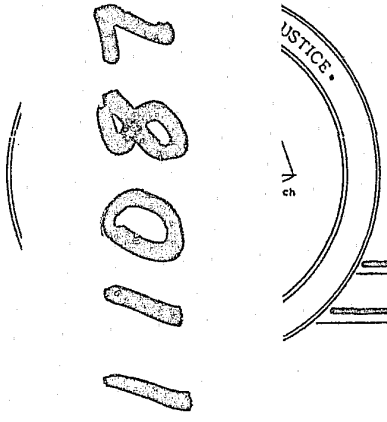
GETTING TOUGH ON CRIME IN COLORADO

DECEMBER 1987



COLORADO DEPARTMENT OF PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE

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GETTING TOUGH ON CRIME IN COLORADO

AN ASSESSMENT OF HB1320
A NEW SENTENCING LAW

Prepared by

THE COLORADO DIVISION OF CRIMINAL JUSTICE

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EXECUTIVE SUMMARY

Colorado's sentencing laws have undergone several dramatic system-impacting changes since 1977. "Get tough on crime" efforts have come full circle. In 1979, the indeterminate sentencing scheme of the 1960's and 1970's was replaced by a presumptive sentencing structure designed to insure a definite term for offenders sentenced to prison. The 1979 law required that a single sentence be imposed from within the narrow range prescribed for each felony class. In 1985, however, the presumptive sentencing law was amended to double the top of the range for each felony class--in effect, a return to indeterminancy with a different twist.

The purpose of this research is (1) to assess the "toughness" of the new law by examining the effects of the 1985 sentencing legislation on sentencing practices and on the prison system, and (2) to assess the validity of some of the assumptions used in forecasting policy impacts. First, a summary of Colorado sentencing law changes and impacts between 1977 and 1985 will be presented; second, study methods will be described; and third, findings and conclusions will be presented from the judicial survey, the court data and the interviews with system decision-makers.

COLORADO SENTENCING LAWS: 1977 to 1985

Following is a summary of sentencing law changes in Colorado between 1977 and 1985. This summary is provided as background for the study.

In the 1977 legislative session, HB1589 was introduced. The major purpose of the bill was to substitute a single fixed "presumptive" incarceration sentence for felony classes two (most serious) through five (least serious) in place of the incarceration ranges then in effect. Class 1 offenses (homicide) continued to be classified as capital offenses carrying a life or death sentence. The law became effective, following a two-year delay, on July 1, 1979 for all offenses committed on or after that date.

The sentencing law prior to July 1979 authorized a minimum and maximum sentence. These indeterminate sentences could be as short as one day or as long as 50 years. HB1589 specified for four felony classes a range within which a definite sentence was to be imposed unless aggravating or mitigating factors were present.

Under HB1589, time served in prison was determined by sentence length. The law's good and earned time provisions, in addition to full credit for presentence confinement, enabled a prisoner to cut the sentence served by more than half.

HB1320 and Its Projected Impact

Criticisms of the presumptive sentencing bill surfaced shortly after its enactment. The major criticisms concerned mandatory release dates and short sentences for heinous crimes. For example, an offender committing a Class 2 offense such as attempted 1^{o} murder could be sentenced to a maximum of 12 years (unless aggravating factors were present) with a mandatory release date of six years. An aggravated 1^{o} murder could receive up to 24 years.

Although tougher sentencing laws were debated in every legislative session following the enactment of HB1589, for the most part the fiscal impact argument stopped their enactment. Colorado's prisons were full, and legislators were struggling with reduced state revenues. However, late in the 1985 session, a new sentencing bill slipped through with a very small fiscal impact statement attached for the first year. The bill doubled the top of the presumptive range and returned release discretion to the parole board with a minimum time served of half the sentence. Thus, in less than 10 years, the ranges specified by Colorado's sentencing laws have changed as follows:

Felony Class	Indeterminate Min	Indeterminate Max	Presumptive Range	Modified Presumptive Range
1	Life	Death	Life/Death	Life/Death
2	10 yrs	50 yrs	8 - 12 yrs	8 - 24 yrs
3	5 yrs	40 yrs	4 - 8 yrs	4 - 16 yrs
4	1 day	10 yrs	2 - 4 yrs	2 - 8 yrs
5	1 day	5 yrs	1 - 2 yrs	1 - 4 yrs

The Colorado Division of Criminal Justice (DCJ) prepared an impact analysis based on the assumption that admissions would increase slightly and that judges would sentence, on the average, at the midpoint of the new presumptive range. Thus, we projected a large increase in the prison population from 3500 in 1986 to 6900 in 1995. As alluded to earlier, supporters of the bill argued that this would have little impact on the prison system because the court would use its discretion to give longer sentences only to the most serious offenders. That is, they argued that the system would adjust to maintain the current level of incarceration by incarcerating the most serious offenders for longer terms and reducing the time served for less serious offenders. In effect, they were arguing that capacity drives commitments in the direction desired to "get tough on crime."

This study was designed to shed light on these questions about the impact of HB1320. Study objectives were to:

- Profile charged and convicted offenders pre and post HB1320.
- Compare plea bargaining pre and post HB1320.
- Compare court case dispositions pre and post HB1320.
- Describe the attitudes of judges, district attorneys, and probation officers toward HB1320, and estimate their response.
- Project the impact of HB1320 on Colorado's correctional system.
- Assess the effectiveness of the law and a "get tough on crime" policy.

RESEARCH METHODS

This study is based on three data souces:

- Quantitative data from 1997 felony court case files in seven judicial districts (Denver, El Paso, Larimer, Garfield, Pueblo, Logan/Morgan, and Mesa counties).
- Personal interviews with judges, district attorneys, defense lawyers, and probation officers.
- Mail survey of judges, district attorneys, defense lawyers, and probation officers.

FINDINGS AND CONCLUSIONS

Many factors other than HB1320 may have affected sentencing patterns during the observation period. Offender profiles, the economy, crime types, offender needs, prosecuting and sentencing practices are but a few of these factors. We therefore compared, pre and post HB1320, as many of these factors as possible in order to identify possible confounding effects. The following changes were observed:

Offender Profile

- Slight increase in proportion of male offenders.
- Slight increase in 18 to 20 year old group.
- Slight increase in never married offenders.

Offender Needs

- Increase in unemployment at sentence--related to increase in pretrial confinement.
- Increase in reported substance abuse.

Criminal History

- Increase in proportion of offenders with prior juvenile history.

- Decrease (not statistically significant) in adult offenders with no criminal history.

Offense Characteristics

- Data suggest smaller proportion of offenders charged with Class 4, larger proportion charged with Class 5 felonies.

Plea Bargaining

- No change.

Placement Decisions for Convicted Offenders

- No change. For all offenders charged with felonies in district court and convicted, 23 percent were sentenced to prison; six percent to jail (these were offenses reduced to misdemeanors); nine percent to residential community corrections; 13 percent to jail and probation; 45 percent to probation; and four percent to unsupervised deferred judgment, deferred prosecution, suspended sentence, or fine.

Changes in Sentence Length

- A survey of judges found that recommended sentence lengths have increased 35 percent since 1980.

- The increase in recommended sentence lengths was found in all cases, but was greater for repeat and violent offenders.

- Analysis of data from court casefiles shows that sentences were increasing dramatically under the old sentencing law. Analysis of sentences in relation to the midpoint of the ranges shows that 61 percent of the total sample were at or above the top of the range. Of sentences imposed prior to the effective date of HB1320, 68 percent were at or above the top range, compared to 52 percent of new law sentences. However, the percentage of sentences which fall between the middle and top of the range increased from one percent under the old law to 10 percent under the new law.

Sentence Length

- Under HB1320, the average sentence length has increased 30 months, from 63.6 to 93.6 months. A sentence of 93.6 months requires a minimum length of stay in prison of 46.8 months.

Impact on Correctional System

- Prison population projections using old law sentence lengths as of June 30, 1985 (the new law was effective on July 1, 1985) and new law sentence lengths show that the projected prison population for 1995 would be 6123 under old law sentence lengths compared to 10,373 under the new law. Thus, the new law creates the need for 4250 additional prison cells.

Get Tough on Crime Effects

The proponents of the new sentencing law argued, in effect, that the strength of the relationship between the seriousness of the offense/offender and the severity of the disposition would be significantly increased under new law sentences. This hypothesis was tested by creating an offense/offender index and a dispositional severity index. The seriousness index was created by adding weighted values for seriousness of the felony class of conviction, violent/non-violent offense, and criminal history score. The dispositional severity index was created by adding weighted values for placement severity (probation, jail and probation, community corrections, prison) and sentence length. A multiple regression analysis found little change in the relationship pre and post HB1320. Further, we found a weak correlation ($r = .1750$), and very little explained variance (adjusted r^2 .0169) between seriousness of offender/offense and dispositional severity either pre or post HB1320. Thus, it can be inferred that many factors other than officially recorded offense/offender seriousness affect dispositional severity. It can also be inferred that HB1320 is not achieving the stated objectives of its sponsors: that is, the strength of the relationship between seriousness of offense/offender and dispositional severity has not increased under HB1320.

GETTING TOUGH ON CRIME IN COLORADO: AN ASSESSMENT OF HB1320, A NEW SENTENCING LAW

INTRODUCTION

Colorado's sentencing laws have undergone several dramatic system-impacting changes since 1977. "Get tough on crime" efforts have come full circle. The indeterminate sentencing scheme of the 1960's and 1970's was replaced by a presumptive sentencing law in 1979 which was designed to insure a definite sentence for more offenders sentenced to prison. The 1979 law required that a single sentence be imposed from within the narrow range prescribed for each felony class. In 1985, however, the presumptive sentencing law was amended to double the top of the range for each felony class--in effect, a return to indeterminancy with a different twist.

The purpose of this research is to assess the "toughness" of the new law by examining the effects of the 1985 sentencing legislation on sentencing practices and on the prison system, and to assess the validity of some of the assumptions used in forecasting policy impacts. First, a brief review of changes in Colorado's sentencing laws is presented. A methodology section follows, then the findings and conclusions are presented from the judicial survey, analysis of the felony filings data for 1984 to 1986, and interviews with decisionmakers.

COLORADO SENTENCING LAWS: 1977 to 1985

In Colorado, as in other states, the companion topics of equity in criminal sentencing and crime classification have consumed much legislative and administrative energy for the last two decades. A comprehensive history of Colorado sentencing legislation is beyond the scope of this report; however, a brief review of changes since 1977 is provided as background to the research.

In the 1977 legislative session, HB1589 was introduced. The major purpose of the bill was to substitute a single fixed "presumptive" incarceration sentence for felony classes two (most serious) through five (least serious) in place of the incarceration ranges then in effect. Class 1 offenses (homicide) continued to be classified as a capital offense carrying a life or death sentence. The bill was passed by the General Assembly on June 3, 1977. However, opponents of the bill successfully lobbied for HB1001 which delayed the enactment date of HB1589 until April 1, 1979.

In early 1979, representatives from the three branches of state government, state and local law enforcement officials, prosecution and defense agencies, the private bar and other interested private organizations participated in a sentencing conference. The participants reached a compromise on the issues that had led to the delayed enactment date. These included incarceration sentence lengths, good and earned time provisions, parole functions,

retroactivity and sentence review. The compromises which were written into HB1589 applied to offenses committed on and after July 1, 1979.

The sentencing law prior to July 1979 authorized a minimum and maximum sentence. These indeterminate sentences could be as short as one day or as long as 50 years. HB1589 specified for four felony classes a range within which a definite sentence was to be imposed unless aggravating or mitigating factors were present.

As a result of the mandatory good time provisions of HB1589, sentence length, in effect, determined time served. The law's good and earned time provisions, in addition to full credit for presentence confinement, enabled a prisoner to cut the sentence served by more than half.

HB1320 and its Projected Impact

Criticisms of the presumptive sentencing bill surfaced shortly after its enactment. The major criticisms concerned mandatory release dates and short sentences for heinous crimes. For example, a Class 2 offense such as attempted 1^{o} murder could bring a maximum sentence of 12 years (unless aggravating factors were present) with a mandatory release date of six years. An aggravated 1^{o} murder could receive up to 24 years.

Although tougher sentencing laws were debated in every legislative session following the enactment of HB1589, for the most part the fiscal impact argument stopped their enactment. Colorado's

prisons were full, and legislators were struggling with reduced state revenues. However, late in the 1985 session, a new sentencing bill slipped through with a very small fiscal impact statement attached for the first year. The bill doubled the top of the presumptive range and returned release discretion to the parole board with a minimum time served of half the sentence. Thus, in less than 10 years, the ranges specified by Colorado's sentencing laws have changed as follows:

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The Colorado Division of Criminal Justice (DCJ) prepared an impact analysis based on the assumption that admissions would increase slightly and that judges would sentence, on the average, at the midpoint of the new presumptive range. Thus, we projected a large increase in the prison population from 3500 in 1986 to 6900 in 1995. As alluded to earlier, supporters of the bill argued that HB1320 would have little impact on the prison system because the court would use its discretion to give longer sentences only to the most serious offenders. That is, they argued that the system would adjust to maintain the current level of incarceration. In effect, they were arguing that capacity drives commitments.

Implementation Issues

If a policy is well designed, there are intended consequences. However, in implementation, new policies also cause unintended consequences. The uncertainty about how new policies will be implemented and what effect they will have encourages the kind of debates described earlier about a policy's potential impact. That capacity drives commitment is a common belief among criminal justice practitioners. This belief is reflected in practitioner shared experience of empty cells soon being filled. There is some empirical support for this hypothesis in the American Prisons and Jails study (1980: 138):

> Facility capacity was one variable that appeared to exert a moderating influence on these decisions. Where policies have explicitly taken capacity limitations into account, it has generally been possible to control the degree of crowding. Our historical analysis suggests, however, that where new space has been added, it has, on the average, been followed two years later by population increases of nearly equal size. This finding does not conclusively prove that increased capacity drives population, but does suggest that it may diminish reliance on non-custodial dispositions and inhibit other mechanisms that regulate and control prison population.

It defies logic, however, to assume that the system has an infinite capacity to adjust. As stated in Prisons and Jails,

> ... when the limits of these adjustments were reached, the effects would be directly transmitted to the corrections system. Unfortunately, predicting these movements proved to be a difficult, if not fundamentally impossible, task.

Thus, it is likely that both DCJ's projections of a 97 percent increase in the prison population and the bill sponsor's assessment of no impact are wide of the mark.

However, if DCJ's impact forecasts are moderately accurate, several prisons will be needed by 1989 when the projected population is expected to be over 6000. New sentencing legislation has exacerbated the problem. Sentencing enhancements for violent offenses or new crimes by offenders currently under supervision were made an element of the offense in the session following enactment of HB1320. The practice had been to use the enhancement charge as a bargaining asset; thus, very few offenders were convicted of the enhancement. The change requires a mandatory prison sentence at more than the top of the range for offenders convicted of the included offenses (see Attachment 1). Mandatory sentence lengths for Class 5 felonies are thus increased by at least two years; Class 4 felonies by at least four years; Class 3 felonies, eight years; and Class 2 felonies, 12 years.

Colorado urgently needs the most accurate estimate possible of the law's impact on the system. Currently, about 300 prisoners are backed up in county jails. New prison construction has not yet been funded, but the 1988 Legislature will consider funding two additional prisons.

The following objectives were developed to guide the research and contribute to a better understanding of HB1320 impact:

- To profile charged and convicted offenders pre and post HB1320.
- To assess changes in plea bargaining practices pre and post HB1320.
- To assess changes in court case dispositions pre and post HB1320.
- To describe the attitudes of judges, district attorneys, and probation officers toward HB1320, and to estimate their response to the new law.
- To project the impact of HB1320 on Colorado's correctional system.
- To assess the effectiveness of the law as a "get tough on crime" policy.

RESEARCH DESIGN

This study is based on three data sources. First, we collected quantitative data from seven Colorado judicial districts selected to be representative of the state. Second, in those same districts we conducted personal interviews with judges, district attorneys, defense lawyers, and probation officers; and, third, we replicated a statewide mail survey of judges in which they were asked how they would sentence in hypothetical cases.

The Quantitative Data

The Colorado Division of Criminal Justice annually collects data from District court case filings (see data collection form, Attachment 2). For the observation period, July 1, 1984 through December 31, 1986, a 10 percent systematic sample of case filings produced 1997 cases for analysis. Of the 1997 filings in the sample, 1548 had resulted in convictions at the time of the data collection.

Personal Interviews

To better understand the dynamics of law implementation, we personally interviewed system decisionmakers in all seven districts. (See Attachment 3.) The number and position of the persons interviewed are as follows:

District Judge	District Attny.	Defense Attny.	Probation	Total
10	12	12	13	47

The Judicial Survey

The Division of Criminal Justice has twice conducted mail surveys to district judges on sentencing decisions (see Attachment 4). The survey consists of several case profiles. The respondent is asked to indicate the in/out decision and, if in, the sentence that would be imposed. This survey was replicated on the population of Colorado district judges. Of the 105 judges surveyed, 79 judges who hear criminal cases responded. At least one judge in each of the 22 judicial districts responded. In 11 of the districts, 100 percent of the judges returned completed surveys. Overall response rate was 75 percent.

FINDINGS AND CONCLUSIONS

Many factors, other than the new sentencing law, may have affected sentencing patterns during the observation period. Offender profiles, the economy, crime types, offender needs, prosecuting and sentencing practices are but a few of these factors. To be able to analyze impact of the law, changes possibly caused by these other factors must be controlled. Thus, the first step in the analysis was bivariate analysis to identify variables which changed significantly during the study period.

Offender Profile

For the study period, we observed several minor changes in demographic characteristics. These changes are statistically significant; however, the correlation coefficient indicates that the relationship is very weak. There is a slight increase in the proportion of male offenders; also, individuals who committed crimes after July 1, 1985 are more likely to be between 18 and 20 years old and to be single than those who committed crimes before that date. There is no significant difference in ethnicity or education for the two time periods. The distributions before and after the HB1320 effective date are shown in Tables 1 and 2.

TABLE 1

DEMOGRAPHIC CHARACTERISTICS
PRE AND POST HB1320
EFFECTIVE DATE

	Pre HB1320 N	Pre HB1320 %	Post HB1320 N	Post HB1320 %
Sex				
Male	860	(82)	823	(86)*
Female	192	(18)	130	(14)
TOTAL	1052		953	
Ethnicity				
Anglo-White	532	(59)	501	(57)
Black	148	(16)	178	(20)
Hispanic	216	(24)	193	(22)
American Indian	6	(1)	7	(1)
Other	3	(<1)	6	(1)
TOTAL	905		885	
Marital Status				
Single	436	(46)	479	(55)*
Married	259	(27)	180	(21)
Separated/Divorced	252	(26)	201	(23)
Widowed	6	(1)	5	(1)
TOTAL	953		865	
Education				
High School Diploma or GED	564	(63)	490	(61)
No High School Diploma or GED	330	(37)	316	(39)
TOTAL	894		806	

*The probability that the observed relationship occurred by chance is .05 or less.

TABLE 2

OFFENDERS BY AGE GROUP: PRE AND POST
HB1320 EFFECTIVE DATE

Age Group	Pre HB1320 N	%	Post HB1320 N	%
18 - 20	130	(13)	188	(20)*
21 - 24	221	(22)	236	(25)
25 - 29	230	(23	195	(21)
30 - 34	160	(16)	147	(16)
35 - 39	104	(11)	82	(9)
40 +	140	(14)	83	(9)
TOTAL	985		931	

*The probability that the observed relationship occurred by chance is .05 or less.

Offender Needs

As reported in Tables 3 and 4, the data also show statistically significant changes in employment at sentence and in substance abuse. The change in employment at sentence appears to be related to an increase in the proportion of defendants in pretrial confinement: employment at arrest was unchanged, but there was an increase in unemployment at sentence and in pretrial confinement after the HB1320 effective date. Offender's status at disposition is given in Table 5. The observed increase in substance abuse could reflect an actual increase or it may reflect increased attention (as a result of the "war on drugs" program) to substance abuse by probation investigation officers. It is interesting to note that the increase occurs in the self-report categories.

TABLE 3

EMPLOYMENT CHARACTERISTICS
PRE AND POST HB1320
EFFECTIVE DATE

Employment		Pre HB1320 N	%	Post HB1320 N	%
At Arrest					
Full Time		383	(42)	330	(41)
Part Time		33	(4)	26	(3)
Unemployed		459	(50)	406	(50)
Sporadic		47	(5)	45	(6)
	TOTAL	922		807	
At Sentence					
Full Time		286	(36)	173	(26)*
Part Time		22	(3)	23	(3)
Unemployed		464	(58)	454	(68)
Sporadic		26	(3)	19	(3)
	TOTAL	798		669	

*The probability that the observed relationship occurred by chance is .05 or less.

TABLE 4

OFFENDER NEEDS: PRE AND POST
HB1320 EFFECTIVE DATE

Needs		Pre HB1320 N	%	Post HB1320 N	%
Mental Health					
None		490	(70)	410	(74)
Yes - from Individual		113	(16)	80	(15
Yes - Court Placement		92	(13)	56	(10)
Yes - per File		3	(<1)	5	(1)
	TOTAL	698		551	
Alcohol					
None		407	(57)	271	(49)*
Yes - from Individual		177	(25)	176	(32)
Yes - Court Placement		103	(14)	95	(17)
Yes - per File		26	(4)	15	(3)
	TOTAL	713		557	
Drug					
None		415	(59)	273	(51)*
Yes - from Individual		210	(30)	197	(37)
Yes - Court Placement		65	(9)	68	(13)
Yes - per File		11	(2)	2	(<1)
	TOTAL	701		540	

*The probability that the observed relationship occurred by chance is .05 or less.

TABLE 5

OFFENDER STATUS AT DISPOSITION
PRE AND POST HB1320
EFFECTIVE DATE

Status		Pre HB1320 N	%	Post HB1320 N	%
Summons		41	(4)	27	(3)
PR Bond		216	(22)	193	(21)
Secured Bond		485	(48)	426	(45)
Jail or Prison		260	(26)	294	(31)
	TOTAL	1002		940	

Criminal History

Table 6 reflects a statistically significant increase in the percentage of offenders with a prior juvenile record. There is also a change in the same direction for adult records for prior felony convictions, although this change is not statistically significant at the .05 level. A criminal history index (see Table 7) composed of prior juvenile commitments, prior felony convictions, prior violent felony convictions, and prior parole or probation revocations reflects the same pattern. The data show an eight percent decrease in the proportion of offenders with no criminal history. Again, at a significance level of .06, this change does not quite meet the .05 criteria. The Pearson's correlation coefficient is also .06.

TABLE 6

CRIMINAL HISTORY OF SENTENCED OFFENDERS
PRE AND POST HB 1320 EFFECTIVE DATE

Prior Record		Pre HB1320 N	%	Post HB1320 N	%
Juvenile					
Yes		216	(33)	218	(40)*
No		436	(67)	329	(60)
	TOTAL	652		547	
Adult Felony Convictions					
None		463	(64)	340	(59)
One +		261	(36)	232	(41)
	TOTAL	724		572	

*The probability that the observed relationship occurred by chance is .05 or less.

TABLE 7

OFFENDER CRIMINAL HISTORY SCORE
PRE AND POST HB1320
EFFECTIVE DATE

Criminal History Score		Pre HB1320 N	%	Post HB1320 N	%
Score = 0		327	(57)	239	(50)
Score = 1		68	(12)	77	(16)
Score = 2		63	(11)	49	(10)
Score = 3		38	(7)	45	(9)
Score = 4		77	(13)	73	(15)
	TOTAL	573		483	

Offense Characteristics

Colorado's criminal code classifies felony offenses into five categories, with Class 1 as the most serious (1^{o} homicide) and Class 5 the least serious. Because HB1320's wider and overlapping sentence ranges allow much more discretion within each felony class (except Class 1), we expected charging practices to change. Table 8 suggests that a smaller percentage of defendants are being charged with a Class 4 felony, and a larger percentage with a Class 5. The Chi-square for this relationship is statistically significant, but the correlation coefficient is only .02. The distributions before and after the effective date of HB1320 are virtually the same for Felony Classes 1 through 3. Further, when class of offense charged is controlled, there is no significant difference pre and post HB1320 for felony class of conviction (see Table 9).

There is no significant difference in use of a deadly weapon or victim injury (Tables 10 and 11).

TABLE 8

FELONY CLASS OF MOST SERIOUS OFFENSE CHARGED
AND OF MOST SERIOUS CHARGE AT CONVICTION
PRE AND POST HB1320 EFFECTIVE DATE

	Pre HB1320 N	Pre HB1320 %	Post HB1320 N	Post HB1320 %
Most Serious Charge				
Felony 1	7	(1)	6	(1)*
Felony 2	16	(2)	19	(2)
Felony 3	324	(31)	298	(31)
Felony 4	550	(52)	441	(46)
Felony 5	153	(15)	186	(20)
TOTAL	1050		950	
Most Serious Conviction				
Felony 1	2	(<1)	1	(<1)
Felony 2	9	(1)	7	(1)
Felony 3	97	(12)	66	(9)
Felony 4	329	(40)	265	(37)
Felony 5	229	(28)	230	(32)
Misdemeanor	149	(18)	156	(22)
TOTAL	815		725	

*The probability that the observed relationship occurred by chance is .05 or less.

TABLE 9

FELONY CLASS OF MOST SERIOUS OFFENSE CHARGED
BY FELONY CLASS OF MOST SERIOUS CONVICTION
PRE AND POST HB1320 EFFECTIVE DATE

	Pre HB1320 N	%	Post HB1320 N	%
MOST SERIOUS CHARGE = FELONY 1				
Most Serious Conviction =				
Felony 1	2	(75)	1	(33)
Felony 2	1	(25)	1	(33)
Felony 5	0		1	(33)
TOTAL	3		3	
MOST SERIOUS CHARGE = FELONY 2				
Most Serious Conviction =				
Felony 2	7	(47)	6	(38)
Felony 3	2	(13)	1	(6)
Felony 4	6	(40)	6	(38)
Felony 5	0		2	(13)
Misdemeanor	0		1	(6)
TOTAL	15		16	
MOST SERIOUS CHARGE = FELONY 3				
Most Serious Conviction =				
Felony 2	1	(<1)	0	
Felony 3	95	(36)	65	(28)
Felony 4	88	(33)	77	(33)
Felony 5	61	(23)	59	(26)
Misdemeanor	18	(7)	29	(13)
TOTAL	263		230	
MOST SERIOUS CHARGE = FELONY 4				
Most Serious Conviction =				
Felony 4	233	(56)	182	(53)
Felony 5	103	(25)	92	(27)
Misdemeanor	83	(20)	71	(21)
TOTAL	419		345	
MOST SERIOUS CHARGE = FELONY 5				
Most Serious Conviction =				
Felony 4	2	(2)	0	
Felony 5	65	(57)	76	(58)
Misdemeanor	47	(41)	54	(42)
TOTAL	114		130	

TABLE 10

USE OF DEADLY WEAPON
PRE AND POST HB1320
EFFECTIVE DATE

Weapon Used	Pre HB1320 N	%	Post HB1320 N	%
None	880	(84)	763	(82)
Gun	74	(7)	77	(8)
Knife	47	(5)	54	(6)
Other	43	(4)	42	(5)
TOTAL	1044		936	

TABLE 11

PHYSICAL INJURY INVOLVED
PRE AND POST HB1320
EFFECTIVE DATE

Physical Injury	Pre HB1320 N	%	Post HB1320 N	%
Yes	122	(12)	98	(11)
No	915	(88)	838	(90)
TOTAL	1037		936	

Plea Bargaining

The data indicate no difference in plea bargaining pre and post HB1320, although the data suggest a decrease in guilty pleas (Table 12) and an increase in reductions from a felony charge to a misdemeaner (Table 13). A sentencing modification which occurred in 1986, independent of the enactment of HB1320, mandates an aggravated sentence for offenders convicted of selected offenses if the offender is sentenced to prison. Thus, an offender convicted of an aggravated Class 4 offense has to be sentenced to more than eight years, and a Class 5 offender to more than four years if a prison sentence is imposed. The data, as well as the interviews, suggest that judges are reluctant to sentence some offenders to the mandatory ranges, but are also reluctant to release them without any incarceration time; thus felony charges are reduced to misdemeanors and jail sentences imposed. The data presented later in Table 16 reflect a 23 percent increase in split sentences (jail and probation) for offenders with a criminal history score of one, pre and post HB1320.

TABLE 12

TYPE OF DISPOSITION
PRE AND POST HB1320
EFFECTIVE DATE

	Pre HB1320 N	%	Post HB1320 N	%
Deferred Judgment	204	(20)	177	(19)
Guilty or Nolo Plea	577	(57)	526	(55)
Trial Conviction	31	(3)	23	(2)
Incompetent	1	(<1)	1	(<1)
Not Guilty (Insanity)	2	(<1)	0	
Deferred Prosecution	2	(<1)	4	(<1)
Not Guilty (Jury)	9	(1)	11	(1)
Dismissed	127	(13)	141	(15)
Transferred to Other Court	3	(<1)	9	(1)
Dismissed for Plea in Another Case	44	(4)	43	(5)
Other	13	(1)	18	(2)
TOTAL	1013		953	

TABLE 13

RELATIONSHIP OF CHARGE AT CONVICTION TO CHARGE
AT FILING: PRE AND POST HB1320
EFFECTIVE DATE

Class of Conviction Compared to Class Charged	Pre HB1320 N	%	Post HB1320 N	%
Same Felony Class	409	(50)	337	(47)
Lesser Felony Class	262	(32)	234	(32)
Misdemeanor	144	(18)	150	(21)
TOTAL	815		721	

Sentencing Placement Decisions for Convicted Offenders

The data presented in Table 14 show no significant difference in placement decisions pre and post HB1320. For all offenders charged with felonies in district court and convicted, 23 percent were sentenced to prison; six percent to jail (these were offenses reduced to misdemeanors); nine percent to residential community corrections (some of these were condition of probation sentences); 13 percent to jail and probation; 45 percent to probation, and four percent to other placements such as unsupervised deferred judgment, deferred prosecution, suspended sentence, or fine.

TABLE 14

PLACEMENT DECISIONS: PRE AND POST HB1320 EFFECTIVE DATE

Type of Placement	Pre HB1320 N	%	Post HB1320 N	%
Probation	370	(45)	330	(45)
Jail + Probation	108	(13)	93	(13)
Community Corrections	70	(9)	66	(9)
Jail	46	(6)	47	(7)
Prison	195	(24)	156	(21)
Other	31	(4)	36	(5)
TOTAL	820		728	

Further analysis of sentencing patterns was based on several three-way crosstabs. The first was crosstabulation of the criminal history scores by HB1320 controlling for placement alternative. The decrease in jail and probation sentences for offenders with a criminal history score of 0 and the increase in such sentences for offenders with a criminal history score of one is the only significant relationship found. Again, this may reflect the reluctance of the court to sentence this group of offenders to a mandatory prison term. See Tables 15 through 18.

TABLE 15

SENTENCE TO PROBATION BY CRIMINAL HISTORY SCORE
PRE AND POST HB1320 EFFECTIVE DATE

Criminal History Score	Pre HB1320 N	%	Post HB1320 N	%
Score = 0	183	(81)	134	(80)
Score = 1	20	(9)	17	(10)
Score = 2	12	(5)	9	(5)
Score = 3	6	(3)	5	(3)
Score = 4	6	(3)	2	(1)
TOTAL	227		167	

TABLE 16

SENTENCE TO JAIL + PROBATION BY CRIMINAL HISTORY SCORE
PRE AND POST HB1320 EFFECTIVE DATE

Criminal History Score	Pre HB1320 N	%	Post HB1320 N	%
Score = 0	54	(82)	37	(56)*
Score = 1	4	(6)	19	(29)
Score = 2	5	(8)	6	(9)
Score = 3	2	(3)	4	(6)
Score = 4	1	(2)	0	
TOTAL	66		66	

*The probability that the observed relationship occurred by chance is .05 or less.

TABLE 17

SENTENCE TO COMMUNITY CORRECTIONS
BY CRIMINAL HISTORY SCORE
PRE AND POST HB1320
EFFECTIVE DATE

Criminal History Score	Pre HB1320 N	%	Post HB1320 N	%
Score = 0	14	(26)	13	(27)
Score = 1	13	(24)	13	(27)
Score = 2	11	(20)	10	(21)
Score = 3	2	(4)	2	4)
Score = 4	14	(26)	10	(21)
TOTAL	54		48	

TABLE 18

SENTENCE TO PRISON BY CRIMINAL HISTORY SCORE
PRE AND POST HB1320 EFFECTIVE DATE

Criminal History Score	Pre HB1320 N	%	Post HB1320 N	%
Score = 0	26	(22)	16	(14)
Score = 1	9	(8)	13	(12)
Score = 2	21	(18)	16	(14)
Score = 3	18	(15)	22	(20)
Score = 4	43	(37)	44	(40)
TOTAL	117		111	

Also, a three-way crosstab (Tables 19 through 23) was run to determine how the younger, single males who appear to be coming into the system are being sentenced. We found a significant difference in the distribution of age groups sentenced to probation and to jail and probation. Of those sentenced to probation pre HB1320, 11 percent were 18 to 20 years old compared to 25 percent post HB1320. For jail and probation, the increase appears in the 21 to 24 year old category, from 16 percent pre HB1320 to 32 percent post HB1320. The question is whether these changes obscure or affect the impact of HB1320. It is difficult to separate out all of the effects of social and demographic changes, but it can be seen in Table 23 that no significant difference exists in sentences to prison by age group, although the trend appears to be toward younger admissions groups. Since the major impact of HB1320 is reflected in length of prison sentence, and there is no significant change in age groups sentenced to prison, it can be inferred that the demographic change does not confound HB1320 impacts.

TABLE 19

SENTENCE TO PROBATION BY AGE GROUP
PRE AND POST HB1320
EFFECTIVE DATE

Age Group	Pre HB1320 N	%	Post HB1320 N	%
18 - 20	40	(11)	79	(25)
21 - 24	90	(25)	83	(26)
25 - 29	87	(24)	56	(17)
30 - 34	52	(14)	45	(14)
35 - 39	47	(13)	30	(9)
40 +	46	(13)	29	(9)
TOTAL	362		322	

TABLE 20

SENTENCE TO JAIL + PROBATION BY AGE GROUP
PRE AND POST HB1320 EFFECTIVE DATE

Age Group	Pre HB1320 N	%	Post HB1320 N	%
18 - 20	23	(22)	20	(22)
21 - 24	17	(16)	30	(32)
25 - 29	25	(23)	24	(26)
30 - 34	19	(18)	7	(8)
35 - 39	7	(7)	6	(7)
40 +	16	(15)	6	(7)
TOTAL	107		93	

TABLE 21

SENTENCE TO COMMUNITY CORRECTIONS BY AGE GROUP
PRE AND POST HB1320 EFFECTIVE DATE

Age Group	Pre HB1320 N	%	Post HB1320 N	%
18 - 20	12	(17)	16	(25)
21 - 24	12	(17)	18	(28)
25 - 29	16	(23)	10	(15)
30 - 34	10	(14)	11	(17)
35 - 39	11	(16)	6	(9)
40 +	9	(13)	4	(6)
TOTAL	70		65	

TABLE 22

SENTENCE TO JAIL BY AGE GROUP
PRE AND POST HB1320
EFFECTIVE DATE

Age Group	Pre HB1320 N	%	Post HB1320 N	%
18 - 20	4	(9)	4	(9)
21 - 24	14	(32)	14	(30)
25 - 29	9	(21)	18	(38)
30 - 34	7	(16)	5	(11)
35 - 39	2	(5)	2	(4)
40 +	8	(18)	4	(9)
TOTAL	44		47	

TABLE 23

SENTENCE TO PRISON BY AGE GROUP
PRE AND POST HB1320
EFFECTIVE DATE

Age Group	Pre HB1320 N	%	Post HB1320 N	%
18 - 20	22	(11)	21	(14)
21 - 24	35	(18)	37	(24)
25 - 29	55	(29)	32	(21)
30 - 34	33	(17)	29	(19)
35 - 39	20	(10)	20	(13)
40 +	28	(15)	16	(10)
TOTAL	193		155	

Finally, we looked at the effect of pretrial status on sentencing placement decisions. We have consistently found that pretrial detention is related to decisions to incarcerate in prison (Mande, 1980). In this case, also, of those who are sentenced to prison, 72 percent were in jail at the time of sentencing. The distribution by HB1320 shows that the percentage increased from 67.5 percent pre HB1320 to 77 percent post HB1320. The increase in pretrial detention may be indicative of general "get tough on crime" trends. If so, this would be another explanation of the increase in sentences to jail and probation, as there has been no increase in prison commitments. Another plausible explanation is the poor economy. Defendants with unstable employment histories or weak community ties are more likely to be jailed while awaiting trial because they cannot make bond. Table 24 presents data on pretrial status by HB1320 by placement alternative.

TABLE 24

OFFENDER STATUS AT DISPOSITION BY PLACEMENT: PRE AND POST HB1320 EFFECTIVE DATE

	Pre HB1320 N	Pre HB1320 %	Post HB1320 N	Post HB1320 %
Sentenced to Probation				
Status at Disposition: Summons	27	(7)	16	(5)
PR Bond	104	(28)	89	(27)
Secured Bond	204	(56)	187	(57)
Jail or Prison	31	(9)	35	(11)
TOTAL	366		327	
Sentenced to Jail + Probation				
Status at Disposition: Summons	5	(5)	1	(1)
PR Bond	35	(32)	36	(39)
Secured Bond	57	(53)	43	(46)
Jail or Prison	11	(10)	13	(14)
	108		93	
Sentenced to Community Corrections				
Status at Disposition: Summons	1	(1)	1	(2)
PR Bond	11	(16)	11	(17)
Secured Bond	33	(47)	27	(41)
Jail or Prison	25	(36)	27	(41)
TOTAL	70		66	
Sentenced to Jail				
Status at Disposition: PR Bond	8	(17)	7	(15)
Secured Bond	24	(52)	18	(38)
Jail or Prison	14	(30)	22	(47)
TOTAL	46		47	
Sentenced to Prison				
Status at Disposition: Summons	2	(1)	1	(1)
PR Bond	14	(7)	1	(1)
Secured Bond	47	(24)	33	(21)
Jail or Prison	131	(68)	119	(77)
TOTAL	194		154	

Changes in Sentence Length

To assess the impact of the increased discretion given to the court to set sentence lengths, we analyzed the quantitative data collected from district court case files, conducted a survey of judicial attitudes, and interviewed system decisionmakers. The results of the judicial survey will be presented first.

Survey of Judges in Colorado, 1987

To better understand judicial attitudes, we conducted a survey of all district judges who hear criminal cases. This survey, originally developed and administered by a Denver district judge in 1980, presents the respondent with five scenarios. In each situation, the offenders, victims, the nature of the offense and any mitigating or aggravating circumstances are described. The judges were asked to answer three questions for each situation:

1. Would you grant probation?
2. If probation is denied, what sentence would you impose?
3. Is the presumptive range for this offense adequate, too high, or too low?

This survey was previously administered in 1980 and 1985 to all Colorado district judges. In 1980, 38 judges responded; in 1985, 72 judges responded; and in 1987, 79 judges responded. The findings suggest that judges are getting tougher on more serious offenders, but are also increasing the average sentence length for all offenders

sentenced to prison. Also, the responses reflect a judicial consensus on the adequacy of the longer sentencing ranges.

In terms of getting tougher on more serious offenders, fewer judges are currently inclined to sentence a first-time violent offender to probation. In 1980, 16 percent of the respondents said they would sentence a first-offender robber to probation. This number dropped to two percent in 1985, and in 1987 it is eight percent. If the robber is an heroin addict, the percentage increases. The changes in the proportion of judges who would sentence the addict to probation may reflect changing attitudes toward treatment as a sentencing objective.

The responses to the house burglary case with the large (18 - 23) percentage of undecideds, reflect the wider range of sentencing options, such as residential community corrections or intensive probation supervision, available for the property offender. There is a degree of uncertainty about some of these alternatives, however, because acceptance of the offender into the community program is usually a negotiated process with the program having the right of refusal.

The responses also indicate a dramatic 35 percent increase in average sentence length since 1980. The largest increases, as shown below, are for the repeat offenders. The sentence of the robber with a prior violent conviction would increase from 92 months in 1980 to 132 months in 1987. The sentence of the house burglar with two prior

burglary convictions would go up from 93 months in 1980 to 135 months in 1987. It is also interesting to note that recommended sentence lengths have gone up in all cases. The sentence of the house burglar with no prior convictions increases 10 months, from 42 months in 1980 to 52 months in 1987.

Finally, the respondents agree that sentence ranges are neither too low nor too high. In 1980 and 1985, up to 53 percent of the respondents saw the presumptive ranges as too low. In 1987, we have a virtual consensus with four percent or less suggesting that the range was too low.

The findings presented in the table below suggest that Colorado is, as intended, getting tough on repeat offenders, but in the process, the sentences of all offenders sentenced to prison are going up. For a graphic display of individual responses, see Attachment 4.

TABLE 25

RESPONSES TO JUDICIAL SURVEYS 1980 TO 1987

Case	Year	Probation? Yes	No	DK	Average Sentence (Months)	Adequate Range? Yes	Hi	Lo
Robbery, Class 3;	1980	16	76	8	61	55	5	40
Weapon used, no	1985	2	93	6	66	58	0	42
prior felonies	1987	8	86	6	79	96	3	1
Same case, except	1980	0	100	0	92	45	4	53
one prior felony	1985	0	100	0	102	52	0	48
conviction	1987	0	100	0	132	98	0	2
Same case, no prior	1980	26	63	11	48	58	3	40
convictions, but	1985	10	81	9	65.5	58	1	41
defendant is heroin addict	1987	16	78	6	81	95	4	1
Burglary of home;	1980	63	18	18	15	70	22	8
Class 3; no forced	1985	79	3	18	51	79	3	18
entry; apprehended at scene of crime	1987	65	12	23	52	91	8	1
Same burglary case;	1980	0	100	0	94	63	8	29
two prior convictions	1985	0	100	0	100	70	1	29
for similar felonies	1987	0	100	0	135	91	5	4

Sentence Lengths as a Proportion of the Range

HB1589, the original presumptive sentencing law, with its short and mutually exclusive sentencing ranges for felony classes two through five, led to a practice of viewing average sentence length for each felony class as a percentage of the midpoint of the sentencing range. The practice was based on the theory that judges would sentence, on the average, at the midpoint of each range. This theory was offered by one of the respondents interviewed. According to a judge:

> Changes are inducing me to give longer sentences, and I suspect that judges will strive for the midpoint of the range. The average length will go up with the increase in the presumptive range.

The midpoint method of estimating impact carried over in preparing assessments of the sentencing ranges adopted in HB1320. As discussed earlier, proponents of the bill contended that sentences would not increase dramatically, reasoning that judges would use the increased discretion to sentence each offender on the merits of the case, and thus would only sentence the most serious offenders to the high end of the range. The Division of Criminal Justice impact assessments were based on the assumption that judges would continue to sentence at the midpoint of the range, on the average, and that sentences would thus greatly increase. The data to be presented shortly show that both assumptions were wrong. Sentence lengths have

dramatically increased, but the assumption that the range serves as a guide to judges in setting sentences no longer seems valid. The average sentence currently imposed is much higher than the midpoint.

Analysis of sentences in relation to midpoint of the range was performed by creating a variable to classify sentences pre and post HB1320 in four categories: (1) at the bottom of the range or below, (2) above the bottom of the range through the midpoint, (3) above the midpoint to the top, (4) at the top of the range or above. This analysis yielded a surprising finding: 61 percent of the sentences in the total sample were at or above the top of the range. Of sentences imposed prior to the effective date of HB1320, 68 percent were at or above the top, compared to 52 percent of HB1320 sentences. The distribution by HB1320 is given in Table 26 below:

TABLE 26

SENTENCE LENGTHS: PRE AND POST HB1320 EFFECTIVE DATE

Sentencing Point: Presumptive Range	Pre HB1320 N	%	Post HB1320 N	%
Bottom of the Range or Less	57	(18)	24	(11)
Midpoint to Bottom of the Range	40	(13)	62	(28)
Greater than Midpoint, Less than Top	3	(1)	23	(10)
Top of the Range or Above	209	(68)	116	(52)
TOTAL	309		225	

The data show an interesting and logical change, given the doubling of the range. The proportion of sentences at or over the maximum of the range decreased from 68 percent to 52 percent, while the sentences which fell between the middle and top of the range increased from one percent to 10 percent. Sentences falling in the bottom half of the range also increased, from 13 percent to 28 percent, and sentences falling below the range decreased from 18 percent to 11 percent.

Although there is some variation when controlling for felony class, the pattern of change holds. For felony Class 2, the number of cases in the sample is very small (N=19), and thus the relationship is not statistically significant. We can see, however, in Table 27, that 68 percent of the total sample of Class 2 felons sentenced to prison were sentenced at or above the top of the range, and that the percentage decreased by about 10 percent under HB1320. Class 2 offenses are often Class 1 attempts. The mandatory range for Class 2's increased from 12 to 24 years under the old law to 24 to 48 years under HB1320.

TABLE 27

SENTENCE LENGTHS BY CLASS 2 FELONY
PRE AND POST HB1320
EFFECTIVE DATE

Sentencing Point: Presumptive Range	Pre HB1320 N	%	Post HB1320 N	%
Bottom of the Range or Less	3	(27)	0	
Midpoint to Bottom of the Range	0		1	(13)
Greater than Midpoint, Less than Top	0		2	(25)
Top of the Range or Above	8	(73)	5	(63)
TOTAL	11		8	

Class 3 sentences (Table 28) changed more sharply in relation to the midpoint of the range. Of all Class 3's sentenced to prison during the sample period (July 1, 1984 to December 31, 1986), 57 percent were sentenced in the aggravated range, 70 percent pre HB1320 and 38 percent post HB1320. Of the 28 percent sentenced above the minimum through the midpoint, 15 percent were so sentenced pre HB1320 and 45 percent post HB1320. It is in Class 3 that we see the most variation in sentencing in Colorado. Class 3 offenses include sex assaults and robbery which require aggravated sentences for offenders sentenced to prison, and burglary and other property offenses which do not require aggravated sentences if no victim injury or weapon use was involved.

TABLE 28

SENTENCE LENGTHS BY CLASS 3 FELONY
PRE AND POST HB1320
EFFECTIVE DATE

Sentencing Point: Presumptive Range	Pre HB1320 N	%	Post HB1320 N	%
Bottom of the Range or Less	9	(15)	5	(12)
Midpoint to Bottom of the Range	9	(15)	19	(45)
Greater than Midpoint, Less than Top	0		2	(5)
Top of the Range or Above	42	(70)	16	(38)
TOTAL	60		42	

The Class 4 and 5 distributions (Tables 29 and 30) look similar to the distribution for the total sample. The Class 5 distribution lends support to the hypothesis that judges and/or district attorneys, reluctant to sentence some Class 5 offenders to the new aggravated range (old aggravated range two to four years; new aggravated range four to eight), are reducing the charges to misdemeanors and using jail as the sanction. Of the 68 percent in the Class 5 sample sentenced to prison in the aggravated range, 76 percent were so sentenced pre HB1320 compared to 59 percent post HB1320. One of the respondents talked about the reason for this change:

> For some offenses and certain cases, there is a need to get around the longer sentences. A bond violation for a class four or five felony, for example, requires sentencing in the aggravated range. Sometimes the top of the presumptive plus one day is inappropriately long. For a class five felony the problem cannot be resolved by a plea to a lower class felony.

TABLE 29

SENTENCE LENGTHS BY CLASS 4 FELONY
PRE AND POST HB1320
EFFECTIVE DATE

Sentencing Point: Presumptive Range	Pre HB1320 N	%	Post HB1320 N	%
Bottom of the Range or Less	33	(23)	9	(9)
Midpoint to Bottom of the Range	21	(15)	29	(29)
Greater than Midpoint, Less than Top	2	(1)	11	(11)
Top of the Range or Above	87	(61)	50	(51)
TOTAL	143		99	

TABLE 30

SENTENCE LENGTHS BY CLASS 5 FELONY
PRE AND POST HB1320
EFFECTIVE DATE

Sentencing Point: Presumptive Range	Pre HB1320 N	%	Post HB1320 N	%
Bottom of the Range or Less	12	(13)	10	(13)
Midpoint to Bottom of the Range	10	(11)	13	(17)
Greater than Midpoint, Less than Top	1	(1)	8	(11)
Top of the Range or Above	72	(76)	45	(59)
TOTAL	95		76	

The analysis of sentences in relation to the midpoint of the sentencing range is informative for Colorado policymakers in several respects. Although the assumption that judges sentence, on the average, to the midpoint of a presumptive range was useful and fairly accurate for several years (1980 through 1984), the data indicate that this tendency is easily and rapidly affected by other forces. Thus it is no longer a useful assumption for developing policy impact statements.

This finding reinforces the need for timely data. For a year, Colorado policy analysts relied on this assumption in the absence of timely information on sentence lengths. The Department of Corrections had discontinued their reporting of intake data, the State Judicial Department did not collect aggregate data on convictions, and the Division of Criminal Justice manual data collection effort has a one to two year lag to maximize the number of completed cases in the sample. It appears that during the year of the data blackout, sentence lengths in all ranges increased to or above the top of the range. Based on our sample of 186 sentences imposed in the year prior to the effective date of HB1320, the average length of sentence for Class 2 was 19.8 years; Class 3 10.4 years; Class 4, 4 years; and Class 5 2.1 years. Remember that the top of the range for these classes was 12, 8, 4, and 2 years respectively. These sentences would produce an average length of stay of approximately 32 months (half the average sentence), whereas the information available in 1983-1984 implied an average length of stay of 27 months.

This is another change that should not have been surprising, however. Judges tend to sentence to new sentencing laws. For example, before the old presumptive law was effective, many judges began imposing, under the indeterminate law, determinate sentences within the range for the felony class of conviction.

The following section presents the findings on actual sentence length, but first, to sum up this discussion, the midpoint analysis suggests that policy analysts should continually re-examine the assumptions that underlie their projections, and should press for timely data. It also indicates the need to be aware of all changes to sentencing law or policy that may affect decisions in unexpected ways. It is not so difficult to re-examine assumptions, given an awareness of the need to do so; however, acquiring timely data, and monitoring sentencing changes and policies require a perception of need and allocation of resources that is not given a high priority in many agencies, or in many states.

Sentence Length

A breakdown with an analysis of variance was used for the analysis of sentence lengths pre and post HB1320. Table 31 depicts the average sentence lengths for felony classes 2 through 5, pre and post HB1320. The ranges for each category are also given for ease of comparison. The data show that the average sentence increases two and one-half years (30 months) to 93.6 months. A sentence of 93.6 months requires a minimum length of stay of 46.8 months. As discussed previously, the parole board now has the discretion to parole at completion of the minimum sentence, where formerly parole was mandatory.

Even given the great within-group variation seen in the midpoint analysis, and implicit in the felony class sentencing ranges, the analysis of variance demonstrates significant variation between HB1320 groups. The between groups F score is 8.7, significant at the .00 level, although as would be expected very little variance is explained by HB1320 (eta squared is .03). The next section will consider the impact of the longer sentence lengths on the prison population.

TABLE 31

AVERAGE SENTENCE LENGTHS: PRE AND POST HB1320 EFFECTIVE DATE

Conviction Class	Presumptive Range (Months)	Mean (Months)	Number of Cases
Felony 2			
Pre HB1320	96 - 144	237.0	8
Post HB1320	96 - 288	352.6	7
Felony 3			
Pre HB1320	48 - 96	125.3	36
Post HB1320	48 - 192	153.1	21
Felony 4			
Pre HB1320	24 - 48	47.9	85
Post HB1320	24 - 96	87.0	69
Felony 5			
Pre HB1320	12 - 24	25.9	57
Post HB1320	12 - 48	40.3	49
	ENTIRE POPULATION	77.2	332

Impact of HB1320 on Colorado's Correctional System

DCJ has prepared several impact/forecasts of HB1320 effects. The first was based on the assumption that the average sentence would fall at the midpoint of the new range, and that parole discretion would increase length of stay by 25 percent. With the enactment of HB1320, the State Judicial Department began manually collecting sample data on sentence lengths. This information first became available in September 1986, and new projections were prepared based on the longer than expected sentences. Information received from Judicial on sentence lengths between March and May of 1987 shows even longer sentence lengths. For Class 2, the average sentence is now 21.5 years; for Class 3, 12.2 years; for Class 4, 6.8 years; and for Class 5, four years. This produces an average length of stay of 45.1 months not including parole or lifer (Class 1) effects.

Prison populations consist of admissions added to the existing population minus releases. Thus, number of admissions multiplied by the average length of stay (in years) of the admissions group gives a ballpark estimate of the prison population. Using the sentence lengths reported as of June 30, 1985 serves as a control for the underlying trend toward tougher sentencing, and holding admissions steady at 2200 controls for changes in admissions which may result from forces other than the sentencing law. As the data previously given shows, there has been no change in proportion of admissions to prison during the study period. Also included, for comparative

purposes, are the effect of sentence lengths at the midpoint of the old law as well as the new law. Much of the impact projected results from the return of discretion to the parole board for release decisions. The parole board now has discretion to increase, but not to decrease, length of stay. Length of stay can be increased up to the full term of the sentence. We have no empirical data on these effects, since there is no database currently in place to capture it. The Department of Corrections is working on this problem, but in the meantime, we continue to use an estimate of 25 percent length of stay increase due to parole discretion to refuse parole. The perception in the field is that parole effects will be larger than 25 percent. For example, in discussing this issue with a parole board member, we learned that over 50 percent of the current parole caseload consists of discretionary parole cases; further, parole is routinely being denied without a parole plan in place. Given the lack of parole planning under the old law which led to the dismantling of the parole planning system, the changes which affect parole in the new law, and the changes in the parole board--the new governor appointed a completely new parole board--the assumption of a 25 percent effect is very conservative.

The estimates presented in Table 32 show an increase in the prison population from 6123 using June 30, 1985 old law sentence lengths to 10,373 using the most recent data on new law sentence lengths. Assuming that sentencing laws, policies, and practices stay the same, that admissions remain steady, that no cataclysmic events occur, the prison population should steadily increase to the 10,000 figure by 1995.

TABLE 32

IMPACT OF HB1320 ON THE PRISON POPULATION

	Length of Stay Average in Months	Est. Prison Population*	Est. Prison Population with 25 Percent Parole Effect
Old Law Midpoint	20.3	3712	3712
Old Law Observed, June 1985	33.4	6123	6123
New Law Midpoint	34.5	6325	7906**
New Law Observed, October 1986	36.4	6673	8347
New Law Observed, August 1987	45.1	8268	10373

* For the purpose of this analysis, admissions were held steady at 2200. The formula used for the estimate is number of admissions times average length of stay (in months) divided by 12.

** Parole discretion begins with HB1320 (new law) sentences.

Is Colorado Getting Tough on Crime?

Several approaches could be taken in assessing whether Colorado is getting tough on crime. One might do a cost effectiveness study which looks at the cost of incarceration as an investment made to reduce crime (see Zedlewski, 1987). One might also simply define it as locking up more offenders for longer times. Another approach (argued by the proponents of the new law) is that the most serious offenders will be sentenced to prison, and length of sentence will increase as seriousness of offense/offender increases. If HB1320 proponents are right, then the relationship between the seriousness of the offense/offender and the severity of the disposition should be significantly stronger under HB1320 sentences than under HB1589 sentences.

The first step in testing the hypothesis was to create an offense/offender seriousness index and a dispositional severity index. The seriousness index was created by weighting and then adding values for seriousness of the felony class of conviction, violent/non-violent offense, and criminal history score. The dispositional severity index was created similarly by adding weighted values for placement (probation, jail and probation, community corrections, prison) and sentence length. Multiple regression analysis was used to test the hypothesis. Not only did the anlaysis find little change in the relationship pre and post HB1320, it also found a very small correlation between seriousness of offender/offense and dispositional

severity. The correlation coefficient (Pearson's r) between the two variables is .1750. Three regressions were run. With dispositional severity as the dependent variable and offense/offender seriousness and HB1320 (dichotomized) as the independent variables, HB1320 did not enter. Offense/offender severity explained .0169 (Adjusted r^2) of the variance in dispositional severity. HB1320 did not enter with a partial correlation coefficient of .054. Another approach partitioned HB1320 and regressed offense/offender seriousness on dispositional severity for each group. For the pre HB1320 group, the variance explained is .019; for the post HB1320 group, it is .01. Thus, this analysis suggests that HB1320 is not accomplishing its purpose of "getting tough on crime." Further, it suggests that post as well as pre HB1320, dispositional severity appears to have a very weak relationship to offense/offender seriousness.

ATTACHMENTS

ATTACHMENT 1

MANDATORY SENTENCES FOR VIOLENT CRIMES

16-11-309, C.R.S.

(1) (a) Except as provided in paragraph (b) of this subsection (1), any person convicted of a crime of violence shall be sentenced pursuant to section 18-1-105 (9), C.R.S., to a term of incarceration greater than the maximum in the presumptive range, but not more than twice the maximum term, provided for such offense in section 18-1-105 (1) (a), C.R.S., without suspension; except that, within ninety days after he has been placed in the custody of the department of corrections, the department shall transmit to the sentencing court a report on the evaluation and diagnosis of the violent offender, and the court, in a case which it considers to be exceptional and to involve unusual and extenuating circumstances, may thereupon modify the sentence, effective not earlier than one hundred twenty days after his placement in the custody of the department. Such modification may include probation if the person is otherwise eligible therefor. Whenever a court finds that modification of a sentence is justified, the judge shall notify the state court administrator of his decision and shall advise said administrator of the unusual and extenuating circumstances that justified such modification. The state court administrator shall maintain a record, which shall be open to the public, summarizing all modifications of sentences and the grounds therefor for each judge of each district court in the state. A person convicted of two separate crimes of violence arising out of the same incident shall be sentenced for such crimes so that sentences are served consecutively rather than concurrently.

(b) Any person convicted of a crime against an elderly or handicapped person in which he used, or possessed and threatened the use of, a deadly weapon shall be sentenced to at least the maximum term of incarceration in the presumptive range provided for such offense in section 18-1-105 (1) (a), C.R.S., without suspension. Thereafter, the provisions of paragraph (a) of this subsection (1) shall apply.

(2) (a) (I) "Crime of violence" means a crime in which the defendant used, or possessed and threatened the use of, a deadly weapon during the commission or attempted commission of any crime committed against an elderly or handicapped person or a crime of murder, first or second degree assault, kidnapping, sexual assault, robbery, first degree arson, first or second degree burglary, escape, or criminal extortion, or during the immediate flight therefrom, or the defendant caused serious bodily injury or death to any person, other than himself or another participant, during the commission or attempted commission of any such felony or during the immediate flight therefrom.

(II) "Crime of violence" also means any unlawful sexual offense in which the defendant caused bodily injury to the victim or in which the defendant used threat, intimidation, or force against the victim. For purposes of this subparagraph (II), "unlawful sexual offense" shall have the same

meaning as set forth in section 18-3-411 (1), C.R.S., and "bodily injury" the same meaning as set forth in section 18-1-901 (3)(c), C.R.S.

(III) The provisions of subparagraph (II) of this paragraph apply only to felony unlawful sexual offenses.

(b) As used in this section, "elderly person" means a person who is sixty years of age or older. "Handicapped person" means a person who is disabled because of the loss of or permanent loss of use of a hand or foot or because of blindness or the permanent impairment of vision in both eyes to such a degree as to constitute virtual blindness.

(3) Repealed, L. 77, p. 888, ¶78, effective July 1, 1979.

(4) In any case in which the accused is charged with a crime of violence as defined in subsection (2)(a)(I) of this section, the indictment or information shall so allege in a separate count, even though the use or threatened use of such deadly weapon or infliction of such serious bodily injury or death is not an essential element of the crime charged.

(5) The jury, or the court if no jury trial is had, in any case as provided in subsection (4) of this section shall make a specific finding as to whether the accused did or did not use, or possessed and threatened to use, a deadly weapon during the commission of such crime or whether such serious bodily injury or death was caused by the accused. If the jury or court finds that the accused used, or possessed and threatened the use of, such deadly weapon or that such injury or death was caused by the accused, the penalty provisions of this section shall be applicable.

(6) In any case in which the accused is charged with a crime of violence as defined in subsection (2)(a)(II) of this section, the indictment or information shall so allege in a separate count, even though the use of threat, intimidation, or force or the infliction of bodily injury is not an essential element of the crime charged.

(7) The jury, or the court if no jury trial is had, in any case as provided in subsection (6) of this section shall make a specific finding as to whether the accused did or did not use threat, intimidation, or force during the commission of such crime or whether such bodily injury was caused by the accused. If the jury or court finds that the accused used threat, intimidation, or force or that such bodily injury was caused by the accused, the penalty provisions of this section shall be applicable.

COLORADO DIVISION OF CRIMINAL JUSTICE
Court Data Collection

SUBJECT # ___ ___ ___ ___ ___ JUDICIAL DISTRICT ___ ___ CASE #: ___ ___ ___ ___ ___ ___
County I.D. # Year

NAME	DATES OF FILING:	BIRTH:	OFFENSE:	ARREST DATE:
Last First Middle	Month Day Year	Month Day Year	Month Day Year	Month Day Year

SEX: ___
1 Male
2 Female

ETHNICITY: ___
1 Angle/White
2 Black
3 Hispanic
4 Amer. Indian
5 Other

MARITAL STATUS: ___
1 Single
2 Married
3 Sep./Div.
4 Widowed

 # Of DEPENDENTS: ___
Actual #
8 or More, Enter 8

EMPLOYMENT AT TIME OF ARREST: ___ **AT SENTENCE:** ___
1 Full Time
2 Part Time
3 Unemployed
4 Sporadic

WORK EXPERIENCE: ___
1 N/A-Less than 6 Mos.
2 Odd Jobs
3 Unskilled
4 Migrant
5 Blue Collar
6 White Collar
7 Professional
8 Military

DEADLY WEAPON: ___
1 Gun
2 Knife
3 Other

PHYSICAL INJURY: ___
1 Yes
2 No

FOR THOSE INJURED: ___
1 No Treatment
2 First Aid/Doctor
3 Sexual Assault
4 Hospitalization
5 Emergency Room
6 Permanent Injury
7 Death

OFFENDER NEEDS: MH___ ALCOHOL___ DRUGS___
1 None
2 Yes - Reported by Self, Parent, Friend, Officer
3 Yes - Recognized by Court/Condition of Placement
4 Yes - Per File

EDUCATION H.S./GED: ___
1 Yes
2 No

EDUCATION LAST GRADE COMPLETED: ___ ___
00-11 Actual Grade
12 High School Diploma
13 Some College
14 College Degree
15 Some Grad School
16 Grad Degree

JUVENILE RECORD: ___
1 Yes
2 No

AGE AT FIRST ARREST ___ ___
(Juvenile or Adult)

JUVENILE ARRESTS:
Violent___ Non-Violent___
0-7 Actual #
8 8 or More

JUVENILE CONVICTIONS:
Violent___ Non-Violent___ Misd.___ Fel.___
0-7 Actual #
8 8 or More

PROBATION/PAROLE SUPERVISIONS: ___
0-7 Actual #
8 8 or More

PROBATION/PAROLE REVOCATIONS: ___
0-7 Actual #
8 8 or More

PLACEMENTS IN SHELTER/GROUP HOMES: ___
0-7 Actual #
8 8 or More

COMMITMENTS TO STATE INSTITUTIONS: ___
0-7 Actual #
8 8 or More

ADULT ARRESTS
Violent___ Non-Violent___

ADULT CONVICTIONS:
Violent___ Non-Violent___ Misd.___ Fel.___

SUPERVISIONS:
Probation___ Parole___

REVOCATIONS
Probation___ Parole___

INCARCERATIONS
Prison___ Jail___

OFFENSE CHARGED:
1st Most Serious ___ # Counts___
Felony Class:___ Statute:___
Offense:___

2nd Most Serious ___ # Counts___
Felony Class:___ Statute:___
Offense:___

3rd Most Serious ___ # Counts___
Felony Class:___ Statute___
Offense:___

OFFENSE AT CONVICTIONS:
1st Most Serious ___ # Counts___
Felony Class:___ Statute:___
Offense:___

2nd Most Serious ___ # Counts___
Felony Class:___ Statute:___
Offense:___

3rd Most Serious ___ # Counts___
Felony Class:___ Statute:___
Offense:___

DISPOSITION: ___
01 Deferred Judgment
02 Guilty or Nolo Plea
03 Trial Conviction
04 Incompetent
05 Not Guilty (Insanity)
06 Deferred Prosecution
07 Not Guilty by Jury
08 Dismissed
09 Fugitive Extradition
10 Other Court ___
11 Other ___
12 Pending
13 Charges Dismissed for Plea in Another Case
14 FTA, Never Arrested, No Action Taken

FOR THOSE CONVICTED: ___
1 Guilty as Charged
2 Guilty to Lesser Felony
3 Guilty to Misdemeanor
4 Incompetent to Stand Trial
5 Not Guilty by Reason of Insanity

SENTENCE/DISPOSITION EFFECTIVE DATE
Month Day Year

TOTAL COUNTS: CHARGED___ CONVICTED___

OFFENDER STATUS AT SENTENCE/DISPO: ___
1 Summons
2 PR Bond
3 Secured Bond
4 Jail/Prison
5 At Large
6 Other ___

BOND AMOUNT: ___
1 Under $1000
2 $1000-$1999
3 $2000-$4999
4 $5000-$9999
5 $10,000-$49,999
6 $50,000-$99,999
7 $100,000 or More

BOND VIOLATION THIS CASE
1 Yes
2 No

PLACEMENT ____

PROBATION

01 Probation Only
02 Probation Concurrent with Earlier Sentence to Probation
03 Probation with Jail Sentence
04 Deferred Judgment: Other
05 Other Sentence to Probation

_____

06 Unspecified Sentence to Probation

COMMUNITY CORRECTIONS

07 Comm. Corr's. as Condition of Probation
08 Direct Sentence to Community Corrections
09 Other Type of Sentence to Community Corr's

_____

JAIL

11 Jail Only
12 Jail and Fine
13 Jail with Work Release
14 Other Sentence to Jail

_____

15 Unspecified Sentence to Jail

PRISON

16 Prison Only
17 Prison Plus Probation
18 As Result of Conviction for New Offense While on Probation
19 As Result of Conviction for New Offense While on Parole
20 Other Commitment to Prison

_____

21 Unspecified Commitment to Prison
22 SUSPENDED SENTENCE ONLY
23 FINE ONLY.
24 RESTITUTION ONLY

PRESENTENCE PLACEMENT	DISPOSITION
25 Probation	Deferred Judgment/Probation
26 Probation	Probation
27 Community Corrections	Probation
28 Community Corrections	Direct Sentence to Comm. Corr's.
29 Probation	Comm. Corr's./Probation
30 Probation	Prison
31 Community Corrections	Prison

SENTENCE LENGTH:

Prison Sentence (Months) _____ Jail Sentence (Days) _____ Jail Credit (Days) _____ Community Corrections (Months) _____

Probation Supervision ___ Months _____

1 Supervised
2 Unsupervised

MULTIPLE CONVICTIONS OFFENSES ___ ___

1 Concurrent Sentence
2 Consecutive Sentence

1 Single Case
2 Between Cases: Same Judicial District
3 Between Cases: Different Judicial District

CONDITIONS:

Fine ___ Amount _____

1 Yes
2 No

(Actual $ amount ÷ by 100.)

0 000 00000

9 999 99999

0 0

9 9

CHARGES: 0

1 Technical Violation
2 New Offense

DEFENSE: ___

1 Public Defender
2 Court Appointed
3 Private Attorney
4 Waived

OFFENDER

RECORD OF ABUSE AS A CHILD: ___
1 Yes
2 No

0

9

RECORD OF NEGLECT: ___
1 Yes
2 No

0 0

9 9

STABILITY: ___
1 Always lived in Same Area or Moved Occasionally
2 Moved Frequently
3 Military

VICTIM (Violent Crime)

MULTIPLE: ___
1 Yes
2 No

AGE: ___
1 Child
2 Adolescent
3 Adult
4 Elderly

SEX: ___
1 Male
2 Female

0 0

9 9

RELATIONSHIP: ___
1 Related to Offender
2 Friend of Offender
3 Acquaintance
4 Stranger

PROBATION OFFICER'S RECOMMENDATION: ___ ___
(Use Placement Codes Above)

ALIAS: NAME _____ DOB ___ ___ ___ (Month Day Year)

NAME _____ DOB ___ ___ ___ (Month Day Year)

SID _____

FBI _____

ATTACHMENT 3

INTERVIEWS

Introduction

The interview phase of this study was designed to gain insight into the attitudes of judges, district attorneys and probation officers toward HB 1320 and to estimate their response to the new law. We used an unstructured interview technique in order to fully explore the issue. Generally, the interviewer began by explaining the purpose of the study and then asked if and how the provisions of HB 1320 had made a difference in the way each interviewee was handling cases. In most instances, the four groups of practitioners willingly, and often enthusiastically, shared their opinions on indeterminate and determinate sentencing, narrow and broad presumptive ranges and the impact of HB 1320 on judicial discretion, sentence length, and case and correctional management.

Mandatory aggravators,[1] requiring sentences beyond the top of the presumptive range, have a new significance for many of the interviewees. For some, the aggravators are a useful or appropriate complement to the broader presumptive range; for others, a restriction on judicial discretion or an obstacle to appropriate sentencing.

Factors other than sentencing law provisions having a profound effect on policies and decisionmaking were also discussed by interviewees. These included changes in the socio-economic environment of communities and adjustment to directives affecting probation supervision policy and diversionary community corrections. In addition, a significant number of interviewees volunteered advice and suggestions for addressing the problems of crime and punishment beyond or instead of changes in the sentencing law. These suggestions focused on juvenile offender policies, alternatives to incarcertaion, rehabilitation programs, prison population management and a better balance in funding the various parts of the criminal justice system.

This section of the study report presents a general account of comments selected for their reflection of opinions related to the impact of HB 1320. The many other concerns and opinions expressed by the judges, district attorneys, public defenders and probation officers interviewed have provided valuable information and thoughtful suggestions for improvement of the judicial process. The issues mentioned are referred to in the preceding paragraph. The body of information resulting from comments related to these issues will be filed as a research reference.

Comments relating more directly to the impact of HB 1320 are grouped by topic in the paragraphs which follow.

EFFECT OF CHANGE

These interviews provided a deeper insight into the overall effect of doubling the top of the presumptive sentencing range as prescribed by HB 1320. They also revealed that opinions and policy decisions related to the changes in the sentencing law differ within and among the four groups of criminal justice practitioners and, particularly if comprised of two or more counties, within the same judicial district.

A judge and a district attorney agree that frequent changes create problems for everyone and that sentencing issues are very difficult to explain to the public. The judge believes that "judges in particular need to take time to communicate with the public." Three judges, four district attorneys and one probation officer commented that the system needs to work with what we have long enough to know how it works. A district attorney agreed and recommended that "the sentencing law should not be changed now for at least another decade."

Another district attorney noted that the greatest impact of change in the sentencing law "...is litigations resulting from disparities in sentence length for those committed under the "old" and the "new." He explained as follows:

> There is less impact when the change is upward. Judges are reluctant at first to impose longer sentences and they 'ease' into it, and by then the law is changing downward again because of space problems.
>
> When the change is downward, the result is chaos. Once the court has lost jurisdiction, there is trouble at the Department of Corrections. Within two years every 'old' sentence will be changed.

The situation was expressed more strongly by a different district attorney. He spoke more directly about the role of legislators:

> Changes in the sentencing law confuse the public, encourage litigation, cost money and time and create misunderstanding. Legislators presume to know what is right for the state without benefit of actual experience or input from criminal justice personnel.

From a public defender came a complaint shared by several other public defenders and probation officers:

> They doubled the top of the presumptive range without doubling anything else. The result is a greater strain on the system without solving prison population problems or crime rate increases.

A western slope judge reminded us that circumstances other than changes in the provisions of the sentencing law have as much, if not more, effect on law enforcement, prosecution, defense and sentencing decisions. In his words,

> Out-of-control factors really account for the changes, not so much the changes in the sentencing law. Take, as an example, sex assault. Social services dollars are down. Therefore, in court we see fewer sex crimes. We have fewer law enforcement officers; therefore, we have fewer arrests.

The Sheriff's office has zero narcotics investigation dollars; therefore, we have fewer drug crimes.

Discretion

> Public philosophy seems to be, 'Like circumstances should result in like punishment.' I agree. The problem is, there are no like circumstances.
>
> --Public Defender

Also gained from the interviews is a better understanding of the community values which color attitudes toward criminal justice issues, and which may affect decisions in each district. This community perspective as well as a widespread belief that each criminal case should be handled as an individual situation, were of major importance to all who spoke about the impact of HB 1320 on judicial discretion.

A judge and two public defenders expressed the belief that judicial discretion is more limited under the provisions of HB 1320. This judge believes that "with some guidelines the old indeterminate range could still be used" as there is "enough flexibility to handle aggravating factors."

Three other judges and two district attorneys expressed agreement. One of the judges noted the need for indeterminate sentencing to be accompanied by "a very responsible, well funded parole system." Another of the judges commented that "under indeterminate sentencing very few judges imposed really long sentences and thought about accountability more." In the opinion of the third judge, "Indeterminate sentences were not really indeterminate. A pattern develops within and among judicial districts. People talk to each other."

Most of the judges, district attorneys and probation officers who volunteered opinions about judicial discretion prefer or "can live with" the broader sentencing range. Reasons given for this preference include the following: (1) Judges can impose longer sentences, if appropriate, on plea-negotiated cases; (2) Flexibility is needed to assure that perpetrators of heinous crimes are put away until they no longer have energy left to repeat such crimes; (3) Longer sentences are needed for, but only for the very dangerous; (4) Sentence length for class 5 felonies was not always long enough under the old (Gorsuch) law. Offenders were moved out of the Department of Corrections and released from parole too soon to make payment of restitution feasible.

One public defender acknowledged being able to do a better job because of the broader presumptive sentencing range, but others who expressed opinions on this issue indicated a preference, not only for determinate sentencing but also for a narrower sentencing range. One of the public defenders who would like to see a return to the Gorsuch provisions supported his feeling with the following hypothetical situation:

> Under new provisions, imagine a scuffle in a bar. One pulls out a knife. Never been in trouble before. This is a mandatory aggravation. This is really not a criminal. The mandatory sentence is inappropriately long. Creates a 'no-win' situation for the system and the offender.

The following comment by a district attorney reflects the attitude of most of the interviewees regarding discretion:

> I do not believe the public wants uniformity strictly applied. I believe the public wants to rely on the district attorneys, and others in the system, to work out what is best for all on the basis of information that is available--not always in connection with actual contacts with the law. A good district attorney will protect the rights of the defendant and will also do what is best to protect society. To accomplish these objectives, there must be enough leverage in the sentencing law to permit use of discretion in a way that will treat each defendant as an individual and each case as a unique situation.

Finally, a judge speaking about the same concerns, listed the three purposes of sentencing as "retribution, deterrence and rehabilitation," and went on to comment as follows:

> These conflict with each other internally. I ask myself, in light of the above, 'How is this person's life going to change as a result of his admission of guilt or conviction by the court?' Judges must have a number of levers to enable them to make an appropriate sentencing decision. It is not simple.

Sentence Length

Among those interviewees who volunteered predictions about the effect of HB 1320 on sentence length, two judges, probation officers and public defenders and three district attorneys said that all sentence lengths were or would be longer. A public defender believes "sentence lengths are going to get much longer." A judge notes, "Because of the change, I suppose we do impose 'a little bit' longer sentences."

Another judge said, "Changes are inducing me to give longer sentences and I suspect that judges will strive for the midpoint of the range." The average length will go up with the increase in the presumptive range."

A district attorney senses that "we have moved to the right of the middle of the presumptive range," and a public defender believes "sentences to prison and probation will increase, and offenders will remain in the system much longer." A probation officer specified that "mandatory aggravators have caused longer sentences to the Department of Corrections, especially for probation violators." From different judicial districts, a judge and a district attorney agree, "There will not be more or longer sentences once overcrowding in the prisons and backlogs in the jails have been relieved." Their beliefs are founded on the observation that judges are compensating for early release from the Department of Corrections because of the prison population problem.

Some interviewees reported problems associated with the longer presumptive sentencing range. One judge noted, "For some offenses and certain cases, there is a need to get around the longer sentences. A bond violation for a class 4 or 5 felony, for example, requires sentencing in the aggravated range. Sometimes the top of the presumptive range plus one day is inappropriately long. For a class 5 felony, the problem cannot be resolved by a plea to a lower class felony."

Plea Negotiations

There was little agreement among interviewees regarding the effect of HB 1320 on the number of cases going to trial versus those disposed through plea negotiations. Because public defenders may be assigned to particular judges, disagreement occurred between them within the same judicial district. District attorneys, however, generally agreed that the number of cases going to trial had not increased; their opinions regarding the number of dispositions ranged from "no change" through "may be more dispositions" to "are seeing more."

Most of the public defenders who commented on trials and plea negotiations said they believe or know that more cases are going to trial. One public defender qualified his comment as follows:

> ...can't say it is because of penalty enhancement, but more cases seem to be going to trial. As time goes on, I believe we will find there are more dispositions.

From the same judicial district, a public defender and a district attorney shared the opinion that fewer cases are going to trial. The public defender explained, "Mandatory aggravators make it more likely the public defender will suggest a negotiation. The risks are just too great to go to trial."

Agreement was expressed by a district attorney from another judicial district:

> I see no increase in cases going to trial. For the more serious offender, the risk of being found guilty of an original charge and probably subject to sentencing in the aggravated range is too great. A plea agreement could mean 30 years instead of 48.

In general, judges did not express concern regarding the impact of sentencing provisions on cases going to trial. A few comments were made in passing about plea negotiations. For example, one judge noted, "Because of overlap in sentencing ranges, we can negotiate on felony class." Another recognized a reliance on the district attorney by explaining, "I must confine my attention to the facts brought out in court for each particular case; the district attorney has more information than I do when negotiating."

The following comment was offered by a third judge:

> Options provided by the class 2 felony presumptive range and aggravated possibilities make it possible to work out plea negoiations to fit particular circumstances for more serious crimes.
>
> Pleas from a class 4 felony down to a class 5 have increased....have amended counts to 'attempt.' It takes an experienced district attorney to use new provisions appropriately. They are using them more to dispose of cases.

The above opinion was supported by a probation officer who noted, "Longer class 4 and 5 felony ranges have led to an increase in class 5 convictions where there used to be class 4 convictions." An additional judge mentioned that "the district attorney is now recommending a sentence length cap."

Negotiation Strategies

Public defenders and district attorneys reported that plea agreement focus is now on sentence length. In the words of one public defender, "Felony class is no longer as important as sentence length. In effect, we change the range."

The words of another public defender underscore the previous statement:

> Sentence concessions have entered the picture. I don't go into a plea with an open sentence. I will go to trial otherwise. For class 4 and 5 felonies I can get short sentences, and defendants are in halfway houses very soon because of overcrowding.

Speaking about class 4 and 5 sentencing ranges, another public defender reported:

> In lower sentencing ranges, we have more difficulty getting a sentencing cap agreement. We may be able to get from 4 years plus one day to 6 years for aggravated cases, but we have to do a harder selling job. Our judges did not like the 1-to-2-years range for class 5 felonies under the old law. We seem to have more leeway for bargaining in the higher ranges. Judges feel that a long sentence for a property crime is counterproductive.

Plea strategy for class 1 felonies was mentioned by an additional public defender. He explained, "For first degree murder, for example, minimum sentence is 40 years. Offense is often difficult to prove. Plea is usually to criminal attempt or second degree murder."

Several district attorneys shared the opinion that "with the new provisions, a plea to a lesser felony is more likely. We can still have long enough sentences. Because of the overlap, in some cases, the sentence length can be the same."

One district attorney spoke of another advantage of the overlap:

> Overlap in sentencing ranges, generally, is good. Example: Rape. Traumatized victim is no good as a testifying witness in a trial. We can plea down and still impose a sentence that does not depreciate the seriousness of the crime.

Another district attorney commented on the relationship between the separate charge, violent crime, and the new sentencing ranges:

> For a violent crime with one or no prior, depending upon seriousness, it allows a plea agreement to drop the violent crime charge and still sentence the offender to a long enough prison sentence.

Commenting on plea negotiation practices involving serious offenders, a probation officer made the following statement:

> District attorneys should be able to prove a case against a serious criminal. When they can't and so use the new provisions in plea negotiations, they can still 'pacify' the public with longer sentences, but the fact that the less serious offender is now also getting longer sentences is overlooked.

Alternatives to Incarceration

A significant number of comments relating to alternatives to incarceration simply expressed opinions about the relative value and effectiveness of the various types of alternative placement: probation, intensive supervision probation, community corrections (diversion, direct sentence, transition). Generally, these comments expressed support for alternative placements and cited rehabilitation opportunities as a major consideration. A need for increased funding was also mentioned as well as a recognition that "the problem of providing alternatives to prison and programs to prepare offenders for release is extremely complicated and discouraging." (District Court Judge)

Fewer interviewees spoke directly about the impact of HB 1320 on alternative sentencing. Two probation officers reported that the length of probation has increased. They noted that "two years was the usual length. Now five years is becoming more common." One of these officers went on to say that in his judicial district the policy is to terminate after two years "if the client proves stable and the judge approves."

A judge complained that "because of mandated sentencing ranges we are disqualifying persons from being sentenced to community corrections for class 4 felony offenses. Our community correction center's limit is four years."

A public defender said,

> HB 1320 has increased the length of a client's non-residential status....can be considered a 'set up.' Sentence can be ten years or longer. There is no alternative but to sentence to prison if client violates rules and is rejected by the community corrections board for continuance in the program. Certain types of offenders--drug users, for example--seem to do better under continued supervision. However, even a daily call-in requirement becomes tiresome after a long period.

From a probation officer came the following comment: "Impact of HB 1320 is not all negative. People are being placed in community corrections more. Department of Corrections can't do anything with them and is moving them out sooner."

Two public defenders and a probation officer agree, "Defendants will 'opt' to go to prison rather than take a direct sentence to community corrections. On a four-year sentence, an offender can spend two years maximum in prison and move in a matter of weeks into minimum security or less. Judges are giving longer sentences to community corrections than to prison."

A probation officer also spoke to the problem of long sentences to community corrections specifically for the purpose of fulfilling restitution obligations. He suggested that "maybe we need a procedure for reconsidering length of a community corrections sentence."

Get Tough on Crime

Several district attorneys, public defenders, probation officers and one judge volunteered opinions on the get-tough-on-crime effect of doubling the top of the presumptive range. The public defenders, judge and two probation officers agree that "longer sentences do not equal deterrence."

The judge also spoke about the conflict between judicial intent and correctional management which makes the effect of imposing a longer sentence often impossible to evaluate. In his words, "Longer sentences don't solve the problems. The pressure is on the Department of Corrections to get people out, and they will find a way to move inmates through and out of their system."

Although not relating their remarks specifically to the deterrence effect of HB 1320, several other judges, as well as district attorneys, public defenders and probation officers, expressed concern or frustration over early release from prison because of overcrowding problems. Several noted that the public often blames the judge when an offender returns to a community after "just a few weeks or months." Another judge, expressing sympathy with the Department of Corrections because of overcrowding problems, nevertheless spoke for several other interviewees when he commented, "Sentencing decisions and release decisions should not be based on correctional management problems."

A district attorney, judge and probation officer share the opinion that "sentences would not have to be so long if they were honest sentences." These practitioners went on to say they believe "DOC manipulates on the basis of management considerations rather than reclassifying and scheduling for parole on the basis of fulfilling the intent of the sentence, and offenders are aware of this." Suggesting a method for promoting greater awareness of this situation, a judge remarked, "Judges should be required to state why they are giving a particular sentence; releasing authorities should do the same for release decisions."

Commenting on deterrence, prison space and legislative response, a district attorney made the following statement:

> The law is changed downward because of space problems. The public becomes confused and demands that something be done to protect them and to make the streets safe. The legislature responds with a 'tougher law,' but the public confidence is destroyed when an eight year sentence means four years, and two of these may be served at an honor camp or community corrections.

Two public defenders explained their feeling about deterrence and longer sentences. One simply stated, "Longer sentences will not help recidivism and are only helpful if accompanied by some sort of rehabilitation program." The other public defender's remarks indicate agreement:

> The first two or three months in prison are the most traumatic. After that the offender often 'works the system' and becomes reasonably adjusted. If we could find a way to determine the optimum 'scare period' for each inmate and then release to an alternative program, we might have greater success combating recidivism.

An "honest" death penalty or life sentence was recommended by a probation officer to deter would-be offenders from committing some of our horrible crimes. He believes that "much beyond a two year sentence is counterproductive unless the community needs to be protected." He recognizes that such a policy would place a burden on the Department of Corrections for awhile but, in his words, "I believe in five years it would even out."

District attorneys who expressed opinions on deterrence generally agree that the greater flexibility provided for the exercise of judicial discretion by doubling the top of the presumptive range is in itself a deterrence factor.

According to one district attorney, "There is a greater effect on the accused and others who may be tempted to offend if there is a greater degree of uncertainty regarding how a judge will sentence a particular case."

Uncertainty about time of release was also cited as a deterrence factor by several judges, ditrict attorneys and probation officers. A district attorney said,

> I believe the probability of early release, rather than the certainty of early release in exchange for not doing anything bad in prison instead of for doing something positive, is a greater incentive for attitude change. The certainty of having to serve the balance of one's sentence, or at least until parole eligibility is once again considered, is a greater incentive to not reoffend.

Certainty about going directly to prison was recommended as an effective deterrence measure by another district attorney. He believes, "The most serious problem now is prison space. Convicted offenders need to go directly to the Department of Corrections, not be 'eased into' incarcertaion by staying at the county jail. A certain, immediately imposed sentence to prison, even for a short sentence, would be more effective as a deterrent."

A judge's remark supports the preceding opinion. He notes, "On a two-year sentence to the Department of Corrections, the offender may serve most of it right here in this county."

Two public defenders share the opinion that the "get-tough" intent of HB 1320 will not be fulfilled. In the words of one,

> I do not see how doubling the top of the presumptive range will be a deterrence strategy. Public awareness of sentencing provisions is minimal. A person planning a robbery does not stop to consider how long he will be in prison. He doesn't plan to get caught.

Finally, another public defender, who believes that "for most offenders, a longer sentence benefits only the politician," summed up a variety of opinions expressed by other interviewees as he voiced concern about the problems and complications caused by impulsive legislative reaction to perceived public pressure. He discussed the following as problems resulting from this type of legislative response: (1) Frequent changes in sentencing provisions; (2) Unclearly written sentencing provisions; (3) Disparity and inconsistencies in policy and practice throughout the system; (4) Offenses that should never be criminal charges; (5) Special offense mandates; and (6) Misunderstanding regarding constitutionally guaranteed rights of the accused vs rights of the victim.

FOOTNOTES

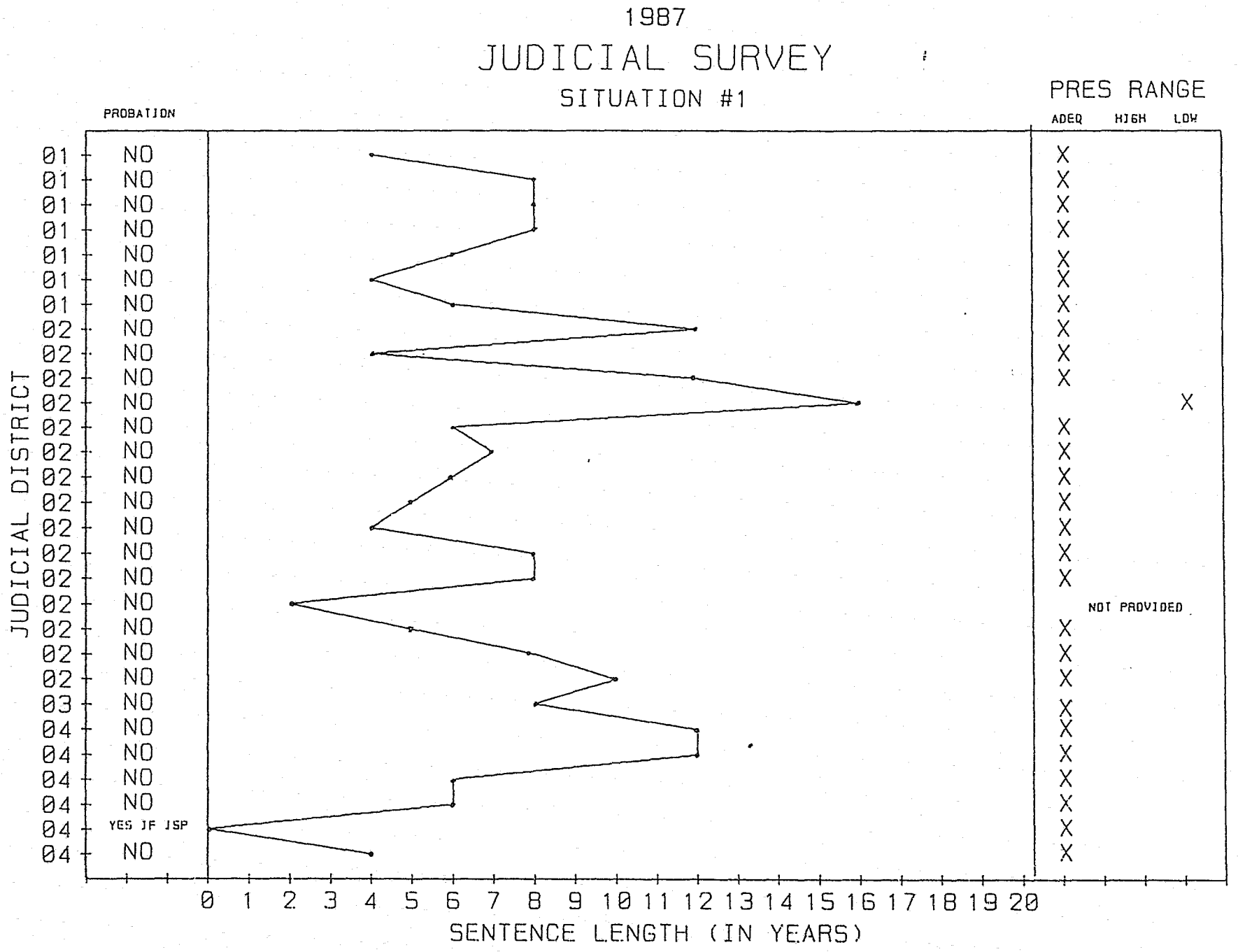
[1]Colorado Revised Statutes (CRS) 18-1-105(9)(a): "The presence of any one or more of the following extraordinay aggravating circumstances shall require the court, if it sentences the defendant to incarceration, to sentence the defendant to a term greater than the maximum in the presumptive range, but not more than twice the maximum term authorized in the presumptive range for the punishment of a felony": (1) Defendant is convicted of a crime of violence

under section 16-11-309, C.R.S.; (2) Offender is on bond or was charged with a felony when the instant offense was committed and subsequently is convicted of the earlier offense; (3) Offender is on felony probation, parole or deferred judgment at the time of the commission of the offense; (4) Offender is under confinement or in prison as the result of a felony or escape at the time of commission of the offense. Conviction of a crime of violence under 16-11-309 mandates a sentence of imprisonment as well as a sentence in the aggravated range.

ATTACHMENT 4

GRAPHIC SUMMARIES OF JUDICIAL SENTENCING SURVEY RESPONSES

Judicial Sentencing Survey Funded by
Bureau of Justice Statistics
Grant 86-BJ-CX-K019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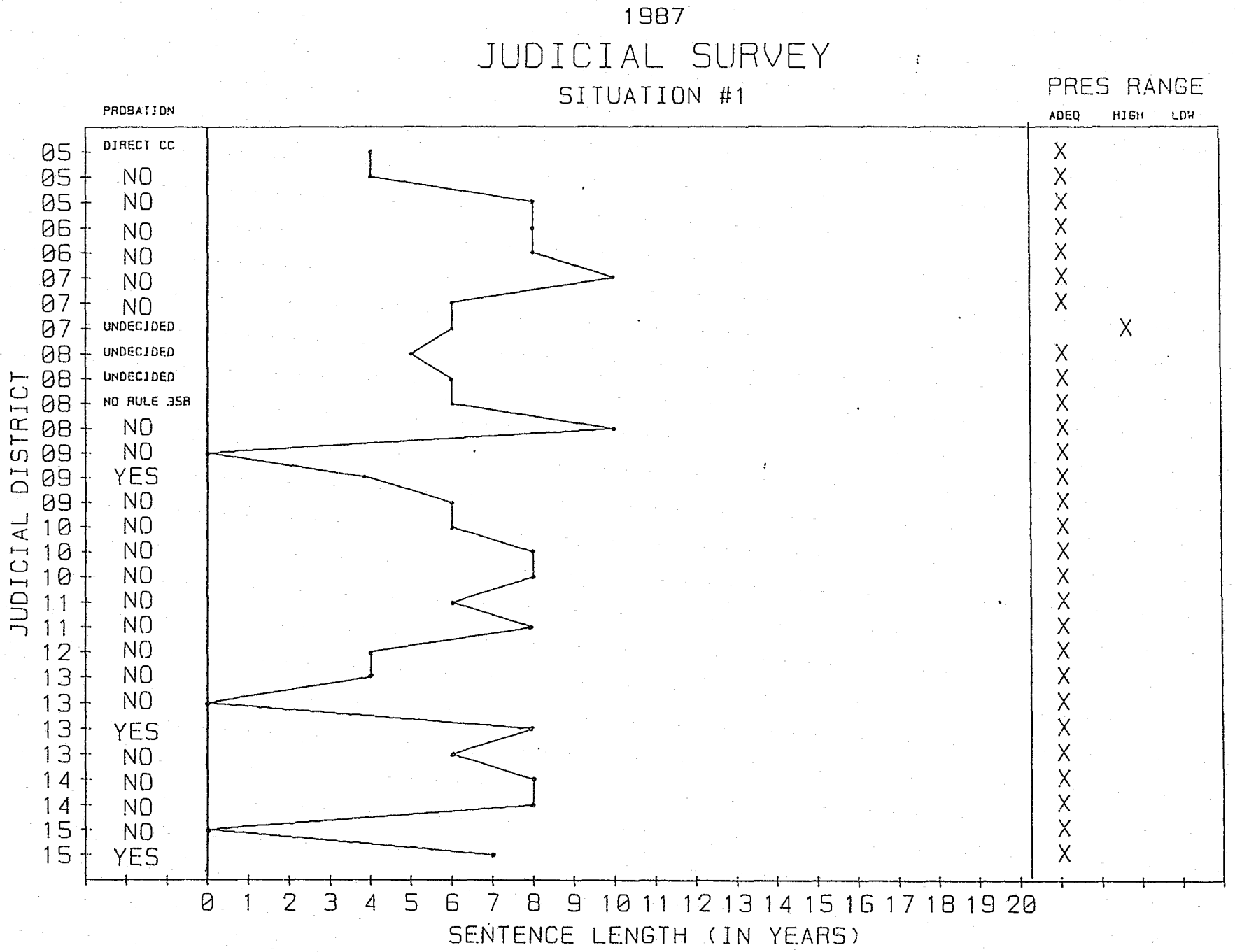
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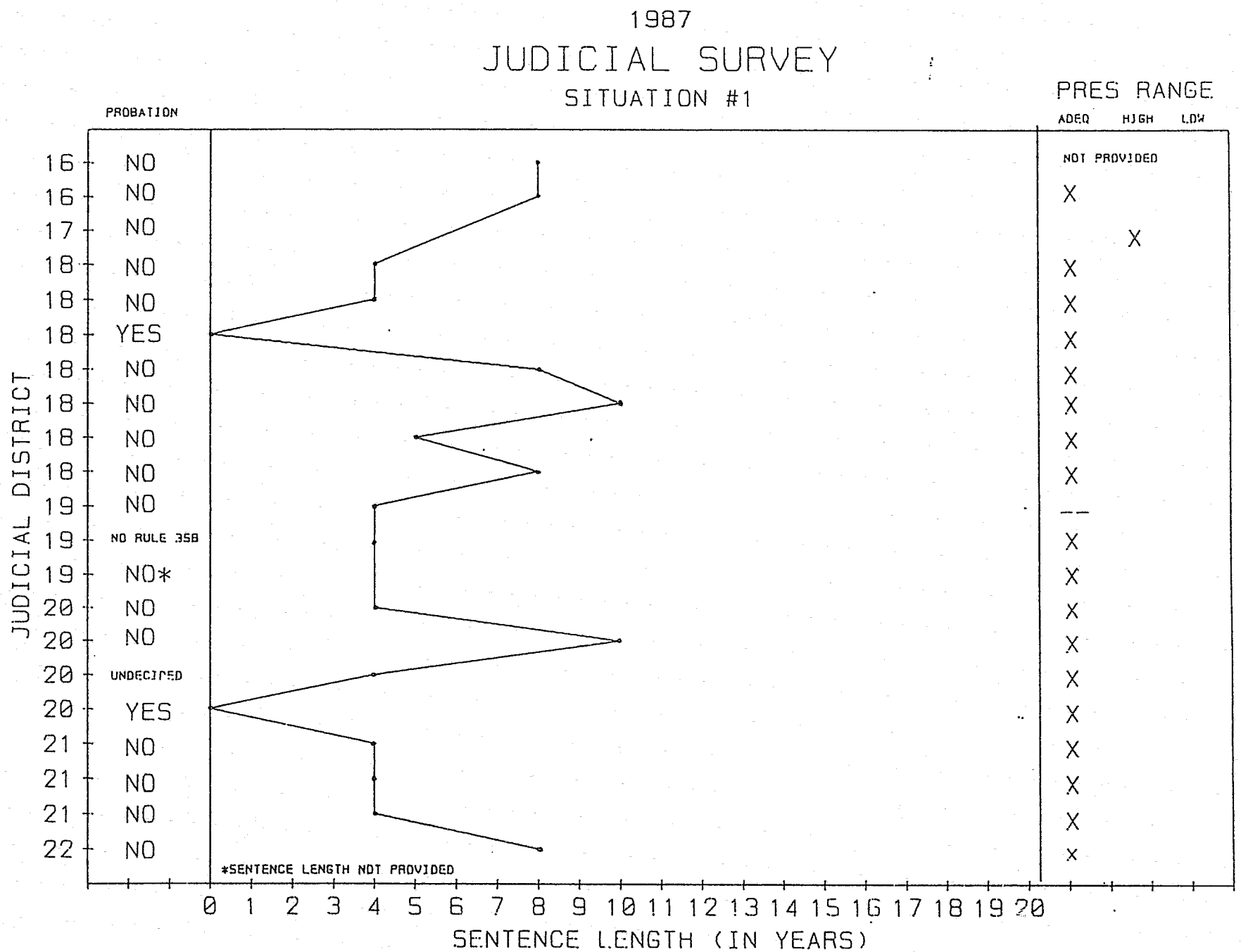
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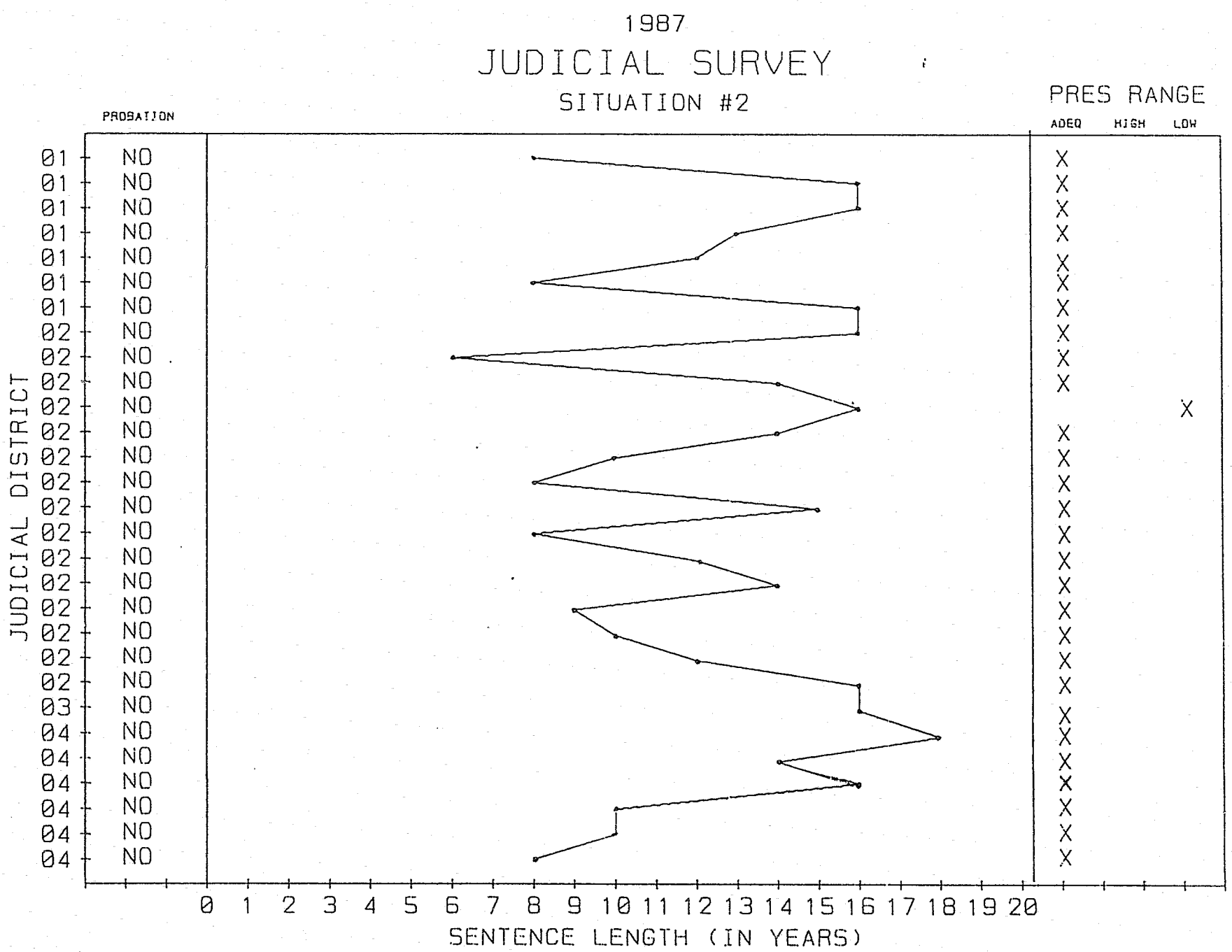
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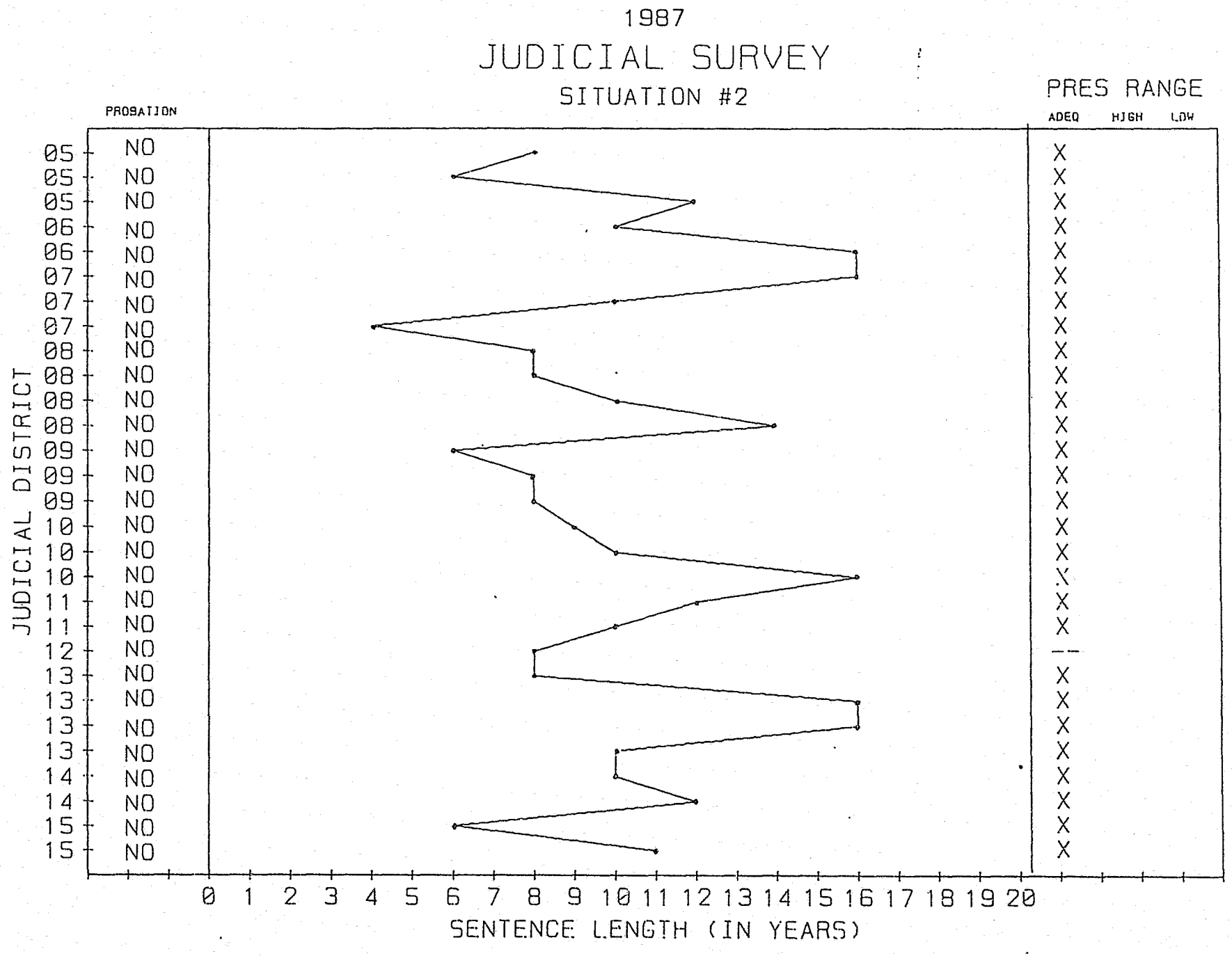
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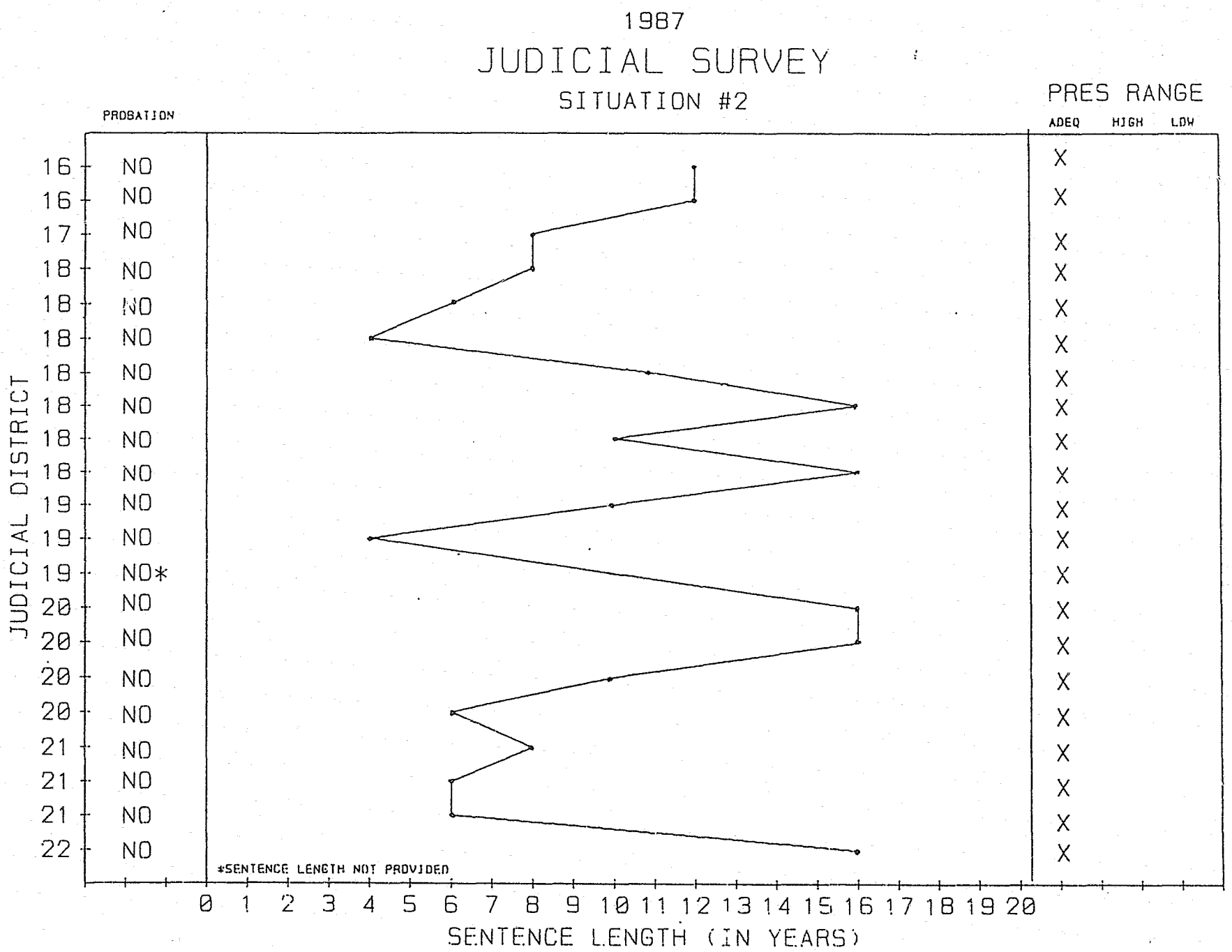
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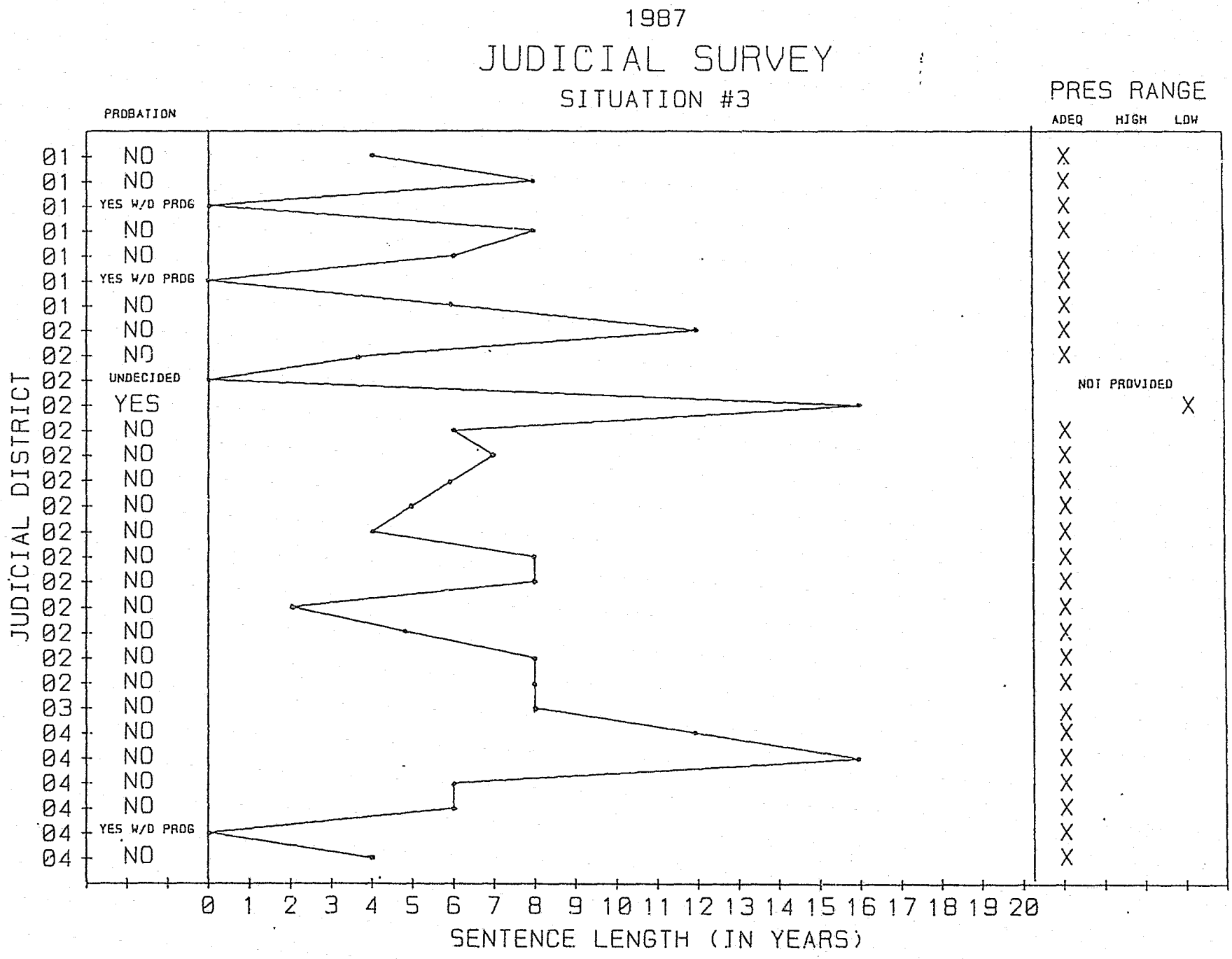
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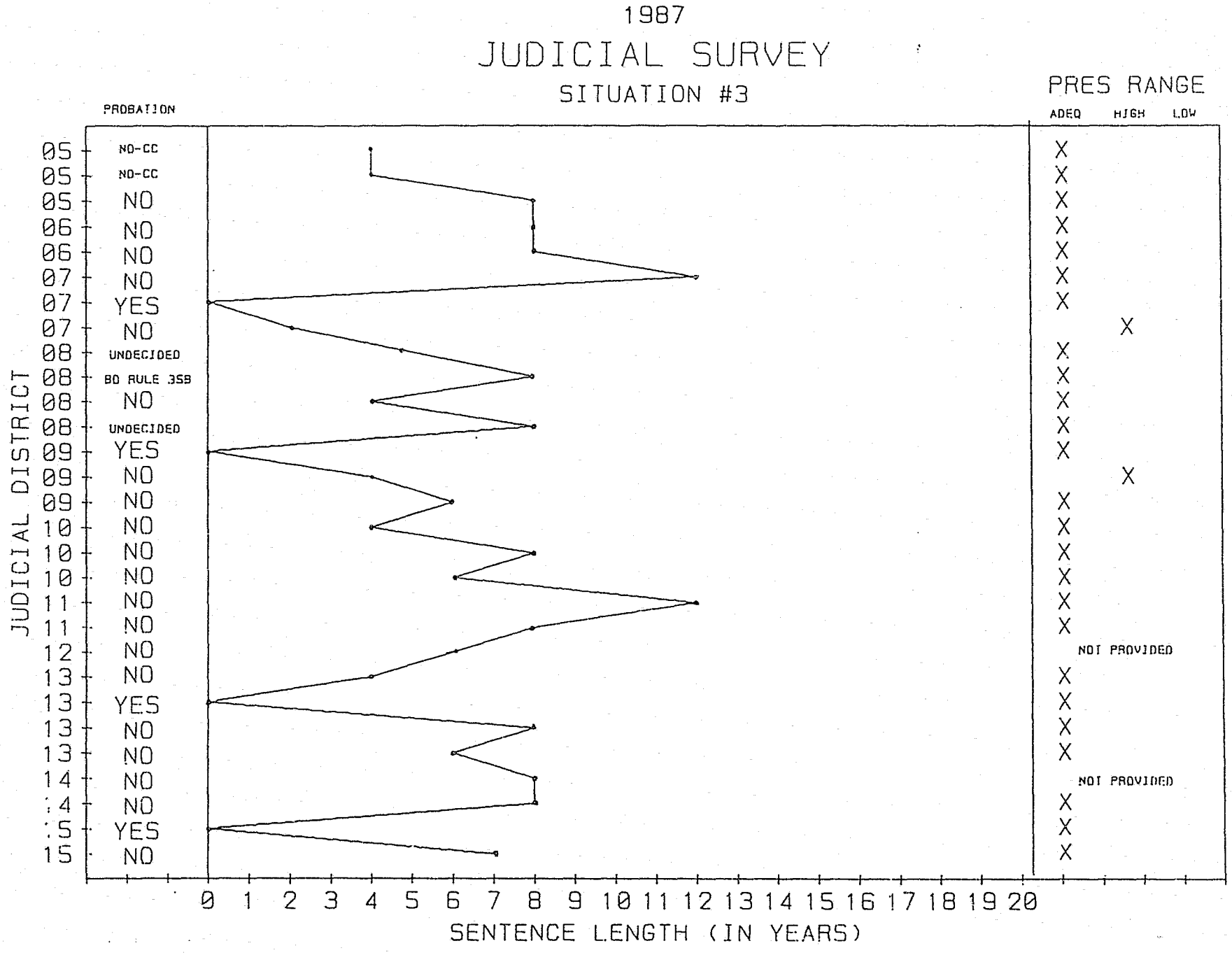
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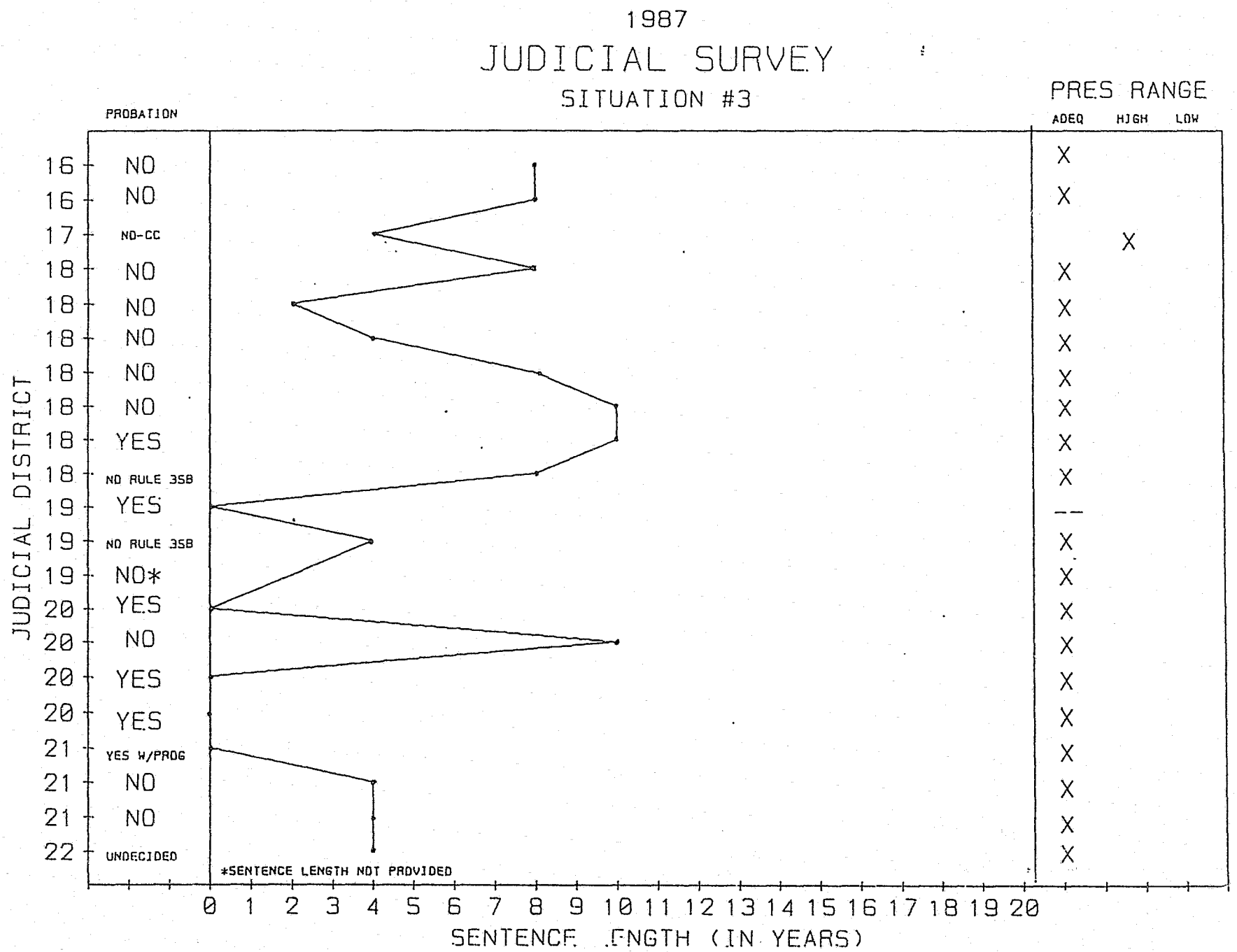
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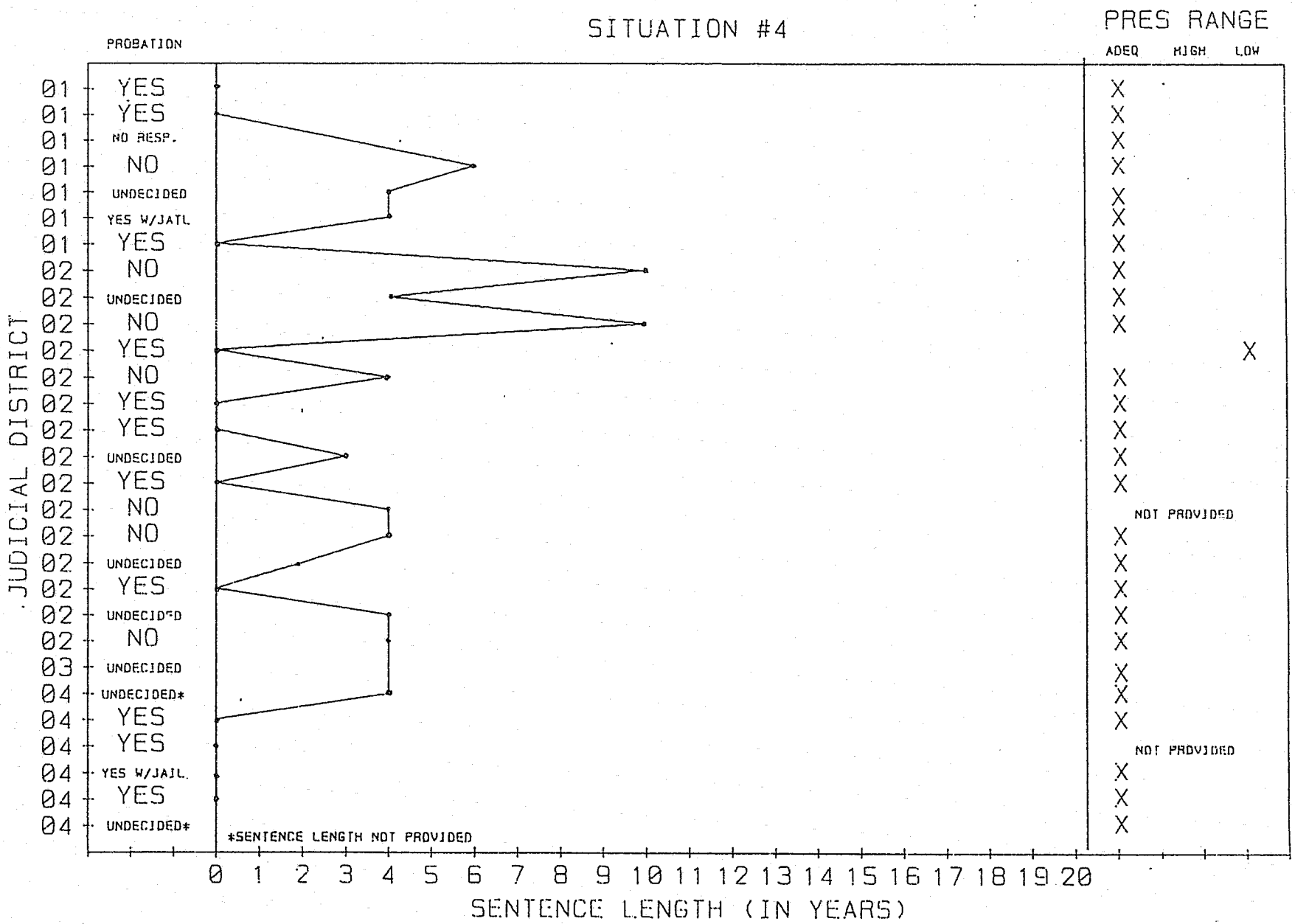

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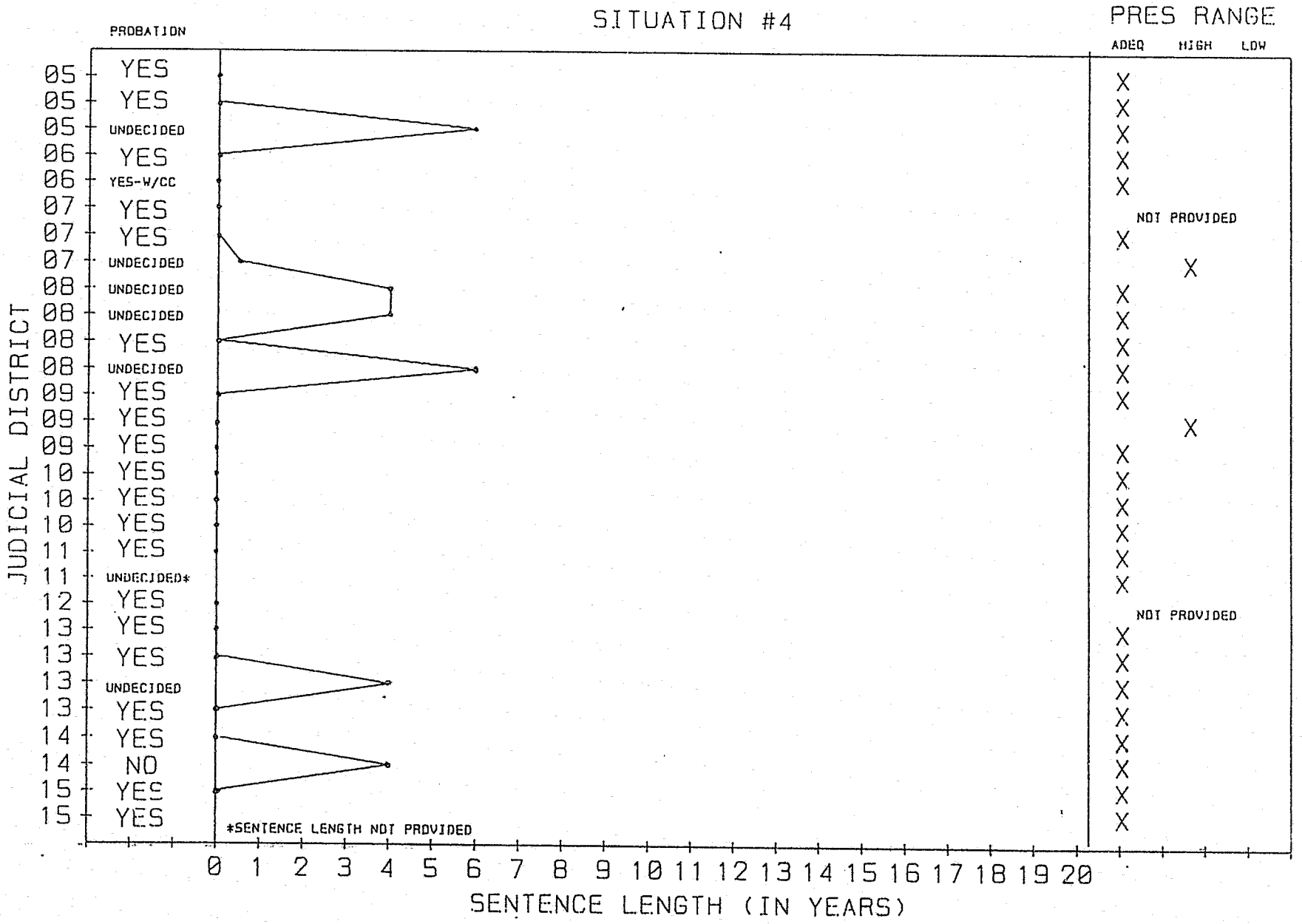

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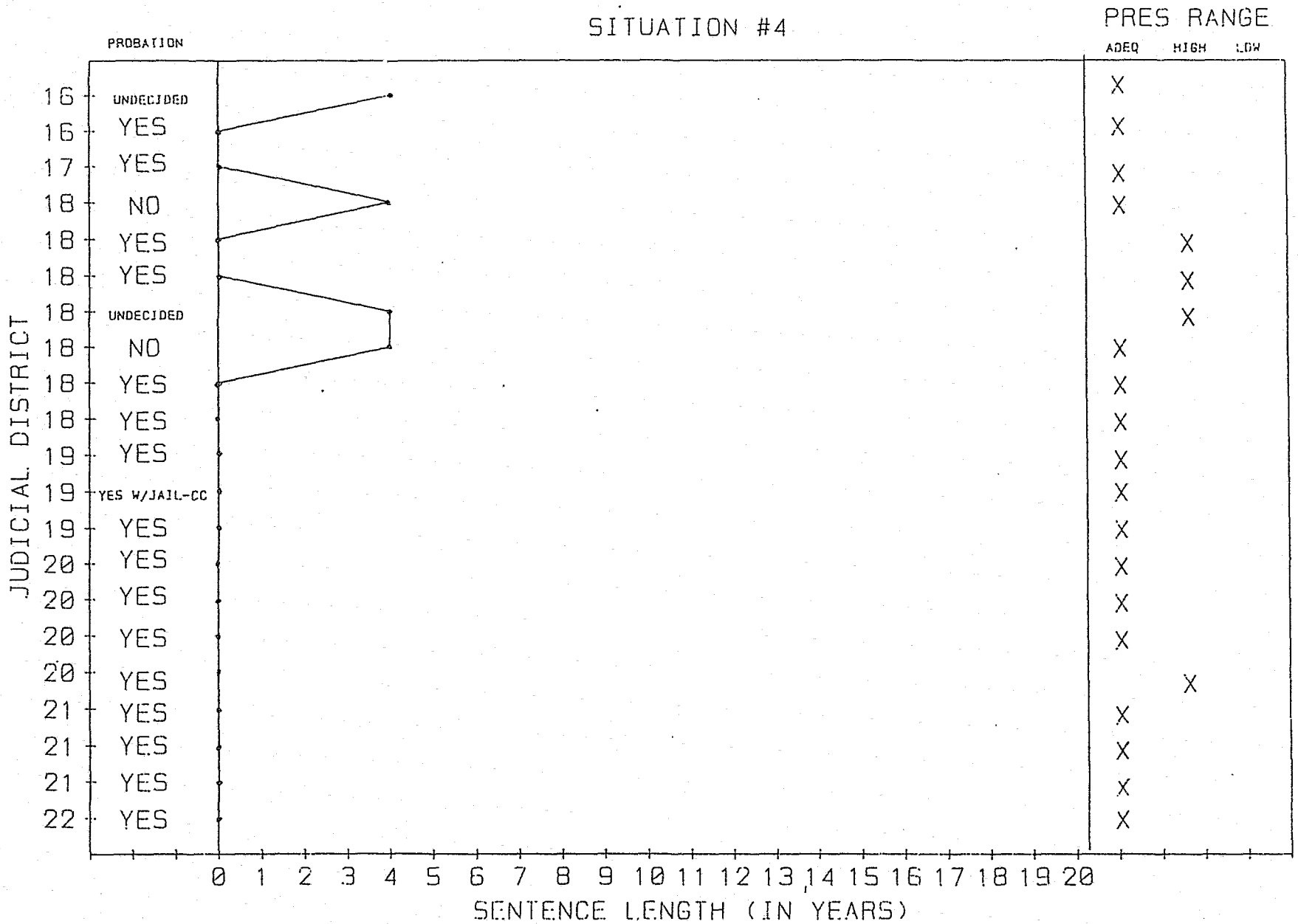

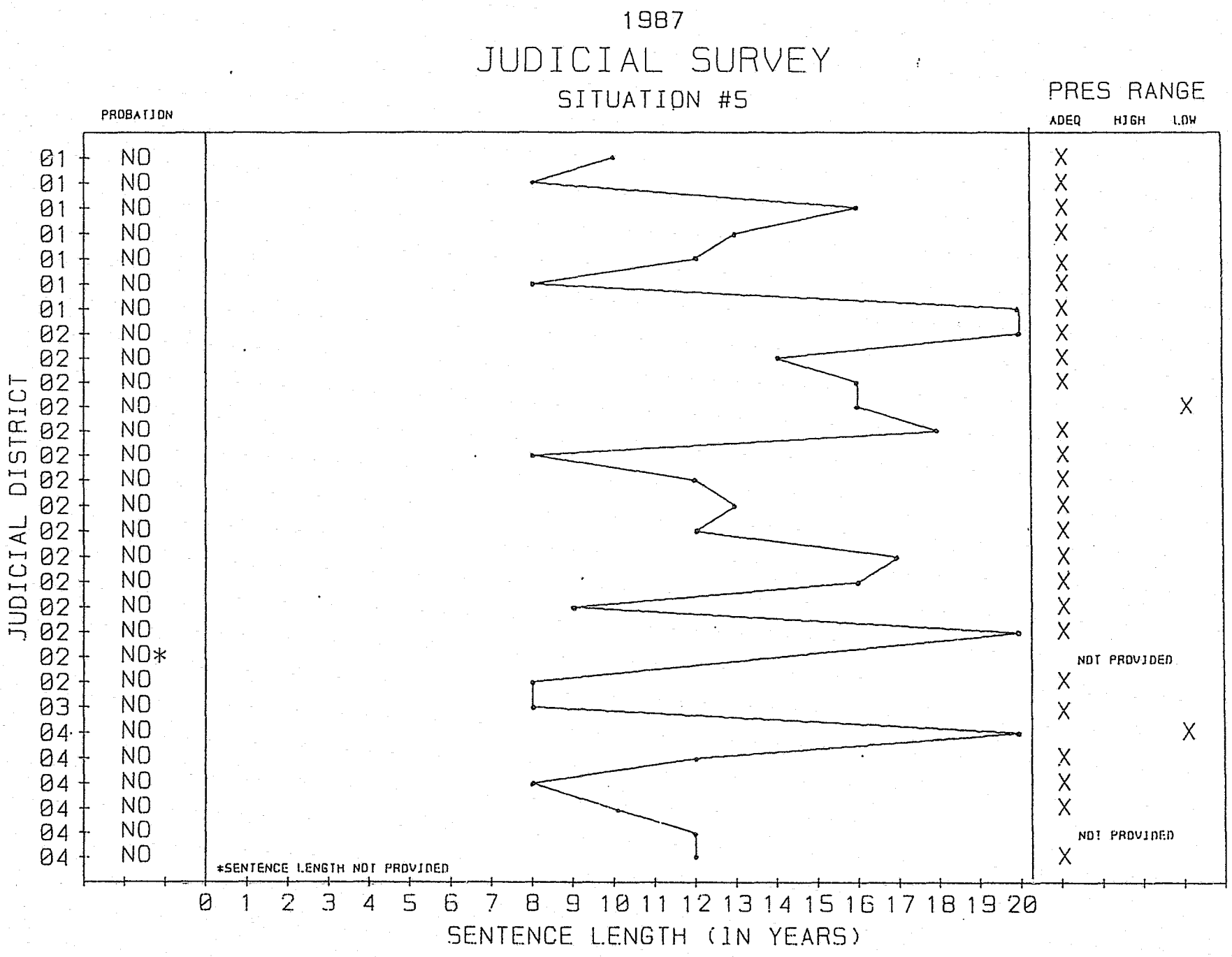
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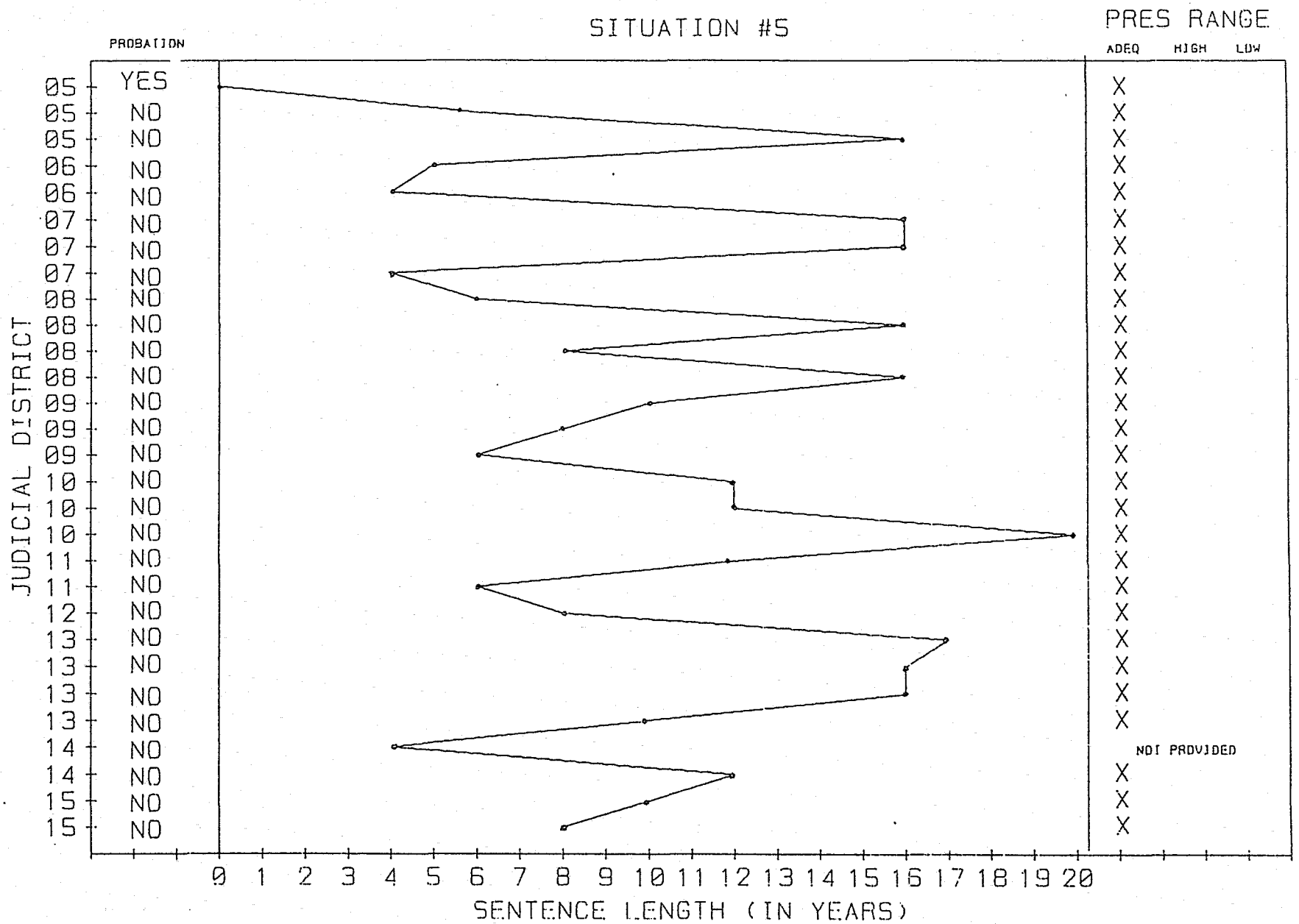

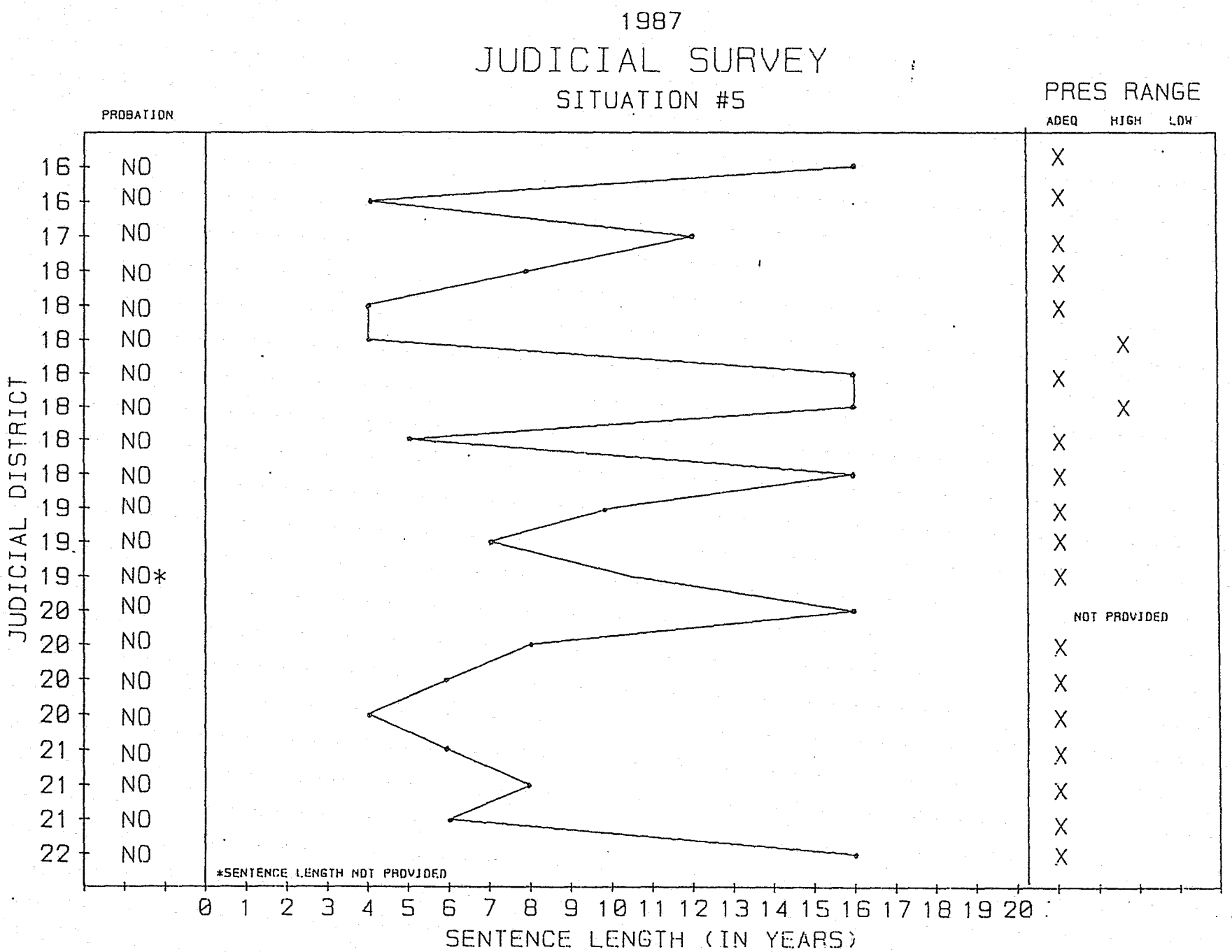
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BIBLIOGRAPHY

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