

OFFICE OF JUSTICE SYSTEMS ANALYSIS

A STUDY OF FELONY CASE PROCESSING IN NEW YORK STATE

APRIL, 1988

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**NEW YORK
STATE**



**DIVISION OF
CRIMINAL
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U.S. Department of Justice
National Institute of Justice

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EXECUTIVE SUMMARY

This report describes the processing of felony arrests that occurred within a sample of ten New York State counties during 1983 and 1984. The counties included in this study were selected to provide as much variety as possible in office characteristics outside of New York City. Thus, the findings are not necessarily generalizable to the State as a whole. To test the generality of these findings, similar analyses will have to be conducted for a larger sample of counties that include the boroughs of New York City.

Conclusion

For the purpose of this study, net felony conviction rate is defined as the proportion of felony convictions given felony arrests within a county. One case processing decision that was associated with this rate was case screening - the decision to process cases in upper or lower court. Counties varied greatly in the rate at which they selected cases for upper court prosecution, and subsequently, in their net felony conviction rates.

Analysis identified four variables that were strongly associated with the differences in the screening rate - caseload, prior criminal history, average seriousness, and crime type. Counties that had lower average caseloads or that handled more serious crime overall tended to have relatively higher screening rates. Counties with higher proportions of defendants with one or more prior felony convictions tended to have relatively higher screening rates. Differences in the distribution of arrest crime types were associated with differences in the screening rates.

Findings

Office Characteristics

- o Case screening - offices varied as to when case screening occurred and the level or experience of staff responsible for such decisions.

- o Plea bargaining - offices varied in the degree to which assistant district attorneys (ADAs) were allowed to deviate from the original charges when negotiating plea bargains. It was common for ADAs to negotiate on charges and not on sentences.
- o Centralization of decisionmaking - offices differed in the amount of decisionmaking power given to line ADAs.
- o Style of prosecution - three styles of prosecution were identified:
 - vertical - one prosecutor handles a case as it moves from arrest to final disposition.
 - horizontal - different prosecutors handle specific aspects of a case as it moves from arrest to final disposition.
 - mixed - a combination of the above two styles.
- o Office size - the ten offices studied differed widely in annual expenditures, number of staff, and volume of cases processed. The four largest offices all used horizontal prosecution and had high levels of centralization of decisionmaking.

Case Processing

Felony Arrests

- o Style of prosecution was associated with number of felony arrests. Counties that used vertical prosecution had relatively small numbers of felony arrests. Counties that used horizontal prosecution had relatively large numbers of felony arrests.
- o Smaller offices had relatively high average caseloads. Larger offices had relatively low average caseloads.
- o The distribution of crime types and the average seriousness level of felony arrests were similar across counties.
- o Counties varied in the proportion of cases that involved defendants with prior criminal records. The percentage of defendants with at least one prior felony arrest ranged from 36 percent to 53 percent. The percentage of defendants having at least one prior felony conviction ranged from 10 percent to 24 percent.

Felony Case Screening

- o For all counties combined, one out of every three felony arrests was selected for upper court processing. Individually, counties varied widely in this regard from a low of 16 percent to a high of 52 percent.

- o Average number of cases per prosecutor was associated with the rate at which offices selected cases for upper court processing. Offices with high average numbers of cases per prosecutor had relatively low rates of selecting cases for upper court prosecution (16 to 23 percent). Offices with low average numbers of cases per prosecutor had relatively high rates of selecting cases for upper court prosecution (36 to 43 percent).
- o The rate at which specific types of crime were selected for upper court prosecution varied both within and among counties.

Method of Upper Court Prosecution

- o Overall, one out of every three cases was processed by a Superior Court Information (SCI). "A superior court information is a written accusation by a district attorney filed in a superior court,... charging a person,... with the commission of a crime" [N.Y.S. CPL §200.15]. To file an SCI, a defendant must waive his right to be prosecuted by indictment and must consent to be prosecuted by an SCI [N.Y.S. CPL §195.20]. Individually, counties varied widely in their use of SCIs.
- o For all counties combined, the decision to process cases by means of SCIs did not appear to be affected by the type of crime committed.
- o At upper court processing, SCI cases were more likely to have undergone a reduction in charge seriousness relative to their arrest charges than were indicted cases.

Conviction

- o Net felony conviction rates varied across counties from a low of 10 percent to a high of 36.1 percent.
- o Overall, seven out of ten cases selected for upper court prosecution resulted in a felony conviction.
- o Counties with high net felony conviction rates did not necessarily engage in extensive reduction of charge seriousness.
- o Pleas taken after indictment had less reduction in charge seriousness than pleas taken prior to indictment.
- o The rate of selecting cases for upper court processing was a primary determinant of the probability of felony conviction given felony arrest.

SECTION I

INTRODUCTION

The major findings of this study indicate that there is considerable variation among prosecutors' offices in the way similar felony cases are handled, and that the bottom line of felony case processing, net felony conviction rate, is more strongly related to the rate at which cases are selected for upper court processing than to the rate at which prosecutors obtain felony convictions in upper court. These and other findings presented in this report were made possible through creative research that combined qualitative and quantitative methods, and that resulted in a collection of information that allowed a unique review of felony case processing.

The goal of the study was to better understand how felony cases were processed from arrest to final disposition. However, due to the complexity of the process, relying solely on quantitative data was thought to be inadequate. As a result, qualitative research was incorporated to assist in the analysis of the quantitative data.

The initial stages of this research involved collecting information about the organization and functioning of county prosecutors' offices. Researchers conducted in-depth interviews with prosecutors in each of the ten counties and, in some instances, directly observed case processing practices. The end result of this research was the identification of the various stages and decision points associated with case processing and a general understanding of the attitudes of the ten offices toward the handling of felony cases. Building on this information, a conceptual framework was developed that described case processing in an organized manner and that formed a foundation for the analysis of the quantitative data.

The findings of the qualitative research were presented in an interim report entitled: A Preliminary Study of Prosecutor Case Processing Procedures: Decision points, Decision Makers, and Office Characteristics. To verify these

findings, the report was sent to each of the participating offices for review and comment. The resulting descriptions of felony case processing procedures and prosecutors' office characteristics are presented in Sections II and III of this report.

Relying upon the qualitative framework as a foundation, quantitative data were sought to track individual cases from arrest to disposition. No one source of data existed, however, that could provide the necessary information. As a result, a new database was developed that merged specific pieces of information from the New York State Computerized Criminal History (CCH) database and the Indictment Statistical System (ISS) database. The CCH database provided arrest and disposition information supplied by arresting police agencies and the courts. The ISS database provided information on upper court activities and dispositions supplied by local prosecutors' offices. By merging information from the two databases, detailed information was available on an individual case level at four stages of case processing: arrest, prosecutorial screening, upper court prosecution, and final disposition. Analyses of the merged database are presented in Section IV.

The results of this research provide information on felony case processing that was not previously available on a multi-county level. Combining information from three independent sources (interviews, CCH, and ISS) made it possible for researchers to assess the interdependency of case processing decisions, to analyze the extent to which the seriousness and type of crimes committed influence the types of decisions made, to relate the various office characteristics to case processing outcomes, and finally, to determine what factors influence net felony conviction rate.

The present report provides a fairly comprehensive look at felony case processing as it existed in ten New York State counties during 1983 and 1984. These counties represent metropolitan, urban, and rural areas of the State. New York City, however, was not included in this analysis. Research is presently being conducted that will test the generalizability of the findings to the remaining counties of the State.

SECTION II

AN OVERVIEW OF FELONY CASE PROCESSING

Preliminary research was conducted to obtain an overall perspective on case processing. The ten counties involved in the study were visited and in-depth interviews conducted with district attorneys, assistant district attorneys, and office managers. The findings of this research were presented in a document entitled: "A Preliminary Study of Prosecutor Case Processing Procedures: Decision Points, Decision Makers, and Office Characteristics", and were sent to each of the participating counties during this research.

Figure 2.1 presents a flowchart of the stages that were identified in the interviews. The narrative to follow focuses on the responsibility of prosecutors, the various decisions, and the activities associated with each stage. Although these stages were common to all offices, offices differed as to which stages received the highest priority.

Pre-Arrest

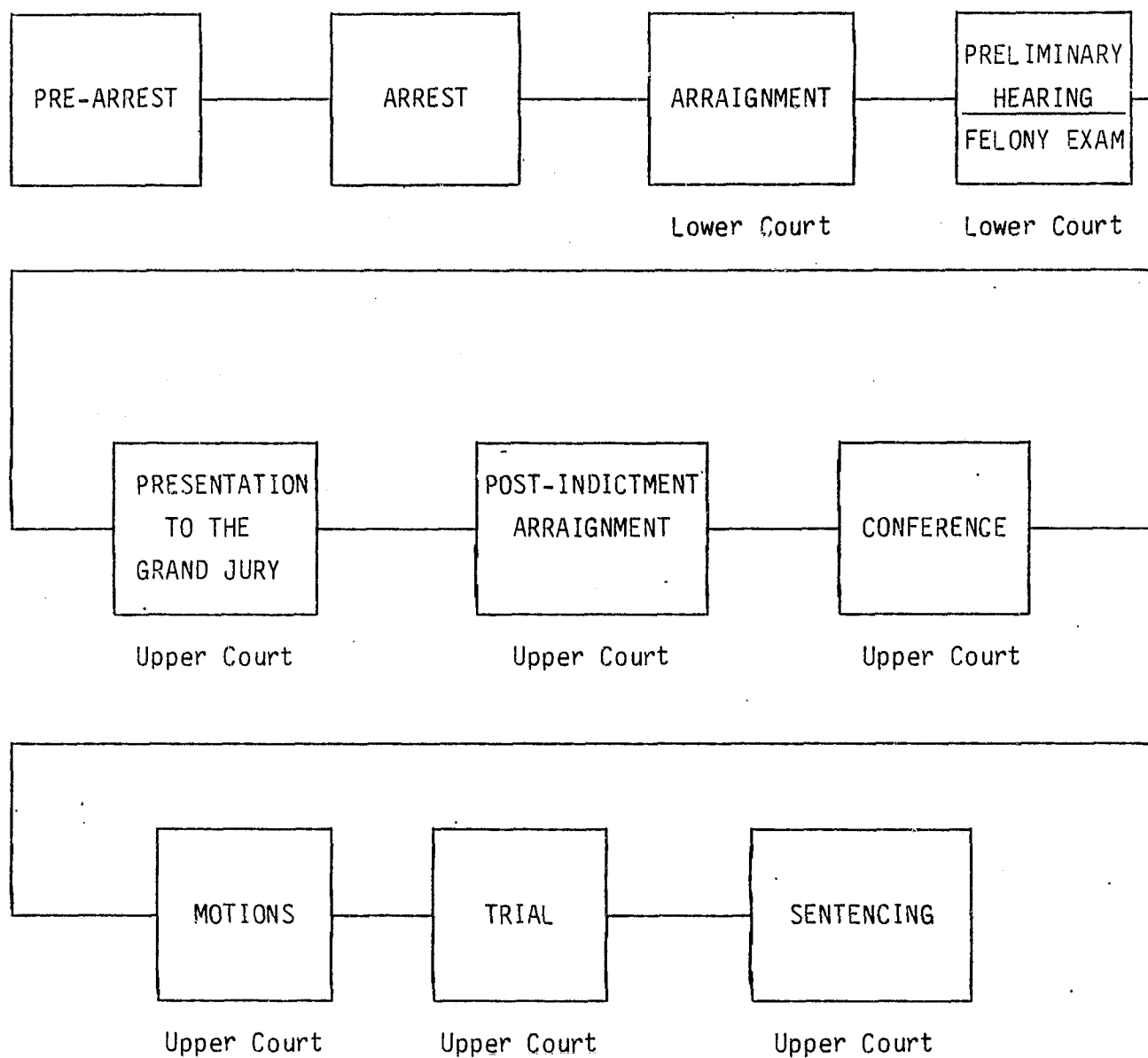
Prosecutors commonly become involved with an offense prior to an arrest under three circumstances.

- (1) Prosecutors may initiate investigations into alleged criminal activities. Certain crimes such as fraud, white collar crime, and racketeering lend themselves to pre-arrest investigations. When conducting investigations, prosecutors work with police concerning decisions about warrants, wire taps, degree and type of charging, and whether there are sufficient grounds to make arrests.
- (2) Immediately following the occurrences of major crimes, investigating police departments often contact their local prosecutor. Prosecutors often assist the police by answering legal questions and by helping to preserve evidence for trial.
- (3) Prosecutors answer police inquiries about legal issues concerning arrests that the police plan to make.

The involvement of prosecutors at the pre-arrest stage is relatively infrequent compared with their post-arrest activity. In all of the jurisdictions included in this study, the vast majority of prosecutors' time is spent reacting to arrests that have already been made by the police.

FIGURE 2.1

STAGES OF PROSECUTORIAL CASE PROCESSING



Arrest

Prosecutors are not generally involved with criminal cases at the time of arrest, although police occasionally contact prosecutors soon after an arrest to seek advice on potential legal problems or on the appropriate charges. Some district attorneys' offices designate assistant district attorneys (ADAs) to be on duty 24 hours a day to answer police questions.

Some district attorneys' offices assign prosecutors to specific types of major offenses. When the police make an arrest for these offenses, they are encouraged to contact the appropriate prosecutor, who, for the purpose of preparing a case for trial, will assist the police with problems encountered during the booking process. These problems include issues related to properly charging defendants, photographic identifications, and line-up procedures.¹

Arraignment

Following arrest, defendants are brought before local (lower) court magistrates "without unnecessary delay" [N.Y.S. CPL §140.20(1)]. At arraignment [N.Y.S. CPL §140.20(1)], defendants are informed of the charges against them, their right to a preliminary hearing, and their right to be represented by counsel. If the defendant is charged with a violation or a misdemeanor, and if the defendant pleads guilty as charged, the case can be disposed of by the lower court, regardless of whether a prosecutor is present or consents. However, if the courts wish to dispose of a case by a guilty plea to less than the original charges, these courts must receive prior approval from prosecutors. Finally, if the complaint filed with the court is not sufficient on its face, the court can "...dismiss such accusatory instrument and discharge the defendant" [N.Y.S. CPL §140.45].

Prosecutors are generally made aware of felony arraignments that occur in lower courts because:

- (1) lower courts are required to contact prosecutors for the purpose of receiving bail recommendations in felony cases; and

- (2) since lower courts are not authorized to dispose of felony charges as felonies, lower courts must reduce the felony charges to non-felony charges if they wish to dispose of the case. To reduce the charges, lower courts must receive prior approval from prosecutors. (At lower court arraignment, prosecutors are not bound by legislatively imposed plea bargaining limitations for any crime except Class A, non-drug felonies and "armed felonies" [N.Y.S. CPL §180.50.2 (b)].)

Prosecutorial decisions made at arraignment include:

- (1) screening cases
 - determining if defendants were appropriately charged
 - determining whether to engage in plea negotiations
 - determining the parameters of plea negotiations
 - determining whether to dismiss or prosecute cases;
- (2) deciding whether to refer cases to special bureaus;
- (3) deciding whether to refer cases to dispute resolution programs; and
- (4) deciding bail recommendations.

Preliminary Hearings/Felony Exam

The purpose of a preliminary hearing is to determine in a prompt manner "whether there is sufficient evidence" to hold a defendant for grand jury action [N.Y.S. CPL §180.10.2]. These hearings, sometimes referred to as "felony exams," take place in local courts and involve lower court judges, prosecutors, defense attorneys, defendants, and occasionally, witnesses who may be asked to testify. If the hearings do not take place within 120 hours of arrest (144 hours if a weekend or legal holiday is involved [N.Y.S. CPL §180.80]), incarcerated defendants must be released from custody. Although released, defendants may still be prosecuted for the same offenses if preliminary hearings are subsequently held or if indicted by grand juries at a future date.

At a preliminary hearing, the prosecution must prove that there is reasonable cause to believe that a defendant committed a crime. A preliminary hearing can result in one of three outcomes:

- (1) The court can find probable cause to sustain felony charges. The defendant will then be held for upper court proceedings.
- (2) The court can find probable cause to support misdemeanor charges, but not felony charges. The felony charges will then be reduced to misdemeanor charges and handled in lower court.
- (3) The court can fail to find probable cause to support any offense. The defendant is then released.² A district attorney may nonetheless subsequently present the matter to a grand jury.³

Preliminary hearings are designed to protect the rights of defendants. In some counties, however, prosecutors use these hearings to obtain more information about cases such as the creditability of the witnesses involved. In other counties, prosecutors try to avoid holding preliminary hearings. These prosecutors view preliminary hearings as additional occasions when witnesses may have to testify (in addition to complaints, grand jury testimonies, evidentiary hearings, and trials), thereby increasing the potential for inconsistencies and a loss of interest on the part of witnesses.

In those instances where defendants are in custody and prosecutors wish to avoid preliminary hearings, prosecutors can keep defendants incarcerated by presenting grand jury indictments to the court prior to the 120 hour time limit.

In general, preliminary hearings are technical proceedings that require routine decisionmaking by prosecutors. The decisions made at this point are:

- (1) whether to participate in the hearings, or allow the time limit to expire; and
- (2) whether to supersede the hearings with grand jury indictments.

Prior to making these decisions, prosecutors make numerous other decisions that, in effect, act as a screening process. Examples of these other decisions are:

- (1) determining whether arrest charges should remain the same or be altered to more appropriately fit the offenses;
- (2) determining whether to engage in plea negotiations and, if so, what the parameters of the plea should be;
- (3) determining whether felony charges should be reduced to non-felony charges and handled in lower courts;
- (4) determining what cases to decline to prosecute;
- (5) determining whether cases should be referred to special bureaus;
and
- (6) determining whether cases should be "held" in order to obtain more information before making any further decisions.

Presentation to the Grand Jury

Prior to this stage, all court proceedings take place in lower court. In felony cases, lower court jurisdiction is limited to arraignments and preliminary hearings. Where a prosecutor decides to process a case as a felony, the case must be delivered to a Superior (upper) Court⁴ by either a grand jury indictment or a Superior Court Information.

Grand juries consist of between 16 and 23 citizens; 16 must be present for a quorum and any official action requires the concurrence of at least 12 members [N.Y.S. CPL §190.25]. Grand jury proceedings are not open to the public. If the grand jurors determine that there is reasonable cause to believe that a defendant committed a crime, they may issue an indictment. In general, grand juries indict defendants on felony charges. In a small percentage of cases, grand juries may direct prosecutors to charge non-felony offenses [N.Y.S. CPL §190.70.1] or they may dismiss the charges [N.Y.S. CPL §190.75.1].

Some prosecutors use grand juries to screen cases. This is especially true in sensitive cases where it is hoped grand juries will relieve prosecutors from criticism concerning the decision to prosecute. Other prosecutors place a high priority on screening cases before they reach the grand jury in an attempt to prevent or lessen backlog in the system.

In general, decisions made by prosecutors when preparing cases for presentation to grand juries include the following:

- (1) which cases to present to the grand jury. In deciding this, prosecutors must answer two types of questions, "Are these cases worthy of indictments, or should they be reduced or even dismissed?" Or, "These crimes are worthy of presentation to the grand jury, but is there enough evidence to support the charges?";
- (2) which charges to present;
- (3) when to present the charges;
- (4) which grand jury to use. (Some counties have more than one grand jury, each of which may have one specific judge assigned to handle its workload. Depending on the crime, prosecutors may pick one grand jury over another knowing that a case will be handled by one judge and not another.);
- (5) whether to engage in plea negotiations that, if successful, would negate the necessity of grand jury indictments;
- (6) what the parameters of plea offers should be; and
- (7) which witnesses, if any, to prepare to testify before a grand jury.

One of two types of individuals are typically responsible for making these decisions. In some instances the assistant district attorneys assigned to the cases make decisions such as what witnesses to interview and what charges to present. In other counties, second-level management (senior ADAs) or the district attorneys make decisions such as whether to present cases to a grand jury, and whether to engage in plea bargaining negotiations. In addition, they establish and interpret office policies with respect to plea bargain parameters.

Grand juries can render one of three decisions:

- (1) there is reasonable cause to proceed with felony charges;
- (2) there is not reasonable cause to proceed with felony charges, but there is reasonable cause to proceed with misdemeanor charges; and
- (3) there is not reasonable cause to proceed with any charge (resulting in decisions called No True Bills).

In addition to grand jury indictments, prosecutors can introduce cases into the upper court by means of Superior Court Informations (SCIs). SCIs are "...written accusations by a district attorney filed in a superior court,... charging a person,... with the commission of a crime [N.Y.S. CPL §200.15]. For a prosecutor to file an SCI, a defendant must waive his right to be prosecuted by indictment and must consent to be prosecuted by an SCI [N.Y.S. CPL §195.20]. SCIs are usually the result of plea negotiations between defense attorneys, prosecutors, and judges whereby defendants agree to plead guilty to specific crimes in return for some guarantee about sentence or charge. It is not uncommon for SCIs to be prepared early in the process, thereby negating such proceedings as preliminary hearings, presentations to grand juries, motion hearings, and trials. When prosecutors file SCIs with upper courts and defendants enter pleas of guilty, the courts will generally accept the pleas and set sentencing dates.

Post Indictment Arraignment

Following the filing of a felony indictment or SCI, defendants are brought before Superior (upper) Courts and arraigned on the pending charges. There is no constraint on prosecutors or grand juries to necessarily charge defendants with the arrest crime, especially when new evidence is presented.

If defendants are indicted, judges will inform them of the charges in the indictments and set dates for motion hearings. If SCIs are filed with the courts, it is common practice for defendants to enter pleas of guilty at this point. Upon accepting the pleas, judges set dates for sentencing.

Prosecutorial decisions at this point include:

- (1) bail recommendations;
- (2) reassessed plea offer (usually harsher after an indictment); and
- (3) whether to supply the defense with all pertinent information through voluntary disclosures.

Depending upon the county, these decisions can be made by ADAs assigned to the cases, designated persons from special bureaus, or second-level management ADAs. The last decision, whether to provide information through voluntary disclosure, tends to be more of an officewide policy than a decision made by individual ADAs on a case by case basis.

Conference

Conferences, which can occur at various stages in the process, are meetings among judges, prosecutors, and defense attorneys that usually take place in the judges' chambers. Conferences are designed to dispose of cases through plea bargaining, thereby bypassing further court proceedings such as trials. If negotiations fail, cases proceed through the normal processing steps unless plea bargains are subsequently negotiated.

Prosecutorial decisions at this point revolve around the negotiation of plea bargain agreements that are acceptable to district attorneys, defense attorneys, and judges. Because conferences are sometimes spontaneous, line ADAs may make decisions without receiving prior approval from superiors. However, ADAs are governed by office policies and bound by statutory limitations regarding plea negotiations.

Motion Hearings

Dates for motion hearings are set at post-indictment arraignments. At motion hearings, judges listen to the arguments of defense attorneys and prosecutors and make decisions as to what evidence and testimony can be introduced at trial and whether or not cases should be dismissed. Prosecutorial decisionmaking at this point is directly related to the nature of the evidence associated with the offenses. In general, the process is considered routine.

Trial

There are two types of trials: jury trials and non-jury trials. Juries consist of twelve citizens who determine guilt or innocence of defendants. In non-jury trials, judges replace the juries and become solely responsible for determining guilt or innocence.

Trials account for a relatively small percentage of total case dispositions. Most cases are disposed by plea bargaining or dismissed before they reach trial. When cases are brought to trial, prosecutors engage in full-time commitment preparing for and conducting the trial. It is not uncommon for prosecutors to be relieved of other responsibilities while engaged in trials.

Because of the substantial effort expended preparing for trials, prosecutors are sometimes faced with a difficult decision when, at time of trial, defendants agree to accept previously offered plea bargains. Decisions on whether to proceed to trial depend, in part, on whether prosecutors feel they have strong cases weighed against the fact that strong cases do not guarantee convictions.

Sentencing

Sentencing is the final stage of case processing. The process by which sentences are derived differs and this difference is directly related to the manner in which the convictions are obtained - by trial or by plea of guilty.

For example, following convictions by trial, judges must select sentences from ranges of permissible sentences that are prescribed by law and that are categorized by the seriousness of the offenses committed. When selecting sentences, judges often consider sentencing recommendations made by defense attorneys, and in some instances, prosecutors. Judges also rely on recommendations made by local probation departments that, following conviction, provide courts with information on the social and criminal background of the defendants.

For cases disposed by a plea of guilty, the procedure is different. In such circumstances, defense attorneys and prosecutors will negotiate on either the charges that defendants will plea guilty to (thereby, determining the seriousness of the offense and subsequently, the range of permissible sentences)

or what is jointly considered to be an appropriate sanction. Once an agreement has been reached, both parties will approach the court seeking judicial approval. If the court accepts the agreement, some or all of the preliminary work necessary to formulate the appropriate sentences will already have been completed. Furthermore, because agreements surrounding plea negotiations occur prior to an actual plea of guilty, these agreements will have been reached without the benefit of the probation reports. As a result, judges commonly inform defendants who plea guilty that the court has the right to impose sentences other than those negotiated during the plea negotiations, especially if the forthcoming probation reports contain information that would deem the prior sentence agreement inappropriate. If this occurs, and the court wishes to impose a more severe sentence than was negotiated, the court must allow the defendants to withdraw their plea of guilty and return the case to a pre-plea stage.

Summary of Decisions

Interviews conducted during the preliminary study provided information concerning the stages and the decisions associated with criminal case processing. Table 2.1 summarizes these stages and decisions, and indicates the stages at which each type of decision may be made. From Table 2.1, it should be noted that there is not generally a one-to-one correspondence between processing stages and types of decisions. Depending upon the structure of the offices and the dynamics of certain cases, prosecutors may be faced repeatedly with one decision at various stages of the process.

TABLE 2.1
CASE PROCESSING STAGES

DECISIONS	PRE-ARREST	ARREST	LOWER COURT ARRAIGNMENT	PRELIMINARY HEARING	GRAND JURY	UPPER COURT ARRAIGNMENT	CONFERENCE	MOTIONS	TRIAL	SENTENCING
To self initiate an investigation.	X									
How to assist police officers (e.g., wire taps, charging).	X	X								
How to assist police with booking decisions		X	X							
How much bail to recommend.			X			X				
Screening decisions (to proceed as charged, to reduce the charge, to increase the charge or to dismiss the case).			X	X	X			X		
To consider a plea.			X	X			X		X	
Parameters of the plea.			X	X			X		X	
To refer case to a special bureau.	X	X	X							
To participate in a preliminary hearing.				X						
To supercede preliminary hearing with a grand jury indictment.				X						
To present to the grand jury.					X					
What menu to present to the grand jury.					X					
When to present to the grand jury.					X					
Selection of trial strategy.									X	
Jury selection.									X	
To recommend a sentence or not.										X
What sentence to recommend.										X

SECTION III

COMPARISONS AMONG OFFICES

Interviews conducted with district attorneys and ADAs during the exploratory stage of this study provided information concerning the formal stages of case processing and identified the types of case decisions that were common across jurisdictions. Analyses of this information suggested important procedural and organizational differences among offices. Five dimensions distinguished the offices studied: case screening procedures, plea bargaining practices, centralization of decisionmaking, style of prosecution, and office size.

Case Screening

Case screening includes deciding whether to prosecute cases, determining whether defendants are appropriately charged, establishing possible plea bargaining parameters, making referrals to special bureaus, and establishing bail recommendations. The types of decisions associated with case screening appear to have been consistent across the offices studied. The factors that differentiated the offices on this dimension were the time at which case screening occurred and level or experience of staff responsible for case screening decisions. Depending on the jurisdiction, cases may have been screened prior to lower court arraignments, at lower court arraignments, at preliminary hearings, prior to grand jury presentations or, on occasion, during grand jury presentations. (For example, in sensitive cases, some prosecutors chose to allow grand juries to decide if defendants should be prosecuted and for what charges.) Individuals given responsibility for case screening decisions ranged from lower court ADAs, in some counties, to district attorneys in others.

Plea Bargaining

The vast majority of cases in all ten offices were disposed of by pleas of guilty. However, offices differed in the degree to which ADAs were allowed to deviate from the original charges when negotiating plea bargains. Depending

upon the offense and the offender, ADAs in some offices offered defendants no more than a promise of not recommending the most severe penalty in exchange for a plea of guilty to the original charge. A more common policy among offices studied was to engage in plea negotiations with the intent of obtaining no less than a "quality plea." This policy allowed ADAs to reduce original charges by no more than one degree in negotiating plea bargains. In addition, it was common office policy that ADAs negotiate on charges and not on sentences. The majority of ADAs interviewed said that their role was to secure appropriate convictions and that judges were responsible for determining sentences.

Centralization of Decisionmaking

While district attorneys were ultimately responsible for the prosecution of criminal cases within their jurisdiction, they often delegated decisionmaking authority to their ADAs in an effort to expedite case processing. The degree of delegation of authority was usually set forth through formal or informal office policies that expressed the district attorneys' position on the general manner in which cases were to be prosecuted.

The entire concept of district attorneys relying upon ADAs to process criminal cases is a broad area that encompasses many different issues, including:

- (1) centralization of decisionmaking, which is the degree to which certain ADAs within an office are empowered to make important case processing decisions;
- (2) monitoring of the degree to which ADAs comply with the policies of the district attorneys concerning case processing decisions; and
- (3) enforcement of the district attorneys' policies on ADAs concerning case processing decisions.

Variation in centralization of decisionmaking was found among offices. In offices with low levels of centralization, most line ADAs were allowed to make a wide range of case decisions as long as they followed general office policies; ADAs in these offices were more likely to be responsible for the screening function and more likely to make plea bargaining decisions. In offices with

high degrees of centralization, most line ADAs were more restricted in their decisionmaking powers; in these offices district attorneys, councils, or bureau heads performed the screening function and line ADAs had to refer plea negotiations to senior ADAs.

Style of Prosecution

There are two styles of prosecution: vertical and horizontal. In offices with vertical prosecution, ADAs who first handle cases carry those cases through every legal proceeding from arrest to final disposition. Under the horizontal style, a different ADA is responsible for each stage of prosecution. Of the ten offices studied, four used vertical prosecution. These offices tended to be smaller than other offices studied and less complex in organizational structure. Four offices used horizontal prosecution. Although these offices may not have perfectly fit the definition of horizontal prosecution, in that one ADA may have handled more than one stage of the proceedings, overall, they were more heavily oriented toward horizontal than vertical prosecution. In general, the offices using horizontal prosecution tended to have a more complex organizational structure.

The remaining two counties used variations of the two styles of prosecution. In one office, local court ADAs (usually the least experienced in the office) handled cases vertically from arrest until it was decided that the cases should be processed as felonies. Cases were then referred to more experienced ADAs who handled them vertically from grand jury proceedings through completion. The other office allowed its assistants to prosecute cases vertically unless the cases were going to felony trial and the original ADAs were inexperienced. Under these circumstances, the original ADAs would have been replaced by more experienced senior ADAs. One senior ADA in this office conducted all post-indictment arraignments and subsequent conferences.

Offices using horizontal prosecution had special units that used vertical prosecution for specific types of offenses and offenders. For example, offices that generally prosecuted horizontally may have prosecuted sex abuse and child

abuse cases vertically in an attempt to maintain continuity when dealing with victims.

Office Size

The ten offices included in this study were chosen to be representative of New York State jurisdictions (excluding New York City) in size and geographic region. Consequently, they differed widely in annual expenditures, number of staff, and total volume of cases processed annually. The smallest office studied employed two full-time prosecutors and seven part-time prosecutors, whereas the largest office employed 127 full-time prosecutors. The annual number of felony arrests for each county ranged from a few hundred to nearly 6,000. Table 3.1 presents annual expenditures, staff sizes, and caseloads (felony and misdemeanor arrests divided by number of ADAs) for each of the ten counties studied, together with a summary of the other office characteristics discussed in previous sections.

Office size was strongly related to some of the other characteristics discussed in this report. For example, the four largest offices all employed horizontal prosecution and were rated moderately high or high on centralization of decisionmaking (see Figure 3.1). The fifth largest office, which appeared to be moderately centralized, recently changed from horizontal to vertical prosecution.

Despite the strong relationships among size, centralization of decisionmaking, and style of prosecution, it is useful to keep these dimensions conceptually distinct. For example, Figure 3.1 shows that a high degree of centralization occurred in both horizontally and vertically organized offices, and that small offices may or may not have centralized their case level decisionmaking. Among the counties studied, however, there were no large offices with vertical prosecution and decentralized decisionmaking.

TABLE 3.1
Summary of Office Characteristics

D.A.'s OFFICES	STYLE OF PROSECUTION	CENTRALIZATION OF DECISIONMAKING	CASE SCREENING	PLEA BARGAINING	EXPENDITURE ^d	STAFF (ADAs) ^e	CASELOAD ^g
1	Vertical	High	District Attorney screens all felony cases.	District Attorney determines plea parameters on felonies.	261,000	9 ^f	410
2	Vertical	Low	Conducted by lower court ADA.	Plea policies not formal, but closely adhered to.	391,000	8	296
3	Vertical	Med/Low	District Attorney screens all felony cases.	District Attorney determines plea parameters on felonies reduced to misdemeanors.	538,000	12	296
4	Vertical	Medium	Conducted by upper court trial ADAs.	Upper court ADAs determine plea parameters within office policies.	2,605,000	37	220
5	Mixed ^a	Med/High	A "council" screens all felonies. ^c	"Council" determines plea parameters on felonies.	1,326,000	17	358
6	Mixed ^b	Medium	Conducted by lower court ADA.	Informal plea policies.	1,074,000	18	347
7	Horizontal ^h	Med/High	Conducted by Bureau Chiefs.	Bureau Chiefs determine plea parameters within office policies.	4,904,000	82	249
8	Horizontal ^h	High	Conducted by District Office Bureau Chief or Pleading Bureau ADAs.	District court Bureau Chiefs or Pleading Bureau ADAs determine plea parameters within office policies.	5,851,000	109	137
9	Horizontal	Med/High	Conducted by Screening Bureau.	Screening Bureau Chiefs or Grand Jury Bureau Chief determines plea parameters within office policies.	8,514,000	111	199
10	Horizontal ^h	High	Conducted by Screening Bureau.	Formal plea policies.	9,695,000	127	137

^aCharacterizes an office that employs vertical prosecution unless the initial ADA is too inexperienced in which case a more experienced ADA will handle the case.

^bCharacterizes an office where less experienced ADAs vertically handle felonies through to grand jury presentation at which time a more experienced ADA will assume responsibility for the case.

^cThe "council" is composed of the District Attorney and the two most senior ADAs.

^dBased on 1983 data.

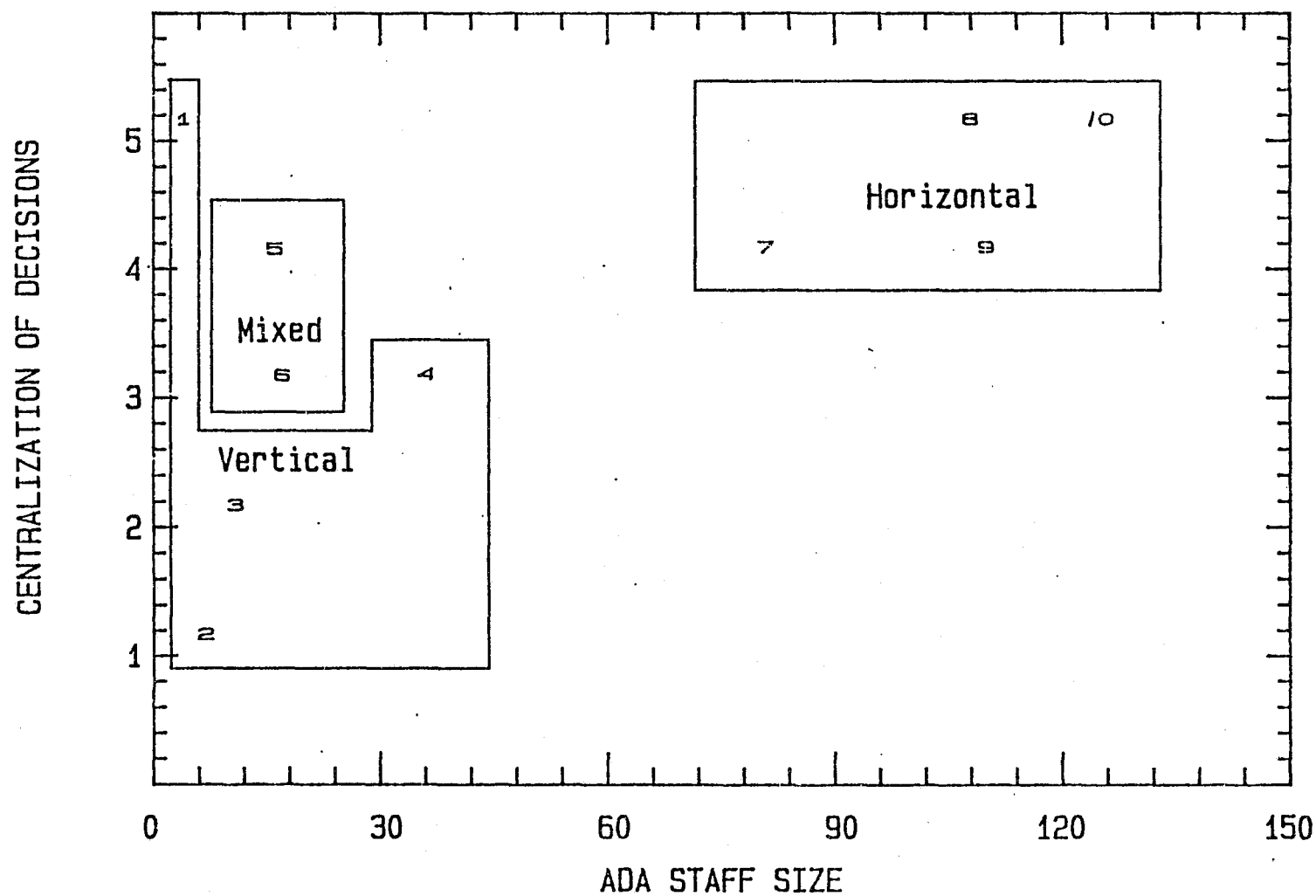
^eBased on 1985 data.

^fSeven of the nine ADAs are employed on a part-time basis.

^gApproximate case load calculated by dividing the number of 1985 fingerprintable misdemeanor and felony arrests in that county by the number of ADAs in that county.

^hThough basic style of prosecution is horizontal, may engage in some vertical prosecution for specific offenses.

FIGURE 3.1
Clustering of Prosecutor Offices



Note: Numbered points refer to offices in Table 3.1

SECTION IV

FINDINGS

The following observations are based on the total number of felony arrest events (n = 60,113) that occurred within ten selected counties during 1983 and 1984. The Findings section focuses on four major decision points in the case processing continuum: arrest, screening, means of prosecution, and final disposition. It describes the case processing decisions associated with each of these stages, highlights similarities and differences among the ten counties, and indicates how case processing decisions affected the outcomes in subsequent stages.

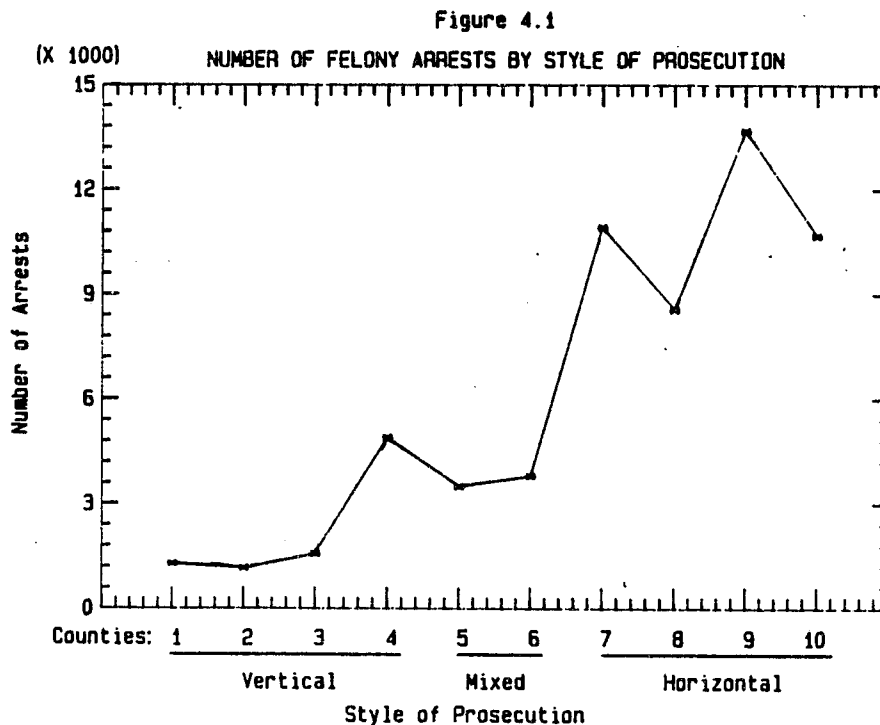
For the purpose of this study, a felony case was defined as any felony arrest event or driving while intoxicated misdemeanor arrest event eligible for felony prosecution. If a defendant was arrested more than once during 1983 and 1984, each arrest event was treated as a separate case. The type of crime and the seriousness level of each arrest event were determined by the top charge of that event, which could change as a case progressed from arrest to disposition.

Felony Arrest

Number of felony arrests was associated with style of prosecution.

It is apparent from Figure 4.1 that there was a strong relationship between the number of felony arrests and style of prosecution. In general, offices with a relatively small number of felony arrests employed a vertical style of prosecution. Offices with a slightly greater number of felony arrests (i.e., Counties 5 and 6) employed a mixed style of prosecution, and offices with a high number of felony arrests employed a horizontal style of prosecution. This is consistent with the relationship between staff size and style of prosecution noted in Section III (Table 3.1). Offices with smaller staff sizes and expenditures tended to use a vertical style of prosecution, offices with medium staff sizes and expenditures tended to use a mixed style of prosecution, and offices with larger staff sizes and expenditures used a horizontal style of prosecution.

Figure 4.1 does not provide information as to the cause of the relationship. It could not be determined whether a large number of cases requires a horizontal style of prosecution or whether a horizontal style of prosecution is the preferred style, but only possible in offices with large staffs.

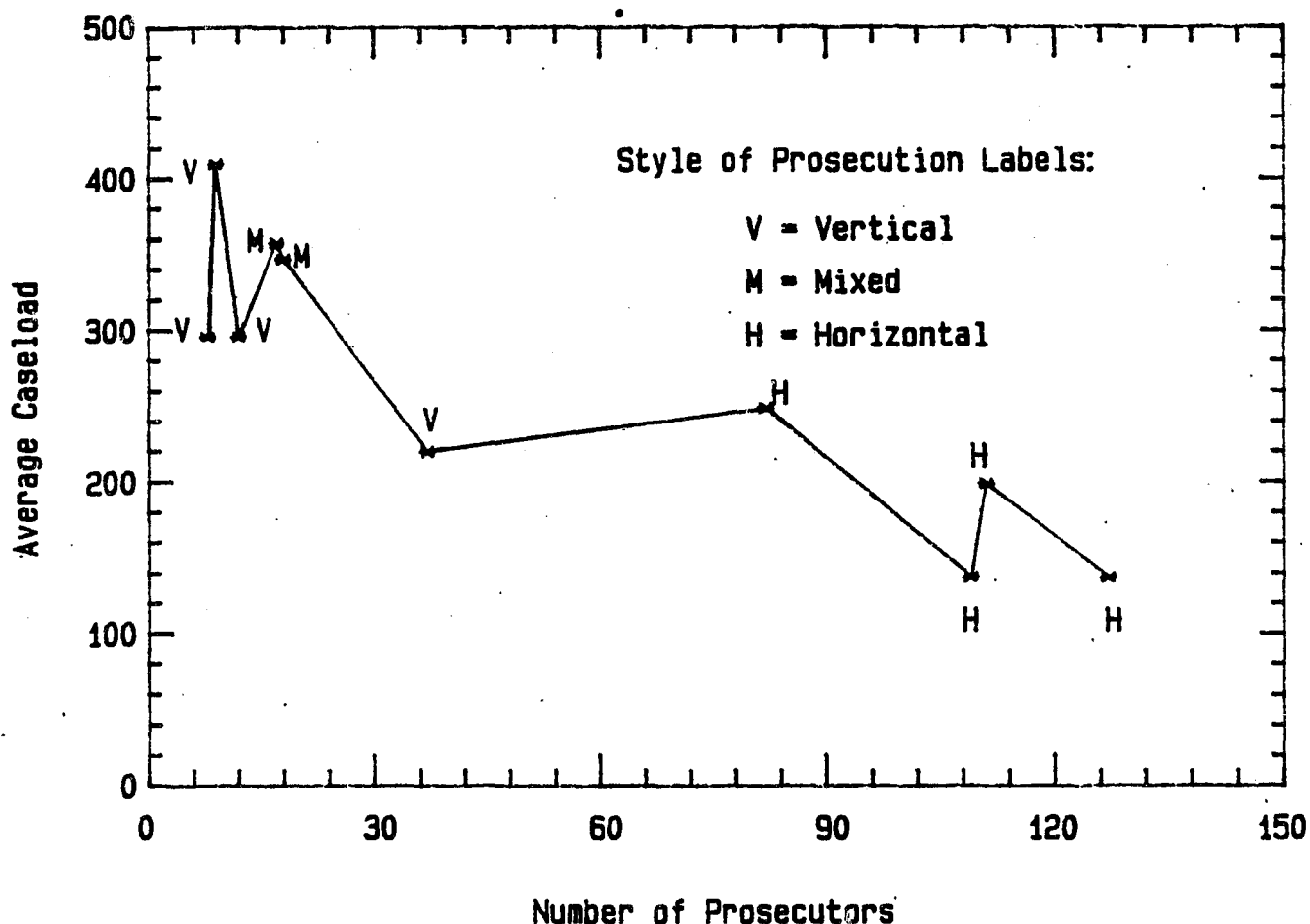


Size of office was related to average number of cases per prosecutor.

There was an inverse relationship between office size and the average number of cases per prosecutor. Smaller offices had a relatively high average number of cases per prosecutor and larger offices had a relatively low average number of cases per prosecutor. That is, the larger offices that were associated with a horizontal style of prosecution tended to have smaller average caseloads than smaller offices that employed vertical or mixed styles of prosecution.

FIGURE 4.2

AVERAGE CASELOAD BY NUMBER OF PROSECUTORS *



*Note: See Table 3.1 for information concerning the formulation of average caseload.

Type of crime and average seriousness level of felony arrests were similar across counties.

Crimes processed by each prosecutor's office were similar across counties. Figure 4.3 shows that the average seriousness of the top arrest charge was relatively consistent across counties. Table 4.1 shows that overall, the distribution of the types of crimes processed was also relatively consistent across counties with some noticeable variation in a few areas (i.e., DWI and robbery).

FIGURE 4.3

'AVERAGE SERIOUSNESS OF TOP ARREST CHARGE BY COUNTY .

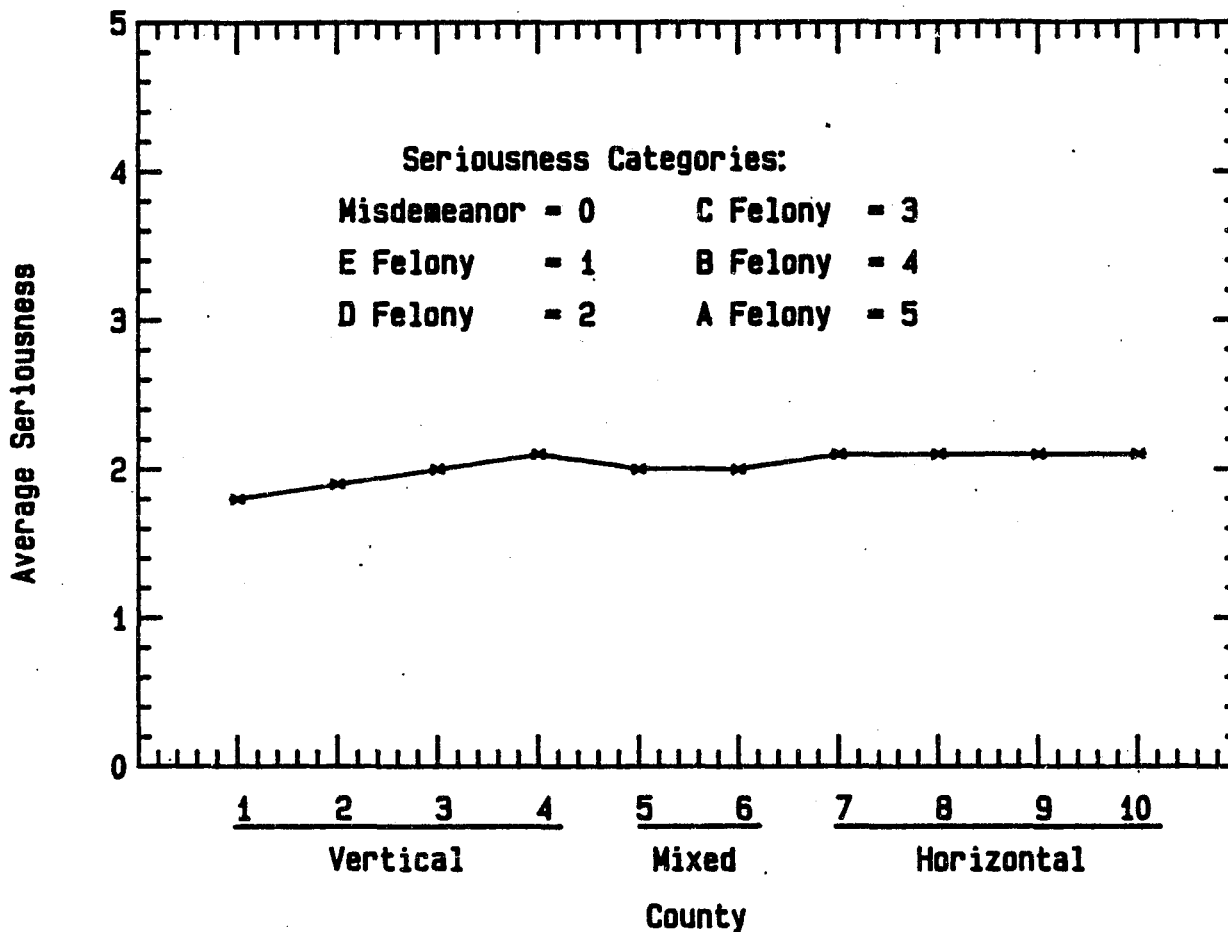


TABLE 4.1

Felony Arrests for 1983-1984: Percent of Crime Within County

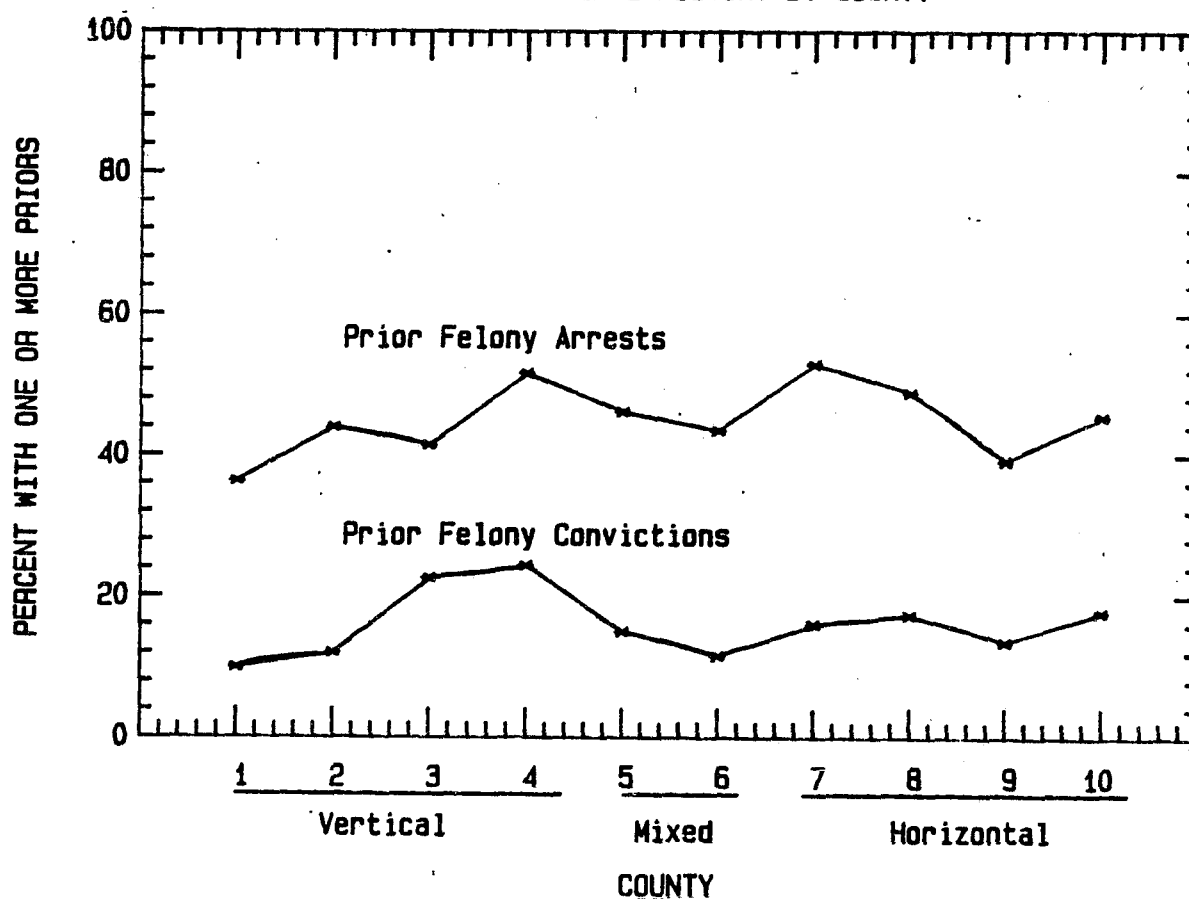
Crime Type At Arrest	C O U N T Y										All Counties Combined
	1	2	3	4	5	6	7	8	9	10	
DWI	25.6%	17.2%	15.2%	6.4%	16.7%	16.2%	11.6%	8.4%	20.1%	12.4%	13.9%
Assault	7.7%	13.7%	6.4%	12.1%	11.8%	13.0%	15.2%	11.7%	8.6%	10.8%	11.4%
Homicide	0.2%	0.9%	1.2%	0.8%	0.9%	0.9%	1.2%	1.5%	1.1%	1.3%	1.1%
Sex Offenses	4.5%	3.4%	6.2%	6.1%	3.7%	3.4%	4.8%	2.3%	3.3%	1.7%	3.5%
Burglary	21.6%	26.1%	26.2%	20.2%	17.7%	17.1%	19.2%	16.1%	20.1%	17.9%	18.9%
Crim. Mischf.	4.1%	2.8%	2.9%	3.8%	3.4%	2.7%	3.5%	3.1%	3.9%	3.1%	3.4%
Arson	0.9%	0.9%	1.8%	1.2%	0.4%	1.2%	0.7%	0.7%	1.0%	1.2%	1.0%
Larceny	13.8%	9.3%	10.9%	11.8%	11.9%	13.6%	14.2%	15.0%	14.0%	16.9%	14.2%
Robbery	1.5%	5.2%	4.4%	9.1%	6.1%	6.8%	7.9%	10.0%	6.4%	9.4%	7.8%
Theft	6.4%	8.3%	6.0%	6.1%	5.9%	5.8%	6.1%	11.5%	5.0%	6.2%	6.7%
Forgery	5.7%	4.1%	6.9%	6.7%	5.8%	6.5%	4.8%	6.2%	5.2%	5.0%	5.5%
Drug	5.0%	3.4%	6.3%	8.5%	9.6%	7.8%	5.0%	8.1%	7.3%	7.8%	7.2%
Firearm	1.3%	2.0%	2.0%	2.8%	3.0%	2.9%	3.2%	2.7%	1.4%	3.0%	2.5%
Other	1.8%	2.7%	3.6%	4.3%	3.0%	2.1%	2.6%	2.7%	2.7%	3.3%	2.9%
Total Number of Cases	1,287	1,160	1,575	4,901	3,506	3,806	10,932	8,573	13,692	10,681	60,113

Counties varied in terms of the proportion of cases that involved defendants with prior felony arrests and convictions.

Overall, 45.9 percent of all defendants arrested within the ten counties during 1983 and 1984 had at least one prior felony arrest, and 16.3 percent had at least one prior felony conviction.

Individually, there was variation among counties concerning these two measures of prior criminal record. The percent of defendants having at least one prior felony arrest ranged from 36.3 percent in County 1 to 52.9 percent in County 7. The percent of defendants having at least one prior felony conviction ranged from 9.9 percent in County 1 to more than double that rate (24.4 percent) in County 4.

FIGURE 4.4
PRIOR CRIMINAL HISTORY BY COUNTY



Felony Case Screening

The first major processing decision is felony case screening - the point at which prosecutors decide whether felony arrests will be processed in upper or lower court.⁵

For the ten counties combined, one out of every three felony arrests was selected for upper court processing.

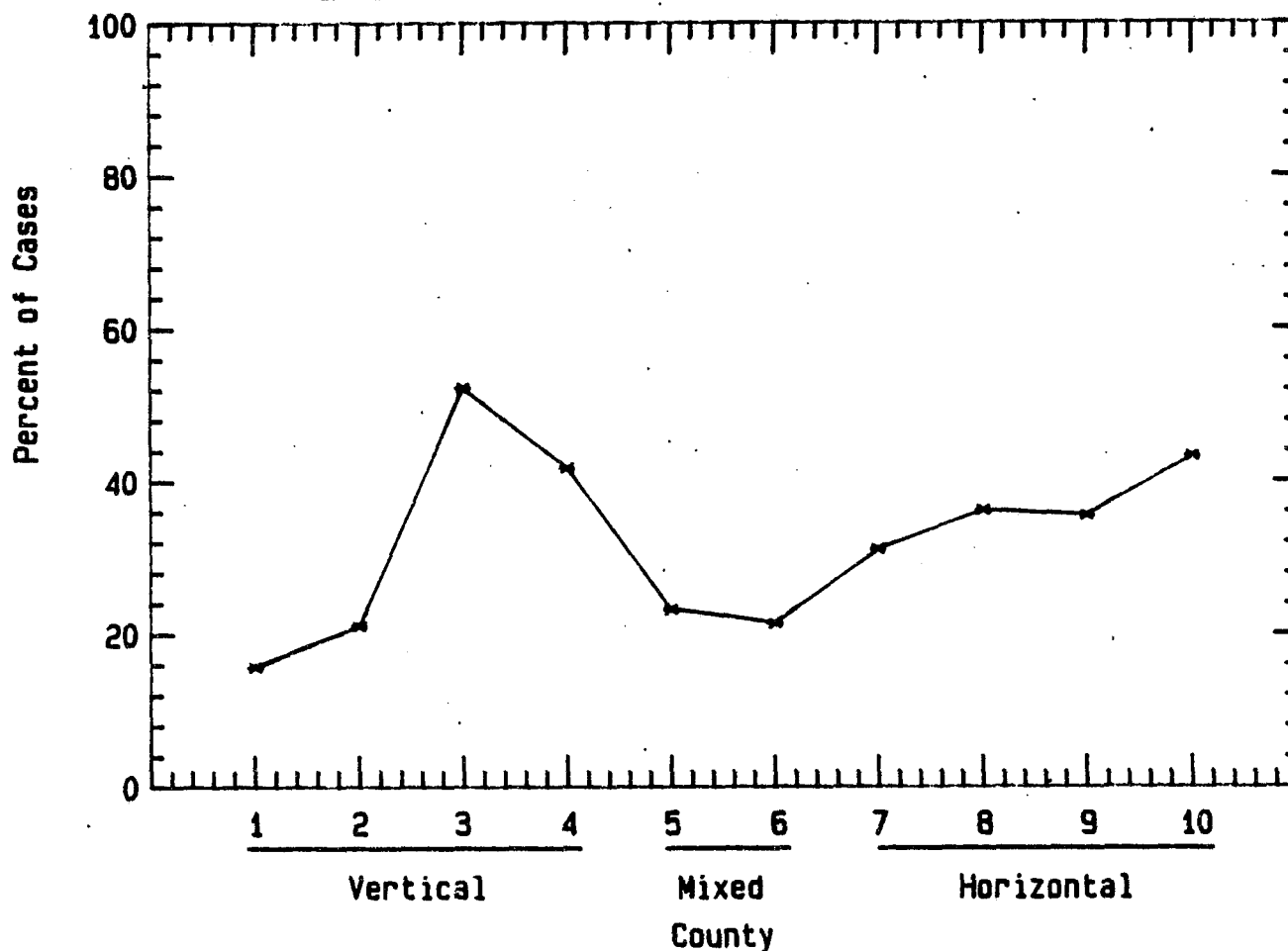
Overall, prosecutors selected 34.8 percent of all felony arrest cases to be processed in upper court. The remaining felony arrest cases were processed in lower court, where they were either dismissed or processed as non-felonies.

Individual counties varied widely as to the percent of cases selected for upper court processing.

Attending only to the overall rate (34.8%) at which felony arrest cases were selected for upper court processing masks the fact that there was wide variation among counties in this respect. The rates ranged from 15.7 percent in County 1 to 52.3 percent in County 3. With the exception of Counties 3 and 4, there was an association between size of an office and the rate at which cases were processed in upper court; larger offices generally processed a higher proportion of cases in upper court than did smaller offices.

FIGURE 4.5

PERCENT OF CASES PROCESSED IN UPPER COURT BY COUNTY



Prior criminal history, caseload, average seriousness, and crime type were associated with the rate at which counties selected cases for upper court processing.

Bivariate analyses identified specific variables that were strongly associated with the rate at which counties selected cases for upper court processing. These variables were:

- a) prior criminal history - counties with higher proportions of defendants with one or more prior felony convictions tended to have higher rates of sending cases to upper court;
- b) caseload - counties with lower caseloads tended to have higher rates of sending cases to upper court.
- c) average seriousness - counties that handled more serious crime overall tended to have higher rates of sending cases to upper court; and
- d) crime type - differences in the distribution of crime types were associated with differences in the rate at which cases were sent to upper court.

TABLE 4.2

Correlations Between the Rate at Which Cases were Selected
for Upper Court Processing and Other Relevant Variables*

<u>SCREENING</u>	
Prior Felony Convictions	= .87
Caseload	= -.65
Average Seriousness	= .65
DWI	= -.57
Use of SCIs	= .52
Robbery	= .45
Staffsize	= .42
Forgery	= .37
Assault	= -.34
Number of Arrests	= .33
Charge Reduction** for SCI Cases	= -.30
Drug	= .29
Prior Felony Arrests	= .26
Style of Prosecution	= .15
Larceny	= .13
Burglary	= .13
Upper Court Felony Conviction Rate	= .06
Theft	= -.04
Charge Reduction for Indicted Cases**	= .03

* Values greater than .63 or less than -.63 are statistically significant at the 0.5 level. Though the values for the individual crime types were not significant, they were presented due to their relatively high correlation values and because it is hypothesized that if grouped into a single variable, the composite variable would be significantly correlated with the rate at which counties selected cases for upper court processing. Only those crime types that constituted 5 percent or more of the total number of arrests were included in these analyses.

**Calculations concerning charge reductions for SCI and indicated cases were based on the percentage of cases for which the seriousness level remained the same as at arrest. This basis was selected because it represented the majority of cases in each circumstance - 60.5 percent and 83.5 percent respectively.

The rate at which specific types of crime were selected for upper court prosecution varied within counties.

Table 4.3 shows that the overall rate at which felony arrests were selected for upper court processing varied across counties. It also shows that the rate at which specific crime types were selected for upper court processing varied within counties. For example, County 5 selected 51.9 percent of all felony drug cases for upper court prosecution, and only 11.1 percent of all felony assault cases.

When comparing the rate at which each county selected specific crime types for upper court prosecution, it appears that counties with low overall rates of selecting felony cases for upper court prosecution had a similar tendency for most crime types. For example, County 1, with a relatively low overall rate of 15.7 percent, had a below average rate of selecting cases for upper court prosecution for 12 of the 14 crime types. Conversely, counties with high overall rates of selecting cases for upper court processing had a similar tendency for most crime types. For example, County 3, with a high overall rate of 52.3 percent, had above average rates of selecting cases for upper court prosecution for 12 of the 14 crime types.

It appears that across counties, prosecutors did not have a core of specific types of crime that automatically were selected for upper court prosecution. (One exception to this rule were cases involving homicide. Homicide cases were selected for upper court prosecution at very high rates regardless of a county's overall selection rate.)

TABLE 4.3
Percent of Felony Arrests
Processed in Upper Court*

Crime Type At Arrest	C O U N T Y										All Counties Combined
	V E R T I C A L				M I X E D		H O R I Z O N T A L				
	1	2	3	4	5	6	7	8	9	10	
DWI	12.1	15.1	57.5	31.3	18.5	8.3	37.2	46.5	21.2	32.2	27.3
Assault	15.2	20.1	32.7	27.8	11.1	12.4	24.7	21.9	26.0	33.2	24.4
Homicide	100.0	50.0	84.2	92.7	81.8	77.1	81.2	79.2	78.5	90.3	82.4
Sex Offense	31.0	23.1	46.4	60.6	40.8	44.6	49.2	63.8	54.6	69.1	53.1
Burglary	17.6	26.4	57.1	56.6	27.4	19.3	36.0	51.1	45.0	55.6	43.7
Crim. Misch.	3.8	0.0	44.4	10.8	2.5	1.9	4.7	8.0	9.8	10.2	8.4
Arson	27.3	45.5	57.1	57.9	50.0	55.3	46.3	40.3	50.7	70.6	54.2
Larceny	4.5	17.6	51.2	35.3	9.4	13.1	13.9	18.2	24.2	24.5	20.9
Robbery	36.8	46.7	65.7	53.3	45.6	45.0	40.9	52.6	56.6	68.1	53.9
Theft	9.8	10.4	38.3	37.5	9.6	18.3	25.8	20.9	29.5	28.6	24.9
Forgery	9.6	18.8	54.6	35.1	13.7	23.4	35.1	31.1	24.8	23.4	28.0
Drug	54.7	17.5	45.0	39.2	51.9	42.4	45.2	46.2	65.8	70.0	54.5
Firearm	0.0	21.6	43.8	48.9	17.0	24.8	26.9	54.1	44.4	58.1	41.1
Other	30.4	16.1	55.4	24.4	19.2	33.3	26.0	29.4	48.1	49.1	36.4
All Crimes Combined	15.7	21.1	52.3	41.8	23.2	21.4	31.1	36.2	35.5	43.3	34.8

*This includes cases that were eventually dismissed or returned to lower courts by grand juries.

Method of Upper Court Prosecution

Prosecutors have two formal means by which to introduce cases into the upper courts. One is to seek indictments from grand juries. The other is to file Superior Court Informations (SCIs). SCI's are "...written accusations by a district attorney filed in a superior court,... charging a person,... with the commission of a crime" [N.Y.S. CPL §200.15]. Prior to filing an SCI, a defendant must waive his right to be prosecuted by indictment [N.Y.S. CPL §195.20]. Both of these means occur at the same stage of case processing. However, whereas seeking an indictment is usually followed by further case processing, the filing of an SCI is usually synonymous with a successful plea negotiation and therefore, often considered to be the final disposition of a case. It is important to keep this distinction in mind when reviewing comparative analysis between cases processed by means of SCI, and cases processed by means of indictment (e.g., for Figures 4.8, 4.9, and 4.10).

Cases that were presented to grand juries but did not result in indictments, and cases that were processed in the upper court, but for which the means of prosecution (SCI or indictment) could not be adequately determined were not included in the analysis. These cases represent 4.8 percent and 3.3 percent of all cases processed in the upper courts, respectively.

One out of every three upper court cases was processed by an SCI.

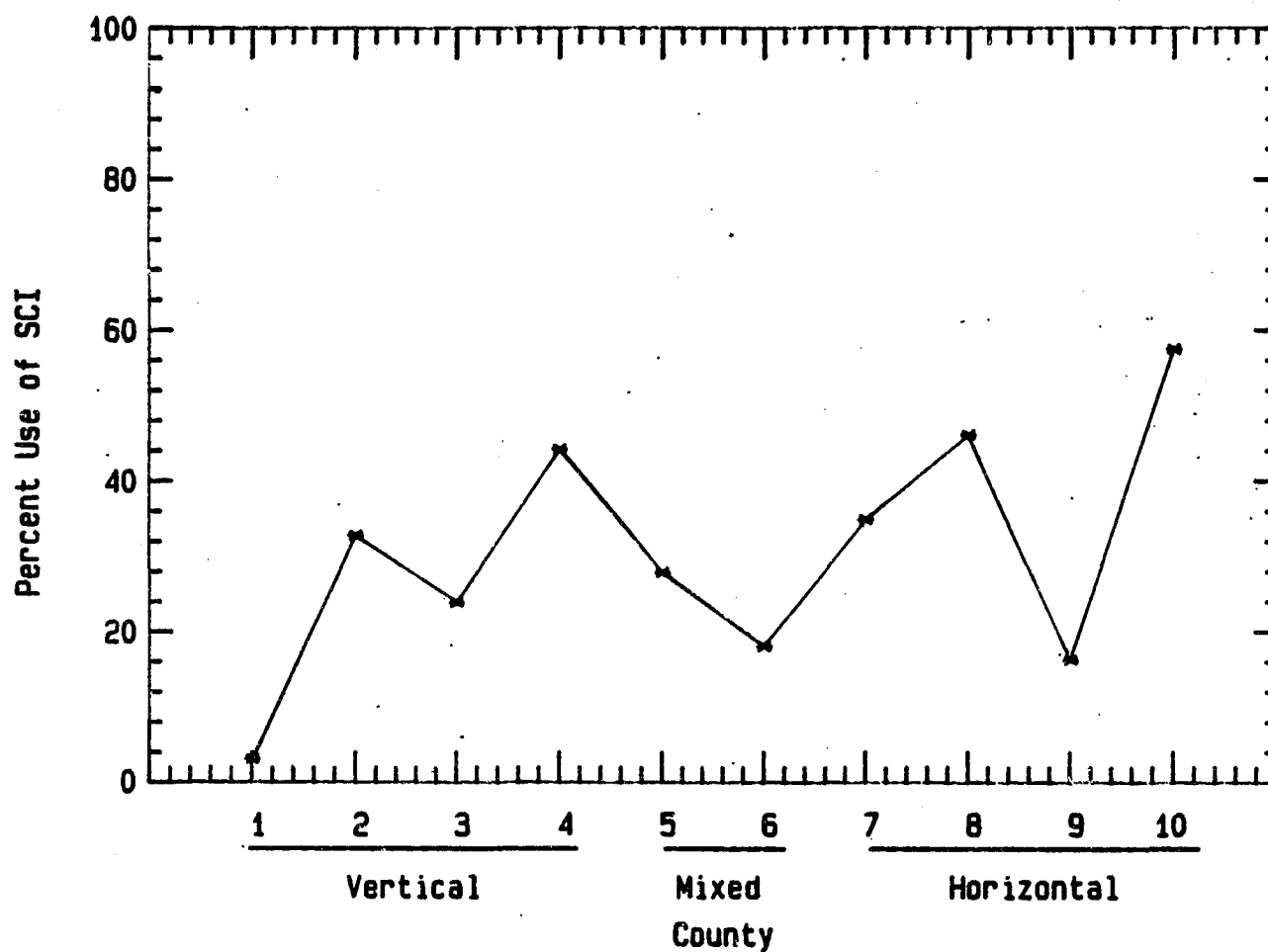
SCIs are associated with guilty pleas and occur in the preliminary stages of case processing. As a result, SCIs are considered by some prosecutors to be preferable to seeking indictments because SCIs save time and resources and are highly associated with conviction. However, for all counties combined, SCIs were filed in only one out of every three cases selected for upper court processing.

Counties varied in their use of SCIs.

The percentage of upper court cases for which counties used SCIs varied from 3.1 percent in County 1 to 57.5 percent in County 10. There was no association between use of SCIs and size of office or style of prosecution.

FIGURE 4.6

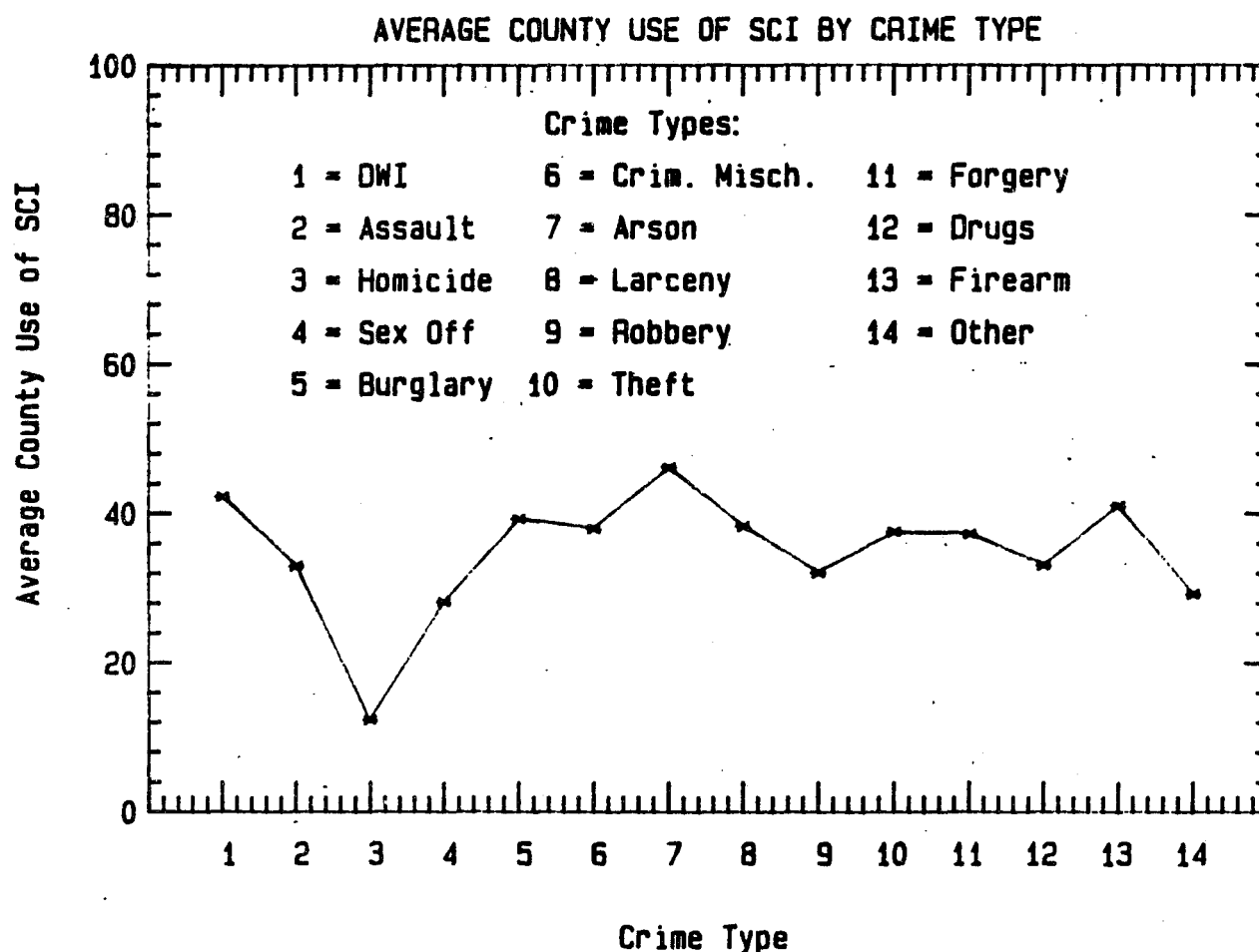
PERCENT OF UPPER COURT CASES PROCESSED BY SCI BY COUNTY



For all counties combined, the decision to process cases by means of SCI did not appear to be affected by the type of crime committed.

Overall, 35.9 percent of all cases were processed by means of an SCI. The processing of individual crime types did not substantially differ from the overall rate except for homicide, which was processed at a rate of 12.3 percent.⁶

FIGURE 4.7

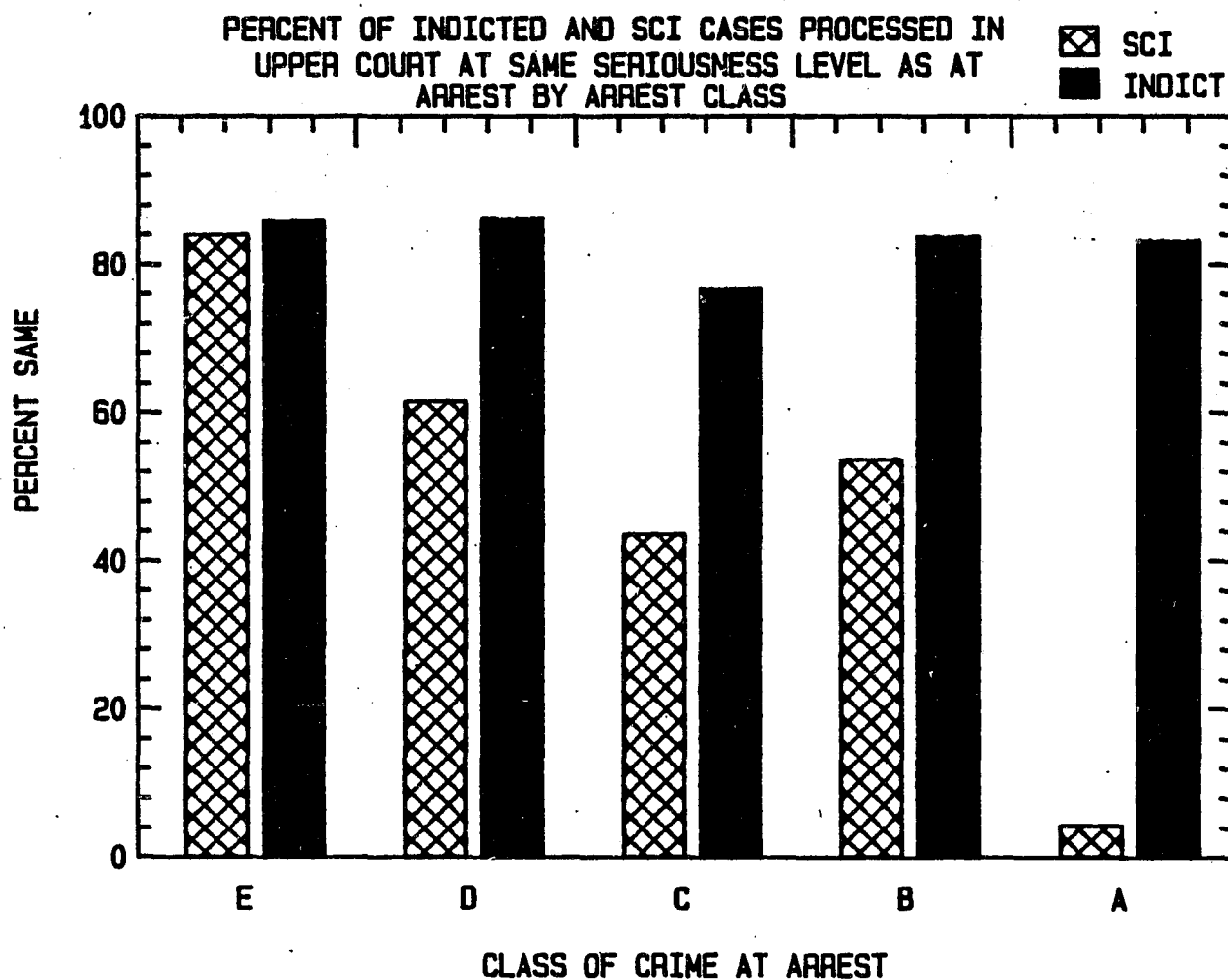


Note: See Appendix A for more information.

SCI cases were more likely to be reduced in seriousness level than indicted cases.

Information in Figure 4.8 indicates that, in general, cases processed by means of SCI had a greater probability of being processed at a reduced seriousness level (as measured by class of arrest crime) than did indicted cases. Furthermore, the higher the arrest seriousness, the more likely an SCI-processed case was reduced. This was not true for indicted cases. Irrespective of level of arrest seriousness, the likelihood of a case being indicted on the same seriousness level as at arrest was consistently high.

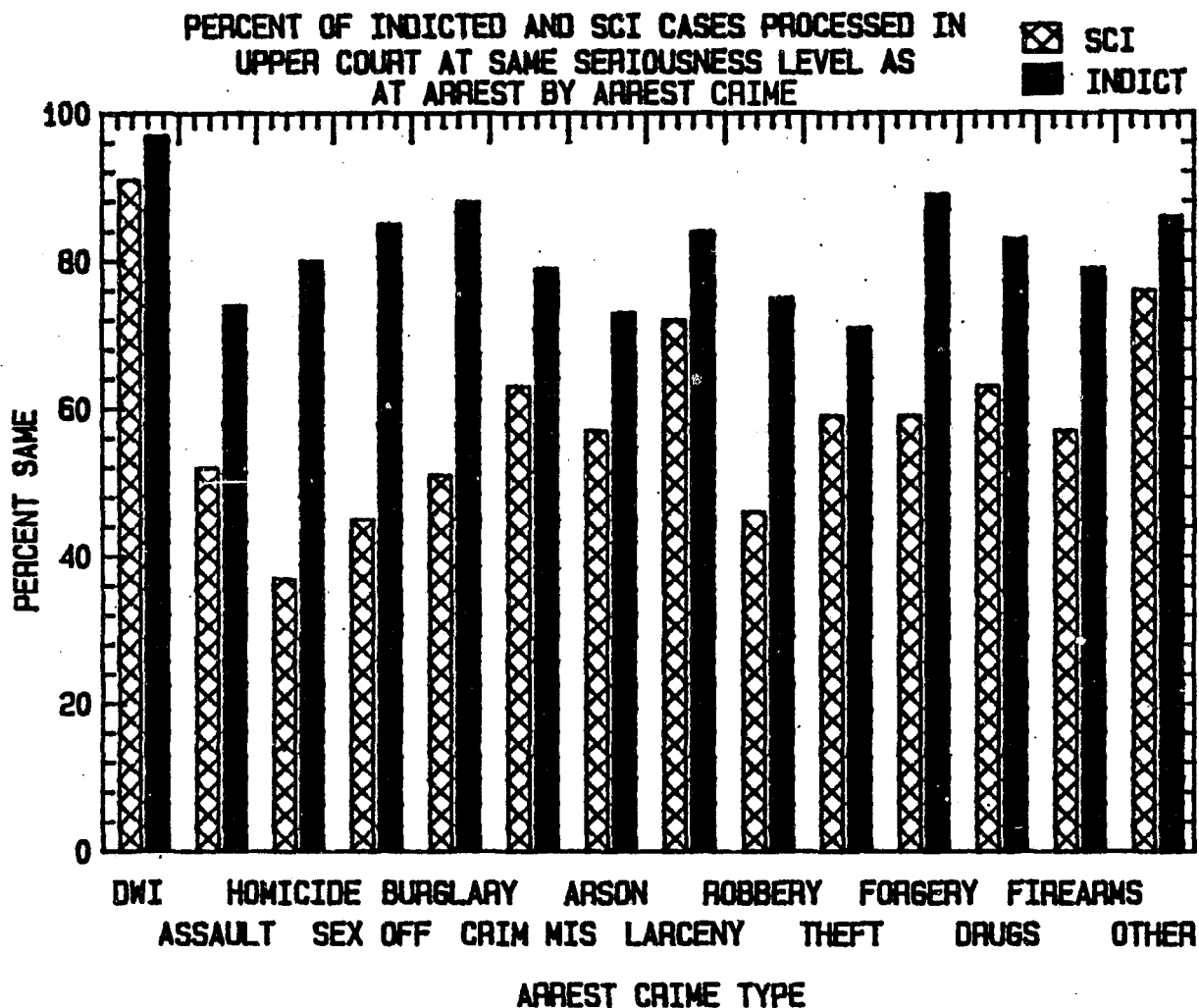
FIGURE 4.8



SCI cases were more likely to be reduced in seriousness level than indicted cases for every crime type.

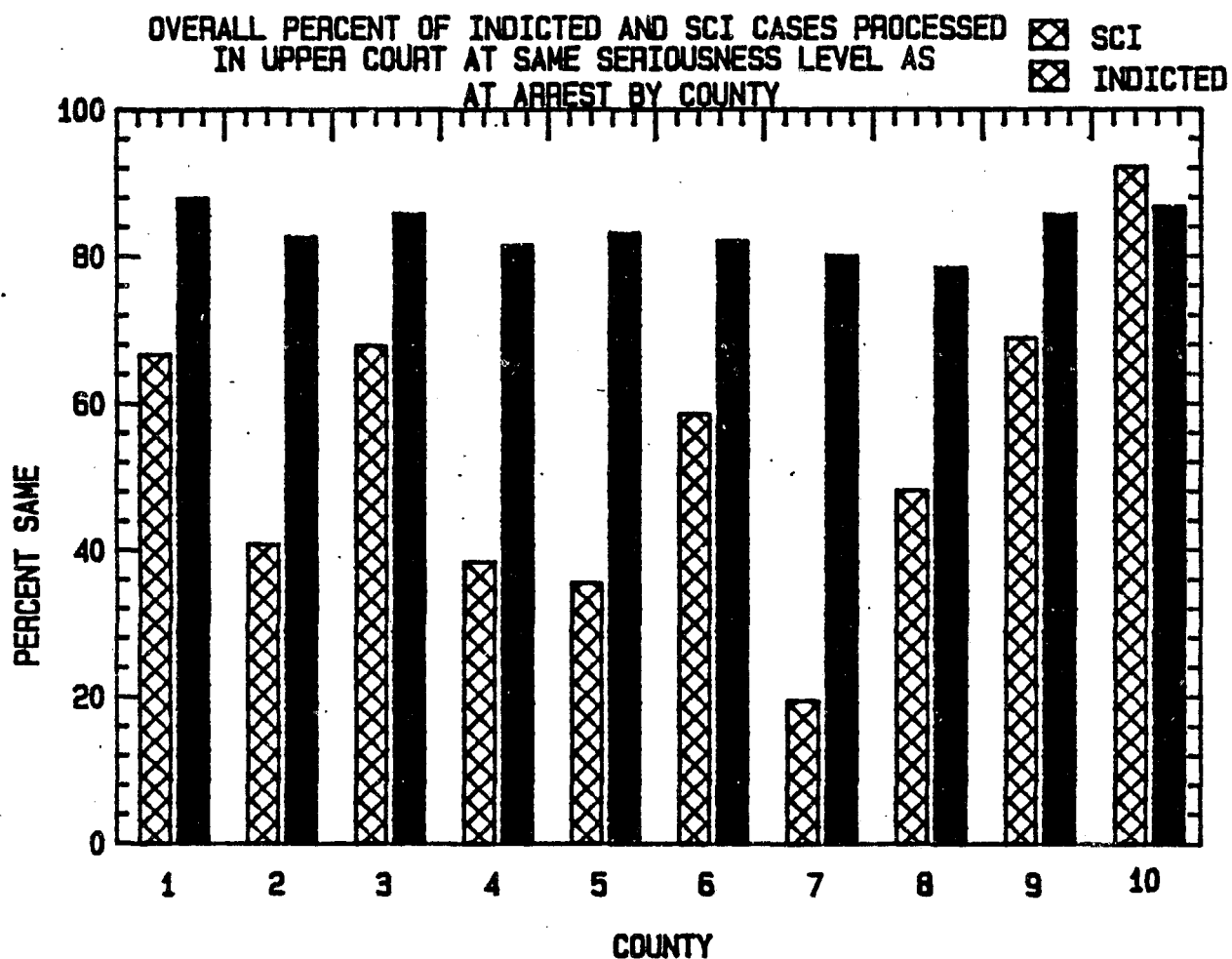
Figure 4.9 shows that the overall change in seriousness for SCI processed cases was consistent across crime type. For the ten counties combined, the proportion of cases having the same charge seriousness was less for SCI cases than indicted cases for every crime type. In general, the difference in seriousness was greater for crimes against persons than for non-person crimes.

FIGURE 4.9



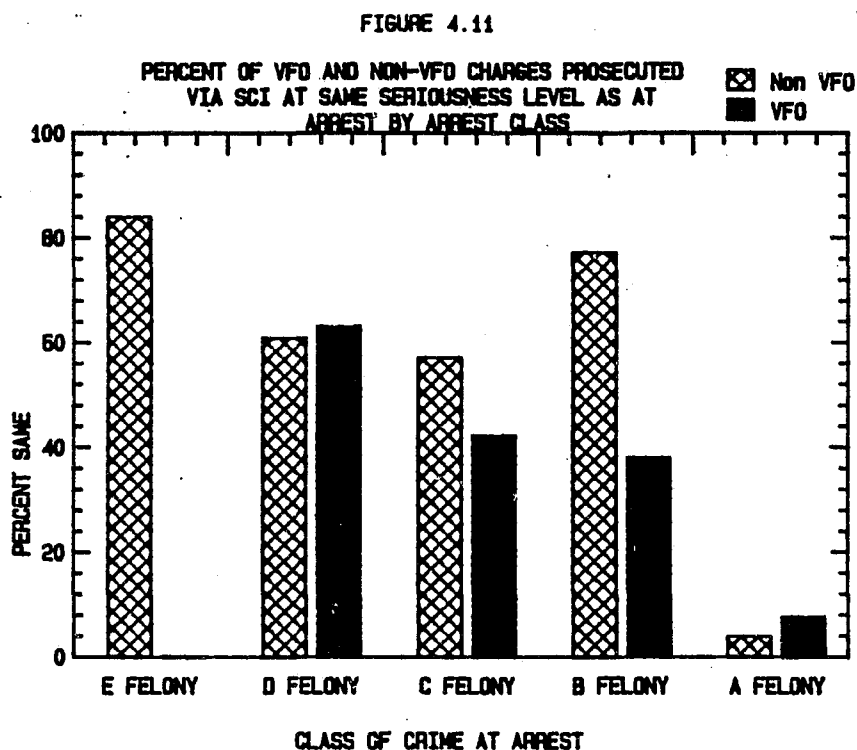
The above generalization held true across all counties except one. County 10 was unique in that the overall percentage of cases processed at the same seriousness level as at arrest was higher for SCI cases (92.2%) than for indicted cases (86.8%). This atypical pattern held true in County 10 for all but three crime types: sex offenses, criminal mischief, and other.

FIGURE 4.10



For VFO arrests processed via SCI, the more serious the arrest charge, the less likely the charge was prosecuted at the same seriousness level as at arrest.

For SCI cases, Figure 4.11 provides a further breakdown of arrest seriousness by classifying crimes into Violent Felony Offenses (VFOs) and Non-Violent Felony Offenses (non-VFOs). It can be seen from this figure that for Class C and B felonies, a smaller proportion of VFO charges were processed at the same seriousness level than were non-VFO charges. For Class D felonies, almost equal percent of VFO and non-VFO charges were processed at the same level of seriousness. However, for Class A felonies a higher proportion of VFO charges were processed at the same seriousness level than were non-VFO charges. Thus, it can be concluded that both VFO and non-VFO charges underwent charge reduction and that these reductions for VFO charges differed from those for the non-VFO charges. The direction of the charge reduction for VFO cases generally depended on the felony class - the more serious the felony charge, the more likely it was that charge reduction occurred. This was, however, not uniformly observed for the non-VFO charges. This effect was not observed for indicted case for either VFO or non-VFO cases.



Note: Violent felony offenses were defined as those offenses stated in New York Penal Law §70.02(1) plus the following Class A felonies: PL 127.27, PL 125.25, PL 135.25 and PL 150.20

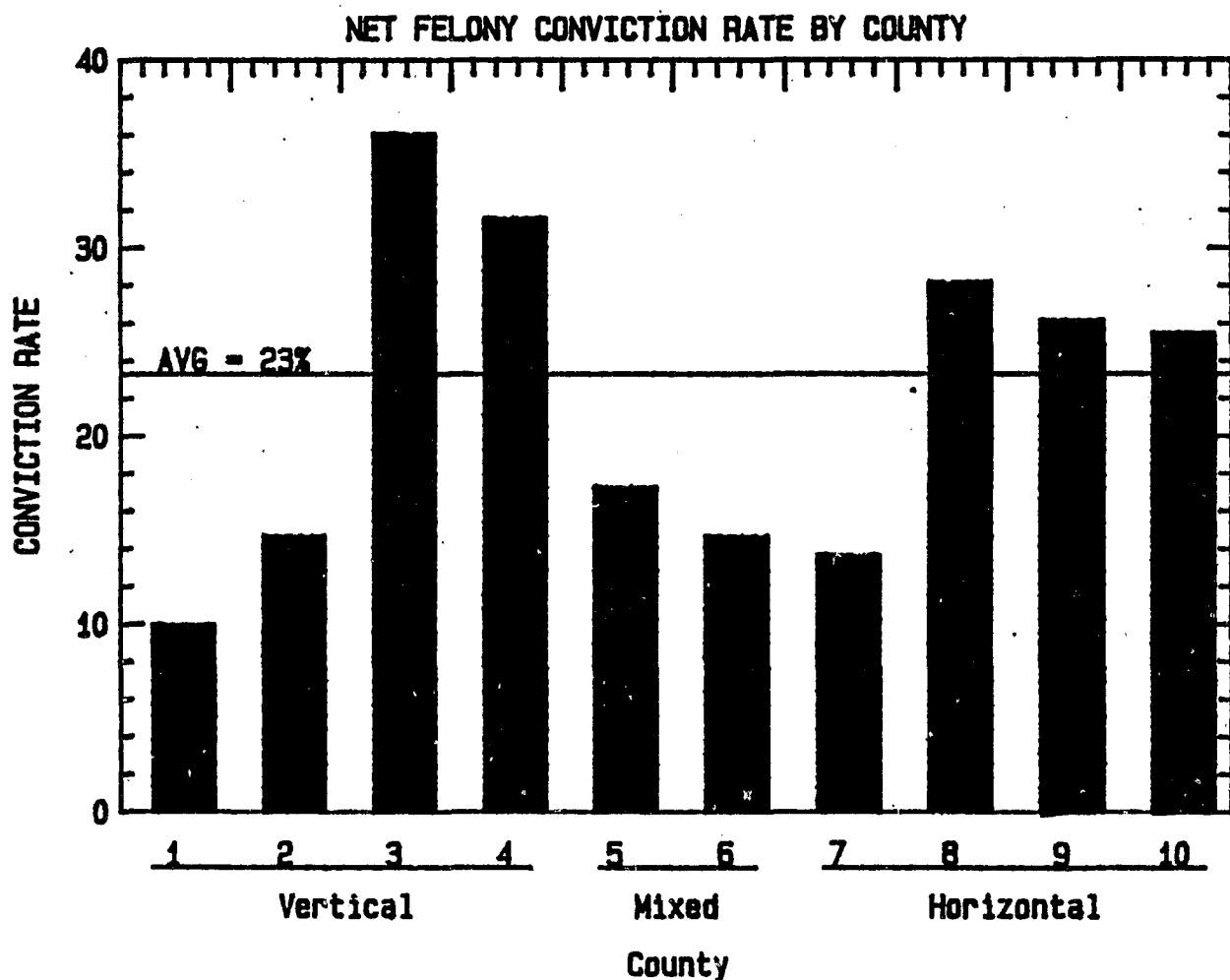
Conviction

Net felony conviction rate varied across counties⁷.

For the ten counties combined, 23.0 percent of all felony arrests resulted in a felony conviction. Counties varied from a 10.0 percent net felony conviction rate in County 1 to a 36.1 percent rate in County 3.

Three of the four horizontal offices had net felony conviction rates slightly above the ten county average. The remaining horizontal office had the second lowest rate. Of the four counties that employed vertical prosecution, two had the two highest conviction rates and two had low conviction rates.

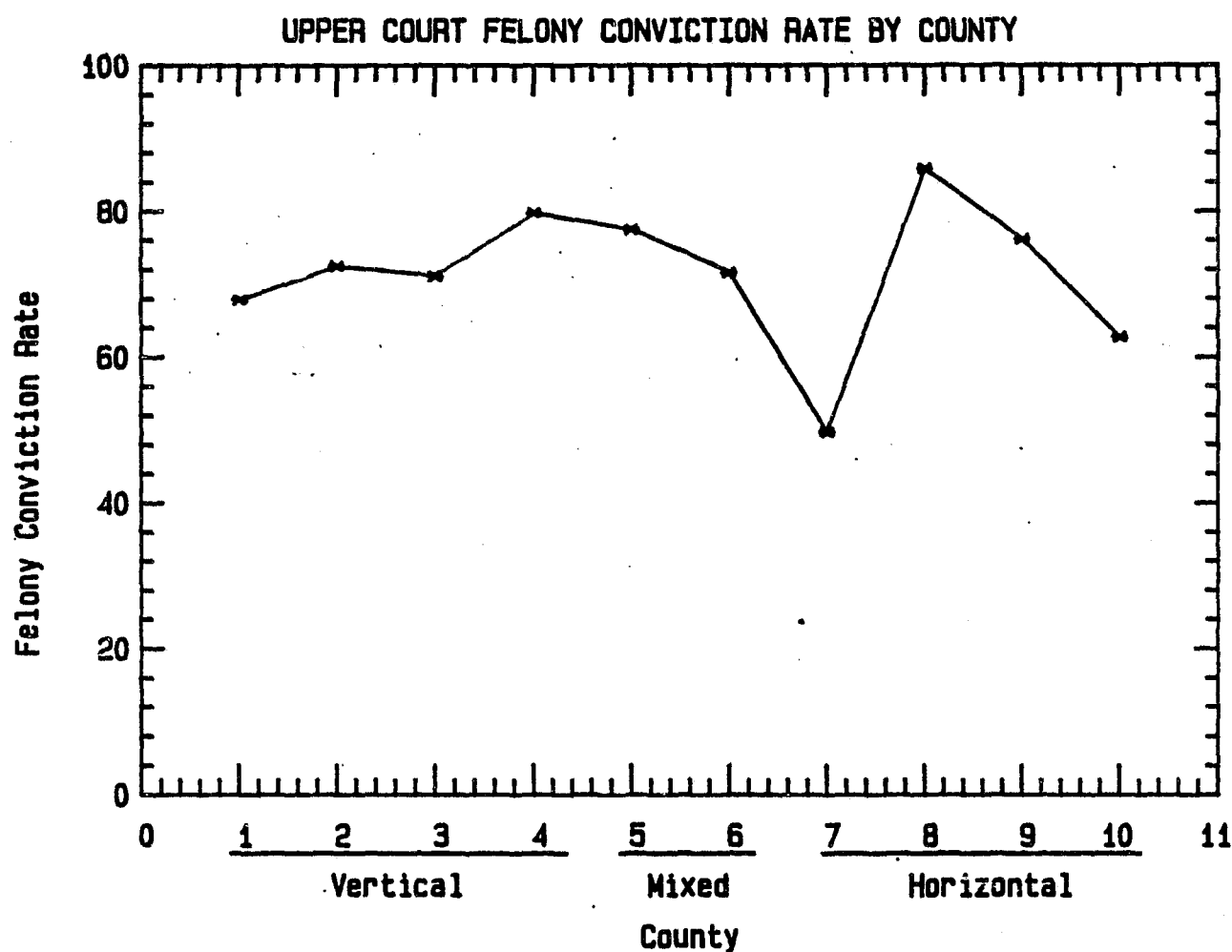
FIGURE 4.12



Rate of obtaining a felony conviction in upper court varied across counties⁸.

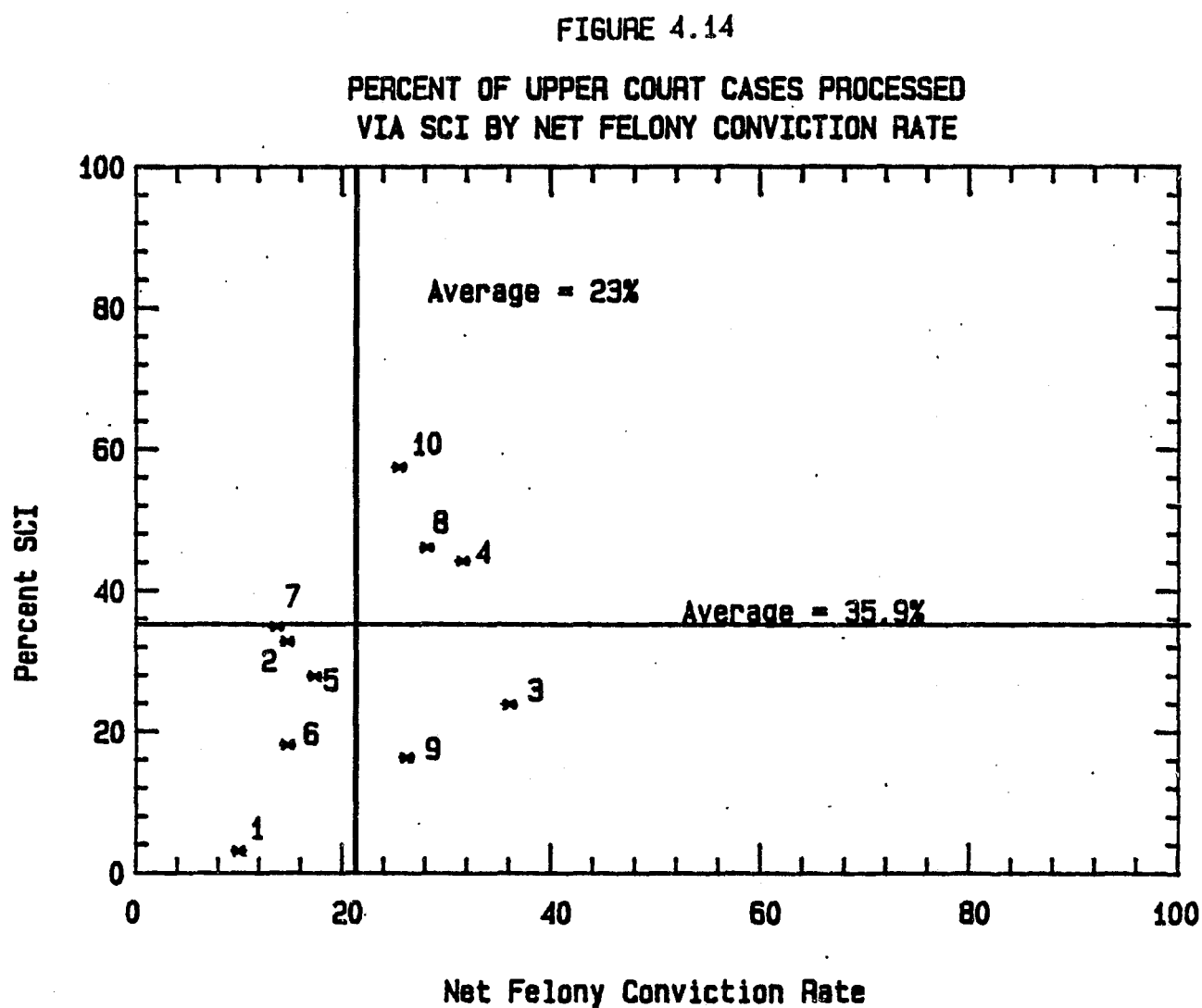
Overall, 70.4 percent of all cases processed in upper court resulted in a felony conviction. Individually, counties varied in this respect from a low of 49.7 percent in County 7 to a high of 85.9 percent in County 8.

FIGURE 4.13



Use of SCIs was not associated with higher conviction rates.

Method of prosecution (SCI/indictment) was not strongly correlated with net felony conviction rate. All counties with an above average use of SCIs (35.9%) had above average net felony conviction rates (23.0%). However, counties with a below average use of SCIs had a wide range of net felony conviction rates including both the lowest rate and the highest rate.

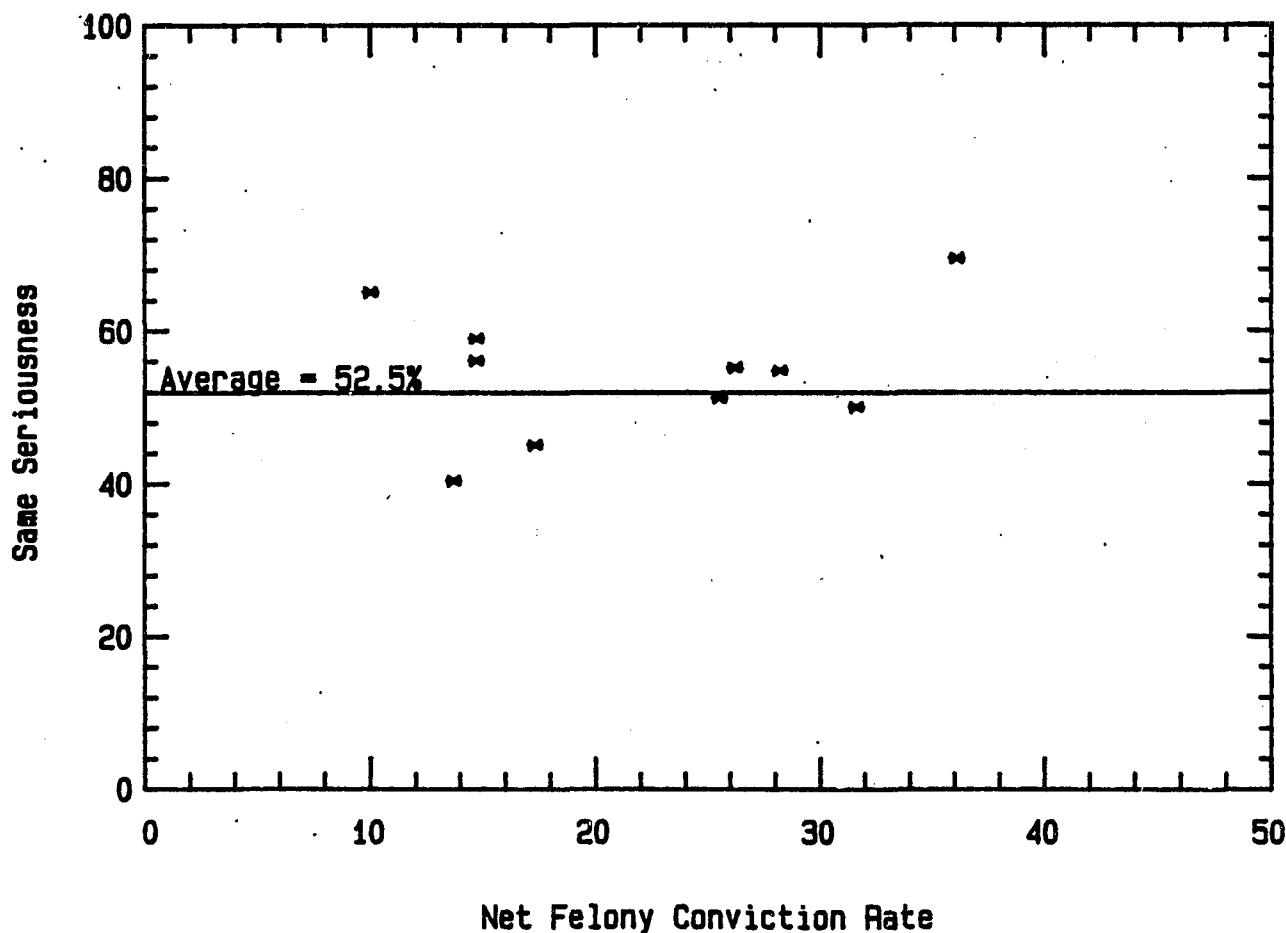


Counties with high net felony conviction rates did not necessarily engage in extensive reduction of charge seriousness.

Do offices with high net felony conviction rates engage in extensive charge reduction? Information provided in Figure 4.15 indicate that they do not. Overall, 52.5 percent of all felony convictions were at the same seriousness level as the top arrest charge. However, there was much variation among counties in this respect, and there appears to have been no association between change in charge seriousness and conviction rate. Interestingly, the office which had the highest net felony conviction rate also had the highest rate of convicting felony cases at the same seriousness level as the top arrest charge.

FIGURE 4.15

PERCENT OF CASES CONVICTED AT SAME SERIOUSNESS LEVEL
AS AT ARREST BY NET FELONY CONVICTION RATE



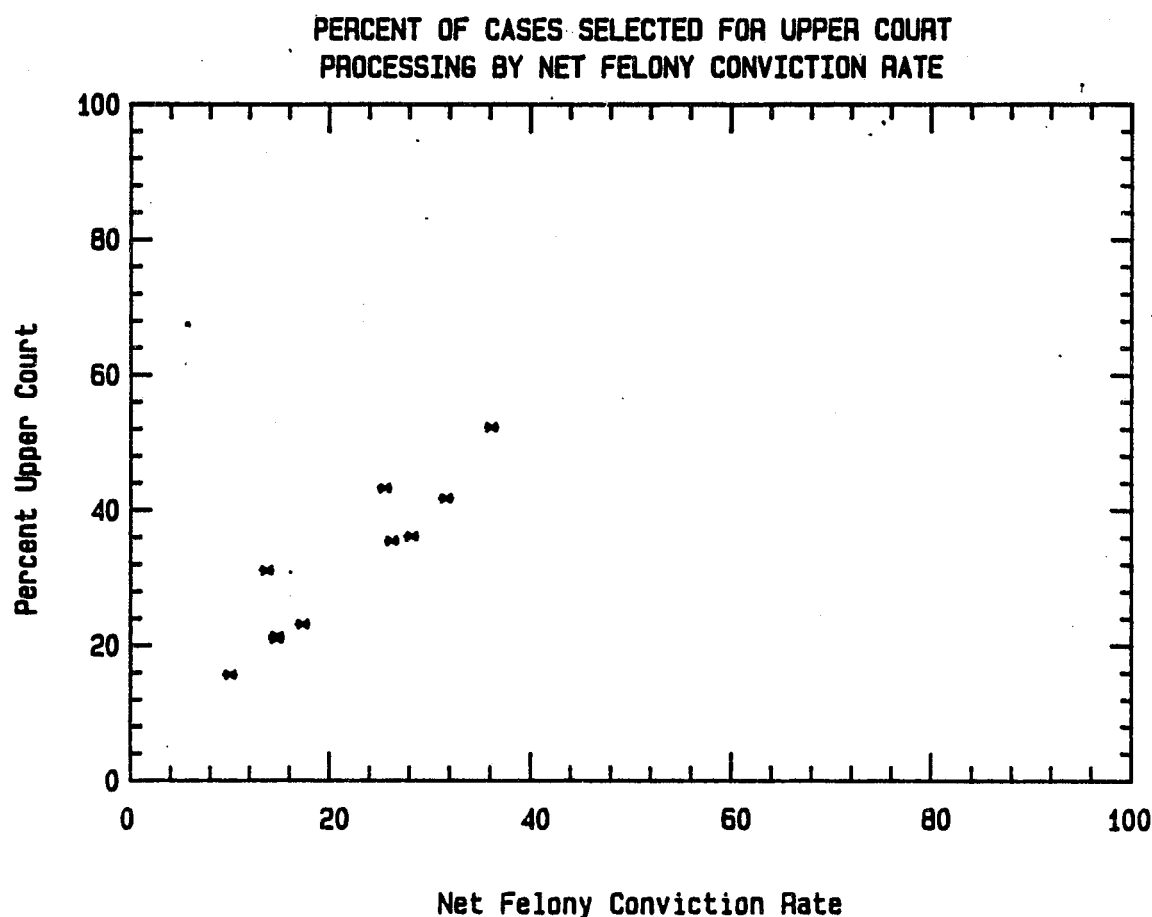
Pleas taken after indictment had less reduction in charge seriousness than pleas taken prior to indictment.

Indictment processing affected change in seriousness level. Approximately one half (45.6%) of the cases that were processed by a plea of guilty following indictment were convicted at the same seriousness level as the top arrest charge. One third (33.2%) of the cases that plead guilty prior to indictment did so at the same seriousness level as the top arrest charge.

The rate of selecting cases for upper court processing was correlated to net felony conviction rate.

Overall, net felony conviction rates were directly associated with the rate at which cases were selected for upper court processing ($r = .93$). The higher the rate of sending cases to upper court, the higher the net felony conviction rate.

FIGURE 4.16



SECTION V

CONCLUSIONS

A major finding of this study is that the probability of a felony conviction given a felony arrest (net felony conviction rate) varied substantially across the ten counties studied. By definition, there are only two factors that determine net felony conviction rate: the rate at which counties select felony arrests for upper court processing⁷ (herein referred to as screening rate), and the rate at which prosecutors obtain felony convictions for cases processed in upper court.

Of these two factors, only the screening rate was strongly associated with the net felony conviction rate. The rate at which counties obtain felony convictions in upper court was more uniform across counties and was minimally associated with the variation in net felony conviction rate.

As a result of this finding, an attempt was made to identify those variables that could help explain the variation in the screening rate. Bivariate relationships were examined between screening rate and office characteristics, defendant characteristics, and characteristics of the instant offense. These analyses cast doubt on some otherwise plausible explanations. For example, screening rate was not significantly correlated with the degree to which counties engaged in charge reduction practices between arrest and upper court processing, nor with certain office characteristics such as style of prosecution and centralization of decisionmaking.

The analysis did, however, identify four variables that were strongly associated with the screening rate. These variables were:

- a) caseload - counties with lower average caseloads tended to have relatively higher screening rates;

- b) prior criminal history - counties with higher proportions of defendants with one or more prior felony convictions tended to have relatively higher screening rates;
- c) crime type - differences in the distribution of arrest crime types were associated with differences in the screening rate; and
- d) average seriousness - counties that handled more serious crime overall tended to have relatively higher screening rates.

It should be emphasized that the above analyses were based on a sample of ten counties. Advanced statistical analyses were not used because of the small sample size. As a result, statistical analyses were limited to bivariate associations. Only the very strongest associations are highlighted above. In addition, these associations have considerable face validity; caseload, crime type, average seriousness, and prior criminal history are all variables that would be expected to affect prosecutorial decisionmaking. Thus, it is reasonable to expect that these associations might be replicated in analyses of a larger set of jurisdictions. However, further exploration of the nature of these relationships would require multivariate analyses of a larger sample.

In summary, the major findings of this study are that 1) net felony conviction rate varied across counties, 2) net felony conviction rate was primarily a function of the rate at which counties selected cases for upper court processing, and 3) four variables were identified that were directly associated with the rate at which counties selected cases for upper court processing, and therefore, were indirectly associated with the net felony conviction rate. Due to the limitations on statistical testing in this study, further research is needed to more fully investigate the potential effect of the above mentioned variables on net felony conviction rate.

Ongoing Research

Presently, additional research is being conducted that will analyze felony case processing as it occurred within all counties across New York State. The data set for this additional research is modeled after the merged CCH/ISS analysis file developed for the ten county study. The new database contains arrest, indictment, and disposition information from all 62 counties, and expands the study period to include 1985.

This research will expand on the findings of the ten county study in at least two ways: 1) it will be possible to test the extent to which the findings of the ten county study hold true statewide; and 2) due to the larger number of counties involved, more sophisticated statistical analyses can be used. For example, it will be possible to test alternative hypotheses about the pattern of causal relationships among variables.

ENDNOTES

¹Though not common among the counties involved in this study, some district attorney's offices, especially those in New York City, have a pre-arraignment complaint unit. For those offices, such a unit may constitute an additional case processing stage. This information was provided by Mr. Robert Kaye, Assistant Coordinator for the Office of the Mayor, City of New York.

²Kamisar, Y., W. LaFave, and J. Israel. Modern Criminal Procedure: Cases Comments and Questions (St. Paul, MN: West Publishing Co., 1974), pp. 9-10.

³Comment provided by Mr. Robert Kaye.

⁴Superior Court is defined as either the supreme court or a county court [N.Y.S. CPL §10.10.2].

⁵Determination of whether cases were selected for lower or upper court prosecution was based on one of two criteria: the existence of an upper court disposition, or the existence of any ISS information.

⁶A defendant may waive indictment and consent to be prosecuted by superior court information for all offenses except Class A felonies [N.Y.S. CPL §195.10(b)].

⁷Net felony conviction rates were calculated by dividing the number of felony convictions that occurred within a county by the total number of felony arrests that occurred within that county. These calculations were not limited to those cases for which disposition information was available. As a result, these calculations represent an underestimate of the actual net felony conviction rates. This is because disposition information on cases processed in upper court were made available from two independent sources of data (the Computerized Criminal History [CCH] database, and the Indictment Statistical System [ISS] database). Disposition information on felony cases processed in lower court was made available through only one source of data (the CCH database). Therefore, there was a greater probability of having disposition information on cases processed as felonies in upper court than on cases processed as non-felonies in lower court. If the calculations were conducted only on those cases for which disposition information was known, a greater proportion of cases that resulted in felony convictions would have been included in the calculations thereby providing an overestimate of the actual net felony conviction rate.

By the same logic, conducting calculations on all cases whether disposition information was available or not, underestimated the actual felony conviction rate. Analyses were conducted both ways. The results provided similar patterns of data of which the substantive meaning did not vary.

ENDNOTES (continued)

⁸Upper court felony conviction rates were calculated by dividing the number of felony convictions that occurred within a county by the total number of cases selected for upper court prosecution. It should be noted that for each county, the total number of cases selected for upper court processing did include some non-felony cases. Analysis conducted both with and without these cases provided a similar pattern of results of which the substantive meaning did not vary. Also, the calculations were limited only to those cases for which disposition information existed.

APPENDIX A

APPENDIX A

Percent of Upper Court Cases Processed by SCIs*

Crime Type At Arrest	C O U N T Y										All Counties Combined
	V E R T I C A L				M I X E D		H O R I Z O N T A L				
	1	2	3	4	5	6	7	8	9	10	
DWI	5.4	34.6	10.9	54.6	31.8	71.7	48.6	70.6	10.9	70.4	42.3
Assault	13.3	28.1	29.0	45.2	26.8	16.4	33.4	33.5	6.4	59.9	33.0
Homicide	0.0	0.0	18.8	21.1	12.0	0.0	10.8	18.7	6.5	13.7	12.3
Sex Offenses	0.0	33.3	44.4	43.2	26.0	5.4	29.2	12.9	15.8	53.3	28.2
Burglary	2.1	42.3	19.0	53.7	43.1	13.8	41.2	56.7	10.6	63.6	39.3
Criminal Mischief	0.0	-	47.4	44.4	100.0	0.0	66.7	57.9	9.4	59.1	38.0
Arson	0.0	40.0	31.3	54.8	57.1	0.0	28.1	47.8	26.9	82.1	46.2
Larceny	0.0	10.5	41.9	41.1	36.1	18.5	31.4	44.1	21.4	61.6	38.3
Robbery	0.0	24.0	11.1	35.9	33.0	22.8	26.1	37.0	11.4	50.2	32.1
Theft	0.0	14.3	33.3	33.0	42.1	14.3	45.5	51.4	14.3	54.5	37.6
Forgery	14.3	50.0	29.8	24.3	39.3	22.4	27.6	65.3	19.4	67.6	37.3
Drugs	0.0	71.4	28.6	56.1	4.1	14.5	21.1	27.0	36.7	45.9	33.1
Firearms	-	33.3	21.4	34.4	27.8	8.0	40.0	44.1	12.3	63.4	41.1
Other	0.0	0.0	10.0	22.7	22.2	11.1	19.3	27.1	20.2	56.8	34.9
All Crimes Combined	3.1	32.8	23.9	44.2	27.9	18.1	34.9	46.1	16.3	57.5	35.9

*Based on SCI and indicted cases only.

APPENDIX B

APPENDIX B

Percent of Indicted and SCI Cases Processed in Upper Court at Same Seriousness Level as at Arrest by Arrest Crime

		C O U N T Y										All Counties Combined
		V E R T I C A L				M I X E D		H O R I Z O N T A L				
Crime Type	Path	1	2	3	4	5	6	7	8	9	10	
DWI	SCI	100*	89*	100	100	100	100	65	100	95	100	91
	Ind	97	100	98	98	99	77	95	98	98	98	97
Assault	SCI	0*	22*	67*	26	36	33*	7	45	53	95	52
	Ind	85	83	77	77	70	78	64	64	82	77	74
Homicide	SCI	-	-	0*	38*	33*	-	27	18	0	82	37
	Ind	67*	100*	92	90	82	81	71	72	87	81	80
Sex Offenses	SCI	-	33*	70	41	31	67*	7	55	36	84	45
	Ind	88	100*	80	85	84	83	83	89	83	90	85
Burglary	SCI	100*	46	73	27	17	29	7	33	52	94	51
	Ind	87	84	85	85	90	86	88	85	89	92	88
Crim. Misc.	SCI	-	-	67*	75*	33*	-	13*	73	80*	77	63
	Ind	100*	-	60	80	-	100*	75*	37	85	89*	79
Arson	SCI	-	0*	20*	18	0*	-	0*	36	50	87	57
	Ind	67*	100*	64	57	100*	75	87	75	67	73	73
Larceny	SCI	-	0*	78	53	62	67	11	54	85	95	72
	Ind	75*	88	84	81	70	89	88	76	84	93	84
Robbery	SCI	-	33*	20*	23	7	31	3	29	24	81	46
	Ind	57*	74	75	75	68	78	73	72	75	78	75
Theft	SCI	-	100*	75	77	25*	60*	13	47	79	90	59
	Ind	88*	33*	67	75	46	67	63	66	77	78	71
Forgery	SCI	100*	0*	82	30	36	62	2	56	82	99	59
	Ind	100*	50*	95	92	77	91	88	84	87	94	89
Drugs	SCI	-	20*	25	38	0*	41	0	11	79	92	63
	Ind	97	100*	83	75	89	85	69	81	84	89	83
Firearms	SCI	-	50*	67*	18	40*	100*	0	29	60	93	57
	Ind	-	50*	82*	83	77	61	65	80	85	86	79
Other	SCI	-	-	0*	60	100*	100*	9	44	83	91	76
	Ind	50*	80	96	74	50*	92	94	81	86	94	86
All Levels Combined	SCI	66.7	40.8	67.9	38.4	35.6	58.6	19.5	48.2	68.9	92.2	60.5
	Ind	87.9	82.7	85.8	81.6	83.2	82.1	80.1	78.5	85.7	86.8	83.5

*Based on less than 10 cases.