties and hundreds of other jurisdictions paddling their own policy boats. Santa Clara County, however, has developed over a nine-year period a computerized model entitled

Justice System Improvement Model (JUSSIM) to analyze these changes as they affect local government. The system has filled such a pressing need that Santa Clara County regularly does consulting for other local governments and, currently, with the state of Colorado to predict costs in the criminal justice system.

To illustrate the interrelationships as determined by JUSSIM, consider a recent example in Fresno County. Early in 1993, Fresno County hired the Santa Clara consultants to analyze a proposal by the City of Fresno to hire 100 additional police officers. The consultants determined the additional city officers would cost the cash-strapped county $9.5 million for 5,000 additional jail bookings, 7,000 Municipal Court cases, 500 felony Superior Court cases and the additional arrests and incarcerations for juveniles. Of the 500 felony cases, 230 would be sentenced to state prison, the study found.[148]

JUSSIM's Fresno County exercise was not structured to predict impact on the state prison system, but using Department statistics, the added prison inmates would cost the state $4.8 million a year in operating costs at $21,000 per inmate and $9.4 million in construction costs, using the least expensive figure of $41,000 for a minimum security (Level I) prison bed. The Fresno County case provides a taste of the impact if Los Angeles Mayor Richard Riordan's 1993 post-election proposal to hire 4,000 new police officers for Los Angeles is adopted.

The State has no formal system of coordination between itself and the 58 counties that send felons from local courts to the state prison system. The result is that policies can have unintended consequences or may fail to make the best use of resources that are available at different levels of government.

The Legislative Analyst's Office has begun to tackle these issues by proposing a restructuring of responsibilities that bring more common sense to the division of duties between local governments and the State, including taking steps to combine the probation and parole functions.

The Commission believes that it is important to move forward with the reforms cited in this report to make prisons more effective. But it is also critical for the State to address the problem of crime -- from its root causes to its end products -- in a holistic fashion. In support of that, the Commission will continue to examine state programs that have the potential of affecting crime in California.

Appendices

APPENDIX A

Little Hoover Commission
Criminal Justice Subcommittee

Arthur Gerdes, Chair
Angie Papadakis
Haig Mardikian
Barbara Stone

Little Hoover Commission
Criminal Justice Advisory Committee

James Gomez, Director
Department of Corrections

Thomas McConnell, Executive Director
Board of Corrections

John Gillis, Chairman
Board of Prison Terms

Craig Cornett, Director
Criminal Justice and State Administration
Legislative Analyst's Office

Don Novey, President
California Correctional Peace
Officers Association

Jan Miller, Chair
Doris Tate Crime Victims Bureau

Vincent Schiraldi, Director
Center on Juvenile & Criminal Justice

James Austin, Executive Vice President
National Council on Crime & Delinquency

Susan B. Cohen, Executive Director
California Probation, Parole and
Correctional Association

Emma Childers
Friends Committee on
Legislation of California

Ken Knost, Mayor
City of Taft

Robert Denham, Chief Deputy
Sacramento County Sheriff's Office

Cary Rudman, Chief Counsel
Assembly Public Safety Committee

Carolyn Eggleston, Director
Center for Study of
Correctional Education

Greg Harding, Deputy Director
Department of Corrections

Jim Lewis, Director
Assembly Office of Research

Ken Hurdle
Senate Office of Research

Margaret Pena, Legislative Director
American Civil Liberties Union

Linda Nararro
California Rural Indian Health Board

Leonard Greenstone
Leonard Greenstone Company

Lisa Rea
Justice Fellowship

Joan Cavanaugh, Deputy Attorney General
State Attorney General's Office

Gregory Harding, Deputy Director
Department of Corrections

Richard Schumsky, President
Los Angeles County
Deputy Probation Officers Union

Donald Spector
Prison Law Office

Mary Anne Gilliard
Chief Deputy Director
Office of Criminal Justice Planning

Curt Miller
Senate Republican Caucus

Mel Assagai
Senior Executive for Gov't. Affairs
State Bar of California

Susan Wallace, Chief Counsel
Joint Committee on
Prison Construction and Operations

Rich Hopkins, Branch Chief
State Controller's Office

Marcos Nieto
California Research Bureau

APPENDIX B

Witnesses Appearing at
Little Hoover Commission Criminal Justice Study Public Heaings

July 20, 1993, Los Angeles

James Austin
Executive Vice President, National Council on Crime and Delinquency

James Gomez, Director
California Department of Corrections

Dan Lungren
California Attorney General

Sandra Buttitta, Chief Assistant District Attorney
Los Angeles County

Steven Z. Perren, Judge
Ventura County Superior Court

Paul Myron, Chief, Custody Division
Los Angeles County Sheriff's Office

Susan B. Cohen, Executive Director
California Probation, Parole and Correctional Association

Rowan Klein
California Attorneys for Criminal Justice

Patty Tate
Doris Tate Crime Victim's Bureau

September 21, 1993, Sacramento

James Gomez, Director
California Department of Corrections

Craig Cornett
Office of the Legislative Analyst

Arnold Schuler, Deputy Controller
California Controller's Office

Charles Scott, Administrator
Taft Return to Custody Facility

Patricia Borst, Program Administrator
Mesa Verde Community Correctional Facilitly

Don Novey, President
California Correctional Peace Officers Association

Carolyn Eggleston and Thom Gehring, Directors
Center for Study of Correctional Education

James Provenza
Former Chief Counsel, Assembly Public Safety Committee

Endnotes

ENDNOTES

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LITTLE HOOVER COMMISSION FACT SHEET

The Little Hoover Commission, formally known as the Milton Marks Commission on California State Government Organization and Economy, is an independent state oversight agency that was created in 1962. The Commission's mission is to investigate state government operations and -- through reports, and recommendations and legislative proposals -- promote efficiency, economy and improved service.

By statute, the Commission is a balanced bipartisan board composed of five citizen members appointed by the Governor, four citizen members appointed by the Legislature, two Senators and two Assembly members.

The Commission holds hearings on topics that come to its attention from citizens, legislators and other sources. But the hearings are only a small part of a long and thorough process:

* Two or three months of preliminary investigations and preparations come before a hearing is conducted.

* Hearings are constructed in such a way to explore identified issues and raise new areas for investigation.

* Two to six months of intensive fieldwork is undertaken before a report -- including findings and recommendations -- is written, adopted and released.

* Legislation to implement recommendations is sponsored and lobbied through the legislative system.

* New hearings are held and progress reports issued in the years following the initial report until the Commission's recommendations have been enacted or its concerns have been addressed.

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