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Determinate and Indeterminate Sentence Law Comparison Study: Feasibility of Adapting Law to a Sentencing Commission Guideline Approach

Joint Committee on Rules

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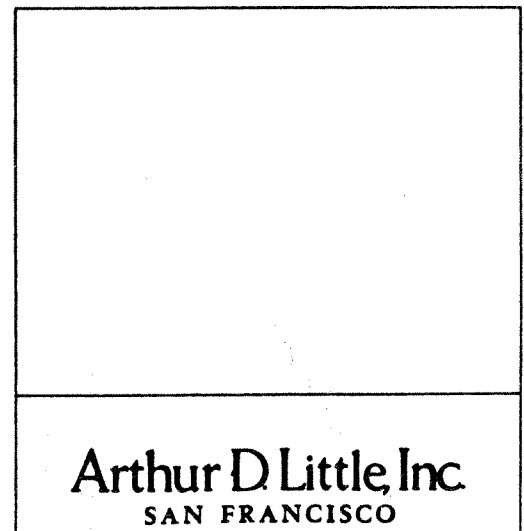
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**DETERMINATE AND INDETERMINATE SENTENCE LAW COMPARISONS STUDY:
FEASIBILITY OF ADAPTING LAW TO A
SENTENCING COMMISSION-GUIDELINE APPROACH**

**Report to the
CALIFORNIA LEGISLATURE
JOINT COMMITTEE ON RULES**

May 1980



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Arthur D Little, Inc. ONE MARITIME PLAZA · SAN FRANCISCO CALIFORNIA 94111 · (415) 981-2500

May 23, 1980

Mr. Eugene Mansfield
Chief Administrative Officer
California Legislature
Joint Committee on Rules
State Capitol -- Room 3016
Sacramento, CA 95814

Re: Chapter 1135 -- Statutes of 1979

Dear Mr. Mansfield:

84553

Enclosed please find the Final Report for our research: *Determinate and Indeterminate Sentence Law Comparisons Study: Feasibility of Adapting Law to a Sentencing Commission-Guideline Approach.*

We appreciate the opportunity to have worked on this assignment for the California Legislature and the Citizens' Advisory Committee on Alternatives.

Sincerely,

Roger C. Steiner

Roger C. Steiner

RCS/sk

Enclosures

cc: Citizens' Advisory Committee on Alternatives

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Report to the
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May 1980

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TABLE OF CONTENTS

	<u>Page</u>
EXECUTIVE SUMMARY	i
I. INTRODUCTION	I-1
A. ARTHUR D. LITTLE, INC., STUDY	I-2
B. DEFINITIONS AND ISSUES	I-3
Philosophical Dimensions	I-3
C. GOALS AND OBJECTIVES	I-4
1. Adequacy	I-4
2. Equity	I-5
3. Certainty	I-5
4. Other Issues of Sentencing	I-6
a. Offender/Offense Dimension	I-6
b. Discretion	I-8
c. Available Resources	I-10
D. CONCLUSIONS	I-10
II. CALIFORNIA'S EXPERIENCE UNDER INDETERMINATE AND DETERMINATE SENTENCING	II-1
A. CALIFORNIA'S DETERMINATE SENTENCING LAW	II-1
1. Enactment of Determinate Sentencing	II-1
a. Background to Enactment of the DSL	II-1
b. Senate Bill 42	II-3
c. Amending Legislation	II-3
2. Objectives of the Determinate Sentencing Law	II-4
3. Structural Contrasts Between ISL and DSL in California	II-6

TABLE OF CONTENTS
(continued)

	<u>Page</u>
B. STUDY METHODS	II-7
1. Methodological Concerns	II-8
a. Continuing Evolution of the Sentencing Structure Within DSL	II-9
b. Other Initiatives Influencing Observed Results in the Criminal Justice System	II-9
c. Attribution of Observed Conditions to Sentencing Approaches	II-11
d. Limited DSL Implementation Period and Data Availability	II-11
C. A COMPARISON OF ISL AND DSL EXPERIENCE IN CALIFORNIA	II-12
1. Attainment of Sentencing Goals	II-12
a. Adequacy	II-12
b. Certainty	II-14
c. Equity	II-21
d. Protection	II-22
e. Deterrence	II-28
f. Rehabilitation	II-41
2. Impacts on the Criminal Justice System	II-44
a. Courts	II-45
b. Corrections	II-50
c. Decision-making Discretion	II-59
III. NATIONAL STUDY OF SENTENCING	III-1
A. SENTENCING APPROACHES	III-1
1. Trends	III-1
a. Legislative Sentencing	III-2
b. Parole Guidelines	III-4

TABLE OF CONTENTS
(continued)

	<u>Page</u>
2. Sentencing Characteristics	III-4
a. Mandatory Sentencing	III-5
b. Aggravating/Mitigating Circumstances	III-7
c. Multiple Crimes	III-9
d. Appeals of the Sentence	III-9
e. Parole	III-11
f. Good Time	III-11
g. Retroactivity	III-12
B. SENTENCING RESEARCH	III-13
IV. CASE STUDIES	IV-1
A. MINNESOTA	IV-2
1. Background	IV-3
2. Guidelines	IV-4
a. Offense Severity Reference Table	IV-5
b. Criminal History Index	IV-10
3. Characteristics	IV-12
a. Equity	IV-12
b. Uniformity	IV-13
c. Certainty	IV-13
d. Mandatory Sentences	IV-13
e. Mitigating and Aggravating Factors	IV-14
f. Multiple Crimes	IV-15
g. Good Time	IV-16
h. Parole	IV-17
i. Appeals	IV-17
j. Impact	IV-18
k. Implementation	IV-19
4. Conclusion	IV-20
a. Legislative Mandate	IV-20
b. Process of Guidelines Development	IV-21
c. Guidelines	IV-21
B. PENNSYLVANIA	IV-22
1. Background	IV-22
2. Guidelines	IV-24

TABLE OF CONTENTS
(continued)

	<u>Page</u>
3. Characteristics	IV-25
a. Uniformity, Equity, and Certainty	IV-25
b. Mandatory Sentences	IV-25
c. Multiple Crimes	IV-26
d. Good Time	IV-26
e. Parole	IV-26
f. Appeals	IV-26
g. Impact	IV-27
4. Conclusions	IV-27
C. NEW JERSEY	IV-27
1. Background	IV-28
2. Guidelines	IV-29
3. Characteristics	IV-40
4. Conclusions	IV-42
D. MASSACHUSETTS	IV-43
1. Background	IV-43
2. Guidelines	IV-43
3. Characteristics	IV-44
a. Uniformity, Certainty, and Equity	IV-44
b. Mandatory Sentences	IV-44
c. Multiple Crimes	IV-44
d. Good Time	IV-44
e. Parole	IV-45
f. Appeals	IV-46
4. Conclusions	IV-46
V. RECOMMENDATIONS	V-1
A. SENTENCING COMMISSION	V-1
1. Literature	V-1
2. Other States	V-2

TABLE OF CONTENTS
(continued)

	<u>Page</u>
3. California Status Quo	V-2
a. Overcrowding	V-2
b. Ad Hoc Legislative Inputs	V-3
c. Inadequate Attention to Financial Implications	V-3
d. Lack of a Deliberate, Systemwide Planning Process	V-4
e. Lack of Monitoring	V-4
B. RECOMMENDATIONS	V-4
C. ENABLING LEGISLATION	V-6
1. Composition and Organization	V-6
2. Powers and Duties	V-7
3. Public Hearings	V-7
a. Legislative Review	V-8
b. Time Frames	V-8
c. Guidelines	V-8
d. Appeals	V-8
e. Sunset Law	V-8
APPENDICES	
A. Study Design	A-1
B. Letter of Response to Questions from Citizens' Advisory Committee on Alternatives	B-1
C. Bibliography	C-1
D. Analysis of Superior Court Dispositions 1970-1978	D-1
E. Analysis of Offense Rates	E-1

LIST OF FIGURES

<u>Figure Number</u>	<u>Title</u>	<u>Page</u>
II-1	Offense Rate Trends - Total Seven Index Crimes	II-31
II-2	Offense Rate Trends - Crimes Against Persons	II-32
II-3	Offense Rate Trends - Willful Homicide	II-33
II-4	Offense Rate Trends - Forcible Rape	II-34
II-5	Offense Rate Trends - Robbery	II-35
II-6	Offense Rate Trends - Assault	II-36
II-7	Offense Rate Trends - Crimes Against Property	II-37
II-8	Offense Rate Trends - Burglary	II-38
II-9	Offense Rate Trends - Theft	II-39
II-10	Offense Rate Trends - Motor Vehicle Theft	II-40
II-11	Superior Court Dispositions - Percent of Original Guilty Pleas	II-49
II-12	Superior Court Sentences	II-54
II-13	Superior Court Sentences - Percentage to Prison	II-55

LIST OF TABLES

<u>Table Number</u>	<u>Title</u>	<u>Page</u>
II-1	Percentage of Felony Convictions Resulting in State Prison Sentences	II-13
II-2	Selected Sentence Comparisons: California ISL and DSL Years Versus State Sample	II-15
II-3	Dispositions to Prison and to Total of Probation and Probation and Jail - 1975 and 1978	II-17
II-4	Summary of Comparisons Between Reported DSL Dispositions and ISL Period Projections Calculated as Percentages of Superior Court Convictions	II-18
II-5	Percentage Point Differences Between Dispositions to Prison and to the Total of Probation and Probation and Jail - 1975 and 1978	II-20
II-6	Percentages of Newly Received Male Felons: By Conviction Offense 1975 and 1978	II-25
II-7	Comparative Indices of Incapacitation Per 1000 Newly Received Male Felons: 1975 and 1978	II-26
II-8	Weighted Incapacitation Index Comparisons	II-27
II-9	Offense Rates - ISL Projections Versus DSL Reports	II-29
II-10	Sanction Indices	II-41
II-11	Sentence Length Comparisons (Median Sentence in Months By Selected Offenses)	II-43
II-12	California Prison Population by Fiscal Years 1970-1979	II-53
II-13	Prison Commitments by Selected Offenses in California - 1975 and 1978	II-57
II-14	California Male Prison Admissions by Offense and Percent of Total Admissions January-June 1975, 1977, and 1979	II-58
III-1	Ranges of Sentences	III-2
IV-1	Attribute Inclusion By Offenses -- Overview of New Jersey Sentencing Guidelines	IV-31
IV-2	New Jersey Sentencing Ranges	IV-2
IV-3	Parole Eligibility Computation	IV-46

LIST OF EXHIBITS

<u>Exhibit Number</u>	<u>Title</u>	<u>Page</u>
IV-1	Offense Severity Reference Table	IV-6
IV-2	Sentencing Guidelines Grid - Presumptive Sentencing Lengths in Months	IV-9
IV-3	Administrative Office of the Courts Sentencing Guidelines -- Breaking and Entering or Entering Category	IV-32
IV-4	Administrative Office of the Courts Sentencing Guidelines -- Robbery Category	IV-35
IV-5	Administrative Office of the Courts Sentence Disparity Project: 48-cell Locator Sheet	IV-38
IV-6	Administrative Office of the Courts Sentencing Research Project: 48-cell Guidelines Matrix	IV-39

EXECUTIVE SUMMARY

In 1979 the California Legislature created a Citizens Advisory Committee on Alternatives, "...to supervise three studies, conducted under contract with the Joint Rules Committee, and to report their recommendations to the Legislature." Two of the studies were to address: (1) state prison population projections, facilities, and classification, and (2) alternatives to incarceration in state institutions.

The third study is the topic of this report. Its purpose is to:

- Provide information regarding the apparent merits of California's experience under Determinate Sentencing Law (DSL) as compared with the merits of the state's experience under its previous Indeterminate Sentencing Law (ISL).
- Assess the feasibility of California adopting a sentencing commission based upon other states' experiences with sentencing commissions.

A. DETERMINATE SENTENCING IN CALIFORNIA

1. Enactment of Determinate Sentencing

Senate Bill 42 (SB 42) was passed by the California Legislature in 1976, creating Chapter 1139 of that year's statutes. The bill was signed into law by the Governor on September 20, 1976, to become effective July 1, 1977. This act is generally referred to as California's Determinate Sentencing Law. The act made extensive revisions to the state's Penal Code and considerable amendments to the penal sections of many other of the state's codes in relation to imprisonment and in relation to the administration of the new determinate system.

Enactment of DSL in 1976 represented a major shift in the state's philosophy concerning crime and punishment. It was the first of a large number of legislative acts that generally increased the seriousness of the consequences of criminal activity.

2. Objectives of California's Determinate Sentencing Law

Section 1170 of the Penal Code provides insights on the basic objective of SB 42 enacting DSL in California. Section 1170(a)(1) states that:

"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 sentence

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."

Subsequent portions of Section 1170 provide further clarification on provisions and procedures for the calculation and imposition of determinate sentences; however, no other "objective" -- in the strict sense of sentence results -- are defined.

As if to emphasize the basic objective, other portions of SB 42 lodged responsibility in a Community Release Board -- replacing the Adult Authority -- for reviewing each prison sentence for disparity within one year of the beginning of a convicted offenders term of commitment. Effective January 1980, this state agency became known as the Board of Prison Terms.

Under SB 42, the Judicial Council was given the responsibility for developing sentencing rules for the application of the provisions of SB 42, said rules to be utilized by the Community Release Board in reviewing "the information regarding the sentences in this state of other persons convicted of similar crimes so as to eliminate disparity of sentences and to promote uniformity of sentencing."

3. Structural Contrasts Between ISL and DSL in California

Determinate sentencing in California, as initiated by SB 42, had the following general characteristics contrasting with the previous indeterminate scheme.

- Rather than the situation under ISL where the actual term of imprisonment was determined by a paroling authority, DSL created a system wherein judges select a specific term of imprisonment from three term lengths specified by the legislation, including a minimum, middle or "base" term, and maximum term. Under ISL, judges were specifically prohibited from fixing the term of a person's sentence to state prison; SB 42, in addition to specifying the three possible sentences provided specific procedures to be followed by the trial judge in sentencing, and required that a statement of reasons be made public for the resulting sentence choice.
- Under ISL the granting and revocation of parole, and thus the fixing of sentences, were determined by the Adult Authority (for males) and the California Womens Board of Terms and Paroles. SB 42 abolished these agencies in light of the determinate sentence

as specified in the statute, and created a Community Release Board with specified powers and duties relating to the granting of parole.

- Where under ISL, the time to release (or the granting of parole) was indefinite during the period of commitment, SB 42 provided for specific provisions and procedures for the reduction of the length of sentence by up to one-third on the basis of "good time".
- Under ISL, prisoners were eligible for parole after having served either the minimum level or one-third of the minimum of the indeterminate range proscribed by law; furthermore, a prisoner released to parole could be on parole until the expiration of the maximum term of imprisonment for the crime for which he or she was convicted. At the discretion of the pertinent authority, a parolee could be discharged from parole after serving two years satisfactorily under ISL. In contrast, DSL limited parole to one year after the expiration of the prison sentence. In the event of parole revocation by the Community Release Board, the determinate sentencing language of SB 42 limited the time for which the offender could be recommitted on a parole violation to six months or the end of the original one year parole term, whichever came sooner.
- A major structural contrast with ISL instituted through the enactment of SB 42 was the inclusion in the legislation itself of provisions specifically aimed at promoting uniformity in sentencing. Specifically, Section 1170.3 charged the Judicial Council with the responsibility of adopting rules "providing criteria for the consideration of the trial judge at the time of sentencing regarding the court's decision to:
 - (a) Grant or deny probation,
 - (b) Impose the lower or upper prison term,
 - (c) Impose concurrent or consecutive sentences,
 - (d) Consider an additional sentence for prior prison terms, and/or
 - (e) Impose an additional sentence for being armed with a deadly weapon, using a firearm, an excessive taking or damage, or the infliction of great bodily injury.

To summarize structural changes enacted through SB 42 with regard to the determination of the actual sentence length, the courts retained all previous ISL procedural responsibilities, and were given the added responsibility of calculation of a sentence. It was to be presumed that the middle (base term) was appropriate for the convicted offense in the absence of mitigating or aggravating situations. The act itself specified "enhancements" which, if pled and proven, could serve as a justification for the imposition of additional time to be served. The sentencing rules to be promulgated by the Judicial Council would provide guidelines for calculation of the sentence to be passed.

4. Amending Legislation

Since the passage of SB 42 in 1977, some 5 legislative bills and one statewide ballot proposition have been passed modifying or altering the original determinate sentencing law. All of these increased offenders' liability, in terms either of lengthened sentences, lengthened parole, or mandatory provisions requiring incarceration (rather than probation).

B. STUDY SCOPE

In order to evaluate, compare, and contrast California's experience with DSL and ISL, Arthur D. Little has analyzed the degree to which each sentencing scheme has achieved the following goals:

- Adequacy
- Certainty
- Equity
- Protection
- Deterrence
- Rehabilitation

We have also assessed the impact of DSL on justice system processes and procedures, specifically: (1) the courts; (2) corrections; and (3) discretion afforded to decision makers in the system.

The analysis of sentencing practices in other states has included a review of the literature on sentencing; a general survey of sentencing models and mechanisms used throughout the United States; and an in-depth analysis of four states' experiences in establishing sentencing commissions and developing sentencing guidelines.

C. FINDINGS AND CONCLUSIONS ON ISL AND DSL IN CALIFORNIA

The research outlined above has resulted in the following findings and conclusions, reported in detail in the body of this report:

1. Attainment of Sentencing Goals

a. DSL more closely approximates national norms for "adequacy of punishment" than did ISL. This conclusion is based upon a comparison of median time served for different offenses under ISL and DSL, in

comparison with sentences in 27 other states around the country and in the District of Columbia. This conclusion appears valid not only considering DSL sentences with good time credited, but also considering DSL sentences without any good time at all credited in comparison to ISL sentences.

b. It appears that California's DSL has increased the certainty of imprisonment given conviction. In most cases analyzed the percentage of prison dispositions reported in the DSL period was significantly higher than would have been projected based on ISL trends. The type of offender who in the past under ISL would have been given a probation and jail sentence is more frequently being sent to state prison under DSL.

As a consequence of the increasing certainty of prison commitments, there is apparently less certainty under DSL than under ISL of the likelihood of particular dispositions given conviction. A convicted offender apparently faces a more even chance of going to prison or of being granted probation under DSL than under ISL. However, it may be that, given knowledge of case particulars, there is a considerably higher degree of certainty under DSL than under ISL regarding whether or not an offender will be sentenced to prison or granted probation, given knowledge of the offender's prior criminal record and other pertinent factors.

There is general agreement that there is greater certainty of time to be served under DSL than existed under California's ISL.

c. Several DSL features enhance California's capability to attain sentencing equity. These include the public accounting of reasons for the particular sentence and length imposed; the requirement for a formal process of review for sentencing disparity; and the elimination of the possibility for a parole agency to deny parole for reasons not pertinent to an offender's current incarceration.

d. DSL appears, at least in the year 1978, to have provided less of an incapacitation effect than the state's ISL provided in 1975. In addition, DSL appears to structurally provide for less incapacitation, based on its comparatively shorter median length of sentences, given relatively comparable inmate population sizes. The recent slowing in the growth of offense rates in the state cannot be attributed to an increase in protection due to DSL.

e. While the early 1970s growth in California offense rates under ISL has slowed under DSL, this cannot be clearly attributed to deterrence provided by DSL. Three of the four measures of "sanctions" against crimes have decreased during the 1970s; DSL has played a role in increasing the risk of imprisonment, but has decreased, in general, the severity of punishment as measured by sentence lengths.

f. It is not possible to compare California's DSL experience with the state's experience under ISL in the field of rehabilitation. With data available to this study only through the year 1978, sufficient time has not passed for examination of rehabilitation results with any confidence.

2. Impacts on the Criminal Justice System

The impact of implementing DSL in California was researched in the areas of courts, corrections and decision-making discretion.

a. The following are findings pertaining to courts:

- With the exception of mandatory sentencing amendments, DSL has expanded the role of the judiciary.
- The determinate nature of California's DSL permits district attorneys to develop clear-cut departmental policies regarding charging and prosecutorial strategy.
- California's determinate sentencing scheme clearly adds to the district attorney's ability to influence final sentences but other important factors can inhibit the exercise of this DSL sentencing influence.
- DSL has caused an increase in the number of original guilty pleas.
- DSL may significantly impact the timeliness of the adjudication process and local corrections, because local pre-sentence jail time is now credited towards prison time to be served.

b. The following was found from research in the areas of probation and corrections institutions.

- Concern for the pre-sentence investigation procedure has been emphasized under DSL
- The specification of sentences by the DSL has reduced the PSI's former influence in sentence determination.
- Considerable variation appears among county probation departments in California regarding their participation in the Superior Court sentencing process.
- Probation officers interviewed who were involved with adult probationers maintain that since the enactment of DSL they have not observed any significant differences in the types of offenders receiving probation sentences; however, from a statewide perspective, it would appear that the nature of the caseload is shifting due to the implementation of DSL.

- While it cannot be concluded with certainty that implementing DSL has increased the total number of prison commitments, DSL does seem to have influenced the composition of the prison population.
- Participation in rehabilitation programs is continuing, but it is possible that the size of the California Rehabilitation Center's treatment population will be less under DSL than it would have been under ISL.
- The DSL emphasis on punishment has lowered the perceived priority of rehabilitation within state corrections.
- Prison system managers appear to have lost considerable flexibility in terms of dealing with the size of the overall state prison population.
- The span of influence of the paroling agency has been considerably decreased due to DSL.

c. The following was found from research regarding decision-making discretion.

Several important research findings pertained to DSL's impact on discretion in the justice system.

- While DSL expanded the overall judicial role in sentencing, judicial decision-making discretion under DSL has been limited as compared with ISL in some cases.
- DSL has shifted a great deal of discretion with regard to determining the final results of any particular criminal case to the prosecutor's office.
- While DSL has enabled the defense to more clearly convey the sentencing implications of pleas to various charges, this may be an incentive for accepting a negotiated plea only for the lesser sanctioned offenses.
- From a justice system perspective, it appears that an important impact of DSL has been to encourage settlements at the pre-trial stage of the trial system process.
- DSL has increased local influence on the criminal justice system.

D. NATIONAL SENTENCING STUDY

1. Sentencing Research and Trends

Several trends in sentencing are evident throughout the nation. The following major findings are pertinent in considering sentencing approaches for California.

a. In recent years, sentencing has been one of the major focal points of activity in the criminal justice system. It is an area which changes constantly -- legislatures are passing laws, courts are making decisions, and administrative agencies are revising policies and procedures.

b. The sentencing structures of the states vary considerably from one another. The criminal codes classify crimes and punishments differently, sanctions vary, and the various decision makers of the system have different roles in the sentencing process. In some states the judge has the greatest amount of discretion; in others it is the parole board. Some legislatures have taken quite active roles in reforming the sentencing structures; in others the reforms have come from the judiciary, and in still others the parole board has taken action.

c. Nationally, the trend is towards more determinacy in the sentencing structure. There is a trend towards mandatory sentencing provisions for violent crimes, repeat offenders, and crimes against specific victim groups, such as the elderly or children. This trend is reflected in limitations of discretion as found in (a) legislative sentencing, (b) sentencing guidelines, and (c) parole guidelines.

d. The sentencing guideline model can take several forms. Depending on the source of the guidelines, these can include independent legislatively established sentencing commissions, or a judicial unit either at a particular level of the court system, or in the office of the Administrator of the court.

2. Conclusions Pertinent to a Sentencing Commission in California

In considering the advisability and feasibility of establishing a sentencing commission for California, Arthur D. Little, Inc., examined three critical areas: (1) literature in the field; (2) other jurisdictions' experience with sentencing commissions and guidelines; and (3) California's present experience with DSL.

1. Most recent literature generally supports the concept of a sentencing commission. The major advantages of a well established sentencing commission cited include:

- The complexity of the criminal justice system can be considered.
- A systematic approach to the criminal justice process and its many components can be utilized.

- The commission is less vulnerable to direct political pressures.
- The commission will have the time, the expertise, and manpower to develop sentencing reform.
- The commission will be able to monitor and develop a feedback process that can be utilized to change sentencing reforms without the necessity for continual legislative action.
- The commission will be able to balance flexibility and uniformity in a better fashion than is presently available in most determinate models.

2. Although there is a growing movement towards the guideline concept through the formation of sentencing commissions, there is no data presently available that evaluates the concept on a statewide basis. Therefore, we cannot predict, based on other states' experiences, what the impact of a sentencing commission or guidelines will be in California on the goals of certainty, uniformity, and proper case-by-case discretion. California should closely monitor the progress of the studies referred to in Chapter III, but more importantly, the development and performance of Minnesota and Pennsylvania, which have guideline mandates.

3. In addition to assisting in the achievement of the goals of certainty, uniformity, and proper discretion through sentencing reform, a sentencing commission may eliminate or reduce problems which beset the general criminal justice system. Arthur D. Little, Inc., believes that California is presently experiencing difficulties related to sentencing that may be alleviated by a sentencing commission. These difficulties include:

- Overcrowding in state corrections institutions
- Ad hoc legislative changes in sentencing
- Inadequate attention to the financial implications of sentencing legislation
- The lack of a focal point for system-wide planning and monitoring of results achieved

E. SUMMARY OF RECOMMENDATIONS

1. Arthur D. Little, Inc., recommends that California establish a sentencing commission to alleviate the present management problems associated with the current legislative process of developing and passing sentencing laws.

- a. Prior to the establishment of a sentencing commission, the California Legislature should prioritize goals for sentencing. California's current DSL represents a mixed model. The Judicial Council rules suggest that there are a variety of goals and philosophical bases present. The Legislature should clarify its position by placing clear priorities on the intended goals of sentencing.
- b. In the analysis of sentencing reforms, the sentencing commission should seriously consider development of sentencing guidelines. The commission should consider the development of guidelines in light of the activities and evaluations underway in other states.
- c. The sentencing commission should be initiated and established by the Legislature as an independent body in the Executive Branch. The importance of a legislatively established commission lies in the need for the commission to have sentencing policy authority that is supported and legally mandated to ensure compliance.
- d. If the Legislature decides to enact enabling legislation to establish a sentencing commission, we recommend that the legislation address the following points.

- Composition and organization of the commission
- Powers and duties
- Public hearings
- Legislative review
- Time frame for completion of sentencing reforms
- Intended scope of guidelines
- Appeals
- Sunset provision

In summary, enabling legislation for a sentencing Commission should specify goals to be achieved and the basic organizational and procedural responsibilities to be assumed by the Legislature, Commission, and Judiciary in regard to affecting sentencing reform.

INTRODUCTION



I. INTRODUCTION

The sentencing reform movement in the United States is at a critical turning point. When the movement began, critics attacked the indeterminate sentencing structure with its emphasis on rehabilitation. Critics such as the American Friends Service Committee began to suggest that other sentencing strategies were more equitable.¹ Following this, more specific sentencing proposals began to appear in the literature. Examples of these include the work of Mitford, Morris, Fogel, Wilson, van den Haag, and von Hirsch.² As the criticisms and proposals increased, and as research began to document the existence of the unwarranted sentencing disparity and the uncertainty of the relationship between rehabilitative programs and recidivism, states began to modify their sentencing structure. Maine, Illinois, Indiana, and California became quite prominent in this phase. Legislatures began to restructure the criminal codes; administrative agencies such as parole and corrections began to examine their decision-making process; and the judiciary began to initiate studies into their discretionary powers.

With these developments, the inevitable questions were asked: "Are these changes working?" "Is unwarranted discretion reduced, or possibly eliminated?" "What is the impact of the changes?" Research projects on the local, state, and national level began the investigation of these and other questions. Some findings are beginning to emerge; most are still to be released. Yet the initial findings are raising criticisms of a different perspective, namely whether these "reforms" are creating other or more problems of injustice than the previous sentencing models. Furthermore, critics ask, is justice really being achieved by these reforms?

These questions have brought the sentencing reform movement to a point in which the states must begin to assess the various sentencing modifications implemented and undertake a comparative analysis of the various options available. The states must address these issues to determine what is viable, feasible, and desirable in their state. The states must also weigh the various consequences of reform and establish a priority of objectives and goals. This project, funded by the California Legislature, is intended as one part of that initial investigation.

1. American Friends Service Committee, Struggle for Justice (New York: Hill and Wang, 1971).

2. Jessica Mitford, Kind and Usual Punishment (New York: Alfred A. Knopf, 1973); Norval Morris, The Future of Imprisonment (Chicago: University of Chicago Press, 1974); David Fogel, "...We are the Living Proof..." (Cincinnati: W. H. Anderson, 1975); James Q. Wilson, Thinking About Crime (New York: Basic Books, Inc., 1975); Ernest van den Haag, Punishing Criminals (New York: Basic Books, Inc., 1975); Andrew von Hirsch, Doing Justice: The Choice of Punishments (New York: Hill and Wang, 1976).

A. ARTHUR D. LITTLE, INC., STUDY

In 1979 the California Legislature created a Citizens Advisory Committee on Alternatives, "...to supervise three studies, conducted under contract with the Joint Rules Committee, and to report their recommendations to the Legislature."¹ Two of the studies were to address: (1) prison populations projections and (2) alternatives to incarceration in state institutions.

The third study is the topic of this report. Its purpose is to:

- Provide information regarding the apparent merits of California's experience under Determinate Sentencing Law (DSL) as compared with the merits of the state's experience under its previous Indeterminate Sentencing Law (ISL).
- Assess the feasibility of California adopting a sentencing commission based upon other states' experiences with sentencing commissions.

Arthur D. Little, Inc., began its research on these two areas in February 1980. Our efforts have focused upon examining California's experience with ISL and DSL and analyzing current sentencing practices in other states.

In order to evaluate, compare, and contrast California's experience with DSL and ISL, Arthur D. Little has analyzed the degree to which each sentencing scheme has achieved the following goals:

- Adequacy
- Certainty
- Equity
- Protection
- Deterrence
- Rehabilitation

We have also assessed the impact of DSL on justice system processes and procedures, specifically: (1) the courts; (2) corrections; and (3) discretion afforded to decision makers in the system.

The analysis of sentencing practices in other states has included a review of the literature on sentencing; a general survey of sentencing models and mechanisms used throughout the United States; and an in-depth analysis of four states' experiences in establishing sentencing commissions and developing sentencing guidelines.

This report constitutes the results of Arthur D. Little's investigation.

1. Chapter 1135, 1979 Statutes.

B. DEFINITIONS AND ISSUES

This section defines issues and terms that any sentencing strategy must consider. The philosophical dimensions of rehabilitation, just deserts, deterrence, and incapacitation are discussed as are corollary objectives of certainty, equity, and adequacy. Finally, we speak to other related issues such as the offender/offense dimension, the question of discretion, and the roles of the various decision makers and the issue of available resources. This section is intended as a framework for the remainder of the report.

Philosophical Dimensions

Sentencing models throughout the United States reflect a variety of societal objectives in dealing with those who have violated the established norms. These societal objectives have remained the same, only their emphasis and priority have changed. There are four major concerns and objectives: rehabilitation, just deserts, deterrence, and incapacitation. Just deserts is seen as punishing the offender solely on the grounds of retribution. It is punishment of what he has done, not for what he might do. The difference between this objective and the other three is that retribution focuses on crimes committed, while the others focus on crimes he or others may commit. While the DSL in California can be seen to reflect elements of this philosophy, in that the Legislature states that the purpose of incarceration is punishment,¹ for this study the areas of concern as defined by the request for proposal are rehabilitation, deterrence, and incapacitation. For this study, we have defined these elements as follows:

- Rehabilitation — In the past, this was given primacy in the sentencing scheme and can be defined in a variety of ways.² The basic definition for this study is the restoration of the individual to a non-criminal state.
- Deterrence — In this study, this refers to general deterrence. It is defined as the prevention of future crimes by members of the general public by the threat of punishment.³

1. California Penal Code Chapter 1170(a)(1).

2. Variations of this include: restoration of offenders to conditions of useful or constructive activity, or at least to conditions of non-criminal activity, and "changing a convicted offender's character, habits, or behavior patterns as to diminish his criminal propensities." Andrew von Hirsch, and Kathleen J. Hanrahan, The Question of Parole Retention, Reform or Abolition? (Cambridge, Mass: Ballinger, 1979) p. 13.

3. For discussions on deterrence and possible effects, see Alfred Blumstein, Jacqueline Cohen, and Daniel Nagin, eds., Deterrence and Incapacitation: Estimating the Effects of Criminal Sanctions on Crime Rates, (Washington, D.C.: National Academy of Sciences, 1978).

- Incapacitation — or as referred to in the request for proposal for this study, public protection. For this study, this is defined as the prevention of future crimes against the community by offenders. This goal of protection of the community bases its belief on the fact that incarceration will "limit access to potential victims."¹

Although rehabilitation has been the dominant objective in previous sentencing models, in recent years, just deserts has become the focal point for sentencing strategies. Most strategies do not exclude the other objectives, for there are not any "pure" desert models, or "pure" rehabilitative models. Rather, political realities and compromises have created mixed models in which the objectives are interspersed throughout the states' criminal codes and administrative rules.²

C. GOALS AND OBJECTIVES

The recent criticisms of the various sentencing models have placed emphasis on several other corollaries. These include: (1) adequacy of the punishment, (2) equity of the sentencing model, and (3) certainty of the level of punishment. These corollary objectives are part of any sentencing scheme. However, the move away from the indeterminate models and towards the more determinate models has given them prominence in the nation's sentencing strategies and reform movement.

1. Adequacy

Adequacy focuses on the appropriateness of the punishment and, specifically, refers to the relationship of punishment to the offense. For example, is five years for armed robbery adequate punishment or should it be ten years? The difficulty with the adequacy principle is the selection of the reference points. Should the punishment be based on past dispositional decisions as some of the empirically-based sentencing and parole guidelines have done? Or, should the comparison be made with national averages? Does it matter whether New York has enacted stiff penalties for certain drug offenses, or that Massachusetts has adopted mandatory incarceration for those convicted of illegally carrying a firearm? Should the judgments of a group of experienced individuals, such as a group of judges, parole board members, attorneys, law enforcement officials, legislators, concerned citizens, or a combination of these be used as the frame of reference? Furthermore, similar to the issue of pornography, should there be community standards for sentencing dispositions? For example, should there be regional differences between Northern and Southern California, or Western and Eastern Oregon?

1. von Hirsch and Hanrahan, The Question of Parole, p. 13; Incapacitation is concerned about potential victims in the community. Potential victims within the prison walls are not considered in this principle.

2. For example, see discussion of California mixed model in April 1978 Kestell Cassou and Brian Taugher, "Determinate Sentencing in California: The New Numbers Game," Pacific Law Review.

One standard that is present is the Constitutional protection against cruel and unusual punishment. However, a recent U.S. Supreme Court case, Rummel vs. Estelle, suggests that federal court intervention in the area of state sentencing, specifically the issue of proportionality of punishment, may be limited.¹ Although the cruel and unusual punishment standard exists, the threshold -- "drawing the line" -- from the perspective of a majority of the Supreme Court Justices may be quite high.²

2. Equity

The second corollary in a sentencing scheme is equity. Equity is defined as fairness achieved in sentencing: similar offenders convicted of similar offenses should receive similar dispositions. In the quest for equity, the policy makers have seen a need to reduce the discretion of the various decision makers in the system as a method to ensure fairness and uniformity. However, the desire for uniformity has to be balanced by the desire for flexibility. The more flexibility that is built into the system, the less uniformity, and the less consistency. The more uniformity, the less the flexibility. Policy makers have to define the desired balance between these two dimensions.

Various methods have been introduced to achieve equity through uniformity. As will be discussed in Chapter III of this report, these methods include mandatory minimums, sentencing and parole guidelines, and various models that are more determinate in nature than the models they replace. In order to allow some flexibility and at the same time ensure some level of uniformity, some sentencing schemes have devised a system of checks and balances with provisions for the review of the sentence by an appellate court, by a special judicial sentencing council, or by an outside agency, such as the Board of Prison Terms in California. Others have introduced aggravating and/or mitigating circumstances which may be weighed in determining the sentences.

3. Certainty

Each of these added corollaries is intertwined. Certainty can be seen as a link between equity and its goal of uniformity. For example, certainty as defined by Arthur D. Little, Inc., in this study is the degree to which one can reasonably predict the disposition and length of the incarceration period. Certainty applies to knowing both the disposition, that is, whether the offender will be incarcerated or not (the in/out decision) and the term of the incarceration period. Most states have focused only on the term of the incarceration period. In addition,

1. U.S. Supreme Court, Docket #78-6386, Decided March 18, 1980 (Slip Opinion).

2. For a different perspective, see Mr. Justice Powell's opinion for the four justices who dissented in the Rummel case.

the focus is on the timing of the decision: in other words, when will the inmate know with some certainty the length of his incarceration period? With the establishment of sentencing guidelines and mandatory incarceration for certain types of crimes of offenders, the certainty of the disposition, that is, whether prison or alternatives to incarceration, has increased in some jurisdictions. For example, the Bartley-Fox Gun Law in Massachusetts mandates a minimum one year prison term for those convicted of illegally carrying a firearm. In Washington state, voluntary guidelines for judges have focused on the "in/out" decision since in this state, the Board of Prison Terms and Paroles has almost complete control as to the length of the incarceration.

Specific terms, set early in the sentencing process, are inherent in any presumptive sentencing model. In the more indeterminate models, terms are usually mandated either by the Legislature or by parole board administrative rules. However, as stated earlier, the desire for flexibility affects the level of consistency and the degree of certainty. If the decision-making body -- whether the judiciary or the parole board -- has built-in "escape-valve" clauses, then the level of certainty may be more an illusion than a reality. For example, the presumptive and determinate sentencing models allow a multitude of aggravating and mitigating factors. Prosecutors may bargain away the enhancement for a guilty plea; the judge may or may not make a finding of fact that would require the enhancement. In terms of guidelines, the spread of the time ranges, the variation outside the guidelines allowed, and the vagueness of the applicability of the aggravating and/or mitigating circumstances all can decrease the level of certainty.

Another provision that has an effect on certainty is the explicitness of the procedures that rescind the release date or minimum term. This usually is attached to institutional behavior of the offender. If procedures for the removal of good time (including a definition of serious misconduct) are not precisely delineated, then the certainty of the date and the level of equity may be reduced. Furthermore, if there is not a review of this process by some outside body, then the desired sentencing principles may also be violated.

4. Other Issues of Sentencing

The philosophical issues and sentencing corollaries are reflected in several areas: (1) the offender/offense dimension, (2) the role and discretion afforded to decision-makers, and (3) the examination of available resources.

a. Offender/Offense Dimension

The two dimensions that are used in the sentencing scheme are offense characteristics and offender characteristics. There are three issues related to this aspect of sentencing:

- The Balance to be achieved between the two dimensions. The degree of emphasis of the two dimensions and level of the balance between the two may be determined in the sentencing scheme. Usually

the balance between the two is decided not by policy but by the circumstances in individual cases. Such questions include, does the fact that the offense is check forgery outweigh the fact that the offender's past crimes include rape and armed robbery? Does this past probation failure indicate a need for a period of incarceration, even though the present crime may be a petty property offense?

- The Characteristics or factors to be considered in each dimension. In the definition of characteristics of the offense, the major issue is whether total offense behavior should be considered or only some aspect of it, such as only conviction offense. For example, should the fact that the offender was charged with multiple offenses, but some were dropped in a plea bargain, be considered in deciding the disposition of the case? Should victim injury be considered, and if so, how should it be considered? If the victim claims one description of the event, the offender another, how should they be considered and resolved?

In considering the characteristics of the offender dimension, should one be prohibited from differentiating between male and female offenders, or various races even if the research shows that these factors (sex, race) are predictive of recidivism? What about such socioeconomic factors such as employment and educational history? How does history of alcohol and/or drug abuse enter into the decisions? Again, these factors may be predictive of recidivism, but should offenders' "status" be considered? Should there be limits to the consideration of the offender's past: for example, should crimes committed five or ten years ago not be considered? Should the nature of the past criminal history be explicitly considered?

- The Relationship of the balance and characteristics to the overall sentencing goals and philosophy. Policy makers should define the balance and characteristics in light of the stated objectives of the sentencing strategy. This involves consideration of several issues. On what basis are such things as equity and adequacy determined? Is the conviction offense the basis for the decision, or should the total criminal behavior of the act be considered? If the total criminal act is to be considered, how will it be defined? These and similar questions must be answered, not only for the disposition decision, but also for the decision concerning the length of the incarceration period.

These issues and others related to them must be considered when developing a sentencing scheme. The Legislature should decide how explicit they should be in order to meet the stated goals and objectives. Furthermore, they must decide whether to delegate responsibility for the development of procedures for the implementation of these decisions to various decision makers in the system. Thus, the nature of the role and the amount of discretion allowed to them must be decided by the Legislature. As discussed earlier, the desire for uniformity and yet the need for some flexibility must be balanced and that balance must be decided upon by the Legislature.

b. Discretion

For this study, discretion is defined as the latitude afforded to actors in the system when deciding questions in a particular case, according to the circumstances and judgment of the decision maker. Discretion is best discussed in terms of the variety of sentencing models.

- Indeterminate Sentencing -- The degree and nature of the discretion, especially in the sentencing area, has been the center of the criticism of the traditional sentencing scheme associated with the indeterminate model. Criticism focused on the perceived and documented lack of uniformity and equity. The primary concern was the wide discretion of the parole board and its release function. In the indeterminate sentencing model, the basic structure has the legislators determining the content and structure of the criminal code, including definitions of the offense and usually the maximum amount of punishment. In some structures, the Legislature also determines the minimum sentences possible and, in some instances, mandatory dispositions based on either the offense or the nature of the offender. The judiciary determines the disposition, whether incarceration or not, and sets the maximum term of the incarceration period. In some indeterminate models, the judges also set the minimum term of the sentence. The parole board then determines the actual length of the incarceration period, given the good time and legislative restraints, through their parole release decisions.
- Determinate Sentencing -- Basically this is a model that substantially reduces the discretionary powers of either the judiciary and/or the parole board. However, this general model has included a variety of schemes, some of which may not, in practice, be very determinate.
- Presumptive Sentencing Models -- In this model an established sentence for the "typical" case, and for aggravating or mitigating circumstances, is established. The presumptive sentence usually refers to the incarceration period as opposed to whether there is a presumed disposition of incarceration or

probation. California is usually cited as the example of a presumptive sentencing state; however, other states such as Indiana have "presumptive" sentencing structures that allow more discretion than the California model.

In the presumptive model, a definite and fixed term must be given by the judge. Furthermore, although states may have a "presumptive" law, even as fixed as California, the guidance to the judges regarding aggravating and mitigating circumstances may be vague or not given at all.

- Legislatively-established ranges -- This model is really a refined form of the minimum/maximum system that in the past has given wider discretion to the decision makers. In these models, the Legislature has established ranges for the crimes, but not in the presumptive model format.¹ The judge chooses a fixed term from the ranges. An example of this model is in Illinois in which the Legislature has established a range of 4-15 years for felonies.
- Guideline Models -- This term is more misleading than most because sentencing guidelines may be established in the indeterminate or determinate structures. Guidelines refer generally to a sentencing grid which presents suggested dispositions and ranges for terms of incarceration. The two-dimensional grid is based on the severity of the conviction offense and the offender's background characteristics, primarily prior criminal record.
- Other Determinate Mechanisms -- Another sentencing scheme involves the use of mandatory sentencing provisions.² Such provisions are enacted by the Legislature and require a certain disposition and/or a certain length of incarceration for specifically identified offenses or offenders. The typical provision is mandatory incarceration periods for persons convicted of violent offenses, or repeat, habitual offender. A variety of states, labeled both "determinate" and "indeterminate," have such provisions.

1. Kannensohn has labeled some of these states "determinate discretionary." Indiana is placed in this group, although in this state the Legislature did establish a presumptive standard term in addition to providing wide ranges for enhancements and reductions. See Michael Kannensohn, A National Survey of Paroled Related Legislation: Enacted during the 1979 Legislative Session. (Revised Edition) Uniform Parole Reports, Series IV: 1: 79, 80, (San Francisco Research Center West/NCCD) February, 1980.

²See Kannensohn, Ibid.

c. Available Resources

Of all the issues that are present in a discussion of the sentencing models, the question of whether available resources should be considered in determining a sentencing strategy is the most hotly contested issue. The basic question is: Should the decision makers, whether legislators, judges, or parole members consider the available resources when deciding either an individual case or in establishing general policy? Specifically, should the state mandate that any newly devised sentencing scheme or provision ensure that the present prison population not be increased beyond its present level or capacity level? Should the Governor and/or the Corrections Departments be allowed to bring pressure on, for example, the Parole Boards to alleviate the prison populations through special consideration of parole releases? This has already occurred in several states, e.g., Washington and Oregon. Although the focus of this issue has centered on prison population, it should also be considered in other areas. For example, in probation subsidy programs, if policy makers provide a monetary incentive for increased use of probation, should the concern of available programs and manpower also be considered? The management issues and the practical concern for bed space and manpower may conflict and contradict the stated goals and objectives of the sentencing schemes. For example, should the parole board or sentencing judge consider whether the prisons are overcrowded when they are deciding to release or incarcerate an individual? Should the length of the incarceration period be determined by the available space? What happens if this violates the principles of adequacy and/or equity? How do the policy makers balance these aims with the reality of the situation, especially in this period of fiscal concern? Whatever the decision of the policy makers, the issue of available resources should be considered explicitly.

D. CONCLUSION

The issues of a sentencing model are complex and interrelated with each other. Moreover, in order to establish a policy that is coherent, feasible, and manageable, they must all be considered by the legislators. Utilizing the definitions and issues presented in this chapter, Arthur D. Little has evaluated the California experience under DSL and ISL. These findings are presented in the next chapter.

**CALIFORNIA'S EXPERIENCE
UNDER INDETERMINATE AND DETERMINATE SENTENCING**



II. CALIFORNIA'S EXPERIENCE UNDER INDETERMINATE AND DETERMINATE SENTENCING

This chapter compares California's recent experience under indeterminate and determinate sentencing.

A. CALIFORNIA'S DETERMINATE SENTENCING LAW

Legislation was in effect in California from 1917 to mid-1977 that was known as Indeterminate Sentencing Law (ISL). Under California's ISL, convicted offenders were sentenced to prison terms for which the lengths were not specified beyond particular minimums and maximums. An offender's behavior while incarcerated was to be a key factor in determining the actual time to be served within the statutory minimums and maximums. Such a sentencing structure was to some degree based on the assumption that a primary purpose of imprisonment -- although not its only purpose -- was rehabilitation.

1. Enactment of Determinate Sentencing

Senate Bill 42 (SB 42) was passed by the California Legislature in 1976, creating Chapter 1139 of that year's statutes. The bill was signed into law by the Governor on September 20, 1976, to become effective July 1, 1977. This act is generally referred to as California's Determinate Sentencing Law (DSL). The act made extensive revisions to the state's Penal Code and considerable amendments to the penal sections of many other of the state's codes in relation to imprisonment and in relation to the administration of the new determinate system.

a. Background to Enactment of the DSL

Throughout California's 60 years of experience under indeterminate sentencing, the state was often hailed as a forerunner among those dealing with difficult social problems. Basically, advocates of the ISL were appreciative of its emphasis on the rehabilitation of offenders sentenced to institutions. The ISL provision for release of incarcerated persons, based upon demonstrated reform in behavior and attitude, was viewed as a progressive incentive for rehabilitation in the criminal justice system.

Enactment of DSL in 1976 represented a major shift in the state's philosophy concerning crime and punishment. It was the first of a multitude of legislative acts that generally increased the seriousness of the consequences of criminal activity.

While ISL lasted 60 years in the state, over this period there was an accumulation of evidence that there were wide sentencing disparities in terms of both who went to prison and their lengths of stay for similar offenses. Other criticisms increasingly leveled at the operation of ISL that were heard particularly during the early 1970s included the following:

- The nature of sentence decision making was arbitrary and contributed to inequities in punishments meted out by the justice system.
- Rehabilitation programs were largely ineffective as evidenced by high crime rates in the state and continual increases over time in these rates.
- Knowing the rules - inmates, parole decision makers, and wardens were potentially able to manipulate the system towards ends it was not designed to achieve.
- Indeterminate sentences stood in the way of criminal law providing an effective deterrent.
- Indeterminate sentencing -- and the resultant uncertainty in sentence lengths coupled with the perception that the parole board made release decisions somewhat arbitrarily -- contributed significantly to prison tension and consequent violence.

In light of these contentions, a Senate Select Committee on Penal Institutions began in September of 1974 to research the merits of the sentencing system operating in California. Shortly thereafter the initial version of SB 42 was introduced by Senator John Nejedly, the Committee's Chairman.

Another factor pertinent to the enactment and structure of SB 42 was the finding by the California Supreme Court In re Rodriguez (June, 1975), that the then Adult Authority (the parole agency) had abused its discretion in failing to fix a term less than the life maximum for an offender and in failing to grant parole; however, the Court upheld the constitutionality of the indeterminate sentencing. Thus, directly on the heels of the Senate Select Committee's research into the operation of the indeterminate sentencing system, the Supreme Court found that the law's penalty provision had been administered by the Adult Authority unconstitutionally because the term of an particular offender's imprisonment had resulted in punishment disproportionate to the offense. The Court concluded that in the past the Adult Authority had failed to properly interpret and administer the ISL with respect to responsibility for fixing the "primary term" of a prisoner under ISL; the Court went on to pronounce that if the Adult Authority failed to make a prompt fixing of the "primary term" within the ISL minimum and maximum range, the "primary term" will be deemed by the Court for the purpose of assessing constitutionality to have been set at the maximum. This ruling in effect required the Adult Authority to fix each defendant's term as soon as possible after imprisonment.

In a related case, In re Stanley (January 1976), certain questions were raised about the state's capability to move administratively to a more determinate sentencing scheme, such as had been considered and recommended in SB 42 but which had not been passed yet.

b. Senate Bill 42

Passage of SB 42, (particularly as emphasized by subsequent amending legislation discussed below), represented to many a shift away from the rehabilitative model towards a model more oriented towards punishment. Whereas Section 1168(a) of ISL read in part, "every person convicted of a public offense, imprisoned in any reformatory or state prison as now prescribed by law shall, unless such convicted person be placed on probation, a new trial granted or the imposing of sentence suspended, be sentenced to be imprisoned in a state prison, but the court in imposing the sentence shall not fix the term or the duration of the imprisonment," Chapter 1170(a) of the California Penal Code was changed by SB 42 to read that "the Legislature finds and declares that the purpose of imprisonment for crime is punishment."

DSL in California, as enacted by SB 42, had the following major contrasts with the state's previous ISL:

- In contrast with wide minimum and maximum terms for offenses under ISL, the Legislature mandated much more specific and narrower ranges of terms, with a minimum, middle or "base", and maximum term specified for each offense.
- Rather than a parole board setting lengths of prison terms, parole terms, and release and parole policies, these were specified in the legislation.

c. Amending Legislation

Even before the provisions of SB 42 became effective (July 1, 1977), AB 476 was passed by the California Legislature creating Chapter 165 of that year's statutes. AB 476, among several technical points, expanded the list of crimes qualifying for "enhancements" under DSL, generally to permit wider application of enhancements and thus lengthen sentences. Equally important, limitations on aggregate increases for particular kinds of enhancements, as well as limitations on the total length of sentences that could be imposed, were removed or phased out.

SB 42 as amended by AB 476 became effective in mid-1977. It did not take long for enactment of further legislation increasing the middle and upper terms specified under DSL (SB 42 amended by AB 476) one and two years respectively for certain crimes of violence. This bill was SB 709, which created Chapter 579 of the Statutes of 1978.

Also in 1978, SB 1057 was passed, creating Chapter 582 of that year's statutes. This bill increased the length of parole terms for certain offenses under California's increasing body of determinate sentencing legislation and further increased the time that could be served in the event of a parole revocation.

Adding their collective voice to that of the Legislature, the voters of California passed Proposition 7 in 1978, removing second degree murder from determinate sentencing provisions and proscribing an indeterminate sentence, of from 15 years to life.

SB 13 created Chapter 934 of the statutes of 1979. SB 13 contained 21 different sections, the majority of which dealt with increasing the seriousness of consequences -- primarily in the direction of incarceration for a broad variety of crimes against persons and for attempts to influence victims or witnesses. Most recently, SB 1236 was passed in 1980 by the Legislature, which generally prohibited probation except in unusual cases for burglary, requiring prison for first degree convictions (nighttime) and at least 90 days in jail for second-degree convictions.

2. Objectives of the Determinate Sentencing Law

It is important to distinguish between the objectives that supporters of SB 42 felt it would accomplish and the objectives stated in the legislation itself.

Many observers of the shaping and final enactment of the legislation note that it had support from liberals and conservatives alike. Many of the criticisms of ISL were held by liberal supporters of DSL, who felt that known sentences of determinate length and the abolition of the old Adult Authority's potential for arbitrary decision making were important DSL advantages. They felt DSL would increase sentencing uniformity with respect to specific offenses. Conservative DSL supporters favored removing the possibility that Judicial and Adult Authority decisions would not deal strongly enough with convicted offenders, and that prison terms in general could be expected to increase under DSL.

An analysis of Section 1170 of the Penal Code provides insights on the basic objective of DSL in California. Section 1170(a)(1) states that:

"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 sentence 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."

Subsequent portions of Section 1170 provide further clarification on provisions and procedures for the calculation and imposition of determinate sentences; however, no other "objective" -- in the strict sense of sentence results -- are defined. Therefore, to summarize, it appears that there is a single legislatively-stated objective sought through the passage of SB 42:

The uniform imposition of sentences of seriousness proportionate to the seriousness of the offense, wherein the seriousness of the offense includes the seriousness of the act itself and the "circumstances" under which the act took place.

As if to emphasize the basic objective, other portions of SB 42 lodge responsibility in a Community Release Board -- replacing the Adult Authority -- for reviewing each prison sentence for disparity within one year of the beginning of a convicted offenders term of commitment. Under SB 42, the Judicial Council was given the responsibility for developing sentencing rules for the application of the provisions of SB 42, said rules to be utilized by the Community Release Board in reviewing "the information regarding the sentences in this state of other persons convicted of similar crimes so as to eliminate disparity of sentences and to promote uniformity of sentencing."

In order to determine the relative seriousness of offenses one from another and of punishment proportionate to this, consideration of the "circumstances" in which the act was committed was necessary. Further guidance needed in this type of consideration had to be drawn from beyond the language of DSL itself.

Seven objectives to be considered in determining appropriate sentences under SB 42 were set forth in the "general objectives in sentencing" stated in Rule 410 of the Sentencing Rules for the Superior Courts. These were promulgated by the Judicial Council pursuant to the responsibility given it by SB 42. The first six of these objectives elaborate upon the above stated objective of SB 42 and the seventh is a further reference to it.

These seven objectives to be considered in determining appropriate sentences are:

1. Protecting society
2. Punishing the defendant
3. Encouraging the defendant to lead a law abiding life in the future and deterring him from future offenses
4. Deterring others from criminal conduct by demonstrating its consequences
5. Preventing the defendant from committing new crimes by isolating him for the period of incarceration
6. Securing restitution for the victims of crime
7. Achieving uniformity in sentencing

The objectives thus defined for determinate sentencing in California were the basis for the formulation of the research questions addressed in this report. These questions are set forth below, following a comparison of the major structural differences between the state's DSL and its previous ISL scheme.

3. Structural Contrasts Between ISL and DSL in California

It is important to note the distinctions between indeterminate sentencing such as existed in California prior to the passage of SB 42, and other forms of sentencing that more clearly proscribe particular dispositions for conviction of specific offenses (e.g., prison, probation and jail, fine), and that proscribe a more definite term to be served given a particular disposition.

The structure of the determinate sentencing law as enacted by SB 42 in California incorporates various aspects of other presumptive and/or determinate sentencing approaches throughout the country. Determinate sentencing in California, as initiated by SB 42, had the following general characteristics contrasting with the previous indeterminate scheme.

- Rather than the situation under ISL where the actual term of imprisonment was determined by a paroling authority, DSL created a system wherein judges select a specific term of imprisonment from three term lengths specified by the legislation, including a minimum, middle or "base" term, and maximum term. Under ISL, judges were specifically prohibited from fixing the term of a person's sentence to state prison; SB 42, in addition to specifying the three possible sentences provided specific procedures to be followed by the trial judge in sentencing, and required that a statement of reasons be made public for the resulting sentence choice.
- Under ISL the granting and revocation of parole, and thus the fixing of sentences, were determined by the Adult Authority (for males) and the California Womens Board of Terms and Paroles. SB 42 abolished these agencies in light of the determinate sentence as specified in the statute, and created a Community Release Board with specified powers and duties relating to the granting of parole.
- Where under ISL, the time to release (or the granting of parole) was indefinite during the period of commitment, SB 42 provided for specific provisions and procedures for the reduction of the length of sentence by up to one-third on the basis of "good time".
- Under ISL, prisoners were eligible for parole after having served either the minimum level or one-third of the minimum of the indeterminate range proscribed by law; furthermore, a prisoner released to parole could be on parole until the expiration of the maximum term of imprisonment for the crime for which he or she was convicted. At the discretion of the pertinent authority, a parolee could be

discharged from parole after serving two years satisfactorily under ISL. In contrast, DSL limited parole to one year after the expiration of the prison sentence. In the event of parole revocation by the Community Release Board, the determinate sentencing language of SB 42 limited the time for which the offender could be recommitted on a parole violation to six months or the end of the original one year parole term, whichever came sooner.

- A major structural contrast with ISL instituted through the enactment of SB 42 was the inclusion in the legislation itself of provisions specifically aimed at promoting uniformity in sentencing. Specifically, Section 1170.3 charged the Judicial Council with the responsibility of adopting rules "providing criteria for the consideration of the trial judge at the time of sentencing regarding the court's decision to:
 - (a) Grant or deny probation
 - (b) Impose the lower or upper prison term
 - (c) Impose concurrent or consecutive sentences
 - (d) Consider an additional sentence for prior prison terms
 - (e) Impose an additional sentence for being armed with a deadly weapon, using a firearm, an excessive taking or damage, or the infliction of great bodily injury."

To summarize structural changes enacted through SB 42 with regard to the determination of the actual sentence length, the courts retained all previous ISL procedural responsibilities, and were given the added responsibility of calculation of a sentence. It was to be presumed that the middle (base term) was appropriate for the convicted offense in the absence of mitigating or aggravating situations. The act itself specified "enhancements" which, if pled and proven, could serve as a justification for the imposition of additional time to be served. The sentencing rules to be promulgated by the Judicial Council would provide guidelines for calculation of the sentence to be passed.

B. STUDY METHODS

With the enactment of SB 42, creating determinate sentencing in the state, a considerable amount of concern existed about the impact of this major shift in sentencing approach. The act itself called for the Judicial Council to report on the impact of the implementation of the act and report on a quarterly and annual basis information that could provide the foundation for assessing the achievement of uniformity and the

reduction of disparity in sentencing in the state. As previously noted, the Community Release Board was charged with the responsibility for a formal review of each commitment to state prison in order to identify disparate sentences according to specific procedures. Other studies of national scope are under way and some have been completed, citing impacts-to-date of the implementation of determinate sentencing in California. (These are listed in Section B, Sentencing Research, in Chapter III, following.).

Published research-to-date is careful, however, to note the relative newness of the state's experience under SB 42 and to note that considerable amendments have been passed making the distinction of impacts due to SB 42 itself (as opposed to amendments) more difficult to discern. Such research since the enactment of SB 42 is careful to point out that any conclusions reached have been of a preliminary nature and that DSL has not been in effect for a sufficiently long time for some possible effects of the law to be observed.¹ To a large degree, criminal justice officials, planners, and analysts have reserved judgment awaiting the outcome of work by the Community Release Board, the Judicial Council, and others.

During debate over the enactment of the determinant approach, and since the enactment of SB 42 and amendments further discussed below, there have been several arguments voiced against DSL and against other presumptive sentencing schemes in general. Some of these concerns have included:

- The contention that any legislative reaction shifting from indeterminate to determinate sentences fixed by law for many years will be an overreaction.
- The contention that there is little evidence on what an "appropriate" sentence is for a given crime and a given set of circumstances, and it is the experienced judiciary, not a legislative body, that is best able to make these individual determinations.
- Policy deliberations that result in legislated sentences impose sentencing policies on the judiciary branch of the government by the legislative branch "unfairly", i.e., usually without any significant judiciary input.

1. Methodological Concerns

There are several issues and methodological difficulties that must be borne in mind either when reviewing the particular research approach adopted, or when considering the implications of conclusions reached. These research concerns are discussed below.

1. See, for example, Howard, Dick; Determinate Sentencing in California; Council of State Governments; Lexington, Kentucky; December 1978. Judicial Council of California; 1979 Report to the Governor and Legislature; January 1, 1979; San Francisco, California, pp.3-10.

a. Continuing Evolution of the Sentencing Structure Within DSL.

For an examination of the merits of California's experience under DSL as compared with its experience under ISL, it would obviously be desirable to obtain comparative data over a number of years during which the structure and provisions of the sentencing alternatives remained static. This would allow the researcher to attribute, with relative assurance, pertinent changes in the results achieved under differing sentencing systems to convincing differences in the sentencing systems themselves. The opportunity to compare the results of relatively static sentencing systems does not exist in this situation, however.

Even though data obtainable from state reporting systems for use in this study could only be obtained through the year 1978 for research purposes, DSL provisions were undergoing changes from mid-1977 through 1978; further systematic changes in California's DSL continue to take place.

The continuing evolution of California's DSL sentencing structure because of legislation amending SB 42 has not required major analytical efforts to isolate the effect of SB 42 from the effects of its amendments. This is because the overall charge of the study as stated in SB 196 has been to examine and assess the relative merits of California's experience under ISL and DSL. To exclude the important impacts of amending determinate sentence legislation would be to ignore important trends that are evident in the growing body of determinate sentencing legislation in the state. It should be remembered that amending legislation with "mandatory" provisions provides for "determinate" sentences, while legislation providing for "determinate" sentences does not necessarily provide "mandatory" sentences unless there are no options specified.

b. Other Initiatives Influencing Observed Results in the Criminal Justice System

Continuing legislative changes to the structure and provisions of California's DSL since its implementation are not the only important factors contributing to the volatility of the criminal justice system in the state. Particularly since the mid-1970s, there have been other changes, both as the result of legislation or local administrative initiative, that certainly have the potential to influence justice system processes and results in recent years. These have the potential for further obscuring those impacts that could be attributed to ISL or DSL, rather than to other factors.

For example:

- In the same year as the enactment of SB 42, AB 3121 was passed creating Chapter 1071 of the statutes of 1976. A major feature of AB 3121 was the "formalization" of the justice system with regard to juveniles, which not only provided them with certain defense rights previously lacking but which also stated — reversing the previous situation — that a juvenile was automatically presumed fit for trial in adult court for certain serious crimes unless this could be proven not to be the case.

- While the Law Enforcement Assistance Administration had funded demonstration "career criminal" prosecution programs in the district attorneys offices of several major counties in California prior to the implementation of DSL, further reinforcements to the successful prosecution of "career" criminals has been implemented since DSL became effective. In 1977, SB 683 was passed creating Chapter 1151 of that year's statutes. This legislation provided for a state program of funding for the prosecution of career criminals whose activities were thought to contribute significantly to crime and to high offense rates.
- In 1978, Senate Bill 2039 created Chapter 1167 of that year's statutes. This bill provided for the implementation of a state career criminal apprehension program, designed to assist local law enforcements to apprehend serious habitual criminals.
- In July of 1978, AB 90 became effective, creating the Uniform County Justice System Prevention Program. This bill was originally passed with the intended effect of protecting society from crime and delinquency by: assisting counties in maintaining and improving local criminal justice systems; encouraging greater selectivity in the kind of juvenile and adult offenders retained in the community; assisting counties in reducing the number of offenders re-entering the local criminal justice system; and to protect and care for the children and youth who are in need of services as a result of such status offenses as truancy, running away, and being beyond the control of parents.

The potential for impact on observed justice system processes and results from initiatives such as the above -- implemented concurrently with or subsequent to California's DSL -- is apparent; the potential for the effects of such justice system initiatives, extraneous to those directly affecting the structure of DSL, must be borne in mind and has been addressed in the design of the research methodology.

The need to consider the possible effects of other initiatives that may have influenced observed results under DSL or ISL was addressed by the conduct of a structured set of interviews with knowledgeable justice system officials and staff including the areas of local law enforcement, courts, and corrections. This same system of structured interviews was carried out to address, in addition, the perceived process and procedure impact of the implementation of amending legislation to California's DSL structure and to further inform our quantitative analyses designed to identify the influence of pre-existing trends and conditions external to ISL or DSL provisions when observing statistics on justice system results under ISL or DSL.

c. Attribution of Observed Conditions to Sentencing Approaches

A further methodological concern is the degree to which observed changes in the processes as a result of California's justice system can be attributed to changes from ISL to DSL. There is the need to distinguish the effects of the sentencing schemes themselves from (1) already pre-existing trends (having nothing particular to do with which sentencing scheme is in effect) and (2) changes in other background conditions (that might not necessarily be considered as "other initiatives" such as were described immediately above). An approach, explained further below, has been adopted to analyzing trends with this concern in mind.

Trends evident in recent ISL years were quantitatively analyzed in order to forecast these for the years 1977 and 1978 assuming that ISL trends had continued in these years. Then reported data on trends under DSL in 1977 and 1978 were compared to the forecasts or projections. This allowed the identification of instances where justice system conditions reported as DSL was implemented appeared to be significantly different than one would have expected if ISL trends had continued. Such instances then could be assessed further on the basis of interviews with knowledgeable justice system officials and staff, and on the basis of other quantitative analyses.

d. Limited DSL Implementation Period and Data Availability

A final major methodological concern relates to the fact that the determinate sentence law enacted by SB 42 as amended has been in effect for a relatively short period in the State of California. By way of elaboration, it should be noted that determinate sentencing became effective July 1, 1977, but applied only to crimes committed after that date. With this in mind, it is important to note that as of the date of the beginning of the research reported in this document, statewide data in the detail needed to examine the degree of attainment of the sentencing goals of certainty or equity, for example, was available only through 1978 from the State Bureau of Criminal Statistics and the Department of Corrections publications. Development by the Board of Prison Terms of the computerized information system designed to record information needed to conduct the disparity of prison commitments under DSL was in process, with information coded and readily available only for commitments through June of 1978.

It is significant to the research design and to interpreting results reported in this study that determinate sentencing may not have been in effect for a sufficient period of time for representative proportions of all offenders and offenses under DSL to have come to trial and disposition. An offender would have had to have committed a crime after June 30, 1977, to come under the provisions of DSL, have been apprehended, sentenced, and incarcerated for detailed information to be available, all in the period of time between June 30, 1977, and the end of calendar year 1978.

This limited time of implementation experience under DSL is of concern in considering such issues as the attainment of rehabilitation or deterrence, for example, in that it is highly unlikely that sufficient

number of persons sentenced under DSL have been "at risk" in the community for a sufficient period of time to fully examine the law's deterrent or rehabilitative effects such as might be reflected in perceptible shifts in offense or recidivism rates.

Table II-1, following, illustrates the caution that is needed in analyzing some of the data presented in this research pertaining to overall incarceration rates, or to other court dispositions in the period of time during which both ISL and DSL cases were being heard by the courts. As can be seen in the Table, as late as one year following the implementation of DSL, fully a third of the offenders sentenced to state prison were sentenced under ISL.

C. A COMPARISON OF ISL AND DSL EXPERIENCE IN CALIFORNIA

1. Attainment of Sentencing Goals

This section compares California's experience under ISL as compared with its recent experience under DSL in relation to the attainment of particular defined sentencing goals. These include (a) adequacy of sentencing, (b) certainty of sentencing, (c) equity or uniformity in sentencing, (d) protection of the public, (e) deterrence from criminal activity, and (f) rehabilitation of offenders.

These terms have been defined more completely in the preceding chapter. A number of statistical criteria and judgmental factors were defined and selected that would be appropriate and desirable for measuring the attainment of each of these goals. Data available that could be compiled in the three-month study period was researched and qualitative information was attained through literature review and interviews in ten counties in the state covering about 75% of the population).¹

a. Adequacy

In order to examine the adequacy of sentences for punishment under California's ISL and DSL, data was obtained from the Uniform Parole Reporting System through the National Council on Crime and Delinquency. California's 1975 ISL and 1978 DSL median sentences then compared to those of other states,² on an offense by offense basis.

1. Field interviews were conducted in the following Counties: Alameda, Los Angeles, Merced, Orange, Sacramento, San Bernardino, San Diego, San Francisco, Santa Clara, and Tulare.

2. Data was obtained from 27 states and the District of Columbia, selected to provide geographic and size diversity and reasonable coverage of the nation. The sample included the following: Alabama, Alaska, Arkansas, Delaware, District of Columbia, Florida, Georgia, Idaho, Illinois, Iowa, Kansas, Kentucky, Maine, Michigan, Missouri, Nebraska, New Jersey, North Carolina, North Dakota, Ohio, South Carolina, South Dakota, Texas, Utah, Virginia, West Virginia, Wisconsin, and Wyoming.

TABLE II-1

**PERCENTAGE OF FELONY CONVICTIONS
RESULTING IN STATE PRISON SENTENCES**

	<u>Quarter Ending</u>			
	<u>9/30/77</u>	<u>12/31/77</u>	<u>3/31/78</u>	<u>6/30/78</u>
Percentage Sentences to State Prison	27%	30%	33%	32%
Percentage Determinate Sentences	5	33	57	67
Percentage Indeterminate Sentences	95	67	43	33

Source: Judicial Council of California; Arthur D. Little, Inc.

Table II-2, following, presents the results of this analysis, analyzing sentences received for forcible rape, robbery, assault, burglary, theft (except motor vehicle theft), and motor vehicle theft. The Table provides ISL sentence medians for all offenders released in the second quarter of the year 1975, as reported by the Department of Corrections. The DSL sentences shown are those reported by the Board of Prison Terms for all prisoners sentenced and received at institutions under DSL in the second quarter of 1978. The most recent data available under the Uniform Parole Reporting System is for the year 1976. While this does not provide precise comparability, its use does provide the same "yardstick" against which to examine California's ISL and DSL sentence medians as represented by the years 1975 and 1978 as shown.

(1) DSL more closely approximates national norms for "adequacy of punishment" than did ISL. As can be seen in Table II-2, for the offenses shown it appears that California sentencing under DSL comes closer to what would be considered "adequate for punishment" as represented by the median of the average sentences reported by the states in the sample.

For the crimes against property shown, this is true not only considering DSL sentences with good time credited, but also considering DSL sentences without any good time at all credited in comparison to ISL sentences. Thus, for those offenses, DSL regardless of any assumptions regarding good time earned, comes closer to what is considered "adequate" judging by the state sample.

For the crimes against persons shown, California's DSL sentences with good time credited up to the maximum of 1/3, come closer to what is considered adequate as judged by the state sample than do either California ISL sentences or California DSL sentences without any credit for good time earned.

If one assumes that the general pattern shown for crimes against persons and crimes against property holds true for other offenses not shown in the Table, it can certainly be said that California's DSL provides a closer approximation of adequacy for punishment than did California's recent ISL sentencing.

b. Certainty

To examine the degree of certainty provided by California's ISL and DSL sentencing schemes, analysis was undertaken in two areas, as follows:

- An examination of the disposition received (prison, straight probation, probation with jail, and the total for straight probation and probation with jail) given a conviction for particular offenses.
- Time served for conviction for various offenses, given imprisonment.

This data showed sentence means (averages) as opposed to the median figures that were available to characterize ISL sentences. Means in California will be from one to about six months higher than medians, depending on the offense. This does not alter the basic conclusions above.

TABLE II-2

SELECTED SENTENCE* COMPARISONS: CALIFORNIA
ISL AND DSL YEARS VERSUS STATE SAMPLE

	Forcible Rape	Robbery	Assault	Burglary	Theft	Motor Vehicle Theft
California ISL Median, 1975	52.0	43.0	41.0	34.0	28.0	27.0
California DSL Median, 1978**	60.0	48.0	44.0	24.0	24.0	24.0
California DSL Median with "Good Time" Credit, 1978	40.0	32.0	30.0	16.0	16.0	16.0
State Sample Median, 1976	44.4	34.6	22.7	20.0	17.5	21.6
Upper Quartile, 1976	66.7	44.3	27.6	25.3	19.1	18.7
Lower Quartile, 1976	22.3	22.7	19.2	13.7	13.0	13.4

*Sentences shown in months.

**DSL Sentences do not include "Good Time" to be credited.

Source: Arthur D. Little, Inc.

(1) It appears that California's DSL has increased the certainty of imprisonment given conviction. This conclusion is based on several analyses.

In order to analyze this possibility, Bureau of Criminal Statistics data was used. The number of dispositions reported for the years 1970 through 1978 were calculated as a percentage of total Superior Court dispositions in each year. Viewed in the absence of any other information regarding the specifics of particular cases brought to court, this percentage can be viewed as the rough probability that any particular disposition will be made, given conviction in Superior Court. These disposition probabilities were calculated for the F.B.I. seven major index¹ crimes as well as for several other crimes, including sex offenses; drug offenses except marijuana; and forgery, check, and credit card offenses.

Calculating the probability of particular dispositions for each of the years from 1970 through 1978 revealed several trends and changes from year to year in the likelihood that a particular disposition would be made given conviction for particular offenses. In order to gain further insight as to the degree to which trends or changes observed in California's DSL period (1977, 1978), regression analysis was made of the trends. Reported DSL rates then were compared to rates that would have been projected with 95% confidence if ISL trends had continued into the DSL period. Tables II-3 and II-4, following, present the results of this analysis. Detailed results are contained in Appendix D.

Table II-3 shows the percentage dispositions to prison and to the total of probation and probation and jail for the years 1975 and 1978. As can be seen, the percentage of convictions that resulted in prison dispositions was higher in 1978 than in 1975, for all offenses analyzed. Conversely -- with the exception of convictions for assault -- the use of probation given conviction was less in 1978 than in 1975. Thus, it can disposition probabilities in the ISL period in order to examine ISL.

It could be said that the probability of prison disposition given conviction was higher in 1978 than in 1975 and that there was a correspondingly lesser use of probation either with jail or as straight probation in 1978 than in 1975.

Table II-4 shows the results of comparing ISL trends with dispositions reported in the DSL period. In most cases the percentage of prison dispositions reported in the DSL period was significantly higher than would have been projected based on ISL trends. This gives credence

1. Seven major crimes, selected for the F.B.I.'s Uniform Crime Reporting System because of their likelihood of being reported as well as their severity, include willful homicide including manslaughter; forceable rape; robbery; aggravated assault; burglary; theft (except motor vehicle theft); and motor vehicle theft. These seven categories also allow the calculation of the offense rate for the seven major crimes total, a subtotal for crimes against persons, and a subtotal for crimes against property.

TABLE II-3

DISPOSITIONS* TO PRISON AND TO TOTAL OF PROBATION
AND PROBATION AND JAIL - 1975 AND 1978

Offense	Percent to Prison			Percent to Probation Total		
	1975	1978	Difference	1975	1978	Difference
Rape	36.9%	55.3%	15.7	40.5%	28.8%	(11.7)
Other Sex Offenses	10.2	12.3	2.1	67.8	65.3	(2.5)
Robbery	43.7	54.7	11.0	38.2	30.8	(7.4)
Assault	12.3	18.9	6.6	74.4	75.9	1.5
Burglary	12.3	22.0	9.7	70.5	65.1	(5.4)
Theft, Except Auto	7.3	12.0	4.7	78.4	77.6	(.8)
Motor Vehicle Theft	9.2	16.6	7.4	72.1	67.3	(4.8)
Drug Offenses, Except Marijuana	10.6	16.8	6.2	76.7	73.0	(3.7)
Forgery	9.4	21.7	12.3	78.9	70.0	(8.9)

*Calculated as percent of total Superior Court dispositions.

Sources: State of California Bureau of Criminal Statistics; Arthur D. Little, Inc.

TABLE II-4

SUMMARY OF COMPARISONS BETWEEN
 REPORTED DSL DISPOSITIONS AND ISL PERIOD PROJECTIONS
 CALCULATED AS PERCENTAGES OF SUPERIOR COURT CONVICTIONS

Offense	Dispositions to:							
	Prison		Probation		Probation and Jail		Probation Total	
	1977	1978	1977	1978	1977	1978	1977	1978
Rape				=				
Robbery	++	++				=	=	=
Assault	++				=	=	++	++
Burglary	++	++			=	=		=
Theft	++	++			=	=	=	
Motor Vehicle Theft		++				=	=	=
Forgery	++	++				=	=	=

Key:

- ++ = Reported DSL rate above projected ISL 95% confidence range.
- = = Reported DSL rate below projected ISL 95% confidence range.

Sources: State of California Bureau of Criminal Statistics; Arthur D. Little, Inc.

to justice system officials believe that implementation of DSL in California has indeed had a significant impact on increasing the certainty of a prison disposition given conviction for an offense.

Also interesting to note in that Table is the fact that the use of probation with jail appears to be significantly less frequent in a large number of instances during the DSL period than would have been expected based upon the continuation of ISL trends. This can be interpreted as an indication that the type of offender who in the past under ISL would have been given a probation and jail sentence is more frequently being sent to state prison under DSL.

(2) As a consequence of the increasing certainty of prison commitments, there is apparently less certainty under DSL than under ISL of the likelihood of particular dispositions given conviction. Because prison commitments for the offenses analyzed above were in most cases considerably less frequent than probation dispositions, the fact that the frequency of prison dispositions has risen under DSL means that a convicted offender apparently faces a more even chance of going to prison or of being granted probation under DSL than under ISL. This result is illustrated in Table II-5, following.

This Table shows the "spread", in percentage points, between the probability of a disposition to prison or to probation or probation with jail, given a conviction in Superior Court. As can be seen, except for convictions for forceable rape and robbery, there is a smaller percentage point spread under DSL between prison and probation dispositions than existed under ISL. Therefore, in the absence of further information about the specifics of particular cases, one could be led to conclude that there is in general less certainty under DSL than under ISL about which disposition a convicted offender will receive.

Caution should be used in generalizing from this analysis, however. It may be that, given knowledge of case particulars, there is a considerably higher degree of certainty under DSL than under ISL regarding whether or not an offender will be sentenced to prison or granted probation, given knowledge of the offender's prior criminal record and other pertinent factors. This result of DSL was in fact the consensus of those interviewed in the justice system in California as part of this study. However, it is also possible that for a class of "border line" cases where probation is a distinct probability given the nature of the offense and the offender, less "certainty" does indeed exist under DSL than under ISL regarding the likely outcome.

(3) There is general agreement that there is greater certainty of time to be served under DSL than existed under California's ISL. Information from the Department of Corrections was not available on standard deviations or variances of time served in prison under ISL for various conviction offenses. Therefore, no precise statistical comparison could be made of California's experience under DSL with that under ISL.

TABLE II-5

PERCENTAGE POINT DIFFERENCES BETWEEN DISPOSITIONS*
TO PRISON AND TO THE TOTAL OF PROBATION AND
PROBATION AND JAIL - 1975 AND 1978

Offense	ISL 1975	DSL 1978	Relative "Certainty" of Disposition Under DSL
Forcible Rape	3.8	26.5	More
Other Sex Offenses	57.6	53.0	Less
Robbery	5.5	23.9	More
Assault	62.1	57.0	Less
Burglary	58.2	43.1	Less
Theft, Except Auto	71.1	66.8	Less
Motor Vehicle Theft	62.9	50.7	Less
Drug Offenses, Except Marijuana	66.1	55.2	Less
Forgery/Check/Credit Cards	69.5	48.3	Less

*Calculated as percentage of Superior Court convictions.

Sources: State of California Bureau of Criminal Statistics; Arthur D. Little, Inc.

However, by the very determinacy of the structure of DSL, with fixed terms not subject to changes in parole board policies or views regarding individual offender rehabilitation, a greater "certainty" of time to be served for persons committed to prison does indeed appear to be provided by the law.

A research concern that should be followed in the future, however, is the possibility that prison or offender situations may cause considerable variance among offenders in the degree of good time ultimately credited to one's sentence. This variance could conceivably, for some offenses, result in less certainty than existed under ISL with regard to time served. However, without information on variance or standard deviation of time served from the Department of Corrections during the ISL period, this comparison will not be possible.

c. Equity

Data is needed from the Department of Corrections in order to statistically assess the degree to which equity or uniformity in sentencing was attained under ISL. Information on offender and offense characteristics reportedly could not be provided by the Department with sufficient detail to adequately identify offenses committed by offenders "under similar circumstances", in the time available for the completion of this study.

The Board of Prison Terms has such information readily available for DSL convictions and sentences, including offender backgrounds and offense characteristics, as the result of the Board's work on the disparity review required under DSL.

(1) Several DSL features enhance California's capability to attain sentencing equity.

The enactment of SB 42 initiating California's determinate sentencing legislation has provided three results that should significantly assist in improving the uniformity and equity in sentencing in the state. These features due to DSL did not pertain under the previous ISL approach and its sentencing provisions.

- DSL provides greater sentencing accountability than was the case under ISL. The law requires the public accounting of the basis for, and calculation of DSL sentences, whereas this requirement did not exist under ISL.
- DSL mandates the review of every prison sentence for disparity. Reporting responsibilities with regard to the results of this review are also specified in the legislation.
- The specification of sentences that are of a definite length as the result of pled and proven facts has eliminated the possibility for sentencing inequity due to a "silent beef." This term has been

used to refer to situations possible under ISL where a criminal activity or a personal characteristic of the offender that had not been responsible for his commitment was still considered by the parole board as a factor important to his release.

d. Protection

The relative public protection effect provided in California under ISL and DSL was examined by analyzing both:

- Offense rates, and
- Changes in the incapacitation of criminals provided through their incarceration.

The analysis of changes in offense rates under ISL and DSL is intended to provide further insights as to whether the relative incapacitation effects of ISL and DSL appear to be having an effect on changes in crime rates observed.

(1) Offense rates under DSL are growing less rapidly than under ISL, but this cannot be attributed to a greater incapacitation effect under DSL. To examine offense rates, the reported offense rates for the F.B.I seven major index crimes were used. Regression techniques were used to analyze reported offense rates under ISL and to calculate offense rates that would have been expected for the years 1977 and 1978 if ISL trends had continued. Then, actual rates reported under DSL were compared with the rates that would have been expected if ISL trends had continued. This allowed the researchers to identify DSL offense rates that were significantly different than what would have been expected based on California's ISL experience. The results obtained from this analysis are explained in further detail under the following section discussing deterrence.

The analysis showed that the 1977 offense rate for the total of the seven major index crimes was significantly lower than would have been expected if ISL trends continued; this total offense rate in 1978 was lower than what would have been expected, but not with as great statistical significance. The general trend, examining both the subtotal for crimes against persons and the subtotal for crimes against property, appears to be that offense rates are growing less rapidly under DSL than under ISL.

This slowing in the rate of growth in offense rates cannot be attributed to a greater incapacitation effect under DSL, however.

This conclusion is due to the following considerations:

- Insufficient research in general has been conducted on the "replacement" effect. That is, to the degree that certain types of crimes are more or less formally organized into businesses or vocations, the removal of a particular offender from that criminal activity by incarceration may only result in the recruitment of another individual to take up or "replace" that level of criminal activity.

- While the size of the California state prison population is, for all of the index crimes but motor vehicle theft, negatively correlated with offense rates in the 1970s, the strength of the correlation is not particularly strong; further, there is a lack of information on the likely individual offense rates for different types of criminals. This is needed in order to relate the size of changes in offense rates to the size of changes in the incarcerated criminal population.
- The likely incapacitation effect of California's DSL does not seem to be larger than the incapacitation effect of the previous ISL.

This latter point is discussed in greater detail below.

(2) DSL appears, at least in the year 1978, to have provided less of an incapacitation effect than the state's ISL provided in 1975. In addition, DSL appears to structurally provide for less incapacitation, based on its comparatively shorter median length of sentences, given relatively comparable inmate population sizes. All sentencing approaches provide for some amount of incapacitation, or the prevention of criminal activity on the part of those offenders who are convicted and sentenced to prison (or jail) terms. In discussing incapacitation, it should be noted that the effect on offense rates due to incapacitation is distinct from that which may be provided by the deterrent effect of a law in preventing crimes committed by members in the society at large.

A number of models do exist in the literature for estimating the incapacitative effect of various sanctioning schemes.¹ Each of the models considered attempts to actually measure the incapacitative effect of imprisonment. To do this, a number of critical assumptions must be made regarding the probability of arrest given commitment of crime; the length of a particular offender's active criminal career; the average length of sentence served for commitment, given a particular conviction offense; and the individual average crime rate of offenders while at large in society.

In a critical review of such models, Cohen points out that the major inadequacy in the models is the development of individual offender crime rates; differences in the estimate of the individual crime rate can make significant differences in the magnitude of the incapacitation effect that is estimated with the models. Cohen also notes, however, that "while the currently limited models and parameter estimates cannot be relied on for an exact numerical calculation of incapacitative effects, they are useful for relative comparisons."

In the analysis below, numerical calculations of the incapacitative effect of ISL and DSL in California are not made. Rather, calculations are made to show the relative magnitude of the incapacitative effect provided by ISL and DSL, based upon data drawn from 1975 and 1978, respectively.

1. Blumstein, Cohen, and Nagin, Eds., Op. Cit., pp. 187-243.

To analyze the incapacitative effects of ISL and DSL, a number of indices have been constructed. These have been developed in order to provide proxy measures for the incapacitative effects of the laws.

Table II-6, following, provides background information for the analyses, showing percentages by offense for male felons newly received by the Department of Corrections in 1975 and 1978. Using this information and data on median sentences by offense, Table II-7 shows the calculation of comparative indices of incapacitation under ISL and DSL. The median sentences shown for 1975 are based on all male felony first parole releases for the second quarter of 1975 as reported by the Department of Corrections; medians shown for the DSL period are based on all DSL offenders received during the second quarter of 1978 as reported by the Board of Prison Terms.

The indices in Table II-7 measure incapacitation on the basis of man-months of incarceration expected for every 1000 newly received male felons. It can be roughly estimated based on the indices calculated that Corrections would have had to have admitted from 1150 to 1720 felons in 1978 under DSL provisions to have achieved the same potential man-month incapacitation that could have been achieved with only 1000 new commitments under ISL in 1975.

Two additional indices were used to analyze ISL and DSL incapacitation using slightly different estimation techniques. Table II-8 shows the next analysis undertaken.

This analysis was made to take account of different crimes rates among offenses, and to see how the differing composition of the inmate population in terms of commitment offenses might affect the incapacitative effect of DSL as compared with ISL. In order to weight the indices calculated in Table II-7 to take account of differing offense frequencies, reported offense rates were used rather than any estimates of individual offender category recidivism rates. Further, to highlight the relative incapacitative effect due to DSL's structure in comparison with ISL (rather than due to higher offense rates in 1978 than in 1975), 1975 offense rates were used as weights for both the ISL calculation (for the year 1975) and for the DSL calculation (for 1978).

Thus, the weights shown in Table II-8 are 1975 reported offense rates; the indices shown are those calculated in Table II-7; and the "score" columns show the relative incapacitative effects of ISL and DSL calculated. As above, the DSL measure indicates less incapacitation potential than existed under ISL in 1975, even when no good time is credited to sentences.

Finally "equilibrium" conditions were calculated for theoretical state prisons under ISL and DSL to assess the laws' relative affects on reducing the number of annual offenses through incapacitation. The distributions among offenses shown in Table II-6 above for 1975 and 1978 were assumed to remain the same from year to year, and total annual commitments to both the theoretical ISL and DSL prisons were assumed to be equal and a constant number from year to year. The ISL and DSL median

TABLE II-6

PERCENTAGES OF NEWLY RECEIVED MALE FELONS;
BY CONVICTION OFFENSE 1975 AND 1978

Offenses	1975	1978
Homicide	10.7%	6.3%
Forcible Rape	4.0	3.2
Other Sex Violations	2.6	1.9
Robbery	25.0	28.5
Assault	8.3	8.4
Burglary	17.2	19.0
Theft Except Auto	7.5	10.0
Motor Vehicle Theft	2.1	3.5
Marijuana	2.0	.6
Other Drugs	12.2	9.2
Forgery	3.5	3.7
All Other Offenses	5.1	4.8

Sources: State of California Department of Corrections; Arthur D. Little, Inc.

TABLE II-7

COMPARATIVE INDICES OF INCAPACITATION PER 1000
NEWLY RECEIVED MALE FELONS, 1975 AND 1978

Offense	ISL (Based on 1975)			DSL (Based on 1978)			"Good Time" Credit Index
	Median Sentence*	No. of Offenders	Index	Median Sentence**	No. of Offenders	Index**	
Homicide	75	107	8,025	60	63	3,780	2,520
Forcible Rape	52	40	2,080	60	32	1,920	1,280
Other Sex Violations	60	26	1,560	36	19	684	456
Robbery	43	250	10,750	48	285	13,680	9,120
Assault	41	83	3,403	44	84	3,696	2,464
Burglary	34	172	5,848	24	190	4,560	3,040
Theft Except Auto	28	75	2,100	24	100	2,400	1,600
Motor Vehicle Theft	27	21	567	24	35	840	560
Marijuana	38	20	760	36	6	216	144
Other Drugs	40	122	4,880	36	92	3,312	2,208
Forgery	28	35	980	24	37	888	592
All Other Offenses	37	51	<u>1,887</u>	24	48	<u>1,152</u>	<u>768</u>
Incapacitation Index Total			42,840			37,128	24,752

*In months.

**Without "Good Time" credited to sentence length.

Sources: State of California Department of Corrections; Arthur D. Little, Inc.

TABLE II-8

WEIGHTED INCAPACITATION INDEX COMPARISONS

	Weight	ISL - 1975		DSL - 1978			
		Index	Score (000s)	Index*	Index	Score* (000s)	Score (000s)
Forcible Rape	41.6	2,080	86.5	1,920	1,280	79.9	53.2
Robbery	283.0	10,750	3,042.3	13,680	9,120	3,871.4	2,581.0
Assault	320.5	3,403	1,090.7	3,696	2,464	1,184.6	789.7
Burglary	2,218.7	5,848	12,975.0	4,560	3,040	10,117.3	6,744.8
Theft (except motor vehicle)	646.6	2,100	1,357.9	2,400	1,600	1,551.8	1,034.6
Motor Vehicle Theft	629.6	567	<u>357.0</u>	840	560	<u>528.9</u>	<u>352.6</u>
Weighted Incapacitation Index Total			18,909.1			17,333.9	11,555.9

*Without "good time" credit.

Sources: State of California Department of Corrections; Arthur D. Little, Inc.

sentences by offense were used for lengths of terms to be served for all the years in the analysis. After several years in such an analysis, the number of new commitments for every offense equals the number of releases for that offense, and the inmate population of the theoretical prison remains constant thereafter.

This simplified model allows the calculation of estimated percentages of the ISL and DSL inmate populations for each commitment offense. Then, the 1975 reported offense rates were used as proxies for the average individual offender's crime rate for each offense category, and an index of "annual relative incapacitation" was calculated for the two theoretical ISL and DSL prisons.

When this analysis was performed, it appeared that DSL was about 25 to 30 percent less effective in reduction of annual crime due to incapacitation than was ISL. It should be noted that recent amending legislation enacted since 1978 having the effect of reducing the possibility of probation in certain instances and otherwise mandating prison terms may increase the incarceration rate. Further, if the prison population were to shift in the future towards a greater porportion of inmates from crimes with reportedly high recidivism rates (such as burglary, motor vehicle theft, forgery, checks and credit card offenses, etc.) as the data in Table II-8 appears to indicate, the incapacitation effect of DSL would thus be greater than estimated for 1978 above.

e. Deterrence

For purposes of this research, deterrence was defined as the prevention of criminal activity on the part of persons other than those in the incarcerated population.

In the past, most studies of the deterrent effect of sanctions against crime on persons other than the sanctioned offender have studied variations in offense rates, and have compared these to various "risks" attendant to criminal justice system characteristics (such as the risk of apprehension, risk of conviction, risk of imprisonment, and severity of punishment). This approach was followed in the research presented here, using a statewide perspective on risk; that is, the "risks" of apprehension, conviction and imprisonment were not analyzed by specific offense categories, although offense rates for the seven major F.B.I. index crimes were analyzed on an offense-by-offense basis.

(1) While the early 1970s growth in California offense rates under ISL has slowed under DSL, this cannot be clearly attributed to deterrence provided by DSL. In order to compare California's experience under ISL and DSL with regard to growth trends and offense rates, the seven major F.B.I. index crime rates were analyzed. The basic approach of the analysis was that outlined above. Offense rate data reported for the years 1969 through 1976 under ISL was projected, assuming ISL trends continued, for the years 1977 and 1978. Reported offense rates for 1977 and 1978 were then compared to rates that would have been expected based on the continuation of ISL trends. Table II-9, following, presents the results of this analysis. Detailed results are contained in Appendix E.

TABLE II-9
OFFENSE RATES
ISL PROJECTIONS VERSUS DSL REPORTS

Offense	Reported Compared to 1968-76 Trends	
	1977	1978
Total for Seven Major Crimes	=	-
Total Crimes Against Persons	=	-
Willful Homicide	+	-
Forcible Rape	++	++
Robbery	+	+
Aggravated Assault	=	=
Total Crimes Against Property	=	-
Burglary	=	-
Theft	-	-
Motor Vehicle Theft	+	++

Key:

- ++ = Reported rate above projected range.
- + = Reported rate above projected rate.
- = Reported rate below projected rate.
- = = Reported rate below projected range.

Sources: State of California Bureau of Criminal Statistics.

As can be seen, in 1977 the rate for crimes against persons under DSL was below the entire range of ISL rates that might have been projected if one wanted to have 95 percent confidence in the projected range. This draws one's attention to searching for some significant changes that took place between the ISL and DSL periods that would affect the rate of offenses for crimes against persons. Examining the Table further, one may conclude that a significant decline in the growth rate of assault during the DSL period is the driving force behind the fact that the rate for crimes against persons has grown at a consistently slower rate than one would have expected based upon ISL experience.

An additional interpretation is possible in comparing the reported offense rates observed under DSL with those observed under ISL. Figures II-1 through II-10, following, show a comparison of the expected offense rate trend¹ with the observed trend considering DSL data reported². Two lines are shown in each of these graphs. As can be seen, in most cases, the inclusion of offense rates under the DSL period has tipped the trend-line downwards. This is true when considering the total of the seven crimes shown, the total for crimes against persons, and the total of crimes against property. Within individual crimes shown, this is true for all categories except forceable rape and motor vehicle theft. One can infer on the basis of this analysis that some change took place in 1976 or thereafter (the years in which DSL was passed and implemented) that caused offense rates to grow at a less rapid rate than they had in the ISL period.

(2) DSL has increased one deterrent sanction against crime while decreasing another. In general, theories of deterrence predict, and research generally finds, that there is a consistent negative association between crime rates and the risks of apprehension, conviction, and/or imprisonment. Consideration of the risk of imprisonment has generally included not only the likelihood of imprisonment given conviction for a specific crime, but also the severity of the sentence -- the amount of time to be served under the prison sentence passed. Tables II-10 and II-11, following, show calculated indexes for these sanctions; Table II-10 shows indexes for the risks of apprehension, conviction, and imprisonment, while Table II-11 shows ISL and DSL sentence length comparisons.

The "sanctions" against committing crimes -- or the deterrent effect of a particular justice system -- as usually measured have decreased in California considering three of the four indexes. Decreases in two of the measures of sanctions against criminal activity cannot be attributed to particular differences between ISL or DSL. As can be seen in Table II-10:

1. Regression line based upon 1969 through 1975 reported data and extrapolations

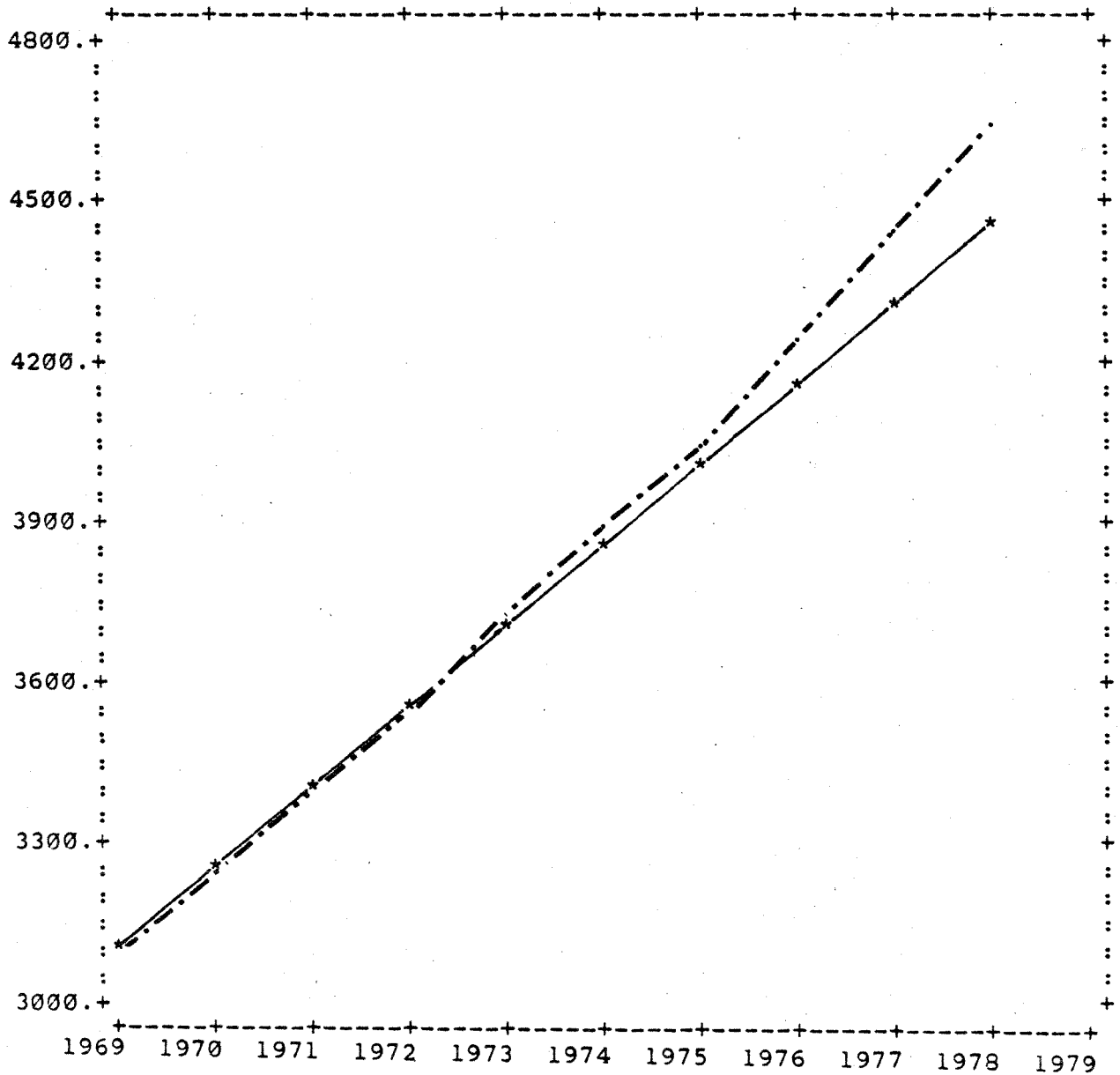
2. Regression line considering offense rates reported for the years 1969 through 1978

OFFENSE RATE TRENDS

FIGURE II-1

TOTAL SEVEN INDEX CRIMES

	ISL	ISL WITH DSL
1969	3094	3112
1970	3237	3258
1971	3387	3405
1972	3544	3551
1973	3708	3698
1974	3879	3844
1975	4058	3991
1976	4246	4137
1977	4442	4284
1978	4648	4430

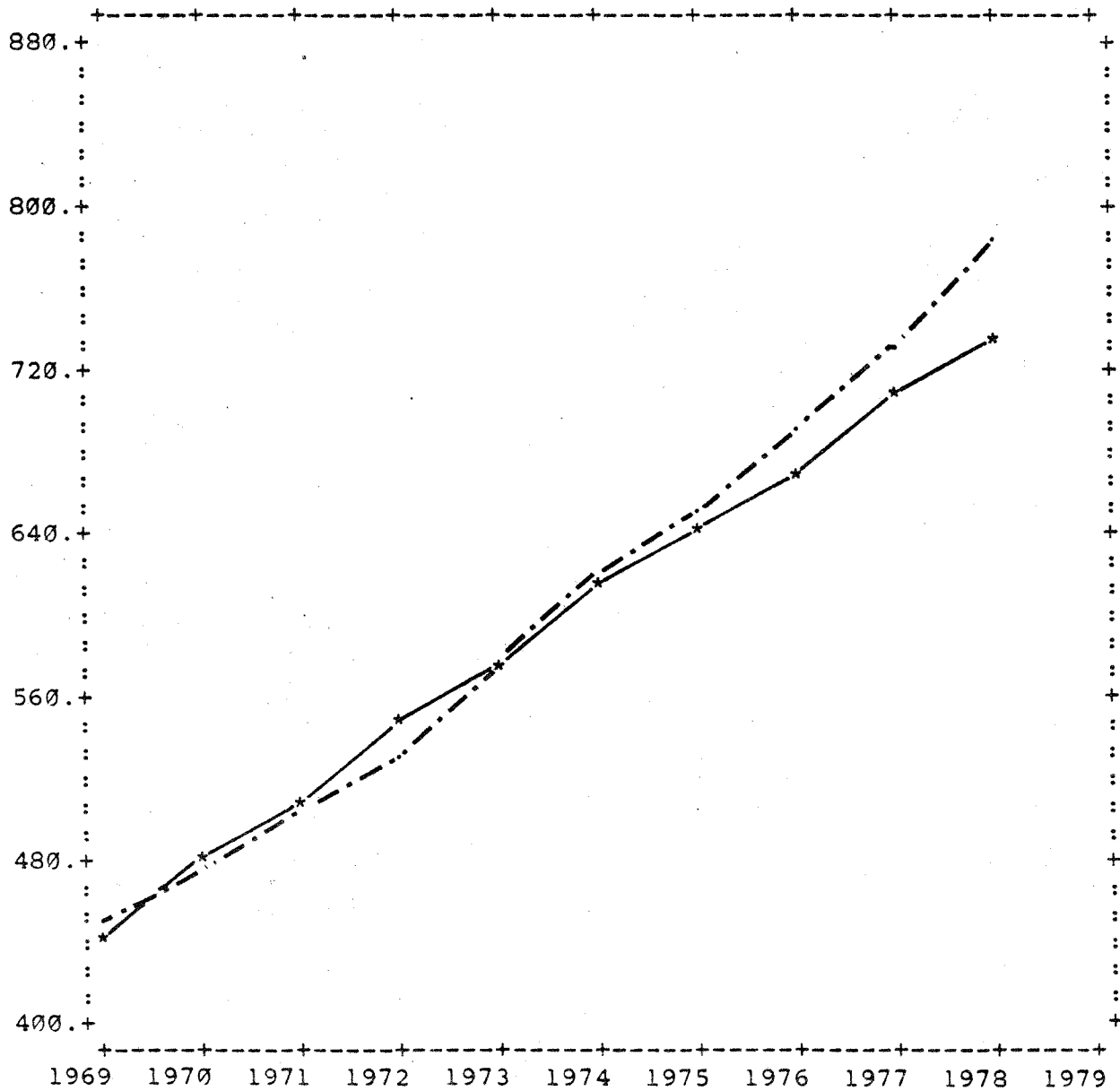


OFFENSE RATE TRENDS

FIGURE II-2

CRIMES AGAINST PERSONS

	ISL	ISL WITH DSL
1969	447.8	444.8
1970	476.3	477.2
1971	506.7	509.6
1972	539.0	542.0
1973	573.3	574.4
1974	609.9	606.8
1975	648.7	639.2
1976	690.1	671.5
1977	734.1	703.9
1978	780.8	736.3

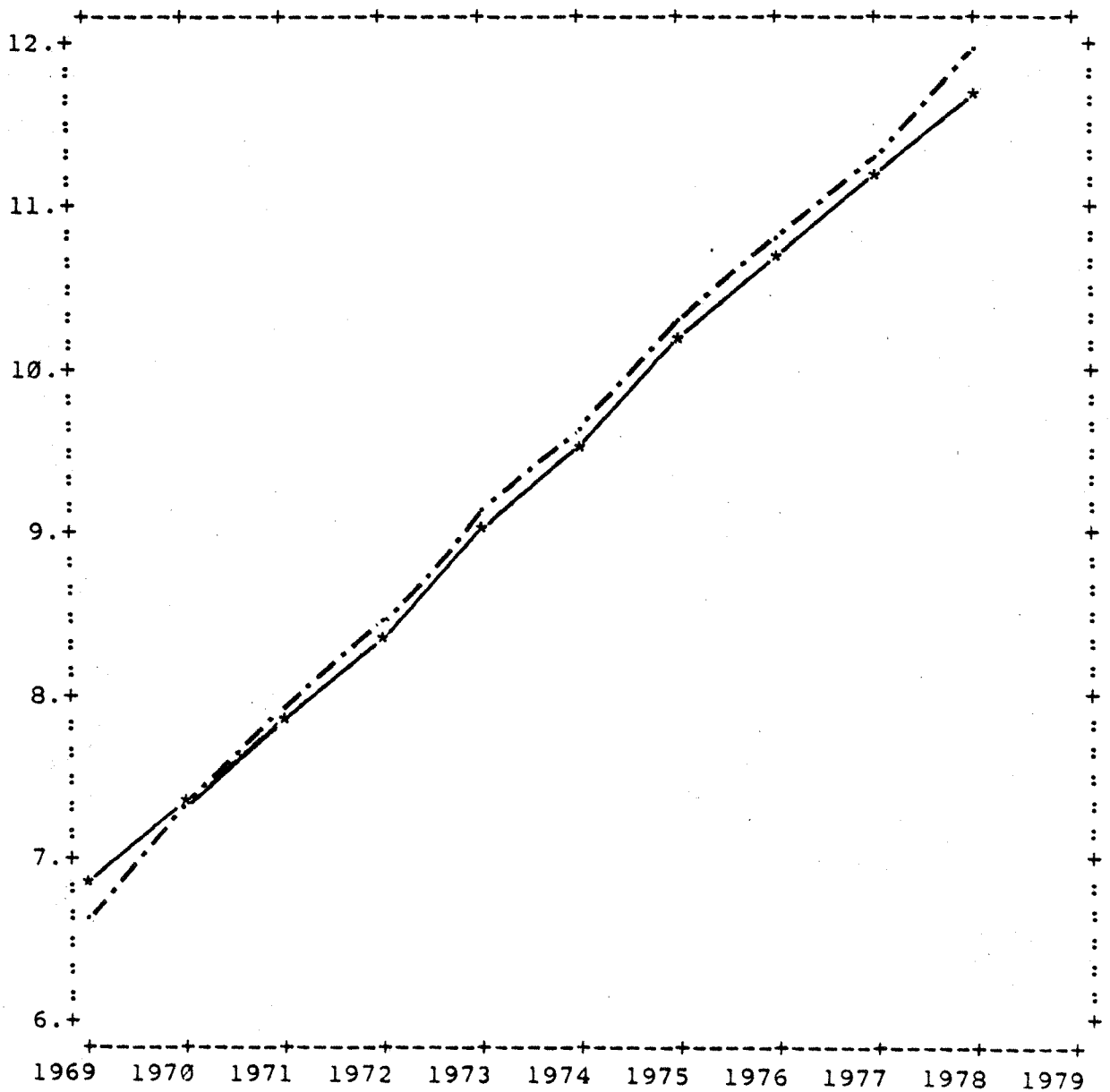


OFFENSE RATE TRENDS

FIGURE II-3

WILLFUL HOMICIDE

	ISL	ISL WITH DSL
1969	6.70	6.80
1970	7.30	7.30
1971	7.90	7.90
1972	8.50	8.40
1973	9.10	9.00
1974	9.70	9.50
1975	10.30	10.10
1976	10.80	10.60
1977	11.40	11.20
1978	12.00	11.70

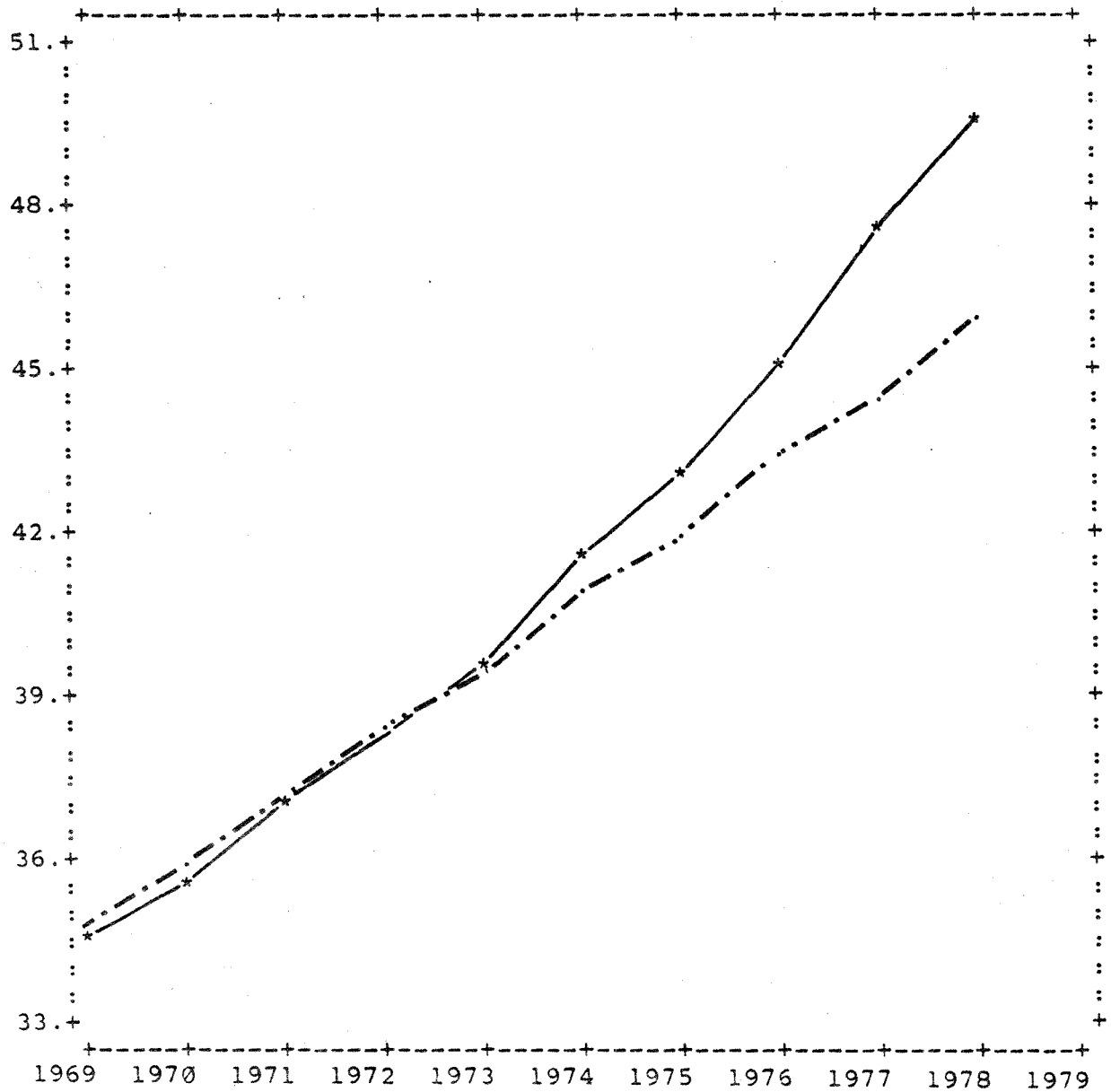


OFFENSE RATE TRENDS

FIGURE II-4

FORCIBLE RAPE

	ISL	ISL WITH DSL
1969	34.50	34.30
1970	35.80	35.50
1971	37.00	36.80
1972	38.30	38.20
1973	39.50	39.70
1974	40.80	41.40
1975	42.00	43.20
1976	43.30	45.20
1977	44.60	47.30
1978	45.80	49.70

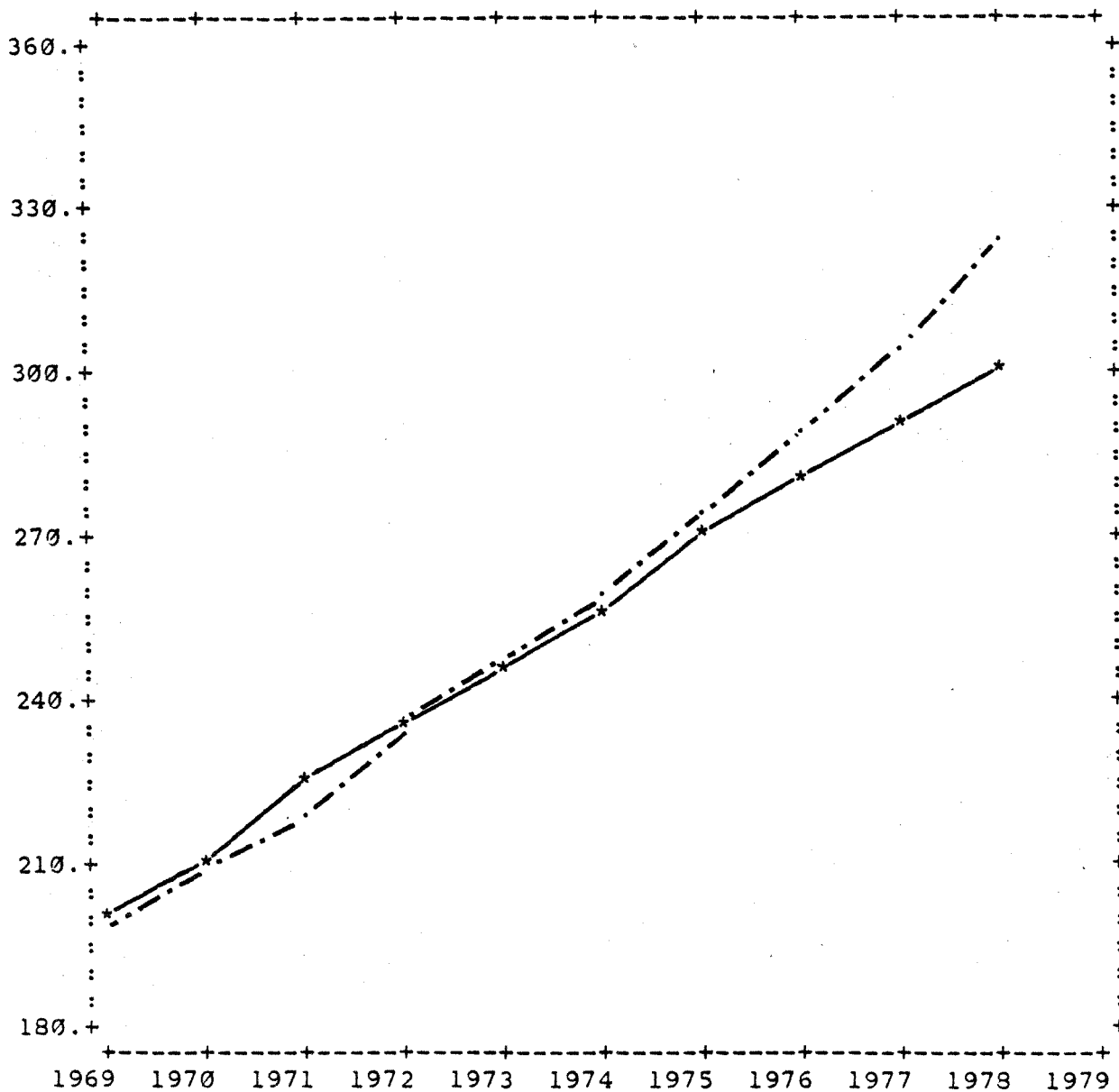


OFFENSE RATE TRENDS

FIGURE II-5

ROBBERY

	ISL	ISL WITH DSL
1969	199.7	200.8
1970	210.7	212.1
1971	222.2	223.3
1972	234.3	234.5
1973	247.2	245.8
1974	260.7	257.0
1975	275.0	268.3
1976	290.0	279.5
1977	305.9	290.7
1978	322.6	302.0

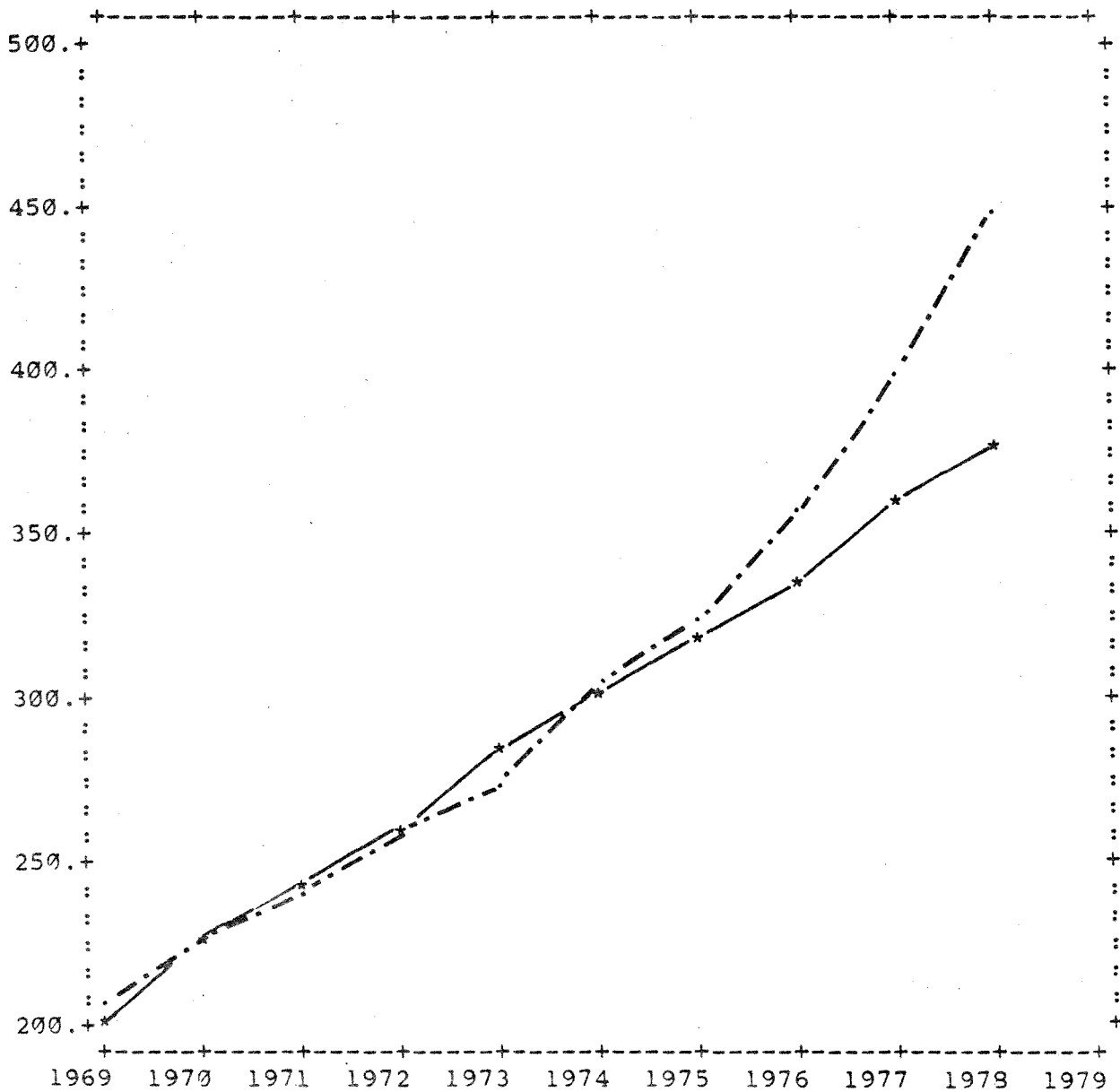


OFFENSE RATE TRENDS

FIGURE II-6

ASSAULT

	ISL -----	ISL WITH DSL -----
1969	209.5	203.9
1970	222.7	222.7
1971	237.8	241.6
1972	255.0	260.5
1973	275.0	279.3
1974	298.3	298.2
1975	325.9	317.1
1976	359.2	335.9
1977	400.1	354.8
1978	451.4	373.7

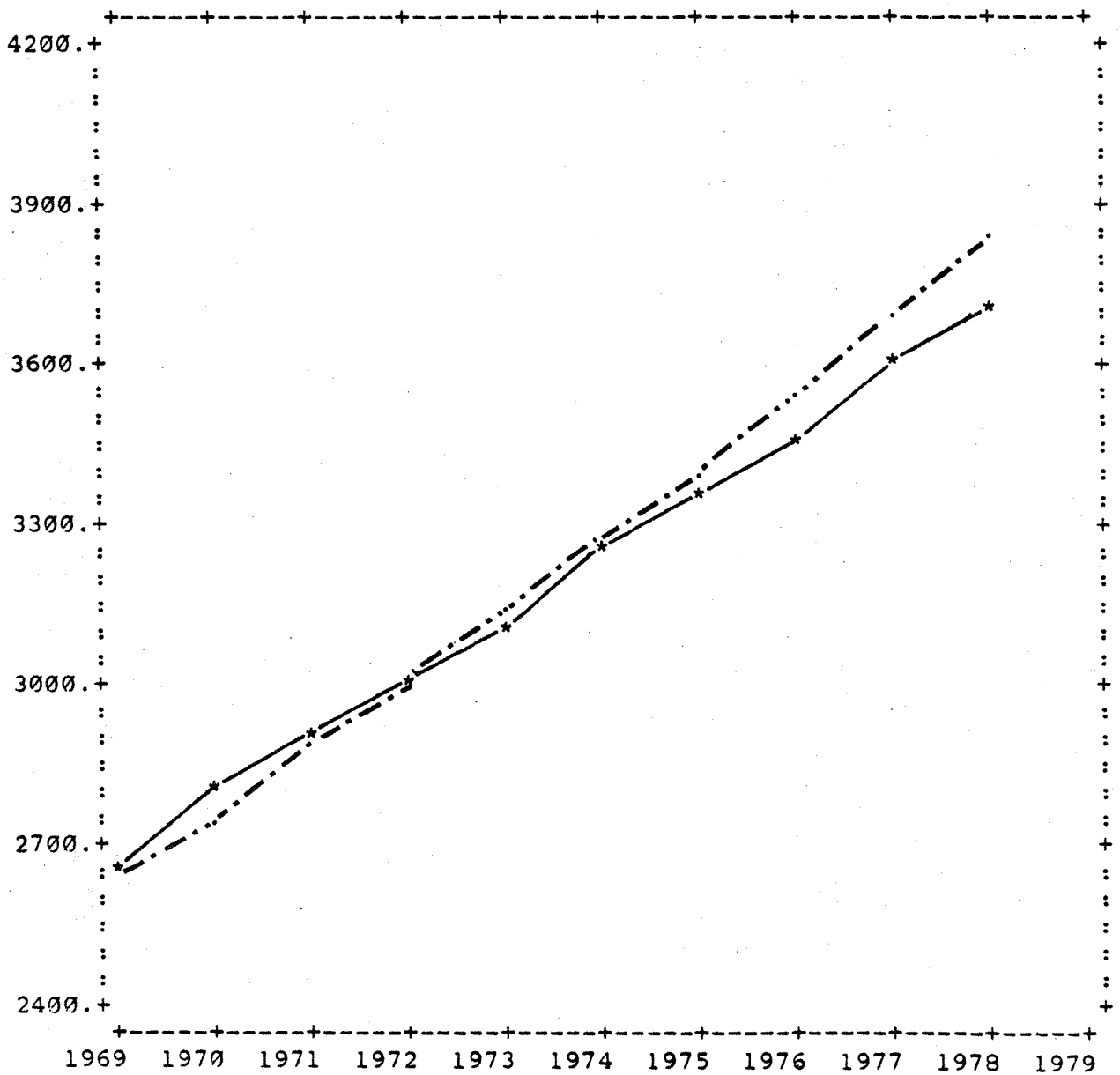


OFFENSE RATE TRENDS

FIGURE II-7

CRIMES AGAINST PROPERTY

	ISL	ISL WITH DSL
1969	2647	2667
1970	2761	2781
1971	2880	2895
1972	3004	3009
1973	3134	3123
1974	3269	3237
1975	3410	3351
1976	3557	3466
1977	3710	3580
1978	3870	3694

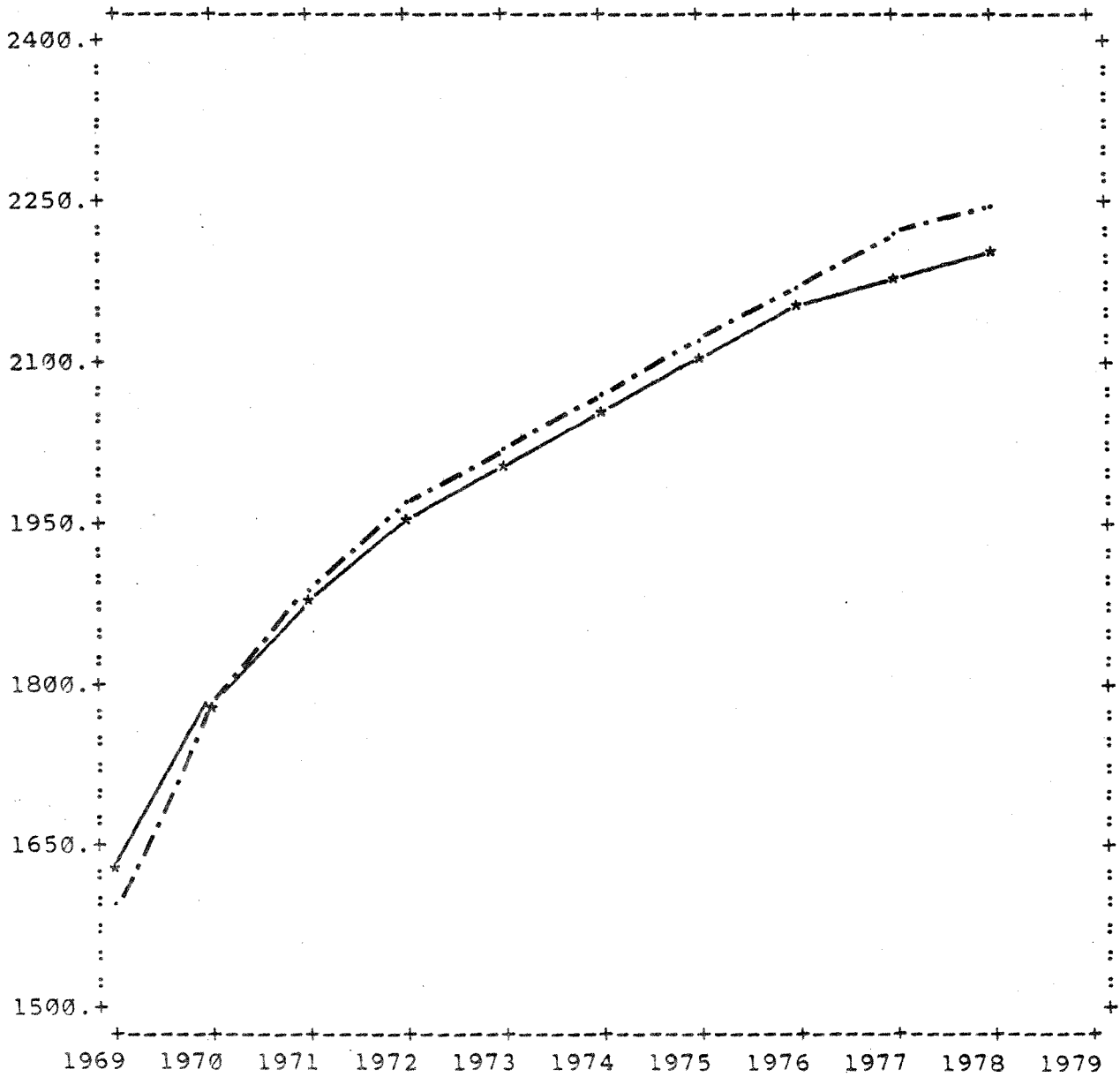


OFFENSE RATE TRENDS

FIGURE II-8

BURGLARY

	ISL	ISL WITH DSL
1969	1602	1619
1970	1774	1778
1971	1884	1877
1972	1965	1952
1973	2031	2011
1974	2086	2061
1975	2134	2104
1976	2176	2143
1977	2214	2177
1978	2249	2208

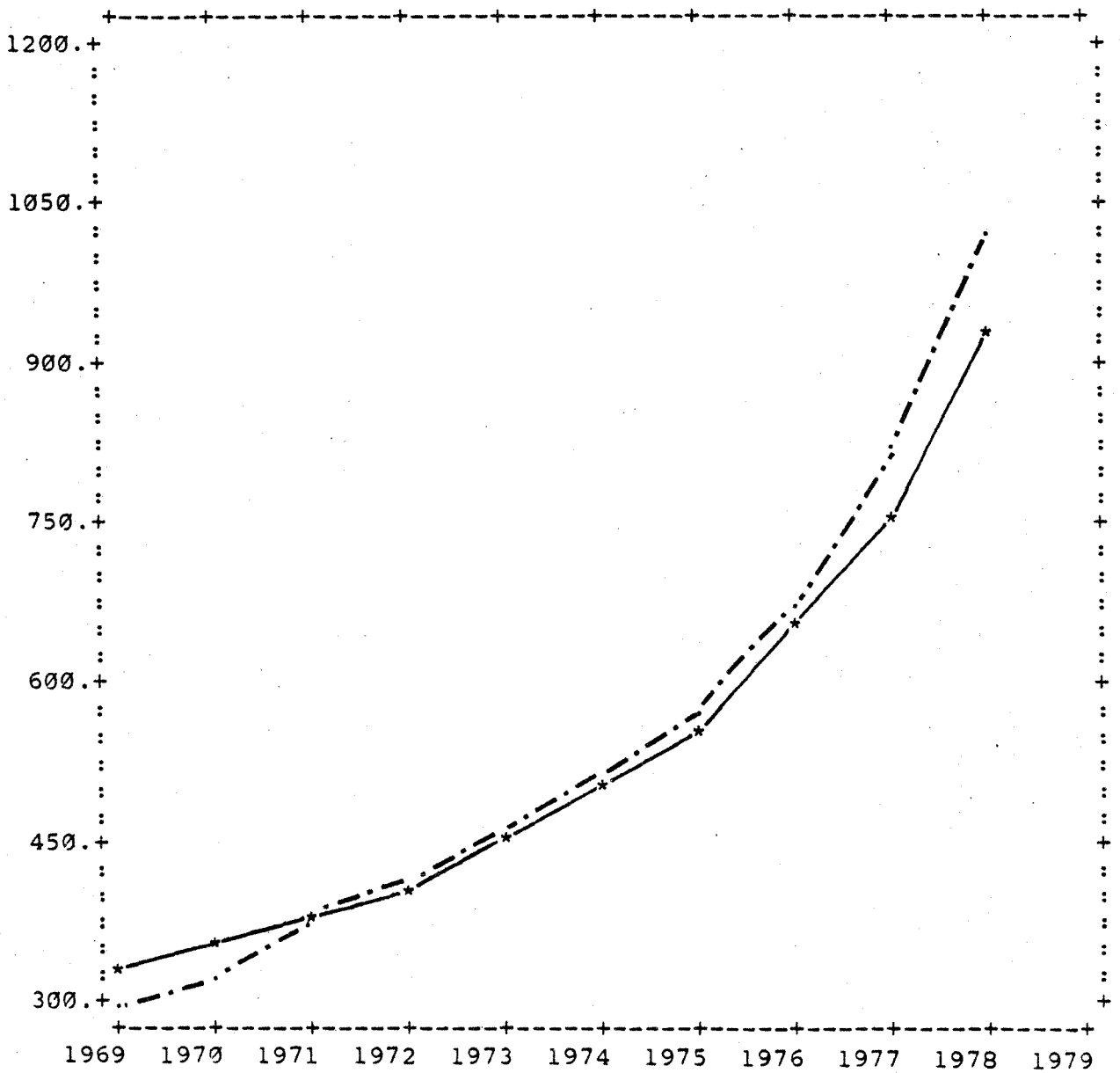


OFFENSE RATE TRENDS

FIGURE II-9

THEFT

	ISL	ISL WITH DSL
1969	311	316.3
1970	337	341.1
1971	368	370.1
1972	405	404.4
1973	451	445.8
1974	508	496.6
1975	581	560.5
1976	680	643.2
1977	818	754.6
1978	1028	912.7



OFFENSE RATE TRENDS

FIGURE II-10

MOTOR VEHICLE THEFT

	ISL	ISL WITH DSL
1969	692.9	681.7
1970	682.0	672.5
1971	671.5	667.2
1972	661.3	663.5
1973	651.4	660.6
1974	641.8	658.2
1975	632.5	656.3
1976	623.4	654.5
1977	614.6	653.0
1978	606.1	651.7

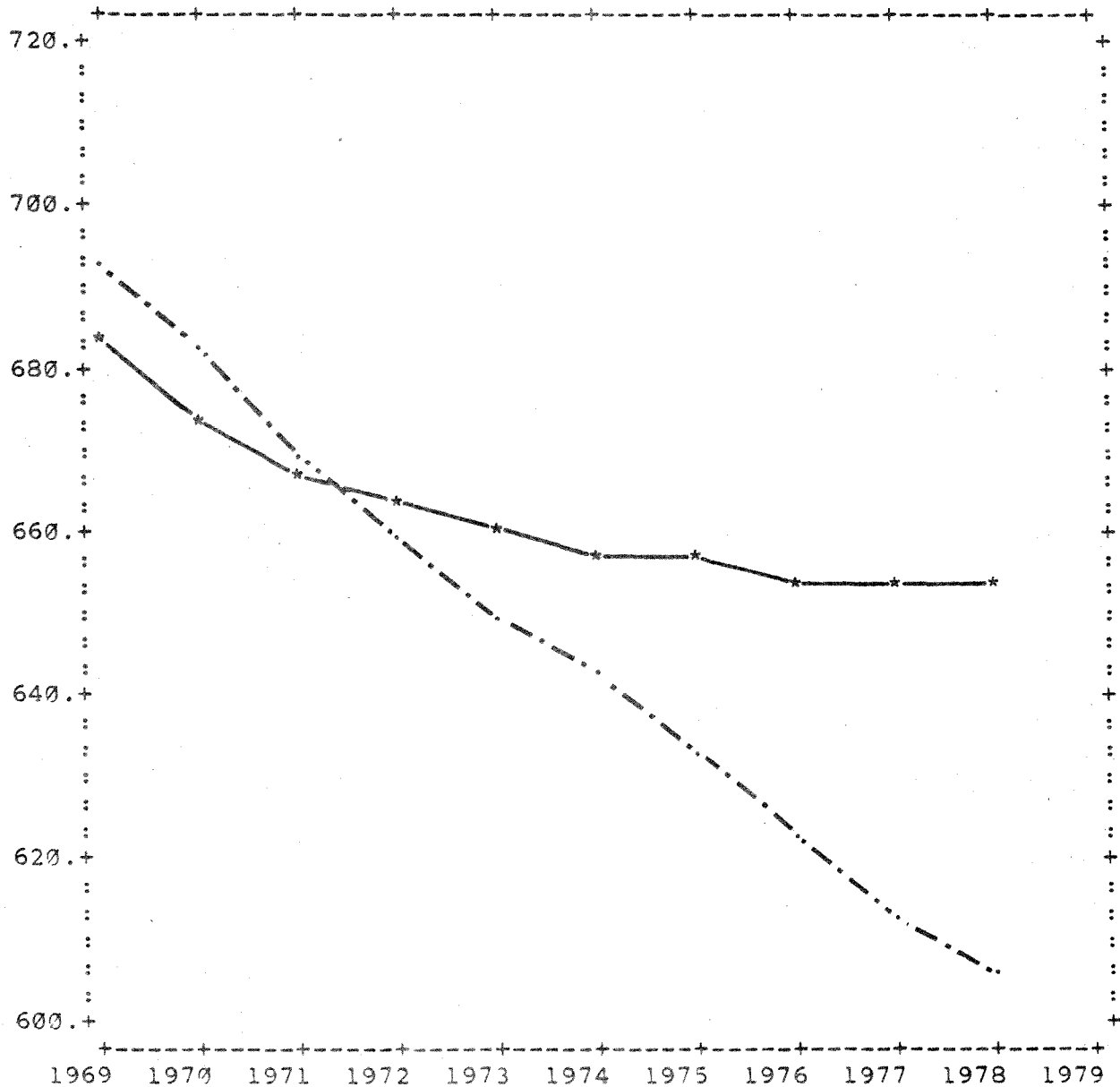


TABLE II-10
SANCTION INDICES^a

Year	Risk of Apprehension ^b	Risk of Conviction ^c	Risk of Imprisonment ^d
1969	18.6	8.4	.90
1970	17.7	7.7	.82
1971	17.5	7.8	.78
1972	17.2	6.8	.78
1973	16.5	5.8	.82
1974	17.3	4.7	.76
1975	17.0	4.0	.75
1976	16.3	3.7	.90
1977	16.3	N/A	.96
1978	15.8	3.1	1.11

^aAlso generally includes "Severity of Punishment" defined by mean or median length of stay, which as shown previously, is less for crimes examined under DSL than under ISL.

^bRatio of Arrest rate for Federal Bureau of Investigation Index Crimes to Reported Offense Rate; Source: State of California Bureau of Criminal Statistics.

^cRatio of Felony convictions to reported felony offenses; Source: State of California Bureau of Criminal Statistics.

^dRatio of Prison commitments (number of convicted offenders) received and reported by State of California Department of Corrections to number of index offenses reported by State of California Bureau of Criminal Statistics.

- The risk of apprehension, as measured by the ratio of felony arrests for F.B.I index crimes, is lower for every year since the enactment of DSL, and it generally declined during California's ISL period, declining from a rate of 18.6% of arrests for offenses reported in 1969 to 15.8% in 1978.
- The ratio of felony convictions to F.B.I. index crimes reported has also declined during both California's ISL and DSL periods, from 8.5% in 1969 to 3.1% in 1978.

Analysis above has shown that commitment rates given convictions have increased significantly during the DSL period over what would have been expected based on ISL trends. DSL thus appears to have played a role in the increases shown in recent years in the risk of imprisonment shown in Table II-10.

The "risk of imprisonment" as measured by the ratio of prison commitments to reported offenses is the only category of "risk" normally measured regarding deterrents that have increased since DSL was enacted or implemented. This ratio dropped in the period analyzed from a high of .9 (the comparison of the number of prison commitments to crimes reported) to .75 in 1975; this again rose to .9 in 1976 and up to 1.11 in 1978.

At the same time, however, Table II-11 shows that median time served under DSL has decreased in comparison to ISL medians for 1975; this is especially true considering the possibility for up to one third "good time" to be credited to the sentences shown in Table II-11.

To attribute the down turn noted above in the growth of offense rates to any deterrent effect of DSL, one would have to develop convincing evidence that the risk of imprisonment given commitment of a crime included in the F.B.I. index of seven major offenses (a risk of less than 1 in 100 in general in the past) has been a major determinant of decisions regarding whether or not to commit one of these seven major index offenses. It would be difficult to conclude that this was the case without further convincing research.

Perhaps the primary difficulty in inferring deterrent effects from observed natural variation in offense rates is the need to separate out the incapacitation effect on offense rates. That is, changes in offense rates are likely due not only to any deterrent effect, but also to the prevention of repeat offenses by those incarcerated, among other factors.

f. Rehabilitation

(1) It is not possible to compare California's DSL experience with the state's experience under ISL in the field of rehabilitation. To test whether rehabilitation has been accomplished in some degree, there must be a period following the supposed rehabilitation wherein the ex-offender can be considered to be "at risk" in the community. This is needed in order to test whether or not that offender returns to crime. With data available to this study only through the year 1978, insufficient time has

TABLE II-11

SENTENCE LENGTH COMPARISONS
(MEDIAN SENTENCE IN MONTHS BY SELECTED OFFENSES)

Conviction Offense	ISL Sentence Median*	DSL Sentence Median**	DSL Difference
Homicide, Including Manslaughter	75	60	- 15
Forcible Rape	52	60	+ 8
Other Sex Violations	60	36	- 24
Robbery	43	48	+ 5
Assault	41	44	+ 3
Burglary	34	24	- 4
Theft, Except Auto	28	24	- 10
Auto Theft	27	24	- 3
Marijuana	38	36	- 2
Opiates	41	36	- 5
Dangerous Drugs	39	36	- 3
Forgery	28	24	- 4
All Other Offenses	37	24	- 13

Note: DSL Sentences shown do not reflect good time to be credited.

*State of California Department of Corrections

**State of California Board of Prison Terms.

existed to examine rehabilitation results with any confidence. It is not believed that sufficient numbers of offenders of different types have committed a crime and been convicted and sentenced since mid-1977; participated meaningfully in a rehabilitation program; and been at risk in the community for a meaningful period of time.

An additional factor complicating the possible examination of rehabilitation is the desirability of focusing on individual offenders in a sample large enough to be generalized to the state as a whole, for each offense and/or offender type. The design and conduct of such a study was not possible within the resources available for this DSL/ISL comparative evaluation, although some research at the level of the general population of the state as a whole was feasible. This particularly focused on examining California's ISL experience with regard to offense rate trends, and some limited analysis of changes of the offense rates under DSL.

(2) Rehabilitation under DSL should not be given credit for any observed slowing in the rate of growth in the crime rate. For the reasons noted above, the general slowing of the rate of growth in reported offenses for crimes against persons and crimes against property as a whole experienced under DSL in California should not be attributed to any rehabilitation efforts in California under DSL. As noted above, further time and research would have to pass in order for convincing conclusions to be drawn regarding the link between any observed change in offense rates and rehabilitation efforts under DSL. While it is true that the offense rate for the total of index crimes against persons was below the range of rates that would have been projected on the basis of ISL experience, Table II-9, previously has shown this is primarily due to a slowing in the growth of the assault rate; the rate of growth in the offense rate for rape, on the other hand, grew much greater than would have been expected in 1977 and 1978 on the basis of ISL experience. Therefore, the absence of consistent patterns of changes among trends further emphasizes the dubiousness of any conclusions regarding rehabilitation drawn on the basis of data available and analyses available to this point.

In any event, with DSL so recently implemented, it would be more likely that any changes in offense rates attributable to DSL would more likely have occurred from the legislation's deterrent effect rather than the effect of rehabilitation programs carried on under DSL.

2. Impacts on the Criminal Justice System

This section of our report discusses changes that have taken place in the criminal justice system that appear to be due to the implementation of DSL. Conclusions as to the changes that appear to be due to the implementation of DSL are based both upon statewide quantitative analyses where noted and upon the results of interviews conducted with justice system officials in the ten California counties previously indicated.

a. Courts

(1) Judiciary

- With the exception of mandatory sentencing amendments, DSL has expanded the role of the judiciary.

There is some disagreement as to the degree to which the purview of judges has been restricted or expanded under DSL as contrasted with ISL. This can be seen to be somewhat due to differing interpretations of "expansion," or "restriction" of control over sentencing. SB 42 as originally enacted did not affect opportunities that had existed under ISL for the granting of probation. To the extent that DSL amendments such as SB 1236 restrict the granting of probation for certain felonies, judicial control over the decision to imprison or not to imprison is seen by some to have been diminished.

On the other hand, others contend that the judicial role in sentencing has been increased. Under DSL and the sentencing rules promulgated by the Judicial Council, judges must now make rulings in many cases not only on whether or not to grant probation, but also regarding the calculation of the appropriate term. This is in contrast to ISL, where judges' major sentencing decisions were in decreeing a probation or state prison sentence, with no control over the length of sentence in the event of the incarceration.

While the determinate sentencing law permits judges to determine whether the lesser, base, or higher term is to be imposed, the prevailing practice appears to be, on the basis of interviews conducted, that judges generally follow the presumption that the middle (base) term is in most cases the "appropriate" sentence, although some variation from this pattern reportedly exists.

(2) District Attorneys

- The determinate nature of California's DSL permits district attorneys to develop clear cut departmental policies regarding charging and prosecutorial strategy.

Because DSL allows a much greater predictability of sentence in regard to offenses and enhancements pled and proven, district attorneys report that they are able to specify by policy definite strategies that are to be followed given differing case strengths and weaknesses. Examples of this could include the design by the district attorney of policies stating that all enhancements will be charged on violent crimes or first degree burglary; another policy example could be the refusal to accept anything less in plea bargaining than state prison for burglars who have prior burglary convictions.

- California's determinate sentencing scheme clearly adds to the district attorney's ability to influence final sentences.

It should be remembered that the district attorney's office has held, both under ISL and DSL in California, major power in the criminal justice system due to the ability to charge or not charge specific offenses alleged. It was noted that a major effect of the DSL structure in contrast to ISL has been that the district attorney can now, through charging decisions, literally force the commitment of an offender to state prison if the offender is convicted.

- Other important factors can inhibit the exercise of this DSL sentencing influence.

District attorneys' offices in larger California counties and those with heavy case volumes pointed out that there is an incentive to compromise with defense council in order to dispose satisfactorily of cases. From this perspective, these officials point out that although DSL may provide district attorneys a high degree of control over sentence possibilities through charging decisions, the desirability of speedy disposition in these instances results in less exercise of this control over sentences than many persons might imagine. Further noted was the fact that if district attorneys attempt to exercise increased control over sentences, and in doing so tended to "over charge", they will find their offices forced into an increase in the number of trials and in the length of trials. Most prosecutor's offices are aware of this possibility and report that it can significantly countervail tendencies to exercise increased control over sentences under DSL.

(3) Defense

- DSL has enabled defense attorneys to more clearly examine sentencing sanctions with clients.

In general, defense attorneys feel that the structural provisions of DSL, as compared with ISL, have proven to be advantageous to defense representation of clients interests. Particularly noted is the ability to mathematically demonstrate to clients the defense's past experience under DSL at plea bargaining, and they report that they are now able to state with a higher degree of accuracy than under ISL the length of prison terms to be imposed under various pleas.

(4) Interactions

The structural provisions of DSL as compared with ISL reportedly have influenced the nature of interactions over cases taking place between prosecutors and defense attorneys.

- The early stages of the court process have become more critical due to DSL.

District attorneys in some counties report that one outcome of DSL in contrast to ISL has been the assigning of more experienced deputy district attorneys to initial filing and preliminary hearing responsibilities, in that the structural provisions of DSL have added

significant importance to the kind and number of accounts filed with regard to influencing court processes and potential final outcomes. It was noted that under DSL there is perhaps a greater tendency by the prosecution than under ISL to lay out the aggravating factors in the preliminary examination rather than waiting for superior court.

There is also a frequently voiced contention that the predictability of sentences under DSL has pushed negotiations between the defense and prosecution much closer to the beginning stages of the court process.

- DSL has created an environment very conducive to plea bargaining.

The offenses charged and the number of counts are both subject to negotiation under DSL. A shared goal reported by both opposing attorneys is to maneuver the cases into a position where negotiation is possible with the least amount of difficulty. Defense attorneys reported a tendency to be aware of the minimum which the district attorney will accept and prosecuting attorneys generally report that they are sensitive to the maximum acceptable by the defense. From discussions with both defense and prosecuting attorneys, it appears that while plea bargaining certainly took place under ISL, the bargaining that takes place under DSL could be much more accurately described as sentence bargaining.

- DSL has caused an increase in the number of original guilty pleas.

Since the implementation of DSL, there has been a widely held contention, supported in various degrees of statistical detail, that DSL has been directly responsible for an increase in the number of original pleas of guilty entered by defendants.

Some interviewed pointed out that SB 42 as amended by SB 476, when initially effective as of July 1, 1977, was perceived by many to be "light" in sentencing in comparison to ISL. Further, many report to the perception that the greater degree of predictability in sentence lengths for offenses has prompted offenders to be quicker to opt for a guaranteed length of stay in prison to a lesser charge rather than to stand trial on a higher charge. Initial indications can be gained from examining data reported by the State Bureau of Criminal Statistics (BCS).

Such data indicates that in 1975 approximately 20% of Superior Court cases involved the entering of an original plea of guilty. Subsequent to the implementation of DSL, however, this figure escalated to 33% in 1978. A corresponding decline in the number of pleas changed from innocent to guilty took place, according to BCS data. These pleas declined from approximately 51% in 1975 to 43% in 1978.

In order to more rigorously test the degree to which such changes in original guilty pleas could be attributed DSL, total statewide Superior Court convictions were examined for the years 1969-1978. For each year, the percentage of Superior Court convictions that were due to original guilty pleas was calculated. Regression techniques were then used to forecast percentages of original guilty pleas entered that would be

expected if ISL trends continued. Reported original guilty plea rates for the ISL period were used as the basis for forecasting the trend in these rates that would be expected for the years during which DSL was enacted and implemented. Thus, the forecast for the DSL enactment and implementation time period are based on the assumption that trends existing in the justice system in the ISL would have continued. Comparisons were then made of the percentage of original guilty pleas reported under DSL in 1977 and 1978 with the rates that would have been expected (forecast) had previous ISL trends continued.

Figure II-11 shows the results of this analysis. The table included shows the original guilty plea percentages reported, and projected rates for the forecast years as well as high and low estimates of the projected rates, calculated at the 95% confidence level. The graph shows a plot of the data shown in the Table.

This analysis provides further evidence that the increase in the percentage of original guilty pleas entered with respect to Superior Court convictions is due to the implementation of DSL. One can consider the range represented by the distance between the high and low estimates on the graph as the range in which one would expect the actual guilty plea percentage to fall (within with 95% confidence). As can be seen, the reported rate in 1977 and 1978 is higher than the range that would have been forecast based on ISL years' experience. One can conclude with a high degree of confidence that the jump in original guilty pleas entered was not due to continuation of trends but probably due to a change from the ISL to DSL sentencing structure. With regard to analyzing the impact of DSL on the entering of original guilty pleas within specific offenses, sufficient historical data was not available to perform the same analysis. However, in the years 1975-78, consistently large increases in the rate appear, particularly in 1978.

- DSL may significantly impact local corrections and the timeliness of the adjudication process.

Time served in jail while awaiting sentence could not be credited toward any imposed state prison sentence time under ISL, while under DSL, jail time is to be credited toward the total prison sentence. It was noted that the intent of this DSL provision's to not penalize the defendant for delays in court proceedings. Because delays frequently are advantageous for the defense, the defense and the defendant may be encouraged to move more slowly through the court process under DSL than under ISL. If the incentive to move more slowly through the court process for defense advantage is acted upon, there could be an increase in costs under DSL in contrast with ISL.

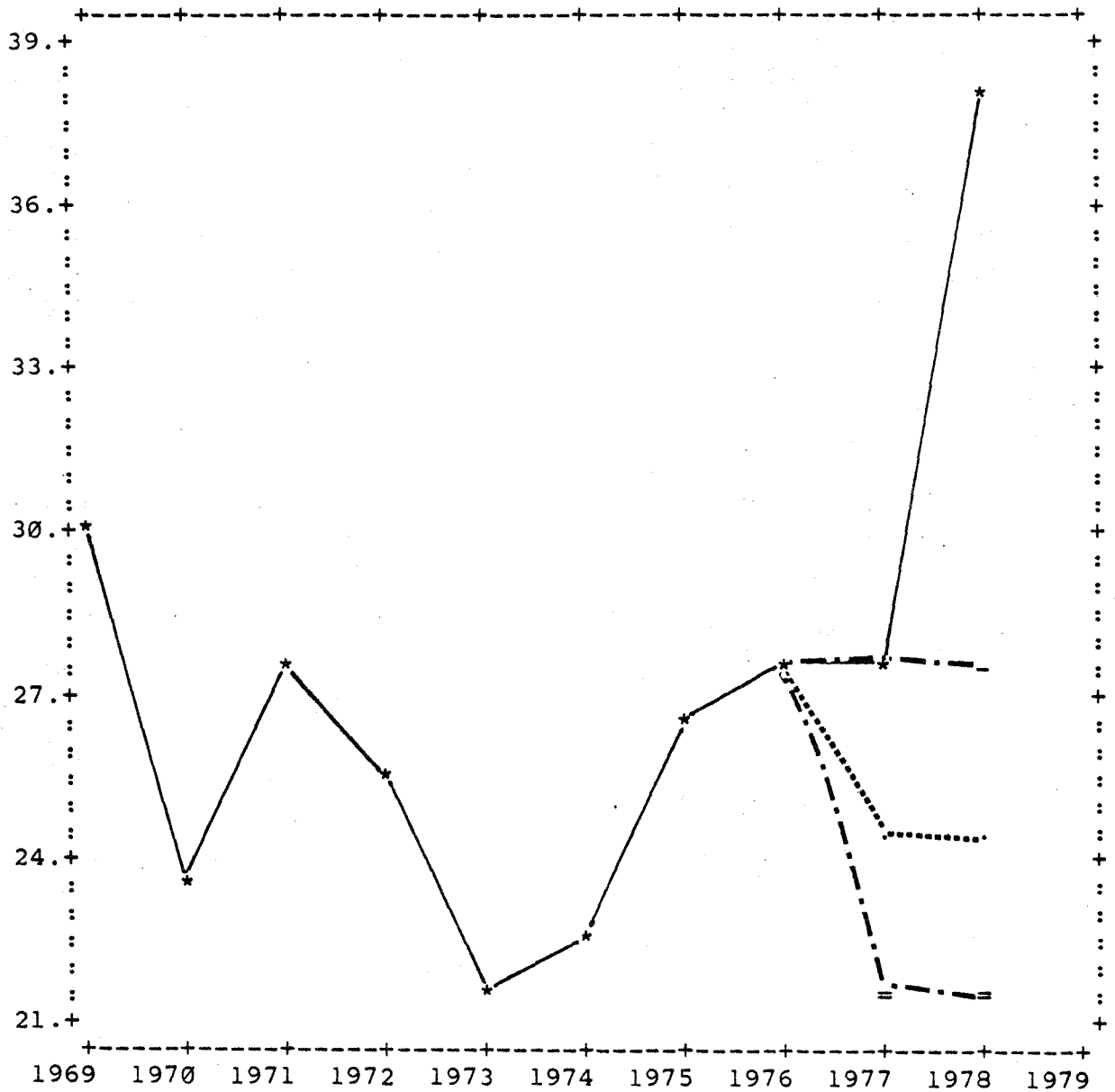
The potential impact of financial concern is the possible increase in burden on local detention and corrections facilities. The size of the detained population in local jails awaiting sentencing has fluctuated considerably during the 1970s, and no clear pattern has yet emerged as DSL has been implemented, however.

SUPERIOR COURT DISPOSITIONS

FIGURE II-11

PERCENT ORIGINAL GUILTY PLEAS

	REPORTED	PROJECTED	LOW	HIGH
1969	29.80			
1970	23.70			
1971	27.50			
1972	25.70			
1973	21.60			
1974	22.50			
1975	26.30			
1976	27.70			
1977	27.30	24.50	21.50	27.40
1978	38.20	24.40	21.40	27.40



b. Corrections

This section discusses the perceived impacts of implementing DSL in the area of probation and corrections institutions.

(1) Probation

- Concern for the pre-sentence investigation procedure has been emphasized under DSL

Provisions of California's DSL are designed to promote uniformity and to eliminate disparity in sentencing. Offenders convicted of similar offenses under similar circumstances are to receive similar sentences; the need to be able to identify "similar circumstances" has generally resulted in a clearer definition of areas to be included in pre-sentence investigation reports (PSIs).

Most notable among the structural provisions of DSL, intending to better define the requirements of PSIs, are the sentencing rules for Superior Courts that must be promulgated under DSL by the Judicial Council. Specifically, the legislation calls for judges to make reasons for sentences known, and the Judicial Council rules (especially Rule 414 delineating criteria effecting a decision to either grant or deny probation) make the thoroughness of the PSI and its uniform consideration of all relevant criteria relating to probation more important than was the case under ISL.

Whereas PSIs under ISL were advisory in nature, under DSL they are evidentiary, containing a verification of prior criminal convictions and often initial sentence calculations.

- The more formalized nature of the PSI under DSL has made the preparation of PSIs a more time consuming procedure.

According to those interviewed, the "peripheral contacts" now required on the part of probation officers in the preparation of PSIs has increased significantly under DSL. Under DSL, the PSI now requires specific information on factors of aggravation and factors in mitigation, in addition to information regarding eligibility and suitability for probation.

Additional work is now necessary not only to gather information but also to verify any information to be reported in the pre-sentence investigative reports. This has been in the form of increased contacts required with other public agencies as well as additional contacts with others such as the military, family members, and previous employers. Thus, verified background information is required under DSL both on the offender and on the nature of the offense, as well as on the additional sentencing factors necessary to the calculation of the sentence.

Additionally, some probation departments are involved in the initial calculation of the various sentencing options. In some cases, specialized forms have been prepared to accomplish this. Where this is taking place, it reportedly further increases the amount of time required for officers in the pre-sentencing aspects of their probation work.

- The specification of sentences by the DSL has reduced the PSIs former influence in sentence determination.

Under ISL, the major sentencing decision faced by the judiciary was the decision to incarcerate an offender or grant probation. Probation staff were expected to bring knowledge of complex social issues and skills in a number of social disciplines to assist the judiciary in making an informed decision regarding the risk an offender potentially posed to the community and the potential for that offender's rehabilitation. In this context, the PSIs assessment and advice was of considerable importance to the sentencing decision.

DSL provisions, especially with some of the more recent mandatory amendments prohibiting probation in certain instances, have become a major determinant of sentences, with the law's implementation. While the PSI is procedurally of greater concern under DSL, its role in influencing sentencing decisions is not as substantial as under ISL.

- Considerable variation appears among county probation departments in California regarding their participation in the Superior Court sentencing process.

In some counties probation officers actively participate in the sentence negotiating process. In such cases, their role is to present detailed information to the attorneys concerning prior criminal history of the offender, and, in some cases, estimates of the offender's potential threat to the community and his chances of being rehabilitated. It appears that this varies from county to county, however. In most, but not all counties visited, probation officers report that they make recommendations to the court as to whether a lower, middle, or maximum DSL sentence should be imposed.

- Probation officers interviewed who were involved with adult probationers maintain that since the enactment of DSL they have not observed any significant differences in the types of offenders receiving probation sentences; however, from a statewide perspective, it would appear that the nature of the caseload is shifting due to the implementation of DSL.

Table II-4 previously presented information regarding the certainty of sentencing under DSL. This table illustrated the point that significant increases in dispositions to prison from Superior Court have been experienced as compared with ISL trends, and that significant decreases compared with ISL trends have been noted under DSL in dispositions to probation and jail. Significant decreases in dispositions to probation and jail due to DSL implementation were noted in 1978 for offenders convicted of robbery, assault, burglary, theft, motor vehicle theft, and of forgery, check, and credit card violations. This information suggests that at least a portion of those offenders who would have received jail sentences with probation -- and thus who would

have ultimately composed a portion of the probation load -- are indeed being given prison sentences under DSL. It may simply be that the change has not taken place for a sufficient period of time to make a large and perceptible difference in the numbers or types of offenders faced by any individual probation officer.

(2) Corrections Institutions. Concern was expressed on the part of corrections officials that DSL has created a set of circumstances which is resulting in an increase in commitments to state prisons. The contention is that from a defendant's perspective it is easy to accept a guilty plea with a state prison disposition with a known determinate length of sentence, and from the court's perspective a prison sentence might be given more readily knowing that the exact term is fixed in proportion to the offense (rather than the case under ISL where the length of term was decided by another agency). It was further contended that state facilities may be perceived by offenders to be more desirable due to the availability of programs and services as compared with local jails, and that in this context the known length of sentence under DSL has possibly prompted offenders to opt for a guilty plea with a state prison disposition. It is not clear that any change in the size of the prison population as a whole is due to DSL, however.

- Increases in the total size of prison population cannot be attributed to DSL on this basis of this analysis.

Table II-12, following, shows an increased prison population since the low figure for the decade of 17,970 in fiscal year 1977.

In order to analyze trends in the size of the state prison population, the number of Superior Court sentences and dispositions to state prison were analyzed annually for the years 1969 through 1978. ISL trends for the period 1969 through 1976 were projected into the DSL period to forecast a range of expected convictions and prison dispositions for 1977 and 1978 -- assuming that ISL trends had continued. Reported DSL convictions and prison sentences were then compared to those expected had ISL trends continued. Figures II-12 and II-13 present the results of this analysis.

As can be seen in Figure II-12, the number of Superior Court sentences has declined consistently since 1971. The 1978 (or DSL) reported number of sentences was 29,899, within the range of what would have been expected based on ISL trends continuing. Further, Figure II-13 shows that the percentage of Superior Court sentences that were to prison has risen fairly consistently since 1971 (with the exception of 1975), and that the reported percentage of dispositions to prison in 1978 (23%) is within the range that would have been expected had ISL trends continued.

- While it cannot be concluded with certainty that implementing DSL has increased the total number of prison commitments, DSL does seem to have influenced the composition of the prison population.

Table II-4 has previously shown that a significant increase in the number of dispositions to prison appears to have taken place due to DSL when specific offenses are examined. So although it cannot not be said

TABLE II-12

CALIFORNIA PRISON POPULATION BY FISCAL YEAR - 1970-79*

Year	Population**	Index (1970 = 100)
1970	25,033	100
1971	24,127	96
1972	20,359	81
1973	17,316	69
1974	19,450	78
1975	22,166	89
1976	22,006	88
1977	17,970	72
1978	19,209	77
1979	19,019	76

*Fiscal year ends June 30.

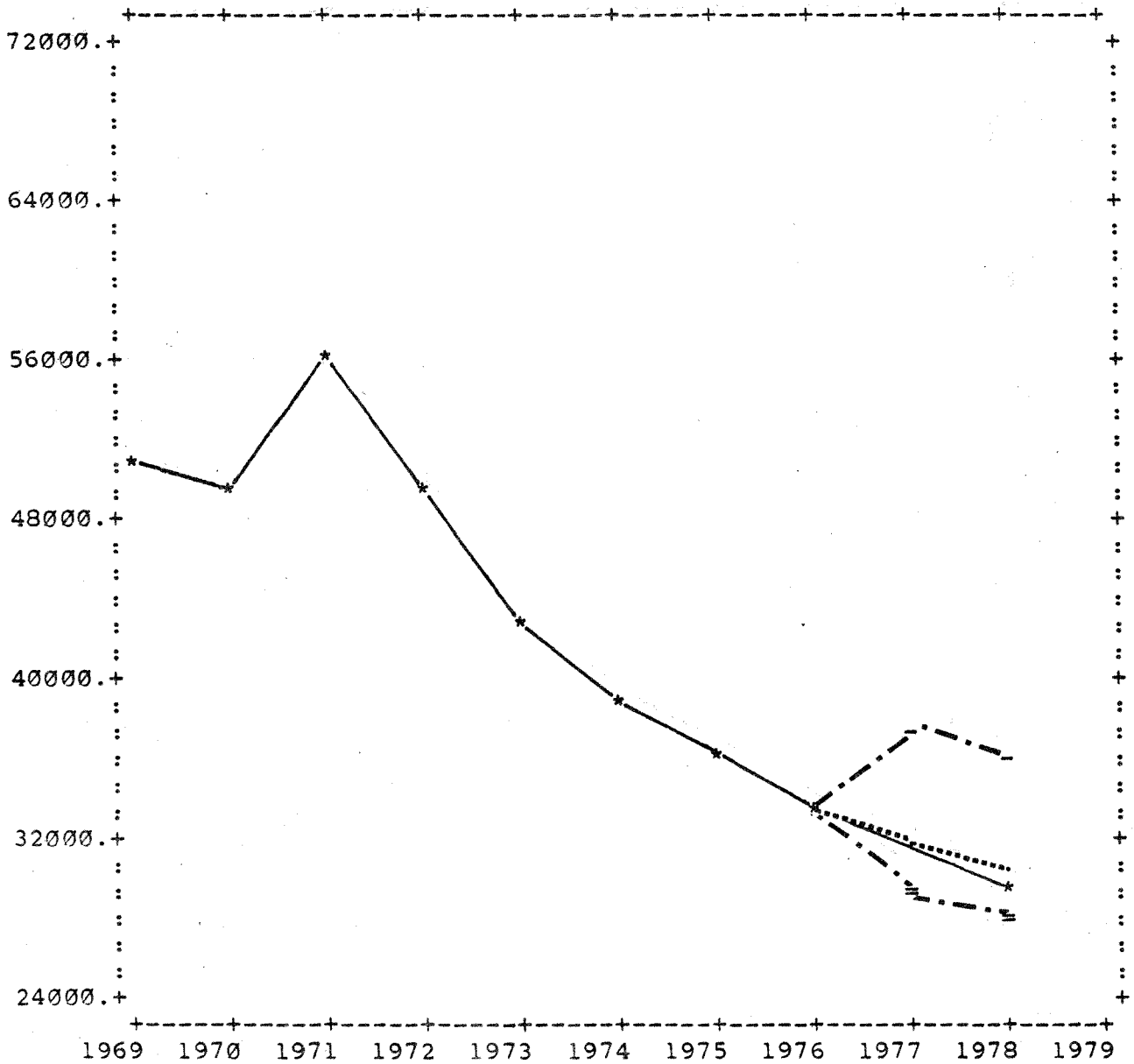
**Excluding civil narcotic addicts.

Sources: State of California Department of Corrections; Arthur D. Little, Inc.

SUPERIOR COURT SENTENCES

FIGURE II-12

	REPORTED	PROJECTED	LOW	HIGH
1969	50568			
1970	49950			
1971	56018			
1972	49024			
1973	42672			
1974	38007			
1975	35418			
1976	33538			
1977	N/A	32554	29177	36814
1978	29899	30881	27340	35476

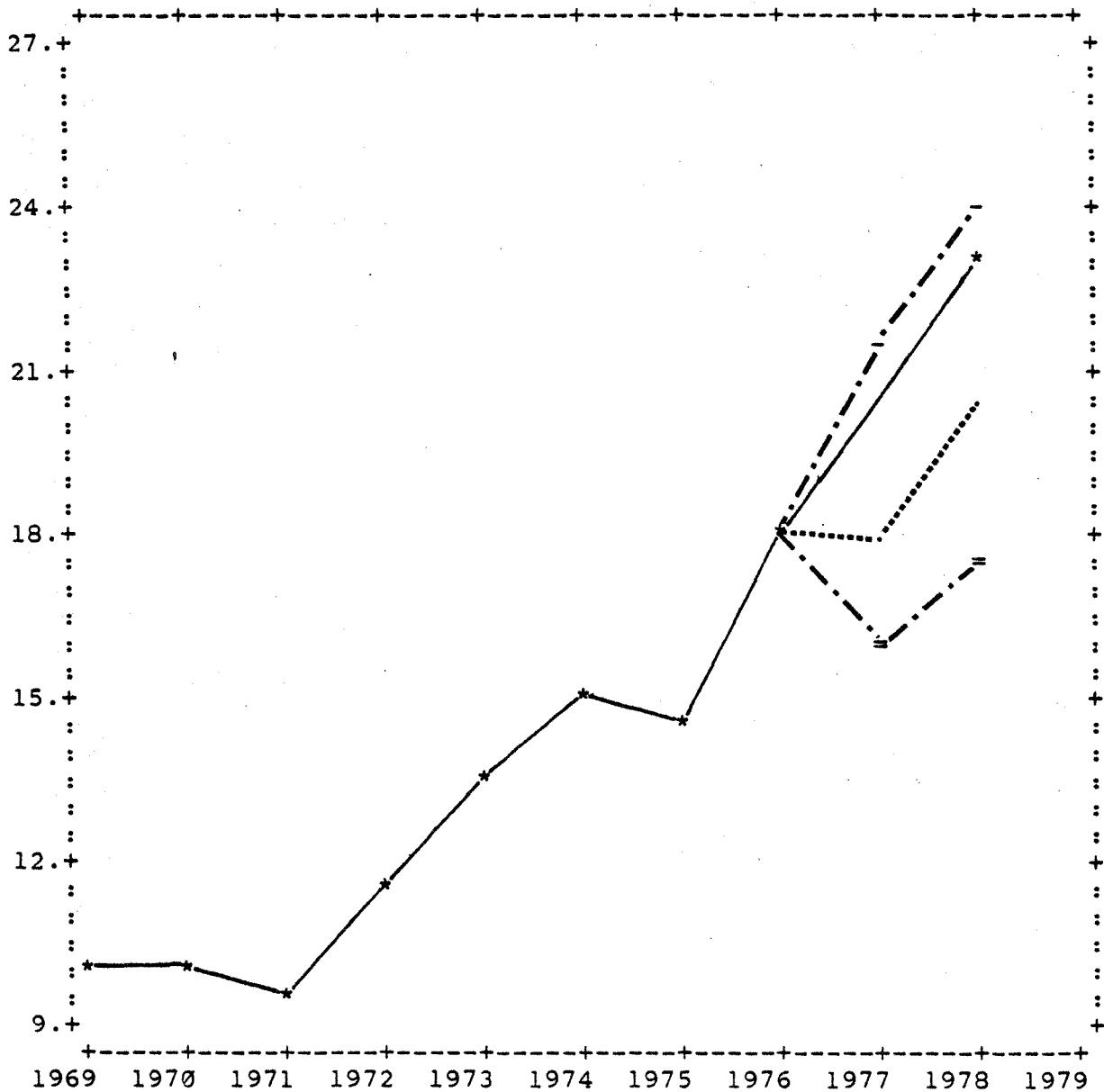


SUPERIOR COURT SENTENCES

FIGURE II-13

PERCENTAGE TO PRISON

	REPORTED	PROJECTED	LOW	HIGH
1969	9.80			
1970	10.00			
1971	9.60			
1972	11.50			
1973	13.70			
1974	14.80			
1975	14.60			
1976	17.80			
1977	N/A	18.00	16.20	21.40
1978	23.00	20.40	17.30	24.00



with certainty that DSL itself has influenced the size of the state prison population, it does appear that the types of offenders appearing in the state prison population have changed in their relative proportion.

Table II-13, following, shows changes in the numbers of prison commitments, comparing 1975 to 1978. Analysis shown above has indicated that the increase in commitments for robbery, burglary, theft, motor vehicle theft, forgery, check, and credit card violations is at least partly due to implementation of DSL, and that these commitments are higher than would have been expected under ISL.

Table II-14 continues this analysis further, showing the percent that offenders admitted for various convictions and offenses have made up of total admissions, showing the years 1975, 1977, and 1979. As can be seen, increases in the proportion of the prison population between the years shown occur primarily in offenses against property. In general, the violent offense group declined. The analysis thus leads to the conclusion that it is highly likely that implementation of DSL has resulted in bringing more short term property offenders into the prison population. This increase due to implementation of DSL has probably also been stimulated by a more "law and order" attitude that has been seen recently in the criminal justice system, and which is reflected by the sentencing of offenders to prison who in 1975 under ISL would likely have been sentenced to probation with jail.

- Participation in rehabilitation programs is continuing.

Although as noted above it is too soon to assess differences in California's experience under ISL and DSL with regard to rehabilitation, corrections officials interviewed indicated that participation appears to be continuing in rehabilitation programs offered by the prison system. It is also to be noted that because of the lack of a need to demonstrate an interest in rehabilitation under DSL as a condition for parole, participation in rehabilitation could be judged with more certainty to be due to an interest in rehabilitation on the part of offenders.

- It is possible that the size of the California Rehabilitation Center's treatment population will be less under DSL than it would have been under ISL.

Knowledgable local justice system officials who were interviewed noted that the size of the CRC population could be impacted by DSL. Specifically noted was the possibility that known lengths of sentences under DSL could be an incentive to property offenders usually committed under ISL to CRC to accept a prison sentence instead under DSL. This conclusion was based on the idea that a sentence of known length for property offenses would be more desirable in the eyes of some offenders than the possibility of a lengthier period of treatment under a commitment to CRC.

- The DSL emphasis on punishment has lowered the perceived priority of rehabilitation within state corrections.

TABLE II-13

**PRISON COMMITMENTS BY SELECTED OFFENSES
IN CALIFORNIA - 1975 AND 1978**

	1975	1978	Percent Change
Total Commitments	5,157	6,888	+ 33.6%
Homicide	492	548	+ 11.4
Forcible Rape	151	267	+ 76.8
Other Sex Violations	67	92	+ 37.3
Robbery	1,381	1,772	+ 28.3
Assault	327	525	+ 60.6
Burglary	791	1,492	+ 88.6
Theft	212	351	+ 65.6
Auto Theft	101	204	+ 102.0
Marijuana	72	42	- 41.7
All Other Drugs	466	712	+ 52.8
Forgery	186	346	+ 86.0
All Other Offenses	315	537	+ 70.5

Sources: State of California Bureau of Criminal Statistics; Arthur D. Little, Inc.

TABLE II-14

**CALIFORNIA MALE PRISON ADMISSIONS BY OFFENSE
AND PERCENT OF TOTAL ADMISSIONS - JANUARY-JUNE 1975, 1977, AND 1979**

Offense	1975	1977	1979	Percent Change 1975-79
Homicide	10.0	9.1	8.1	- 19.0%
Robbery	26.2	24.7	23.3	- 10.1
Assault	8.7	7.9	8.5	- 2.3
Burglary	17.2	19.8	21.7	+ 26.2
Theft Except Auto	7.8	7.9	9.0	+ 15.4
Auto Theft	1.9	2.7	3.4	+ 78.9
Forgery	3.5	3.1	3.1	- 10.4
Rape	3.9	4.0	4.2	+ 7.7
Other Sex Offenses	2.3	2.4	3.2	+ 39.1
Opiates	9.7	10.8	7.9	- 18.6
Dangerous Drugs	2.1	1.5	2.0	- 4.8
Marijuana	1.8	1.3	0.8	- 55.6
All Other Offenses	4.9	4.8	4.8	- 2.0

Sources: State of California Department of Corrections; Arthur D. Little, Inc.

In spite of continued participation in rehabilitation programs, it was also noted by some corrections officials and staff interviewed that rehabilitation under DSL is perceived to have less legitimacy. That is, with DSL's greater emphasis on punishment as specifically stated in the legislation, rehabilitation staff can be led to conclude that their activity is of less importance under DSL than under ISL.

- Prison system managers appear to have lost considerable flexibility in terms of dealing with the size of the overall state prison population.

Predictions of the size of the inmate population may be possible with more precision under DSL than under ISL, with the length of sentences known; however, the possibility that existed under ISL for parole of prisoners held under indeterminate sentences in the face of the detrimental effects of prison overcrowding has been lost under DSL.

(3) Parole

- The span of influence of the paroling agency has been considerably decreased due to DSL.

Under DSL, the paroling authority no longer determines length of imprisonment as was the case under ISL. Lengths of sentence are legislatively determined under DSL rather than set by paroling agencies. Further, the length of parole after imprisonment and after parole revocation has been substantially reduced from the possible period under ISL. Additional work has been mandated under DSL, however, in that the Board of Prison Terms is required by law to develop a system for the review of sentencing disparity, and to conduct that review on every state prison sentence within a period time of one year following the commitment.

c. Decision-Making Discretion

(1) While DSL expanded the overall judicial role in sentencing, judicial decision making discretion under DSL has been limited in some cases as compared with ISL. There was a general concern, it is reported, prior to the passage of SB 42 implementing determinate sentencing in California, for the appropriate balance of discretionary latitude among the judicial branch and the legislative branch with regard to determining sentences. While it was generally agreed that sentencing policy, goals and objectives were within the purview of the Legislature, some concern existed that in implementing determinate sentencing, sufficient judicial discretion would not remain to make appropriate sentencing decisions on a case-by-case basis — sometimes considering factors that even the most elaborate and detailed determinate sentencing law might fail to cover. When SB 42 was enacted, the reading of the legislation showed that some degree of this concern had been unfounded, in that no provision of SB 42 changed the judiciary's power to grant probation.

Subsequent amending legislation such as SB 1236 has, however, prohibited the granting of probation under various circumstances. To many observers this appears to be a trend that is continuing. Some members of the judiciary interviewed stated that they indeed have been required by the provisions of DSL to pass sentences they felt to be less than appropriate, and which they would not have passed if the same scope of judicial discretion as existed under ISL had been available.

(2) DSL has shifted a great deal of discretion with regard to determining the final results of any particular criminal case to the prosecutor's office.

DSL has made the potential sentencing consequences of particular charges by the prosecution very clear. The enhanced ability of the prosecutor to bargain for sentences with the defense, rather than simply for the nature of pleas as was the case under ISL, has been noted in sections above.

This can be appreciated by noting that the prosecution could expose an offender, through charging and prosecutorial strategy, only to sanctions that were vaguely defined under ISL, in contrast to DSL. Under DSL, rather than influencing a disposition to state prison for an indefinite term, or to probation or another local alternative, the prosecution is provided the sentencing implications needed to evaluate available evidence and known facts in a way that allows a much more precise prediction of the sanctions that will result from any particular charging strategy.

(3) While DSL has enabled the defense to more clearly convey the sentencing implications of pleas to various charges, this may be an incentive for accepting a negotiated plea only for the lesser sanctioned offenses.

It was noted that while the knowledge of the length of sentences under DSL may be an incentive to enter a negotiated guilty plea, this incentive diminishes as the sentences to be imposed lengthen. It was generally agreed by attorneys interviewed that the definite length of sentences under DSL could not be assumed to be an incentive for the defense to negotiate a plea in all cases; in every case situation there will be a sanction threshold after which increases in prosecution charges will have no incentive on the defense to negotiate a plea.

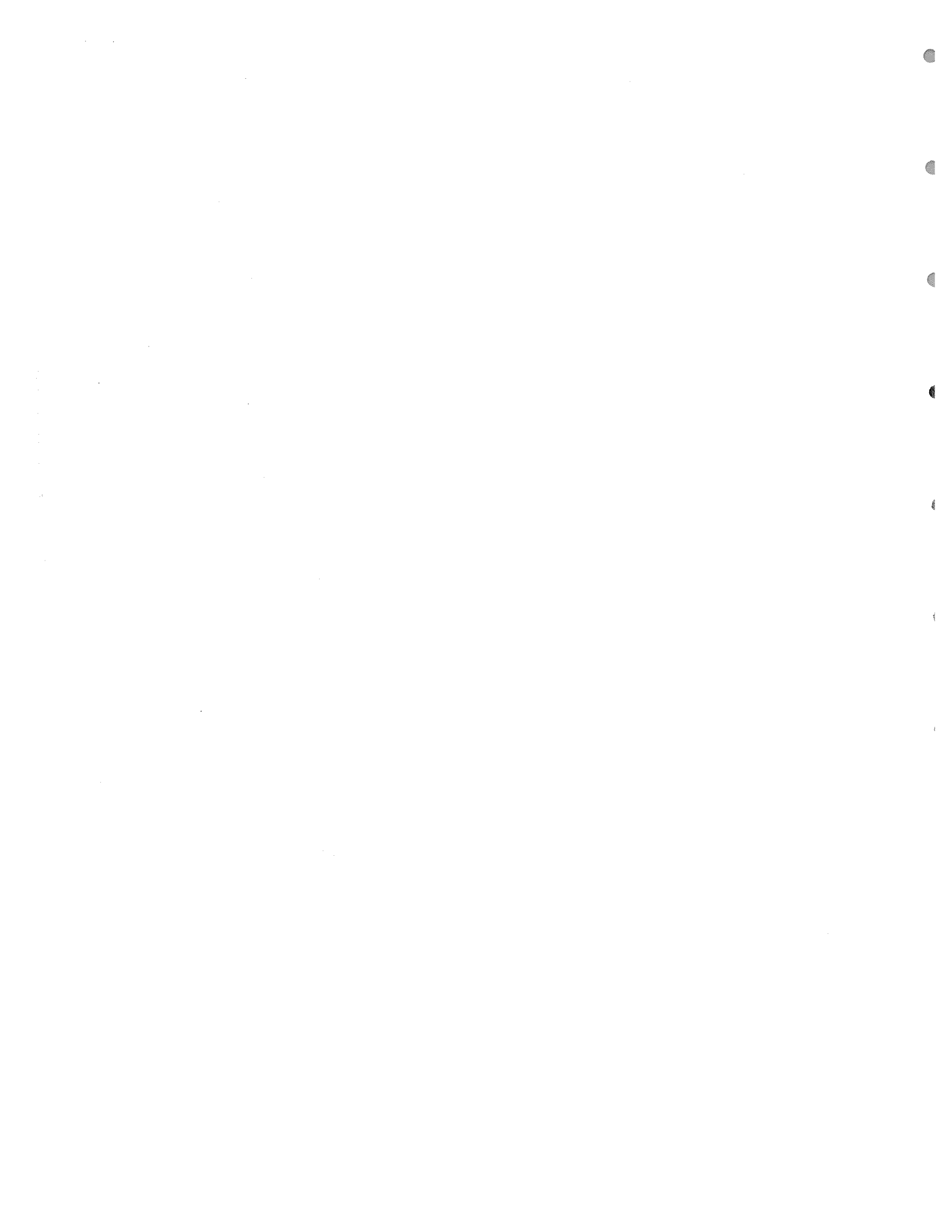
(4) From a justice system perspective, it thus appears that an important impact of DSL has been to encourage settlements at the pre-trial stage of the trial system process.

This becomes more significant when it is realized that in some trial departments of the California Superior Court, as high as 90% of the cases heard may be plea bargained. This obviously means that a large majority of the Department of Corrections prison population in the state may be there as a result of the pre-trial plea agreement. Some justice system analysts interviewed have felt that this was a result stemming from the almost "slide rule" precision that both the prosecution and defense are afforded with regard to sentences to be imposed under various possible charging and plea situations, and with judicial discretion diminished under DSL.

(5) DSL has increased local influence on the criminal justice system.

A final and important impact of the implementation of DSL has been to provide local jurisdictions and their constituents the opportunity for more influence in shaping local justice systems in accordance with

community philosophy and norms. This is in contrast with conditions under ISL, where responsibilities for sentence lengths and rehabilitation were centralized at the state level. This local influence has resulted in part from the increased capability of the local prosecutor to influence sentencing dispositions, and in part from the ability provided to citizens by DSL to easily identify the relative severity of sentencing sanctions and therefore to make their opinions known in relation to this important issue.



NATIONAL STUDY OF SENTENCING

III. NATIONAL STUDY OF SENTENCING

This chapter provides important differences in sentencing approaches presently being implemented across the country. This chapter contains (1) a national overview of the sentencing approaches with an emphasis on the key characteristics of any sentencing scheme, and (2) a brief listing of some of the present sentencing research. Chapter IV continues this analysis with an in-depth examination of four state experiences with sentencing commissions and guidelines.

A. SENTENCING APPROACHES

1. Trends

This section will describe the present status of the sentencing reform movement in the United States. Its purpose is to describe the general trends in the United States, highlighting examples from some states.¹

In recent years, sentencing has been one of the major focal points of activity in the criminal justice system. It is an area which changes constantly -- legislatures are passing laws, courts are making decisions, and administrative agencies are revising policies and procedures -- therefore, it is impossible to describe the exact status of any one state.

The sentencing structure of the states vary from one another. The criminal codes classify crimes and punishments differently, sanctions vary, and the various decision makers of the system have different roles in the sentencing process. In some states the judge has the greatest amount of discretion; in others it is the parole board. Some legislatures have taken quite active roles in reforming the sentencing structures; in others the reforms have come from the judiciary, and in still others the parole board has taken action.

1. Material for this section came from several documents: Michael Kannensohn, National Survey; Criminal Courts Technical Assistance Project, Overview of State and Local Sentencing Guidelines and Sentencing Research Activity, American University Law Institute, 1980. Acknowledgement must also be given to Alex Greer and Kathleen Hanrahan, from the "Research on Strategies for Determinate Sentencing" Project; School of Criminal Justice, Research Center, Rutgers University; Bridget Stechner of the "Evaluation of Statewide Sentencing Guidelines" Project also from Rutgers; and, Barbara Broderick, Research Specialist, New York State Division of Parole. The authors, however, are solely responsible for its accuracy.

A more in-depth and state-by-state survey will be one of the final products of the Determinate Sentencing Project of the School of Criminal Justice of Rutgers University in Newark.

Nationally, the trend is towards more determinacy in the sentencing structure, especially more mandatory sentencing provisions for specific violent crimes, repeat offenders, and crimes against specific victim groups, such as the elderly or children. This trend is reflected in limitations of discretion as found in (a) legislative sentencing, (b) sentencing guidelines, and (c) parole guidelines.

a. Legislative Sentencing

Some legislatures have taken an active role, not only in modifying the sentencing structure but more importantly, in assuming the role of decision makers in sentencing. California, Alaska, Arizona, New Jersey, New Mexico, and North Carolina have been cited as states in which the Legislature has established the presumptive sentence with the judiciary having discretion to increase or reduce the sentence.¹ However, the discretion given to the judge varies by state and may vary by offense class. Some states like California cite specific time choices, such as either two, three, or four years with specific enhancements to increase the base. Other states give percentages of the base term. For example, judges in Alaska can decrease the term up to 50% of the presumptive term in offenses in which the presumptive term is more than four years.² In those states in which percentages are used, the amount of discretion concerning sentence lengths given to the judge thus depends on the length of the presumptive terms and the specified allowable percentages. A 50% variation of a four-year term is only two years, whereas a 50% variation of a 15-20 year term, is 7 1/2-10 years. The limitations on the judiciary in these states in practice may be similar to the second strategy of structuring discretion, what Kannensohn calls "determinate discretionary" models. In these states, such as Illinois, Colorado, and Tennessee, the Legislature has established ranges for specific classes of offenses. For example, Table III-1 illustrates the Illinois code:³

TABLE III-1

Ranges of Sentences

Murder-Felony	20-40* years or "natural life"
Class X Felony	6-30* years
Class 1 felony	4-15* years
Class 2 felony	3-7* years
Class 3 felony	2-5* years
Class 4 felony	1-3* years

*Maximum may be doubled under certain conditions.

Class X felonies include: aggravated kidnapping for ransom, rape, deviate sexual assault, aggravated arson, armed violence, armed robbery, treason, heinous battery, certain hard narcotics transactions, and calculated criminal drug conspiracy.

1. Kannensohn, p. 5-6.
2. Greer, Working Document.
3. Public Act 80-1099, 1977.

Although Maine is considered by some to be a determinate sentencing structure, the discretion given the judges is only limited by the legislatively-set maximum. For example, a Class A felony in Maine has a sentence limitation (maximum) of not more than 20 years. The judge has discretion to set up to the limit.

The Federal Law Enforcement Assistance Administration has provided assistance to states on a variety of issues related to the courts. One of the areas of focus has been facilitating states in the research and development of the sentencing guidelines. The number of states that are considering the development of state guidelines systems has reportedly increased in the last year.¹

The sentencing guideline model can take several forms, depending on the source of the guidelines, namely an independent legislatively-established sentencing commission, or a judicial unit either at a particular level of the court system, or in the office of the Administrator of the court office. Examples of commissions of both types include:

- Pennsylvania has an independent sentencing commission established by the General Assembly.
- Minnesota has an independent commission established by the Legislature.
- New Jersey has a judicially established sentencing project out of the Administrative Office of the courts.
- Massachusetts has a sentencing project out of the Superior Court of the state.
- Washington has sentencing guidelines which were developed by the Administrator of the Court.
- Michigan has a sentencing guidelines project that is located in the Office of the Administrator of the courts.
- Florida and Maryland are developing guidelines through their Administrative Offices of the courts as part of an experiment sponsored by the Law Enforcement Assistance Administration in which guidelines are being developed in rural, urban, and suburban areas of the state.

1. See Criminal Courts Technical Assistance Project, Overview for a state-by-state analysis.

Other states that have some form of guidelines include Alaska for drug and first offenders and Utah which has guidelines for certain felony and misdemeanor crimes.¹ The Judiciary Committees in both the U.S. House of Representatives and the Senate are considering legislation which would create a federal sentencing commission. One of the major differences between the two versions centers on the parole release decisions: the Senate version abolishes it, the House version maintains it.

b. Parole Guidelines

The strategies mentioned thus far have focused on the sentencing discretion and the guidance given either by the Legislature or the judges. Another national strategy, which in some states has been independent of legislative reform, is the creation of parole guidelines. There have been several reasons for the move toward parole guidelines, including a desire by some legislators and parole boards to prevent the passage of mandatory minimums or a determinate sentencing structure which might include a provision for the abolition of the parole release decision. Oregon, New York, and Florida have legislative mandates for the implementation of parole guidelines. Minnesota, Washington, and Georgia have created parole guidelines administratively.² Other states considering parole guidelines include Louisiana, Pennsylvania, Hawaii, Kentucky, Ohio, and Wisconsin.

2. Sentencing Characteristics

These strategies of structuring sentencing and parole discretion must be viewed in conjunction with other statutory provisions. Sentencing Guidelines can be substantially affected by mandatory minimums; the presence of a parole release function can determine the sentence length; good time provisions play a role in the determination of the actual incarceration period. Although some states have adopted determinate sentencing structures, the judicial discretion still may be wide. Illinois and Indiana are examples of this. In the indeterminate model the judges and/or the parole board members have wide discretion with usually few limits other than the legislatively established maximums. In the present move toward some form of determinacy, the legislation has diminished judicial discretion in its desire to reduce and/or eliminate unwarranted disparity present in past sentencing schemes. However, judicial discretion, as determined by mandatory sentencing provisions; procedures for the use of aggravating and mitigating circumstances to modify the sentencing terms; the provisions and procedures (or lack thereof) for determining when to impose consecutive or concurrent sentences; and the availability of alternatives

1. The judges and the parole board have established guidelines which they both utilize. The judges, however, can only recommend the length of incarceration to the parole board who in turn has authority to determine the actual incarceration length. (See Criminal Courts Technical Assistance Project, Overview). Technically they might be considered parole guidelines.

2. Minnesota still has parole guidelines for those under the old sentencing structure.

to incarceration may still be unrestricted. Furthermore, the provisions provided for sentence review may provide an avenue to examine sentencing discretion. A brief examination of some of the states' statutes will provide examples of these provisions. Specifically, we will address provisions related to:

- Mandatory Sentences
- Aggravating/Mitigating Circumstances
- Multiple Crimes
- Appeals of the Sentence
- Parole
- Good Time
- Retroactivity

a. Mandatory Sentencing

There are two models concerning mandatory sentencing that reflect the offender/offense dimension. The offender-focused statutes tend to overlap with the offense model, since in these statutes, the offender -- whether labeled repeat, violent, dangerous, or habitual -- usually is defined according to conviction of specific types of crimes. The mandatory offense statutes have focused on the violent offenses. In Washington state, there is a mandatory imprisonment for rape that is quite explicit:

"...shall be punished by imprisonment in the state penitentiary for a term of not less than twenty years. No person convicted of rape in the first degree shall be granted a deferred or suspended sentence except for the purpose of commitment to an inpatient treatment facility: PROVIDED, That every person convicted of rape in the first degree shall be confined for a minimum of three years: PROVIDED FURTHER, That the Board of Prison Terms and Paroles shall have authority to set a period of confinement greater than three years but shall never reduce the minimum three-year period of confinement nor shall the board release the convicted person during the first three years of confinement as a result of any time of automatic good time calculation nor shall the Department of Social and Health Services permit the convicted person to participate in any work release program or furlough program during the first three years of confinement." (RCW 9.79.170)

This provision is a good example in which the legislators took into consideration the possible effects of other provisions: the good time provision could not be used to reduce the mandatory three-year period of incarceration; every person convicted of Rape in the First Degree had to be sentenced to prison with no deferred or suspended sentence except for commitment to an inpatient treatment facility. Thus, the Legislature restricts judicial discretion on the disposition, and restricts the parole board from reducing that three-year minimum term. A comparison mandatory statute from the same state is the statute for the sale of heroin for profit:

"Any Person convicted of a violation of subsection (1) of this section by selling heroin shall receive a mandatory sentence of two years in a correctional facility of the Department of Social and Health Services and no judge or any court shall suspend or defer the sentence imposed for such violation. Any person convicted on a second or subsequent sale of heroin, the sale having transpired after prosecution and conviction on the first cause of the sale of heroin, shall receive a mandatory sentence of ten years in a correctional facility of the Department of Social and Health Services and no judge or any court shall suspend or defer the sentence imposed for this second or subsequent violation: PROVIDED, That the Board of Prison Terms and Paroles under RCS 9.96.040 shall not reduce the minimum term imposed for a violation under this subsection." (RCW 69.50.410(3)).

The statute illustrates several points. First, the legislators restricted the judicial discretion (no suspended or deferred sentences) and restricted the parole board's authority to establish or reduce the minimum term. However, it did not explicitly restrict the good time provision, as compared to the previous statute on rape. One can interpret this to mean that there is no restriction on good time, which means that theoretically if the Board of Prison Terms and Paroles sets a two year minimum, then good time (1/3) would be taken off the sentence. The second point that this statute illustrates is the interrelationship between the offense and the offender dimension. In this statute, a person who is convicted of a second violation of sale of heroin for profit will have a mandatory minimum of ten years. Thus, while the offense (sale of heroin for profit) is the reference, the offender's prior record will determine the length of the mandatory sentence. First, conviction under this statute requires a two-year mandatory sentence, a second requires a ten-year mandatory sentence.

Another manner to limit the parole board's discretion to release an offender that is sentenced under a mandatory minimum is to restrict parole eligibility. For example, the Florida statute for trafficking in drugs requires that no person shall be eligible for parole until the completion of the mandatory minimum prescribed by the statute.¹

On the offender dimension, the statute usually focuses on the individual with the offense a secondary concern. However, as the heroin for profit statute illustrated, the term repeat or habitual offender may not be explicitly stated, but rather subtly included within a sentencing scheme for a particular offense. The recent U.S. Supreme Court case, the Rummel case, discussed the present status of such laws in the nation.

1. See Powell's dissenting opinion, p. 11-16.

The definitions and consequences of convictions under these statutes vary among states: some require three, others four, felony convictions; some require the "commission of at least one violent crime;" some require punishments from several years to life; and still others require a prior incarceration period.¹ No one state is typical of this provision, although the threshold level seems to be at least three felonies for habitual offender label. It seems, however, that with the trend towards more determinacy in the sentencing structure, the distinction between violent person crimes and non-violent property crimes may become more explicitly emphasized in the habitual offender laws. Illinois, for example, provides mandatory life imprisonment upon the third conviction for such violent crimes as murder, rape, armed robbery, and aggravated arson.

b. Aggravating/Mitigating Circumstances

In the attempt to structure discretion and provide some guidance to the judiciary and the parole decision makers, some jurisdictions have begun to codify the factors that should be considered in sentencing, although some of the states may have enacted such circumstances in their statutes and/or their administrative rules in an indeterminate sentencing structure, the move towards determinacy, especially for the guideline models, has stressed the need to make the circumstances more explicit. Indiana's statute provides a typical example of such codification:

35.50.1A-7, "Criteria for sentencing -

- (a) "In determining what sentence to impose for a crime, the court shall consider the risk that the person will commit another crime, the nature and circumstances of the crime committed, and the prior criminal record, character, and condition of the person.
- (b) "The court may consider these factors as mitigating circumstances or as favoring suspending the sentence and imposing probation:
 - (1) "The crime neither caused nor threatened serious harm to persons or property, or the person did not contemplate that it would do so.

1. Florida Annotated Statutes Sec. 893.135 (2). Section 3 of this statute allows the state attorney to recommend to the sentencing court a reduction or suspension of the sentence if the person "provides substantial assistance in the identification, arrest, or conviction of any of his accomplices, accessories, co-conspirators, or principals." This is another example where discretion and flexibility allows the mandatory aspect of the statute, something less than mandatory.

- (2) "The crime was the result of circumstances unlikely to recur.
 - (3) "The victim of the crime induced or facilitated the offense.
 - (4) "There are substantial grounds tending to excuse or justify the crime, though failing to establish a defense.
 - (5) "The person acted under strong provocation.
 - (6) "The person has no history of delinquency or criminal activity, or he has led a law-abiding life for a substantial period before commission of the crime.
 - (7) "The person is likely to respond affirmatively to probation or short-term imprisonment.
 - (8) "The character and attitudes of the person indicate that he is unlikely to commit another crime.
 - (9) "The person has made or will make restitution to the victim of his crime for the injury, damage, or loss sustained.
 - (10) "Imprisonment of the person will result in undue hardship to himself or his dependents.
- (c) "The court may consider these factors as aggravating circumstances or as favoring imposing consecutive terms of imprisonment:
- (1) "The person has recently violated the conditions of any probation, parole or pardon granted him.
 - (2) "The person has a history of criminal activity.
 - (3) "The person is in need of correctional or rehabilitative treatment that can be best provided by his commitment to a penal facility.
 - (4) "Imposition of a reduced sentence or suspension of the sentence and imposition of probation.
 - (5) "The victim of the crime was sixty-five (65) years of age or older.
 - (6) "The victim of the crime was mentally or physically infirm.
- (d) "The criteria listed in subsections (b) and (c) of this section do not limit the matters that the court may consider in determining the sentence (IC 35.4.1-4-7, as added by Acts 1976 P.L. 148, Sec. 15, p. 718; 1977, P.L. 340, Sec. 139, p. 1533.)"¹

1. Compiler's Notes. This section number is not the official Indiana Code number.

The states vary by the degree of their inclusion and/or exclusion of factors, the explicitness of their procedures, and whether there is any "weight" given to one factor or another. As noted earlier, the desire for flexibility and the need for uniformity may be operationalized in these provisions. Specifically, the criteria established for consideration of the disposition and the length of the incarceration period may help achieve or undermine the intended goals.

c. Multiple Crimes

The issue here usually revolves around the decision to impose concurrent or consecutive sentences. Although some statutes presume concurrent unless stated by the judge as consecutive, or mandated for a particular offense or offender by the Legislature, there usually is very little, if any, guidance for the decision makers to decide this issue.

The previous Indiana example illustrates the lack of guidance given to the judge. The statute merely provides a list of factors that the "court may consider." These same factors may be used to consider aggravation generally in determining a sentence or for the imposition of a consecutive term. The development of the guideline models have stimulated added interest in this area, due to the fact that unless the guideline developers consider the question of concurrent/consecutive sentencing, and state explicitly the procedures for the decisions, the decision makers can go outside the guidelines through a manipulation of the consecutive provisions. In other words, two consecutive sentences of "within" the established ranges, can be considered appropriate, yet at the same time defeat the purpose and intent of the guidelines. Unless these provisions are clearly established the goal of uniformity may be diluted with variation, not on the disposition or length of incarceration on any one particular offense or offender, but rather on the decisions to impose or not impose consecutive sentences.

d. Appeals of the Sentence

Judicial discretion, regardless of the degree of determinacy established in the sentencing scheme, still requires review. For this discussion, appeals of sentence refers only to a review of the sentencing decisions: the disposition and the length of the incarceration period. Some states such as Delaware and Mississippi have no statutory provision of sentence review. Others have provisions which give grounds for a sentence review. Grounds commonly include that the sentence is outside the statutory limit from the crime; the sentence is excessively harsh in view of the circumstances; and, that the sentence is in violation of some aspect of the state and/or Federal Constitution.

Some states, such as Georgia, Maine, and New Hampshire, have established panels of judges specifically for sentence review. In Georgia, a three judge panel of Superior Court judges review certain sentences:

"In any case, except cases in which the death penalty is imposed, in which a sentence of five or more years, or several consecutive sentences which total five or more years, has been fixed and imposed by a judge, without a jury, the defendant shall have the right to have such sentence or sentences reviewed by a panel of three superior court judges. The purpose of such review shall be for the determination of excessive harshness in the sentence or sentences so imposed. Consideration shall be given in such review to the nature of the crime for which the defendant has been convicted and the defendant's prior criminal record." (GA Code Annotated Sec. 27-2511.1 (a))

The statute clearly states that the panel only has the power to reduce, yet "the panel shall not have the authority, however to reduce any sentence to probation or to suspend any sentence." Therefore, in this state, review is limited to sentences greater than five years and can review only the length of the sentence, not the decision to incarcerate. According to one account, "over the three year period in which this review has taken place, 7% of the approximately 3,000 sentences reviewed have been reduced."¹

In Maine, an Appellate Division of the Supreme Court, comprised of three justices from the Supreme Judicial Court, appointed by the Chief Justice have the authority to review any sentence "of one year or more to the State Prison, Maine Correctional Center, or any county jail imposed by a final judgment in a criminal case, except in any case in which a different sentence could not have been imposed." (15 M.R.S.A. Sec. 2141). The authority of the panel is not as restricted as the Georgia panel:

"...shall have jurisdiction to amend the judgment by ordering substituted therefore a different appropriate sentence or sentences or any other disposition of the case which could have been made at the time of the imposition of the sentences under review, but no sentence shall be increased without giving the defendant an opportunity to be heard." Maine Criminal Procedure (15 M.R.S.A. Sec. 2142).

Thus, in Maine the panel can reduce or increase the sentence or substitute any disposition that was available to the sentencing judge.

The procedures of the review, the degree of the authority of the panel, and the grounds for inmate and/or state appeal of the sentence also may be tempered by the available resources and the nature of the state. For example, a state as large as Pennsylvania which allows appeals, has specifically stated that the acceptance of the appeal is at the discretion of the court. It is not as encompassing as the Maine statute which clearly states that an appeal is a right of the defendant, stating that the "clerk of the appropriate court shall notify the

1. Criminal Courts Technical Assistance Project, Overview.

person sentenced of his right to request such an appeal." The inclusion of an appellate review of sentences as the only avenue of review to reduce or eliminate unwarranted disparity may not succeed without consideration of other supporting checks and balances.¹

e. Parole

In any discussion of parole it is important to delineate among the various functions that are subsumed under the institution called parole. There are three common functions: the parole release decision, parole supervision, and parole revocation. For the purposes of this report, only the first is relevant. In the sentencing reform movement, the early momentum leaned towards the elimination of the parole release decision. This seems to be subsiding to some degree, with some now viewing the parole system, especially the release decision, as an important fail-safe function, in the system.² Even in Maine, which was the first state to eliminate the parole release decision, there is some support to reintroduce the parole release decision.

Parole boards have begun to answer the criticism with the adoption of parole guidelines that provide some due process provision. However, the evaluations of these guidelines are still underway,³ so that it is unclear at this point whether the guidelines systems are in fact reducing the past unwarranted disparity.

f. Good Time

As stated earlier, the presence of good time provisions may determine the actual length of the incarceration period. The two examples from Washington state illustrated how the legislative intent may be diluted unless there is explicit consideration of the good time provision when establishing a sentencing scheme for a particular offense or offender. In general, there are a variety of models available throughout the country concerning good time. There is the standard deduction for good behavior, usually either 1/4 or 1/3 of the sentence. In the indeterminate models, the good time could be taken off the minimum or the maximum. If it was taken off the maximum, there was no effect on the length of the prison term unless the offender was denied parole. Otherwise, the individual would have been released prior to his good time date. Under determinate models, with the elimination or reduction of the

1. See discussion in American Bar Association Standards relating to the Criminal Justice, Sentencing Alternatives and Procedures, Second Edition, Tentative Draft, Approved August 14, 1979.

2. Ibid.

3. Arthur D. Little, Inc., is conducting an evaluation of Parole Guidelines in four jurisdictions for the National Institute of Corrections.

parole release decision, the good time provisions become even more important.¹ Therefore, additional good time credits may be obtained in some jurisdictions for participation in certain educational, work, or volunteer programs. Referring to Table III-1, page 2, on the Illinois sentencing scheme, the sentencing lengths are really reduced by 1/2 since the Illinois statute gives the offender the ability to earn one day for good conduct for every day served in prison. Thus, a five-year sentence by a judge, presuming no good time is forfeited, is two and one-half years.²

g. Retroactivity

This issue revolves around the question: Should a newly enacted sentencing scheme be made retroactive to prisoners who have been sentenced under the old scheme? Most jurisdictions have not enacted a retroactive provision into their new sentencing scheme. However, Illinois gives the option to the inmate. Under the new law, the Illinois Prisoner Review Board sets a fixed release date for those inmates under the indeterminate sentence, as set forth under the determinate law. The inmate has the option to accept the date, and thus waiving the right to parole, choose to remain under the indeterminate system in which the procedures and eligibility rule would still be effective, or request the Board to reconsider the decision of the established date. One recent report stated:

During the Board's first year of operation, 70% of prisoners offered "out-dates" accepted the offer. An additional 12% asked for reconsideration of the Board's decision. Eleven percent of these reconsideration requests were granted. Once a prisoner accepts a determinate sentence, he or she begins accumulating day-for-day good conduct credits in the same manner as a prisoner sentenced under the new law.³

The issues that the policy makers must balance are the goals of the new sentencing scheme, such as equity and uniformity, and the feasibility and procedures of such a retroactive provision.

1. See analysis of Illinois, in Paul Bigman, *Discretion, Determinate Sentencing and the Illinois prisoner Review Board: A Shotgun Wedding* Chicago Law Enforcement Study Group, 1979.

2. Also, see discussion in von Hirsch, The New Indiana Sentencing Code.

3. Bigman, Discretion, p. 12.

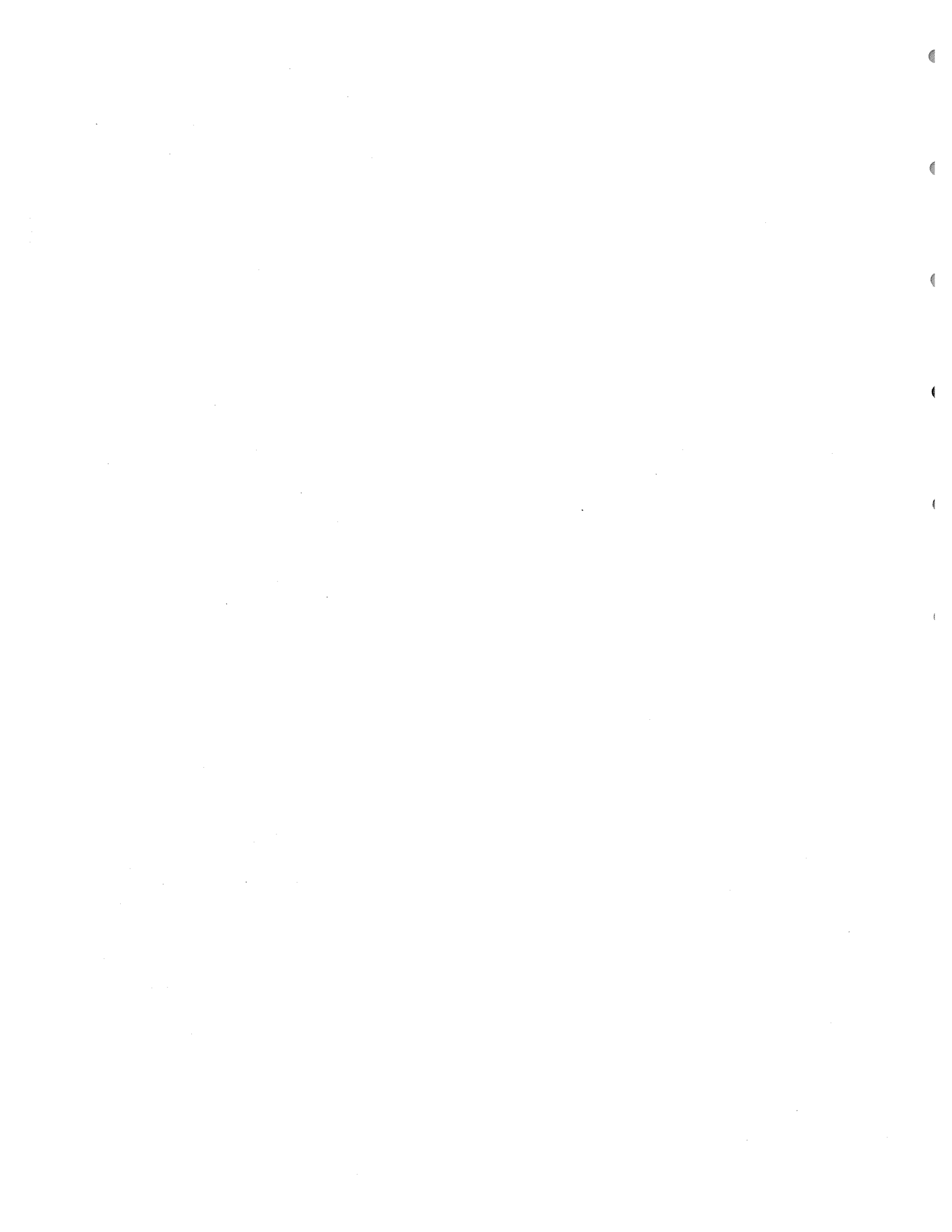
B. SENTENCING RESEARCH

There are presently several research projects underway, or soon to be completed, that should be consulted for any future consideration of a modification in California's sentencing scheme. These projects are listed below.

1. The Assessment of the Impact of Determinate Sentencing and Parole Abolition. Drs. John H. Kramer and Frederick A. Hussey, Pennsylvania State University, NIJ Grant #76-NI-99-0412 (Report not published at this time).
2. Strategies for Determinate Sentencing, Professors Sheldon L. Messinger, Center for the Study of Law and Society, Berkeley, Richard F. Sparks and Andrew von Hirsch, School of Criminal Justice, Rutgers, NIJ grant #78-NI-AX-0081/02 (Report expected Fall 1980).
3. Evaluation of Statewide Sentencing Guidelines, Professor Richard F. Sparks, School of Criminal Justice, Rutgers University, NIJ grant #78-NI-AX-0147 (Report expected Fall 1980).
4. Evaluation of Parole Guidelines in Four Jurisdictions, Arthur D. Little, Inc., NIC grant, #BJ-5 (Two-year study, started June 1979).
5. Sentencing Guidelines: Their Operation and Impact on the Courts; William D. Rich, Paul Sutton, National Center for State Courts, NIJ grant, #78-NI-AX-0140 (Report expected Summer 1980).
6. Sentencing Guidelines Structuring Judicial Discretion, Jack Kress, Albany, New York (Final Report due Fall 1980).
7. Evaluation of the Massachusetts Gun Law, David Rossman, Paul Froyd (Boston University), Glen L. Pierre, John McDevitt, and William J. Bowers, (Northeastern University's Center for Applied Social Research), Boston, NIJ grant #76-NI-99-0142 (Final Report not published at this time).
8. Impact of Michigan Firearms Law on Detroit's Recorder Court, Colin Loftin, University of Michigan, NIJ grant #78-NI-AX-0021 (Project still in progress).
9. Deterrence Effects on Revised Arizona Criminal Code, Lee McPheters, Arizona State University, Dept. of Economics, NIJ grant, #79-NI-AX-0041 (Funded in Fall 1979).
10. Influence of Sanctions and Opportunities on Rates of Bank Robbery, George Camp, Criminal Justice Institute, New York City, New York, NIJ grant #79-NI-AX-0117 (Funded in Fall 1979).

11. Evaluation of the New York Juvenile Offender Law, Frank Zimring, Hoover Institute/University of Chicago (NIJ funded in Fall 1979).
12. Evaluation of Multi-Jurisdictional Sentencing Guidelines Field Test, Abt Associates, NIJ grant #78-NI-AX-0118 (Field states Maryland and Florida funded in 1979.)

CASE STUDIES



IV. CASE STUDIES

Several states have created sentencing commissions or steering committees which are empowered to develop and review sentencing guidelines. These bodies are either legislatively empowered or established internally within the judiciary. Some are involved with parole, others are not. This section examines the experience of four states -- Minnesota, Pennsylvania, Massachusetts, and New Jersey -- in developing and implementing sentencing commissions and sentencing guidelines.

Other states primarily considered were: Washington state, which has voluntary sentencing guidelines and parole guidelines; Utah, which recently enacted guidelines which the sentencing judge uses to make recommendations to the parole board which in turn uses them in making their release decisions; Michigan whose Administrative Office of the Courts is presently developing guidelines; Alaska, which has sentencing guidelines for certain offenses; Maryland and Florida, which LEAA has selected as the sites for the multi-jurisdictional sentencing guidelines experiment; and Illinois, which created a Criminal Sentencing Commission in 1978.

These states were not selected for several reasons: the judiciary in Washington state and Utah only have the authority to recommend the sentence length to the parole board, and thus, the focus of the guidelines is at the parole level; Alaska's guidelines only include drug and first offenders; Michigan, Florida, and Maryland are still developing their guidelines; and the Illinois Commission is only presently considering the development of the guidelines.

Our examination of each state's experience is divided into six major sections:

- Background: a discussion of the role of legislature and/or judiciary in establishing the commission, commission purpose, organizational structure, and activities.
- Guidelines: a description of the standards and techniques for sentencing adopted by the commission.
- Characteristics: a review of the guidelines approach to achieving uniformity, equity, and certainty as well as a description of how the guidelines address areas such as:
 - Mandatory sentences
 - Mitigating and aggravating circumstances
 - Multiple crimes
 - Good time

- Parole
- Appeal
- Impact: a discussion of the anticipated or actual impact of instituting the sentencing guidelines.
- Implementation: a description of the commission's activities relative to implementing the guidelines.
- Conclusion: a review of the primary strengths and weaknesses of the state's commission and/or guidelines.

A. MINNESOTA

Minnesota has recently implemented sentencing reforms, involving a Sentencing Commission and proposed guidelines which are instructive for California. The Commission was established by the Legislature as an independent body to develop and continue monitoring sentencing guidelines. In addition to basing guidelines upon current state sentencing practices, the Legislature also directed the Commission to consider available state correctional resources.

The Minnesota sentencing guidelines are based on a Sentencing Guidelines Grid which combines offense and offender characteristics. A district court judge uses the Grid to decide whether or not to imprison a convicted felon and what fixed sentence to impose. Limited discretion is given to the judge in determining the fixed sentence. Deviations from the guidelines based on aggravating or mitigating circumstances must be documented in writing by the judge.

The sentence imposed is for a fixed period with a possible good time reduction. Parole is automatic and mandatory following the serving of the sentence. In summary, the Minnesota guidelines:

- Base presumptive sentence on a combination of offense and offender characteristics;
- Provide direction to the judge regarding the in/out decision;
- Provide a limited range of discretion for the judiciary once a decision to incarcerate has been made;
- Establish fixed presumptive sentences;
- Eliminate the parole release decision;
- Establish mandatory parole; and
- Provide for continued Commission review and revision of the Guidelines.

1. Background

The Minnesota Sentencing Guidelines Commission was established by the Minnesota Legislature in 1978.¹ The Legislature directed the Commission to develop and promulgate sentencing guidelines for the state's district courts based on reasonable offense and offender characteristics.

The Sentencing Commission is composed of nine members who are appointed for a term of four years. The membership includes:

- The Chief Justice of the Supreme Court or his designee;
- Two District Court judges appointed by the Chief Justice of the Supreme Court;
- One public defender appointed by the Governor upon recommendation of the State Public Defender;
- One county attorney appointed by the Governor upon recommendation of the Board of Governors of the County Attorneys' Council;
- The Commissioner of Corrections or his designee;
- The Chairman of the Minnesota Corrections Board or his designee; and
- Two public members appointed by the Governor.²

In addition to developing and implementing guidelines, the Commission is empowered to serve as a clearinghouse for the collection, analysis, and dissemination of information on state and local sentencing practices. The Commission is further empowered to conduct research regarding sentencing guidelines, use of imprisonment and alternatives to imprisonment, plea bargaining, and other matters relating to the improvement of the criminal justice system.³ The Commission is also directed to study the impact of the sentencing guidelines and to make recommendations to the Legislature regarding changes in the criminal code, criminal procedures, and other aspects of sentencing.⁴

1. Minnesota Laws 1978, Chapter 723, Minn. Stat. Chapter 244 et sec. (1978). Much of the following material is based upon and directly quoted from the Commission enabling legislation contained in Chapter 723.

2. Chapter 723 Sec. 9 (244.09) Subd. 2.

3. Chapter 723 Sec. 9 (244.09) Subd. 6.

4. Chapter 723 Sec. 9 (244.09) Subd. 6 and 7.

The legislation directed the Commission to submit the sentencing guidelines to the Legislature on January 1, 1980, and stipulated that they would go into effect May 1, 1980, unless the Legislature provides otherwise.

The Commission is to develop guidelines for the state's district courts that establish:

1. The circumstances under which imprisonment of an offender is proper;
2. A presumptive, fixed sentence for offenders for whom imprisonment is proper based on each appropriate combination of reasonable offense and offender characteristics; and
3. Appropriate sanctions for offenders for whom imprisonment is not proper with specific reference to noninstitutional sanctions including probation and the conditions thereof.

In developing guidelines for each of these three areas, the Sentencing Commission was instructed by the Legislature to take into substantial consideration current Minnesota sentencing and release practices.

Prior to May 1, 1980, under Minnesota laws and procedures, the real power to establish durations of confinement rested with the Minnesota Corrections Board (MCB). The judicial decision was basically whether or not a convicted felon should be imprisoned. If the offender was imprisoned, the judge set a maximum sentence length and the offender was committed to the custody of the Commissioner of Corrections. However, the MCB had the authority to release imprisoned felons and, in general, judicial decisions regarding maximum sentence length did not constrain MCB releasing decisions and discretion. The MCB utilized parole decision-making guidelines in making their releasing decisions.

In developing the guidelines, the Sentencing Commission considered current Minnesota sentencing practices by examining judicial decisions regarding imprisonment and by examining releasing decisions of the MCB.

The Legislature also directed the Sentencing Commission to consider in the development of guidelines the state's correctional resources including the capacities of local and state correctional facilities.¹ This was done by the Commission through computerized simulation models of projected prison populations based on the new guidelines.

2. Guidelines

The stated purpose of the Minnesota sentencing guidelines is to "establish rational and consistent sentencing standards which reduce sentencing disparity and ensure that sanctions following conviction of a

1. Chapter 723 Sec. 9 (244.09) Subd. 5(2).

felony are proportional to the severity of the offense of conviction and the extent of the offender's criminal history."¹ The guidelines embody the following principles:

- Sentencing should be neutral with respect to the race, gender, social, or economic status of convicted felons.
- Development of a rational and consistent sentencing policy requires that the severity of sanctions increase in direct proportion to increases in the severity of criminal offense and the severity of criminal histories of convicted felons.
- Because the capacities of state and local correctional facilities are finite, use of incarcerative sanctions should be limited to those convicted of more serious offenses or those who have longer criminal histories. To ensure such usage of finite resources, sanctions used in sentencing convicted felons should be the least restrictive necessary to achieve the purposes of the sentence.
- While the sentencing guidelines are advisory to the sentencing judge, departures from the presumptive sentences established in the guidelines should be made only when substantial and compelling circumstances exist.

The guidelines are built around two references -- Offense Severity Reference Table and the Criminal History Index. These two references combine to create the Sentencing Guidelines Grid. (See Exhibits IV-1 and IV-2, following.)

a. Offense Severity Reference Table

The offense severity level is determined by the offense of conviction. Felony offenses are arrayed into ten levels of severity, ranging from low (Severity Level I) to high (Severity Level X). First-degree murder is excluded from the sentencing guidelines, because by Minnesota law the sentence is mandatory imprisonment for life. Offenses listed within each level of severity are deemed to be generally equivalent in severity. The most frequently occurring offenses within each severity level are listed on the vertical axis of the Sentencing Guidelines Grid. The severity level for infrequently occurring offenses is provided in additional tables in the guidelines.

1. Minnesota Sentencing Guidelines Commission Report to the Legislature, January 1, 1980. Much of the following material is based upon and directly quoted from this report.

EXHIBIT IV-1

OFFENSE SEVERITY REFERENCE TABLE

First Degree Murder is excluded from the guidelines by law, and continues to have a mandatory life sentence.

X Murder 2-609.19

IX Murder 3-609.195

VIII Assault 1-609.221
Attempted Murder 1-609.185 with 609.17 or 609.175 cited
Criminal Sexual Conduct 1-609.342
Kidnapping (w/great bodily harm)-609.25, subd. 2(2)
Manslaughter 1-609.20(1) & (2)

VII Aggravated Robbery-609.245
Arson 1-609.561
Criminal Sexual Conduct 2-609.343(c), (d), (e), & (f)
Criminal Sexual Conduct 3-609.344(c) & (d)
Kidnapping (not in safe place)-609.25, subd. 2(2)
Manslaughter 1-609.20(3)
Manslaughter 2-609.205(1)

VI Arson 2-609.562
Assault 2-609.222
Burglary-609.58, subd. 2(1)(b) & (2)
Criminal Sexual Conduct 2-609.343(a) & (b)
Criminal Sexual Conduct 4-609.345(c) & (d)
Escape from Custody-609.485, subd. 4(4)
Kidnapping-609.25, subd. 2(1)
Receiving Stolen Goods (over \$2,500)-609.525; 609.53
Sale of Hallucinogens or PCP-152.15, subd. 1(2)
Sale of Heroin-152.15, subd. 1(1)
Sale of Remaining Schedule I & II Narcotics-152.15, subd. 1(1)

V Criminal Negligence Resulting in Death-609.21
Criminal Sexual Conduct 3-609.344(b)
Manslaughter 2-609.205(2), (3), & (4)
Perjury-609.48, subd. 4(1)
Possession of Incendiary Device-299F.80; 299F.815; 299F.811
Simple Robbery-609.24
Solicitation of Prostitution-609.322, subd. 1
Tampering w/ Witness-609.498, subd. 1

EXHIBIT IV-1 (Continued)

IV
Assault 3—609.223
Bribery—609.42; 90.41
Bring Contraband into State Prison—243.55
Bring Dangerous Weapon into County Jail—641.165, subd. 2(b)
Burglary—609.58, subd. 2(1)(a), (c), & (d)
Criminal Sexual Conduct 4—609.345(b)
Negligent Fires—609.576(a)
Perjury—209.53, subd. 4; 300.61; & 609.48, subd. 4(2)
Receiving Profit Derived from Prostitution—609.323, subd. 1
Receiving Stolen Goods (\$150-\$2500)—609.525; 609.53
Security Violations (over \$2500)—80A.22, subd. 1; 80B.10, subd. 1; 80C.16, subd. 3(a) & (b)
Terroristic Threats—609.713, subd. 1
Theft Crimes—Over \$2,500 (*See Theft Offense List*)*
Theft from Person—609.52
Use of Drugs to Injure or Facilitate Crime—609.235

III
Aggravated Forgery (over \$2,500)—609.625
Arson 3—609.563
Coercion—609.27, subd. 1(1)
Coercion (over \$2,500)—609.27, subd. 1(2), (3), (4), & (5)
Damage to Property—609.595, subd. 1(1)
Dangerous Trespass—609.60; 609.85(1)
Dangerous Weapons—609.67, subd. 2; 624.713, subd. 1(b)
Escape from Custody—609.485, subd. 4(1)
False Imprisonment—609.255
Negligent Discharge of Explosive—299F.83
Possession of Burglary Tools—609.59
Possession of Hallucinogens or PCP—152.15, subd. 2(2)
Possession of Heroin—152.15, subd. 2(1)
Possession of Remaining Schedule I & II Narcotics—152.15, subd. 2(1)
Prostitution (Patron)—609.324, subd. 1
Receiving Profit Derived from Prostitution—609.323, subd. 2
Sale of Cocaine—152.15, subd. 1(2)
Sale of Remaining Schedule I, II & III Non-narcotics—152.15, subd. 1(2)
Security Violations (under \$2500)—80A.22, subd. 1; 80B.10, subd. 1; 80C.16, subd. 3(a) & (b)
Solicitation of Prostitution—609.322, subd. 2
Theft Crimes—\$150-\$2,500 (*See Theft Offense List*)*
Theft of Public Records—609.52
Theft Related Crimes—Over \$2,500 (*See Theft Related Offense List*)*

*Detailed Lists accompany The Minnesota Guidelines.

EXHIBIT IV-1 (Continued)

Aggravated Forgers (\$150-\$2500)—609.625
Aggravated Forgery (misc.) (non-check)—609.625; 609.635; 609.64
Coercion (\$300-\$2500)—609.27, subd. 1(2), (3), (4), & (5)
Damage to Property—609.595, subd. 1(2) & (3)
Negligent Fires (damage greater than \$10,000)—609.576(b)(4)
II Riot—609.71
Sale of Marijuana/Hashish/Tetrahydrocannabinols—152.15, subd. 1(2)
Sale of a Schedule IV Substance—152.15, subd. 1(3)
Terroristic Threats—609.713, subd. 2
Theft-Looting—609.52
Theft Related Crimes—\$150-\$2500 (*See Theft Related Offense List*) *

Aggravated Forgery (Less than \$150)—609.625
Aiding Offender to Avoid Arrest—609.495
Forgery—609.63; and Forgery Related Crimes (*See Forgery Related Offense List*) *
Fraudulent Procurement of a Controlled Substance—152.15, subd. 3
Leaving State to Evade Establishment of Paternity—609.31
Nonsupport of Wife or Child—609.375, subds. 2, 3, & 4
I Possession of Cocaine—152.15, subd. 2(2)
Possession of Marijuana/Hashish/Tetrahydrocannabinols—152.15, subd. 2(2)
Possession of Remaining Schedule I, II & III Non-narcotics—152.15, subd. 2(2)
Possession of a Schedule IV Substance—152.15, subd. 2(3)
Selling Liquor that Causes Injury—340.70
Solicitation of Prostitution—609.322, subd. 3
Unauthorized Use of Motor Vehicle—609.55

*Detailed Lists accompany The Minnesota Guidelines.

EXHIBIT IV-2

SENTENCING GUIDELINES GRID
PRESUMPTIVE SENTENCE LENGTHS IN MONTHS

Italicized numbers within the grid denote the range within which a judge may sentence without the sentence being deemed a departure.

Severity Levels of Conviction Offense	Criminal History Score						
	0	1	2	3	4	5	6 or More
Unauthorized Use of Motor Vehicle Possession of Marijuana I	12*	12*	12*	15	18	21	24
Theft-related Crimes (\$150-2,500) Sale of Marijuana II	12*	12*	14	17	20	23	27 25-29
Theft Crimes (\$150-2,500) III	12*	13*	16	19	22 21-23	27 25-29	32 30-34
Burglary – Felony Intent Receiving Stolen Goods (\$150-2,500) IV	12*	15	18	21	25 24-26	32 30-34	41 37-45
Simple Robbery V	18	23	27	30 29-31	38 36-40	46 43-49	54 50-58
Assault, Second Degree VI	21	26	30	34 33-35	44 42-46	54 50-58	65 60-70
Aggravated Robbery VII	24 23-25	32 30-34	41 38-44	49 45-53	65 60-70	81 75-87	97 90-104
Assault, First Degree Criminal Sexual Conduct, First Degree VIII	43 41-45	54 50-58	65 60-70	76 71-81	95 89-101	113 106-120	132 124-140
Murder, Third Degree IX	97 94-100	119 116-122	127 124-130	149 143-155	176 168-184	205 195-215	230 218-242
Murder, Second Degree X	116 111-121	140 133-147	162 153-171	203 192-214	243 231-255	284 270-298	324 309-339

Note: First degree murder is excluded from the guidelines by law and continues to have a mandatory life sentence.

*One year and one day.

b. Criminal History Index

A criminal history index constitutes the horizontal axis of the Sentencing Guidelines Grid. The criminal history index is comprised of the following items: (1) prior felony record; (2) custody status at the time of the offense; (3) prior misdemeanor and gross misdemeanor record; and (4) prior juvenile record for young adult felons.

The offender's criminal history index score is computed in the following manner:

(1) Subject to the conditions (such as multiple offenses, prior misdemeanor offense), the offender is assigned one point for every felony conviction for which a sentence was stayed or imposed, and that occurred before the current sentencing. Prior felony convictions are not used in computing the criminal history score after a period of ten years has elapsed since the date of discharge from, or expiration of the sentence, provided that during the period the individual has not been convicted of a felony, gross misdemeanor, or misdemeanor.

(2) The offender is assigned one point if he was on probation or parole or confined in a jail, workhouse, or prison following conviction of a felony or gross misdemeanor, or released pending sentencing at the time the felony was committed for which he is being sentenced. The offender will not be assigned a point under this item when: the person was committed for mental treatment or examination; or the person was on juvenile probation or parole status at the time the felony was committed for which he is being sentenced.

(3) Subject to certain conditions, the offender is assigned one unit for each misdemeanor conviction and two units for each gross misdemeanor conviction (excluding traffic offenses) for which a sentence was stayed or imposed before the current sentencing. Four such units shall equal one point on the criminal history score, and no offender shall receive more than one point for prior misdemeanor or gross misdemeanor convictions.

(4) The offender is assigned one point for every two juvenile adjudications for offenses that would have been felonies if committed by an adult, provided that: the juvenile adjudications were pursuant to offenses occurring after the offender's sixteenth birthday; the offender had not attained the age of twenty-one at the time the felony was committed for which he is being currently sentenced; and no offender may receive more than one point for prior juvenile adjudications.

The designation of out-of-state convictions as felonies, gross misdemeanors, or misdemeanors is governed by the offense definitions and sentences provided in Minnesota law.

The criminal history score is the sum of points accrued under items one through four above.

Using the Sentencing Grid, the district court judge makes one or two key decisions: (1) disposition of imprisonment or non-imprisonment and (2) if imprisonment, fixed presumptive sentence.

• Disposition: Imprisonment or Non-imprisonment

The guidelines for the judicial decision of whether or not to imprison a convicted felon are based upon appropriate combinations of reasonable offense and offender characteristics. The Commission defined those characteristics as severity of offense and the criminal history of the offender.

In terms of philosophies of punishment, the Commission considered (a) just deserts, (b) incapacitation, and (c) various degrees of emphasis between the two. Their assessment of system impact indicated that a philosophy which heavily emphasized just deserts would be incompatible with available correctional resources, i.e., not enough bed space would be available in state correctional institutions.

The Commission also considered two additional factors: (a) Minnesota mandatory sentencing laws, and (b) the Minnesota Community Corrections Act. Minnesota mandatory sentencing laws cover murder in the first degree (which is excluded from the Sentencing Guidelines by the enabling legislation), second conviction of certain drug and sex crimes, and offenses where the offender possesses a firearm or uses some other dangerous weapon. The Commission developed guidelines so that most offenses which previously involved mandatory imprisonment would still receive a presumptive imprisonment sentence. The Minnesota Community Corrections Act establishes a presumption against imprisonment for persons convicted of offenses with a statutory maximum of five years or less — generally property crimes. The Commission's guidelines substantially comply with this expression of legislative intent. However, the guidelines recommend imprisonment of certain persons convicted of property crimes with longer criminal histories.

The guidelines for an incarceration decision finally adopted by the Commission are based on a modified just deserts approach. Imprisonment is presumptive for any persons convicted of offenses involving aggravated robbery, assault in the first degree, kidnapping, if the victim is not released in a safe place or suffers great bodily harm, manslaughter in the first degree, and murder in the second and third degrees. For these offenses, it was the position of the Commission that the severity of the offenses, by themselves, were sufficient to merit a presumption of imprisonment. This leaves open the possibility that there may be compelling mitigating factors in some cases which would make imprisonment inappropriate. In such cases, the judge may depart from the guidelines and provide written reasons to support the departure.

The Guidelines also provide a presumption against state imprisonment for all severity level one offenses. (See Exhibit IV-2, page 9.) The most frequent offense in severity level one is unauthorized use of a motor vehicle (UUMV). The Commission felt that UUMV was intended to cover "joyriding" situations, as distinguished from theft, where the intent of the perpetrator was to deprive the owner permanently of possession of the vehicle. Given that, the Commission felt that the potential for incarceration in a local jail or workhouse for up to twelve months was commensurate with the severity of the offense. In addition, if an individual case involved substantial and compelling aggravating factors, the judge could depart from the guidelines and imprison the offender by giving written reasons.

- Presumptive Sentences

The presumptive sentence for any offender convicted of a felony is determined by locating the appropriate cell on the Sentencing Guidelines Grid. (See Exhibit IV-2, page 9.) The Grid represents the two dimensions that the Commission considered -- offense severity and criminal history. The presumptive fixed sentence for a felony conviction is found in the Sentencing Guidelines Grid cell at the intersection of the column defined by the criminal history score and the row defined by the offense severity level. The offenses within the Sentencing Guidelines Grid are presumptive with respect to the duration of the sentence and whether imposition or execution of the sentence should be stayed.

The line on the Sentencing Guidelines Grid demarcates those cases for whom the presumptive sentence is executed from those for whom the presumptive sentence is stayed. For cases contained in cells below and to the right of the line, the sentence should be executed. For cases contained in cells above and to the left of the line, the sentence should be stayed.

Every cell in the Sentencing Guidelines Grid provides a fixed duration of sentence. For cells below the solid line, the guidelines provide both a presumptive prison sentence and a range of time for that sentence. Any prison sentence duration pronounced by the sentencing judge which is outside the range of the presumptive duration is a departure from the guidelines, regardless of whether the sentence is executed or stayed, and requires written reasons from the judge.

3. Characteristics

The Minnesota Sentencing Guidelines address a number of key issues of any sentencing approach. These are discussed below.

a. Equity

The Sentencing Guidelines Grid is also intended to assure that convicted felons similar with respect to relevant sentencing criteria will receive similar sanctions. The Guidelines state that in making departures from the presumptive sentence the following factors should not be considered by the judge:

- Race;
- Sex;
- Employment factors, including: occupation or impact of sentence on profession or occupation; employment history; employment at time of offense; employment at time of sentencing;
- Social factors, including: education attainment; living arrangements at time of offense or sentencing; length of residence; marital status; or

- The exercise of constitutional rights by the defendant during the adjudication process.¹

Factors that may be considered, i.e., "substantial and compelling circumstances," are discussed in the section below on mitigating and aggravating circumstances.

b. Uniformity

A stated goal of the guidelines is to reduce sentencing disparity. This is accomplished through the application of the Sentencing Guidelines Grid. Judicial discretion within the Grid is limited: ranges are very narrow. However, the more severe the offense and the higher the criminal history score, the broader the discretion afforded -- up to 30 months.

The sentences provided in the Sentencing Guidelines Grid are presumed to be appropriate for every case. The judge utilizes the presumptive sentence provided in the Sentencing Guidelines Grid unless the individual case involves substantial and compelling circumstances, i.e., mitigating or aggravating circumstances. When such circumstances are present, the judge may depart from the presumptive sentence and stay or impose any sentence authorized by law. When departing from the presumptive sentence, however, a judge must provide written reasons which specify the substantial and compelling nature of the circumstances, and which demonstrate why the sentence selected in the departure is more appropriate, reasonable, or equitable than the presumptive sentence.²

c. Certainty

The Minnesota Sentencing Guidelines require a presumptive sentence for a specific fixed period of time and eliminate the parole release decision, and therefore there is predictability in the length of sentence to be served. The fixed presumptive sentence may only be reduced by (1) poor jail credit and/or (2) good time.

d. Mandatory Sentences

Under Minnesota law, first-degree murder has a mandatory life imprisonment sentence and is excluded from offenses covered by the sentencing guidelines. For mandatory minimum sentences the guidelines contain these two provisions:

- When an offender has been convicted of an offense with a mandatory minimum sentence of one year and one day, the presumptive duration of the prison sentence should be 18 months or the duration of prison sentence provided in the appropriate cell of the Sentencing Guidelines Grid, whichever is longer.

1. Minnesota Sentencing Guidelines Commission, Report to the Legislature, January 1, 1980, p. 30.

2. Chapter 723 Sec. 10 (244.10) Subd. 2.

- When an offender has been convicted of an offense with a mandatory minimum sentence of three years, the presumptive duration of the prison sentence should be 54 months or the duration provided in the appropriate cell of the Sentencing Guidelines Grid, whichever is longer.

According to the Guidelines, because good time reductions do not apply to mandatory minimum sentences under Minnesota law, the intent of this provision is to provide all incarcerated inmates with equal incentive for good behavior, thereby alleviating potential institutional management problems.

e. Mitigating and Aggravating Factors

The Minnesota Guidelines provide for departure from the presumptive sentence based upon substantial and compelling circumstances to be documented by the judge. Factors that may be used as reasons for departure include:

- Mitigating Factors:

- (1) The victim was an aggressor in the incident.
- (2) The offender played a minor or passive role in the crime or participated under circumstances of coercion or duress.
- (3) The offender, because of physical or mental impairment, lacked substantial capacity for judgment when the offense was committed. The voluntary use of intoxicants (drugs or alcohol) does not fall within the purview of this factor.
- (4) Other substantial grounds exist which tend to excuse or mitigate the offender's culpability, although not amounting to a defense.

- Aggravating Factors:

- (1) The victim was particularly vulnerable due to age, infirmity, or reduced physical or mental capacity, which was known or should have been known to the offender.
- (2) The victim was treated with particular cruelty for which the individual offender should be held responsible.
- (3) The current conviction is for an offense in which the victim was injured and there is a prior felony conviction for an offense in which the victim was injured.

- (4) The offense was a major economic offense, identified as an illegal act or series of illegal acts committed by other than physical means and by concealment or guile to obtain money or property to avoid payment or loss of money or property, or to obtain business or professional advantage. The presence of two or more of the circumstances listed below are aggravating factors with respect to the offense:
- (a) The offense involved multiple victims or multiple incidents per victim;
 - (b) The offense involved an attempted or actual monetary loss substantially greater than the usual offense or substantially greater than the minimum loss specified in the statutes;
 - (c) The offense involved a high degree of sophistication or planning or occurred over a lengthy period of time;
 - (d) The defendant used his or her position or status to facilitate the commission of the offense, including positions of trust, confidence, or fiduciary relationships; or
 - (e) The defendant has been involved in other conduct similar to the current offense as evidenced by the findings of civil or administrative law proceedings or the imposition of professional sanctions.¹

f. Multiple Crimes

When an offender is convicted of multiple current offenses, or where there is a prior felony sentence which has not expired or been discharged, concurrent sentences are given in all cases not covered below. The most severe offense among multiple current offenses determines the appropriate offense severity level for purposes of determining the presumptive guideline sentence. Consecutive sentences may be given only in the following cases:

- When a prior felony sentence for a crime against a person has not expired or been discharged and one or more of the current felony convictions is for a crime against a person, and when the sentence for the most severe current conviction is executed according to the guidelines; or

1. Minnesota Sentencing Guideline Commission, Report to the Legislature, January 1, 1980, pp. 30-32.

- When the offender is convicted of multiple current felony convictions for crimes against different persons, and when the sentence for the most severe current conviction is executed according to the guidelines; or
- When the conviction is for escape from lawful custody.

The use of consecutive sentences in any other case constitutes a departure from the guidelines and requires written reasons.

For persons given consecutive sentences, the sentence durations for each separate offense sentenced consecutively shall be aggravated into a single presumptive sentence. The presumptive duration for offenses sentenced consecutively is determined by locating the Sentencing Guidelines Grid cell defined by the most severe offense and the offender's criminal history score and by adding to the duration shown therein the duration indicated for every other offense sentenced consecutively at their respective levels of severity but at the zero criminal history column on the Sentencing Guidelines Grid. The purpose of this procedure is to count an individual's criminal history score only one time in the computation of consecutive sentence durations.

For persons who, while on probation, parole, or supervised release, commit a new offense for which a consecutive sentence is imposed, service of the sentence for the current conviction shall commence upon the completion of any incarceration arising out of the prior sentence.

g. Good Time

Under the new Minnesota law, good time will reduce the term of imprisonment one day for every two days during which the inmate violates none of the disciplinary offense rules promulgated by the Commissioner of Corrections. Good time earned accrues to a period of supervised release. Thus, for an inmate sentenced to serve nine years, a maximum of three years good time can be accrued. The inmate would be released after six years and would be on supervised release for three years. This applies to all inmates except those serving a mandatory life sentence.

Under the Guidelines, good time is vested, meaning that if an inmate violates a disciplinary offense rule, good time earned prior to the violation may not be taken away, but the inmate may be required to serve an imprisonment after the violation without earning good time.

The Commissioner of Corrections is responsible for developing the uniform rules and procedures for good time applicable to all state correctional institutions. The law stipulates, however, that in no case shall an individual disciplinary offense result in the loss of more than 90 days of good time.¹

1. Chapter 723, Sec. 4 (244.04) Subd. 1, 2, 3.

Participation in educational, vocational, or other rehabilitative programs while imprisoned is optional and has no effect on the length of time served. Based upon a mutual agreement program, the inmate may participate in rehabilitative programs. Failure to enter into an agreement shall not affect the earning of good time by an inmate, nor shall violation of the terms of the mutual agreement constitute a disciplinary offense which may result in loss of good time.¹

h. Parole

With the adoption of the Sentencing Guidelines, the Minnesota Corrections Board's parole release decision-making authority is eliminated — all inmates sentenced for crimes committed after May 1, 1980, serve a fixed sentence. The MCB will continue to have jurisdiction over all those inmates who are incarcerated for crimes committed prior to May 1, 1980, and over those presently in the institutions. Release decisions for these inmates are based upon Parole Release Decision Guidelines.²

Under these Guidelines every inmate (except those serving life) serves a supervised release term upon completion of his term of imprisonment as reduced by any good time or jail credit earned. The supervised release term, or parole, is equal to the period of good time the inmate has earned and cannot exceed the length of time remaining in the inmate's sentence.

While the supervision of released inmates is the responsibility of the Department of Corrections, the Minnesota Corrections Board still has authority over revocation. If an inmate violates the conditions of his supervised release, the MCB may (1) continue the inmate's supervised release term with or without modifying or enlarging the conditions imposed on the inmate or (2) revoke the inmate's supervised release and reimprison him for the appropriate period of time.

An inmate serving a mandatory life sentence is not given supervised release unless he has served a minimum term of imprisonment of 17 years.³

1. Appeals

An appeal to the Minnesota State Supreme Court may be taken by the defendant or the state from any sentence imposed or stayed by the district court according to the rules of criminal procedure for the district court. The State Supreme Court may review the sentence to

1. Chapter 723, Sec. 2 (244.02) Subd. 1 and 2.

2. Arthur D. Little, Inc., A Descriptive Case Study: Parole Decision Guidelines and the Minnesota Corrections Board, Draft Report submitted to the National Institute of Corrections, March 1980.

3. Chapter 723 SF No. 65 Article I Sec. 5 (244.05) Subd. 1, 2, 3, 4, and 5.

determine whether it is inconsistent with statutory requirements, unreasonable, inappropriate, excessive, unjustifiably disparate, or not warranted by the findings of fact issued by the district court. This review is in addition to all other powers held by the State Supreme Court. The Supreme Court may dismiss or affirm the appeal, vacate, or set aside the sentence imposed, or stayed, and direct entry of an appropriate sentence, or order further proceedings to be had as the Supreme Court may direct.¹

j. Impact

Although the Minnesota Sentencing Guidelines were not effective until May 1, 1980, the Commission has made estimates of the impact of the Guidelines. These estimates were made to respond to the legislative mandate to consider available correctional resources in designing the Guidelines.

Four major assumptions were made to develop the projections:

- Departures from guideline dispositional recommendations would be 10% overall.
- Probation revocations for technical violations would remain at the current level.
- MCB supervised release revocations for technical violations would remain at the current level.
- Work release from institutions would remain at the current level.²

Based on these assumptions, the Commission has made the following projections.

- Level of Prison Population: The Sentencing Guidelines were developed so that the State prison capacity of 2072 beds will not be exceeded as a result of changes in sentencing. In addition, the Guidelines were developed so that the average projected population would be 5% below capacity.
- Types of Offenses: The Commission anticipates that the Sentencing Guidelines will have a substantial impact on types of offenders in institutions. There will be more murderers, sex offenders, robbers, assaulters, and other serious person offenders than in the past. Over a five year period the Commission estimates that the proportion of person offenders in state institutions should increase from about 58% to 74%. The proportion of property offenders is expected to increase from about 23% to 29% of the state prison population.

1. Chapter 723, Sec. 11 (244.22).

2. Arthur D. Little, Inc., op. cit.

- Commitment Rates: The Commission anticipates that commitment rates for both male and female felons will not change significantly. The commitment rate for male felons now is 21.9% and is expected to decrease to 20.7% under the Guidelines. The female felon commitment rate of 9.2% is not expected to change. Commitment rates are also not expected to change for racial groups. However, the Guidelines are anticipated to reduce the difference between Black and White commitment rates. It is expected that the Guidelines will have a differential impact on younger and older groups of offenders. The commitment rate for younger offenders (18-23) should decrease by 1.7%. Older offenders, it is projected, will be committed more frequently under the Guidelines than in past practice. The durations for the older offenders committed will be longer and therefore, the prison population is projected to be somewhat older than the present one.
- Terms of Incarceration: The Commission anticipates an increase in the proportion of offenders in prison serving terms longer than five years (from 18% to 26%) and a decrease in the proportion of offenders serving terms of three to five years (from 40% to 30%). The proportion of offenders serving very short terms and those serving between one and two years are expected to remain at the current level.

In summary, the Minnesota Sentencing Commission expects the prison population under the Guidelines to be slightly older, serving more time, and comprised of more person offenders.

k. Implementation

Now that the Guidelines have gone into effect May 1, 1980, the Commission will be involved in implementation in several ways: (1) The Commission will, in conjunction with other criminal justice agencies, provide training to individuals affected by the Guidelines, e.g., judges, probation officers, public defenders, prosecutors, etc. (2) The Commission will monitor sentencing practices through reporting systems and modify, if appropriate, particular sentencing guidelines. The monitoring will also allow the Commission to assess whether projected prison populations under the Guidelines will remain consistent with available correctional resources. (3) The Commission will undertake evaluation studies including pre- and post-guideline sentencing disparity study; a post guideline plea negotiation study, and a study on the impact of the guidelines on criminal justice resources. (4) The Commission will serve as a clearinghouse on sentencing practices and conduct research on sentencing-related issues. (5) Finally, the Commission will make legislative recommendations regarding improvements in criminal procedures and changes in criminal status. The Commission, in submitting its report to the Legislature, has already made recommendations for three legislative changes which are necessary to effectively implement the Guidelines. These are:

- Provision of certain juvenile history information for adult sentencing purposes upon request by the district court;
- Development of minimum standards for the content of pre-sentence investigations; and
- Provision of adequate data to the Commission for monitoring purposes.

4. Conclusion

The Minnesota experience represents a strong example of the strengths of a sentencing commission and sentencing guidelines. The strengths can be identified in three areas: (1) the legislation establishing the Commission, (2) the process of Guidelines development, and (3) the Guidelines themselves. The strengths in the first two areas -- conditions and the means by which the Guidelines are developed -- contributed significantly to the overall strengths of the final product, the Guidelines.

a. Legislative Mandate

An advantage of the legislation establishing the Commission is that it is explicit on several key points: the legislation mandates that the Commission is to consider an appropriate combination of offense and offender characteristics in developing guidelines. This mandate represents a statement of criminal justice philosophy under which the Commission can then proceed. The Minnesota Legislature also clearly stipulated that the Commission consider current sentencing and release practices in defining guidelines. This helps to assure that guidelines will be in keeping with, but not confined, by present levels of tolerance and practices within the state and will therefore be politically feasible to adopt. In addition, the Minnesota Legislature mandated the Commission to consider available correctional resources in developing guidelines. This represents a recognition on the part of the Legislature that sentencing practices cannot be altered without causing ramifications in the system, particularly in regard to bed space in state correctional facilities. Guidelines developed in the absence of cost and facility considerations can cause havoc with the overall system's ability to respond.

By legislating these points, the Minnesota Legislature had a critical impact, from the start on the nature of the eventual guidelines. The Legislature created a Commission that had a set of premises from which to begin and upon which to build reform.

Other advantages of the Minnesota Sentencing Commission's enabling legislation relate to the structure and powers of the organization. The Commission is composed of a representative group of the judicial, prosecutorial, and correctional functions. Citizens are also included. This has the advantage of involving the key players in the system early on in the change process. The Commission is empowered to monitor and evaluate

the implementation of the Guidelines. This allows the Commission to remain as a reviewer of sentencing practices and resulting impact on the system and to make modifications as warranted.

The Legislature also clearly supports the Guidelines in the enabling legislation by requiring written documentation of deviations from the Guidelines by trial judges. Without this legislative endorsement, the Guidelines could be used indiscriminately or ignored entirely by the judiciary.

Finally, although the enabling legislation grants broad powers to the Commission to develop guidelines, it also gives final veto power over the Guidelines to the Legislature. This protects the state from a set of Guidelines that are untenable. The legislation is less specific, however, as to whether the Guidelines must be adopted in toto or whether they may be modified in part by the Legislature .

b. Process of Guidelines Development

The Minnesota experience reflects a collaborative effort of research and policy development. Policy decisions were based upon an understanding of research in the field, analysis of current state practices, and projections of impact. To be sure, political realities and personal philosophies played some role in policy decisions. But deliberate efforts were made by the Commission to base decisions upon factual and research data. Computer simulation models were employed, for example, to project commitment levels based on various sentencing schemes.

The process of developing guidelines was also characterized by active involvement of Commission members. For example, in conjunction with staff, Commission members discussed and prioritized offenses by severity. The Commission deliberated, argued, and decided. They were not a "rubber stamp" organization.

c. Guidelines

The Minnesota Guidelines have clearly stated goals: uniformity, equity, and certainty. The actual articulation of these goals is a strength. Through the use of the Sentencing Guidelines Grid, which combines both offender and offense characteristics, these goals should be achieved. The Guidelines have the further advantage of restricting the range of judicial discretion without eliminating consideration of mitigating and/or aggravating circumstances. An additional strength of the Guidelines is their simplicity -- they are succinct, straightforward, and eminently readable.

The true success of the Minnesota Sentencing Guidelines remains to be seen. Of particular interest will be the accuracy of the Commission's projections of state correctional institution population levels and composition. The elimination of the parole release decision and its impact, if any, on inmate behavior, will also be of interest. In addition, attention should be paid to the number of sentences deviating from the presumptive sentence and the reasons for deviation. Finally, the Commission will want to examine the nature of plea bargaining and defendant decisions to determine any unexpected trends.

B. PENNSYLVANIA

Pennsylvania is in the preliminary stages of preparing sentencing guidelines. The Legislature established a Commission on Sentencing in 1978, but the Commission has yet to develop guidelines.¹ The experience in Pennsylvania is nonetheless instructive for California in that it offers another example of enabling legislation mandates and directions given to a state sentencing commission. Specifically, the Pennsylvania legislation speaks to a general standard of sentencing that incorporates public protection, retribution, and rehabilitation. It also contains enforcement clauses for following guidelines and has provisions on:

- Composition and organization of the commission
- Powers and duties of the commission
- Adopting and promulgating the guidelines, and
- Appellate review of sentences.

The Pennsylvania enabling legislation is more explicit than Minnesota's in defining the content of the guidelines and the means for their adoption (including public hearings). However, the Pennsylvania Legislature retains the power to reject only in toto the guidelines.

1. Background

Senate Bill No. 195, passed on November 26, 1978, established a Commission on Sentencing in Pennsylvania. The legislation directs the Commission to develop and adopt initial sentencing guidelines within 18 months of the first meeting of the Commission. The Commission, however, is seeking an extension of this deadline.

The Pennsylvania Commission on Sentencing is composed of 11 members with appointments lasting for either two years or one year. The membership, and the source of appointment is as follows:

- Two members of the House of Representatives, with no more than one from the same political party, are appointed by the Speaker of the House of Representatives.
- Two members of the Senate, with no more than one from the same political party, are appointed by the President Pro Tempore of the Senate.
- Four justices or judges of a court of record are appointed by the Chief Justice of the Supreme Court.

1. Act No. 1978-319 amending Title 18 (Crimes and Offenses of the Pennsylvania Consolidated Statutes). Much of the material in this section is derived directly from the Act.

- A district attorney, a defense attorney, and either a professor of law or a criminologist are appointed by the Governor.¹

The Chairman of the Commission is elected by a majority vote of the membership and the Commission must meet not less frequently than quarterly.

The Commission is empowered with the usual authorities needed to carry out its mandate, e.g., "establish general policies, enter into contracts, request information with other Commonwealth agencies, etc." Additionally the Commission has the power to:

- Issue invitations requesting the attendance and testimony of witnesses and the production of any evidence that relates directly to a matter with respect to which the Commission or any Commissioner of the Commission is empowered to make a determination under this subchapter;
- Establish a research and development program within the Commission for the purpose of:
 - Serving as a clearinghouse and information center for the collection, preparation, and dissemination of information on Commonwealth sentencing practices; and
 - Assisting and serving in a consulting capacity to State courts, departments, and agencies in the development, maintenance, and coordination of sound sentencing practices;
- Collect systematically, the data obtained from studies, research, and the empirical experience of public and private agencies concerning the sentencing processes;
- Publish data concerning the sentencing processes;
- Collect systematically, and disseminate information concerning sentences actually imposed;
- Collect systematically, and disseminate information regarding effectiveness of sentences imposed; and
- Make recommendations to the General Assembly concerning modification or enactment of sentencing and correctional statutes which the Commission finds to be necessary and advisable to carry out an effective, humane, and rational sentencing policy.²

1. Title 18, Pennsylvania, C.S.C., Sec. 1318(a).

2. Title 18, Pa. C.S.C. Sec. 1382(a)(1)-(12).

Finally, the Commission is directed to report annually to the General Assembly, the Administrative Office of the Pennsylvania Courts, and the Governor on the activities of the Commission.¹

Unlike Minnesota, the Pennsylvania Legislature established specific procedures for adoption of the Guidelines. Prior to adoption, the Commission must publish the guidelines in the Pennsylvania Bulletin and hold Public Hearings not earlier than 30 days and not later than 60 days thereafter to afford an opportunity for the following persons and organizations to testify:

- Pennsylvania District Attorneys' Association
- Chiefs of Police Associations
- Fraternal Order of Police
- Public Defenders Organization
- Law school faculty members
- State Board of Probation and Parole
- Bureau of Corrections
- Pennsylvania Bar Association
- Pennsylvania Wardens Association
- Pennsylvania Association on Probation, Parole, and Corrections
- Pennsylvania Conference of State Trial Judges
- Any other interested persons or organizations.

Following public hearings, the Commission must adopt the guidelines by a majority vote and submit them to the General Assembly. The General Assembly may, by concurrent resolution, reject in their entirety any initial or subsequent guidelines adopted by the Commission within 90 days of their publication in the Pennsylvania Bulletin and any subsequent guidelines adopted by the Commission shall become effective 90 days after publication in the Pennsylvania Bulletin unless rejected in their entirety by the General Assembly by a concurrent resolution.

2. Guidelines

Guidelines for sentencing in Pennsylvania are in draft and were not available to researchers for this study.² There is, however, language in the enabling legislation which indicates the philosophical premise on which the guidelines are to be based and particular characteristics the guidelines are to incorporate.

The statutes stipulate that in imposing sentences, the court "shall follow the general principle that the sentence imposed should call for confinement that is consistent with the protection of the public, the gravity of the offense as it relates to the impact of the life of the victim and on the community, and the rehabilitative needs of the defendant." This standard combines the objectives of incapacitation, retribution, and rehabilitation.

1. Title 18, Pa. C.S.C. Sec 1382(a)(1)-(12) and (b).

2. The Executive Director of the Pennsylvania Commission on Sentencing, indicated to the Arthur D. Little study team that guidelines were not yet available for distribution.

The statutes also stipulate that the guidelines will be considered by the court in sentencing both felons and misdemeanants. The Guidelines, according to the legislation shall:

- (1) Specify the range of sentence applicable to crimes of a given degree of gravity,
- (2) Specify a range of sentences of increased severity for defendants previously convicted of a felony or felonies, or convicted of a crime involving the use of a deadly weapon, and
- (3) Prescribe variations from the range of sentences applicable on account of aggravating or mitigating circumstances.¹

The final mandate in the legislation provides for some enforcement over the judiciary to assure use of the guidelines. The court is specifically directed to consider the guidelines for sentencing and "in every case where the court imposes a sentence outside the sentencing guidelines ... the court shall provide a contemporaneous written statement of the reason or reasons for the deviation from the guidelines." The legislation continues by stating that, "failure to comply shall be grounds for vacating the sentence and resentencing the defendant."²

3. Characteristics

The enabling legislation addresses some of the key issues which must be included in any sentencing model. Some of the issues which are not addressed by the legislation will be areas of inquiry for the Commission.

a. Uniformity, Equity, and Certainty

Without the guidelines, it is not possible to determine the degree to which Pennsylvania will achieve these sentencing objectives.

b. Mandatory Sentences

The legislation establishes an interim guideline for the minimum sentencing of certain repeat offenders. Until sentencing guidelines adopted by the Pennsylvania Commission on Sentencing become effective, "when any person is convicted in any court of this Commonwealth of murder of the third degree, voluntary manslaughter, rape, involuntary deviate sexual intercourse, robbery, aggravated assault as defined in Title 18, Pa. C.S. 2702(a)(1) (relating to aggravated assault) involving the use of a firearm, arson or kidnapping, or of attempt to commit any of these crimes, and when that person has been previously convicted in this Commonwealth, or any other state or the District of Columbia, or any Federal Court, of any of the offenses set forth in this section or their

1. Title 18, Pa. C.S.C. Sec. 1384(1)(2)(3).

2. Title 18, Pa. C.S.C. Sec. 1321(b).

equivalent, the sentencing court shall consider as a guideline in imposing sentence that such person be sentenced to a minimum term of not less than four years' imprisonment."

In any case where a court sentences a person subject to the provisions of subsection (a), to a term of less than four years imprisonment, the court shall provide a contemporaneous written statement of the reason or reasons for the sentence. In addition, the defendant or the Commonwealth may appeal as a right the legality of a sentence imposed pursuant to the provisions of appeal.

c. Multiple Crimes

Under Pennsylvania law, a defendant convicted of multiple crimes may receive concurrent or consecutive sentences based upon the discretion of the judge. The Commission on Sentencing may well make recommendations on this issue.

d. Good Time

Pennsylvania does not have provisions for good time.

e. Parole

Pennsylvania at present empowers the Parole Board to make release decisions and supervise parole. It does not appear at this time that the Commission will address this practice.

f. Appeals

The General Assembly included in the Commission's enabling legislation statutes giving the defendant and the Commonwealth the right to appeal the legality of the sentence. The defendant or the Commonwealth may file a petition for allowance of appeal of the discretionary aspects of a sentence for a felony or a misdemeanor to the appellate court that has initial jurisdiction for such appeals. Allowance of appeal may be granted at the discretion of the appellate court where it appears that there is a substantial question that the sentence imposed is not appropriate under this Chapter.

The appellate court shall vacate the sentence and remand the case to the sentencing court with instructions if it finds:

- (1) The sentencing court purported to sentence within the sentencing guidelines but applied the guidelines erroneously;
- (2) The sentencing court sentenced within the sentencing guidelines but the case involves circumstances where the application of the guidelines would be clearly unreasonable; or
- (3) The sentencing court sentences outside the sentencing guidelines and the sentence is unreasonable.

In reviewing the record, the appellate court shall have regard for:

- (1) The nature and circumstances of the offense and the history and characteristics of the defendant,
- (2) The opportunity of the sentencing court to observe the defendant, including any pre-sentence investigation,
- (3) The findings upon which the sentence was based, and
- (4) The guidelines promulgated by the Commission.

g. Impact

The Pennsylvania Commission on Sentencing has been collecting baseline data on sentencing practices in the state. It is anticipated that this information will be used to assess the impact of the guidelines in terms of commitments to state institutions.

4. Conclusions

Although the Commission on Sentencing has not yet released its initial guidelines, lessons can be learned from the legislation passed by the General Assembly to establish the Commission. The legislation provides direction in terms of defining the philosophical basis for sentencing. It also mandates cooperation from the courts in using the guidelines. The legislation also provides for public hearings and wide review and comment of the initial guidelines. This has the advantage of educating the public and involved professionals in the purpose and content of the guidelines. It also provides for gaining a diversity of inputs in a systematic way.

Finally, the Commission is empowered by the Legislature to carry out additional functions (research, data collection, recommending code changes) that are critical to the successful development and implementation of guidelines.

C. NEW JERSEY

New Jersey was the first state to implement sentencing guidelines on a statewide basis. Although sentencing guidelines have been implemented and evaluated on the county or city level, it has only been in recent years that attempts have been made on the state level. Essex County, New Jersey was one of the local jurisdictions involved in an original National Feasibility Study on Sentencing Guidelines. From the experience in Essex County, the judiciary decided to develop and implement guidelines on the state level to reduce unwarranted discretion by providing some guidance to the judges. The first guidelines were adopted by the judges in October 1978.

1. Background

The New Jersey judiciary began to investigate the sentencing process as early as 1973, when at the Annual Judges' Seminar (now called the New Jersey Judicial College) an investigation on the use of plea bargaining and sentencing practices began. The presentation of hypothetical cases to the approximate 90 judges and their subsequent sentencing decisions on those cases revealed the wide spectrum of possible sentencing decisions. These results, coupled with findings in subsequent years that few judicial sentences were reversed or even modified, provided an impetus to pursue guidelines on a state level.¹

With the New Jersey State Law Enforcement Planning Agency providing the funds for the project, the project is based in the Administrative Office of the Court. A five-member staff is supplemented by consultants and other temporary employees. There is also a judicial steering committee which provides policy guidance to the project. The project began in 1976 with the first guidelines devised and implemented in October 1978. These guidelines were based on data collected on almost 16,000 cases which represented all cases sent during a one-year period. Between 800 and 1000 factors on each case were collected and analyzed.

The October 1978 Guidelines, subsequently revised, dealt with 11 categories that covered approximately 85% of all sentenced cases. Five additional categories were devised in March 1979.

However, in 1978 the Legislature adopted a new criminal code which had an effective date of September 1979. The code classified the offenses into four classes, establishing ranges and a presumptive sentence for each class. The presumptive sentences are the midpoint of the ranges. "Preponderance of aggravating factors or preponderance of mitigating factors" would favor a higher or lower term than the presumptive sentence, but it must still be within the range of the class. Case law is presently emerging which is interpreting the mandates and legislative intent of the new code.

The new law also created a Criminal Disposition Commission (N.J.S. 2C:48) which must report biannually on the disposition of criminal offenders. The charge to the Commission is quite broad:

"It shall be the duty of the Commission to study and review all aspects of the criminal justice system relating to the disposition of criminal offenders, including but not limited to terms of imprisonment, fines, and other monetary punishments, parole, probation, and supervisory treatment (N.J.S. 2C:48-2)."

The composition of the 11 member commission is mandated by law:

1. See transcript of Seminar, Implementation of Statewide Sentencing Guidelines, October 23, 1978.

- Two members of the Senate of different parties, appointed by the President of the Senate;
- Two members of different parties of the General Assembly, appointed by the Speaker of the General Assembly;
- The Chief Justice of the Supreme Court, or his designee;
- The Attorney General, or his designee;
- The Public Advocate, or his designee;
- The Chairman of the Parole Board, or his designee;
- The Commissioner of the Department of Corrections, or his designee; and
- Two public members appointed by the Governor.

The legislative members of the Commission serve for terms "consecutive with their respective terms as members of the House of the Legislature from which they are appointed." The public members serve for a period of three years. The nature of the relationship of this Commission and the Sentencing Guidelines with the judiciary is presently not fully established. The important link, however, will be the Chief Justice.

Another recent legislative change is the passage of the Parole Act of 1979 (P.L. 1979, Chapter 441) which in effect creates "presumptive" release dates. These release dates called primary parole eligibility dates are either "the judicial or statutory mandatory minimum, or one-third of the sentence imposed where no mandatory minimum has been imposed." The adult inmate is released at the primary parole eligibility date unless "by a preponderance of the evidence, there is a substantial likelihood that the inmate will commit a crime under the laws of this State if released on parole at such time."

2. Guidelines

As stated in the Chapter I, there is no clear consensus of the definition of sentencing terms. Equally, there is no consensus on the definition of guidelines. Some argue that a list of aggravating and mitigating circumstances is not a guideline system but rather criteria for decisions. Guidelines are usually seen as either the Wilkins-Gottfredson matrix, or a sequential model in which one adds or subtracts from a base time. The New Jersey guidelines do not fit either guideline model.

The "guidelines" in New Jersey are percentages and medians of types of sentences given for similar offenders convicted of similar offenses. The first set of guidelines covered about 85% of the cases. The

supplemental guidelines covered the remaining types of cases sentenced in 1976-77. For the purposes of this analysis, only the "major offenses" will be discussed.¹

The guidelines utilize five dimensions: Criminal History; Amenability to Non-Custodial Supervision, Exacerbating Factors; Community Background; and, Actions Since Arrest. However, not all offense categories use all five dimensions.² The following table, developed by Sparks and Stecher, illustrates this point. Each dimension can have a score ranging from -1 to 0, 0 to +1, or 0 to 2. The definitions of the items vary from one offense category to the next, as the sentencing sheets for breaking and entering and robbery illustrate. (See Exhibits IV-3 and IV-4, following Table IV-1.) Examining the dimension, "Amenability to Non-Custody Supervision," one notices that an offender in the robbery category would be scored +1 on this dimension if the offender was "under the criminal justice supervision at time of the offense, or the pre-sentence report indicates that the offender is drug dependent." An offender in the breaking and entering category would also be scored a +1 on this item for the same reasons or if there was a prior probation "that was negatively evaluated." Therefore, cases with identical scores may actually be scored on different dimensions on different factors within a dimension and different definitions within a factor.

Once the dimension is scored, each score is placed in the "configuration section" of the sentencing sheet. Taking this configuration, one then proceeds to a "cell locator" sheet. The cell locator sheet for breaking and entering category is presented in Exhibit IV-5. From this sheet one matches the configuration of the particular score and finds the "cell number." For this discussion we will use the configuration 1, 0, 0, 0, 0 which gives us the cell number 32. From this, we next turn to the matrix for this category. (See Exhibit IV-6.) Breaking and entering has a 48 cell guideline matrix. We first attain the cell score by adding the scores of all the dimensions. In our example, the cell score is +1, that is, $1+0+0+0+0 = +1$. Turning to the matrix, we find the cell group that has a score of 1. (See Exhibit IV-6.)³ There are 14 possible combinations of the configurations that have a cell score of +1. Taking the cell number (in our example, 32) we then find the guideline information. In our example, there are 81 cases, of whom 32% are incarcerated. One was sent to the state prison for five years; seven were sentenced to an indeterminate sentence at either the Youth Reception Center or the Correction Center (median term of five years); 18 were sent to a county jail with a median term of 5.5 months; and in counties in which the maximum jail term can exceed 18 months, none were incarcerated in

1. See Supplemental Report of the Sentencing Guidelines Project to the Administrative Director of the Courts.

2. See Richard F. Sparks and Bridget A. Stecher, The New Jersey Sentencing Guidelines: An Unauthorized Analysis, (paper presented at the Annual Meeting of the American Society of Criminology, Philadelphia, November 8, 1979).

3. Exhibit IV-6 is the only portion of the matrix for breaking and entering that is relevant for the example.

TABLE IV-1

ATTRIBUTE INCLUSION BY OFFENSES
OVERVIEW OF NEW JERSEY SENTENCING GUIDELINES

Offense Type	Criminal History	Amenability to Non-custodial Supervision	Number of Exacerbating Factors		Community Background	Actions Since Arrest	Number of Cells in Matrix**
				* # Needed			
Break and Enter	X	X	6	1	X	X	48
Robbery	X	X	6	3	X	X	48
Assault	X	X	4	1	X	X	48
Drug Sale	X	X	6	2	X	X	48
Drug Possession	X	X	5	1	X	X	48
Larceny	X	X	10	2	X	X	48
Weapons	X	X	4	2	X		24
Fraud	X	X	3	1	X	X	48
Forgery	X		1	1	X		12
Rape	X		4	1	X	X	16
Lewdness	X		4	2	X		8

* Number of factors needed for a rate score of 1.

** Total number of cells = 396.

EXHIBIT IV-3

ADMINISTRATIVE OFFICE OF THE COURTS
SENTENCING GUIDELINES

Sentence Sheet
Breaking and Entering or Entering Category

OFFENDER _____

CASE # _____

JUDGE _____

DATE OF SENTENCE _____

SCORE (Circle
appropriate box)

1. CRIMINAL HISTORY

(Note: All totals include adult convictions or juvenile petitions sustained. If more than one score is possible, circle highest score.)

- A. Total convictions for any offense more than 5, or total convictions for crimes more than 3;, or total convictions for similar crimes more than 2, or total incarcerations more than 1. 2
- B. Total convictions for any offense more than 1 but less than 6, or total convictions for crimes more than 0 but less than 4, or total convictions for similar crimes is 1 or 2, or total incarcerations is 1. 1
- C. None of the above. 0

2. AMENABILITY TO NON-CUSTODIAL SUPERVISION

- A. Under criminal justice supervision at time of offense, or prior probation was negatively evaluated, or pre-sentence report indicates that offender is drug dependent. 1
- B. None of the above. 0

IV-32

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EXHIBIT IV-3 (Continued)

3. EXACERBATING FACTORS

A. Offense includes:
check if present ()

- i) Offender convicted also on weapons charge
- ii) Goods stolen included those of only sentimental value
- iii) No strong need for money, money was "extra" or for "fun" only
- iv) Person was apparently present in the structure entered
- v) Offender committed multiple breakings and entries, consider convictions only
- vi) Offense included property damage over \$100

Total _____ If total of checks is 1 or more, score 1 1

B. Offense did not include 1 or more of the above 0

4. COMMUNITY BACKGROUND

A. Offender background includes the following conditions:

- i) Offender employed, in military, or in school at time of offense, and has a job, military, or school to go to after sentencing

- or -

- ii) Offender contributes to the support of other persons 1

B. None of the above. 0

EXHIBIT IV-3 (Continued)

5. ACTIONS SINCE ARREST

- A. Offender has voluntarily entered a drug or alcohol treatment program, secured employment, made restitution, sought psychiatric help, entered school, sought skills or trade training or otherwise attempted to recitify past mistake, AND has entered a guilty plea. 1
- B. Offender has not met both of the above conditions 0

Configuration. Place circled score below appropriate factor numbers

1 2 3 4 5

Go to cell locator sheet for cell number

Cell Number

Cell Score (add scores)

Guideline information is located on guideline matrix as the above cell and score numbers. Judges will also receive individual cell sheets with each pre-sentence report.

If the judge feels the sentence deviates from the guidelines, please state reason for same.

EXHIBIT IV-4

ADMINISTRATIVE OFFICE OF THE COURTS
SENTENCING GUIDELINES

Sentence Sheet
Robbery Category

OFFENDER _____

CASE # _____

JUDGE _____

DATE OF SENTENCE _____

SCORE (Circle
appropriate box)

1. CRIMINAL HISTORY

A. Total adult convictions or juvenile petitions sustained for any offense is more than three, or total adult convictions or juvenile petitions sustained for crimes is more than one or total adult convictions or juvenile petitions sustained for similar offenses is one or more, or total adult or juvenile incarcerations is one or more.

2

B. Total adult convictions or juvenile petitions sustained for any offense is one, two, or three, or total adult convictions or total adult convictions or juvenile petitions sustained for crimes is equal to one.

1

C. None of the above.

0

2. AMENABILITY TO NON-CUSTODIAL SUPERVISION

A. Under criminal justice supervision at time of offense, or pre-sentence report indicates that offender is drug dependent.

1

B. None of the above.

0

EXHIBIT IV-4 (Continued)

3. EXACERBATING FACTORS

A. Offense includes:

check if present ()

- i) Offender convicted also on weapons charge
- ii) Offender convicted on multiple counts of one of the statutes in this category
- iii) Multiple offenders involved in the robbery
- iv) Amount of cash involved in the robbery was greater than 200
- v) Robbery involved any forceful physical contact or injury between offender and victim
- vi) robbery took place in a street (public passageway) or in a commercial establishment

Total If total of checks is 3 or more, score 1 1

B. Offense did not include 3 or more of the above 0

4. COMMUNITY BACKGROUND

A. Offender background includes the following conditions:

i) Offender has a job, military, or school to go to after sentencing 1

B. None of the above. 0

5. ACTIONS SINCE ARREST

A. Offender has voluntarily entered a drug or alcohol treatment program, secured employment, made restitution, sought psychiatric help, entered school, sought skills or trade training or otherwise attempted to rectify past mistake, AND has entered a guilty plea. 1

B. Offender has not met both of the above conditions 0

IV-36

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EXHIBIT IV-4 (Continued)

Configuration. Place circled score below appropriate factor numbers

1 2 3 4 5

Go to cell locator sheet for cell number

Cell Number

Cell Score (add scores)

Guideline information is located on guideline matrix as the above cell and score numbers. Judges will also receive individual cell sheets with each pre-sentence report.

If the judge feels the sentence deviates from the guidelines, please state reason for same.

EXHIBIT IV-5

ADMINISTRATIVE OFFICE OF THE COURTS
 SENTENCE DISPARITY PROJECT:
 48-CELL LOCATOR SHEET

Criminal History	Amenability to Non-custodial Supervision	Exacerbating Factors	Community Background	Actions Since Arrest	Cell Number
2	1	1	-1	-1	1
2	1	1	-1	0	2
2	1	1	0	-1	3
2	1	1	0	0	4
2	1	0	-1	-1	5
2	1	0	-1	0	6
2	1	0	0	-1	7
2	1	0	0	0	8
2	0	1	-1	-1	9
2	0	1	-1	0	10
2	0	1	0	-1	11
2	0	1	0	0	12
2	0	0	-1	-1	13
2	0	0	-1	0	14
2	0	0	0	-1	15
2	0	0	0	0	16
1	1	1	-1	-1	17
1	1	1	-1	0	18
1	1	1	0	-1	19
1	1	1	0	0	20
1	1	0	-1	-1	21
1	1	0	-1	0	22
1	1	0	0	-1	23
1	1	0	0	0	24
1	0	1	-1	-1	25
1	0	1	-1	0	26
1	0	1	0	-1	27
1	0	1	0	0	28
1	0	0	-1	-1	29
1	0	0	-1	0	30
1	0	0	0	-1	31
1	0	0	0	0	32
0	1	1	-1	-1	33
0	1	1	-1	0	34
0	1	1	0	-1	35
0	1	1	0	0	36
0	1	0	-1	-1	37
0	1	0	-1	0	38
0	1	0	0	-1	39
0	1	0	0	0	40
0	0	1	-1	-1	41
0	0	1	-1	0	42
0	0	1	0	-1	43
0	0	1	0	0	44
0	0	0	-1	-1	45
0	0	0	-1	0	46
0	0	0	0	-1	47
0	0	0	0	0	48

EXHIBIT IV-6

ADMINISTRATIVE OFFICE OF THE COURTS
SENTENCING RESEARCH PROJECT

48 CELL GUIDELINES MATRIX

BREAKING AND ENTERING OR ENTERING

	CRIMINAL HISTORY	AMENABILITY TO NON-CUSTODIAL CARE	EXACERBATING FACTORS	COMMUNITY BACKGROUND	ACTIONS SINCE ARREST	CELL NUMBER	SCORE	NUMBER OF CASES	PERCENT INCARCERATED	STATE PRISON		INDETERMINATE		COUNTY TERMS 12 MOS. OR LESS		COUNTY TERMS MORE THAN 12 MOS	
										NUMBER OF CASES	MEDIAN TIME	NUMBER OF CASES	MEDIAN TIME	NUMBER OF CASES	MEDIAN TIME	NUMBER OF CASES	MEDIAN TIME
1	1	1	-1	-1		17	1	27	41%	1	5 yr.	2	5 yr.	6	3.5 mo.	2	18 mo.
2	0	1	-1	-1		9	1	17	41%	None	-	1	5 yr.	5	3 mo.	1	18 mo.
0	1	1	0	-1		35	1	10	40%	None	-	1	5 yr.	3	6 mo.	None	-
1	1	0	-1	0		22	1	28	36%	2	4 yr.	2	5 yr.	6	10 mo.	None	-
2	0	0	-1	0		14	1	17	35%	1	2 yr.	1	5 yr.	4	5 mo.	None	-
0	0	1	0	0		44	1	44	34%	1	5 yr.	7	5 yr.	7	6 mo.	None	-
1	1	0	0	-1		23	1	53	32%	2	5 yr.	4	5 yr.	11	5 mo.	None	-
1	0	0	0	0		32	1	81	32%	1	5 yr.	7	5 yr.	18	5.5 mo.	None	-
2	1	0	-1	-1		5	1	53	25%	4	2.5 yr.	5	5 yr.	3	4 mo.	1	18 mo.
1	0	1	0	-1		27	1	42	24%	1	5 yr.	5	5 yr.	4	5.5 mo.	None	-
1	0	1	-1	0		26	1	34	24%	None	-	4	5 yr.	4	5.5 mo.	None	-
0	1	0	0	0		40	1	11	18%	None	-	2	5 yr.	None	-	None	-
2	0	0	0	-1		15	1	15	13%	1	5 yr.	None	-	1	6 mo.	None	-
0	1	1	-1	0		34	1	3	0%	None	-	None	-	None	-	None	-
TOTALS. ALL CELLS IN THIS SCORE						1		435	30%	14	5 yr.	41	5 yr.	72	5.5 mo.	4	18 mo.

REVISED EFFECTIVE 11/5/79

IV-39

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jail. The above information is considered the primary guideline "which should be observed by the judges." In our example, the guide suggests a non-custodial sanction. A judge may also want to consider cell score information or what is called secondary guidelines. These are the totals at the bottom of each group of cell scores. The judge may also want to review the other groups' total information to compare this group (+1 scores) to other groups within the same offense category.

The guidelines are totally voluntary, and emphasize a descriptive rather than a prescriptive perspective. This emphasis allows the judge to "select" a rationale for his decision. As stated in the first report:

"It should be noted that another benefit of using the dimensional factors is that they approximate more naturally the dimensions a judge will seek in assessing criminal behavior. Therefore, if a crime does not possess the exacerbating factors listed as most influential for that crime, and therefore receives an exacerbating factor score of "0," a judge may find some "other" factor which he feels nevertheless makes the crime a more serious one. He then might assign the higher score and move on to the new cell. The benefit of this procedure would be to allow the judge to deviate from the Guidelines in a structured manner, and still use the Guidelines. Of course, the Guidelines are still advisory only, and judges may deviate in any manner they choose."¹

Some have argued that if the information is merely descriptive, if the "Guidelines" are only advisory with no enforcement procedures, they are really just aggregate data?

3. Characteristics

In New Jersey the Guidelines model does not explicitly consider the sentencing structure. Without an emphasis on prescription, and without any procedures for enforcement, the criminal code mandates or limits are not intertwined with the Guidelines. The judge must consider the Guidelines information in light of the requirements of the criminal code as well as the laws governing parole. The new criminal code and the recently enacted Parole Law provide the judges with more guidance than the previous code. The relationship of these new laws and the Guidelines are presently unknown. The sentencing guideline project will be developing new Guidelines to reflect these changes; however, it is unknown whether the changes will only involve the aggregate data or whether additional procedural changes will also be included. Without an explicit, or even implicit, consideration of the sentencing structure it is difficult to describe the "characteristics" of the Guidelines, as stated earlier.

1. John P. McCarthy, Jr., Project Director, Report to the Sentencing Guidelines Project to the Administrative Director of the Courts, page 33.

It is virtually impossible to describe whether the Guidelines ensure any uniformity of sentencing. Besides the definitional problems of disparity, there is not a base that can be used as a comparative frame of reference. What is the frame of reference in our example? Is it the fact that 32% of the cases were sentenced to prison, or is it that the median terms were five years for state prison, five years for those at the Reception or Correctional Centers, or five and one-half months for county jails? The Guidelines may provide some frame of reference in the old indeterminate sentencing structure, but to evaluate whether it provides some guidance for the judicial discretion is difficult.

The new criminal code may provide more guidance in terms of the maximum, but little else. The new law divides the offenses into four classes with sentencing ranges for ordinary and extended imprisonment, as well as stating presumptive sentence (see Table IV-2 below). However, with provisions in the laws in which the judge can set a mandatory minimum up to one-half of the sentence in certain cases, and with the effect of the new criminal code on good time still unclear, these presumptive sentences may actually be "presumptive maximums."¹

TABLE IV-2

<u>Class</u>	<u>Presumptive Sentence</u>	<u>Ranges</u>	<u>Extended Ranges</u>
1	15 years	10-20 years	20-life
2	7 years	5-10 years	10-20 years
3	4 years	3-5 years	5-10 years
4	9 months	18 month maximum	-

The judge may also deviate from the presumptive sentence if there is finding of aggravating or mitigating factors. Furthermore, the new law gives the judge the right to reduce the first or second degree offenses by one degree if "the mitigating factors substantially outweigh the aggravating factors and where the interest of justice demands..." The evidential standard is a preponderance of the evidence. The judge is also empowered to extend the prison term ranges if an offender is defined as a persistent or professional criminal, or the defendant was paid to commit the crime. The new criminal code may on the surface "limit" judicial discretion but, in fact, still maintains wide discretion. In this model, sentencing guidelines can provide a reference point for the judiciary, but the nature of the New Jersey Guidelines may or may not help to ensure uniformity or equity. Although there is a great degree of specificity, the absence of enforcement procedures with a prescriptive perspective may reduce its usefulness.

1. N.J.S. 2C:43-6b. allows the judge to fix a minimum term for a crime of the first or second degree "...during which the defendant shall not be eligible for parole and which may be up to one-half of the term set...." N.J.S. 2C:43-7b. gives similar authority when extended terms are imposed.

The old criminal code did not have a provision for appellate review of sentencing, so that there was no built-in mechanism for an equity check that was lacking in the Guideline model. The new code changed that. N.J.S. 2C:44-7 states:

"Any action taken by the court in imposing sentence shall be subject to review by an appellate court. The court shall specifically have the authority to review findings of fact by the sentencing court in support of its findings of aggravating and mitigating circumstances and to modify the defendant's sentence upon his application where such findings are not fairly supported on the record before the trial court." (N.J.S. 2C:44-7)

The prosecutor may appeal a decision in which the judge has lowered the offense class for a first or second degree class offense, or if the judge imposes a non-custodial or probationary sentence on an offender convicted of a first or second class offense. At this time it is unknown how effective this appellate review will be.

The guideline system does not specifically mention multiple crimes, good time, or parole. Factors within the dimensions do consider what one would consider mitigating and aggravating circumstances but, as noted before, they vary by offense as well as the degree to which they affect the configuration score.

4. Conclusion

The impact of the New Jersey guidelines are unknown, and will be very difficult to ascertain. What can be learned from the model and experience include the following:

- The effectiveness of the judicial implementation of guidelines may be reduced, if support from the legislature is not obtained. Two sentencing reforms, one on the administrative level, the other on the legislative level, occurred within one year of each other. A systematic and collaborative approach to sentencing reform might have prevented the uncertainty that now faces the sentencing guideline project.
- With an emphasis on description rather than prescription, the Guidelines do not provide a basis for evaluating whether one is achieving the desired goals of uniformity and equity.
- The exclusion of an explicit consideration of such factors as good time, parole, and other statutory provisions and laws in the guideline model allows individual judges to consider these on a case-by-case basis.

- One cannot differentiate between the impact of the Guidelines themselves on the sentencing decision and the judicial interpretation and consideration of these requirements.
- The need for the degree of complexity and specificity of the Guidelines, weighted against the information and guidance obtained, can be questioned. The additional fact that these are not intended to be prescriptive but are merely advisory adds more uncertainty to their effectiveness in reducing discretion.

D. MASSACHUSETTS

The Superior Court of Massachusetts has developed a sentencing guidelines model that is planned to be in operation by the end of 1980.¹ These guidelines attempt to structure the in/out decision, as well as the length of incarceration prior to parole eligibility. A separate and independent sentencing reform movement is presently under way in the Legislature. A Special Joint Committee on Uniform Sentencing and Revision of the Criminal Law Statutes, formed in 1977, plans to develop a new crime classification structure as well as to propose mandatory minimums for certain crimes.² The nature of these revisions and the impact on the judicial sentencing guidelines are presently unknown.

1. Background

In 1978, the Superior Court sought and obtained a grant to develop sentencing guidelines. With money from the Massachusetts Committee on Criminal Justice, the State Planning Agency, and assistance from consultants supported by the Criminal Courts Technical Assistance Project of the American University Law Institute, the sentencing project of the Superior Court has developed a guidelines system that was presented to the judges in mid-April 1980. At that time the judges decided to continue experimenting for another six months.

2. Guidelines

The Sentencing Guidelines project will not release the guidelines until the judges have formally adopted them. However, the general format is known.³ The Guidelines will structure both the in/out decision and

1. Massachusetts is one of the states included in the Evaluation of Statewide Guidelines Project.

2. First and Second Interim Report of the Special Joint Committee on Uniform Sentencing and Revision on the Criminal Law Statute.

3. Material based on discussion with Director of Sentencing Guidelines project.

the length of incarceration to serve prior to parole eligibility. Four factors will be considered: use of a weapon, injury to victim, seriousness of the conviction offense, and the seriousness of prior record. An offender will be scored and an aggregate score will be used as the base term of the sentence. As presently proposed, the final score in months will be the midpoint of the range with a 50% spread on both sides. For example, if the offender receives a score of 15 months, the guideline range will be 7-1/2 to 22-1/2 months. The judges and the project are presently formulating procedures for the guideline application.

3. Characteristics

a. Uniformity, Certainty, and Equity

The uncertainty facing the Guidelines project is the reform movement in the Legislature. The impact of the reforms on the guidelines is unknown, so that whether the guidelines will increase uniformity and equity of sentences is uncertain. However, as presently proposed, any mandatory minimum or parole laws will take precedence over the Guidelines. In effect, the Guidelines will serve as a guide to determine parole eligibility rather than length of incarceration. The purpose of the judicial Guidelines seems to be to reduce unwarranted disparity of parole eligibility. In Massachusetts, as will be discussed in a later section, parole eligibility varies by the length of the minimum term of the sentence, by type of sentence, and by the nature of the crime. The guidelines attempt to structure the determination of the minimum term which, in Massachusetts, is only one aspect in establishing actual prison length.

b. Mandatory Sentences

Besides the mandatory gun law provision, there are other provisions for certain offenses or types of offenders which have legislatively determined terms for parole eligibility. For example, habitual criminals are not eligible for parole until they have served at least one half of their maximum sentence minus good time. As presently proposed, these mandatory statutes will override the guidelines.

c. Multiple Crimes

At this time, it is unknown whether the proposed sentencing Guidelines will have specific provisions and procedures regarding multiple crimes.

d. Good Time

The proposed Guidelines will not explicitly consider good time, although it may have an impact on parole eligibility. In Massachusetts, good time can be earned for good institutional behavior, participation in certain work and educational programs, and donation of blood under certain conditions. Additional good time may be earned by good conduct while confined at a camp. For some types of offenders there are restrictions on the use of good time to reduce the minimum terms.

e. Parole

Parole eligibility dates seem to be the central component of the sentencing guidelines. The terms proposed are basically parole eligibility dates. Besides the mandatory sentences for gun possession, lifers, and other enumerated offenses or offenders, there are at least six categories for parole eligibility:¹

- State Prison, 1/3: State prisoners sentenced for non-violent offenses are eligible at 1/3 of their minimum (minus good time deductions). A minimum of one year must be served.
- State Prison, 2/3: Offenders sentenced to state prison as a result of certain violent offenses are not eligible for parole until 2/3 of their minimum term. (In some cases, certain good time deductions can reduce this minimum.)
- State Prison, 1/3 - 2/3: Some of the offenders who are eligible at 2/3 of their minimums may in certain circumstances be eligible for parole after 1/3 of the sentences. Procedures have been established in which the institutional superintendent, the Commissioner of Corrections, and a majority of the Board must agree to the earlier eligibility date.
- Lifer (excluding first degree murder): These individuals must serve at least 15 years.
- Sexually Dangerous Persons: Criminals committed under civil commitment procedures have special hearings for parole eligibility in their first year and every three years subsequent to the first hearing. The inmate, however, must be parole eligible on his criminal sentence before actual eligibility is considered.
- Indefinite Sentences: Those inmates sentenced to Concord (young, first offenders) or to Framingham (female inmates) receive indefinite sentences with no judicially-set minimums. Parole eligibility is determined by the length of the indefinite sentence and prior adult record. (See Table IV-3, following)

1. See Commonwealth of Massachusetts, Parole Board and Advisory Board of Pardons, Decision-making Guidelines and Procedures for Parole Granting, Parole Revocation and Pardons.

TABLE IV-3

PAROLE ELIGIBILITY IS COMPUTED AS FOLLOWS

	0 Up to 6 Years	6 Years Up to 12 Years	12 Years up to 18 years	18 years & above
No previous criminal commitments other than juvenile or military	6 months or half-time, whichever is less	1 year	18 months	2 years
One or more previous criminal commitments other than juvenile or military	1 year or half-time whichever is less	18 months	2 years	2 years

f. Appeals

At this time no special appeal provisions or mechanism are envisioned for the Guidelines system. Presently, the appeal process is governed by statute and by the rules for criminal procedure. The Appellate Division of the Superior Court has jurisdiction over certain cases, specifically:

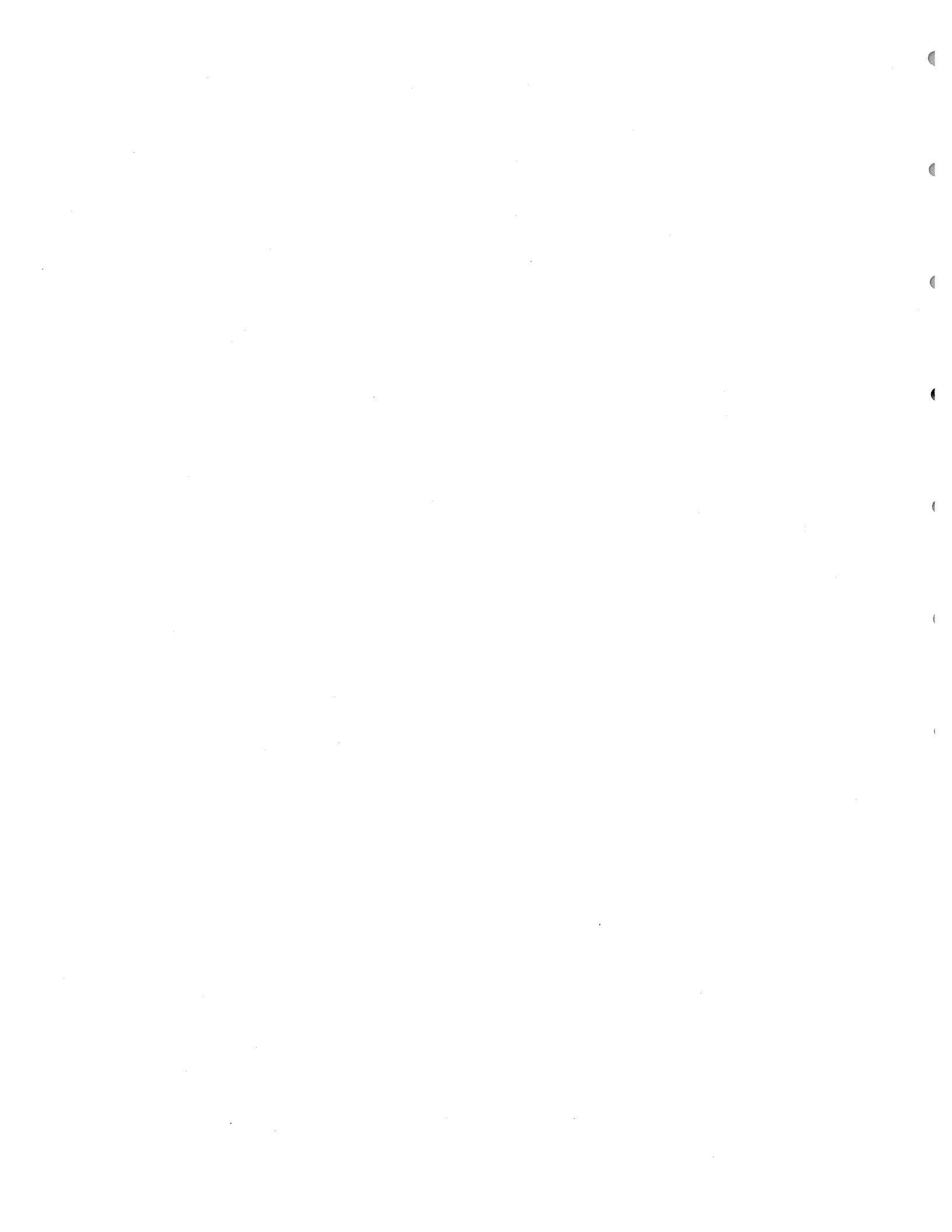
"...for the review of sentences to the state prison imposed by final judgments in criminal cases, except in any case in which a different sentence could not have been imposed, and for the review of sentences to the reformatory for women for terms of more than five years imposed by final judgment in such criminal cases." (Chapter 278, Section 28)

4. Conclusions

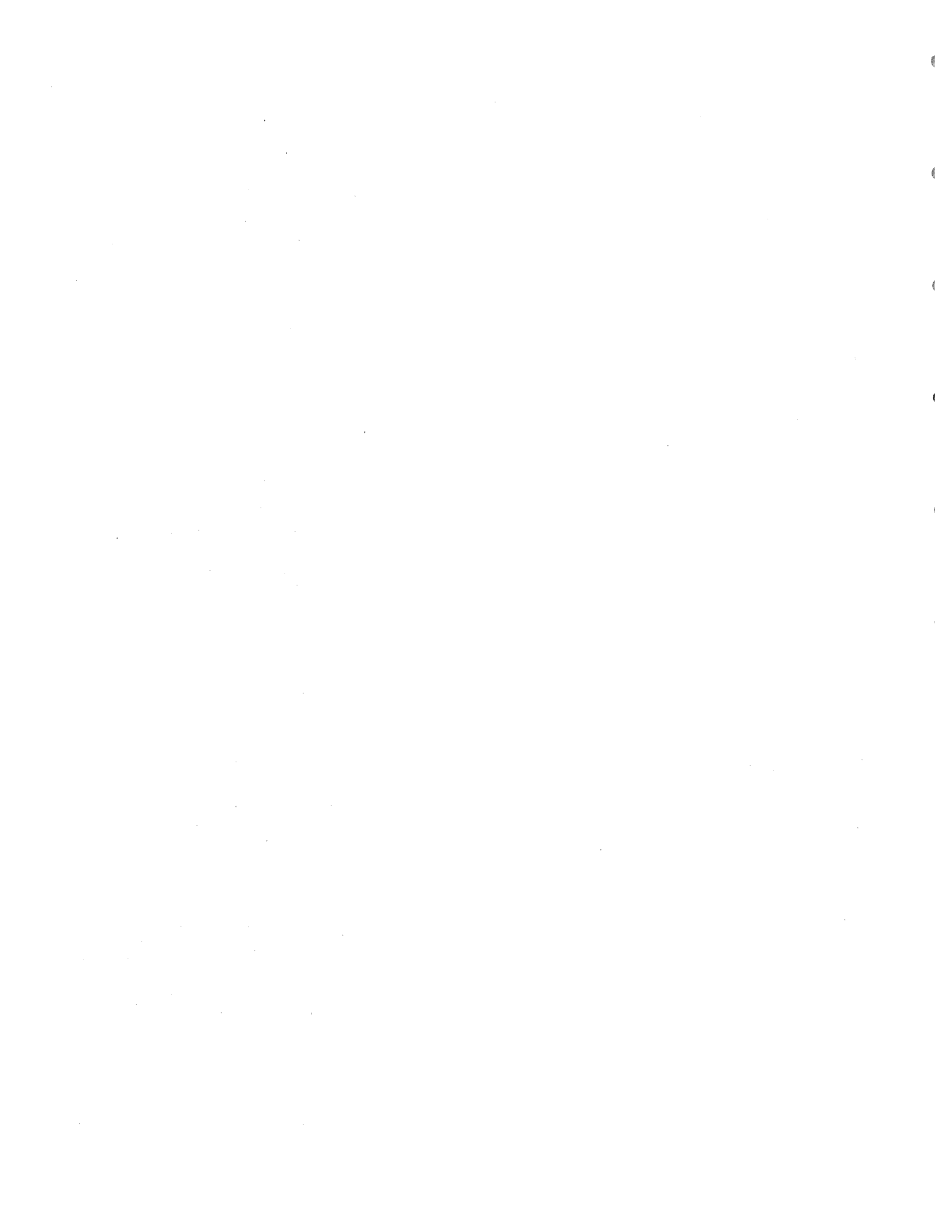
The exact nature of the Sentencing Guidelines in Massachusetts is presently unknown. However, several observations can be made:

- Both the Judiciary and the Legislature have attempted to structure the sentencing scheme in Massachusetts, however, the two reform movements are independent from each other. It is uncertain whether the Massachusetts Sentencing Guidelines project will be in a similar position to the New Jersey judicial project whereby the Guidelines were developed and then the the Legislature restructured the criminal code.

- The wide range (plus or minus 50%) may greatly affect the visibility of "structuring" discretion, if the proposed ranges are adopted.
- As the Uniform Sentencing Committee of Massachusetts has stated, there is a need to modify the sentencing structure on a systematic level rather than on a piecemeal manner. The judicial guidelines will have to consider any newly enacted laws of the Legislature, the rules and procedures of parole eligibility, and the possible effect of good time.



RECOMMENDATIONS



V. RECOMMENDATIONS

This chapter presents Arthur D. Little, Inc.'s, recommendations regarding the alternative of using a sentencing commission. Our recommendations are based upon our understanding of California's experience with determinate sentencing, as well as our knowledge of other states' experiences with sentencing commissions. The chapter is divided into two main sections:

- Recommendations regarding a sentencing commission, and
- Recommendations regarding enabling legislation to establish a sentencing commission.

A. SENTENCING COMMISSION

Frequently, the terms "sentencing commission" and "sentencing guidelines" are used interchangeably when, in fact, they mean different things. A sentencing commission is an organization responsible for developing and monitoring sentencing reforms. Sentencing guidelines are one possible vehicle for reform. Most sentencing commissions have been established primarily to develop guidelines.

Arthur D. Little, Inc., has examined in-depth the advisability of California establishing a sentencing commission. We have examined the feasibility of California developing sentencing guidelines as a separate question.

In analyzing both the advisability and feasibility of establishing a sentencing commission for California, Arthur D. Little, Inc., examined three critical areas: (1) literature in the field; (2) other jurisdictions' experience with sentencing commissions and guidelines; and (3) California's present experience with determinate sentencing law (DSL).

1. Literature

Most recent literature generally supports the concept of a sentencing commission: the American Bar Association standards; The Model Sentencing Act; and Frankel, Zalman, and Tunry have all addressed the advantages of a sentencing commission which develops sentencing guidelines. The major advantages of a well established sentencing commission cited include:

- The complexity of the criminal justice system can be considered.
- A systematic approach to the criminal justice process and its many components can be utilized.
- The commission is less vulnerable to direct political pressures.

- The commission will have the time, the expertise, and manpower to develop sentencing reform.
- The commission will be able to monitor and develop a feedback process that can be utilized to change sentencing reforms without the necessity for continual legislative action.
- The commission will be able to balance flexibility and uniformity in a better fashion than is presently available in most determinate models.

2. Other States

Although there is a growing movement towards the guideline concept through the formation of sentencing commissions, there is no data presently available that evaluates the concept on a statewide basis. The evaluation of local jurisdiction sentencing guidelines, implemented in Denver and Philadelphia, and statewide guidelines, implemented in Massachusetts, will be completed by the end of the year. However, these evaluations and other ongoing research are examining sentencing guidelines that are voluntary. Only Minnesota and Pennsylvania have mandated guidelines and these are by the Legislature. Experience thus far has shown that where there are voluntary guidelines, not all judges participate in the development of the guidelines, nor utilize the guidelines. Many of these systems on the state level are considered merely descriptive guides to the judges, rather than prescriptive.

Minnesota, which has proceeded further with their commission than any other state, only put their guidelines into effect on May 1, 1980. Therefore, we cannot predict, based on other states' experiences, what the impact of a sentencing commission or guidelines will be in California on the goals of certainty, uniformity, and proper case-by-case discretion. The previous chapter described the sentencing commission and guideline development activities of other states, but the actual implementation, performance, and impact remains to be seen.

California should closely monitor the progress of the studies referred to in Chapter III, but more importantly, the development and performance of Minnesota and Pennsylvania, which have guideline mandates.

3. California Status Quo

In addition to achieving the goals of certainty, uniformity, and proper discretion through sentencing reform, a sentencing commission may eliminate or reduce problems which beset the general criminal justice system. Arthur D. Little, Inc., believes that California is presently experiencing difficulties related to sentencing that may be alleviated by a sentencing commission. These problems are discussed below.

a. Overcrowding

Both the California Department of Youth Authority (CYA) and especially the California Department of Corrections (CDC) are experiencing overcrowding in their institutions. Recent Department of

Corrections estimates have indicated that by the end of 1979 all vacant state institutional beds in prisons will be filled and approximately 2000 inmates will be double celled in cells designed for only one occupant. The County Justice System Subvention Program (AB 90) was passed by the Legislature in 1977 to increase selectivity of offenders retained in the community and thereby reduce commitments to state institutions. However, counties have increased commitments to both CYA and CDC over the past three years. By way of example, the number of first commitments to Department of Corrections was 53.5% higher in fiscal year 1979 than the average number of first commitments for fiscal years 1975-1977, and first commitments to the Youth Authority were 11.3% higher.

The development of a sentencing commission will not, per se, alleviate the overcrowding situation, but the commission can examine the problem in a systematic fashion and on a continual basis, and provide system solutions rather than crisis solutions. The Commission can be the mechanism to consider not only the philosophy and objectives of a sentencing scheme but also fiscal concerns and the availability of resources. A focus merely on corrections to resolve the overcrowding may be a futile effort. Corrections does not control who enters and leaves their facilities. The Legislature, the Judiciary, and the Board of Prison Terms do.

b. Ad Hoc Legislative Inputs

Since the passage of SB 42 in 1977, some five legislative bills and one statewide ballot proposition have been passed modifying or altering the original determinate sentencing law SB 42. All of these increased offenders' liability in terms either of lengthened sentences, lengthened parole, or mandatory provisions requiring incarceration (rather than probation).

In the majority of instances, these bills have stemmed from an immediate concern of the Legislature regarding a particular criminal activity. The formulation of sentencing legislation has become an ad hoc process characterized by incremental adjustments and modifications. By utilizing this process, California runs the risk of having sentencing laws that, taken together, are inconsistent, cumbersome, and not always based on sound policy.

c. Inadequate Attention to Financial Implications

Sentencing legislation has been developed and passed in California without legislators always having the benefit of thorough cost information. Generally, the financial impact of new or changed laws should be considered. In particular, the financial impact on corrections should be considered in new or changed sentencing laws. Although availability of resources should not be the primary criteria in defining sentencing practices, consideration should be given to any additional costs involved to develop needed resources. This problem is related to the problem of overcrowding in the institutions.

d. Lack of a Deliberate, Systemwide Planning Process

The above two problems, an ad hoc legislative process and a lack of knowledge of financial impacts, can be summarized as a lack of an overall coherent planning process for California's criminal justice system that takes into account all aspects of the system including sentencing laws.

California, in adopting its determinate sentencing laws, has not undertaken such an orderly planning activity. Nor has California defined the overall goals upon which to predicate its sentencing laws and other aspects of the criminal justice system.

e. Lack of Monitoring

Although the Board of Prison Terms reviews all sentences under DSL for disparity, the intent of this review is not to gather data and analyze the overall trends or success of the sentencing law. While SB 42 requires the Judicial Council, among other responsibilities, to continually study California's DSL and any proposed amending legislation, this research is to focus on the appropriateness of sentences for punishment and public protection, not upon justice system impacts. California needs an ongoing monitoring activity for the express purpose of studying the results of sentencing laws upon all important components of the criminal justice system as well as on the community.

These are management problems which do not relate directly to the primary stated reasons for establishing a sentencing commission and guidelines, i.e., to achieve greater uniformity and certainty. Nonetheless, we believe that a sentencing commission can address and overcome these problems. For this reason, Arthur D. Little, Inc., recommends that California establish a sentencing commission. This recommendation is discussed below.

B. RECOMMENDATIONS

1. Arthur D. Little, Inc., recommends that California establish a sentencing commission to alleviate the present management problems associated with the current legislative process of developing and passing sentencing laws. A sentencing commission can undertake a rational planning process in developing sentencing reform that considers financial implications as well as other system impacts. A sentencing commission also can monitor the implementation of reforms to assure that they are meeting intended objectives. This recommendation is predicated upon the following three additional recommendations.

2. Prior to the establishment of a sentencing commission, the California Legislature should prioritize goals for sentencing. The definition of goals is a critical role for the Legislature to play relative to a sentencing commission. Are sentencing guidelines to achieve certainty, adequacy, and equity? Is the purpose of the system punishment, deterrence, incapacitation, and rehabilitation? Arthur D. Little, Inc., believes these questions should be answered by the Legislature.

As Cassou and Taugher have suggested, California's current DSL represents a mixed model. The Judicial Council rules suggest that there are a variety of goals and philosophical bases present. The Legislature should clarify its position by placing clear priorities on the intended goals of sentencing.

The importance of clearly stated goals and objectives is that they establish the basis for implementation of decisions and administrative procedures needed to implement the sentencing scheme and to help ensure that the sentencing objectives are fulfilled. Sentencing goals and objectives will provide definition to the legislature's philosophy on sentencing. This philosophical stance can guide the formation of the sentencing model; for example, a rehabilitative model lends itself to an indeterminate sentencing structure, with release contingent upon the offender's progress towards rehabilitation. A rehabilitative model may require program participation as a condition of release, whereas this may not be an emphasis or concern under models based on other philosophies. Concern for the management of prisons may require that participation in rehabilitation programs be attached to the sentencing scheme regardless of its philosophical goals. Practicality thus may require a mixed model.

A key decision for the Legislature in defining sentencing goals is to determine the amount of flexibility that will be allowed in the sentencing scheme. This requires the Legislature to guide the balance between (1) certainty and uniformity, and (2) discretion. The more certainty and uniformity to be achieved, the less flexibility that is afforded to decision makers in the system.

A sentencing commission should have clear and specific direction from the Legislature in terms of sentencing goals and their relative priorities. The Legislature is the appropriate forum in which to build a consensus that reflects the concerns and beliefs of Californians.

3. In the analysis of sentencing reforms, the sentencing commission should seriously consider development of sentencing guidelines. At present there is not enough information on the experience and impact of sentencing guidelines on a statewide basis to evaluate their use on an indepth basis. What is known is that their establishment and operation appears feasible and that judicial support is present in several states. However, what is not known is the impact of such a system mandated either by legislation or judicial rules. Furthermore, the impact of the inclusion or absence of the parole release decision is not known. Minnesota has abolished the parole release decision, Pennsylvania has not. Thus, the commission should consider the development of guidelines in light of the activities and evaluations underway in other states.

4. The sentencing commission should be initiated and established by the Legislature as an independent body in the Executive Branch. Several states have enacted some form of a commission or advisory group whose purpose is essentially to establish a sentencing guideline system. As stated earlier, Massachusetts, New Jersey, Michigan, and Washington have done so in the judiciary. However, these are voluntary, and depending on the powers of the judiciary in the states, may not be totally comprehensive. Minnesota and Pennsylvania have legislatively established

sentencing commissions as independent agencies. Illinois and New Jersey have legislatively established sentencing commissions whose purposes are not primarily the development of sentencing guidelines.

The importance of a legislatively established commission lies in the need for the commission to have sentencing policy authority that is supported and legally mandated to ensure compliance. The establishment of an ad hoc group such as those formed by the judiciary cannot ensure the comprehensive scope envisioned by Arthur D. Little, Inc., nor compliance by the various criminal justice decision makers.

The recommendation for an independent body reflects a need for the commission to be free to carry out its activities independent from possible political pressures. There are a number of organizations in the Executive Branch which could serve as examples.¹

C. ENABLING LEGISLATION

If the Legislature decides to enact enabling legislation to establish a sentencing commission, we recommend that the legislation address the following points.

1. Composition and Organization

The legislation should specify the size and membership of the commission. Members may be appointed by the Legislature, the Governor, and/or the Chief Justice; or the Legislature may want to specify members, including:

- The Chief Justice
- Superior Court Judges
- District Attorneys
- Public Defenders
- Private Attorneys
- Corrections Officials
- Legislators
- Citizen Members

If members of the judiciary are to sit on the commission as voting members, there may be a question raised regarding separation of powers. Reference should be made to the California State Constitution to determine if this is an issue. Some states have attempted to overcome the problem by making the sentencing commission advisory. Another suggestion is to make members of the judiciary advisory to the commission with no voting powers.

1. State Lands Commission; Public Utilities Commission; Fair Political Practices Commission; Public Employment Relations Board; Agricultural Labor Relations Board; State Board of Education; University of California Board of Regents; Board of Governors of the California Community Colleges.

The legislation should also speak to (a) terms of appointments, (b) procedures for determining a chairman, (c) rules regarding a quorum, (d) frequency of meetings, and (e) procedures for reimbursement of expenses.

2. Powers and Duties

The legislation should define as clearly as possible the mandate of the commission. This mandate can include any one or all of the following responsibilities:

- Review and analyze sentencing reforms;
- Conduct systemwide planning to identify impact of proposed sentencing changes;
- Determine financial and resource implications of sentencing changes proposed;
- Develop, adopt, and promulgate sentencing guidelines, if warranted;
- Develop, adopt, and promulgate parole release decision guidelines;
- Serve as a clearinghouse for collection, preparation, and dissemination of information on California sentencing practices;
- Conduct research and publish data regarding sentencing practices;
- Monitor sentencing activities and modify, as needed, sentence practices;
- Promulgate and implement guidelines, including providing training and guidance to the judiciary and other appropriate parties; and
- Make recommendations to the Legislature regarding statutory changes needed to implement sentencing reforms.

We recommend that the commission's powers and duties be broadly defined so that it may conduct a systematic and full analysis of sentencing reforms including guidelines and their implications. The commission should also be empowered to (1) enter into and perform contracts as may be necessary and (2) request and gain information from other departments and agencies of the state.

3. Public Hearings

The legislation may require the commission to publish proposed sentencing changes, hold public hearings, and obtain testimony regarding proposed sentencing changes. This process has the advantage of opening decision making to as wide an audience as possible. California may wish

to incorporate the commission's activities under existing administrative procedures such as the rule making authority established in the Administrative Procedures Act.

a. Legislative Review

The Legislature should specify what role it expects to take in the review and approval of sentencing revisions. In Pennsylvania, the guidelines went into effect unless the Legislature rejected them entirely by a specified date. The Minnesota Legislature also retained a veto power over guidelines finalized by the Commission. A decision should be made as to whether the Legislature can make revisions in aspects of the sentencing reforms, or whether reforms must be adopted in their entirety.

b. Time Frames

The legislation may state a specific time by which the Commission is to complete its sentencing reforms. The effective date of implementing reforms also should be included.

c. Guidelines

If the Legislature plans to mandate the development of guidelines, they should specify parameters for the Commission in the enabling legislation. Should both offender and offense characteristics be considered? Should current sentencing practices be considered in developing guidelines? Should existing resources and cost implications be considered by the Commission in developing guidelines? These are key questions which should be addressed in the legislation.

Guidelines should address issues such as (1) mandatory sentences, (2) multiple offenses, (3) aggravating and mitigating circumstances including enhancements, (4) good time, (5) parole, and (6) compliance with and enforcement of guidelines by the judiciary.

d. Appeals

The enabling legislation can also address the issue of appeals and the role the Board of Prison Terms may play in reviewing sentences for disparities.

e. Sunset Law

The legislation may include a sunset law which automatically abolishes the Commission at some future date unless legislative action is taken.

In summary, enabling legislation for a sentencing Commission should specify goals to be achieved and the basic organizational and procedural responsibilities to be assumed by the Legislature, Commission, and Judiciary in regard to affecting sentencing reform.

APPENDIX A



APPENDIX A

INDETERMINATE AND DETERMINATE SENTENCE LAWS COMPARISON FEASIBILITY OF ADAPTING LAW TO SENTENCING COMMISSION/GUIDELINE APPROACH

STUDY DESIGN

A. INTRODUCTION

This study is policy-oriented in nature. It was undertaken to provide the Legislature, through the Joint Committee on Rules, information regarding the apparent merits of California's experience under the Determinate Sentencing Law (DSL) as compared with the merits of the state's experience with its previous Indeterminate Sentence Law (ISL). The study then compares the merits of California's DSL with other approaches to sentencing used throughout the United States such as the use of a sentencing commission and/or sentencing guidelines. Specific recommendations are then formulated on the feasibility of implementing in California those sentences approaches found to be meritorious elsewhere, when compared to the state's DSL approach, with their various apparent advantages and possible drawbacks explained.

1. Study Scope and Approach

In order to evaluate California's DSL experience as compared with its ISL experience, the goals pursued by any approach to sentencing must be considered. Then the degree to which DSL and ISL attains these goals can be considered relative to their "merits." By assessing, as far as is reasonably possible, California's experience under DSL as compared with its experience under ISL in attaining each sentencing goal defined, some overall conclusions can be gained regarding the effectiveness of each sentencing law.

However, recognizing that legislative policy setting is a priority setting process guiding the allocation of public resources, consideration of the "merits" of California's ISL and DSL approaches cannot be limited to study of effectiveness alone. The relative efficiency -- or cost in resources -- of these approaches must also be addressed in some way. Thus, the study scope was defined to include research on the impact of implementing DSL with regard to processes and procedures within courts and correction agencies and institutions.

a. Goals of Sentencing Approaches

For purposes of this study, six goals were defined as desirable for any sentencing approach to achieve. These include:

- Adequacy
- Certainty
- Equity

- Protection
- Deterrence
- Rehabilitation

Another way to consider these goals is that they represent desired results, or outcomes, to be achieved through the processes of the criminal justice system.

The first three of these goals are offense- and offender-oriented; they focus on punishment:

- "Adequacy" is defined for the purpose of this study in relation to national norms for the time served by disposition* for any particular offense. It is assumed that national norms for time served represent a measure of what is considered "adequate" for punishment of particular offenses.
- "Certainty" is defined in relation to the link between particular offenses (for which an offender is convicted) and the length of time served by disposition. To the degree that the disposition and time served within disposition for a particular offense is more statistically predictable under some sentencing approach, it is considered to be more "certain."
- "Equity" is defined in relation not only to the link between particular conviction offenses and time served within dispositions for those offenses, but also in relation to offenders' background characteristics. Equity has two aspects pertinent to this study.
 - Equity results from the application of judicial discretion to make appropriate individual sentencing decisions considering circumstances not specifically addressed by the law, in order to achieve "fairness." In this instance, one would include consideration of particular mitigating or exacerbating characteristics of an offender's history, demonstrated attitude, and so forth. The greater the similarity between time served by disposition for offenders of similar background characteristics, the greater the "equity."

*"Disposition" refers to mode of punishment, e.g., probation, probation and jail, state prison, etc.

- The second consideration that is necessary, however, is the degree to which there are identifiable distinctions between dispositions and time served within dispositions for offenders with different background characteristics -- examined within particular conviction offenses. That is, there should be some perceptible difference between offenders with less serious criminal histories and offenders with more serious criminal histories regarding time served within dispositions for the same offense.

The three additional goals of any sentencing scheme are society-oriented:

- "Protection" is defined as the prevention of criminal activity due to incarceration. For example, to the degree that one sentencing scheme versus another results in a greater proportion of the incarcerated population convicted for crimes typically associated with high recidivism, a greater relative public protection effect will be assumed to exist; similarly, incarceration rates and lengths of time served for particular offenses also yield information on public protection due to the incapacitation of offenders.
- "Deterrence" is defined as the prevention of the commitment of offenses by those persons in the population at large excluding the incarcerated population. To the extent that there is a perceptible shift, beyond what would be projected on the basis of historical experience, in offense trends coincident with the implementation of determinate sentencing, examination is made of the extent to which this change in offense trends may be attributable to DSL.
- "Rehabilitation" is defined, for purposes of this study, as the restoration of offenders to conditions of useful or constructive activity, or at least to conditions of non-criminal activity. The scope of the examination of California's rehabilitation experience under ISL as compared with under DSL is limited to formal rehabilitation programs operated by local and state corrections.

b. Justice System Processes and Procedures

Recognizing the policy-oriented nature of the study, and the resource allocation implications of any sentencing scheme or approach, consideration must be given to the impact of implementing California's DSL as compared with the state's experience under ISL.

Processes and procedures are studied within the offices of the district attorney, public defender, and the judiciary within courts; and in probation and correctional institutions. Of particular importance for describing the impact of DSL as compared with ISL experience regarding processes and procedures are the following areas:

- Incremental costs or cost savings
- Court backlog with regard to time per case processing
- System flows of cases from filings through ultimate dispositions
- Nature and scope of departmental interactions

In order to further illuminate the exercise of discretion under DSL as compared with ISL, in particular regarding the ability of the judiciary to make appropriate sentencing decisions in individual cases, discretion throughout the courts and corrections system is examined. In order to do this, the range of options available to the various justice system offices are examined with regard to particular types of cases (e.g., crimes against persons, crimes against property); study is then made of each office's ability to influence, under DSL as compared with ISL, the movement of particular cases toward particular options. The results of this examination are then taken under consideration along with the results shown from study of the exercise of discretion regarding the goal of equity in order to draw conclusions.

c. Feasibility of Implementing Sentencing Commission/Guideline Approaches

In order to examine the feasibility of implementing sentencing commission or guideline approaches found to be in use elsewhere in the nation, considering their relative merits as compared with California's DSL experience, study is made of these other approaches on the same decision criteria set forth above.

That is, the degree to which the goals of sentencing adequacy, certainty and equity, and of protection, deterrence, and rehabilitation are attained by other sentencing approaches is examined, along with procedures and resource allocations. This is accomplished through obtaining and assessing available research and evaluation studies where these are available and through the conduct of interviews with knowledgeable justice system representatives in locales where the approaches studied have been implemented.

B. SUB-STUDY PROJECTS

Six separate, but interrelated, sub-study projects are conducted in order to accomplish the work scope described above. These are as follows:

1. ISL/DSL Sentence Comparisons

This project provides information on sentencing adequacy, certainty, and equity, according to the definitions of those terms above. To accomplish this, time served under various sentencing dispositions is examined for two time periods:

- An ISL period, represented by the year 1975.
- A DSL period, represented by the year 1978.

In order to compare time served by disposition for the population in the state prison for 1975 and 1978, two samples are selected:

- All male felons released from the Department of Corrections in the quarter, April-June 1975. Examining releases provides information on time actually served for various offenses. This information is obtained from published reports from the Department of Corrections.
- All male felony commitment admissions during the quarter, April-June 1978, as recorded by the Board of Prison Terms, will provide the DSL comparison group. The Board's computerized file of offender, offense, and disposition characteristics is coded and compiled in order to conduct the review of sentencing disparity required by the legislation, and this file is the source of data on this group. Estimates of time to be served by disposition are developed, reflecting the sentence passed by the court as well as assumptions on "good time" credits.

2. ISL/DSL Criminal Activity

This project is designed to test for the presence of, and examine, changes in criminal activity trends that can be attributed to a change from California's ISL experience to DSL. Examination of offense trends as reported forms the basis for examining the sentencing goals of "protection" and "deterrence." Data on offenses by type reported to BCS is analyzed on an annual basis for the years 1968-78. Using sophisticated projection techniques, offense rates and changes in offense rates are analyzed for the purpose of forecasting these rates on an annual basis after 1976. Comparisons are then made between actual reported offense rates and the projected rates. Annual changes in rates are then examined during California's ISL and DSL experience and effects in changes in these offense rates attributable to implementation of DSL are then examined.

Further, recidivism rates by offense category are examined in a similar fashion. Annual changes in rate by offense are studied, comparing projections for the years 1977 and 1978 with actual rates observed. Changes in recidivism trends by offense during California's ISL experience are then compared and contrasted with changes observed concurrent with the implementation of DSL.

"Rehabilitation" can only be studied indirectly by examining changes in offense rate trends and recidivism rate trends. However, particular attention is paid to criminal activity attributable to the probation caseload population under ISL and DSL. The recidivism rate of the ISL probation population and the probation population during the years of DSL implementation (1977, 1978) are noted. However, California's rehabilitation programs offered by corrections cannot be adequately reflected at this date; insufficient time has passed for a sufficient number of offenders to have been released from institutions providing formal rehabilitation programs.*

Further information on California's ISL and DSL experience with regard to rehabilitation is provided under Project 4 below regarding correctional institutions.

3. Courts

The scope of this project includes the offices of the district attorney, public defender, and the judiciary. The purpose of this project is to determine the process impact of implementing DSL in the state, and to compare and contrast from this perspective the state's ISL and DSL experience in the courts area.

We have discussed above the types of processes and procedures, as well as the impact on incremental costs or cost savings, to be covered through interviews and research with available data.

Interviews and related data and information gathering is carried out in this project (and in Projects 4 and 5 below) in 10 counties in the state that together comprise about 75% of the population. These counties are:

- Alameda
- Los Angeles
- Merced
- Orange
- Sacramento
- San Bernardino

*Determinate sentencing became effective July 1, 1977, and applied only to crimes committed after that date. Therefore, an offender would have had to have committed a crime after this date, been apprehended, sentenced and incarcerated, have participated in a rehabilitation program, been released and have been at risk in the community, all in the period of time between July 1, 1977, and the end of calendar year 1978. It is highly unlikely that sufficient numbers of this population have existed to have a perceptible effect on offense and recidivism rates.

- San Diego
- San Francisco
- Santa Clara
- Tulare

Additionally, information available through the Offender Based Transaction System (OBTS) of BCS is utilized to provide insights regarding California's ISL/DSL experience in the courts area with regard to the flow of cases through the criminal justice system.

4. Corrections

The scope of this study includes not only correctional institutions, but also probation departments. The focus of interviews and information gathering is consistent with that in Project 3 above regarding the processes' and procedures' impact of implementing DSL as compared with California's ISL experience.

Similarly, information from OBTS will be utilized to examine, for the years 1974-1978, changes in system flows and workloads in the probation area.

Beyond the scope in Project 3, however, Project 4 includes additional work designed to address the impact of implementing DSL on state institutions. Interviews will be conducted with representatives from the Department of Corrections and with others regarding trends revealed under ISL and DSL in both the magnitude and composition of the inmate population. Further interviews and information gathering will be specifically aimed at identifying any changes in the state's institutional rehabilitation programs.

5. Decision-making Discretion

The primary focus of this project is to examine the capability of the judiciary to make appropriate sentencing decisions based upon individual case and offender characteristics; in addition, the examination of decision-making discretion under ISL and DSL includes the role of probation, district attorney, and public defender offices.

Discretion will be defined and examined according to the approach set forth in Sections a. and b. above, with work including analysis of data on equity, interviews with justice system representatives, and analysis of the structural provisions of DSL as compared with ISL.

6. Survey of Sentencing Commission/Guideline Approaches to Sentencing

This project, conducted concurrently with the above five, includes the following:

- A survey of the states to identify those with significant sentencing commission or sentencing guideline approaches. Information is obtained regarding the basic structure of the approach and the degree to which the approach has been implemented.
- The development of a taxonomy of significant sentencing approaches, based upon the identification of important differences in the purpose, structure and/or operation of the approaches.
- Selection and indepth study of the advantages and disadvantages of significant representatives of each type of approach identified in the taxonomy, to the extent that these exist with sufficient experience to warrant their study.
- Assessment of the advantages and disadvantages of the approaches, to the extent possible based upon existing evaluative research and information obtained through interviews, in regard to the attainment of sentencing goals defined above or other operational or cost benefit criteria.

C. RECOMMENDATIONS

Based upon the findings and conclusions from each of the above six projects, recommendations are then presented on the feasibility of implementing in California the sentencing approaches thought deserving of attention on their apparent merits.

Recommendations are presented from two perspectives, as follows:

- Those approaches that appear to provide advantages in terms of achievement of sentencing goals, or procedural or cost/benefit advantages.
- Those approaches particularly relevant to consider from a practical standpoint concerning operational justice system advantages for California in comparison with DSL, or that are found to be particularly appropriate or feasible for implementation in an orderly manner given California's current DSL environment and experience.

APPENDIX B

APPENDIX B



Arthur D. Little, Inc. ONE MARITIME PLAZA · SAN FRANCISCO CALIFORNIA 94111 · (415) 981-2500

May 21, 1980

Mr. Mark Peterson
Attorney at Law
838 Superba Avenue
Venice, CA 90291

Dear Mark:

Thank you for your letter of April 30, 1980, forwarding a list of questions of concern to members of the Citizens Committee. We have reviewed this list and in conjunction with our colleagues in our Washington, D.C. office, have prepared responses to three of the questions which request references on applicable research, reports, and articles.

- Question #5 - Is there an analysis of the causes for the prison population to be in excess of 60% minority representation? This is a very serious concern to the Committee.

Sources

Gibson, J.L.; Race as a Determinant of Criminal Sentences: a Methodological Critique and a Case Study; Law Society Review, 1978, 12/3; pp. 455-478.

Howard, J.C.; Racial Discrimination in Sentencing. Paper presented at the 28th Annual meeting of the American Society of Criminology, Tucson, AZ, November 4-7, 1976; 426 Court House, Baltimore, MD.

Howard, J.C.; Racial Discrimination in Sentencing; Supreme Bench; Baltimore, MD; Judicature 1975; 59/3; pp. 120-125.

Gray, D.B., and Ashmore, R.D.; Biasing Influence of Defendants' Characteristics on Simulated Sentencing; Westminster College, Department of Psychology, New Wilmington, PA; Psychology Reports 1976; 38/3; pp. 727-738.

Nagel, S; Racial Disparities that Supposedly do not Exist: Some Pitfalls in Analysis of Court Records; Notre Dame Law 52; pp. 87-94; October 1976.

Arthur D Little, Inc

May 21, 1980

-2-

Mr. Mark Peterson
Attorney at Law

Gibson, J.L.; Race as a Determinant of Criminal Sentences, a Methodological Critique and a Case Study; Law Society Review, 1978; 12/3; pp. 455-478; Spring 1978.

Mugford, S. and Gronfors, M.; Racial and Class Factors in the Sentencing of First Offenders; Australian National University, Canberra, Australian New Zealand Journal of Sociology 1978; 14/1; pp. 58-61.

Perry, R.W.; The Justice System and Sentencing: The Importance of Race in the Military; Battelle Human Affairs Research Center, Seattle, WA; Criminology 1977; 15/2; pp. 225-234.

Kelly, H.E.; A Comparison of Defense Strategy and Race as Influences in Differential Sentencing; University of Tulsa, Tulsa, OK, Criminology 1976, 14/2; pp. 241-249.

An important source of information would also be the National Criminal Justice Information and Statistics Service, LEAA. These specific documents from NCJISS would include:

- Profile of State Prison Inmates: Socio-demographic Findings from the Survey of Inmates of State Correctional Facilities.
- Census of Prisoners in State Correctional Facilities
- Sourcebook of Criminal Justice Statistics
- Children in Custody: A Report on the Juvenile Detention and Correctional Facility Census.

Another important source would be the National Criminal Justice Reference Service, including the following documents:

- Prisoners in State and Federal Institutions on December 31, 1977, and 1978.
- Prison Population and Policy Choices.

Arthur D Little, Inc.

May 21, 1980

-3-

Mr. Mark Peterson
Attorney at Law

- Directory of Criminal Justice Information Sources, May, 1979.
- Report of the Task Force on Juvenile Justice and Delinquency Prevention, National Advisory Committee on Criminal Justice Standards and Goals, Washington, D.C. 1976.

In addition, Corrections Magazine conducts an annual analysis of the correctional populations. Copies can be obtained from:

Criminal Justice Publications, Inc.
801 Second Avenue
Suite 1404
New York, NY 10017
Telephone: 212-490-1913

- Question #12 - Is there any research of late which indicates the effectiveness of deterrent effects of criminal sanctions?

Sources:

An especially important document regarding this question is:

Deterrence and Incapacitation: Estimating the Effects of Criminal Sanctions on Crime Rates, National Academy of Sciences; Washington, D. C. 1978.

This report was prepared by a Panel on Research on Deterrent and Incapacitative Effects. We have obtained an additional copy of this document and are enclosing it with this letter for immediate reference.

The National Institute of Justice is an important reference source in response to the question. The research for the articles referenced below is supported by NIJ and the suggested contact person is Mr. Joel Garner; Office of Research, Evaluation and Methodolgy; Telephone 301-492-9080.

- The Nation's Toughest Drug Laws: Evaluating the New York Experience; Joint Committee on New York Drug Law Evaluation, Association of the Bar of the City of New York.

Arthur D Little, Inc

May 21, 1980

-4-

Mr. Mark Peterson
Attorney at Law

- Pierce, G.L. and Bowers, W.J.; Evaluation of the Massachusetts Gun Law; Northeastern University's Center for Applied Social Research, Boston, MA.; 76-NI-99-0142. (Research Grant #)
- Lofton, Colin; Impact of Michigan Firearms Law on Detroit Recorder's Court; University of Michigan; 78NI-AX-0021.
- McPheters, L.; Deterrence Effects of Revised Arizona Criminal Code; Arizona State University, Department of Economics, Tempe, AZ. 79NI-AX0041.
- Camp, G.; Influence of Sanctions and Opportunities on Rates of Bank Robbery; Criminal Justice Institute, New York, NY; 79NI-AX0017.

- Question #15: Can anyone provide the committee with reports, research studies, articles, etc., dealing with the subject of the interrelationship, correlation between social justice (full employment, education, training, housing, access to medical care, etc.) and criminal justice?

Sources:

Klonoski, J.R. and Mendelsohn, R.I.; The Politics of Local Justice.

Black on Black Crime, The Causes, The Consequences, The Cures, Ebony Magazine, August 1979.

Race and Crime Study conducted for the National Institute of Justice by the Criminal Justice Institute of Atlanta University; contact Dr. Julius Debro, telephone 404-681-0430.

Relationship between Race and Sentencing - Report of the Sentencing Guidelines Project to the Administrative Director of the Courts; State of New Jersey Administrative Office of the Courts Sentencing Guidelines Project, September 4, 1979.

Aspects of Crime in Black Communities, a paper prepared for the Eighth National Symposium on the State of the Black Economy, June 22-23, 1978 at the University of Texas, Austin, Texas.

Arthur D Little, Inc.

May 21, 1980

-5-

Mr. Mark Peterson
Attorney at Law

Andreano, R., and Siegfried, J.G.; The Economics of Crime: An Anthology of Recent Work; New York, Halsted Press 1979.

Braithwaite, J.; Inequality, Crime and Public Policy, Boston: Routledge and Kegan Paul, 1979.

The Impact of Social Trends on Crime and Criminal Justice; Project Star, Cincinnati, OH; Anderson Publishing Company and Davis Publishing Company; 1976.

In addition, we have requested further information on these questions from the National Criminal Justice Reference Service. If more information is forthcoming, we will forward these references to you. As the Citizens Committee continues to analyze these questions, Committee members may find it helpful to forward requests directly to this reference service, which can be contacted as follows:

National Criminal Justice Reference Service
Box 6000
Rockville, MD 20850
Telephone 301-655-4000

We appreciate the opportunity to have prepared this information in response to the list of questions of concern to the Committee members, and look forward to continuing to work together.

Sincerely,

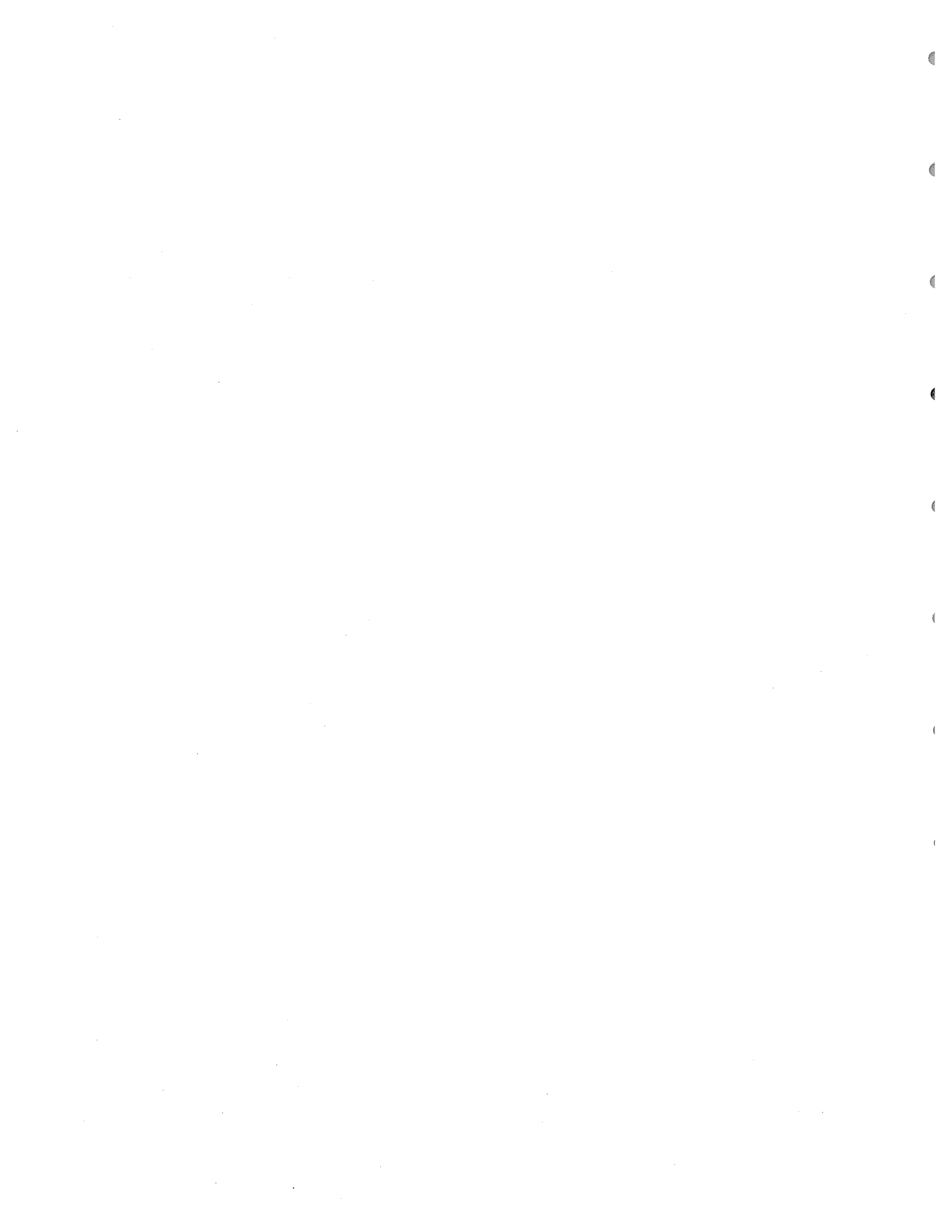
Roger C. Steiner

RS/jm

cc: Ms. Miki Vohryzek
Assembly Office of Research
Mr. Jan Marinissen, Chairperson
Citizens Committee



APPENDIX C



APPENDIX C

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APPENDIX D

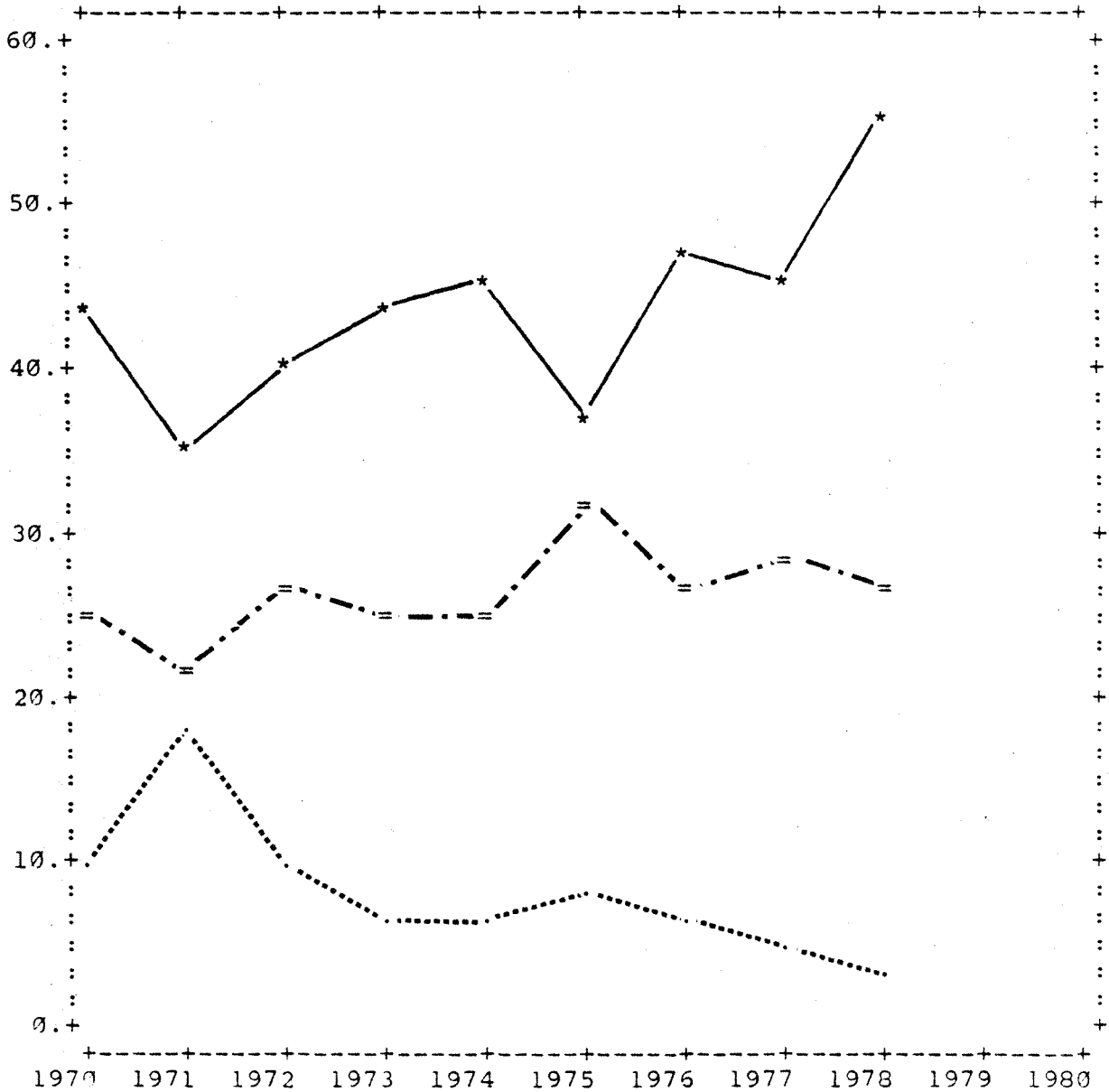


FORCIBLE RAPE DISPOSITIONS

APPENDIX D-1

PERCENTAGE TO

	PRISON	STRAIGHT PROBATION	PROBATION AND JAIL
1970	42.50	10.70	24.80
1971	35.80	17.70	22.30
1972	39.80	9.60	26.40
1973	43.10	7.20	24.70
1974	44.80	7.00	25.50
1975	36.90	8.80	31.70
1976	46.90	6.50	26.10
1977	45.80	4.90	27.80
1978	55.30	2.80	26.00

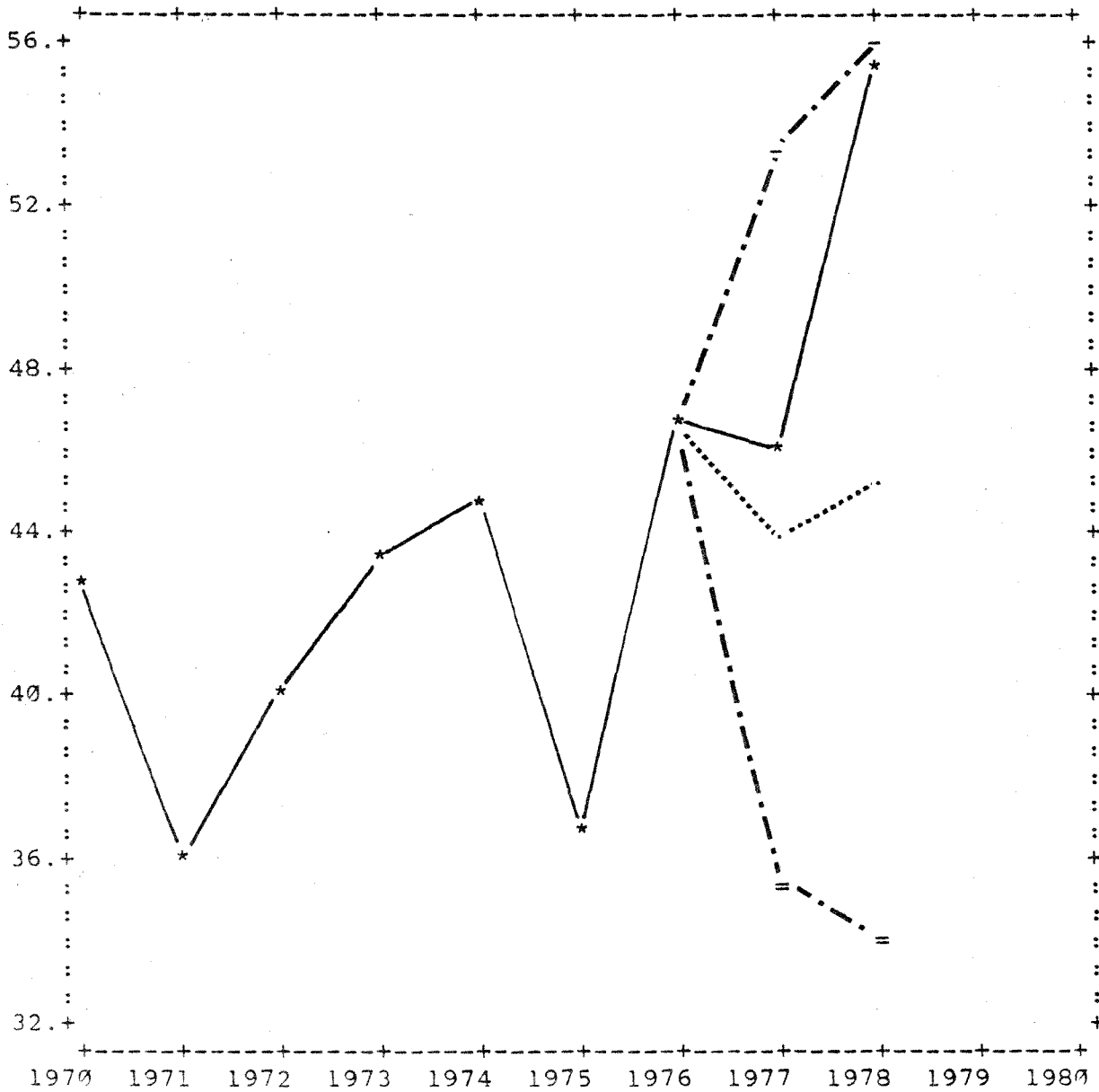


FORCIBLE RAPE DISPOSITIONS

APPENDIX D-2

PERCENTAGE TO PRISON

	REPORTED	PROJECTED	LOW	HIGH
1970	42.50			
1971	35.80			
1972	39.80			
1973	43.10			
1974	44.80			
1975	36.90			
1976	46.90			
1977	45.80	44.30	35.30	53.30
1978	55.30	45.00	34.20	55.80

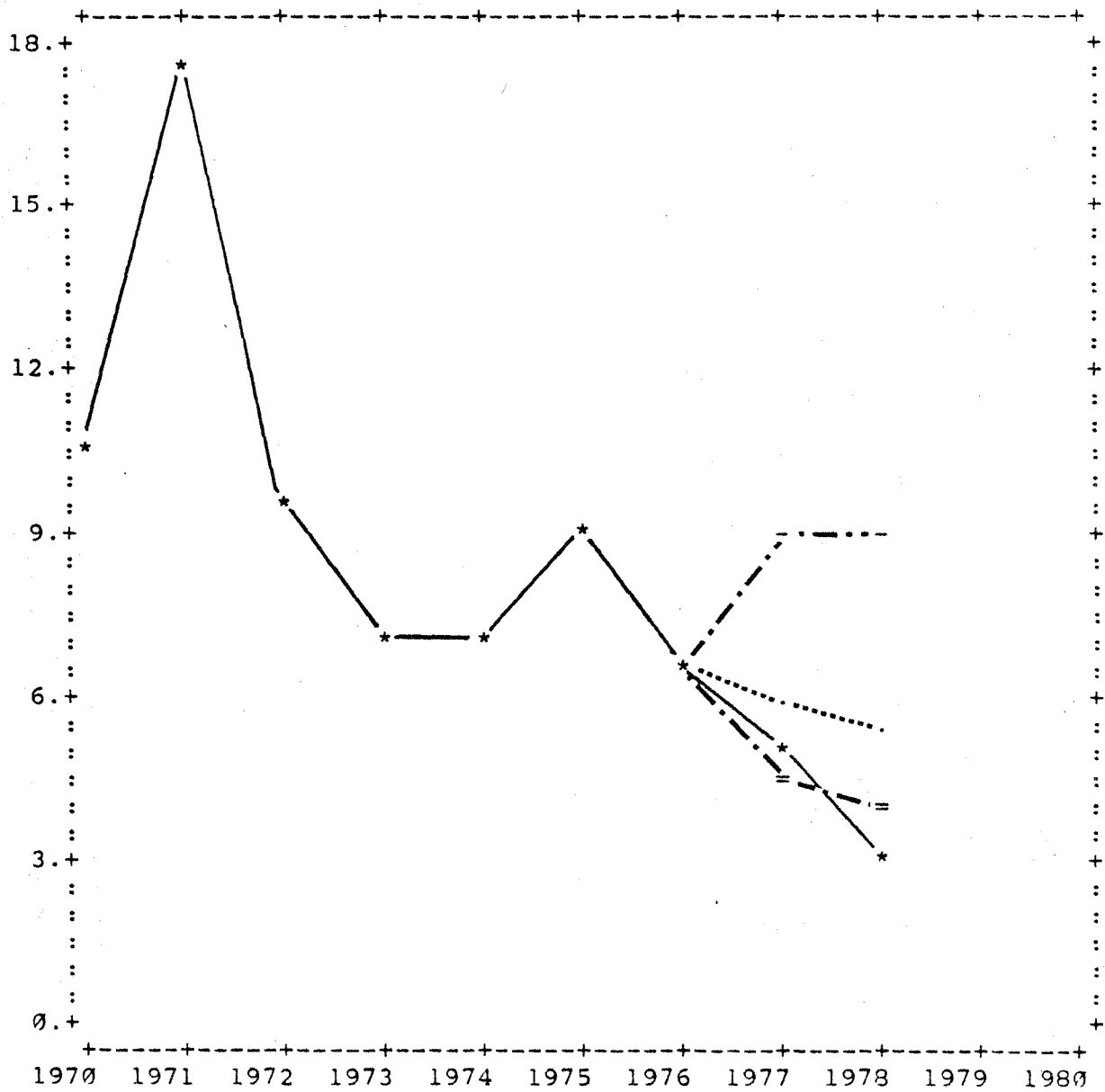


FORCIBLE RAPE DISPOSITIONS

APPENDIX D-3

PERCENTAGE TO STRAIGHT PROBATION

	REPORTED	PROJECTED	LOW	HIGH
1970	10.70			
1971	17.70			
1972	9.60			
1973	7.20			
1974	7.00			
1975	8.80			
1976	6.50			
1977	4.90	6.200	4.600	9.100
1978	2.80	5.700	4.200	9.000

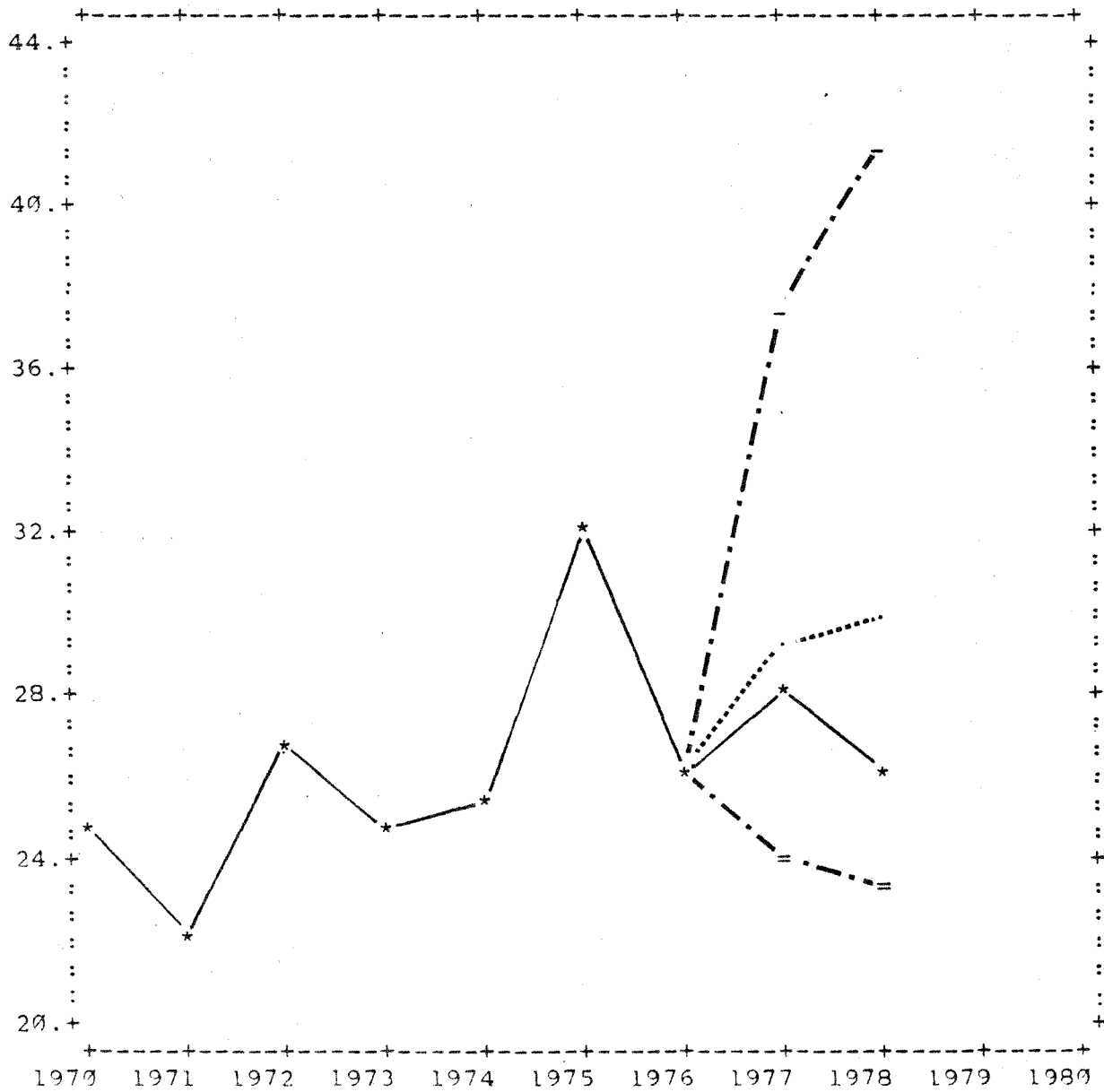


FORCIBLE RAPE DISPOSITIONS

APPENDIX D-4

PERCENTAGE TO PROBATION AND JAIL

	REPORTED	PROJECTED	LOW	HIGH
1970	24.80			
1971	22.30			
1972	26.40			
1973	24.70			
1974	25.50			
1975	31.70			
1976	26.10			
1977	27.80	29.00	23.80	37.10
1978	26.00	30.00	23.60	41.20

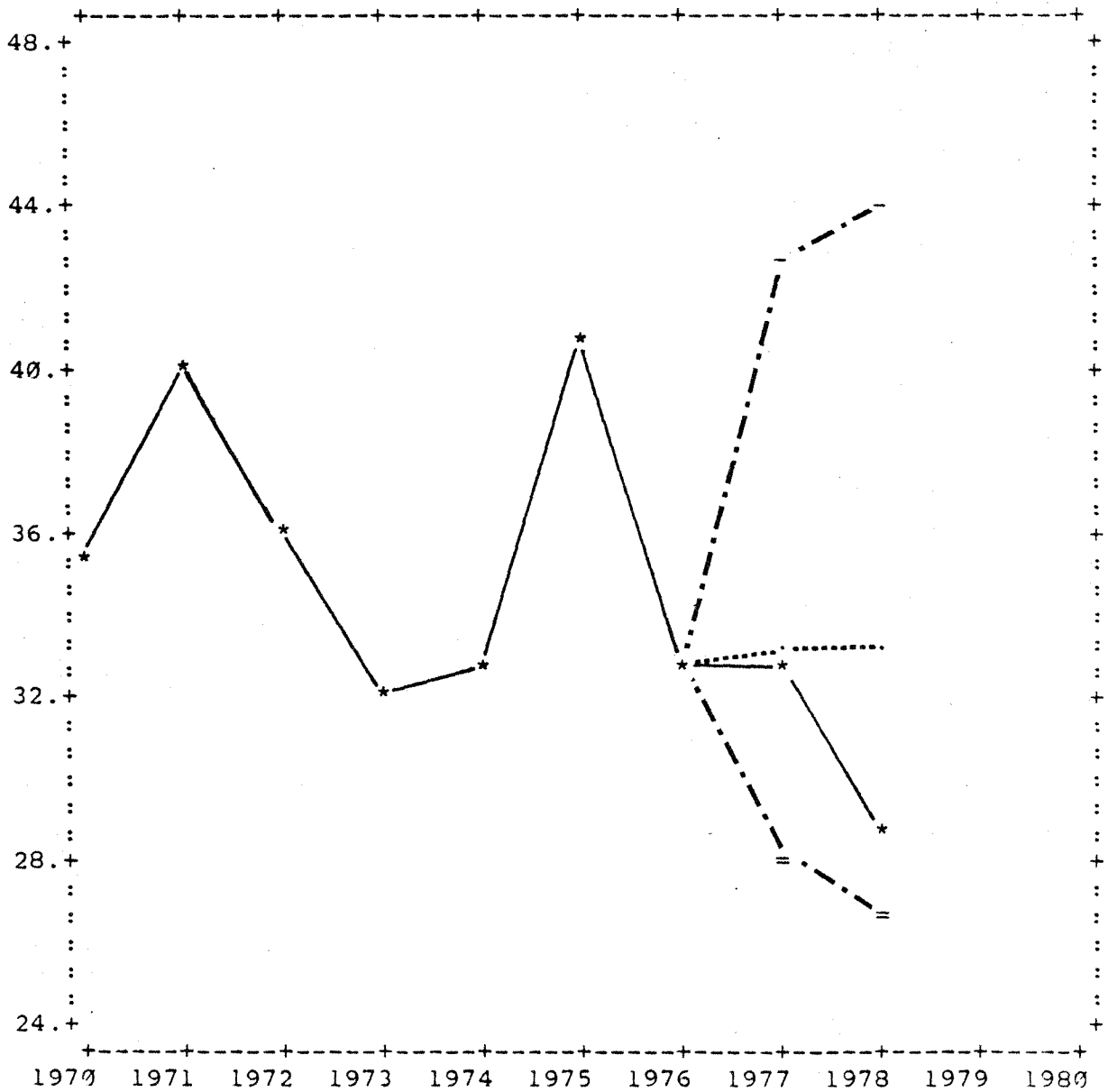


FORCIBLE RAPE DISPOSITIONS

APPENDIX D-5

PERCENTAGE TO PROBATION TOTAL

	REPORTED	PROJECTED	LOW	HIGH
1970	35.50			
1971	40.00			
1972	36.00			
1973	31.90			
1974	32.50			
1975	40.50			
1976	32.60			
1977	32.70	33.60	27.70	42.60
1978	28.80	33.20	26.50	44.30

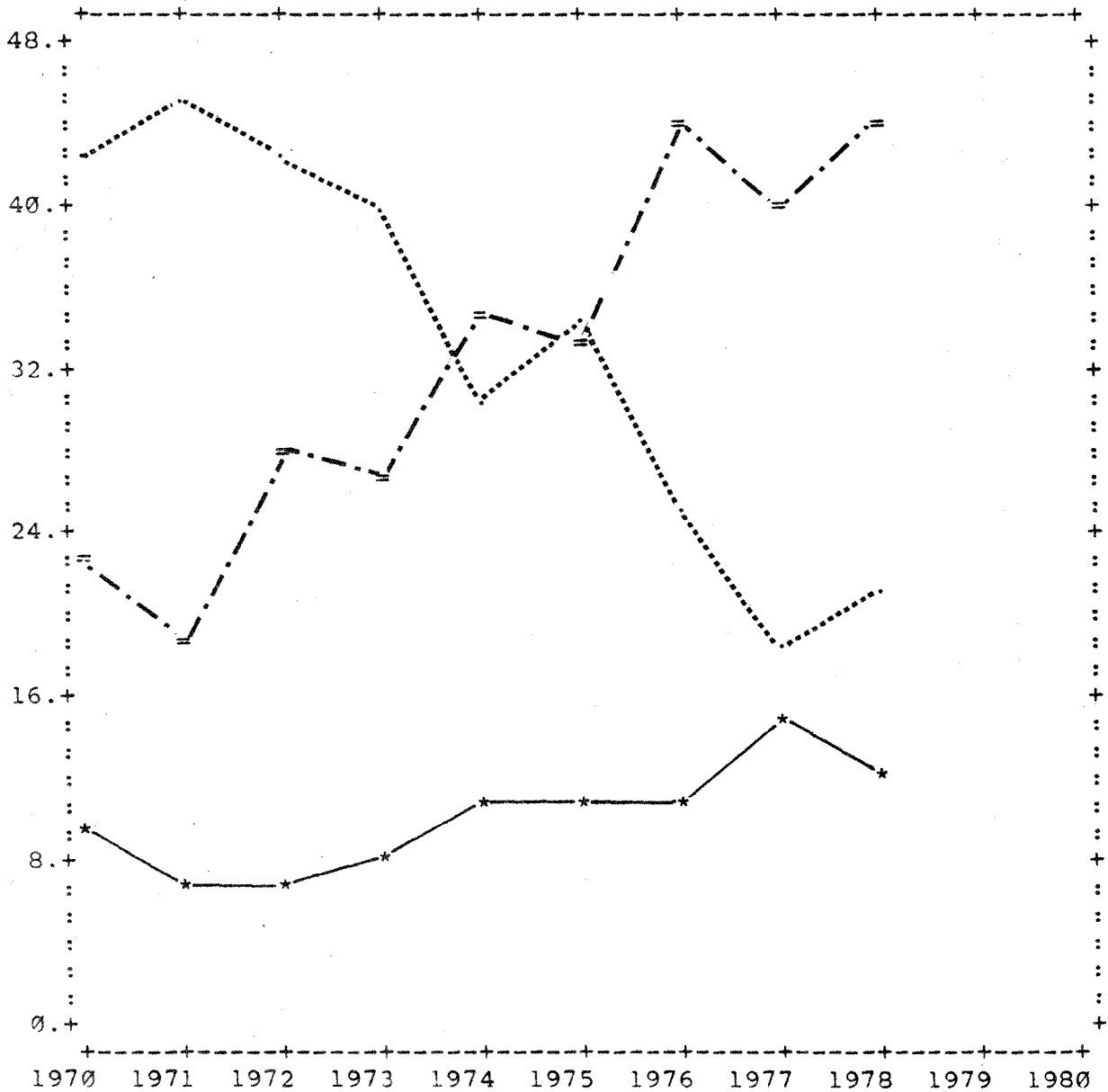


OTHER SEX OFFENSES DISPOSITIONS

APPENDIX D-6

PERCENTAGE TO

	PRISON	STRAIGHT PROBATION	PROBATION AND JAIL
1970	9.80	42.00	22.50
1971	6.60	44.80	19.20
1972	6.80	42.00	28.50
1973	7.70	39.50	26.60
1974	11.30	31.30	35.10
1975	10.20	34.60	33.20
1976	10.50	25.60	44.30
1977	14.10	18.50	40.10
1978	12.30	21.10	44.20

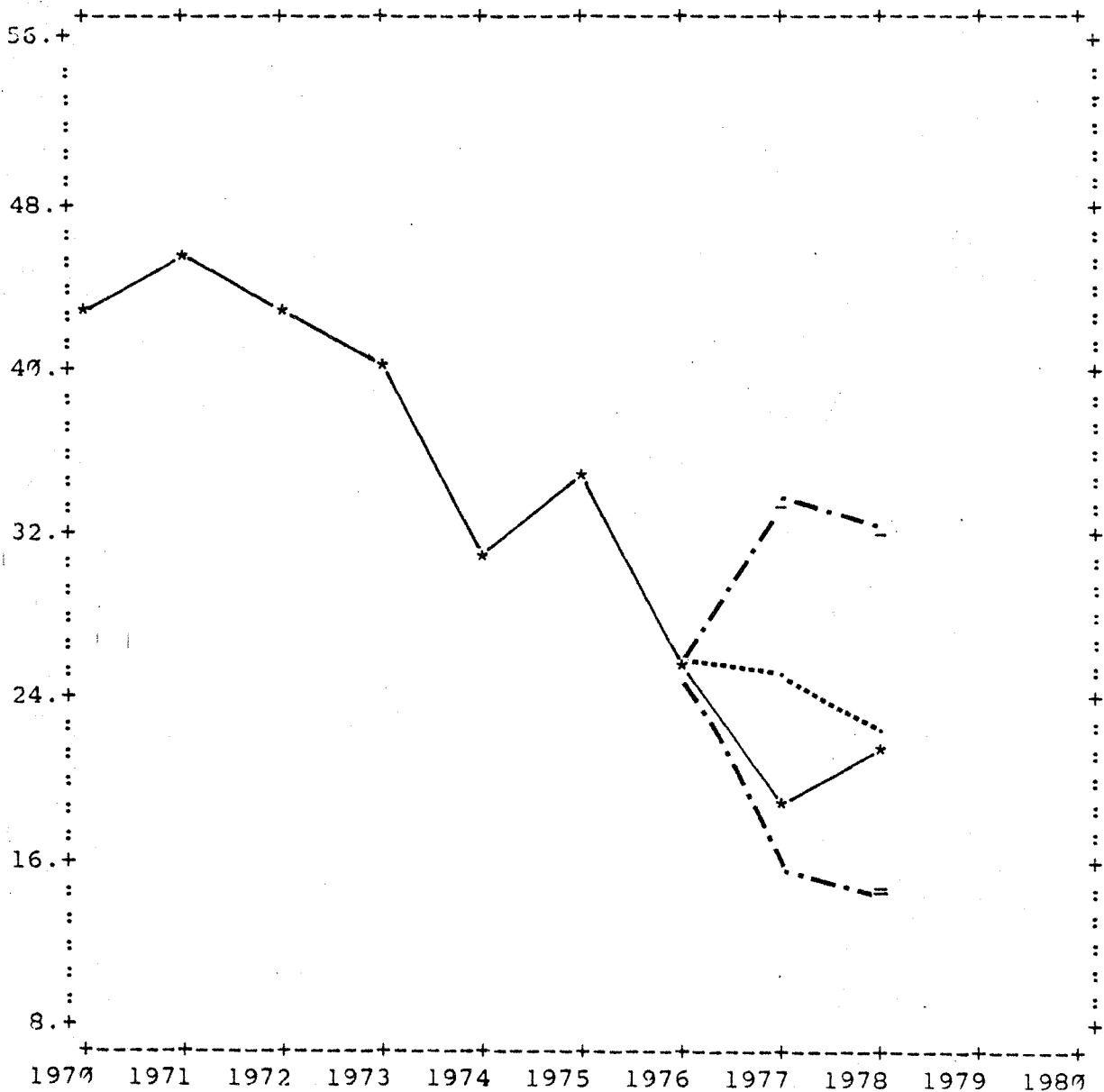


OTHER SEX OFFENSES DISPOSITIONS

APPENDIX D-7

PERCENTAGE TO STRAIGHT PROBATION

	REPORTED	PROJECTED	LOW	HIGH
1970	42.00			
1971	44.80			
1972	42.00			
1973	39.50			
1974	31.30			
1975	34.60			
1976	25.60			
1977	18.50	25.60	7.200	32.80
1978	21.10	22.80	6.900	31.40

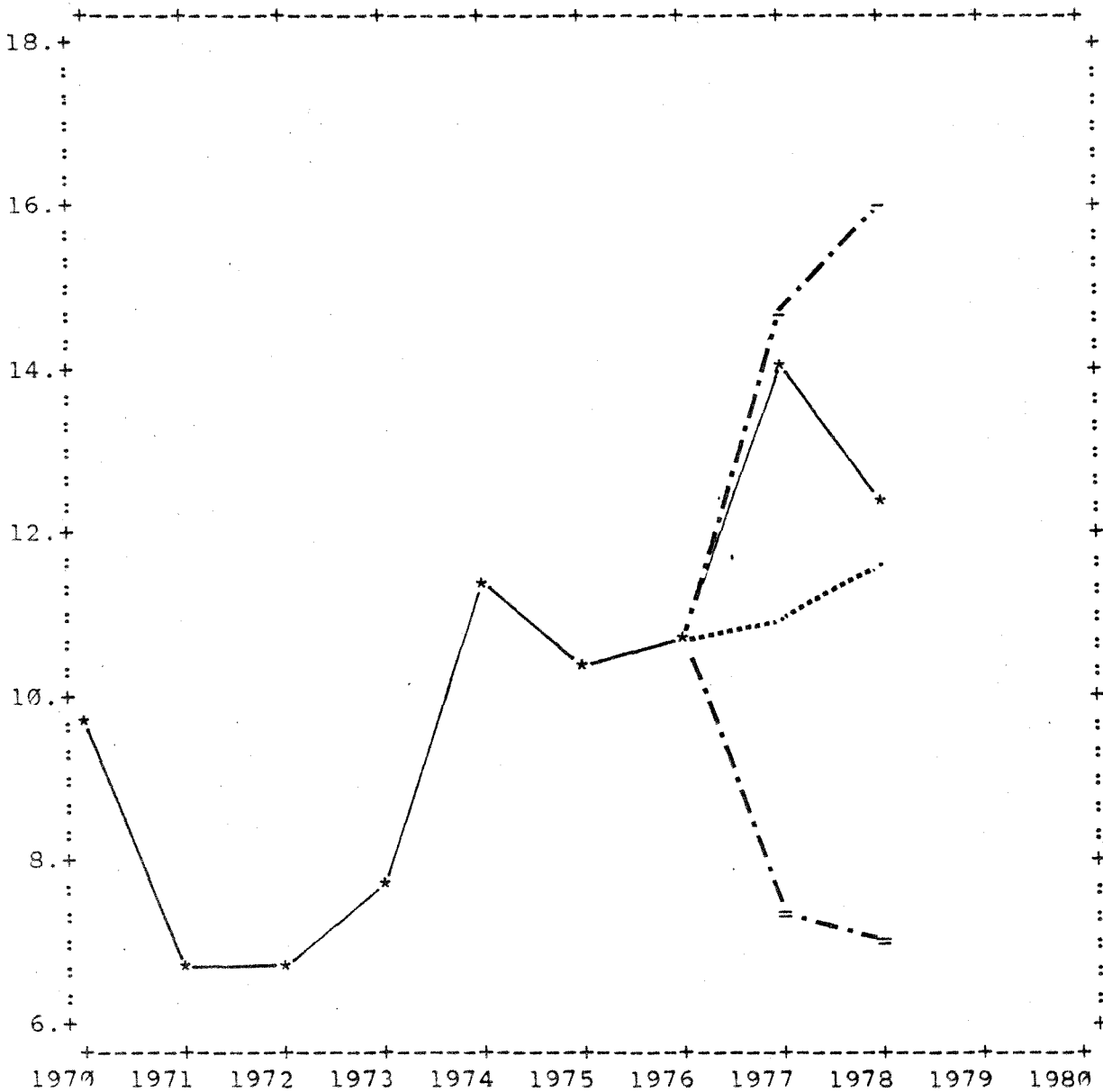


OTHER SEX OFFENSES DISPOSITIONS

APPENDIX D-8

PERCENTAGE TO PRISON

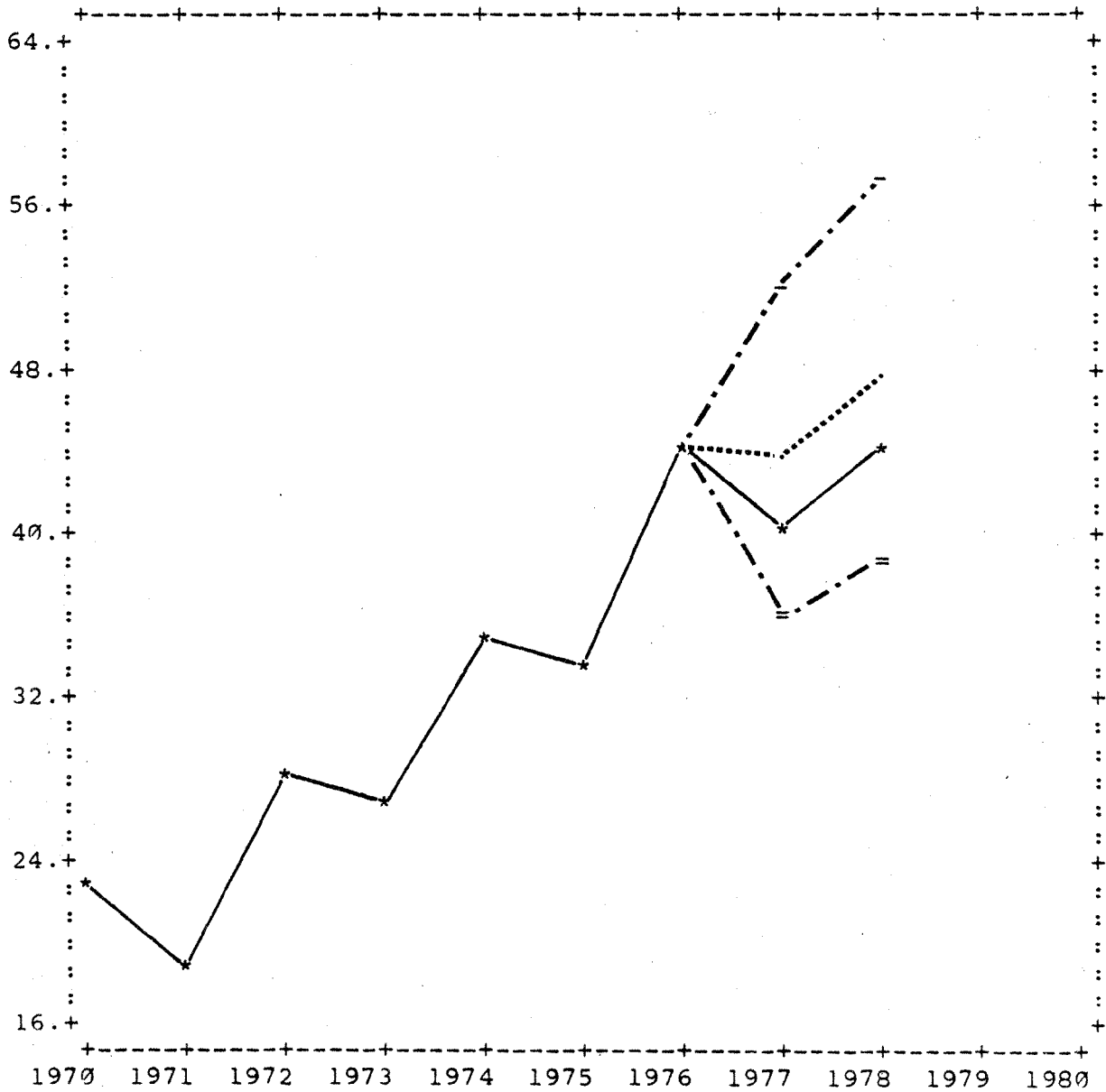
	REPORTED	PROJECTED	LOW	HIGH
1970	9.80			
1971	6.60			
1972	6.80			
1973	7.70			
1974	11.30			
1975	10.20			
1976	10.50			
1977	14.10	11.00	7.200	14.70
1978	12.30	11.50	6.900	16.00



OTHER SEX OFFENSES DISPOSITIONS
 PERCENTAGE TO PROBATION AND JAIL

APPENDIX D-9

	REPORTED	PROJECTED	LOW	HIGH
1970	22.50			
1971	19.20			
1972	28.50			
1973	26.60			
1974	35.10			
1975	33.20			
1976	44.30			
1977	40.10	44.20	36.10	52.30
1978	44.20	47.80	38.00	57.60

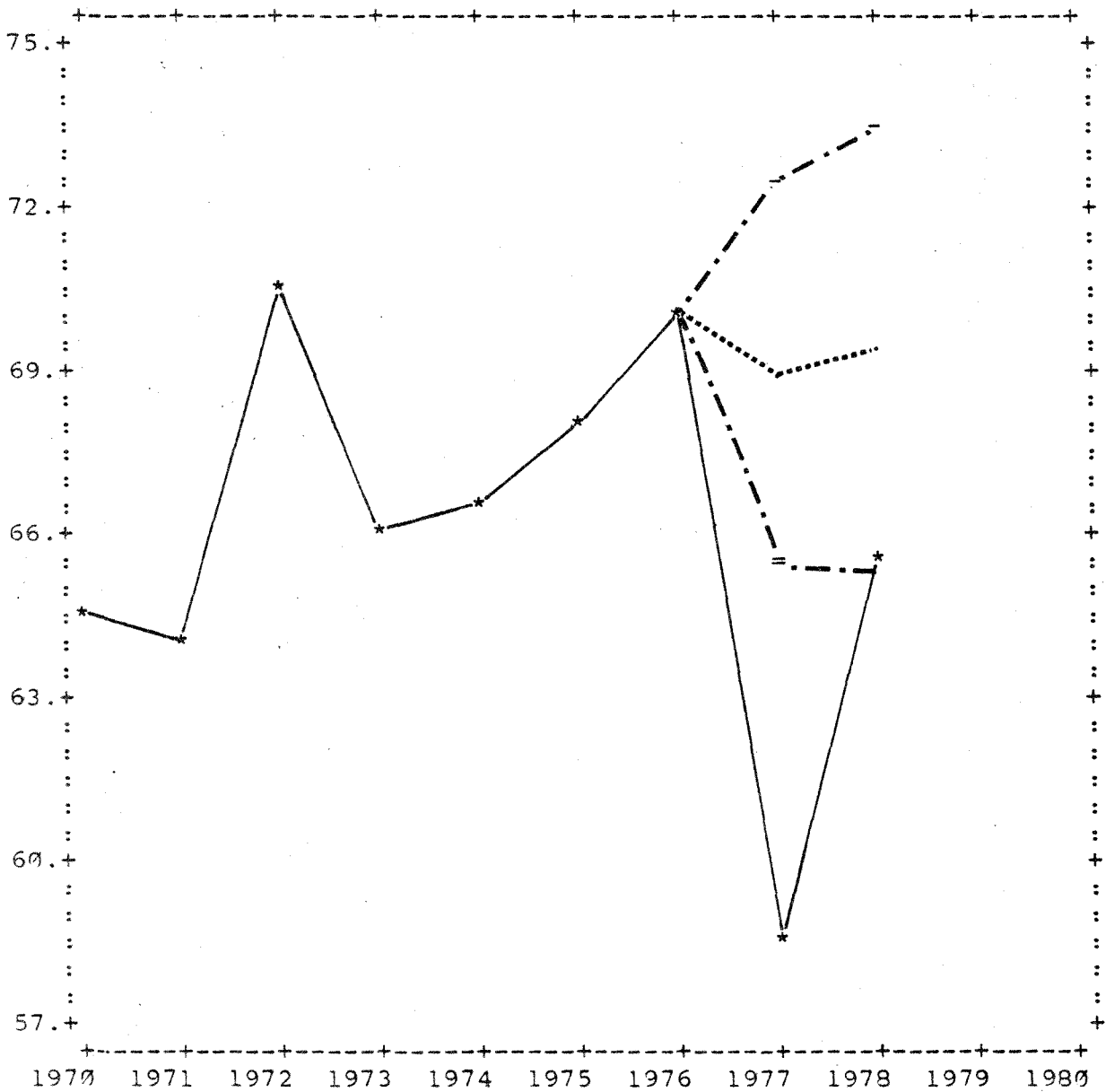


OTHER SEX OFFENSES DISPOSITIONS

APPENDIX D-10

PERCENTAGE TO PROBATION TOTAL

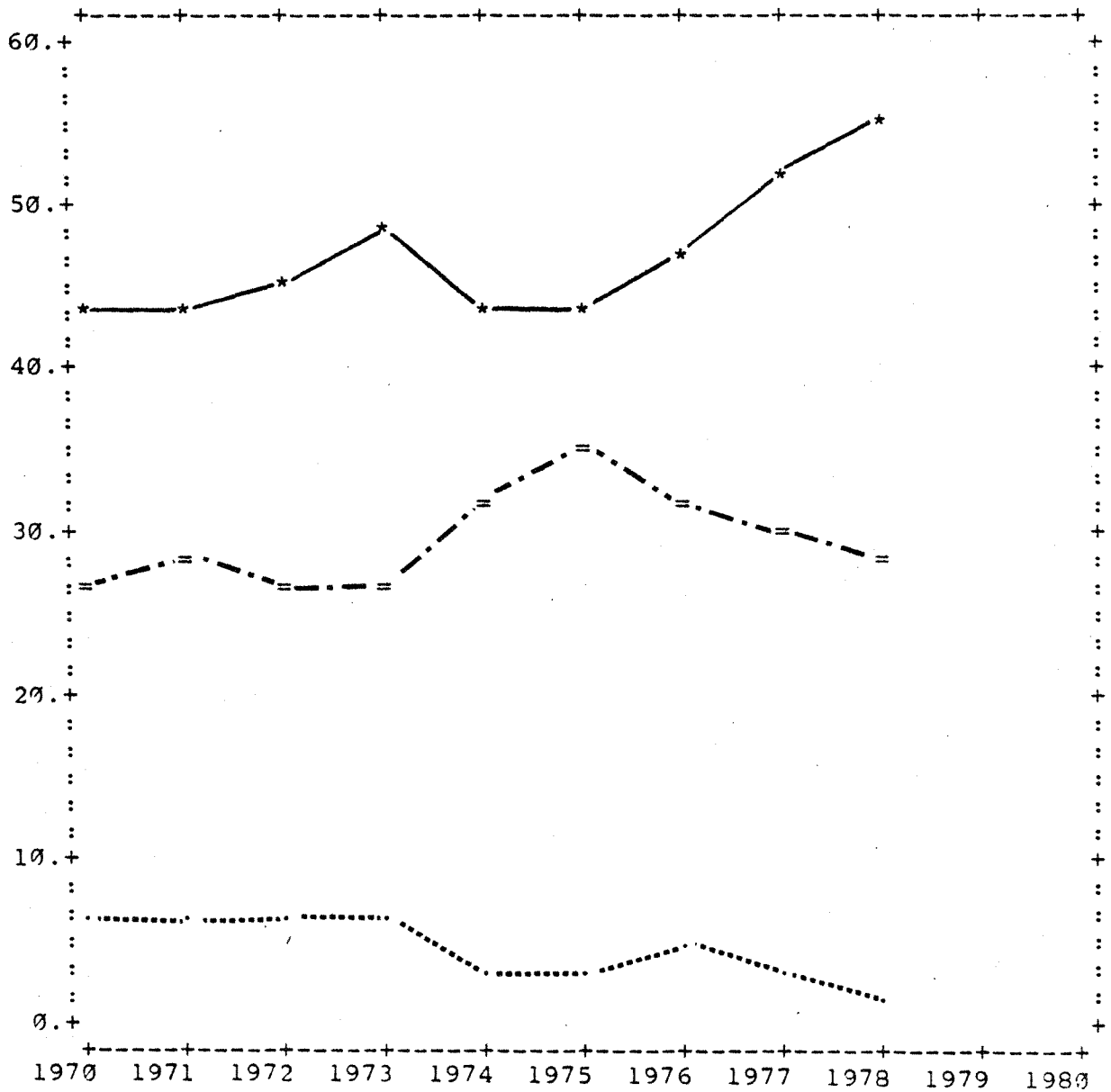
	REPORTED	PROJECTED	LOW	HIGH
1970	64.50			
1971	64.00			
1972	70.50			
1973	66.10			
1974	66.40			
1975	67.80			
1976	69.90			
1977	58.60	69.00	65.50	72.70
1978	65.30	69.30	65.40	73.30



ROBBERY DISPOSITIONS

PERCENTAGE TO

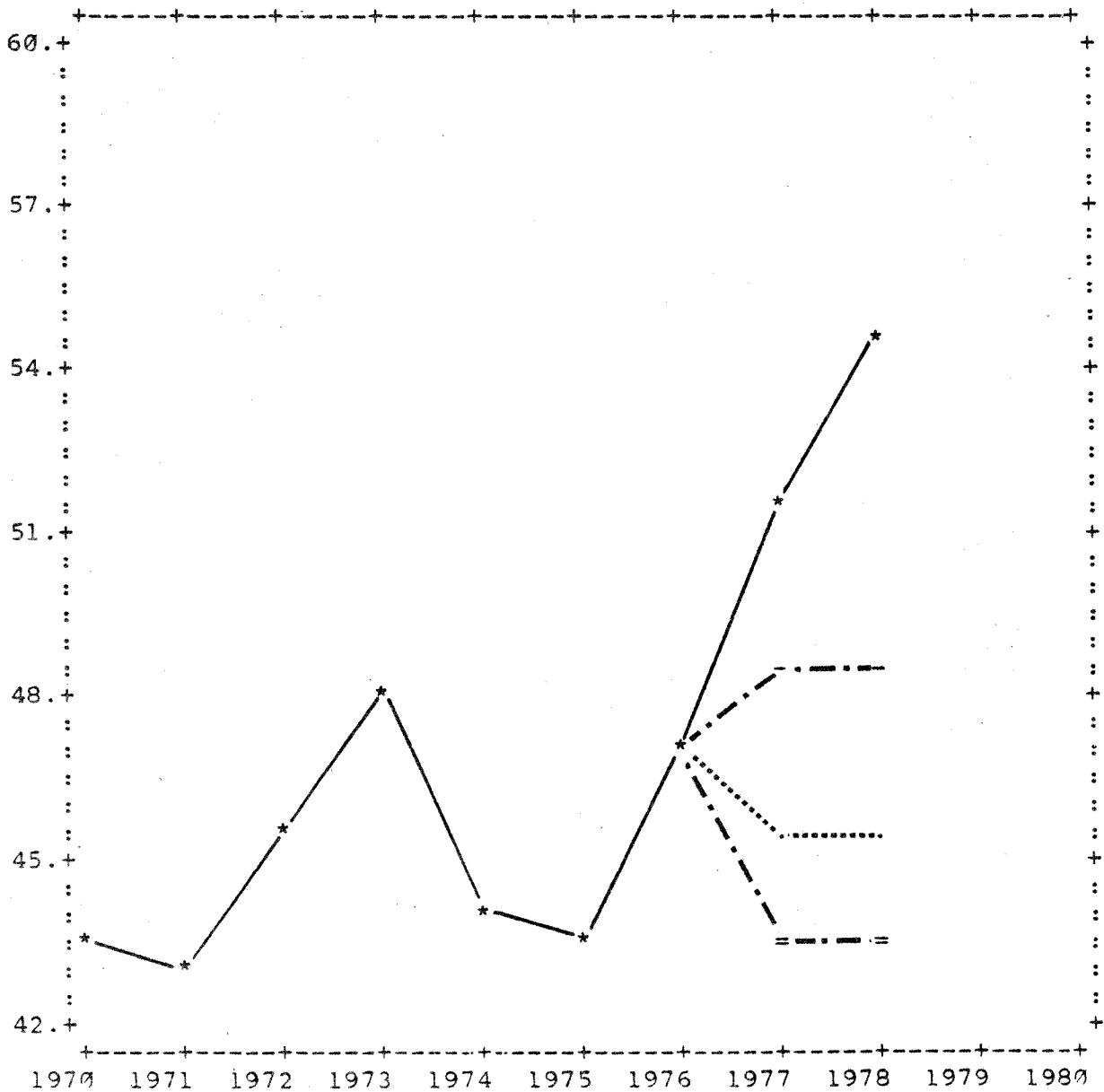
	PRISON	STRAIGHT PROBATION	PROBATION AND JAIL
1970	43.50	7.000	26.80
1971	43.20	7.000	28.90
1972	45.50	7.100	27.40
1973	48.20	6.600	26.80
1974	44.00	4.100	31.50
1975	43.70	3.400	34.80
1976	47.00	4.200	31.60
1977	51.50	2.800	29.90
1978	54.70	2.400	28.40



ROBBERY DISPOSITIONS

PERCENTAGE TO PRISON

	<u>REPORTED</u>	<u>PROJECTED</u>	<u>LOW</u>	<u>HIGH</u>
1970	43.50			
1971	43.20			
1972	45.50			
1973	48.20			
1974	44.00			
1975	43.70			
1976	47.00			
1977	51.50	45.70	43.30	48.30
1978	54.70	45.70	43.30	48.40

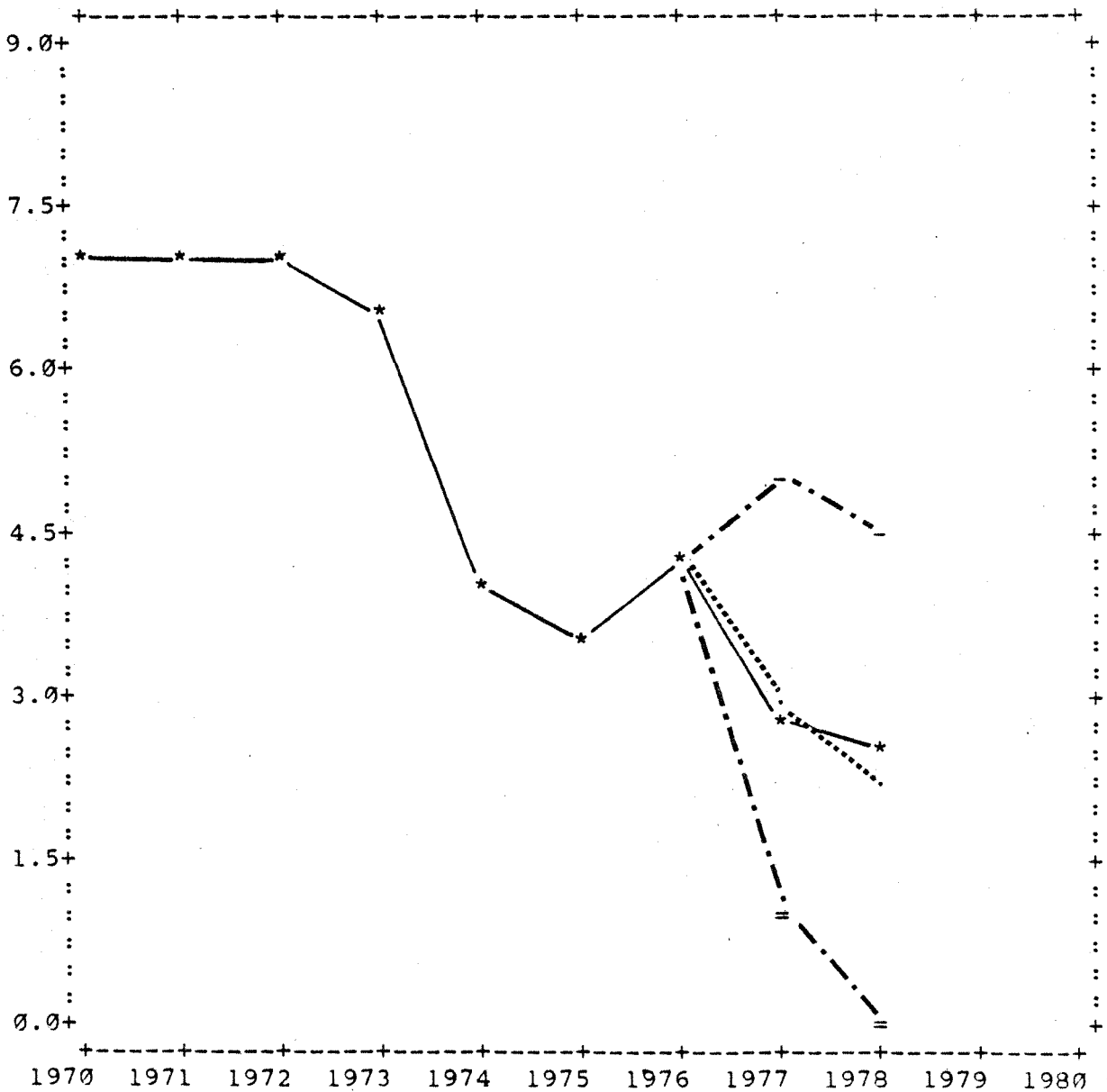


ROBBERY DISPOSITIONS

APPENDIX D-13

PERCENTAGE TO STRAIGHT PROBATION

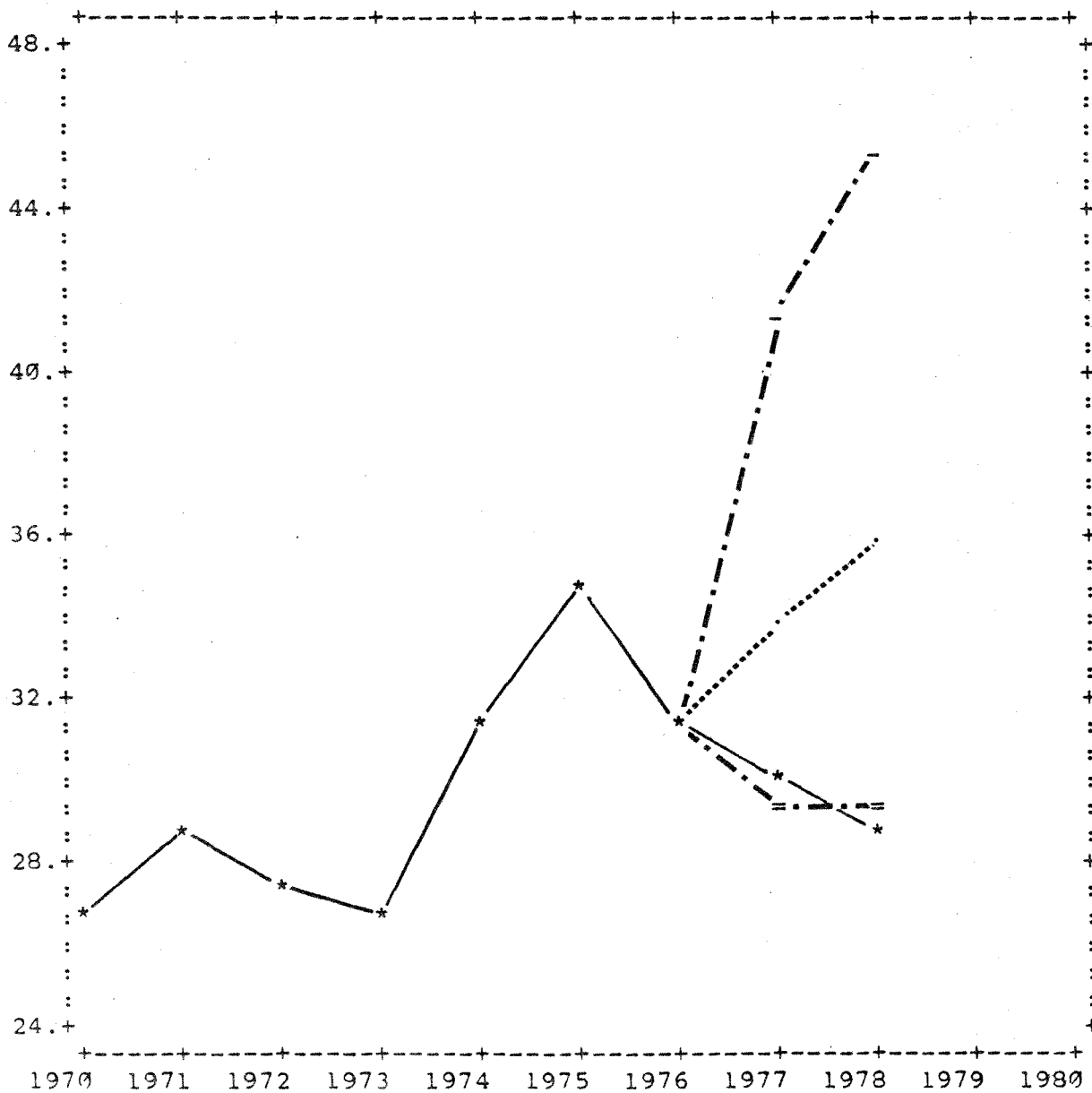
	<u>REPORTED</u>	<u>PROJECTED</u>	<u>LOW</u>	<u>HIGH</u>
1970	7.000			
1971	7.000			
1972	7.100			
1973	6.600			
1974	4.100			
1975	3.400			
1976	4.200			
1977	2.800	3.000	1.100	4.900
1978	2.400	2.300	0.000	4.600



ROBBERY DISPOSITIONS

PERCENTAGE TO PROBATION AND JAIL

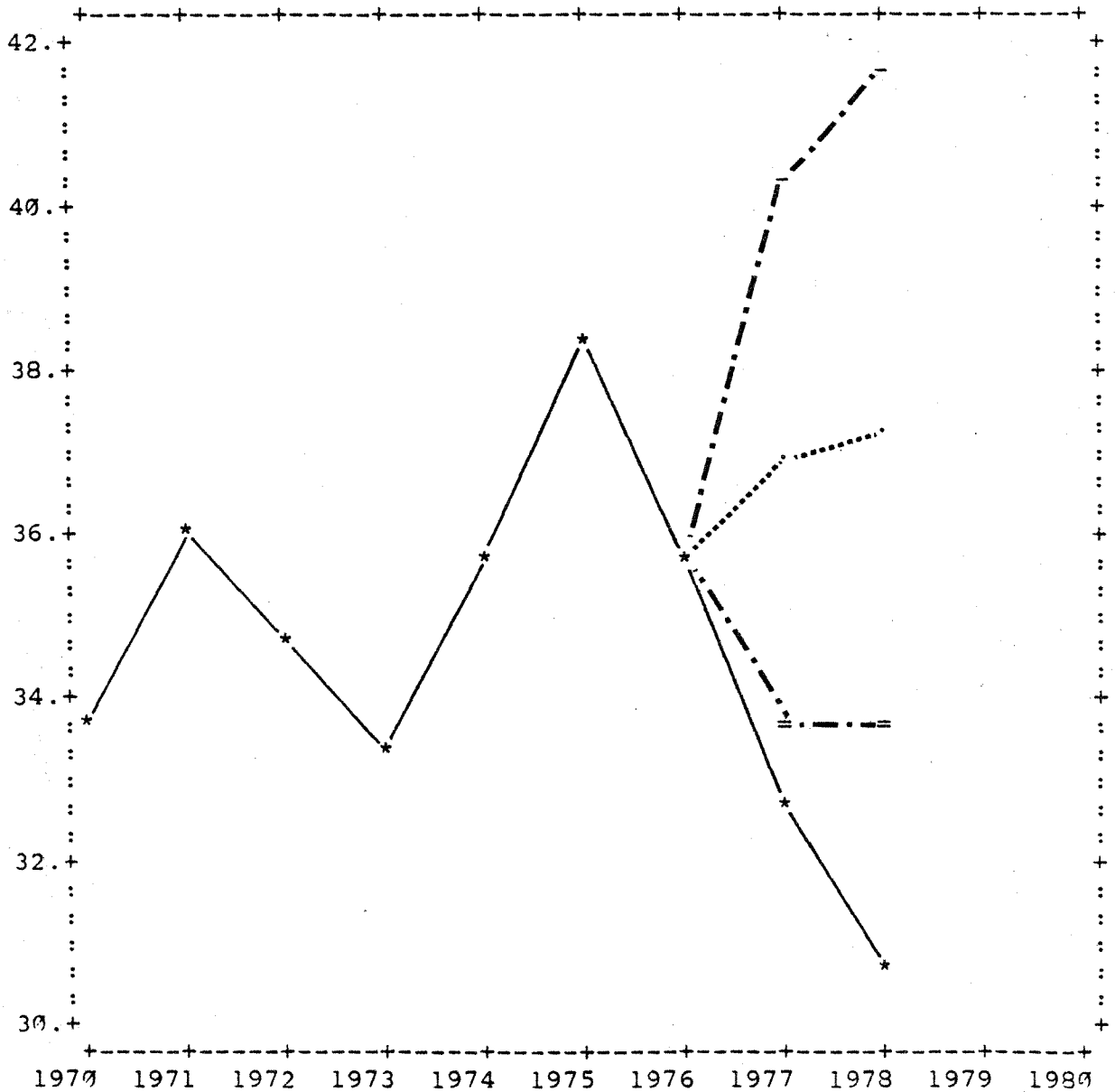
	REPORTED	PROJECTED	LOW	HIGH
1970	26.80			
1971	28.90			
1972	27.40			
1973	26.80			
1974	31.50			
1975	34.80			
1976	31.60			
1977	29.90	34.30	29.20	41.40
1978	28.40	35.70	29.40	45.60



ROBBERY DISPOSITIONS

PERCENTAGE TO PROBATION TOTAL

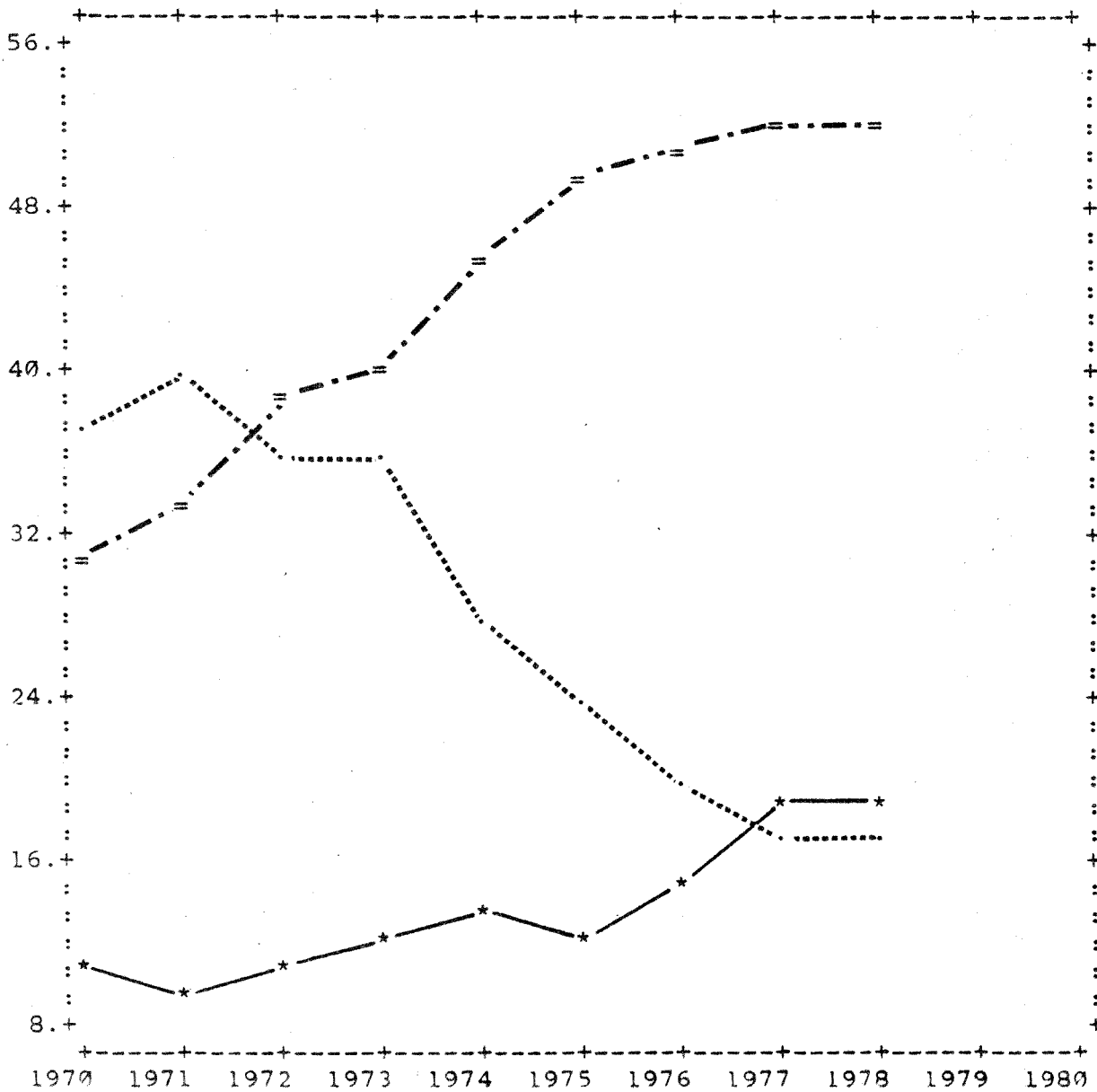
	<u>REPORTED</u>	<u>PROJECTED</u>	<u>LOW</u>	<u>HIGH</u>
1970	33.80			
1971	35.90			
1972	34.50			
1973	33.40			
1974	35.60			
1975	38.20			
1976	35.80			
1977	32.70	37.00	33.80	40.40
1978	30.80	37.40	33.60	41.70



ASSAULT DISPOSITIONS

PERCENTAGE TO

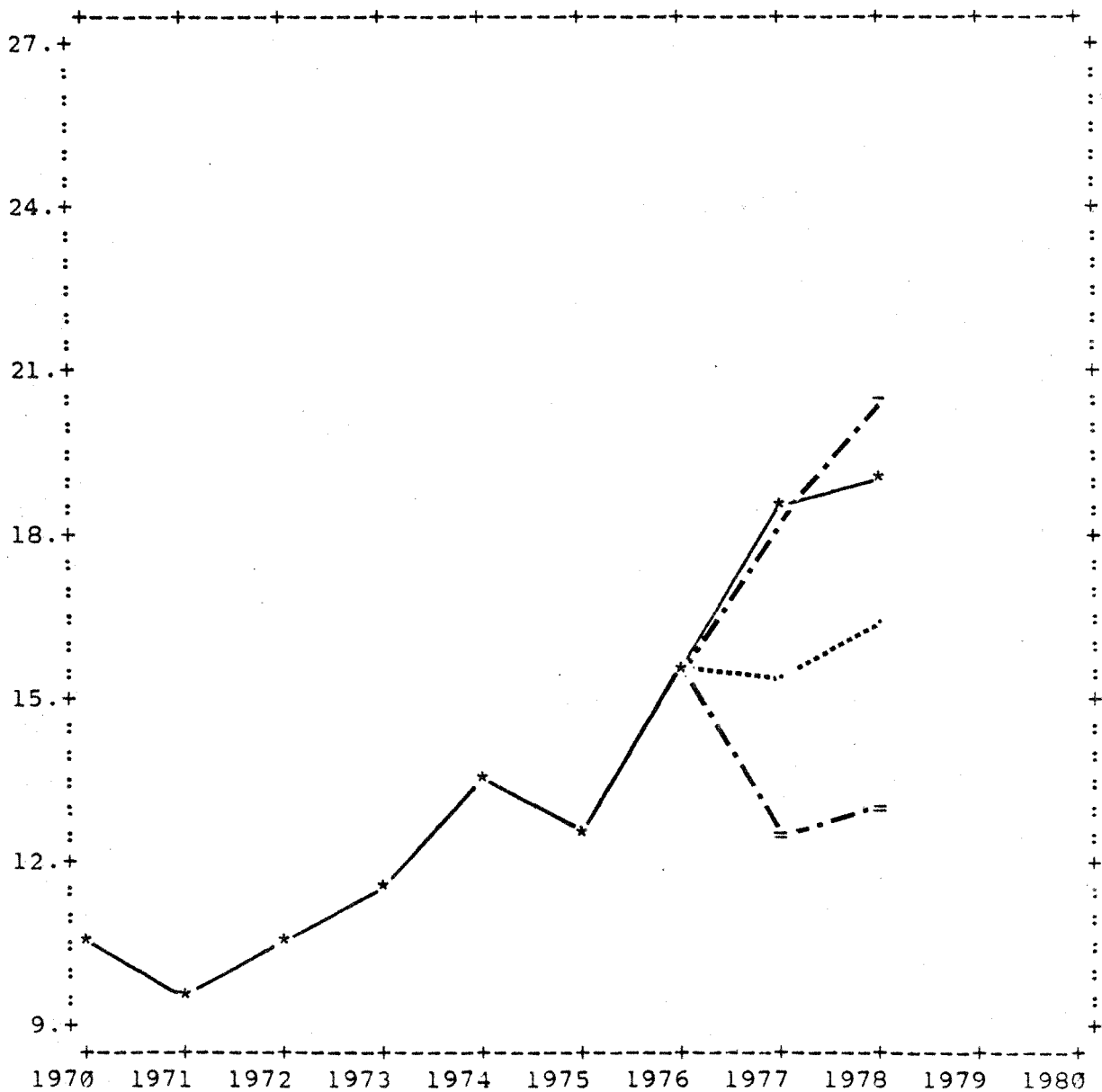
	PRISON	STRAIGHT PROBATION	PROBATION AND JAIL
1970	10.70	37.90	31.20
1971	9.50	40.30	33.60
1972	10.60	36.30	38.30
1973	11.40	36.00	39.90
1974	13.60	27.50	45.60
1975	12.30	24.50	49.90
1976	15.30	20.00	50.70
1977	18.70	17.00	51.60
1978	18.90	16.70	52.50



ASSAULT DISPOSITIONS

PERCENTAGE TO PRISON

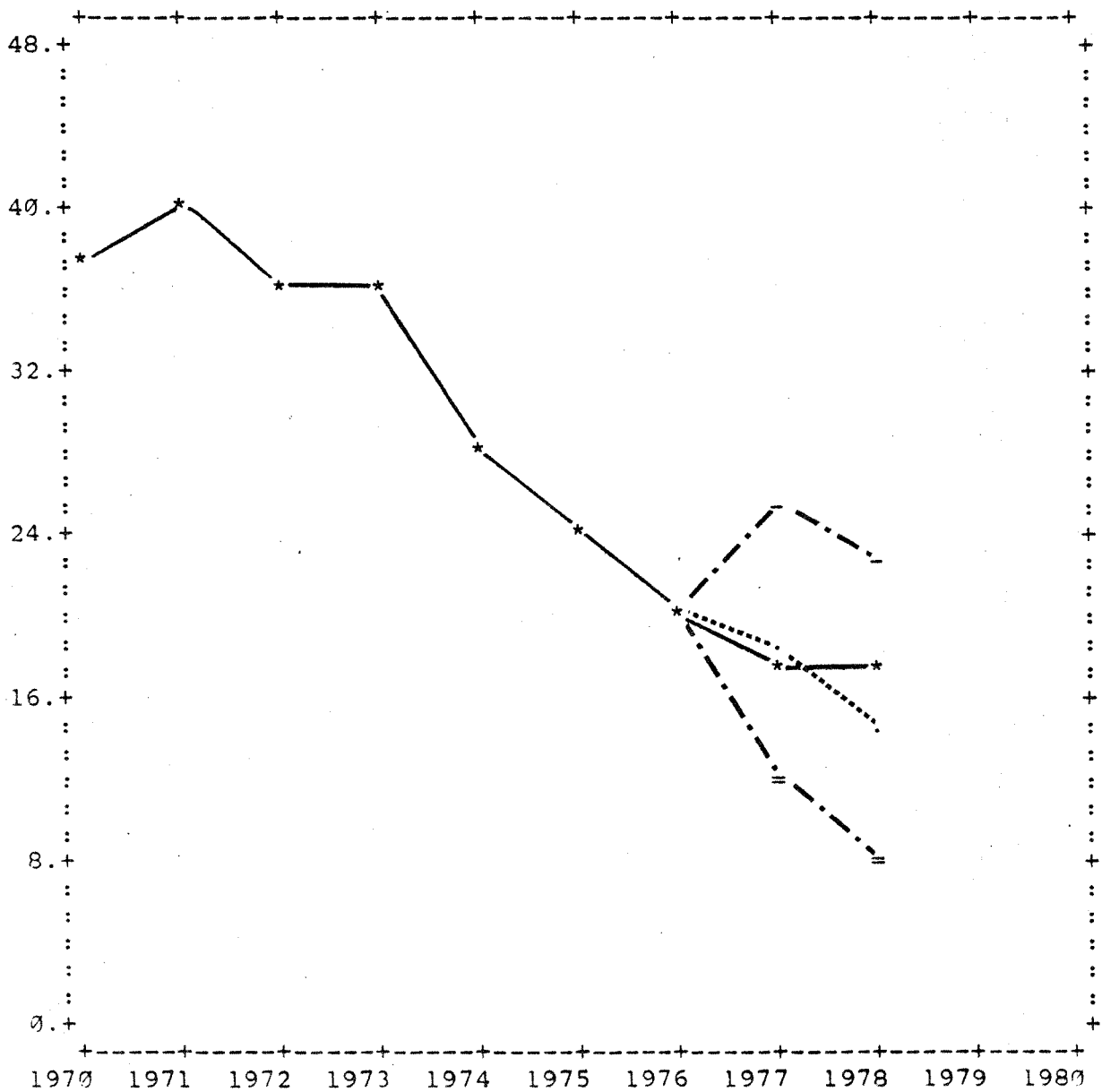
	REPORTED	PROJECTED	LOW	HIGH
1970	10.70			
1971	9.50			
1972	10.60			
1973	11.40			
1974	13.60			
1975	12.30			
1976	15.30			
1977	18.70	15.30	12.70	18.50
1978	18.90	16.40	13.00	20.50



ASSAULT DISPOSITIONS

PERCENTAGE TO STRAIGHT PROBATION

	<u>REPORTED</u>	<u>PROJECTED</u>	<u>LOW</u>	<u>HIGH</u>
1970	37.90			
1971	40.30			
1972	36.30			
1973	36.00			
1974	27.50			
1975	24.50			
1976	20.00			
1977	17.00	18.30	12.00	24.70
1978	16.70	15.00	7.40	22.60

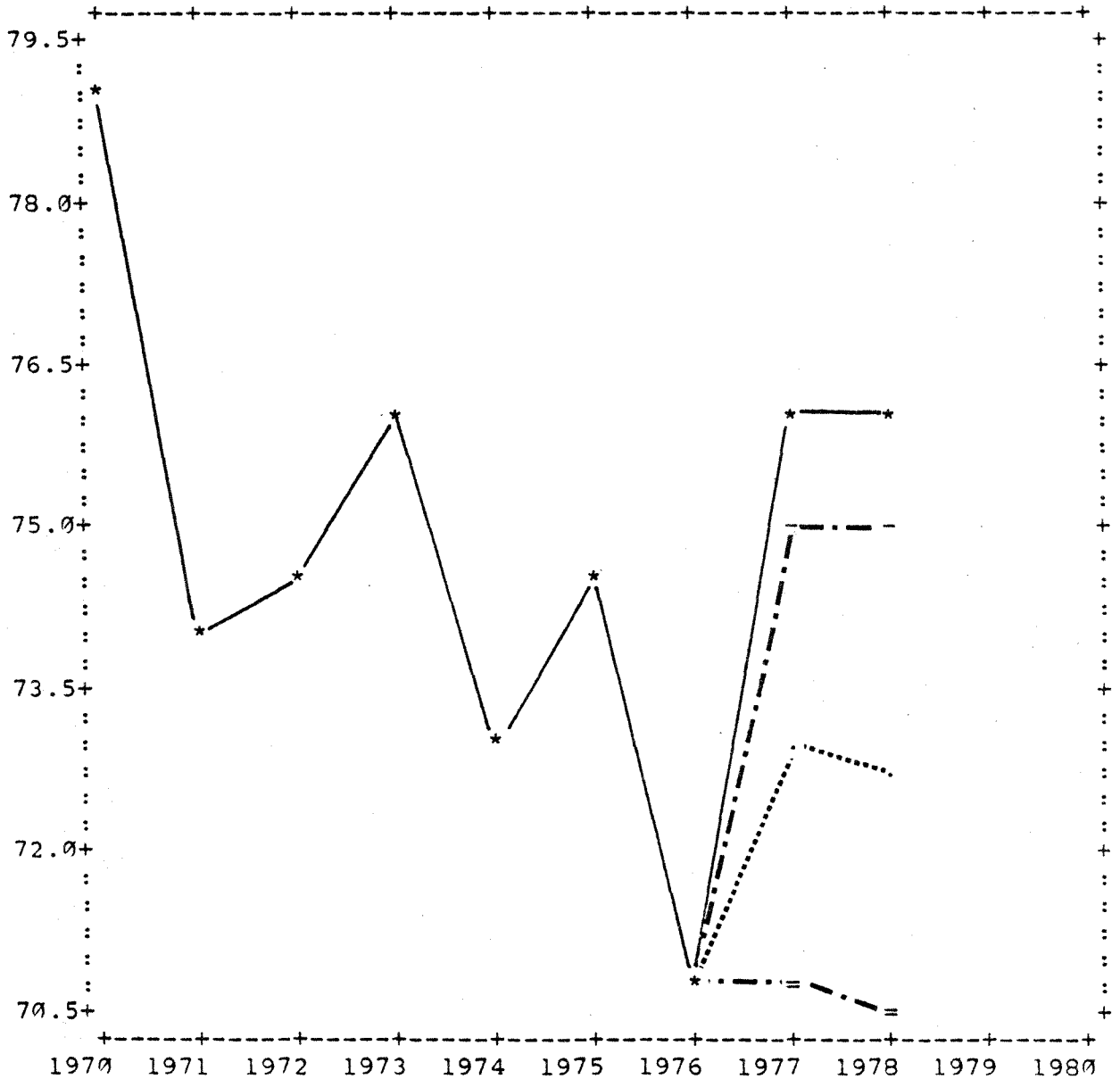


ASSAULT DISPOSITIONS

APPENDIX D-19

PERCENTAGE TO PROBATION TOTAL

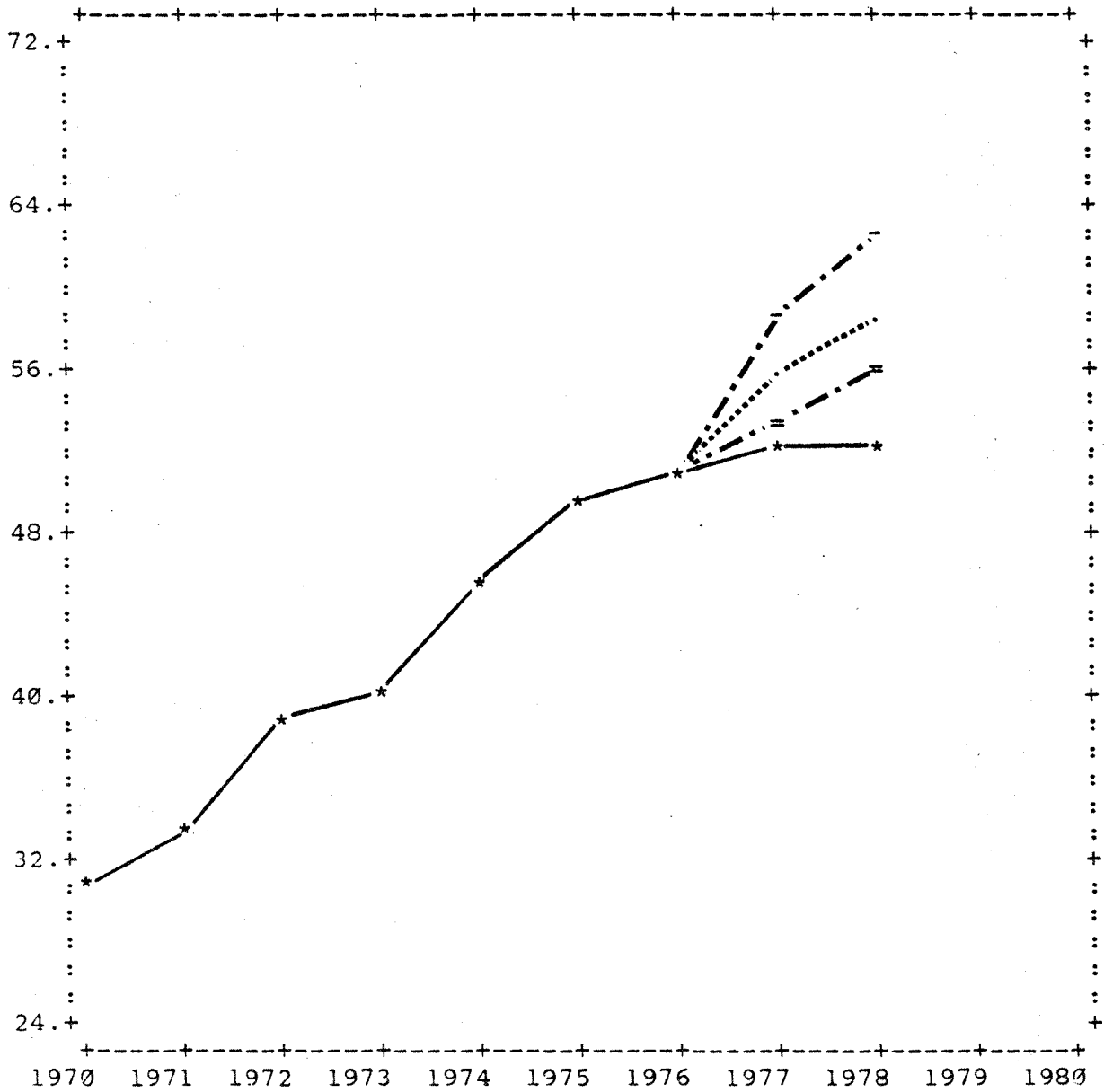
	REPORTED	PROJECTED	LOW	HIGH
1970	79.10			
1971	73.90			
1972	74.60			
1973	75.90			
1974	73.10			
1975	74.40			
1976	70.70			
1977	75.90	72.90	70.70	75.00
1978	75.90	72.80	70.50	75.00



ASSAULT DISPOSITIONS

PERCENTAGE TO PROBATION AND JAIL

	<u>REPORTED</u>	<u>PROJECTED</u>	<u>LOW</u>	<u>HIGH</u>
1970	31.20			
1971	33.60			
1972	38.30			
1973	39.90			
1974	45.60			
1975	49.90			
1976	50.70			
1977	51.60	55.40	52.80	58.00
1978	52.50	58.90	55.70	62.00

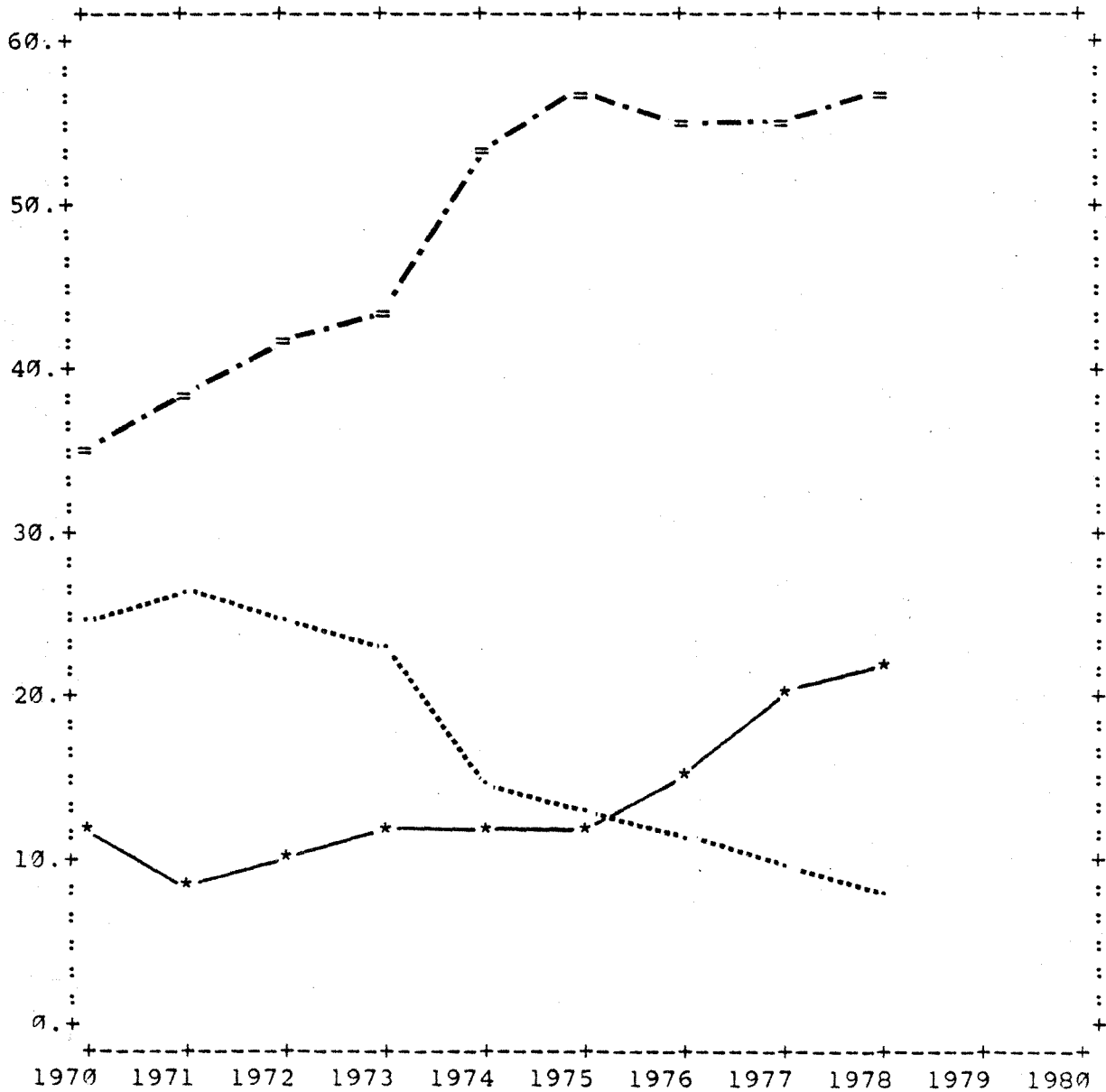


BURGLARY DISPOSITIONS

APPENDIX D-21

PERCENTAGE TO

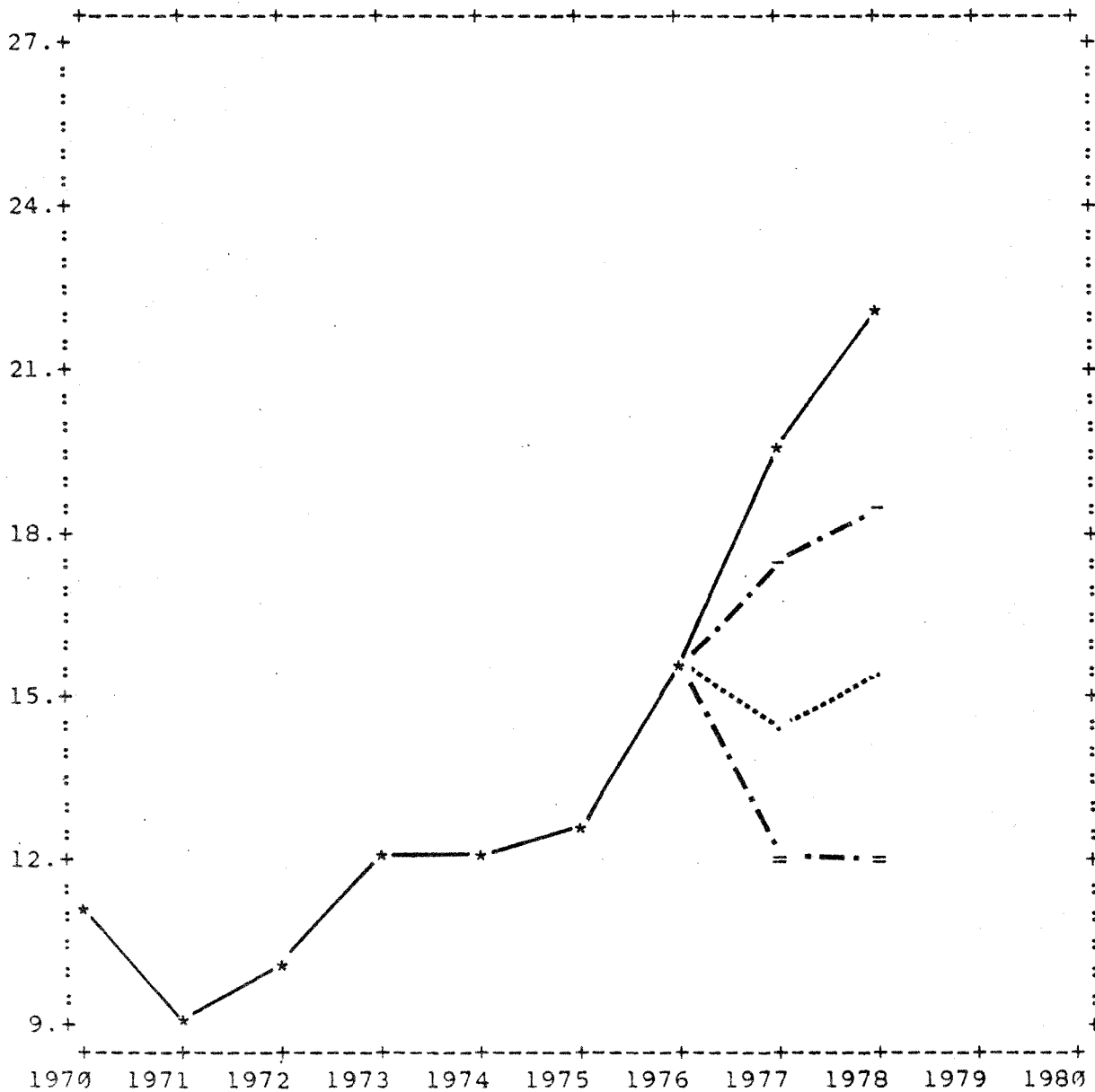
	PRISON	STRAIGHT PROBATION	PROBATION AND JAIL
1970	11.10	25.80	35.70
1971	9.10	26.90	37.60
1972	10.00	25.50	41.50
1973	12.00	23.50	42.60
1974	12.00	14.80	53.60
1975	12.30	13.10	57.40
1976	15.30	11.60	55.00
1977	19.30	9.80	55.40
1978	22.00	8.60	56.50



BURGLARY DISPOSITIONS

PERCENTAGE TO PRISON

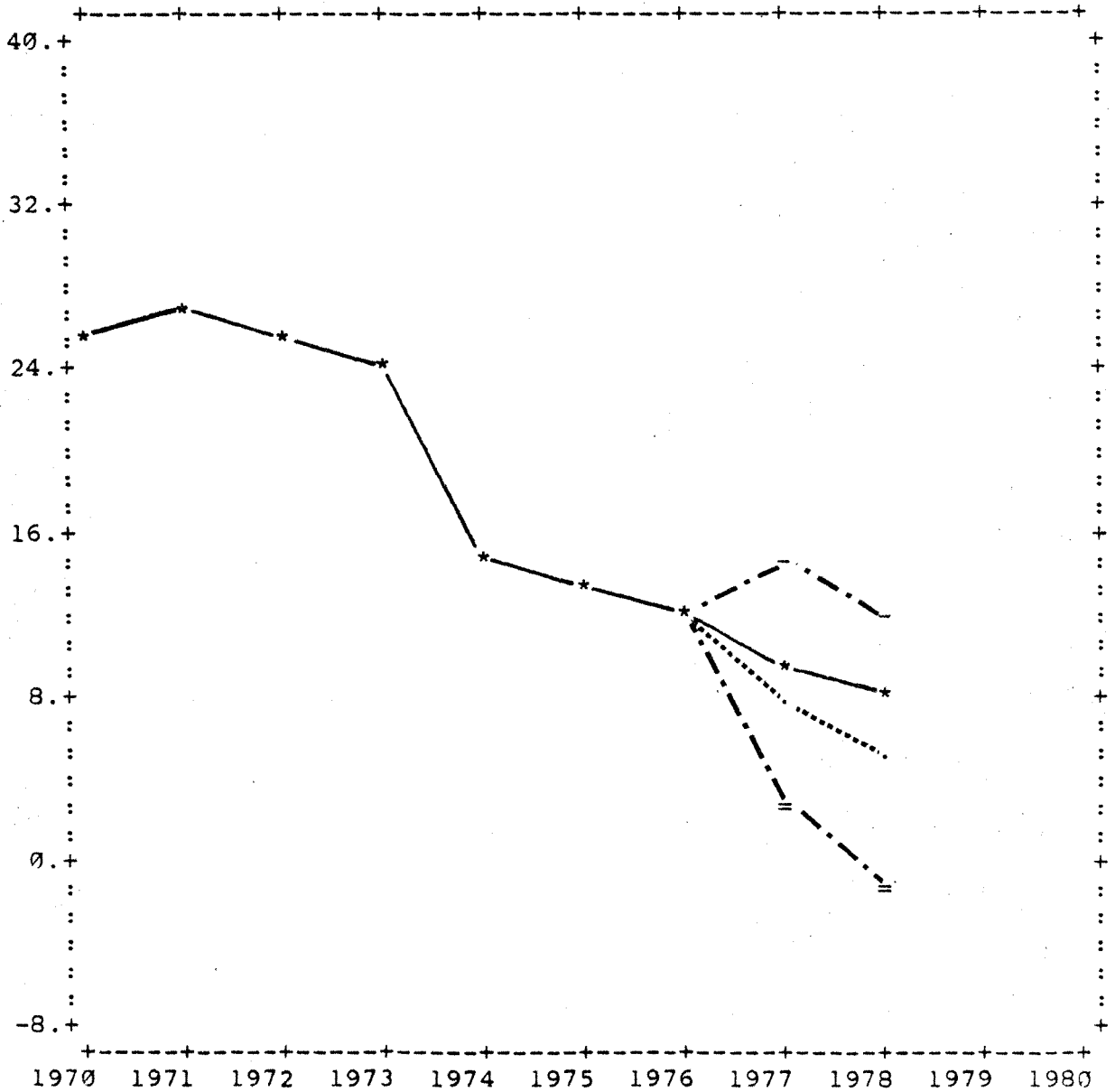
	REPORTED	PROJECTED	LOW	HIGH
1970	11.10			
1971	9.10			
1972	10.00			
1973	12.00			
1974	12.00			
1975	12.30			
1976	15.30			
1977	19.30	14.70	12.00	17.40
1978	22.00	15.40	12.20	18.70



BURGLARY DISPOSITIONS

PERCENTAGE TO STRAIGHT PROBATION

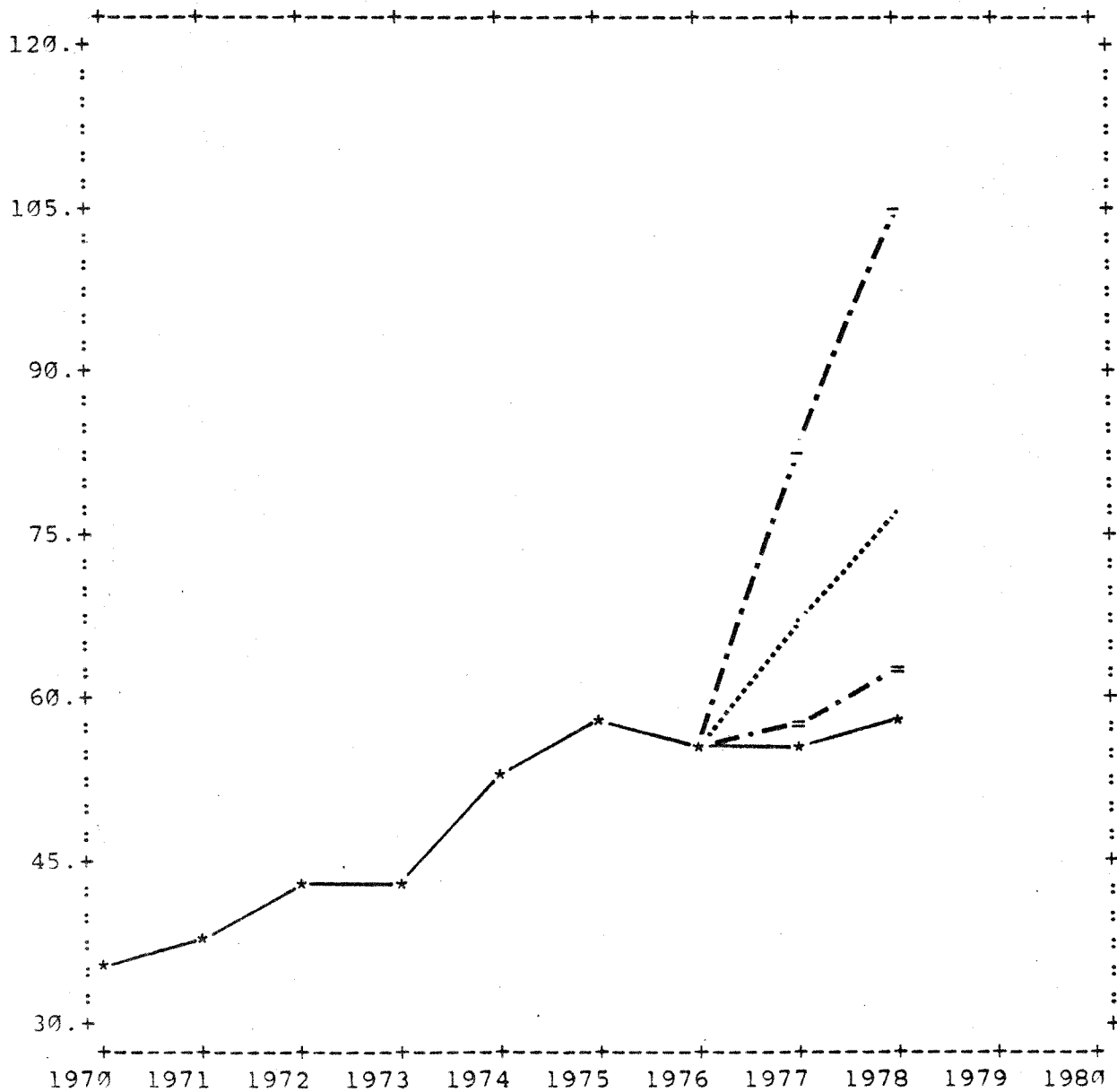
	REPORTED	PROJECTED	LOW	HIGH
1970	25.80			
1971	26.90			
1972	25.50			
1973	23.50			
1974	14.80			
1975	13.10			
1976	11.60			
1977	9.80	8.600	2.90	14.40
1978	8.60	5.700	-1.20	12.60



BURGLARY DISPOSITIONS

PERCENTAGE TO PROBATION AND JAIL

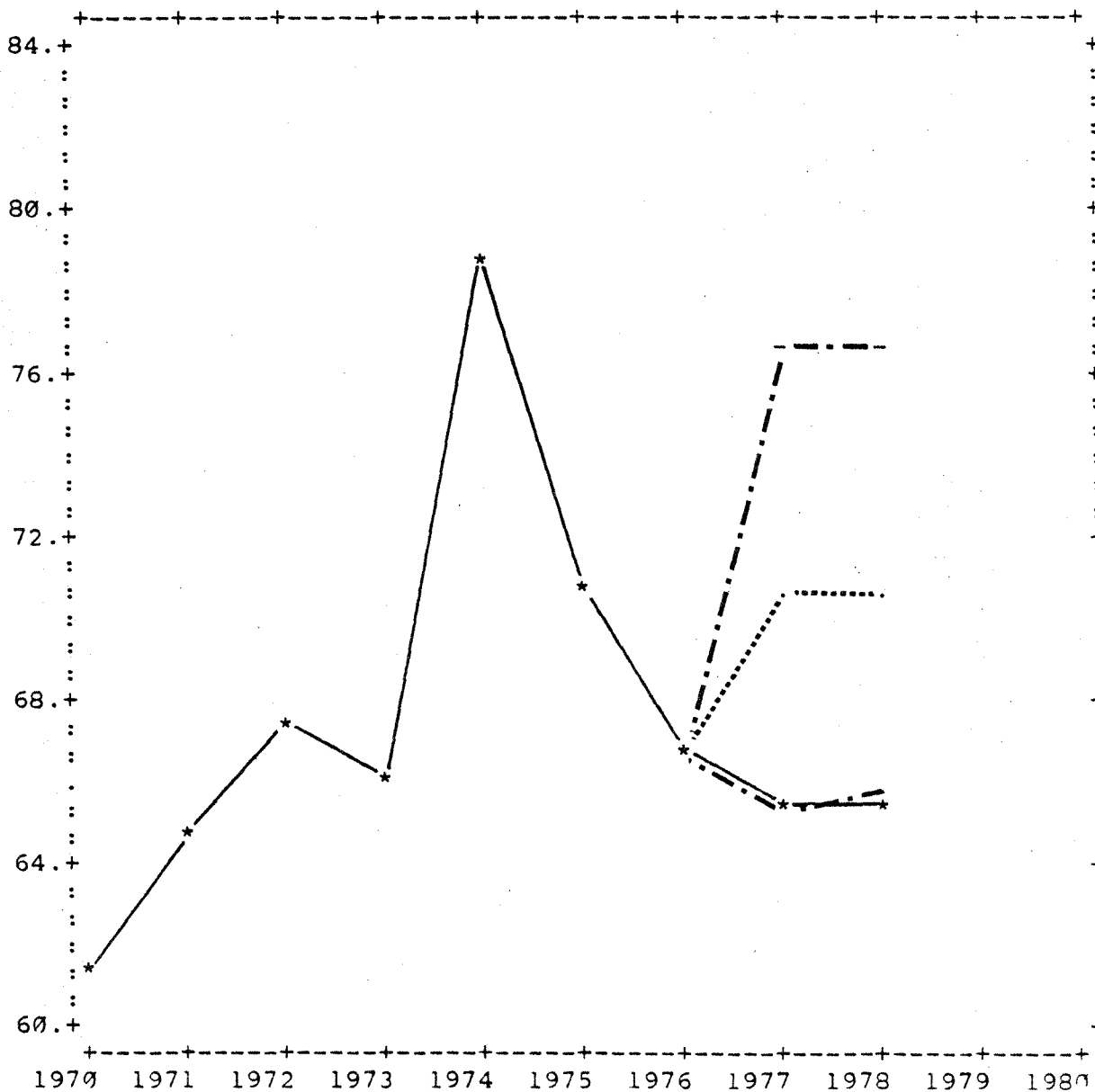
	REPORTED	PROJECTED	LOW	HIGH
1970	35.70			
1971	37.60			
1972	41.50			
1973	42.60			
1974	53.60			
1975	57.40			
1976	55.00			
1977	55.40	67.90	57.00	83.4
1978	56.50	78.00	61.70	105.7



BURGLARY DISPOSITIONS

PERCENTAGE TO PROBATION TOTAL

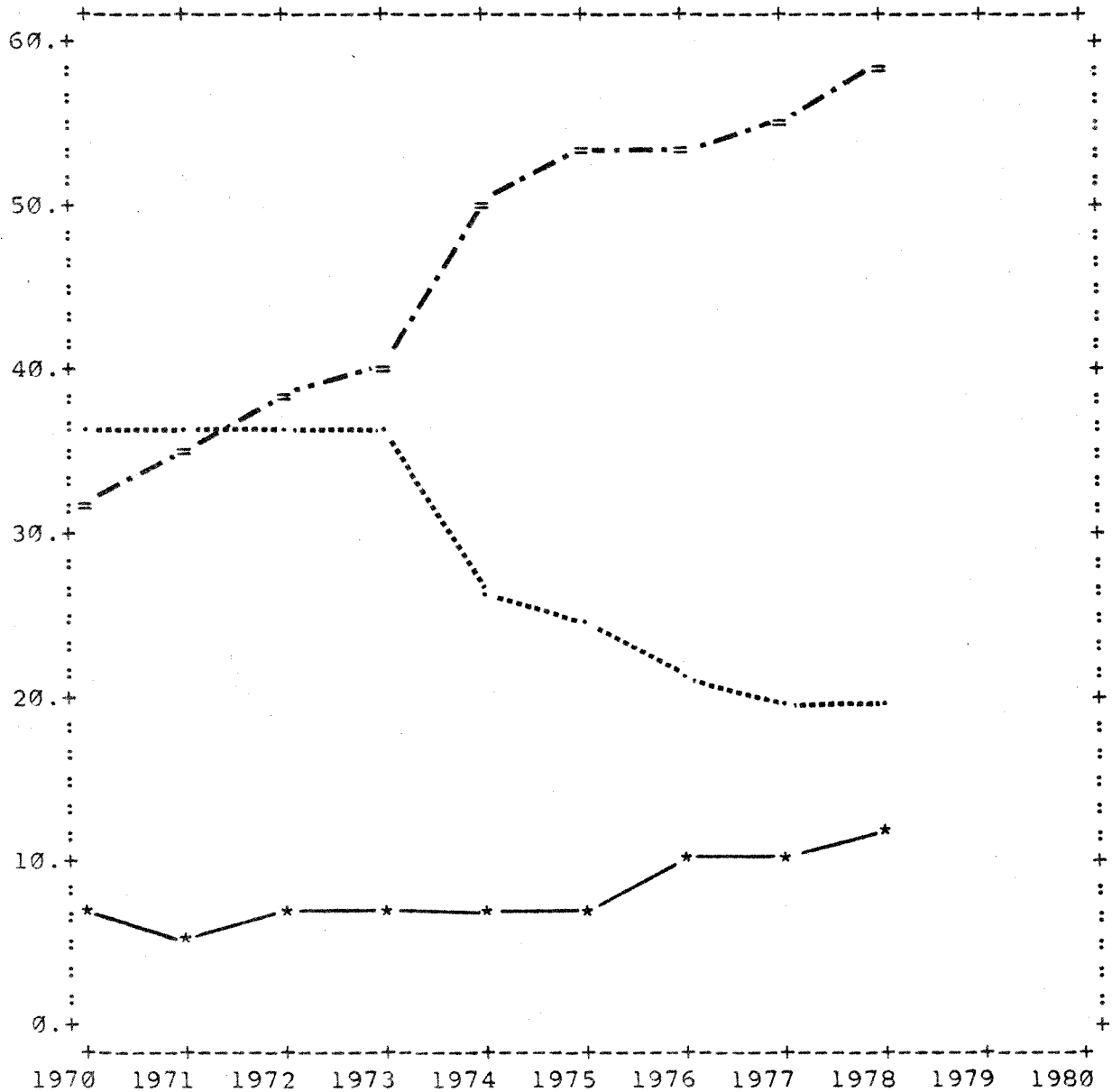
	REPORTED	PROJECTED	LOW	HIGH
1970	61.50			
1971	64.50			
1972	67.00			
1973	66.10			
1974	78.40			
1975	70.50			
1976	66.60			
1977	65.20	70.40	65.20	76.50
1978	65.10	70.60	65.20	76.90



THEFT DISPOSITIONS

PERCENTAGE TO

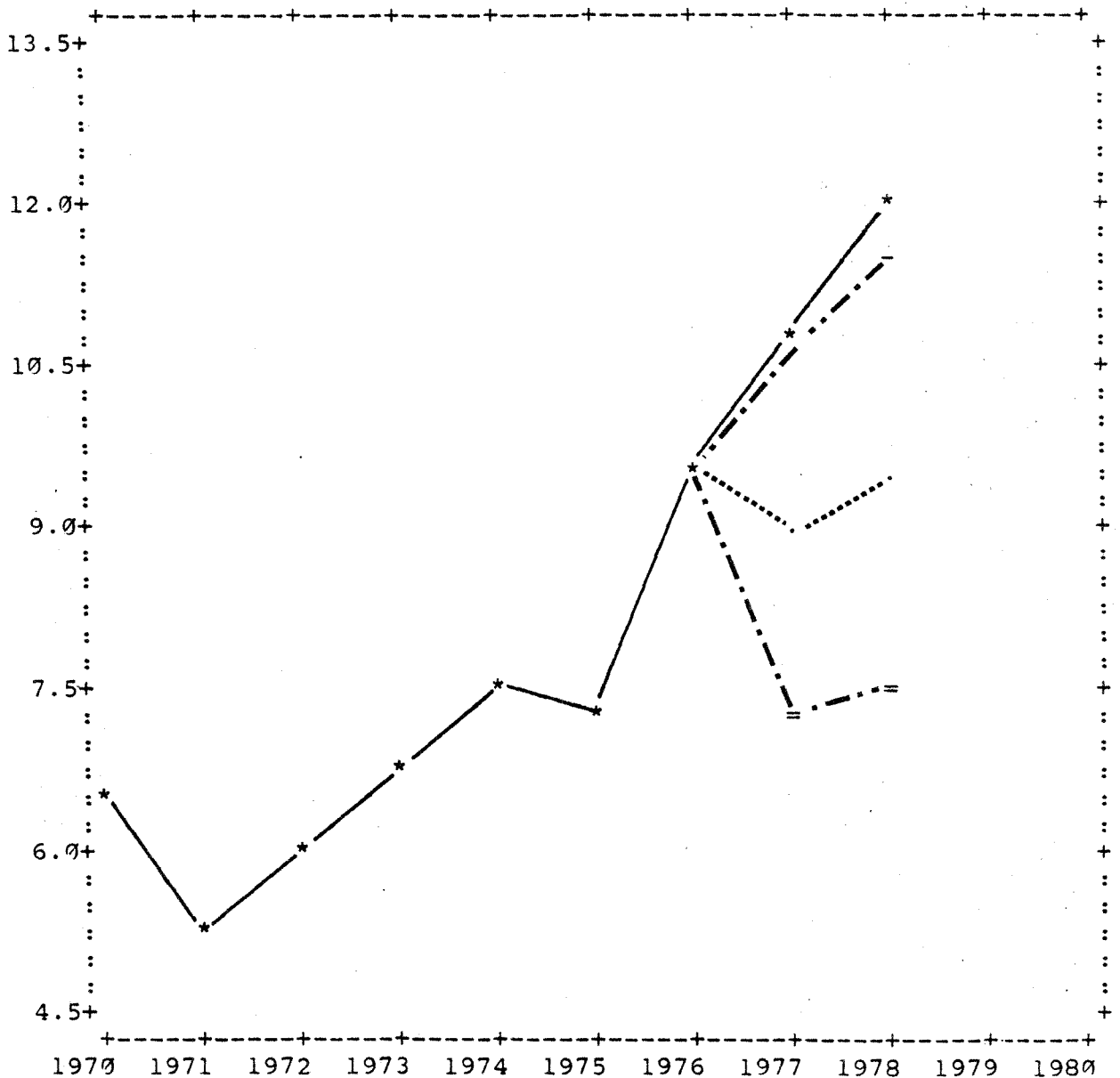
	PRISON	STRAIGHT PROBATION	PROBATION AND JAIL
1970	6.50	36.70	31.00
1971	5.30	37.30	34.20
1972	5.90	36.50	38.50
1973	6.80	36.50	40.20
1974	7.40	27.40	50.00
1975	7.30	24.60	53.80
1976	9.40	22.40	54.10
1977	10.80	20.30	54.90
1978	12.00	19.50	58.10



THEFT DISPOSITIONS

PERCENTAGE TO PRISON

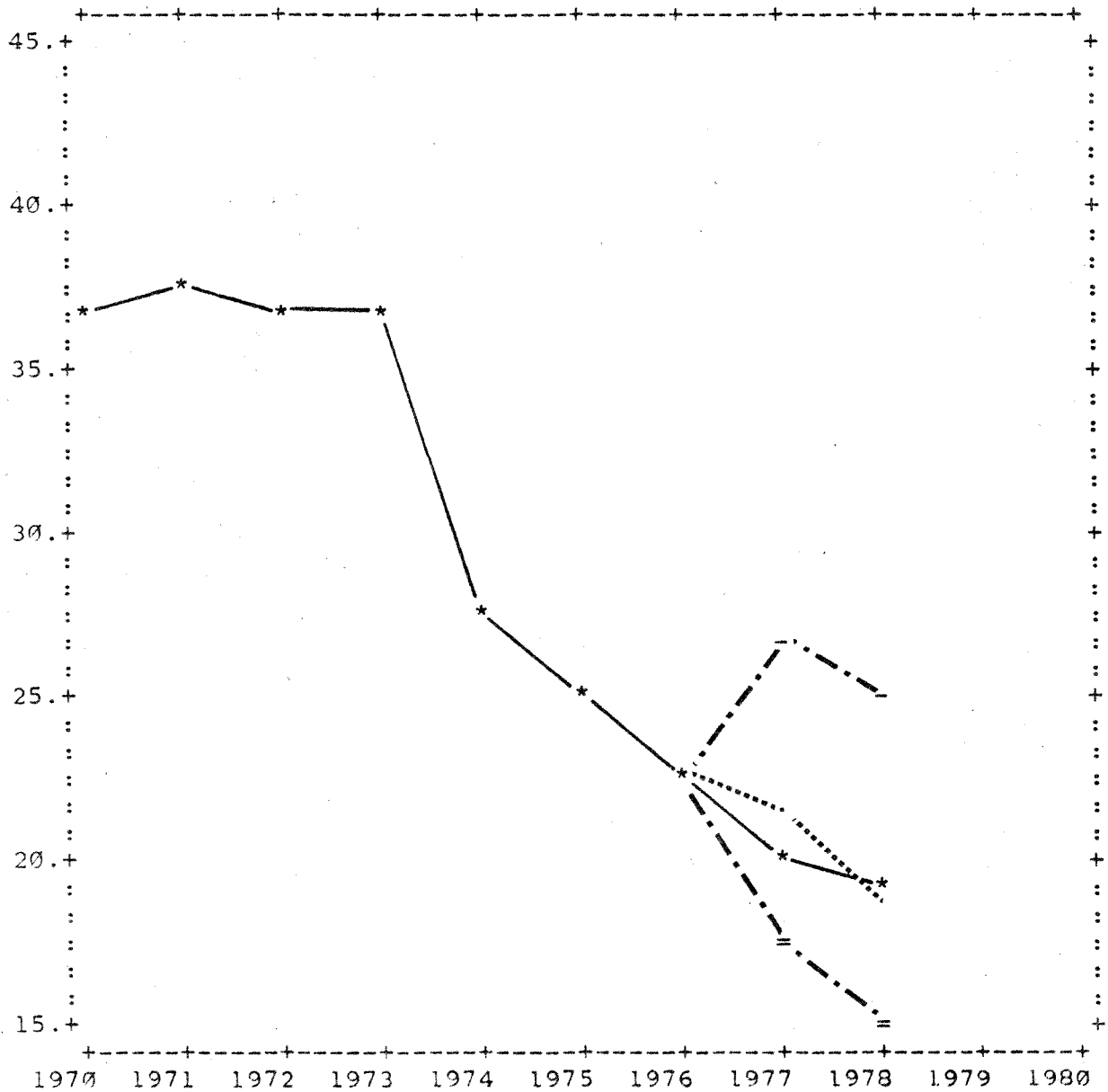
	REPORTED	PROJECTED	LOW	HIGH
1970	6.50			
1971	5.30			
1972	5.90			
1973	6.80			
1974	7.40			
1975	7.30			
1976	9.40			
1977	10.80	9.000	7.200	10.70
1978	12.00	9.500	7.400	11.60



THEFT DISPOSITIONS

PERCENTAGE TO STRAIGHT PROBATION

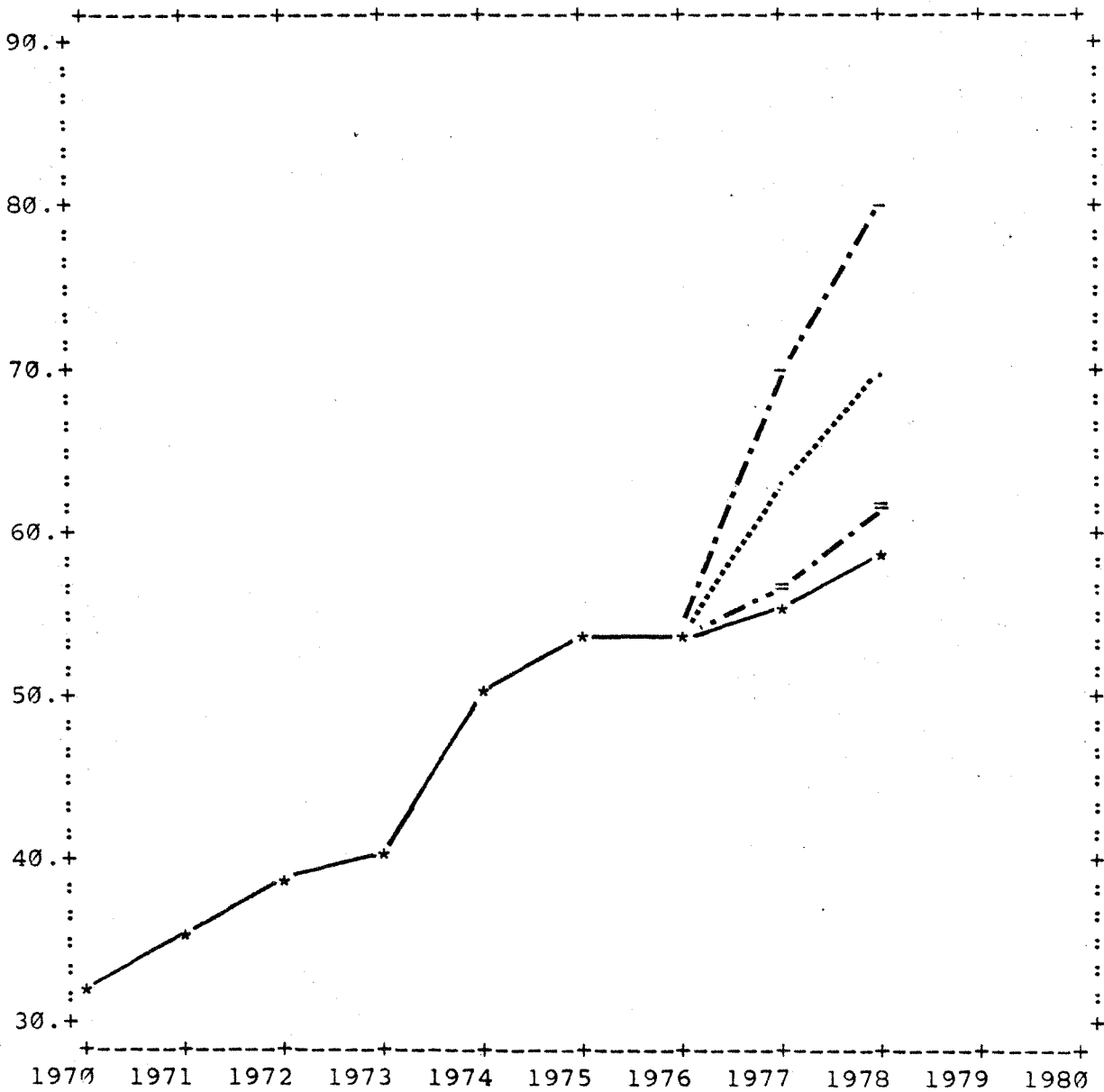
	<u>REPORTED</u>	<u>PROJECTED</u>	<u>LOW</u>	<u>HIGH</u>
1970	36.70			
1971	37.30			
1972	36.50			
1973	36.50			
1974	27.40			
1975	24.60			
1976	22.40			
1977	20.30	21.40	17.30	26.50
1978	19.50	19.50	15.00	25.20



THEFT DISPOSITIONS

PERCENTAGE TO PROBATION AND JAIL

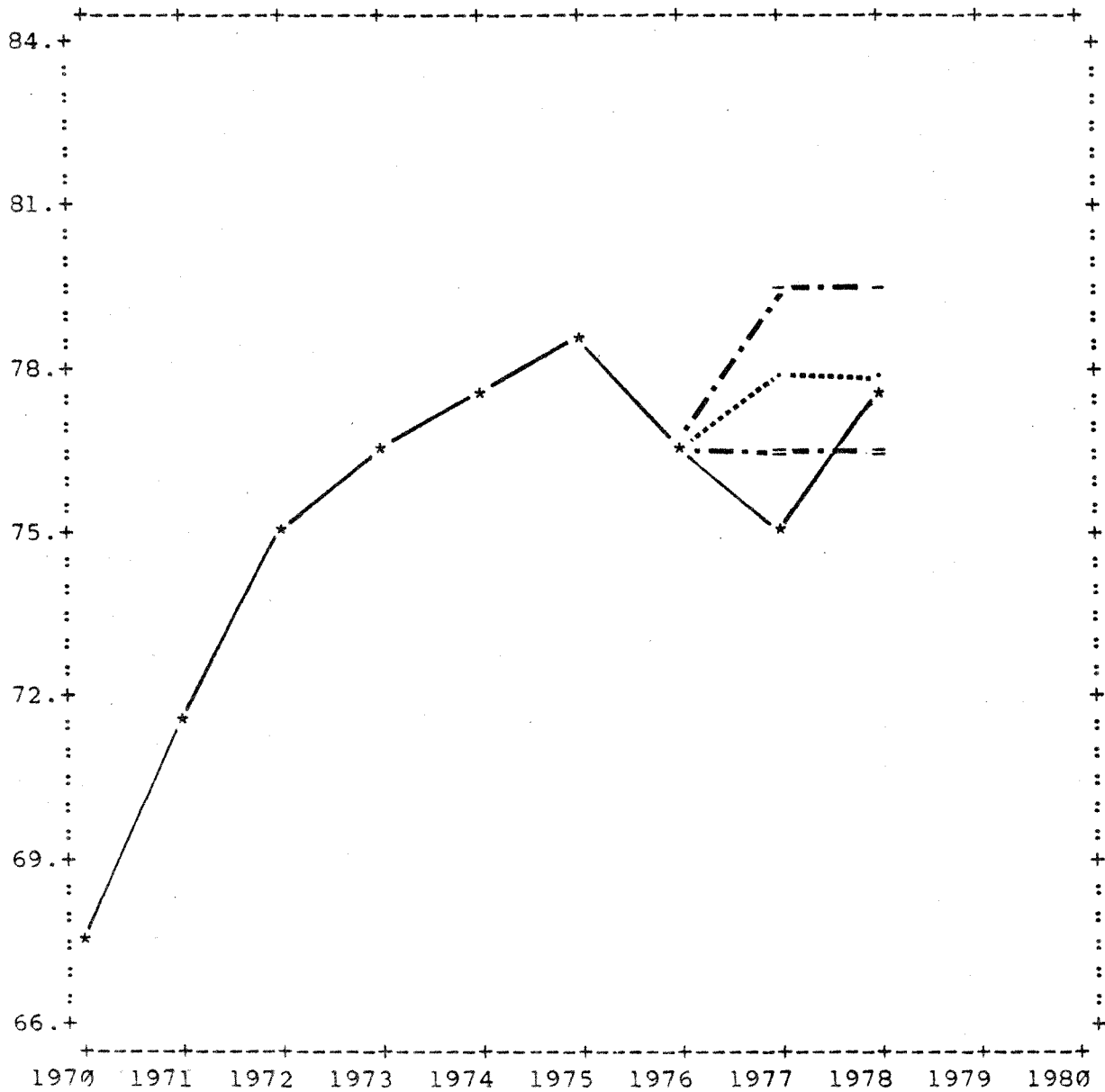
	REPORTED	PROJECTED	LOW	HIGH
	-----	---	---
1970	31.00			
1971	34.20			
1972	38.50			
1973	40.20			
1974	50.00			
1975	53.80			
1976	54.10			
1977	54.90	63.30	56.90	70.30
1978	58.10	70.10	61.70	79.60



THEFT DISPOSITIONS

PERCENTAGE TO PROBATION TOTAL

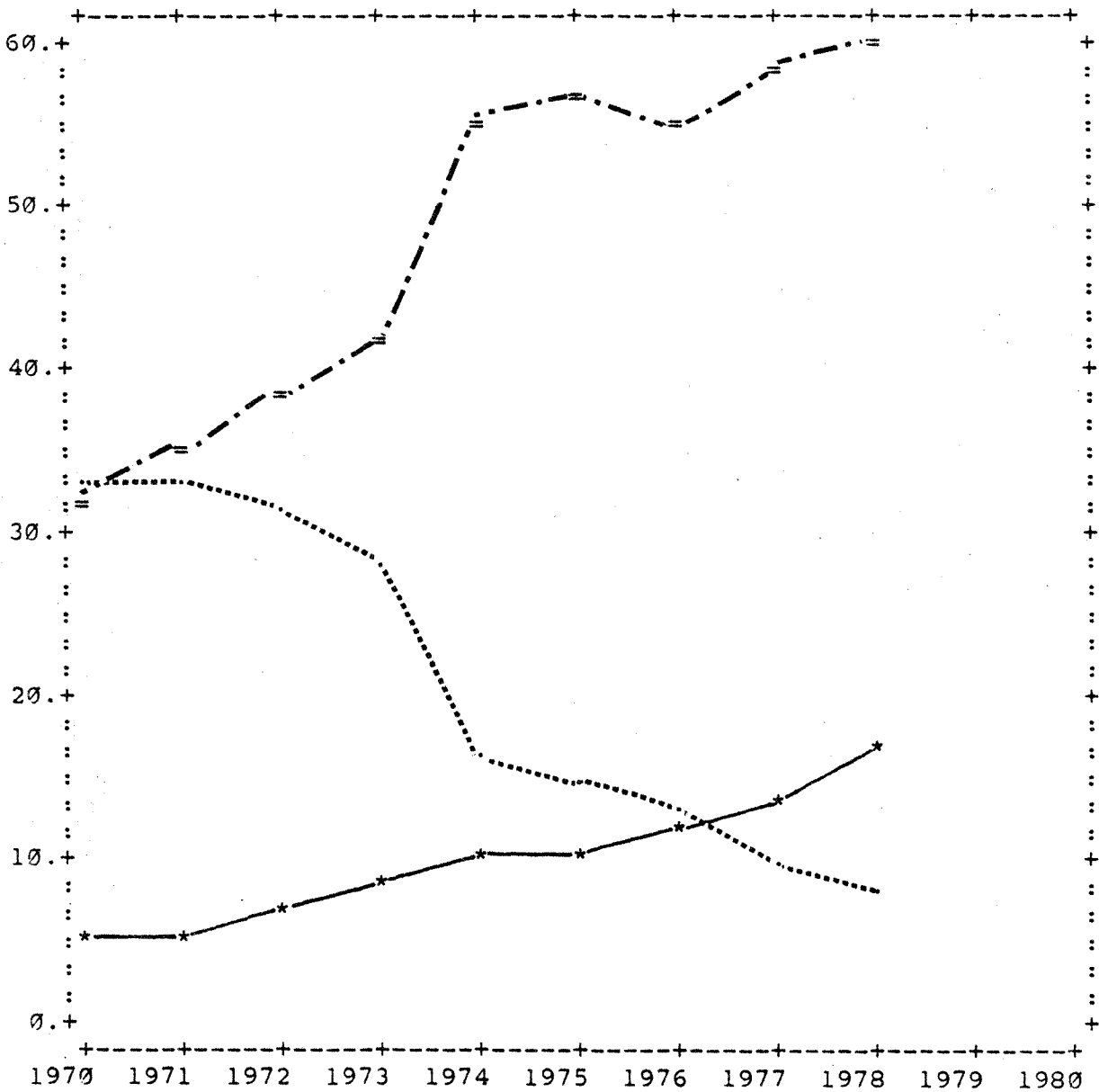
	REPORTED	PROJECTED	LOW	HIGH
1970	67.70			
1971	71.50			
1972	75.00			
1973	76.70			
1974	77.40			
1975	78.40			
1976	76.50			
1977	75.20	77.90	76.40	79.30
1978	77.60	78.10	76.60	79.60



MOTOR VEHICLE THEFT DISPOSITIONS

PERCENTAGE TO

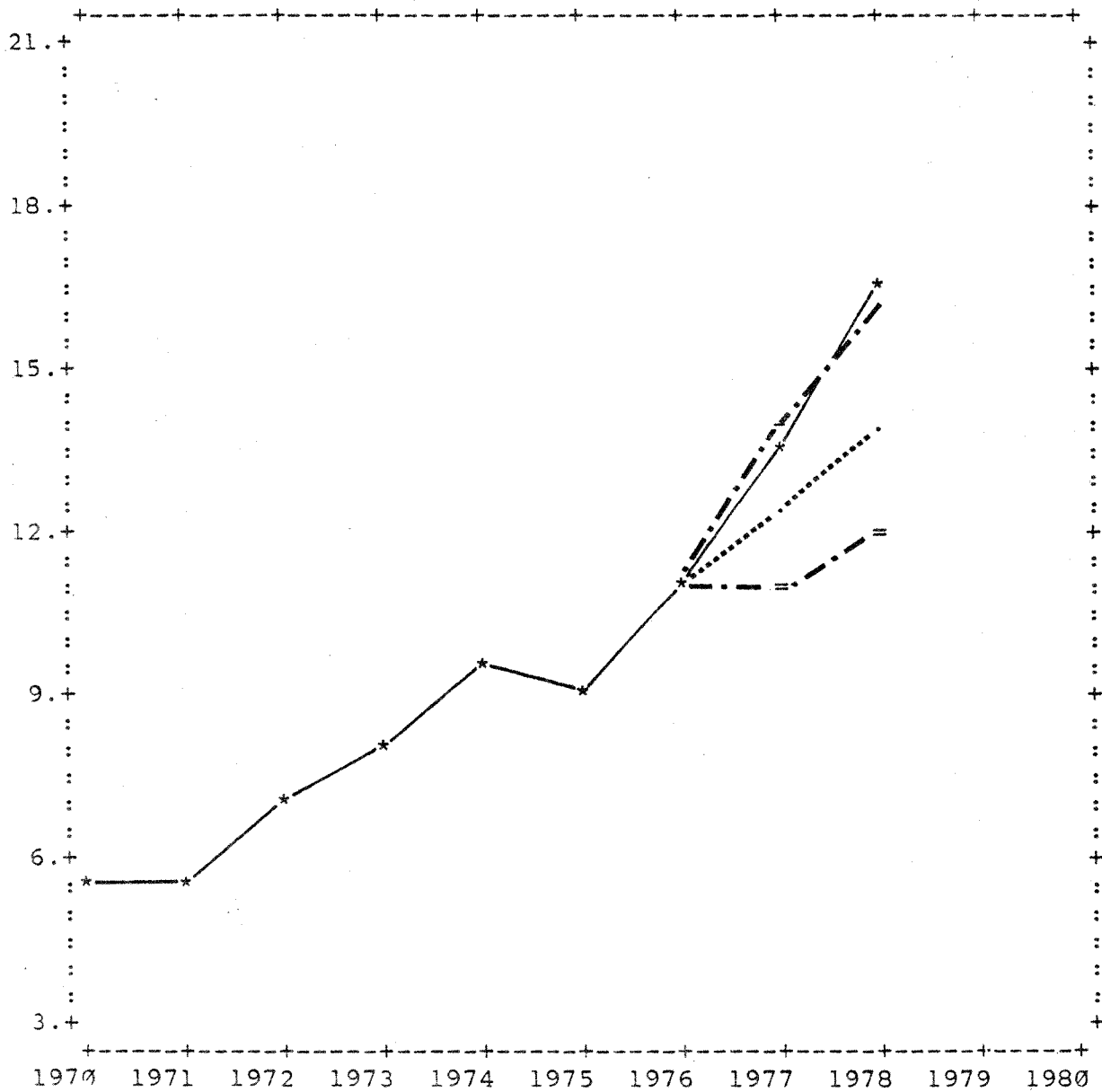
	PRISON	STRAIGHT PROBATION	PROBATION AND JAIL
1970	5.50	32.50	32.10
1971	5.70	32.80	34.30
1972	7.10	31.90	37.60
1973	7.80	28.30	41.50
1974	9.50	16.40	54.60
1975	9.20	15.00	57.10
1976	11.10	13.00	55.00
1977	13.40	9.90	58.60
1978	16.60	7.70	59.60



MOTOR VEHICLE THEFT DISPOSITIONS

PERCENTAGE TO PRISON

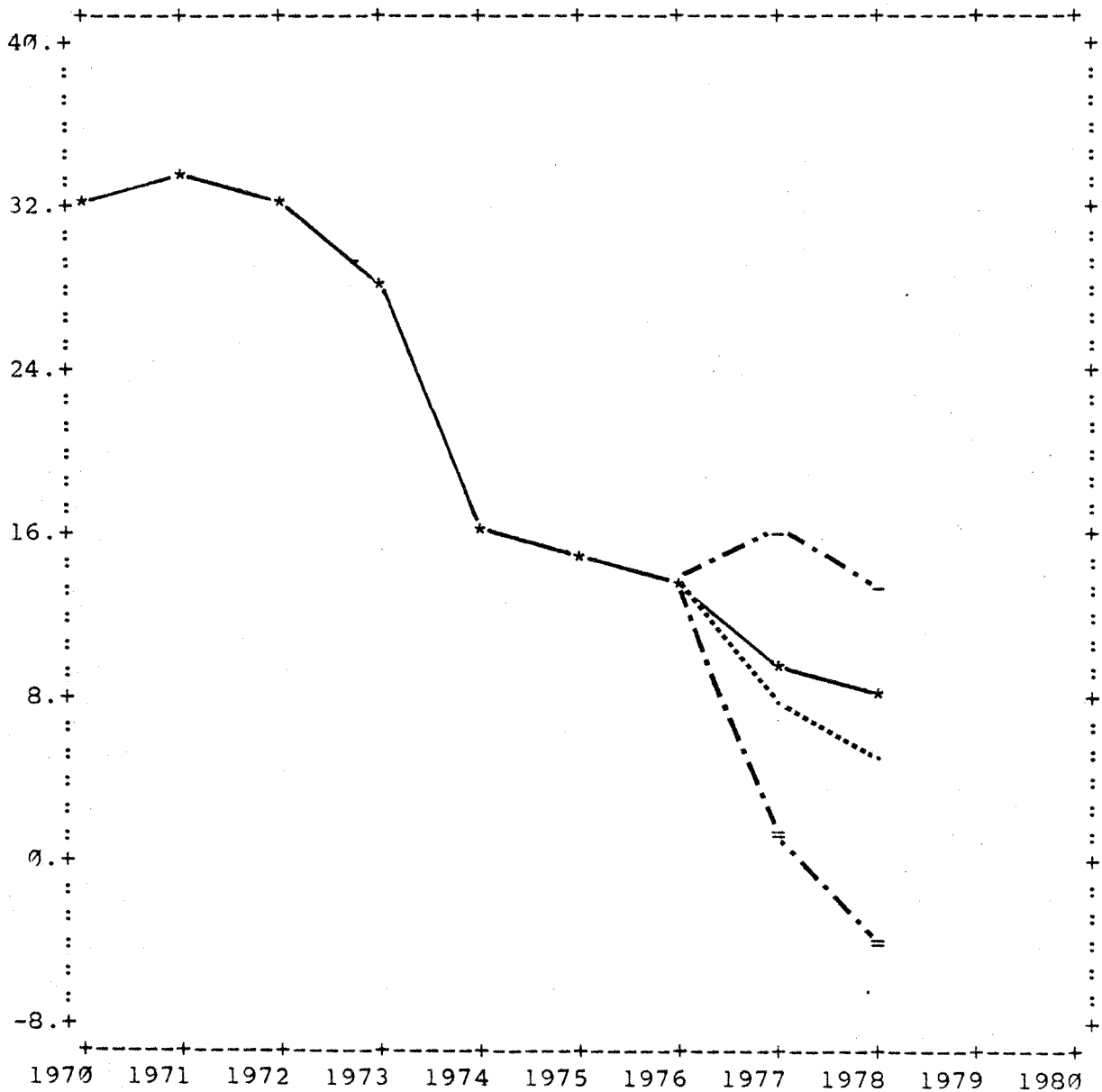
	REPORTED	PROJECTED	LOW	HIGH
1970	5.50			
1971	5.70			
1972	7.10			
1973	7.80			
1974	9.50			
1975	9.20			
1976	11.10			
1977	13.40	12.50	11.00	14.20
1978	16.60	14.10	12.10	16.50



MOTOR VEHICLE THEFT DISPOSITIONS

PERCENTAGE TO STRAIGHT PROBATION

	REPORTED	PROJECTED	LOW	HIGH
1970	32.50			
1971	32.80			
1972	31.90			
1973	28.30			
1974	16.40			
1975	15.00			
1976	13.00			
1977	9.90	8.600	1.00	16.20
1978	7.70	4.700	-4.40	13.80

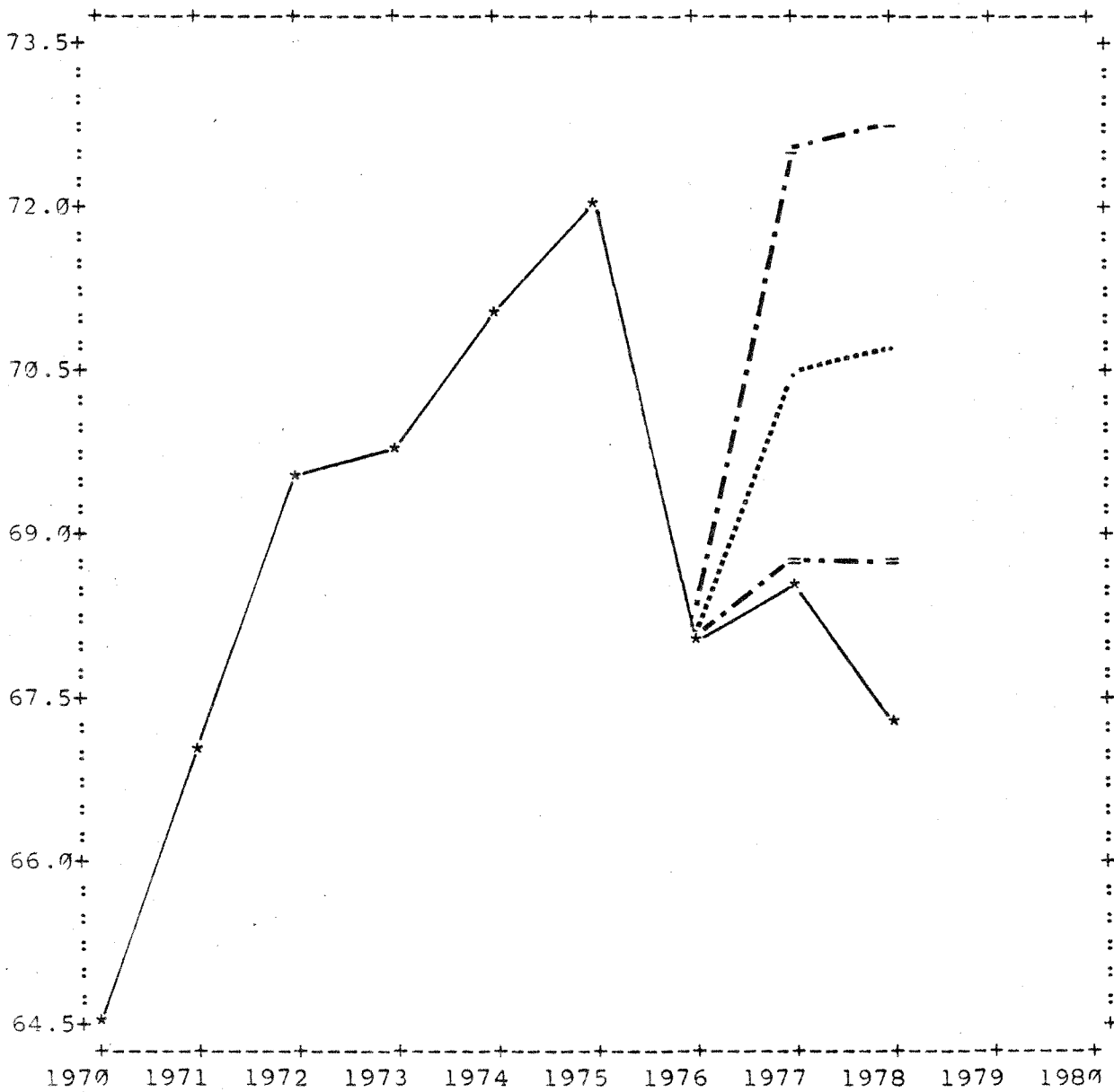


MOTOR VEHICLE THEFT DISPOSITIONS

APPENDIX D-34

PERCENTAGE TO PROBATION TOTAL

	REPORTED	PROJECTED	LOW	HIGH
1970	64.60			
1971	67.10			
1972	69.50			
1973	69.80			
1974	71.00			
1975	72.10			
1976	68.00			
1977	68.50	70.60	68.70	72.60
1978	67.30	70.70	68.80	72.80

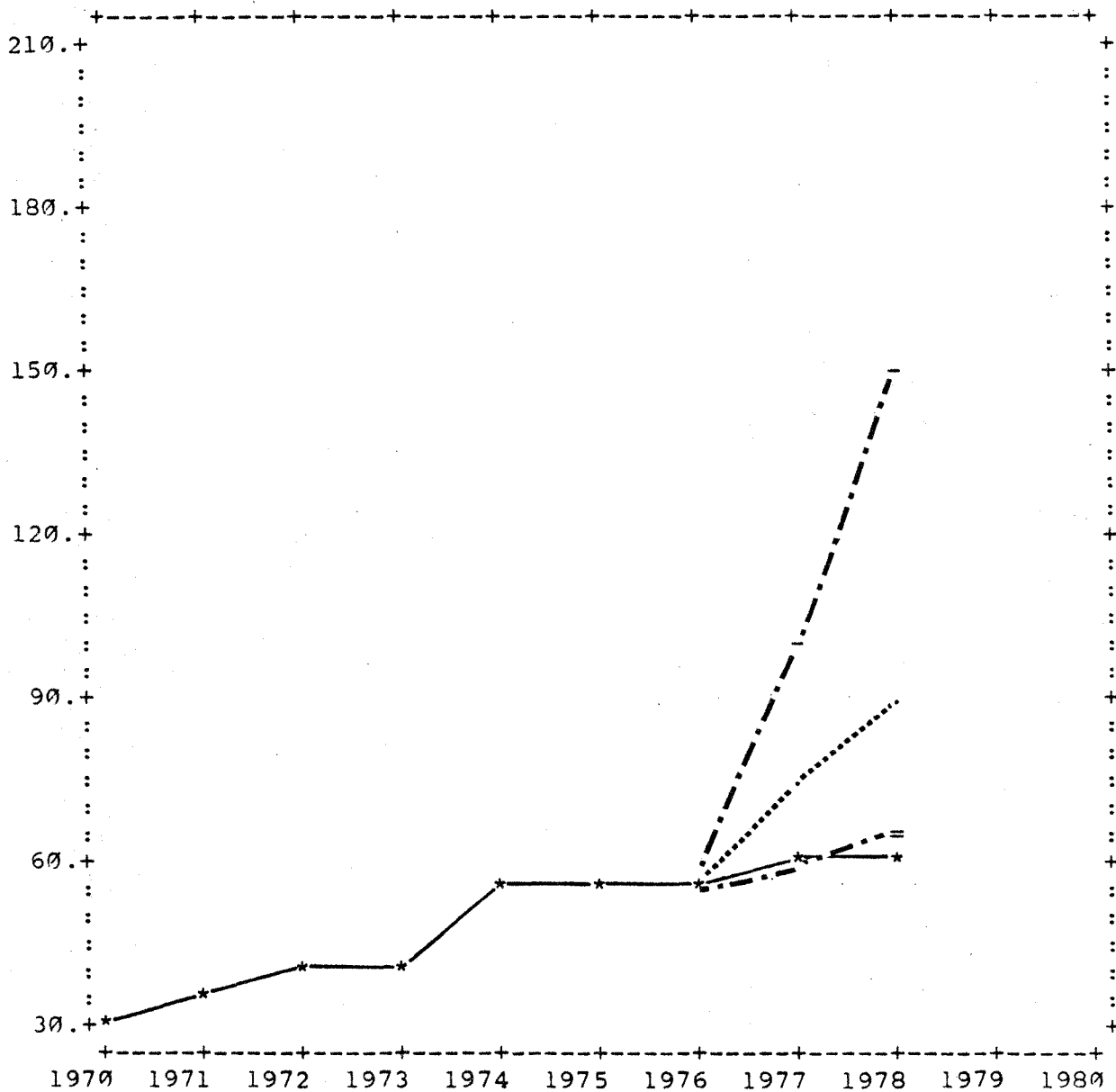


MOTOR VEHICLE THEFT DISPOSITIONS

APPENDIX D-35

PERCENTAGE TO PROBATION AND JAIL

	REPORTED	PROJECTED	LOW	HIGH
1970	32.10			
1971	34.30			
1972	37.60			
1973	41.50			
1974	54.60			
1975	57.10			
1976	55.00			
1977	58.60	74.00	58.30	101.4
1978	59.60	91.00	65.00	151.5

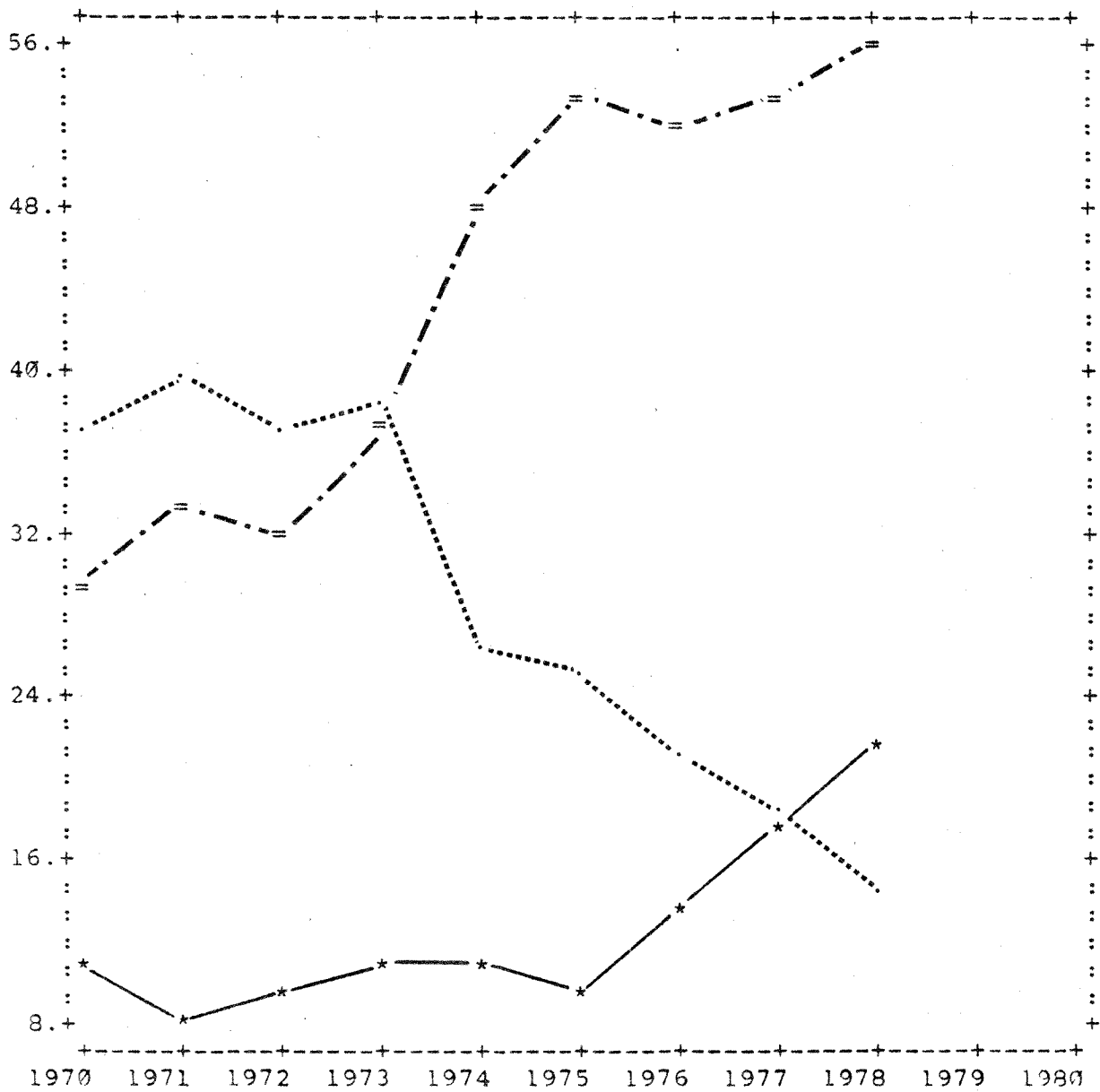


FORGERY OFFENSES DISPOSITIONS

APPENDIX D-36

PERCENTAGE TO

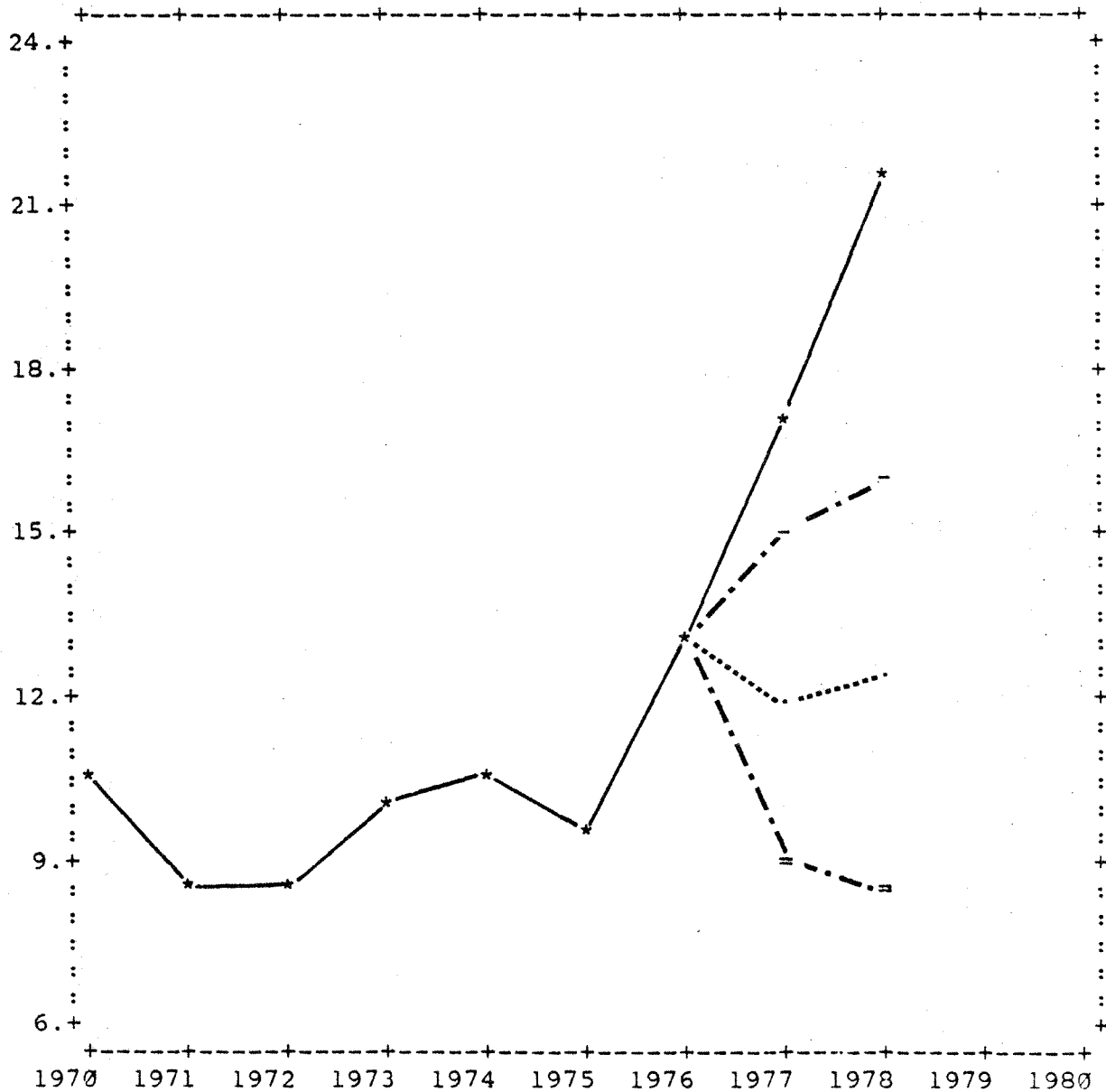
	PRISON	STRAIGHT PROBATION	PROBATION AND JAIL
1970	10.30	37.50	29.90
1971	8.40	40.00	33.00
1972	8.70	37.60	32.20
1973	10.00	38.20	37.10
1974	10.60	26.60	48.20
1975	9.40	25.90	53.00
1976	13.20	21.70	52.20
1977	16.80	18.20	53.00
1978	21.70	14.30	55.70



FORGERY DISPOSITIONS

PERCENTAGE TO PRISON

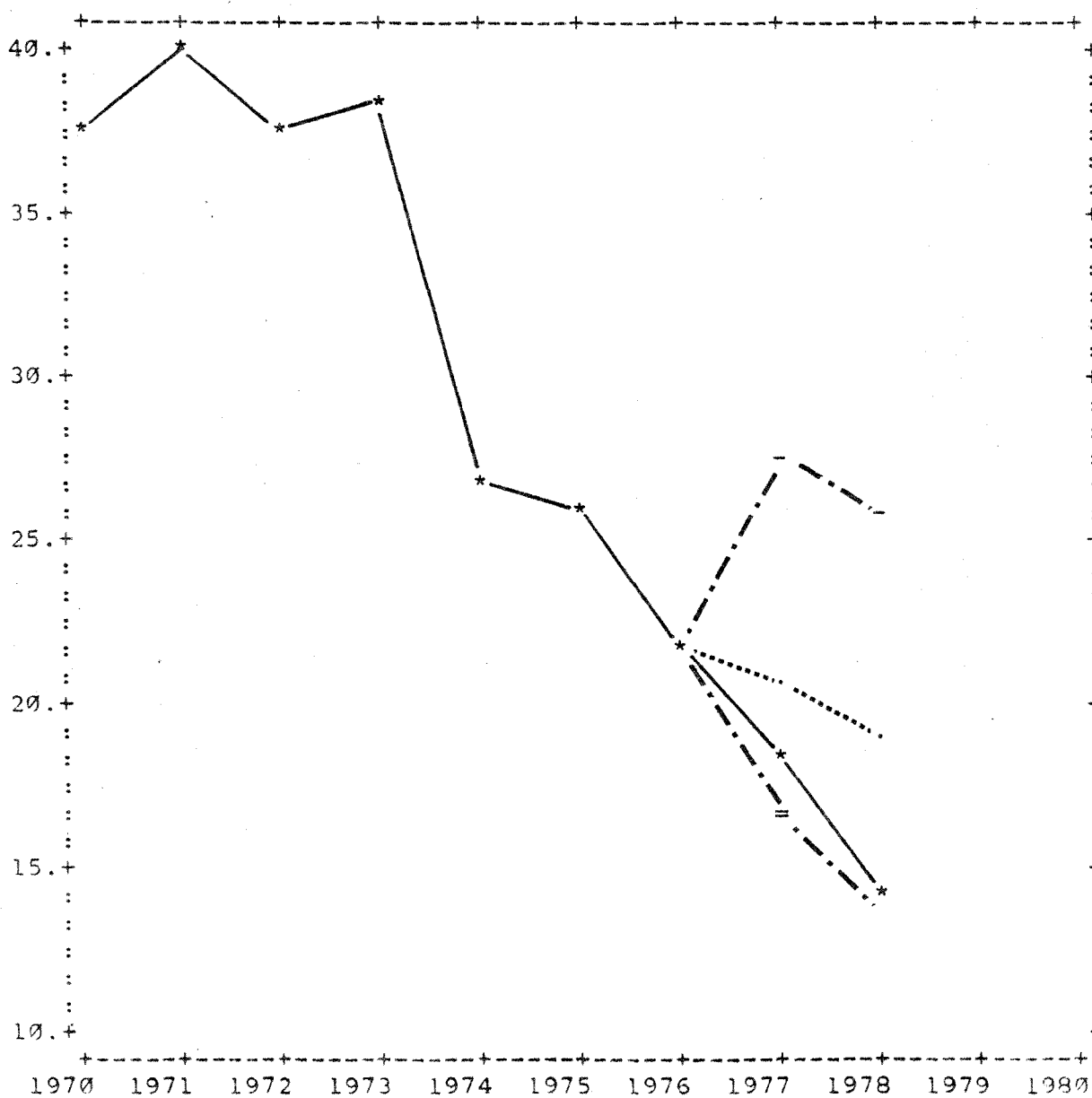
	REPORTED	PROJECTED	LOW	HIGH
1970	10.30			
1971	8.40			
1972	8.70			
1973	10.00			
1974	10.60			
1975	9.40			
1976	13.20			
1977	16.80	11.90	8.900	15.00
1978	21.70	12.30	8.700	16.00



FORGERY DISPOSITIONS

PERCENTAGE TO STRAIGHT PROBATION

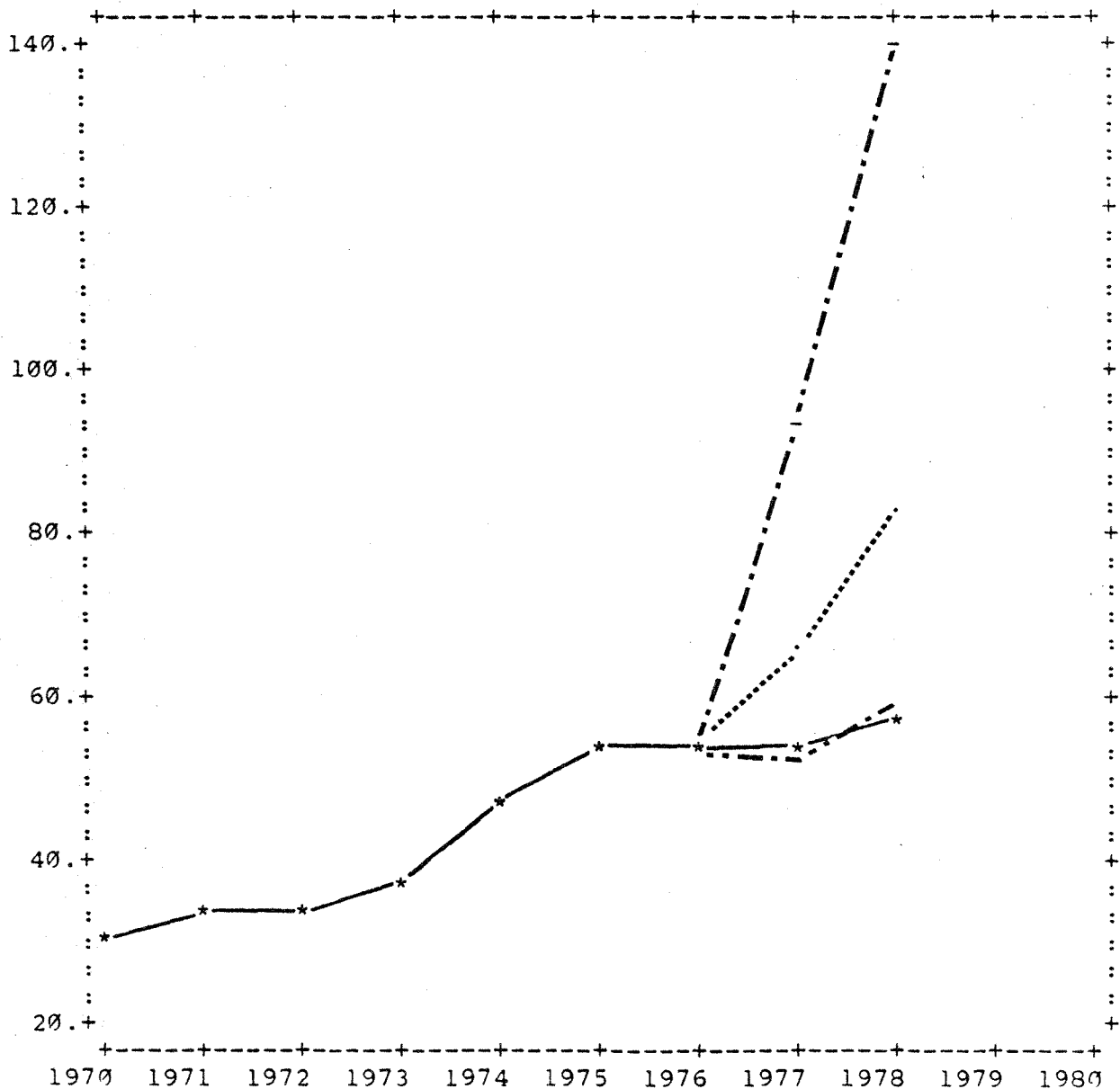
	<u>REPORTED</u>	<u>PROJECTED</u>	<u>LOW</u>	<u>HIGH</u>
1970	37.50			
1971	40.00			
1972	37.60			
1973	38.20			
1974	26.60			
1975	25.90			
1976	21.70			
1977	18.20	21.10	16.30	27.30
1978	14.30	19.00	14.00	26.00



FORGERY DISPOSITIONS

PERCENTAGE TO PROBATION AND JAIL

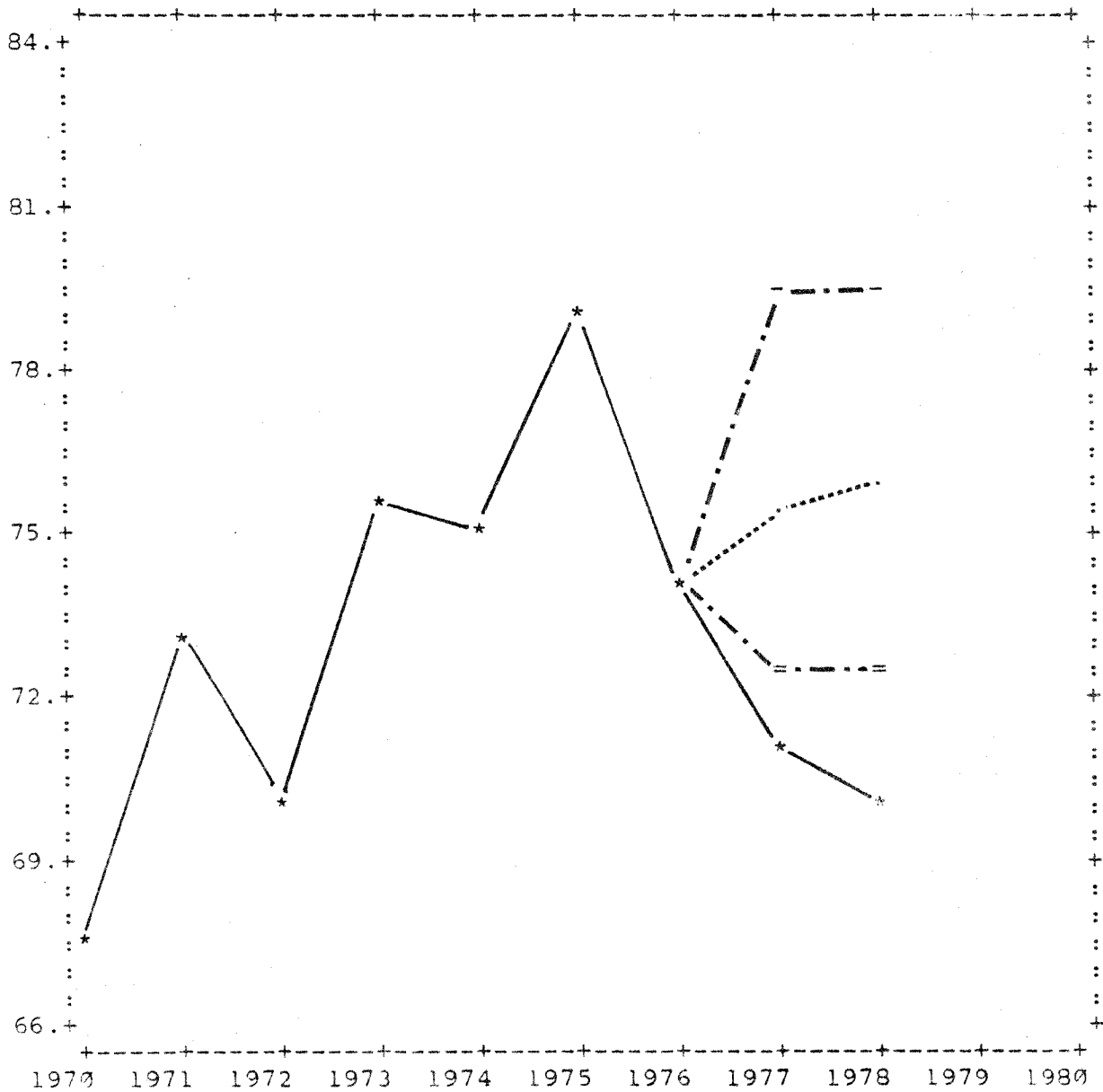
	REPORTED	PROJECTED	LOW	HIGH
1970	29.90			
1971	33.00			
1972	32.20			
1973	37.10			
1974	48.20			
1975	53.00			
1976	52.20			
1977	53.00	67.00	52.20	93.4
1978	55.70	81.90	57.80	140.3



FORGERY DISPOSITIONS

PERCENTAGE TO PROBATION TOTAL

	REPORTED	PROJECTED	LOW	HIGH
1970	67.40			
1971	73.00			
1972	69.80			
1973	75.30			
1974	74.80			
1975	78.90			
1976	73.90			
1977	71.20	75.70	72.50	79.30
1978	70.00	75.90	72.50	79.50

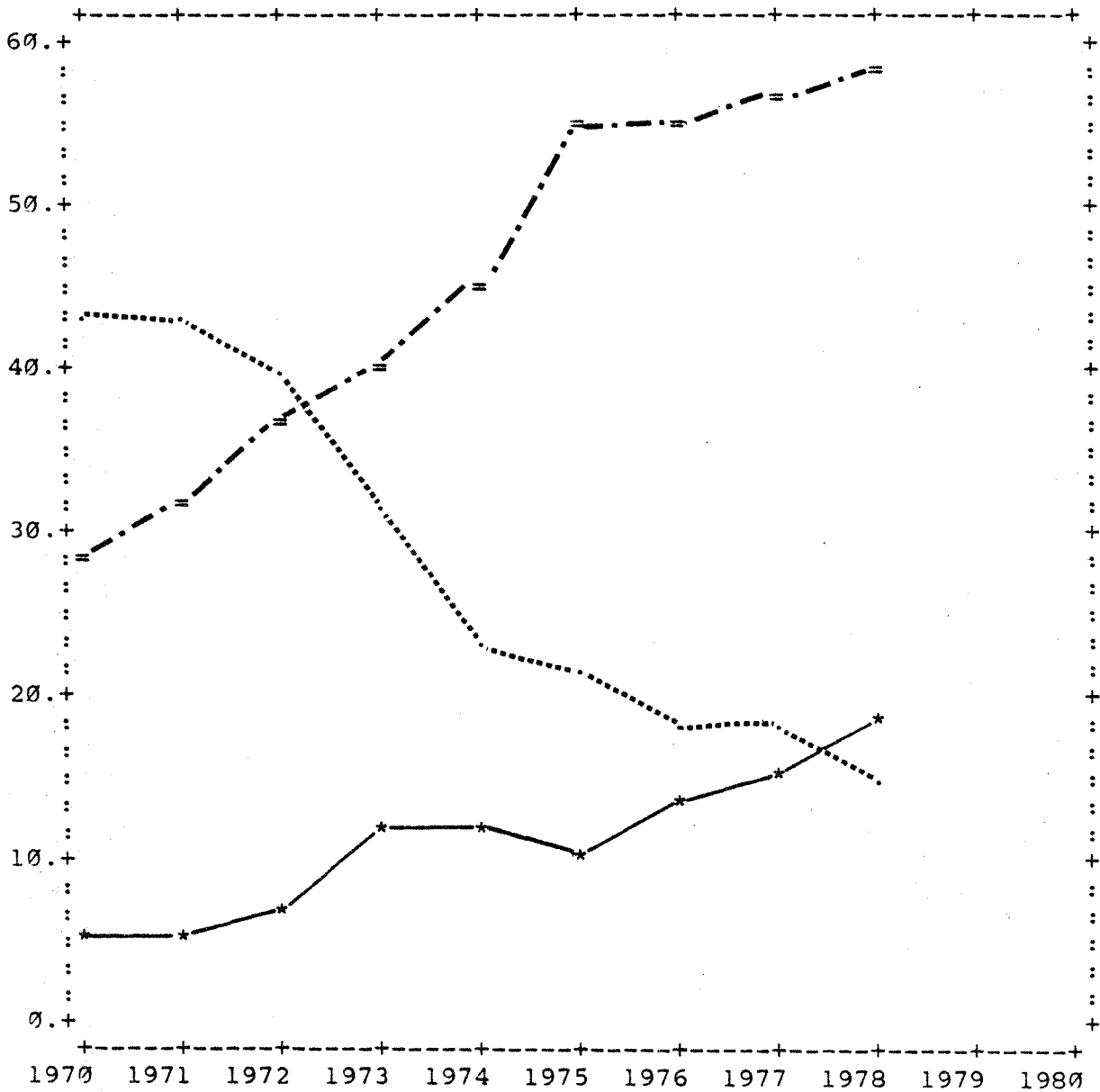


DRUG OFFENSES (EXCEPT MARIJUANA) DISPOSITIONS

APPENDIX D-41

PERCENTAGE TO

	PRISON	STRAIGHT PROBATION	PROBATION AND JAIL
1970	5.30	43.80	27.90
1971	5.70	42.90	32.40
1972	7.20	39.60	37.40
1973	11.00	31.60	40.50
1974	11.60	22.60	44.30
1975	10.60	21.20	55.50
1976	13.90	18.80	55.80
1977	15.40	17.80	57.10
1978	17.80	15.30	57.70

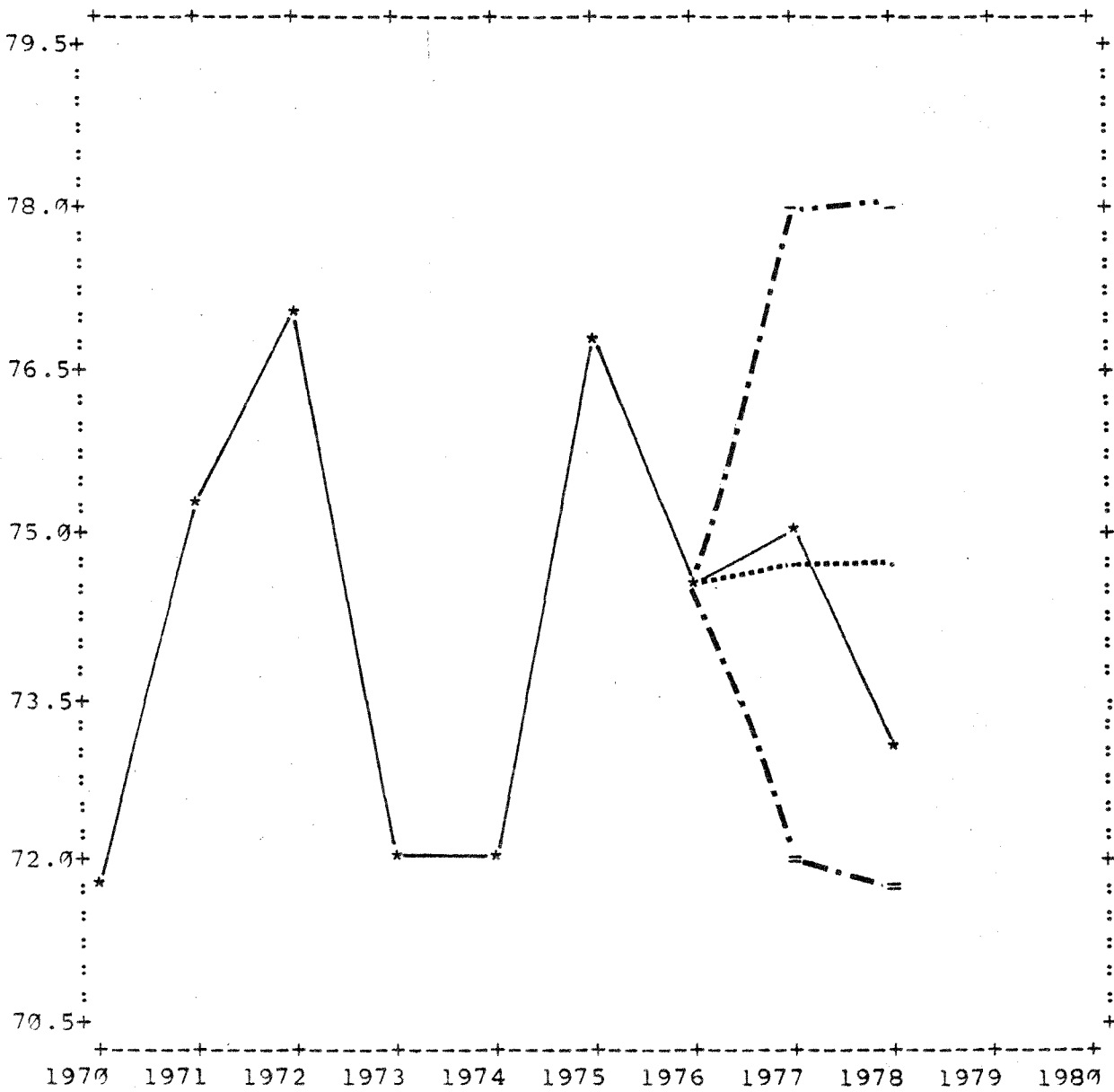


DRUG OFFENSES (EXCEPT MARIJUANA) DISPOSITIONS

APPENDIX D-42

PERCENTAGE TO PROBATION TOTAL

	REPORTED	PROJECTED	LOW	HIGH
1970	71.70			
1971	75.30			
1972	77.00			
1973	72.10			
1974	71.90			
1975	76.70			
1976	74.60			
1977	74.90	74.80	71.90	78.00
1978	73.00	74.80	71.80	78.10

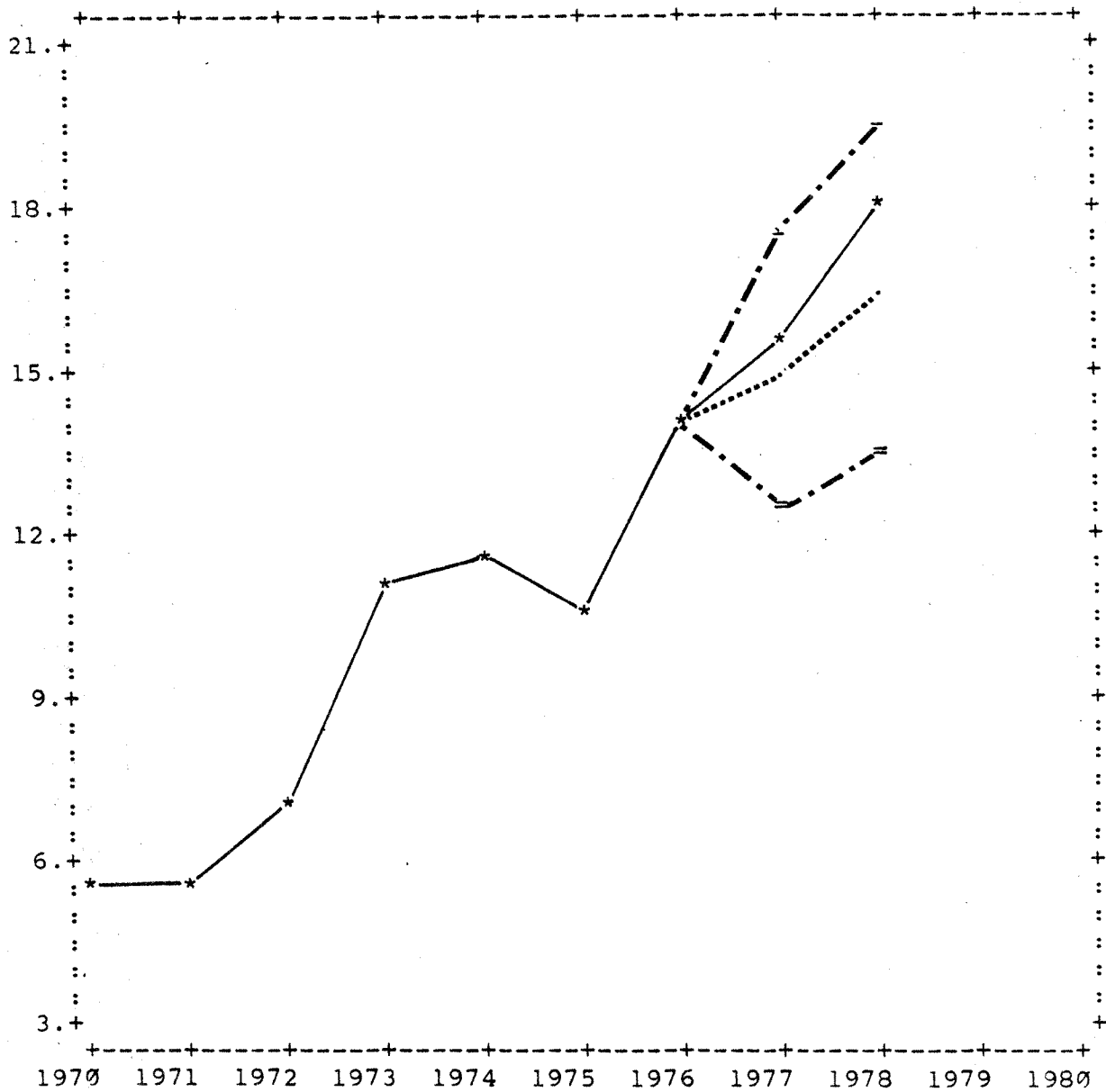


DRUG OFFENSES (EXCEPT MARIJUANA) DISPOSITIONS

APPENDIX D-43

PERCENTAGE TO PRISON

	REPORTED	PROJECTED	LOW	HIGH
1970	5.30			
1971	5.70			
1972	7.20			
1973	11.00			
1974	11.60			
1975	10.60			
1976	13.90			
1977	15.40	15.00	12.40	17.70
1978	17.80	16.50	13.30	19.60

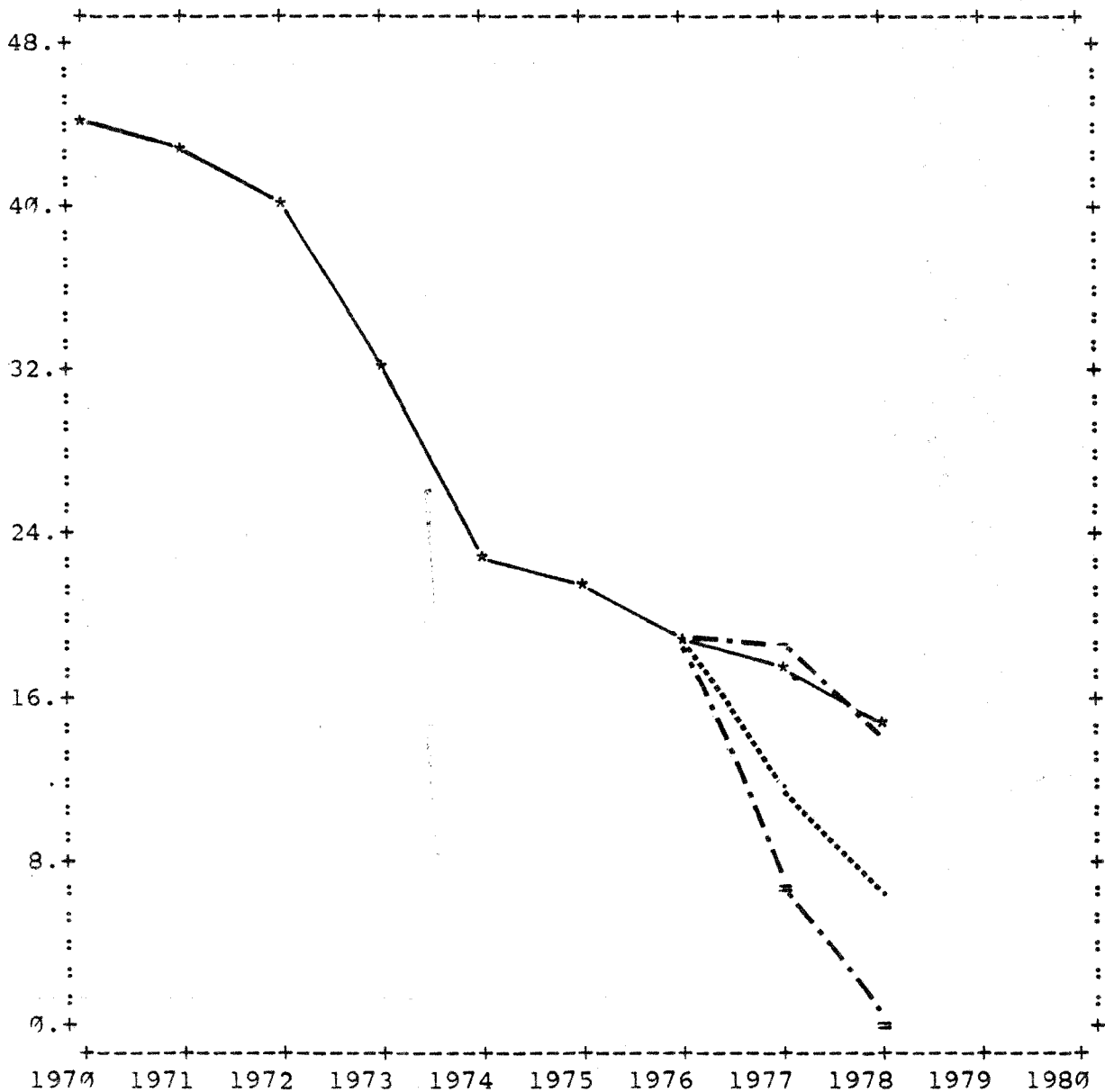


DRUG OFFENSES (EXCEPT MARIJUANA) DISPOSITIONS

APPENDIX D-44

PERCENTAGE TO STRAIGHT PROBATION

	<u>REPORTED</u>	<u>PROJECTED</u>	<u>LOW</u>	<u>HIGH</u>
1970	43.80			
1971	42.90			
1972	39.60			
1973	31.60			
1974	22.60			
1975	21.20			
1976	18.80			
1977	17.80	12.20	6.100	18.20
1978	15.30	7.30	0.000	14.60

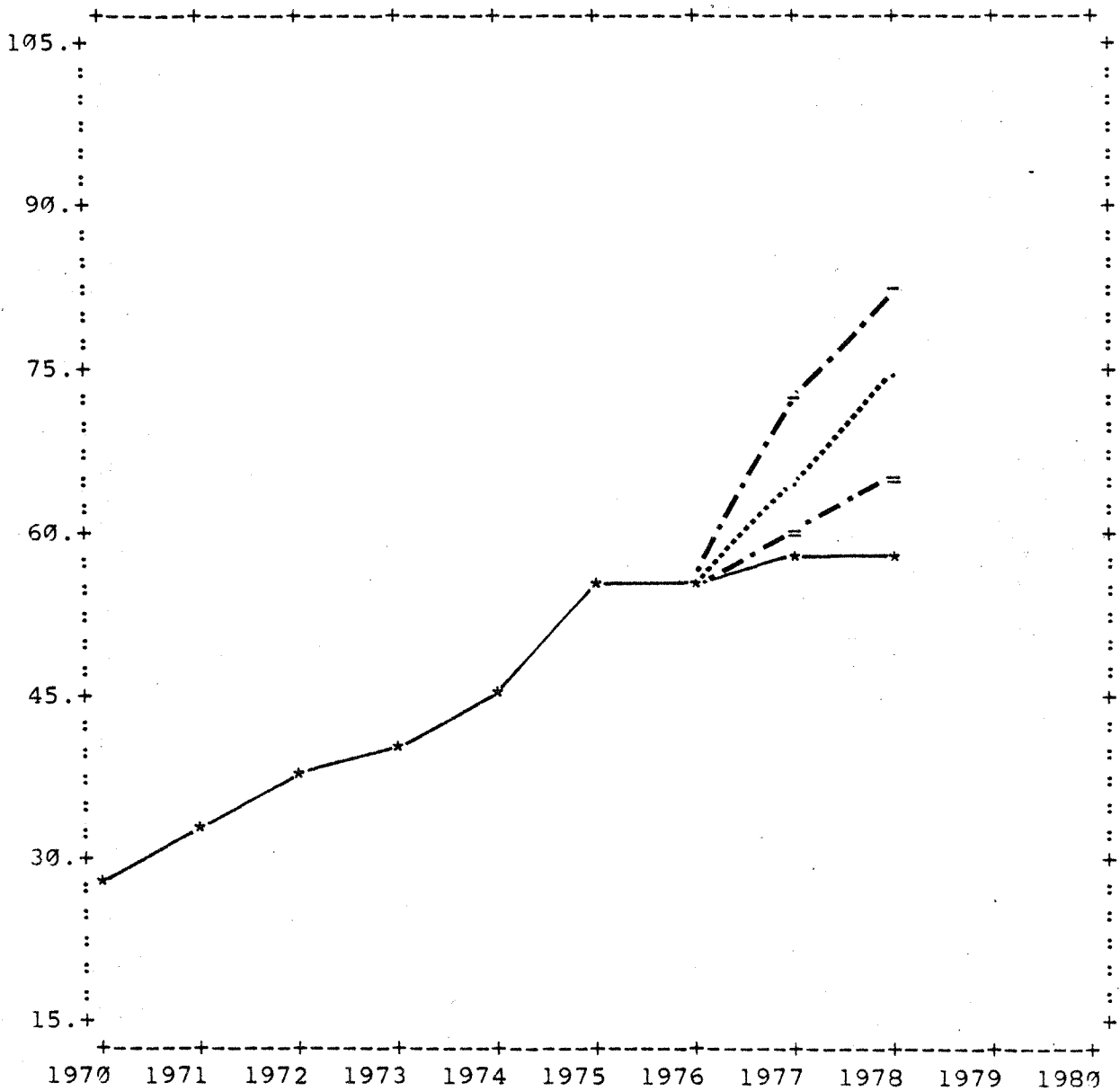


DRUG OFFENSES (EXCEPT MARIJUANA) DISPOSITIONS

APPENDIX A-45

PERCENTAGE TO PROBATION AND JAIL

	REPORTED	PROJECTED	LOW	HIGH
1970	27.90			
1971	32.40			
1972	37.40			
1973	40.50			
1974	44.30			
1975	55.50			
1976	55.80			
1977	57.10	65.60	59.60	72.20
1978	57.70	73.90	65.80	82.90



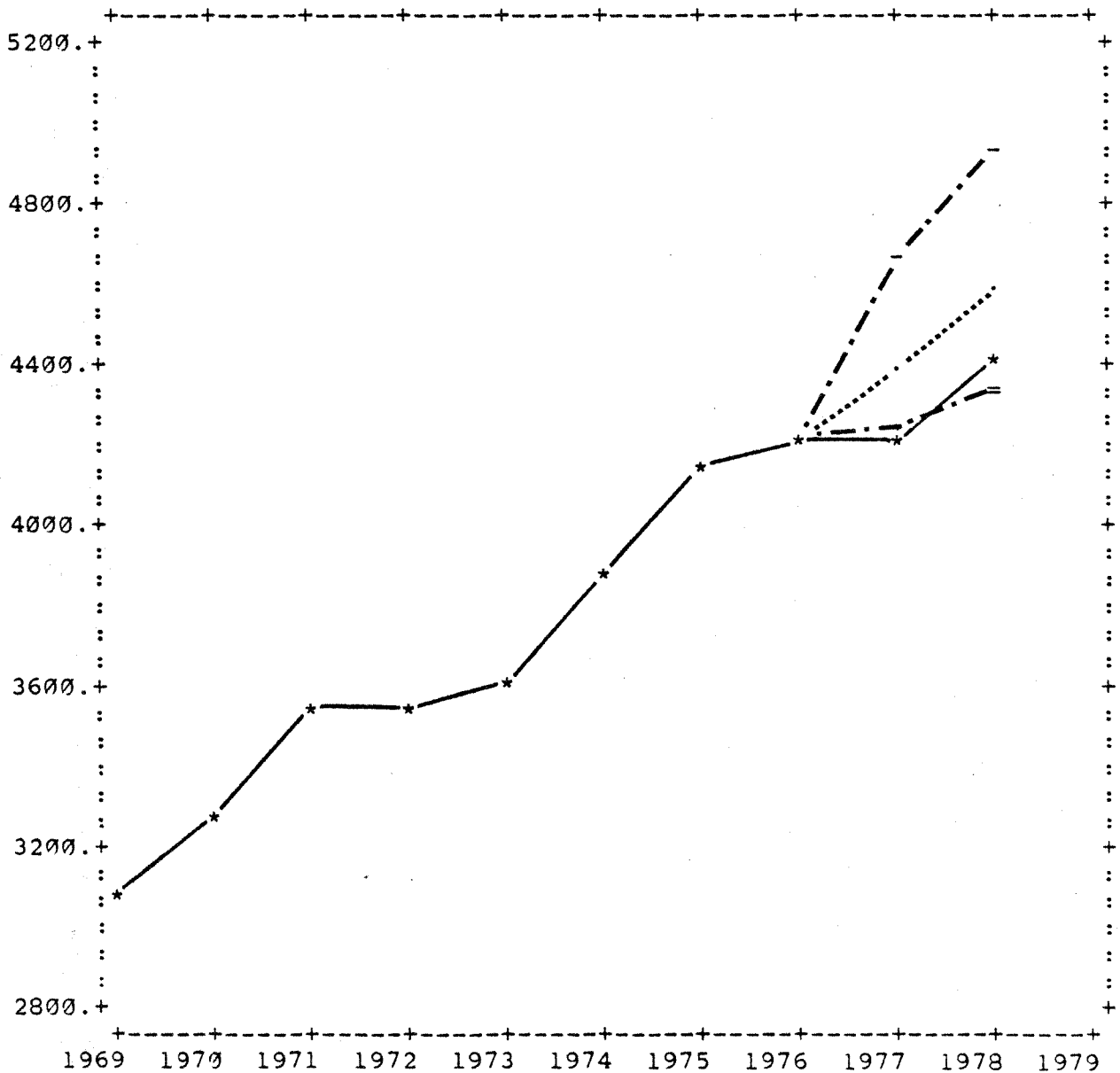
APPENDIX E

OFFENSE RATE

APPENDIX E-1

TOTAL SEVEN INDEX CRIMES

	REPORTED	PROJECTED	LOW	HIGH
	—————	---	---
1969	3045			
1970	3261			
1971	3527			
1972	3527			
1973	3569			
1974	3836			
1975	4150			
1976	4219			
1977	4190	4428	4213	4654
1978	4386	4630	4366	4910

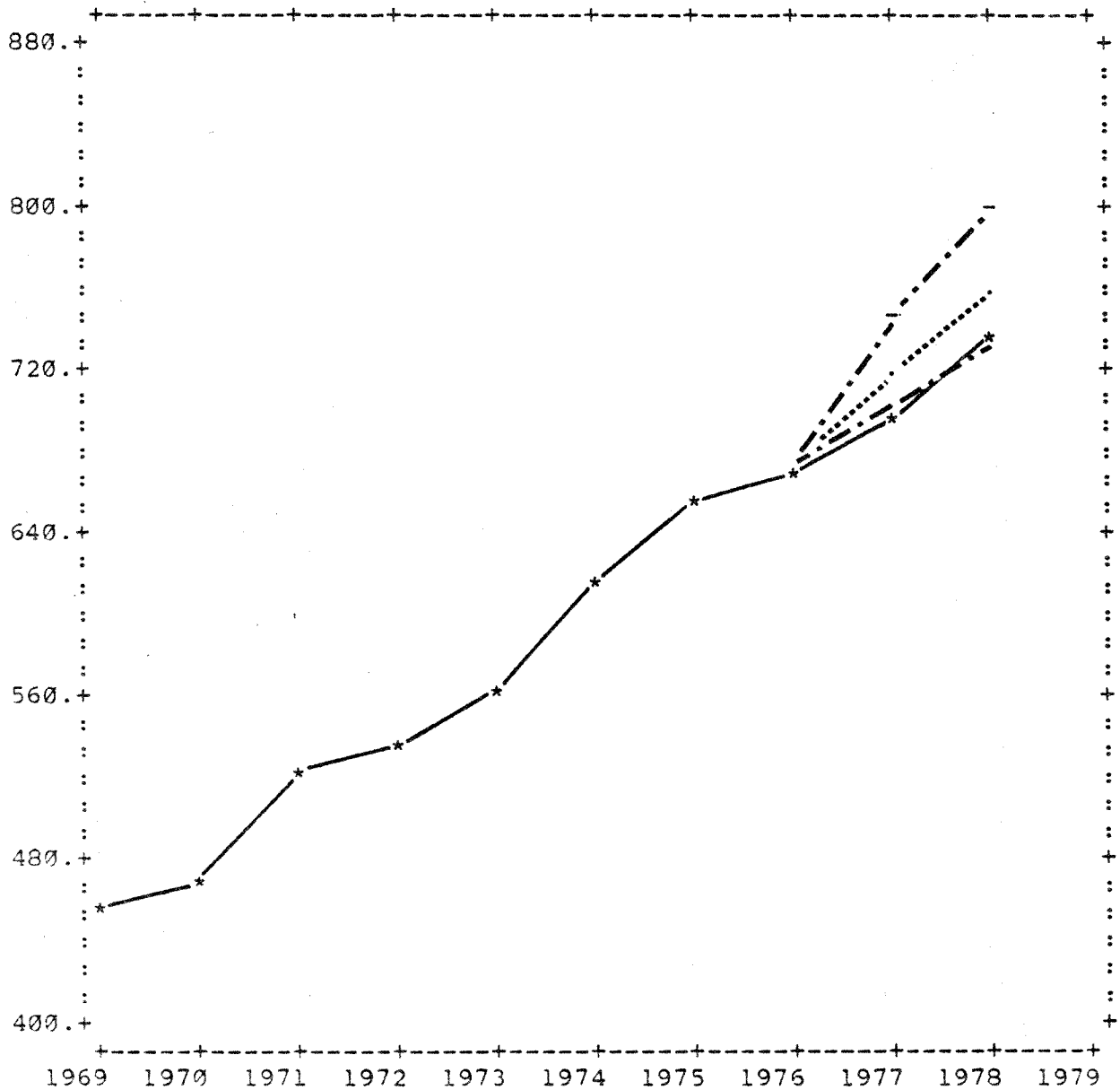


OFFENSE RATE

APPENDIX E-2

CRIMES AGAINST PERSONS

	REPORTED	PROJECTED	LOW	HIGH
1969	449.2			
1970	471.7			
1971	515.6			
1972	539.3			
1973	561.7			
1974	608.9			
1975	655.5			
1976	666.9			
1977	698.0	721.6	699.4	744.6
1978	738.9	765.4	737.7	794.3

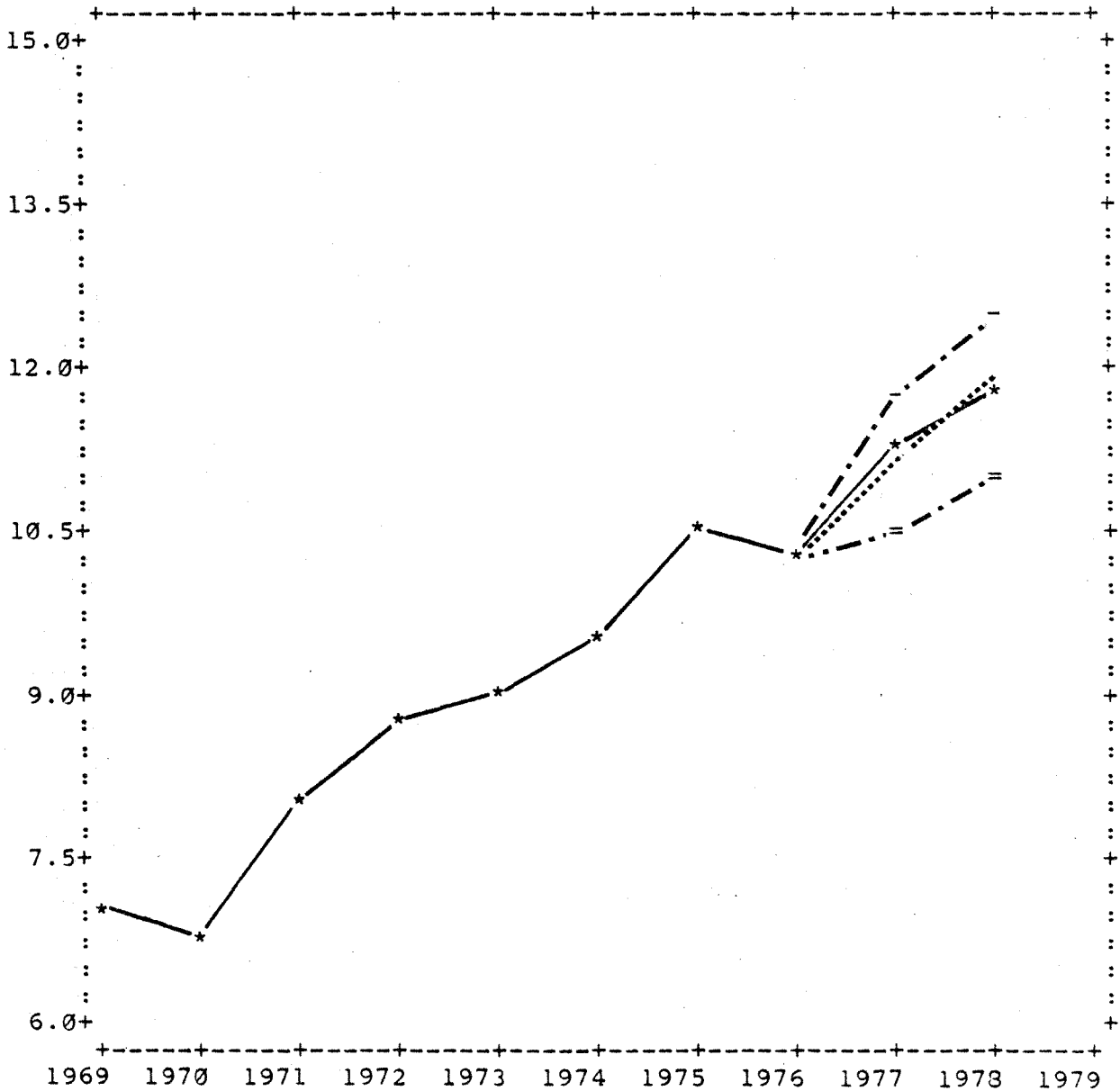


OFFENSE RATE

APPENDIX E-3

WILLFUL HOMICIDE

	<u>REPORTED</u>	<u>PROJECTED</u>	<u>LOW</u>	<u>HIGH</u>
1969	6.90			
1970	6.80			
1971	8.10			
1972	8.70			
1973	9.00			
1974	9.40			
1975	10.40			
1976	10.30			
1977	11.30	11.16	10.54	11.79
1978	11.70	11.71	10.97	12.45

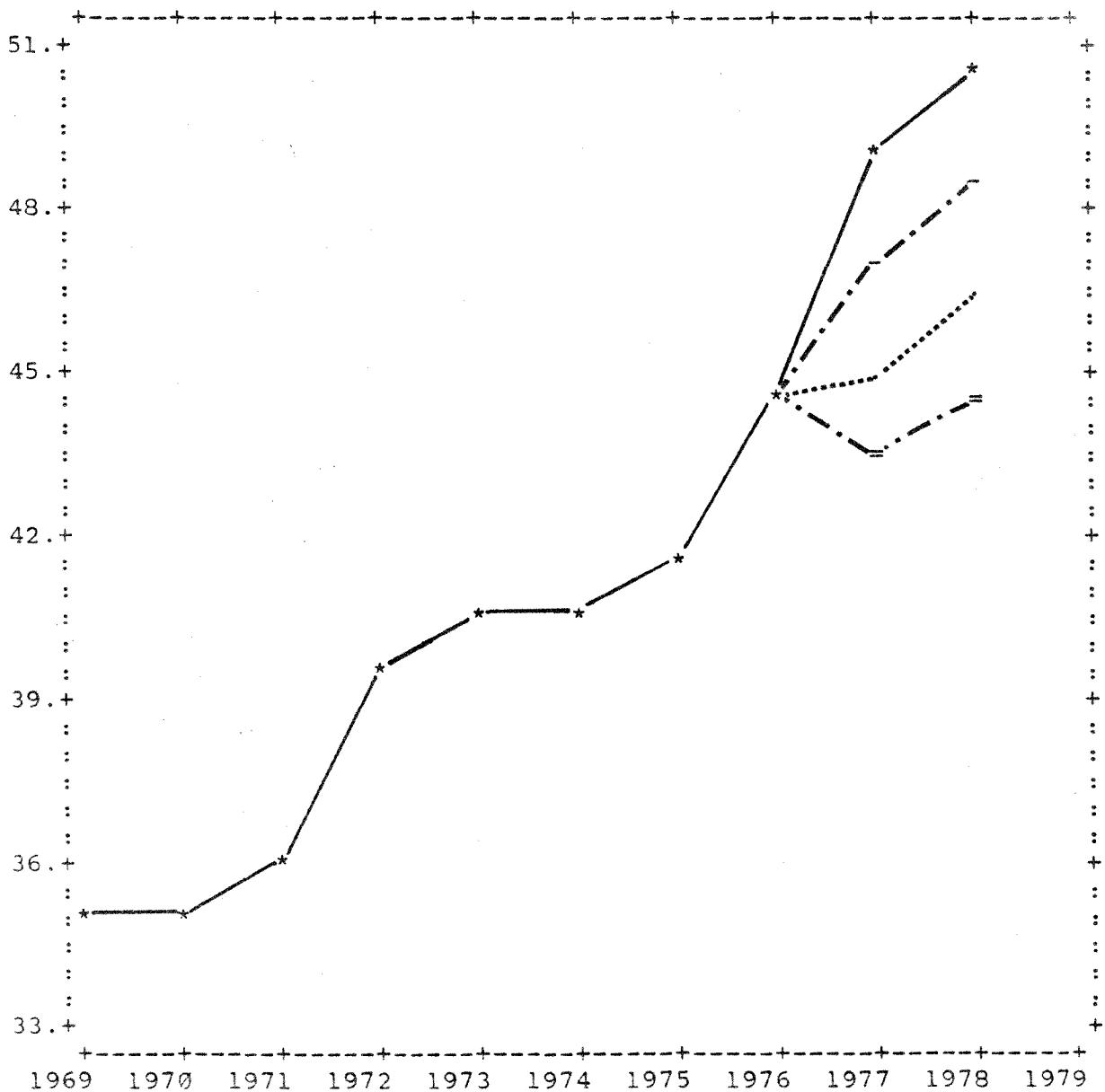


OFFENSE RATE

APPENDIX E-4

FORCIBLE RAPE

	<u>REPORTED</u>	<u>PROJECTED</u>	<u>LOW</u>	<u>HIGH</u>
1969	35.00			
1970	35.00			
1971	35.90			
1972	39.60			
1973	40.30			
1974	40.50			
1975	41.60			
1976	44.40			
1977	48.90	45.11	43.30	46.92
1978	50.50	46.46	44.32	48.59

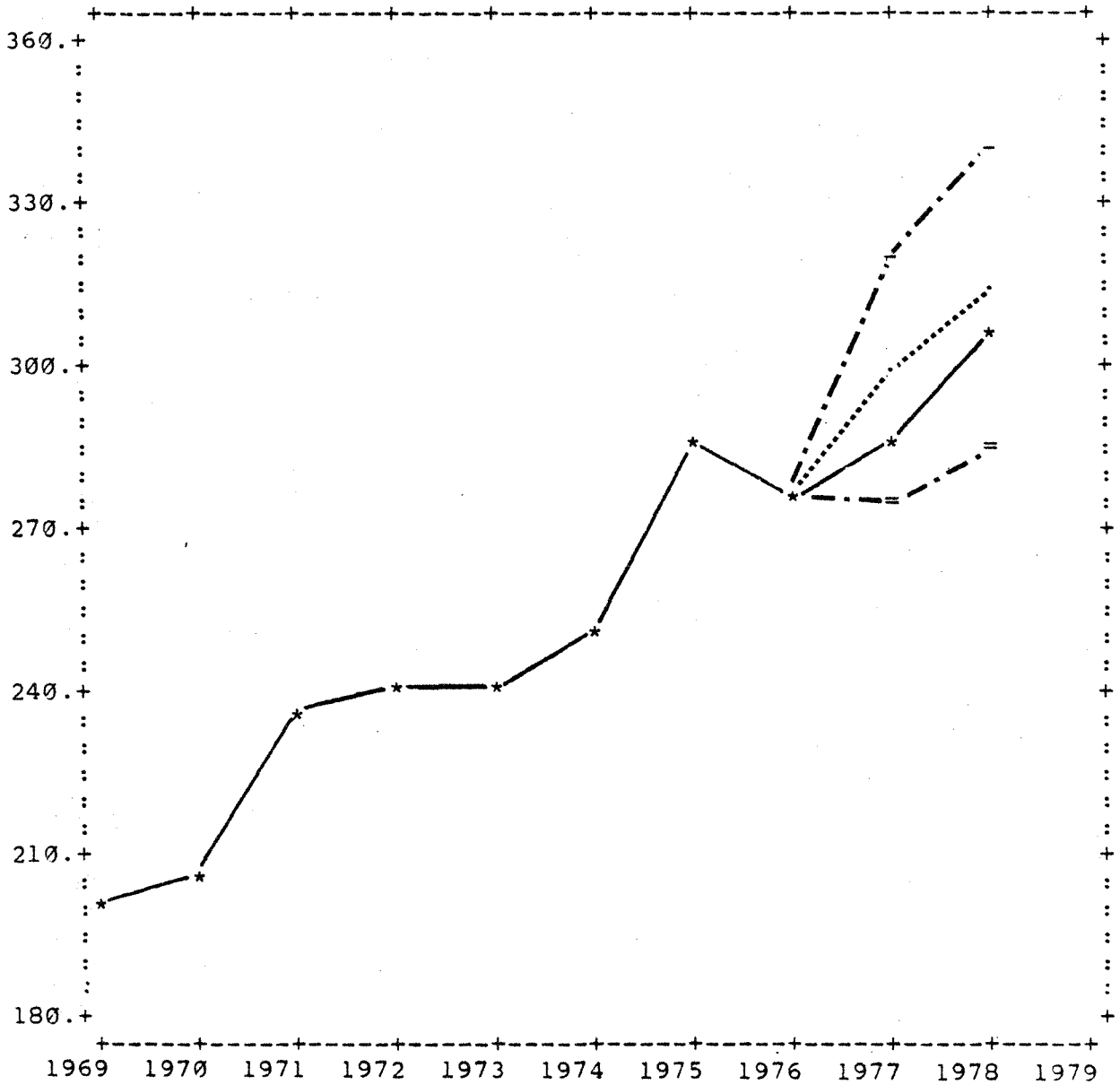


OFFENSE RATE

APPENDIX E-5

ROBBERY

	<u>REPORTED</u>	<u>PROJECTED</u>	<u>LOW</u>	<u>HIGH</u>
1969	197.5			
1970	207.0			
1971	234.3			
1972	237.9			
1973	238.8			
1974	252.0			
1975	283.0			
1976	274.8			
1977	284.1	297.7	277.3	319.7
1978	304.6	312.6	287.5	340.0

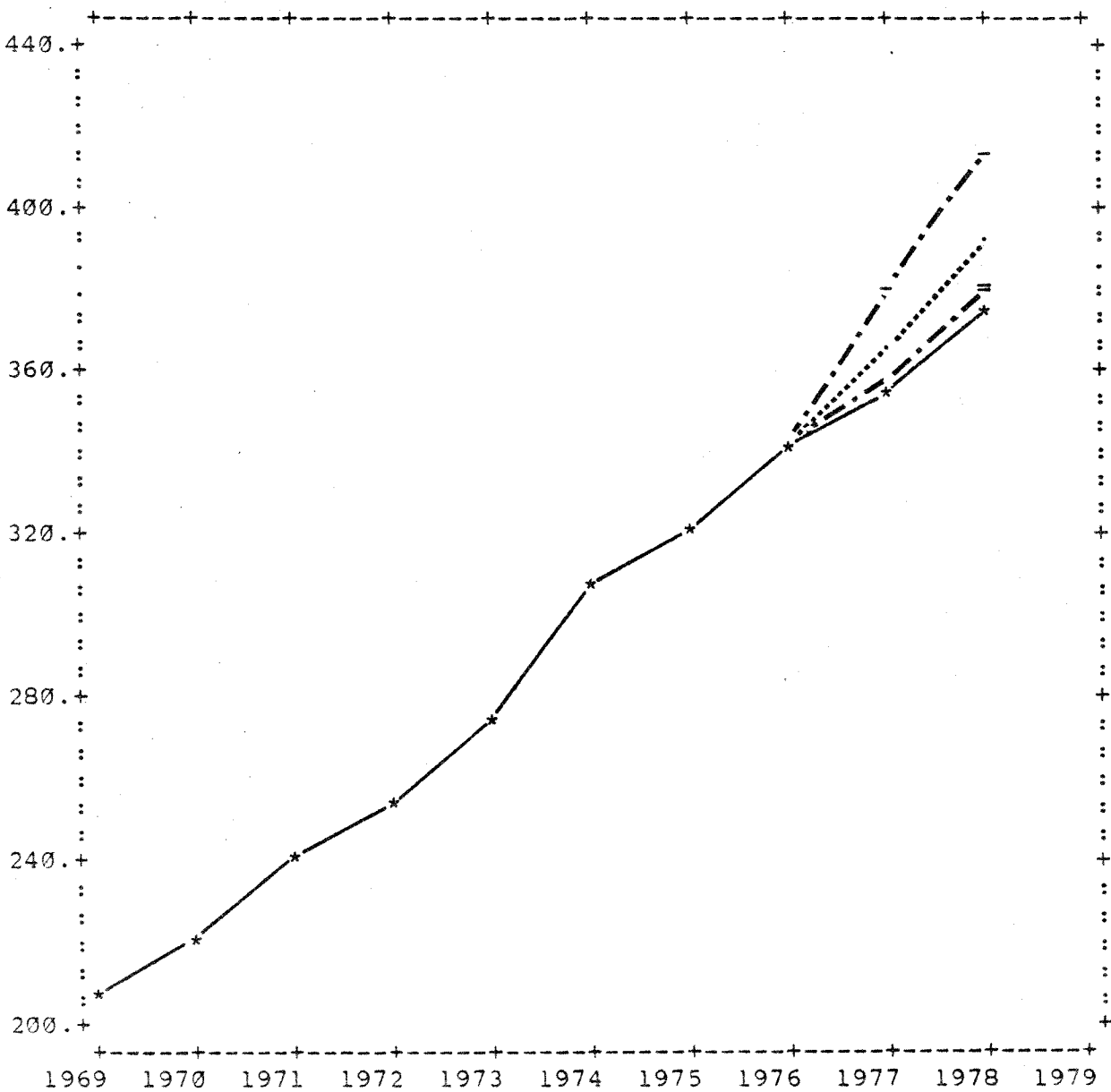


OFFENSE RATE

APPENDIX E-6

ASSAULT

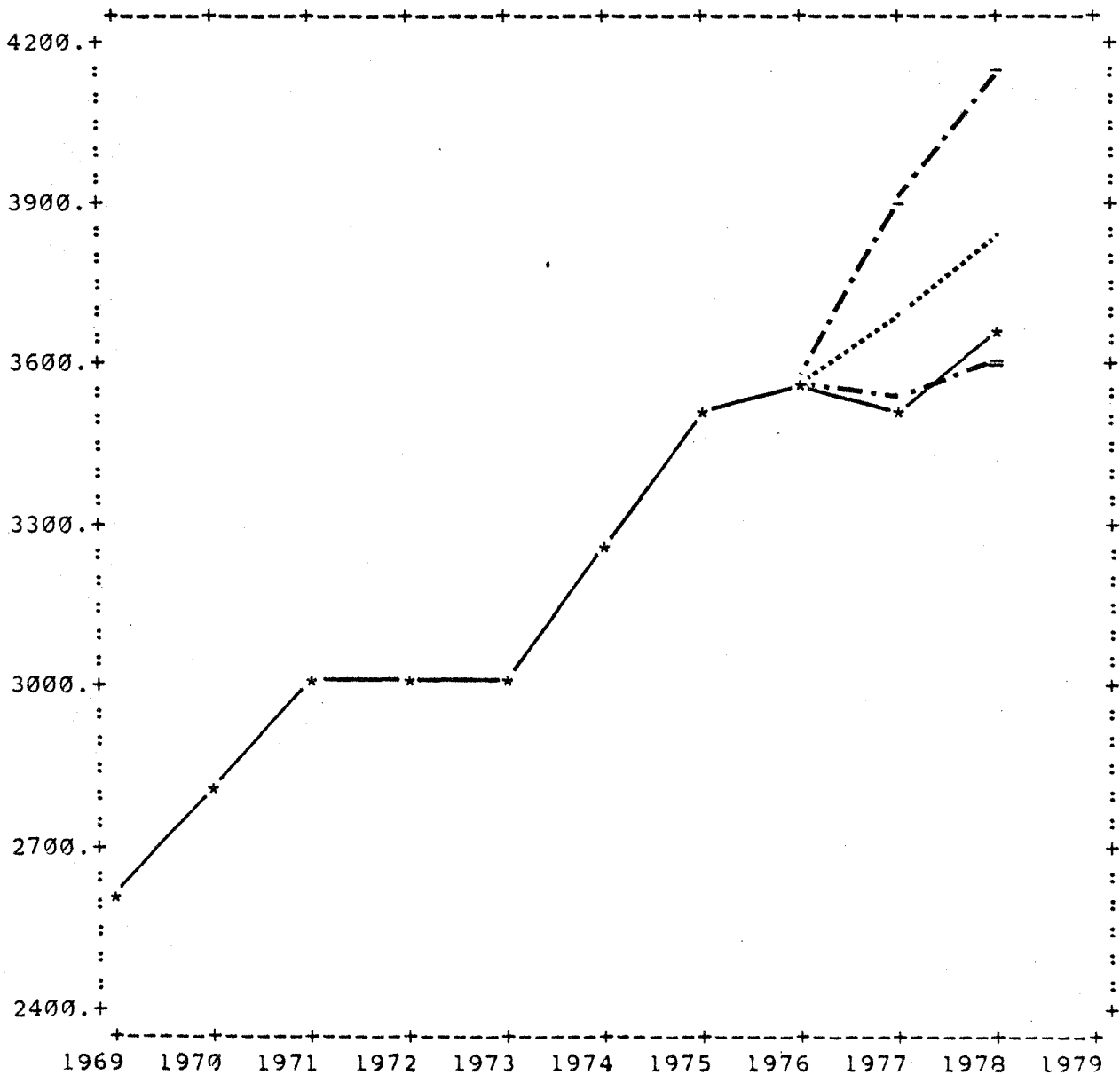
	REPORTED	PROJECTED	LOW	HIGH
1969	209.7			
1970	223.0			
1971	237.3			
1972	253.0			
1973	273.7			
1974	307.1			
1975	320.5			
1976	337.4			
1977	353.6	367.6	355.1	380.5
1978	372.2	394.7	379.0	411.2



OFFENSE RATE

CRIMES AGAINST PROPERTY

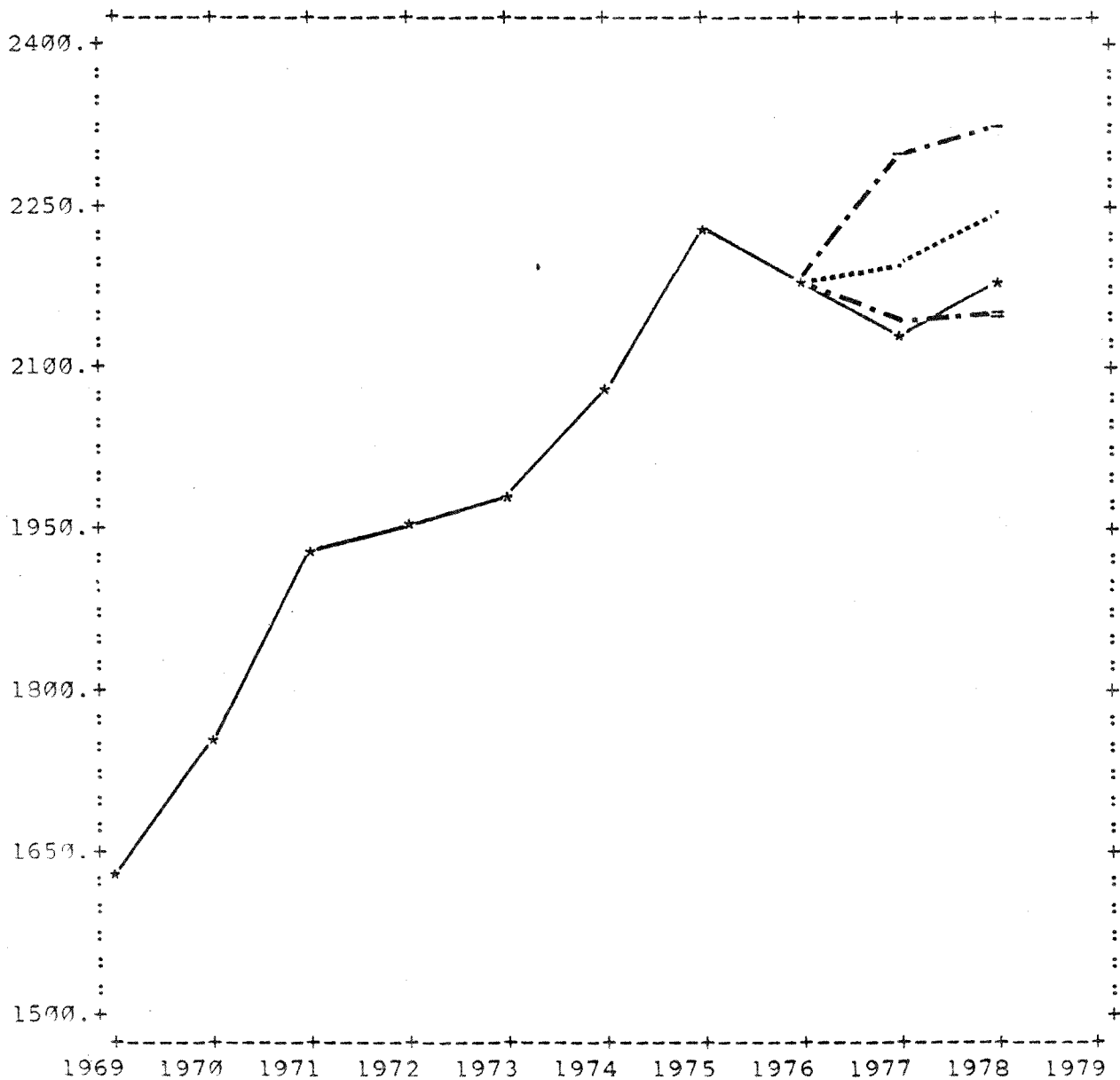
	<u>REPORTED</u>	<u>PROJECTED</u>	<u>LOW</u>	<u>HIGH</u>
1969	2596			
1970	2790			
1971	3011			
1972	2988			
1973	3007			
1974	3227			
1975	3495			
1976	3552			
1977	3492	3708	3509	3917
1978	3647	3867	3624	4126



OFFENSE RATE

BURGLARY

	REPORTED	PROJECTED	LOW	HIGH
1969	1620			
1970	1743			
1971	1930			
1972	1941			
1973	1964			
1974	2063			
1975	2219			
1976	2164			
1977	2113	2210	2130	2294
1978	2178	2245	2157	2336

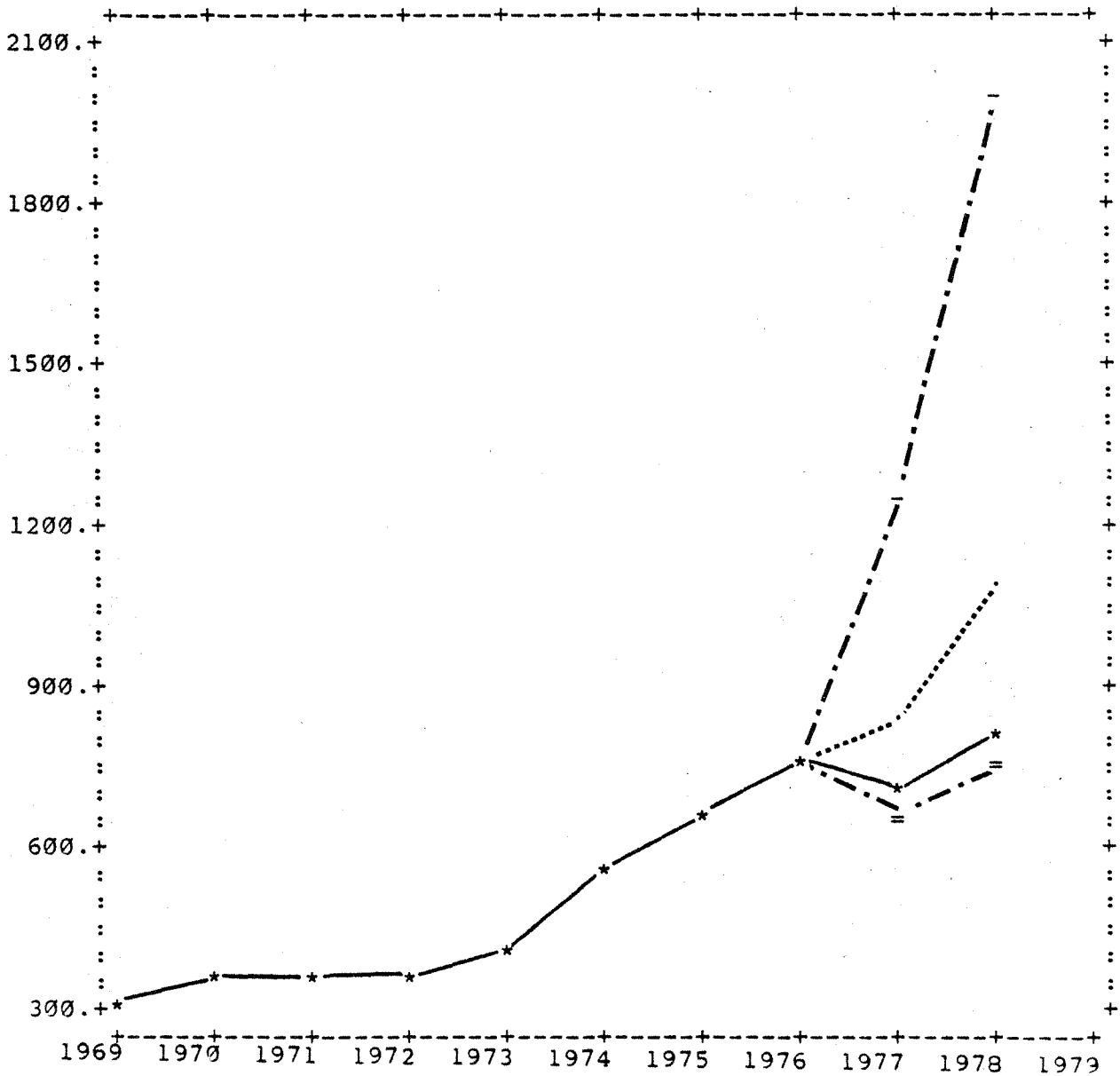


OFFENSE RATE

APPENDIX E-9

THEFT

	<u>REPORTED</u>	<u>PROJECTED</u>	<u>LOW</u>	<u>HIGH</u>
1969	313.1			
1970	359.1			
1971	370.7			
1972	367.5			
1973	410.1			
1974	527.6			
1975	646.6			
1976	746.1			
1977	720.6	865	667.8	1226
1978	782.1	1116	770.1	2024



OFFENSE RATE

APPENDIX E-10

MOTOR VEHICLE THEFT

	<u>REPORTED</u>	<u>PROJECTED</u>	<u>LOW</u>	<u>HIGH</u>
1969	662.1			
1970	688.0			
1971	710.1			
1972	679.1			
1973	632.7			
1974	636.2			
1975	629.6			
1976	641.6			
1977	657.7	623.3	664.5	587.0
1978	686.7	616.0	663.9	574.5

