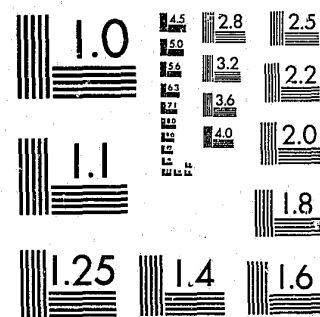


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# VIOLENT CRIME IN ALBERTA

PAPER #2

Sentencing Strategies and Violent Crime

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## SENTENCING STRATEGIES

### AND VIOLENT CRIME

By

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and

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June, 1980

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NCJRS

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ACQUISITIONS

This is Paper #2 from THE VIOLENT CRIME STUDY by the Office of Robert Clark, Leader of the Official Opposition, Legislative Assembly of Alberta under contract with the Centre for Criminological Research, Population Research Laboratory, The University of Alberta.

Additional papers are:

- #1 Violent Crime in Alberta: Some Background Statistics
- #3 Parole and the Violent Offender
- #4 Strategies for the Prevention of Violent Crime

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### ABOUT THE AUTHORS

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ABSTRACT

This second paper in the Violent Crime Study summarizes some of the research that supports arguments on behalf of more severe sentencing. These ideas are then assessed using the Dangerous Offender Project in Columbus, Ohio. Comparisons are made between Columbus and Edmonton to see if that study would provide insights for Alberta.

Using computer techniques, the Columbus study applied eighteen different sentencing policies to all those offenders who had been charged (not necessarily convicted) of a violent crime in 1973. The most severe policy would have lead to a reduction of 6% of the violent crime in 1973 but would have required five year sentences for those convicted of serious non-violent offences and for first offenders as well.

A look at homicide cases in Canada shows that only a portion of them would be subject to a severe sentencing policy. The conclusion is that a 5 to 10% reduction in crime might be achievable through incarceration, but it would require massive imprisonment of many who have never committed a violent crime and probably will never commit a violent crime. Finally, the argument is made that increasing certainty in conviction, even with a decrease in severity of punishment might be a preferable strategy.

The Questions

There are a number of ways one could attempt to reduce violent crime. This paper will focus on sentencing strategies available to the criminal justice system. More specifically, how effective would different sentencing policies be if society kept convicted dangerous offenders in jail for a longer period of time than we do at the present? Or, how much violence would be prevented by jailing those who commit non-violent offences on the assumption that they are likely to commit violent crimes in the future? Supposing we could go back and identify violent juveniles and keep these individuals in jail for a longer period of time? In other words, it has been argued more vigorously in recent years that stiffer sentences would have a significant impact on violent crime. Most of these arguments do not spell out clearly how this sentencing would be utilized. Therefore, part of our task will be to assess, not just a single sentencing strategy, but rather several alternatives that reflect different aspects of what we might call the "hard line" toward violent offenders.

Recently economic models, as one type of "hard line" argument, have been applied to criminology and have gained considerable popularity. For years we have used legalistic models which, like the ones devised by economists, were based on the assumption that man was reasonable and rational. However, the "benefits gained" from a criminal act and the "costs" of its consequences do not conform to rational processes of calculation in the mind of a bitter, hate-filled young man who has been beaten up frequently as a child and now is happy to hurt anyone who crosses his path. Thus the handy analogies drawn from economic theory and rational legalism frequently turn out to be useless

in understanding and controlling crime. That does not mean that these economic models do not serve a function. Imperfect models can still be useful and they may identify those factors that may be important in the future. However, before we can use these models for policy decisions, they must be tested against evidence. Similarly, their assumptions must be tested and checked, and if necessary, modified to bring them closer in line with reality.

In recent years several models have been developed that have been used to advance a hard line sentencing policy. These arguments warrant review at this point.

#### The Hard Line Arguments

The Shinnar model. Shlomo and Reuel Shinnar developed a mathematical model using crime data in New York City designed to estimate the reduction of violent crime by the rigorous application of jail sentences. The Shinnar model makes a number of assumptions:

1. There is a class of criminals that has a high rate of recidivism.
2. This class is responsible for a high proportion of the total crimes committed.
3. Each recidivist is responsible for at least five or six crimes per year.
4. Recidivists commit most of the 70% of crimes that are never cleared by an arrest.

This last assumption suggests that it is inconceivable that there are a large number of professional criminals who are so proficient that they never are caught. John Mack, in his study of "Able Prisoners" in Scotland feels that such professionals have been overlooked (1972). For violent offenders, however, one might reasonably assume that very few persistent violent offenders escape detection (except for upper class wife-batterers, child abusers and others who have the resources to resist the official agencies of social control).

The Shinnars argued that if the inconsistent administration of short prison sentences could be altered in favor of mandatory five year terms for all who commit violent crimes and three year terms for all burglars, the crime situation in New York would be dramatically improved. Of course such a policy would increase the 20,000 prison population of New York State to something like 40,000 to 60,000, and there is no estimate of the possibility of increased violence arising at a future time because of the experiences resulting from the extended jail sentencing (McKay, Jayewardene, and Reedie, 1979).

Models of this nature have certain merits. They allow the statistician to estimate the effects of differing policies of incarceration. Different factors can be isolated to see what their impact would be on other factors. The model could also be used to estimate the changes in prison population depending on various sentencing policies.

There are weaknesses, however. One is the attempt to estimate the crime rate per year per criminal. Secondly, they have not allowed for the impact of overloading on the criminal justice system. Furthermore, one critic points out that the increase in the prison population would be much greater than originally estimated (Cohen, 1978).

Applying this logic: Wilson and Van den Haag. While the construction of the Shinnar model is an important achievement, presently available data and other data in the future must be used to test aspects of their thinking. For two policy analysts to undertake such an exercise is commendable. What is unfortunate is that social scientists with greater familiarity with the actual dynamics of the criminal justice system should treat it as evidence and use it for arguing for new policies. Yet this is what James Wilson, a political scientist, has done in what is probably the best known argument for a harder line in sentencing (1975). Wilson also assumes that most serious crime is



committed by repeaters and therefore the correctional system must isolate and punish those individuals simply because it really does not know how to do much else. Wilson assumes, along with many social scientists today, that correctional treatment has not been particularly effective (Lipton, Martinson, and Wilks, 1975).

Similar arguments were offered by Ernest Van den Haag, a social philosopher, in a book entitled, Punishing Criminals (1975). Van den Haag argues that punishment is not only useful for setting the boundaries for acceptable behavior, but it also incapacitates offenders, reforms them through intimidation or rehabilitation, and deters others from committing offences. Van den Haag also draws on a Philadelphia study which concludes that a very small number of boys, about 6%, committed most of the serious crimes (Wolfgang, Figlio, and Sellin, 1972). These boys committed five or more offences before they were eighteen and were designated as chronic offenders. Van den Haag proposed, for the chronic recidivist, "post-punishment incapacitation," based on the prediction from the past behavior of the offender that he will offend again. It is important to emphasize a key assumption in the thinking of Van den Haag and Wilson: there is a relatively small number of chronic offenders who commit a very large number of crimes and this group can be identified with enough reliability to justify special treatment.

Ehrlich's deterrent model. Another study which has had a significant impact on the press was the work on deterrence offered by economist Isaac Ehrlich (1974). Ehrlich argued that general deterrence (impact on potential offenders) was about ten times more influential than incapacitation in reducing crime. Hence the conclusion by some sensation seeking journalists that one execution will save eight victims. Hann (1977), in a critique of Ehrlich's research, points out several behavioral and theoretical shortcomings and data

limitations that destroy its credibility and render it inappropriate for making policy in the deterrence area. Other critiques of these studies deserve mention at this point but will not be discussed (see Van Dine, Conrad, and Dinitz, 1979; and Blumstein, Cohen, and Nagin, 1978). Blumstein, Cohen and Nagin offer a sophisticated assessment of the state of the art when it comes to applying statistical techniques to jail sentences and general deterrence. Greenberg also applies some of these models to data in California and concludes that each one year reduction in average sentence length would result in increases of violent crimes from 1.2 to 8% (1975).

Mathematical models and empirical evidence. In trying to answer these questions regarding the impact of sentencing it is important to distinguish between mathematical models and empirical facts. Model building is an important part of any scientific endeavor. After making a number of assumptions, the scientist attempts to calculate the outcome of a series of events. While such models may be informed by empirical facts, they are not facts themselves do not "prove" anything. Models are very useful tools, however, in that they spell out fairly clearly what we would expect to find if all of the assumptions were met. Nor should we consider a model worthless if some of the assumptions are imperfect. By the same token we should not treat these theories as evidence. When one reads a newspaper headline, "Scientist Proves That One Execution Will Save Eight Victims" we can be assured that the reporter is confusing theoretical models and empirical evidence.

Let us now leave these mathematical models and turn to the evidence gathered by the Dangerous Offender Project in Columbus, Ohio, examine their efforts to test the effectiveness of different sentencing policies, and ask ourselves if this study can provide insights for decision making in Alberta. Several publications have come out of this project but this paper will borrow

extensively from one of the more recent books Restraining the Wicked (Van Dine, Conrad, and Dinitz, 1979).

#### The Dangerous Offender Project

The directors of the Dangerous Offender Project reasoned that if effective restraint of the criminals would reduce the rate of crime, then those offenders who appear in court today would not have committed their crimes if they had been in captivity at the time their offences were committed. Therefore, they obtained the criminal histories of the 342 offenders in Columbus who were arrested during 1973 and charged with crimes of violence: homicide, forceable rape, aggravated assault, and robbery. This population was for all intents and purposes of the total group of official violent offenders for Columbus, Ohio for that year. The question studied is: could the violent crimes of these 342 persons, assuming that arrest equals guilt, have been prevented if these dangerous offenders had faced different types of sentencing policies the last time they appeared in court for a serious conviction? Eighteen different sentencing policies were tested to see what percentage of violent crime would be prevented by the various policies and how long sentences must be to have a significant impact on violent crime.

Refer to Table 1

#### Preventing Violent Crime Through Incarceration

Although only 166 (48.5%) of these 342 violent offenders were actually found guilty as charged, the researchers assumed that all subjects in the cohort, whether found guilty or not of the crimes with which they were charged, did in fact commit all the crimes for which they were arrested. Thus, a man arrested for 14 robberies but convicted for only 3, is assumed to have committed

Table 1: Sentencing Policies Based on Prior Felonies, Prior Violent Felonies, and Length of Sentence: Dangerous Offender Project

Sentencing Policy	Number of Prior Felony Convictions	Number of Prior Violent Felony Convictions	Years of Incapacitation
1	1	0	3
2	2	0	3
3	3	0	3
4*	1	0	5
5	2	0	5
6	3	0	5
7	1	1	3
8	2	1	3
9	3	1	3
10*	1	1	5
11	2	1	5
12	3	1	5
13 <sup>a</sup>	1	2	3
14	2	2	3
15	3	2	3
16 <sup>a</sup>	1	2	5
17	2	2	5
18	3	2	5

\*Policies discussed in this paper.

<sup>a</sup>Policy is clearly impossible.

Source: Van Dine, Conrad and Dinitz. Restraining the Wicked. 1979: Table 3-18.



all 14. If he had been incarcerated on his last conviction of a serious crime, and that sentence would have left him in jail in 1973, the result would have been the prevention of 14 robberies. Admittedly, such assumptions overstate the effectiveness of a severe sentencing policy.

To study the hypothetical impact of alternate policies the adult histories of the 342 violent offenders in the 1973 cohort were studied: (1) Did they have any previous indictable (felony) convictions? (2) Were any of these convictions for prior violent crimes? (3) Would a three- or five-year prison sentence for the earlier violation have prevented the 1973 offence? That is, would any of these violent offenders have been in prison under a stiffer sentencing policy and consequently been incapable of their violent crime in 1973?

Findings. Surprisingly 306 (89%) of the 342 persons had no prior violent convictions. Thirty had one prior violent conviction, and 6 had two or more. This lack of prior violent convictions is in contrast to their activities in 1973. In Table 2 we show the distribution of indictments and the number of crimes for which they were charged and also the convictions and the number of counts on which they were convicted. The total number of persons was 342 with 638 charges. Of these 166 (48%) of the 342 persons were convicted of 321 crimes (50% of the total). Those convicted do not account for a vast majority of the charges. If one looks specifically at murder and manslaughter we see that 36 persons were charged with 45 murders or manslaughters. Similarly, the 79 sex offenders were charged with 111 crimes. Again, let it be emphasized that when we are talking about preventing crime, we are counting the sex offences as 111 as charged not just the 24 which lead to convictions.

Table 2: Distribution of Cohort by Crime of Indictment and Number of Crimes and by Convictions and Conviction Counts Columbus, Ohio, 1973

	Persons Indicted	Crimes charged by categories of persons indicted	Persons convicted	Conviction counts
Murder/ manslaughter	36	45	18	20
Sex offences	79	111	23	24
Assault	49	66	28	30
Robbery	128	269	77	100
Multiple offence (two of the above)	50	147	20	57
Total	342	638	166	231

Source: Van Dine, Conrad and Dinitz. Restraining the Wicked. 1979: Tables 3-23 and 3-24.

Let us now consider one of the 18 sentencing policies tested in the Dangerous Offender Project (Table 1). Policy number 10 assumed that on any first violent indictable conviction, a five year mandatory prison term would be imposed. For any subsequent violent or non-violent indictable offence by the same offender, a five year mandatory prison term would be imposed. There would be no time off for good behavior and no parole. For offenders convicted of only non-violent indictable crimes, the penalty structure would continue as under the present law. Going back to previous offences committed by the 1973 violent offenders, the researchers applied policy number 10. In calculating the effect of these jail sentences one could use at least two different suppositions.

First, one could say that a crime was prevented only if the person charged were found guilty of the crime. By this yardstick only 24 of the 2,892 violent crimes reported in Columbus in 1973 (or .8%) would have been prevented using sentencing policy number 10.

The second assumption would be that the defendant was in fact guilty in every case even if the case was dismissed in court. Under this assumption sentencing policy number 10 would have prevented 37 crimes of violence in 1973 (or 1.3%).

So far the effect seems to be rather trivial. Would a more severe sentencing policy have a greater impact? Skipping through the other 17 sentencing policies, let us go directly to number 4, which was the most severe. It assumed that on any indictable (felony) conviction, whether violent or not, a five year mandatory prison term would be imposed. True, a mandatory five year prison term for murder may not seem severe, and there were only three cases of murder in the prior offence record of these 342 persons. This assumption would mean that every case of auto theft and bad checks would also go to jail for five years even if it were a first offence. One might argue that those who commit any crimes at all are also the people most likely to commit violent crimes. There is some evidence that people who break the law in one way are more inclined to be violent. Therefore sentencing policy number 4 assumes that every serious offender will spend at least five years in jail with no parole and no time off for good behavior. The question is: would this severe policy have prevented a significant amount of crime if it had been applied to the cohort of 342 offenders in the Dangerous Offender Project at the time they were first arrested?

If one applied policy 4 on the assumption that the 1973 crime was prevented only if the person charged were found guilty of the crime, 48 out of the 2,892

crimes (1.7%) would have been prevented. Using the second assumption, that all of the charges were correct, regardless of the findings of guilt, the project found that at least 111 violent crimes would have been prevented by this five year sentence, a 3.8% reduction in the volume of violent crime.

#### The Impact of Jailing Adults With Juvenile Records

There is still another variation on sentencing policy number 4 that could be considered. Supposing that we could go back into the juvenile records of these 342 violent offenders and include violent convictions as juveniles. Obviously, there are many people who would oppose using juvenile records in this way, but since we are trying to assess the impact of rather severe measures, we shall ignore such niceties as the protection of juvenile records. If one includes juvenile convictions for violent offences, instead of 36 previous convictions the number jumps to 62, an increase of 72%. We also notice that instead of 110, there were 161 who show serious convictions if one adds both adult and juvenile convictions together, an increase of 46%. In other words, this cohort displayed a considerable amount of serious delinquency.

Let us assume that we had applied policy number 4, a five year mandatory prison term to those violent offenders in 1973 regardless of whether they were juveniles or adults for any previous serious (felony) offence at the time of that offence. We would imprison many juveniles for five years. This would have lead to a 2.7% reduction of the reported offences in terms of the convictions in 1973 or a 6.1% reduction, if one assumes that all the charges should be interpreted as evidence of guilt. Again, it should be noted that such results could only be achieved by rather drastic changes in the criminal justice system and with complete disregard for the possible negative impact of sentencing juveniles to five year prison terms. Since we wouldn't know

which juveniles would be the future violent offenders, policy 4 requires the imprisonment of all juveniles for five years for their first serious offence.

#### The Impact on Homicide

There is little point in going through the other sentencing policies since they tend to yield less impact than policy number 4. In fairness, however, one should note that sentencing policy number 4 had a larger impact on murder and manslaughter than it did on other offences. In 1973 there were 65 such crimes in Columbus, Ohio and the Dangerous Offender cohort was charged with 45 of them. If the entire cohort had been jailed for five years at the first serious conviction, it would have lead to the reduction of 28% of the murders or manslaughters in 1973 or a 14% reduction at the conviction level (Van Dine, Conrad and Dinitz, 1979: Table 3-32). One point is obvious, however: a policy that only imposes such severe sentences on those with violent convictions doesn't have much impact; it is necessary to imprison large numbers of offenders who commit non-violent crimes. This comes back to the basic problem of prediction. We can identify a fairly large population of problem individuals, people who will contribute more than their share of crimes and who have also been the recipients of more than their share of violence. But selecting out which of these individuals will be the ones to commit serious violent crimes is still something that eludes us.

#### Comparing Violent Offenders in Edmonton and Columbus, Ohio

In our background paper on Violent Crime in Alberta (Hackler and Gauld, 1980a), we illustrated that comparing crime data from city to city within the same province or country can be misleading. Thus the comparison of cities from different countries may increase those hazards. Although we are aware

of these limitations, the Columbus study provides many good insights on the question of the effects of sentencing policies in reducing violent crime. As Edmonton and Columbus are cities of approximately one-half million people, we are taking the liberty of drawing parallels wherever possible with the belief that valid insights for the province of Alberta can be obtained.

Table 3 and 4 present 1973 Uniform Crime Statistics for Edmonton and Columbus. In Table 3 we see that in 1973 Edmonton would have produced a 495 person cohort that could have been studied.

Table 4 shows that a much larger percentage of the Columbus subjects were charged with homicide and attempted murder than Edmonton; 15.5% of the 342 violent offenders were charged with homicide and attempted murder while 3.6% of the 495 Edmonton violent offenders were so charged. Similarly, a higher percentage of the Columbus violent offenders were charged with sexual offences (20.0% compared with 7.5%). By contrast, a lower percentage of Columbus violent offenders were charged with assault than the Edmonton cohort of violent offenders for 1973 (16.7% compared to 54.1%). This may indicate that the Edmonton system generates a larger base of violent offenders by reporting and charging (at least initially) many assault cases. By comparison the Columbus police may charge fewer of these cases. The Columbus researchers lend support to this interpretation in their discussion of aggravated assault. They found that 89% of the crimes for aggravated assault were technically cleared. That is, the police had identified the offender and had sufficient evidence to charge him, and actually took the offender into custody. However, only 13% of those crimes reported ended up with an actual arrest. It seems that in the case of family assaults the offender is identified, the crime is "cleared", but the victim declines to prosecute. The case has been "cleared otherwise" in the official records. This is a limitation to any sentencing strategy.

Table 3: Violent Crime Profile. Edmonton and Columbus 1973

	Actual Number Known	Offences Cleared by Charge	Adult Persons Charged	Juveniles Charged
Columbus	2,892	792	342	126
Edmonton	5,567	996	495	21

Sources: Van Dine, Conrad and Dinitz. Restraining the Wicked. 1978: p. 35.  
Cook and Daniel. A Compendium of Criminal Justice Statistics: Alberta. 1978.

Table 4: Distribution of 1973 Violent Offences of Subjects Charged: Edmonton\* and Columbus\*\*

Offence-Category	Adult Persons Charged			
	Edmonton* Number	Percent	Columbus** Number	Percent
Homicide and attempted murder	18	3.6	53	15.5
Sexual Offences	37	7.5	71	20.8
Assaults Not Indecent	268	54.1	57	16.7
Robbery	172	34.8	161	47.0
Crimes of Violence Total	495	100.0	342	100.0

Source: \*Cook and Daniel. A Compendium of Criminal Justice Statistics: Alberta. 1978.

\*\*Van Dine, Conrad and Dinitz. Restraining the Wicked. 1979: Table 3-12.

The police may apprehend violent offenders, and a significant proportion of the violence which takes place in our society happens within families, but these offenders are frequently not processed further by the criminal justice system.

In Alberta in 1978 the 1328 charges for violent crimes lead to 869 convictions, a rate of 65%. In Columbus 215 of the 342 subjects were convicted of either the original charge or of a lesser offence giving a rate of 63%. One can assume that a fair portion of those 495 persons who were charged with violent offences were not in fact found guilty. Unfortunately, we do not have court statistics for those 495 persons charged with violent offences. In the Columbus study only 166 of the 342 subjects (48.5%) were in fact found guilty of a violent offence. It is also important to point out that these 166 subjects were found guilty of 231 charges, which was 8% of the 2,892 violent crimes reported to the police in Columbus in 1973 and 36% of the 638 crimes charged against the 342 offenders. In other words, the vast majority of violent crimes known to the police do not lead to charges, and about half of the charges lead to convictions. There is no reason to assume that our pattern would be different in Alberta. Much of the violence which occurs within families could be prosecuted in court, but victims frequently do not wish to lay a charge. Even when charges have been laid, the resulting conviction applies to a small percentage of the violent crimes that are known to the police. One must conclude that the chances of escaping justice even after the commission of serious violent crime are rather good. While it may be possible to get a certain amount of symbolic justice by treating those convicted harshly, it is unreasonable to believe that the actual amount of violent crime could be significantly reduced by imprisoning the relatively small percentage of individuals who end up receiving convictions for violent crime.

To illustrate the problem, we tend to assume that a high percentage of those who commit violent crimes are convicted. If we are going to use the criminal justice system and sentencing to prevent crime, we must arrest criminals and convict them. Probably the best example of the rational violent offender is the professional killer. We have very few studies of the impact of sentencing on professional killers but one study attempted to follow 982 gangland murders in Chicago between 1919 and 1963. Usually professional killers work in pairs so one might argue that close to 2,000 murderers were involved. On the other hand, let us assume that some of these professionals did more than one job so that might put us down to less than 1,000. Admitting that we have difficulty estimating the number of murderers, there were still only 19 convictions connected with these 982 murders and several of these were reversed on appeal. None of those convicted were executed. One might argue that the "law should be changed", but the reader should note that capital punishment was available to the courts in Chicago and there was no particular evidence that the laws were particularly lenient. Clearly, if a system cannot generate a higher rate of conviction, a harsh sentencing strategy will be largely irrelevant.

Let us return to the question concerning the sentencing of convicted murderers and whether an earlier incarceration would have prevented murder. Of the 342 violent offenders in Columbus, 53 were charged with homicide and attempted murder. Let us assume that all of these 342 individuals had been placed in jail at age 16 and kept there. How many deaths would have been prevented prior to 1973? These 342 individuals have been charged with 3 murders in the past. In other words, taking this cohort of violent offenders as a whole, their total past murders were roughly 6% of their murders for 1973.

If we translate this sort of ratio to the Edmonton scene, we note that there were 18 charges for murder in 1973 (Table 4). For the time being let us assume that 15 of these 18 were convicted (24 murder charges led to 15 convictions for all of Alberta in 1978). In addition let us argue, not simply for the incarceration of all those charged with murder, but let us argue that all of the 495 violent offenders charged with the 996 violent crimes in 1973 should have been locked up at age 16. Even making the questionable assumption that we could diagnose violence at age 16, what would we accomplish by locking up this population until 1973? If we use the figures from the Columbus study which showed that the previous murders done by the violent offender cohort were approximately 6% of those done in the one year under study, imprisonment of the 1973 violent offenders would have saved approximately 2 lives prior to 1973. This would not have much impact on the 20 murders per year that are normally recorded in Alberta. The reader should also note that we haven't offered any way of recognizing these violent offenders at age 16. This calculation is not based only on the imprisonment of murderers but all the assault cases as well.

One must distinguish between the rare sensational case and the ongoing reality. The story of the murderer who kills a second time is highly publicized and used as an illustration of what is wrong with the system from time to time. In fact, such repeat offenders are very rare. They constitute a problem for a society, but they still contribute a very small percentage of the violence that plagues our society.

Clearance rates for violent crime in Canada. Before reviewing some of the other findings from the Dangerous Offender Project in Columbus, let us look at the flow of violent cases through the Canadian system. In Table 5 we show the percentage of violent crime cleared by charge, cleared otherwise, and

unresolved for each of the provinces in Canada. We noted earlier situations where the violent crime is known to the police but where they are not in a position to lay a charge. Therefore it is not surprising that charges are laid in Canada for only 34% of the violent crimes that are known to the police. Alberta is much like the rest of Canada in this respect. It is worth noting that in some areas, such as the Northwest Territories, the number of unresolved cases is very small, only 6%, but the number of violent crimes cleared "otherwise", rather than by a charge, is rather high, 65%. Even in the smaller communities in the Northwest Territories where the R.C.M.P. have greater knowledge of the violent crimes being committed, it is still difficult to bring much more than a third of these offences into the criminal justice system with a formal charge. Clearly, if we are genuinely concerned about violent crime, and not just a symbolic form of justice, strategies must be aimed at those conditions that lead to violent crimes which are unresolved or known to the police but which cannot be resolved by a charge.

Table 5: Percentage of Violent Crime Cleared by Charge, Cleared Otherwise and Unresolved: Canada and Provinces 1977

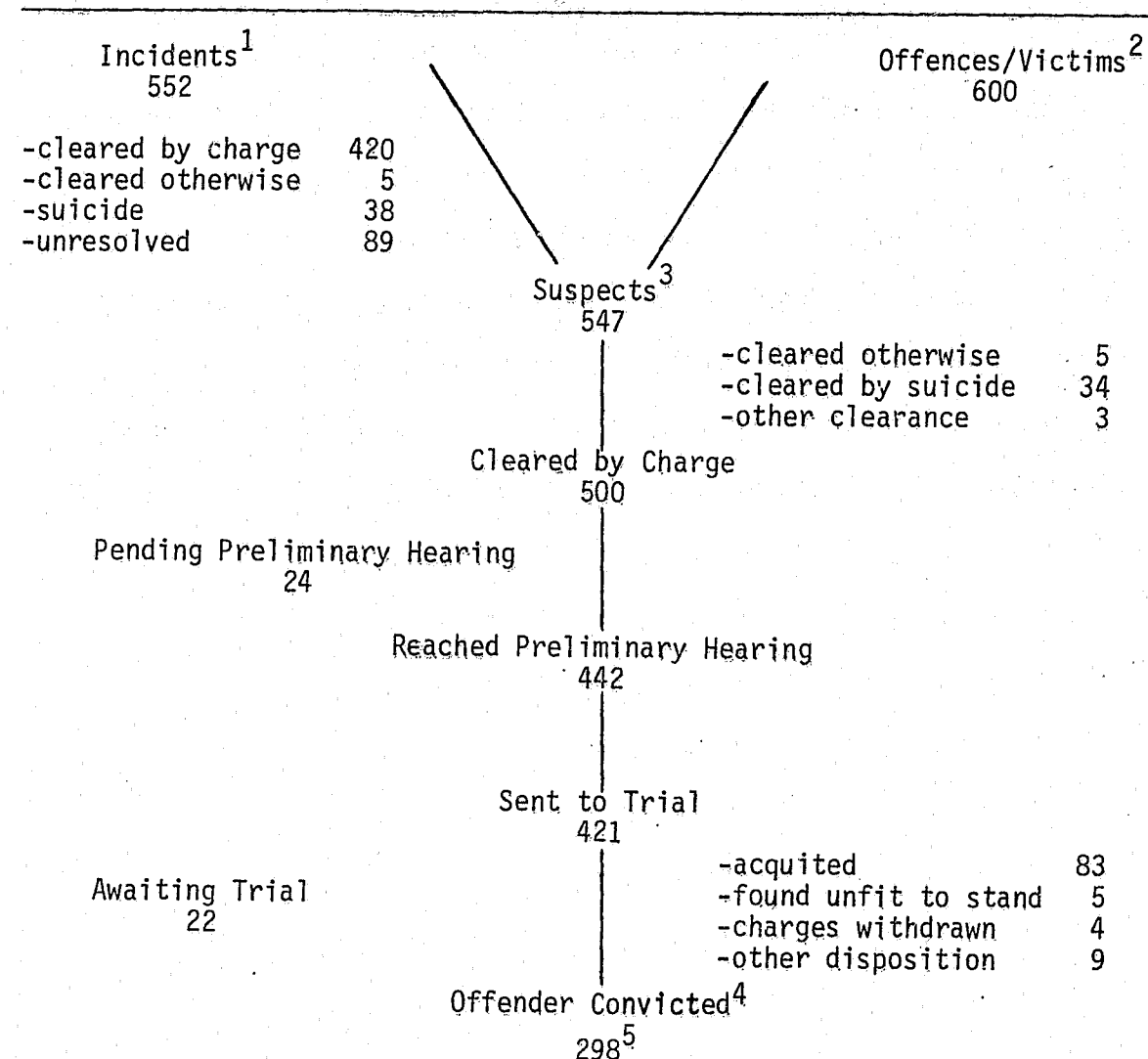
	% Cleared by Charge	% Cleared Otherwise	% Unresolved
Canada	34.1	36.7	29.2
Newfoundland	38.1	45.0	16.9
Prince Edward Island	37.2	49.7	13.1
Nova Scotia	35.0	43.6	21.4
New Brunswick	40.3	35.0	24.7
Quebec	32.9	14.7	52.4
Ontario	35.9	40.5	23.6
Manitoba	40.4	32.8	26.8
Saskatchewan	43.3	34.1	22.7
Alberta	35.1	42.4	22.5
British Columbia	24.9	47.0	28.1
Yukon	32.5	57.3	10.2
Northwest Territories	29.5	64.5	6.0

Source: Statistics Canada. Crime and Traffic Enforcement Statistics, 1977.

Homicide cases in the Canadian criminal justice system. Perhaps the best Canadian illustration of how crimes and persons flow through the criminal justice system is obtained from Homicide Statistics. Figure 1 reflects the 1978 status of incidents, offences, suspects and offenders for all homicides reported in Canada during 1974. Can we argue that the criminal justice system could be used effectively against murderers even though it can't be used effectively against those who commit assaults? It frequently takes more than a year to process homicide cases, therefore 1974 statistics give the most complete picture of the flow of homicides cases through the criminal justice system.



Figure 1: Incidents, Offences and Legal Status of Homicide  
Suspects and Offenders 1974



<sup>1</sup>incident - refers to every single event in which homicide is committed regardless of whether it involves one person or more than one.

<sup>2</sup>offences - refers to the number of victims killed within a designated period of time.

<sup>3</sup>suspects - the persons identified as having committed a murder, manslaughter or infanticide. (In any incident where more than one victim has been killed by a single suspect, a separate charge is usually laid against the suspect for each offence.)

<sup>4</sup>offenders - homicide suspects who are sent to trial and ultimately convicted.

<sup>5</sup>includes suspects who were found or pleaded guilty and were given absolute or conditional discharge.

Source: Stats Canada. Homicide Statistics, 1978.

One notes that the 547 suspects pass through the system losing cases along the way. Four hundred and twenty-one were sent to trial and of those, 298 were convicted. Keep in mind that this is a relatively small population of people to focus on if we are genuinely concerned with reducing the amount of homicide in Canada. Keep in mind also the evidence from the Columbus, Ohio study of what the consequences would be if one were to take all persons who had been convicted of any violent offence and had somehow been able to put them in jail early in their lifetime. According to the empirical data from the Dangerous Offender Project, which is not a calculation from a mathematical model, drastic measures taken against the relatively few cases that end up being convicted by the criminal justice system can have little impact on the total violence problem.

Let us follow the 298 convicted murderers in 1974 a step further. In Table 6 we see that the offences for which the offenders were convicted include six cases of capital or first degree murder, 97 cases of non-capital or second degree murder, and 154 cases of manslaughter. Usually, when we think of the vicious premeditated killer we are thinking of the capital<sup>1</sup> or first degree murderer. Most of us are willing to distinguish between a murder committed in self-defense or in a midst of a fight and premeditated cold blooded murder. If we wish to have a selective sentencing policy which focuses primarily on capital or first degree murderers then we should be aware that for 1974, there were only six convictions for such cases. Again we see evidence that although there are certainly some very nasty people around, those who can be identified, charged, tried, and convicted for the most severe crimes are relatively rare.

Table 6: Distribution of Convicted Offenders by Offences of Murder, Manslaughter, and Infanticide Canada - 1974

Offence	Number of Offenders Convicted
Capital or first degree murder	6
Non-Capital or second degree murder	97
Manslaughter	154
Infanticide	5
Other lesser offence	<u>35</u>
	297 <sup>1</sup>

<sup>1</sup> Excludes suspects who were found or pleaded guilty and were given absolute or conditional discharge.

Source: Statistics Canada. Homicide Statistics, 1978.

In Table 7 we have the disposition of the convicted offenders for 1974. Notice that 104 received life sentences, 28 received 10 years or more, and 146 received under 10 years. While it is difficult to make judgements about the appropriateness of these dispositions, it should be noted that over one-third received life sentences and the number of first and second degree murders was also about one-third.

Table 7: Dispositions Awarded Convicted Offenders for Homicide Canada - 1974

Disposition	Number receiving disposition
life	104
10 years plus	28
under 10 years	146
suspended sentence, probation or fine	<u>16</u>
	297 <sup>1</sup>

<sup>1</sup> Excludes suspects who were found or pleaded guilty and were given absolute or conditional discharge.

Source: Statistics Canada. Homicide Statistics. 1978.

### Conclusions Regarding Prevention Through Severe Jail Sentences

In the Dangerous Offender Project empirical data were used to test theoretical models. One premise of the study by the Shinnars was that most uncleared crime is committed by those arrested. Therefore, severe sentencing for those arrested would prevent far more crime than is actually cleared by arrest. The Dangerous Offender Project suggests that this assumption is generally in error. For jail sentences to be effective the apprehension rate must be greatly increased, unless it can be shown that a very large percentage of uncleared crimes are committed by those who are arrested. Secondly, a large percentage of crimes must be committed by repeat offenders and this assumes that convicted offenders spend very little time in prison. Those who advocate more extensive sentencing assume that we apprehend most of those who commit violent crimes, permit them to slip through the criminal justice system and free them frequently on a technicality. Once they are convicted there is the assumption that they are treated so leniently and paroled so readily that those cases that seem to be obvious risks spend very little time in jail. In Paper #3 of this study we review data on parole in Canada (Hackler and Gault, 1980c). The Dangerous Offender Project suggests that these assumptions are not correct and the Canadian evidence is consistent with these findings.

It is possible to get many different reactions to severe sentencing, but we tend to share the views expressed by Cohen (1978) and Van Dine, Conrad, and Dinitz (1979): keeping people in jail simply does not prevent much crime. There is some reduction, however, and the question is how much do you get with a specific policy and how much do you sacrifice? There is also some evidence that the reduction in crime through increased prison sentences seems to be much more effective and less costly in those areas where the need is least.

In New York's South Bronx, with a greater density of serious offenders, it is less probable that this strategy will have the desired crime reduction impact. Is it possible that such a strategy would work reasonably well in Red Deer but poorly in Edmonton? If Edmonton is such a violent place to live, longer sentences might have a slight impact, for a severe price in civil liberties, expansion of prisons, etc. For the crime problem in Red Deer, it would be a case of overkill. Let us also note that those who write with such confidence and certitude about the efficacy of severe sentencing policies tend to be scholars, judges, legislators, and lawyers, whose unshakeable convictions come from that "common sense" arising from the comfortable life in seats of power. Few of these arguments are launched by people who have been hungry, poor, abused, or come from low status ethnic or racial groups.

#### The Trade-Off Between Severity and Certainty

The preceeding data cast doubts on the effectiveness of extremely harsh sentencing practices. There is also the possibility that harsh sentences, especially when they are mandatory, decrease the likelihood of a conviction. Juries are less likely to convict when the consequences of such a conviction are severe. Would more be achieved if the severity of the punishments were reduced if higher certainty could be achieved? If we look at rape, we may get some insights into a more productive strategy.

We are all aware of the hesitancy on the part of rape victims to report attacks to police. In 1977, 369 cases were reported in Alberta, 108 were unfounded, 96 were cleared by charge and 36 were cleared otherwise. That year 48 rape charges were processed by the provincial courts and 22 convictions were given, of which 14 received sentences of two years or more, 6 received less than two years and 2 received probation. Notice, the same problem exists

in terms of using incarceration as a means of cutting down on rape. Assuming that the 369 cases reported did represent an assault of some kind, the 22 convictions represent a small number of persons who can be disciplined in some way. Would not the deterrent effect and the symbolic effect be greater if we could increase the percentage as a trade-off against severity? By processing some of these attacks as assaults, it is likely that a higher conviction rate could be obtained even though the penalties would be much less. Recent publications by the Law Reform Commission of Canada (1978) and the Rape Crisis Centre of Edmonton (1978) advocate reforms that would treat rape as an assault (sexual) and facilitate increased certainty of conviction. Although this study cannot present hard evidence to support this line of thinking, there are indications that sentencing policies which would increase the certainty of apprehension and conviction may have a greater deterring effect than those that would increase the severity of sentences (Law Reform Commission of Canada, 1974).

#### Conclusion

In the event sentencing policies were to be implemented that would facilitate the long term incarceration of offenders, the effects of such actions would need to be studied. Although this will not be dealt with in this study, some research indicates that long term incarceration may increase offender hostility and personal despair to the extent the offender is indifferent to consequences so that more crimes will be committed on release (Hamparian, 1978; McKay, Jayewardene and Reedie, 1979).

One must conclude that increased sentencing would have to be extensive and would still only make a modest reduction in violent crime. If we are truly serious about the reduction of violence, we cannot rely on the criminal

justice system. A good portion of our violent criminals are produced in violent homes. The current concern about wife battering and other forms of domestic violence should not be ignored if we have a serious commitment to the reduction of violence. This theme will be developed in Paper #4 of this study (Hackler and Gauld, 1980d).

#### Footnotes

- <sup>1</sup> Capital murderers would be those who killed policemen or prison guards. These categories are no longer in use. First degree murder implies deliberate intent and is comparable although not the exact equivalent of capital murder.

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