THE MICHIGAN COMMUNITY CORRECTIONS ACT:

PRISON DIVERSION OR NET-WIDENING

A COUNTY LEVEL ANALYSIS

by

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I. INTRODUCTION

A. BACKGROUND

The Michigan Community Corrections Act, adopted on December 29, 1988, was clearly a legislative response to prison crowding. While many of its ardent supporters valued the Act for the implicit values associated with the reform-based reallocation of correctional resources, they extolled the Act for its capacity to reduce prison and jail crowding, and still provide for offender punishment in community-based settings. Supporters were so anxious for the bill to pass, after almost ten years in development, that in the later stages of the process the language of the supporters and practitioners began to change. Almost overnight, per the advice of the legislative spin doctors, the buzzwords changed from rehabilitation and humanness to new and more marketable descriptors such as community punishment and intermediate sanctions. As is the case in many public policy initiatives, the passage of the Act represented a consensus of different constituent groups with conflicting goals. The need for a response to prison crowding conditions other than prison expansion was so critical that it brought together a varied group of legislators, corrections officials and community corrections advocates.

So great was the crowding crises and legislative motivation to relieve the costs associated with the soaring prison admissions, that the Act called for results within a year from adoption. Through local comprehensive planning the Act required "...an explanation of how the state prison commitment rate for the city, county, or counties will be reduced, and how the public safety will be maintained, as a result of implementation of the comprehensive plan. The plan shall include provisions that detail how the...plan will substantially reduce, within one year, the use of prison sentences for felons..." These ambitious expectations were in part due to the existing foundation of community corrections programs throughout the state, supported by the Department of Corrections (DOC) which included residential centers, substance abuse treatment, and job preparation/finding networks. In fact, a 1987 study conducted by the Michigan Office of Criminal Justice stated that "it is clear that the existing community alternatives system in

Michigan is serving a substantial majority of the convicted felons and has achieved some degree of success at a cost substantially lower than those incarcerated in the state's prison system." (Michigan Office of Criminal Justice,1987) The study noted that the budget for these programs in 1987 was 8.5 million and that the Executive budget recommendation for 1988 was 12.5 million. (Michigan Office of Criminal Justice,1987)

Successful implementation of the Act, policy-makers knew, would require considerable cooperation and support from the local judiciary and other criminal justice officials based in the counties. The Act acknowledged this fact and established considerable authority at the local level for analysis of local systems and the allocation of resources. While many communities had programs designed to be alternatives to incarceration, virtually none of those communities had thoughtfully examined local data in order to identify systemic problems, nor had local criminal justice leaders initiated system-wide planning. The existing community corrections programs were built using a model of not-for-profit agencies seeking grant funds without the benefit of much planning by the DOC. This foundation building began in the late 1970's and continued up until the passage of the Act, through an office inside of the DOC known as CAP (Community Alternative Programs).

B. KENT COUNTY

Kent County is an example of a community that benefitted extensively from the early alternative program building. Immediately prior to the passage of the Act, Kent County, through its existing programs, was receiving approximately one million dollars in state support. The funds, according to the 1989 Office of Community Corrections (OCC) budget for Kent County, went to three residential programs, an employment program and to the local circuit court probation office which funded contractual treatment services for probationers. The programs were stable and had gained, generally speaking, a fair degree of credibility

and support from local criminal justice stakeholders. Throughout the State, the same could be said for existing programs located primarily in the most populated counties containing major urban centers.

Kent County is a geographically large county located in the lower western portion of the state of Michigan. It contains the city of Grand Rapids which has a population of 180,000; the County, as of the 1990 census exceeded a half a million in population. Like virtually every other county in the state and country, the Kent County Jail was overcrowded. The facility with a rated capacity of 540 came under federal judge supervision in 1978 and remains under the overcrowding order despite recent expansion of the facility and a population below the new capacity of 1,030. In 1982 the County began boarding prisoners in neighboring counties until it reached a system population averaging one thousand. Just a few months prior to the passage of the Act in 1988, Kent County voters approved a millage to expand the jail to raise the secured bed capacity to 1,030. Most policy makers in Kent County viewed the Act as an opportunity to continue the planning and system monitoring process that was undertaken in the course of planning the jail expansion. Of particular interest to County policy makers was the emphasis the Act placed on local administration and system coordination that was perceived to be critical for the avoidance of future jail crowding. They recognized that new beds would be quickly occupied, but hoped that future crowding could be avoided through systematic analysis of the jail population and improved coordination.

C. STUDY ISSUES

A fundamental question raised in community corrections literature and by legislative appropriation bodies is whether resources given to divert prison and or jail-bound offenders are effective, or whether more would-be probationers become the subject of enhanced control measures. The phenomenon of introducing of would-be probationers to programs intended for higher risk offenders bound for prison or jail is known as "net-widening". This study will attempt to answer that question for Kent County offenders by examining past sentencing practices to determine a probability of incarceration. An examination of actual program

enrollments will be performed to measure the extent of actual diversion activity versus net-widening. The principle method used to explore the issue of net-widening will be the sentencing guideline scores used in Michigan criminal sentencing. These scores will be used to identify "similarly situated" offenders that can then be tracked through the sentencing disposition. Establishing a baseline of dispositions by a sentencing guideline category will permit the study of diversion versus net-widening.

II. THE MICHIGAN COMMUNITY CORRECTIONS ACT

A. MAJOR FEATURES

The definition of community corrections legislation recently adopted by the American Correctional Association reads as follows:

> A statewide mechanism through which funds are granted to local units of government to plan, develop and deliver correctional sanctions and services at the local level. The overall purpose of this mechanism is to provide local sentencing options in lieu of imprisonment in state institutions.

The Michigan Act, known as Public Act 511, is consistent with that definition and contains the following major features:

1. Funding

The Act provides specific authority to local boards to apply for funding. It also prohibits local applicants from supplanting local funds with state funds. The local board, for example, may not withdraw local funds from a community corrections program and replace that funding with P.A. 511 dollars. Interestingly enough, the Act does not specify how funds will be distributed among applicants but gives the State Board authority under Section 4 (c) to, "adopt an application process and procedures for funding community corrections programs, including the format for comprehensive corrections plans". The funding format implemented by the State Board is based on crime statistics for the locality and its population. A general fund entitled "Community Correction Grant Funds" is allocated to all successful applicants based on the

formula. In addition to the general fund, there are other specific funds available, but those funds are not allocated using the formula. The funds set aside for residential programs represent the largest portion of these specific funds and does not come under the formula. The 1993 fiscal year state community corrections total budget was approved at 25 million dollars. In three full years of funding, the allocation formula has not been challenged, nor has it been publicly reviewed for fairness or accuracy. Unlike the Kansas Act which has a "chargeback" system that penalizes county's financially for imprisoning low level property offenders, PA 511's only language for funding withdrawal is contained in Section 8(2)(a). This is the same section that requires a county to substantially reduce the use of prison sentences. The section ends with the caveat that "continued funding in the second and subsequent years shall be contingent upon substantial compliance with this subdivision". The Kansas Act provides a chargeback system that deducts from the local grant a per diem amount for each offender sent to prison who was a "target-category" offender. The county is assessed for each day of imprisonment. The Kansas penal code helps with the definition of the target group because it classifies its low level, primarily property crimes as class "D" and "E" felonies. Michigan does not have such categories.

2. Planning

According to Shilton (1992), of the 18 states with community corrections legislation, only Connecticut requires that a state plan be fashioned. All of the states though, require the local jurisdiction to file an application which in varying degrees amounts to a comprehensive plan. For instance, 12 of the 18 states require data analysis. Thirteen of the states require program analysis and 12 require that evaluations be performed. Michigan is among the states that require extensive annual planning. The annual application mandates an analysis of data related to prison and jail admissions as well as an examination of offender characteristics. The planning model encompasses a review of the activities of the courts at both the district and circuit levels, their processing times, and their pending caseloads. The courts are reviewed for jail use, both for pretrial detainees and sentenced inmates. In Michigan, a state that has sentencing guidelines,

the analysis includes a review of sentencing patterns for low guideline scoring prison admissions. A score of 48 months on the maximum end of the sentencing range is considered a viable community corrections participant. Scores below 6 months on the minimum range of the score are presumed by the state administration to be "straight" probation cases and therefore, not eligible for funding as prison diversion. Scores by guideline groups must therefore be analyzed and defined for placement in a continuum of community sanctions. The comprehensive plan must be approved by the local community corrections advisory board prior to submission of the plan to the state for final approval.

3. Local Control

The Michigan Community Corrections Act requires that an interested county, city, or regional group of counties, through a vote of its commissioners, request funding and appoint a local advisory board. The make-up of the board as prescribed in the Act requires that the following areas and elected offices be represented: county sheriff, chief of city police, circuit court judge, district court judge, probate court judge, county commission, community helping agency, prosecuting attorney, criminal defense attorney, business, media, probation, and general public. The power of appointment to the local board lies with the county board of commissioners or city council in the event that a city applies for funding. Having the power to approve the local comprehensive plan gives the board full authority over the formula grant. Provided that services are directed to eligible offenders, the board may allocate local resources with complete discretion.

4. Administration

The administration of community corrections would appear to be unique in Michigan due to the autonomous status of the Office of Community Corrections. In Shilton's (1992) review of community corrections acts and their respective administrative departments, Michigan is the only state with an independent office. The other states have located the administrative function within an existing and related office, eg. public safety,

corrections, courts. The status in Michigan is actually a semi-autonomous relationship with the DOC. The OCC budget is contained within in the DOC budget, but the office has independent control over its portion of the budget. The executive director of the OCC answers to the State Community Corrections Advisory Board, not to the DOC director.

Framers of the legislation intended this semi-autonomous administrative arrangement. They sought to ensure that community corrections would remain a priority, which they feared may not be the case in the DOC where prisons have priority and comprise the majority of the budget. Many of the supporters of the legislation had spent years working with the DOC in community contracts and always felt like poor cousins to the institutions in the budgetary sense. The separateness of the administrations also reflects the different ideologies between the DOC and community corrections professionals. Despite attempts in the 1980's to legitimize the practice of community corrections, tension existed between the two groups, with the DOC representing the status quo and community corrections representing reform. The relationship between the two groups prior to the Act had the community-based programs at the discretion of DOC. Therefore, priorities were set by departmental caveat and not by the legislature or through any consensus building. Under the pre-Act arrangement, new programs, changing priorities, and per diem amounts were developed in-house and not defined in any public forum; this left the impression among the non-profit vendors that performance had little to do with continued funding.

The Community Corrections activists who helped to craft the legislation were motivated to create a bureaucracy of their own. Rather than being dictated to by the DOC, they worked for an independent governing board. One of the resulting compromises was a State Board with a seat reserved for the director of the DOC. Like the local boards, the state governing board authorizes 13 seats and requires representation from key areas of the criminal justice system. State Board members are appointed by the Governor and confirmed by the state Senate. It is a policy making board with a mandate to appoint the

executive director; establish goals and offender eligibility criteria; adopt program standards; establish an application and funding process; and set criteria for program evaluations. Board member terms are four years in length and are staggered so that members are not all replaced at once. (Michigan Community Correction Act, 1988)

The independent status of the OCC has been under constant review by the body-politic in Michigan. A new Republican Governor has eliminated all independent agencies that do not have cabinet-level status except for the OCC, in an attempt to downsize government and exercise greater control over his departments. Numerous legislative attempts were made at the beginning of the 1993/94 fiscal year to have the OCC incorporated into the DOC and lose its independent status. Those attempts, however, failed.

5. Goals

The overriding goal of P.A. 511 is to reduce prison admissions for the so-called two-year felon. Every speaker supporting the legislation cited the statistic from 1987 which states that of all the prison admissions for that year, 50 percent were for sentences of two years or less. A state-wide conference held in 1986 produced a figure that 41 percent of the sentenced inmates in 1984 were sentenced for two years or less. (Community Corrections Conference Report, 1986) A report from the Michigan Prison Overcrowding Project (1986), indicated that in 1985, 44 percent of the prison sentences were for less than two years. That meant that in less than one year these 4,000 plus offenders, under the release provisions governing re-entry into the community via correction centers, would be back in the community in a matter of weeks. A former DOC director referred to the short sentences as little more than "bus therapy" because the department transported the inmates to the prison reception and guidance center, then to a minimum security camp, and then back to the community to be housed in a center run by the DOC. The profile characteristics of these offenders were young, male, first or second time adult offender, high school dropout, unemployed or underemployed and substance abusing to the point of dysfunction. The DOC

wanted these offenders, in spite of their great numbers, to be supervised in the community for the utilitarian reason that there was no room in state institutions. This goal of reducing prison admissions for short term felons is stated explicitly in the Act. The urgency to stem the flow of these short term offenders is also expressed in language which states that results are expected in one year.

Another goal of the Act that is more difficult to detect is related to jail overcrowding and the sentencing of state inmates to local facilities. The Michigan Sheriff's Association noted at the time of the impending legislation that approximately 1,400 state-eligible inmates served time in county jails in 1984. The Act speaks to this issue in the paragraph following the call for a reduction in prison admissions. Language in the Act requests an analysis of jails with respect to inmate status, the status of the classification system, and a review of inmates' sentencing dispositions by sentencing guideline scores. Although not specifically stated, this section of the Act was meant to address the fact that jails were housing offenders who could be in the community, freeing up space in the jail for two-year felons. The phrase "backflushing the system" was coined to express the logical connection between prison's two-year felon problem and a reallocation of jail space to accommodate them. The assumption was that community corrections legislation must support not only prison diversion but jail diversion and that sentencing judges were more likely to keep two-year felons in the community with the sanction of jail available to them. Furthermore, it was assumed that there were offenders serving jail time that could be diverted from jail with adequate community-based programs available to the local judiciary.

B. CONTEXT OF THE LEGISLATION

1. Crime Trends

The 1985 murder of a state trooper by an escapee from a Lansing corrections center set off a major prison building program in Michigan. Prior to that incident, overcrowding in Michigan prisons had led then Governor James Blanchard to declare an overcrowding emergency several times. While the murder

provided the political impetus for a huge capital investment in new prison beds, policy makers also had apparent statistical justification for such a decision. Crime data for the period 1971 through 1981 revealed a 15 percent increase in index crimes in Michigan. (Overcrowding Project, 1984) Compared to other midwest states, and also against the national average, Michigan's index crime rate for this period was higher. In real numbers, this meant that by 1981 the number of murders, rapes, robberies, aggravated assaults, larcenies, auto thefts, and burglaries had exceeded 6,000 per 100,000 population. The national average was less than 5,000 and the regional average was approximately 4,500. Another measure of crime and its potential impact on prison and jail populations, is felony convictions. For the same time period of the 1970's and early 1980's, the count of felony convictions in Michigan rose by 40 percent. A corresponding increase in imprisonment also occurred at this time. Two interesting observations can be drawn regarding the relationship of felony convictions and imprisonment: first, imprisonment was essentially capped in 1978 when full capacity was reached and the Emergency Powers Act was being used for population control through early releases; second, when the conviction rate suddenly dropped by some 15 percentage points between 1978 and 1980, the rate of imprisonment remained constant. (Michigan Overcrowding Project, 1984)

In the time frame of 1983-1988, the period leading up to the passage of the Community Corrections Act in 1988, reported crime i n Michigan increased by only 3.4 percent, while the total arrests increased by 22 percent. Arrests for violent crime, however, increased by nearly 19 percent. Drug arrests for the period of 1986-1988 increased in the state by 64 percent, with a 351 percent increase in arrests for the sale of cocaine. (Zalman in Ad hoc Report to the MI House, 1990)

In Kent County and in Grand Rapids, the County's urban center, the crime trends were similar to those in the state. In Grand Rapids, in the 1980's, arrests for the second half of the decade rose by almost 16 percent; aggravated assault arrests rose by 35 percent; weapons offenses arrests increased by 61 percent.

The cocaine epidemic hit the City with a vengeance during the 1980's and was reflected in arrests that rose by 141 percent. Court data for the County also reveals a significant increase in felony convictions: from 1986 to 1988, dispositions increased by 11 percent and investigations of felony offenders for presentence reports increased from 1985 to 1988 by 30 percent. (Bennett, 1990)

2. Criminal Code Changes

The trend in the last decade has been for code changes to enhance sentencing or to legislatively mandate a minimum prison term. While it is beyond the scope of this paper to evaluate the impact of these code changes on jail and prison populations, a review of the code changes that occurred in the 1980's is presented for consideration of their effect on the correctional system:

- Mandatory Consecutive Sentencing
- Bail Modifications
- Shoplifting Reform
- Drugs on School Property
- Controlled Substances
- Sale/Delivery
- Possession
- Elimination of Good Time
- Sentencing Guidelines
- Others

A Michigan State Appellate Defender Office (SADO) 1993 report documents significant changes to criminal justice policy passed by law makers in every session of the Michigan Legislature since 1981. (Tieber, 1993)

3. Jail and Prison Crowding

The impact of these increases in arrests and dispositions on the Kent County Jail was predictable. Beginning in 1978 admissions to the jail began to rise. Bookings to the jail for 1978 were 7,500. By 1988, the number of admissions had risen to 12,268, an increase of 64 percent, for an average of 6.4 percent per year. Critical to the crowding equation is the average length of stay for inmates. For the

period of 1977 to 1984, the average length of stay rose from 19.1 days in 1977 to 28.7 days in 1984. From 1984 to 1988 the average length of stay receded to a low of 23 days. With increased bookings and increasing lengths of stay in the County Jail, average daily population was destined to rise. Going back to 1973 when the jail population averaged 282 inmates, and charting increases up to 1988, the result is a line of steady growth to a population in 1989 of 787. (Bennett, 1990)

A set of statistics that will be important for later discussions concerning the interplay of the County and the state, is the correctional disposition of the felony convictions. That is, where does the offender convicted of a felony offense punishable by a term in the state penitentiary actually serve his time? In 1986, on a national average, felons were sent to a state prison nearly 32 percent of the time. (BJS,1989) In Kent County the average for 1988 was only 26 percent. The state average for imprisonment was 34 percent. Use of a local jail for felony level sanctioning in the nation, in 1986 was 47 percent; the state average was only 36 percent while the Kent County use of the local jail for sentenced felons was almost 50 percent, in 1988. Although Kent County has historically used the jail more than most counties for punishing low-level felons, there is another underlying factor at work that contributes to the high usage of jail space in Kent County. In the early 1980's when the prisons became full and began releasing inmates early to the street and to DOC-run community-based correctional centers, many sentencing judges determined that they could actually get more incarceration time for the offender with a full year in the County Jail. The result was an expansion of sentenced beds in the jail for felons and the elimination of sentenced bed space for lower court misdemeanants. Jails in Michigan increased their population from 1983 to 1988 by 23 percent and increased their average daily population for the same period from 7,624 to 9,444. (BJS, 1989). The phenomenon of using local jail instead of prison was apparently underway.

Prison crowding was also well underway in the early 1980's in Michigan. According to Bureau of Justice Statistics (1989), the incarceration rate (inmates per 100,000 population) moved from a low in 1973 of 86.8

to a 1988 rate of 298. The 1988 rate placed Michigan 11th among the states. (Washington D.C. was the highest at 1,078 and North Dakota was lowest at 62.) From 1971 to 1981, there was an increase of 35 percent in the Michigan imprisonment rate. The rate leveled out in 1978 through 1981, but it is thought this leveling was due to the release of prisoners under the Emergency Powers Act and the economic downturn in Michigan which halted prison expansion.

The prisoner count in Michigan at the end of 1988 was 27,612. A year later the prison inmate total had risen to 31,639, an increase of 14.6 percent. The rate of imprisonment rose from the 1988 rate of 298, to 340 in 1989. (BJS, 1989) The prison building program when completed in 1992, would provide a bed capacity of 31,600. Based on the DOC's own projections, at the completion of the building, there would be a shortage of 5,400 beds, and there would be 36,560 prisoners in the system.

Late in 1992, two 500-bed regional prisons were completed but not opened because the legislature decided not to appropriate operational funds. The impact of the building program and the ongoing costs to run the prison, probation and parole system are staggering. For example, the 1984/85 appropriation to the DOC was 312.5 million dollars and supported 6,319 full time equivalent (FTE) personnel. By 1988/89 the appropriation had reached 651.8 million dollars with 13,387 FTEs. (At the height of the expansion the DOC was opening a 500 bed prison every two weeks.) (House Ad hoc Report, 1990) The impact on other state departments was devastating. In this time period, the DOC budget rose as a percentage of the overall state budget from 4.9 to 9.4 percent, making it the fourth largest budget in the state. Of every four employees hired by the state during this period, three went to work at the DOC. A state senate fiscal analysis of the DOC budget produced the observation that the DOC was likely under funded by 30-45 million heading into the 1990/91 budget year. The DOC's director in 1990, in view of prison commitment trends, speculated that inmate population could grow to 47,000 by the end of 1992. If that occurred, he said, inmates would exceed capacity by 16,000. As of spring 1993, according to Clark, the Michigan

prison system is more overcrowded than at any time in state history, exceeding capacity by almost 9,000 prisoners. (Clark, 1993)

Short term sentences (one year or less) and drug offenders have been the largest contributors to overcrowding. In 1987, short-termers represented 14 percent of new admissions. In 1988, that figure grew to 21 percent. If short-termers are re-defined to be those admissions with sentences of two years or less, the percentage of new admissions rose to almost 54 percent in 1989. The majority of those short-term new admissions in 1987/88 were drug offenders. Indeed, for the period of 1986-1989 the percentage of drug offenders increased by 390 percent. DOC projections indicated that the diversion of short-termers (two years or less), would result in a bed savings of 6,555 by 1992. (House Ad hoc Report, 1992) As indicated in the introduction, the impact of these numbers associated with the short-term sentences was the overriding reason for the passage of the community corrections act.

C. LOCAL IMPLEMENTATION

1. System Analysis

Kent County used funds available from the newly enacted law, PA 511, to study its local criminal justice system beginning in June of 1989, just five months after the passage of PA 511. The study had the following major objectives:

(1) Evaluate the County Jail's present suitability for incarcerating pre- and post-trial inmates, as well as its suitability for renovation or expansion.

(2) Use local criminal justice system data to forecast jail space needs for the coming fifteen years, and on the basis of those forecasts, explore all feasible options for holding offenders, in order to meet those needs.

(3) Study the efficiency and effectiveness of the local system in handling individuals (incarcerated or not) who pass through the district and circuit courts.

(4) Evaluate the present impact of pre-trial and post-trial alternatives on jail and prison population,

> with a view to the eventual full County participation in the State of Michigan's recently updated community corrections effort. (Bennett Study, 1990)

The study was commissioned at a time in the development of the State Office of Community Corrections when the Office was not fully organized and the Department of Corrections was assisting in the transition. The initial grant award structure from the state made funds available to study local systems through the collection and analysis of data. The potential awards were initially advertised to be in amounts of $40,000 each. The grant award process was quite liberal and money was made available in most cases with a single letter indicating an intent to study the local criminal justice system. Specific standards and criteria for the content of the studies were not available in 1989, as evidenced by the objectives of the Kent County study. Of the study objectives, all four are quite specific with respect to local issues with the jail as top priority. Despite the number one priority of the legislation being prison diversion, the study both in terms of objectives and subsequent findings and recommendations is clearly focused on local jail related problems. While prison is mentioned in objective four, the study produced virtually no impact statements or statistics for prison commitments. The study was clearly oriented to the problems of the old jail and to sizing a new jail.

The study turned out to be very effective because very shortly after its publication, a millage was passed by the voters to fund a 48 million dollar addition to the jail. The new jail, designed as a new generation jail with direct supervision, was completed in November of 1992. Many of the study recommendations for the jail were community correction concepts and were incorporated into the new facility. The first staff to greet new arrestees for example, is a pre-trial staff funded by Public Act 511. Their function will be to assess whether the new arrestee is appropriate for an immediate interim bond and a "fast track" release. If eligible, the arrestee would not be booked into the jail. The intake area will also provide for mental health and substance abuse assessments to effect prompt referrals and release to treatment or case-management programs.

Had Kent County waited for the OCC to become fully operational and the setting of more stringent standards for the studies, it is doubtful that the study would have been allowed to take the direction it did with the jail. It would have been allowed, though, to delve into the systemic problems present in Kent County. At the time of the study, the overcrowded jail and its federal lawsuit had everyone in the system pointing the finger of blame away from themselves and at the other stakeholder(s). The blaming was particularly easy to do because there was very little data with which to objectively assess the situation. Existing data was limited to the number of inmates in the jail, and boarded in other counties; strained budgets reflected the increased number of inmates. According to the Bennett study, "various efforts, made in recent years, to reduce the jail's population seemed to succeed briefly in making a few beds available; but these beds would quickly fill, while various elements of the criminal justice system were forced to keep increasing their demands for jail space". The study served to show that many of the problems were not ones that could be solved by building additional cells. For example, the study demonstrated an inordinately high average length of stay for pre-trial inmates. The study suggested that a new function in County government needed to provide ongoing analysis of system issues. Therefore, in addition to the recommendation for increased jail capacity, the study recommended that a criminal justice coordinator be hired with PA 511 funds to oversee the implementation of the study's recommendations for enhanced system coordination and changes.

2. Organization

PA 511 permits the use of up to 30 percent of allocated funding for the administration of local community correction programs. Participating counties moved quickly to hire staff to operate a local office. The primary responsibility of these offices is to prepare annual planning and grant requests for submission to the State OCC. Most counties in turn subcontract with local service providers for substance abuse treatment, residential programs, employment programs, etc.

In Kent County, the community corrections manager is appointed by the Board of Commissioners and supervised by the county controller, who serves as the county executive. The manager is also staff to the local Community Corrections Advisory Board. The Board, per the legislation, is comprised of all the key policy makers in the criminal justice system, eg. prosecutor, sheriff, judge, police chief, etc. The manager must rely on referent power and salesmanship in order to carry out the coordinating role the office is expected to provide. This is because the office has no authority of its own. The legislation confers no power to the manager and places the manager in a staff role to the CCAB. The planning function of the office demands that data be acquired from the departments represented by the CCAB members, who are the key criminal justice stakeholders. Without the cooperation of those key officials, the data is not accessible, and without the necessary data, grant applications are impossible, and more importantly, data driven policy decisions are impossible.

The manager in Kent County has been extremely fortunate to find the policy makers quite amenable to planning and coordinating tasks. Other county coordinators have come up against entrenched policy makers who are more than content with business as usual. The jail addition in Kent County, made possible by the millage, was a major contribution toward relaxed relations and an atmosphere of cooperation. Prior to the millage election, there had been bitter battles over the need for a jail and the size of the planned expansion. While most stakeholders agreed that a expansion was necessary, the fact that there was not unanimity perpetuated a very negative atmosphere. The tension at pre-millage meetings was extreme. The passage of the millage caused most players to breathe a collective sigh of relief. Immediately following the millage, the effort of community corrections began in earnest and its efforts were greatly facilitated by the approval of jail expansion plans.

3. Intergovernmental Relations

The phrase "state and local partnership", introduced through pending legislation, invariably brings a wry smile to the face of a local official. In the environment of crime and corrections, the phrase appropriately describes the intergovernmental nature of the corrections problem and the fact that the state and counties/cities are inexorably connected to the problem and solutions. The local response characterized by the wry smile is that the partnership is sooner or later going to weigh more heavily on local government. The presumption is that the state will draw the county into the problem through the planning and funding process and then withdraw the funding after many programs are up and running. The intergovernmental nature of the problem, however, is inescapable. As Shilton (1992) points out, the 1980's witnessed an explosion in the correctional population. At the end of 1989 there were 4.1 million people under correctional supervision. Compared to 1980 figures, this represents an increase of 126 percent for probation, 107 percent for parole, and 114 percent for jails and prisons. Correctional expenditures, according to Shilton (1992), have become the second largest item in state and local budgets. Michigan state department budgets such as welfare and education, when compared to corrections over recent years, reveal a direct correlation between the rise of correctional expenditures and the shrinking of other competing budgets. (Clark,1993) This population explosion occurred at the same time as federal assistance to counties declined by 73 percent from 1980 to 1986. In the last three years, according to the National Association of Counties (NACo), nearly two thirds of counties have raised property tax rates. Still unable to finance the expanding correctional system, NACo has called the problem a "structural fiscal gap". (Strasser, 1989)

Local skepticism for the Act was compounded because the first substantive paragraph, following definitions and other procedural aspects of the legislation, states that local corrections plans must detail a reduction in the rate of prison admissions. A logical and frequently asked question from local officials and sentencing judges was where were these prisoners to go, if not to prison, given local jail overcrowding. A somewhat obtuse answer to the question is found in the succeeding paragraph of the legislation when it

requires an analysis of the local jail with respect to the legal status of its occupants. The inference to be drawn was that there were jail inmates, eg. misdemeanants and pre-trial detainees that did not belong in the jail and that room could be found for prison-bound offenders provided the local system identified and then evacuated low risk jail inmates. The interplay of state and local interest comes to rest squarely on the definition of use for the local jail. The state's position was that two-year prison-bound offenders could, and should be a local responsibility. These offenders could be punished with local jail time of a year or less and further supported in local community corrections programs with state dollars flowing to the county. A typical county position is that by state statute those offenders are the responsibility of the DOC and that local jails are for violators of local ordinances, not punishable by imprisonment. This dichotomy will eventually lead to the basic research question of whether either or both of these populations (jail-bound and prison-bound) can be adequately defined and then evaluated for impact on jail and or prison admissions.

4. Sub-National Federalism

Like the local units of government at the Constitutional Convention in 1787, the local offices of community corrections were entirely neglected in Michigan's community corrections legislation. At the Convention, of course, the chief topic was whether the balance of power should reside in the national government or with the states. A discussion of what the future should hold for sub-state government went largely forgotten. Hamilton (1990) suggests that local governance and the power of self rule was indeed self evident and therefore not a point of contention among convention delegates. So it was also, with the local community corrections offices in 1988; the framers of the community corrections legislation envisioned local administration and even assumed that the act could not be implemented without it, but neglected to define it in the bill.

The closest the legislation comes to addressing the issue of local administration is the allowance of funds for local administration. The analogy of federalism and its treatment of the sub-state function is also true

for community corrections with respect to its legal subservience. Just as local government's authority is entirely dependent on authority specifically conveyed in state statute, community corrections government is dependent on County government. The County Commission must enable the local governing board, appoint membership, Act as fiduciary agent, and must pass on the comprehensive plan before it is accepted by the state.

The other aspect of intergovernmental relations that is present in community corrections is the notion of sub-state dualism. This concept applies to the political relationship between the state and the local government, in this case it would be county government and the state Community Corrections Advisory Board. A quote from Hamilton (1990) best describes the potential for dualism between the state and local bureaucrats - "legal subservience and political passivity are two different things". Hamilton identifies several key aspects to sub-state political intergovernmental relations.

The first aspect concerns the effectiveness of the state legislature to make the law and the energy to supervise its implementation. Effectiveness is defined as the degree to which the law is appropriate to solving the problem and whether adequate implementation is built into the law. For community corrections in Michigan the aspect of effectiveness has hinged on two areas: policy and enforcement. From a County perspective the policy implications for jail crowding and changing utilization of those beds in the jail for additional "state inmates" has never been adequately addressed. The dualism is present because the state only cares about prison-bound offenders and the primary concern for counties is stemming the tide of jail bound offenders. From the very beginning of the development of the legislation, dating back to the early 1980's, there was a common belief that neither offender population could be addressed separately and that in fact there was a relationship between the two groups that necessitated a joint approach. Namely, that the jail bound offender be directed away from jail to community programs and that the low-risk prison-bound offender be directed from prison to jail. The legislation fails to spell out that relationship in any

specific or meaningful way and the state administration has failed to illuminate this discussion. The failure to come to grips with this very basic policy issue has served to frustrate both parties.

The policy confusion has also set up a "do or die" situation in the legislature with respect to future funding. With only three full years of implementation passed, the legislature wants to see prison diversions documented. In the midst of tough economic times and very little definition of what really constitutes a prison diversion, counties are hard pressed to demonstrate prison diversion. This problem is compounded because counties have been operating with the assumption that the answer to prison diversion was connected to jail re-utilization. The message from the state has, under pressure from the legislature, evolved from "We agree and understand that your jail problems are connected to prison crowding solutions" to, "We are only concerned with prison diversion numbers and we will be forced to cut off funding if you cannot produce results".

A second aspect of the intergovernmental relationship concerns the bureaucratic interpretation that each level applies to the relationship. The "battle of the bureaucrats" determines which direction the legislation will take. In Michigan it has been less of a battle and more of a search for the appropriate definitions and the best strategy for success. For the most part, the bureaucrats are all new and the issues so complex that many battle lines are quickly drawn, erased and redrawn. As previously discussed, the activities of community corrections are inseparable from the courts and sentencing philosophy, probation and supervision models and most particularly the very thorny issue of which offenders should be targeted. What should the size of the control net be, and what should we do with the captives? The propositions are all very slippery and just when you think you have got your arms around them and are fully prepared to battle the state, or vice a versa, they slip from your grasp. A battle with clear issues and identifiable enemies would be welcome.

The third aspect of intergovernmental relations involves the degree to which local officials are competent to respond to state laws. If the local official struggles with the difference, for example, between probation and parole then there will be problems with implementing a law aimed at front-end diversion. This issue of competency takes an ironic twist in Michigan because of the nature of the expansion of the state office and the necessity to recall laid-off employees into the OCC with no background in corrections, courts or community corrections. When comparing new OCC employees with urban center officials, the competency tilts to the local officials.

The fourth factor in intergovernmental relations, according to Hamilton, has to do with "who influences whom". Or perhaps, more importantly "who gets what, when and how". If the definition of political economy is the zone of impact between politics and economics, then the zone resembles a war zone between competing groups and elites. This factor has been minimized somewhat with the allocation formula established administratively. One glaring example of this factor did surface however, when the largest urban center in the state had difficulty with the application process. Their political weight and substantial influence forced the State Board to grant funding despite the inadequacy of the application. No other county could have forced the issue to that extent. Other communities had been put through intense scrutiny prior to acceptance of their plans and many were forced to return with revisions. The large urban center succeeded in having its plan accepted at a meeting at which they did not even appear to present the plan. The plan has since been judged by the Board to have been successfully implemented, but the process was a good example of influence winning out over substance.

The last factor in sub-state relations has to do with the local-to-local politics. This factor has been particularly prevalent in community corrections. The fact that many of the local criminal justice stakeholders are elected officials and concerned with re-election makes for tremendous challenges in system coordination and community corrections innovations. It is not uncommon in the local arena to hear from

one of these stakeholders that a proposed innovation has merit and deserves attention and resources, but not now before the upcoming election, and perhaps never. Political history also influences what can and cannot be accomplished. Personality conflicts between political elites with a long history, may be more than any coordinator of a state law can overcome.

PA 511 is particularly vulnerable to local-to-local politics in the area of data required from the lower/misdemeanant courts. Michigan's court of general jurisdiction is centrally organized in circuit jurisdictions. The Circuit (felony) Court almost always houses all of the judges in the circuit and circuits are led by a chief administrative judge. Data, therefore, is accessible and reported in a standard method to the state. Permission to access the data requires a single approval from the chief judge or court administrator. This is not the case in the limited jurisdiction courts known as district courts. In a large county, such as Kent there are several districts and therefore several "chiefs". Court data is not collected or reported for several areas identified in the state planning requirements, and data collection procedures in these courts cover the gamut, as does the spirit of cooperation among the judges. Cooperation is difficult to induce when the "carrot" of money cannot be offered to the district courts. Grants to these lower courts are chiefly prohibited because the funds are to be used to divert felony offenders from prison and jail.

5. System Coordination

"One of the purposes of any block grant is the coordination of recipient agencies within a broadly defined functional area". (Gray and Williams, 1980) Clearly, this was the intent of the framers of PA 511. Funding for 511 programs comes to the jurisdiction in block grant form and recipients need only demonstrate diversion of the target population of prison-bound or jail-bound offenders. Both the State and local board structures were established to facilitate coordinated policy within the large environment of the criminal justice system. This arrangement bears a striking resemblance to the LEAA programs

implemented in the 1970's, emanating from the policy established in the Omnibus Crime Control and Safe Streets Act of 1968. The 1968 Act allocated funds by population and designated planning agencies were set up in each of the states. The planning was designed to be system planning, much like that in Michigan community corrections. The goals of LEAA were to balance funding between police, courts, and corrections; to stimulate innovation, and to increase coordination among the criminal justice agencies. Again, very similar to PA 511. The same Advisory Commission on Intergovernmental Relations (ACIR) that recommended the LEAA process for its system building potential recommended community corrections acts for jail crowding problems. The ACIR believed that the state and local partnership forged by the acts would enhance solutions to jail problems. (Shilton, 1992)

In evaluating public policy that establishes coordination as a goal, the evaluation question becomes, how do you measure coordination? Pfeffer and Salancik (in Gray and Williams, 1980) conceptualize coordination as a way of reducing uncertainty in an organization's exchange with its environment. Among the mechanisms they cite are social norms, coaptation, and joint ventures. A social norm example would be the trust involved between a prosecutor and judge in the development of a sentence bargain. Both parties must be relatively certain that if the victim complains that the sentence was too lenient that they will not publicly blame the other. An example of a joint venture might be a drug investigation team made up of detectives from several different police agencies. Coordination then, on a local community correction board level, can be measured by the number of joint projects or the level of trust displayed in interagency activities. A real example in Kent County is the development of a consolidated criminal justice information system that was spearheaded and shepherded by the local community corrections office. It is an example of coordination that will pay long term and direct benefits to both the local system and the state. The system, which is being funded locally, will permit detailed analysis of the PA 511 target population and will allow studies of the effectiveness of the system. There is some doubt, however, whether the state

legislature will continue to interpret the legislation as important to system coordination, or look to it as a remedy only for prison crowding, and therefore, measured only on its contribution to reducing prison commitments.

III. COMMUNITY CORRECTIONS

A. HISTORY AND DEVELOPMENT

It is telling that the most popular buzzword in use in the post-conviction world of criminal justice is the word sanction. The fact that it is generic and neutral and may mean punishment to one person and rehabilitation to another, is reflective of the ambivalence toward the system's product, the convicted offender. In a casebook prepared by Kittrie and Zenoff (1981), they used the term "sanctions" in order to "steer clear off, or at least diffuse, such ideologically-tainted terminologies as 'punishment' and 'corrections'". In their view, sanctions refer to both the process of sanction-selection or "sentencing" and the process of sanction-execution or "corrections". This ambivalence is most apparent in the courtroom work group at the plea bargain stage where the public defender, prosecutor and judge are simultaneously deciding both ends of the sanction; the sentence and the mode of correction. The organizing principle in this group is that the sentence and correction should be acceptable to each member's constituency. There is often an implicit understanding, in the work group that nothing works and that the optimum arrangement is one that disposes of the case in a manner that each member can justify to their constituency. The defender to the offender; the prosecutor to the victim and the police; the judge to the electorate. This work group, complete with its own version of operating room humor, is a confirmation of the observation of Robert McKay, former dean of the New York University Law School:

> The kingpin of the entire criminal justice system is the sanctioning process. It is also conceptually the most difficult. We understand how to go about defining crime, establishing police forces, and devising due process trial methods. What we do not seem to understand is the purpose (or purposes) of sanctions. Moreover, we do not seem to know why or when or how to sentence; we do not know who should not be imprisoned and who should and for how long. (Kittrie, 1981)

In our search for which sanctions work and do not work, we have tried isolationism, indeterminate prison stays, mandatory sentences, and incapacitation among others. None of these have proved particularly successful and if they were, we have little or no research to say why they were successful. The latest approach in this lineage of attempts to solve the crime problem is community corrections. It is an attempt to solve the crime problem because it purports to perform two basic functions. Community corrections seeks to provide an alternative to incarceration and to reintegrate the offender in the community. The first function of an incarceration alternative implies assistance for jail and prison overcrowding caused by crime. The function of reintegration suggests that the individual requires adjustment or rehabilitation so a better fit exists for the offender in the community environment and recidivism can be avoided. While the definition of community corrections continues to evolve, the promise of prison and jail avoidance for a targeted group of offenders is present. Also present is the association of rehabilitation programs for offenders deemed acceptable for community supervision, eg., drug treatment, remedial education, vocational training, etc. Witness the definition from McCarthy (1984).

> Community-based corrections is the general term used to refer to various types of therapeutic, support, and supervision programs for criminal offenders. These programs, including diversion, pretrial release, probation, restitution and community service, temporary release, halfway houses, and parole, form a continuum of options for dealing with offenders in the community.

The programs cited in this definition are all non-incarcerative and McCarthy (1984) states that the correctional objective is reintegration of the offender. Duffee (1990) is less sure that a definition for community corrections is possible or even particularly important. He suggests that, "community corrections is such a fuzzy concept, suffering such accidental inclusions and exclusions, that it simply does not denote anything systematically or uniformly". He believes that community differences are perhaps greater than are the similarities and, therefore. a body of knowledge, and thus a final definition may be impossible. More simply put, the things that work in two very different communities may be so unrelated that a neat definition to encompass both is difficult. Duffee does believe that becoming more specific with the terms should prove helpful and that examining the characteristics of community corrections that are

common is an appropriate starting point. He offers seven characteristics that are often claimed to be common and are paraphrased below:

(1) Innovation - the alternatives are newer than the programs they contrast with and are viewed to be flexible and more effective in solving problems.

(2) Services - resources are offered to offenders and this will reduce recidivist crime.

(3) Change - programs should change the relationship between the offender and the community. With community undefined though, the study of the relationship has not been possible.

(4) Local Constituency - the community must support the programs by overcoming the "not in my backyard" syndrome.

(5) Non incarcerative - avoids the use of institutions.

(6) Sanction Value - programs which are working or providing restitution are viewed as comparable to traditional sanctions, i.e., jail time.

(7) Diversity - programs in the community give us more options than do those in the "non-community" setting.

Assuming that Duffee's seven characteristics of community corrections present a reasonable picture of the field and its activities, there is the question of how these characteristics came to be associated with corrections as it is now practiced in the community.

McCarthy offers the view that the origins of community corrections can be traced to the time following World War II. Soldiers who were having adjustment problems needed assistance. That assistance took the form of many of our current modalities. Soldiers were offered counseling, education and job preparation. Rather than deliver these services in the isolation of the veterans hospitals, a community reintegration model was developed. A parallel development in the mental health field was also beginning to take shape. A new view of the limitations of the mental hospital was being advanced. Both developments relied heavily on an emerging sociological theory known as "labeling". This theory posited the notion that by labeling an offender as pathological or a mental health patient as schizophrenic, was to ex-communicate them from the rest of society and severely hamper their chance for reintegration. To

stigmatize an offender with a label of convict and isolate him from society was to give him a reference group that contained only other offenders and thereby severely reduce the chances for future law-abiding behavior. It followed that the appropriate response, according to labeling theory, was to not disassociate the offender from the larger community and to offer him resources that could be internalized and converted into constructive behavior.

Lauen (1988) also points to the de-institutionalization of our mental hospitals in the mid-60's as the foundation of community corrections. He reports that in 1955 there were 558,922 patients in state and county psychiatric hospitals, but by 1984 that number had been reduced to 116,136. Not only was normalization a major feature of the movement of hospitalized clients to community settings, there was also the realization that many of the resources and services needed by the patients already existed in the community. People began questioning the wisdom of duplicating those services in remote asylums and hospitals.

The American Correctional Association Conference in 1968 had a major section of the conference entitled "Community-Based Treatment". Seminars on community treatment centers, halfway houses, use of ex-offenders, and work release were held. (Fox, 1977) Just before this, the Federal Rehabilitation Act was passed in 1965. The Act sought to improve rehabilitation procedures and to hold down the number of inmates in prisons and correctional centers. (Fox, 1977) It formally approved the use of residential centers and half-way houses preceding parole, furloughs, and work release programs. Immediately after its passage, a community service office was opened in Atlanta where pre-release guidance centers were started. The Bureau of Prisons had opened similar centers in Chicago and Los Angeles by administrative order as early as 1961. In 1967, the Presidents Commission on Law Enforcement and Administration of Justice published a report which recommended major changes in the areas of pretrial release and the use

of community programs for "special, intensive treatment as an alternative to institutionalization for both juvenile and adult offenders". (Fox, 1977)

The Law Enforcement Assistance Act (LEAA) of 1965 allowed communities around the country to test community correction notions, such as bail reform and community treatment. The LEAA funds were both beneficial and deleterious for community corrections efforts. The opportunity of LEAA grant funds produced well conceived programs as well as programs that were often "tacked on". These programs, even the good ones typically promised too much and upon further investigation were found to be adding to the problem of systems crowding. (McCarthy) Due to a lack of careful planning concerning what offenders would be targeted by these programs, the question of adding costs to supervise and treat offenders that would have previously been left alone began to arise. This was particularly true in the mid 1970's when an economic recession hit the country and president Carter eliminated LEAA funding. Many local programs died because there was insufficient evidence of their success for local government to absorb the cost. The evaluation of these programs often showed that they were having little impact on recidivism and that they were in fact widening the net of social control. In some instances, the net widening effect had a doubling impact because very low level offenders were being violated and incarcerated under the closer scrutiny of programs they would not have otherwise been involved in, in the program's absence. The Reagan years were not kind to community corrections because his Task Force on Violent Crime supported the building of new prisons but indicated that the resources for the new prisons would have to come from the states. Reagan's new federalism hit hard on community corrections. The redirection of correctional resources caused a shake out in the field and many programs did not survive. With most prison building programs that were initiated in the 1980's now over, and crowding not yet overcome, community-based programs are once again being looked to for answers. There are several critical issues which have to be examined if the same mistakes of promising too much and delivering services to the wrong offender group are to be avoided.

B. CRITICAL SYSTEM ISSUES

It may sound trite to suggest that a discipline or field is at a crossroads, but that is a legitimate claim in Michigan for the policies and programs that can be organized around community corrections principles. The changes that are occurring in community corrections are, of course, taking place within the larger criminal justice system. The two system elements which must change in relationship to community corrections are the court's sentencing philosophy and correction's felony probation. These elements are so related that to not address them in this paper would be to ignore the driving element of community corrections (sentencing philosophy), and the primary vehicle for carrying out community corrections sentences (probation). Critics of community corrections effectiveness typically point to the conflicting goals embedded in the three distinct but interrelated systems represented by court, corrections and community corrections. Community corrections has responded schizophrenically to the demands of the courts and probation. The result has often been service to an inappropriate population of low-level offenders and conflict with probation services with regard to the rehabilitation role. Courts have been reluctant to sentence the truly prison-bound under the emerging determinate based sentencing guidelines. Probation has been reluctant to give up their primary role in brokering rehabilitation services for offenders. A review of Figure 1 (McCarthy, 1984) illustrates the interdependence of Courts, Corrections, and Community Corrections and why it is important to understand the past and present philosophies of each and what they mean for community corrections.

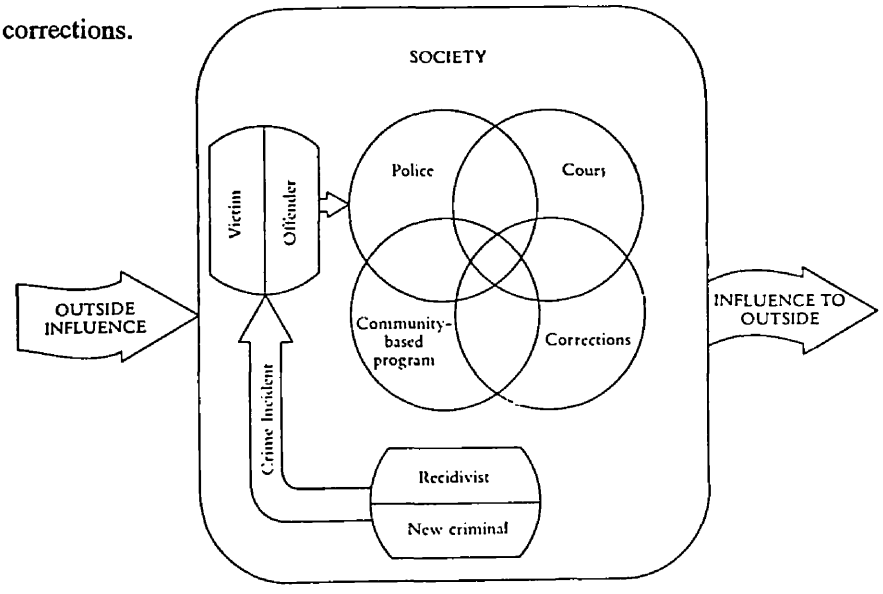


FIGURE 1 Elements of the criminal justice system *(From "Criminal Justice Planning: A Practical Approach," by M.E. O'Neill, R. F. Bykowski, and R. S. Blair. Copyright © 1976 by Justice System Development, Inc. Reprinted by permission).*

1. Courts and Sentencing

A. Indeterminate v. Determinate Sentencing

For over a century prior to the 1970's, our corrections system, ie., prison system, relied upon a model that professed to be able to rehabilitate offenders. Individual offenders, it was reasoned, needed different lengths of time to be treated and thereby prevented from future criminal activities. The model stated that, "it is not feasible at the time of sentencing to establish a specific duration for the rehabilitation process. Rather, offenders are to be sentenced to an indefinite length of incarceration, with the precise release date to be determined by a knowledgeable decision-making body on the basis of rehabilitative criteria". (Goodstein, 1985) Sentencing systems were therefore built on a foundation of minimum and maximum lengths of imprisonment that were roughly scaled to the seriousness of the offense. An offender receiving a sentence of 10 to 20 years would know that his release was predicated on whether or not the parole board believed him to be sufficiently rehabilitated. Such a system is referred to as modified indeterminate sentencing; a pure indeterminate system would sentence everyone to one day to life. As Spring (1983) points out, the indeterminate sentence reflects the following ideological and political perspectives regarding the handling of criminal offenders:

1. Rehabilitation, probation, and parole are viewed as plausible and preferred forms of crime control.

2. "Fair" sentencing is viewed in relation to the individual inmate, his or her needs, and the exact circumstances of his or her criminal act.

3. The Parole Board and criminal justice professional are expected to have the necessary information and expertise to predict post-release "danger to society" with reasonable accuracy.

4. Criminal justice professionals, rather than the legislature, are considered to be the appropriate decision makers regarding sentence severity.

This treatment perspective became the predominant ideological framework and was largely unchallenged until the early 1970's. The general conscientious raising of the 70's is largely responsible for highlighting the abuses of the indeterminate system. Greenburg and Humphries (1980) cite 'Struggle for Justice',

published in 1971 by The American Friends Service Committee, as the publication that first coined the phrase "crime of treatment" and challenged the rehabilitative philosophy, and the indeterminate sentencing methods. This followed a period of intense civil rights activity and black militancy which focused, in part, on "unequal and sometimes brutal treatment of blacks by criminal justice authorities. Additionally, Greenburg and Humphries write "imprisoned civil rights activists, war resisters, and articulate, and radicalized prisoners increasingly wrote and spoke of their experiences, thereby providing the public with a new image of the prisoner as an acceptable person whose claims of unjust treatment demanded serious attention". (Goodstein, 1985)

a) Indeterminate Inequities

Study after study of the treatment model in the mid 70's failed to support that correctional treatment could in fact prevent recidivism. With the treatment model under attack, critics began to focus attention on the apparent inequity in the sentencing process itself. Critics questioned whether judicial power was being exercised consistently for the purpose of effecting rehabilitation goals. Rehabilitation efficacy aside, the concern was that indeterminate sentencing was a handy cover for judicial power run amuck. As Frankel (1972) notes, the indeterminate sentencing process reflects little concern for equity for each individual defendant. Criminal sentencing could best be characterized as a system of "law without order" in which autonomous judges make idiosyncratic decisions resulting in widely disparate sentences awarded to individuals convicted of similar crimes. Other critics pointed out that the converse was also true; that similar sentences where handed out to offenders whose crimes differed greatly.

b) Reform Politics

History records that there was very little opposition to sentencing reform in the 70's. The liberals who brought the injustice of the indeterminate system into light were surprised to discover that conservatives were open to a coalition. The problem with the coalition became evident early on. The liberals were

unhappy with the indeterminate system because it violated individual rights and privileges. The conservatives were dissatisfied with the system because indeterminate sentencing allowed judges to be "soft" on crime. The liberals wanted a fairer system to be the outcome of reform. The conservatives expected the outcome to be more certain and longer sentences. These conflicting goals that produced determinate sentencing systems, are in part, responsible for much of the present day concern for a system which is felt by many to still be both ineffective and wrought with disparity. This is because, "the two groups entered the legislative arena with incompatible agenda items hidden behind apparently consistent positions favoring determinacy". (Goodstein, 1985) In writing about the reform movement in Indiana, Clear (1977) said that, "in the eyes of one interest group or another, the new Indiana Penal Code is variously expected to increase deterrence, increase prison populations, make penalties more appropriate to the offense, equalize penalties, reduce arbitrariness, increase system efficiency, and reduce leniency." Nevertheless, reform did come to many states in one of three major forms.

c) Determinate Models

The models for operationalizing determinate sentencing differ as a result of which organization or body has primary responsibility for sentencing. According to Goodstein (1985), these models fall into three general categories:

1) Presumptive Sentences

Determined by the legislature and typically codified, each offense carries three possible sentences. The middle sentence of the three is the presumptive sentence. The highest sentence is there to accommodate an offense that contains aggravating circumstance. The lower sentence can be invoked if there are mitigating circumstances. States that have adopted this model (Alaska, Indiana, California to name a few) have also abolished the parole decision-making process. Offenders, instead are released at the end of their sentence, "minus good time". Parole supervision still exists but for a specified period of time.

2) Definite Sentences

In this scheme offenses are classified according to seriousness and to each class there is attached a sentence range. The sentencing judge then sets a fixed term of imprisonment inside the parameters of the range established by the legislature. The parole decision making process has been abolished in Colorado, Connecticut, and Maine where this type of system has been adopted.

3) Sentencing Guidelines

This model is usually accompanied by a standing Sentencing Commission which is responsible for the ongoing monitoring of sentences imposed by the judiciary. The Commission function is viewed as critical because the appointees are sheltered to some extent from the politics of crime and justice (Champion, 1989). The state of Minnesota is the best example of guidelines developed thoughtfully by a Commission. Minnesota's Commission did two things that most states did not. They made a conscious decision to de-emphasize incarceration in their guideline structure for non serious crimes. They also forecasted prison population figures into their guidelines and pro-actively stated that the number of prisoners would remain constant.

The adoption of determinate sentencing systems meant that rehabilitation as a sentencing/correctional goal was no longer accepted. The acceptance of these models also meant that the system was going to relinquish, perhaps not conscientiously, the practice of predictive restraint. Von Hirsch (1985) describes this associated component as the practice of gauging not only individual treatment needs but also their likelihood of returning to crime. Redeemable offenders were to be treated, in the community if possible, but those judged to be bad risks were to be confined. He refers to this rehabilitative approach as positivism and explains its appeal for six decades of this century due to its convenience. It offered both treatment and restraint. "One did not have to assume all criminals were redeemable but could merely hope that some might be. Therapy could be tried on apparently amenable defendants, but always with the fail safe: the

offender who seemed unsuitable for or unresponsive to treatment could be separated from the community." (von Hirsch, 1985) The failure of the positivism theory required a replacement. The civil libertarians, those radicals of the 70's, turned to moral philosophy and as the basis for their justice issues, proffered the theory of just deserts.

B. Just Deserts

This theory set forth that punishment is deserved and that punishment be proportional to the blameworthiness of the crime. It differed from the notion of rehabilitation because it asked only for punishment for the past crime and did not speculate about future crimes, eg. predictive restraint. The central principle of sentencing using the desert theory is that punishment should be structured to be "commensurate" to the crime. That each offender should be punished in proportion to the severity of his violation. Von Hirsch who wrote one of the original works (Doing Justice: The Choice of Punishment) on just deserts and sentencing, advocated for a new system that only used imprisonment to punish offenders who have committed serious crimes. Touching upon the need for guidance in non prison sentences he states that "For non-serious crimes, penalties less severe than prison are to be used. The degree of intrusiveness of these non prison sanctions is determined not be rehabilitative or predictive considerations but, again, by the degree of gravity of the criminal conduct". (von Hirsch, 1985)

The theory of just or commensurate deserts also rules out *deterrence* as a principle of sentencing. Deterrence is unacceptable because it involves a prediction of what particular punishment imposed on a criminal or class of criminals would prevent future criminality. This would not only violate moral concern for the integrity of the individual and accountability but it would detract from the "blaming" character of punishment. According to von Hirsch, our institutions rely heavily upon the concept of praiseworthiness and blameworthiness. Schools, for example give grades based upon a retrospective view of what is

praiseworthy. Our jurisprudence system does the same with blameworthiness and ought to deliver punishment retrospectively and only to the extent that the blameworthiness is present. Just like school grades scale praiseworthiness, punishment as a sanction for wrongdoing should be scaled in proportion to the blameworthiness. Fairness in sentencing requires a rational approach and also a consistent approach to the reprobation we meet out to the offender. The issue of fairness, though, requires that we go beyond what just deserts has to offer for guidance. Desert sets forth the principle of retroactive punishment that is scaled and proportionate to the offense. It sets the parameters on a continuum between unduly lenient and excessively punitive. Desert, according to von Hirsch, does not and cannot define the specific punishments warranted in any given case.

C. Scaled Community Punishments

von Hirsch presents three different models for scaling community punishments. They are different to the extent that he allows for what he refers to as "substitutability". That is the discretion that would be permitted in a sentencing grid model for the judge to cross over lines of demarcation to substitute for another punishment. The model presented below is von Hirsch's no substitution model:

1) Simple "No Substitution Model"

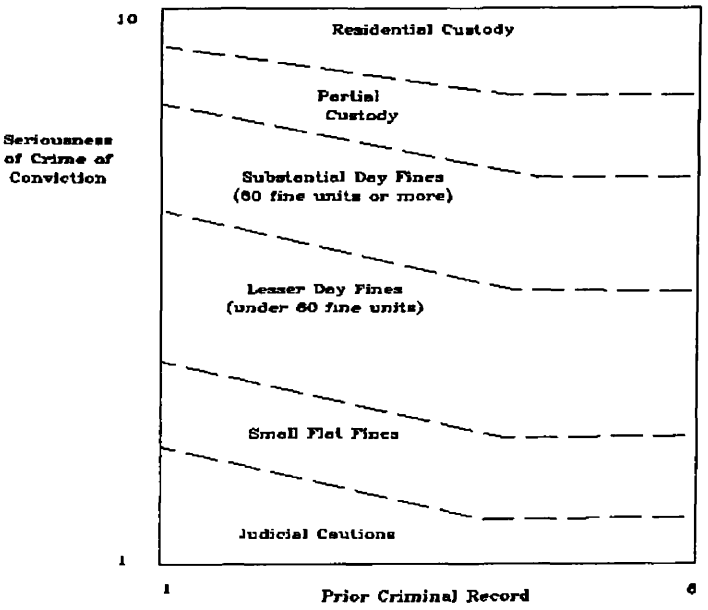
Inside of the model there would be a ranking of severity with commensurate penalties, e.g., a fine amount. It is believed that the model would result in a sharp decrease in the use of custodial sanctions because our current policies result in many sentences for non serious crimes stretching into the custodial band for punishment. The model would prevent this substitution and would force the system to rely more on the sanction of fines. Europe makes extensive use of the "day fine", which is a monetary sanction that is computed on the basis of a days wages and the fine value of the offense. (Mahoney, 1990)

The Michigan Community Corrections Act;
Kent County Analysis, 1994

A more elaborate no substitution model can be built by creating more bands of sanctions. The punishments could be graded to include a division between a flat rate fine, a lesser day fine and then a more substantial day fine. This scheme would further restrict the use of custody because the top custody band would narrow by virtue of partial custody band below. Andrew von Hirsch admits that the no substitution model while attractive for its predictability is probably not workable because not all sanctions are appropriate. The most obvious problem is with the use of fines in the event the offender has no means of regular income. There would have to be therefore, some method for substitution.

"No Substitution" Model

Source: *Rutgers Law Journal* Vol. 20:595



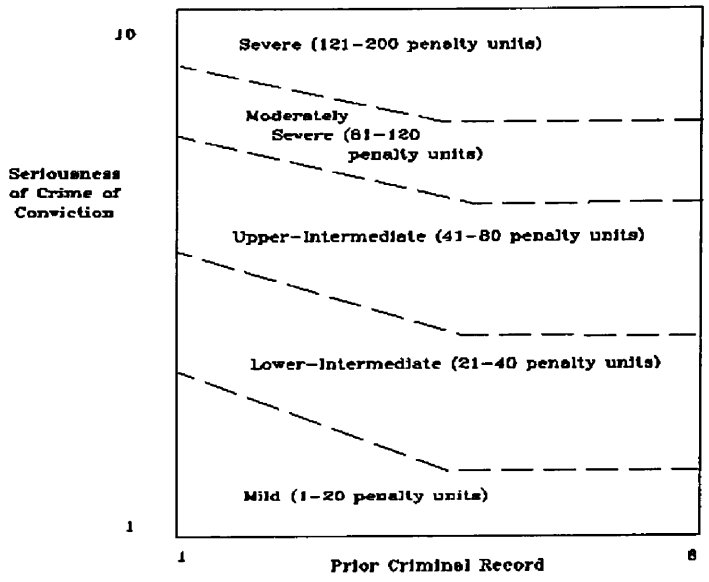
2) Full Substitution Model

The second model offered by von Hirsch is the "full substitution" model. This model, as pictured in *full substitution model*, borrows from the European concept of day fines and assigns penalty units to each band which still are configured on a grid with axes for the present crime and the criminal history. This grid does not contain the punishments but only the offense bands. The user would have to take the penalty unit score and apply that score to a table which would have the sanctions ranked and with assigned penalty

units. This would allow for full substitution of sanctions. For an offender with no means to pay a fine, an alternative punishment could be derived by translating the penalty unit score into so many number of hours of community service.

The drawbacks to the full substitution relate to the difficulty in trying to differentiate between punishments. It would be problematic for example, to try assign so many penalty units to community service and then differentiate those units from those that would be assigned to house arrest. An argument could certainly be made that one or the other of the sanctions represents more or less punishment. So it would be difficult to take a relatively homogeneous set of punishments and scale those sanctions to match a scale of offenses. We are not that sophisticated and not likely to acquire any consensus in this area any time soon. The other concern for the full substitution model is that it just is not all that necessary to develop such a complex scheme. A limited substitution model, that allows for substitution when necessary, as in the case of the fine for a non working offender, may accomplish as much with respect to matching punishment to an offense.

"Full Substitution" Model
Source: *Rutgers Law Journal* Vol. 20:595



Using the rationale for limited substitution, von Hirsch proposes a model that is more flexible than the no substitution model and more workable that the unlimited substitution model. This limited substitution model, seen below, would permit substitution in some of the penalty bands but not in all of the bands. There could be no substitute for example in the first two bands which call for only a judicial caution or a flat fine. Judges would be restricted from exercising rehabilitative therapy in one of these bands through the use of a weekend of shock incarceration, for instance. Similarly, the top band which prescribes custody could not be substituted for because presumable the crime is offensive enough that a philosophy of just desert demands custody. No rationale for a non custody would satisfy in this band. Substitutes would be possible in the middle bands. The proviso for substitution would be that the substitution would be of equivalent severity and could only be invoked for certain stated reasons.

3) Limited Substitution Model

To give the reader a better sense of what level of penalties are being suggested by von Hirsch in the limited substitution model, the punishment bands are outlined below:

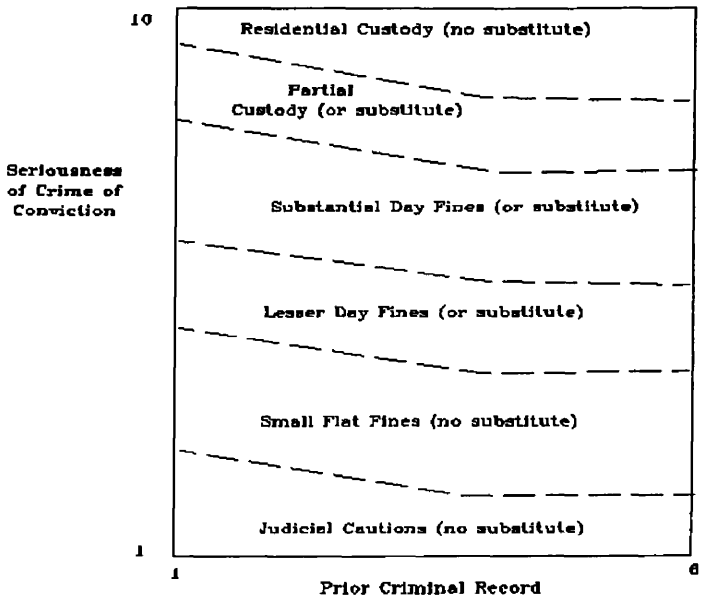
1. Severe band -- local jail for six months or more
2. Moderately severe band -- time served at residential center on weekends. A substitute would be jail custody of one or two weeks for offenders who have proven a bad risk for residential placement.
3. Upper intermediate -- substantial day fine of perhaps 60 days earnings or extensive community service
4. Modest day fine -- day fines less than 60 days with substitute of limited community service
5. Low bands -- small flat fine or judicial caution

It is noteworthy that the Morris and Tonry models are very similar to those of von Hirsch as is the concept of substitutability; Morris and Tonry (1990) use the term interchangeability and would give more freedom to judges to cross into other bands to establish the punishment. Their "interchangeability" relies less, however, upon the desert theory.

4) Comprehensive Punishment System

In the development of model sentencing grids and a supporting sentencing philosophy it would be easy to lose sight of the complexity of our jurisprudence system and promote the grids as "the" solution. Ideally, sentencing grids could reign in judicial power, eradicate sentencing disparity, significantly impact institutional overcrowding, eliminate correctional net widening, and solve our overall resource problems. This of course, is unlikely and none of the writers in this area are suggesting that sentencing grids that include community as well custodial sanctions are the single answer. They do assert that a rational sentencing system that works to keep offenders at a level of punishment that is commensurate to the crime is the major component of a comprehensive punishment system. The other key aspects of such a comprehensive system that will require consideration are the "back-up" sentence, resources and costs, and better use of probation.

"Limited Substitution" Model
Source: *Rutgers Law Journal* Vol. 20:595



C. PROBATION PHILOSOPHIES

The original philosophy of probation is easily understood by a closer look at the meaning of the term. The term probation implies "forgiveness" and "trial", or period during which offenders may prove their ability to obey the law. (Champion, 1988) John Augustus, the founder of modern probation, intended probation

to be a means of bringing about personal behavior change or reform. The original mission of probation was clearly rehabilitation. This function has lost some of its priority over the years in light of huge caseloads and questions of treatment efficacy. Probation services, in a perfect world, would follow directly with the court's sentencing philosophies. This is not the case, however, and probation has functions which go beyond philosophy. Champion has identified seven different functions of probation. Those functions include (1) rehabilitation, (2) deterrence, (3) crime control, (4) reintegration, (5) punishment (6) restitution, (7) reduction of prison/jail overcrowding.

1. Rehabilitation

One only needs to read a standard probation order to realize that probation's first orientation, rehabilitation still dominates as a function. The orders are replete with mandates to participate in activities that will rehabilitate, ie., Alcoholics Anonymous attendance, school enrollment, and counseling with a community agency. It is quite common for the probation order to contain a standard clause wherein the offender will participate in a community treatment program at the discretion of the probation agent. Despite the popular belief that most offenders will not benefit from treatment, but will in fact resist treatment, it is nevertheless expected to be part of the presentence recommendation.

2. Deterrence

While this function is debatable in an environment of large caseloads and crowded jails and prisons, probation officers may be able to deter future criminality using a threat of probation revocation and incarceration.

3. Crime Control

The advent of electronic surveillance has provided additional possibilities for restricting crime by probationers. Home confinement or house arrest, for example, may be able to physically restrict a

probationer from subsequent criminal activity. Intensive supervision may also make a claim for crime control with enforced curfews and random visits from agents. While these restrictions may not prevent all crime, the measures surely minimize the criminal opportunities for offenders.

4. Reintegration

The split sentence of jail and regular probation is an example of the need for reintegration. Presumably a long term in jail will cause separation from employment, family and treatment needs. The agent role is to assist the offender in connecting with resources necessary for rehabilitation. The term is also used to describe the process of referring the offender to needed services even in the absence of a term in jail or prison. The process is an accepted function of the community-based residential program which causes an initial separation and serves to make the necessary ties to services.

5. Punishment

The inability of citizens and many criminal justice practitioners to appreciate how probation can be punishment goes to the core of what community corrections seeks to become. The notion is that for some criminal infractions there is sufficient punishment/just deserts administered through rules and regulations of probation. Punishment need not be equated with jail or prison time.

6. Restitution

The Federal Victim/Witness Protection Act of 1982 provides for restitution payments to victims by offenders. Michigan is a victim/witness state which, therefore, mandates restitution. Agents spend considerable time researching the amount of restitution owed and establishing a payment schedule.

7. Reduction of Prison and Jail Overcrowding

Probation has been asked to take on more and more of the prison and jail crowding problem. Not only have caseloads increased but the risk level of the probationers has presumably increased. The pressure to keep the offender in the community has been extreme in Michigan. Agents must document why an alternative has not been effected in the event of a recommendation of a two-year or less prison term.

D. PROBATION MODELS

1. Rehabilitation

Correctional and sentencing reform have forced probation to reevaluate its traditional rehabilitation model. Sometimes referred to as the "treatment model" or "medical model" because of its reliance on diagnosis and treatment, the model has come under attack from several quarters. The advocates of just desert are concerned that the model permits unequal treatment of like offenders under the guise of rehabilitative needs. Is it fair, for example, to give one offender probation with many conditions, while a similar offender is given no conditions because the offender has completed their education and is employed and is therefore, not in "need". Criticism has also come to the model because it allows the offender to escape responsibility and punishment. For example, the sickness of alcoholism may have caused manslaughter with a vehicle to occur and the extent of punishment would come in the form of a treatment program; this scenario is inappropriate for the retributionist.

2. Deterrence

As capitol punishment is supposed to deter crime with its threat of certain and swift consequences, so to is probation suppose to deter the probationer from future crime because of rational thinking and avoidance of the negative outcome. The problem of course is that many probationers recognize that the available consequences for petty crime are insignificant, that justice is not particularly swift, and that the time served, if revocated, is something they "can do". That would be the thinking of someone familiar with

the system and someone who will not be deterred by any part of the probation term or its conditions. Then there is the person who by their apprehension and processing through the system will be deterred from present and future offenses.

3. Desert

Rooted in retribution, this model claims that the offender has earned the punishment for the violation of our laws and should not avoid the punishment under any circumstances. Writers in the desert model (von Hirsch, Newman) believe that to punish like offenders alike is to avoid discrimination. They do not advocate human suffering but believe that punishment may serve to prevent more suffering than punishment causes. (von Hirsch) The desert theorist also believe that the punishment that should be applied needs to be scaled back from our current standards. They recognize that a pure desert model using our existing punishment scales would result in very harsh treatment for a the entire group of offenders which the system could not afford.

4. Justice

The justice model utilizes the theory of the desert model and expands it with several principles. Champion indicates that the sentencing reform of the 80's is based upon the justice model in as much as punishment should be distributed in accord with the seriousness of the offense and the culpability of the offender. The model holds that other purposes of criminal law, such as incapacitation, protection of the public, deterrence of future offending, and treatment and change of offenders, may be pursued within the limits of these principles, but only insofar as they do not undercut the primary principles.

E. "BETWEEN PRISON AND PROBATION"

A discussion of what sanctions do and do not exist between prison and probation is to highlight both the potential and problems of a community corrections model. Morris and Tonry in Between Prison and Probation (1990) make "intermediate punishment" sound within reach. They are so reasoned and so principled that they make you forget the following quote from David Rothman. (as quoted in Byrne and Yanich, 19)

> Each generation, it seems, discovers anew the scandals of incarceration, each sets out to correct them, and each passes on a legacy of failure. The rallying cries of one period echo dismally into the next. Benevolent societies in the 1790's denounced prisons as 'seminaries for vice', and their successors in the 1930's complained of 'schools for crime'...We inherit, in essence, a two hundred-year history of reform without change.

Morris and Tonry's introduction to their book on intermediate sanctions begins with:

> Effective and principled punishment of convicted criminals requires the development and application of a range of punishments between imprisonment and probation. Imprisonment is used excessively; probation is used even more excessively; between the two is a near vacuum of purposive and enforced punishments. Our plea is for neither increased leniency nor increased severity; ...We are both too lenient and too severe; too lenient with many on probation who should be subject to tighter controls in the community, and too severe with many in prison and jail who would present no serious threat to community safety if they were under control in the community.

Unfortunately, we have seen in the last several years a retrenchment in correctional policy. "A serious challenge has been mounted by modern criminology against prison reform and the claims of rehabilitation. The basis for this attack rests on the paradox of reform- that reform concedes certain successes to incarceration and accepts imminent failure for its own performance". (Byrne and Yanich, 19).

Morris and Tonry wrestle the paradox of reform away from the criminologists and the corrections officials with their ideas and with specific terms and definitions:

> We refer to 'intermediate punishments', rather than to 'alternative punishments', or 'alternative sanctions.' Use of the word assumes that these punishments are substitutes for real punishment. It assumes that the norm of punishment is imprisonment, against which all other punishments are to be measured. This is true neither historically nor in current practice....Convicted criminals should not be spared punitive responses to their crimes; there is no point in imposing needless suffering, but effective sentencing will normally involve the curtailment of freedom; this is entirely

> properly regarded as punishment. The language of treatment, reform, and rehabilitation has been corrupted by unenforced and uncritically evaluated good intentions. We will do better if we are more blunt about these matters.

Byrne and Yanich make the observation that "past reform efforts have been systematically diluted by the requirement that they adapt to the requisites of total institutions. That so long as total institutions are the core of corrections and community-based alternatives are the fringe, the latter will be required to adapt their goals to the organizational needs of the former".

In a chapter entitled Interchangeability of Punishments in Practice, Morris and Tonry address the reality and relation to the institution of punishment:

> Across the country, many jurisdictions are responding (to overcrowding) by creating sentencing programs aimed at preventing or reducing crowding by keeping newly convicted criminals out and by releasing previously sentenced prisoners....These are good times for intermediate punishments. They are bad times, though, because the crowding impetus gives only negative reasons for new programs--to avoid prison crowding and the resulting court orders--rather than positive reasons; programs aimed at avoiding something are less likely to endure than are programs aimed at achieving something.

F. THE PRINCIPLE OF INTERCHANGEABILITY

Our history of punishment in this country shows that we make policy decisions about punishment with a view toward the most heinous criminal. As an example, we experience drug problems and we see organized crime figures who ought to be severely punished for trafficking. We follow with broad sweeping laws targeting drug dealers and legislate mandatory imprisonment. We convict though, a large group of offenders who don't look anything like the villainous head of the crime family we were targeting and the result is overcrowded prisons. We can look to desert theory for guidance but discover that using a pure just desert approach serves to exacerbate our dilemma because all like offenders should be treated alike. As Morris (1990) states, "A punishment system scheme that sought only desert plus equity would be intolerably severe". Put another away, if intentional and legally unprovoked killings attract their deserved

punishment, a punishment matching the harm encompassed, then we would have approximately 10,000 executions a year in the country. So desert theory must be modulated if excessive severity is to be avoided. One way to modulate is with proportionality.

To practically achieve proportionality on a sentencing grid requires that a class or grouping of crimes be contained in a cell and a punishment assigned. As seen earlier, what happens then with respect to the punishment is that it is conceived to fit the "worst case" of the class of crimes. Proportionality like deserts takes us only so far. Morris (1990) suggests that the other key to a fair sentencing system is the inclusion of the principle of parsimony. He would have us use economy with our correctional resources (the means) in the process of allocating deserved punishment (the end). Operationally, we would, and do already in some cases, scale the punishment in accordance with the adversity brought by the type of prison setting. The intentional killer and the legally unprovoked killer may be in the same cell and receive the same length of sentence but parsimony could be used with respect to the prison setting. The one would be punished at an institution of extreme security and few privileges while the other might be punished at a minimum security facility that provided significant educational and vocational opportunities. The same parsimony is possible at the community level keeping in mind that the least restrictive sanction is advisable for reasons of fairness as well as economy of finite correctional resources. This is also the theoretical foundation for the use of so called intermediate sanctions. Intermediate sanctions describe a range of sanctions that lie between "straight" probation on the least restrictive end of the range on up to the very restrictive end of prison. To date the theory of modified just deserts has not been incorporated into the use of intermediate sanctions because they are not scaled and because the judiciary continues to function with a system of indeterminate sentencing for non-prison sanctions.

G. INTERMEDIATE SANCTIONS

The need for better use of our sanctioning resources is self evident to professionals in the field of corrections. Statistically, support is also evident. In 1990, our country confined over 1 million people in our prisons and jails. Our probation and parole caseload numbers swelled to more than 2.5 million. Counting individuals on bail awaiting trial we had more than 4 million people under supervision (Morris, 1990). The numbers add up to more than 2 percent of our adult population under some sort of sanction. The term intermediate sanctions refers to the range of post adjudication sanctions being developed to fill the gap between traditional probation and traditional jail or prison sentences. These sanctions range from community service programs, to increased use of fines to, day reporting centers. Programs currently operating as intermediate sanctions include boot camp type shock incarceration, house arrest, intensive probation supervision, tethering with electronic surveillance equipment, restitution centers, etc.. Speaking to the 1990 National Drug Conference about the federal drug control strategy that included the use of intermediate sanctions, Attorney General Thornburg was quoted as saying that "this concept has appeal in both principle and practice. In principle, if we recognize gradations in the seriousness of criminal behavior then we should have gradations in sanctions, as well. That's why we need a portfolio of intermediate punishments that are available -- independent of whether our correctional facilities are full or empty, or whether our correctional budgets are lush or lean, or whether our offender populations are increasing or declining."

The fact is though, that intermediate sanctions have primarily been a response to jail and prison overcrowding. The first term used to describe these sanctions was not intermediate sanctions but rather, alternatives -- a substitute for prison or jail. Their value was not in their ability to punish offenders effectively in the community but in their diversionary potential. Much of the community corrections legislation adopted in the last ten years, has in fact hinged on the proposition that offenders had to be prison divertees. In Michigan the law (PA 511) that in theory supports intermediate sanctions expressly prevents

non-prison and jail bound offenders from enrolling in the programs that are intermediate sanctions by definition. The reason for this is that community corrections, ie., intermediate sanctions, was sold politically as the answer to burgeoning prison and jail budgets and the crises of overcrowding. The sentence alternatives offered by such programs were intended only to stop the flow of offenders into the prisons and jails. From what we can tell this has not happened because the flow has remained steady while the intermediate sanctions have been filled to capacity by offenders who ten years ago would have been placed on traditional probation.

H. INTERCHANGEABILITY OF PUNISHMENT

The primary vehicle for the delivery of a rational sentencing system, that includes intermediate punishment, is the use of presumptive sentencing guidelines. Guidelines that presume a particular punishment have been shown to be an effective way to establish standards, to reduce sentencing disparity, to assure judicial accountability, and to provide a basis for appellate sentence review. (Morris and Tonry, 1990) The current state of guidelines though do in general not address the decisions related to non-imprisonment. This fact is due in part to the rehabilitative rationales of indeterminate sentencing. The thinking is that the person is not going to jail so we must treat him in the community and probation is suppose to identify all the needed cures. From a judicial perspective, the decision is framed around the in or out decision associated with prison. Because our system lacks any thoughtful and comprehensive approach to a range of punishments, the decision to place someone on probation is tantamount to an abyss.

The basis for that comprehensive system of punishments is, according to Morris and Tonry, a continuum of punishments that begin as low as warnings and move to jail but along the way are overlapping and interchangeable. The problem with a system structured for presumptive sentencing is the fear that the system would prove to be too rigid and mechanistic to take into account of significant difference between offenders. " A comprehensive sentencing system must harness the tension between the requirement of

fairness that there be general standards that apply to all and the requirement of justice that all legitimate grounds for distinguishing between individuals into account when decisions about individuals are made". (Morris, 1990)

IV. THE EVALUATION QUESTION

As the title of this paper suggests, the critical question to be asked of the Community Corrections Act is whether the Act is accomplishing, or at least approaching, the priority goals of real prison and jail diversion. Are community-based diversion programs reaching their target population or are they instead enrolling offenders who would have previously been supervised with less intrusive measures by probation agents alone? As we saw in the Kansas study, the question can also be framed to examine the characteristics of different offender groups, eg. probationers and prisoners to test if the program enrollees more closely resemble, prisoners or probationers. One approach to answering the question that requires very little analysis is to simply look at the prison and jail commitment rates for probationable offenders and make a judgment as to whether the Act is of value. Most communities, however, are not in a position to do that and need to have their information systems evolve before they can get to that bottom line approach.

Still another way to get at the question is to analyze the historical sentencing practices of a jurisdiction and then construct a prediction instrument for jail and prison bound decisions. The object of the instrument would be to identify relevant sentencing variables that are unique to both incarceration groups (jail and prison) and thereby target those, and only those offenders for enrollment in programs. To target offenders to that level of specificity is to avoid the phenomenon known as "net widening" , ie., the expansion of social control over offenders who would have otherwise been supervised with less restrictive measures, absent the new programs and the state OCC resources. Answering the evaluation question and being aware

of the "net-widening" phenomenon has ramifications in several areas, eg., the cost/benefit of the Act, the ethics of unnecessary social control of an offender, and the appropriate allocation of scarce correctional resources.

For Kent County, the issue of net-widening has been discussed but remains empirically unanswered and provides the context for the most basic questions. What kind of offenders are in Kent County OCC funded programs, offenders that are prison-bound or probation-bound? Do the participating offenders look more like "straight" probation cases, or more like cases that have in the past been sentenced to a short term (less than 2 years) in prison? Is the system developing intermediate sanctions for would-be probationers, or for prison and jail bound offenders?

A. ASSESSING PRISON-BOUND CHARACTERISTICS

Kay Harris in her 1990 study of the Kansas Community Corrections Act indicates that there are two ways to approach the question of diversion from prison. The first method involves an examination of prison admissions, and the second involves a comparative analysis of offender profiles in each of the three dispositional groups (probation, community corrections, and prison). In the first method, her evaluation used data from several participating counties in Kansas to determine if the target-category offenders were present or not.

B. COMPARISON OF OFFENDER GROUP PROFILES

Lacking hard data from definable prison admissions, Harris asserts that it is reasonable to say that offenders are being diverted from prison if community correction clients more closely resemble prisoners than probationers, with respect to characteristics that serve to distinguish among the three dispositional groups. In order to compare the profiles, significant discriminatory variables must be identified and each group classified.

Using both bivariate and multivariate analysis, Harris found that there were several factors that were significantly related to sentence outcome. Those factors were mainly prior criminal history measures, including drug history, prior juvenile offenses, prior arrests in the preceding two years, prior felony convictions, and other charges pending at the time of the arrest, with age and educational level also being important. The most significant variable relating to the instant offense was whether or not it involved a person victim. Her methodology went on to attempt to classify cases into one of several mutually exclusive groups on the basis of a predetermined set of factors.

Using discriminate analysis for the process of "classification, suggested that the most parsimonious model (in the sense of yielding the 'best separation of groups', viz a viz actual and predicted group membership, with the fewest variables) contained just four factors". (Harris, 1990) These factors were prior juvenile adjudications, prior adult arrests in the two years preceding the present arrest, existence of a personal victim of the crime, and a history of substance abuse. While there were other factors that were significant, ie, education and pending charges, they did not improve the overall proportion of cases correctly classified. The percent of cases correctly classified using the model with the four variables was 55.2 percent. In the final model, both discriminate functions were significant, the first accounting for 96 percent of the total between-groups variability. Unfortunately, although not unexpectedly for Harris, the total variability "explained" by the difference between the groups was just 20 percent. This suggests according to Harris that the three sentence groups, prison, probation and community corrections-- "are by no means easily distinguishable".

This finding is consistent with the view of experienced courtroom work group members who believe that many borderline cases are disposed to probation v. prison more by serendipity than by any identifiable predictors. This is particularly true in Michigan where the sentencing guidelines are not presumptive and especially in those cases where the score for the maximum sentence does not exceed one year. It is at this

low-end of the sentencing guidelines, where judges are using broad discretionary power, that community corrections must carve out a sentencing niche from the murky waters of conflicting sentencing goals and probation models that are equally conflicted.

If, as Harris suggests, sophisticated statistical models can only get it "right" 20 percent of the time, then the continuum of sanctions, that we regularly refer to as a basis for a more rational sentencing system, is not as distinct in the intermediate range as the hypothetical plotting on the line would suggest. (Harris, 1990) In fact, Harland suggests that we too often confuse the development of an "array" of sanctions with a continuum of sanctions; the latter being the more precise task of specifically defining sanctions that then "fit" on a continuum. (Harland, 1993) The lack of any rational sentencing policy that employs the principals of defining a continuum and assessing offenders for the right fit leads to differential sentencing. Differential sentencing has a substantial impact on the size of jail (and prison) populations which has important ramifications for county (and state) government. (Price, 1983) The question of how to more precisely identify an intermediate sentencing group has ramifications for both justice and community benefit. Offenders who can be managed in less restrictive and less costly programs, benefit the community and justice.

V. METHODOLOGY

A. STRATEGY AND DESIGN

When Kay Harris evaluated the Kansas Community Corrections Act she determined that in fact there was significant diversion of offenders from prison. The methodology used here will recognize her work and also include another element in the diversion equation, that of diversion from the local jail as well as prison. Under the Michigan Community Corrections Act, jail diversion is a stated priority and believed to be related to prison diversion. The assumption is that a jail bed vacated by a community corrections

program placement, becomes a bed that can be occupied for some period of time by the offender bound for prison.

As earlier discussed, the two offender groups of prison-bound and jail-bound are believed to be highly related and difficult to separate when analysis is limited to low risk offenders. The offenders who can be incarcerated for up to a year in the county jail versus a similar population of offenders who can be committed to the state for two years or less, are not easily distinguished. Conceptually, it is thought that the offender to target for jail diversion is only one or two "salient characteristics" away from being a prison-bound offender. This study will attempt to find two different plots on the sanctioning continuum: one for jail diversion and another for prison diversion. The unit of analysis will be the sentencing disposition. After establishing a baseline of prison, jail, and non-confinement outcomes, actual community corrections program enrollment data will be evaluated to determine the extent of enrollments that are believed to be, by virtue of the analysis, prison or jail-bound.

Michigan is a sentencing guideline state. The guidelines were voluntarily adopted by the judiciary in the mid 80's. The sentencing guideline score is derived through an objective/subjective accounting of the severity of the instant offense and assessing a value for the prior criminal history of the offender. The resulting score is expressed in a range of months the offender could be incarcerated. The judge may depart from the guidelines by supplying a rationale for the record. It is rare for judges in Kent County to depart from the guidelines. For the offender population of potential community-based placements, the guideline scores typically begin with a minimum score of 0 months (indicating no incarceration), and rarely exceed a maximum score of 48 months. A score with a range of 12 months to 48 months represents the outer limit of acceptability for most judges considering retaining the offender for local incarceration and/or supervision in lieu of prison. The guidelines are important to this analysis for two reasons: first, they are

referenced in the Act in an attempt to define what is to be considered a prison diversion; second, the guidelines have also been used by the state OCC administration to analyze prison diversion.

C. DATA SET

The total number of cases with a sentencing guideline score studied was 3,027. The data set used in this analysis has two sources. The first source is a report produced by the Circuit Court Probation Department, a local department of the state Department of Corrections. The report is entitled the Basic Information Report (BIR). The report is prepared for all sentenced felons and is statutorily required. It contains biographic data, criminal history information, current offense information, sentencing guideline score, and the actual sentence.

The validity of the BIR data was not independently validated. The DOC does, however, edit the data and it is generally accepted that the quality of the data has been steadily improving over the last few years. It is the basis for much of the statewide data provided by both the DOC and the OCC. The second source of data is from program enrollment and termination reports required by the local Office of Community Corrections. It is noteworthy that offenders may well be diverted to non OCC funded programs which exist in the community and are entrusted by judges to deliver, as an example, drug treatment services. Unfortunately, the BIR data is lacking for specific program referral information. Therefore, the analysis of program effect on diversions will be limited to OCC funded programs, which comprise the bulk of the rehabilitative and program resources for offenders.

The analysis will include all eligible felony dispositions with a sentencing guideline score, that occurred in Kent County in 1992 and the first six months of 1993. Since the object is to assess if "eligible" offenders are being appropriately targeted for local programs in lieu of jail or prison, the first task will be to sort out all of the ineligible offenders. The first cut of offenders will be inmates and parolees. State

correctional inmates are part of the large dispositional data set because there is a state-run correctional center in the jurisdiction; they are on inmate status and are half-way out. The cut of the parolee population is because of an OCC policy that places them fourth in priority for services; locally, the population has virtually been ignored. The policy in Kent County has been to focus resources on front-end diversion, by concentrating on probationers.

The next sorting function will be for offenders who are not eligible for statutory reasons. Section 8 (4) of the Act states that "...it is intended to encourage the participation in community corrections programs of offenders who would likely be sentenced to a state correctional facility or jail, would not increase the risk to public safety, have not demonstrated a pattern of violent behavior, and do not have a criminal record that indicates a pattern of violent offenses". Section 8 (2) (a) of the Act stipulates that counties shall demonstrate how ..."prison sentences for felons for which the state felony sentencing guidelines **upper limit** for the recommended minimum sentence is 12 months or less, as validated by the Department of Corrections". (P.A. 511, 1988) Both parts of Section 8 are problematic. The problem with the upper limit guideline score of 12 months or less is that it is presently too conservative. With all the data on the "two-year-or-less" felons clogging up the prisons, 12 months is actually a more reasonable and acceptable number for the lower limit or minimum score. The issue of violence is exceedingly more complicated due to the interpretation required to sort for violent cases. It is assumed here that a genuinely violent offense will trigger a higher minimum guideline score than 12 months.

Another difficulty with the analysis is with the fact that several divertable offenses are not included in the sentencing guidelines. The best example of this is the charge of Operating (a vehicle) Under the Influence of Liquor--third offense (OUIL III). (Any offense that was enacted after the guidelines were adopted does <u>not</u> have a guideline score.) OUIL III is an offense for which the statutory language is interpreted by many

judges to mandate a year in prison. Many judges interpret the statute literally and automatically send these offenders to prison. Other judges use a combination of jail time and residential treatment to satisfy the year of confinement. The expectation from both the OCC and the DOC is that OUIL III is a divertable offense and one that is encouraged. The OUIL offenses will not be considered in the analysis because it is widely accepted as a true prison diversion and because the offense does not carry a guideline score.

A more problematic offense without a sentencing guideline score is that of Retail Fraud I, an offense that is typically applied to chronic shoplifters. Like OUIL, Retail Fraud I was also enacted after the guidelines were created. Unlike the OUIL III offense which would produce a high prison-bound type score, Retail Fraud I, if it were scored, would likely produce a lower guideline score. Kent County disposed of 184 Retail Fraud convictions in 1992, with 47 resulting in a prison sentence. This important target population for community corrections, however, will need to be analyzed separately, due to the fact that the offense does not carry a sentencing guideline score.

B. SENTENCING GUIDELINE VARIABLES

Harris (1990) determined that current offense, prior juvenile adjudication, prior adult convictions, history of substance abuse, crime against a person, and pending charges at the time of arrest, were the most significant variables in her test for prison- boundeness in Kansas. A major assumption in this analysis is that the Michigan sentencing guideline score, which encompasses all of the important variables identified by Harris is appropriate for study as a single variable. Identifying disposition outcomes of no incarceration, jail or prison on the basis of the guideline score will have important practical applications for the evaluation of current enrollment policies and future targeting of offenders. To date, the scores have meaning only to the extent that we have arbitrarily assigned meaning to them. The state for example, adopted a policy excluding the enrollment of offenders into residential programs who had a score of 0-6 months or less. This decision was not a data-based decision but was based on a consensus that an offender

with that low of a score was unlikely to be sentenced to prison. Testing the guideline score variable, therefore, will allow for more precise targeting if we find for example, that virtually no one goes to prison even at the 0-12 range. That kind of finding would help with policy development for who is appropriate for an expensive and intrusive sanction such as residential placement.

The other variable to be tested is the pretrial confinement status of the offender. A study performed in Hennepin County, Minnesota, found that "similarly situated" offenders who had been detained pretrial had a significantly higher rate of imprisonment than offenders who had been released from pretrial custody. (Osterban, 1987) This variable of pretrial status was also chosen because Kent County, more than any other county in Michigan, has committed major funding resources to pretrial release programs. The County has made a significant investment in the assumption that an effective pretrial program will provide two primary benefits: efficient use of pretrial jail beds, therefore freeing up more beds for the sentencing of prison-bound offenders; and offenders released pretrial will be enrolled in supervision and rehabilitation programs and will, therefore, increase their chances for a community-based sentence.

C. RESULTS

The effect of sentencing guideline score in combination with pretrial release in determining sentencing outcome is apparent in the crosstabulation displayed in Table 1. Each case resulted in a disposition of either non-confinement, jail, or prison. The dispositions were then crosstabulated with sentencing guideline scores and the pretrial release decision. The three Sentencing Guideline (SGL) score ranges of $\leq$0-9, 0-12 to 12-30, and $\geq$12-30 were chosen because they are consistent with state OCC categorizations and also because the distribution of all SGL scores presented obvious breaks at these ranges. Each sentencing outcome in the table is differentiated by the SGL score and the yes/no pretrial decision.

TABLE 1

PRE-TRIAL RELEASE/SENTENCING GUIDELINE CATEGORY BY SENTENCING DISPOSITION
(N = 3,027)

SGL CATEGORY	PreTrial Release	Count / Row Pct / Col Pct / Tot Pct	NON-CONFINED	JAIL	PRISON	ROW TOTAL
≤ 0-9 mths	YES		835 76.4 62.3 27.6	248 22.7 27.4 8.2	10 .9 1.3 .3	1093 36.1
	NO		44 28.4 3.3 1.5	104 67.1 11.5 3.4	7 4.5 .9 .2	155 5.1
0-12 TO 12-30 mths	YES		325 47.4 24.2 10.7	265 38.2 29.2 8.8	96 14.0 12.3 3.2	686 22.7
	NO		62 17.2 4.6 2.0	185 51.4 20.4 6.1	113 31.4 14.5 3.7	360 11.9
≥ 12-32 mths	YES		57 19.8 4.3 1.9	62 21.5 6.8 2.0	169 58.7 21.7 5.6	288 9.5
	NO		18 4.0 1.3 .6	42 9.4 4.6 1.4	385 86.5 49.4 12.7	445 14.7
	COLUMN TOTAL		1341 44.3	906 29.9	780 25.8	3027 100.0

The results of Table 1 reveal several interesting findings. The most dramatic finding is the apparent importance of the release variable on the sentence. In all three SGL categories, a wide variation in sentencing was found between those who were released and those offenders who were detained through the adjudication process. In the first category of SGL ranges of 0-9 or less, the comparison reveals a startling difference in those offenders who are held until sentencing. Those that were released on bond were subsequently incarcerated in the local jail at a rate of only 22.7%. Those who were unable to post bond were continued in jail after sentencing at the much higher rate of 67.1%. The relatively small group of

offenders not released (12%) made up 30% of the jail sentences in this category. This is an even more startling difference when the SGL score is fully understood and considered. The SGL score is presumed to identify "similarly situated" offenders by way of their prior histories and the instant offense. That is, the offenders with these ranges would be expected to receive similar sentences because of the similarity in their current offense and prior criminal records.

The assumption of similar scores equaling similar sentences did not hold however when the variable of pretrial custody was introduced. Quite clearly, decision makers at two different levels agreed that these offenders were not similar and deserved differential treatment. The first level was at the initial arraignment where a pretrial report for bail was considered. The second level was at sentencing where the judge considered the recommendation of a probation agent through the presentence report. The Hennepin County study (Osterban, 1987) suggested that the pretrial custody variable stood alone as a determinant in the sentencing decision, because the study was able to rule out sex and race as significant variables for the sentencing inequity. Plainly stated, the inference was that the assumed appropriateness of the pretrial custody also made the appropriateness of additional confinement all the more acceptable at the time of sentencing. This finding has resulted in the local pretrial agency looking more closely at pretrial offender characteristics. Data elements that are being reviewed are: a history of non appearance for court dates; prior probation failures; reduction of the charge by the prosecution at a pretrial conference for sentencing promise; current probation revocation that did not by itself change the SGL score.

Equally interesting, is the number of offenders that were sentenced to prison from the category of 0-9 or less. Ten offenders who were released on bond, were subsequently sentenced to a term of prison. Only seven, however, from the non released category were sent to prison. Given the high percentage of non released offenders who went to jail it would have followed that an equally disproportionate number would have gone to prison, but this did not occur. Of released offenders in the 0-9 category .8 went to prison,

while only .6 of the non released offenders in the category ended up in prison. When all prison commitments were considered, the rate of imprisonment for non released and released in the category of 0-9 was exactly the same at .9. So, while the pretrial status had a major impact on the jail sanction, it had little impact for the prison decision.

What is very clear from the table is that offenders with a 0-9 score or less are not prison-bound. This category which contains 41.2% of the total dispositions, contributed only .5% of the prison outcomes. Further, programs that are at the high end of the sanctioning continuum, to avoid net-widening, should be discouraged from enrolling these offenders unless a unique factor can be determined as the cause for the 17 offenders who did go to prison in this category. True prison diversion does not occur at a significant rate even in the next sentencing category of 0-12 to 12-30 months. For those released on bond in this category, only 14% were imprisoned. Even the offenders held during pretrial were sentenced to prison only about one-third of the time. The decision to imprison becomes significant at the $\geq$12-32 level. Those released on bond were imprisoned at the rate of 58.7%. Those detained were almost sure to be sentenced to prison with a rate of 87%.

For purposes of targeting, the 12-32 SGL range is the clear choice in order to impact the state commitment rate and avoid net-widening. The combined prison commitment rate in this category of 71% means that to divert one of these offenders is to risk only a 29% chance that the offender would not have gone to prison. The sentencing range is also the precise target group that clogs the prison beds with the short term stays of two years and less.

There is also a sentencing curve that can be observed in the table. At the 0-9 range, the rate for prison is at the bottom of the curve at only .5%; prison is used only 7% of the time in the category of 0-12 to 12-30 compared to the rate of jail use further up the curve at 12%. The reliance on jail levels off at 15%

in the category of 0-12 to 12-30. The curve peaks for prison in the 12-32 category at 18%. The curve bends down for jail in the 12-32 category with the rate dipping to 3%. For purposes of targeting prison-bound offenders and impacting the commitment rate, the ideal situation would be to reverse the above two numbers in the category of 12-32, to get sentencing outcomes of jail before prison in this category.

The next step in analyzing the data was to document the community corrections funded program enrollments and crosstabulate them with the SGL categories and the pretrial release decision. Those results are shown in Table 2. There were 539 enrollments documented. The table shows program enrollments with programs arranged in continuum fashion from least restrictive displayed on the left, to most restrictive displayed on the right hand side of the table.

TABLE 2
OCC Funded Programs
1993 Enrollments

SGL CATEGORY	PT Release	A	B	C	D	E	F	G	H	Total/ Percent
≤ 0-9 mths	Yes	7	0	2	45	106	15	19	26	220 / 41%
	No	0	0	2	1	1	3	0	4	11 / 2%
0-12 to 12-30 mths	Yes	7	7	3	21	71	12	14	51	186 / 35%
	No	6	1	3	10	9	7	3	27	66 / 12%
≥ 12-32 mths	Yes	1	5	1	6	10	3	1	7	34 / 6%
	No	0	2	0	4	3	7	0	6	22 / 4%
Column Total		21	15	11	87	200	47	37	121	539 / 100%

A. Community Service - outpatient
B. Project Intervene - outpatient/mental health
C. Project Rehab - outpatient/substance abuse
D. Contact Center - outpatient/job readiness
E. Sex Offenders Treatment Program - outpatient
F. Jellema House - male residential
G. The One Way House - female residential
H. Alternative Directions - male residential

It was anticipated that the continuum of programs would reflect the appropriate SGL scores. In other words, the least restrictive programs would have enrolled lower SGL scores, while the more restrictive programs would have enrolled higher SGL scores. This occurred in general but some of the enrollment numbers are skewed and require an explanation. First of all, the programs have different capacities and, therefore, the numbers cannot be viewed as though they had an equal opportunity to enroll. Also, two programs specialize in difficult offenders who have a tendency to produce higher scores without the system requiring a high level of intrusiveness. The first such program is the Sex Offender Program and the other is Project Intervene, which works with mentally ill offenders. These exceptions notwithstanding, the continuum holds relatively true with respect to enrollments by SGL scores.

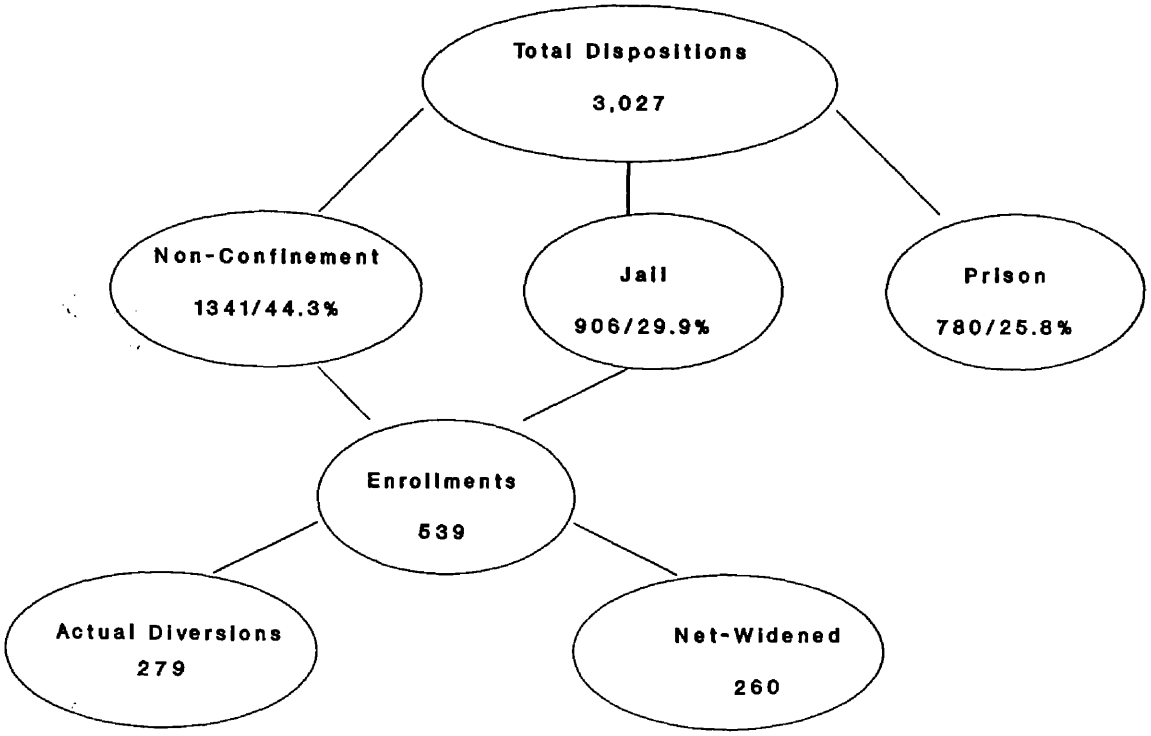
The data in Table 2 is reflective of the distribution of the sentencing outcomes found in Table 1. The 0-9 category from Table 1 contained 41.2% of the total dispositions. The 0-9 category in Table 2 likewise contains 43% of the enrollments. The 0-12 to 12-30 category in Table 1 contained 34.6% of the dispositions. Enrollments in this category, however, totalled 47%. This is likely due to the recent emphasis placed on enrolling offenders from this category. A further review of the data showed that the majority of these offenders had SGL scores on the lower end of this SGL category, 0-12 rather than 12-30.

Table 2 also displays the difficulty programs have enrolling offenders who do not make bond. In the 0-9 and 0-12 to 2-30 categories, the difference is apparent. Only 2% in the 0-9 category and only 12% in the 0-12 to 12-30 category come from the detained population. A review of the numbers in the 12-32 category demonstrate the overall difficulty in accessing offenders who can be defined as truly prison-bound. Only 4% of enrollments come from the detained 12-32 category who go to prison at a rate of 87%.

The Michigan Community Corrections Act;
Kent County Analysis, 1994

Moving toward the goal of discerning whether diversion occurred in Kent County or whether net-widening was the predominant activity, Chart 1 is provided to demonstrate the flow of offenders and the reduction methodology that will be utilized to isolate the true diversion.

OFFENDER FLOW



The above chart depicts the flow of offenders studied through the disposition decisions, through program enrollment, and then through a narrowing process intended to determine the cases that represent true diversion vs. net widening. That process begins with the rate of dispositions directed to non confinement, jail and prison as seen in Table 3.

The basis for the reduction of the program enrollments is that for any SGL category, there is a percentage of the dispositions that would go to prison and a percentage that would not. The only way this would not be true would be in the case of non probational offenses, ie. murder, armed robbery. For the eligible offenses in this analysis, there will by definition be offenders who were not going to go prison, regardless of the threats put on the record by the sentencing judge. This knowledge goes to the core of the net-widening dilemma. Every judge, prosecutor, defense attorney, and probation officer has been in the judges chambers and participated in the decision to not commit an offender to prison. The dilemma is not being able to quantify that decision and differentiate it from the decision to commit the offender. As we have said before, the difference between prison and community placement may be only one or two salient offender characteristics.

Lacking the precise knowledge of what those characteristics are, we will assume that the analysis of the 3027 dispositions for a sentencing outcome is sufficient to reduce the program enrollments by a percentage, so we can derive a more accurate view of what was diversion and what constituted net-widening. That view is displayed in Table 3.

TABLE 3
KENT COUNTY OCC FUNDED
JAIL AND PRISON DIVERSIONS

SGL CATEGORY	PT Release	TOTAL ENROLLMENTS	JAIL DIVERSIONS	PRISON DIVERSIONS	NET WIDENING
≤ 0-9 mths	Yes	220	51	20	68%
	No	11	7	-	4%
0-12 to 12-30 mths	Yes	186	73	26	47%
	No	66	34	20	18%
≥ 12-32 mths	Yes	34	7	20	21%
	No	22	2	19	<1%
COLUMN TOTAL		539	174	105	

The number of jail and prison diversions identified in Table 3 were derived by applying the percentage of actual jail and prison dispositions from Table 1 to the enrollments found in Table 2. The result is the number of offenders, by SGL category and pretrial release status, that are actual and true diversions. The column labeled net-widening gives the percentage in each row that were left over from the diversion reduction calculation and must, therefore, be considered the offenders who were not statistically bound for either jail or prison. Not surprisingly, the category that produced the greatest amount of net-widening was the $\leq$ 0-9 category. This category contains 41.2% of all the eligible offenders. The large number of dispositions however, contributed to 20 prison diversions from that category. This method of reducing enrollments to a true number of diversions also resulted in this 0-9 category producing 51 jail diversions.

The 0-12 to 12-30 category, predictably, produced the greatest number of diversions. Combining jail and prison diversions, the category accounted for 153 diversions. It is believed that this is due in some measure to the emphasis placed on programs increasing their enrollments for the higher guideline scores. Viewing the 0-12 to 12-30 category as whole, the level of net-widening for jail and prison is approximately 40%; meaning that enrollments in this category have a better chance of being a true diversion than a case that was over sanctioned. The total number of diversions contained in the Table is 279, which exceeds the total number of offenders considered to be over sanctioned by 19 (260).

CONCLUSION

The analysis of offenders enrolled in PA 511 funded programs in Kent County, Michigan, shows that both diversion and net-widening are occurring simultaneously. The analysis clearly demonstrates that offenders who would have otherwise gone to prison, by virtue of their sentencing guideline score and pretrial release status, have been diverted. Just as clear, is that community-based programs designed to accept the prison or jail bound offender have enrolled clients who were candidates for community supervision absent special

programming. This net-widening effect is evident in the population of offenders who scored $\leq$0-9 and were released on bond. Among this group, it was determined that 68% of the offenders would not have been sentenced to prison or jail. The number of actual offenders who were apparently over-sanctioned from this group in PA 511 funded programs totaled 149. This is in contrast with 48 offenders who were enrolled with scores $\geq$12-32 who were determined to be diverted and representing a group of offenders in a range where net-widening was only 22% of the program enrollees.

Other evaluations of community corrections acts have assessed the impact of diversion by the more direct method of measuring prison admissions. Time series analysis in the Kansas study, for example, showed that in fact the prison commitment rate had been reduced under the Act. (Harris, 1990) While that approach was not employed in this analysis, the local commitment rate was verified to determine if that rate was supportive or in conflict with the evaluation results in Kent County. It would be difficult to conclude that diversion was taking place in the face of evidence that showed the prison commitment rate for eligible offenders was constant or worse yet, on the rise. The commitment numbers reported by Kent County to the state show that from 1992 to 1993, the rate has declined from 23.5 to 19.1. This reduction of prison commitments in Kent County appears to support the conclusion that indeed the Act's goal of prison diversion is being met.

This study also reported on the phenomenon of judges becoming frustrated with early release policies in the prison system for low-risk offenders which resulted in similar offenders being given time in the County jail. Just as the prison commitment numbers were verified to not contradict this analysis on net-widening, the jail commitment numbers were also checked. It was important to make sure that all of the prison diversion cases did not get sentenced to jail for the maximum one year term. For the study period, the average daily population in the Kent County Correctional Facility was actually reduced. While the mix

of cases found in the jail was not specifically studied, the average daily population for 1991 was 957; for 1992 it was 870; and for 1993 it was 763, as reported to the DOC Office of Facility Services.

Further evidence that the Act is working comes from statewide data. State OCC analysis shows that the number of felony dispositions for prison is on the decline. In 1991 there were 10,537 commitments for a rate of 29.8. In 1992, that rate dropped to 28.5. The projected rate for 1993, using six months of actual data, was 25.6. (Howard, 1993) This information is not conclusive, just as the check of jail and prison commitments from Kent County is not conclusive, but it does provide for a solid foundation on which to present the more rigorous analysis and ultimate conclusion that true diversion is occurring in Kent County.

An important question for policy makers with respect to net widening and diversion objectives is what the appropriate level or mix of net widening and diversion is. Net-widening will not be completely eliminated. To push local judges to only divert the high risk offender is to invite a backlash in their sentencing practices. There is an apparent need to strike a balance between diversion goals and acceptable levels of net-widening. The analysis of Kent County suggests that diversion and net-widening can occur simultaneously, that they do not work in direct opposition to each other. The evidence at both the state and local level indicates that the goals of the Act are being accomplished through the steady evolution of communities grasping and understanding the data in recognition that there is a legitimate mission to divert some level of their own sons and daughters from prison, and then coordinating the development of policies and programs to accomplish that mission.

In order to maintain this evolving state and local partnership there are two primary needs which must be successfully managed. On the state side, data that shows prison diversion must be continually refined so as to be more precise in targeting the appropriate offenders and, therefore, stay true to the intent of the Act. From the local perspective, the other intent of the Act must not be forgotten and that is for greater

coordination and cooperation in the counties among the criminal justice stakeholders. Recognizing and accommodating both of those needs will permit the partnership to grow. The outcome of that partnership is the imprisonment of those who can not be managed in the community, with space in the prison to accomplish that detention, and the cost-effective supervision offenders who can be managed in the community.

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