

The Use of Custodial Sentences and Alternatives to Custody by NSW Magistrates

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***The Use of
Custodial Sentences
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Custody by NSW Magistrates***

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**U.S. Department of Justice
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Preface

The attached paper prepared by Rohan Bray, a Research Officer with the Judicial Commission, looks at whether sentencing alternatives to imprisonment are working as Parliament intended they should. His conclusion is that they are not.

Periodic detention and community service orders were created to replace terms of imprisonment. It appears however they are being used to replace fines and bonds. This phenomenon is known as "net widening". This means that the economic and other gains of reducing the prison population that Parliament had anticipated are not being realised and that a more "severe" rather than a less severe pallet of dispositions is being resorted to. The paper also notes that breaches of community service orders and periodic detention result in a much higher number of people being sentenced to full time custody than is the case for breaches of recognizance.

The paper considers a number of methodological approaches for testing this hypothesis and determines that it is best to look at the percentage of convicted people receiving various dispositions for different offences. Local Court dispositions for 1979/88 show that between 1981 and 1984 the use of both community service orders and imprisonment increased. From 1985 to 1988 both have tended to plateau. Community service orders therefore appear to have been used but not as an alternative to imprisonment.

There is the possibility that despite these apparent trends community service orders are in fact being used as an alternative to imprisonment but that there are simply more traditionally "imprisonable" offences, such as break enter and steal coming before the courts. To test for this the change in the use of imprisonment and alternative dispositions for individual offences over time was examined. If Parliament's intent was being realised then the percentage increase in community service orders and periodic detention should be marked by a similar order of magnitude decrease in imprisonment for similar categories of offence. This proves to be true for offences against the person but for all other offence categories it is clear that the use of alternatives has not resulted in a comparable, if any, decline in the use of imprisonment. The paper acknowledges that this is not conclusive if in fact there has been a general increase in sentence severity over the period which would account for the non-decline in the level of imprisonment.

The paper also looks at 1988 Local Court data and provides an analysis of the types of offences that attract community service orders. Break enter and steal, serious driving and fraud offences had the highest percentage use of community service orders. These offences together with drink driving were the only categories for which community service orders were used more frequently than short prison terms.

The offender characteristics for break enter steal and driving while disqualified offences were also examined in a sample of Local Court cases. Age, sex, legal representation, employment status, plea, prior record and other variables were analysed. Offenders who received community service orders or periodic detention appear to have characteristics resembling those who were given a fine or bond. If Parliament's intention that these orders be a substitute for imprisonment was being

realised it would be expected that recipients of such orders would more closely resemble those receiving short prison sentences. This is clearly not the case.

If the conclusions of this paper are accurate it raises questions about the value of recent legislation extending the availability of community service orders and periodic detention. The paper asks whether this is a trigger for further unintended net widening.

A further concern is whether such orders are being used effectively. The Judicial Commission is currently conducting a survey of community service orders organizers and probation and parole officers. A report on the administration of these orders and attendance centre programmes will be made available to judicial officers later in the year.

Introduction

Since 1970, sentencers in New South Wales have been able to avail themselves of at least one sentencing option intended to act as an "alternative to imprisonment". In that year, the state government passed legislation allowing for offenders who have been sentenced to a custodial sentence to serve that sentence by way of periodic detention (*Periodic Detention of Prisoners Act 1970*). New South Wales is still the only state with an operative periodic detention system. Mid way through 1980, community service orders were added as a further alternative to full time custody with the passing of the *Community Service Orders Act 1979*.

The styling of these sanctions as "alternatives to imprisonment" is important when evaluating their use by sentencers. It is clear that in New South Wales community service orders and periodic detention are meant to "replace" or "stand in for" a sentence of imprisonment which would have otherwise been handed down if these options were not available¹. For example, the Periodic Detention of Prisoners Act 1981 (NSW)² states that periodic detention is only available "Where a person is convicted of an offence and sentenced upon that conviction to imprisonment" for between three and eighteen months: s.5(1). Section 4(1) of the Community Service Orders Act 1979 (NSW) provides that a community service order is an option exercisable "instead of imposing a penalty of imprisonment".

The Ministers' second reading speeches, too, explicitly state the intention that these sentencing options be used only as alternatives to prison (New South Wales Parliamentary Debates (Hansard); 1970, 1979). The former Minister for Justice, Mr Maddern, emphasised this in speaking to the periodic detention bill:

I hope the courts will use the provisions contained in this measure not to deny a bond or probation or a suspended sentence where this course would otherwise be appropriate, but to apply them in those cases where the offender qualifies under the bill and *would otherwise have been sentenced to imprisonment* (p.8045, emphasis added).

Mr Haigh, the then Minister for Corrective Services, also addressed this matter in relation to the community service orders bill:

It is intended that this measure should operate as an alternative to imprisonment (p. 4258).

These considerations place these "alternatives to prison" in a different category of sanction to other non-custodial options, such as fines and recognizances, which may be used as sentences in their own right. The distinction is important in the light of the benefits foreseen by the governments of the day when introducing the

¹ This is not necessarily the case in all jurisdictions. In Western Australia and the United Kingdom, community service orders do not necessarily have to be used as alternatives to gaol.

² Although periodic detention has been available continually since 1970, the original Act was repealed and replaced in 1981. The differences between the two Acts do not affect the substance of this report.

schemes. First, there was the possibility of a reduction in economic cost through the decreasing use of prisons. Secondly, the new options provided a more humane form of punishment whilst still maintaining a punitive element seen as essential for public approval. Thirdly, the offender would be better off since, by avoiding full-time imprisonment, he/she would be able to retain their normal employment and home life to a certain extent.

Researchers have noted the importance of the requirement that alternatives to imprisonment be used as genuine alternatives and not in substitution for other non-custodial sanctions (e.g. Fox and Challinger, 1985; Chan and Zdenkowski, 1986b; Polk, 1987). If alternative options are not being used to divert offenders from prison (the phenomenon known as "net-widening") then situations arise which are inimical to the potential benefits of such schemes. If there is no diversion from prison then there can obviously be no economic saving. In terms of the humanitarian argument, net-widening results in people receiving penalties which are more severe than the penalty they would have received had the alternative option not been available.

It is also important to consider the "risk element" in the context of net-widening. This refers to the fact that an offender who is given an alternative sentencing option has a greater risk of later receiving a custodial sentence on account of breach or re-offending provisions contained in the relevant Act. Data from the NSW Local Court provide a good illustration of this. In 1988, 90/224 (40.2%) of proceedings for breach of community service order and 29/62 (46.8%) of proceedings for failing to report for periodic detention resulted in a full-time sentence. Compared to this, 88/384 (22.9%) of offenders were sentenced to full-time custody for breach of the conditions of a s.558 recognizance. Also interesting is the fact that in proceedings for breach of recognizance, 46.4% were withdrawn and dismissed. This occurred in only 25.4% of proceedings for community service order breach and 4.8% of breach of periodic detention cases (NSW Bureau of Crime Statistics and Research, 1988). Clearly then, offenders who receive an alternative disposition run a greater risk of receiving a custodial sentence for breach than if they had been given a recognizance.

The present study has gathered different kinds of data relevant to the use of community service orders and periodic detention by magistrates. In addition to providing descriptive information on the use of these sentencing options over time and the types of offenders who receive them, the data allow for an assessment of the degree to which the sanctions are being used as genuine alternatives to imprisonment. This is a critical question since, as previously noted, the attainment of the putative benefits of these schemes depends greatly on their being used in the manner intended by Parliament.

How has the Introduction of Alternative Options Affected the Use of Imprisonment? An Analysis of Time-Series Data from the NSW Local Court

A number of studies have used different measures to examine the use of alternative options, especially in comparison with imprisonment. Chan and Zdenkowski (1986a), made extensive use of imprisonment and community service order "rates" (number of people subject to a particular sanction per 100 000 of population) to examine the effect of alternative options on the correctional system as a whole. The authors found that alternative options had little impact on prison populations. However, the use of "rate" measures, while useful in gauging changes to the load on the corrections' system over time, does not address the question of sentencing practice. This is because the index is affected, not only by the sentences handed down, but by crime and arrest rates, early release provisions and the lengths of sentences given in the past.

Another index which has been used in studies of the use of alternative options is the number of receptions to a particular disposition within a certain period of time. Varne (1976) and Rook (1978) used this form of measurement to arrive at estimates of the percentage of Tasmanians receiving work orders who would have otherwise gone to prison. However, when looking at sentencing patterns this index is misleading unless the total number of convictions for each year (or whatever time scale is used) is taken into account. All that the number of receptions does is indicate the flow into the corrections' system. Changes in the number or type of crimes committed or arrests made, may lead to a change in the number of people sent to prison, without there having been any change in the likelihood of sentencers using a particular sanction.

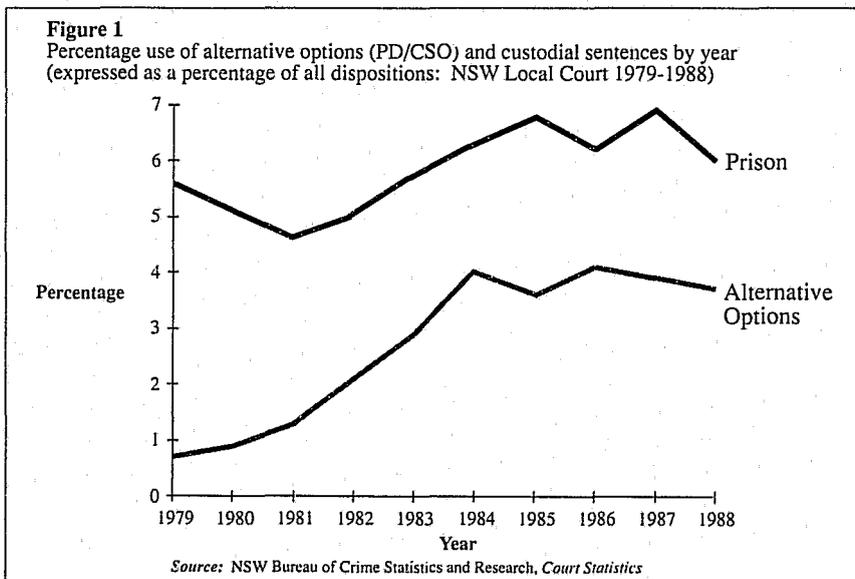
The most appropriate index to use when looking specifically at sentencing practice is the proportion of all convicted people who receive a particular disposition (Bottoms, 1983; Weatherburn, 1988). It has the advantage of not being directly affected by parole or remission provisions and is not susceptible to fluctuations in the number of convictions over time.

This method was used in a recent Victorian study which looked at statewide sentencing from 1981-1985 (Vic. Office of Corrections, 1988). The data indicated that the use of imprisonment and attendance centre orders increased. It is not clear, however, whether this is due to sentencing practices or merely because "there was an apparent increase in the seriousness of offences heard before the Magistrates' Courts" (p. 5). A further investigation of sentencing in five Magistrates' Courts found marked differences in the sentencing patterns between the sampled courts, as well as significant changes in offence profiles at those courts over the course of the study. The failure of the authors to partition out sentencing trends for different types of offence means that it is difficult to draw general conclusions regarding the effects of the alternative options on sentencing. The present study has attempted to address this problem by looking at offence specific sentencing trends.

Table 1 shows the percentage use of different dispositions in the Local Court over the period 1979-1988. For a more direct comparison of alternative options (periodic detention and community service order combined) and custodial sentences, figure 1 translates the data for these penalties into graphical form³. The use of community service orders increased noticeably from 1981 to 1984. During the same period there was an increase in the use of imprisonment and a decrease in the use of fines. There was no monotonic trend for any of the other sanctions over this period. It is interesting to note the infrequency with which periodic detention is given as a penalty. In fact, periodic detention has never been used in more than 1% of cases since the Bureau started to collect Local Court data in 1974.

TABLE 1
Percentage use of different penalties (Local Court 1979-1988)

PENALTY	YEAR									
	79	80	81	82	83	84	85	86	87	88
Fine	73.9	74.0	75.3	73.7	68.4	67.8	68.6	68.7	68.0	68.5
Other	7.6	7.5	7.0	7.5	10.2	9.0	8.5	8.2	8.3	8.0
Bond	12.3	12.6	11.8	11.7	13.0	13.0	12.5	12.9	13.0	13.8
CSO	-	0.1	0.7	1.3	2.3	3.5	3.1	3.6	3.3	3.2
PD	0.7	0.8	0.6	0.8	0.6	0.5	0.5	0.5	0.6	0.5
Prison	5.6	5.1	4.6	5.0	5.7	6.3	6.8	6.2	6.9	6.0



³ Due to the fact that it is not possible to hand down a prison sentence for fare evasion offences and because there are a large number of these cases in any given year, these cases have been excluded from the analysis.

These data suggest that alternative options have not been used in substitution for imprisonment. If this had been the case, then the "prison" curve in figure 1 would be expected to slope *downwards* at the same rate as the upwards slope in the "alternative options" curve. As this figure shows, the prison curve actually has an *upward* trend since 1981. The past four years (1985-1988) has seen a diminishing in the upward trend for both penalties, which seem to have fluctuated around a constant level. It appears that community service orders have eventually found a niche in the tariff of penalties, though without effecting change on the use of custodial sentences.

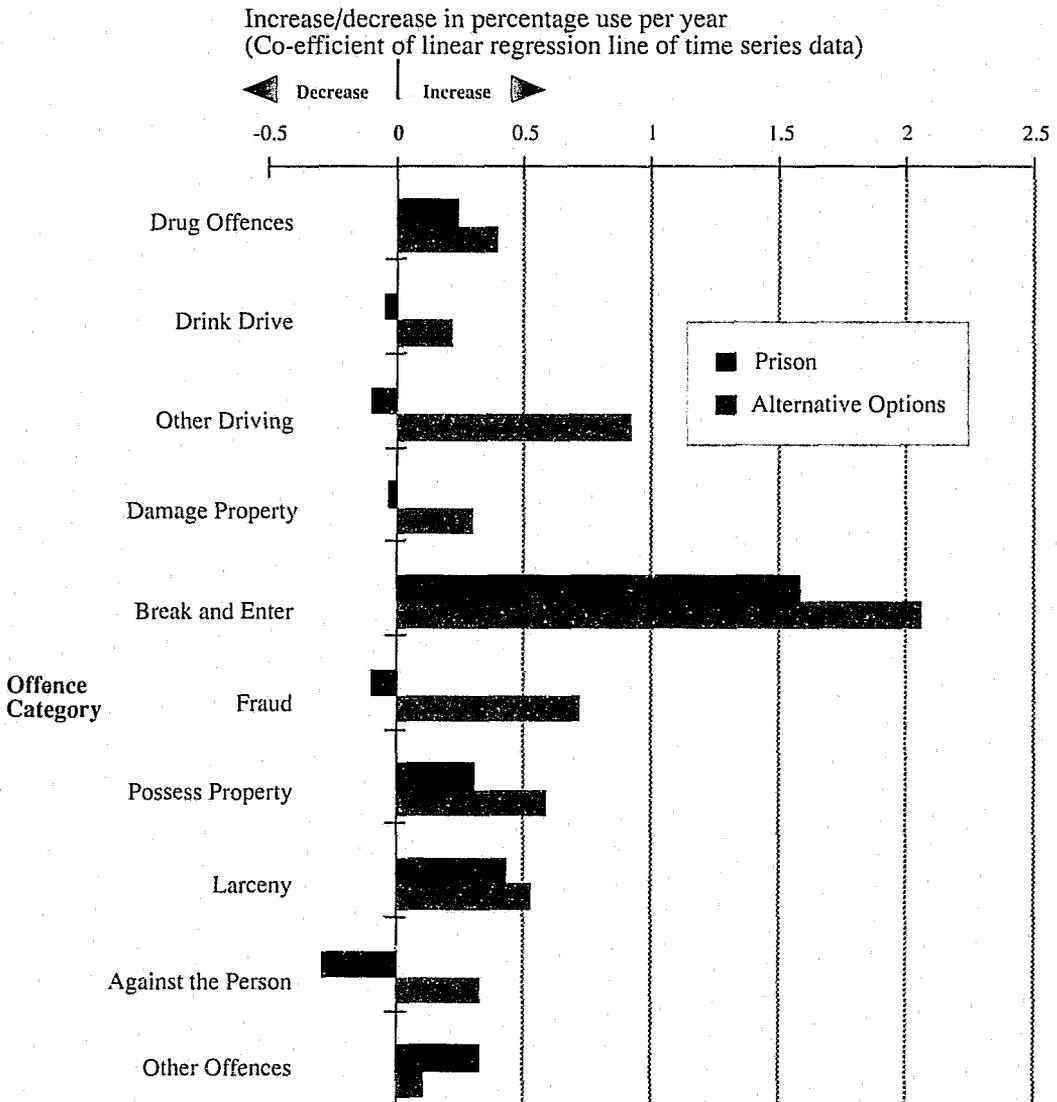
Although it is true that these penalties are used in a small percentage of cases (fines are by far the most common penalty), nevertheless, the actual number of people who received sentences is quite large, ranging from a minimum of 54,000 in 1979 to more than 81,000 in 1988. Accordingly, small changes in percentage terms can indicate significant changes in absolute numbers. For example, the increase in the combined use of custodial sentences and alternative options from 1979-1988 was 3.4%; that is, for every thousand people convicted, there were 34 additional people who received a custodial or alternative option in 1988 than 1979. In absolute terms, this means that these sanctions were handed down to approximately 2700 more people than would have been expected if there had been complete diversion from 1979-1988. Thus, although the percentages involved are only small, the implications of non-diversion for the resources of correctional services can be significant.

There is a strong possibility that the trends shown in figure 1 are merely due to changes in the offence profile. In other words, the increase in the overall use of custodial sentences and alternative options may have occurred because there are proportionately more convictions for offences which tend to result in more severe sentences. The offence of break, enter and steal provides a good example. In the Local Court, a greater percentage of people who are convicted of this offence are sent to gaol than is the case for any other offence. Accordingly, if there was an increase in the number of break and enter offenders relative to other types of offence then, from that fact alone, the combined figures would be expected to show an increase in the use of prison and alternative options. Yet, this would not be due to any change in sentencing practice.

To investigate this possibility, the overall data of figure 1 were divided into offence types. A time series for each offence type was constructed and the best fitting linear regression line for each offence type calculated. The values of the regression coefficients for offence category are displayed in graphical form in figure 2. These coefficients represent annual rates of increase or decrease in the use of alternative sentencing options and imprisonment.

As would be expected, there has been an increase in the use of alternative options for all offence categories, the largest increases being for break, enter and steal and serious driving offences. Once again, an hypothesis of complete diversion would predict the use of imprisonment to decrease by an amount equivalent to the increase in the use of alternative options. In other words, the bars for the prison coefficients should have the same magnitude, but in the negative direction, as the alternative options bars. The only offence category which approaches this situation is offences against the person. In four other categories, namely, drink

Figure 2
 Rate of increase/decrease in use of alternative options (PD/CSO)
 and imprisonment by offence category (NSW Local Court: 1979-1988)



driving, serious driving, damage property and fraud offences, there has been some downward trend in the use of imprisonment. However, these trends are outweighed by the increase in the use of alternative options. For all other offence categories, the situation reflects the overall findings; there has been an increase in the use of both types of disposition.

The findings for break and enter, larceny, and possession offences could have been affected by increases in the jurisdiction of the Local Court to hear those types of cases. Amendments to s. 476 of the NSW Crimes Act during the time period being analysed have meant that more serious instances of these offences (i.e. greater property value) were able to be heard summarily. This could explain increases in use of prison and alternative options for these offences, but it is difficult to account for other offence trends in terms of anything other than sentencing practice itself.

Although there are differences in the trends between offence types, the introduction of community service orders has apparently not decreased the use of imprisonment by magistrates. Over the same period of time as community service orders have become increasingly popular as a sentencing option, the use of imprisonment has also increased. With respect to the issue of alternative options being used as true alternatives, this evidence suggests that alternatives to prison are not being used as anticipated by the legislature. This is indicated by the fact that for not one offence category has the use of imprisonment decreased at a rate equal to the increase in the use of alternative options. Admittedly the evidence is not conclusive; since there is no objective standard by which to judge whether somebody would have been given a custodial sentence, the possibility remains that offenders who received community service orders or periodic detention really would have otherwise gone to prison. To put it another way, there is the possibility that the results found here indicate a general increase in the severity of penalties over the time period covered. Nevertheless, such an increase in severity, if it has occurred, could be seen as a significant phenomenon in its own right.

For what kind of Offences and Offenders are Alternative Options Handed Down?

Another area of research into the use of different sanctions involves examining those factors which may be influential in the court's decision to say, send a person to gaol as opposed to giving them a community service order. In this report, 1988 data from the Local Court will be used to analyse sentencing patterns due to offence differences. Following that, the results of an examination of a selection of cases will be presented, providing some indications as to the individual characteristics of people who receive alternative options as opposed to other sanctions.

Data based on Type of Offence

Table 2 gives the percentage use of dispositions for offence categories in 1988. It reveals that community service orders are most often used (in percentage terms) for break, enter and steal (14.8%), serious driving (8.2%) and fraud cases (6.2%). But these figures, in isolation, tell us little of interest. It must be remembered that a community service order is at the higher end of the range of penalties in the Local Court. Accordingly, it would be expected that a relatively large percentage of break and enter offenders receive a community service order since the offence is one likely to attract a penalty at the higher end of the range. Comparing the community service orders figures alone across the different offence categories probably only reveals something about the relative seriousness with which the different types of offence are viewed.

TABLE 2
Disposition of Offenders (Local Court 1988) By Offence Type
(Expressed as percentage of all dispositions).

Offence Cat.	Other	Fine	Recog.	C.S.O.	P.D.	6 mth	6 mth	Total
						Prison	Prison	
Against Person	12.0	31.1	48.2	2.8	0.6	4.2	1.2	10176
Break & Enter	2.4	9.8	34.3	14.8	2.0	9.8	27.1	1486
Damage Property	10.0	69.7	12.7	2.8	0.2	3.0	0.7	2932
Larceny	11.7	59.5	14.2	3.7	0.8	5.7	4.5	10926
Unlawful Possess.	6.7	59.6	14.8	4.0	0.7	11.8	2.4	2149
Driving	3.7	71.3	6.5	8.2	1.6	8.2	0.4	6827
Drink/Drive	6.7	84.3	4.9	2.2	0.3	1.3	0.3	4218
Fraud	8.4	47.8	27.1	6.2	0.8	4.8	4.9	1808
Drug Offences	3.6	73.3	12.3	3.1	0.4	5.5	1.8	7095
Other	8.4	82.4	4.2	0.6	0.2	3.2	0.9	14652

Of greater interest in table 2 is a comparison of the number of people receiving community service orders with the numbers receiving prison sentences⁴. If short prison sentences (here less than or equal to six months) are singled out for comparison then this gives some idea of the offences for which diversion from prison is most likely to occur. For most offences, it can be seen that more people are given a short prison sentence than a community service order. The exceptions to this are: break, enter and steal, serious driving, drink/drive and fraud offences. It is not surprising that driving offenders tend to be diverted more often than most other offenders. They tend, more so than others, to fit the "mould" of the person considered most suitable for some form of non-custodial correction: that is, they are more likely to be married and in permanent employment. Perhaps this is also true of fraud offenders. It is more difficult, however, to account for the much larger number of break and enter offenders who receive community service orders than short prison terms.

The answer may lie, somewhat paradoxically, in the serious nature of the crime. To assess this possibility, compare this type of offence with the generally less serious category of "damage property". An offender in the latter group who has reached the stage where a sentence of imprisonment or an alternative is warranted will probably have a long record of property crime for which they have received fines and/or bonds. In this situation, the sentencer may consider a community service order ineffectual; if this form of sentence is handed down the offender will probably re-offend yet again (so it may be thought). The only other option is a short term of imprisonment.

Now consider the break, enter and steal offender. This offence is considered to be quite serious, a fact which is indicated by the large number of longer (i.e. greater than 6 months) prison terms handed down (27.1% of all dispositions). Because of the seriousness of the offence, a short term of imprisonment or a community service order may be considered an appropriate penalty even for those break and enter offenders with short prior records or no record at all. When the decision must be made as to the appropriate penalty (prison or community service order), the absence of a long record may incline the sentencer towards handing down a non-custodial rather than custodial disposition. This would lead to the situation noted here whereby the category of break, enter and steal has the highest ratio of community service orders to short term prison sentences. The hypothesis that prior record may have a significant effect on the decision to give an alternative option rather than a prison sentence will be further investigated below.

Data based on Offender Characteristics

In order to obtain data on a number of items, including prior record, it is currently necessary to record directly from court files. On account of the limited resources available to carry out this task, it was not feasible to examine a variety of offence

⁴ The small numbers of offenders sentenced to periodic detention tends to preclude an assessment of the use of this penalty.

types in the study. The relative infrequency of community service order, periodic detention and short prison term outcomes for most offences meant that attendance at a large number of courthouses would have been required, in many cases to examine only a handful of files. Accordingly, it was decided to look specifically at cases where the principal offence was either break, enter and steal (BES) or drive whilst disqualified (DWD)⁵.

There were three levels of outcome used in this part of the study (the "outcomes of interest"). Fines and bonds made up one level ("FB", Fine/Bond group), community service orders and periodic detention the second ("AO", Alternative Options group) and custodial sentences of six months or less made up the third level of the variable ("PR", Prison group). All cases in the sample were taken from Sydney metropolitan courts. This ensured some degree of control in relation to the availability of facilities, such as periodic detention centres and probation and parole offices, which may vary between country areas.

The courthouses used in the study were selected on the basis of the number of "outcomes of interest" for BES and DWD cases finalised in 1987. These figures were obtained from the Bureau of Crime Statistics and Research's Local Court database. Any court which had less than ten of these cases was excluded from the sample for that offence. For BES, nine courts remained after the exclusion and the 177 cases from these courts made up the cases for that offence. Eighteen courts fitted the ten cases or more criterion for DWD: a random selection of ten of these resulted in a selection of 438 cases. The courthouses selected accounted for approximately 50% of outcomes of interest for both offences in the metropolitan area.

The following data items were recorded for each case: age, sex, whether the offender was legally represented, whether the person was employed at the time of sentence, plea, number of concurrent offences, whether the person was subject to bail, a bond or probation/parole at the time of the offence, the number of prior convictions, the number of prior convictions for a similar offence, the number of counts of the principal offence, value of the property stolen and whether the offender had received a previous custodial sentence or alternative option. Twelve files in the BES sample and 21 in the DWD sample could not be found. Of those files which were located, 24 of the BES and 57 of the DWD cases had one or more items of data missing.

The data were analysed using a computer based statistical package. Tables 3 and 4 show the relationships between outcome of the case and the variables on which information was collected ("predictor variables") for BES and DWD respectively. The predictor variables are separated into categorical or continuously distributed variables. Data for the former are presented in percentage form so that each figure indicates the percentage of people receiving a certain outcome who possessed the attribute specified in the row. Thus, table 3 indicates that 40% of those who received a fine/bond for BES were employed at the time of sentence. For the continuous variables, the values given are means of each variable for the

⁵ Where there is more than one offence for a single appearance, the principal offence is the offence for which the most severe penalty is given.

different outcomes. For example, the mean number of prior convictions for BES offenders who received an alternative option was 7.8.

The tables also provide information about the importance of each variable in predicting outcome. "Cramer's V" coefficient is a measure of the strength of relationship between two categorical variables (Siegel and Castellan, 1988), whilst "eta" measures the association between a continuous variable and categorical variable ("outcome" in this case) with three or more levels (Roscoe, 1975). The value of both coefficients ranges from 0, indicating no association, to 1, indicating perfect association.

TABLE 3
Analysis of Bivariate Relationships between Outcome and Predictor Variables for Sample of Break, Enter and Steal Offenders

PREDICTOR VARIABLES	OUTCOME			
	FB	AO	PR	
Categorical				Cramer's V
Employed (163)	40% (36)	36% (21)	13% (2)	.15
Represented (165)	88% (80)	83% (49)	93% (14)	.09
Males (165)	90% (82)	88% (52)	87% (13)	.04
25 years or less (165)	69% (63)	78% (46)	80% (12)	.10
Guilty Plea (165)	89% (81)	95% (56)	93% (14)	.10
Subject to Order (150)	17% (14)	28% (15)	83% (10)	.41
Prior Prison (150)	20% (17)	21% (11)	58% (7)	.24
Prior PD or CSO (148)	8% (7)	9% (5)	45% (5)	.30
Continuous				Eta
Num. Priors	6.7 (86)	7.8 (54)	15.3 (12)	.28
Num. Similar Priors	0.7 (86)	0.6 (54)	1.7 (11)	.20
Property Value	\$1230 (83)	\$1760 (55)	\$981 (13)	.15
Concurrent Offences	1.2 (91)	1.0 (59)	2.2 (15)	.16
Number of Counts	1.2 (84)	1.2 (55)	1.1 (13)	.05

Note: For categorical variables, the percentage figures indicate the percentage of people receiving that outcome who were employed, legally represented, etc. and the figures in brackets are frequencies. Figures in brackets next to the variable name indicate the number of cases which returned data for that variable (i.e. were not missing). For continuous variables, the figures indicate the mean number of priors, etc. for people receiving that outcome.

For the BES cases (table 3), the categorical variables subject to order, prior prison sentence and prior PD or CSO sentence were the most strongly related to outcome. The percentage figures indicate that offenders given AO tended not to be subject to some form of supervision and were unlikely to have had a previous prison sentence, community service order or periodic detention. The association between outcome and prior record is also borne out by the continuous variables. In terms of the number of prior convictions and number of prior similar convictions, the AO group had a "better record" than those who were imprisoned.

TABLE 4
Analysis of Bivariate Relationships between Outcome and Predictor
Variables for Sample of Drive Whilst Disqualified Offenders

PREDICTOR VARIABLES	OUTCOME			Cramer's V
	FB	AO	PR	
Categorical				
Employed (405)	73% (101)	65% (100)	46% (51)	.22
Represented (417)	85% (124)	81% (128)	79% (89)	.05
Males (417)	95% (139)	98% (155)	99% (111)	.12
25 years or less (417)	59% (86)	65% (102)	63% (70)	.05
Guilty Plea (417)	99% (145)	97% (153)	97% (109)	.05
Subject to Order (377)	15% (21)	18% (27)	30% (28)	.15
Prior Prison (393)	19% (27)	21% (32)	47% (47)	.26
Prior PD or CSO (387)	17% (24)	21% (32)	36% (35)	.17
Continuous				Eta
Num. Priors	9.0 (141)	9.2 (152)	17.0 (101)	.29
Num. Similar Priors	4.0 (141)	4.8 (152)	8.3 (101)	.34
Concurrent Offences	1.2 (147)	1.4 (158)	2.2 (112)	.22
Number of Counts	1.0 (141)	1.1 (153)	1.2 (103)	.14

For explanation of figures, see note for table 1.

A similar picture emerges for the DWD results shown in table 4. Once again, the variables prior prison sentence, number of prior convictions and number of prior similar convictions were the most strongly related to outcome. Whether the person was subject to a supervision order at the time of the offence does not seem as important here as for BES, but employment status and the number of concurrent offences appeared to have some effect.

These data suggest that, of the characteristics examined, those relating to prior record best distinguished between offenders who receive an alternative option and those who are imprisoned. Note that this confirms the earlier hypothesis concerning prior record which was proposed to explain the fact that break and enter offenders are much more likely to receive an alternative sentencing option to a short prison term. Other factors which seemed to contribute to outcome, though possibly to a lesser extent, were whether the offender was employed, whether he/she was subject to some court order and the number of concurrent offences at that appearance. Variables such as age, legal representation, sex and plea appeared to have little bearing on outcome.

So far only the characteristics of those receiving outcomes of alternative options and short term imprisonment have been compared and found to differ in some respects. Further examination of tables 3 and 4 indicate striking similarities between recipients of community service orders/periodic detention (AO) and recipients of fines or bonds (FB). With respect to those variables mentioned above as being most strongly related to outcome, there are clearly similarities between the FB and AO groups which and both differ from the PR cases. For example, in table 3 17% of FB and 28% of AO cases were subject to some order as opposed

to 83% of PR cases. The mean number of prior convictions for FB and AO was 6.7 and 7.8 respectively, compared to a mean of 15.3 for PR. Similar patterns can be observed for other variables in both tables.

These results provide further evidence supporting the proposition that community service orders and periodic detention are not being used as true alternatives to imprisonment. If it were the case that offenders receiving alternative options would otherwise have gone to prison, then they would be expected to resemble more closely offenders who are actually sentenced to gaol than those given a fine or bond. However, the similarities between the AO and FB group, and the disjunction between these two groups on the one hand and the PR cases on the other, clearly do not support the suggestion that alternative options are diverting offenders from full time imprisonment.

Conclusions

Different forms of analysis have been used here to present a picture of some of the workings of community service orders and periodic detention from the point of view of sentencing policy and practice. In particular, the legislative requirement that these sanctions be used only as "alternatives to imprisonment" has been focused upon.

Both the time series data and the analysis of case characteristics provide evidence of net-widening at the level of sentence imposition; that is, alternative sentencing options in many cases do not appear to have been used as true substitutes for imprisonment. The period following the introduction of community service orders saw a slight increase in the use of imprisonment in the Local Court. This finding runs counter to the decrease which is purported to be a consequence of the introduction of alternative options. The study of individual case files revealed a tendency for recipients of alternative options to resemble more closely recipients of fines or bonds than people sentenced to full-time custody.

These findings are certainly not exceptional. In a review of the Australian literature on decarceration, Polk states

one could not conclude that in Australia the development of community based programs has contributed to a significant decline in prison populations

and, further on, that

such net-widening is clearly contrary to the judicial and legislative intent behind the deinstitutionalization policy.

Researchers in other countries have arrived at similar conclusions in regard to those jurisdictions.

The findings presented here and elsewhere have direct relevance to government policy. In the introduction, the various objectives of the legislature were pointed out and it was noted that the attainment of these objectives was conditional on community service orders and periodic detention being used as intended; i.e. in substitution for a prison sentence. If the conclusions advanced here are correct, then the legislature has failed to achieve its goals.

If the original objectives have not been realised, then the efficacy of recent legislation to extend the availability of community service orders and periodic detention requires scrutiny (*Community Service Orders (Amendment) Act 1989 (NSW)* and *Periodic Detention of Prisoners (Amendment) Act 1989 (NSW)*). Will this result in real diversion or merely lead to further net-widening? In the event of the latter occurring, the consequences would be even more unjust than those which may exist under the present regime. The more arduous the alternative options are allowed to become, the greater is the prospect of breaches and subsequent incarceration, possibly in cases which did not warrant a prison sentence in the first place. This is not to say that net-widening is inevitable, but it certainly seems possible when past practice is considered.

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