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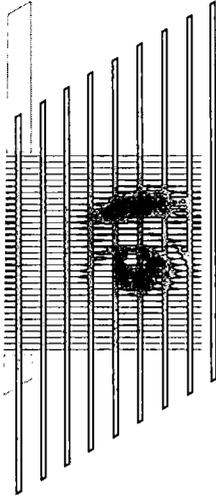
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# Punishment Options

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September 1991

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## Conference Summary

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Crime and its consequences have been major policy interests for the Washington State Legislature over the past decade. The state's landmark Sentencing Reform Act of 1981 set the stage for a determinate sentencing system that links punishment directly to the seriousness of offenses and to the criminal history of offenders. Recent legislation such as the Burglary Act of 1989, the Omnibus Drug Act of 1989, and the Community Protection Act of 1990 has strengthened the link between criminal behavior and appropriate punishment.

Other states have considered policy options for criminal sentencing. The Washington State Institute for Public Policy brought together a wide range of individuals on June 5, 1991, for a conference on "Punishment Options," where national experts could present their recommendations to Washington policy-makers. Approximately 150 people attended the conference, including state legislators and legislative staff, and representatives from the fields of adult corrections, law enforcement, victim and offender treatment, research and policy, and citizen organizations.

### Key Findings

- Washington has experienced a great increase in its prison, jail, and community supervision populations over the last decade.
- While the population under punishment for crime has increased, *overall crime rates have remained flat* over the same decade.
- Overcrowded prison and jail conditions are driving the search for punishment options and alternatives in many states, including Washington.
- Drug-related convictions and probation revocations have significantly impacted the populations of corrections systems, especially in the past three years.
- Alternative sentencing practices and intermediate sanctions are means of appropriately punishing offenders, while providing retribution and public safety to the community.

### Conference Participants

- Norval Morris,**  
*University of Chicago*
- Dale Parent,**  
*Abt Associates*
- Richard Gebelein,**  
*Delaware Superior Court Judge*
- Judith Greene,**  
*Vera Institute of Justice*
- Michael Tonry,**  
*University of Minnesota Law School*
- Robert Lasnik,**  
*King County Superior Court Judge*
- Charles Z. Smith,**  
*Washington State Supreme Court Justice*
- Representative Marlin Appelwick,**  
*House Judiciary Committee Chair*
- Norm Maleng,**  
*King County Prosecutor*
- Senator Gary Nelson,**  
*Senate Law and Justice Committee Chair*
- Steven R. Tomson,**  
*Whitman County Sheriff*

**Presented by the**  
Washington State Institute for Public Policy

**and co-sponsored by the**  
House Judiciary Committee  
Senate Law and Justice Committee  
Office of Financial Management  
Sentencing Guidelines Commission

# Overview

## The American Punishment System

**C**hase Riveland, Secretary of the Washington State Department of Corrections, introduced **Norval Morris**, the Julius Kreeger Professor of Law and Criminology at the University of Chicago. He is a member of the Research Advisory Board for the Federal Bureau of Prisons, and Chairman of the Board of the National Institute of Corrections. Morris co-authored *Between Prison and Probation: Intermediate Punishments in a Rational Sentencing System* (1990), and has authored many other criminology publications.

### The Current Picture

In 1987, about 750,000 people were housed in U.S. jails and prisons and about 2.5 million were under correctional control. By the end of 1990, more than 1.1 million were imprisoned and over 4 million were under correctional control—more than a 50 percent increase in just three years. Over the past decade both prison and probation/parole populations have more than doubled.

During this same time, the nation's crime rates have remained relatively stable. The increases have been in drug dealing, family and sexual violence, and homicide. Increases in the first two areas are clearly a product of rising public and police concern. The homicide increase appears to be related to the increased fire power of weapons and increased drug dealing.

Comparisons with other industrial nations show dramatic differences.

Incarceration rates per 100,000 people:	
Holland	36
Sweden	61
United Kingdom	98
Canada	108
<b>United States</b>	<b>426</b>

These differences cannot be explained by varying crime rates. Moreover, our prison population is disproportionately black, Hispanic, and poor.

The current situation is expensive. The present rate of prison population increase is 13 percent per year. To stay exactly where we are in terms of crowding, we would have to build 250 new cells per day at a cost of \$12.5 million per day.

### Why the Crisis?

We have watched policymakers over the past decade increase the penalties for crime, especially drug offenses, in the interest of crime reduction. A popular, deeply ingrained, and false belief exists in the United States that imprisonment is punishment while everything else is not. What we often forget is that the duration of imprisonment is somewhat arbitrary and unrelated to the severity of the crime. However, once duration and severity are linked, and if imprisonment is the only punishment, then increased duration of imprisonment is inevitable.

### Will Alternatives Save Money?

We cannot save money and have a decent criminal justice system. To realize any savings, we must take the alternatives seriously and invest resources in them. Marginal savings will be inconsequential if we affect only a few people. In the long run, a developed system that makes proper use of alternative punishments will be cheaper than one confined to prisons and probation. But policymakers are not always attentive to the long run.

*"We cannot save money and have  
a decent criminal justice system."*

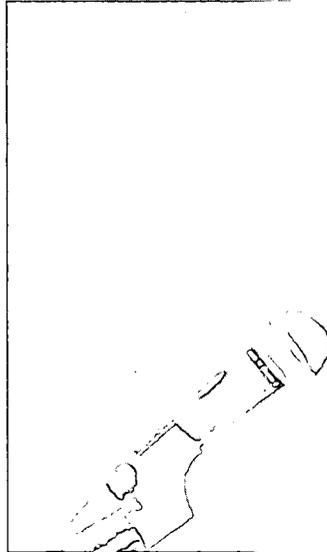
—Norval Morris

Alternatives to imprisonment could result in widening the net: intermediate punishments tend to draw on populations that otherwise would be on probation rather than incarcerated. It is hard to make these options truly alternative. They are often additional and tend to draw from the lower end of the punishment spectrum. Also, if we put people who would otherwise not be in prison on intermediate punishment, and then revoke them if they fail to meet all the sentence conditions, prison populations could actually *increase*. In some states, more people are entering prison from revocation of probation than from new convictions.

Research shows that alternative punishments may not necessarily reduce crime rates or recidivism.

### **The Prospects**

Even if we will not save money in the short run, we still will have to fund prisons. If recidivism will not necessarily be reduced, why should we even be talking about alternative punishments? The justifications are those of justice, not utility. They should be based on minimum decencies in human situations.



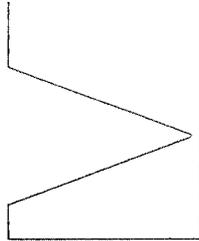
**Norval Morris**



A developed punishment system should be a graduated system that makes less use of both probation and incarceration. We should use incarceration as parsimoniously as possible in the middle levels of punishment, recognizing that we cannot draw a line of severity above which we use prison and below which we do not.

What haunts this whole field is the belief that somehow we are going to cure crime and better protect citizens. The criminal justice system has a deterrent effect on crime, but we cannot measure the effects of relatively small changes in police, prosecutorial, sentencing, or correctional practices.

Finally, if crime reduction is your goal, then you should get out of criminal justice and enter the fields of public health, education, employment, or housing. If you really care about crime reduction, the only years in the life of the criminal that matter are shortly before birth through the first five years.



# Delaware:

## A Punishment Continuum



**M**ichael Tonry, of the University of Minnesota Law School, co-authored *Between Prison and Probation: Intermediate Punishments in a Rational Sentencing System*. He introduced the topic of intermediate sanctions, and moderated the discussion of models that have been developed in other states.

**T**he Honorable Richard Gebelein, Superior Court Judge and former Attorney General in Delaware, chairs Delaware's Sentencing Accountability Commission. Although it is a small state, Delaware's range of sentencing options is instructive for other states considering sentencing reforms.

In 1990, Delaware adopted a determinate sentencing system.

### How the System Works

Standards and sentencing options are based on factors that have always motivated sentencing: severity of the crime and characteristics of the offender. The sentence is directed to one or more of five general levels of punishment and supervision (see chart on page 5). In addition to the level of the sanction, Delaware courts can order conditions, such as treatment, employment, education, or community service, as part of the sentence at any one of the levels.

Under the Delaware laws, the court assumes a more creative role in sentencing. Sentences can, and do, reflect a combination of supervision levels; the court must plan their entire progression at the time of sentencing. For example, a felon may be sentenced to four years in prison, one year in work release, one year in intensive supervision, and one year under regular supervision--thus moving through several levels of supervision under a single seven-year sentence.

### Delaware's Sentencing Reform Goals

Delaware's first Sentencing Reform Commission arose from its correctional crisis in the late 1970s. Its goals were to incapacitate violent offenders, restore victims, impose alternative sanctions for property and minor crimes, and potentially change the behavior of offenders.

The permanent commission, created in 1984, developed a five-level continuum of sentencing options, ranging from unsupervised probation to incarceration. Guidelines were adopted and implemented in 1987 as a voluntary system of standards expressing presumptive sentences. However, these guidelines also have required the courts to consider the least restrictive and least costly method of custody. For most nonviolent offenses, intermediate sanctions are considered appropriate. Although the guidelines are voluntary, judges have been required to document their reasons for deviating from these standards.



**Michael Tonry**

*“Under the Delaware laws, the court assumes a more creative role in sentencing.”*

—Judge Richard Gebelein



**Results of the Delaware Model**

Sentencing patterns have changed dramatically in Delaware since adoption of this five-level system. Offender-specific sentencing, combining many levels of supervision, is now the rule. Sentences are structured on stepwise movement at the lower levels, offering the offender greater freedom as he or she succeeds in the community. A social contract is developed between the offender and the public. Success is rewarded with greater freedom, while failure results in increased supervision and control.



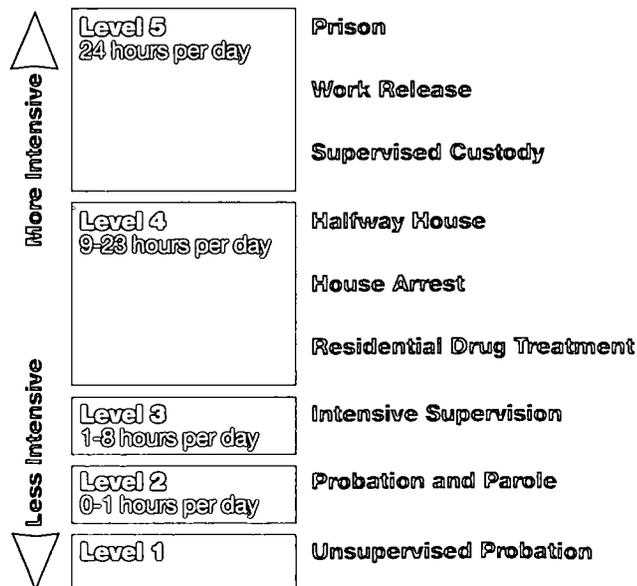
In the past three years, 90 percent of the sentences in Delaware have been within the voluntary standards. The prison population mix has changed: the proportion of violent felons has increased, while the share of nonviolent felons has decreased significantly. Incarceration has decreased as a percentage of sentences imposed. Semi-incarceration in halfway houses, drug rehabilitation centers, or home confinement via electronic monitoring has increased, as has intensive supervision.

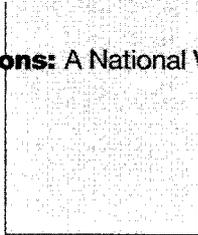
Is Delaware widening the net, or has unsupervised probation grown substantially? The number of probation violations has increased, but the Delaware system guides discretion regarding the appropriate solution for these violations. Incarceration is not the only option for probation violation; instead, a period of intensive supervision may be imposed. Failure of intensive supervision could mean movement into a situation of semi-incarceration, and so forth, as the system responds appropriately to the level of the offender’s violation.



**Richard Gebelein**

**Levels of Supervision**  
Delaware Sentencing Accountability Commission





# Day Fines

## Experiences in New York and Arizona

**J**udith Greene is Director of Court Programs at the Vera Institute of Justice in New York, an innovator in criminal justice programs throughout the country. The Vera Institute is involved in experimental day fine programs in several states. Greene has also served as Associate Director of the National Institute on Sentencing Alternatives.

### Day Fines as Part of Intermediate Sanctions

Fines are already a useful tool in our system, but are primarily used for petty offenses; superior courts use them sparingly. In the United States, the usual criticism of fines as penalties for felonies is that they cannot be imposed in large enough amounts to be more than nominal penalties for affluent offenders. Critics also argue that a system of financial penalties discriminates against poor offenders.

A system of day fines tries to meet both areas of criticism. Day fines can be calibrated to *both* the severity of the crime and the economic circumstances of the offender. Day fines are a technique for structuring the criminal fine to be a more equitable and broadly useful sentence.

Fines are now *the* sentence for criminal offenses in European nations, and incarceration is the alternative. In Germany, 85 to 95 percent of all criminal sentences are fines. Two-thirds of all assault convictions and three-fourths of all property offenses in that country result in fines.

The United States is a puzzling contrast. We have perhaps the most highly developed consumer economy in the world, where many economic incentives are employed to adjust, modify, and change human behavior. Yet we seem reluctant to exploit the punishment utility of monetary sanctions for felony behavior. The punitive impact of a fine is unmistakable: The offender literally pays his or her debt to society.

There is evidence that fines, unlike imprisonment, do not encourage further criminal behavior. Fines may deter further crime better than probation. A system of fines is relatively inexpensive to administer, and it produces revenue. Day fines can be incorporated easily into American sentencing practices. The question may be: Why have they not been incorporated? Let's explore how they operate.

### Staten Island, New York: Day Fines for Misdemeanor Offenses

The first day fines in the United States were imposed in Staten Island, New York, in 1988. The Vera Institute worked with a planning group of judges, prosecutors, and attorneys to construct a scale of penalty units for misdemeanor offenses. After considering family size, income, and support requirements, from one-third to one-half of an offender's income can be removed from the day fine calculation. For example:

Fine amounts in the Staten Island court could range from a low of \$25 for a welfare recipient with three children who was convicted of the least serious offense in the court's jurisdiction, to \$4000 for a single offender with no dependents and a gross annual income of \$35,000 who was convicted of the most serious misdemeanor offense.

The effect is to equate penalties among offenders of differing income scales to replace flat fines which represent the "going rate" for a crime. The day fine gives a presumptive number of units scaled according to a share of daily income. This results in an appropriate amount for each offender, whether he or she is a welfare recipient, a truck driver, or an investment banker.

*“The U.S. has perhaps the most highly developed consumer economy in the world, yet we seem reluctant to exploit the punishment utility of monetary sanctions.”*

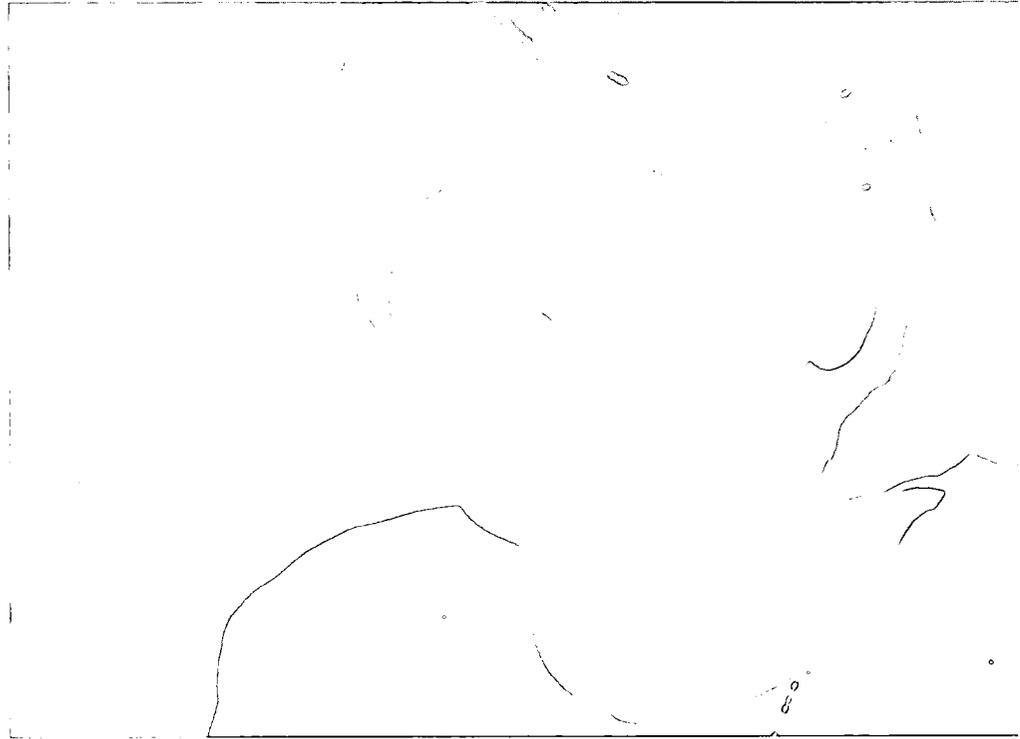
—Judith Greene

During the first year of use in New York, judges found the system relatively easy to apply, and fine use increased somewhat. Revenues increased by 18 percent. Old fine structures began to dissolve, with a much more individualized use of fines. Roughly 80 percent of the dollars assessed were collected.

#### **Phoenix, Arizona: The Day Fine Experience with Felonies**

The Vera Institute also began working with Phoenix, Arizona, which had already been using monetary penalties heavily. The traditional criminal fine was replaced several years ago by a proliferation of monetary penalties: restitution, surcharges on fines, mandatory drug fines, victim compensation payments, anti-racketeering fund assessments, probation service fees, and others.

The Vera Institute helped the Phoenix court system refocus attention on appropriate and proportional uses of monetary penalties. According to Greene, “We introduced to the pre-sentence investigation the idea of a unit penalty, taking into account offender means, to create an appropriate monetary penalty—a kind of money pie. The court has developed penalty units for felony offenses ranging up to \$360.”



**Judith Greene**

Phoenix is building a continuum of intermediate penalties to reduce probation caseloads, and has incorporated day fines as part of the effort. This system of monetary penalties targets offenders who would otherwise receive traditional straight probation, and who are at low risk of violating probation. When the law requires some kind of restitution or victim compensation, it is carved out of the day fine. The Phoenix system has just begun, but appears to be working.

Greene noted, “We are looking for ways to explore the day fine concept further. We are confident that it can be done, can produce sentences that are more equitable, may have some deterrent value, and can be acceptable to the public.”

# Day Reporting Centers

**D**ale Parent is Senior Social Scientist at Abt Associates in Cambridge, Massachusetts, where he specializes in sentencing and community correctional policy. Parent is a former director of the Minnesota Sentencing Guidelines Commission, which devised the nation's first presumptive guidelines for felony sentencing. He has conducted a number of national surveys on community sentencing issues, as well as research on boot camps, parole and probation revocation, and day reporting centers.

## The Breakdown of Community Supervision

According to Parent, "When we look at the sudden, massive increase in prison populations in the past two years, we do not discover that crimes and convictions have increased, but instead that revocations have increased."

Studies by the Rand Corporation found that probation systems were in shambles and had no credibility. As a result of that finding, probation tried to reassert itself with an emphasis on control and surveillance. The credo of probation and parole became: "trail 'em, nail 'em, and jail 'em." That was easy to do. As revocations increased, so did the prison population. Sentencing reform efforts typically did not address this phenomenon.

Criminal justice officials are recognizing that the community supervision system is breaking down. They are seeking to reestablish a balance in dealing with punishment, deterrence, and treatment, in ways that make sense. Parent observed, "I think that treatment is going to become respectable again, and we will see systematic efforts to control revocation decisions through rational policy."

## Origins of Day Reporting

Day reporting centers originated in Great Britain during the 1970s out of a need to clear the jails of chronic, nuisance offenders. These centers were set up to structure offenders' time and reduce their opportunity to commit further crimes. Many centers had a short-term treatment component to improve living, social, and job seeking skills.

During 1985, Connecticut and Massachusetts looked to day reporting as a way to alleviate crowding in prisons. An example from Massachusetts shows how the system can work:

Bill lives with his mother in Framingham, about 30 miles southwest of Billerica. It takes him 45 minutes to drive to Billerica, where he reports to the Metropolitan Day Reporting Center office located in the work release unit, a residential facility outside the prison's security perimeter. After checking in with the Center staff, he fills out an itinerary, showing where he will be each moment of the next day, and gives phone numbers where he can be reached at each location.

After Bill gives a urine specimen for drug testing, he and his counselor spend 15 minutes planning Bill's budget for the coming month. He then goes to work at a metal fabrication plant, a job he got through Comprehensive Offender Employment Resources, a community program. He calls Center staff once at noon, and gets two additional calls at random times during the day from Center staff. After work, Bill returns to Metro Center offices to attend a group drug use counseling session. He then goes home. During the evening and early morning hours, he gets two random calls to assure he is complying with curfew requirements. Last week, Bill had 42 in-person and telephone contacts with Center staff.

*“Day reporting centers are a model in search of a mission.”*

—Dale Parent

Unlike other forms of intensive supervision, these centers tend to be privately operated, often linked to residential facilities. Massachusetts has 6 centers and Connecticut 15. A number of other states have day reporting programs, and there is increasing interest in them nationwide.

### Goals of Day Reporting

The Massachusetts and Connecticut programs are designed to reduce crowding in prisons and jails. In Massachusetts, clients come from county jails to the centers as an alternative to prison. All those eligible are offered the chance to participate six months before their parole date. In Connecticut, of those in day reporting, about one-third come from supervised home release, one-third are those who were denied parole, and one-third have a day reporting sentence option in lieu of prison.

### A variety of day reporting models exist:

- A post-confinement model used in Massachusetts and Connecticut in which offenders enter day reporting following confinement.
- A “last-gasp model” and transition program used in Canada for prisoners who have been denied parole, and who would otherwise serve out their terms in prison.
- An intensive treatment program for particular target groups, as used in Milwaukee to stabilize mentally ill offenders.
- An accompaniment to a residential treatment program, as used in Minnesota.
- A pre-trial diversion model, like the Miami Drug Court’s year-long program including daily reporting and drug testing, counseling, acupuncture, living skills, and training. If an offender completes it, the charges are dropped.
- Part of a revitalized, decentralized neighborhood probation system, as used in Chicago.

Day reporting can be regarded as a “model in search of a mission.” Although this option is being used extensively, there is little coordinated vision of what it might be. Any jurisdiction that develops a day reporting program needs a clear understanding of its purposes, and of the link between the design and the intended outcome.



Dale Parent

Parent offers these suggestions: “You need to define the target population and determine whether you have the kinds of offenders that will support the purposes of a day reporting option. It is also very important to define what to do when people fail, and as you increase supervision, people will fail more. For example: if you intend to treat drug-involved offenders—a promising use of the model—you must expect some relapse, and you can’t just automatically lock up everyone who relapses.”

## Questions from the Audience

**Question:** *There seems to be increasing national interest in rehabilitation programs for offenders—particularly drug offenders—and in tailoring particular sentences to individual offenders. What is the future of determinate sentencing systems, like the one in Washington State?*

**Norval Morris:** There is an assumption that determinate sentencing precludes treatment. This is not true. Instead, determinate sentencing limits punishment and defines what would be unfair. It is clear from our experience worldwide that people favor a combination of support and control during the period of reintegration to society. I think that all of our treatment programs are likely to have that concept. I don't see why we can't do treatment just as well with determinate sentencing, with some modulation.

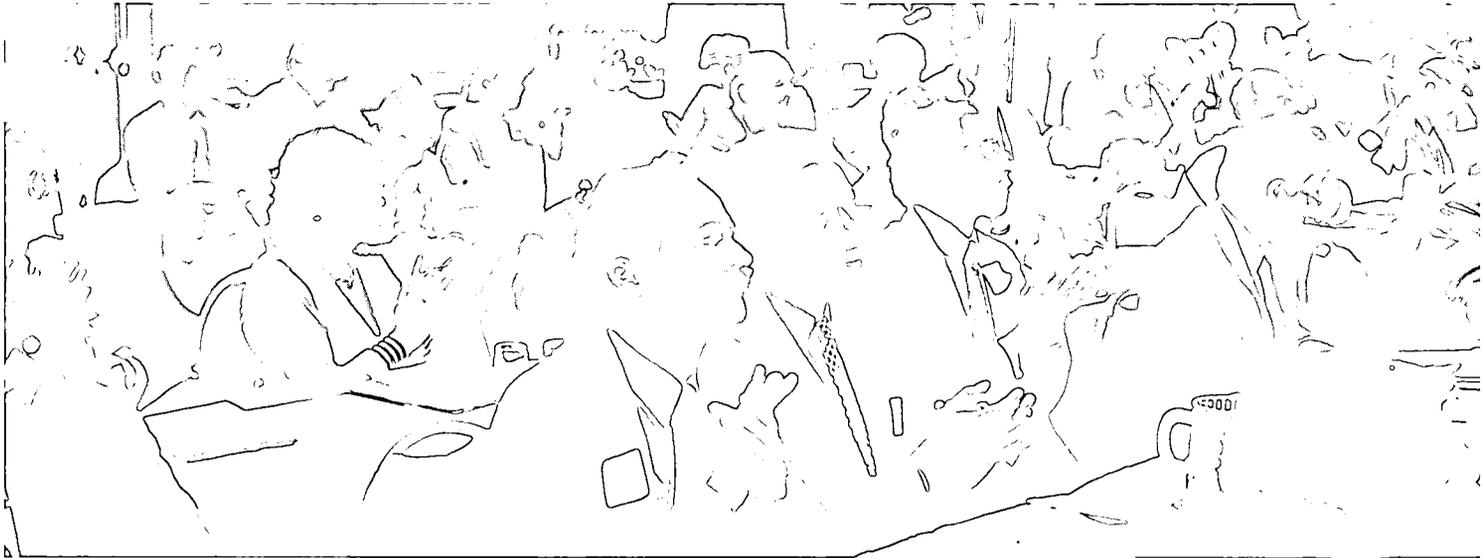
**Dale Parent:** We are going to have a strong resurgence of interest in treatment as a sentencing goal as well as in a more rational system, in which "what is just" is used to set the parameters of sanctions. Within this, other purposes such as treatment will be structured in ways that don't interfere with the larger purposes. There is a tension between treatment and punishment; treatment speaks to individualization, and punishment speaks to uniformity. That tension is not going to disappear.

We need to rebuild the capacity of corrections to deliver treatment. We have concentrated so much on control and surveillance that probation and parole staff see treatment as something that can be achieved only by referring people somewhere else. Probation and parole officers used to be social workers. Now most are not equipped or motivated to deal with changing human behavior.

**Judge Gebelein:** I don't believe treatment and determinate sentencing are mutually inconsistent ideas. In Delaware, determinate sentencing was enacted after the continuum of sanctions was adopted. Treatment is one of the alternatives, one of the goals of the sentencing process. This mandates that Delaware is going to have individualized sentencing orders, each one somewhat different from the others, with the goal of rehabilitation when possible. Where rehabilitation is successful, it is obviously the cheapest and most effective way to go.

**Question:** *How does the day fine system differ from the practice in Washington's superior courts—and other states' courts—other than by linking penalties to ability to pay?*

**Judith Greene:** It isn't very different and it can be incorporated easily into present fine systems and sentencing guidelines. The difference is that it is grounded in a penalty unit. The number of units imposed is scaled to the severity of the crime. And the dollar amount assessed for each unit is scaled to the offender's income.



**Question:** *Almost all of the prison population increase in Washington since 1986 is drug dealers. What special problems and opportunities do drug dealers present for alternative punishment options such as day fines, which cannot realistically factor in actual income from drug dealing, and day center reporting, where drug dealing can still occur at the offender's home?*

**Norval Morris:** Fairly low-level drug dealers and users are flooding the federal and state prisons. The task that corrections administrators face is developing alternative techniques of control and treatment. We are shooting ourselves in the foot with our current drug policies. We should turn away from moralistic posturing and allocate resources only towards those aspects of the drug scene that injure us: sales to children, the link between high crime rates and high drug use, and the destruction of neighborhoods. As for arresting users, it will fail.

I am skeptical about boot camps, but as a *preamble* to community-based drug treatment and control programs, they would have high promise, might be politically acceptable, and would be socially advantageous.

# Punishment Options

## The Outlook for Washington State

The Honorable Robert Lasnik, King County Superior Court Judge and member of the Washington Sentencing Guidelines Commission, moderated a discussion among public officials on the outlook for punishment options in Washington.

Panelists included The Honorable Charles Z. Smith, Justice of the Washington State Supreme Court; Representative Marlin Appelwick, House Judiciary Committee Chair; The Honorable Norm Maleng, King County Prosecutor; Senator Gary Nelson, Senate Law and Justice Committee Chair; and Steven R. Tomson, Whitman County Sheriff.

**Judge Lasnik:** *Where do the panelists think Washington State is in terms of considering punishment options?*

**Norm Maleng:** I think the public may be more ready for sentencing options than the experts are. When people say “lock ‘em up,” they are talking about the most serious offenses—rapes, robberies, and murders. For lesser offenses, the idea that really grabs people is work. Day reporting centers can be a vehicle for such work alternatives, or work alternatives combined with programs such as drug treatment.

**Senator Nelson:** The public wants offenders in prison, and this is the very basic public perception that must be faced squarely when we consider punishment options.

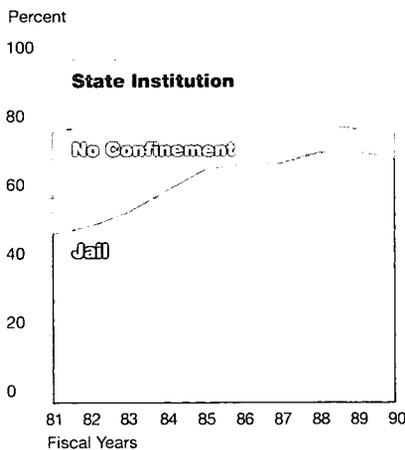
**Representative Appelwick:** Some of the public is willing to give offenders a second chance, but the dominant attitude is “lock ‘em up.” The public has to be persuaded that there will be a net gain from alternatives before it will pay for them. The public is not yet well educated about alternatives.

**Justice Smith:** I am pleased to see that we have not completely abandoned the concept of rehabilitation. The “just deserts” approach to sentencing works only if all of us—legislative, administrative, and judicial—work cooperatively in the public interest. But it will work only if it is constantly examined and intelligently administered by judges.

I hope we can revise what we have and remain a forward-looking state in sentencing reform. Innovation is good, and all of the new approaches have some possibility of success, but sometimes we predict unrealistically. Some offenders will never be changed and no program will make a difference, but we must be able to distinguish between this group and those with a possibility of redemption. I hope we can make changes that will maintain the dignity of those who come before the criminal justice system but also fully preserve the public interest.

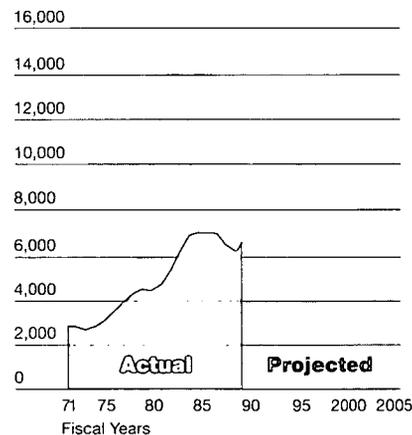
### Distribution of Felony Sentences in Washington State

Source: Office of Financial Management



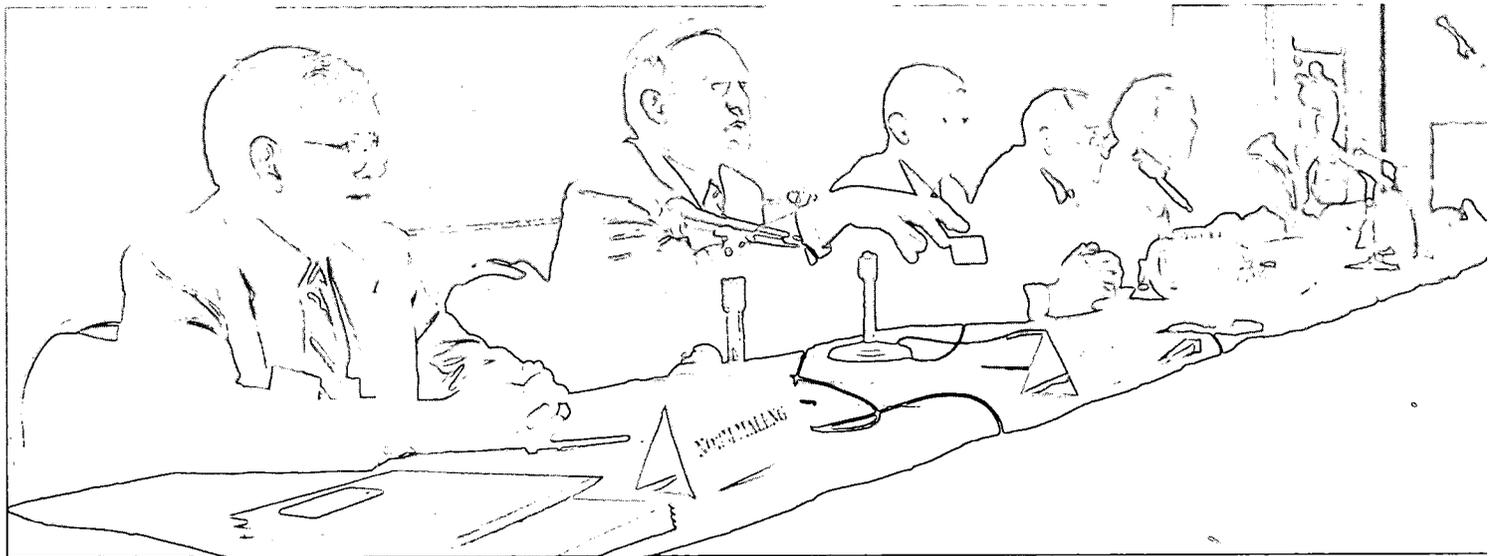
### Inmate Population in Washington State

Source: Office of Financial Management



*“Some offenders will never be changed and no program will make a difference, but we must be able to distinguish between this group and those with a possibility of redemption.”*

—Justice Charles Z. Smith



The panelists for the discussion on Washington State were (left to right): **Norm Maleng, Senator Gary Nelson, Steven Tomson, Charles Z. Smith, Representative Marlin Appelwick, and Robert Lasnik.**

**Judge Lasnik:** *We have seen a dramatic reduction of drug cases in Yakima County, and elsewhere, as a result of a vigorous enforcement effort and prosecution. Sheriff Tomson, do you see a need to do anything, or is the war on drugs being won at the street level?*

**Sheriff Tomson:** If the war on drugs is ever won, it will be won through demand reduction, not solely through the efforts of law enforcement. We can have limited effects through vigorous and aggressive street-level operations and can fill the jails with drug dealers, but that's always a temporary thing.

Punishment options should attend not just to the crime but to the offender. We should save jail and prison space for career criminals—the small number of offenders who are responsible for a large number of crimes. We should look at alternatives for those who can be rehabilitated, including certain substance abusers. We are putting too many drug users in jail. I think they should be held accountable, but I'm interested in very structured programs that blend rehabilitation and punishment.

**Judge Lasnik:** *What is the role of punitive law enforcement in a three-pronged approach to the drug problem—treatment, education, and punishment?*

**Norm Maleng:** I agree that we have a secondary role in fighting drugs—the prime role being education and treatment—but we play an important part in reinforcing public attitudes. There is an appropriate role for sentencing options in drug offenses, and I would distinguish between drug dealing and possession cases. For drug dealers, prison is appropriate. But we have thousands of people in jails and prisons on lesser possession charges for whom alternative programs could have a substantial impact.

*“If you have a limited menu of sentencing options, it will have a disparate impact on ethnic minorities.”*

—Norm Maleng

**Representative Appelwick:** With the Omnibus Drug Act of 1989 we were trying to balance the criminal justice component with an intervention and treatment program, as well as an education component. Dealing with all those elements together is really our hope. If we are going to be overt about sentencing options, we may be getting tougher in some areas, easier in others.

**Judge Lasnik:** *One of the strong attitudes that created the climate for sentencing reform was that sentencing options were granted to those offenders most like those who made the decisions. We discovered that mostly white, middle-class offenders tended to get breaks from decision makers, who are also mostly white and middle-class.*

**Justice Smith:** We need to be aware of the impact of alternatives on ethnic minorities. Are they being given the option to participate? The Sentencing Guidelines Commission had some very telling findings on this question. We cannot pursue any creative approach to disposition without openly, objectively, and affirmatively taking into consideration the consequential discrimination against persons of color.

**Norm Maleng:** If you have a limited menu of sentencing options, it will have a disparate impact on ethnic minorities. Minorities might have fewer job opportunities and less ability to pay fines or pay for treatment. Expanding the options can dramatically reduce that disparity. For example, if we had day reporting, one person might have a job, another person without a job would go to a work crew, and a third might do community service or undergo treatment. This could reduce the disparity we have now. If we can have community sanctions that are more structured, they will be more meaningful to the offender, more acceptable to the public, and more equitable for the criminal justice system.

**Judge Lasnik:** *What the public seems to fear are alternative sentences that exist only to divert people from jail or prison, and will leave them out in the streets without supervision or meaningful treatment. What is the connection between sentencing alternatives and budgetary allocations?*

**Representative Appelwick:** That's the problem: Can you fund your promises? The advantage of the Omnibus Drug Act of 1989 is that it was bipartisan and there were many things people wanted, but the tax increase that went with it was difficult to pass. We need to be candid if we are going to enact sentencing alternatives. The public thinks alternatives are a shell game about letting people out of prison.

Fiscal reality tells us we have to use more than one strategy to deal with the increasing number of convicted felons. We need a consensus rather than fighting among various factions. And we need to tell the public that this is a comprehensive program, even if it costs more money.

**Senator Nelson:** In the Sentencing Guidelines Commission's current evaluation of the impact of the Sentencing Reform Act, we have an opportunity to extend the menu of options available to punish offenders. For example, I would support something like the day fine system discussed today. This, as well as other alternatives, must be presented accurately to the public. We also need to show that these options can work—by both appropriately punishing offenders and adequately protecting the public.

# For Further Reading

## Definitions

Morris, N. and Tonry, M. (1990). *Between Prison and Probation: Intermediate Punishments in a Rational Sentencing System*. New York and Oxford: Oxford University Press.

Parent, D.G. (1989). *Shock Incarceration: An Overview of Existing Programs*. Washington, DC: National Institute of Justice.

Parent, D.G. (1990). *Day Reporting Centers for Criminal Offenders: A Descriptive Analysis of Existing Programs*. Washington, DC: National Institute of Justice.

### **Day Reporting Centers:**

The typical day reporting center provides increased supervision and monitoring, as well as short-term treatment for offenders in a community setting. The concept was first developed as a way to clear jails and prisons of chronic, less serious offenders. In a typical day reporting center, the offender may be tested for drugs before going to work, return for drug counseling before going home at night, and maintain telephone contact with a supervisor throughout the day.

### **Day Fines:**

Day fines are an effort to impose equitable fines based both on the seriousness of the crime and the economic circumstances of the offender. A certain number of penalty units are assigned to each offense, with the dollar amount assigned to each unit determined by the offender's ability to pay.

### **Shock Incarceration or "Boot Camps":**

Patterned after the military boot camp, shock incarceration is an intensive, short-term prison sentence designed as an intermediate sanction for young offenders. The programs are residential, lasting 90-120 days, and incorporate highly regimented activities with strict discipline and physical training. Boot camp programs are operating in a dozen states. Evaluations are under way to determine the utility of this model in corrections.

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