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**THE 1980 NEW YORK GUN LAW:
AN EVALUATION
OF ITS IMPLEMENTATION AND IMPACT**

Final Report
to the National Institute of Justice
the Honorable James K. Stewart, Director

January 9, 1987

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Police Foundation
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President

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ACKNOWLEDGEMENTS

An historic piece of legislation such as the 1980 New York Gun Law requires more than a fortnight to evaluate thoroughly. This particular project lasted four years. So, the list of people deserving recognition is proportionately long.

State and local criminal justice agencies, including city and county police departments, offices of the district attorney, and court and administrative bureaus in 11 counties, granted the authority to search records and recollections of firearm violence in New York. The New York City Police Department set an example for others to follow in support of the project. The State Division of Criminal Justice Services provided a wealth of data for analysis, the design and transfer of which consumed hours. But it was the individuals who extended their personal cooperation and hospitality that made the project a success. Without the enthusiastic participation of 750 police officers, 150 assistant district attorneys, and countless agency staff, the reams of official data gathered might have been misinterpreted and unrealistic.

Project Coordinators Carol Werblin and Tom Castellano worked hard to assemble and maintain the research team. Each more than once burned the midnight oil to clean data and to meet deadlines. In addition to performing the traditional role of project coordinator, both contributed unique analytic skills to the project: without Carol Werblin's legal expertise the letter of the law never might have been deciphered; without Tom's legislative research, the spirit of the law might have escaped us.

For two years, Barry Glick traveled to the ends of New York, from Buffalo to Ronkonkoma, questioning police officers, riding on patrol, and extracting the "inside scoop" in many candid interviews. The coordination of this field work was a complicated, sometimes dangerous operation. Barry perhaps came the closest of us all to observing the gun law in action in New York.

CHAPTER ONE
SUMMARY AND MAJOR FINDINGS

Across the United States, about 20,000 gun law statutes and local ordinances are on the books. Florida, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, and New York are among states that have implemented strict gun control laws.

New York, along with Massachusetts and New Jersey, has been cited as one of the most restrictive states in its multifaceted approach to gun control¹. When the State's gun control law was enacted in 1980, there were already many statutory provisions that monitored and regulated gun ownership and provided sanctions against the illegal use of firearms. As recently as 1978, New York had enacted the "Violent Felony Offender" legislation mandating minimum imprisonment terms for serious criminals, including those using firearms when committing felonies.

Given the nature of gun control laws and public reaction to gun regulation, the New York law, called by some "the toughest gun control law in the nation," was seen as a prime candidate for evaluation to determine the overall utility of such laws. The New York law did not infringe upon the argued Second Amendment right to bear arms by enacting a total ban on handguns. Rather, it reaffirmed existing permit-to-purchase laws that discouraged unnecessary ownership. The law did create a new weapon offense category--the criminal use of a firearm. It mandated minimum incarceration for simply using a gun; the prison term could be imposed without concurrent conviction of another felony. Finally, it set out to alter plea bargaining while recognizing

the need for discretion in that process.

In 1981, the National Institute of Justice funded a major evaluation of the New York gun control law to determine whether the law (1) modified the criminal justice system's approach to firearm regulation; (2) affected the prevalence of legal and illegal gun ownership; and (3) changed the observed frequency of crimes involving guns. A descriptive sample of gun-related cases was selected for 1979, 1980, and 1981 so that processing and disposition data for the years preceding, during, and following the law's enactment could be compared.

Because criminal justice legislation is not always implemented as intended, project staff first studied the original intent of the law, social attitudes about gun control, and organizational interests that affect the law and its enforcement. An aggregate analysis of statewide complaints, arrests, indictments, convictions, and sentences was undertaken to assess the official system response to the law. Police officer and district attorney perceptions were sampled to discover possible trends and changes in workload and case processing of crimes involving firearms as a result of the law. The intermediate impact of the law on those convicted of firearm crimes was analyzed in detail, including changes in offender and offense characteristics, as well as changes in charging and sentencing practices before and after the law. Finally, the legislation's goal of reducing gun possession and gun-related crime was examined by analyzing reported crime complaint data.

Major Findings

The ultimate goal of New York's 1980 gun control law was to reduce the number of guns on the street and to reduce the number of gun-related crimes. The law can be said to be a failure on both counts.

In terms of affecting the criminal justice system's handling of firearm cases, the law did not appear to overwhelm the system with gun possession cases. In fact, the number of weapon possession charges lodged against those already charged with a felony decreased, while the number of arrests for the sole crime of criminal use of a gun simultaneously increased. At the same time, the number of firearms crimes leading to arrest seems not to have been affected significantly by the law.

The number of indictments for weapon possession offenses as top charges did increase. But because all indictments in the state were increasing as well between 1977 and 1982, it seems unlikely that the new law alone accounted for this trend. The number of possession cases processed through the system to final court disposition also increased, but it is not clear that the increase was either significant or a result of the gun law.

Since enactment of the law, charging patterns have changed, reflecting a new emphasis on arrests, indictments, and convictions for class B and C violent felonies--serious felony classifications subject to stringent bargaining rules. While the number of weapons convictions did increase, most gun charges resulted in misdemeanor or non-violent felony convictions. If

offenders were not charged with weapons offenses at the time of arrest, they subsequently were less likely to be convicted of weapons charges, even if firearms were involved in the original offenses. Serious firearm felons were not generally convicted of gun charges. Rather, the additional gun charge often was dropped in favor of the accompanying felony charge. Those convicted of gun-related crimes were more likely to receive jail or prison sentences after enactment of the law.

Police officials reported that their priorities and their exercise of discretion did not change as a result of the law, especially for illegal possession. District attorneys also noted that many gun charges were reduced or dismissed before or at the time of formal charging, and that the law was sufficiently flexible to accommodate such actions.

Following enactment of the law, there was no significant change in the number of complaints reported by citizens or police for crimes involving possession of a gun. Additionally, there is no apparent reason to believe that the law and its mandatory incarceration provisions prompted criminals to substitute knives or other dangerous weapons for guns when they committed crimes. Dangerous weapons offenses for all weapons continued at about the same pace as before the law. Finally, uniform crime complaint data for assault, rape, and robbery show that firearm use in each violent crime category was not reduced by the law. In sum, the rather constant trends detected by the research for each type of crime suggests that the criminal use of guns did not change during the study's two-year period following enactment of the law.

CHAPTER TWO
GUN CONTROL AND THE NEW YORK LAW

In light of recent research confirming that criminal attacks are more lethal when guns are used², restricting access to and the availability of dangerous weapons offers one way to control violent crime³. Several states (Massachusetts, Michigan, and Florida) and two cities (Los Angeles and Washington, D.C.) have attempted this by enacting strict gun control laws⁴. The District of Columbia's Gun Control Act of 1975 even restricted the sale of guns to D.C. residents beyond the scope of the Federal Gun Control Act of 1968, which limited importation, interstate traffic, and eligibility for firearms commerce.

Each of these laws includes mandatory minimum sentence provisions. While the rationale behind these laws varies, they all attempt to reduce accessibility, prevalence, and visibility of firearms by restricting availability, use of weapons, or both. And each law is based on the premise that few law-abiding citizens (even those owning guns legitimately) would be offended by a law that greatly enhances community safety.

Experience with and research on gun control legislation suggests, however, that laws restricting the sale, transport, and import of guns have little impact on firearm availability or incidents of violent crime⁵. Self-reporting surveys and gun dealer records indicate that between 100 and 140 million guns are in circulation in the U.S., and that 1 of every 2 households

contains a gun for sporting or self-protection reasons⁶. Less than 1 percent of all guns are known to be used to commit criminal offenses⁷.

Efforts to limit gun ownership and use have remained controversial and evoke ambivalent public reactions. Although most Americans believe they have a constitutional right to own guns and oppose bans on ownership, many also believe that the criminal use of guns should be severely punished⁸. The success of gun control measures to reduce criminal gun use also is controversial and ambiguous.

Evaluations by Wright, Rossi, and Daly, for example, note that gun control laws are not easily implemented and produce mixed results in their ability to reduce crime in general and crimes committed with guns in particular⁹. While the number of armed robberies and gun assaults decreased in Massachusetts following enactment of the 1975 Bartley-Fox Amendment (accompanied by an increase in non-gun assaults), this trend was temporary and has been explained as a possible effect of publicity surrounding the law's introduction¹⁰. Michigan's decline in violent crime evidently began before enactment of its gun law¹¹. And Florida's Glisson Amendment produced no discernible effect on violent crime¹².

New York's Gun Law

Although New York state had strict gun licensing and penal measures on its books in 1980¹³, some influential political

leaders felt that violent criminal offenders were not receiving adequate punishment. Following the fatal shootings of police officers in New York City in early 1980, both Mayor Koch and Governor Carey called for legislation mandating prison terms for the possession or sale of unregistered handguns¹⁴. In the months following, 152 separate firearms control bills were introduced in the Senate and Assembly, generating lengthy debate and considerable compromise¹⁵. On June 12, 1980, Governor Carey signed the final bill giving New York what was then called "the toughest gun law in the country."

New York's gun control law was designed to reduce the number of "dangerous" guns through disarmament, selective allocation, and sanctions for criminal use, three common gun control strategies¹⁶. To disarm the public, an amnesty period was proclaimed during which time otherwise law-abiding citizens could surrender their illegal guns to the police¹⁷. In an effort to reduce the number of guns available for criminal purposes, police could also confiscate firearms that were illegally owned, possessed, or used. Through already stringent licensing and permit procedures, the law would keep guns from "unsafe" individuals by restricting guns to those without criminal records and of sound mind. The major thrust of the law, however, was the deterrent threat of mandatory jail or prison penalties for the illegal possession, use, or sale of a firearm.

The legislation also amended the state's Penal Law and Criminal Procedure Law in four major categories. The law: (1)

created seven new felony offenses and amended the definition of existing crimes; (2) added restrictions on plea bargaining so that convicted defendants would not be excused from felony convictions and incarcerations; (3) provided new penalties with greater mandatory minimum jail or prison terms; and (4) amended gun licensing procedures¹⁹.

The New York law did not infringe on the Second Amendment right to bear arms by imposing a total ban on handgun ownership, as did Washington D.C.'s firearm act of 1975. By simply adhering to existing permit-to-purchase laws, the new law at least discouraged a proliferation of ownership. The New York law also was designed to improve on the Massachusetts' 1975 Bartley-Fox Amendment, which imposed a mandatory jail term for conviction of "carrying" an unlicensed firearm. New York's law punished illegal possession both outside ("carrying") and inside the home.

The law also offered what advocates claimed was a better model for sentence enhancements than that found in Florida's Glisson Amendment, and it improved on Michigan's firearm felony statute by mandating incarceration for the simple use of a gun without conviction for another felony. While the legislation limited possible plea bargaining reductions, it also recognized the existence of prosecutorial and judicial discretion by providing opportunities for authorized and documented exceptions to the rule.

Yet the broad scope and complexity of New York's penal and criminal procedure law made the new gun control law difficult to

assess. Careful inspection of the law revealed "loopholes", especially in discretionary charging, plea bargaining, and sentencing practices²⁰. Illegal possession of a firearm in the home or place of business by those without prior criminal records remained a class A misdemeanor with possible jail terms of up to one year. Finally, persons convicted of illegally using, selling, or possessing firearms would face basically the same punishments as were in force before the gun law went into effect.

CHAPTER THREE ISSUES, DESIGN, AND DATA SOURCES

In assessing the impact of the New York gun control law on the role of firearms in crime, researchers examined three sets of questions:

1. How has the gun law modified the approach of the criminal justice system toward gun-related crime? Was the law effectively implemented? Was the processing of criminal cases affected?
2. Has the gun law affected the prevalence of legal and illegal gun ownership?
3. Has the gun law affected the frequency of crimes involving guns?

A varied research methodology was used to evaluate the law. To answer the first set of questions, researchers used archival data including official police, prosecutor, and court records in 11 New York state counties to trace the processing of gun-related offenses through the system before and after the gun law was enacted. Interviews were also used to record the views of police officers and district attorneys about how the law changed enforcement, charging, and disposition practices. Interrupted time-series analyses of monthly arrest, indictment, conviction, and sentencing data were conducted to evaluate the implementation and impact of the law on the criminal justice system.

The outcome of the law was assessed through changes in legal and illegal firearm activity to answer the second and third questions. Trends in legal firearm ownership were evaluated through changes in applications for gun permits, as well as

through interviews with police officers. Uniform Crime Report (UCR) crime complaint data for dangerous weapons offenses and violent crimes were inspected to determine whether expected crime reduction actually occurred.

To ensure adequate sample size, eleven counties were selected as study sites based primarily on the volume of their gun-crime caseloads. State geographic and demographic representation was achieved by using the five New York City counties (Manhattan, Brooklyn, Bronx, Queens, and Staten Island) and six other sites, including suburban New York City (Nassau, Suffolk, and Westchester counties) and three major upstate counties (Erie, Monroe, and Onondaga). These six include the cities of Yonkers, Buffalo, Rochester, and Syracuse.

Archival Data Collection

A descriptive sample of gun-related cases (N = 3,389) for calendar years 1979, 1980, and 1981 was selected in each participating police agency to describe the processing and disposition of offenders. Persons arrested for crimes involving guns in cooperating jurisdictions were tracked through the system. Items included type of offense charged at arrest, indictment, conviction, and factors affecting sentencing. Because previous empirical studies have shown that pretrial confinement status, prior criminal record, drug use, victim characteristics, type of defense attorney, and employment record may influence sentences in gun-related cases²¹, these and other

variables were systematically collected. Arrest reports were used to obtain information detailing the circumstances of the crime and offender and victim characteristics. Subsequent charging, conviction, and disposition data were obtained from lower criminal court, supreme court, and/or prosecutor records at each county courthouse.

Field Research: Police and Prosecutor Interviews

Because much valuable criminal justice information is never recorded officially, researchers interviewed patrol officers, detectives, and booking officers to assess the police role in enforcing the new gun law through officers' perceptions of violent crime, dangers of the job, actual implementation of the law, and its present or potential effectiveness. Between June 1981 and January 1983, an experienced investigator conducted 781 interviews with police officers in the 11 jurisdictions within 10 study counties²².

Interviews designed to elicit similar information concerning perception and actual enforcement of the new gun law also were conducted with prosecuting attorneys who handled gun-related crimes since (if not before) enactment of the law. The interview schedule was tailored to replicate questions from the police interviews and to incorporate questions that surfaced during court record archival research. Six interviewers conducted 156 interviews with assistant district attorneys in 11 counties.

Interrupted Time Series Analysis

Time series data were analyzed to assess the impact of the law on crime or court caseload trends in gun-related cases. Several trends and changes in criminal justice process and outcome variables were examined:

- * arrests for violent felonies (1976-1982)
- * arrests for weapons offenses (1976-1982)
- * gun-related indictments (1977-1982)
- * gun-related convictions (1977-1982)
- * sentences to confinement (1977-1982)
- * gun permit applications (1976, 1978-1982)
- * complaints for gun and non-gun crimes (1978-1982)

All crime data were provided by the New York State Division of Criminal Justice Services (DCJS); gun permit data were provided by three police departments. A model of the long-term trends was constructed to identify seasonal cycles and temporary trends.

CHAPTER FOUR
IMPLEMENTATION OF THE NEW YORK GUN LAW
THE CRIMINAL JUSTICE SYSTEM RESPONSE

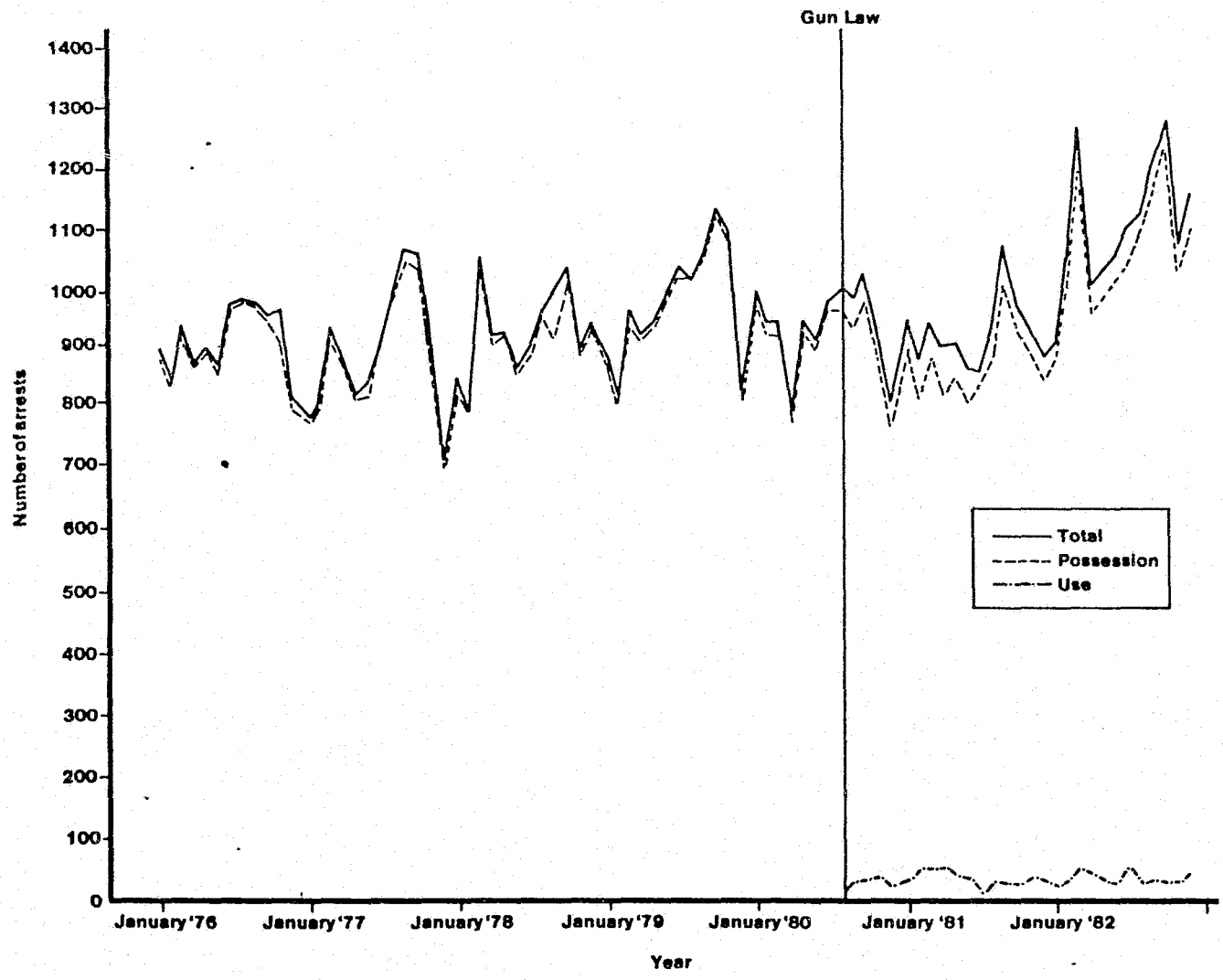
An Aggregate Analysis

Many experts predicted that the New York law would create additional stress for an already overburdened justice system. If successfully enforced, the law would lead to additional arrests, indictments, convictions, and incarceration for those caught with illegal firearms.

Firearm Arrests. Two measures of statewide firearm arrests were available from the New York State Division of Criminal Justice Services (DCJS) for the period from 1976 to 1982: weapon possession and use charges at the time of arrest (or "top" charges), and weapon charges filed as supplementary charges to more serious criminal acts.

The increase in the number of arrests for criminal possession-of-weapon as top charge following implementation of the law was not statistically significant (Figure 1). Criminal use charges were lodged, but only infrequently. Assuming constant criminal activity, this suggests that police arrested people suspected of criminal possession of a weapon at about the same rate as before the law, and that they were not motivated to adopt more aggressive investigative or stop-and-frisk stopping procedures, for example, to increase these kinds of arrests. In

Figure 1 Number of arrests for weapons offenses, by top charge, by month, statewide, 1976-82



Source: Data provided by New York State Division of Criminal Justice Services from Uniform Crime Reports.

short, the system was not inundated with possession arrests after the law. The newly created "use" charges were filed when applicable.

Examination of statewide aggregate data showed that secondary charges for criminal possession of weapons, filed in conjunction with felony charges for robbery, assault, rape, and murder, decreased in frequency following enactment of the gun law while criminal use charges simultaneously increased. The shift in charging behavior suggests that police did respond to the law by lodging the highest possible charge (use) when it became an available option in 1980.

The arrest-charging behavior of police appears to have changed to accommodate the new charging rules. However, the overall number of weapon charges as a combined total for possession and use did not appear to change as a result of the law. This may mean that the true level of firearm crimes precipitating arrests has not been affected by the law, and that police have adjusted their charging practices to follow the letter of the law.

Firearm Indictments. Statewide aggregate data were examined to assess the law's impact on prosecutorial activity as reflected by indictments filed. The indictment trends discussed here do not follow from the arrest statistics cited above. In fact, more than one indictment might be filed as the result of one arrest. That is, the following is not a caseflow analysis; it is an

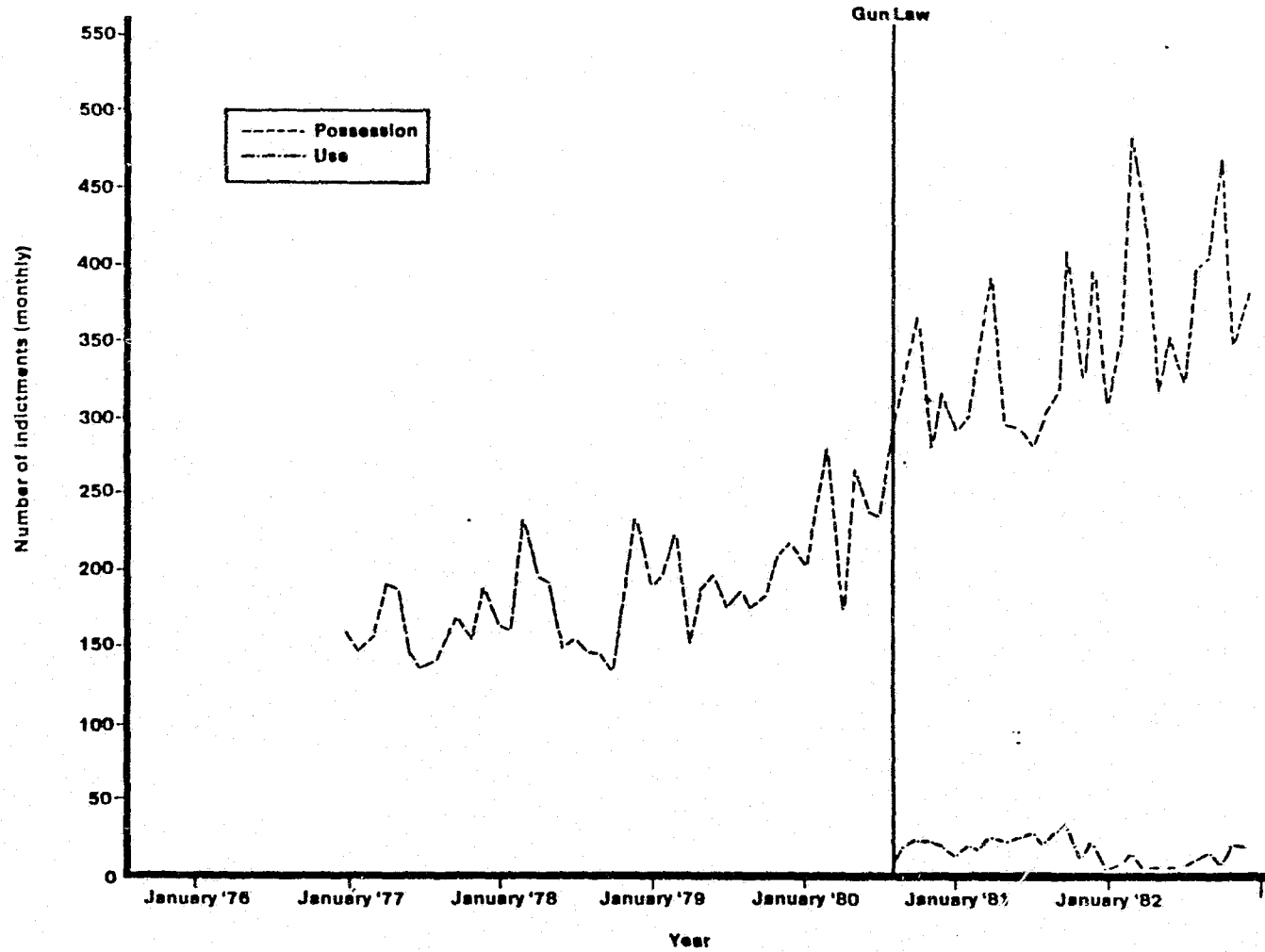
examination of the aggregate number of indictments filed in a given month, irrespective of previous arrest charges. Still, charging patterns can be evaluated for implementation of and compliance with the gun law.

The number of indictments for weapon possession offenses (including possession of weapons other than firearms) as the top charge clearly increased after the law was passed (Figure 2). Total weapon indictments filed as secondary possession and use charges for all felonies combined also increased. Because criminal use of a firearm was a new felony charge in 1980, its appearance alone as top or secondary charge would appear to provide evidence of compliance with the law. However, given the additional finding that all indictments in the state were increasing, one might reasonably infer that the new law alone did not account for increased activity (measured by the number of indictments) of prosecutors.

There has been little confusion surrounding the law. In fact, there is reason to believe that district attorneys are following both its letter and spirit.

Firearm Disposition. An increase in all categories of indictments, including weapon charges, could be expected to affect total numbers of cases handled, trials, convictions, and acquittals. Since enactment of the law, the number of possession cases processed through final disposition in the courts increased by more than half, with increases in convictions and in

Figure 2. Number of indictments for criminal possession and use of a weapon, statewide aggregate, 1977-82 (monthly)



Source: Data provided by New York State Division of Criminal Justice Services.

dismissals and acquittals. (See Figure 3.)

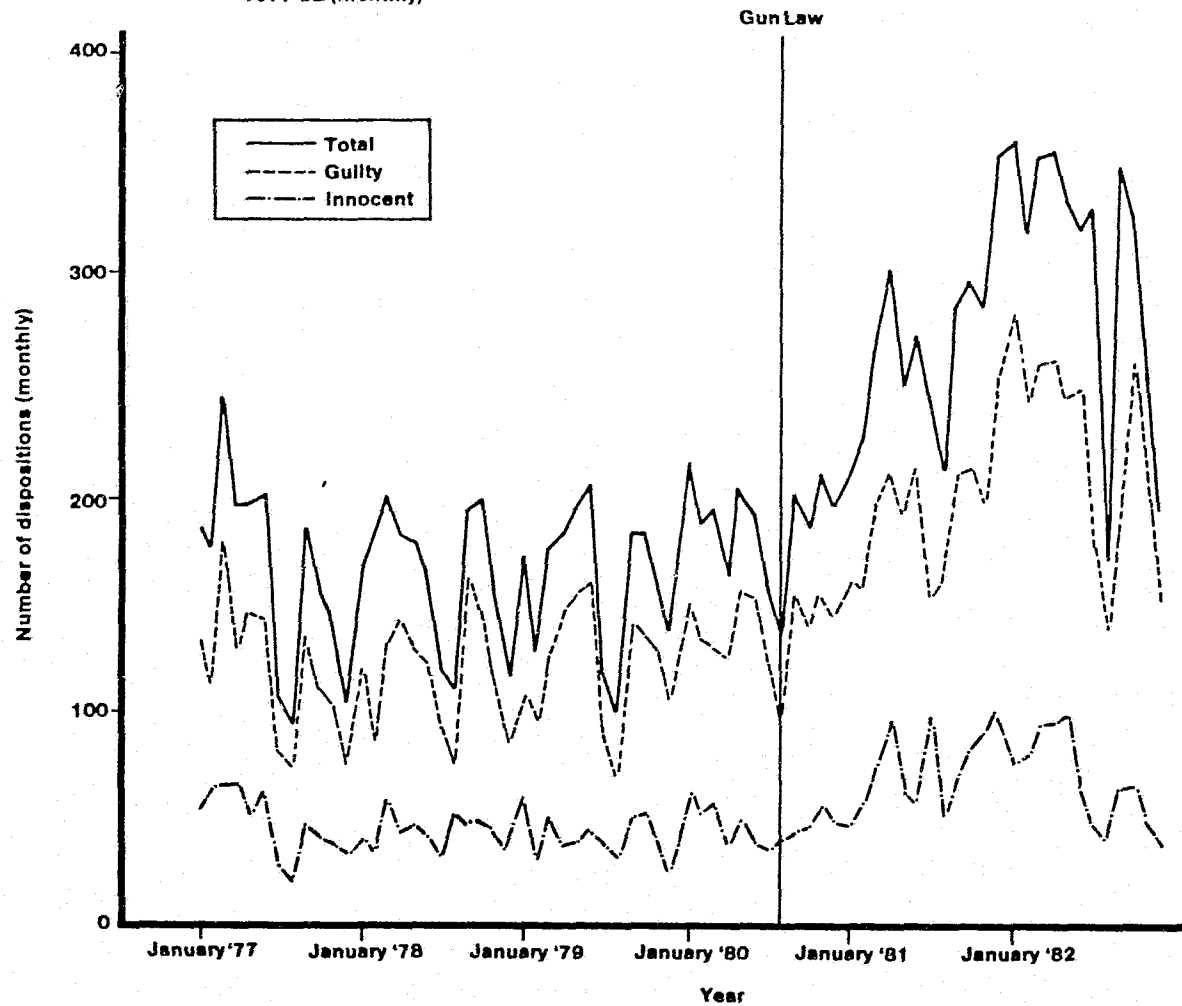
Sentences for Dangerous Weapon Convictions. The number of persons sentenced for possession of dangerous weapons as their most serious charge at conviction increased by more than 50 percent after the law, after three years of stability, and the number sentenced to jail terms more than doubled--from about 20 jail sentences per month prior to enactment of the law to more than 40 per month afterward (Figure 4). The decline in jail sentences during 1982, however, may suggest that this increase was only temporary. Most people sentenced under the 1980 provision for criminal use of a weapon went to prison.

Findings from an analysis of the archival data tend to confirm these indications that judges are complying with the law. Because the law allows for judicial discretion if the mandatory sentence would be unduly harsh, or if mitigating circumstances exist, explicit evidence of evasion would be hard to gather.

Criminal Case Processing: Analysis of Firearm Convictions

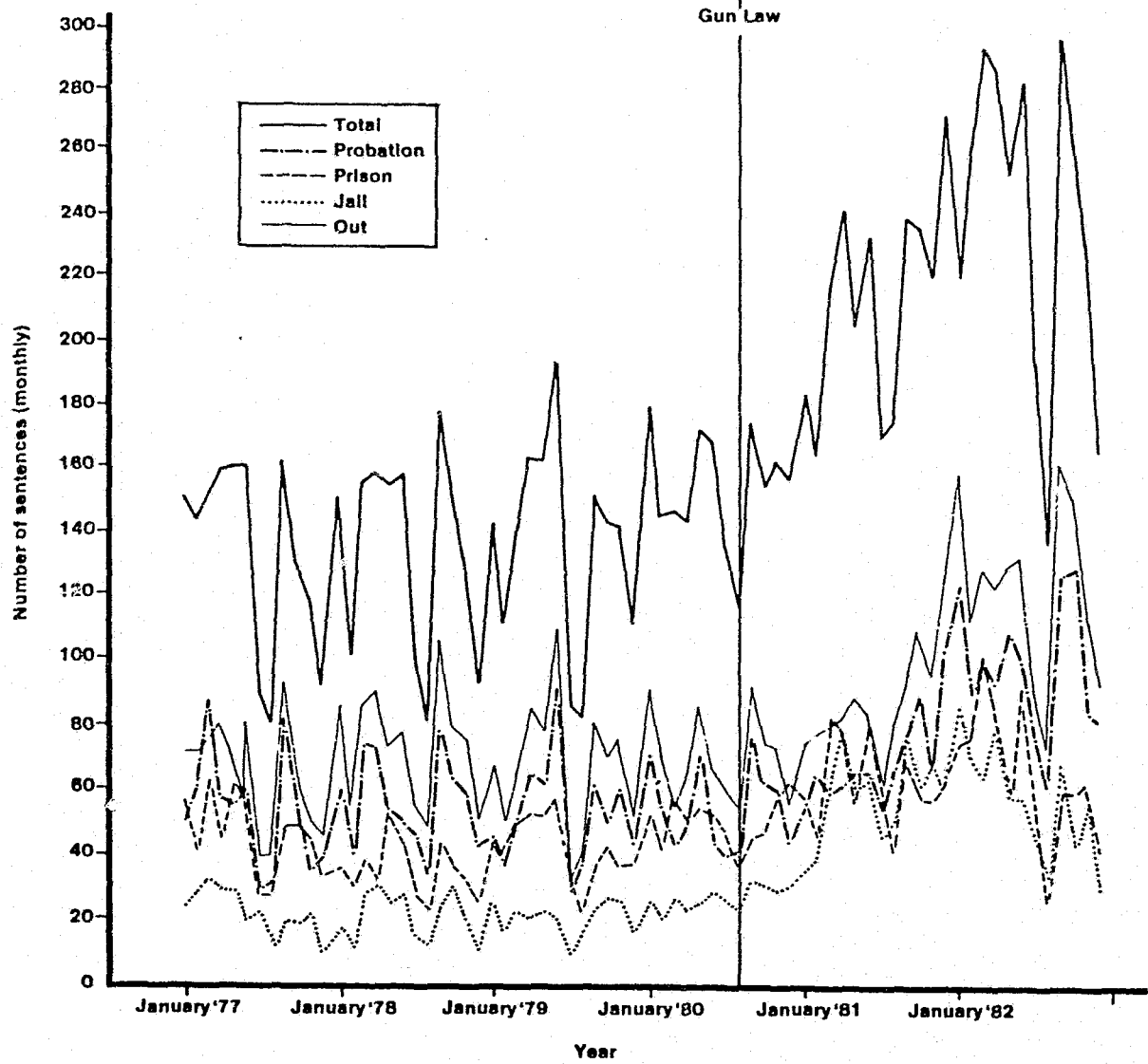
Processing samples were drawn from the five New York City counties and from the six statewide counties²³. The sample was designed to reflect the populations of those arrested for gun-

Figure 3 Disposition of criminal possession of weapons cases, by type of disposition, statewide aggregate, 1977-82 (monthly)



Source: Data provided by New York State Division of Criminal Justice Services.

Figure 4- Sentences for criminal possession of weapons convictions, statewide aggregate, 1977-82 (monthly)



Source: Data provided by New York State Division of Criminal Justice Services.

related offenses, and to permit tracking to final disposition of the criminal justice process. Those arrested in 1979, 1980, and 1981 for offenses involving firearms were tracked through the criminal justice system in New York State, yielding a "city" sample of 1,345 cases in five New York City counties and a "statewide" sample of 2,044 cases in the six counties.

Gun Offenders. Most gun offenders were males between 18 and 25 years of age. Approximately one-half were black, one-half had not completed high school, and most were employed or in school full- or part-time. While almost two-thirds of the offenders had prior felony and misdemeanor arrests, only one-fourth had prior arrests specifically for gun offenses. Few offenders had prior criminal convictions, and more than 90 percent had never been convicted of a weapons offense. The vast majority had never been incarcerated for felony convictions. Inasmuch as judges sometimes consider family ties, dependents, and age as mitigating circumstances when determining conviction charges and sentences, many offenders were susceptible to receiving lenient sentences. Another condition for waiving the mandatory minimum one-year sentence had been met by many offenders: three-fourths had no recent class A misdemeanor convictions. (The characteristics of the offenders sampled over the three years did not change after the law.)

Gun Offenses. Crimes included in this study were either gun-only or gun-related offenses. Weapon-only crimes accounted for half of the firearm crimes. Robberies comprised one-fourth of firearm offenses in both city and statewide samples. Weapon involvement in the sampled arrests was divided between use and possession; criminal sale of a firearm was highly infrequent. While handguns were the predominant weapon, some rifles were involved, and a few offenders were arrested for firearm crimes committed with toy or imitation pistols. The trend after the law showed more arrests involving criminal use and fewer for criminal possession of a gun. This could reflect the type of case more likely to lead to conviction; simple possession cases, for example, might be dropped.

While firearms are inherently dangerous, many arrests for firearm offenses are victimless; arrests and convictions were often for simple possession. For those firearm crimes involving victims, very few were injured. Most victims of firearm crimes were males between the ages of 18 and 30 years. The most common relationship between victim and offender was "stranger"; family and spouses were victims in less than 10 percent of crimes. The data reveal police to be the victims of gun-related crimes very rarely²⁴.

Official Charges at Arrest, Indictment, and Conviction. Most firearm offenses involved arrests for assault, murder, robbery, or weapons-only crimes. Similar distributions of charges

occurred at subsequent stages of processing, indictment, and conviction. Since enactment of the law, the charging patterns show a serious commitment to charge severely, marked by an increase in arrests, indictments, and convictions for class B and C violent felonies.

Because gun charges specifically trigger new gun law provisions, the filing of weapon charges requires special attention. At arrest, a slight but significant increase in weapon charges surfaced in New York City (from 93 to 98 percent), although the statewide rate remained steady at 60 percent.

Although slightly more arrests for crimes involving firearms included the specific charge, convictions on firearm charges did not increase. Most gun charges at arrest resulted in misdemeanor or non-violent felony convictions. If offenders were not charged with weapon offenses at the time of arrest, they were not likely to be convicted of weapon charges--even if firearms were involved in the original offenses. Closer inspection of the relationship between charge at arrest and conviction revealed that a charge of criminal use of a firearm lodged in conjunction with a more serious offense was less likely to result in a weapons conviction than was a criminal possession charge involving no other criminal behavior. It might seem that serious firearm felons do not get convicted of the gun charge. However, New York's penal code considers the weapon charge superfluous. Charges stemming from the same crime can or must be either dropped or dealt with concurrently. Presumably, the weapon conviction charge

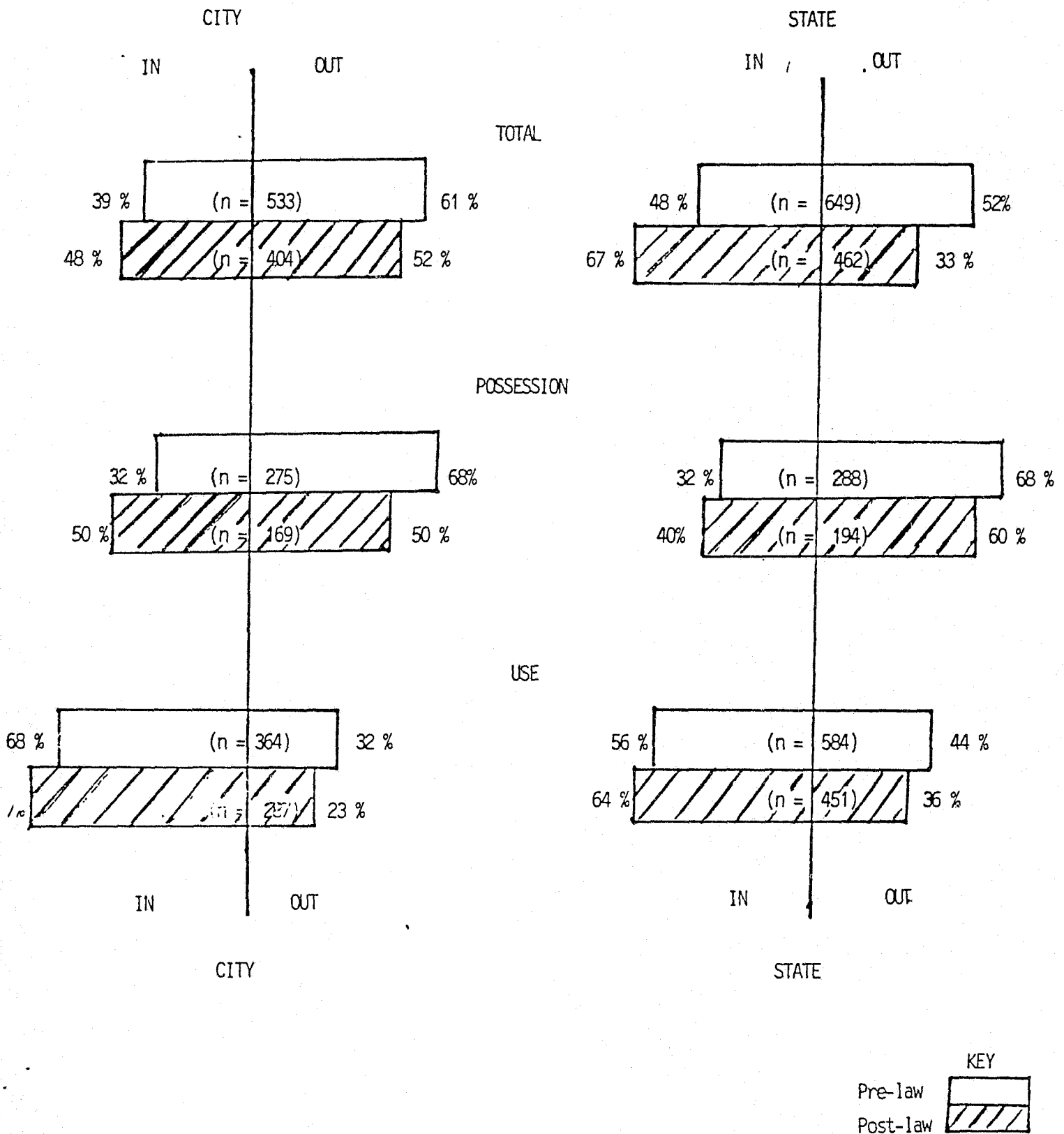
"disappears" because it is subsumed by the accompanying murder, robbery, or assault charge.

Firearm Sentences. Only one-third of the persons charged with firearm offenses were convicted of weapon charges. Those convictions present a limited opportunity for evaluating compliance with legislative sentencing instructions. However, the cases can be used to examine a complete subsample of firearm convictions and sentences.

After the law, those convicted of gun-related crimes were more likely to receive jail or prison sentences. In New York City, almost half (48 percent) of those convicted received jail or prison sentences, up from 39 percent before the law. Counties in upstate New York and suburban New York City had higher rates of incarceration before the law, beginning at 48 percent and increasing to 67 percent (Figure 5).

The relationship between sentence and extent of weapon involvement--that is, use or possession--can be used to understand "in" (jail or prison) and "out" (community supervision) sentences. In general, persons convicted only of firearm possession were more likely to receive a sentence in the community than to go to jail or prison. Crimes involving use of the gun more often resulted in incarceration after the law. Before the law, two-thirds of New York City and statewide offenders

Figure 5 Sentence dispositions for firearm convictions, by extent of weapon involvement, New York City and state samples, pre-law (January 1, 1979 - August 11, 1980) and post-law (August 12, 1980 - December 31, 1981)



received "out" sentences. After the law, only half of City offenders and three-fifths of statewide offenders were sentenced to community supervision.

While the new gun law provided sentence enhancements for gun offenders, approximately 2 out of 5 offenders were sentenced to less than one year for possession and only 1 out of 5 for use of a gun in a crime (Figure 6). Victim injury, age of the offender, violent conviction charge, and prior incarcerations surfaced in multivariate analysis as factors leading to longer sentences. However, type and length of sentence did not vary for cases tried before and after the law was enacted.

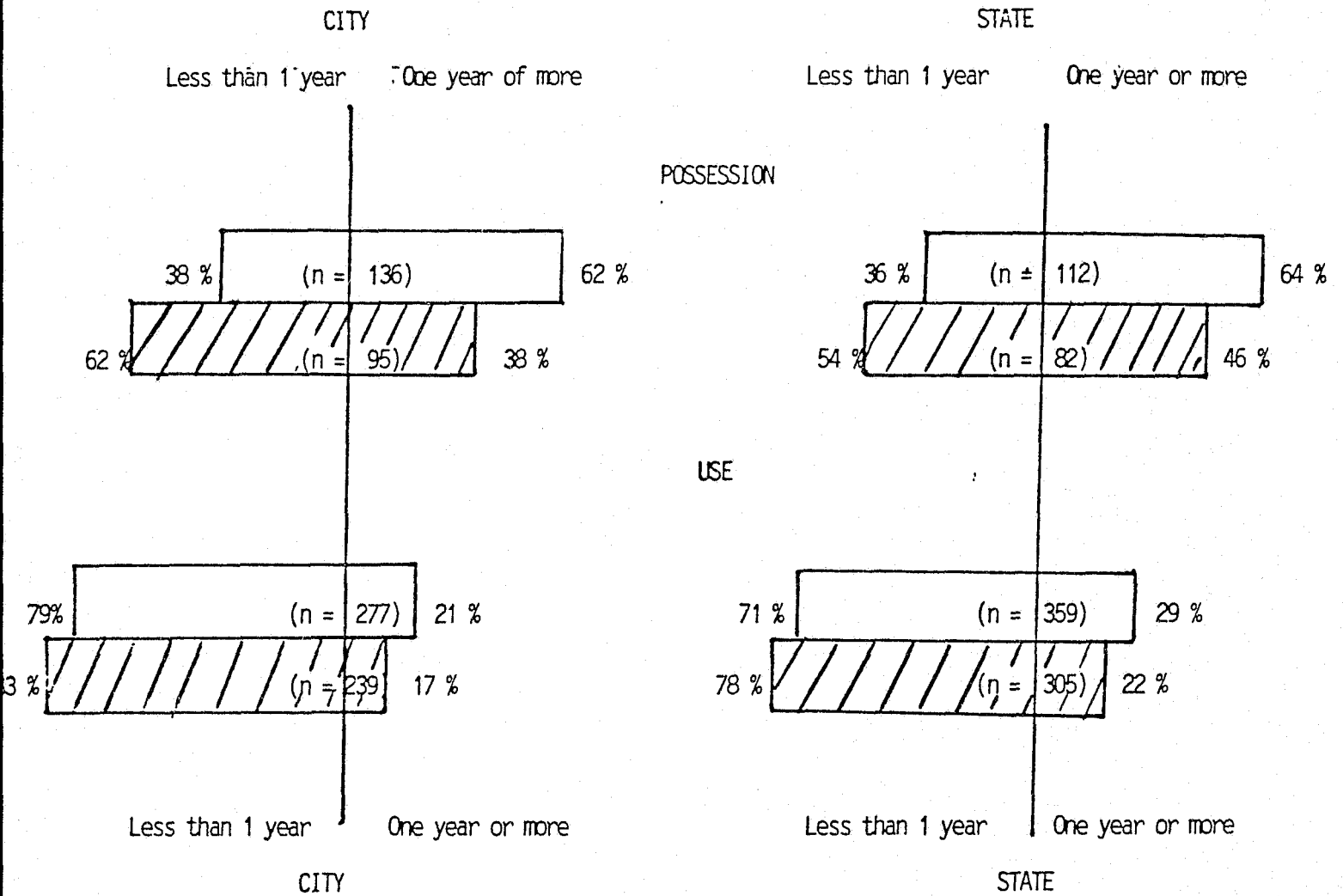
Criminal Justice Actors and Attitudes

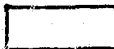

According to police respondents interviewed throughout the state, police priorities did not change after the law. Police felt that the law did not matter, since they already spent a great deal of time on gun cases. If officers perceived arrest as an inappropriately severe sanction for out-of-state travelers, shop owners or informants, they might simply confiscate the gun for "safekeeping." District attorneys also admitted that many gun charges were reduced or dismissed at or before formal charging, and considered the law flexible enough to accommodate that decision. Those with no prior criminal history, who were "otherwise innocent," and/or who did not really intend to harm anyone were prime candidates for charge reductions or dismissals.

There is nothing in the new law that discourages

Figure 6

Sentence length for firearm convictions, by extent of weapon involvement, New York City and State samples, pre-law (January 1, 1979 - August 11, 1980) and post-law (August 12, 1980 - December 31, 1981)



KEY
 Pre-law 
 Post-law 

discretionary decision-making perceived by those in a position of responsibility as "in the interests of justice." Whether police officers and district attorneys perceived the law as an effective vehicle for incapacitation, deterrence or politics, no one appeared to expect the law to change the violent crime situation in New York State. They voiced suspicion that "no one's afraid of getting caught" and "the law's not strong enough"; some complained that "offenders can always get another gun."

CHAPTER FIVE
THE LAW'S IMPACT ON FIREARM ACTIVITY

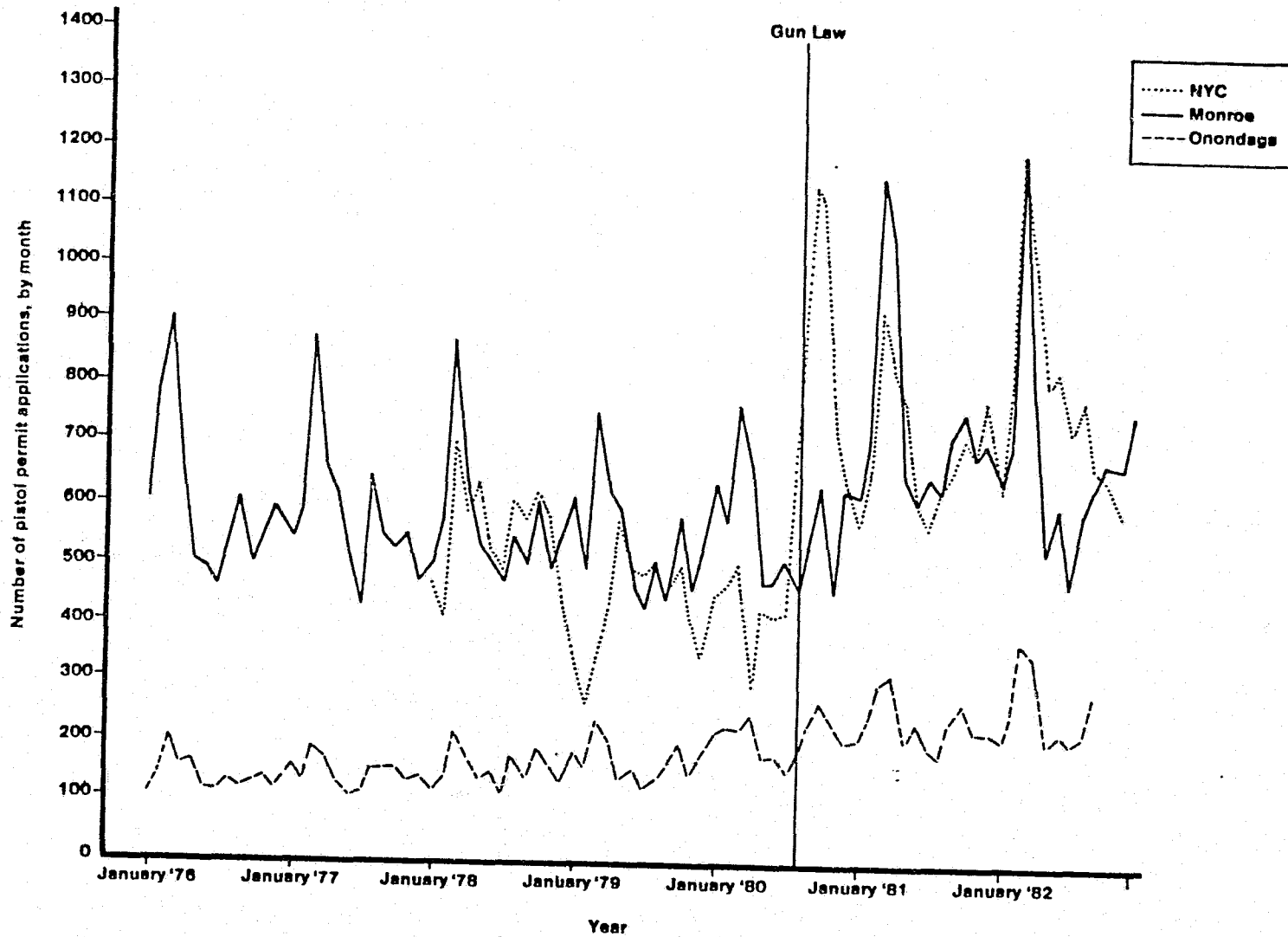
One way of measuring intended legal handgun ownership is through pistol permit applications. An increase in applications might suggest that (1) the law was adequately advertised, and (2) the deterrent message registered with the public, at least with law-abiding citizens.

Legal ownership of firearms by qualified citizens would eliminate "bad guns," since only those with a legitimate need were granted permits and since others turned in their guns during the amnesty period. An immediate and lasting increase in pistol permit applications was apparent in New York City following the law (Figure 7). Unfortunately, this does not preclude illegal possession at home or on the street. Additionally, legal possession at home does not inhibit--and, in fact, may invite--illegal possession in public.

Criminal Possession

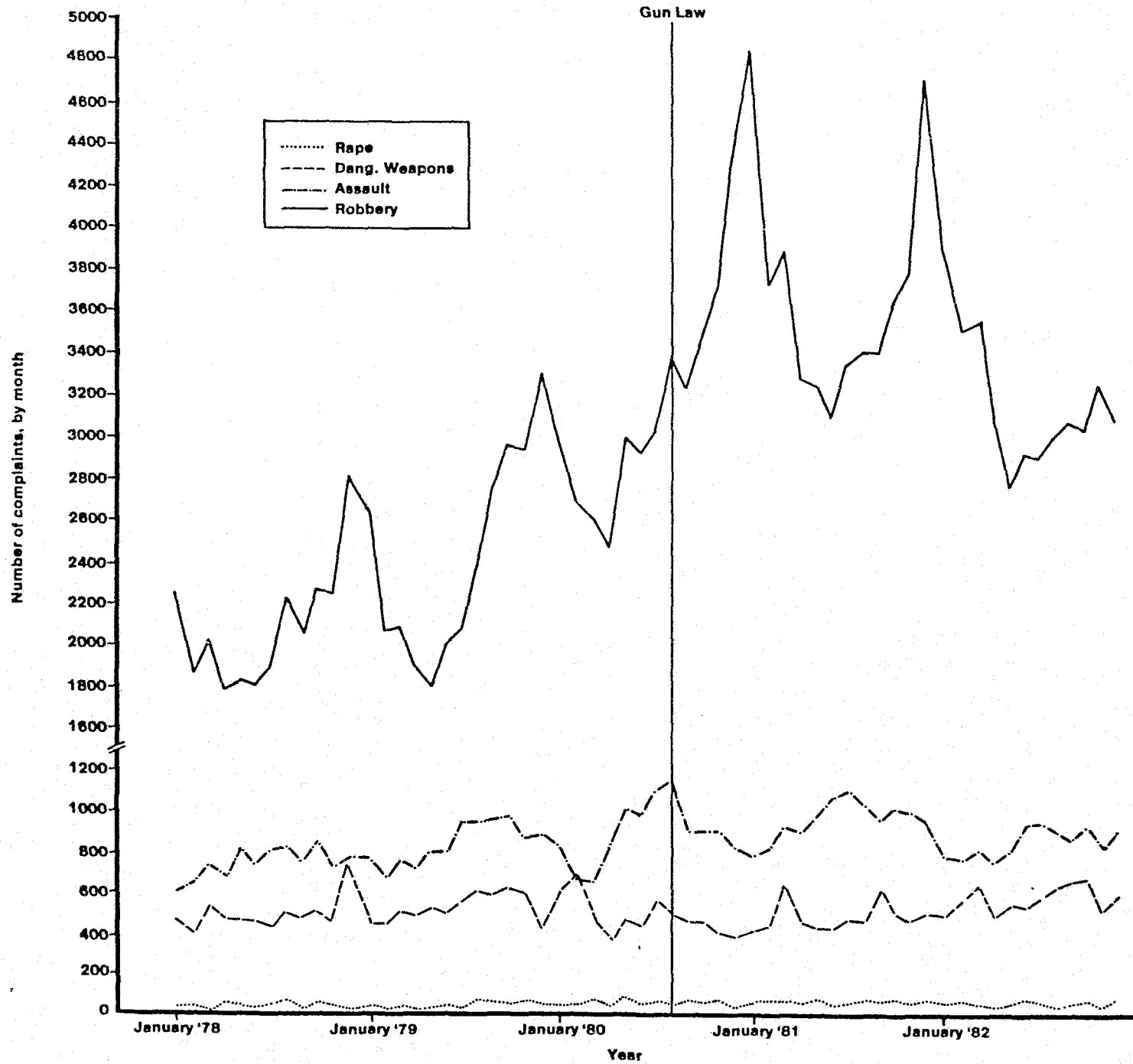
Between enactment of the law in 1980 and the two years following, there was no significant change in the number of complaints reported by citizens and police for crimes involving possession of a gun (Figure 8). This suggests no significant change in illegal possession of firearms. A change in either direction would have provided evidence that the law had an effect. A decrease would support the deterrent effect of the law's threat of a mandatory minimum sentence of one year in jail.

Figure 7 Number of Pistol Permit Applications, New York City (5 county aggregate), Monroe County, and Onondaga County, by month, 1976, 1977-1982



Source: Data provided by Firearm Licensing Bureau of New York City Police Department, Monroe Sheriffs, and Onondaga Sheriffs.

Figure 8 Number of Firearm Complaints, by type of crime, by month, statewide (aggregate), 1978-82



Source: Data provided by New York State Division of Criminal Justice Services from Uniform Crime Reports.

An increase in firearm possession offenses might have represented a defiant reaction by citizens who perceive the law as a violation of their second amendment right to bear arms²⁵.

Other indications of increased public awareness of the law, apart from more permit applications, such as more diligent reporting behavior of citizens in notifying police of firearm offenses and increased police detection of firearm offenses, did not emerge.

Many people own or carry firearms for protection, so one might predict that the otherwise law-abiding citizen interested in protection would switch to other dangerous weapons not subject to the mandatory jail sentence. Even those with criminal intentions possessing guns might switch to knives or other weapons in order to perpetrate their crimes. The deterrent value of the gun law thus might surface in a related increase in other dangerous weapons offenses.

This was not the case, however. An unchanging pattern for other dangerous weapons (such as knives or explosives) offenses and total dangerous weapons offenses suggests that the law did not trigger a switch from guns to other weapons²⁶. The similarity of each trend also suggests that there was no change in reporting behaviors of citizens.

Police officers provided some insight into weapon possession behavior in their patrol area. Officers reported that only 20 percent or fewer of those within their jurisdiction were armed with guns and that they had not noticed a change in the number of

citizens possessing or carrying firearms (or knives) since the law took effect. Inasmuch as this confirms that no change took place, the statistics for criminal complaints have extra validity as a measure of gun possession or carrying. In short, there appears to be no reason to believe that strict gun control laws requiring mandatory jail terms will result in the substitution of knives or other dangerous weapons for self-defense or protection.

Complaint, arrest, and police accounts indicate that dangerous weapons offenses for firearms and other weapons continued at about the same pace as before the law. Police officers did not begin aggressively detaining people on the street or in their homes to make good gun arrests. Citizens did not join vigilante groups to detect and report possession offenses. Police and citizens evidently are less concerned about gun possession than state legislators. Nonetheless, law-abiding citizens have complied with the law by seeking firearm permits in greater numbers.

Criminal Use

Uniform crime complaint data for assault, rape, and robbery suggest that firearm use in each violent crime category was not reduced by the 1980 gun law. Of course, firearm use could have increased to a greater degree in the absence of the law, but the fact that the mix of firearms and other weapons remained about constant suggests that the gun law had little effect, if any, on the behavior of violent offenders. Offenders did not appear to

change the weapon of choice from guns to knives as the costs associated with gun use increased.

Advocates of sentence enhancements for gun use predicted that in addition to substituting weapons, offenders might switch from violent to property crimes, and not use a weapon in committing their offenses. Unfortunately, offenders did not switch crime categories or "retool" because of the law's new threat.

The rather constant trends over the years for each type of crime suggest that the criminal use of guns was not changed during the two-year period examined since enactment of the gun law. Offenders did not substitute weapons other than guns to commit their felonies. If the criminals were determined to commit assault, rape, or robbery but feared the mandatory and enhanced minimum sentence for gun use, one would expect a more obvious shift in weapon selection. This decrease in firearm use was not forthcoming.

CHAPTER SIX
CONCLUSION: OVERSOLD BUT NOT NECESSARILY USELESS

When the New York State gun law was publicized by the media, a great number of citizens applied for permits. During the two years following the enactment of the law the police brought more weapons cases to the prosecutor and the prosecutor brought more to the court. The number of court dispositions of criminal weapon possession cases increased by over 50% from the levels of the four years immediately prior to the law. The conviction rate for these new cases increased as well--the number of sentences for persons convicted of weapons possession increased by about 65%. The judges did their part too. The incarceration rate for firearm convictions in New York State increased from an estimated 44% before the law to 58% afterward, but jail sentences of less than a year rose from an estimated 64% of all firearm incarcerations before the law to about 75% afterward.

One can argue reasonably that these changes might well have occurred anyway (or, indeed, that they might have been larger) in the absence of the law. Social science is notoriously limited in its ability to deduce causation from statistical changes that occur in nonexperimental settings.

With respect to the ultimate result that had been hoped for by the promoters of the law, however, one thing is clear: there was no dramatic decline in crime following this "tough-on-guns" law. Offenders did not refrain in great numbers from criminal activity, nor did they substitute less lethal weapons in the

commission of their crimes or turn to weaponless crimes.

Because New York's existing 1978 Violent Felony Offender laws provide harsh penalties for offenders (including those often committed with a gun), any violent crime committed with a dangerous weapon could be classified as an "armed" felony. This discretionary decision further complicates the situation by introducing "threshold" and "dosage" problems. If the 1980 law is to have a more apparent deterrent effect on weapon offenders, perhaps the new mandatory sentence should provide additional punishment beyond existing penalties²⁷. But a one-year sentence added to a 7 to 25 year term might be perceived as superfluous by attorneys, judges, and offenders. Moreover, in multiple convictions resulting from the same criminal act, New York judges must, by law, impose concurrent rather than consecutive sentences. For extremely serious offenders, the 1980 gun law posed little additional threat.

For "otherwise innocent citizens"--offenders who illegally possess guns with no intention of using them in the commission of a crime--the mandatory incarceration provision was perceived as unfair. Legal exception to pre-indictment plea restrictions was created for cases where the prosecutor believed that reducing the charge would be "in the interests of justice." If judges believe a felony conviction would be "unduly harsh," another legal exception, the post-indictment plea restrictions could be relaxed. If mitigating circumstances existed, even for repeat offenders, the imposed sentence could be less than mandatory.

In sum, New York's gun law relied on the deterrent threat of mandatory incarceration to reduce violent crime. But serious violent gun offenders did not receive incarcerative sentences at sufficiently higher rates, and lengths of sentences did not increase enough to matter. New York has always been tough on gun crime; the new law did not really add that much.

Gun Control and Public Policy

The accumulated lessons of gun law research during the past decade in California, Florida, Massachusetts, Michigan, New York, and Washington, D.C., are useful for legislatures facing the limitations of crime control through current laws and policies. Ambitious laws designed to reduce the number of guns on the street and, therefore, the number of violent crimes can suffer from operational problems. "No questions asked" turn-in and buy-back programs for firearms have failed to reduce significantly the number of guns in circulation.

The selective allocation of guns suffers from two shortcomings. First, it assumes a valid and reliable method for screening "safe" firearm owners. Second, selective allocation deals solely with the legal acquisition or transfer of weapons-- a tiny fraction of potential gun offenders. In some jurisdictions, severe sanctions aimed at violent criminals have been neutralized by expediencies in system practices such as plea bargaining, stemming from an overburdened criminal justice system. In others, existing sanctions are deemed appropriately and adequately severe and remain undiluted. In either case,

rates of violent crimes declined only slightly if at all.

Laws designed to "get tough" on gun crime are problematic. Laws concerning the possession and carrying of firearms target both illegitimate and legitimate use, and create a double standard. Ambitious but ambiguous laws designed to punish some but not all gun offenders invite disparity and disenchantment with the system. By definition, the "otherwise innocent" violator is a person caught with a gun. One option is to recognize that weapons-only offenses pose only a small threat, and abandon legislation threatening incarceration for such violations. Another option is to decide that any gun is a potential instrument of violence, and draft convincing, carefully reasoned, logical laws that punish deserving criminals.

The dilemma, however, is how to define a "deserving" criminal. This means differentiating between "safe" offenders and "dangerous" offenders. Historically, those with no prior criminal record, good character, family dependents, jobs, and the very young or very old have been considered good risks. Assuming that a legitimate distinction can be made between good and bad risks, a list of mitigating circumstances that makes severe punishment seem unduly harsh should be developed and guidelines established for use in the sentencing process²⁸.

If this appears too complicated, or constitutionally questionable, legislatures could ignore the task of removing guns from the street, and limit severe sanctions on the criminal use of firearms. Again, it is difficult to identify "deserving"

criminals. But seriousness of offense and extent of injury could be among the factors used as a basis for incarcerating the worst offenders.

Other crime control avenues remain open and less fully exploited than the quick-fix offered by gun control laws on top of already fairly tough sanctions. The task of locating and confiscating street and crime guns could be designated a high police priority. However, most police share the same attitudes about simple, illegal gun possession offenses. And they cannot be expected to embrace the responsibility for disarming "otherwise innocent" offenders. In this scenario, law enforcement could be limited to a reactive role, responding once a complaint has been logged or an illegal firearm has been noted.

Experience suggests that neither legislative sanctions nor proactive policing is likely to reduce significantly the number of victims of violent, firearm crimes. An investment in crime prevention might be a more appropriate course of action for government agencies. The public might benefit from educational programs on target hardening and crime prevention. In an effort to avoid accidents and possible thefts of weapons during burglaries, firearm safety programs could be offered at the municipal level. Citizens, including those who report "protection" as the reason for gun ownership, could be encouraged to attend self-defense or personal protection seminars. Installation of metal detectors or use of hand-held magnetometers at businesses reporting high risks, such as bars or banks, could be used to

detect weapon possession. Legal guns could be "checked at the door," posing a lesser invasion of privacy than would a ban on private ownership of weapons. More organized efforts such as neighborhood block watch and other community programs could defuse fear, and even displace or prevent crime.

In the interim, a coherent gun control policy is needed. Millions of guns are in circulation and disarmament policies are not likely to reduce their availability to criminals. Many jurisdictions currently have legislation in effect that is much weaker than what New York had prior to the enactment of their 1980 gun law. The consensus that mere illegal possession or carrying of a firearm does not warrant severe punishment should be recognized. Mandatory and enhanced punishment provisions should be implemented as intended, following legislative guidelines for discretion. Then, given sound, logical laws, the marginal deterrent impact of gun control laws on violent gun crime should be evaluated. Government funding is needed to experiment with crime prevention techniques and to disseminate successful findings to the public. A cooperative effort from all sections of society is needed if we are to create a society that can live safely with guns.

Notes

1. James Wright, Peter Rossi, and Kathleen Daly, Under the Gun (Hawthorne, New York: Aldine Publishing Company, 1983), pp. 249-270.
2. See Franklin Zimring, "Is Gun Control Likely to Reduce Violent Killings?" University of Chicago Law Review 35 (Summer 1968): 721-37.
3. See Mark H. Moore, "Keeping Handguns From Criminal Offenders," Annals of American Academy of Political and Social Science 455 (May 1981): 92-109.
4. Twenty-eight states enhance sentences, including Florida, Massachusetts, Michigan, New Jersey, and New York. See Wright, Rossi, and Daly, Under the Gun, for a review of state and local ordinances, pp. 247-272.
5. James Wright, Peter Rossi, and Kathleen Daly, Under the Gun (Hawthorne, New York: Aldine Publishing Company, 1983), pp. 245-246.
6. See Footnotes 2 and 3.
7. See Footnote 5.
8. See Footnote 4.
9. See Wright, Rossi, and Daly, Under the Gun, pp. 282-308, for a review of these studies.
10. See David Rossman, et al., Impact of the Mandatory Gun Law in Massachusetts (Boston, Mass.: Boston University School of Law, 1980), pp. 16-18, 342, 343, 419, 420.
11. See Colin Loftin, Milton Heumann, and David McDowall, "Mandatory Sentencing and Firearms Violence: Evaluating an Alternative to Gun Control," Law and Society Review 17, no.2 (1983): 287-318.
12. See David McDowall and Colin Loftin, "The Deterrent Effects of the Florida Felony Firearm Law," Journal of Criminal Law and Criminology 75, no. 1 (Spring 1984): 250-259.
13. Criminal possession of a weapon in the first and second degree were included among the original "violent felonies" in 1978.

14. New York Times, February 17, 1980, p. 47; February 19, 1980, p.3; February 21, 1980, p. B4; February 22, 1980, p. 16.
15. Information on all bills introduced before the 1980 Legislature were obtained from the official record of the 1980 Legislature, New York Legislature Record and Index, 1980 (Albany: Legislative Index Company, 1980). The total number of bills represents 106 distinct proposals.
16. Mark H. Moore, "The Bird in Hand: A Feasible Strategy for Gun Control," Journal of Policy Analysis and Management 2, no. 2 (1983): 188-192.
17. Amnesty period was advertised on the radio and on television, in newspapers, and on billboards. Citizens were encouraged to surrender their illegal guns without penalty of arrest by August 11, 1980 (although this deadline was extended to one month past the law's starting date). During this period, 372 guns were turned in; the comparable statistic for 1979 was 30 guns ("Gun Amnesty Result," New York Times September 13, 1980, p. 25).
18. The principal sections affected by the legislation were 60.4, 70.02, 70.04, 120.11, 265.02, 265.08, 265.09, 265.10, 265.12, 265.15, 265.20, and 400.00 of the penal law and 220.10 and 220.30 of the criminal procedure law.
19. New York (State) Division of Criminal Justice Services, Semi-Annual Report on Violent Felony and Juvenile Offenders in New York State (New York: Division of Criminal Justice Services, 1981), pp. 99-100.
20. Schwartz, "The New York Gun Control Law," pp. 3-37.
21. See John Goldkamp, Two Classes of Accused (Cambridge, Mass: Ballinger Publishing Company, 1979) for a discussion of bail decisionmaking. See Leslie Wilkins, Don Gottfredson, and Jack Kress, Sentencing Guidelines (Washington, D.C.: U.S. Government Printing Office, 1976) for a discussion of the sentencing decision. In general, see Michael Gottfredson and Don Gottfredson, Decisionmaking in Criminal Justice: Toward the Rational Exercise of Discretion (Cambridge, Mass: Ballinger Publishing Company, 1980) for review of research and issues involved in criminal justice decisions.

22. The officers were informed of Mr. Glick's presence (and indeed could ask, as some did, to refuse the observation or interview), his affiliation with the Police Foundation, and his position on the National Institute of Justice Gun Law Project. After establishing rapport (which was accomplished easily by virtue of Mr. Glick's demeanor, research skill, and background in policing), the interview itself eased suspicions about ride-alongs and reduced the number of individual refusals to participate.
23. For a number of reasons, primarily the policy of sealing or expunging cases resulting in favorable dispositions for the defendant (under C.P.L. 160.50), the resultant sample was of gun-related arrests reaching the conviction state (although the convictions could be for any charge, not just for the gun involvement, possession or use, which originally triggered inclusion in the sample). Approximately one-half of the selected sample cases "disappeared" as missing or sealed cases and cannot be accounted for. See Final Report, Chapter Three, Table 3.4 and accompanying text.
24. This coincides with the broader picture of violence against police: the proportion of assaults on police in the United States resulting in serious injury is small. See Mona Margarita, "Criminal Violence Against Police" (Ph.D. Dissertation, S.U.N.Y. Albany, 1980), pp. 33-49.
25. For a review of the legal right to bear arms, see K. F. Kluin, "Gun Control: Is It a Legal and Effective Means of Controlling Firearms in the U.S.?" Washburn Law Journal 21, no. 2 (1982): 244-65.
26. See Wesley G. Skogan, "Weapon Use in Robbery," in Violent Crime, eds. James Inciardi and Anne Pottieger (Beverly Hill: Sage Publications, 1978), pp 61-73 for a discussion of weapon utility for robbers.
27. For a full discussion of the problems posed by duplicative statutes, see Martin H. Tish, "Duplicative Statutes, Prosecutorial Discretion, and the Illinois Armed Violence Statute," Journal of Criminal Law and Criminology 71 (Fall 1980): pp. 226-243.
28. Although the procedures to guarantee due process need not be as cumbersome as in the bifurcated death penalty determination, the proposition is similar.

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