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SUMMARY REPORT

PRELIMINARY ANALYSIS
OF SENTENCING AND RELEASING DATA

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Summary Report on Preliminary Analysis of Sentencing and Releasing Data

I. Background

A. Reasons for the Study:

Chapter 723, Laws, 1978 requires the Minnesota Sentencing Guidelines Commission to give substantial consideration to current sentencing and releasing practices in the development of uniform statewide sentencing guidelines. To comply with the intent of the Legislature, the Commission undertook a major study of sentencing and parole releasing practices in Minnesota, with actual data collection beginning in late January, 1979, and concluding in late June.

B. Data Bases - Selection of Samples:

Our study consists of two distinct data bases -- one covering judicial sentencing decisions and the other releasing decisions of the Minnesota Corrections Board. For each set of data we collected the same basic information, collecting a few additional items for the durational study designed to measure variables of relevance only to parole decisions.

Our dispositional study consists of a 42% random sample of males convicted of a felony and receiving a felony or gross misdemeanor sentence in fiscal year 1978, along with all the females convicted of a felony and receiving a felony or gross misdemeanor sentence in that same year. We excluded from our sample anyone convicted of a felony but receiving a misdemeanor sentence. Hereafter, we will refer to this as the sample of convicted felons. Every county in the state is represented in the sample, but counties with large proportions of Indian population were "oversampled," a technique designed to increase the number of Indians in our sample so we could conduct a more meaningful analysis of sentencing practices with respect to race. In all, our dispositional sample includes approximately one-half the persons convicted of a felony in fiscal year 1978.

Because we sampled at different rates for males, females, and Indians, we developed a weighting scale so that each case would be counted equally in our sample results. We then used our sample cases to generate an estimate of the characteristics of the total population of convicted felons.

Our durational study examined the population of prison releasees in fiscal year 1978. We procured a list of all persons released from state correctional institutions from the Department of Corrections, and culled from this list those whose fiscal year 1978 release was a second or subsequent parole, following an initial parole granted in an earlier period and a subsequent parole revocation. In other words, we selected from this list all persons whose fiscal year 1978 release was a first release after admission for the current sentence, whether that release was via parole or expiration.

C. Development of Offense Severity Scale:

For both the dispositional and durational studies, we measured offense severity by using an offense severity scale developed by the Commission. For four months the Commission worked on various aspects of the severity scale construction. All commonly occurring felonies were arranged into six categories -- property crimes, crimes against persons, sex offenses, drug offenses, arson offenses, and a miscellaneous category. For each offense in these six categories, staff prepared a card which described the offense, provided the statutory citation, and the statutory maximum penalty. Each Commission member was given six decks (one for each major category), which contained a total of 104 cards. Each Commission member was then asked to sort the cards within each deck in order of decreasing severity. Once this was accomplished, each member placed the six decks of cards in front of them, and we held a group discussion to determine which of the six cards rated most severe within the respective decks was most severe overall. That item was then rated number one in terms of overall severity. The members then examined the remaining top cards in the six decks, and selected another which they felt was the most severe of the six remaining top cards. This process was continued until all 104 cards had been placed on a continuum from highest to lowest severity. During this process, members of the Commission frequently differed on which of the six cards before them should be most severe. When these differences emerged, the members articulated reasons for their preference, and sought to convince other members to their viewpoint. This continuing articulation of reasons provided the substantive basis for the Commission consensus attained in the overall ranking. A subcommittee was then established to suggest groupings of the overall ranking into a smaller number of severity levels. The report of that subcommittee formed the basis of

the severity ranking used in the analysis of both dispositional and durational data.

D. Criminal History Scale:

Our preliminary analysis of the dispositional data indicated that several criminal history variables were strongly associated with judicial decisions to imprison or place on probation. The variable with the strongest association was number of prior felony convictions. Rather than impose a staff developed criminal history index on the data analysis, staff decided to utilize the single variable of prior felony convictions for analytical purposes. We would then describe the options open to the Commission for the development of a more sensitive criminal history index, and have them make policy decisions to guide the staff in the development of an operational criminal history index. However, when we utilized prior felony convictions as the sole variable, we found that a very large number (over 70%) of the cases had no prior felony record. Number of prior felonies is highly intercorrelated with age -- that is, younger offenders are less likely to have extensive felony convictions than older offenders. Our "no prior felony conviction" category consisted of some older offenders who had not gotten a felony conviction for several years after attainment of majority, as well as some offenders who had recently attained majority, and who, because of their youth, had not had the chance to attain an adult criminal record. For this latter group, we felt that juvenile history would be an important consideration in judicial sentencing decisions, a position supported by prior sentencing research and affirmed by the opinion of the Commission members. Therefore, to present a more accurate portrayal of judicial sentencing practices, we modified our preliminary criminal history scale by including the presence or absence of a juvenile adjudication for a serious (felony-type) juvenile offense for those offenders who were 23 or less at the time of their first adult felony conviction. Therefore, our zero criminal history category means that those in that category have no prior adult felony conviction, and no prior serious juvenile adjudication if they were 23 or less at the time of their first felony conviction. Those with scores of 1 have either one prior adult felony, or one or more serious juvenile adjudications if they were 23 or younger at the time of the first adult felony conviction.

II. Judicial Decision Making

A. Conceptual Basis of IN/OUT and Durational Decisions:

Under the Criminal Code of 1963, Minnesota judges, when sentencing convicted felons, make two decisions: first, whether or not to imprison the offender, and, second, if the first decision is imprisonment, they establish a maximum sentence length which may be as low as one year and one day or as high as the statutory maximum sentence.

If a convicted felon is imprisoned, the decision of when to release from prison is conferred by law on the Minnesota Corrections Board. In most cases, MCB discretion to release (under parole guidelines promulgated by the Board) is unfettered by the maximum sentence set by the judge.

In other words, the most significant aspect of judicial sentencing is the imprisonment/no imprisonment decision. We refer to this as the IN/OUT decision. Current judicial sentence lengths are "symbolic" -- that is, they generally do not limit the range of discretion open to the MCB in making release decisions -- and "real" responsibility for durational decisions rests with the MCB.

Given this practice, we are analyzing judicial decisions in terms of percent of felony cases imprisoned within each category of criminal history and offense severity. We also will analyze average time between admission and first release from prison within those same categories, for persons released from prison in fiscal year 1978.

B. Factors Associated with IN/OUT Decisions:

We found that in making dispositional sentencing decisions (imprisonment versus non-imprisonment) judges rely on two sets of factors of roughly equal importance -- the severity of the conviction offense, and the criminal history of the defendant.

We found that "social status" variables, with the exception of employment at the time of the sentencing, were not associated with the IN/OUT decision. We found that employment status at time of sentencing was associated with the decision to imprison, but the association was marginal. We have tentatively

determined that employment status at time of sentencing should not be included in any scheme of guidelines because it is correlated with race and economic class, and because it is a manipulable variable -- that is, the defendant could use that factor--by getting a job between arrest and sentencing--to affect his or her chances of obtaining a more favorable sentence.

Since social status variables are correlated with income levels, social class and race, any sentencing guidelines incorporating such factors could be criticized for introducing a systematic bias against low income and minority groups.

C. Characteristics of the Population of Convicted Felons:

1. Age: The population of convicted felons is young. 37.1% are 20 or younger. Another 45.8% are between 21 and 30, and 17.0% are over 30.
2. Sex: 88.3% of the convicted felons were men, and 11.7% were women.
3. Race: 84.1% of the felons sentenced in fiscal year 1978 were White, 8.8% were Black, 4.8% were American Indian, and 1.5% were Mexican-American or other minorities.
4. Marital Status: 59.4% are single, 22.6% are married or living with another in a stable relationship, and 17.1% are separated, divorced, or widowed.
5. Educational Status: 45.9% have not completed high school, 12.9% have completed a GED, 26.9% have completed high school, and 14.3% have completed some college or post-secondary vocational education.
6. Employment: 55.7% were unemployed at the time of the offense, and 60.1% were unemployed at time of sentencing.
7. Use of Drugs and Alcohol: 23.7% are classified as "moderate" users of drugs, while 21.0% are classified as "heavy" users, and 4.1% are addicted. In terms of alcohol, 27.8% are classified as moderate users, 34.5% are classified as "heavy" users, and 6.2% are addicted. For those on whom data was available, 45.3% were under the influence of alcohol or drugs at the time of the offense.

D. Judicial Sentencing Decisions:

3.8% of the population were given jail sentences which were stayed, either by stay of imposition or stay of execution. Another 2.5% were given straight jail, or a split sentence, involving some jail time coupled with probation. All the

above sentences, 6.3% of the total are misdemeanor or gross misdemeanor sentences. 24.0% were given prison sentences, but the imposition of the sentence was stayed. Another 12.5% received stays of imposition on prison sentences with a condition that some time be served in a local jail or workhouse -- that is, a "split" sentence.

13.6% were given prison sentences, but the execution of the sentence was stayed and the persons were given probation. Another 20.0% were given prison sentences, but the execution was stayed and the person was given a "split" sentence -- that is, some local jail time followed by probation. In total, 36.5% of the population received stays of imposition, and 33.6% received stays of execution on felony sentences.

The balance of this presentation on judicial sentencing practices will focus on the IN/OUT decision -- that is, decisions to imprison or not imprison. Subsequent summaries will be prepared to cover judicial sentencing practices in the use of non-incarcerative sentences, including local jail and workhouse sentences, probation (with and without treatment), split sentences, fines, restitution, etc. This report covers the IN/OUT decisions because that information is most important to the Commission in developing the guidelines we are required to develop.

Data on judicial IN/OUT decisions are presented in summary tables, which present a great deal of sentencing information in very compact form. The summary tables use the Commission's offense severity scale on the vertical axis and a preliminary criminal history index on the horizontal axis. The offense severity scale presented in this paper is a scale recommended by a subcommittee of the Commission. The Commission has since made minor changes in the severity scale, but those changes should not result in any substantial changes in the patterns of decision making practices displayed in these tables. However, the preliminary criminal history index will undergo substantial modifications in terms of items, and these changes will have some effect on the distribution of cases. While the array of cases within the summary table will change once the final history and severity indices are constructed, the existing history and severity scales are sufficient to provide a general description of sentencing practices.

TABLE 1

* S U M M A R Y T A B L E O F * * *
SUMMARY BY HISTORY
* *

HISTORY / PERCENT / N CASES	0	1	2	3	4	TOTAL
SUMMARY						
SEV1	2.3	15.1	52.6	30.5	61.1	11.5
NUMV-POSS MARIJ	(485)	(165)	(53)	(21)	(26)	(751)
SEV2	4.6	11.9	39.5	54.3	74.5	12.3
THFT REL-S MARIJ	(545)	(143)	(57)	(21)	(29)	(796)
SEV3	6.8	13.0	50.5	59.5	64.1	17.9
THEFT <2500	(531)	(175)	(83)	(56)	(38)	(882)
SEV4	5.3	21.6	52.3	56.3	83.1	18.2
BURG-REC ST PROP	(551)	(288)	(68)	(34)	(38)	(980)
SEV5	12.4	58.6	71.0	75.3	68.2	32.2
ROBBERY-CSC 3	(120)	(46)	(15)	(8)	(7)	(195)
SEV6	9.9	32.6	69.1	74.9	66.6	23.2
ASSAULT2-CSC 2	(282)	(83)	(34)	(8)	(22)	(430)
SEV7	46.8	61.8	79.2	87.0	100.0	61.7
AGG ROBBERY	(89)	(61)	(20)	(17)	(14)	(200)
SEV8	37.7	57.9	72.4	100.0	100.0	55.8
ASSAULT1-CSC 1	(57)	(22)	(9)	(17)	(2)	(106)
SEV9	34.6	0	100.0	100.0	100.0	67.7
MURDER 3	(6)	(0)	(2)	(2)	(2)	(13)
SEV10	100.0	100.0	0	0	0	100.0
MURDER 2	(8)	(8)	(0)	(0)	(0)	(17)
TOTAL	8.2	24.1	54.6	63.2	73.5	20.4
DISPOSITION	(2674)	(992)	(340)	(184)	(179)	(4369)

The summary tables show the number of cases in the population estimate that contain similar characteristics on the history and severity dimensions. This number is always shown in parentheses. Thus, in the cell defined by history zero, severity one, there were 485 cases in the population estimate convicted of a severity level one offense, with a zero prior criminal history score. The figure appearing above the number in each cell is the percentage of that number who were imprisoned -- who were given "in" sentences. Thus, in the cell defined by history zero, severity one, there were 485 cases, of whom 2.3% were imprisoned.

Overall, judges in Minnesota imprisoned 20.4% of all convicted felons in fiscal year 1978. (In addition, another 6% of those not imprisoned at the time of the initial sentencing were imprisoned during the fiscal year for violations of the conditions of stays of execution or imposition. Together, about 25% of the felons convicted in fiscal year 1978 were imprisoned.) For property crimes, the average imprisonment rate was 15.2%, and for crimes against persons, it was 38.5%. For the more serious crimes against persons, such as aggravated robbery, assault in the first degree, criminal sexual conduct in the first degree, and murder, the imprisonment rate was 62%.

Several items are immediately apparent from Summary Table 1. First, offenders in the "zero" history category are seldom imprisoned. Overall, only 8.2% were imprisoned and by severity levels, only second degree murder (at severity level 10) was imprisoned more than 50% of the time. Second, for those with a criminal history score of 1, 24.1% were imprisoned. The average imprisonment rate does not exceed 50% until we reach history score of two -- at 54.6%. The other striking feature is the distribution of cases by severity level and criminal history categories. 60.1% of the population fall into the lowest criminal history category, while another 22.7% fall into the second criminal history category. If, for purposes of discussion, we term these two "limited" criminal histories, then 82.8% of those convicted of and sentenced for felonies in fiscal year 1978 had limited criminal histories, and the remaining--or 17.2%--had "extensive" prior criminal histories. If fiscal year 1978 was a typical year -- and we have no reason to believe the contrary -- it suggests that the impact of repeat offenders in the population of convicted felons has been overestimated, perhaps. The more typical felon has had no

prior felony, or perhaps, only one prior. Moreover, if the distribution of felons (by criminal history levels) over time is similar to that found in fiscal year 1978, it suggests that after one or two felony convictions, the great majority may not be convicted of additional felonies.

Second, 78% of the felons sentenced in fiscal year 1978 were convicted of crimes falling into severity levels one through four -- generally, property crimes. 85% of those felons convicted of property crimes were in history categories zero or one. The eight cells in the grid defined by severity levels one through four and history levels zero and one together contain 66% of all felons sentenced in fiscal year 1978. For these felons, the average imprisonment rate was 8.0%. Even though the rate of imprisonment in these cells is low, since the numbers in the cells are large, these limited criminal history property offense categories account for 26% of the total felons sentenced to prison.

In general, Table 1 shows that probability of imprisonment increases with both criminal history and severity of offense, as one would expect. Rates of imprisonment are low for low history, low severity categories, and increase substantially at higher levels of history and severity.

Tables 2 and 3 show the difference between IN/OUT sentencing practices for male and female felons. Overall, 9.2% of the females, as compared with 21.9% of the males, were imprisoned. In large measure, these differences are explained by differences in distribution between males and females on the history and severity indices. 83% of the females, but only 64% of the males, are in the limited criminal history property crime categories. For these categories (history zero or one, severity one through four) the rate of imprisonment for males is 8.0%, and was 5.4% for females. However, these eight cells accounted for 48.9% of the females imprisoned, compared to 23.5% of the males. Some persons had expressed concern that sentencing guidelines applied equally to males and females would result in increased imprisonment of females. This was based on a presumption that, other things being equal, women were substantially less likely to be imprisoned. We find that the rates of imprisonment for men and women are not greatly different for these limited history property offense categories. Moreover, due to the higher proportion of

TABLE 2

* * * * * * * * * * * * * * * * * * * SUMMARY TABLE OF * * * *
BY HISTORY

SUMMARY
CONTROLLING FOR..
SEX OFFENDER'S SEX VALUE.. 1 MALE

HISTORY (PERCENT / N CASES)	0	1	2	3	4	TOTAL
SUMMARY SEV1 UUMV-POSS MARIJ	1.5 (414)	15.8 (157)	55.7 (50)	30.5 (21)	62.1 (24)	12.1 (667)
SEV2 THFT REL-S MARIJ	5.0 (384)	11.5 (113)	43.0 (50)	61.0 (17)	77.2 (28)	14.5 (593)
SEV3 THEFT <2500	7.7 (417)	12.4 (166)	51.3 (70)	59.9 (54)	65.7 (31)	19.1 (737)
SEV4 BURG-REC ST PROP	5.4 (524)	21.7 (282)	52.3 (68)	56.3 (34)	83.1 (38)	18.6 (947)
SEV5 ROBBERY-CSC 3	13.4 (111)	62.7 (43)	71.0 (15)	75.3 (8)	68.2 (7)	34.3 (183)
SEV6 ASSAULT2-CSC 2	10.1 (265)	33.4 (78)	69.1 (34)	74.9 (8)	69.7 (21)	24.0 (407)
SEV7 AGG ROBBERY	46.1 (84)	61.2 (60)	78.1 (19)	87.0 (17)	100.0 (13)	61.1 (192)
SEV8 ASSAULT1-CSC 1	38.4 (56)	58.7 (20)	72.4 (9)	100.0 (17)	100.0 (2)	56.5 (103)
SEV9 MURDER 3	34.6 (6)	0 (0)	100.0 (2)	100.0 (2)	100.0 (2)	67.7 (13)
SEV10 MURDER 2	100.0 (7)	100.0 (8)	0 (0)	0 (3)	0 (0)	100.0 (16)
TOTAL DISPOSITION	8.7 (2268)	24.7 (928)	56.2 (316)	64.2 (178)	75.2 (167)	21.9 (3857)

SUMMARY TABLE OF
BY HISTORY

SUMMARY
CONTROLLING FOR.. OFFENDER'S SEX VALUE.. 2 FEMALE
SEX

HISTORY	PERCENT / N CASES	0	1	2	3	4	TOTAL
SUMMARY							
SEV1 UUMV-POSS MARIJ	7.0 (71)	0 (8)	0 (3)	0 (0)	50.0 (2)		7.1 (84)
SEV2 THFT REL-S MARIJ	3.7 (161)	13.3 (30)	14.3 (7)	25.0 (4)	0 (1)		5.9 (203)
SEV3 THEFT <2500	3.5 (114)	22.2 (9)	46.2 (13)	50.0 (2)	57.1 (7)		11.7 (145)
SEV4 BURG-REC ST PROP	3.7 (27)	16.7 (6)	0 (0)	0 (0)	0 (0)		6.1 (33)
SEV5 ROBBERY-CSC 3	0 (9)	0 (3)	0 (0)	0 (0)	0 (0)		0 (12)
SEV6 ASSAULT2-CSC 2	5.9 (17)	20.0 (5)	0 (0)	0 (0)	0 (1)		8.7 (23)
SEV7 AGG ROBBERY	60.0 (5)	100.0 (1)	100.0 (1)	0 (0)	100.0 (1)		75.0 (8)
SEV8 ASSAULT1-CSC 1	0 (1)	50.0 (2)	0 (0)	0 (0)	0 (0)		33.3 (3)
SEV9 MURDER 3	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)		0 (0)
SEV10 MURDER 2	100.0 (1)	0 (0)	0 (0)	0 (0)	0 (0)		100.0 (1)
TOTAL DISPOSITION	5.2 (406)	15.6 (64)	33.3 (24)	33.3 (6)	50.0 (12)		9.2 (512)

TABLE 3

women in low history, low severity crimes, it is likely that the numbers of women imprisoned under sentencing guidelines will decline somewhat.

We found that rates of imprisonment for Whites, Indians, and Mexican-Americans were not greatly different -- 19.1% for Whites, 22.9% for Indians, and 17.1% for Mexican-Americans. However, we found Blacks were imprisoned 30.1% of the time. Again, there are substantial differences in Black distribution on the history and severity indices. For example, 30.7% of the Blacks are convicted of crimes against persons, compared with 19.8% of the Whites, and 27.0% of the Blacks are in criminal history categories 2-4 ("extensive"), compared to 15.5% of the Whites. Other things being equal, we would expect the Black imprisonment rate to be higher than the Whites given this distribution on the grid. However, we also observed differences in Black and White imprisonment rates within the various cells of the grid. In some cases, Black rates were much higher (for example, only 1% of the Whites in history zero, severity one category were imprisoned, versus 22% of the Blacks). In other categories, the White rate was higher than the Black rate -- for instance, at severity 3, history 2, 53% of the Whites were imprisoned versus 24% of the Blacks. Overall, the variations in Black and White imprisonment rates from cell to cell appeared more random than systematic. But, there were only five cells in the grid where 100% of the Whites were imprisoned, compared to 13 such cells for Blacks. The number in these "100% imprisonment" cells is small -- the largest Black cell contains six cases, and the largest White cell contains 13. Nonetheless, the larger number of Black "100% imprisonment" cells indicates a need to subject the data to additional analysis to determine if race itself may account for some of the difference.

Tables 4 and 5 show the percent incarcerated by history and severity levels by judicial district. These tables show that while there is a general trend for rates of incarceration to increase with both history and severity levels, there are substantial variations among the judicial districts.

Our analysis does not confirm one popular impression about sentencing in Minnesota -- namely, that non-metropolitan judges are more severe in sentencing than their metropolitan counterparts. We grouped the data into two

SEVERITY LEVELS - % PRISON SENTENCES

Judicial Dist.	1	2	3	4	5	6	7	8	9	10	Total
1	15.4	6.6	23.0	23.4	0.0*	21.9*	--	0.0*	--	--	17.0
2	15.7	18.8	14.7	23.2	25.0	16.7	52.3	58.3	100.0*	100.0*	22.7
3	7.1	18.4	30.4	24.9	28.0	31.0	92.6*	34.5*	--	--	25.7
4	15.0	16.9	17.1	21.7	33.2*	18.1	59.9	60.6	75.0*	100.0*	23.8
5	16.1	10.4	24.7	5.1	63.4*	0.0*	75.3*	54.3*	--	--	17.4
6	2.8	0.0	5.1	19.1	18.2*	42.3	20.0*	45.1*	--	100.0*	13.4
7	8.1	5.6	16.2	12.6	26.0	23.2*	100.0*	0.0*	--	--	13.2
8	3.6	25.5	14.8	23.1*	37.7*	0.0*	21.6*	100.0*	--	--	18.5
9	5.4	3.5	5.2	14.3	35.4*	64.5	86.4*	68.7*	--	100.0*	17.0
10	18.2	9.3	28.9	12.0	49.8*	9.6	75.5	60.8*	0.0*	100.0*	21.7
State Total	11.5	12.3	17.9	18.2	32.2	23.2	61.7	55.8	67.7	100.0	20.4
Range	3.6/18.2	0.0/25.5	5.1/30.4	5.1/23.4	0.0/63.4	0.0/64.5	20.0/100.0	0.0/100.0	0.0/100.0	100.0	

*Less than 20 cases

8/16/79

TABLE 4

TABLE 5

CRIMINAL HISTORY - % PRISON SENTENCES

Judicial Dist.	0	1	2	3	4	Overall
1	2.8	38.5	41.3*	100.0*	39.8*	17.0
2	7.5	23.8	55.3	68.2	66.8	22.7
3	12.2	24.3	87.8	67.9*	68.6*	25.7
4	12.9	23.5	53.1*	49.2*	76.2*	23.8
5	6.9	12.8	58.9*	51.1*	100.0*	17.4
6	4.8	24.0	52.7*	60.0*	0.0*	13.4
7	1.7	21.5	37.6	100.0*	87.4*	13.2
8	16.9	13.7*	0.0*	0.0*	100.0*	18.5
9	4.9	31.5	41.6	67.7*	92.9*	17.0
10	7.3	21.7	62.6	76.1	70.0	21.7
Total	8.2	24.1	54.6	63.2	73.5	20.4
Range	1.7 / 16.9	12.8 / 38.5	0.0 / 87.8	0.0 / 100.0	0.0 / 100.0	13.2 / 25.7

*Less than 20 cases

8/16/79

sets -- "metro area," defined as the seven county Twin Cities metropolitan area, and "non-metro," the remaining 80 counties. We found that the average rate of incarceration in the metro area is 23.4%, compared to 16.7% in the non-metro counties. There are substantial differences in the distribution of metro and non-metro cases on both the criminal history and offense severity indices. For example, 27.3% of the metro cases were convicted of crimes against persons (severity levels 5 through 10), compared with only 15.6% in the non-metro area. Also, 19.0% of the metro convicted felons had "extensive" criminal histories (criminal history categories 2 through 4), compared to 12.6% in the non-metro area. Metro area felons were convicted of more severe crimes and had somewhat longer criminal histories on the average, and, thus, we might expect that the rate of imprisonment would be higher. In the aggregate, we found that non-metro counties are substantially less likely to incarcerate persons convicted of low severity property offenses, or history level "zero" offenders. In other categories of severity and history, non-metropolitan rates of incarceration do not appear much different than that in metro counties. That is, non-metro judges do not appear to be more punitive than their metro counterparts for the remaining history and severity categories.

III. Durational Study--Minnesota Corrections Board Releasing Practices

A. Introduction:

At the outset, we should state one disclaimer. Our presentation is not an evaluation of how well the MCB matrix works, and cannot be viewed as such. Despite the fact that our data is presented in a format that resembles the "matrix" used by the Minnesota Corrections Board to establish parole release dates, that resemblance is coincidental. The format is similar only in the general or conceptual sense. That is, our assessment of MCB and judicial sentencing indicates that both consider criminal history and offense severity as the principal elements of decision making, although they weight these two dimensions differently. There are substantial structural differences between our offense severity scale and that used by the Minnesota Corrections Board.

Our offense severity scale contains ten severity levels excluding first degree murder, while the MCB severity index contains eight, excluding first degree murder. There are important differences in relative severity levels of several major offense types. For example, the MCB severity scale places aggravated

forgery at the lowest level of severity, where the Commission scale places it in severity levels one, two, or three, depending on the amount of loss.

In addition, there is little correspondence between the criminal history scale used in our analysis and the "risk of failure" items included in the matrix. There is a fundamental conceptual difference between the two. The matrix utilizes an actuarial device to predict recidivism rates for similar categories of inmates. This device is based primarily, but not exclusively, on criminal history items, only one of which bears some resemblance to that used in our preliminary history scale (prior felony convictions). Our preliminary criminal history scale is not designed explicitly to predict recidivism.

Because of these differences, we have "forced" data on MCB decision making to fit into an analytical framework which is different than that used by the MCB in decision making. Therefore, we cannot use the results from this framework of analysis to comment on the effectiveness of the MCB parole guidelines.

B. Characteristics of the Population of Releasees, Fiscal Year 1978:

In fiscal year 1978, 847 persons were granted first releases from Minnesota state correctional institutions. First releases means the initial release (on either parole or by expiration of sentence) following a commitment for a felony conviction. These data exclude those leaving correctional institutions during that time on work release (where a parole release did not follow during the fiscal year), and those whose release was a second or subsequent parole following a "technical" (no new felony offense) violation of an initial parole granted before fiscal year 1978.

Of these releases, 96.7% were male and 3.3% were female. 77.8% were White, 14.4% were Black, 6.7% were Indian, 0.6% were Mexican-American, and 0.4% were other races. Because Mexican-Americans are too small a group to allow meaningful separate analysis, we will report only three major racial groups for the durational study -- White, Black, and Indian/Others.

The population of prison releasees is only slightly older than the population of convicted felons. 30.6% were age 20 or younger, 51.7% were age 21 to 30, and 17.7% were over age 30. 80.7% were not married or cohabiting at the time of

their sentencing to prison. 69.1% were not working at the time of the offense and 88.0% were not working at the time they were sentenced to prison. 47.9% had not completed high school, 21.5% had a high school diploma, another 21.5% had completed a GED, and 9.0% had post-high school educational experience.

38.5% were heavy users of alcohol, and another 12.5% were alcoholic at the time of commitment, for a total of 51.0% in these two categories. 28.0% were heavy users of drugs, and another 11.2% were addicted at the time of commitment, for a total of 39.2% in these two categories. 29.3% were under the influence of drugs or alcohol at the time of the commitment offenses.

38.8% were under some form of custody at the time of the commitment offense, most frequently probation. 77.1% of the population of releasees had been sentenced directly to prison, while 22.9% were imprisoned following a revocation of a sentence previously stayed.

Of those released in fiscal year 1978, 85.0% were released by parole, 7.3% were paroled from work release, 6.6% were discharged from the institutions, and 1.1% were discharged from work release. Together, parole accounted for 92.3% of all first releases.

C. Analysis of Releasing Practices:

Table 6 shows the population of fiscal year 1978 first releasees, distributed into the same categories of criminal history and offense severity used to analyze the judicial sentencing data. For each category of severity and history, the following information is given: (a) the average or mean time served between admission and first release in months, (b) the number of releasees in that cell of the grid, (c) the "sum" of the average months served multiplied by the number in that cell -- this is a useful guide to determine quickly which cells are making the greatest contribution to prison populations -- and (d) the standard deviation. The standard deviation is a measure of the dispersion of times about the average. The figure most relevant for this presentation is the mean or average time served between admission and first release.

Before discussing the average time served, it is instructive to examine in general the distribution of cases in the grid by criminal history and offense

TABLE 6

* C R O S S---B R E A K D O W N O F * * * * * * *

SEVERITY BY HISTORY CRIMINAL HISTOR

VARIABLE AVERAGED... TIME2 MONTHS FROM ADMIT TO PAROLE, ADJUSTED

SEVERITY	MEAN / COUNT / SUM / STD DEV	HISTORY 0	1	2	3	FOUR OR MORE 4	ROW TOTAL
1 UUMV, POS MARIJ	MEAN	10.099	9.620	11.919	16.056	17.270	11.441
	COUNT	23	34	27	11	5	100
	SUM	232.270	327.072	321.809	176.612	86.349	1144.112
	STD DEV	5.278	4.499	8.467	7.507	6.190	6.686
2 THFT REL, S MARI	MEAN	8.803	11.019	12.478	17.286	12.832	11.114
	COUNT	31	32	15	6	10	94
	SUM	272.895	352.599	187.171	103.717	128.322	1044.704
	STD DEV	4.656	5.435	5.316	3.725	8.607	5.820
3 THEFT < 2500	MEAN	12.159	12.171	14.693	16.584	15.905	13.561
	COUNT	32	32	22	12	12	110
	SUM	389.079	389.474	323.257	199.013	190.855	1491.678
	STD DEV	8.146	8.437	6.454	10.754	7.963	8.260
4 BURG, REC ST PRO	MEAN	11.543	14.290	18.252	21.057	22.693	15.804
	COUNT	57	61	47	17	19	201
	SUM	657.928	871.678	857.829	357.961	431.118	3176.513
	STD DEV	5.318	7.570	8.292	11.411	15.436	9.323
5 ROBBERY, CSC3	MEAN	18.130	21.964	17.439	17.039	36.579	21.145
	COUNT	24	17	7	2	6	56
	SUM	435.132	373.388	122.072	34.079	219.474	1184.145
	STD DEV	8.652	6.693	6.598	4.559	7.319	9.319
6 ASSAULT2, CSC2	MEAN	18.034	22.161	27.749	37.336	21.944	21.736
	COUNT	33	19	16	1	11	80
	SUM	595.132	421.053	443.980	37.336	241.382	1738.882
	STD DEV	8.342	9.226	11.811	0	13.441	10.635
7 AGG ROBBERY	MEAN	22.770	27.450	35.686	43.462	39.770	28.822
	COUNT	59	40	27	8	10	144
	SUM	1343.454	1097.993	963.520	347.697	397.697	4150.362
	STD DEV	10.989	7.696	20.470	12.893	6.368	14.032
8 ASSAULT1, CSC1	MEAN	37.113	40.467	21.678	35.526	39.391	37.144
	COUNT	13	11	2	6	2	34
	SUM	482.467	445.132	43.355	213.158	78.783	1262.895
	STD DEV	14.173	12.787	10.607	16.654	19.608	14.094
9 MURCER 3	MEAN	72.007	0	41.875	0	33.882	49.254
	COUNT	1	0	1	0	1	3
	SUM	72.007	0	41.875	0	33.882	147.763
	STD DEV	0	0	0	0	0	20.105
10 MURDER2	MEAN	73.328	90.055	0	0	140.296	85.043
	COUNT	6	3	0	0	1	10
	SUM	439.967	270.164	0	0	140.296	850.428
	STD DEV	33.368	56.132	0	0	0	44.724
COLUMN TOTAL	MEAN	17.636	18.267	20.152	23.327	25.301	19.461
	COUNT	279	249	164	63	77	832
	SUM	4920.329	4548.553	3304.868	1469.572	1948.158	16191.480
	STD DEV	14.799	14.323	13.827	14.145	19.321	15.066

severity. As one would expect, the population of prison releasees has been sentenced for more severe crimes and had longer criminal histories than the population of convicted felons. Only 63.5% are in criminal history categories zero or one, compared to 83% of those convicted of felonies. 60.7% were sentenced for crimes in severity levels one through four (generally, property crimes) compared to 78.0% of the convicted felons.

This table presents data on 832 cases. There were a total of 847 first releases in this fiscal year. We have excluded from this table those cases sentenced for an offense not included in the Commission's preliminary offense severity ranking (such as attempted first degree murder) and those convicted of "excluded" offenses. These are offenses which the Commission by policy chose not to include in our severity ranking. For example, the Commission chose not to include incest in the severity ranking because, since the revision of the criminal sexual conduct statutes, the act of incest is uniformly charged under a more appropriate statute. The incest cases in the releasing population were probably admitted to prison prior to the change in the criminal sexual conduct statutes.

Table 6 shows that the 832 cases were imprisoned for an average of 19.5 months. Again, we should stress this is the time between admission and first release. MCB figures for calendar year 1978 indicate that the average time served for all releases, including those revoked and re-paroled, was over two years. The average time served for those convicted of severity level one through four offenses (property crimes) was 13.8 months. The average for severity level five through ten (person offenses) was 28.5 months. We found that severity of offense was the most important decision making dimension for the MCB, followed by criminal history. Together, criminal history and offense severity explain about as much of the variance in MCB decision making as they do for judicial sentencing decisions.

Average time served between admission and first release increases in general with increases in offense severity and criminal history. If you examine the "Row Totals," there is an increase in average time served at every severity level except at level 2, where there is a drop of 0.3 months. This appears due to differences between the MCB and Commission severity indices, specifically regarding the offense of aggravated forgery. Likewise, if you examine the

"Column Total" you find that the average time served increases with every increase in criminal history. Within the cells of the grid, the average time served generally increases as expected, with increases in either severity or criminal history. However, there are several cells where the expected pattern is not observed. For example, in severity one, history zero, the average time served is 10.1 months. However, at severity two, history zero, the average drops to 8.8 months. To some degree these "incongruous" results are due to differences in the use of history and severity indices by the MCB which differ from those used in this analysis.

Table 7 shows the average time served by males and Table 8 shows the same figures for females. Overall, males served 19.7 months between admission and first release compared to 13.4 for females. (There are fewer female cells in the grid because where an entire row or column contained no cases, the computer omitted that row or column.) Again, there are substantial differences in the distribution of males and females on the criminal history and offense severity indices which account for some of this difference. 59.3% of the females fall into the eight cells defined by history levels zero or one, and severity levels one through four, compared to 35.5% of the males. Beyond that general comparison, there are simply too few females (only 27 were released, and the largest cell contains only four) to allow any additional meaningful analysis.

We found that White releasees served an average of 18.6 months, compared to 22.3 for Blacks, and 23.3 months for Indian/Other categories. Again, much of these differences appear related to different distributions by race on the criminal history and offense severity indices. Only 34.7% of the Whites released were sentenced for crimes against persons, compared to 59.0% for Blacks, and 49.2% for Others. Likewise, 35.0% of the Whites had "extensive" criminal histories (history categories two through four) compared with 39.3% for Blacks and 47.6% for Others. Cell-by-cell comparisons of average time served by race are meaningless due to the small numbers of Blacks and Others in individual cells. While these results indicate that much of the difference in average time served by race is explainable in terms of criminal history and offense severity differences, as with the judicial data, additional analysis is required to determine if there is an independent racial effect on time served until initial release.

TABLE 7

* C R O S S---B R E A K D O W N O F * * * * * * *

SEVERITY - BY HISTORY CRIMINAL HISTOR

CONTROLLING FOR..

SEX OFFENDER'S SEX VALUE.. 1 MALE

VARIABLE AVERAGED... TIME2 MONTHS FROM ADMIT TO PAROLE, ADJUSTED

SEVERITY	HISTORY: MEAN / COUNT / SUM / STD DEV	0	1	2	3	FOUR OR MORE 4	ROW TOTAL
1 UUMV, POS MARIJ	MEAN	10.542	9.787	12.107	16.056	17.270	11.704
	COUNT	21	32	25	11	5	94
	SUM	221.382	313.191	302.664	176.612	86.349	1100.197
	STD DEV	5.311	4.581	8.776	7.507	6.190	6.794
2 THFT REL, S MARI	MEAN	8.721	11.715	12.478	17.286	11.261	11.244
	COUNT	27	28	15	6	9	85
	SUM	235.461	328.026	187.171	103.717	101.349	955.724
	STD DEV	4.929	5.432	5.316	3.725	7.454	5.730
3 THEFT < 2500	MEAN	12.670	12.171	14.933	16.584	15.905	13.777
	COUNT	29	32	21	12	12	106
	SUM	367.434	389.474	313.586	199.013	190.855	1460.362
	STD DEV	8.391	8.437	6.513	10.754	7.963	8.333
4 BURG, REC ST PRO	MEAN	11.428	14.290	18.252	21.057	22.690	15.793
	COUNT	56	61	47	17	19	200
	SUM	639.967	871.678	857.829	357.961	431.118	3158.553
	STD DEV	5.295	7.570	8.292	11.411	15.436	9.345
5 ROBBERY, CSC3	MEAN	18.130	21.964	17.439	17.039	36.579	21.145
	COUNT	24	17	7	2	6	56
	SUM	435.132	373.388	122.072	34.079	219.474	1184.145
	STD DEV	8.652	6.693	6.598	4.559	7.319	9.319
6 ASSAULT2, CSC2	MEAN	18.034	22.727	27.749	37.336	21.944	21.860
	COUNT	33	18	16	1	11	79
	SUM	595.132	409.079	443.980	37.336	241.382	1726.908
	STD DEV	8.342	9.148	11.811	0	13.441	10.645
7 AGG ROBBERY	MEAN	22.534	27.581	35.686	43.462	39.770	28.949
	COUNT	55	39	27	8	10	139
	SUM	1239.375	1075.658	963.520	347.697	397.697	4023.947
	STD DEV	10.391	7.752	20.470	12.893	6.368	14.154
8 ASSAULT1, CSC1	MEAN	36.749	40.467	21.678	35.526	39.391	37.013
	COUNT	12	11	2	6	2	33
	SUM	440.987	445.132	43.355	213.158	78.783	1221.414
	STD DEV	14.739	12.787	10.607	16.654	19.608	14.291
9 MURDER 3	MEAN	72.007	0	41.875	0	33.882	49.254
	COUNT	1	0	1	0	1	3
	SUM	72.007	0	41.875	0	33.882	147.763
	STD DEV	0	0	0	0	0	20.105
10 MURDER2	MEAN	73.328	90.055	0	0	140.296	85.043
	COUNT	6	3	0	0	1	10
	SUM	439.967	270.164	0	0	140.296	850.428
	STD DEV	39.368	56.132	0	0	0	44.724
COLUMN TOTAL	MEAN	17.753	18.572	20.348	23.327	25.279	19.664
	COUNT	264	241	161	63	76	805
	SUM	4686.842	4475.789	3276.053	1469.572	1921.184	15829.441
	STD DEV	14.936	14.425	13.879	14.145	19.449	15.160

TABLE 8

* * * * * * * * * * * * * * * * * * C R O S S---B R E A K D O W N O F * * * * * *
SEVERITY BY HISTORY CRIMINAL HISTOR
CONTROLLING FOR..
SEX OFFENDER'S SEX VALUE.. 2 FEMALE
* *
VARIABLE AVERAGED... TIME2 MONTHS FROM ADMIT TO PAROLE, ADJUSTED
* *

SEVERITY	HISTORY: MEAN / COUNT / SUM / STD DEV	0	1	2	FOUR OR MORE 4	ROW TOTAL
1 UUMV, POS MARIJ	MEAN	5.444	6.941	9.572	0	7.319
	COUNT	2	2	2	0	6
	SUM	10.888	13.882	19.145	0	43.914
	STD DEV	1.047	1.442	1.907	0	2.204
2 THFT REL, S MARI	MEAN	9.359	6.143	0	26.974	9.887
	COUNT	4	4	0	1	9
	SUM	37.434	24.572	0	26.974	88.980
	STD DEV	2.403	1.862	0	0	6.864
3 THEFT < 2500	MEAN	7.215	0	9.671	0	7.829
	COUNT	3	0	1	0	4
	SUM	21.645	0	9.671	0	31.316
	STD DEV	1.560	0	0	0	1.770
4 BURG, REC ST PRO	MEAN	17.961	0	0	0	17.961
	COUNT	1	0	0	0	1
	SUM	17.961	0	0	0	17.961
	STD DEV	0	0	0	0	0
6 ASSAULT2, CSC2	MEAN	0	11.974	0	0	11.974
	COUNT	0	1	0	0	1
	SUM	0	11.974	0	0	11.974
	STD DEV	0	0	0	0	0
7 AGG ROBBERY	MEAN	26.020	22.336	0	0	25.283
	COUNT	4	1	0	0	5
	SUM	104.079	22.336	0	0	126.414
	STD DEV	12.040	0	0	0	10.556
8 ASSAULT1, CSC1	MEAN	41.480	0	0	0	41.480
	COUNT	1	0	0	0	1
	SUM	41.480	0	0	0	41.480
	STD DEV	0	0	0	0	0
COLUMN TOTAL	MEAN	15.566	9.095	9.605	26.974	13.409
	COUNT	15	8	3	1	27
	SUM	233.487	72.763	28.816	26.974	362.039
	STD DEV	12.366	5.858	1.350	0	10.434

IV. Conclusions

Our principal finding is that judges (in making IN/OUT decisions) and the Minnesota Corrections Board (in making durational decisions) utilize the same basic dimensions of decision making -- the severity of the offense and the criminal history of the convicted felon. This finding means that it will be possible to capture the essential framework of current sentencing and releasing practices on a single two-dimensional sentencing guidelines grid. If the MCB had considered different decision making dimensions than judges, it would have been necessary to have separate grids for IN/OUT and durational guidelines. A single grid is desirable from an operational viewpoint, since it makes the guidelines more compact, simpler to administer, and minimizes the possibility of error in application.

We found that judges consider criminal history and offense severity factors roughly equally in making IN/OUT decisions. However, we found that the MCB gives substantially greater weight to the severity of the offense than they do to criminal history factors. Nonetheless, these different weights can be "captured" on a single guidelines grid by means of increasing the duration of confinement for those for whom imprisonment is recommended more rapidly along the severity than the history dimension.

We found that while rates of imprisonment are very low for limited criminal history property crime categories, there are so many cases in these cells of the grid that they account for a substantial portion of those sent to prison. Under any set of sentencing guidelines that uses current practice as an important element in deciding where to draw an IN/OUT line, these cases will be recommended for non-imprisonment sentences. Assuming that judges follow these recommendations most of the time, we should expect to see some changes in the type of cases being imprisoned. This would be reinforced by more uniform incarceration of offenders in categories where imprisonment is recommended. Specifically, we could expect fewer commitments to prison for persons convicted of property crimes and who have short criminal histories, and more commitments to prison for persons convicted of person offenses who have longer criminal histories. In the long run, these changes will have an impact on the configuration of the prison population in Minnesota. Specifically, the prison population is likely to become older, convicted of more serious crimes, and serving somewhat longer sentences than at present. Fewer women are likely to be imprisoned than under current practice, but again, those that

are imprisoned will be older, convicted of more serious crimes, and serving longer sentences. Commission staff are now preparing a projection model which will allow us to describe the number and composition of prison populations over a five year period under the sentencing guidelines.

We found that while the percent imprisoned as well as the duration of confinement increased with increases in criminal history and offense severity, there was substantial variation in both IN/OUT decisions by judges in different regions of the state, and in durations of confinement by the Minnesota Corrections Board. Obviously, not all of that variation may be properly labeled as "disparity." Disparity occurs only when variation in sentencing practice is unwarranted, or is based on some invidious criteria. Nonetheless, the variations we observed are large and some must occur by means of unwarranted differences in imprisonment or durational decisions. Our findings support the concern voiced in the Legislature during the last few years that sentencing patterns for similar offenders differ from place to place in Minnesota.

DGP/blf
9/18/79