Fledgling Programs Forced to Grow Up Fast

by Bill Finger

Since 1983, N.C. state government has funded three major community-based programs for adult criminal offenders—community penalties, intensive probation and parole, and community service. This article examines how these three programs have evolved and what their future might be, in the context of the current prison overcrowding crisis and from the viewpoint of a unified system of community-based punishments.

Because the state has more than 18,000 inmates in space designed for fewer than 17,000, programs providing alternatives to incarceration have taken on increasing importance. This article contains nine recommendations which attempt to link the growth of alternatives to incarceration to the broader context in which these programs function. These include recommendations that the 1987 General Assembly enact an emergency cap on inmates in the prison system; that the parole system seek national accreditation; that the state develop a better treatment system for drunken drivers; and that the state send misdemeanants to county jails, as the large majority of states do, rather than to state prisons.

On a dreary fall morning, 16-year-old Eliot Johnson sits fidgeting in Wake County District Court. He's been in trouble with the law before, but this time he broke into a car, and the charges are more serious—one felony count of breaking and entering and two misdemeanor counts of possessing stolen property.

Even though Eliot (not his real name) is only 16, the seriousness of his crime means that he is treated as an adult under the N.C. criminal justice system. Nearly one of every three people in the N.C. prison system is under age 25. Because Eliot is in the adult *judicial system, he has no special juvenile court counselors, only his lawyer, 46-year-old Sally Scherer.*

"The first thing I did when I got the case was call Cindy and ask for help," explains Scherer, motioning to the petite woman at her side during the long wait for the District Court docket to clear. "Attorneys just aren't able to adequately do the kind of background work that Cindy can do at ReEntry."

Cindy Hill, a forensic social worker, picks up the story. "When I first saw him, he was still locked up," she begins, pointing upstairs to the Wake County jail. ReEntry, a nonprofit organization serving Wake County, develops alternative sentencing plans for nonviolent, prison-bound felons, people like Eliot Johnson.

"I got him enrolled in school and gathered the records on his history—criminal justice records from other states and in-patient hospitalizations for substance abuse (drugs and alcohol)," explains Hill. She met with Eliot's mother (his father was not in the home), school officials, and Wake County Drug Action. She learned that Eliot was a kid with some serious problems. "Every previous study of him had recommended some kind of residential out-of-home group situation. I contacted a private group home here which decided he qualified for the home. They put him on the waiting list."

For six weeks, Hill had gathered information on Eliot's history and current situation, which helped attorney Scherer in negotiating the case with Assistant District Attorney Tony Copeland. Throughout the morning, Scherer and Copeland continue to confer, between the parade of cases before Judge Russell Sherrill.

Even if Scherer can finalize the plea and alternative sentencing plan with Copeland, the case still has to go before Judge Sherrill, known for his tough sentences. He could reject any proposal Scherer and Copeland work out. Finally, at 12:50 p.m., Judge Sherrill turns to Eliot's case, the final business on the morning calendar.

Since the late 1970s and early '80s, ReEntry and similar programs in Fayetteville, Asheville, Hickory, and Greensboro have sponsored efforts designed to punish and rehabilitate offenders in a community setting. Overcrowding of the state's aging prisons triggered these early efforts and prompted a greatly expanded system of punishments *outside* of prison. Thus far, only 350 people actually *headed for prison* have been diverted into community-based penalty programs. Yet the overcrowding continues. As of December 1986, the 86 state prisons held over 18,000 people, an all-time record (for more on overcrowding, see article on page 4).

The severe overcrowding has prompted far-reaching lawsuits in federal court. In 1985, the state settled a class-action suit covering 13 prison units, and in 1986 the Attorney General's office began defending a class-action suit covering another 48 units (for more on how this litigation affects prison policy, see page 29). These and other lawsuits spurred Gov. James G. Martin into action.

"It is critical that an ambitious prison construction program be adopted which will mitigate against Federal Court intervention," reported the Governor in a 10-year plan released by his Department of Correction in March 1986. "The total capital cost of this 10-year expansion plan to add 10,000 beds is $202,000,000. This is a substantial investment that will be required unless some effective alternatives to incarceration can be developed."[1]

This magical phrase—*effective alternatives to incarceration*—has taken on significant meaning. In the context of the current litigation, the most obvious measurement of "effective" is whether alternatives help solve the overcrowding problem. Overcrowded prisons have come to be the driving force behind the growing system of community-based sanctions, known loosely as alternatives to incarceration. But a truly "effective" system of alternatives to incarceration must be viewed independently of an overcrowding crisis.

Bill Finger is editor of North Carolina Insight.

"We need a unified concept of alternatives, a framework for North Carolina," says Lattie Baker, assistant secretary for Programs and Personnel Development in the Department of Correction, and former president of the N.C. Correctional Association. "Without a framework, existing programs don't work well together. Programs tend to compete against each other for scarce resources."

To determine clear purposes for a system of alternatives *to prison,* one must first articulate goals for prison itself, which has been the traditional penalty for lawbreakers. Historically, in the American criminal justice system, prison has been viewed as serving four purposes: 1) to protect the public safety; 2) to seek retribution for criminal acts; 3) to be a deterrent against more crime; and 4) to rehabilitate the offender (for more on these purposes, see pp. 2-3).

To meet these four purposes today, people from all political persuasions are looking beyond prison to community-based programs. Overcrowding, lawsuits, and massive capital expenditures by state legislatures around the country have resulted in the endorsement of alternative programs by a broad consensus of opinion-makers, from the American Bar Association to conservative U.S. Senators William L. Armstrong (R-Colo.) and Sam Nunn (D-Ga.). "Penal imprisonment is not always an appropriate punishment for certain types of criminal offenses," Armstrong and Nunn wrote in a recent anthology, released by a conservative think tank.[2] Other contributors making similar points include U.S. Rep. Jack Kemp (R-N.Y.) and Delaware Gov. Pierre du Pont, both candidates for the 1988 Republican presidential nomination. Community-based sanctions as well as prison are now considered as viable penalities for lawbreakers.

Litigation in federal court has prompted the 1987 legislature to consider major policy initiatives in the prison area. "We know the federal courts are looking over our shoulders," says state Sen. Tony Rand (D-Cumberland), who chairs the Senate Appropriations Base Budget Committee. Rand and other legislative leaders will decide how available dollars are divided among alternative programs and prison construction. "I would hope that they [alternatives and construction bills] would come together so we can look at everything as a package deal."

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Given this scenario, the 1987 General Assembly has an opportunity to go beyond the short-term overcrowding crisis to clarify the long-term goals of community-based penalities. A framework of alternative programs should have four components, says Lattie Baker. They should:

- have local direction;
- include a state-level inducement to promote such programs;
- contain an enforcement mechanism to penalize municipalities and counties that do not divert appropriate offenders into community-based programs; and
- define target groups for the alternative programs.

The overriding theme for all these components is *targeting the appropriate offender* through inducements and enforcement mechanisms. But how does a prosecutor and judge determine who is "appropriate"? Two critical steps in the entire criminal justice process occur when a prosecutor decides the charge against an offender and when the judge imposes the sentence. Even so, sentencing is only part of a system which many analysts believe has gotten out of kilter in North Carolina.

"When I review the DOC's (Department of Corrections) 10-year plan, I am struck with the lack of any explicit, coherent philosophy or the lack of any coherent statement of objectives for the correctional system," says Joseph E. Kilpatrick, assistant director of the Z. Smith Reynolds Foundation, which has funded many alternative programs over the years. "By default, we have settled for the objectives of 'incapacitation' and 'punishment' based on the theory that deprivation of freedom is synonymous with punishment to those offenders who are incarcerated."

Then Kilpatrick takes his argument beyond the short term issues. "But what bothers me is our failure to factor in the *social cost* of not rehabilitating more nonviolent offenders, who are

released from the prison system within five years or less. The real issue is not whether incarceration or even prison overcrowding is bad per se, but rather our failure to deal more effectively with those offenders who have the potential to be rehabilitated and thereby diverted from the prison system."

Deeply involved in helping to develop community-based penalty programs for six years, Kilpatrick goes on to explain his concern over the current framework for discussing these programs. "Community sanctions should not be understood solely in reference to prisons or prison overcrowding. They should be judged on the basis of how well they accomplish our criminal sanction objectives."

In 1987, the General Assembly, the Martin administration, and the judicial branch have two separate but related tasks. In the short term, they must determine how and to what extent these community-based programs—viewed with building state prisons and county jails, altering sentencing laws, and related issues—can address the crisis of overcrowding. But for the long term, policymakers might also attempt to articulate an overall criminal justice policy (see article on page 17 for more). For the most positive results, the role of community-based penalties must be examined within that larger policy discussion.

Regarding penalties outside of prisons, policymakers might consider such questions as these: Do alternative programs divert *prison-bound* offenders or serve to "widen the net" of state sanctions over persons who otherwise would not go to prison? Do alternatives reduce recidivism? Do alternatives enhance rehabilitation? Which people now in prison—and going to prison in the future—would be better off in a community-based program, for themselves and for society at large?

A true "package-deal" approach, as Sen. Rand puts it, can clarify the short-term and long-term goals of the prison *and* the alternative programs. To do that, however, first requires an understanding of how the current system of alternative programs has evolved.

Alternatives Take Hold in North Carolina

"Alternatives to incarceration" is a term that has come to mean many things to many people. In North Carolina, its entrance into the lawmakers' vocabulary dates from November 24, 1982, when Judge Willis Whichard, then on the N.C. Court of Appeals and now a N.C. Supreme Court justice (see page 91), released the report of the Citizens Commission on Alternatives to Incarceration. Whichard chaired the two-year study by this blue-ribbon commission, which moved alternatives from a fledgling community-based movement into the mainstream of the criminal justice system.

"Alternative penalties are clearly not appropriate for all offenders, but they can be responsible forms of punishment for most nonviolent crimes," explained the Citizens Commission in its 138-page report. "Alternative penalties are punishments that do not rely primarily on confinements in prison or jail."[3]

Before the formation of the Whichard Commission, advocates of alternatives had few highly visible supporters in government, with a few notable exceptions. As early as 1977, for example, the General Assembly had funded some restitution officer positions, a community-based program endorsed by Gov. James B. Hunt Jr., who served from 1977 to 1985. "We're not used to having so many allies in high places," said Lao Rubert, director of the N.C. Prison and Jail Project, at the time.[4]

The Whichard Commission report, through the legislative leadership of state Rep. Joe Hackney (D-Orange), played a significant role in the 1983 legislative session. In that pivotal year, the General Assembly put into place a system of state-sanctioned alternatives to incarceration that remains the framework for proposals in 1987. Two separate movements dovetailed in 1983—the alternatives-to-incarceration movement and the groundswell to curb drunk driving through Governor Hunt's campaign for the Safe Roads Act.[5]

This coincidence—the same legislature acting on the Whichard Commission recommendations and on the Safe Roads Act—resulted in a three-part *institutionalized* structure of alternatives to incarceration. In 1983, the legislature:

- passed the Community Penalties Act and funded the five existing community-based alternative sentencing programs through a grant system.[6] In order to receive state funds, these programs could work *only* with prison-bound offenders charged with nonviolent misdemeanors and nonviolent felonies in "H", "I", and "J" classifications (the least "serious" felonies under the Fair Sentencing Act);[7]
- passed enabling legislation for an "Intensive" Probation and Parole system, facilitating a much more personalized approach than regular "supervised" probation and parole;[8] and
- established the Community Service Program to manage the anticipated high volume of DWI

convictions (which usually include community service) under the Safe Roads Act.

Ironically, about the time the N.C. General Assembly launched this three-pronged system, scholars were beginning to express doubts on how most alternative efforts around the country were being implemented. "A careful review of the research literature on alternatives to incarceration suggests that their promise of reducing the prison population has remained largely unmet," wrote James Austin and Barry Krisberg of the National Council on Crime and Delinquency, in an influential paper developed for the National Academy of Sciences Panel on Sentencing Research.[9]

"Sentencing alternatives, such as restitution and community service, were found to enhance the sanctions of probation and fines *instead of replacing incarceration,*" continued Austin and Krisberg. "Similarly, post-incarceration release programs, such as work release and work furlough, often escalated the level of control over clients and served *primarily to control populations* within prison systems" (emphasis added). The authors go on to explain how alternatives have created wider nets—i.e., causing *more* people, not fewer, to come under state sanctions, if not in prison, then in programs such as community service. Hence, while prison populations continued to increase, the number of people in new community-based programs, such as community service and drunk driving schools, also grew. *Put another way, alternatives seemed to take on their own momentum, but without any clearly articulated goal other than to reduce overcrowding, which they meanwhile were failing to do.*

"Ten years ago in North Carolina, you had two basic systems—probation and prison," says ᵓubert, of the N.C. Prison and Jail Project. ˡternatives came out of those existing options. ˀope was that alternatives would reduce the prison population, because prisons were overflowing all over the country. We wanted the programs to be alternatives to *prison* rather than an alternative to *probation.* But we've got to be careful of unintended and undesirable consequences— increasing the portion of persons whose behavior is regulated by the state."

The Whichard Commission recommendations walked a fine line: incorporating a sophisticated "client-specific" system (designed to produce proper sanctions and rehabilation for each *individual* headed for prison) yet remaining attuned to the political realities of elected officials who want to avoid appearing soft on crime. One compromise inherent in the Communities Penalties Act was restricting the program to *nonviolent* offenders in the least "dangerous" felony categories. No distinction was made between a violent *offense* (such as a manslaughter case in a fit of passion) and a violent *offender* (a person with a violent pattern who poses a genuine threat to society).

Stevens H. Clarke of the Institute of Government in Chapel Hill, known for his extensive research in the criminal justice field, points out an important issue regarding violent offenders. "Violent felons become recidivists less often, and less seriously, than other offenders," he explains.

The Rand Corporation, a highly respected research group often concentrating on criminal justice issues, released two reports in 1982 examining behavior patterns and policy implications for incarceration rates.[10] The studies developed a method of determining criminal behavioral tendencies, labeling the most serious category of offender as a "violent predator." This crime pattern included some combination of robbery, assault, and drug-dealing. Violent predators typically begin committing crimes, especially violent crimes, well before age 16. Sentencing judges often are not able to determine whether a defendant is a "violent predator" or a generally nonviolent person who committed a violent crime, the studies found.

Such distinctions go beyond the casual labels of "violent" and "nonviolent" offenses. But with the implementation of the Fair Sentencing Act (1981) and the Community Penalties Act (1983), the legislature cast in concrete the violent and nonviolent criteria. Looking behind labels like "violent" and "nonviolent" is only one of the many complex issues before the 1987 General Assembly.

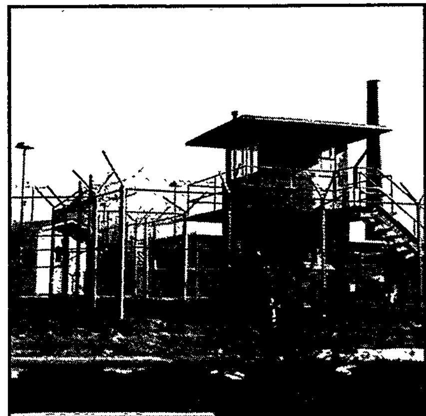
"The legislators have an incredible problem on their hands," says Rubert. "Because of the litigation, they can't move leisurely ahead. But when

they expand overnight, they don't solve the problem. They have to walk the tightrope between the litigation, severe overcrowding, and expanding alternative programs very quickly on the one hand, and moving ahead very carefully and in a targeted fashion on the other."

Since 1983, a three-part *state government* system has evolved—community penalties, intensive probation and parole, and community service. Other related community-based programs exist, such as halfway houses and dispute settlement centers. But the statewide system is building on these three programs. Policymakers now turn to the task of molding these three into an integrated, cooperative whole. Perhaps most importantly, state officials will face an increasing pressure to adjust this very young state system to the needs of counties and local communities.

AN ALTERNATIVE

Community Penalties



In 1983, the legislature appropriated $210,000 for a grant system for the existing nonprofit programs in Raleigh, Greensboro, Fayetteville, Asheville, and Hickory. The 1986 legislature expanded the program to four additional judicial districts, centered in Statesville, Wilmington, Winston-Salem, and a five-county area south and east of Asheville (29th judicial district).

These programs have a four-part statutory responsibility: 1) to target prison-bound offenders; 2) to prepare a detailed community-based penalty plan and to present the plan to the sentencing judge through the defense attorney; 3) to arrange for the services specified in the plan; and 4) to monitor the progress of the offender placed under the community plan.[11] As Cindy Hill did with Eliot Johnson, a staff person develops an alternative sentencing plan, working with the defense attorney and increasingly with the district attorney's office as well. Usually, the case comes before a superior court judge, who rotates from county to county within a superior court division (district court judges sit in the same district where they are elected).

"We're trying to convince sentencing judges—usually visitors to a community—that a particular community will support a community sentence," explains Dennis Schrantz, the former director of Repay, the Hickory program, and now the statewide grants administrator of the community penalties program. "We produce a document, an alternative sentencing report, that basically says, along with the experts in the community, 'Hey, judge, give it a shot.' That's why community ownership makes a difference in what we do."

The North Carolina community penalties legislation is unusual, because the act focuses on prison-bound felons, explains Malcolm Young of The Sentencing Project in Washington, D.C. "What makes it unique is that the defense counsel is supposed to use the resources funded by the act to propose alternatives." Other states have failed to provide real alternatives to prison, explains Young, because the people running the programs are not motivated to produce the alternative. North Carolina has the "only statutory scheme that specifically allocates the resources of the act to the court and to the defense counsel. After all, the defense lawyer has the job of getting the best deal he can for his client, which usually means the least prison time." The resources of the act, for example, paid Cindy Hill to help Attorney Sally Scherer develop an alternative sentencing plan for Eliot Johnson.

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—*Jim Kimel*
Guilford County
District Attorney

was likely to receive a *much less severe sentence* than he would have received if he had been in the control group [which received no Repay services], regardless of all other factors considered" (emphasis added).[12]

A June 9, 1986 *Newsweek* story, "Punishment Outside Prison," led with Clarke's research in Hickory. In the story, Clarke emphasized the cost savings of programs successfully diverting a person from prison. "If you can deter and control offenders less expensively by keeping them in the community, then everybody gains," he told *Newsweek*. A person outside prison costs about one-fourth what an incarcerated offender costs the state, about $8 versus $32 a day, not counting huge capital construction costs (for more, see page 71).

Clarke's research does not examine how well community penalties plans work *after* sentencing —for example, how the community sanctions affect the recidivism rates of offenders. The programs have not been around long enough for such a study. A large body of research on recidivism in general does exist, with both encouraging and depressing results. Studies have shown, for example, that financial assistance and using ex-probationers to assist professionals have helped to lower recidivism rates but not to the degree that one might expect.[13]

Clarke's studies break new ground, specifically regarding how judges and prosecutors use programs to divert prison-bound offenders at the sentencing stage. "This is significant because much of the criminal justice literature assumes that prosecutors and judges will not use these programs properly," says Joel Rosch, coordinator of the criminal justice program in the Department of Political Science and Public Administration at N.C. State University. But Rosch remains cau-

But if some perceive this program design to be a strength, others have criticized community penalties for working too closely with defense lawyers. Consequently, the programs have worked hard at building good communication with the District Attorneys' offices and with the judges.

"The community alternative program should walk a fine line and not be seen as a defense attorney program," says Jim Kimel, Guilford County District Attorney. "It is a sentencing tool used by the presiding judges to form appropriate sentences. Many times, judges have adopted the exact plan proposed by One Step Further [the alternative program in Greensboro]. Many times, we have given the defendant a split sentence, with some time and a suspension on probation. If the alternative programs can be realistic in their evaluations and assessments, they will gain and keep credibility."

Austin and Krisberg, in their paper on the "unmet promise" of alternatives, called for advocates to "test their ideologies through rigorous research." In what he says is the only such research in the country, Stevens Clarke has carefully studied two of the five original community penalty programs, Repay in Hickory and One Step Further in Greensboro. In both studies, Clarke compared the clients served by an alternative sentencing plan with a control group that got no assistance from the program (resources were too limited to allow the programs to develop a plan for every person who falls under the program guidelines).

In both studies, Clarke found that those offenders who were served by the community penalties program spent significantly less time in prison. After explaining the technical findings, Clarke puts the results in layman's terms. "Being in the [Repay] service group meant that the defendant

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—*Dennis Schrantz*
Statewide Coordinator
Community Penalties Program

tious about how the research results speak to areas where judges or DA's *do not* have an investment in using the program. "There must be a supportive DA and some enlightened judges. How do we ensure that others are that responsible? What incentive does any judge or DA have to use it properly?"

Building community support for the program seems to be the key to answering these questions. "The involvement of the community is really crucial," says Superior Court Judge Forrest Ferrell, who is on the board of directors for Repay. "If the community is interested in alternative methods of sentencing, then the judiciary and judges are more confident of its success. Without community support, it's difficult to have a really viable, meaningful alternative sentencing program."

Maintaining direction of the programs through local boards is considered critical to the success of expanding the program. Currently, every community penalties board includes either a superior court judge, chief of police, or sheriff. The boards have incorporated the leadership of such heavyweights as Sen. Tony Rand (Fayetteville), Sen. William Martin (Greensboro), and senior resident Superior Court Judge Robert A. Collier (Statesville), also chairman of the Governor's Crime Commission Committee on Sentencing. Finally, the boards include influential local citizens, ranging from county commissioners to civic and religious leaders.

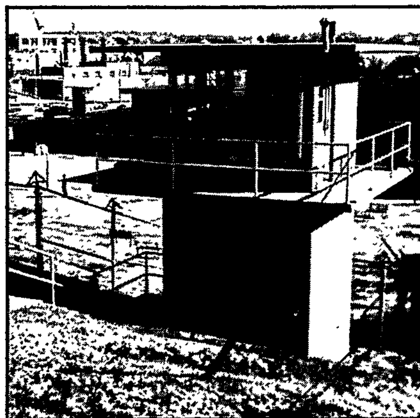
"A state bureaucracy cannot incorporate community resources as well as programs with local boards," notes Lao Rubert.

The Department of Crime Control and Public Safety, which oversees the community penalties programs, has proposed in its 1987-89 budget to add programs in 10 more judicial districts in each of the next two fiscal years, going from nine to 29 programs in two years (see Table 1, p. 58, for the counties currently covered). The budget would increase from $550,000 in 1986-87 to $2 million by 1988-89. Under this level of expansion, Schrantz estimates, the number of defendants diverted from prison would climb to 665 in 1987-88 and 1,121 in 1988-89.

"It starts to add up," says Schrantz. "But it's just a piece of the pie. You're going to have to keep intensive probation, look at the misdemeanants, expand residential centers, and consider more release options."

AN ALTERNATIVE

Intensive Probation and Parole



After nine years as a traditional probation officer, Morty Jayson last fall became an "intensive" probation officer. From carrying an average caseload of 115 (and working alone), Jayson went to a maximum caseload of 25, working with a surveillance officer. The numbers suggest the many differences in the job—and in the goals of the two programs. A probation officer, because of such a large caseload, does well to keep a face associated with the papers he must shuffle. Were the community work hours completed? Were drug clinic fees paid? Was the judge's restitution order met?

An intensive probation officer deals more with people, with felons convicted of more serious crimes. "It's like I'm in the commercial where they change hats," says Jayson. "I'm a counselor, a referral coordinator, then put on a community service hat, then a law enforcement hat."

Officers in the intensive program can carry a weapon. "It's there for self defense only," says Jayson. "We don't carry it openly. The majority of our work is at night, often by ourselves. In most instances, it's an environment that is sometimes not exactly sociable."

In 1983-84, the Division of Adult Probation

— continued on page 60

Table 1. Community-Based Programs for Adult Criminal Offenders, 1987

Counties	Intensive Probation and Parole[1]	Community Penalties[2]	Community Service[3]	Alcohol and Drug Programs			
				TASC[4]	ADETS[5]	DWI Assess.[6]	Drug Ed.[7]
Alamance	●		●	●	●	●	●
Alexander		○	○		●	○	○
Alleghany			○		●	●	○
Anson			●		●	○	●
Ashe			●		●	●	○
Avery			○		●	●	○
Beaufort	●		●		●	●	○
Bertie			○		●	○	○
Bladen			○		●	●	○
Brunswick			●	○	●	○	○
Buncombe	●	●	●	●	●	●	●
Burke	●	●	●		●	●	○
Cabarrus	●		●		●	●	○
Caldwell	●	●	●		●	○	○
Camden			○		○	○	○
Carteret	●		●		●	●	○
Caswell	●		○	○	●	○	○
Catawba	●	●	●		●	●	●
Chatham			○		●	○	○
Cherokee			●		●	●	○
Chowan			●		●	○	○
Clay			○		○	●	○
Cleveland	●		●		●	●	○
Columbus			●	○	●	●	○
Craven	●		●		●	●	●
Cumberland	●	●	●	●	●	●	●
Currituck			○		○	○	○
Dare			●		●	○	○
Davidson	●	○	●		●	●	○
Davie		○	○		●	●	○
Duplin	●		○		●	●	○
Durham	●		●	●	●	●	●
Edgecombe	●		●		●	●	○
Forsyth	●	●	●	●	●	●	●
Franklin			○		●	○	○
Gaston	●		●		●	●	○
Gates			○		○	○	○
Graham			○		○	●	○
Granville			●		●	○	○
Greene			○		●	○	○
Guilford	●	●	●	●	●	●	●
Halifax	●		●		●	●	○
Harnett	●		●		●	●	○
Haywood			○		●	●	○
Henderson		○	●		●	●	○
Hertford			●		●	●	○
Hoke		○	○		●	○	○
Hyde			○		●	○	○
Iredell	●	●	●		●	●	○
Jackson			●		●	●	○

KEY: ● Program is located in the county. ○ Program serves this county.

FOOTNOTES: see page 60.

Table 1. Community-Based Programs for Adult Criminal Offenders, 1987, *continued*

Counties	Intensive Probation and Parole[1]	Community Penalties[2]	Community Service[3]	Alcohol and Drug Programs			
				TASC[4]	ADETS[5]	DWI Assess.[6]	Drug Ed.[7]
Johnston	●		●		●	●	○
Jones			○		●	○	○
Lee	●		○		●	●	○
Lenoir			●		●	●	●
Lincoln			●		●	●	○
Macon			○		○	○	○
Madison			○		●	●	○
Martin	●		●		●	○	○
McDowell		●	●		●	○	○
Mecklenburg	●		●	●	●	●	●
Mitchell			○		●	●	○
Montgomery			○		●	○	●
Moore	●		●		●	●	●
Nash	●		●		●	●	●
New Hanover	●	●	●	●	●	●	●
Northampton	●		●		●	○	○
Onslow	●		●		●	●	○
Orange	●		●		●	●	○
Pamlico			○		○	○	○
Pasquotank			●		●	●	●
Pender		○	○		●	○	○
Perquimans			○		○	○	○
Person			○		●	○	○
Pitt	●		●	●	●	●	●
Polk		○	○		○	○	○
Randolph	●		●		●	●	○
Richmond	●		○		●	○	○
Robeson	●		●		●	●	○
Rockingham	●		●		●	●	○
Rowan	●		●		●	●	●
Rutherford		○	●		●	●	●
Sampson	●		●		●	○	○
Scotland			●		●	●	○
Stanly	●		●		●	●	●
Stokes			○	○	○	○	○
Surry			●		●	●	○
Swain			○		○	○	○
Transylvania		○	●		●	○	○
Tyrrell			○		●	○	○
Union	●		●		●	●	●
Vance			●		●	●	○
Wake	●	●	●	●	●	●	●
Warren			●		●	○	○
Washington			●		●	○	○
Watauga			●		●	●	●
Wayne	●		●		●	●	○
Wilkes			●		●	●	○
Wilson			○		●	●	○
Yadkin			●		●	●	○
Yancey			●		●	●	○

KEY ● Program is located in the county.
○ Program serves this county.

FOOTNOTES: see page 60.

Table 1. Community-Based Programs for Adult Criminal Offenders, 1987, *continued*

FOOTNOTES

[1]*Intensive Probation/Parole.* This program began in 1983, located in seven counties and was expanded to an eighth county in 1984 (Buncombe, Cumberland, Forsyth, Guilford, Mecklenburg, New Hanover, Rowan, and Wake). In 1986, the program was expanded to supervise felons living in 43 counties (45 teams). Judges in all 34 judicial districts may sentence a person to intensive probation, so as a *sentencing* system, it covers offenders from all 100 counties. But the people on intensive probation or parole must live in one of the 43 counties.

[2]*Community Penalties.* As a state-funded program, it began in 1983 in five judicial districts (Buncombe, 28th; Burke, Caldwell, and Catawba, 25th; Cumberland and Hoke, 12th; Guilford, 18th; and Wake, 10th). The 1986 legislature funded four additional judicial districts (Forsyth, 21st; New Hanover and Pender, 5th; Alexander, Davidson, Davie, and Iredell, 22nd, to be covered by 1987; and Henderson, Polk, McDowell, Rutherford, and Transylvania, 29th, to be covered by 1987).

[3]*Community Service.* This is a 100-county system. Community service staff work out of offices located in 65 counties and travel to court locations in all 100 counties.

[4]*Treatment Alternatives to Street Crime (TASC).* This is a federal program, funded through the Department of Justice. It now funds 10 agencies serving 14 counties in North Carolina. The agencies get funds from other sources as well. Of the 10, six are private nonprofit groups and four are area mental health centers. The six groups are: Drug Action of Wake County, Cape Fear Substance Abuse Center (Brunswick, Columbus, and New Hanover counties), Drug Counseling and Evaluation (Durham County), High Point Drug Action (Guilford County), Open House (Mecklenburg County), and Step One: The Center for Drug Abuse (Forsyth and Stokes counties). The mental health centers with TASC programs are in Alamance/Caswell, Buncombe, Cumberland, and Pitt counties.

[5]*Alcohol and Drug Education Traffic Schools (ADETS).* There are ADETS schools located in 89 counties, which serve people from all 100 counties. These programs are run through the 41 area agencies on mental health, mental retardation, and substance abuse services; the agencies may contract for those services.

[6]*Driving While Impaired (DWI) Substance Abuse Assessment.* Contact persons for this program are located in mental health centers in 64 counties and are supposed to serve all 100 counties. Many of the people listed as "contact persons" for the DWI assessment program are the same people listed as the contact person or instructor in the ADETS program.

[7]*Drug Education Schools (DES).* This program is designated to serve all 100 counties through the 41 area agencies on mental health. Currently, 23 counties have one of these schools.

Sources: Memoranda from Departments of Correction, Crime Control and Public Safety, and Human Resources.

Table compiled by Alethea Williamson and Bill Finger

and Parole (Department of Correction) launched this program with nine intensive supervision teams in urban areas with the highest concentration of felons sent to prison (see footnote 1 to Table 1). A team consists of an intensive officer and a surveillance officer. Intensive probation officers must have worked as a probation officer and have college training; surveillance officers, who work under the intensive officer's supervision, usually come from a law enforcement background.

In 1986, the legislature expanded the program, appropriating funds for an additional 36 teams, including the position now held by Morty Jayson. The 45 teams are located in 43 counties (see Table 1). Judges from all 34 judicial districts may place persons on intensive probation; as a sentencing alternative, this program now functions statewide. But the person on intensive probation must live in one of the 43 counties. As of Dec. 31, 1986, there were 335 people on intensive probation and 20 on intensive parole. The new teams are expected to gear up to full capacity by mid-1987, so that intensive probation/parole could manage up to 1,215 people at one time.

The program has three functions: 1) to oversee felons who pose no major public risk; 2) to provide intensive counseling to help convicted felons get themselves back into the mainstream of society; and 3) to provide strict surveillance (five to seven times a week) to be sure the offenders are meeting the terms of their probation, which could include everything from restitution and community service to drug counseling.

Usually, an intensive officer works first with the district attorney's office, rather than the defense attorney. "We also work closely with the community penalties people," says Doug Pardue, the lead intensive probation officer on one of the original nine teams. Unlike community penalties staff, intensive officers have regular, often daily contact with their clients. Intensive probation/parole is not restricted to H, I, and J felons; it can include offenders who have been convicted of violent crimes. Finally, intensive probation is a state-run system, with staff reporting through an administrative structure that answers to Secretary of Correction Johnson. Community penalties staffers report to a nonprofit board of directors composed of community leaders, while following standards developed in the Department of Crime Control and Public Safety.

"The main emphasis is keeping them on the street," says Pardue. "I go into their homes, allow them to tell me face-to-face how things are going. If they have curfew violations, we usually give

"We're paroling more than anybody has ever paroled before."

—Bruce Briggs
Chairman
N.C. Parole Commission

them extra community service. You don't want to send them back to prison just for missing curfew one night, but we don't want them to get away with it either."

Of his current case load of 23, Pardue says five should be in drug counseling, but only one is going regularly. "Some of them we have are not motivated to work," he says. "A lot of these people don't have anything, and that's part of the reason they committed the crime. I try to keep them on the street, but if they don't have any self motivation, I'm not going to burn a lot of night oil."

Some 30 states have begun some type of intensive probation system, some of which (not North Carolina) rely on "house arrest."[14] In North Carolina, people placed on intensive probation (as well as regular probation) must pay a $10 a month supervision fee. They may be moved "down" to traditional "supervised" probation by the court upon the recommendation of the intensive officer. (A third general category is "unsupervised" probation, under which an offender does not have a probation officer but is on probation as part of a sentence.)

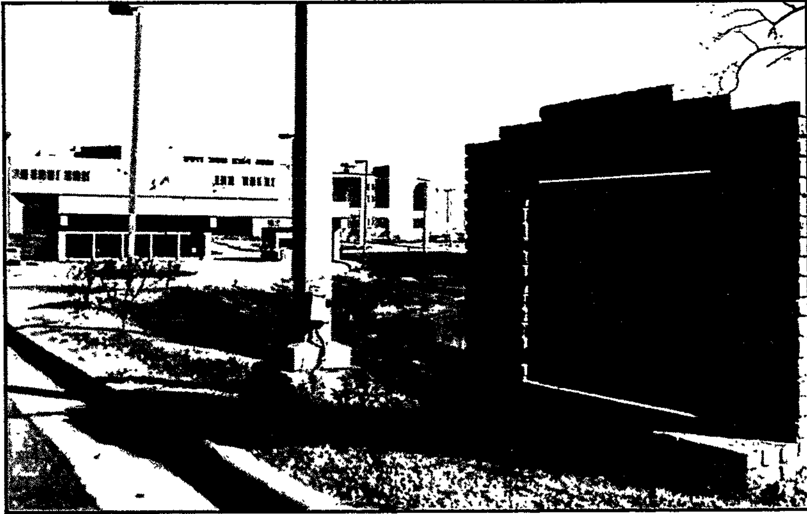
The original probation system was *the* alternative to going to prison. In the early days, officers were usually male social workers, on a career track that paralleled the female case worker in the welfare system. The best probation officer wanted to rehabilitate the offender. But today, with a caseload of about 115, a probation officer by necessity processes papers more than people. In the wake of prison overcrowding over the last 20 years, probation has become equally "overcrowded." The mission of probation officers has been overwhelmed by the caseload, resulting in little "client-specific" attention.

Probation has evolved into its own system of community sanctions, functioning more like a system of controls than of rehabilitation. In some instances, supervised probation might still be an alternative to prison, but rarely is a prison-bound felon (or misdemeanant) diverted from an active sentence only because of the traditional probation system. Most alternatives to *prison* rely on probation *along with* other community-based sanctions such as community service. On an average day, the Division of Adult Probation and Parole has responsibility for some 59,000 people under probation, plus another 3,500 on parole, and 350 on dual probation/parole (usually under the supervision of a probation officer).

The intensive and surveillance officers are set up to cover people on *parole* as well as probation. This is important to note in the context of alternatives in general. The *parole* system is considered an "exit alternative" to prison—simply put, a system designed to get people out of prison and, only secondarily, to reintegrate them into the society. Officers working strictly with parolees have a caseload of 61, compared to the caseload of 115 a probation officer carries. Parole officers spend about half their time supervising parolees; the other time goes to investigating persons being considered for parole. A five-member Parole Commission, appointed by the governor, decides who may be paroled, acting on requests of its own staff (which is separate from the parole officers themselves).

Among the three central alternative systems launched by the state in 1983, only intensive parole is an *exit alternative*—that is, it can function to reduce the *existing* prison population. Community penalties and intensive probation, in contrast, can reduce *admissions* to the prison system through alternative sentencing plans. As of Dec. 1, 1986, there were 18,000 people in prison and only 20 on intensive parole—one tenth of one percent of the overcrowded prison population. This exit alternative alone seems woefully inadequate to address in a serious fashion the *existing* prison overcrowding, which has prompted the litigation.

In 1981, when the Fair Sentencing Act took effect, the parole system lost much of its flexibility over who could be paroled. This act eliminated discretionary parole for *all future felons*, with a few notable exceptions, such as some youthful offenders. Three subsequent legislative actions, however, have returned some degree of



discretion to the Parole Commission, by allowing inmates to be eligible for parole earlier than prescribed in the Fair Sentencing Act. The legislature:

- in 1983 passed the Emergency Powers Act, which allowed the Parole Commission to release felons 180 days before their release date;[15]
- in 1984 authorized community service parole, which allowed felons serving their first active sentence of more than 12 months to perform community service while in the regular parole system, after serving one-fourth of their sentence;[16] and
- in 1986 increased the thresholds in the two acts named above, lengthening the Emergency Powers Act provision from 180 to 270 days[17] and effectively reducing the community service eligibility threshold period from one-fourth to one-eighth of the person's sentence (which can shorten a sentence by more than 270 days).[18]

In 1985, Secretary of Correction Aaron Johnson formally invoked the Emergency Powers Act; the Parole Commission then issued regulations for implementing the act.[19] "It has been used continuously since the rules were first adopted in April of 1985," says Ben Irons, attorney for the Department of Correction. The community service parole authority, on the other hand, was used "very seldom at first," adds Irons, but "it is being used more often now."

Under this new authority, the Parole Commission still bases its review of inmates on sentence length and projected release date supplied by the Division of Prisons computer system and determined under the Fair Sentencing Act. "We can't release them before they become eligible," says Parole Commission Chairman Bruce Briggs, but the new laws have "accelerated the eligibility."

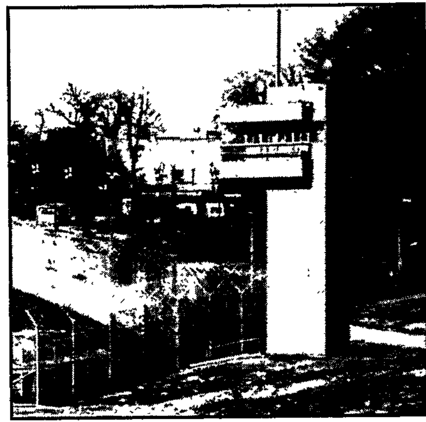
In addition to the discretionary powers for paroling felons, the Parole Commission can also parole misdemeanants, whether sentenced to the state prison or local jails. As of September 1986, nearly *one of every five* people in the state prison system was convicted of a misdemeanor, not a felony (3,299 of 17,708). The Parole Commission concentrates more on felons because it reviews those cases more times. Because of short sentences and the rapid turnover of the misdemeanant population, most misdemeanants come up for parole review only once or twice.

The new flexibility from these three legislative actions makes parole an important tool for policymakers to consider while overcrowding continues. The 1986 law alone, which changed the two thresholds, could apply to as many as 2,000 of the 18,000 people now in prison. But Commissioner Briggs warns against depending upon parole to relieve overcrowding. "We're paroling more than anybody has ever paroled before," says Briggs. In 1986, the commission paroled 11,312, a record for North Carolina. (Of those, 8,768 were paroled from the state prisons and 2,544 from local jails.)

Even putting the restrictions of this act aside —which could be done through further emergency powers—an exit alternative alone meets only one criteria of an "effective" alternative to incarceration. It can help relieve prison overcrowding. But what about the larger questions of an effective penalty? If proper attention is not given to the individuals paroled, recidivism might undermine the value of this alternative. The parole system alone is not equipped to work with large new numbers of parolees to reintegrate them into a productive life and hence—for many—to avoid future problems with the law.

AN ALTERNATIVE

Community Service Work and Related Programs



In North Carolina, the term "community service" has a dual meaning in the context of alternatives to prison. Traditionally, the term refers to the *actual work* a person performs in the community as part of a sentence. Since 1983, the term has also come to refer to the statewide *system* prompted by the Safe Roads Act. The community service system—run by state employees based in all judicial districts—has four parts: 1) driving while impaired (DWI) community service, 2) non-DWI community service (usually includes people going through the community penalties and intensive probation programs), 3) first-offender programs, and 4) community service parole. Clients come into the program as a condition of probation or of parole, through a "prayer for judgment" (an informal deferral of a case, which is dismissed after community service is completed), through a deferred prosecution agreement, or through a sentence to perform community service (as through community penalties or intensive probation programs discussed above).

Strictly speaking, neither the community service system nor an individual community service work plan is an alternative to incarceration. Community service is either a *component* of an alternative sentencing plan (i.e., through community penalties or intensive probation) or is the main sanction for DWIs and first offenders, that is, for people *not* going to prison. "The community services program does not intend to deal primarily with prison-bound people," says Lao Rubert. "That's why it's not an alternative to prison. It's an additional sanction available to the judge."

Before the Safe Roads Act, the five community alternative programs (Asheville, Fayetteville, Greensboro, Hickory, and Raleigh) included a community service component, which also concentrated on restitution. For three years (1981-83), the General Assembly appropriated funds (in the form of grants) to these groups and about 20 other nonprofit groups across North Carolina. The 1983 Safe Roads Act included community service as a mandatory component of a DWI conviction and had a $2.7 million appropriation to establish a statewide system to administer this sanction. The original community service programs left their community-based board structure and moved under the jurisdiction of the Division of Victim and Justice Services in the Department of Crime Control and Public Safety.

The General Assembly, one should note, funded this system *not* as an alternative to prison but as a *new* community sanction for a person convicted of driving while impaired. The public outrage over drunk drivers, heightened by strong backing from Governor Hunt and other high-profile politicians, added a new, institutionalized system of sanctions, effectively widening the net of persons under state control.

In its three years of operation, the community service work program has collected $4.2 million in fees, which have reverted to the General Fund. Most persons sentenced to community service must pay a $100 fee to the program. "These fees have largely been successful in offsetting the cost of the program," Robert Hassell, director of the Division of Victim and Justice Services, told the legislature's Special Committee on Prisons on Dec. 5, 1986.[20]

"The increase in fees from $50 to $100 for community service, passed during the last [1986] legislative session, made it possible to offset the expenses needed for additional staff to meet projected client growth for FY 86-87." The division, Hassell said later in an interview, is adding 36 additional staff members for an expected client growth from 35,000 to 46,000 in FY 86-87.

The additional fee might justify the new positions but it has quite a different effect at the street level. "We used to set up the schedule and monitor all the community service ourselves—in nursing homes, the Raleigh Rescue Mission, Goodwill, police stations, libraries, you name it," says Intensive Probation Officer Pardue, referring to his caseload. "Now, we have to send them through the community service office and they have to pay the fee." In effect, the system has caused another state employee to become involved with a person on intensive and supervised probation. Hence, in most cases, two offices and two different state employees are keeping track of whether a person completes community service.

"All the probation officer does is check on a form whether the community service is completed," says Hassell. "Our field staff arrange the community service, make all the community contacts, keep up with the schedule, and keep up with a person's progress. If the probation officer and the community service officer are keeping the same kind of records on a person, then we should eliminate that duplication."

Currently, a community service worker has an average caseload of 145 people, compared to the probation officer's load of 115. In fiscal year 1985-86, 34,495 people were sentenced to the community service work programs—*73 percent of them for DWI offenses*—where they had to work from 24 hours to hundreds of hours. Imagine *every resident* of McDowell County (pop. 36,000, including the towns of Marion, Old Fort, Dysartsville, Little Switzerland, and Nebo) under a state-run bureaucracy (with 107 case workers), which required *free work.* That's what the Safe Roads Act spawned in just three years.

"If it hadn't been for them, I would've been here a lot of nights by myself," chuckles Frank Miller, a retired Army man who runs the Greensboro Urban Ministries shelter for homeless people. At 4 p.m. on the first chilly night of the fall, the concrete floors in what had been a grocery store look stark and bare. In four hours, "about 70 people will be here," says Miller. "I'll put two volunteers at the door to record names and shake them down. Another will serve the coffee and sandwiches. Another will put the mats down and help keep the peace." Miller or a staff assistant will supervise the court-ordered workers (and volunteers from churches and colleges). The community service office calls Miller first, telling him about the client, who then sets up his own work. "We're a popular one, because a person can get 12 hours at a time. I only accept those who will work all night."

Government officials, like people working for nonprofit groups, recognize the value of this pool of free labor. "Our courthouse has never been so clean," says Frances Walker, who chairs the Currituck County Board of Commissioners.

The free labor seems to be the key element that sells community service to the public, rather than some sense that the person is repaying society for his crime (or being rehabilitated). "Community service and restitution were linked together in the early 1980s," explains Dennis Schrantz, who ran Repay in Hickory at the time. "But community service was a lot easier to service. There was more of a clamor for free labor than for labor that someone had to pay for." For a person to pay restitution, he needs to have a paying job, explains Schrantz. In two years (1985 and 1986), community service hours were worth over $6 million to nonprofit and governmental organizations. In making the estimate of the value of the work performed, the legislature's Fiscal Research Division assumed a rate of $3.35/hr., the federal minimum wage rate.[21]

But the most heated debate over this system is whether it duplicates the role of traditional probation officers to some extent, thus creating an unnecessary layer of bureaucracy for various state officials to regulate and within which offenders must function. A series of operational audits from the State Auditor triggered this debate in the broader context of pointing out the fragmentation involved in the criminal justice field (for more, see article on page 17).[22]

The community service system is not the only new sanction that has emerged in recent years. The Division of Mental Health, Mental Retardation, and Substance Abuse Services in the Department of Human Resources administers four programs used as a community sanction. The sanctions are invoked as a requirement of probation or as part of a multi-faceted, community-based sentencing plan.

One of these programs, the Treatment Alternatives to Street Crimes (TASC), is significantly different from the other three. It began as part of a federal emphasis on drug treatment in the 1970s and now operates in 11 N.C. urban areas which have significant crime rates. The TASC program works through grants to nonprofit organizations (see Table 1). When Cindy Hill was trying to develop a community-based plan for Eliot Johnson, she used Drug Action of Wake County, which gets funds from the TASC program. Clients in the TASC-funded programs can be misdemeanants or

felons convicted of a nonviolent offense. The programs provide treatment as an alternative to more restrictive action by the courts.

The other three programs are administered more directly by DHR, through the 41 area mental health agencies, and in theory are available statewide:

■ Alcohol and Drug Education Traffic Schools (ADETS) — 89 schools designed to *educate* first-offender DWIs about the dangers of alcohol (they don't offer treatment), usually a required sanction under a DWI conviction. The director of this program testified before the Special Committee on Prisons that preliminary data indicate that this program has not had positive results with regard to reducing recidivism: "This [program] is a noble and desirable goal but it is unrealistic to expect [such an] educational program to impact on 15-20 years of drinking and driving experience."

■ DWI Substance Abuse Assessment — designed as an intervention and treatment program for repeat DWI offenders, problem offenders (persons registering over .2 alcohol content in the blood in the breathalyzer analysis), or offenders refusing the breath test. The same person in a local mental health center sometimes runs the ADETS and assessment programs, which can tend to blur the distinctions between the two programs.

■ Drug Education Schools (DES) — an education program for first-offenders convicted of drug possession (not repeat offenders or drug sellers), usually for young persons.

"We put more misdemeanants into our state system than nearly any other state. The only way to deal with this problem is to change the law so that no misdemeanant could be sent to the state prison system."
—Lao Rubert
N.C. Prison and Jail Project

What Future for Alternatives to Incarceration?

Within the increasingly complex system described above, where will the 1987 legislature look to relieve overcrowding and to chart a clear sense of purpose for prison and for community-based punishments? The lawmakers will face no tougher question this year. To answer it in the most innovative and fundamental sense, they must consider not only prison conditions, federal litigation, and alternatives but also local jail overcrowding, changes in sentencing statutes, and other related issues.

State government actions regarding alternatives to prison can be boiled down to three components: 1) *entrance* alternatives, i.e., diverting prison-bound people at the sentencing stage; 2) *exit* alternatives through parole; and 3) altering sentencing laws so as to reduce the prison populations. This third component may well hold the key to the overcrowding problem.

The sentencing laws—and how judges use sentences in relation to community-based penalties—have the greatest long-term impact on the prison population. Parole, even with the added flexibility discussed above, remains confined within the parameters of a person's sentence. Consider that in the N.C. prison system:

■ *one of every 25* (4 percent) was convicted of a DWI offense (another 2 percent had other traffic offenses such as hit and run and death by motor vehicle);

■ *one of every 20* (5 percent) is a "committed youthful offender" (CYO) with no prior incarceration, in for a property offense (CYOs are under age 25 and are in a special parole category, where they can be considered for parole anytime during their sentence);

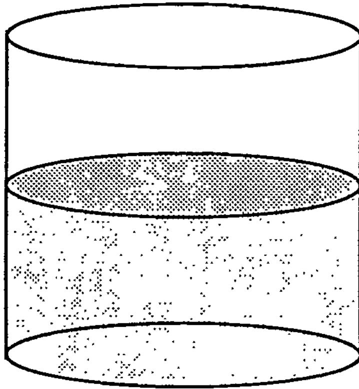
■ *nearly one of every five* (19 percent) was convicted of a misdemeanor (only seven states, including North Carolina, routinely put large numbers of misdemeanants in state prisons;[23]

■ *almost one of every three* (30 percent) was convicted of a felony property offense; and

■ *almost two of every five* (37 percent) are serving time under an H, I, or J felony.

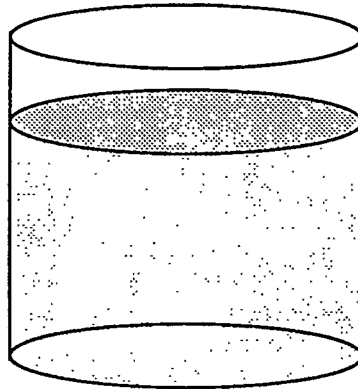
Making sweeping recommendations based on these numbers can be misleading. To take the

Imagine a glass of water — Admissions, Sentences, Lengths, and Releases



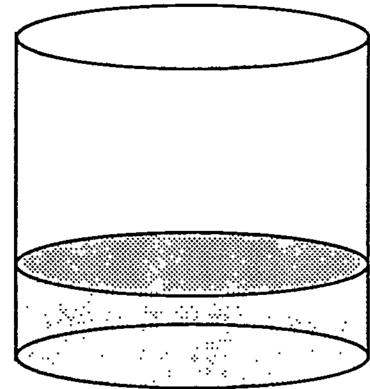
If you take out the same amount you put in, the level of water remains the same.

When *admissions* = *releases*, the population remains the same.



If you take out less water than you put in, the level of water in the glass increases.

When *releases* are lower than *admissions*, the population increases.



If you take out more water than you put in, the level of water in the glass decreases.

When *releases* are higher than *admissions*, the population decreases.

Source: N.C. Prison and Jail Project

Carol Majors

most common theme among newly won converts to the alternatives approach, what about diverting more "nonviolent" offenders? "The distinction between the 'nonviolent' and 'violent' offender is a bogus one in terms of protecting the public," says Joel Rosch of N.C. State University. "A drug addict who breaks into a house that happens to be unoccupied is classified as a 'nonviolent' offender [under the Fair Sentencing Act] while a 45-year-old alcoholic with no criminal record who murders his wife is 'violent'. As a member of the public, I fear the drug addict more."

Another faulty assumption is that the Parole Commission can target all the groups mentioned above, such as property offenses or H, I, and J felons. With the notable exception of the CYOs, offenders are eligible for parole only according to the amount of time served. If a person got a bad sentence—was charged and tried in a crime category that overstated his danger to the public, for example—the parole process does not have the discretion to alter that sentence.

The prison population is a fluid system. That is, people are entering and leaving it every day. Since so many factors affect this fluid system, from sentencing to parole, analyzing any single point in time is difficult. To simplify this task, Lao Rubert likens the system to a glass of water (see graphic above). The level of water, i.e., the number of people in prison, rises or falls depending upon how much water you put in or take out. Only when releases are higher than admissions does the "water level" drop.

Community-based penalty programs attempt to decrease admissions to prison, while incorporating the four traditional purposes of punishing offenders. To enhance the success of this effort, offenders need to be targeted at the sentencing stage. Three general criteria can be used to target those offenders who most logically could be diverted from prison: property offenders, "public order" offenders (such as traffic or drug offenders), and offenders with limited prior incarceration.

Applying these three criteria to CYOs, misdemeanants, and felons results in 20 groups of offenders (see Table 2). Ken Parker, manager of re-

search and planning for the Department of Correction, has analyzed these 20 categories according to the number of offenders flowing through the system in a year. Parker assumed that 80 percent of the offenders in each category might be appropriate for a community-based penalty plan or for sentencing to a local jail, and that 70 percent of those diverted from the prison system would not re-enter the system for at least three years. Using 1986 population levels in the 20 categories, Parker calculated that the net prison population could be reduced by 1,940 (see Table 2).

Parker is quick to point out, however, that these calculations used "paper" categories, and that any wholesale actions would require a close look at each individual. "What you see from looking at the list is that there aren't too many Boy Scouts in there," he says. "Furthermore, you would have to process over 7,600 cases each year [in these 20 categories]," says Parker, "about half the number who come to prison."

Parker's research shows what is possible over a span of time, which is the proper way to examine a fluid, constantly changing system. But the 1987 legislature has to deal with the short-term overcrowding crisis. In its last meeting before the legislature convened, the Special Committee on Prisons adopted a recommendation to impose a cap on the prison population at 18,000. Rep. Anne Barnes (D-Orange), co-chair of the committee, said, "We are working as fast as we can on developing the mechanism for implementing that cap." Barnes announced to the committee that the Governor, Lieutenant Governor, and Speaker of the House had agreed to the concept of the cap.

If the legislature approves the cap, it will face the tough job of finding a mechanism to keep the prison population below 18,000. In the short run, it might have to give Secretary Johnson and the Parole Commission further emergency parole powers. Emergency early release programs have been used successfully in other states, notably in Illinois.[24] But for the long run, the legislature will have to take a close look at sentencing laws.

"The only way you really will address prison overcrowding is through sentencing," says David Jones, director of analysis for the Governor's Crime Commission, which routinely recommends legislative action. Over the years, the recommendations of the Crime Commission have been important guideposts for action.

This year, the Crime Commission has proposed several minor changes designed to reduce the state's prison population. For example, the commission recommended that the legislature prohibit

Table 2. Potential Reduction in Prison Population, by Inmate Type

Inmate Type*	Population Level, 1986	Potential Reduction
A. NO PRIOR INCARCERATIONS		
Property Crimes:		
1. Committed Youthful Offender	893	500
2. Misdemeanant	362	203
3. Felon with less than presumptive sentence	81	45
4. Felon with presumptive sentence	265	148
5. Split sentence	143	80
Public Order Crimes:		
6. Committed Youthful Offender	72	40
7. Misdemeanant	477	267
8. Felon with less than presumptive sentence	55	31
9. Felon with presumptive sentence	106	59
10. Split sentence	133	74
B. ONE PRIOR INCARCERATION		
Property Crimes:		
11. Committed Youthful Offender	150	84
12. Misdemeanant	193	108
13. Felon with less than presumptive sentence	40	22
14. Felon with presumptive sentence	162	91
15. Split sentence	52	29
Public Order Crimes:		
16. Committed Youthful Offender	9	5
17. Misdemeanant	189	106
18. Felon with less than presumptive sentence	6	3
19. Felon with presumptive sentence	28	16
20. Split sentence	52	29
TOTALS	**3,468**	**1,940**

*Felons are sentenced under the Fair Sentencing Act and may receive less than the presumptive sentence if mitigating factors are involved. A judge can also issue a sentence longer than the presumptive length if aggravating factors exist.

Source: N.C. Department of Correction

Overcrowded Jails—Are "Satellite" Detention Centers An Answer?

County jails, like state prisons, are overcrowded, in large part because of state legislative actions. In the late 1970s, the legislature first addressed the misdemeanant prison population by allowing the use of jails for prisoners with sentences of up to 180 days. In 1986, the General Assembly eliminated the 180-day cap, allowing a judge to order work release and jail for any misdemeanant.

Perhaps the most dramatic new pressure on jails came in 1983 with the Safe Roads Act, which required jail (or prison) time for repeat drunk drivers. Judges also began to order drunk drivers to spend weekends in jails, creating uneven bed needs and bad overcrowding on weekends. The 1986 legislature also mandated that most misdemeanant motor vehicle offenders receiving an active sentence go to a local jail, unless previously jailed on similar charges.

The state has helped the counties absorb this added expense. The state pays the counties $11 per day for every *man* from the prison system who is kept in a local jail. The 1986 legislature boosted the reimbursement to $12.50. Holding a person in a minimum security prison costs the state about $20 a day, so the state is saving money. But should the state assist counties in building more jail facilities? And if so, how?

Mecklenburg County Sheriff C.W. Kidd has provided the state with a widely publicized and financially successful model—a minimum security detention center called a "satellite" jail, operating seven days a week as a work-release center. While under fire for some of his administrative decisions, Kidd's financing system has held up under close scrutiny. In 1985, the satellite jail netted the county some $200,000 in profits, says Kidd, through an $11 per day fee from the inmates themselves, a $25 per day fee for federal prisoners housed in the facility, and the $11 (now $12.50) daily reimbursement from the Department of Correction. The per-bed cost in the satellite jail was only $5.60. The facility, a renovated school building, can accommodate 150 offenders, allowing them to keep their jobs (or stay in school), an incentive easily worth the $11 per day fee.

Other satellite jails have begun to sprout around the state, recognizing that the Mecklenburg model can save money and meet the needs of the inmates. "It's awfully hard to find or keep a job if you're in a minimum security prison," says Senator Rand, who helped secure some state money for a pilot project in Cumberland County. "Working in his own county is much better for the person, the family, and the system."

The state is covering the daily costs of *housing* misdemeanants, but the overcrowding of jails requires assistance generating capital as well. The Crime Commission's sentencing committee developed a recommendation which could assist the sentencing of a misdemeanant to a state prison "unless the defendant has first served an active term in jail or prison, or has been or currently is on supervised probation." Jones admits that this "unless" clause minimizes the impact this recommendation can have on overcrowding.

Getting the misdemeanants out of the state system presents hard policy, administrative, and financial choices for the legislature. "You have a problem with misdemeanants who are charged as felons and get the charge reduced through a plea bargain," says Sen. Rand, a Fayetteville criminal defense attorney. "The sentencing concession [in the plea down to a misdemeanor] is often that the client get some active time. I don't think the jails can pick up that expense."

Lao Rubert, reflecting on the challenges ahead for advocates like herself, also worries about a solution here. "We put more misdemeanants into our state system than nearly any other state. The only way to deal with this problem is to change the law so that no misdemeanant could be sent to the state prison system. But local community programs and local resources need to be in place if misdemeanants aren't going to the prison system."

"Local resources" is one of the key elements

with this need. First, to avoid any grey areas in the law, the Crime Commission recommends the legislature give sheriffs clear authority to establish and maintain minimum custody detention facilities, commonly known as satellite jails or work/study release centers. Second, the commission recommended that the legislature establish a statewide construction/renovation assistance program through funds generated by tax-exempt revenue bonds.[1] The facilities would be leased to the local unit of government, which would repay the bond costs from its profits (fees exceed costs, at least in the Mecklenburg model) and would assume ownership of the facility when the bonds are repaid.

FOOTNOTE

[1]"Truth in Sentencing — A Report to the Governor," Governor's Crime Commission, Department of Crime Control and Public Safety, February 1987.

Security Officer Joe Carter mans the entrance desk to the Mecklenburg County Satellite Jail. Down the hallway are the dorms where the prisoners live.

Don Sturkey, © 1987 The Charlotte Observer

in the entire alternative picture—from minimum security detention centers where people can work or go to school during the day in their own communities (called "satellite" jails) to a local community-based punishment system. Simply pushing misdemeanants out of the state prison system into county jails, while it might relieve the overcrowded prison system, can create new problems. The jail system is overcrowded itself and might be worse off for a prisoner than a minimum security prison. Many jails are in a county courthouse, and the inmates cannot even go outside to get some fresh air. Moreover, many people who might be punished better in a community setting would still be incarcerated. The legislature's Special Committee on Prisons has recommended that the state set up a $20 million fund for capital grants to counties to develop misdemeanant work-release "satellite" jails (see sidebar above).

"The state needs to provide technical assistance to counties to develop more alternative programs for the people in jails and for people headed to prison," says Stephanie Bass, executive director of the N.C. Center on Crime and Punishment. "But how do you develop these programs to meet the varying needs of different communities? We

need residential centers, drug treatment facilities, and many other things. What does a community do besides jail? The answer is not just more jails."

One thing that all these issues—exit alternatives, sentence diversions, changes in sentencing laws, community service, satellite jails—have in common is the involvement of the judicial and law enforcement systems. Alternative programs are also expanding in an effort to keep problems from ever getting into the complicated and expensive judicial system. The best example, perhaps, are the dispute settlement centers that have spread into at least 10 North Carolina towns. These groups have joined together into the N.C. Association of Community Mediation Programs.

Too often, however, the array of community-based programs related to the criminal justice system evolve without any overall direction. Developing a community corrections *policy* is "often an afterthought" to community corrections *programming*, says Patrick McManus, the federal court's "special master" for the Tennessee corrections system. "This, in fact, may be why the [prison systems in the] United States are in a mess. Overriding community corrections policy rarely happens without federal court intervention."

In looking at all the potential purposes of an "effective" system of community-based penalties, policymakers are "really asking questions about the very nature of crime and punishment," says Malcolm Young. (For specific recommendations for 1987, see pages 72-73.)

"Sadly enough, criminal courts are very impersonal places, a system where people get pushed through," continues Young. "It's a poor place to provide social services and rehabilitation. But we're better off anytime we stop and pay attention to the individuals in that system"—individuals like Eliot Johnson.

Eliot walks through the swivel gate into the attorney area and sits beside Sally Scherer at the defendant's table on the right. Judge Sherrill asks Tony Copeland, the assistant DA, to proceed.

Rising on the left, Copeland reviews the charges and then announces, "We've worked out a plea, your honor." He then presents the agreement—the felony and two misdemeanors reduced to a single misdemeanor, with a six-month suspended sentence; two years probation; a fine of $100 and court costs (which include attorney fees), to be paid by Eliot; and his placement in the group home.

Cindy Hill, of ReEntry, had arranged for Eliot to move off the waiting list and into the structured living situation he needed.

Judge Sherrill begins shuffling through his papers. Eliot, a full head shorter than Scherer and looking barely out of junior high school, stands beside his attorney. Scherer reaches over and rubs his back as they wait for the decision. At last, Sherrill looks up. His sleepy-eyed countenance belies his bite.

"Are you trying to become a career criminal before you're 25?" Sherrill barks.

"No sir," the 16-year old manages.

"This case will make a fool out of one of us," the Judge continues. "And I hope it's me. If you show up in this courtroom again, you know who the fool will be?"

"Yes sir."

Then the Judge passes his sentence, agreeing to the plan that Scherer and the assistant DA worked out, using the background information and community placements developed by Hill. In agreeing to the community-based penalty plan, Sherrill was making tradeoffs among the four classic purposes of criminal punishments. Would the public be protected with Eliot in the community? Would the system provide sufficient retribution through the combination of fines, probation, and restrictions in a group home? Would such a sentence deter further crime from Eliot? Will the sentence help to rehabilitate Eliot?

Then Sherrill, true to his hard-line reputation, adds, "Your probation officer must take you on a tour of Central Prison during your first 30 days on probation. And that's where I'll send you if I see you back in this courtroom. I'll have your dunce cap ready."

In another setting, the line might have sounded corny, but not from Judge Sherrill. His steel-grey eyes peer wide for the first time during his crowded morning session.

Eliot bursts into a smile and walks through the gate to join his mother. Scherer and Hill follow them outside the courtroom. Dragging long and deep on a cigarette, he says he felt "better" when the Judge agreed to the suspended sentence. "I thought he might send me to prison. I spent 11 days in jail here before I got out," Eliot says.

Cindy Hill's next step is to take Eliot over to the group home, the kind of structure that—unlike the bars of a prison cell—might enhance his chances in life.

How Much Do Taxpayers Pay?

Incarceration

1. Average cost per inmate in state prison:
   $31.63 per day **$11,500** per year
2. Average cost of construction per cell (designed for one person) in a new, medium-security prison:
   $60,000 to $72,000

Alternatives to Incarceration

1. Cost per person sentenced through community penalties program:
   $1,000 per person
2. Cost per person on intensive parole or probation:
   $7.13 per day **$2,602** per year
3. Cost per person on traditional probation or parole:
   $1.25 per day **$456** per year

Data compiled by N.C. Center on Crime and Punishment

FOOTNOTES

[1]"Corrections at the Crossroads—Plan for the Future," developed by the N.C. Department of Correction and released March 6, 1986, p. 1.

[2]William L. Armstrong and Sam Nunn, "Alternatives to Incarceration: The Sentencing Improvement Act," in *Crime and Punishment in Modern America,* Institute for Government and Politics of the Free Congress Research and Education Foundation, pp. 337ff.

[3]"Report: Citizens Commission on Alternatives to Incarceration," released by this 21-member commission through the Prison and Jail Project of North Carolina, Durham, N.C., Fall 1982, p. 65.

[4]Public sentiment in North Carolina on crime and punishment appears to be in flux. In a 1982 survey of 1,506 people, the North Carolina Citizen Survey, part of the N.C. Office of Budget and Management, included a significant section on crime issues. "Although North Carolinians take a fairly 'hard line' on the subject of prison sentences in general (44 percent think they're too short), there is considerable support for alternatives to prison sentences for certain types of offenders," reported the office. Then in 1986, the N.C. Center on Crime and Punishment conducted a 25-minute telephone survey of 621 randomly selected citizens. The survey indicated that North Carolinians would rather use alternative punishments than build more facilities to solve prison overcrowding.

[5]Chapter 435 of the 1983 Session Laws, now codified as N.C.G.S. 20-179.

[6]Chapter 909 of the 1983 Session Laws, now codified as N.C.G.S. 143B-500 to 507.

[7]The Fair Sentencing Act established a 10-tier classification system for felonies, linking presumptive and maximum sentences to each tier. Here are some of the felony categories that can be dealt with through the community penalities program: "H" (maximum 10 years, presumptive three years)—attempt to commit burglary, felonious larceny, felonious breaking or entering, felonious receiving or possession of stolen goods, embezzlement, manufacture or sale of "schedule I or II" controlled substances; "I" (maximum five years, presumptive two years)—breaking and entering into a motor vehicle, forgery, manufacture or sale of schedule III-VI controlled substances, possession of a schedule I controlled substance, welfare and Medicaid fraud; and "J" (maximum three years, presumptive one year)—credit card theft and fraud, forgery, unlawfully transporting a child out of state, and all felonies not specifically classified by the Fair Sentencing Act.

[8]Chapter 682 of the 1983 Session Laws, now codified as N.C.G.S. 143B-262(c).

[9]James Austin and Barry Krisberg, "The Unmet Promise of Alternatives to Incarceration," *Crime & Delinquency,* July 1982, pp. 374ff.

[10]Jan M. Chaiken and Marcia R. Chaiken, "Varieties of Criminal Behavior: Summary and Policy Implications," The Rand Corporation, publication R-2814/1-NIJ, August 1982; and Peter W. Greenwood with Allan Abrahamse, "Selective Incapacitation," The Rand Corporation, publication R-2815-NIJ, August 1982.

[11]N.C.G.S. 143B-503.

[12]Stevens H. Clarke, "Effectiveness of the Felony Alternative Sentencing Program in Hickory, North Carolina: Report on a Controlled Evaluation," prepared for Repay Inc., Institute of Government, University of North Carolina at Chapel Hill, February 1986, p. 11; see also, W. LeAnn Wallace and Stevens H. Clarke, "The Sentencing Alternative Center in Greensboro: An Evaluation of Its Effects on Prison Sentences," Institute of Government, January 1987.

[13]A valuable source on recidivism and related studies is *Crime and Public Policy,* James Q. Wilson, editor, ICS Press (San Francisco, Ca.), 1983. In this anthology, see particularly Daniel Glaser, "Supervising Offenders Outside of Prison," pp. 207-228. Another excellent background book on how well alternative programs work is James Q. Wilson, *Thinking About Crime* (revised edition), Basic Books, Inc. (New York, N.Y.), 1983.

[14]For a summary of a 50-state survey of house arrest programs, with special emphasis on the Florida program, see "House Arrest: Florida's Community Control Program," publication RM-764, Council of State Governments, 1986. In North Carolina, a pilot house arrest project has begun in Winston-Salem for *juveniles.* This article focuses on alternatives for persons tried and convicted in adult court.

[15]Chapter 557, sec. 4, 1983 Session Laws, now codified as N.C.G.S. 148-4.1.

[16]Chapter 1098, sec. 1, 1983 Session Laws (2nd session, 1984), now codified as N.C.G.S. 15A-1371.

[17]Chapter 1014, sec. 197 (HB 2055, p. 157), 1985 Session Laws (2nd session, 1986), which amended N.C.G.S. 148-4.1(c) and 15A-1380.2(c). This was a "special provision" to a budget bill. For more on this issue, see Ran Coble, *Special Provisions in Budget Bills: A Pandora's Box for North Carolina Citizens,* N.C. Center for Public Policy Research, June 1986.

[18]Chapter 960 of the 1985 Session Laws (2nd session, 1986), which amended N.C.G.S. 15A-1371(h) and 15A-1380.2(h).

[19]For the rules issued by the Secretary of Correction, see 5 NCAC 2F .2000; for the regulations issued by the Parole Commission, see 5 NCAC 4C .1800.

[20]See "Response of the Department of Crime Control and Public Safety to the Report of the State Auditor Entitled 'Restructuring of Offender Programs in the Criminal Justice System'," p. 14, part of a 70-page packet sent with a cover letter from Governor Martin, dated Dec. 1, 1986.

[21]"Community Service Work Programs," in "Programs of Incarceration and Community Alternatives in North Carolina," Fiscal Research Division, N.C. General Assembly, p. 25.

[22]The Office of the State Auditor put out three major operational audit reports in 1986—on the community services program, on the probation and parole system, and on restructuring issues (see resources, page 83).

[23]For background on how all 50 states use local jails for incarceration, see "Incarceration Practices," an annotated survey report compiled by the Fiscal Research Division, N.C. General Assembly, 1986.

[24]See *Crime & Delinquency,* Vol. 32, No. 4, October 1986, a special collection of articles devoted to the early release program used in Illinois.