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CONFINING FELONS:

Incapacitation As A Sentencing Strategy

Authors

Jennifer Panagopoulos

Bruce M. Trager

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Statistical Analysis Center
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100 Cambridge St., 21st Floor
Boston, MA 02202

Walter Timilty, Director, MCCJ
Jennifer Panagopoulos, Director, Evaluation and Research
Joanne Quigley, Director, SAC
Bruce Trager, Research Associate

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ABSTRACT

This study is an assessment of legislation, to be filed next year, that assigns mandatory minimum sentences to specific crimes. Some criminologists believe that by incapacitating habitual offenders there will be a significant reduction in the crime rate. Our research examines this question by looking at the number of felonies prevented if these sentences had been in operation since 1975. In addition, the impact of this type of legislation on the Massachusetts Correctional System is evaluated.

PREFACE

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ACQUISITIONS

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Literature Review:

The primary function of government is to ensure the security of all of its citizens. Government must establish a legal order that guarantees its inhabitants certain rights and at the same time deal with those who seek to infringe on the rights of others. Order is enforced by bestowing sanctions upon those who violate the law. The correctional system was established to alter the behavior of violators. Two distinct ideologies, rehabilitation and punishment, arose as methods of affecting criminal behavior.

Rehabilitation is the belief that criminals may be reformed to live within society as productive members (Brockway:1870). In modern times, rehabilitation has conjured images of a "soft" response to crime. The rehabilitative philosophy believes that an individual becomes a criminal because he lacks the necessary skills needed to function in society. Thus, the emphasis is on social programs, job training, etc. rather than on incarceration. There are some that believe a criminal may be reformed by punishment. In general, this philosophy is concerned with treating the offender rather than punishing him.

There is another school of thought that believes punishing a criminal is the best way to change his behavior. The punishment philosophy consists of three varying theories: retribution, deterrence (general and specific) and incapacitation.

Retribution theory states that a criminal should be punished as a "just desert" for his crime. He should be treated punitively by society because he has behaved in a manner that cannot be tolerated by the legal order. Retribution may take the form of a monetary fine, restitution or incarceration. In earlier times the family of the victim was allowed to

physically harm the offender if the crime warranted it.

Such a policy of legalized revenge has been discounted by modern society as being barbaric. In point of fact, it is the function of law and government to punish criminals in lieu of individual retaliation. The state has tried to humanize punishment by rejecting the idea of revenge.

The classical school of criminology, led by Cesare Beccaria (1764) and Jeremy Bentham (1830), gave rise to the concept of deterrence as a justification for punishment. The classical school believed that man would engage in those activities in which he would derive pleasure and desist from those that caused pain. Thus, punishment must be severe enough to deter the average citizen from engaging in crime. This concept is known as general deterrence. We will discuss specific deterrence in the section on incapacitation. Beccaria's ideas are contrasted below with those of Zebulon Brockway (1870), a leading proponent of the rehabilitation movement:

Brockway

1. Let the punishment fit the criminal.
2. Release after criminal reformed.
3. Emphasis on prevention.

Beccaria

1. Let the punishment fit the crime.
2. Release after punishment served.
3. Emphasis on deterrence.

Some criminologists disagree on the utility of general deterrence in preventing crime. Critics contend that the criminal does not rationally weigh the gains of crime with the possible consequences; so, deterrence is ineffective. Proponents argue that the fact that most people do not commit crimes is proof that deterrence is a viable concept.

Incapacitation originally meant the physical mutilation of criminals in order to prevent them from repeating their crimes. For example, a thief may be incapacitated by having his hand removed. However, for our purposes incapacitation is defined as the confinement of a convicted offender in order to prevent future crimes. There is a philosophy that contends that most crimes are committed by a relatively small group of chronic offenders and the extended incarceration of this group would have a dramatic effect on the crime rate. That premise is the focus of our report.

The debate on which theory can be the most effective in reducing crime was rekindled after the publication of Wolfgang's juvenile cohort study (1973). This study traced the criminal careers of 9,945 boys living in Philadelphia. Wolfgang and his colleagues found that 6 percent of the sample (627) were responsible for more than half of all the crimes committed. In addition, this same group had committed nearly 2/3 of the violent offenses. Thus, a certain notion arose, led primarily by James Q. Wilson and Ernest van den Haag, that claimed if this small group of chronic offenders were incapacitated for a longer period of time there would be a meaningful reduction in the crime rate.

Wilson (1977) suggests that the function of the correctional system is to isolate criminals from the community and punish them. Given that and his claim that most serious crime is committed by repeaters it seems logical to surmise that extended incapacitation of repeat offenders will have an effect on the crime rate.

Ernest van den Haag (1975) carries this position one step further by advocating preventive detention. He asserts that we presently have the ability to predict future criminal behavior based on the "general cate-

gories into which the offender falls" (1975:246) using prior arrests and convictions, age, sex, etc. as criteria. Wolfgang found that the possibility of committing future crimes was dependent on the number of crimes already committed. Ernest van den Haag postulates that offenders whose probability of assaultive recidivism is greater than 60 percent or whose non-assaultive recidivism exceeds 75 percent remain incapacitated until they become low risks. He justifies his position by saying,

"It is for the sake of the security or welfare of society, not of justice, that we quarantine persons with contagious diseases... and confine psychotics deemed dangerous to others, when they have not, or not as yet, harmed anyone. We do not punish, but nonetheless deprive, these persons of freedom because they constitute an excessive hazard... Surely, then, once having punished offenders for their offense, we may incapacitate them when we have reason to believe that they will unlawfully harm others if released and that the harm and the likelihood of it are great enough to outweigh the harm preventive restriction of their freedom does to them." (1975:243)

Yet, van den Haag distinguishes between punitive confinement and non-punitive confinement. For, "We cannot punish offenders just to protect society from anticipated danger. Punishment refers only to what is deserved for a crime already committed." (1975:243) Instead, he recommends that non-punitive confinement be made as comfortable for the detainee as possible. He may live with his family, have friends visit, watch TV, etc. The only thing he will be prevented from doing is associating with the general public. Eventually the detainee will age past the crime-prone years and then can be reintegrated into the community.

In recent years there have been a number of papers published examining the efficiency of a policy of incapacitation. The varying studies pro-

duced a number of differing results. Isaac Ehrlich (1973) developed a mathematical model to project the effect law enforcement (i.e. imprisonment) could have on the crime rate. He examined the effect of sentence length on the crime rate. The hypothesis being that the longer an inmate is confined (incapacitated) then the greater the reduction in the total number of crimes committed. Ehrlich found that by reducing the average time served by 50 percent there would be a subsequent increase in index property offenses (4.6%), index offenses against the person (2.5%), and an increase of 5.6% in all index crimes, from the time lost from incapacitation. That is to say, if the offender remained incarcerated for the entire time the increased crime mentioned above would not have taken place.

Shlomo and Reuel Shinnar (1975) also developed a mathematical model based on the individual's criminal history and the amount of time served for crime in New York State. The authors coined the term "safety crimes" to refer to all violent index crimes plus burglary. The Shinnars state that career criminals commit between 6-14 crimes per year and are only caught once. Their assumption, therefore, is that uncleared offenses are also being committed by the career criminals. By incapacitating these offenders we can reduce serious crimes by 2/3 if every person convicted was given a three year stay in prison. Concomitantly, if such a policy were implemented in New York State the prison population would increase by 40,000 (355%) to 60,000 (567%). These figures were computed by taking the average daily population in New York Prisons for safety crimes in 1970 (9,000) and comparing that to the 40-60,000 additional prisoners detained by a policy of incapacitation. Under this scheme, facilities would have to confine 40,000 persons convicted of safety crimes alone. Incapacitating other felons as well would be even more costly.

Joan Petersilla and Peter Greenwood (1978) in Colorado conducted a study based on individual offenders' case histories rather than a general mathematical formula. Petersilla's sample consisted of 625 persons convicted from mid-1968 to mid-1970. In addition to safety crimes, they also included auto theft, selling drugs, and grand larceny in the analysis. They employed a variety of sentencing policies and their subsequent effect on the crime rate. They found that if every convicted felon were incarcerated for five years, regardless of prior history, there would be a crime reduction of 50 percent. Under the different sentencing plans, the prison population would increase by 450% for five year sentences, 230% for 3 year sentences and 50% for a one year sentence. By incarcerating only those who were convicted of violent crimes, the prison population increases would be 160% for five year sentences, 80% for 3 year and 25% for one year sentences.

Perry Johnson (1978) contends that repeat offenders are responsible for 1/4 of all violent crime in **Michigan**. Therefore by incapacitating certain offenders we can prevent a number of violent crimes per year. He uses the Michigan Department of Corrections criteria for parole that has been proven successful in predicting future behavior (Kime:1976). The incapacitation of 100 high risk cases was found to prevent as many offenses as incarceration of 400 low risk prisoners. Johnson then develops a sentencing plan where high risk cases are imprisoned for five years and middle risk prisoners for two years. Low risk offenders are not imprisoned. Such a policy reduces violent crime by 8.8 percent with a subsequent increase in the prison population of only 10%.

Jacqueline Cohen (1978) has prepared a critical review of the literature on incapacitation. By using available models of incapacitation she concludes (using 1970 statistics) that a 10% reduction in crime in

Massachusetts for the index offenses would precipitate a 310% increase in the prison population. However, a 10% reduction in the violent crime rate would constitute only a 27% increase in the prison population.

In 1975, David Greenberg published a paper refuting the effects of incapacitation on the crime rate. He defines recidivism as a return to prison within two years of release for a new felony conviction. Using a sample of 25,602 men, he found that only 0.73% returned to prison for a violent crime.

Greenberg then applies the recidivism rate for his sample to all prisoners in the U.S. He postulates that all prisoners would recidivate at the same rate as his sample (0.73%). He assumes there are 200,000 men incarcerated throughout the country. If they were all released simultaneously, then only 1,460 would return to prison for a violent crime. Greenberg cites two factors that limit the effectiveness of incapacitation; the low rate of return among parolees, and the low rate of imprisonment for total index crimes. The latter is affected by low clearance rates and prosecutorial discretion to drop or reduce charges.

In addition, "When one resorts to imprisonment to solve the crime problem, the crime problem reappears within the prison" (1975:571). The large number of prisoners confined in institutions leads to overcrowding which results in increased violence within the prison.

Stephen Van Dine, Simon Dinitz and John Conrad (1979) conducted a case history study on convicted felons in Franklin County, Ohio in 1973. They used the 1973 felony conviction as their target offense. The researchers studied 342 adults that were responsible for 638 offenses. They also looked at 126 juveniles who were responsible for 154 delinquent acts. Only 32.2% (110) of their adult sample had been convicted of a

prior felony. They found that there were only 6 persons in their adult sample that had been convicted of more than one violent offense. The authors then developed sentencing patterns and studied their effect on the 1973 felony. Van Dine found that a 3 year prison stay would have prevented 42.8% of the 1973 offenses that were committed by recidivists; whereas a 5 year prison stay would have prevented 64.6% of the 1973 offenses that were committed by recidivists. Using their most restrictive sentencing policy, a five year sentence for any felony conviction, only 111 violent crimes out of the 2,892 reported for Franklin County in 1973 would be affected. If the person is assumed to be guilty of a violent crime whether convicted or not, there is only a 3.8% reduction in the volume of violent crime. However, using only those convicted of violent offenses, only 1.7% of violent crimes are affected by such a sentencing modality. The reasons for these results are twofold. First, the vast majority of violent crimes are not cleared by arrest and thus are excluded from the effects of an incapacitation strategy. Second, two-thirds of the sample are first time offenders, consequently their 1973 offenses would take place regardless of the sentencing scheme.

To conclude, the debate on the effectiveness of incapacitation is far from conclusive. The research that has been done to date seems to reflect the philosophy of those conducting the studies. Those researchers who claim that incapacitation can reduce the crime rate tend to extrapolate the findings of their sample to offenders who have not been arrested. For example, if 30% of the research sample are repeat offenders then the researchers assume that 30% of uncleared offenses are also committed by repeat offenders. Similarly those who say incapacitation has no effect also "stack the deck" by comparing effected crimes with the total number of reported offenses. Due to the fact that 70% of

reported offenses are not solved, then incapacitation can have very little effect on the crime rate as a whole. To quote Gunnar Myrdal, "The place of the individual scientist in the scale of radicalism-conservatism has always had strong influences upon both the selection of research problems and the conclusions drawn from research. In a sense, it is the master scale of biases in social science." (1944:1038)

(Emphasis in original.) Clearly, more research is needed on this question.

METHODOLOGY:

In June, 1981 the Statistical Analysis Center, under the direction of the Governor's Office, undertook a study to measure the effects of incapacitation on the crime rate. Because of the heavier caseload Suffolk County Superior Court was chosen as the target population. Using records from the Chief Probation Officer of Suffolk County, a list was compiled of every offender convicted of a serious crime in 1975. The list was checked to assure that offender's name appeared only once (e.g., a person may have been convicted of two serious crimes in 1975). There were 552 such cases, 302 of which were randomly selected for our sample. Due to missing histories, (i.e., lost records) a number of cases had to be dropped from consideration, leaving a total of 276. Our data base is a 50% sample of offenders not offenses. For ensuing years, offenses are counted, because we wish to know the number of crimes prevented by incapacitation. The following crimes were deemed to be of a serious nature for the purpose of our study: murder, manslaughter, rape, indecent assault, abuse of a female child, armed robbery, unarmed robbery, assault with a deadly weapon, kidnap, arson, breaking and entering, larceny and larceny of a motor vehicle.

The criminal histories of the 276 individuals selected for the study were then obtained from the Office of the Commissioner of Probation.

The criminal's history was disaggregated into those crimes which took place prior to the 1975 target offense and those which occurred after it. For the prior history only felony offenses were used. Both felonies and misdemeanors were used for subsequent crimes. Misdemeanors were included in the subsequent offenses in order to obtain a more accurate picture of the total criminal behavior that would be affected by a more stringent sentencing policy.

By using the sentencing strategies outlined in the Governor's Mandatory Sentencing Bill we were able to measure the effects of incapacitation on the crime rate. In other words, if a charge of armed robbery carried a six year sentence, we would look at the offender's history for the six years subsequent to the 1975 conviction for armed robbery. We then totaled the number of crimes he committed during the six year period. We assume those crimes would not have taken place if the offender had been incarcerated. The total number of crimes "prevented" were compared to the number of crimes that actually occurred. The effectiveness of this sentencing policy can then be measured.

LIMITATIONS OF THE STUDY:

Only certain crimes are being examined in this study: we did not collect data on all offenses included in the sentencing bill. Therefore, we cannot measure the total value of such legislation. The bill can only be evaluated in terms of the offenses studied.

In collecting the conviction figures for subsequent years we run the risk of including individuals who were arraigned for that offense in prior years. (The record-keeping system is such that we cannot easily differentiate between crimes arraigned in that year and crimes arraigned several years prior to the conviction)

ex: It is possible for someone to be convicted for an offense in 1976, and for them to have been arraigned for that offense in 1967. (They would have been counted as being convicted for a "crime committed in 1976").

Consequently, there seems to be no feasible way of preventing our tallies from being in error. However, these cases are the exception rather than the rule. Our tallies are sufficient to indicate trends in the number of crimes prevented. We can get a reasonable gauge as to the feasibility of mandatory sentences. (It would take much too long to examine all of the records thoroughly, matching arraignment and conviction dates. (This can be done for the target offense in 1975, but not for the years after 1975).

Demographics:

We attempted to identify our sample population by looking at certain demographic variables. As can be expected when studying serious offenders, our sample consisted primarily of young (under 30) non-white males.

The age breakdown follows below:

Table 1

Age (in 1975)	N	%
13 - 17	11	(4.0)
18 - 24	147	(53.6)
25 - 29	49	(17.9)
30 - over	<u>67</u>	<u>(24.5)</u>
	274	100.0

Three quarters (75.5%) of our target population were under thirty years of age at the time of the 1975 conviction. Age data was not available for two of the subjects. Traditionally, crime has been a young man's occupation. This can be seen more clearly when we examine the sex of the offender in the sample.

Males comprised 94.6% of the serious offenders in our study. There were only 15 women in the sample. Women are under-represented in crime since over half of the Massachusetts population is female (52.4%). Males are far more likely to commit serious crimes than are females.

In analyzing racial characteristics, we find that non-whites (blacks and others) represent 54.4% of our population while whites comprise 45.6%. Blacks are over-represented in our sample. They make up only 4% of the Commonwealth's population (221,179 of 5,737,037) yet are 51.1% of the sample. The racial characteristics of two offenders was unknown.

By cross-tabulating the race variable by sex we get the results found in Table 2.

Table 2

Race	Sex		Total
	Male	Female	
Black	130	10	140 (51.1%)
White	121	4	125 (45.6)
Other	8	1	9 (3.3)
Total	259 (94.6%)	15 (5.4%)	274 (100.0)

In addition, we looked at the marital status of the offenders in an effort to discern if it had an effect on criminal behavior. The theory being that a married man would have a more stable life-style and be less susceptible to peer influence to engage in criminal activity.

The marital status of the sample is as follows:

Marital Status

Table 3

	N	%
Single	214	77.8
Married	46	16.7
Separated	8	2.9
Divorced	7	2.5
	275	99.9

The marital status of one subject was missing.

To conclude, serious offenders in Suffolk County are primarily young, single, men who are disproportionately black. In the next section, we will examine their criminal histories and the effects of incapacitation on reducing crime.

Criminal History:

Inclusion in the sample, required that a person be convicted in Suffolk County Superior Court for a serious offense in 1975. The 1975 offense is called the target offense. Every individual in the sample had only one target offense. The following table is the type and frequency of target offenses for our study.

Table 4

Target Offense

	N	%
Murder	20	(7.2)
Manslaughter	11	(4.0)
Rape	13	(4.7)
Abuse Female Child	3	(1.1)
Armed Robbery	60	(21.7)
Unarmed Robbery	6	(2.2)
Robbery	14	(5.1)
Assault - DW	32	(11.6)
Arson	4	(1.4)
B&E	43	(15.6)
Larceny	60	(21.7)
Larceny MV	10	(3.6)
Total	276	(100.0)

As a whole, the crime of robbery accounts for 29% of the target offenses. Robbery is distinguished from armed and unarmed robbery in the analysis because court records do not always differentiate one from the other. Larceny (felonies only) combined with breaking and entering comprise 37.3% of the target crime. Only 5.9% of the sample was convicted in 1975 for murder, manslaughter or rape.

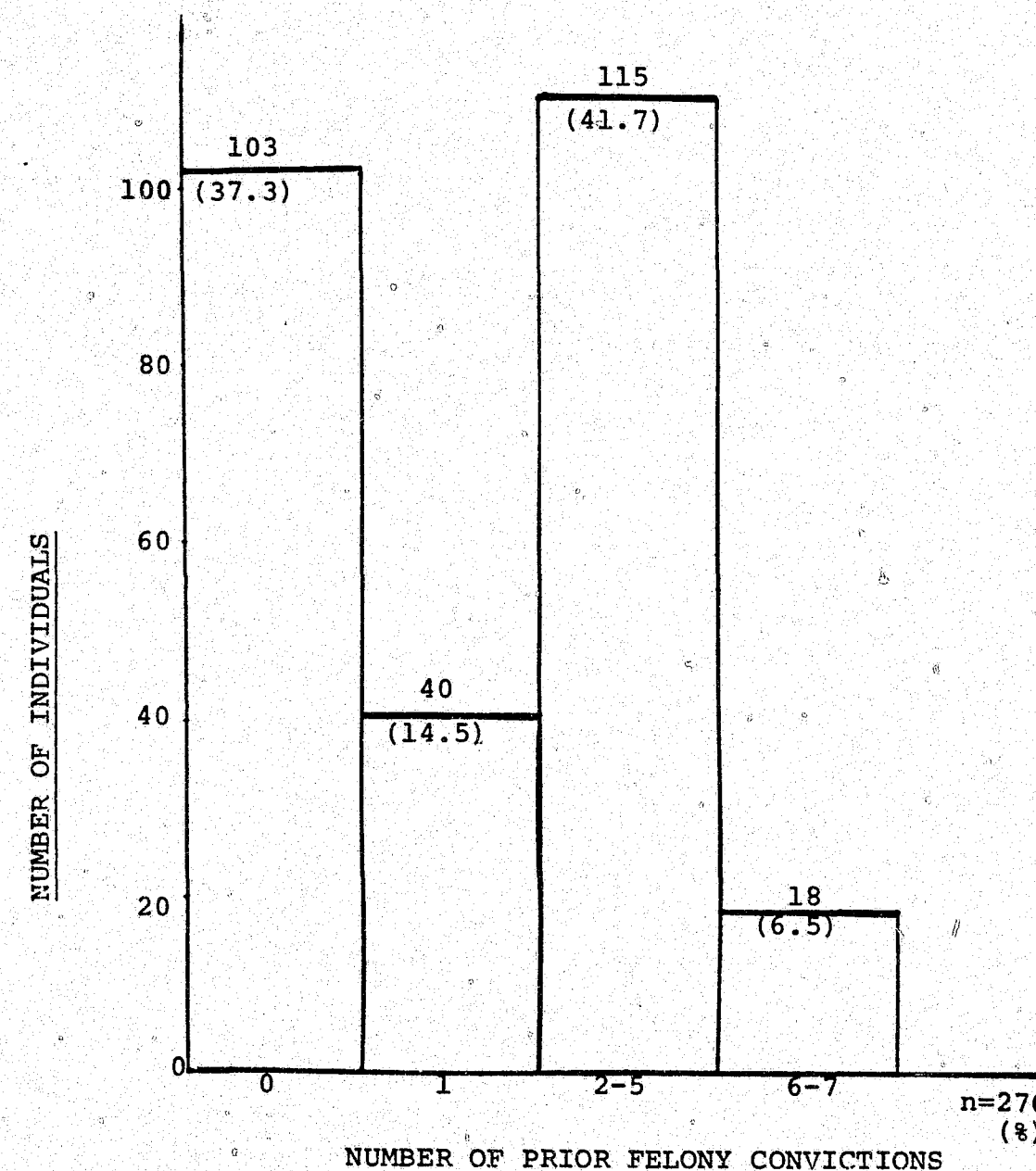
We then analyzed the criminal histories of the sample, to discern if there was a pattern to their criminality. Graph 1 indicates that 103 individuals or 37.3% of the sample were first time felony offenders in 1975. These individuals had no prior history of felony convictions. Yet 48.2% of the sample had been convicted for 2 - 7 felonies before the 1975 offense. Although a significant proportion of offenders were novices, a greater percentage were in fact career criminals.

Graph 2 also illustrates this point. One hundred and fifty-eight person had no subsequent felony convictions. This may be due to the fact that many of the more serious offenders (e.g. murder, rape) have been incarcerated for longer than the five years of the study. Holding incarceration constant still reveals that 60 criminals have been convicted for 2-5 felonies. An astounding fact is that 13 persons have been convicted for between 6 and 12 felonies from 1975 to 1980.

When we add subsequent misdemeanor offenses to the analysis the trends remain virtually unchanged (See graph 3). The modal category is that with no subsequent misdemeanor convictions (44.9%); yet a substantial segment of the sample (42.0%) had committed at least two misdemeanors since 1975.

Finally, graph 4 depicts the number of total felony convictions for each member of the sample. This chart enables the reader to get an understanding of the criminal histories of the sample. For 75 subjects (27.2% of the total), the 1975 crime was their only felony conviction. Once again the modal category was for at least two yet no more than five felony convictions. Interestingly, as many individuals had between 6 to 15 convictions as had those with only 1 offense (28.3% compared to 27.2% respectively).

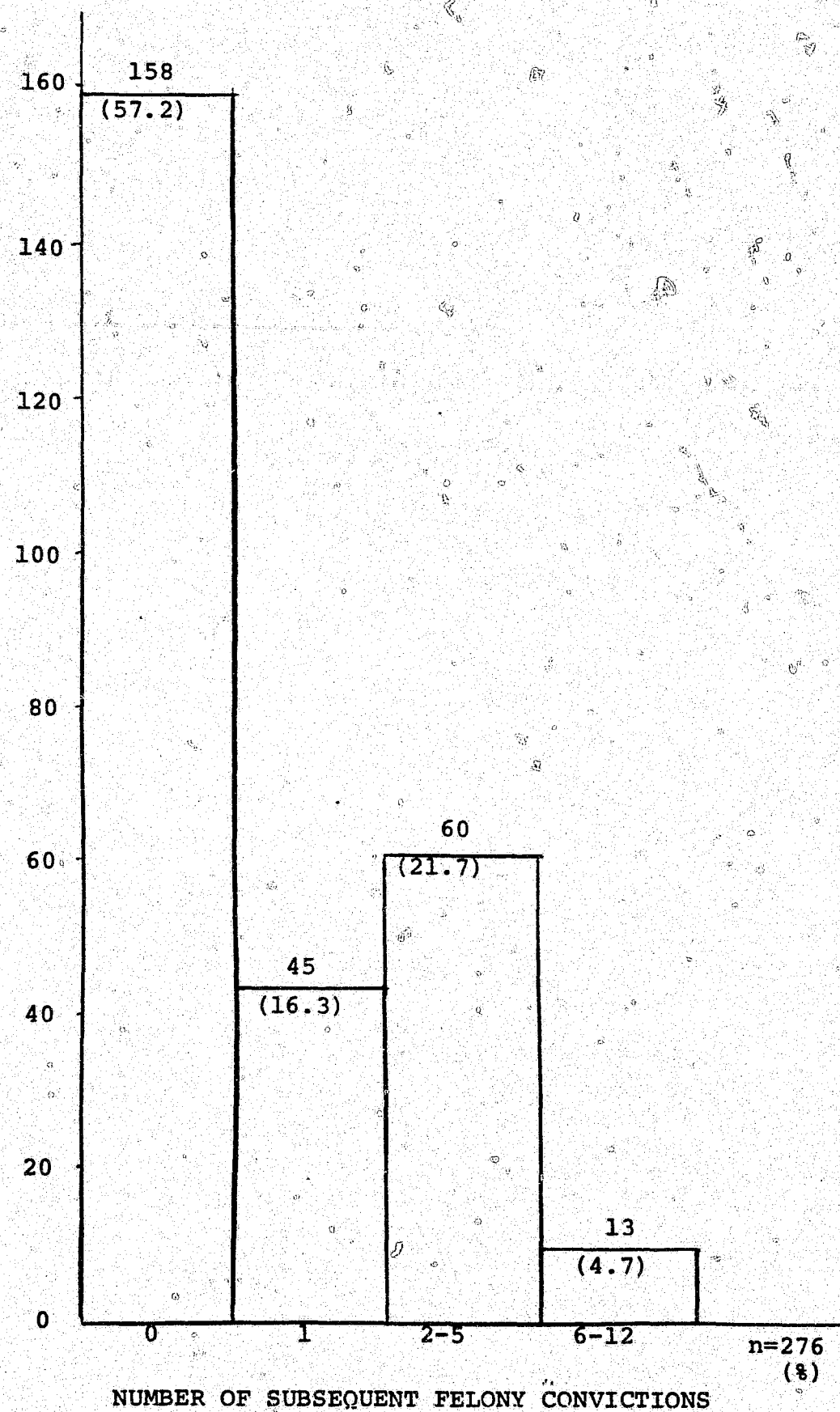
NUMBER OF PRIOR FELONY CONVICTIONS



GRAPH 1

NUMBER OF INDIVIDUALS

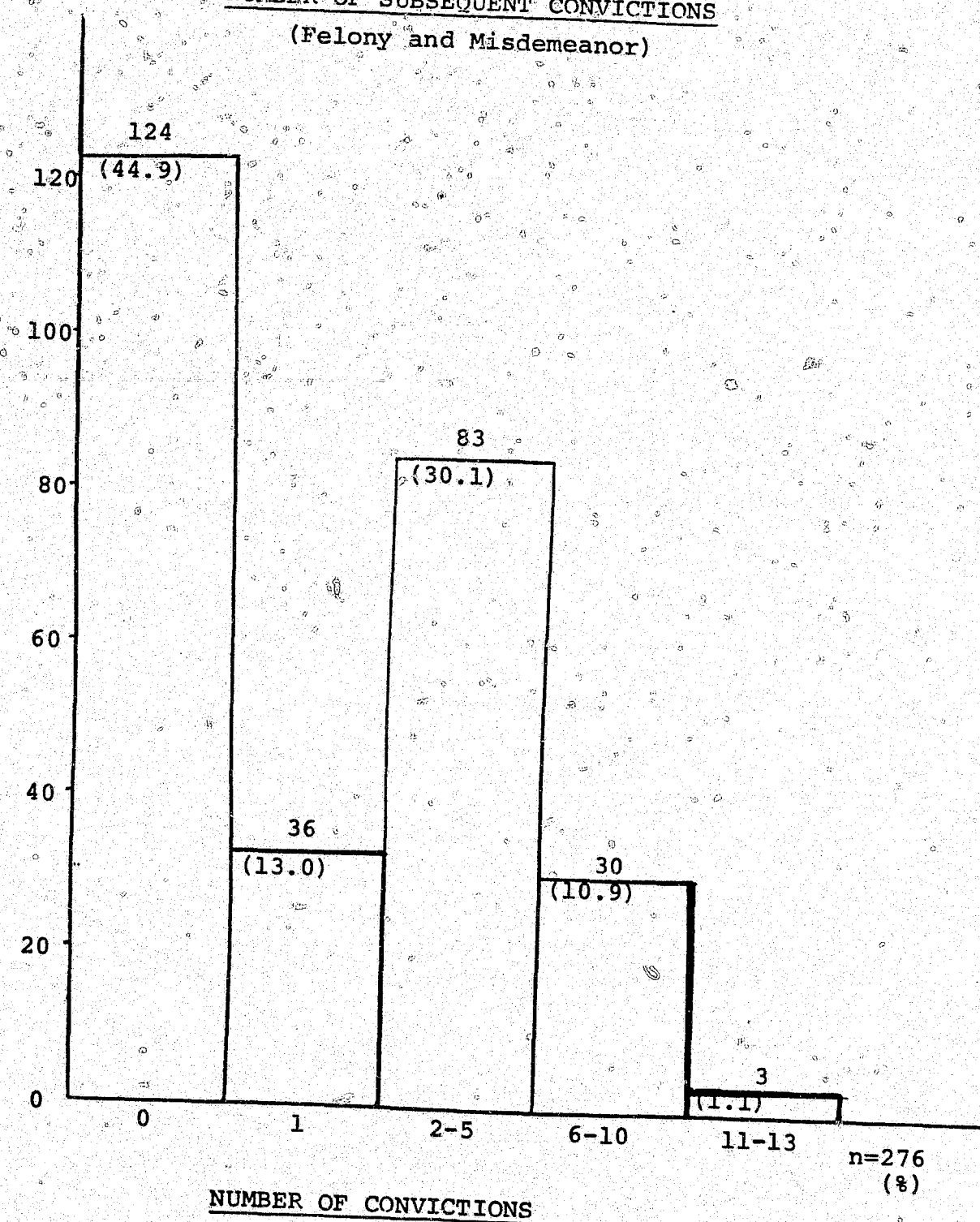
NUMBER OF SUBSEQUENT FELONY CONVICTIONS



GRAPH 2

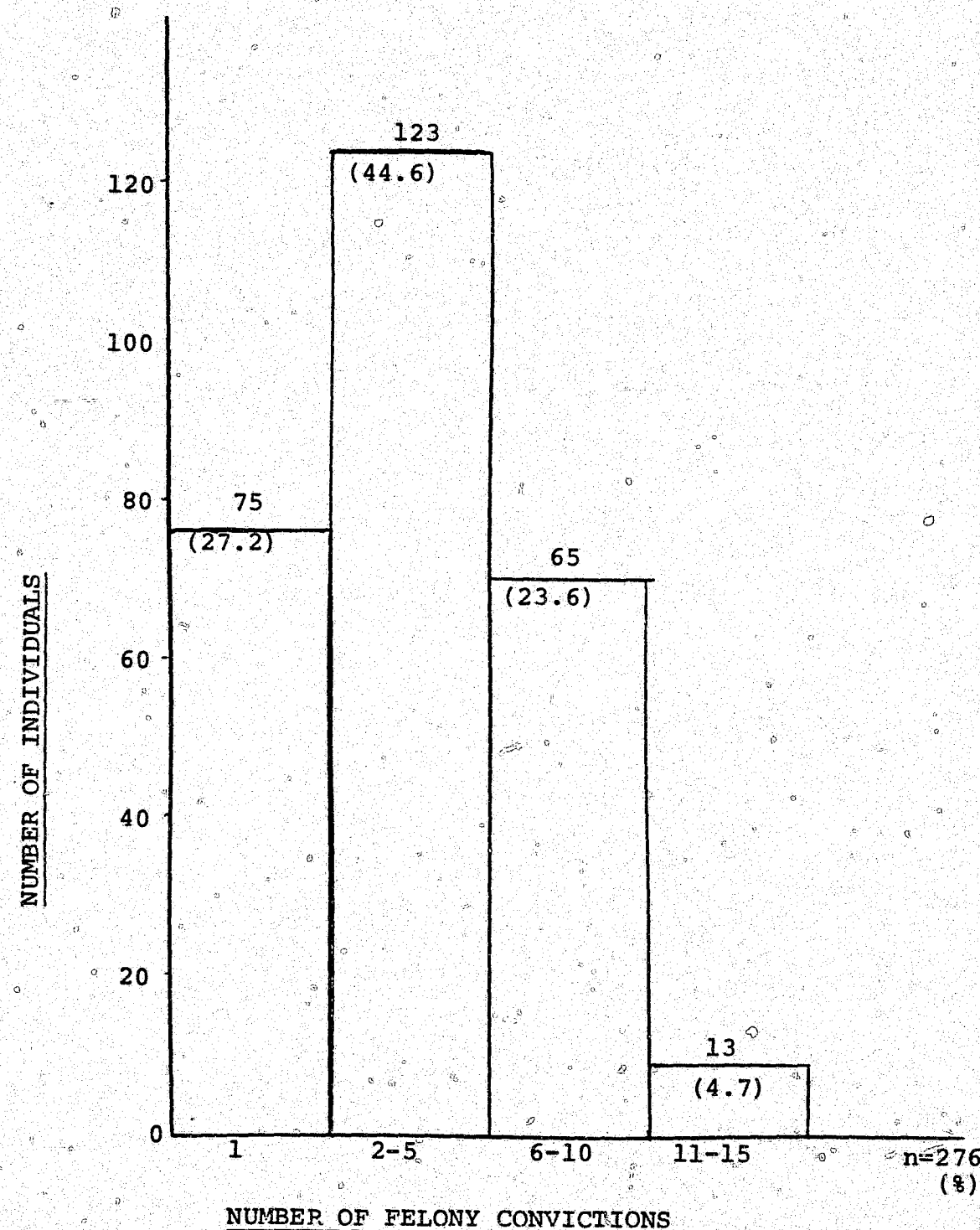
NUMBER OF INDIVIDUALS

NUMBER OF SUBSEQUENT CONVICTIONS
(Felony and Misdemeanor)



GRAPH 3

NUMBER OF TOTAL FELONY CONVICTIONS
(Prior, Subsequent, and Target)



GRAPH 4

An overall examination of the criminal histories reveals that the group was responsible for 1,124 felony convictions. Excluding the one-time offenders from the analysis, we find 201 criminals who were convicted for 1,049 offenses, an average of 5.22 felonies per offender. Clearly, this population reflects the type of habitual felon that has not been dealt with effectively by the criminal justice system. Further investigation of subsequent criminal behavior discloses that the individuals in the sample not only committed, but had been convicted of 325 felonies and 238 misdemeanors since 1975.

Only 118 persons were accountable for the 325 felonies. Similarly, just 94 people committed 238 misdemeanors since 1975. Wolfgang (1973) found that the number of prior offenses was the best indicator for future recidivism. Our analysis indicated a corresponding relationship. We cross-tabulated the number of subsequent convictions (felonies and misdemeanors combined) by the number of prior felony convictions, and obtained chi square with significance at the .001 level. Such a finding illustrates that there is an association between prior and subsequent convictions.

We also attempted to determine if there was a relationship between prior and subsequent felony convictions. Our findings indicate a moderate relation between the two. Chi square was calculated to be significant at the .046 level.

We then imposed the sentences delineated in the Governor's Mandatory Sentencing Bill on the target offense to see the effects of incapacitation on career criminals (See table 5.) For research purposes index crimes are those offenses previously mentioned in the methodology section (page 10). Violent crimes exclude b&e, larceny and larceny MV.

NUMBER OF CRIMES PREVENTED BY INCAPACITATION

Table 5

INDEX CRIMES

VIOLENT CRIMES

	1976	1977	1978	1979	1980	TOTAL	1976	1977	1978	1979	1980	TOTAL
<u>1 Year Sentence</u>												
Unarmed Robbery	34					34	13					13
Robbery												
Assault DW												
Larceny												
Larceny MV												
<u>2 Year Sentence</u>	8	8				16	1	0				1
Arson												
B&E												
<u>4 Year Sentence</u>	13	6	3	8		30	6	3	0	1		10
Indecent Assault												
Abuse Female Child												
Armed Robbery												
Kidnap												
<u>8 Year Sentence</u>	0	0	0	0	0	0	0	0	0	0	0	0
Manslaughter												
Rape												
<u>15 Year Sentence</u>	0	0	0	0	1	1	0	0	0	0	0	0
Murder												

By imposing a 1 year sentence for the following target offenses: unarmed robbery, robbery, assault DW, larceny and larceny MV; 34 index felonies that actually occurred in 1976 would have been prevented. Thirteen of those 34 offenses were violent crimes. The reason that so few crimes are prevented by the eight and fifteen year imposed sentences is probably because these offenders were incarcerated during this time and therefore unable to continue their criminal careers.

By imposing a five year incarceration period across the board, regardless of target offense, we obtain these results:

Index Crimes					
1976	1977	1978	1979	1980	Total Prevented
55	33	27	19	38	172

Violent Crimes					
1976	1977	1978	1979	1980	Total Prevented
20	10	5	5	18	58

The number of crimes prevented was compared to the actual number of convictions in Suffolk County from 1976 to 1980. Unfortunately, the records for the years 1976, 1977, and 1978 were discarded by the court and were not available for analysis.

In 1979, there were 580 individuals convicted for a serious crime in Suffolk County Superior Court. These individuals were convicted for 935 major offenses. Using the five year across the board sentence 19 out of 935 crimes, or 2.0% would be affected by an incapacitation strategy. If the Governor's sentences are implemented, .9% of the 1979 convictions would be affected.

For 1980, there were 605 individuals convicted for 845 serious felonies. The five year sentence yields a 4.5% reduction in criminal activity. The Governor's Bill has no effect on the crime rate since the serious offenders (8 and 15 year sentences) are already incarcerated and the other offenses carry a sentence that does not extend until 1980.

Due to the misplaced court records, we assumed that there were as many convictions in the missing years (1976-78) as there were in 1979 and 1980. The percentages for the years 1976-78 are rough estimates, and are meant solely to give the reader a sense of the relative merits of a mandatory sentencing policy.

(Table 6)

Estimated Per Cent of Crimes Prevented (1976-80)

Table 6

<u>Year</u>	<u>Crime Prevented</u>	<u>Number of Convictions</u>	<u>Percent Prevented</u>
1976	55	890 (estimated)	6.2
1977	14	890 (estimated)	1.6
1978	3	890 (estimated)	.3
1979	19	935 (actual)	2.0
1980	1	845 (actual)	.9
Total	92	4,450	2.1

Prison Population:

In 1979, there were 580 individuals convicted for 935 serious crimes in Suffolk County. Over half of those charges resulted in incarceration (57.4%). The breakdown is outlined in the table below:

1979	Table 7	
Offense	Convictions	Incarcerations (%)
Murder	20	20 (100.0)
Manslaughter	30	27 (90.0)
Rape	38	24 (63.2)
Ind. Asslt.	4	3 (75.0)
Abuse Fem. Ch.	11	9 (81.8)
Armed Robbery	195	136 (69.7)
Unarmed Robbery	20	10 (50.0)
Robbery	45	24 (53.3)
Assault DW	298	166 (55.7)
Kidnap	28	22 (78.6)
Arson	16	5 (31.3)
B&E	92	37 (40.2)
Larceny	119	43 (36.1)
Larceny MV	19	9 (47.4)
Total	935	535 (57.2)

For the year 1980, a total of 605 individuals were responsible for 845 serious felony convictions. Of these offenses, 67.4% resulted in an incarceration (See Table 8).

1980	Table 8	
Offense	Convictions	Incarcerations (%)
Murder	12	12 (100.0)
Manslaughter	23	21 (91.3)
Rape	39	32 (82.1)
Ind. Asslt.	7	6 (85.7)
Abuse Fem. Ch.	7	2 (28.6)
Armed Robbery	260	199 (76.5)
Unarmed Robbery	26	14 (53.8)
Robbery	32	16 (50.0)
Assault DW	257	163 (63.4)
Kidnap	23	21 (91.3)
Arson	24	14 (58.3)

Offenses	Convictions	Incarcerations (%)
B&E	69	42 (60.9)
Larceny	57	26 (45.6)
Larceny MV	9	2 (22.2)
Total	845	570 (67.4)

Another type of analysis was undertaken to more accurately gauge the increase in prison population due to the new sentencing structure. We calculated the following ratio by aggregating the data found for 1979 and 1980.

$$\frac{\text{Number of felony convictions}}{\text{Number of individuals convicted}} = \frac{\text{Number of incarcerations}}{\text{Number of individuals incarcerated}}$$

$$\frac{(935 + 845)}{(580 + 605)} = \frac{(541 + 570)}{X}$$

$$\frac{1780}{1185} = \frac{1111}{740}$$

The above ratio yields an increase in prison population of 61% per year. ¹ Thus, if this legislation had been in effect in 1975 the now-overcrowded Massachusetts Correctional System would have an additional 17,385 inmates in need of housing. This works out to an annual increase of 3,477 inmates.

COMPARISON BETWEEN THE GOVERNOR'S PROPOSED BILL

AND CURRENT PRACTICE

	<u>Proposed Sentence</u>	<u>Avg. Time Served - Present*</u>
Murder	180 months	194 months
Manslaughter	96 months	38 months
Rape	96 months	56 months
Armed Robbery	48 months	32 months
Unarmed Robbery	12 months	24 months
Assault DW	12 months	26 months
Kidnap	48 months	43 months
Arson	24 months	23 months
Burglary	24 months	23 months
Larceny	12 months	8 months
Larceny MV	12 months	17 months

* Source: Dept. of Corrections

Table 9

Table 9 compares the proposed sentences to the average time presently served in state facilities for specific crimes. It is important to note that the proposed sentences are mandatory minimum sentences while they are compared to the average length of time served. For example, under the current statute the typical unarmed robbery will spend 24 months behind bars, some will spend more time others less. Under the proposed bill every unarmed robber will spend at least one year in confinement. In addition, the current average sentence mentioned in Table 9 is only for those offenders sentenced to state correctional facilities. County facilities are utilized to punish offenders who have received lesser sentences. As a result, the average time currently served appears to be more severe since lighter sentence are not included in the average. The

increase in the length of sentence will also lead to an increase in the prison population. Increased sentences will keep people in prison longer, in turn cell-space will not be as available for incoming inmates.²

CONCLUSION

The analysis of the effects of incapacitation revealed some interesting results. We found that the majority of criminals convicted in a given year were career offenders. Over 60% of the sample had been convicted of a felony offense prior to the 1975 conviction. Similarly, over 40% of the study was convicted for at least one felony since 1975. There was a definite correlation between prior and subsequent convictions. Incapacitation had more of an effect in reducing property crimes than violent offenses. This corresponds to the finding of Van Dine (1979) and Petersilla (1978). However, the effects of an incapacitation policy on the crime rate were negligible.

Due to the great increase in prison population (at least 61%) and the minimal reduction in criminality, a mandatory sentencing strategy appears to be ill-advised.

Endnotes:

1. The figures were computed in the following manner: there were 1,185 persons convicted for a serious felony, 740 of which were incarcerated. Under the sentencing plan an additional 448 who were also convicted would be incarcerated.

$$448 \text{ (new incarcerations)} \div 740 \text{ (already incarcerated)} = 60.54\% \text{ increase per year.}$$

The average number of new commitments in state and county institutions from 1976-1980 was 5743.2 inmates.

$$5743.2 \times (.6054) = 3,477 \text{ additional inmates/year.}$$

$$3,477 \text{ inmates} \times 5 \text{ years} = 17,385.$$

2. Analysis was only done for those offenses where the proposed sentence exceeds the current practice. It seems highly unlikely that under a "get tough" policy inmates will serve less time than they do currently. Therefore, certain crimes, where the actual time served is longer than the proposed mandatory minimums, were excluded from the analysis. The calculation, which follows below, represents the additional length of stay in prison for convicted offenders. Under the proposed legislation, offenders will remain in prison 52% longer than they currently do. In other words, for every twelve months currently served, offenders will serve an additional 6 months due to the proposed mandatory sentences. This will increase prison overcrowding by delaying the flow of inmates through the correctional system.

The calculation is as follows:

$$(P_1 - T_1)I_1 + (P_2 - T_2)I_2 + (P_3 - T_3)I_3 + (P_4 - T_4)I_4 + (P_5 - T_5)I_5 + (P_6 - T_6)I_6 + (P_7 - T_7)I_7$$

$$(T_1)(I_1) + (T_2)(I_2) + (T_3)(I_3) + (T_4)(I_4) + (T_5)(I_5) + (T_6)(I_6) + (T_7)(I_7)$$

where: P = proposed sentence

T = average time currently served

I = number of incarcerations 1980

- 1 - Manslaughter
- 2 - Rape
- 3 - Armed Robbery
- 4 - Kidnapping
- 5 - Arson
- 6 - Burglary
- 7 - Larceny

$$1. \frac{(96-38)21 + (96-56)32 + (48-32)199 + (48-43)21 + (24-23)14 + (24-23)42 + (12-8)26}{(38)(21) + (56)(32) + (32)(199) + (43)(21) + (23)(14) + (23)(42) + (8)(26)}$$

$$2. \frac{(58)21 + (40)32 + (16)199 + (5)21 + (1)14 + (1)42 + (4)26}{798 + 1792 + 6368 + 903 + 322 + 966 + 208}$$

$$3. \frac{1218 + 1280 + 3,184 + 105 + 14 + 42 + 104}{11\ 357}$$

$$4. \frac{5947}{11357}$$

$$5. 52.36\%$$

ATTACHMENTS

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Suffolk County Major
Offender Study

Conducted by:

Statistical Analysis Center
(SAC) of the
Massachusetts Committee on
Criminal Justice

Identifier Number

Date of Birth

Race (1=Black, 2=White, 3=Other)

Sex (1=Male, 2=Female)

Target Offense

Date of Arraignment

Date of Conviction

Marital Status

PRIOR HISTORY

count number	offense type	year of arraignment	disposition	month and year of adjudication
0 1				
0 2				
0 3				
0 4				
0 5				
0 6				
0 7				
0 8				

☐ MORE THAN 8 PRIORS

SUBSEQUENT HISTORY

count number	offense type	year of arraignment	disposition	month and year of adjudication
0 1				
0 2				
0 3				
0 4				
0 5				
0 6				
0 7				
0 8				

0