# Report to the Idaho State Legislature

on

# *Child Sexual Abuse Crimes*

January 1, 1988 through December 31, 1989

Submitted By

Governor
Cecil D. Andrus

*AND*

Attorney General
Jim Jones

During the First Regular Session of the Centennial Legislature, many bills were proposed dealing with the problem of child sexual abuse. The Legislature found that information regarding child sexual abusers was incomplete and enacted Idaho Code § 67-1405, instructing the Attorney General to collect and collate information on a statewide basis so that future policy decisions of the Legislature could be based on a more substantial body of knowledge.

This Report, submitted by the Governor and the Attorney General of the State of Idaho, compiles all available information from the Department of Health and Welfare, the Department of Law Enforcement, local law enforcement officers, the Administrative Office of the Courts, and the Commission on Pardons and Parole. Valuable assistance was also provided by the Department of Corrections.

It is our joint conviction that the information in this Report provides the substantial body of knowledge necessary for the Legislature to make its policy decisions. It is our joint plea that the 1990 Legislature take strong action to deal with the scourge of sexual abuse upon the innocent children of Idaho.

Cecil D. Andrus
Governor of the
State of Idaho

Jim Jones
Attorney General of the
State of Idaho

## A NOTE OF APPRECIATION

Compiling this Report for the first time was a process fraught with false leads, dead ends, stumbling blocks and assorted obstacles. The compiler was assisted throughout by gracious and cooperative people in each of the affected agencies: Kent Henderson and Linda Hagedorn at Health and Welfare's Division of Family and Children's Services; Lonnie Gray at the Department of Law Enforcement; Carl Bianchi and John Peay at the Administrative Office of the Courts; Olivia Craven at the Commission of Pardons and Parole. Several prosecutors and Health and Welfare field office workers made it possible to check local records on-site and in detail. Alice Koskela of the Governor's Office lent her help in structuring, compiling and editing the report. Hollis Brookover, who researched the FCS Special Report, provided access to the raw data that make this an accurate Report. The Report itself owes its existence to the able help of Leslie Thullen of the Attorney General's Office.

John J. McMahon
Chief Deputy Attorney General
Report Author

# TABLE OF CONTENTS

## SUMMARY OF REPORT FINDINGS

The most significant findings reported by the agencies that contributed to this Report are:

* Approximately 2,000 reports of child sexual abuse were made to Health and Welfare during the 18-month period from January 1, 1988 to June 30, 1989. Caseworkers identified approximately 700 of these reports as "substantiated."

* During the same period, approximately 400 felony cases were filed in Idaho district court for sex abuse crimes.

* Eight percent of child sex abuse cases go to trial. Two out of every three trials result in a conviction. The Second, Third, Fourth and Fifth Judicial Districts -- with 56% of the state's sex abuse cases -- accounted for 94% of the state's trials.

* One in every four cases is dismissed outright.

* One in five sentencings results in a withheld judgment. This number appears to be decreasing, probably because withheld judgments can no longer be expunged from the child sex abuser's record.

* In 83% of the sentences handed down, the court's sentence was the same as or exceeded the recommendation made by the prosecutor at the time of sentencing.

* Approximately 15% of all sex offenders were sentenced directly to the state penitentiary during calendar year 1989.

* Average length of sentences of sex offenders sent to the state penitentiary varies widely across the state from a low of 4 months in the Fifth Judicial District to a high of over 7 years in the First and Third Judicial Districts.

* One out of every two convicted sex offenders now spends time in the 4-6 month evaluation program at Cottonwood. During 1986-87, only

one out of four sex offenders went to Cottonwood.

* Approximately 50% of those who completed the Cottonwood program during calendar year 1989 were sentenced to the state penitentiary. The other half were placed on probation. In 1986-87, only 23% of those sent to Cottonwood were sent to the state penitentiary.

[The number of dismissals, withheld judgments and immediate suspended sentences in the last half of 1989 may be understated because of incomplete data available to the Attorney General in these categories.]

Time Frame Now
July 1, 1989 - June 30, 1990

## INTRODUCTION

This report on child sexual abuse is submitted by the Governor and the Attorney General of the State of Idaho to the Idaho Legislature. In 1989, the Legislature enacted Idaho Code § 67-1405, directing the Attorney General to collect and collate information regarding child sexual abuse from the following agencies:

--- the Department of Health and Welfare;

--- city police, county sheriffs, and the Department of Law Enforcement;

--- county prosecuting attorneys;

--- the Administrative Office of the Courts; and

--- the Commission on Pardons and Parole.

The purpose of the report is "so that future policy decisions of the Legislature [dealing with the problem of child sexual abuse] can be based upon a more substantial body of evidence." 1989 Sess. Laws, ch. 382, § 1, p.952.

The Governor and the Attorney General conclude that the reporting mechanisms now in place at the agencies listed above are not adequate to produce a report that would prove helpful to the Legislature. The format whereby information is collected by each agency has been designed to meet that agency's in-house needs, not to generate a single statewide data base for reporting child sexual abuse information. Furthermore, each agency's service function is paramount; data collection is of lesser importance and thus the information is sometimes incomplete or unreliable.

CHILD SEXUAL ABUSE REPORTS ANALYZED IN THIS REPORT

1. The Family and Children's Services (FCS) Special Report

Fortunately, the Legislature's need for information is largely met by the recent publication of a "Special Report on the Status of Prosecution and Sentencing for Sex Crimes Against Children," a study made possible by grants to the Division of Family and Children's Services (FCS) at the Department of Health and Welfare. This report was prepared at the request of the Governor's Office. The FCS Report studied 397 court cases from January 1, 1988 to June 30, 1989 in an attempt to track all felony cases bound over to district court involving sex crimes against children. The Report included in its data base 57 cases disposed of at the magistrate court level -- mostly either dismissals or plea bargains down to misdemeanors.

As noted in the FCS Report, the study was designed to track Idaho district court cases, and thus does not cover crimes prosecuted in tribal or military courts. The study also omits cases where the perpetrator is a juvenile -- an unfortunately large category, which the Attorney General estimates at perhaps 10% of all cases (based on Health and Welfare reports of older "siblings" as "alleged perpetrators").

The methodology of the FCS Report, established by the Governor's Office, insured maximum accuracy. The researcher made an on-site inspection of court records in all 44 counties. This method avoided the pitfalls that plagued

ADA-Boise
Pocatello
Idaho City
Sandpt.
Idaho Falls
Bonners Ferry
* Caldwell
Burley
Emmett
Jerome
Coeur d'Alene
Moscow
Rupert
Payette
Weiser
Twin Falls
Lascade

Called all the others

17 counties visited

every other report: its accuracy does not depend on the reliable transmission of data from dozens or even hundreds of people working in the social service, criminal justice and court systems. The Attorney General has independently verified the accuracy of this report by sampling two of the state's six largest counties and conducting interviews and a detailed record search in those counties. The Attorney General agrees with the Governor that the Legislature may rely upon the FCS Report for its claim to be a "virtually complete record of charges of sex crimes against children" filed in felony cases in Idaho from January 1, 1988 to June 30, 1989.

Caldwell was done

The Attorney General has also been able to update the information in the FCS Special Report. At the time the report was completed, the researcher listed 34 cases in which judgments were still pending, 33 cases in which sentences were still pending, and 41 cases in Cottonwood where ultimate disposition was still pending. By using records at the Department of Corrections, the Attorney General has been able to identify the disposition of 93 of these 108 cases.

2. Department of Health and Welfare Annual Reports

The Department of Health and Welfare's "Annual Report," filed under the mandate of the Idaho Child Protective Act, tabulates approximately 2,306 reports of child sexual abuse for the 18-month period (1,546 reports for FY '89, plus one-half of the 1,520 reports for FY '88). However, the

Department is in process of going from a manual to a computerized record-keeping system and was not able, due to staff limitations, to verify this number (which is derived from individual reports kept in each field office around the state). Nor was the Attorney General. Due to incomplete implementation of the new data system, it is also possible that not all reported cases are represented in the computer print-outs. The computer print-outs provided to the Attorney General by the Department for the test period list 3,152 reports. However, only 1,936 separate victims are identified once duplicates are eliminated. Furthermore, a spot check revealed that some cases recorded as sexual abuse are actually cases of physical abuse or neglect, which were miscoded in the data system.

If these reports <u>were</u> all substantiated, it would mean that only one out of every five incidents of child sexual abuse (397/1,936) found its way into the criminal justice system during the study period. The Department's "Special Report" for the 1986-87 period stated that "about 50% of all reports are substantiated." That estimate is not borne out by the Department's computer reports, which consistently record, in the judgment of the caseworkers, that between 35-40% of the reported incidents are "substantiated." However, even this estimate is flawed, since the caseworkers decline to identify the incidents as either "substantiated" or "unsubstantiated" in 20-25% of their reports.

The Attorney General's conservative best estimate is that approximately 1,900-2,000 unduplicated incidents of child sexual abuse were reported to the Department during the 18-month test period and, of that number, at least 35%, or about 700 incidents, were deemed "substantiated" by the caseworkers.

The Governor and the Attorney General further conclude that no valid inferences can be drawn by juxtaposing the number of Health and Welfare "substantiated" reports alongside the number of district court prosecutions. Bridging the gap between Health and Welfare reports and court records requires "incident-based-reporting," not the mere juggling of raw numbers. The existing computer systems are not able to talk to one another to generate a report that follows an incident from the time it is reported to Health and Welfare, through investigation, prosecution and court disposition.

3. Department of Law Enforcement Records

Department of Law Enforcement (DLE) reports are created when fingerprint records are forwarded to the Department. A fingerprint card is sent to DLE whenever a person is arrested and booked for a crime of sex abuse. If the card is not then sent to DLE by local law enforcement officials, the system is incomplete at the very outset. Moreover, in some areas of the state, if the accused is not considered at risk to abscond before trial, he is merely served a summons to appear at trial and is never booked and fingerprinted at

all. The result is that DLE has no record of these sex offenders unless and until they are convicted and sent to the penitentiary. Since many convicted sex offenders never spend time in the penitentiary, the DLE records are incomplete.

For example, during the test period, the FCS Report researcher identified 397 people who were bound over to district court on felony child sex abuse crimes. During the same time period, the DLE data base identified only 277 people accused of child sex abuse crimes in Idaho. Thus, more than 30% of the people charged with felony sex abuse are missing from the DLE records that are used for background checks. The results can be tragic in the case of offenders who pursue multiple victims or who seek employment in positions dealing with children.

The Attorney General concludes that the DLE data base cannot be relied upon as a complete or accurate record of sex abuse offenders in Idaho. The Attorney General further concludes that the omission of so many sex offenders from the DLE data base poses a serious danger to the children of Idaho.

4. The Administrative Office of the Courts Report

On January 18, 1990, the Administrative Office of the Courts forwarded to the Attorney General "A Report on the Disposition of Child Sexual Abuse Cases" (The Court Report). The Report covers a different time period from the reports submitted by the Department of Health and Welfare, the

Department of Law Enforcement, the prosecuting attorney reports, and the FCS Report. Because of delays in data transmission and tabulation, each of the latter four reports covers the 18-month period from January 1, 1988 to June 30, 1989. By contrast, the Court Report covered the 12-month period January 1, 1989 to December 31, 1989. As such, the Court Report offers the most up-to-date information available in helping to piece together the child sexual abuse puzzle in Idaho.

The Court Report tracked the results of "146 cases disposed during 1989." Unfortunately, as the Report states, an initial audit "indicates that not all of the cases which were disposed were reported." (Court Report, p.1.) The Governor and the Attorney General agree. The report's data base was significantly incomplete.

The Court Report suffers from the same problem encountered in each of the other agency reporting systems that relied on the filing of reports by many people. The Report describes its methodology on page 6: each district court was provided with data collection forms and was "instructed to forward a copy of the final judgment with each of the completed data collection documents." Unfortunately, these instructions were not carried out in all instances.

By comparing the Court Report with the FCS Report and with Department of Correction records, the Attorney General was able to identify a total of 100 dispositions that were

not available to the compilers of the Court Report. These cases are factored into the sentencing statistics provided later in this report.

As the Court's new ISTARS computer system is gradually installed statewide, the need to collect data manually should end and the Court's ability to provide accurate up-to-date information should be greatly enhanced.

5. The Role of the Commission on Pardons and Parole

The Commission on Pardons and Parole likewise submitted data to the Attorney General. However, in the nature of things, there is little likelihood that even the earliest case in the test period (January, 1988) would have progressed through the criminal justice system to conviction, sentencing, incarceration and have reached the point of possible prison release by the end of the test period (December, 1989). Thus, the Commission would not have had a chance to exercise its powers of commutation, discharge, or parole over the criminal defendants identified in the various reports. If later studies attempt to track the same defendants, it is clear that the Commission maintains excellent records for that purpose.

## PROSECUTING CHILD SEXUAL ABUSE CASES

### 1. Prosecutor "No Actions"

If some 700 child sexual abuse reports received by Health and Welfare during the study period were deemed to be "substantiated" by the caseworkers, and if only 397 felony cases were filed by prosecutors, it follows that some 300 cases were not acted on by prosecutors. A sample check of prosecutor logs in one large county showed this to be a reasonable ratio: the "no action" file contained almost as many cases as were actually filed.

This is not entirely surprising. Prosecutors often take "no action" on many cases -- or later dismiss them -- for solid reasons. Most obviously, the perpetrator may have died, or not have been found; or perhaps be already serving a prison sentence in another jurisdiction by the time he is located. Or the crime may have been reported in Idaho, or in a particular county, but actually committed in another state or county; in such cases, the local court system has no jurisdiction over the offender. Most importantly, the prosecutor, in his or her discretion, may decide that the crime cannot be proved beyond a reasonable doubt. This may be because the victim is too young to testify (note that 101 of the victims in the FCS Report were under 7 years of age); or because the family refuses to cooperate, protects the perpetrator and discourages the victim from testifying; or because critical evidence from interviews with professionals (doctors, psychiatrists, psychologists, social workers,

counselors) was not tape recorded and is therefore inadmissible under standards recently enunciated by the Idaho Supreme Court in State v. Wright.

Any of these reasons can substantiate a "no action" on the part of a prosecutor. Similarly, any of them may cause a prosecutor to dismiss a case once it has been thoroughly investigated. It is not surprising that of the 397 cases tracked in the FCS Report, 76 of them (19%) were eventually dismissed.

2. Charging Child Sexual Abuse Offenses

Most incidents of child sexual abuse can be brought into court under several different statutes. The charging decision is left to the discretion of the prosecutor to determine which statute best describes the crime and can most readily lead to conviction.

The FCS Report and the Court Report tracked the various ways in which child sex abuse crimes are charged for the differing time periods covered:

| | FCS Report | | Court Report | |
|---|---|---|---|---|
| § 15-1508 Lewd and Lascivious Conduct | 262 | 64.2% | 104 | 74.3% |
| § 18-1506 Sexual Abuse of a Child | 89 | 21.8% | 27 | 19.3% |
| § 18-6101(1) Rape of a Minor | 57 | 14.0% | 9 | 6.4% |

If both sets of figures are accurate, it means that there has been a sharp rise during calendar year 1989 in the

number of sex abuse crimes charged as lewd and lascivious conduct and a sharp drop in those charged as statutory rape. The Attorney General was not able to identify the source or accuracy of this apparent trend.

The Court Report documents another interesting variation in charging patterns around the state. Charges for the crimes of lewd and lascivious conduct (Idaho Code § 18-1508) and for rape (Idaho Code § 18-6101) carry a maximum penalty of life imprisonment. Charges for sexual abuse of a child (Idaho Code § 18-1506) and injury to children (Idaho Code § 18-1501) carry a maximum penalty of 15 and 10 years respectively. For no apparent reason, the charging of what are undoubtedly similar crimes varies widely in the different judicial districts across the state.

According to the Court Report, the initial charge against the sex abuser contains a possible life sentence in the following percentages in each of the seven judicial districts:

| I | II | III | IV | V | VI | VII |
|---|---|---|---|---|---|---|
| 76.2% | 84.6% | 95.5% | 78.1% | 83.3% | 52.4% | 78.6% |

It is perhaps significant that four of the five judicial districts that tend to charge the most serious offense also tend to go to trial most often. Similarly, the judicial district with the highest rate of life-sentence crime charges (the Third Judicial District, with 95.5%) houses Canyon County which has the most severe average penitentiary sentence (over 8 years) and 5 out of the 8 life sentences

imposed during the study period (see chart following page 26).

3. Trials

Neither the FCS Report nor the Court Report breaks out the number of convictions resulting from trials compared to those resulting from guilty pleas. The Attorney General has attempted to reconstruct this information from the raw data in the FCS Report, but cannot assure the complete accuracy of the following account.

There appear to have been 31 trials statewide during the 18-month period studied in the FCS Report. Ten trials resulted in Not Guilty verdicts. This statistic is not surprising. Sex abuse cases are universally perceived by prosecutors as emotionally draining and extremely difficult to obtain convictions. Those who pursue the cases to trial, on average, can count on winning only two out of every three attempts.

Again, there is a wide variation in the different judicial districts regarding the number of times a child sex abuse case goes to trial. The following chart and accompanying graph show the percentage that each judicial district has of the state's population, the number of charges filed, and the number of cases that go to trial.

| | I | II | III | IV | V | VI | VII |
|---|---|---|---|---|---|---|---|
| % of Population | 12.3% | 9.0% | 13.7% | 23.3% | 14.0% | 10.1% | 18.0% |
| % of Charges filed | 13.7% | 6.8% | 13.9% | 21.5% | 16.5% | 16.2% | 11.4% |
| % of Trials Held | 6.5% | 13.0% | 16.1% | 48.4% | 16.1% | 0.0% | 0.0% |

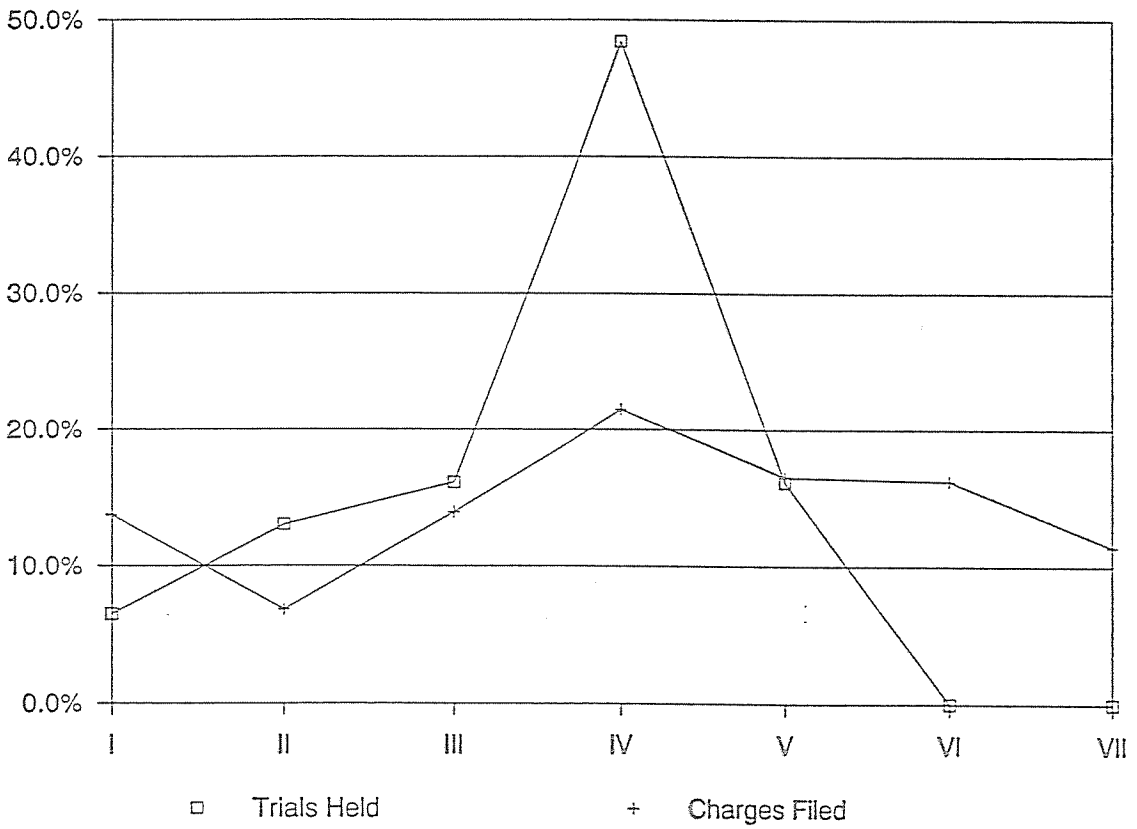
In short, the Second, Third, Fourth and Fifth Judicial Districts, with a combined total of 60% of Idaho's population and 56% of its cases, have 94% of its trials.

It is difficult to decipher the meaning of these statistics. They may mean only that the defense bar in some districts is more litigious than in others; or that prosecutors in those districts are more reluctant to dispose of cases by plea bargains. Intuitively, it seems that a credible threat of going to trial would strengthen the prosecutor's hand in negotiating plea bargains, and that tougher sentences would follow upon trials than upon guilty pleas. Further studies should test these hypotheses by tracking the differing sentencing disposition patterns, if any, between trial convictions and guilty pleas.

4. Guilty Pleas and Plea Bargains

None of the reports presents a detailed analysis of cases disposed of by guilty pleas. The FCS Report identified 192 plea bargains between defense counsel and prosecutors. Of these, 12 resulted in dismissed charges, 117 in fewer or lesser charges.

# Child Abuse Cases Tracked By Judicial District



Neither the FCS Report nor the Court Report distinguishes between "straight up" guilty pleas and plea "bargains." A straight-up guilty plea means that the accused admits all charges and the prosecutor is free at sentencing to place in evidence all aggravating circumstances (past and present) and to recommend whatever sentence the prosecutor deems fit. A plea bargain, by contrast, means that the accused pleads guilty to one or more charges in exchange for an agreement by the prosecutor to drop other charges or to seek less than the maximum penalty authorized by statute.

Once again, there are many situations in which a plea bargain is justified. For all the reasons mentioned earlier, the prosecutor may conclude that he or she may not be able to prove the charge beyond a reasonable doubt. Or a maximum possible life sentence may remain, even though the accused only admits to one crime (lewd and lascivious conduct) rather than many crimes.

On the other hand, it must be stressed that a plea bargain may not hold an offender appropriately accountable for his crimes and may, therefore, place at risk other young children.

The role of plea bargains in the criminal justice system is extremely controversial and should be closely studied in any future reports.

## SENTENCING THE CHILD SEXUAL ABUSER

### 1. Sentencing Data

This part of the report draws upon the FCS Report and the Court Report. Both reports present detailed analyses of the sentencing outcomes of cases studied.

#### a. Total Number of Cases Studied

The FCS Report studied 397 cases that began in district courts during the 18-month time period, January 1, 1988 to June 30, 1989. The report continued to track the outcomes of these cases throughout the remainder of 1989 as additional disposition information became available.

The Court Report came at its data from the opposite direction. It studied 146 cases that ended by way of a district court order during calendar year 1989. Because many of the orders disposing of cases studied in the FCS Report were also issued during calendar year 1989, there is a very large overlap between the populations studied in the two reports. As mentioned earlier, the Attorney General was able to supply information on 100 cases entirely omitted in the Court Report.

The chart on the following page shows the disposition of cases as tabulated in the two reports and as updated by the Attorney General.

# CHILD SEXUAL ABUSE REPORTS

| | F.C.S. Report [1/1/88 to 6/30/89] | Court Report | Atty. Gen. Updates [1/1/89 to 12/31/89] |
|---|---|---|---|
| TOTAL CHARGES: | 397 | 146 | 237 |
| Judgment Pending | 34 | 9* | |
| Sentence Pending | 33 | | |
| Deferred Prosecution | 4 | | |
| | 326 | 137 | 237 |
| Dismissals | 76 | 21 | 37 |
| Not Guilty | 10 | 6 | 9 |
| Remaining Dispositions | 240 | 110 | 191 |
| Withheld Judgments | 45 | 0 | 26 |
| Immediate I.S.C.I. | 24 | 22 | 31 |
| Immediate Jail | 5 | 6 | 2 |
| Cottonwood Dispositions | | | |
| I.S.C.I. | 23 | 13 | 38 |
| Suspended Sentence | 34 | 11 | 33 |
| Pending | 41 | 30 | 28 |
| (Totals for Cottonwood) | (98) | (54) | (99) |
| Immediate Suspended Sentence | 68 | 28 | 33 |
| TOTAL SENTENCES: | 240 | 110 | 191 |

* 9 cases omitted from totals include probation violations, appeal stays, etc.

b. Cases Pending

The FCS Report data base began with 397 cases. At the time the report was filed, judgments were still pending in 34 cases; sentencing hearings had not yet been held in 33 cases; and 4 cases were listed as deferred prosecutions. Thus, the Report tracks the disposition of 326 cases (397 less the 71 pending).

The Court Report data base began with 146 cases. Since the court tracked only court disposition orders, it had no pending cases. Some 137 cases are tabulated, nine others having been subtracted from the initial total because they deal with odd categories that do not compare well with other tracking systems (e.g., stay orders pending appeal; probation violations; etc.). The data base is raised to 237 cases by the addition of 100 cases the Attorney General identified as having been decided during calendar year 1989. These cases were found in the FCS Report data base and all dispositions were confirmed by contacting the Department of Corrections, the Cottonwood facility, and the originating county. However, since the FCS Report did not track cases filed after June 30, 1989, we were not able to report any cases filed after June 30, 1989, which may have resulted in dismissals, withheld judgments or suspended sentences during the latter half of calendar year 1989, unless those cases were identified in the Court Report. Because the Court Report was imcomplete, the number of cases included in those categories is likely to be understated. The combined total

of 237 cases will be referred to as the "Updated Court Report" in this section of the study.

c. Cases Dismissed

The FCS Report identified 76 dismissals, for a total of 23.3% (76/326) of the total dispositions. The dismissal rate, according to the Updated Court Report, appears to drop off to 15.6% (37/237) during 1989. In fact, a sharp drop-off did not occur. The 76 dismissals in the FCS Report included 18 by magistrates. The Court Report did not track any cases disposed of by magistrates. If these dispositions were added back in, the Court Report rate would rise to 23.2%. Thus, the dismissal rate of child sex abuse cases has held relatively constant over the last two years. Similarly, a report documenting child sex abuse cases during calendar years 1986-87, found a 19.3% dismissal rate.

d. Withheld Judgments

The FCS Report found 45 withheld judgments, or 18.8% of the total number of sentencings (45/240). By contrast, the Court Report tabulated no withheld judgments at all. This is because the Court Report had no category for withheld judgments; instead, it simply recorded all case outcomes in the categories devoted to length of sentence or resulting probation.

The Governor and the Attorney General believe it is extremely important to identify the number of child sex abuse cases that end in a withheld judgment. Traditionally, a withheld judgment has meant that no conviction will appear

on the defendant's record if the terms of the withheld judgment are met. The result is that the offender's identity will not turn up on any background check of criminal records; furthermore, the abuser will be able to argue, at least one more time, that he is a "first-time" offender.

The 1989 Legislature attempted to do away with this loophole. Under an amendment to Idaho Code § 19-2604, effective July 1, 1989, crimes of sexual abuse can no longer be expunged from the abuser's record. Consequently, there is no longer any incentive to seek a withheld judgment. One would, therefore, expect to see a sharp drop-off in the number of withheld judgments during the latter part of 1989. In fact, a drop-off did occur, though not as sharply as one might expect. During the latter part of 1988, 19 withheld judgments were recorded. During the first half of 1989, 16 withheld judgments were recorded. During the last half of 1989, only 10 withheld judgments were entered. (As mentioned earlier, it is possible that this number may be slightly understated.) As practitioners and defendants learn that withheld judgments no longer mask the record of the sex abuser, we expect such judgments will gradually cease.

e. Immediate Incarcerations

The FCS Report found that only 24 sex offenders, or 10% of the 240 sentences studied, were sent directly to prison. By contrast, the Court Report states that 63% were sent

directly to prison. The discrepancy arises because the FCS Report tabulates separately those offenders sentenced to the Cottonwood evaluation and treatment program, whereas the Court Report melds the penitentiary and Cottonwood data together. An offender may be released on probation or may be sent to the penitentiary upon completion of the Cottonwood program.

The facts are that only 24 of the 240 sex offenders whose sentences were known at the time the FCS Report was published, were sentenced immediately to the state penitentiary.

By contrast, the Updated Court Report shows that 31 of the 191 sex offenders whose sentences were known to have occurred during calendar year 1989 were sent immediately to the state penitentiary.

Additionally, a small number of offenders were identified by each report as having been sentenced immediately to county jail (5 in the FCS Report, 9 in the Updated Court Report).

f. Cottonwood Dispositions

According to the FCS Report, defendants in 98 cases, or 40.8% of the total (98/240) were sent to the Cottonwood facility for a 4-6 month evaluation period after initial sentencing. The Updated Court Report shows a definite trend toward increased use of the Cottonwood sentencing option: 99 out of 191 defendants, or 51.8%, were sent to Cottonwood during calendar year 1989. These figures continue a trend

that has been occurring over the last four years. In the 1986-87 Report, only 30% of all sex abuse offenders were sentenced to the Cottonwood program.

There has also been a shift in the post-Cottonwood disposition ratio. When the FCS Report was filed, 23 offenders had been sent to the penitentiary after Cottonwood; 34 had received suspended sentences (41 cases were still open). Thus, in 1988 and early 1989, approximately 40% of sex abusers sent to Cottonwood, whose final sentences were known (23/57), were eventually sent to the state penitentiary.

By contrast, the updated Court Report shows that 38 offenders were sent to the penitentiary after Cottonwood in calendar year 1989; 33 received suspended sentences (28 cases were still pending). This means that slightly more than half the offenders sent to Cottonwood during calendar year 1989 (38/71) were sent to the state penitentiary upon completion of the Cottonwood program.

g. Immediate Suspensions

The FCS Report identified 68 cases, or 28% of the total (68/240), in which suspended sentences were immediately imposed on the offender.

The Updated Court Report indicates that only 33, or 17% of the cases (33/191), during calendar year 1989 resulted in immediate suspensions.

The discrepancy is partly due to the fact that the FCS Report included 12 cases where suspensions were imposed by

magistrates in cases plea bargained down to misdemeanors. Nonetheless, there appears to have been a trend away from the granting of immediate suspensions. Nearly 40 suspensions were recorded in 1988; 21 were recorded in the first half of 1989; only 9 in the second half of 1989. Again, the latter number may be slightly understated because of possibly incomplete data in this category for the second half of 1989.

h. County Jail Sentences

As mentioned earlier, 5 cases in the FCS Report resulted in immediate incarceration in the county jail, as did 9 cases in the Updated Court Report.

Of greater significance is the fact that many of the other categories tabulated here generally involve short term county jail sentences. Those who receive withheld judgments, or suspended sentences, or probation after Cottonwood, may be required to serve time in the county jail. The Court Report attempted to break out these numbers; however, the task is complicated by the fact that the jail sentences varied in length from 48 hours to one year. Future studies should track information on county jail sentences in varying degrees of severity: e.g., 0-30 days; 1-6 months; 6 months to one year.

2. Sentencing Patterns

It is difficult to draw conclusions from the wide variations in sentencing patterns found in the Special Report. The three crimes studied cover a spectrum that is

almost infinite in its breadth: from the violent pedophile preying upon hundreds of young victims at one extreme, to a single incident of consensual intercourse between a 19-year-old and a 17-year-old on the other.

Sentencing is an exercise of judicial discretion applied to the individual facts of each case. Some crimes are simply more egregious than others: some may involve violence, others not; some may involve multiple victims, others not; some may be a first offense, others but one incident in a life-long pattern of abuse. Some victims "consent"; others are unwilling. Some defendants are respected members of the community, while others are drifters or social outcasts; some admit their crime and seek help, while others deny the crime in the face of obvious proof to the contrary.

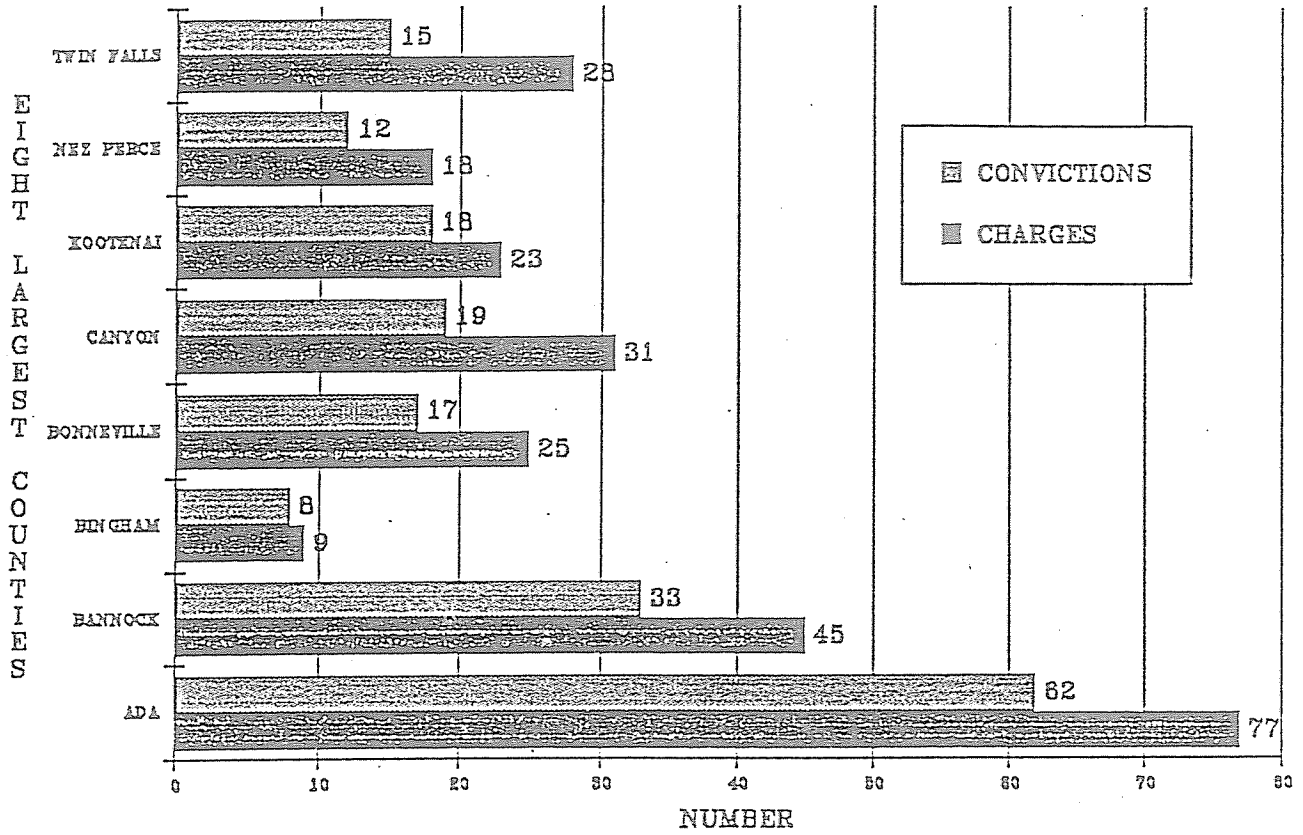
All that having been said, one still cannot explain the wide variations in conviction and sentencing patterns throughout the state simply by pointing to variations in individual fact situations. It is clear that jurisdictions within the state have different philosophical approaches to disposition of child sex abuse offenders. In some jurisdictions, there is obviously a concerted effort to punish the offender and protect the victim and other children in the community by convicting the abuser and putting him behind bars. In other jurisdictions, the preferred approach appears to be an attempt to rehabilitate, rather than incarcerate the offender. Moreover, if the

offender has a responsible job, these jurisdictions view a penitentiary sentence as likely to cast the family onto the welfare rolls and to deprive the victim of treatment and counseling. The non-incarceration approach also attempts to reunite the family if this is possible and in the best interest of the child. In these instances, the child's interest may best be served by removing the offender, not the child, from the home. Given the uncertainty about effectiveness of rehabilitation treatment for child sex abusers, the non-incarceration approach may create a risk for child victims and other children in the community.

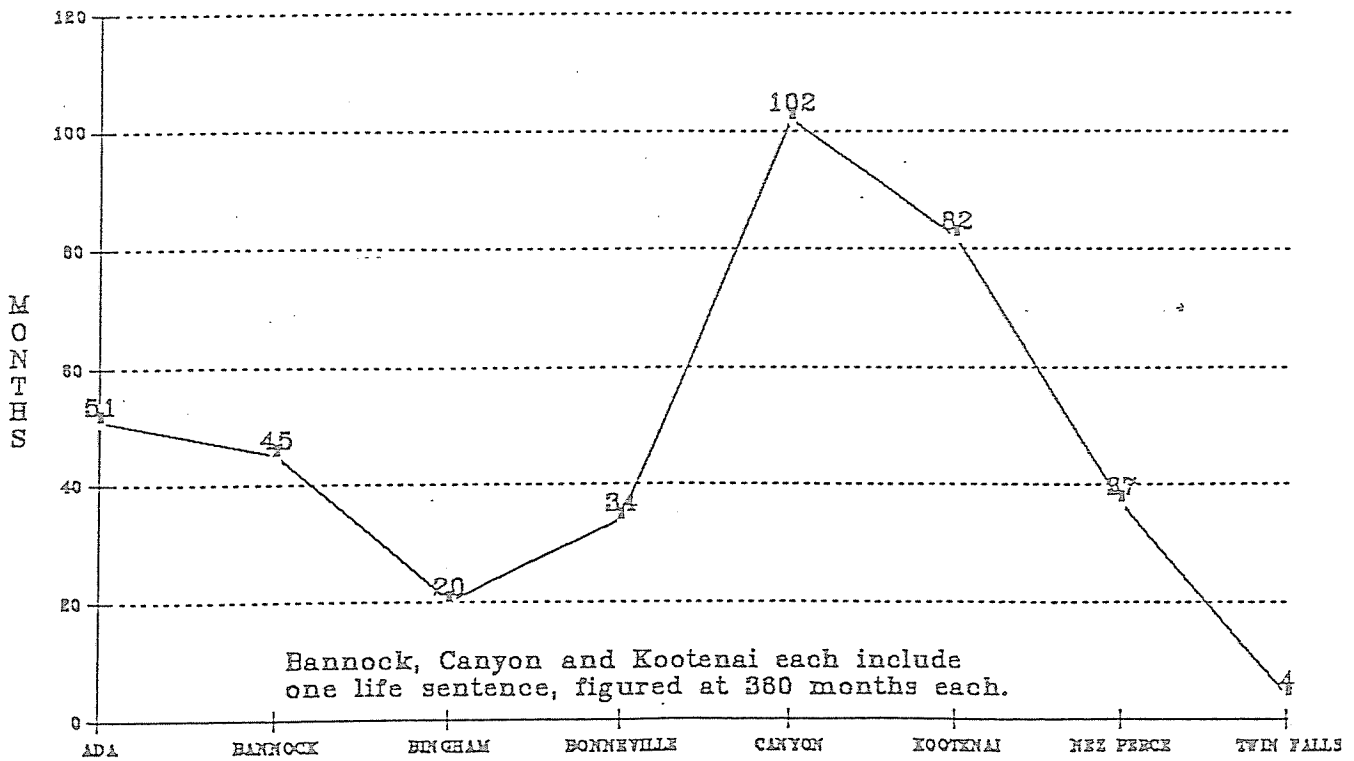
Kootenai County is the obvious example of a county that is incarceration-oriented. (Table 1, FCS Report, pp.24-25.) Once charges are filed in Kootenai County, the overall conviction rate is 78.3%, compared to a statewide average of 68.7%. A person convicted of child sexual abuse in Kootenai County receives an immediate withheld judgment or suspended sentence only 16.7% of the time, compared to nearly 60% of the time in some other large counties. In Kootenai County, the convicted offender faces an average of nearly seven years in the state penitentiary (second only to Canyon County, with an average of over eight years -- see attached graph from FCS Report, p.26), compared to other counties where "hard time" is virtually non-existent as a sentencing option.

Similarly, wide variations are seen between sentencing patterns in the state's most populated counties and those

## CHARGES AND CONVICTIONS
## JANUARY 1988 – JUNE 1989




## AVERAGE TIME TO BE SERVED PER DISPOSITION
## (INCLUDES EVALUATION TIME)



less populated. (See Table 2, FCS Report, pp.28-29.) In the state's eight most populated counties, for example, convicted sex offenders are sent directly to the state penitentiary 15% of the time, compared to only 6.5% of the time in the 36 least populated counties. Similarly, the large counties on average grant an immediate withheld judgment or suspended sentence only 43% of the time, whereas the smaller counties do so 57% of the time.

A final indication of the widespread philosophical differences in approach to sex abuse cases can be seen in the different outcome of cases in different judicial districts. In the First Judicial District, 34% of convicted abusers go straight to the penitentiary; only 41% get suspended sentences or withheld judgments. By contrast, the combined totals in the Fifth and Seventh Judicial Districts indicate that convicted sex abusers in those districts go straight to the penitentiary only 4% of the time; suspended sentences or withheld judgments are imposed 67% of the time.

3. Court Response to Sentencing Recommendations

The Court Report is the only study to document the correlation between court sentencing patterns and recommendations made to the court at the time of sentencing. The Report summarizes its findings as follows:

> In 83% of the sentences handed down, the court's sentence was the same or exceeded the recommended sentence provided by the prosecutor at the time of sentencing.
>
> In 92% of the sentences imposed during 1989, the court's sentence was the same or exceeded the

sentence recommended by the Department of Corrections.

In 26 of the 29 cases where the victim's recommendation was available, the judge's sentence was the same or was more severe than what the victim recommended.

Recommendations were available from prosecutors and from presentence investigators (the Department of Corrections representatives) in approximately 80% of the cases.

However, it should be noted that under Rule 32 of the Idaho Criminal Rules, "the presentence report may recommend incarceration but it should not contain specific recommendations concerning the length of incarceration." Thus, the statement that the court met or exceeded the presentence report recommendations 92% of the time deals only with broad general categories, not specific amounts of time.

Nonetheless, it appears accurate that in five out of every six cases (83%), the district court is handing down sentences in child sex abuse cases that meet or exceed the recommendations made by prosecutors at the time of sentencing.

Since 50% of all convicted sex offenders are now spending time at Cottonwood, the Governor and the Attorney General recommend that future reports also study the district court's response to recommendations (for incarceration or probation) made by the Cottonwood staff upon completion of the 4-6 month evaluation program.

## RECOMMENDATIONS REGARDING FUTURE STUDIES

The purpose of this report is to provide a "more substantial body of evidence" to guide future policy decisions of the Legislature. The Governor and the Attorney General have their own policy recommendations that they are making directly to the Legislature. This report does not present such policy recommendations.

This first Report has benefited from the cooperation of all affected agencies. Furthermore, we recognize that each agency's primary mission is service, not data collection. Still, much progress can be made at little cost if uniform procedures are set up to trace incidents from start to finish. In some instances, this will require only the addition of a single data entry (e.g., a social security number, or case number). In other instances, it will require that newly installed computer systems be programmed with an eye to existing computer data bases in other state departments.

Finally, if the Attorney General or any agency that does not collect the data in the normal course of business is given responsibility to generate the annual report, then that agency must be given the resources to do the job. Had there not been a grant to hire a consultant to search out the files in all 44 counties, the FCS Report, the basis for much of the information presented here, would not have been written and this report would not have been able to check the accuracy of information submitted by the agencies.

Funding must be made available on a permanent basis if a quality report is to be generated in the future.