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CHAPTER 10

Crime and Punishment

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The criminal justice policies of the American states have been shaped by the nature of the crime problem; the division of responsibility among federal, state, and local governments for dealing with crime; and changing views of what we ought to do concerning crime and criminals. In the first section of this chapter, I describe the crime problems facing the states and explore the factors that differentiate high-crime from low-crime areas. I also describe some of the main features of state criminal justice systems and how much they cost. Most of the money is spent by cities. They are responsible for the police, which absorb the lion's share of the overall budget for criminal justice. Courts are also a significant expense item, and responsibility for them is shared by municipalities, counties, and the states. The second-largest slice of the criminal justice budget is devoted to prisons and jails, and the former are the responsibility of state governments. The focus in most of this chapter is on state policies and practices with regard to filling those prisons and jails—the kinds of sentences outlined in the states' criminal codes, the number of offenders they hold in custody, the construction and operation of prisons, and how the states have responded to rising crime rates since the 1960s. In the final sections of this chapter, I examine how these policies have in turn created new problems for states and their taxpayers, including massive overcrowding and pressure to build many new prisons.

TRENDS IN CRIME

In 1960, a little more than 285,000 violent crimes and about 900,000 burglaries were reported to the nation's police. That year there were about 190,000 inmates in state prisons across the country. These numbers had changed only a little since shortly after the end of World War II. A decade later, following the onset of an upward spiral in crime that haunts the nation to this day, the Federal Bureau of Investigation (FBI) recorded more than 2 million burglaries, and more than 700,000 violent crimes. By 1992, about 2 million violent crimes and almost 3 million burglaries were reported to the police. At the end of 1993 almost 950,000 people were locked in prison. To be sure, the population of the nation had increased over this period. Between 1960 and 1992, the U.S. population grew by 40 percent. But during the same time violent crime went up 600 percent, and the number of prison inmates had increased 400 percent.[1]

These were large increases. Both the level of crime and the rate of increase in crime and imprisonment has been higher in the United States than in any other industrial country (or for that matter, in any country that keeps reasonable crime statistics). Given the structure of American government, it was mostly up to the cities and states to do something about it.

As large as these numbers were, they also were far from a complete accounting of crime. We know from interviews with victims that a significant percentage of crimes are never reported to the police and remain uninvestigated. In fact, surveys by the Census Bureau point to about twice as much individual robbery and residential burglary as can be found in police statistics. (For a description of these surveys, see U.S. Department of Justice 1994a). However, the workload of the criminal justice system is made up of the crimes that are reported to the police, the arrests that they make, and the problems that face crime victims.

The crime problem is not the same everywhere. Throughout the world, levels of crime are highest in large cities and lowest in rural areas, while the suburbs and smaller cities stand in between; residents of the countryside typically report one-half as much violent crime and two-thirds the rate of property crime as do the inhabitants of big cities. Not surprisingly, crime rates are therefore highest in the metropolitan states—those whose populations are concentrated in and around big cities. The three least metropolitan states—Idaho, Montana, and Vermont—lie among the bottom 20 percent of states in regard to violent crime. In contrast, California, Massachusetts, and New Jersey are the most urbanized states, and in 1992 their crime rate was, on average, 450 percent higher than the three least metropolitan states. Social and economic factors that go along with metropolitanism naturally are related to crime rates as well. These include such factors as population density and household crowding, concentrations of immigrants, and larger numbers of renters than home owners. Data on metropolitanism and the total number of FBI index crimes (roughly, the most serious and

1. All the statistics on reported crime and arrests in this chapter come from yearly editions of the FBI's *Uniform Crime Reports for the United States.*

Table 10-1 Crime Rates and State Demography

State	*Index crime 1992 (no.)**	*Violent crime 1992 (no.)**	*Property crime 1992 (no.)**	*Metropolitan crime rate 1990 (%)*	*Pop. change 1980–1990 (%)*	*Single-parent families 1990 (%)*
Alabama	5,268	872	4,396	67	4	14
Alaska	5,570	661	4,909	41	37	15
Arizona	7,029	671	6,358	85	35	14
Arkansas	4,762	577	4,185	44	3	13
California	6,680	1,120	5,560	97	26	15
Colorado	5,959	579	5,380	82	14	13
Connecticut	5,053	495	4,558	96	6	11
Delaware	4,849	621	4,227	83	12	13
Florida	8,358	1,207	7,151	93	33	12
Georgia	6,405	733	5,672	67	19	15
Hawaii	6,112	258	5,854	76	15	11
Idaho	3,996	281	3,715	29	7	11
Illinois	5,765	977	4,788	84	0	13
Indiana	4,687	509	4,178	72	1	12
Iowa	3,957	278	3,679	43	−5	10
Kansas	5,320	511	4,809	54	5	11
Kentucky	3,324	536	2,788	48	1	12
Louisiana	6,547	985	5,562	74	0	18
Maine	3,524	131	3,393	36	9	12
Maryland	6,225	1,000	5,225	93	13	14
Massachusetts	5,003	779	4,224	96	5	12
Michigan	5,611	770	4,841	83	0	15
Minnesota	4,591	338	4,253	69	7	10
Mississippi	4,283	412	3,871	30	2	18
Missouri	5,097	740	4,357	68	4	12
Montana	4,596	170	4,426	24	2	12
Nebraska	4,324	349	3,975	50	1	10
Nevada	6,204	697	5,507	84	50	14
New Hampshire	3,081	126	2,955	59	21	10
New Jersey	5,064	626	4,439	100	5	12
New Mexico	6,434	935	5,499	56	16	16
New York	5,858	1,122	4,736	92	3	15
North Carolina	5,802	681	5,121	65	13	13
North Dakota	2,903	83	2,820	40	−2	9
Ohio	4,666	526	4,140	81	1	13
Oklahoma	5,432	623	4,809	59	4	12
Oregon	5,821	510	5,311	70	8	12
Pennsylvania	3,393	427	2,966	85	0	11
Rhode Island	4,578	395	4,184	94	6	12
South Carolina	5,893	945	4,949	70	12	15
South Dakota	2,999	195	2,804	32	1	10
Tennessee	5,136	746	4,390	66	6	13
Texas	7,058	806	6,252	83	19	14
Utah	5,659	291	5,368	78	18	11
Vermont	3,410	110	3,301	27	10	12
Virginia	4,299	375	3,924	77	16	12
Washington	6,173	535	5,638	83	18	13
West Virginia	2,610	212	2,398	42	−8	11
Wisconsin	4,319	276	4,043	68	4	12
Wyoming	4,575	320	4,256	30	−3	12

SOURCES: U.S. Bureau of the Census 1993; U.S. Department of Justice, Federal Bureau of Investigation 1993.
* Per 100,000 population.

thoroughly recorded offenses) that were reported to the police in each state are presented in Table 10-1.

Another factor that is strongly associated with high levels of crime is population and other growth. States growing in population and jobs report more property crime but not more violent crime. Between 1980 and 1990, the states with the highest rates of growth were Alaska, Arizona, California, Florida, and Nevada; they showed double-digit expansion on several measures, including population (Table 10-1). Four of these five states also are among the top nine states in regard to property crime, and in 1992, Florida had the highest property and total crime rate of any state in the nation. Arizona, which ranked third in growth during the decade from 1980 to 1990 reported the second highest property crime rate of any state and ranked third on the combined property and violence list. The lowest-growth states were Iowa, North Dakota, West Virginia, and Wyoming. Their average property crime rate stood at about half that of the average for the highest-growth states. The most crime-prone low-growth states were Illinois, Louisiana, and Michigan; their population growth rate was zero between 1980 and 1990, yet their average property crime rate stood above that for the five highest-growth states. This discrepancy is explained in part by their high level of metropolitanism.

A third factor associated with crime is economic disadvantage. At the state level, disadvantage is strongly linked to both property and (especially) violent crime. States with high concentrations of single-parent families (which is reported in Table 10-1), high levels of infant mortality, many adults who never graduated from high school, and large African-American populations, tend to report higher levels of homicide, assault, robbery, auto theft, and burglary. The states with the most highly disadvantaged populations in 1990 included Louisiana, Michigan, Mississippi, New Mexico, and New York. Together their violent crime index averaged 3.6 times the average rate for the states with the least disadvantaged populations (Iowa, Minnesota, Nebraska, New Hampshire, and North Dakota).

Nevertheless, property crime is actually linked to many measures of *advantage;* burglary and theft rates are higher in states with more college-educated adults and higher individual incomes. These kinds of people are concentrated in the metropolitan states, which enjoy a disproportionate share of higher-paying jobs. Persons of Hispanic origin are overconcentrated in states that are high in both property and violent crime, but those are also growth states, where measures of both affluence (people are attracted by well-paying jobs) and other crime-related factors (for example, the divorce rate) are high as well.

CRIME AND THE CRIMINAL JUSTICE SYSTEM

Governments face two problems: how to prevent crime and how to respond to it once it occurs. Both are difficult tasks. Most crime prevention probably is not in the hands of the criminal justice system at all. Rather, the crime rate largely is a product of the strength of families, the cohesiveness of neighborhoods, the quality of schools, the availability of jobs, and the extent to which people think they are treated fairly by economic and political institutions. Responding when crime occurs by assisting victims and dealing with offenders, however, is to a great extent the responsibility of the criminal justice system.

In this chapter the focus is on the criminal justice responsibilities of the states. Principally, these responsibilities are to make criminal justice policy and to build and operate state prisons. In addition, the states supervise those who have been released from prison on parole, or who have been found guilty but placed on probation in lieu of serving time in prison. As this chapter will make abundantly clear, these are rapidly changing, controversial, and expensive responsibilities. It is important to recall, however, that the government agencies that deal directly with crime in this country are overwhelmingly local: police and sheriffs, criminal courts, and jails. Even following the passage of the widely debated 1994 crime bill, measured by spending, the federal government is involved in only a fraction of all criminal justice activity.

The most money is spent on police, whose funding is decentralized. About 84 percent of all uniformed police officers and sheriffs are employed by cities and counties; only 9 percent are state police (U.S. Department of Justice 1993b). Policing consumes about 20 percent of city expenditures, a budget share that has doubled in the past forty years. To put this figure in perspective, in 1990 there were about as many police employees as social workers or doctors, more than public health and hospital workers, and more than postal workers (U.S. Bureau of the Census 1993).

Although the number of police officers is large, the increases in their ranks have not kept abreast of crime. The amount of resources committed to crime control (like the number of criminal justice employees per thousand crimes) actually has fallen. Between 1965 and 1995, the number of crimes per police employee for the country as a whole rose by almost 50 percent. In a study of the politics of local justice in ten major cities, Jacob (1984) found that in many of them the share of the budget allocated to the police declined or remained constant while crime rates exploded. In the ten cities, the number of police officers fell in relation to the number of violent crimes by a factor of six, and expenditures declined by a factor of more than two, between 1948 and 1978 (Jacob and Lineberry 1982). This decline was almost unique to policing, as expenditures for many other municipal functions either kept up with or exceeded the growth of their workloads during the same period (Jacob and Swank 1982).

Criminal courts are also an important component of the criminal justice system, and courts in general are discussed in Chapter 7. Criminal courts are, for the most part, a function of county government, although municipal courts and justices of the peace abound and state governments contribute to the funding of some local courts. Many courts and judges hear both criminal and civil cases, so

it is difficult to account separately for the resources devoted to each activity. The personnel and expenditures devoted to local prosecutors' and public defenders' offices and to criminal court staff members account for about 20 percent of the total local criminal justice budget. City jails, which hold suspects after arrest and those sentenced for short periods after trial, also are a local expense item.

The criminal court system handles a torrent of cases. In 1993, state and local police made about 14.2 million arrests of all kinds. (Millions of traffic citations were handed out as well, adding somewhat to the workload of those in the system.) While this is a large number of arrests, it is considerably less than the number of crimes that were reported to the police. Most crimes are never solved. This is particularly true in the case of property offenses like burglary, which typically do not involve an eyewitness or any useful clues. Across the United States, police claim to solve about 13 percent of burglaries; this is the official "clearance rate" for burglary. Studies of this process indicate that the real probability of arresting someone for a burglary is more like 5 percent. In contrast, face-to-face crimes like rape and assault, which frequently involve people who know one another, are solved more than 50 percent of the time, and about 65 percent of all murders (which also often involve related parties) lead to an arrest. The limited capacity of the criminal justice system to locate and arrest offenders in the first place should be an important consideration in discussions about how to control crime, although it is often lost from view. One justification for stiff criminal sentences is that they deter others from breaking the law. However, the low chances actually of being caught for many kinds of crime (a low "certainty of punishment") may undermine some of the deterrent value of the severe sentences that are meted out to those few who do fall within the grasp of the law.

Those who are arrested must be dealt with in some fashion or another by the system, with, it is hoped, fairness and some efficiency. Tracking those who enter the criminal justice system to see if they are dealt with fairly and efficiently, however, is difficult. Still, it is obvious that most of the 14.2 million or so who are arrested each year are not dealt with at great length.

Because people are often arrested multiple times in the course of a year, the number of arrests does not equal the number of arrestees. Unlike arrests, which are classified according to standard national definitions, courts account for their workload in diverse and confusing ways (see Eisenstein and Jacob 1974). The definition of what is a serious crime (a *felony,* for which people can be sent to prison) and what is not (which includes *misdemeanors* and traffic offenses, for which people may be fined or jailed for a short time) varies from state to state. Some state courts count and report on cases, which may involve multiple defendants; others publish statistics on indictments, and one individual may be faced with several of those; still others report on defendants. For management and analysis purposes it would be useful to follow arrestees through the criminal justice system to see what happens to them, but it is often impossible to do so. In eight states it is possible to glean some systemwide information on the flow of

felony defendants through the process. In those states, about 80 percent of those arrested for a felony were prosecuted, 60 percent were convicted of something (but not necessarily a felony), 40 percent spent some time behind bars, and 10 percent went to prison. The last figure varied according to the crime, ranging from about 50 percent (for those arrested for homicide) to only 4 percent (for assault) (U.S. Department of Justice 1991b).

Organizational factors also cloud the meaning of such seemingly simple factors as the offense charged and the conviction rate. In some places, the police vigorously review their arrests and only pass on to the prosecutor serious cases that can legitimately be prosecuted. In other jurisdictions they pass on to the prosecutor's office virtually everyone they pick up and rely on that office to screen and reclassify cases. Some prosecutors do not do much of that and instead rely on the judge who holds the first hearing, called the preliminary hearing, of a case in court to decide what to do with it. As a result, the fact that there are about 14.2 million arrests, 1.5 million felony cases filed, and 830,000 felony convictions each year does not tell us very much at all.

Detailed national statistics on courts, prisons, and jails can be found in yearly editions of the *Sourcebook of Criminal Justice Statistics,* by the Bureau of Justice Statistics in the U.S. Department of Justice. The only reasonably solid figures on what happens after arrest are based on a sample of local criminal justice agencies that are monitored by the Bureau of Justice Statistics, and even the bureau keeps track only of felony arrests. It reports that in 1990 about 50 percent of the arrested felons who were turned over to prosecutors were convicted of something. Of that group, half were placed on probation. Probation is a form of supervised community living; probationers have been found guilty, but as long as they stay out of further trouble, follow the terms of their release, and report regularly to their probation supervisors, they can serve out their sentences while living at home and keeping their jobs. This is the most common disposition of criminal cases of all kinds; in 1990 more than 2,520,000 persons were on probation.

The remaining half of those convicted felons were incarcerated; about one-quarter each were sent to jail and prison. Whether offenders go to jail or prison largely depends, of course, on their offense: 91 percent of those convicted of murder, 67 percent of those convicted of rape, and 44 percent of those convicted of burglary went to prison.

Another large group of Americans under correctional supervision are parolees. They have been released from prison before the end of their original sentences, usually after state parole boards have reviewed their cases and judged them ready to return to the community. Like those on probation, they must stay out of trouble and report in regularly. In 1990 about 457,000 people were on parole. During the early 1990s about 2.6 percent of all adults in the United States (one in every forty-three) were living under some form of correctional supervision—either probation or parole.

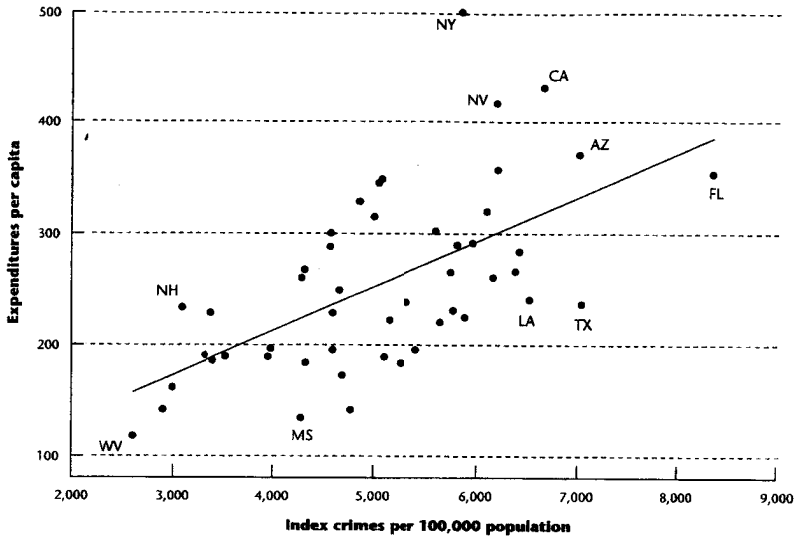
THE COST OF CRIME TO THE STATES

Running this criminal justice system is expensive. Information on state and local finances takes longer than many other statistics to assemble, so discussions about dollars and cents refer to the early 1990s, the most recent years for which expenditure figures were available. All of the expenditure data reported here can be found in the *Sourcebook of Criminal Justice Statistics* and the Census Bureau's yearly *Statistical Abstract of the United States,* unless otherwise noted (U.S. Bureau of the Census, various years). In 1990, government units in the fifty states spent about $64.9 billion on police, judges and criminal court staff, jails and prisons, and other forms of punishment and supervision. This was about $261 for every person in the United States. Of this, about 20 percent went for judicial, prosecution, criminal defense, and other court services; 36 percent went for prisons and jails; and 43 percent went for policing. The federal government spent another $10 billion on criminal justice matters in 1990, spread over roughly the same categories; this brought the burden borne by each U.S. resident to just under $300. To set the total of all criminal justice expenditures in context, it was about 1.7 times the budget of the U.S. Postal Service that year and about 89 percent of what all levels of government spent on hospitals and health care. It was far less (three times less) than what was spent on elementary and secondary education in 1991, but it was not much of an investment in the future.

The current trend is to increase spending. Between 1970 and 1990, state and local spending on the police went up 420 percent and expenditures on punishment and supervision (known, for reasons we shall see shortly, as corrections) went up 978 percent. Of course, the value of the dollar went down during this period, but when these figures are expressed in constant dollars, taking into account the effects of inflation, the increases were about 125 percent for policing and 290 percent for corrections. Police expenditures grew the most during the late 1960s and early 1970s and have now leveled off; spending on corrections grew wildly after the mid-1970s and continues to skyrocket. The increase in total state and local spending on criminal justice was twice the increase in state and local public welfare expenditures during the same period and almost twice the increase in spending for hospitals and health care; only spending for education was up more.

As mentioned earlier, most of the cost of operating the criminal justice system is borne by state and local governments. In 1990 the federal government accounted for only 12 percent of all criminal justice expenditures, the states contributed 38 percent of the total, and local governments (principally cities and counties) 50 percent. Police and sheriffs account for the large local share, but since 1980, it has been the state share that has been growing. The growth in state spending is due to two factors: more states are contributing to the financing of local courts, and there has been a tremendous increase in the cost of constructing and operating state prisons. Prisons are the largest component of state criminal justice spending (60 percent in 1990), and this component is growing the fastest.

Figure 10-1 Index Crime Rate and Criminal Justice Expenditures, 1991



SOURCE: U.S. Department of Justice 1993e.
NOTE: Excludes Alaska.

High crime and arrest rates drive up state spending on criminal justice. In addition, factors that have little to do with crime (such as variations in wages in the public sector) also affect expenditure levels. There is a high correlation between crime rates and the workload of the components of the criminal justice system. Reported crime is the largest element of police workload, and the enormous jump in the crime rate during the late 1960s played an important role in boosting municipal public safety expenditures at that time. Police make arrests, and those in turn constitute the workload for judges, prosecutors, and public defenders. This creates pressure to hire more of them, which has been one of the forces behind increasing state funding of local courts in many jurisdictions. Finally, many arrestees also must be fed and housed in the local jail, which is a significant expense in urban counties.

Figure 10-1 illustrates how the total per capita cost of running the criminal justice system (including all state and local expenditures on police, courts, and corrections) reflects the burden of crime. Both were measured in the same year, 1990. Statistically, the correlation between the two measures was +0.60. It will be remembered that the states spend, on average, $261 per person on criminal justice operations. In 1991, Alaska and New York spent more ($600 and $499 per capita, respectively) than any other state, and more than their crime rates would

Table 10-2 Expenditures, Arrests, Police Employment, and Corrections, 1991

State	Total system expenditures per capita	Number of police per 10,000	Total arrests per 1,000	Rate in jail or prison*	Rate on probation or parole*
Alabama	185	25.5	47	7.3	11.3
Alaska	600	27.6	62	6.6	11.1
Arizona	372	29.6	66	7.9	12.3
Arkansas	142	21.5	72	5.1	11.5
California	432	28.4	54	7.6	17.0
Colorado	290	27.3	75	5.0	13.8
Connecticut	346	28.1	64	4.0	18.5
Delaware	328	28.1	28	6.1	26.8
Florida	354	33.9	51	7.5	21.1
Georgia	266	27.6	59	9.2	33.1
Hawaii	320	28.7	56	2.9	15.8
Idaho	197	25.8	58	5.3	6.6
Illinois	266	34.6	46	4.6	13.4
Indiana	173	23.3	43	4.8	17.7
Iowa	190	21.6	33	3.0	7.8
Kansas	239	26.5	67	4.0	15.4
Kentucky	190	21.0	79	5.1	3.9
Louisiana	241	27.9	66	9.2	13.1
Maine	189	23.8	45	3.9	8.2
Maryland	358	30.4	54	7.1	26.0
Massachusetts	315	28.9	35	3.0	16.6
Michigan	303	23.1	45	6.6	21.3
Minnesota	228	20.5	32	2.2	19.1
Mississippi	134	22.0	65	6.4	6.4
Missouri	189	28.3	58	5.1	13.6
Montana	196	24.2	39	4.1	8.5
Nebraska	183	24.1	47	3.5	13.3
Nevada	417	32.9	77	9.5	11.7
New Hampshire	233	26.6	33	2.9	4.4
New Jersey	349	39.4	49	5.3	16.1
New Mexico	284	29.3	74	5.3	7.0
New York	499	37.1	76	6.1	13.7
North Carolina	231	25.7	73	5.4	17.5
North Dakota	143	21.5	37	2.1	3.8
Ohio	249	25.0	52	5.1	11.3
Oklahoma	195	27.6	46	5.9	12.0
Oregon	288	22.2	53	4.5	21.5
Pennsylvania	229	24.4	38	4.3	16.9
Rhode Island	287	29.7	43	3.1	20.1
South Carolina	224	25.0	36	8.3	14.0
South Dakota	161	22.0	61	3.8	7.6
Tennessee	221	25.0	66	5.4	12.0
Texas	237	26.6	59	7.0	34.4
Utah	220	22.4	65	3.6	6.8
Vermont	185	21.7	16	2.4	14.8
Virginia	260	24.2	62	5.4	6.5
Washington	261	21.7	58	4.1	26.2
West Virginia	118	16.3	35	2.5	4.5
Wisconsin	268	25.8	78	3.7	9.3
Wyoming	300	33.2	59	4.7	10.4

SOURCES: U.S. Bureau of the Census 1993; U.S. Department of Justice 1993e; U.S. Department of Justice, Federal Bureau of Investigation 1993.
*Per 1,000 population.

predict (Table 10-2).[2] These excessive costs are due mostly to Alaska's high cost of living and New York's high public-sector wage level. The next highest-spending state (California) is quite high on the crime index, ranking fourth in crime per 100,000 population. The state with the most crime in relation to population, Florida, was seventh in spending. West Virginia and the two Dakotas had the lowest crime rates and did not spend much on criminal justice. West Virginia and Mississippi spent the least.

A key factor driving state government expenditures on criminal justice is the sentencing policies that legislators have written into criminal codes. State criminal justice agencies do other things, including patrolling the expressways on the lookout for speeders, but the largest percentage of state money goes to building and operating prisons. In 1990, states spent 60 percent of their criminal justice budgets on prisons and jails; 20 percent on their share of court costs, prosecutors, public defenders, and other legal services; and 19 percent on state police.

The cheapest sentencing policies are those that keep offenders under supervision but out of confinement. States that make liberal use of probation get off the easiest; in 1993 it cost about $775 per year to supervise a probationer at a normal level of intensity. More intensive probation supervision (see below) cost $2,700 per year, while electronic monitoring of probationers living at home cost $3,500. States also can save money by making extensive use of parole, releasing offenders from prison but keeping them under supervision for a period of time. In 1993 this cost only about $975 per year for each parolee, with further cost increments for intensive supervision or electronic monitoring. Locking people up is much more expensive. In 1993 it cost about $17,200 to hold someone in a local jail for a year, and to keep them in a minimum security prison that long cost $18,300. To build a maximum security prison cost about twice as much as constructing a jail (which in 1992 cost about $38,000 per bed), because jails have many fewer facilities. Placing someone in a residential care facility located in the community (a halfway house or work-release center) cost somewhat less than in a secure lockup, about $11,000. Expenditures on these alternatives vary from place to place, for factors such as construction and labor costs differ everywhere. However, states that hold more people in jail or send more to prison, or do so for longer periods, find that such a strategy for controlling crime is costly.

By the late 1970s, many had chosen this course. Rising crime rates generated incessant demands that governments "do something" about the problem. State, municipal, and county governments made choices about how to deal with those pressures, and many chose (consciously, or to their later surprise) criminal justice policies that cost more than others would have.

2. Figure 10-1 excludes Alaska; per capita expenditures there were so high that they distorted the picture presented by the other states. The data for Alaska are presented in Table 10-2, along with those for the other forty-nine states.

TRENDS IN STATE SENTENCING POLICY

For most of the twentieth century the American states lived with a policy of ambiguity concerning just how long convicted offenders would remain in prison. This policy was dubbed *indeterminate sentencing;* it was exemplified by states such as California and Washington, where judges could render sentences of "from one day to life." Almost everywhere, for most crimes, state criminal codes specified broad ranges of sentences (such as "2 to 10 years") for common classes of offenses. The actual decisions concerning how long individuals would remain behind bars were left to others, usually state parole boards. While in prison, inmates were to participate in educational and job training programs and to engage in group therapy and individual counseling sessions. The idea was that sentences should be tailored to the responsiveness of individual prison inmates to this treatment and how well behaved they were in custody; when they were "ready" (as determined by the staff and ratified by the parole board, and when their accumulated time off for good behavior was taken into account) they should be let go. The use of the generic term *corrections* to characterize the American system of punishment reflects this therapeutic and rehabilitative model of how the process should work.

The result was that the sentences handed down by judges had little to do with how long offenders actually spent in prison. By the mid-1970s, no one was happy with this system. Liberals attacked the seemingly arbitrary and bureaucratically determined length of sentences, pointed to apparent racial and class disparities in the actual time prisoners served, and objected to some of the treatments (especially those relying heavily on tranquilizers and personality-altering drugs) employed in prisons. Conservatives pointed with alarm to the often large discrepancy between how long prisoners were actually incarcerated and popular perceptions of how tough the system should be on murderers and rapists. They argued that one reason for this discrepancy was excessive leniency (from their point of view) on the part of parole boards and rehabilitation-oriented correctional officials. Indeterminate sentences also limited the ability of prosecutors to deliver on agreements they made in return for guilty pleas. Everyone was cynical about what a *sentence* actually meant.

In addition, a serious intellectual attack was mounted on the rehabilitative ideal that underlay the policy of indeterminate sentencing. A series of academic studies concluded that few if any therapeutic programs had any demonstrable effect on preventing future crimes, once inmates who had participated in them left prison (see Lipton, Martinson, and Wilks 1975; Sechrest, White, and Brown 1979). These findings were (and are to this day) widely heralded as signifying that "rehabilitation doesn't work." A great deal could be said that is critical about the quality of those studies, how their findings were interpreted, and how much they reflected not the principle but the actual operation of rehabilitation programs (which often was not very good). Nevertheless, their impact on the credibility of

therapeutically inclined participants in the politics of criminal justice policy was far-reaching. For example, the Omnibus Crime Bill signed by President Clinton in 1994 actually *forbids* the awarding of federal grants supporting college classes for prisoners.

The collapse of consensus among legislators, prison administrators, and knowledgeable outsiders on what prisons were to do took place in a political environment that encouraged many politicians to try to "look tough" on criminals and do something about soaring crime rates. In the political scramble that resulted, the conservatives won some victories; for example, sentences got longer and more threatening. But in addition, some attention was given to the issue of racial disparities in the imposition of criminal sanctions, programs were inaugurated to focus special attention on the most dangerous offenders, attempts were made to limit the almost-invisible discretion exercised at the local level by prosecutors and judges, and new efforts were made to impose penalties more commensurate with the seriousness of particular offenses.

The Trend to Make Sentences Predictably Longer

One of the goals of sentencing reformers during the 1980s was to make sentences more predictable. A complementary goal of many of those involved in the politics of sentencing in both the 1980s and the 1990s was also to make them longer, but the indeterminacy of the existing system was widely perceived to be part of the reason that sentences were too short.

Many changes were made in state criminal codes that were designed to increase the predictability of time served. One strategy was to write determinate sentences into the criminal code by specifying exact sentence lengths for various crimes rather than broad sentencing ranges. Virtually every state now has at least some determinate sentences. A second strategy followed in some states was to abolish parole. In these states there is no administrative process for releasing prisoners before the end of their sentences. This is commonly called a *flat time* sentencing policy. Flat-time policies lend a great deal of predictability to sentences by eliminating the ambiguity associated with possible parole decisions later on. To achieve flat time in Illinois, felons are required to serve at least 85 percent of the sentence imposed by the court. Flat-time states are not necessarily determinate states; for example, Maine eliminated parole but left judges there with wide statutory ranges from which they could choose sentences. In addition, some of the presumed advantages of flat-time sentencing can be achieved by carefully standardizing parole decisions (see below). States can also pursue a mixed strategy. For example, Ohio's criminal statutes call for short, determinate sentences for first-time and property offenders, and longer, indeterminate sentences for repeat and violent offenders. The release of the latter thus remains in the hands of the state parole board.

An additional strategy for increasing the predictability of time served was to

eliminate time off for good behavior, so-called good time. *Good time* is the common term for credit that can be accumulated for good behavior within prison. Days of good time are subtracted from prisoners' sentences, making them very valuable indeed. When combined with determinant and flat sentences, eliminating good time would make the period to be served entirely predictable on the day of sentencing. Most states have not adopted the whole package, however. California and North Carolina increased the ability of prisoners to earn good time at the same time that they moved toward determinate sentences. This was a relief to prison administrators in those states, for the ability of prisoners to get out early by accumulating good time (and related credits for working in prison industries) has long been seen as an important mechanism for controlling their behavior behind bars.

The final, and perhaps most difficult, target of state criminal law reformers was that of local judicial and prosecutorial discretion. The reformers were concerned that defendants routinely were being allowed to plead guilty to charges that did not reflect the seriousness of what they had done. In response, some legislatures attempted to impose mandatory sentences for offenses of particular kinds. Perhaps the best known is the Bartley-Fox Gun Control Law, which incorporated the now famous "Use a gun, go to prison" rule. In 1975 the Massachusetts legislature passed this law mandating a one-year minimum sentence for anyone convicted of a crime while carrying a firearm without a special license. The license was just a legal trick; the real idea behind the law was that many robberies and rapes involved the use of a gun and that by flagging that aspect of a case it would be more difficult to charge robbers and rapists with lesser offenses. The statute specified that sentences in gun cases could not be suspended, violators could not be granted probation, and parole boards could not consider their cases until those convicted under this law had served at least one year in prison. Almost all states now have some mandatory sentences on the books. Typically, they are reserved for weapons offenses, offenders with long prior records, and drug sales. For example, in Illinois, anyone convicted of the sale of five grams or more of cocaine receives an automatic six-year prison sentence.

Of course, mandatory sentencing policies will work only if police, prosecutors, and judges go along. Many are concerned that the imposition of new mandatory sentences will be circumvented at the local level because they will stand in the way of tailoring sentences to the perceived needs of individual defendants and the community. It is also widely believed that the threat of a stiff mandatory sentence will encourage more defendants to plead not guilty and demand jury trials. If it looks as though a charge that carries a mandatory sentence is going to stick, defendants seemingly will have little to lose by stalling and delaying their cases, as long as they are out on bail. Because additional cases would multiply the workload of the criminal courts, judges and prosecutors would be forced to work around mandatory charges in order to facilitate negotiated guilty pleas and keep cases moving.

Evaluations of sentencing reforms in several states suggest that these fears are unfounded, however. Tonry (1988) reports that, by and large, determinate, presumptive, and mandatory sentencing statutes are not being widely circumvented or manipulated by local officials. Such statutes probably increase the leverage of prosecutors in discussions leading to arranged guilty pleas, for defendants have a great deal to gain by pleading guilty to an offense that does not carry a stiff mandatory sentence. Evaluations in Minnesota and Pennsylvania indicate that bargaining over the charges that were filed in felony cases increased after determinate sentencing schemes were put in practice in those states.

All of these reforms have had some effect. Even though most states have not abolished parole entirely, the combination of abolishing parole and introducing flat and mandatory sentences has greatly reduced the percentage of prisoners being released on parole. In 1977, for example, 72 percent of all prisoners were discharged on parole before the end of their nominal sentences; by 1990 that proportion had shrunk to 40 percent (U.S. Department of Justice 1991a). Most of the reforms discussed here have been in place in a large number of states just since the early 1980s. We only know the actual sentences served by those who are now coming out of prison, and most of them went in under a different set of arrangements. Because of lengthening sentences, it will be a long time before we can be certain of the fate of prisoners who have been sentenced since the beginning of the 1980s.

Of course, there are other options available to judges at sentencing besides incarceration. The length of sentences and their predictability is relevant to those who are locked up, but most of those found guilty of criminal offenses do not go behind bars. At the end of 1991, when there were about 1,270,000 people incarcerated in jails, prisons, and juvenile facilities in the United States, more than 2.7 million others were on probation. When combined with the 532,000 people who had been released from prison but were still on parole, about 72 percent of all those under correctional supervision in the United States were walking the streets.

The Trend to Reduce Variation in Sentencing

As part of increasing the length and predictability of time served, the states also have moved in related ways to reduce case-by-case variation in the sentences imposed for seemingly similar offenses. States that have retained parole generally have mechanisms to automate that decision process as well. In order to reduce case-by-case variation, states have devised strategies to constrain the discretion of judges and prosecutors at the sentencing stage of the criminal process and that of parole boards later on. These measures were developed in response to charges of racial and class bias in the administration of justice. Legislators also suspected that local judges were using their discretionary powers to undermine the sometimes draconian intentions of sentencing reformers in the 1980s, and these mechanisms were handy in foreclosing that option as well.

Before these reforms, judicial decision making was extremely decentralized. Decisions about the guilt or innocence of accused parties and about the manner and length of time for which they must do penitence was traditionally left in the hands of the judges and juries that originally heard criminal cases. Judges enjoyed their independence from bureaucratic control (and even from one another) and liked to feel that they were bound in their decisions only by the law and the requirement that they employ it to find justice in the cases before them. In practice they were bound only by their states' rules of criminal procedure, for—within broad limits—the important decisions they made about the type of punishment and the length of prison stays were not subject to review by appellate courts. This left them free to choose the factors they weighed in making those decisions, and they could give those factors different weights from case to case.

Of course, this discretion inevitably meant that sentences did vary from case to case and judge to judge, even when they seemed similar in many important ways. Evidence of this could be found easily, and it lent credence to charges that sentencing practices were at best arbitrary and unfair, and at worst systematically discriminatory. In virtually every jurisdiction this perception was refueled at least occasionally by prominent instances of seeming abuse. In addition, massive social and legal studies documented the seemingly discriminatory fashion in which sentences were rendered and later reviewed. It was easy to point to evidence that African Americans and the poor (and even people who just did not dress properly in court) systematically were treated more harshly.

Under pressure from civil rights groups, social critics, and the courts, states devised strategies to cope with these charges. Several states organized sentencing commissions to formulate detailed guidelines for the disposition of cases. Prominent sentencing commissions were formed in Florida, Minnesota, Pennsylvania, and Washington. In other states, legislative committees took on the same task. Their purpose was to recommend (with the stamp of approval of the entire legislature) presumptive sentences. These are the sentences that judges are expected to give under circumstances that are described in detail in the legislation. In their most advanced form, these presumptive sentences are calculated using a case work sheet. The judge or a clerk refers to a scoring handbook to record elements of the offense; these commonly include weapon use, the extent of injury to the victim, the prior record of the defendant, and the established seriousness of the offense category. These are added together, and the number of months the offender should be incarcerated, given the total score, is indicated on a chart. This is his or her presumptive sentence. The states that have adopted such systems all leave judges some creative leeway around the presumptive sentence in order to take into account any aggravating or mitigating circumstances that were not reflected in the sentencing formula, but that leeway is always just a matter of months. The states also make it possible to render a sentence outside of that range, but only if judges submit a written statement detailing their reasons for doing so. In sum, presumptive sentencing serves to (a) specify exactly the factors that judges are to take into account when rendering judgment, and (b) standardize the weight given to each factor in all cases and by all judges.

Parallel moves have been made to constrain the discretion of boards authorized to release selected prisoners on parole, where such boards still exist. Point-scoring procedures and detailed parole guidelines have been inaugurated to reduce case-by-case variation in decisions about when prisoners are to be let free.

Some states (including Massachusetts, Michigan, and Wisconsin) have not gone so far as to legislate presumptive sentences. Instead, state and local sentencing councils have been formed to formulate and recommend model sentences for major classes of offenses and to conduct training sessions to imbue judges with the spirit of their recommendations. Unlike mandatory guidelines, the evidence suggests that voluntary ones do not have much effect on sentencing disparity. Sentences continue to vary widely, and only a low percentage fall within the recommended guidelines; they still are dominated by plea agreements made by prosecutors and the individual predilections of judges (Tonrey 1988).

The Trend to Incapacitate High-Rate Offenders

While pressure to increase the severity of criminal sanctions virtually has been across the board, there has been a great deal of interest in trying to identify individuals who pose a particular risk to society and to single them out for special treatment. Those who commit more serious crimes have always been subject to harsher sentences; however, it is also the case that a relatively small number of repeat offenders contribute disproportionately to the total crime count. High-repeat offenders can be found for violent and property crimes, drug offenses, drunk driving, and dangerous motoring violations. The policy of identifying them and imposing longer sentences so that society will experience fewer of their offenses in the immediate future is known as selective incapacitation.

An example of the importance of high-repeat offenders in violent and property crime rates can be found in two studies of youths in Philadelphia. In each case, researchers followed the records of boys, beginning at age fifteen; the first group was fifteen in 1960, the second in 1973. They found that most of them did not commit any serious crimes, and that most of those who did got into trouble only once or twice. However, the top 6 percent of the first group they studied got into so much repeated trouble that they accounted for 63 percent of all the serious offenses committed by the group. The second birth cohort they studied was much more crime prone, reflecting changes in society between the two periods. The second group committed more serious property offenses and more violent crimes, were more inclined to use weapons, and were more likely to harm or kill their victims. The most crime-prone 8 percent of them accounted for 68 percent of all serious offenses by the group (Tracey, Wolfgang, and Figlio 1985).

Beginning about 1975, prosecutors' offices began to develop what came to be known as career criminal programs. In principle, such programs were to target high-rate, criminally active offenders even if the offense with which they were

charged was not very serious. Rather than routinely disposing of these cases with a slight penalty in return for a guilty plea, prosecutors and investigators were to develop and prosecute them to the hilt, taking advantage of the fact that they had a high-rate criminal in their grasp. Concentrating prosecution resources in this way was expensive, and the early programs were supported with federal funds by an agency (the Law Enforcement Assistance Administration) charged with promoting innovation in criminal justice. The same agency sponsored a great deal of research aimed at identifying appropriate targets for selective prosecution, based on such criteria as their past records as juveniles and adults, a pattern of drug use, and a history of involvement in assaultive violence (Forst 1983).

The politics of crime in the 1990s brought a new slogan to the battle against career criminals, "Three strikes and you're out!" Legislation building on this catchy metaphor, seemingly chosen more for its resonance with baseball than research on offending, calls for harsh and certain sentences for repeat offenders. In 1993, voters in the state of Washington approved a referendum (by 76 percent) mandating life prison terms for violent felons with two previous felony convictions. Under California's 1994 criminal sentencing act, a defendant with one previous conviction for a serious or violent crime, if found guilty of another felony, receives double the established penalty for the second crime, plus five additional years. An unfortunate Californian with two prior convictions must receive a prison sentence of at least twenty-five years. In neither case could they become eligible for parole. Observers estimated that these changes called for the construction of twenty new prisons in California, commencing almost immediately at a cost of about $10 billion. These kinds of harsh sentencing measures are encouraged by federal legislation that awards generous police and prison construction grants to states that change their sentencing codes to abide by the principles embodied in "Three strikes and you're out!" For example, in order for states to get the money, the 1994 Omnibus Crime Bill requires that they make serious offenders serve at least 85 percent of their sentences.

There has been considerable debate about the potential payoffs and liabilities of pursuing such selective incapacitation strategies. The discussion has largely been hypothetical, for in practice few career criminal programs have worked as they should; they have gravitated instead toward prosecuting those charged with more serious crimes even if they were not high-rate offenders. Still, it has been claimed that increasing the length of sentences given to a few chronic offenders and lowering those given to others (to balance the required prison bed space) could greatly reduce crime without increasing the need for new prisons. Others have argued that criminal careers may in fact be lengthened by prison stays, so that such dramatic benefits will not accrue simply by locking offenders up for a while. Finally, selective incapacitation raises deep questions about the purposes of punishment. Although offenders may be identified for special treatment by seemingly objective criteria, such as their record of past convictions, drug use, and the age at which they became criminally active, the real goal of these programs is to punish people for things they might do rather than for what they have done. This is a long way from one of the touchstones of the American system of justice, the presumption of one's innocence even of things that have already occurred.

The Trend to Use Executions More Often

One of the most visible changes in the sentencing policies of the states has been the reappearance of the death penalty. This may be the ultimate symbol that a state is being tough on crime. Between 1967 and 1976 it was impossible in practice for the states lawfully to execute anyone. Then the U.S. Supreme Court announced the conditions under which it would entertain the imposition of the death penalty (in the case of *Gregg v. Georgia,* 428 U.S. 153 [1976]), and many states quickly took advantage of the opportunity. By the end of 1992, 2,575 persons sat on death row in state prisons, and 188 had been executed since the *Gregg* decision (U.S. Department of Justice 1993a). The execution count had grown to 249 by August 1994.

Until the passage of the Omnibus Drug Bill of 1988, the possibility of employing the death penalty in *federal* offenses was confined to cases involving treason; espionage; deaths resulting from aircraft hijacking, train wrecking, bank robberies, or letter bombs; and the murder of the president, Supreme Court justices, or members of Congress. The 1988 act added major drug trafficking offenses to that list, but the death penalty has not yet been frequently used. At the end of 1992 only one federal nonmilitary prisoner awaited execution.

The number of state death row inmates has been growing by about 10 percent a year, and if past practice is any guide, they will be there for some time. The average waiting time for those who have been executed since 1977 has been seven and a half years. During the wait, 100 death row prisoners died, almost half of the number actually executed. Prisoners sentenced to death are entitled to a series of appeals through the state and federal courts regarding their conviction, the penalty, and how their cases were handled. To many observers, these appeals seem frivolous, expensive, and time consuming, and conservatives have made many proposals to limit and speed up these appeals. It is important to note in this regard that about 36 percent of those sentenced to death have had their convictions or sentences overturned on appeal, so moves to limit appeals are of considerable significance to those involved. Two percent have had their sentences of death commuted, another outcome worth a wait.

Table 10-3 identifies the thirty-six states that have devised new statutes calling for the death penalty, the number of executions they have carried out between 1977 and 1992, and the number of prisoners sitting on death row in each state at the end of that year. New Hampshire and Wyoming had the death penalty on the books in 1992 but no one on death row. Almost all death row inmates were male, half were black or Hispanic, and two were only seventeen years old. Texas (344), California (332), and Florida (312) had the largest death row populations, ac-

Table 10-3 Prison Crowding, Judicial Intervention, and Executions, 1992

State	Corrections depts. under court order*		Percentage of prison capacity used 1992	Total inmates on death row 1992	Total executions 1977 to 1992
	Entire department	Some units			
Alabama	No	No	111	124	10
Alaska	Yes	Yes	116	—	—
Arizona	No	Yes	106	103	1
Arkansas	No	Yes	104	32	4
California	No	Yes	191	332	1
Colorado	Yes	Yes	113	3	0
Connecticut	No	Yes	103	4	0
Delaware	No	Yes	99	11	1
Florida	Yes	Yes	88	312	29
Georgia	No	Yes	100	101	15
Hawaii	Yes	Yes	123	—	—
Idaho	No	Yes	106	23	0
Illinois	No	No	129	145	1
Indiana	No	Yes	95	50	2
Iowa	No	Yes	138	—	—
Kansas	No	Yes	91	—	—
Kentucky	No	Yes	107	29	0
Louisiana	Yes	Yes	95	44	20
Maine	No	No	112	—	—
Maryland	No	Yes	101	15	0
Massachusetts	No	No	144	—	—
Michigan	No	Yes	144	—	—
Minnesota	No	No	104	—	—
Mississippi	Yes	Yes	89	42	4
Missouri	No	Yes	100	82	7
Montana	No	No	106	8	0
Nebraska	No	No	150	12	0
Nevada	Yes	Yes	105	62	5
New Hampshire	No	Yes	113	0	0
New Jersey	No	No	131	3	0
New Mexico	Yes	Yes	95	1	0
New York	No	Yes	103	—	—
North Carolina	No	Yes	98	76	5
North Dakota	No	No	81	—	—
Ohio	No	Yes	177	121	0
Oklahoma	No	Yes	119	120	3
Oregon	No	No	101	11	0
Pennsylvania	No	Yes	149	153	0
Rhode Island	Yes	Yes	84	—	—
South Carolina	Yes	No	112	41	4
South Dakota	No	Yes	125	1	0
Tennessee	Yes	Yes	94	99	0
Texas	No	Yes	106	344	54
Utah	No	No	81	10	4
Vermont	No	No	147	—	—
Virginia	No	No	139	49	17
Washington	No	Yes	128	11	0
West Virginia	No	Yes	100	—	—
Wisconsin	No	Yes	139	—	—
Wyoming	No	Yes	105	0	1

SOURCES: U.S. Department of Justice 1993a, 1993e.
NOTE: Dashes indicate the state has no death penalty.
*Adult institutions only.

counting for 38 percent of the national total. Texas and Florida, followed by Louisiana, have executed the most inmates since 1977; the three states account for 55 percent of all the nation's recent executions. The city of Houston alone accounted for 10 percent of all the nation's executions since 1976. California ranked second to Texas in the number of sentences but by the end of 1992 had actually executed only one person. Arizona also had a particularly large discrepancy between the imposition of the death penalty and its actual use. Most executions and persons under sentence of death are in the South (as they were before 1967), while the thirteen states that have not reinaugurated the death penalty (plus Vermont, which did so and then repealed the law) are concentrated in the Midwest and the Northeast. All but one of the inmates sitting on death row was convicted of homicide (the exception was for the rape of a child). Two-thirds of them had previously been convicted of a felony; two-fifths were on probation, parole, in prison, or had other charges pending against them when they committed their capital offense; and one in ten had been convicted of killing someone before.

THE CONSEQUENCES OF STATE CRIME POLICIES

All of these new policies have had consequences for how state criminal justice agencies operate—and how much they cost. They have contributed to an explosive growth in the size of state prison populations, which in turn has led to mammoth prison overcrowding. This overcrowding then led to litigation that has passed control of important aspects of state criminal justice policy making to the federal courts. Pressure from the courts has led to the controversial practice of releasing jail and prison inmates without bail or before their sentences are completed. It has also put great financial pressure on the states by forcing them to dig deep into their pockets to build expensive new prisons. Other problems remain unresolved, including racial disparities in sentencing. In addition, the persistent political pressure to increase the certainty and severity of sentences for even more crimes will put more upward pressure on prison populations.

Growing Inmate Populations

Perhaps the most obvious consequence of changes in state criminal justice policy has been a vast increase in the rate at which Americans are being incarcerated. At the end of 1991, about 1,270,000 people were locked in about 3,300 jails, 3,300 juvenile facilities, and almost 1,000 state and federal prisons; 95 percent of the prisoners were male, 1 percent were juveniles, and more than 50 percent were African American or Hispanic. This accounted for 1 of every 200 Americans residing in the United States. Between 1991 and 1993 the prison population alone rose by almost 125,000.

This rate of imprisonment is unprecedented in modern times. The only accurate national trend statistics are on those confined in state and federal prisons, who currently make up about two-thirds of all the prison and jail inmates com-

bined. In relation to the size of the population, the number of prisoners in the United States remained surprisingly stable from the late 1930s through the mid-1970s. Then their numbers began to explode. In 1970 there were 196,000 persons in prison; in 1975, 240,000; in 1980, 330,000; and in 1993, almost 950,000. The year 1993 was the nineteenth consecutive year to set a new record. The prison incarceration rate (prisoners per 100,000 in the population) in 1987 was 351. Adding together prisons and jails, it was 455. This is in sharp contrast to the incarceration rate of other nations. In the early 1980s, when the rate in the United States was 194, the rate for Sweden was only 16 (Blumstein 1988).

It is harder and more expensive to count people in jails than in prisons. Jails hold persons awaiting trial or trying to make bail, those sentenced for short periods, and some convicted state prisoners for whom there are no prison beds. As a result, most inmates do not stay in jail very long, and there is a large turnover in the jail population in the course of a year. In addition, in six states the same agencies run both the jails and the prisons, and they do not report separate inmate counts for the two. The combined figures for those states, all of which are small, are included among prison statistics.

In 1991 about 10,266,000 persons were admitted to jail in the United States and an almost identical number were released, because the jails are full. This does not mean that this many people went to jail, for even more so than prisons (because stays are shorter) these institutions are "revolving doors." People can easily reenter several times in the course of a year. We have no real idea how frequently individuals reenter jail in a year, so there is no way of estimating from admissions figures how many people have been jailed; we only know the average jail population in a year and the number of people in jail on a particular day (June 28) of each year.[3] In 1991 the latter number was 426,000, a figure that is only 4 percent of the yearly total of admissions. Estimates of average jail populations are included in the data in Table 10-2.

Those behind bars are a select group. First, they are disproportionately male. In June 1992, 94 percent of prisoners and 91 percent of jail inmates were men; twenty times as many men as women were incarcerated. Montana had so few women convicts that until 1982 it did not have a women's prison facility at all, finding it cheaper to pay to house female offenders in nearby states. The relatively few women who are in prison were sent there for reasons different from those that locked up their male counterparts. While men are most likely to be sentenced to prison for committing violent or drug offenses, women are there for drug offenses (33 percent of women as opposed to 21 percent of men), theft, fraud, and forgery. The increase in the female prison population has been higher than that for men, and has been so each year since 1981. For example, between 1986 and 1991 the number of male prisoners rose 53 percent and the number of females rose 75 percent, on a much smaller base (U.S. Department of Justice

3. June 28 was selected arbitrarily as "National jail census day" by the Bureau of Justice Statistics.

1994b). Prisoners are also disproportionately black and Hispanic. In 1991, 46 percent of prisoners were African Americans, 14 percent were of Hispanic origin, and about 36 percent were non-Hispanic whites; jail inmates were distributed in roughly the same way. Blacks and Hispanics make up a much smaller percentage of the general population, so as groups they have high incarceration rates (U.S. Department of Justice 1993c, 1993d).

Why are there are so many people in U.S. prisons? The main reason, of course, is that crime rates are high. In relation to the level of crime in the United States, we send people to prison with about the same frequency as many other industrial nations. We send so many people to prison because we have much more crime than they do. In a comparison of the number of people entering prison with the number of crimes that could result in a prison sentence, this country stands in the lower-middle range among industrial countries. The ratio of prisoners to homicides puts the United States at the same level as Australia, England, and West Germany; its ratio of prisoners to robberies is similar to those and other industrial nations as well (Blumstein 1988; Lynch 1988). As best it can be judged, the United States does not have a disproportionately high conviction rate; for example, Canada, Great Britain, and the United States send almost the same percentage of those arrested for robbery to prison, between 48 and 52 percent, and conviction percentages for burglary and theft in the three countries are just as similar (U.S. Department of Justice 1987).

Prison admissions have even lagged behind the growth of the crime rate. Crime was up so much in the United States that between 1967 and 1980 the number of prison admissions per 100 serious crimes was two and a half times less than in 1960. By this measure the incarceration rate did not slope upward again until after 1980, and it is still considerably below that for the early 1960s. In addition, some of the biggest increases in crime have been in categories of offenses that more easily get people into prison: violent personal crimes and those involving weapons. The Philadelphia studies mentioned earlier documented dramatic shifts in tendencies toward youthful violence, weapon use, and victim harm between the 1960s and the 1970s.

Another reason for skyrocketing prison populations is demography. Crime is disproportionately committed by young males. That was an important reason for the tremendous increase in the crime rate during the 1960s and 1970s, when members of the postwar baby-boom generation were in their teens. However, prison sentences generally are reserved for adult offenders who have substantial criminal records, so the peak prison-prone age group is those in their twenties. This group grew precipitously in size during the 1980s. In fact, much of the increase in the number of Americans entering prison during the 1980s can be attributed to the escalating crime rate and demography alone.

However, an important cause of the size of prison populations in the United States is the length of prison stays, which has been the subject of many recent policy changes in the states. As discussed earlier, during the 1970s and 1980s many

states undertook measures that effectively increased the actual length of criminal sentences. They did so by abolishing parole and sometimes good time, by mandating prison sentences for special classes of offenses, and by tacking years onto sentencing guidelines. These measures had important consequences, for the size of the prison population is affected both by the number of people entering prison and by how long they stay. In the aggregate, someone sentenced to ten years occupies the same bed space as ten people sentenced to one year. The effect of increases in average length of stay can be dramatic. For example, a requirement proposed in Illinois in 1994 that felons serve at least 85 percent of their court-imposed sentences called for twenty-eight new prisons and a doubling of the state's prison capacity during the next decade because the state previously had a generous good-time policy. During the 1980s, the total size of the U.S. prison population was affected more by length of stay than by volume of intake. More people were coming in, principally as a result of crime rates and the number of offenders in their twenties, but they were also staying longer. When coupled with poor planning, this resulted in a prison overcrowding problem of crisis proportions.

Growing Prison Overcrowding

The prison overcrowding problem has become one of the major headaches facing American state governments. In 1992, thirty-seven states had more prisoners than the capacity of their prisons, some of them dramatically more (U.S. Department of Justice 1993d). During 1992, state prison populations increased so fast that more than 1,100 new beds were required each week to handle new admissions. In light of the scrutiny prisons were getting from the courts, these beds could not just be crowded in among the old ones. Space for them had to be supplied from new construction, or their previous occupants had to be leaving.

There are two ways to measure overcrowding. The first (and probably best) is the number of square feet of space that a prisoner has to live in. The only figures available are averages, for relatively few prison inmates live in a single-bunk cell. (In fact, about one-quarter of all prisoners live in barracks with more than fifty other people per room.) The average amount of living space allotted to inmates of U.S. prisons was fifty-six square feet. The amount of space varied considerably, however, and 30 percent of all prisoners had less than forty square feet (that is five by eight feet) of space to live in. Furthermore, these figures were lower than in earlier years; in 1979, the average living space was seventy square feet in size. Between 1979 and 1984, 138 state prisons were built, renovated, or expanded, adding 5.4 million square feet of housing space. This amounted to a 29 percent increase in the space prisoners had to live in. However, the prison population went up 45 percent during the same period, so the space for each inmate actually decreased (Innes 1986).

The second way to measure overcrowding—based on the capacity of a prison

or jail—is slippery. There are several different ways of rating prison capacity. From one point of view, however many people can be crowded into a prison is its capacity. Texas once put tents in the exercise yard of its prison in Huntsville and wanted to count the cots in those tents as part of the prison's capacity. The data on prison crowding presented in Table 10-3 are based on the most favorable definitions of prison capacity that the states report. Even by these measures, the prisons in many states are overwhelmed. Forty-three states (plus the federal prison system) reported operating above capacity. Eleven states reported that at the end of 1992 their prisons were, in the aggregate, at more than 130 percent of capacity. The worst offender was California, which was operating at 191 percent of capacity. Prisoners in Hawaii had an average of thirty-six square feet of living space each. Only ten states were running at a comfortable 95 percent or less of capacity.

There is no clear agreement on the actual consequences of prison overcrowding alone. The dominant factor that is related to prison assaults and homicides, disturbances, and suicides is the type of prison. High-security prisons, which house the most dangerous offenders, are the worst on all these measures, almost regardless of their crowding or design characteristics, while low-security facilities come off best. Living in barracks seems to be worse than bunked cells, and there is some evidence that overcrowded prisons are more likely to have high assault rates. It certainly is reasonable to hypothesize that overcrowding increases levels of violence in prison. Crowding strains the recreational and educational capacities of a prison; as a result, the inmates are bored, and conflicts break out among them. It is easier for the staff to lose control of overloaded institutions. The only winners in this situation are gangs, which already control many aspects of prison life (see Ellis 1984; Gaes 1985; Innes 1986).

It also should not be forgotten that overcrowding also effectively increases the harshness of the sentences that are handed down by the criminal justice system, perhaps beyond the intent of legislators, judges, or society. At the extreme, overcrowding and its correlates can pervert a seemingly rational sentencing policy into something that is cruel and unusual in its application. Then prison living conditions become a constitutional question.

New Federal Supervision of State Prisons

One important change in state criminal justice policy since the 1970s has been the intrusion of the federal courts into the process. Before 1960 the federal courts had little to say about how prisons operated. Then, two waves of litigation swept through the system; the first had to do with prisoners' rights in matters of traditional constitutional concern, whereas the second had to do with the quality of their life behind bars. The results have been controversial and expensive (for a discussion, see DiIulio 1990).

During the 1960s, the basis of most of this court action was the First, Fifth,

and Fourteenth Amendments, which guarantee freedom of religion, the right to fair administrative processes, and equal protection by the law. On these grounds the federal courts ruled against the denial of religious freedom to Muslim prisoners (who usually were black), found that prisoners had the right to meet with their attorneys and have access to legal materials, limited the censorship powers of prison administrators, insisted on fair procedures in prisoners' disciplinary hearings, and acted to soften often brutal disciplinary measures.

Beginning in the 1970s, the grounds on which important legal actions took place shifted from prisoners' rights to governments' responsibilities. Those law suits attacked crowded, unsanitary, and dangerous prison living conditions. Suits were brought against prisons that were in a deteriorated condition and against systems that did not provide adequate health care for prisoners. Federal district court judges frequently were appalled by the conditions of confinement that those suits revealed. Their general ground for imposing a remedy in those cases has been the Eighth Amendment to the Constitution, which forbids "cruel and unusual punishment." Since 1970, forty-five states have either been issued federal court orders or are still in litigation about such issues. In 1992 eleven entire state prison systems were operating under court orders or consent decrees specifying how they were to reduce crowding and deal with other prison problems; in thirty-seven states at least one major prison was operating under similar arrangements (Table 10-3). In an important sense the federal courts are governing state prisons.

The prisons are not directly run by the judges. Rather, the practice is for district court judges to appoint a *special master* to represent the courts in the matter. At one point about 1980, a Texan was serving as the special master overseeing state prison management in Oklahoma, while an Oklahoman was the special master for prisons in Texas. In 1992, seven state systems were under the supervision of a court-appointed master, as were individual prison units in thirteen states. Masters monitor conditions in the prison(s) in question and keep the courts abreast of progress toward their compliance with the judges' orders. Progress is not automatic. Even when there is a great deal of professional good will on both sides, state prison administrators often find it difficult to persuade legislators to approve the money they need to meet the requirements of the master. Judges frequently have to move the process along with injunctions, threats of contempt of court citations, and fines of $1,000 a day. The process is more difficult in states where the public must vote their approval of bond issues in order to pay for new prison construction; if they defeat the issue (which does not always happen, to be sure), states must scramble to find other sources for the money.

It is clear that "crowding them in" is no longer an acceptable response to the crisis generated by the growing stream of long-term inmates entering the nation's prisons. Judicial supervision of state prison conditions makes that impossible. Simple crowding is not, per se, unconstitutional. In fact, a line of U.S. Supreme Court decisions has ruled to the contrary; evidence of other untoward conditions is required. This is why states can exceed the capacity for which their prisons were designed. For example, in 1992 Illinois housed 24,000 inmates in prisons intended to hold 20,800, but the state was not operating under court jurisdiction. However, evidence that conditions are unsanitary and dangerous has not been difficult to come by in many cases, and the federal district courts have also continued to be impressed by descriptions of crowded prison conditions. The problem is what to do about it. The short-term response has been simply to let out enough prisoners to get prisons down to their capacity; the long-term solutions have to be to build new prisons and to find politically acceptable alternatives to incarceration.

Mounting Pressure to Release Prisoners

While none of these alternatives is easy, perhaps the most controversial are the backdoor solutions to overcrowding employed by many states. They just let prisoners out. This happens at all levels of incarceration. In 1986 (the last year for which the data were published), fourteen states employed some kind of emergency release mechanism to rid themselves of excess prisoners, letting about 72,000 of them out early. California freed more than 37,000 prisoners before their time; Texas, almost 13,000; Illinois, 8,600; and New York and Maryland, 1,900 each. It worked: at year's end, the prison systems in all of these states were at or very slightly below 100 percent of capacity. But no one was happy with this solution.

Local jails face the same problem. In Cook County, Illinois (Chicago and its nearby suburbs), the local jail was forced to release 1,200 inmates in just November and December of 1986. By 1988 the situation had gotten worse. In the first eight months of the year, more than 6,000 persons charged with felonies who had been unable to make their assigned bail were released anyway because about 100 inmates were sleeping on the floor each night in the county's 5,500-bed facility. By November 1988 the release rate was up to 120 offenders a day, but there were still inmates sleeping on floors. The next month, a federal district court judge appointed a monitor to oversee the local corrections department, and jail officials were fined $1,000 per day for not reducing the jail's population or constructing new facilities.

As a temporary measure, some states are able to keep sentenced prisoners in local jails where there is some room. In 1992, twenty states held an additional 18,200 convicted felons in this manner. The difficulty with this is that jails are not designed or equipped to hold prisoners for long periods of time. They usually offer only rudimentary health services and have limited educational and recreational facilities, reflecting their short-term custodial role.

In principle these mandatory releasees are not simply dumped back into the community. Although they are not being released by parole boards, state prison emergency releasees are placed under the supervision of parole officers and ac-

quire the responsibilities of parolees. How well this works in practice depends on the quality of the parole supervision system, which often is not very good. During the fiscal crisis of the 1980s, state parole agencies faced simultaneous increases in their caseloads and cuts in their budgets. Those released early from the Cook County jail effectively have no supervision at all. Their status just becomes a ground for setting a somewhat higher bail for them the next time they get into trouble.

Many states have shouldered the responsibility for reducing the size of prison populations. In statutes with titles like "The Forced Release Act" (to indicate that it was not *their* idea), these states have established uniform trigger mechanisms (such as an institution's capacity exceeding 105 percent for three consecutive months) and inmate-selection policies (for example, first release those near the end of their sentences, then free offenders incarcerated for property crimes rather than violent acts) to guide prison administrators. Some legislatures have attempted to hang the responsibility for making these decisions on the governor, making what happens appear to be his or her fault; when the state assembly did so in Michigan, the governor simply refused to release any prisoners, leading to further litigation. A few state legislatures have studiously ignored the issue, refusing to act and trying not to notice while their prison administrators proceed to release inmates without any statutory authority.

Mounting Pressure to Build New Prisons

One obvious response to the crisis of prison overcrowding is to build new prisons. Most states have done so; between 1984 and 1990 the number of prison beds increased by 52 percent. In 1995 the states and the federal government planned to spend $5.1 billion on prisons, up $200 million from the year before. A "build more" strategy, however, harbors several problems. First, keeping abreast of mounting and increasingly lengthy prison admissions is extremely expensive. In 1994, it cost an average of $75,000 per bed to build a new high-security prison; at the high end, Connecticut spent $147,000 per bed for a new high-security prison in the early 1990s. Juvenile facilities typically are smaller and provide more educational services, so they cost even more. Unfortunately, prisons (not to mention their inhabitants) do not have much of a political constituency. The construction of prisons is not a popular way to spend tax dollars, nor should it be. Not only is such construction expensive, but the states pay "opportunity costs" in the form of not being able to spend the money on other, more productive things like education and highways. If taxes are not to increase, more spending for criminal justice means less spending elsewhere. As a result, even in relatively progressive states the public has defeated measures for prison construction when given the opportunity. Voters have refused to approve bond issues to support prison construction in New York, Oregon, and Virginia, and in Michigan they rejected a proposed 0.1 percent increase in the state income tax to pay for new prisons (Petersilia 1987).

There has been a great deal of discussion about the privatization of prisons in the United States. Most media attention has focused on privately managed prisons and the controversial practice of delegating coercive (and potentially life or death) power over inmates to private contractors. By 1990, however, private contractors managed only twenty-one confinement facilities in the United States. From a political point of view, one of the most attractive features of privatization is financial. By leasing prison facilities from private developers who finance and oversee their construction, states can evade public referendums on bonds and taxes, and states, counties, and municipalities can avoid statutory or constitutional limitations on their bonded indebtedness. Using private investors to finance and own prisons lets the states meet their legal obligations out of current revenues.

The constituency problem also begets the problem of "Not in my back yard," or NIMBY—the response of many (but not all) communities to the proposal that a prison be built. The result is that prisons usually are built in inaccessible, thinly populated reaches of the state, where being a prison guard is regarded as a good job, but prisoners are far away from their friends and families.

Building new prisons is also an extremely slow response to the overcrowding problem. Planners must decide what kinds of prisons to build (high, medium, or low security) as well as how many, so they need to forecast the types of prisoners they will have on their hands in the future as well as how many there will be. They have to find locations for them, plan them in detail (looking forward to new standards for living space, health, and recreational facilities), and convince the legislature that building a prison is a good idea. Typically, this process takes about five years.

Anticipating future prison needs, therefore, is an integral part of the "build more" response to crime and overcrowding. The forecasting process relies in part on demography. As noted above, one reason for prison overcrowding during the 1980s has been the large size of the prison-prone population, males in their twenties. Demographic forecasts, however, call for caution in building new prisons, for following in the wake of the baby boom were dramatically fewer prison-age males; their numbers will not pick up again dramatically until after the turn of the century. Demography alone would lead many low-growth states to resist investing much more in prison construction. Other factors involved in the demand for prison space need to be included in forecasts as well. The National Council on Crime and Delinquency (NCCD) conducts prison forecasts for states, including California, Florida, Illinois, and Ohio. In addition to admissions, the predictions of the NCCD also take into account anticipated parole rates and parole violations (which bring releasees back in). The latter is an important component of capacity planning, for about two-thirds of all prisoners released on parole are rearrested within two years, most of them while they are still on parole. Thirty percent of all those admitted to U.S. prisons in 1991 were going back because they had violated their parole conditions.

Planners should also try to take into account anticipated sentence lengths for offenders entering prison, for their average length of stay is the largest determinant of a state's need for bed space. NCCD's estimates are steady-state forecasts; they "assume that arrest and court policies have stabilized and that new court admissions will be driven by demographic trends" (NCCD 1988, 3). This is unlikely, however, which is one reason why policy-related forecasting is an uncertain art. NCCD's 1988 forecast for California estimated that the state would need 102,550 beds by the end of 1993. But by the end of 1992 the state already had almost 110,000 prisoners. In 1991 the state of California forecast a need for 151,500 prison beds by 1995 but admitted that the state's own construction plan would fall far short of that total (U.S. Department of Justice 1993e). Changes in the criminal code can upset the most carefully thought out forecasts. Given the typical five-year plan-and-build cycle for new prisons, the ability of statutory changes to have such significant short-term consequences for the need for prison space makes it unlikely that new construction alone can suffice to respond to our changing prison needs.

An alternate view, one that is consistent with the Cook County, Illinois, experience, is that we can never build enough prisons. In 1983 a new 500-bed addition to the jail was hopelessly overcrowded within eighteen months despite court-ordered attempts to keep the jail's population under control. In the face of its mounting 1988 jail population, Cook County approved spending $60 million to add another 750 beds to its 5,500-bed facility. At the same time, however, the county was releasing enough inmates to have filled the new annex the month it opened. By 1994 the county jail had grown to 7,900 beds but housed an average daily population of 9,000. Once again, prisoners were sleeping on floor pads in large numbers. More than 700 prisoners were women, forcing the dedication of a wing of the facility for their use and the opening of a prenatal tier for women who were pregnant. Space needs for women prisoners were so tense that a special furlough program was devised that sent many of them out of jail each evening, so they could sleep elsewhere and not use up precious floor space. Nationally, while the number of prison beds increased 52 percent between 1984 and 1990, the number of prisoners went up 67 percent. In 1984, state prisons were 11 percent above capacity; in 1990, they were 22 percent above capacity.

Perhaps the states have gotten into trouble because they have been governed badly; it seems that the consequences of soaring crime rates and new sentencing policies should have been obvious. However, theorists on prison capacity argue that the limited willingness of political systems actually to spend money is how they cap their symbolic and emotional enthusiasm for increasing the scope and harshness of criminal sanctions. We hit our limits when symbolic crusades against crime overreach the scarce resources that the political system is willing to devote to crime control, and capacity thus provides a practical break on society's retributive impulses.

Mounting Pressure to Find Alternatives

Perhaps the only desirable element of the prison overcrowding problem is the opportunity it creates to explore alternatives to incarceration. It is neither possible nor desirable to throw the book at every offender who comes into court, and this is especially true now that the book has gotten heavier in many states. The sanctions outlined in criminal statutes serve many functions. They are presumed to have general deterrent value; that is, by sending the message that crime does not pay, punishing criminals should deter others from following in their path. Presumably the criminal justice system has some rehabilitative effect, and we have seen how close supervision of offenders is presumed to have an incapacitation value. The question is how to achieve these goals using sanctions that fall short of incarceration but at the same time respond to the public's demand that criminals be dealt with severely.

There are many correctional programs to which offenders can be diverted in lieu of prison. They range from residential care facilities, where offenders live (and often work) in the community, to detention programs that require that offenders serve their sentence by not leaving home. One important alternative to prison is intensive supervision probation (ISP). More than thirty states are experimenting with some version of ISP. In 1992, Florida had the largest program, one enrolling more than 12,000 of the state's 89,000 probationers. The next largest program was in Texas, where ISP enrollees numbered 6,000. In ISP, probationers are placed under heavy surveillance. They have frequent face-to-face meetings with their probation supervisors, and their supervisors independently monitor their status at work and conditions in their homes. ISP parolees typically face an early-evening curfew, and their supervisors make frequent home visits to make sure they are complying. They also must submit to urine tests to certify that they are staying off drugs. Often these programs require that parolees perform hundreds of hours of community service and participate in drug or alcohol treatment programs. The close supervision of ISP is used to justify releasing offenders who have committed relatively serious crimes but who appear to have a low risk of getting into serious trouble again. The savings to the state are considerable; Georgia estimated that in 1986 each ISP parole saved almost $11,000 in prison construction and operating costs per year (Petersilia 1987). There are benefits to offenders who participate in the program as well: those involved can keep or find a job and maintain contact with their families, two good predictors of probation success.

Shock incarceration programs (more commonly known as boot camps) put offenders in quasi-military confinement for short periods of time, followed by a more lengthy period of community supervision. These programs feature rigorous exercise, military drill, and hard and demeaning labor. Houston's program requires six hours of exercise and drill every day, two more working at a camp job, and some vocational training. Boot camp programs typically last for three to six months and are becoming the sentence of choice for drug offenders. The

jury trials. Nevertheless, most defendants are convicted, and in those cases almost all are incarcerated. This in turn puts some strain on the correctional system. Mandatory DWI statutes typically require offenders to do their time on weekends, and these inmates are set apart from other prisoners in low-security facilities. Ohio had so many cases and was so short of weekend bed space that sentenced offenders often had to wait six or seven months before being locked up (Greenfield 1988; Heinzelmann et al. 1984).

Other important shifts have taken place in America's drug policy. There has been an explosion of drug arrests, and convictions for increasingly long periods, of a vast new group of offenders. In 1991 more than one million people were arrested for whom a drug offense was the highest charge against them, about 1.4 times the number who were arrested for all violent crimes. State statutes vary considerably in the stringency of penalties for drug trafficking and drug possession, but about 75 percent of those convicted of a drug offense are sentenced to prison or jail. By the end of the 1980s, 30 percent of all new state prison inmates were arriving to serve a drug offense sentence. In the federal prison system the total in 1994 was 62 percent. In the federal system they were also going in for longer sentences; for federal drug offenders the length of the average sentence to prison increased by 60 percent during the 1980s. In this group, 20 percent were convicted only of low-level drug offenses, had never been to prison before, and had no previous convictions for violent crime. The results of this influx as it relates to the need for new prison beds are obvious. The federal prison population is forecast to rise by 50 percent between 1994 and 2000, with more than 60 percent of all new prisoners going in for drug crime offenses (U.S. Department of Justice 1992).

Continued Racial Disparities

One of the greatest challenges to the system of justice in the American states remains the apparent racial disparities in how it operates. African Americans are disproportionately represented at every step in the criminal justice process, from arrest to imprisonment. In 1991, about 35 percent of those arrested for index crimes and 48 percent of those in state prisons were black. Based on 1979 data, it was estimated that 19 percent of blacks, but only 3 percent of whites, would serve a term in prison during their life time (Langan 1985). Blacks are also disproportionately likely to be executed; about 40 percent of those waiting on death row are African Americans.

We can track some of the reasons for this at every stage, from offending to sentencing. First, blacks commit (relatively) more crimes. Recent reports from the National Crime Survey, which directly questions representative samples of victims in the United States, found that blacks were more than twice as likely to commit rape, and almost five times as likely to be involved in a robbery, as their numbers in the population (about 12 percent of the total) would indicate (U.S. Department of Justice 1994a).

Second, black offenders are even more likely to be arrested. In 1991, 60 percent of all those arrested for robbery were black; the comparable figure for rape was 43 percent, and for murder 57 percent. Even more important, blacks are more likely to be arrested for the kinds of crimes for which people are more likely to be put into prison. While 49 percent of those arrested for violent crimes in 1991 were black, only 23 percent of those arrested for theft and burglary were black; property offenders generally must accumulate an extensive record before they are sent to prison. However, based on data on prison inmates, blacks are more likely to have a past history of felony convictions when they are up for sentencing; in addition, black offenders are more likely to carry guns (Block and Skogan 1986). This is important because violent, repeat, and weapon-carrying offenders typically get longer sentences as well as being sent to prison more readily. Sentencing figures are consistent with this: blacks are more likely to get longer sentences. This is true both overall and within every category of violent crime, for all types of drug offenses, and for most property crimes. Significantly, implementation of strict sentencing guidelines in federal criminal courts since 1989 has actually increased sentencing disparities between whites on the one hand, and black and Hispanic defendants on the other. This widening is due principally to the legal gravity of charges more typically brought against minority defendants, including trafficking in crack cocaine (McDonald and Carlson 1993).

Blacks, then, are both more likely to enter prison and to stay there longer when they do, which adds up to a disproportionate representation of them in U.S. prisons and jails. The numbers are large—Blumstein (1988) estimated that during the mid-1980s about one in twelve black males in their twenties was in jail or prison. The numbers vary from state to state, one obvious reason being the differences in the racial composition of the states. According to the latest available figures, over 70 percent of prisoners in Louisiana and Maryland and two-thirds of those in Mississippi are black. Black overrepresentation in prison, however, also varies dramatically between similar states. For example, the populations of Indiana and Connecticut are both about 8 percent black, but in Connecticut, 56 percent of prisoners were black, whereas in Indiana, 35 percent were black. In the main, the areas with the biggest discrepancies between population and prison figures are large, metropolitan states with high crime rates; the two states with the largest overrepresentation of blacks in their prisons are New Jersey and Illinois. The biggest discrepancies were not among rural southern states; the four southern states in which blacks were most overrepresented in prison compared to the population included three highly urban states—Florida, Maryland, and Virginia.

CONCLUSION

Crime rates in the United States doubled or tripled in the three decades following 1965, and the states were hard pressed to keep up in dealing with them. The highest levels of crime—and the biggest increases during that period—were

concentrated in the metropolitan, high-growth states. Responding to the political and workload pressures generated by mounting crime rates proved to be expensive, and to a certain extent it came at the expense of other functions of government. Not only did state and local criminal justice budgets grow, but their slice of the total pie grew as well. Budgets and budget shares expanded most at the local level, largely to support policing; while federal involvement in crime control grew during this period, it still does not amount to very much.

The role of state government in the control of crime is limited, but state responsibilities include some of the most controversial elements of criminal justice policy making and some of the most expensive decisions. During the late 1970s and early 1980s, many states began to rely on longer and more certain imprisonment to control crime, and the early 1990s saw renewed enthusiasm for such hard-line measures. Average sentences got longer, and the elimination of parole and other mechanisms for releasing offenders before the end of their statutory sentences made it more certain that those sentences would be served in full. Often these stiffer penalties were combined with efforts to impose new sanctions on so-called career criminals, who presumably would otherwise continue to follow a life of crime.

One consequence of these policies has been an explosion in the size of prison populations. By 1994 more than one million people were in state and federal prisons, a number about equal to the population of Dallas or Detroit. If prisons were a city, they would be the ninth largest in the country. Some of the increase would have occurred anyway, driven by soaring crime rates and a growing pool of adult offenders seemingly fully qualified for prison. However, these events occurred at a time in which the old, liberal consensus on corrections, aimed at rehabilitation, was in retreat. The notion that prisons are about retribution and incapacitation was in the ascent, and more punitive policies resulted. The effects of this were to be multiplied by their extension into areas in which the criminal justice system hitherto had not relied heavily on incarceration, including such high-volume crime problems as drunk driving and drug possession or use.

The consequence of this new punitiveness remains a national crisis. People flooded into prisons and jails at an unprecedented rate. Crowding and underfunding, and their consequences (inadequate food and care, poor staffing, deterioration of buildings), soon caught the attention of the federal courts. The resulting litigation led to new rounds of fund-raising and prison construction and the release of sentenced prisoners to make room for others. The fiscal and political consequences of this quickly encouraged new thinking about punishment, and by the middle of the 1980s interest in alternatives to traditional forms of incarceration had been renewed. Finding large numbers of candidates for low-cost rather than high-cost treatment, and justifying this politically, has become the most popular topic in state criminal justice circles.

The issue of how to solve these problems in ways that seem fair as well as effective remains a source of great concern to those involved in criminal justice

policy making. Efforts were made during the 1970s and 1980s to devise ways of reducing race and class discrimination in the imposition of criminal sanctions, principally through constraining the discretion of judges and parole boards by focusing their decisions on a few legally relevant criteria. However, there continue to be large discrepancies by race in the imposition of prison sentences and the death penalty. We have seen that some of these discrepancies are rooted in the distribution of crime and criminal careers, but whatever the reason, these dramatic racial disparities constitute the most serious—and potentially the most explosive—issue facing the American system of justice.

REFERENCES

Block, Richard, and Wesley G. Skogan. 1986. "Resistance and Nonfatal Outcomes in Stranger-to-Stranger Predatory Crime." *Violence and Victims* 1, no. 4:241–253.

Blumstein, Alfred. 1988. "Prison Populations: A System Out of Control?" In *Crime and Justice: An Annual Review*, edited by Michael Tonrey and Norval Morris. Chicago: University of Chicago Press.

DiIulio, John J., ed. 1990. *Courts, Corrections, and the Constitution: The Impact of Judicial Intervention on Prisons and Jails*. New York: Oxford University Press.

Eisenstein, James, and Herbert Jacob. 1974. "Measuring Performance and Outputs of Urban Criminal Courts." *Social Science Quarterly* 54 (March): 713–724.

Ellis, David. 1984. "Crowding and Prison Violence: Integration of Theory and Research." *Criminal Justice and Behavior* 11, no. 3:277–308.

Forst, Brian. 1983. "Prosecution and Sentencing." In *Crime and Public Policy*, edited by James Q. Wilson. San Francisco: ICS Press.

Gaes, Gerald G. 1985. "The Effects of Overcrowding in Prison." In *Crime and Justice: An Annual Review*, edited by Michael Tonrey and Norval Morris. Chicago: University of Chicago Press.

Greenfield, Lawrence A. 1988. *Drunk Driving*. Washington, D.C.: Bureau of Justice Statistics, U.S. Department of Justice.

Heinzelmann, Fred, W. Robert Burkhard, Bernard Gropper, Cheryl Martorana, Lois Mock, Maureen O'Connor, and Walter Travers. 1984. *Jailing Drunk Drivers: Impact on the Criminal Justice System*. Washington, D.C.: U.S. Department of Justice.

Innes, Christopher A. 1986. *Population Density in State Prisons*. Washington, D.C.: Bureau of Justice Statistics, U.S. Department of Justice.

Jacob, Herbert. 1984. *The Frustration of Policy: Responses to Crime by American Cities*. New York: Longman.

Jacob, Herbert, and Robert L. Lineberry. 1982. *Governmental Responses to Crime: Crime and Governmental Responses to American Cities*. Washington, D.C.: National Institute of Justice, U.S. Department of Justice.

Jacob, Herbert, and Duane Swank. 1982. "Police Expenditures And Public Policy: An Analysis of an Anomaly." Paper presented at the annual meeting of the Southwest Social Science Association, San Antonio, Texas, March.

Langan, Patrick A. 1985. *The Prevalence of Imprisonment*. Washington, D.C.: Bureau of Justice Statistics, U.S. Department of Justice.

Lipton, Dugan, Robert Martinson, and Judith Wilks. 1975. *The Effectiveness of Correctional Treatment*. New York: Praeger.

Lynch, James P. 1988. "A Comparison of Prison Use in England, Canada, West Germany, and the United States." *Journal of Criminal Law and Criminology* 79, no. 1:180–217.

McDonald, Douglas C., and Kenneth E. Carlson. 1993. *Sentencing in the Federal Courts: Does Race Matter?* Washington, D.C.: Bureau of Justice Statistics, U.S. Department of Justice.

MacKenzie, Doris Layton. 1994. "Shock Incarceration as an Alternative for Drug Offenders." In *Drugs and Crime*, edited by Doris Layton MacKenzie and Craig D. Uchida. Thousand Oaks, Calif.: Sage Publications.

NCCD (National Council on Crime and Delinquency). 1988. "The NCCD Prison Population Forecast: The Growing Imprisonment of America." *NCCD Focus*, April, 1–7.

Petersilia, Joan. 1987. *Expanding Options for Criminal Sentencing.* Santa Monica, Calif.: Rand Corporation.
Sechrest, Lee, Susan White, and Elizabeth Brown. 1979. *The Rehabilitation of Criminal Offenders.* Washington, D.C.: National Academy of Sciences.
Tonry, Michael. 1988. "Structuring Sentencing." In *Crime and Justice: An Annual Review,* edited by Michael Tonry and Norval Morris. Chicago: University of Chicago Press.
Tracey, Paul E., Marvin E. Wolfgang, and Robert M. Figlio. 1985. *Delinquency in Two Birth Cohorts.* Washington, D.C.: National Institute of Justice, U.S. Department of Justice.
U.S. Bureau of the Census. 1993. *Statistical Abstract of the United States, 1992.* Washington, D.C.: U.S. Government Printing Office.
———. Various years. *Statistical Abstract of the United States.* Washington, D.C.: U.S. Government Printing Office.
U.S. Department of Justice. Bureau of Justice Statistics. 1987. *Imprisonment in Four Countries.* Washington, D.C.: U.S. Government Printing Office.
———. 1988. *Pretrial Release and Detention: The Bail Reform Act of 1984.* Washington, D.C.: U.S. Government Printing Office.
———. 1991a. *Probation and Parole, 1990.* Washington, D.C.: U.S. Government Printing Office.
———. 1991b. *Tracking Offenders, 1988.* Washington, D.C.: U.S. Government Printing Office.
———. 1992. *Drugs, Crime, and the Justice System.* Washington, D.C.: U.S. Government Printing Office.
———. 1993a. *Capital Punishment, 1992.* Washington, D.C.: U.S. Government Printing Office.
———. 1993b. *Census of State and Local Law Enforcement Agencies, 1992.* Washington, D.C.: U.S. Government Printing Office.
———. 1993c. *Jail Inmates, 1992.* Washington, D.C.: U.S. Government Printing Office.
———. 1993d. *Prisoners in 1992.* Washington, D.C.: U.S. Government Printing Office.
———. 1993e. *Sourcebook of Criminal Justice Statistics.* Washington, D.C.: U.S. Government Printing Office.
———. 1994a. *Criminal Victimization in the United States, 1992.* Washington, D.C.: U.S. Government Printing Office.
———. 1994b. *Women in Prison.* Washington, D.C.: U.S. Government Printing Office.
U.S. Department of Justice. Federal Bureau of Investigation. 1993. *Uniform Crime Reports for the United States.* Washington, D.C.: U.S. Government Printing Office.

SUGGESTED READINGS

Eisenstein, James, Roy B. Fleming, and Peter F. Nardulli. *The Contours of Justice; Communities and Their Courts.* Boston: Little, Brown, 1988. An analysis of the operation of criminal courts and how they vary from community to community.
Goodstein, Lynne, and Doris Layton MacKenzie. *The American Prison.* New York: Plenum Press, 1989. A collection of essays that review most aspects of prison life and prison policy.
Morris, Norval, and Michael Tonry. *Between Prison and Probation: Intermediate Punishment in a Rational Sentencing System.* New York: Oxford University Press, 1990. The best treatment of theories of sentencing and how their social functions can be performed by alternative sanctions.
Scheingold, Stuart A. *The Politics of Street Crime.* Philadelphia: Temple University Press, 1991. An analysis of the policy choices facing municipal officials, and how those are confounded by the various ideologies that shape public and elite thnking about crime control.
Wilson, James Q. *Thinking about Crime.* 2d ed. New York: Basic Books, 1983. Although dated, an excellent series of essays on most of the important issues in crime and criminal justice.