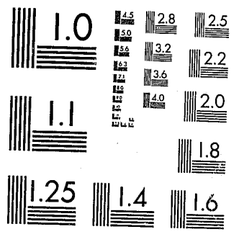

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Felony Prosecution and Sentencing in North Carolina

A Report to the Governor's Crime Commission and the National Institute of Justice

MAY, 1982

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FELONY PROSECUTION AND SENTENCING IN NORTH CAROLINA

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and the National Institute of Justice

May 1982

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FELONY PROSECUTION AND SENTENCING IN NORTH CAROLINA: A Report to the Governor's Crime Commission and the National Institute of Justice by Stevens H. Clarke, Susan T. Kurtz, Elizabeth W. Rubinsky, and Donna J. Schleicher

ABSTRACT

This report presents a comprehensive statistical study of prosecution and sentencing of persons charged with felonies in North Carolina, before the State's new determinate sentencing legislation became effective. Dealing first with N.C. Department of Correction data on nearly ten thousand felons sentenced in 1979, the study describes the sentences imposed: 44 per cent involved probation only, and the rest a wide range of prison sentences. Logistic multiple regression indicated that active sentence lengths were associated not only with the seriousness and number of crimes of conviction and the offender's criminal record, but also with his age, race, sex, education, and marital status, whether he was a drug abuser, and how long he spent in pretrial detention before sentencing. Data on time actually served in prison by felons released in 1980 are presented, along with some preliminary estimates of the possible effects of the new determinate sentencing legislation.

Data from court and police records are used for an in-depth analysis of court disposition in twelve representative N.C. counties. About half of the defendants charged with felonies never reached the indictment stage (their charges were either dismissed or reduced to misdemeanors in the lower trial court); a third had all their charges dismissed; 58 per cent pled guilty to some charge (about half of those pled only to misdemeanors); only six per cent completed jury trials. (These rates are similar to those of other jurisdictions.) There was extensive plea bargaining concerning both charges and sentences; sentence bargaining is expected to increase under determinate sentencing.

Further analysis of the twelve-county data using multiple regression suggested that the defendant's chance of dismissal of all charges and the severity of his sentence if he was convicted were affected not only by his charge(s), his criminal record, and the type of evidence against him, but also (independently) by certain administrative factors, including the type of attorney he had, the amount of time he spent in pretrial detention, and whether he pled guilty or went to trial. Other things being equal, defendants with longer pretrial detention times had lower odds of dismissal of charges and received more severe sentences if convicted. Indigent defendants with court-assigned counsel were more likely to be convicted and received more severe sentences for property crimes, than were defendants who paid for their own lawyers. Indigent defendants represented by specialized public defenders were less likely to be convicted than those represented by individually-appointed attorneys, other things being equal. Sentences tended to be less severe for defendants who pled guilty than for those who went to trial, apart from the effects of other factors.

FOREWORD

The research on which this report is based was supported by a grant from the National Institute of Justice, U.S. Department of Justice, and by a contract with the North Carolina Governor's Crime Commission. Neither of these supporting agencies is responsible for the contents of this document.

We want to acknowledge the assistance that we received in carrying out the research described here and especially wish to thank the staff of the National Institute of Justice, the North Carolina Governor's Crime Commission, the North Carolina Police Information Network, and the North Carolina Administrative Office of the Courts for their help. The research and data processing staff of the North Carolina Department of Correction have also been most cooperative as we gathered and analyzed data. Every clerk of superior court in the state and every assistant clerk in charge of superior court matters has faithfully sent us copies of felony judgments, and we appreciate their taking the extra time to do so. We especially thank the officials in the twelve counties where we did in-depth data collection who gave generously of their time in helping us to use their records: the sheriffs, police officials, clerks of court, and district attorneys in Mecklenburg, New Hanover, Buncombe, Rockingham, Craven, Harnett, Rutherford, Anson, Cherokee, Granville, Pasquotank, and Yancey counties. Finally, we want to thank those who read an earlier draft of this report and provided useful suggestions and criticism--especially Ronald C. Brown (District Attorney of the 28th District), Judge D. Marsh McLelland, Judge F. Gordon Battle, Dr. John H. Kramer (Director of the Pennsylvania Sentencing Commission), Mary Ann Tally (Public Defender in the 12th Judicial District), Judge Robert Collier, Jr., Judge Robert D. Rouse, Jr., Judge Harry C. Martin, Wade Barber, Jr. (District Attorney of District 15-B), Judge Frank W. Snepp, Thomas Havener of the Governor's Crime Commission staff, and our colleagues Robert L. Farb and Kenneth S. Cannaday at the Institute of Government.

Chapel Hill
May 1982

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I. INTRODUCTION

North Carolina's new determinate sentencing law, known as the Fair Sentencing Act, became effective on July 1, 1981 (see Appendix 1). This report is intended to facilitate an assessment of that law's impact by describing the process of felony prosecution and sentencing in North Carolina in 1979, before the act became operational. Besides serving as a basis for a later evaluation of the Fair Sentencing Act, this document presents statewide statistics on felony prosecution and sentencing never before collected in North Carolina. The findings and conclusions are summarized in Section VI of the report. Section II deals with the data and methods used in the study. Section III is an overview of statewide felony sentencing patterns in 1979 drawn from North Carolina Department of Correction data. Sections IV and V analyze the process of felony prosecution and sentencing in twelve representative counties in 1979.

In order to understand sentencing, it is necessary to understand how cases are handled in criminal court. The criminal court judge does not sentence in a vacuum. Before he appears for sentencing, a convicted felon has passed through a complex process that involves a number of decision-makers who affect the sentence in a variety of ways. This process usually involves arrest of the defendant, setting of pretrial release conditions (and often the pretrial jailing of the defendant), retention or appointment of legal counsel, review of charges by the prosecutor, and plea negotiation or jury trial. Before the impact of determinate sentencing legislation can be assessed, sentencing must be placed in the context of the entire disposition process. The degree to which a determinate sentencing law achieves its sponsors' objectives may have as much to do with the law's effect on the disposition process as with its effect on the judge's sentencing behavior.

This report addresses the following questions:

- What were the statewide patterns of felony sentencing in 1979, two years before the Fair Sentencing Act became effective? More specifically,
  - What was the overall distribution of prison and probation sentences?
  - What factors were associated with the felon's chance of receiving an active prison sentence?
  - What factors influenced the length of the felon's maximum and minimum prison sentence?

- How much time was actually served in prison by felons released in 1977-78 and 1980, and what preliminary assessment can be made of the effect of the Fair Sentencing Act on time served in prison?

- What were the patterns of court disposition of defendants charged with felonies in representative counties of the state, including dismissal, reduction of charges, plea bargaining, trial, and sentencing?

- How long did it take for the criminal courts to dispose of felony cases in representative counties in 1979?

- What was the relative importance in 1979 of various characteristics of the felony defendant and the case or cases against him in determining the court's disposition?

- What was the influence on court dispositions of administrative variables, including the type of counsel the defendant had, the amount of time he spent in pretrial detention, and whether he pled guilty or went to trial?

II. DATA AND METHODS

A. Data

Data collection is described in detail in Appendix 2. Three primary sets of data were used: (1) the judgment sample; (2) the twelve-county sample; and (3) the state Department of Correction (DOC) data on felons sentenced to prison, death, or supervised probation in 1979. (The DOC prison and probation files were merged to form a single statewide 1979 felony sentence file.) We also have used DOC data on the length of time served in prison by felons who were released from prison in fiscal year 1977-78 and in calendar year 1980 [see Section III(E)].

The judgment sample comprised data drawn from official court judgments (sentences) imposed on convicted felons throughout North Carolina from April 1 through September 30, 1980 [see Section III(A)].

The DOC data were compiled by the prison staff (for felons sentenced to prison or death) or by probation/parole officers (for felons sentenced to supervised probation). They include information on sentences and charges taken directly from court judgments. Felons on the DOC files frequently had a number of sentences. The DOC files were arranged cumulatively; each offender's file included his complete history while his case remained active with the DOC (in prison or on probation). Therefore we had to extract just those felony sentences imposed on each offender in 1979. The data were restructured with a specially designed computer program so that (a) multiple sentences imposed by a single court on a single offender within 30 days of each other were treated as a single instance of sentencing, and (b) total maximum and total minimum prison terms were determined by adding any consecutive terms and using the longest concurrent term. When an offender had multiple sentences for multiple offenses, for statistical purposes his offense was his "principal offense"--the one for which he received the longest single maximum term.

The twelve-county sample provided much more complete and detailed information than either the DOC data or the judgment sample on the characteristics and court processing of felony defendants. The twelve-county data described felony prosecutions that began (and usually ended) in 1979.[1] These data included the characteristics of 1,378 defendants charged with felonies in twelve counties during three months in 1979, as well as important aspects of the cases against the defendants, the various steps in their court disposition, and their sentences, if any. [A brief summary of North Carolina criminal procedure appears in Section IV(D), below.] The twelve counties were chosen as a reasonable cross-section of the state's 100 counties. They include western, central, and

eastern counties as well as urban and rural ones--ranging from Cherokee in the far west to Pasquotank in the northeastern corner of the state.

In collecting the twelve-county data, we sought to reconstruct the information known to the various actors in the defendant's prosecution--especially the police and district attorney--at the time of prosecution. We took data from the local police and court records that either were known or could have been obtained readily by the police and prosecutor at the time of prosecution. Such data do not provide an exact picture of what the police and prosecutor actually knew because (1) the police and prosecutor may have had important information not kept in any available record, and (2) they may not have looked at all of the records we saw. However, we believe that information written in the records generally had an important influence on the outcome of prosecution.

B. Methods

Our study relies on statistical analysis and aggregation of data. (See Appendix 3 for a discussion of statistical methods and references.) Readers unused to statistical analysis--especially lawyers--may be uncomfortable about adding information on different defendants together, because they may regard each case as unique. In a sense, they are right--no two criminal cases are ever exactly alike. But there is enough similarity among criminal cases to form aggregations of them from which an overall picture of the criminal process can be formed. This picture is simplified, like a contour map; fine details are sacrificed in order to provide a broad view of the criminal court "landscape." The use of similarities among criminal cases for statistical aggregation resembles the process--familiar to lawyers--of inferring a rule of law from a series of appellate court decisions, each of which may also involve a "unique" case. Generalization based on the similarity among a number of varied fact situations is necessary in inferring workable rules of law; it is also necessary in order to obtain a broad empirical description of the criminal court process.

The reader should note that our data were not taken from random samples of any larger groups of defendants; rather, they comprise information on certain defendants prosecuted or sentenced at specific times and places. Nevertheless we regard these data sets as reasonably representative of felony prosecution and sentencing in North Carolina in 1979.

III. STATEWIDE FELONY SENTENCING PATTERNS

A. Felony Judgments Imposed, April through September 1980

The Director of the North Carolina Administrative Office of the Courts asked all of the state's clerks of court to photocopy and mail to us each judgment (sentence) imposed for a felony conviction between April 1 and September 30, 1980. The judgment data cover 4,073 defendants, each of whom was sentenced for one or more felonies by a single court within five working days. Of these 4,073 defendants, 58.0 per cent received an active prison term (including a term imposed as a condition of probation), 6.0 per cent received an active jail term (such terms were short and usually were a condition of probation), 32.5 per cent were sentenced to supervised probation without any active imprisonment ("supervised probation" means a suspended prison term with supervision by a probation officer), 3.3 per cent were sentenced to unsupervised probation (a suspended prison term without supervision by a probation officer), 0.1 per cent were ordered to pay a fine or restitution without any active or suspended prison term, and 0.1 per cent (three defendants) received the death penalty.

We did not make much use of the 1980 judgment data in this report because we discovered that a substantial number of supervised probation judgments were inadvertently omitted from the judgments sent to us. But the 1980 judgment data tell us something important for the purposes of the present report. Most convicted felons in North Carolina--on the basis of the judgment data, we estimate at least 95 per cent--are placed in DOC's custody, either to serve active prison terms or to be supervised by DOC's probation officers. Therefore, data concerning felons sentenced to the DOC's custody provide a nearly complete description of felony sentences.

B. The Overall Felony Sentence Distribution As Shown by DOC Data

The overall distribution of sentences imposed for felonies in 1979 appears in Figures 1 and 2. This distribution includes all felons (9,959) sentenced in 1979 who received either supervised probation without any active imprisonment or active prison sentences. ("Special probation" sentences--i.e., sentences of probation with a short prison term to serve as a condition of probation, also known as "split sentences"--are included with active prison sentences.) Felons who received a sentence other than active prison or supervised probation (such as unsupervised probation, which is a suspended prison term without supervision by a probation officer) are not included in these distributions. As explained earlier, we estimate that the excluded felons constitute no more than 5 per cent of the total sentenced in 1979.

Figure 1 shows the distribution of total active maximum prison terms, and Figure 2 shows the distribution of total active minimum terms. In each distribution, sentences to supervised probation (not involving any active imprisonment as a condition) are shown in the vertical bar at the extreme left. As Figure 1 indicates, about 44 per cent of the felons received supervised probation without any active prison time. Counting the supervised probation sentences as prison terms of zero, the median value of the total maximum term in 1979 was six months, the mean was 5.4 years, and 75 per cent of all total maximums were five years or less. Only 8.5 per cent of the total maximums exceeded 15 years.

Some explanation is needed of maximum and minimum prison terms in North Carolina law immediately before the Fair Sentencing Act. Neither the maximum nor the minimum term indicated exactly how long the offender would actually spend in prison. The maximum term was the maximum amount of time that the offender could be held in prison, minus whatever time he spent in pretrial detention and his "good time" (time off for good behavior) and "gain time" (time off for work and certain other creditable activities in prison). The minimum term, except in a few offenses like armed robbery, determined the prisoner's eligibility for parole. (1) If his prison sentence had no minimum term (or, equivalently, if he was sentenced as a committed youthful offender), he was eligible to be considered for parole at any time; (2) if he was sentenced to a minimum term, he was eligible to be considered for parole after he served either (a) the minimum term minus pretrial detention and good time or (b) one-fifth of the longest possible term that he could legally have received minus pretrial detention time, whichever was less. (See N.C. Gen. Stat. §§ 15A-1371, -1355.) To summarize: Under the law before the Fair Sentencing Act, the minimum term functioned as a limit to the time that had to be served before the prisoner first became eligible for parole consideration, and the maximum term was an absolute limit to the time that he had to serve before unconditional release.

C. Prison or Probation?

Perhaps the most important sentencing decision concerning a person convicted of a felony is whether he should receive any immediate active imprisonment. What factors influence this decision? The DOC data provide a statewide perspective on this question, which will also be examined in more depth in the next section.

One factor strongly related to the likelihood that an offender would receive an active prison sentence was his type of offense. For 9,966 felons convicted in 1979 (not counting the few who received a sentence other than death, prison, or supervised probation), Table 1 shows the percentages who received an active prison sentence (including special probation) or a death sentence (which only seven first-degree murderers received) in each of 29 categories of offenses. The overall percentage of those sentenced to prison was 55.6. The likelihood of an active prison sentence was generally much higher (in the 70 to 100 per cent range) for violent offenses like felonious assault, rape, voluntary manslaughter, murder, and robbery than for offenses against property--

such as larceny, receiving stolen goods, breaking or entering, forgery, and fraud; 30 to 65 per cent of felons convicted of these offenses received an active prison sentence. Those convicted of burglary and burning offenses (including arson), which did not involve direct violence to persons, were very likely to be imprisoned, probably because these offenses endangered dwellings and people in them. The likelihood of a prison sentence was relatively low for drug felonies; but it was higher for felonies involving "major" drugs (Schedule I and II controlled substances as defined by N.C. Gen. Stat. §§ 90-89 et seq.), such as opiates, than for felonies involving "minor" drugs (Schedule III through VI controlled substances), such as barbiturates or marijuana. The likelihood was also higher for sale or delivery of drugs than for possession. Imprisonment was very likely for sex felonies like crime against nature and indecent liberties with children (in the 65 to 80 per cent range) and for felonious escape from prison (81.5 per cent).

Another factor that was probably very important in deciding whether a felon should receive active prison was his previous criminal convictions. We could not consider this as we analyzed the DOC data. Although the DOC prison and probation data sets both included prior conviction information, the information was not comparable because it came from different sources. For a probationer, prior conviction information was obtained by his probation officer, who usually searched the court file in the county of conviction; for a prisoner, the conviction information was obtained by prison staff from the North Carolina Police Information Network (PIN) and the Federal Bureau of Investigation.

Lacking consistent data on prior convictions, we decided not to perform a multiple regression analysis of the likelihood of active prison. Instead, we used a simple tabulation to illustrate the possible association of a number of factors with the likelihood that an offender would receive an active prison sentence. This tabulation was done only for 1,473 offenders convicted of the most common single felony--felonious breaking or entering of buildings--of whom 68.1 per cent received active prison sentences and the rest received supervised probation without any active imprisonment.

Table 2 indicates, for offenders convicted of felonious breaking or entering of buildings, how the probability of receiving an active prison sentence varied with: the total number of felonies for which the offender was sentenced; his (or her) age, race, and sex; his marital status; his number of years of education; his employment status at the time of conviction; whether he resided in the county of conviction; and whether that county was urban or rural. The comparisons in Table 2 may possibly be misleading because they were not simultaneous. Thus any one variable's apparent relationship to active imprisonment could be explained by another variable. For this reason, no significance tests were computed for the comparisons.

The probability of receiving an active prison sentence went up sharply with the number of felony charges of which the defendant had been convicted in addition to his principal breaking or entering charge; the proportion who received an active sentence went from 53.5 per cent for

defendants convicted of only one breaking or entering charge to 80 per cent or more for those who had been convicted of other felony charges. Youths under 21 were less likely to be sentenced to prison than older defendants, and females were less likely to receive an active sentence (51.9 per cent) than males (68.7 per cent). This fact may be accounted for by a difference between the sexes in the precise circumstances of the breaking or entering offense, but the data do not tell us.

Whether a defendant convicted of breaking or entering received an active sentence apparently had little to do with race. The percentages receiving active prison differed little for blacks and whites. The number of Indians represented was too small for the prison percentage for Indians to be reliable.

Defendants who were separated or divorced were more likely to be imprisoned than either single or married defendants, but again, the DOC data provide no further explanation of this apparent relationship. It appears that defendants with nine or more years of schooling were somewhat less likely to receive active time than less educated defendants. Unemployed defendants were a good deal less likely to receive an active sentence than those who were employed at the time of conviction. Being a local resident seems to have neither helped nor hurt the defendant. Finally, offenders convicted of breaking or entering in rural counties were more likely (72.1 per cent) to receive active sentences than residents of urban counties (60.2 per cent).

D. Analysis of DOC Data on Active Prison Sentences

1. In General. The DOC data indicate that 5,538 offenders were sentenced in 1979 to serve active prison terms for felonies, including 346 offenders who received "special probation"--which means that they had to serve a short active term (up to six months) as a condition of probation--and 916 who were sentenced as committed youthful offenders. The frequency distribution of the length of the 5,538 offenders' total maximum prison terms appears in Figure 3. (In these data, life sentences were treated as terms of 80 years.) The median term was five years; the mean (influenced by the few extremely long terms) was 9.6 years. Twenty-five per cent of the total maximum terms were two years or less. Twenty-nine and two-tenths per cent were ten years or more, and only 15.1 per cent were over 15 years.

Figure 4 shows the distribution of total active minimum terms. Thirty-nine per cent of the 5,538 felons either had no minimum term or were committed youthful offenders--i.e., they were eligible to be considered for parole as soon as they entered prison. The median value of the minimum term was two years, and the mean was 5.5 years. Only 15.3 per cent of the felons had minimum terms of ten years or more, and only 8.7 per cent had minimums of more than 15 years.

2. Prison Terms for Specific Offenses. How did the range and distribution of maximum and minimum prison terms vary with the specific felony of which the defendant was convicted? This can be shown by "box

and whisker" plots. An explanation of how to read such plots is given in Figure 5. The shaded "box" represents the interquartile range (from the 25th to the 75th percentile) of the values described--i.e., the "middle 50 per cent." The extreme ends of the two lines on either side of the box represent the overall range from the lowest to the highest value, the vertical line near the center of the box represents the median value (the value above and below which half of the measurements occurred), and the small black triangle represents the mean (average) value.

In Figures 6 and 7, the box and whisker plots show the distribution of total maximum and total minimum active prison terms imposed on felons convicted of some of the more common felonies in 1979, excluding those who received no active prison time. (For convenience in making later comparisons with the period after the Fair Sentencing Act became effective, the felonies are grouped into the classes established by the act.) We can take voluntary manslaughter as an example. For offenders convicted of that felony, the median value of the maximum prison term was 12 years, the mean was 13.7 years, and the interquartile range was 8.8 to 20 years, while the full range (lowest to highest value) was one to 60 years (see Fig. 6). For that same felony, the minimum prison term had a median value of 8 years, a mean of 8.5 years, and an interquartile range of zero to 15 years. For felonious breaking or entering (for which the plots are shown later), the ranges were much narrower and lower. The maximum and minimum prison terms varied much more for the more serious violent felonies (voluntary manslaughter, armed robbery, second-degree murder) than they did for less serious violent felonies and felonies against property.

The plots in Figures 6 and 7 also indicate our very rough estimates of how much time the offenders would have served under the Fair Sentencing Act; these estimates are shown by the vertical dashed lines on the graphs. These estimates of time served under the new act are well below the range of the majority of cases with regard to both maximum and minimum terms. However, in terms of time actually served in prison, the comparison is quite different. We return to this subject in Section III(E) below.

3. Factors That Influenced Felony Sentences. By means of multiple regression, we analyzed both the total maximum prison term and the total minimum prison term using the DOC data for 5,098 felons sentenced in 1979.[2] Consecutive maximum terms (if any) were added together to compute the total maximum term, and consecutive minimum terms were added together to compute the total minimum term. To avoid the distortion that would be caused by a few very long terms (some over 100 years), we eliminated from consideration those defendants with either life sentences or terms over 40 years (only 4 per cent of the total had such sentences). Other defendants were eliminated from consideration because one or more items of data were missing from their DOC records.

The variables considered for the regression analyses of prison terms are listed in Table 3, which shows their distribution. They included: the principal felony charge for which the defendant was sentenced; the total number of felony charges for which he was sentenced; his prior

convictions as determined by prison staff; whether the sentencing court was in an urban county (i.e., in a standard metropolitan statistical area); the offender's age, sex, race, marital status, and employment status; whether he resided in the county where he was convicted, his work experience and years of education; and his history of drug and alcohol abuse.[3] No DOC data were available on the type of counsel the defendant had, whether he pled guilty or went to trial, charge reduction, evidence, the extent of injury and property loss caused by the crime, and the victim's characteristics and relationship to the defendant. (These variables were available in the twelve-county analysis discussed in Section IV, below.)

Among the 5,098 felons considered in the regression, the factor with the largest influence on the prison term was the principal offense of which the offender was convicted. The estimated effects are shown in Table 4 as a percentage increase (+) or decrease (-). The reference category, not listed in the table, was felonious breaking or entering of a building (it was chosen because it was the most common single offense category, applicable to 19 per cent of all felons who received active prison sentences). The table shows that apart from other factors, defendants convicted of murder (only second-degree murder was included[4]) received maximum prison terms that were an estimated 370 per cent longer than the sentences of those convicted of breaking or entering, and they received minimum prison terms about 299 per cent longer. Voluntary manslaughter, rape, kidnapping, assault with intent to kill, armed robbery, common law robbery, safecracking, and burglary (breaking and entering a dwelling at night with the intent to commit a felony therein) all involved considerably longer maximum and minimum prison terms than breaking or entering of a building. Other felonies involved shorter terms than breaking or entering of buildings: breaking or entering of motor vehicles, larceny, receiving of stolen goods, fraud felonies (such as embezzlement), forgery and uttering (passing) forged instruments, and drug offenses. Felonious escape--usually the escape from prison of a person serving time for a felony--also involved considerably shorter prison terms than breaking or entering of buildings. Note, however, that despite the short prison terms for escape, offenders who escaped often also faced a substantial postponement of parole from their earlier sentence.

Besides the offense of which the defendant was convicted, a number of factors were significantly associated with either the maximum term or the minimum term or both. About one-third of the felons were sentenced for more than one felony. The regression indicates that both the total maximum term and the total minimum term increased, but only by about 3.0 per cent, for each additional felony conviction. This finding suggests that where the defendant was convicted of several felonies the principal felony (the felony with the longest individual prison term) was much more important in determining the total prison term than the number of felonies, so that there was a sort of "discount price" for multiple felony convictions. As expected, the prison term also increased with each prior conviction, but not by much.

The amount of time the defendant spent in pretrial detention (jail) before conviction also was associated with maximum and minimum terms. Maximum terms were 5.6 per cent longer for each 30 days of detention, and minimum terms were 9.3 per cent longer for each 30 days of detention (see Table 4). Thus a felon who would otherwise have received a five-year maximum term (the median value for the entire group) would have received a term about 3.4 months longer for each 30 days he spent in jail before trial, and if he would otherwise have received a minimum term of two years (the median value for the entire group), his minimum term would have been about 2.2 months longer for each 30 days of pretrial detention. In our analysis of the DOC data, credit for pretrial detention--required by state law--was not subtracted from prison terms, but these results show that, apart from detention credit and possible attempts by the courts to compensate for it in advance and apart from other factors affecting the sentence, pretrial detention meant longer prison sentences. This subject will be considered further in Section IV, below.

What about the defendant's other characteristics? Being under 21 years of age was associated with a shorter prison term--a maximum estimated at 10.8 per cent less and a minimum estimated at 65.5 per cent less than a felon aged 21 to 25 would have received. Felons over 25 tended to receive somewhat longer terms than the 21-to-25 group. Sex also mattered: female felons' maximum terms were an estimated 25.9 per cent shorter than males', and their minimum terms were an estimated 41.2 per cent, apart from the effects of other factors such as the type of offense they had committed. Blacks received significantly longer prison terms than whites--maximums 6.1 per cent longer and minimums 27.2 per cent longer, as estimated by regression analysis. The offender's marital status was associated with the prison term, but in an unexpected way: married offenders evidently received longer terms, both maximum and minimum, than single offenders, and separated or divorced offenders received shorter minimum terms.

Being a resident of the county where he was sentenced (and where his crime occurred, in most instances) was not associated with the length of an offender's prison term, but degree of education was--the length of term decreased slightly with each year of schooling. Whether the defendant was employed when he was convicted had little effect on the length of his sentence, except that an unemployed felon received a shorter minimum prison term, other things being equal. Work experience also had no effect on sentence. An abuser of alcohol or other drugs generally received a somewhat longer maximum and minimum prison term.

E. How Much Time Do Felons Actually Serve in Prison, and Will the Fair Sentencing Act Affect It?

Until the data presented in Table 5 and Figure 8 were prepared, no accurate information was available on how much time convicted felons actually serve in North Carolina prisons, taking into account parole, good time, gain time, and other factors that may influence actual time served.[5] In Table 5, time actually served computed from DOC records is

compared for three groups of felons: (1) those released from prison in fiscal year 1977-78 (Column 1); (2) those released in calendar 1980 (Column 2); and (3) a hypothetical group sentenced under the Fair Sentencing Act (Column 3).[6]

Prison time served is compared in Table 5 for a number of specific felonies; the only felonies excluded were those represented by fewer than ten convicts released in FY 1977-78 and 1980. (The numbers of inmates released corresponding to each offense and time period are shown in parentheses.) Inmates were excluded from the table if they were either serving their time as committed youthful offenders[7] or serving time for more than one crime. This exclusion facilitated the comparison with what might be expected under the Fair Sentencing Act. Column 3 of the table shows estimates of the mean time that may be served for the same offenses by felons sentenced under the new Fair Sentencing Act. Note that these estimates of time served under the new act are highly speculative and may prove to be very wide of the mark. Data now being collected in the second phase of our study will be used to develop more accurate estimates.

In Table 5, offenses are grouped according to the approximate class they belong to under the Fair Sentencing Act. For each class in the act, there is a presumptive (i.e., standard) prison term, departures from which are allowed only if the sentencing judge gives written reasons. The estimates of time served in Column 3 of the table were derived by assuming that (1) the mean prison term imposed would be equal to the presumptive term for each felony class; (2) felons would receive all of the day-for-day good-time credit allowed by the act (thus reducing their term by 50 per cent); and (3) gain time earned (for work and other prison activity) would be negligible. Thus the estimate of time served under the act is simply half the presumptive term minus .25 years (90 days) for the "re-entry parole," which is virtually mandatory under the act. (For one offense--armed robbery--the estimate is based on the minimum service of time required by a law that antedated the Fair Sentencing Act.) In the rest of this discussion, we make another assumption (which, like the other assumptions, may be false): the Fair Sentencing Act will not cause judges to impose probation on a smaller proportion of felons. This assumption is based on the fact that the act leaves the judge free to impose probation for most felonies without giving reasons, just as he could before the act.

What do the numbers in Table 5 indicate? First, there has not been a consistent pattern of change in time served from FY 1977-78 to 1980. In a comparison of the mean times served in Columns (1) and (2), means for some offenses increased slightly, means for others decreased slightly, and some means remained almost the same between those two periods. Thus there is no indication that the amount of time served for felonies had been consistently moving either up or down in the few years before North Carolina's determinate sentencing legislation was passed. Second, in the future there may be a mixed pattern of change in time served under the Fair Sentencing Act. In a comparison of Columns (2) and (3), the increases (estimated) under the act occur mainly in connection with violent felonies like second-degree murder, armed robbery, and assault with a deadly weapon with intent to kill inflicting serious injury, although the time served may decline for manslaughter, assault with intent to rape (which will now usually be the crime of attempted rape or attempted sexual offense), assault with a deadly weapon inflicting serious injury, and common law robbery. With regard to the much more numerous nonviolent felonies--including crimes against property like larceny and breaking or entering, forgery, uttering, and drug felonies--the estimated time served may decline.

Figure 8 presents the time-served information in Table 5 in more detail: the distribution and range of time served by felons released in 1980 is shown in box and whisker plots. What does Figure 8 indicate? First, it shows that the amount of time served can vary enormously for any particular felony, although usually half of the inmates (the interquartile range) are clustered in a small part of the overall range. Second, the estimated time served under the Fair Sentencing Act, for most of these selected felonies, is usually somewhere within the middle half of the range of time that felons have been serving under previous law. But for a few violent felonies like second-degree murder, the estimated time served under the new act is more than the previous mean and median, and also well outside the middle 50 per cent of the range.

The overall effect of the Fair Sentencing Act--judged on the basis of very speculative estimates--may be to increase the contrast in time served between violent and nonviolent felonies and to reduce somewhat the overall amount of time served by reducing time served for the most numerous (usually nonviolent) felonies. Also, given the primary objective of the new act--to reduce unjustified variation in sentencing--one would expect that the ranges shown in Table 5 would be considerably narrowed in the future.

IV. ANALYSIS OF FELONY COURT DISPOSITIONS IN TWELVE COUNTIES

In the previous section, we discussed an analysis of DOC data that comprehensively described the sentences imposed for felonies throughout the state and identified some factors that were correlated with severity of sentences but furnished little insight into the process that led to the sentence. The twelve-county data are not so broad in their coverage as the DOC data, but they offer an opportunity to examine the process of felony prosecution in some depth. They include information (which the DOC files lack) on factors intrinsic to each felony case, such as the type of evidence against the defendant, his relationship to the victim, and his criminal record. They also include information on administrative processes such as defense service and pretrial release. The twelve-county data indicate not only the sentences of persons convicted of felonies but also all the other possible court dispositions of persons charged with felonies, including dismissal of charges, reduction of charge, and plea bargaining, as well as information on court delay.

A. Structure of the Data

The twelve-county sample consists of 1,378 defendants charged with felonies in those counties during three months in 1979. For Mecklenburg County, the months were January through March 1979; in other counties, they were April through June 1979. The data were drawn from local records of sheriffs, police, courts, and district attorneys. They include (1) the defendant's characteristics (age, race, sex, employment, criminal record, etc.); (2) important features of the case against him (number of felony charges, nature of principal charge [explained below], number of codefendants, information on evidence and extent of injury or damage, and his relationship to the victim); and (3) the processing of the charges against him, with emphasis on the principal charge.

Because a defendant could have more than one felony charge--and 30.4 per cent of the twelve-county defendants did (see Table 6)--all of his concurrently processed felony charges were traced through the records. (Data on accompanying misdemeanor charges were usually not collected, but such charges rarely had worse consequences than the felony charges.) The "principal charge" was the charge with the worst outcome from the defendant's point of view. Most of the information discussed here concerns the principal charge, but much of it also applies to companion charges.

The court-processing data in the twelve-county sample include: how the prosecution began (arrest without warrant, arrest with warrant, indictment, or summons); how much time the defendant spent in pretrial detention; the type of attorney he had (retained by him, individually

court-appointed, public defender, or none); reduction of the principal charge to a lesser charge (by plea or trial conviction); the type of court disposition; and the sentence. The information about the sentence includes the total prison term imposed for all felony charges that resulted in convictions, with consecutive prison terms (if any) added together and credit for pretrial detention subtracted, and the prison term or other sentence imposed for the principal charge or the charge to which the principal charge was reduced.

As explained earlier, the twelve counties chosen constitute a cross-section of the state's 100 counties. The three urban counties dominate the twelve-county data because they have many more felony defendants than the other nine counties--but the predominant contribution of urban areas is typical of the state as a whole. The actual breakdown of the sample by county is: Mecklenburg, 35.8 per cent; New Hanover, 14.7 per cent; Buncombe, 13.6 per cent; Rockingham, 10.1 per cent; Craven, 6.1 per cent; Harnett, 5.9 per cent; Rutherford, 5.0 per cent; Anson, 3.0 per cent; and the remaining 5.8 per cent shared among Cherokee, Granville, Pasquotank, and Yancey counties.

B. Defendants and Their Charges

The felony defendants in the twelve-county sample (see Table 6) were mostly young males; only 12.2 per cent of them were female. The proportion of blacks was 47.5 per cent; among male defendants aged 15 to 29, 48.2 per cent were black. This last proportion was much greater than the proportion of blacks among the state's 15-to-29 age group in 1970--21.7 per cent.[8] The median age at the time of arrest was 23, and the interquartile range in ages was 19 to 30. Most defendants (83.8 per cent) resided in the county where they were prosecuted; only 3.8 per cent resided outside the state. The records of only 54.8 per cent of the defendants showed occupation; of these offenders, 32.4 per cent were nonfarm laborers, 17.5 per cent were students, and 14.1 per cent were private household workers. The records showed employment status for 75.4 per cent of the defendants; of these, 39.8 per cent were unemployed at the time of arrest.

Defendants were grouped into six classes depending on the type of felony that they were initially charged with; these classes have no relation to the Fair Sentencing Act's ten classes. Nearly a quarter (23.6 per cent) of the defendants were charged with Class 1 (violent) felonies--which included felonious assaults of various kinds, robbery, murder and manslaughter, rape, arson, and kidnapping (see Table 6). Crimes against property (Class 2) were the most common charges; 45.9 per cent of the defendants had a Class 2 charge--such as felonious larceny, breaking or entering, burglary, or possession or receiving of stolen goods. Class 3 offenses comprised fraudulent crimes against property, including obtaining property by false pretense, forgery, uttering a forged instrument, larceny by an employee,[9] felonious credit card theft and fraud, and embezzlement; 11.9 per cent of the defendants faced Class 3 charges. Class 4 charges (drug felonies) were filed against 13.4 per

cent of the defendants; they included felonious possession, possession with intent to sell or deliver, and sale or delivery of various substances controlled by state law. Class 5 ("morals" felony) charges were filed against only 1.9 per cent of the defendants; they included such offenses as crime against nature, incest, and taking indecent liberties with a minor. Class 6 included charges that did not fit into Classes 1 through 5--a residual class that consisted primarily of escape from prison and leaving the scene of an accident that caused personal injury; 3.3 per cent of the defendants were placed in this class.

Thirty and four-tenths per cent of the defendants had more than one felony charge, and 40.6 per cent had one or more codefendants (see Table 6). (As explained earlier, we handled the multiple-charge situation by selecting a principal felony charge and emphasizing it in the data collection and analysis; the number of accompanying ("companion") charges was treated as a variable in the analysis.) We hypothesized that, other things being equal, the more charges the defendant had, the worse the outcome of prosecution would be for him. We also thought that codefendants might have affected the defendant's chances in court by (1) making the crime appear more serious, or (2) either "taking the rap" or being turned against the defendant as witnesses. We did not examine the court dispositions of groups of defendants, but for each individual defendant, the number of codefendants was treated as a possible explanatory variable in the analysis, just as the number of companion felony charges was.

C. Counsel, Pretrial Release, and Pretrial Detention

Most defendants (86.1 per cent) were known to have been represented by counsel; only 6.7 per cent were known not to have been represented (see Table 7). Thirty-four per cent paid for their own attorney, 27.9 per cent were found to be indigent and were represented by individual attorneys appointed by the court, and 24.3 per cent were found to be indigent and were represented by a public defender. (Only two of the twelve counties--Buncombe and Mecklenburg--had public defenders, but these two counties accounted for half of the defendants in the twelve-county sample.) For 7.1 per cent of the defendants it was unknown whether they had counsel.

For all but twelve of the defendants, prosecution began with arrest. About one-fifth (22.5 per cent) of the arrested defendants were not released before trial--and remained in the local jail while their charges were processed (see Table 7). The rest of the arrested defendants received some form of pretrial release: 27.0 per cent on bond secured by a professional bondsman, 14.4 per cent on bond secured by a nonprofessional surety ("accommodation bondsman") such as a friend or relative, 2.5 per cent on bond secured by a deposit of cash, and 1.7 per cent on bond secured by a mortgage of real or personal property. Another 11.7 per cent of the arrested defendants obtained release on unsecured bond (i.e., a promise to pay the bond amount if they failed to appear), 12.0 per cent were released in the custody of a third party who agreed to supervise them, and 4.5 were released on a written promise to appear.

Considering all of the arrested defendants together, the mean time they spent in pretrial detention (jail) before first pretrial release (or before disposition if they did not receive pretrial release) was 15.8 days. Although the median detention time was only one day, 25 per cent of the defendants spent 13 or more days in pretrial detention.

D. Court Processing

For those unfamiliar with North Carolina criminal procedure and court structure, some explanation is needed of the steps followed in the typical felony case. Usually prosecution on a felony charge begins with an arrest. The arrested person (defendant) is taken by the police officer before a magistrate, who determines whether the arrest was either made on a valid warrant or based on reliable information that the person committed the alleged crime. If there is neither a warrant nor probable cause, the magistrate releases the defendant. Otherwise, he sets conditions of pretrial release, such as an appearance bond. The defendant then either meets the release conditions (for example, by posting the amount of the bond) or is committed to pretrial detention (jail). (The defendant in jail remains there until his case is disposed of unless he can meet the pretrial release conditions, which may be modified later by the district court or superior court.) Next, the defendant proceeds to his first appearance before a district court judge; if he is in detention, this first appearance must be within 96 hours after he is arrested or at the next regular session of district court in that county, whichever comes first. The district judge assures the defendant's right to counsel by informing him of the right, determining whether he has retained counsel, and if not, appointing counsel to represent him if the defendant requests it and the judge finds him indigent. Thereafter, the defendant receives a probable cause hearing in district court. The district court judge may dismiss the felony charge altogether if he does not find enough evidence to support it (however, the prosecutor may still seek an indictment later), or he may find probable cause to support another charge instead. If this other charge is a misdemeanor, the defendant will either receive a trial on it (by a district court judge) or plead guilty to it. If the district judge finds probable cause for a felony charge, the charge will normally proceed to the grand jury. The prosecutor asks the grand jury to indict (formally accuse) the defendant of the charge, which it usually does, although it may vote "no true bill" (refuse to indict), in which case the defendant is released. If the defendant is indicted, he proceeds to superior court, where he may plead guilty to the original charge or a lesser charge or receive a jury trial. The charge may also be dismissed by the superior court judge. At any point in the process (either in district or superior court), the prosecutor may himself dismiss the charge, but under some circumstances if the charge is dismissed the defendant may be prosecuted later for it. Sentencing of a defendant in the twelve-county sample could be by either a district court judge (if the defendant pled guilty or was found guilty of a misdemeanor in district court) or a superior court judge (if the defendant pled guilty in superior court or was found guilty by a jury of any charge). Plea bargaining could also occur in either court.[10]

Figure 9 describes the various court dispositions for 1,350 felony defendants whose cases began by arrest or summons (not counting the few who were indicted directly and never passed through district court). About half (47.9 per cent) of these defendants had all their charges disposed of in district court, and the rest went on to the grand jury and usually to superior court. In district court, 26.2 per cent of all the defendants had all their charges dismissed. (This includes one defendant who received a "P.J.C.")[11] Most of the dismissals were by the prosecutor; 5.9 per cent of the cases were dismissed by the district judge for lack of probable cause.

Pleas of guilty to misdemeanors were also common in district court: 20.6 per cent of the felony prosecutions in the twelve-county sample were disposed of in this way. (Most of these were not formal plea bargains but instead were pleas to a lesser-included misdemeanor with the prosecutor's approval.) A few felony defendants (1 per cent) had their charges reduced to misdemeanors and were tried by a district judge; half were acquitted.

Defendants convicted of misdemeanors in district court have the right to a trial de novo, by a jury, in superior court. In our analysis, the few who exercised this right were placed on the disposition diagram according to the disposition they received in superior court, as were the few defendants who received dismissal of felony charges in district court but were later indicted.

Of the 1,350 defendants described in Figure 9, 52.1 per cent went to the grand jury. Very few (0.6 per cent of the total) were discharged by the grand jury's refusal to indict. The rest were indicted and proceeded to superior court. Once they did so, it was much less likely that all charges would be dismissed than it had been in district court: only 8.0 per cent were so fortunate (again, most of these dismissals were by the prosecutor). The most common outcome in superior court (for 37.8 per cent of all the defendants) was a guilty plea. Usually this plea was pursuant to a formal plea arrangement on the record, shown by either a transcript of plea or an out-of-court dismissal form completed by the prosecutor. Most guilty pleas in superior court were to felony charges.

Jury trials (conducted only in superior court) were very rare. Only 5.8 per cent of all the defendants received complete jury trials. When they did, conviction was four times as likely as acquittal, and the conviction was almost always of a felony rather than a misdemeanor.

Looking at the overall disposition rates (see Table 8), we see that nearly two-thirds (63.7 per cent) of the felony defendants were eventually convicted: 32.5 per cent were convicted of felonies, and 31.2 per cent were convicted of only misdemeanors. Twenty-seven and four-tenths per cent of the defendants had all felony charges dismissed by the prosecutor. Counting dismissals by a judge and the three "P.J.C.s," 34.0 per cent of all the defendants had all of their felony charges dismissed. This rate may seem high to those unfamiliar with felony prosecution in the United States, but it is not high compared with other jurisdictions'

rates. Dismissal rates of 40 to 50 per cent have been common for many years.[12]

What about sentences received by the defendants in the twelve-county sample? Thirty-six and three-tenths per cent of the 1,378 defendants were not convicted of any charge and therefore received no sentence. Twenty-seven and four-tenths per cent received active imprisonment--22.3 per cent in the form of regular prison sentences and 5.1 per cent in the form of special probation--i.e., probation with up to six months to serve in jail or prison as a condition of probation (see Table 8). Twenty-five and one-tenth per cent received supervised probation without active imprisonment, and 7.1 per cent received unsupervised probation. Four and one-tenth per cent received neither probation nor prison but were ordered to pay fines, costs, or restitution. (In considering these sentences, the reader should remember that about half were for misdemeanor convictions.)

For the 377 defendants who received active prison sentences, the median length of the maximum prison term was 3.0 years and the median length of the minimum prison term was .7 years (see Table 8). The mean (average) maximum sentence was 7.1 years and the mean minimum sentence was 3.6 years. Only 25 per cent of the maximum sentences exceeded seven years.

E. Plea Bargaining

What these data show about pleas of guilty and plea bargaining is important, because the plea-bargaining system is the environment in which the Fair Sentencing Act will operate. Of the 1,378 defendants in the twelve-county sample, all of whom were charged with one or more felonies, 58.6 per cent pled guilty--28.2 per cent to felonies, and 30.4 per cent to misdemeanors (see Table 9). Thus more than half of the guilty pleas involved reduction of the charge from felony to misdemeanor.

Of all the guilty pleas, 55.8 per cent involved what we called "formal plea bargains"--pleas of guilty accompanied by a written statement of terms and conditions of the guilty plea either on the transcript-of-plea form or on a dismissal form (or both). "Terms and conditions" on the plea transcript or the dismissal form included the concessions granted by the prosecutor for the guilty plea; for example, the prosecutor may agree to dismiss a charge, or accept a plea to a reduced charge, or recommend a specific sentence to the judge.[13]

The rest of the guilty pleas (44.2 per cent) we called "informal pleas" because they did not involve a quid pro quo expressed in a written statement. But our count of "formal" plea bargains is a conservative estimate of quid pro quo situations. Many of the "informal" pleas probably involved unwritten understandings between the defendant and the prosecutor and/or judge.

Formal plea bargains involving the defendant's sentence were recorded in our study only if accepted by the judge. Under North Carolina law, when a "plea arrangement" (plea bargain) involves a promise by the prosecutor to recommend a particular sentence, "the judge must advise the parties whether he approves the arrangement and will dispose of the case accordingly." If the judge disapproves, he must refuse to accept the guilty plea; the defendant is then entitled to a postponement of his case to the next court session, when a different judge will usually be presiding.[14] If the judge approves the bargain but later decides to "impose a sentence other than provided for in a plea arrangement between parties," the defendant may withdraw his plea and obtain a continuance to the next session.[15] Thus, when we recorded a formal plea bargain that included an agreement by the prosecutor to recommend a particular sentence, the bargain was approved by the judge and in most cases the recommended sentence was actually imposed.

Of the 808 felony defendants who pled guilty to some charge, 27.0 per cent did so pursuant to a formal plea bargain in which the prosecutor agreed to recommend a specific sentence for the principal charge such as probation or a particular prison term or range, and 6.2 per cent did so under a plea bargain in which the prosecutor agreed to recommend consolidation for judgment of one or more companion felony charges with the principal felony charge (consolidation of charges for judgment means that any prison terms imposed for them must run concurrently rather than consecutively).

Considering just the 389 defendants who pled guilty to felonies, 12.6 per cent agreed to plead guilty in exchange for the prosecutor's agreement to consolidate two or more of their charges for judgment. A much larger proportion entered into formal plea bargains that were quite specific about their sentence. Of the 389 defendants who pled guilty to felonies, 37.3 per cent did so in exchange for a prosecutorial recommendation--which the judge agreed to follow--of either probation or a specific prison term or range of terms. Seventeen and two-tenths per cent of the 389 defendants entered into formal plea bargains in which the prosecutor agreed to recommend probation without active imprisonment, and 20.1 per cent entered into formal plea bargains in which the prosecutor agreed to recommend a specific term of imprisonment (such as four years) or a specific range of terms (such as three to five years). The proportion of felony guilty pleas involving prosecutorial recommendations of specific prison terms or ranges of terms, which we measured at 20.1 per cent for the twelve counties in 1979, may well increase under the Fair Sentencing Act because the new act exempts such sentences from the judicial-findings requirement.[16]

F. Court Disposition Time and "Speedy Trial" Limits

The question whether the Fair Sentencing Act increases court delay will be considered in the second phase of our study. In order to consider that question, we had to compile baseline data regarding delay before the new act went into effect (see Table 10). Using the twelve-county

data, we measured court disposition time for arrested defendants in three ways: (1) from arrest to indictment (or if there was no indictment, to final disposition in district court); (2) from indictment to superior court disposition for defendants who were indicted; and (3) from arrest to final disposition for all defendants in whichever court final disposition occurred. If the defendant had more than one felony charge, these times were measured regarding only his "principal charge" (as defined above). Our measurements were slightly exaggerated in the sense that they included some periods of time that would be excluded under the speedy-trial law, such as periods of continuance requested by the defendant and periods when the defendant had disappeared. Thus the figures in Table 10 should be regarded as somewhat pessimistic.

To place the court-delay statistics in context, we need to consider North Carolina's speedy-trial law.[17] It provides that "the trial of a defendant charged with a criminal offense" must begin "[w]ithin 120 days from the date the defendant is arrested, served with criminal process, waives an indictment, or is indicted, whichever occurs last...." The original legislation, enacted in 1977, provided that the time limit would be reduced from 120 to 90 days by 1980, but since then the General Assembly--concerned about straining the resources of the court system--has postponed the 90-day limit twice, and it is now not scheduled to go into effect until 1983.[18] Despite the language just quoted, court decisions interpreting the speedy-trial law have held that (a) the 120-day limit does not apply to district court proceedings, and (b) in felony cases the "clock" begins to run only when indictment occurs.[19]

The time from arrest to indictment or district court disposition (Table 10, Item 1) was substantial for the defendants studied. The median was 34 days, and 7.0 per cent of the times exceeded 120 days. Thus in many felony cases as much delay occurs in district court as occurs in superior court after indictment. Perhaps the speedy-trial law should be amended to cover district court delay.

If a 90-day limit is regarded as an ideal standard that North Carolina courts should eventually attain, the figures in Table 10 are fairly enouraging, especially when one considers that they are somewhat pessimistic. District court delay (from arrest to indictment or final disposition in district court) did not exceed 90 days for 87.4 per cent of the felony defendants we studied in the twelve counties. Superior court delay (from indictment to disposition) did not exceed 90 days for 74.7 per cent of the defendants; however, 25.3 per cent of the defendants experienced delays of more than 90 days in superior court, and 14.7 per cent experienced more than 120 days. The median time from indictment to disposition was 51 days. Considering the overall disposition time--from arrest to final disposition in whichever court it occurred--the median value was 58 days; 34.5 per cent of the disposition times exceeded 90 days, and 22.8 per cent exceeded 120 days.

These figures suggest that while most felony prosecutions meet the "ideal" 90-day standard, it would be difficult to satisfy a 90-day limit

for all felony prosecutions, especially in superior court. If more trials were held, it probably would be even more difficult.

G. Comparing Court Processing and Disposition Times Among the Twelve Counties

Figures 11 through 15 show court-processing diagrams for Buncombe County (including Asheville), Mecklenburg County (including Charlotte), New Hanover County (including Wilmington), Rockingham County (including Reidsville), Craven County (including New Bern), and the seven small counties combined (Anson, Cherokee, Granville, Harnett, Pasquotank, Rutherford, and Yancey). The first three counties are urban areas.

The diagrams illustrate the variation in court processing across the state. This variation will be important in the next phase of this study, because the effects of the Fair Sentencing Act may vary considerably with the patterns of court processing in each judicial district. The diagrams do not take into account differences among the counties in the makeup of their caseload. Later this report will discuss analyses indicating that some (but not all) of the differences among counties observed in these processing diagrams persist when various characteristics of felony defendants and cases are taken into account statistically.

Who is responsible for court processing? The answer is that several agencies are responsible in various ways. In comparing processing patterns among the twelve counties, we are really comparing the performance of these agencies as they interact. The differences we found among counties could be attributed to any one of the agencies or to the way in which they work together. The district attorney and his staff perhaps play the key role in court processing; besides representing the state in trials, he has the power to schedule criminal cases for court hearings,[20] can dismiss charges,[21] and can engage in plea bargaining about charges and sentences.[22]

But other agencies and individuals are also important. The defense attorney--whether he is a privately paid attorney, an individually appointed attorney, or a salaried public defender--influences dismissal of charges and participates in plea bargaining, besides representing the defendant in trials. Local police agencies also influence court dispositions. The standards they set (implicitly or explicitly) for making felony arrests and how well they prepare each case affect the prosecutor's likelihood of obtaining a conviction, since he depends on the police to apprehend felons and obtain evidence against them. The characteristics and attitudes of presiding judges are also very important in court dispositions, and the clerk's office and how it manages court record-keeping and other support functions is not inconsequential.

Computed on the basis of the twelve-county data, dismissal rates for felony defendants in Buncombe and Mecklenburg Counties were high--51.1 per cent and 36.4 per cent, respectively, compared with 22.8 per cent in New Hanover County, 27.3 per cent in Rockingham County, 30.5 per cent in

Craven County, and 31.3 per cent in the seven small counties combined. Dismissals also occurred much faster in Buncombe and Mecklenburg counties. Most of these two counties' dismissals occurred in district court, with a median delay of 23 days from arrest in Buncombe and 17 days in Mecklenburg--compared with 38 days for district court dismissal in New Hanover and an average of 43 days in the other counties.

One probable reason for the greater frequency and speed of dismissals in Buncombe and Mecklenburg was that these two counties' district attorneys had formal systems (not used in the other ten counties we studied) for screening felony charges soon after arrest. Another reason why dismissals were more frequent in Buncombe County was that the proportion of dismissals by district court judges was high--15.6 per cent, compared with an average of 5.9 per cent for all twelve counties.

The jury trial rate varied considerably. It was very low for Buncombe County (1.1 per cent) and Rockingham County (1.5 per cent). In Mecklenburg County the trial rate (5.7 per cent) was close to that of the seven small counties (6.8 per cent). New Hanover County had the highest jury trial rate--10.6 per cent.

The processing pattern in New Hanover County stands out. The county's dismissal rate (22.8 per cent) was the lowest for the three urban counties and lower than the rate for all twelve counties together (34.2 per cent). Prosecutors in New Hanover County dismissed only 10.1 per cent of the defendants' charges at the district court stage, compared with 20.2 per cent in all twelve counties. A very high percentage of felony defendants went to superior court (76.7 per cent in New Hanover, compared with 51.6 per cent in all twelve counties). As already noted, the jury trial rate was high (10.6 per cent, compared with 5.8 per cent for all twelve counties). New Hanover's overall conviction rate was high (73.5 per cent, compared with 63.5 per cent for all twelve counties), and its rate of conviction of a felony charge was 47.2 per cent (compared with 31.7 per cent for all twelve counties). Most of the felony convictions (40.1 out of the total 47.2 percentage points) were obtained by pleas of guilty in superior court.

How did court disposition times vary among the twelve counties? This can be seen in Table 10, Item 3. For all twelve counties, the disposition time measured from arrest to final disposition (note that this measurement includes defendants whose cases were disposed of in district court as well as those who were indicted and processed in superior court) had a median value of 58.0 days and a mean of 79.2 days; the 25th percentile was 22.0 days and the 75th percentile 116.8 days. The individual figures for Cherokee, Granville, and Yancey counties were unreliable because so few felony defendants were prosecuted in each of those counties during the study period. As for the other nine counties, we can see that Mecklenburg had the lowest median disposition time (37.0 days) and also the lowest mean disposition time (68.3 days). These low values probably resulted from the systematic post-arrest screening of felony charges in Mecklenburg and the consequent high rate of dismissals in district court. Buncombe County, the only other county with such a

screening system, had the second lowest median time (50.0 days) and mean time (70.2 days) among the nine counties that had enough defendants to permit a comparison.

Because felony cases in New Hanover County were much more likely than those in the other eleven counties to be disposed of in superior court, and because the jury trial rate was high there, one would expect the court disposition times to have been quite high, but this was not the case. With a median time of 62.0 days and a mean time of 81.6 days, New Hanover was quite close to the median (58.0) and mean (79.2) for all twelve counties, despite its high frequency of superior court dispositions including jury trial.

H. Transformation of Charges

Another way of looking at felony prosecution is to see what happens to various types of charges. This is shown by the charge-reduction graph in Figure 16, which includes only those felonies with which 15 or more defendants were charged. (If a defendant had more than one felony charge, he was counted according to his principal charge.) The overall conviction rate was highest for drug-felony defendants, somewhat lower for fraud defendants, and lower still for theft and violent-felony defendants; but the rates varied greatly within each class of charges. The amount of charge reduction also varied greatly. None of the 19 first-degree murder defendants in the twelve-county sample was convicted of his original charge, although 68 per cent were convicted of lesser felonies; in contrast, 78 per cent of the 23 defendants charged with sale of a Schedule III, IV, V, or VI drug were convicted of their original felony charge. There seems to be no clear pattern in this charge-transformation graph. To understand disposition patterns better, one must consider other factors besides the charge.

V. MULTIVARIATE MODELS OF COURT DISPOSITIONS IN TWELVE COUNTIES

We applied a statistical technique called multiple regression to the twelve-county data to develop models of the process that led to dismissal of all of a defendant's felony charges and (for those defendants whose charges were not all dismissed) the process that led to sentencing or acquittal. A statistical model of a process is developed by testing and tracing the implications of initial hypotheses and assumptions. We hypothesized that a number of relationships could exist between various factors present in felony cases and outcomes of prosecution. All of these possible relationships were tested statistically for significance (see Appendix 3). Some were supported by the tests; others were found not to be statistically significant and were rejected.

In determining how each factor contributed to the probability of dismissal of all charges and to the sentence the defendant was likely to receive, separate analyses were done of defendants charged with different types of felonies. We expected to get more precise estimates of the various factors' effects in this way, because the type of offense charged might well influence the effects of other factors on court outcome. In this report, statistical analyses are presented for the defendants in the two largest offense classes: Class 1 (violent felonies--including 23.6 per cent of all defendants); and Class 2 (burglary, breaking or entering, larceny, etc.--the largest class, including 45.9 per cent of the defendants).

A. Potential Causal Factors

Our preliminary notions about how relationships between characteristics of cases and defendants may affect court disposition can be summarized as follows:

Basic factors regarding the defendant and his felony charge(s) may affect either his chance of dismissal of all charges or his sentence or both. These basic factors include:

--The type of principal felony initially charged, and its seriousness in terms of the maximum prison term allowed by law for it;
--The total number of felonies charged;
--The number of codefendants;
--Defendant's criminal record, including whether he was on probation or parole at the time of prosecution;
--Defendant's age, sex, race, marital status, employment status, and whether he was a resident of the county of prosecution;

--The type of evidence against the defendant, including eyewitnesses, a confession or incriminating statement, physical evidence such as fingerprints, and whether stolen property was recovered;
--Whether substantial physical harm was inflicted during the crime, and the value of property unlawfully taken or damaged;
--Whether a firearm or other weapon was used in the crime;
--The crime victim's characteristics, including age, sex, race, and whether the victim was related to or acquainted with the defendant;
--The county in which the prosecution took place.

Administrative factors such as those listed below, may affect either the chance of dismissal or the sentence or both. They may themselves be affected by the basic factors listed above. (Also, the administrative factors may affect each other.)
--Whether the defendant was found indigent and had appointed counsel (an attorney individually appointed by the court or an attorney from the local public defender's office);
--Pretrial detention time (measured in days from arrest to first pretrial release, or to trial court disposition if the defendant was arrested but did not receive pretrial release--considered zero if the defendant was summoned rather than arrested);
--Whether the defendant went to trial or pled guilty.

We thought that what happened to a defendant in court would depend partly on his attorney's skill and remuneration and the amount of effort he devoted to the case. We could not measure individual attorneys' skills and efforts--too many attorneys were involved in the cases we studied to treat them as individuals in a multivariate analysis. But we hypothesized that regardless of the defense attorney's ability, the defendant would tend to fare somewhat worse in criminal court if he had assigned counsel. An attorney retained by a defendant probably earns more for representing him than attorneys individually appointed by the court is paid to represent an indigent. The average appointed attorney's fee in a criminal case is about $158,[23] or perhaps somewhat more if only felony cases are considered. We have no figures on private attorneys' fees but believe them to be much higher. The average yearly salary of public defenders and assistants was about $26,000 in 1979[24]; while their salaries were on a par with those of prosecuting attorneys, they earned less than many private defense attorneys earned. Also, attorneys whose work is mainly with defendants who pay them privately may have lower caseloads (and thus may be able to spend more time per case) than either public defenders or attorneys who spend a good deal of time on indigent defendants. For these reasons, we suspected that a felony defendant would tend to be at a disadvantage if he was represented by assigned counsel rather than by private counsel.

Some explanation of the statistical association between pretrial detention and court disposition is needed.[25] There are several possible explanations for this association, each of which probably has some validity. We will describe each of them and then comment.

(1) Pretrial detention tends to make the court disposition worse for the defendant because the defendant who is free while his case is being processed by the court has certain advantages over the jailed defendant. He can keep (or obtain) a job, make restitution to the victim, and do other things that may favorably impress the court; and he can help his attorney and his defense by obtaining evidence (including witnesses) in his behalf and doing other "legwork." The longer the defendant spends in pretrial detention, the fewer his opportunities to impress the court favorably with his postarrest behavior and help in his defense; also, it will be harder for his attorney to interview him because the attorney will have to take valuable time to go to the jail, where there may not be the proper space or atmosphere for an interview.

(2) Pretrial release tends to make the court disposition better for the defendant because he may be able to intimidate adverse witnesses while he is free. In some cases the mere knowledge that he is free may be enough to intimidate witnesses without any contact with the defendant.

(3) The statistical association between pretrial detention and court disposition is partly explained by other factors. In other words, the same sorts of factors that make the court decide that a defendant is a poor risk for pretrial release (and consequently cause the court to set stringent conditions of release such as a high bail bond) also tend to cause him to be convicted and receive a severe sentence.

Explanation (1) is based on our conversations with several defense attorneys. The fact that pretrial detention interferes with the defendant's ability to defend himself has been widely recognized--for example, in the American Bar Association Standards for Criminal Justice.[26]

Explanation (2)--that pretrial freedom may help the defendant by intimidating potential witnesses against him--has some validity, but it probably applies only to a few cases involving serious violent crimes or defendants reputed to be dangerous. Many released defendants may be tempted to try to discourage witnesses from testifying against them, but it is reasonable to suppose that they are deterred from this by the fear of getting into worse trouble with the law. In fact, the most rational thing for them to do to help their own defense is probably to stay away from prosecution witnesses.

Explanation (3) is that the same factors that cause high bond also tend to cause convictions and long sentences. If the defendant has strong negative factors in his case, such as a serious charge, an extensive criminal history, or strong evidence against him, the magistrate may tend to set a high secured bail bond, and in later hearings the prosecutor may recommend either that a higher bond be set or that the original bond not be reduced. These same negative factors may also (1) make it unlikely that the prosecutor will dismiss the defendant's charge, and (2)

increase the probability that the defendant will receive a substantial active sentence.

Our statistical analysis was designed to take explanation (3) into account: it measured the effects of pretrial detention separately from those of charge seriousness, prior convictions, type of evidence against the defendant, and certain other factors that could affect both pretrial detention and court disposition. Actually, we found that very little of the variation in pretrial detention could be explained by information on seriousness of charge, prior convictions, type of evidence, and other similar factors. In other words, it was common (as this section will show later) for two defendants to be alike with respect to charge, prior convictions, and other legally relevant factors but spend very different amounts of time in pretrial detention. This may simply mean that there is a good deal of random or capricious variation in how pretrial release conditions are set. That such variation could occur is not very surprising, because the initial setting of pretrial release conditions is not closely supervised and is almost never reviewed by appellate courts. Another factor that probably contributes to random variation in pretrial detention is random variation in court disposition time, which affects pretrial detention time. Another reason why the variation in pretrial detention could not be explained well with our data is that our data probably omitted some important aspects of reality. The data we used were taken from court and police records and, as explained earlier, undoubtedly did not include all information important to the court processing of the defendant. To the extent that we inadvertently omitted legally relevant information in our data, we regard our analysis as deficient, but we do not consider it to be deficient simply for omitting information that would have helped to explain both pretrial detention and court disposition if that information was not legally relevant. For example, if our data did not include reliable information that the defendant had behaved very violently in his community--information that the police may have been able to give the magistrate and prosecutor but did not appear in conviction records--then our study was partly deficient. But suppose we left out information showing that the defendant, although not a dangerous person, had an unpleasant personality that antagonized court officials and thereby reduced the likelihood that he would receive favorable bail conditions and a probationary sentence. We do not regard this sort of omission as a deficiency of the study because having an unpleasant personality is not relevant to any legal policies.

We thought that whether the defendant chose to plead guilty rather than go to trial would affect his sentence. Specifically, we thought that the defendant who pled guilty would tend to receive a "break" in terms of a less serious charge of conviction or a less severe sentence or both. That he would receive a break is quite plausible because that is presumably why he chose not to exercise his right to a trial, and giving him a break in such circumstances is widely recognized as legitimate.[27] We also thought that the defendant who went to trial and was convicted could receive a more severe sentence than the one who pled guilty, for several possible reasons: (1) he did not to get the break that he would have received if he had pled guilty; (2) aggravating factors were brought

out at a trial that would not usually emerge during pleabargaining; and (3) the court either consciously or unconsciously penalized him for exercising his right to a trial (which involved more work and delay than a plea). The last reason is clearly illegitimate,[28] but we thought it might have some validity.

One important variable was missing from the analyses discussed here: who the judge was. While most practitioners would agree that the identity of the presiding judge may make an important difference in court disposition--especially in sentencing--and although we knew who the sentencing judges were, we did not use the judge's identity as a causal factor in statistical analysis. The reason was that too many judges were involved and each had too few cases. Since we had no basis for grouping judges, it would have been necessary to treat each judge as a single variable in analysis. This would have made it impossible to control properly for important differences in judges' caseloads. It should be remembered, then, that part of the variation in criminal court dispositions that the present analyses do not explain is probably attributable to variations among judges.

B. Dependent Variables (Court Dispositions)

In analyzing the twelve-county data, we considered two possible outcomes of court processing--dismissal and sentencing. Dismissal was simply the odds that all of the defendant's felony charges would be dismissed (usually by the prosecutor) without any conviction, not even on a misdemeanor charge reduced from a felony. For all of the defendants whose felony charges were not all dismissed, the sentence was computed. The defendants whose charges were not dismissed included those who pled guilty or were convicted at trial as well as the very few (23 out of 1,378 defendants) who went to trial and were acquitted. (The acquitted defendants were considered to have received "zero sentences" so that our analysis could take into account the possible benefits as well as the possible disadvantages of going to trial rather than pleading guilty.)

The sentence imposed on the defendant was expressed as three different variables: (1) the odds of receiving any active imprisonment; (2) the total active maximum prison term imposed; and (3) the time until earliest release from prison. When the defendant either was acquitted at trial or received a sentence involving no active imprisonment, the odds of active imprisonment, the total active maximum prison term, and the time to earliest release from prison were all considered to be zero. The total active maximum prison term was computed by selecting the longest of any group of concurrent prison terms, adding together any consecutive terms, and then subtracting the time the defendant spent in pretrial detention (for which he must receive credit under N.C. Gen. Stat. Ch. 15, Art. 19A). (Defendants whose active prison term was reduced to zero by pretrial detention credit were considered to have no active imprisonment and zero prison terms.) The total active maximum term is the longest time the defendant could legally be held in prison. The time to earliest release from prison was computed (unless the defendant received a nonpri-

son sentence or an acquittal) as the least amount of time he could serve in prison before either becoming eligible for parole or being unconditionally discharged, whichever would come first. (In a few instances, an inmate could be unconditionally discharged before he became eligible for parole.) When a defendant was sentenced to active imprisonment but was legally eligible for parole immediately, we assigned a value of two months to his time to earliest release; two months, according to a knowledgeable Department of Correction official, was the minimum administrative delays in considering parole.[29]

The time to earliest release was difficult to compute because the parole laws were so complex in 1979, and there were many exceptions for specific crimes and situations. But we assumed that most defense attorneys, prosecutors, and judges understood the basic rules of serving prison time and used these in bargaining about the sentence, because the thing that felony defendants were probably most interested in--when contemplating plea bargains that involved any active imprisonment--was how soon they might emerge from prison. Our conversations with criminal court practitioners indicate that the time to earliest possible release from prison is the "coinage" of plea bargaining, and therefore perhaps the best of our three measures of sentence.

C. Methods of Multivariate Analysis

In developing statistical models using the twelve-county data, we followed the methods described in Appendix 3 and employed a "hierarchical" approach that consisted of the following steps.

(1) The dependent variable (such as the odds of dismissal or the total active maximum prison term) was regressed on--i.e., modeled in terms of--basic factors intrinsic to the case, such as the seriousness of the defendant's charge, his prior criminal record, and the type of evidence against him.

(2) From this first "basic factors model," the basic factors were selected that proved to have a significant relationship with the dependent variable and other basic factors were dropped.

(3) A second model, called a "complete model," was formed by regressing the dependent variable on the previously selected basic factors plus the process variables (time spent in pretrial detention, type of defense attorney, and whether the defendant pled guilty or went to trial).

The hierarchical procedure, used in conjunction with careful checking for multicollinearity (see page 1 of Appendix 3 for a definition), is a way of insuring that the statistical association of process variables with court disposition is not confused with the effects of basic factors.

D. Models of Dismissal

In the logistic regression analyses of dismissal for Class 1 and Class 2 defendants, the odds in favor of dismissal were modeled in terms of basic factors and process variables.[30] In showing the effects of various factors on the odds of dismissal of all of the defendant's charges, we present estimates of the percentage increase (+) or decrease (-) in the odds of dismissal associated with each factor studied.

In analyzing dismissal and sentence, as explained previously, we first formed basic-factors models (shown in Column 1 of Tables 11 through 18) and then formed "complete models" (Column 2 of Tables 11 through 18) by adding pretrial detention time and type of attorney to the factors found significant in the basic-factors models. Later, "attorney-differences models" were formed to highlight possible differences among types of defense counsel (see Column 3 of Tables 11 through 18).[31]

Turning first to dismissal for Class 1 (violent felony) defendants, we found that the defendant's demographic characteristics--sex, race, age, residence, employment, and marital status--had no significant association with dismissal (see Column 1 of Table 11). The odds of dismissal of all charges dropped substantially for each felony charge (in addition to the principal charge) against the defendant, which is not surprising. The odds of dismissal increased with each codefendant that the defendant had. This result suggests that the more suspects there were to take the blame for a violent felony, the better the chance that any one of the suspects would have his charge dismissed. The defendant's criminal record does not seem to have affected the odds that a Class 1 charge would be dismissed. Evidence did affect dismissal. As we expected, the existence of an eyewitness who could testify, an incriminating statement by the defendant, physical evidence of the crime, and physical injury to the victim all were associated with significantly lower odds of dismissal. The victim's characteristics were apparently unimportant. Each ten days of pretrial detention was associated with an estimated 17 per cent decrease in the odds of dismissal.

There were some differences among the courts of the twelve counties. The odds of dismissal in Buncombe and Craven counties were apparently not different from those in Mecklenburg (the county chosen for reference purposes because it had the most defendants), but Class 1 felony defendants prosecuted in New Hanover, Rockingham, and the seven smaller counties all had much lower odds of dismissal than those in Mecklenburg, other things being equal.

In Class 1 cases, there was no significant difference in the odds of dismissal between (1) defendants with assigned counsel (either individually appointed counsel or the public defender), and (2) defendants with privately paid counsel, no counsel, or counsel of unknown types. To investigate further the possible effects of the type of counsel on dismissal of Class 1 charges, we formed a third attorney-differences model that compared each of two groups with defendants who had privately paid counsel: (1) defendants with individually appointed counsel, and (2)

defendants represented by the public defender. (Defendants with no counsel and defendants whose attorney status was unknown were also included as separate groups.) This model (see Table 11, Column 3) indicates that Class 1 defendants with individually appointed attorneys had significantly lower odds of dismissal (lower by an estimated 60 per cent) than Class 1 defendants with private attorneys; but the model also shows that defendants represented by public defenders had about the same odds of dismissal as defendants with private attorneys. This finding suggests that with regard to obtaining dismissal of violent felony charges, public defenders may have been more effective than individually appointed attorneys and no less effective than privately paid attorneys.

The attorney-differences model for Class 1 defendants also indicates that defendants whose attorney status was unknown had much higher chances of dismissal than other defendants. This is probably explained by either of two facts: (a) when a defendant's charges were dismissed early in the district court stage of processing, very often either there was not time enough for him to obtain an attorney; or (b) information on his attorney tended to be missing from the court records we used.[32]

Now let's consider dismissal of Class 2 defendants--those charged with breaking or entering, burglary, larceny, and possession and receiving of stolen goods. Of the 633 such defendants in the twelve-county sample, 32.4 per cent received dismissal of all charges; the overall odds of dismissal were .479, or about one to two. The "complete model" of dismissal for Class 2 defendants (see Table 12, Column 2) indicates that among the basic factors, the defendant's age, the number of charges, the evidence against him, and the victim-defendant relationship were significantly related to the odds that the charges against him would be dismissed. Defendants over 30 years of age evidently were more likely than those under 21 to have Class 2 charges dismissed (this is the opposite of what we expected). The defendant's race, sex, residence, employment, and marital status--as in violent-felony cases--apparently had no effect on dismissal. The odds of dismissal diminished for each felony charge against the defendant but were not affected by his criminal record. The existence of an eyewitness to the crime and an incriminating statement by the defendant both were associated with reduced odds of dismissal. If the victim and the defendant were friends or relatives, the charges were much more likely to be dismissed. We had expected to find a tendency for acquaintances or relatives to drop charges but thought that it would appear in assault cases rather than in property crimes; the reverse seems to be true. There was a smaller chance that a Class 2 charge would be dismissed in New Hanover County than in Mecklenburg and about the same chance in Buncombe (this was also true of Class 1 charges).

Class 2 defendants' odds of dismissal went down as their pretrial detention increased--about 10 per cent for each ten days. When all Class 2 defendants who had assigned counsel (of either type) were compared with all other Class 2 defendants, the group with assigned counsel had significantly lower chances of dismissal. Further comparisons in the attorney-differences model (Table 12, Column 3) showed that defendants

with individually appointed counsel had significantly lower odds of having the charges against them dismissed than defendants with privately paid attorneys, while those represented by the public defender had about the same odds. Thus Class 2 defendants, like Class 1 defendants, fared somewhat better, in terms of dismissals, when they were represented by the public defender than when they were represented by individually appointed counsel.[33] Class 2 defendants with no attorney and those whose attorney status was unknown had much better prospects for having their charges dismissed than those represented by private attorneys, probably for the reasons mentioned earlier regarding Class 1 defendants.[34]

E. Models of Whether Defendant Received Active Sentence

If a felony defendant cannot get all his charges dismissed, the next most important thing to him is probably whether he will have to serve any time in prison or jail. Models of the odds in favor of receiving an active sentence are shown in Tables 13 and 14. These models concern only those defendants who (a) pled guilty to at least one charge, or (b) went to trial and were either convicted of at least one charge or acquitted of all charges.

There were 182 Class 1 (violent felony) defendants who fit this definition. Of these, 56.6 per cent received active sentences, and the overall odds of receiving an active sentence were about 1.3 to 1.

The complete model for Class 1 defendants (Table 13, Column 2) indicates that those over 30 years of age were significantly less likely to receive an active sentence than those under 21 (we expected the opposite effect). Other demographic characteristics of the defendant--including race, residence, employment, and marital status--apparently did not affect the odds of an active sentence. (Sex was omitted from this model because there were so few non-dismissed Class 1 female defendants.)

The odds of receiving an active sentence increased slightly as the seriousness of the Class 1 defendant's principal charge (measured in terms of the statutory maximum prison term for the offense) increased, and the odds increased greatly--by an estimated 259 per cent--for each felony charge against the defendant (see Table 13, Column 2). Each prior conviction increased the odds of receiving an active sentence.

The existence of physical evidence against the Class 1 defendant greatly increased the odds of an active sentence. This factor probably operated indirectly on the sentence by affecting plea bargaining. The absence of any weapon used in a violent felony case was associated with greatly increased odds of receiving an active sentence. This is surprising, since use of a weapon is generally considered an aggravating circumstance. But this result was probably due to the offense rather than the absence of a weapon. When a defendant was charged with a violent felony but was not alleged to have used a weapon, he was much more likely than other Class 1 defendants--most of whom had allegedly used weapons--to have been charged with and convicted of rape, common law rob-

bery, and arson or other burning crimes, which do not necessarily include the use of a weapon as an element of the crime. Defendants convicted of rape, common law robbery, and burning offenses were more likely to receive an active sentence than most other Class 1 defendants.

The characteristics of the victim apparently made no difference with regard to active sentences in Class 1 cases. The county where the defendant was prosecuted was associated to some extent with the odds of receiving an active sentence: Defendants in both Buncombe and Craven counties were considerably less likely to receive active time than those in Mecklenburg County, while defendants in other counties were about as likely as Mecklenburg defendants to be imprisoned.

The model indicates that none of the process variables--pretrial detention, type of attorney, and whether the defendant went to trial (rather than pleading guilty)--was significantly associated with the odds of an active sentence for Class 1 defendants. Perhaps the seriousness of a violent felony charge is so great that administrative variables have very little effect on the sentencing of a person charged with such a crime.

Now let's consider active sentences for defendants charged with Class 2 felonies (breaking or entering, larceny, etc.). There were 428 such defendants who did not have all their charges dismissed; of these, 42.1 per cent received active sentences, and the overall odds of receiving an active sentence was .727. Demographic factors had no association with the odds of an active sentence for Class 2 defendants. In the basic-factors model (Table 14, Column 1), being black was associated with a considerably greater likelihood of receiving an active sentence, but adding the pretrial detention and attorney variables suppressed this race effect. Black defendants' disadvantage in this situation is thus explained by the fact that they were more likely to have assigned counsel than white defendants and tended to spend more time in pretrial detention, which may have had more to do with their income than their race.[35]

Additional felony charges increased the likelihood of an active sentence for Class 2 defendants, as did prior convictions. Being on probation or parole greatly increased the prospects for receiving active time. Most evidence factors did not matter, except for the defendant's having made an incriminating statement, which was associated with lower odds of an active sentence. We expected an opposite effect, since having confessed would presumably put the defendant at a disadvantage in sentence bargaining. But perhaps confessions were sometimes induced by offers of lenient sentences.

The odds of an active sentence for Class 2 defendants increased as pretrial detention increased--by about 10 per cent for each ten days. When they were represented by assigned counsel (compared with private attorneys, no attorneys, and unknown attorney status combined), Class 2 defendants had a much greater chance of receiving active time. It made no difference whether the assigned attorney was an individually appointed lawyer or a public defender; both forms of free counsel meant a much higher odds of an active sentence compared with representation by a

privately retained attorney, and there was no significant difference in the odds of an active sentence between the two forms of free counsel. As was found for Class 1 defendants, Class 2 defendants' prospects for active sentences were not significantly associated with whether they pled guilty or went to trial.

F. Models of Total Active Maximum Sentence

The models of the total maximum sentence--i.e., the total active maximum prison term imposed by the court, with probation and acquittal treated as zero and any consecutive terms added together--are shown in Tables 15 and 16. The 182 defendants originally charged with Class 1 (violent) felonies, who later either went to trial or pled guilty to the original or a reduced charge, received an average of 113 months for their maximum prison term (this figure includes probation sentences and jury acquittals as zero prison terms). Class 1 defendants' demographic characteristics had no significant association with their maximum prison terms (see Table 15). The maximum term increased with the seriousness of the initial charge and the total number of felony charges. Being on probation or parole at the time of the alleged offense meant a much longer maximum prison term. Physical evidence against the defendant was associated with an increased maximum term, probably because it put him at a disadvantage in plea negotiation. The absence of weapon use in a Class 1 crime was associated with much longer maximum sentences; as noted earlier, this peculiar result is explained by the fact that Class 1 defendants who did not use weapons were more likely than other Class 1 defendants to be charged with and convicted of rape, burning offenses, and common law robbery. The maximum sentence actually went down slightly as the value of property stolen (for example, in a robbery) increased; this result is the opposite of what we expected.

The county where the Class 1 defendant was prosecuted had some association with maximum sentence: sentences were longer in the seven small counties. The maximum prison term increased by about 7 per cent for each ten days of pretrial detention. Other process variables--type of attorney and whether the defendant chose to go to trial--had no significant effect on the maximum prison term, which again suggests that administrative factors have no influence on violent felonies because the charges are inherently so serious.

For the 428 defendants charged with Class 2 felonies (larceny, breaking or entering, etc.) whose charges were not all dismissed, the average total active maximum prison term was 21 months, counting probation sentences and trial acquittals as zero. Class 2 defendants' demographic characteristics showed no significant association with their maximum terms, except for race (see Table 16, Column 1). Black Class 2 defendants received maximum prison terms that were an estimated 57 per cent longer than other Class 2 defendants' maximums. This association seems to be explained by the fact that (as explained earlier) black Class 2 defendants tended to spend more time in pretrial detention and were more likely to have assigned counsel than other Class 2 defendants; when

the variables for pretrial detention and attorney were added to the model, the race effect disappeared.

Class 2 defendants' maximum prison terms increased--but only slightly--with the seriousness of their initial charge, which thus had much less importance in determining their eventual sentence than the initial charges of Class 1 (violent felony) defendants. Additional felony charges also meant longer maximum terms. Being on probation or parole at the time of the crime was associated with a large increase in the maximum prison term. There was also an increase for prior convictions, but it was very small. Having confessed apparently meant a shorter maximum prison term; this is consistent with the finding (mentioned earlier) that Class 2 defendants were less likely to receive active sentences if they had confessed. Victim characteristics and the county of prosecution had no significant effects on the maximum prison term.

Class 2 defendants' maximum prison terms increased by about 10 per cent for every ten days they spent in pretrial detention. Maximum prison terms were much longer for defendants with either type of assigned counsel than for defendants with privately retained counsel. Comparing each type of assigned counsel with private counsel (attorney-difference model, Table 16, Column 3), we found that both assigned counsel groups--defendants with individually appointed lawyers and defendants represented by the public defender--did worse, in terms of maximum prison term than defendants represented by privately paid attorneys. Also, there was no significant difference between the two assigned counsel groups with respect to maximum prison term.

Of the 428 Class 2 defendants whose charges were not dismissed, 32 chose to go to trial rather than plead guilty. The regression analysis indicates that when Class 2 defendants went to trial, apart from other ways in which they may have been different from other defendants, their maximum prison terms were an estimated 78 per cent longer than the terms of those who pled guilty (Table 16, Column 2).

G. Models of Time to Earliest Possible Release from Prison

As explained earlier, the best single measurement of sentence severity may be the time to earliest possible release from prison or jail (treated as zero when the offender did not receive an active prison sentence) because this is probably what most concerned the defendant, the defense attorney, and the prosecutor in plea bargaining. The mean time to earliest possible release was 30.7 months for Class 1 defendants whose charges were not all dismissed, and 4.5 months for Class 2 defendants. These means reflect the zeroes assigned to defendants who were either acquitted or convicted without receiving active time. The "complete model" of time to earliest possible release for Class 1 defendants appears in Table 17, Column 2. It indicates that the defendant's demographic characteristics were unimportant, except that the time to earliest possible release was considerably longer for defendants 21 to 25

years of age than for younger defendants. The time to earliest possible release increased somewhat as the seriousness of a Class 1 defendant's charge increased (about 2 per cent for each year) and increased substantially (by an estimated 39 per cent) for each felony charge against him. Being on probation or parole at the time of the offense meant a much longer time to earliest possible release from prison. Evidence, characteristics of the victim, and county of prosecution showed no significant relationship with time to earliest possible release.

The only process variable that showed a significant association with time to earliest possible release for Class 1 defendants was pretrial detention; the time increased by about 6 per cent for every ten days in detention. The type of attorney the defendant had and whether the defendant went to trial made no difference.

Considering Class 2 defendants (Table 18, Column 2), we see that (as for Class 1 defendants) defendants age 21 to 25 had longer times to earliest possible release than younger defendants. Blacks also had longer times than other defendants (see Table 18, Column 1), but this effect seems to be explained by their relative disadvantages with respect to pretrial release and counsel, as explained earlier. When pretrial detention and type of counsel were added to the model, the race effect disappeared (Table 18, Column 2).

The time to earliest possible release for Class 2 defendants increased slightly as the seriousness of the initial (principal) charge increased and more substantially for each additional felony charge. Being on probation or parole when the crime was committed meant a much longer time to earliest release. The time to earliest release increased only slightly for each prior conviction. Having confessed or having made an incriminating statement was associated with a reduced time to earliest release. (As noted earlier, confession was also associated with reduced odds of an active sentence and a shorter maximum prison term.) Characteristics of the victim and county of prosecution apparently had no effect on time to earliest possible release.

Class 2 defendants' time to earliest possible release from prison increased about 5 per cent for each ten days they spent in pretrial detention. Class 2 defendants with either type of assigned counsel had substantially longer times to earliest possible release than other Class 2 defendants. When defendants with assigned counsel were separately compared with defendants who had private counsel, there was no significant difference in time to earliest possible release between those represented by individually appointed counsel and those represented by the public defender, but both had substantially longer times than defendants with privately retained counsel (Table 18, Column 3). Going to trial rather than pleading guilty was not significantly associated with time to earliest possible release.

H. Review of Analysis Concerning Administrative Variables--Detention, Attorney, and Guilty Plea

In eight separate regression analyses of the twelve-county data--one for each of the four court disposition variables in each of the two major offense classes--we found that the amount of time the defendant spent in pretrial detention was clearly and consistently associated with his prospects for dismissal and sentencing. We also found considerable association between the type of defense attorney and court disposition. The analysis showed no significant association between the sentence and whether the defendant pled guilty or went to trial. A brief review of our findings concerning administrative variables follows:

1. Pretrial Detention Time. The regression analyses indicated that longer pretrial detention times were associated with worse prospects for disposition from the defendant's point of view, and this is true of both Class 1 (violent felony) defendants and Class 2 defendants (those charged with breaking or entering, larceny, etc.) The more time the defendant spent in pretrial detention, the less likely he was to have his charges dismissed, and--if his charges were not all dismissed--the more likely he was to receive an active sentence, the longer that active sentence was likely to be and the more time he was likely to spend in prison until his earliest possible release date. The association was measured apart from the effects of other factors (such as seriousness of charge and criminal record) that could affect both pretrial detention and court disposition.

What the regression analysis tells us, in effect, is that when two defendants were alike with respect to characteristics likely to influence their court disposition but one spent considerably more time in pretrial detention than the other, that defendant was less likely to have his charges dismissed than the other and was likely to receive a more severe sentence. What may be difficult to accept about this statement is that two defendants and their cases could be alike in other characteristics affecting disposition yet differ substantially in pretrial detention time. But in fact this often happened. Defendants fairly often were alike with respect to other factors that influenced their court disposition but spent very different amounts of time in pretrial detention.

Tables 19 and 20 both have four columns. Column 1 indicates the percentage of defendants who had all their charges dismissed (such defendants are not counted in Columns 2, 3, and 4). Column 2 shows the percentage of defendants who received active time. Column 3 indicates the mean total active maximum sentence imposed, and Column 4 shows the mean time to earliest possible release from prison on the sentence. For each column, defendants are divided into low, moderate, and high "risk groups," depending on the likelihood that they would experience a bad outcome (from their point of view) with respect to dismissal, an active sentence, length of active sentence, and time to earliest possible release from prison, as determined from basic characteristics of the defendants and charges against them. For example, the dismissal-risk groups were determined by (a) predicting the odds of dismissal from the

seriousness of the charge, the number of felony charges, criminal record, age, sex, race, residence, employment, type of evidence against the defendants, information about victims, and the specific counties where prosecution occurred, and then (b) classifying defendants according to whether their predicted odds of dismissal fell into the lowest, middle, or highest third of all the predicted values.

Thus in Table 19, which deals with Class 1 defendants, each risk group was approximately homogeneous with respect to basic factors that could affect dismissal. As Column 1 of Table 19 shows, the probability of dismissal dropped as the risk increased. It was 79.2 per cent for the 106 defendants in the low risk group, 39.6 per cent for the 111 defendants in the moderate risk group, and 13.9 per cent for the 108 defendants in the high risk group. Within each risk group, defendants were further divided into subgroups depending on how much time they spent in pretrial detention: no pretrial detention (or less than one day); low pretrial detention (from one to 33 days, 33 being the median for Class 1 defendants); and high pretrial detention (more than the median time of 33 days). A considerably smaller percentage of defendants in the high pretrial detention group had all of their charges dismissed than in the "low" or "no" group (although there was very little difference between the latter two groups).

Columns 2, 3, and 4 of Table 19 can be read analogously to Column 1. For each measure of sentence severity, defendants were divided into three risk groups of approximately equal size. Within each risk group, the severity of the sentence (measured in each of the three ways) was, with very few exceptions, least for the no-detention group, higher for the low-detention group, and highest for the high-detention group. Table 20 shows the same relationship for Class 2 defendants as Table 19 shows for Class 1 defendants: in each risk group, the more time the defendant spent in detention, the lower his prospects for dismissal were, and the more severe his sentence (measured in three different ways) was likely to be.

The comparisons based on the data in Tables 19 and 20 have not been tested for statistical significance. They merely illustrate what was shown by the regression analyses described earlier: longer detention was associated with more unfavorable dispositions, quite apart from the effects of basic defendant and case characteristics. The various explanations for this association were discussed earlier [see Section V(A)].

2. Type of Attorney. The type of attorney the defendant had--specifically, whether he was represented by privately retained counsel, individually appointed counsel, or the public defender--was shown by the regression analysis to be associated with court disposition. Defendants in both Class 1 and Class 2 were less likely to have all of their charges dismissed, other things being equal, if they were represented by individually appointed counsel than if they were represented by either private counsel or the public defender; defendants with private counsel and those represented by the public defender did not differ significantly in their likelihood of dismissal. With regard to sentencing, the type of attorney

apparently made no difference when the defendant was charged with a Class 1 (violent) felony. If he was charged with a Class 2 felony (such as larceny or breaking or entering), the defendant was at a disadvantage in sentencing if he was represented by assigned counsel rather than privately paid counsel. The specific form of assigned counsel made no difference in the sentencing of Class 2 defendants: those with individually appointed lawyers and those represented by the public defender were at an equal disadvantage compared with those who could pay for their own attorneys.

3. Guilty Plea Versus Trial. Did going to trial, other things being equal, tend to make the defendant's sentence more severe? Or, to put it another way, did pleading guilty tend to make his sentence less severe? Inspection of the data suggests that going to trial was associated with more severe sentences when the defendant had a moderate or high risk with respect to severity of sentencing. In Table 21, defendants who pled guilty and defendants who went to trial were compared with respect to three measures of sentence severity: the percentage who received active imprisonment, the mean total active maximum prison term, and the mean time to earliest possible release from prison on the sentence. Class 1 and Class 2 defendants were compared separately. Within each class, and for each measure of sentence severity, defendants were divided into three sentence "risk groups"--low, moderate, and high. These risk groups were defined as previously explained in connection with Tables 19 and 20--that is, in terms of the defendant's likely sentence predicted from such basic factors as offense seriousness and criminal record. Plea/trial comparisons were made within each such risk group. In the comparisons, the very few defendants who were acquitted at trial were counted along with defendants who were convicted at trial, by assigning a value of zero as the "sentence" that the acquitted defendants received. This was done as a way of including the possible benefits to the defendant of going to trial with the possible disadvantages.

Table 21 indicates that few defendants who went to trial were in the low-risk category; most were in the moderate- or high-risk categories. (The number of defendants corresponding to each percentage and mean is shown in parentheses.) Thus, low-risk defendants tended to plead guilty and moderate- and high-risk defendants were more likely to go to trial. Perhaps the plea bargain offers that moderate- and high-risk defendants received were not as advantageous as those that low-risk defendants received.

The sentence comparisons in Table 21 were different for low-risk defendants than for moderate- and high-risk defendants. Low-risk defendants who went to trial received less severe sentences (in all six comparisons) than those who pled guilty--in fact, they usually were acquitted or received probation without active imprisonment. But for moderate- and high-risk defendants, in eleven out of twelve comparisons defendants who went to trial received more severe sentences, taking into account the fact that a few were acquitted. To summarize, Table 21 suggests what is known in statistics as an "interaction effect:" going to trial rather than pleading guilty may have meant a better outcome for

the defendant if he was in a low-risk category to begin with, but a worse outcome if he was in a moderate- or high-risk category.

Our multiple regression analyses, as explained earlier, indicated very little significant difference in sentencing severity between defendants who were tried and defendants who pled guilty. (Five out of six regression models indicated a positive effect of going to trial on sentence severity, but the estimated effects did not significantly differ from zero except in one instance.[36] We used the regression procedure to test for significance rather than testing the comparisons in Table 21, because we regarded the regression procedure as a more rigorous test.) It is not surprising that almost no significant differences were found. The positive effect of trial on sentence severity for moderate- and high-risk defendants may have been partly offset by a negative effect of trial on sentence severity for low-risk defendants, as suggested by Table 21. But more important, the sample of defendant who went to trial was very small (only 40 out of 182 in Class 1 and 32 out of 428 in Class 2); a larger sample might have revealed a significant difference.

Our conclusion about a plea/trial sentence differential is tentative: quite possibly, defendants who went to trial did in fact receive more severe sentences than those who pled guilty, other things being equal, especially when they were at moderate- or high-risk levels. A larger sample may possibly reveal a significant difference. We will test for a differential again when we have the additional data from the second phase of our study.

VI. SUMMARY OF FINDINGS

A. Statewide Felony Sentencing in 1979

An analysis of felony sentences imposed in 1980 showed that at least 95 per cent of felons convicted in North Carolina are currently placed in the custody of DOC, either in prison or on supervised probation. Thus DOC data provide an almost complete description of felony sentences. These data indicate that--excluding the few felons who received fines, local jail sentences, or unsupervised probation--56 per cent of 9,966 felons convicted in 1979 received active prison sentences (this includes seven death sentences), and the rest received supervised probation. The rates of active imprisonment were much higher for violent felonies, arson, burglary, sex felonies like crime against nature, and escape from prison than they were for felonies against property (like larceny, breaking or entering, forgery, and fraud) or for drug felonies. Among drug felonies, the rate of imprisonment was higher for major drugs (Schedule I or II controlled substances) than for other drugs--and higher for sale or delivery than for possession. Considering 1,473 offenders convicted in 1979 of felonious breaking or entering of buildings (the largest single felony category), the likelihood of receiving an active prison sentence increased with the number of felonies for which the offender was sentenced. It was lower if the offender was female or under 21 years of age. The offender's race and whether he was a resident of the county of conviction apparently made no difference. The likelihood of an active sentence was greater for separated or divorced breaking-or-entering offenders than for those who were single, married, or widowed. Better-educated offenders had better prospects of avoiding an active sentence. Unemployed breaking-or-entering offenders were less likely to receive an active sentence than their employed counterparts. An active prison sentence was apparently more likely in a rural county than in an urban county.

Considering DOC data on active prison sentences received by 5,538 felons in 1979, we found that the median value of the total maximum prison term (adding any consecutive terms) was five years, and the mean was 9.6 years. One fourth of the maximum terms were two years or less. Twenty-nine and two-tenths per cent were over ten years, and only 15.1 per cent were over 15 years. Thirty-nine per cent of the 5,538 felons were eligible for parole consideration as soon as they entered prison because they either were committed youthful offenders or had no minimum prison term. The median value of the total minimum term was two years, and the mean was 5.5 years.

The DOC data on active sentences for felons were analyzed using multiple regression to determine the simultaneous effects of several factors on the length of the total maximum and total minimum prison term. As expected, the offense of which the defendant was convicted had a major

effect on both maximum and minimum terms; violent offenses were most likely to draw a long term. The offender's prison term (both the maximum and the minimum) increased with each felony for which he was concurrently sentenced, and also with each criminal conviction on his record, but only by small percentages. Younger offenders (under 21) and female offenders received shorter prison terms than others. Terms were somewhat longer (maximum terms 6 per cent longer and minimum terms 27 per cent longer) for black offenders. Married defendants received longer terms than single or widowed defendants, contrary to what we expected. Whether the defendant resided in the county of conviction had no significant effect on prison terms, but minimum terms were slightly shorter in urban counties. More education (formal schooling) was very slightly associated with shorter prison terms. Minimum terms were shorter for unemployed defendants. Alcoholics and drug abusers received longer minimum terms. Finally, both the minimum and maximum prison term increased with the amount of time the offender had spent in pretrial detention. For example, for a felon who, without pretrial detention, would have received a five-year maximum term and a two-year minimum, the regression analysis indicated that the maximum term would have been about 3.4 months longer and the minimum 2.2 months longer for each month he spent in pretrial detention. (See Table 4.)

B. Time Served in Prison by Felons

The time served in prison by offenders released in 1980 for most types of felonies varied widely. Assuming (1) that the average prison term under the Fair Sentencing Act will be the presumptive term and (2) that felons will receive all of the day-for-day good-time credit allowed under the act, a preliminary--and highly speculative--assessment of the new act's effect is that it may increase the mean time served for a few violent felonies, but may compensate for this increase by reducing the mean time served for the much more numerous nonviolent felonies. If judges do not reduce the proportion of probation sentences they impose on felons--and there is no reason why they should, because the new act does not change their discretion to impose probation--and if our other assumptions stated earlier in this report are correct, the act may reduce the overall amount of time served by felons. Also, the act may reduce the variation of time served if judges stay fairly close to the presumptive prison term. (See Table 5 and Figures 5 and 8.)

C. Court Processing of Felony Defendants in Twelve Representative Counties

The prosecutions of 1,378 felony defendants that began during three months of 1979 in twelve representative North Carolina counties--Mecklenburg, New Hanover, Buncombe, Rockingham, Craven, Harnett, Rutherford, Anson, Cherokee, Granville, Pasquotank, and Yancey--were analyzed on the basis of court, police, and sheriff records to determine patterns of court disposition. The results may be surprising for those who think of superior court as the primary court for disposition of felony charges.

Almost half (48 per cent) of the defendants had all of their felony charges disposed of in district court. Only 52 per cent went to the grand jury, were indicted, and proceeded to superior court. Thirty-four per cent of all the defendants had all of their felony charges dismissed without any convictions; most of these dismissals were voluntarily entered by the prosecutor, and most (for 26 per cent of the defendants) occurred in district court. (This dismissal rate is not especially high when compared with the rates of other American jurisdictions.) Sixty-four per cent of the felony defendants were eventually convicted of some charge--33 per cent of a felony charge and 31 per cent on a misdemeanor charge to which a felony charge had been reduced. Most of the convictions were by guilty plea: 58 per cent of the defendants pled guilty; 30 per cent pled guilty to a misdemeanor (usually in district court), and 28 per cent pled guilty to a felony in superior court. Thus more than half of the guilty pleas involved reduction of felony charges to misdemeanors. Only 5.8 per cent of the defendants went through a complete jury trial (4.6 per cent of the total were convicted by the jury, and 1.2 per cent were acquitted).

Disposition rates varied among the twelve counties studied. Rates of dismissal by the prosecutor in district court were highest in Mecklenburg and Buncombe, the two counties whose prosecutors had formal systems for screening felony charges after arrest; these two counties also had considerably shorter court delays than the other ten counties. The proportion of felony defendants who went to superior court was much higher in New Hanover County (77 per cent) than the average for all twelve counties (52 per cent). New Hanover's rate of conviction of a felony charge was 47 per cent (compared with a 32 per cent average for all twelve counties), and its jury trial rate was 10.6 per cent (compared with 5.8 per cent in all twelve counties). Despite its higher rate of superior court dispositions, New Hanover's length of court delay was close to the average for the twelve counties.

D. Plea Bargaining and Sentencing

Of the 808 felony defendants in the twelve counties who pled guilty to at least one charge, 27 per cent entered into a written plea bargain in which the prosecutor agreed to recommend a specific sentence (such as probation or a particular prison term or range of prison terms). (All of the plea bargains involving sentences that were recorded for this study were approved by the sentencing judge.) Of the 389 defendants who pled guilty to felonies, 37 per cent did so in return for the prosecutor's written promise to recommend a specific sentence, 17 per cent in return for a recommendation of probation without active imprisonment, and 20 per cent in return for a recommendation of a specific active prison term or range of terms. The proportion of felony guilty pleas that involve "sentence bargains" may increase under the Fair Sentencing Act: the act may encourage such bargains because it exempts prison terms agreed on in a plea bargain from the requirement that the judge give written reasons for imposing a nonpresumptive prison term.

E. Court Disposition Times

The twelve-county data provided rather encouraging news about the time that elapsed in disposing of felony defendants' cases, even if a 90-day limit is considered an ideal standard that the courts should eventually achieve. District court disposition time--the time from arrest to either indictment or district court disposition if the defendant was never indicted--had a median value of 34 days; the time exceeded 90 days for only 12.6 per cent of the defendants and exceeded 120 days for only 7.0 per cent. Superior court disposition time, measured from indictment, had a median value of 51 days; it exceeded 90 days for only 25.3 per cent of the defendants and exceeded 120 days for only 14.7 per cent. Overall disposition time from arrest to disposition in either district or superior court had a median value of 58 days; the time exceeded 90 days for 34.5 per cent of the defendants and exceeded 120 days for 22.8 per cent of the defendants. Thus most of the felony defendants were processed by the courts within 90 days. But disposition times would be longer if there were fewer dismissals in district court (for which the median time from arrest was only 22 days) or more jury trials (for which the median time from arrest was 115 days). The figures also show that felony defendants spent considerable time in district court processing, which is not covered by the state's speedy-trial law.

F. Statistical Models of Felony Case Disposition

Court dispositions of the felony defendants in the twelve counties were analyzed by means of a technique (multiple regression) that measured simultaneously the relationships of a number of factors to the court disposition that the defendant received. Separate analyses were done of Class 1 defendants (those charged with violent felonies) and Class 2 defendants (those charged with larceny, breaking or entering, or receiving or possessing stolen goods). A summary of the results follows.

1. Defendant's Charge(s) and Codefendants. For Class 1 defendants whose charges were not all dismissed, the more serious their principal charge was when their prosecution began, the greater their prospects were of receiving an active prison sentence. For both Class 1 and 2 defendants, the more serious the initial principal charge, the longer the maximum prison term they were likely to receive, and the more time they were likely to spend serving an active sentence before their earliest possible release. The number of felony charges against the defendant (30 per cent of the defendants in the twelve-county sample had more than one felony charge) was strongly associated with court disposition: for both Class 1 and Class 2 defendants, as the number of felony charges increased, the likelihood of dismissal of all charges dropped, and for those whose charges were not all dismissed, the prospects of receiving an active sentence increased, the length of the active maximum prison term increased, and the amount of time they would have to serve in prison before earliest release increased. The existence of codefendants--other people who were also charged for the criminal transaction on which the defendant's charges were based--apparently had no effect on court dispo-

sition except for lowering the chance of dismissal if the defendant was charged with a violent felony.

2. Defendant's Prior Criminal Record. The defendant's prior criminal record was not significantly related to the probability that his charges would be dismissed, but it was clearly associated with the sentence he received if his charges were not dismissed. Being on probation or parole at the time of his prosecution meant a greater likelihood of receiving an active sentence (Class 2 defendants only), a longer active maximum prison term, and a longer time to serve before earliest release from prison. The number of prior convictions on the defendant's local record was also positively associated with sentence severity, although not as strongly as being on probation or parole.

3. Evidence Against the Defendant. Whether the defendant was charged with a Class 1 or Class 2 felony, he was less likely to have all of his charges dismissed if an eyewitness was available to testify against him and if he had made a confession or incriminating statement. Also, having made a confession was associated with less severe sentences for Class 2 defendants--possibly because confessions were induced by promises of lenient sentences. For Class 1 defendants, the existence of any physical evidence meant a lower likelihood of dismissal and a more severe sentence. A substantial physical injury to the victim during the crime reduced the prospect for dismissal of a Class 1 charge, but it had no measurable effect on sentencing. Neither the recovery of stolen property by the police nor the value of the property taken or damaged by the crime had any significant effect on either dismissal or severity of sentence. (Note, however, that physical injury and property loss were to some extent correlated with the severity of the initial charge against the defendant, and severity of the charge did have an effect on sentencing, as explained earlier.)

4. Characteristics of the Victim. When a Class 2 defendant (one charged with larceny, breaking or entering, etc.) and the victim of the alleged crime were related or acquainted, the likelihood that the charges would be dismissed was significantly increased. But the victim-defendant relationship had no significant effect on court disposition in Class 1 (violent felony) cases. Other characteristics of the victim--age, sex, and race--were not associated with either dismissal or sentencing.

5. The Defendant's Demographic Characteristics. The analysis indicated that, apart from the effects of other factors, the defendant's age was associated with his court disposition to some extent. Class 2 defendants over age 20 were somewhat more likely to have their charges dismissed. Among those defendants whose charges were not dismissed, sentences were more severe for those aged 21 to 25 than for those who were under 21, in the sense that the time they would have to serve before earliest release from prison was significantly longer for this age group.

The defendant's race was not significantly associated with whether his charges were dismissed. But among Class 2 defendants whose charges

were not all dismissed, black defendants received significantly more severe sentences than white defendants: they had a greater likelihood of receiving an active sentence, a longer expected active maximum prison term, and a longer time to serve before earliest possible release from prison. This disadvantage of black defendants was apparently due to the fact that blacks were more likely than whites to have assigned (rather than privately paid) counsel and spent a longer average time in pretrial detention; when type of counsel and detention time were added to the statistical models, the effects of race disappeared.

Other demographic characteristics--the defendant's sex, marital status, whether he was a resident of the county of prosecution, and whether he was unemployed--showed no significant relationship to court disposition.

6. The Court (County) in Which Prosecution Occurred. The analysis showed that the defendant's charges were generally more likely to be dismissed in the courts of Mecklenburg and Buncombe counties than in the courts of the other ten counties studied, when the differences in characteristics of the cases were controlled for. But among defendants whose charges were not all dismissed, little difference in sentencing was apparent. In New Hanover County--which (as explained earlier) had much higher rates of indictment, guilty pleas to felonies, jury trials, and convictions by jury than the other eleven counties--sentences were not significantly different from those imposed in the other counties when differences in case characteristics were controlled for. In other words, New Hanover County had more convictions and fewer dismissals but not more severe sentences.

7. Administrative Variables. The amount of time the defendant spent in pretrial detention was consistently associated with both the probability that his charges would be dismissed and the severity of his sentence if the charges were not dismissed: as detention time increased, the odds of dismissal of charges decreased, and the odds of receiving an active sentence, the expected active maximum prison term, and the length of time the defendant would have to serve in prison before his earliest possible release all increased. There are at least two explanations for the link our analysis shows between pretrial detention and court disposition, and both may be true to some extent. One is that pretrial detention and unfavorable court dispositions are both caused by other factors, such as the seriousness of the defendant's alleged crime and other indicators of his dangerousness. But this explanation is weakened because our analysis takes into account statistically some of these "dangerousness indicators," including seriousness of the offense, number of charges, and criminal record. Another explanation is that if the defendant spends a substantial time in pretrial detention, he is at a disadvantage because he loses the opportunity to help his lawyer prepare his defense and to compile a record of post-arrest good behavior while free on pretrial release that will help him argue for dismissal, a favorable guilty plea, or a lenient sentence.

The type of attorney the defendant had also was associated with court disposition. For Class 2 defendants (those charged with larceny, breaking or entering, etc.), dismissal of charges was less likely and sentences were more severe if the defendant was represented by assigned counsel (an individually appointed attorney or public defender) than if he was represented by privately paid counsel or had no lawyer. More specific comparisons of forms of counsel showed that whether they were charged with Class 1 or Class 2 felonies, defendants represented by individually appointed lawyers were less likely to have their charges dismissed than defendants represented by privately paid lawyers, while defendants represented by the public defender had about the same prospect as those represented by privately paid attorneys. This suggests that specialized full-time public defenders may have been more effective in representing indigent defendants than attorneys appointed individually by the court. On the other hand, there was no significant difference in the sentences of defendants represented by the public defender and defendants represented by individually appointed counsel. Among Class 1 defendants, the sentences of those represented by individually appointed counsel, those represented by the public defender, and those represented by privately paid attorneys--were not significantly different. All Class 2 defendants represented by assigned counsel received more severe sentences than those represented by privately paid counsel, and there was no significant difference between the two assigned counsel groups with respect to severity of sentence. Thus public defenders were apparently more successful than individually appointed counsel in getting felony defendants' charges dismissed but not in regard to the sentencing of defendants whose charges were not dismissed.

The effects on sentences of going to trial (rather than pleading guilty) were analyzed statistically, controlling for the effects of other characteristics in which whose who went to trial might differ from those who pled guilty. (Acquittals by the jury were counted as "zero sentences" so that the advantage of possible acquittal could be taken into account in the calculations.) Inspection of the data suggested that going to trial was associated with somewhat less severe sentences than pleading guilty when the defendant was in a "low-risk" group but with more severe sentences than pleading guilty when the defendant was in a "moderate-risk" or "high-risk" group. (Risk groups were based on the severity of the sentence predicted from basic factors in the defendant's case, such as the seriousness of his charge and his criminal history.) But when the plea/trial sentence differential was tested more rigorously using multiple regression, it did not generally prove to be statistically significant. The lack of statistical significance may simply be due to the fact that so few defendants went to trial. We cannot rule out the strong possibility that defendants at moderate- and high-risk levels tended to receive more severe sentences when they chose to go to trial rather than plead guilty, entirely apart from other characteristics of their cases relevant to sentencing.

FOOTNOTES

1. Some cases were not disposed of until 1980. The reason for selecting 1979 was that it seemed to be the best year to serve as a benchmark for later comparisons of the courts' experience with the Fair Sentencing Act. If we had chosen an earlier year, we would have encountered the courts' adjustment to a previous new set of laws regarding sentencing and parole (N.C. Gen. Stat. §§ 15A-1301 through -1377) that became effective on July 1, 1978. In a later year, we might have found that the courts were anticipating the Fair Sentencing Act, which was first enacted in 1979 with an effective date of July 1, 1980--a year earlier than it actually became effective. By 1980, expecting the act to become effective very soon, the courts might have begun to conform their practices in advance to its requirements, which might have produced a misleading comparison of pre-act and post-act court behavior. The judgment sample--which was not relied on in the study as much as the other data sets--consisted of judgments imposed in 1980. For reasons already mentioned, 1979 would have been preferable, but the judgment data had to be obtained prospectively after the study began in March 1980.

2. The logarithms of prison terms were used in the regression analysis rather than their actual values; see Appendix 3. In the regression analysis of DOC data, we grouped together offenders convicted of all types of felonies, rather than forming separate models for different types of felonies as we did in the twelve-county analysis discussed in the next two sections of the report. This seemed appropriate because: (1) the DOC analysis dealt only with the sentencing stage of court disposition; (2) the DOC had no information on evidence against the defendant, extent of injury and damage, and the victim of the crime, each of which might have influenced the sentence differently for different types of felonies; and (3) a preliminary analysis of all felons together "fit" the DOC data better statistically (i.e., had a higher R^2) than separate models for different types of felonies. Separate models "fit" the twelve-county data better.

3. About 75 per cent of the information was recorded by prison staff within one month of the offender's conviction. Our investigation indicated that generally, but not always, the DOC staff checked the social and economic information on the offender each time he received a new sentence while he was still in DOC custody. The rest of the information was either recorded more than 30 days before the conviction captured in our study--in connection with an earlier conviction--or recorded more than 30 days after the conviction captured in our study, in connection with a later conviction received while the offender was still in DOC custody. But the fact that the information was recorded within more than a month of the conviction date did not necessarily mean that it was inaccurate with respect to that conviction. Some information--like the offender's sex, for example--could not have changed.

4. The exclusion from the regression analysis of life sentences and sentences over 40 years removed first-degree murderers.

5. We are grateful to Glenn F. Lang for his diligent work in preparing these statistics, and also to Glenn G. Williams of the Department of Correction for his support.

6. Groups 1 and 2 comprise felons released in particular periods of time, not felons sentenced in particular periods of time; the result is that these figures on time served represent the aggregate experience of offenders sentenced at various times in the past subject to various laws, attitudes, and practices regarding sentencing and parole. For a felon released in--say--1980, the more time he has spent in prison, the more out-of-date his experience has been in terms of today's laws and practices regarding sentencing and parole. Nevertheless, these data provide a fair idea of how much time felons have been serving in the recent past.

7. CYOs, unlike other offenders, were eligible for parole as soon as they entered prison; see N.C. Gen. Stat. Ch. 148, Art. 3B.

8. U.S. Department of Commerce, Bureau of the Census, 1970 Census of Population, Vol. 1, Part 35 (Washington, D.C.: U.S. Government Printing Office, 1973), Table 19, p. 56.

9. The crime of larceny by employee is not really larceny; it is an employee's taking away or embezzling or converting to his own use something that he keeps for his employer's use with the intent to deprive the employer of it. See Stevens H. Clarke et al., North Carolina Crimes, 2d ed. (Chapel Hill, N.C.: Institute of Government, The University of North Carolina at Chapel Hill, 1980), pp. 12-25.

10. See N.C. Gen. Stat. Ch. 15A, Art. 23 et seq.

11. "P.J.C.", or "prayer for judgment continued," is in fact a suspended imposition of sentence [State v. Miller, 225 N.C. 213 (1945)]. It usually involves a plea of guilty by the defendant to a charge (in district court this would be a misdemeanor charge), after which the judge postpones imposition of sentence, sometimes on certain specific conditions. Thus it is a sort of conviction without punishment. Although the judge may impose a sentence later if the defendant violates conditions of the P.J.C., this rarely occurs. Thus, because the P.J.C.'s immediate effect is about the same as that of a dismissal, we have grouped it with dismissals.

12. Studies by the Institute of Law and Social Research using PROMIS data from five American jurisdictions in 1977 indicated that about half of the felony cases were dropped or dismissed after arrest and before plea or trial. The Wickersham Commission (the first national crime commission established in 1930) found a similar dismissal rate in four jurisdictions in the early 1920s. See PROMIS Newsletter, 3, no. 1 (April 1978) (Institute for Law and Social Research, Washington, D.C.); Kathleen B. Brosi, A Cross-City Comparison of Felony Case Processing

(Washington, D.C.: U.S. Department of Justice, Law Enforcement Assistance Administration, 1979); Wickersham Commission Reports, (Montclair, N.J.: Patterson Smith Publishing Co., 1968).

13. A formal plea bargain may also include a sentence offered by the judge as a condition. North Carolina law [N.C. Gen. Stat. § 15A-1021(a)] allows the judge to participate in plea bargaining. The judge may indicate to the defendant what sentence he will impose if the defendant pleads guilty. The judge's "offer" may sometimes be written on the transcript of plea as a condition of a formal plea bargain, although probably more often it is not recorded on the transcript of plea. For purposes of data collection, where a specific sentence was written on the transcript of plea form as a condition of the guilty plea, we treated it as a prosecutor-initiated sentence recommendation, even though in a few instances the sentence may have been offered by the judge. (The wording on the plea transcript did not allow prosecutor-initiated sentence bargains to be distinguished from judge-initiated ones, but the former were probably much more frequent than the latter.)

14. During the postponement period, the parties may revise the plea bargain; also, a new judge may be inclined to approve the initial bargain.

15. See N.C. Gen. Stat. §§ 15A-1023, -1024. Some North Carolina judges disagree with this interpretation of the statute and believe that their approval of a plea bargain involving the sentence only requires them merely to consider the prosecutor's sentence recommendation, not follow it; see Norman Lefstein, "Plea Bargaining and the Trial Judge, the New ABA Standards, and the Need to Control Judicial Discretion," North Carolina Law Review, 59, no. 3 (1981), 477-529.

16. The Fair Sentencing Act requires the sentencing judge to state reasons in writing when he imposes a prison term other than the presumptive (standard) term prescribed for a felony; but if the parties have entered into a "plea arrangement as to sentence pursuant to Article 58 [of General Statutes Chapter 15A]"--i.e., if they have agreed that the prosecutor will recommend a nonpresumptive prison term--then the judge need not state reasons in writing if he simply sentences according to the plea bargain. See Appendix 1.

17. N.C. Gen. Stat. §§ 15A-701 et seq.

18. N.C. Sess. Laws 1979, 2d sess., Ch. 1317; N.C. Sess. Laws 1981, Ch. 626.

19. See Robert L. Farb, "The Speedy-Trial Law: Recent Cases and Legislative Changes," Administration of Justice Memoranda No. 81/09 (Institute of Government, The University of North Carolina at Chapel Hill, December 1981); State v. Charles, 53 N.C. App. 567, 281 S.E.2d 438 (1981). Since the study was made, N.C. Gen. Stat. § 15A-703 has been amended to exclude district court misdemeanor processing delay from the

dismissal sanctions of the speedy-trial law (N.C. Sess. Laws 1981, Ch. 626).

20. N.C. Gen. Stat. § 7A-61 provides that the "district attorney shall prepare the trial dockets," which in practice is interpreted to mean that the district attorney schedules criminal court hearings and judges may grant continuances of the hearings. In most states, district attorneys do not have this authority.

21. N.C. Gen. Stat. § 15A-931.

22. N.C. Gen. Stat. §§ 15A-1021 et seq.

23. Annual Report of the [North Carolina] Administrative Office of the Courts 1978-79 (Raleigh, N.C., 1980), pp. 59-62.

24. Calculation provided by the Director of the Administrative Office of the Courts in a telephone interview.

25. We are indebted to several critics of an earlier draft of this report for comments on the association between pretrial detention and court disposition. Wade Barber, Mary Ann Tally, John Horne, Judge Robert A. Collier, Jr., and Judge Gordon Battle were particularly helpful.

26. American Bar Association Standards Relating to the Administration of Criminal Justice: Pretrial Release, 2d ed. (1979), § 10-1.1 and commentary.

27. The ABA Standards approve concessions for pleading guilty, but only where (1) the defendant is genuinely contrite, (2) the concession serves a rehabilitative purpose, (3) the defendant demonstrates consideration for the victim, or (4) the defendant assists the prosecution of other offenders. American Bar Association Standards Relating to the Administration of Criminal Justice: Pleas of Guilty (2d ed., 1979), § 14-1.8 and commentary. The U.S. Supreme Court, in Brady v. United States, 297 U.S. 742, 750-53 (1970), upheld the constitutionality of the state's granting a concession to the defendant who "in turn extends a substantial benefit to the State" by pleading guilty.

28. American Bar Association Standards Relating to the Administration of Criminal Justice: Pleas of Guilty, 2d ed. (1979), § 14-1.8 and commentary. See State v. Boone, 33 N.C. App. 378, aff'd, 293 N.C. 702 (1977), which held that the defendant's right to trial was violated when the judge said on the record that he was giving him an active sentence because he had refused to plead guilty, even though he was unfamiliar with the defendant's character and record.

29. Conversation with Ms. Judy Harrelson, North Carolina Department of Correction, September 1981.

30. Odds were used, rather than probability, because we used mathematical procedures explained in the references in Appendix 3 for which

odds were more appropriate. What does "odds in favor of" mean? In speaking of a horserace, we say that the odds against a particular horse's winning are ten to one; the odds in favor would therefore be one to ten. Mathematically, this is expressed by the ratio of one to ten, or one-tenth. The odds that something will happen range from zero (where it is impossible) to positive infinity (where it is certain). The odds that something will happen are equal to the probability that it will happen, divided by one minus that probability. For example, for Class 1 defendants in the twelve-county sample (of whom there were 325), the overall proportion dismissed was 44.0 per cent; thus the overall probability of dismissal for these defendants was .440 and the odds in favor of dismissal were (.440)/(1-.440), which equals .786--or in more familiar terms, odds of approximately eight to ten.

31. In the attorney-differences models, county was omitted as a factor because it was "aliased with" public defender--i.e., it was possible for the defendant to be represented by the public defender in only two of the twelve counties. Pretrial detention time was also omitted because it could have concealed some of the effect of type of attorney, which we regarded as causally prior to detention.

32. Defendants with no attorney or with unknown attorney status had all of their charges dismissed at the district court stage much more frequently than defendants known to be represented by attorneys. The rates of dismissal in district court for Class 1 defendants were: no attorney, 70.6 per cent; unknown attorney status, 82.6 per cent, and known forms of attorney, 27.0 per cent. For Class 2 defendants, they were: no attorney, 54.1 per cent; unknown attorney status, 70.6 per cent; and known forms of attorney, 16.0 per cent. Disposition times for Class 1 defendants with no attorney and unknown attorney status were also less than those of other Class 1 defendants, but this was not true among Class 2 defendants.

33. The coefficients for the public defender and individually appointed attorney variables in both the Class 1 and Class 2 dismissal models were compared and found to be significantly different at the .05 level.

34. See footnote 32 and accompanying text.

35. Among Class 2 defendants whose charges were not dismissed, the proportions who have assigned counsel were as follows: blacks, 81.6 per cent (N=217); whites, 51.7 per cent (N=207). The mean pretrial detention times for Class 2 defendants whose charges were not dismissed were: blacks, 27.1 days (N-211); whites, 12.8 days (N=198). We did not find such discrepancies between black and white defendants in Class 1. Among Class 1 defendants whose charges were not all dismissed, 63.6 per cent of blacks had assigned counsel, compared with 67.1 per cent of whites, and blacks spent an average of 32.7 days in pretrial detention, compared with 35.3 days for whites. One reason why the disparity in detention times between blacks and whites occurred in Class 2 but not in Class 1 may be that in Class 2 blacks were, on the average, poorer than whites, but not

in Class 1. (We have no direct data on defendants' incomes; however, the figures just mentioned show that, for purposes of assigning counsel, in Class 2 the percentage of black defendants found indigent was greater than the percentage of white defendants who were found indigent, but the two percentages were approximately equal in Class 1.) Another reason for the absence of the disparity in pretrial detention between blacks and whites in Class 1 may be that Class 1 (violent) felony charges were so serious that they overcame both blacks' disadvantages and whites' advantages.

36. The actual regression coefficients for the variable TRIAL, which was equal to one if the defendant went to trial and zero if he pled guilty, were as follows. Class 1 defendants: log odds of active sentence, -.6710; log of total maximum active sentence plus one, +.3338; log of time to earliest release from prison plus one, +.1402. Class 2 defendants: log odds of active sentence, +.4932; log of total active maximum sentence plus one, +.5790*; log of time to earliest release from prison plus one, +.1990. Only the coefficient marked with an asterisk tested significantly different from zero.

Table 1

Felons Who Were Sentenced to Either Prison or Supervised Probation in 1979: Percentage Who Received Active Prison Term[1] (Including Special Probation) by Crime Category[2]

Crime Category	(N)	Percentage Who Received Active Prison
1. Murder	(206)	98.1%
2. Voluntary manslaughter	(178)	83.2
3. Involuntary manslaughter	(137)	65.0
4. Rape	(89)	96.6
5. Assault with intent to rape	(63)	84.1
6. Kidnapping	(54)	87.0
7. Assault without intent to kill	(369)	69.9
8. Assault with intent to kill	(97)	71.1
9. Breaking or entering (building)	(1,669)	63.6
10. Breaking or entering of motor vehicle	(151)	58.9
11. Burglary	(77)	85.7
12. Burning (includes arson)	(116)	71.6
13. Larceny	(1,235)	47.0
14. Receiving stolen goods	(337)	48.4
15. Breaking or entering and larceny (consolidated judgment)	(887)	44.3
16. Armed robbery	(436)	89.0
17. Common law robbery	(473)	71.3
18. Safecracking	(36)	86.1
19. Fraud	(340)	32.9
20. Forgery and uttering	(697)	40.0
21. Crime against nature	(45)	77.8
22. Indecent liberties with children	(69)	66.7
23. Escape	(460)	81.5
24. Sale or delivery of major drug (Schedule I or II controlled substance)	(287)	59.2
25. Sale or delivery of minor drug (Schedule III, IV, V, or VI controlled substance)	(568)	27.5
26. Possession of major drug	(118)	43.2
27. Possession of minor drug	(587)	15.3
28. Drug prescription fraud	(63)	34.9
29. Other felonies	(122)	54.1
TOTAL--all felonies	(9,966)	55.6

1. Active prison terms include seven death sentences, all for first-degree murder.
2. Most categories contain several similar offenses.

Table 2

Felons Convicted of Felonious Breaking or Entering in 1979 and Sentenced to Either Prison or Supervised Probation: Percentage Who Received Active Prison Sentence, by Selected Variables

		(N)	Percentage Who Received Active Prison
TOTAL convicted of felonious breaking or entering		(1,473)	68.1%
NUMBER OF FELONY CHARGES OF WHICH CONVICTED	One charge	(866)	53.5
	Two charges	(335)	88.1
	Three charges	(80)	80.0
	Four or more	(192)	94.3
AGE	Under 21	(828)	60.5
	21-25	(389)	77.1
	26-30	(145)	82.1
	Over 30	(111)	74.8
SEX	Male	(1,419)	68.7
	Female	(54)	51.9
RACE	White	(793)	66.0
	Black	(643)	71.2
	Indian	(34)	55.9
	Other	(3)	100.0
MARITAL STATUS (34 unknown)	Married	(214)	67.8
	Separated or divorced	(127)	77.2
	Single or widowed	(1,098)	66.7
YEARS OF EDUCATION (1 unknown)	0-8 years	(339)	74.6
	9-11 years	(884)	65.2
	12 or more	(248)	69.8
EMPLOYMENT AT TIME OF CONVICTION	Employed	(1,204)	70.6
	Unemployed	(269)	56.9
RESIDENCE	Local (in county of conviction)	(1,139)	67.2
	Elsewhere	(334)	71.3
URBAN/ RURAL COURT	Urban county	(497)	60.2
	Rural county	(976)	72.1

Table 3

Felons Sentenced to Active Imprisonment or Death[1] in 1979: Distribution of Variables in DOC Data

		Number	Percentage of 5,545[3]
TOTAL FELONS		5,545	100.0%
OFFENSE CLASS AND CATEGORY	Class 1 (Violent Felonies)	1,760	31.7
	Murder (1st and 2nd degree)	202	3.6
	Voluntary manslaughter	148	2.7
	Involuntary manslaughter	89	1.6
	Rape	86	1.6
	Assault with intent to rape	53	1.0
	Kidnapping	47	0.8
	Assault without intent to kill	258	4.7
	Assault with intent to kill	69	1.2
	Burning (includes arson)	83	1.5
	Armed robbery	388	7.0
	Common law robbery	337	6.1
	Class 2 (Theft and Break-ins)	2,383	43.0
	Breaking or entering (building)	1,061	19.1
	Breaking or entering of motor vehicle	89	1.6
	Burglary	66	1.2
	Larceny	580	10.5
	Receiving	163	2.9
	Breaking or entering and larceny consolidated	393	7.1
	Safecracking	31	0.6
	Class 3 (Fraud, Forgery, etc.)	391	7.1
	Fraud	112	2.0
	Forgery and uttering	279	5.0
	Class 4 (Drug Felonies)	489	8.8
	Sale and delivery of major drug[2]	170	3.1
	Sale and delivery of minor drug[2]	156	2.8
	Possession of major drug	51	0.9
	Possession of minor drug	90	1.6
	Prescription fraud	22	0.4
	Class 5 (Morals Felonies)	81	1.5
	Crime against nature	35	0.6
	Indecent liberties with children	46	0.8
	Class 6 (Escape and Others)	441	8.0
	Felonious escape	375	6.8
	Other felonies	66	1.2

1. There were seven death sentences, all for murder.
2. Major drug is Schedule I or II controlled substance; minor drug is Schedule III, IV, V, or VI.
3. Where data are missing for some offenders, the percentage base is reduced by that number.

Table 3 (cont'd)

		Number	Percentage of 5,545[3]
NUMBER OF FELONIES FOR WHICH OFFENDER WAS SENTENCED	One	3,707	66.9
	Two	1,059	19.1
	Three	279	5.0
	Four or more	500	9.0
PRIOR CONVICTIONS (210 missing)	None	2,873	53.9
	One	1,041	19.5
	Two	553	10.4
	Three or more	868	16.3
TIME SPENT IN PRETRIAL DETENTION	None or unknown[4]	2,289	41.3
	One to 40 days	1,603	28.9
	Over 40 days	1,653	29.8
AGE AT CONVICTION	Under 21	1,869	33.7
	21 to 25	1,611	29.1
	26 to 30	935	16.9
	Over 30	1,130	20.4
RACE	White	2,721	49.1
	Black	2,695	48.6
	Indian	110	2.0
	Oriental	1	0.0
	Other	18	0.3
SEX	Male	5,252	94.7
	Female	293	5.3
MARITAL STATUS AT CONVICTION (131 missing)	Married	1,321	24.4
	Separated or divorced	841	15.5
	Single or widowed	3,252	60.1
RESIDENCE AT CONVICTION	Local (in county where convicted)	4,004	72.2
	Elsewhere	1,541	27.8
YEARS OF EDUCATION (17 missing)	0-8 years of school	1,360	24.6
	9-11 years of school	2,831	51.2
	12 (high school) or more	1,337	24.2
EMPLOYMENT STATUS AT CONVICTION	Employed	4,944	89.2
	Unemployed	601	10.8

3. Where data are missing for some offenders, the percentage base is reduced by that number.

4. DOC data did not distinguish between true zero value and unknown value, but most cases in this category had true zero value.

Table 3 (cont'd)

		Number	Percentage of 5,545[3]
WORK EXPERIENCE (951 missing)	One year or less	1,624	35.4
	2-5 years	1,628	35.4
	Over 5 years	1,342	29.2
ALCOHOL ABUSE HISTORY	Alcohol abuser	1,054	19.0
	Not alcohol abuser	4,491	81.0
DRUG ABUSE HISTORY	Drug abuser	1,453	26.2
	Not drug abuser	4,092	73.8
RURAL/URBAN COUNTY	Court in rural county	3,511	63.3
	Court in urban county (i.e., in Standard Metropolitan Statistical Area)	2,034	36.7

Table 4

Total Active Maximum and Minimum Prison Terms for Felons Sentenced to Prison in 1979: Results of Multiple Regression Analyses[1] of DOC Data ($N = 5,098$; $R^2 = .50$ for maximum term model; $R^2 = .25$ for minimum term model)

Factors Tested		Estimated Effect on MAXIMUM Term: Increase (+) or Decrease (-) or Not Significant (*)	Estimated Effect on MINIMUM Term: Increase (+) or Decrease (-) or Not Significant (*)
AGE (compared with 21-25 years)	Defendant was under 21	-10.8%	-65.5%
	Defendant was age 26-30	+9.7%	+22.8%
	Defendant was over 30	*	-11.7%
SEX	Defendant was female	-25.9%	-41.2%
RACE (compared with white)	Defendant was black	+6.1%	+27.2%
	Defendant was Indian	*	*
MARITAL STATUS (compared with single or widowed)	Defendant was married	+15.8%	+24.6%
	Defendant was separated or divorced	*	+18.7%
RESIDENCE (compared with outside county of conviction)	Local residence	*	*
EDUCATION	Each year of school	-1.1%	-3.0%
EMPLOYMENT	Unemployed	*	-18.3%
WORK EXPERIENCE	Each year	*	*
ALCOHOL ABUSE	Defendant was alcohol abuser	*	+15.0%
DRUG ABUSE	Defendant was drug abuser	+8.4%	+24.3%
TOTAL FELONIES	Each felony for which sentenced	+3.0%	+3.0%

*No significant association.

1. Logarithm of prison term was modeled using ordinary least squares, and resulting coefficients were converted to percentages. One month was added to minimum term to avoid computing logarithm of zero. Variables were checked for multicollinearity as explained in Appendix 3. Sentences of life and over 40 years were excluded from analysis.

Table 4 (cont'd)

Factors Tested		Estimated Effect on MAXIMUM Term: Increase (+) or Decrease (-) or Not Significant (*)	Estimated Effect on MAXIMUM Term: Increase (+) or Decrease (-) or Not Significant (*)
PRIOR CONVICTIONS	Each prior conviction	+3.1%	+9.1%
PRETRIAL DETENTION	Each 30 days	+5.6%	+9.3%
CATEGORY OF PRINCIPAL OFFENSE FOR WHICH SENTENCED (compared with felonious breaking or entering of a building)	Murder (2d degree)	+370.4%	+299.6%
	Voluntary manslaughter	+174.8%	+170.4%
	Involuntary manslaughter	*	*
	Rape	+326.5%	+386.9%
	Assault to commit rape	+65.1%	*
	Kidnapping	+239.1%	+193.7%
	Assault without intent to kill	*	*
	Assault with intent to kill	+87.7%	+213.3%
	Breaking or entering of motor vehicle	-24.9%	*
	Burglary	+212.6%	+468.8%
	Burning (includes arson)	*	*
	Larceny	-15.5%	*
	Receiving stolen goods	-18.0%	*
	Breaking or entering and larceny consolidated	+10.6%	+26.6%
	Armed robbery	+280.8%	+395.6%
	Common law robbery	+39.3%	+70.6%
	Safecracking	+171.0%	+223.2%
	Fraud	-22.5%	*
	Forgery and uttering	-16.3%	*
	Crime against nature	-31.0%	*
	Indecent liberties with child	*	*
	Felonious escape	-85.1%	-82.3%
	Sale or delivery of major drug	*	*
	Sale or delivery of minor drug	-38.2%	-35.4%
	Possession of major drug	-49.7%	*
	Possession of minor drug	-51.9%	-60.8%
	Drug prescription fraud	-32.9%	*
	Other felony	-29.2%	-12.0%
URBAN COURT	Court was in urban county (i.e., in SMSA)	*	-10.2%

Table 5

Prison Years Served for Felonies in North Carolina: Inmates Released in FY 1977-78, Inmates Released in 1980, and Inmates Sentenced Under New Fair Sentencing Act

	1. Single-Sentence Non-CYO Felons Released in Fiscal Year 1977-1978		2. Single-Sentence Non-CYO Felons Released in 1980			3. Estimated Time Before Parole under Fair Sentencing Act (1/2 Presumptive - .25 years)		Comments
	(N)	Mean	(N)	Mean	Median	Estimated Time		
Class C (presumptive - 15 years)								
Second degree murder	(45)	5.17	(60)	5.54	5.64	7.25	+	7.00 years for robbery with a dangerous weapon is the minimum term imposed by law in S.L. 1977, Ch. 871 and not the result of FSA classification. The presumptive term for all Class D felonies other than robbery with a dangerous weapon is 5.75 years.
Class D (presumptive - 12 years)								
Robbery with a dangerous weapon	(98)	3.65	(89)	4.17	--	7.00	+	
Class F (presumptive - 6 years)								
Voluntary manslaughter	(63)	3.21	(90)	3.23	2.97	2.75	-	
Assault with a deadly weapon with intent to kill inflicting serious injury	--	--	(11)	1.99	1.79	2.75	+	
Class G (presumptive - 4 1/2 years)								
Assault with intent to rape	(14)	3.69	(22)	3.28	2.85	2.00 or 1.25	-	The crime of assault with intent to rape was repealed in 1979. The offense would now probably be either attempted first degree rape or sexual offense (a Class G offense with an estimated 2.00 years before parole) or attempted second degree rape or sexual offense (a Class H offense with an estimated 1.25 years before parole).
Class H (presumptive - 3 years)								
Involuntary manslaughter	(18)	1.85	(44)	1.61	1.54	1.25	-	
Assault with a deadly weapon inflicting serious injury	(50)	1.25	(80)	1.70	1.77	1.25	-	
Common law robbery	(99)	2.10	(91)	2.07	1.79	1.25	-	
Breaking or entering	(239)	1.54	(223)	1.65	1.52	1.25	-	
Larceny	(91)	.90	(99)	1.30	1.02	1.25	0	
Receiving stolen goods	(13)	1.67	(29)	1.14	.97	1.25	+	
Larceny after breaking or entering	(149)	1.66	(98)	2.00	1.93	1.25	+	
Embezzlement	--	--	(13)	1.11	.95	1.25, 4.25, 2.75 or .75		Most embezzlement offenses are Class H felonies (with an estimated 1.25 years before parole). A few offenses are classified as Class E, F, or I felonies with an estimated 4.25, 2.75 and .75 years before parole, respectively.
Sale or delivery of Schedule I	(12)	1.12	(28)	1.24	1.11	1.25	0	
Class I (presumptive - 2 years)								
Possession or larceny of motor vehicle	(10)	1.52	(11)	.94	.68	.75 or 1.25	0	Possession or larceny of motor vehicle includes both auto larceny (repealed in 1973) which now would usually be either felonious larceny (a Class H offense with an estimated 1.25 years before parole), or possession of a stolen motor vehicle (a Class I offense with an estimated .75 years before parole.)
Forgery	(67)	1.56	(35)	1.43	1.42	.75	-	
Uttering	(21)	.94	(13)	1.06	1.12	.75	-	
Sale or delivery of Schedule VI	(20)	.96	(13)	.63	.58	.75	+	
Possession with intent to sell or deliver Schedule VI	(19)	1.07	(10)	1.01	.72	.75	-	
Possession of Schedule VI	(37)	.87	(20)	.90	.82	.75	-	

Table 6

Twelve-County Sample: Distribution of Demographic and Charge Variables

	Percentage	(N)
Defendant's Age:		
Total	100.0	(1,378)
14-18 years	23.0	(317)
19-21	20.9	(288)
22-26	20.4	(281)
27-30	11.2	(155)
31-40	12.9	(178)
41 and over	9.1	(125)
Missing	2.5	(34)
Defendant's Race:		
Total	100.0	(1,378)
Black	47.5	(655)
Indian	0.2	(3)
Other minority	0.6	(8)
White	50.9	(702)
Unknown	0.7	(10)
Defendant's Sex:		
Total	100.0	(1,378)
Male	87.7	(1,209)
Female	12.2	(168)
Unknown	0.1	(1)
Total Felony Charges:		
Total	100.0	(1,378)
One	69.6	(959)
Two	17.1	(236)
Three	4.6	(64)
Four or more	8.6	(119)
Total Number of Codefendants:		
Total	100.0	(1,378)
None	59.4	(819)
One	24.2	(333)
Two	9.6	(132)
Three or more	6.8	(94)
County Where Charge(s) Filed:		
Total	100.0	(1,378)
Anson	3.0	(42)
Buncombe	13.6	(187)
Cherokee	1.2	(17)
Craven	6.1	(84)
Granville	1.5	(21)
Harnett	5.9	(81)
Mecklenburg	35.8	(494)
New Hanover	14.7	(203)
Pasquotank	2.4	(33)
Rockingham	10.1	(139)
Rutherford	5.0	(69)
Yancey	0.6	(8)

Table 6 (cont'd)

Type of Principal Felony Charge	Percentage of Total	Percentage of this Class	(N)
Class 1 - Violent Felonies	23.6%		(325)
Murder and manslaughter		8.6%	(28)
Assault without intent to kill		31.7%	(103)
Assault with intent to kill		19.7%	(64)
Rape		9.5%	(31)
Burning (includes arson)		5.2%	(17)
Common law robbery		7.4%	(24)
Armed robbery		14.2%	(46)
Kidnapping		3.7%	(12)
Class 2 -Felonious Larceny Breaking or Entering, Etc.	45.9%		(633)
Burglary		3.8%	(24)
Breaking or entering		13.3%	(84)
Breaking or entering and larceny combined		45.8%	(290)
Larceny		27.5%	(174)
Possession or receipt of stolen goods		9.6%	(61)
Class 3 - Fraud Forgery, Embezzlement, etc.	11.9%		(164)
Fraud (includes larceny by employee, embezzlement, false pretense, theft of credit card, etc.)		59.8%	(98)
Forgery and uttering (passing) forged instrument		40.2%	(66)
Class 4 - Drug Felonies	13.4%		(185)
Manufacture, sale, or possession for purpose of sale of controlled substance		61.6%	(114)
Possession of controlled substance		38.4%	(71)
Class 5 - Morals Felonies (primarily crime against nature and indecent liberties with child)	1.9%		(26)

Table 6 (cont'd)

Type of Principal Felony Charge	Percentage of Total	Percentage of this Class	(N)
Class 6 - Other Felonies	3.3%		(45)
Felonious escape		57.8%	(26)
Other (including felonious leaving scene of accident)		42.2%	(19)
TOTAL, All Classes	100.0%		(1,378)

Table 7

Twelve-County Sample: Attorney, Pretrial Release, and Pretrial Detention

	Percentage	(N)
1. Type of attorney:		
Total	100.0	(1,378)
No attorney	6.7	(93)
Public defender	24.3	(335)
Individually appointed	27.9	(384)
Private counsel	34.0	(468)
Unknown	7.1	(98)
2. Type of pretrial release:		
Total	100.0	(1,378)
Written promise to appear	4.5	(62)
Unsecured appearance bond	11.7	(161)
Third-party custody	12.0	(166)
Secured bond: cash deposit	2.5	(35)
Secured bond: real or personal property	1.7	(24)
Secured bond: accommodation bondsman	14.4	(199)
Secured bond: professional bondsman	27.0	(372)
Released by type unknown	1.6	(22)
Not released	22.5	(310)
Not arrested	0.9	(12)
Unknown	1.1	(15)

	N	Mean	Median	25th Percentile	75th Percentile
3. Days of pretrial detention	1344	15.81	1.00	0.00	13.00

Table 8

Twelve-County Sample: Court Disposition and Sentence

	Percentage	(N)
1. Disposition		
Total	100.0	(1,378)
Voluntary dismissal by prosecutor	25.2	(347)
Dismissal with leave by prosecutor	2.2	(30)
Dismissal by judge	6.5	(89)
Prayer for judgment continued ("P.J.C.")	.2	(3)
Grand jury refused to indict ("No True Bill")	.6	(8)
Plea bargain on record	32.7	(451)
Other guilty plea	25.9	(357)
Trial acquittal	1.7	(23)
Trial conviction	5.1	(70)
ALL DISMISSALS (includes 3 "P.J.C.s")	34.0	(469)
ALL CONVICTIONS INCLUDING GUILTY PLEAS AND TRIALS	63.7	(878)
ALL TRIALS	6.8	(93)
2. Type of Sentence		
Total	100.0	(1,378)
No conviction	36.3	(500)
Fine and/or costs	3.7	(51)
Restitution or restitution plus fine	0.4	(6)
Unsupervised probation	7.1	(98)
Supervised probation	25.1	(346)
Special probation (active time plus probation)	5.1	(70)
Active imprisonment	22.3	(307)*

	N	Mean	Median	25th Percentile	75th Percentile
3. Total active minimum prison term for defendants who received active time (in years)	377*	3.62	0.67	0.00	4.00
4. Total active maximum prison term for defendants who received active time (in years)	377*	7.14	3.00	0.50	7.00

*Active imprisonment in this table is not reduced by credit for pretrial detention. When such credit was subtracted 365 (not 377) defendants actually had to serve time in prison or jail.

Table 9
Twelve-County Sample: Plea Bargaining and Sentence Recommendations

1. Percentage of Defendants who Pled Guilty to Misdemeanors or Felonies

	Percentage	Number
No plea	41.4	(570)
Plea to misdemeanor	30.4	(419)
Plea to felony	28.2	(389)
Total	100.0	(1378)

2. Type of Plea for Defendants Who Pled Guilty

	Formal (Written) Plea Bargain		Informal plea (No Written Bargain)		Total (100.0%)
	Percentage	(Number)	Percentage	(Number)	
Plea to misdemeanor	44.6	(187)	55.4	(232)	(419)
Plea to felony	67.9	(264)	32.1	(125)	(389)
Total	55.8	(451)	44.2	(357)	(808)

3. Sentence Recommendations for Guilty Pleas to Either Misdemeanors or Felonies

	Percentage	Number
Specific sentence recommended in formal plea	27.0	(218)
No specific sentence recommended in formal plea	28.8	(233)
Informal plea	44.2	(357)
Total	100.0	(808)

4. Consolidation for Judgment Recommendations for Guilty Pleas to Either Misdemeanors or Felonies

	Percentage	Number
Consolidation for judgment recommended in formal plea	6.2	(50)
No consolidation for judgment recommended in formal plea	22.2	(179)
No companion cases	27.5	(222)
Informal plea	44.2	(357)
Total	100.0	(808)

5. Sentence Recommendations for Defendants Who Pled Guilty to Felonies

	Formal Plea Bargain		Formal Plea Bargain or Informal Plea	
	Percentage	(Number)	Percentage	(Number)
Specific sentence recommendation in written plea bargain	54.9	(145)	37.3	(145)
Consolidation of charges for judgment in written plea bargain	18.6	(49)	12.6	(49)
Total defendants who pled guilty to felonies	100.0	(264)	100.0	(389)

Table 10

Twelve-County Sample: Court Disposition Time for Arrested Defendants*

1. Days from arrest to indictment (or if no indictment, to final disposition in district court):

Median = 34 days

Total	100.0	(1344)
0-10	8.4	(113)
11-20	18.6	(250)
21-30	16.6	(223)
31-40	14.6	(196)
41-50	9.5	(128)
51-60	6.0	(80)
61-75	9.4	(126)
76-90	4.4	(59)
91-120	5.6	(75)
Over 120	7.0	(94)

2. Days from indictment to final disposition:

Median = 51 days

Total	100.0	(680)
0-10	18.1	(123)
11-20	9.9	(67)
21-30	9.4	(64)
31-40	6.2	(42)
41-50	4.7	(32)
51-60	10.1	(69)
61-75	8.1	(55)
76-90	8.2	(56)
91-120	10.6	(72)
Over 120	14.7	(100)

3. Days from arrest to final disposition, by county:

	N	Mean	Median	25th Percentile	75th Percentile
All 12 counties	1,337	79.2	58.0	22.0	116.8
Anson	39	102.8	83.5	33.2	143.8
Buncombe	186	70.2	50.0	21.0	110.0
Cherokee	17	116.8	74.0	57.8	123.5
Craven	82	91.4	92.0	41.5	127.0
Granville	21	93.0	41.5	14.0	176.5
Harnett	74	88.7	64.0	34.5	126.0
Mecklenburg	488	68.3	37.0	18.0	96.0
New Hanover	196	81.6	62.0	33.0	110.0
Pasquotank	31	88.0	62.0	44.0	120.8
Rockingham	131	80.7	61.5	27.0	118.0
Rutherford	65	107.2	87.0	29.8	133.0
Yancey	7	167.0	11.5	4.0	380.0

*Six arrested defendants were excluded because of missing data.

Table 11
Dismissal Model: Defendants Charged with Class 1 Felonies

Variables (Characteristics of Defendant and Case)	Estimated Effects* of Variables on the Odds of Dismissal Estimated Percentage Increase (+) or Decrease (-)		
	1 Basic Factors Model R^2 = .131 N = 324	2 Complete Model R^2 = .225 N = 317	3 Attorney Differences Model R^2 = .156 N = 325
A. Demographic Variables			
Age (compared with under 21 years old)			
Defendant was 21 to 25 years old	+123.96%	NS	NS
Defendant was 26 to 30 years old	NS	---	---
Defendant was over 30 years old	NS	---	---
Race			
Defendant was black	NS	---	---
Sex			
Defendant was female	NS	---	---
Local Residence			
Defendant was local county resident	NS	---	---
Employment			
Defendant was unemployed	NS	---	---
Marital Status			
Defendant was married	NS	---	---
B. Charge and Codefendants			
Seriousness of initial charge (statutory maximum prison term in months)	NS	---	---
Each additional felony charge against defendant	-59.97%	-48.65%	-45.96%
Each codefendant	+53.37%	+41.00%	+49.39%
C. Defendant's Criminal Record			
Defendant on probation or parole	NS	---	---
Defendant had served prison or jail sentence in past	---1	---1	---1
Each additional prior conviction	NS	---	---

*A dash without superscript indicates that the variable was not considered in the model specified by the model column; "NS" means that the variable was not significant at the .05 level of significance; a dash with a superscript "1" means that variable was not included in the model specified by the model column because it was highly collinear with other independent variables in the model.

**Difference between individually appointed and public defender coefficients was significant at .01 level.

Table 11 (cont'd)
Dismissal Model: Defendants Charged with Class 1 Felonies

Variables (Characteristics of Defendant and Case)	Estimated Effects* of Variables on the Odds of Dismissal Estimated Percentage Increase (+) or Decrease (-)		
	1 Basic Factors Model R^2 = .131 N = 324	2 Complete Model R^2 = .225 N = 317	3 Attorney Differences Model R^2 = .156 N = 325
D. Evidence Against Defendant and Injury to Victim			
There was eyewitness to offense	-75.79%	-70.26%	-63.61%
Defendant confessed or made incriminating statement	-49.79%	-48.87%	-44.93%
Stolen property was recovered	NS	---	---
There was physical evidence against defendant	-46.95%	-42.95%	-47.76%
No weapon was used (compared with firearm use)	NS	---	---
Weapon other than firearm used (compared with firearm use)	NS	---	---
There was physical injury to victim	-60.30%	-49.50%	-53.02%
Each additional $100 value of property stolen or damaged	NS	---	---
E. Victim Information			
Victim was friend or relative of defendant	NS	---	---
Victim was female	NS	---	---
Victim was black	---[1]	---[1]	---[1]
Victim was under 18 years old	NS	---	---
F. County Where Court was Located (compared with Mecklenburg County)			
Buncombe County	NS	---	---
Craven County	NS	---	---
New Hanover County	-76.31%	-71.92%	---
Rockingham County	-95.11%	-94.96%	---
Small Counties: Anson, Cherokee, Granville, Harnett, Pasquotank, Rutherford, and Yancey	-65.67%	-61.19%	---

Table 11 (cont'd)
Dismissal Model: Defendants Charged with Class 1 Felonies

Variables (Characteristics of Defendant and Case)	Estimated Effects* of Variables on the Odds of Dismissal Estimated Percentage Increase (+) or Decrease (-)		
	1 Basic Factors Model R^2 = .131 N = 324	2 Complete Model R^2 = .225 N = 317	3 Attorney Differences Model R^2 = .156 N = 325
G. Process Variables			
Pretrial detention (each additional 10 days)	---	-17.06%	---
Attorney factors -- I Defendant had public defender or individually-appointed attorney (compared with private attorney, no attorney, or unknown attorney type)	---	NS	---
Attorney factors -- II (compared with private attorney)			
Defendant had individually-appointed attorney	---	---	-60.00%**
Defendant had public defender	---	---	NS
Defendant had no attorney	---	---	NS
Defendant's attorney status was unknown	---	---	+499.60%

Table 12
Dismissal Model: Defendants Charged with Class 2 Felonies

Variables (Characteristics of Defendant and Case)	Estimated Effects* of Variables on the Odds of Dismissal Estimated Percentage Increase (+) or Decrease (-)		
	1 Basic Factors Model R^2 = .173 N = 633	2 Complete Model R^2 = .213 N = 609	3 Attorney Differences Model R^2 = .220 N = 633
A. Demographic Variables			
Age (compared with under 21 years old)			
Defendant was 21 to 25 years old	NS	---	---
Defendant was 26 to 30 years old	+100.39%	---	---
Defendant was over 30 years old	+161.01%	+95.66%	+83.53%
Race			
Defendant was black	NS	---	---
Sex			
Defendant was female	NS	---	---
Local Residence			
Defendant was local county resident	NS	---	---
Employment			
Defendant was unemployed	NS	---	---
Marital Status			
Defendant was married	NS	---	---
B. Charge and Codefendants			
Seriousness of initial charge (statutory maximum prison term in months)	NS	---	---
Each additional felony charge against defendant	-73.10%	-71.61%	-68.94%
Each additional codefendant	NS	---	---
C. Defendant's Criminal Record			
Defendant on probation or parole	NS	---	---
Defendant had served prison or jail sentence in past	---1	---1	---1
Each additional prior conviction	NS	---	---

*A dash without superscript indicates that the variable was not considered in the model specified by the model column; "NS" means that the variable was not significant at the .05 level of significance; a dash with a superscript "1" means that variable was not included in the model specified by the model column because it was highly collinear with other independent variables in the model.

**Difference between individually appointed and public defender coefficients was significant at .01 level.

Table 12 (cont'd)
Dismissal Model: Defendants Charged with Class 2 Felonies

Variables (Characteristics of Defendant and Case)	Estimated Effects* of Variables on the Odds of Dismissal Estimated Percentage Increase (+) or Decrease (-)		
	1 Basic Factors Model R^2 = .173 N = 633	2 Complete Model R^2 = .213 N = 609	3 Attorney Differences Model R^2 = .220 N = 633
D. Evidence Against Defendant and Injury to Victim			
There was eyewitness to offense	-57.92%	-56.53%	-53.00%
Defendant confessed or made incriminating statement	-62.88%	-62.84%	-51.45%
Stolen property was recovered	NS	---	---
There was physical evidence against defendant	NS	---	---
Each additional $100 value of property stolen or damaged	NS	---	---
E. Victim Information			
Victim was friend or relative of defendant	+103.44%	+174.29%	+185.37%
Victim was female	NS	---	---
Victim was black	NS	---	---
F. County Where Court was Located (compared with Mecklenburg County)			
Buncombe County	NS	---	---
Craven County	-66.17%	-69.83%	---
New Hanover County	-68.60%	-64.79%	---
Rockingham County	-68.50%	NS	---
Small Counties: Anson, Cherokee, Granville, Harnett, Pasquotank, Rutherford, and Yancey	NS	---	---

Table 12 (cont'd)
Dismissal Model: Defendants Charged with Class 2 Felonies

Variables (Characteristics of Defendant and Case)	Estimated Effects* of Variables on the Odds of Dismissal Estimated Percentage Increase (+) or Decrease (-)		
	1 Basic Factors Model R^2 = .173 N = 633	2 Complete Model R^2 = .213 N = 609	3 Attorney Differences Model R^2 = .220 N = 633
G. Process Variables			
Pretrial detention (in days)	---	-1.02%	---
Attorney factors -- I			
Defendant had public defender or individually appointed attorney (compared with private attorney, no attorney, or unknown attorney type)	---	-52.14%	---
Attorney factors -- II			
(compared with private attorney)			
Defendant had individually appointed attorney	---	---	-47.18%**
Defendant had public defender	---	---	NS
Defendant had no attorney	---	---	+170.01%
Defendant's attorney status was unknown	---	---	+446.46%

Table 13
Active Sentence Model: Defendants Charged with Class 1 Felonies

Variables (Characteristics of Defendant and Case)	Estimated Effects* of Variables on the Odds of an Active Sentence Estimated Percentage Increase (+) or Decrease (-)		
	1 Basic Factors Model R^2 = .205 N = 182	2 Complete Model R^2 = .267 N = 178	3 Attorney Differences Model R^2 = .228 N = 182
A. Demographic Variables			
Age (compared with defendants under 21 years old)			
Defendant was 21 to 25 years old	NS	---	---
Defendant was 26 to 30 years old	NS	---	---
Defendant was over 30 years old	-74.39%	-65.84%	-58.98%
Race			
Defendant was black	NS	---	---
Local Residence			
Defendant was local county resident	NS	---	---
Employment			
Defendant was unemployed	NS	---	---
Marital Status			
Defendant was married	NS	---	---
B. Charge and Codefendants			
Seriousness of initial charge (each additional year of statutory maximum prison term)	+3.34%	+2.64%	+2.08%
Each additional felony charge against defendant	+300.12%	+258.95%	+183.26%
Each additional codefendant	NS	---	---
C. Defendant's Criminal Record			
Defendant on probation or parole	NS	---	---
Defendant had served prison or jail sentence in past	---[1]	---[1]	---[1]
Each additional prior conviction	+24.02%	+26.54%	+23.64%

*A dash without superscript indicates that the variable was not considered in the model specified by the model column; "NS" means that the variable was not significant at the .05 level of significance; a dash with a superscript "1" means that variable was not included in the model specified by the model column because it was highly collinear with other independent variables in the model.

1. See Section VI of text for explanation of this result.
2. Reliable estimates could not be computed because so few defendants had unknown attorney status.

CONTINUED

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Table 13 (cont'd)
Active Sentence Model: Defendants Charged with Class 1 Felonies

Variables (Characteristics of Defendant and Case)	Estimated Effects* of Variables on the Odds of an Active Sentence Estimated Percentage Increase (+) or Decrease (-)		
	1 Basic Factors Model R^2 = .205 N = 182	2 Complete Model R^2 = .267 N = 178	3 Attorney Differences Model R^2 = .228 N = 182
D. Evidence Against Defendant and Injury to Victim			
There was eyewitness to offense	NS	---	---
Defendant confessed or made incriminating statement	NS	---	---
Stolen property was recovered	NS	---	---
There was physical evidence against defendant	+302.13%	+219.47%	+194.03%
No weapon was used (compared with firearm use)	+1037.02%[2]	+725.65%[2]	+430.31%[2]
Weapon other than firearm used (compared with firearm use)	NS	---	---
There was physical injury to victim	NS	---	---
Each additional $100 value of property stolen or damaged	-4.51%	NS	NS
E. Victim Information			
Victim was friend or relative of defendant	+193.59%	NS	NS
Victim was female	NS	---	---
Victim was black	---[1]	---[1]	---[1]
F. County Where Court was Located (compared with Mecklenburg County)			
Buncombe County	-87.63%	-86.37%	---
Craven County	-87.60%	-83.89%	---
New Hanover County	NS	---	---
Rockingham County	NS	---	---
Small Counties: Anson, Cherokee, Granville, Harnett, Pasquotank, Rutherford, and Yancey	NS	---	---

Table 13 (cont'd)
Active Sentence Model: Defendants Charged with Class 1 Felonies

Variables (Characteristics of Defendant and Case)	Estimated Effects* of Variables on the Odds of an Active Sentence Estimated Percentage Increase (+) or Decrease (-)		
	1 Basic Factors Model R^2 = .205 N = 182	2 Complete Model R^2 = .267 N = 178	3 Attorney Differences Model R^2 = .228 N = 182
G. Process Variables			
Pretrial detention (in days)	---	NS	---
Attorney factors -- I			
Defendant had public defender or individually appointed attorney (compared with private attorney, no attorney, or unknown attorney type)	---	NS	---
Attorney factors -- II (compared with private attorney)			
Defendant had individually appointed attorney	---	---	NS
Defendant had public defender	---	---	NS
Defendant had no attorney	---	---	NS
Defendant's attorney status was unknown	---	---	---3
Defendant went to trial (rather than pleading guilty)	---	NS	---

Table 14
Active Sentence Model: Defendants Charged with Class 2 Felonies

Variables (Characteristics of Defendant and Case)	Estimated Effects* of Variables on the Odds of an Active Sentence Estimated Percentage Increase (+) or Decrease (-)		
	1 Basic Factors Model R^2 = .144 N = 428	2 Complete Model R^2 = .201 N = 411	3 Attorney Differences Model R^2 = .194 N = 428
A. Demographic Variables			
Age (compared with under 21 years old)			
Defendant was 21 to 25 years old	NS	---	---
Defendant was 26 to 30 years old	NS	---	---
Defendant was over 30 years old	NS	---	---
Race			
Defendant was black	+72.89%	NS	NS
Sex			
Defendant was female	NS	---	---
Local Residence			
Defendant was local county resident	NS	---	---
Employment			
Defendant was unemployed	NS	---	---
Marital Status			
Defendant was married	NS	---	---
B. Charge and Codefendants			
Seriousness of initial charge (each additional year of statutory maximum prison term)	NS	---	---
Each additional felony charge against defendant	+36.18%	+19.35%	+31.04%
Each additional codefendant	NS	---	---
C. Defendant's Criminal Record			
Defendant on probation or parole	+482.93%	+346.65%	+416.91%
Defendant had served prison or jail sentence in past	---[1]	---[1]	---[1]
Each additional prior conviction	+11.03%	+8.46%	+8.50%

*A dash without superscript indicates that the variable was not considered in the model specified by the model column; "NS" means that the variable was not significant at the .05 level of significance; a dash with a superscript "1" means that variable was not included in the model specified by the model column because it was highly collinear with other independent variables in the model.

Table 14 (cont'd)
Active Sentence Model: Defendants Charged with Class 2 Felonies

Variables (Characteristics of Defendant and Case)	Estimated Effects* of Variables on the Odds of an Active Sentence Estimated Percentage Increase (+) or Decrease (-)		
	1 Basic Factors Model R^2 = .144 N = 428	2 Complete Model R^2 = .201 N = 411	3 Attorney Differences Model R^2 = .194 N = 428
D. Evidence Against Defendant and Injury to Victim			
There was eyewitness to offense	NS	---	---
Defendant confessed or made incriminating statement	-54.92%	-53.92%	-58.75%
Stolen property was recovered	NS	---	---
There was physical evidence against defendant	+68.14%	NS	+76.69%
Each additional $100 value of property stolen or damaged	NS	---	---
E. Victim Information			
Victim was friend or relative of defendant	NS	---	---
Victim was female	NS	---	---
Victim was black	NS	---	---
F. County Where Court was Located (compared with Mecklenburg County)			
Buncombe County	NS	---	---
Craven County	NS	---	---
New Hanover County	NS	---	---
Rockingham County	NS	---	---
Small Counties: Anson, Cherokee, Granville, Harnett, Pasquotank, Rutherford, and Yancey	NS	---	---

Table 14 (cont'd)
Active Sentence Model: Defendants Charged with Class 2 Felonies

Variables (Characteristics of Defendant and Case)	Estimated Effects* of Variables on the Odds of an Active Sentence Estimated Percentage Increase (+) or Decrease (-)		
	1 Basic Factors Model R^2 = .144 N = 428	2 Complete Model R^2 = .201 N = 411	3 Attorney Differences Model R^2 = .194 N = 428
G. Process Variables			
Pretrial detention (each additional 10 days)	---	+9.96%	---
Attorney factors -- I Defendant had public defender or individually appointed attorney (compared with private attorney, no attorney, or unknown attorney type)	---	+211.06%	---
Attorney factors -- II (compared with private attorney)			
Defendant had individually appointed attorney	---	---	+285.90%
Defendant had public defender	---	---	+235.85%
Defendant had no attorney	---	---	NS
Defendant's attorney status was unknown	---	---	NS
Defendant went to trial (rather than pleading guilty)	---	NS	---

Table 15
Maximum Sentence Model: Defendants Charged with Class 1 Felonies

Variables (Characteristics of Defendant and Case)	Estimated Effects* of Variables on Total Active Maximum Prison Term: Estimated Percentage Increase (+) or Decrease (-)		
	1 Basic Factors Model R^2 = .610 N = 182	2 Complete Model R^2 = .567 N = 178	3 Attorney Differences Model R^2 = .530 N = 182
A. Demographic Variables			
Age (compared with under 21 years old)			
Defendant was 21 to 25 years old	NS	---	---
Defendant was 26 to 30 years old	NS	---	---
Defendant was over 30 years old	NS	---	---
Race			
Defendant was black	NS	---	---
Local Residence			
Defendant was local county resident	NS	---	---
Employment			
Defendant was unemployed	NS	---	---
Marital Status			
Defendant was married	NS	---	---
B. Charge and Codefendants			
Seriousness of initial charge (each additional year of statutory maximum prison term)	+4.14%	+3.53%	+3.95%
Each additional felony charge against defendant	+51.00%	+47.24%	+50.82%
Each additional codefendant	NS	---	---
C. Defendant's Criminal Record			
Defendant on probation or parole	+153.60%	+193.00%	+204.77%
Defendant had served prison or jail sentence in past	---1	---1	---1
Each additional prior conviction	NS	---	---

*A dash without superscript indicates that the variable was not considered in the model specified by the model column; "NS" means that the variable was not significant at the .05 level of significance; a dash with a superscript "1" means that variable was not included in the model specified by the model column because it was highly collinear with other independent variables in the model.

Table 15 (cont'd)
Maximum Sentence Model: Defendants Charged with Class 1 Felonies

Variables (Characteristics of Defendant and Case)	Estimated Effects* of Variables on Total Active Maximum Prison Term: Estimated Percentage Increase (+) or Decrease (-)		
	1 Basic Factors Model R^2 = .610 N = 182	2 Complete Model R^2 = .567 N = 178	3 Attorney Differences Model R^2 = .530 N = 182
D. Evidence Against Defendant and Injury to Victim			
There was eyewitness to offense	NS	---	---
Defendant confessed or made incriminating statement	NS	---	---
Stolen property was recovered	NS	---	---
There was physical evidence against defendant	+115.50%	+110.41%	+78.64%
No weapon was used (compared with firearm use)	+268.25%	+185.37%	+187.60%
Weapon other than firearm used (compared with firearm use)	NS	---	---
There was physical injury to victim	NS	---	---
Each additional $100 value of property stolen or damaged	-2.76%	-2.61%	-2.47%
E. Victim Information			
Victim was friend or relative of defendant	NS	---	---
Victim was female	NS	---	---
Victim was black	---1	---1	---1
F. County Where Court was Located (compared with Mecklenburg County)			
Buncombe County	NS	---	---
Craven County	NS	---	---
New Hanover County	NS	---	---
Rockingham County	NS	---	---
Small Counties: Anson, Cherokee, Granville, Harnett, Pasquotank, Rutherford, and Yancey	+138.69%	+150.68%	---

Table 15 (cont'd)
Maximum Sentence Model: Defendants Charged with Class 1 Felonies

Variables (Characteristics of Defendant and Case)	Estimated Effects* of Variables on Total Active Maximum Prison Term: Estimated Percentage Increase (+) or Decrease (-)		
	1 Basic Factors Model R^2 = .610 N = 182	2 Complete Model R^2 = .567 N = 178	3 Attorney Differences Model R^2 = .530 N = 182
G. Process Variables			
Pretrial detention (each additional 10 days)	---	+7.35%	---
Attorney factors -- I Defendant had public defender or individually appointed attorney (compared with private attorney, no attorney, or unknown attorney type)	---	NS	---
Attorney factors -- II (compared with private attorney) Defendant had individually appointed attorney	---	---	NS
Defendant had public defender	---	---	NS
Defendant had no attorney	---	---	NS
Defendant's attorney status was unknown	---	---	NS
Defendant went to trial (rather than pleading guilty)	---	NS	---

Table 16
Maximum Sentence Model: Defendants Charged with Class 2 Felonies

Variables (Characteristics of Defendant and Case)	Estimated Effects* of Variables on Total Active Maximum Prison Term: Estimated Percentage Increase (+) or Decrease (-)		
	1 Basic Factors Model R^2 = .368 N = 428	2 Complete Model R^2 = .383 N = 411	3 Attorney Differences Model R^2 = .366 N = 428
A. Demographic Variables			
Age (compared with defendants under 21 years old)			
Defendant was 21 to 25 years old	NS	---	---
Defendant was 26 to 30 years old	NS	---	---
Defendant was over 30 years old	NS	---	---
Race			
Defendant was black	+57.04%	NS	NS
Sex			
Defendant was female	NS	---	---
Local Residence			
Defendant was local county resident	NS	---	---
Employment			
Defendant was unemployed	NS	---	---
Marital Status			
Defendant was married	NS	---	---
B. Charge and Codefendants			
Seriousness of initial charge (each additional year of statutory maximum prison term)	+1.81%	+1.38%	+1.93%
Each additional felony charge against defendant	+37.26%	+23.76%	+33.04%
Each codefendant	NS	---	---
C. Defendant's Criminal Record			
Defendant on probation or parole	+241.71%	+211.27%	+255.98%
Defendant had served prison or jail sentence in past	---[1]	---[1]	---[1]
Each additional prior conviction	+10.87%	+6.95%	+7.42%

*A dash without superscript indicates that the variable was not considered in the model specified by the model column; "NS" means that the variable was not significant at the .05 level of significance; a dash with a superscript "1" means that variable was not included in the model specified by the model column because it was highly collinear with other independent variables in the model.

Table 16 (cont'd)
Maximum Sentence Model: Defendants Charged with Class 2 Felonies

Variables (Characteristics of Defendant and Case)	Estimated Effects* of Variables on Total Active Maximum Prison Term: Estimated Percentage Increase (+) or Decrease (-)		
	1 Basic Factors Model R^2 = .368 N = 428	2 Complete Model R^2 = .383 N = 411	3 Attorney Differences Model R^2 = .366 N = 428
D. Evidence Against Defendant and Injury to Victim			
There was eyewitness to offense	NS	---	---
Defendant confessed or made incriminating statement	-40.80%	-36.24%	-43.00%
Stolen property was recovered	NS	---	---
There was physical evidence against defendant	NS	---	---
Each additional $100 value of property stolen or damaged	NS	---	---
E. Victim Information			
Victim was friend or relative of defendant	NS	---	---
Victim was female	NS	---	---
Victim was black	NS	---	---
F. County Where Court was Located (compared with Mecklenburg County)			
Buncombe County	NS	---	---
Craven County	NS	---	---
New Hanover County	NS	---	---
Rockingham County	NS	---	---
Small Counties: Anson, Cherokee, Granville, Harnett, Pasquotank, Rutherford, and Yancey	NS	---	---

Table 16 (cont'd)
Maximum Sentence Model: Defendants Charged with Class 2 Felonies

Variables (Characteristics of Defendant and Case)	Estimated Effects* of Variables on Total Maximum Sentence Length[2] Estimated Percentage Increase (+) or Decrease (-)		
	1 Basic Factors Model R^2 = .368 N = 428	2 Complete Model R^2 = .383 N = 411	3 Attorney Differences Model R^2 = .366 N = 428
G. Process Variables			
Pretrial detention (each additional 10 days)	---	+10.01%	---
Attorney factors -- I			
Defendant had public defender or individually appointed attorney (compared with private attorney, no attorney, or unknown attorney type)	---	+97.51%	---
Attorney factors -- II (compared with private attorney)			
Defendant had individually appointed attorney	---	---	+132.47%
Defendant had public defender	---	---	+78.18%
Defendant had no attorney	---	---	NS
Defendant's attorney status was unknown	---	---	NS
Defendant went to trial (rather than pleading guilty)	---	+78.43%	---

Table 17
Time to Earliest Possible Release Model: Defendants Charged with Class 1 Felonies

Variables (Characteristics of Defendant and Case)	Estimated Effects* of Variables on Time to Earliest Possible Release From Prison: Estimated Percentage Increase (+) or Decrease (-)		
	1 Basic Factors Model R^2 = .652 N = 182	2 Complete Model R^2 = .586 N = 178	3 Attorney Differences Model R^2 = .558 N = 182
A. Demographic Variables			
Age (compared with under 21 years old)			
Defendant was 21 to 25 years old	+76.23%	+64.77%	NS
Defendant was 26 to 30 years old	NS	---	---
Defendant was over 30 years old	NS	---	---
Race			
Defendant was black	NS	---	---
Local Residence			
Defendant was local county resident	NS	---	---
Employment			
Defendant was unemployed	NS	---	---
Marital Status			
Defendant was married	NS	---	---
B. Charge and Codefendants			
Seriousness of initial charge (each additional year of statutory maximum prison term)	+2.50%	+2.20%	+2.52%
Each additional felony charge against defendant	+42.59%	+39.04%	+42.88%
Each additional codefendant	NS	---	---
C. Defendant's Criminal Record			
Defendant on probation or parole	+112.12%	+114.26%	+122.80%
Defendant had served prison or jail sentence in past	---[1]	---[1]	---[1]
Each additional prior conviction	+6.81%	NS	NS

*A dash without superscript indicates that the variable was not considered in the model specified by the model column; "NS" means that the variable was not significant at the .05 level of significance; a dash with a superscript "1" means that variable was not included in the model specified by the model column because it was highly collinear with other independent variables in the model.

Table 17 (cont'd)
Time to Earliest Possible Release Model: Defendants Charged with Class 1 Felonies

Variables (Characteristics of Defendant and Case)	Estimated Effects* of Variables on Time To Earliest Possible Release From Prison: Estimated Percentage Increase (+) or Decrease (-)		
	1 Basic Factors Model R^2 = .652 N = 182	2 Complete Model R^2 = .586 N = 178	3 Attorney Differences Model R^2 = .558 N = 182
D. Evidence Against Defendant and Injury to Victim			
There was eyewitness to offense	NS	---	---
Defendant confessed or made incriminating statement	NS	---	---
Stolen property was recovered	NS	---	---
There was physical evidence against defendant	NS	---	---
No weapon was used (compared with firearm use)	NS	---	---
Weapon other than firearm used (compared with firearm use)	NS	---	---
There was physical injury to victim	NS	---	---
Each additional $100 value of property stolen or damaged	NS	---	---
E. Victim Information			
Victim was friend or relative of defendant	NS	---	---
Victim was female	NS	---	---
Victim was black	---1	---1	---1
F. County Where Court was Located (compared with Mecklenburg County)			
Buncombe County	-53.98%	NS	---
Craven County	NS	---	---
New Hanover County	NS	---	---
Rockingham County	NS	---	---
Small Counties: Anson, Cherokee, Granville, Harnett, Pasquotank, Rutherford, and Yancey	NS	---	---

Table 17 (cont'd)
Time to Earliest Possible Release Model: Defendants Charged with Class 1 Felonies

Variables (Characteristics of Defendant and Case)	Estimated Effects* of Variables on Time to Earliest Possible Release From Prison: Estimated Percentage Increase (+) or Decrease (-)		
	1 Basic Factors Model R^2 = .652 N = 182	2 Complete Model R^2 = .586 N = 178	3 Attorney Differences Model R^2 = .558 N = 182
G. Process Variables			
Pretrial detention (each additional 10 days)	---	+5.70%	---
Attorney factors -- I Defendant had public defender or individually appointed attorney (compared with private attorney, no attorney, or unknown attorney type)	---	NS	---
Attorney factors -- II (compared with private attorney)			
Defendant had individually appointed attorney	---	---	NS
Defendant had public defender	---	---	NS
Defendant had no attorney	---	---	NS
Defendant's attorney status was unknown	---	---	NS
Defendant went to trial (rather than pleading guilty)	---	NS	---

*A dash without superscript indicates that the variable was not considered in the model specified by the model column; "NS" means that the variable was not significant at the .05 level of significance; a dash with a superscript "1" means that variable was not included in the model specified by the model column because it was highly collinear with other independent variables in the model.

Table 18
Time to Earliest Possible Release Model: Defendants Charged with Class 2 Felonies

Variables (Characteristics of Defendant and Case)	Estimated Effects* of Variables on Time to Earliest Possible Release From Prison: Estimated Percentage Increase (+) or Decrease (-)		
	1 Basic Factors Model R^2 = .370 N = 428	2 Complete Model R^2 = .378 N = 411	3 Attorney Differences Model R^2 = .368 N = 428
A. Demographic Variables			
Age (compared with under 21 years old)			
Defendant was 21 to 25 years old	+35.42%	+35.69%	+41.02%
Defendant was 26 to 30 years old	NS	---	---
Defendant was over 30 years old	NS	---	---
Race			
Defendant was black	+26.39%	NS	NS
Sex			
Defendant was female	NS	---	---
Local Residence			
Defendant was local county resident	NS	---	---
Employment			
Defendant was unemployed	NS	---	---
Marital Status			
Defendant was married	NS	---	---
B. Charge and Codefendants			
Seriousness of initial charge (each additional year of statutory maximum prison term)	+1.23%	+0.89%	+1.17%
Each additional felony charge against defendant	+17.94%	+12.51%	+16.57%
Each additional codefendant	NS	---	---
C. Defendant's Criminal Record			
Defendant on probation or parole	+87.46%	+81.68%	+90.14%
Defendant had served prison or jail sentence in past	---[1]	---[1]	---[1]
Each additional prior conviction	+9.61%	+7.37%	+7.89%

*A dash without superscript indicates that the variable was not considered in the model specified by the model column; "NS" means that the variable was not significant at the .05 level of significance; a dash with a superscript "1" means that variable was not included in the model specified by the model column because it was highly collinear with other independent variables in the model.

Table 18 (cont'd)
Time to Earliest Possible Release Model: Defendants Charged with Class 2 Felonies

Variables (Characteristics of Defendant and Case)	Estimated Effects* of Variables on Time to Earliest Possible Release From Prison: Estimated Percentage Increase (+) or Decrease (-)		
	1 Basic Factors Model R^2 = .370 N = 428	2 Complete Model R^2 = .378 N = 411	3 Attorney Differences Model R^2 = .368 N = 428
D. Evidence Against Defendant and Injury to Victim			
There was eyewitness to offense	NS	---	---
Defendant confessed or made incriminating statement	-30.27%	-27.75%	-31.70%
Stolen property was recovered	NS	---	---
There was physical evidence against defendant	NS	---	---
Each additional $100 value of property stolen or damaged	+0.93%	NS	+0.98%
E. Victim Information			
Victim was friend or relative of defendant	NS	---	---
Victim was female	NS	---	---
Victim was black	NS	---	---
F. County of Conviction (compared with Mecklenburg County)			
Buncombe County	NS	---	---
Craven County	NS	---	---
New Hanover County	NS	---	---
Rockingham County	NS	---	---
Small Counties: Anson, Cherokee, Granville, Harnett, Pasquotank, Rutherford, and Yancey	NS	---	---

Table 18 (cont'd)
Time to Earliest Possible Release Model: Defendants Charged with Class 2 Felonies

Variables (Characteristics of Defendant and Case)	Estimated Effects* of Variables on Time to Earliest Possible Release From Prison: Estimated Percentage Increase (+) or Decrease (-)		
	1 Basic Factors Model R^2 = .370 N = 428	2 Complete Model R^2 = .378 N = 411	3 Attorney Differences Model R^2 = .368 N = 428
G. Process Variables			
Pretrial detention (each 10 days)	---	+5.23%	---
Attorney factors -- I			
Defendant had public defender or individually appointed attorney (compared with private attorney, no attorney, or unknown attorney type)	---	+34.27%	---
Attorney factors -- II (compared with private attorney)			
Defendant had individually appointed attorney	---	---	+42.23%
Defendant had public defender	---	---	+35.78%
Defendant had no attorney	---	---	NS
Defendant's attorney status was unknown	---	---	NS
Defendant went to trial (rather than pleading guilty)	---	NS	---

Table 19
Dismissal and Sentence by Detention Time, Controlling for "Risk"[1]
Class 1 Felonies

		All Defendants		Defendants Not Dismissed (Pled Guilty or Went to Trial)					
		(1) Proportion with all Charges Dismissed	(N)	(2) Proportion Receiving Active Time	(N)	(3) Mean Total Active Maximum Sentence	(N)	(4) Mean Time (Months) to Earliest Possible Release	(N)
Low Risk	All Low Risk Defendants	0.7924	(106)	0.1148	(61)	3.2911	(61)	0.4614	(61)
	No pretrial detention	0.8000	(55)	0.0857	(35)	1.3368	(37)	0.3688	(36)
	Low pretrial detention[2]	0.9412	(34)	0.1250	(16)	6.3824	(16)	0.5789	(17)
	High pretrial detention[2]	0.4286	(14)	0.2500	(8)	9.2487	(5)	0.6087	(5)
Moderate Risk	All Moderate Risk Defendants	0.3964	(111)	0.6721	(61)	20.5567	(61)	4.6333	(61)
	No pretrial detention	0.4762	(42)	0.4706	(17)	10.9426	(18)	0.5882	(17)
	Low pretrial detention[2]	0.4375	(32)	0.6800	(25)	17.9057	(30)	5.6994	(30)
	High pretrial detention[2]	0.2424	(33)	0.8235	(17)	39.9863	(13)	7.2607	(14)
High Risk	All High Risk Defendants	0.1389	(108)	0.9167	(60)	319.4578	(60)	87.9744	(60)
	No pretrial detention	0.2121	(33)	0.7143	(7)	111.0000	(4)	43.4617	(6)
	Low pretrial detention[2]	0.2333	(30)	0.9444	(18)	181.5600	(17)	57.2602	(13)
	High pretrial detention[2]	0.0227	(44)	0.9429	(35)	405.3283	(38)	103.7940	(40)

1. "Risk levels are defined in four different ways for the four columns of this table. Low, moderate, and high "risk" correspond to the first, second, and third tertiles of the values of log odds of dismissal (col. 1), log odds of active prison (col. 2), log of total active maximum sentence (col. 3), and log of time to earliest release (col. 4) predicted from regression models which included all basic factors (offense severity, number of felony charges, prior convictions, evidence, etc.) but not attorney type, detention time, and plea/trial. (Separate risk scores using only basic factors significant at the .05 level were also computed. The two different risk scores were correlated between .92 and .96.)

2. Low detention time includes all nonzero detention times not exceeding the median nonzero detention time (33 days) for this offense class.

Table 20
Dismissal and Sentence by Detention Time, Controlling for "Risk"[1]
Class 2 Felonies

		All Defendants		Defendants Not Dismissed (Pled Guilty or Went to Trial)					
		(1) Proportion with all Charges Dismissed	(N)	(2) Proportion Receiving Active Time	(N)	(3) Mean Total Active Maximum Sentence	(N)	(4) Mean Time (Months) to Earliest Possible Release	(N)
Low Risk	All Low Risk Defendants	0.6087	(207)	0.1338	(142)	2.2304	(142)	0.3866	(142)
	No pretrial detention	0.7053	(95)	0.0976	(82)	1.5447	(86)	0.3846	(88)
	Low pretrial detention[2]	0.5507	(69)	0.1316	(38)	2.0322	(37)	0.3526	(37)
	High pretrial detention[2]	0.4857	(35)	0.4286	(14)	8.3598	(13)	0.6667	(12)
Moderate Risk	All Moderate Risk Defendants	0.3088	(217)	0.3655	(145)	11.6258	(145)	2.3299	(145)
	No pretrial detention	0.3367	(98)	0.3077	(52)	10.8008	(46)	2.1002	(43)
	Low pretrial detention[2]	0.3036	(56)	0.3617	(47)	9.1421	(53)	1.7696	(51)
	High pretrial detention[2]	0.2593	(54)	0.4762	(42)	17.6092	(40)	3.4951	(45)
High Risk	All High Risk Defendants	0.0574	(209)	0.7659	(141)	48.7152	(141)	10.8173	(141)
	No pretrial detention	0.0735	(68)	0.6818	(22)	31.1763	(24)	6.4772	(25)
	Low pretrial detention[2]	0.0727	(55)	0.6364	(44)	28.9723	(39)	4.7044	(41)
	High pretrial detention[2]	0.0256	(78)	0.8714	(70)	64.2988	(73)	16.2225	(69)

1. "Risk levels are defined in four different ways for the four columns of this table. Low, moderate, and high "risk" correspond to the first, second, and third tertiles of the values of log odds of dismissal (col. 1), log odds of active prison (col. 2), log of total active maximum sentence (col. 3), and log of time to earliest release (col. 4) predicted from regression models which including all basic factors (offense severity, number of felony charges, prior convictions, evidence, etc.) but not attorney type, detention time, and plea/trial. (Separate risk scores using only basic factors significant at the .05 level were also computed. The two different risk scores were correlated between .92 and .96.)

2. Low detention time includes all nonzero detention times not exceeding the median nonzero detention time (15 days) for this offense class.

Table 21
Twelve-County Sample: Sentence by Whether Defendant Pled Guilty or Went to Trial, Controlling for "Risk"[1]
(Ns in Parentheses)

		Percentage Receiving Active Time		Mean Total Active Prison Term in Months		Mean Time to Earliest Possible Release from Prison in Months	
		Class 1	Class 2	Class 1	Class 2	Class 1	Class 2
Low Risk	All Low-Risk Defendants	11% (61)	14% (142)	3.29 (61)	2.23 (142)	.46 (61)	.39 (142)
	Pled guilty or no contest	13% (52)	14% (137)	3.72 (54)	2.31 (137)	.47 (51)	.39 (139)
	Went to trial[2]	0% (9)	0% (5)	.00 (7)	.00 (5)	.40 (10)	.00 (3)
Moderate Risk	All Moderate-Risk Defendants	67% (61)	37% (145)	20.56 (61)	11.63 (145)	4.63 (61)	2.33 (145)
	Pled guilty or no contest	67% (45)	36% (137)	19.51 (46)	11.46 (137)	4.22 (47)	2.27 (134)
	Went to trial[2]	69% (16)	50% (8)	23.76 (15)	14.41 (8)	6.03 (14)	3.08 (11)
High Risk	All High-Risk Defendants	92% (60)	77% (141)	319.46 (60)	48.72 (141)	87.97 (60)	10.82 (141)
	Pled guilty or no contest	93% (45)	75% (122)	284.95 (42)	41.58 (122)	84.71 (44)	9.33 (123)
	Went to trial[2]	87% (15)	89% (19)	399.98 (18)	94.54 (19)	96.96 (16)	20.97 (18)

1. See footnote 1, to Table 20. Exclude defendants whose changes were dismissed.

2. Acquittal treated as "zero sentence."

Figure 1

Felons Who Were Sentenced to Either Prison or Supervised Probation in 1979:
Frequency Distribution of Total Active Maximum Prison Term
(Probation Sentence Treated as Zero)

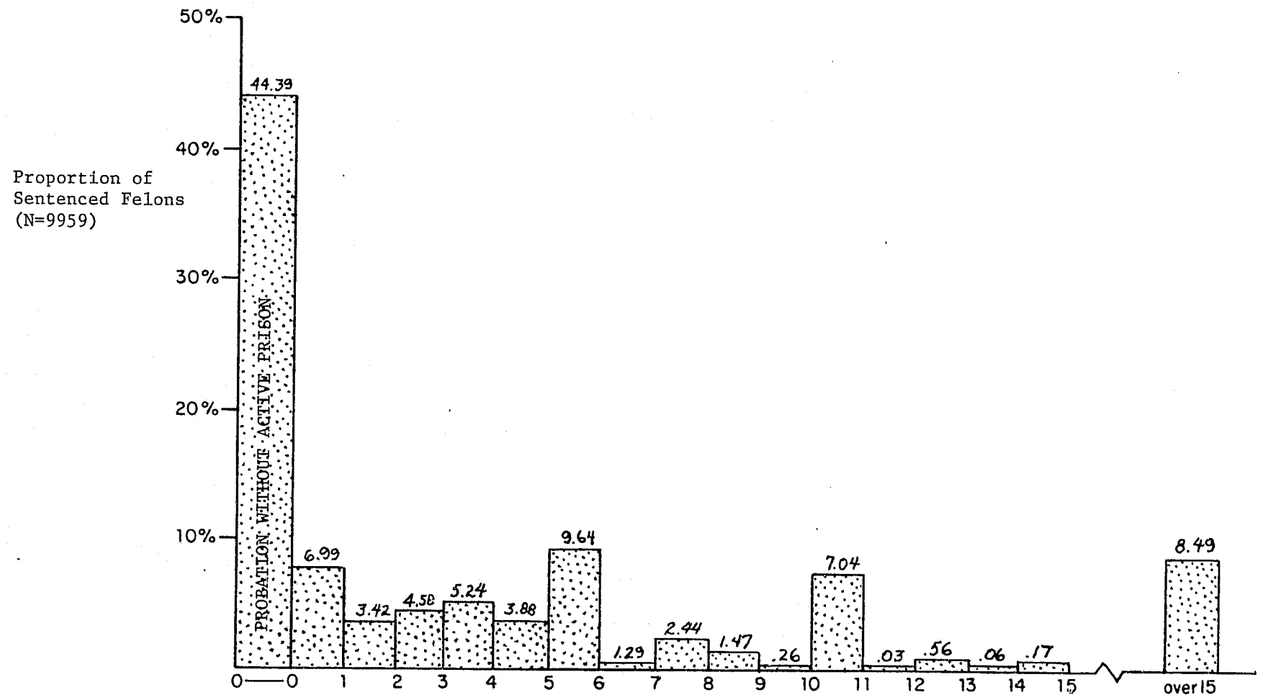


Figure 2

Felons Who Were Sentenced to Either Prison or Supervised Probation in 1979:
Frequency Distribution of Total Active Minimum Prison Term
(Probation sentence and absence of minimum prison term both treated as zero)

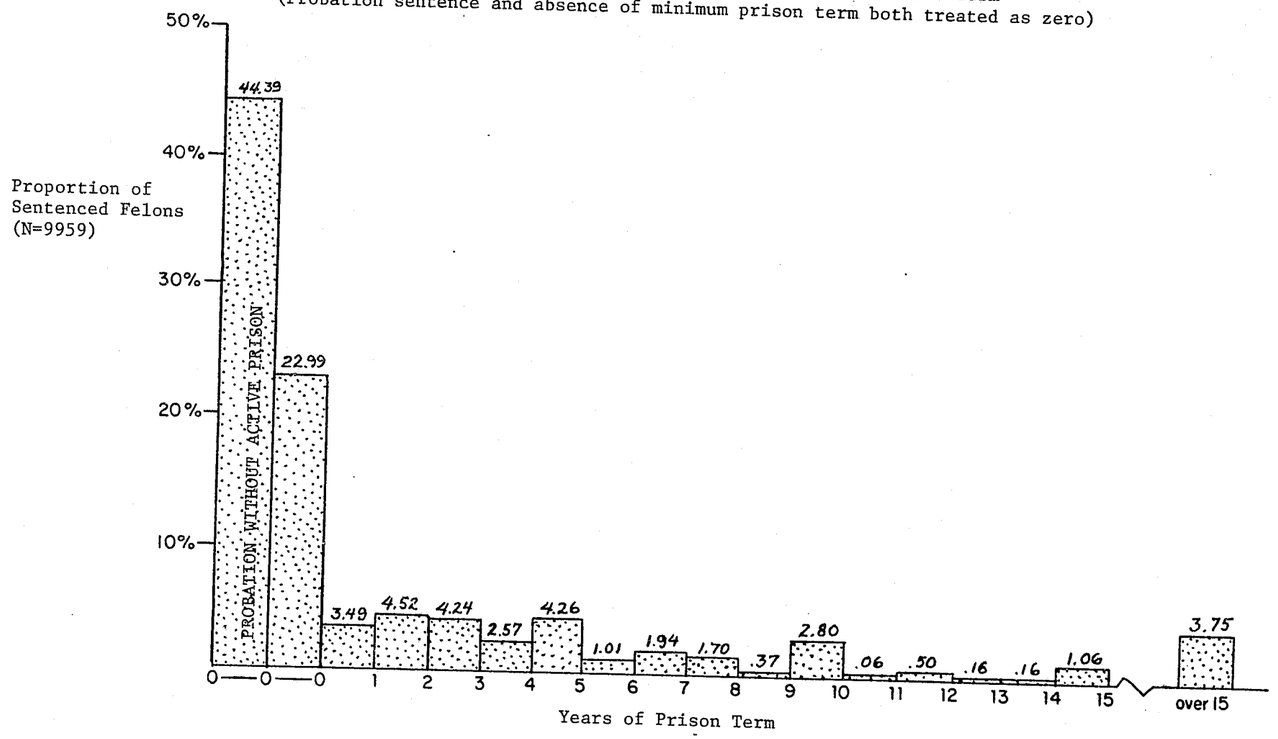


Figure 3

Felons Who Were Sentenced to Prison in 1979:
Frequency Distribution of Total Active Maximum Prison Term

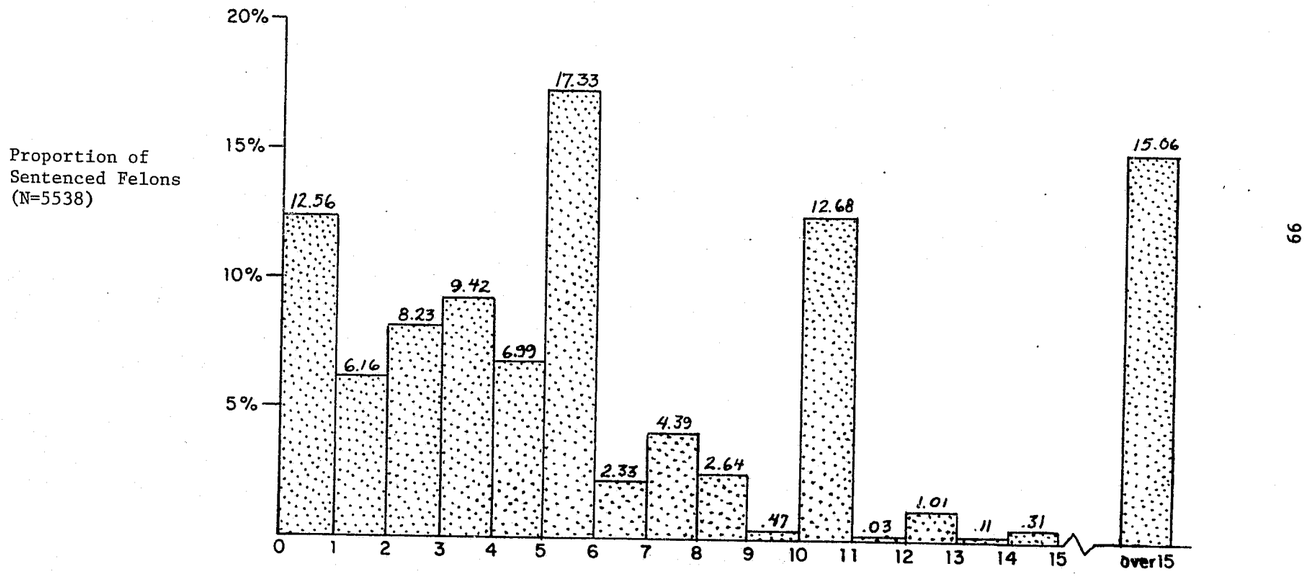


Figure 4

Felons Who Were Sentenced to Prison in 1979:
Frequency Distribution of Total Active Minimum Prison Term

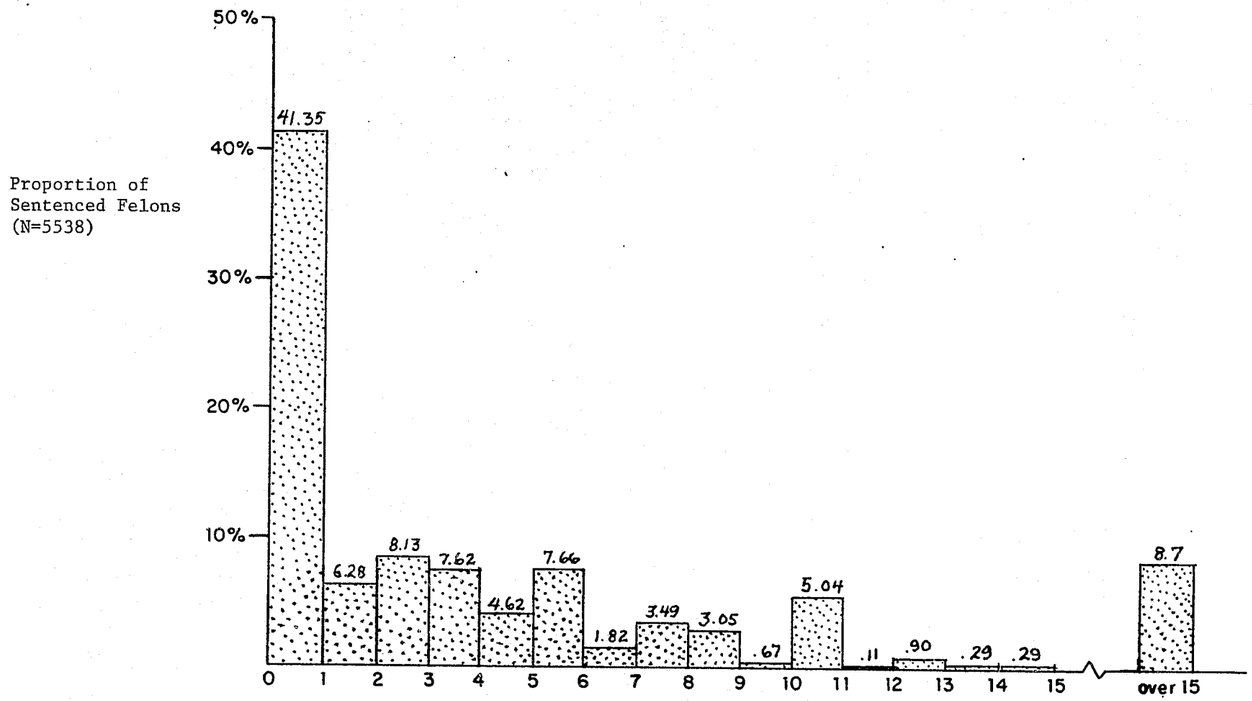


Figure 5
Explanation of "Box and Whisker" Plots

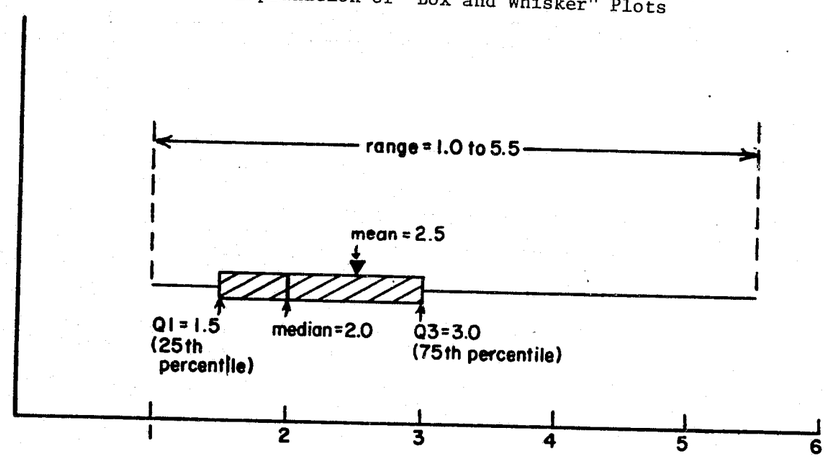


Figure 6
Total Maximum Active Sentence for Defendants
Sentenced to Prison in 1979 and Estimated Years
Before Parole for Inmates Sentenced Under New Fair Sentencing Act
FSA Classes C, D, and F

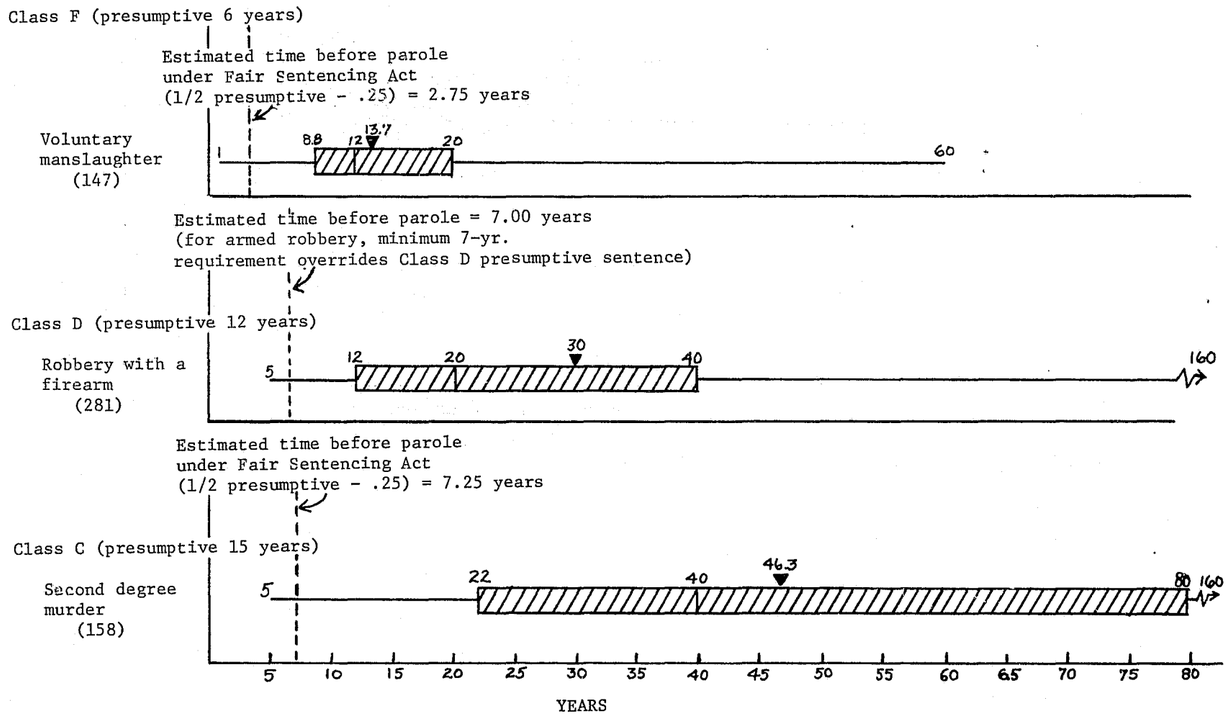


Figure 6 (cont'd)
Total Maximum Active Sentence for Defendants
Sentenced to Prison in 1979 and Estimated
Years Before Parole for Inmates Sentenced Under New Fair Sentencing Act
FSA Class H

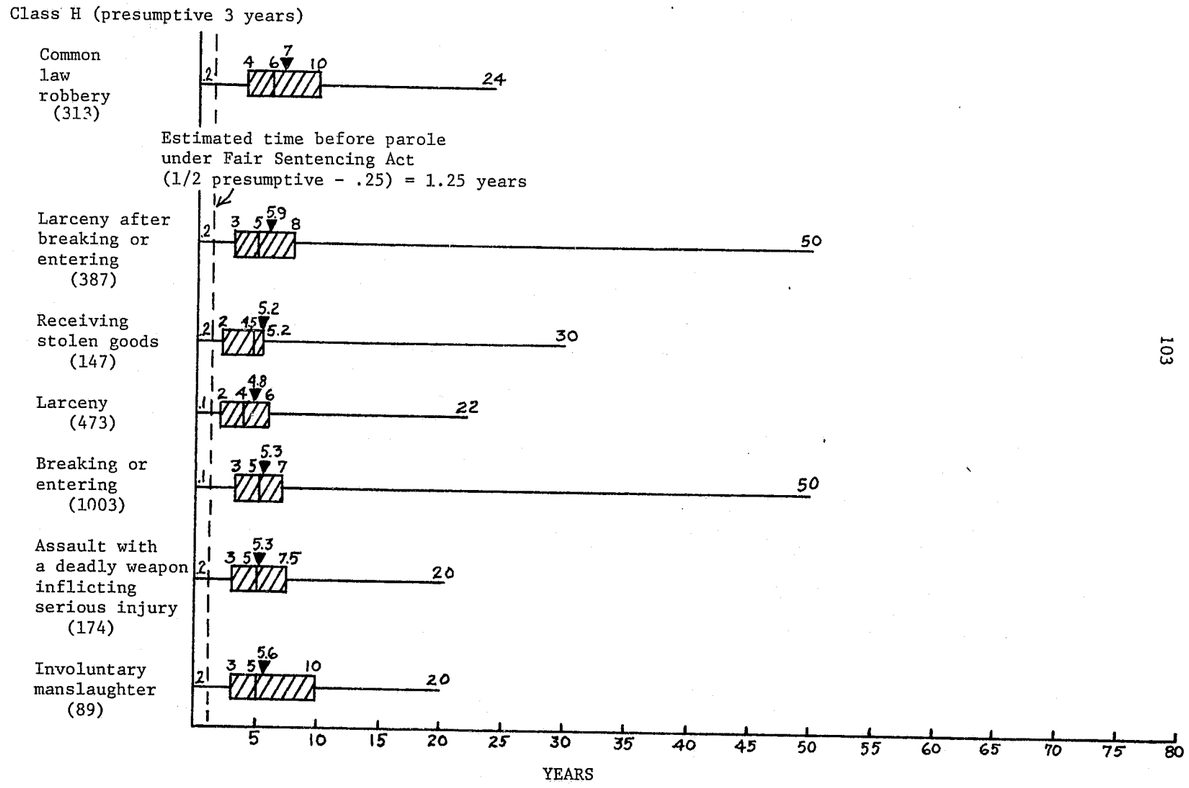


Figure 6 (cont'd)
Total Maximum Active Sentence for Defendants
Sentenced to Prison in 1979 and Estimated Years
Before Parole for Inmates Sentenced Under New Fair Sentencing Act
FSA Classes I and J

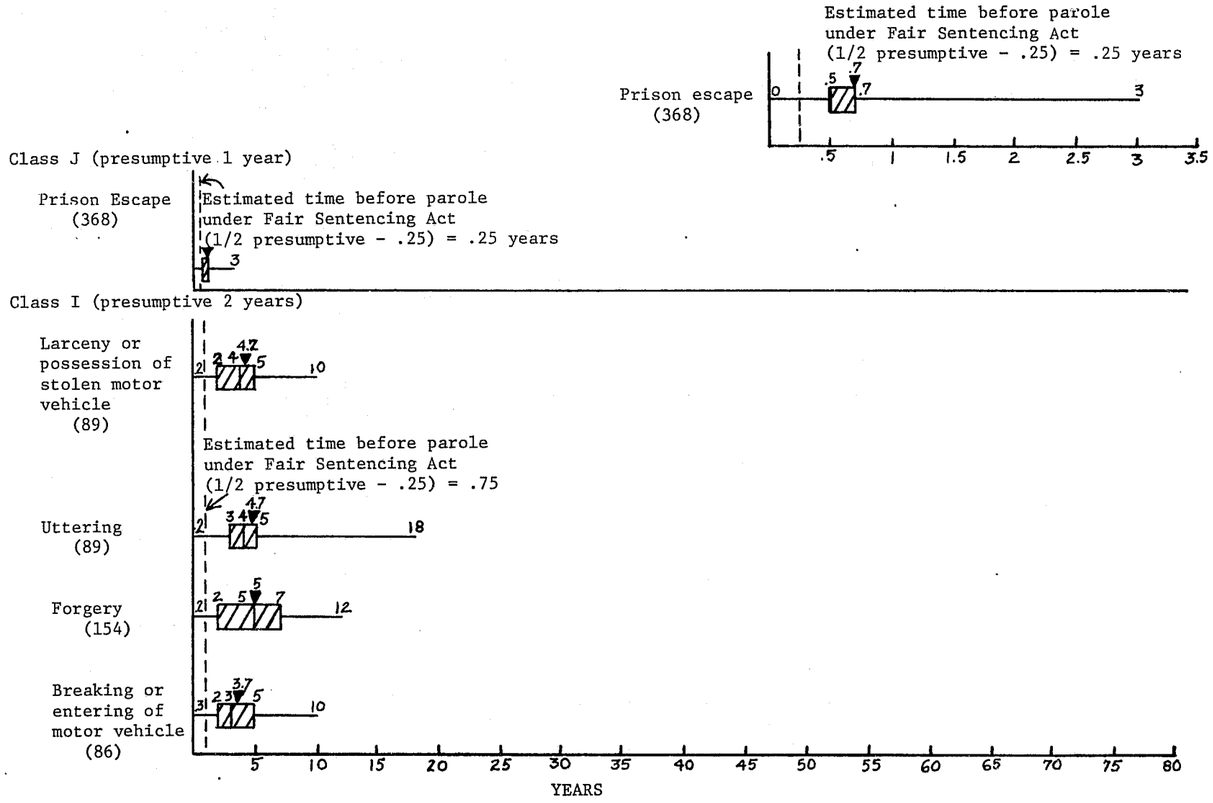


Figure 7
Total Minimum Active Sentence for Defendants
Sentenced to Prison in 1979 and Estimated Years to Parole
FSA Classes C, D, and F

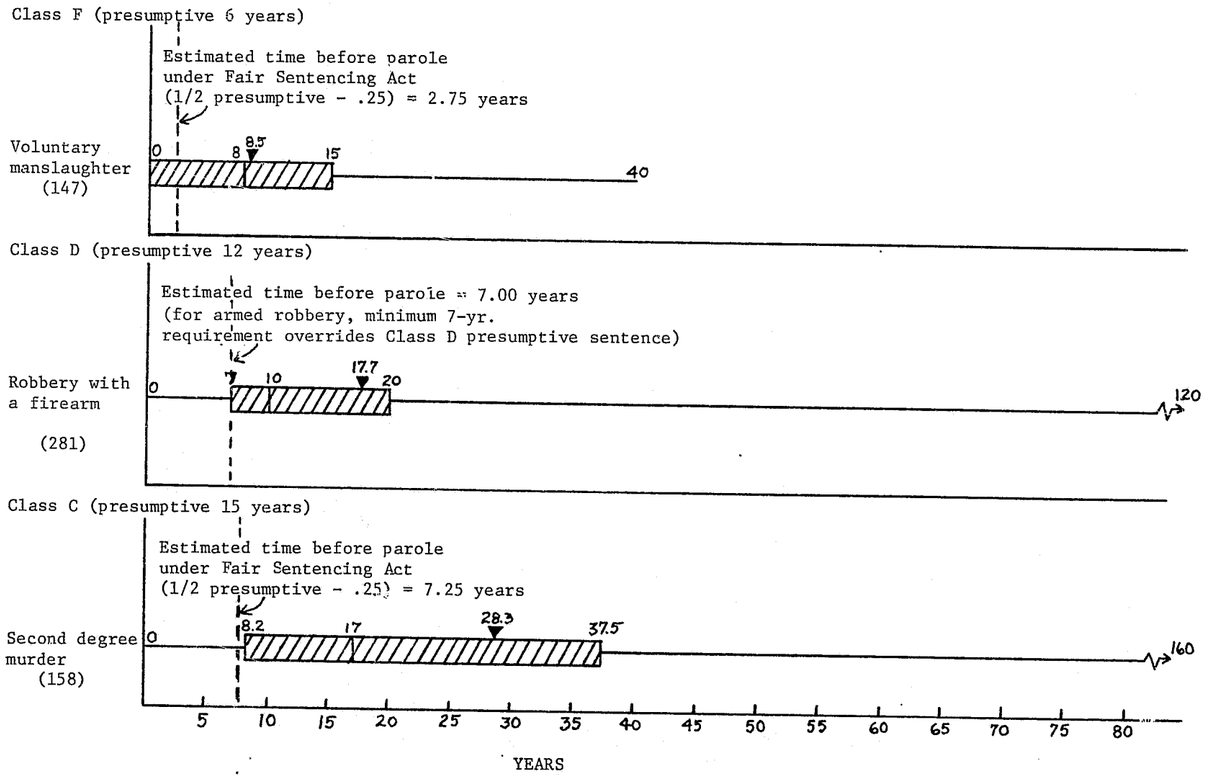


Figure 7 (cont'd)
Total Minimum Active Sentence for Defendants
Sentenced to Prison in 1979 and Estimated Years to Parole
Under New Fair Sentencing Act
FSA Class H

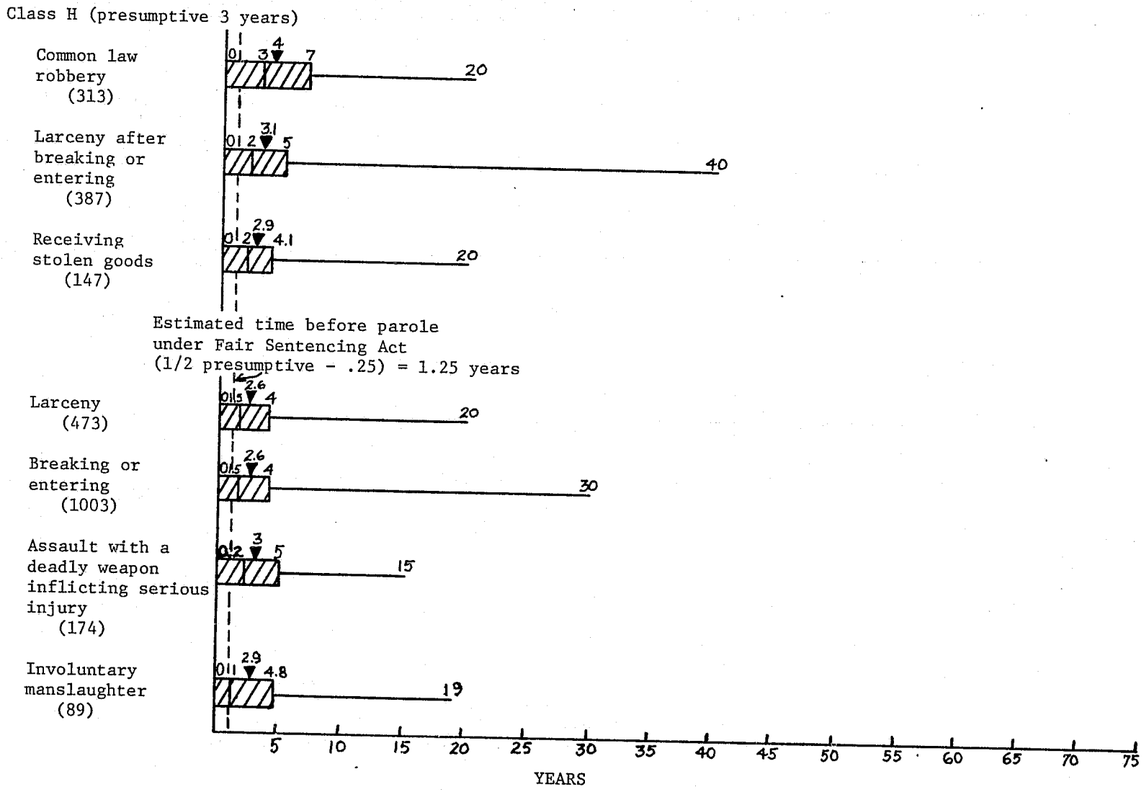


Figure 7 (cont'd)
Total Minimum Active Sentence for Defendants
Sentenced to Prison in 1979 and Estimated Years
to Parole Under New Fair Sentencing Act
FSA Classes I and J

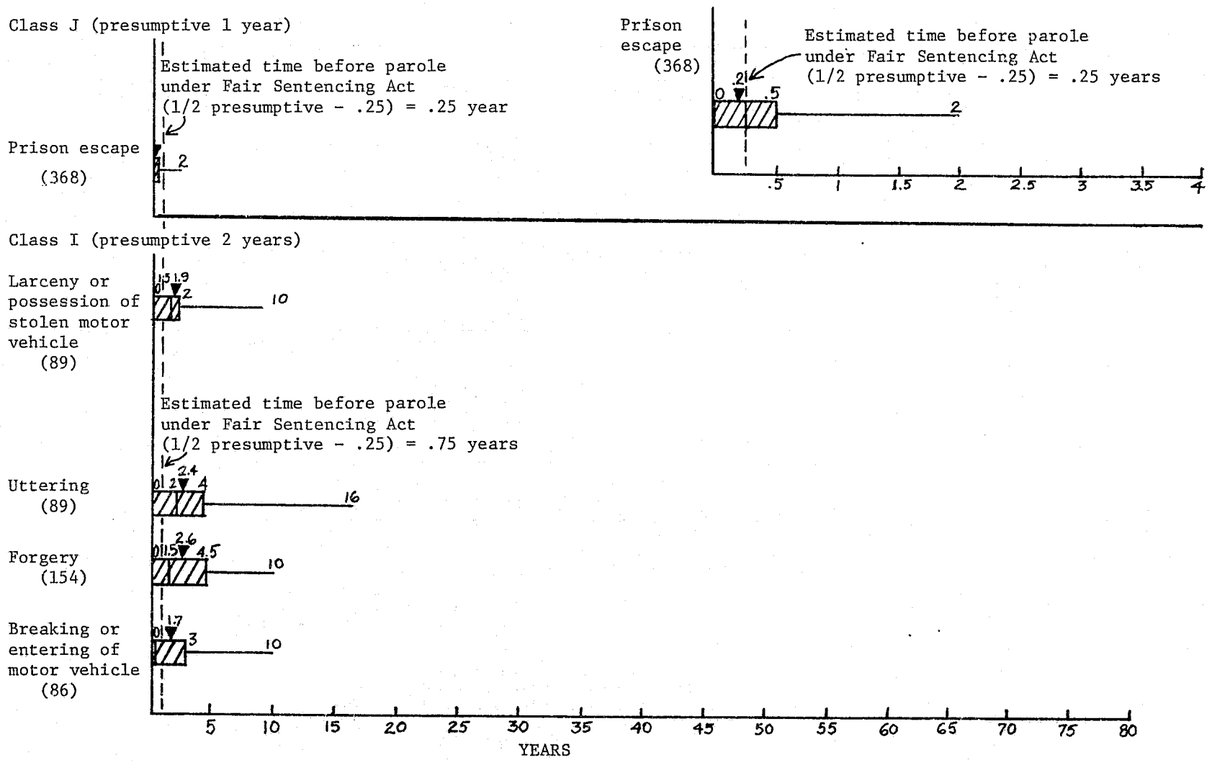


Figure 8

Prison Years Served for Felons in North Carolina: Inmates Released in 1980 and Estimated Years Before Parole for Inmates Sentenced Under New Fair Sentencing Act FSA Classes C, D, F, and G

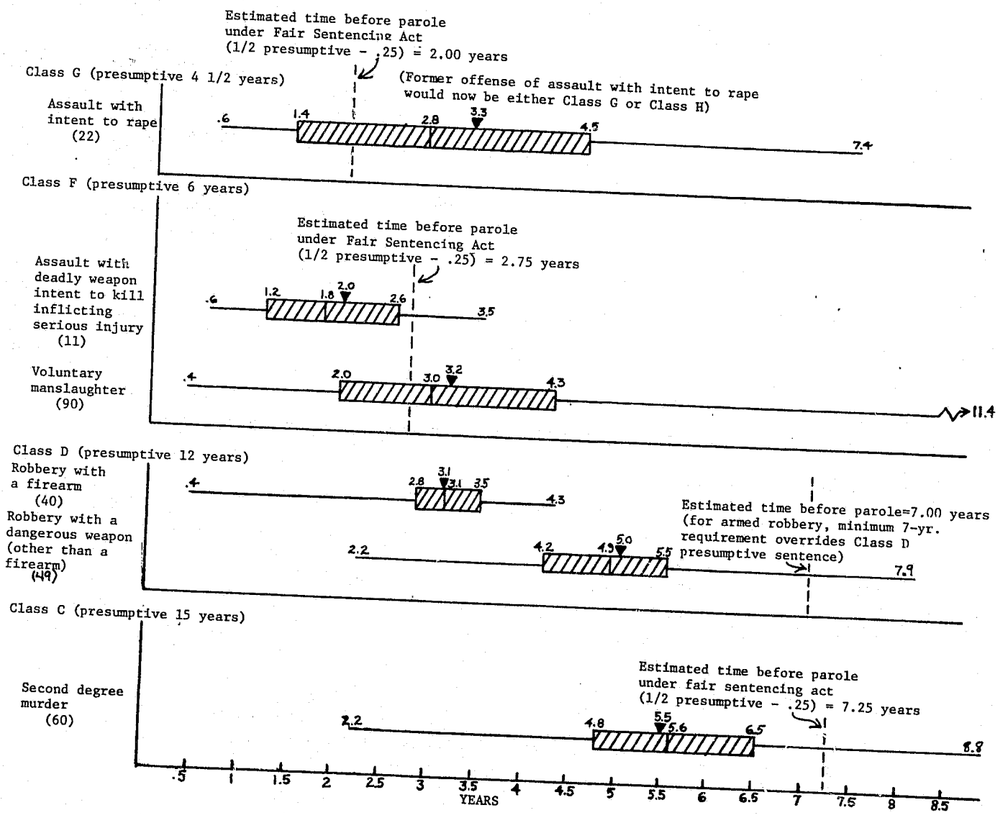


Figure 8 (cont'd)
Prison Years Served for Felons in North Carolina: Inmates Released in 1980 and Estimated Years Before Parole for Inmates Sentenced Under New Fair Sentencing Act
FSA Class H

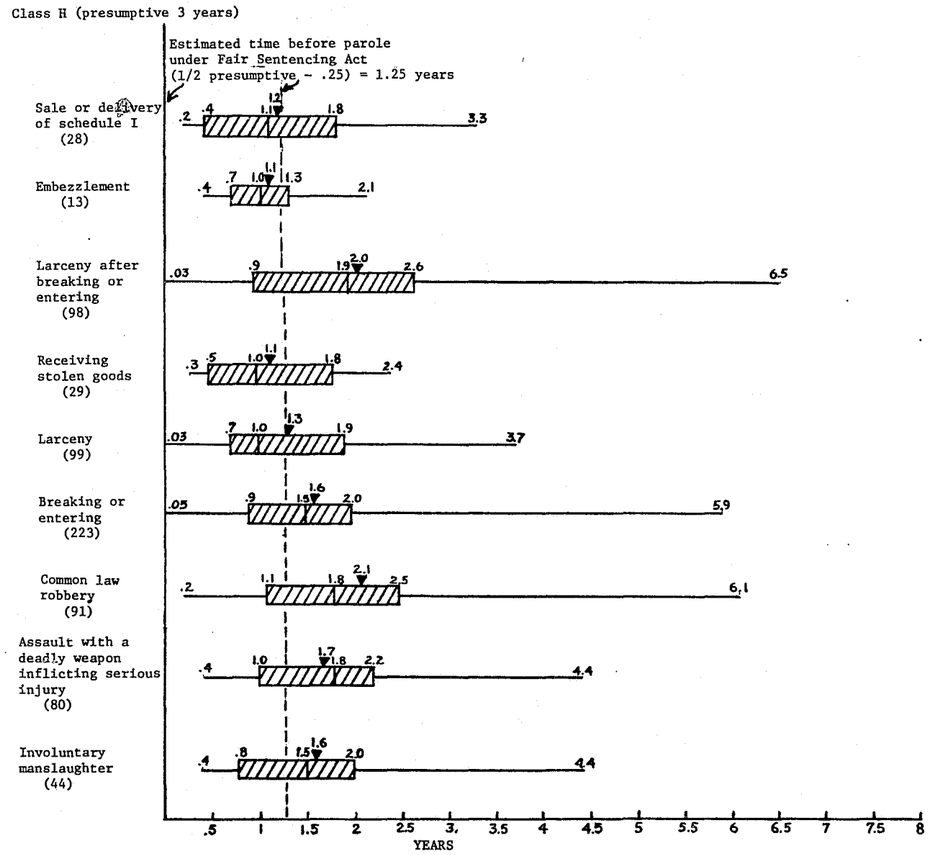


Figure 8 (cont'd)
Prison Years Served for Felons in North Carolina: Inmates Released in 1980 and Estimated Years Before Parole for Inmates Sentenced Under New Fair Sentencing Act
FSA Class I

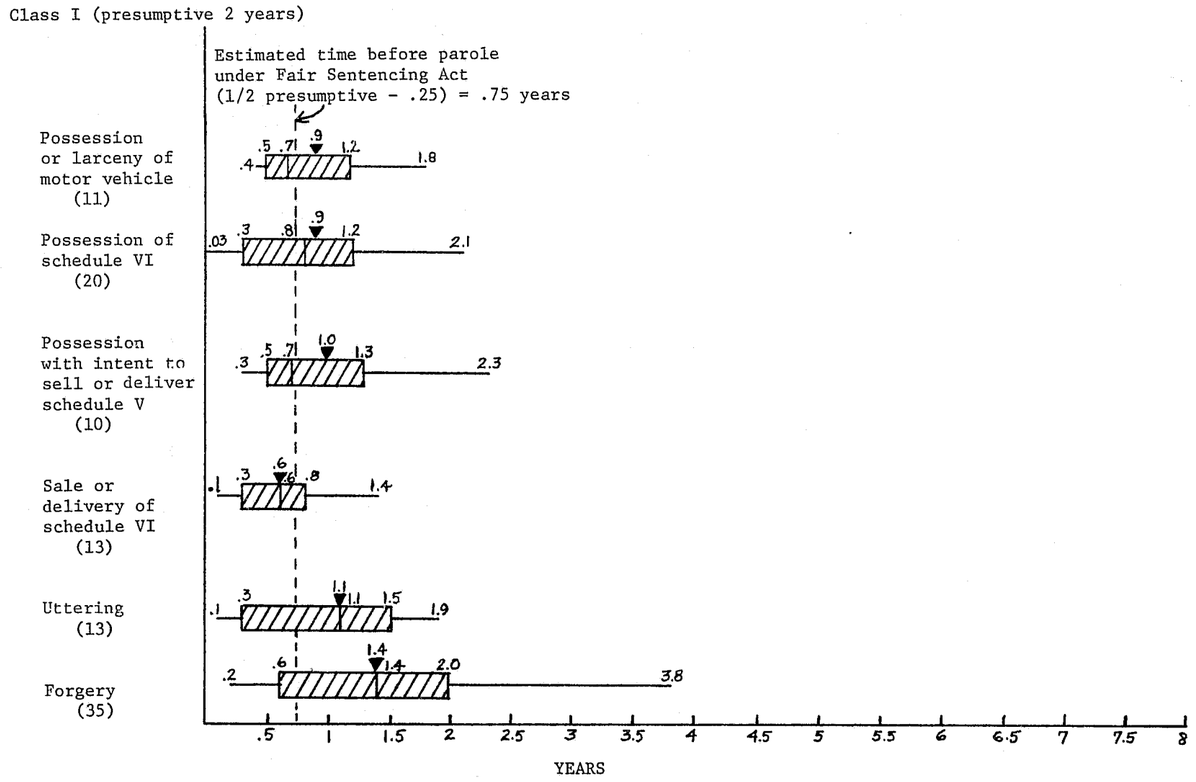


Figure 9
Court Processing Diagram: Twelve Counties, 1979

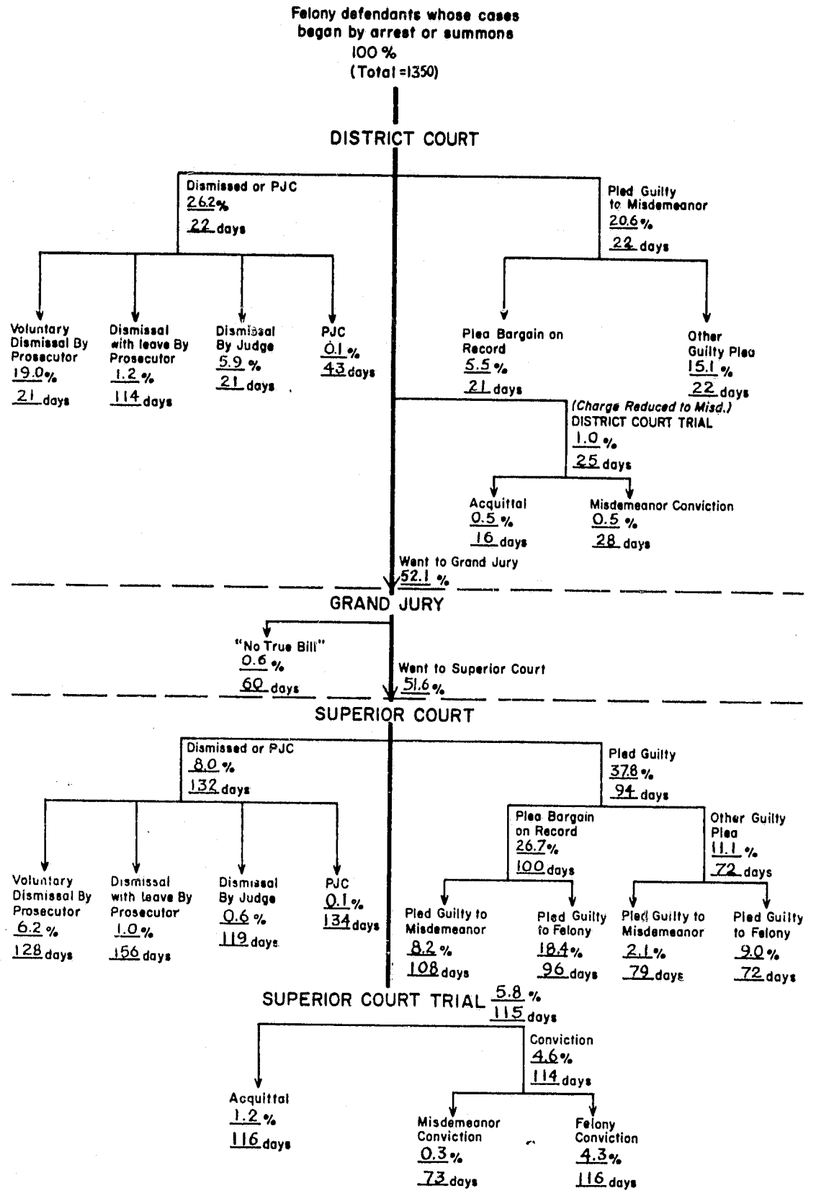


Figure 10
Court Processing Diagram: Buncombe County, 1979

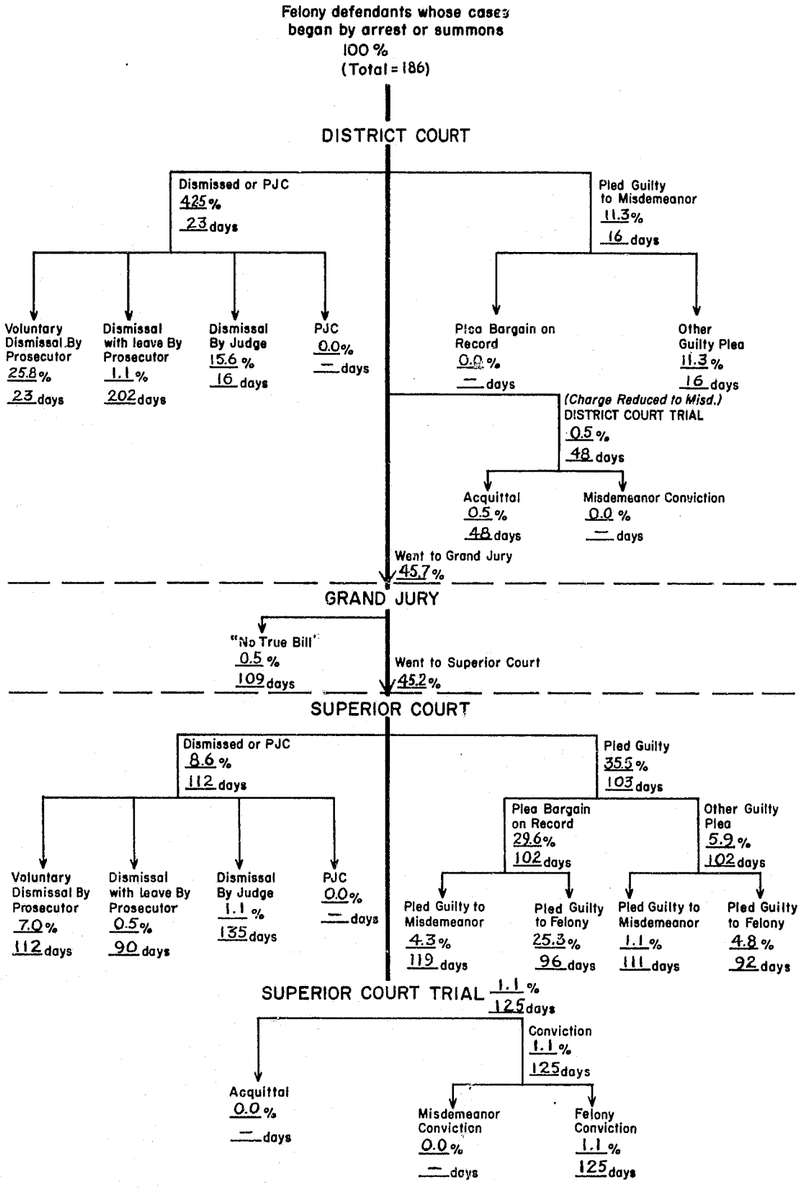


Figure 11.
Court Processing Diagram: Mecklenburg County, 1979

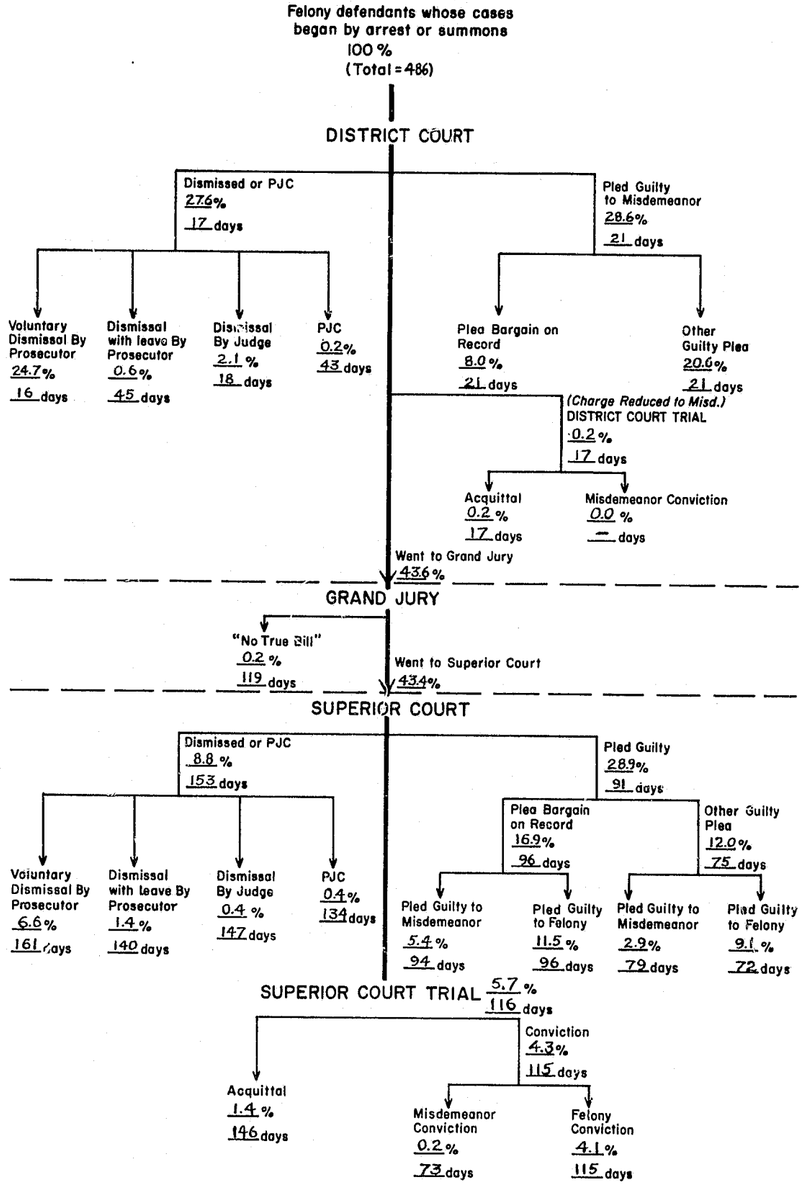


Figure 12.
Court Processing Diagram: New Hanover County, 1979

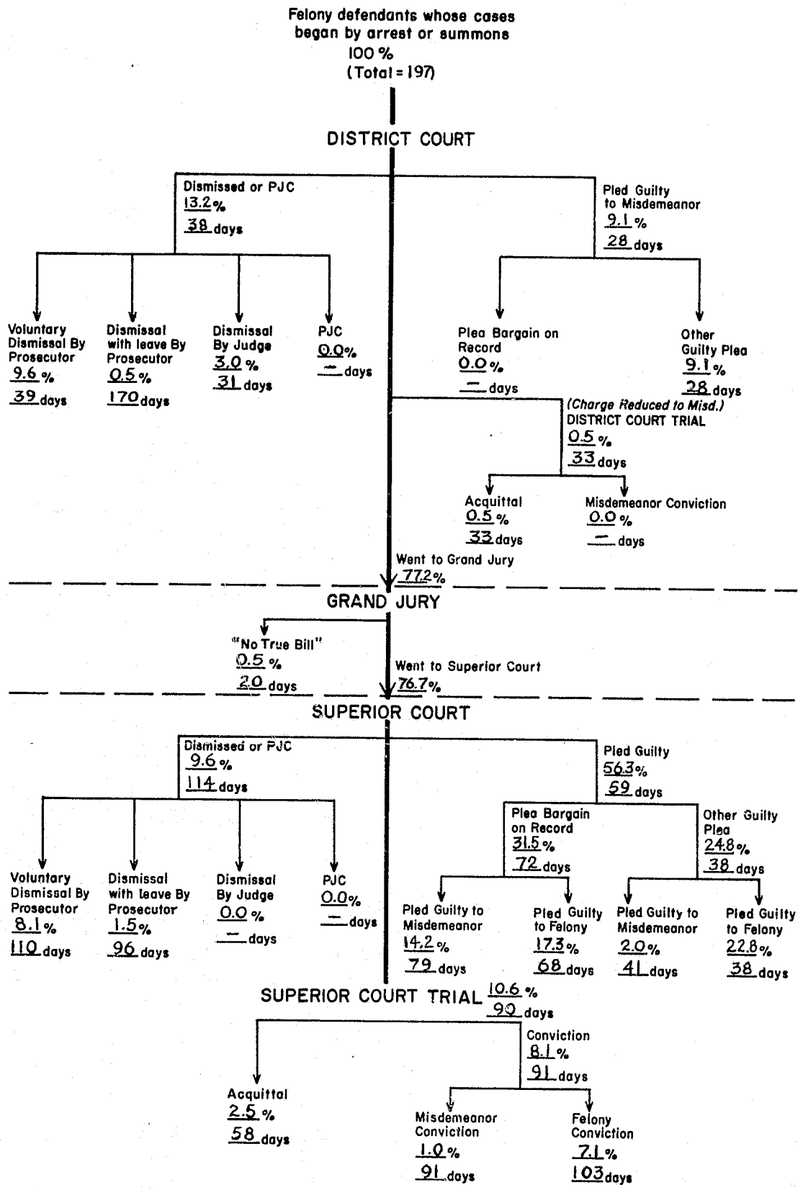


Figure 13
Court Processing Diagram: Craven County, 1979

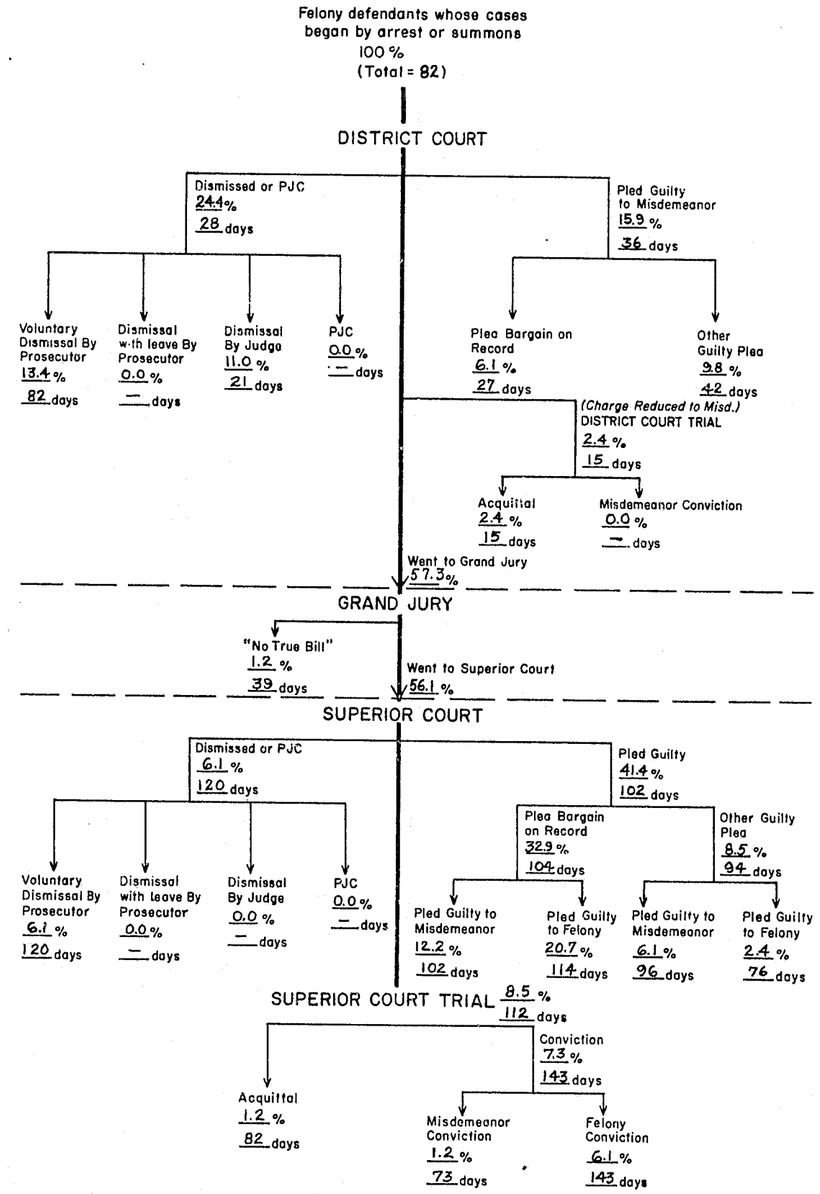


Figure 14
Court Processing Diagram: Rockingham County, 1979

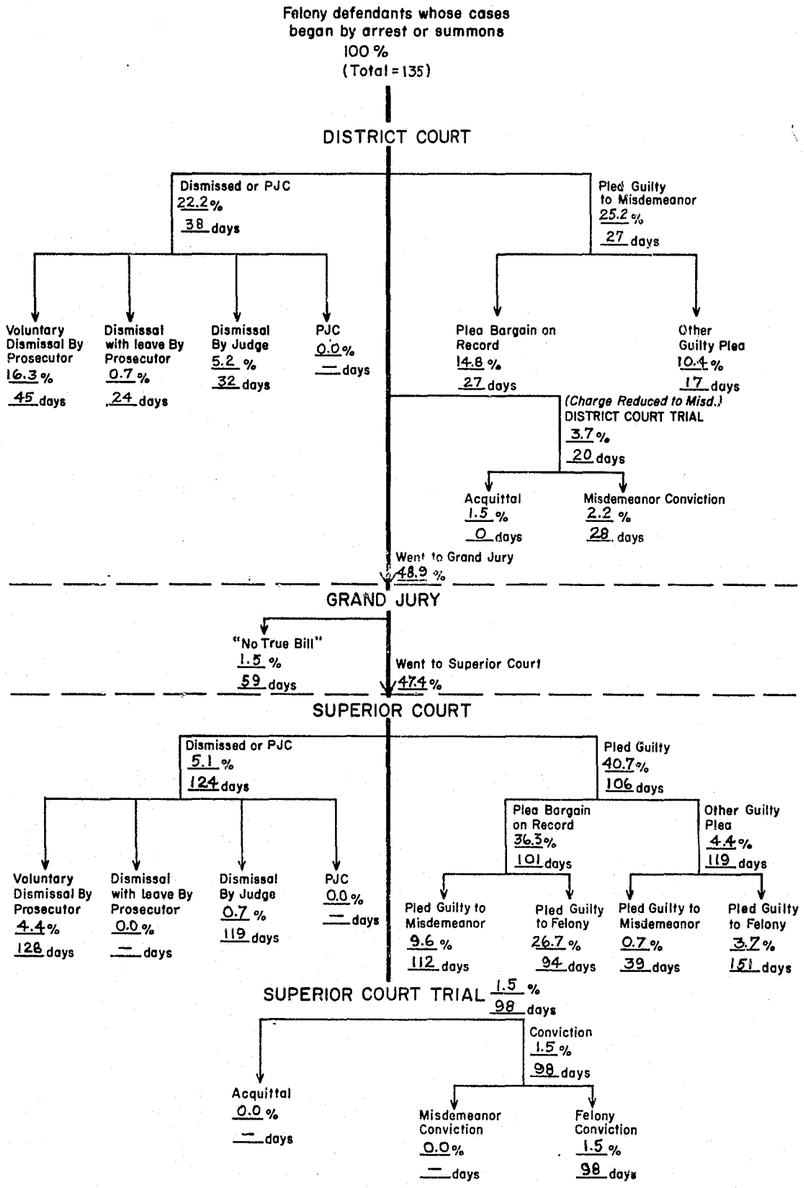


Figure 15
Court Processing Diagram: Seven Small Counties, 1979
(Anson, Cherokee, Granville, Harnett, Pasquotank, Rutherford, Yancey)

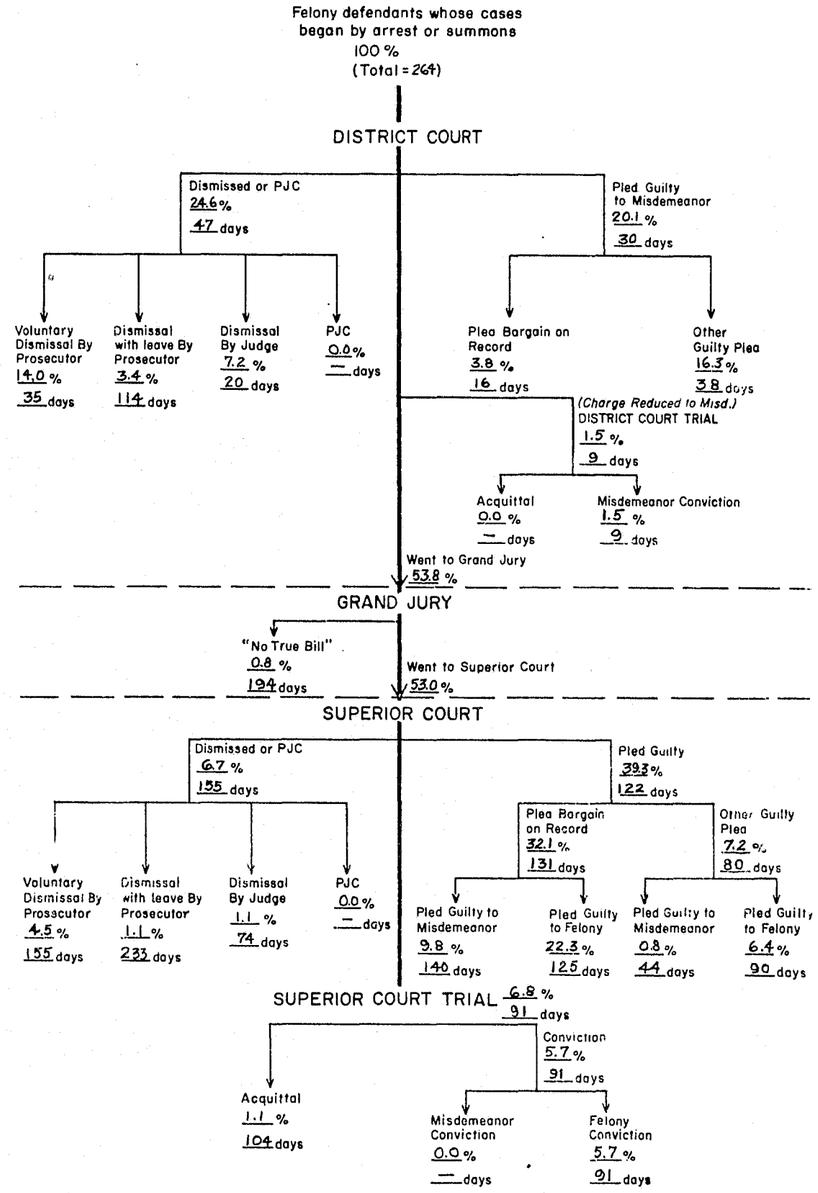
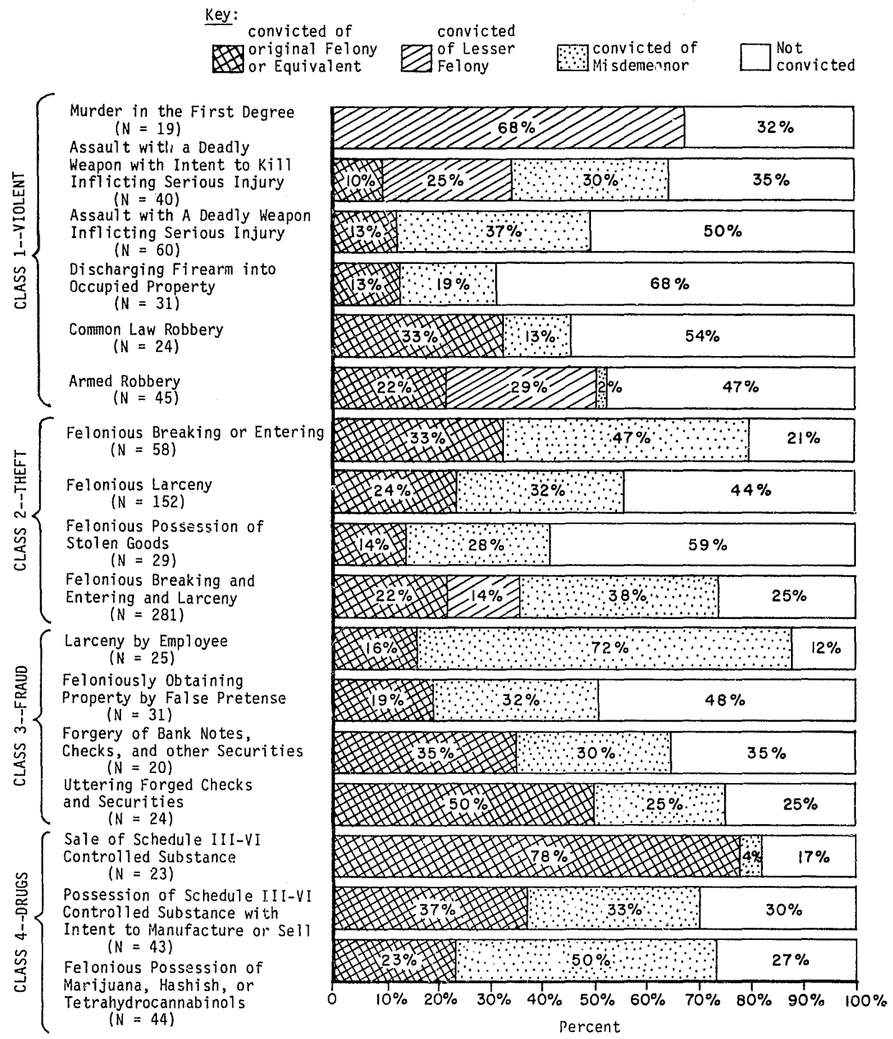


Figure 16.

Charge Reduction (Twelve-County Sample)



Appendix 1

THE FAIR SENTENCING ACT

The Fair Sentencing Act

THE FAIR SENTENCING ACT, also called the presumptive sentencing law, was originally enacted as Chapter 760 of the 1979 Session Laws, but it was much revised before it went into effect. It was amended in 1980 and again, several times, in 1981. The information presented here is current as of the end of the 1981 legislative session.

The Act in General

The act applies only to felonies committed on or after July 1, 1981. It classifies felonies according to maximum prison terms, most of which are the same as under former law. It sets a "presumptive" (i.e., standard) prison term for each felony other than first-degree murder, rape, and sexual offense; the sentencing judge must impose this presumptive term unless he states in writing why he imposed a different term (but plea-bargained sentences are exempt from this requirement). The act preserves the judge's discretion to suspend a prison term, impose probation supervision, sentence a defendant under 21 as a committed youthful offender (CYO) with eligibility for parole at any time, and impose consecutive sentences for multiple offenses--all of which the judge can still do--without stating reasons. The act facilitates appellate review of felony sentences, as explained below. It abolishes parole for felons except for (1) CYO parole, (2) parole from a life sentence, and (3) "re-entry" parole (explained in detail below). It grants day-for-day "good time" credit toward service of a felony prison term for avoiding serious misconduct while in prison and allows the Secretary of Correction to grant additional "gain time" credit toward the service of the prison term.

History of the Act

The Fair Sentencing Act was originally drafted in 1975 and 1976 by the General Assembly's Commission on Correctional

Programs ("Knox Commission"). The Knox Commission's goal was to deter crime by punishing criminals more fairly and predictably. The Commission sought to increase the fairness and certainty of punishment by narrowing and guiding the discretion of sentencing judges and eliminating the Parole Commission's discretion in releasing prisoners. The Knox Commission's original bill, sponsored by Governor Hunt, died in committee in 1977. Perceiving considerable opposition to the bill from judges and lawyers, the Governor asked the North Carolina Bar Association to redraft it. The Association complied in 1978 by setting up a Special Committee on Sentencing, which included a number of members of the former Knox Commission. The Bar Committee made only minor changes, except for taking out the list of specific aggravating and mitigating factors. The revised bill was approved by the Bar Association Board of Governors in January 1979. Before the bill was introduced in the 1979 General Assembly session, the Governor's staff restored the list of specific aggravating and mitigating factors as well as the seven-year mandatory minimum prison stays for burglary, armed robbery, and repeat felonies with a deadly weapon, originally enacted in 1977, which both the Knox Commission and the Bar Association had recommended be repealed. The revised Bar Association bill was enacted by the 1979 General Assembly, with revisions like these: entering a plea of guilty pursuant to a formal plea arrangement was made a mitigating factor, and the presumptive prison term for Class H felonies (by far the largest class because it includes felonious breaking or entering, larceny, and receiving and possession of stolen goods) was reduced from four to 3 1/2 years. The original effective date of the act (N.C. Sess. Laws 1979, Ch. 760) was July 1, 1980.

Early in 1980, before the original bill was to go into effect, the Governor and the Chief Justice of the Supreme Court appointed a Sentencing Procedures Committee, with several responsibilities: (1) to draft needed technical amendments to the act; (2) to develop new sentencing procedures to be used by superior court judges in implementing the act; (3) to develop guidelines for sentencing convicted felons that were compatible with the act's provisions (the intent was to consider criteria for decisions like suspension of sentence that were not covered by the act); and (4) to review and monitor the effect of the act on the criminal justice system and recommend modifications to the act if needed. (About the same time, the Governor's Crime Commission began an extensive study of disposition of felony charges in order to examine sentencing and plea-bargaining practices before and after the act became effective; this study is expected to be completed by the end of 1982.) The Sentencing Procedures Committee presented a package of amendments supported by the Governor that was introduced in the June 1980 session. The strictly technical amendments passed,

but the more substantive amendments failed; also, the effective date of the act was put off until March 1, 1981. The Committee's remaining amendments were reintroduced in the 1981 session. They included (1) exemption of "plea arrangements as to sentence" from the requirement that the judge state reasons for a nonpresumptive prison term (this passed); (2) elimination of postconviction motions and appeals as of right on whether the sentence was supported by the evidence (this failed--in fact, the right to appeal was expanded to include greater-than-presumptive sentences imposed after a guilty plea when there are judicial findings--i.e., where there is no "plea arrangement as to sentence"); (3) clarification and extension of the list of aggravating and mitigating factors, including treating the defendant's prior convictions as just one of sixteen aggravating factors whose importance is weighed by the judge[1] (this passed); and (4) standards of proof of factors (this also passed). The amending bill (Ch. 571, S 72) ran into opposition in the House from members concerned about rapidly increasing prison population and costs. To meet this opposition, the Governor appointed a study commission to review sentencing severity in North Carolina, and agreed to a reduction of presumptive prison terms by about 25 per cent for Class C through H felonies. This last change was thought necessary to prevent a short-term exacerbation of the rapid increase in the prison population that the Department of Correction's research staff said might otherwise be caused by the act.

Maximum and Presumptive Sentences

The act establishes ten penalty classes for felonies--Classes A through J. For eight of these classes (C through J), it sets a maximum prison term (for most felonies, this maximum is the same as the present maximum), allows fines, and sets a presumptive prison term. The maximums and presumptives are shown in the list of penalty classes below.[2]

Class A: Death or life imprisonment. Includes only first-degree murder. The present capital sentencing law (G.S. Ch. 15A, Art. 100) is unchanged. If the offender is sentenced to life, he is eligible for parole after serving 20 years.

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1. In the original Knox Commission bill and Chapter 760 of the 1979 Session Laws, prior felony convictions were treated differently from other aggravating factors: The presumptive term for each class of felonies was incremented by specific amounts depending on the type and number of prior felony convictions. The 1981 amendments removed these increments and simply added prior convictions to the list of aggravating factors.

2. There are several exceptions to this general scheme. (1) The drug-trafficking offenses created by N.C. Sess. Laws 1979, 2d sess. 1980, Ch. 1251,

Class B: Mandatory life imprisonment. Includes only first-degree rape and sexual offense. The offender becomes eligible for parole after serving 20 years.

Class C: Life term (with parole eligibility after serving 20 years) or maximum of 50 years, presumptive 15 years. Includes (among others) second-degree murder; first-degree burglary; and arson of an occupied dwelling (now called first-degree arson). (All except one of the Class C felonies--possession, etc., of 28 grams or more of an opiate--were formerly punishable by life or up to life.)

Class D: Maximum 40 years, presumptive 12 years. Includes (among others) second-degree burglary, rape, and sexual offense; arson of an unoccupied dwelling (now called second-degree arson); armed robbery; and first-degree kidnapping [kidnapping as defined by G.S. 14-39 when (1) the victim is not released in a safe place, or (2) the victim is sexually assaulted or seriously injured]. (Class D felonies were formerly punishable by life, up to life, or at least 40 years.)

Class E: Maximum 30 years, presumptive nine years. Includes (among others) second-degree kidnapping (kidnapping as defined by G.S. 14-39, when the victim is released in a safe place without being sexually assaulted or seriously injured); burning public buildings; and delivery of a controlled substance to a person under 16. (Most Class E felonies were formerly punishable by up to 30 years.)

Class F: Maximum 20 years, presumptive six years. Includes (among others) voluntary manslaughter; assault with a deadly weapon with intent to kill and inflicting serious injury; and attempted first-degree rape and sexual offense. (Most Class F felonies were formerly punishable by up to 20 years.)

Class G: Maximum 15 years, presumptive four and one-half years. Includes (among others) abduction of children; incest; and intercourse with a minor by a substitute parent or custodian. (Most Class G felonies were formerly punishable by up to 15 years.)

Class H: Maximum 10 years, presumptive three years. Includes (among others) safecracking; common law robbery; attempt to commit burglary and certain other felonies; involuntary manslaughter; assault with a deadly weapon

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set out in the Editor's Note to G.S. 90-95(h) in the 1980 Interim Supplement to the General Statutes, are assigned to penalty classes, but they actually carry mandatory minimum prison terms longer than the presumptive terms for their classes. (2) For the following offenses, a suspended sentence is forbidden, and the mandatory minimum prison term is 14 years, with service of at least seven years required: armed robbery (assigned to Class D); first-degree burglary (assigned to Class C); second-degree burglary (assigned to Class D); and being a habitual felon (assigned to Class C--see G.S. 14-7.1 through -7.6). (3) For a repeated felony with a deadly weapon, which is not assigned to any class, the mandatory minimum prison term is 14 years, with service of at least seven years required, and a suspended or CYO sentence is forbidden.

inflicting serious injury or with intent to kill; felonious breaking or entering; felonious larceny; felonious possession or receiving of stolen goods; embezzlement; and manufacture or sale of a Schedule I or II controlled substance. (Most Class H felonies were formerly punishable by up to 10 years.)

Class I: Maximum five years, presumptive two years. Includes (among others) assault with a deadly weapon on a law enforcement officer; forgery and uttering; manufacture or sale of Schedule III-VI controlled substances; simple possession of a Schedule I controlled substance; and welfare and Medicaid fraud. (Most Class I felonies were formerly punishable by up to five years.)

Class J: Maximum three years, presumptive one year. Includes (among others) financial-transaction card theft and fraud; forgery of a financial-transaction card; felonious prison escape; and all felonies not specifically classified by the act, including conspiracy to commit a felony. (Most Class J felonies were formerly punishable by up to three years.)

Sentencing for a Class C through J Felony

Except as noted in the next paragraph, the sentencing judge must impose the presumptive prison term for a Class C through J felony unless he finds aggravating or mitigating factors. A minimum term, allowed under former law, may not be imposed; only a single (maximum) term may be imposed. No written findings are required if the presumptive term is imposed. If the judge imposes a prison term longer than the presumptive term, he must find that aggravating factors outweigh mitigating ones, and if he imposes a term less than the presumptive term, he must find that mitigating factors outweigh aggravating ones. If the term imposed differs from the presumptive term, "the judge must specifically list in the record each matter in aggravation or mitigation that he finds proved by a preponderance of the evidence." These written findings must be made for any prison term different from the presumptive, even if the judge suspends the term and even if he sentences the defendant as a CYO. But no findings need be made for a judge's decision to: (1) suspend a prison term with or without probation supervision; (2) impose consecutive prison terms for multiple offenses; and (3) sentence the defendant as a CYO (which makes him eligible for parole at any time).

There is an important exception to the requirement of judicial findings for a nonpresumptive prison term. If the judge "imposes a prison term pursuant to any plea arrangement as to sentence under Article 58 of this Chapter [15A], regardless of the length of the term . . .," he need not make

any findings regarding aggravating and mitigating factors. What is a "prison term pursuant to any plea arrangement as to sentence under Article 58"? Ultimately this issue must be resolved by litigation. The only mentions of such plea arrangements in Article 58 are as follows. G.S. 15A-1021(a) provides that the prosecution and defense may discuss "the possibility that, upon the defendant's entry of a plea of guilty or no contest to one or more offenses, the prosecutor . . . will recommend or not oppose a particular sentence." G.S. 15A-1021(c) allows the parties to notify the judge of "a proposed plea arrangement in which the prosecutor has agreed to recommend a particular sentence" before the plea is tendered, so that the judge can tell them whether he will accept the arrangement. G.S. 15A-1023 provides that a "plea arrangement in which the prosecutor has agreed to recommend a particular sentence" must be approved by the judge, who "must advise the parties whether he approves the arrangement and will dispose of the case accordingly" (if the judge rejects the arrangement, the defendant may withdraw his plea and obtain a continuance until the next session of court). G.S. 15A-1024 states that if "at the time of sentencing, the judge for any reason determines to impose a sentence other than provided for in a plea arrangement between the parties," he must tell the defendant, who may withdraw his plea and obtain a continuance until the next court session. The question posed by the "plea arrangement as to sentence" language of the Fair Sentencing Act is whether the exception to the judicial-findings requirement applies only to plea arrangements in which the prosecutor agrees to recommend a <u>particular</u> sentence--such as "five years," for example--or whether it also includes plea arrangements involving "less particular" recommendations like "not more than five years" and perhaps arrangements in which the prosecutor simply agrees not to oppose a particular sentence.

What factors does the judge consider in imposing a prison term? He <u>may</u> consider evidence of any aggravating or mitigating factor that is "reasonably related to the purposes of sentencing," whether or not it is specifically listed in the act. [The act declares the purposes of sentencing to be: (1) punishment commensurate with the injury caused by the offense; (2) protection of the public by restraining offenders; (3) rehabilitation of offenders; and (4) deterrence of crime.] The judge <u>must</u> consider any evidence of each of sixteen specific aggravating factors listed in the act, such as the defendant's record of convictions of offenses punishable by more than 60 days; whether the offense was "especially heinous, atrocious, or cruel"; and whether the victim was very young, old, or mentally or physically infirm [see G.S. 15A-1340.4(a)(1)]. The judge <u>must</u> also consider any evidence of each of fourteen specific mitigating factors listed in the

act, such as whether the defendant had a conviction record; whether he was immature or had limited mental capacity; and whether he committed the offense under duress [see G.S. 15A-1340.4(a)(2)]. The act forbids dual use of evidence by providing that (a) evidence necessary to prove an element of the offense may not be used to prove any aggravating factor, and (b) the same item of evidence may not be used to prove more than one aggravating factor. Also, the defendant's exercise of his right to a jury trial may not be considered as an aggravating factor.

How are aggravating and mitigating factors to be proved? The act provides guidance only with respect to proving a prior conviction: A prior conviction may be proved by stipulation, by the original record, or by a certified copy of the original record (which the act makes prima facie evidence of a conviction). No conviction may be considered unless the defendant either was represented by counsel or waived counsel with respect to it. The defendant may move to suppress evidence of a prior conviction pursuant to G.S. Ch. 15A, Art. 53; if this motion is made for the first time during the sentencing hearing, both parties are entitled to a continuance of the hearing.

The act provides no directions--other than those already mentioned--with respect to how evidence on which the judge bases his findings of aggravating and mitigating circumstances is to be adduced. The act leaves untouched the present law (G.S. Ch. 15A, Art. 81) regarding presentence reports: G.S. 15A-1332 leaves the judge full discretion whether to order a presentence report by a probation officer.

<u>Suspension of Prison Term, Probation, Consecutive Terms, and CYO Commitment</u>. The act continues existing law by giving the sentencing judge full discretion to: (1) suspend a prison term with or without imposing probation supervision; (2) impose concurrent or consecutive terms for multiple offenses; and (3) commit the defendant to prison as a CYO under existing law (G.S. Ch. 15A, Art. 82, and G.S. Ch. 148, Art. 3B). The judge need make no findings to justify these discretionary actions. But he must make findings to support the actual prison term imposed if it differs from the presumptive term for the offense, whether or not the term is suspended and whether or not the defendant receives CYO status (unless, as explained earlier, the prison term is imposed pursuant to a "plea arrangement as to sentence").

<u>Review of Sentence</u>. The act provides that the question whether the defendant's sentence is supported by evidence introduced at the trial and sentencing hearing may be raised in the trial court by a postconviction motion for appropriate relief; this motion must be addressed to the sentencing

judge. It is not clear whether this motion must be made within 10 days after entry of judgment or may be made at any time; the act amends both G.S. 15A-1414 (grounds for appropriate relief that must be asserted within 10 days after verdict) and G.S. 15A-1415 (grounds for appropriate relief that may be asserted at any time) to add as a ground the question of whether the evidence supports the sentence.

The act facilitates appellate review of felony sentences by requiring a written record of reasons for a prison term that differs from the presumptive sentence unless it is imposed pursuant to a "plea arrangement as to sentence." Formerly, no such record of reasons was required. The act gives the defendant the right to appeal the question of whether his sentence is supported by the evidence only if: (1) the prison term of his sentence exceeds the presumptive term for his offense; and (2) "the judge was required to make findings as to aggravating or mitigating factors" (i.e., the prison term was not imposed pursuant to a "plea arrangement as to sentence under Article 58" of G.S. Ch. 15A). In other circumstances, the defendant has no right of appeal on this question, but he may raise it by petitioning the appellate division for a writ of certiorari.

"Good Time" and "Gain Time" Credit Toward Prison or Jail Term. The act gives good-behavior credit ("good time") toward service of a felony prison or jail term (including a CYO term) at the rate of one day for each day served, which is forfeited only for serious misconduct. A charge of misconduct by an inmate requires notice and a hearing. Rules on conduct of prisoners are to be issued by the Secretary of Correction for all felons who are serving prison or jail terms. These rules must be explained to the prisoner within 30 days of his entry into prison or jail; in addition, he must be told in writing the date of his release with maximum day-for-day good-time credit and the date of his release without such credit.

The act provides that additional "gain time" credit may be given at the discretion of the Secretary of Correction--as under former law--for meritorious conduct and work inside or outside the prison; this credit is not subject to forfeiture for misconduct. Gain time may be given at rates of two days, four days, or six days per month for various job assignments and in greater amounts up to 30 days for a month of emergency work or a single act of meritorious conduct.

Under former G.S. 148-13, the Secretary of Correction had broad discretion to deduct time from prison terms for good behavior and work. The practice has been to grant good time at the rate of 8.94 days per 30.4-day month for avoiding misconduct and additional gain time (not subject to forfeiture) of up to 30 days per month for various kinds of work (see 5 N.C. Admin. Code § 2B.0100). In the past this good time and gain time has usually applied only to the maximum release date of the inmate and thus has not usually affected actual release, since most inmates were paroled before their maximum release date. Under new G.S. 15A-1340.7 and G.S. 148-13 as revised by the act, good time and gain time have become much more important to the inmate: parole is virtually abolished unless he is a CYO, and thus good time and gain time are the only means of obtaining release before the full maximum prison term (after credit for pretrial detention is subtracted) has been served.

The new good-time provisions of the Fair Sentencing Act apply prospectively only--like the act's other provisions--to felonies committed on or after July 1, 1981. The former law (G.S. 148-13) continues in force for misdemeanants and felons not subject to the act, and thus allows the continuation of the old good-time rules for these inmates.

One other change affects local jails. As of the effective date of the act, the Secretary of Correction's regulations on prisoner conduct, good time, and gain time--including the new day-for-day good time for felons--must be distributed to local jailers and followed with regard to time deductions for all prisoners who are serving sentences in local jails, whether for misdemeanors or felonies. Thus a uniform good-time and gain-time system will be adopted, replacing the variety of local practices under the old jail good-time statutes (G.S. 162-46 and G.S. 14-263), which are repealed by the act.

Felony Parole. Misdemeanant prisoners remain eligible for parole under existing law. Prisoners convicted of Class A or B felonies or committed as CYOs also remain eligible for parole under existing law. Those who are serving mandatory life sentences for Class A or B offenses are eligible after serving 20 years, and CYOs are eligible at any time.

For Class C felons, a life sentence is an additional sentencing option. When the judge imposes a life term for a Class C felony, the offender will be eligible for parole after serving 20 years, just as a Class A or Class B felon with a life sentence will, and will be subject to former law regarding good time and gain time [now in G.S. 148-13(b)]. Under Ch. 571 of the 1981 Session Laws, which allows the Department of Correction to grant good time and/or gain time toward eligibility for parole under all parole laws, the offender may receive good time and/or gain time toward this 20 years.

Prisoners convicted of Class C through Class J felonies who receive a prison term other than life are eligible only

for "re-entry parole," as follows. The Parole Commission must parole each inmate who is serving a prison or jail term of 18 months or more for a felony 90 days before the end of his term, less credit for good time, gain time, and time served in pretrial detention. (Note that felons with terms less than 18 months imposed under the act are not eligible for any parole unless they are CYOs.) The act states that the purpose of such parole is to help the prisoner to re-enter the free community. The term of re-entry parole is limited to 90 days (formerly, under G.S. 15A-1372, the parole period could be up to five years). If the parolee violates the conditions of re-entry parole--which are limited to reporting to the parole officer and answering the officer's reasonable inquiries, permitting visits by the parole officer, remaining within geographic limits fixed by the Commission unless granted written permission to leave, and notifying the parole officer of changes in address or employment--he returns to prison to serve 90 days less good time and any gain time he receives and then must be unconditionally discharged.

The act clarifies the present parole-eligibility statute (G.S. 15A-1371) with regard to parole from a life term when no minimum prison term has been imposed. A prisoner with such a sentence will be eligible for parole after he has served 20 years. (This provision applies only to felonies committed on or after July 1, 1981.) Note that under Chapter 571 of the 1981 Session Laws, the Department of Correction may now grant good time and/or gain time toward this 20 years.

Stevens H. Clarke

Appendix 2

DATA USED IN STUDY

DATA USED IN STUDY

In collecting and processing the data described in this appendix, care was taken to preserve the confidentiality of defendants' and offenders' names. Coders were instructed not to discuss any information obtained in the study with anyone outside the study staff. The analysis of the data dealt only with groups of defendants and their statistical characteristics. No information about individually identifiable defendants or offenders was published or otherwise released.

Court Judgment Sample

The Court Judgment Sample consisted of 4,073 defendants convicted of felonies and sentenced between April 1 and September 30, 1980. Clerks of court in all 100 North Carolina counties were asked to mail photocopies of felony judgments rendered during this period to the Institute of Government.

The judgment forms contained information about the county and date of sentencing; defendant's age; race; sex; offense initially charged; offense of conviction; whether conviction was by trial, plea of guilty, or plea of no contest; length active sentence or probation; conditions of imprisonment or probation (including restitution, fines, work release recommendations, etc.); and the identities of the sentencing judge, the attorney for the State, and the attorney for the defendant.

The defendant was chosen as the unit of analysis. All of a defendant's judgments imposed in the same county by the same judge and within five working days of each other were grouped together as companion offenses. From these, the offense with the most serious outcome, from the defendant's point of view was selected as the principal offense. Information about the principal offense was stressed in the coding form.

DOC Active Sentence File

The North Carolina Department of Correction (DOC) provided a data tape of individuals convicted of felonies in 1979 and sentenced to prison. The original layout of a defendant's record on this file included a header portion consisting of demographic information about the defendant--his name, residence, education, occupation, race, sex, age, marital status, and prior record. This information was provided by the inmate during an initial interview by the diagnostic center and also by copies of the final judgment and commitment forms that are mailed to the center. The diagnostic center then mailed the information to the Department of Correction.

Following the header portion were ten trailers. A trailer is formed for each judgment form received by the DOC from the county of conviction. Sentence trailers contained information about the county of conviction, CYO commitments, the number of counts against the defendant, additional offenses consolidated for judgment, the sentencing judge, offense of conviction, type and length of sentence, jail credit, restitution, court docket number, and suspended sentence length (for special probation).

The prison record for a defendant is cumulative. Each time an individual is newly admitted, new header information is collected. Sentence trailers for convictions on or after his admission date are added to his record as long as the defendant remains in prison (or is on parole). Thus for our defendant the header information could have been collected earlier (and occasionally later) than the 1979 conviction date for the principal offense. To calculate how recent the demographic information was, the defendant's admission date was subtracted from the date of conviction for the principal offense. We found that approximately 75 per cent of the information was collected within thirty days of the defendant's principal offense conviction date.

DOC Probation Sentence File

The Department of Correction (DOC) provided their master tape of all individuals who had been placed on supervised probation. From this tape we selected persons convicted of felonies in 1979.

The file layout of probationer records consisted of a header section (similar to the active sentence file), case section, one or more crime sections, and often alias sections and special condition sections. The information for these sections was obtained from DAPP1 and DAPP2 forms filled out by the probation officer.

The header section contained demographic information on the defendant, such as name, age, race, sex, marital status, education, income, occupation, and prior record history of drug and alcohol addiction. All of this information was obtained by the probation officer interviewing the probationer. Obtaining the defendant's prior record was a more involved process which will be explained later.

The case section consisted of information concerning the term of probation, jail credit, the sentencing judge, and court indebtedness (attorney fees, fines, and court costs, and payment schedule). The probation officer collected this information from district and superior court records.

The crimes section included the offense of conviction, the date of the offense and the date of conviction, the county of conviction, the court docket number of the offense, and the number of counts against the defendant. The probation officer obtained this information from district and superior court records, and by talking to the probationer's arresting officers. Occasionally the probation offices examined local police or sheriff records.

The special conditions sections described restrictions on the probation--curfews, drinking or driving restrictions, or required attendance at special programs. The probation officer obtained this information from the final judgment and commitment form.

Joint Prison-Probation File

A Joint Prison-Probation File was created by examining the DOC's prison and probation sentence files and determining which sets of variables were comparable. Sometimes a variable had the same name and meaning in both files but the source of the information was different, which made a precise comparison difficult. An example would be jail credit awarded the defendant for days in pretrial detention from different sources for the two files. In the inmate file, the jail credit was recorded directly from the final judgment and commitment form. In the probation file, the probation officer calculated the jail credit using jail slips contained in the court records.

The defendant's prior criminal record was also obtained from different sources. In the prison file, prior record was usually available only for offenses that had been fingerprinted, such as offenses found through a Police Investigative Network (PIN) check, an FBI rap sheet, or the DOC internal records. Prior record is also obtained by asking the inmate. Local court records were not searched.

In contrast, the probation file's primary source of prior record was the local police, sheriff, and court files of the defendant's county of residence. (It is mandatory that the probation officer check local records.) The probation office may also ask the defendant about his record. If the probation officer suspected that the probationer had a more extensive record in another area, a PIN check or an inquiry with out-of-state law enforcement agencies may have been made.

Information on the defendant's drug and alcohol use was also not comparable. In the inmate file the question asked whether the defendant uses drugs and alcohol. In the probation file, the question was whether he had a history of alcoholism or drug abuse.

Eliminating the items that were not comparable in the two files provided a joint file consisting of the defendant's age, race, sex, education, occupation, work experience, county of residence, and marital status. Court information included the conviction date, docket number of the principal offense, county of conviction, offense of conviction, sentencing judge, the total number of felonies of which convicted, and the total active minimum and maximum sentence lengths (which were both "0" for probationers).

The Twelve-County Sample

The Twelve-County Sample comprised 1,378 defendants from twelve counties in North Carolina. To select twelve representative counties, the first step was to categorize all 100 counties on the basis of the following criteria:

1. Region of North Carolina--eastern, western, or central;

2. Urban/rural (a county was "urban" if it was part of a Standard Metropolitan Statistical Area (SMSA) as defined by the Census Bureau as of 1973, otherwise it was "rural");

3. High or low court workload (the workload was determined from the total number of felony cases disposed of in superior court according to the 1978 Annual Report of the Administrative Office of the Courts and from arrests for Part I crimes according to the 1978 Uniform Crime Report);

4. Court efficiency rating ("above average" or "average or below").

The counties were selected as follows. First, three urban counties were selected, one in each region: New Hanover (eastern), Mecklenburg (central), and Buncombe (western). Originally twelve rural counties were chosen by selecting one at random from each cell of a 12-cell grid that corresponded to the twelve cross-classifications: region by low/high workload by court efficiency rating. The selection was further constrained so that (1) no more than one rural county was chosen from any of the state's 33 judicial districts, and (2) no rural counties were adjacent. This initial selection produced twelve rural counties, but because of lack of time, three were eliminated--one at random from each region. Thus the final sample of counties included New Hanover, Pasquotank, Craven, and Harnett in the east; Mecklenburg, Rockingham, Granville, and Anson in the central part of the state; and Buncombe, Cherokee, Yancey, and Rutherford in the west.

A 16-page coding form was completed for defendants whose date of arrest for any felony occurred within the selected three-month period in 1979. It was designed to trace the defendant's path through the criminal justice system from the time of arrest to final trial court disposition of the case. (A copy of the form is attached.) Coders tried to reconstruct what the key participants (i.e., the district attorney, the police, and the judge) knew about the case when court processing took place. The first section of the questionnaire deals with the defendant's social background (such as his age, sex, and race), his occupation, and his prior record of criminal offenses. Information on age, sex, and race was usually found in court records--on the arrest warrant or magistrate's order. Information on occupation and marital status was consistently found only for those defendants for whom an affidavit of indigency form appeared in the court files (this form is used by defendants who wish to obtain the services of a court-appointed attorney or pubic defender).

The defendant's prior record was compiled from several sources. In Mecklenburg and Buncombe counties, local prior record was obtained from the court and district attorney's records. In the remaining counties, information was collected from the local police and sheriff departments (for these counties district attorney files were generally unavailable) and the court records. Where Police Information Network (PIN) information on prior record was available in police or sheriff files (usually it was not), it was coded. Minor misdemeanors such as nonsupport, traffic offenses (except DUI, reckless driving, hit and run), littering, wildlife violations, and offenses committed while the defendant was a juvenile were not recorded.

Data on the actual offense including information about witnesses to the crime, physical evidence, type of weapon used, drug type and amount,

victim-defendant relationship, and value of any property stolen and recovered--were obtained from the district attorney's files (when available). More often, this information came from complaint or arrest reports from the local police or sheriff departments. Generally, detailed investigative reports were available only for the more serious felonies.

Information about court processing was obtained from district and superior court files. The type of charge, date of offense, and often additional information about the offense were taken from the arrest warrant or the magistrate's order and the indictment (if the case proceeded to superior court). Pretrial release information was found on the release order and on appearance bond forms. The terms of formal plea bargains were recorded from out-of-court dismissal or transcript-of-plea forms.

Data concerning the sentencing judge, the offense of conviction, and the type of disposition--prison or probation imposed, fines, court costs, restitution--were found on the final judgment and commitment form. Though jail credit for pretrial detention was often recorded on this form, coders calculated jail credit themselves (from materials in the court files) and recorded the calculated figure.

Many of the items on the coding form require a judgment to be made by the coder. To facilitate consistency in coding, a set of guidelines was supplied that told where to look and how to evaluate information in the various data sources.

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Appendix 3

STATISTICAL METHODS AND REFERENCES

STATISTICAL METHODS AND REFERENCES

The statistical methods used in this study included simple cross-tabulations; comparisons of means, medians, and frequency distributions; and multiple regression.* Multiple regression is a standard tool for estimating the simultaneous independent contributions of many potential explanatory factors--such as a defendant's offense or his previous criminal convictions--to the outcome of a process, such as the length of the defendant's prison term. For example, multiple regression can estimate how much the severity of a defendant's charge influences the prison term he may receive, regardless of his criminal record; at the same time, it can estimate how much each prior conviction may add to his prison term, regardless of what he is charged with. Multiple-regression results are not exact measurements for these reasons (among others): (1) factors like charge and criminal record are often not completely independent of each other; (2) any given set of criminal cases may yield data that are not truly representative of the kinds of cases one is interested in (such as those processed in a different place or at a different time from the cases on which the data were obtained); and (3) one can never be sure that all the important explanatory factors have been considered and also properly defined and measured.

In using multiple regression, we made careful checks for multicollinearity--that is, a strong dependency of any factor being considered on one or more of the others. This was done by regressing each factor on all of the others and examining the resulting value of R^2, which is the proportion of the total variance in that factor that is explained by all the other factors. If a factor's R^2 value exceeded .5, we considered the degree of multicollinearity to be unacceptable and removed the factor from the analysis. For example, we found that the defendant's number of past instances of imprisonment--one of the factors we first considered--had a high R^2 when regressed on other factors--primarily because of its high correlation with the defendant's number of prior convictions. We removed past imprisonment from further consideration because prior conviction was a more important factor, and only one could be used. Factors removed from consideration because of multicollinearity are identified in the tables that show our multiple regression models.

In deciding how to express the court dispositions studied (dismissal and sentencing) in numeric terms, we compared the degree of heteroscedasticity in several preliminary models by examining plots of residuals against predicted values. (This subject is explained in the references on multiple regression, especially Draper and Smith.) This comparison and the advice of our consulting statistician (Prof. Gary G. Koch of the UNC School of Public Health) led us to express maximum sentence length and time to earliest release from prison in logarithmic form rather than by using their actual value. (Because sentence length and time to earliest release could have zero values, we added one month to their actual value before we computed the logarithm.)

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*In analyzing the twelve-county data, we used a "hierarchical" modeling approach explained in Section V(B), above.

Two of the court dispositions studied--(1) whether all of the defendant's charges were dismissed, and (2) whether the defendant received an active prison or jail term--were binary ("yes or no") variables. After consulting with Prof. Koch and others, we decided to treat these with logistic regression using the LOGIST procedure in the SAS Supplemental Library. In this procedure, the odds in favor of an event (such as having all charges dismissed) are analyzed by regressing the logarithm of the odds on the various explanatory factors (such as the severity of the offense, the type of evidence against the defendant, and the like), using a technique for estimating maximum likelihood rather than the least-squares method, which is the more common procedure. (Logistic regression is explained in the articles by Swafford and McFadden, cited below.)

A multiple regression analysis provides a measure of the completeness of its description of the process being studied: the proportion of the total variance in the outcome of the process that is accounted for, statistically, by the explanatory factors chosen for the analysis. (This proportion is measured by the R^2 statistic.) In the study, the various regression models explained proportions of total variance ranging from 20 to 70 per cent; thus they left a considerable amount of the variation in the dismissal and sentencing processes unexplained. To some extent, the unexplained variation can be thought of as just "chance"--i.e., as a degree of uncertainty about what the court will do in a given situation that could not be explained by any rational analysis. Also, the unexplained variation shows that some of the major factors that influenced the courts simply were not reflected in our data, even though we used all information about each case that could be found in official records except for the identity of the judge, the prosecutor, and the defense attorney. In any event, we believe that the analyses provide a good description of what can be learned from the available records.

Significance tests require some explanation. When one is analyzing a random sample of a large group, a statistical significance test is a measure of sampling error. For example, when researchers say that a particular factor is associated with the length of the active prison term and that its association is "significant at the .05 level," they means that if the factor had no real association with the length of the prison term, it would be very unlikely (less than 5 per cent probable) that the association they found would be observed in their data sample. In other words, the observed relationship is very unlikely to be an accident of sampling. But in our study (as in most studies of its kind), although we use significance tests, the defendants we selected were not a random sample of any group. How then should our significance tests be interpreted? To the extent that the defendants we chose are regarded as typical of all felony defendants during 1979 and 1980, then the reader can interpret our significance tests just as they would be interpreted for a true random sample. To the extent that the reader is unwilling to regard the defendants selected for our study as typical defendants, the significance tests can be considered indicators of the importance of relationships among various pieces of information just for the defendants in the study.

A word should be said about statistical "relationships," "associations," and "effects." An association or relationship between two variables is a situation in which they co-vary to some extent (e.g., when one increases, the other also increases). When this co-variance is unlikely (with a probability of .05 or less) to be an accidental result of how the data were selected, we call the association or relationship "significant." A relationship or association may suggest that one variable has a causal effect on the other. In this report, when two variables were significantly associated (such as criminal record and sentence length) and one always clearly preceded the other (for example, the record of previous crimes always existed before the sentence for the latest crime was imposed), we tentatively called the association "an effect"--in this example, an effect of criminal record on sentence length. We were more confident in calling it an effect when the analysis took into account other variables that could explain some of the relationship between criminal record and sentence. On the other hand, when there was reason to believe that each variable to some extent could have caused the other, or when we suspected that some third variable that we could not take into account might have causally affected both variables and thus explained their apparent relationship, we used the term "relationship" or "association" when speaking of their co-variance. An example is the relationship of pretrial detention to the defendant's chance of dismissal (see Section V of the report).

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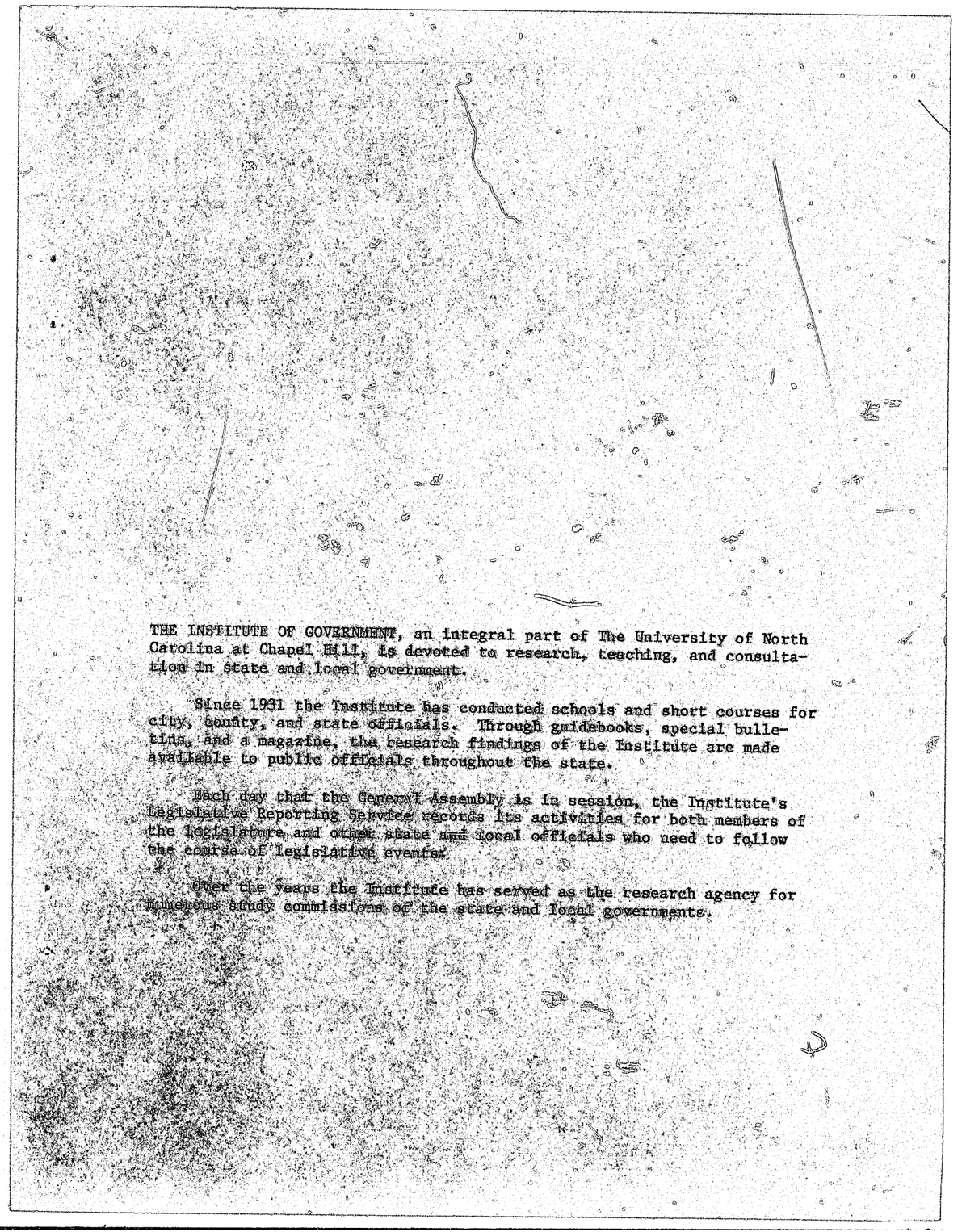

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