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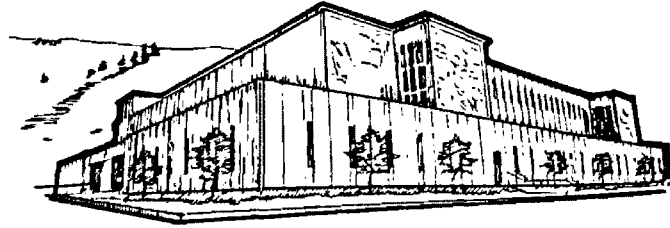
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INTENSIVE SUPERVISION PROBATION: AN ALTERNATIVE TO
INCARCERATION FOR NON-VIOLENT ADULT OFFENDERS

by

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B.A., University of Montana, 1991

Presented in partial fulfillment of the requirements
for the degree of

Master of Public Administration

University of Montana

1993

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Chapter 1

Corrections Models, Sentencing Laws, and Prison Overcrowding

Prison overcrowding has plagued the United States for many years. A wide variety of alternative sentences have been suggested to alleviate the problem including detention centers, boot camps, and intensive probation. Intensive supervision probation is a sentence that allows an offender's prison term to be suspended in favor of strict community supervision for a period of time ranging from six months to two years. This option offers short-run crime protection to the public at a cost that is generally less than 25% of prison. This work evaluates the practice of ISP, and suggests modifications that would heighten its impact on the reduction of prison overcrowding.

First, ISP will be briefly described including the selection process, program requirements, and the key problem of technical violations. Then the problem of prison overcrowding will be documented and discussed, including the debate revolving around sentencing practices at the state and federal level. In the second chapter, the intensive probation programs in Florida, Georgia, New Jersey, Texas, and Missoula, Montana are studied to gauge their impact on prison overcrowding and offender rehabilitation.

Prison overcrowding has become so serious that many states are currently under court-ordered guidelines to limit their prisoner populations (Cole 1992, 29). For example, the incarceration population at the state and federal level has risen 168% since 1980 (Gilliard 1993, 1). If something is not done to reduce incarceration rates, corrections will continue to take a larger and larger portion of many states' funds, thus putting other programs such as education at a disadvantage.

Another troublesome aspect of prison overcrowding is that it often leads to the early release of prisoners. While many of these offenders may not be violent, prison officials are frequently forced to release violent offenders to reach court-ordered population goals (Harris 1991, 492). From a public safety standpoint, it would make more sense to target non-violent offenders for a diversionary program from prison, rather than forcing prison officials to release violent offenders early.

ISP Programs

ISP allows non-violent offenders, who otherwise would be sent to prison, to complete an alternative sentence in the community. This frees up prison space, thus allowing violent offenders to serve a larger portion of their sentence. ISP creates a safer community by keeping violent criminals off the streets for a longer period of time,

since fewer of them will be released early. It also seeks to address offenders' addictions through drug and alcohol treatment (Harland and Rosen 1987, 34).

ISP is an intensive form of probation. It targets non-violent offenders to protect public safety. The process of selecting participants is known as "offender targeting," and is crucial to the success of ISP. It is important that offenders be prison-bound, otherwise the impact on prison overcrowding is reduced considerably. If some offenders, in the absence of ISP, would have been placed on regular probation, a phenomenon known as "net widening," their placement in ISP would not save prison space. At the same time, it is important that offenders selected for ISP be non-violent so that public safety is not jeopardized by their presence in the community.

ISP forces participants to alter their behavior patterns in order to complete the program. Officers have daily contact with offenders in the early stages of the program to ensure compliance with the rules, including prohibition of alcohol use, curfews, and confinement at home when not working or performing some other necessary activity. Most offenders have a drug or alcohol problem, and must undergo treatment. Participation in treatment is recorded by the ISP officer, and failure to comply results in sanctions ranging from a more restrictive curfew to expulsion from the program (Fogg 1988).

ISP ensures public safety by providing electronic surveillance of high-risk offenders. Drug and alcohol testing is also used, and a positive test can result in revocation of probation and a prison sentence. Offenders are screened as often as three times a week, making it difficult to use drugs or alcohol and escape detection. The length of the program may range from six months to two years. Program participants must be employed, and most states require they perform community service as well.

Two key concerns with intensive probation are recidivism (re-offending rate) and technical violations of offenders. The recidivism of offenders, while in ISP, is important since one of the program's major goals is to increase public protection by reducing prison overcrowding so that violent offenders are not released early (Fogg 1988, 14). Secondly, by integrating ISP offenders into the community and avoiding the harmful influence of prison, there is less chance that they will commit future crimes (Harris 1991, 497). Certainly it would jeopardize public support for any ISP program if its participants were committing violent crimes.

Technical violations of offenders are important because they can result in sending offenders to prison. Technical violations are program infractions including drinking alcohol, using illegal drugs, missing curfew, and failing to report to an ISP officer. Since the methods of

supervision are intensive, including minimum twice weekly visits, unannounced night visits, and electronic surveillance, the chances of detecting violations are increased. Hence, the rate of technical violations is high in these programs, and accounts for a high percentage of ISP's failure rate.

ISP is designed to alleviate prison overcrowding, hence it is important to review some key factors that account for much of the overcrowding today. A brief history of corrections models will provide a context in which philosophy of the "get tough" movement can be explained. It is crucial to examine the "get tough" movement, because it continues to have a large impact in the creation of mandatory and determinate sentencing laws in this country. These sentencing laws exacerbate prison overcrowding. Discussion of the evolution of corrections models from the positivistic model to the now pre-eminent punishment model will demonstrate why correctional programs such as ISP must now stress public safety and strictness of program requirements to obtain legislative approval.

Models of Correctional Philosophy

The "get tough" movement is led by conservatives who believe criminals should be held fully accountable for their actions (Walker 1989). Individual responsibility is a key tenet of this philosophy. "Get tough" advocates

support mandatory sentencing and capital punishment. They contend that judges have too much discretion, and that leniency in sentencing has eliminated the deterrent effect of punishment (Bartollas 1985). These conservatives feel that mandatory sentencing is especially important in re-establishing the deterrent effect of punishment.

ISP appeals to "get tough" advocates by emphasizing punishment and surveillance of offenders. While intensive probation certainly holds promise for rehabilitating participants, public opinion regarding the punishment of criminals has dictated a focus on "short-term in-program crime control" (Harland and Rosen 1987, 34). ISP's concentrate on limiting offender recidivism for program duration through surveillance, drug testing, frequent officer contacts, and searches of participants' premises. For example, the Texas ISP program is based on a "sentencing model that emphasizes specific deterrence and incapacitation and places less weight on rehabilitation" (Turner and Petersilia 1992, 39).

During the 1960s, the focus in handling criminal offenders was on diversion from prison with the emphasis on rehabilitation. "Deinstitutionalization" was based on the positivistic model, comprised of the concepts of determinism, individual pathology, and punishment-to-fit-the-offender. Determinism assumes that the offender has no control over the forces that shape

him or her, and therefore the individual is not fully responsible for his or her crimes (Bartollas 1985). Individual pathology assumes that each offender is fundamentally different from the next, and therefore each crime is committed under different motivation and circumstances. Punishment-to-fit-the-offender is based on the consideration of an offender's individual characteristics in selection of punishment.

By the mid 1970s, rehabilitation had fallen out of favor because of public sentiment that criminals were not receiving adequate punishment (Siegel 1992). The classical model, first popular in the 1800s, became favored once again. The classical model is based on the tenets of free will-hedonism and utilitarianism. Additionally, the model asserts that punishment deters crime, and that punishment should fit the crime. Free will-hedonism assumes that man seeks pleasure (hedonism), and that when a person commits a crime he or she makes a rational choice to do so. Utilitarianism is exercised when any policy that provides the greatest good for the greatest number is enacted. Hence, since locking up criminals is said to be advantageous to the public, it represents a utilitarian policy. This model also assumes that the harsher the punishment, the more crime deterred.

Finally, punishment should fit the type of crime committed rather than the offender, for example, capital

punishment would not be acceptable for thievery, while probation would not be right for murder (Siegel 1992). Criminal offenders should be responsible for the crimes committed, despite what individual characteristics he or she may possess, or what social conditions he or she has lived under. ISP holds offenders accountable for their crimes by the restrictive nature of the program.

The punishment model became popular in the late 1970s as conservatives sought to update classical thought for modern times. This model advocates stiffer sentences for criminals, and disavows treatment of offenders as unnecessary and ineffective (Bartollas 1985). It embraces free will and deterrence, and also advocates determinate sentencing (Siegel 1992). Determinate sentencing provides fixed sentences for particular crimes. Those who support the "get tough" movement subscribe to the punishment model.

Mandatory and Determinate Sentencing

Mandatory sentencing usually means mandatory imprisonment for a specified crime. It can also mean a mandatory minimum sentence before the convict is eligible for parole. The present prison overcrowding problem appears to have resulted, not from criminals being sentenced to longer periods of incarceration, but rather in part from more marginal offenders being sent to prison (Walker 1989). For example, a study of mandatory sentencing laws in

Massachusetts, Michigan, and New York, found that the laws can sometimes result in sentencing of marginal offenders in ways considered "unduly harsh" by both prosecuting and defense attorneys (Tonry 1987, 35). It is these marginal offenders who may be candidates for intensive probation. In California, where a determinate sentencing law (DSL) took effect in 1977, there were similar effects resulting from imprisoning marginal offenders. Michael Tonry notes: "Prison use definitely increased after DSL; this increase was accompanied by apparent increasing imprisonment of less serious, marginal offenders" (1987, 80).

However, sentencing laws are not solely to blame for the increased use of incarceration. Judges have been under public pressure to be tougher on criminals (Walker 1989). Unfortunately, this can have a rebound effect, as locking up more offenders forces others out early. Intensive supervision allows judges an option that satisfies the public's desire for punishment, but at the same time can divert non-violent offenders from incarceration. Determinate sentencing laws, though, are often rigidly constructed and may preclude the consideration of alternative sentencing options (Rackmill 1991, 237).

Stephen Rackmill (1991) notes that determinate sentencing reform is a return to the discarded policies of the first half of the nineteenth century. The current "get tough" movement is turning back the clock to a previous

century, and ignoring advances made in the field of penology. It was not until the development of the social sciences that penologists and humanitarians began to see that there was a possible correlation between behavior and social conditions. For example, in 1870, the National Prison Association was formed to advocate indeterminate sentences and parole. The positivist school, emphasizing improvement of prison conditions and rehabilitation of individual offenders, began to receive wide acceptance by the 1920s (Rackmill 1991). By the 1960s, reintegration for offenders was emphasized in the criminal justice system using treatment and offering opportunity in the community (Rackmill 1991).

However, by the mid 1970s, the apparent failure of rehabilitation left the positivist model with little popularity. There was a feeling that sentencing discretion had been abused (Rackmill 1991, 235). As of 1982, thirty-seven states had mandatory sentencing laws requiring that offenders who committed certain offenses receive long prison terms (Rackmill 1991, 239). For example, in Indiana, terms for burglaries doubled under a new determinate sentencing code passed in 1978. Judges there must now send burglars to prison for four years, and they are ineligible for parole (Rackmill 1991, 239). Illinois, which instituted determinate sentencing in 1978, had an incarceration rate of 71 per 100,000 in 1980 (Rackmill

1991, 243). In 1992, its incarceration rate had increased to 267 per 100,000 (Gilliard 1992, 3).

In the ten states that have enacted determinate sentencing, prison populations have increased. While other factors, such as higher arrest rates and a rising United States population also contribute to prison overcrowding, determinate sentencing and increased prosecution of drug offenders have the largest impact (Rackmill 1991, 239). As illustrated below, the prisoner population in states with determinate sentencing increased dramatically from 1980 to 1991:

Table 1

Number of Prisoners in States with Determinate Sentencing

	<u>1980</u>	<u>1991</u>
Maine	519	1,621
New Mexico	925	3,119
Minnesota	1,884	3,472
Connecticut	2,469	10,977
Washington	4,339	9,156
Indiana	6,281	13,008
Illinois	10,451	29,115
North Carolina	14,456	18,899
Florida	19,945	46,533
California	23,264	101,808

(Figures derived from Rackmill 1991, 243, and Snell and Morton 1992, 2).

Eight of these ten states experienced growth of 100% or more in the eleven-year period.

It is interesting to note that the two states that had lower than 100% growth, Minnesota and North Carolina, retained judicial discretion to deviate from statute.

A 1981 ruling of the Minnesota Supreme Court, State v. Wright, allowed "amenability to probation as a legitimate ground for departure" (Rackmill 1991, 239). Thus if an offender is suitable for probation, the judge may deviate from that statute. In a 1982 ruling, State v. Olson, the Minnesota Supreme Court held that "prosecution and judges should have greater flexibility in imposing mandatory minimum sentencing for weapons violations" (Rackmill 1991, 239). Retaining a certain amount of judicial discretion was one factor in putting a damper on increasing corrections populations in these states (Rackmill 1991, 239).

Just as many states have adopted restrictive sentencing guidelines, Congress has acted similarly by passing the Anti-Drug Abuse Act of 1988 which increases penalties for drug offenses, imposes mandatory minimum prison terms, and eliminates probation for all but minor drug offenses. The legislation was meant to increase the number of prosecutions for drug offenses (Rackmill 1991). In 1989, the average prison sentence for persons charged with Federal drug offenses was longer than for all other offenses except violent ones (Timrots 1992, 11). The number of persons convicted of Federal drug violations in 1989 was 15,799 as compared to 5,135 in 1980 (Timrots 1992, 11). The increased emphasis on putting drug offenders behind bars has worsened prison overcrowding.

Given that sentencing reform has found support in Congress, it would be revealing to see, by way of comparison, how legislators from a populous state feel about that and related issues. A survey of state legislators in New York state shows how they have been affected by the public push for law and order. While this study was done in 1985, it reflects the attitudes and priorities that resulted in tougher sentencing laws in the years to come.

This survey found 55% supporting determinate sentencing, with 20% neutral, and 25% opposed (Flanagan 1989, 90). Also, 67% of the legislators favored increasing the capacity of the adult correctional system by 30% to 40%, with 17% neutral, and 18% opposed. This appears to reflect moderate support for the "get tough" philosophy. At the same time, 72% of the state legislators supported greater use of community correctional programs for some adult offenders, with 20% neutral and 7% opposed. Legislators seem to believe that community corrections should be supplementary to incarceration rather than an alternative. Finally, only 23% favored abolishing the parole board, with 28% neutral, and 48% opposed (Flanagan 1989, 90). Abolishing the parole board would be a step in line with the views of "get tough" advocates since it would attempt to ensure that those sent to prison serve out their terms.

Public opinion is the driving force behind legislative action, hence it is important to consider such opinion in the area of criminal justice. A 1986 survey of adult residents in Cincinnati and Columbus, Ohio found a mixture of attitudes regarding strategies to control prison overcrowding. 78% of Cincinnati residents and 85% of Columbus residents opposed shortening sentences to reduce prison overcrowding (Skovron 1988, 157). Yet when asked if they approved of allowing prisoners to earn early release through good behavior and participation in educational and work programs in prison, 80% of Cincinnati residents approved while 70% of Columbus residents approved (Skovron 1988, 157). Evidently, these citizens believe that it is permissible to release prisoners early if they make an effort to better themselves in prison.

When asked whether they supported developing local programs to keep non-violent and first time offenders active and working in the community, 90% of Cincinnati residents and 87% of Columbus residents did so (Skovron 1988, 157). These residents offer support to a program like intensive supervision probation (ISP), although ISP generally takes non-violent offenders with past felony convictions. When asked whether they supported increasing taxes to build more prisons, 57% of Cincinnati residents and 48% of Columbus residents were opposed (Skovron 1988, 157). These residents were clearly split on the issue of paying more

taxes to house prisoners. These citizens recognize the need to keep first-time offenders out of prison in order to save prison space for more hardened criminals. They also want more protection from crime, but are either reluctant to pay for it via more prisons, or do not feel additional prisons will provide that protection. Prison construction seems to offer a remedy to overcrowding in the system, but as will be shown, it often leads to higher rates of incarceration.

Prison Overcrowding and Strategies to Control It

Nationally, \$16 billion was spent on prison construction in the 1980s, yet prisons are far more crowded now than they were a decade ago (Johnson 1993, 55). Certainly, there must be adequate prison space for violent criminals, but this does not require the accelerated prison construction seen today. It does require that non-violent non-career criminals receive a punishment alternative to incarceration. Those who desire more criminals be locked up do not understand that the crime rate is a function of changes in the size and composition of the general population, not the size of the prison population. If every offender convicted of a felony in this country was sentenced to incarceration, the prison population would double within one year to nearly 1.8 million, yet felonies committed after this mass incarceration are estimated to

decline only 15% (Johnson 1993, 55). A more efficient use of correctional resources would be to expand alternatives to incarceration, such as intensive supervision, rather than continuing to sink tax dollars into expensive new prisons.

Morris and Tonry argue that there is a vacuum between prison and regular probation, where more alternative sentences need to be added (1990, 18). Prison is too harsh for many non-violent offenders, while regular probation may be too lenient to exact punishment. Georgia offers a continuum of punishment alternatives, including ISP, diversion centers, detention centers, and boot camps which are all cheaper per offender day than prison. ISP costs were completely recovered in Georgia for fiscal year 1992 through the use of a probation fee which brought in \$9,022,802 (Whitworth 1992, 1). Alternative programs for offenders should be expanded because they are cheaper than prison, but offer significant punishment.

As evidence that prison construction alone is a misguided strategy to curb overcrowding, one need only look at California and Michigan. Both states have responded to the overcrowding with extensive prison construction, yet the overcrowding has continued unabated (Baird 1990). Between 1984 and 1990, California built 15 facilities and added 19,000 beds, with 12,000 more beds on the way at a total cost of \$2.6 billion (Baird 1990, 113). Yet it

has not been nearly enough due to the fact that California's inmate population has grown from 21,235 in 1978 to 109,946 in 1992 (Gilliard 1993, 2). California's crime rate, as measured by crimes reported to police, declined from 7,285 to 6,772 offenses per 100,000 inhabitants from 1982 to 1992. However, the violent crime rate increased from 814 to 1,089 offenses per 100,000 inhabitants from 1982 to 1992 (Webster 1983, 50) and (Sessions 1992, 68). The increase in violent crime, though, does not seem to justify the rate of incarceration seen in California. At the end of 1992, California's prisons were operating at 191% of capacity (Gilliard 1993, 6).

Michigan, meanwhile, increased its corrections spending from \$265 million in 1984 to \$614 million in 1989. Yet despite this increase, Michigan's prisons were operating at 144% of capacity at the end of 1992 (Gilliard 1993, 6). Michigan also has one of the top ten incarceration rates in the country - 414 prisoners per 100,000 residents, and although its prisons held 2½ times the number of offenders in 1992 as they did in 1985, the current violent crime rate is higher than ever (Gilliard 1993, 2) and (Johnson 1993, 55). Similar to California, Michigan's overall reported crime rate has dropped from 6,784 to 6,138 offenses per 100,000 inhabitants from 1982 to 1992, while the violent crime rate during that period has increased from 656 to 803 offenses per 100,000 inhabitants (Webster

1983, 54) and (Sessions 1992, 72). Again, the incarceration of increased numbers of violent offenders does not require massive prison construction, but rather, limited prison construction and judicious use of incarceration.

Overall, the 1992 incarceration rate for the nation was 329 prisoners per 100,000 residents, up dramatically from 1980 when the rate was 123 per 100,000 (Gilliard 1993, 2). The total number of prisoners in state and federal prisons measured 883,593 at the end of 1992, a 170% increase since 1980, when there were 329,821 prisoners in state and federal institutions (Gilliard 1993, 2). 61% of the growth in the prison population from 1974-1990 is due to tougher sentencing laws and increased prosecutions, while 32% is attributed to more arrests stemming from an increase in reported crime, a rising U.S. population, and stronger law enforcement efforts (Watts 1993, 9).

An increased number of offenders being incarcerated during this period presumably meant that more offenses were being committed. In fact, this was not the case. The rate for violent crimes was 35.3 per 1,000 people in 1981, while the rate was 31.7 per 1,000 people in 1990 (Bastian 1992, 1). The robbery rate has remained stable at 6 robberies per 1,000 people since 1984. The female rape rate has declined from 1.5 rapes per 1,000 people in 1984 to 1 rape per 1,000 people in 1990 (Bastian 1992,

1). These statistics are the rates of actual crime occurrences, while the crime rate given for California and Michigan are crimes reported to police. These rates are difficult to comprehend until one considers the increasing number of drug offenders going to prison.

The number of prison commitments for drug offenses grew six fold, from 11,487 in 1981, to 87,859 in 1989 (Snell and Morton 1992, 7). This was at the same time total commitments increased from 149,386 to 297,827. The increase in prisoners admitted for drug offenses accounted for more than half of the growth in the total admissions to state prisons (Snell and Morton 1992, 7). Drug offenders made up 34% of all Federal inmates in 1986, and increased to 58% in 1991 (Timrots 1992, 14). The number of arrests for drug law violations has risen from 468,056 in 1981 to 1,247,763 in 1989 (Snell and Morton 1992, 7). Adding to the fact of more arrests is an increased incarceration rate for drug offenders, leaping from 24 drug offenders admitted to state prisons for every 1,000 adult drug arrests in 1981, to 70 admissions for every 1,000 arrests in 1989 (Snell and Morton 1992, 7). This increased incarceration rate is a reflection of the public's "get tough" attitude having a large impact in state legislatures and Congress.

New Jersey offers another prime example of a state which has seen its corrections population more than triple since 1980. In 1980, New Jersey had 6,000 inmates (Sieh

1989, 41). At the end of 1992, it had 22,653 inmates (Gilliard 1993, 2). Despite adding 2,500 beds to the correctional system in the late 1980s, New Jersey was operating at 150% of capacity at the end of 1992 (Gilliard 1993, 6). Edward Sieh notes that: "Authorities in New Jersey place much of the blame on the mandatory and determinate sentencing schemes" (1989, 44). He also adds that, like New Jersey, the nation is trying to solve societal problems by putting more people in prison (1989, 50).

Overall, 43 of the 50 states were over their prison capacity at the end of 1992, including federal prisons in those states (Gilliard 1993, 6). 14 of the 43 states' prisons were operating at 140% or greater of capacity (Gilliard 1993, 6). Certainly, more populated states face a more daunting task when they have overcrowded prisons than do less populated states. For instance, Ohio and Vermont have similar percentages of prison capacity at 172% and 173% respectively. However, Vermont is slightly less than 500 inmates over capacity, while Ohio is slightly less than 15,000 inmates over capacity (Snell and Morton 1992, 6).

Florida has been well publicized for its prison overcrowding and early release program. Between 1978 and 1987, Florida led all states in increasing prison admissions at 210%. The increase is due primarily to increased drug

enforcement and determinate sentencing guidelines (Harris 1991, 490). As of 1990, drug offenders accounted for over 35% of all prison admissions, as compared to 8% in 1984 (Harris 1991, 490). This substantial increase put pressure on state officials to address prison overcrowding.

Sentencing guidelines in Florida have certainly contributed to the increases in prison admissions. The laws contain a strong presumption in favor of incarceration for even first time and petty offenders (Harris 1991, 491). Furthermore, judges have little flexibility to sentence outside the guidelines. Often, alternative measures for punishment are not an option since the guidelines favor incarceration. The worsening conditions in Florida's prisons, brought on in part by restrictive sentencing guidelines, resulted in a law suit being brought against the state.

Florida has been obliged to take steps against prison overcrowding following a 1980 settlement in the case of Costello v. Wainwright, a federal class action suit that addressed confinement conditions in the Florida prison system (Harris 1991). As a result, two measures have been taken to combat overcrowding: early release credits and accelerated prison construction. Early release credits in Florida include: basic gaintime, incentive gaintime, meritorious gaintime, and provisional release credits. Inmates receive ten days of basic gaintime for each

month of their sentence. This can reduce time served by one-third. Incentive gaintime is granted for above average work and prison adjustment, to a maximum of twenty days a month. Meritorious gaintime may be given to an inmate for an outstanding deed performed. Provisional release credits are used as an early release mechanism to keep prison populations below the capacity set by federal court order (Harris 1991, 492).

Charles Harris (1991) believes that early release credits are ineffective in fighting prison overcrowding in Florida because many offenders return to prison. Harris notes that the number of inmates receiving credits appears to be excessive. For example, 90% of Florida's inmates are eligible for early release credits (Harris 1991, 492). Only those convicted of first degree murder, sex offenses, drug trafficking, or use of a firearm in the commission of a felony are excepted. Hence, average inmates only serve 35% of their sentence (Harris 1991). Harris writes that early release credits are very controversial because almost 67% of all offenders released are re-arrested within three years (1991, 492).

The second strategy used to control prison overcrowding, accelerated prison construction, has not proven successful. Judging by California, there will generally be more prisoners than prison space to accommodate them, regardless of how many prisons are constructed.

Harris notes that fifteen states have attempted to out-build prison admissions by increasing their prison capacity 56%. These states have had a faster growing crime rate over twenty years, than fifteen other states which relied more on alternative forms of punishment and where prison capacity increased by only 4% (1991, 493). Of course, one could argue that the crime rate would have gone up more without the construction, however, there exists little evidence to show that punishment is a deterrent to crime (Walker 1989). Recent research also shows that persons sentenced to prison return to crime more often after release than similar offenders sentenced to alternative forms of punishment (Harris 1991, 493).

Similar to Florida, Texas has experienced serious prison overcrowding in the past two decades (Kelly 1991). In Texas, the 1983 Prison Management Act (PMA) gave responsibility for managing the prison population to the Board of Pardons and Paroles. The PMA capped the prisoner limit at 95% of capacity (Kelly 1991, 602). When the prison population reached that point more good time allowances were utilized, as well as the advancing of parole eligibility in thirty day increments, up to a total of ninety days. The PMA changed the number of inmate releases significantly: in 1980, 7,180 inmates were released with continued supervision; in 1989, 30,102 were released (Kelly 1991, 604).

Another effect of the legislation was to increase the percentage of inmates released at their first parole hearing. In 1983, only 40% of inmates were released after their first parole hearing, but in 1988, almost 80% were released (Kelly 1991, 604). Additionally, the proportion of sentence served declined in the 1980s. In 1980, the average inmate served 37% of his sentence, with the average length of incarceration of 2.39 years. In 1989, the time served was 21% of sentence, with an average length of incarceration of 1.7 years (Kelly 1991, 604).

William Kelly examined data from four successive parolee cohorts, 1984, 1985, 1986, and 1987 in Texas. He found that after two years, 25% of the 1984 and 1985 cohorts were re-incarcerated as compared to 33% of the 1986 and 1987 cohorts (1991, 608). He partially attributed this to a reduced "deterrent effect of punishment" (1991, 606). In other words, the parolees felt the punishment they would receive, if any, was not severe enough to deter them from committing a crime. Of those convicted for sexual assault, only 48% and 35% of the 1986 and 1987 cohorts were in the community after two years. Kelly does indicate, however, that the percentage of violent offenders re-incarcerated after two years held nearly constant at between 35% and 40% for the four cohorts, which casts some doubt on the reduced deterrence theory (1991, 615).

While reduced deterrence may play a small role in exacerbating prison overcrowding, a survey of correctional officials in all fifty states points to other factors as more significant. The officials believe that a public desire for law and order has contributed to prison overcrowding (Holbert 1989). 84% of the officials said this desire was extremely or very significant. Other important factors include longer minimum prison sentences, less willingness to grant parole, and mandatory sentences (Holbert 1989). Legislators are said to have contributed to the problem by not providing enough community sentencing programs to serve as alternatives to incarceration. Judges are also blamed: "Judges have further contributed to the problem by incarcerating too many offenders who are not dangerous enough to merit incarceration" (Holbert 1989, 27). Both legislatures and the courts have been affected by a public desire for more stringent law and order.

Overview of Work

Prison overcrowding is a serious problem facing much of the United States today. Forty-three of the fifty states had overcrowded prisons at the end of 1992. However, the crime rate has remained stable, and actually declined for violent offenses in the last decade. Mandatory and determinate sentencing schemes, as well as an increased emphasis on prosecuting drug offenders, has led to the

crisis faced today. In response to the public's call for law and order, the criminal justice system has needlessly incarcerated more marginal non-violent offenders, thereby worsening prison overcrowding. One of the answers to the overcrowding dilemma is to have more community-based options, including intensive probation, to keep marginal offenders from the harmful influence of prison.

The following chapter includes a review of intensive probation programs in Florida, Georgia, New Jersey, Texas (including intensive parole), and Missoula. The selection process for participants is discussed extensively in the Missoula section, because it is key to both reducing prison overcrowding and protecting public safety. Key concerns in all of these programs are "net widening," recidivism, and technical violations of offenders in ISP. Differences in the way offenders are selected for ISP are considered. The goal of this study is to identify what these programs are accomplishing and how they can be improved. The recommendations offered in the final chapter are useful not only to the states in this study, but also to states which wish to establish intensive probation programs.

Chapter 2

ISP Programs: Issues of Recidivism, Technical Violations and Rehabilitation

Intensive supervision probation (ISP) is an intermediate sanction between regular probation and prison intended to divert non-violent offenders from incarceration, thus reducing prison overcrowding in the system. Key to this reduction in prison overcrowding is the issue of offender targeting. Two other important issues to be examined include recidivism (re-offending rate) and technical violations of offenders. The purpose of case studies in Florida, Georgia, New Jersey, Texas (including intensive parole), and Missoula is to gauge their experience regarding these key issues. Information was gathered through a review of the literature and by obtaining ISP documents from the states being evaluated.

These states were selected because they include the oldest ISP program (Georgia), the largest ISP program (Florida), one that includes a period of incarceration (New Jersey), one with intensive parole (Texas), and one of local interest (Missoula). Georgia's ISP allows one to review the experience of the most studied program in the nation, while Florida's program shows how ISP works on a large scale. New Jersey's ISP provides a contrast in selection process of offenders. Texas demonstrates how parolees respond to intensive supervision.

Florida's Community Control Program

Florida has one of the top ten incarceration rates in the nation - 348 per 100,000 people in 1992 (Gilliard 1993, 2). In addition to prison construction and early release credits for prisoners, Florida has adopted the Community Control Program (FCCP) to combat prison overcrowding. FCCP is the largest intensive supervision program in the country (Baird 1990, 112).

FCCP, like many intensive supervision programs, is designed for offenders who normally would go to prison. Its two major goals are reduction of prison overcrowding and the assurance of public protection (Baird 1990, 112). It is crucial that most offenders taken into the program be prison-bound, otherwise the impact on prison overcrowding is lessened considerably. It is also important that offenders selected have a non-violent history, otherwise public protection is put in jeopardy.

Florida adopted sentencing guidelines that are supposed to ensure these considerations are met. These guidelines take into account the primary offense by degree of seriousness and number of criminal counts one is charged with, and additional offenses by degree and number of counts. Also factored are prior convictions by degree and number of counts, legal status at time of offense (probation, parole), and extent of physical injury to the victim(s). A total score adding these items is calculated,

and this number indicates both a sentence type and length to the judge. For example, sentence to community control or to a 12 - 30 month prison term is suggested for offenders whose score falls within a certain range (Baird 1990, 114).

A key to maintaining intensity of supervision in any ISP program is to have a low number of cases per officer. For example, the Florida program limits the caseload to twenty per officer (Baird 1990, 114). This is in comparison to caseloads that can range into the hundreds in regular probation (Petersilia 1990, 93). It is simply much easier to maintain contacts and supervision with lower caseloads. However, the greater intensity of supervision also means that it is more likely that officers will find offenders in violation of the rules. Twenty-eight case contacts between offender and probation officer are required every month (Baird 1990, 115).

Florida's ISP is classified as a house arrest program. Offenders must stay at home when not at work, performing community service, grocery shopping or taking care of some other necessity. Some of the offenders are electronically monitored depending on their risk to the community. Additionally, offenders must pay restitution to victims and a service fee for the program (Baird 1990, 115).

Crucial to the success of any ISP program is offender targeting. Florida's sentencing guidelines, instituted in 1983, recommended incarceration much more frequently

than did previous sentencing practices (Baird 1990, 116). This means that many of the offenders that FCCP is diverting from prison would not have gone to prison prior to the sentencing guidelines. An example of this can be seen in the percentages of offenders going to prison or community control by offense type. In 1981, before the sentencing guidelines or FCCP, 18.9% of those convicted of theft, and 12.9% of those convicted of drug offenses, were incarcerated. In 1987, 34.8% of those convicted of theft and 33% of those convicted of drug offenses were either incarcerated or sent to FCCP (Baird 1990, 119).

While the sentencing guidelines expand the group of offenders recommended for incarceration or FCCP, judges sent substantial numbers of offenders to FCCP when the guidelines did not call for it (Baird 1990, 119). This creates a previously mentioned phenomenon, net widening, whereby offenders are sent to FCCP who in the absence of it would be placed on probation. This may be unavoidable to some extent, since judges may wish to impose additional punishment on these offenders, wherein the past they were unable to. From a public safety perspective, these cases pose less of a threat than those diverted from prison. From a cost perspective, net widening is not entirely negative because some of the individuals would have been sent to county jail which is more expensive than FCCP (Baird 1993, 5).

Recidivism of offenders in FCCP is an important consideration in evaluating program results. In a study that checked offenders' status at eighteen months following entry into FCCP, it was found that 19.7% of them had committed new offenses. In comparison, a group with a similar offense history, had a 24.3% new offense rate after eighteen months following release from prison (Baird 1993, 5). Also, judges sentenced FCCP offenders to considerably shorter sentences for their offenses (33.1 months) than the prison group (40.8 months) (Baird 1993, 5). This would indicate that FCCP offenders are committing less serious crimes than their prison counterparts.

Technical violations are another key variable in determining whether an ISP program is successful. As discussed earlier, technical violations are program infractions committed by offenders. If a program does not have sanctions other than revoking probation for violations, considerable numbers of offenders will be sent to prison. FCCP has a technical violation rate of 9.7%.

Most of the technical violators were sent to prison (Baird 1993, 4). This does reduce the cost savings of FCCP, but even when both technical violations and recidivism are considered, Florida is still spending less money on corrections than it would in the absence of the program (Baird 1993, 5).

Christopher Baird found that FCCP was most effective with drug offenders (1993, 4). This is a notable finding, since increased prosecution of drug offenders is one of the primary causes of the prison overcrowding in this nation. Baird found that only 11% of the drug offenders in FCCP had been convicted of new offenses at the eighteen month follow-up, while 27% of similar offenders having served time in prison for their offenses were convicted of new ones during that time (1993, 4). FCCP is beneficial to drug offenders because it makes it difficult to use drugs and avoid detection. If they are able to "stay clean" for the program duration, this may give them the incentive to do so afterward. Intensive involvement in drug treatment during ISP has shown to decrease recidivism 10% to 20% (Petersilia and Turner 1993, 8). Also, a study in Ohio comparing alcoholic ISP offenders in treatment to a similar group of non-alcoholic offenders under regular probation showed that after three years, 8% of the alcoholic group had a felony arrest compared to 13% of the non-alcoholic group (Latessa and Goodman 1989, 40).

In the 1990s, FCCP averaged 10,000 admissions a year. Of these, 54% were diversions from prison, 32% from jail or probation, and 14% from probation (Baird 1993, 5). Figuring in the losses from recidivism and technical violations, FCCP still saves the state \$274,654 for every 100 offenders sentenced to the program. While FCCP is

more expensive than probation, \$6.49 compared to \$2.19 per day per offender, it is much cheaper than either jail, (\$19.52), or prison, (\$39.05) (Baird 1993, 5). Despite the fact that considerable net widening does occur with FCCP, it still provides a net savings to Florida.

Georgia's ISP

Georgia also has one of the top ten incarceration rates in the nation at 366 per 100,000 in 1992 (Gilliard 1993, 2). However, Georgia has made progress in stabilizing its incarceration rate which led the nation in 1981 (Erwin 1990, 61). A key reason for this is Georgia's intensive supervision program, which along with diversion centers, detention centers, and boot camps, provide a wide array of sentencing alternatives to prison (Whitworth 1992). The program seeks to divert non-violent, yet serious, offenders from prison while providing community protection through a high level of supervision. In its first three years of operation, Georgia's ISP reduced the percentage of felons sentenced to prison from 37% to 27% (Fogg 1988, 17).

Georgia's ISP limits caseloads to 25 offenders monitored by two officers or 40 offenders monitored by three officers (Erwin 1990, 62). This allows for close supervision of the participants. When there are two officers, one seeks to rehabilitate the offender through

counseling and arrangement of treatment and also maintains contact with the court, while the other is a surveillance officer who makes home checks and arrest checks. With the alternative team of three officers, one is a rehabilitation worker, and the other two are surveillance officers (Erwin 1990, 62).

The requirements of Georgia's ISP system are similar to that of other intensive supervision programs. Offenders must have five contacts a week with their ISP officer during the early stages of the program. Participants are not allowed to leave their homes except for work, community service, or other necessities, such as grocery shopping. Curfews have been enforced since 1987 with electronic monitoring. ISP officers verify that each offender is employed. Offenders must submit to unscheduled drug screening and alcohol breath tests (Erwin 1990, 62). Local arrest records are checked weekly, while statewide notification of arrests is available through the State Crime Information Network (Fogg 1988, 17).

The surveillance officers carry a variety of equipment into the field: including walkie-talkies to provide back-up capability, breathalizers, portable EMIT urine testing machines, and Roche urinalysis kits. Surveillance officers are drawn from law enforcement or correctional officer backgrounds. These officers serve a police function, while rehabilitation is left to probation

officers. The division of labor works well with the Georgia program (Fogg 1988, 17).

Georgia's electronic monitoring began as a pilot study in October of 1987. One caseload in Atlanta used an electronic device that handled curfews by voice verification and also provided a breath/alcohol test through the same mouthpiece (Erwin 1990, 65). A caseload in Macon used electronic ankle bracelets, while a third group in Waycross used only human surveillance and received an additional drug/alcohol counselor to work with them. Billie Erwin found that officer and offender did become "accustomed to the device, and personal communication did occur" (1990, 65). However, she felt that the time used for monitoring the equipment, repairs, and dealing with false tamper messages was extensive and might have been better used in personal supervision (1990, 65).

There was some concern among officers that they were becoming captivated with the technology. One probation officer felt that an "image of high adventure seems to have developed, and the staff may be feeding on this need for excitement in their work" (Erwin 1990, 66). This indicates that the staff may be more interested in the equipment than in personally dealing with offenders. Cognizant that electronic monitoring might dehumanize the program, the number of personal contacts between officer and offender has not been reduced. Any violation with

the equipment, such as an absence from the home or a disabled equipment message, is verified by a face-to-face visit. By maintaining the level of personal contact that existed prior to electronic monitoring, Georgia's ISP has "reaffirmed its emphasis on human interaction and rehabilitative goals" (Erwin 1990, 66).

The ankle bracelet used had been well tested in the past, and thus presented few equipment problems. In contrast, the device used for voice verification and an alcohol/breath test was fairly new and not very reliable (Erwin 1990, 67). The alcohol/breath test results were unreliable (Erwin 1990, 67). Both Macon and Atlanta had difficulties with false tamper messages, i.e., the equipment signaling that it has been altered in some way, when this was not the case. This problem took extra staff time to correct (Erwin 1990, 67).

Overall, ISP staff were not overly impressed with the use of electronic monitoring. They felt it did not enhance supervision achieved by home visits (Erwin 1990, 67). The officers felt that the people at the central computer service did not always provide prompt notification of offender violations. They suggested placement of a central monitor at a residential facility, monitored by agency staff on a 24 hour basis (Erwin 1990, 67). Since surveillance officers carry alcohol sensors, which are more reliable than the alcohol testing used in electronic

monitoring, it was believed that the breath test part of electronic monitoring was not needed (Erwin 1990, 68).

Georgia's ISP also conducted a pilot study on the increased frequency of drug testing. A drug laboratory was established at the three sites, Macon, Atlanta, and Waycross for fast processing of urine samples. Of those offenders required to give samples three times a week in 1988, 23 (15%) were revoked to prison, most due to cocaine use (Erwin 1990, 69). Erwin writes that the increased testing is necessary to stop drug usage before it leads to more serious crime. This is especially true now that the trend is towards greater use of cocaine, rather than marijuana (Erwin 1990, 70).

Erwin also found that demand for drug treatment exceeded available services. She notes: "In all sites, it was clear that the levels of need found in many cases were not matched by available treatment slots for specialized treatment either on an inpatient or outpatient basis" (1990, 70). The problem was worst in Atlanta, where out of fifteen cases needing specialized treatment, only two slots were available at any given time. More intensive treatment is needed. While drug use is reduced during ISP, many offenders return to drugs after the program is over (Erwin 1990, 71).

Information on recidivism and technical violations indicate that during three years of program operation 1982

- 1985, 16% of offenders had their probation revoked, and were subsequently sent to prison (Erwin 1990, 63). A 1989 follow-up showed that 36% of original ISP participants were in prison, while 42% of a similar prison cohort were in prison after five years (Erwin 1990, 64). During fiscal year 1992, 16% of offenders had their probation revoked, showing a continued emphasis on graduating offenders, rather than revoking probation for program violations (Whitworth 1992, 6). Minor offenses, such as drug possession, were numerous with ISP participants but serious offenses, such as rape or robbery, were rare (Fogg 1988, 19). While these figures do not reflect great potential for long-term rehabilitation, they do show that ISP is slightly more successful than prison at preventing future crime, and at a much cheaper cost, \$4.07 compared to \$45.33 per offender day in 1992 (Whitworth 1992, 1).

New Jersey's ISP

New Jersey, like Georgia and Florida, has had difficulty keeping up with rising prisoner population levels. At the end of 1992, New Jersey's prisons were nearly 8,000 prisoners over capacity (Gilliard 1993, 6). On the bright side, New Jersey was one of only five states with a declining prisoner population in 1992, down about 800 prisoners from the previous year (Gilliard 1993, 2). New Jersey also utilizes an ISP program to limit prison

overcrowding. New Jersey's ISP is different from the others discussed in that it takes offenders after they have served three to four months of their prison term (Pearson and Harper 1990, 75). Technically, this ensures that all offenders are diverted from prison, rather than from probation, although it is difficult to estimate how many criminals are sent to prison who might not have been in the absence of the ISP escape valve. Once in the community, ISP participants are subject to a variety of restrictive conditions.

ISP is meant to serve as "a prison without walls in the community" (Pearson and Harper 1990, 76). The supervision is intense enough to seem prison-like, and also to exact a level of punishment stiffer than regular probation (Pearson and Harper 1990, 76). Conditions imposed on offenders in New Jersey's ISP include fines, curfews, and community service work. They must also be employed and participate in treatment programs such as Alcoholics Anonymous or Narcotics Anonymous. Other counseling is provided by professional group therapists (Pearson and Harper 1990, 76). Offenders are contacted once a day, either in person or by phone, by their ISP officer for the first six months of the eighteen month program (Pearson and Harper 1990, 77).

ISP clients are primarily non-violent felons. The majority were either drug offenders (72%)

or property offenders (19%) (Lipscher 1993, 11). This would indicate that the program is accomplishing one of the goals of offender targeting - to select offenders who would not be a high risk to the community. An average officer's caseload was 16, which allows for the intensity of supervision needed in such a program (Pearson and Harper 1990, 77).

It is not surprising that New Jersey's program is able to exclude violent felons, since they only accept 17% of the prisoners who apply. Applicants are tested for "motivation and suitability." The selection process includes a screening board and a three judge panel. If the board approves of a candidate, then the judges' panel must subsequently do so for the applicant to be accepted. Due to the tough screening process, it took over a year (1983-84) for the program to reach full caseloads (Fogg 1988, 20).

Technical violations pose a problem for New Jersey's ISP, as they did for Georgia and Florida. Of the offenders going through the program from 1984-88, 23% were returned to prison for technical violations (Fogg 1989, 16). The violations were typically positive drug tests. Frequent drug testing makes it likely that ISP uncovers minor violations that would go undetected under regular probation (Pearson and Harper 1990, 78).

The recidivism figures show that 8% of the offenders were arrested between 1983 and 1988. Slightly more than half of these were felonies, while the rest were misdemeanors (Fogg 1989, 16). Less than 10% of the crimes involved violence (Pearson and Harper 1990, 80). From a public protection standpoint, these rates are quite acceptable (Pearson and Harper 1990, 80). The recidivism rate of 8% is low when compared to Florida's 19.7% rate. Some of the difference can be attributed to New Jersey's strict selection standards. New Jersey's offenders primarily have drug convictions (72%) and property convictions (20%), while Florida's offenders have property convictions (49%) and drug convictions (20%), they also have violent convictions (27%), including rape and robbery (Lipscher 1993, 10) and (Baird 1993, 3).

When comparing an ISP sample of 500 offenders to a prison comparison group of 500 offenders, 12% of the ISP group had an arrest that led to a conviction after two years, while 23% of the prison comparison group did (Pearson and Harper 1990, 79). This is another indication that New Jersey's ISP reduces offender recidivism, both during and after the program. An additional comparison between the ISP and the prison group shows that the ISP group completed a median of 109 days in prison, while the prison group served a median of 308 days (Pearson and Harper 1990, 81). In 1986, 311 offenders entered ISP, and this

ultimately saved 62,000 days of prison time (Pearson and Harper 1990, 82). That is a cost savings of \$7,000 to \$8,000 per offender (Pearson and Harper 1990, 83).

Texas' Intensive Probation and Parole Programs

Similar to the other states discussed in this survey, Texas has grappled with prison overcrowding in the last decade. Between 1981 and 1990, its prison population rose from 30,000 to 49,000 inmates (Turner and Petersilia 1992, 35). Since 1990, the prison population has risen to 61,178 inmates (Gilliard 1993, 2). Texas has been under federal court order since the 1981 decision Ruiz v. Estelle to limit overcrowding in its prisons (Turner and Petersilia 1992, 35). Consequently, prisoners have been serving shorter sentences, an average of 1.7 years in 1989 compared to 2.39 years in 1980 (Kelly 1991, 604). To combat overcrowding, Texas has established the Intensive Supervision Probation and the Intensive Supervision Parole programs.

The intensive probation program is designed to divert non-violent offenders from prison, thereby releasing space to keep dangerous offenders for a longer period. Offenders are primarily taken from two sources: probation revocations and direct sentences (Fogg 1988, 19). Selection criteria include one or more of the following: one or more commitments to prison or jail, one or more convictions,

documentable chronic unemployment problems, alcohol or drug dependency problem, limited mental capacity problem, and seriousness of current offense (Fogg 1988, 19). A direct sentence to ISP requires a signed statement by the sentencing judge that the offender would have been sent to prison had it not been for ISP's availability (Fogg 1988, 19).

In 1992, 56% of offenders in Texas' ISP were from court order and 27% from probation revocation hearings (Pope 1992, 1). A study done to determine whether ISP was diverting substantial numbers from prison found the offender profiles of ISP participants and those of probation-eligible prisoners to be quite similar (Fogg 1988, 20). Thus, ISP is doing a good job diverting offenders from prison, and a pool of probation-eligible offenders is available supporting program expansion.

The Texas Intensive Supervision Parole program is an experiment designed to reduce the recidivism of problem parolees, thereby saving prison space. In the late 1980s, about 20% of incoming inmates were parole revocations (Turner and Petersilia 1992, 36). This program utilizes intensive supervision under different conditions because the offenders are convicted of more serious offenses than those on intensive probation. The program is also meant to serve as an intermediate sanction between parole and prison (Turner and Petersilia 1992, 37).

The program identifies parolees who have the highest chance of returning to prison if left on regular parole. The Texas Board of Pardons and Paroles target those offenders who are currently problem parolees and have a serious prior criminal record (Turner and Petersilia 1992, 37). Two other measures are used to identify appropriate participants: a salient factor score indicating high risk at release from prison, and a reassessment score six months after release indicating high probability of recidivism. Parolees with less than six months left on parole are excluded from consideration because the ISP program runs 9 - 12 months (Turner and Petersilia 1992, 38).

The program requires ten contacts per month between officer and parolee. Offenders must work or attend school full time (Turner and Petersilia 1992, 39). In addition, there may be drug tests at officer discretion. Technical violations, such as drug use and missing curfew, are normally met with intermediate sanctions such as house arrest and electronic monitoring, rather than parole revocation. The use of intermediate sanctions was thought to be crucial "in saving expensive prison beds for the truly dangerous" (Turner and Petersilia 1992, 36).

The most common crime of conviction for Texas intensive parole offenders was burglary - 46% in the Dallas group and 32% in the Houston group. Theft/forgery followed with 21% in the Dallas group and 26% in the Houston group (Turner

and Petersilia 1992, 43). 85% of the participants at both sites had served at least two prison terms, had 8-9 prior arrests, and 6-8 prior convictions (Turner and Petersilia 1992, 42). The average ISP offender was sentenced in 1985-86 to serve a 10 year prison term, and was released 22 months into the sentence. The average participant had been on parole 11 months when assigned to ISP. While these offenders have serious criminal profiles, most were not violent, only 14% of Dallas participants were convicted of robbery and 4% of homicide, rape, or kidnapping, while 8% of Houston participants were convicted of robbery and 4% of homicide, rape, or kidnapping (Turner and Petersilia 1992, 42-43).

The program operated more leniently in Dallas as compared to Houston. In Dallas, the contacts between offender and officer only averaged 5 per month (10 were planned). In Houston, there was an average of 6.5 contacts per month (Turner and Petersilia 1992, 44). In Dallas, only 4% of offenders received counseling, while 55% received it in Houston. Only 3% of offenders participated in work training in Dallas, but 20% did so in Houston. 61% of Houston offenders were employed, but only 37% were in Dallas (Turner and Petersilia 1992, 45). The program was clearly more intensive in Houston than in Dallas.

One apparent consequence of this is that 80% of offenders in Houston had a technical violation, while only

20% did in Dallas. Some of this difference can be attributed to the fact that 85% of offenders in Houston were tested at least once for drugs, but only 37% were tested in Dallas (Turner and Petersilia 1992, 47). Also, 33% of Houston offenders were cited for no employment, while less than 1% were in Dallas (Turner and Petersilia 1992, 47). Fewer than 10% of routine parolees in Dallas or Houston were tested for drugs, hence few tested positive (Turner and Petersilia 1992, 47).

When compared with routine parolees, ISP offenders had a similar rearrest rate of about 35%. Approximately 30% of ISP offenders subsequently did prison time, compared to 20% of routine parolees. The difference is due to the fact that ISP offenders had more serious criminal profiles than routine parolees (Turner and Petersilia 1992, 47). Also, almost half of the 35% going to prison from the Houston sample were for technical violations (Turner and Petersilia 1992, 49). This was despite incarceration being imposed for only 11% of technical violations in Houston (Turner and Petersilia 1992, 52). Texas had hoped to save money with intensive parole through reduced imprisonment costs. Unfortunately, with the reincarceration costs factored, intensive parole costs 1.7 times the amount of routine parole per offender (Turner and Petersilia 1992, 52).

Montana Intensive Probation and Parole Program

There are a variety of ways that an offender can be admitted into Missoula's ISP. Most are referred to the program by Missoula District Court. This involves a postponement of sentencing to see if the offender is appropriate for community supervision, and hence acceptable for Missoula's ISP. The screening process generally takes about two weeks. The screening committee includes Mike McCarty and Jan Ullam, Missoula ISP Officers, and a captain from the Missoula County Sheriff's Department and the Missoula Police Department.

The committee looks at the record of the offender, and is likely to reject those with a history of violence. Most, though, are granted an interview. At this point, the offender is made aware of the conditions of ISP and what would be expected of him during the program. Also discussed are his or her past crimes and/or violation/s of probation. It is made clear that any further digressions will land the violator in prison, and may make being paroled less likely at the first parole hearing.

The interview is conducted by ISP personnel, and is not attended by outside screening committee members of the Sheriff's and Police Departments. Outside members do not have time to attend interviews, but are appraised of the situation by reading the file, after which they cast a vote to approve or deny each offender. While there

are four members of the committee, it takes only two approval votes for an offender to be granted admission. If the offender receives one vote or less, a document detailing the reasons why the candidate was rejected is sent to the court.

Reasons for rejecting a candidate are varied, for example, a history of violence, or if the offender is not deemed capable of living independently, the committee may feel he would be better off living in a halfway house or pre-release center. In such cases, offenders go to prison and are usually recommended for release to such a facility after thirty days. Generally ISP personnel prefer to admit people convicted of property crimes, such as burglary or auto theft, rather than felons convicted of crimes against other people such as rape or robbery.

The chance that failing in ISP may later jeopardize parole leads some offenders to choose to go to prison rather than attempt a 9-month stint in ISP. They are concerned that they will be unable to avoid alcohol and/or illegal drugs while under community supervision - two of the conditions of ISP. Others are afraid that if they fail ISP, they may be sentenced to a longer stay in prison than he/she would have originally. The typical criminal referred to ISP by the Court is a probation violator, and if he or she cannot avoid violations under regular probation, he may be afraid to tackle ISP which has more stringent

conditions. The hesitancy of some offenders to join ISP demonstrates that the costs for violating the conditions of ISP may be too high (Interview with Jan Ullam, June 3, 1993).

Regular probation typically involves one contact per month or less between the probation officer and the offender compared to twice-weekly contacts with Missoula's ISP. Also, there is no electronic surveillance of the offender on regular probation as there is on ISP. These factors may discourage offenders from participating in ISP. Although the clients get to live in the community, their freedom and privacy is restricted in such a way that some may feel it is not worth it.

Another factor that may come into play regarding whether to accept or reject ISP status is the "good time" credits given at the Montana State Prison in Deer Lodge. These credits may cut an offender's sentence in half. This may influence an offender to go to prison and complete his sentence, rather than risk failing ISP and possibly get a longer term.

If an offender is approved for ISP, a memorandum is sent to the court listing the conditions of release to the program. Occasionally, the judge may go ahead and send the criminal to prison. Typically, though, the judge follows the committee's recommendations. This is especially true when all four members of the committee recommend

admission. The judge would be more likely to send the offender to prison if only two members approved of ISP selection, although such a move would still be an exception rather than the rule.

Another means by which offenders are referred to ISP is through the Board of Pardons. The Board of Pardons may choose to parole an inmate only to ISP due to the need for additional supervision before release. These offenders tend to have a more violent history than those referred by the court. This is also why the Board of Pardons will grant them only a conditional release.

In such cases, ISP representatives interview the inmate to see if he is amenable to the conditions of ISP, and to gauge his attitude in general. They will review the inmate's prison file to assess his prison behavior. The ISP officers in turn forward the file to the other committee members in the Sheriff's and Police Departments. If the committee approves, ISP will receive the offender fairly quickly since the Board of Pardons has already decided that ISP is the only appropriate placement for the parolee. If they disapprove, the inmate will continue to serve his sentence until he is once again eligible for parole.

Offenders may also be referred to ISP through the Department of Corrections (DOC). Due to a 1993 statute in the Montana Code Annotated, judges can now sentence

offenders directly to the DOC. At that point, the offender becomes an inmate in custody of the State. The judge leaves the appropriate placement of the offender to the Department of Corrections. The DOC supervisor for western Montana decides whether to send the inmate to a pre-release center, ISP, prison, or the boot camp at Swan River. The screening committee is not involved under this option.

Community support, essential for the program, could be jeopardized if more violent criminals are taken by ISP through the Department of Corrections. People must feel that their safety concerns are taken into consideration by such a program. Unfortunately, the DOC regional supervisor may have little choice but to send violent offenders to ISP because of the overcrowded conditions at the Montana State Prison. This issue is addressed by offender targeting. Offender targeting seeks to identify an appropriate population for an ISP program. The key is to secure a prison-bound population, while not diverting a high-risk group into the community. There must be assurance that judges are not sending people that would otherwise go to probation, to intensive probation (net widening). This must be discouraged because intensive probation is more expensive than regular probation, and thus undermines the cost savings from prison diversions.

Up to this point, Missoula's ISP program has done a good job with offender targeting. Most offenders were

probation-violators. This ensures that there was little possibility they would be put back on regular probation, hence little net widening. Ullam also noted that these offenders would almost certainly be sent to prison were it not for ISP thus most participants in the program are diverted from prison. Missoula's ISP may have a future problem with diverting too many violent offenders due to the DOC sentencing option, but it remains to be seen what danger these participants will pose.

Since Missoula's ISP acquires most of their offenders from a prison-bound population, it is reducing prison overcrowding. Even so, ISP alone, under current funding and staffing levels, cannot solve prison overcrowding because of the intensive nature of the program. Due to the increased contact between ISP officer and offender, only ten offenders are assigned to each officer. Currently there are only two officers in Missoula. While the caseloads allow for close supervision, they do not allow for large scale diversion without considerable expansion of the program. Jan Ullam believes, though, that every bed that is freed up at the prison, no matter for how long, keeps a dangerous offender behind bars rather than on the street. While this is true, the impact of ISP on keeping violent offenders behind bars will be greater once the population is brought down at the Montana State Prison. Prison officials say they want to reduce the number of

inmates from 1,250 to 850 (Interview with Jan Ullam, June 3, 1993).

ISP Offender Conditions

ISP conditions of participation differ significantly from those of regular probation. The primary difference between regular and intensive probation lies in the number of contacts between probation officer and client. A regular probation officer in Missoula can have between seventy and eighty offenders to supervise. While these clients are supposed to be seen once a month, it can be several months between visits. An ISP officer has only ten offenders to supervise, greatly decreasing the number of missed visits. The offender must come in once a week to see his ISP officer, while the officer visits him once a week in his home. ISP also requires a specific address for the client to allow home visits, and approval must be gained from the ISP officer before changing addresses. Offenders on ISP are also prohibited from leaving the county. Offenders on regular probation can leave Missoula County with a travel pass (State of Montana 1993, 1).

Offenders are not notified of officer visits. Also, the officer may collect a urine sample from the offender. This is in addition to urine samples given every week in the probation office. This makes it very difficult for the offender to avoid detection of drug use. In Missoula's

ISP, one positive test means revocation of probation, and usually a prison sentence. This policy is followed in Florida, but not New Jersey, Georgia, or Texas. Its purpose is to demonstrate that these programs are committed to public safety in the belief that technical violations may lead to criminal activity.

ISP offenders must also wear electronic surveillance equipment - a wristlet containing a square removable plastic piece which fits into a verifier box that connects to a phone like an answering machine. Offenders are called by a computer to confirm that they are at home. They must plug the plastic piece into the verifier box and give their name and time of day, or the computer will record their absence. The ISP staff chooses the time frame in which offenders will be called, usually 6 p.m. to 12 a.m. or 12 a.m. to 6 a.m. The computer randomly selects two times within that period to call.

Participants must wear the equipment for the first ninety days of the program. If they miss a phone call, they are reported off-schedule - a violation of the program. Unless there is a problem with the equipment, offenders can go to county jail until a determination is made regarding their status in the program. At that time, their probation may be revoked, and if so they likely would be sentenced to prison.

Most ISP programs take advantage of electronic monitoring to varying degrees. New Jersey uses it for high-risk clients for periods not to exceed sixty days (Fogg 1989). Florida also utilizes electronic monitoring for selected participants (Baird 1990). Georgia uses it for curfew compliance (Erwin 1990). Electronic monitoring is a form of punishment which may be lifted as offenders demonstrate their ability to be trusted.

Missoula participants must submit a activity schedule to their ISP officer every week. Offenders are kept on a tight schedule. Every hour must be accounted for. For the most part, they must be at work, at home, at an Alcoholics Anonymous or Narcotics Anonymous meeting, community service, or other types of counseling. After a month in the program, participants are given six hours of free time a week for recreational activity e.g., to go to a movie or out to eat. Offenders are granted three hours of exercise time per week.

Seventy hours of community service is required. Community service is meant to instill a sense of civic duty in the offenders. While this may be unrealistic, due to the criminal background of offenders, at least community service occupies much of their free time, thus keeping them out of trouble. All ISP programs utilize community service as a key aspect of the punishment scheme. It reinforces the idea that there are consequences for

unlawful actions, even in community programs. Community service may also be used to punish program violators.

Other conditions of ISP include the prohibition of ownership of firearms or other deadly weapons. A client must obtain permission from his ISP officer before financing a vehicle, purchasing property, or engaging in any other business. An offender, upon reasonable cause, must submit to a search of person, vehicle, or residence by an ISP officer at any time without a warrant. Finally, a participant must not use or possess alcohol or enter any establishment where alcohol is the chief item of sale (State of Montana 1993, 1).

Evaluation of ISP in Montana

In the most recent evaluation of the program done in 1991, 65% of offenders had completed the program. The failures either had a technical violation or had committed a misdemeanor. No offender has committed a felony while in the program up to the time of this interview. This certainly spells success in terms of protecting the public. Jan Ullam's main concern for the future was that the program would be receiving more violent offenders. One way she thought this would occur is through the Department of Corrections sentencing option. Criminals sentenced directly to the Department of Corrections have a more serious offense background, than those sentenced to ISP. The pre-release

centers are full and have long waiting lists, which means ISP could get violent offenders paroled from prison. ISP can refuse these offenders, but Jan Ullam noted that they are under "great pressure" to accept them. To this point, the program has worked well in terms of targeting certain offenders for diversion from prison without endangering the public.

Comparative Analysis

In evaluating ISP programs, the key items to consider are the percentage of offenders diverted from prison, the level of public protection offered, and the percentage returned to prison either for new crimes committed or technical violations. Ideally, an ISP program would like to divert a high percentage of its offenders from prison, and return a low percentage of its participants to prison in order to have the maximum effect on overcrowding. Florida diverts 54% of its offenders from prison at a savings of \$297,324 per 100 offenders. 32% of its participants are diverted from either jail or probation at a savings of \$17,664 per 100 offenders. 14% diverted strictly from probation add \$40,000 a year per 100 offenders. Overall, Florida saves a net \$274,654 for every 100 ISP participants including the cost of re-incarcerating technical violators (Baird 1993, 5).

Georgia diverts approximately 75% of its ISP offenders from prison (Clear and Hardyman 1990, 52). At a cost of \$4.07 per offender day, Georgia's ISP is less than 10% of the cost of prison per day, \$45.33 (Whitworth 1992, 1). Texas would appear to be diverting a high percentage of its offenders from prison by the fact that average participants had a sentence length of seven years and six months (Pope 1992, 1). Missoula, Montana's ISP claims to obtain most of their offenders through probation revocations, who were likely to be sent to prison in the absence of ISP (Interview with Jan Ullam, ISP, June 3, 1993).

Florida and Montana have the most restrictive policy on technical violations. Both generally revoke probation for an offender on his/her first positive drug test. By sending these offenders to prison, the impact on prison overcrowding is reduced. Florida's rate of technical violations is 9.7%, and most violators are sent to prison. New Jersey does not explicitly have a first-time revocation policy, although it sends a large percentage of participants to prison for program violations: 27% from 1983 to 1993 (Lipscher 1993, 10). This percentage has been rising in recent years primarily because New Jersey's ISP is now comprised of 72% drug offenders (Lipscher 1993, 10).

Both Texas and Georgia utilize alternative sanctions such as additional community service and more restrictive

curfews for offenders with their first positive drug test. Georgia has a home confinement track of ISP which may be used for program violators (Whitworth 1992, 7). Texas had a revocation rate of 9% for technical violations during 1991 (Pope 1992, 1). The use of alternative sanctions for technical violations should be encouraged, since little evidence exists indicating that such violations predict future criminal behavior.

All the programs do a good job protecting the public while participants are on active status. These programs report that violent crimes are rare while offenders are in ISP. ISP's have achieved their goal of providing a near simulation of the "risk-control guarantee of more total confinement" (Harland and Rosen 1987, 40). Long-term recidivism is a different matter, as Georgia's ISP had 36% of program graduates return to prison for new offenses in a three-year followup study, while 42% of a prison control group went back to prison (Erwin 1990, 64). New Jersey had only 9% of program graduates return to prison for new offenses from 1983-1993 (Lipscher 1993, 11). Not surprisingly, their offenders have a less serious offense history than those in the other states. As compared to Texas, for instance, New Jersey offenders coming into the program averaged a four year six month prison sentence as compared to a seven year six month sentence for Texas ISP participants (Lipscher 1993, 11) and (Pope 1992, 1).

Florida had 19.7% of its community control offenders recidivate after 18 months, as compared to 24.3% of a prison control group after the same period (Baird 1993, 4). Florida, though, had over 25% violent offenders in their program at that time, while New Jersey had less than 7% violent offenders in 1988 and less than 5% today (Baird 1993, 5) (Pearson and Harper 1990, 76) and (Lipscher 1993, 11). New Jersey's ISP is also such smaller at 618 offenders in 1993 compared to 20,000 offenders in Florida's Community Control Program (Lipscher 1993, 11) and (Baird 1993, 1). Due to varying factors, such as program size and offender type, it is difficult to indicate that one program has a more positive effect on long-term recidivism than another, but it does appear that drug offenders pose a lower long-term risk to the community than other types.

Judging from the programs surveyed, intensive supervision is more successful with offenders who have not had repeated exposure to prison. Technical violations are a point of concern in all of these programs. The more these violations lead to probation revocation, the less impact these programs have on prison overcrowding. The diversion of probation-bound offenders occurred in substantial numbers in the programs, yet they still saved money for their respective states. Since intensive probation is an intermediate sanction between regular

probation and prison, some diversion from probation is to be expected (Thomson 1990, 52). Overall, the drug treatment and counseling aspects of ISP are the key to reducing long-term recidivism of offenders. The surveillance aspects of ISP, curfews and electronic monitoring, while important as punishment, do not affect offenders' behavior in the long run (Turner and Petersilia 1992, 57).

Chapter 3

Conclusion and Recommendations

Prison overcrowding, as has been shown, is a serious problem facing the United States today. It has largely been a product of tougher sentencing practices and an increased emphasis on prosecuting drug offenders. Accelerated prison construction, as evidenced in California, serves only to increase the number of offenders sentenced to prison, rather than closing the gap between the current prison population and prison capacity. Indeed, considering the high cost of prison construction, and that 43 of 50 states have overcrowded prisons, other solutions must be sought (Gilliard 1993, 6). One such solution is the expansion of community-based corrections, including intensive supervision probation (ISP).

ISP is designed to accept non-violent offenders who otherwise would go to prison - to provide a "prison without walls in the community" (Pearson and Harper 1990, 32). Electronic surveillance of offenders gives community residents a measure of security. Offenders must be employed and perform community service. There is evidence of ISP's success in that few violent crimes have been committed by offenders in the programs (Fogg 1989, 14).

Given ISP's strong record on limiting serious crime, and the fact that it costs 25% or less per day per offender

of what prison costs, some would be quick to call it an unqualified success. However, there are problems with ISP programs. One involves offender targeting, the identification of appropriate offenders for the program. The diversion of offenders bound for regular probation to ISP, is a common occurrence in many of the programs around the country (Clear and Hardyman 1990, 52). This diversion reduces the savings of ISP, since regular probation costs less than ISP.

Impact of Net Widening

In states where judges sentence offenders directly to ISP, it is difficult to estimate how many offenders are diverted from probation. This is due to the fact that offense records are fairly similar for the more serious probation offenders and the less serious prison offenders (Clear and Hardyman 1990, 52). In other words, there is a certain group of offenders where it is unclear whether they should be on probation or in prison. In Georgia, corrections officials estimate that only 75% of their ISP cases are diversions from prisons, despite a requirement the judges sign a document indicating that ISP offenders would have gone to prison if it had not been for the program (Clear and Hardyman 1990, 52). Christopher Baird argues that at least some net-widening is unavoidable when

diversionary programs are put in place, because these programs are intermediate sanctions (1990, 123).

Previously, judges were uncomfortable with some of the offenders they sentenced to probation, whereas now they have another option (Clear and Hardyman 1990, 51). There also may be some long-term benefit to diverting repeat offenders from probation to intensive probation. In intensive probation, these offenders are forced to confront drug problems which are often at the heart of their criminal behavior. Frequent drug testing makes it difficult to evade the problem. In addition to standard testing, New Jersey now uses a hair follicle test which can detect drug use in the past three months (Lipscher 1993, 7). Offenders also have much more interaction with their probation officer in ISP compared to regular probation, which helps them stay with the program and prevents criminal behavior.

Montana, in contrast to Florida and Georgia, may be facing more violent offenders coming into ISP with the expansion of the program. This could be because they have limited diversions from regular probation by accepting mainly probation-violators. The offenders sentenced to the Department of Corrections have a more serious profile than typical Montana ISP offenders. Taking these offenders from the Department of Corrections to ISP will improve the diversion rate from prison, but it may make ISP less successful in getting offenders through the program. If

violent crime was to become a problem with these offenders, a screening committee may be needed to limit incoming violent offenders from the Department of Corrections.

ISP Technical Violations

An additional quandary faced by ISP programs is the high rate of technical violations. All the programs surveyed had a rate of at least 8%, with New Jersey being the worst at 27% (Lipscher 1993, 10). Technical violations, usually positive drug tests, do not generally put a community at immediate risk. The demanding nature of these programs make it more likely that violations will be discovered, therefore one has to question the policy of Florida and Montana to revoke offenders' probation on the first positive drug test.

Proponents of the revocation policy argue that it is a deterrent to drug use. Offenders are given one last chance, and if they do anything wrong, they are out of the program. While this attitude may appear just, it is not very practical. Drug addiction is not something that can be overcome overnight, hence these programs must have patience with remiss offenders, rather than sending them right back to court. The prison term violators would likely receive would certainly not aid in their rehabilitation.

Secondly, while ISP is supposed to be an intermediate sanction between probation and prison, in reality it is

much closer to prison in the punishment it exacts. While an offender in ISP technically has his freedom, and a prisoner does not, it is not quite that simple. An offender in ISP is prohibited from associating with past friends with a criminal record, and also from going to any liquor establishments. These restrictions instill a sense of social isolation in ISP offenders, not unlike prison. Joan Petersilia notes that: "When offenders return to their communities, they expect to return to their old lives. ISP transforms those lives radically" (1990, 25). ISP imposes significant punishment through its conditions, therefore the added threat of revocation for the first technical violation may be unnecessary.

Recommendations

1) The most essential change necessary to reduce prison overcrowding is the modification of mandatory federal drug laws in this country. These laws are based solely on the amount of drug involved, and preclude the consideration of alternative sentences (Timrots 1992). In the fall of 1993, Congress was considering an "escape clause" to let first-time offenders avoid a mandatory minimum sentence. Incorporation of this clause is essential because it would give federal judges the discretion to take into account the offender's characteristics and circumstances of the crime. The experience of Minnesota

and North Carolina indicate that when determinate sentencing is used, it is essential to retain judicial discretion to deviate from statute. Otherwise, correctional populations balloon with many of the added offenders being marginal ones unsuited for prison (Tonry 1987, 80).

2) Offenders being diverted from regular probation reduces cost savings of ISP. To address this states need to use a re-sentencing option where ISP is recommended only after a prison term has been imposed. ISP officers can then choose the clients appropriate for the program and ask the judge to re-sentence them to ISP. 40% of Georgia ISP cases come by re-sentencing (Clear and Hardyman 1990, 53). Judges may sentence more offenders to incarceration because they estimate these offenders would be diverted to ISP (Clear and Hardyman 1990, 53). Nevertheless, re-sentencing would likely divert fewer offenders from probation. Judges could not be sure that if they sentenced additional offenders to incarceration, all of them would be recommended for ISP. Secondly, plea bargaining limits the number of offenders whose sentence could be increased by the judge (Pearson and Harper 1990, 82). Therefore, resentencing is a plausible option for states where diversion from probation to ISP is a problem.

3) ISP is certainly stringent enough without the "first time revocation policy" for technical violations. ISP provides sufficient punishment thorough the social

isolation and invasion of privacy it imposes on participants. Revoking an offender's probation for one programmatic violation is overkill in terms of punishment, and is counterproductive to the extent that such a policy reduces ISP's impact on prison overcrowding. This policy as it exists in Florida and Montana, specifies that probation is revoked for the first positive drug test, and often for other first-time violations (missing a phone call or failing to report for treatment) as well. James Byrne believes that a strict revocation policy has a deleterious long-term effect on offender recidivism because of the negative effects that subsequent incarceration has on the offender (1990, 17). It is difficult to save much prison space when ISP keeps offenders out of prison for employment and drug treatment, and then sends them back at the first sign of drug usage.

Furthermore, revoking probation for technical violations has not been proven to enhance public safety. In Texas, after one year in the program, arrest records of ISP technical violators were compared to ISP participants without violations, and no difference was found. This indicates that technical violators are no more likely to commit new crimes than violation-free ISP participants (Petersilia and Turner 1993, 5). The majority of participants in ISP programs are prior felons, hence most will never be model citizens, but as long as their behavior

does not put other citizens at risk of harm, programs should not be so quick to terminate their freedom.

There are a variety of other punishments available that would allow remiss offenders to continue in the program. These include increased community service, stricter curfews, and reduced free time (Byrne 1990, 17). Using alternative sanctions would also free up more prison beds, because more offenders would finish the program. New Jersey is considering using halfway houses for problem ISP offenders, which is certainly cheaper and more rehabilitative than sending them to prison (Pearson and Harper 1990, 86).

4) ISP was shown to be the most successful with drug offenders. Hence, programs should concentrate on enlisting more drug offenders because they pose a lower risk to the community than other types. The recidivism rate for drug offenders in Florida's Community Control Program was 11% over 18 months, as compared to 19.7% for the entire intensive supervision group. A similar group of drug offenders sent to prison had a 27% recidivism rate after an 18 month follow-up (Baird 1993, 4). In Georgia, the revocation rate for drug offenders was 13% compared to 16% for the entire ISP group (Erwin 1990, 62). In New Jersey, from 1987-1992, only 4% of drug offenders that went through ISP were convicted of felonies (Lipscher 1993, 10). While drug offenders may not be this crime-free

in every program, the evidence comes from three well-established programs that have been operating for over ten years.

The increased emphasis on prosecuting drug offenders is a primary cause of prison overcrowding which provides another reason why ISP's should seek to divert such offenders from incarceration. In 1990, 103,800 drug offenders were admitted to prisons in the United States, as compared to 1985 when there were 25,000 drug offenders admitted (Gilliard 1993, 7). The drug testing in ISP programs serves as a deterrent to usage, and also gives these offenders time to work on their addictions through counseling and group meetings. Sending drug offenders to prison will likely have a negative long-term impact on recidivism (Byrne 1990, 17). Instead, these offenders should be given the opportunity to become drug-free through the testing and counseling offered in intensive probation.

5) Finally, ISP programs should put more emphasis on rehabilitation. The primary way this could be accomplished is through intensive drug treatment. While surveillance may limit short-term criminality, only treatment can produce long-term behavioral change (Fulton and Stone 1992, 85). In Texas' ISP, higher levels of participation in drug treatment were associated with a 10 to 20 percent decrease in recidivism (Petersilia and Turner 1993, 8). More programs are needed for mental health

and substance abuse treatment of offenders (Byrne 1990, 33). In Atlanta, for every fifteen cases needing specialized drug treatment, two slots were available (Erwin 1990, 71).

Intensive drug treatment is needed because drug offenders often return to drug use after their ISP term is concluded (Erwin 1990, 71). Additional time and money must be invested in developing treatment options for offenders. Currently, ISP's put an emphasis on limiting offender recidivism through surveillance during the program, however, after the program is completed the deterrence of certainty of detecting criminal actions is gone (Harland and Rosen 1987, 39). ISP's must strive to effectively treat offenders' addictions, so these men and women can assume the responsibility that comes with freedom. Harland and Rosen note that ISP's are very symptom-oriented in that they attempt to repress criminal behavior in the short-run, but are limited in their treatment of the underlying causes of criminality (1987, 41). When ISP programs reach a balance between rehabilitation and punishment, long-term reductions in recidivism will become more likely.

Constraints to Implementation

Public opinion is the most difficult stumbling block to both the expansion of ISP programs where they exist, and to the establishment of new programs. In a recent federally sponsored experiment, intensive probation was adopted at fourteen sites only two of which opted for the prison diversion type. Joan Petersilia, monitor of the experiment, noted that "the general public does not at present seem receptive to prison-diversion ISP's" (Petersilia and Turner 1993, 9).

The public appears to be more comfortable with "warehousing" even marginal offenders, than with trying to rehabilitate them. This may stem from the fact that at least while these offenders are in prison, they cannot be victimizing the public. In a 1992 national survey of public opinion on how to reduce crime, 44% of Americans thought the solution was stricter law enforcement and stiffer penalties for criminals, while 31% thought correctional treatment programs were the answer, and 22% thought both were needed (Maguire, Pastore, and Flanagan 1993, 195).

Clearly, many Americans still feel that stronger penalties will serve as a deterrent to crime. The problem of violent early-release offenders seems to prompt more discussion of new prisons, rather than alternative measures

to deal with non-violent offenders now crowding our penal facilities. An anti-crime bill approved by the Senate in November of 1993, and destined to become law in 1994, allocates \$8.9 billion for 100,000 more police officers on the street, \$3 billion for new prisons, and \$1.2 billion for drug testing and treatment programs for non-violent drug offenders on probation.

However, since the mandatory drug laws have not yet been changed, the money for drug treatment will fail to reach many drug offenders behind bars, and even if it did, prisoners are not in an environment where the effectiveness of treatment can be measured. Adding more police will do little to reduce violent crime since most murders and assaults, as well as about half of all rapes are committed in private residences by people who know their victims (Walker 1994, 135). Additional prisons may provide temporary relief by allowing violent criminals to serve a greater portion of their sentences, however, if current sentencing practices do not change to allow for greater use of intermediate sanctions, the new prisons will soon be overcrowded. Of those sent to prison in 1991, 27% were violent offenders, 34% property offenders, and 31% drug offenders (Watts 1993, 11). It appears that in the rush to incarcerate violent criminals, other less serious offenders are imprisoned as well.

In Texas, for instance, voters recently approved a \$1 billion proposal, most of which will go to build new prisons. It was passed despite their prisons being only 12% over capacity. California's prisons are 91% over capacity, hopefully they will not choose to spend \$7½ billion (proportionate to Texas) on new prisons. Evidence regarding prison construction suggests that it results in the greater use of incarceration, rather than relieving of overcrowding. In Texas, voters do not believe ISP holds the potential of greatly reducing prison overcrowding.

Voters in Washington, meanwhile, approved a measure that mandates life in prison without parole for three-time felony offenders. This shows evidence of a "get tough" influence in that state. At the same time, though, Washington has a law that specifies that those on probation or parole cannot go to prison for a technical violation, such as drug use or missing curfew. The maximum penalty is sixty days in the county jail (Petersilia and Turner 1993, 9). That should provide some relief in the area of prison overcrowding, and give those offenders more time to turn around their lives.

It will be difficult to change the technical violations revocation policy in Florida and Montana. Most technical violators in Florida had their probation status revoked, because "when in doubt about the effect of a technical violation on public safety, probation supervisors have

acted to increase restraints on the offender" (Baird 1993, 4). In Montana's ISP, a "one strike" policy was considered essential as a deterrent for offenders. One-time drug usage was thought to be a step down the road of more serious criminal actions, and therefore violators were not allowed to continue in the program. Evidence demonstrating that technical violators do not pose any more of a future threat to public safety than do other program participants needs to be distributed to ISP officials nationwide.

Increasing the number of drug offenders in ISP programs may be problematic unless some of the mandatory sentences for drug offenses are changed. Cases abound of first-time offenders selling a small amount of a dangerous drug and receiving federal sentences of ten years or more, and there is no parole in the federal system. Until these laws are changed to allow for greater consideration of offender characteristics and circumstances of the crime, prison overcrowding will continue to be a serious problem.

Regarding rehabilitation in ISP programs, it is difficult to get funding for increased treatment options when ISP's are sold as a short-term crime-control alternative to prison. The public is somewhat doubtful that treatment options can possibly change offenders' behavior (Harland and Rosen 1987, 37). More research is needed to ascertain the long-term effects of intensive drug and alcohol treatment on offenders' criminality.

Regardless, it is a worthwhile effort to spend money on drug and alcohol treatment in ISP's considering that 50% of prisoners were under the influence of alcohol or drugs when they committed the offenses for which they were incarcerated (Watts 1993, 10).

Finally, ISP officials need to emphasize to the public and policymakers the punitiveness of the program, its positive record on public safety, and the cost savings incurred. People need to be made aware that offenders view ISP as a severe sanction. In Marion County, Oregon, 33% of non-violent offenders chose to go to prison rather than ISP (Petersilia 1990, 24). This suggests that offenders do not view prison as the terribly harsh sanction the public sees. Joan Petersilia reflects:

The prison environment may be far below the ordinary standards of society, but so is the environment offenders come from. As the quality of life that people can expect when free declines, the relative deprivation suffered while in prison declines (1990, 24).

Due to this perception of prison, ISP is seen as a serious punishment in comparison. Offenders would rather have their freedom than go to prison, but ISP "does not represent freedom" (Petersilia 1990, 25). Offenders may find the drug testing and home searches more burdensome than the absence of privacy in prison where that is expected (Petersilia 1990, 25). Much can be said about how ISP's reduce prison overcrowding and save money, but until the public feels the option represents "just deserts" for its

participants, it will not become a widespread alternative to incarceration.

People also need to be made aware that intensive probation, much like prison, can keep offenders from committing serious crimes during their sentence. When the public sees that surveillance can curb offenders' criminality, this will encourage advocacy of ISP. Furthermore, intensive probation allows participants to avoid the harmful influence of prison. Prison often serves to make first-time felony offenders more predatory upon their release which hardly assists in the anti-crime crusade (Broderick 1993, 14).

A key advantage of intensive probation is that it takes non-violent offenders, thus freeing up space allowing violent offenders to serve a greater portion of their sentences. This argument must be made to increase support for intensive probation in states that do not presently have it. Promoting punitiveness and public safety is the best way to sell intensive probation to the public and legislators, alike.

At the same time, ISP officials should seek to incorporate intensive drug and alcohol treatment into their programs. This is more problematic since it drives up the cost of ISP's, and funding is difficult to secure primarily because prisons eat up such a large portion of corrections budgets. While probation and parole

expenditures comprised 17% of national corrections spending in 1977, this dropped to 11% in 1990 (Watts 1993, 10). Nevertheless, correctional professionals must stress to policy-makers the importance of considering not only present recidivism of offenders, but also the long-term outlook. Intensive probation must strive to improve that outlook if it is to become more than just a less-expensive alternative to incarceration.

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