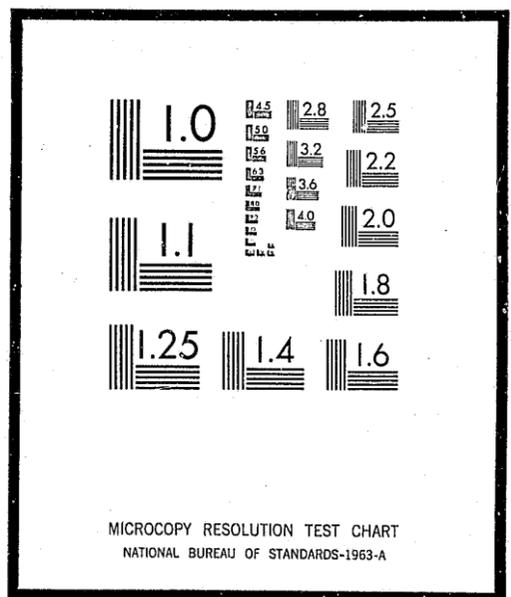


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NATIONAL CRIMINAL JUSTICE REFERENCE SERVICE  
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ATTITUDES AND FEELINGS OF CRIMINAL JUSTICE  
PERSONNEL TOWARD THE MENTALLY ILL<sup>1</sup>

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Final Report

University of South Florida  
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31714  
READING ROOM

ATTITUDES AND FEELINGS OF CRIMINAL JUSTICE

PERSONNEL TOWARD THE MENATALLY ILL

ABSTRACT

The present study compared the attitudes and feelings of law enforcement, corrections, parole and probation personnel, and college students toward mental illness. Modified versions of the Criminally Insane Scale (Khanna, et al, 1962) and Attitudes Toward Mental Illness Scale (Cohen and Struening, 1959) were used in assessing these attitudes. Law enforcement and corrections personnel tended to believe many of the stereotypic causes of mental illness while the college students based their view on more current thinking. In addition, law enforcement and corrections personnel indicated greater fear of the criminally insane than the other two groups. Possible causes and ramifications of these differences are discussed.

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Attitudes and Feelings of Criminal Justice  
Personnel Toward the Mentally Ill

Criminal Justice personnel continually come in contact with mentally ill individuals. If the mentally ill are to be handled correctly, it is necessary that criminal justice personnel have the knowledge and attitudes which will make them sensitive to such individuals.

A comprehensive review of the literature reveals two basic trends: First, there is some evidence to suggest that a number of programs have been developed to be used with law enforcement and other criminal justice professionals with respect to education in the mental health field (e.g., Schragar, 1964; Kadish, 1965). Second, a number of studies have been conducted to assess the knowledge and attitudes relative to mental illness exhibited by professionals within the mental health field (Cohen and Struening, 1961; Mangum and Mitchell, 1973; Meyer, 1973; Levine, 1972; and Tolor, 1973). However, it is significant to note that none of the studies assessing attitudes or knowledge relative to mental illness used criminal justice personnel for subjects.

Therefore, in order to develop an adequate knowledge base with respect to future development of educational materials in the mental health field for criminal justice personnel, it was decided that an assessment of the attitudes and knowledge of professionals in the criminal justice system relative to mental illness should be done. The present study focussed on those individuals in the criminal justice system who make important diagnostic decisions through direct contact with the general public. Such

individuals were found throughout the criminal justice system in law enforcement, probation and parole, and corrections.

#### METHOD

##### Subjects

A total of 180 subjects from the criminal justice system were used in the present study. The sample consisted of 124 police officers, 21 probation and parole officers, and 35 corrections officers. A control group of 125 students attending a non-major general education course in criminal justice at the University of South Florida were also used. With respect to the police, and probation and parole subjects, the following selection method was used: First, the State of Florida was divided into eight regions corresponding to the criminal justice regional planning units; second, each criminal justice entity was categorized in terms of small, medium, and large with respect to organizational structure and population served; and third, the units to be represented in the final data collection were randomly selected on a statewide basis from the small, medium, and large categorizations. All subjects from the field of corrections were selected from the State Intake Center at Lake Butler, Florida. The reason underlying this separate selection mechanism was that these were the individuals within the Division of Corrections that have first contact and are responsible for making diagnostic decisions relative to the individuals adjudicated by the courts to the Division of Corrections.

### Measures

Modified versions of the following two scales were used in the present study. The CI Attitude Scale developed by Khanna, Pratt, and Gardiner (1962), the Opinions About Mental Illness Scale developed by Cohen and Struening (1959). Based on a pretest of the student sample, only those items from the above scales were used that differentiated significantly between high and low scores.

### Procedure

For the subjects employed by police departments and other law enforcement entities, the questionnaire was distributed on a personal basis to the chief administrator of the unit who, in turn, distributed it to those individuals on his staff responsible for first booking. The respondents then filled out the questionnaire and returned them via mail. With respect to the parole and probation, and corrections subjects, the procedures varied in that the questionnaire was given directly to the individual who returned it by mail. Of 225 questionnaires originally distributed, 180 were ultimately returned.

### RESULTS

Because of the complexity of the data collected, the Results Section will be subdivided in the interest of clarity along the following dimensions: (1) Background characteristics; and (2) Attitudes Toward Mental Illness Scale.

#### Background Data

In terms of the background data collected, one of the most interesting findings related to the youth of the subjects sampled for the present study. The police subjects had a median age of 30 years, while probation and parole subjects yielded a median age of 28 years, and similarly, the subjects from the field of corrections also had a median age of 28 years. In addition, differences were noted with respect to the educational achievement of the three groups being studied. Of the three groups being studied, the probation and parole subjects showed the highest educational achievement with over 90 percent of the respondents indicating that they had achieved a bachelor's degree. Police and corrections officers were similar in educational achievement in that 25 percent of both of these groups had a high school degree only, while 20 percent of the population being studied had attained a bachelor's degree (see Table 1).

---

INSERT TABLE 1 ABOUT HERE

---

#### Attitudes Towards Mental Illness Data

As noted earlier, two existing measures of attitudes toward mental illness were selected for the present research. The measures selected were the Opinions About Mental Illness Scale developed by Cohen and Struening (1959), and CI Attitude Scale developed by Khanna, Pratt, and Gardiner (1962). After each of these measures were selected, it was decided that further analysis related to their basic structure was needed because of

the differences in population being studied. In order to accomplish this task, each measure was given to a sample of 305 individuals of which 180 were involved professionally in the criminal justice field, while 125 were college students. The analysis procedure used was a principle component factor analysis with varimax rotation. The results of the factor analysis yielded four factors for each of the measures being studied. The factors and their respective loadings for each of the measures are summarized in Tables 2 and 3. Upon completion of the factor analysis, factor scores were computed for each of the subjects in the study on both the Opinions Toward Mental Illness measure and the CI measure. The scores were further analyzed by means of a one way analysis of variance across groups. On the Attitudes Toward the Criminally Insane Scale, significant differences were found between groups on Factor 1 (Causes of Mental Illness;  $F = 6.17$ ,  $df = 3,301$ ,  $p < .001$ ) and Factor 4 (Fear of Criminally Insane;  $F = 16.12$ ,  $df = 3,301$ ,  $p < .001$ ).

With respect to the four factors comprising the Opinions Toward Mental Illness Scale, only Factor 4 (Causes of Mental Illness) yielded significant group differences ( $F = 8.74$ ,  $df = 3,301$ ,  $p > .001$ ).

---

INSERT TABLES 2 and 3 ABOUT HERE

---

The Newman/Kuels test for differences between means was used to evaluate differences between groups. The results of this analysis can be found in Table 4. Significant differences between the police and corrections groups

were noted when compared with the student control group. It was interesting to note that no such differences occurred when parole subjects were compared with the student population. No other differences were noted. On Factor 1 of the Criminally Insane Scale, significant differences were noted between the parole and student groups when compared to the police and corrections groups. No differences were noted when police were compared with corrections subjects. Similarly, on Factor 4 of the Criminally Insane Scale, parole personnel and students differed significantly from both the police and corrections subgroups. Again, no differences were found between police and corrections when these two groups were compared. All differences noted in the table were significant at the .05 level.

---

INSERT TABLE 4 ABOUT HERE

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#### DISCUSSION

As noted in the Results Section, there were some differences within the populations being studied with respect to background variables. It was noted that the parole and probation workers were significantly higher in educational attainment than those individuals working in police agencies and correctional institutions. This can best be explained by the differential requirements in the various agencies with respect to educational criteria used in their personnel selection practices.

As noted above, two scales were used to assess attitudes toward the mentally ill in the present study. On the Opinions About Mental Illness

Scale developed by Cohen and Struening (1959), one factor yielded significant differences. The differences indicated that both correctional workers and police officers tended to use or believe many of the stereotypic causes of mental illness prevalent in our society. In comparison, students had a tendency to base their attitudes on definitions of mental illness more closely related to current thinking in the fields of psychology and psychiatry. Even though professionals in corrections and law enforcement come into contact with emotionally disturbed individuals, differences in educational and background variables appear to account for the variation in knowledge about causes of mental illness. Even though many of the police officers and corrections professionals have attended college, it might be argued that the curriculum they participated in was radically different from the students used as a control group. The student subjects were basically psychology and criminal justice majors; both of these programs emphasize the current theories of mental illness.

With respect to the Criminally Insane Scale developed by Khanna, Pratt, and Gardiner (1962), the following discussion is warranted. Significant differences were found on Factor 1 (Causes of Mental Illness), and Factor 4 (Fear of the Criminally Insane). In both cases individuals working in the fields of police and corrections were significantly different in their responses than subjects comprising the parole and student groups. The findings with regard to Factor 1 provide a cross validation for the results reported earlier with respect to the Opinions Toward Mental Illness Scale. The differences, therefore, can best be explained in terms of different educational and background characteristics of the groups being studied.

Similarly on Factor 4 of the Criminally Insane Scale, parole personnel and students differed significantly from both the police and corrections subjects. In that this Factor purportedly measures the degree to which the respondent exhibits fear of the criminally insane, the following explanation seems tenable. Police and corrections officers often encounter individuals with emotional pathology under very stressful circumstances (riots, during the commission of felonies, etc.). Such situations may have a distorting effect upon the conceptualization of people exhibiting emotional illness by these professionals. The fear exhibited by law enforcement and correctional personnel based on harsh experiences coupled with the inadequate educational backgrounds discussed above could reinforce the negative attitudes and stereotypes about the mentally ill documented in the previous section. The lack of knowledge concerning the emotionally disturbed combined with their fear of the mentally ill could lead to criminal justice personnel making inappropriate responses when dealing with these types of individuals.

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#### FOOTNOTES

<sup>1</sup>The research reported herein was performed pursuant to a grant (73-DF-04-0032) by the Department of Justice/Law Enforcement Assistance Administration thru the Florida Department of Administration/Bureau of Criminal Justice Planning and Assistance, State of Florida. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the Department of Justice/Law Enforcement Assistance Administration or the Florida Department of Administration/Bureau of Criminal Justice Planning and Assistance.

TABLE 1

Frequencies and Percentages: Police, Parole,  
Corrections and Student Education

Education	Police		Parole		Corrections		Students	
	(n)	(%)	(n)	(%)	(n)	(%)	(n)	(%)
High School	31	25.0	0	0	9	25.7	36	28.8
Up to two years of college	45	36.5	1	4.8	11	31.4	14	11.2
Two to four years of college	21	17.0	1	4.8	7	20.0	6	4.8
Beginning graduate work in progress	26	21.5	16	76.2	7	20.0	1	0.8
Completion of Masters Degree	0	0	2	9.5	1	2.9	5	4.0
Above Masters Degree	0	0	1	4.8	0	0	4	3.2
No Response	0	0	0	0	0	0	36	28.8
Total	123	100.0	21	100.0	35	100.0	102	100.0

TABLE 2

Items Selected by Factor Analysis for Attitudes Toward  
Mental Illness With Their Respective Loadings  
Opinions About Mental Illness

Factor I - Stereotyping		Factor II - Incompetency	
Loading	Item	Loading	Item
.59	55. Many mental patients are capable of skilled labor, even though in some ways they are very disturbed mentally	.51	79. Every mental hospital should be surrounded by a high fence and guards
.58	56. To become a patient in a mental hospital is to become a failure in life	.48	88. Most women who were once patients in a mental hospital could be treated as baby sitters
.45	54. People who have been patients in a mental hospital will never be their old selves again	.47	80. The law should allow a woman to divorce her husband as soon as he has been confined in a mental hospital with a severe mental illness
.38	51. People would not become mentally ill if they avoided bad thoughts	.43	78. If a patient in a mental hospital attacks someone, he should be punished so he doesn't do it again
		.43	90. Although some mental patients seem all right, it is dangerous to forget for a moment that they are mentally ill
		.41	60. Anyone who is in a hospital for a mental illness should not be allowed to vote
		.40	32. Although patients discharged from mental hospitals may seem all right, they should not be allowed to marry
		.39	27. More tax money should be in care and treatment of people with severe mental illness
		.39	29. Most patients in mental hospitals are not dangerous
		.35	23. There is something about mental patients that makes it easy to tell them from normals

TABLE 2 (continued)

Factor III - Causes		Factor IV - Relative Causes	
<u>Loading</u>	<u>Item</u>	<u>Loading</u>	<u>Item</u>
.61	22. When a person has a problem or a worry, it is best not to think about it, but keep busy with more pleasant things	.50	62. Mental patients come from homes where the patients took little interest in their children
.47	23. There is something about mental patients that makes it easy to tell them from normal people	.40	35. If parents loved their children more, there would be less mental illness
.43	33. People who are mentally ill let their emotions control them, normal people think things out	.40	20. Nervous breakdowns usually result when people work too hard
.42	51. People would not become mentally ill if they avoided bad thoughts		
.40	61. People who are successful in their work never become mentally ill		
.39	21. It is easy to recognize someone who once had a serious mental illness		
.37	77. One of the main causes of mental illness is a lack of moral strength or will power		
.37	76. Sometimes mental illness is punishment for bad deeds		
.35	74. Mental illness is usually caused by some disease of the nervous system		

TABLE 3

Items Selected by Factor Analysis for Attitudes Toward  
the Criminally Insane, With Their Respective Loadings

Factor I - Causes of Mental Illness		Factor II - Traditional Approach to Treatment	
<u>Loading</u>	<u>Item</u>	<u>Loading</u>	<u>Item</u>
.61	43. Criminally insane patients should first of all be treated as criminals	.56	42. Electric shock treatment usually improves any patient's personality
.59	83. Most criminally insane persons are basically bad people	.54	10. If a patient makes a lot of trouble, he should be given shock treatment to quiet him down
.52	82. Criminally insane persons guilty of robbing should be in prison instead	.54	63. Most criminally insane persons need religion more than anything else
.45	71. All criminally insane persons sent to a hospital from the pen are there for a soft touch	.54	65. Sometimes for the patient's own good, he has to be beaten up
.39	4. Anyone who has ever raped a child should die in the "electric chair"	.46	6. Most criminally insane patients are sex crazed
.38	1. For the public's protection, all murderers should be hung	.41	64. If more discipline were handed out in childhood, there would be less patients in mental hospitals
.37	66. If a "gay person" makes a pass at some- body, they should beat him up		
.35	64. If more discipline were handed out in childhood, there would be less patients in mental hospitals		
.35	37. Most criminally insane persons are dangerous		

TABLE 3 (continued)

Factor III - Sexual Deviancy		Factor IV - Fear of Criminally Insane	
<u>Loading</u>	<u>Item</u>	<u>Loading</u>	<u>Item</u>
.69	13. You can always tell a queer by the way he looks	.63	9. Ward government by criminally insane patients is dangerous
.67	11. You can always pick out a queer from the rest of the patients	.54	8. Murderers and sex offenders should always be separated on the ward
.38	1. For the public's protection, all murderers should be hung	.45	4. Anyone who has ever raped a child should die in the "electric chair"
.36	5. For the good of the public, all sex offenders should be castrated or sterilized	.44	37. Most criminally insane persons are dangerous
.35	4. Anyone who has ever raped a child should die in the "electric chair"	.40	38. Through ward government by criminally insane patients, they can become more responsible

TABLE 4

Newman/Kuels Test for Differences Between Means; Mental  
Illness Factor IV, Criminally Insane Factors I and IV

Mental Illness Factor IV - Relative Causes					
Mean Group	Mean	Students	Parole	Corrections	Police
Students	12.20		1.26	*1.99	*2.03
Parole	13.38			0.73	0.77
Corrections	14.11				0.04
Police	14.15				

---

Criminally Insane Factor I - Causes of Mental Illness					
Mean Group	Mean	Corrections	Police	Students	Parole
Corrections	40.49		0.24	3.85	*7.10
Police	40.73			3.61	*6.65
Students	44.34				3.04
Parole	47.38				

---

Criminally Insane Factor IV - Fear of the Criminally Insane					
Mean Group	Mean	Police	Corrections	Students	Parole
Police	16.96		1.07	*4.07	*5.99
Corrections	18.03			*3.00	*4.92
Students	21.03				1.92
Parole	22.95				

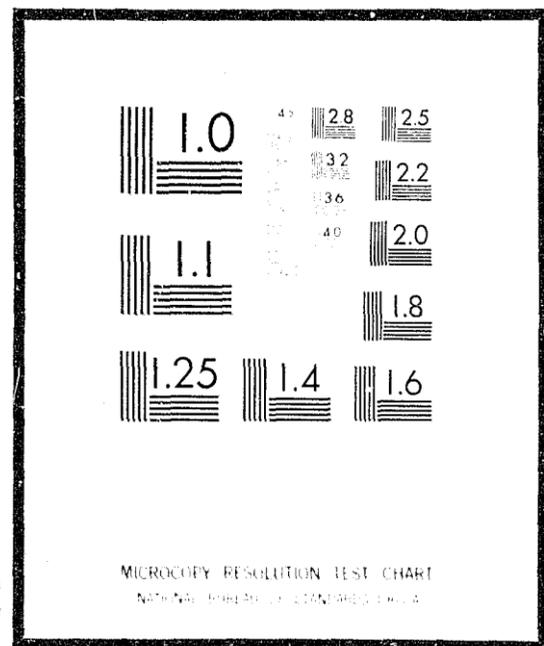
\* = p < .05

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NEW JERSEY STATE LEGISLATURE

OFFICE OF FISCAL AFFAIRS

PROGRAM ANALYSIS OF THE  
NEW JERSEY PAROLE SYSTEM

31715 Dup



August, 1975

75-5

LAW REVISION AND LEGISLATIVE SERVICES COMMISSION

- Chairman: [Name]
- Vice-Chairman: [Name]
- Members: [List of names]

The Law Revision and Legislative Services Commission authorized the release and publication of this program analysis in August 1978.



New Jersey State Legislature

OFFICE OF FISCAL AFFAIRS  
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- George B. Harper, State Auditor
- John P. Callahan, Director, State Auditor
- Serald D. Hill, Director, Program Analysis
- Thomas L. Bertone, Director, Budget Review

August 11, 1978

MEMORANDUM TO: Members of the Law Revision and Legislative Services Commission

The Office of Fiscal Affairs has completed a program analysis of the New Jersey Service System, requested pursuant to N.J.S.A. 52:11-47e.

This report is one of a series of program analyses completed by our Division of Program Analysis headed by David L. Gillingham.

Throughout the course of this analysis, the Office of Fiscal Affairs will enjoy the cooperation and assistance of the officials and staff of the Department of Institutions and Services.

*[Signature]*  
Kenneth N. Erace

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FOREWORD

The Office of Fiscal Affairs was established by Chapter 211 of the Laws of 1971 which requires the Executive Director of the agency to "... ascertain compliance with legislative intent by the conduct of performance audits and efficiency studies ..."

Accordingly, a Division of Program Analysis was created within the Office of Fiscal Affairs to perform program evaluations for the Legislature. The Division of Program Analysis is staffed by professional analysts who are assigned to ascertain compliance with legislative intent and analyze the qualitative and quantitative impact of a variety of State programs. The Division reports its recommendations to the Legislature through the Law Revision and Legislative Services Commission, which is chaired by Senator John J. Horn.

The Program Analysis of the New Jersey Parole System is the tenth in a series of comprehensive evaluations published by the Division of Program Analysis. The analytical work and report writing were performed by Carol Neuman Tomson, assisted by Victoria B. Smalley and Thurman D. Woodward, Jr.

The findings and recommendations in this report are constructive in nature and are intended to assist both the Legislative and Executive branches of government in establishing appropriate statutory and administrative guidelines to improve parole services in New Jersey. During the period of study, a number of organizations, including the New Jersey Association on Correction and the Ad Hoc Parole Committee, actively worked for the improvement of the New Jersey parole system and published reports on the subject.

In view of the important impact of judicial disposition on parole, one of the main recommendations in this report focuses attention on improving judicial-correctional communication. Many of the recommendations are directed at improving parole decision-making by expanding the use of due process provisions in parole hearings, establishing specific criteria for parole release, and improving the information system for offender-related data, including sentence computations. Other recommendations in this report address such issues as improving parole supervision, expanding post-release services, and reducing the rate of recidivism.

A program analysis compliance activity has been established within the Office of Fiscal Affairs to assist the Legislature, the Department of Institutions and Agencies, and the State Parole Board in the implementation of the recommendations contained herein.

The program analysis procedures, as authorized and approved by the Law Revision and Legislative Services Commission, provided an opportunity for the Department of Institutions and Agencies, the Judiciary and the State Parole Board to review a draft copy of the report. As a result of their responses, which are published in Appendix K of this report, the Division of Program Analysis made minor changes in the final report in order to clarify the meaning of certain points and to incorporate new information brought to our attention by these agencies. This review represents an initial step in the continuing dialogue between the Office of Fiscal Affairs and the parole agencies geared toward implementing the program analysis recommendations.

The Division of Program Analysis wishes to acknowledge the cooperation and assistance provided throughout the course of this study by a number of persons, including the following individuals and their staffs: Commissioner Ann Klein of the Department of Institutions and Agencies; William Fauver, Director of the Division of Correction and Parole; Nat R. Arluke, Chief of the Bureau of Parole; Nicholas Heil, former Chairman of the State Parole Board; Honorable Arthur J. Simpson, Jr., Acting Administrative Director of the Courts; and, Edwin H. Stern, Director of Criminal Practice.

August, 1975



Gerald D. Silliphant  
Director  
Division of Program Analysis

## SUMMARY OF FINDINGS AND RECOMMENDATIONS

The Office of Fiscal Affairs (OFA), Division of Program Analysis has been directed by the Law Revision and Legislative Services Commission to study the effectiveness and efficiency of the parole system in New Jersey.

The first objective of the analysis is to examine the judicial and statutory requirements relating to parole and to determine whether the parole system operates according to these regulations. The second objective is to determine how effectively and efficiently it meets its objectives and whether it conforms to national trends and standards.

The methodology for this analysis includes, among other things, site visits to correctional facilities and parole offices, interviews with a number of parole administrators, and several surveys of data related to parole decision-making.

The findings and recommendations of this report are as follows:

### CHAPTER ONE: ORGANIZATION OF THE NEW JERSEY PAROLE SYSTEM

Finding 1. Judicial action has altered the original intent of legislation concerning the sentencing of female offenders, and the parole jurisdiction over those convicted of being narcotic addicts and inmates of the county jail. In two of these instances, the legislative purpose has been determined unconstitutional. (See page 10.)

Recommendation 1. *It is recommended that the State Legislature consider the revision or elimination of N.J.S.A. Title 30:4-155; 4-123.43; and 8-28 to make them conform to judicial rulings.* (See page 12.)

### CHAPTER TWO: SENTENCING AND PAROLE ELIGIBILITY

Finding 2. The judiciary affects the parole process in four major areas:

- a. Judicial discretion in use of sentencing alternatives affects both the number and type of offenders that eventually comprise the parole population.
- b. The judiciary shares certain decision-making authority regarding parole with the paroling authorities.

- c. The judicial reasons for sentences establish guidelines for the paroling authorities.
- d. The judiciary generates important information about the social and criminal history of the offender that is used in the parole hearing. (See page 13.)

Recommendation 2. In view of the important impact of judicial disposition on parole, *it is recommended that the Commissioner of Institutions and Agencies, in conjunction with the Chief Justice of the New Jersey Supreme Court, create a committee composed of representatives from both the Judiciary and parole system. The committee should be charged with the responsibility of increasing judicial-correctional communication. This committee should meet on a regular basis to discuss the use of sentencing alternatives, how sentencing affects parole eligibility, the potential impact of a new penal code, judicial-correctional information systems, and other areas of mutual interest.* (See page 18.)

Finding 3. New Jersey has divided its offenders into different classes, affording parole eligibility to some, and making eligibility conditional for others, while some are entirely denied eligibility for parole.

- a. In N.J.S.A. 30:4-155, adult women are automatically granted an indeterminate sentence (except for crimes of murder or manslaughter) unlike their male counterparts. This has been determined unconstitutional in State v. Chambers, 63 N.J. 287, 307A. 2d 78 (1973).
- b. There are no provisions for parole from a county institution for sentences less than one year.
- c. There are no provisions for good behavior credits within the workhouse or the youth correctional institutions (reformatories).
- d. There are no criteria for paroling those serving indeterminate sentences. As a result, both Youth Correctional Institutions have developed a different system of time goals and method for sentence adjustment. (See page 18.)

Recommendation 3. *It is recommended that the State Legislature, in its evaluation of New Jersey's penal code, standardize the system for parole eligibility and sentence adjustment and eliminate the distinctions made between the same type of offenders.* (See page 27.)

### CHAPTER THREE: PAROLE DECISION-MAKING

Finding 4. At the time of the parole hearing, the State Parole Board does not request, nor does it receive, an up-to-date calculation of the offender's eligibility or minimum and maximum dates. As a result, the Board may rely on inaccurate information when determining parole release dates. (See page 29.)

Recommendation 4. *It is recommended that the State Parole Board request, and have access to, up-to-date actual sentence calculations at the time of the parole hearing.* (See page 30.)

Finding 5. Unlike the majority of U.S. paroling authorities, the New Jersey State Parole Board conducts informal parole hearings. The initial parole hearing utilizes fewer, if any, due process provisions than those extended for the parole revocation hearings. (See page 31.)

Recommendation 5. *It is recommended that the Legislature consider establishing the same due process provisions for hearings to grant parole as those which are currently utilized in parole revocation hearings such as: disclosure of evidence, the opportunity to present witnesses and documentary evidence, a written statement as to the evidence relied on, and reasons for denying parole.* (See page 33.)

Finding 6. An examination of the State Parole Board's decision-making process indicates that the Board has no explicit criteria or standards for parole decision-making which results in a process that is neither objective nor accountable. (See page 33.)

Recommendation 6. In order to ensure rational and equitable parole decisions, *it is recommended that the State Parole Board establish parole criteria which would provide standards for the Board and the potential parolee and serve as a more adequate means for evaluating parole decisions against the objectives of the State parole system.* (See page 40.)

Finding 7. There are no standards to prevent an interminable period of incarceration between a favorable parole hearing and release on parole. According to an OFA survey, 30 percent of the sample cases accounted for a pre-parole incarceration period of six months or longer, rendering the parole plan invalid. (See page 40.)

Recommendation 7. *It is recommended that parole release be effectuated as soon as possible once the Parole Board judges an eligible offender fit for parole. No parole release date should be set further than six months from the time of the hearing without the submission and consideration of a revised parole plan. (See page 42.)*

Finding 8. Existing legislation does not clearly establish whether a person whose parole has been revoked because of a conviction for a new offense serves sentence on the second conviction consecutively or concurrently with the first. (See page 42-43.)

Finding 9. In those cases where an inmate is on parole for one offense, while serving sentence for another, the statutory criteria for granting parole appear irrelevant to parole for the first sentence. Since the inmate is not going to actually be released until having served or been paroled from the second sentence, the inmate's ability to operate successfully in society is not decisive. (See page 43.)

Recommendation 8. *It is recommended that the Legislature establish whether a person who is convicted of a second offense, while on parole from another sentence, should serve the second conviction either consecutively or concurrently with the first conviction. If the Legislature intends to leave such discretion to the sentencing judge, it is recommended that the Court require every judge to make a specific determination in all such cases.*

In addition, *it is recommended that the Legislature establish criteria for granting parole under such circumstances. (See page 44.)*

Finding 10. An OFA parole decision-file survey provides evidence that in approximately 50 percent of the cases considered for parole during the April, 1975 hearings, the Board had to make a decision based on incomplete or missing information. This indicates that the systematic collection and distribution of complete information about an offender, as established in N.J.S.A. Title 30:4-123.18 and 4-123.31, is not being fulfilled. (See page 49.)

Recommendation 9. *It is recommended that the Chairman of the State Parole Board, in conjunction with the Commissioner of the Department of Institutions and Agencies, reorganize the information system for offender-related data to comply with legislative standards and to provide a means for every parole agency to collect and distribute accurate, complete, and up-to-date information regarding an offender who is being considered for or being supervised on parole.*

*Reorganization of the information system should address the following procedures and problems:*

1. *The institutional classification departments should have the capability to determine and distribute accurate, up-to-date sentence computations at all times.*
2. *Duplicating equipment should be made available to allow classification departments to distribute complete copies, rather than summaries, of classification data, including the pre-sentence report.*
3. *The State Parole Board and the institutional professional staff should develop a more meaningful diagnostic format for psychological and psychiatric reports. The question of confidentiality should be addressed and whether inmate access would affect the quality of such reports.*
4. *All disciplinary actions pertaining to an inmate, occurring prior to parole release, should be referred to the State Parole Board as soon as possible.*
5. *All offender-related data, including the parole plan, should be distributed to the State Parole Board in advance of the parole hearing to allow the Board sufficient time to thoroughly review the data. Offenders should not be penalized by a deferred decision in those cases where a complete set of data is not available at the time of the hearing. (See pages 52-53.)*

#### CHAPTER FOUR: PAROLE SUPERVISION

Finding 11. The Bureau of Parole's former policy that prohibited parole officers to supervise parolees of the opposite sex, affected the efficiency and effectiveness of its operation by creating proportionately higher caseloads for males. (See page 56.)

Recommendation 10. *It is recommended that the Bureau of Parole continue its revised policy of making parole caseload assignments regardless of sex since such a policy reduces unequal caseload size. (See page 57.)*

Finding 12. Almost half of the parolees under supervision are unemployed or unemployable and the income for those who are employed is under or near poverty level. Consequently, it appears that the State Parole Board is not fulfilling its legislated responsibility, as established in N.J.S.A. 30:4-123.10, to ensure that offenders are likely to be economically self-sustaining after parole release. (See page 58.)

Recommendation 11. It is recommended that the State Parole Board thoroughly review every community parole plan, in light of the current unemployment figures for parolees, and reject every community plan that does not reflect a suitable arrangement for obtaining and maintaining employment. In developing this plan, the Bureau of Parole should use all available community resources for employment referral services to ensure equal employment opportunity for every person prior to their release on parole. (See page 60.)

Finding 13. There are at least four separate sets of parole conditions being used in New Jersey which establish different standards of conduct for those released from each institution. Such inconsistency presents a serious problem for the parolees who must live by these standards and the parole officers who must judge behavior by them. (See page 60.)

Recommendation 12. It is recommended that the Legislature, in conjunction with the paroling authorities, consider a revision of parole conditions. In addition to authorizing the paroling authorities to establish special conditions according to the needs or problems of each individual case, the Legislature should establish a minimum number of mandatory conditions, such as:

1. Obey all laws and ordinances. (#4(a) Youth Correctional Certificate.)
2. Report to or notify your Parole District Supervisor or (the) designated representative whenever you are instructed... (#3 1(4) State Prison Certificate.)
3. Comply with any special condition(s) of parole specified by the paroling authority or specified by your parole officer in behalf of the paroling authority. (#7 Youth Correctional Certificate.)

4. Obtain permission from your Parole District Supervisor or (the) designated representative before changing your place of residence...and before leaving the State of your approved residence. (#3m(4) and (5) State Prison Certificate.) (See page 65-66.)

Finding 14. The county probation departments are responsible for collecting outstanding fines from parolees. However, they have not been successful in their collection efforts because they do not have direct authority over the parolee. In some cases, the cost of processing and collection exceeds the amount of the fine. (See page 66.)

Recommendation 13. It is recommended that the Legislature consider the revision of N.J.S.A. 30:4-123.15 so that the Bureau of Parole replaces the county probation departments as the agents for the collection and disbursement of outstanding fines.

In addition, it is recommended that the paroling authorities authorize the Bureau of Parole to file court actions in order to eliminate or reduce fines that impose undue hardship on indigent parolees or where the cost of such collection exceeds the value of the fine itself. (See page 67.)

#### CHAPTER FIVE: PAROLE POPULATION MOVEMENT

Finding 15. The overall cost to maintain a person on parole is cheaper than maintaining an offender in prison. However, the total cost for maintaining the prison and parole system has not decreased despite the increase in the use of parole. (See page 69.)

Finding 16. Prison departures, the majority of which are parole releases, increased proportionately with prison admissions. As a result, the prison population remained constant while the parole population increased rapidly. (See page 73.)

Recommendation 14. N.J.S.A. 30:4-123.14 states that release on parole should be based on the offender's ability to abide by the law. Parole release decisions should not be affected by prison population pressures or cost considerations. (See page 78.)

Finding 17. Over the last five years, the rate of parolee arrests, the majority of which are for indictable offenses, has increased faster than the total parole population. Approximately two-thirds of these arrests occurred within 12 months of their release from prison. (See page 79.)

Finding 18. For every three offenders released to parole each year in New Jersey, at least one person from the parole population was returned to prison. (See page 80.)

Recommendation 15. *It is recommended that the Legislature direct the Bureau of Parole, in conjunction with the paroling authorities, to develop a uniform information system in order to closely monitor parole outcome and to determine the cause and extent of recidivism in New Jersey.*

Furthermore, since the rate of failure appears to be most frequent within the first 12 months of release, *it is recommended that provisions be made to furnish more extensive post-release services to meet such basic needs as housing, employment, and financial assistance.* (See page 81.)

Finding 19. New Jersey is one of only two states which does not participate in the Uniform Parole Reports, a national statistical reporting system on parole. (See page 84.)

Recommendation 16. *It is recommended that the Bureau of Parole participate in the nationwide parole information system of the Uniform Parole Reports. Such participation would provide New Jersey with a standardized mechanism for comparing parole outcomes with those of other states and improve the overall reliability of the Uniform Parole Reports.* (See page 85.)

## INTRODUCTION

On Thanksgiving Day, 1971, over 500 inmates from New Jersey's Rahway State Prison took over two cell blocks and rioted for 24 hours. Property was burned and destroyed. Twelve guards were injured. Six people were taken hostage, including the warden who had been stabbed and almost killed.<sup>1</sup> The inmates surrendered and released the hostages only after Governor William Cahill promised that his negotiating committee would meet with the inmate grievance committee and take action on their list of 15 grievances. Parole was the fourth grievance listed.

Since the disturbance, much attention has been focused on the criminal justice system in New Jersey, with particular emphasis on the parole system. Some changes in the parole system have been initiated and still more are anticipated. In June, 1972, at least 70 percent of the Rahway inmates participated in a work stoppage to protest New Jersey's parole laws and the fact that not enough action had been taken on their demands.<sup>2</sup>

## PURPOSE AND SCOPE

In order to assist the Legislature in its task of reviewing and evaluating parole, the Office of Fiscal Affairs (OFA), Division of Program Analysis, has been directed by the Law Revision and Legislative Services Commission to study the effectiveness and efficiency of the parole system in New Jersey and the extent to which it complies with legislative intent.

The first objective of the analysis is to examine the judicial and statutory requirements relating to parole and to determine to what extent the parole system, including the sentencing and eligibility mechanism, the paroling authorities, and the parole supervision process, operates according to these regulations.

The second objective is to analyze the parole system to see how effectively and efficiently it meets its objectives and whether this process conforms to national trends and standards. The parole decision-making process, as well as the information collection and distribution system, is analyzed. The overall effectiveness and efficiency of the parole system is examined in terms of cost and the parole release and return rate.

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1. Bergen County Record, June 4, 1972.

2. New Jersey Star Ledger, June 6, 1972.

## METHODOLOGY

The methodology for this analysis included the following procedures:

1. All relevant State legislation and State studies and commission reports relating to parole were reviewed. This review included books and articles by criminal justice authorities dealing with sentencing, corrections, and parole.
2. Site visits were conducted to five State correctional institutions including the New Jersey State Prisons at Trenton and Rahway, the Correctional Institution for Women at Clinton, the Youth Correctional Institution Complex at Yardville, and the Essex County Correction Center.
3. Site visits were made to two District Parole Offices.
4. Interviews were conducted with various parole personnel. Within the Judicial Branch, interviews were held with judges, prosecutors, probation department officials, and staff members of the Administrative Office of the Courts. Within the Department of Institutions and Agencies, interviews were held with parole administrators and parole officials, including all the members of the State Parole Board and the Chairman of the Youth Correctional Institution's Board of Trustees.
5. The collection and distribution of offender-related data throughout the parole system was analyzed in an OFA survey of parole decision files. Analysis of such data as court-related information, classification materials, and parole plans was included.
6. A five-month survey of State Parole Board action memos was conducted by OFA staff in order to compile a composite set of characteristics of prison inmates eligible for parole, and to analyze the significance of these characteristics in the Board's decision-making process. Data were also compiled from the Parole Board files to determine the average length of time between the parole hearing and parole release.
7. The New Jersey State budgets from fiscal year 1971 through 1974 were analyzed to determine the cost of maintaining the State parole system.
8. Data from the Division of Correction and Parole's Correctional Information System and Bureau of Parole was analyzed to determine prison and parole population trends and the prison return rate.

## Introduction

The first section of this Chapter will provide a definition of parole, how it is distinguished from other institutional release mechanisms, and some of the issues surrounding the parole concept.

In New Jersey, the authority to determine parole eligibility, to grant parole, to supervise on parole, as well as to revoke or discharge from parole, is divided among many authorities. The remainder of the Chapter will describe the organization of paroling authorities as established within legislative statute and the effect of judicial decisions upon it.

## PERSPECTIVES ON PAROLE

The U.S. Attorney General's Survey of Release Procedures defines parole as "the release of an offender from a penal or correctional institution, after he has served a portion of his sentence, under the continued custody of the State and under conditions that permit his reincarceration in the event of misbehavior."<sup>3</sup> Within certain statutory limitations, the offender can be released on parole and returned repeatedly until the term of original commitment has expired.

Parole is similar to probation in that an authority has the power to release an offender, to fix the conditions of release, and to order imprisonment should the offender fail to comply with those conditions.

Parole and probation, of course, are distinctive in a number of important aspects. Probation was developed as an alternative to imprisonment while parole was developed as an alternative to continued imprisonment. The granting of probation is further distinguished as a court function whereas the granting of parole is generally an administrative function. Once sentenced, the power to release an offender passes from the court to the parole authority who then determines when, and under what conditions, an offender is released from an institution.<sup>4</sup>

Parole is distinguished from two other kinds of prison release procedures that are employed in New Jersey: conditional pardon and discharge.

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3. Attorney General's Survey of Release Procedures, Vol. IV (Washington, D.C.: Government Printing Office, 1939), p. 4.
  4. Vincent O'Leary, "Issues and Trends in Parole Administration in the United States", The American Criminal Law Review, Volume 11:97, p. 99.

Conditional pardon is a form of executive clemency in which release is granted on the condition that specified rules of behavior are obeyed. The authority for such release comes within the jurisdiction of the Governor.<sup>5</sup>

Discharge from prison involves neither selection nor supervision. Discharge is a permanent and unconditional release that occurs when the maximum term of imprisonment has expired.

The concept of parole has been the subject of much controversy. Opponents attack it as too lenient. They believe that the rise in crime and the recidivism rate are evidence that the parole system has failed. Such opponents believe a prison term serves the function of retribution for crime and provides an opportunity for the offender's rehabilitation. On the other hand, proponents of parole argue that the parole system is both humanitarian and designed to protect the public. This argument relies on the fact that virtually all convicted offenders sentenced to an institution are eventually released to live in the community. A parolee's reintegration is gradual and subject to the State's supervisory authority. Proponents also contend that the paroling authority, unlike the sentencing judge, has the advantage of making an appraisal of the offender's optimum release date based on information, such as institutional behavior.<sup>6</sup>

The National Advisory Commission on Criminal Justice Standards and Goals states that, "To actually understand parole and to make it a more effective instrument of public policy requires sophisticated knowledge of all its processes, procedures, and objectives. Understanding is obscured by the use of such value-laden terms as leniency, harshness, punishment, or coddling. All of them oversimplify what is a complex administrative, legal, and political issue."<sup>7</sup>

#### ORGANIZATION AND LEGISLATIVE FRAMEWORK

"New Jersey's system for incarceration and parole is an intricate one that has grown historically and not completely logically."<sup>8</sup>

While European penal philosophy established the basic framework for the organization of the parole system, the first parole law in New Jersey was passed in 1889, relating prison discharge to rehabilitation rather than the former idea of executive

5. N.J.S.A. 2A:167-2.

6. National Advisory Commission on Criminal Justice Standards and Goals, Corrections (Washington, D.C.: Government Printing Office, 1973), p. 390.

7. Ibid.

8. Bonilla v. Heil, 126 N.J. Super 538 (App. Div. 1973).

clemency. Since that time, parole legislation has been influenced by a number of study commissions and government officials interested in penal reform. Today, the inmates themselves have taken an active role in the formulation of parole policy. (See Appendix A.)

In providing for a system of parole, the Legislature sets the framework within which the paroling authorities must act. The granting of parole is strictly a matter of legislative grace and not a matter of right on the part of the prisoner.<sup>9</sup>

There are two types of paroling authorities in New Jersey: the State Parole Board and the Institutional Boards of Trustees. Basically, the State Parole Board (SPB) has jurisdiction over offenders serving minimum-maximum sentences in the State prisons. The majority of offenders (71 percent), however, are youths serving indeterminate terms. (See Appendix B.) These offenders are paroled by the Boards of Trustees at each correctional institution.

The statutes require that certain inmates meet eligibility criteria before being considered for parole. Briefly stated, eligibility is determined by the type of sentence received and the number of prior convictions.<sup>10</sup> Eligibility will be discussed in greater detail in Chapter Two.

#### PAROLE ADMINISTRATORS

The State Parole Board members are appointed by the Governor with the approval of the Senate.<sup>11</sup> The members of the Institutional Boards of Trustees are appointed by the State Board of Institutional Trustees, with the approval of the Governor.<sup>12</sup> (See Figure 1.)

The Parole Board, formerly part-time, now consists of three full-time members. The Chairman serves for a six-year term. The two associate members serve a four-year term and two-year term, respectively.<sup>13</sup> Appointees to this Board must be of recognized ability in the field of penology, with special training or experience in law, sociology, psychology, or related branches of the social sciences.<sup>14</sup>

9. Kincaid v. State Parole Board, 53 N.J. Super 526, 147A 2d 817 (1959).

10. N.J.S.A. 30:4-123.10 et seq.

11. R.S. 30:4-123.1.

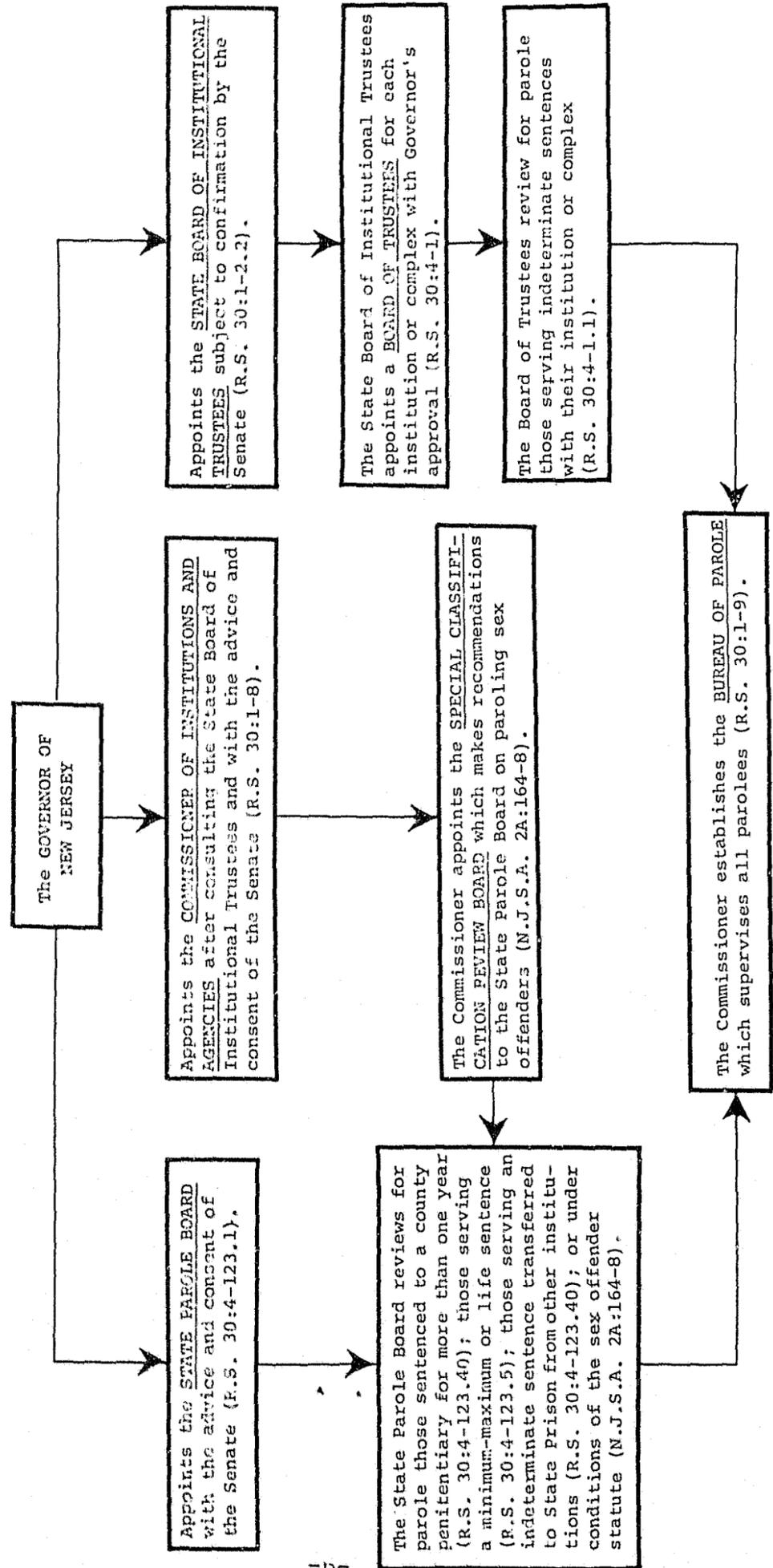
12. R.S. 30:4-1 and 4-146.1.

13. R.S. 30:4-123.1 sets the Chairman's salary at \$27,000. The associate members earn \$25,000 annually.

14. R.S. 30:4-123.1.

Figure 1

ORGANIZATION OF THE NEW JERSEY PAROLE SYSTEM



Source: Compiled by Legislative Committee Staff from N.J.S.A. Titles 2A and 30.

On the other hand, Boards of Trustees, consisting of not less than five nor more than 15 members, are appointed at large, with no qualifications other than State residency. These members serve staggered three-year terms and receive no compensation.<sup>15</sup>

Any member of either Board can be removed at any time for good cause. The Parole Board members are subject to removal by the Governor<sup>16</sup> whereas the members of the Board of Trustees are removed by the Commissioner of the Department of Institutions and Agencies.<sup>17</sup>

State Parole Board

According to legislative statute, the State Parole Board has three major powers:

1. It is the duty of the Board to determine when, and under what conditions, persons serving sentences in the several penal and correctional institutions of this State may be released on parole.<sup>18</sup>
2. The Board is empowered and authorized to promulgate reasonable rules and regulations which establish the general conditions under which parole is granted and revoked. It has the authority to adopt special rules to govern particular cases.<sup>19</sup>
3. When requested by the Governor, the Board shall also have the power to investigate all facts and circumstances surrounding applications made to the Governor for pardon and executive clemency.<sup>20</sup>

The State Parole Board is empowered to promulgate rules for the granting or revocation of parole for all eligible offenders that come within its jurisdiction.<sup>21</sup> The Parole Board has jurisdiction over the following types of offenders:

15. R.S. 30:4-146.1.
16. R.S. 30:4-123.1.
17. R.S. 30:4-1.
18. N.J.S.A. 30:4-123.5.
19. N.J.S.A. 30:4-123.6.
20. N.J.S.A. 30:4-123.33.
21. N.J.S.A. 30:4-123.6.

Definite Sentence: All persons who have been sentenced to a New Jersey county penitentiary for more than a year, providing (a) they have served at least 12 months of that sentence; and, (b) they make application to the State Parole Board.<sup>22</sup>

Minimum-Maximum: All persons committed to a State penal or correctional institution under a minimum-maximum (determinate) sentence;<sup>23</sup> and all persons serving life sentences in the same State institutions.<sup>24</sup>

Indeterminate Sentence: All persons serving an indeterminate sentence in the New Jersey State Prison at Trenton after transfer from a reformatory;<sup>25</sup> and all persons serving an indeterminate sentence imposed under the conditions of the special sex offender statute.<sup>26</sup>

The State has determined that no person shall be released on parole as a reward for good conduct or efficient performance of work assigned while under sentence. The statutory test to be applied in determining whether or not to grant parole is outlined in N.J.S.A. 30:4-123.14. The Board must be of the opinion that "there is a reasonable probability that, if such prisoner is released, he will assume his proper and rightful place in society, without violation of the law, and that his release is not incompatible with the welfare of society."<sup>27</sup>

The decision for release requires the unanimous vote of the Board as well as a suitable parole plan that demonstrates a visible means of support or the likelihood of suitable and self-sustaining employment.<sup>28</sup>

The Parole Board is also empowered to specify written conditions of parole for those under supervision.<sup>29</sup>

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22. R.S. 30:4-123.40.

23. R.S. 30:4-123.5.

24. Ibid.

25. N.J.S.A. 30:4-123.40.

26. N.J.S.A. 2A:164.3 et seq.

27. N.J.S.A. 30:4-123.14.

28. N.J.S.A. 30:4-123.19.

29. N.J.S.A. 30:4-123.20.

The Board has the power to revoke parole by a majority vote whenever it is satisfied that paroled prisoners have violated the conditions of parole, or have given evidence that they are unfit to be at liberty or have been convicted of crime.<sup>30</sup>

#### Boards of Trustees

For those offenders serving indeterminate terms at State correctional institutions other than the State Prison, the power to release eligible inmates on parole lies with the several Boards of Trustees.<sup>31</sup>

Originally, the Boards of Trustees derived their powers from the former State Board of Control of Institutions and Agencies. The power "...to determine all matters relating to the unified and continuous development of the institutions..." was held by the State Board of Control.<sup>32</sup> In 1972, the power for determining the institutional rules and regulations was transferred to the Commissioner of Institutions and Agencies.<sup>33</sup>

In 1940, the Board of Control developed a list of "Rules and Regulations Governing the Administration of Parole in New Jersey: Indeterminate and Juvenile Cases." This body of regulations was amended most recently in 1962. However, to date, the regulations developed by the Board have not been substantially changed.

These regulations establish criteria for parole similar to those followed by the State Parole Board. "Parole will be granted when it appears to the paroling authority that such action will further the rehabilitation of the offender and that his release under supervision will not be incompatible with the welfare of society."<sup>34</sup>

According to these regulations, parole will be granted by a majority vote of a quorum of the Board of Trustees. Unlike the SPB, the Board is not required to meet personally with the eligible inmate.

Youth offenders released by the Board remain under its jurisdiction until the maximum term of their original sentence expires or until they receive a discharge from the Board by a quorum vote.

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30. N.J.S.A. 30:4-123.23.

31. N.J.S.A. 30:4-106.

32. N.J.S.A. 30:1-12.

33. N.J.S.A. 30:1-12, amended by L. 1971, c.384, Sec. 8.

34. Excerpt from minutes of October 17, 1957 meeting of State Board of Control of Institutions and Agencies.

The regulations also specify that violation of the conditions of parole may be cause for revocation of parole. "A violation of the law or any regulatory ordinance, serious misconduct constituting a menace to the community, or continued evasion of responsibility and disregard of parole obligations will be deemed a violation of parole."<sup>35</sup>

#### INVALID STATUTES

Finding 1. Judicial action has altered the original intent of legislation concerning the sentencing of female offenders, and the parole jurisdiction over those convicted of being narcotic addicts and inmates of the county jail. In two of these instances, the legislative purpose has been determined unconstitutional.

While legislation provides the legal basis of the parole system, it is subject to revision, particularly as the result of a judicial decision. In New Jersey, there are at least three instances where the original intent of parole legislation has been altered by judicial interpretation.

The first, and most significant, is N.J.S.A. 30:4-155 which refers to the term of imprisonment for female offenders. Under this statute, any female sentenced to the Correctional Institution for Women serves an indeterminate sentence not to exceed five years, except those convicted of murder or manslaughter.

In 1973, these statutory provisions were challenged in State v. Chambers and declared unconstitutional by the New Jersey Supreme Court under the equal protection clause of the Fourteenth Amendment.

"In the future, a female offender under 30 years of age shall receive an indeterminate sentence if, were she a male, she would have been sentenced to the reformatory complex, and otherwise shall be sentenced for a minimum-maximum term, while females more than 30 years of age and sentenced for a custodial term at the correctional institution shall have a minimum-maximum fixed, unless a life sentence is imposed in a homicide case."<sup>36</sup>

35. State Board of Control, "Rules and Regulations Governing the Administration of Parole in New Jersey: Indeterminate and Juvenile Cases," adopted October 29, 1940 and amended.

36. State v. Chambers, 63 N.J. 287, 307 A. 2d 78 (1973).

The second statute, N.J.S.A. 30:4-123.43, refers to the jurisdiction of the State Parole Board over those convicted of the crime of being a narcotics addict.<sup>37</sup> Under this statute, the Board has the power to release on parole persons convicted of being narcotics addicts, any time after commitment and commencement of the sentence. The addicts must agree to voluntarily admit themselves to an appropriate facility, institution, or hospital for treatment of their addiction. However, in 1962, the U.S. Supreme Court in Robinson v. State of California held that a state law which made the status of narcotics addiction a criminal offense inflicted "cruel and unusual punishment." Such a law was declared to be in violation of the Fourteenth Amendment.<sup>38</sup>

The legal status of narcotic addicts was further clarified by the Superior Court of New Jersey in 1965. In Winbush v. Sills, the court held that N.J.S.A. 30:4-123.43 did not authorize the State Parole Board to parole a prisoner convicted of possession of narcotics.<sup>39</sup> As the result of these and subsequent court decisions, and the fact that no statute in this State attempts to make addiction a criminal offense, it is clear the intent and purpose of N.J.S.A. 30:4-123.43 has been altered.<sup>40</sup>

The third statute, N.J.S.A. 30:8-28, pertains to parole for inmates of county jails. This statute permits a county court, in its discretion and upon recommendation of the sheriff, to parole a county jail prisoner to the custody of the county probation officer "or any other fit person."<sup>41</sup> This parole is for the purpose of prisoner employment outside of the prison.

The statute is related to P.L. 1971, c.271, which is entitled "An act to provide for the employment of inmates of county jails, and to provide payments therefore." The Act is derived from the discredited practice of farming out convict labor and has been replaced by the modern work release program.

On May 31, 1963, the New Jersey Chief Justice, with the consensus of the assignment judges, issued a directive ordering that county judges refuse to consider applications under N.J.S.A. 30:8-28.<sup>42</sup> So for all intensive purposes, this parole power is void.

37. N.J.S.A. 30:4-123.43.

38. Robinson v. State of California, 370 U.S. 660, 82 S.Ct. 1417, 8L. Ed. 2d 758 (1962).

39. Winbush v. Sills, 88 N.J. Super 392, 212 A. 2d 571 (1965).

40. This should not be confused with R. 3:21-10 where a narcotics addict can petition the court for a modification of the custodial sentence to a release on probation for drug addiction.

41. N.J.S.A. 30:8-28.

42. Administrative Director of the Courts, "Summary of Administrative Directives," April, 1965, p. 14.

Recommendation 1. *It is recommended that the State Legislature consider the revision or elimination of N.J.S.A. Title 30:4-155; 4-123.43; and 8-28 to make them conform to judicial rulings.*

## CHAPTER TWO: SENTENCING AND PAROLE ELIGIBILITY

### Introduction

Sentencing is an integral part of the total criminal justice process. For the convicted offender, sentencing is roughly mid-point of passage through the criminal justice system; for the judge, sentencing is usually the culmination of official participation in the individual offender's criminal career; for the paroling authorities in New Jersey, however, sentencing is the beginning of their relationship with the offender.<sup>43</sup>

This Chapter will describe the sentencing options available to the judge and show how these actions impact on the parole process. The three basic types of judicial sentences that place the offender under the jurisdiction of a New Jersey paroling authority will be discussed in detail: definite, minimum-maximum, and indeterminate sentences. This information sets the framework for a description of parole eligibility standards as they apply to each type of sentence. The Chapter also addresses the system of sentence credits which affects parole eligibility by reducing the original terms of the sentence.

### IMPACT OF JUDICIAL DISPOSITION ON PAROLE

Finding 2. The judiciary affects the parole process in four major areas:

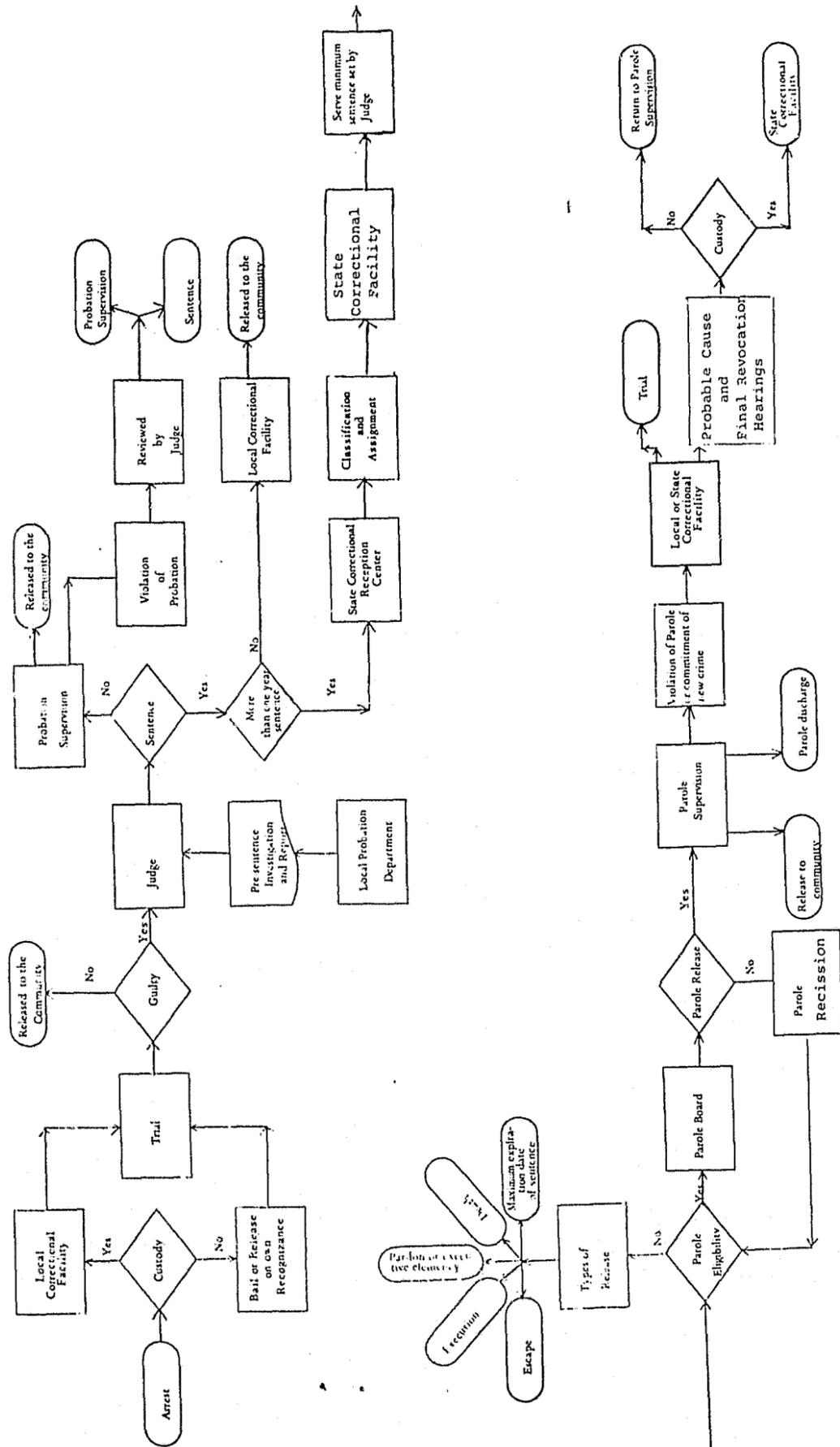
- a. Judicial discretion in use of sentencing alternatives affects both the number and type of offenders that eventually comprise the parole population.
- b. The judiciary shares certain decision-making authority regarding parole with the paroling authorities.
- c. The judicial reasons for sentences establish guidelines for the paroling authorities.
- d. The judiciary generates important information about the social and criminal history of the offender that is used in the parole hearing.

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43. See Flow Chart of Criminal Justice System in New Jersey, Figure 2, page 14. For additional information about sentencing classification of offenders, see Appendix C.

Figure 2

FLOW CHART OF THE NEW JERSEY CRIMINAL JUSTICE SYSTEM



Source: New York State Office of the State Comptroller, Division of Audits and Accounts, "Report on Rehabilitation Programs of the Department of Correctional Services (No. A1-St-39-74)", December 31, 1973, Exhibit A. This chart was slightly modified by OFA for application in New Jersey.

Sentencing Alternatives

Judicial discretion in use of sentencing alternatives affects both the number and type of offenders that eventually comprise the parole population. There are four major judicial actions that will divert the offender from a custodial sentence. These sentencing options include placement in pre-trial intervention programs; total suspension of sentence or suspension to probation;<sup>44</sup> imposition of a fine; or, post conviction relief from an appellate court.

The pre-trial intervention programs, and other alternatives to the custodial sentence, are often used for first offenders or those convicted of less serious crimes. These offenders represent a lower risk population less likely to recommit a crime.

It appears that the courts commit only the more serious offenders to prison. Commitments to prison for serious crimes have increased 65 percent while commitments for less serious offenses have decreased 33 percent.<sup>45</sup> The implication that New Jersey confines only the more serious offender is also supported by the fact that New Jersey confines 71 adults per 100,000 population compared with 106 adults per 100,000 population for the United States as a whole.<sup>46</sup>

The offenders who represent the higher risk to the community are those who are usually incarcerated and ultimately become eligible for parole. Thus, it is judicial discretion that determines who and how many of these offenders continue through the system and eventually comprise the parole population.

Decision-Making

The judge determines two important elements that affect parole eligibility: 1) length of sentence, and 2) type of custody. According to New Jersey's sentencing system, the judge delineates the maximum and, in some cases, the minimum amount of time the offender serves sentence. The judge also determines, within certain statutory limits, the type of institution within which the offender is held in custody: training school, reformatory, or prison. The paroling authority has the power to set standards and procedures for parole release or discharge within these basic guidelines.

- 14. If the conditions of probation are violated, the judge may choose to remand the offender to complete the sentence in a correctional institution.
- 45. Division of Correction and Parole, "Resident Population in New Jersey State Prison by Offender Subgroups 1950-1980," February 20, 1968, p. 1.
- 46. Ibid, p. 4.

The Judge's Sentencing Manual illustrates the distribution of decision-making authority between the judiciary and the paroling authorities. In a discussion of the imposition of life sentences, the Manual states:

"The only obvious purpose for such sentences (consecutive life sentences) is to attempt to delay eligibility for parole. A person sentenced to life imprisonment becomes eligible for parole after service of 25 years less credits and commutation time. Needless to say, it is extremely difficult to predict that far into the future what society's needs will be in relation to the defendant. In addition, there is little reason to believe that the sentencing judge will recognize those needs better than the Parole Board which makes its decision at the time of release upon parole. As a matter of fact, to the extent that it is true that decisions are better made upon the additional facts available at the later date, judges should attempt to sentence in such a way as to enlarge the period of time for Parole Board action, rather than to attempt to curtail it."<sup>47</sup>

The Judiciary has the power to determine the sentence, but the paroling authority has the power to alter the terms of that sentence. As a result, the Parole Board is in a unique position to have an impact on the potential inequities in the sentencing system when, for example, different sentences are meted out to defendants of similar backgrounds upon conviction of the same or very similar crimes.

#### Reasons for Sentence

Supreme Court Rule 3:21-4 provides that judges must state reasons for the imposition of sentence. The reasons for a sentence may include rehabilitation, retribution, punishment, deterrence, or any combination of these or other factors.

The decision to release an offender on parole is based, in part, on the purpose of the sentence. The judicial reasons for a sentence represent guidelines to the paroling authority. The parole authority determines if the intent of the sentence has been accomplished during the period of incarceration and whether release will serve that end.

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47. New Jersey Administrative Office of the Courts, Sentencing Manual for Judges (July, 1971), p. 41.

The Sentencing Manual for Judges indicates that a statement of reasons for imposing sentence should be effective...

"in promoting uniformity of sentencing and rehabilitation of a defendant...Formulation of reasons could lead to a greater uniformity of sentencing by trial judges and could convey to appellate courts, institutions, and the State Parole Board information of the greatest value. Given the difficult problems of theory and fact involved in a review for abuse of discretion in sentencing, the reasons for the sentence seem essential for such review. The evaluation of the offender by the trial judge is equally significant to decisions made within the institutions and the State Parole Board. These judicial determinations should not be left to be gleaned from inferences arising out of minimum sentences or other ambiguous acts."<sup>48</sup>

#### Information

The Judiciary generates important information about the social and criminal history of the offender that is used by both institutional and paroling authorities.

Supreme Court Rule 3:21-2 requires that pre-sentence investigations be performed by county probation departments for the sentencing judge. This rule also specifies that a statement of reasons for each sentence should be incorporated in the judgment of conviction. The judgment and the pre-sentence report are transmitted to the institution within ten days of sentencing for review at the time of classification and parole eligibility.

The adult pre-sentence report, recently standardized throughout the State's 21 counties, includes such information as: official and defendant's version of offense; criminal history, including previous institutionalization; family history; educational achievement; employment history; financial status; and other items.

In most cases, this pre-sentence report provides the most extensive source of classification information available to the paroling authorities.

#### Conclusion

It is essential that the Judiciary clearly understand its important relationship with the parole process since judicial discretion not only affects the parole eligibility of the individual offender but also the composition of the parole population

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48. Ibid, pp. 10-11.

as a whole. The judge's evaluation of the offender affects decisions made within the parole system.

Equally, the Judiciary must acknowledge the ability of the paroling authority to evaluate additional information related to the offender's institutional behavior that will affect the determination of the optimum release date. Judicial determinations should establish flexible sentence guidelines that enhance the parole decision-making process, rather than curtail it by attempting to delay parole eligibility.

Recommendation 2. In view of the important impact of judicial disposition on parole, it is recommended that the Commissioner of Institutions and Agencies, in conjunction with the Chief Justice of the New Jersey Supreme Court, create a committee composed of representatives from both the Judiciary and parole system. The committee should be charged with the responsibility of increasing judicial-correctional communication. This committee should meet on a regular basis to discuss the use of sentencing alternatives, how sentencing affects parole eligibility, the potential impact of a new penal code, judicial-correctional information systems, and other areas of mutual interest.

#### PAROLE ELIGIBILITY

Finding 3. New Jersey has divided its offenders into different classes, affording parole eligibility to some, and making eligibility conditional for others, while some are entirely denied eligibility for parole.

- a. In N.J.S.A. 30:4-155, adult women are automatically granted an indeterminate sentence (except for crimes of murder or manslaughter) unlike their male counterparts. This has been determined unconstitutional in State v. Chambers, 63 N.J. 287, 307A 2d 78 (1973).
- b. There are no provisions for parole from a county institution for sentences less than one year.
- c. There are no provisions for good behavior credits within the workhouse or the youth correctional institutions (reformatories).
- d. There are no criteria for paroling those serving indeterminate sentences. As a result, both Youth Correctional Institutions have developed a different system of time goals and method for sentence adjustment.

Sentencing alternatives that can place the offender under the jurisdiction of a paroling authority include: definite sentences over one year to county institutions; minimum-maximum sentences; and indeterminate sentences. (See Table 1.)

#### Definite Sentence

Offenders receiving a definite sentence must serve a specified number of months in either a county jail, penitentiary, or workhouse. Offenders sentenced to jails are always sentenced for periods less than one year and are not eligible for parole. Offenders sentenced to penitentiaries or workhouses can receive a definite sentence for any period up to 18 months.<sup>49</sup>

#### Parole Eligibility

Of all offenders confined within a county penal institution serving definite sentences, only those confined for at least one year are eligible for parole.<sup>50</sup> Inmates of county institutions may apply for parole to the State Parole Board if they are serving sentences greater than one year and have served at least 12 months of that sentence.<sup>51</sup> These inmates are supervised on parole by the county Departments of Probation.

#### Sentence Adjustment

Most sentences within the New Jersey criminal justice system are subject to adjustment on the basis of credit for both work and good behavior. Such credits reduce the original terms of the sentence according to a specified schedule.

Inmates serving definite sentences in any county institution reduce their sentence one day for every five days of work.<sup>52</sup> Good behavior or commutation credit reduces county jail and penitentiary sentences at the rate of one day for every six days served.<sup>53</sup>

Work credits are available in all county institutions. However, there is no provision in the statutes that allows good behavior credit to those confined in county workhouses.

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49. N.J.S.A. 2A:164-15.

50. The constitutionality of denying parole eligibility to those county inmates serving less than one year was challenged in Bonilla v. Heil, 126 N.J. Super 538 (App. Div. 1973). This statute was upheld on the grounds that the eligibility standard was not unreasonable. Davis v. Heil, 132 N.J. Super 283 (App. Div. 1975) extended parole eligibility to inmates of county workhouses with sentences over one year and to inmates of county institutions serving consecutive sentences aggregating more than one year.

51. N.J.S.A. 30:4-123.35.

52. N.J.S.A. 30:8-28.1.

53. N.J.S.A. 2A:164-24. There is slightly greater credit for good behavior granted to State Prison inmates.

Table 1

TYPE OF SENTENCES AND  
PAROLE AUTHORITIES FOR YOUTH AND ADULT OFFENDERS  
IN NEW JERSEY

SENTENCE	CORRECTIONAL INSTITUTION	PAROLE AUTHORITY	PAROLE SUPERVISOR
<u>Definite Sentence</u> Up to 18 Months	<u>County Institutions</u> Essex County Correctional Center Hudson County Penitentiary, etc.	State Parole Board	County Probation Dept.
<u>Minimum-Maximum Sentence</u> 1 Year - Life	<u>State Prison Complex</u> Rahway Trenton Leesburg Prison Satellites <u>Correctional Institution for Women</u> Clinton	State Parole Board	Bureau of Parole
<u>Indeterminate Sentence</u> Up to Statutory Maximum	<u>Youth Correctional Complex</u> Yardville Annandale Bordentown <u>Correctional Institution for Women</u> Clinton	Institutional Boards of Trustees	Bureau of Parole

Minimum-Maximum Sentence

Offenders sentenced under statutes providing for minimum and maximum periods of time, ranging from one year to life, are sentenced to the State Prison Complex (Trenton, Rahway, and Leesburg) or the Correctional Institution for Women at Clinton.

Minimum-maximum (determinate) sentences are automatically used for adult offenders over 30 years old. Youths, those under 30, who have been previously incarcerated in a State prison or charged with "an offense of heinous nature," are sentenced in the same manner as adults.<sup>54</sup> These offenders are released on parole by the State Parole Board and supervised on parole by the Bureau of Parole.

Parole Eligibility

An inmate serving a fixed minimum-maximum sentence is eligible for consideration for parole after having served the minimum sentence, or a percentage of the maximum sentence, whichever comes sooner, less sentence credits.<sup>55</sup>

Thus, parole eligibility is based upon an adjusted sentence which may be substantially shorter than the actual sentence. The sentence is adjusted on the basis of two factors: the number of previous prison commitments and the amount of credit that can be earned for a good institutional record.

A person with no previous adult prison commitments serving a fixed minimum-maximum sentence becomes eligible for cons. pration for parole after service of the minimum sentence, or one-third of the maximum sentence, whichever is less.<sup>56</sup>

The percentage of the maximum sentence that is required to be served becomes larger as the number of previous offenses increase. If a convicted adult offender has been previously sentenced to any penal institution in the United States, parole eligibility is based upon the maximum sentence.<sup>57</sup>

A second offender serves one-half of the maximum, a third offender serves two-thirds, and a fourth offender serves four-fifths of the maximum.<sup>58</sup>

54. N.J.S.A. 2A:4-15.

55. N.J.S.A. 30:4-123.10.

56. Ibid.

57. Commitments as a juvenile to a reformatory or as an adult to a county institution are not considered previous offenses.

58. N.J.S.A. 30:4-123.12.

A person sentenced to life imprisonment is eligible for parole after 25 years, less commutation time and work credit.<sup>59</sup>

There is one basic exception to the eligibility standard. It applies to an offender serving consecutive sentences.<sup>60</sup> In this case, the court would aggregate the sentence to constitute one minimum and maximum sentence.<sup>61</sup> Therefore, two 5-10 year sentences would, for parole purposes, be treated as a single sentence of 10-20 years. If eligibility would be delayed, because of the length of the aggregated sentence, beyond the time eligibility would have been had a life sentence been given, the inmate automatically becomes eligible after 25 years, less commutation time.<sup>62</sup>

#### Sentence Adjustment

State Prison inmates can earn work credit and good behavior credit to decrease the minimum and maximum term of their sentence.

Work credit is awarded as one day for every five days of work. In addition, all inmates classified as minimum security receive further remission of time at the rate of three days per month for the first year and five days per month for each subsequent year.<sup>63</sup>

Good behavior ("continuous orderly deportment") credit is established according to another schedule. Seventy-two (72) days credit can be earned during a year or approximately six days per month.<sup>64</sup> (See Appendix D.)

An inmate can also receive jail credit on a custodial sentence for time spent in jail for the period between arrest and imposition of sentence.<sup>65</sup>

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59. N.J.S.A. 30:4-123.11.

60. N.J.S.A. 30:4-123.10.

61. If such sentences were imposed by different judges at different times, the term would not be aggregated into one sentence without the offender's consent.

62. N.J.S.A. 30:4-123.10.

63. N.J.S.A. 30:4-92.

64. N.J.S.A. 30:4-140.

65. R. 3:21-8.

Table 2 on the following page shows parole eligibility dates and minimum and maximum expiration dates for certain relatively common sentences. The table applies to a first offender in minimum security with no jail credits.

#### Indeterminate Sentence

Offenders receiving indeterminate sentences do not serve any specified length of time. For these cases, the duration of confinement or parole shall not exceed five years, or with good cause, the maximum term provided by law.<sup>66</sup> The sentence may be terminated at any time by the Boards of Trustees according to their discretion.

Indeterminate sentences are primarily used for youth offenders, those between 15 and 30 years old. This type of sentence is also applied to any offender sentenced under special drug or sex offender statutes.<sup>67</sup>

Indeterminate sentences are served in the Youth Correctional Complex (Yardville, Annandale, and Bordentown) or the Correctional Institution for Women.

These offenders are released on parole by the institutional Board of Trustees and supervised by the Bureau of Parole.

#### Parole Eligibility

There are no statutory provisions for the determination of eligibility or sentence credits for reformatory sentences. Guidelines for time goals and sentence credits are developed by the Boards of Trustees and implemented by each institution's Classification Committee.<sup>68</sup>

At the Youth Correctional Complex, all inmates with reformatory sentences are given tentative parole dates approximately two to three weeks after admission. The factors considered in establishing this date are: the offense, age of inmate, length of service, single vs. multiple offenses, county jail credit, and so forth.<sup>69</sup>

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66. A sentence to the Youth Institution Correctional Complex is indeterminate subject to a maximum of five years, unless (a) the statutory maximum for the offense is below five years in which event that maximum controls, or (b) the maximum is above five years and the court, for good cause shown, raises the maximum above five years to the statutory maximum for the offense involved.

67. N.J.S.A. 24:21-16 et seq. and N.J.S.A. 2A:164-2 et seq.

68. Each institution has a Classification Committee comprised of the Superintendent and other administrative and professional personnel. These committees are charged with periodically reviewing the inmates records and making recommendations for treatment and training assignments.

69. B.J. Urbaniak, Memo on YRCC Time Reduction System, November 1972, p. 1.

Table 2  
 ELIGIBILITY AND SENTENCE DATES  
 FOR AVERAGE FIRST OFFENDER

Sentence	Eligible for parole upon service of	Minimum expires upon service of	Maximum expires upon service of
1-2	0 yrs. 4 mos. 28 days	0 yrs. 8 mos. 2 days	1 yr. 3 mos. 25 days
2-3	0 yrs. 7 mos. 13 days	1 yr. 3 mos. 25 days	1 yr. 11 mos. 7 days
3-5	1 yr. 0 mos. 11 days	1 yr. 11 mos. 7 days	3 yrs. 1 mo. 29 days
6-7	1 yr. 4 mos. 17 days	3 yrs. 9 mos. 13 days	4 yrs. 4 mos. 18 days
5-10	1 yr. 11 mos. 10 days	3 yrs. 1 mo. 29 days	6 yrs. 0 mos. 23 days
8-15	2 yrs. 10 mos. 6 days	4 yrs. 11 mos. 9 days	8 yrs. 9 mos. 11 days
10-25	4 yrs. 6 mos. 25 days	6 yrs. 0 mos. 23 days	13 yrs. 8 mos. 21 days
20-30	5 yrs. 4 mos. 17 days	11 yrs. 3 mos. 4 days	15 yrs. 11 mos. 0 day
Life	13 yrs. 9 mos. 20 days		

Source: Letter from Mr. Howard Yeager, former Superintendent of the State Prison in Trenton to Mr. Harold Ashby, former Chairman of the State Parole Board, November 2, 1967 as cited in Sentencing Manual for Judges, Appendix B, July 1971.

The following schedule in Table 3 represents the guidelines for parole dates, or time goals, established by the Boards of Trustees and used by the Classification Committee at both the male and female youth reformatories.

Table 3 TIME GOALS FOR YOUTH REFORMATORIES, BY CRIME		
Crime	Time Goals	
	Youth Correctional Complex	Clinton
Crimes of Property	4-14 months	Up to 12 months
Crimes against Persons	8-24 months	14-20 months
Marcotic Crimes		
Possession of narcotics or controlled dangerous substance	14-16 months	Up to 10 months
Sale of narcotics or controlled dangerous substance	14-16 months	Up to 14 months

Source: Compiled by OFA from Yardville Youth Correctional Complex, "Procedures and Guidelines," October, 1973; and Correctional Institution for Women, Classification Material, September, 1974.

The Youth Complex has an additional schedule for certain more serious crimes including murder, manslaughter, rape, atrocious assault, and armed robbery, among others. In these cases, check dates are set usually at 6- or 12-month intervals, at which time the case is reviewed. If progress has been satisfactory, a time goal is then set for anywhere between 8 and 24 additional months, depending on the aforementioned criteria.<sup>70</sup>

Sentence Adjustment

In addition to the development of time goals, the Board of Trustees at each institution has developed criteria for sentence credits. These credits serve a function equivalent to the work and good behavior credits in the prison.

70. Yardville Youth Correctional Complex, "Procedures and Guidelines" (October, 1973), p. 3.

Both institutions have developed mathematical formulas based on behavior or performance ratings for such factors as work, school, reading, and discipline.

In Yardville, for example, an inmate with a 12-month time goal can earn 21 days off the sentence if the adjustment rating is poor, 45 days if adjustment is average, and 90 days if adjustment is above average. At Clinton, the same inmate with a 12-month time goal earns no credit for poor adjustment, one and one-half months for average adjustment, and three months for above average.

#### Special Offenders

New Jersey has a special set of statutes dealing with the sentencing and parole eligibility of offenders convicted of sex-related crimes.<sup>76</sup>

#### Parole Eligibility

Anyone convicted of a sex-related crime and committed to confinement under the Special Sex Offender Statute may be released under parole supervision when it appears to the satisfaction of the State Parole Board, after recommendation by a Special Classification Review Board, that such person is capable of making an acceptable social adjustment in the community.<sup>77</sup>

The Chief Executive of the Treatment Unit for sex offenders at Rahway Prison is required to file a written report at least semi-annually to the Commissioner of the Department of Institutions and Corrections concerning the physical and mental condition of these offenders. This report must include a recommendation regarding continued confinement or consideration for release on parole.<sup>78</sup>

The State Board of Institutional Trustees is empowered to formulate rules and regulations for granting, supervising, and revoking parole of sex offenders. The Board also appoints the members of the Special Classification Review Board.

Thus, there are four major decision points involved in parole eligibility of sex offenders. First, the therapist must make a

decision regarding the advisability of the offender's release. Second, the Executive Director of the Treatment Unit must concur with this recommendation. Third, the Special Classification Review Board must review the case and make a recommendation to the State Parole Board. And finally, the State Parole Board makes the final decision with regard to the release of the sex offender on parole.

#### Conclusion

It can be seen that New Jersey has divided its offenders into different classes, affording parole eligibility to some and denying parole eligibility to others. There are no provisions for parole from a county institution for sentences less than one year. There are no provisions in the workhouse or reformatories for sentence adjustment based on good behavior. Additionally, each reformatory has developed a different system of time goals and different methods for sentence adjustments. (See Table 4.)

In one case, such provisions have been upheld. The New Jersey Superior Court has upheld an appeal on the question of equal protection arising from the determination that parole eligibility is applicable only for sentences greater than one year.<sup>76</sup> However, another court decision has overturned the special sentencing regulations as they applied to adult women. The New Jersey Supreme Court, in State v. Chambers, held that the distinction made with respect to sentencing and parole eligibility for adult female offenders was unconstitutional.<sup>77</sup>

*Recommendation 3. It is recommended that the State Legislature, in its evaluation of New Jersey's penal code, standardize the system for parole eligibility and sentence adjustment and eliminate the distinctions made between the same type of offenders.*

76. Bonilla v. Heil, 126 N.J. Super 538 (App. Div. 1973).

77. State v. Chambers, 63 N.J. 287, 307 A. 2d 78 (1973).

Table 4

PAROLE ELIGIBILITY AND SENTENCE CREDITS,  
BY INSTITUTION

Offense	Parole Authority	Eligibility	Good Behavior Credit	Work Credit
NJSA 20:1-13 1. 12 months 2. 12 months 3. 12 months 4. 12 months	None	NJSA 30:4-28 (considered void)	NJSA 20:164-24	NJSA 30:4-28.1
NJSA 20:1-13 12 months maximum	State Parole Board	NJSA 30:4-123.15 (see Davis v. Bell)	1 day for 6 days served	1 day for 5 days served
			No Provision	

Offenses with terms less than one year and not greater than 18 months are committed to State Parole Board with no minimum or maximum.

Offense	Parole Authority	Eligibility	Good Behavior Credit	Work Credit
NJSA 20:1-13 12 months maximum	State Parole Board	NJSA 30:4-123.10	NJSA 30:4-140	NJSA 30:4-92 1 day for 5 days served
NJSA 20:1-13 12 months maximum		NJSA 30:4-123.11		
NJSA 30:4-135 12 months maximum				

Offenses with terms less than one year and not greater than 18 months are committed to State Parole Board. The program must be one year.

Offense	Parole Authority	Eligibility	Good Behavior Credit	Work Credit
NJSA 20:1-13 12 months maximum	Board of Trustees	NJSA 30:4-110(a) and 30:4-106	No Provision	NJSA 30:4-92 1 day for 5 days served
No fixed sentence type listed in confinement and on parole shall not exceed 12 years or maximum of 10 years if less or more must be same and same.		No Provision		

Offenses with terms the area of 15 and 30 years, who have been convicted of a crime punishable by life imprisonment and who have not been previously sentenced to a State Prison.

Source: Compiled by OPA staff from N.J.S.A. Titles 2A and 30.

CHAPTER THREE: PAROLE DECISION-MAKING

Introduction

This Chapter analyzes the decision-making procedures followed by the State Parole Board in granting, releasing, and revoking parole. Several OPA surveys of case files highlight the importance of accurate and up-to-date offender-related data which is necessary for parole decision-making.

CALCULATING ELIGIBILITY FOR PAROLE HEARINGS

Finding 4. At the time of the parole hearing, the State Parole Board does not request, nor does it receive, an up-to-date calculation of the offender's eligibility or minimum and maximum dates. As a result, the Board may rely on inaccurate information when determining parole release dates.

When eligibility is established by institutional classification personnel, 12-15 weeks after reception, two eligibility dates are calculated for each offender: best eligibility and actual eligibility.<sup>78</sup>

The initial calculation, or best eligibility, is based on the greatest number of sentence credits an inmate could possibly receive. The offender's first parole hearing is based on this best eligibility date. If the offenders fail to actually earn all the estimated time for which they were credited, it does not affect their best eligibility. However, the second calculation, or actual eligibility, is based on the actual number of credits that the offender earns for good behavior and work. This date reflects the actual accumulation of credits and determines when the offender is first legally eligible for release on parole. The same procedure is followed in determining best and actual maximum and minimum dates.

After reception, inmates are notified of their best eligibility date, offender status, and jail credit, and can challenge the eligibility calculations if there is reason to believe the records are not correct.

The Parole Board maintains a rotating file of parole eligibility dates for each inmate based on "best" dates established at the time of initial reception. The Board is supposed to be informed by the Classification Office of any change in sentence status such as jail credit that would affect the eligibility date.<sup>79</sup>

78. Interview with David Anderson, Senior Classification Officer at Trenton State Prison, September 3, 1974.

79. There are three circumstances that can change the best eligibility date: additional jail credit, an additional sentence, or a reduction in sentence.

Four months prior to the inmate's scheduled hearing date, the Board sends an eligibility list to the prison classification office so that the classification material can be prepared.

At this time, the eligibility list is made public and sent to county prosecutors, county judges, and the Attorney General of the State.

At the time of the parole hearing, the Board does not report, nor do they receive, an up-to-date calculation for the eligibility date. They rely on the hypothetical or "best" calculation established at reception. The Classification Office does report to the Board, for use in the parole hearing, calculations for the "actual" minimum and maximum dates. Recently, however, some of these calculations have been as much as 16 months out-of-date. As a result, there are certain occasions when a parole date is set without the benefit of an accurate eligibility or sentence calculation.

The confusion and inaccuracy surrounding these calculations presents a problem for both the Board and classification personnel. In those cases where accurate information is not available, the Board must either delay release until an accurate account of the offender's sentence is received, or set a date according to the Board's own calculations. In either case, an overestimation will delay release beyond its necessary limits or an underestimation may set a date prior to the legal standards of release. Contact with prison classification officials indicates that, on occasion, classification has had to inform the Board that an established release date had been set prior to eligibility. As a result, the Board had to change the release date to conform to the legal eligibility date.

In certain cases, the Parole Board may rely on inaccurate information when determining parole release dates. The result may lead to unnecessary delays or uncertainty for the expectant parolee. In addition, the Board relies on classification personnel to correct illegal or inaccurate parole dates.

Recommendation 4. It is recommended that the State Parole Board request, and have access to, up-to-date actual sentence calculations at the time of the parole hearing.

N.J.A.C. 11:70-41.

During the period of analysis, the reception classification function was transferred from Trenton to Yardville. The responsibility for adjusting sentences for credit was transferred from Central Classification to each individual institution. Unofficial estimates indicate that at the time of transfer certain dates had not been posted for 16 months.

#### PAROLE HEARING

Finding 5. Unlike the majority of U.S. paroling authorities, the New Jersey State Parole Board conducts informal parole hearings. The initial parole hearing utilizes fewer, if any, due process provisions than those extended for the parole revocation hearings.

N.J.S.A. 30:4-123.19 states that "Before reaching a final decision to release any prisoner on parole, the Board shall cause the prisoner to appear before it and shall personally interview him to consider his ultimate fitness for parole, and verify as far as possible, the information furnished it from other sources...The Board shall reach its own conclusions as to the desirability of releasing the prisoner on parole and no release shall be effected except by unanimous vote of the entire Board..."<sup>82</sup> This parole hearing represents the focal point of the Board's decision-making process.

As a matter of administrative policy, rather than statutory rule, the Board holds monthly parole hearings at each institution for all offenders whose best date for eligibility falls within a month.<sup>83</sup> See Appendix E for a compilation of State Parole Board activities.

The Parole Board hears approximately 33 cases on each hearing day.<sup>84</sup> Fifty (50) percent of the other U.S. paroling authorities hold fewer average number of hearings per day.<sup>85</sup> Each individual hearing lasts on the average of 14 minutes.<sup>86</sup> There are no nationally accepted standards for the number of minutes spent on each hearing. However, there are established due process provisions that reduce the potentially arbitrary nature of an informal hearing and help ensure equal opportunity for each offender's release.

82. The Cumulative Annual Pocket Part of the New Jersey Statutes Annotated, for use in 1974-75, refers to a revision of this Statute; however, the reference is misprinted. The revision listed under N.J.S.A. 30:4-123.19 is actually a reference to N.J.S.A. 30:4-126.1.

83. N.J.A.C. 11:70-56.

84. Based on OFA State Parole Board Action Memo Survey, December 4-6, 1974.

85. O'Leary, Vincent and Nuffield, Joan, "A National Survey of Parole Decision-Making," Crime and Delinquency (July, 1973), p. 385.

86. Op. cit.

Like the majority of U.S. parole authorities (74 percent), the New Jersey Board conducts the parole hearing.<sup>27</sup> However, unlike other State parole hearings, the New Jersey hearings are informal. The Board is not bound by ordinary rules of evidence or judicial procedure. It maintains an informal record of the proceedings. Only with the Board's permission may a legal brief be filed on the inmate's behalf.

According to a recent survey of hearing practices of all U.S. paroling authorities, a majority of authorities allow more extensive procedural due process in the parole hearings than currently exist for New Jersey Board hearings. For example 58 percent of them allow a legal counsel to attend the hearings and 63 percent allow witnesses. At least 60 percent of the authorities make a written record of the proceedings.<sup>28</sup>

In 1971, the Court required the establishment of at least minimal procedural due process in the parole hearing process. In Wright v. New Jersey State Parole Board, the Supreme Court of New Jersey heard an appeal of the State Parole Board's decision to reject a prisoner's request for a statement of reasons for denial of parole. The Supreme Court held that the Parole Board's rule, which provided that the basis for denial of parole would not be revealed, was invalid. The Board was directed to provide reasons on parole denial. "A statement of reasons," the decision stated, "...would also serve as a suitable and significant discipline on the Board's exercise of its wide powers."<sup>29</sup>

The due process requirements set forth in Morrissey v. Brewer for parole revocation are more extensive than those employed in New Jersey for parole release.<sup>30</sup> While the courts have been active in establishing due process requirements for revocation hearings, they have been reluctant to usurp the legislative prerogative for setting standards for parole release since parole is considered an act of "penalative grace." The courts argue that "the parolee's conditional liberty is a right which is enjoyed but potentially lost when frustrated by revocation, while the parole applicant's liberty is a privilege sought but not yet possessed."<sup>31</sup>

<sup>27</sup> Id., p. 111.

<sup>28</sup> N.J.S.A. 11:70-13.

<sup>29</sup> Id., p. 130.

<sup>30</sup> Wright v. New Jersey State Parole Board, 58 N.J. 238, 277 A.2d 103 (1971).

<sup>31</sup> Morrissey v. Brewer, 42 S. Ct. 2593, 408 U.S. 471 (1972).

<sup>32</sup> 1975, Steven H., Chairman, Report of the Special Study Committee on Parole Reform of the New Jersey Association on Correction, "A Day Out of Wonderland" (February 12, 1975), p. 10.

There is no apparent reason why the due process provisions followed in parole revocation hearings should not be utilized for parole release hearings. However, it appears that such requirements for due process depend upon legislative initiative rather than court action.

Recommendation 5. It is recommended that the Legislature consider establishing the same due process provisions for hearings to grant parole as those which are currently utilized in parole revocation hearings such as: disclosure of evidence, the opportunity to present witnesses and documentary evidence, a written statement as to the evidence relied on and reasons for denying parole.

#### CRITERIA FOR GRANTING PAROLE

Finding 6. An examination of the State Parole Board's decision-making process indicates that the Board has no explicit criteria or standards for parole decision-making which results in a process that is neither objective nor accountable.

In order to grant parole, the Board must be of the opinion that "there is a reasonable probability that, if such prisoner is released, he will assume his proper and rightful place in society, without violation of the law, and that his release is not incompatible with the welfare of society."<sup>33</sup>

Within these general constraints imposed by a duty to protect the public from any potential criminal behavior of the parolee, the Parole Board is given complete discretion in establishing the criteria for release. The Board has the authority for establishing rules and regulations and the conditions under which parole is granted.

The Board does not have any specific formula or set of criteria for parole decision-making. The Board states that it "...reviews each case individually, thus a standardized set of requirements would be of no use to the Board and is, therefore, non-existent."<sup>34</sup>

#### State Parole Board Decision Survey

OFA staff conducted a five-month study of the State Parole Board action memos in order to determine the characteristics of offenders eligible for parole and to analyze the significance of these characteristics in the Board's decision-making process.

<sup>33</sup> N.J.S.A. 30:4-123.14.

<sup>34</sup> Letter, Nicholas D. Heil, Chairman of Parole Board to Edward White, Secretary of C.R.I.M.E. Program, August 5, 1974.

Action memos represent the Board's working files for use in the parole hearing. Information, regarding each offender who is being considered for parole, is obtained during the parole hearing, verified from other sources and recorded in the monthly memo. Data was collected and analyzed from these memos for all offenders whose parole hearings were held during July through November, 1974. The sample included 958 cases.<sup>95</sup> Nine factors were collected for each offender:

1. type of offender
2. number of minutes per hearing
3. commitment charge
4. number of previous convictions
5. current age
6. number of previous probations
7. number of previous paroles
8. problems (i.e. drug addiction)
9. Board's action or parole decision.

#### Characteristics of Offenders Eligible for Parole

The first objective of this analysis was to provide a composite view of the characteristics of eligible offenders. The data shows that all but two offenders considered for parole by the N.J. Parole Board during the five-month study had been previously convicted of crime and a majority had already been on parole and probation.

At least ninety (90) percent of the 894 offenders considered for parole by the State Parole Board during the five-month study period were male. Approximately two-thirds of the sample were under 34 years of age. Forty-one (41) percent of the offenders had been classified as having a drug problem.

More than half, or 54 percent, of those offenders considered for parole were serving time for offenses against persons such as homicide, armed robbery, assault, or rape. Seventeen (17) percent of the sample were convicted of crimes against property and 14 percent for narcotics offenses.

Sixty-four (64) of the 958 cases sampled had incomplete data. Therefore, the total sample for this OFA survey consisted of 894 cases.

Table 5 SAMPLE OF OFFENDERS ELIGIBLE FOR PAROLE, BY COMMITMENT CHARGE					
Number of Offenders					
485 (54%)	152 (17%)	128 (14%)	36 (4%)	93 (10%)	894 (100%)
Crimes Against Persons	Crimes Against Property	Narcotics Law Violations	Other, i.e. gambling	Multiple Convictions	Total
Source: OFA State Parole Board Action Memo Survey, December 4-6, 1974.					

A majority of these offenders had been previously convicted of crime. At least 55 percent of eligible offenders had been convicted of up to six other crimes and 45 percent had been previously convicted of seven or more crimes. One offender in the sample had been convicted of 33 previous offenses.

Table 6 SAMPLE OF OFFENDERS ELIGIBLE FOR PAROLE, BY NUMBER OF PREVIOUS CONVICTIONS							
Number of Offenders							
2 (-)	233 (26%)	260 (29%)	171 (19%)	141 (16%)	38 (4%)	49 (5%)	894 (100%)
No Prior Convictions	1-3	4-6	7-9	10-13	14-16	17-more	Total
Source: OFA State Parole Board Action Memo Survey, December 4-6, 1974.							

Most eligible offenders had been released on both probation and parole at least once. Fifty-three (53) percent of the sample had previously been on parole; 26 percent of these offenders had been under parole supervision two or more times. Similarly, 64 percent had been previously on probation at least once and 29 percent of them more than once. Therefore, a majority of the offenders eligible for parole had been on both probation and parole prior to their current offense.

Table 7  
SAMPLE OF OFFENDERS ELIGIBLE FOR PAROLE,  
BY NUMBER OF TIMES ON PROBATION AND PAROLE

Prob	Par	Prob	Par	Prob	Par	Prob	Par	Prob	Par	Prob	Par	
322 (36%)	420 (47%)	320 (36%)	244 (27%)	167 (19%)	131 (15%)	55 (6%)	59 (7%)	15 (2%)	28 (3%)	15 (2%)	12 (1%)	874 (100%)
No Prior Prob or Par		1		2		3		4		5 or more		Total

Source: OFA State Parole Board Action Memo Survey, December 4-6, 1974.

Parole Decision-Making

The second objective of this analysis was to determine if any characteristics of eligible offenders proved to be more significant than another in relation to the Board's final parole action or decision.

There are no stated guidelines for parole decision-making. According to Board policy, the merits of each case are considered individually. On the basis of policy, it certainly appears that the Board considers no characteristic or combination of factors to be more significant than any others in determining parole release. Therefore, the policy implies that regardless of their personal characteristics or prior criminal history, each eligible offender should be equally considered for release on parole.

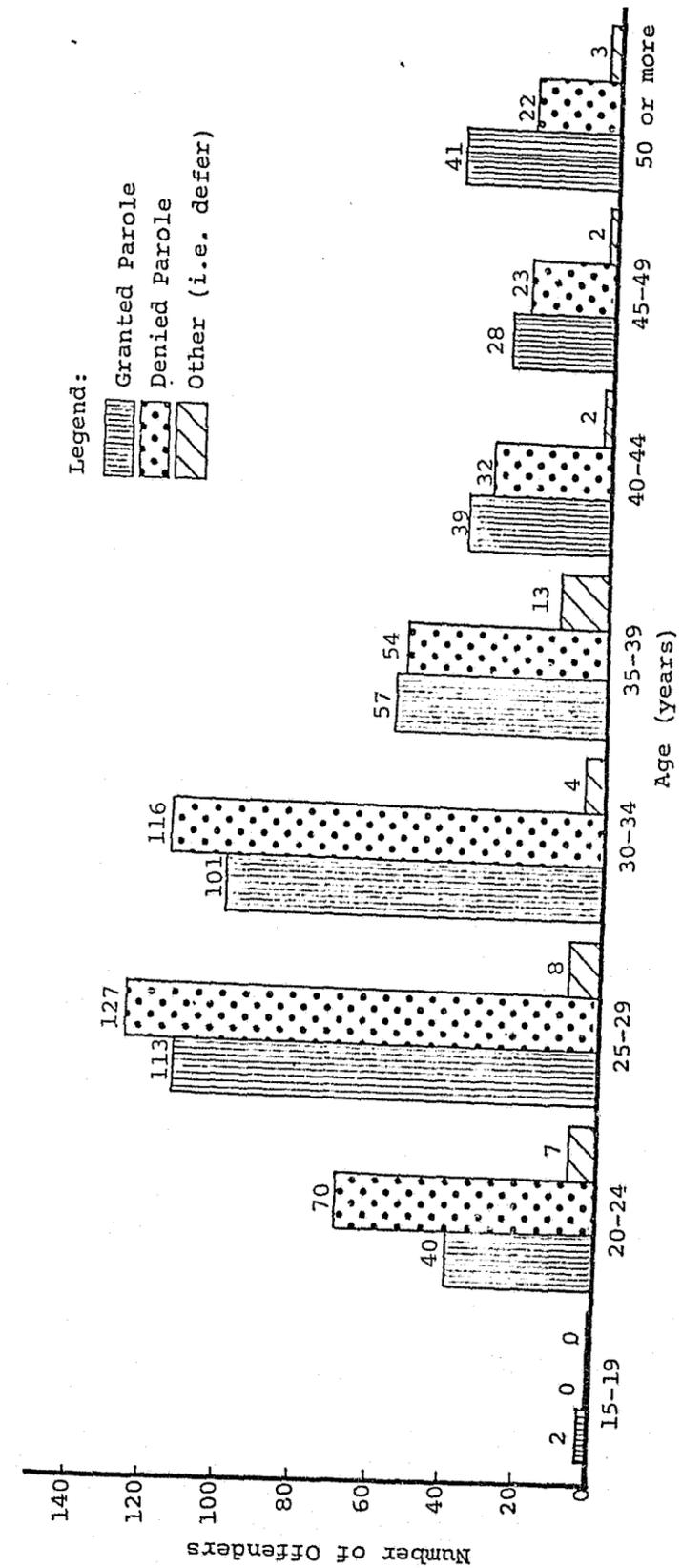
When the sample population is examined according to a variety of offender characteristics, the distribution of parole decisions is skewed. The following Figures are highly suggestive of the fact that individuals with certain characteristics are not being equally granted or denied parole.

For example, in the sample population, almost twice as many offenders between the ages of 20 and 24 years old were denied parole as were granted parole. And yet almost twice as many offenders 50 years or older were granted parole as denied. Therefore, younger offenders had been denied parole in greater proportion than older offenders. (See Figure 3.)

Of those offenders in the sample who had committed one to three prior offenses, 37 percent were granted parole and 59 percent were denied. Those offenders who had committed four to six prior offenses had a better chance of being paroled than those who had committed one to three offenses. (See Figure 4.)

And finally, the fewer times an offender was on parole, the more likely parole was granted. The data indicates there is an inverse relationship between those granted parole and the number of

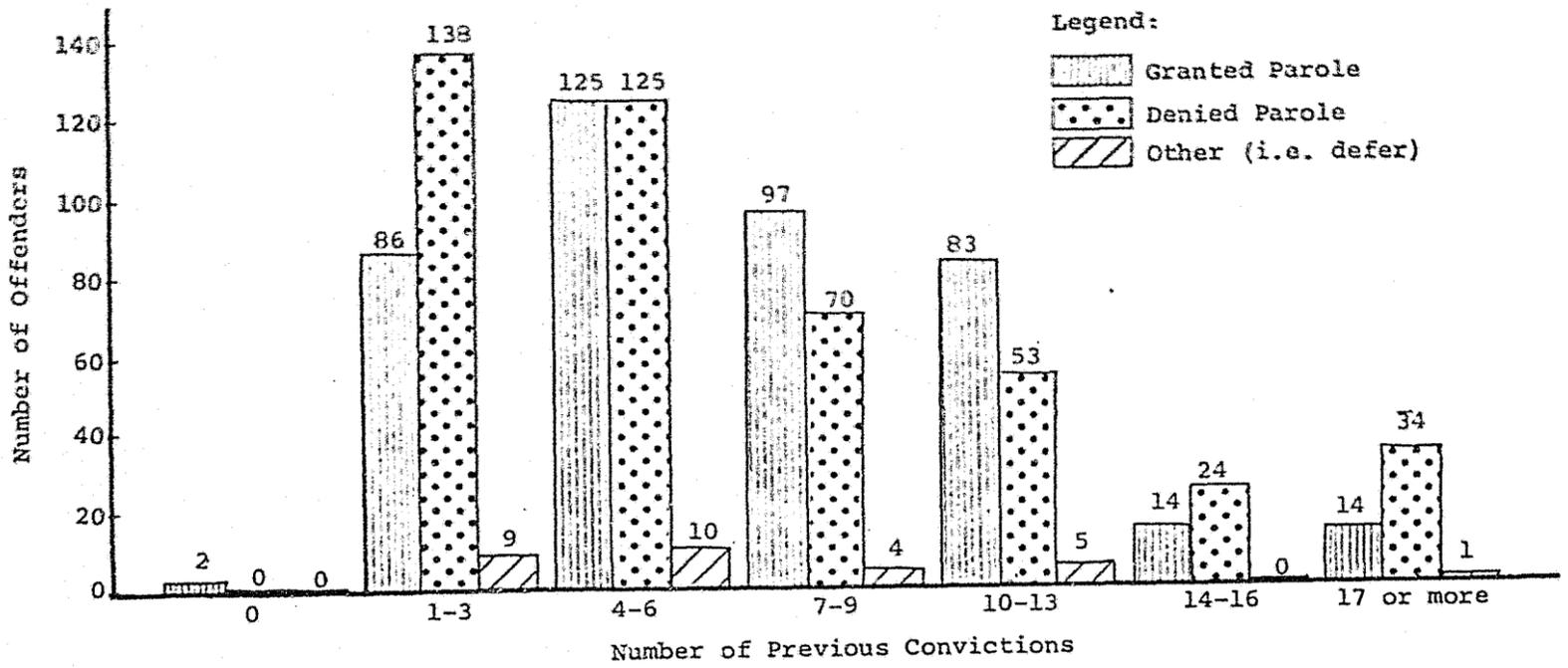
Figure 3  
SAMPLE OF PAROLE DECISIONS, BY AGE



Source: OFA State Parole Board Action Memo Survey, December, 4-6, 1974.

Figure 4

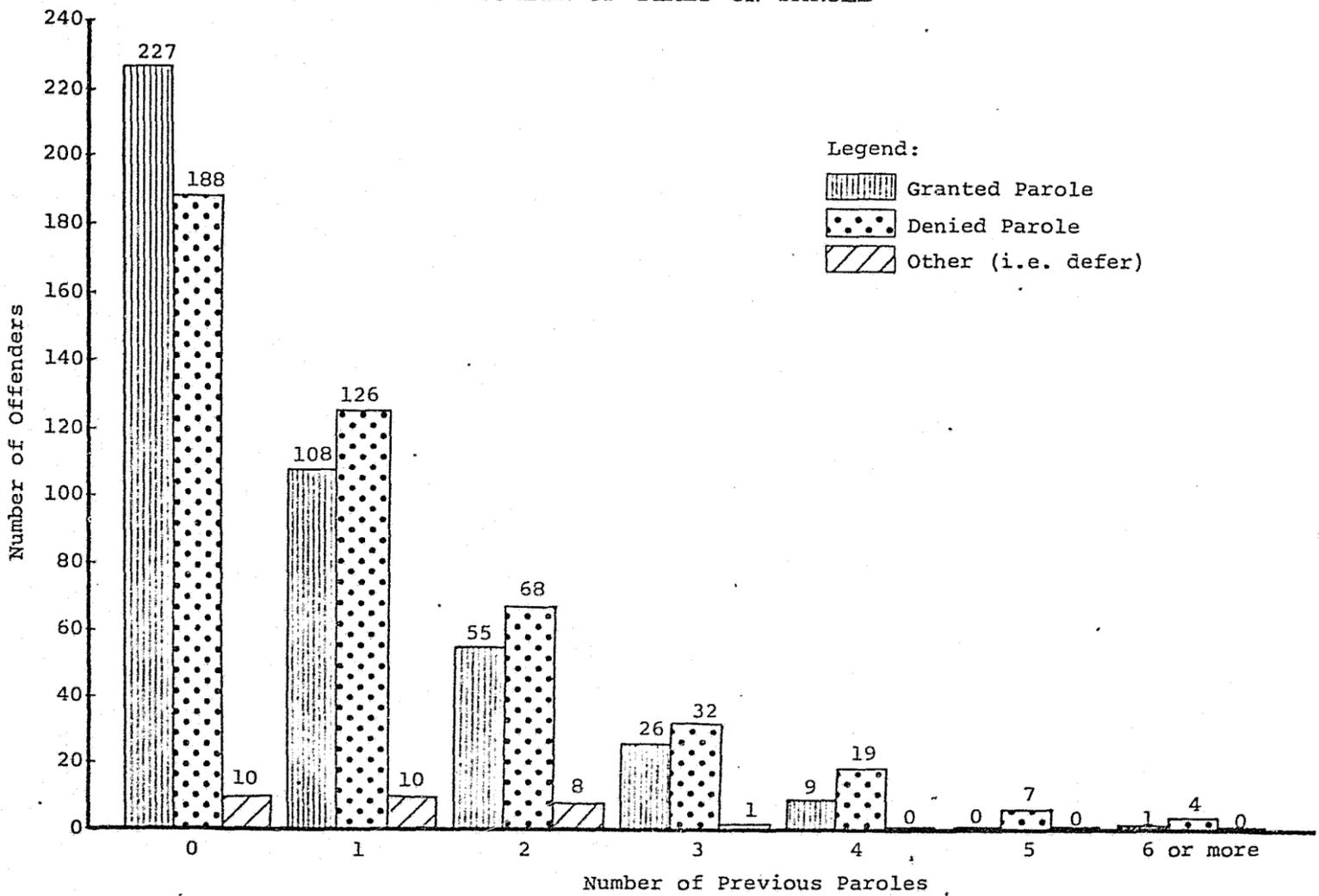
SAMPLE OF PAROLE DECISIONS,  
BY NUMBER OF PREVIOUS CONVICTIONS



Source: OFA State Parole Board Action Memo Survey, December 4-6, 1974.

Figure 5

SAMPLE OF PAROLE DECISIONS,  
BY NUMBER OF TIMES ON PAROLE



Source: OFA State Parole Board Action Memo Survey, December 4-6, 1974.

time the offender has been on parole. (See Figure 5.)

#### Discussion

If no decision-making criteria exists, no characteristic or combination of characteristics should affect parole decisions. However, the distribution of the sample population illustrates that decision-making patterns do exist, regardless of whether or not they are intended.

The operation of the State Parole Board is designed to ensure that an offender can be successfully reintegrated into society and that such a release is compatible with the welfare of society. These objectives are supposed to be achieved in the Board's determination of the individual's optimum release date and conditions of release. Examination of the realities of the Board's decision-making process reveals, however, that this process is neither objective nor accountable. While certain implicit standards may exist, the Board apparently has no explicit criteria or standards for decision-making.

Recommendation 6. In order to ensure rational and equitable parole decisions, it is recommended that the State Parole Board establish parole criteria which shall provide standards for the Board and the individual parolee and serve as a more adequate means for evaluating parole decisions against the objectives of the State parole system.

#### Findings

Finding 7. There are no standards to prevent an interminable period of incarceration between a favorable parole hearing and release on parole. According to an OPA survey, 30 percent of the sample cases accounted for a pre-parole incarceration period of six months or longer, rendering the parole plan invalid.

The State Parole Board not only has the responsibility for deciding whether or not offenders are fit to be released on parole but also for determining the date they are to be released.

Once an inmate has attained actual eligibility and has been judged fit for parole, the Parole Board has the authority to set a parole date, or release date, at any time prior to expiration of the minimum sentence.

The Parole Board is appraised of many facts that may be unique to each individual when making the final determination for release. Sometimes release will be delayed for several months because the Board believes an inmate should earn money in the work release program. Also, there are seasonal considerations, like holidays, that may create unnecessary social pressures for a newly

released parolee. The Board has the option to release certain inmates at the expiration of their minimum sentence, which can sometimes come years after initial eligibility. However, once an inmate is eligible and has been judged fit for release, why should the offender serve the minimum sentence which could delay release for years?

The parole release date should be effectuated as soon as possible. The most compelling reason to release with dispatch is that the parole plan upon which the decision is based is viable for only six months, at which time the parole plan expires. Release dates that are set more than six months in advance are technically illegal since they are established without benefit of a revised plan.<sup>96</sup>

In addition, the correctional institutions have limited resources and releases are considered desirable from a prison management perspective. Also, an interminable delay between a favorable parole hearing and release can cause serious morale problems for the prospective parolee.

In order to determine the average length of time between a parole decision and a parole release, a sample of 198 parole release dates was taken from all positive parole decisions made by the State Parole Board from November, 1973 through November, 1974.<sup>97</sup>

It should be noted that this analysis does not account for the time differential between the best and actual eligibility dates which is estimated at approximately one month.<sup>98</sup> These data are based on the information available to the State Parole Board at the time the release decision is made.

In the sample, the period of incarceration after a favorable parole decision ranged from seven days to 1,233 days or from one week to three and one-half years. The average or mean length of stay pending release was 152 days or approximately five months.

Of the sample cases, 35 inmates were released on parole at the expiration of their minimum sentence. Thirteen of these cases accounted for a pre-parole incarceration period of six

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96. N.J.S.A. 30:4-123.19.

97. For purposes of this analysis, every seventh favorable parole decision was chosen, not including those for the county offenders, for a total of 208 case decisions. Ten cases had incomplete information which left a total of 198 cases for the sample.

98. Interview with John J. Fannan, Administrative Assistant to the SPB, February 19, 1975.

months or longer. However, a total of 66 cases served at least six months or longer before being released on parole. Therefore, the parole plan had expired in at least 30 percent of the cases.

*Recommendation 7. It is recommended that parole releases be effectuated as soon as possible once the Parole Board judges an eligible offender fit for parole. No parole release date should be set further than six months from the time of the hearing without the submission and consideration of a revised parole plan.*

#### REVOCATION OF PAROLE

A parolee may be returned to prison for either the violation of a parole condition or the commission of a new crime. The State Parole Board has authority to revoke parole whenever it appears that the parolee "has violated the terms, conditions, and limitations annexed to his parole and has given evidence by his conduct that he is unfit to be further at liberty, or if he shall be convicted of crime in this or any other State committed after the date of his parole."<sup>99</sup>

Revocation legislation does not outline any procedure for revocation and, prior to 1972, the process was totally subject to the Board's discretion. At that time, revocation of parole was automatic. Hearings were post facto and the offender was required to show cause why parole should not be revoked.

The U.S. Supreme Court decision, Morrissey v. Brewer provided for certain minimum due process requirements for parole revocation. Chief Justice Burger held that such requirements include a preliminary inquiry to determine probable cause to be conducted at or reasonably near the place of the alleged parole violation and as promptly as convenient after arrest; and, a final revocation hearing conducted with certain specified due process procedures.<sup>100</sup>

The State Parole Board has recently developed procedural guidelines which are intended to implement the Morrissey v. Brewer decision within the framework of New Jersey's correctional and parole system. The guidelines outline the procedure for both a Probable Cause and a Final Hearing. These procedures indicate that the parole revocation process is being conducted in compliance with the law. (See Appendix F.)

#### TIME SERVED AFTER REVOCATION

Finding 8. Existing legislation does not clearly establish whether a person whose parole has been revoked because of a conviction for a new offense

serves sentence on the second conviction consecutively or concurrently with the first.

Finding 9. In those cases where an inmate is on parole for one offense, while serving sentence for another, the statutory criteria for granting parole appear irrelevant to parole for the first sentence. Since the inmate is not going to actually be released until having served or been paroled from the second sentence, the inmate's ability to operate successfully in society is not decisive.

The Board of Trustees for the Youth Institution Complex has a policy of retaining parole violators for one to 12 months.<sup>101</sup> The State Parole Board also has discretion over the length of time, if any, the parolee should serve in prison as a result of revocation. Unless sooner reparaoled by the Board, the statutes specify the procedure for calculating the balance of time after revocation. N.J.S.A. 30:4-123.24 states:

A prisoner, whose parole has been revoked because of a violation of a condition of parole or commission of an offense which subsequently results in conviction of a crime committed while on parole, even though such conviction be subsequent to the date of revocation of parole, shall be required, unless said revocation is rescinded, or unless sooner reparaoled by the Board, to serve the balance of time due on his sentence to be computed from the date of his original release on parole. If parole is revoked for reasons other than subsequent conviction for crime while on parole, then the parolee, unless said revocation is rescinded, or unless sooner reparaoled by the Board, shall be required to serve the balance of time due on his sentence to be computed as of the date that he was declared delinquent on parole.

There is a distinction between those whose parole is revoked for a new conviction and those whose parole is revoked for other reasons. The former serves back-up time from the date of release where the latter serves time from the date declared delinquent.<sup>102</sup> However, the Board has the authority to rescind revocation or reparaole the individual at any time.

Nevertheless, the statutes do not clearly state whether the new sentence is served consecutively (one after another) or concurrently (at the same time) with the old sentence. This confusion is especially true in cases where the judge makes no such determination at the time of sentencing. Certain case law has determined that no such judicial presumption implies a consecutive sentence. In

101. John Gregoria, Parole Revocation Hearing Officer for the Youth Complex, in a telephone interview, November, 1974.

102. N.J.S.A. 30:4-123.24.

99. N.J.S.A. 30:4-123.23.

100. Morrissey v. Brewer, 92 S. Ct. 2593, 408 U.S. 471 (1972).

Bergen County, such a determination cannot be implied; judges must declare their intent.

In any event, there must be either a parole or service of the maximum on the first sentence before service of the second sentence begins. Parole under such circumstances is called "cell parole." Cell parole refers to those cases where an inmate is on parole for one offense while serving a sentence for another.<sup>103</sup>

Under these circumstances, the statutory criteria for granting parole seem irrelevant to parole of the first sentence. Since the inmate is not going to actually be released until having served or been paroled from the second sentence, the inmate's ability to operate successfully in society is not decisive. The Sentencing Manual cites this dilemma: "If the test (parole criterion) is conscientiously applied, the determination would have significance upon the future determination on parole for the second sentence while making any service under that sentence inherently oppressive and punitive. The net effect is to delay meaningful consideration of parole under the first sentence, thereby adding appreciably to the time such people must serve."<sup>104</sup>

*Recommendation 8. It is recommended that the Legislature establish whether a person who is convicted of a second offense, while on parole from another sentence, should serve the second conviction either consecutively or concurrently with the first conviction. If the Legislature intends to leave such discretion to the sentencing judge, it is recommended that the Court require every judge to make a specific determination in all such cases.*

*In addition, it is recommended that the Legislature establish criteria for granting parole under such circumstances.*

#### INFORMATION

An important ingredient in the parole determination process is the offender's case file, which contains a number of reports prepared by the courts, the institutions, the parole authority and parole officers. It is this data upon which parole decisions are based.

New Jersey statutes require that the State Parole Board have access to a complete set of information regarding the inmate.

"The board shall have the report of the warden, keeper or chief executive officer of the institution wherein the prisoner is confined with a

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103. Donnelly v. New Jersey State Parole Board, 91 N.J. Super 302, 220 A. 2d 117 (1966).

104. New Jersey Administrative Office of the Courts, Sentencing Manual for Judges (July, 1971), p. 62.

detailed statement of his institutional record of behavior, discipline, type and manner of work performed, his own efforts to improve his mental and moral condition and his attitude toward society and the law enforcement officials responsible for his arrest, conviction and sentence.

Accompanying the report of the warden, keeper, or chief executive officer shall be a statement of the physical, mental and psychiatric examination given the prisoner during the period of his confinement and the results thereof."<sup>105</sup>

The State Parole Board is given the responsibility to effectuate the collection of inmate records. N.J.S.A. 30:4-123.31 states:

"The Board shall keep or cause to be kept and maintained full and complete records of every prisoner released on parole. Such records shall contain, among other things, ...the criminal record of each prisoner, ...and all other information and reports referred to herein, as well as the reports of the parole officers and the Division of Parole with relation to such prisoner. Such records shall be filed in the central office of the Department of Institutions and Agencies and shall be organized...so that complete information on each prisoner on parole will be immediately available. The board may make such reasonable rules as are necessary to protect the privacy of such records..."<sup>106</sup>

The flow of offender-related data throughout the parole system is analyzed in this section of the report. First, a description of how information is generated and distributed among the parole agencies will be presented. (See Figure 6.) Second, the format of offender-related data and the degree of regularity with which it is collected will be discussed. The data for this informational analysis was generated from an OFA survey of parole decision files.<sup>107</sup>

#### Court-Related Data

Information about an offender is first collected by the court in order to supplement the judge's knowledge of the accused defendant.

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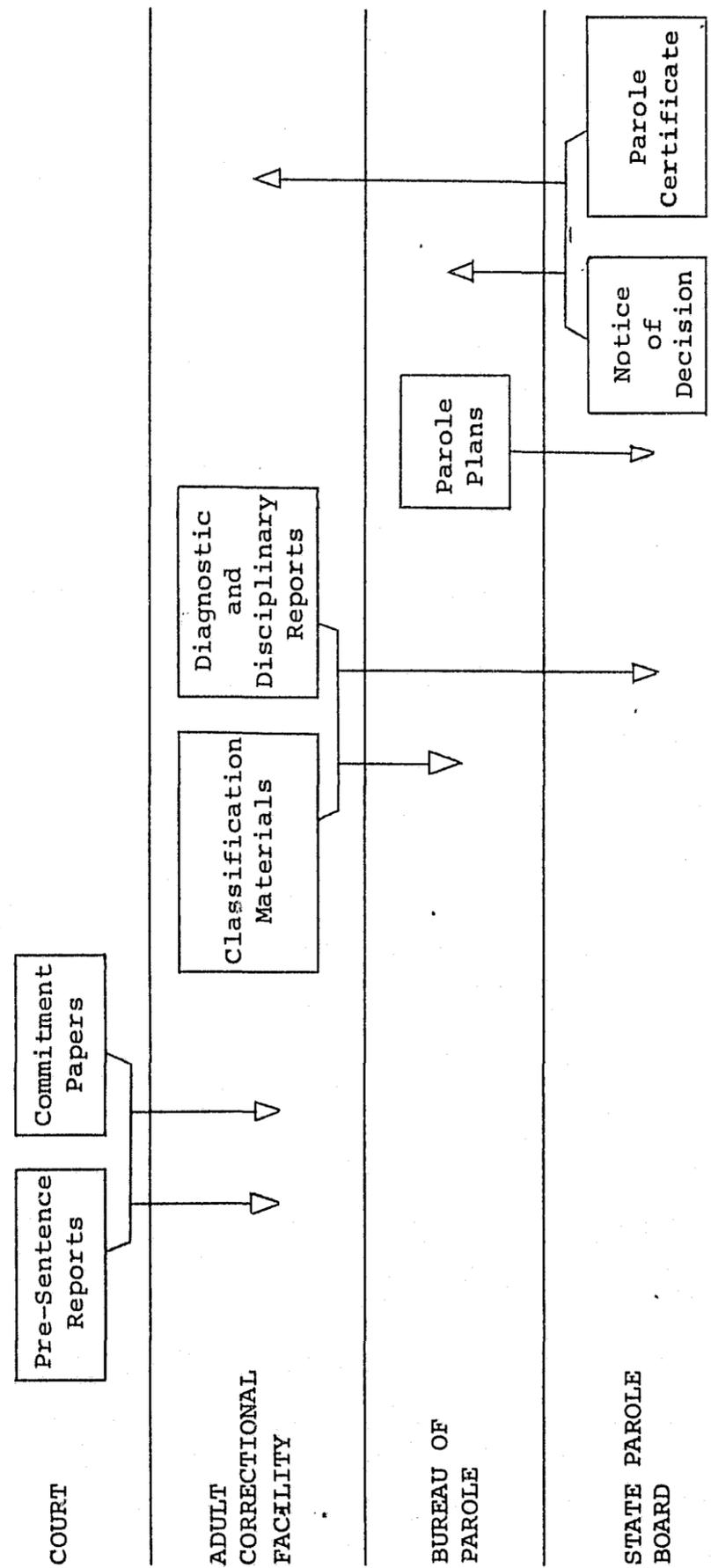
105. N.J.S.A. 30:4-123.18.

106. N.J.S.A. 30:4-123.31.

107. OFA surveyed 100 case files compiled for use in SPB's April Parole Hearings.

Figure 6

COLLECTION AND DISTRIBUTION OF OFFENDER-RELATED DATA



Note: For purposes of this simplified chart, the square represents information collection and the arrow signifies its distribution point.

Source: Compiled by OFA staff.

The County Probation Office collects the initial social and criminal history of the individual for its pre-sentence report. This report is standardized among all probation departments in the State. The pre-sentence report includes such information as: official and defendant's version of offense; criminal history, including previous institutionalization; family history; educational achievement; employment history; financial status; and other items.

These data serve as a valuable source of classification material for the correctional authorities and eventually for the parole authorities in determining whether or not the purpose of the sentence has been accomplished.

This pre-sentence report, along with the judicial statement of reasons for the sentence, is sent to the custodial institution within ten days of sentencing according to court law R. 3:21-2.

Classification Material

Four months prior to an inmate's scheduled parole hearing, the State Parole Board requests the appropriate classification material. This material includes computations for the sentence and sentence credits; a classification summary; medical and psychological evaluation reports; institutional reports on housing and work assignments; and disciplinary reports.

A majority of the classification information is sent to the Board in summary form. Summaries are compiled because the classification departments do not have duplicating equipment to copy the original information sources. For example, the sentence data is a summary of the commitment report. The prior criminal history is a digest of the State Bureau of Investigation report. Disciplinary actions are summarized too. This is a questionable procedure since each summary may vary according to a prison employee's subjective opinion and could be potentially misleading or even inaccurate.

Classification personnel also collect diagnostic reports from housing and work supervisors and psychologists. These reports are an important part of the inmate's file, used for evaluating the inmate's institutional adjustment.

The Parole Board has recently expressed concern over the diagnostic value of the psychological and psychiatric reports prepared for the Board. Among the problems cited by the Board were the use of number scales and check lists.<sup>108</sup> Such methods are subject to a variety of interpretations and have limited value in determining a person's parole preparedness.

108. Memo from Nicholas D. Heil, Chairman of the State Parole Board to William H. Fauver, Director of the Division of Correction and Parole, September 20, 1974.

After reviewing a number of psychological and psychiatric reports, the Board concluded "...that these reports are becoming less informative, more prescriptive than diagnostic and consequently less useful."<sup>109</sup> This evaluation was based in part on a review of psychological reports prepared by seven other states which led the Board to conclude that the New Jersey State Parole Board "...is comparatively inadequately informed with respect to the psychological strengths and weaknesses of the inmates it considers for parole."<sup>110</sup>

Classification submits an Assignment, Disciplinary, and Transfer Progress Report so that the Board can assess the inmate's institutional behavior. However, the referral system for disciplinary information is neither organized nor adequate. Many infractions are never reported to the Board since they are dealt with administratively within the institution. For example, the Board was notified that an inmate was reported "late" in returning from work-release. Actually, the inmate had been arrested for burglarizing a store and was "late" because he was being booked by police.<sup>111</sup>

Reporting institutional disciplinary infractions is particularly important for those inmates whose parole date has already been set. A report of a serious infraction or illegal behavior might demonstrate to the Board that the inmate is not ready to return to the community. In fact, the Board may rescind a parole decision prior to an inmate's release.

In April, 1974, the Board reported: "Over the past two or three months, we have been notified of infractions only in the form of a telephone call, usually one week to 10 days prior to a man's release date from the Classification Department of the Institutional Parole Office, asking what action we were planning to take. In almost every case, the inmate's infraction has occurred some 4-8 weeks previous and we have had no notice at all of the charge."<sup>112</sup> The Parole Board recently began recording all reported infractions for those inmates with parole dates set. From December, 1974 to February, 1975 the Board's Parole Recision Action Record lists 25 infractions, only 15 of which were reported by the institutions themselves. Ten infractions were indirectly derived by the Board itself from the Daily Census Report.<sup>113</sup>

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109. Ibid.

110. Ibid.

111. The Sunday Star Ledger, October 6, 1974, p. 43.

112. Memo from Nicholas D. Heil, Chairman of the State Parole Board to William H. Fauver, Director of the Department of Correction and Parole, April 18, 1974.

113. During this period, there was no record of any infractions from Leesburg Prison.

The final information collected for the parole hearing is the parole plan which is submitted by the Parole Bureau. Developed in conjunction with the inmate, the parole plan summarizes the inmate's perspective employment and residential plans. No release can be effected unless the Board is satisfied that this is a suitable plan.<sup>114</sup>

#### Parole Decision Papers

At the time of the parole hearing, the Board must have a complete set of classification material including the judicial papers and diagnostic reports. The Board must also have a copy of the parole plan from the Parole Bureau. The Board also has access to any correspondence it has received from judges, prosecutors, the public, or the inmate's themselves, pertaining to each inmate. This total compilation of data is very important since the inmate's institutional progress and potential for future criminal activity are factors in the Board's decision-making.

Within one to six weeks after the hearing, the Board issues its notice of decision. Prior to an inmate's release, a parole certificate is issued. The responsibility for the inmates and their records is then transferred to the Parole Bureau.

#### Parole Supervision Material

The Parole Bureau maintains continued contact with the parolee during the parole period. The information the parole officer collects during the parole period is compiled in Chronological Supervision reports. This report documents the circumstances of each official contact with the parolee or their family. Certain community contacts with the court, the police, or social agencies are recorded in separate reports.

#### Parole Decision Survey

Finding 10. An OFA parole decision-file survey provides evidence that in approximately 50 percent of the cases considered for parole during the April, 1975 hearings, the Board had to make a decision based on incomplete or missing information. This indicates that the systematic collection and distribution of complete information about an offender, as established in N.J.S.A. 30:4-123.18 and 4-123.31, is not being fulfilled.

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114. N.J.S.A. 30:4-123.19.

In order to analyze the effectiveness of the information collection and distribution system for offender-related data, 100 cases were randomly sampled from 236 files prepared for the Board's April parole hearings.<sup>115</sup> Ten standard data items from each file were analyzed to see if they were complete or missing. The data items under examination included court-related data, classification material, diagnostic reports, and the parole plan. This information provides the basis for the parole decision.<sup>116</sup> (See Table 8.)

The offender's parole file should be considered an essential administrative and decision-making tool. It provides a personal and criminal profile of individual offenders, including a descriptive and evaluative record of their prison and parole experience. However, in order to be an effective resource, the files must provide comprehensive and up-to-date information. According to results of the survey conducted by OFA, the parole files do not fulfill their potential as an effective information resource. The information collected for the parole hearing was irregular and incomplete. Eleven files had no information at all while five had nothing other than the classification summary.

Very few forms used for recording offender-related data were standardized. Each institution recorded different data about each offender. Specific knowledge about different institutional programs was a pre-requisite for understanding the difference in the records. In some cases, even that knowledge did not entirely account for its variability.

None of the sample files contained a copy of the pre-sentence report or a copy of the judicial statement of reasons. Therefore, it appears that, other than a brief summary of the pre-sentence report in the classification summary, the Board has no access to any court-related data.

Over one-fourth, or 28 percent, of the items in the files that were studied were missing the classification material that informs the Board of the inmate's social and criminal background and the circumstances of the offense for which the inmate is serving sentence.

The psychological and psychiatric reports used by the Board to evaluate the success of the inmate's institutional adjustment were incomplete or missing in 52 percent of the cases. Included in this figure are 33 files which had incomplete or missing institutional progress reports. These reports are used to assess the offender's institutional adjustment with respect to work and housing. For

115. The sample represented 42 percent of the total number of cases scheduled for the April, 1975 hearings.

116. In some cases, the pre-sentence report is made available in the institution at the time of the hearing. Without knowing the previous history of each individual case, observations were based only on the information that was available.

Table 8  
PAROLE DECISION-FILE SURVEY,  
APRIL, 1975

	Complete	Incomplete	Missing	Total
<u>COURT-RELATED DATA</u>				
Pre-Sentence Report			100	100
Reasons for Commitment			100	100
<u>CLASSIFICATION MATERIAL</u>				
Classification Summary	66	22	12	100
Prior Criminal History	72		28	100
Pre-Sentence Summary	78		22	100
<u>DIAGNOSTIC REPORTS</u>				
Psychological Admission and Progress Report	32	3	65	100
Medical-Psychiatric Admission and Progress Report	45	10	45	100
Assignment, Disciplinary, and Transfer Progress Report	67	15	18	100
Report to State Parole Board	62	20	18	100
<u>PAROLE PLAN</u>				
Parole Plan	82	2	16	100
<u>TOTAL</u>	504	72	424	1,000

Source: Compiled by OFA Staff, May 8-9, 1975.

these cases, none of the information compiled for the hearing gave the board any insight into the offender's adjustment in prison since such information was available prior to incarceration.

The item that appeared with the most regularity was the parole plan. At least 84 files had a copy of the plan.

#### Conclusion

The survey provided evidence that in approximately 50 percent of the cases considered for parole during the April hearings, the board had to make a decision based on incomplete or missing information.<sup>117</sup> This is contrary to New Jersey legislation regarding such matters.

*Recommendation 9. It is recommended that the chairman of the State Parole Board, in conjunction with the Commissioner of the Department of Institutions and Agencies, reorganize the information system for offender-related data to comply with legislative standards and to provide a means for every parole agency to collect and distribute accurate, complete, and up-to-date information regarding an offender who is being considered for or being supervised on parole.*

*Reorganization of the information system should address the following procedures and problems:*

- 1. The institutional classification departments should have the capability to determine and distribute accurate, up-to-date sentence computations at all times.*
- 2. Sufficient equipment should be made available to allow classification departments to distribute complete copies, rather than summaries, of classification data, including the pre-sentence report.*
- 3. The State Parole Board and the institutional professional staff should develop a more meaningful diagnostic format for psychological and psychiatric reports. The question of confidentiality should be addressed and whether inmate access would affect the quality of such reports.*

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<sup>117</sup> For every 99 out of 100 samples taken, the percent of the total population or number of files that would be incomplete would fall between 40.2 percent and 59.8 percent.

- 4. All disciplinary actions pertaining to an inmate, occurring prior to parole release, should be referred to the State Parole Board, as soon as possible.*
- 5. All offender-related data, including the parole plan, should be distributed to the State Parole Board in advance of the parole hearing to allow the Board sufficient time to thoroughly review the data. Offenders should not be penalized by a deferred decision in those cases where a complete set of data is not available at the time of the hearing.*

## CHAPTER FOUR: PAROLE SUPERVISION

### Introduction

This Chapter outlines the policies and procedures of the final stage in the parole process: supervision. Ideally, parole supervision provides parolees with the necessary controls and assistance to allow them to reintegrate into society as productive and law-abiding persons. The Bureau of Parole, an operational Bureau within the Division of Correction and Parole, is responsible for the parole supervision of adult offenders, youth offenders, and most juveniles above the age of 14.

This Chapter will discuss the policies and procedures that encompass the parole supervision process, including a description of the types of parole officers and caseload assignments. The Chapter will address the problem of parolee unemployment and compliance with the diversity of parole conditions.

### PAROLE OFFICERS

There are several types of parole officers who function within the State parole system. This section will briefly outline the types of parole officers and their duties and responsibilities.

The Chief is the administrator of the Bureau of Parole which is an operational Bureau within the Division of Correction and Parole, Department of Institutions and Agencies. The Bureau's field operation is overseen by seven Supervising Parole Officers. In addition to serving as liaison for operational procedures, the Supervising Parole Officers administer special projects and serve as hearing officers for the Probable Cause hearings.

The nine District Offices are supervised by the District Parole Supervisors. The district's caseload responsibilities are handled by the field Parole Officer. In developing and maintaining a program of supervision for the individual parolee, the Parole Officer provides assistance with work, education, or personal concerns. They also investigate the parolee's community parole plan.

In addition to the field offices, the Bureau of Parole is represented at each correctional institution by an Institutional Parole Officer. These officers counsel the inmates on parole matters at least once during the pre-parole interview or any time upon request. The institutional parole officer handles the administration of parole release.

122. The Bureau of Parole's former policy prohibited parole officers to supervise individuals of the opposite sex, affected the efficiency and effectiveness of its operation by assigning disproportionately higher caseloads for men.

The total number of parolees under supervision are divided into caseloads for each parole officer. According to the Bureau's most recent calculation in its Annual Report, 1973, the average male caseload was 16 parolees. The average female caseload was 11. In view of past trends, the Bureau anticipates an increase in caseloads.

Caseload assignments are made on the basis of several factors. The Bureau of Parole operates two special caseloads: one for inmates and another for those released at the expiration of their sentence but who are not actually on parole. (See Section 11.) The primary criteria for regular caseload assignments is geography since there are nine district parole offices throughout the State. Every parole officer has the responsibility for a certain geographic area within each district.

The second criteria for caseload assignments was sex. The former Bureau of Parole had a policy that prohibited the supervision of offenders by parole officers of the opposite sex. Male parole officers were allowed to supervise only male parolees and female parole officers supervised only female parolees.

In a national survey of parole and probation departments conducted in 1971, 42 State agencies employed both men and women.<sup>122</sup> Although the routinely assigned caseloads to parole officers of the opposite sex, nine agencies made such assignments selectively, as mentioned, including New Jersey's Bureau of Parole, never assigned women to supervise male parolees or probationers.<sup>123</sup> New Jersey's Hudson County Probation Department, however, regularly assigned officers to mixed caseloads.

This policy was attacked by the New Jersey Parole Officer's Union as one that affected the efficiency, effectiveness, and morale of the Bureau.<sup>124</sup> The Union's position was upheld by the State Department of Civil Service, stating that such a policy was contrary to the Equal Employment Opportunity Act. Consequently, the policy has been recently changed to allow mixed caseloads.

Bureau of Parole, Annual Report (July 1, 1972 - June 30, 1973), p. 8.

122. The agencies employed no women.

123. John Scott, "Women in Probation and Parole," Crime and Delinquency, 19 (January, 1973), pp. 66-71.

124. Civil Service Board, October 5, 1974.

Such a change in policy will permit the hiring of more women and have the effect of decreasing the overall caseload size. Formerly, the average male caseload was approximately 25 percent larger than the average female caseload.<sup>122</sup>

Recommendation 10: *It is recommended that the Bureau of Parole continue its revised policy of making parole caseload assignments regardless of sex since such a policy reduces unequal caseload size.*

#### HOUSING AND COMMUNITY ALTERNATIVES

Most parolees locate and maintain their own residences. Parolees with no relatives, or very limited resources, present placement problems. These parolees are dependent upon assistance from their parole officers and the community.

New Jersey has developed one short-term alternative for certain placement cases. The Bureau of Parole operates a community service center for parolees. This 24-hour diagnostic center located in Jersey City is known as P.R.O.O.F. (Parole Resource Office and Orientation Facility). P.R.O.O.F. offers readjustment assistance for parolees anytime after their release from prison.

At maximum capacity, the facility can handle 15 parolees. From December, 1969 through 1974, P.R.O.O.F. provided services to 483 parolees.<sup>123</sup>

P.R.O.O.F. has certain eligibility requirements. Candidates for P.R.O.O.F. must be male, at least 16 years of age, and in need of temporary supportive housing, training, or assistance. Admission requirements further restrict the admission of arsonists, sex offenders, those with serious psychological problems, and those actively addicted to drugs.<sup>124</sup> Enrollment is voluntary.

The only available evaluation of the P.R.O.O.F. facility was compiled by the Bureau in 1972. At that time, the facility had serviced 200 parolees. The evidence indicates that while the facility aided many residents in obtaining employment, there was no appreciable affect on the recidivism rate. Nine percent of the residents

122. Bureau of Parole, Annual Report FY 1973, p. 8.

123. W. Faulkner, Program Officer for P.R.O.O.F., N.J. Bureau of Parole, in telephone conversation on March 6, 1975.

124. According to Mr. Faulkner, the restriction against drug addicts has been relaxed somewhat as the facility's capacity to treat these individuals improved. The restriction that all P.R.O.O.F. residents must be employed has also been relaxed.

was arrested while in residence and 34 percent were arrested within the year of termination.136 Parole was revoked for at least 27 percent of the former residents.137

Obviously there is a need to provide as many community resources as possible to assist the parolees. There is evidence, however, in light of some related statistics, that P.R.O.O.F. is not as effective as it should be. The Bureau should update its statistics and evaluate the progress of the program in light of the statistics.

Paragraph 17. Almost half of the parolees under supervision are unemployed or unemployable and the income for those who are employed is under the near poverty level. Consequently, it appears that the State Parole Board is not fulfilling its legislated responsibility, as established in P.L.A. 1969-1970, to ensure that offenders are likely to be economically self-sustaining after parole release.

A significant problem confronting the parolee upon release is obtaining and maintaining employment. Legislative guidelines require that the parolee's prospective vocational plans are an important consideration in releasing an offender. According to P.L.A. 1969-1970, "...no release on parole shall be effected... unless the board is reasonably satisfied that the prisoner has a suitable community parole plan with viable means of support or is likely to be initially employed in self-sustaining employment on release." In addition, most parole certificates specify that parolees are required to seek and maintain employment as a condition of parole.

Nevertheless, according to figures established by the Department of Parole, in 1973, only 57 percent of those under supervision in New Jersey for that year were classified as employed. Some parolees earned an average of \$3,040 annually. At least 32 percent of the women from Clinton, 27 percent of the youth offenders, and 20 percent of those from the State Prison were unemployed that year. The rest were classified as unemployable. (See Table 9.)

Thus, almost half of the parolees under supervision, in 1973, were unemployed or unemployable. The income for those that were employed was under or near the poverty level.138 This is an unac-

ceptable situation. See A. Busit, "Parole Resource Office and Orientation Facility: Statistical Report, December, 1969-June, 1972," January, 1973, pp. 4 and 9.

1969, p. 11.

In 1972, the poverty level for a single head of household was \$2,100 and \$4,275 for a family of four, as determined by the U.S. Department of Labor.

Table 9

REPORT ON EARNINGS OF PAROLEES  
FOR CALENDAR YEAR 1973

Institution	Unem- ployed	Unem- employable	Employed	Estimated Earnings <sup>2</sup>	Verified Earnings <sup>2</sup>	Period Supervised					Total		
						1 day - 3 mos.	4 mos. - 6 mos.	7 mos. - 9 mos.	10 mos. - 12 mos.				
Correctional Institution for Women	178	32%	153	28%	217	40%	\$ 148,106	\$ 157,853	104	97	114	233	528
Youth Correctional Institutions	1,925	27%	1,268	18%	3,911	55%	4,561,530	5,466,211	1,497	1,346	1,173	3,088	7,104
Annandale	708	30%	329	14%	1,290	56%	1,259,061	1,685,581	520	440	391	976	2,327
Bordentown	703	26%	565	21%	1,453	53%	1,796,176	2,279,126	533	531	426	1,231	2,721
Yardville	514	25%	374	18%	1,168	57%	1,506,293	1,501,504	444	375	356	881	2,056
State Prison	514	20%	434	16%	1,675	64%	2,699,994	4,270,200	584	466	457	1,116	2,623

1. Those considered unemployable include those classified as missing, in custody, attending school, homemakers, or incapacitated.

2. Earnings verified by W-2 forms.

Source: N.J. Bureau of Parole, Annual Report of Parolee Earnings, 1973, June 24, 1974.

employment in light of legislative standards and the relationship between unemployment and recidivism.<sup>130</sup> It appears that the Board is not fulfilling its mandate to ensure that offenders are economically self-sustaining after parole release.

Paragraph 11. It is recommended that the Board should thoroughly review every community program, in light of the current unemployment figures, to determine, and reflect every community program, that will reflect suitable arrangements for maintaining employment. In developing the plan, the Bureau of Parole should use every possible resource for employment opportunities to ensure that employment opportunities are available prior to their release on parole.

Paragraph 13. There are at least four separate sets of parole conditions being used in New Jersey which present different standards of conduct for those released from each institution. Such inconsistency presents a serious problem for the parolees who must live by these standards and the parole officers who control the behavior by them.

Upon release, the parolee enters into and executes a written agreement with the paroling authority. This agreement, recorded in the parole certificate, stipulates the terms and conditions upon which parole is granted. The conditions of parole are established by the paroling authority.<sup>131</sup>

In addition to the standard conditions cited on each certificate, the paroling authority has the power, where applicable, to impose special conditions for an individual offender. These conditions may include participation in a drug or alcohol treatment program, payment of outstanding fines, psychiatric care, etc.

According to an article by Nat Arluke, the Chief of the New Jersey Bureau of Parole, conditions of parole "...should be formulated to aid to successful adjustment rather than as punitive restrictions...if they are to serve as positive guides in the development of acceptable behavior patterns, they must be administered in a manner that will finally permit the parolee, on release from parole supervision, to lead the life of a normal citizen. The rules

Daniel Glaser, The Effectiveness of a Prison and Parole System, 2nd ed. (New York: Robbs-Merrill Co., Inc. 1969), Chapter 14.

N.J.S.A. Title 17:4-108; 4-123.6. See Appendix H for a copy of the State Parole Board Certificate of Parole.

must be reasonable, practical, and within the intent of the law and should not require behavior that is illegal, immoral, or impossible."<sup>132</sup>

Currently, there are at least four separate sets of parole conditions being used in New Jersey correctional institutions.<sup>131</sup> Each type of institution has developed different standards of conduct for its released offenders. The resulting inconsistency and ambiguity presents a serious problem for offenders who must live by these conditions and parole officers who must judge behavior by them. A comparison of the four types of parole certificates illustrates this dilemma.<sup>132</sup> (See Table 10.)

Behavioral expectations are different for males and females. While all males are required to support dependents, there is no such stipulation for women. Also, female indeterminates apparently are exempt from the requirement to be steadily employed.

The degree of compliance to parole conditions varies considerably. For example, while most parolees are required to live only in approved residences, male youths need only "follow reasonable advice" from the parole officer regarding such matters. Adult males need only report that bail has been posted or a fine was paid whereas all others require the parole officer's permission to do so. All parole certificates make it clear that the sale and usage of narcotics is to be avoided, but only in the case of adult males is such action specifically prohibited.

There are some parole conditions unique only to one group. While most parolees require permission regarding the purchase registration and licensing of a motor vehicle, male youths have no such stipulation. Only female youths are required to obey a curfew and follow advice regarding visits to an institution.

#### Violation of Parole Conditions

Conditions of parole release are established for the purpose of setting standards for successful reintegration into society. Failure to abide by these standards is sufficient cause for the parole authority to return the violator to prison.

130. Nat R. Arluke, "A Summary of Parole Rules - Thirteen Years Later," Crime and Delinquency (April, 1969), p. 268-269.

131. This study does not consider the additional certificates of parole issued by the training schools.

132. The Youth Complex certificate has been recently revised. The two certificates from Clinton are currently under revision.

Table 10

## COMPARISON OF NEW JERSEY PAROLE CONDITIONS

	Minimum- Maximum	Female Indeterminate	Male Youth	Female Youth
Comply with the law	3	3	3	3
Reside in approved residence	3	3	5	3
Change employment or residence	1	1	1	1
Maintain gainful employment	3	-	3*	3*
Report to Parole District Supervisor, or representative	3	3	3	3
First arrival report	3	3	3	3
Follow advice of parole officer	-	3	-	-
Report trouble or arrest	6	6	6	6
Pay a fine or post bail	6	1	1	1
Support dependents	3	-	3	-
Associate with persons of bad character	4	4	-	5
Friends and companions	-	-	4	4
Liquor usage	4	4	4	4
Narcotic usage	2	4	4	4
Indebtedness	1	1	5	1
Out-of-state travel	1	1	5	1
Marriage	1	1	5	1
Divorce	1	1	5	1
Motor vehicle registration and license	1	1	1	1
Weapons; hunting license	1	1	1	1
Curfew	1	1	1	1
Act as informer	-	-	2	-
Restitution for crime, when required	3	-	-	-
Visiting an institution	-	-	-	1

\* Or attend school, if legal age.

## Legend

- 1 - Must have permission
- 2 - Prohibited
- 3 - Compulsory
- 4 - Avoid
- 5 - Follow reasonable advice regarding
- 6 - Report to Parole District Supervisor or representative

Source: Compiled by OFA Staff from institutional parole certificates.

A review of the conditions of parole indicates that not all conditions deal with issues of the same magnitude. Some conditions, in fact, set a stricter standard for the parolee than those established for the rest of society. Consequently, compliance is difficult to measure.

The current parole conditions create problems of differential enforcement. One parole official stated that revocation should not be upheld in cases where only one infraction is reported.<sup>133</sup> Under the current regulations, it is conceivable that one parolee could be returned to prison for failing to seek permission to marry, whereas another could be returned for selling narcotics. A parolee could also technically be returned for not reporting unlawful behavior rather than for the illegal behavior itself.

OFA examined the total caseload on the Public Defender Parole Revocation Unit for a three-month period to observe the frequency with which these conditions are violated.<sup>134</sup> (See Table 11.)

There are at least five conditions that refer to compliance with legal and societal standards (3a; 3b; 3c; 3d; 3i). Among the Public Defender cases, only six parolees did not "demonstrate...conduct on parole has been good at all times," and yet 25 parolees did not "conduct (themselves) in society in compliance with all laws and ordinances."

Enforcement of these conditions creates an inherent dilemma in the parole officer's responsibility regarding the supervision of a parolee. The officer must simultaneously perform the role of advisor/counselor and law enforcer. The parole officer is expected to counsel a parolee with respect to a social or physical problem, yet to acknowledge the existence of that problem is sufficient cause for revocation.

### Conclusion

One solution to the parole officer's dilemma in enforcing parole conditions is to clearly distinguish the counseling and surveillance function. This could be accomplished by assigning only one function to each officer. However, a more practical alternative would be to limit the conditions of parole and leave the primary law enforcement responsibility to the legal authorities - the police and the courts.

Currently, there is much emphasis on parole condition reform. Some of the reform has been stimulated by courts. Conditions

133. Interview with Herbert Birum, Chairman of Youth Correctional Board of Trustees, February 5, 1975.

134. Information is based on Public Defender parole revocation caseload of 54 cases from July to September, 1974. This represents accusations, not necessarily convictions. In some cases, parolees are accused of violating more than one condition.

Table 11

## FREQUENCY OF PAROLE VIOLATIONS: JULY-SEPTEMBER 1974

	<u>Violation Frequency</u>
As a condition of being on parole, you are required to:	
a. Comply with laws	25
b. Regard moral standards	3
c. Good conduct	6
d. Fit person at liberty	5
e. Restitution for crime	0
f. Support of dependents	0
g. Abstain from drugs/alcohol	16
h. Refrain from bad associations	1
i. Refrain from criminal conduct	25
j. Reside in approved residence	14
k. Seek employment	4
l. Report to P.D. Supervisor	
1. first visit	1
2. trouble	4
3. arrest	15
4. parole report	12
5. fine or bail	9
m. Obtain permission for:	
1. marriage	0
2. driver's license	1
3. sales agreements	1
4. change home or job	5
5. out of state travel	9
6. gun permit	0
Special conditions	<u>7</u>
Total	54 cases

Source: Compiled by OFA from Public Defender parole revocation caseload of 54 cases from July to September, 1974.

have been struck down by the courts as being "unreasonable, impossible of performance, or unfair."<sup>135</sup> Many states, including Oregon, Washington, and Idaho, have reduced their parole rules and made them more relevant to each particular case.<sup>136</sup>

The National Advisory Commission on Criminal Justice Standards and Goals calls for each State to take immediate action regarding the reduction of parole rules. "...A potential source of great abuse, is found in the conditions governing the conduct of parolees and the measures taken to enforce those rules. Some... rules are so vague as to invite serious problems of interpretation by both the parolee and the parole officer...and embrace such a wide portion of the parolee's potential and actual behavior as to become unnecessarily restrictive of his freedom and do little to prevent crime."<sup>137</sup>

Parole revocation is not a capricious or revengeful act. The legal standards set forth in Morrissey v. Brewer for enforcing these conditions have substantially reduced such arbitrary decision-making. However, since these standards are used as the basis for setting behavioral standards and revoking parole, they should be clearly defined and uniformly enforced.

Recommendation 12. *It is recommended that the Legislature, in conjunction with the paroling authorities, consider a revision of parole conditions. In addition, to authorizing the paroling authorities to establish special conditions according to the needs or problems of each individual case, the Legislature should establish a minimum number of mandatory conditions, such as:*

1. *Obey all laws and ordinances. (#4(a) Youth Correctional Certificate.)*
2. *Report to or notify your Parole District Supervisor or (the) designated representative whenever you are instructed...(#3 1(4) State Prison Certificate.)*
3. *Comply with any special condition(s) of parole specified by the paroling authority or specified by your parole officer in behalf of the paroling authority. (#7 Youth Correctional Certificate.)*
4. *Obtain permission from your Parole District Supervisor or (the) designated representative*

135. National Advisory Commission on Criminal Justice Standards and Goals, Corrections (Washington, D.C.: Government Printing Office, 1973), p. 412.

136. Ibid.

137. Ibid, p. 433.

before changing your place of residence...and before leaving the State of your approved residence. (4)(4) and (5) State Prison Department.

#### OUTSTANDING PAROLE FINES

Finding 14. The county probation departments are responsible for collecting outstanding fines from parolees. However, they have not been successful in their collection efforts because they do not have direct authority over the parolee. In some cases, the cost of processing and collection exceeds the amount of the fine.

In part of a sentence, an offender may be required to pay a fine. Usually such a fine is paid at the time of release from prison. However, the Board may release an offender on parole providing that the debt eventually be paid. The Board is empowered to set the payment schedule for the debt in weekly amounts.<sup>138</sup> The county probation departments serve as the collection agencies.

Failure to pay such costs delays discharge from parole. The probation departments have the responsibility to collect fines even after the technical terms of an individual's sentence have expired. Those with outstanding debts are placed on "fine status" and continued on the parole caseload. Failure to ultimately pay costs constituted sufficient cause for parole revocation.<sup>139</sup>

While county probation departments are designated the collection agent for outstanding fines, they have no direct authority over the parolee. As a result, the probation departments have no leverage with which to collect those outstanding debts.

The most commonly used technique to encourage fine payments is to notify the individual's Supervising Parole Officer. One county probation department has resorted to serving contempt of court notices. Since June, 1974, the Essex County Probation Department has issued an average of 15 notices per month.<sup>140</sup> This notice causes the parolee to be brought before the assignment judge. This procedure was established in conjunction with the State Parole Board.

A report on outstanding parole fines, prepared by the Hudson County Probation Department for the Office of Fiscal Affairs, indicated the extent of the fine collection problem.<sup>141</sup> A total of 50 parolees released to Hudson County since 1971 owed \$87,050. The fines range from \$150 to \$7,000, with payments set at \$10 per week

or less. As of February, 1975, 25 percent of the assessed fines had been paid, leaving a total of \$66,045 in outstanding parole fines.<sup>142</sup>

The likelihood of the Hudson County Probation Department eventually collecting the total outstanding debt appears slight. A majority of the parolees are either indigent or negligent. Of the 50 parolees owing fines, only eight of them were considered good or excellent risks.<sup>143</sup> Without more direct authority over the parolee, the Department has limited success in collecting these fines. Such responsibility would be more logically located within the Bureau of Parole. The Bureau has legal jurisdiction over these individuals as well as the responsibility to assist them in meeting such obligations.

In some cases, it appears doubtful that the collection effort is worth the expense. For small fines, the cost of processing the collection has been estimated to cost more than the fine was worth.<sup>144</sup> For larger fines, such as the one for \$7,000, it would take the parolee almost 13 and one-half years to pay the debt, even if the \$10 payments were met according to schedule. This represents 13 and one-half years for which the parolee requires the services of a probation and parole officer.

Recommendation 13. *It is recommended that the Legislature consider the revision of N.J.S.A. 30:4-123.15 so that the Bureau of Parole replaces the county probation departments as the agents for the collection and disbursement of outstanding fines.*

*In addition, it is recommended that the paroling authorities authorize the Bureau of Parole to file court actions in order to eliminate or reduce fines that impose undue hardship on indigent parolees or where the cost of such collection exceeds the value of the fine itself.*

142. "N.J. State Parolees Owing Fines," prepared by Marie Sgro, Investigator, for William E. Hyler, Assistant Chief Probation Officer for Hudson County, February 19, 1975.

143. Ibid.

144. M. Crowley, op. cit.

138. N.J.S.A. 30:4-123.15.

139. Ibid.

140. Muriel Crowley, Acting Chief Probation Officer, Essex County, in telephone conversation on January 28, 1975.

141. A similar report was requested from Essex County Probation Department but never received.

CHAPTER FIVE: MAINTAINING THE PAROLE  
SYSTEM: COST AND POPULATION MOVEMENT

Introduction

This Chapter analyzes the rising cost of maintaining the parole system. The commitment and release rate from both the prison and parole populations are also evaluated in this Chapter. Many factors are considered that influence the movement of the parole population including the commitment and release trends, length of stay, and rate of parole returns.

COST

Finding 15. The overall cost to maintain a person on parole is cheaper than maintaining an offender in prison. However, the total cost for maintaining the prison and parole system has not decreased despite the increase in the use of parole.

Since fiscal year 1971, the cost of parole maintenance and institutionalization have increased. This section, which analyzes these rising costs, was developed using financial data based on expended agency appropriations from the N.J. Executive Budget Messages for fiscal years 1971-1974. (See Appendix I.) Annual population figures were computed from Correctional Information System's data for the three institutional complexes.<sup>145</sup>

The average number of parolees under supervision during fiscal year 1971 totaled 5,202 compared to 8,291 parolees during fiscal year 1974. The parole population has therefore grown over 60 percent for this four-year period. During the same period, parole supervision positions increased 64 percent from 105 to 169. In addition, parole appropriation expenditures rose by 65 percent from \$2.6 million to \$4.3 million over the four years. (See Table 12.) This indicates for every increase in parole population, the system tended to display proportional increases in staff and cost.

While the parole population has shown a marked increase, institutional population has shown a slight decrease (approximately 1 percent) over the same period. However, aggregate expenditures for the correctional institutions have not shown a proportional decline. The Youth Correctional Complex and the Correctional Institution for Women, which both displayed a declining census over the four-year period, showed a 34 percent increase in aggregate expenditures during that period. In part, these rising costs were due to staff increases (i.e. from 5 percent at Yardville to 10 percent at Bordentown).

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145. Institutional population averages were derived from the N.J. Executive Budget Messages, fiscal years 1971-1974.

Table 12  
POPULATION AND EXPENDITURES, FY 71-74

	POPULATION											
	State Prisons		Youth Correction		Womens' Correction		Institution Total		Parole Total		Composite Total	
	#	% Inc. (Dec.)	#	% Inc. (Dec.)	#	% Inc. (Dec.)	#	% Inc. (Dec.)	#	% Inc. (Dec.)	#	% Inc. (Dec.)
1971	3,196	1%	2,234	11%	283	33%	5,713	6%	5,202		10,915	
1972	3,305	3%	2,173	(3%)	263	(7%)	5,741	-	6,364	22%	12,105	11%
1973*	3,290	-	2,272	5%	220	(16%)	5,782	1%	7,620	20%	13,402	11%
1974	3,397	3%	2,115	(7%)	183	(17%)	5,695	(1%)	8,291	9%	13,986	4%
<u>EXPENDITURES (000,000) Omitted</u>												
	\$	% Inc. (Dec.)	\$	% Inc. (Dec.)	\$	% Inc. (Dec.)	\$	% Inc. (Dec.)	\$	% Inc. (Dec.)	\$	% Inc. (Dec.)
1971	10.4		9.9		2.3		22.6		2.6		25.2	
1972	13.0	25%	11.3	14%	2.4	4%	26.7	18%	3.1	19%	29.8	18%
1973	16.2	25%	12.1	7%	2.6	8%	30.9	16%	3.6	16%	34.5	16%
1974	19.0	17%	13.4	11%	2.8	8%	35.2	14%	4.3	19%	39.5	15%
Total Increase Since 1971	8.6	83%	3.5	35%	.5	22%	12.6	56%	1.7	65%	14.3	57%

Source: N.J. Executive Budget Messages, FY 71-74.

The most dramatic increase in institutional expenditures occurred within the State Prison Complex. During the four-year period, expenditures increased over 80 percent, from \$10.4 million to \$19 million. Again, this increase was influenced by staff position increases (i.e. from 22 percent at Leesburg to 55 percent at Trenton State Prison). It is important to note that State Prison population grew by less than 7 percent during this same period.

The data indicate that decreasing the institutional population by increasing the use of parole does not decrease institutional expenditures. It does, however, increase parole expenditures by creating the need for additional supervisory positions necessary to handle increased caseloads.

If emphasis in New Jersey's correctional institutions is placed on control and supervision of prison inmates, then the degree of control and supervision is enhanced considerably by decreasing inmate population and increasing supervisory positions.<sup>146</sup> However, this situation tends to increase budgetary requirements.

Averaged funds, expended for correctional institution operations and parole maintenance, indicate that for every \$8.25 spent on inmates, \$1.00 is spent on parolees. The cost differential between prison and parole is somewhat misleading, however, since fixed costs and staff/offender ratios are, by necessity, much higher in the institutions. In the future, the cost ratio will probably begin to decline, not because of a shrinking institutional population, but due to a growing parole population and the concomitant increase in parole costs. The cost of operating all correctional programs is rising (56 percent) while parole costs are increasing at an even higher rate (65 percent).

#### POPULATION TRENDS

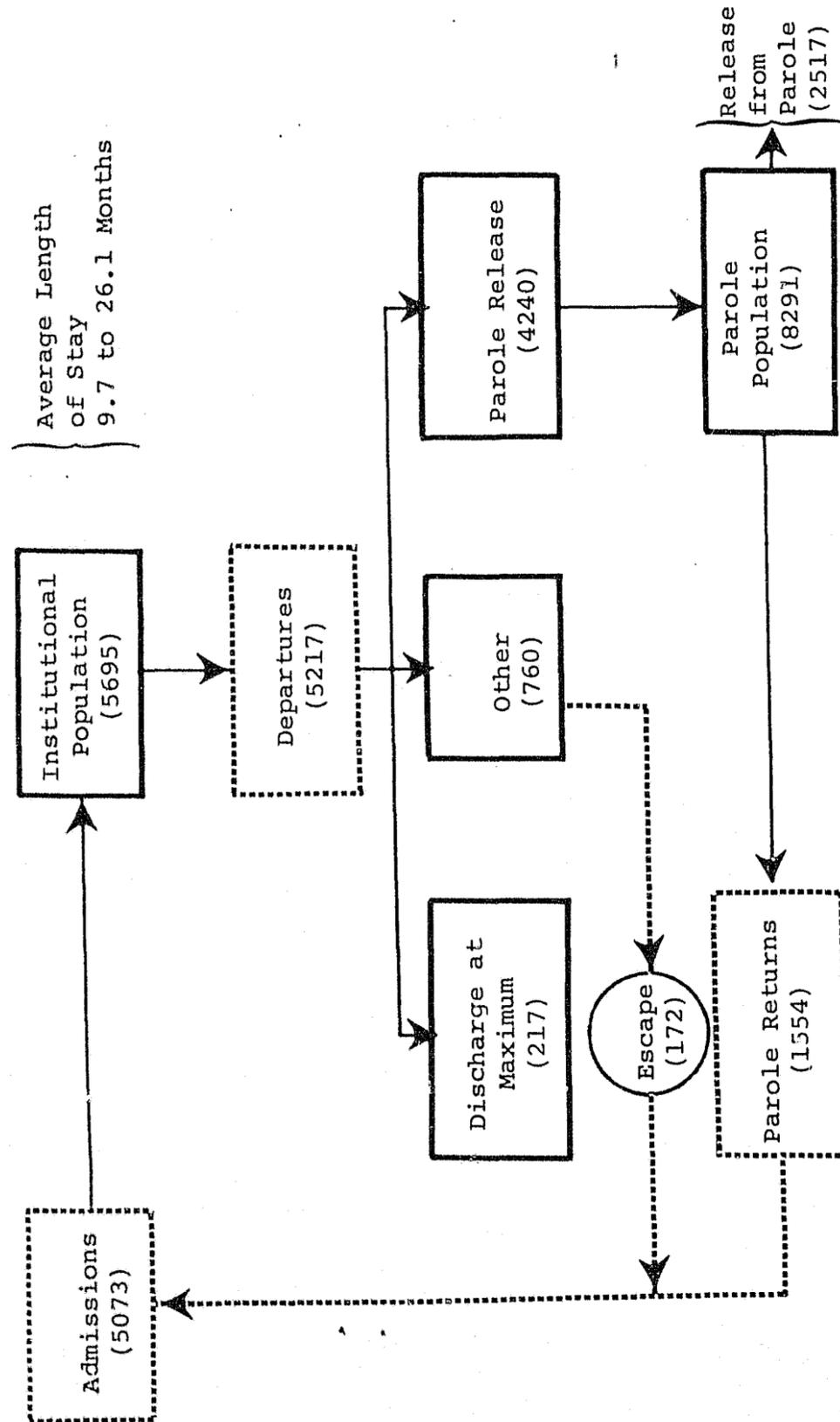
The average prison or parole population consists of the numerical balance between the number of offenders admitted and the number released.

The parole population is increased each year by the number of persons leaving prison on parole release. The parole population is then decreased by the number discharged by the paroling authority or released after serving the maximum sentence. Some leave parole because they are recommitted to prison.

Persons are admitted to prison from three sources: new offenders are admitted from the community; some parolees return to prison as violators; and, others are transferred between prisons,

146. The ratio between staff/inmate automatically decreases with the decrease in inmate population. It becomes even smaller when staff positions simultaneously increase.

Figure 7  
PRISON AND PAROLE POPULATION MOVEMENT, FY 1974



Source: Compiled by OFA from Division of Correction and Parole, Correctional Information System, November 21 and December 6, 1974.

in the case of an administrative transfer.<sup>147</sup> Prison departures consist primarily of parole releases. The remainder of departures are those being discharged at the completion of their maximum sentences.

The interaction between the prison and parole population in 1974, is illustrated in Figure 7.

From fiscal year 1969 to fiscal year 1974, the average prison population increased by 12 percent, from 5,099 to 5,695 inmates. However, since fiscal year 1971, this population remained relatively constant and even demonstrated a net population loss. From fiscal year 1971 to fiscal year 1974, the State Prison Complex increased 6.3 percent from 3,196 inmates to 3,397. During the same period, the Youth Correctional Complex and the Correctional Institution for Women declined in population, producing an overall net loss of 18 inmates.

On the other hand, the number of parolees under supervision in New Jersey has increased dramatically in recent years. In 1971, the average number under supervision was 5,202. In 1974, this average increased to 8,291 parolees under supervision, or an overall average increase of 59 percent.<sup>148</sup> Thus, since 1971, the prison population has remained the same while the parole population has increased at a rapid rate. (See Figure 8.)

#### Admissions/Departures

Finding 16. Prison departures, the majority of which are parole releases, increased proportionately with prison admissions. As a result, the prison population remained constant while the parole population increased rapidly.

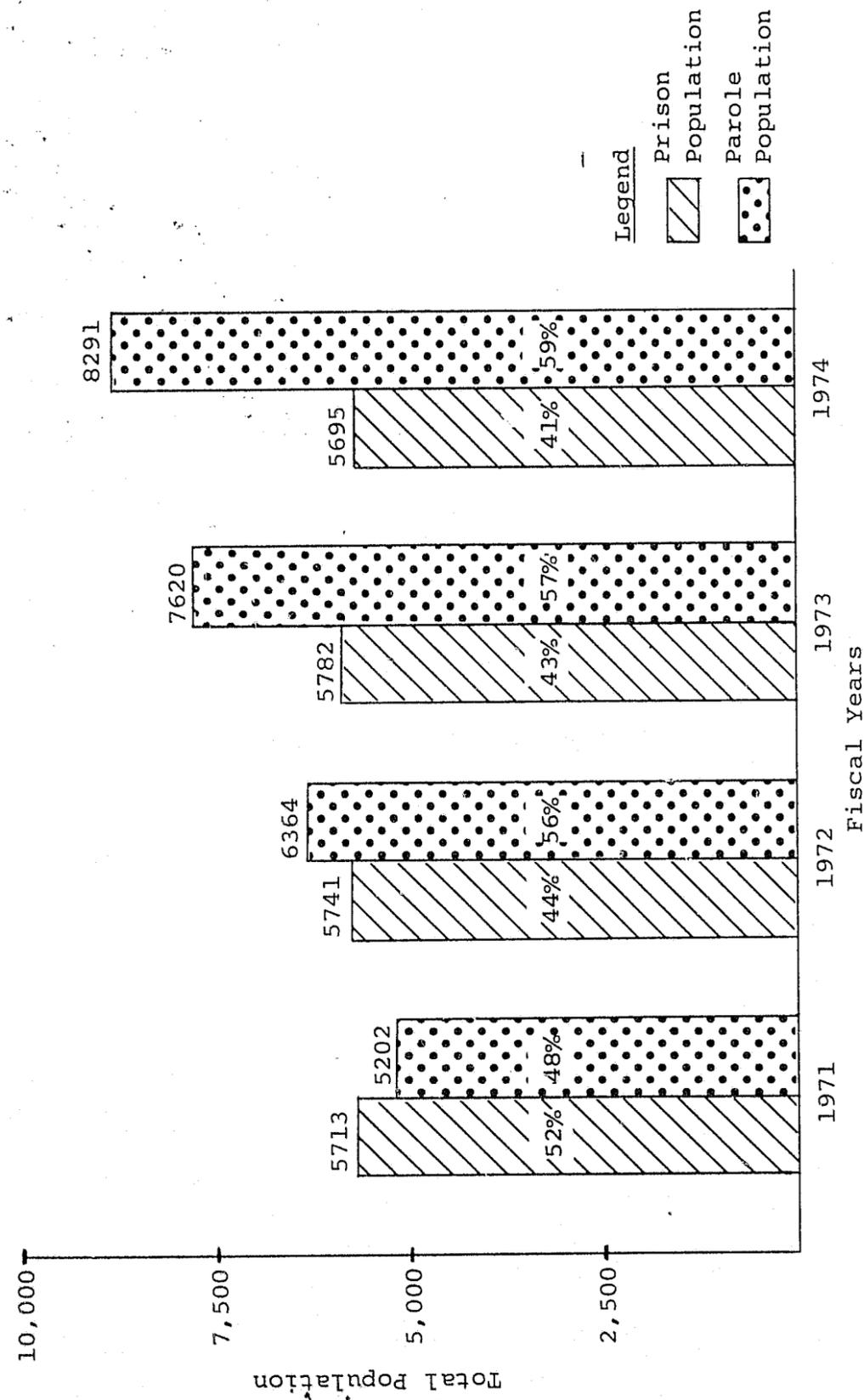
From 1969 to 1974, total admissions to the three institutional complexes increased 26 percent, from 5,099 inmates to 5,695. This represents an increase in admissions almost twice as great as that of the growth of the total prison population. This increase ranged from 11 percent in the Prison Complex to 47 percent in the Correctional Institution for Women. Youth Correctional Institutions increased 35 percent, demonstrating the greatest numerical increase, accounting for 782 additional admissions.

Prison departures experienced an even greater increase during this period. Since 1969, departures from all institutions averaged an increase of 45 percent, from 3,604 releases to 5,217 in 1974. Departures from the Youth Correctional Institutions increased 50 percent and similarly increased in the Prison Complex (42 percent).

147. This category includes transfer from other institutions, housing moves and returns from escape.

148. Compiled by OFA from Correctional Information System data, November 21, 1974.

Figure 8  
COMPARISON OF NEW JERSEY PRISON AND  
PAROLE POPULATIONS, FY 1971-1974



Source: Compiled by OFA staff from Correctional Information System data, November 21, 1974.

Table 13  
PRISON AND PAROLE POPULATION FLOW, FY 1974

	1969		1970		1971		1972		1973		1974		1969-1974	
	#	% Inc.	#											
	(Dec.)													
<u>Average Institutional Population</u>														
Prisons	2967	-	3158	6%	3196	1%	3305	3%	3290	-	3397	3%	430	15%
YCI	1901	-	2018	6%	2234	11%	2173	(3%)	2272	5%	2115	(7%)	214	11%
Womens'	231	-	231	(8%)	283	33%	263	(7%)	220	16%	183	(17%)	(48)	(21%)
Total	5099	-	5389	6%	5713	6%	5741	-	5782	1%	5695	(1%)	596	12%
<u>Total Admissions</u>														
Prisons	1606	-	1304	(19%)	1585	22%	1812	14%	1898	5%	1785	(6%)	179	11%
YCI	2269	-	2560	13%	3200	25%	3559	11%	3283	(8%)	3051	(7%)	782	35%
Womens'	161	-	189	17%	237	25%	249	5%	266	7%	237	(11%)	76	47%
Total	4036	-	4053	-	5022	24%	5620	12%	5447	(3%)	5073	(7%)	1037	26%
<u>Total Departures</u>														
Prisons	1290	-	1299	-	1390	7%	1688	21%	1796	6%	1830	2%	540	42%
YCI	2090	-	2416	16%	2975	23%	3513	18%	3195	(9%)	3142	(2%)	1052	50%
Womens'	224	-	131	(42%)	200	53%	275	38%	327	19%	245	(25%)	21	9%
Total	3604	-	3846	7%	4565	19%	5476	20%	5318	(3%)	5217	(2%)	1613	45%
<u>Parole Releases</u>														
Prisons	660	-	758	15%	750	(1%)	1040	39%	1214	17%	1071	12%	660	62%
YCI	1843	-	2211	20%	2700	22%	3269	21%	3050	(7%)	2970	(3%)	1127	61%
Womens'	173	-	109	(37%)	137	26%	235	72%	268	14%	199	(26%)	26	15%
Total	2676	-	3078	15%	3587	17%	4544	27%	4532	-	4240	(6%)	1564	58%
<u>Discharge At Maximum</u>														
Prisons	432	-	391	(10%)	404	3%	359	(11%)	287	(20%)	204	(29%)	(228)	(53%)
YCI	67	-	85	27%	91	7%	34	(63%)	15	(56%)	11	(27%)	(56)	(84%)
Womens'	10	-	13	30%	12	(8%)	6	(50%)	3	(50%)	2	(33%)	(8)	(80%)
Total	509	-	489	(4%)	507	4%	399	(21%)	305	(24%)	217	(29%)	(292)	57%
<u>Released From Parole</u>														
To Institution	-	-	-	-	1674	-	1751	5%	1616	(8%)	1554	(4%)	(120)	(7%)
Discharged	-	-	-	-	657	-	668	2%	888	32%	1084	22%	427	65%
Sentence Exp.	-	-	-	-	1089	-	1162	7%	1336	15%	1433	7%	344	32%
Total	-	-	-	-	3420	-	3581	5%	3840	7%	4071	6%	651	19%

Source: Compiled by OFA staff from Correctional Information System, November 21 and December 6, 1974.

Departures increased only 9 percent in the Correctional Institution for Women during that period.

Since 1973, the overall trend of both admissions and departures seems to have leveled off. Although departures have abated, the drop in admissions has been more severe. Despite this new trend, prison admissions and departures have exhibited similar increases and declines. This suggests that the rate of prison admissions affects the number of prison departures. (See Table 13.)

The length of time between admission and departure represents the length of stay in the institution. Length of stay is one of the factors that affects the numerical balance between admissions and departures.

When admissions increase faster than the prison population, it can be concluded that length of stay is being progressively reduced.<sup>149</sup> Since 1969, the overall rate of admissions in the institutions has been higher than the average institutional population growth. So it appears that during this period, length of stay has been reduced, implying an acceleration of parole releases.<sup>150</sup>

#### Parole Release

Over four-fifths of the total number released from correctional institutions in New Jersey are released on parole. During the six-year period between fiscal years 1969 and 1974, there were 28,026 departures from prison, and 81 percent, or 22,657 inmates, were released to parole custody.

Virtually all of the offenders released from the Youth Correctional Institutions were released on parole. In fiscal year 1974, approximately 95 percent of those released from the Youth Correctional Institutions were parole releases; 81 percent were released on parole from the Correctional Institution for Women.

A majority of State Prison inmates, or 59 percent of departures, in fiscal year 1974 were released on parole. Discharges at maximum sentence accounted for 11 percent of the departures, occurring seven times as frequently in the State Prison as the Youth Correctional Institutions. Administrative moves accounted for the remaining 30 percent of departures.

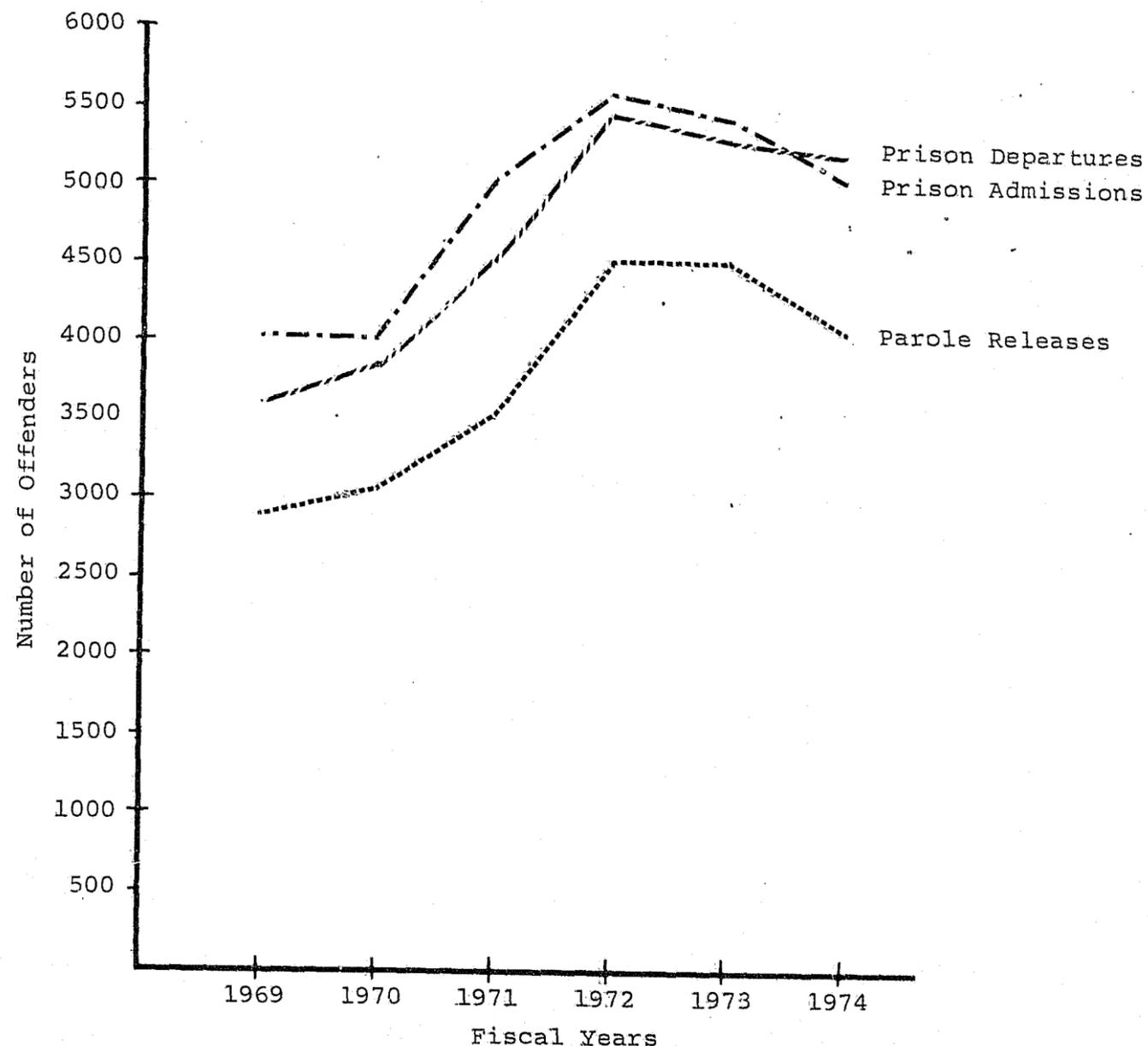
#### Conclusion

Data indicate that since 1969, total prison departures increased proportionately with total prison admissions. As a result, the average prison population remained relatively constant. As the

149. N.J. Division of Correction and Parole, Correctional Information Systems, "Correctional Population Movement Through Fiscal 1974," December 6, 1974, p. 2.

150. Ibid.

Figure 9  
TOTAL PRISON POPULATION MOVEMENT,  
FY 1969-74



Source: Compiled by OFA staff from Correctional Information System, November 21 and December 6, 1974.

**CONTINUED**

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