

COUNTRY REPORT ~ THAILAND

*Somphop Rujjanavet**

I. GENERAL SITUATION OF THE CRIMINAL JUSTICE SYSTEM

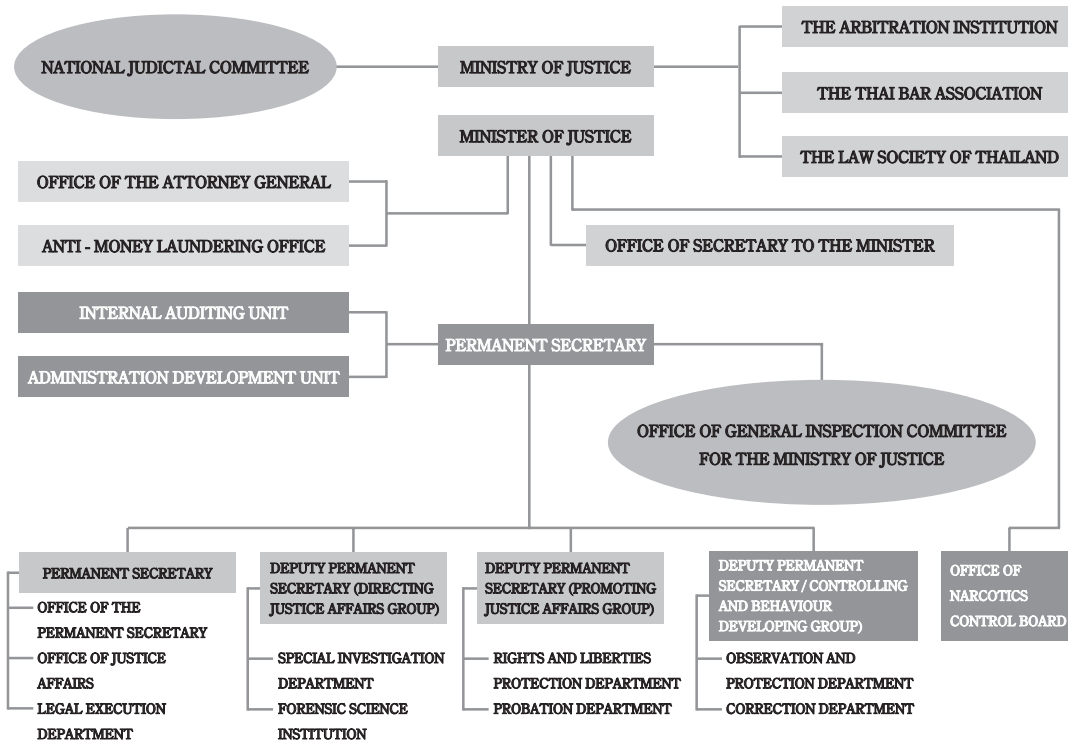
A. The Thai Constitution B.E. 2540 (1997)

It might be said that it was not until 1891, during the reign of King Rama V, that the criminal justice system in Thailand was applied in the same way as Western countries. The major reform of the justice system, however, occurred subsequent to the enforcement of the Thai Constitution B.E. 2540 (1997). As a result, the Thai Constitution B.E. 2540 (1997) decreed the Court an independent public agency separate from the Ministry of Justice. In the case of the Department of Corrections, this is administered by the Ministry of Interior.

B. The Bureaucracy Reform in 2002

In order to enhance the role of the Ministry of Justice on rights and liberties protection, crime prevention and rehabilitation of offenders, including legislation development, the Bureaucracy Reform was introduced in 2002. As a result of the bureaucracy reform, the Department of Corrections was transferred to the Ministry of Justice in October 2002 after having been under the administrative chain of the Ministry of Interior for 69 years. Also, the Office of the Narcotics Control Board has been transferred from the supervision of the Prime Minister to the Ministry of Justice. In addition, new agencies in the justice system have been established such as the Office of Justice Affairs, Special Investigation Department, Rights and Liberties Protection Department and the Central Institution of Forensic Science. The principle objective of streamlining the state bureaucracy is to enable it to function efficiently and transparently with a higher degree of public accountability. Agencies that perform the same duties are grouped in the same cluster. The Department of Corrections as a significant unit in the criminal justice system, therefore, has been transferred and works closely with the Department of Probation and the Department of Juvenile Observation and Protection under the supervision of the Justice Minister.

Organization Chart of the Ministry of Justice



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Moreover, in the Thai Justice System, treatment of offenders is categorized into several forms which focus on offenders' characteristics and the causes of offending. In general, offenders' treatment may be divided into Custodial Treatment and Non-Custodial Treatment. Accordingly, it is noted that the latter form can be put into practice previous to and subsequent to the court hearings.

Nevertheless, both Custodial Treatment and Non-Custodial Treatment, aims to reduce crime rates and re-offending, including returning decent citizens to society.

II. CURRENT SITUATION AND PROBLEMS IN REGARD TO THE TREATMENT OF OFFENDERS

A. Prison Population

During this last decade, the prison population in Thailand has increased dramatically. Especially after the Royal Thai Government declared the drug prevention and suppression policy in 1998, the number of drug offences notified to the police has been the number one crime in Thailand. This has led to a rapid increase in the number of drug offenders in prisons throughout the country. In the past, offences against property was the highest crime in prisons but since 1996 drug offences have become the highest and has increased dramatically. Given the Department of Corrections (DOC) statistics, the number of inmates convicted for drug offences in 2003 was as high as 104,999, nearly four times greater than property crime which ranks in second place. Approximately 70% of drug offenders were drug producers, sellers and smugglers.

It can be said that Thailand is one of the countries that have a very high ratio of prisoners per population. Remarkably, in some years there was a collective royal pardon according to the importance of the nation; when some convicted inmates were released, which slightly decreased the prison population. In 2003, the number of prisoners had dropped from 250,000 to around 210,000 because of the Narcotic Addict Rehabilitation Act B.E. 2545 (2002), which came into force in October 2002. According to the Act, offenders committing drug-related offences, especially drug users, will be sent to undergo medical examinations and receive proper rehabilitation and treatment in Drug Rehabilitation Centres of the Department of Probation. Even though such numbers of prisoners is still considered relatively high, the decreasing number has shown a positive trend in the prison population. This significant change is a result of the recognition that overcrowding is not merely a problem for the Department of Corrections, but is a consequence overall of the criminal justice system. Therefore, the government has taken the problem of solving prison overcrowding as corporate policy thereby various agencies, both private and public, have cooperated in trying to solve this problem.

Prison Population in Thailand

Year	Male	Female	Total
1994	94,776	8,553	103,359
1995	101,130	9,898	111,028
1996	92,353	10,849	103,202*
1997	114,389	16,608	130,997
1998	141,131	23,320	164,451
1999	171,730	31,972	203,702*
2000	157,454	33,087	190,541
2001	204,429	46,424	250,853
2002	204,737	49,333	254,070
2003	168,523	42,952	211,475

* In these years, there was a collective royal pardon.

B. Overcrowding Problem

Overcrowding is regarded as the most important problem in regard to the treatment of offenders in Thailand. At present, there are 139 prisons and correctional institutions under the supervision of the Department of Corrections. Sleeping cells in Thai prisons are common rooms or dormitories. The total space in the dormitories is 245,033 sq.m. while the standard sleeping area stipulated by the Department of Corrections is 2.25 sq.m. per person. This standard sleeping area consequently allows 108,904 prisoners. However, as of 31 March 2004, there were 200,476 prisoners in prisons across the country. It is obvious that the number greatly exceeds the sleeping capacity and one can just imagine how tightly packed prisoners have to sleep. Overcrowding is the cause of many related problems; both to the custodial system and to the physical and mental status of the prisoners. Indeed, overcrowding is not merely a problem for the Department of Corrections, but is of consequence to the overall criminal justice system.

C. Main Causes of Prison Overcrowding

There are various factors that lead to higher numbers of inmates in Thai prisons.

1. The Increase of Drug Offenders

The government's policy on drug suppression: Suppression is carried out by destroying drug production sources and by arresting drug users and drug dealers. The main sentence imposed on drug offenders is imprisonment. The more drugs suppressed, the higher the number of drug offenders. Furthermore, the Prime Minister's Order on Treatment of Drug Offenders which was issued by the Office of the Prime Minister in 1998 indicated that drug users should receive treatment programmes. On the other hand, drug dealers should receive severe punishment and should not receive any lenient or commutative pardon. The order has had a direct effect on drug dealers who have to spend a longer time in prison than other offenders. This long-term imprisonment is certainly one main cause of overcrowding.

2. The Incarceration of Unsented Inmates

Among the total number of the prison population, approximately 30 percent are inmates awaiting investigation and inmates awaiting trial. Generally, remandees or unsented inmates are incarcerated in Remand Prisons. As for Provincial Prisons, there must be a separate section for remandees, which had previously been approximately 10 percent of the total capacity. However, at present the number of remandees represents almost half of the total population. Most prisons are overcrowded. Some have to incarcerate unsented inmates together with convicted prisoners due to the lack of facilities.

3. The Frequent Use of Imprisonment in the Thai Criminal Justice System

In Thailand, forms of punishment vary from forfeiture of property, fines, imprisonment to capital punishment. However, the main punishment is imprisonment. Those who cannot afford to pay a fine are imprisoned. Imprisonment could be replaced by probation in the case of a first-time offence. Despite probation, the imprisonment rate is still very high and is imposed for every type of offences including petty offences, gambling, offences against traffic laws, etc. In short, this over frequent use of imprisonment has simply aggravated the prison overcrowding situation.

D. Solving the Overcrowding Problem

Overcrowding has long been a problem in Thailand due to an imbalance in the receiving and releasing of prisoners which is the result of the government's policy on drug suppression. The Department of Corrections has tried to solve the problem by expanding sleeping areas within the prisons but this has only made a slight improvement on the problem. During recent years, the government has recognized the prison overcrowding problem and has rendered a helping hand. The number of prisoners, which used to be around 250,000 in 2001, was reduced to around 210,000 by 2003. This is the first time in a decade in which a decrease has been recognized.

However, it cannot be said that this decrease in numbers is the solution to prison overcrowding since the number of prisoners is still much higher than total capacity. It may be interesting to see the projects that have been implemented to lessen the overcrowding problem during the last few years.

1. Rehabilitation of Offenders in Boot Camp

With cooperation from the Royal Thai Army, the Department of Corrections has classified some offenders

to receive rehabilitative programmes in a boot camp. The offenders are given parole and transferred to the boot camp. The programme comprises the Ministry of Public Health's drug treatment programme, the army's discipline practice, and some agricultural training. Each year, 5,000 prisoners, both male and female, are sent to approximately 40 boot camps across the country, where they attend 3 - 6 months training before being released on parole.

2. Pre-release Centre Project

Thailand has never had a pre-release centre outside prison; it still does not have one. The pre-release centre project operated during 2002 - 2003 uses space in prison camps or open correctional institutions as a centre for pre-release prisoners. The prisoners are given a special parole and are sent to the centre for agricultural training and pre-release activities for a period of time before a real parole follows. At present, there are 12 pre-release centres across the country.

3. The Release of Detainees

According to Thai laws, offenders who cannot afford to pay fines are incarcerated in a House of Detention, under the responsibility of the Department of Corrections. These offenders are poor people that have committed petty offences. In 2002, the government decided to pay fines on their behalf which released quite a number of detainees from prisons. Even though this was an ad hoc approach it effectively resulted in a decrease of offenders at certain levels.

Apart from the above approaches, the Department of Corrections is studying innovations to manage the overcrowding situation as follows:

- House arrest using electronic monitoring systems
- Work release projects
- Periodic detention or weekend imprisonment

If these three projects come into practice, it will certainly be a good solution in managing the present crowded prison system in Thailand. Nonetheless, one undeniable fact is that the prison-overcrowding problem cannot be solved solely by the Department of Corrections, but needs cooperation from every party in society. During recent years, though the Thai government has given some assistance, the problem is still there. There has to be alternatives to imprisonment, the amendment of certain laws so as to lessen the number of prisoners or the imprisonment period. One of the most effective approaches is certainly prevention, which society, family, education and other institutes should play roles to accomplish.

E. Improving Living Conditions in Prisons

In the last decades, overcrowding has been a major obstacle in the improvement of living conditions. Nevertheless, at the moment, the prison population has considerably decreased as a result of the enforcement of the Narcotic Addict Rehabilitation Act B.E. 2545 (2002). The Department of Corrections, thus, can take advantage of the decreasing numbers to improve living conditions in prisons. The following are some major issues taken into account by the Department of Corrections to improve the living standards of inmates in Thai prisons.

1. Sleeping Place

Sleeping cells in Thai prisons are dormitory style, where inmates sleep in rows on a mat or blanket provided by each prison. There is no fixed standard of sleeping material; therefore, some inmates may get a better material than others. The Department is now studying whether it would be possible to provide a standard mattress for each inmate, so that at least the inmate can have a good sleeping place while in custody. It is expected that, with a standard mattress given to each inmate, it will prevent the problem of some prisoners taking advantage of other prisoners as well as the problem of corruption of prison officers.

2. Kitchen and Food

In order to improve living standards for prisoners, the Department of Corrections require all prisons and correctional institutions to make higher quality kitchens and food. To provide hygienic kitchens and good quality food can help to promote prisoners' health in general.

3. Medical Service

In each prison and correctional institution, there is a nursing home that provides basic medical services for sick prisoners. Those sick prisoners that need long-term treatment are transferred to the Central Correctional Hospital in Bangkok, which is the only hospital of the Corrections Department. In 2003, the Department obtained the budget to construct a new building for the Central Correctional Hospital. This new facility will be opened and ready to provide medical services to sick prisoners in 2004.

4. Access to Visits

In order to uphold good relationships between prisoners and their families, the Department requires every prison to hold contact visits for qualified prisoners across the country. In other words, the prisoners' families are accessible for visits to the prisoners throughout the year instead of once or twice a year as it used to be. The regulations pertaining to contact visits have been changed to promote more access for visits. Each prison shall hold contact visits upon its convenience in order to offer opportunities to both prisoners and their families to meet each other as much as possible.

Improving living condition in prisons seems to be an easy plan and yet a difficult target to achieve. To make the plan become concrete, the Department of Corrections set a goal that within the year 2004 there will be at least 20 standard prisons in Thailand where prisoners receive good food, good sleeping places and good living standards.

III. COUNTERMEASURES CONCERNING THE USE AND APPLICATION OF THE UNITED NATIONS STANDARDS AND NORMS IN CRIME PREVENTION AND CRIMINAL JUSTICE

Under the Thai Criminal Code, there are five mandatory penalties imposed on offenders comprising of capital punishment, imprisonment, confinement, fines and forfeiture of property to the state. However, due to concern for human rights issues, the criteria and approaches of punishment in Thailand have been consistently put into consideration by the Thai Justice System. It can also be found that laws and legislation, including several practices, have been developed as significant countermeasures concerning the Use and Application of the United Nations Standard and Norms in order to vigorously deal with crimes and offending.

A. Penal Punishment

It may be said that at present, there is no punishment which is seen to be cruel or inhumane in Thailand. Accordingly, a provision in the Thai Constitution B.E. 2540 (1997) affirmed that any brutal or inhumane punishment to offenders was prohibited. However, the death penalty, is still carried out for offences categorized as felonies. Therefore, this may undeniably show that the use and application of punishment in the country conforms to the United Nations Standards and Norms in Crime Prevention and Criminal Justice, particularly the Declaration on the Protection of All Persons from Being Subjected to Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

B. The Death Penalty

Whereas Thailand is one of the retentionist countries which still carries out the death penalty, only offenders who commit offences categorized as felonies are given such severe mandatory penalty. Furthermore, Thailand has abandoned the firing squad and adopted lethal injection as the new method of execution since 19 October 2003. Currently, there are 53 convicted inmates that have been sentenced to death.

Remarkably, execution cannot be carried out due to the appeal procedure of individual royal pardons submitted to His Majesty the King. In addition, under the Thai law, if the inmate is pregnant at the time of the crime, an execution cannot be carried out until the inmate has given birth. Likewise, for inmates with mental problems at the time of the crime, the implementation of execution has to be suspended until such people have recovered. More importantly, according to Thai law, the death penalty and life imprisonment for people aged under 18 years at the time of the crime will be replaced with a maximum penalty in criminal cases of 50 years imprisonment. In addition, it may be noted that the implementation relating to the death penalty mentioned above has been carried out in accordance with Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty.

C. Rehabilitation and Treatment of Offenders

Providing vocational training or occupation programmes for inmates is seen as a great form of rehabilitation. Generally, the Department of Corrections is the agency in charge of such responsibility. Apart from offering vocational programmes, the Department of Corrections also provides educational programmes to inmates. Both vocational or educational programmes aim to assist inmates to enhance their potential, particularly the opportunity to earn a living upon release.

Recently, the Department of Corrections has developed some new rehabilitative programmes for inmates before returning them to society. Such new rehabilitative programmes consist of programmes relevant to the fundamental needs of offenders such as education, vocational training, medical services, recreation programmes and drug treatment programmes and special programmes relevant to special needs of offenders such as programmes for property-related offenders, sex-related offenders, bodily-harm or life-related offenders, aged offenders and recidivism prevention programmes.

In cases of treatment of offenders, although the Penitentiary Act B.E. 2479 (1936) determines some main approaches for inmates' treatment and rehabilitation, the Department of Corrections has constantly developed and created many more approaches pertaining to the treatment of prisoners in accordance with the Standard Minimum Rules for the Treatment of Prisoners, especially focusing on the improvement of living conditions in prisons.

D. Probation/Suspended with Conditions

Probation or supervision is viewed as a significant non-custodial measure. According to the Thai Criminal Code, probation is usually imposed on offenders combined with a suspended sentence. What is more, it is found in many cases that an offender who commits petty offences and is sentenced to imprisonment for less than 3 years is likely to receive probation or a suspended sentence with conditions. This is because mitigation factors, such as the offender's age, behaviour and health, are taken into account by the court. For example, a person aged under 18 years at the time of the crime is more likely to receive a suspended sentence with conditions as he/she is still young and also has never committed a crime before.

To augment probation, an Act relating to probation or a suspended sentence with conditions has been enacted under the Thai Criminal Code B.E. 2522 (1979). Furthermore, the Department of Probation has been set up to be responsible for enforcement of such sentences on offenders, including inmates who are on parole or are released with conditions. Then, it may be undeniable that to impose probation or a suspended sentence with conditions on offenders rather than imprisonment is in support of the United Nations Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules).

E. Implementation of Non-custodial Measures

Public service or public work is one of the conditions under the period of probation. Recently, due to the amendment of the Thai Criminal Code, offenders may be required to do public work instead of paying fines to the court. It is noted that to do public work may be a good option which can certainly benefit offenders. Furthermore, in the near future, another non-custodial measure called 'home detention' will be brought into practice by the Department of Corrections. When home detention is applied, offenders have to wear an electronic bracelet and be controlled by electronic monitoring by the central control centre. More importantly, it is believed that to implement non-custodial measures will lessen the prison population and also help to promote the United Nations Standard Minimum Rules for Non-Custodial Measures.

F. Treatment and Rehabilitation of Drug Offenders

The Narcotic Addict Rehabilitation Act B.E. 2545 (2002), considerably contributes to the positive effects on the treatment of drug offenders in Thailand. Consequently, drug users and drug dealers are no longer locked up in the same places because of the Act. In particular, in the case of drug users, they are seen as patients who need to receive appropriate treatment and rehabilitation in specific institutions rather than be in custody in prisons. Moreover, the Act indicates that in every province, there is a sub-committee responsible for making a decision upon drug tests of offenders. Then, the sub-committee has to report the decision and the result of drug tests to a public prosecutor in order to decide prosecution for drug users. Accordingly, drug users will be sent to receive compulsory treatment and complete rehabilitative programmes in specific institutions before returning to the community. The enforcement of the Act is deemed to have led to a decrease in the number of drug-related cases in the courts. Also, it has resulted in a decrease of drug offenders incarcerated in Thai prisons. Thus, to put the Act in force may be the best active

strategy to solve drug problems in accordance with the United Nations Standard Minimum Rules for Non-Custodial Measures.

G. Implementation of Restorative Justice

It seems that restorative justice has developed and improved upon the traditional criminal justice practice. That is because in the traditional criminal justice system, it basically conducts and addresses only offender-oriented services and punishment. The victims, in contrast, are refused involvement in the process, although, the rights of victims should actually be promoted and considered. Furthermore, the needs and roles of victims are usually not taken into consideration. Most victims are ignored or marginalized by the criminal justice process. Accordingly, some victims have often experienced re-victimization such as in the process of police investigation and in the prosecution of the court.

As a result, many benefits, particularly victims' benefits can definitely be acquired from the concept of restorative justice. In addition, such concepts also recognize the importance of community participation and initiative in responding and reducing crime rather than leaving the crime problem to the government alone. Accordingly, it can be seen that there are some restorative justice programmes and services which have been established for victims such as victim-offender reconciliation and mediation and restitution programmes.

It can be concluded that restorative justice is a useful process for victims as it promotes the repair of harm caused by crime and the active involvement of victims and communities in justice processes. In addition, it is also concerned specifically with the need to provide victims with a sense of fairness and access to the justice system which has formal obligations to make things right for victims.

Yet, restorative justice has not been a widespread concept in the Thai Justice System. Until now, only some restorative approaches have been employed in the country such as mediation. Likewise, laws relating to suspended prosecutions have now been introduced into the justice system. It is believed that applying the concept of restorative justice will generate better standards in the justice system of Thailand. For instance, only serious criminal offenders will now be forwarded for court processing. For other petty offences, offenders will be dealt with professionally by the police or probation officers.

IV. CONCLUSION

In general, the bureaucracy reform has caused a significant change in the criminal justice system in Thailand. Accordingly, nowadays, laws, legislation and practices are employed in accordance with the United Nations Standards and Norms in Crime Prevention and Criminal Justice. More importantly, the occurrence of the justice system from the endorsement of the Thai Constitution B.E. 2540 (1997) has led to the establishment of new justice agencies for the protection of Thai citizens such as the Office of the National Human Rights Commission of Thailand and the Office of the Ombudsman. Therefore, this is a good indication that the Thai justice system has developed in the proper direction.

What is more, when laws and legislation relating to suspended sentences in prosecution are endorsed throughout the country, it will contribute to a variety of advantages or positive effects. For example, petty offences will be moved away from Court processing. It will also benefit the categorization of normal offenders and serious criminals. The serious criminals will be imposed harsher sentences and at the same time normal offenders should receive more lenient sentences.

Additionally, the issue of restorative justice seems to be a hot topic in the justice system. That is because it is likely to be a major concept adopted in the justice system. It is believed that restorative justice is a response to crime which focuses on restoring the losses suffered by victims, holding offenders accountable for the harm they have caused and also generating peace within communities. Therefore, at present, restorative justice may be one of the best concepts which should be brought into practice.

To sum up, I believe the development of laws and legislation pertaining to criminal justice in Thailand and putting the concept of restorative justice into practice will be a better way to enhance the justice system in Thailand to the universal standard, particularly the United Nations Standards and Norms.

APPENDIX

Statistics on Prison Population & Correctional Manpower

Chart 1: Prison Population

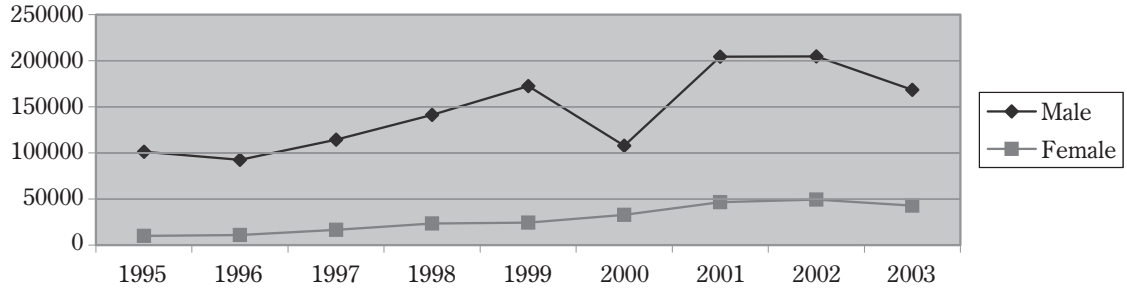


Chart 2: Prisoners by Status

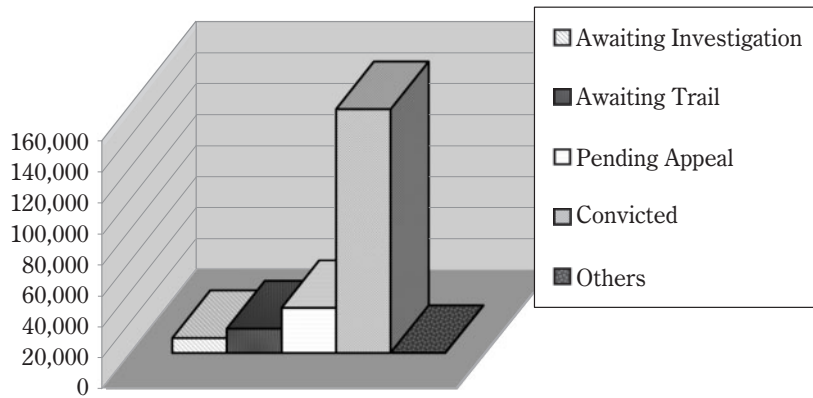


Chart 3: Convicted Prisoners by Type of Offence

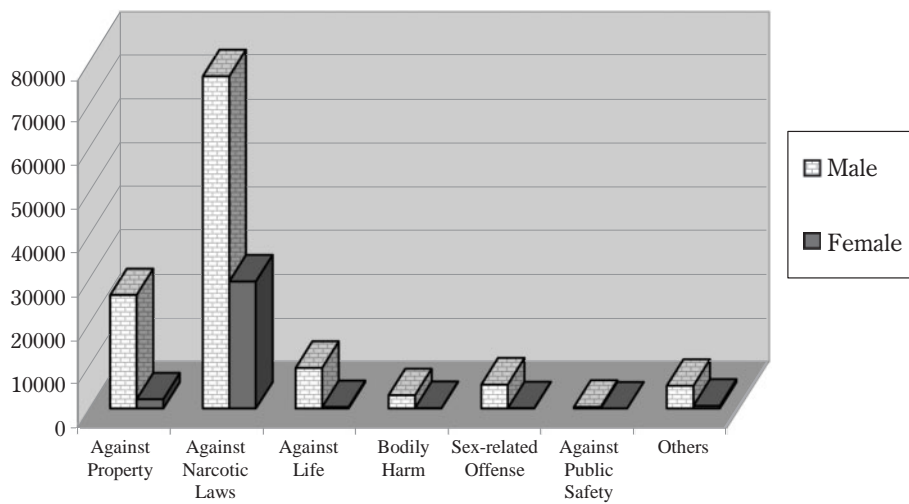


Chart 4: Convicted Prisoners by Sentence Term

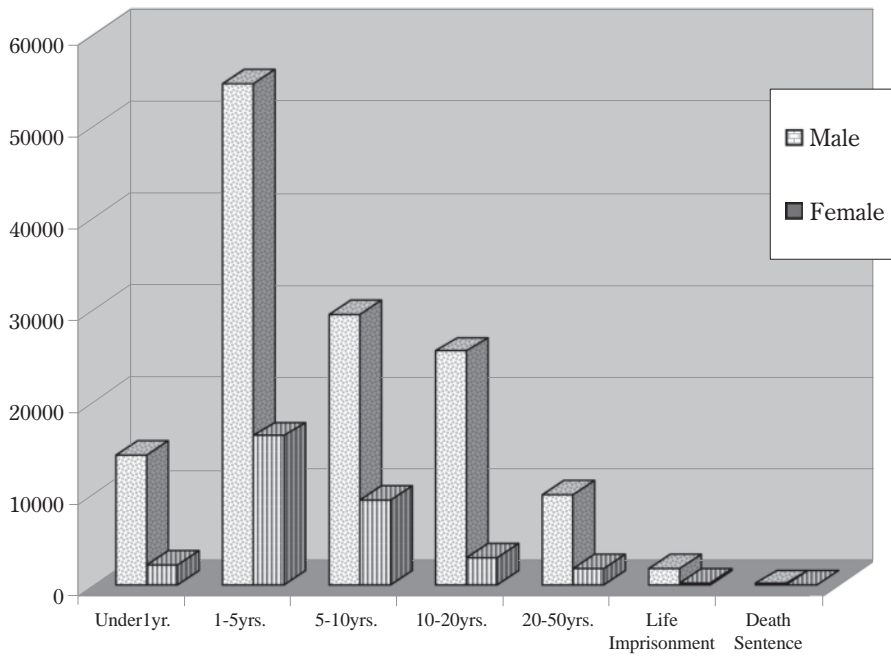


Chart 5: Convicted Prisoners by Age

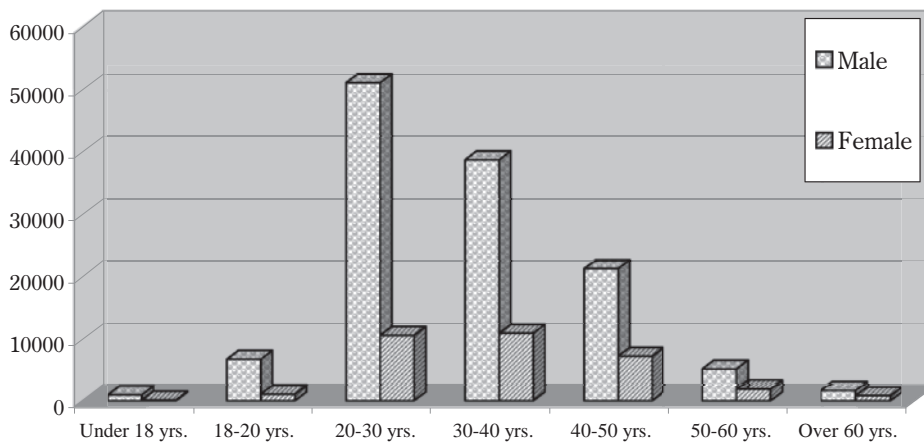
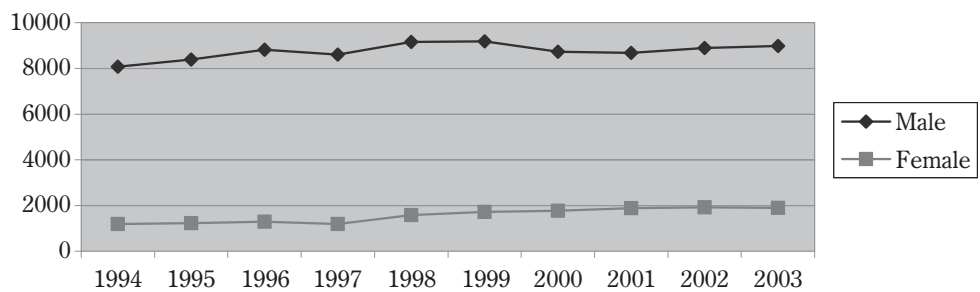


Chart 6: Correctional Manpower



Staff: Inmate Ratio in 1995 - 2003

Year	No. of Inmates	No. of Staff	Ratio
1995	111,028	9,615	1:12
1996	103,202	10,113	1:10
1997	130,997	9,796	1:13
1998	164,451	10,745	1:15
1999	203,702	10,909	1:18
2000	190,541	10,507	1:18
2001	250,853	10,573	1:24
2002	254,070	10,825	1:23
2003	211,475	10,889	1:19