# Criminal Punishment in the District of Columbia: Intermediate Sanctions, Prisons and Public Safety

## Final Report of the Intermediate Sanctions Task Force

Federal City Council
March 1996

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## Intermediate Sanctions Task Force Report

### *Executive Summary*

In this report the Intermediate Sanctions Task Force of the Federal City Council examines both the nationwide and the District of Columbia's experiences involving how nonviolent criminal offenders are punished. As a society, increasingly we lock 'em up! In the District of Columbia, as in many other jurisdictions, the rate of imprisonment and the governmental costs of corrections have skyrocketed over the past decade. Is this course of action best for our nation over the long run? Is it inevitable? Are we materially safer now that we have beefed up enforcement and nearly quadrupled the number of people incarcerated since 1970? Are there correctional programs anywhere in the United States that protect the community, but at lower cost than prisons?

Over the past three years, the Federal City Council in collaboration with the Council for Court Excellence conducted a broad overview of the correctional system in the District of Columbia focusing in particular on the nonviolent offender and questions such as those posed above. Our work has been conducted in a crucible of public fear, public mistrust, and widespread community frustration with both offenders and the correctional system itself.

The Intermediate Sanctions Task Force found a number of criminal justice programs for nonviolent offenders in the District of Columbia and elsewhere that are programmatically effective and far less costly than prison. These community-based programs also hold the potential of freeing up expensive prison bedspace to be used for dangerous offenders. Such programs may be found from the front end of the justice system all the way through the

courts and correctional process. We believe the District of Columbia should expand the use of effective programs—such as the Pilot Drug Court and Community Policing—in order to limit the number of nonviolent law violators subject to imprisonment in the first place. Based on a comparative review of prison populations nationwide, the report concludes that upwards of 10 percent of those now incarcerated in District of Columbia prisons could be punished within the community. The keys to achieving such an early reduction are proper selection of offenders, and the provision of proper services, supervision, and rehabilitation programs.

As the District of Columbia and the Federal government struggle through the financial and governance issues facing the Nation's Capital in the latter part of the 1990s, the correctional roles and responsibilities of the District of Columbia government also bear reexamination. The Intermediate Sanctions Task Force proposes that the present District of Columbia Department of Corrections be retooled and refocused as the District of Columbia Department of Community Corrections. In turn, the report proposes that the D.C. government's Lorton prison complex be turned over to the Federal government's Bureau of Prisons. It is time to acknowledge that the city's Corrections Department lacks the financial resources and human resources necessary to operate a modern penal system.

Further, it must be noted that the Intermediate Sanctions Task Force is cognizant that the scope of our inquiry focused principally on the community corrections component of the District's criminal justice system. We are painfully cognizant of the larger issues of crime control and public safety. In seeking to discharge our limited responsibility, we reference the importance of community vigilance to the larger issue of crime prevention. The community must understand that only by stengthening society's most fundamental institutions, the family

and the community, will antisocial conduct be prevented or curbed. Without well functioning families and communities, the criminal justice system cannot in and of itself ensure public safety.

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# Federal City Council
# Intermediate Sanctions Task Force Report

## Table of Contents

Federal City Council

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## SECTION ONE: Intermediate Sanctions Report Overview and Policy Recommendations

### Introduction

Nearly three years, ago the Mayor of the District of Columbia asked the Federal City Council to examine how the District's deployment of adult correctional resources, programs, and usage compared with that of other jurisdictions. (Because the District of Columbia functions as a state in terms of its correctional and other criminal justice functions, jurisdictional comparisons in this report are with other states.) The study that resulted focused on the District of Columbia's reliance on imprisonment for a substantial portion of nonviolent adult offenders.

Simply put, when compared with other jurisdictions' sentencing and correctional trends, the District of Columbia locks up a higher percentage of nonviolent offenders, and drug offenders, and in turn the District of Columbia utilizes probationary sentences markedly less often than other states. Extrapolating from other jurisdictions' experience with nonviolent offenders suggests that upwards of ten percent of persons now incarcerated in the District of Columbia prisons might be punished effectively outside of prison and at lower cost without adversely affecting public safety. To achieve this result, proper offender selections must be made, appropriate programs must exist or be developed, and adequate levels of supervision of such persons is imperative.

Nonviolent offender is a term used throughout this report for its descriptive value. Implementation of any intermediate sanction program needs to concentrate carefully on a more critical definition of the nonviolent offender class. Clearly, not all nonviolent offenders are suitable to participate in intermediate sanction programs. Many of these offenders have serious drug and alcohol addiction histories and dependencies. The character of the crime, record of repeat offenses, stability of the individual, capacity for self-control and self-

management are all valuative factors which may exclude many nonviolent offenders from intermediate sanctions. Some nonviolent offenders will be poor risks and should be incarcerated and/or subject to more restrictive confinement, residential drug treatment, or other restriction on freedom of movement.

To conduct this project, the Federal City Council convened an Intermediate Sanctions Task Force chaired by Donald E. Santarelli, Esquire. (Mr. Santarelli is Chair of the National Commission on Community Corrections and former Administrator of the U.S. Department of Justice Law Enforcement Assistance Administration.) The late Kenneth R. Mundy, Esquire, a distinguished member of the District's trial bar, served as vice chairman and provided the project valuable direction and counsel until his untimely death. A list of those participating on the Task Force appears at the end of this report. Additionally, the Council for Court Excellence collaborated throughout the project providing policy advice, report drafting, and analytic and research consultant support in conducting this study. The Task Force wishes particularly to acknowledge the essential coordinative and policy analysis roles played by the Council for Court Excellence in support of this project. Dr. Edward J. Burger, Jr., a member of the Council's Board and its Criminal Justice Committee, deserves special thanks for his participation and many contributions. (No judicial member of the Council for Court Excellence Board of Directors participated in the development of the recommendations set forth in this report.)

## Report Framework and Context

This Intermediate Sanctions Final Report is divided into two broad sections—an overview of the major report findings and conclusions followed by a detailed analysis of the major policy subjects examined by the Project. Appendix A provides a primer on seven of the leading types of intermediate sanction programs in use in the United States.

The degree of public concern with crime and with the District of Columbia's criminal justice system escalated during the 1990s. Public scrutiny has focused especially on the District's adult and juvenile correctional systems and agencies. Breaches of security and escapes from halfway houses and other noninstitutional programs in alarming numbers have been reported widely in the media. The D.C. Department of Corrections has been the subject

of a variety of court suits alleging managerial deficiencies, inhumane prison conditions and more. Public confidence and trust in the conduct and competence of this important governmental department has been badly eroded.

It is in this crucible of public fear, public mistrust, and community frustration with offenders and their keepers that this District of Columbia Intermediate Sanctions Project has worked. Our objective has been to seek better results in this important area for all concerned.

**Project Methodology**

The work of the Intermediate Sanctions Project consisted of five main elements: (1) review of other jurisdictions' experience with programs and strategies to punish offenders and to limit their freedom while still in a community setting; (2) descriptions of leading intermediate sanctions programs in the United States; (3) site visits to successful District of Columbia criminal justice programs; (4) meetings with District of Columbia justice system leadership; and (5) review of public opinion polls and attitudinal research on the District of Columbia.

To help with preparing the review of other jurisdictions' experiences in the correctional area, the Project engaged the consulting services of Vivian Watts, a state legislator and former Secretary of Public Safety and Transportation for the Commonwealth of Virginia. Ms. Watts is a highly respected and experienced public policy analyst. Ms. Watts' analytic work for this Project drew heavily on a May 1993 published report by the Advisory Commission on Intergovernmental Relations (ACIR), for which she had served as the author and principal investigator. The ACIR report is entitled The Role of General Government Elected Officials in Criminal Justice. Ms. Watts was assisted by Mary Shilton, Esquire, in researching community corrections and public attitudinal issues. Ms. Shilton is an experienced criminal justice planner with emphasis in the community corrections area.

Wherever possible, District of Columbia crime and correctional data were included in the analytic material Ms. Watts initially prepared to make the presentation more relevant for use by the Intermediate Sanctions Project Task Force and by other District of Columbia policy makers.

We are deeply grateful to Ms. Watts for her contribution to this overall project and wish to acknowledge Ms. Shilton's help as well.

Another task the Intermediate Sanctions Project undertook was to prepare descriptions of some of the most frequently used programs other communities across the nation are using to punish nonviolent offenders within the community. Appendix A of this report summarizes seven such program models, including cost and program effectiveness data where available.

One of the most important early paradigm shifts by the Intermediate Sanctions Project was to understand that there are opportunities for relieving the expenses and myriad obligations of incarceration if we can divert people before they enter the justice system. Some law violators in the District of Columbia and across the country in fact exit the criminal justice system at many points well before sentencing or the expiration of a term of imprisonment. Stated differently, effective crime prevention programs and drug rehabilitation programs have the potential of reducing the numbers of juveniles and adults formally entering the criminal justice system through arrest, adjudication and imprisonment. The more successful and effective such programs are, the less need there will be for expensive prison space. The experience of incarceration itself may be counterproductive. Diverting certain offenders from prison may better promote their longer term positive law-abiding behavior.

In line with the above understanding, the Intermediate Sanctions Project sought to become familiar with successful District of Columbia criminal justice programs being operated throughout the justice system. Site visits were held to the Community Policing Program of the Metropolitan Police Department, the Pilot Drug Court of the Superior Court of the District of Columbia, and the Correctional Treatment Center of the D.C. Department of Corrections. These three different pilot criminal justice programs in the District of Columbia are targeted either to District neighborhoods with high levels of crime and drug abuse or to drug-dependent offenders. (Each of these programs appear highly salutary but may be in jeopardy due to the larger fiscal crisis in the city.)

The Community Empowerment Policing Project site visit demonstrated a law enforcement program where police officers affirmatively work at the block and neighborhood level to solve and resolve problems before they "become a crime." By being proactive with the community, the Community Empowerment Policing Program believes it can have a positive impact on the level of crime and on the attitude of the residents toward the District

of Columbia's criminal justice system. In the past this innovative program has worked in conjunction with the health department, the recreation department, and other municipal services to link city services with immediate community and neighborhood needs.

The Superior Court of the District of Columbia's Pilot Drug Court Program was the second District of Columbia program examined by Intermediate Sanctions Project participants. In this program the court intervenes closely in the lives and rehabilitation of convicted drug-dependent persons. Among the Drug Court's goals are to keep program participants drug and crime free and to substantially lessen the need to imprison many drug-dependent offenders. The Pilot Drug Court Program model appears to be highly cost-effective when measured against traditional incarceration in terms of both recidivism and the per offender program cost. The Intermediate Sanctions Task Force wishes to acknowledge the important leadership role played by Superior Court Chief Judge Eugene N. Hamilton for his support and continued utilization of the innovative drug court program. His many initiatives to expand community support for intermediate sanctions should yield valuable long-term cost effective and humane public safety results for the District of Columbia.

Site visits were also taken to the innovative Correctional Treatment Facility Program operated by the D.C. Department of Corrections. This program works over an extended time period with several hundred convicted drug-dependent male and female defendants at a time in an institutional setting. While only operational for a few years, the Correctional Treatment Facility Program concept holds great promise for dramatically reducing recidivism and providing essential work and life-skill training to a heretofore highly intransigent offender population.

Over the course of the Intermediate Sanctions Project, meetings were held with the senior command structure of the Metropolitan Police Department, the U.S. Attorney's office, the D.C. Pretrial Services Agency Director, the Chief Judge and Criminal Division Presiding Judge of the Superior Court of the District of Columbia, the Director of the D.C. Department of Corrections, the City Planning Office, the Chair of the D.C. Council Judiciary Committee, and others. These meetings helped shape and guide the direction of the Project and were most informative. The Project appreciates the time and consideration of these officials in this regard.

Finally, as to methodology, Project staff and individual members of the Advisory Committee reviewed several public opinion surveys and attitudinal research reports to gauge community sentiment on crime and justice.[1] These materials were helpful and instructive.

## Major Recommendations and Findings

### Recommendation One

A well functioning Community Policing Program in the Metropolitan Police Department can be an effective public safety tool in reducing the numbers of persons who enter the law enforcement, court, and correctional systems as offenders.

One of the most important lessons learned by the participants of the Intermediate Sanctions Project was that by carefully diverting some persons on their first encounter with the justice system the number of people processed as offenders through the courts and correctional agencies may be lowered dramatically. Proactive law enforcement programs like the District's Community Empowerment Policing Program—properly supported by the leadership of the Police Department, the Mayor, and the public—offer a potentially valuable means of improving public safety and reducing the number of persons caught in the system.

### Recommendation Two

Greater D.C. Council, judicial, and public notice should be taken of the District of Columbia's less frequent use of probationary sentences when compared to other jurisdictions.

In the United States, for more than 75 years the most frequently employed penalty for those who are found guilty of committing a nonviolent crime has been a term of probation—often combined with a fine. The analysis conducted as part of this Project reflects that while over 60 percent of sentenced offenders nationally are committed to a probationary sentence, in the District of Columbia less than 45 percent of offenders receive a probationary sentence.

The wide variance of the District of Columbia from the national average in the use of probation as the principal intermediate sanction is significant. It has been suggested that the sentencing structure under which the District of Columbia judiciary functions materially impedes judges' use of probation. If so, the D.C. Council should take cognizance and consider amending aspects of that structure.

However, before the D.C. Council, the District of Columbia judiciary, and this community embark on any marked increase in the use of probation in the near term, it is critical that the Superior Court of the District of Columbia's Social Services Division first be provided adequate probationary supervision resources. Community resources must be identified or developed to augment the supervision offenders receive from the Court's Social Services Division. Other options, such as privately financed and managed probation programs also should be considered as part of the continuum of rehabilitative services. Additionally, church groups, fraternal organizations, and nonprofit social service groups all should be utilized in a positive way with this issue.

**Recommendation Three**

The Superior Court of the District of Columbia's Pilot Drug Court Program should be fully integrated into the District of Columbia Government budget in fiscal year 2000, when the federal grant funds expire.

For the past three years, the D.C. Superior Court together with the D.C. Pretrial Services Agency has operated this highly cost-effective and intensive intermediate sanctions program. Hundreds of convicted drug-dependent offenders, who otherwise would have been sentenced to a lengthy period of incarceration, have successfully remained in the community under continuing judicial supervision. The court employs a graduated sanctions penalty scheme and applies a variety of treatment techniques—ranging from counseling to acupuncture—to motivate program participants positively. Offenders know from the start that participation in the Pilot Drug Court Program is a privilege. Failure to comply with the requirements of the Drug Court "contract" which offenders individually sign will result in immediate judicial sanctions up to and including increasingly longer periods of secure confinement in prison.

**Recommendation Four**

The functional and structural integrity of the Correctional Treatment Facility Program of the D.C. Department of Corrections must be reinstituted, maintained and enhanced.

One of the most impressive new program concepts in the District of Columbia justice system in the past twenty years is the Correctional Treatment Facility Program. Participants

from the Intermediate Sanctions Project who visited this facility were universally impressed with the potential of this rehabilitation program operated by the D.C. Department of Corrections.

Initial research data reflect that over 70 percent of men and over 90 percent of women who have successfully completed the Correctional Treatment Facility Program do not become recidivists. For men leaving the District's Lorton Prison Complex, only about 30 percent do not recidivate. (Comparable data on women offenders was not available.)

In 1992 the District of Columbia Government opened the approximately 800-bed capacity Correctional Treatment Facility (CTF). Despite an exemplary and nationally regarded treatment program model, laudable success statistics, and a substantial drug-dependency cohort within the prison population, five years later this innovative program is not operating at or even near capacity. (As of the time this Task Force visited the CTF, nearly half of the bedspace had been reassigned to house women prisoners because of overall prison system bedspace pressures.)

**Recommendation Five**

All District *prison* facilities, services, staffing and authority should be transferred to the United States Bureau of Prisons by the year 2000.

(Interestingly, under current District of Columbia law, when criminal offenders are sentenced to imprisonment, they are remanded to the custody of the Attorney General of the United States. The Attorney General in turn designates the Lorton prison facilities as the suitable place for their confinement. Thus, it could be argued that the authority to move District of Columbia Code violators to the cognizance of the Federal Bureau of Prisons already exists.)

Over the past quarter century, the D.C. Department of Corrections has operated its detention and correctional facilities under a growing number of separate court decrees. As of February 1996, nine separate court decrees mandate the D.C. Department of Corrections to provide certain programmatic services, correctional officer staffing ratios, and myriad other tasks.[2]

In January 1995, legislation was introduced in the U.S. Congress to transfer responsibility for the Lorton prison facilities to the U.S. Bureau of Prisons. The U.S.

Congress in recent years has directed the National Institute of Corrections of the U.S. Department of Justice to undertake several independent studies of the operation of the Lorton prison complex and to examine options to the existing Lorton prisons as operated by the D.C. Department of Corrections at Lorton, Virginia.

The issue of privatization of the prison facilities at Lorton is also under study as part of these Congressionally mandated studies.[3] Finally, in this same context it is of special note that the District of Columbia Government has specifically enunciated in its fiscal year 1997 Budget Plan that "Over the next four years, three quarters of the District's corrections system will be privatized."[4]

The ramifications of these several proposals are far-reaching. They also present the District of Columbia Government with a significant positive opportunity to concentrate D.C. correctional staff and policy attention and resources closer to home—namely, on competently administering an appropriate range of community-based sanctions to punish some portion of persons who violate the District's criminal code.

As noted earlier, research by the Intermediate Sanctions Project reflects that the District of Columbia uses probationary sentences far less frequently than most other jurisdictions; that the District of Columbia incarcerates a higher percentage of nonviolent offenders than most other jurisdictions in the United States; and that in recent years the D.C. Department of Corrections has developed a poor record, and a worse public image, in terms of operating safe and effective correctional facilities and community-based sanctions.

One solution, which bears serious consideration, is to sharply reduce the disparate functions and responsibilities of the D.C. Department of Corrections and focus the District of Columbia agency entirely on the objective of administering a competent, well-managed community correctional program. Like cities and local governmental units across the country, the District Government would presumably continue to operate its pretrial detention facilities (D.C. Jail) for those either awaiting trial or serving a brief incarcerative sentence.

In turn, the U.S. Congress should take the necessary steps to transfer the long-term incarcerative (prison) responsibilities of the D.C. Department of Corrections to the federal government's U.S. Bureau of Prisons. The Federal Bureau of Prisons is an important asset at the national level which should be used in a solution-focused way at this critical juncture in

the evolution of the District of Columbia. The U.S. Bureau of Prisons has a deep cadre of experienced professional staff, a broad array of program service options, and a well deserved positive public image of programmatic competency and integrity.

As to the privatization proposals now being considered for major parts of the D.C. Department of Corrections, the Intermediate Sanctions Task Force believes that long-term public and Congressional confidence would be much higher if these prospective steps were taken under the aegis and authority of the U.S. Bureau of Prisons.

**Recommendation Six**

The D.C. Department of Corrections should be renamed and refocused and given a new and explicit mandate as the D.C. Department of Community Corrections. Its responsibilities should be concentrated on operating programs for the community-based punishment of offenders under active sentence who reside in the District of Columbia.

In the correctional facilities and expenditures areas, the District of Columbia Government is on the horns of a dilemma for which there is no simple answer. It is abundantly clear that the District's correctional agencies do not now have and will not likely ever receive sufficient resources to build, maintain and operate a safe and modern state prison system. As the District of Columbia's fiscal situation deteriorates, citizens and the District of Columbia Government are faced with enormous taxation pressures and other municipal governance tensions. Correctional expenditures in the United States and in the District of Columbia have grown dramatically faster than those for other functions of government.

For the most part, the District's prison facilities are old and outmoded—requiring staffing complements far greater than would be needed to operate a more modern prison. The "Rivlin Report" (Financing the Nation's Capital) of November 1990 documented this situation in both personnel and budget terms.

With outdated prison facilities, high rates of incarceration, insufficient resources, and a plethora of court decrees, there is no realistic end in sight for the D.C. Department of Corrections in terms of the exponential expenditure growth in the future. A revitalized, far smaller, D.C. Department of Community Corrections would permit better training, management, and standards of responsibility to be developed and maintained.

**Recommendation Seven**

The District of Columbia Government should not expand its community-based correctional programs for adult offenders **until the capacity to manage offenders in the community is adequately developed**. Notwithstanding the fact that research reveals there is presently an over reliance on incarceration for nonviolent offenders, public confidence first must be restored in the competency of the D.C. Government to assure public safety.

Research conducted as part of the Intermediate Sanctions Project reflects that the District of Columbia uses incarceration more frequently than most other jurisdictions in the United States. It is estimated that as many as ten percent of persons now incarcerated in District of Columbia Prisons may be appropriate to consider for community release provided there is proper selection of those to be released, adequate supervisory resources, treatment programs, and employment support to better protect the community. The financial savings from a 10 percent reduction in the prison population would provide resources to invest in stronger community-based supervision.

As noted, the Intermediate Sanctions Project does not recommend the expansion of community-based correctional programs and facilities in the District of Columbia at this time. This view stems from the clear lack of confidence we perceive on the part of this community in the city's correctional management systems and capacities. The first priority, in our judgment, should be for the District Government to continue to bolster the administrative systems, managerial skills, and staffing resources necessary to operate a *safe* and effective community-based correctional program. If implemented competently over time, such a strategy should help restore public confidence and save a great deal of money, which today has to be directed to operating prison facilities and services for as many as 1,000 nonviolent offenders or 10 percent of the current sentenced prison population at Lorton who warrant punishment and need supervision but may not require secure and expensive confinement.

**Recommendation Eight**

Greater public awareness must be developed and cultivated in the District of Columbia as to the appropriate mix of punishment options for offenders short of imprisonment.

Prisons are costly. The average cost of prisons nationally is over $23,000 per offender per year. It is important to reserve this costly public expenditure principally for law violators who pose a public danger. While an increasingly large percent of tax dollars is being devoted in the District of Columbia and across the nation to incarcerating law violators—as opposed to spending available tax resources on public schools, libraries, or even road repairs—the community-at-large lacks awareness of the myriad successful rehabilitation programs and services underway in the community.

The Edna McConnell Clark Foundation has supported several highly useful public education programs on the correctional subject in Alabama, Delaware, and Pennsylvania. The thrust of these programs has included testing whether an informed public would make different choices about who should be sent to prison and who should serve their sentence in the community under an appropriate level of supervision. In each of the three states, the Clark Foundation—supported researchers documented that a community that is well informed about the range of alternatives to prison will support sending markedly fewer people to prison.

An important element of community support and confidence in intermediate sanctions programs is the issue of participant failure. No matter how well run a drug-treatment center, a halfway house, or other intermediate sanction program may be, some offenders will relapse or commit new crimes. Government's challenge is to demonstrate to the public that these programs are worth the risk; that program violators are quickly and appropriately sanctioned; and that proper participant supervision and administrative direction and support are present.

## SECTION TWO: Prison Population and Public Safety Policy Analysis

### The Challenge

In the criminal justice area, the District of Columbia faces two serious challenges—dealing with serious crime and handling the costs of dealing with crime, notably the filling to overcapacity of the prison spaces allotted for incarceration. Throughout the nation, communities are struggling with criminal justice budgets draining funds from more constructive programs, high crime rates, and an apparent inability to change criminal behavior.

According to the Washington Post's March 13, 1994 *Pulse of the Region* survey, 69 percent of those polled within the District of Columbia ranked crime and violence as their number one concern.[5] Those polled in Maryland and Virginia also expressed crime and violence as their number one concern.[6]

Figure 1

**THE PULSE OF THE REGION**

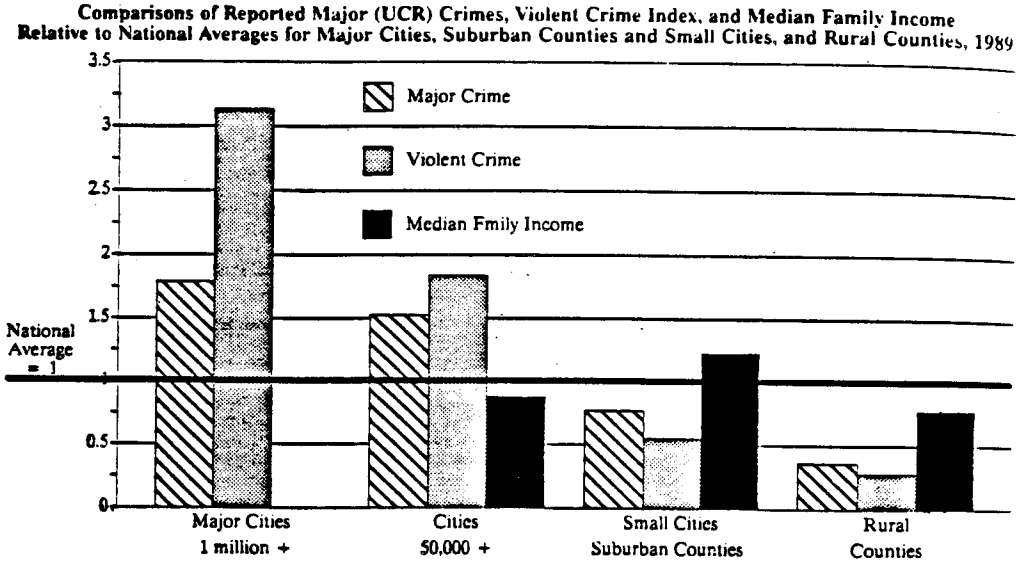
***The Washington Post recently surveyed nearly 3,000 adults in the District, Maryland and Virginia to determine their major concerns in this election year. Here are the percentages of people who identified each problem as one of the two biggest concerns for area governments:***

| TOP PROBLEMS | DISTRICT | | MARYLAND | | VIRGINIA | |
|---|---|---|---|---|---|---|
| | Pct. | Rank | Pct. | Rank | Pct. | Rank |
| Crime and violence | 69% | 1 | 36% | 1 | 49% | 1 |
| Drugs | 33 | 2 | 21 | 5 | 17 | 4 |
| Economy/ unemployment | 23 | 3 | 30 | 2 | 25 | 2 |
| Education | 10 | 6 | 22 | 4 | 20 | 3 |
| Government operations | 13 | 4 | 22 | 3 | 15 | 5 |
| Homelessness | 13 | 5 | 6 | 6 | 2 | 6 |

NOTE: Ties were broken by tenths of a percent

The impact of crime is particularly great on citizens in urban areas like the District of Columbia. The high rates of crime in large cities are well known. However, it is important to note that it is the concentration of poverty rather than the ethnicity or shade of people's skin that is most closely related to high crime rates in urban cores. For example, while black household victimization has increased sharply since 1985,[7] poor whites have about the same homicide rate as poor blacks and wealthy blacks about the same rate as wealthy whites.[8] Figure 2[9] illustrates the relation of crime and income to location.

Figure 2




The more questions that are asked, the more it is apparent that there are no simple answers to the District of Columbia's or to the nation's criminal justice problems. Rather there are a multiplicity of problems feeding each other. These problems can only be addressed through the joint efforts of all criminal justice officials and government agencies, leadership from elected officials, and active involvement of law-abiding citizens and the private sector.

But above all, it must be remembered that continued reliance on the enforcement model and its criminal justice system is not likely to produce significant improvements in public safety or reduce the numbers of persons entering into criminal activity. The criminal justice system is designed to deal with after the fact conduct and struggles but probably never

can adequately deal with prevention. That responsibility must be borne by the more fundamental governmental and non-governmental institutions of our society. It is there that the greatest impact will be made.

## The Challenge We're Facing

**Demand on Tax Revenues**: Since 1970, state and local government criminal justice budgets have risen faster than any other area of government spending.

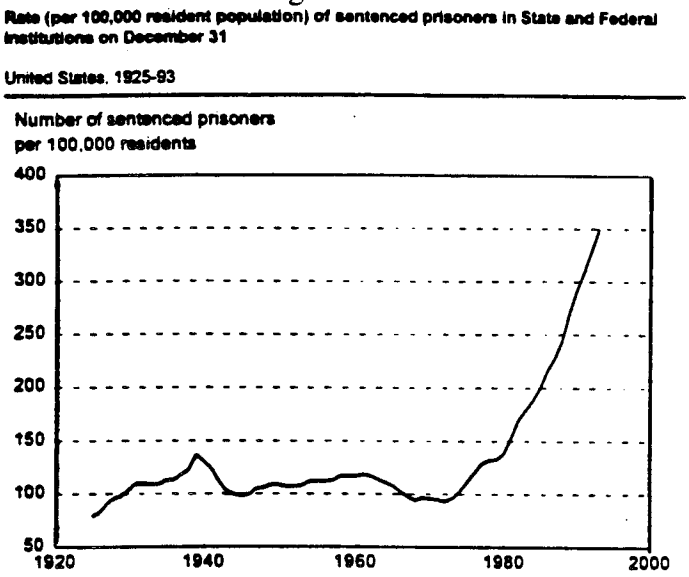
Table 1[10]

| 1970-1990 (constant dollar value increase) | |
|---|---|
| Corrections | 232% |
| Public Welfare | 79% |
| Hospital and Health Care | 71% |
| Police | 49% |
| Education | 32% |

In addition, court related budgets increased 41 percent between 1985 and 1990. The total cost of crime, of course, also includes the economic impact on victims, loss of taxes from businesses that flee crime impacted areas, and public funds spent on deterrence—such as street lights and youth crime-prevention programs.

**Magnitude of Change**: Between 1972 and 1993, the proportion of America's population in prison almost quadrupled.

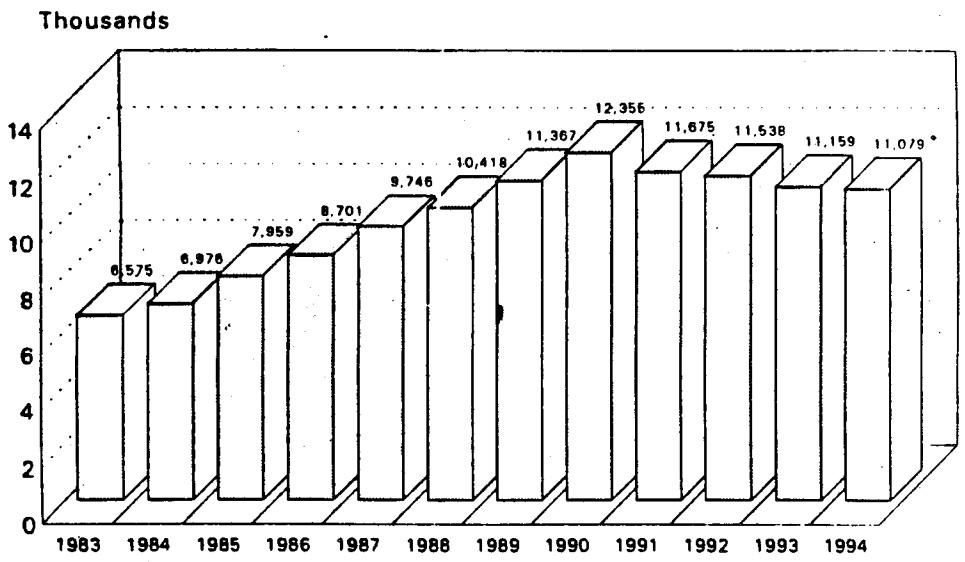
Figure 3[11]




For 50 years the annual prison growth (per 100,000 population) was only one-half of 1 percent. This suddenly and dramatically changed to average annual increases of over 6 percent from 1974 through 1985, only to explode further to average annual increases of almost 8 percent.[12] Since 1990 prison growth rates across the United States have dropped back slightly, but annual increases have remained above 6 percent.[13] These extraordinary growth rates have resulted in the United States having the highest percentage of people behind bars of any industrialized nation in the world.[14]

The District of Columbia's overall incarceration trends were essentially the same as the national picture: an average of 6.3 percent increase per year during the 1974-1985 period; 8.0 percent increase from 1986-1990; and 5.9 percent annual increase for 1991. However, the District of Columbia reported greater fluctuations from year to year than are apparent in the nationwide totals shown in Figure 3.[15] Figure 4 reflects D.C. Department of Corrections Average Daily Populations. Since 1990, notwithstanding a declining trend, the District has the highest percentage of people behind bars of any United States jurisdiction.

Figure 4[16]




Most of the growth in prison populations was driven by local and state law enforcement, since federal prisons hold only 6 percent of sentenced felons.[17] Federal prisons grew only half as fast as state prisons from 1973 to 1985. However, due to the War on Drugs and federal sentencing reform, since 1985 federal prisons are growing almost twice as fast as state prisons.[18]

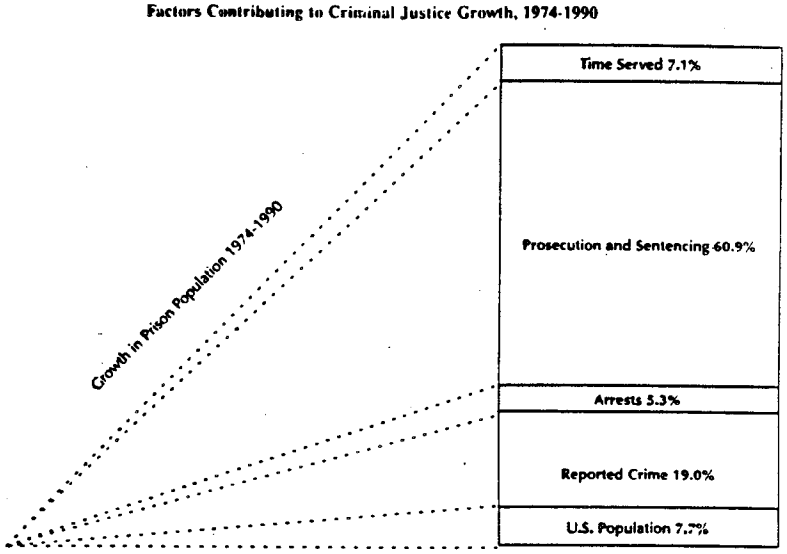
Local jail increases paralleled state prison increases, although there were greater swings from year to year.[19] Record growth of over 15 percent occurred in both 1988 and 1989. Jail populations are driven by court backlogs, pretrial release policies, and convicted felons awaiting transfer into overcrowded state prisons. From 1983 to 1989, the percent of persons in jail awaiting trial grew from 39.9 percent to 42.6 percent.[20]

## Why the Extraordinary Increases?

Prison growth in the District of Columbia and nationally over the last 15 years is explained by a number of factors which include increased crime. As illustrated in Figure 5, the extraordinary prison growth in the United States resulted from actions taken by all parts of the criminal justice system. **Increased arrests (stemming from population growth, reported crime, and stronger law enforcement) account for only about 1/3 of prison**

**growth. The remaining 2/3 was driven by tougher sentencing laws combined with prosecutor and judicial decisions.** More parole and probation revocations also have added to prison growth by adding to the length of time actually served in prison.

Figure 5[21]




This estimate of factors contributing to the national growth in incarceration is based on the following actual increases nationally from 1973 to 1990:

Table 2[22]

| | |
|---|---|
| Increase in **Total** number of **people in prison** | **238.2%** |
| Growth in General **population** | **18.3%** |
| Growth in **Serious crime reported** (UCR felonies) | **63.5%** |
| Increase in **Arrests** for felonies and drug offenses | **76.3%** |
| Increase in Arrests **prosecuted** and **prison sentence** given | **221.2%** |
| Increase in **Time prisoners actually served** | **17.0%** |

Whether someone who is arrested is charged with a crime is up to the prosecutor, for the most part, based on the facts presented by the police. Since the mid-1970s, improved technology and training have enhanced the ability of the police to present a strong case. In addition, tough sentencing laws have both directed and encouraged prosecutors to pursue charges they previously may have felt were not worth the effort. However, prosecutors, as independent officials, also have exercised their own judgment and philosophy in their decisions to prosecute more arrests.

It must be emphasized that the prosecution bears as much responsibility for the careful selection of persons for sanctions short of confinement through its capacity for diversion as does the correctional system exercising its responsibility for determining the proper level of confinement or alternatives thereto.

The prosecutor has almost complete discretion in the exercise of responsibility to determine whether or not to charge a crime, at what level the crime should be charged, and what diversion might be made without trial and conviction, in an effort to properly deal with selected individuals. This responsibility is awesome, has very significant impacts on criminal justice and the costs of prosecution, incarceration and treatment. Fortunately at this time this community is blessed with a highly competent and equally sensitive prosecutor, the Honorable Eric Holder, United States Attorney for the District of Columbia. The Task Force commends Mr. Holder for his efforts as described above and urges greater community and financial support for his community prosecution activities. His office controls the gate to our criminal justice system.

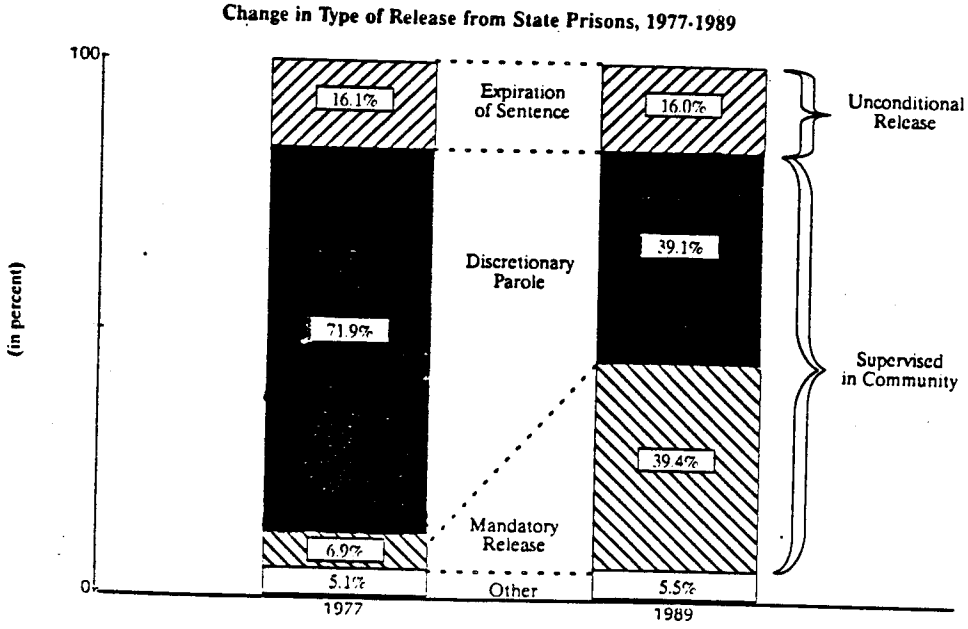
**Results of Tougher Penalties**

Paradoxically, the length of time actually served by many offenders in America's prisons in recent years has been less or much less than the sentences awarded would have indicated—this even in the face of efforts by some legislatures to limit or eliminate parole, good time credit, and other release programs. Behind this paradox is the fact that tougher sentencing laws and tougher sentencing practices, including eliminating incentives for inmates' good behavior, became increasingly prominent without a corresponding increase in prison programs or new prison capacity. As a safety valve, many incarcerated offenders were released prior to serving their full sentence.

Reported crime did not decrease, and when new prison capacity was not added fast enough, tough policies up-front created a level of overcrowding that forced back-door relief. Back-door measures have occurred in almost every state, such as California expanding "good time" from one-third to one-half of the sentence, North Carolina legislating a prison population cap in 1987, and federal courts placing states such as Florida under population caps. Figure 6 shows that nationally, although releases due to parole board decisions declined significantly from 1977 to 1989, the proportion of inmates serving their full sentences

remained virtually unchanged because of mandatory early releases forced by overcrowding.[23] In 1993, 32 percent of state prison releases were discharged early as mandatory releases, 40 percent were discretionary parole releases, and 14 percent were categorized as unconditional releases due to expiration of sentence.[24]

Figure 6[25]




The goal or prospect of parole itself is a safety valve encouraging many inmates to conform their conduct to acceptable prison rules. Safety-valve release of offenders has not been characterized by increased care exercised in parole decisions across the United States. This has led, secondarily to more prisoners being returned to prison for parole violations. Since 1974, there has been an almost 700 percent increase in the number of probation and parole violators admitted/returned to prison.[26] Violators made up less than 10 percent of the admissions in 1974 but over 30 percent in 1993.[27]

The corresponding pattern in the District of Columbia is even more pronounced, reflecting a combination of tougher enforcement of probation or parole conditions as well as more violations being reported by people who are on probation or parole. In the period between 1974 and 1993, the District of Columbia reported significant increases:[28] in 1974 probation and parole violators made up 7 percent of admissions to the District of Columbia prison system but in 1993 they were over 23 percent of admissions.[29]

**Increased Use of Parole as an Incentive**

The premature and indiscriminate shift of incarcerated offenders to parole status as a default consequence of exceeding the capacity of jails and prisons has occurred nationally. Thus, while it is as accurate in 1990 as it was in 1980 to say that three-quarters of those under correctional control in the United States are under supervision in the community,[30] in recent years an increasing proportion are on parole rather than a probationary sentence.

Table 3

| | 1990 National Average[31] | 1990 - D.C.[32] |
|---|---|---|
| Supervised in the Community | 73.6% | 68.9% |
| Probation | 61.4% | 44.5% |
| Parole | 12.2% | 24.4% |
| Incarcerated | 26.4% | 31.1% |
| Jail | 9.3% | |
| Prison | 17.1% | |

Trends in the District of Columbia, while more varied year-to-year, are even more pronounced for the same period (Table 5). Between 1985 and 1990, of those under correctional control, the percentage in jail and prison increased, those in probationary status decreased, and those on parole markedly increased. The adult probation annual caseload in the District of Columbia declined by just over 10 percent from 1990 to 1993.[33] Table 4 shows that, as the use of probation began falling off in 1987, the use of prison and jail sentences increased and so also did numbers in parole status.

Table 4[34]

| | National Average annual increase 1983-1987 | National Average annual increase 1987-1990 |
|---|---|---|
| Probation | 9.2% | 5.9% |
| Jail | 7.4% | 11.4% |
| Prison | 7.4% | 9.8% |
| Parole | 10.1% | 14.4% |

Compared to the experience at the state level (the only comparable data available), the District of Columbia has a much higher rate of change in the percentage of parolees compared to probationers and prisoners nationally (Table 5).

Table 5[35]

| | National change 1985-1990 | D.C. change 1985-1990 |
|---|---|---|
| Probation | 28.6% | -19.9% |
| Jail and Prison | 44.2% | 55.6% |
| Parole | 70.6% | 130.2% |

At the same time, paradoxically, the proportion of public funding devoted to the supervision of persons on parole status has eroded both nationally and, to an even greater extent, in the District of Columbia. The combined consequences of both the increased, non-discriminate use of parole as a safety valve because of prison overcrowding and relative lack of financial resources to supervise those on parole are believed to be significant contributors to a pattern of high or increasing recidivism and continuing criminal activity among those apprehended. According to a 1992 U.S. Department of Justice study, 93 percent

of state prison inmates were either repeat offenders or convicted violent offenders.[36] Thus, this complex of factors appears to have had the perverse second-order effect of further increasing the number of offenders sentenced to incarceration.

## Effect on Crime

### Principal Contributors to Crime and to the Increase in Sentenced Offenders

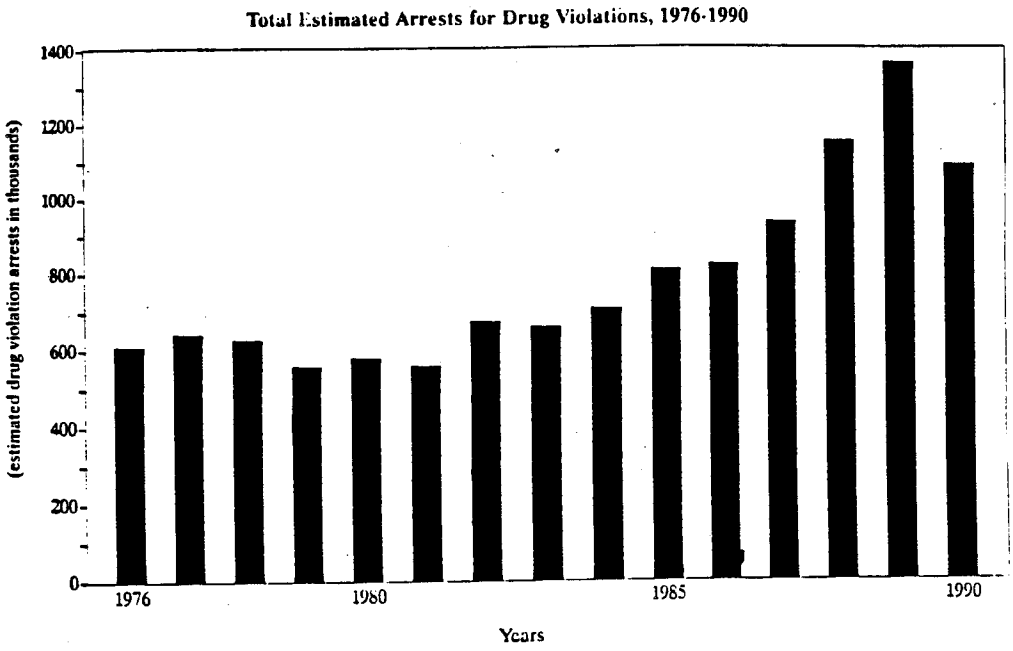
The result of all of the above factors nationally is that there has been a 184 percent increase in the number of persons imprisoned in 1993 as compared to 1980.[37] From 1980 to 1990 in the District of Columbia, the combined prison/jail population growth was 165 percent. One reasonable expectation from such a dramatic increase in prison growth is that it should have resulted in less crime. This expectation was not borne out as the FBI's Uniform Crime Reports (UCR) reveal a 63.5 percent increase in serious crimes reported in the period 1973 to 1990. Serious crime has declined modestly since 1990. The UCR 1994 Crime Index rate fell 2 percent from 1993, yet this rate was still 3 percent higher than the 1985 UCR rate.[38]

### Drugs

There are several components of the FBI's Uniform Crime Reports which help explain the upward trends—narcotic and addicting drugs; violent crime; and career criminals (tendency of persons committing crimes to continue doing so with increasing age and over a longer period of time).

Drug convictions now make up over 30 percent of prison admissions nationwide. Drug offenders constitute over 50 percent of the prisoners admitted to the District of Columbia Department of Corrections over five years—1989 through 1993.[39] This record reflects both trends in the use of and trade in illegal drugs and the response of the criminal justice system to the drug challenge—higher arrest rates, higher prosecution rates and prosecution especially in federal courts, and tougher sentencing practices through a combination of sentencing guidelines and mandatory minimum sentences (Figure 7).

Figure 7[40]




Violent offenders—i.e., people who commit such crimes as homicide, rape, robbery, assault and burglary—constitute 17 to 26 percent of persons admitted to the D.C. Department of Corrections over a recent five-year period (1989-1993).[41] However, and again paradoxically, concentration on the War on Drugs and the imposition of mandatory minimum sentences for drug offenders, has competed for prosecutorial and judicial attention, shifting some of the focus away from emphasis on violent offenders. Thus, in the District of Columbia as in some other states, law enforcement has been more successful in incapacitation of nonviolent drug offenders than it has in incarcerating violent criminals.

## Career Criminals

On a national scale, many criminals are continuing to commit crime longer. The following data is instructive.

- the average age at arrest is 29;[42]
- nearly 60 percent of jail populations are over age 25 compared to 50 percent in 1983;[43] and
- 23 percent of state prison inmates are 35-45 compared to just 14 percent in 1979.[44]

The age range of the offenders at the District of Columbia's Lorton facility are as follows:[45]

- 5.2 percent are under 21 years old;
- 55.1 percent are 21-35 years old; and
- 39.6 percent are over 36 years old.

As to the offense profile for the District of Columbia inmates in 1994:

- 91.4 percent are incarcerated for felony charges; and
- 8.6 percent are incarcerated for misdemeanor offenses.

## Consequences of Failure to Take Action

Secure prison capacity must be available in the District of Columbia for persons who commit violent crimes. The major national and local criminal justice trends, just discussed, confirm a cycle of both increased crime and increased toughness by prosecutors, judges, legislatures and police. This combination has led to major cost increases in the criminal justice system as a whole and especially in correctional agencies. Despite extraordinary taxpayer expenditures, however, both the challenges of illegal drugs and violent crime remain unresolved. An increasing number of offenders are left neither intimidated nor changed by law enforcement's response. This lack of results frustrates the public and could fuel another costly cycle.

## Can the Situation Get Worse?

### Drugs

Nationally, there was an estimated 20 percent decrease in drug arrests during 1990 followed by a 7 percent decrease in 1991.[46] In 1994 arrests for drug abuse violations rose 18 percent above the 1993 level.[47] This resurgance of drug arrests may reflect that law enforcement efforts in the 1980s simply temporarily disrupted drug activity.

### A New Generation of Criminals

Urban drug rings are using juveniles as never before. Juveniles are recruited for the drug trade as young as age 10 and are often using high-powered weapons by their mid-teens. These guns and individuals with the inclination to use them will be on the streets for years to come.

Increased juvenile violence is documented in the number of murder arrests of suspects under age 18, which increased from 1,100 in 1982 to 2,331 in 1990 nationally.[48] This pattern of increasing violence among the next generation of adult criminals is further demonstrated by the shift from burglary (generally defined as breaking into an un-occupied building) to robbery (a crime which involves the use of force or threat of force against a person). From 1982 to 1990, juvenile burglary arrests decreased 40 percent, while robbery arrests increased 30 percent. Offenders under age 18 now account for one-fourth of all robbery arrests.[49]

Theories about the passing of the baby boom offer no relief. The baby boom generation coincided with the traditional prime crime ages of 15 to 35 back in 1980, and relief did not materialize. Instead, we now can expect increased criminal activity by the mid-1990s and beyond from the children of the baby boomers.

**Use of Probationary Options**

Increased use of probation with increasing probation staff may well have reached its limits based on the trend of the last three years. More disturbing, overuse without resources may have encouraged offenders who might have been otherwise deterred to continue criminal activity.

Reducing crime in the District of Columbia is very complex and ultimately, cannot be achieved by criminal justice agencies alone. Crime prevention must include efforts that deal with what shapes an individual's inclination to obey the law and to not prey upon other members of society. Prevention programs to reduce the numbers who would ever need to be dealt with by law enforcement include social, medical, educational and other types of programs targeted to reduce:

- the number of infants affected by handicapping prenatal choices such as crack cocaine use;
- the incidence of child abuse, neglect and domestic violence;
- school drop-outs and functional illiterates;
- drug abuse; and
- the number of citizens who are un-employed or under-employed.

Each of these issues is important in and of itself, but collectively, they are especially critical as they affect the formation of stable families who convey the values that underlie law-abiding choices and who control antisocial conduct.

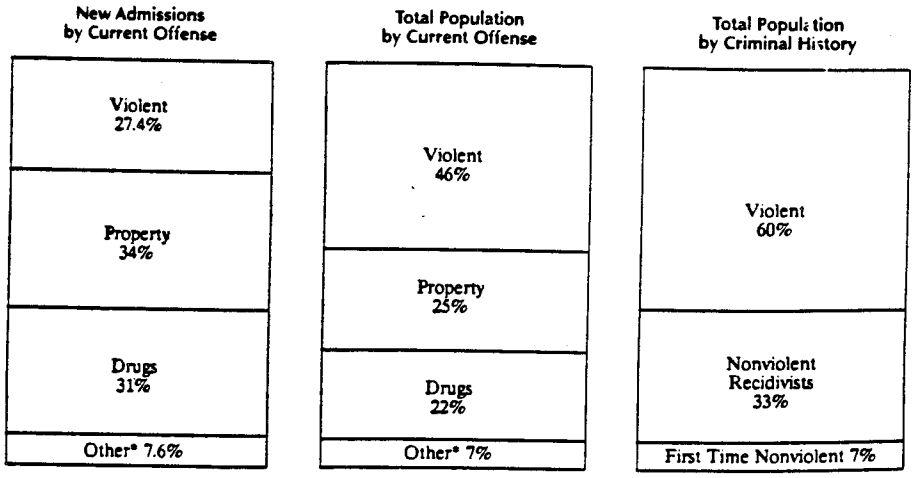
The lack of any reduction in crime, despite a decade and a half of extraordinary increases in locking up criminals, undoubtedly has been driven as much by our failures to deal with crime prevention issues as by the failure of our penal policies. Nevertheless, it is appropriate to re-examine the assumption that locking up large numbers of people, often for nonviolent offenses, will reduce crime.

## What Is the Potential for Relief?

The experience of other states has been that carefully directed programs of early release, shorter sentences, community correctional supervision, and programs short of prison can result in a maximum reduction of 10 percent to 15 percent in prison populations without any appreciable increase in criminal activity.[50] Figure 8 shows the spectrum of those incarcerated in state prisons and highlights the contrast between admissions, current offense, criminal history, and length of stay.

Figure 8[51]

**1991 State Prison Populations**




Although 27 percent of those admitted to state prisons in 1991 were sentenced for a violent offense, 60 percent of those in prison had been convicted of a violent crime at least once. It is also important to note that over half of the nonviolent recidivists were in prison on at least their fourth conviction. (Drug offenses are categorized as nonviolent.)

A potential reduction in current prison populations of ten percent also emerges from the following analysis of a survey of over 14,000 state prisoners in 1991.[52]

- 25 percent are career, violent criminals (defined as having three or more convictions with at least one for violent offense), and
- 18 percent are nonviolent criminals who are in prison on at least their fourth conviction.

These two categories of offenders represent 43 percent of the average state prison population in the United States. Few citizens would support shorter or less restrictive sentences for this group. An additional:

- 22 percent of prison inmates are violent recidivists with two convictions, at least one of which was violent;
- 12 percent are violent first timers; and
- 2 percent are serving their first prison sentences as drug traffickers.

That is, of the total universe of incarcerated offenders in the survey above, upwards of 80 percent may not be appropriate for alternatives to incarceration of any kind. The remaining 20 percent might be reduced by using punishment options for nonviolent offenders (excluding major drug traffickers) with no previous convictions (5 percent), one previous conviction (8 percent), and two previous convictions (7 percent). (Violent and nonviolent are defined by the Uniform Crime Report offense categories.)

**Important Definitional Caveat on Crime Statistics**

The preceding data presentation followed a fairly straightforward and conservative path of reporting aggregate percentages as to what types of offenders are incarcerated in America's state prisons in the early 1990s. There is substantial room for interpretation of the statistics, though in this report the conclusions offered on who needs to be in prison are conservative. For example, the definitions of **career** criminals, violent or nonviolent, may encompass a substantial number—i.e. in the thousands—of individuals in state prisons today whose major offense history includes drug abuse, petty assaults, receiving stolen property, etc.

The present tendency today to lump offenders together and to "throw away the key" on incarceration stems both from legitimate and understandable public fear about crime and from over broad and far too generalized characterizations of many offenders' pathologies.

Jail populations probably can be reduced as well. Because those awaiting trial make up the largest group (43 percent in 1989), most attention is given to pretrial alternatives.[53] Less costly, non-secure detention also might be used for some domestic violence and sex offenders. In addition, 3.5 percent of jail defendants were recidivists who had previous sentences for only minor public-order offenses, and include the mentally ill who are sometimes charged with disorderly conduct to get them off the street. Because of the large numbers that move through jails, even a one day reduction can produce significant relief.

The next largest category is sentenced misdemeanants (20 percent), with the largest sub-group convicted of driving under the influence of alcohol and drugs. Nationally, jailed DUI offenders increased by 25 percent between 1983 and 1989.[54] It is important to notice that half of these DUI offenders had at least one previous drunk driving conviction.[55]

To reiterate and summarize, the above analysis reflects that over the past decade and a half there have been extraordinary increases in locking up criminals across the United States. We also conclude that the lack of reduction in crime rates during this same 15 year period has been driven as much by our failures to deal with prevention issues as by our expectations for the criminal justice system, or by failures of our correctional policies. In the face of the flux of criminal activity and the tremendous governmental budgeting and other resource pressures which flow from the heavy dependence on incarceration, it is appropriate to re-examine the reliance on imprisonment and to determine if alternatives at the margin might usefully and safely be employed.

This paper does not represent an in-depth analysis of the District of Columbia criminal justice system. It is an overview of problems and options, intended to surface broad policy options for citizens and the District of Columbia government to consider further.

## SECTION THREE: Directions for Change

### What Are the Options for Change?

> Appendix A to this Report sets forth a narrative description of seven different types of intermediate sanction programs for adult offenders in use in the United States. Where such programs are also in use in the District of Columbia, this is noted in the respective program descriptions.

The District of Columbia's high incarceration rates resulted in Correctional Department expenditures exceeding $250 million in fiscal year 1992 and $240 million for fiscal year 1995. The proposed budget for the Department of Corrections in fiscal year 1997 is approximately $238 million.[56] The District of Columbia Department of Corrections has introduced many innovations to control costs, but

- What other opportunities exist?
- How can they be used without jeopardizing public safety?
- What savings can be achieved to provide resources for more effective approaches?
- Is legislation necessary for improved interagency coordination regarding overcrowding?
- What level of community involvement should exist?
- What role can community corrections legislation play?

Many states have introduced community based programs in an effort to engage communities in the business of sanctioning and habilitating non-assaultive offenders. These programs and improved criminal justice system procedures provide numerous opportunities for cost savings, efficiency, increased public safety, and diversion from career criminal activity. This section discusses program options in use throughout the nation that might be adopted or enhanced to reduce non-productive incarceration and lower correctional costs in the District of Columbia. Where the Intermediate Sanctions Project was aware of such programs in the District of Columbia, appropriate reference has been included herein. It should also be noted that not all of the programs referenced may presently be in operation. Budgetary and other organizational imperatives may have resulted in certain programs to be redirected or even eliminated.

The criminal justice system does not have a single safety valve. Instead, there is an intricate series of junctures, affecting operations and budgets. Starting with identification of a criminal suspect, each step in processing a case requires efficient commitment of labor and resources.

Five out of seven key decision points affecting governmental budget and workload occur before an individual is actually found guilty—arrest, detention, prosecution, pretrial release, and case management. The remaining key decisions for the most productive use of resources are sentencing, level of supervision, and postsentencing modification.[57] Making the most productive use of resources at any of these decision points depends on the information that is available on the offender, the speed of the decision, and the options available.

## Arrest

### Community Policing

The District of Columbia has the highest per capita number of sworn police officers of any urban jurisdiction in the United States, and they constitute a valuable resource for reducing the number of persons to be sent to prison. Before the decision to arrest occurs, law enforcement officers using community policing techniques can intervene to prevent crime.

The Community Empowerment Policing of the District of Columbia Metropolitan Police Department has been lauded for a dramatic reduction of violent crimes in a number of areas of the District. The proactive approach the police have taken includes identifying the most crime ridden areas, identifying the crime perpetrators and then removing them from the community. In addition to strategic policing, the Community Empowerment Policing initiative has fostered programs that created alliances among the police, social service agencies and the residents of the community. The D.C. Recreation Department's Late Night Hoops basketball program began as one such endeavor. This late night recreational program has provided structured and positive activities for youth who otherwise "hang out" at all hours of the night with nothing constructive to do.

Two other programs launched by the Community Policing effort are the Youth Intervention Task Force and Street Games. The concept of the Youth Intervention Task Force is to have mental health, medical, and youth counselors work with the police at crime scenes, in volatile situations or during routine patrols. Street Games is a youth-focused

program designed for the summer months in the District's communities that are in the most need of providing daytime activities for children on summer vacation. The Metropolitan Police Department in conjunction with volunteers, social service workers and community residents have conducted morning educational classes, provide a noontime lunch and an afternoon filled with recreational activities. If necessary, children and adults may also receive a host of social services ranging from counseling and referrals to advice on how to secure employment.

In Houston, Texas; New Orleans, Louisiana; Wilmington, Delaware; and at least 250 other cities, community policing is being used to target high-crime areas. It aims to eliminate sites of frequent crime; get substance abusers into treatment; improve housing conditions; foster neighborhood volunteer leaders; provide work, recreation, and educational opportunities; and use alternative dispute mechanisms.

Successful community policing requires use of a wider range of skills and resources than traditional policing. For example, the Wilmington, Delaware, Eastside Anti-Drug Abuse Program uses a network of volunteer block captains to identify and refer residents in need of drug treatment to social services.

While community policing requires substantial training and management changes, as well as having community treatment and education resources available, it holds the potential of having a significant long term positive impact to keep citizens out of the criminal justice system before they enter it.

**Alternatives to Arrest**

The District of Columbia and some other jurisdictions have provision for summons and citation in lieu of arrest for non-assaultive criminal offenses. This practice, regularly used for traffic violations, can save pretrial bedspace. Other jurisdictions have created noncriminal offenses for certain minor or low-level crimes to eliminate the need for jailing nonviolent offenders pretrial. Both citation arrest procedures and decriminalization require that case charging and case management guidelines be jointly developed by prosecutors and police.

### Improving Arrest Decisions

There are many reasons police arrest people. This overview comes from a discussion of police performance and case attrition:

> They may make arrests to quiet a situation, to assert a presence, to prevent a crime, to bring in an informant, to build a record of charges against certain suspects that may be used later to prosecute repeat arrestees, etc. Further, "sweeping the streets" may be a high priority in communities that have high crime rates...[P]olice in affluent neighborhoods may also arrest...suspicious outsiders to maintain community confidence...in the presence of certain kinds of community pressure, a rejection from the prosecutor can be valuable...to show that the department has done its best, and it is the prosecutor who will not proceed.[58]

The more that arrests are made only when police believe that they have adequate evidence to support a finding of guilt, the less detention space and court time is wasted holding and processing individuals who will be released.

Some localities have regular training and review sessions between the prosecutor's office and police and have developed guidelines for arrest and detention decisions.[59] In addition, the value of quality rather than quantity in police work was documented in a review of the 25 municipal police agencies that all work with the same Los Angeles prosecutor's office. Some had conviction rates that were twice as high as others. Police activity that wasted jail and court resources with arrestees who weren't found guilty was related directly to the amount spent per arrest. The number of officers was not significant.[60]

## Detention

### Detention of Arrestees

On the average nationally, 20 percent of those who are arrested are not charged by the prosecutor.[61] Therefore, the sooner the arresting officer presents his/her information to a representative of the prosecutor's office, the more jail or prison bedspace can be saved. In the District of Columbia, the "no paper" rate in the U.S. Attorney's office for D.C. Superior Court cases has run as high as 30 percent on occasion.

## Prosecution

### The Decision to Charge

Research has documented that early prosecutorial screening saves prison bedspace. The more that prosecutors expend efforts to screen cases, rather than filing charges routinely for most arrests, the fewer cases are rejected in court actions.[62] Similarly, early involvement by the public defender minimizes overuse of detention.

## Pretrial Release

### Pretrial Services Options and the Decision to Detain

Nationally, two-thirds of persons charged with felonies are released pretrial. When this is added to misdemeanants, the overall release rate is about 80 percent.[63] Likelihood of release decreases as the gravity of offense and severity of criminal record increases.[64] Nevertheless, almost half of all jail beds nationally are filled with people being held pretrial. Expeditious use of options for those who pose the least danger allows wiser use of detention space for those whom the public would not want released.

### Pretrial Screening

Pretrial services programs screen offenders. Across the country many of these programs have the power to release. Although there are a large number of programs, they vary widely in their location and functions.[65] Pretrial release programs can be effective in discharging more persons using nonmonetary bail; however, nonmonetary release programs tend to experience delays in screening and verification, which contribute to costs. As noted by the Advisory Commission on Intergovernmental Relations in its 1993 report, to ensure the greatest cost savings:

> The critical time period to be examined for the effect of bail policies and procedures on jail overcrowding is the first days of detention.[66]

Each jail bed that is taken even for one day by a minor offender who will be released pretrial drives costs and/or limits the bedspace available for more serious offenders.

The District of Columbia Pretrial Services Agency, by statute, provides many services to the courts and the community including two primary functions. The Agency serves as a neutral fact-finder for judicial officers who must decide whether a defendant will be released

pending trial and under what conditions release will be granted. To assist the court make this first important decision, the agency interviews arrestees, verifies information provided in the interview, checks criminal histories, conducts drug tests, identifies cases eligible for pretrial detention, and makes conditional release recommendations.

The D.C. Pretrial Services Agency also monitors compliance with court-ordered conditions of pretrial release, reporting violations to the court. These conditions include regular drug testing; requirements to enroll in drug treatment programs; curfew restrictions; release to a community-based third party custody organization; or regular contact by telephone or in person to the agency.

Among the programs operated by the D.C. Pretrial Services Agency at the time this report was being developed is the Intensive Pretrial Supervision. This program—providing close supervision for higher risk detained individuals—consisted of regular drug testing, frequent curfew checks, and an immediate return to custody after a violation. Drug use among program participants was reduced from a level of 85 percent to just 3.5 percent. The rate of arrest on new charges was one third that of defendants under less restrictive forms of supervision. This evidence indicates the important role of supervision in the success of any effective alternative or well run early release program.[67] (Regrettably, this program has lost its funding due to an overall District of Columbia budget shortfall. This may be a prime example of how the absence of an effective low-cost intermediate sanctions program results in the District of Columbia Government paying more to incarcerate defendants who otherwise could stay out of prison pretrial.)

## Judicial Case Management

### Enhanced Notification

Nationally, about one quarter of those defendants released do not attend their scheduled court hearings. Enhanced notification procedures reduces defendants' failure to appear for court appearances and in turn reduces the frequency of bench warrants issued for not showing up for court. Because there is an average lag time of about 122 days between arrest and case disposition,[68] some jurisdictions have found it pays to remind offenders of court dates.

**Expedited Cases**

In an effort to cut paperwork and warrants, courts have adopted expedited hearings, especially for misdemeanants. Some of these programs are intended to prevent failures to appear as well as to decrease case processing costs. Monthly custody screening by prosecutors of all cases to examine if there is a basis to expedite any has been recognized by the National District Attorney's Association in its National Prosecution Standards.[69]

**Differential Case Management**

Trial courts across the United States have reacted to multiple stresses on their burgeoning caseloads and to overcrowded jails by becoming more creative and efficient in processing cases. For example, differentiated case management systems rate cases on a schedule based on their complexity. Less complex cases are moved quickly saving pretrial jail bedspace. In one example, Philadelphia's program was estimated to release 400 jail beds daily.[70]

Trial courts, including those in the District of Columbia, have developed "drug courts" to defer prosecution for drug possession subject to successful completion of a drug treatment program. In drug courts, such as in Miami, the prosecutor, public defender, and judge all monitor the defendant's participation in treatment and periodic urinalysis testing. Drug courts may monitor hundreds of cases and direct treatment to persons exhibiting criminal behavior.

In 1993 the Superior Court of the District of Columbia embarked on a major five year Drug Court Intervention Program. Responding to the need for improved knowledge about successful treatment approaches, The Center for Substance Abuse Treatment (CSAT) has entered into an interagency agreement with the D.C. Pretrial Services Agency (PSA) and the Superior Court of the District of Columbia to initiate a major demonstration project.

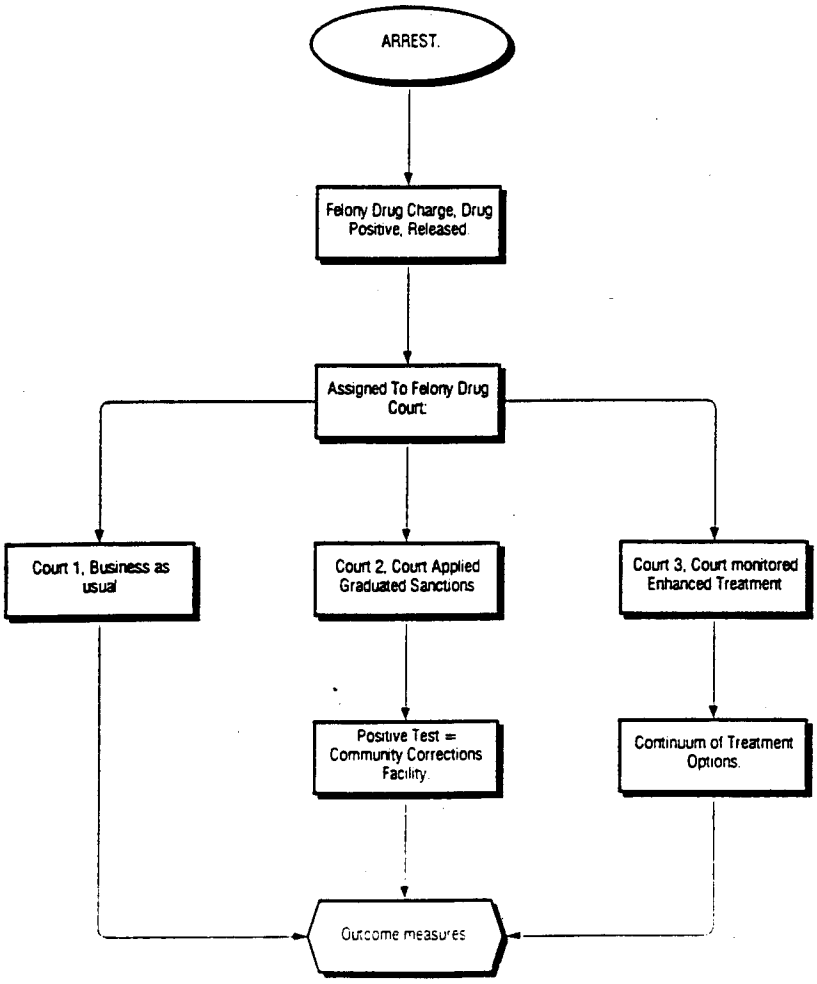
Several goals for the D.C. Superior Court's Drug Court initiative have been identified. The first goal is to design and implement a Drug Intervention Project, in the context of criminal court system. The elements of this approach consist of (1) personal involvement of the judge in overseeing the defendant's participation in drug treatment; (2) ready access to a continuum of services—ranging from routine urine testing, outpatient treatment, intensive outpatient treatment, to residential treatment modalities; and (3) the use

by the judge of both incentives for encouraging participation in drug treatment, as well as immediate, graduated consequences for lack of compliance. The second overall goal of the D.C. Superior Court's Drug Court pilot project is to describe and document the implementation process for the benefit of other jurisdictions considering replicating the approach. The third and final goal is to implement a project that can be properly evaluated.[71]

This demonstration pilot program is intended to provide CSAT and the Superior Court of the District of Columbia with significant information about the costs versus benefits of introducing enriched drug treatment services within the context of a court-supervised drug intervention project. The demonstration has been designed so that the efficacy of the enriched drug treatment services and graduated consequences may be compared with less comprehensive traditional intervention programs currently used by the District of Columbia criminal justice system. (Figure 9)

Figure 9[72]

**Superior Court Drug Intervention Program**



**Control of the Calendar**

Minneapolis' fourth circuit found that moving to single judge case assignment reduced continuances from an average of 6.8 per day to only 1.1 per day because continuances could no longer be used to "judge shop."[73]

Videotaping depositions, electronic filings, use of speakerphones for oral arguments, and providing computer access for case tracking to detention, the prosecutor, defense, and the court are other potentially important tools to ensure that no one is held in jail longer than necessary before trial.

**Sentencing and Level of Supervision**

For those convicted of a crime, most jurisdictions have a range of sanctions between unsupervised probation and imprisonment. A continuum of sanctions provides the sentencing judge the option to increase compliance by prescribing an increasingly severe set of consequences. It is designed to minimize the use of costly, high-security incarceration due to technical violations and to avoid subsequent criminal behavior.

The Superior Court of the District of Columbia through the Drug Court Pilot Program described above (and many of its other sentencing statutes) employs a limited use of graduated sanctions for persons violating their probationary conditions. Such efforts may have a substantial impact on freeing up costly prison bedspace needed for the dangerous offenders while conveying to the offender the need to follow release conditions.

**Economic Sanctions**

Economic punishments have been used mostly in the state courts across the United States in conjunction with probation and split sentences. They may be in the form of restitution to the victim, court-related assessments, probation supervision and treatment fees, or fines. Jurisdictions where the collecting agency's budget (typically the probation department) is funded in part by the money collected report higher rates of collection.[74]

Fines—Fines are so common nationally that about 84 percent of all probationers must make some form of monetary payment.[75] Over half of those required to pay fines complete their obligation with an average payment of $2,172.[76]

Day Fines—Despite common usage in conjunction with other criminal court sanctions, until recently fines have not been levied in the United States state and federal courts as a primary option for punishing criminal law violators. Day fines are a penalty that is determined by multiplying units (which originally were equated to days of punishment) representing the severity of offense and the earning capability of the defendant. Day fines have been employed by trial courts in Staten Island, New York; Milwaukee, Wisconsin; Phoenix, Arizona; and are very widely used in Western Europe.

Proponents of day fines argue that they generate revenue, offer proportionality in punishment, are more effective in deterring criminal behavior than jail, and preserve offender contacts with the community. Courts can administer day fine sanctions routinely once they are established, although legislated maximums may have to be removed to enable proportional penalties for higher income individuals.

Fees—In the past twenty years, it has become increasingly common for states to enact laws requiring offenders to pay for their treatment and supervision:

Table 6[77]

Number of State Correctional Fee Enabling Statutes Passed Before and After 1970

| Years | Prison Inmates | Jail Inmates | Parolees | Probationers |
|---|---|---|---|---|
| Before 1970 | 21 | 17 | 3 | 8 |
| 1970-1987 | 15 | 9 | 12 | 20 |
| TOTAL | 36 | 26 | 15 | 28 |

Civil Economic Sanctions—Other economic sanctions include benefits withholding and forfeiture. Drivers licenses, public housing benefits, or unemployment insurance are examples of benefits which may be withheld for persons convicted of a crime. Asset seizure and forfeiture of property used in drug transactions may help break-up drug operations.

Critics of these penalties argue that they are counterproductive because they reduce an offender's options for maintaining a law- abiding lifestyle. However, civil forfeitures can generate income and facilitate adjudication because they apply civil system rules.

Restitution—The concept of restitution (paying the victim or society for harm) has wide public approval.[78] It can be used for employed offenders who are on probation, for those serving intermittent sentences, or for those residing in halfway houses. Restitution payments are derived from the offender's wages.

## Probationary Community Supervision and Treatment

Community sanctions vary from self-supervision to very restrictive. Public safety, effective deterrence, and treatment results depend upon having a continuum of responses available and a good classification system of offenders to provide appropriate supervision and treatment.

### Community Service

Community service is a work-related alternative punishment. Nationally it is required in about 12 percent of probation cases.[79] Community service provides jurisdictions and nonprofit organizations with thousand of hours of labor. Community service work orders average about 250 to 300 hours of time. Use of this sanction is more common where the offender is unemployed and restitution will meet the goals of punishment or, alternatively, where the offender can pay restitution relatively easily and the nature of the community service may have a deterrent value on the offender. Community service usually involves low-risk offenders.

### Substance Abuse Treatment

At least two thirds of urban offenders nationally and in the District of Columbia have drug-related and alcohol-related problems. The District of Columbia has several programs targeting hard-core drug offenders within the criminal justice system. Among these are the Drug Court Intervention Program and the Correctional Treatment Facility Substance Abuse Program of the D.C. Department of Corrections.

The Drug Court Intervention Program, described previously under the caption Case Management, is a pilot program that operates as an intricate part of the District of Columbia's overall strategy to break the cycle of drugs and crime. Its innovative approach introduces a major change to the way courts have traditionally dealt with drug-abusing defendants. In coordination with its funding agency, the Center for Substance Abuse Treatment, the Drug Court makes accessible to drug offenders a range of substance abuse treatment services. The program encourages or, if necessary, compels hard-core drug users to participate in these drug treatment services.[80]

The D.C. Department of Correction's Correctional Treatment Facility Substance Abuse Program offers drug-abusing defendants a holistic approach to treatment that includes counseling, therapy and educational opportunities. Like the two other aggressive substance abuse treatment programs already in existence—New York's Stay'N Out program and Oregon's Cornerstone program—the Correctional Treatment Facility Substance Abuse Program is designed for serious drug-addicted offenders. The offenders spend the last year or year and a half of their prison sentence at the facility, followed by up to 18 months in a Community Correctional Center, also known as a halfway house.[81]

Prison drug programs are described nationally as predominantly drug "education," not "treatment." In other major urban areas, fewer than one quarter of those diagnosed as having a drug problem are in treatment while on probation.[82]

A number of other promising diversion programs exist. In Orange County, California, nonviolent youthful offenders were given drug treatment, employment and counseling. Tucson, Arizona, developed an outpatient follow-up support program following a short-term residential stay. In Portland, Oregon; Cook County, Illinois; Hennepin, Minnesota; and in the District of Columbia Drug Court Program addicts may receive acupuncture detoxification along with therapy to resist drug cravings. These special programs also include one for 300 District of Columbia high-risk felons, as well as expanded TASC programs in some cities.

**Day Reporting**

Day reporting centers are designed to provide structured supervision and treatment for felons on probation or parole in a nonresidential facility. There are now more than 80 centers in this country—including the District of Columbia's Probation Parole Resource Center.

These centers provide for frequent contact with the probationer—including drug or alcohol testing, education, training or support. Day reporting centers also can provide sanctions such as curfew, electronic monitoring, community service work and restitution. Day reporting centers cost about $7.60 per day per offender.[83]

The Superior Court of the District of Columbia's Social Service Division operates a Probation and Parole Resource Center (PPRC). The PPRC follows the basic Day Reporting Center model. It is a highly-structured, non-residential, community-based, day reporting substance abuse treatment program for probation and parole offenders.[84]

**Intensive Supervision Probation (ISP)**

Intensive supervision probation is intended to supervise probationers who are at risk of reoffending or to divert persons from prison who need to be monitored more closely than probation. Average probation caseloads have been growing substantially in the United States as budgetary resources are reallocated to prison and jail operations. The public may be surprised that nationally only 40 percent of felons on probation are ordered to see a probation officer more than once a month. In fact, actual contact is much less, as the survey summarized below notes.[85]

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

Intensive supervision probation relies on more frequent face-to-face contact with the probation officer, drug testing, treatment services, and other surveillance such as home confinement with electronic monitoring. In New Jersey ISP is used in tandem with a short

split-sentence of imprisonment.[86] Evaluation reports of the New Jersey program indicated reduced recidivism.[87] Although other evaluations report no reduction in recidivism, there is some promise in that future offenses are less serious. Since there is a correlation between a high number of face-to-face contacts and probation revocations due to higher detection of technical violation rather than increased criminal behavior, ISP may catch a return to criminal behavior before it becomes more serious. ISPs cost much less than prison—about $7,000 for each case.[88]

The District of Columbia's Intensive Supervision Probation Program provides offenders with substance abuse treatment or whatever else is deemed necessary by the court or their probation officer. Program participants remain under intense supervision for a six-month period, thereafter they are placed in regular probation but under maximum supervision.

**Police/Probation Coordination**

In at least one urban jurisdiction, police and probation work together to better supervise parolees and probationers. Los Angeles County's ASAP program provides monthly case lists and speeds up notification to the police of change in supervision status or risk status of offenders.[89]

House Arrest—The use of an offender's home for detention and punishment can be expanded beyond persons who have home, employment, and community ties. With prison overcrowding, home confinement has been coupled with ISP or electronic monitoring to target higher risk offenders transitioning back from incarceration or in need of extra supervision.

**Electronic Monitoring**

Electronic monitoring requires the offender to constantly wear a bracelet linked to a transmitter within his/her home. Electronic monitoring and house arrest are estimated to cost about $5.85 per day per offender.[90] A majority of jurisdictions charge offenders fees to offset costs of electronic monitoring, in part, because many courts use it for DUI repeat

offenders.[91] Technical challenges are one obstacle, but nationally the number and type of electronically monitored offenders is expanding. Electronic monitoring does require a telephone, which some offenders may not be able to afford.

### Residential Facilities

Halfway houses and community residential centers operate as a structured living environment for convicted offenders in many communities. Residents are not permitted to leave except for employment or other essential activities. Offenders in halfway houses may range from probationers to parolees transitioning back into the community. In some jurisdictions, halfway houses also are used to punish DUI offenders. About two thirds of all halfway houses are privately operated.

Halfway houses are less costly and far less secure than prison because they do not use high-security construction; however, their operating cost savings depend on whether increased program staffing replaces reduced security staffing. If halfway houses are effective in deterring first time inmates or in carrying out programs that stop continued criminal activity, they are a less expensive form of punishment than high-security prisons. The District of Columbia Department of Corrections has operated halfway house programs directly and through private contract for over twenty years. In 1993 and 1994, the average bed capacity for such programs in the District of Columbia was between 800 and 900 persons. Serious lapses in handling escapees from the District's community corrections centers in 1993 and 1994 lowered their use and lowered public confidence in this alternative to incarceration.

## Postsentencing Modification

### Parole

The number of persons in prison is determined in part by the number of persons sentenced to prison directly plus those admitted because they fail probation. Prison populations are further determined by how long offenders stay, which is controlled as much or more by the decision to grant or revoke parole as by the original sentence. Finally, parole policies and the likelihood of parolees being returned frequently are influenced in part by

conditions in prison. For example, overcrowding may lead to emergency mandatory releases and high rates of return, while effective prison programs may lead to discretionary release based on evidence that the inmate is not likely to continue to commit crime.

Most of the programs discussed above under probationary options are being used in various United States jurisdictions for parolees. In addition, states are using a variety of programs targeted to reduce length of prison stay.

**Boot Camp/Shock Incarceration**

Boot camps rely on military discipline in a highly- structured residential environment. These programs were started in Georgia and Oklahoma, and by 1993 thirty states and the federal government were operating over sixty boot camp prisons with a capacity of over 9,000 inmates.[92] The District of Columbia now has an urban boot camp program as well.

Boot camp programs generally are short-term confinements for youthful offenders and are geared toward developing self discipline and employment skills. Boot camps are viewed as an alternative to lengthy imprisonment though recidivism rates are generally similar for boot camps and for prison; those boot camps that report the most reduction in recidivism have education, drug treatment, and other rehabilitation programs. Boot camps are an attractive alternative to incarceration because the public likes the idea of inmates being required to conform to a highly-structured regime and they are less expensive than longer prison stays.

Additionally, because boot camp sentences are short—frequently six months or less—their costs per confinement are substantially lower than the alternative prison commitment expense many of these offenders would cost the taxpayer. Structured aftercare programs and supervision in the community for offenders following a boot camp sentence may make a very positive difference in overall program success rates.

**Coordinated Prison and Parole Programs**

An increasing number of prisons and jails are addressing inmate deficits by developing coordinated programs for education, substance abuse, job training, mental health, and social skills.

Education—Most prisons have adult education, diagnostics, and literacy efforts.[93] About a quarter of all state prisoners are active in educational programs.[94] Some states, such as Colorado, have developed incentives such as granting good time credit for those prisoners who enter education programs. In Virginia, parole is harder to obtain for those who refuse to participate in reading programs which have a goal of an eighth-grade reading level.

Texas and many other states are introducing computer assisted learning in the prison context to provide low-cost, high-volume instruction. Computer assisted learning allows one teacher to double or triple the number of students taught because it reinforces each student's learning. Computer literacy skills are also an important passport to the working world.

Substance Abuse—Although most jails and prisons offer some kind of drug program, most are only detoxification and drug education—few offer treatment.[95] A number of jails provide more comprehensive options, relying on community substance abuse services. Alexandria, Virginia, established a sober-living unit in its jail with comprehensive substance abuse and mental health services. Cook County, Illinois, convened a consortium of medical, drug treatment, TASC, and sheriff services in their comprehensive treatment program. Aftercare is provided during work release following a three-week intensive treatment program.

Evaluations of drug and alcohol treatment programs indicate that the rate of success improves dramatically with the length of time spent in the program. Starting drug treatment in prison takes advantage of the fact that the individual is being housed and fed and adds only about 10 percent to the overall cost. For prisoners who undergo treatment, it is critical to have a continuum of aftercare in the community when they are released. One approach used in the New York state prisons is outreach by Alcoholics Anonymous members to persons with substance abuse needs who are about to be released.[96] Such self-help groups are inexpensive and critical support systems for recovering addicts.

Job Training and Placement—Employment is one of the strongest factors associated with remaining arrest-free after release. Work training and placement has been increasingly recognized as beneficial for prisoners being released. Most prisons and jails operate work release as a separate program due to security needs of controlling contraband. Work release is increasingly operated by halfway houses. In San Francisco, California, work furlough costs $13.85 per person and saved the county over one million dollars in 1990.[97]

Over half of jails nationwide offer some type of job placement services to inmates about to be released.[98] Virginia Cares offers job training and placement to newly released persons and assists in their employment search by offering regular support groups. Some public/private partnerships operate to train offenders, such as the National Association of Homebuilders HEART apprentice program.

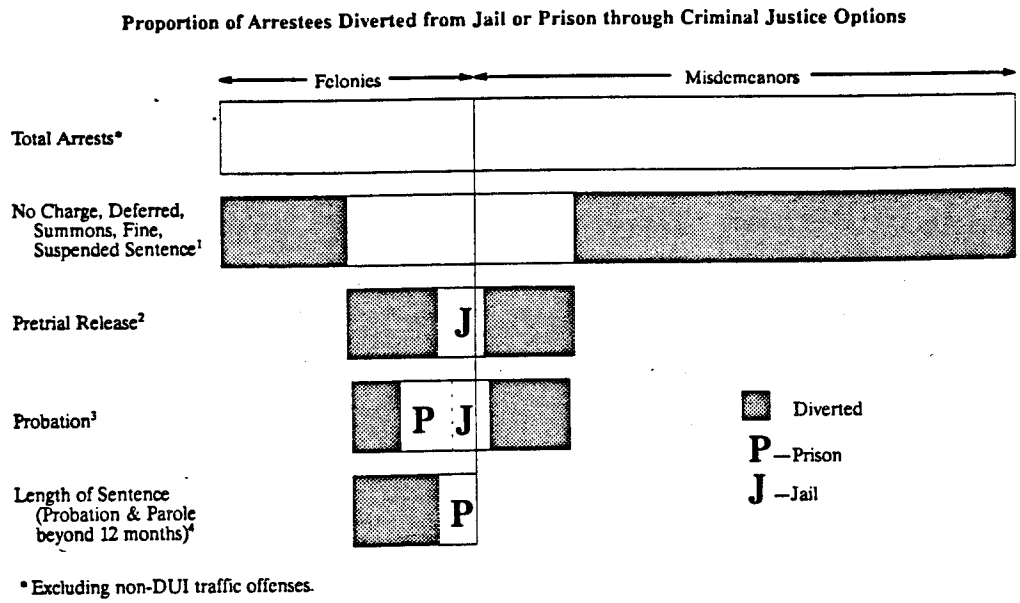
Mental Health—Although most states offer mental health and sex offender treatment, such programs are self-help and do not constitute comprehensive treatment.[99] Oregon and Minnesota have pioneered relapse prevention programs geared to the release of such individuals. Prison mental health services must be upgraded to link with community resources to prevent further domestic violence, child abuse, and other criminal activity caused by mental health problems.

## Realistic Expectations for Nonviolent Offenders Being Diverted from Prison

At each stage of the criminal justice process, opportunities exist for reduction of cases and costs. Although no one change will produce a dramatic reduction, cumulatively the number of individuals behind bars can be significantly reduced.

Figure 10 provides a pictorial representation of how many arrestees in 1990 nationally were being diverted based on whether the offense was a misdemeanor or a felony.

Figure 10[100]



**Pretrial**

At each stage of the process, opportunities exist to reduce the number of cases and move the remaining cases faster. Because of the large number of individuals moving through the system, real cost savings can accrue out of savings of hours and days. About 47 percent of the persons jailed in the District of Columbia in 1992 were awaiting trial. The average length of stay in jail before trial at that time was 153 days. This can be compared to the national average of about 43 percent in pretrial status.[101] Although the District has several pretrial release programs, more could be done to expedite decisions, hearings, and provide alternative supervision.

**Misdemeanants**

Another potential group for diversion is misdemeanants, particularly those serving drunk driving offenses. As of fiscal year 1994, sentenced misdemeanants in the District of Columbia are about 9 percent of the incarcerated population.[102] In the nation's jails, misdemeanants average about 20 percent. Although the District of Columbia misdemeanant rate is lower than most jurisdictions, it may be possible to release up to one third of misdemeanants now receiving an incarceration sentence into community service, supervised work release, day reporting, or day fine programs.

**Non-Career, Nonviolent Felons**

As indicated in the first section of this paper, arguing from national experience, a possible reduction of 10 percent of the District of Columbia's prison population might be realized. In the District of Columbia, about 3 percent of sentenced prisoners at the Lorton prison complex are property offenders and 33 percent are drug offenders.[103] More than half of this group of drug and other nonviolent offenders may have prior violent offense records or more than four felony convictions and could be described accurately as career criminals. Therefore, by concentrating on the remaining nonviolent, non-career felons who are incarcerated, it may be viable to reduce their numbers through using alternatives and/or shorter stays. To achieve further reduction, existing mandatory sentencing penalties would have to be amended or repealed.

## SECTION FOUR: Conclusion

Reliance on imprisonment as a public policy tool to punish a substantial proportion of nonviolent law violators is not necessary where there is a well managed and functioning system of criminal justice in place. Reducing prison and jail growth in the District of Columbia, or in any other United States jurisdiction, depends upon having available:

- a continuum of consequences to sanction, divert, and adequately respond to offenders;
- authority at the working level to use the most effective program and/or sanction;
- support of the major criminal justice officials;
- well-focused funding;
- organizational competency and integrity of justice agencies which supervise offenders;
- participation by community agencies; and
- most importantly, citizen support.

Our analysis and site visits within the District of Columbia justice system over the course of researching and preparing this report reveal that there are a number of highly promising criminal justice programs and strategies. These programs hold the potential over time for lowering the need for imprisonment for hundreds of offenders annually and in turn saving the taxpayer substantial sums.

Among the existing programs which warrant broader community awareness and support now and in the future are the Community Policing Program of the Metropolitan Police Department; the Third Party Custody Program of the D.C. Pretrial Services Agency, the innovative Pilot Drug Court Program of the Superior Court of the District of Columbia, and the Correctional Treatment Facility program model operated by the D.C. Department of Corrections.

The broader truth in 1996 is that citizen confidence and support of the District's offender rehabilitation agencies is sadly lacking. Public confidence and trust in these institutions must increase dramatically before the community will embrace any meaningful reduction in the use of imprisonment for many adult offenders.

Any major governmental policy shift cannot be sustained unless it has community support. This is especially true in criminal justice because the fear of crime is intensely personal—" the fear rather than the fact of crime determines the initial views many people express... a danger that might affect them suddenly and without warning."[104] Such personal fear will make most citizens suspect of any governmental efforts to reduce incarceration.

However, there is growing evidence nationally that information can change public opinion. As noted earlier, the Edna McConnell Clark Foundation has been successful in states as diverse as Alabama, Delaware, and California in conducting community-wide focus groups where, with minimal information about prison costs and probationary alternatives, people changed their decisions about who needs to be sent to prison from over 60 percent to less than 30 percent of sample cases.[105]

The challenge to officials in all three branches of the District of Columbia Government is to encourage honest and open communication with the community and each other about the offender rehabilitation process so that public trust and support first can be established then sustained.

Over the long run the community needs to understand and to accept that incarceration is very expensive; that incarceration does little to prevent recidivism; and that imprisonment should be used selectively. Employment, education, drug and other substance abuse treatment services for offenders are as important as they are for law-abiding citizens. Adequate budgetary support is imperative; and, finally, we should not rush to condemn or to close community-based offender programs when some offenders escape or commit new crimes.

Although the Federal City Council's Intermediate Sanctions Task Force labored long and diligently to examine and recommend ways to improve the city's existing criminal justice system and limited its scope to the issue of intermediate and community-based sanctions, those limits must be clearly noted. No significant reduction in crime or increase in public safety can be achieved if we continue to rely, as a society, on the law enforcement model, that is, the present criminal justice system. It is a great current fallacy to continue to look to the criminal justice system and its enforcement model as fundamentally likely to produce significant results.

The criminal justice system was designed and is operated as a last stop on the line of antisocial conduct. By the time a person runs afoul of the criminal justice system, it is very

often too late to have significant impact upon that individual in terms of conforming his conduct in the future to the social norm. As noted previously in this report, normative conduct is basically controlled by the more fundamental and closer related institutions of our society, starting with family and proceeding through the community and its many mechanisms for imparting values and guiding controlling conduct. Without significant changes in our culture as it relates to the rearing of children and the infusing of social values, accompanied by appropriate peer and other social mechanisms for enforcement, we should not expect the police, courts, and prisons to incapacitate at any affordable cost the number of persons who are today caught up in that net.

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# Summary Description of Emerging Intermediate Sanctions Programs in Use in the United States

- Correctional Boot Camps
- Substance Abuse Treatment
- Day Reporting Centers
- Economic Sanction—Fines and Day Fines
- Electronic Monitoring
- House Arrest
- Intensive Supervision Probation

## INTERMEDIATE SANCTION: CORRECTIONAL BOOT CAMPS

### Definition

The alternative to incarceration known as "correctional boot camp" involves placement of offenders into a military-type training camp for recruits.[1] Recruits in correctional boot camps must comply with strict rules, discipline, military drills, and physical training. The use of correctional boot camps in the United States was first attempted by Georgia and Oklahoma in 1983. Since the success of these pioneer camps, correctional boot camps have sprung up across the United States.

### Examples

By 1990, 14 states had correctional boot camps and 12 states were considering them. Among the states using correctional boot camps are Alabama, Arizona, Florida, Georgia, Idaho, Louisiana, Michigan, Mississippi, New York, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas.[2] One of the reasons for the growing popularity of correctional boot camps across the United States is their appeal to legislators and the public. Correctional boot camps are seen as highly structured and time efficient by the public. No other alternative sanction has the ready public perception correctional boot camps have for being tough on criminals. Information concerning the existence of correctional boot camps within the District of Columbia Corrections Department has not been made available.

### Costs

It costs about the same amount of money to place an offender in a correctional boot camp as it does to place an offender in prison. However, the average length of a correctional boot camp sentence is much shorter than most prison sentences. Therefore, if similar-type offenders were diverted from prison into correctional boot camps for similar offenses, a financial savings would result due to the shorter length of correctional boot camp sentences (90 to 120 days)[3] compared to prison sentences.

However, it costs much more to place an offender in a correctional boot camp program than it does to place an offender on probation. Sentencing offenders who are otherwise appropriate for a probationary sentence to a correctional boot camp sentence (a process known as "net widening") is something that should be avoided as the District of Columbia implements a correctional boot camp program. The decision to put offenders in correctional boot camps should be made either by prison officials from among the existing prison population or by the sentencing judge advised that correctional boot camp programs are most appropriate for those offenders who otherwise should be incarcerated.

### Types of Offenders

In existing correctional boot camp programs, most participants are young, male, nonviolent, first time felony offenders. Most correctional boot camps include rehabilitative services like education, counseling, drug treatment, and vocational training.[4] Because such a large proportion of first time nonviolent felony offenders are drug offenders, drug treatment is an essential program for this alternative sanction option.

**Program Characteristics**

Recidivism rates in correctional boot camps are very similar to those in prisons. In a Florida correctional boot camp, the rate of reincarceration for graduates of the camp was 5.6 percent compared to 7.8 percent for controls (offenders from prisons).[5] The high turnover rate of correctional boot camps enables the state to handle a greater volume of offenders without endangering the public with higher recidivism rates.

Correctional boot camps appear to do better in instilling offenders with positive social attitudes than offenders who leave prisons.[6] Offenders in one correctional boot camp evaluation study reported that the camp provided a constructive environment to make the offender "get up in the morning and be active all day."[7] This type of environment not only is good for the offender but appeals to citizens who believe that in prison offenders are at liberty to spend much of their time sitting around, lifting weights, and plotting revenge.

**Evaluation**

The correctional evaluation literature reports three principal findings when considering the correctional boot camp concept. First, when measured against a median prison sentence of two years for similar type offenders, a correctional boot camp program of 90 or 120 days duration enables the prison system to accommodate six to eight times as many offenders for the same cost as placing one person in prison. Secondly, correctional boot camp programs appear to be effective in instilling a constructive work ethic and social attitude skills in offenders when compared to prisons in general. Finally, recidivism rates for correctional boot camp participants appear to be roughly equivalent to persons with similar offense and offender profiles who serve prison sentences.

## INTERMEDIATE SANCTION: SUBSTANCE ABUSE TREATMENT

### Definition

The alternative to incarceration known as "substance abuse treatment" refers to a variety of programs designed to help offenders with drug and alcohol abuse problems. These programs include weekly therapy sessions, detoxification, and outpatient or inpatient residential stays. In terms of the intermediate sanctions issue, generally offenders are placed in substance abuse treatment programs as a condition of probation or parole. Most of the alternatives to incarceration discussed in this report include the use of substance abuse treatment in conjunction with another intermediate sanctions program.

### Examples

Most prisons and jails in the United States offer some type of substance abuse service. "Approximately 87 percent of the jails with populations of over 200 report that they offer drug treatment referral services; 81 percent offer drug education; 76 percent, drug counseling; and 57 percent, detoxification."[8] However, most of these programs are not treatment programs; they focus only on addiction recognition and education.

The Federal Office of Treatment Improvement of the Alcohol, Drug Abuse and Mental Health Administration (ADAMHA) has funded a number of demonstration drug treatment centers for drug offenders. Montgomery County, Maryland, and the District of Columbia each have received ADAMHA funding. Montgomery County jails operate a five week institutional drug treatment program for up to 24 inmates. The treatment is then followed with six months of aftercare (status reports, group therapy).[9] The District of Columbia has a program funded by ADAMHA consisting of aftercare and follow up for 300 felons.[10] This District of Columbia program is managed jointly by probation, treatment, and social service agencies.

Two of the most aggressive substance abuse treatment programs are New York State's Stay'N Out program and Oregon's Cornerstone program. These two programs are designed for serious offenders who are addicted to drugs. Offenders admitted to these two programs and others like them are admitted during the final year of their prison sentence.[11]

### Costs

Substance abuse treatment, if done while offenders are serving sentences in prison, adds a minor expense to the total cost of incarceration. "New York's Stay'N Out program adds about 10 percent to the normal cost of prison."[12] Offenders who successfully complete these programs have a lower recidivism rate than other similar offenders. By reducing recidivism rates, future prison costs are reduced because substance abusers will re-enter the criminal justice system less often.

### Types of Offenders

Most substance abuse treatment programs focus on high-risk offenders who are addicted or dependent on drugs or alcohol. A high-risk offender is one who is likely, if released from the criminal justice system, to revert back to the use of the illegal substances which originally got him/her in trouble. Offenders must be nonviolent in order to be eligible for intermediate sanctions substance abuse treatment programs.

**Program Characteristics**

Indications are that substance abuse treatment programs substantially reduce recidivism and therefore reduce long term financial costs to the criminal justice system. More than 77 percent of the men who remained in New York's Stay'N Out program for at least nine months were not rearrested in a three-year follow up, while only 50 percent of a control group (incarcerated offenders) performed as well upon release from prison.[13]

Substance abuse treatment programs are often joined with other intermediate sanctions. For example, an offender in a home detention program may be allowed to leave his/her home on a daily basis for employment and on a daily or weekly basis to attend a drug counseling session. In another example, an offender sentenced to a fine may be required by the court to be drug tested on a daily basis. Substance abuse treatment programs exist not only within prisons and jails but within the community as well. By pairing substance abuse treatment with alternatives to prison such as home detention, electronic monitoring, or day reporting centers, the costs to society for housing and feeding the offender are lowered.

**Evaluation**

New York's Stay'N Out program and Oregon's Cornerstone program are examples of substance abuse treatment programs which are effective in decreasing the recidivism rates of the participating offenders. The New York program had a 77 percent success rate and decreased comparative (to incarcerated offenders) recidivism rates by 27 percent. Most offenders in our prisons and jails were sentenced for violating drug laws. Over two thirds of the offenders in the federal prison system broke drug laws[14] and in 1991, 49 percent of newly sentenced persons sentenced in the District of Columbia courts were committed for drug offenses.[15] If these offender recidivism rates could be decreased by anywhere near 27 percent, the effect on prison overcrowding could would be beneficial. One cannot solve the prison overcrowding problem without first recognizing the role substance abuse plays in its creation.

## INTERMEDIATE SANCTION: DAY REPORTING CENTERS

### Definition

The alternative to incarceration known as a "day reporting center" is a nonresidential community facility to which nonviolent offenders report and which may provide vocational counseling, drug treatment and other services. Offenders who qualify for day reporting centers must check in at a designated day reporting center every day. Offenders are not provided with overnight accommodations in day reporting centers.

### Examples

Correctional day reporting centers emanated from England where they have been in use since 1974. Currently in England there are over 80 centers operating.[16] In the United States, day reporting centers for probationers operate in Cook County, Chicago; Springfield, Massachusetts; and New York City. In Boston, Massachusetts, day reporting centers exist for parolees. The District of Columbia operates such a program through the Social Services Division (Probation) of the Superior Court.

### Costs

Day reporting centers offer the same types of programs as those offered in prisons and residential facilities but at a much smaller cost. The average daily cost of day reporting centers is about $7.60 per offender.[17] When compared to the daily cost of incarcerating a District of Columbia offender ($61.10),[18] day reporting centers offer a financial savings of over $50 per day per offender.

### Types of Offenders

Programmatically, day reporting centers can accommodate pretrial detainees, probationers, and convicted parolees. Because of their emphasis on treatment and structured time, day reporting centers are used frequently in sentencing nonviolent drug users.

The reason for the seemingly greater importance given to drug-related sentences compared to other sentences is the system of mandatory minimums in federal sentencing drug offenses. "In the entire federal prison system, two thirds of the inmates broke drug laws, compared with 1 in 10 jailed for armed robbery and 1 in 100 for white-collar crimes."[19] Legislators fear easing back on the incarceration of drug offenders due to the popularity of the "drug war." However, by diverting drug offenders into day reporting programs, legislators could reduce the overcrowding in federal prisons while still appearing tough on drugs.

### Program Characteristics

Offenders in day reporting centers participate daily in structured activities—including drug treatment, community service, education, and employment counseling. Also, a number of day reporting centers use other existing community-based services (such as drug counseling centers, community service, etc.). In this way, ties can be established by the offender for continuing participation after the court-ordered sentence is completed.[20]

Day reporting centers can be combined with competent evening supervision through electronic monitoring. By combining these two tightly supervised intermediate sanctions, one can keep offenders effectively supervised for a full 24 hours.

Most day reporting centers accommodate about 300-500 offenders annually. However, larger day reporting centers exist in places like Houston, Texas, where the local day reporting center serves 2,600 offenders annually.[21]

Because use of day reporting centers in the United States is so recent, very little information regarding recidivism rates exists. Indications are that recidivism rates in day reporting centers are probably equal to or lower than those of prisons or jails.

**Evaluation**

Competently managed day reporting centers offer an inexpensive alternative to prisons while providing services not readily available to incarcerated offenders. Nonviolent offenders who have a job and a home do not need to have the criminal justice system spending tax dollars to monitor and house them. Use of day reporting centers would allow offenders to remain in touch with society while saving the government a great deal of money. —

## INTERMEDIATE SANCTION: ECONOMIC SANCTIONS—FINES AND DAY FINES

**Definition**

The alternative to incarceration known as "economic sanctions" involves the use of fines as a sentencing tool. A fine is "a sum of money imposed as a penalty for an offense."[22] The two different types of fines described herein are being used by courts in different jurisdictions in the United States and in Europe as alternatives to incarceration.

The simple fine is one of the most frequently used forms of punishment legislatures and the courts give offenders convicted of a crime. Currently, fines are used both in combination with prison or jail sentences and with nonincarcerative intermediate sanctions such as probation.

**Definition**

The "day fine" is simply a refinement of the court imposed monetary fine concept. Day fines serve the same basic purpose as the traditional criminal fine but also seek to address the inequities of fining individuals with different levels of income. The objective of the day fine is to provide a fine large enough to be a punishment but not more than the defendant could reasonably pay. A day fine is calculated by multiplying a number of units reflecting the seriousness of the crime by the average daily disposable income of the offender.

**Examples**

Provisions for basic monetary fines are contained in the criminal laws of virtually every state and the District of Columbia, and courts in many jurisdictions employ these sanctions frequently. As noted above, fines are rarely used alone and are usually linked to a sentence of probation or prison.

**Examples**

Day fines have been in use for over 50 years in Europe but are relatively new in the United States. As an intermediate sanction, day fines are used extensively in Milwaukee, Wisconsin; Staten Island, New York; and Phoenix, Arizona. Day fines were first introduced in Finland in 1921 and are now used in Sweden, England, and Germany.[23] In these countries, fines are the sole criminal court punishment meted out in 80 to 85 percent of convictions.[24] Information concerning the District of Columbia's frequency of use of fines or the presence of day fine programs within the District of Columbia are not available. One knowledgeable D.C. Justice System official stated that fines are infrequently used in the District of Columbia.

**Costs**

Data on the costs courts incur in collecting criminal fines could not be located. The literature is replete with references to the fact that fines represent one of the few, if only, criminal court sanctions which punishes the offender while at the same time providing financial revenue to the state.[25]

**Types of Offenders**

In general, criminal fines are levied by trial courts in the United States for a wide variety of violent and nonviolent offenses. Some jurisdictions, such as Texas and Oregon, use fines as the sole form of punishment for certain types of nonviolent offenders. Interestingly, these same jurisdictions also make persons on probation pay the costs of their probation supervision within the community.

Unlike fine programs in general, offenders participating in day fine programs are limited to nonviolent crimes. Day fine program offenders are usually gainfully employed within the community.

**Program Characteristics**

The philosophy of fines is, simply, that the criminal pays for the crime. By levying a tangible economic punishment on some types of offenders, the court will deter further criminal behavior.

Nationally, fine collections from convicted offenders have been very deficient for a host of different reasons. Some states and localities have demonstrated creative and pragmatic strategies to increase monetary income to the state from this source. In Texas, for example, 90 percent of misdemeanants and 65 percent of felons on probation make periodic monetary payments to the state in the form of fines or as direct costs for probation supervision.[26]

Collection agencies have been used by the courts more often as a means for securing payment of fines. "Many collection agencies are able to pursue offenders across state lines and have access to credit reporting systems so that the fact of an unpaid fine enters an individual's credit history."[27]

Another argument which supports the increased use of fines and day fines is that the courts have the sanction of incarceration as a fallback punishment. In the event of a default, the offender could be removed from the fine program and incarcerated. When individuals with differing financial resources default on day fine payments, the prison sentence imposed as a result is correlated to the number of original units of punishment sentenced, not the dollar amount of the day fine.

**Evaluation**

Fines and day fines are alternatives to incarceration which work well in widespread use in Europe and which have worked well in an embryonic stage in the United States. The most appealing aspect of economic sanctions is the fact that they represent very modest direct costs to the government. In fact, an effectively-run day fine intermediate sanctions program could produce enough revenue to defray most, if not all, of the administrative costs of such a program. Additionally, day fines eliminate possible economic inequities between individuals by considering an individual's ability to pay.

## INTERMEDIATE SANCTION: ELECTRONIC MONITORING

**Definition**

The alternative to incarceration known as "electronic monitoring" usually refers to an ankle or wrist electronic bracelet which provides probation or parole officials with the ability to monitor offenders in the community. Often these monitoring systems also include a capability to detect alcohol or drug abuse by the offender as well. Electronic monitoring is usually coupled with other intermediate sanction programs such as intensive supervision probation, house arrest, or day reporting centers.

Electronic monitoring usually appears in one of two forms: Passive Systems, which require the offender to telephone a central computer, whereby the computer electronically verifies the presence of the offender's transmitter bracelet over the telephone. Active Systems involve a central computer which telephones the offender's residence, at random intervals, to verify the presence of the offender and his/her bracelet transmitter. Since both of these systems require telephone lines, only offenders with a telephone service can readily participate in these programs.

**Examples**

By February 1989, electronic monitoring programs were operating in 37 states, the District of Columbia, and the Commonwealth of Puerto Rico and involved 6,490 offenders.[28] This number represents a 285 percent increase of the number of offenders being electronically monitored in the previous year.[29] Between 1988 and 1989, the District of Columbia, Idaho, Iowa, Kansas, Louisiana, Puerto Rico, South Carolina, and West Virginia all initiated electronic monitoring programs.[30]

New Jersey is one of the leaders in the field of electronic monitoring. New Jersey uses these devices to supplement its intensive supervision probation programs. New Jersey's trial courts began deploying electronic monitoring systems in 1986 to assure the curfew compliance[31] of its offenders in the community. These jurisdictions' intensive supervision probation programs are very successful. Less than 1 percent of those who successfully complete the New Jersey program are subsequently convicted of a felony offense.[32] (However, a number of offenders do not successfully complete the program and have their release in the community revoked.)

In April 1987, the D.C. Department of Corrections created the Office of Rehabilitative Services (ORS) to provide alternatives to incarceration for convicted offenders from the District of Columbia. ORS operates 5 major community service programs, all of which utilize electronic monitoring devices. These programs are Operation Progress, the Pre-Parole Program, the Home Detention Program, the Independent Living Program, and the Parolee Electronic Monitoring Program. The average length of time offenders stay in these programs ranges from between 30 and 190 days.

In 1989 the District of Columbia had 19 offenders in electronic monitoring status.[33] No data is available concerning the current number of participants in the District's programs. Offenders in the District of Columbia electronic monitoring program meet very specific program standards. To qualify, they must either be nonviolent offenders unable to post bonds

of $5,000 or less; alleged offenders in pretrial status; or offenders who are within 30 days of any presumptive release date. If they meet these criteria and are selected by the Department of Corrections, the offenders are assigned to specific electronic monitoring programs.

**Types of Offenders**

As in other intermediate sanctions programs, offenders who are placed in electronic monitoring programs have been convicted primarily of nonviolent crimes. Nationally, the top three offender categories sentenced to electronic monitoring in 1989 were property offenders, drug offenders, and vehicular traffic offenders (31.7 percent, 22 percent, and 18.9 percent respectively).[34] Nationally, the average duration of electronic monitoring for an offender in 1989 was 79 days.[35]

New Jersey's success with electronic monitoring may be closely linked to the strict standards it applies to the selection and behavior of its program participants. While the program accepts only 17 percent of its applicants,[36] interestingly, the New Jersey program criteria targets offenders at high-risk of curfew violation, offenders with a history of curfew violation, or offenders that require more supervision than those traditionally placed in probation.[37] Once the offenders have entered into the New Jersey electronic monitoring program, they must be employed full-time; maintain a 6:00 p.m. curfew; perform weekly community service; pay all financial obligations, including program fees; keep a daily diary and a weekly budget; meet with a probation officer at least 20 times per month; and participate in weekly group meetings, including Alcoholics Anonymous or Narcotics Anonymous, if applicable.[38]

**Program Characteristics**

Many offenders who participate in electronic monitoring programs are required to pay monitoring fees. These fees often are used to offset some of the costs of the monitoring devices. However, these fees can also be paid as restitution through the court or directly to the victims of the crime.

No conclusive evidence was located for this report demonstrating, on a national scale, that electronic monitoring has a positive effect on an offender's recidivism. Individual electronic monitoring programs have been evaluated. In 1987 a Colorado electronic monitoring program reported a 42.5 percent completion rate with only 6 percent of those completing the program committing new crimes.[39] (47.5 percent of the participants had their release in the community revoked because of technical violations.) The New Jersey intensive supervision probation program reported, in 1988, a 37 percent completion rate, with 8.4 percent committing new crimes.[40]

**Cost**

One of the main reasons that electronic monitoring is so attractive is that the cost of detaining an offender within their own residence in the community is substantially less than a comparable amount of time in traditional incarceration. For example, Fairfax County, Virginia, spent $16,251 in 1989 to house one inmate in jail for one year. However, it was estimated to cost Fairfax County only $600 a year to electronically monitor one offender on home detention.[41]

In Kenton County, Kentucky, in the period May 1, 1985, through December 1986, 35 offenders were electronically monitored for a total of 1,702 inmate days. The cost to the county was $42,568, at an average cost of about $26 per person per day. During this period a total of $6,377 was collected in program fees from 29 of the 35 offenders.[42]

No cost data for the District of Columbia electronic monitoring programs have been made available.

**Evaluation**

Electronic monitoring's greatest assets are the constant offender surveillance capability the devices give parole and probation officials and the cost savings that it provides to the state. Studies have shown that, due to the fact that offenders' average amount of technical violations decrease over time, this program might even be useful for offenders with sentences exceeding the current average of 79 days.[43]

## INTERMEDIATE SANCTION: HOUSE ARREST

**Definition**

The alternative to incarceration known as "house arrest" involves the pre-trial or post-conviction confinement of an offender within their residence. House arrest is known as "home detention" in some jurisdictions. Under the house arrest procedure, offenders may legally leave the confines of their residence for employment, medical reasons—such as drug treatment, or court-related proceedings. The conditions of the offender's release from their residence are generally set by a judicial officer or probation officer under judicial direction.

Individual house arrest programs vary as to the length of time an alleged or convicted offender remains in the program, the use of drug testing, and the frequency of contact between the offender and his/her probation officer. Courts which use house arrest as an intermediate sanction invariably accompany it with other intermediate sanctions, such as electronic monitoring or with high levels of contact by a probation officer (i.e., Intensive Supervision Probation). By linking house arrest with other intermediate sanction programs, jurisdictions seek to better assure enforcement, and, in turn, a positive result from individuals in this custody status.

**Examples**

Florida's "Community Control Program," established in 1983, is one of the nation's most ambitious house arrest programs.[44] On any given day in Florida, an average of about 5,000 offenders participate in some form of house arrest.[45] According to Florida's standards, house arrest offenders must be nonviolent and otherwise facing a period of incarceration. Participants in the Florida Community Control Program are subject to up to 28 random contacts a month with their probation officer[46] to verify their compliance with the terms of their house arrest. Offenders in the Florida house arrest program may leave their residences for court-approved employment, rehabilitation services, or approved community-service activities.[47]

For the more serious offenders in Florida, an electronic monitoring system, used to determine the offender's location,[48] supplements the usual probation contacts.

In 1988 at least 20 states used "electronic bracelets" with house arrest to monitor program compliance and detect curfew violations.[49] Programs of this type exist in New Jersey, Georgia, and Illinois. States which use house arrest in conjunction with Intensive Supervision Probation include Florida, Kentucky, Utah, Michigan, Oregon, and California.

According to the FY 1994 Washington D.C. Budget Report, the Superior Court of the District of Columbia uses house arrest programs for certain offenders. No data concerning the extensiveness or standards of the D.C. Superior Court's programs have been made available.

**Types of Offenders**

Courts originally used house arrest as an alternative to incarceration for persons convicted of driving under the influence (DUI) offenses. In past years, these programs have expanded to include other alleged and convicted offenders. The rationale behind this expansion is that house arrest offers courts the means of punishing a person within the community at very little cost to the state and, at the same time, keeping first-time or nonviolent offenders away from the harmful side effects of a prison stay. Keeping drunk drivers away from the influence of more serious law violators is one of the major reasons Oregon and Kentucky devised their house arrest programs.[50]

House arrest programs also offer the courts and legislators pretrial release and sentencing flexibility in addressing very different types of nonviolent law violators. House arrest has been used to punish terminally ill, mentally retarded, and elderly offenders. Connecticut has been a pioneer in using house arrest programs to deal with special types of offenders. For example, they have one house arrest program which deals only with pregnant offenders and another house arrest program for certain types of offenders with AIDS.[51]

**Cost**

Nationwide it costs the government between $1,500 and $7,000 to keep an offender under house arrest and between $2,500 and $8,000 per offender where electronic monitoring devices are used.[52] (According to the 1992 Indices of the District of Columbia, it cost an average of $61.10 to keep a person in the Lorton, Virginia Prison Complex in 1991.)[53]

States are recovering some of the expense of house arrest by requiring offenders to pay program fees and electronic monitoring costs. A further direct economic benefit of house arrest programs cited in the literature is achieved by allowing the alleged or convicted law violator to continue his/her gainful employment, thereby helping to support their families, pay taxes, and even to make restitution where ordered by the court.

**Program Evaluation**

House arrest programs appear to be a promising alternative to incarceration for certain nonviolent offenders. They provide judges and policy makers with an option that, on one hand, is cost-efficient and rehabilitative and, on the other hand, provides reasonable limits on offenders' freedom without a high degree of program supervision and cost. In addition, house arrest is easily combined with other intermediate sanctions. One of the main limitations with this intermediate sanction is that house arrest program criteria favor persons who have a job, an income, a residence, etc. This program limitation may be overcome by applying a sliding scale for program costs.

In an independent study of Florida's "Community Control [House Arrest] Program," researchers recorded a 5.1 percent recidivism rate among a sample of the Florida program's participants, as opposed to a 20 percent recidivism rate of prisoners charged with similar offenses.[54] One Utah jurisdiction uses a new electronic monitoring system coupled with house arrest, and, since its inception, none of the program's participants have been convicted of a new offense.[55] No national evaluation study of house arrest has been located, nor is evaluative data on the District of Columbia's house arrest program available for this report.

## INTERMEDIATE SANCTION: INTENSIVE SUPERVISION PROBATION

**Definition**

The alternative to incarceration known as "intensive supervision probation" refers to a form of court-ordered supervised release for offenders in the community. Heightened frequency of contact between the offender and a probation officer and rigorous conditions placed upon the offender to remain in the program distinguish intensive supervision probation from ordinary probation.

Intensive supervision probation programs are often coupled with other intermediate sanctions, such as electronic monitoring or house arrest, to assist the court in the supervision of the offender. Usually, these programs require participants to maintain a steady job, participate in some form of counseling, and perform community service. Frequently, offenders are also subject to random drug testing.

There are two commonly recognized classifications of intensive supervision probation—diversion programs and enhancement programs. Offenders are placed in diversion programs at the initial sentencing; these programs are meant to serve as an alternative to a prison sentence. Offenders placed in diversion programs are considered to represent a low-risk of violence to the community. Enhancement programs select offenders that are already serving their sentence, either in prison or on probation. These offenders are chosen either on the basis of their failure to succeed on regular probation, or the severity of the crime that they committed, or both.

**Examples**

By 1987, 40 states used intensive supervision probation as well as routine probation programs.[56] At that time there were over 25,000 felons under intensive supervision, or about 2.7 percent of all probationers.[57] Due to the variety of these intensive supervision probation programs and their ability to let the punishment fit the crime, no two programs are identical. States which use intensive supervision probation in conjunction with house arrest include Florida, Kentucky, Utah, Michigan, Oregon, and California. States which incorporate the use of intensive supervision probation into their electronic monitoring programs include Colorado, Georgia, New Jersey, and Utah.

In 1992, according to the Annual Report of the Courts, the Superior Court of the District of Columbia handled 306 offenders in its intensive supervision probation program; this number representing a 33.6 percent intensive supervision probation caseload decrease from the previous year.[58] (The caseload of the District of Columbia probationers participating in regular probation dropped 4.3 percent during that same time frame.)[59]

Offenders placed in the District of Columbia intensive supervision probation program must agree to a supervision schedule and substance abuse treatment, or other conditions specified by the court or probation officer. In the District of Columbia, program participants remain under intensive probation supervision for a six-month period, after which time they revert to regular probation, usually under maximum supervision. No information regarding the standards of the D.C. Superior Court's intensive supervision probation program or its applicant criteria has been made available.

**Types of Offenders**

As in most other intermediate sanctions programs, nationally only nonviolent offenders participate in intensive supervision programs as an alternative to incarceration. However, the traits of each program's participants are determined in each jurisdiction. For example, in Marion County, Oregon, program participants must have no past history of violent crime or be currently convicted of a violent crime. In addition, those with burglary convictions were excluded as well, as these offenders were deemed to pose too great of a risk to the public. In Milwaukee, Wisconsin, intensive supervision parole programs are used only to monitor "back-end" cases, consisting of parole violators who face revocation. Virtually all of Milwaukee's eligible "front-end" cases (high-risk offenders newly convicted of a nonviolent felony) received prison sentences.

**Program Characteristics**

The effect of intensive supervision probation on offender recidivism is unclear. Intensive supervision probation participants were not arrested less often, did not have a longer time before being re-arrested, and were not arrested for less serious offenses than similar offenders who served their sentence in prison.[60] In a nationwide survey of 14 intensive supervision probation/parole programs, during a one-year follow-up period, the participants in 11 of the programs actually had a slightly higher recidivism rate (37 percent) than their counterparts who were in prison (33 percent).[61]

Due to the strict regulations enforced in intensive supervision probation programs, there tends to be a large number of technical violations among program participants. In the aforementioned national survey, an average of 65 percent of the intensive supervision probation program participants had one or more technical violations compared to 38 percent of their counterparts in prison.[62] ("Technical violations" refer to program rule infractions, such as missing a drug counseling session, and are not necessarily linked to committing new crimes.) It should be noted that this unusually high "failure" rate is explained by the character of the programs themselves—because there is increased degree of contact, the participants are more likely to be caught breaking the rules. It should also be noted that there is no correlation in the literature between intensive supervision probation technical violations and an increased chance of being subsequently arrested for a new crime.

The research literature suggests that some offenders actually find intensive supervision probation to be more punitive and restrictive than incarceration. In fact, in one Oregon locality 25 percent of offenders eligible for intensive supervision probation chose not to participate.[63] Reasons cited for these offenders refusing placement were Oregon's prison overcrowding and that it was unlikely that anyone sentenced to a year would serve their full term.

**Cost**

The amount of time an offender spends in intensive supervision probation costs the state less than a comparable amount of time spent in prison; however, because it is highly labor intensive, intensive supervision probation can cost substantially more than routine probation. (Intensive supervision probation requires lower probation officer caseloads, so it may necessitate more staff in the probation office.)

The base national average cost of an offender on intensive supervision probation is $4,000 per year compared to $12,000 per year per imprisoned offender and $4,700 per year per offender on routine probation.[64] (It costs about $22,300 to keep an inmate in Lorton for a year.) Yet, due to the high number of technical violations resulting in many intensive supervision probation offenders being remanded to prison, intensive supervision probation programs average about $7,200 per offender.[65]

**Evaluation**

Intensive supervision probation and parole can be useful tools for monitoring offenders who pose too high of a risk to be considered for routine probation or parole. Although these programs might appear to be unsuccessful because of their high revocation rates for technical violations, this should actually be understood to be a result of the increased supervision. In order to devise an efficient program, it will be necessary for the courts or prison authorities to either deemphasize the placement impact of technical violations or for the courts to return offenders who violate program rules to prison for defined brief periods then to return them to the community.

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