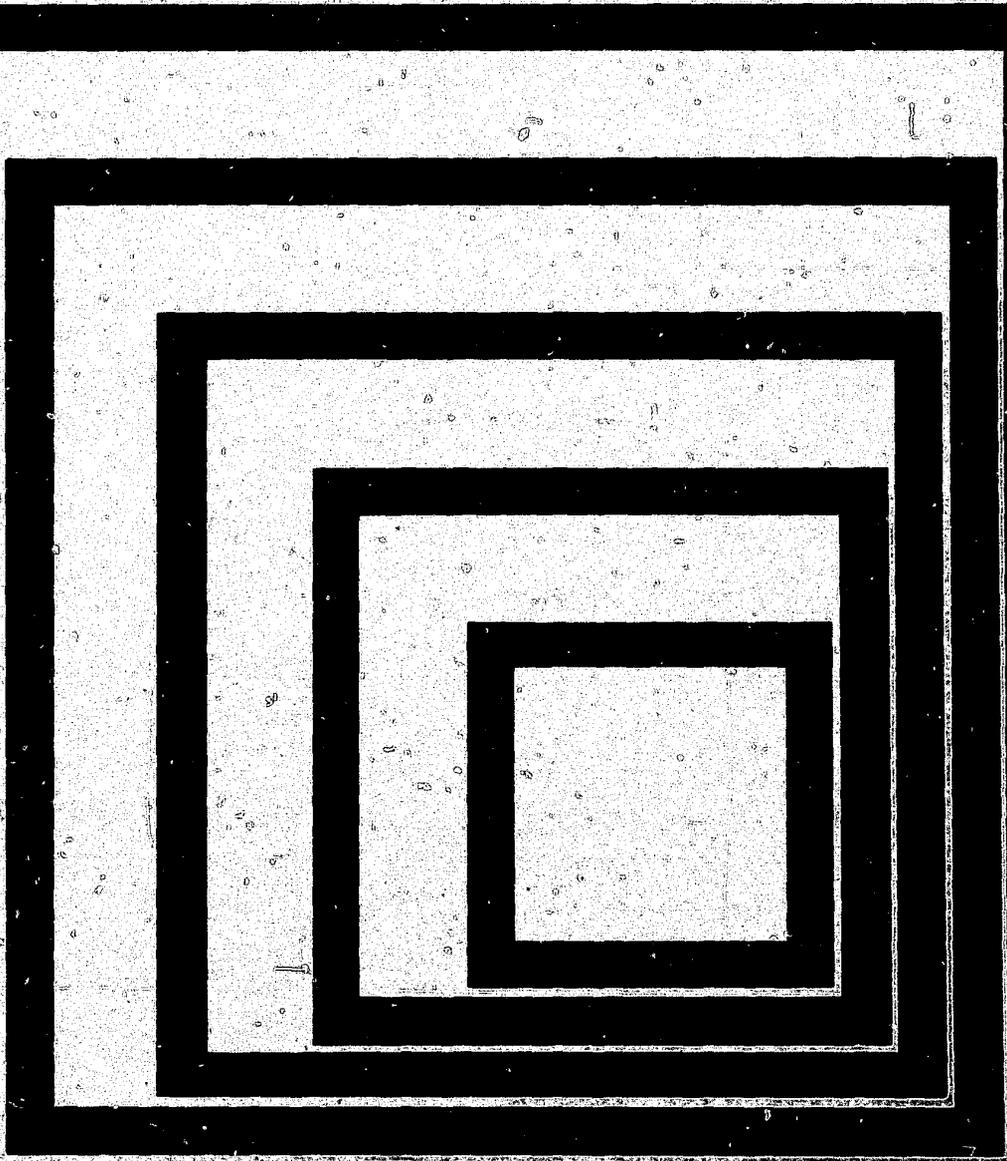


# SENTENCING IN MICHIGAN

Report of the Michigan  
Felony Sentencing Project

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ACQUISITIONS

# X SENTENCING IN MICHIGAN

REPORT OF THE MICHIGAN FELONY SENTENCING PROJECT

BY

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July 1979

Lansing, Michigan

"Sentencing reform is the foundation upon which all  
other criminal-justice reforms must build."

*EDWARD M. KENNEDY (D., MASS.)*

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- H. Judicial Opinion Regarding Offense Severity
- I. Appellate Review of Sentences in America: Failure and Promise
- J. Scoring Sheets for Sentence Matrices
- K. Alternate Formats for Sentencing Guidelines

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Of course, the final shape and content of this report, and any error in it, is the responsibility of the authors. Any opinions expressed in the body of the report are solely those of the authors and do not necessarily represent those of the Office of Criminal Justice, the State Court Administrative Office, or the members of the MFSP Steering and Policy Committee.

## RECOMMENDATIONS

### Steering and Policy Committee Michigan Felony Sentencing Project

#### RECOMMENDATIONS CONCERNING IMPLEMENTATION

1. In principle, the sentencing guidelines technique is a preferred method of establishing a sentencing structure.

Staff comment: The term sentencing structure has two meanings. First, a sentencing structure indicates the maximum and minimum sentences, if any, established by the Legislature. Second, sentencing structure refers to the structuring of discretion left to judges within maximum and minimum sentences. Recommendation 1 refers to sentencing structure in the second way and does not contemplate interference with fundamental legislative functions.

2. The Legislature should establish a broadbased and racially balanced sentencing guidelines commission to include citizens, representatives of the courts (approximately 25% to be trial judges), prosecution, defense, and corrections to develop and promulgate sentencing guidelines utilizing all available data including the sentencing matrices developed by the research component of the Michigan Felony Sentencing Project.
3. The Supreme Court should, in the interim before the Legislature acts, appoint a broadbased and racially balanced sentencing guidelines commission to include citizens, representatives of the courts (approximately 25% to be trial judges), prosecution, defense, and corrections to develop and promulgate sentencing guidelines utilizing all available data including the sentencing matrices developed by the research component of the Michigan Felony Sentencing Project.

4. After sentencing guidelines are adopted by Supreme Court rule or legislation, their usage should be entirely optional for judges for a two year experimental period.
5. When sentencing guidelines are developed, they should be published and sent to every judge in the state of Michigan. These guidelines, and any that are published containing 1977 or 1978 sentencing data, should indicate the time period on which the guidelines are based and should indicate in some prominent way what the rules are concerning good time off of prison sentences for good behavior. Where such rules differ for prison sentences handed down at different time periods, such fact should be indicated.
6. A steering and policy committee (or a sentencing guidelines commission) should be maintained to oversee the work of guidelines development during the experimental implementation period. Such a committee (commission) shall be a broadbased and racially balanced and shall include citizens, representatives of the courts (approximately 25% to be trial judges), prosecution, defense, and corrections.
7. The Department of Corrections, working closely with a sentencing guidelines committee (commission), should issue directives to probation officers to have a sentencing guidelines score developed for each sentence. The worksheet information would be returned to the sentencing committee (commission) for research and development purposes.

Staff comment: It is intended that probation officer training, administrative support for any additional data collection, supportive materials, and research be funded through the sentencing guidelines committee or commission and not the Department of Corrections.

8. Data on every Circuit Court and Recorder's Court criminal sentence handed down during the experimental implementation period should be subject to regular analysis.
9. The results of such analysis should be regularly published. This continually received data should be used to update sentencing guidelines on a regular basis and such guidelines should be published.
10. This period of experience with and development of guidelines should be continued for at least two years.
11. At the completion of two years experience with sentencing guidelines, a report shall be prepared indicating the effect of guidelines upon judicial sentencing patterns, disparity, and other relevant issues.
12. Sentencing guidelines are adopted in principle and the techniques voted on in Recommendations 2 through 11 shall be carried through.

## RECOMMENDATIONS CONCERNING APPELLATE REVIEW OF SENTENCES

13. The Steering and Policy Committee endorses the concept of appellate level sentence review.
14. Appellate level sentence review should be instituted by legislation.
15. Appellate level sentence review should be instituted by the Supreme Court by its promulgating a court rule.
16. The rule (statute) initiating appellate level sentence review should allow this review to be initiated by leave by either the prosecutor or the defendant, with the possible result that the sentence could be increased or decreased. An increase could occur only on the prosecutor's application. The prosecution's application would be limited by time so as to prevent the prosecution from trying to "chill" a defense appeal by responding to a defense appeal by a motion to increase the sentence.
17. The rule (statute) initiating appellate level sentence review should contain language on the scope of review (such as "manifest injustice") to indicate to the reviewing panel that the committee intends that sentences could be changed only in an exceptional case, rather than as a matter of routine.
18. The rule (statute) initiating appellate level sentence review should establish the review on a prospective basis within the existing appellate framework in Michigan.

19. The rule (statue) initiating appellate level sentence review should include a requirement that, at the time of sentence, the trial judge must state reasons for a sentence and must make findings of fact on the following points: the offender's prior criminal record; the likelihood that the offender will respond to probation; whether custody is required either for rehabilitation or for the public's protection; any aggravating or mitigating circumstances involved in committing the crime; any other factor the trial judge used to influence his decision.
20. The rule (statute) initiating appellate level sentence review should contain a requirement that the presentence report must be available for review by the appellate courts.
21. The rule (statute) initiating appellate level sentence review should prohibit the use of guideline studies as the sole basis for comparison until such time as sentencing guidelines are officially adopted by the Legislature or Supreme Court.
- 21a When the guidelines have been used incorrectly by a judge, then the sentence may be corrected.

## CHAPTER 1

### BACKGROUND OF THE MICHIGAN FELONY SENTENCING PROJECT

On April 1, 1978 the Michigan State Court Administrative Office was awarded a grant establishing the Michigan Felony Sentencing Project (MFSP).<sup>1</sup> The application summary indicates that it would undertake research into felony sentencing and produce:

1. An information package detailing current felony sentencing practice to assist the Legislature, the Supreme Court and the Executive Branch in determining the sentencing policy for Michigan.
2. Complete documentation for the sentencing guidelines alternative including a detailed proposal for sentence review.

This final report, with the attached appendices, satisfies these requirements by providing (a) the methodology and results of a comprehensive empirical analysis of sentencing patterns and disparity in Michigan in 1977, (b) a general description of the sentencing guidelines system, (c) a detailed report on appellate review of sentences, (d) a suggestion of how the results of the MFSP study can be utilized to formulate operational sentencing guidelines, and (3) recommendations from the Steering and Policy Committee of the MFSP.

In this chapter the background for the MFSP is sketched by discussing the perceived problems of sentencing, the climate of opinion in America and Michigan, and the various proposals that have been proposed in recent years to reform sentencing. Chapter 2 describes the history, implementation, and concept of the sentencing guidelines system. The differences between parole guidelines, local sentencing guidelines, and statewide guidelines are described. A summary of the report on appellate sentence review is included.

Chapters 3 and 4 contain the results of the empirical study of Michigan sentencing. Chapter 3, "Sentencing Patterns in Michigan," displays empirical sentencing matrices. It is of great importance to note that while matrices are produced and displayed, this Project has not suggested actual sentencing guidelines for the use of trial judges. Because of the narrow time constraints of the project, the limited grant of authority to the Steering and Policy Committee, changes in Michigan's sentencing law since 1977,<sup>2</sup> and the unique problems discovered in considering the establishment of statewide sentencing guidelines, it was decided that an attempt to modify the sentence matrices described herein into guidelines would be premature and could lead to arbitrary results. However, the MFSP has produced a foundation on which guidelines may be quickly and effectively established. Chapter 4, "Sentencing Disparity in Michigan," shows that the existing sentencing system, with its unguided discretion, tends naturally to lead to such wide variations in sentencing that the ethical conclusion may be drawn that sentence disparity exists. We do not conclude that sentencing is totally chaotic, arbitrary, or deliberately discriminatory. What the report does suggest is that, within general sentencing norms, the lack of guidance or structure leads inadvertently to variations that are not rationally explainable on the basis of offense or offender characteristics.

Chapter 5 reformulates the recommendations of the Steering and Policy Committee which are addressed to the Supreme Court, the Legislature, the Governor, and the people of Michigan, and spells out an implementation strategy in greater detail.

A. INDETERMINACY AND THE PROBLEMS OF SENTENCING

The MFSP grant proposal briefly described three problems associated with presently existing sentencing systems:

- Disparity
- Lack of Accountability
- Diffusion

To this list may be added:

- Confusion of Individual Case Decisionmaking with Policymaking
- Stagnation

These problems are to some extent interrelated but are separately described in this chapter. Chapter 2 explains how these problems are dealt with by a sentencing system utilizing guidelines.

Disparity

Since its inception in America about a century ago, the indeterminate sentence has been the source of problems that created a sense of injustice.<sup>3</sup> A basic problem is sentence disparity, which in its most general sense may be taken to mean that differences in sentencing outcomes are associated with invidious criteria.<sup>4</sup> There may be many forms of sentence disparity including sentences affected by the race of defendants<sup>5</sup> or their economic status,<sup>6</sup> or disparity may be detected in the fact that sentencing outcomes are associated with aspects of the processing of criminal cases,<sup>7</sup> or simply that the sentence an offender receives depends upon the county he is sentenced in or the judge who hands down the sentence.<sup>8</sup>

Disparity, it is important to note, is a moral concept and not a scientific one. It is to be expected that in any decisionmaking system outcomes will vary. It is not the fact of variation that causes injustice but its interpretation by human observers.

Not all sentencing variation should be considered unwarranted or disparate. Much of it properly reflects varying degrees of seriousness in the offense and/or varying characteristics of the offender. Indeed, we would contend that dispositional variation which is based upon permissible, rationally relevant and understandably distinctive characteristics of the offender and/or the offense is wholly justified, beneficial and proper so long as the variable qualities are carefully monitored for consistency and desirability over time. Moreover, since no two offenses or offenders are identical, the labeling of variation as disparity necessarily involves a value judgment--what is disparity to one person may simply be justified variation to another. It is only when such variation takes the form of differing sentences for similar offenders committing similar offenses that it can be considered disparate.<sup>9</sup>

This concept is well recognized. Justice Brennan of the Michigan Supreme Court, in commenting on our indeterminate sentence, wrote:

But disparity was quite purposely built into the system by legislative enactment. It was thought that punishment should be tailored to fit the offender, and that a system of variable minimum terms was the best suited to provide optimum discretion in the parole authorities consistent with the defendant's threat to the community as perceived by the trial judge.<sup>10</sup>

This statement rightly concedes that sentence variation is not in itself bad and that a legislative judgment was made in 1903<sup>11</sup> to allow variation in the joint but serial discretion of the trial judge and the parole board, without additional check or control.

The issue, then, is not whether sentence variation is unjust, but whether the present indeterminate sentence system with its nearly unfettered discretion in the the trial judge to grant probation or to set minimum terms<sup>12</sup> and the legally open discretion of the parole board to release at any time before the statutory maximum sentence, produces sentences which are not explainable in terms of rational and fair criteria.

This issue is not raised in isolation in Michigan, for there is now in America a great legal and penological debate that has been stated in polar and philosophical terms: shall the basis for sentencing decisions be the concept of positivistic rehabilitation or just deserts?<sup>13</sup> However, this may

not be the most fruitful way of seeing the matter. "Necessarily, any statute in the area of sentencing is an expression of some compromise among competing ends sought to be accomplished."<sup>14</sup> The goal of a sentencing guidelines system, then, is not to direct ongoing sentencing practice toward one philosophy or another. Rather, it is designed to establish a system whereby the decisions of diverse trial judges throughout the State can be translated into a method that has the greatest probability of providing equity in sentencing without sacrificing reasoned flexibility.

### Accountability

Disparity is not the only problem that currently faces sentencing courts. A maxim familiar to jurists is that justice must not only be done but must be seen to be done. In a democratic society the legitimacy of all aspects of government, including the judiciary, depends upon the belief among the people that, over the long run, decisions of government are rational and fair. Legitimacy cannot be separated from accountability. The sad fact is that prior to the present study, there has been no way to determine the overall and actual sentencing practice throughout the State in any way which is useful to policymakers. Lack of information produces two evils: it leads to unfounded and even scurrilous criticism (e.g., the familiar comment that sentencing decisions are whimsically based on the daily disposition of the judge) and does not allow for accurate assessment of real problems. The results of the Michigan Felony Sentencing Project tend to agree with the mainstream of recent sentencing research that sentencing patterns (and therefore, implicit policies) exist, that these patterns are for the most part rational, but that enough variation exists to be considered disparity.<sup>15</sup>

The concept of a sentencing guidelines system does not end with the research effort and the "modeling" of policy guidelines. Inherent in the notion

is the continuous monitoring of sentencing decisions. This means that the appropriate agency (for example, the State Court Administrative Office in conjunction with the Department of Corrections) will gather data on each sentence handed down by Circuit and Recorder's Court judges.<sup>16</sup> Such data will include a limited but relevant number of variables aside from the conviction offense and the sentence guideline score. From time to time, but preferably on an annual basis, the data thus collected shall be subject to analysis to determine whether sentencing norms and patterns have shifted, whether guidelines grids are still being adhered to, and to answer other questions about overall sentencing practice. By this method the exercise of sentencing discretion will no longer be hidden from view, and, on the other hand, an isolated case will not be taken to represent all sentencing practice.

#### Diffusion

Judicial sentencing is one part of a diffuse and complex decisionmaking process including plea bargaining and parole release.<sup>17</sup> Because of this diffusion, the decision made at one point affects later decisions. Thus, no one decisionmaker has complete control over the sentencing disposition. It is known that decisionmakers make informal accommodations to the needs of other groups (e.g., sentencing judges take into account the expectations of prosecutors and defendants following guilty pleas, parole boards take into account judicial minimum sentences or the overcrowded conditions in prisons, etc.). However, this does not always work satisfactorily. Also, the legitimate and reasoned-out rationales of prosecutors, judges, and parole boards may be disregarded by the other agencies. There is no systematic way for these decisionmakers to inform one another as to their actual policies.

The problem of diffusion has not gone unnoticed by legislators. Apparently disturbed by the confusion and lack of accountability that occurs when both judges and parole boards share in sentencing, and perhaps motivated by earlier attacks on parole boards,<sup>18</sup> several states have recently either abolished the parole board or have greatly attenuated its release powers.<sup>19</sup> There is a danger that this form of radical surgery, if not carefully thought out, will so destabilize the sentencing system as to cause wholesale injustice, a point recently made by a chief proponent of the just deserts philosophy!<sup>20</sup> Another problem of hastily created sentencing reform is that, in attempting to control judges with determinate sentences, the legislature will, in fact, shift more discretion into the hands of prosecutors.<sup>21</sup> Even the creation of guidelines in one part of the sentencing system can lead to "boundary" problems. Thus, when the federal parole board established decisionmaking guidelines, many of its decisions were overturned in appellate courts on the grounds that the wishes of the sentencing judges were not considered.<sup>22</sup>

If an accountable sentencing system is to be created, some means must be devised to deal with diffusion of authority. One way is to create an "umbrella" sentencing commission which represents the interests of the various groups which have a role in sentencing.<sup>23</sup> Another method is for judicial sentencing guidelines to be created and simultaneously to establish the relations between such guidelines and paroling authority, perhaps by reducing the scope or eliminating parole authority.<sup>24</sup> A third approach implemented by Oregon is to vest the decision as to length of prison term chiefly in the parole board but under guidelines in which judges have a say.<sup>25</sup> Whichever method is selected, the diffusion problem must be given careful attention since some sentencing reforms that give the appearance of radical change turn out to be cosmetic, at best, upon closer inspection.<sup>26</sup>

### Policymaking

To raise the very issue of "sentencing policy" may seem to fly in the face of the indeterminacy theory that each case is unique and is to be sentenced solely on its peculiar offense and offender circumstances.<sup>27</sup>

Because court norms almost never are articulated, let alone spelled out in formal guidelines, judges usually do not realize the degree to which their sentences are predictable. On the contrary, their own perception is that there are no norms at all--that they handle each sentence differently because no two cases and no two defendants are alike. Indeed, most judges take professional pride in their ability to tailor each sentence to the peculiar circumstances of each case.<sup>28</sup>

But, while sentencing norms are rarely made explicit, recent research shows that they exist.<sup>29</sup> In a sense these norms form the implicit policy of the courts. Unfortunately, such policy arises out of a welter of individual decisions and this leads to a confusion of two types of decisionmaking: individual cases and general policies. The result, as noted, is a lack of accountability, unjustified disparity and the danger that policies may "drift," that is, shift over time without due deliberation as to the reasons and consequences of change.

### Stagnation

The legal philosopher, Lon Fuller, noted that too frequent changes in law can produce an instability that violates basic tenets of lawfulness.<sup>30</sup> But the opposite--the failure of legislators to change the law when conditions have changed, also produces injustice and many such examples exist in the sentencing literature.<sup>31</sup> Unfortunately, piecemeal legislative changes in penalties tend to produce the evils of disproportionality in penalties and an "inching up" of allowable maximum terms. On the other hand, given the massive nature of any overhaul of a penal code, legislatures wisely refrain from redoing codes frequently. Still, the problem remains that as public needs change rigid sentencing prescriptions create injustices.

## B. CLIMATE OF OPINION REGARDING SENTENCING

### The United States Since 1970

Prior to 1970 the indeterminate sentence was accepted by leading jurists and penologists as the most effective and humane approach to the problems of sentencing offenders.<sup>32</sup> Since that time the climate of opinion has shifted radically. Most commentators now call for some form of determinacy in sentencing, and even defenders of the parole board's role in sentencing argue that parole discretion should be confined and structured by decisionmaking guidelines.<sup>33</sup> The reasons for this sudden turnabout are varied. First, there was much criticism of the way in which parole boards exercised their discretion, with several extreme cases of arbitrary and capricious use of discretion pointing to a lawless system.<sup>34</sup> Analysis of unfettered parole discretion soon led to indeterminate sentence laws as the source of this problem. Furthermore, as numerous middle class persons entered prisons in the late 1960's for drug offenses and various kinds of protest-related crimes, and as more middle class persons became interested in prisoners' rights, they heard for the first time the gripes of "real" prisoners.

And much to the surprise of many civil libertarians, the foremost gripes were directed against rehabilitation in general and indeterminate sentencing in particular. Indeed, the Attica Report concluded that "the operation of the parole system was a primary source of tension and bitterness within the walls."<sup>35</sup>

These concerns were then addressed to the larger public in the news media and popular works.<sup>36</sup> The gist of these books and articles was that parole and indeterminate sentencing was arbitrary, highhanded and unfair, hypocritically masking retribution and capriciousness behind the mask of scientific objectivity.

Another strand in the attack upon indeterminacy was the growing scientific and scholarly realization that prisons were generally not fit places for rehabilitation, being inherently more concerned with security, status

maintenance, and population control.<sup>37</sup> Thomas Szasz, a psychiatrist and medical professor, undermined the very foundation of in-prison social rehabilitation by his trenchant attacks upon coercive psychiatry.<sup>38</sup> A seminal article in the legal literature by Francis Allen alerted the more perceptive in the legal world that there were cracks in the rehabilitative foundation of indeterminacy.<sup>39</sup> After 1970 several studies showed that the ability of clinicians or social scientists to accurately predict dangerousness was not possible and that to increase the proportion of correct predictions entailed the unacceptable costs of a very high number of erroneous decisions. In other words, to correctly predict actual violent offenders necessarily means that many non-violent offenders will be misdiagnosed.<sup>40</sup> This utilitarian theme culminated in 1974-75 with an article in The Public Interest journal by Robert Martinson entitled "What Works?" followed by a massive report evaluating studies of hundreds of rehabilitation programs.<sup>42</sup> The "what works?" debate<sup>43</sup> rivited the attention of the penological world and has had a significant impact on legislators and other policymakers summed up in the residual slogan that "nothing works."

There has always been the realization that indeterminacy was linked to disparity. But, until the last decade, the costs of unfettered indeterminacy were offset by the belief that dangerous offenders could be identified, that the social rehabilitation of offenders was possible, that judges and parole boards made the best attempts to search out correct sentences, and that simple procedural reforms (such as sentencing councils) could eliminate the side effects of disparity and unaccountability. Under the pressure of the criticism of unfairness, combined with the growing realization that the flaws of the rehabilitative ideal outweighed its strengths, support for indeterminate sentencing eroded and left a vacuum soon to be filled by a variety of so-called "determinate sentencing" concepts.<sup>44</sup>

The vacuum created by the collapse of the idea of indeterminacy might have been filled by simple flat sentencing provisions. Apparently, legislatures have balked at the monumental task of creating absolutely rigid penalties to be attached to specific convictions. The closest to this was Maine's new statute allowing a judge to fix a "one time" prison sentence. As noted above, this law has an element of deception in that discretionary release (although labeled "resentencing") is allowed after one year in prison and in no way controls disparity in meting out prison sentences or in the length of prison terms.<sup>45</sup>

The thrust of other states' sentencing reforms has been in the direction either of presumptive sentencing or sentencing guidelines. Both methods revolve around the idea that to reduce disparity there should be a sentencing norm which is presumed to be the "correct" sentence for a particular crime situation. However, the "presumption" may be "rebutted," so to speak, if there are found to exist aggravating or mitigating circumstances which were not taken into account in setting the presumptive sentence. Both concepts also have been associated with procedural reforms including sentencing hearings, the giving of reasons for (at least) sentencing decisions which are "outside" the presumption, and appellate review of sentences.

The major differences between presumptive sentencing and guidelines stem from the nature of the development of each. (Guidelines are described in detail in Chapter 2). Presumptive sentences are essentially arbitrary, decided upon by the group, be it a legislative committee or advisory board, which is vested with the authority to develop the presumptions. Also, in all presumptive sentencing schemes put into legislation, a small number of presumptions have been established to cover all possible sentencing contingencies. The alternative would be to enact scores, if not hundreds, of minutely defined offenses, each with its own presumption and range.

The guidelines concept differs in several regards. The guidelines are based upon scientific analysis of existing sentencing patterns, and are displayed in decisionmaking grids. Thus, guidelines are grounded in the existing sentencing patterns of judges and are able to display a very complex set of decision norms in a way that all participants in the sentencing process can readily understand. Thus, a two-axis grid (x axis encompasses offender scores, y axis encompasses offense scores), with five divisions on each axis, displays 25 separate sentencing norms for 25 unique combinations of offense and offender characteristics. If a grid is developed for ten separate offense groups, as has been done by the MFSP,<sup>46</sup> 250 separate norms may be economically displayed.

The first writings suggesting new sentencing methods were two influential books which appeared in 1975 and 1976,<sup>47</sup> both advocating presumptive sentencing. Two states, California and Indiana, soon passed variations of presumptive sentencing into law.<sup>48</sup> Briefly, the range of sentencing choice in the Indiana legislation is very large and it remains to be seen whether the existence of a statutory presumptive sentence, along with appellate review, will reduce sentence disparity. The California law, as originally passed, set very low presumptive sentences of two, three, four, and six years, with life sentences for kidnapping with injury and first degree murder. The ranges were also very narrow, limited to one year increase and one year decrease for aggravating and mitigating circumstances. This lenient scheme lasted less than a year before the legislature raised presumptives to three, four, five, six and seven years, with a variety of expanded ranges including five-seven-eleven for murder in the second degree.<sup>49</sup> Various enhancements allow the base sentence to be doubled upon the assertion and finding of specific facts about the offense or the offender's prior record, thus,

incidentally, enhancing the prosecutor's discretion as well.<sup>50</sup> The Illinois revision has not followed the presumptive sentence mode but has, rather, given the judge authority to set a definite term with statutory minima and maxima.<sup>51</sup> Although it is too early to say how these laws will operate in practice, most commentators believe that the laws are structured with too much discretion to have any effect on reducing disparity. The very narrow terms of the California law were expanded shortly after passage. One feature of the California law worth emulating is the requirement of monitoring by the California Judicial Council.<sup>52</sup> This function is being performed and information is disseminated quarterly in the Council's Sentencing Practices Quarterly. On the basis of this information, the Council has the power to make rules to provide criteria to promote uniformity in sentencing.

The second wave of postindeterminacy sentencing legislation has been the recent creation of sentencing guidelines commissions in Minnesota, Oregon, and Pennsylvania.<sup>53</sup> The Minnesota and Pennsylvania laws create independent commissions whose functions are to adopt sentencing guidelines for use by trial judges in sentencing. Section 1384 of the Pennsylvania act, for example, states that "the guidelines shall: (1) Specify the range of sentences applicable to crimes of a given degree of gravity; (2) Specify a range of sentences of increased severity for defendants previously convicted of a felony or felonies or convicted of a crime involving the use of a deadly weapon; (3) Prescribe variations from the range of sentences applicable on account of aggravating or mitigating circumstances." The Minnesota law, section 244.09, instructs the sentencing guidelines commission to promulgate advisory sentencing guidelines based upon reasonable offense and offender characteristics. These guidelines are to establish "the circumstances under which imprisonment of an offender is proper" and for imprisoned offender, "a presumptive, fixed

sentence." Increases or decreases of up to 15 percent are allowed. The Minnesota law contains two interesting and worthy features. First, the commission is authorized to be concerned with community corrections and "may also establish appropriate sanctions for offenders for whom imprisonment is not proper." Second, "The commission shall take into substantial consideration current sentencing and release practices and correctional resources, including but not limited to the capacities of local and state correctional facilities." These legislative features are highly desirable because they deal with more than prison terms and treat the entire range of sentencings and show concern for the practical side of the impact of sentences.

The Oregon law is quite different in that it retains a high degree of parole board involvement in sentencing, thus bucking the trend of the 1970's. It establishes an advisory commission on prison terms and parole standards of five parole board members, five judges, and the governor's legal counsel. The commission is authorized in section 144.780 to "propose to the board and the board shall adopt rules establishing ranges of duration of imprisonment to be served for felony offenses prior to release on parole." Whatever parole board discretion is retained is to be controlled by "rules regulating variations from the ranges, to be applied when aggravating or mitigating circumstances exist." (Section 144.785) Oregon's judges make the decision whether to sentence convicted felons to prison. Their term-setting authority is somewhat ambiguous, for although the court may, under section 144.110, "impose a minimum term of imprisonment of up to one-half of the sentence it imposes," the parole board may release a prisoner prior to the expiration of the minimum "upon affirmative vote of at least four members of the board."

The statutes reviewed in this section are all so new that it is not possible to evaluate their performance. In Pennsylvania and Minnesota,

guidelines have not yet been promulgated at this time although the Minnesota commission is in the midst of conducting empirical research as a basis for guidelines' promulgation. Without going into great detail, we have overviewed the major academic and legislative sentencing activity of the last decade. This fertile period of sentencing activity has resulted in a variety of alternative approaches to sentencing reform. In Chapter 2 a rationale is made for the guidelines alternative. First, though, a brief review of sentencing reform activity in Michigan will complete the picture of the climate of opinion regarding sentencing.

#### Definite Sentencing Proposals in Michigan

Three proposals to replace the current indeterminate sentence are very briefly sketched here, the flat sentencing scheme of Wayne County Prosecutor William Cahalen, the Michigan State Bar's presumptive sentences, and the Department of Correction's model for a modified rehabilitative sentencing structure. To these three, the proposal herein for sentencing guidelines can be seen as a fourth major input on sentencing reform.

William Cahalen's flat sentencing concepts were the first suggestions for reform of the indeterminate sentence in the 1970's and were influenced significantly by the double barreled attacks of the early critics--the American Friends Service Committee, Judge Frankel, and Jessica Mitford--that discretion in the service of rehabilitation fails to reduce crime and produces disparity. The solution proposed emphasized certainty of punishment in the guise of mandatory minimum sentences for every felony conviction. His proposal is highly conceptual in that it has not been translated into specific terms. However, it is the most radical of the proposed reforms, insisting that each crime be visited with a specific, unalterable, mandatory prison sentence "with no parole and no probation."<sup>54</sup>

The State Bar of Michigan's Criminal Code Revision Committee, as part of its monumental tasks, has put forward a presumptive sentence proposal. The Committee has recommended that five classes of felonies be established, with a penalty structure to be attached to each class. The penalty for first degree murder would remain at "flat life." Second degree and attempted murder would be punishable by a standard sentence of ten years, or a sentence ranging from a mandatory minimum of two years to a flat life maximum. The form of sentence would be a "single time" sentence, thus eliminating the need for the parole board to determine time of release. Class A and B felonies would carry mandatory minima of two years and 18 months, standard sentences of seven and five years, and maximum penalties of 30 and 20 years respectively. Class C, D, and E felonies carry no mandatory minimum or standard sentences and carry maxima of ten, five and two years respectively. For Class A and B felonies, sentences other than the standard sentence may be given only upon a finding of aggravating or mitigating circumstances. Where both aggravating and mitigating circumstances exist, they would be "weighed" to determine whether a sentence would be raised, lowered, or would remain at the standard.<sup>55</sup> The State Bar's presumptive sentences are closer to the wide time ranges in the new Indiana law, rather than the narrower California statute. Such a broad range as 2-7-30 years raises some doubts about controlling disparity.

The Department of Corrections has suggested a modification of the indeterminate sentence. A flat life term for murder in the first degree is retained, but felonies are placed in three classes, A, B, and C, with the maximum penalties of 20, 10 and 5 years respectively. Judges would continue to set minimums, but limited to half the maximum. The parole board release decision would be subject to guidelines and review. Five and two year

mandatory minimum sentences are suggested for Class A and B offenses, and enhancements for previously convicted felons, and crimes committed with a firearm, are required.

These alternative sentencing proposals, including the guidelines alternative, run the gamut of new sentencing reforms. Michigan undoubtedly reflects the national concern with sentencing reform. Note, for example, that in the last four years there has been a significant amount of legislative activity on this issue.<sup>56</sup> Most of the major sentencing bills presently before the legislature are presumptive sentencing proposals modeled closely upon the State Bar's recommendation. However, the concepts of regularity and fairness which underlie the presumptive sentencing model led the Michigan Commission on Criminal Justice to recommend an alternative method of sentencing which includes "establishment of written sentencing and parole guidelines . . ." <sup>57</sup> We submit that a combination of legal procedural reform, written rules, and guidelines based on sentencing experience and presented in the format of a decisionmaking grid, is the best alternative to the current sentencing morass. A guidelines system can provide an understanding of sentencing practice, unambiguous guidance to judges, flexibility in decisions, and a method to continuously monitor the sentencing process. This system provides a level of rational policy input, oversight, and accountability that is not available in other sentencing alternatives.

NOTES

1. See MFSP Appendix A, Grant Application (February 21, 1978).
2. On February 11, 1977 the so-called "two year gun law" went into effect. Codified as M.C.L.A. sec. 750.227b, the law generally provides that a person in possession of a firearm during the commission of a felony shall be sentenced to a mandatory concurrent two-year prison term. Second and third convictions carry five and ten year terms. Although this law was in effect during most of the year in which data was collected (1977), it is often true that a time lag occurs before a law, especially one requiring prosecutorial discretion to be used, is put into effect.

Effective May 12, 1978, a drastic revision of the Controlled Substances Act went into effect bringing back the harsh penalties for drug law violations which were eliminated in 1971. 1978 Public Acts, P.A. 147, codified as M.C.L.A. 335.341. The penalty structure includes mandatory life imprisonment for manufacture, delivery, possession with intent to deliver, or possession of 650 grams or more of narcotics; 20 to 30 years for amounts between 650 and 225 grams; 10 to 20 years for amounts between 225 and 50 grams, and up to 20 years for amounts less than 50 grams. Other penalties for controlled substance violations do not carry mandatory minimum terms, but carry maximum terms up to ten years. Mandatory terms under this law are to run consecutively with other terms and probation, suspension or parole are not allowable (except for lifetime probation).

The final statute to affect sentences since 1977 is "Proposal B," a law passed by referendum initiative in the November 1978 general election, amending M.C.L.A. sec. 791.233 concerning the grant of parole. In effect, the amendment lists more than 80 offenses which are not eligible for parole release until the "calendar minimum" is served. In other words, good time (i.e., time off prison sentence for good behavior), established by M.C.L.A. sec. 800.33 no longer applies to a large number of crimes.

3. See Edmond Cahn, The Sense of Injustice 11-15 (1949).
4. See M. Zalman, "A Commission Model of Sentencing," 53 Notre Dame Law. 277, 268-269 (1977).
5. M. Wolfgang and M. Riedel, "Race, Judicial Discretion and the Death Penalty," 407 Annals of Amer. Acad. Pol. & Soc. Sci. 119 (1973).
6. S. Clarke and G. Koch, "The Influence of Income and Other Factors on Whether Criminal Defendants Go to Prison," 11 Law & Soc. Rev. 57 (1976); Project, "A Study of the California Penalty Jury in First Degree Murder Cases," 21 Stanford L. Rev. 1297 (1969).
7. Peter W. Greenwood, et al, Prosecution of Adult Felony Defendants: A Policy Perspective 41-56 (1976); S. Talarico, "Judicial Decisions and Sanction Patterns in Criminal Justice," 70 J. Crim. L. and Crim. 117 (1979).

8. John Hogarth, Sentencing as a Human Process (1971).
9. Leslie T. Wilkins, et al., Sentencing Guidelines: Structuring Judicial Discretion 1 (1978).
10. People v. Tanner, 387 Mich. 683, 694-95, 199 N.W. 2d 202, (1972) (dissenting).
11. Act 136 of Public Acts of 1903 (Mich).
12. The rule of People v. Tanner, supra, is that minimum prison sentences under the indeterminate sentence law may not exceed in length two-thirds the maximum.
13. See Andrew von Hirsch, Doing Justice: The Choice of Punishments (1976); Boalt Hall School of Law, Determinate Sentencing: Reform or Regression (Proceedings of the Special Conference on Determinate Sentencing, 1978).
14. Justice Brennan in People v. Tanner, supra, at 694.
15. For a more detailed analysis of these patterns, see chapters 3 and 4, and Appendices G and H of this report.
16. This is currently done by the Department of Corrections and collected in the Criminal Case Conviction Register.
17. See Robert Dawson, Sentencing: The Decision as to Type, Length, and Conditions of Sentence (1969); Arthur Rossett and Donald R. Cressey, Justice by Consent: Plea Bargains in the American Courthouse (1976); M. Zalman, "The Distribution of Power in Sentencing," in John A. Conley, ed., Theory and Research in Criminal Justice: Current Perspectives 75 (1979).
18. American Friends Service Committee, Struggle for Justice: A Report on Crime and Punishment in America (1971); Norval Morris, The Future of Imprisonment (1974); David Fogel, "...We Are the Living Proof...": The Justice Model for Corrections (1975); Morris, "Toward Principled Sentencing," 37 Maryland L. Rev. 267, 276-279 (1977).
19. M. Neithercutt, "Parole Legislation," 41 Fed. Prob. 22 (March 1977) (Indiana, Maine, California, Illinois, Minnesota, Washington).
20. Andrew von Hirsch and Kathleen Hanrahan, Abolish Parole? (1978)
21. A. Alschuler, "Sentencing Reform and Prosecutorial Power: A Critique of Recent Proposals for 'Fixed' and 'Presumptive' Sentencing," in Determinate Sentencing, supra note 13, p. 59.
22. Kortness v. United States, 514 F. 2d 167 (8th Cir. 1975), United States v. Slutsky, 514 F2d 1222 (2d Cir. 1975), United States v. Salerno, 538 F.2d 1005 (3rd Cir. 1976).

23. Zalman, supra note 4.
24. See, e.g., Minnesota Statutes 1978, Ch. 723.
25. See Oregon Revised Statutes, secs. 144.775 - 144.790.
26. Compare Maine Revised Statutes, tit. 17-A, sections 1251, 1252 (establishing definite sentences) with section 1154 (1) (making all prison sentences longer than one year "tentative").
27. United States v. Daniels, 446 F.2d 967 (6th Cir. 1971).
28. Charles Silberman, Criminal Violence, Criminal Justice 290 (1978).
29. James Eisenstein and Herbert Jacob, Felony Justice: An Organizational Analysis of Criminal Courts, pp. 282-86 (1977); Wilkins et al., supra note 9; David W. Neubauer, Criminal Justice in Middle America 238 (1974).
30. Lon L. Fuller, The Morality of Law 79-81 (1963).
31. Cahn, supra note 3, pp. 20-22; Dawson, supra note 17.
32. President's Commission on Law Enforcement and the Administration of Justice, The Challenge of Crime in a Free Society 142 (1967) (advocates "rationalizing" the indeterminate sentence); Karl Menninger, The Crime of Punishment 64 (1966); Ramsey Clark, Crime in America 224 (1970).
33. von Hirsch and Hanrahan, supra note 20; C. McCall, "The Future of Parole - In Rebuttal of S. 1437," 42 Fed. Prob. 3 (Dec. 1978).
34. George Jackson, Soledad Brother (1970); Eve Pell, ed., Maximum Security: Letters From California's Prison (1972); C. Foote, "The Sentencing Function," in American Trial Lawyers Foundation, A Program For Prison Reform 17 (1972); Erik O. Wright, The Politics of Punishment: A Critical Analysis of Prisons in America (1973); Bruce Kahn, "Alternatives to Current Michigan Sentencing and Parole Procedures," Report submitted to the Special Committee on Prisons and Corrections of the State Bar of Michigan (1972); In re Lynch, 105 Cal. Rptr. 217, 503 P.2d 921 (Cal. Sup. Ct. 1972) (life imprisonment for second offense indecent exposure disproportionate penalty and cruel and unusual punishment).
35. A. Dershowitz, "Let the Punishment Fit the Crime," New York Times Magazine, Dec. 28, 1975, pp. 7, 26.
36. American Friends, supra note 18; Jessica Mitford, Kind and Usual Punishment (1971); H. Griswold, et al., An Eye for an Eye (1970).
37. Erving Goffman, Asylums: Essays on the Social Situation of Mental Patients and Other Inmates (1961).
38. Thomas Szasz, The Myth of Mental Illness (1961); Thomas Szasz, Law, Liberty, and Psychiatry (1963).

39. F. Allan, "Criminal Justice, Legal Values and the Rehabilitative Ideal," 50 J. Crim. L., Crim & P.S. 226 (1959).
40. These studies are summarized in Morris, Future, supra note 18, pp. 34-43, 62-73.
41. R. Martinson, "What Works? - Questions and Answers About Prison Reform," 35 The Public Interest 22 (Spring, 1974).
42. Douglas Lipton, Robert Martinson and Judith Wilks, The Effectiveness of Correctional Treatment: A Survey of Treatment Evaluation Studies (1975).
43. See Robert Martinson, Ted Palmer and Stuart Adams, Rehabilitation, Recidivism, and Research (1976).
44. Perhaps the bellwether for the legal profession was Marvin Frankel, then a federal district judge, who in the early 1970's noted in an influential book that "This 'rehabilitative ideal'...is genetically flawed and malformed." Marvin Frankel, Criminal Sentences: Law Without Order 89 (1972). Judge Frankel, unlike some critics, believed that there might be some cases where the indeterminate sentence should be used "in the service of incapacitating dangerous people" but in such cases "the need for incapacitation and the criteria for continuing scrutiny should be specified with maximum feasible particularity." Ibid., p. 101.
45. For more detailed analyses see M. Zalman, "The Rise and Fall of the Indeterminate Sentence," 24 Wayne L. Rev. 847, 873-75; S. Lagoy, F. Hussey, and J. Kramer, "A Comparative Assessment of Determinate Sentencing in the Four Pioneer States," 24 Crime & Del. 385, 387-88 (1978).
46. Homicides, robberies, sex crimes, drug crimes, assaults, burglaries, larcenies, property destruction, frauds, and weapons offenses.
47. Fogel, supra note 18; Twentieth Century Fund Task Force on Criminal Sentencing, Fair and Certain Punishment (1976).
48. See Cal. Penal Code, sections 1170. - 1170.6; Ind. Code. Ann. sections 35-50-1-1 to 35-50-6-6 (Burns Cum. Supp. 1977).
49. Cal. Stat. 1978, cap. 709.
50. See A. Cassou and B. Taugher, "Determinate Sentencing in California: The New Numbers Game," 9 Pacific L.J. 1 (1978).
51. See Lagoy, et al., supra note 45, pp. 394-97.
52. Cal. Penal Code, section 1170.4
53. Minn. Stat. 1978, Ch. 723; Ore. Rev. Stat. secs. 144.775-144.790; Penn. Sen. Bill 195 (1979).

54. William L. Cahalen, "Flat or Mandatory Minimum Sentencing," in Citizens Research Council of Michigan, Sentencing Alternatives 9, 14 (1977) (originally published in volume 51 of the Journal of Urban Law in 1973).
55. "Proposed Criminal Code Revision: Sentencing the Convicted Felon," 56 Mich. St. Bar J. 121 (1977).
56. For recent legislation see note 2 supra; for a detailed discussion of other proposals, see Zalman, supra note 45, pp 919-924 (1978).
57. Michigan Commission on Criminal Justice, Commission Action: 2/77-1, Adopted 2/16/77.

CHAPTER 2

THE RATIONALE FOR SENTENCING GUIDELINES

A. BRIEF HISTORY AND EXPLANATION OF SENTENCING GUIDELINES

The concept of analysing sentencing-like decisions and describing them in decisionmaking grids, somewhat akin to the intersecting lines that overlay road maps to enable the user to locate a point, originated with a study of federal parole decisionmaking in 1970.<sup>1</sup> Out of that came the idea and the technology of articulating and predicting general sentencing patterns. The practical effect was to establish for the first time an effective way to structure sentencing decisions, that is, to partially control and improve them on the basis of relevant information. Thus, a methodology was created which could be used to significantly reduce sentence disparity while simultaneously allowing necessary flexibility in making sentencing decisions. It is submitted that the technique of sentencing guidelines has a greater potential of bringing about equity in sentencing than any other proposed reform and can make the sentencing function accountable without sacrificing a reasonable degree of individualization.

An early legal and empirical evaluation of parole guidelines was favorable to the concept but urged that it was more appropriate for judges to use guidelines as an aid in sentencing.<sup>2</sup> This advice was not lost on the originators of the parole guidelines system for they conducted a feasibility study of sentencing guidelines in the Denver District Court.<sup>3</sup> Since that time a number of multi-judge courts have undergone the empirical research and policy development needed to adopt guidelines for their local jurisdictions within the context of state sentencing laws.<sup>4</sup> Immediately upon the successful completion of the feasibility study and early implementation in

local jurisdictions, it became apparent to many policymakers including legislators, judges, and court administrators that the guidelines system has statewide applicability. Thus, within the last two years, eleven states have undertaken research to establish statewide guidelines. Three of these states have established a legislative framework for guidelines. Another state has sponsored a large scale empirical investigation of sentencing practices.<sup>5</sup> This burst of activity shows that, despite the "early start" of the definite sentencing or presumptive sentencing models for reform in the past three years, the guidelines concept has attracted the attention of more policymakers.

Any standard or recommendation for action which is not absolutely binding may be considered a guideline. For example, the Council of Judges of the National Council on Crime and Delinquency suggests guides that range from extremely vague ("Moderation and objectivity should be the goals of the sentencing judge") to somewhat vague directions ("Probation is a preferred disposition and should be considered as a possibility in almost every case"; "Probation is not for the dangerous offender") to quite specific rules ("A stenographic record of the sentence hearing should be made").<sup>6</sup> It seems that procedural rules may be stated with a high degree of explicitness in the form of written rules, while substantive rules for sentencing which give explicit guidance in actual cases are very difficult to develop. This is because (1) the potential facts and circumstances of offenses and offenders are very large, (2) the choice of penalties under indeterminate sentence laws is great, (3) the rationales for punishment are vague in their application to specific cases, and (4) there is no explicit correlation between a rationale for punishment and a specific penalty.

As used in this report, "sentencing guidelines" is a term of art which

designates an approach by which sentencing decisions of all judges in a jurisdiction are subjected to empirical analysis and that analysis is used to project the "average" sentences of the judges for a variety of offense and offender fact combinations. Based on our experience, we believe that initial sets of grids, which we designate sentencing matrices, should not ordinarily be used as sentencing guidelines until another process, which we call "policy modeling," is undertaken. This point will be explained in greater detail in Chapter 3.

An example of sentencing guidelines will clarify the nature of the grids. The feasibility study in Denver analysed offenses by statutory classification. From most to least severe, Colorado has eight offense classifications: Felony 1, 2, 3, 4, and 5, and Misdemeanor 1, 2, and 3. Felony 4 carries a minimum sentence of probation, or \$2,000 fine, or indeterminate imprisonment and a maximum allowable prison term of ten years. Within this range the judge can sentence to fine or probation ("OUT") or a maximum prison term of ten years or less. Offenses within the Felony 4 category include manslaughter, second degree burglary, and theft. On the basis of multivariate analysis of over 200 items of information possibly related to the sentence, several items concerning offense and offender found to be statistically significant are used to compute offense and offender scores. In Denver, the offense score is made up of an "intra-class rank" and a "harm/loss modifier." For Felony 4, there are 34 possible offenses. Eighteen are given an intra-class rank of 1, the least severe (e.g., third degree burglary, first degree criminal trespass), twelve are given a rank of 2 (e.g., menacing if deadly weapon employed, criminal impersonation), and four carry the most serious rank of 3 (e.g., attempt to commit sexual assault on a child, theft from the person without force). The harm/loss modifier adds points for certain aggravations,

i.e., 1 for sale of drugs, 1 for weapon use, 1 for injury, and 2 for death. The offender score is based on scores for six items: current legal status (0 = not on probation/parole, escape; 6 = on probation/parole, escape); prior convictions (0 = none; 1 = one to three; 2 = four or more); prior revocations (0 = none; 4 = one or more); prior incarcerations (0 = none; 1 = one; 2 = two or more); employment/school status (0 = none; -3 = part time; -4 = full time); length of employment/school (0 = none; -2 = over two months; -3 = over one year).<sup>7</sup>

Example of Offense and Offender Scoring Instruments  
Used in Denver, Colorado

NAME John Doe DOCKET NUMBER 5671

OFFENSE(S) CONVICTED OF: Theft  
18-4-401 (2)

SENTENCE Probation

DATE OF SENTENCE 4-27-76

<p>OFFENSE SCORE</p> $\frac{3}{\text{INTRA-CLASS RANK}} + \frac{1}{\text{HARM/LOSS MODIFIER}} = 4$	<p>OFFENSE CLASSIFICATION</p> <p style="text-align: center;"><u>Felony 4</u></p>
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OFFENDER SCORE

$\frac{1}{\text{PRIOR CONVICTIONS}}$	+	$\frac{0}{\text{LEGAL STATUS}}$	+	$\frac{0}{\text{PRIOR REVOCATIONS}}$	+	$\frac{0}{\text{PRIOR INCARCERATIONS}}$	=	<u>1</u>
$\frac{3}{\text{EMPLOYMENT/SCHOOL STATUS}}$	+	$\frac{2}{\text{LENGTH EMPLOYMENT/SCHOOL}}$						
								<u>5</u>
								<u>-4</u>

MODEL SENTENCE Out

COMMENTS:

The scores in this hypothetical case of 4 for offense and -4 for offender are then used to locate the case in the appropriate cell of the sentencing guidelines grid. In this particular case the cell indicates that the typical sentence for such a case is non-incarceration or "OUT." The judge in a sentencing guidelines system may follow the guidelines or may decide that a period of incarceration is called for. In such case a court rule or statute should require that an explicit reason (e.g., a specific aggravating factor) should be given for the divergence from the norm.

SUGGESTED SENTENCING GUIDELINES FOR DENVER, COLORADO  
(Felony 4 Offenses)

		Offender Score				
		-1 -7	0 2	3 8	9 12	13+
Offense Score	10-12	Indet. Min. 4-5 year max.	Indet. Min. 8-10 year max.	Indet. Min. 8-10 year max.	Indet. Min. 8-10 year max.	Indet. Min. 8-10 year max.
	8-9	Out	3-5 month work project	Indet. Min. 3-4 year max.	Indet. Min. 8-10 year max.	Indet. Min. 8-10 year max.
	6-7	Out	Out	Indet. Min. 3-4 year max.	Indet. Min. 6-8 year max.	Indet. Min. 8-10 year max.
	3-5	Out	Out	Out	Indet. Min. 4-5 year max.	Indet. Min. 4-5 year max.
	1-2	Out	Out	Out	Out	Indet. Min. 3-4 year max.

The Colorado Penal Code contains five levels of felonies (Felony 1 is the most serious) and three levels of misdemeanors. The Felony 4 category includes crimes such as manslaughter, robbery and second degree burglary.

The legislated maximum sentence for a Felony 4 offense is ten years. No minimum period of confinement is to be set by the court.

"Out" indicates a non-incarcerative sentence such as probation, deferred prosecution or deferred judgment.

This representation is not the only way in which sentencing guidelines can be constructed. In Chapters 3 and 5 closer attention will be given to

a discussion of alternate models for sentence matrix development and policy modeling of guidelines grids.

B. THE RELATIONSHIP BETWEEN GUIDELINES AND PROCEDURAL REFORM, APPELLATE REVIEW AND THE SENTENCING COMMISSION CONCEPT

The burden of this chapter, to justify the sentencing guidelines approach as the best method for resolving numerous problems of sentencing, rests partly on an understanding of the structural context of guidelines. The Denver feasibility study could afford to ignore such matters because (1) it was concerned with proving that the basic parole decision guidelines method could be transferred to sentencing and (2) it was concerned with developing local guidelines in which all the judges whose decisions were being analyzed could have a say in the "policy modeling" of the final grids. If implemented by local court rule, the guidelines are concerned with reducing disparity among a relatively small and intimate group of judges and probation officers. Under these circumstances a high measure of compliance may be assumed to flow from the proximity of the decisionmakers, i.e., knowledge of local disposition averages (guidelines) should cause most judges to try to agree with their fellow jurists unless specific, articulatable reasons can be offered as a reason for divergence.

The concept of statewide guidelines adds significantly different dimensions. Of necessity, each judge cannot participate directly in the policy modeling of grids. Thus, the level of psychological commitment that can be expected for local guidelines cannot be readily anticipated for statewide guidelines. Also, different interpretations of how guidelines should be used, questions of procedural detail, and disputes over the reasons for and extent of divergence from the norms can be resolved in face to face meetings by judges sitting in a local jurisdiction. Further, as experience

with guidelines increases, local judges can, by court rule, modify aspects of the guidelines. Since face to face dispute resolution cannot be achieved in any statewide legal system, it is necessary to examine, in conjunction with statewide sentencing guidelines, the matters of procedural reform, appellate review, and the sentencing commission.

#### Procedural Reform

A significant portion of the legal community believes that sentencing hearings should progress beyond the simple allocution to a fairly substantial due process hearing.<sup>8</sup> The United States Supreme Court, with its rulings insuring counsel at sentencing and due process in capital cases<sup>9</sup> has advanced these beliefs. There are two concerns with the movement toward the full due process sentencing hearing. First, that the extra time required to conduct sentencing hearings will critically burden extremely busy courts, and second, that unlike the criminal trial, the sentencing hearing does not focus on specific facts relevant to the determination of the truth of historical events. Rather, the allocution is meant to supplement the presentence report and is a broad ranging inquiry into many aspects of the quality of the offense and the entire life of the offender. Thus, to establish due process sentencing hearings under indeterminate sentencing, could result in the creation of a process with no clear-cut function. Both objections are answered by the sentencing guidelines system.

Sentencing guidelines give the sentencing hearing a focus which makes it meaningful. Instead of a fishing expedition for mercy, which the allocution too often is, a sentencing hearing under guidelines serves to (1) determine whether the facts in the presentence report are correct, (2) determine whether the sentence guidelines score sheet has been correctly filled out, and (3) inquire into whether aggravating or mitigating factors require an

alternate sentence than the recommended guideline. This focus will make the sentencing hearing more meaningful than a formless allocution and can be expected to be more economical of time than a full fledged due process hearing under unstructured indeterminate sentencing. Such a hearing need not have the trappings of a trial to be fair, but it should get to the heart of the sentencing decision and allow for an informal airing of facts.<sup>10</sup>

In this regard, more can be done by defense attorneys to scrutinize the presentence report and guidelines score sheet to assure that all aspects are accurate and fairly reflect the offense and the defendant's background. Attorneys who are concerned solely with the specific plea and sentence in a case often give the most cursory attention to presentence reports and inaccuracies may have damaging effects at later stages such as prison classification or parole hearings. This is not to say that presentence reports in Michigan are riddled with inaccuracies. They are required as a matter of "public policy," and typically are carefully investigated, written, and supervised documents.<sup>11</sup> But, as in any human endeavor, some level of error is inevitable and attorneys can undoubtedly give this more attention.

#### Appellate Review of Sentences

The relationship between sentencing guidelines and appellate review of sentences is fully explored in Appendix I of this report. To summarize briefly, it has been the hope of proponents that review would promote equality in sentencing and lead to the development of rational criteria. Empirical studies of appellate review in the United States make it clear that this has not occurred. While various structural reasons such as limited statutory scope for sentence review are partly to blame, the chief reason for failure has been that American appellate judges have not believed it is proper or possible to establish meaningful and workable sentencing tariffs within

indeterminate sentence laws. They correctly perceive that the facts of specific offenses and offenders are so complex that to establish guidelines by the case-by-case method may lead to disproportionality and injustice. To establish comprehensive rules based on appellate judge's views is also very close to legislating.

It is submitted that appellate review can become a successful technique for achieving rational sentencing when review is based upon sentencing guidelines and that review is a necessary adjunct to statewide sentencing guidelines to insure compliance and resolve differing applications. Review will be successful under guidelines because guidelines are grounded in the patterns of trial judges, match the complexity of sentencing, do not require fixed sentencing, and are modeled and legitimated by lawful policymakers. Because of these reasons, appellate judges will accept the legitimacy of guidelines and will not, as is now typical, raise barriers to the effective use of sentence review. Rather than a formless and open-ended decision that now faces appellate judges in states with sentence review, appellate court decisions under guidelines can focus on specific questions, especially whether guidelines have been appropriately applied and whether divergence from guidelines are based on adequate reasons. These are the kinds of decisions that appellate courts are particularly well-suited to make.

In a single multi-judge county, guidelines can be expected to have a high degree of effectiveness for the reasons stated earlier in this section. Applied statewide, by several hundred trial judges, it is to be expected that sentencing guidelines will be interpreted in divergent ways. In fact, the experience of trial judges is important datum to be utilized by a sentencing commission to continuously consider updating the sentencing guidelines. But, if the injustice of sentence disparity is to be effectively

controlled, compliance to basic norms must be insured, and to this end appellate review is crucial.

#### Sentencing Guidelines Commission

In the past, sentencing reformers thought in terms of setting up a statutory scheme of penalties and then leaving judges and parole boards to their own devices.<sup>12</sup> Experience with Model Penal Code-type sentencing structures indicates that this kind of general change fails to reduce sentence disparity. The mutability of sentencing guidelines is a feature which is as important as the fact that guidelines are developed on the basis of trial judges' experience. That is, in a sentencing guidelines system, the grids are not established and then left in place for all time. As a matter of course, data on each sentence and relevant factors associated with it are gathered and regularly subjected to analysis to determine whether the guidelines are being adhered to.<sup>13</sup> The ability to do this, and its desirability, may seem startling and questionable to attorneys. Yet, it is now axiomatic that no large (and few small) businesses conduct their affairs without regular monitoring of their processes, be it manufacture or service. Further, there is a healthy trend in American government and public affairs toward accountability (i.e., a form of "public accounting") and openness so that the fairness and effectiveness of government activity can be assessed. It is also axiomatic that the success of "public sector" decisions are not easily determined for there is no simple yardstick, such as "profitability," by which to judge government action. In this context, sentencing guidelines provide continuous information about statewide sentence patterns and disparity. This information does not do away with the need for responsible governmental decisionmakers making informed policy decisions. Rather, the sentencing guidelines methodology, for the first time, allows this to be done in a meaningful way.

Let us explore the alternatives. On the one hand it can be argued that sentencing judges, without any direction save the "lawless" mandate<sup>14</sup> of the indeterminate sentence law, create policy by their individual decisions. Or one may take the mandate of indeterminacy to mean that there should be no "sentencing policy." But, as noted in Chapters 1 and 3 there is in reality some sort of sentencing policy, based on the somewhat predictable and similar reactions of individual judges to similar offense/offender fact situations.<sup>15</sup> If there is policy, we argue that it should be policy without disparity, for sentencing differences which appear to be unjustifiable are indicated by the results of data analysis in Chapters 3 and 4. After all, it should be expected that sentences handed down by over 200 judges in a state as large as Michigan will show such differences. In the past it was assumed that if judicial disparity exists, it is an inevitable by-product of a system of "individual policymaking." But, if statewide patterns can be known, there is an opportunity to use such information to reduce disparity. Of course, there are serious practical doubts that approximately 175 trial judges can sit as a "Greek jury" to decide upon the precise way that guidelines are to be established.

On the other hand, it can be said that the legislature is the proper agency to make policy in sentencing. It is true that the legislature must establish the general framework and direction of sentencing and penal policy. But it is questionable whether the legislature can, or should, give close attention to the minute structuring of sentencing policy which is achieved with guidelines.

The reasonable middle ground that has been proposed<sup>16</sup> and established<sup>17</sup> is the sentencing guidelines commission. A commission would be required to closely examine the research going into the development of sentencing matrices

and engage in explicit policymaking in determining the final content of such grids. A commission should rely on the sentencing matrices as its primary source of information, since the matrices indicate the collective actions of trial judges. But in addition to this data, the sentencing commission should receive input from diverse individuals and groups concerning the "ought" questions that inevitably surround sentencing. Heretofore, there has been no meaningful opportunity for public input to sentencing policy. The commission now makes this possible. To assure stability, such a commission should reflect the major component parts of the sentencing system. The Minnesota sentencing guidelines commission, for example, consists of nine persons: the chief justice of the supreme court or his designee, two district court judges appointed by the chief justice, the commissioner of corrections and the chairman of the corrections board or their designees, and gubernatorial appointments of a public defender, a county attorney and two public members. Alternatively, a sentencing committee of trial court judges could be established under Supreme Court rule. In either event, such a body would be responsible for monitoring sentencing patterns and, where sound reasons exist for changing policy, it could do so. Such a body, as constituted, would undoubtedly avoid the evil of making too many changes in sentencing guidelines grids, but would be able to make changes when needed.

### C. GUIDELINES, SENTENCING POLICY, AND THE PROBLEMS OF SENTENCING

In Chapter 1 we specified five problems of sentencing which cause injustice: disparity, lack of accountability, diffusion, mixing case decision-making with policymaking, and the stagnation of sentencing norms. Now we are in a better position to assess the ability of a guidelines system to resolve the problems and assure justice in sentencing.

Previously conceived techniques to control disparity include mandatory sentences and presumptive sentences. Both make a priori decisions as to appropriate sentences and often ignore judicial experience in favor of legislative fiat. Also, in the face of the hopeless task of specifying hundreds of offense-offender combinations, a few mandatory or presumptive sentences are chosen which may produce injustice if applied strictly to varying situations. For this reason, mandatory sentences are often honored in the breach. Presumptive sentences are typically almost as vague as indeterminate sentences, in fact, giving a judge a large number of years within which to set the sentences. Presumptives give some attention to equity in the length of prison terms but ignore the equally important issue of equity in deciding whether or not to imprison.

Guidelines avoid these difficulties. They follow the experience of trial judges and, by stating a reasonably large number of sentence norms, avoid the gross rigidity and injustice of mandatory sentences. Guidelines are specific where presumptive sentences are vague, and guidelines give direction in the crucial "in-out" decision. Appellate review is a tool which, in conjunction with guidelines, will insure that disparity is significantly reduced.<sup>18</sup> Monitoring of sentences will give the commission a realistic appraisal of whether norms are being followed or whether disparity continues. A commission will be in a position to act on such findings and, by measures including the dissemination of sentencing information, either modify sentencing norms or confirm their primacy. Experience, we candidly admit, shows that the problem of sentence disparity has been resistant to solutions. However, the internal logic of guidelines, the matching of sentencing's complexities that are incorporated in guidelines, the structural components of a guidelines system, and the success of federal parole guidelines, make guidelines the most likely method to reduce the injustice of sentence disparity.

\* \* \* \* \*

The problems of diffusion, policymaking, stagnation, and accountability are interrelated. Under the present system of indeterminate sentencing, several participants have responsibility for determining the actual sentence of an offender, thus reducing accountability. Also, the lack of accessible and usable knowledge about the operations of the sentencing system reduces accountability. If sentencing statutes fail to keep in tune with needed changes, stagnation of policy can occur. On the other hand, radical changes can occur within criminal justice without any single group being responsible for the consequences. What results is an acephalous system, shrouded in mists of partial information and mythology, unaccountable to the people, and subject to no control. Of course, the notion of control, which is closely related to information, may lead some to prefer the status quo. The decision to avoid information (remain ignorant) is indeed an oft-used policy. However, we believe that such an approach is antithetical to the foundation of a democratic society, which is an informed citizenry. We believe that a group such as a sentencing commission (established by legislation) or a sentencing committee (appointed by the Supreme Court), guided primarily by the norms of trial judges, and by the opinions of others, can model sentencing guidelines grids which will reduce disparity, assure more rational sentences, and, by publishing clear and appropriate data, help to make the entire sentencing system more accountable.

Why should judicial sentencing norms be the centerpiece of sentencing guidelines grids? First, because such norms are realistic; they "work." The danger with establishing norms by fiat is that if set too "low" (i.e., if sentences are set at levels far more lenient than current levels) some components of criminal justice can be expected to react to reach former levels. This was experienced by California in 1978 where, less than a year

after the new sentencing code, minimums, maximums and presumptive sentences were increased across the board by a legislature responding to a public outcry.<sup>19</sup> If set too "high" the actors responsible for sentencing utilize discretion to bring decision ranges back to the ranges which existed before.<sup>20</sup> The criminal justice system tends to be homeostatic, accommodating a complex of shared understandings and mutually beneficial actions. In the wake of many failed sentencing reforms, failure to understand this and failure to attempt to deal with this complexity in seeking reform amounts to willful negligence. Second, although disparity is a by-product of sentencing, the main body of decisions, the "sentencing patterns" as we designate them, are typically the result of careful scrutinization of each case, and a real attempt, more often than not successful, to do justice in the instant case.<sup>21</sup> There is much that is valuable in the collective wisdom of sentencing judges which should be preserved.

In this light, the sentencing commission operates as a conservator of judicial sentencing. The correct assumption, we submit, is that judges (and other significant actors--probation officers, prosecutors, and defense counsel) on the firing line, in their collective actions based on realistic assessments of actual cases, are in better positions than any small group to set the basic norms of sentencing.

Why must sentence matrices be subject to policy modeling? As seen in Chapter 3, sentence matrices show not only overall sentencing patterns but also show variation that is difficult to explain without close attention to specific cases. Such "raw" information cannot reasonably form prescriptive guides to the sentencing judge. Therefore, it is necessary for policymakers to engage in explicit modifications of raw sentence matrices to establish sentencing guidelines. Such a group must be small enough to

do its work effectively, be familiar with the sentencing process, and, to be legitimate, must be a meaningful representation of the sentencing system. The group must also be given authority by the legislature or Supreme Court.

Once guidelines are developed, why should they not simply remain in place without any monitoring or oversight by commission or committee? There are several answers, but underlying each is the idea that policymaking should not be confused with individual case decisionmaking wherever possible. "Central to the guidelines approach is the separation of the machinery whereby policy and case decisions are made."<sup>22</sup> If the two kinds of decisions are mixed, and if decisionmakers have discretion, they are able to change policy only by making modifications in individual cases. It must be realized that sentencing policy does not (and probably should not) remain stable over time. As public concepts of right change, as crime rates shift, and as penal alternatives expand (or contract), sentencing policy is modified. This often takes place at the "line" level in such a way that the change is known informally to operational personnel. The drawback to this is that there is no way to assess the need, impact, and success of such changes. Also, when change occurs, the individuals whose cases are being decided are "used," so to speak, as the instruments of policy change. Where there are strict rules, such as mandatory sentence laws, informal attempts to mitigate what is perceived as unjust tends to be made sporadically, and thus disparately.

Without monitoring, then, there is no way to know how sentencing is proceeding, whether guidelines are being followed, and whether reasons offered for divergence are appropriate; with monitoring, this information will be available. Monitoring presupposes accountability.

Information, however, is not self-actuating. There must be a human agency which analyses information and uses it to make appropriate decisions.

Without a sentencing commission or committee given a mandate to modify or reconfirm guidelines, opposite dangers arise. One is stagnation, creating one form of injustice. The other is the uncontrolled drift of policy.

Consider composite Table 2.1.<sup>23</sup>

Table 2.1

SENTENCING, PRISON POPULATION, AND PAROLE  
TRENDS IN MICHIGAN, 1970-1977

<u>Year</u>	<u>Criminal Court Dispositions</u>		<u>Year End Prison Population</u>	<u>Number Prisoners Released On Parole</u>
	<u>Number Sentenced to Prison</u>	<u>% Total Dispos. to Prison</u>		
1970	2273	24.6	9079	4074
(% chg)*	(+10.6)		(+ 5.2)	(+ 4.1)
1971	2515	37.3	9547	4240
(% chg)	(-19.1)		(-11.3)	(+30.9)
1972	2034	35.6	8471	5552
(% chg)	(+100.5)		(- 7.0)	(-17.7)
1973	4080	32.4	7874	4567
(% chg)	(+29.9)		(+ 9.6)	(-14.8)
1974	5299	35.3	8630	3892
(% chg)	(+24.9)		(+24.8)	(-16.0)
1975	6619	38.5	10,773	3269
(% chg)	(+ 7.6)		(+14.8)	(+10.7)
1976	7121	38.6	12,369	3619
(% chg)	(+13.0)		(+11.7)	(+21.2)
1977	8045	37.4	13,824	4385

Source: Michigan Department of Corrections Annual Reports, 1970-1977.

\*Indicates % change between 1970 and 1971

From 1971 to 1977 the Michigan Circuit and Recorder's Court judges have been consistent in the proportion of sentences which are prison sentences. The steady increase of the prison sentences, however, vividly shows that the number of convictions has steadily increased, doubling between 1973 and 1977. This may be caused not only by increases in crime and arrests, but also by changes in prosecutorial policy. However, the courts have not met this increase by sharply modifying sentencing policy as measured by overall "in-out" decisions. But, a consequence of the increasing intake and steadiness of sentencing has been an increase in the prison population. Parole policy has not appeared to change in order to reduce this pressure. However, figures not shown in Table 2.1 show that the total cases considered for parole has declined from over 8,000 in 1973 and in 1974 to 5,460 in 1976 and 6,273 in 1977. This implies that fewer cases are eligible for parole because minimum sentences are longer.

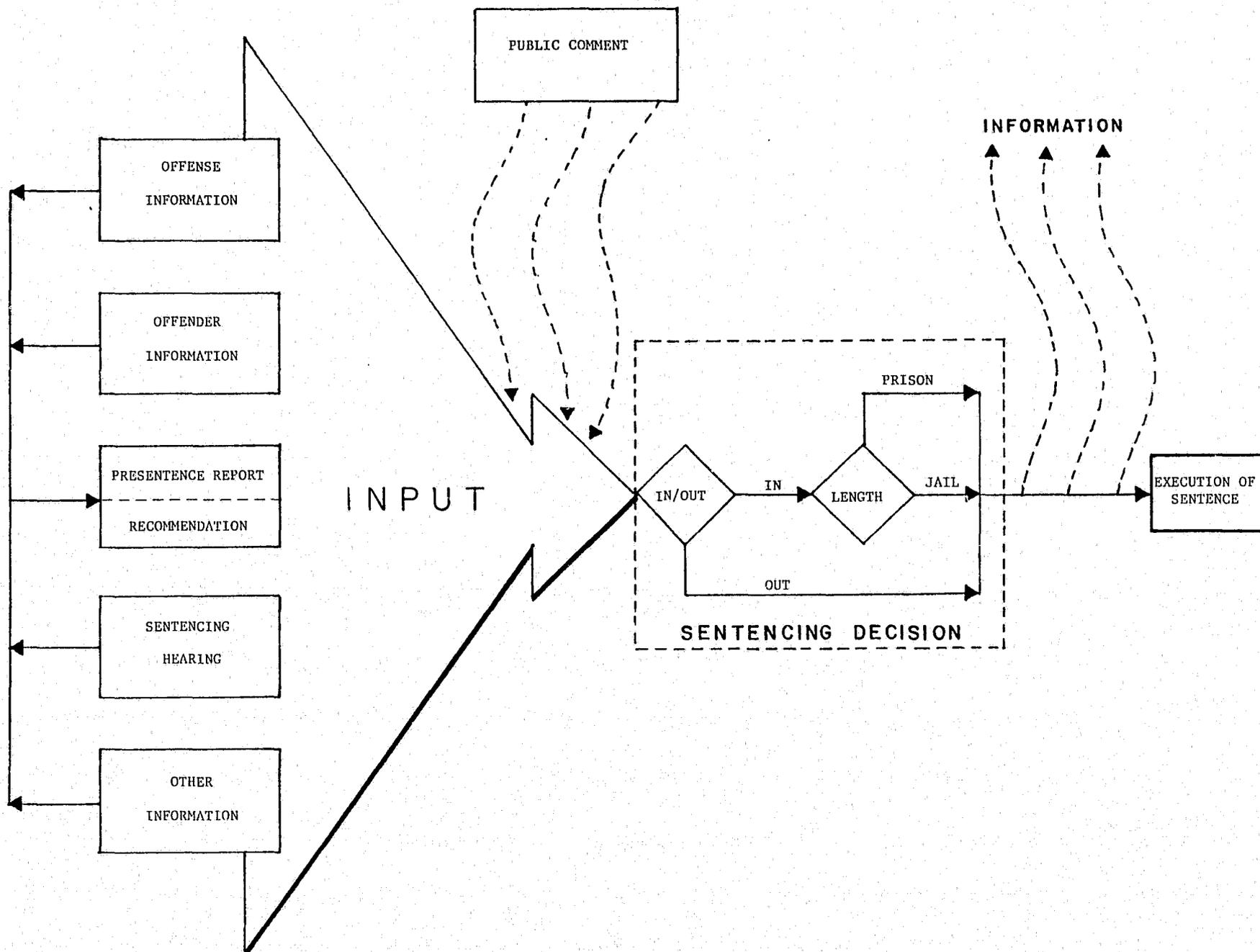
While the causes of these increases in prison population are not entirely known, the consequence of prison crowding is clear. This is an example of how the combined action of several agencies (police, prosecution, and parole) have "drifted" to produce unintended and, because of the lack of accountability, uncontrolled results. Prison overcrowding is not the only factor to be considered in sentencing policy, but it should be seen as a constraint. Because overcrowding has not been factored into thousands of prosecutorial, sentencing, and parole decisions, the State of Michigan now faces several lawsuits challenging the constitutionality of overcrowded conditions. If successful, such suits could bring federal court control over the state system, with radical solutions imposed from the outside. The Governor is proposing a prison building plan which would cost at least one half billion dollars. The rationality of the plan is challenged by some who argue that prison alternatives should be established.<sup>24</sup> The point here is not that

one or another policy is appropriate but that the State has drifted into a crisis with serious implications concerning the constitutional treatment of prisoners and the cost of penal objectives. Because legislatures tend to be slow to react to this sort of problem, and because of the lag of information about it, there is now no simple solution except radical legislation which distorts sentencing laws to relieve overcrowding, or an extremely expensive prison building program, or some combination of the two imposed by the federal courts. Such solutions, when they come, will inevitably arrive in a crisis atmosphere which is hardly conducive to wise, long-range sentencing policy (e.g., attempting to reserve prison places for the more serious violent offenders). Without belaboring the point, a sentencing commission with authority to modify sentencing guidelines grids would have recognized this problem as early as 1974 and could have taken action to reduce the impact of the crisis while informing the legislature that a problem existed which could not be ignored. At the present time, there is no agency which is equipped to perform this important function.

\* \* \* \* \*

A sentencing system which is able to effectively make policy decisions is characterized by the "feedback" of information from the decision process to a control mechanism. The current judicial sentencing system, in a highly oversimplified manner, is characterized in Figure 2.1. The judge is primarily responsible for the sentencing decision. In order to make the appropriate decision, the judge receives information about the offense from the preliminary hearing (if held before the sentencing judge), the taking of the factual basis for a plea of guilty, or from the trial. The judge obtains some information concerning the background and character of the offender from personal observation. Both sets of information are elaborated upon by the

Figure 2.1  
NON-FEEDBACK MODEL OF SENTENCING

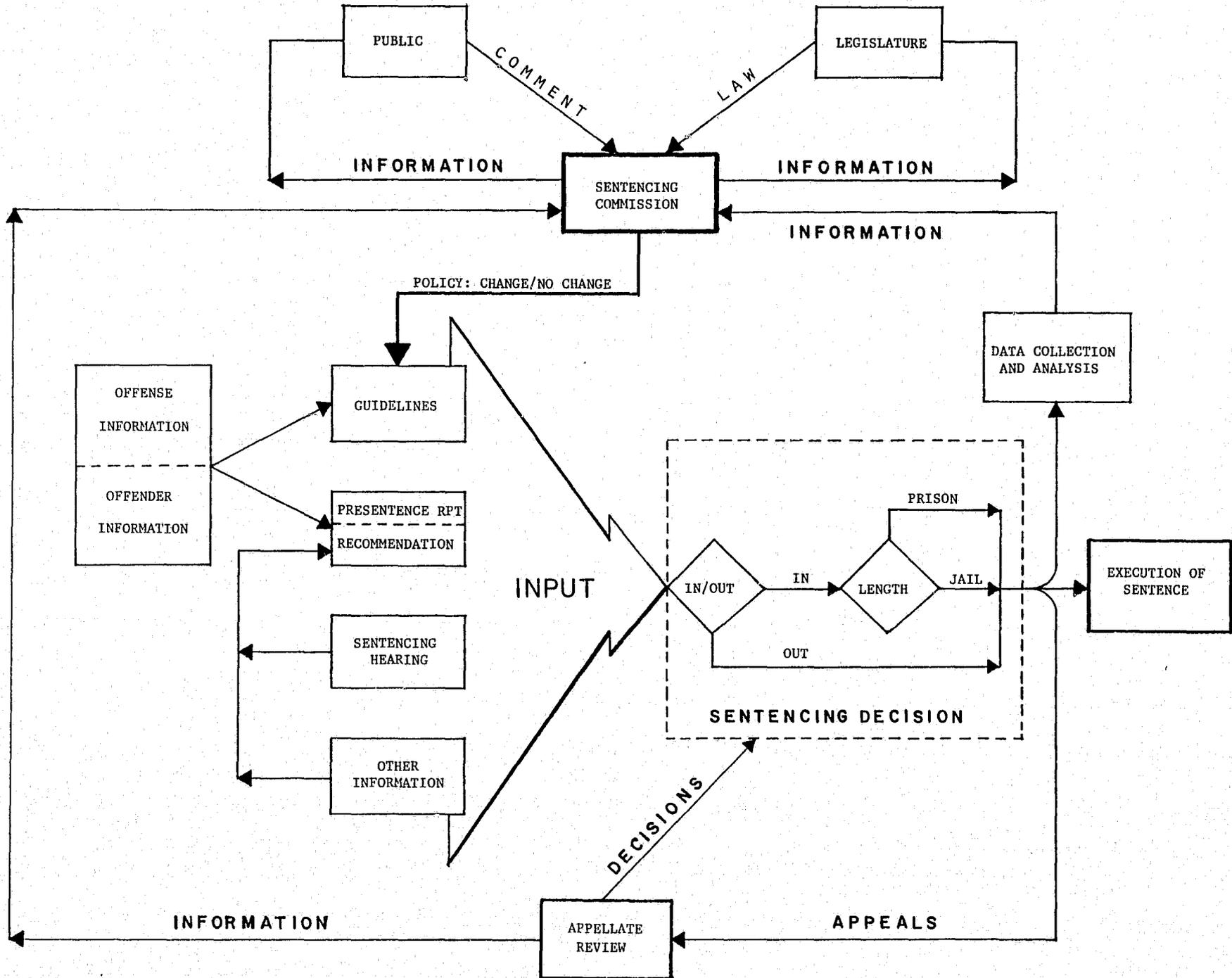


probation officer who, in addition to the information directly available to the judge, has the police report, obtains the offender's version of the offense, and by investigation collects background information about the offender. In addition, both probation officer and judge may be influenced by facts about the processing of cases and by the social environment in which they work. This model may be elaborated upon<sup>25</sup> but one fact about it tends to be true in most American court systems: information concerning primary sentencing decisions are not used in any meaningful way to "guide" future sentences. To some extent this is deliberate, for when presentence reports came into vogue it was assumed that the information provided would aid significantly in the decision. Subsequent history has shown that while properly investigated and well written presentence reports are extremely useful tools, they do not have an impact on disparity nor do they resolve difficult policy questions. The information in present sentencing practices runs in one direction.

Figure 2.2 elaborates a feedback model of sentencing, one which takes the information from the primary decisions and feeds it back to an information utilization component which is connected to the primary decisionmaking body in such a way as to offer guidance.<sup>26</sup> Information concerning sentencing decisions are prepared in such a way as to enable a sentencing commission to know salient facts. Is the number of sentences rising or decreasing? Is the proportion of prison sentences rising or decreasing? Are associations between sentences and factors which raise the suspicion of disparity (e.g., race) statistically observable? Are sentencing patterns shifting across the state, in a region, county or particular courtroom? Very little of this information will call for an automatic response on the part of the sentencing commission.

Figure 2.2

# FEEDBACK MODEL OF SENTENCING



The sentencing commission does not operate as a "governor" in a closed system. The commission is, as a matter of rule, to be open to public input as an administrative agency.<sup>27</sup> Of course, the commission is subject to legislative rules. In turn, a sentencing commission must disseminate information to the public and to the three branches of government which will allow for meaningful evaluation of how the sentencing system is operating.

The sentencing judge in a fully operational guidelines system receives relevant information about sentencing in a more structured way. In addition to the probation officer's presentence investigation report, the judge is also informed of the appropriate guideline sentence. The judge is reassured that the guideline scores are based upon norms established by fellow judges, have been carefully scrutinized and modified where appropriate by the sentencing commission, and are devoid of factors that are clearly inappropriate. However, the judge's confidence and reliance on the guidelines are not total because a factor which may be relevant to this case is not a component of the offense or offender score. Where appropriate, the judge hands down a sentence which does not match the guideline and explains what factors led to the decision.

The sentencing guidelines form the link between the trial judges and the sentencing commission; the sentence appeal process forms the link between the trial and appellate judges. Both links establish guidance, but the guides differ. The appellate process is primarily concerned with ensuring that judges follow the guidelines, or when they diverge from guidelines that reasons and the extent of divergence be acceptable. The commission, on the other hand, is concerned with public policy. Information must be assessed by the commission, e.g., the judges talk to the commission through their decisions and the commission must listen. Thus, if a large number of guideline deviations

occur (even if overturned on appeal), this may alert the commission that a modification might be made in the direction of the deviations. If not, the commission should seek to convey reasons for re-confirming established policy. In short, what a sentencing guidelines system seeks to establish is not a universal panacea, but, in the realization that change is inevitable in public affairs, a method to fairly, intelligently, efficiently, and openly allow such change to be made.

#### D. UNANSWERED QUESTIONS

Many questions will arise in the reader's mind concerning such a new concept. Some may be matters of detail but others concern important issues of public policy. The concept of sentencing guidelines, as defined here, has been in existence for only five years and statewide guideline thinking, research, and legislation only began two or three years ago. The questions addressed in this section have not been fully addressed before; our exploratory remarks are intended to raise questions, not to provide definitive answers.

What underlying "theory" of punishment is associated with sentencing guidelines? We perceive sentencing guidelines as a neutral tool insofar as penal goals are concerned. As such, guidelines can be used to orient sentencing in a more or less punitive way, or can be used to promote or delay the use of sentencing alternatives. Perhaps because they entered the public arena at a time when the rehabilitation ideology and parole release have come under attack, guidelines have been erroneously connected solely with a retributive or "just deserts" philosophy.<sup>28</sup> But all guidelines systems yet devised seek to assess both offense and offender characteristics in discovering sentence norms. There is no reason why explicitly predictive factors could not be built into the offender axis, although the questionable ability

to predict dangerousness fairly suggests caution. In any event, we believe that too much can be made of penal philosophy. As we noted above, quoting from Justice Brennan of the Michigan Supreme Court, every sentencing system necessarily involves more than one goal, and we would add, must also be concerned with accommodating practical ends (e.g., expeditiousness) and avoiding injustice. At the present time, despite the existence of the indeterminate sentence law, a commentator would be hard pressed to say that the policy motivating judicial sentencing in Michigan is rehabilitation.<sup>29</sup> We submit that a guidelines commission must grapple with issues of public policy, and in so doing, will have to set some direction (grounded in judicial sentencing norms) for the sentencing judges. The direction may be retributive, may be based exclusively on deterrence, or incapacitation, or rehabilitation. Perhaps the empirical information available will allow the commission to differentiate goals among specifically targeted groups of cases. But it is erroneous stereotyping to connect guidelines, a priori, to a specific sentencing philosophy.<sup>30</sup>

In relation to these comments another point should be considered. The guidelines tables, as now established by research, are superior to presumptive sentence structures in that guidelines are concerned not only with structuring length of prison sentence decisions, but with the crucial decision of whether or not the offender should be incarcerated. There is no reason why guidelines cannot be used to structure and promote policies concerning alternatives to imprisonment. Perhaps decisionmaking grids are not the most appropriate form for such guidelines, but we believe that research into the use of creative forms of conditions of probation can be most useful to judges if such information is appropriately disseminated. Similarly, research into the differential levels of alternatives to incarceration in different jurisdictions can aid significantly in sentence policymaking.

What is the role of the parole board in a jurisdiction with sentencing guidelines? Sentencing is a system of rules but every rule has a jurisdictional side. "Each rule, to be a meaningful rule, must carry with it a ticket to some person, agency, or institution, authorizing, permitting, forbidding, or allowing some action to take place."<sup>31</sup>

The institutional structure of sentencing has for a long time in most states been a dual system of shared power between judges and parole board members. As we noted in Chapter 1, dissatisfaction with parole boards has given much impetus to the so-called determinate sentencing movement. However, parole boards have responded by adopting guidelines of their own to structure discretion,<sup>32</sup> and from some quarters the concept of sentencing by parole board is being vigorously advocated.<sup>33</sup> The Michigan Felony Sentencing Project was not mandated to look into the sentencing structure of the State (except for appellate review) and, without indepth study, believe it unwise to make definitive statements on the future relationship between judges and the parole board.

However, we would note that in every state with a new determinate sentence law, even in Maine where the parole board was abolished, the discretionary-release-from-prison function still exists!<sup>34</sup> If radical minded legislatures could not find their way clear to establishing absolutely fixed prison sentences, this may be some evidence that the release function, for whatever reason, is too critical to criminal justice to be eradicated. This matter obviously needs cool thought. We would add this: if parole jurisdiction to release prisoners remains at its present or some reduced level, and sentencing guidelines are implemented, work will have to be done to assure that the standards of both are compatible.

What is the relationship between sentencing guidelines and the statutory structure of sentence lengths? The sentencing guidelines developed to date

are designed to be compatible with indeterminate sentence laws on the theory that discretionary decisionmaking of judges can be improved by offering structured guidelines which do not require slavish adherence. Thus, sentencing guidelines are compatible with a variety of alternatives: codes which reduce the number of maximum sentences, which require judicial setting of maxima as well as minima, and even presumptive sentencing codes, although we believe the presumptives are more soundly anchored if developed by guidelines research. Length of sentence guidelines are not compatible with absolute flat-time sentences set by the legislature but there has been little enthusiasm for such an approach. At first blush, guidelines would appear incompatible with the narrow presumptive ranges established in California in 1977 (e.g., 3-4-5 year penalty structure for rape). Now that California has expanded such penalty scales (e.g., 3-6-8 years for rape), guidelines have become more appropriate. But a more fundamental point is that California's system of statutory penalty enhancements is so complex, and so subject to prosecutorial manipulation, that it may be more difficult to assess by empirical research than indeterminate sentencing. For all their seeming complexity, we submit that guidelines make sentencing more knowable, open, and fair than complex and discretionary sentence enhancements.

Even rigid laws specifying the length of prison sentences are compatible with guidelines that address the "in-out" decision. Of course, guidelines for the decision to incarcerate are made futile by mandatory minimum sentencing legislation. Our research shows that some non-incarceration occurs among the most serious probationable classes of crime. We certainly do not assume that all such decisions are examples of unwarranted sentencing variation. If such decisions can be rationally explained as fair, then to impose mandatory minimum sentences is to impose injustice or to encourage

evasion. We submit that a sentencing guidelines system, including appellate review of cases that are arguably too lenient, provides sufficient safeguard against shockingly lenient penalties for perpetrators of heinous crimes.

NOTES

1. Don M. Gottfredson, Leslie T. Wilkins, Peter B. Hoffman, and Susan M. Singer, The Utilization of Experience in Parole Decision-Making: Summary Report (1974); Don M. Gottfredson, Leslie T. Wilkins, and Peter B. Hoffman, Guidelines for Parole and Sentencing (1978); Donald M. Gottfredson, Colleen A. Cossgrove, Leslie T. Wilkins, Jane Wallerstein, and Carol Rauh, Classification for Parole Decision Policy (1978).
2. Project, "Parole Release Decisionmaking and the Sentencing Process," 84 Yale L.J. 810 (1975).
3. Leslie T. Wilkins, Jack M. Kress, Don M. Gottfredson, Joseph C. Calpin, and Arthur M. Gelman, Sentencing Guidelines: Structuring Judicial Discretion (1978).
4. These jurisdictions include the Denver District Court (Colo.); Cook County Circuit Court (Ill.); Essex County Court (Newark, N.J.); Maricopa County Superior Court (Phoenix, Ariz.); Philadelphia Court of Common Pleas (Pa.).
5. The 11 states are Alaska, Florida, Massachusetts, Michigan, Minnesota, New Jersey, Ohio, Oregon, Pennsylvania, Rhode Island and Washington. Of these, New Jersey and Ohio have completed guidelines development although neither followed the two-step process of empirical analysis and policy modeling in the way contemplated in the original feasibility study. This is explained in greater detail in Chapter 3. The three states with statutory structures are Minnesota, Oregon, and Pennsylvania, see Chapter 1. Wisconsin has undertaken a statewide study of sentencing. See Criminal Courts Technical Assistance Project, "Overview of State and Local Sentencing Guidelines Activity," (American University Law Institute, 1979).
6. Council of Judges, Guides for Sentencing, Second Edition (National Council on Crime and Delinquency, 1974). The quotes are at pages 5, 23, 24, and 52 respectively.
7. This information is taken from Wilkins, et al., supra note 3.
8. F. Cohen, "Sentencing, Probation, and the Rehabilitative Ideal: The View from *Mempa v. Rhay*," 47 Tex. L. Rev. 1 (1968) (Counsel and due process hearing); M. Berkowitz, "The Constitutional Requirement for a Written Statement of Reasons and Facts in Support of the Sentencing Decision: A Due Process Proposal," 60 Iowa L. Rev. 205 (1974); R. Singer, "Sending Men to Prison: Constitutional Aspects of the Burden of Proof and the Doctrine of the Least Drastic Alternative as Applied to Sentencing Determinations," 58 Cornell L. Rev. 51 (1972); National Advisory Commission on Criminal Justice Standards and Goals, Corrections, Standards 5.17-5.18, pp. 190-196.

9. Mempa v. Rhay, 389 U.S. 128 (1967), Gardner v. Florida, 430 U.S. 349 (1977). See Note, "Gardner v. Florida: The Application of Due Process to Sentencing Procedures," 63 Va. L. Rev. 1281 (1977).
10. Kenneth C. Davis, Discretionary Justice: A Preliminary Inquiry 116-120, 133-141 (1969).
11. People v. Brown, 393 Mich. 145, 224 N.W.2d 38 (1974) (Presentence report mandatory as a matter of public policy).
12. American Law Institute, Model Penal Code Article 6 (1962); National Council on Crime and Delinquency, "Model Sentencing Act, Second Edition," 18 Crime & Delinquency 340 (1972); salient provisions of the M.P.C. and M.S.A. are reprinted in American Bar Association, Standards Relating to Sentencing Alternatives and Procedures (1968).
13. The best model for continuous monitoring and updating has been the guidelines system used by the Federal Parole Board (and its successor, the Federal Parole Commission) since 1974. See United States Parole Commission, Federal Parole Decision-Making: Selected Reprints, Volume I 1974-1977 (1978).
14. Marvin Frankel, Criminal Sentences: Law Without Order (1972).
15. John Hogarth, Sentencing As a Human Process (1971).
16. M. Zalman, "A Commission Model of Sentencing," 53 Notre Dame Law. 266 (1977); J. Coffee, "The Repressed Issues of Sentencing: Accountability, Predictability, and Equality in the Era of the Sentencing Commission," 66 Georgetown L. J. 975 (1978); Proposed Federal Criminal Code - United States Sentencing Commission, S.1437, 95th Cong., 1st Sess., Title II, Part E (1977).
17. Minnesota Commission on Sentencing Guidelines, Minn. Stat. 1978, Ch. 723; Pennsylvania Commission on Sentencing, Penn. Sen. Bill 195 (1979).
18. The logic behind this statement is found in Appendix I on Appellate review of sentences.
19. Calif. S.B. No. 709 (approved by Governor September 5, 1978) (the "Presley Bill").
20. Robert O. Dawson, Sentencing: The Decision as to Type, Length, and Conditions of Sentence (1969); Donald A. Newman, Conviction: The Determination of Guilt or Innocence without Trial (1966); T. Church, "Plea Bargains, Concessions and the Courts: Analysis of a Quasi-Experiment," 10 Law & Society Rev. 377 (1976).
21. Vera Institute of Justice, Felony Arrests: Their Prosecution and Disposition in New York City's Courts (1977); Charles Silberman, Criminal Violence, Criminal Justice 285-296 (1978).
22. Guidelines for Parole, supra note 1, p. 156.

23. The year end prison populations and the number paroled are precise counts. The number sentenced to prison is taken from the criminal case conviction register, and to some extent the information depends on the status of court data. Thus, the incredible 100% jump of offenders sentenced to prison from 1972 to 1973 may be an artifact of court data collection.
24. W. Hart, "Crowded prisons may bring U.S. action," Detroit Free Press, May 14, 1979, p. 3A.
25. See R. Hood and R. Sparks, Key Issues in Criminology 168-69 (1970).
26. Feedback systems require loops, i.e., continuous connectors and maybe negatively-connected (negative feedback) or positively-connected (positive feedback). Classic negative feedback loops are governors or other control systems (e.g., thermostats) whereby a minute portion of energy produced is transferred to the governor which reacts to decrease the output of the system when such output reaches a specified level. Negative feedback is described as a deviation-counteracting mechanism. Positive feedback loops specify mutually interacting components, with an action in one component communicated to and causing a reaction in the other component. The action-reaction may remain stable, but if the energy in the action of one component causes a greater reaction in the other (the "gain" exceeds one) then the system becomes unstable, the energy or other output produced increases and we have a "deviation amplifying" loop. In human relations the 'vicious cycle' exemplifies positive feedback. See J. Milsum, ed., Positive Feedback: A General Systems Approach to Positive/Negative Feedback and Mutual Causality (1968).
27. J. Coffee, supra note 16, pp 996-1000.
28. A guidelines-like proposal was suggested by Andrew von Hirsch, Doing Justice: The Choice of Punishments 132-40 (1976), a chief proponent of the commensurate deserts philosophy.
29. The merely verbal statement of explicit policy can be problematic. For example, California, as a matter of legislative policy, "finds and declares that the purpose of imprisonment for crime is punishment." Cal. Pen. Code, sec. 1170(a)(1). But in practice, California prisoners receive part of their "good time" for participation in a variety of rehabilitative programs. Cal. Pen. Code, secs. 2930-2932. Also, the Community Release Board or corrections department may recommend release to the judge within six months of serving a sentence. Cal. Pen. Code, sec. 1170 (c). The acting goals of the California sentencing/prison system seem more complex than the stated goal.

30. It might be true that to the extent sentencing guidelines seek to structure discretion around a large number of explicit norms, this method is antithetical to some sort of "clinical method" of determining the sentence. However, proponents of indeterminate sentencing have long stopped advocating a "medical model" approach to sentencing.
31. L. Friedman, "Legal Rules and the Process of Social Change," 19 Stanford L. Rev. 786, 788 (1967).
32. Gottfredson, et al., Classification, supra. note 1.
33. C. McCall, "The Future of Parole - In Rebuttal of S. 1437," 42 Fed. Prob. 3 (Dec. 1978).
34. See analysis in Zalman, "The Rise and Fall of the Indeterminate Sentence," 24 Wayne L. Rev. 857, 873-875 (1978); S. Lagoy, F. Hussey and J. Kramer, "A Comparative Assessment of Determinate Sentencing in the Four Pioneer States," 24 Crime & Del. 385 (1978).

CHAPTER 3

SENTENCING PATTERNS IN MICHIGAN

A. SENTENCING RESEARCH

The history of parole and sentencing guidelines development has been a history of unique collaboration between social science research and traditional legal policymaking. At its best this collaboration has resulted in the introduction of due process hearing and appeal procedures combined with the feedback of information that allows policymakers to maintain equitable sentencing or release procedures.<sup>1</sup> Without this latter feature there would be no way of knowing, in any meaningful sense, what the level of decisions are in relation to offense and offender characteristics.

Sentencing guidelines research is a form of social science research and as such must be held accountable to the canons of scientific rigor.<sup>2</sup> Thus, one lodestar in the conduct of the Michigan Felony Sentencing Project (MFSP) has been that all phases of the research including instrument design, sampling design, data collection, coder reliability control, and data analysis be done in such a way as to meet all basic standards of social science research including replicability.

Legitimate questions are raised at the introduction of scientific methodology into matters of public policy. For one, the aims of scientists may appear unrelated to those of public servants. It is axiomatic that the key to the scientific enterprise is the search for explanations of natural and social phenomena.<sup>3</sup> While theory building and testing lie at the apex of scientific work, one can list several functions provided by scientific knowledge:

- (1) A method of organizing and categorizing "things," a typology

- (2) Predictions of future events
- (3) Explanations of past events
- (4) A sense of understanding about what causes events.

And occasionally mentioned as well is:

- (5) The potential for control of events<sup>4</sup>

None of this is of much concern to public policymakers except insofar as scientific research and knowledge can be used to inform public policy and for the betterment of society.

We tend toward agreement with Wilkins that

Neither the distinction between pure and applied research in the physical sciences nor the separation of social research from social action can now be retained in a meaningful way for similar reasons . . . The non-utilitarian nature of research, even of the 'highest' forms of mathematical analysis, can no longer be expected to be more than a temporary phase . . . [I]t is no longer possible to assume that even the most remote investigations will not at some time have a great impact upon our society or even upon the future of mankind.<sup>5</sup>

Thus, in Wilkins' continuum from long-term to short-term research, the qualitative difference between "pure" or "applied" investigation depends in part upon the motivation which stimulated the researcher. We believe it is sterile to debate whether applied research is or is not science but prefer the formulation of Selltitz and her colleagues that "The purpose of research is to discover answers to questions through the application of scientific procedures."<sup>6</sup>

The MFSP has had to answer two overarching research questions:

- (1) Are there patterns (i.e., policies) among judicial sentencing decisions in Michigan? And, if so, describe them, and
- (2) Is there sentence disparity in Michigan?

The form of these questions reflects the concern of the policymakers on the MFSP Steering and Policy Committee and the state of the art of sentencing research. Policy and technological developments are often linked: new

technologies often require new public policies, while altered political thought fosters the development of compatible technologies. The process is usually a spiral with technology and policy affecting one another in a progressive fashion. Policy is similarly linked to development in the social sciences and sentencing has been an exemplary case in point.

Over twenty years ago Hermann Mannheim noted that equality of treatment in sentencing is "a philosophical-ethical and penological question of first importance" and is moreover part of "the concept of a sentencing policy."<sup>7</sup> This view of policy was undoubtedly clarified in Mannheim's mind by his understanding of the voluminous research on the matter in America and Europe:

A final influence on sentences is an unexpected newcomer--research into sentencing policy. Though still in its initial stages, such research has in the past thirty years grown fairly steadily in magnitude and refinement. The day may not be too far distant when it will present judges and magistrates a mirror which will faithfully reflect the weaknesses and inconsistencies of their sentencing policies, a mirror which will give the judiciary growing insight into its work and, perhaps, even into its own personalities, eventually leading to required changes in policy.<sup>8</sup>

This research, which Mannheim traced to Everson's 1920 study of sentencing policies of New York magistrates in intoxication cases,<sup>9</sup> tended to focus on the purported disparities of sentences, perhaps subtly leading Mannheim to emphasize the "weaknesses and inconsistencies" in sentencing. Several social concerns spurred research into various aspects related to sentencing such as judicial differences evidencing a general concern for equal justice,<sup>10</sup> and racial and economic factors evidencing a growing movement toward egalitarianism.<sup>11</sup> The growing sophistication of research has resulted in various studies published in the 1970's which have greatly increased our understanding of sentencing disparity, although the price of sophistication has at times been a confounding of simplistic notions.<sup>12</sup> This line of sentencing research over a period of almost 60 years represents a common focus on

disparities, i.e., deviations from some theoretical abstraction of equal justice. Many of these studies have suggested policy implications, but aside from vague prescriptions, none have created specific methods for dealing with disparities.

Disparity research, fueled by growing social concerns for equal justice, has tended to increase dissatisfaction with sentencing practice. This in turn created the impetus for a new line of research which, by investigating patterns of sentencing (rather than disparities alone), has provided a model for control of disparity. This "new line," of course, is the guidelines model which seeks regularities in sentencing on which a coherent and equitable sentencing policy can be anchored. Although guidelines research owes much to previous sentencing and court studies, it asks a different question in order to resolve the problem and question of disparity. In this regard, an important point about research design should be noted. All disparity studies, including those which are performed for specific applied purposes,<sup>13</sup> are ultimately in the familiar form of hypothesis testing. Guidelines research is concerned with developing a model of sentencing, but goes beyond a "pure" model by its explicit technological approach. Thus, rather than only answering a research question and dumping the results, so to speak, in the laps of policymakers, guidelines research seeks to establish an explicit instrument and method which can be used by sentencing decisionmakers to render more equitable decisions. In this light, guidelines research may be analogized to engineering or technological application, rather than to "pure" scientific research. On the other hand, given the newness of the guidelines techniques, we believe that the MFSP research and development make original and important contributions to the basic model.

## B. SAMPLING AND DATA COLLECTION

This section briefly summarizes information found in Appendices B, C, and F to this report. In order to establish an adequate base for statewide guidelines, a large sample of cases must be collected which is representative of the population of sentences during a given period. We selected calendar year 1977 as the collection period because a full year avoids any bias that might be associated with a particular time period (e.g., "Christmas leniency"), that year was the most recent period with complete data, and the calendar year is the time period which the Department of Corrections uses to compile the Criminal Case Conviction Register. We took the Register, which contains every 1977 sentence and other dispositions (e.g., probation revocations, resentencings after successful appeal and retrial, etc.), as the representation of the population of 1977 sentences.

A sample size of approximately 6000 was selected, representing about a 25 percent sample of 1977 sentences. This large a sample is necessary in order to capture the wide geographic dispersion of cases, the variety of criminal cases, and the great range of factors associated with them. The unit of analysis, a "case," is an individual sentenced at one court for a crime or similar group of crimes.

Simple random sampling of cases from the Register is inappropriate because the number of cases from less populated areas of Michigan and the number of most serious offense cases is so small that an insufficient number for analysis would result. A disproportionate random sample was selected, with dual stratification for geographic region and offense severity. Three geographic strata were selected using number of criminal dispositions in a county's Circuit Court as the selection criterion. (Cross checking of this criterion with 1973 SMSA, 1970 population density, and 1977 reported crime

validated the appropriateness of this stratification.) This resulted in Stratum I (Oakland Circuit, Wayne Circuit and Recorder's Court) designated as "metro"; Stratum II (Circuit Courts in Bay, Berrien, Calhoun, Genesee, Ingham, Jackson, Kalamazoo, Kent, Macomb, Monroe, Muskegon, Ottawa, Saginaw, St. Clair, and Washtenaw counties) designated as "urban"; and Stratum III (the remaining counties except Keweenaw which reported no felonies in 1977) designated as "rural." Five offense severity categories were selected according to maximum penalty; this resulted in a total of 15 stratifications from which cases were drawn randomly. Sample weights and special problems in the sampling procedures and their solutions are reported in Appendix E.

The data collection strategy focused on the presentence report as the primary and best source of data concerning the crime, the background of the offender, and the processing of the case. In virtually all instances we found that complete reports were available. In the design of data collection instruments we "erred" on the side of over-inclusion of variables. First, we believe the unprecedented nature of this research establishes a data set which may be of use to the State of Michigan for a variety of purposes. We cannot go back again for any overlooked items. Second, since the development of guidelines is a new enterprise, we could not fully know in advance precisely which variables would be necessary.

The questionnaire contains 421 questions plus 12 questions for each prior criminal record (see Appendix C). The questionnaire asks of the presentence report general information about each offense such as time, place, weapon use, motives, number and nature of victims, and extent of physical injury, if any. Additionally, specific question sets were established for theft/property damage, drug crimes, sex offenses, and frauds, which could be left blank if not applicable. Questions about the offender's background were grouped into vital statistics, home situation, community ties, family background, marital

situation, military history, educational background, health, drug and alcohol use/abuse, employment history, financial status, and "good moves" since arrest. Data concerning the processing of the case including type of attorney, custodial status, number of charges, and probation officer's recommendation were selected. On the dependent variable set, information collected included original charge, conviction charge, type of sentence and length of sentence. Three separate disposition sets could be coded, and coders were given specific instructions and procedures for selecting primary convictions (see Appendix D, the Codebook). Various questions were asked such as offender's present relation to the criminal justice system (e.g., none, on probation), and for each prior record 12 questions were asked to elicit basic information such as offense and disposition. Special data collection sheets, designed for ease of use by coders and keypunchers (and to avoid the additional step of transfer to FORTRAN sheets), were printed (see Appendix B).

Over 30 data coders were hired and trained to read presentence reports and to transcribe the information accurately. To insure inter-coder reliability, ten percent of the cases were randomly selected for recoding by "reliability coders" and a method was developed to evaluate the rate of coder error. An accuracy rate of 88.2% includes errors on trivial variables. While visual examination of the error tally sheets indicates that the error rate on sets of key variables, including the dependent variables, is lower, we have selected the more conservative error term.

At all times steps were taken to insure the confidentiality of the data, and the aggregate information in our analysis is not traceable to any individual. Information concerning access to data, keypunching, data preparation and further details concerning the matters discussed in this section may be found in Appendix B.

### C. DESCRIPTION OF THE DATA AND GROSS SENTENCING PATTERNS

This section is designed to familiarize the reader with the data by reproducing frequencies and cross-tabulations of a few important variables. Contingency tables are used herein to economically display the data rather than to make any causal statements.

Table 3.1, Offense Categories for Primary Convictions, lists each offense which was coded as a primary conviction and groups them into twelve offense categories. A different list could be developed for primary offenses charged or for second or third conviction offenses. Note that the frequency of cases is given. Thus, our sampling procedures resulted in the coding of 94 distinct cases where the primary conviction offense was murder in the second degree. After the application of weighting procedures, our weighted sample contains 339 second degree murder cases. Much of the analysis conducted for this report is on the weighted sample, which represents total sentencing in Michigan in 1977.

The offenses were categorized into 12 legal categories of similar crime types: homicide, assaults, sex crimes, robbery, drugs, burglary, larceny, fraud, property destruction, weapons, escape, and miscellaneous. These divisions were made in order to facilitate the development of a new kind of sentence guideline format: the crime-type format. Gelman, et al., describe three types of "models" (which we designate formats), the "general" format, which encompasses all crimes, the "generic" format which divides crimes into violent, property, and drug, and the "crime-specific" which designates a guideline table for a single offense.<sup>14</sup> The MFSP Steering and Policy Committee felt that general and generic formats did not differentiate finely among the offenses and requested the research staff to prepare both crime-specific grids and the suggested crime-type format. The drawback of the crime-

Table 3.1

OFFENSE CATEGORIES FOR PRIMARY CONVICTIONS

Project Offense Number <sup>a</sup>	Cate- gory <sup>b</sup>	Offense <sup>c</sup>	Compiled Law Number	Max- imum <sup>d</sup>	No. Cases Coded <sup>e</sup>	Number Weighted Cases <sup>f</sup>
HOMICIDE						
111111	(1)	Murder first degree	750.316	L <sup>g</sup>	39	123
111211	(2)	Murder second degree	750.317	L <sup>h</sup>	94	339
111411	(2)	Asslt wi murder	750.83	L	19	66
111312	(3)	Manslaughter	750.321	15	112	257
112212	(3)	Mans, death from wound	750.329	15	2	4
111224	(4)	Murder second degree ATT	750.317	5	1	2
111324	(4)	Manslaughter ATT	750.321	5	4	22
112115	(4)	Negligent homicide	750.324	2	29	125
112125	(4)	Negligent homicide ATT	750.324	1	<u>1</u>	<u>13</u>
Sub-Total					301	951
ASSAULTS						
131111	(1)	Kidnapping	750.349	L	19	51
131211	(1)	Kidnapping child under 14	750.350	L	1	2
121213	(2)	Asslt wi great bod harm	750.84	10	55	187
121313	(2)	Asslt wi commit felony	750.87	10	3	9
122413	(2)	Asslt wi to maim	750.86	10	2	3
141313	(2)	Torturing children	750.136a	10	2	3
121114	(3)	Felonious assault	750.82	4	102	640
131124	(3)	Kidnapping ATT	750.349	5	1	11
141114	(3)	Cruelty to children	750.136	4	4	21
121125	(4)	Felonious assault ATT	750.82	2	13	95
121415	(4)	Asslt wo weapon, infl inj	750.81a	1	24	140
132115	(4)	Resisting officer	750.479	2	37	134
132125	(4)	Resisting officer ATT	750.479	1	8	64
132215	(4)	Disobey officer	750.479	2	2	7
141125	(4)	Cruelty to children ATT	750.136	2	1	2
431315	(4)	Inj w firearm no malice	750.235	1	1	5
431415	(4)	Inj prop neg use firearm	752.862	1	2	6
441115	(4)	Kill or inj neg use f'rm	752.861	2	13	64
441125	(4)	Inj neg use f'rm ATT	752.861	1	1	13
441315	(4)	Dschg f'rm wo malice	750.234	1	2	4
121425	(5)	Asslt wo weapon, inj ATT	750.81a	M	2	8
121515	(5)	Assault and battery-misd	750.81	1	26	157
441325	(5)	Dschg f'rm wo malice ATT	750.234	M	2	6
441415	(5)	Use f'rm UI liq/drug	750.237	M	2	6
441515	(5)	Reckless use f'rm	752.863a	M	<u>13</u>	<u>63</u>
Sub-Total					338	1701

Table 3.1 cont.

Project Offense Number <sup>a</sup>	Cate- gory <sup>b</sup>	Offense <sup>c</sup>	Compiled Law Number	Max- imum <sup>d</sup>	No. Cases Coded <sup>e</sup>	Number Weighted Cases <sup>f</sup>
SEX CRIMES						
151111	(1)	CSC first degree	750.520b	L	82	219
152111	(1)	Rape	750.520	L	3	7
822111	(1)	Pandering	750.455	20	2	10
151212	(2)	CSC second degree	750.520c	15	105	175
151312	(2)	CSC Third degree	750.520d	15	88	170
151613	(2)	Asslt wi sexual pen	750.520g	10	34	84
152213	(2)	Asslt wi rape	750.85	10	1	5
152312	(2)	Sodomy, sex delinquent	750.158	15	1	1
811313	(2)	Indec liberties w child	750.336	10	1	2
141214	(3)	Solicit child second off	750.145b	4	1	6
151124	(3)	CSC first degree ATT	750.520b	5	1	3
151224	(3)	CSC second degree ATT	750.520c	5	17	64
151324	(3)	CSC third degree ATT	750.520d	5	13	54
151514	(3)	CSC subsequent offense	750.520f	5 <sup>i</sup>	1	2
151624	(3)	Asslt wi sexual pen ATT	750.520g	5	1	6
151714	(3)	Asslt wi CSC second degree	750.520g	5	15	37
811414	(3)	Gross indec bet males	750.338	5	3	12
812214	(3)	Gross indec male & female	750.338a	5	2	9
812314	(3)	Polygamy	750.439	4	2	6
141415	(4)	Contrib to neglect child	750.145	M	1	13
141515	(4)	Solicit child under 16	750.145a	1	2	5
151415	(4)	CSC fourth degree	750.520e	2	57	214
151425	(4)	CSC fourth degree ATT	750.520e	1	2	18
811215	(4)	Indecent exposure	750.335a	1	3	18
821115	(4)	Solicit for prostn	750.448	M	4	18
821615	(4)	Prostn 3rd & subseq off	750.451	2	2	11
Sub-Total					444	1169
ROBBERY						
221111	(1)	Robbery armed	750.529	L <sup>j</sup>	301	1070
221311	(1)	Bank robbery	750.311	L	11	23
221411	(1)	Asslt w int rob armed	750.89	L	78	222
123311	(1)	Extortion	750.213	20	3	4
221212	(2)	Robbery unarmed	750.530	15	134	281
221512	(2)	Asslt w int rob unarmed	750.88	15	14	40
221613	(3)	Larceny from person	750.357	10	74	217
221124	(4)	Robbery armed ATT	750.529	5	12	61
221224	(4)	Robbery unarmed ATT	750.530	5	28	122
221424	(4)	Asslt wi rob armed ATT	750.89	5	2	5
221524	(4)	Asslt wi rob unarmed ATT	750.88	5	2	21
221624	(4)	Larceny from person ATT	750.357	5	34	146
123324	(4)	Extortion ATT	750.213	5	1	6
Sub-Total					694	2218

Table 3.1 cont.

Project Offense Number <sup>a</sup>	Cate- gory <sup>b</sup>	Offense <sup>c</sup>	Compiled Law Number	Max- imum <sup>d</sup>	No. Cases Coded <sup>e</sup>	Number Weighted Cases <sup>f</sup>
DRUGS						
511111	(1)	Poss narc wi mfg or del	335.341(1)(a)	20	180	572
511213	(2)	Poss non-narc wi del	335.341(1)(b)	7	100	246
521113	(2)	Del counterfeit narc	335.341(3)(a)	10	2	8
511124	(3)	Poss narc wi del ATT	335.341(1)(a)	5	30	212
511224	(3)	Poss non-narc wi del ATT	335.341(1)(b)	3½	12	75
511314	(3)	Poss sch 4 drug wi del	335.341(1)(c)	4	63	281
521214	(3)	Del counterfeit non-narc	335.341(3)(b)	5	2	6
531114	(3)	Poss sch 1 or 2 narc	335.341(4)(a)	4	104	847
551114	(3)	Obt poss CS by forgery	335.343	4	5	35
511325	(4)	Poss sch 4 narc wi del ATT	335.341(1)(c)	2	15	60
511415	(4)	Poss sch 5 drug wi del	335.341(1)(d)	2	3	10
531125	(4)	Poss sch 1 or 2 narc ATT	335.341(4)(a)	2	48	553
531215	(4)	Poss sch 1-4 drug	335.341(4)(b)	2	71	401
551125	(4)	Obt poss CS by forg ATT	335.343	2	9	58
551215	(4)	Unlaw distributing CS	335.342	2	2	8
531225	(5)	Poss sch 1-4 drug ATT	335.341(4)(b)	1	10	41
531315	(5)	Poss halluc or sch 5 drug	335.341(4)(c)	1	7	49
531325	(5)	Poss hall or sch 5 dr ATT	335.341(4)(c)	M	1	3
531415	(5)	Poss marihuana	335.341(4)(d)	1	38	199
531425	(5)	Poss marihuana ATT	335.341(4)(d)	M	1	5
541115	(5)	Use sch 1-2 narc	335.341(5)(a)	1	43	517
541125	(5)	Use sch 1-2 narc ATT	335.341(5)(a)	M	1	11
541215	(5)	Use sch 1-4 drug	335.341(5)(b)	1	8	59
541415	(5)	Use Marihuana	335.341(5)(d)	M	1	5
551225	(5)	Unlaw distribute CS ATT	335.342	1	1	2
551325	(5)	Distribute marihuana ATT	335.346	1	1	3
Sub-Total					758	4266

Table 3.1 cont.

Project Offense Number <sup>a</sup>	Cate- gory <sup>b</sup>	Offense <sup>c</sup>	Compiled Law Number	Max- imum <sup>d</sup>	No. Cases Coded <sup>e</sup>	Number Weighted Cases <sup>f</sup>
BURGLARY						
211112	(1)	B&E occupied dwelling	750.110	15	376	864
211213	(2)	B&E unoccupied dwelling	750.110	10	544	1266
212113	(2)	Possess burglars tools	750.116	10	4	14
211124	(3)	B&E occupied dwell ATT	750.110	5	83	513
211224	(3)	B&E unoccupied dwell ATT	750.110	5	81	466
211314	(3)	Enter wo breaking	750.111	5	71	395
212124	(3)	Poss burglars tools ATT	750.116	5	2	21
211414	(4)	Larceny from dwelling	750.360	4	293	1578
211324	(5)	Enter wo breaking ATT	750.111	2½	8	57
211425	(5)	Larceny from dwell ATT	750.360	2	199	1064
211515	(5)	B&E wo permission	750.115	1	11	51
211525	(5)	B&E wo permission ATT	750.115	M	1	13
212215	(5)	Larceny vacant building	750.359	1	9	66
212225	(5)	Larceny vacant bldg ATT	750.359	M	2	23
Sub-Total					1684	6391
LARCENY						
251214	(1)	Steal credit card	750.157n	4	1	10
261114	(1)	Larceny over \$100	750.356	5	44	238
261314	(1)	Larceny MV	750.356a	5	58	317
321114	(1)	UDAA	750.413	5	52	283
271114	(2)	Rec stolen prop o \$100	750.535	5	128	871
212414	(3)	Alter coin devices	752.811	3	5	18
261124	(3)	Larceny o \$100 ATT	750.356	2½	31	203
261324	(3)	Larceny, MV ATT	750.356a	2½	52	376
271124	(3)	Rec stolen prop o \$100 ATT	750.535	2½	58	463
321124	(3)	UDAA ATT	750.413	2½	17	104
212425	(4)	Alter coin devices ATT	752.811	1½	2	12
261525	(4)	Larceny livestock ATT	750.357a	2	2	6
321215	(4)	Use auto wo authority	750.414	2	82	432
321225	(4)	Use auto wo auth ATT	750.414	1	3	16
321315	(4)	Tamper/damage auto	750.416	1	7	76
261215	(5)	Larceny under \$100	750.356	M	38	215
261225	(5)	Larceny under \$100 ATT	750.356	M	3	30
271315	(5)	Rec stolen prop u \$100	750.535	M	25	117
Sub-Total					608	3787

Table 3.1 cont.

Project Offense Number <sup>a</sup>	Cate- gory <sup>b</sup>	Offense <sup>c</sup>	Compiled Law Number	Max- imum <sup>d</sup>	No. Cases Coded <sup>e</sup>	Number Weighted Cases <sup>f</sup>
FRAUD						
231612	(1)	U&P forged instr	750.249	14	171	324
241112	(1)	Forge public records	750.248	14	27	46
241213	(2)	Forge treasury notes	750.250	7	2	4
241313	(2)	Forge bank bills & notes	750.251	7	1	2
281113	(2)	Embezzle over \$100	750.174	10	22	69
291113	(2)	False pret wi def o \$100	750.218	10	30	88
293013	(2)	Franchise law violation	445.1538	7	1	3
713413	(2)	Poss title stolen MV	257.254	10	1	6
231623	(3)	U&P forged instr ATT	750.249	7	54	246
241123	(3)	Forge public records ATT	750.248	7	9	46
241514	(3)	Utter counterfeit note	750.253	5	3	23
261614	(3)	Larc by conversion o \$100	750.362	5	9	70
261914	(3)	Larc by false person	750.363	5	1	3
281124	(3)	Embezzle o \$100 ATT	750.174	5	3	15
291124	(3)	Fls pret wi def o \$100 ATT	750.218	5	19	115
291624	(3)	Gross frauds ATT	750.280	5	1	2
713424	(3)	Poss title stolen MV ATT	257.254	5	1	6
231115	(4)	Checks NSF, 3 or more	750.131a	2	67	294
231125	(4)	Checks NSF, 3 or more ATT	750.131a	1	6	17
231215	(4)	Checks NSF over \$50	750.131	1	26	121
231515	(4)	Cks NSF u \$50, 3 or more	750.131	1	1	5
241424	(4)	Poss cntrft notes ATT	750.252	3½	1	2
241624	(4)	Poss cntrft bank note ATT	750.254	2½	1	1
251114	(4)	Poss credit card	750.157p	4	2	9
251125	(4)	Poss credit card ATT	750.157p	2	4	37
251314	(4)	Del credit card	750.157q	4	3	28
251325	(4)	Del credit card ATT	750.157q	2	3	39
251814	(4)	Forge sig credit card	750.157u	4	1	2
261624	(4)	Larc by conv o \$100 ATT	750.362	2½	6	40
261815	(4)	Larc rented MV o \$100	750.362a	2	4	20
261825	(4)	Larc rented MV o \$100 ATT	750.362a	1	2	25
292025	(4)	Criminal usury ATT	438.41	2½	1	5
611214	(4)	Welfare fraud o \$500	400.60	4	19	127
611225	(4)	Welfare fraud o \$500 ATT	400.60	2	10	63
713725	(4)	Forge MV title ATT	257.257	2	1	3
761615	(4)	Violate builders act	338.1516	1	2	26
231225	(5)	Checks NSF o \$50 ATT	750.131	M	2	16
231315	(5)	Checks NSF u \$50	750.131	M	4	21
231325	(5)	Checks NSF u \$50 ATT	750.131	M	2	8
261715	(5)	Larc by conversion u \$100	750.362	M	1	2
291215	(5)	Fls pret wi def u \$100	750.218	M	4	19
611115	(5)	Welfare fraud u \$500	400.600	M	4	14
713615	(5)	Unlaw lending MV title	257.256	M	1	3
Subtotal					533	2015

Table 3.1 cont.

Project Offense Number <sup>a</sup>	Cate- gory <sup>b</sup>	Offense <sup>c</sup>	Compiled Law Number	Max- imum <sup>d</sup>	No. Cases Coded <sup>e</sup>	Number Weighted Cases <sup>f</sup>
PROPERTY DESTRUCTION						
301111	(1)	Arson, dwelling	750.72	20	18	39
301213	(2)	Burn real property	750.73	10	18	51
301413	(2)	Burn insured property	750.75	10	4	15
301124	(3)	Arson dwelling ATT	750.72	5	4	19
301224	(3)	Burn real property ATT	750.73	5	2	12
301314	(3)	Burn personal prop o \$50	750.74	4	4	25
301514	(3)	Prepare to burn o \$50	750.77	4	7	33
311214	(3)	Mal inj pers prop o \$100	750.377a	4	13	65
311414	(3)	Mal inj prop of police	750.377b	4	6	35
311514	(3)	Mal inj house o \$100	750.380	4	7	30
301325	(4)	Burn pers prop o \$50 ATT	750.74	2	2	6
301525	(4)	Prepare to burn o \$50 ATT	750.77	2	3	16
301615	(4)	Prepare to burn u \$50	750.77	1	4	13
311225	(4)	Mal inj prop o \$100 ATT	750.377a	2	12	68
311525	(4)	Mal inj house o \$100 ATT	750.380	2	1	5
311315	(5)	Mal inj pers prop u \$100	750.377a	M	11	87
311325	(5)	Mal inj prop u \$100 ATT	750.377a	M	1	5
311615	(5)	Mal inj house u \$100	750.380	M	2	16
Sub-Total					119	540
WEAPONS						
411114	(1)	Carry concealed weapon	750.227	5	110	852
411214	(1)	Sell illegal weapon	750.224	5	2	12
411314	(1)	Carry weapon unlaw int	750.226	5	1	11
411124	(2)	CCW ATT	750.227	2½	122	1159
411224	(2)	Sell illegal weapon ATT	750.224	2½	1	3
411324	(2)	Carry weap unlaw int ATT	750.226	2½	3	24
431115	(2)	Sell switchblade knife	750.227b	1	1	5
Sub-Total					240	2066
ESCAPE						
133113	(1)	Aid escape felon	750.183	7	1	1
133414	(1)	Prison escape	750.193	5	30	149
133814	(1)	Contraband to prison	800.281	5	2	13
133424	(2)	Prison escape ATT	750.193	2½	5	27
133514	(2)	Jail break, armed	750.197c	4	2	6
133525	(2)	Jail break, armed ATT	750.197c	2	1	3
133614	(2)	Abscond/forfeit bond	750.199a	4	2	9
133625	(2)	Abscond/forfeit bond ATT	750.199a	2	1	2
133825	(2)	Contraband to prison ATT	800.281	2½	1	6
Sub-Total					45	216

Table 3.1 cont.

Project Offense Number <sup>a</sup>	Offense <sup>c</sup>	Compiled Law Number	Max- imum <sup>d</sup>	No. Cases Coded <sup>e</sup>	Number Weighted Cases <sup>f</sup>
MISCELLANEOUS AND UNSPECIFIED					
621212	Perjury in court	750.422	15	2	4
621224	Perjury in court ATT	750.422	5	1	6
621312	Perjury	750.423	15	1	3
621414	Subornation of perjury	750.425	5	1	6
622100	Contempt of court	-	-	1	2
641115	Tap telephone wire	750.540	2	1	3
641125	Tap telephone wire ATT	750.540	1	1	5
651115	Game and fish law	300.5	M	2	6
671100	Petty offenses	-	M	1	2
711115	Felonious driving	752.191	2	2	5
711325	DUIL ATT	257.625 (a/b)	M	1	3
711415	DUIL second offense	257.625 (c)	1	14	71
711514	DUIL third offense	257.625 (c)	4	8	41
711715	Impaired driving	257.625 (b)	1	1	5
711815	Reckless driving	257.626	M	1	5
712515	Leave scene accident	257.617	2	5	24
712615	Leave pers inj accident	257.617a	1	1	6
714015	Violations MV code	257.901	M	1	3
721115	Trespass	750.546	M	1	3
731315	Keep gambling room	750.303	2	2	26
731415	Selling pools	750.304	1	1	5
731515	Poss gambling slips	750.306	M	1	5
741115	Disorderly person	750.168	M	12	68
741315	Disorderly person third	750.168	2	1	3
751114	Non support	750.161	3	1	3
751314	Refuse to pay support	750.165	4	1	7
761211	Conspiracy-felony	750.157a	-	32	150
761224	Conspiracy ATT	750.157a	-	1	2
761315	Conspiracy - misdemeanor	750.157a	1	39	292
911111	Habitual offender 2d con	769.10	-	1	2
911211	Habitual offender 3d con	769.11	-	3	5
911311	Habitual offender over 4	769.12	-	1	10
993313	Unspecified	-	10	1	4
994424	Unspecified	-	5	1	6
995515	Unspecified	-	2	1	5
Sub-Total				145	796
				5,909	26,116

Table 3.1 cont.

Footnotes

- a. The first four digits are unique to the crime listed. The fifth digit identifies attempts (1=substantive crime, 2=attempt). The last digit is a measure of the statutory maximum penalty (1=life, term of years, 25, 20; 2=15,14; 3=10,7; 4=5,4,3½,3,2½; 5=2,1½,1, misdemeanor).
- b. These categories are subjective clusters of similar offenses. The criteria for clustering were similarity of maximum penalties, number of responses and crime characteristics.
- c. These titles are not official and in many cases fail to give sufficient indication of the precise elements of the offense. Consult the Michigan Compiled Laws for the complete definition of the offense. All abbreviations are explained in an appendix to this table. Note that most attempts have the same C.L. number as the substantive crime.
- d. M.C.L. 750.92 provides that the maximum penalty for attempted crimes where the maximum penalty for the completed crime is five years or more shall be five years in prison but not more than half the substantive crime. For crimes with maximums of less than five years, the maximum penalty for attempts shall be two years in prison but not more than half the substantive crime. However, in all offenses except those providing for life or other term of years, the court may impose a term of up to one year in county jail for attempts.
- e. The cases selected for coding were chosen by a disproportionate random sample. The number in this column reflects the number actually coded.
- f. This number reflects the number of cases resulting from weighting the coded cases to reflect the actual proportion of cases sentenced.
- g. The penalty is fixed by law as life imprisonment. Parole is not allowed.
- h. The penalty for this crime and all other crimes designated by the maximum penalty "L" (except murder in the first degree) is life, or any term of years. The court may either set a life term (with parole eligibility in ten calendar years) or a term of years, meaning a maximum and a minimum term.
- i. Second or subsequent convictions of CSC first, second, or third degrees carry a mandatory minimum penalty of at least five years.
- j. If an aggravated assault or serious injury is inflicted, the conviction also carries a two year mandatory term of imprisonment.

Table 3.1 cont.

Abbreviations

asslt	assault
ATT, AT	attempt
bet	between
B&E	breaking and entering
CCW	carrying a concealed weapon
cks	checks
CS	controlled substance
conv	conversion
con	conviction
cntrft	counterfeit
CSC	criminal sexual conduct
deg	degree
del	deliver
dschg	discharge
DUIL	driving under the influence of liquor
dr	drug
dwll	dwelling
fls	false
f'rm	firearm
forg	forgery
hall	hallucinogen
indec	indecent
infl	inflict, inflicting
inj	injury
instru	instrument
int	intent
larc	larceny
mfg	manufacture
mans	manslaughter
mysd	misdemeanor
MV	motor vehicle
narc	narcotics
neg	negligent
NSF	non sufficient funds
obt	obtain
off	offense
o	over
pen	penetration
pers	personal
person	personation
poss	possess, possession
prop	property
prostrn	prostitution
rec	receiving
sch	schedule
sig	signature
subseq	subsequent
u	under
UI	under the influence of
unlaw	unlawful
UDAA	unlawful driving away of an automobile
U&P	uttering and publishing
weap	weapon
w	with
wi	with intent to, with intent to do
wo	without

specific matrices is that an exceedingly large number (i.e., one for each statutory offense) must be compiled to be of use to the judges and, for many offenses, the number of cases is too small to construct grids. Our development of several crime-specific matrices indicates that their predictive power is no greater than crime-type matrices. (For analysis of crime-specific sentence matrices, see Appendix K.) The strength of the crime-type matrices is that judges and other participants in the sentencing process tend to mentally group crimes into general categories and may apply different policies to these groups. This categorization, we believe, improves the predictive power of our models and should prove more useful to judges and others in the sentencing process.

There are two basic sentencing decisions: whether to incarcerate and, if so, how long. (We do not wish to downplay the importance of decisions relating to conditions of probation and alternatives to imprisonment. It is appropriate for sentencing guidelines research to first inquire into fundamental questions affecting liberty. However, once such questions are resolved, we would urge a sentencing commission to inquire into the structuring, and fostering, of creative "out" decisions.) One innovation made by the MFSP is to develop separate sentence matrices for both kinds of decisions, thus improving the specificity and usefulness of guideline tables.

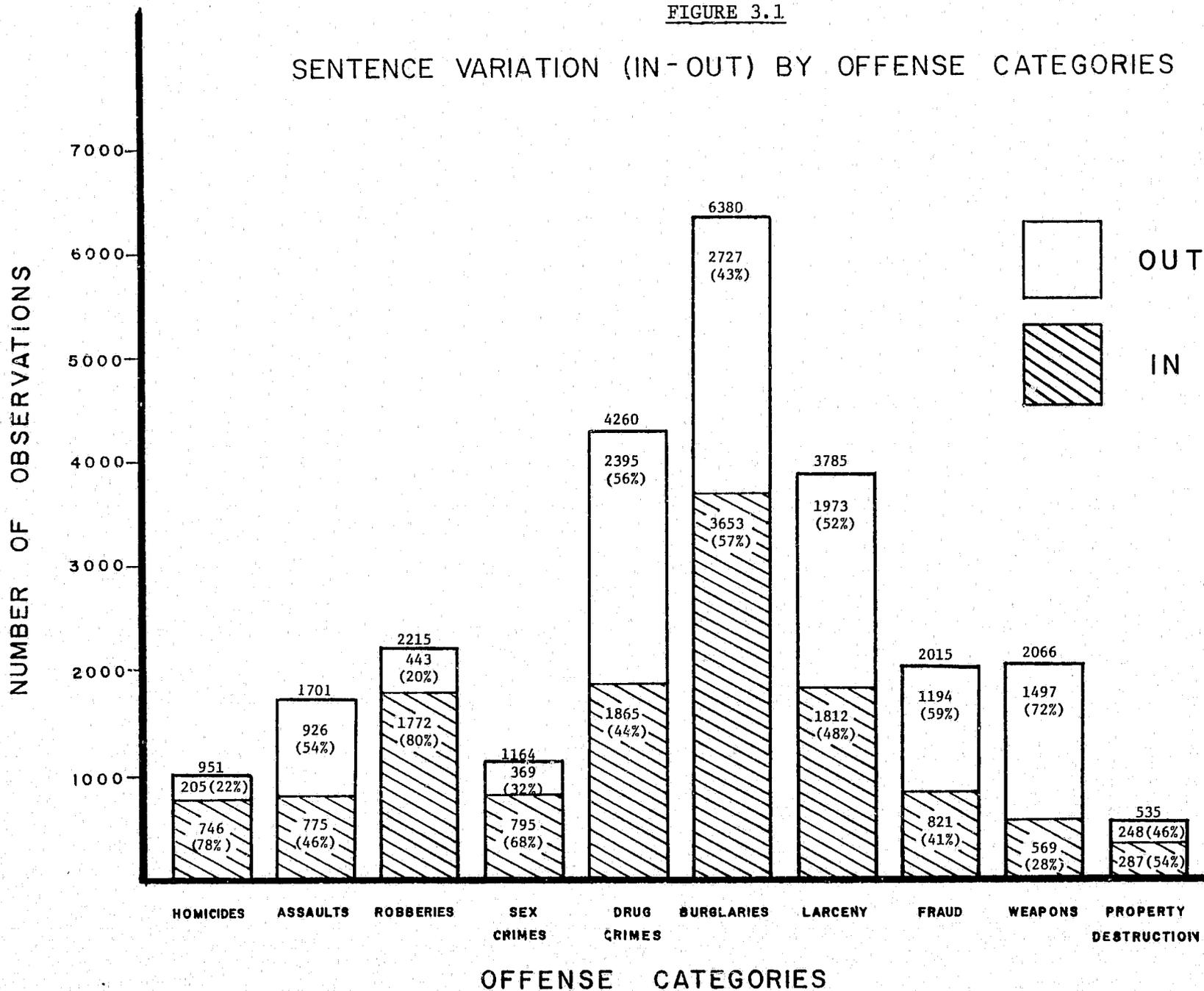
Figure 3.1 examines "IN/OUT" sentence variation by offense type. The bar graph indicates that judges sentence three times as many crimes in non-violent categories as crimes in violent categories. The proportion of offenders incarcerated for violent offenses is generally much higher than the proportion of incarcerations for non-violent crimes. The moderate level of incarceration for assaults tends to indicate that many such convictions are for actions that are not heinous. Given the non-violent nature of larceny

**CONTINUED**

**1 OF 4**

FIGURE 3.1

SENTENCE VARIATION (IN-OUT) BY OFFENSE CATEGORIES



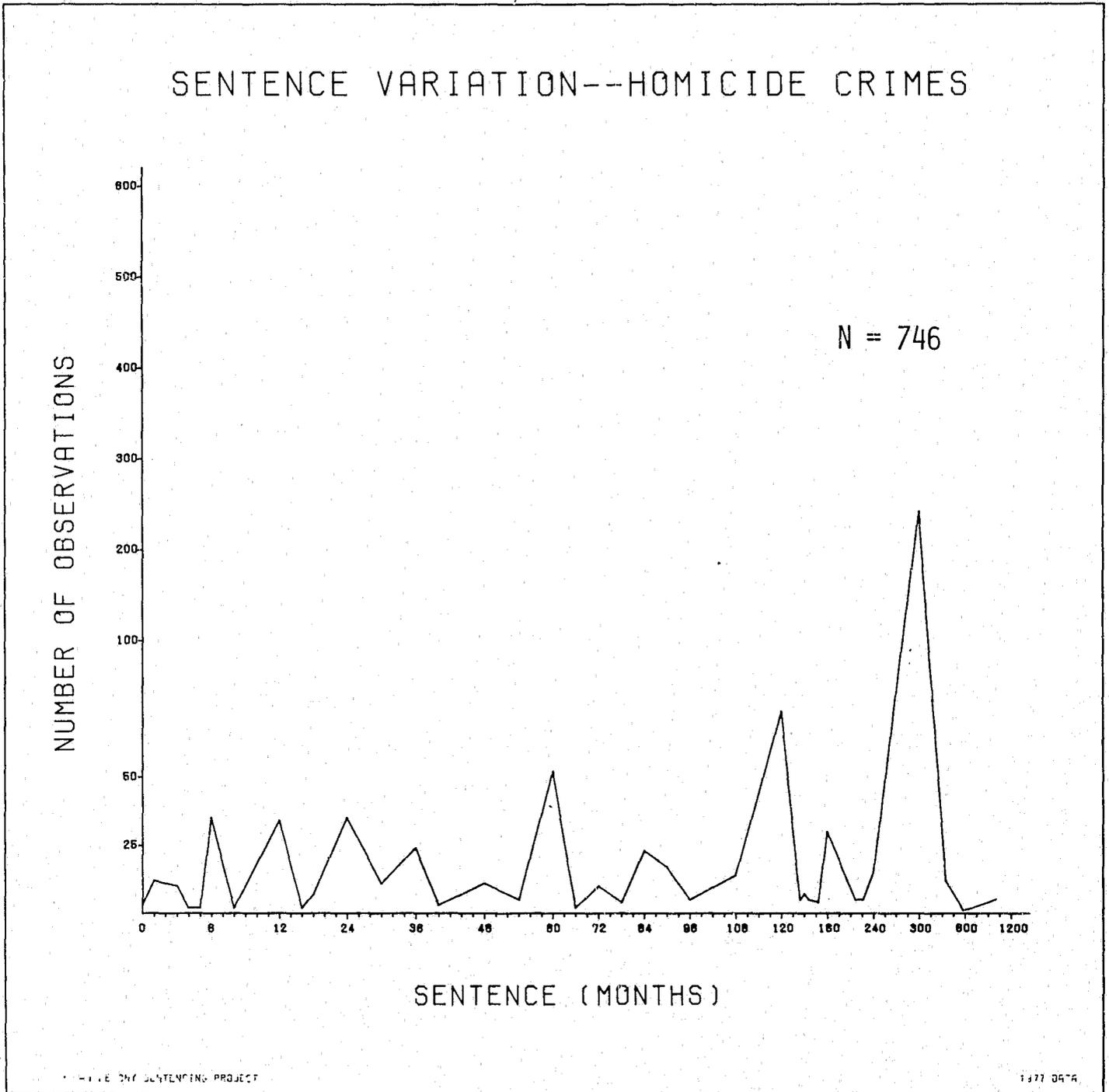
and fraud offenses, a surprisingly large proportion of offenders are sentenced to jail or prison. This may reflect the fact that the cases in our population were all bound over to Circuit Courts as felonies. Note that in subsequent analysis offenses in our sample do receive jail sentences of less than one year. These are "felony" cases in that all were initially charged as felonies, whatever the ultimate disposition.

Figures 3.2 to 3.11 display minimum sentence length variation for incarcerated cases by ten crime categories.<sup>15</sup> Note that for homicide sentences (Fig. 3.2) the distribution is skewed to the right, while for robbery (Fig. 3.4) the distribution is more even, indicating that although both offense groups are sentenced to similar proportions of incarceration, the lengths of minimum sentences meted out show that judicial sentencing policy in Michigan treats homicides as far more serious crimes. In these figures, and throughout our analysis, life sentences have been set at 300 months or 25 years. This research decision was made after conversations with judges and correctional and parole staff persons indicated that minimum sentences of more than 25 years were rare in comparison to life sentences and psychologically conveyed the impression that these were more heinous offenses than those which usually receive life sentences.

These graphs show that LENGTH sentences tend to be given in "even" multiples, e.g., 3, 6, or 9 months, or 1, 2, 4, 5, 10, 15, or 20 years. Sentences that do not fall on such "even" numbers are relatively rare. Sentences for the weapons offense group (Fig. 3.10), which encompasses very few statutory crime numbers, show very standard sentence decisions.

Various summary statistics accompanying each figure (3.2 to 3.11) were derived from weighted data, therefore, the standard error listed overestimates the confidence we have in our results. Standard error figures on

Figure 3.2

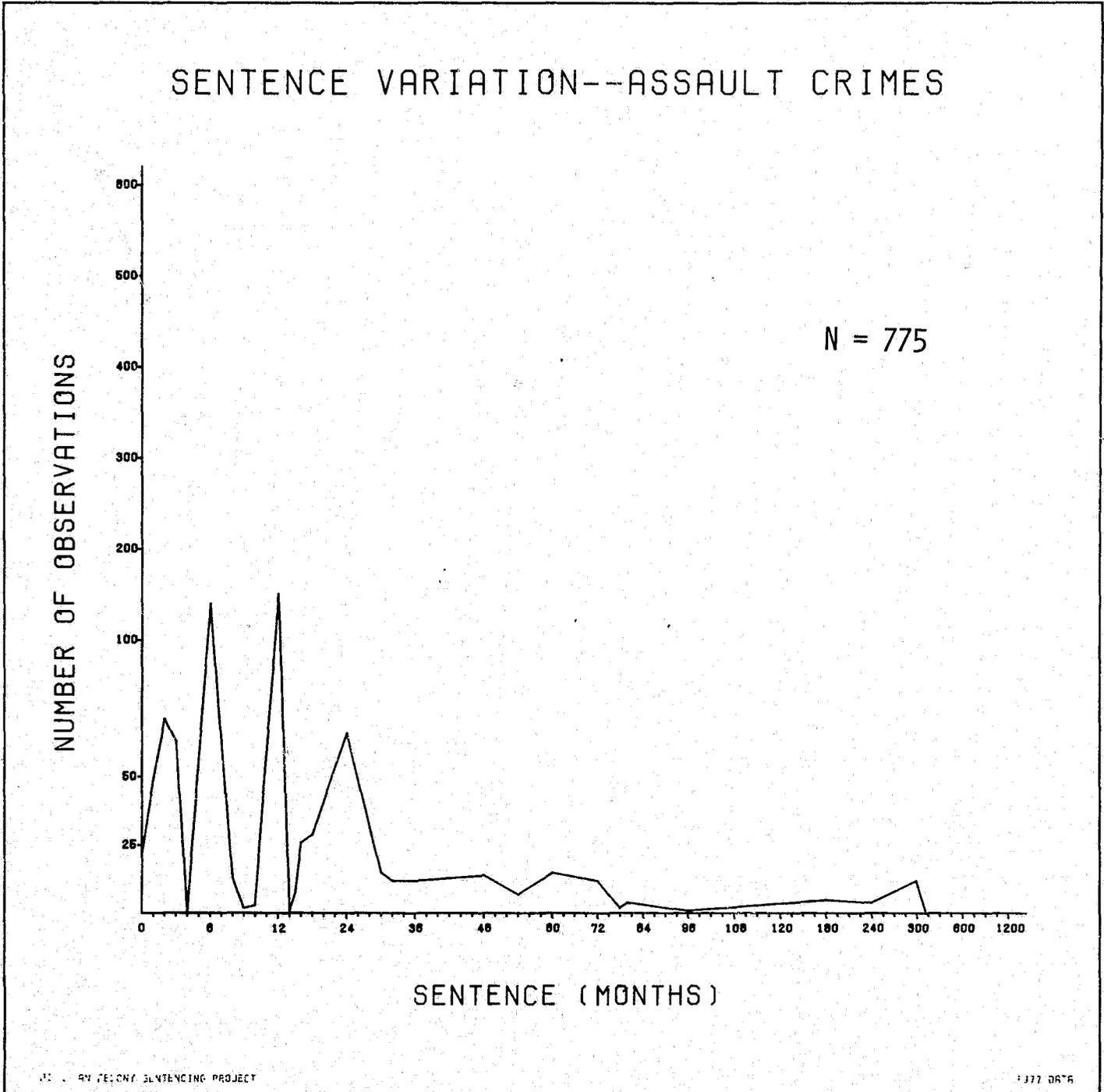


STATE OF ILLINOIS SENTENCING PROJECT

1977 DATA

MEAN	161.710	STANDARD ERROR	5.158	MEDIAN	120.000
MODE	300.000	STANDARD DEVIATION	140.886	VARIANCE	19848.786
KURTOSIS	5.168	SKEWNESS	1.413	RANGE	960.000
MINIMUM	0	MAXIMUM	960.000	SUM	120636.000
C.V.PCT	87.122	.95 C.I.	151.584	TO	171.837

Figure 3.3

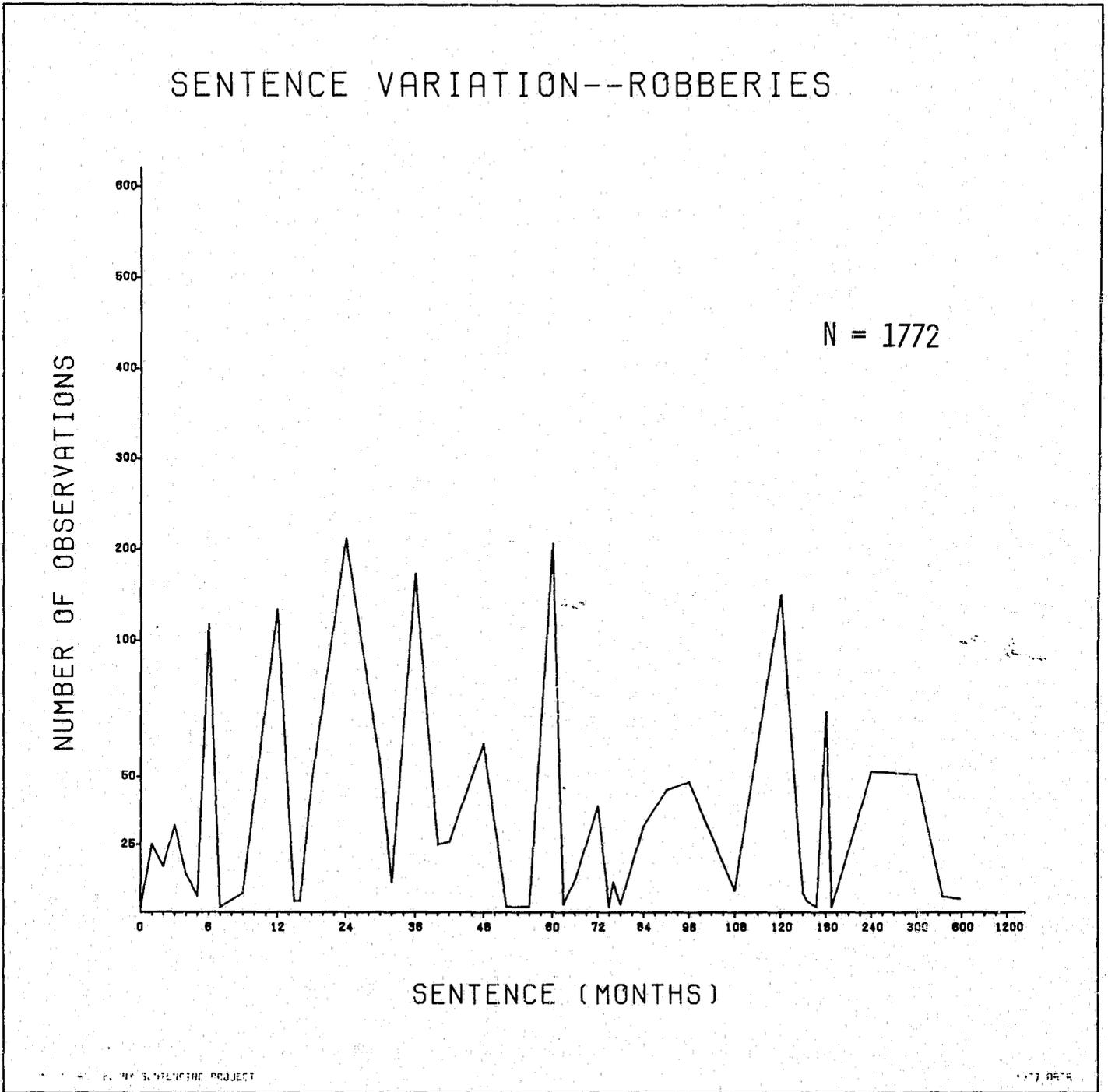


BY REGIONAL SENTENCING PROJECT

1977 DATA

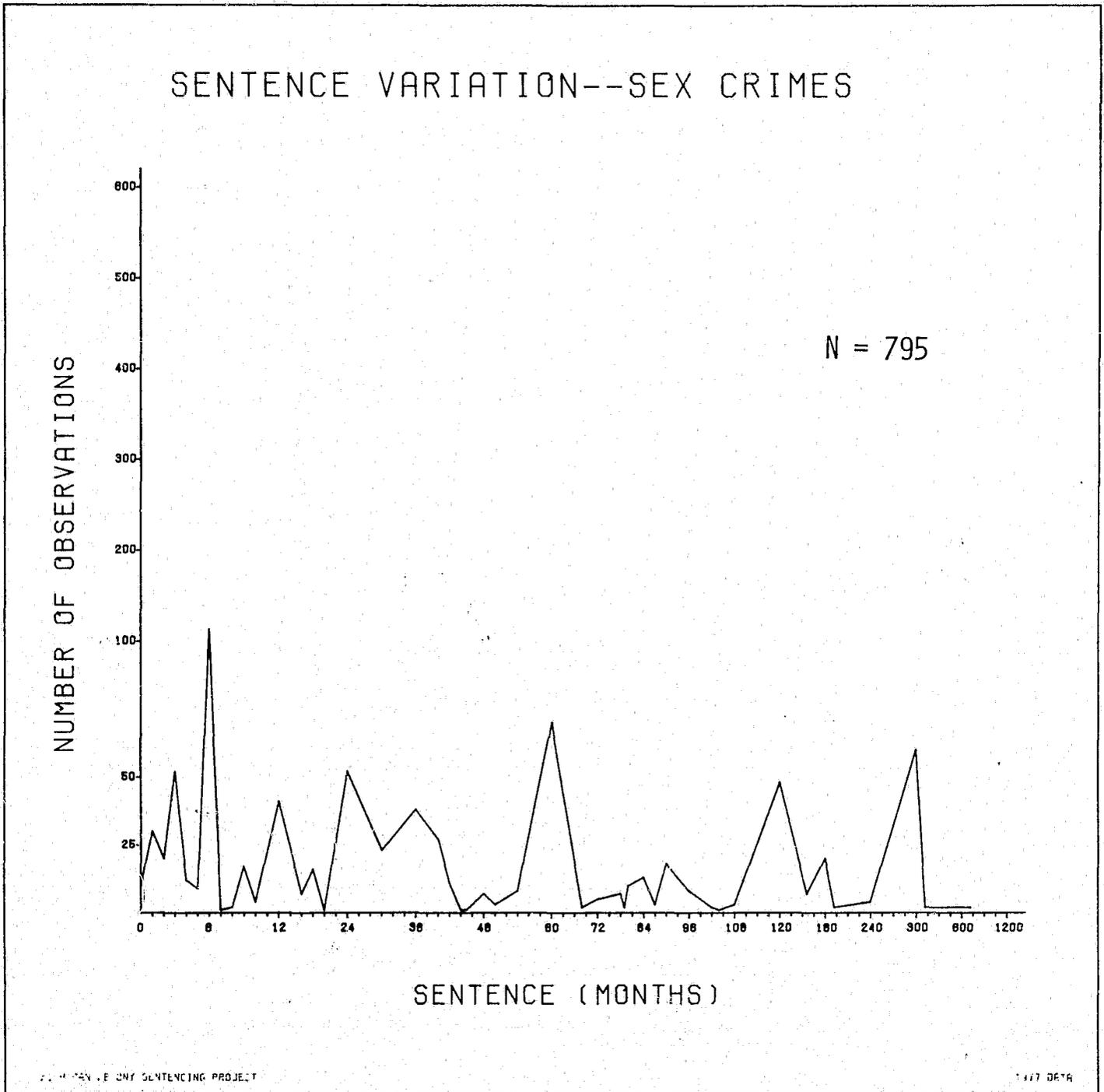
MEAN	21.990	STANDARD ERROR	1.638	MEDIAN	11.662
MODE	12.000	STANDARD DEVIATION	45.589	VARIANCE	2078.349
KURTOSIS	26.286	SKEWNESS	4.926	RANGE	360.000
MINIMUM	0	MAXIMUM	360.000	SUM	17042.000
C.V. PCT	207.320	.95 C.I.	18.775	TO	25.204

Figure 3.4



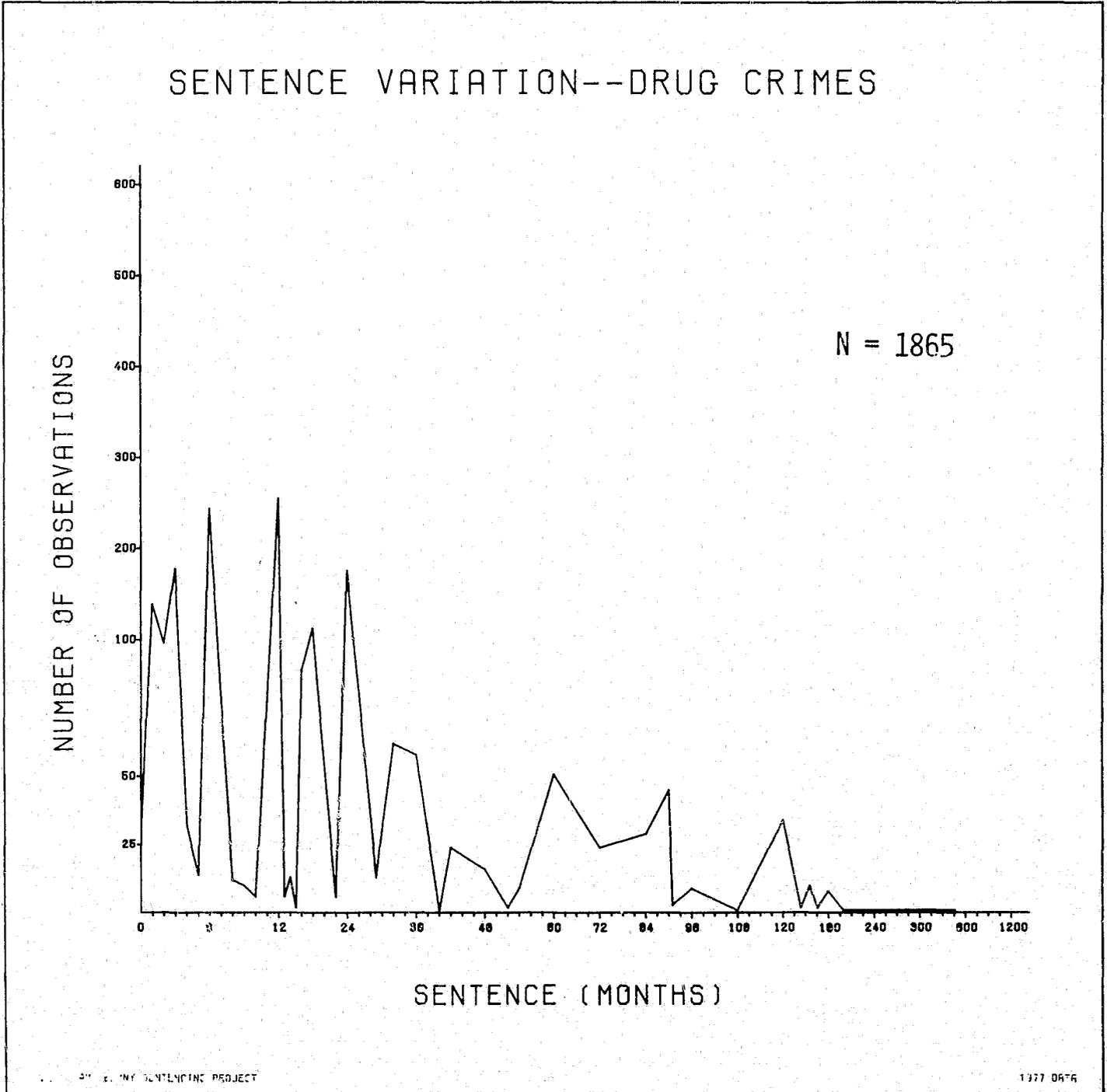
MEAN	69.568	STANDARD ERROR	1.840	MEDIAN	40.420
MODE	24.000	STANDARD DEVIATION	77.467	VARIANCE	6001.108
KURTOSIS	9.186	SKEWNESS	2.503	RANGE	600.000
MINIMUM	0	MAXIMUM	600.000	SUM	123274.000
C.V. PCT	111.355	.95 C.I.	65.958	TO	73.177

Figure 3.5



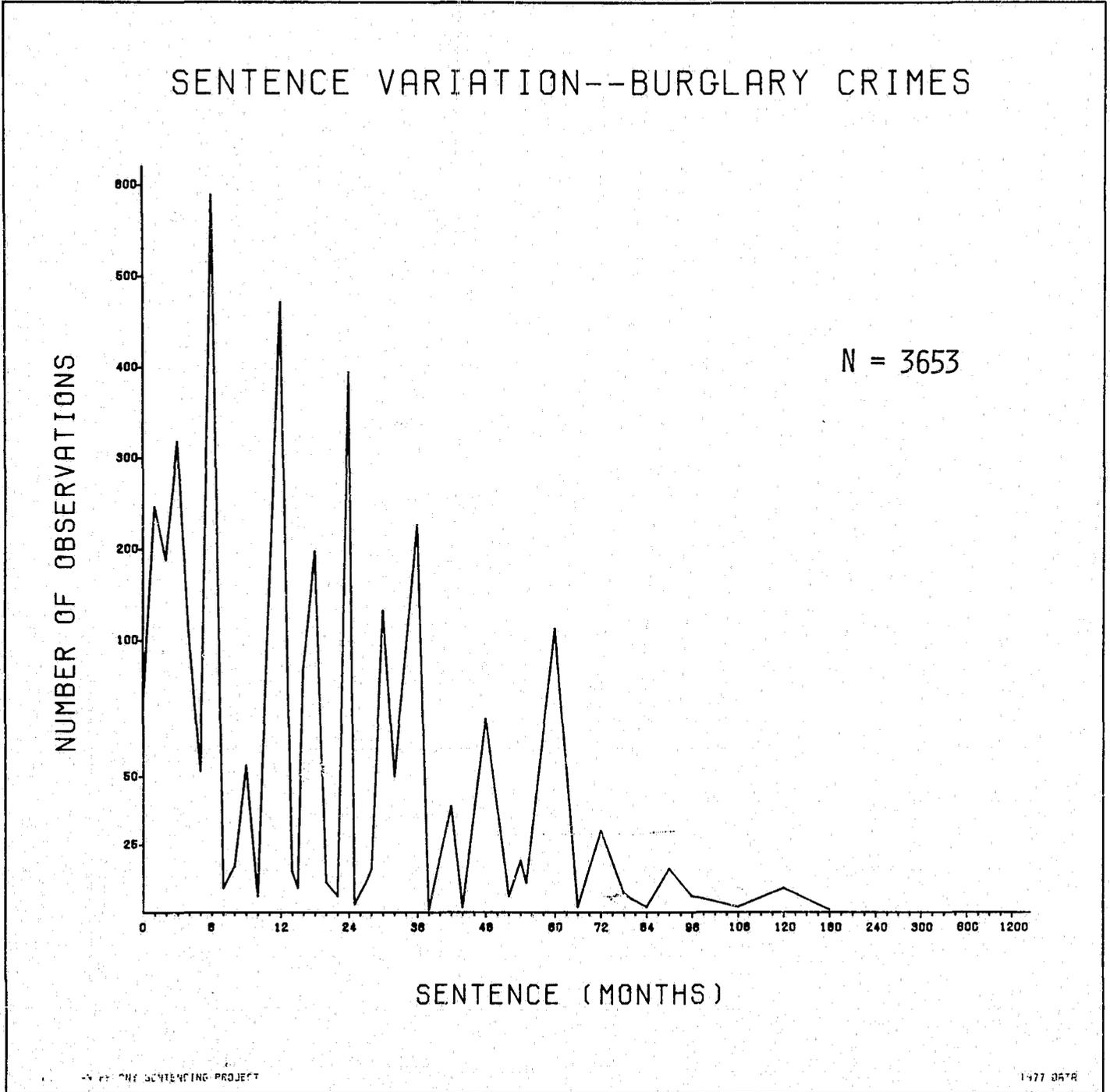
MEAN	63.533	STANDARD ERROR	3.170	MEDIAN	29.957
MODE	6.000	STANDARD DEVIATION	89.367	VARIANCE	7986.410
KURTOSIS	8.678	SKEWNESS	2.504	RANGE	720.000
MINIMUM	0	MAXIMUM	720.000	SUM	50509.000
C.V. PCT	140.661	.95 C.I.	57.312	TO	69.755

Figure 3.6



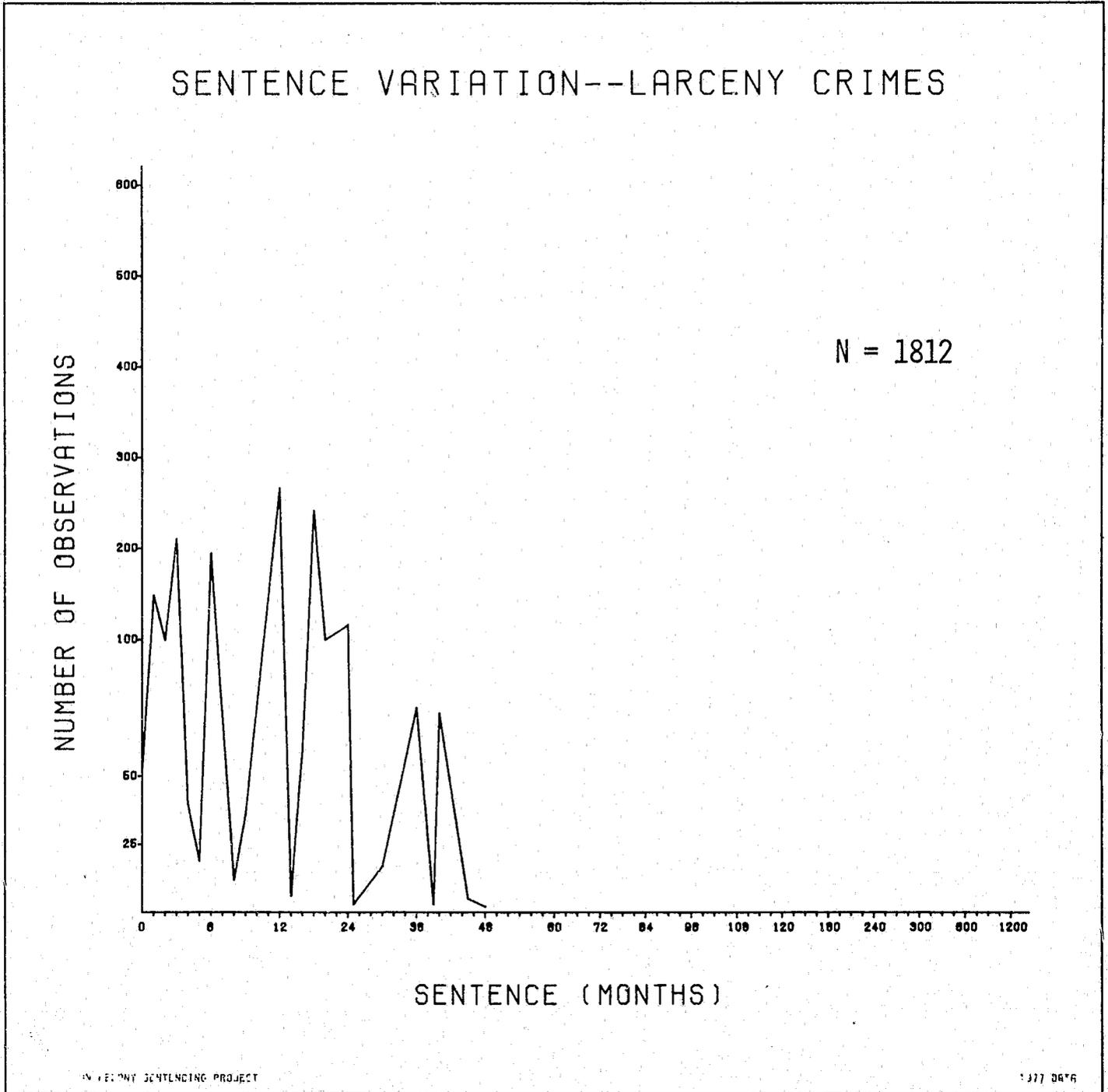
MEAN	23.033	STANDARD ERROR	.757	MEDIAN	12.149
MODE	12.000	STANDARD DEVIATION	32.709	VARIANCE	1069.907
KURTOSIS	38.806	SKEWNESS	4.204	RANGE	540.000
MINIMUM	0	MAXIMUM	540.000	SUM	42957.000
C.V. PCT	142.010	.95 C.I.	21.548	TO	24.519

Figure 3.7



MEAN	17.350	STANDARD ERROR	.302	MEDIAN	11.851
MODE	6.000	STANDARD DEVIATION	18.241	VARIANCE	332.733
KURTOSIS	5.957	SKEWNESS	1.989	RANGE	180.000
MINIMUM	0	MAXIMUM	180.000	SUM	63379.000
C.V. PCT	105.136	.95 C.I.	16.758	TO	17.942

Figure 3.8

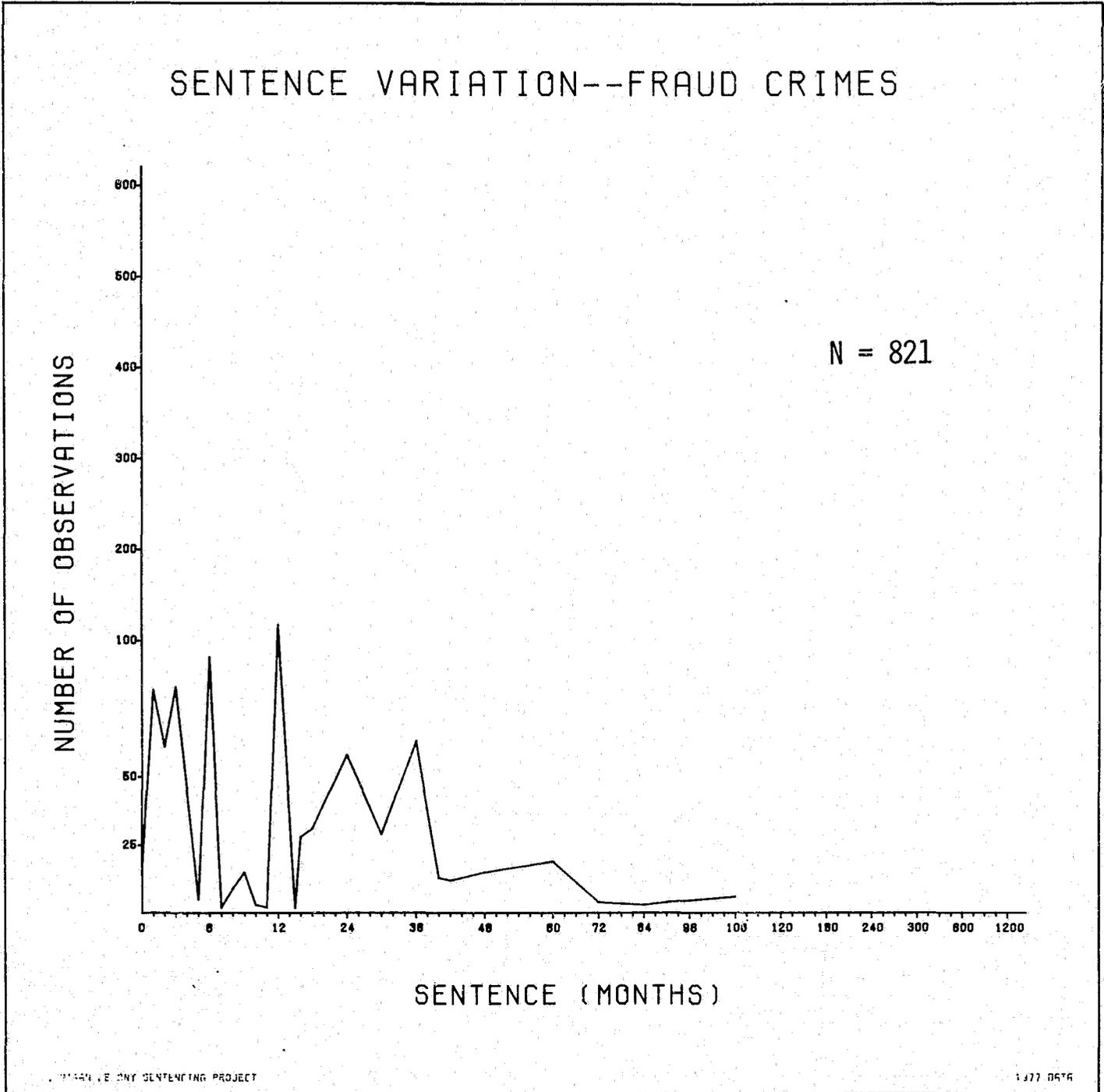


IN COUNTY SENTENCING PROJECT

117 06\*6

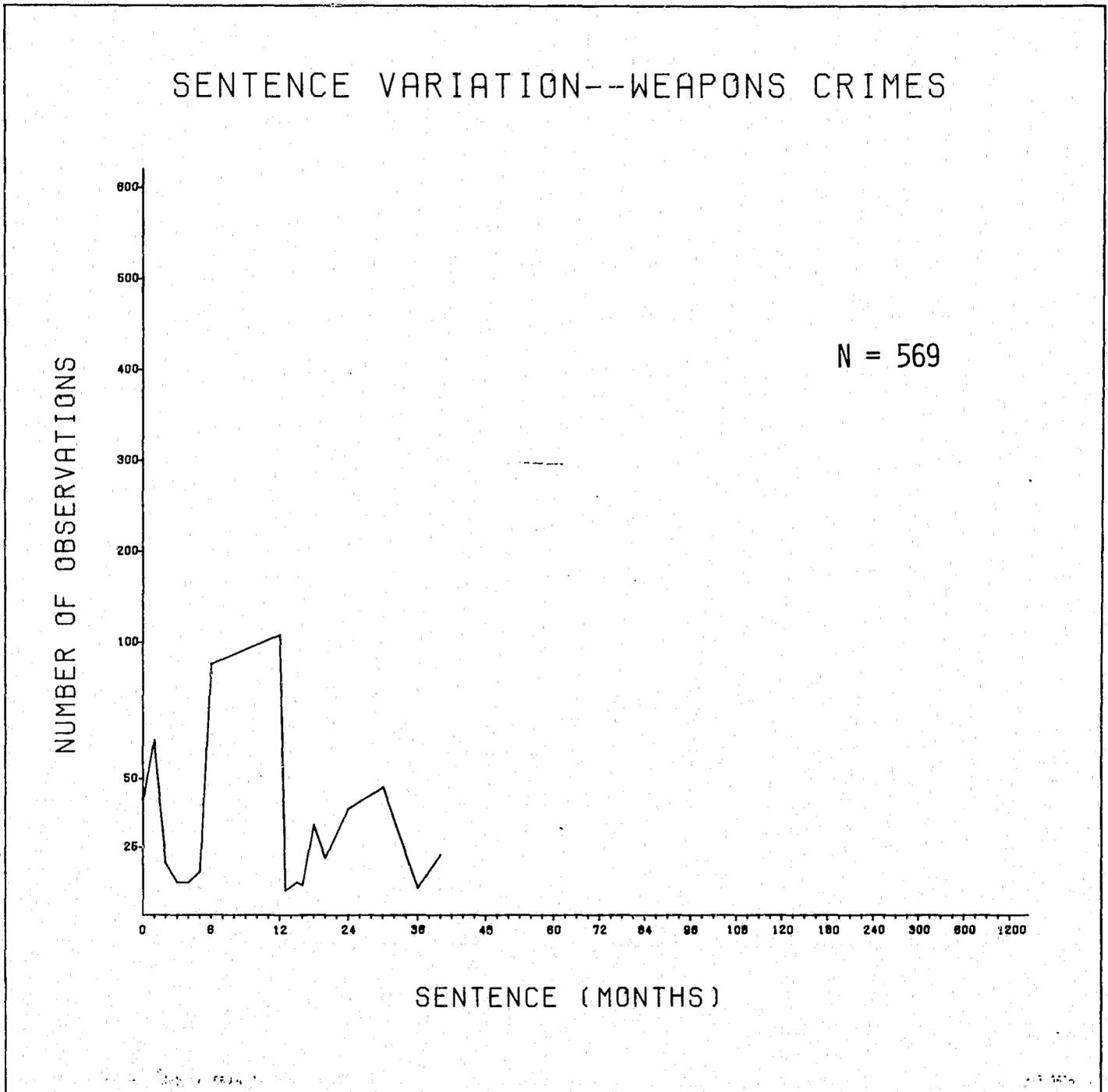
MEAN	12.874	STANDARD ERROR	.254	MEDIAN	11.857
MODE	12.000	STANDARD DEVIATION	10.813	VARIANCE	116.926
KURTOSIS	.359	SKEWNESS	.970	RANGE	48.000
MINIMUM	0	MAXIMUM	48.000	SUM	23328.000
C.V. PCT	83.992	.95 C.I.	12.376	TO	13.372

Figure 3.9



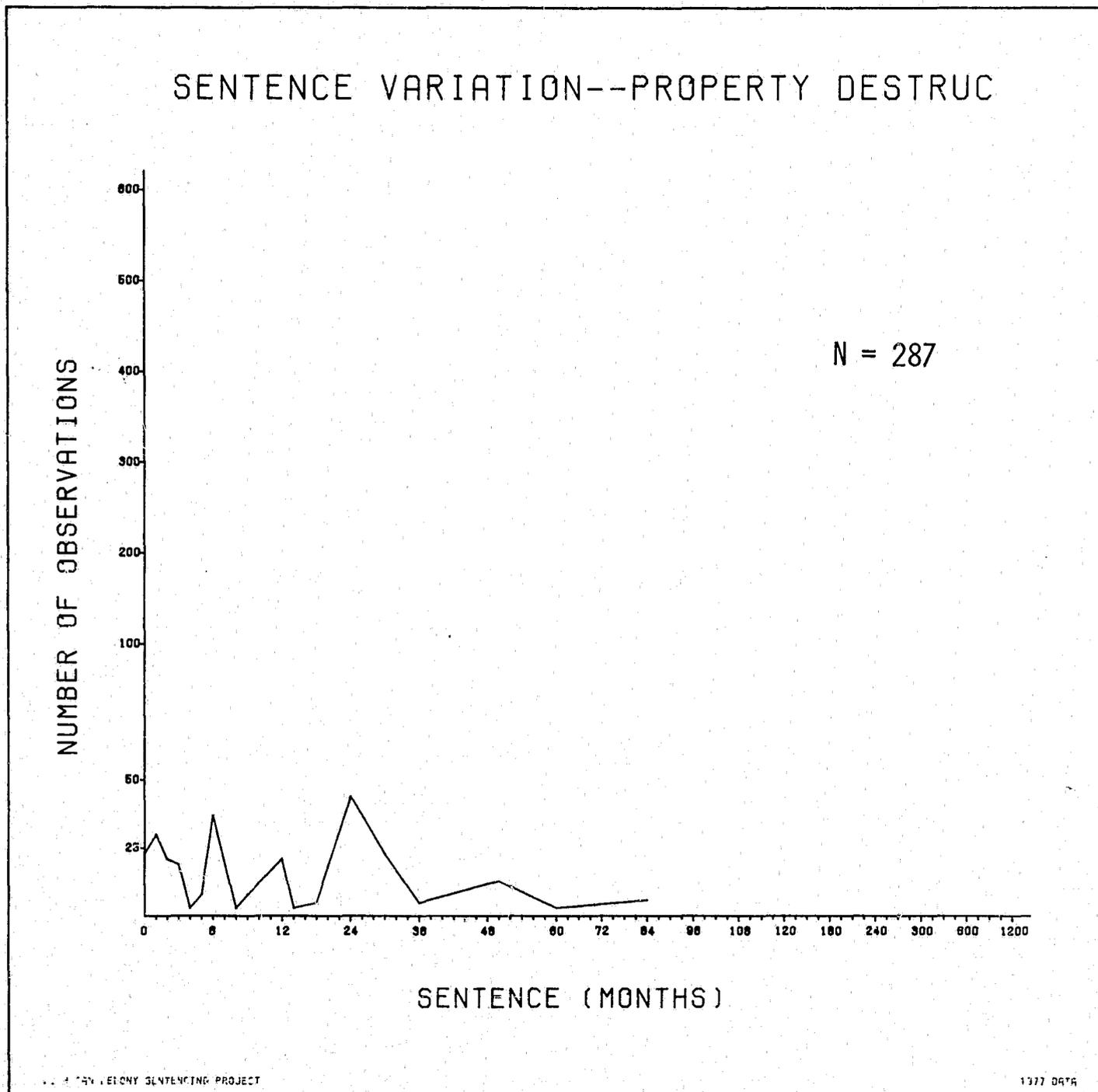
MEAN	15.709	STANDARD ERROR	.633	MEDIAN	9.400
MODE	12.000	STANDARD DEVIATION	18.146	VARIANCE	329.290
KURTOSIS	5.887	SKWENESS	2.127	RANGE	108.000
MINIMUM	0	MAXIMUM	108.000	SUM	12897.000
C.V. PCT	115.516	.95 C.I.	14.466	TO	16.952

Figure 3.10



MEAN	12.631	STANDARD ERROR	.459	MEDIAN	11.755
MODE	12.000	STANDARD DEVIATION	10.940	VARIANCE	119.680
KURTOSIS	-.130	SKWENESS	.858	RANGE	40.000
MINIMUM	0	MAXIMUM	40.000	SUM	7187.000
C.V. PCT	86.612	.95 C.I.	11.730	TQ	13.532

Figure 3.11



MEAN	16.443	STANDARD ERROR	1.082	MEDIAN	8.333
MODE	24.000	STANDARD DEVIATION	18.336	VARIANCE	336.199
KURTOSIS	2.384	SKEWNESS	1.537	RANGE	84.000
MINIMUM	0	MAXIMUM	84.000	SUM	4719.000
C.V. PCT	111.514	.95 C.I.	14.312	TO	18.573

the unweighted sample are reported in Appendix F.

Table 3.2 indicates the relative distribution of cases among the strata.

Table 3.2

DISTRIBUTION OF CASES AMONG STRATA  
(WEIGHTED SAMPLE)

	<u>Number</u>	<u>Percent</u>
Stratum I	14,520	55.6
Stratum II	7,965	30.5
Stratum III	<u>3,648</u>	<u>13.9</u>
TOTALS	26,133	100.0

The totals for Tables 3.2 and 3.3 differ very slightly from the totals in Table 3.1. This resulted from missing data in the dependent variable which led us to drop these cases (see Appendix B).

In the regression analyses and sentence matrices, the IN (incarcerations) and OUT (non-incarcerations) sentences are studied separately. Incarcerations, in our analysis, include prison sentences, jail sentences, and "split-sentences" where offenders are sentenced to probation and a jail term. Table 3.3 shows the distribution of these three kinds of sentences across strata and for the state as a whole.<sup>16</sup>

Out sentences are used ten percent more frequently by metropolitan judges than urban judges, and urban judges in turn use out sentences eight percent more frequently than rural judges. Out sentences are inversely related to ruralness. Jail sentences, on the other hand, are positively related to ruralness, with Stratum III judges using jail as a sentence 30%

Table 3.3

DISTRIBUTION OF SENTENCES AMONG STRATA

	<u>Out</u>	<u>Jail</u>	<u>Prison</u>		
Stratum I	7614 (52.4%)	2042 (14.1%)	4864 (33.5%)		(100%)
Stratum II	3438 (43.2%)	2405 (30.2%)	2122 (26.6%)		(100%)
Stratum III	1308 (35.9%)	1627 (44.6%)	713 (19.5%)		(100%)
-----	-----	-----	-----	-----	-----
TOTALS	12,360 (47.3%)	6,074 (23.2%)	7,699 (29.5%)		(100%)

more frequently than metropolitan judges. Note that in Strata I and II, out is the modal sentence, while in III jail is the most frequently used sentence. The pattern of prison sentences is the reverse of jail, with Stratum I judges sentencing a higher proportion of their cases to prison, urban judges sentencing a smaller proportion of their cases to prison, and Stratum III judges using the prison alternative least. Whether these patterns are reasonably related to offense and offender characteristics can only be known through multivariate analysis. Still, Table 3.3 is paradoxical and suggestive. It is paradoxical in that Stratum I judges appear most lenient when out sentences are examined, but seem most severe when looking at the incarceration pattern. The table suggests that jail may be more frequently used in rural courts either (1) because jails are more available as sentence alternatives there, or (2) cases which require incarceration are less severe there, or (3) the judges in Stratum III believe that a higher proportion of total offenders should be given some incarceration, or (4) some combination of the above.

\* \* \* \*

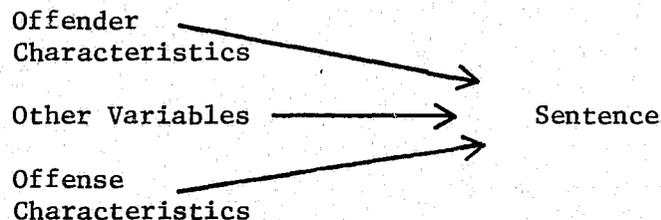
Literally hundreds of variables collected by our research effort can be correlated with sentences in order to gain understanding of the overall process, to determine whether there are patterns, and to search out variations from sentence norms. The large number of variables could be presented in hundreds or even thousands of frequency and contingency tables. While such tables are valuable research tools, they have two drawbacks: when a large number are necessary their interpretation becomes highly confused and at best, they can control for two or three independent variables before cell size becomes too small and tables become unwieldy. Therefore, the mainstay of the MFSP research effort is multiple regression, a versatile multivariate analysis technique.

D. DESCRIBING SENTENCING PATTERNS: REGRESSION ANALYSIS

D.1. Introduction to the Model and to the Regression Analysis

Given the extensive data set collected by the MFSP (see Appendix C, Original Questionnaire), a subset of data was selected based upon the following considerations. First, the variables had to exhibit some variation (i.e., all of the values of the variable could not be identical). Second, a group of judges were asked to identify which of the variables were potentially relevant to the sentencing decisions. The end result is a data set "trimmed down" to those variables that exhibited some variation over the possible values of the variable and that were identified as potentially relevant by a panel of judges (see Appendix E, Recoded Questionnaire).

Prior to conducting any empirical analyses of the data it was necessary to formulate an outline or structure of the model that we were going to evaluate. The first step in the development of our model was to divide our trimmed down data set into the following groups: (1) dependent variables (Var 86 and Var 87) (hereafter, variable numbers refer to variables in Appendix E), (2) offense variables (Var 2 to Var 56, Var 77), (3) offender variables (Var 60 to Var 74, Var 94 to Var 99, Var 102 to Var 109), and (4) other variables (all of the remaining variables). These variables were then related to one another via the construction of the following causal model:



The offense, offender, and other variables are exogenous to our system; that is, we make no effort to explain them. Instead, the exogenous variables are

used to explain the sentences. Exogenous variables are referred to as independent, while the explained variable(s) is the dependent variable.

It is our belief that while the "other" variables do have an impact on the sentence, it is the offense and offender variables that are explicitly employed by the judge. Therefore, we will examine their impact first. Once the offense and offender variables have been allowed to explain all of the variation in the sentences that they can, we will turn to an examination of the impact of the other variables. The latter examination will be the focus of the following chapter of the report.

The basic mathematical model that is being employed by the MFSP can be characterized in the following fashion:

$$S_i = \sum_{j=1} \alpha_j A_{ij} + \sum_{k=1} \beta_k B_{ik} + e_i \quad (1)$$

where

$S_i$	=	sentencing decision for individual i
$A_{ij}$	=	offense characteristics for individual i
$B_{ik}$	=	offender characteristics for individual i
$\alpha_j$	=	weights attached to offense characteristics
$\beta_k$	=	weights attached to offender characteristics
$e_i$	=	disturbance term

That is, the sentencing decision is seen to be a linear and additive function of a number of independent variables (i.e., offense and offender characteristics). The weights to be attached to each of the independent variables will be estimated using the appropriate statistical technique. The error term  $e_i$ , represents all those factors that have been omitted from our model. The particular type of omissions that might be present can be grouped into three

categories. First, it is possible that we have omitted relevant explanatory variables from our model; we feel that we have included all of the relevant factors that have a systematic influence on the sentence. The analyses conducted in Chapter 4 of this report will investigate whether anything else makes a difference. Second, the sentencing decision is likely to be a probabilistic one; that is, judges do not behave in the same fashion from one case to the next. If this is the case, it will only be possible to predict sentences within some error range. Finally, there is undoubtedly some measurement error in the data and the error term can serve as a summary measure of such error. Equation (1), therefore, represents our initial characterization of an explanation of judicial sentencing.

As noted earlier, this study has two dependent variables: (1) whether the individual was incarcerated, and (2) the length of the incarceration. It is our contention that the sentencing decision is a two-stage decision.<sup>17</sup> The first stage concerns whether the felon is to be incarcerated and will be referred to as the IN/OUT decision. The second stage concerns the length of the incarceration and will be referred to as the LENGTH decision. We have chosen to evaluate the two decisions separately and will develop an equation similar to equation (1) for each decision. Consequently, we will also be able to determine if judges use the same factors in both decisions.

The specific offense and offender variables are listed in Table 3.4. These variables all exhibit some variation and have been identified as potentially relevant. We have added one variable, offense severity (Var 160), to the data set in order to account for the multi-modal nature of the length decision (see Figures 3.2 through 3.11). The offense severity variable takes on the value of the statutory maximum for the offense with which the individual has been charged. We use this as a surrogate of the seriousness of the

Table 3.4

OFFENSE AND OFFENDER VARIABLES

Offense Variables

Time of primary incident  
Place of primary incident  
Type of weapon  
Was victim asportation involved  
Offender's role  
Intent in violent crimes  
Did offender steal for min. nec.  
Total number of offenders  
Was excessive cruelty inflicted  
Aggregate value stolen property  
Reason for property damage  
Manner of entry (B&E)  
Possession of burglary tools  
Was victim present (B&E)  
Number of mos over wh crimes occur  
Organized operation/ring  
Substance involved (drugs)  
Street value of substance involved  
Was offender selling  
Was offender a manufacturer  
Appear to already have drugs avail.  
Offender/s ability to obtain drugs  
Length of time selling/manufacturing  
Level in drug network  
Sodomy involved  
Bodily beatings  
Did penetration occur  
Did offender claim consent  
Duration of sex crime  
Long relationship with victim  
Intent of fraud  
Offender knowledgeable finan. mat.  
Continuing scheme  
Bad checks due to  
Total checks involved  
Negotiable instruments obtained  
Total cash value of frauds  
Type of primary victim  
Total number of human victims  
Age of primary victim  
Sex of primary victim  
Race of primary victim  
Offender victim relationship  
Victim-offender long standing feud  
Victim's attitude after offense  
Victim lacks capacity to defend

Victim use of alcohol time of offense  
Type of injury  
Continuing therapy/permanent injury  
Was there injury to eye(s)  
Role of physical injury  
Method of inflicting injury  
Extent of mental trauma  
Offender's acts toward victim  
Effect on victim's family  
Amount of goods recovered  
Offense severity, statutory maximum

Offender Variables

Residential stability  
Associates with  
Support spouse/offspring  
Type of military discharge  
Reason for leaving school  
Highest grade completed  
Drug use status  
Degree alcohol use  
Mental health  
Employed at time of offense  
Job to go to  
Type of work  
Length of time job held (in months)  
Good moves since arrest  
Detainers outstanding  
Pending charges other jurisdictions  
Relation to CJ system time present offense  
Offender ever escape  
Disposition most recent probation  
Disposition most recent parole  
Aggregate number adult felony convictions  
Aggregate number juv delinq adjudications  
Aggregate number incarcerations (J & A)  
Sum months minimum terms  
Sum months maximum terms  
Number violent felonies, adult  
Number violent felonies, juvenile  
Number of similar priors

offense. Note that the offender variables of age, sex, and race are not included. The race variable is examined in Chapter 4.

Having limited the model to plausible variables and thereby eliminating some of the possible problems associated with spurious correlation, we now turn to the location of statistically significant explanatory variables for each of the sentencing decisions. The statistical technique that we have chosen to use is multiple regression. While a PROBIT-type estimator is more appropriate for use in estimating the parameters of the IN/OUT decision (since the dependent variable is limited to the values of 0 and 1), we find that the results of the analysis are not that different when using regression.<sup>18</sup> When this is coupled with the fact that regression results are substantially more interpretable for the lay reader, we have chosen to use multiple regression exclusively. (A complete explication of the statistical methodology is found in Appendix G.)

Because of the computer's core limitation brought on by our large data set and sample size, we first regressed each dependent variable on all of the relevant offense variables and selected out those variables that were significant at the .05 level. We then regressed each dependent variable on all of the offender variables and again selected out those that were significant at the .05 level. The offense and offender variables that were significant at the .05 level were then pooled together and each of the dependent variables were regressed on this reduced set of variables. Our explanatory model consists of all of the offense and offender variables that were significant at the .01 level in the latter regression. The end result is that we have located a set of variables which are relevant to the sentencing decision, statistically significant, and are able to account for a significant portion of the variance in each of the dependent variables.

The basic output of the regression analyses for each crime type will consist of estimated values for the  $\alpha$ 's and  $\beta$ 's in equation (1). These regression coefficients can be interpreted as the change that will result in the dependent variable for every unit change in the independent variable holding all of the other independent variables constant. These coefficients can be viewed as statistically optimal weights which reflect the relative importance of each of the variables in explaining the sentencing decision. The regression coefficients are those weights that minimized the sum of the squared errors and as a consequence there are no substantive considerations taken into account. As a result, it is possible for some of the coefficients to take on substantively implausible values. Remember, the weights are simply designed (and empirically determined) to minimize error. Consequently, one must exercise care when interpreting the coefficients.

One additional point of interest is the total (or cumulative) impact of offense and offender factors on the final sentence. In order to be able to make such an inference, we propose to develop a single score for all of the offense-related variables and for all of the offender-related variables. Such measures can be calculated in the following fashion:

$$\text{OFFENSE} = \sum \hat{\alpha}_j A_{ij} \quad (2)$$

$$\text{OFFENDER} = \sum \hat{\beta}_k B_{ik} \quad (3)$$

where the " $\hat{\alpha}$ " denotes the estimated regression weights from applying the multiple regression technique to equation (1). In other words, OFFENDER and OFFENSE scores can be obtained by multiplying the estimated regression coefficients and the individual variables together and then adding up the products. By using these scores in place of all the offense and offender variables, we can now

determine the relative impact of the two types of variables on the final sentence. The determination of relative weight can be made by running the following regression:

$$S_i = b_1 X \text{ OFFENSE} + b_2 X \text{ OFFENDER} + e_i \quad (4)$$

where  $b_1$  and  $b_2$  are standardized regression coefficients (also known as beta weights). The relative magnitude of the standardized coefficients will provide an indication of the relative importance of the two sets of factors.

#### D.2. Interpreting an IN/OUT Regression

For purposes of exposition we will discuss the IN/OUT model for sex offenses. The regression results are displayed in Table 3.5 and, as can be seen, the statistically significant variables are divided into offense and offender categories. For the offense characteristics there are three significant variables. Var 160, our surrogate measure of offense severity, has a coefficient of .0009, which means that we multiply the statutory maximum associated with the charged offense, measured in months, by .0009. The reader is reminded that the values taken on by the variables in this study are found in Appendix E, Recoded Questionnaire. The standard error (or deviation) of the coefficient indicates the degree of variability while the F-statistic provides a statistical test of significance for the coefficient. In these analyses all of the coefficients are significant at the .01 level and, all other things being equal, the higher the value of the F-statistic, the more important (in a statistical sense) the particular variable is.

When interpreting the coefficients for the IN/OUT regression, it is important to remember that we are predicting the probability that an individual will be sent to prison or jail [hence the value of the dependent variable must lie somewhere between 0 and 1]. For example, if an offender commits a

Table 3.5

IN/OUT REGRESSION RESULTS: SEX CRIMES

Adjusted R<sup>2</sup> = .30937

<u>Statistically Significant Offense Variables</u>		<u>B-Coef</u>	<u>Standard Error B</u>	<u>F-Stat</u>	<u>Beta</u>
Var 160	Offense severity, stat. max.	.0009	.0001	49.1	.186
Var 54	Extent of mental trauma	.139	.040	12.0	.086
Var 27	Bodily beatings	-.072	.023	9.8	-.080

<u>Statistically Significant Offender Variables</u>		<u>B-Coef</u>	<u>Standard Error B</u>	<u>F-Stat</u>	<u>Beta</u>
Var 104	Number of incarcerations	.034	.004	56.5	.198
Var 96	Relation to CJ system	.093	.013	55.4	.189
Var 73	Good moves since arrest	.204	.024	69.8	.218
Var 71	Type of work	-.085	.017	25.7	-.130
Var 64	Reason for leaving school	.108	.025	18.1	.108
Var 66	Drug use status	.093	.030	9.6	.079
Var 67	Degree of alcohol use	.045	.014	10.7	.084
Var 108	Number violent felonies, juv	-.318	.091	12.2	-.087
Var 60	Residential stability	.042	.014	8.8	.077
Var 94	Detainers outstanding	.133	.048	7.7	.071

crime which has a statutory maximum of 300 months (our designation of a life term), he has a .27 probability of going to jail on that alone (.0009 X 300 = .27). When looking at the other offense variables, it can be seen that the extent of the victim's mental trauma can lead to an additional .139 probability of being incarcerated. Finally, bodily beatings has a negative coefficient, suggesting that it leads to a reduction in the probability of being incarcerated. This latter result is not very plausible but it is one of the hazards of a strictly empirical procedure. It should be stressed at this juncture that we have followed a strictly empirical procedure once we located the set of plausible independent variables. From that point we have been searching for the set of independent variables which provides the "best" fit.

This decision to "let the data speak" was a policy recommendation of the MFSP Steering and Policy Committee. While the results are not always plausible, two things should be kept in mind. First, this approach avoids the problem of "policy making" by the research staff through model building. Second, such anomalies can be "cured" by explicit policy decisions by a sentencing commission armed with empirical results.

Turning to the offender variables, it can be seen (by looking at the F-statistics) that the number of previous incarcerations, relation to the criminal justice system, and good moves since arrest all have a very dramatic impact on the dependent variable. The good moves variable takes on the value -1 whenever the felon has initiated good moves, so that a positive value for this coefficient indicates that the probability of being incarcerated is reduced whenever there are good moves. The relation to the criminal justice system variable also takes on a negative value, -1, whenever the felon is free. This means that whenever a felon is not on bond, conditional release, or an escapee, his probability of being incarcerated decreases. Within the set of offender characteristics there are several coefficient values which do not make any substantive sense; these include type of work and number of violent felonies as a juvenile.

Taken as a whole, the explanatory equation for SEX IN/OUT ( $\bar{R}^2$ ) accounts for approximately 31% of the overall variation. While this is not a very high value, the limited value nature of the dependent variable must be kept in mind. As with most limited-value dependent variable models, the  $R^2$  is not a very useful statistic. In its place we wish to ascertain the number of correct predictions made by our model. To ascertain the predictive power of our model, we have first computed the predicted score as follows:

$$\text{Predicted Score} = \sum \hat{\alpha}_j A_{1j} + \sum \hat{\beta}_k B_{1k} \quad (5)$$

where " $\hat{\phantom{x}}$ " denotes the estimated values of the regression coefficients. If the predicted score is greater than .50, we will classify the prediction as an IN-prediction. If the predicted score is less than or equal to .50, we will classify the prediction as an OUT-prediction. For each case we will have an indication of whether the model predicted the probability of being incarcerated was greater than .50 and whether the individual actually went to jail. The results of such an analysis, undertaken for sex offenses, are arrayed in the following 2 X 2 table.

Table 3.6

PREDICTION OF IN/OUT SENTENCE FOR SEX CRIMES

		PREDICTED		
		OUT	IN	
ACTUAL	OUT	369	0	369
	IN	627	173	800
		996	173	1169

The entries in the diagonal cells are the correct predictions and the off-diagonal cells contain the incorrect predictions. As can be seen, approximately 46% of the predictions are correct. It is interesting to note that 85% of the predictions are OUT and only 15% of them are IN. This suggests that the model is not doing a very good job of discriminating between those individuals that are ultimately incarcerated and those that are not.

Having ascertained the degree of fit for the SEX IN/OUT decision, we now turn to a consideration of the relative impact of offense and offender characteristics. Taking the regression weights from Table 3.5 and multiplying them by the appropriate variables yields the following OFFENSE and OFFENDER SCORES [these are the operational versions of equations (2) and (3) for SEX offenses]:

$$\text{OFFENSE} = .0009 \text{ X Var } 160 + .139 \text{ X Var } 54 - .072 \text{ X Var } 27$$

$$\begin{aligned} \text{OFFENDER} = & .034 \text{ X Var } 104 + .093 \text{ X Var } 96 + .204 \text{ X Var } 73 - \\ & .085 \text{ X Var } 71 + .108 \text{ X Var } 64 + .093 \text{ X Var } 66 + \\ & .045 \text{ X Var } 67 - .318 \text{ X Var } 108 + .042 \text{ X Var } 60 - \\ & .133 \text{ X Var } 94 \end{aligned}$$

When the IN/OUT variable is regressed on these two scores, the following results are obtained [using equation (4)]:

$$\text{Var } 86 = .206 \text{ X OFFENSE} + .495 \text{ X OFFENDER}$$

where the coefficients are standardized regression coefficients (i.e., beta weights). Based upon these results it is possible to infer that offender characteristics are over twice as important as offense characteristics for the SEX IN/OUT decision.

#### D.3. Interpreting IN/OUT Regressions for Other Crime Categories

The regression results for the remaining crime categories are presented in Tables 3.7 through 3.15. One thing of interest to note are the variables that appear in more than one equation. With respect to the offender characteristics, the following variables appear in at least five of the final regression equations:

- Var 60: residential stability
- Var 67: alcohol use
- Var 69: employed at time of offense
- Var 71: type of work
- Var 73: good moves
- Var 96: relation to CJ system
- Var 98: disposition of most recent probation
- Var 104: aggregate number of previous incarcerations

There seems to be a good mixture of current and prior information being used by judges in their evaluation of the individuals. Since most of the offense variables are applicable to a limited number of crime categories, the following variables appear in at least three of the final regression equations:

Var 46: victim's attitude  
 Var 160: offense severity  
 Var 2: time of incident  
 Var 4: type of weapon  
 Var 3: place of incident  
 Var 6: offender's role  
 Var 17: organized ring  
 Var 43: race of victim

There does not seem to be any clear pattern to those variables that recur in several categories.

With respect to overall levels of fit, the SEX IN/OUT model appears to be a bit below average. The  $\bar{R}^2$ 's range from a high of 55% for property destruction to a low of 25% for burglary. Remember that the  $\bar{R}^2$  values are lower because the dependent variable is limited to either a 0 or a 1. It is best, we believe, not to place too much emphasis on such measures and, instead, concentrate on the number of correct predictions.

Table 3.7

IN/OUT REGRESSION RESULTS: HOMICIDE

Adjusted  $R^2 = .46922$

<u>Statistically Significant Offense Variables</u>		<u>B-Coef</u>	<u>Standard Error B</u>	<u>F-Stat</u>	<u>Beta</u>
Var 160	Offense severity, stat. max.	.0009	.0001	55.4	.22
Var 10	Was excessive cruelty inflicted	.203	.024	69.9	.21
Var 4	Type of weapon	.072	.009	53.3	.22
Var 54	Extent of mental trauma	.759	.138	30.4	.13
Var 53	Method of inflicting injury	-.063	.018	12.9	-.09
Var 45	Victim-offender long standing feud	.068	.025	7.4	.06

<u>Statistically Significant Offender Variables</u>		<u>B-Coef</u>	<u>Standard Error B</u>	<u>F-Stat</u>	<u>Beta</u>
Var 73	Good moves since arrest	.290	.025	135.8	.31

Table 3.8

IN/OUT REGRESSION RESULTS: ASSAULT

Adjusted R<sup>2</sup> = .41044

<u>Statistically Significant Offense Variables</u>		<u>B-Coef</u>	<u>Standard Error B</u>	<u>F-Stat</u>	<u>Beta</u>
Var 160	Offense severity, stat. max.	.002	.0002	134.8	.27
Var 44	Offender-victim relationship	-.093	.014	46.8	-.14
Var 7	Intent in violent crimes	.032	.005	41.9	.14
Var 48	Victim use of alcohol time of off	-.258	.030	70.6	-.17
Var 5	Was victim asportation involved	-.341	.426	63.9	-.19
Var 10	Was excessive cruelty inflicted	.129	.024	28.6	.12
Var 50	Continuing therapy/permanent injury	.293	.043	46.3	.14
Var 46	Victim's attitude after offense	-.117	.025	21.9	-.09
Var 3	Place of primary incident	-.049	.010	22.7	-.10
Var 49	Type of injury	-.049	.010	24.2	-.12
Var 41	Age of primary victim	.118	.027	19.1	.09
Var 55	Offender's acts toward victim	.085	.025	11.9	.08
Var 51	Was there injury to eye(s)	-.192	.052	13.5	-.07
Var 2	Time of primary incident	.064	.019	11.0	.06

<u>Statistically Significant Offender Variables</u>		<u>B-Coef</u>	<u>Standard Error B</u>	<u>F-Stat</u>	<u>Beta</u>
Var 96	Relation to CJ sys time pres off	.106	.131	65.5	.18
Var 60	Residential stability	.093	.013	50.9	.14
Var 94	Detainers outstanding	.150	.043	12.3	.07
Var 61	Associates with	.404	.064	39.6	.12
Var 99	Disposition most rec parole	.088	.119	54.1	.15
Var 67	Degree alcohol use	.103	.012	70.2	.17
Var 69	Employed at time of offense	.586	.965	36.9	.16
Var 62	Support spouse/offspring	-.080	.149	28.9	-.12
Var 108	Number violent felonies, juv	.841	.225	13.9	.07
Var 73	Good moves since arrest	.073	.218	11.2	.07
Var 70	Job to go to	-.046	.164	7.8	-.07

Table 3.9

IN/OUT REGRESSION RESULTS: ROBBERY

Adjusted R<sup>2</sup> = .35518

<u>Statistically Significant Offense Variables</u>		<u>B-Coef</u>	<u>Standard Error B</u>	<u>F-Stat</u>	<u>Beta</u>
Var 160	Offense severity, stat. max.	.0008	.0001	110.1	.20
Var 7	Intent in violent crimes	.030	.006	27.7	.10
Var 17	Organized operation/ring	-.067	.136	24.9	-.09
Var 6	Offender's role	.058	.009	45.9	.12
Var 9	Total number of offenders	-.037	.009	18.7	-.07
Var 46	Victim's attitude after offense	-.085	.020	17.4	-.07
Var 41	Age of primary victim	-.078	.021	14.2	-.07
Var 53	Method of inflicting injury	.105	.019	29.1	.12
Var 2	Time of primary incident	-.038	.013	8.8	-.05
Var 5	Was victim asportation involved	.109	.026	17.7	.07
Var 43	Race of primary victim	-.065	.019	11.1	-.06
Var 40	Total number of human victims	.028	.009	9.8	.06
Var 49	Type of injury	-.036	.010	11.0	-.08
Var 47	Victim lacks capacity to defend	.058	.023	6.2	.05

<u>Statistically Significant Offender Variables</u>		<u>B-Coef</u>	<u>Standard Error B</u>	<u>F-Stat</u>	<u>Beta</u>
Var 73	Good moves since arrest	.287	.017	288.1	.31
Var 96	Relation to CJ sys time pres off	.035	.007	27.3	.09
Var 60	Residential stability	.036	.008	17.7	.08
Var 106	Sum months maximum terms	.0001	.00002	9.3	.05
Var 71	Type of work	-.058	.011	26.7	-.09
Var 72	Length of time job held (months)	.028	.007	15.5	.09
Var 69	Employed at time of offense	-.022	.007	9.1	-.07

Table 3.10

IN/OUT REGRESSION RESULTS: DRUGS

Adjusted R<sup>2</sup> = .28569

<u>Statistically Significant Offense Variables</u>		<u>B-Coef</u>	<u>Standard Error B</u>	<u>F-Stat</u>	<u>Beta</u>
Var 160	Offense severity, stat. max.	.001	.0001	158.4	.18
Var 22	Appear to already have drugs avail	.079	.016	22.1	.08
Var 21	Was offender a manufacturer	.433	.063	46.7	.09
Var 20	Was offender selling	.057	.120	22.1	.08
Var 23	Offender's ability to obtain drugs	-.027	.009	7.3	-.04

<u>Statistically Significant Offender Variables</u>		<u>B-Coef</u>	<u>Standard Error B</u>	<u>F-Stat</u>	<u>Beta</u>
Var 73	Good moves since arrest	.183	.013	174.5	.18
Var 98	Disposition most rec probation	.065	.006	102.6	.15
Var 60	Residential stability	.054	.008	40.6	.09
Var 61	Associates with	.265	.036	54.3	.10
Var 66	Drug use status	.064	.013	23.8	.06
Var 67	Degree alcohol use	.055	.008	38.9	.08
Var 97	Offender ever escape	.141	.041	12.1	.05
Var 65	Highest grade completed	.043	.008	27.8	.07
Var 95	Pending chgs other jurisdictions	.097	.018	28.0	.07
Var 106	Sum months maximum terms	.0001	.0001	11.4	.05
Var 71	Type of work	-.046	.009	22.1	-.06
Var 69	Employed at time of offense	.023	.005	19.0	.06
Var 96	Relation to CJ sys time present off	.031	.008	15.5	.06
Var 107	Number violent felonies, adult	.032	.012	6.5	.03

Table 3.11

IN/OUT REGRESSION RESULTS: BURGLARY

Adjusted R<sup>2</sup> = .25439

<u>Statistically Significant Offense Variables</u>		<u>B-Coef</u>	<u>Standard Error B</u>	<u>F-Stat</u>	<u>Beta</u>
Var 12	Reason for property damage	.024	.006	17.4	.05
Var 17	Organized operation/ring	.042	.009	19.6	.05
Var 46	Victim's attitude after offense	-.132	.027	24.6	-.05
Var 4	Type of weapon	.044	.009	22.4	.05
Var 6	Offender's role	.016	.006	7.1	.03

<u>Statistically Significant Offender Variables</u>		<u>B-Coef</u>	<u>Standard Error B</u>	<u>F-Stat</u>	<u>Beta</u>
Var 73	Good moves since arrest	.186	.012	232.3	.18
Var 98	Disposition most rec probation	.049	.005	94.4	.12
Var 96	Relation to CJ sys time pres off	.070	.006	139.4	.15
Var 60	Residential stability	.066	.007	97.9	.11
Var 64	Reason for leaving school	.075	.011	44.3	.08
Var 104	Aggregate number incarc (J & A)	.015	.002	35.7	.08
Var 72	Length of time job held (months)	.030	.005	36.4	.07
Var 95	Pending chgs other jurisdictions	.078	.014	29.2	.06
Var 63	Type of military discharge	.052	.013	15.8	.04
Var 99	Disposition most rec parole	.039	.007	28.2	.07
Var 71	Type of work	-.039	.009	20.8	-.05
Var 62	Support spouse/offspring	.039	.009	19.0	.04
Var 103	Aggregate number juv delinq adjud	.043	.008	26.2	.06
Var 108	Number violent felonies, juv	-.118	.028	18.2	-.05
Var 61	Associates with	.077	.029	7.1	.03
Var 106	Sum months maximum terms	-.0001	.0001	9.3	-.04
Var 67	Degree alcohol use	.019	.007	7.2	.03

Table 3.12

IN/OUT REGRESSION RESULTS: LARCENY

Adjusted R<sup>2</sup> = .30677

<u>Statistically Significant Offense Variables</u>		<u>B-Coef</u>	<u>Standard Error B</u>	<u>F-Stat</u>	<u>Beta</u>
Var 160	Offense severity, stat. max.	.002	.0003	47.9	.10
Var 46	Victim's attitude after offense	-.189	.033	33.3	-.08
Var 42	Sex of primary victim	.260	.037	48.5	.10
Var 11	Aggregate value stolen property	-.025	.004	33.7	-.08
Var 6	Offender's role	.035	.007	26.1	.07
Var 43	Race of primary victim	-.192	.042	20.9	-.07
Var 8	Did offender steal for min. nec.	.157	.040	15.3	.05
Var 45	Victim-offender long standing feud	.498	.140	12.7	.05
Var 2	Place of primary incident	-.058	.011	25.5	-.07
Var 16	Number of months o wh crimes occur	.092	.018	24.0	.07
Var 14	Possession of burglary tools	.061	.019	10.8	.05

<u>Statistically Significant Offender Variables</u>		<u>B-Coef</u>	<u>Standard Error B</u>	<u>F-Stat</u>	<u>Beta</u>
Var 98	Disposition most rec probation	.079	.630	157.6	.20
Var 72	Length of time job held (months)	.059	.006	92.2	.16
Var 104	Aggregate number incarcerated (J & A)	.026	.003	69.9	.14
Var 96	Relation to CJ sys time pres. off.	.055	.007	47.8	.11
Var 60	Residential stability	.079	.009	75.8	.12
Var 105	Sum months min. terms	.0004	.0001	18.7	.06
Var 68	Mental health	-.099	.021	23.0	-.07
Var 95	Pending chgs other jurisdictions	.068	.019	12.3	.05
Var 107	Number violent felonies, adult	-.056	.011	25.0	-.08
Var 71	Type of work	-.050	.010	21.9	-.07
Var 73	Good moves since arrest	.057	.016	12.6	.06
Var 64	Reason for leaving school	.056	.014	15.4	.06
Var 99	Disposition most rec parole	.036	.010	11.2	.06
Var 63	Type of military discharge	-.058	.018	10.3	-.04

Table 3.13

IN/OUT REGRESSION RESULTS: FRAUD

Adjusted R<sup>2</sup> = .33640

<u>Statistically Significant Offense Variables</u>		<u>B-Coef</u>	<u>Standard Error B</u>	<u>F-Stat</u>	<u>Beta</u>
Var 160	Offense severity, stat. max.	.0007	.0001	17.9	.08
Var 42	Sex of primary victim	-.192	.041	21.8	-.09
Var 3	Place of primary incident	.162	.028	33.4	.10
Var 4	Type of weapon	.206	.042	23.9	.09
Var 8	Did offender steal for min. nec.	.124	.029	17.9	.08
Var 36	Total checks involved	.036	.011	10.9	.06
Var 33	Intent of fraud	-.074	.021	12.1	-.07

<u>Statistically Significant Offender Variables</u>		<u>B-Coef</u>	<u>Standard Error B</u>	<u>F-Stat</u>	<u>Beta</u>
Var 96	Relation to CJ sys time pres off	.118	.010	119.5	.23
Var 73	Good moves since arrest	.154	.019	62.2	.16
Var 66	Drug use status	.118	.023	26.0	.09
Var 104	Aggregate number incarc (J & A)	.028	.005	31.8	.12
Var 62	Support spouse/offspring	.054	.012	18.7	.09
Var 97	Offender ever escape	.271	.053	25.6	.10
Var 68	Mental health	.087	.024	13.6	.07
Var 107	Number violent felonies, adult	-.045	.015	8.8	-.06
Var 63	Type of military discharge	-.087	.020	18.9	-.08
Var 98	Disposition most rec probation	.031	.009	10.0	.07
Var 71	Type of work	-.050	.011	19.3	-.09
Var 69	Employed at time of offense	.025	.007	12.0	.07

Table 3.14

IN/OUT REGRESSION RESULTS: WEAPONS

Adjusted R<sup>2</sup> = .41411

Statistically Significant  
Offense Variables

		<u>B-Coef</u>	<u>Standard Error B</u>	<u>F-Stat</u>	<u>Beta</u>
Var 160	Offense severity, stat. max.	.006	.0005	129.9	.20
Var 4	Type of weapon	-.057	.015	13.9	-.07

Statistically Significant  
Offender Variables

		<u>B-Coef</u>	<u>Standard Error B</u>	<u>F-Stat</u>	<u>Beta</u>
Var 102	Aggregate number adult felony conv	.057	.007	66.2	.20
Var 96	Relation to CJ sys time pres off	.099	.012	68.0	.16
Var 62	Support spouse/offspring	.067	.012	32.5	.11
Var 103	Aggregate number juv delinq adjud	.319	.037	72.4	.15
Var 60	Residential stability	.081	.010	59.9	.14
Var 66	Drug use status	.127	.019	42.9	.12
Var 99	Disposition most rec parole	.098	.013	56.6	.17
Var 105	Sum months minimum terms	.0002	.00002	31.1	.10
Var 104	Aggregate number incarc (J & A)	-.026	.004	43.1	-.15
Var 98	Disposition most rec probation	.043	.008	29.4	.11
Var 61	Associates with	.372	.067	31.1	.10
Var 68	Mental health	-.150	.024	39.4	-.11
Var 63	Type of military discharge	-.094	.016	32.8	-.10
Var 71	Type of work	-.065	.010	37.6	-.11
Var 73	Good moves since arrest	.075	.017	19.5	.08
Var 65	Highest grade completed	.037	.009	16.6	.07

Table 3.15

IN/OUT REGRESSION RESULTS: PROPERTY DESTRUCTION

Adjusted R<sup>2</sup> = .55136

<u>Statistically Significant Offense Variables</u>		<u>B-Coef</u>	<u>Standard Error B</u>	<u>F-Stat</u>	<u>Beta</u>
Var 2	Time of primary incident	-.238	.028	68.2	-.25
Var 160	Offense severity, stat. max.	.002	.0003	51.3	.23
Var 43	Race of primary victim	-.378	.089	17.7	-.13
Var 4	Type of weapon	.074	.012	37.6	.19
Var 16	Number of months o wh crimes occur	.324	.069	21.5	.14
Var 3	Place of primary incident	-.072	.013	26.5	-.17
Var 17	Organized operation/ring	-.162	.039	17.1	-.13
Var 39	Type of primary victim	.049	.014	11.0	.12

<u>Statistically Significant Offender Variables</u>		<u>B-Coef</u>	<u>Standard Error B</u>	<u>F-Stat</u>	<u>Beta</u>
Var 96	Relation to CJ sys time pres off	.112	.021	28.0	.21
Var 63	Type of military discharge	-.257	.037	48.0	-.23
Var 98	Disposition most rec probation	.091	.017	29.4	.22
Var 104	Aggregate number incarc (J & A)	.027	.007	15.2	.14
Var 69	Employed at time of offense	.055	.011	23.0	.15
Var 97	Offender ever escape	.454	.116	15.2	.13
Var 105	Sum months min terms	-.0004	.0001	12.0	-.11
Var 95	Pending chgs other jurisdictions	.235	.053	19.6	.15
Var 67	Degree alcohol use	-.086	.021	16.6	-.13

Table 3.16

PREDICTION OF IN/OUT SENTENCE BY CRIME CATEGORIES

		Predicted		
		OUT	IN	
Actual	OUT	196	9	HOMICIDE 66% correct
	IN	317	429	
Actual	OUT	924	2	ASSAULT 60% correct
	IN	673	102	
Actual	OUT	443	0	ROBBERY 34% correct
	IN	1474	301	
Actual	OUT	369	0	SEX CRIMES 46% correct
	IN	627	173	
Actual	OUT	2336	59	DRUG 68% correct
	IN	1327	544	
Actual	OUT	2717	10	BURGLARY 47% correct
	IN	3351	313	
Actual	OUT	1916	57	LARCENY 72% correct
	IN	1002	810	
Actual	OUT	1139	55	FRAUD 72% correct
	IN	499	322	
Actual	OUT	1497	0	WEAPONS 80% correct
	IN	411	158	
Actual	OUT	248	0	PROPERTY DESTRUCTION 53% correct
	IN	253	39	

Table 3.16 provides the output from the prediction analyses. As can be seen, the number of correct predictions varies from a high of 80% for weapons offenses to a low of 34% for robbery. In almost every case (except homicide) a disproportionate number of the model predictions are for OUT decisions. On the whole, it would appear that our model provides far less than adequate distinctions between IN and OUT.

Turning to a consideration of the relative importance of OFFENSE and OFFENDER scores, we have displayed the standardized regression coefficients for each equation (4)-type regression in Table 3.17. The most notable feature of the table is that with the exception of homicide offenses, the offender variables are more important determinants of incarceration than are the offense variables. For the violent offenses (i.e., homicide, assault, robbery, and sex) the relative weights are somewhat closer to equality than for the non-violent offenses. Still, the offender characteristics seem to stand out.

Table 3.17

RELATIVE IMPORTANCE OF OFFENSE AND OFFENDER SCORES FOR IN/OUT

	<u>Offense</u>	<u>Offender</u>
<u>Violent</u>		
Homicide	<u>.498</u>	.315
Assault	.423	<u>.472</u>
Robbery	.365	<u>.400</u>
Sex	.206	<u>.495</u>
<u>Non-Violent</u>		
Drug	.262	<u>.436</u>
Burglary	.101	<u>.497</u>
Larceny	.230	<u>.493</u>
Fraud	.233	<u>.490</u>
Weapons	.210	<u>.579</u>
Property Destruction	.435	<u>.559</u>

#### D.4. Interpreting a LENGTH Regression

Having focused on the IN/OUT decision, we now turn to an analysis of the LENGTH decision and report the analysis of factors which account for the length of sentence given to those people who receive an IN sentence. As with the IN/OUT report, the discussion consists of two parts, an interpretation of a typical regression followed by a comparison of the final regression equations for the various crime categories.

The SEX-LENGTH regression is presented in Table 3.18. Looking first at the offense factors in this table, it can be seen that an offender being sentenced for a sex crime receives a minimum sentence which is approximately 33% of the statutory maximum since the b-coefficient for Var 160 is .329. In addition, an offender is likely to receive increments of 27.4 months for each gradation of weapon used. Also, he is likely to have his sentence reduced by 51.4 months if there was a prior long standing feud. The coefficients for variables 27, 41, and 9 do not make sense substantively because they seem to suggest that a person receives a lighter sentence in the face of aggravating factors. This is a hazard of a strictly empirical procedure and may mean that people who are sentenced and who have positive scores on these factors are being punished for other kinds of aggravating factors. Focusing on the offender factors, it can be seen that one receives an extra 37 months for having detainers outstanding, has his sentence reduced by 20 months for good moves since arrest, and has 19 months added for pending charges. Overall, the regression equation accounts for 65% of the total variation in sentencing which seems quite good.

The next step in our analysis is to determine the relative import of offense- and offender-related characteristics. Taking the regression results from Table 3.18 and multiplying them by their corresponding variable yields

the following OFFENSE and OFFENDER scores for the SEX-LENGTH decision:

$$\text{OFFENSE} = 27.441 \text{ X Var 4} + .329 \text{ X Var 160} - 16.417 \text{ X Var 27} - 23.190 \text{ X Var 41} - 51.418 \text{ X Var 45} + 8.068 \text{ X Var 44} - 8.203 \text{ X Var 9}$$

$$\text{OFFENDER} = 3.618 \text{ X Var 102} + 19.541 \text{ X Var 95} + 9.978 \text{ X Var 99} + 20.343 \text{ X Var 73} + 18.330 \text{ X Var 68} + 37.569 \text{ X Var 94} - 6.014 \text{ X Var 98} + 13.495 \text{ X Var 70} - 8.825 \text{ X Var 71} + .061 \text{ X Var 105}$$

When the LENGTH variable is regressed on these two scores, the following results are obtained:

$$\text{Var 87} = .646 \text{ X OFFENSE} + .318 \text{ X OFFENDER}$$

where the coefficients are standardized regression coefficients. Based upon these results, we can infer that offense-related factors are about twice as important to the SEX-LENGTH decision as the offender-related factors.

Table 3.18

LENGTH REGRESSION RESULTS: SEX CRIMES

Adjusted R<sup>2</sup> = .64744

<u>Statistically Significant Offense Variables</u>		<u>B-Coef</u>	<u>Standard Error B</u>	<u>F-Stat</u>	<u>Beta</u>
Var 4	Type of weapon	27.441	2.473	123.1	.300
Var 160	Offense severity, stat. max.	.329	.023	214.1	.378
Var 27	Bodily beatings	-16.417	3.828	18.4	-.099
Var 41	Age of primary victim	-23.190	4.523	26.3	-.124
Var 45	Long standing feud	-51.418	16.021	10.3	-.073
Var 44	Offender victim relationship	8.068	2.745	8.7	.068
Var 9	Number of offenders	- 8.203	3.231	6.4	-.058

<u>Statistically Significant Offender Variables</u>		<u>B-Coef</u>	<u>Standard Error B</u>	<u>F-Stat</u>	<u>Beta</u>
Var 102	Number adult felony convictions	3.618	1.427	6.4	.071
Var 95	Pending chgs other jurisdictions	19.541	5.578	12.3	.080
Var 99	Disposition most rec parole	9.978	2.613	14.6	.103
Var 73	Good moves since arrest	20.343	4.378	21.6	.108
Var 68	Mental health	18.330	4.229	18.8	.097
Var 94	Detainers outstanding	37.569	7.142	27.7	.117
Var 98	Disposition most rec probation	- 6.014	1.730	12.1	-.080
Var 70	Job to go to?	13.495	3.050	19.6	.105
Var 71	Type of work	- 8.825	2.920	9.1	-.069
Var 105	Sum months minimum terms	.061	.022	7.9	.069

D.5. Interpreting LENGTH Regressions for Other Crime Categories

The empirical results for the other crime categories are presented in Tables 3.19 to 3.27. As with the IN/OUT decision, we wish to note those variables which appear in more than one model. With respect to the offender characteristics, the following variables appear in at least five of the final regression equations:

Var 61: associates with  
Var 70: job to go to  
Var 73: good moves  
Var 95: pending charges  
Var 99: disposition most recent parole  
Var 102: aggregate number adult felony convictions  
Var 106: sum months maximum terms  
Var 109: number of similar priors

There seems to be a preponderance of factors related to prior criminal behavior being used by the judges in making their LENGTH decisions.

The following offense variables appear in at least three of the final regression equations:

Var 4: type of weapon  
Var 160: offense severity  
Var 46: victim attitude  
Var 45: long standing feud  
Var 41: age of victim  
Var 9: total number of offenders  
Var 17: organized ring

These are very similar to the offense-related variables that appeared most often in the IN/OUT decision.

With respect to the overall levels of fit, the SEX-LENGTH model appears to be above average. The  $\bar{R}^2$ 's range from a high of 72% for property destruction to a low of 34% for robbery. Most of the crime category models explain about 50% of the variance which is quite good for large, cross-sectional data sets.<sup>19</sup> There is no apparent reason that we can offer for the relatively poor performance of the ROBBERY model, which is out of line with other LENGTH decisions.

Table 3.19

LENGTH REGRESSION RESULTS: HOMICIDE

Adjusted R<sup>2</sup> = .56455

<u>Statistically Significant Offense Variables</u>		<u>B-Coef</u>	<u>Standard Error B</u>	<u>F-Stat</u>	<u>Beta</u>
Var 160	Offense severity, stat. Max.	.799	.049	260.9	.476
Var 45	Long standing feud	-41.649	8.627	23.3	-.128
Var 49	Type of injury	24.651	4.645	28.2	.134
Var 42	Sex of primary victim	42.122	8.511	24.5	.127
Var 4	Type of weapon	-13.169	3.644	13.1	-.098
Var 8	Did offender steal for min. nec.	78.459	27.446	8.2	.070
Var 46	Victim's attitude	-49.584	15.655	10.0	-.078
Var 7	Intent in violent crimes	4.617	1.550	8.9	.084
Var 40	Number of human victims	15.666	5.701	7.6	.069

<u>Statistically Significant Offender Variables</u>		<u>B-Coef</u>	<u>Standard Error B</u>	<u>F-Stat</u>	<u>Beta</u>
Var 106	Sum months maximum terms	.170	.019	79.3	.277
Var 63	Type of military discharge	33.620	8.243	16.6	.106
Var 67	Degree of alcohol use	-21.461	4.310	24.8	-.130
Var 68	Mental health	39.947	9.569	17.4	.105
Var 102	Number of adult felony conv.	12.149	2.820	18.6	.189
Var 65	Highest grade completed	13.760	4.060	11.5	.084
Var 104	Number of incarcerations	- 6.152	2.216	7.7	-.122

Table 3.20

LENGTH REGRESSION RESULTS: ASSAULT

Adjusted R<sup>2</sup> = .52704

Statistically Significant  
Offense Variables

	<u>B-Coef</u>	<u>Standard Error B</u>	<u>F-Stat</u>	<u>Beta</u>
Var 160 Offense severity, stat. max.	.459	.018	655.0	.651
Var 9 Total number of offenders	10.372	1.370	57.3	.191
Var 46 Victim's attitude after offense	-13.406	3.237	17.2	-.105

Statistically Significant  
Offender Variables

	<u>B-Coef</u>	<u>Standard Error B</u>	<u>F-Stat</u>	<u>Beta</u>
Var 109 Number of similar priors	11.612	1.644	49.9	.180
Var 72 Length of time job held	6.173	.806	58.6	.192

Table 3.21

LENGTH REGRESSION RESULTS: ROBBERY

Adjusted R<sup>2</sup> = .33964

<u>Statistically Significant Offense Variables</u>		<u>B-Coef</u>	<u>Standard Error B</u>	<u>F-Stat</u>	<u>Beta</u>
Var 4	Type of weapon	8.203	1.393	34.7	.139
Var 5	Victim asportation	23.182	5.377	18.6	.085
Var 7	Intent in violent crimes	4.680	1.239	14.3	.085
Var 8	Did offender steal for min nec	-56.865	8.858	41.2	-.126
Var 17	Organized operation/ring	12.277	3.157	15.1	.078
Var 41	Age of victim	-15.191	4.798	10.0	-.065
Var 45	Long standing feud	-57.505	10.154	32.1	-.119
Var 49	Type of injury	14.149	1.995	50.3	.171
Var 51	Was there injury to eye(s)	40.107	10.527	14.5	.081
Var 52	Role of physical injury	-30.675	7.020	19.1	-.096
Var 160	Offense severity, stat. max.	.176	.021	68.3	.200

<u>Statistically Significant Offender Variables</u>		<u>B-Coef</u>	<u>Standard Error B</u>	<u>F-Stat</u>	<u>Beta</u>
Var 61	Associates with	40.608	7.024	33.4	.114
Var 62	Support spouse/offspring	18.365	2.649	48.1	.141
Var 73	Good moves since arrest	21.606	4.192	26.6	.104
Var 95	Pending chgs other jurisdictions	10.396	3.780	7.6	.056
Var 96	Relation to CJ system	6.472	1.457	19.7	.090
Var 99	Disposition most recent parole	10.171	1.793	32.2	.123
Var 103	Number juv delinq adjudications	17.052	2.389	50.9	.149
Var 106	Sum months, maximum terms	.013	.005	6.7	.054
Var 107	Number violent felonies, adult	14.401	2.314	38.7	.155
Var 109	Number of similar priors	- 8.249	2.391	11.9	-.091

Table 3.22

LENGTH REGRESSION RESULTS: DRUGS

Adjusted R<sup>2</sup> = .49987

<u>Statistically Significant Offense Variables</u>		<u>B-Coef</u>	<u>Standard Error B</u>	<u>F-Stat</u>	<u>Beta</u>
Var 160	Offense severity, stat. max.	.238	.006	1376.8	.622
Var 21	Manufacture of drugs	23.160	3.935	34.6	.099
Var 24	Length of time selling/mfg	- 4.949	1.219	16.5	-.069

<u>Statistically Significant Offender Variables</u>		<u>B-Coef</u>	<u>Standard Error B</u>	<u>F-Stat</u>	<u>Beta</u>
Var 106	Sum months maximum term	.027	.004	56.8	.133
Var 96	Relation to CJ system	3.436	.532	41.7	.110
Var 65	Highest grade completed	3.022	.703	18.5	.073
Var 99	Disposition most rec parole	2.147	.620	12.0	.063
Var 95	Pending chgs other jurisdictions	4.175	1.278	10.7	.054
Var 109	Number of similar priors	2.734	.632	18.7	.075
Var 62	Support spouse/offspring	2.661	.774	11.8	.058

Table 3.23

LENGTH REGRESSION RESULTS: BURGLARY

Adjusted R<sup>2</sup> = .46887

<u>Statistically Significant Offense Variables</u>		<u>B-Coef</u>	<u>Standard Error B</u>	<u>F-Stat</u>	<u>Beta</u>
Var 160	Offense severity, stat. max.	.137	.004	1033.2	.398
Var 42	Sex of victim	9.840	1.086	82.0	.116
Var 53	Method of inflicting injury	15.013	3.029	24.6	.067
Var 14	Burglary tools?	3.048	.661	21.3	.057
Var 41	Age of victim	- 9.509	1.681	32.0	-.073
Var 45	Long standing feud	-13.327	3.171	17.7	-.052
Var 10	Excessive cruelty	11.596	3.590	10.4	.042
Var 4	Type of weapon	1.341	.375	12.8	.047
Var 2	Time	- 1.179	.404	8.5	-.036
Var 51	Injury to eye(s)	-19.962	6.895	8.4	-.036

<u>Statistically Significant Offender Variables</u>		<u>B-Coef</u>	<u>Standard Error B</u>	<u>F-Stat</u>	<u>Beta</u>
Var 99	Disposition most rec parole	3.452	.267	166.5	.190
Var 102	Number of adult felony convic	1.330	.152	76.7	.132
Var 72	Length of time job held	1.779	.222	64.1	.105
Var 97	Offender ever escape?	7.606	.810	88.1	.118
Var 106	Sum months maximum terms	.012	.002	56.8	.102
Var 96	Relation to CJ sys time pres off	1.474	.217	46.2	.088
Var 73	Good moves since arrest	3.436	.533	41.6	.085
Var 61	Associates with	4.695	1.016	21.4	.057
Var 65	Highest grade completed	1.792	.324	30.6	.069
Var 71	Type of work	- 1.491	.369	16.3	-.051
Var 60	Residential stability	.877	.251	12.2	.044

Table 3.24

LENGTH REGRESSION RESULTS: LARCENY

Adjusted R<sup>2</sup> = .46612

<u>Statistically Significant Offense Variables</u>		<u>B-Coef</u>	<u>Standard Error B</u>	<u>F-Stat</u>	<u>Beta</u>
Var 160	Offense severity, stat. max.	.115	.102	128.1	.204
Var 17	Organized operation/ring	1.546	.283	29.9	.097
Var 3	Place of incident	- .592	.223	5.4	-.042
Var 46	Victim's attitude	- 2.360	1.131	4.3	-.038

<u>Statistically Significant Offender Variables</u>		<u>B-Coef</u>	<u>Standard Error B</u>	<u>F-Stat</u>	<u>Beta</u>
Var 99	Disposition most rec parole	1.765	.244	52.4	.155
Var 73	Good moves since arrest	4.329	.465	86.8	.187
Var 98	Disposition most rec probation	1.417	.166	73.1	.168
Var 108	Number of viol felonies, juv	6.792	1.077	39.8	.126
Var 96	Relation to CJ sys time of off	1.312	.193	46.2	.137
Var 61	Associates with	6.782	1.082	39.3	.113
Var 106	Sum months maximum term	.668	.134	24.8	.100
Var 103	Number juv delinq adjudications	1.618	.323	25.1	.096
Var 107	Number violent felonies, adult	- 1.665	.313	28.3	-.109
Var 104	Number of incarcerations	.244	.684	12.8	.074
Var 69	Employed at time of offense	- 1.294	.182	50.5	-.155
Var 70	Job to go to?	1.678	.324	26.7	.117
Var 62	Support spouse/offspring	1.311	.322	16.6	.078
Var 68	Mental health	2.403	.571	17.7	.080
Var 67	Degree of alcohol use	- .907	.257	12.5	-.066
Var 63	Type of military discharge	1.452	.478	10.1	.059
Var 66	Drug use status	1.037	.434	5.7	.043
Var 95	Pending chgs other jurisdiction	1.174	.458	6.6	.048
Var 64	Reason for leaving school	- .815	.383	4.5	-.037

Table 3.25

LENGTH REGRESSION RESULTS: FRAUD

Adjusted R<sup>2</sup> = .48502

<u>Statistically Significant Offense Variables</u>		<u>B-Coef</u>	<u>Standard Error B</u>	<u>F-Stat</u>	<u>Beta</u>
Var 160	Offense severity, stat. max.	.093	.008	135.9	.303
Var 3	Place	6.996	1.017	47.3	.179
Var 4	Type of weapon	8.417	1.531	30.2	.140
Var 39	Type of victim	- 1.399	.424	10.9	-.086

<u>Statistically Significant Offender Variables</u>		<u>B-Coef</u>	<u>Standard Error B</u>	<u>F-Stat</u>	<u>Beta</u>
Var 102	Number adult felony convictions	2.550	.285	80.1	.293
Var 106	Sum months maximum term	.032	.005	44.4	.635
Var 105	Sum months minimum term	- .029	.006	24.7	-.467
Var 95	Pending chgs other jurisdiction	4.207	1.113	14.3	.098
Var 61	Associates with	18.123	4.182	18.8	.110
Var 99	Disposition most, rec parole	2.621	.695	14.2	.124
Var 70	Job to go to	2.272	.666	11.6	.088
Var 60	Residential stability	1.419	.524	7.3	.070

Table 3.26

LENGTH REGRESSION RESULTS: WEAPON

Adjusted R<sup>2</sup> = .55227

<u>Statistically Significant Offense Variables</u>		<u>B-Coef</u>	<u>Standard Error B</u>	<u>F-Stat</u>	<u>Beta</u>
Var 160	Offense severity, stat. max.	.151	.023	42.7	.198

<u>Statistically Significant Offender Variables</u>		<u>B-Coef</u>	<u>Standard Error B</u>	<u>F-Stat</u>	<u>Beta</u>
Var 102	Number adult felony convictions	1.263	.166	58.2	.287
Var 96	Relation to CJ sys time pres off	2.885	.356	65.9	.258
Var 107	Number of viol felonies, adult	- 5.060	.548	85.2	-.311
Var 60	Residential stability	2.333	.345	45.8	.200
Var 70	Job to go to?	2.946	.495	35.5	.199
Var 71	Type of work	- 3.158	.534	34.9	-.193
Var 98	Disposition most rec probation	1.456	.280	27.0	.165
Var 61	Associates with	6.386	1.806	12.5	.105
Var 67	Degree of alcohol use	- 1.785	.428	17.4	-.125
Var 106	Sum months maximum terms	.011	.026	17.7	.146
Var 66	Drug use status	1.720	.695	6.1	.074

Table 3.27

LENGTH REGRESSION RESULTS: PROPERTY DESTRUCTION

Adjusted R<sup>2</sup> = .71915

<u>Statistically Significant Offense Variables</u>		<u>B-Coef</u>	<u>Standard Error B</u>	<u>F-Stat</u>	<u>Beta</u>
Var 160	Offense severity, stat. max.	.108	.009	135.6	.413
Var 17	Organized operation/ring	15.146	2.145	49.8	.244
Var 12	Reason for property damage	7.703	1.403	30.1	.194

<u>Statistically Significant Offender Variables</u>		<u>B-Coef</u>	<u>Standard Error B</u>	<u>F-Stat</u>	<u>Beta</u>
Var 73	Good moves since arrest	12.804	1.329	92.8	.331
Var 68	Mental health	12.627	1.667	57.4	.275
Var 109	Number of similar priors	-10.829	2.407	20.2	-.162
Var 104	Number of incarcerations	1.933	.242	64.0	.311
Var 62	Support spouse/offspring	5.952	1.035	33.1	.218
Var 64	Why left school	- 5.889	1.296	20.6	-.158
Var 95	Pending chgs other jurisdiction	9.694	1.839	27.8	.203
Var 60	Residential stability	- 3.511	.816	18.5	-.159
Var 72	Length of time job held	- 1.725	.519	11.1	-.127

Turning to a consideration of the relative importance of offense- and offender-related characteristics (see Table 3.28), we find that the OFFENSE score is predominant for homicide, assault, robbery, sex, drug, and property destruction. Consequently, for all of the four so-called violent crime categories, the OFFENSE factors are the most important determinant of LENGTH.

Table 3.28

RELATIVE IMPORTANCE OF OFFENSE AND OFFENDER SCORES FOR LENGTH

	<u>Offense</u>	<u>Offender</u>
<u>Violent</u>		
Homicide	<u>.536</u>	.398
Assault	<u>.695</u>	.261
Robbery	<u>.463</u>	.378
Sex	<u>.646</u>	.318
 <u>Non-Violent</u>		
Drug	<u>.621</u>	.264
Burglary	<u>.439</u>	<u>.479</u>
Larceny	.241	<u>.609</u>
Fraud	<u>.381</u>	<u>.553</u>
Weapon	<u>.198</u>	<u>.717</u>
Property Destruction	<u>.571</u>	<u>.533</u>

D.6. The Impact of Explanatory Variables on Sentencing

Table 3.29 compares the impact of each variable on the IN/OUT and LENGTH decisions. A square denotes that an OFFENSE variable was entered into the equation to see if it was statistically significant. All OFFENDER and CJ variables were entered; thus, no squares are used for them. A triangle indicates that the variable is significant in the LENGTH decision and a circle that the variable was significant in the IN/OUT decision. As can be seen, there is a good deal of overlap of variables which have influence in both decisions.

Turning to the relative importance of the clusters presented in Tables 3.17 and 3.28, it can be seen that the OFFENDER score predominates in the IN/OUT decision and that the OFFENSE score plays a prominent role in some (but not all) of the LENGTH decisions.





Table 3.29 cont.

OFFENDER VARIABLES	Homicide	Robbery	Sex	Drugs	Assault	Burglary	Larceny	Property	Fraud	Weapons	Escape
Residential stability			●	●	●	●	▲	▲	▲	▲	
Associates with		▲		●	●	●	▲	▲	▲	▲	▲
Support spouse/offspring		▲		▲	●	●	▲	▲	●	●	
Type of military discharge	▲					●	●	●	●	●	
Reason for leaving school			●			●	●	▲	▲		
Highest grade completed	▲			●	▲		▲			●	
Drug use status			●	●			▲		●	●	▲
Degree alcohol use	▲		●	●	●	●	▲	●			▲
Mental health	▲		▲				●	▲	●	●	
Employed at time of offense		●		●	●		▲	●	●		▲
Job to go to			▲		●		▲		▲	▲	▲
Type of work		●	●	▲	●	●	▲	●	●	●	▲
Length of time job held (in months)		●				▲	●	▲	▲		▲
Good moves since arrest	●	●	▲	●	●	●	▲	▲	▲	●	▲
Detainers outstanding			●	▲	●						
Pending charges other jurisdictions		▲	▲	●	▲	●	●	▲	▲	▲	
Relation to CJ system time present offense		●	●	●	●	●	▲	●	●	●	▲
Offender ever escape				●		▲		●	●		
Disposition most recent probation			▲	●		●	●	▲	●	●	▲
Disposition most recent parole		▲	▲	▲	●	●	▲		▲	●	
Aggregate number adult felony convictions	▲		▲			▲			▲	●	▲
Aggregate number juv delinq adjudications		▲				●	▲			●	▲
Aggregate number incarcerations (J & A)	▲		●			●	●	▲	▲	●	▲
Sum months minimum terms			▲				●	●	▲	●	▲
Sum months maximum terms	▲	●	▲	●	▲	●	▲	▲	▲	▲	▲
Number violent felonies, adult		▲		●			▲		●		▲
Number violent felonies, juvenile			●		●	●	▲				
Number of similar priors		▲		▲	▲			▲			▲

## E. SENTENCE MATRICES

### E.1. Introduction to the Empirical Sentence Matrix

To this point we have presented the results of the empirical analyses in an attempt to indicate what types of factors make a difference and how much of a difference they make on sentences. The basic conclusion that we have been able to draw from these analyses is that while there are many correlates to sentencing decisions, there is a great deal of the variation in sentencing which is not explained by our models.

What does this large amount of unexplained variation mean about sentencing patterns in Michigan? In order to provide some guidance in answering this question, and to meet the Project's mandate of providing documentation for the sentencing guidelines alternative, we have translated our empirical results into descriptive sentence matrices. The matrix allows us to see if judges, as a group, are making decisions in a predictable fashion. In addition, the sentence matrix provides the Steering Committee with an introduction to sentence guidelines--with all their attendant problems--so that when the decision to develop sentencing guidelines is made, the methodological issues underlying their construction will be clearly understood. Therefore, we approach the development of sentencing matrices as a means to introduce the key issues, provide some resolution to our question concerning how predictable judges' decisions are, and to begin to see how "rationality" (in the sense of using information of other judges' decisions) might be introduced into sentencing decisions.

There are a number of issues which need to be resolved in the construction of any type of sentence matrix whether it is empirically-based or normative (policy), or both. The first issue concerns the types of information (i.e., variables) which will be used by the judge to evaluate the case in

question. The MFSP research used the set of variables shown to have a significant impact upon sentencing at the .01 level. The second issue concerns the weighting of variables to reflect their relative importance in an explanation of sentencing. We have chosen to use the b-coefficients from the previously reported regression analyses to weight the variables. These weights have certain highly desirable statistical properties and reflect the relative salience of each variable when considered in the context of the other significant variables. On the other hand, they produce a system of case scores which is unwieldy to use in practice (see Appendix J). The third issue concerns the manner in which the variables are to be combined. We have chosen to simply add the variables together once they have been weighted. Thus, we will have an overall score for each case based upon the previously reported regression analyses.

Having adopted these methodological positions, we now have to face the problem of how many different vectors will be constructed (where a vector is a combination of variables with a common theme which can be used to independently estimate the position of each case relative to all other cases). The key issue here is to determine the number of vectors to be employed which, in turn, means that relevant variables must be partitioned into several independent sets. We constructed one vector for each dimension of the judicial decision. In a previous section we posited that the sentencing decision proceeds as if there are two dimensions. The judge first compares the individual to be sentenced to other individuals and secondly, compares the crime that has been committed to all other crimes in the judge's information set. From this, OFFENSE and OFFENDER scores are calculated and used to represent the two dimensions. Thus each dimension represents the weighted sum of the statistically significant offense and offender variables.

Having developed the way in which the location of each case on each vector is measured, it is necessary to standardize the scale of measurement. Each of the instrumental variables (i.e., scores) has a mean and a standard deviation. These can be used, via the z-score transformation, to transform the scale of measurement on each vector so that the mean is zero and the standard deviation is 1.00. Thus, the value of the instrumental variable, once it is transformed, will provide an indication of the number of standard deviations that case is from the mean of all other cases on that particular vector. For example, for the SEX-LENGTH cases the following transformation will yield the appropriate scale of measurement for the offense and offender vectors:

$$\text{Offense Standardized score} = \frac{\text{OFFENSE} - 43.401}{57.502}$$

$$\text{Offender Standardized Score} = \frac{\text{OFFENDER} - 18.151}{28.475}$$

Utilizing these transformations the OFFENSE and OFFENDER scores can be mapped onto scales:

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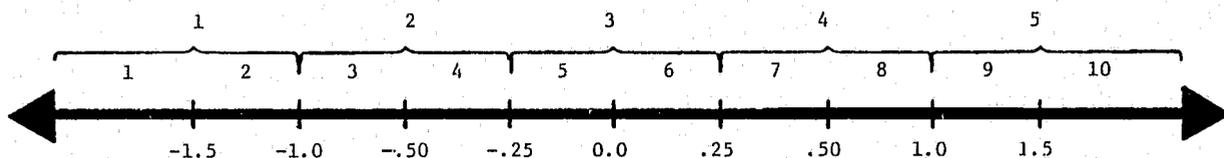
-3.0      -2.0      -1.0      0.0      1.0      2.0      3.0

For each crime category, 0 denotes the modal or average value for the cases on that dimension. A value of 1.0 denotes that the case is one standard deviation above the mean of all cases on that dimension. A value of -1.0 denotes that the case is one standard deviation below the mean for all cases in that category.

Having scaled each dimension, it is now necessary to partition each dimension into subsets of similar cases. The procedure that we have chosen is to divide the scale as follows:

Figure 3.12

STANDARDIZATION SCALE



Thus each vector is divided into ten cells initially on the basis of the standardized scale of measurement. Thereafter, adjacent scores are collapsed to form a more workable matrix. When this is done for each dimension, we can align them in an orthogonal fashion and thereby create a 5x5 table. This assumes that these vectors can be seen as if they were independent of one another. To check on the plausibility of this assumption, we have correlated the two vectors for each crime type and display the results in Table 3.30. As can be seen, the correlation coefficients are small, supporting the conclusion of orthogonality (independence) between scores.

Another issue that must be addressed is the overall weight that is to be attached to each dimension. Given the focus of our research on describing empirical sentencing patterns, no modification is made in the overall parameters of the dimensions. However, it should be kept in mind that the overall values of the vectors, as well as the values within each of the divisions, are subject to policymaker consideration and potential modification.

This realization brings us to the intersection of empirical research and policymaking. Consider that there are a number of ways in which sentences can be attached to each of the 25 cells in the 5x5 matrices. First, one can decide what sentence value (percent IN/OUT or LENGTH) ought to be attached

to this group of cases as a matter of policy. Second, sentences can be entered into the cells on a purely empirical basis, i.e., indicating the sentences actually given by the judges. Third, it is possible to combine these two methods in some way so that policymaking becomes informed with empirical data not heretofore available. In accord with the wishes of the MFSP Steering and Policy Committee, and consistent with our desire to separate the research effort from policymaking to the greatest extent possible, the second approach is used in this chapter, and the sentence values are attached to each cell empirically.

Table 3.30

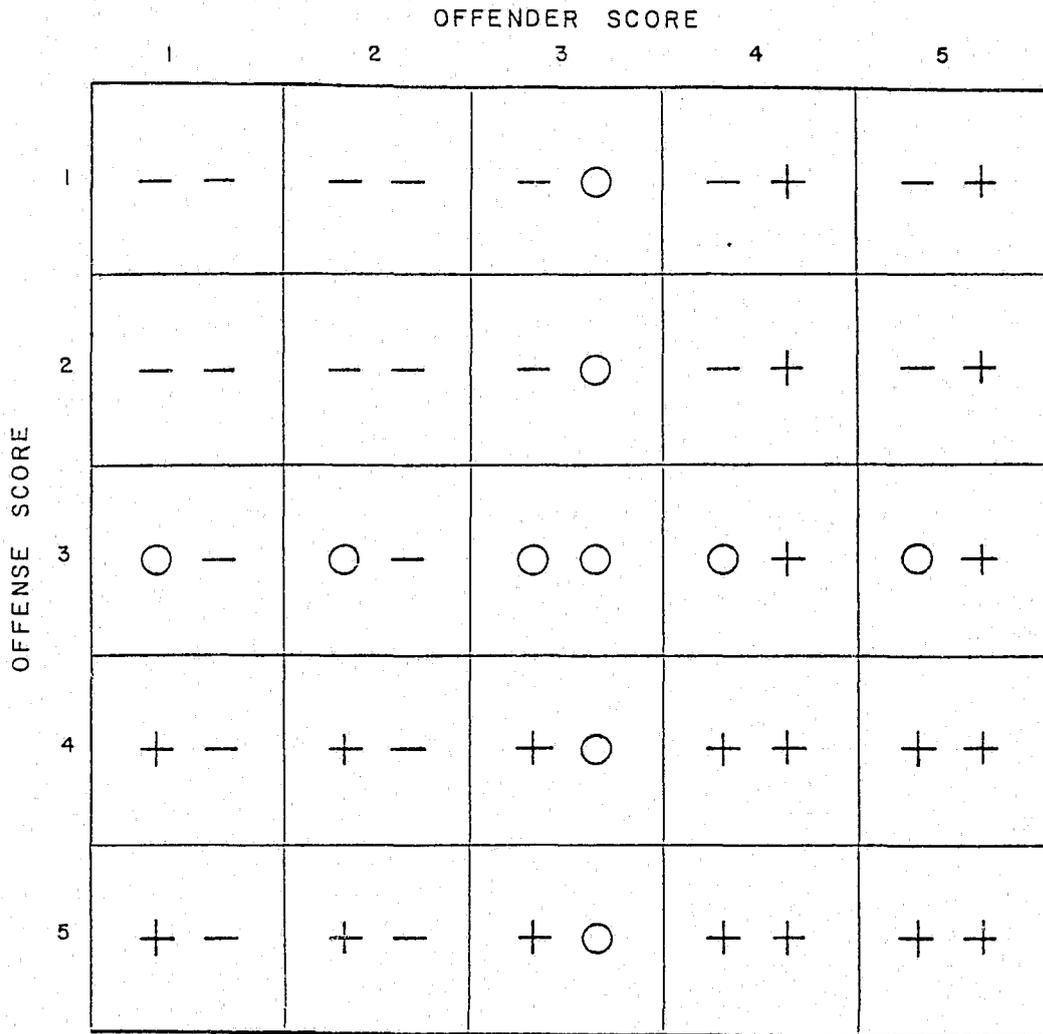
CORRELATION COEFFICIENTS OF OFFENDER AND OFFENSE  
VECTORS BY CRIME TYPE

<u>Crime Type</u>	<u>Length</u>	<u>In/Out</u>
Homicide	.29973	.40006
Assault	.06271	.04224
Robbery	-.00003	.23362
Sex	.33857	.14293
Drug	.14502	.12946
Burglary	.12007	-.01044
Larceny	.15199	.06963
Fraud	.09918	.20947
Weapons	.03086	.16454
Property Destruction	.20914	.13059

What can we learn from the empirical sentence matrices? How are these devices to be interpreted? The empirical sentence matrix (as opposed to policy-modified sentencing guidelines) provides a rather powerful tool for describing overall sentence patterns and coherence because it breaks sentences in various categories down into numerous discrete groups which have similar offense and offender characteristics. It is possible to place a plus, minus, or zero in each cell depending upon where cases in each cell will be. As can be seen in Figure 3.13, the four cells in the upper lefthand corner will be

Figure 3.13

PLACEMENT OF SCORE IN A SENTENCE MATRIX



+ = ABOVE THE MEAN

○ = THE MEAN

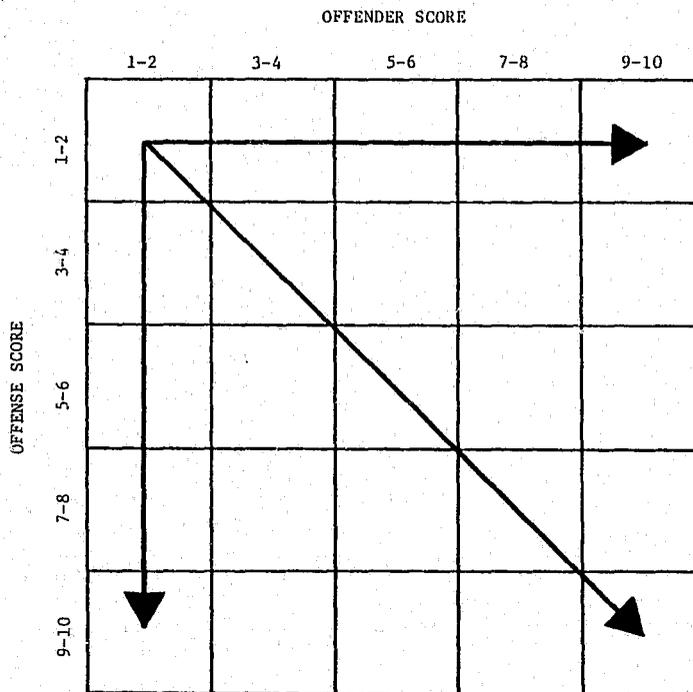
-- = BELOW THE MEAN

below average on both dimensions while the four cells in the lower righthand corner will all be above average on each dimension. The off-diagonal cells will be above average on one dimension and below average on the other. Finally, the cells in row 3 and column 3 will be average on at least one of the dimensions. Based upon an assumption that the higher the case is on a given

dimension, the more severe or longer the sentence will be, we would expect sentences to flow in the fashion depicted in Figure 3.14. That is, sentences ought to be higher as one moves to the right and/or down. The development of these two figures provides us with a basis upon which to evaluate the tables that are going to be constructed.

Figure 3.14

EXPECTED DIRECTION OF CELL SEVERITY



If sentencing is "coherent" we should be able to observe a number of distinct features in empirical sentence matrices. First, sentence values (percent IN/OUT and average LENGTH) should "flow" in the fashion depicted in Figure 3.14. Second, since offense and offender scores increase in severity in fairly equal steps, the amount of increase in adjacent cells should be

evenly distributed. Third, in length of sentence matrices, the mean and median sentence values within each cell should be close together. If they are not, then it is the case that there are some rather severely extreme sentences (from the average) being meted out which lie in the same direction as the mean from the median. (The mean is the arithmetic average of all sentence lengths in a given cell, whereas the median is the value of the sentence at the middle of the distribution. If the distribution of sentences in a cell is symmetrical, the mean and the median will coincide. If they are different, this indicates that the distribution is skewed and that many cases are being treated very leniently or with extreme harshness.) Fourth, the range of sentences within a cell should not be too wide, i.e., the ranges should indicate minimal overlap between adjacent cells. Note again that all cases in a given cell have similar scores on OFFENSE and OFFENDER dimensions. Consequently, we would expect that they will be treated in a similar fashion and this in turn implies minimal overlap. Findings contrary to these interpretive rules indicate a lack of coherence in the sentencing process.

#### E.2. Interpreting Length of Sentence Matrices

The length decision for sex offenses was used as the focal point for explicating the methodology in previous sections. We follow that tradition here. The regression results are used to complete the "Empirical Sentence Matrix Scoring Sheet" which enables us to determine the offense and offender scores for each case (see Table 3.31). Similar score sheets for other offense categories are found in Appendix J. These scores can be standardized using the previously noted z-score transformation equations. The resulting z-scores can then be divided into five cells and the guideline table can be constructed. Once each of the vectors has been partitioned into ten divisions and then collapsed to five divisions, we can analyse the sentences

Table 3.31

EMPIRICAL SENTENCE MATRIX SCORING SHEET: SEX CRIMES - LENGTH

Offense (A)	Var 160	_____	X	.329 =	_____	
	Var 4	_____	X	27.441 =	_____	
	Var 44	_____	X	8.068 =	_____	
	Total			+	_____	(A) + _____

Offense (B)	Var 27	_____	X	16.417 =	_____	
	Var 41	_____	X	23.190 =	_____	
	Var 45	_____	X	51.418 =	_____	
	Var 9	_____	X	8.203 =	_____	
Total			-	_____	(B) - _____	

Offense Score \_\_\_\_\_

Offender (A)	Var 102	_____	X	3.618 =	_____	
	Var 95	_____	X	19.541 =	_____	
	Var 99	_____	X	9.978 =	_____	
	Var 73	_____	X	20.343 =	_____	
	Var 68	_____	X	18.330 =	_____	
	Var 94	_____	X	37.569 =	_____	
	Var 70	_____	X	13.495 =	_____	
	Var 105	_____	X	.061 =	_____	
Total			+	_____	(A) + _____	

Offender (B)	Var 98	_____	X	6.014 =	_____	
	Var 71	_____	X	8.825 =	_____	
Total			-	_____	(B) - _____	

Offender Score \_\_\_\_\_

STANDARDIZED SCORE =  $\frac{\text{Offense or Offender Score} - \text{Mean}}{\text{Standard Deviation}}$

Offense Standardized Score =  $\frac{\text{Offense Score} - 43.401}{57.502} =$  \_\_\_\_\_

Offender Standardized Score =  $\frac{\text{Offender Score} - 18.151}{28.475} =$  \_\_\_\_\_

Look at Standardization Scale

Final Offense Score = \_\_\_\_\_

Offender Score = \_\_\_\_\_

Go to Grid

given to each case in a particular cell of the resulting 25-cell table. The result is the sentence matrix presented as Table 3.32.

Table 3.32

SEX LENGTH MATRIX

		OFFENDER SCORE				
		1-2	3-4	5-6	7-8	9-10
OFFENSE SCORE	1-2	MEDIAN 1.8 MEAN 3.9 RANGE 1-40 NUMBER 18	3.1 3.8 0-16 31	11.1 9.8 2-12 21	4.8 12.6 3-72 29	12.0 12.0 12-12 2
	3-4	6.0 8.9 0-54 55	6.4 18.7 1-79 124	12.4 28.4 3-120 55	29.5 32.7 1-120 43	41.0 53.9 12-120 27
	5-6	5.6 32.4 0-180 20	72.0 58.3 1-120 24	35.6 39.1 6-96 35	29.2 38.8 6-90 36	58.8 67.3 3-120 19
	7-8	23.5 30.5 3-78 21	44.0 53.3 6-180 39	36.0 34.4 1-60 14	79.4 114.1 30-300 40	123.8 164.0 24-300 27
	9-10	68.1 70.1 60-87 8	121.0 162.9 80-360 32	177.9 141.8 36-192 16	120.0 155.5 60-300 8	297.1 286.9 80-720 52

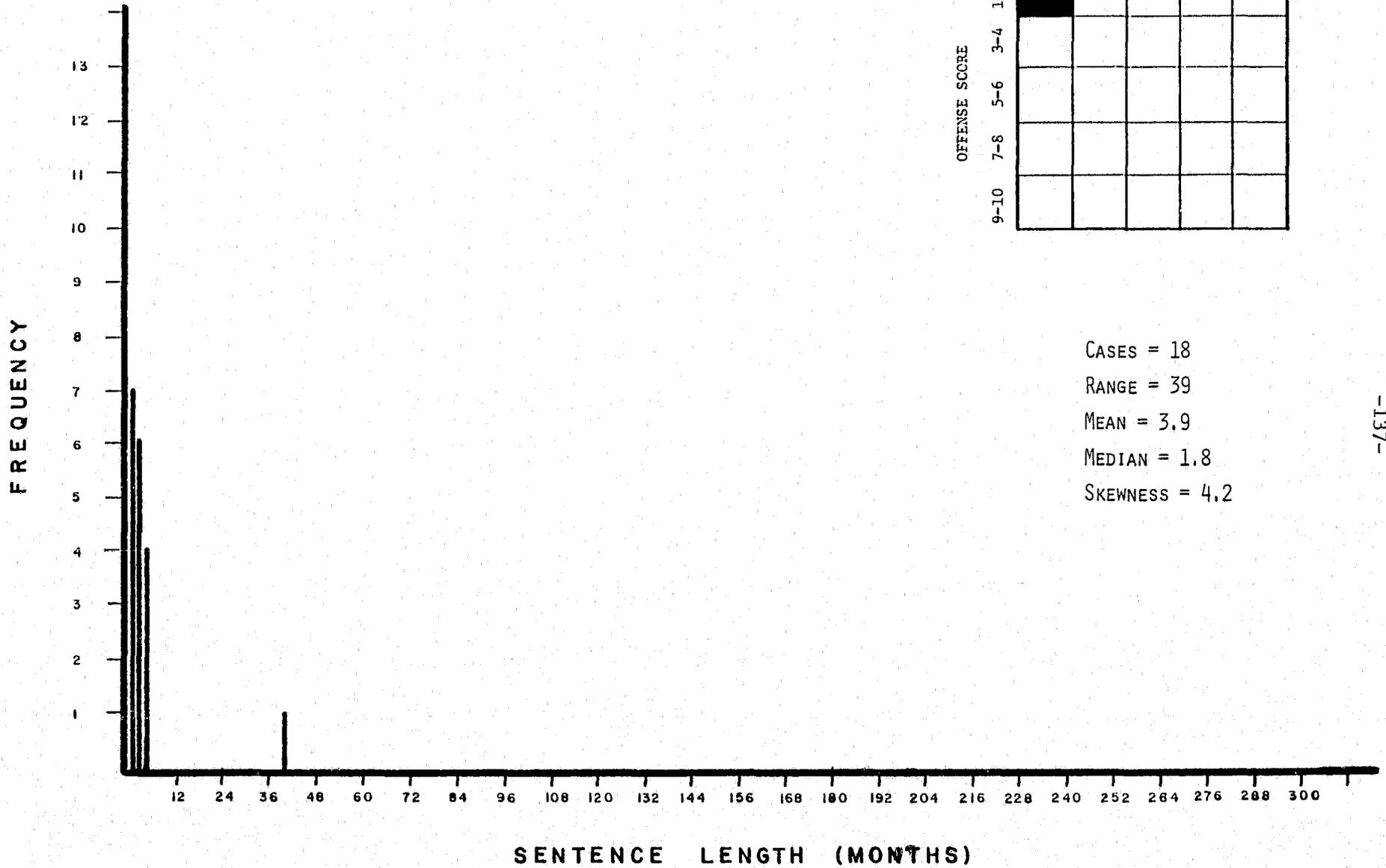
The standardized offender scores form the horizontal axis while the standardized offense score forms the vertical axis. Within each cell are the number of cases which fall into each cell along with the median, mean, and range of sentences. As can be seen, there is some coherence in the matrix as a whole when examining the cell medians. It is clear, however, that marked differences between the mean and the median in many cells indicate that there are extreme sentences on the severe end of the sentence-length continuum. Finally, the ranges in most of the cells are very large indicating that similar individuals are being treated in distinctly dissimilar ways. To provide a visual indication of what is going on within the cells of this matrix, we have provided an in-depth view of the five diagonal cells in the SEX matrix in Figures 3.15 to 3.19.

Cell (1-2, 1-2) Fig. 3.15 seems to be acceptable with only one outlier. Cell (3-4, 3-4) Fig. 3.16 has a much larger distribution as evidenced by the rather large difference between the mean and the median. Cell (5-6, 5-6) Fig. 3.17 has an almost uniform distribution indicating that almost any sentence from six to 96 months can be given to an individual in that cell. Cell (7-8, 7-8) Fig. 3.18 evidences a rather extreme amount of variability; not only is the range quite large, but there are a number of sentences at the upper levels. Cell (9-10, 9-10) Fig. 3.19 indicates some continuity as 42 of the 52 sentences received the same sentence (life or 300 months); there are, however, eight cases which received much less onerous sentences.

What does this in-depth analysis of the diagonal elements tell us about sentencing patterns in sex offenses in 1977? First, SEX-LENGTH decisions are much more orderly than those in other crime categories (compare Table 3.32 with Tables 3.33 through 3.41). Second, there is some coherence in the average sentences. Third, within each cell judges appear to be handing out almost any type of sentence; that is, no matter where the individual lies on the OFFENSE

Figure 3.15

DISTRIBUTION OF SENTENCES IN CELL (1-2,1-2) SEX-LENGTH



OFFENDER SCORE

	1-2	3-4	5-6	7-8	9-10
1-2					
3-4					
5-6					
7-8					
9-10					

CASES = 18  
 RANGE = 39  
 MEAN = 3.9  
 MEDIAN = 1.8  
 SKEWNESS = 4.2

Figure 3.16

DISTRIBUTION OF SENTENCES IN CELL (3-4,3-4) SEX-LENGTH

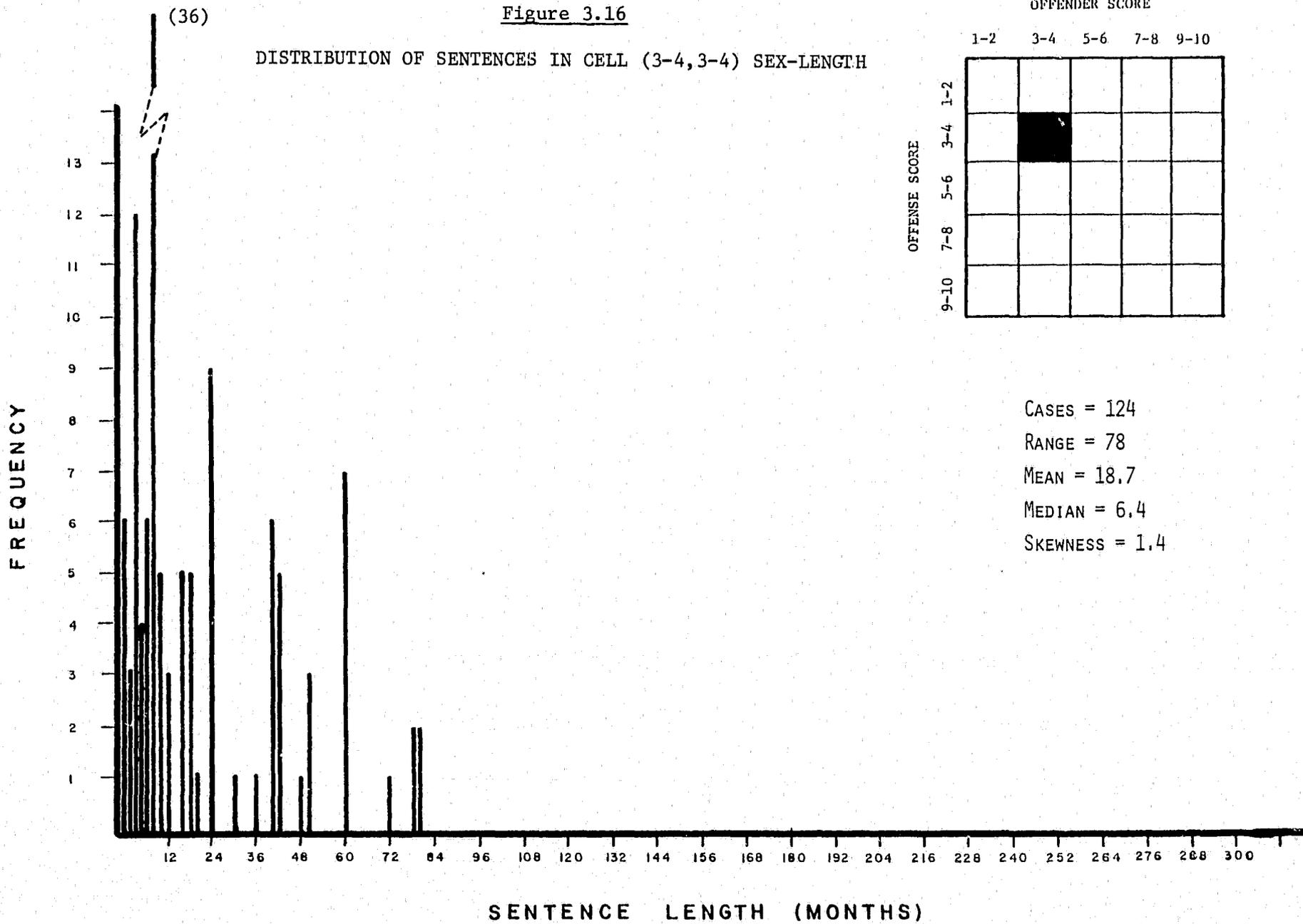
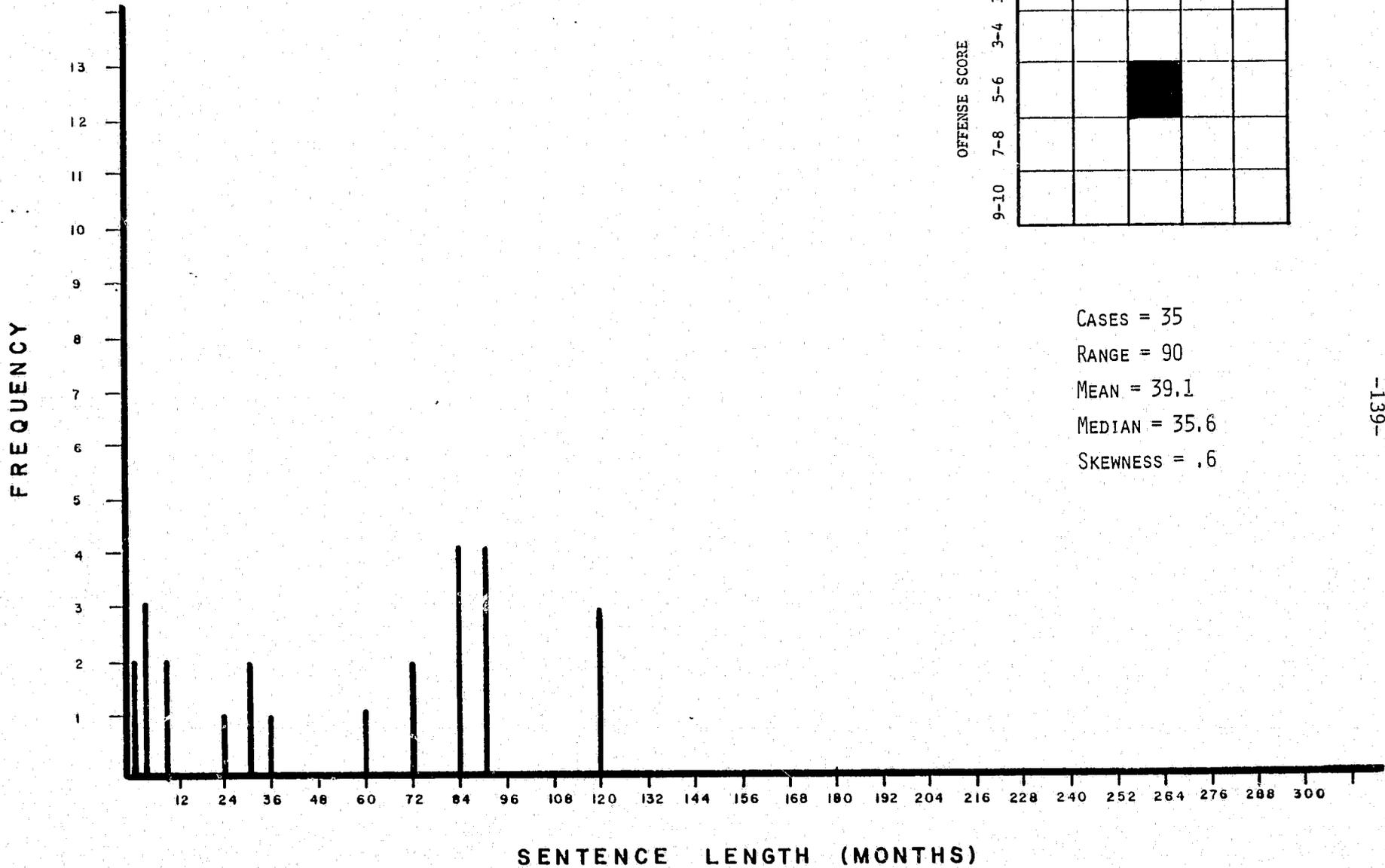


Figure 3.17

DISTRIBUTION OF SENTENCES IN CELL (5-6,5-6) SEX-LENGTH



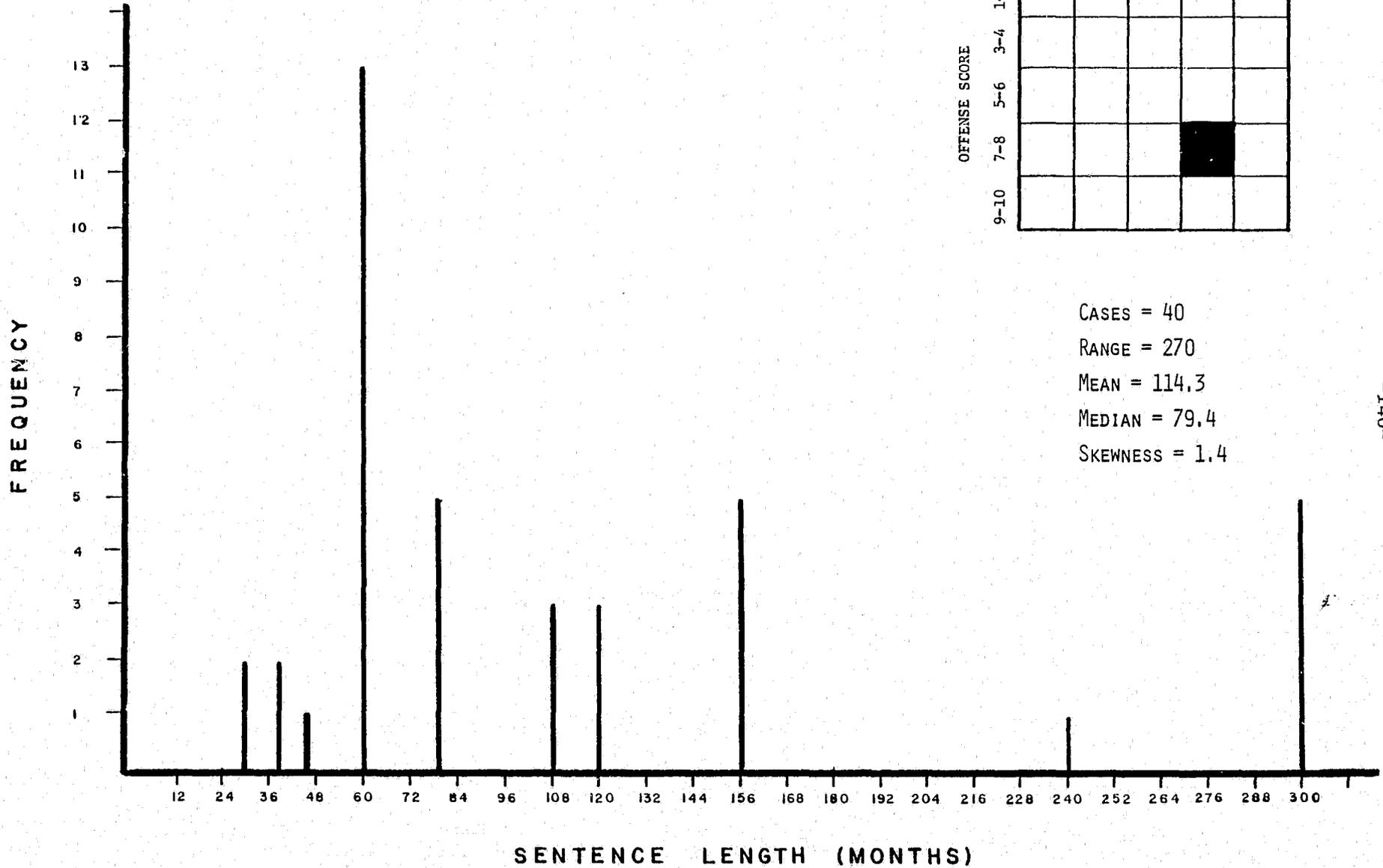
OFFENDER SCORE

	1-2	3-4	5-6	7-8	9-10
1-2					
3-4					
5-6					
7-8					
9-10					

CASES = 35  
 RANGE = 90  
 MEAN = 39.1  
 MEDIAN = 35.6  
 SKEWNESS = .6

Figure 3.18

DISTRIBUTION OF SENTENCES IN CELL (7-8,7-8) SEX-LENGTH



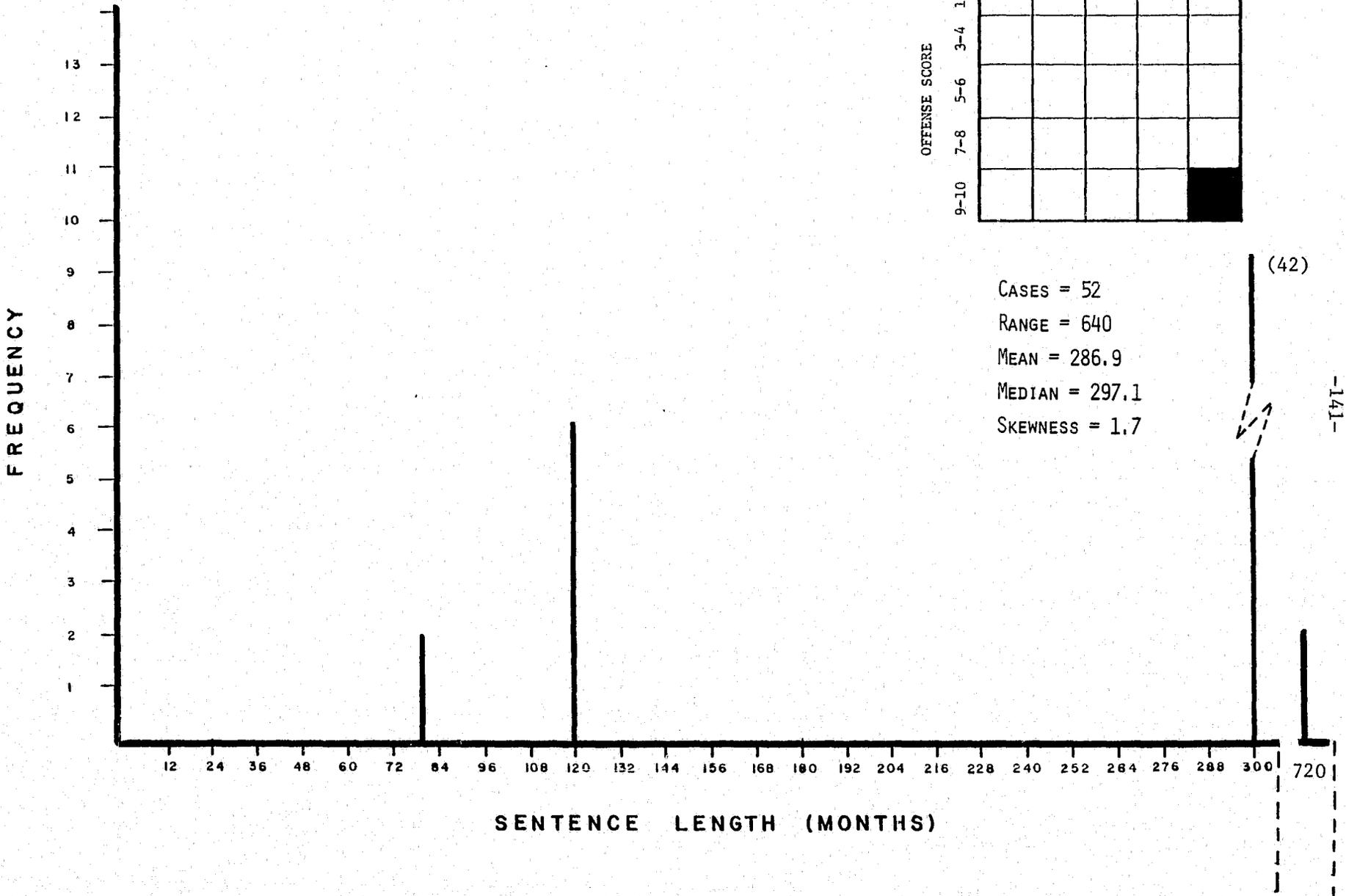
OFFENDER SCORE

	1-2	3-4	5-6	7-8	9-10
1-2					
3-4					
5-6					
7-8				■	
9-10					

CASES = 40  
RANGE = 270  
MEAN = 114.3  
MEDIAN = 79.4  
SKEWNESS = 1.4

Figure 3.19

DISTRIBUTION OF SENTENCES IN CELL (9-10,9-10) SEX-LENGTH



OFFENDER SCORE

	1-2	3-4	5-6	7-8	9-10
1-2					
3-4					
5-6					
7-8					
9-10					

CASES = 52

RANGE = 640

MEAN = 286.9

MEDIAN = 297.1

SKEWNESS = 1.7

(42)

-141-

and OFFENDER dimensions, almost any sentence (up to the statutory maximum) is possible. We would have to conclude that there is not much predictability in sentencing, since similar cases are being treated very differently.

The remainder of the LENGTH matrices are presented as Tables 3.33 through 3.41. They should be examined with an eye toward determining the coherence of sentencing practices. Remember that sex offenses have one of the higher  $R^2$ 's (see Table 3.18) and hence are more coherent/predictable than crime categories with lower  $R^2$ 's. Note especially in this regard the high degree of variability in sentences in the ROBBERY matrix.

Table 3.33 shows that more homicide offenders are "bunched up" along the middle scores (3-8) than in the extreme columns. Note that life sentences for homicides are found in every row, including row 1-2, although the life (300 month) sentence in that row (in cell 1-2,5-6) stands out dramatically from other minimum sentences that range from two weeks in jail to ten years. Incidentally, remember that a 0 (zero) value in LENGTH matrices stand for jail sentences of less than one month.

The lower right cells in the ASSAULT-LENGTH matrix (Table 3.34) implies heinous acts by offenders with long records and unstable backgrounds. The low levels of minimum sentences in other cells tend to indicate convictions for acts that are not related to professional criminal activity. The range of sentences within cells continue to give us pause, for example--cell (7-8, 7-8) ranging from six months to 6.6 years, or cell (9-10,7-8) ranging from six months to 30 years.

Consider Table 3.36 (DRUGS), row 3-4. Note that the medians for the three "highest" offender scores are the same, and that the upper level of minimum sentences in all five cells are very close. This implies that for this level of drug offense, which includes the largest number of convictions,

Table 3.33

HOMICIDE LENGTH MATRIX

		OFFENDER SCORE				
		1-2	3-4	5-6	7-8	9-10
OFFENSE SCORE	1-2	MEDIAN 6.2 MEAN 29.0 RANGE 1-120 NUMBER 21	12.3 24.8 0-120 72	37.8 72.0 6-300 22	5.6 11.6 2-40 16	12.0 12.0 12-12 2
	3-4	33.0 56.3 6-120 16	30.5 64.4 3-480 48	63.0 90.9 6-300 28	77.5 118.5 16-300 19	225.0 218.2 120-300 11
	5-6	66.0 103.2 36-180 5	59.3 90.0 3-300 53	117.4 132.2 6-300 33	294.4 194.2 36-300 27	120.0 120.0 120-120 2
	7-8	180.0 180.0 60-300 11	122.3 153.0 6-300 63	177.6 196.5 12-300 89	297.1 252.2 90-300 74	300.0 300.0 300-300 12
	9-10		294.5 302.7 108-480 36	279.0 271.2 90-600 26	300.0 318.3 226-480 29	295.3 373.5 90-960 31

Table 3.34

ASSAULT LENGTH MATRIX

		OFFENDER SCORE				
		1-2	3-4	5-6	7-8	9-10
OFFENSE SCORE	1-2	MEDIAN 16.0 MEAN 16.0 RANGE 16-16 NUMBER 1		12.0 11.4 6-15 5	7.6 7.4 6-8 7	
	3-4	2.3 7.5 0-24 59	3.3 6.9 0-32 61	3.2 5.0 0-16 46	11.6 12.4 0-54 223	12.1 13.6 1-24 44
	5-6	1.8 4.8 1-18 30	12.0 12.5 2-24 22	17.5 14.4 3-24 14	6.4 7.4 3-12 30	19.1 17.6 6-24 17
	7-8	7.6 10.1 2-30 31	6.0 6.0 6-6 11	12.3 20.4 3-60 33	15.7 29.4 1-80 58	39.6 40.9 36-60 11
	9-10	20.3 57.7 6-240 13		46.9 67.9 30-300 19	84.0 152.5 6-360 21	207.0 213.0 36-300 12

Table 3.35

ROBBERY LENGTH MATRIX

		OFFENDER SCORE				
		1-2	3-4	5-6	7-8	9-10
OFFENSE SCORE	1-2	MEDIAN 6.1 MEAN 13.4 RANGE 1-36 NUMBER 34	12.5 21.4 1-120 86	17.1 28.1 3-168 80	36.1 33.7 1-72 40	23.1 26.8 6-72 45
	3-4	6.4 21.1 0-120 41	24.4 33.5 0-120 115	35.8 37.2 3-120 81	61.8 83.4 12-180 61	41.0 48.2 6-84 47
	5-6	30.0 33.8 1-84 65	36.1 41.4 2-180 141	36.8 62.6 6-300 113	60.1 89.0 6-300 87	121.3 149.6 12-300 83
	7-8	23.4 45.9 6-300 61	60.0 74.5 6-180 95	57.6 62.9 12-180 118	61.8 87.0 12-240 85	141.9 162.9 24-480 76
	9-10	60.0 83.5 2-300 28	94.7 102.9 6-300 78	71.3 80.1 4-180 39	122.1 176.4 12-480 50	249.0 280.2 6-600 23

Table 3.36

DRUGS LENGTH MATRIX

		OFFENDER SCORE				
		1-2	3-4	5-6	7-8	9-10
OFFENSE SCORE	1-2	MEDIAN 4.0 MEAN 3.7 RANGE 1-6 NUMBER 12			5.7 5.5 4-6 .8	
	3-4	2.8 4.7 0-36 154	5.8 9.4 0-48 402	12.1 12.3 0-32 258	12.2 14.7 2-32 292	12.6 15.1 3-42 159
	5-6	6.1 9.6 0-30 32	6.5 13.3 0-48 54	4.7 11.1 1-54 25	24.0 24.3 1-48 6	42.0 42.0 24-60 8
	7-8	1.0 1.0 1-1 5	12.8 12.6 3-16 20			
	9-10	16.0 30.4 6-120 40	36.8 49.0 4-96 84	36.1 47.5 6-166 102	70.3 68.9 6-120 123	87.5 95.1 6-540 83

offender factors do not have much impact. Note that even for the most severe offense row (9-10) in every cell some offenders receive sentences less than one year.

The BURGLARY-LENGTH matrix (Table 3.37) can be used to illustrate a point about overlap. Column 7-8 describes 590 offenders with similar offender scores, indicating similar and fairly serious prior records and relatively low social stability. (See Table 3.11 for the significant variables that go into the offender score.) The medians of the five offense severity levels for these cases move up in increments that are quite coherent, except for the 9.7 month median in cell (5-6, 7-8). The upper ranges of minimum sentences also flow in steps that are plausible: 18, 36, 36, 78 and 120 months. Yet the lower range overlaps in every cell. The short jail sentence of two months for an offender(s) in cell (9-10, 7-8) may indicate a lack of meaningful alternatives to imprisonment, undue leniency, or different sentencing policies among different judges.

Larceny and fraud matrices (Tables 3.38 and 3.39) reflect the statutory upper limits of maximum offenses, "compressing" upper limits.

Table 3.40, the WEAPONS-LENGTH matrix is not collapsed. The very narrow band of offense scores (primarily in rows 2 and 8) is probably explained by the highly standardized nature of the bulk of weapons offenses which are carrying a concealed weapon and attempted CCW (see Table 3.1).

### E.3. Interpreting IN/OUT Sentence Matrices

In addition to sentencing tables for the LENGTH decision, we have developed empirical matrices for the IN/OUT decision as well. As with the LENGTH matrices, the IN/OUT tables are based entirely on the empirical data; that is, once we have constructed the vectors for the IN/OUT decision, we

Table 3.37

BURGLARY LENGTH MATRIX

		OFFENDER SCORE				
		1-2	3-4	5-6	7-8	9-10
OFFENSE SCORE	1-2	MEDIAN 2.9 MEAN 4.2 RANGE 0-16 NUMBER 118	3.2 5.7 1-16 211	8.6 8.8 1-16 91	11.8 11.0 4-18 80	11.6 11.2 6-22 84
	3-4	2.0 3.3 0-40 162	5.9 9.0 0-36 526	12.0 13.8 1-36 303	17.8 17.3 1-36 271	18.9 20.7 3-40 204
	5-6	5.5 5.0 0-24 50	11.5 10.7 1-36 81	12.5 16.3 4-40 71	9.7 14.6 3-36 25	42.7 42.1 28-55 21
	7-8	2.6 4.6 0-36 103	6.2 13.0 0-60 229	23.6 25.6 1-72 138	27.5 35.0 3-78 108	38.6 42.2 6-80 144
	9-10	3.0 12.4 0-60 57	19.8 22.8 0-96 205	24.0 27.4 2-90 138	36.0 44.1 2-120 106	59.1 54.7 2-180 129

Table 3.38

LARCENY LENGTH MATRIX

		OFFENDER SCORE				
		1-2	3-4	5-6	7-8	9-10
1-2	MEDIAN	1.7	2.5	3.0	17.7	15.3
	MEAN	1.9	9.4	4.5	14.3	13.6
	RANGE	0-3	1-45	2-9	1-24	2-16
	NUMBER	85	32	47	46	15
3-4	1.4	5.9	7.7	14.9	17.3	
	3.6	7.2	10.3	14.8	16.0	
	0-12	0-18	1-20	0-20	12-20	
	74	179	100	170	83	
5-6	1.3	5.7	22.0	24.0	35.0	
	2.5	5.4	22.6	24.0	35.0	
	1-6	2-12	12-36	24-24	30-40	
	15	35	22	3	6	
7-8	3.8	5.8	16.4	18.1	24.2	
	4.6	7.9	16.8	20.0	27.0	
	0-18	0-24	0-40	0-40	6-48	
	102	192	154	168	141	
9-10	3.0	5.0	16.5	18.5	38.2	
	3.3	9.2	20.2	21.1	38.1	
	0-6	3-30	3-36	12-40	36-40	
	29	16	48	28	21	

Table 3.39

FRAUD LENGTH MATRIX

		OFFENDER SCORE				
		1-2	3-4	5-6	7-8	9-10
OFFENSE SCORE	1-2	MEDIAN 1.0 MEAN 1.0 RANGE 1-1 NUMBER 3	3.3 3.9 0-11 68	2.1 5.7 1-12 32	7.3 8.2 3-16 5	
	3-4	1.5 1.7 1-3 18	2.2 3.8 0-16 79	11.9 11.0 3-24 90	14.0 21.8 3-42 26	34.9 28.0 5-40 46
	5-6		3.4 6.0 1-36 72	24.0 25.1 12-36 16	13.4 15.1 6-30 21	24.0 24.0 24-24 23
	7-8	2.5 4.9 1-12 8	6.3 9.5 1-36 73	25.5 27.0 3-48 11	18.0 17.2 8-24 10	35.0 33.0 6-84 20
	9-10	2.1 2.3 1-4 13	6.3 19.2 0-108 81	30.0 27.3 1-60 34	34.5 33.8 7-72 26	43.5 49.4 3-108 46

Table 3.40

WEAPONS LENGTH MATRIX

		OFFENDER SCORE										
		1	2	3	4	5	6	7	8	9	10	
OFFENSE SCORE	1	MEDIAN MEAN RANGE NUMBER	0 0 0-0 1									
	2		.7 1.7 0-6 28	4.9 4.1 1-6 33	12.9 10.3 1-20 41	6.0 6.0 6-6 10	16.0 16.0 16-16 11		12.9 13.5 1-20 62	15.0 15.0 15-15 6	12.0 12.0 12-12 10	
	3				5.0 5.0 5-5 1							
	4				5.0 5.0 5-5 1							
	5				5.0 5.0 5-5 1							
	6				5.0 5.0 5-5 1							
	7											
	8		5.8 5.7 5-6 13	1.4 2.2 0-6 34	6.2 6.8 0-13 56	6.0 5.9 0-12 59	3.3 3.2 0-6 19	12.2 16.5 0-36 47	22.0 20.6 12-30 44	22.9 21.8 4-36 49	29.7 29.4 18-30 20	39.1 36.7 24-40 27
	9				40.0 40.0 40-40 1							
	10				4.0 4.0 4-4 1							

Table 3.41

PROPERTY DESTRUCTION LENGTH MATRIX

		OFFENDER SCORE				
		1-2	3-4	5-6	7-8	9-10
OFFENSE SCORE	1-2	MEDIAN 2.2 MEAN 2.3 RANGE 2-3 NUMBER 4		14.0 14.0 14-14 3	12.0 12.0 12-12 10	
	3-4	2.7 2.5 1-3 21	5.4 4.3 0-9 27	1.3 1.4 0-3 18	5.6 4.5 1-6 11	21.4 20.0 6-30 12
	5-6	1.2 1.2 0-2 25	5.4 8.0 1-18 15	12.8 17.8 6-30 27	23.8 18.2 4-24 38	30.0 30.0 30-30 3
	7-8	12.0 12.0 12-12 5	11.5 14.2 1-36 12	3.0 3.0 0-6 4	27.0 27.0 6-48 4	48.2 44.6 24-50 17
	9-10	3.0 3.0 3-3 1	27.0 22.8 1-36 8	25.2 25.7 24-30 7	47.4 45.6 24-60 15	82.0 80.6 60-84 7

analysed all of the cases that fall within a given cell. The number of IN decisions is noted as well as the percentage of such cases. We have employed the same methodology in analysing IN decisions. The regression results from the SEX IN/OUT regression equation are used to complete an "Empirical Sentence Matrix Scoring Sheet" displayed as Table 3.42. The offense and offender scores are then standardized via the following transformation:

$$\text{Offense Standardized Score} = \frac{\text{OFFENSE} - .118}{.096}$$

$$\text{Offender Standardized Score} = \frac{\text{OFFENDER} - .09}{.23}$$

Utilizing these transformations we have constructed the SEX-IN/OUT sentence matrix presented as Table 3.43.

Our examination of the SEX table yields the following conclusions. There is considerable coherency in that the average percentage IN seems to rise in the anticipated directions. While there are several anomalies (e.g., (5-6,3-4), (5-6,5-6), (9-10,1-2)), the entire pattern appears to be well-ordered. The percentages are primarily determined by the offender score as the percentage IN moves up in the horizontal direction much more rapidly than in the vertical direction.

The results for HOMICIDE IN/OUT (Table 3.44) show many empty cells. We have little to offer by way of explaining the fact that offender columns 3-4, 5-6, and 9-10 are not represented. At a minimum, the data suggest that homicide offenders are more homogenous than most other offenders. Interestingly, there are no offenders in the most "serious" category, suggesting that homicide offenders fall below the most professional criminal ranks and the greatest recidivists. The data also suggest that such offenders are either not in the ranks of regular offenders at all (column 1-2), or have fairly

Table 3.42

EMPIRICAL SENTENCE MATRIX SCORING SHEET: SEX CRIMES - IN/OUT

Offense (A)	Var 160	_____	X	.00085	=	_____	
	Var 54	_____	X	.1392	=	_____	
				Total	+	_____	(A) + _____

Offense (B)	Var 27	_____	X	.0719	=	_____	
				Total	-	_____	(B) - _____

Offense Score \_\_\_\_\_

Offender (A)	Var 104	_____	X	.034	=	_____	
	Var 96	_____	X	.093	=	_____	
	Var 73	_____	X	.203	=	_____	
	Var 64	_____	X	.108	=	_____	
	Var 66	_____	X	.0925	=	_____	
	Var 67	_____	X	.045	=	_____	
	Var 60	_____	X	.042	=	_____	
	Var 94	_____	X	.133	=	_____	
				Total	+	_____	(A) + _____

Offender (B)	Var 71	_____	X	.085	=	_____	
	Var 108	_____	X	.318	=	_____	
				Total	-	_____	(B) - _____

Offender Score \_\_\_\_\_

STANDARDIZED SCORE =  $\frac{\text{Offense or Offender Score} - \text{Mean}}{\text{Standard Deviation}}$

Offense Standardized Score =  $\frac{\text{Offense Score} - .118}{.096}$  = \_\_\_\_\_

Offender Standardized Score =  $\frac{\text{Offender Score} - .09}{.23}$  = \_\_\_\_\_

Look at Standardization Scale

Final Offense Score = \_\_\_\_\_

Offender Score = \_\_\_\_\_

Go to Grid

Table 3.43

SEX - PERCENT IN/OUT MATRIX

		OFFENDER SCORE									
		1-2	3-4		5-6		7-8		9-10		
OFFENSE SCORE	1-2	PERCENTAGE "IN" 16%	25%		80%		81%		94%		
		TOTAL N 73	N "IN" 12	102	25	56	45	37	30	47	44
	3-4	25%	35%		73%		90%		100%		
		16	4	82	29	33	24	51	46	23	23
	5-6	33%	91%		45%		93%		100%		
	21	7	22	20	20	9	14	13	27	27	
7-8	52%	59%		77%		92%		100%			
	56	29	79	47	56	43	72	66	43	43	
9-10	20%	81%		88%		100%		100%			
	10	2	57	46	49	43	72	72	52	52	

Table 3.44

HOMICIDE - PERCENT IN/OUT MATRIX

		OFFENDER SCORE				
		1-2	3-4	5-6	7-8	9-10
1-2	PERCENTAGE "IN"				54%	
	TOTAL NUMBER				65	
96						
3-4	44%				86%	
	75				94	
5-6	54%				91%	
	11				78	
7-8	76%				97%	
	63				408	
9-10	100%				100%	
	16				45	

substantial records (column 7-8). This interpretation does not violate criminological knowledge about homicide offenders. The high rates of incarceration tend to show that the heinous consequences of homicide offenses account for these decision patterns. As for the lower rate of incarceration in the upper-left cells, these may be explained not only by the low severity of the scores but also by the fact that for several of the offenses in the homicide category, death is not necessarily the resulting harm in every case (see Table 3.1).

The only other offense category with an entire empty line of cells is weapons offenses (Table 3.51). In homicide three columns are empty, implying homogenous offenders. For weapons, one row is empty and two other rows are either nearly empty (1-2) or contain a relatively small number of cases (7-8). The WEAPONS IN/OUT matrix, consistent with the WEAPONS LENGTH matrix (Table 3.41), implies that the offenses are homogenous, and this is consistent with Figure 3.10. Note in Table 3.51 that judges take offender characteristics into account by bifurcating offenders into two groups. A possible unanswered question regarding weapons is whether the high incarceration cells contain cases where other kinds of offenses were charged but dropped. Note that our analysis covers only primary convictions so that the weapons offenses analysed are cases where the weapons conviction was the only or the most serious conviction.

The ASSAULT IN/OUT matrix (Table 3.45) implies a line where, with one exception, percentages IN jump dramatically from well below 50% to substantially over 50% in adjacent cells (e.g., from 21% to 86%, from 26% to 74%, from 25% to 77%, etc.). This may indicate that the extent of injury, or the professionally criminal nature of the act/offender creates a clear sentencing policy dividing line.

Table 3.45

ASSAULT - PERCENT IN/OUT MATRIX

		OFFENDER SCORE				
		1-2	3-4	5-6	7-8	9-10
1-2	PERCENTAGE "IN"					
	0%					
3-4	TOTAL NUMBER					
	18					
5-6						
	5%					
7-8						
	16%					
9-10						
	25%					

		1-2	3-4	5-6	7-8	9-10
0%		0%		0%	21%	86%
TOTAL NUMBER	18	104	63	47	15	
5%	36	19%	35%	41%	54%	
16%	31	173	122	118	31	
37%		26%	79%	100%		
74%		41	78	73		
83%		36%	74%	83%	96%	
96%		130	62	30	57	
100%		77%	86%	96%	100%	
	28	75	65	63	55	

Table 3.46

ROBBERY - PERCENT IN/OUT MATRIX

		OFFENDER SCORE				
		1-2	3-4	5-6	7-8	9-10
1-2	PERCENTAGE "IN"		0%	60%	59%	100%
	TOTAL NUMBER	117	21	99	99	12
3-4	35%		52%	77%	93%	90%
	158		27	105	179	42
5-6	69%		92%	99%	93%	100%
	54		26	93	139	40
7-8	65%		100%	95%	96%	100%
	130		19	119	341	99
9-10	84%		100%	100%	100%	100%
	25		23	63	154	34

Table 3.47

DRUG - PERCENT IN/OUT MATRIX

		OFFENDER SCORE				
		1-2	3-4	5-6	7-8	9-10
OFFENSE SCORE	1-2	PERCENTAGE "IN" 0%	24%	39%	69%	0%
	3-4	TOTAL NUMBER 2	41	61	16	2
3-4		13%	15%	25%	28%	91%
5-6		340	620	362	354	345
5-6		30%	23%	59%	62%	69%
7-8		174	232	163	164	94
7-8		16%	33%	61%	68%	93%
9-10		121	200	110	104	118
9-10		23%	65%	87%	73%	95%
		56	107	114	179	187

Table 3.48

BURGLARY - PERCENT IN/OUT MATRIX

		OFFENDER SCORE				
		1-2	3-4	5-6	7-8	9-10
OFFENSE SCORE	1-2	PERCENTAGE "IN" 19%	19%	45%	72%	87%
	3-4	TOTAL NUMBER 78	125	89	76	86
5-6	3-4	20%	41%	55%	78%	90%
	5-6	463	467	457	480	440
7-8	5-6	13%	41%	54%	69%	92%
	7-8	206	313	202	297	211
9-10	7-8	19%	46%	73%	76%	92%
	9-10	353	428	305	384	262
		31%	61%	83%	91%	92%
		137	158	101	168	105

Table 3.49

LARCENY- PERCENT IN/OUT MATRIX

		OFFENDER SCORE				
		1-2	3-4	5-6	7-8	9-10
1-2	PERCENTAGE "IN" 3%	8%	38%	25%	100%	
	TOTAL NUMBER 96	132	81	124	28	
3-4	13%	31%	35%	46%	98%	
	135	271	248	103	107	
5-6	12%	35%	49%	51%	96%	
	154	221	148	241	160	
7-8	23%	32%	63%	80%	92%	
	135	298	141	234	285	
9-10	12%	55%	60%	93%	89%	
	77	132	110	68	56	

**CONTINUED**

**2 OF 4**

Table 3.50

FRAUD - PERCENT IN/OUT MATRIX

		OFFENDER SCORE				
		1-2	3-4	5-6	7-8	9-10
OFFENSE SCORE	1-2	PERCENTAGE "IN" 1%	10%	11%	26%	71%
	3-4	TOTAL NUMBER 72	60	81	30	7
OFFENSE SCORE	3-4	2%	19%	36%	73%	76%
	5-6	109	153	114	80	72
OFFENSE SCORE	5-6	0%	15%	53%	40%	82%
	7-8	82	104	62	55	102
OFFENSE SCORE	7-8	5%	40%	47%	77%	76%
	9-10	85	165	140	133	123
OFFENSE SCORE	9-10	14%	40%	68%	73%	98%
		7	43	50	42	44

Table 3.51

WEAPONS - PERCENT IN/OUT MATRIX

		OFFENDER SCORE				
		1-2	3-4	5-6	7-8	9-10
1-2	PERCENTAGE "IN"	0%			37.5%	
	TOTAL NUMBER	10			8	
3-4	0%	3%	23%	25%	65%	
	111	496	258	175	91	
5-6						
7-8	0%	38%	0%	0%	100%	
	14	29	21	6	64	
9-10	6%	16%	25%	57%	100%	
	106	263	111	147	156	

Table 3.52

PROPERTY DESTRUCTION - PERCENT IN/OUT MATRIX

		OFFENDER SCORE				
		1-2	3-4	5-6	7-8	9-10
1-2	PERCENTAGE "IN"					
	0%	9%		0%	0%	33%
3-4	TOTAL NUMBER	9	33	2	16	6
	3%	14%		48%	100%	100%
5-6	75	21		25	12	32
	0%	43%		27%	100%	100%
7-8	10	30		11	13	26
	12%	50%		70%	96%	100%
9-10	24	24		17	50	6
	50%	68%		100%	100%	100%
	4	19		28	27	20

The other matrices may be visually examined in order to discern patterns. While these patterns are interesting and somewhat indicative of the crucial incarceration decision, an important limitation should be kept in mind. As we noted above in the regression-prediction analysis for IN/OUT decisions (see Tables 3.5, 3.7, through 3.15), the ability of the IN/OUT empirical model to predict the actual sentence IN is rather poor. For each cell in most crime categories, it is as likely that we would not be able to predict which cases are IN, as that a correct prediction would be made. Thus, even though the average percentages move in a generally smooth (monotonic) fashion, the poor predictive power of these IN/OUT matrices can be deceiving if a judge were to use them to determine whether a case with a certain score should actually be IN or OUT under the model.

## F. SUMMARY AND CONCLUSIONS

This chapter presents research into sentencing patterns in order to develop sentencing guidelines. Of the more than 400 variables available to us, approximately 110 were deemed to be potentially relevant determinants of sentencing. These factors were grouped into offense and offender characteristics. We made every effort to exclude potential sources of disparity and to include factors that are actually used. The makeup of the data set thus constructed has considerable face validity.

Having located a set of relevant variables, our attention turned to the specification of a model of judicial decisionmaking. Equation (1) provides a tentative approximation to actual decision rules. The major implications of the model are that judges take a number of offense and offender variables into account in a systematic fashion, weight the factors to reflect their overall salience, and then add the weighted characteristics together to determine the sentence. The construction of a single model for the IN/OUT and LENGTH decisions for each crime category means that we have been assuming that offense and offender characteristics are invariant with respect to both the individual being sentenced and to the judge doing the sentencing, that the factors have the same relative salience for all individuals and judges, and that sentences can be predicted within tolerable limits. In other words, we assumed that there are coherent sentence patterns. The error term, which reflects the portion of each sentence that is due to factors outside the purview of our model, was ignored in the search for patterns. The final functional form for the explanatory model in each crime category was determined through strictly empirical procedures as dictated by our Steering and Policy Committee. While there are some problems with such a procedure, we believe the final models are plausible representations of the decision rules used by sentencing judges.

Having completed this, it was possible to begin to address the key research question: are there any patterns in judicial sentencing? Turning first to the IN/OUT decision, there are several conclusions to be drawn concerning the presence of patterns. First, in terms of the individual variables that are included in each category's model, it seems that judicial decisions are being based on a large number of elements in the fact situation. In addition, note that while there are some variables which are important in most every crime category, there are some variables which only show up in one or two categories. This seems to suggest that the sentencing decision rules do vary from one crime category to another. Second, despite the relatively large number of explanatory variables in each model, the overall equation goodness of fit is not very high. Thus, while there are statistically significant patterns, they are not pronounced. This latter point is underscored when it comes to using the model as a predictive device; it does a poor job of predicting which individuals are sent to jail/prison. Overall, we must conclude that the patterns which have been located are somewhat faint. It is worth noting that the offender characteristics are by far the most important determinants of whether a person is given an IN or OUT sentence. This suggests that the prior record and social stability of an individual are the primary determinants of incarceration.

Turning to the LENGTH decision we reach similar conclusions. First, the range of variables affecting sentencing appears to be more limited for the LENGTH decision; that is, there are on average fewer variables being used by judges. As with the IN/OUT decision, there are a number of variables which appear in several models and a number which appear in only one or two. This seems to indicate that wide number of "facts" are being used by judges in deciding a sentence. Second, the overall goodness of fit indicators suggest

that 50 to 60 percent of the variance is being accounted for by the models. While this is quite good for a large cross-sectional data set, it does reflect the fact that a great deal of variation is not being accounted for by our models. As with the IN/OUT decision, the patterns that have been located are rather faint. Third, the offense characteristics are the most important determinants of the LENGTH decision for violent and drug offenses, whereas the offender characteristics are the most important determinants for the remaining nonviolent crime categories.

With respect to both the IN/OUT and LENGTH decisions, the following conclusions can be drawn from the empirical analyses. First, the potentially relevant variables that we located do appear to have statistically significant impacts on sentencing. Second, there are patterns in 1977 sentencing decisions in Michigan. Furthermore, the patterns can be explained by substantively plausible variables. There is reason, however, to qualify this conclusion by noting that the patterns are discernable but "fuzzy." Third, the two dimensions of judicial decisionmaking appear to have a differential impact on sentencing. This means that they are not being weighted equally by the judges.

These empirical results served as the basis from which we constructed sentence matrices. In addition to the policy application of matrices as starting points for sentencing guidelines grids, they fulfill several research functions. First, they allow us to see what our models are saying about the presence/absence of patterns in sentencing. Second, we approached the development of sentence matrices as a means to introduce key issues, provide a graphic answer to the question of how predictable judges' decisions are, and to begin to show how coherency might be introduced into sentencing decisions.

The sentencing matrices, both for the IN/OUT and LENGTH decisions,

provide a clear and graphic display of the extent of the unpredictability of sentencing. We underscore the fact that the matrices presented herein provide no additional statistical information to that provided in the regression results; they are simply another way to display the results. As noted repeatedly in discussing these results, the matrices document the paradoxical conclusion of coherence and incoherence. While there are definitely some patterns, the patterns are faint, i.e., it is difficult to say conclusively what the patterns are. It is sufficient to say that the matrices provide a visual indication of the extent to which there are patterns and the extent to which there are contradictions in felony sentencing.

We stress that the perception of patterns lies in the eye of the beholder. To draw conclusions from either the regression results or the sentencing matrices involves the two capabilities of insight and ingenuity. The location of coherent patterns is a partially subjective enterprise, but one that is informed by the data.

Whatever patterns one ultimately sees in the matrices presented are likely to be fuzzy. This is, we believe, the result of many judges making decisions carefully and rationally but without any explicit guidance. Decision rules do appear to be followed, but they are not very exact nor widely accepted. Without structure the rules will remain implicit and in all likelihood the sentencing patterns emerging will continue to be fuzzy. The basis for agreement exists; all that remains to be done is to clarify and structure the existing rules.

NOTES

1. The paradigm is the decision and feedback structure of the Federal Parole Commission. See 18 U.S.C. secs. 4201-4218; 28 C.F.R. secs. 2.1-2.59; P. Hoffman, "A Paroling Policy Feedback Method," in W. Amos and C. Newman, eds., Parole: Legal Issues/Decision-Making/Research 343-362 (1975).
2. See Zalman, "Making Sentencing Guidelines Work: A Response to Professor Coffee," 67 Georgetown L. J. 1005, 1012-13 (1979).
3. "The basic aim of science is theory. Perhaps less cyptic, the basic aim of science is to explain natural phenomena. Such explanations are called theories." Fred N. Kerlinger, Foundations of Behavioral Research, Second Edition 8 (1973).
4. Paul R. Reynolds, A Primer in Theory Construction 4 (1971).
5. Leslie T. Wilkins, Social Deviance: Social Policy, Action, and Research 11, 13 (1964).
6. Claire Selltiz, Marie Jahoda, Morton Deutch, and Stuart Cook, Research Methods in Social Relations (Revised Ed.) 2 (1959).
7. The entire quotation concerning sentencing policy, which Mannheim defines as "the manner in which the courts when sentencing an offender use the discretion left to them by the law" is:  
  
Having a sentencing policy means, however, not merely using one's discretion but using it in a specific and consistent manner, with some ultimate object in view. Taken in a formal way, this need not imply more than consistency alone. Focused on the individual offender, this object of sentencing aims, first, at the most appropriate sentence--whatever that may be--for each of his offenses taken in isolation and, second, at the most appropriate treatment --whatever it may be--for the whole of his criminal activities, stretching perhaps over the larger part of his life. Focused on the criminal population as a whole, the concept of a sentencing policy means that there should be a consistent correlation--of whatever kind it may be--between the treatment allotted to one offender and that allotted to others. Whether this relation is or should be one of equality or something else is not implied in the neutral concept of a sentencing policy; rather, this is a philosophical-ethical and penological question of first importance. Of course, consistency is not enough for a good sentencing policy; a system of more than formal values is also needed. H. Mannheim, "Some Aspects of Judicial Sentencing Policy," 67 Yale L. J. 961, 962 (1958).
8. Ibid., p. 970.
9. G. Everson, "The Human Element in Justice," 10 J. Crim. L. & Crim'y. 90 (1920)
10. See e.g., John Hogarth, Sentencing As A Human Process (1971)

11. See e.g., M. Hindelang, "Equality Under the Law," 60 J. Crim. L., Crim'y. and P.S. 306 (1969); J. Gibson, "Race As A Determinant of Criminal Sentences: A Methodological Critique and a Case Study," 12 Law & Soc. Rev. 455 (1978).
12. See J. Hagen, "Extra-Legal Attributes and Criminal Sentencing: An Assessment of a Sociological Viewpoint," 8 Law & Soc. Rev. 357 (1974).
13. See M. Wolfgang and M. Riedel, "Race, Judicial Discretion, and the Death Penalty," 407 Annals of Amer. Acad. Pol. & Soc. Sci. 119 (1973).
14. A. Gelman, J. Kress, and J. Calpin, Establishing A Sentencing Guidelines System: A Methods Manual 15-17 (1977).
15. The length of sentence results reported throughout this report are minimum sentences which in most cases represents the only meaningful use of discretion by judges. Under the Michigan indeterminate sentence law, M.C.L.A. sec. 769.8, the judge determines whether or not to incarcerate and has discretion to set the minimum term. The maximum term is the statutorily fixed maximum and may not be modified by the court. Since 1972 judges have not been able to fix minimum sentences greater than 2/3 of the maximum, People v Tanner, 387 Mich 683, 199 NW2d 202 (1972). Certain crimes are punishable with life or a term of years. In such case the judge may fix a life sentence or a term of years with a judge-determined minimum and maximum term. However, a minimum term of years to life is not permitted. In the term of years sentence the judge must apparently keep the minimum to a ceiling of 2/3 the judge-set maximum.
16. According to the Michigan Department of Corrections, 1976 felony sentences show this pattern:

prison	38.6%
probation	55.0%
jail/fine	6.4%
	<hr/>
	100.0%

The difference between the Department's figures and the Project's may be accounted for in this way:

- a) The MFSP sampled all sentences of Circuit and Recorder's Courts, including misdemeanor sentences to reduced charges. This may tend to explain the 9% difference in prison rates, since with misdemeanor sentences added into the total, the prison rate should be lower in the MFSP sample.
- b) The Department counts as probation all sentences to probation, even if jail is a condition. The jail/fine category applies to sentences where there is no order of probation. The MFSP places a sentence in the jail category if a person is sentenced to jail whether or not there is an order of probation. "Out" refers to all non-incarcerative sentences, including fine, probation (without jail), and suspended sentences.
- c) While the differences in these figures "make sense," we do not have precise figures on how the MFSP sample "matches" the Corrections Department count, nor do we know the MFSP sampling error in regard to this aspect.

17. This assumption was made in the sentencing guidelines feasibility study. See L. Wilkins, J. Kress, D. Gottfredson, J. Calpin and A. Gelman, Sentencing Guidelines: Structuring Judicial Discretion 1 (1978).
18. This analysis is presented in Appendix G, Statistical Methodology.
19. Compare these results with James Eisenstein and Herbert Jacob, Felony Justice: An Organizational Analysis of Criminal Courts 283 (stepwise multiple regressions on length of felony sentence in samples for Baltimore,  $R^2 = .66$ ; Chicago,  $R^2 = .66$ ; and Detroit,  $R^2 = .50$ ) (1977); and Palmer and Zalman, "People v. Tanner: A Legal and Empirical Study in Sentencing," 14 N.E.L. Rev. 82, 105-110 (linear regressions on length of prison sentences in Michigan, 1971 to 1973 for robbery,  $R^2 = .68$ ; burglary,  $R^2 = .47$ ; auto theft,  $R^2 = .48$ ; assault/murder,  $R^2 = .97$ ) (1978).

CHAPTER 4

SENTENCE VARIATIONS AND DISPARITY IN MICHIGAN

A. DISPARITY RESEARCH

A definition of disparity must of necessity combine ethical and empirical considerations. Like Wilkins, we feel that empirical research on disparity can at best identify variation in sentencing. Having located and partitioned each variation, one can apply ethical considerations to determine whether certain types of variation is good/bad or acceptable/unacceptable.

In this chapter we attempt to locate and measure the magnitude of the unexplained variation. The adjective "unexplained" may be a bit misleading, however, and deserves further clarification. In order to identify the unexplained portion of the total variation it is necessary to identify that portion which is explained. Throughout this research project we have assumed that sentences should vary upward by severity of conviction offense, heinousness of the criminal facts, motive (deliberateness), resulting harm, offender's prior record, and the lack of stability in the offender's background. Any variation that can be accounted for by such factors is called explained. All other variation is labeled unexplained and becomes the focal point for our disparity research.

Within the unexplained variation there are at least two distinct types of disparity. First, there is that portion of the variation which, though unexplained by offense and offender variables, can be explained by variables such as the offender's race or economic status. Second, there is that portion of the variation which cannot be reduced; that is, it does not seem to be related in a systematic fashion to any other variables. We investigate both types of unexplained variation herein and the magnitude of each serves as a basis from which a conclusion concerning sentencing disparity can be drawn.

What do we know about sentence disparity from earlier studies? In this section we trace two lines of investigation: studies of judicial variation in sentencing and studies of unwarranted disparity, especially the racial factor in sentencing. (This division is somewhat artificial since many studies overlap and others do not fit neatly into this framework.) While the following conclusion is somewhat overstated, investigations tend to show consistently that there is unexplained variation in sentences, i.e., that sentences vary substantially among judges for no apparent reasons. On the other hand, studies of unwarranted variation are mixed, with findings on both sides of the fence as to racial disparity.

Two of the earliest studies of sentence disparity focused almost exclusively on the judicial factor (i.e., the variation of sentences among judges) and both found that different judges utilize sentencing alternatives differentially.<sup>1</sup> Everson studied 41 New York magistrates' sentencings in intoxication cases and found great variations in suspended sentences (0% to 83.2%), fines (one magistrate fined the two cases before him; for the judges with more substantial caseloads, fines ranged from 6.7% to 79.7%), and workhouse and reformatory sentences (ranged from 5.2% to 41.6%). Gaudet et al. found that the percentage of prison sentences ranged from 33.6% to 57.7% among six New Jersey judges sentencing felonies such as rape, larceny, robbery, and burglaries, among other crimes. Unfortunately, virtually no controls were introduced in these studies, thus rendering their conclusions open to question. However, the huge sample in both studies gives some indication that the judges' personal formulation of sentencing policy is a significant factor in sentencing, over and above offense and offender variables.

A more sophisticated analysis by Green introduces controls in a series of cross-tabulations. A sample of 1437 felony and misdemeanor sentences

handed down by 18 Philadelphia judges in 1956-57 showed initially the wide variation of sentences observed in earlier studies.<sup>2</sup> Green then controlled for number of bills of indictment (a rough measure of severity) and prior record combined into an index,<sup>3</sup> and found that "when cases are patently either mild or grave, the standards for sentencing are clearly structured and generally shared by the judges. As the cases move from the extreme of gravity or mildness toward intermediacy, judicial standards tend to become less stable and sentencing increasingly reflects the individuality of the judge."<sup>4</sup> However, independent assessment of Tables 44, 45, and 46 for low, medium and high index scores show ranges of non-imprisonment from 29.7% to 82.4%, 0% to 35.8%, and 0 to 50% respectively. While there is more clustering in the low and high tables, these tables tend to support the view that individual judge's sentencing policy is an important factor.<sup>5</sup>

Perhaps the most impressive study is the 1971 study of all Ontario magistrate's sentencings by Hogarth. He constructed a "phenomenological model" of sentencing by examining not only the legal and extra-legal variables (input) and sentences (output) but also the "minds of the judges" by exploring their personal backgrounds and attitudes. He generally showed a correlation between attitudes and behavior with more punitive attitudes highly correlated with harsher sentences.<sup>6</sup> Although Hogarth's analysis is subject to some question of subjectivity (e.g., relying on a phenomenological approach and heavily on factor analysis), he does compare the predictive power of a "black box" model to his phenomenological model and the latter provides better predictions of sentences.<sup>7</sup> In sum, Hogarth supports the contention that personal differences between judges make a difference in sentencing and that these differences reflect fairly coherent internal policies held by judges.

A type of experiment popular at sentencing councils has the participant judges sentence a common hypothetical case(s) and wide variations of sentences are often reported. The most elaborate study of this kind was conducted among approximately 48 federal district judges in the Second Circuit (Connecticut, New York, and Vermont). They were sent twenty actual presentence reports (modified slightly) and asked to provide sentences. The results of 20 cases are displayed, showing the median sentence, the twelfth most and twelfth least severe, the sixth most and sixth least severe, and the most and least severe sentences for each. This creates three ranges, one of 48 cases, one of 36 cases, and one of 24 cases (when all 48 responses are made). Examining the results, Partridge and Eldridge conclude that "Table 1 clearly shows a wide range of disagreement among Second Circuit judges about the appropriate sentences in the twenty cases . . . For the most part, the pattern displayed is not one of substantial consensus with a few sentences falling outside the area of agreement. Rather, it would appear that absence of consensus is the norm."<sup>8</sup> While the differences do not appear quite so large in the middle range (24 judges), the ranges from highest to lowest severity are quite broad and the authors point out that in 16 of 20 cases there was disagreement as to whether incarceration was or was not appropriate. Also, another part of the Second Circuit study shows that individual judges were not internally consistent.<sup>9</sup>

A study of the sentencing councils of two federal district courts by Diamond and Zeisel shows that, in approximately 30% of each sample, the three judges on the councils differed as to whether or not to incarcerate. As for differences between the three judges on the panels regarding length, in one district the average disparity was 30.7% and in the other 45.5%.<sup>10</sup> This study confirms judge disparity and goes on to show that sentencing councils have a minimal impact on reducing disparity.

A recent study by Gibson of eleven judges in one jurisdiction shows that introducing controls causes racial variation to disappear in the aggregate. However, when a standardization procedure is applied, five judges were in a middle range indicating no significant racial variation on a discrimination index, three were very high indicating "pro-black" variation, and three were very low indicating "pro-white" variation.<sup>11</sup> Gibson's procedures show the importance of examining judicial variation despite aggregate findings.

Numerous studies have inquired into the racial factor in sentencing. The findings are somewhat mixed. Four early studies (pre-World War II data) reported by Green all show racial-ethnic differences in sentencing with Negroes, Mexicans and foreign-born whites.<sup>12</sup> According to Green, none of these studies maintained sufficient statistical controls.

A 1969 survey of eight studies of economic and racial disparity concluded that racial differences in sentences were found in those examining Southern jurisdictions, in the older studies, and in studies of violent as opposed to property crimes.<sup>13</sup>

Another survey of 20 studies by Hagen, including some of the studies previously reviewed, contained a methodological critique and a reevaluation of their data to measure association of variables. He found that the statistically significant relationships indicating racial bias in eight studies all yielded extremely small measures of association indicating that the racial factor did not have a great impact in those studies.<sup>14</sup> On the other hand, four out of five studies of sentencing in interracial capital crimes found racial disparity; notably, all four evaluated practice in southern states, partially confirming Hindelang's evaluation.<sup>15</sup> Hagen concludes: "The central finding of this review of past research is that there is generally a small relationship between extra-legal attributes of the offender and sentencing

decisions,"<sup>16</sup> thus indicating the need for more careful, controlled studies of disparity.

Among three recent studies, racial differences are found in one, where the data is disaggregated at the judge level. Clarke and Koch found that in burglary and larceny sentences in North Carolina, offense, criminal history, and promptness of apprehension have predictive associations with prison sentences and there is "no evidence that the defendant's age, race, or employment status had an important relationship to prison outcome." However, "low income defendants were more likely to go to prison, other things being equal, than high-income defendants."<sup>17</sup> Palmer and Zalman, in a regression analysis of length of Michigan prison sentences (1971 to 1973) for robbery, burglary, auto theft and assault/murder offenses, found that race is not statistically significant, that educational level is significant only in assault/homicide and that legitimate occupational level is not significant. Race was not significant, even when disaggregated to separate white and black offenders geographically (sentenced in the Detroit Recorder's Court vs. the other courts in the state).<sup>18</sup> The importance of disaggregation in disparity research is brought home by Gibson's study of the Fulton County (Georgia) Superior Court commented on above.<sup>19</sup> Gibson shows that overall analysis produces findings of no racial disparity, but closer analysis indicated that this masked three "policies" among eleven judges: evenhanded, pro-white, and pro-black. Presumably, only the first pattern (associated with five of the eleven judges) is proper.

Thus, to briefly summarize, disparity studies tend to show that sentences vary by judge (i.e., unexplained variation) but findings of racial differences in sentencing (i.e., unwarranted variation) produce a confused picture overall.

B. DISPARITY ANALYSIS

B.1. Introduction

Throughout our analysis of sentencing patterns in Chapter 3, we made use of the following model of judicial sentencing:

$$S_i = \sum \alpha_j A_{ij} + \sum \beta_k B_{ik} + e_i \quad (1)$$

where

$S_i$  = sentencing decision

$A_{ij}$  = offense-related characteristics

$B_{ik}$  = offender-related characteristics

$e_i$  = error term

$\alpha_j$  = weights attached to offense characteristics

$\beta_k$  = weights attached to offender characteristics

The major assumption underlying the model is that judges take a number of offense and offender characteristics into account in a systematic fashion, weight the factors to reflect their overall salience, and then add the weighted characteristics together. The implication is that the higher the sum, the more severe the sentence. The sentencing system can be labeled coherent as long as there are stable and visible decision rules which are applied in a consistent fashion to all individuals. In other words, the sentencing system will be identified as coherent if (1) there is a stable set of factors used to determine an individual's sentence (i.e., the factors are invariant with respect both to the individual being sentenced and to the judge doing the sentencing), (2) the factors have the same relative salience as reflected by the regression weights, and (3) the sentence could be predicted (within tolerable error limits) by someone who had knowledge of the fact situation.

Provided that sentences are assigned in a coherent fashion, it should be the case that the variation in sentences will be systematic. In Chapter 3

we focused on the systematic part of the equation; i.e.,

$$\sum_j \alpha_j A_{ij} + \sum_k \beta_k B_{ik},$$

and found some evidence to support the proposition that sentencing is somewhat coherent. It was noted throughout Chapter 3, however, that there is a considerable amount of variation that cannot be explained by our models.

The error term in equation (1) reflects the difference between the actual decision and that which would be predicted using the fact situation and the regression weights. The variability of  $e_i$  relative to the variability of  $S_i$  (i.e.,  $R^2$ ) provides one with an indication of the predictability of sentencing as well as an index of the goodness of fit of the model. If there is a large gap between the actual and predicted decision, this is an indication that, relatively speaking, the decisionmaking process is inconsistent or arbitrary.

In this chapter attention is focused on in-depth analyses of the unsystematic variation in sentencing. Upon completion of this research, we will have examined both the regularity and the irregularity in sentencing.

Coherency is important to the sentencing process because its absence suggests the presence of disparity. As an analytic term, disparity refers to those instances in which there is a relatively large amount of variance left unexplained by plausible and relevant offense and offender characteristics. The conclusion one might draw from the presence of a larger nonsystematic component is that each defendant is being treated capriciously i.e., there are no clear standards or criteria of fairness. It is also the case that disparity occurs whenever there are patterns in the unexplained variation. By construction the unexplained variation is that which is unexplained by offense and offender characteristics. This does not rule out the possibility that there are some extra-fact-situation factors which have an impact on sentencing.

It seems reasonable, therefore, to focus on the variation in sentencing which cannot be accounted for by the offense and offender fact situation. By doing so it will be possible to analyse the level of coherency in the sentencing process as well as the nature and extent of the disparity in the actual sentences given out. Disparity, as a value term, thus refers to arbitrariness in sentencing and also to sentencing that is systematically related to invidious factors.

### B.2. Unexplained Variation

As we noted in Chapter 3, there is a substantial portion of unexplained variation in sentencing for all crime categories and for both types of sentence decisions. Evidence of the magnitude of the unexplained variation can be found in both the regression results and the sentencing matrices. The  $\bar{R}^2$ 's for each crime category for both types of sentences are displayed in Table 4.1. As can be seen, even though the models perform quite adequately (in a statistical sense), there is a very large amount of variation which the relevant offense and offender variables cannot explain. Similarly, one can look at the individual cells in the sentencing matrices and observe that similar cases are treated in a very dissimilar fashion especially for the more serious crimes.

We conclude that there is a great amount of unexplained variation in both the IN/OUT and LENGTH decisions. In and of itself, this constitutes disparity since it reflects the presence of a relatively large nonsystematic component in the sentencing decision.

There are two reasons for observing a relatively large nonsystematic component. First, it could be that our model of judicial sentencing has either omitted relevant variables or has incorrectly characterized the functional form of the decision-rule. We feel that the models, as formulated in

Chapter 3, are plausible and hence have a high degree of face validity. As such, this possibility will be ignored for the time being. Second, it could be that the decision rules employed by the judges are unstable or vary in some fashion. That is, judges may not use the same factors in the same way from case to case.

Table 4.1

COMPARISON OF EXPLANATORY POWER OF GUIDELINE MODELS

	LENGTH	IN/OUT
	$\bar{R}^2$	$\bar{R}^2$
Homicide	.56	.47
Assault	.53	.41
Robbery	.35	.36
Sex	.65	.31
Drugs	.50	.29
Burglary	.47	.25
Larceny	.47	.31
Fraud	.48	.34
Weapons	.55	.41
Property Destruction	.72	.55

The bulk of this chapter is directed toward an examination of the incoherency in judicial sentencing practices. We have been able to develop four alternative explanations for the large amount of unexplained variation in the sentencing models. The first two reasons direct attention toward the manner in which the data have been aggregated and analysed. It could be that the large amount of unexplained variation is a function of the way in which the analysis has been conducted. The final two reasons are based upon a consideration of the structure of the model in equation (1).

First, as a practical matter, we may be looking at judicial decision-making at too high a level of aggregation. The crime categories analysed throughout this report contain crimes which range from two or three month maxima to those which carry a life maximum. One could argue that it is not

surprising that we are able to attain such limited explanatory power given the wide range (in terms of seriousness) of the crimes grouped in each category. Following this argument it may be wise to focus on specific crimes; by doing so, judicial sentencing practices may appear more consistent.

Second, it could be that judges are very heterogeneous. Because of the importance of background and personality to judicial sentencing or because of the infrequency of certain types of cases, it may be unreasonable to expect patterns to be present across all judges in the state. Consequently, it may be that the data ought to be disaggregated and analysed on a judge-by-judge basis.

Having investigated these possibilities, it will be possible to reach a conclusion concerning sentencing variation. If we can rule out both points as possible explanations for our findings, then we will have to turn to a consideration of explanations of unwarranted sentencing variation of a more substantive nature. Using equation (1) as a guide, it would appear that there are at least two possible explanations.

First, it could be that the same weights ( $\alpha_j$  and  $\beta_k$ ) are not attached to the offense and offender variables for all individuals. It is possible that the weights could vary from one person to the next or there could be different weights for different subsets of the population. Therefore, even if we have located all plausible offense and offender variables, the variability of the weights would lead us to find a great deal of unexplained variation. This would occur because we have been trying to find one set of weights for all individuals within a given crime category. To check out this possibility it is necessary to break the data into groups of individuals and see if the weights vary.

Second, even though we have assumed that we have located all possible

offense and offender variables, it could be that other types of factors enter into the judicial decision calculus on a regular basis. Consequently, we need to look for seemingly unrelated factors which, although not directly germane to the fact situation, may have an impact on the final sentence.

Based upon the discussion to this point, there are four major lines of inquiry which must be pursued in order to ascertain whether sentencing is coherent and, if not, what types of disparity have resulted as a consequence of the incoherency. First, the data are disaggregated on a crime specific basis in order to determine whether the lumping together of specific crimes into groups can account for the absence of patterns. Second, the data will be disaggregated on a judge-specific basis so that we can determine whether the presence of different judges can account for the relatively large amount of unexplained variation. Third, the data will be divided into relevant subpopulations and the possibility that the regression weights are different for different subpopulations will be investigated. Finally, it is necessary to locate OTHER variables which may be influencing the sentencing practices of judges and see whether they can reduce the magnitude of the unexplained variation.

### C. DISAGGREGATION AND ANALYSIS BY SPECIFIC CRIMES

One possible explanation for the high degree of unexplained variation in the sentencing decision is that the data are too highly aggregated. It could be, for instance, that patterns are present when one looks at specific crimes. Although we made no attempt to investigate the possibility for all specific crimes, we did choose three specific crimes for which there were numerous cases and subjected them to the analyses undertaken in Chapter 3: Criminal Sexual Conduct I, Armed Robbery, and Felonious Assault. The regressions and sentencing grids are undertaken only for the LENGTH decision.

The results of the crime specific analyses are presented in Tables 4.2 through 4.7. The results for SEX offenses will be discussed in detail as they were in Chapter 3. First notice that Var 160 (statutory maximum) is no longer included in the model since the same crime is being analysed. As can be seen when comparing Table 4.2 to Table 3.18, the  $\bar{R}^2$  is lower for the CSC-I analyses than for the overall SEX-length analyses. Note too that different variables are statistically significant. Thus, even within the confines of a specific crime type, there is a large amount of unexplained variation (and in terms of variance explained the equation for the specific crime type is less accurate). A similar conclusion can be reached with respect to the armed robbery analysis presented in Table 4.3. Felonious assault, however, evidences better resolution than does the general assault model. One explanation for this is that felonious assault carries a statutory maximum of four years and hence the variability is restricted by law. Note that the explanatory power for felonious assault is much greater than for all assaults with longer sentencing ranges. Thus, a wide expanse of sentencing discretion itself generates unexplained variation. This implies that in order to reduce unexplained variation of sentences, it is necessary

to have some method which reduces the amount or structures the content of discretion.

Table 4.2

LENGTH REGRESSION RESULTS:  
CRIMINAL SEXUAL CONDUCT I (MCL 750.520b)

Adjusted R<sup>2</sup> = .60531

<u>Statistically Significant Offense Variables</u>		<u>B-Coef</u>	<u>Standard Error B</u>	<u>F-Stat</u>	<u>Beta</u>
Var 4	Type of weapon	40.381	5.378	56.4	.435
Var 9	Total number of offenders	-28.999	8.698	11.1	-.173
Var 31	Long relationship with victim	71.679	19.324	13.8	.197
Var 40	Number of human victims	-72.885	13.148	30.7	-.315
Var 44	Offender-victim relationship	34.584	9.231	14.0	.213

<u>Statistically Significant Offender Variables</u>		<u>B-Coef</u>	<u>Standard Error B</u>	<u>F-Stat</u>	<u>Beta</u>
Var 68	Mental health of offender	52.969	14.673	13.0	.201
Var 73	Good moves since arrest	56.403	17.055	10.9	.165
Var 95	Pending chgs other jurisdictions	78.940	17.341	20.7	.263
Var 98	Disposition most recent probation	-26.114	5.529	22.3	-.252
Var 102	Number adult felony convictions	30.919	4.171	55.0	.474
Var 109	Number of similar priors	-17.761	5.715	9.7	-.191

Turning to the sentencing matrices for the specific crime types, it is possible to reinforce the aforementioned conclusions. Table 4.5 contains the sentencing matrix for SEX-LENGTH offenses. Remember that all of these sentences are for individuals charged with crimes which carry the statutory maximum (i.e., life or a term of years). Keeping this in mind, it does not seem that looking at a specific crime reduces the level of unexplained variation. We find individuals being given minimum sentences ranging from six to 720 months. The sentencing matrix for armed robbery (see Table 4.6) underscores the fact that there is still an enormous amount of unexplained variation in sentencing. Finally, Table 4.7 shows that for offenses with a

Table 4.3

LENGTH REGRESSION RESULTS: ROBBERY ARMED (MCL 750.529)

Adjusted R<sup>2</sup> = .36413

<u>Statistically Significant Offense Variables</u>		<u>B-Coef</u>	<u>Standard Error B</u>	<u>F-Stat</u>	<u>Beta</u>
Var 5	Victim asportation	22.197	7.614	8.5	.078
Var 8	Did offender steal for min. nec.	-76.949	12.020	41.0	-.165
Var 9	Number of offenders	-12.801	2.783	21.2	-.124
Var 17	Organized operation/ring	18.042	4.128	19.1	.112
Var 40	Number of human victims	12.219	2.602	22.1	.124
Var 41	Age of victim	-42.875	8.973	22.8	-.126
Var 45	Long standing feud	-75.316	14.236	28.0	-.153
Var 49	Type of injury	41.282	4.143	99.3	.411
Var 52	Role of injury	-37.507	11.267	11.1	-.103
Var 53	Method of inflicting injury	-30.000	6.392	22.0	-.182

<u>Statistically Significant Offender Variables</u>		<u>B-Coef</u>	<u>Standard Error B</u>	<u>F-Stat</u>	<u>Beta</u>
Var 61	Associated with	68.266	9.858	48.0	.183
Var 62	Support spouse/offspring	30.185	3.984	57.4	.208
Var 63	Type of military discharge	18.361	5.192	12.5	.092
Var 69	Employed at time of arrest	- 6.351	1.884	11.4	-.089
Var 73	Good moves	22.653	7.348	9.0	.080
Var 103	Juvenile delinq adjudications	23.844	4.317	30.5	.169
Var 107	Number violent felonies, adult	43.757	4.282	104.4	.405
Var 108	Number violent felonies, juv	67.764	17.435	15.1	.113
Var 109	Number similar priors	-20.201	3.887	27.0	-.210

Table 4.4

LENGTH REGRESSION RESULTS: FELONIOUS ASSAULT (MCL 750.82)

Adjusted R<sup>2</sup> = .85652

<u>Statistically Significant Offense Variables</u>		<u>B-Coeff</u>	<u>Standard Error B</u>	<u>F-Stat</u>	<u>Beta</u>
Var 4	Type of weapon	1.513	.254	35.5	.167
Var 7	Intent in violent crimes	- .505	.148	11.6	-.100
Var 10	Excessive cruelty	5.580	.714	61.1	.255
Var 41	Age of victim	5.492	.903	37.0	.174
Var 43	Race of victim	- 5.139	.639	64.7	-.211
Var 45	Long standing feud	- 2.880	.802	12.9	-.118
Var 49	Type of injury	2.132	.354	36.3	.231
Var 52	Role of physical injury	2.115	.772	7.5	.098
Var 55	Offender's acts toward victim	- 1.867	.673	7.7	-.085

<u>Statistically Significant Offender Variables</u>		<u>B-Coeff</u>	<u>Standard Error B</u>	<u>F-Stat</u>	<u>Beta</u>
Var 60	Residential stability	- 1.219	.321	14.4	-.109
Var 64	Leaving school	5.668	.631	80.6	.259
Var 68	Mental health	2.758	.657	17.6	.110
Var 70	Job to go to	- 3.180	.495	41.2	-.234
Var 71	Type of work	2.691	.428	39.5	.159
Var 73	Good moves since arrest	6.037	.815	54.9	.252
Var 95	Pending chgs other jurisdictions	- 8.664	.847	104.6	-.305
Var 98	Disposition most recent probation	1.154	.280	17.0	.110
Var 102	Number adult felony convictions	2.143	.251	73.0	.358
Var 106	Sum months, maximum terms	.007	.0004	253.1	.544
Var 107	Number violent felonies, adult	- 4.404	.441	99.9	-.170

low statutory maximum (i.e., in which the degree of variability is restricted by law), the ranges are smaller and appear to be more coherent. It should be stressed that appearances can be deceiving because there is still a large amount of variation, relative to the maximum, in several of the cells.

Table 4.5

CRIMINAL SEXUAL CONDUCT I (MCL 750.520b) LENGTH MATRIX

		OFFENDER SCORE				
		1-2	3-4	5-6	7-8	9-10
OFFENSE SCORE	1-2	MEDIAN 6.0 MEAN 6.0 RANGE 6-6 NUMBER 2	23.9 46.8 6-156 25	60.0 60.0 60-60 5	5.0 95.0 24-240 6	100.0 108.0 60-180 5
	3-4	36.0 36.0 36-36 4	58.0 89.1 12-300 14	66.4 82.5 44-120 11	210.0 210.0 120-300 2	190.0 190.0 80-300 4
	5-6		63.0 95.6 36-300 16	115.0 111.4 60-120 7	300.0 300.0 300-300 5	240.0 240.0 180-300 5
	7-8	90.0 90.0 84-96 4	225.0 218.1 120-300 11	360.0 360.0 360-360 2	210.0 210.0 120-300 4	300.0 300.0 300-300 11
	9-10	180.0 180.0 180-180 2	158.5 141.7 36-240 23	300.0 300.0 300-300 12	300.0 300.0 300-300 6	384.0 420.0 300-720 7

It seems, therefore, that further investigation of specific crimes will not change our finding that there is a great deal of unexplained variation in sentencing. It seems that judges vary their sentences over the entire range of possible sentences regardless of the relevant offense and offender

Table 4.6

ROBBERY ARMED (MCL 750.529) LENGTH MATRIX

		OFFENDER SCORE				
		1-2	3-4	5-6	7-8	9-10
OFFENSE SCORE	1-2	MEDIAN 37.5 MEAN 38.0 RANGE 36-42 NUMBER 3	28.5 38.2 24-60 11	26.8 54.5 12-180 47	24.0 51.0 9-120 15	24.0 24.0 24-24 13
	3-4	38.1 48.4 12-144 30	36.9 48.8 12-180 97	118.1 113.2 24-240 54	37.5 58.5 12-300 31	71.4 103.6 12-300 52
	5-6	41.7 40.6 12-66 43	48.9 64.7 12-300 150	60.0 87.2 12-300 110	78.4 92.7 12-300 63	229.8 199.2 120-300 53
	7-8	81.0 67.5 24-120 12	115.3 112.0 24-300 42	72.0 81.2 12-120 34	72.0 57.0 24-84 12	177.6 196.7 96-480 18
	9-10	60.0 57.3 6-120 16	62.7 88.9 24-300 49	100.8 98.3 48-180 21	192.0 242.6 90-480 23	292.5 324.0 30-600 25

Table 4.7

FELONIOUS ASSAULT (MCL 750.82) LENGTH MATRIX

		OFFENDER SCORE				
		1-2	3-4	5-6	7-8	9-10
OFFENSE SCORE	1-2	MEDIAN 1.2	1.2	6.5		
	MEAN 1.7	1.7	7.5			
	RANGE 1-6	1-6	3-12			
	NUMBER 32	32	24			
	3-4	1.2 2.7 0-6 20	6.1 7.4 3-24 36		14.1 15.3 12-24 22	44.6 43.8 32-54 13
	5-6	2.0 2.0 2-2 6	10.8 9.3 1-12 19		18.0 18.0 18-18 3	18.0 18.0 18-18 2
	7-8	3.1 3.4 2-6 17	12.0 11.5 1-18 32	16.9 18.3 12-24 31	23.6 21.7 14-24 15	24.0 24.0 24-24 5
	9-10		13.5 14.0 12-18 15	25.5 24.0 12-30 15	25.1 25.7 24-32 14	32.0 32.0 32-32 3

variables. While this conclusion must remain tentative until all of the specific crimes have been analysed, the initial analyses do undercut the validity of the alternative hypothesis which has been investigated in this section.

D. DISAGGREGATION AND VARIATION OF SENTENCE BY SPECIFIC JUDGE

D.1. Methodology

One possible explanation for the large amount of unexplained variation is that each individual judge sentences in a markedly different fashion. If this is the case, then we should observe individual judges behaving in a very systematic and coherent fashion. The unexplained variation that is present in the overall crime categories is simply the result of aggregating a number of systematic but different judges.

The sentence variations examined previously in this chapter relied on the statistical analysis of aggregated data. In this section we disaggregate the data and closely examine sentencing patterns by judge to see whether a quantitative overview and graphic display of sentencings tells us anything about sentence variation by judge when offense and offender characteristics are held constant and when race of offender is entered. As Gibson's study of one multi-judge superior court shows, the disaggregation of overall sentencing patterns into patterns by judge showed the existence of disparity in two directions where in the aggregate none was observed.<sup>20</sup>

In this section, rather than examining IN/OUT and LENGTH separately, a single variable (Var 171) is created to measure the spectrum of punishments found in our sample ranging from the highest, a minimum prison sentence of 960 months, to the lowest, unconditional discharge. The common unit of measurement is the month, applied both to incarceration length and to months of probation (fines, costs, and restitution were not included in this scale). The range of incarceration is 0-960 with 0 representing jail terms of two weeks or less. The range of non-incarceration (suspended sentences and probation) is 0-60, with 0 representing unconditional discharges and 60 representing the statutory maximum of five years probation for felony convictions.

When combining these two scales into one, the most directly interpretable form is effected by making OUT a negative range (-60-0) and maintaining LENGTH as is. Var 171 is graphically displayed in Table 4.8.

Table 4.8

VAR 171 - SCALE OF PENALTIES  
(Not All Values Represented)

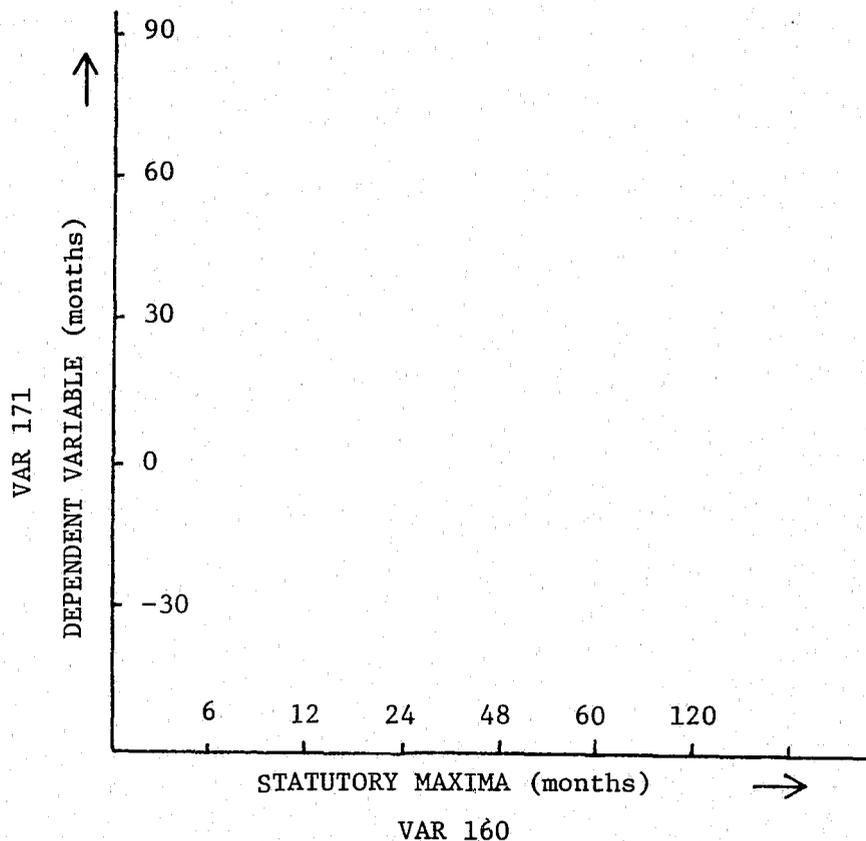
	<u>Sentence</u>	<u>Scale</u>
	80 years, prison	960
	↑	
	Life term prison	300
	↑	
	5 years, prison	60
	↑	
	2 years, prison	24
	↑	
	6 months, jail	6
	↑	
	1 month, jail	1
	↑	
	0-14 days, jail	0
<u>IN</u>	-----	-----
<u>OUT</u>		
	60 months, probation	0
	↑	
	36 months, probation	-24
	↑	
	24 months, probation	-36
	↑	
	12 months, probation	-48
	↑	
	Discharge	-60

Var 171 is used as the dependent variable in this analysis and is presented in subsequent graphic displays. As a control variable we select a relevant criterion which disperses a judge's sentences and allows us to examine comparable cases on the scale of penalties: Var 160, the legislative maximum penalty for an offense. (See Appendix E for values of Var 160. Maxima are also found in Table 3.1.)

Using Var 171 and Var 160 to form the axes, we develop the following graphic:

Figure 4.1

GRAPHIC FORMAT FOR DISPLAY OF JUDGE'S SENTENCES



If a judge's sentences are plotted on a graph, the control provided by the horizontal axis (Var 160) gives some indication of case differentiation, but there is no way to assess whether cases with the same maximum penalties are comparable. Thus, additional control measures are introduced to standardize case severity. In Chapter 3, case severity was very finely controlled by (a) dividing cases into ten comparable offense groups (e.g., homicide, property destruction) and (b) locating sentences within grid cells which finely distinguish offense and offender characteristics. Such distinctions

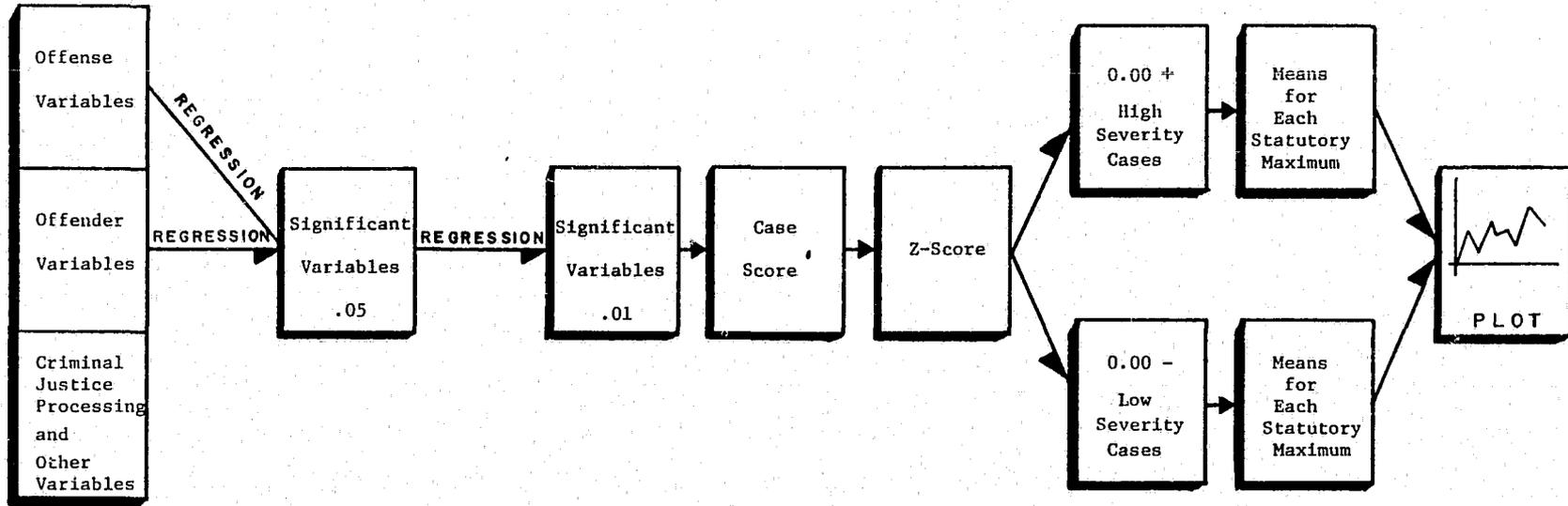
cannot be made when evaluating one judge's sentences because there are too few cases. Here, a modified control system (a) divides cases into two generic types: violent (homicide, assault, robbery, and sex) and non-violent (drug, burglary, larceny, fraud, weapons, and property destruction), and (b) combines offense and offender scores and divides them into a high and a low group.

The development of high and low average scores is presented schematically in Figure 4.2. As in Chapter 3, offense and offender variables are regressed on sentence, but rather than two stages (IN/OUT, LENGTH) the dependent variable is Var 171. Note that Var 160, which is controlled for in the plotting of cases (see Figure 4.1) is omitted as an independent variable on the offense regression. CJ processing and other variables are also omitted. However, the racial variable will be graphically displayed. A second set of regressions using variables significant at the .05 level results in a refined set of variables significant at the .01 level. Instead of creating offense and offender scores, a single case severity score is developed and standardized by the z-transformation. To simplify the visual display, rather than dividing the standardized case score into ten or five divisions, they are divided into two groups with cases above the mean ( $>0.00$ ) classified as high severity cases and those below the mean ( $< 0.00$ ) classified as low severity. The average sentences of high and low severity cases are then calculated for all violent cases and non-violent cases for each value of Var 160 (i.e. maximum penalty) and are plotted on Figures 4.3 and 4.4.

These figures represent the base graphs for violent and non-violent offenses. The average sentence of all judges for standardized high and low severity cases are plotted on each offense maximum penalty line and connected with horizontal lines. The low severity cases are represented by circles and

Figure 4.2

# MULTISTAGE METHODOLOGY FOR DETECTION OF JUDICIAL SENTENCING VARIATION



the high severity by triangles. With the exceptions of three and six month maxima in violent offenses (Fig. 4.3), our standardized mean scores differentiate clearly between high and low severity cases. The odd results for three and six month maxima may be the product of the small number of cases in those categories and the narrow range within which sentencing occurs. This also implies that at these low penalty ranges, offense severity is not a meaningful criterion. The "non-coherent" drop in both high and low average severity scores for violent crimes with 240 month maxima may also be a function of the small number of cases in that group or may indicate legislative misclassification. Note that in the non-violent graph (Fig. 4.4) one value for Var 160 (84 months), which represents a small number of cases, has been inadvertently omitted. Any cases with 84 month maxima are excluded from consideration in this section.

Now that the base charts are set up, the cases of individual judges are superimposed on them. In this section, each triangle (high) and circle (low) represents an unweighted case sentenced by that judge. Judges plotted on these base graphs were chosen purely by the number of cases they had disposed of -- for violent, over 25 dispositions and for non-violent, over 40 dispositions. The reason for this relates to the effectiveness of the graphic. The more observations to plot, the better the chance of finding patterns which may give us an insight into the behavior of a single decision-maker. In all, ten judges were chosen in violent and fourteen judges in non-violent. Only three judges are in both, so Judge A, violent, is not Judge A, non-violent, etc. Each individual case of the judge was plotted on the graph with the high severity cases being symbolized by triangles, black

triangles representing non-white dispositions and open triangles representing white dispositions. Similarly, black circles signify low severity cases for non-whites and open circles low severity dispositions of whites.

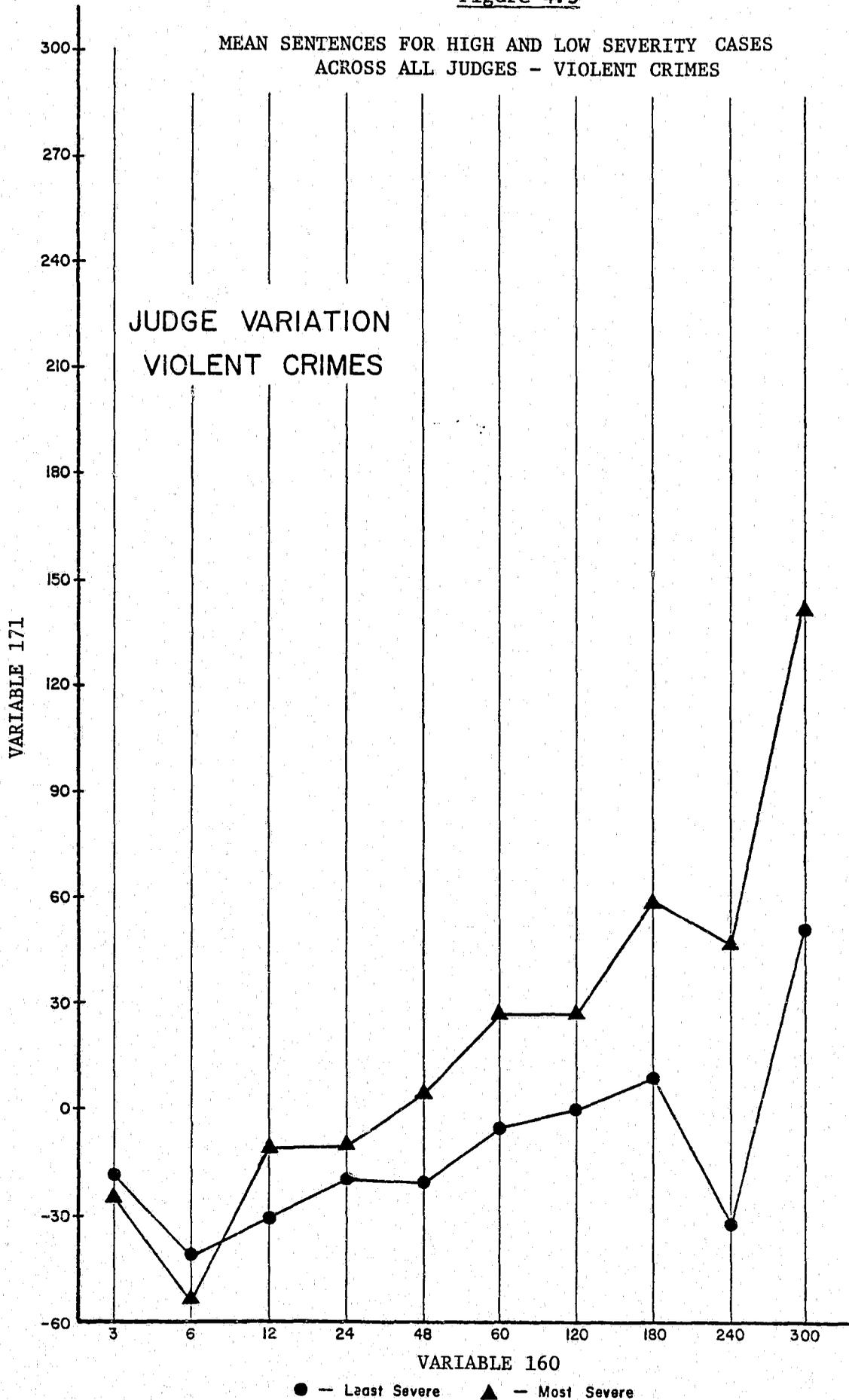
#### D.2. Examination of Judge Variation Graphs

There are several ways in which to evaluate the graphs in Figures 4.5 through 4.28. First, we can examine a particular maximum penalty for Judge X for violent or non-violent crimes and ask the following questions. In relation to the maximum penalty, are the sentences along the vertical "max line" spread out or bunched into a narrow sentence range? Do sentences range above and below 0 or does the judge use incarceration or non-incarceration exclusively? Are triangles located above circles on the vertical max line or does the judge treat different cases alike? Are triangles arrayed around the high severity mean and circles around the low severity mean or is there is different kind of distribution? Are non-whites and whites arrayed similarly on the max-line or are there differences?

Second, looking horizontally at sentences (Var 171) we can ask whether different cases are being treated similarly. For example, if a judge were to sentence all cases with 48 to 300 month maxima to a range between 0 and 30 months, then we would see a form of disparity. In other words, do sentences tend to follow the direction of lines which connect average maxima for high and low severity cases?

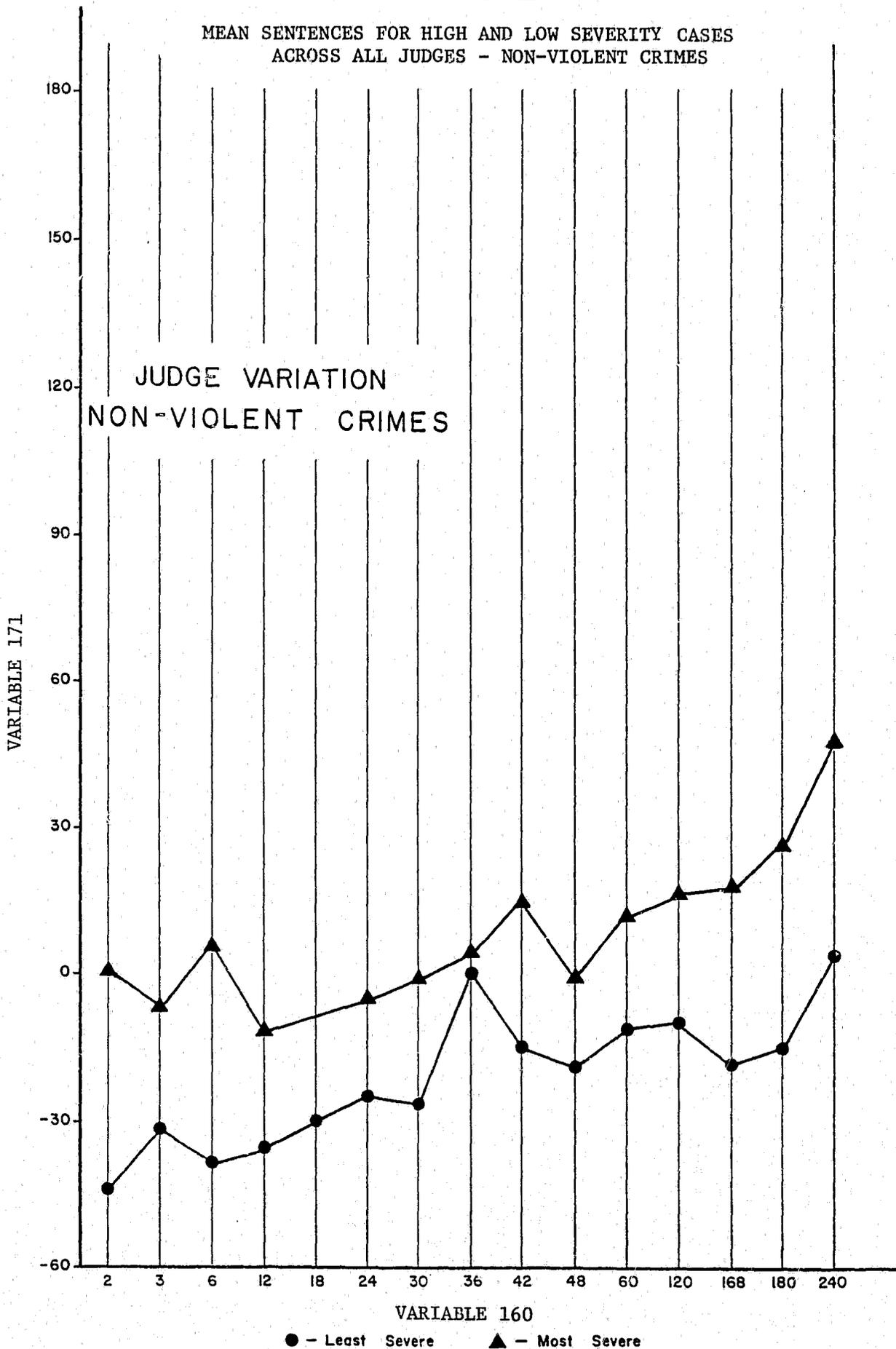
Looking at the graph as a whole we can ask whether the judge tends to have different policies for offenses with different maxima. Also, the distribution of non-white and white offenders can be noted. Care should be exercised since the high concentration of violent crimes per judge in the metro

Figure 4.3



● -- Least Severe    ▲ -- Most Severe

Figure 4.4



stratum led to the selection of nine stratum I judges, one stratum II judge, and no stratum III judges for the ten judges examined on violent offenses. Thus, there are a disproportionate number of non-white offenders represented in Figures 4.5 through 4.14 since the proportion of non-white defendants is highest in the metropolitan courts.

Examining judge variation for violent crimes first, we notice that the sentences for Judge A (Fig. 4.5) across maxima seem to follow the average lines, that except for 300 month maxima, the range of Judge A's sentences are rather narrow, and that with a few exceptions, high severity cases per max-line are sentenced to longer terms than less severe, i.e., triangles are usually above circles. Similar observations for violent crimes can be made about Judges B, C (note the 600 month minimum sentence), and G (Figs. 4.6, 4.7, and 4.11). Judge D (Fig. 4.8) appears to be relatively severe on low severity cases (circles), sentencing 13 out of 17 above the average for low severity cases. Such a pattern for Judge D is not observable for high severity cases (triangles).

Judge E (Fig. 4.9) sentenced one high severity offender convicted of a crime carrying a life or term of years maximum to a minimum sentence of 960 months or 80 years, the highest sentence in our sample. Aside from this, Judge E's sentencing pattern is not remarkable. While the only two white offenders in the sample for this judge were convicted of life term maximums, and one was a high severity case, they both received non-incarcerative sentences. Such appearance of racial disparity does not have much meaning with such a small sample.

Judge F (Fig. 4.10) sentenced six out of 15 low severity cases to terms above the high severity average. Given the fact that our statistical procedures separate low and high severity cases on the basis of all statistically

Figure 4.5

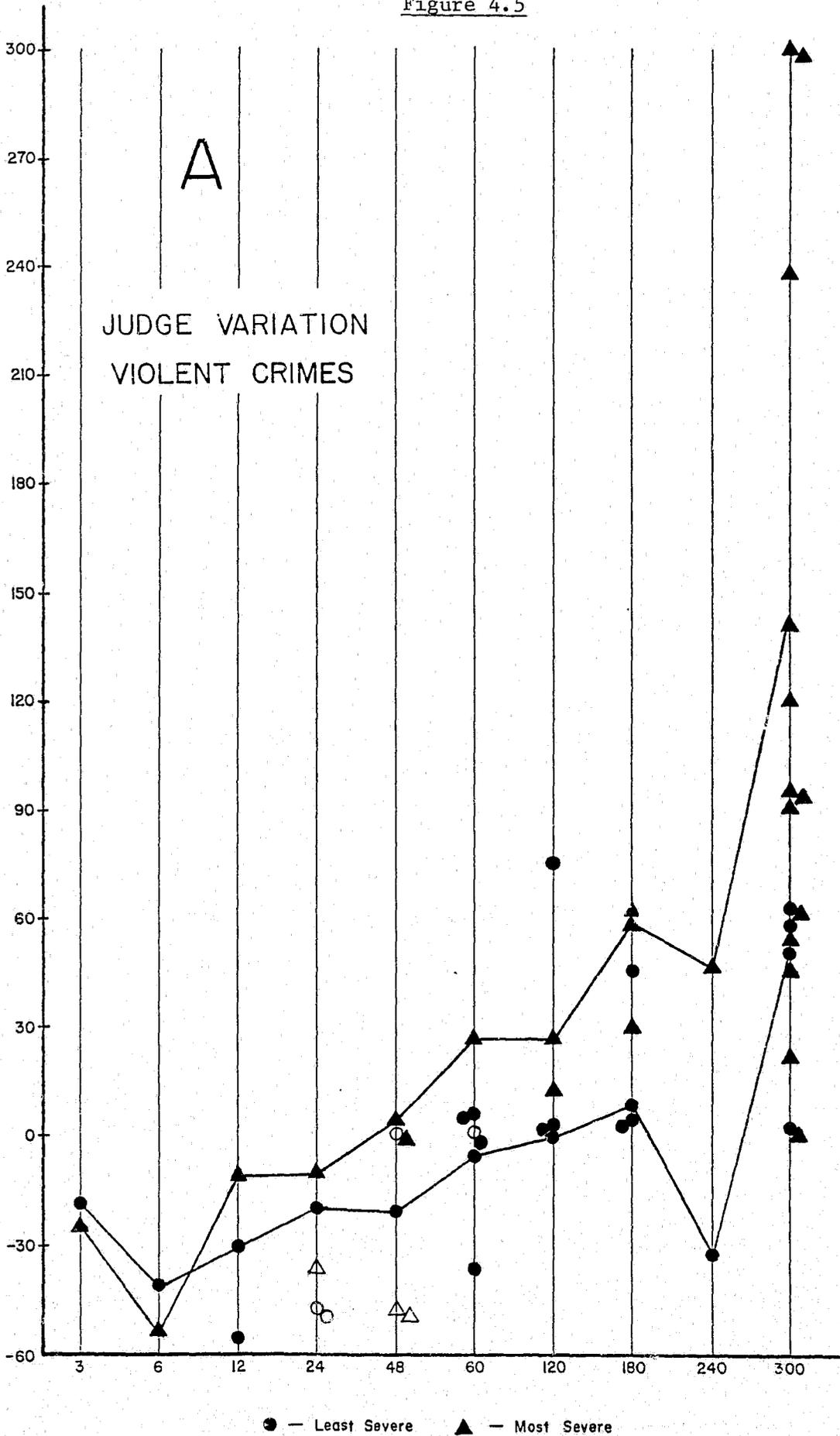


Figure 4.6

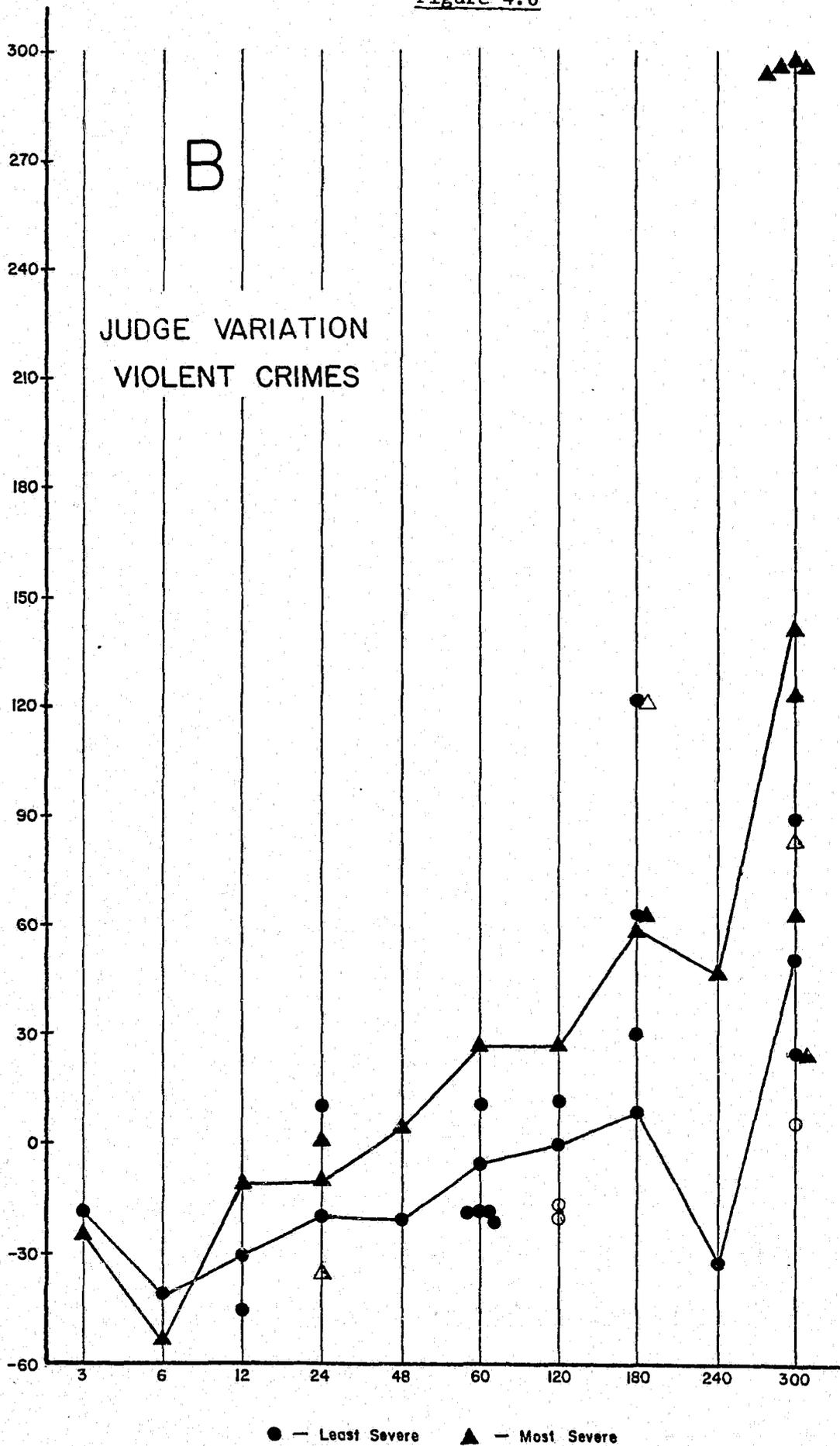


Figure 4.7

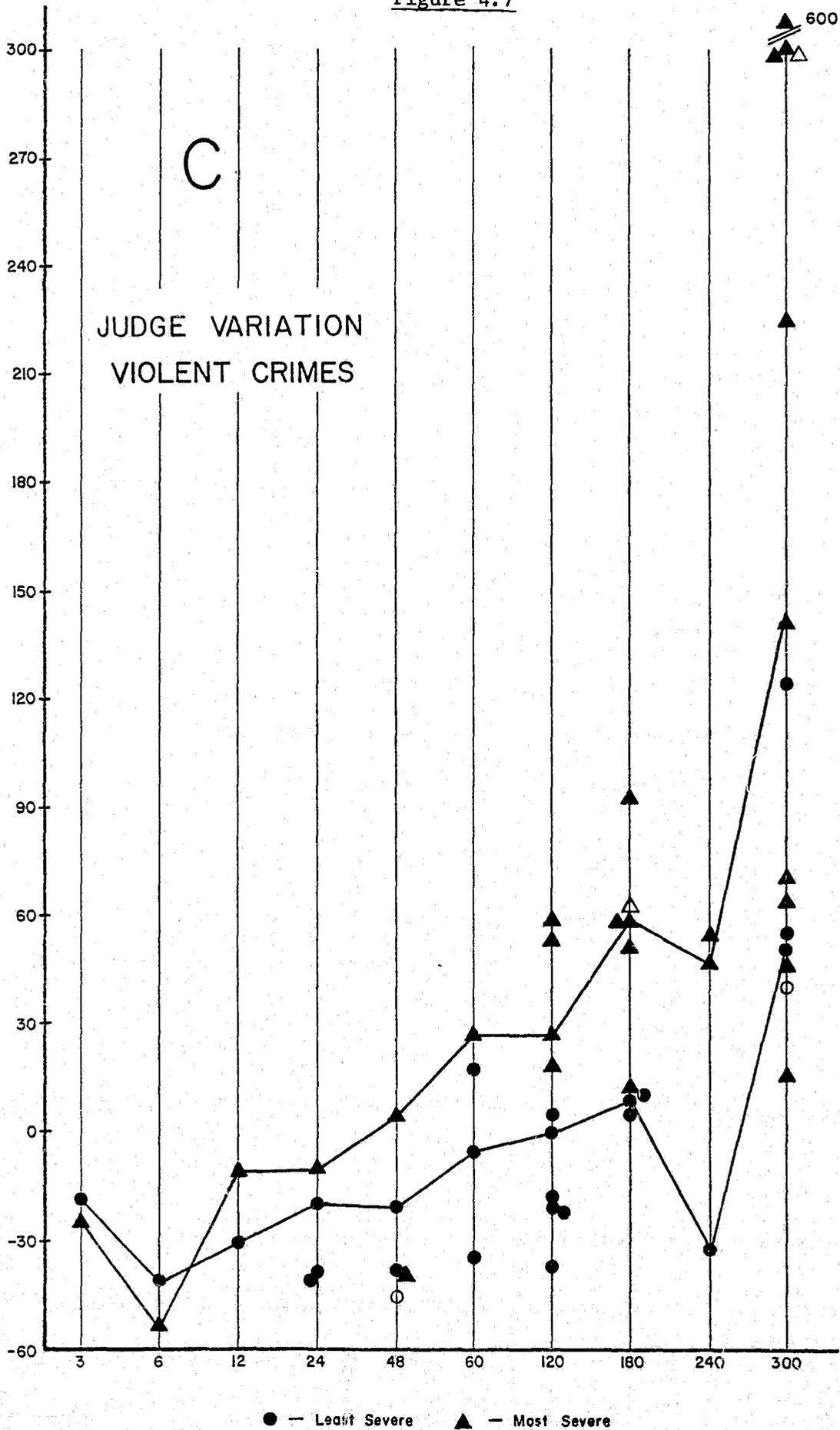


Figure 4.8

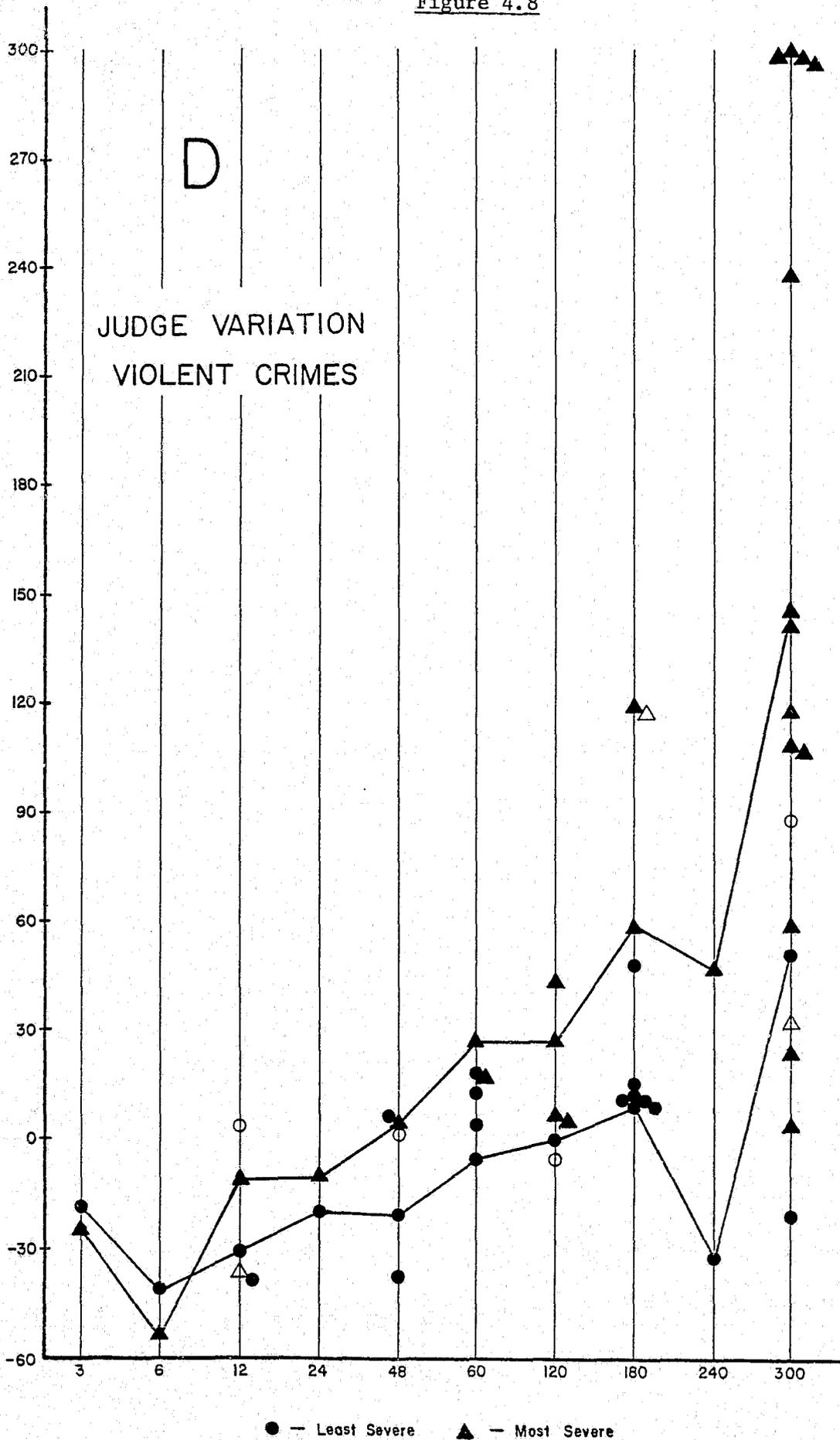


Figure 4.9

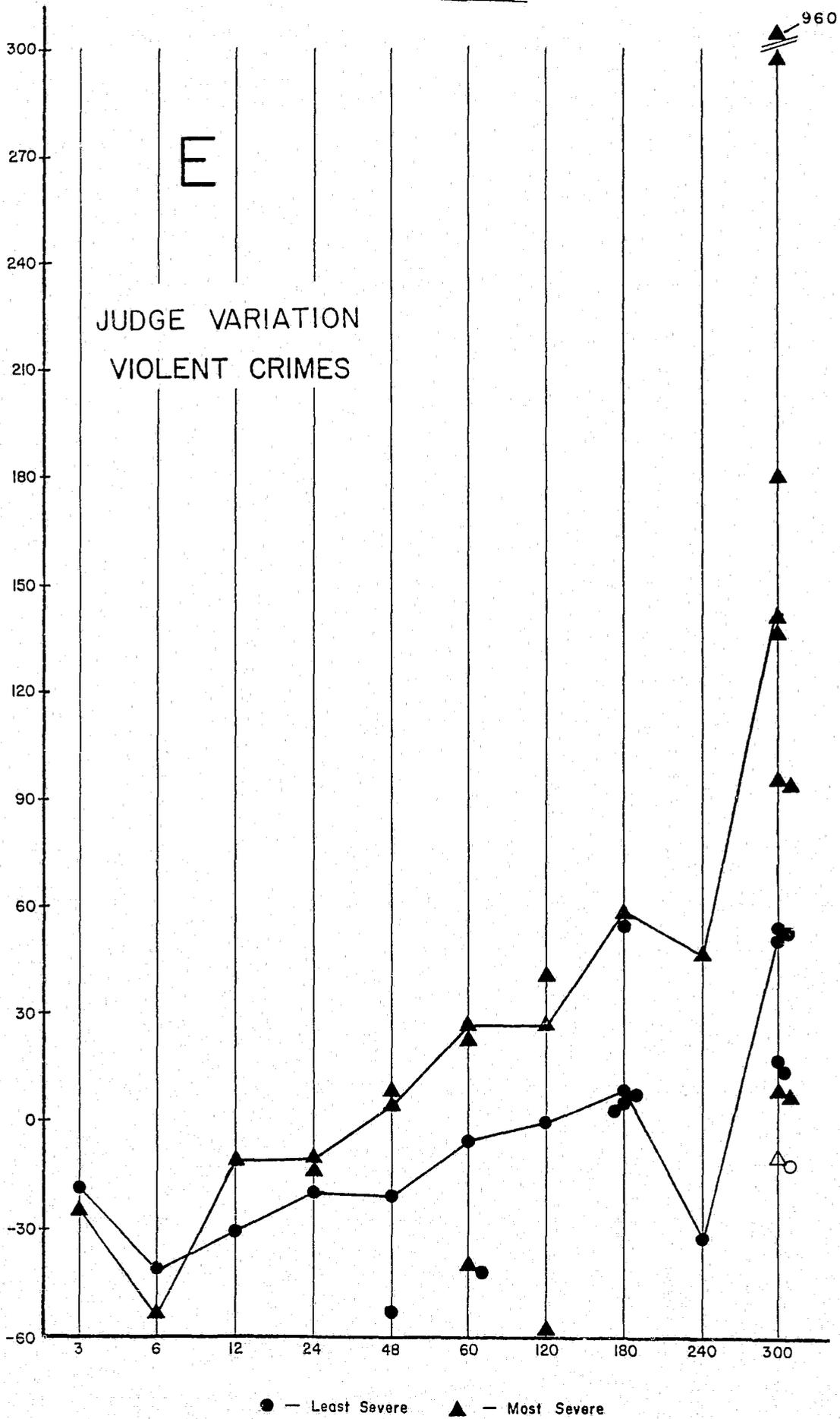


Figure 4.10

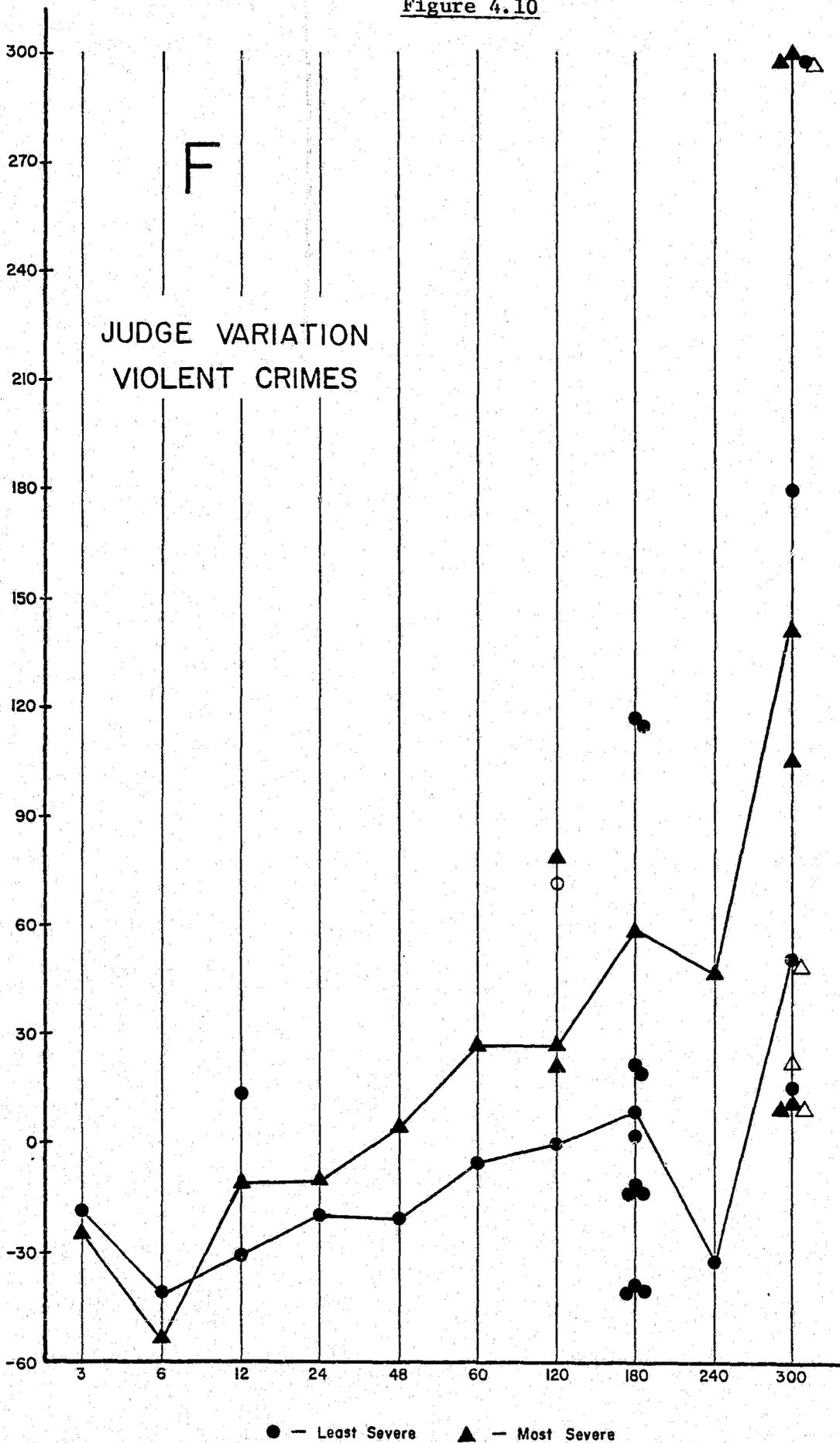


Figure 4.11

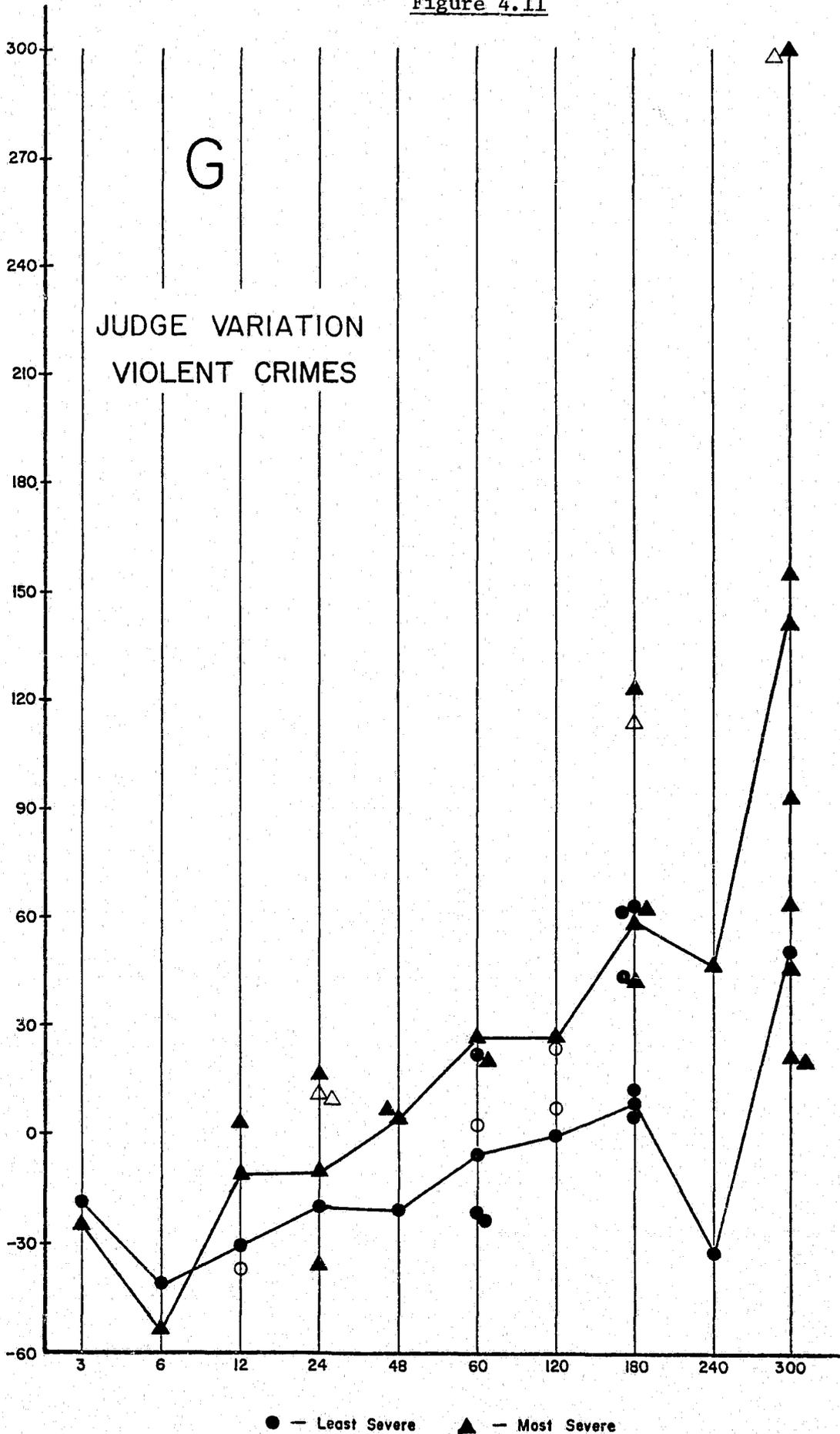
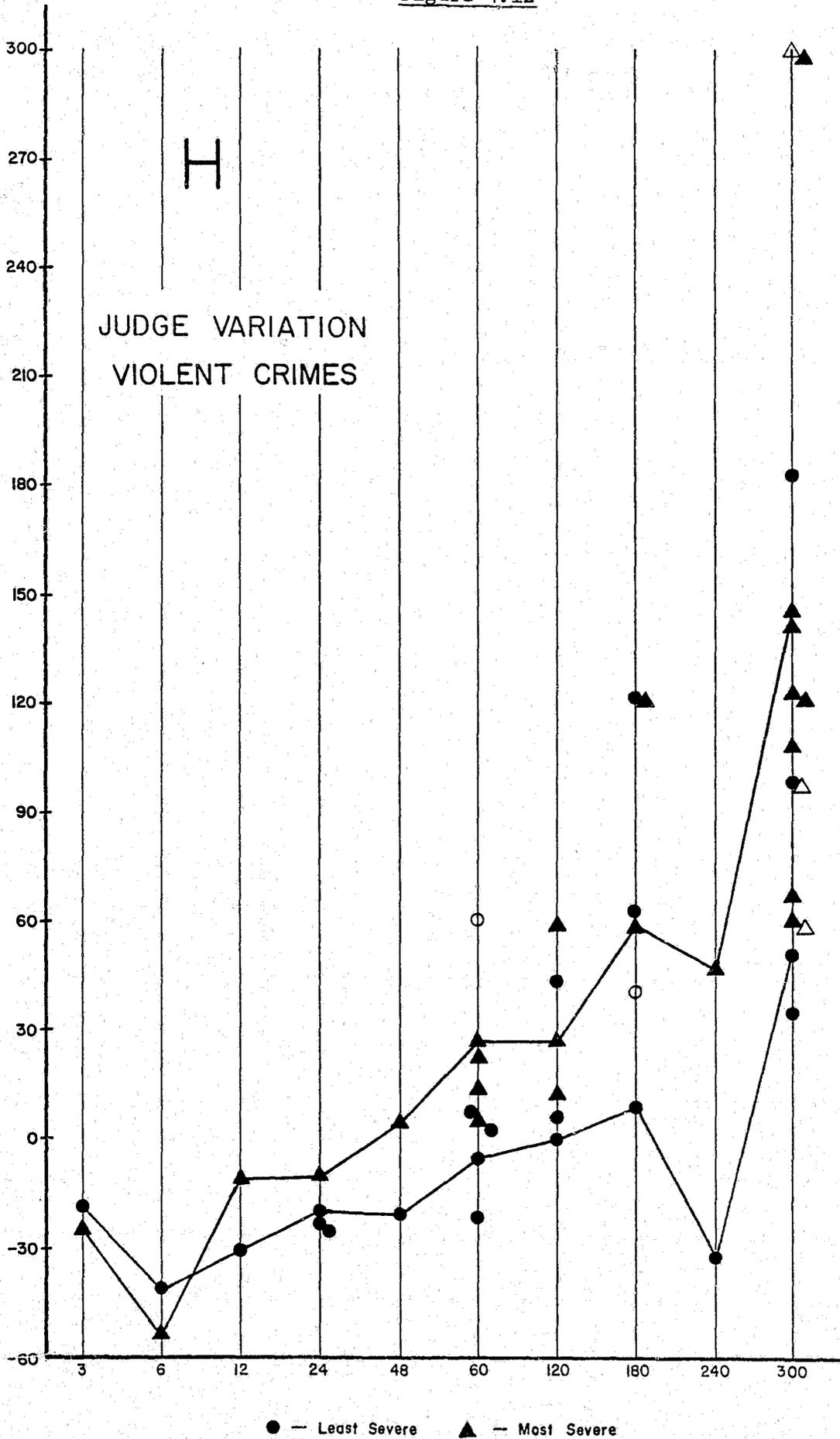


Figure 4.12



● -- Least Severe    ▲ -- Most Severe

Figure 4.13

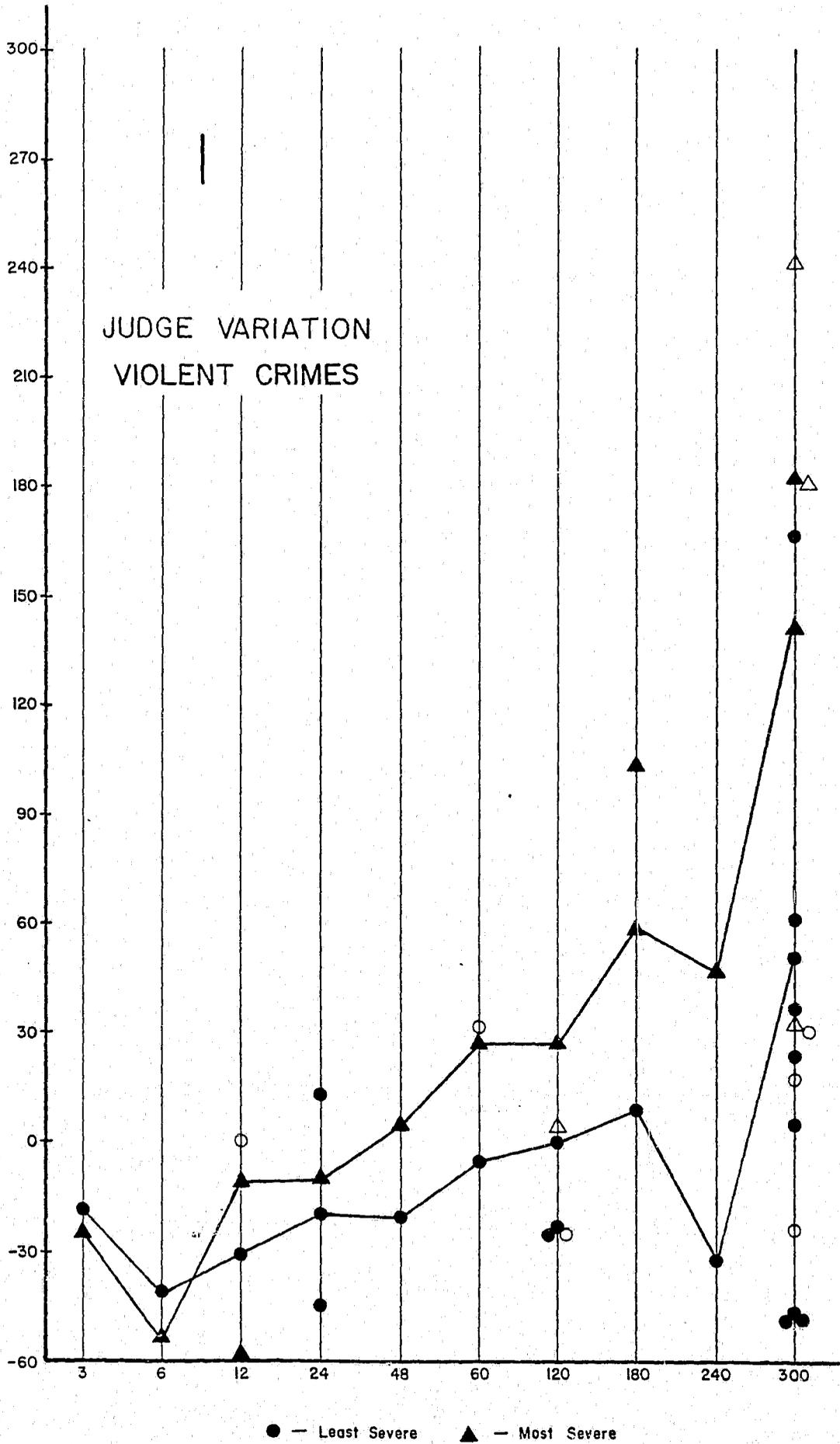
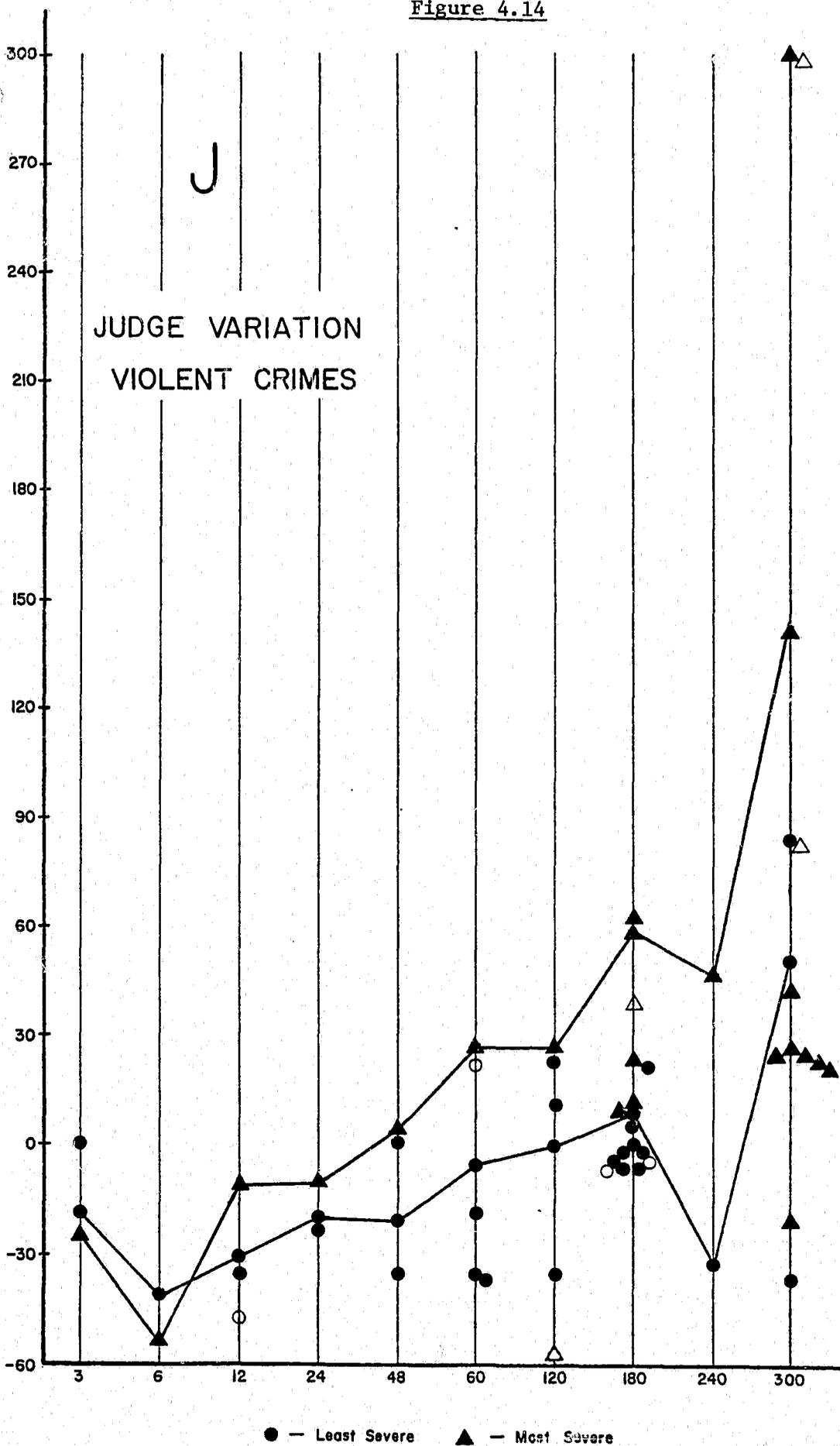


Figure 4.14



significant offense and offender variables, this kind of sentencing pattern raises the question of unexplained variation.

Judge H (Fig. 4.12) sentenced 14 low severity cases: four below the low severity average, five above the low severity but below the high severity line, and five above the high severity average. Of 16 high severity cases, Judge H sentenced five above average and 11 below average. Thus, Judge H appears to treat low severity cases severely and high severity cases leniently.

Judge I's sentences (Fig. 4.13) show a wide scatter along the max-lines. Judge J (Fig. 4.14), despite two life sentences meted out, shows a clear pattern of leniency.

It seems clear that the source of the greatest amount of variation in sentencing lies in the treatment of those cases with the most severe maximum penalties, (i.e., Var 160 = 300). This is permissible, however, because the extent of the judges' discretion is so great in these cases. The wide variation here is a graphic display of what was observed in the lower right hand quadrants of the sentence length matrices in Chapter 3.

Figures 4.15 through 4.28 display patterns for non-violent crimes. Remember that the judges in these figures are not necessarily the same as the judges for violent crimes. Note also that the scales are different since the maximum penalties for non-violent offenses are lower. The maximum value of 240 months or 20 years on the horizontal axis (Var 160) can only be for possession of narcotics with intent to manufacture or deliver, or for arson. Given the small number of arson convictions, then, crimes on the non-violent 240 max-line most probably refer to heroin cases.

Judge A (Fig. 4.15) seems to treat virtually all low severity non-violent

Figure 4.15

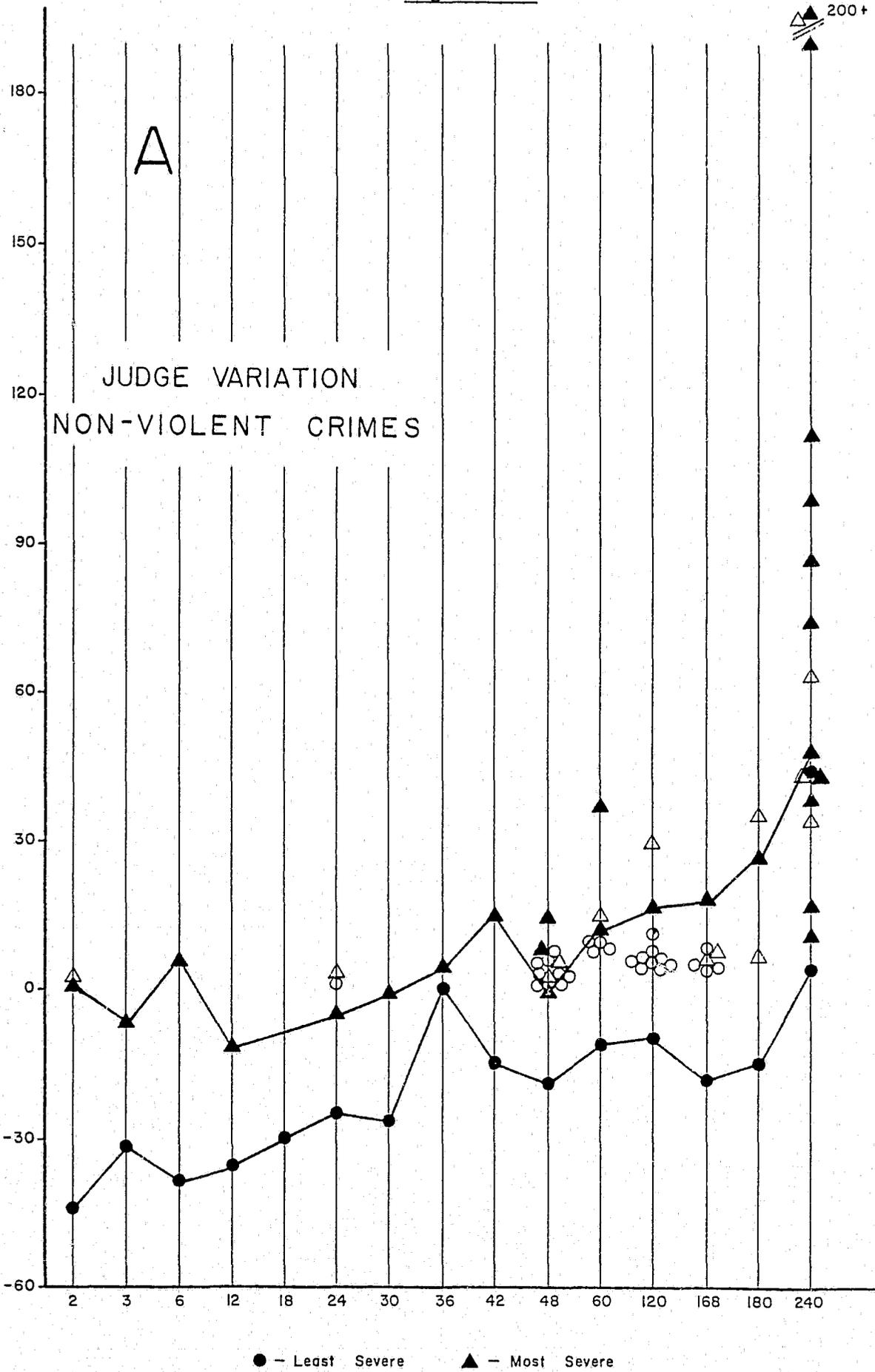


Figure 4.16

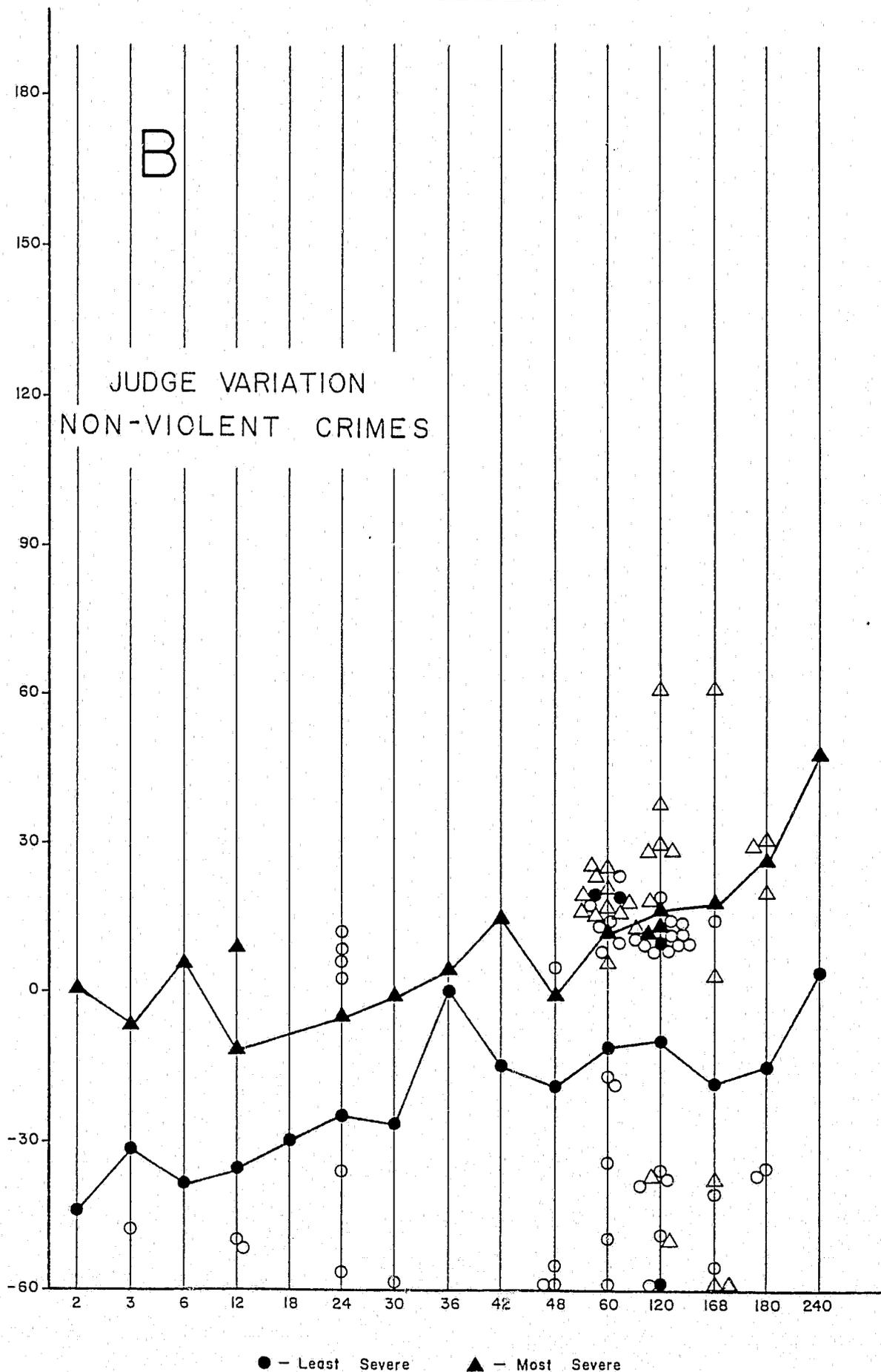


Figure 4.17

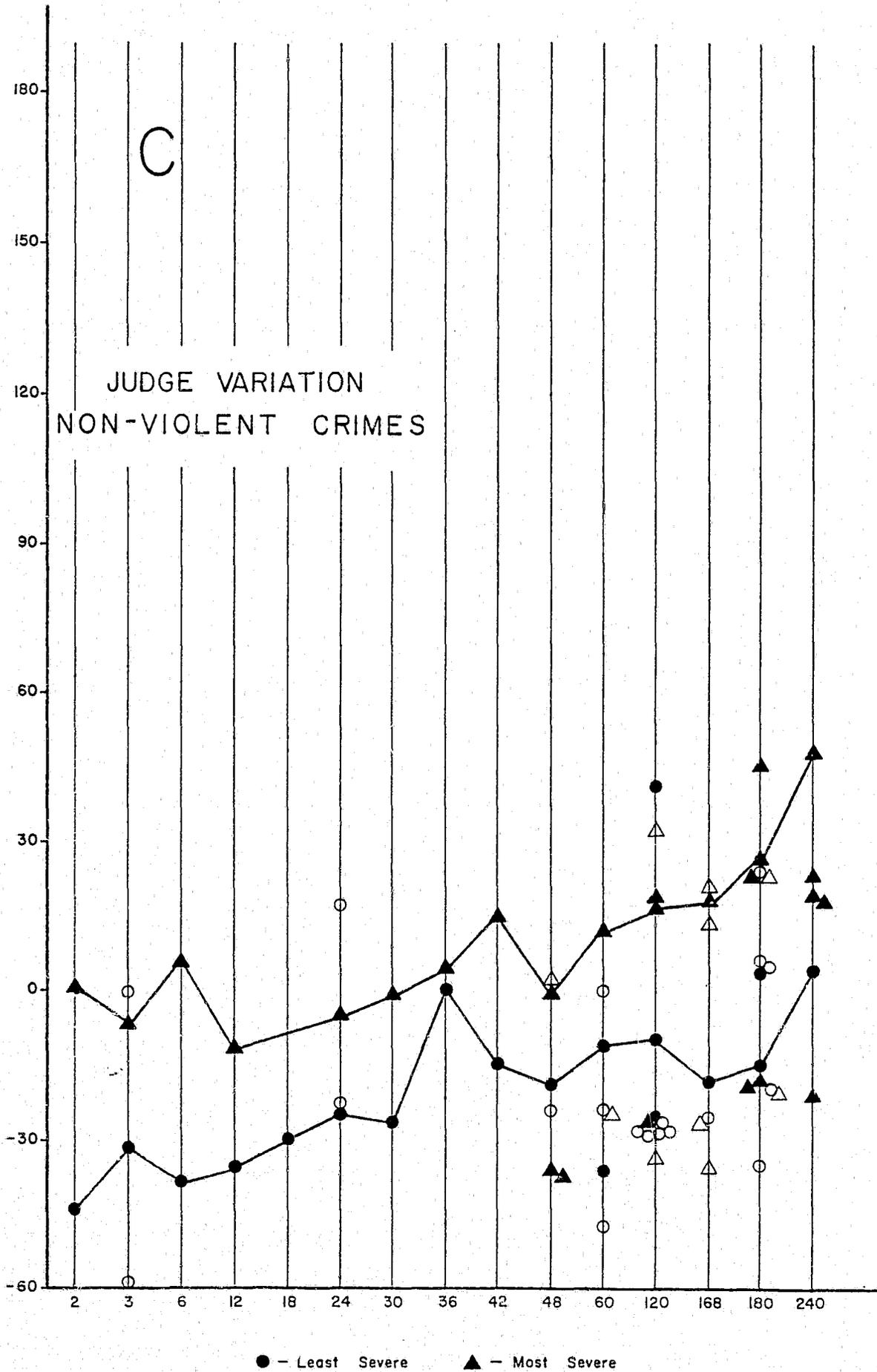


Figure 4.18

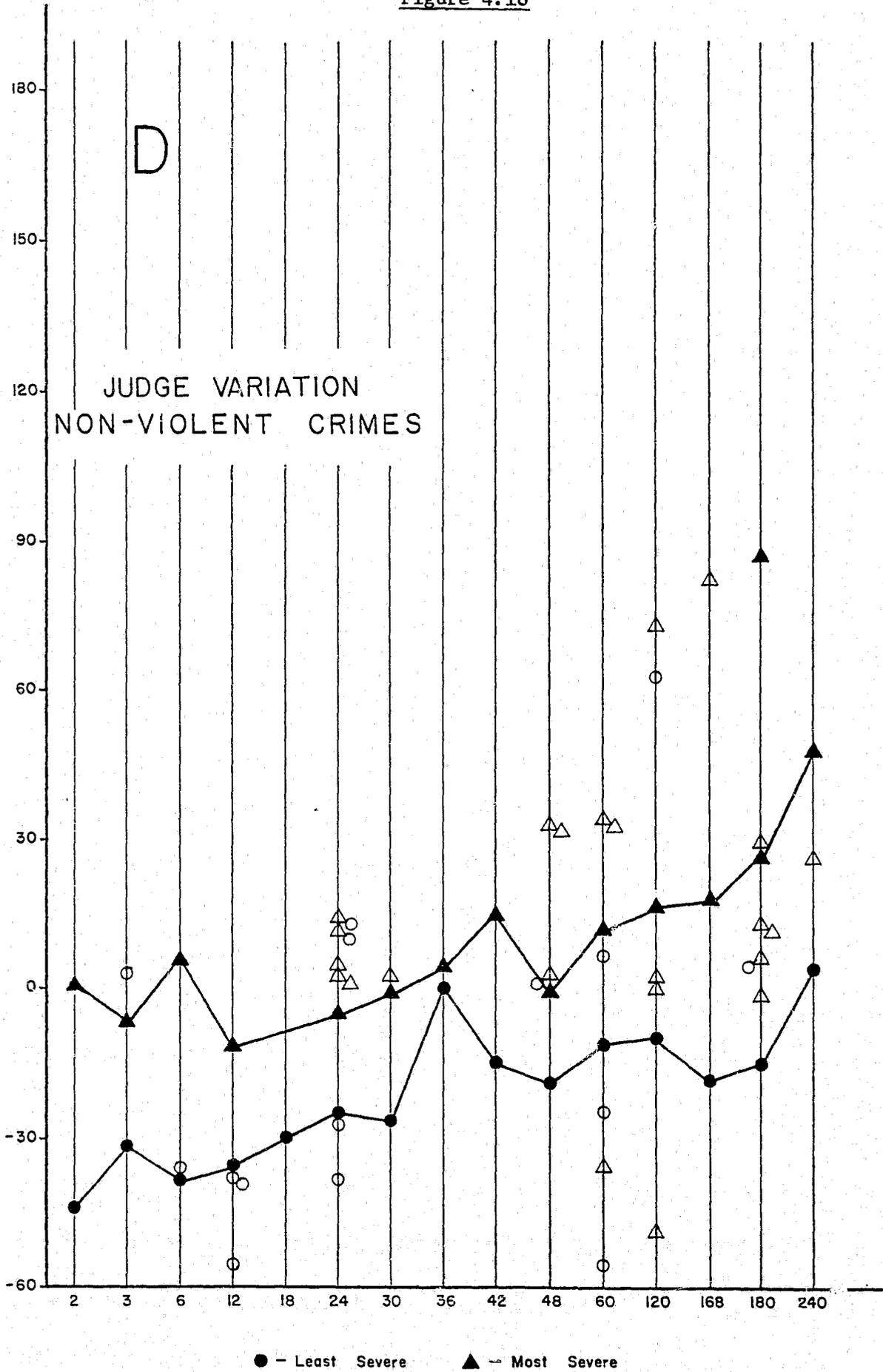


Figure 4.19

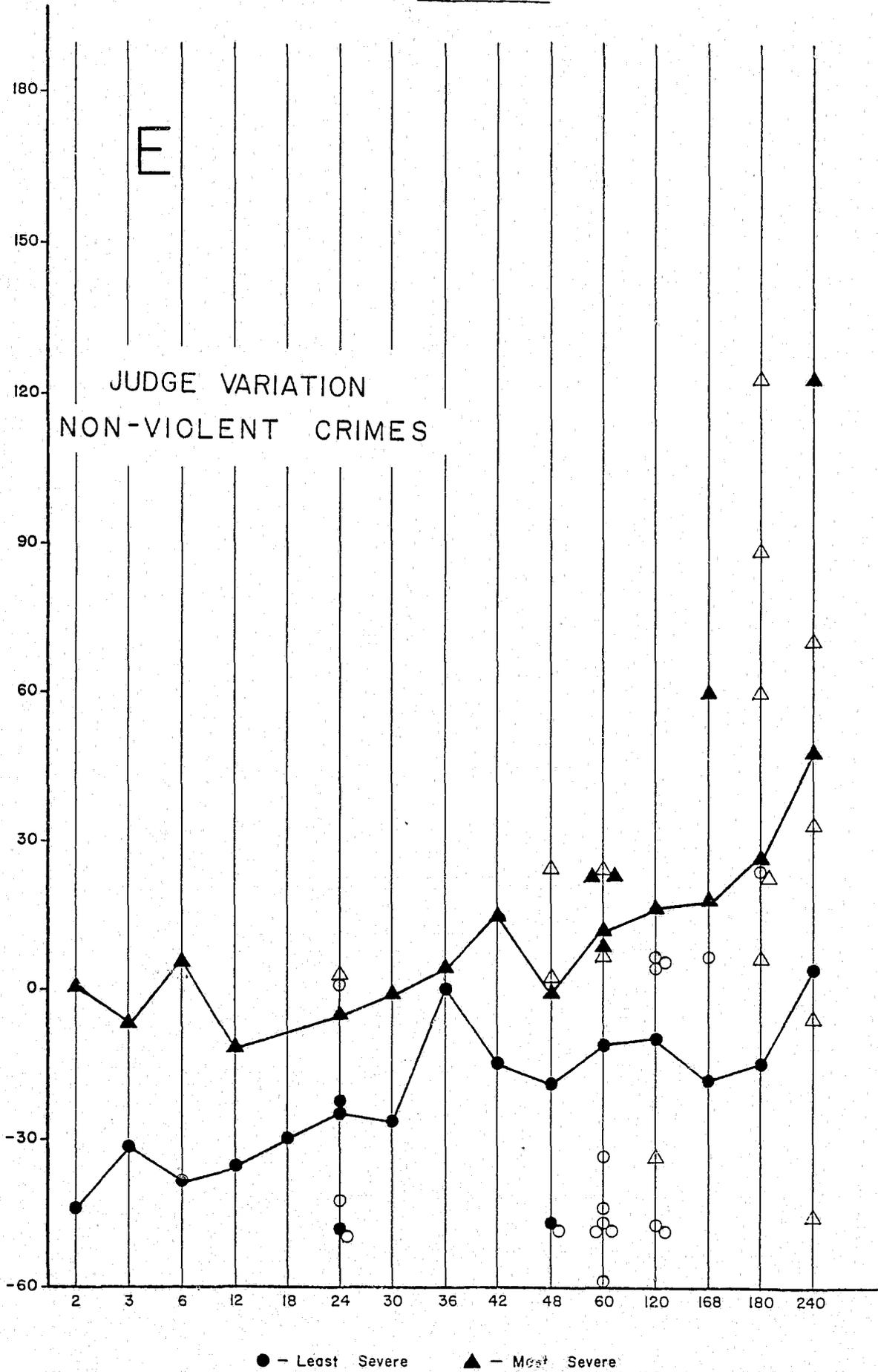


Figure 4.20

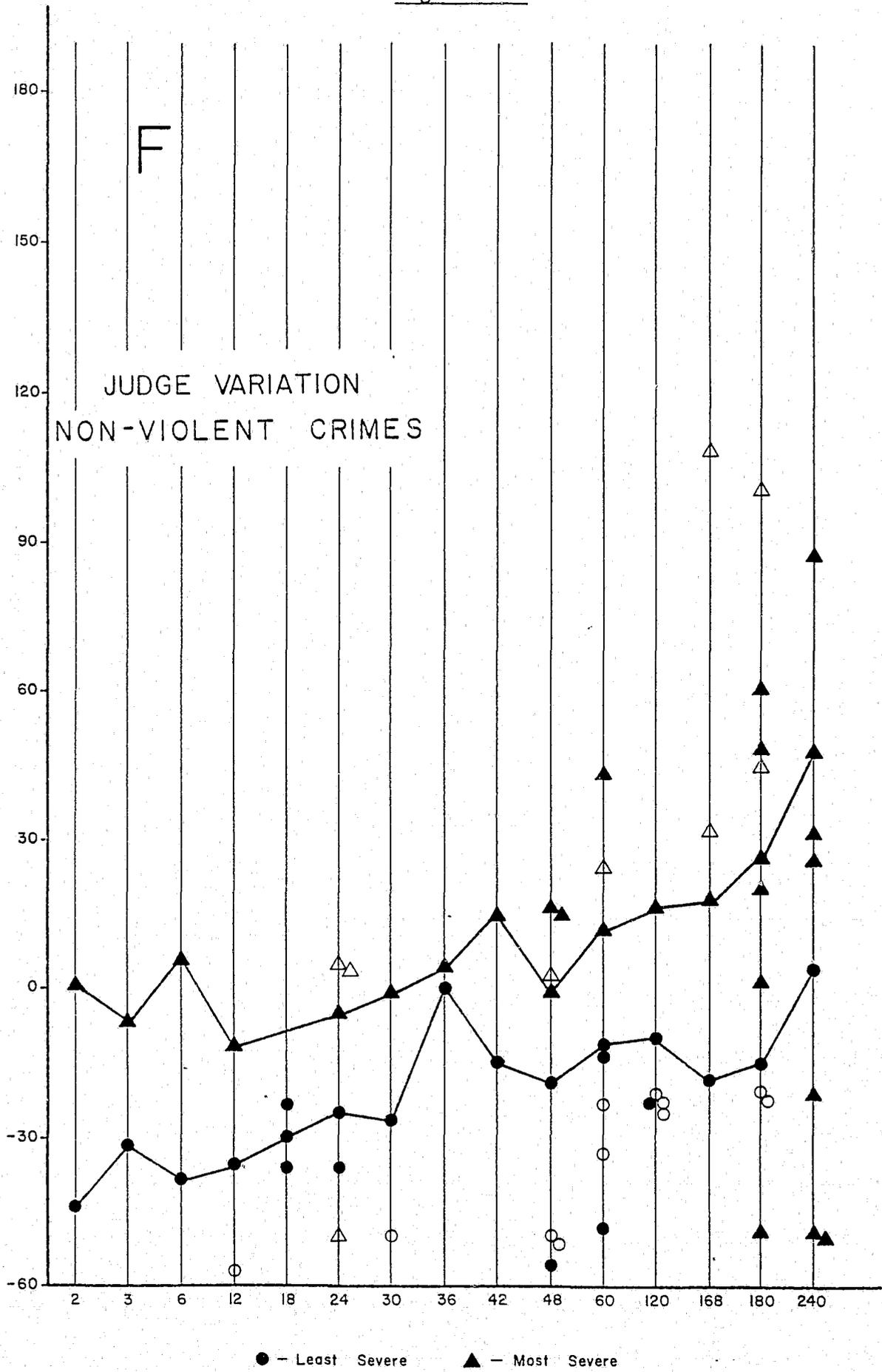


Figure 4.21

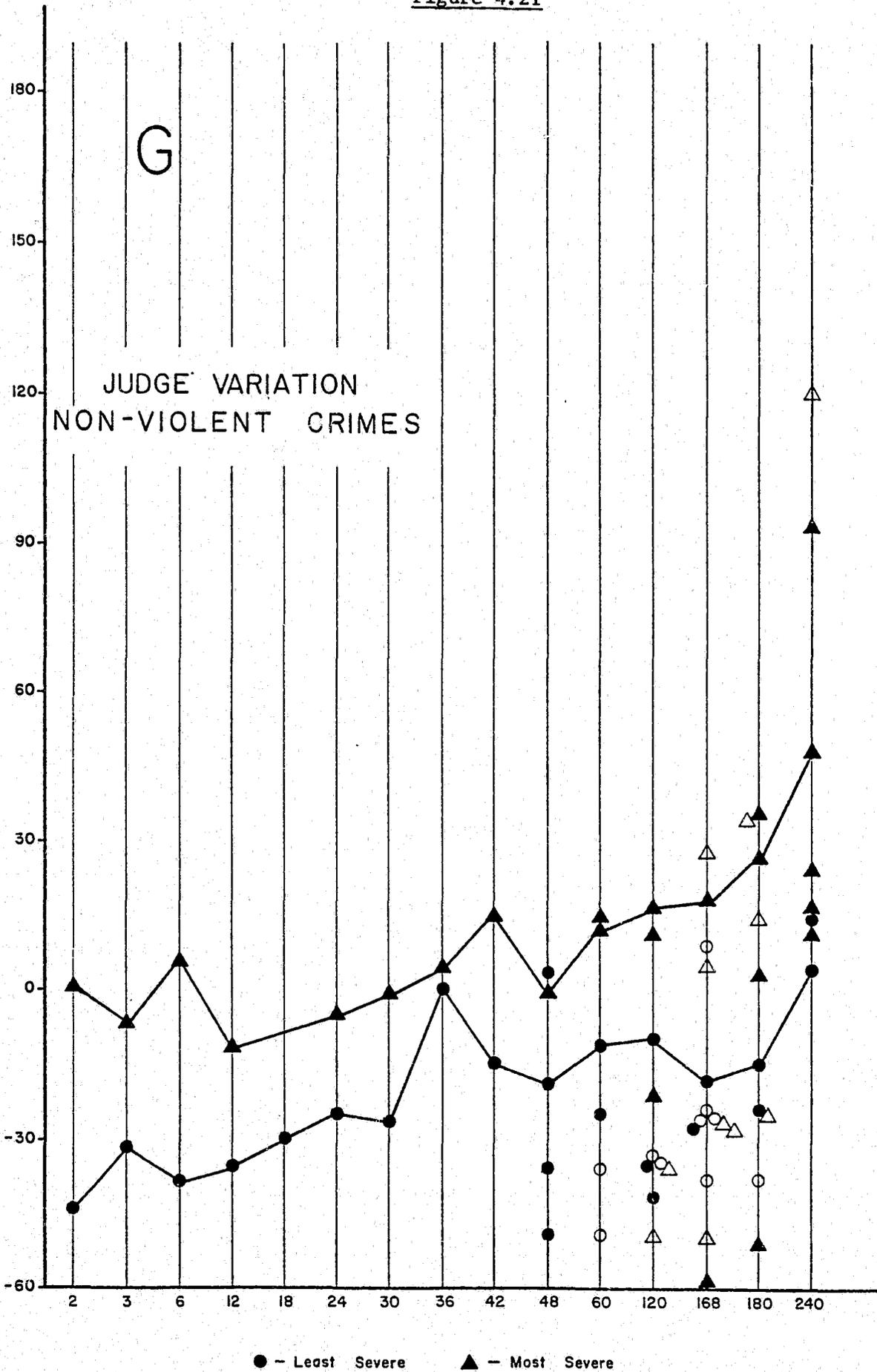


Figure 4.22

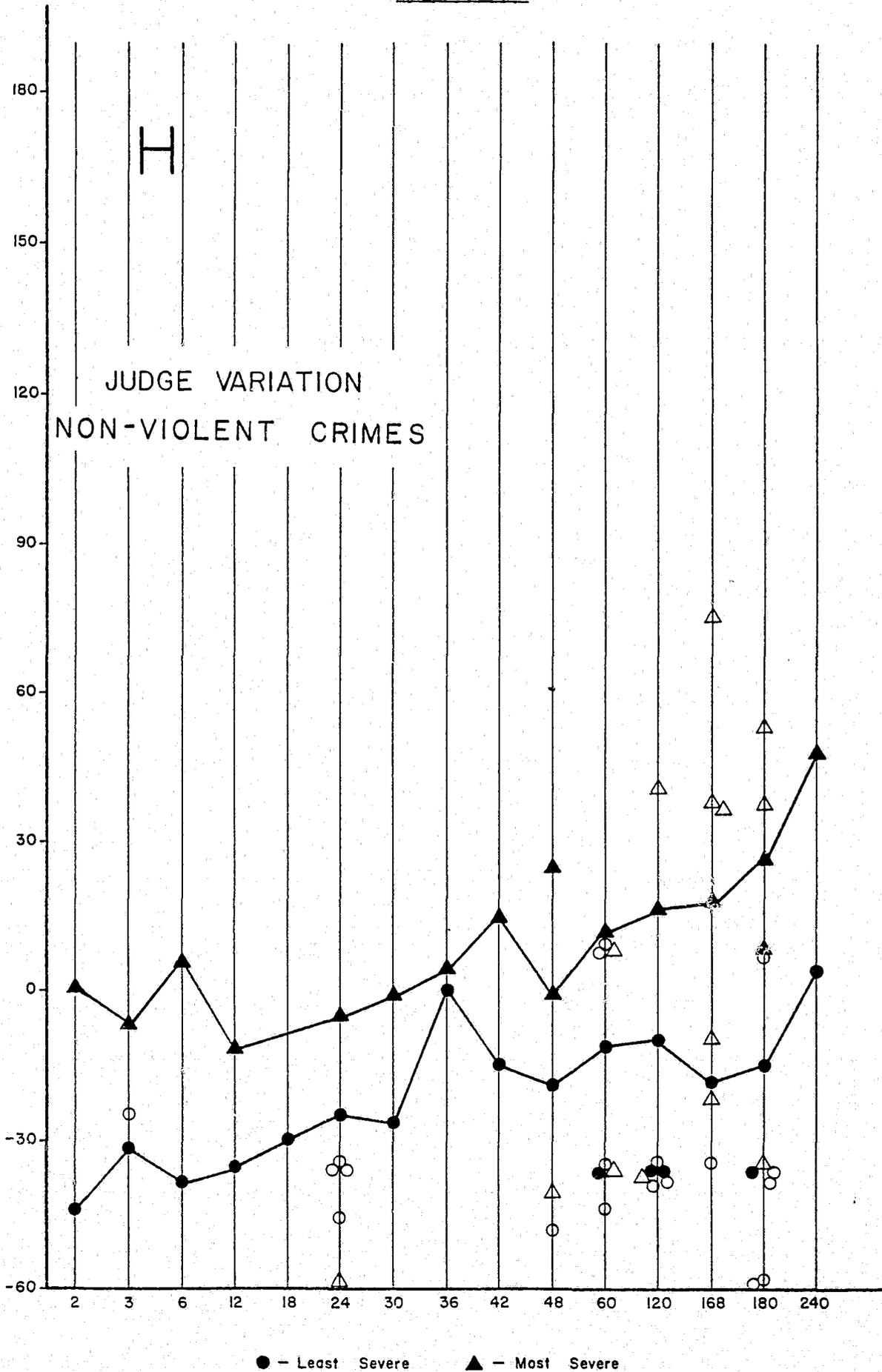
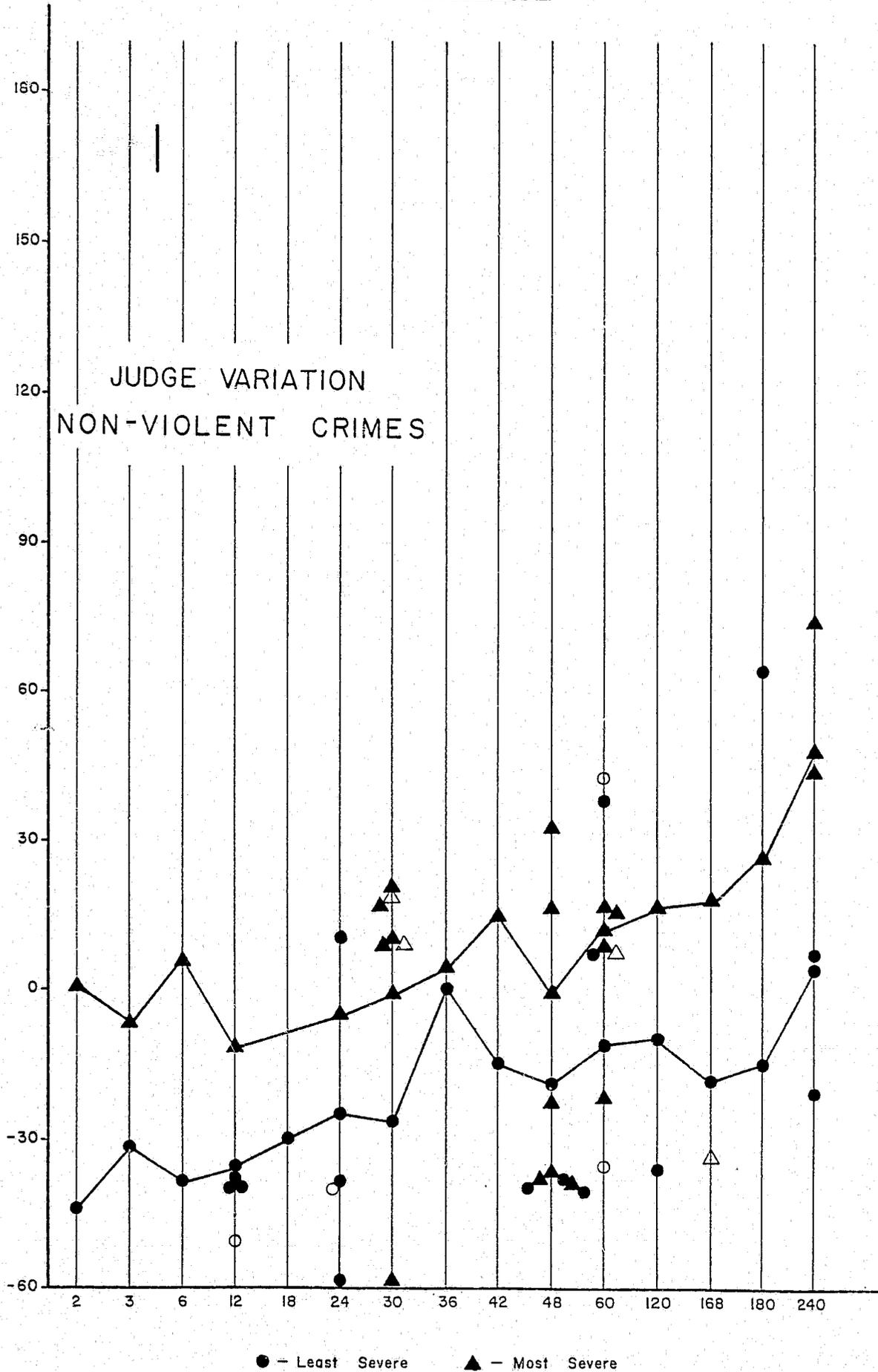


Figure 4.23



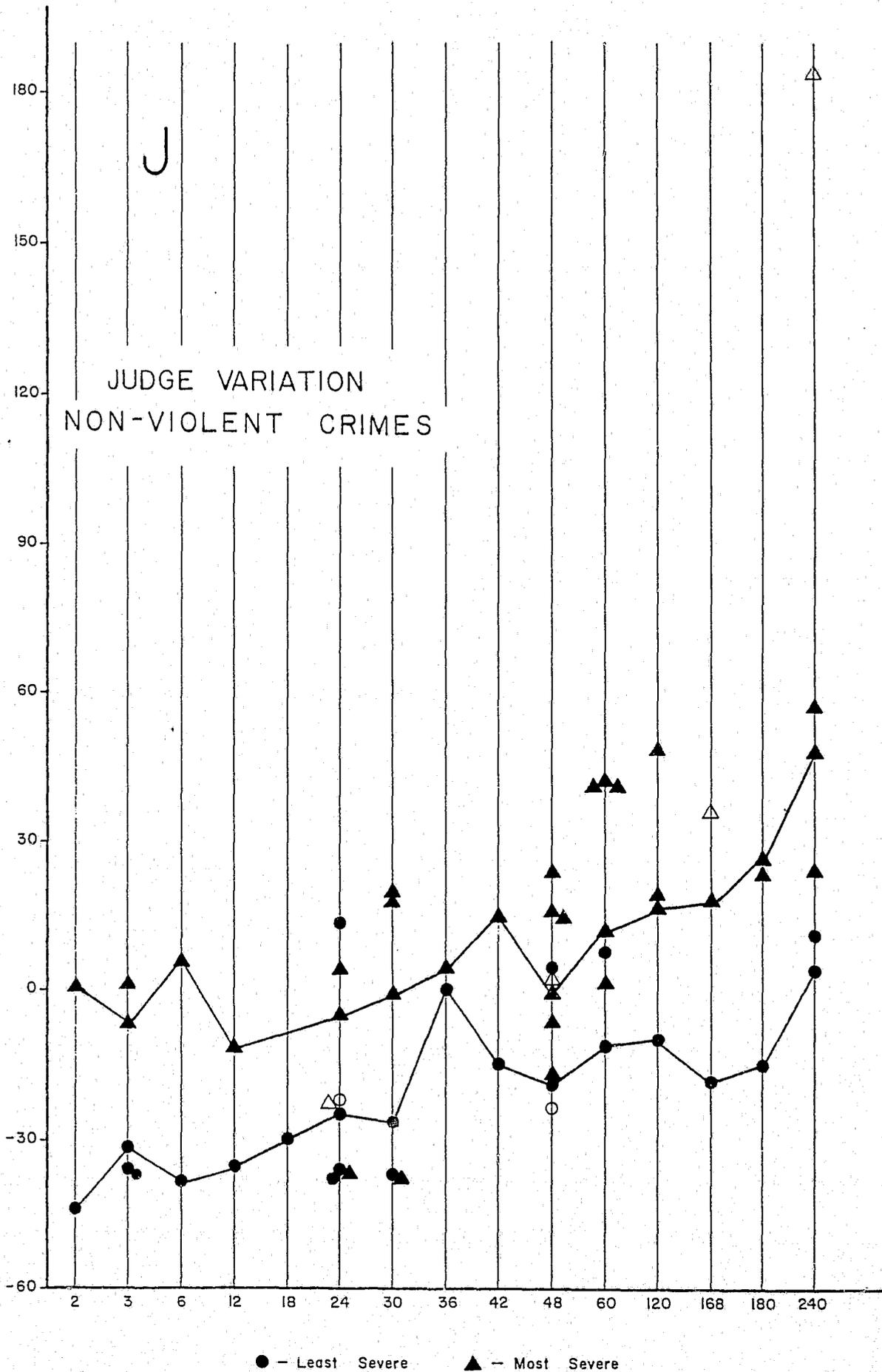


Figure 4.25

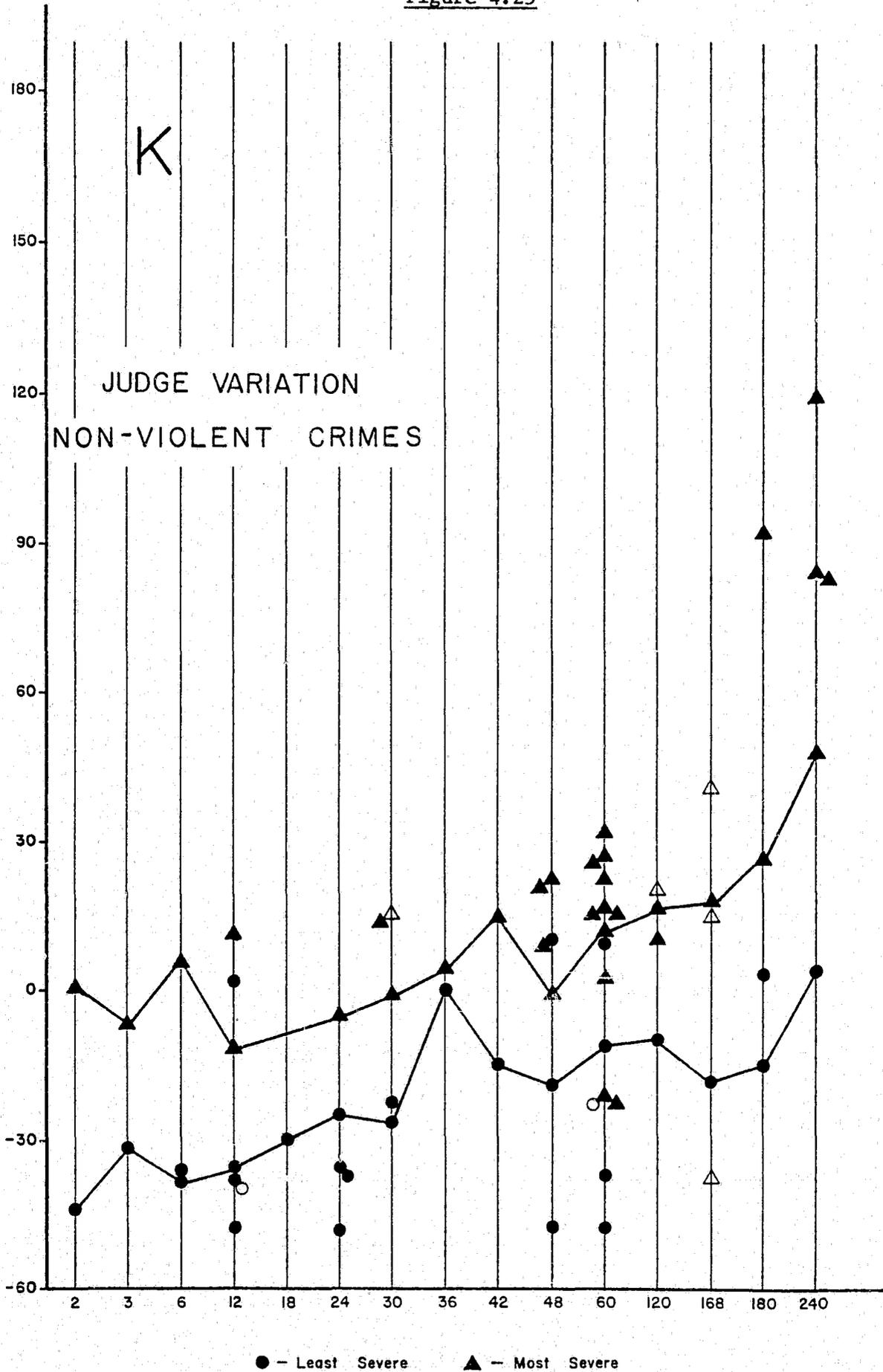
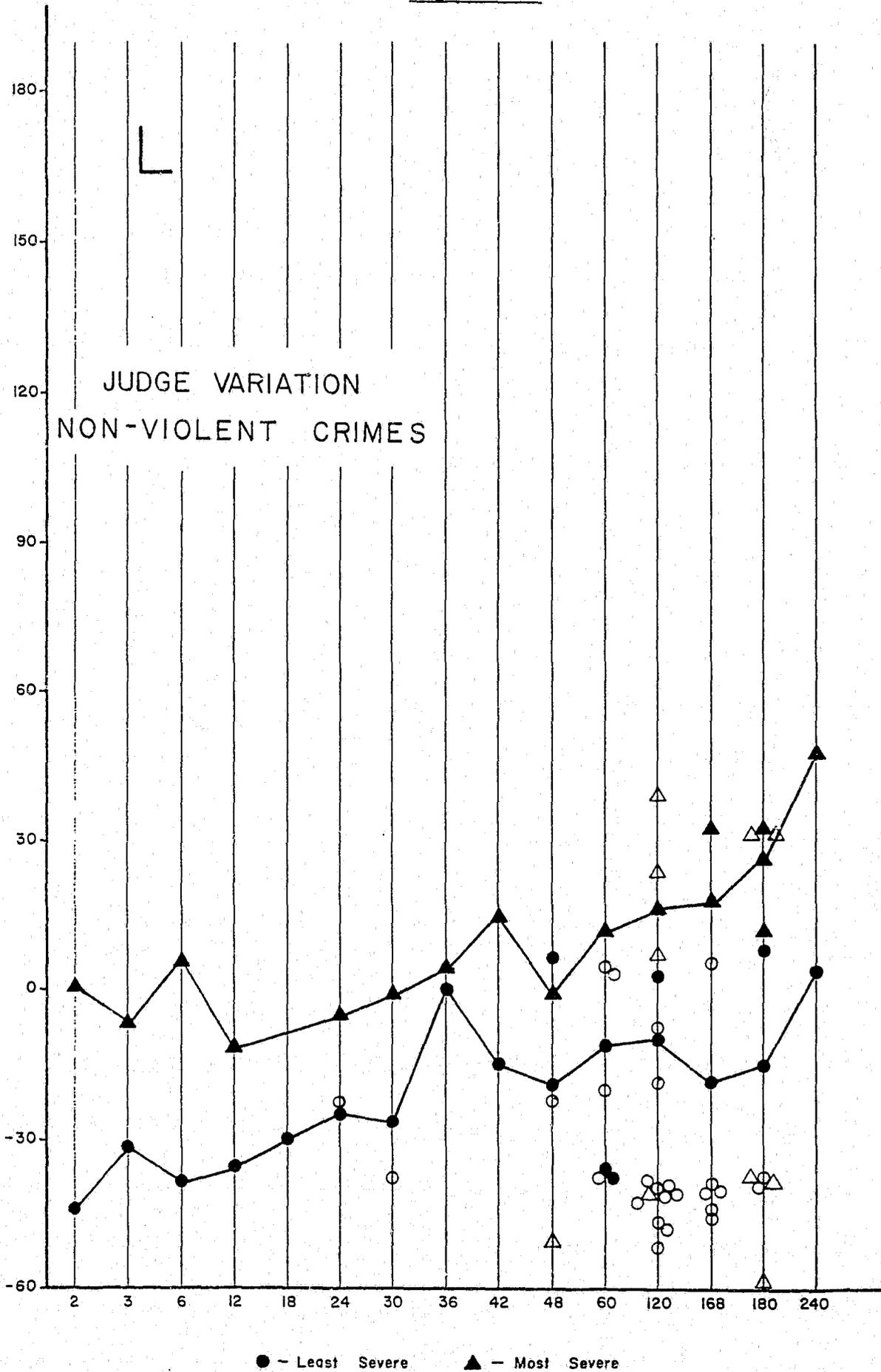
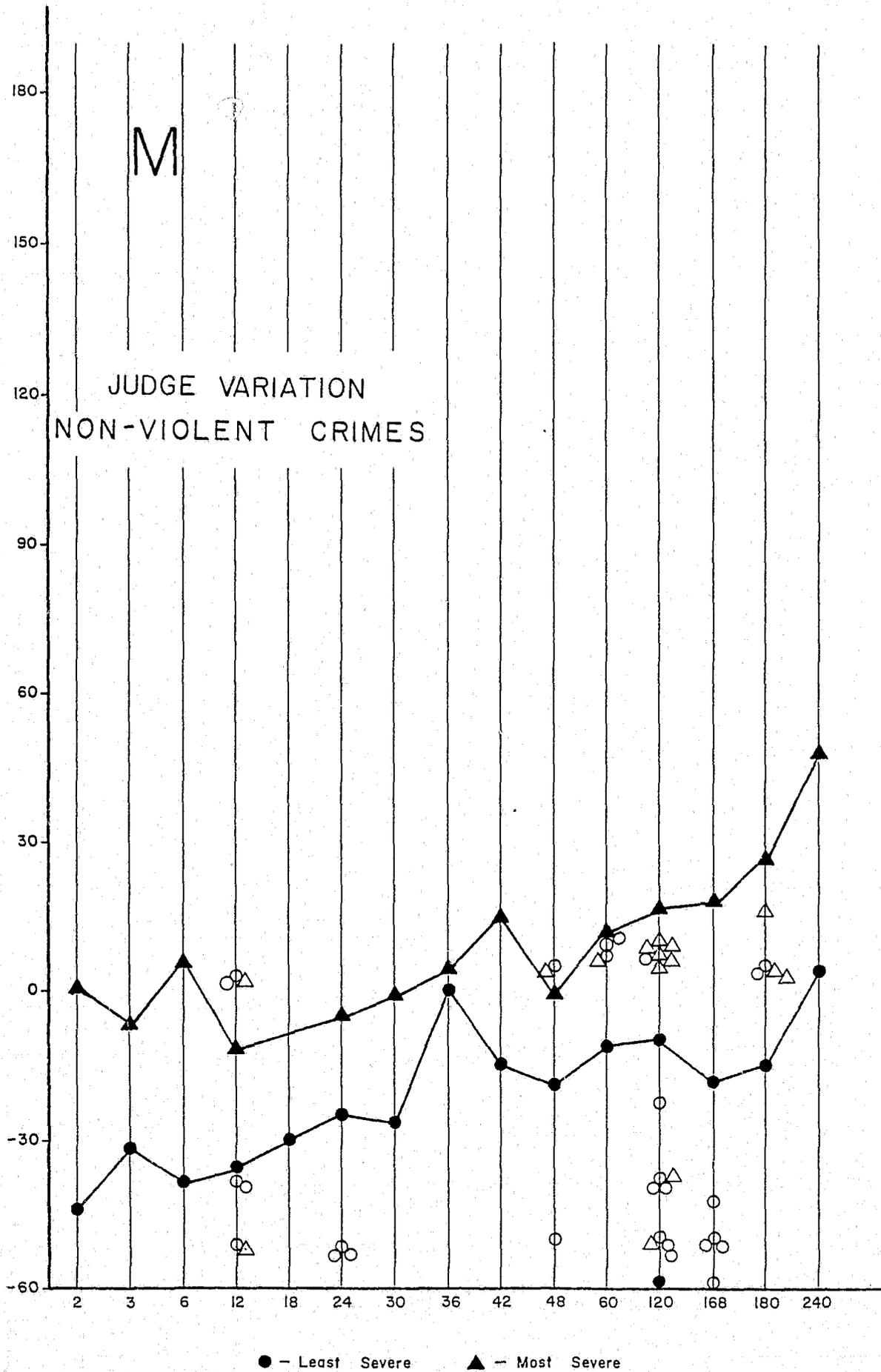
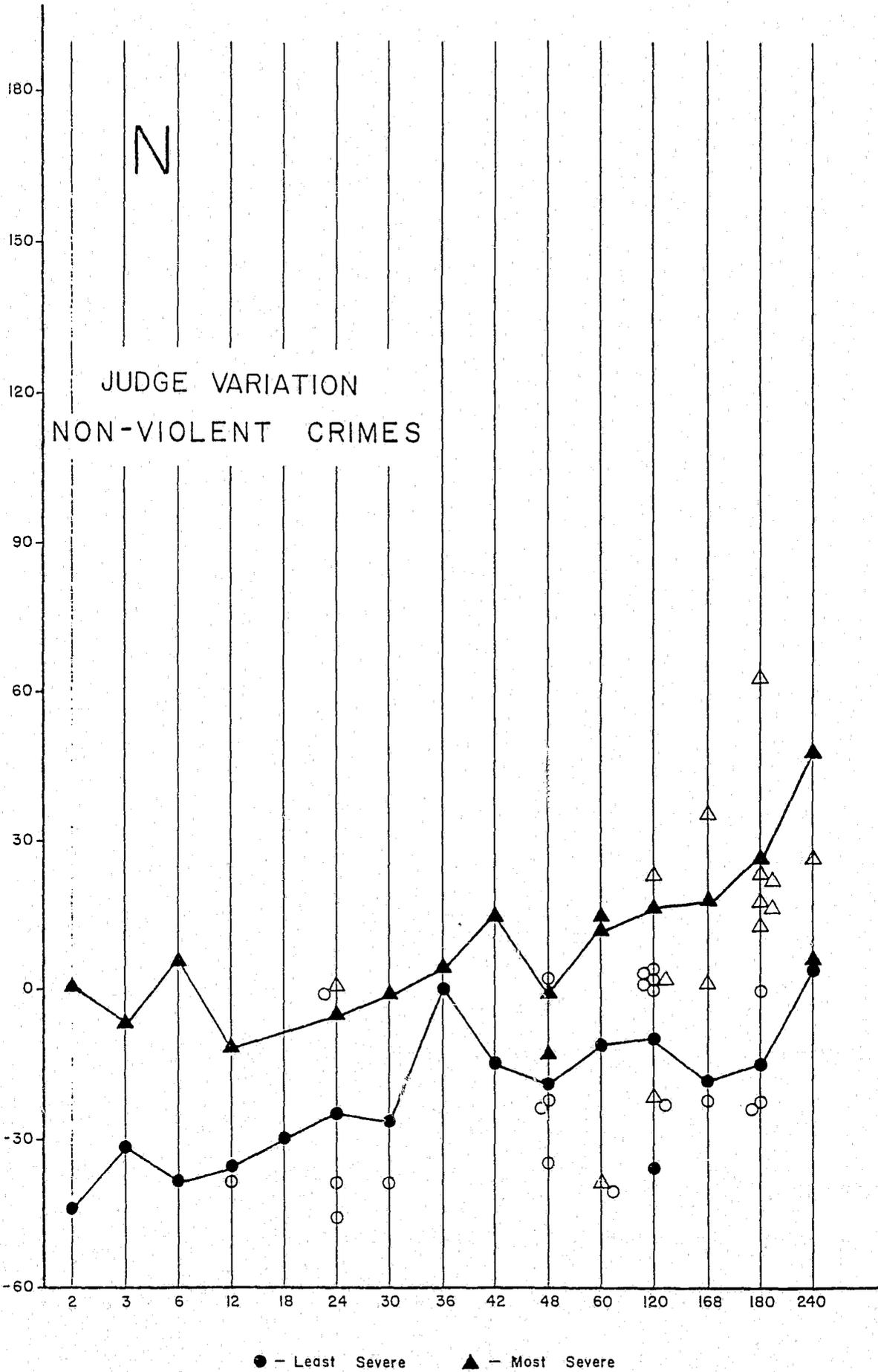


Figure 4.26







crimes the same (short jail terms) and above average, whatever the maximum penalty. This seems to be an efficient decisionmaking policy for Judge A. Judge B (Fig. 4.16) clusters many high and low severity cases together and tends to use unconditional discharge (-60 for Var 171) more than other judges.

Judge F's sentences (Fig. 4.20) present a rather interesting pattern; although there are a few exceptions, Judge F tends to sentence most severe cases above the severe average line and all less severe cases, except one, below the low severity average line. Thus, Judge F seems to be rather sensitive to the severity of cases and emphasizes their factual content in sentencing. Although Judge F is not an "average" sentencer, the pattern displayed is coherent. To a lesser degree, Judge K seems to follow such a policy.

We will not comment on every non-violent crime judge pattern. On the whole judges do not seem to differentiate between high and low severity cases in the non-violent offenses to the degree they did in the violent crimes. In addition, maximum penalty (Var 160) does not appear to be a good discriminator of sentence patterns for non-violent crimes.

### D.3. Conclusion: The Disaggregation Issue

In sections C and D we have examined disaggregated sentencing data by specific crimes and judges. This enables us to examine sentencing patterns/variation more closely and also gives us some basis for assessing whether we are on the right track in our statistical analyses of aggregated data in Chapter 3 and other parts of this chapter. We are aware that analysis on disaggregated data can be done on the level of the case study and, no doubt, much can be learned about sentencing by inspecting cases in all their factual details. While case studies would form an interesting adjunct to statistical analysis, our approach allows us to assess sentencing practices as a whole.

A specific issue in disparity analysis is whether aggregation of data biases the results. In Chapter 3, the reasons for aggregating data were explained and, using such data, we found a substantial amount of unexplained variation in sentencing. A plausible alternate explanation to these findings is that the analyses focused on the wrong subsets of cases, and to test this the crime-specific and judge-specific studies were undertaken.

While further disaggregation analysis is possible, the rather detailed--if preliminary--results in sections C and D of this Chapter appear to dispel the likelihood that aggregation bias serves as the primary reason for the substantial amount of unexplained variation in sentencing. The conclusion that we wish to draw is that regardless of how one partitions the cases, there is an extraordinary amount of variability in the sentences meted out. Since a significant proportion of this variation cannot be explained by the fact situation, we are forced to label it disparity.

## E. VARIATIONS IN THE RELATIVE IMPORTANCE OF KEY EXPLANATORY VARIABLES

Another possible explanation for the relatively large amounts of unexplained variation in sentencing lies in the possibility that certain factors which are severely aggravating for one group of individuals are only moderately aggravating (or even mitigating) factors for another group. That is, the regression weights attached to the relevant offense and offender variables may vary systematically across subsets of the population.

To ascertain the possibility of such variability, it is necessary to locate plausible subsets of the total population. For purposes of illustration we have chosen to look at two possible ways of subdividing the population. First, we will entertain the possibility that the white and non-white subpopulations are being treated differently. Second, we will investigate the possibility that sentencing varies across different geographic areas of the state. Prior to looking at the variation in the weights attached to the relevant offense and offender variables, we will look to see if there are significant differences in the sentences that one receives in the various subgroups.

### E.1. Racial Variation in Sentencing

This section seeks to investigate the hypothesis that whites and non-whites receive different sentences. The most obvious approach to testing such a hypothesis is to look at a tabulation of the mean sentences given to the two racial groups for each crime category. Table 4.9 presents the various means and, as can be seen, there appear to be substantial differences in the sentences given to the two racial groups. Prior to moving on, it is necessary to investigate the probability that such differences could have occurred by chance. In other words, we will investigate whether the mean values for the sentencing variables for each racial group are statistically different.

Table 4.9

RACIAL VARIATION FOR IN/OUT AND LENGTH DECISIONS

	<u>Percentage IN</u>		<u>Mean LENGTH in Months</u>	
	White	Non-White	White	Non-White
Homicide	.72	.82	153	166
Assault	.42	.49	25	19
Robbery	.71	.84	67	71
Sex	.64	.78	46	91
Drug	.42	.45	17	27
Burglary	.52	.65	16	19
Larceny	.41	.54	10	16
Fraud	.42	.35	16	13
Weapon	.28	.25	13	12
Property	.54	.53	16	16

To undertake such a determination (which is analogous to a one-way analysis of variance), we have regressed each of the sentencing variables on a binary variable denoting the racial group to which the individual belongs:

$$S_i = b_0 + b_1 \times \text{VAR } 59 + e_i \quad (2)$$

where

$$S_i = \text{sentencing decision}$$

$$\begin{aligned} \text{VAR } 59 &= 1 \text{ if the individual is in non-white group} \\ &= 0 \text{ if the individual is white} \end{aligned}$$

The mean values of  $S_i$  corresponding to the different values of the regressor are:

$$\text{WHITE: } E(S_i / \text{VAR } 59 = 0) = b_0$$

$$\text{NON-WHITE: } E(S_i / \text{VAR } 59 = 1) = b_0 + b_1$$

NOTE: read these expressions as the "expected value" of  $S_i$  given VAR 59 is equal to 0 or 1.

From the above expressions it follows that

$$b_0 = \text{mean sentence for whites}$$

$$b_1 = \text{difference in the mean sentence for whites and non-whites}$$

$$b_0 + b_1 = \text{mean sentence for non-whites}$$

The regression equation allows one to test the following hypotheses:

$$H_1: \text{there is no difference in the two means (i.e., } b_1 = 0)$$

$$H_2: \text{there is a difference in the two means (i.e., } b_1 \neq 0)$$

The statistical test of this hypothesis can be carried out in the framework of the usual F-test for the individual coefficient. If the value of the F-statistic is not significantly different from zero, the sample offers no evidence that race has any impact on the mean sentence.

The results of these regressions for the IN/OUT and LENGTH decisions are presented in Table 4.10. To see how this procedure is employed, consider the regression results for SEX - IN/OUT and SEX-LENGTH respectively:

$$\text{IN/OUT} = .64 + .14 \times \text{Var } 59 \quad F = 24.42^*$$

$$\text{LENGTH} = 46 + 45 \times \text{Var } 59 \quad F = 51.74^*$$

The IN/OUT regression indicates that there is a statistically significant difference between the percentage IN for whites and non-whites. The constant term of .64 is the expected value of the IN/OUT variable for whites. It indicates that 64% of the whites can be expected to be incarcerated. The estimate of  $b_1$  is .14 which indicates that the difference in the mean IN/OUT percentage for whites and non-whites is 14%. Adding  $b_0$  and  $b_1$ , it is possible to determine that the mean IN percentage for non-whites is 78%. Note that these results are indeed the mean percentages presented in Table 4.9.

Table 4.10

REGRESSION RESULTS FOR EQUATION (2) FOR THE  
IN/OUT AND LENGTH DECISIONS

	IN/OUT			LENGTH		
	b <sub>0</sub>	b <sub>1</sub>	F	b <sub>0</sub>	b <sub>1</sub>	F
Homicide	.72	.10	11.81*	153	12	1.23
Assault	.42	.07	7.69*	25	- 6	3.35
Robbery	.71	.13	48.47*	67	4	1.08
Sex	.64	.14	24.42*	46	45	51.74*
Drug	.42	.04	5.41	17	10	47.05*
Burglary	.52	.13	111.63*	16	3	16.84*
Larceny	.41	.15	85.10*	10	6	143.27*
Fraud	.42	.07	3.84	16	- 3	2.33
Weapon	.28	-.03	1.92	13	- 1	1.69
Property	.52	-.02	.04	17	0	.00

\*Significant at the .01 level

The LENGTH regression can be interpreted in a similar fashion. The constant term, b<sub>01</sub> is the expected LENGTH for whites. The constant term is 46 which is the mean sentence for whites. The regression coefficient b<sub>1</sub> indicates the difference in the LENGTH for non-whites. As can be seen, the difference is 45 so that the mean LENGTH for non-whites in sex offenses is 91. Note that these values match those reported in Table 4.9. As with the IN/OUT decision, the F-statistic for b<sub>1</sub> indicates that there is a statistically significant difference in the white and non-white means.

Turning to an examination of the IN/OUT decision for other crime types, the results in Table 4.10 indicate that non-whites receive statistically more

harsh sentences than whites in the following crime categories: homicide, assault, robbery, sex, burglary and larceny. Note that the differences in these categories suggest that non-whites have anywhere from .07 to .15 higher probability of being incarcerated than do whites.

An examination of the results for the LENGTH decision in Table 4.10 indicates that there are fewer instances of racial disparity; there are statistically significant differences in the following crime categories: sex, drug, burglary, and larceny. In all four instances, non-whites are being treated more harshly than whites.

Taken together the results of an analysis of the IN/OUT and LENGTH decisions indicate that there is evidence of very distinct differences in the treatment of whites and non-whites. Furthermore, in all cases in which the differences are statistically significant, non-whites are being treated more severely.

#### E.2. Geographical Variation in Sentencing

In this section the hypothesis to be tested is that there is no difference in the sentencing process in Strata I, II, and III. Tables 4.11 and 4.12 provide a tabulation of the mean sentences for the IN/OUT and LENGTH decisions respectively. As can be seen, there are rather substantial differences across strata in sentencing for most of the crime categories. Note, for example, that percent IN is highest in seven out of ten categories in Stratum III, but that average length is shortest in Stratum III in eight categories, seeming to confirm the high use of jail (rather than prison or OUT) noted in the aggregate in Table 3.3.

To determine whether such differences can be attributed to chance, we regressed each of the sentencing decisions on two binary variables as follows:

Table 4.11

MEAN PERCENTAGE "IN" BY STRATUM

	<u>Stratum I</u>	<u>Stratum II</u>	<u>Stratum III</u>
Homicide	.79	.78	.68
Assault	.39	.50	.59
Robbery	.80	.80	.80
Sex	.65	.74	.66
Drug	.38	.55	.59
Burglary	.55	.55	.66
Larceny	.44	.49	.59
Fraud	.32	.44	.58
Weapons	.23	.42	.68
Property	.38	.61	.72

SIGNIFICANCE TESTS FOR THE DIFFERENCE IN PERCENTAGE "IN" BY STRATUM

	Differences Between Strata			
	<u>I and III</u>	<u>II and III</u>	<u>I and II</u>	<u>I, II, III</u>
Homicide	2.14	1.78	.37	2.27
Assault	-5.74*	-.76	-4.45*	19.47*
Robbery	.05	.08	.04	.01
Sex	-.36	2.77*	-3.36*	5.27*
Drug	-8.49*	-1.47	-9.81*	65.01*
Burglary	-5.77*	-6.29*	.42	24.36*
Larceny	-6.49*	-3.96*	-2.77*	20.67*
Fraud	-8.03*	-4.19*	-5.14*	34.11*
Weapons	-9.18*	-4.97*	-6.61*	62.43*
Property	-5.90*	-2.07	-2.62*	20.60*

\*Significant at the .01 level

Table 4.12

MEAN SENTENCE LENGTH BY STRATUM

	<u>Stratum I</u>	<u>Stratum II</u>	<u>Stratum III</u>
Homicide	169	149	125
Assault	22	21	23
Robbery	69	70	71
Sex	77	66	32
Drug	24	24	17
Burglary	21	18	11
Larceny	15	12	9
Fraud	18	17	10
Weapons	14	11	6
Property	25	14	11

SIGNIFICANCE TESTS FOR THE DIFFERENCE IN LENGTH BY STRATUM

Differences Between STRATA

	<u>I and III</u>	<u>II and III</u>	<u>I and II</u>	<u>I, II, III</u>
Homicide	2.02	1.02	1.65	3.01
Assault	- .30	- .46	.22	.10
Robbery	- .18	- .11	.04	.02
Sex	5.27*	3.92*	1.65	14.14*
Drug	2.94*	2.75*	.00	4.58
Burglary	12.68*	8.11*	4.52*	81.22*
Larceny	9.64*	4.51*	5.27*	48.38*
Fraud	4.75*	4.10*	.97	12.21*
Weapons	5.41*	3.21*	2.57*	15.93*
Property	4.99*	1.23	4.33*	14.32*

\*Significant at the .01 level

$$S_i = b_0 + b_1 \times \text{METRO} + b_2 \times \text{URBAN} + e_i \quad (3)$$

where

$$\begin{aligned} S_i &= \text{sentencing decision} \\ \text{METRO} &= 1 \text{ if the person is sentenced in Stratum I} \\ &= 0 \text{ otherwise} \\ \text{URBAN} &= 1 \text{ if the person is sentenced in Stratum II} \\ &= 0 \text{ otherwise} \end{aligned}$$

Note that we have not included a variable for the rural counties. As will become apparent, this is represented by the constant term.

The mean values of  $S_i$  corresponding to the three different strata are:

$$\begin{aligned} \text{I (METRO): } E(S_i/\text{METRO} = 1, \text{URBAN} = 0) &= b_0 + b_1 \\ \text{II (URBAN): } E(S_i/\text{METRO} = 0, \text{URBAN} = 1) &= b_0 + b_2 \\ \text{III (RURAL): } E(S_i/\text{METRO} = 0, \text{URBAN} = 0) &= b_0 \end{aligned}$$

From the above expressions it follows that

$$\begin{aligned} b_0 &= \text{mean sentence for Stratum III} \\ b_1 &= \text{difference in the mean sentence from} \\ &\quad \text{Stratum III to Stratum I} \\ b_2 &= \text{difference in the mean sentence from} \\ &\quad \text{Stratum III to Stratum II} \end{aligned}$$

The regression equation allows one to test the following pairs of hypotheses:

$$\begin{aligned} H_0: & \text{there is no difference in means between strata} \\ & \text{I and III (i.e., } b_1 = 0) \\ H_1: & \text{there is a difference in the means for strata} \\ & \text{I and III (i.e., } b_1 \neq 0) \\ H_0: & \text{there is no difference in means between strata} \\ & \text{II and III (i.e., } b_2 = 0) \\ H_1: & \text{there is a difference in the means for strata} \\ & \text{II and III (i.e., } b_2 \neq 0) \\ H_0: & \text{there is no difference in means between strata} \\ & \text{I and II (i.e., } b_1 = b_2) \\ H_1: & \text{there is a difference in the means for strata} \\ & \text{I and II (i.e., } b_1 \neq b_2) \end{aligned}$$

- H<sub>0</sub>: there is no difference in the means for the three strata (i.e.,  $b_1 = b_2 = 0$ )
- H<sub>1</sub>: there is a difference in the means for the three strata (i.e.,  $b_1 \neq b_2 \neq 0$ )

The statistical tests of the four sets of hypotheses must be carried out in slightly different ways. The first two pairs of hypotheses can be tested using the usual regression t-statistics; that is

$$t = \hat{b}/S_{\hat{b}}$$

While the third hypothesis is likewise tested using a t-statistic, it has a somewhat different structure. The specific ratio of interest is

$$t = \frac{\hat{b}_1 - \hat{b}_2}{S_{\hat{b}_1 - \hat{b}_2}}$$

where

$$S_{\hat{b}_1 - \hat{b}_2} = \sqrt{S_{\hat{b}_1}^2 + S_{\hat{b}_2}^2 - 2 \text{Cov}(\hat{b}_1, \hat{b}_2)}$$

Finally, the last pair of hypotheses can be tested using the F-statistic for the regression as a whole.

The results of the hypothesis tests for the IN/OUT and LENGTH decisions are presented at the bottom of Tables 4.11 and 4.12 respectively. First, as indicated by the overall F-test, the following crime categories evidence significant differences in the mean percentage IN: assault, sex, drug, burglary, larceny, fraud, weapon, and property destruction. For the mean LENGTH decisions, the following crime categories evidence significant stratum variation: sex, burglary, larceny, fraud, weapon, and property destruction. Note that sentences given for nonviolent crimes are quite distinctive across strata. With respect to violent crimes the pattern is not very clear; sex crimes

appear to be sentenced quite differently for both IN/OUT and LENGTH whereas robbery is treated relatively uniformly. The results are mixed for assault.

Turning to pairwise differences between strata for the IN/OUT decision, a number of interesting patterns become apparent. First, stratum III judges appear to incarcerate a statistically significant higher percentage of individuals. A negative sign attached to the t-statistic means that the second stratum listed in the columnar pair has a higher percentage of IN sentences. Second, the variation in the percentages is very dramatic; different decision rules appear to be in use in the three strata with respect to whether a person is incarcerated. Finally, stratum I judges appear consistently to incarcerate a lower percentage of convicted individuals.

With respect to the LENGTH decision, the patterns observed in the IN/OUT decision are almost completely reversed. First, stratum I consistently imposes statistically longer sentences on those individuals who are incarcerated. Second, the variability is not quite so dramatic especially between strata I and II. Finally, except for assault and robbery, stratum III sentences are uniformly less severe suggesting that a higher percentage of those individuals being incarcerated may be going to jail.

As with the two racial subgroups, it appears that there are substantial differences in the sentences that individuals from the various strata receive. Whether these variations are warranted or not depends upon the fact situation in each case. Up to now we have not introduced any offense and offender characteristics into the analysis. To see whether there are group differences once such factors have been controlled for is the subject of the following section.

### E.3. Controlling for the Fact Situation

Before we can adequately determine if race or stratum make a difference in the sentence that an offender receives, it is imperative that we correct statistically for the effects of heretofore uncontrolled variables; that is, variables whose effects cannot be properly standardized between subgroups. The basic hypothesis underlying this analysis is that the relevant offense and offender variables that have been identified in Chapter 3 have the same effect on the sentence regardless of which subgroup the individual is in. In technical terms this means that the regression coefficients are invariant from subgroup to subgroup.

The technique that is employed to test this hypothesis is covariance analysis. The regression results reported in Chapter 3 will be compared to the results obtained when analysing the relevant subsamples independently. Specifically, we will regress the sentencing variables on all of the explanatory variables identified in Chapter 3 for the individual subgroups (non-white, white, Strata I, II, and III). The thrust of this analysis is to see whether we can obtain a better fit if we run a separate regression for each subgroup. This is tantamount to seeing if whether knowing the race of the offender or the geographical location in which he is being sentenced increases the accuracy of our predictions (i.e., does this knowledge increase the amount of systematic variation in the results). The particular test statistic is an F-statistic which compares the fit of the model when estimated on the entire population to the fit when estimated for each subgroup. If the F-statistic is significant, the regression coefficients or weights attached to the relevant offense and offender variables are different for the groups. In other words, it is an indication that the explanatory models are different for each subgroup.

E.3. (a) Analysis of Covariance for Racial Groups

The results of the analysis of covariance for each crime category are presented in Table 4.13. For the IN/OUT decision there is an indication of significant differences in the way offense and offender variables affect the sentence for the two racial groups in the assault, robbery, sex, drug, burglary, and larceny categories. Returning to Table 4.10, we see that in every case where there was a significant racial difference (except homicide), there were significant differences in the manner in which the "fact situation" impacted on the sentence. Based upon these results, it is now possible to conclude that there is evidence of racial disparity. To see what individual coefficient differences one finds, it is necessary to look at the regression results for each racial group.

Table 4.14 presents the regression results for the SEX IN/OUT decisions for the white and non-white portions of the sample. It appears that there are some rather sharp differences between the white and non-white individuals. The first point to notice is that the coefficient for Var 160 in the non-white group is twice as high as that for the white group. This means that regardless of the fact situation, non-whites have a much higher probability of being incarcerated for crimes with a given seriousness level. Another comparison worth noting concerns those variables which are statistically significant in one equation but not in the other. Variables that are significant in the white regression but not in the non-white regression include: extent of mental trauma (Var 54), type of work (Var 71), reason for leaving school (Var 64), and drug use status (Var 66). The two variables which are significant in the non-white but not in the white equation are: number of violent felonies as a juvenile (Var 108) and residential stability (Var 60). While it might be easy to make too much of these differences, it is interesting to note that the

Table 4.13

ANALYSIS OF COVARIANCE F-STATISTICS  
FOR IN/OUT AND LENGTH DECISIONS

<u>Crime Category</u>	<u>PERCENTAGE IN</u>		<u>LENGTH</u>	
	Mean <u>White/Non-White</u>	<u>F-Statistic</u>	Mean <u>White/Non-White</u>	<u>F-Statistic</u>
Homicide	.72 / .82	1.61	153 / 166	4.18*
Assault	.42 / .49	15.11*	25 / 19	9.78*
Robbery	.71 / .84	5.30*	67 / 71	8.67*
Sex	.64 / .78	3.78*	46 / 91	3.70*
Drug	.42 / .45	13.26*	17 / 27	10.21*
Burglary	.52 / .65	7.13*	16 / 19	9.93*
Larceny	.41 / .54	6.47*	10 / 16	6.77*
Fraud	.42 / .35	1.73	16 / 13	1.49
Weapon	.28 / .25	0.95	13 / 12	1.41
Property	.54 / .53	0.99	16 / 16	.00

\*Significant at .01 level

Table 4.14

ANALYSIS OF COVARIANCE: SEX IN/OUT

<u>Offense Variables</u>	WHITE		NON-WHITE	
	<u>B-Coef</u>	<u>F-Stat</u>	<u>B-Coef</u>	<u>F-Stat</u>
Var 160	.0005	8.90*	.001	53.29*
Var 54	.222	18.88*	.076	1.23
Var 27	-.091	6.33	-.067	5.91
 <u>Offender Variables</u>				
Var 104	.045	34.39*	.027	23.42*
Var 96	.084	23.70*	.087	22.63*
Var 73	.194	38.81*	.221	28.49*
Var 71	-.118	30.87*	--	.00
Var 64	.137	16.44*	.078	4.56
Var 66	.199	21.95*	-.056	2.01
Var 67	.045	5.96	-.001	.01
Var 108	-.186	2.01	-.418	12.58*
Var 60	.015	.52	.062	9.00*
Var 94	.181	6.27	.062	.91

-----  
 $\bar{R}^2 = .30$

$\bar{R}^2 = .38$

SSF = 121.69

SSE = 42.84

n = 760

m = 409

\*Significant at .01 level

non-white regression explains a much higher percentage of the total variation. This, plus the fact that the non-whites' probability of incarceration is much more dependent on the statutory maximum than is the whites', suggests some disparity.

Tables 4.15 through 4.19 present the IN/OUT results for those crime categories in which the analysis of covariance indicated a significant difference between the coefficients for white offenders and those for non-white offenders. When examining these results, one should concentrate on the different weights attached to the offense and offender variables. It is also interesting to note that in most crime categories there is a substantial difference between the  $\bar{R}^2$ 's for the two racial groups. With the exception of robbery, the non-white subsample exhibits a higher proportion of systematic variation. Does this mean that non-whites are being treated more systematically and hence fairly? To make such a determination it is necessary to examine the coefficient values for various offense and offender variables. It could be, for instance, that non-whites are being treated in a more systematic fashion but they are being penalized much more severely for certain aggravating factors and rewarded less favorably for mitigating factors. What such examination might show is that being treated more systematically but differently than whites is a dramatic form of disparity.

The results of the two regressions for SEX LENGTH crimes are presented in Table 4.20. As can be seen, there are some marked differences between coefficients for the white and non-white groups. There are three coefficients which are significant for whites but not for non-whites and four coefficients which are significant for non-whites but not for whites. Note, too, there are some notable differences in relative magnitude of the remaining coefficients. One coefficient worth some examination in particular is that for

Table 4.15

ANALYSIS OF COVARIANCE: ASSAULT IN/OUT

<u>Offense Variables</u>	WHITE		NON-WHITE	
	<u>B-Coef</u>	<u>F-Stat</u>	<u>B-Coef</u>	<u>F-Stat</u>
Var 160	.002	32.13*	.003	78.82*
Var 44	.11	36.20*	-.08	18.86*
Var 7	.06	58.13*	.019	8.67*
Var 48	-.13	8.77*	-.38	71.56*
Var 5	-.17	9.50*	-.346	27.55*
Var 10	.05	2.39	.246	46.39*
Var 50	.51	77.67*	.08	1.31
Var 46	-.15	17.98*	-.07	4.15
Var 3	-.02	1.41	-.10	52.77*
Var 49	-.11	42.80*	-.031	5.71
Var 41	.11	8.00*	.11	9.22*
Var 55	.11	8.36*	.09	6.52
Var 51	-.11	3.43	-.21	4.81
Var 2	.01	.27	.11	16.11*
 <u>Offender Variables</u>				
Var 96	.17	42.35*	.13	47.95*
Var 60	.10	23.38*	.11	41.07*
Var 94	.22	15.40*	.093	1.81
Var 61	.14	2.25	.44	23.80*
Var 99	.12	45.80*	.04	4.93
Var 67	.09	19.85*	.109	38.78*
Var 69	.07	28.78*	.051	13.34*
Var 62	.07	10.12*	-.08	13.73*
Var 108	.89	16.82*	---	---
Var 73	-.11	13.54*	.161	23.28*
Var 70	-.07	8.41*	-.047	4.01
<hr/>				
	$\bar{R}^2$	= .46	$\bar{R}^2$	= .47
	SSR	= 107.15	SSR	= 110.93
	n	= 846	m	= 855

\*Significant at .01 level

Table 4.16

ANALYSIS OF COVARIANCE: ROBBERY IN/OUT

<u>Offense Variables</u>	WHITE		NON-WHITE	
	B-Coef	F-Stat	B-Coef	F-Stat
Var 160	.001	29.94*	.001	70.01*
Var 7	.076	34.26*	.009	2.29
Var 17	-.061	6.89*	-.057	11.30*
Var 6	.081	27.67*	.042	17.14*
Var 9	-.031	3.05	-.037	14.77*
Var 46	-.124	11.21	-.053	4.64
Var 41	-.046	.84	-.010	21.06*
Var 53	.112	9.18*	.096	17.61*
Var 2	-.037	2.06	-.016	1.08
Var 5	.190	16.45*	.081	6.93*
Var 43	.019	.26	-.112	24.18*
Var 40	.012	.42	.029	8.15*
Var 49	-.088	17.17*	-.005	.13
Var 47	-.017	.17	.088	9.53*

Offender Variables

Var 73	.272	87.29*	.284	175.04*
Var 96	.066	23.84*	.018	5.20
Var 60	.064	15.40*	.020	4.19
Var 106	.000	2.54	.000	3.82
Var 71	-.104	23.52*	-.035	7.28*
Var 72	.010	.66	.039	18.23*
Var 69	-.025	3.94	-.019	4.40

$\bar{R}^2 = .44$

SSR = 79.49

n = 713

$\bar{R}^2 = .32$

SSR = 134.95

m = 1505

\*Significant at .01 level

Table 4.17

ANALYSIS OF COVARIANCE: DRUG IN/OUT

<u>Offense Variables</u>	WHITE		NON-WHITE	
	B-Coef	F-Stat	B-Coef	F-Stat
Var 160	.002	57.33*	.001	126.71*
Var 22	.066	5.85	.089	18.77*
Var 21	.374	21.41*	.452	17.17*
Var 20	.028	1.95	.069	21.39*
Var 23	-.015	.91	-.043	11.80*
 <u>Offender Variables</u>				
Var 73	.051	4.92	.304	315.57*
Var 98	.093	62.69*	.055	52.68*
Var 60	.042	7.21*	.074	57.92*
Var 61	.455	33.64*	.190	23.88*
Var 66	.108	24.42*	.037	5.15
Var 67	.021	2.00	.056	26.49*
Var 97	.054	.30	.150	12.86*
Var 65	.039	7.49*	.043	19.10*
Var 95	.050	2.44	.121	31.81*
Var 106	-.0004	7.95*	.0003	35.08*
Var 71	.017	1.24	-.093	54.25*
Var 69	.028	10.70*	.024	14.17*
Var 96	-.016	1.29	.050	31.27*
Var 107	.132	19.93*	.007	.25
<hr/>				
	$\bar{R}^2$	= .20	$\bar{R}^2$	= .40
	SSE	= 331.71	SSE	= 373.26
	n	= 1726	m	= 2540

\*Significant at .01 level

Table 4.18

ANALYSIS OF COVARIANCE: BURGLARY IN/OUT

<u>Offense Variables</u>	WHITE		NON-WHITE	
	B-Coef	F-Stat	B-Coef	F-Stat
Var 12	.022	8.32*	.023	7.74*
Var 17	.078	38.54*	-.007	.22
Var 46	-.150	17.90*	-.103	6.85*
Var 4	.071	31.11*	.011	.75
Var 6	.028	13.74*	-.011	1.22
 <u>Offender Variables</u>				
Var 73	.169	115.35*	.211	119.97*
Var 98	.059	71.61*	.035	23.07*
Var 96	.052	42.75*	.089	108.92*
Var 60	.046	27.69*	.086	73.36*
Var 64	.089	35.83*	.079	20.92*
Var 104	.014	13.44*	.012	14.58*
Var 72	.029	21.63*	.023	8.94*
Var 95	.049	6.04	.108	27.57*
Var 63	.007	.17	.135	36.28*
Var 99	.043	17.19*	.022	4.67
Var 71	.040	9.98*	-.049	16.60*
Var 62	.552	19.04*	.009	.45
Var 103	.049	21.62*	.034	5.14
Var 108	-.167	25.62*	.007	.02
Var 61	.081	4.57	.066	2.25
Var 106	-.000	14.34*	.000	2.50
Var 67	.011	1.09	.042	15.45*
<hr/>				
	$\bar{R}^2$	= .22	$\bar{R}^2$	= .33
	SSR	= 756.54	SSR	= 376.79
	n	= 3890	m	= 2501

\*Significant at .01 level

Table 4.19

ANALYSIS OF COVARIANCE: LARCENY IN/OUT

<u>Offense Variables</u>	WHITE		NON-WHITE	
	<u>B-Coef</u>	<u>F-Stat</u>	<u>B-Coef</u>	<u>F-Stat</u>
Var 160	.002	13.62*	.003	37.29*
Var 46	-.203	19.45*	-.162	11.40*
Var 42	.186	8.93*	.355	58.82*
Var 11	-.009	1.97	-.042	47.90*
Var 6	.030	8.36*	.028	9.28*
Var 43	-.336	21.92*	-.189	13.79*
Var 8	.153	8.02*	.127	4.56
Var 45	.532	13.15*	--	--
Var 2	-.048	8.44*	-.058	13.03*
Var 16	.113	12.97*	.077	11.48*
Var 14	.068	5.07*	.042	3.16
 <u>Offender Variables</u>				
Var 98	.044	18.13*	.099	159.69*
Var 72	.086	97.85*	.022	5.85
Var 104	.037	61.16*	.021	25.43*
Var 96	.048	14.12*	.058	31.67*
Var 60	.071	26.35*	.104	73.18*
Var 105	.001	6.68*	.000	15.83*
Var 68	-.150	28.77*	-.012	.14
Var 95	-.020	.43	.134	28.27*
Var 107	.014	.34	-.067	29.48*
Var 71	-.034	4.82	-.079	26.56*
Var 73	.045	4.08	.067	7.76*
Var 64	.032	2.27	.095	23.12*
Var 99	.504	7.17*	.014	1.12
Var 63	-.094	15.77*	.023	.62
<hr/>				
	$\bar{R}^2$	= .24	$\bar{R}^2$	= .41
	SSR	= 370.57	SSR	= 251.92
	n	= 2002	m	= 1757

\*Significant at the .01 level

Var 160. As can be seen, the regression results indicate that whites tend to get a higher proportion of the statutory maximum than the non-white offenders. This result needs to be kept in mind when we are interpreting the analysis of covariance F-test which indicates that there is a statistically significant difference between the way in which whites and non-whites are sentenced for SEX crimes. While it is difficult to conclude that these results indicate there is racial discrimination, we can conclude that the two groups are not being treated in the same fashion. This is especially interesting in light of the fact that the non-white portion of the population receives substantially longer sentences.

Note the very large difference in the amount of variance explained in the non-white subsample as opposed to the white subsample. On the face of it, one might conclude that non-whites are being treated fairly. It seems possible that there exists a subtle type of disparity in the context of the higher  $\bar{R}^2$ . Specifically, it could be that certain factors are severely aggravating for non-whites whereas they are only moderately aggravating (or even mitigating) factors for whites. To ascertain the possibility of such disparity requires a more in-depth investigation of the parameters.

How can we account for the large differences in the average sentence lengths for sex crimes given to whites (46 months) and non-whites (91 months) noted in Table 4.9? By looking at the optimal weights that are attached to the statistically significant coefficients, it is possible to find some of the reason for the differences in mean LENGTH (Table 4.20). The first variable of interest is type of weapon (Var 4); according to our results, non-whites using a firearm would receive 105 months (35x3) whereas whites would receive 42 months (14x3). A second variable of interest is the offender/victim relationship (Var 44), where the weights are 27.01 and -2.22 for non-

Table 4.20

ANALYSIS OF COVARIANCE: SEX LENGTH

<u>Offense Variables</u>	WHITE		NON-WHITE	
	B-Coef	F-Stat	B-Coef	F-Stat
Var 4	14.29	19.76*	35.26	85.70*
Var 160	.35	189.82*	.31	56.42*
Var 27	- 1.73	.13	-31.85	26.26*
Var 41	-15.40	8.94*	-28.81	13.28*
Var 45	-55.14	5.65	-17.45	.54
Var 44	- 2.22	.54	27.01	24.86*
Var 9	- .53	.02	-26.54	20.72*
 <u>Offender Variables</u>				
Var 102	1.01	.50	4.65	3.25
Var 95	21.07	13.09*	12.09	1.11
Var 99	3.14	.84	10.91	6.09
Var 73	17.05	13.83*	25.07	7.42*
Var 68	17.30	14.94*	13.14	2.27
Var 94	27.34	11.44*	68.07	23.60*
Var 98	- 1.84	.85	- 8.23	7.47*
Var 70	9.29	8.08*	7.71	1.50
Var 71	- 7.15	5.04	- 1.48	.07
Var 105	.5	4.92	.05	3.03
<hr/>				
	$\bar{R}^2$	= .51	$\bar{R}^2$	= .74
	SSE	= 924970.	SSE	= 970115.
	n	= 483	m	= 317

\*Significant at .01 level

non-whites and white respectively. If the victim in a sex crime is a stranger (Var 44=2), the non-white individual would receive 54 more months (2x27) whereas the white individual would receive four months less. Finally, the variable which indicates whether there are any detainers outstanding (Var 94) has weights of 68.07 for non-whites and 27.34 for whites. When these are detainers outstanding (i.e., Var 94=1) the non-white individual receives an extra 68 months whereas the white person receives 27 months more. It should be clear that the coefficients attached to the variables more than make up for the higher weight on Var 160 for whites. Therefore, we find that the SEX-LENGTH equation for non-whites has a higher  $\bar{R}^2$  and a lower coefficient for Var 160 than the equation for whites. Does this mean that there is no disparity? We think not, and the results tend to show that whites and non-whites are not treated in the same way when it comes to the LENGTH decision.

The results for the LENGTH decision for the remaining crime categories which had a significant F-statistic for the analysis of covariance are presented in Tables 4.21 through 4.26.

What then do the results in this section indicate about the possibility of racial disparity? First, in more than half of the twenty decisions (ten IN/OUT and ten LENGTH) there is an indication of statistically different patterns in the sentencing of whites and non-whites. The results of the overall F-tests in the analysis of covariance (Table 4.13) suggest that the optimal weights attached to the relevant offense and offender variables differ for the two subsamples.

In and of themselves, such differences do not constitute invidious disparity; they do, however, indicate some variation. It is necessary to examine the regression weights to see what they say about the relative impact of the offense and offender variables. In such a context there are at least two

Table 4.21

ANALYSIS OF COVARIANCE: HOMICIDE LENGTH

<u>Offense Variables</u>	WHITE		NON-WHITE	
	<u>B-Coef</u>	<u>F-Stat</u>	<u>B-Coef</u>	<u>F-Stat</u>
Var 160	.83	115.04*	.87	122.35*
Var 45	-23.10	1.90	-42.94	17.18*
Var 49	- 2.46	.05	28.14	29.83*
Var 42	84.92	35.70*	16.13	2.22
Var 4	- 4.84	.93	-20.55	15.01*
Var 8	63.19	.86	110.30	13.65*
Var 46	-134.00	9.10*	-38.28	5.31
Var 7	- .71	.05	7.64	16.31*
Var 40	19.29	2.83	9.31	2.02
 <u>Offender Variables</u>				
Var 106	.06	1.05	.18	78.24*
Var 63	28.50	4.21	34.08	10.23*
Var 67	- 8.42	1.00	-27.05	27.38*
Var 68	11.21	.62	39.52	7.57*
Var 102	11.53	7.04*	9.62	6.79*
Var 65	11.00	1.93	14.57	9.18*
Var 104	- 2.82	.75	- 3.47	1.74
<hr/>				
	$\bar{R}^2$	= .60	$\bar{R}^2$	= .59
	SSE	= 1697084.	SSE	= 4063060.
	n	= 229	m	= 517

\*Significant at .01 level

Table 4.22

ANALYSIS OF COVARIANCE: ASSAULT LENGTH

<u>Offense Variables</u>	WHITE		NON-WHITE	
	<u>B-Coef</u>	<u>F-Stat</u>	<u>B-Coef</u>	<u>F-Stat</u>
Var 160	.52	499.25*	.36	285.96*
Var 9	5.91	10.78*	7.01	14.43*
Var 46	-2.28	.18	-14.27	19.05*
 <u>Offender Variables</u>				
Var 109	6.43	1.88	14.93	114.54*
Var 72	5.27	19.14*	5.85	46.26*
<hr/>				
	$\bar{R}^2$	=	.61	
	SSR	=	378736.	
	n	=	357	
	$\bar{R}^2$	=	.57	
	SSR	=	262944.	
	m	=	418	

\*Significant at the .01 level

Table 4.23

ANALYSIS OF COVARIANCE: ROBBERY LENGTH

<u>Offense Variables</u>	WHITE		NON-WHITE	
	<u>B-Coef</u>	<u>F-Stat</u>	<u>B-Coef</u>	<u>F-Stat</u>
Var 4	12.54	29.73*	6.22	14.22*
Var 5	16.39	4.03	36.43	29.12*
Var 7	4.71	3.58	5.94	17.21*
Var 8	-26.20	4.29	-64.38	30.46*
Var 17	31.60	46.34*	1.77	.20
Var 41	-28.19	7.91*	-12.48	5.22
Var 45	-122.35	20.67*	-43.10	15.44*
Var 49	6.50	3.09	16.10	47.43*
Var 51	130.31	68.36*	3.91	.08
Var 52	19.03	3.08	-57.10	41.28*
Var 160	.17	23.53*	.20	61.60*
<u>Offender Variables</u>				
Var 61	-18.19	-1.81	49.97	39.61*
Var 62	22.50	20.56*	16.27	27.86*
Var 73	10.90	3.04	27.78	23.86*
Var 95	25.02	14.09*	3.80	.74
Var 96	7.60	9.57*	6.30	12.64*
Var 99	3.19	1.01	10.63	24.99*
Var 103	19.78	31.09*	16.69	29.06*
Var 106	-.01	4.72	.04	37.38*
Var 107	19.97	15.96*	12.13	22.02*
Var 109	-3.26	.56	-10.26	13.70*
<hr/>				
	$\bar{R}^2$	= .48	$\bar{R}^2$	= .36
	SSR	= 1470463.	SSR	= 4806567.
	n	= 510	m	= 1265

\*Significant at the .01 level

Table 4.24

ANALYSIS OF COVARIANCE: DRUG LENGTH

<u>Offense Variables</u>	<u>WHITE</u>		<u>NON-WHITE</u>	
	<u>B-Coef</u>	<u>F-Stat</u>	<u>B-Coef</u>	<u>F-Stat</u>
Var 160	.22	448.24*	.24	837.99*
Var 21	6.93	2.82	57.70	56.49*
Var 24	- 2.63	3.15	- 6.34	11.66*
 <u>Offender Variables</u>				
Var 106	.04	19.13*	.03	35.71*
Var 96	4.17	31.53*	2.49	12.24*
Var 65	2.28	5.73	4.26	19.46*
Var 99	7.82	55.73*	.08	.01
Var 95	1.03	.32	4.18	5.91
Var 109	2.82	16.22*	2.95	7.85*
Var 62	- 1.08	1.25	5.71	26.10*
<hr/>				
	$\bar{R}^2$	= .61	$\bar{R}^2$	= .46
	SSE	= 248458.	SSE	= 692637.
	n	= 719	m	= 1146

\*Significant at .01 level

**CONTINUED**

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Table 4.25

ANALYSIS OF COVARIANCE: BURGLARY LENGTH

<u>Offense Variables</u>	WHITE		NON-WHITE	
	B-Coef	F-Stat	B-Coef	F-Stat
Var 160	.11	384.47*	.17	774.89*
Var 42	8.05	29.77*	10.25	42.39*
Var 53	13.34	11.68*	25.54	26.54*
Var 14	5.27	33.89*	.55	.34
Var 41	- 4.22	3.89	-18.46	44.62*
Var 45	- 4.76	1.52	-31.04	31.21*
Var 10	9.54	.83	12.24	10.31*
Var 4	.59	1.44	3.19	30.72*
Var 2	- 1.61	9.50*	- .42	.43
Var 51	-13.25	3.56	--	--
 <u>Offender Variables</u>				
Var 99	3.78	98.97*	2.88	62.54*
Var 102	2.42	97.92*	.75	15.86*
Var 72	1.76	38.55*	2.07	34.23*
Var 97	8.71	70.28*	6.22	23.42*
Var 106	.01	10.64*	.01	42.26*
Var 96	1.81	38.85*	.96	9.08*
Var 73	3.24	22.53*	2.33	7.81*
Var 61	- .20	.02	10.70	55.74*
Var 65	1.03	5.08	2.15	23.77*
Var 61	- .87	2.69	- 1.59	10.04*
Var 60	1.13	11.27	.30	.65
<hr/>				
	$\bar{R}^2$	= .49	$\bar{R}^2$	= .50
	SSR	= 348174.	SSR	= 258488.
	n	= 2028	m	= 1636

\*Significant at .01 level

Table 4.26

ANALYSIS OF COVARIANCE: VILLAGENY LENGTH

Offense Variables	WHITE B-Coeff F-Stat	NON-WHITE B-Coeff F-Stat
*02. Var 1601.	000.099 11. 34.85*	.1500 136.24*
*03. Var 1733.01	000.00 .92 10. 4.81	2.3100 128.07*
*04. Var 3 42.43	000.00 .04 10. 0.01	- .6100 102.99
*05. Var 4652.	000.00 3.54 10. 3.86	- 4.5000 109.35*
<u>*12. Offender Variables</u>		
*12.01	000.00	000.00
*12.02	000.00	000.00
*12.03 Var 9981.0	000.00 3.28 10. 41.92*	1.3000 119.36*
*12.04 Var 7300.0	000.00 4.59 10. 47.50*	1.8700 107.79*
*12.05 Var 98	000.00 1.40 10. 19.30*	1.2200 107.73*
*12.06 Var 108	- 3.19 .40	6.79 43.15*
*12.07 Var 96	1.83 27.93*	1.9800 117.09*
*12.08 Var 61	6.20 7.57*	6.21 25.56*
*12.09 Var 1068.0	000.00 .02 10. 6.72*	.0100 132.70*
*12.10 Var 1037.0	000.00 .77 10. 1.70	1.5800 118.57*
*12.11 Var 1070.0	000.00 2.34 10. 12.64*	- .9800 108.49*
*12.12 Var 1040.0	000.00 .41 10. 13.53*	.2300 107.01*
*12.13 Var 6910.0	000.00 2.26 10. 76.38*	- .1100 107.46
*12.14 Var 7000.0	000.00 1.09 10. 4.69	2.1900 102.48*
*12.15 Var 6200.0	000.00 .94 10. 3.53	1.6700 114.88*
*12.16 Var 6800.0	000.00 1.20 10. 1.82	3.4000 119.99*
*12.17 Var 6700.0	000.00 1.35 10. 11.44*	- .5000 102.20
*12.18 Var 6300.0	000.00 2.85 10. 15.29*	- .7200 101.37
*12.19 Var 6600.0	000.00 1.98 10. 7.54*	.4100 107.58
*12.20 Var 95	3.99 23.10*	.25 107.21
*12.21 Var 64	- 1.13 3.18	- .48 1.00

R<sup>2</sup> = .38      R<sup>2</sup> = .54

SSE = 56910      SSE = 45399

n = 831      n = 1981

\*Significant at .01 level

types of variation. First, the non-white equation could have a great deal more unexplained variation than the white equation. In those instances in which the non-white individuals are being treated more severely, this may be a finding of unacceptable disparity. Second, even if the non-white equation accounts for a reasonable amount of variation, one needs to examine the regression weights to see if non-whites and whites are being punished/rewarded in a similar fashion for the same aggravating/mitigating factors.

### E.3. (b) Analysis of Covariance for Geographic Strata

In section E.2 it was noted that there is a great deal of variation in sentencing across the three strata. These differences do not, however, take the fact situation into account. To introduce such controls, we have undertaken analyses similar to those for race. That is, we have undertaken a regression analysis for each stratum and then compared the results to see if we can account for the differences in the means noted in Tables 4.11 and 4.12. Because of space limitations in the report, and the considerable time involved in running the analyses of covariance, this section will focus only on the SEX category for both the IN/OUT and LENGTH decisions. This crime category seemed worthy of further examination because (1) it has been our focal point throughout the report and (2) of the violent crimes, only sex crimes show significant differences in the means for IN percentage and LENGTH.

The results of the IN/OUT decision regressions for each of the three strata are displayed in Table 4.27. As can be seen, there are substantial differences in the explanatory power of the model when it is applied individually to the three strata. The  $R^2$ 's drop from .48 to .30 to .14 as one moves from stratum I to stratum II to stratum III. This is a truly remarkable drop.

Table 4.27

ANALYSIS OF COVARIANCE: SEX IN/OUT BY STRATUM

Offense Var.	STRATUM I		STRATUM II		STRATUM III	
	B-Coef	F-Stat	B-Coef	F-Stat	B-Coef	F-Stat
Var 160	.0011	38.90*	.0008	14.61*	.0005	1.96
Var 54	.007	.01	.091	3.13	.254	4.51
Var 27	-.094	12.20*	.001	.00	.017	.05
<u>Offender Var.</u>						
Var 66	.195	26.15*	-.091	3.03	.172	3.45
Var 104	.052	66.49*	.009	1.33	.034	10.63*
Var 108	-.677	23.22*	-.087	.60	---	---
Var 71	-.105	20.39*	-.079	7.46*	.022	.27
Var 60	.050	6.62*	.735	9.25*	-.026	.47
Var 96	.104	26.45*	.103	31.49*	.035	.90
Var 64	.093	6.59	.109	7.58*	.085	1.34
Var 73	.205	34.66*	.216	30.72*	.181	8.59*
Var 94	.230	18.50*	.169	2.25	.134	.49
Var 67	.045	51.49*	.026	1.10	.006	.03
-----						
$\bar{R}^2$	.48		.30		.14	
SSR	57.70		56.41		44.25	
n	495		433		241	

Turning to an examination of the individual coefficients provides us with some indication as to why we observed the significant differences in Table 4.11. First, note that the coefficients attached to Var 160 decline sharply as one moves from stratum I to stratum II to stratum III. Also, note that Var 160 is not significant in the stratum III regression. Second, with respect to the remaining offense variables, there is only one significant coefficient in any of the three strata; bodily beatings (Var 27) is given a significant negative weight for stratum I. For some reason or another, the bodily beatings variable has a very counterintuitive weight. However, the results in this section indicate that the anomaly occurs only in stratum I.

Third, for the offender variables only good moves (Var 73) is significant in all three strata. Fourth, the coefficients for strata I and II are relatively similar despite the significant difference in percentage IN. This suggests that the difference lies primarily in the constant term, so judges are simply more prone to use the incarceration option in stratum II than in stratum I. Finally, in stratum III there are only two significant variables: aggregate number of incarcerations and good moves. This would seem to indicate that the judges in stratum III are exercising a great deal of unguided discretion in deciding which individuals to incarcerate.

Overall there are significant differences between the b-coefficients in the IN/OUT regressions for the three strata. It seems that sentencing is much more coherent in the larger jurisdictions; that is, in stratum I it appears that the IN/OUT decision is more directly attributable to the fact situation than is the case in either stratum II or stratum III. Of particular interest is the very low explanatory power of the IN/OUT model for stratum III; either the judges in the rural counties use different offense and offender characteristics or their sentencing is not very systematic. This is a potentially interesting area for subsequent research.

The results of the analysis of covariance for the LENGTH decision are presented in Table 4.28. Looking at the overall explanatory power of the model for each of the three strata indicates that the  $\bar{R}^2$ 's range from .79 to .61 to .47 as one moves from stratum I to stratum II to stratum III. Again, this supports the previous finding that stratum I is substantially more systematic than stratum II or stratum III and that stratum II is more systematic than stratum III. Although it is difficult to explain, it is interesting to note that the explanatory power varies directly with the mean sentence length; the longer the average sentence given in a stratum, the greater the explanatory power of the model.

Turning to an examination of the individual coefficients indicates the reasons for the wide variation in mean sentences. First, the coefficients for Var 160 do not account for the differences since the values of the coefficients for strata I and III are virtually identical and that for strata II is substantially larger. Second, the coefficients for type of weapon (Var 4) suggest that gradations in the type of weapon lead to substantially higher sentences in stratum I. Third, the coefficients for pending charges (Var 95) and job to go to (Var 70), also help to account for the differences in the strata means.

Table 4.28

ANALYSIS OF COVARIANCE: SEX LENGTH BY STRATUM

Offense Var.	STRATUM I		STRATUM II		STRATUM III	
	B-Coef	F-Stat	B-Coef	F-Stat	B-Coef	F-Stat
Var 4	34.09	118.28*	23.98	27.84*	7.97	1.51
Var 9	- 3.33	.63	- 8.73	2.18	-12.57	2.40
Var 44	9.87	4.69	5.88	1.67	-11.04	3.03
Var 45	-52.34	6.52	-54.48	3.07	-55.94	3.31
Var 41	-36.40	34.94*	-6.85	.75	-27.20	6.13
Var 160	.27	80.04*	.45	101.25*	.28	54.81*
Var 27	-18.85	15.85*	-13.22	2.32	16.69	4.23

Offender Var:

Var 94	27.31	12.65*	103.57	32.51*	58.12	11.55*
Var 71	-13.97	13.72*	- 7.45	1.41	3.03	.33
Var 95	36.54	28.65*	4.03	.13	-12.25	1.03
Var 102	3.02	1.79	6.92	7.47*	2.46	.54
Var 68	19.83	9.49*	17.79	5.47	14.01	4.18
Var 73	17.62	6.52	30.14	14.75*	6.10	.81
Var 98	-10.10	16.83*	-7.84	6.77*	3.64	1.31
Var 105	.05	3.97	- .20	4.97	.02	.22
Var 70	21.52	21.97*	8.02	2.11	2.18	1.20
Var 99	4.35	1.49	21.53	18.59*	8.03	3.97

R<sup>2</sup>

SSR 574546 1048378 208011

n 320 319 156

It seems clear that different decision rules are being used in the three strata. Coefficient weights and  $\bar{R}^2$ 's are significantly different from one another indicating that the overall coherency of the decision rules is low. The conclusion that can be drawn is that there is geographical disparity in felony sentencing practices: the sentence an offender receives is dependent, in part, upon where he is sentenced.

It is also the case that considerably more work remains to be done in this area. For example, it might be worthwhile to look at the variation in sentencing by strata and race. Although we have not completed any multivariate analyses of these differences, we have tabulated the means for the IN/OUT and LENGTH decisions in Tables 4.29 and 4.30 respectively. As can be seen, there are some rather substantial differences. It is also important to extend the analysis of covariance to the nonviolent crime categories to see if there is any consistent explanation for the disparate sentences.

Table 4.29

PERCENTAGE IN BY RACE BY STRATUM

	WHITE			NON-WHITE		
	Stratum I	Stratum II	Stratum III	Stratum I	Stratum II	Stratum III
Homicide	.72	.74	.67	.81	.84	1.00
Assault	.30	.46	.52	.44	.55	.89
Robbery	.65	.79	.79	.85	.81	.88
Sex	.54	.69	.65	.73	.88	.76
Drug	.28	.49	.56	.41	.65	.82
Burglary	.40	.51	.65	.66	.63	.78
Larceny	.26	.43	.59	.54	.60	.59
Fraud	.33	.44	.57	.26	.45	.83
Weapon	.23	.40	.68	.22	.48	.75

Table 4.30

LENGTH BY RACE AND BY STRATUM

	WHITE			NON-WHITE		
	Stratum I	Stratum II	Stratum III	Stratum I	Stratum II	Stratum III
Homicide	174	146	123	168	152	174
Assault	21	29	24	22	13	20
Robbery	72	57	72	69	79	61
Sex	49	52	31	94	98	32
Drug	25	15	9	24	36	53
Burglary	21	18	11	21	16	8
Larceny	13	9	8	16	15	18
Fraud	19	17	10	13	14	4
Weapon	15	11	6	12	11	3

F. OTHER INDICATORS OF DISPARITY

As formalized in equation (1), our model of judicial decisionmaking includes only offense and offender variables. All other factors are assumed to be unsystematic and are consequently relegated to the error term. In this section the investigation turns to the possibility that some other variables may be exercising a systematic and statistically significant influence on sentencing. Such a revised model might look like

$$S_i = \sum \alpha_j A_{ij} + \sum \beta_k B_{ik} + \sum \delta_m O_{im} + v_i \quad (4)$$

where

$O_m$  = other factors

$v_i$  = new disturbance term

That is, in addition to the offense and offender variables, there are other factors which determine an individual's sentence.

The focus of this section is not simply directed toward locating other sentencing correlates. Instead, we wish to know if any other variables can account for any of the variation not presently explained by the offense and offender characteristics. The methodology used to address this issue consists of the following steps. First, the estimated regression coefficients from Chapter 3 (i.e.,  $\hat{\alpha}_j$  and  $\hat{\beta}_k$ ) were used to estimate the magnitude of the error for each case. The estimated error,  $\hat{e}_i$ , can be defined by rearranging equation (1) in the following fashion:

$$\hat{e}_i = S_i - \sum \hat{\alpha}_j A_{ij} - \sum \hat{\beta}_k B_{ik}$$

In other words,  $\hat{e}_i$  is that portion of the sentence which cannot be explained by the weighted combination of offense and offender characteristics. Second, based on the form of the explanation in equation (4),  $\hat{e}_i$  can be seen to be made up of two components:

$$\hat{e}_i = \sum \delta_m O_{im} + v_i \quad (5)$$

That is, part of the error is systematic with respect to  $O_{im}$ , the so-called other factors, and part of it remains unsystematic.

Third, it is necessary to operationalize the set of other variables. For purposes of analysis we have investigated the following criminal justice processing variables:

Var 75: Type of Attorney

Var 76: Custodial Status at Time of Sentencing

Var 84: Method of Conviction

It is our contention that if any of these variables are related to sentencing in a systematic fashion, it constitutes disparity. The type of attorney variable reflects, to some extent, the socioeconomic status of the individual; consequently, it seems patently unfair for sentencing to depend upon it in any systematic way. Custodial status at time of sentencing is likewise a proxy for the socioeconomic status of the individual being sentenced. To the degree that this relationship holds, it would seem to be an indication of disparity for custodial status to influence the sentence. Finally, it would seem to raise constitutional questions if asking for a jury trial has an impact on the sentence one receives. While there are many other possible variables which we could have looked at, each of these three provides an interesting adjunct to our disparity analyses.

Based upon the development to this point, we have estimated the following equation:

$$e_i = \delta_0 + \delta_1 \times \text{Var 75} + \delta_2 \times \text{Var 76} + \delta_3 \times \text{Var 84} + v_i \quad (6)$$

for both the IN/OUT and LENGTH decisions. Table 4.31 presents the estimated b-coefficients that are significant at the .01 level for both decisions. At first glance it should be clear that the OTHER variables have a much greater impact on the IN/OUT decision than on the LENGTH decision. While it should

also be noted that in no case do the significant "other" variables add more than three percent to the overall explained variance, the coefficients imply that they do have a statistically significant impact on the sentence one receives. To see whether the impact is also substantively significant, we must look at the individual coefficients.

Table 4.31

THE IMPACT OF OTHER VARIABLES ON SENTENCING: REGRESSION  
COEFFICIENTS FOR STATISTICALLY SIGNIFICANT VARIABLES IN EQUATION (6)

	IN/OUT			LENGTH		
	Var 75	Var 76	Var 84	Var 75	Var 76	Var 84
Homicide	----	.051	.048	----	----	26.63
Assault	.024	----	.056	----	----	----
Robbery	-.024	.118	.028	-30.63	----	----
Sex	----	.184	----	----	----	----
Drug	----	.154	----	----	----	----
Burglary	----	.145	.073	----	-55.42	----
Larceny	.026	.157	.095	----	----	----
Fraud	----	.177	----	----	2.35	4.40
Weapon	.029	.223	----	----	1.62	2.80
Property	----	----	.086	----	----	----

Var 75: DEFENSE ATTORNEY      Var 76: CUSTODIAL STATUS      Var 84: METHOD OF CONVICTION

2 = self  
1 = pub def/ct apptd  
0 = not specified  
-1 = privately retained

1 = IN  
0 = OUT

2 = jury trial  
1 = bench trial  
0 = plea

Looking first at the IN/OUT decision, it can be seen that criminal justice processing variables have a significant impact on the probability of being incarcerated. Remember that the IN/OUT variable is a 0,1 variable and hence it makes some sense to interpret the coefficients as the increase (or decrease) in the probability of being incarcerated. At least one of the criminal justice variables has a statistically significant impact on the IN/OUT decision

in each crime category and, furthermore, the impact is often very substantial.

For example, in SEX offenses, if an individual is incarcerated at the time of sentencing (i.e., Var 76=1), his probability of being given an IN sentence is increased by .184. In larceny offenses, if an individual has a court appointed attorney (i.e., Var 75=1), is in jail at the time of sentencing (i.e., Var 76=1) and asks for a jury trial (i.e., Var 84=2), his probability of being incarcerated is increased by .376 (i.e.,  $.029 + .157 = .095 \times 2$ ). It seems clear, therefore, that such variables do have a substantial impact on one's sentence after controlling for the relevant offense and offender variables.

As can be seen in Table 4.31, the custodial status of the individual has a positive impact on the probability of being incarcerated for all crime categories except assault and property destruction. If this variable is indeed a proxy for socioeconomic status, these results suggest the presence of a rather invidious type of disparity in felony sentencing.

Turning to the method of conviction variable, it seems quite clear that asking for a trial tends to increase the probability of being incarcerated-- oftentimes quite substantially. If this is widely known, it could have a "chilling effect" on an individual's decision to seek a jury or bench trial and consequently represents a form of disparity.

The defense attorney variable is worth examining because it can take on the value of -1 if an individual retains a private attorney. This means that for the assault, larceny, and weapons categories, having a privately retained attorney decreases the probability of being incarcerated. The robbery category indicates that a privately retained attorney increases the probability of being incarcerated, whereas a court appointed attorney decreases that probability. All in all, the impact of the type of attorney variable is slight.

The IN/OUT decision appears to be very strongly affected by the criminal justice variables; that is, no matter what the fact situation, the way in which one is processed through the system has an impact on sentencing. Until some other plausible explanation can be attached to these results, we must conclude that they provide evidence of another type of disparity.

Table 4.31 also contains the results when equation (6) is applied to the LENGTH decisions. Unlike the IN/OUT decision, there is almost no indication that the criminal justice variables have any impact on the LENGTH decision. One notable exception is that the method of conviction does have a very large impact on homicide sentences; a jury trial adds 53 months and a bench trial adds 26 months. It is also interesting to note that two of the coefficients have very large negative coefficients. We will, however, make no attempt to explain these apparent anomalies. The primary conclusion to be drawn from this analysis of the LENGTH decision is that it is not affected by criminal justice variables. This is not totally optimistic, however, as many individuals are being affected by these variables at the IN/OUT stage.

G. CONCLUSION AND POLICY IMPLICATIONS

What then can be said about the presence of disparity in Michigan in 1977? A major assumption of the MFSP is that judges take a number of offense and offender characteristics into account in a systematic fashion, weight the factors to reflect their overall salience across all individuals, and then add the weighted characteristics together to determine the individual sentences. If this assumption is satisfied, then it should be the case that there are patterns in sentencing. From an analytic point of view, the presence of such patterns implies that there will be relatively little unexplained variation in equation (1).

As an analytic term, disparity or variation refers to those instances in which there is a relatively large amount of unexplained variation once the relevant offense and offender variables have been taken into account. The adjective "unexplained" is a bit misleading, however, and deserves further comment. Strictly speaking, unexplained variation refers to that variation which cannot be explained by offense and offender factors; it does not mean that it is unexplainable in any metaphysical sense. It is possible that a portion of the variance which is left unexplained by offense and offender variables can be explained by non-offense and -offender characteristics. Given this possibility, it would seem that there are two distinct types of disparity.

First, there is that portion of the variation which is unexplained by offense and offender characteristics. One might refer to this type of disparity as discrimination since a portion of the sentence is being based upon something more than the particular fact situation. Second, there is that portion of the unexplained variation which is irreducible; that is, it does not seem to be related in a systematic fashion to any factors. One might

refer to this type of disparity as inconsistency since it reflects the fact that a portion of each sentence is not assigned in a regular manner.

In the course of this chapter we have investigated both types of disparity. With respect to the inconsistency component, we found that a substantial portion of individual sentences cannot be accounted for; it appears to be unsystematic. In order to be sure that our conclusions were accurate, we investigated a number of possible "explanations" for the inconsistency. One possible explanation is that the explanatory model in equation (1) may have been misspecified. By following the strictly empirical procedure dictated by our Steering Committee and restricting ourselves to linear models, some misspecification may have resulted; the procedure does, however, maximize explained variance. Consequently, the magnitude of the unexplained variation is probably close to its minimum. Regardless of the problems inherent with the strictly empirical procedures, it seems safe to say that there is a substantial amount of variation in the sentencing variables which simply cannot be explained.

Another explanation for the inconsistency is that the data are too highly aggregated. In this chapter we have investigated two ways of further disaggregating the data and, based upon our admittedly incomplete (i.e., we did not look at every possibility) analyses, we conclude that aggregation does not seem to be the source of our finding of sentencing disparity.

It seems, therefore, that there is a substantial proportion of the variation in sentencing which cannot be explained by decision rules which assume systematic and consistent behavior. Thus, there is evidence of the inconsistency-type of disparity discussed above.

Turning to the type of disparity we have labeled discrimination, we divided our population into distinct racial- and stratum-based subgroups. Based upon

the work reported in this chapter, dividing our population into subgroups provides a dramatic decrease in the amount of unexplained variation. Operationally, this means that we can significantly increase the accuracy of our predictions if we have knowledge of the race of the individual or the stratum in which the sentence was handed down. Furthermore, the three criminal justice variables we investigated were shown to exert an invidious influence on the individual's sentence. Thus, there is evidence of the discrimination-type of disparity mentioned earlier.

Taken together these results strongly indicate the presence of disparity in felony sentencing in Michigan 1977. From a policy viewpoint, it seems that the solution to the problem can be found by introducing structure into judicial decisionmaking. Such structure would provide the explicit variables that should be the principal determinants of sentencing and the weights that should be attached to these variables. If these two steps were taken (in addition to overt agreement on the decision rules to be used), the result would be a reduction in disparity. Such a reduction might take two forms. First, the discrimination-type disparity would be reduced, and second, the inconsistency-type disparity (as evidenced by the magnitude of the unexplained variation) could be reduced to acceptable proportions. To achieve these results, some form of sentencing guidelines is necessary.

NOTES

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2. Edward Green, Judicial Attitudes in Sentencing 133 (Table 43) (1961).
3. Ibid., pp 64-6, Tables 38-41.
4. Ibid., p. 69.
5. It should also be noted that Green's subdivisions of Tables 44, 45, and 46 into two or three sub-groups of judges seems unwarranted and tends to soften the appearance of judge disparity for no apparent purpose.
6. John Hogarth, Sentencing As A Human Process 147-165 (1971).
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12. The four earlier studies are: (1) T. Sellin, "The Negro Criminal: A Statistical Note," 140 Annals of Amer. Acad. Pol. & Soc. Sci. 52-64 (1928); (2) T. Sellin, "Race Prejudice in the Administration of Justice," 41 Am. J. Soc. 212-217 (1935); (3) R. Martin, The Defendant and Criminal Justice (1934); (4) E. Lemert & J. Rosberg, "The Administration of Justice to Minority Groups in Los Angeles County," 2 U. Cal. Pub. in Culture & Soc. 1-28 (1948). See Green, supra note 2, pp. 8-11.
13. M. Hindelang, "Equality Under the Law," 60 J. Crim.L., Crim'y. & P. S. 306 (1969). The eight studies reviewed are (1) Saul R. Levin Memorial Foundation, Inc., Report of Study of Reorder's Court over 20 month period, Nov. 1, 1957 through June 30, 1959; (2) Vines & Jacob, "Studies in Judicial Politics," 8 Tulane Studies in Political Science 77 (1963); (3) Johnson, "The Negro and Crime," 271 Annals 93 (1941); (4) Garfinkle, "Research Notes on Inter- and Intra-racial Homicides," 27 Social Forces 369 (1949); (5) Bullock, "Significance of the Racial Factor in the Length of Prison Sentence," 52 J. Crim. L., Crim'y & P.S. 411 (1961); (6) Bensing & Schroeder, Homicide in an Urban Community (1960); (7) Green supra note 2; (8) E. Green, "Inter- and Intra-Racial Crime Relative to Sentencing," 55 J. Crim. L., Crim'y. & P.S. 348 (1964).

14. J. Hagen, "Extra-Legal Attributes and Criminal Sentencing: An Assessment of a Sociological Viewpoint," 8 Law & Soc. Rev. 357, 364-65 (1974). In addition to five studies noted in footnotes 12 and 13, Hagen adds (1) M. Forslund, "Age, Occupation, and Conviction Rates of White and Negro Males: A Case Study," 6 Rocky Mt. Soc. Sci. J. 141 (1969); (2) S. Nagel, The Legal Process from a Behavioral Perspective (1969); and (3) Southern Regional Council, "Race Makes the Difference," (1969).
15. Ibid., pp. 372-373. In addition to Johnson (1941) and Garfinkle (1949), noted above, Hagen analysed: (1) D. Partington, "The Incidence of the Death penalty for Rape in Virginia," 22 Wash. & Lee L. Rev. 43 (1965); (2) Judson et al., "A Study of the California Penalty Jury in First Degree Murder Cases," 21 Stanf. L. Rev. 1297 (1969); (3) M. Wolfgang and M. Riedel, "Race, Judicial Discretion, and the Death Penalty," 407 Annals 119 (1973).
16. Ibid., p. 375.
17. S. Clarke and G. Koch, "The Influence of Income and Other Factors on Whether Criminal Defendants Go to Prison," 11 Law & Soc. Rev. 57 (1976).
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CHAPTER 5

TOWARD SENTENCING GUIDELINES

A. SUMMARY

A.1. Chapter 1 - Background of the Michigan Felony Sentencing Project

Indeterminate sentencing throughout the country suffers from a crisis of confidence. Because of the vast discretion that sentencing laws vest in judges, the existence of disparate treatment has long been suspected. Until recently doubts about the effectiveness and fairness of indeterminacy were suppressed, but with growing dissatisfaction has come a demand to modify the system of virtually unfettered judicial and parole discretion. These include flat or mandatory sentencing, presumptive sentencing, and sentencing guidelines.

A.2. Chapter 2 - The Rationale For Sentencing Guidelines

Chapter 2 presents arguments in favor of the guidelines alternative. A first advantage of this system is that sentencing guidelines utilize information of actual sentencing levels. They are, therefore, superior to arbitrarily selected presumptive sentences. We are not saying that empirical sentencing patterns, displayed in Chapter 3, are necessarily what ought to be. However since experience shows that attempts to radically change sentence levels tend to be thwarted, we do urge that existing sentence levels are proper starting points for establishing guidelines. A second advantage is that sentencing guidelines grids can be constructed to omit data of race and other invidious and irrelevant factors, thus insuring a better opportunity to eliminate unwarranted variation of sentences.

A third advantage is that guidelines provide a level of specificity that is genuinely useful to the sentencing judge. A single presumptive sentence for one statutory crime class is far too general to be of any use in the courtroom. A series of written guidelines that capture the complexity of sentencing

would result in a code of mind-boggling length and confusion. Consider the empirical sentence matrices in Chapter 3. If they were modeled into prescriptive guidelines, then each sentencing grid has 25 specific cells. Within a short pamphlet, twenty grids and twenty score sheets (for IN/OUT and LENGTH for ten crime categories) plus general instructions will inform probation officers and judges of 500 specific sentencing rules (i.e., 25 cells x 20 guideline grids), none of which are absolutely binding. To describe each in written form requires that the offense and offender variables and their unique values be described in full, making for a fat and unwieldy book. Since the easiest index to such a book would be a map-like grid, we would be back to guidelines. A fourth advantage is that procedural reforms in sentencing hearings and appellate review are enhanced by guidelines. The opportunity for continuous monitoring and review enhances the public accountability of the courts and is important in reducing the appearance and reality of injustice.

### A.3. Chapter 3 - Sentencing Patterns In Michigan

Chapter 3 presents research into sentencing patterns in order to develop sentencing guidelines. Of the more than 400 variables available to us, approximately 110 were deemed to be potentially relevant determinants of sentencing. These factors were grouped into offense and offender characteristics. We made every effort to exclude potential sources of disparity and to include factors that are actually used. The makeup of the data set thus constructed has considerable face validity.

Having located a set of relevant variables, our attention turned to the specification of a model of judicial decision making. Equation (1) provides a tentative approximation to actual decision rules. The major implications of the model are that judges take a number of offense and offender variables into account in a systematic fashion, weight the factors to reflect their overall

salience, and then add the weighted characteristics together to determine the sentence. The construction of a single model for the IN/OUT and LENGTH decisions for each crime category means that we have been assuming that offense and offender characteristics are invariant with respect to both the individual being sentenced and to the judge doing the sentencing, that the factors have the same relative salience for all individuals and judges, and that sentences can be predicted within tolerable limits. In other words, we assumed that there are coherent sentence patterns. The error term, which reflects the portion of each sentence that is due to factors outside the purview of our model, was ignored in Chapter 3's search for patterns. The final functional form for the explanatory model in each crime category was determined through strictly empirical procedures as dictated by our Steering and Policy Committee. While there are some problems with such a procedure, we believe that the final models are plausible representations of the decision rules used by sentencing judges.

Having completed this, it was possible to begin to address the key research question in Chapter 3: are there any patterns in judicial sentencing? Turning first to the IN/OUT decision there are several conclusions to be drawn concerning the presence of patterns. First, in terms of the individual variables that are included in each category's model, it seems that judicial decisions are being based on a large number of elements in the fact situation. In addition, note that while there are some variables which are important in most every crime category, there are some variables which only show up in one or two categories. This seems to suggest that the sentencing decision rules do vary from one crime category to another. Second, despite the relatively large number of explanatory variables in each model, the overall equation goodness of fit is not very high. Thus, while there are statistically significant patterns, they are not pronounced. This latter point is underscored when it comes to using the model as a predictive device; it does a poor job of predicting which individuals are

sent to jail/prison. Overall, we must conclude that the patterns which have been located are somewhat faint. It is worth noting that the offender characteristics are by far the most important determinants of whether a person is given an IN or OUT sentence. This suggests that the prior record and social stability of an individual are the primary determinants of incarceration.

Turning to the LENGTH decision we reach similar conclusions. First, the range of variables affecting sentencing appears to be somewhat more limited for the LENGTH decision; that is, there are on average fewer variables being used by judges. As with the IN/OUT decision there are a number of variables that appear in several models and a number that appear in only one or two. This seems to indicate that wide number of "facts" are being used by judges in deciding a sentence. Second, the overall goodness of fit indicators suggest that 50 to 60 percent of the variance is being accounted for by the models. While this is quite good for large cross-sectional data set, it does reflect the fact that a great deal of variation is not being accounted for by our models. As with the IN/OUT decision, the patterns that have been located are somewhat faint. Third, the offense characteristics are the most important determinants of the LENGTH decision for violent and drug offenses whereas the offender characteristics are the most important determinants for the remaining non-violent crime categories.

With respect to both the IN/OUT and LENGTH decisions, the following conclusions can be drawn from the empirical analyses. First, the potentially relevant variables that we located do appear to have statistically significant impacts on sentencing. Second, there are patterns in 1977 sentencing decisions in Michigan. Furthermore the patterns can be explained by substantively plausible variables. There is reason, however, to qualify this conclusion by noting that the patterns are discernable but "fuzzy." Third, the two dimensions

of judicial decisionmaking appear to have a differential impact on sentencing. This means that they are not being weighted equally by the judges.

These empirical results served as the basis from which we constructed sentence matrices. In addition to the policy application of matrices as starting points for sentencing guidelines grids, they fulfill several research functions. First, they allow us to see what our models are saying about the presence/absence of patterns in sentencing. Second, we approached the development of sentence matrices as a means to introduce key issues, provide a graphic answer to the question of how predictable judges' decisions are, and to begin to show how coherency might be introduced into sentencing decisions.

The sentencing matrices, both for the IN/OUT and LENGTH decisions, provide a clear and graphic display of the extent of the unpredictability of sentencing. We underscore the fact that the matrices presented herein provide no additional statistical information to that provided in the regression results; they are simply another way to display the results. As noted repeatedly in discussing these results, the matrices document the paradoxical conclusion of coherence and incoherence. While there are definitely some patterns, the patterns are faint, i.e., it is difficult to say conclusively what the patterns are. Suffice it to say, however, that the matrices provide a visual indication both of the extent to which there are patterns and of the extent to which there are contradictions in felony sentencing.

We stress that the perception of patterns lies in the eye of the beholder. To draw conclusions from either the regression results or the sentencing matrices involves the twin capabilities of insight and ingenuity. The location of coherent patterns is a partially subjective enterprise, but one that is informed by the data.

Whatever patterns one ultimately sees in the matrices presented in

Chapter 3, they are likely to be fuzzy. This is, we think, the result of many judges making decisions carefully and rationally but without any explicit guidance. Decision rules do appear to be followed but they are not very exact nor widely accepted. Without structure, the rules will remain implicit and the likely result is that the sentencing patterns that emerge will continue to be fuzzy. The basis for agreement exists; all that remains to be done is to clarify and structure the existing rules.

If a guidelines approach is to be used as the way to clarify judicial decision rules, the methodology we developed for matrix construction and the matrices themselves provide adequate starting points. However, there are other issues facing a policy group which must model matrices into sentencing guidelines grids and these are described in a subsequent section of this chapter.

#### A.4. Chapter 4 - Sentencing Variations and Disparity In Michigan

What can be said about the presence of sentence disparity in Michigan in 1977? A major assumption of the MFSP is that judges take a number of offense and offender characteristics into account in a systematic fashion, weight the factors to reflect their overall salience across all individuals, and then add the weighted characteristics together to determine the individual sentences. If this assumption is satisfied, then it should be the case that there are patterns in sentencing. From an analytic point of view, the presence of such patterns implies that there will be relatively little unexplained variation in equation (1).

As an analytic term, disparity refers to those instances in which there is a relatively large amount of unexplained variation once the relevant offense and offender variables have been taken into account. The adjective "unexplained" is a bit misleading, however, and deserves further comment. Strictly speaking, unexplained variation refers to that variation

which cannot be explained by offense and offender factors; it does not mean that it is unexplainable in any metaphysical sense. It is possible that a portion of the variance which is left unexplained by offense and offender variables can be explained by other than offense and offender characteristics. Given this possibility, it would seem that there are two distinct types of disparity.

First, there is that portion of the variation which is unexplained by offense and offender characteristics. One might refer to this type of disparity as discrimination since a portion of the sentence is being based upon something more than the particular fact situation. Second, there is that portion of the unexplained variation which is irreducible; that is, it does not seem to be related in a systematic fashion to any factors. One might refer to this type of disparity as inconsistency since it reflects the fact that a portion of each sentence is not assigned in a regular manner.

In the course of this chapter we have investigated both types of disparity. With respect to the inconsistency component, we found that a substantial portion of individual sentences cannot be accounted for; it appears to be unsystematic. In order to be sure that our conclusions were accurate, we investigated a number of possible "explanations" for the inconsistency. One possible explanation is that the explanatory model in equation (1) may have been misspecified. By following the strictly empirical procedure dictated by our Steering Committee and restricting ourselves to linear models, some misspecification may have resulted; the procedure does, however, maximize explained variance. Consequently, the magnitude of the unexplained variation is probably close to its minimum. Regardless of the problems inherent with the strictly empirical procedures, it seems safe to say that there is a substantial amount of variation in the sentencing variables which simply cannot be explained.

Another explanation for the inconsistency is that the data are too highly aggregated. In this chapter we have investigated two ways of further disaggregating the data and, based upon our admittedly incomplete (i.e., we did not look at every possibility) analyses, we concluded that aggregation does not seem to be the source of our finding of sentencing disparity.

It seems, therefore, that there is a substantial proportion of the variation in sentencing which cannot be explained by decision rules which assume systematic and consistent behavior. Thus, there is evidence of the inconsistency-type of disparity discussed above.

Turning to the type of disparity we have labeled discrimination, we divided our population into distinct racial- and stratum-based subgroups. Based upon the work reported in this chapter, dividing our population into subgroups provides a dramatic decrease in the amount of unexplained variation. Operationally, this means that we can significantly increase the accuracy of our predictions if we have knowledge of the race of the individual or the stratum in which the sentence was handed down. Furthermore, the three criminal justice variables we investigated were shown to exert an invidious influence on the individual's sentence. Thus, there is evidence of the discrimination-type of disparity mentioned earlier.

Taken together these results strongly indicate the presence of disparity in felony sentencing in Michigan in 1977. From a policy viewpoint, it seems that the solution to the problem can be found by introducing structure into judicial decisionmaking. Such structure would provide the explicit variables that should be the principal determinants of sentencing and the weights that should be attached to these variables. If these two steps were taken (in addition to overt agreement on the decision rules to be used), the result would be a reduction in disparity. Such a reduction might take two forms. First, the

discrimination-type disparity would be reduced, and second, the inconsistency-type disparity (as evidenced by the magnitude of the unexplained variation) could be reduced to acceptable proportions. To achieve these results, some form of sentencing guidelines is necessary.

B. TOWARD SENTENCING GUIDELINES: AN IMPLEMENTATION STRATEGY

On the basis of the models and data analysis presented in this report, we find that disparity takes on one of two forms. It is either the result of sentences based upon something other than offense and offender characteristics or the result of inconsistencies in the judicial sentencing calculus; that is, there is either an unacceptable structure or there is no structure at all to the felony sentencing decision. The prevalence of disparity creates a sense of injustice which, in turn, serves as an impetus for the promulgation of sentencing guidelines. The cause of disparity is not judicial malfeasance but rather is a result of the inordinate complexity of the decision-making tasks facing the judges. We conclude, therefore, that not only are guidelines needed but they must be constructed so that they match the complexity of the sentencing decision.

While very little is necessarily predetermined by the decision to adopt sentencing guidelines, as we noted in Chapter 2 several unresolved issues surround their use. These include whether the guidelines must adhere to any particular philosophy of punishment, whether guidelines should be used to encourage and rationalize the use of alternatives to imprisonment, what the roles of the discretionary release function and the parole board are in such a system, and how guidelines "fit" within statutory sentencing structure. Guidelines are in principle neutral instruments which can accommodate a wide range of different solutions to the previous policy questions. In fact, to the extent that legislative action leaves these matters open, a sentencing guidelines commission should fill the gap of ambiguity and specify the policies.

Policymakers who will be entrusted with the tasks of constructing guidelines grids and of overseeing the progress of guidelines usage will need sufficient and adequate sentencing data, enough time, an unambiguous and

authoritative mandate, open minds, and strong wills to adequately do their work. They will also need a systematic approach and some idea of the issues involved in normative guidelines construction. The discussion of several major issues in this section should aid in the development of an implementation strategy.

B.1. Policy Modeling - Adherence to Judges' Norms

A key issue facing the sentencing guidelines commission involves the relationship of sentencing guidelines grids to the empirical matrices presented in Chapter 3. While we feel that the empirical matrices provide an appropriate starting point for the sentencing commission; there are several issues which must be raised prior to any attempt to transform the empirical matrices into normative/prescriptive guideline grids.

Under the indeterminate sentence statute the judge is given discretion to consider a wide range of alternatives. This law is compatible with recommended guidelines which may be entirely normative (i.e., drafted without considering sentencing data), entirely empirical (e.g., the matrices reported in Chapter 3) or somewhere between these two poles. We suggest that there are three reasons why, at least initially, guidelines ought to closely adhere to the empirical matrices. First, the empirical data represents sentencing experience under the law. Second, the Steering and Policy Committee has recommended that for two years use of guidelines be entirely optional. During such an "experimental period" some judges may actively refer to all the guidelines grids as sentencing information, some may partially use them, and others may not refer to such information at all. It seems to us that in such a situation, having recommended guidelines which differ sharply from expected sentence norms could possibly enhance disparity. Third, the well known capacity of the court and criminal justice systems to resist changes of great magnitude and maintain

operations at existing levels has been noted. This alone suggests that guidelines which result in overall changes in levels and types of incarceration, for example, be approached gradually. This is not necessarily an argument for the status quo but a warning that an attempt to do too much too fast may result in no change at all.

## B.2. Policy Modeling--Guideline Construction

There are a number of issues underlying the construction of sentencing guidelines. These issues necessitate that a number of decisions have to be made before one can begin to construct guidelines. As we see it, the major issues/questions are as follows:

1. the number of dimensions in the sentencing decision: how many different ways do judges evaluate individuals before sentencing?
2. selecting the variables: which variables are to be used to represent the fact situation?
3. vector construction: how are the individual variables which make up each dimension to be weighted and combined into a score for that dimension?
4. categorization: how are the vectors to be subdivided so that the individuals within each category are relatively homogeneous on that dimension?
5. cell construction: when all of the individual dimensions are considered together, are the individuals with similar scores on the various dimensions relatively homogeneous?
6. assigning sentences to the cells: to assign sentences to the cells it will be necessary to confront the following sub-issues:
  - a. weighting the individual vectors: is the matrix symmetrical, i.e., are increments on offense and offender vectors equal?
  - b. assigning cell medians: how are the cell medians to be assigned?

- c. pattern of medians: how are the medians to change from cell to cell?
- d. range of sentences: what range of sentences will be given within each cell?
- e. range overlap: how much, if any, overlap is there to be in the ranges of sentences between cells?

Each of these specific questions must be confronted in a distinct temporal fashion by the sentencing commission. This subsection will provide a short discussion of the issues involved with each of these questions. It should be noted that it was necessary for the research staff to take a position on each of these issues.

Dimensions. Though two dimensional grids are commonly used (and have been used in this study), it is possible to construct three, four or n-dimensional models. Through some of our research (not reported here) we have formulated some basis for utilizing four vectors: offense characteristics, victim characteristics, prior record, and offender personal/social factors. The major advantage of an n-dimensional grid is the finer resolution one achieves in partitioning the cases into relatively homogeneous groups. The major drawback to n-dimensional grids (more than 2) is that they are difficult to portray graphically and consequently may be complicated to utilize in the field.

Selecting the Variables. The warp and the woof of the sentencing guidelines matrices are the individual variables used in their construction. The variables in the empirical matrices in Chapter 3 reflect those variables that were both deemed to be relevant to sentencing decision-making and found to be statistically significant. A sentencing commission might wish to follow this type of procedure or they may wish to develop a different procedure for the

selection of the variables to be considered. Remember that the individual variables that are designated to be relevant serve as the parameters of the "fact situation" and as a consequence ought to include all of that information which is used by judges on a regular basis. During the experimental implementation period, every effort ought to be made to consult with the sentencing judges to obtain ideas as to the type of variables that might be added or deleted from the guidelines models.

Vector Construction. The original sentencing guidelines feasibility study in the Denver District Court presents a straightforward, simple additive scoring system. In our study the weights attached to variables are the b-coefficients taken from the regression runs. The primary function that weighting fulfills is that once the variables are weighted their overall salience can be set relative to other variables. Once the salience of each variable has been determined it is necessary to combine these weighted variables that are identified with a given dimension. The end result of such a procedure is a vector scoring procedure. The MFSP has developed a procedure to accomplish this task (see Tables 3.31 and 3.42) which requires a hand calculator for multiplications, additions and subtractions to be done efficiently. Since these numbers are more cumbersome they increase the possibility of error in the field. Therefore, a policy committee might choose to simplify the scores by using whole numbers which are in proportion to the original decimal numbers. If simplified scores are chosen, however, their effect on sentencing should be tested.

We wish to stress, however, that the method of vector construction utilized by this project is not the only method available. There are several ways of creating these vectors of which two of the more obvious are (1) adding each of the weighted variables together for each dimension to create scores (method used in this study) or (2) multiplying each of the weighted variables together.

Categorization. Having constructed vectors for each of the dimensions, a strategy must be devised for defining categories within which to classify similar cases. Among the several methods available we chose, in Chapter 3, to standardize the scores on each vector; that is, we found the mean of each vector, subtracted the mean from the score of each case and divided by the standard deviation. Having standardized the unit of measurement, we divided the cases into five ordinal categories reflecting whether they were average, above average or below average.

Other grouping techniques that might be applicable to this problem are: (1) Percentiles: arraying the cases in ascending order and dividing them into a predetermined number of categories; (2) Categorical: distinguishing the cases by specific variables; (3) Optimization grouping algorithm: maximizing the difference between categories while minimizing the difference within categories; or (4) Natural breaks: defining categories by arraying the cases in ascending order and looking for natural divisions within the vector set.

Cell Construction. When the individual vectors are combined with one another, the intersection of the various categories will form cells. The presumption is that the individuals in each of the cells constitute a relatively homogeneous grouping. Every effort must be exercised to evaluate whether the individuals who are being grouped together are indeed similar.

Graphical Display. At this point it will be up to the sentencing commission to decide upon the manner in which the sentencing guidelines are to be displayed. If the decision has been made to go with a two dimensional characterization, then the table or matrix format seems obvious. If, however, the commission decides to go with more than two dimensions, then the committee has at least two options. First, the sentencing matrices can be presented as a series of two dimensional grids which control for the values of the third

(and possibly other) dimension. Second, a tree diagram similar to that employed in the New Jersey guidelines experiment could be employed. No matter what the final format of the display, it is imperative that the commission give the highest priority to interpretability on the part of the sentencing judges.

Assigning Sentences to Cells. Once the format has been decided upon, it is time to consider the manner in which the sentences are to be assigned to each of the homogenous groupings (i.e., cells) of individuals. Within the context of this decision, it will be necessary to consider a number of sub-issues. First, the weighting of the individual vectors will have to be considered. As we reported in Chapter 3, the sentencing judges in the State of Michigan appear to give priority to the offender variables when making the IN/OUT decision and then to split their emphasis on the LENGTH decision. The major implication of this decision is that it will provide the judges with an indication of whether the sentences are to be symmetric in the sentencing matrix or whether the sentences will increase faster along one of the dimensions. Second, a median sentence will have to be assigned to each of the cells. Along with the assignment of a median it will be necessary to decide how fast and regularly the sentence lengths are to increase as one moves from left to right and top to bottom in the matrix. As a point of departure, we would recommend that the commission look at the empirical matrices presented in Chapter 3 of this report. A procedure that the commission might follow is to first examine the middle row and middle column of each empirical sentencing matrix (i.e., row and column 5-6). Because of the standardization techniques used, these rows and columns represent the average offenses, offenders, and sentences. The commission could then move up and down from these points. Third, consideration will have to be given to the extent to which the cell medians increase as

one moves from cell to cell. This will be a function of the degree to which the vector weights are different. However, it will still be necessary to make a policy decision as to how much more serious the cases in one cell are than those in another. Fourth, the commission will have to give some thought to the range of sentences to be allowed in each cell. In addition to the median, the commission will have to specify a range within which it is permissible to sentence an individual. On the one hand, a fixed maximum deviation (e.g., 15% as in Minnesota) may be set for each sentence. On the other hand, it could be that the magnitude of the deviation ought to be proportional to the size of the maximum sentence for which the individual has been convicted. Finally, a decision will have to be made with respect to the degree of overlap among the cells of the matrix. Certain types of overlap do not seem to cause problems. For example, two non-adjacent cells can have identical ranges without raising any ethical problems or the spectre of disparity. This simply indicates that the same sentence may be appropriate for two cases where one exhibits a more severe offender score and the other a more severe offense score; it could also result from the fact that the different dimensions may be weighted in a differential fashion. There are situations, however, in which overlap between cells can be viewed as disparity. If, for example, two adjacent cells have identical cell ranges, then the sentence does not appear to depend upon the different offense or offender values. Following the logic of this example, any overlap between two adjacent cells may be a form of institutional disparity. We would recommend that policymakers make every attempt to avoid such an occurrence.

### B.3. Sentencing Outside the Cell.

For guidelines to avoid the unjust rigidity of mandatory sentences, the judge must be given the freedom to sentence an offender to a sentence which

falls outside the cell range; that is, even though an offender's score is located in one cell, it may be necessary to sentence that person as if he were in some other cell due to the presence of some mitigating factors not present in the guideline commission's variable set. In such cases it has been recommended (and we strongly agree) that the judge give explicit reasons (i.e., explicit aggravating or mitigating facts about a case which are not included in the factors already taken into account in constructing guideline table vectors) for the decision. A sentencing commission should monitor deviations to see whether the level remains stable or deviates. This feedback will be critical information in a cybernetic sentencing model that is able to effect rational change (see Figure 2.2).

#### B.4. IN/OUT and LENGTH Matrices

One decision that pervades this project concerns the separate treatment given to the IN/OUT and LENGTH decisions. The Steering and Policy Committee encouraged the distinction and, as a result, we undertook all of our analyses separately for each decision. Maintaining this distinction allowed us to make stronger predictions than otherwise would have been possible. We think that such a distinction should be formalized as a matter of policy since it will allow Michigan to avoid a number of pitfalls inherent in a single sentencing grid.

Combining the IN/OUT and LENGTH decisions in one grid may result in either mandatory minimum sentences (for the IN designation) or undue leniency (for the OUT designation). Though neither of these outcomes is desirable, they are likely to be the result of a combined sentencing matrix. The use of a separate IN/OUT matrix provides an increase in flexibility so that such outcomes can be avoided. It is worth noting, however, that despite the improved fit achieved by viewing the decisions separately, the interpretation of the IN/OUT matrix is somewhat arbitrary and potentially ambiguous.

B.5. The IN/OUT Guidelines: Special Considerations

If a judge uses a guidelines table to sentence an individual located in a 5%-IN cell to jail or to prison, the judge may believe that this case is justly one of the 5% IN, rather than one of the 95% OUT. In other words, in sentencing an individual case using an IN/OUT matrix, unless the cell is 100% IN or OUT, there is never a deviation from the guideline. While this situation may be simplified by designating cells IN or OUT, such simplification may violate the need for individual treatment of cases. This problem is aggravated where percent IN or OUT moves away from extreme percentages toward the middle. We do not believe it is presently justifiable to designate a 45% OUT cell simply as OUT, thus implying that a very high percent (perhaps 80% to 100%) of such cases should be sentenced OUT. The same logic applies on the IN "side" of the table. What we do suggest is that the IN/OUT table offers a basis for policymaking that requires care.

Let us suggest a probabilistic approach to interpreting IN/OUT matrices. Consider the hypothetical and symmetric Table 5.1. In guidelines practice, such a table can be used as a basis for a series of presumptions and procedural rules. For example, 0% or 100% cells can be seen as statements of absolute policy from which no deviations are tolerated. Cells above or below a fixed range (e.g., 75%, 25% respectively) may be accompanied with presumptions (IN, OUT respectively) that can be rebutted only if the defense or prosecution offers specific aggravating or mitigating circumstances. In such a case, procedure may require that below or above a set percent OUT or IN (e.g., 20%, 80% or 25%, 75% or 30%, 70%) that any deviation from the norm must be reviewed by the sentence appeals court. In the middle range (e.g., 25% to 75%, 33% to 66%, etc.) no reasons need be given for deviations and appeals can be by leave. Variations on this general model are possible, but we believe that it better

Table 5.1

HYPOTHETICAL AND SYMMETRIC IN/OUT MATRIX - PERCENT "IN"

		OFFENDER SCORE				
		1-2	3-4	5-6	7-8	9-10
OFFENSE SCORE	1-2	0%	12%	25%	33%	50%
	3-4	12%	25%	33%	50%	66%
	5-6	25%	33%	50%	66%	75%
	7-8	33%	50%	66%	75%	87%
	9-10	50%	66%	75%	87%	100%

structures the IN/OUT decision than the indeterminate sentence or existing guidelines systems.

C. CONCLUSION

Sentencing practice for the entire State of Michigan has been studied and we conclude that discernable but faint and "fuzzy" sentencing patterns exist. Our search for sentence disparity discloses both unexplained and unwarranted sentence variation. We do not believe that these findings result from intentional discrimination or any personal failings on the part of the judges. We doubt whether any randomly selected or specially selected group of comparable size could do better. Rather, we believe that the great complexity of sentencing coupled with the lack of structured information results in current practice. In a state adhering to the same laws and professing the value of equal justice, this is not a situation which should be allowed to remain unchanged.

We have made a case for the sentencing guidelines approach to (a) increase the coherency of sentencing, (b) reduce or eliminate sentencing disparity, and (c) establish a method to make rational and informed policy decisions about sentencing. The empirical basis for guidelines have been developed and presented. Given the fuzziness of sentencing patterns and the prescriptive nature of guidelines, we strongly suggest that a group with an authoritative mandate must engage in specific policymaking in order to produce coherent, workable, and legitimate sentencing guidelines. We have discussed several issues which such a group must face as implementation strategy.

It is the judgment of the research staff, based on an evaluation of current sentencing practice as herein reported and on the limitations of alternative sentencing reforms, that sentencing guidelines provide the best alternative to achieve fair and rational sentencing.

**MICHIGAN FELONY SENTENCING PROJECT**  
**State Court Administrative Office**

**APPENDIX E**

**MODIFIED QUESTIONNAIRE**

MFSP CODEBOOK  
RECODED VARIABLES

<u>Recoded Var #</u>	<u>Orig Q Var #</u>	<u>Variable Label and Recoded Values</u>	<u>Orig Value Labels</u>
1	(1)	PROJECT CASE ID NUMBER  <u>Offense: General</u>	No recode
2	(3)	TIME OF PRIMARY INCIDENT 3 = multiple incidents over long period 2 = multiple incidents within short period 1 = single incident over period of time or at night 0 = single incident day; time not stated; or missing data	(7) (6) (3,4,5) (1,2,9) (0)
3	(6)	PLACE OF PRIMARY INCIDENT 3 = victim's home 2 = other dwelling 1 = street; public; motor vehicle 0 = public buildings; prisons; no specific place; missing data	(02) (01,03) (04,05,06) (07,08,09) (88) (0,99)
4	(11)	TYPE OF WEAPON 4 = shotgun, explosives, machine gun 3 = other firearms, chemicals, MV 2 = cutting weapons, counterfeit weapons 1 = rope, blunt instrument, other weapons 0 = no weapon, blank responses	(10,11,12,16) (07,08,09,13,14,15) (03,04,05,06,95) (01,02,77,99) (88,0)
5	(16)	DID OFFENSE INVOLVE VICTIM ASPORTATION 1 = yes 0 = unknown; missing; no	(1) (9,0,3) (2)
6	(22)	OFFENDER'S ROLE 4 = leader 3 = accomplice 2 = alone 1 = peripheral or minor role 0 = unable to determine; missing data	(1) (2) (8) (3) (0,9)
7	(32)	INTENT IN VIOLENT CRIMES 6 = to kill 5 = seriously injure 4 = injure less seriously 3 = touch (including sexual intercourse) 2 = restrain 1 = frighten 0 = not intentionally violent; missing data	(1) (2) (3) (4) (5) (6) (8,9,0)

<u>Recoded Var #</u>	<u>Orig Q Var #</u>	<u>Variable Label and Recoded Values</u>	<u>Orig Value Labels</u>
8	(39)	DID OFFENDER STEAL FOR MINIMUM NECESSITY 1 = no 0 = yes	(1,3,4,8,9,0) (2)
9	(42)	TOTAL NUMBER OF OFFENDERS 4 = five or more; multiple; number not stated 3 = four 2 = three 1 = two 0 = one; missing data	(5,6,7,9) (4) (3) (2) (1) (0,8)
10	(46)	DID OFFENDER INFLICT EXCESSIVE CRUELTY ON VICTIM? 1 = yes 0 = no; missing data; not applicable	(1) (2,8,9,0)
<u>Theft/Property Damage</u>			
11	(49)	AGGREGATE VALUE STOLEN PROPERTY 5 = \$5001 + 4 = \$1001 - 5000 3 = \$501 - 1000 2 = \$100 - 500 1 = less than \$100 0 = not applicable; not stated	(5,6,7) (4) (3) (2) (1) (8,9,0)
12	(53)	REASON FOR PROPERTY DAMAGE 2 = deliberate means to other end 1 = end in itself; accidental 0 = none/not applicable	(2) (1,3) (5,8,9,0)
13	(54)	MANNER OF ENTRY (B&E) 3 = forced entry 2 = non-forced B&E 1 = remained 0 = not stated/no entry	(4,5) (3) (1,2) (8,9,0)
14	(55)	DID OFFENDER POSSESS BURGLARY TOOLS, MASTER KEY, ETC. 1 = yes 0 = no; not applicable	(1) (2) (3,5,8,9,0)
15	(56)	WAS VICTIM PRESENT DURING OFFENSE (B&E)? 1 = present 0 = not present; not stated	(1) (2) (8,9,0)
16	(59)	NUMBER OF MONTHS OVER WHICH CRIMES OCCURRED 2 = two or more 1 = one 0 = single offense; not applicable, not stated	(2 thru 87) (1) (88) (99,0)

<u>Recoded Var #</u>	<u>Orig Q Var #</u>	<u>Variable Label and Recoded Values</u>	<u>Orig Value Labels</u>
17	(60)	INDICATION OF ORGANIZED OPERATION/RING 3 = large ring 2 = small ring 1 = lone operator 0 = no/not stated	(3) (2) (1) (4,9,0)
<u>Drugs</u>			
18	(65)	SUBSTANCE INVOLVED 3 = heroin or PCP 2 = other drug 1 = marijuana 0 = none, not applicable	(81,147) (other) (94) (99,0)
19	(67)	STREET VALUE OF SUBSTANCE INVOLVED 3 = \$500 + 2 = \$101 - 499 1 = 1 - \$100 0 = not stated/not applicable	(500-8,888,887) (101 thru 499) (1 thru 100) (9999999,0)
20	(76)	WAS OFFENDER SELLING? 2 = for profit 1 = not for profit; reason unclear 0 = not selling not stated/not applicable	(3,4) (1,2,5) (6) (9,0)
21	(77)	WAS OFFENDER A MANUFACTURER OF DRUGS? 1 = yes 0 = no not stated	(1) (2) (9,0)
22	(78)	DID OFFENDER APPEAR TO ALREADY HAVE DRUGS AVAILABLE? 1 = yes 0 = no, not stated	(1) (2,8,9,0)
23	(81)	OFFENDER'S ABILITY TO OBTAIN DRUGS 2 = apparently unlimited 1 = limited, small supply 0 = sale not involved; not stated	(2) (1) (8,9,0)
24	(82)	LENGTH OF TIME SELLING/MANUFACTURING 2 = more than one year 1 = up to one year 0 = no selling/manufacturing involved; not applicable, not stated	(2 thru 6) (1) (7) (8,9,0)
25	(85)	LEVEL IN DRUG NETWORK 3 = very high 2 = dealer, middle man 1 = pusher, seller 0 = no sale involved; unclear; not stated	(1) (2) (3) (8,9,0)

<u>Recoded Var #</u>	<u>Orig Q Var #</u>	<u>Variable Label and Recoded Values</u>	<u>Orig Value Labels</u>
<u>Sex Crimes or Sexual Activity Involved</u>			
26	(92)	SODOMY INVOLVED 2 = multiple 1 = single 0 = no (sex offense); missing; not applicable	(1) (2) (3) (9,0)
27	(95)	BODILY BEATINGS 2 = multiple 1 = single 0 = no (sex offense); missing; not applicable	(1) (2) (3) (9,0)
28	(96)	DID PENETRATION OCCUR? 2 = sex crime with penetration 1 = sex crime without penetration; not stated 0 = not a sex crime	(1) (2,9) (0)
29	(101)	DID OFFENDER CLAIM CONSENT? 1 = no; missing, not applicable 0 = yes	(2) (9,0) (1)
30	(105)	DURATION OF SEX CRIME 3 = half a day and longer 2 = several hours 1 = under one hour 0 = not stated	(3 thru 6) (2) (1) (9,0)
31	(106)	LONG RELATIONSHIP WITH VICTIM 1 = yes 0 = no; not stated, not applicable	(1) (2) (9,0)
<u>Frauds</u>			
32	(116)	INTENT OF FRAUD 1 = deliberate; not stated, not applicable 0 = offender unaware of wrongness	(2) (8,9,0) (1)
33	(120)	OFFENDER KNOWLEDGEABLE OF FINANCIAL MATTERS 1 = yes 0 = no; not stated, not applicable	(1) (2) (8,9,0)
34	(121)	CONTINUING SCHEME 2 = yes, organized 1 = yes, lone operator 0 = no continuing scheme; not stated, not applicable	(2,3) (1) (4) (8,9,0)

<u>Recoded Var #</u>	<u>Orig Q Var #</u>	<u>Variable Label and Recoded Values</u>	<u>Orig Value Labels</u>
35	(122)	BAD CHECKS DUE TO 2 = forgery or illegality 1 = non-sufficient funds 0 = not stated, not applicable	(2,3) (1) (8,9,0)
36	(123)	TOTAL CHECKS INVOLVED 3 = more than five 2 = two-five 1 = one 0 = no such fraud, not stated	(6 thru 87) (2 thru 5) (1) (88,99,0)
37	(124)	NEGOTIABLE INSTRUMENTS OBTAINED 2 = stolen 1 = other means 0 = not applicable, not stated	(1) (2,3,4) (8,9,0)
38	(127)	TOTAL CASH VALUE OF FRAUDS 3 = high 2 = medium 1 = low 0 = not applicable, not stated	(501 thru 88887) (101 thru 500) (1 thru 100) (99999,0)
<u>Victim Information</u>			
39	(128)	TYPE OF PRIMARY VICTIM 5 = law enforcement officer, public official 4 = private person 3 = person as business proprietor 2 = private premises/auto 1 = government/business entity 0 = victimless crime; not stated	(3,4) (1) (2) (7) (5,6) (8) (9,0)
40	(129)	TOTAL NUMBER HUMAN VICTIMS 3 = three or more 2 = two 1 = one 0 = not stated, not applicable	(3,4,5,6,8) (2) (1) (7,9)
41	(130)	AGE OF PRIMARY VICTIM 1 = senior or juvenile  0 = adult; no human victim	(1 thru 20, 61 thru 94,95,97) (21 thru 60,96,99) (0)
42	(131)	SEX OF PRIMARY VICTIM 1 = female 0 = male; no victim, not stated	(2) (1) (9,0)

<u>Recoded Var #</u>	<u>Orig Q Var #</u>	<u>Variable Label and Recoded Values</u>	<u>Orig Value Labels</u>
43	(132)	RACE OF PRIMARY VICTIM 1 = caucasian 0 = minority not stated, not applicable	(1) (2 thru 6) (9)
44	(133)	OFFENDER VICTIM RELATIONSHIP 2 = stranger 1 = known; friend, roommate 0 = family, lover not stated, not applicable	(09,10) (05,06,07,08,11) (03,04) (01,02) (99,0)
45	(136)	DID VICTIM AND OFFENDER HAVE LONG STANDING FEUD? 1 = yes 0 = no	(1) (2,9,0)
46	(137)	VICTIM'S ATTITUDE AFTER OFFENSE 1 = hostile 0 = indifferent or sympathetic; unknown, not applicable	(1) (2,3) (9,0)
47	(138)	VICTIM LACKS CAPACITY TO DEFEND 1 = lacks capacity 0 = does not lack capacity; not stated; not applicable	(1,2,3) (8,9,0)
48	(146)	VICTIM USE OF ALCOHOL AT TIME OF OFFENSE 1 = some alcohol use 0 = no alcohol use; not stated, not applicable	(2,3) (1) (9,0)
<u>Victim Injury/Damage</u>			
49	(148)	TYPE OF INJURY 4 = killed 3 = high severity 2 = moderate severity 1 = low severity, not stated 0 = none	(7) (5,6) (3,4) (2,9) (1,0)
50	(152) (160) (163)	CONTINUING THERAPY OR PERMANENT INJURY? 1 = yes  0 = no; not applicable; not stated; minor trauma	(152 = 1) (160 = 1) (163 = 3) (other)
51	(154)	WAS THERE INJURY TO EYE(S) 1 = yes 0 = no, not applicable	(1,2) (8,9,0)

<u>Recoded Var #</u>	<u>Orig Q Var #</u>	<u>Variable Label and Recoded Values</u>	<u>Orig Value Labels</u>
52	(158)	ROLE OF PHYSICAL INJURY 1 = deliberate end itself 0 = means to other end; accidental means or end; none; not stated; not applicable	(2) (3) (4,5) (1,8,9,0)
53	(162)	METHOD OF INFLICTING INJURY 2 = shot, etc. 1 = slashed 0 = hit, beaten; not stated, not applicable	(08 thru 15) (02 thru 07) (01) (88,99,0)
54	(163)	EXTENT OF MENTAL TRAUMA INFLICTED 1 = severe 0 = mild; not stated, not applicable	(3) (1,2) (8,9,0)
55	(167)	OFFENDER'S ACTS TOWARD VICTIM 1 = aggravated 0 = mitigated missing, not applicable	(4,5,6) (1,2,3) (8,9,0)
56	(168)	EFFECT ON VICTIM'S FAMILY 1 = severe consequences 0 = slight trauma; missing, not applicable	(1,2,3) (4) (8,9,0)
<u>Offender Characteristics</u>			
57	(169)	OFFENDER'S AGE (last two digits of Q. 169) 2 = 22-29 1 = 30 and over 0 = 1-21, not known	(48-55) (1-47) (56-99, 0)
58	(170)	OFFENDER'S SEX 1 = male 0 = female; not stated	(1) (2) (9,0)
59	(171)	OFFENDER'S RACE 1 = non-white 0 = white; not stated	(2,3,4,5,6) (1) (9,0)
<u>Offender Home Situation</u>			
60	(180)	RESIDENTIAL STABILITY 1 = unstable 0 = missing -1 = stable; still living with parents	(2) (9,0) (1) (3)

<u>Recoded Var #</u>	<u>Orig Q Var #</u>	<u>Variable Label and Recoded Values</u>	<u>Orig Value Labels</u>
61	(200)	ASSOCIATES WITH 1 = criminal group, gang 0 = loner; other	(3) (4) (1,2,5,9,0)
<u>Offender Marital Status</u>			
62	(237)	SUPPORT SPOUSE/OFFSPRING? 1 = no 0 = no family; not stated -1 = yes	(2) (8,9,0) (1)
<u>Offender Military History</u>			
63	(243)	TYPE OF MILITARY DISCHARGE 1 = dishonorable, general 0 = no military history; not stated -1 = honorable discharge, still in military	(2,3,4) (8,9,0) (1,5,6,7)
<u>Offender Educational Background</u>			
64	(248)	REASON FOR LEAVING SCHOOL 1 = negative 0 = other	(05,06,07) (01,02,03,04,08, 09,98,99,0)
65	(249)	HIGHEST GRADE COMPLETED 2 = 1 thru 6; never in school 1 = 7-8 0 = 9-11; not stated -1 = 12 -2 = 13-19	(01 thru 06, 88) (07,08) (09,10,11) (99,0) (12) (13-19)
<u>Offender Drug Abuse</u>			
66	(263)	DRUG USE STATUS 1 = presently using 0 = not using, not applicable	(1) (2,9,0)
67	(273)	DEGREE ALCOHOL USE 2 = alcoholic 1 = frequent, social 0 = not stated -1 = none (affirmatively stated)	(4) (2,3) (9,0) (1)
<u>Offender's Mental Health</u>			
68	(278) (260)	MENTAL HEALTH 1 = past or current problems 0 = no problems, not stated	(260=2,278=1,2) (other)

<u>Recoded Var #</u>	<u>Orig Q Var #</u>	<u>Variable Label and Recoded Values</u>	<u>Orig Value Labels</u>
<u>Offender Employment</u>			
69	(280)	EMPLOYED AT TIME OF OFFENSE? 2 = no 1 = part time 0 = not stated -1 = full time, military	(3) (2) (8,9,0) (1,4)
70	(282)	JOB TO GO TO? 1 = no 0 = not stated -1 = yes	(2,4) (9,0) (1,3,5)
71	(283)	TYPE OF WORK -1 = unskilled -2 = blue collar, skilled -3 = white collar 0 = not stated, not applicable; disabled	(5) (3,4,6,7) (1,2) (8,9,0)
72	(284)	LENGTH OF TIME JOB HELD (IN MONTHS) -1 = unemployed; 1 to 6 months -2 = 7 to 12 months -3 = over 12 months 0 = not stated, not applicable	(888) (1 thru 6) (7 thru 12) (13 thru 887) (999,0)
73	(292-295) (297-302)	GOOD MOVES <u>SINCE ARREST</u> -1 = yes  0 = no, not stated	(292=1 or 293=1 or 294-1,2 or 295=1,2 or 297=1 or 298=1 or 299=1 or 300=1,2 or 301=1 or 302=1) (other)
74	(296)	AMOUNT OF GOODS RECOVERED 2 = none 1 = some, not stated 0 = all or most	(1) (2,8,9,0) (3,4)
<u>Criminal Justice Processing</u>			
75	(306)	DEFENSE ATTORNEY 2 = self, pro se 1 = public defender, appointed 0 = not stated -1 = private retained	(4) (1,2) (9,0) (3)
76	(307)	CUSTODIAL STATUS AT TIME OF SENTENCING 1 = in 0 = out; not stated	(4,5,6,7,8) (1,2,3) (9,0)

<u>Recoded Var #</u>	<u>Orig Q Var #</u>	<u>Variable Label and Recoded Values</u>	<u>Orig Value Labels</u>
77	(312)	TOTAL CHARGES/COUNTS 2 = three or more 1 = two 0 = one; unclear, not stated	(3 thru 8) (2) (1) (9,0)
78	(315)	JUDGE  <u>Probation Officer Evaluation</u>	
79	(325)	PSI EVALUATION 1 = incarceration/no probation 0 = no recommendation -1 = probation, special treatment; probation	(5,6) (4,9,0) (3) (1,2)
80	(326)	LENGTH OF RECOMMENDED INCARCERATION 3 = long 2 = moderate 1 = short 0 = not stated, no incarceration	(25 thru 87) (13 thru 24, 86) (01 thru 12, 85) (88,99,0)
81	(338)	OFFENDER TREND (PSI) 1 = negative 0 = no trend, not stated -1 = positive	(3,4) (2,9,0) (1)
		<u>Sentence</u>	
82	(340)	OFFENSE CHARGED, PRIMARY	
83	(345)	CONVICTION OFFENSE, PRIMARY	
84	(346)	METHOD OF CONVICTION, PRIMARY 2 = jury trial 1 = bench trial 0 = plea	(2) (3) (1,4,8,9,0)
85	(348)	SENTENCE, PRIMARY 2 = prison 1 = jail 0 = out	(5) (3,4,6,11) (1,2,7,8,9,10,0)
86	(348)	SENTENCE IN/OUT, PRIMARY 1 = in 0 = out	(3,4,5,6,11) (1,2,7,8,9,10,0)
87	(349)	LENGTH MINIMUM SENTENCE, PRIMARY (life coded as 300 months)	
88	(351)	LENGTH PROBATION, PRIMARY	

<u>Recoded Var #</u>	<u>Orig Q Var #</u>	<u>Variable Label and Recoded Values</u>	<u>Orig Value Labels</u>
89	(352)	AMOUNT OF FINE, PRIMARY	
90	(354)	AMOUNT OF RESTITUTION, PRIMARY	
91	(355)	CONSECUTIVE SENTENCE 1 = yes 0 = no	(2) (1,3,9,0)
92	(356)	CREDIT JAIL TIME SERVED (delete 888,999)	
93	(393)	TOTAL NUMBER OF DISPOSITIONS 2 = three or more 1 = two 0 = one; unclear, missing	(3 thru 8) (2) (1) (9,0)
<u>Offender Prior Record</u>			
94	(412)	DETAINERS OUTSTANDING 1 = yes 0 = no, not stated	(1) (2,9,0)
95	(413)	PENDING CHARGES OTHER JURISDICTIONS 1 = yes 0 = no, not stated	(1) (2,9,0)
96	(414)	RELATION TO CJ SYSTEM AT TIME OF PRESENT OFFENSE 2 = incarcerated, escapee 1 = bail, conditional release 0 = not stated -1 = free	(5,6,7) (1 thru 4) (9,0) (8)
97	(416)	OFFENDER EVER ESCAPE? 1 = yes 0 = no, not stated	(1) (2,8,9,0)
98	(417)	DISPOSITION MOST RECENT PROBATION 3 = revoked, institutionalized 2 = revocations/violations 1 = discharged/on probation 0 = not stated -1 = never on probation	(1) (2,3,4) (5,6) (9,0) (8)
99	(419)	DISPOSITION MOST RECENT PAROLE 3 = revoked, institutionalized 2 = revocation/violation 1 = discharged/on parole 0 = not stated -1 = never on parole	(1) (2,3,4) (5,6) (9,0) (8)

<u>Recoded Var #</u>	<u>Orig Q Var #</u>	<u>Variable Label and Recoded Values</u>	<u>Orig Value Labels</u>
100	(421)	POLICE/PROSECUTION RECOMMENDATION 1 = prison or harsh 0 = none, not stated, mixed -1 = lenient	(1,3,5) (7,9,0) (2,4,6)
101		STRATUM 3 = III (rural) 2 = II (urban) 1 = I (metropolitan)	
102	(P2+P7)	AGGREGATE NUMBER ADULT FELONY CONVICTIONS	
103	(P2+P7)	AGGREGATE NUMBER JUVENILE DELINQUENCY ADJUDICATIONS	
104	(P7)	AGGREGATE NUMBER INCARCERATIONS (JUVENILE AND ADULT)	
105	(P9)	SUM MONTHS MINIMUM TERMS	
106	(P10)	SUM MONTHS MAXIMUM TERMS	
107	(P2+P5)	NUMBER VIOLENT FELONIES, ADULT	
108	(P2+P5)	NUMBER VIOLENT FELONIES, JUVENILE	
109	(P6)	NUMBER SIMILAR PRIORS (ARRESTS, CONVICTIONS, ADJUDICATIONS)	
110		MAXIMUM CATEGORY--DIGIT #6, Question 345	
<u>Analytical Variables</u>			
111		FLAG ORIGINAL CASE 1 = original 0 = dupe	
112		ORIGINAL MAXIMUM CATEGORY	
113		ORIGINAL OFFENSE SEVERITY (FROM OFFENSE MASTER LIST)	
160		OFFENSE SEVERITY, STATUTORY MAXIMUM (FROM OFFENSE MASTER LIST)	

VALUES OF VAR 160 - MAXIMUM PENALTY  
FOR HOMICIDE

<u>Value</u>	<u>Offense</u>
300 months	Murder first degree (750.316) Murder second degree (750.317) Assault w/intent to murder (750.83)
180 months	Manslaughter (750.321) Manslaughter, death from wound (750.329)
60 months	Murder second degree ATT (750.317) Manslaughter ATT (750.321)
24 months	Negligent homicide (750.324)
12 months	Negligent homicide ATT (750.324)

VALUES OF VAR 160 - MAXIMUM PENALTY  
FOR ASSAULT

<u>Value</u>	<u>Offense</u>
300 months	Kidnapping (750.349) Kidnapping child under 14 (750.350)
120 months	Assault w/intent to do great bodily harm (750.84) Assault w/intent to commit felony (750.87) Assault w/intent to maim (750.86) Torture children (750.136a)
60 months	Kidnapping ATT (750.349)
48 months	Felonious assault (750.82) Cruelty to children (750.136)
24 months	Felonious assault ATT (750.82) Resisting officer (750.479) Disobey officer (750.479) Cruelty to children ATT (750.136) Kill or inj., neg. use of firearm (752.861)
12 months	Assault without weapon, injury inflicted (750.81a) Resisting officer ATT (750.479) Injure w/firearm, no malice (750.235) Injure property, negligent use firearm (752.862) Injure, neg. use firearm ATT (752.861) Discharge firearm no malice (750.234)
6 months	Assault w/o weapon, injury ATT (750.81a) Discharge firearm, no malice ATT (750.234)
3 months	Assault and battery, misdemeanor (750.81) Use firearm under influence liquor/drug (750.237) Reckless use firearm (752.863a)

VALUES OF VAR 160 - MAXIMUM PENALTY  
FOR ROBBERY

<u>Value</u>	<u>Offense</u>
300 months	Robbery armed (750.529) Bank robbery (750.311) Assault w/intent to rob armed (750.89)
240 months	Extortion (750.213)
180 months	Robbery unarmed (750.530) Assault w/intent to rob unarmed (750.88)
120 months	Larceny from person (750.357)
60 months	Robbery armed ATT (750.529) Robbery unarmed ATT (750.530) Assault w/intent to rob armed ATT (750.89) Assault w/intent to rob unarmed ATT (750.88) Larceny from person ATT (750.357) Extortion ATT (750.213)

VALUES OF VAR 160 - MAXIMUM PENALTY  
FOR SEX CRIMES

<u>Value</u>	<u>Offense</u>
300 months	Criminal sexual conduct, 1st (750.520b) Rape (750.520)
240 months	Pandering (750.455)
180 months	Criminal sexual conduct, 2nd (750.520c) Criminal sexual conduct, 3rd (750.520d) Sodomy/sex delinquent (750.158)
120 months	Assault w/intent sexual penetration (750.520g) Assault w/intent rape (750.85) Indecent liberties, child (750.336)
60 months	Criminal sexual conduct, 1st ATT (750.520b) Criminal sex conduct, 2nd ATT (750.520c) Criminal sex conduct, 3rd ATT (750.520d) Criminal sex conduct, subsequent (750.520f) Assault w/intent sex ATT (750.520g) Assault w/intent CSC, 2nd (750.520g) Gross indecency/males (750.338) Gross indecency/male, female (750.338a)
48 months	Solicit child, 2nd offense (750.145b) Polygamy (750.439)
24 months	Criminal sexual conduct, 4th (750.520e) Prostitution, 3rd offense (750.451)
12 months	Solicit child under 16 (750.145a) Criminal sex conduct, 4th ATT (750.520e) Indecent exposure (750.335a)
3 months	Contribute to neglect of child (750.145) Solicit for prostitution (750.448)

VALUES OF VAR 160 - MAXIMUM PENALTY  
FOR DRUG OFFENSES

<u>Value</u>	<u>Offense</u>
240 months	Possess narcotics w/intent to manufacture or deliver (335.341(1)(a))
120 months	Deliver counterfeit narcotics (335.341(3)(a))
84 months	Possess non-narcotic w/intent to deliver (335.341(1)(b))
60 months	Possess narcotic w/intent to deliver ATT (335.341(1)(a)) Deliver counterfeit non-narcotic (335.341(3)(b))
48 months	Possess schedule 4 drug w/intent to deliver (335.341(1)(c)) Possess schedule 1 or 2 narcotic (335.341(4)(a)) Obtain possession of controlled substance by forgery (335.343)
42 months	Possess non-narcotic w/intent to deliver ATT (335.341(1)(b))
24 months	Possess schedule 4 narcotic w/intent to deliver ATT (335.341(1)(c)) Possess schedule 5 drug w/intent to deliver (335.341(1)(d)) Possess schedule 1, 2 narcotic ATT (335.341(4)(a)) Possess schedule 1-4 drug (335.341(4)(b)) Obtain possession of controlled substance by forgery ATT (335.343) Unlawful distributing controlled substance (335.342)
12 months	Possess schedule 1-4 drug ATT (335.341(4)(b)) Possess hallucinogen or schedule 5 drug (335.341(4)(c)) Possess marihuana (335.341(4)(d)) Use schedule 1-2 narcotic (335.341(5)(a)) Use schedule 1-4 drug (335.341(5)(b)) Unlawful distributing controlled substance ATT (335.342) Distributing marihuana ATT (335.346)
6 months	Possess hallucinogen or schedule 5 drug ATT (335.341(4)(c)) Possess marihuana ATT (335.341(4)(d)) Use schedule 1-2 narcotic ATT (335.341(5)(a))
3 months	Use marihuana (335.341(5)(d))

VALUES OF VAR 160 - MAXIMUM PENALTY  
FOR BURGLARY

<u>Value</u>	<u>Offense</u>
180 months	B&E occupied dwelling (750.110)
120 months	B&E unoccupied dwelling (750.110) Possess burglar's tools (750.116)
60 months	B&E occupied dwelling ATT (750.110) B&E unoccupied dwelling ATT (750.110) Enter without breaking (750.111) Possess burglar's tools ATT (750.116)
48 months	Larceny from dwelling (750.360)
30 months	Enter without breaking ATT (750.111)
24 months	Larceny from dwelling ATT (750.360)
12 months	B&E without permission (750.115) Larceny, vacant building (750.359)
6 months	B&E without permission ATT (750.115) Larceny, vacant building ATT (750.359)

VALUES OF VAR 160 - MAXIMUM PENALTIES  
FOR LARCENY

<u>Value</u>	<u>Offense</u>
60 months	Larceny over \$100 (750.356) Larceny, motor vehicle (750.356a) UDAA (750.413) Receive stolen property over \$100 (750.535)
48 months	Steal credit card (750.157n)
36 months	Alter coin devices (752.811)
30 months	Larceny over \$100 ATT (750.356) Larceny, motor vehicle ATT (750.356a) Receive stolen property over \$100 ATT (750.535) UDAA ATT (750.413)
24 months	Larceny livestock ATT (750.357a) Use auto without authority (750.414)
18 months	Alter coin devices ATT (752.811)
12 months	Use auto without authority ATT (750.414) Tamper/damage auto (750.416)
3 months	Larceny under \$100 (750.356) Receive stolen property under \$100 (750.535)
2 months	Larceny under \$100 ATT (750.356)

VALUES OF VAR 160 - MAXIMUM PENALTY  
FOR FRAUD

<u>Value</u>	<u>Offense</u>
168 months	Utter and publish forged instrument (750.249) Forge public records (750.248)
120 months	Embezzle over \$100 (750.174) False pretenses over \$100 (750.218) Possess title stolen motor vehicle (257.254)
84 months	Forge treasury notes (750.250) Forge bank bills (750.251) Franchise law violation (445.1538) Utter & publish ATT (750.249) Forge public records ATT (750.248)
60 months	Utter counterfeit note (750.253) Larceny by conversion over \$100 (750.362) Larceny by false personation (750.363) Embezzle over \$100 ATT (750.174) False pretense over \$100 ATT (750.218) Gross frauds ATT (750.280) Possess title stolen motor vehicle ATT (257.254)
48 months	Possess credit card (750.157p) Deliver credit card (750.157q) Forge signature credit card (750.157u) Welfare fraud over \$500 (400.60)
42 months	Possess counterfeit notes ATT (750.252)
30 months	Possess counterfeit bank note ATT (750.254) Larceny by conversion over \$100 ATT (750.362) Criminal usury ATT (438.41)
24 months	Checks, non-sufficient funds, 3 or more (750.131a) Possess credit card ATT (750.157p) Deliver credit card ATT (750.157q) Larceny rented motor vehicle over \$100 (750.362a) Welfare fraud over \$500 ATT (400.60) Forge motor vehicle title ATT (257.257)
12 months	Checks, non-sufficient funds ATT (750.131a) Checks, NSF over \$50 (750.131) Checks, NSF under \$50 (750.131) Larceny rented motor vehicle ATT (750.362a) Violate builders act (338.1516)
6 months	Checks NSF over \$50 ATT (750.131)

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VALUES OF VAR 160 - MAXIMUM PENALTY  
FOR FRAUD CONTINUED

<u>Value</u>	<u>Offense</u>
3 months	Checks NSF under \$50 (750.131) Larceny by conversion under \$100 (750.362) False pretenses under \$100 (750.218) Welfare fraud under \$500 (400.600) Unlawful lending motor vehicle title (257.256)
2 months	Checks, NSF under \$50 ATT (750.131)

VALUES OF VAR 160 - MAXIMUM PENALTY  
FOR WEAPONS

<u>Value</u>	<u>Offense</u>
60 months	Carry concealed weapon (750.227) Sell illegal weapon (750.224) Carry weapon w/unlawful intent (750.226)
30 months	Carry concealed weapon ATT (750.227) Sell illegal weapon ATT (750.224) Carry weapon w/unlawful intent ATT (750.226)
12 months	Sell switchblade knife (750.227b)

VALUES FOR VAR 160 - MAXIMUM PENALTY  
FOR PROPERTY DESTRUCTION

<u>Value</u>	<u>Offense</u>
240 months	Arson, dwelling (750.72)
120 months	Burn real property (750.73) Burn insured property (750.75)
60 months	Arson, dwelling ATT (750.72) Burn real property ATT (750.73)
48 months	Burn personal property over \$50 (750.74) Prepare to burn over \$50 (750.77) Mal. inj. pers. prop. over \$100 (750.377a) Mal. inj. property of police (750.377b) Mal. inj. house over \$100 (750.380)
24 months	Burn personal property over \$50 ATT (750.74) Prepare to burn over \$50 ATT (750.77) Mal. inj. prop. over \$100 ATT (750.377a) Mal. inj. house over \$100 ATT (750.380)
12 months	Prepare to burn under \$50 (750.77)
3 months	Mal. inj. personal prop. under \$100 (750.377a) Mal. inj. house under \$100 (750.380)
2 months	Mal. inj. property under \$100 ATT (750.377a)

END