Grant No.: 77-NI-99-0053

MF-1

RAND/WN-10061-DOJ

December 1977

# THE DISPOSITION OF FELONY ARRESTS: PROSECUTION AND SENTENCING POLICIES IN CALIFORNIA AND THEIR EFFECTS ON CRIME

Peter W. Greenwood, with Marvin Lavin

A WORKING NOTE
prepared for the
DEPARTMENT OF JUSTICE



Prepared under Grant Number 77-NI-99-0053 from the National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Administration, U.S. Department of Justice. Points of view or opinions stated in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice.

Rand
SANTA MONICA, CA. 90406



## PREFACE

This Working Note presents empirical data on how felony arrestees are treated in California's criminal justice system, specifically how the system differentiates among offenders according to their prior record. It also presents estimates of reductions in the crime rate that could be expected from more restrictive sentencing policies.

The research is part of Rand's Research Agreements Program, funded by the National Institute of Law Enforcement and Criminal Justice, LEAA, U.S. Department of Justice. The program focuses on serious habitual offenders--their characteristics, their criminal behavior, and their treatment by the criminal justice system.

Final publication of this material awaits further research to clarify unresolved questions concerning the reasons for various arrest dispositions.

# SUMMARY

This study examines the records of a large and varied sample of felony arrestees in California to determine the pattern of case dispositions, the relationship between offenders' prior records and the outcome of their cases, the effect of special prosecutor efforts on case dispositions, and the effect of alternative sentencing policies on the crime rate.

The main sources of information on arrest disposition were California Bureau of Criminal Statistics (BCS) files on a sample of Southern California felony arrests and on all California Superior Court dispositions in 1973. Additional data were derived from samples of robbery cases drawn from the Los Angeles and San Diego prosecutors' records for 1975 and 1976.

## DISPOSITION AND PRIOR RECORD

An analysis of adult arrestee* characteristics disclosed that for all felony arrestees combined, 35 percent had no prior adult record, 7 percent had prison records, and the remaining 58 percent were divided equally between those with major and minor records.** The average burglary arrestee had a slightly more serious record than the sample average, and the average robbery arrestee had a much more serious record. Only 13 percent of the robbery arrestees had no prior

*Adults account for about 66 percent of robbery arrests and 54 percent of burlary arrests.

**Defined by the BCS, "minor" denotes at least one adult arrest but no sentence over 89 days in jail or over two years on probation; "major" denotes at least one sentence over 90 days in jail or over two years on probation.

record, and 15 percent had served at least one term in prison. Overall, though a substantial number of arrestees have been convicted of serious offenses in the past, the majority have not--with the exception of robbers. Presumably, if the juvenile records of arrestees were available for analysis, the picture of past criminal activity would be considerably different.

An analysis of felony arrest dispositions revealed that only 40 percent resulted in conviction. Of those convicted, 42 percent received sentences that did not involve incarceration, 51 percent were incarcerated in facilities other than prison (typically, jail for less than a year), and 7 percent were sentenced to prison. Burglary arrestees were treated slightly more severely than the felony average, and robbers were treated much more harshly. Of the 37 percent convicted, about one-third were sentenced to prison.

Examining the influence of prior record, we found that prior record had little effect on the likelihood of eventual conviction, but it clearly affected the resulting sentence. Though conviction probabilities were about equal, regardless of prior record, defendants who were not convicted were more likely to have their cases drop out early (because of release by the police or rejection by the prosecutor) if they had lighter records.

As for the robbery arrestees convicted, prison sentences were handed down to 16 percent of those with no or minor records, 40 percent of those with major records, and 72 percent of those with prison records. For burglary defendants who were convicted, the percentage sentenced to prison was almost zero for those with no or minor records, 4 percent for those with major records, and 23 percent



for those with prison records. A closer look at robbery defendants prosecuted in Los Angeles disclosed that those sentenced to prison either had substantial prior records or were armed with a gun.

## EFFECT OF SPECIAL PROSECUTOR EFFORTS

We compared the dispositions of serious robbery cases in Los Angeles County with similar cases in San Diego. The latter sample was drawn from the files of the San Diego Major Violators' Unit (MVU), a special organization created to improve the prosecution of serious robbery cases (about 15 percent of those prosecuted for that crime in the county). We found that San Diego was more successful than Los Angeles in achieving convictions and prison commitments for MV cases. It was similarly more successful in non-MV cases, which did not receive special handling. Therefore, we cannot attribute the differences in MV case results solely to the presence of the Major Violator Unit. However, a difference in the San Diego/Los Angeles results that was not apparent in the non-MV cases was San Diego's strikingly higher percentage of convictions obtained for first-degree robbery. To provide the special processing that characterizes the San Diego unit, the caseload of its attorneys was reduced to about one-third the normal workload for similar cases in Los Angeles.

## SENTENCING POLICY AND THE CRIME RATE

A mathematical model was used to estimate the effect of alternative sentencing policies on the crime rate. Only the incapacitation effect that can be attributed to the confinement of offenders was considered, not any deterrent effects that might result from longer sentences.

The results suggest that under the current sentencing policy for robbery and burglary the crime rates are, respectively, 41 percent and 25 percent lower than what they would be if no offenders were ever confined. Our analysis of alternative sentencing policies revealed that the number of offenders incarcerated for those crimes 500 percent for burglary in order to achieve a 50 percent reduction in the current crime rate.

## POLICY IMPLICATIONS

The findings of this study point up, first, the extremely high cost associated with crime reduction achieved through incapacitation alone. Prison populations would have to increase substantially for any measurable impact on crime to be felt. The only way of avoiding that conclusion is to argue that the increased use of imprisonment will deter other offenders as well, or that the system can somehow become more selective so that only the most active or dangerous offenders are sent to prison. Research to date does not lend much support for either proposition.

Second, the findings suggest that the system needs to improve the conviction rate for serious offenders, assuming that many of the arrests that do not result in conviction are justified. Our analysis of incapacitation effects showed that an increase in conviction rates can have a substantial impact on serious crimes, for which some period of incarceration is normally served. It would be more socially desirable and equitable to identify, convict, and incarcerate a higher percentage of offenders than to incarcerate for longer periods the smaller number who are unlucky enough to be caught.



## CONTENTS

## FIGURES

TABLES







# I. INTRODUCTION

The starting point for any study of how the criminal justice system treats different types of offenders is the time of arrest. Arrestees are the best source of information on the active criminal population, even though arrest data are subject to many qualifications.* It is generally believed, and later sections of this report confirm, that samples of offenders selected at later stages in the criminal process (indictment, conviction, incarceration) are heavily biased. Decisions at the preceding stages tend to weed out certain groups of offenders--primarily those charged with lighter offenses, those with less severe prior records, the young, those with better community ties, and those against whom the evidence is insufficient.

Any attempt to extend an analysis of offenders beyond arrestees forces one to use self-reports, which raise a different set of bias problems, particularly in the case of persistent offenders. Short of establishing an underground network of informants on criminal activity--an impossible task for unorganized street crime--we have no better way of estimating the characteristics of offenders than by examining arrestees and then adjusting the estimates for biases suspected to result from the differential likelihood of arrest among particular groups of offenders.

*For instance, it is often asserted that the police tend to overarrest certain offenders as a form of harassment. Additionally, arrests are not always recorded, so rap sheets and summary statistics based on them are often incomplete.

Once a suspect has been identified in a felony case, criminal justice agencies have a number of opportunities for influencing his likelihood of conviction and incarceration. These opportunities for selective treatment derive from the discretionary power that is either inherent in their role or provided by statute. For example, many penal codes provide for increasing the sentences of offenders with serious prior records; prosecutors and judges have the power to invoke these statutes or not, as they see fit.

First in the process, the police have wide latitude in determining how and when an arrest is made. The latitude extends to what charges they seek against a potential defendant from the prosecutor. Their alternatives range from releasing the suspect without seeking formal charges (as they might do if the evidence is weak or the suspect agrees to become an informant) to seeking a complaint for every crime to which the suspect can possibly be linked.

The prosecutor, in turn, has the options of refusing to file the case; accepting any or all of the charges that the police have asked him to file; filing other charges that he believes the evidence will support; diverting the suspect to noncriminal proceedings if he meets appropriate criteria; referring the case for misdemeanor rather than felony filing; returning the case to the police for further investigation; and so on. Even after a formal complaint has been filed, the prosecutor has the discretionary power to strike or modify any of the charges. These modifications usually occur as the prosecutor learns more about the evidence and reassesses his ability to prove each count; or they occur as part of an early plea bargain in which some of the charges are reduced or dropped in return for the



defendant's guilty plea. (This negotiation of a reduction in charges, as opposed to an agreement about the sentence to be imposed, is often termed charge bargaining.) In California, once an information or indictment is issued, the prosecutor must move the court for changes in the charges, but this motion is almost automatically granted.

As the case progresses, the judge, in addition to his power to grant an outright dismissal, can strike parts of the charge or modify its severity on his own motion, as well as on those of the parties. For instance, under California Penal Code, Sec. 17.b.5, the lower-court judge can reduce some types of felonies to misdemeanors.

Finally, in sentencing a convicted offender, the judge has a variety of options. The most lenient punishment would be a suspended jail sentence or summary probation. Slightly more severe would be formal probation, possibly conditioned on a short term in jail. A full county jail term can extend to one year. Young offenders (18-21 years old) are usually sent to special juvenile facilities if extended incarceration is required. Addicts can be placed in special treatment facilities. The most severe sentences are commitments to state prison, either for a specified or an indeterminate period. Of course, some options may be precluded, and others mandated, by statute.

Given such room for discretion in the treatment of felony arrestees, some observers have contended that criminal justice agencies do not provide sufficient selective attention in treating the serious, "hard-core" habitual offender and that serious crime would be reduced if this type of criminal were more effectively incapacitated. This study addresses that issue by analyzing how the dispositions of felony arrests vary according to selected characteristics of the

arrestees, mainly their criminal record. Dispositions are considered at four levels:

- Given an arrest, whether or not there is a conviction.
- Given a conviction, whether or not there is incarceration.
- Given incarceration, whether in jail or in prison.
- Given incarceration, the length of the term.

Under the indeterminate sentencing law, which was in effect in California until July 1977, the length of incarceration could not be ascertained until prisoners are released, so a proxy for this factor was usually needed for analytic purposes. This report uses the most serious offense type for which a defendant was convicted.

In addition to considering the disposition of felony arrests, we estimate, by means of a mathematical model, the dependence between sentencing policy with regard to incarceration and crime level--in particular, the percentage reduction in crime that could result from the use of various sentencing alternatives.

The analysis relies on several data sets. Two that were already prepared furnished information on felony offenders in California in 1973. The OBTS Arrest File contains arrest-through-disposition information for 11,000 suspects arrested on a felony charge after January 1, and whose cases were disposed of between July 1 and December 31.* The Superior Court File contains the records of all

*This data file consists of a random sample taken in four Southern California counties--Los Angeles, Orange, San Bernardino, and San Diego. Overall, the sample constitutes about 25 percent of the felony arrests in those four counties in 1973, but the fraction varies considerably by county: 10 percent in Los Angeles, 50 percent in Orange, and 70 percent in the other two. Almost all of the records in the file gave information on ethnicity, age, and sex of arrestees, but only about 25 percent (2700 records) gave information on criminal record and criminal status at the time of arrest. The percentage of records containing the latter two items also varied by county: 27 percent in Los Angeles, 20 percent in Orange, 13 percent in San Bernardino, and 40 percent in San Diego. Thus, this four-county random sample, although large, is not necessarily representative of arrestees statewide.



Superior Court dispositions in California during the year 1973, approximately 50,000 defendants.* In addition to using these two data files, we collected data from the case files of the prosecutor's offices in San Diego and Los Angeles counties, to examine more closely the disposition and sentencing of robbery defendants.

This Note is organized as follows. Section II analyzes the characteristics of felony arrestees in four Southern California counties in 1973, focusing on prior record and criminal status. Section III examines the patterns of case disposition for all felony arrestees and then for robbery and burglary offenders in particular. Section IV analyzes in detail the dispositions of robbery cases, again focusing on the effects of prior record. Section V estimates the relationship between crime level and sentencing policy. Section VI presents the conclusions of the study.

*Almost all of these records give information on arrestee race, age, sex, and criminal record, but only 80 percent contain information on criminal status at the time of arrest.

## II. CHARACTERISTICS OF FELONY ARRESTEES

### ADULT VERSUS JUVENILE ARRESTEES

Although this study focuses on adult offenders, it is useful to begin by distinguishing juvenile from adult arrestees, because juveniles are treated quite differently by the criminal justice system. For one thing, juveniles are less likely to be incarcerated and, if incarcerated, are likely to serve shorter terms. This difference is based on differences in the law, which in turn stem from differences in philosophy. With juveniles, the state is much more concerned with their welfare and needs, while with adults there is more emphasis on public safety.

Table 1 shows a breakdown, by offense type, of crimes reported, of the arrest rate (arrests per 100 crimes), and of the percentage of adult arrestees in California in 1973. The offenses are the seven types that the FBI Uniform Crime Reports classify as Part I offenses. We see that the arrest rate declines as expected, moving from personal crimes that often occur between acquaintances (homicide and aggravated assault), to personal crimes involving strangers (robbery and forcible rape), to property crimes seldom involving personal confrontation between offender and victim. The gap between reported offenses and arrests indicates one source of bias in the use of persons arrested to represent all who commit crimes. We also see that adults are most frequently arrested for crimes against persons--two-thirds for robbery and about 80 percent for the other three personal crimes. Arrests for property crimes are about equally distributed between adults and juveniles.



Table 1
ARRESTS FOR PART I CRIMES

| Crime | Number of Crimes Reported | Arrest Rate (Arrests per 100 Crimes)[a] | Percentage of Adult Arrestees |
|---|---|---|---|
| Homicide | 1,862 | 110 | 86 |
| Aggravated assault | 56,771 | 59 | 79 |
| Forcible rape | 8,349 | 40 | 78 |
| Robbery | 49,524 | 42 | 66 |
| Burglary | 407,375 | 20[b] | 54[b] |
| Grand theft | 85,053 | | |
| Auto theft | 131,223 | 21 | 48 |

SOURCE: California Department of Justice, *California Comprehensive Data Systems Criminal Justice Profile*, Sacramento, n.d.

[a]Compare with the mean arrest rates given by the 300 largest U.S. metropolitan police agencies in 1972:

| Crime | Mean Arrest Rate |
|---|---|
| Homicide | 117 |
| Aggravated assault | 53 |
| Forcible rape | 51 |
| Robbery | 39 |
| Burglary | 15 |
| Larceny | 18 |
| Auto theft | 38 |

SOURCE: P. Greenwood et al., *The Criminal Investigation Process*, D. C. Heath and Company, Lexington, Mass., 1977, pp. 81-82.

[b]Burglary and grand theft are combined in the source.

ARREST CHARGE

Though the charges specified at the time of arrest may lack the legal refinement of filed charges, they are usually a clear indication of the criminal act for which the suspect is arrested. Table 2 compares the most serious charge of adult arrestees in the 1973 four-county Southern California sample with the corresponding statewide data. We see that the Southern California data closely resemble the statewide data.

Table 2

DISTRIBUTION OF ADULT ARRESTEES BY MOST SERIOUS ARREST CHARGE (%)

| Most Serious Charge | Southern California (N = 11,000) | Statewide (N = 114,288) |
|---|---|---|
| Homicide | 1 | 1 |
| Aggravated assault | 12 | 11 |
| Rape | 1 | 1 |
| Robbery | 6 | 6 |
| Burglary | 15 | 15 |
| Theft | 3 | 8 |
| Auto theft | 6 | 6 |
| Forgery | 2 | 4 |
| Drug possession or sale | 43 | 40 |
| Weapon possession or use | 2 | 2 |
| Other | 9 | 7 |
| Total | 100 | 100 |

SOURCES: For Southern California data, 1973 OBTS Arrest File; for statewide data, California Department of Justice, *California Comprehensive Data Systems Criminal Justice Profile.*

CRIMINAL RECORD

The potential effects of law enforcement and sentencing policies depend crucially on the criminal record characteristics of the offender population. To illustrate, suppose that a sizable proportion of felony arrestees do not have serious prior records. This may



indicate a fairly high "turnover" in the criminal population of the community, that is, that criminal careers tend to be relatively short. It could be the result of the incapacitative effects of long incarcerations or of a low recidivism rate among convicted persons who learned their lesson, or both. In a jurisdiction where this situation occurs, a policy of longer prison terms, particularly for convicted offenders with significant criminal records, would have little effect on crime unless it deterred the initial commission of crimes. Conversely, suppose that a substantial proportion of felony arrestees do have serious prior records. In that case, a sentencing policy of longer prison terms for each successive conviction would be a rational approach to reducing crime.

Table 3 shows the criminal-record characteristics of adult felony arrestees, by arrest charge. For all felony arrests combined, approximately one-third lacked a criminal record and only 7 percent had served prison time; the rest were equally divided between minor and major records. Those arrested for robbery, on the other hand, were nearly twice as likely to have had serious criminal records (major or prison) as were felony arrestees as a whole.

CRIMINAL STATUS AT TIME OF ARREST

At the time of arrest, were the offenders on probation, on parole, under diversion, serving a term at a penal institution (escaped or temporarily released), or unrestricted? This status reflects both the length of criminal careers and the effect of sentencing policies. Table 4 shows the distribution.

Table 3

DISTRIBUTION OF CRIMINAL RECORD BY ARREST CHARGE (%)

| Criminal Record[a] | Arrest Charge | | | |
|---|---|---|---|---|
| | All Felonies | Burglary | Aggravated Assault | Robbery |
| None | 35 | 27 | 23 | 13 |
| Minor | 30 | 30 | 36 | 28 |
| Major | 28 | 35 | 32 | 44 |
| Prison | 7 | 8 | 9 | 15 |
| Total | 100 | 100 | 100 | 100 |

SOURCE: 1973 OBTS Arrest File.

[a]These categories are defined by the California Bureau of Criminal Statistics. "None" and "prison" are self-explanatory. "Minor" denotes at least one arrest but no county-jail sentence over 89 days or probation over two years. "Major" denotes at least one conviction resulting in a county-jail term of 90 days or more or more than two years' probation.

Table 4

DISTRIBUTION OF CRIMINAL STATUS BY ARREST CHARGE (%)

| Criminal Status | Arrest Charge | | | |
|---|---|---|---|---|
| | All Felonies | Burglary | Aggravated Assault | Robbery |
| On parole[a] | 6 | 9 | 4 | 16 |
| On probation | 20 | 24 | 24 | 29 |
| Diverted or serving term[b] | <1 | <1 | <1 | <2 |
| Unrestricted | 73 | 67 | 72 | 54 |
| Total | 100 | 100 | 100 | 100 |

SOURCE: 1973 OBTS Arrest File.

[a]From California Department of Corrections, California Youth Authority (CYA), or California Rehabilitation Center (CRC).

[b]Diverted under *Penal Code* Sec. 1000.2 or currently serving a term at prison, jail, CYA, or CRC.



The results in Table 4 resemble those in Table 3 in that the robbery arrestees differ most from the sample as a whole. Nearly half of the robbery arrestees were in some form of restricted status at time of arrest, contrasted with one-quarter of all felony arrestees.

# III. DISPOSITION OF FELONY ARRESTS

## BACKGROUND

Once a felony suspect has been arrested, many factors determine whether he will be formally charged, if charged whether he will be convicted, and if convicted whether his sentence will involve incarceration. First, of course, is the law: the statutory definitions of the applicable offenses, Fourth and Fifth Amendment limitations on search and seizure and on confessions, rules of evidence, sentencing options, and the like. But within the law, the prosecutor and judge have discretionary powers that are guided by the individual's sense of justice and the pressure created by his caseload to dispose of cases expeditiously. The way those powers are exercised depends on the following factors:

1. The seriousness of the crime. Although a defendant may have technically committed a burglary or assault, the amount of damage to the victim may be so minor, or the crime may be so mitigated by other circumstances, that the prosecutor or judge opts to dismiss the case in the interest of justice.

2. The strength of the evidence. If the prosecutor sees that his case is not likely to carry the state's burden of proof, he will often accept a dismissal rather than pursue an unnecessary trial. Even with careful arrests, he may find himself in this position when a key witness refuses to cooperate or when new facts raise reasonable doubts as to the defendant's guilt.

3. The defendant's criminal record. Other factors being equal, defendants with less serious prior records are more likely to have their cases dismissed or to receive a minimum sentence.

In this section we examine the pattern of dispositions to determine what impact these various factors may have.



## DISPOSITION PATTERNS FOR ALL FELONY ARRESTEES

Figure 1 depicts the case flow and disposition of felony arrests and gives the probabilities of the various outcomes, based on the 1973 California data.* The process begins at arrest, upper left, and ends with the alternative dispositions on the right. The branches emanating from each node (solid dot) show the outcomes determined by the various criminal justice agencies--the police, the prosecutor, the lower (Municipal) court, and the higher (Superior) court.

The number beneath each branch is the conditional probability of the case's being on that branch, given that it reached the preceding node. To illustrate, we observe that if the police sought a complaint, the probability is 0.37 that the prosecutor filed a felony complaint, 0.43 that he filed a misdemeanor complaint, and 0.20 that he rejected the case. Together, these probabilities total 1.00.

The number attached to each node is the unconditional probability that a case reached that point. For example, once the felony arrest was made, the probability that a felony complaint was issued is 0.33 (the product of the 0.89 probability that a complaint was sought and the 0.37 probability that a felony complaint was filed, given that it was sought). Similarly, the 0.22 probability that a felony arrestee was held to answer is the product of 0.89, 0.37, and 0.67.

The number within a symbol at the end of each branch is the unconditional probability of the case's moving from arrest to the end

*These figures vary somewhat from aggregate statewide data published by BCS. They are only approximations in that estimates of dispositions below the level of superior court are derived from the four-county arrest files, while dispositions in superior court are estimated from data for the entire state. They are used here as a reference point for comparing groups of arrestees with different prior records.

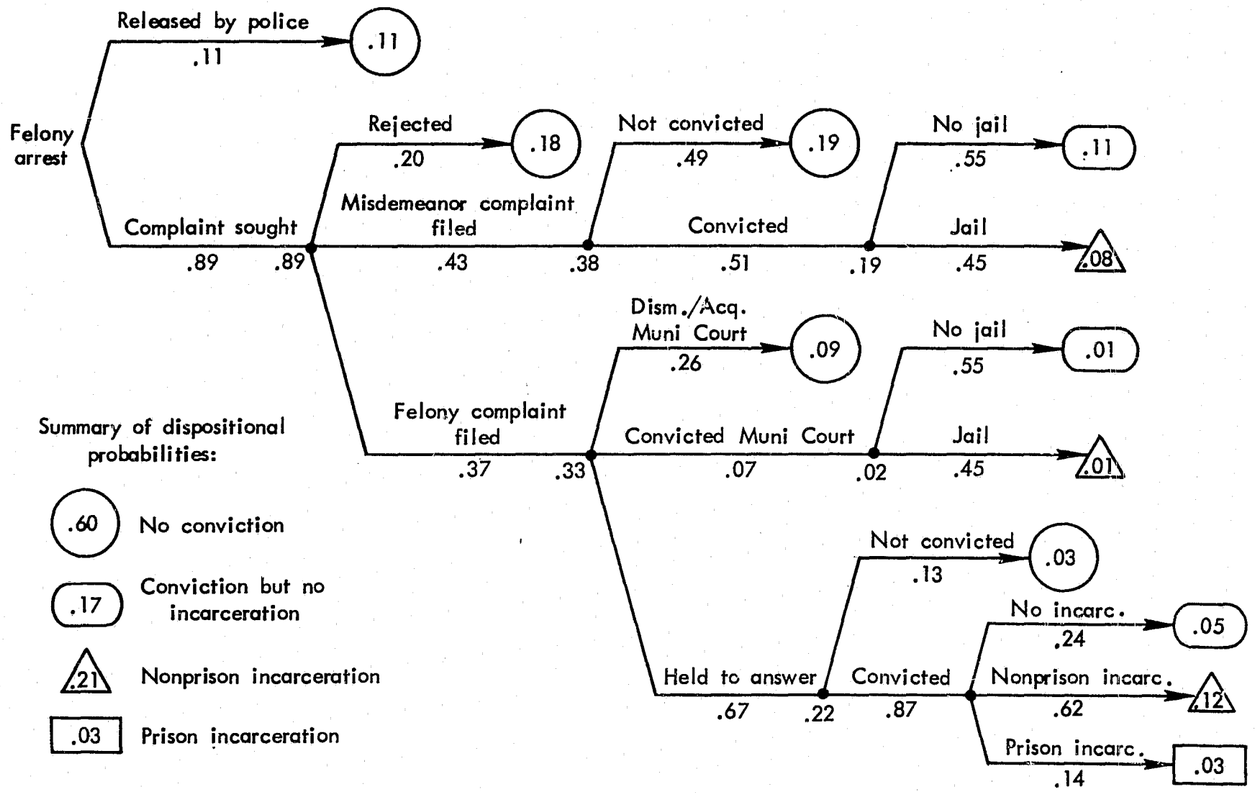


Fig. 1—Disposition of all felony arrests. Sources: 1973 OBTS Arrest File (N = 11,000) and 1973 Superior Court File (N = 50,000).

of that branch. For example, the probability is 0.19 that the felony arrestee was not convicted as the result of a misdemeanor complaint being filed after his arrest. The shape of the terminal symbol denotes the type of disposition.

The dispositional probabilities are summarized at the lower left of the figure. The relatively small proportion of cases that culminated in an incarceration sentence (0.24) and, in particular, a prison sentence (0.03) is noteworthy. For those who were convicted, the distribution of sentences was as follows:

| | |
|---|---|
| No incarceration | 42 percent |
| Nonprison incarceration | 51 percent |
| Prison incarceration | 07 percent |

These results apply to crimes of widely disparate seriousness. It is instructive to focus on the disposition of the serious offenses of robbery and burglary.

## DISPOSITION PATTERNS FOR ROBBERY AND BURGLARY ARRESTEES

Figures 2 and 3 display case flow and dispositional probabilities for robbery and burglary arrestees, respectively, again based on the 1973 California data.* Robbery is a particularly serious offense in that it involves a potentially violent confrontation between offender and victim and sometimes results in physical injury or death. Dangerous weapons are present in a majority of robberies, and strong-arm techniques are employed in the rest. The effect on the victim can be traumatic. Burglary, a common property crime, is less

*In the data files, these robberies and burglaries are designated "serious," which mainly denotes first-degree charges.

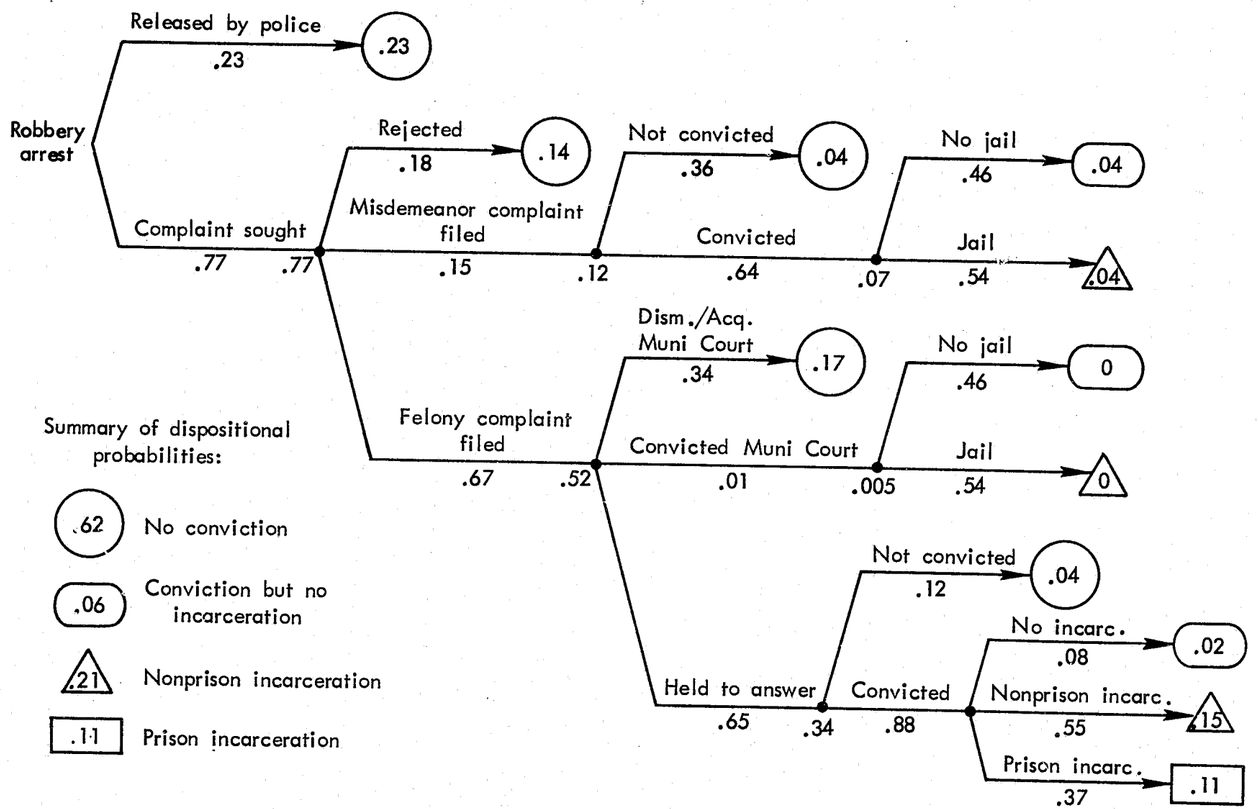


Fig. 2— Disposition of robbery arrests. Sources: 1973 OBTS Arrest File (N = 650) and 1973 Superior Court File (N = 4000)

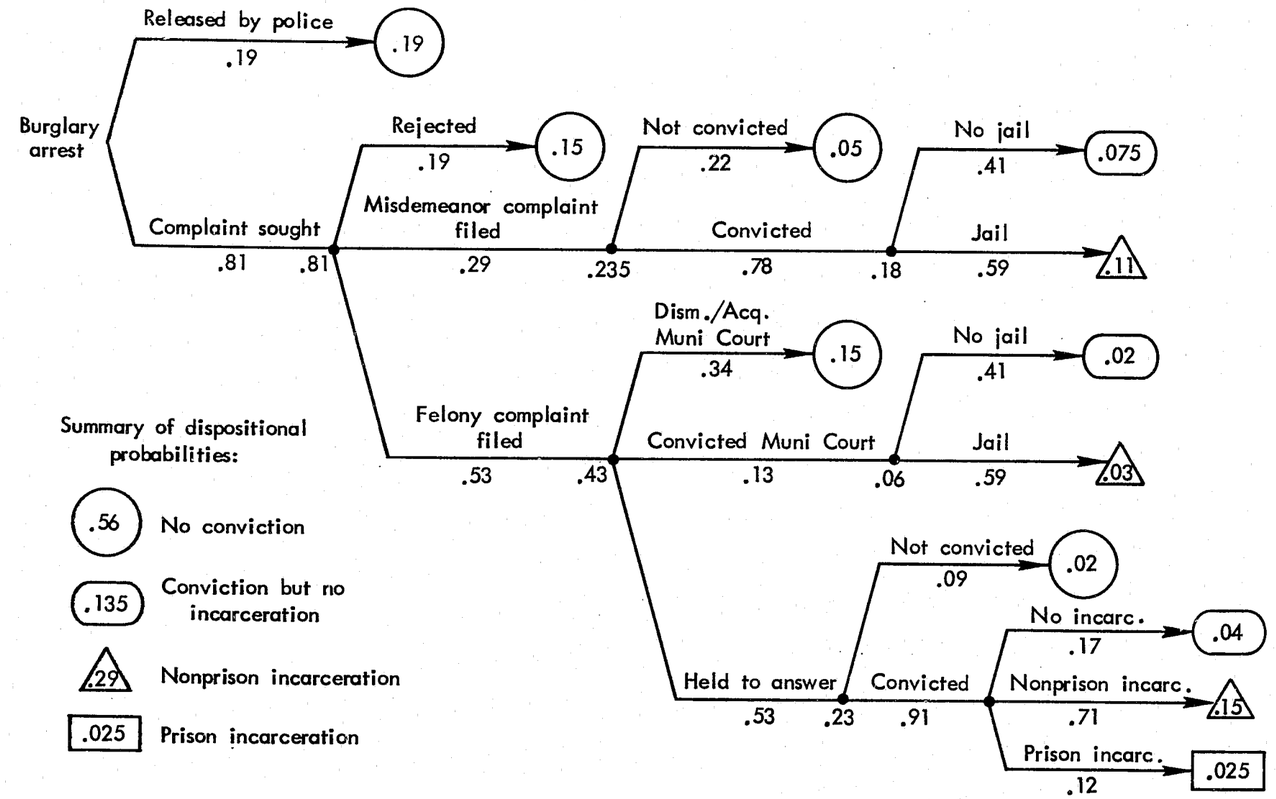


Fig. 3 — Disposition of burglary arrests. Sources: 1973 OBTS Arrest File (N = 1650) and 1973 Superior Court File (N = 9000)

serious than robbery because it lacks the direct contact between offender and victim but nevertheless constitutes a hostile intrusion on the latter's premises.

Comparing Figs. 1 and 2, we observe that:

- Compared with felony arrestees in general, robbery arrestees were twice as likely to be released by the police (0.23 vs. 0.11), and their cases were more likely to be dismissed in municipal court (0.18 vs. 0.09).
- Felony complaints sought by the police were more likely to be issued against robbery arrestees than against felony arrestees in general (0.67 vs. 0.37). Conviction followed by no incarceration was less likely to occur for robbery arrestees. In particular, they were more likely to be sentenced to state prison when convicted (0.11 vs. 0.03).

Comparison of Figs. 1 and 3 shows that the dispositions of burglary arrestees differed from those for all felony arrestees as did the disposition of robbery arrestees, but less markedly.

## EFFECT OF CRIMINAL RECORD ON THE DISPOSITION

Because this study focused on habitual offenders, we were especially interested in the relationship between prior record and the likelihood of various dispositions, for the latter reflect the operative police, prosecutorial, and sentencing policies.

To illuminate the relationship between an arrestee's criminal record and the disposition of his case, we divided the cases referred to in Figs. 2 and 3 into three categories, depending on the defendant's prior record: prison, major, and minor or none (see the footnote to Table 3 for definitions of these terms). Flow diagrams were constructed and dispositional probabilities were calculated for burglary and robbery arrestees in each category (see Appendix A).



Those data are summarized below. Table 5 compares the conditional probabilities of the various dispositional outcomes for robbery arrestees, by severity of criminal record.*

Presuming that the factual strength of cases would not be significantly linked to the defendant's criminal record, we are inclined to interpret the incidence of police releases after arrest as follows: If releases after arrest reflect marginal or weak cases, then the police were more prone to release arrestees who had minor or no records. Rejection by the prosecutor tended to compensate for police selectivity, i.e., a greater proportion of cases in which the defendant had a major or prison record were rejected. Even so, this compensation did not suffice, for a greater proportion of the latter defendants were not held to answer. The conviction probabilities suggest that the net effect of the preceding stages was to eliminate the great majority of weak or marginal cases, irrespective of the prior record of the defendant. But the incidence of prison sentences attests that judges gave great weight to the criminal record of the convicted defendant in imposing prison sentences. The judges might differ somewhat in their reasons, but they would probably agree that an offender with a serious criminal record (1) poses a greater threat to the community, (2) is a less suitable candidate for other forms of rehabilitation, and (3) is more deserving of the punishment that prison represents.

Table 6 summarizes the unconditional probabilities of the various case outcomes for the robbery and burglary arrestees, again related to

*No corresponding tabulation is shown for burglary arrestees because no significant differences were apparent, except in the relation of prison commitment to prior record.

Table 5

CONDITIONAL PROBABILITY OF DISPOSITIONAL OUTCOME FOR ROBBERY ARRESTEES, BY CRIMINAL RECORD

| | Criminal Record | | |
|---|---|---|---|
| Dispositional Outcome | None or Minor | Major | Prison |
| Released by police after arrest | .32 | .21 | .16 |
| Rejected by prosecutor after complaint sought by police | .14 | .20 | .20 |
| Held to answer after complaint filed by prosecutor | .71 | .63 | .56 |
| Convicted in Superior Court | .85 | .88 | .89 |
| Sentenced to prison after conviction in Superior Court | .16 | .40 | .72 |

SOURCE: 1973 OBTS Arrest File (N = 650) and 1973 Superior Court File (N = 4000).

Table 6

UNCONDITIONAL PROBABILITY OF CASE OUTCOME FOR ROBBERY AND BURGLARY ARRESTEES, BY CRIMINAL RECORD

| | Criminal Record | | |
|---|---|---|---|
| Case Outcome | None or Minor | Major | Prison |
| Robbery Arrestees | | | |
| Not convicted | .62 | .64 | .63 |
| Conviction but no incarceration | .10 | .02 | .07 |
| Nonprison incarceration | .23 | .22 | .08 |
| Prison incarceration | .05 | .12 | .22 |
| Burglary Arrestees | | | |
| Not convicted | .54 | .53 | .71 |
| Conviction but no incarceration | .18 | .10 | .02 |
| Nonprison incarceration | .28 | .34 | .20 |
| Prison incarceration | 0 | .02 | .07 |



criminal record. The figures for robbery arrestees reinforce the impression given by Table 5 that the proportion of arrestees convicted is little if at all dependent on their criminal records, probably because of the checks and balances in the successive steps. Consistent with Table 5, the robbery figures also show the strong association between criminal record and the imposition of a prison sentence for the current offense. The case outcomes of burglary arrestees contrast with those of robbers. The nonconviction probability for burglary arrestees with prison records (0.71) was markedly higher than for those with major or minor/no records (0.54, 0.53). The distribution of sentences for convicted burglars indicates that judges generally regarded a state prison term to be inappropriate for convicted burglars, even those with a prison record. (Thirty-seven percent of the burglary arrestees with a prison record that were convicted in Superior Court received a prison term.) The reluctance of judges to impose prison terms on burglars might explain the relatively high nonconviction probability for arrestees with prison records. It is likely that many were on parole when arrested. Since a new conviction would assure a return to prison on the parole violation, we might suppose that judges would have been inclined to dismiss weak or marginal cases against such defendants. However, an examination of the data suggests instead that the relatively high release rate by the police (0.23) and rejection rate by the prosecutor (0.32) account for the relatively high nonconviction rate of burglary arrestees with prison records. A better explanation would thus seem to be that either the police make a larger proportion of weak arrests of burglary suspects with prison records, or the facts of some of

these cases justify parole revocation without the need to obtain a new conviction. To the extent that the former explanation is true, the question arises whether the quality of arrests can be improved.

EFFECT OF CRIMINAL STATUS AT TIME OF ARREST ON THE DISPOSITION

One would expect that criminal status at time of arrest is closely related to prior record, i.e., those with more serious records would be more likely to be on probation, on parole, on pretrial release, or to be fugitives. Our analysis revealed no noteworthy differences in dispositional treatment related to legal status at time of arrest except in the type of sentence imposed. For example, the proportion of cases rejected by the prosecutor for all felony arrestees differed only 1 percent between arrestees on parole and those in unrestricted status (20 vs. 21 percent). For robbery arrestees the difference was 7 percent (24 vs. 17 percent).

On the other hand, the percentage of convicted defendants who received prison sentences differed widely with the arrestee's criminal status, resembling the results shown earlier for criminal record. Among all felony arrestees, the proportion who received prison sentences was 9 percent for the unrestricted arrestees, 15 percent for those on probation, and 32 percent for those on parole. For robbery arrestees, the percentages were 27, 37, and 62, respectively.

In summary, less than half of all felony arrests resulted in conviction: 40 percent of all felonies, 37 percent of the robberies, and 44 percent of the burglaries. Of those convicted, only 7 percent were imprisoned: 30 percent for robbery and 6 percent for burglary.



Although the likelihood of conviction was about equal for all prior record categories, defendants with less serious records were more likely to be released wthouc formal court proceedings. Once convicted, defendants with more serious records were much more likely to be imprisoned.

## IV. DISPOSITION OF ROBBERY ARRESTS: A MORE DETAILED ANALYSIS

### INTRODUCTION

The preceding analysis raises questions that merit further study. What distinguishes those robbery defendants with heavy prior records who were sent to prison from those who were not? Is the apparently more severe treatment of heavy-record defendants the result of intentional policies, or does it reflect less formal discrimination? Has the prosecutor sought to insure that the appropriate sentence is given? How does plea bargaining affect this process?

Several considerations led us to select robbery defendants for a closer look. First, as a practical matter, the use of a single offense type enabled us to obtain a larger sample size for analyzing differences in defendant treatment. Second, robbery is widely regarded as a bellwether crime. It is a common violent crime and the one generally most feared by the public. It involves the highest risk of personal injury from an unknown assailant. Though many convicted robbery defendants are sentenced to prison, many others are not; by contrast, in the more severe personal crimes of rape and homicide, almost all convicted defendants are sentenced to prison. On the other hand, in the less severe property crimes of burglary and larceny, only the few defendants with extensive prior records are sentenced to prison.

The final reason for focusing on robbery defendants is that in 1975 a new prosecutorial unit was established in San Diego County to handle serious robbery cases. Its operation--the only one in



California--offered an opportunity to compare the effect of concentrated prosecutorial efforts with more traditional practices, typified by Los Angeles County.

The San Diego Major Violators' Unit (MVU) was created in the District Attorney's office under a career criminal grant from the LEAA. It departs from traditional prosecutorial practice mainly in the following ways:

- Early case screening and evaluation. The MVU is notified of all potential major violator cases (robbery and robbery-related) at the time of arrest so that a determination can be quickly made whether or not the unit will undertake prosecution. The unit can then insure that the necessary investigation reports will be thoroughly and expeditiously prepared.

- Police liaison. Full-time liaison with the police agencies in the county is provided by the assignment of a police officer to the MVU. In this way the preparation of police reports, the processing of evidence, and the notification of witnesses or involved agencies are expedited and assisted.

- Vertical representation. A single MVU deputy district attorney has the responsibility for an assigned case throughout the criminal proceeding, including all required court appearances. In traditional practice, some deputies specialize in filing complaints, preliminary hearings, or trials.

- Avoidance of plea bargaining. It is MVU policy to avoid the granting of concessions (e.g., reductions in the number and severity of charges, sentence stipulations) in order to elicit a guilty plea and make a trial unnecessary. Our data suggest that this policy was consistently followed in practice. Plea negotiation did occur and sometimes did culminate in guilty pleas, but nearly always the effect was not to lessen sentence severity compared with cases that went to trial. In other words, the plea was accepted only if the charges were consistent with the seriousness of the defendant's conduct. If his conduct warranted an aggravated sentence (say, a firearm was used or a victim seriously injured), the charges to which the plea was made had to reflect that fact.

- Workload. The San Diego MVU is small, and each of its five prosecutors (and sometimes its director) performs all

prosecutorial functions required in a major violator case. By contrast, the other prosecutorial organization dealt with here--the central staff of the district attorney in Los Angeles County--is 15 to 20 times as large and divides its labor by prosecutorial task. Moreover, this staff handles all types of felonies, some more serious than robbery but most less serious. Nevertheless, we attempt a gross indication of the difference in quantity of output between the two organizations, normalized for the difference in their sizes, as follows. In 1975, the year of our Los Angeles data, there were roughly 15 trials per prosecutor in the central division (half by jury and half by court), and about 100 dispositions of other types per prosecutor. In 1976, the year of our San Diego data, there were 5 trials per MVU prosecutor (nearly all by jury) and fewer than 15 dispositions of other types per MVU prosecutor. By this measure, the workload of the prosecutorial staff handling our sample of Los Angeles robbery defendants was considerably heavier than that of the San Diego MVU.

This section (1) describes the samples of Los Angeles and San Diego County robbery defendants that were used in this analysis, (2) compares the patterns of case disposition and sentencing in the two counties, and (3) examines important factors that affected the case outcomes.

First, it is necessary to give basic definitions and clarify some of the legal terms used.* California law distinguishes several types of robbery. If the robber is armed with a dangerous weapon, the crime is a first-degree robbery; if the victim is seriously injured, it is first-degree aggravated by G.B.I. (great bodily injury). All other robberies are considered second-degree. Under the sentencing laws in effect until July 1, 1977, convictions were punishable by indeterminate prison terms of

*Appendix B outlines in greater detail the statutory, prosecution, and sentencing treatment of robbery in California at the time the data were collected. It also summarizes the changes introduced by the Uniform Determinate Sentencing Act, which became effective July 1, 1977.



15 years to life for first degree with G.B.I.; 5 years to life for first-degree; and 1 year to life for second-degree robbery.

Several provisions of the penal code enhance or aggravate the punishment of convicted defendants, if certain characteristics of the defendant's prior record or current offense are alleged and proved. The main so-called special allegations are the following: prior felony convictions; having been armed with or having used a deadly weapon other than a firearm; having been armed with or having used a firearm; great bodily injury intended and inflicted; and status as habitual criminal. The penalties for these allegations, when proven, range from disqualification for probation to substantial additional consecutive terms of imprisonment. For example, the code provides an additional consecutive prison term of at least 5 years for the first felony (committed or attempted) in which a firearm is used.

## THE SAMPLES

Two county-wide San Diego samples were used. The first, comprising 89 defendants, included virtually all robbery and robbery-related cases filed by the San Diego Major Violators' Unit (MVU)* during the 13 months from December 1975 to December

*For a case to be referred to the MVU, one of its defendants had to receive a score of at least 12 points on a crime seriousness form filled out by the prosecutor's office. The form contained 23 items pertaining to the defendant's conduct in the crime and his prior record. Scores on individual items ranged from 2 to 12 points; a total of 65 points was possible, but it was rare for a defendant to receive more than 30. The prosecutor was given the discretion to add or subtract 5 points from the total score for aspects of the crime not covered by the form. Once assigned to the MVU, a case was handled by a single deputy district attorney, from the filing of the complaint to sentencing.

1976.* We obtained our information about these defendants from their crime seriousness forms, from data prepared for the National Legal Data Center,** and from their case files.

The second San Diego sample, numbering 278, comprised all robbery defendants other than MVU defendants whose cases were filed in the six months between December 1975 and May 1976.*** We obtained information about these defendants from a register card filed in the district attorney's office.

The Los Angeles sample was a random selection of 100 robbery defendants from all cases filed in 1975**** in the central division of the county district attorney's office.***** Based on information contained in the case file of each defendant, we assigned a seriousness score by means of a form similar to that used by the San Diego MVU. Forty-seven defendants received a score of 12 points or more; they were considered major violators (MV). The remaining 53 defendants were considered nonmajor violators (non-MV). Information on the cases and the defendants was drawn directly from the case files.

---

*The MVU was established in September 1975. Our data collection thus followed a break-in period of several months.

**The National Legal Data Center, an LEAA grantee, collects summary information on all cases prosecuted by Career Criminal units, such as San Diego's MVU, throughout the nation. It also provides assistance in establishing new units.

***The non-MVU sample was limited to six months to economize on data collection costs.

****The present District Attorney took office in October 1975. Considering the changes he has made in prosecutorial policy in Los Angeles County, a similar sample of arrestees collected in 1976 would probably have received different prosecutorial treatment than our analysis of the 1975 data reveals.

*****We obtained the sample by the following procedure. A random-numbers table was used to locate a name in an alphabetical listing of all felony defendants whose cases were filed in 1975 in the central division. If this person was not a robbery defendant, the first robbery defendant following him in the listing was selected in his place. The process was repeated 100 times.



## DEFENDANT CHARACTERISTICS

### Prior Criminal Record

Table 7 compares the percentages among the San Diego and Los Angeles samples who had prior felony convictions and who had served one or more prior prison terms.* The table indicates that a heavy percentage of defendants classified as major violators in both jurisdictions had at least one prior felony conviction. In other words, it was unlikely that a defendant was so classified only on the basis of the crimes with which he was currently charged.

For major violators, the table shows a much higher percentage of defendants with prior felony convictions in Los Angeles. However, San Diego has a somewhat higher percentage of defendants with prior prison terms. Each of these factors is relevant to the central theme of reducing crime through criminal justice system treatments of "hard-core" habitual offenders. The data suggest that the heavier habitual offender sample was in Los Angeles. That is because of (1) the relatively small difference between the two counties in defendants with prior prison records and (2) the much higher percentage of defendants in Los Angeles with prior convictions.

### Current Characteristics

Table 8 shows how the San Diego and Los Angeles samples compare in personal attributes and characteristics of the criminal conduct with which they were currently charged. It reveals that these groups

---

*The San Diego non-MVU group is not included because prior-record information was not collected for it.

Table 7

PRIOR CRIMINAL RECORDS OF
SAN DIEGO AND LOS ANGELES ROBBERY DEFENDANTS (%)

| Criminal Record | San Diego MVU (N = 89) | Los Angeles MV (N = 47) | Los Angeles Non-MV (N = 53) |
|---|---|---|---|
| Prior felony conviction(s) | 80 | 96 | 43 |
| Prior prison term(s) | 36 | 30 | 6 |

Table 8

SELECTED CHARACTERISTICS OF SAN DIEGO AND
LOS ANGELES ROBBERY DEFENDANTS
(% except age)

| Characteristic | San Diego MVU (N = 89) | Los Angeles MV (N = 47) | Los Angeles Non-MV (N = 53) |
|---|---|---|---|
| Median age (years) | 26 | 25 | 22 |
| Black | 46 | 78 | 66 |
| Male | 99 | 87 | 87 |
| Carrying firearm | 81 | 55 | 21 |
| Charged with codefendant(s) | 66 | 49 | 59 |
| Inflicted great bodily injury | 8 | 9 | 2 |
| Inflicted other injury | 8 | 23 | 30 |



of defendants differed in several noteworthy respects:

- The Los Angeles non-MV sample was perceptibly younger than the other two groups. This characteristics, along with the facts responsible for the non-MV classification, should be reflected in lighter sentencing.

- The percentage of blacks among the Los Angeles defendants was significantly higher than among the San Diego MVU defendants.

- Other data sources generally have found 5 to 10 percent of robbers to be female.* Thus, the near absence of females in the San Diego MVU group is not unusual.

- In the two major violator groups, markedly different percentages carried a firearm. Since that characteristic can have a pronounced effect on the charges of conviction and the severity of sentencing, we may anticipate that the difference in outcomes between the two groups will be partly attributable to differences in firearm possession.

- The smaller percentage of Los Angeles major violators who were charged with codefendants may be a consequence of the larger percentage of older persons (over 28 years old) among them (42 percent for Los Angeles MV versus 30 percent for San Diego MVU and 28 percent for Los Angeles non-MV). Another Rand study has found that the older robbers are, the more they tend to operate alone.**

- Great bodily injury occurred too infrequently to be a distingishing characteristic among the three groups. Lesser victim injury sometimes affects the sentencing judge's evaluation of a convicted defendant; thus, we might anticipate a sentencing difference between the Los Angeles and San Diego defendants due to the greater incidence of victim injury inflicted by the former. However, this difference would be counteracted

*State of California, Report of the Governor's Select Committee on Law Enforcement Problems, Sacramento, 1973, p. 103; U.S. Department of Justice, Law Enforcement Assistance Administration, National Criminal Justice Information and Statistics Service, Sourcebook of Criminal Justice Statistics, by M. Hindelang et al., Washington, D.C., 1975, p. 331; U.S. Department of Justice, Federal Bureau of Investigation, Uniform Crime Reports: Crime in the United States, 1975, Washington, D.C., 1976, p. 199.

**Joan Petersilia, Peter W. Greenwood, and Marvin Lavin, Criminal Careers of Habitual Felons, The Rand Corporation, R-2144-DOJ, August 1977.

by the fact that lesser victim injury generally occurs when the defendant is not carrying a firearm, and such defendants usually receive less severe sentences.

In summary, of the two groups of major violators, the San Diego defendants were more likely to have had no felony convictions (but also more likely to have had a prison record), much more likely to have carried a firearm, and less likely to have injured their victims than the Los Angeles major violators.

## Seriousness of Crimes

Table 9 affords additional insight into the nature of these robbery cases and into the differences between the San Diego MVU defendants and the Los Angeles major and nonmajor violators.* It shows the distribution and percentage of defendants who were scored on various items in the crime seriousness form. The following points are noteworthy:

- The high incidence and substantial score of the San Diego MVU defendants carrying a firearm have already been mentioned.
- A much higher percentage of the San Diego MVU defendants were charged with multiple counts of robbery in their present charges (54 percent) than the Los Angeles major violators (28 percent). The actual difference in robbery activity between these two groups may not have been this large; perhaps the San Diego police had more incentive to assemble evidence supporting multiple robbery counts. Given the presence of the MVU, the San Diego police had more reason to believe that additional counts charged would significantly affect the

*It turned out that the separation of the 100-defendant Los Angeles sample into major and nonmajor violator groups by means of the crime seriousness score was not sensitive to the magnitude of that criterion. For example, had the threshold score been increased from 12 to 18 points (an increase of 50 percent), the percentage of the full sample classed as major violators would have declined from 47 percent only to 38 percent.



Table 9

DISTRIBUTION OF CRIME SERIOUSNESS CHARACTERISTICS

| Item on Crime Seriousness Form (Points) | Percentage of Defendants Scored on Item: San Diego MVU (N = 89) | Los Angeles MV (N = 47) | Los Angeles Non-MV (N = 53) |
|---|---|---|---|
| Carrying firearm (3) | 81 | 55 | 21 |
| Armed otherwise (2) | 7 | 21 | 23 |
| Robbed private residence (3) | 18 | 19 | 2 |
| Three or more robberies in present charges (12) | 35 | 17 | 0 |
| Two robberies in present charges (4) | 19 | 11 | 6 |
| Prior robbery conviction(s) (12) | 45 | 70 | 0 |
| Multiple prior nonrobbery convictions (4) | 21 | 79 | 38 |
| Planning with accomplices in present case (2) | 47 | 57 | 28 |
| Prior arrests without conviction for robbery or grand theft (2) | 16 | 64 | 7 |
| Progression of seriousness in past crimes (2) | 32 | 85 | 34 |
| All other items[a] | 58 | 57 | 47 |

[a]These included the following: defendant fired shot (3 points); victim received G.B.I. (2); victim received injury other than G.B.I. (2); victim killed (6); victim kidnapped for purposes of robbery (4); victim kidnapped otherwise (2); single prior nonrobbery conviction (2); committed robberies in past but not arrested or prosecuted because of problems with the evidence (2); committed robberies in past but escaped arrest (2); prior arrests for robberies but charge reduced by plea bargaining (2); previously arrested, charged, or convicted of crime involving loot from robbery (2); wanted when arrested (2); presently on bail for pending felony (2).

outcome of the case and would result in an aggravated sentence.

- o Prior record characteristics (robbery convictions, nonrobbery convictions, progression of seriousness in arrests) were more significant in determining the seriousness scores among the Los Angeles major violators, in contrast to San Diego MVU defendants.

To gain further insight into the overall crime seriousness of the major violators in Los Angeles versus San Diego counties, the crime seriousness scores were computed for the total sample in each county by summing the products of the percentage of defendants scored on an item and points on that item. The results, 21.4 and 16.8 for Los Angeles and San Diego, respectively, indicate that the sample of MV defendants in Los Angeles had more serious crime characteristics than did those in San Diego. Thus, we would expect dispositions to take this increased seriousness into account. It should also be noted that the contrast between major violators, both in San Diego and Los Angeles, and nonmajor violatos, was very marked.

## DISPOSITION

Table 10 compares the disposition of the cases of all four Los Angeles and San Diego samples. These data suggest that though San Diego was more successful than Los Angeles in achieving convictions and prison commitments for MV cases, it was similarly successful in non-MV cases, which did not receive special handling. Therefore, we cannot attribute the differences in MV case results solely to the presence of the Major Violator Unit.

Additional evidence on the specific impact of the formal MVU processing can be gleaned from data collected by the unit itself. In



Table 10

DISPOSITION OF CASES FOR SAN DIEGO AND LOS ANGELES ROBBERY DEFENDANTS (%)

| | Major Violators | | Nonmajor Violators | |
|---|---|---|---|---|
| Disposition | San Diego (N = 89) | Los Angeles (N = 47) | San Diego (N = 278) | Los Angeles (N = 53) |
| Convicted and sentenced to: | | | | |
| Prison | 82 | 38 | 20 | 11 |
| Other adult custody | 5 | 32 | 35 | 40 |
| Penalties without custody[a] | 2 | 6 | 10 | 8 |
| CYA | 2 | 4 | 9 | 4 |
| | 91 | 80 | 74 | 63 |
| Acquitted | 1 | 0 | 1 | 6 |
| Dismissed | 4 | 15 | 22 | 26 |
| Other (drug or mental commitment, pending) | 5 | 4 | 3 | 6 |

[a]In *People vs. Tanner* the Court of Appeal for the First Appellate District recently held that a trial court does not have the power to strike a use-of-firearm allegation (found to be true by a properly instructed jury) in order to grant probation to an armed robber who would otherwise be ineligible for probation under Sec. 1203.06. The latter provision of the penal code was enacted in 1975 but did not apply during the period of our Los Angeles data. Had it applied and been interpreted by the Superior Court according to the later *Tanner* decision, two Los Angeles major violators and two Los Angeles nonmajor violators who did not receive prison sentences would have had prison sentences imposed. During 1976, the period of our San Diego sample, the Superior Court did not follow the law as held in the 1977 *Tanner* case (see W. B. Keene, comp. and ed., *1976 Supplement to California Superior Court Criminal Trial Judges' Benchbook*, West Publishing Company, St. Paul, Minn., 1976). However, this fact did not prevent any San Diego major violators from receiving a prison sentence (although two defendants who were not given enhanced prison sentences would probably have received them under the *Tanner* interpretation of 1203.06). Our data do not indicate what effect *Tanner* would have had on the disposition of the San Diego nonmajor violators.

a review of approximately 350 robbery cases filed during the year before the MVU was intalled (FY 1975), San Diego personnel determined that 100 defendants would have met the screening criteria for MVU processing. Comparing the disposition of those 100 cases with MVU dispositions during the first year of the unit's operation, they found that the percentage of defendants convicted of the top felony charge increased from 83 percent to 97 percent and the percentage of those convicted defendants receiving terms of more than one year increased from 81 percent to 94 percent. The rate of dismissal for MV cases dropped from 11 percent to 4 percent.

Table 11 compares the San Diego and Los Angeles samples in the most serious charge on which the defendants were convicted. There is a striking difference in the percentage of defendants who received an aggravated sentence in connection with a first-degree robbery conviction (or with conviction for an offense more serious than "ordinary" first-degree robbery, e.g., murder, robbery with G.B.I., or kidnapping for robbery).* The incidence of these aggravated sentences in San Diego was twice as high as Los Angeles for non-MV cases but four times as high for major violators. Furthermore, San Diego's much higher incidence of aggravated sentences occurred despite its smaller proportion of MVU defendants with serious prior records, compared with the Los Angeles major violators.

*Of the 83 convicted San Diego MVU defendants, 50 received sentences more severe than the 5 years to life provided by law for one count of robbery in the first degree: life sentence (3 defendants), 33 years to life (1 defendant), 30 years to life (1), 25 years to life (1), 20 years to life (8), 15 years to life (34), and 7.5 years to life (1).



Table 11

MOST SERIOUS OFFENSE FOR WHICH SAN DIEGO AND LOS ANGELES ROBBERY DEFENDANTS WERE CONVICTED (%)

| | Major Violators | | Nonmajor Violators | |
|---|---|---|---|---|
| Most Serious Offense | San Diego (N = 83)[a] | Los Angeles (N = 39)[a] | San Diego (N = 213)[a] | Los Angeles (N = 34)[a] |
| Robbery, first degree, aggr. by murder, kidnapping for robbery, or G.B.I. | 60 | 15 | 12 | 6 |
| Robbery, first degree | 16 | 49 | 22 | 32 |
| | 76 | 64 | 34 | 38 |
| Robbery, second degree | 8 | 13 | 19 | 9 |
| Attempted robbery or conspiracy to commit robbery | 10 | 0 | 6 | 3 |
| Other (lesser offense) | 6 | 23 | 41 | 49 |

[a]N = number convicted.

The San Diego aggravated sentences shown in Table 11 often reflected multiple counts of an offense coupled with multiple counts of special allegations.* It is also noteworthy that only 6 percent of the San Diego MVU defendants received convictions on offenses less serious than robbery (or robbery-related), whereas nearly one-quarter of the Los Angeles major violators were so convicted. That difference in charge reduction was not observed in the non-MV samples.

A widely applied measure of the cost of adopting a tougher prosecutorial and sentencing policy toward major violators is the trial rate, here defined as the percentage of defendants who went to trial (bench or jury) among the defendants whose cases were adjudicated. For the Los Angeles major violators, the rate was 30 percent (essentially the same as for the nonmajor violators, 28 percent). By comparison, the trial rate for the San Diego MVU defendants was 29 percent, demonstrating that the more stringent circumstances do not necessarily cause the rate to increase.**

In summary, this comparison of robbery case dispositions in San Diego and Los Angeles has demonstrated apparent differences in policy

*One direct effect of sentence aggravation was to extend the time until the Minimum Eligible Parole Date (MEPD). In California, for robbery in the first degree, one must wait 20 months until MEPD. By comparison, for first-degree robbery with the use of a firearm it is 40 months; with a previous felony conviction, 24 months; with a previous felony conviction and armed with a deadly weapon, 48 months. Robbers typically served 2 to 3 years beyond the Minimum Eligible Parole Date. See California Department of Corrrections, Research Division, Sentences and Offenses, by D. R. Jaman, Research Report 54, Sacramento, November 1974.

**The San Diego rate was 37 percent in the first six months and 20 percent in the following seven months of the 13-month period studied. The reduction suggests that some defendants and their counsel became more aware that they would not gain by going to trial.



that affect the nature of final dispositions. San Diego was consistently more successful in avoiding dismissals, in obtaining convictions to the most serious felony charged, and in securing prison commitments--particularly for the most serious defendants. Without a more thorough evaluation of San Diego's Major Violator Unit, it is difficult to say how much of the difference can be attributed to the activities of the unit. At least, it appears that there is opportunity for police and prosecution policies to affect the disposition of major violators so that a greater proportion are temporarily incapacitated by prison commitments.

## FACTORS ASSOCIATED WITH PRISON-SENTENCE DISPOSITIONS IN LOS ANGELES

Since only a minority of the convicted robbery defendants in Los Angeles were sentenced to prison, it is useful to examine the foregoing data to learn what factors were associated with the imposition of prison sentences on the convicted defendants. For example, 24 percent of the Los Angeles robbery defendant sample (one-third of those convicted) received prison sentences. But when this sample is separated into major violators and nonmajor violators, we find that 38 percent of the major violators were sentenced to prison, compared with 11 percent of the nonmajor violators (see Table 11). These results clearly indicate that offenders with higher crime seriousness scores (which strongly reflect criminal record) are more likely to receive prison sentences--whether or not they are prosecuted by a special unit. This finding is consistent with data presented in preceding sections.

Further analysis of the sentences imposed on the convicted offenders in the Los Angeles robbery defendant sample produced an interestingly simple result. It turned out that only a few factors (related to the defendant's criminal record and to the facts of his current crime) were needed to explain why he received a prison sentence.

First was the matter of being armed. Among the 100 defendants, 35 percent were armed with a firearm, 27 percent with other deadly weapons, and 38 percent were unarmed. Table 12 displays the association between these three types of arming and the level of conviction or other case disposition. The unarmed defendants were much more likely to avoid conviction, and defendants carrying a firearm were far more likely to be convicted of first-degree robbery, than were other defendants.

Once convicted, the likelihood of the Los Angeles robbery defendant's being committed to prison depended strongly on the level of that conviction. Of the 38 defendants convicted of first-degree robbery, 21 (55 percent) received a prison sentence. Of the 35 who were so severely.

Table 12

CASE DISPOSITION OF LOS ANGELES ROBBERY DEFENDANTS, BY TYPE OF ARMING (%)

| Disposition | Firearm (N = 35) | Other Deadly Weapon (N = 27) | Unarmed (N = 38) |
|---|---|---|---|
| Convicted of first-degree robbery | 68 | 41 | 11 |
| Convicted of lesser charges | 15 | 41 | 53 |
| Case dismissed or acquitted | 18 | 19 | 36 |



Our analysis disclosed that almost all of the 21 first-degree robbers who were sentenced to prison either had a prior prison commitment or a crime seriousness score of more than 18 points. Only 2 of the 21 had neither of these characteristics, and 4 had both. On the other hand, only 3 of the 17 defendants convicted of first-degree robbery and not sent to state prison had either of these characteristics.

Thus, despite the relatively low rate at which prison sentences were imposed on the Los Angeles robbery defendants, the pattern of imposition appeared rather clear: Those who went to prison had been armed with a weapon (usually a firearm) and had either served a prior prison term or received a crime seriousness score of more than 18 points.

Surprisingly, injury of the victim was not observably associated with the characteristics of the defendant or with the distribution of dispositions. Great bodily injury was inflicted by only 5 percent of the defendants. Lesser injury, which was inflicted by 27 percent of the defendants, was apparently not a decisive factor in sentencing.

## V. ESTIMATED INCAPACITATION EFFECTS OF SENTENCING POLICY ON CRIME RATE

In preceding sections we have examined recent (1973-1976) patterns of dispositions for felony arrests in California. The focus was on how differences in outcome related to different types of offenses and offenders with different prior records. This section estimates the effects that various sentencing policies would have on crime rates. Its purpose is to help the reader judge whether current sentencing policy overall is too lenient or too harsh.

It is generally accepted that the sentencing of criminal defendants serves four societal goals that are distinguished in part by the populations they affect:

- o Punishment or deserts refers to the penalty imposed on offenders as a consequence of their criminal acts. The recent literature on deserts attempts to sort out the legitimate and illegitimate bases of imposing sanctions and of distinguishing among individual offenders in the imposition of sanctions.* Although this literature helps one arrive at sentencing policies that are consistent in their treatment of different offenses and offender types, it leaves unresolved the question of how severe the general sentencing pattern should be.

- o Rehabilitation of the offender was until recently accepted as the primary goal of sentencing policy. However, the recent empirical evidence refuting the notion that offender recidivism rates can be substantially affected by particular sentencing or treatment options has caused many policymakers to give this objective less weight in establishing sentencing policy.

- o Deterrence refers to the restraining effect on other potential offenders of a sanction imposed on convicted

*A. von Hirsh, Doing Justice: The Choice of Punishments, Report of the Committee for the Study of Incarceration, Hill and Wang, New York, 1976.



defendants. Although the concept of general deterrence is believed to hold true, empirical studies have been unable to demonstrate the magnitude of its effect (or existence at all) because of a variety of methodological problems.*

- o Incapacitation refers to the restraining effect imposed on offenders by any form of confinement. While confined, they are temporarily unable to commit additional crimes against the public.

While the concepts of punishment, rehabilitation, and deterrence will continue to play a role in the formulation of sentencing policy and individual sentencing decisions, we are unable to project what effects, if any, they will have on future crime rates. The issue concerning incapacitation is not whether it reduces crime--it obviously must--but how large the reduction might be.

The number of crimes prevented through incapacitation depends on how many crimes the incapacitated offender would have committed had he not been incarcerated, which in turn depends on the length of time he is imprisoned. The percentage crime-reduction effect of incapacitation depends on the number of active offenders and the frequency with which they are arrested, convicted, and sentenced. Incapacitation effects will clearly be minimal for those crimes in which the rate of commission is low or where many crimes are committed by "virgin" offenders without prior records. Incapacitation effects will be greatest for the crimes committed frequently by recidivists.

There are two possible methods for estimating incapacitation effects. The first uses a probabilistic model of individual behavior

*Draft report of the Panel on Research on Deterrent and Incapacitative Effects, Assembly of Behavioral and Social Sciences, National Research Council, National Academy of Science, 1976.

to derive estimates of aggregate incapacitation effects. In addition to a number of plausible assumptions about criminal careers, the model requires independent estimates of offense and arrest rates before any impact assessment can be made. The second relies on retrospective career histories to estimate potential incapacitation effects if the offenders had been sentenced differently in the past.*

The first method, which is adopted in this study, is unaffected by current law enforcement or sentencing practices. It allows the analyst to consider changes in arrest or prosecution procedures in addition to sentencing policy. Its disadvantage is its reliance on estimates of individual crime rates and probabilities of arrest and the distribution of these parameters over the criminal population. The second method, despite the merit of focusing on a specific set of crimes and offenders, requires a substantial data base and estimates of current sentencing policies.

## THE SHINNAR MODEL

The most persuasive model available for predicting incapacitation effects was developed by Benjamin Avi-Itzhah and Reuel Shinnar.** By making a number of plausible (though untested) assumptions about the characteristics of criminal careers, it enables one to calculate the

*Stephan Van Dine, Simon Dinitz, and John Conrad, "The Incapacitation of the Dangerous Offender: A Statistical Experiment," Journal of Research in Crime and Delinquency, Vol. 14, No. 1, January 1977, pp. 22-34.

**Benjamin Avi-Itzhah and Reuel Shinnar, "Quantitative Models in Crime Control," Journal of Criminal Justice, Vol. 1, 1973, and Reuel Shinnar and Shlomo Shinnar, "The Effects of the Criminal Justice System on the Control of Crime: A Quantitative Approach," Law and Society Review, Vol. 9, No. 4, 1975, pp. 581-611.



percentage reduction in crime that would result from a specified sentencing policy.

The following equation is at the core of the Shinnar/Avi-Itzhah approach:

$$A/P = \frac{1}{1 + \lambda(qJS)},$$

where P = the number of crimes an average criminal would commit during his entire career if he were never incarcerated,

A = the number of crimes an average criminal would commit during his entire career under a system using incapacitation, with,

q = the probability of arrest and conviction,

J = the probability of incarceration given a conviction,

S = the average length of prison sentence, given an incarceration,

$\lambda$ = the average annual rate at which individual offenders commit crimes when not incarcerated.

A/P is thus the ratio of actual crimes to potential crimes and (1 - A/P)100 may be interpreted as the percentage reduction in crime resulting from the incapacitation effects of the policy parameters q, J, and S. (A/P may also be interpreted as a ratio of crime rates.)

The underlying assumptions of this formula, which we call the Shinnar model, are the following:

1. Offenders commit crimes at the specified (Poisson) rate $\lambda$ when not incarcerated.*

*The term "Poisson" implies that intervals between criminal acts have independent and identical exponential distributions with parameter $\lambda$, which is not affected by age or experience.

2. Offenders are subject to arrest and conviction with the specified probability q; and to incarceration given a conviction with the specified probability J.

3. Actual time served given an incarceration is exponentially distributed with mean S.

4. Length of individual criminal careers is exponentially distributed with mean T, where $T\lambda = P$.

These assumptions cause the Shinnar model generally to underestimate the actual incapacitation effect of the designated policy parameters. For example, if $\lambda$ varies within the criminal population or if career lengths are distributed other than exponentially, it can be shown that the actual incapacitation effect would be greater than that estimated by the Shinnar model. Similarly, Marsh and Singer have shown that where both $\lambda$ and q vary within the criminal population, the Shinnar model underestimates the number of crimes prevented as long as q does not decrease more than $\lambda$ increases, for individual offenders, i.e., as long as the $\lambda$ for the offenders arrested is higher than that for the criminal population as a whole.*

In the interest of realism we distinguish between two broad types of incarceration--imprisonment in state prison and confinement in a facility other than state prison (for example, jail, juvenile institution, medical facility, drug rehabilitation center, or mental institution.) This distinction is achieved by a minor modification of the Shinnar model:

$$A/P = \frac{1}{1 + \lambda Q_A Q_C (fF + gG)},$$

*J. Marsh and M. Singer, Soft Statistics and Hard Questions, Hudson Institute, Discussion Paper HI-1712-DP, Croton-on-Hudson, New York, 1972.



where $\lambda$ = the average annual rate at which individual offenders commit crimes when not incarcerated,

$Q_A$ = the probability of arrest for a crime,

$Q_C$ = the probability of conviction given an arrest (the product $Q_A Q_C$ is thus Shinnar's q),

f = the proportion of convicted offenders who are sentenced to confinement in other than state prison,

F = the average length of term of confinement for nonprison incarceration (years),

g = the proportion of convicted offenders who receive prison sentences, and

G = the average length of prison sentence (years); (the quantity $(fF + gG)/(f + g)$ is thus Shinnar's S).

## CRIME-REDUCTION EFFECT OF CURRENT SENTENCING POLICY

We first apply the modified Shinnar model to estimate the numerical values of its parameters that characterize current* sentencing policy concerning incarceration.

Drawing from the results given in Figs. 2 and 3, we establish $Q_C$, the probability of conviction given arrest, as having the value 0.38 for robbery (regardless of prior record) and 0.44 for burglary (also regardless of prior record). We observe that in the recent past the average term served in either the California Youth Authority or the California Rehabilitation Center (for drug addicts) has been approximately nine months. The average county jail term has been about nine months for robbers who are so incarcerated, and about six

*"Current" means prior to the initiation of determinate sentencing on July 1, 1977.

months for burglars. These data, together with information in Figs. 2 and 3 generate the following estimates for the parameters f, F, g, and G in the modified Shinnar formula for current sentencing policy with respect to burglary and robbery:*

| | Burglary | Robbery |
|---|---|---|
| f | .66 | .55 |
| F (yr) | .50 | .75 |
| g | .06 | .29 |
| G (yr) | 3.00 | 4.80 |

Table 13 estimates the crime-reduction effect of current sentencing policy for a range of values of $\lambda$, the average annual crime rate when not incarcerated, and $Q_A$, the probability of arrest for a crime. To illustrate, if $\lambda$ for robbers were 5 crimes per year and if the probability of arrest $Q_A$ were 0.10, the crimes currently committed would be 74 percent of those committed in the absence of incarceration, i.e., the crime rate would be reduced 26 percent.

The appropriate values of $\lambda$ and $Q_A$ to be used in the rest of analysis remain uncertain, but estimates can be inferred from several sources. In a random sample of 624 California prison inmates, Stambul and Peterson found that the 212 convicted robbers reported committing an average of 4 robberies per year during the three years preceding their current commitment.** By contrast, the 87 convicted burglars

*Based on data reported in U.S. Department of Justice, Federal Bureau of Prisons, National Prisoners Statistics: State Prisoners: Admissions and Releases, 1970, Washington, D.C., 1970.

**H. Stambul and M. Peterson, with Suzanne Polich, Doing Crime: A Survey of California Prison Inmates, The Rand Corporation, R-2200, 1977 (forthcoming).



Table 13

CRIME-REDUCTION EFFECT OF CURRENT SENTENCING POLICY
(Crimes committed as a percentage of potential crimes)

| Annual Crime Rate ($\lambda$) | Probability of Arrest ($Q_A$) .05 | .10 | .20 |
|---|---|---|---|
| | Robbery | | |
| 5 | 85 | 74 | 59 |
| 10 | 74 | 59 | 42 |
| 20 | 59 | 42 | 27 |
| | Burglary | | |
| 5 | 95 | 90 | 82 |
| 10 | 90 | 82 | 69 |
| 20 | 82 | 69 | 53 |

reported committing an average of 17 burglaries per year during that period.

An upper bound to the probability of arrest $Q_A$ can be obtained by dividing the number of arrests by the number of crimes reported to the police in a specified period. This measure would tend to overestimate $Q_A$, both because the actual number of crimes exceeds the number reported by victims and because more than one person may be arrested for a single offense. Another measure of $Q_A$ is the number of arrests experienced by an identified sample of offenders divided by the number of their self-reported crimes. The following are estimates of $Q_A$ based on the two measures described above:

| Measure | Estimate of $Q_A$ | |
|---|---|---|
| | Burglary | Robbery |
| Number of arrests/number of crimes reported by victims[a] | .20 | .40 |
| Number of arrests/number of crimes reported by offenders[b] | .09 | .13 |

[a]Data Source: U.S. Department of Justice, Bureau of Criminal Statistics, *California Comprehensive Data Systems Criminal Justice Profile—Statewide*, Washington, D.C., 1975 (data are for 1973).

[b]Data Source: Joan Petersilia et al., *Criminal Careers of Habitual Felons*, The Rand Corporation, R-2144-DOJ, August 1977. The number of arrests was obtained from the rap sheets of 49 habitual offenders currently incarcerated for robbery; the number of crimes was based on self-reports of criminal activity during their criminal careers.

On the basis of these estimates, we elect to use 0.10 as the value of $Q_A$ for burglary and 0.20 for robbery.

Returning to Table 13, we find that with $\lambda = 5$ crimes per year and $Q_A = 0.20$, the number (or rate) of robberies committed under current policies regarding incarceration is only 59 percent of the number (or rate) that would be committed in the absence of incarceration. And for $\lambda = 10$-20 crimes per year and $Q_A = 0.10$, we



find that the number (or rate) of burglaries committed under current policies is between 82 and 69 percent of the number (or rate) of burglaries without incarceration. These results suggest that current sentences of confinement do perceptibly reduce the incidence of robbery and burglary.

## CRIME-REDUCTION EFFECT OF ALTERNATIVE SENTENCING POLICIES

A more interesting use of the modified Shinnar model is to estimate the crime-reduction effects of a range of incarceration policies. In the rest of this section we apply the model to a set of policy alternatives that reflect reforms being considered in a number of states:*

1. Every convicted defendant receives and serves a prison sentence of one year.
2. Every convicted juvenile and every convicted adult with no prior convictions receives and serves a nonprison sentence of one year. Every convicted adult with one or more prior convictions receives and serves a three-year prison sentence.
3. Same as (2), except every convicted adult with one or more prior convictions receives and serves a five-year prison sentence.
4. Every convicted defendant receives and serves a prison sentence of three years.
5. Every convicted defendant receives and serves a prison sentence of five years.
6. Current incarceration policy, as described earlier in this section, but with the probability of conviction QC uniformly elevated to 0.80 (from 0.38 for robbery and 0.44 for burglary).

*The Shinnar model would produce the same results if these policies were phrased to say that convicted defendants served the stated term of confinement on the average rather than that they each served the specified fixed term.

The values of the confinement parameters F and G in the modified Shinnar formula are (except for the sixth option) contained in the policy statements themselves. The disposition parameters f and g are explicit only in the second and third options, where they reflect the separation of juveniles plus adults with no prior convictions from adults with one or more prior convictions. To estimate f and g, we proceed as follows. Table 1 indicated that about 34 percent of robbery arrestees were juveniles and about 46 percent of those arrested for burglary (or for grand theft) were juveniles. In Table 3 we found that 27 percent of burglary arrestees and 13 percent of robbery arrestees had no prior record. If the latter percentages persist through the conviction stage, we may set the values of f and g applicable to options 2 and 3 as 0.61 and 0.39, respectively, for burglary; and 0.43 and 0.57 for robbery. The values of F, G, f, and g for option 6 are given in the tabulation on p. 48. The values of $Q_C$, which apply to all options except the sixth, are also specified at that point in the text. Finally, the values of $\lambda$ and $Q_A$ applicable to all options are assumed to be, as discussed earlier, 5 and 0.20, respectively, for robbery; and 10 and 0.10 for burglary.

On the basis of the foregoing parameter values and the modified Shinnar formula, Table 14 estimates the crime-reduction effect of each of the six alternative sentencing policies specified above. For instance, under policy option 2, juveniles and adults with no prior conviction would serve one year while adult recidivists would serve three years. The application of this policy to convicted robbers would result in a robbery rate of 93 percent of the current level, a 7 percent reduction. Applying this policy to burglars would result in a



Table 14

CRIME-REDUCTION EFFECT OF ALTERNATIVE SENTENCING POLICIES

| Policy Option | Robbery[a] | Burglary[b] |
|---|---|---|
| 1. One year of prison for every convicted defendant | 122 | 84 |
| 2. One year of jail for every convicted juvenile or adult with no prior convictions; three years of prison for convicted adults with one or more priors | 93 | 68 |
| 3. Same as 2 except five years of prison for every convicted adult with one or more priors | 75 | 57 |
| 4. Three years of prison for every convicted defendant | 80 | 52 |
| 5. Five years of prison for every convicted defendant | 58 | 38 |
| 6. Same as current policy but with probability of conviction raised to 0.80 | 69 | 87 |

NOTE: Entries are the number of crimes committed or crime rate as a percentage of rate under current policy.

[a] $\lambda = 5$, $Q_A = .20$, $Q_C = 0.38$ (except for option 6).

[b] $\lambda = 10$, $Q_A = .10$, $Q_C = 0.44$ (except for option 6).

crime rate 68 percent of the current level. The reduction in crime rate under any given option will be greater for burglary since much less time is currently served per burglary conviction on the average than for robbery; thus, any specific new term represents a much greater increase in burglary sanctions. Also note that an increase in the conviction rate (option 6) can have a significant effect on robberies without any change in sentencing policy.

Figures 4 and 5 illustrate the relationship between crime-rate reduction and increase in incarcerated population with the various policy options considered, again with values for the Shinnar parameters given above and with the expected number of arrests per year $\lambda \cdot Q_A = 1$. The incarcerated-population estimates are simply steady-state interpretations of the average incarceration terms, given a conviction, served under the alternative policies.* In other words, the increase in man-years of imprisonment served under a specified option relative to current policy (expressed as a proportion of the current amount) is interpreted as the steady-state relative increase in the incarcerated population.

Figure 6 is another way of illustrating the results. It shows the effect on crime rate (relative to the no-incarceration rate) of varying the average incarceration term given a conviction. The alternative sentencing policies appear as individual points on these curves.

The results of this analysis suggest that the reduction of crime by means of simple** incapacitation policies would be a costly

*Except for option 6, for which the population estimates reflect the changes in the probability of conviction $Q_C$.

**By "simple" we mean merely increasing either sentence length or the percentage of convicted defendants who receive incarceration sentences, without differentiation by risk.



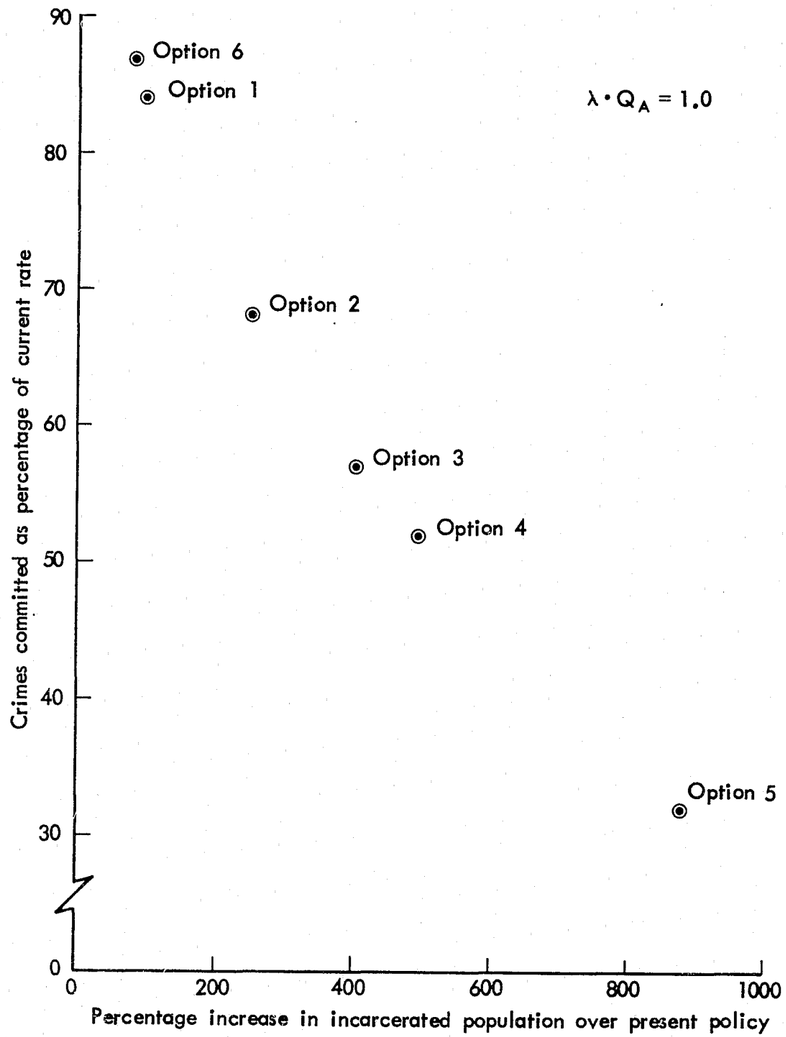


Fig. 4 — Effect of alternative policy options on crime rate and incarcerated population — burglary

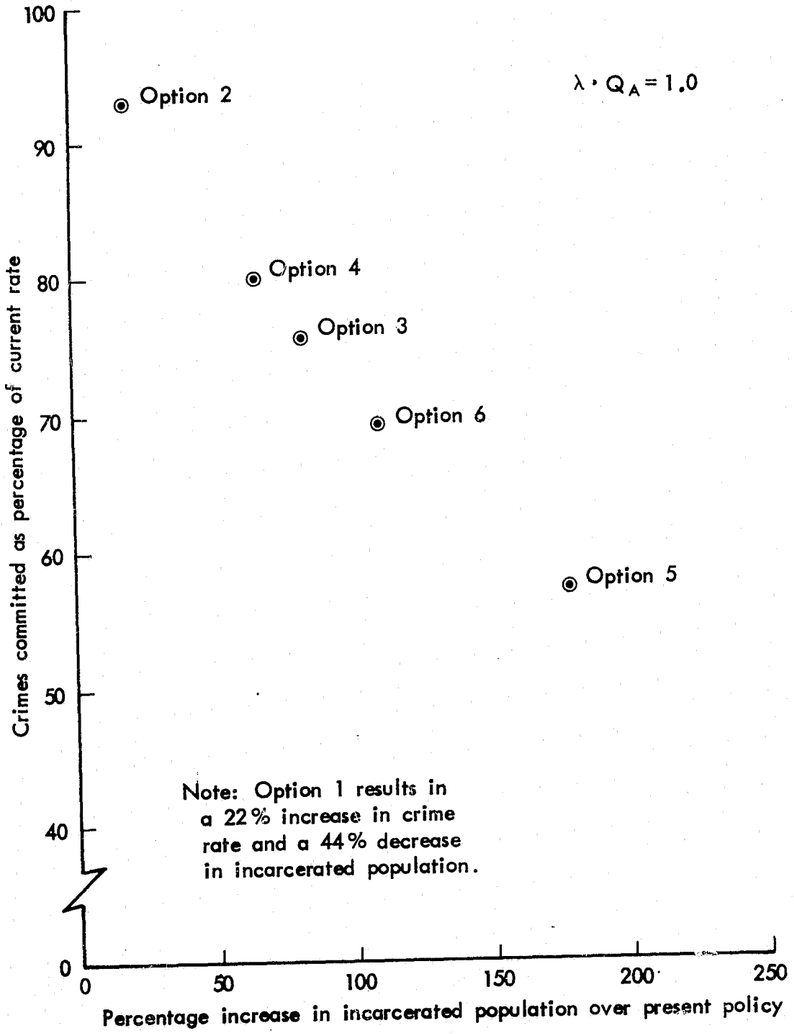


Fig. 5— Effect of alternative policy options on crime rate and incarcerated population— robbery



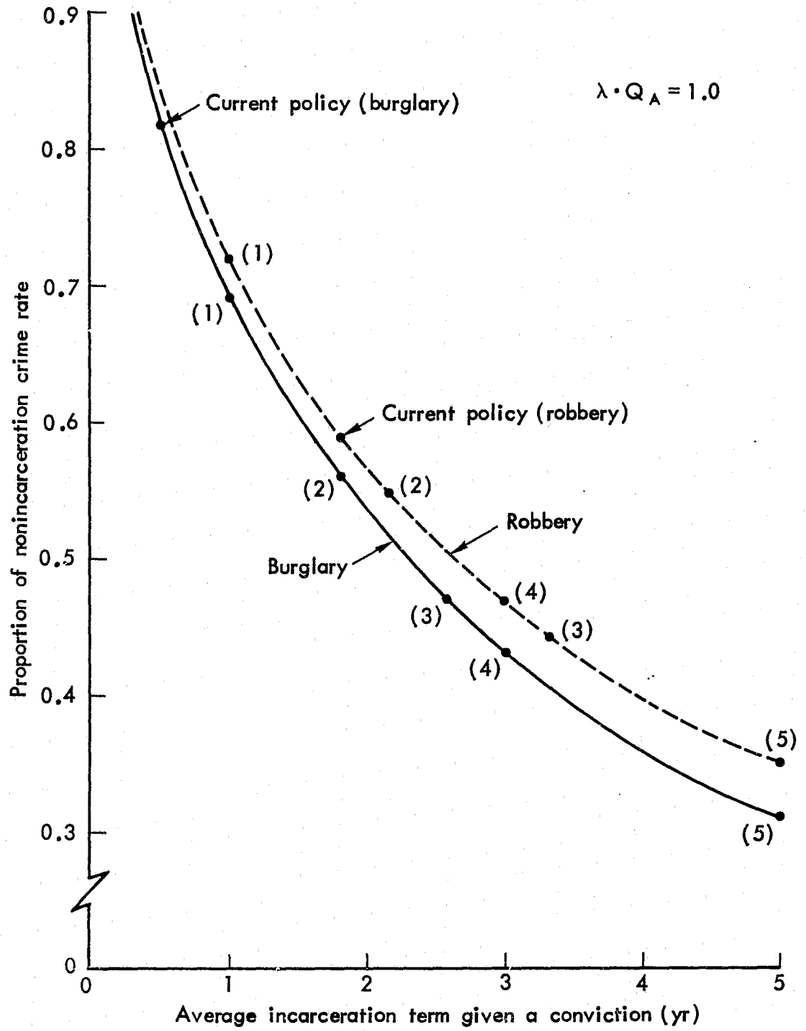


Fig. 6— Effect of alternative policy options on crime rate and average incarceration term (figures in parentheses denote sentencing options)

approach. For example, to achieve a 45 percent reduction in burglaries committed, the number of burglars incarcerated (or the average time served per burglary conviction) would have to be increased over 400 percent (see Fig. 4). Even with robbery, for which the average term of imprisonment is now considerably higher than for burglary, an increase in incarceration of about 200 percent would be required to achieve a 45 percent reduction in robberies committed (see Fig. 5).

The crime-reduction effects of incapacitation, as estimated by the study, are limited by the relatively low estimates of offense rates that research has found to date. The true picture may be one of the following three possibilities--to be established by further research:

- The average offense rates of convicted offenders are as low as reported here, and the incapacitation effects (crimes prevented) of imprisonment are as stated.
- In their self-reports, offenders consistently underreport the true frequency of their criminal activity, so offense rates and incapacitation effects are actually much higher than estimated.
- There is a strong negative correlation between offense rate and probability of arrest and conviction, so inmate samples underrepresent the high-rate offenders. This finding would prompt a search for investigation procedures to raise the arrest and conviction probabilities for high-rate offenders.



## VI. CONCLUSIONS

This analysis has afforded a unique view of how the California criminal justice system operates in discriminating between felony defendants with varying prior criminal records. It has also provided empirical estimates of the sanctions they actually face.

Overall, less than half of all felony arrests result in convictions, regardless of the specific arrest charge. The likelihood of conviction is not significantly affected by the arrestee's prior record, although those with less serious records are more likely to be released without formal court proceedings. Once convicted, defendants with more serious records are much more likely to be imprisoned.

There is considerable debate over the appropriate prison terms for specific offenses; for example, should a robbery term be three or six years? Yet, this analysis demonstrates that this is a second-order issue (except for those so sentenced), given that only 11 percent of robbery arrests (30 percent of convictions) result in imprisonment.

Increasing robbery terms by three years will increase the average time served for each arrest by only about four months. The effect is much less for burglary. The most important policy questions with regard to punishment or incapacitation are whether the quality of arrests can be raised so as to lead to more convictions and whether the percentage of convicted defendants who serve any prison time at all is too low.

When we examined the sentencing pattern for defendants convicted of robbery, the property crime for which imprisonment is by far the most likely, we found that those sentenced to prison were usually armed with a gun and either had extensive prior records (usually prior prison commitments) or were charged with several violent offenses. As for the relationship between sentencing policy and crime rate, our best estimates suggest that in order to substantially reduce crime rates through incapacitation alone, very large increases in prison populations would be necessary.



Appendix A

## DISPOSITIONAL PROCESS AND PROBABILITIES FOR ROBBERY AND BURGLARY ARRESTEES

Figures 7-12 are flow diagrams of the dispositional process and probabilities for burglary and robbery arrestees, grouped by criminal record: no/minor, major, and prison. The data sources are the 1973 OBTS Arrest File and 1973 Superior Court File.

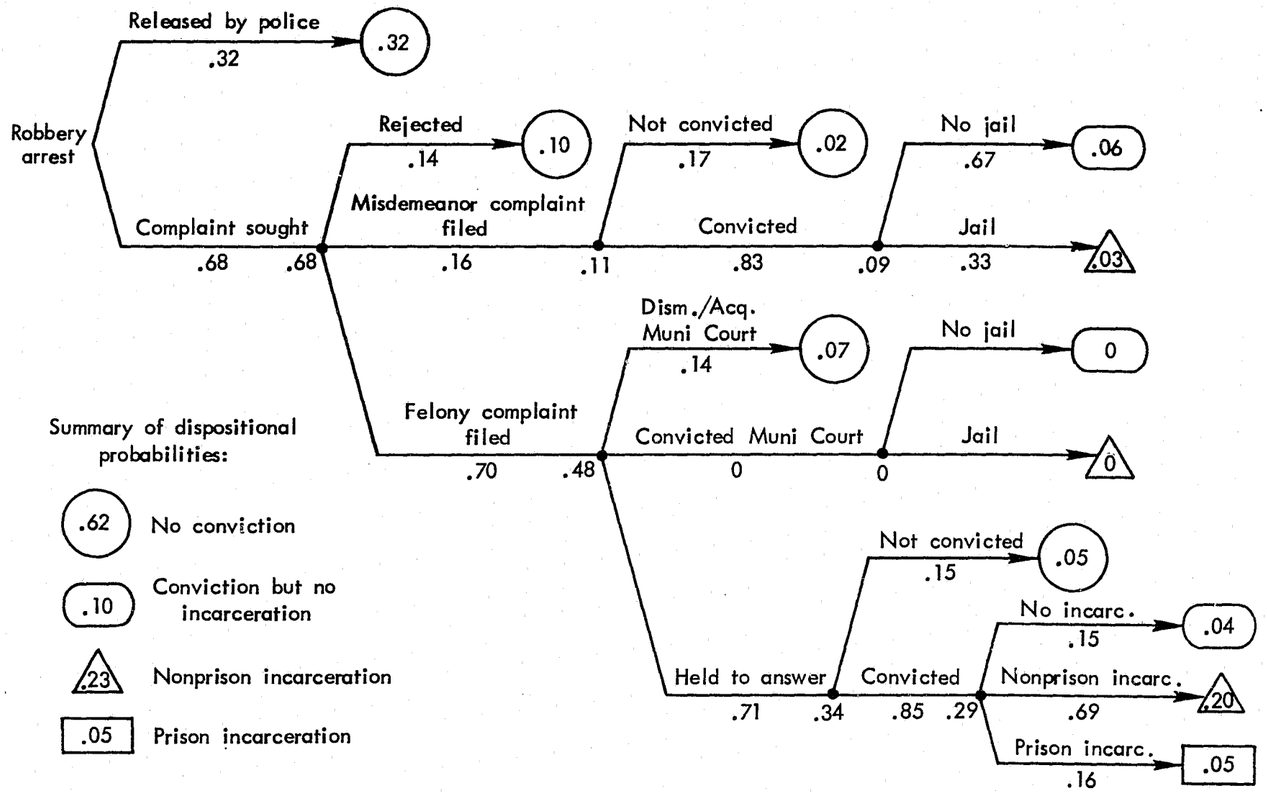


Fig. 7— Case dispositions of robbery arrestees with no or minor prior records

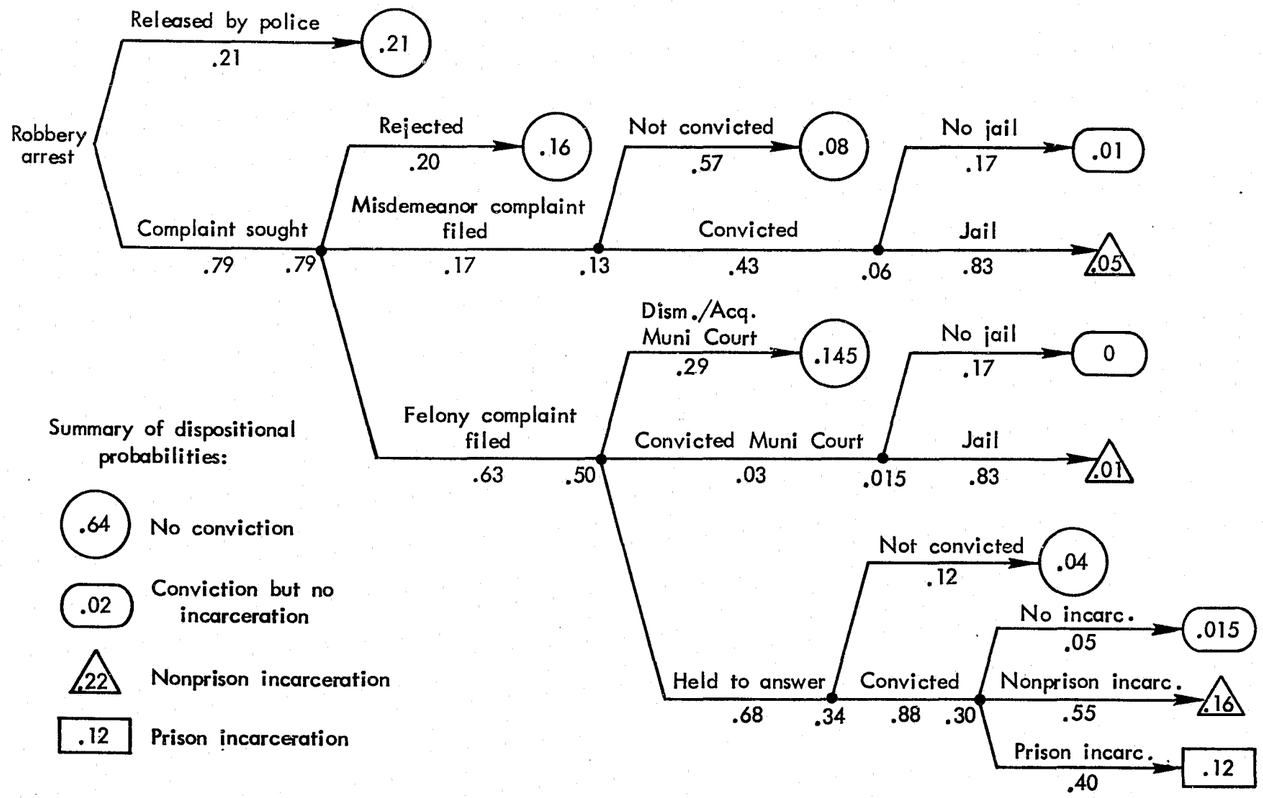


Fig. 8— Case dispositions of robbery arrestees with major prior records

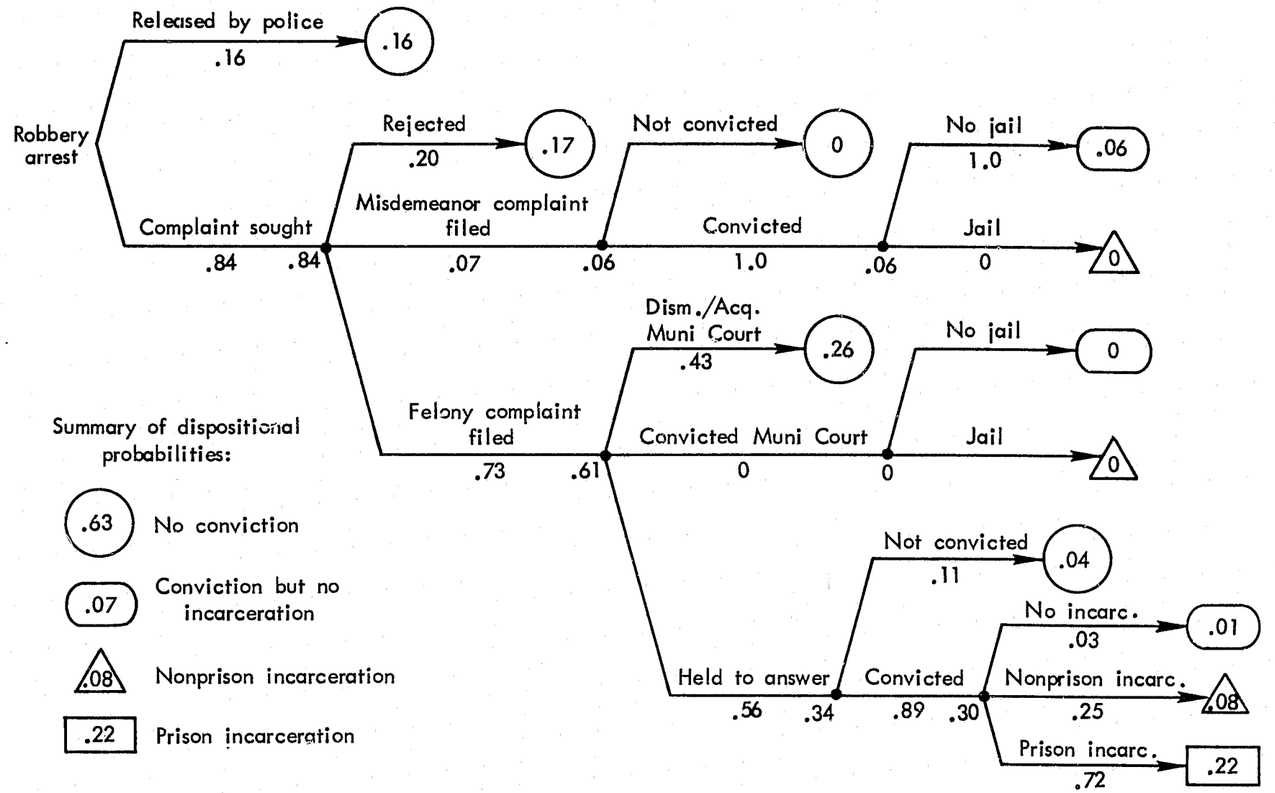


Fig. 9— Case dispositions of robbery arrestees with prison records

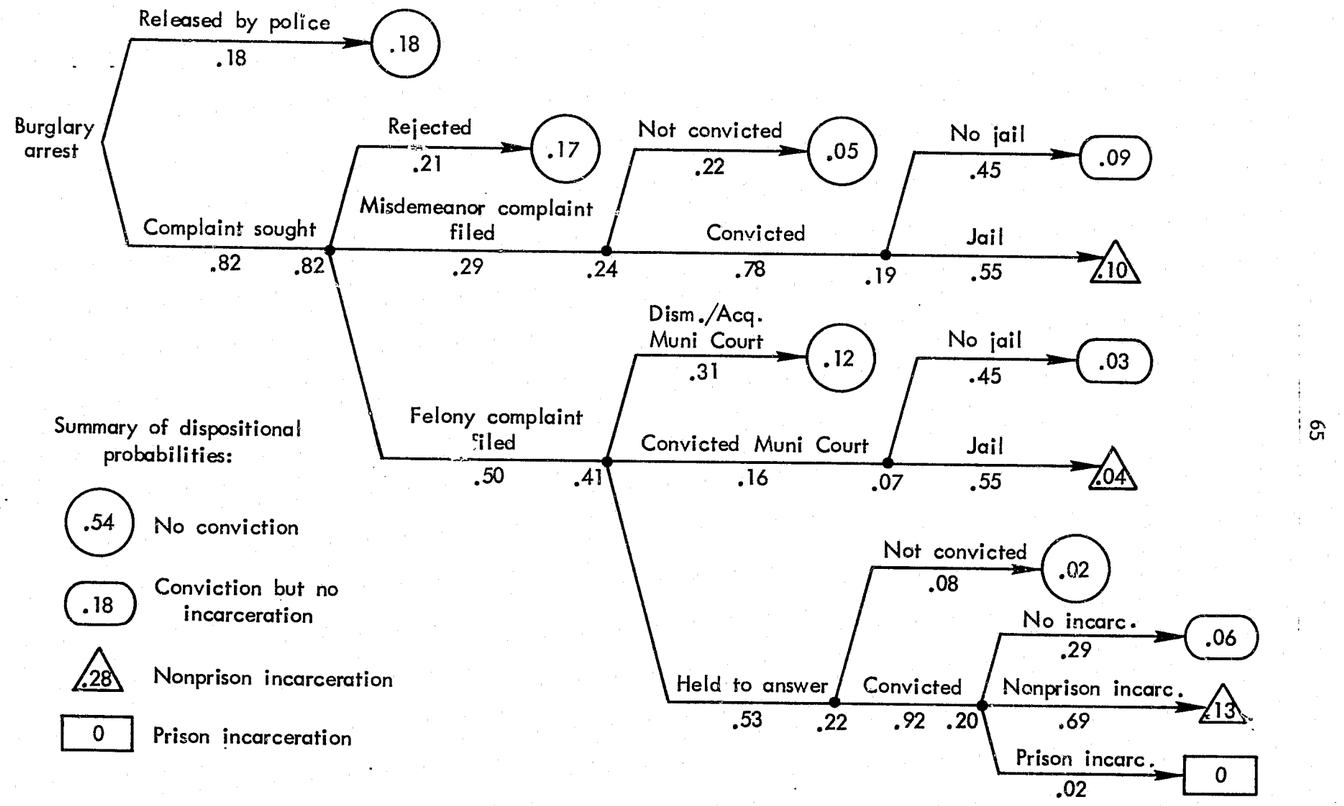


Fig. 10— Case dispositions of burglary arrestees with no or minor prior records

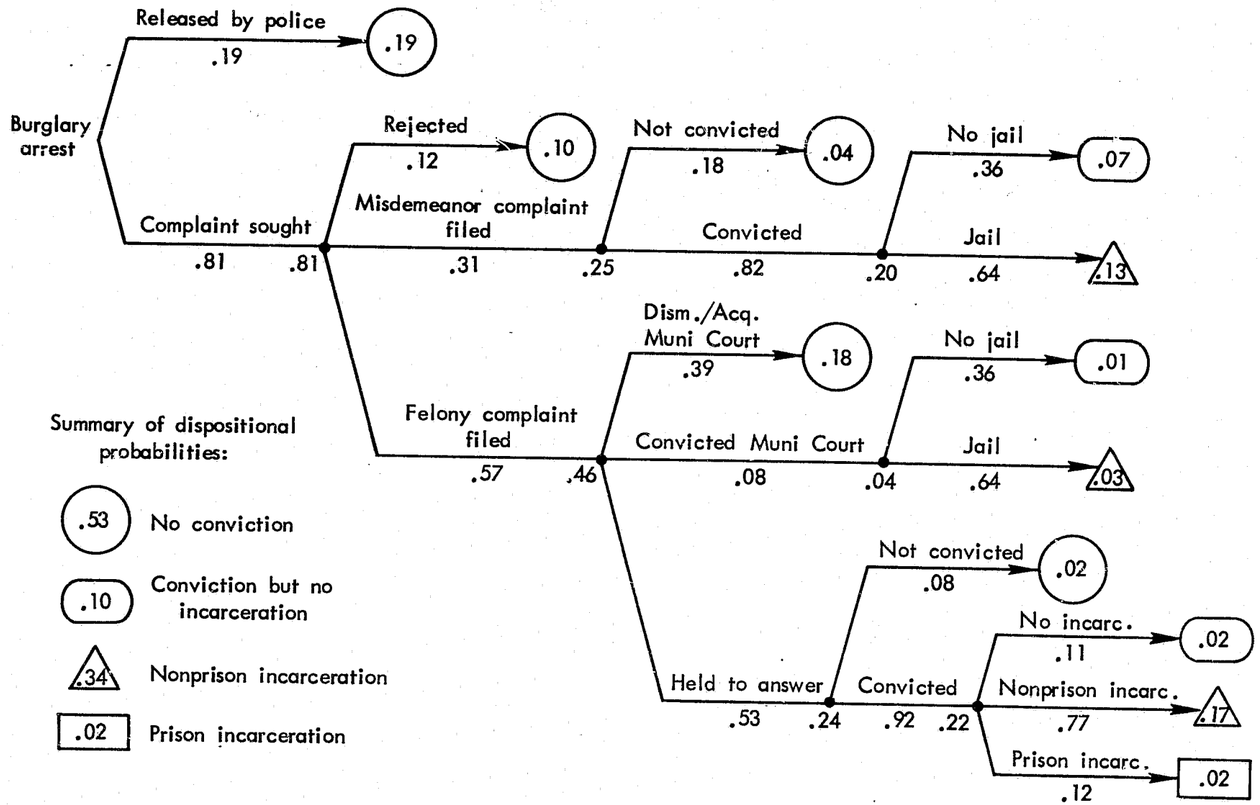


Fig. 11—Case dispositions of burglary arrestees with major prior records

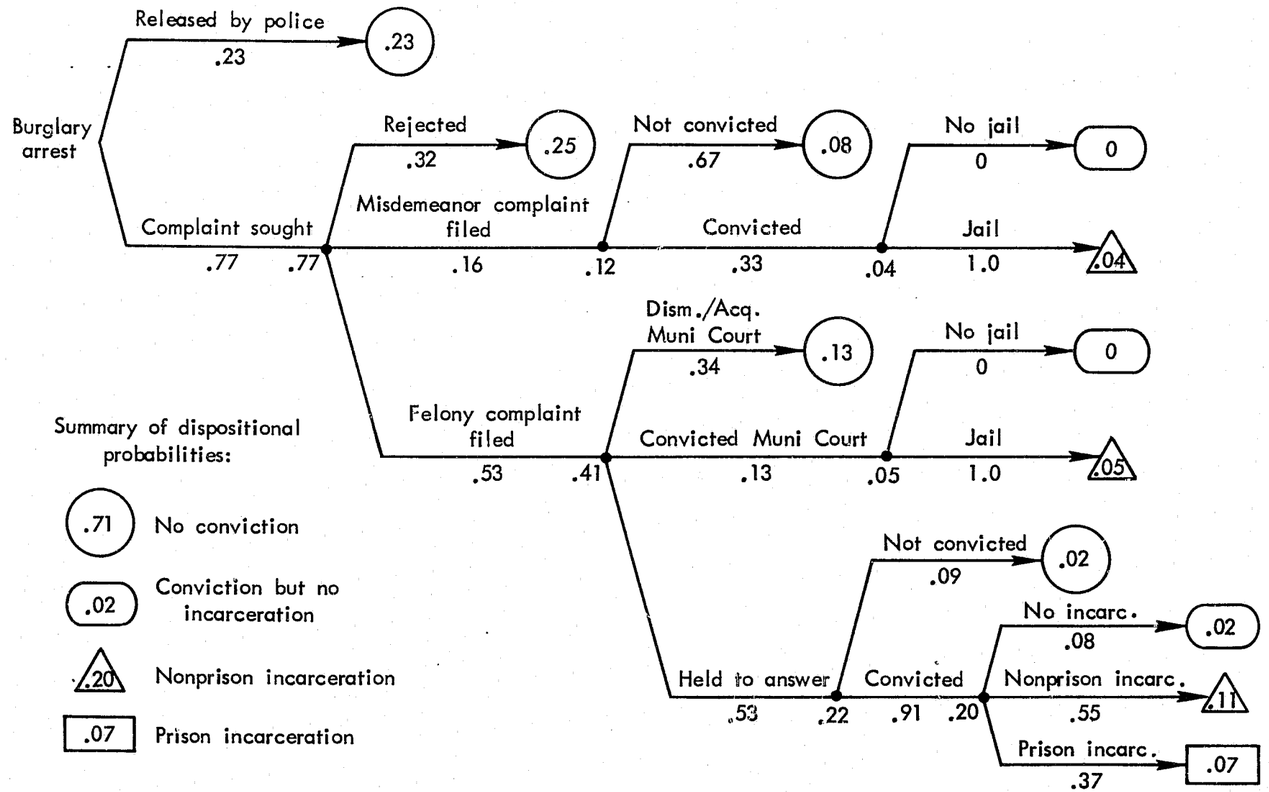


Fig. 12—Case dispositions of burglary arrestees with prison records

Appendix B

## STATUTORY, PROSECUTORIAL, AND SENTENCING TREATMENT OF ROBBERY IN CALIFORNIA

### DEFINITIONS

The California Penal Code, Sec. 211, defines robbery in general as "the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear."* Degrees of robbery are distinguished as follows: "All robbery which perpetrated by torture or by a person armed with a dangerous or deadly weapon, and the robbery of any person who is performing his duties as operator of any motor vehicle, streetcar, or trackless trolley used for the transportation of persons for hire, is robbery in the first degree. All other kinds of robbery are of the second degree" (Sec. 211a).

Fear is defined as either "1. The fear of an unlawful injury to the person or property of the person robbed, or any relative of his or member of his family; or, 2. The fear of an immediate and unlawful injury to the person or property of anyone in the company of the person robbed at the time of the robbery" (Sec. 212).

Robbery is punishable by imprisonment in the state prison for five years to life if the offense is in the first degree and for one year to life if the offense is in the second degree; the term of

*Except where specified, this discussion pertains to the penal code effective during the period our data were collected, that is, before July 1977, when the new Uniform Determinate Sentencing Act became effective.



confinement is 15 years to life if the defendant intended and inflicted great bodily injury on the victim (Sec. 213).*

The California definition of robbery is a typical one, but jurisdictions vary widely in defining degrees of the offense and prescribing punishment. For example, Florida law defines and punishes robbery as follows:

> Whoever, by force, violence or assault or putting in fear, feloniously robs, steals and takes away from the person or custody of another, money or other property which may be the subject of larceny, shall be guilty of a felony of the first degree, punishable by imprisonment in the state prison for life or for any lesser term of years, at the discretion of the court (SS 813.011).

That is, Florida does not distinguish degrees of robbery. By contrast, Oregon distinguishes three degrees of robbery: third degree, theft or attempted theft, with the use or threat of immediate use of physical force, with intent to prevent resistance to taking or to keeping, or with intent to compel delivery of property or to compel another to aid theft; second degree, the foregoing elements plus a claim to be armed, by word or conduct, with a deadly or dangerous weapon, or being aided by another person actually present; and first degree, the third-degree elements plus being armed with a deadly weapon, or using or attempting to use a dangerous weapon, or causing or attempting to cause serious physical injury (ORS 164.395, 164.405, and 164.415). Oregon law specifies maximum prison terms of five, ten, and twenty years for the three degrees of robbery, respectively.

*The classification of robbery by degree and the attendant punishment scheme have been repealed by the Uniform Determinate Sentencing Act.

Various lesser offenses include some but not all of the elements of robbery. Grand theft, for example, involves the felonious taking of personal property without the element of force or fear (Sec. 487*). Assault contains the element of attempted force without the element of felonious taking (Sec. 240). Frequently, initial charges of robbery eventuate in convictions of such lesser crimes when there is insufficient proof of all the elements of robbery.

Attempted robbery and assault with intent to rob are considered to be robbery for statistical reporting purposes in the FBI Uniform Crime Reports and in official California publications.**

## SPECIAL PROSECUTORIAL ALLEGATIONS

The California Penal Code, like the criminal law in most other states, provides for enhancing or aggravating the punishment of convicted defendants, given alleged and proven facts about the defendant's prior record or the offense for which he is currently convicted. Generally, these special facts must be formally alleged (pled) by the prosecutor, and then either admitted by the defendant or proven in trial, in order to justify the imposition of enhanced punishment. A judge may strike such admitted or proven allegations except when specifically prevented by statute.

*Statutory sections not otherwise identified are from the California Penal Code.

**U.S. Department of Justice, Federal Bureau of Investigation, Uniform Crime Reports: Crime in the United States, 1975, Washington, D.C., 1976, p. 24; and California Department of Justice, Crime and Delinquency in California, 1974, Sacramento, 1975, p. 47.



In California the main special allegations include:

- Prior felony convictions (and certain misdemeanor convictions--Sec. 666).
- Having been armed with or used a deadly weapon other than a firearm.
- Having been armed with or used a firearm.
- Great bodily injury intended and inflicted.
- Status as a habitual criminal.

Punishment enhancement takes the following forms, among others:*

- Ineligibility for probation (e.g., Sec. 1203).
- Imposition or increase of minimum sentence (e.g., Secs. 3024, 213).
- Additional consecutive punishment (e.g., Sec. 12022.5).
- Increased sentence (e.g., Sec. 12025).
- Applicability of the Habitual Criminal Act (Sec. 644).

The following discussion of these special allegations pertains to the pre-1977 period. A summary of the comparable provisions under the 1977 Uniform Determinate Sentencing Act is appended.

### Prior Felony Convictions

If a convicted defendant has committed other felonies that led to constitutionally valid convictions before he committed the current offense, and these prior convictions are pled and proven (or admitted), his punishment for the present conviction can be enhanced.

*See W. B. Keene, comp. and ed., 1976 Supplement to California Superior Court Criminal Trial Judges' Benchbook, West Publishing Co., St. Paul, Minn., 1976, pp. 334-355.

Secs. 1203 and 1203.06 provide that no probation shall be granted (except in unusual cases where the interests of justice will be best served) if, for example:

- The defendant has two prior felony convictions, or
- The defendant has a prior conviction for a felony in which he was armed with a deadly weapon while committing the crime or when arrested, or in which he willfully inflicted great bodily injury, or
- The defendant has a prior conviction of specified crimes and was armed with a firearm while committing (or being arrested for) the present crime.

Section 3024 establishes a minimum term of two years for a defendant with a prior felony conviction but not armed with a deadly weapon in the present offense.

Section 644 (the Habitual Criminal Act) may be applied when the defendant's current conviction is for an offense from a list of 14 types (including robbery) and he has had two or three prior convictions (separately tried and terms separately served) for offenses from a list of 20 types (including robbery). The penalty for such criminals is life imprisonment. A person imprisoned as a habitual criminal with two prior convictions is not eligible for parole release until he has served at least nine years; with three prior convictions, at least 12 years.*

Having Been Armed With or Used a Deadly Weapon

The applicability of the five sections pertaining to deadly

*The Habitual Offender Act has been repealed by the Uniform Determinate Sentencing Act.



weapons depends on whether the deadly weapon was a firearm, whether the weapon was simply possessed or used, and whether the arming or use was an element of the crime for which the defendant was convicted. Considerations of prior convictions and the willful infliction of great bodily injury may also apply.

Section 1203 disqualifies a defendant for probation if, in connection with certain charged felonies or any prior felony, he was armed with a deadly weapon other than a firearm while committing the crime or being arrested; or if, in connection with any charged or prior felony, he used it against another.

Section 1203.06 disqualifies a defendant for probation if he used a firearm while committing certain felonies; or if he has prior convictions for these felonies and was armed with a firearm in the current offense or at arrest. Sections 1203 and 1203.06 both apply whether or not the weapon arming or use is an element of the convicted crime.

Section 3024 provides for a minimum imprisonment of two years if the defendant was armed with a deadly weapon while committing the offense, or with a concealed deadly weapon at the time of arrest; and of four years if he also had a previous felony conviction. This section applies only if being armed is an "additional factor" in the convicted crime.

Section 12022 establishes an additional consecutive term of imprisonment if a defendant was armed with a deadly weapon while attempting or committing the felony (present and prior). For the first armed felony, the additional term is 5-10 years; for the second, 10-15 years; for the third, 15-25 years; for the fourth or more, 25

# CONTINUED

# 1 OF 2

years or life. This section applies only if being armed is an "additional factor" in the convicted crime.

Finally, Sec. 12022.5 provides an additional minimum prison term for a defendant who uses a firearm in attempting or committing robbery, assault with a deadly weapon, murder, assault with intent to commit murder, kidnapping, burglary, or rape. The penalty prescribed by this statute, which is always applicable, is an additional sentence of at least 5 years for the first felony in which a firearm was used; at least 10 years for the second; at least 15 years for the third; and at least 25 years, or life, for the fourth or more.

Great Bodily Injury

There is no general provision for G.B.I.; an allegation that great bodily injury was willfully inflicted on the victim is provided for in the statutory specification of various individual crimes. (Sec. 1203, mentioned above, is an exception.) Sec. 213 enhances the punishment for robbery to a term of 15 years to life when it has been pled and proven or admitted that the defendant willfully inflicted great bodily injury on the victim.

Sentence Enhancement Under the 1977 Determinate Sentencing Act (S.B. 42)

Indeterminate sentencing has been largely replaced. The new legislation establishes four ranges of sentence, each containing three alternative terms. Their application depends upon the particular crime, but capital crimes and offenses now having straight life sentences are excluded. The four sentence ranges are: 16 months, 2,



or 3 years; 2, 3, or 4 years; 3, 4, or 5 years, and 5, 6, or 7 years.* For example, the range of 3, 4, 5 years is now applied to robbery of a taxi, streetcar, or bus operator; the range of 2, 3, 4 years is now applied to all other robbery; and the range of 16 months, 2, 3 years to attempted robbery. As the "base term," the sentencing judge is required to impose the middle term of the applicable range unless circumstances mitigate or aggravate the crime. If the sentencing judge finds such circumstances, he may impose the lower or upper sentence of the applicable range, but he must support his decision by stating the reasons on the record.

The base term can be enhanced on a number of grounds, pled and proven, some of which resemble the former special allegations. These grounds are prior prison terms (with violent felony priors distinguished from nonviolent ones); possession of firearm or use of a deadly or dangerous weapon; use of a firearm; multiple convictions (consecutive sentences); great bodily injury; and great property loss. However, the circumstance used to enhance the sentence cannot also be used to support the judge's decision to impose the longest (aggravated) base term in the applicable range.

The base term may be enhanced one year for each prior prison term except when the present offense and the prior prison term involve a listed violent felony, for which an additional term of three years is imposed for each such prior term.

The base term may be enhanced one year for possession of a firearm or use of deadly or dangerous weapon; a consecutive term of

*Bills to modify the sentence ranges for certain offenses are now under consideration by the California legislature.

two years for use of a firearm; three years for willful infliction of great bodily injury; and one or two years for a property loss over $25,000 or $100,000, respectively. For multiple convictions, the principal term is the longest term including enhancements applicable to any of the individual crimes; the additional felonies each add a consecutive subordinate term of one-third of the middle term of the range specified (plus one-third of the "specific" enhancements if the felony is a violent offense).

The 1977 Uniform Determinate Sentencing Act limits the use of sentence enhancements, for example:

- Only the greatest of the three enhancements of great bodily injury, possession of a firearm or use of a deadly or dangerous weapon, and use of a firearm can be imposed except in robbery, rape, and burglary (or attempts of them). In the latter exceptions, both a weapon and a G.B.I. enhancement may be imposed.

- The total term cannot exceed twice the base term unless the crime is a violent one; there is an enhancement for arming, use, or great property loss; or the crime is a prison-or-escape consecutive offense.

- Consecutive subordinate terms for nonviolent offenses cannot exceed five years in total.

- Though no limit is imposed on the number of three-year enhancements for violent crime priors combined with a present violent crime conviction, any such prison prior is washed out if the defendant has gone ten years free of prison custody and felony convictions between prison release and the present crime. Similarly, other combinations are subject to a five-year washout period in which the defendant has remained free of prison custody and felony convictions.

## PROSECUTORIAL AND SENTENCING POLICY AND DISCRETION

The decision to file or not to file special allegations to enhance punishment when the facts of a case appear to support their



application is within the discretion of the prosecutor. Prosecutors sometimes elect not to file them when they believe that the interests of justice will be served.

Agreeing not to file special allegations or to recommend dismissal of filed special allegations is said to be a tool of the prosecution for persuading a defendant to plead guilty to charged offenses.* Notwithstanding, the current trend seems to be against the "manipulative" use of special allegations. For example, the California District Attorneys Association has stated that "The prosecutor should utilize all special allegations relating to prior convictions, presence or use of weapons, use of force, and infliction of great bodily injuries, whenever the Standards on Evidentiary Sufficiency have been satisfied."** In a special directive on felony case settlement policy (October 27, 1976), the Disrict Attorney of Los Angeles County declared:

> Special allegations regarding a defendant's conduct involving armed or use or great bodily injury allegations which, if found to be true, may operate to increase a defendant's punishment or limit a court's sentencing options, shall either be admitted or vigorously litigated. Allegations of prior felony convictions (for which a defendant served a term in prison of at least one year in duration) alleged in a current case charging any of the offenses specified in B.1.(c), whether singly or in multiple counts, shall either be admitted or vigorously litigated.

Judges are confronted with complex and difficult sentencing decisions, even under an indeterminate sentencing scheme in which

---

*For a comprehensive treatment of case settlement, see D. J. Newman, Conviction: The Determination of Guilt or Innocence Without Trial, Little, Brown & Company, Inc., Boston, 1966.

**Uniform Crime Charging Standards, Sacramento, Calif., December 1974, p. 31.

corrections officials determine the prison term actually served. For example, the trial judge must decide whether to grant or deny probation; what probation conditions (possibly including a jail term) to impose; whether to impose misdemeanor or felony punishment (under Sec. 17.b.5) when the statutory punishment permits such discretion; whether to impose consecutive or concurrent terms for multiple convictions; and whether or not to strike sentence enhancements to further justice.

Robbery convictions underscore the sentencing difficulty. The nature of the offense and the offender varies between wide extremes. The setting for the crime may be the street, commercial premises, residential premises, public transportation systems, etc. While the victim has invariably been made fearful, he is not usually injured or only slightly injured. Offenders vary in age but are usually young. Recidivism among robbers is high, and the debate continues over whether its rate depends upon the severity of punishment imposed.

To obtain guidance for his sentencing decisions, a judge may look to the philosophy and details of model statutes and criminal justice standards.* He may consider views that have been advanced in the broad and diverse literature on criminal sentencing.** Through

*See, for example, American Law Institute, Model Penal Code, proposed first draft No. 1, 1961; Advisory Council of Judges of the National Council on Crime and Delinquency, Model Sentencing Act, 1963; The President's Commission on Law Enforcement and the Administration of Justice, Task Force on the Administration of Justice, The Courts: Task Force Report, Washington, D.C., 1967; and American Bar Association, Project on Minimum Standards for Criminal Justice, Standards Relating to Appellate Review of Sentences, Standards Relating to Pleas of Guilty, Standards Relating to Sentencing Alternatives and Procedures, approved drafts, New York, 1968.

**See D. Tompkins, Sentencing the Offender--A Bibliography, Institute of Governmental Studies, University of California, Berkeley, March 1971; and R. Dawson, Sentencing--The Decision as to Type, Length and Conditions of Sentence, Little, Brown & Company, Boston, 1969.



participation in sentencing institutes and training courses,* he may be influenced by his judicial peers, beyond the force exerted by day-to-day contact with colleagues in his own court. He may consult reports of research on the effects of sentencing. But, on balance, the decisive influence is likely to be the judge's personal assessment of how the multiple (and sometimes conflicting) purposes of criminal sentencing should be weighted in specific cases; and of how effective the mechanisms of punishment (prison, jail, probation, fines, etc.) are in accomplishing its purposes.

The commonly recognized ways of achieving the purposes of criminal sentencing--especially of reducing the frequency and severity of the harm caused the public by criminal acts and omissions are the following:**

- Isolating the convicted criminal from the public, thereby protecting it while he is incarcerated.
- Punishing the offender, to deter him and others from future criminality (and, in older views, to exact retribution).
- Rehabilitating the offender, to diminish his desire or need to commit future crimes.

The relative emphasis that a sentencing judge gives these means tends to characterize him as hard-line or otherwise. But any characterization will also reflect his view of the role of prison

*California Sentencing Institutes for Superior Court Judges are conducted annually and are published in the California Reporter. Also see G. H. Revelle, Sentencing and Probation, text prepared for the National College of the State Judiciary, Reno, Nev., 1973.

**See Twentieth Century Fund Task Force Criminal Sentencing, Fair and Certain Punishment, McGraw-Hill Book Company, New York, 1976, p. 69. It contains a succinct but comprehensive review of criminal sentencing by A. M. Dershowitz.

incarceration--how it serves to isolate, to punish, and to provide a setting for rehabilitation.

The Uniform Determinate Sentencing Act expresses a policy toward imprisonment:

> The Legislature finds and declares that the purpose of imprisonment for crime is punishment. This purpose is best served by terms proportionate to the seriousness of the offense with provision for uniformity in the sentences of offenders committing the same offense under similar circumstances. The Legislature further finds and declares that the elimination of disparity and the provision of uniformity of sentences can best be achieved by determinate sentences fixed by statute in proportion to the seriousness of the offense as determined by the Legislature to be imposed by the trial court with specified discretion (Sec. 1170.a.1).

This new legislation--besides recognizing a court's discretion to grant or deny probation; to impose the upper or lower term rather than the middle term of a sentence range; to impose current or consecutive sentences; to consider an additional sentence for prior prison terms; and to enhance a sentence on several specified grounds--directed the California Judicial Council to determine criteria for the exercise of the court's discretion (Sec. 1170.3). These criteria, tentatively adopted by the Judicial Council on January 21, 1977, advise judges to consider for the following:

- Protecting society.
- Punishing the defendant.
- Encouraging the defendant to lead a law-abiding life in the future and deterring him from future offenses.
- Deterring others from criminal conduct by demonstrating its consequences.
- Preventing the defendant from committing new crimes by isolating him for the period of incarceration.



- Securing restitution for the victims of crime.
- Achieving uniformity in sentencing.

Thus, compared with the former sentencing law, the Uniform Determinate Sentencing Act places greater stress on imposing imprisonment primarily to punish and on achieving uniformity in sentencing.

END