

RESEARCH REPORT NO. 53

GUIDANCE IN SENTENCING:  
THE PRE-SENTENCE DIAGNOSTIC OBSERVATION PROGRAM

Robert M. Dickover

Kay A. Durkee

Research Division  
California Department of Corrections  
Sacramento, California

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## INTRODUCTION AND HISTORICAL BACKGROUND

### The Pre-Sentence Diagnostic Program

The title of this report, Guidance in Sentencing, refers to the option that criminal courts in California have of sending, prior to sentencing, an individual convicted of an offense punishable by imprisonment to the Department of Corrections (CDC) for the purpose of obtaining a diagnostic evaluation and a recommendation for an appropriate sentence. The program in which these evaluative services are rendered is referred to in the Department as the diagnostic observation or Z-case program. The purpose of this report is to look at this program historically and as it has functioned more recently, highlighting some of its problems and some of its achievements.

At the time of this writing (March 1974) male offenders referred for the diagnostic observation are sent to the Reception-Guidance Centers (RGC's), which are located at the California Institution for Men (Chino), the California Medical Facility (Vacaville), and the Deuel Vocational Institution (Tracy). The California Institution for Women also offers this same service for women felons; however because of the small number of women involved, the discussion in this report is restricted to the male cases. The legislation establishing the diagnostic observation program became effective on September 11, 1957, and is embodied in the Penal Code in Section 1203.03.

### Historical Background

Section 1203.03 of the Penal Code is the resultant of a recommendation to the California State Legislature by The Special Study Commission on Correctional Facilities and Services that was appointed on September 1, 1955, by then Governor Goodwin J. Knight. The recommendation appeared in the third major report of the Commission, entitled Probation in California (1957). The specific wording of the recommendation is as follows:

Provide, as part of the pre-sentence investigation, that adults convicted in the superior courts of the State be eligible for referral to the Department of Corrections diagnostic facilities for study and return to court with recommendation prior to imposition of sentence (Special Study Commission, 1957, p.23).

The Special Study Commission consisted of four members and the Chairman, Austin MacCormick. It was assisted by a staff and by several advisory bodies including the Board of Corrections, the Advisory Body for Court Processes in Probation, and the Advisory Committee for Probation Case Services. Included as members of these advisory bodies were judges, district attorneys, probation officers, lawyers, public defenders, administrators from the Department of Corrections and the Department of the Youth Authority, and members of the parole boards (Adult Authority and Youth Authority).

The first sentence in the preface to the report of the Special Study Commission states that "The wardens of state prisons in this country frequently remark that many of their inmates belong, not in prison, but outside--under supervision by the convicting court" (1957, p. 9). Observing that at that time about half

of the convicted defendants who were eligible for prison sentences were being placed on probation, the Commission proposed to investigate probation in the various jurisdictions of California with the intention of, among other things, determining if it was used too little or too much. In this connection, one of the principal concerns of the Commission was the variability in the use of probation and the commitment to prison by the various counties. Evidence on this point is shown in Table 1. For the four years prior to the publication of the report combined (1954-57), the percentages of convicted Superior Court defendants sentenced to the Department of Corrections from counties with populations greater than 50,000 ranged from 22.5 for Los Angeles County to 55.0 for Yolo County. While no one would deny that the differences in the use of the various dispositions among the counties could be accounted for in part by differences in the characteristics and offense patterns of the people convicted in them, it was highly unlikely that the variability in sentencing practices among the various jurisdictions was wholly a function of differences in the characteristics of the intake. What was probable was that these differences in sentencing reflected very substantially differences in decision-making policies or practices among the various courts. These, in turn, were at least in part a function of differences in the attitudes, values, and standards of the various participants in the process of making decisions in the courts, including the probation officers, the defense attorneys, the district attorneys, and the judges.

Numerous questions were raised by the existence of such evidence of variability among Superior Court jurisdictions. One of the most important of these was that if Los Angeles County could live with an average percentage of commitments to prison in 1954-57 of 22.5, why couldn't the others? Were the convicted felons in Yolo and other counties more desperately felonious than those in Los Angeles County? The quotation in the first sentence of the preceding paragraph bears directly on this issue. Many of the administrators of the state prison system in California felt that it, along with the rest of the systems in the country, was receiving commitments who had the capability of remaining in the community under the supervision of the convicting courts. Presumably, the differences among the counties was partly the result of different patterns of committing individuals to prison who could be managed satisfactorily in the community.

The 1203.03 alternative was designed as one means of dealing with the problem of the inappropriate commitment to prison. It does so in two ways. The first way is specific to the case committed for the diagnostic observation. If the guidance center staff feels that the case can be maintained in the community, then they may so recommend to the committing court with the anticipation that there is some likelihood that the court will accept their recommendation. The second way might be referred to as norm setting. By recommending a non-prison disposition in a given case and justifying it so that it is accepted by the court, the RGC staff may assist in the development of a standard of sentencing for the particular judge reviewing the recommendation. The outcome may not only be his accepting the non-prison recommendation for the given case but applying the standard it suggests to other cases in the future which appear to be roughly similar in patterns of offense and characteristics. The expectation in the minds of its proponents might therefore have been that one of the long-term contributions of the 1203.03 procedure would be some assistance in

Table 1  
 PERCENTAGES OF CONVICTED SUPERIOR COURT DEFENDENTS SENTENCED  
 TO THE DEPARTMENT OF CORRECTIONS FROM COUNTIES WITH A POPULATION  
 GREATER THAN 50,000

1954 - 57

County	Percentage of Felony Convictions Committed to CDC				
	1954	1955	1956	1957	Four-Years Combined 1954-57
Alameda - - - - -	25.3	34.1	31.4	27.6	29.0
Butte - - - - -	18.2	28.4	33.3	23.6	25.3
Contra Costa - - -	34.3	39.0	32.3	34.0	34.6
Fresno - - - - -	34.5	44.7	36.6	34.2	37.5
Humboldt - - - - -	26.9	17.6	27.2	23.5	24.1
Imperial - - - - -	36.1	50.4	48.4	37.5	42.6
Kern - - - - -	31.3	41.5	54.9	37.2	41.7
Los Angeles - - - -	23.7	19.7	24.2	22.2	22.5
Marin - - - - -	27.6	26.0	27.6	27.0	26.6
Mendocino - - - - -	48.7	56.2	39.3	38.3	44.8
Merced - - - - -	34.8	41.0	41.8	41.7	39.6
Monterey - - - - -	25.6	20.3	25.5	25.3	24.2
Napa - - - - -	10.3	28.6	17.3	31.7	23.5
Orange - - - - -	32.5	32.1	35.5	34.2	33.6
Riverside - - - - -	31.5	29.8	44.3	22.7	30.8
Sacramento - - - -	27.6	28.7	28.5	27.3	27.7
San Bernardino - -	35.5	35.9	47.7	42.2	40.4
San Diego - - - - -	36.9	44.4	41.6	39.2	40.3
San Francisco - - -	29.7	22.0	28.8	33.9	28.9
San Joaquin - - - -	47.8	47.0	48.5	37.9	45.4
San Luis Obispo - -	49.0	34.8	37.7	39.1	39.7
San Mateo - - - - -	23.3	24.3	22.8	27.7	24.7
Santa Barbara - - -	27.2	42.9	36.5	50.0	39.7
Santa Clara - - - -	28.6	29.4	37.5	28.6	31.0
Santa Cruz - - - - -	42.2	38.6	45.3	42.9	42.5
Solano - - - - -	42.0	41.3	29.4	29.8	34.6
Sonoma - - - - -	38.2	20.7	32.3	27.2	28.5
Stanislaus - - - - -	26.4	29.4	43.7	42.7	35.1
Tulare - - - - -	32.4	29.9	30.9	31.8	31.3
Ventura - - - - -	45.2	42.4	36.9	26.7	37.3
Yolo - - - - -	52.6	51.8	48.8	65.9	55.0
State - - - - -	28.2	27.2	30.3	28.0	28.4

reducing the variability among counties in the utilization of the prison sentence and other dispositions. This matter will be returned to again in the concluding section of this report after the presentation in the earlier sections of information about the 1203.03 process and about trends in its utilization.

## OVERVIEW OF THE PRE-SENTENCE DIAGNOSTIC OBSERVATION PROGRAM

### The Procedure of the Program

The period of time that a convicted offender may be confined in a Reception-Guidance Center under Section 1203.03 may not exceed 90 days. Within the 90-day period, the administrator of the RGC acting for the Director of Corrections is to report to the court his diagnosis and recommendations for a disposition for the offender. The RGC staffs have also followed the practice of specifying the reasons for their recommendations. The recommendations reported to the court for the disposition of a case may be either for supervision in a state facility or in the community. The recommendations for supervision in state facilities have primarily been for commitment as felons to the Department of Corrections. However for smaller numbers of cases, the Civil Narcotic Addict Program at the California Rehabilitation Center and the programs of the California Youth Authority and the Department of Mental Hygiene have been recommended. The alternatives recommended for dealing with the cases at the community level have included straight probation, probation with jail with or without other conditions, probation with conditions other than jail, and a jail sentence only. Straight probation and straight jail sentences have been recommended infrequently. The community dispositions recommended with the greatest frequency have involved probation with some combination of conditions, sometimes including jail and sometimes not. In some cases the specification of conditions other than jail has been of little use to the courts and to the probation officers because of the unavailability of the services specified as conditions. For example, a condition of psychiatric care has been recommended in some instances, along with probation, even though the probation departments might have had no means for securing this service for their clientele. The position that some of the RGC administrators have taken is that it is inappropriate to make a study of every county referring cases under Section 1203.03 to determine what services it can make available to probationers and then restrict their recommendations for conditions of probation to those services. They point out, for example, that if a probation department doesn't have psychiatric services available for its clientele, it should have, since every county in the state has offered outpatient psychiatric services for a number of years through programs that are largely state-funded. The RGC administrators see their recommendations for these services as a means of motivating counties to extend them to probation cases.

In arriving at the recommendations for each case, the RGC staff performs a complete work-up utilizing both interviews and testing. Information on the life history, experiences, attitudes, psychiatric problems, etc., of the individual is compiled in the Cumulative Summary which is returned to court along with the statement recommending the disposition that the RGC staff feels is appropriate. Evaluations made by psychologists and, in some cases, psychiatrists on the basis of interviews are used in formulating the recommendations and included in the Cumulative Summary. In a number of very significant respects, the information included in the Cumulative Summary is more comprehensive than that available to the court through the probation officer's pre-sentence report. Following are two examples of the kind of recommendations and reasons for recommendations that are submitted to the courts by the guidance centers in 1203.03 evaluations. Both of these statements are composites that were constructed from material drawn from several cases.

Example A

Recommendations:

It is respectfully recommended to the Honorable Court that if eligible \_\_\_\_\_ be considered for probation under the following conditions:

1. That he receive a suspended prison sentence.
2. That he totally abstain from the use of alcoholic beverages and not frequent places where alcohol is the chief item of sale.
3. That he maintain gainful employment and support his family.
4. That he be required to pay suitable restitution.

Reasons for Recommendations:

The subject has a very limited history of conflict with the law. However, he is still an immature person who tends to use poor judgement occasionally. He seems to have some insight into his personal problems, and his brief confinement in this facility has probably had a deterrent effect on him. Further incarceration in a state institution is not indicated. In our opinion, he could benefit from close and supportive supervision from a county probation department.

Example B

Recommendations:

It is respectfully recommended to the Honorable Court that \_\_\_\_\_ be committed to the California Department of Corrections.

Reasons for Recommendations:

Staff recommendation is not unanimous. Defendant admits guilt in the instant matter and verbalizes awareness of the seriousness of his conduct. He is seen as a generally passive-aggressive young man who has consistently shown some rebellion against society, manifested partly by his use of barbiturates which has complicated his problem. Psychiatrically he is diagnosed as a passive-aggressive person with a history of drug dependency. Staff psychiatrist feels on the basis of the man's vocational skill (though there is risk) that a probation recommendation is in order. In the psychiatrist's opinion, the potential damage in the event the man were to fail would not be great, and therefore the risk would appear justified.

However, the rest of the staff feels that in view of his prior arrest record, failure on probation, involvement with dangerous drugs he is in need of a program of 24-hour treatment and supervision on a state level and commitment to the Department of Corrections is recommended.

Some of the statements of recommendations are interesting in that in the section stating the reasons for them there is an indication of the fact that there was disagreement among the staff as to what would be an appropriate disposition. The guidance center administrators have never felt constrained not to indicate the non-unanimity of the judgements made about 1203.03 cases. In fact, in some instances where no consensus has emerged among the staff reviewing the cases, this has been clearly stated, and no recommendations have been made for those particular cases.

Trends in the Utilization of Section 1203.03

As Section 1203.03 was originally written, the county committing a case to the Department of Corrections for a diagnostic observation was to reimburse the state for the service. The Director of Corrections was authorized to enter into contracts with counties, which stipulated the rate of reimbursement for each case. In 1965, the statute was modified to eliminate the requirement of contracts and reimbursement on the part of counties. The immediate effect of this, as is indicated in Table 2, was a marked increase in the utilization of Section 1203.03 by the courts. The number of male Z-cases (as the 1203.03 commitments are referred to in the Department of Corrections) diagnosed and returned to court increased from 271 in 1964 to 761 in 1965.

Since then, the number of cases has increased steadily year-by-year; in 1972, 2,644 cases were diagnosed and returned to court. As can also be seen in Table 2, this growing utilization of the diagnostic service is a function of more than the gain in population in the state or in felony convictions. The number of felony convictions in 1972 was approximately 59 percent greater than the number in 1965; however, the number of cases sent to the RGC's for diagnostic observation in 1970 was approximately 247 percent greater than (i.e., more than three times as large as) the number sent in 1965. Also while the total number of felony convictions declined by nearly 7,000 from 1971 to 1972, the total number of Z-cases committed increased by more than 200 in the same period. Another way of determining the growth of the Z-case program is to note in Table 2 that 2.5 percent of the convicted felons were sent to the Department of Corrections for diagnostic observation in 1965 while 5.4 were sent in 1972.

This expansion of interest in the utilization of Section 1203.03 reflects a number of things. One of these most certainly is the opportunity that this provision affords for giving a man convicted of a felony a short-term commitment to a state prison--to "show him the walls" as the expression goes. This experience is regarded as having a deterrent effect on the man and as, therefore, making him more amenable to a community-based correctional program. However, also important in contributing to the increase in diagnostic commitments is the growing awareness on the part of the officers of the courts--probation officers, district attorneys, and judges--of the usefulness of the opinions of the RGC staffs in making decisions about cases.

Table 2

USE OF CDC DIAGNOSTIC SERVICE UNDER 1203.03 BY GEOGRAPHIC UNIT  
MEN DIAGNOSED AND RETURNED TO COURT

1964 - 72

Geographical Units & Calendar Year	Population in Thousands	Felony Convictions	Cases Diagnosed	Felony Conviction Rate	Cases Diagnosed Rate	Percentage of Felony Convictions Sent For Diagnosis
Total California						
1964	18020.0	27830	271	154.4	1.5	1.0
1965	18490.0	30840	761	166.8	4.1	2.5
1966	18850.0	32000	1030	169.8	5.5	3.2
1967	19232.0	34683	1274	180.3	6.6	3.7
1968	19511.0	40477	1325	207.5	6.8	3.3
1969	19817.0	50568	1705	255.2	8.6	3.4
1970	20025.0	49962	2158	249.5	10.8	4.3
1971	20296.0	56018	2425	276.0	12.0	4.3
1972	20518.0	49024	2644	238.9	12.9	5.4
Total California, less Los Angeles County						
1964	11359.4	14201	196	125.0	1.7	1.4
1965	11723.3	15227	475	129.9	4.1	3.1
1966	12039.3	15995	635	132.9	5.3	4.0
1967	12315.8	17413	708	141.4	5.7	4.1
1968	18814.2	19951	791	106.0	4.2	4.0
1969	12789.5	25075	888	196.1	6.9	3.5
1970	12981.7	24320	1334	187.3	10.3	5.5
1971	13236.7	28059	1447	212.0	10.9	5.2
1972	13511.8	27545	1706	203.9	12.6	6.2
Los Angeles County						
1964	6660.6	13629	75	204.6	1.1	0.6
1965	6766.7	15613	286	230.7	4.2	1.8
1966	6810.7	16005	395	235.0	5.8	2.5
1967	6916.2	17270	566	249.7	8.2	3.3
1968	6969.8	20526	534	294.5	7.7	2.6
1969	7027.5	25493	817	362.8	11.6	3.2
1970	7043.3	25642	824	364.1	11.7	3.2
1971	7059.5	27959	978	396.1	13.9	3.5
1972	7006.2	21479	938	306.6	13.4	4.4
Counties with Population Greater than 500,000 less Los Angeles County						
1964	6982.9	8422	97	120.6	1.4	1.2
1965	7205.8	8775	254	121.8	3.5	2.9
1966	7405.2	9530	322	128.7	4.3	3.4
1967	7609.6	10480	354	137.7	4.7	3.4
1968	7796.1	12232	401	156.9	5.1	3.3
1969	7969.2	15966	455	200.3	5.7	2.8
1970	8094.4	15189	789	187.6	9.7	5.2
1971	8235.6	17868	835	217.0	10.1	4.7
1972	8401.1	17204	1007	204.8	12.0	5.9

Differences in Utilization of 1203.03 Commitments Among Counties

The data in Table 2 also provide some basis for making comparisons among counties in terms of differences in their utilization of the diagnostic observation option. For the years 1965 through 1970, Los Angeles County had a slightly higher rate of men diagnosed under 1203.03 and returned to court than did the other counties of the state as a whole. However, it has had a much higher rate of felony convictions than the rate of the other counties combined. In 1972, for example, the rate of felony convictions in Los Angeles County (306.6 per 100,000) was substantially greater than that in the other counties combined (203.9 per 100,000). On the basis of this differential in rates of felony convictions, a greater difference in rates of diagnostic commitment would be expected than actually existed.

Statewide Trends in Recommendation Patterns

Data relating to the recommendation patterns of all the guidance centers combined for the years 1967-72 are shown in Table 3.

Table 3

DISPOSITIONS RECOMMENDED FOR Z-CASES  
RETURNED TO COURT FROM ALL RGC'S

1967 - 72

Year	Disposition Recommended		
	County	CDC	Other
1967	40.3	52.3	7.4
1968	39.6	51.3	9.1
1969	39.2	48.9	11.9
1970	39.4	46.3	14.3
1971	42.3	44.1	13.6
1972	48.9	36.9	14.2

The percentage of recommendations for county dispositions for the years 1967 through 1970 clustered around 39 or 40 percent. In 1971 there was a slight rise in the percentage of recommendations for the community, and in 1972 an even larger one. The percentage of recommendations for commitment to the Department of Corrections declined in every year from 1967 through 1972, and the percentage of recommendations for other dispositions increased from 1967 through 1970 and remained at approximately the 1970 level during the subsequent two years.

These trend data for all the RGC's conceal a number of interesting changes that have taken place in the patterns of recommendations of the individual

guidance centers. The most important of these changes have been in the recommendations of the Northern and Southern RGC's. These will be discussed elsewhere in this report. One other influence on the overall trends should be mentioned, and that is the processing by the Deuel Vocational Institution (DVI) guidance center of a significant number of Z-cases beginning in 1970 and continuing through the time of the present writing. Since in any of the three years 1970-72, the DVI guidance center has not recommended more than 22 percent of its Z-cases for the community, one of the effects of the substantial entry of DVI into the picture has been to hold down the trend toward more community dispositions. There are, of course, a number of complexities in the DVI situation, one of which is the relative youth of its Z-cases which introduces the option of the recommendation for the Youth Authority. The other RGC's dealing with an older clientele do not have this option to the extent that DVI has, and one of the results of this seems to be the smaller percentage of community recommendations from DVI.

## THE Z-CASE PROGRAMS IN THE NORTHERN AND SOUTHERN GUIDANCE CENTERS - 1964-71

### Differences Between the Guidance Centers

Because of a marked change in the utilization of the recommendation for a community disposition by the Southern guidance center in 1972 from previous years, the authors decided to restrict the discussion of the differences between the decision patterns of the Northern and Southern guidance centers in this chapter of the report to the period 1964 through 1971. Decision-making in the two guidance centers in 1972 will be discussed in a later chapter.

The data in Table 4 show the differences among the Reception-Guidance Centers in the kinds of recommendations made for the diagnostic cases returned to the courts since 1964. It can be seen that in every year shown in this table, the Northern guidance center at Vacaville (NRGC) has recommended a lower percentage for commitment to state facilities and a higher percentage for dispositions at the community level than the Southern guidance center at Chino (SRGC). In fact, in the period 1964 through 1971, the Northern center has recommended that more than one-half (54.6 percent) of its Z-cases be handled at the community level, while the Southern center has recommended only 36.8 percent of its Z-cases to be so handled. The data for 1971 indicate that 66.1 percent of the Northern center's recommendations were for community-based dispositions while only 35.1 percent of the Southern center's recommendations were for such dispositions. Necessarily, in 1971 the SRGC recommended a substantially higher percentage for a commitment to a state facility (64.1 percent as opposed to 31.6 percent for the NRGC).

Table 5 presents a breakdown in terms of type of state facility specified in the recommendations made in the RGC's. The vast majority of recommendations for state supervision during the period 1964-71 (and 1972 as well) were for commitment to the Department of Corrections. As might be expected, the SRGC has generated a higher percentage of recommendations for CDC than has the NRGC in every year except one (1968), in which the difference between the two guidance centers was 0.4 percent. In Table 4, the data show that during the years 1965 through 1967, the SRGC recommended anywhere from 19.5 to 26.9 percent more of its diagnostic observation caseloads for prison than did the NRGC. In the next two years, 1968 and 1969, the differences between the two guidance centers in the percentages of recommendations for prison almost disappeared. However, in 1970 the discrepancy between the two guidance centers reappeared on a grand scale, with the NRGC recommending 30.2 percent of its Z-cases for prison as opposed to the SRGC's 60.0 percent. This very large discrepancy between the guidance centers continued into 1971, with the NRGC recommending 26.3 of its cases for prison and the SRGC, 57.7 percent.

### Attempts at Explaining Differences in Decision Patterns Among RGC's

Differences in rates of various kinds of decisions occur among decision-making units in all segments of the criminal justice system. The variability among the counties in the percentages of felony convictions committed to the Department of Corrections was discussed above in connection with the historical background of Section 1203.03 (see Table 1). Within the Department itself, differences among operating units in decision-making patterns have been pointed

Table 4

DISPOSITIONS RECOMMENDED BY RECEPTION-GUIDANCE CENTER  
MEN DIAGNOSED AND RETURNED TO COURT

1964 - 72

Facility and Calendar Year	Total Recommendations									
	Grand Total		Total For Community		Total For State		Total For Dept. of Corrections		No Recommendation <sup>1</sup>	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
<b>Northern Guidance Center</b>										
1964	159	100.0	107	67.3	51	32.1	31	19.5	1	*
1965	344	100.0	182	53.0	162	47.0	124	36.0	-	-
1966	476	100.0	216	45.5	260	54.5	230	48.3	-	-
1967	531	100.0	279	52.5	249	46.9	218	41.1	3	*
1968	570	100.0	230	40.4	333	58.5	294	51.6	7	*
1969	633	100.0	281	44.4	341	53.5	300	47.4	11	*
1970	831	100.0	497	59.8	298	35.8	251	30.2	36	4.3
1971	741	100.0	490	66.1	234	31.6	195	26.3	39	5.3
1972	785	100.0	485	61.8	297	37.8	246	31.3	3	*
<b>Southern Guidance Center</b>										
1964	112	100.0	49	43.8	62	55.3	54	48.2	1	-
1965	412	100.0	136	33.0	276	67.0	259	62.9	-	-
1966	552	100.0	142	25.7	410	74.3	406	73.6	-	-
1967	739	100.0	231	31.3	504	68.2	448	60.6	4	-
1968	750	100.0	294	39.2	451	60.2	384	51.2	5	-
1969	1,069	100.0	387	36.2	618	57.8	533	49.9	64	6.0
1970	1,128	100.0	319	28.2	747	66.3	677	60.0	62	5.3
1971	1,265	100.0	444	35.1	812	64.1	731	57.7	81	6.4
1972	1,329	100.0	705	53.0	615	46.3	528	39.7	9	*
<b>Deuel Vocational Inst. Guidance Center</b>										
1964	-	-	-	-	-	-	-	-	-	-
1965	5	*	-	-	5	*	2	-	-	-
1966	2	*	2	*	-	-	-	-	-	-
1967	4	*	3	*	-	-	-	-	1	*
1968	5	*	-	-	3	*	2	*	2	*
1969	3	*	1	*	2	*	1	*	-	-
1970	201	100.0	35	17.4	165	82.1	72	35.8	1	-
1971	418	100.0	92	22.0	326	78.0	144	34.4	-	*
1972	530	100.0	104	19.6	425	80.2	201	37.9	1	*

\* Percent not calculated for numbers under 30

<sup>1</sup>No recommendation due to court recall, dismissal of case, death, etc.

Table 5

STATE PROGRAM DISTRIBUTIONS RECOMMENDED BY RECEPTION-GUIDANCE CENTER  
MEN DIAGNOSED AND RETURNED TO COURT

1964 - 72

Facility and Calendar Year	State Programs Recommended											
	Total to State		Department of Corrections		California Rehabilitation Center		Department of the Youth Authority		Department of Mental Hygiene		Other	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
<b>Northern Guidance Center</b>												
1964	51	100.0	31	60.8	-	-	12	*	7	*	1	*
1965	162	100.0	124	76.5	3	*	18	*	17	*	-	-
1966	260	100.0	230	88.5	4	*	22	*	4	*	-	-
1967	249	100.0	218	87.6	4	*	18	*	9	*	-	-
1968	333	100.0	294	88.3	14	*	16	*	9	*	-	-
1969	341	100.0	300	88.0	6	*	29	*	4	*	2	*
1970	298	100.0	251	84.2	24	*	16	*	7	*	-	-
1971	234	100.0	195	83.3	24	*	2	*	13	*	0	*
1972	297	100.0	246	82.8	40	13.5	3	*	8	*	0	-
<b>Southern Guidance Center</b>												
1964	62	100.0	54	87.1	-	-	-	-	7	*	1	*
1965	276	100.0	259	93.8	1	*	3	*	11	*	2	*
1966	410	100.0	406	99.0	-	-	-	-	4	*	-	-
1967	504	100.0	448	88.9	5	*	23	*	28	*	-	-
1968	451	100.0	384	85.1	2	*	24	*	39	8.6	2	*
1969	618	100.0	533	86.2	8	*	30	4.9	45	7.3	2	*
1970	747	100.0	677	90.6	18	*	29	*	19	*	4	*
1971	812	100.0	731	90.0	33	4.1	34	4.2	14	*	0	*
1972	615	100.0	528	85.9	31	5.0	44	7.2	12	*	0	-
<b>Deuel Vocational Inst. Guidance Center</b>												
1964	-	-	-	-	-	-	-	-	-	-	-	-
1965	5	*	2	*	-	-	3	*	-	-	-	-
1966	-	-	-	-	-	-	-	-	-	-	-	-
1967	-	-	-	-	-	-	-	-	-	-	-	-
1968	3	*	2	*	-	-	1	*	-	-	-	-
1969	2	*	1	*	-	-	1	*	-	-	-	-
1970	165	100.0	72	43.6	7	*	79	47.9	5	*	2	*
1971	326	100.0	144	44.2	2	*	179	54.9	1	*	0	-
1972	425	100.0	201	47.3	11	*	211	49.6	2	*	0	-

\* Percent not calculated for numbers under 30

out in instances other than the one reported here. For example, sizable differences among parole jurisdictions in recommendations for early discharge from parole under Section 2943 of the Penal Code have been documented (Robison et al, 1971). In attempting to account for such differences, the administrators of the decision-making units traditionally have tended to hypothesize differences in the characteristics of intake into the units as the determining factor. The fact that county A commits 20 percent of its felony convictions to the Department of Corrections while county B commits only seven percent means, according to this tradition, that people convicted of felonies in county A are necessarily more felonious or "dangerous" to the community than those convicted in the other county. With respect to comparisons among the guidance centers, acceptance of the tradition would hold that the marked divergence between the NRGCC and the SRGC observable through 1971 in percentages of recommendations for community dispositions reflected the fact that the Z-cases referred to the SRGC were obviously "poorer risks" for community programs than were those evaluated at the NRGCC.

What was usually cited to substantiate this point of view was that Los Angeles County which has always contributed a very substantial proportion of the Z-cases evaluated at SRGC (978 out of 1,266 diagnosed and returned to court in 1971) has tended to commit a very low percentage of its convicted felons to the state prison system. Therefore, the argument continues, the SRGC intake has been more marginal, and a greater percentage of recommendations for prison should be expected. In answer to this argument, it must be pointed out that a number of the more heavily populated Northern California counties sending Z-cases to the NRGCC have had fairly low commitment rates. While these counties (for example, San Francisco, Contra Costa, San Mateo) have not committed as low a percentage of their convicted felons to CDC as has Los Angeles County, their percentages of commitment have been reasonably low. With this in mind, the question arises as to how much more marginal the SRGC's Z-cases have been than the NRGCC's, and even if they have been, in fact, more marginal, has their greater marginality been enough to justify a difference in the percentages of recommendations to CDC of the near gigantic magnitude reported (26.3 percent at NRGCC vs. 57.7 at SRGC in 1971)?

An even more compelling rejoinder to the argument of greater marginality is that if the differences between guidance centers in recommendations reflect solely the differences in the characteristics of the cases evaluated, then the year-to-year differences in one guidance center's recommendations should be solely a function of the fluctuation in the quality of the Z-case intake. If that is the case, the quality of the Z-case intake into NRGCC apparently improved markedly in 1970 and 1971, for the percentage of recommendations for prison from that center very significantly decreased and the percentage of recommendations for community-based dispositions correspondingly increased over the level of the previous years. Since the likelihood that the NRGCC Z-case intake improved to such a degree within this period of time is highly remote, the explanation must be sought elsewhere. The basic contributor to the differences between the RGC's in patterns of recommendations was likely to be primarily a difference in decision-making "cultures". The "culture" at the NRGCC was probably more supportive of recommendations for treatment at the community level than was that at SRGC. In any event, there was a strong indication from the data of a need for an examination of the decision-making processes in the two guidance centers.

#### Z-Cases Subsequently Sentenced to Prison

In Table 6, information is presented relating to the sentencing to prison of those who were originally committed to the RGC's for diagnostic observation. A careful attempt was made to include in this table as "returns to prison" only those who had received a commitment to CDC in the sentencing hearing following the discharge from the 1203.03 commitment. This was done by including as returns only those who had been readmitted to prison within three months after their discharge from the RGC. If all returns to CDC were considered, the resulting percentage would necessarily be greater than that obtained through the latter procedure. This would be the case, because it would include those who had been given a community disposition in the sentencing hearing after the RGC commitment but who had had their probation revoked in the face of violations of probation or new convictions and had been returned to prison. The data in Table 6 which are expressed in terms of men sentenced as felons to the Department of Corrections after discharge from the guidance centers show that on a statewide basis in 1970, 34.7 percent of the Z-cases evaluated were sentenced to prison, while in 1971 28.6 were sentenced to prison. The percentage returned during these two years was substantially lower than the percentage returned in 1967 through 1969.

#### Acceptance of RGC Recommendations

Table 6 presents information relating to the acceptance of RGC recommendations by the courts. In general, the data for all guidance centers combined indicate a substantial degree of acceptance of the guidance center recommendations for commitment to the Department of Corrections from 1967 through 1971. However, in 1970 and 1971, the percentage of acceptance of the recommendations for imprisonment (as expressed in actual returns) declined substantially below that of the previous years. In 1969, the percentage of acceptance of recommendations for imprisonment was 75.9; it declined to 64.5 in 1970 and 53.8 in 1971. The level of acceptance of recommendations for local dispositions has been markedly higher than that for prison recommendations in all the years shown in Table 6. In the years 1967 through 1971, the percentages of acceptance of recommendations for community dispositions ranged from 92.2 to 95.7. In the year 1971, the percentage of acceptance of these recommendations was the lowest in the five-year period. However, in 1971, the acceptance of recommendations for community dispositions was no less than 38 percent greater than was the case for recommendations for commitment to the Department of Corrections (92.2 percent vs. 53.8). This pattern of acceptance parallels the statewide pattern of acceptance of the recommendations of probation officers by judges. There is a higher degree of acceptance of the recommendations for the less severe types of dispositions in both instances.

#### Differences in Acceptance of Recommendation from the Various RGC's

There were a number of important differences between the NRGCC and the SRGC in the extent to which their recommendations were accepted by the courts during the years 1967 through 1971. As can be seen in Table 6, there was no difference in 1968 and 1969 of any consequence between the two guidance centers in the extent to which their recommendations for imprisonment were accepted. However, in 1970 there was a substantially lower percentage of acceptance of the Southern center's recommendations for prison; and in 1971,

Table 6

DISPOSITION AFTER RETURN TO COURT WITH RECOMMENDATION  
BY TYPE OF GUIDANCE CENTER RECOMMENDATIONS  
MEN DIAGNOSED AND RETURNED TO COURT

1967 - 72

Facility and Calendar Year	Total			County			California Department of Corrections			Other or None		
	Recom- mended	Committed as Felon	Percent Returned	Recom- mended	Committed as Felon	Percent Returned	Recom- mended	Committed as Felon	Percent Returned	Recom- mended	Committed as Felon	Percent Returned
<b>Total, All Guidance Centers</b>												
1967	1,274	522	41.0	513	22	4.3	666	477	71.6	95	23	24.2
1968	1,325	575	43.4	524	26	5.0	680	525	77.2	121	24	19.8
1969	1,705	716	42.2	669	38	5.7	834	633	75.9	202	45	22.3
1970	2,158	749	34.7	851	54	6.3	1,000	645	64.5	309	50	16.2
1971	2,425	693	28.6	1,026	80	7.8	1,070	576	53.8	329	37	11.2
1972	2,644	642	24.3	1,294	92	7.1	975	513	52.6	375	37	9.9
<b>Southern Guidance Center</b>												
1967	739	330	44.7	231	7	3.0	448	309	69.0	60	14	23.3
1968	750	328	43.7	294	15	5.1	384	296	77.1	72	17	23.6
1969	1,069	462	43.2	387	17	4.4	533	405	76.0	149	40	26.8
1970	1,128	464	41.1	319	18	5.6	677	415	61.3	132	31	23.5
1971	1,266	392	31.0	444	17	3.8	731	357	48.8	91	18	19.8
1972	1,329	317	23.9	705	47	6.7	528	257	48.7	96	13	13.5
<b>Northern Guidance Center</b>												
1967	531	192	36.2	279	15	5.4	218	168	77.1	34	9	26.5
1968	570	246	43.2	230	11	4.8	294	228	77.6	46	7	15.2
1969	633	253	40.0	281	21	7.5	300	227	75.7	52	5	9.6
1970	831	231	27.8	497	36	7.2	251	181	72.1	83	14	16.9
1971	741	201	27.1	490	61	12.4	195	127	65.1	56	13	23.2
1972	785	185	23.6	485	40	8.2	246	133	54.1	54	12	22.2
<b>Deuel Vocational Inst. Guidance Center</b>												
1967	4	-	*	3	-	*	-	-	-	1	*	-
1968	5	1	*	-	-	-	2	1	*	3	*	-
1969	3	1	*	1	-	*	1	1	*	1	*	-
1970	201	54	26.9	35	-	0.0	72	49	68.1	94	5	5.3
1971	418	100	23.9	92	2	2.2	144	92	63.9	182	6	3.3
1972	530	140	26.4	104	5	4.8	201	123	61.2	225	12	5.3

\*Percent not calculated for numbers under 30

the difference between the two centers in this respect became even greater. The percentage of acceptance of the NRGC prison recommendations during 1971 was 65.1 and of the SRGC recommendations 48.8. As previously indicated, it is in the years 1970 and 1971 that the marked differences between the guidance centers in the percentages of their recommendations for imprisonment appeared with the SRGC recommending prison for a far greater percentage of its case-load. In attempting to account for the differences between the two RGC's in recommendation patterns in 1970 and 1971, the assertion was made that the greater percentage of prison recommendations generated in the SRGC reflected, among other things, the greater responsiveness of the courts whose cases it processed to recommendations for imprisonment. That is, its pattern of recommendations represented an adjustment to the kinds of decision-making in the courts it served. However, on the basis of the 1970-71 data, the conclusion must be that this was clearly not the case. There was a pronounced tendency on the part of the courts to veer away from the recommendations for prison emanating from the SRGC.

The greater degree of acceptance by the courts of NRGC recommendations for prison indicates that this guidance center was clearly more in tune with the courts it served in terms of these recommendations. At the same time, however, in 1971, 12.4 percent of the NRGC recommendations for a community disposition were not accepted as opposed to only 3.8 percent of the SRGC recommendations. Apparently the tendency on the part of NRGC toward recommending less severe dispositions was not met with complete enthusiasm by the courts. The substantial increase in NRGC recommendations for community dispositions was greeted by the courts with an increase in the rejection of these during 1971. The increase in the percentage of the rejections of these over that of the previous year (5.2 percent) is approximately the same as the increase of the percentage of recommendations for the community over that of the previous year (6.3 percent). However, it should be pointed out that from 1969 to 1970 the NRGC percentage of recommendations for the community increased by 15.4 percent (from 44.4 to 59.8 without any increase in rejections by the courts. In any event, the acceptance by the courts of the recommendations for community dispositions or commitments to the Department of Corrections combined from the NRGC was greater during 1970 than the acceptance of the combined SRGC recommendations (85.8 percent NRGC vs. 78.7 percent SRGC). The same was true in 1971, in which 81.2 percent of the recommendations of the NRGC were accepted as opposed to 77.9 percent of those of the SRGC. This is particularly important because in the two previous years, 1968 and 1969, the two guidance centers had had almost identical percentages of their recommendations for either prison or community-based services accepted (1968 - SRGC, 84.8 and NRGC, 83.8; 1969 - SRGC, 83.2 and NRGC, 85.8).

The question might be raised at this point about whether or not there is some kind of "equalizing" effect in the commitments to prison of Z-cases evaluated at the NRGC and the SRGC as a function of the differential acceptance of the recommendations from the two centers on the part of the courts. In other words, does the proportionally less frequent acceptance of the courts of the SRGC's greater percentage of recommendations for imprisonment amount to the same thing in terms of actual commitments to CDC as the proportionally more frequent acceptance of the NRGC's lower percentage? The answer to this is simply no. The data for 1971 show that for all cases recommended either for

services at the county level or commitment to the Department of Corrections, the SRGC recommended 62.2 percent for prison and the NRGCC 28.5 percent for prison. A discrepancy in percentages this large would be extremely difficult to balance unless there was a very high degree of acceptance of NRGCC recommendations for prison and a very low degree of acceptance of SRGC recommendations. Such a pattern of acceptance did not emerge in 1971. The net result is that of the total number of cases recommended by the RGC's for either the CDC or community dispositions, the percentages both recommended for and subsequently committed to prison were 30.4 for the SRGC and 18.5 for the NRGCC. In short, the different patterns of recommendations do make a considerable difference in terms of commitments to prison.

To conclude this section of the report, it must be said that while there were obviously some problems within the RGC's in terms of the recommendations made with respect to Z-cases up through the year 1971, there was obviously substantial acceptance of the final product in the courts. In 1970, nearly 78 percent of the combined NRGCC and SRGC recommendations for either a community disposition or a commitment to prison were accepted by the courts, and in 1971, 72 percent were accepted. This plus the steadily increasing number of cases the courts sent for diagnostic observation during the period discussed in this section of the paper suggests they were getting a service from the Department of Corrections they valued.

RETURNS TO PRISON FROM PROBATION--  
A COMPARISON OF CASES PROCESSED IN  
THE NORTHERN AND SOUTHERN GUIDANCE CENTERS

Returns to Prison from Probation

In the preceding section of this paper, information was presented which indicates that in 1970 and 1971 a substantial difference emerged between the Northern and Southern guidance centers in patterns of recommended dispositions for Z-cases. During 1970, 60.0 percent of those returned to court from the SRGC were recommended for a commitment to prison as opposed to 30.2 percent of those returned from the NRGCC. Conversely, the SRGC recommended 28.2 percent of its 1970 Z-cases for community dispositions, while the NRGCC recommended 59.8 percent of its Z-cases for the community. In 1971, the differences between the guidance centers were about the same. In that year 57.7 of the SRGC's cases were returned to court with recommendations for prison as opposed to 26.3 for the NRGCC. In the same year, the SRGC recommended community dispositions for 35.1 percent of its cases, and the NRGCC for 66.1 percent of its cases.

The data presented above also indicated that the recommendations made by the two guidance centers in 1970 and 1971 were responded to differently by the courts. Specifically, there was a substantially greater inclination on the part of the courts to accept the NRGCC recommendations for commitment to the Department of Corrections than the corresponding SRGC recommendations. In 1971, the courts reacted to the great increase in the recommendations of the NRGCC for community dispositions with an increase in the rejection of them. However, the courts rejected the NRGCC recommendations for the community to a significantly lesser degree than they did the SRGC recommendations for prison. The result was that there was a greater overall percentage of concurrence on the part of the courts with the NRGCC recommendations for dispositions of either prison or the community than with those of the SRGC.

The authors now propose to carry the investigation of the utilization of Z-case recommendations one step further. Specifically, the concern is with the percentage of subsequent returns to prison among those cases from the two guidance centers who received a grant of probation with or without jail or other conditions from the courts upon their return from the 1203.03 commitment. The year for which data are available is 1970.

The question fundamentally is whether those granted probation by the courts in 1970 after having been recommended for such by the Northern guidance center had their probation revoked and were then returned to prison to a greater extent than was the case with their counterparts from the Southern guidance center. To put it another way, the question is whether the greater use of the community recommendation by the NRGCC in that year was inappropriate and was only greeted by a much greater rate of return to prison of those so recommended after they had been granted probation by the courts. Another question that will be looked at is whether those who were recommended for a prison disposition by the SRGC and were granted a community disposition by the courts "fulfilled the prophecy" of the SRGC and ended up in prison anyway.

In 1970 the percentages of agreement by the courts with the recommendations for community dispositions were very nearly the same for the NRGCC as for the SRGC. The courts rejected 5.3 percent of the SRGC recommendations for the community and 7.6 percent of those of the NRGCC. However, as pointed out above, the NRGCC recommended 59.8 percent of its Z-cases for the community as opposed to 28.4 percent recommended by the SRGC. Unless there were very substantial differences in the characteristics of the intake into the two guidance centers, which is not likely to be the case, the expectation would be that the Northern center was recommending more marginal cases for community dispositions (and getting those recommendations accepted by the courts) than was the Southern center. Under these circumstances, the further expectation would be that a greater percentage of those recommended for the community by the NRGCC and granted such dispositions by the courts would have their probation revoked and be returned to prison. The question to be investigated is, therefore, whether there was a greater percentage of return of the NRGCC 1970 recommendations for probation subsequent to a revocation of probation and, if there was a greater percentage of return whether this approached the difference between the guidance centers in the percentages of cases originally recommended for the community.

Tables 7 and 8 present a return to prison follow-up in terms of the RGC recommendations. There are three types of return to prison indicated in these tables: a direct return from court without any grant of a community disposition, a return on the basis of a revocation of probation without a new conviction, and a return with a revocation of probation associated with a conviction for a new offense. It is the latter two types of return that are of interest here. The follow-up period on the cases is one year.

First of all, it should be said that out of all cases recommended by the Northern and Southern guidance centers for community dispositions who received them from the courts, only 5.8 percent were returned to prison within the year subsequent to their release from the RGC. This low percentage of returns to prison attests to the validity of the recommendations that are made in the guidance centers. With respect to the individual guidance centers, the data in Table 7 indicate that of the 319 cases recommended for probation by the SRGC in 1970, 293 were granted probation not followed by a revocation and a return and eight received a grant of probation which was revoked with a resulting return to prison during the one-year follow-up. The percentage of revocations followed by returns to prison for the SRGC is 2.7. For the NRGCC, the data in Table 8 indicate that the percentage of revocations followed by returns is 7.8. Therefore, it can be said that the revocation rate for the cases recommended by the NRGCC is higher than that for the SRGC (7.8 percent vs. 2.7 percent). This difference is statistically significant (chi-square = 8.91,  $p < .01$ ).

Among the alternative ways of explaining this difference is the possibility that the counties served by the NRGCC have higher rates of probation revocations than do the counties served by the SRGC. Even if this were the case, it would have no explanatory significance here, since there are different patterns of probation revocations between the NRGCC and the SRGC for those recommended for probation who are placed on probation as opposed to those who are recommended for prison and placed on probation. To be specific, the NRGCC has a greater

Table 7  
RETURNS TO PRISON OF Z-CASES  
DISCHARGED FROM THE SOUTHERN RECEPTION-GUIDANCE CENTER  
IN 1970 BY  
TYPE OF RECOMMENDATION AND BY  
TYPE OF RETURN

Type of Recommendation	Total Released to Court	Not Returned to State	Direct Return	Returned From Probation Within 12 Months		
				Total Returns From Probation	Probation Revocation Only	New Offense and Probation Revocation
Total	1,128	591	471	66	32	34
Total for County	319	293	18	8	5	3
Probation	36	34	2	0	0	0
Probation with Jail	62	58	4	0	0	0
Probation with Cond. Jail	221	201	12	8	5	3
	0	0	0	0	0	0
Total for the State	743	265	426	52	24	28
CDC	677	211	415	51	23	28
CRC	18	12	5	1	1	0
CYA	29	25	4	0	0	0
DMH	19	17	2	0	0	0
Other	4	3	0	1	0	1
No Report	62	30	27	5	3	2



of applying the SRGC standards (222) and multiply it by the percentage of revocations with returns to prison (2.7 percent) of the SRGC's recommendations for probation which were concurred with by the courts. If this procedure is followed, then the number six is obtained as the estimate of the number of probation revocations resulting in returns to prison that would have occurred if the NRGCC had been as restrictive about recommending probation as the SRGC. In actual fact, there were 36 such revocations of probation in the case of those recommended for probation by the NRGCC who were granted it by the courts. In other words, there are an estimated 30 (36-6) more revocations of NRGCC cases than would have occurred under the SRGC conditions. This looks good for the exponents of the SRGC decision standards until it is considered that to catch those 30 they would have generated an estimated 263 more recommendations for prison by following these standards. If the courts were to accept all 263 of those recommendations in the interest of catching the 30, they would be involved in an unnecessarily costly situation, and, of course, they have no means of identifying the 30 among the 263. While such a procedure of estimation such as used in this section of this paper obviously leads only to crude approximations, it does have the value of providing some information about the potential costs and benefits of more restrictive and less restrictive decision-making policies relating to Z-cases.

#### Returns to Prison of Cases Recommended for Prison but Placed in the Community

The other matter of major interest in this context is what happens to those cases recommended for prison (including in this analysis CRC) by the RGC staffs who are given a community disposition by the courts. Does their behavior in the community subsequent to the grant of probation indicate that the courts would have been better advised to observe the recommendations for commitment of the cases to prison received from the RGC's? The data in Tables 7 and 8 bear on this issue also. Approximately 18.1 percent of those individuals recommended by the Northern and Southern guidance centers for commitment to the Department of Corrections (including CRC) who were instead placed on probation by the courts had their probation revoked and were sentenced to prison within one year after release from the RGC's. A larger percent of the SRGC cases (18.9) received such revocations of probation than did the NRGCC cases (15.7). However, this difference is not statistically significant (chi-square = .44,  $p > .50$ ). Therefore, it must be said that there was no difference between the two guidance centers with respect to their 1970 Z-caseloads in the extent to which this type of discrepancy between their recommendations and the dispositions made by the courts was followed by a revocation of probation with a return to prison.

This absence of a statistically significant difference is interesting in view of the difference between the NRGCC and the SRGC in percentages of recommendations for prison and the differential response by the courts to these recommendations. However, by far the most important and interesting fact is that less than one-fifth of the cases with an unaccepted recommendation from the RGC's for the Department of Corrections were returned to prison with a probation revocation within one year of release. By way of translating this into numeric terms, it can be said that the Southern guidance center recommended 275 cases for prison and CRC that when tested in the community generated only 52 probation revocations with returns in one year. Similarly, only 14 of the 89 cases recommended by the Northern guidance center for prison and CRC who were placed on

probation were returned to prison within one year after the termination of their diagnostic observations. While it is obviously true that not all of the prophecies of the courts about these cases were borne out, i.e., that they would be satisfactory risks for probation, it is also obviously true that it would be a considerable error to sentence, for example, 275 cases to prison in the interest of catching 52 who got into difficulty of a serious enough nature to warrant receiving a revocation of probation with a return to prison during their first year after release from the RGC.

#### Implications of Follow-up Data

The follow-up information presented in this section of the report offers another confirmation of the value of the diagnostic observation service provided by the Northern and Southern guidance centers. However, the data also indicate that there were a number of problems existing in the recommendations that were being made by the guidance centers at least in 1970 and probably in 1971. For example, while the cases recommended for probation by the SRGC and granted it by the courts performed significantly better in a statistical sense than their NRGCC counterparts, the difference in their favor was not remotely near to being large enough to justify the very substantial difference in the percentages that were recommended for community dispositions by the two guidance centers. Similarly, the experience on probation of those cases who were recommended for prison but granted probation by the courts suggested some need for concern about the frequency of prison recommendations. While this statement was relevant to both RGC's, it had particular relevance to the SRGC which in 1970 and 1971 had generated a markedly greater percentage of recommendations for prison than the NRGCC.

A COMPARISON OF Z-CASE PROCESSING  
IN THE NORTHERN AND SOUTHERN GUIDANCE CENTERS IN 1972

Recommendations for Community Dispositions

In previous sections of this report, the authors have compared the Northern and Southern guidance centers in terms of their patterns of recommendations through the year 1971. In this comparison, a divergence between the Northern and Southern guidance centers in their utilization of recommendations for community dispositions was noted. This divergence is indicated in the percentage figures in Table 9 and the trend lines in Figure 1. In 1968 and 1969, the two guidance centers recommended somewhat similar percentages of their Z-cases for the community. In 1970 and 1971, however, the Northern guidance center markedly increased its percentages of recommendations for the community. In 1970 the NRGCC's percentage for the community was 59.8 as opposed to the SRGC's 28.2, and in 1971 the NRGCC recommended 66.1 as opposed to 35.1 for the SRGC. It was pointed out previously that one of the traditional approaches to account for such differences in decision patterns between operating units is to suggest that there are differences in the characteristics of the intake into the units and that these differences in intake are responsible for the variations between units. A number of reasons were presented above to discount such an explanation. It was suggested that the fundamental reason for the difference between the two guidance centers was the dissimilar decision-making standards employed by their staffs.

Table 9

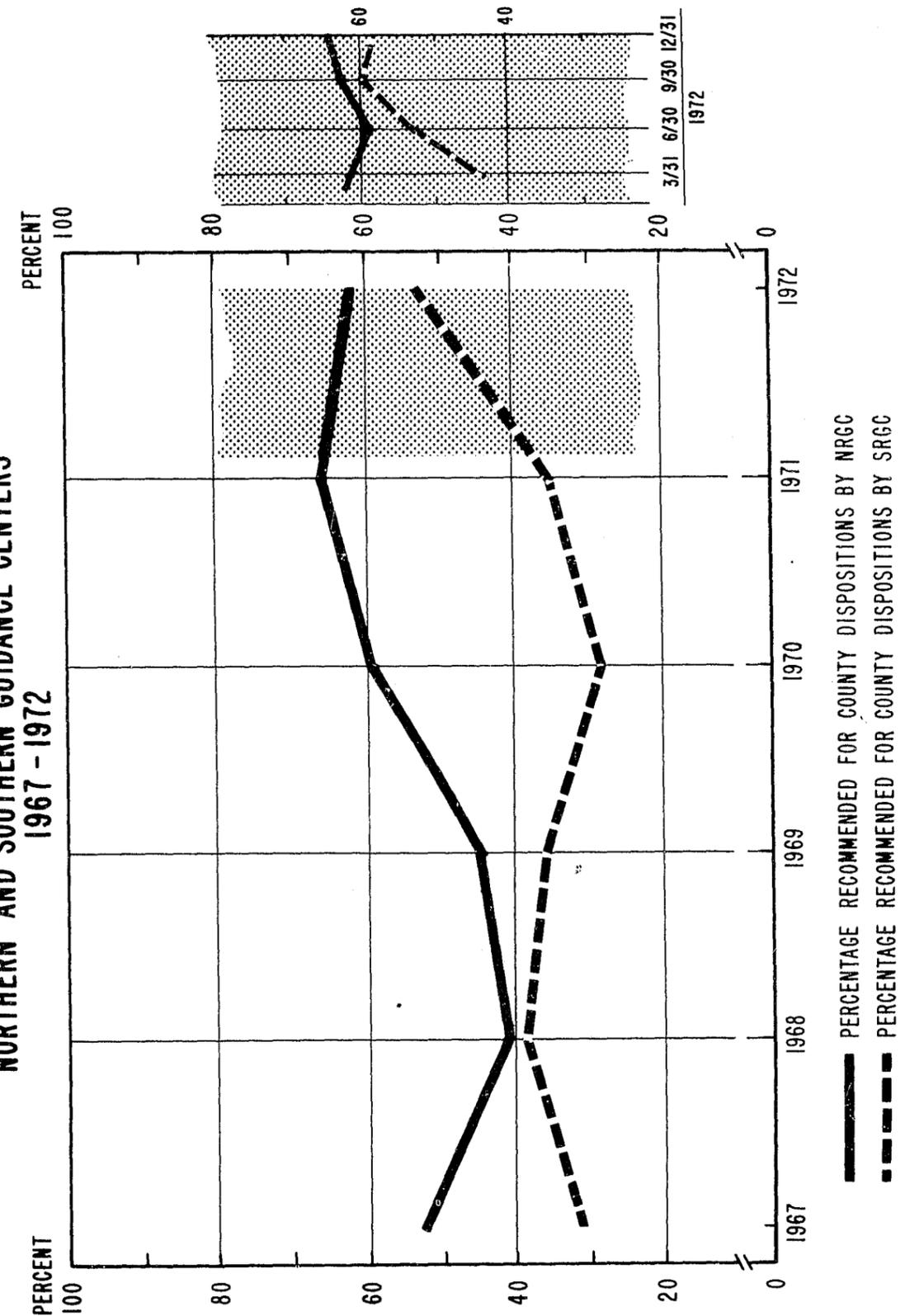
PERCENTAGE OF RECOMMENDATIONS OF Z-CASES FOR COMMUNITY DISPOSITIONS  
NORTHERN AND SOUTHERN RECEPTION-GUIDANCE CENTERS

1967-72

Year	Northern Guidance Center	Southern Guidance Center
1967	52.5	31.3
1968	40.4	39.2
1969	44.4	36.2
1970	59.8	28.2
1971	66.1	35.1
1972	61.8	53.0
Jan.-Mar. 1972	61.1	44.0
Apr.-June 1972	59.0	52.9
July-Sept. 1972	62.9	59.8
Oct.-Dec. 1972	64.1	57.9

It seemed reasonable to assume that if the Department of Corrections was going to provide a useful evaluative service to courts, there should be a considerable degree of similarity in the standards for making decisions in the two

FIGURE 1  
PERCENTAGE RECOMMENDED FOR COUNTY DISPOSITIONS  
NORTHERN AND SOUTHERN GUIDANCE CENTERS  
1967 - 1972



guidance centers. A difference of 30 percent in, for example, recommendations for community dispositions suggested that the two guidance centers were operating in terms of markedly discrepant standards. A difference of such magnitude likewise seemed to have the potentiality of being disconcerting to the judicial users of the service in the event that they were to become aware of it. Accordingly, it seemed appropriate to take steps to discuss the issue with the guidance center staffs and to see if anything might be done to bring the decision patterns of the guidance centers closer together. Staff members of the Research Division made visits to the guidance centers early in 1972 to present the information that had been developed about the Z-case program to that point. At the Southern guidance center, particular attention was paid to the very large percentage of prison recommendations that were being turned down by the courts. The suggestion was made by research staff that this was an indication that the SRGC recommendation pattern should be shifted toward that of the NRGCC, i.e., toward the greater use of the probation recommendation.

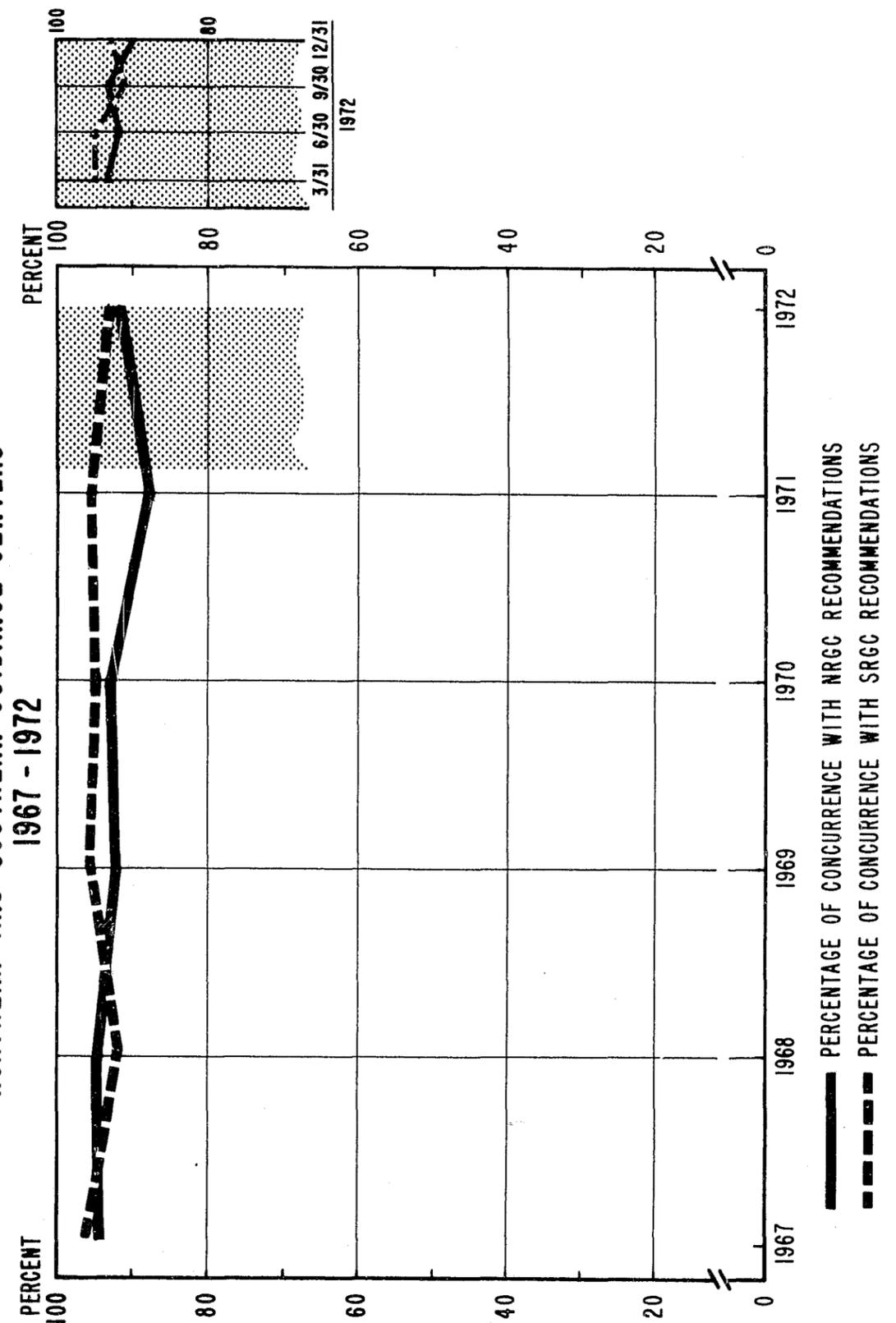
In the midst of these discussions, two important changes in the administration of the SRGC took place. A new chief of casework (Correctional Counselor III) was transferred in, and a new Deputy Superintendent was assigned as administrator of the guidance center. The presentation of the information about the program to the staff and the change in administration was followed in 1972 by the very rapid movement of the Southern guidance center almost up to the level of the Northern guidance center in the percentage of recommendations for community dispositions. As indicated in Table 9 and Figure 1, the SRGC recommended 35.1 percent of its cases in 1971 for community dispositions (as opposed to the NRGCC's 66.1 percent). In the first quarter of 1972, the percentage of recommendations for county dispositions from the SRGC rose to 44.0, in the second quarter to 52.9, and in the third quarter to 59.8. In the fourth quarter however, there was a slight decline from the level of the third to 57.9. In 1972, the NRGCC's percentage of recommendations for probation varied from a low of 59.0 in the second quarter to a high of 64.1 in the fourth. During the entire year, the NRGCC recommended 61.8 percent of its cases for the community, and the SRGC 53.0 percent. It should be pointed out that this change in recommendation patterns on the part of the SRGC did not come about in response to any administrative directive issued by a Department administrator at the headquarters level, but was wholly a matter of local initiative in response to the feedback of information. Furthermore, it is a rather rare example of a shift in decision-making on the part of an operating unit in response to data supplied by a research unit.

Court Concurrence with Recommendations for Community Dispositions

The data presented in Table 10 and Figure 2 indicate a high percentage of concurrence on the part of the courts with recommendations for community dispositions, which as pointed out previously are largely for probation. Beyond the fact of the high acceptance, two additional things are worth noting. The percentage of acceptance of NRGCC recommendations for the community, which dropped below 90 percent in 1971 (to 87.6 percent) for the only time in the five-year period 1967-71, was again above 90 percent in 1972 (91.8 percent). Even more significantly, the percentage of acceptance of the courts of the SRGC recommendations for the community during 1972 decreased only slightly

FIGURE 2

**PERCENTAGE OF COURT CONCURRENCE WITH RECOMMENDATIONS FOR COUNTY DISPOSITIONS NORTHERN AND SOUTHERN GUIDANCE CENTERS 1967 - 1972**



from the level of previous years, even though the percentage of such recommendations had increased markedly in 1972 over the percentages of the years 1967-71.

Table 10

PERCENTAGE OF COURT CONCURRENCE WITH RECOMMENDATIONS FOR COMMUNITY DISPOSITIONS NORTHERN AND SOUTHERN GUIDANCE CENTERS

1967-72

Year	Northern Guidance Center	Southern Guidance Center
1967	94.6	97.0
1968	95.2	94.9
1969	92.5	95.6
1970	92.8	94.4
1971	87.6	96.2
1972	91.8	93.3
Jan.-Mar. 1972	93.4	94.4
Apr.-June 1972	91.5	95.0
July-Sept. 1972	92.9	91.1
Oct.-Dec. 1972	89.6	92.5

Recommendations for Commitment to CDC

The pattern of divergence and convergence noted with respect to the recommendations for community dispositions is observable also for the two guidance centers in the data relating to their CDC recommendations, which are presented in Table 11 and Figure 3. For the two year period 1968 and 1969, the NRGCC and the SRGC recommended approximately the same percentage of their Z-cases for commitment to CDC. In 1970 and 1971, the guidance centers modified their decision-making behavior, with the SRGC shifting to a higher percentage of prison recommendations and the NRGCC to a lower percentage. In 1970, the Northern guidance center dropped its percentage of prison recommendations from the previous year's 47.4 to 30.2, while the Southern guidance center increased its percentage from 49.9 to 60.0. The percentage separation between the two guidance centers in recommendations for CDC was approximately the same in 1971. In 1972, the guidance centers moved toward a convergence in their percentages of recommendations for CDC, with the NRGCC recommending 31.3 percent (up from the 26.3 percent of 1971) and the SRGC recommending 39.7 percent (down from the 57.7 percent of 1971). These data, of course, "parallel" those for community recommendations. Since during the period reported in this section of the report (1967-72) at least 85 percent of the Z-cases in any year were recommended for either CDC or a community disposition, any shift toward recommending more cases for one of these two types of disposition would necessarily be accompanied by a shift of similar magnitude toward recommending fewer of the other.

FIGURE 3

PERCENTAGE RECOMMENDED FOR COMMITMENT TO CDC  
NORTHERN AND SOUTHERN GUIDANCE CENTERS  
1967 - 1972

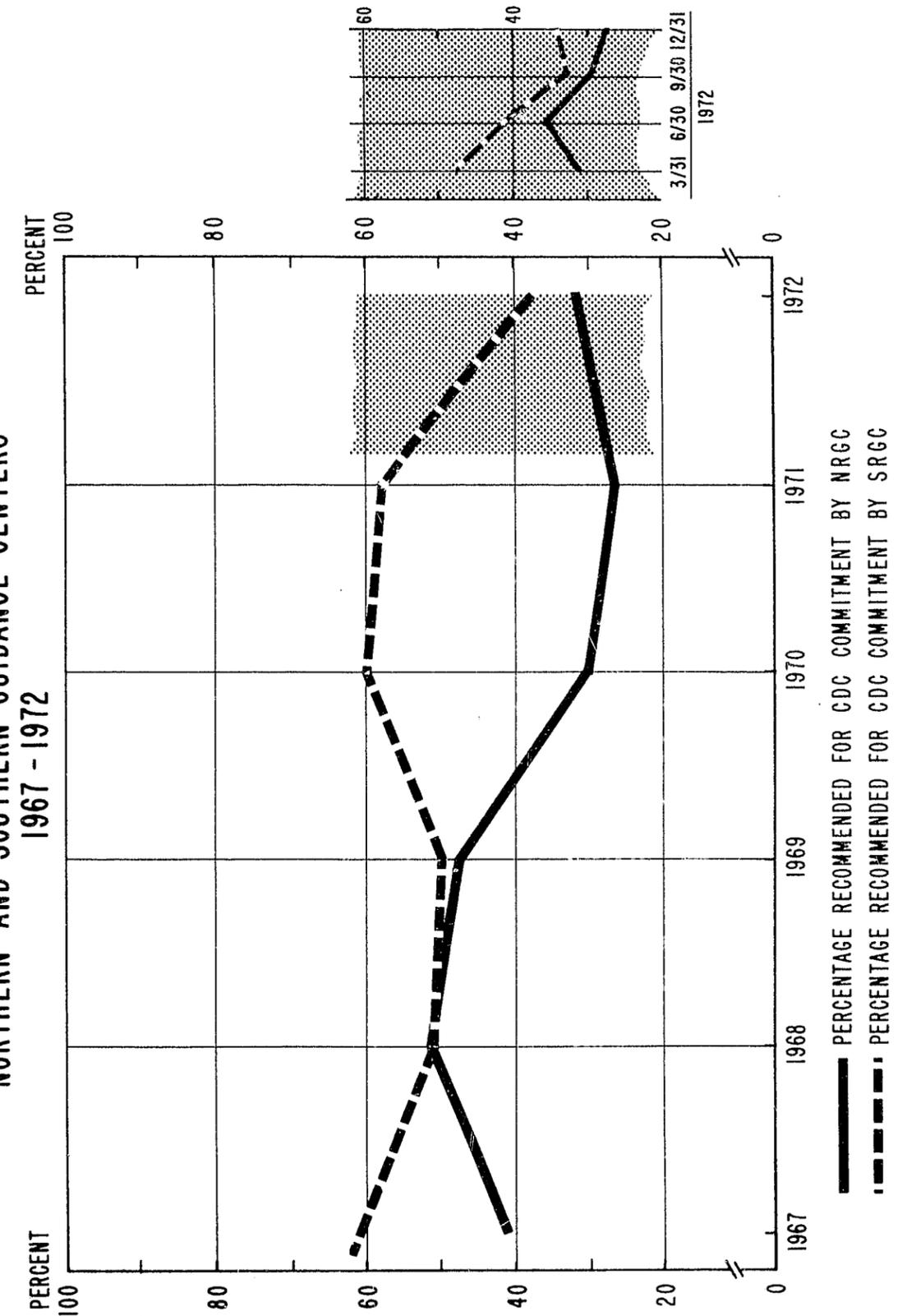


Table 11  
 PERCENTAGE RECOMMENDED FOR COMMITMENT TO CDC  
 NORTHERN AND SOUTHERN GUIDANCE CENTERS

1967-72

Year	Northern Guidance Center	Southern Guidance Center
1967	41.1	60.6
1968	51.6	51.2
1969	47.4	49.9
1970	30.2	60.0
1971	26.3	57.7
1972	31.3	39.7
Jan.-Mar. 1972	31.3	48.4
Apr.-June 1972	36.0	40.2
July-Sept. 1972	29.8	33.4
Oct.-Dec. 1972	28.2	34.7

Court Concurrence with Recommendations for CDC

As shown in Table 12 and Figure 4, the continuing high percentage of recommendations for CDC coming from the SRGC in 1970 and 1971 was greeted by a declining percentage of acceptance by the courts. During the same period, the less

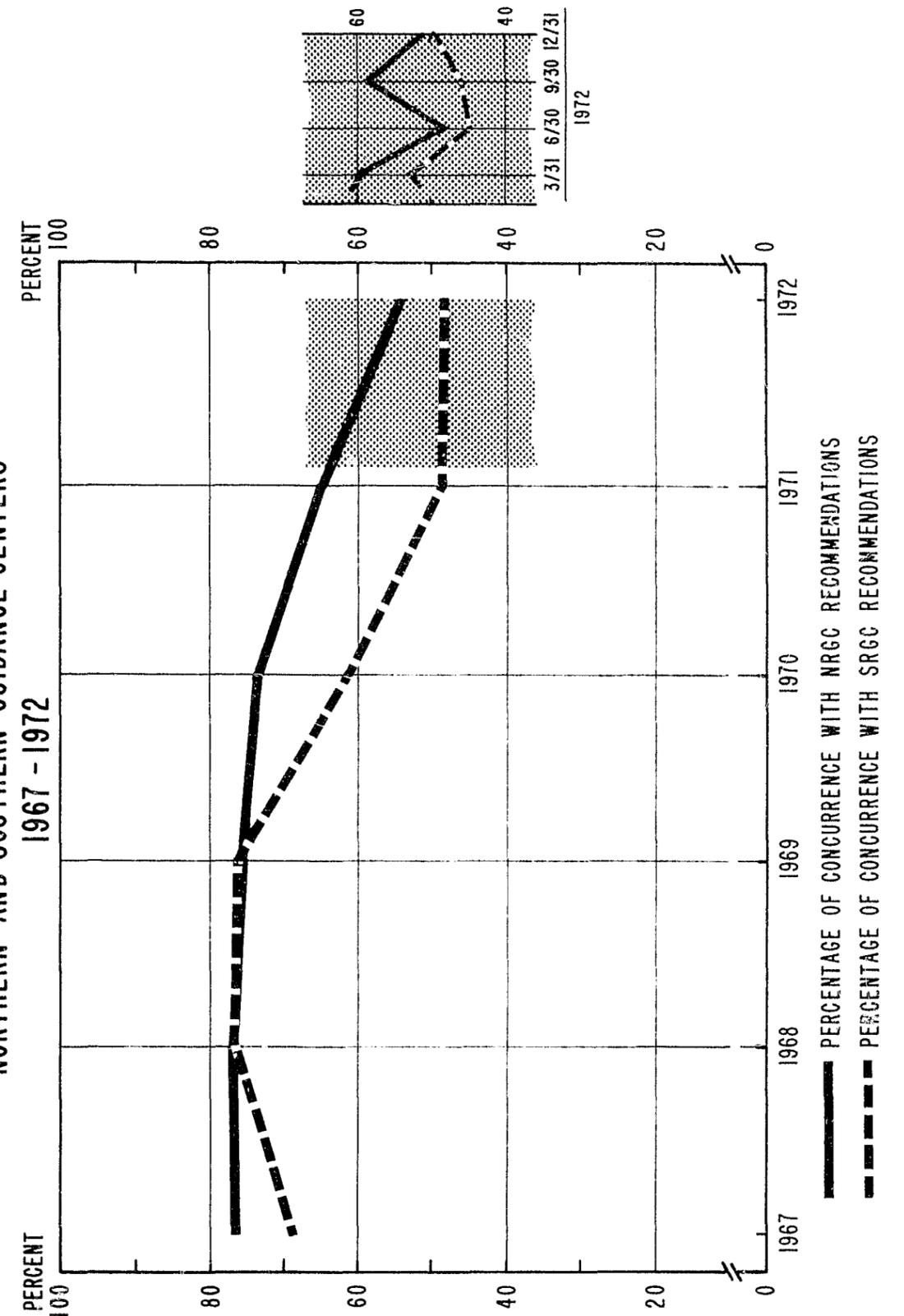
Table 12

PERCENTAGE OF COURT CONCURRENCE WITH RECOMMENDATIONS FOR  
 COMMITMENT TO CDC NORTHERN AND SOUTHERN GUIDANCE CENTERS

1967-72

Year	Northern Guidance Center	Southern Guidance Center
1967	77.1	69.0
1968	77.6	77.1
1969	75.7	76.0
1970	73.3	61.2
1971	65.1	48.8
1972	54.1	48.7
Jan.-Mar. 1972	59.7	52.8
Apr.-June 1972	48.6	44.7
July-Sept. 1972	58.5	46.6
Oct.-Dec. 1972	50.8	49.1

FIGURE 4  
 PERCENTAGE OF COURT CONCURRENCE WITH RECOMMENDATIONS  
 FOR COMMITMENT TO CDC  
 NORTHERN AND SOUTHERN GUIDANCE CENTERS  
 1967 - 1972



frequent recommendations for CDC of the NRGCC were concurred with by the courts to a greater extent than were those of the SRGC. The decrease in recommendations for CDC by the Southern guidance center in 1972 was not associated with an increase in the percentage of acceptance of such recommendations by the courts. The percentage of acceptance of SRGC recommendations for CDC by the courts in 1972 was virtually the same as the percentage in 1971, 48.7 in 1972 and 48.8 in 1971. However, the data also indicate that there was a decline in the acceptance of the NRGCC recommendations for prison in 1972 to 54.1 percent from the previous year's 65.1, although a greater percentage of the NRGCC's than of the SRGC's were still accepted. Apparently, what happened was that the shift of the SRGC toward a lower percentage of CDC recommendations occurred in a period of an even more rapidly declining enthusiasm for the CDC option on the part of the courts, with the result that the percentage of concurrence of the courts with these recommendations from the SRGC was stabilized at approximately the 1971 level. Presumably if the SRGC had recommended in 1972 the same percentage of its Z-cases for prison that it had in the previous year, the downward trend in court acceptance would have continued.

Court Concurrence with Recommendations for Community Dispositions and CDC

The data in Table 13 and Figure 5 combine the data on court concurrence with recommendations for community dispositions and recommendations for commitment to CDC presented separately above. Understandably, the trend lines in Figure 5 for the combined data are reminiscent of the trend lines in Figures 1 and 3, which, respectively, depict the percentages recommended for community dispositions and for CDC. The difference in favor of the Northern guidance center in percentages of acceptance in 1970 and 1971 reflects its shift to a substantially greater percentage of recommendations for community dispositions, which are accepted to a greater extent by the courts. During this period the SRGC generated a much larger percentage of CDC recommendations, which are considerably less favored by the courts. The effect of this was the lower percentage of court concurrence observed for the SRGC when its community and CDC recommendations are combined. The outcome of the SRGC's more extensive utilization of the recommendation for the community in 1972 was to increase its combined percentage of acceptance in this period, from 66.7 in 1971 to 74.2 in 1972.

The question was previously raised about the relationship between the patterns of recommendations of the guidance centers and the percentage of their Z-cases that are committed to prison upon return to court. It was pointed out that in 1971, when the SRGC recommended 57.7 percent of its caseload for commitment to the Department of Corrections as opposed to 26.3 percent for the NRGCC, a substantially greater percentage of the SRGC's recommendations for either prison or community dispositions was committed to prison than of those from the NRGCC (30.4 percent compared to 18.5). In this light, it would seem to be worthwhile to ask the same question for 1972, when the percentages of recommendations for CDC from the two guidance centers were much more nearly the same, 39.7 for the SRGC and 31.3 for the NRGCC. The effect of the much greater similarity in percentages of recommendations for CDC is a much greater similarity in the percentage of commitments to CDC on return to court, 20.8 of the total of those recommended for either the community or CDC by the SRGC and 18.2 by the NRGCC. Any number of conclusions can be drawn from these data. Two obvious ones are that the recommendations produced by the guidance centers are influential and that it is worthwhile to provide feedback of information to decision makers.

FIGURE 5

**PERCENTAGE OF COURT CONCURRENCE WITH RGC RECOMMENDATIONS FOR COMMUNITY DISPOSITIONS AND CDC NORTHERN AND SOUTHERN GUIDANCE CENTERS 1967 - 1972**

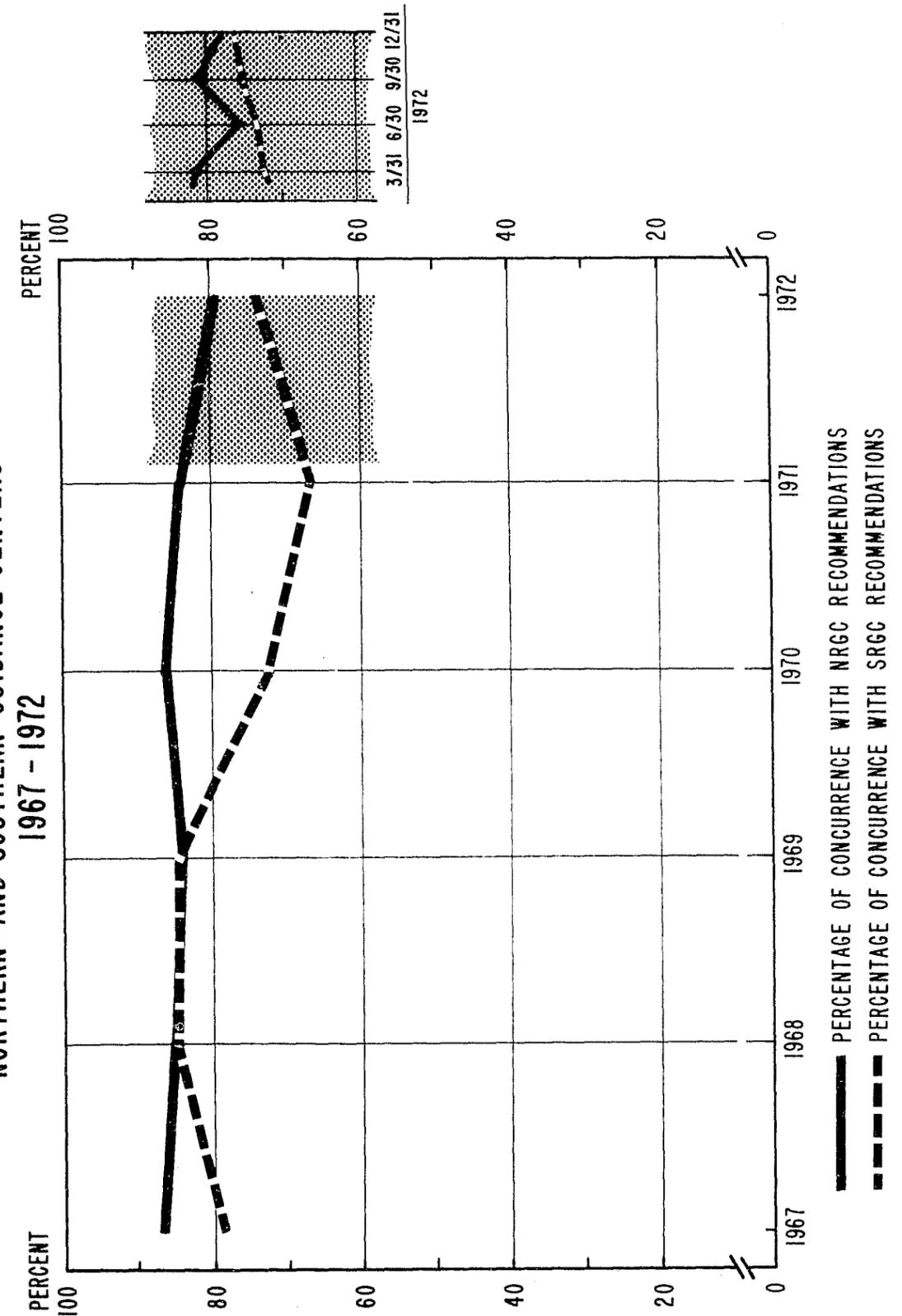


Table 13

PERCENTAGE OF COURT CONCURRENCE WITH RGC  
RECOMMENDATIONS FOR COMMUNITY DISPOSITIONS AND CDC

1967-72

Year	Northern Guidance Center	Southern Guidance Center
1967	86.9	78.5
1968	85.3	84.8
1969	83.8	84.2
1970	86.0	72.0
1971	83.8	66.7
1972	79.1	74.2
Jan.-Mar. 1972	82.0	72.6
Apr.-June 1972	75.3	73.3
July-Sept. 1972	81.8	75.2
Oct.-Dec. 1972	77.7	76.3

The shift in the SRGC's pattern of recommendations that is described in this section of the report does not mean, of course, that the "standards" for decision-making in the two guidance centers are becoming or have become the same. To be more explicit, the similarity in the percentages of recommendations for the various dispositions that emerged in 1972 does not mean that if a given case were recommended for a community disposition in the Northern guidance center that it would necessarily be recommended for a community disposition in the Southern guidance center. Indeed enough inconsistency among decision-makers and decision-making units has been observed in studies of the decisions and recommendations that enter into the process of sentencing (Carter and Wilkins, 1967; Frankel, 1973; Goldfarb and Singer, 1973) to deter anyone from concluding that there is any likelihood of absolute uniformity in the recommendations made by the two guidance centers. The similarity in the percentages with which the various dispositions were recommended in 1972 in the two guidance centers means probably no more than that a general similarity in frames of reference came into being.

This similarity in frames of reference might be based on nothing more than independently-made decisions to hold the number of recommendations for prison down and some kind of crude agreement about the types of offenders for whom prison is an appropriate disposition.

During the latter half of 1972 when the two guidance centers were both recommending more than 55 percent of their cases for community dispositions, there would probably have been enough similarity in frames of reference to have produced considerable agreement if the same set of cases had been reviewed by both guidance centers. Even so, during this period, there was still ample opportunity for discrepancies in judgements between the two units on the same cases. The possibilities for discrepancies between the units are enhanced,

of course, because of the fact that for some types of offenders the recommendations produced within one of the units are not necessarily uniform or consistent over a series of cases, even though there would appear to be considerable similarity among the cases.

In this report, two very substantial shifts in decision-making patterns taking place at different times within short intervals of time have been described. The existence of such sizable and abrupt shifts leads to a number of interesting questions about decision-making in Corrections. One of the most basic of these is how such an abrupt change can take place in the standards by which an organization operates and be assimilated without a substantial amount of strain. The answer to this question most assuredly is not that the guidance centers changed in response to central administrative direction, for the guidance centers have operated their diagnostic observation programs with what appears to the authors to be a great deal of autonomy.

The principal factor underlying their changed decision-making patterns has been the redefinition of standards by the center administrators and their staffs. This redefinition was stimulated by a number of things, some of which have been indicated elsewhere, including an awareness of trends in decision-making in other parts of the criminal justice system, specifically the courts, and feedback from the Research Division staff about the response of courts to the Z-case recommendations in other guidance centers. The redefinition also was an expression, particularly at the Northern guidance center in 1970, of a willingness to take what was reported by its staff members to be the risk of generating a sizable number of recommendations for community dispositions that might be rejected by the courts. The attitude that emerged among the NRGC staff members in 1970 was that instead of trying to produce recommendations based upon standards that seemed to them to be in rough agreement with the standards of the courts, they would make their decisions on the basis of their own conception of what types of cases might be appropriately recommended for community dispositions. They were surprised by the relatively low level of disagreement that they encountered from the courts, for they thought that they had moved well beyond the courts in terms of the types of cases they were recommending for community dispositions.

#### Z-Case Processing in the DVI Guidance Center

The guidance center at the Deuel Vocational Institution (DVI) presents a special problem, since, at the time of this writing, it is processing the vast majority of the youthful Z-cases (ages 18 to 21 or 22). These younger men are eligible for commitment as wards to the California Youth Authority (CYA). Since the other guidance centers receive very few of these younger cases for Z-case processing and therefore have relatively little possibility for making CYA recommendations, it is unreasonable to compare the recommendation patterns of DVI with theirs. However, as indicated in Tables 4 (page 12) and 5 (page 13), the percentage of cases that DVI recommends for state facilities seems to be rather high, and the need for some kind of investigation of decision-making with a younger Z-caseload seems to be indicated. For example, in 1971 the DVI staff recommended 34.4 percent of its Z-caseload for CDC and 42.8 percent for CYA. In 1972, the corresponding percentages were 37.9 for CDC and 39.8 for CYA. In both years the percentage of acceptance of the CDC recommendations was over 60 percent. While this was better than the records

of the other RGC's, there was obviously considerable evidence of non-acceptance by the courts. The record of acceptance of recommendations for the Youth Authority may be even more unfavorable. Of the cases who were recommended for the CYA in 1971, only 45.5 percent received such a disposition, and another 4.5 percent were sentenced to prison. The suggestion from this would seem to be that the criteria used at DVI for determining the recommendations for both CDC and CYA need reviewing.

#### DISAGREEMENTS BETWEEN RGC RECOMMENDATIONS AND COURT DISPOSITIONS

While the percentage of agreement between the recommendations of the RGC staffs and the actual dispositions of the courts is substantial, there are enough instances of disagreement to underscore the administrative and philosophical independence of the courts from the Department of Corrections. A consideration of some aspects of the process of decision-making in the courts may indicate some of the reasons for these disagreements.

Information obtained from a six county (Santa Clara, Alameda, San Diego, Los Angeles, Sacramento, and Monterey) survey of probation records (pre-sentence investigation) for the years 1964, 1966, and 1968 shows that the great majority of the commitments for diagnostic observation were made by judges in the face of recommendations from the probation officers for denial of probation. Relatively few of these commitments seemed to be suggested to the judge in the first place by a recommendation from the probation officer. In many of these cases, the recommendation of a denial of probation in the probation officer's pre-sentence report was accompanied by language of varying degrees of specificity to the effect that prison would be the most appropriate disposition. If probation is denied, of course, the defendant can receive either a commitment to prison or a straight jail sentence. However, in general, in the six-county survey similarly specific or circumlocutive recommendations for straight jail sentences were not found along with recommendations for denial of probation in anywhere near the same degree. Except in a small percentage of cases it would, therefore, be reasonable to conclude that a very large percentage of recommendations for a denial of probation in felony cases are from the standpoint of the probation officer making the recommendation really recommendations for prison, even though he may not specify prison as the appropriate disposition.

With these considerations in mind, the utilization of the 1203.03 option on the part of judges in the face of recommendations from probation officers for a denial of probation (in effect, imprisonment) may be regarded as another expression of a strain toward less severe dispositions. This tendency toward less severe dispositions finds expression elsewhere in the high concurrence of judges with probation officers' recommendations for the granting of probation (more than 96 percent in each of the years 1968-70) but a significantly lesser degree of concurrence with their recommendations for a denial of probation (71.5 in 1968, 66.1 in 1969, and 57.2 in 1970).<sup>\*</sup> The tendency of the judges to be progressively less accepting of the recommendations for a denial of probation from probation officers reflects a number of things including the greater acceptance of community-based alternatives to imprisonment by the judges. The judges' apparently limited enthusiasm for the use of the state prison system may even be supported by some elements in the staffs of the district attorneys' offices and is most certainly supported by the attorneys for the defendants. The effects of these influences may be observable in the expansion of the use of the commitment for diagnostic observation.

<sup>\*</sup>The source of these data is the reference tables on adult probation published by the Bureau of Criminal Statistics of the State Department of Justice for the years 1968, 1969, and 1970.

Interestingly, the trend toward a greater percentage of rejections of the probation officers' recommendations for a denial of probation is paralleled by the trend toward a greater percentage of rejections of the recommendations from the RGC's for commitment to prison as shown in Tables 6 (page 16) and 12 (page 32). This, of course, is another indication of movement toward less severe dispositions. However, in rejecting the RGC recommendations for prison, the judge is really rejecting two supporting sets of recommendations, since in the majority of cases those who are recommended by the RGC's will have previously been recommended for a denial of probation, i.e., prison, by the probation officers. If the latter fact is considered along with the attitudes of the prosecution and the police and other community influences, the granting of a community disposition to a case recommended for prison by the RGC staff is a substantial example of judicial self-determination.

In spite of the trend away from accepting the recommendations of the RGC's for prison, there is still a very high percentage of acceptance when the recommendations for all types of dispositions are considered. Table 13 contains information on this point. In 1972, for example, 79.1 percent of the combined recommendations of the NRCG for CDC and community dispositions were accepted, and the corresponding percentage for the SRGC was 74.2. Again, these percentage figures offer some support for the notion of the utility of the diagnostic observation procedure for the courts.

The question of why the courts disagree with the RGC recommendations should not be too difficult to answer. Certainly, the judge has a clear awareness of his own prerogatives. He is the one who pronounces sentences, and he has considerable latitude, to say the least, in arriving at the sentence. Under these circumstances, the lack of correspondence between the decision of the judge and the RGC recommendation should be no more difficult to understand than the lack of agreement with the probation officer's recommendation. The judge is simply responding to his own perceptions of the "facts" of the case and the various pressures on him from the other parties in the process and the community. Beyond this basic consideration of the status and role of the judge in the decision-making process in the courts, there are a number of other considerations that should be borne in mind when the matter of disagreement between the courts and the RGC's is under discussion.

One of these is simply that the judge who ordered a diagnostic observation for the man may not be the same judge who finally pronounces sentence. While this kind of circumstance is a relative rarity, it does occur, and its impact upon the percentage of disagreements cannot be ignored. The most common circumstance leading to a change in judges would be the kind of rotation of judicial assignments that occurs in some superior court jurisdictions at the beginning of the new year. An individual who had been committed by Judge A in the latter part of one year could be returned from the RGC to face Judge B in the sentencing hearing in the next year. The orientation to the case of the second judge might differ from that of the first judge to the extent that he considers the case an open and shut prison case whereas the first judge had some inclination toward a community disposition; and this, in fact, led him to make the diagnostic commitment in the first place. Under the conditions of the change in judges, a recommendation in a given case for a community disposition from the RGC could confront a judge who not only considers prison the most appropriate disposition but who would not have sought another opinion

through the Z-case procedure in the first place. The same argument pertains, of course, when the recommendations from the RGC are for commitment to the Department of Corrections.

Another factor which would appear to have been conducive to non-correspondence between the recommendations of the RGC's and the dispositions of the courts up to 1970 was the statutory definition of eligibility for probation. In Section 1203 of the Penal Code, there is a listing of certain instant offenses and certain patterns of instant offenses and/or previous offenses which define the person convicted thereof as ineligible for probation. However, this section of the Penal Code also has the following clause which was added in 1965:

In unusual cases, otherwise subject to the preceding paragraph [i.e., declared ineligible in the preceding paragraph], in which the interests of justice would best be served thereby, the judge may, with the concurrence of the district attorney, grant probation.

A clause requiring the judge to secure the concurrence of the district attorney before probation could be granted to certain specified cases was also included in Section 11718 of the Health and Safety Code.

The statement from the RGC recommending probation has usually stated that if the case is "eligible" for probation, he should be considered for such. Since the matter of eligibility in some cases has been a matter to be discussed between the judge and the district attorney, there was a built-in possibility for a lack of correspondence between RGC recommendations for probation and the dispositions of the courts in cases where probation was considered appropriate by a judge. The judge would have accepted the recommendations for probation but was unable to secure the concurrence of the district attorney with the result that another disagreement was tallied.

The Tenorio decision was the first step in eliminating the power of the district attorney to prevent the granting of probation to "ineligible" cases. In Tenorio, the California Supreme Court found unconstitutional the portion of Section 11718 of the Health and Safety Code which specified that no allegation of fact which, if admitted or found true, would change the penalty for a narcotics offense could be dismissed by the judge except with the permission of the district attorney. The Court held that the district attorney could not be given authority to prevent the exercise by the judge of the power to dismiss the allegation of a prior conviction. In Tenorio's case, the allegation of prior narcotics convictions stood in the way of his being granted probation, and the district attorney refused to allow the allegation of these convictions to be stricken from the pleadings. The decision of the Supreme Court in this case asserts that:

The judicial power is compromised when a judge, who believes that a charge should be dismissed in the interests of justice, wishes to exercise the power to dismiss but finds that before he may do so he must bargain with the prosecutor. The judicial power must be independent, and a judge should never be required to pay for its exercise. People v. Tenorio, 3 Cal. 3d 89 (1970).

Subsequent court decisions (People v. Clay, 1971, 18 Cal. App. 3d 964; People v. Armenta, 1972, 22 Cal. App. 3d 823) have clarified the rule enunciated in the Tenorio decision with reference to Section 1203 of the Penal Code. In the two-year period between the Tenorio and Armenta decisions, there may have been a number of encounters between judges and district attorneys in which the judge unsuccessfully sought "permission" to grant probation to an "ineligible" Z-case who had been recommended for it by the RGC staff even though subsequent to Tenorio there was no requirement for such permission. In fact, the circumstances of John Henry Armenta, the defendant and appellant in the Armenta case, are somewhat reminiscent of this situation. Armenta had been processed as a Z-case, receiving a recommendation for probation from the RGC staff. When he appeared for sentencing, there was a discussion between the judge and the deputy district attorney present who said he would inquire of his office as to whether it would concur in a grant of probation. When the court reconvened, another deputy appeared and refused to concur. It is unclear whether the judge would have followed the recommendations of the RGC and granted probation if he had felt he could grant it without the concurrence of the district attorney. On the other hand, it was obvious that the judge felt such concurrence was necessary. The effect of the Armenta decision was to reaffirm the principle that the defendant is entitled to have his application for probation considered by a judge who is aware of the fact that the district attorney has no veto power over his decision to grant probation. The effect of the Tenorio, Clay, and Armenta decisions is very likely to lessen the extent of the disagreement between recommendations from the RGC's for probation and the dispositions of the courts.

By far the greatest number of disagreements between the courts and the RGC's have occurred with the recommendations for prison. The statutory definition of eligibility for probation may be relevant here also. The staff in the RGC's may be reluctant to recommend probation for some of the cases that are defined as ineligible, even though other indications might be favorable. Another circumstance that may encourage conservative recommendations is an interest in avoiding an excessive amount of conflict with judges and district attorneys. Not infrequently, a letter from an irate judge or district attorney comes into a guidance center protesting a recommendation for probation made in a certain case. While the guidance center staffs do not attempt to conform precisely to what they conceive of as the standards of the courts, these communications may have a cautionary affect and reinforce a tendency toward making conservative recommendations.

Another factor promoting conservative recommendations on the part of RGC staffs may be an overconcern with the offense to the exclusion of other considerations. The attitude may prevail, for example, that all perpetrators of "willful" homicide should be sent to prison. This attitude ignores a number of things, including the divergence among murderers in prior offense histories, circumstances of the present offense, work history, emotional stability, etc. It also ignores the fact that the courts do not commit all cases convicted of willful homicide to prison. (In 1972, only 59 percent of the individuals convicted of willful homicide were committed to prison.) That being the case, it seems unreasonable to consider only the offense of homicide (or any other) in making a recommendation. Finally, this attitude is in ignorance of what appears to be an expanding function of the 1203.03 commitment; and that is that the commitment serves as a short-term imprisonment which represents "enough time". To put it another way, giving an

individual a 1203.03 commitment may from the standpoint of the judge be giving him all the time in prison he "needs" to serve. This consideration should be borne in mind by the RGC staffs in terms of making recommendations for prison.

All of this does not mean that the Department of Corrections should be complacent about the disagreement of the courts with its recommendations. An excellent case in point is the disagreement that it encounters with its recommendations for prison. In saying this, the authors are not contending that the goal of the RGC staffs should be to produce recommendations that the courts agree with 100 percent of the time. This is neither possible nor, necessarily, desirable. There is value in the context in which sentencing decisions are currently made in having the perspective of an agency administratively independent of the court system with somewhat different standards. On the other hand, it seems important for the RGC's to be in roughly the same decision-making universe that the courts are. Otherwise, their recommendations will be more or less irrelevant to the way in which business is transacted in the courts. It seems, therefore, that a continuing investigation of the decision standards of the RGC's in the light of court actions on their recommendations is necessary. It is also of fundamental importance to attempt to insure uniformity of standards across the RGC's. If the different units generate markedly different patterns of recommendations, then it is difficult to have much confidence in the validity of the recommendations. Basic to the achievement of the objective of uniformity is also a continuing flow of information about court actions on decisions and a continuing analysis of the premises of decision-making.

REFLECTIONS ON THE PRE-SENTENCE DIAGNOSTIC OBSERVATION  
PROGRAM AFTER FIFTEEN YEARS

Guidance in Sentencing or Short-Term Imprisonment

The title of this report, Guidance in Sentencing, refers to the original intent of the legislation embodied in Section 1203.03 of the Penal Code. As stated in Section 1203.03, the court if

it concludes that a just disposition of the case requires such diagnosis and treatment services as can be provided at a diagnostic facility of the Department of Corrections, may order that defendant to be placed temporarily in such a facility for a period not to exceed 90 days, with the further provision in such order that the Director of the Department of Corrections report to the court his diagnosis and recommendations concerning the defendant within the 90-day period.

As the authors have noted above, the usage of the opportunity afforded by Section 1203.03 by the courts has increased substantially in the last few years. If this increased usage is in line with the legislative intent of the Section, then it must be an expression of the increased uncertainty on the part of judges as to appropriate dispositions for convicted felons.

This may indeed be the case, for there appears to be considerable interest on the part of judges in seeking remedies for the problems they face in determining appropriate sentences for criminal offenders. This interest is manifested in a number of things including the response to the sentencing institutes sponsored by the Judicial Council of California, where superior court judges meet to discuss the sentences they would apply to particular cases and the reasons for choosing those sentences; the development of the sentencing council approach, where the sentence is determined by means of a discussion among several trial judges; and the publication of books by judges who are critical of the present sentencing procedures, such as the book by Judge Marvin E. Frankel of the Federal Court for the Southern District of New York (Frankel, 1973). The authors in their experiences of talking with judges and reading the comments of judges recorded in the transcripts of court hearings have encountered observations to the effect that the diagnostic observation procedure is, in fact, seen as a special resource for guidance in sentencing. For example, one judge said that he had sent a man to Vacaville for a 1203.03 observation in order to "get a handle" on the case. Another judge described the staff of the same guidance center as a source of "expert" opinion. These kinds of comments have led the authors to conclude that the judiciary in California does regard the 1203.03 procedure as a significant diagnostic resource.

However, at the same time, there is substantial evidence that sending a man to prison for up to 90 days under Section 1203.03 is regarded by some of the participants in the sentencing process including judges as a way of giving him a short-term commitment to prison. The utilizors of the 1203.03 option for this purpose feel that being "shown the walls" will have a stabilizing influence on the man and lead to a more satisfactory adjustment after he is

given a community disposition and released. The data in Table 14 provide some basis for estimating the frequency with which the guidance centers are used for this purpose.

Table 14

DIAGNOSTIC OBSERVATION CASES RETURNED TO CDC  
WITH FELON COMMITMENTS

1967-72

Year	Total, Returned to Court	Number Committed as Felons	Percent Committed as Felons
1967	1274	522	41.0
1968	1325	575	43.4
1969	1705	716	42.2
1970	2158	749	34.7
1971	2425	693	28.6
1972	2644	642	24.3

In the years 1967, 1968, and 1969 more than 40 percent of the Z-case intake were committed to the Department of Corrections upon return to court. By 1972, this percentage had dropped to 24.3. This small a percentage of commitments leads one to believe that at least some of the judges in some of the courts are looking for something other than a diagnostic evaluation in sending a man in as a Z-case. This conclusion has been substantiated in many conversations that the authors have had with judges and probation officers. Indeed, while this kind of arrangement may offend some people who prefer to have a greater degree of correspondence between the intent of the law and the actual application of the law, there would seem to be considerable justification for and utility in a short-term commitment to prison. If the 1203.03 procedure becomes the vehicle for the short-term commitment, then it merely has acquired another purpose which is as legitimate as the diagnostic function.

In line with the non-uniformity among jurisdictions that exists with many other kinds of discretionary matters, the data that are shown in Table 15 suggest that some of the counties may be using the RGC's for short-term commitment purposes to a greater extent than others. One would wonder, for example, if the judges in Contra Costa County who committed 17.6 percent of their returned Z-cases to prison in 1970 saw the service in quite the same way as the judges in Los Angeles County who committed 43.6 percent of their returned Z-cases. Both the 1970 and 1971 distributions in the table were subjected to a chi-square test, and in both instances statistically significant chi-squares were obtained (1970, chi-square = 61.69, p < .01; 1971, chi-square = 52.89, p < .01). This means that the differences in the proportions of cases that are returned to CDC from the various counties are not likely merely to be expressions of random sampling fluctuations ("chance") but can be taken as "real".

Table 15

PERCENTAGE OF Z-CASES COMMITTED TO THE DEPARTMENT OF CORRECTIONS SUBSEQUENT TO THEIR RETURN TO COURT, BY COUNTY OF COMMITMENT DURING THE YEARS 1970 AND 1971

1970				
County <sup>1</sup>	Total	Committed	Not Committed	Percent of Z-Cases Committed
Total, All Counties	1928	713	1215	37.0
Alameda	149	60	89	40.3
Butte	20	6	14	30.0
Contra Costa	68	12	56	17.6
Fresno	73	18	55	24.7
Monterey	42	9	33	21.4
San Francisco	163	57	106	35.0
San Joaquin	45	11	34	24.4
San Mateo	75	18	57	24.0
Santa Clara	63	27	36	42.9
Solano	36	7	29	19.4
Tulare	25	4	21	16.0
Orange	73	26	47	35.6
Riverside	66	28	38	42.4
San Bernardino	81	29	52	35.8
San Diego	100	29	71	29.0
Santa Barbara	25	13	12	52.0
Los Angeles	824	359	465	43.6
1971				
Total, All Counties	2244	658	1586	29.3
Alameda	195	61	134	31.3
Butte	30	2	28	6.7
Contra Costa	74	15	59	20.3
Fresno	91	16	75	17.6
Monterey	48	7	41	14.6
Placer	25	3	22	12.0
Sacramento	32	9	23	28.1
San Francisco	111	38	73	34.2
San Joaquin	27	12	15	44.4
San Mateo	62	20	42	32.3
Santa Clara	78	33	45	42.3
Santa Cruz	25	5	20	20.0
Solano	33	8	25	24.2
Yolo	24	5	19	20.8
Kern	23	8	15	34.8
Orange	79	23	56	29.1
Riverside	64	23	41	35.9
San Bernardino	86	22	64	25.6
San Diego	131	25	106	19.1
Santa Barbara	28	6	22	21.4
Los Angeles	978	317	661	32.4

<sup>1</sup>The counties for which data are presented in this table are those which committed 25 or more cases under Section 1203.03 in 1970 and 1971.

#### Impact of the 1203.03 Procedure on Disparities in Sentencing

In the first section of this report, the historical background of Section 1203.03 of the Penal Code was discussed. It was pointed out that it was one of the legislative recommendations of the Special Study Commission on Correctional Facilities and Services and the Board of Corrections published in a report entitled Probation in California (Special Study Commission, 1957). It was further pointed out that the proponents of the diagnostic observation regarded it as a means of dealing with the problem of differential use of probation by the different counties, particularly as it found expression in the overuse of the prison commitment. Probably, the primary focus of the proponents was on the 1203.03 procedure as a means of obviating inappropriate prison commitments for certain individual cases; this would be the area in which it would most likely have the greatest effect. Regarded in those terms the most significant impact that it could have would be to divert a significant but not particularly large number of cases out of the prison system without really greatly affecting the disparities in sentencing among counties.

To expect much else would be unreasonable. To anticipate that the implementation of the diagnostic observation procedure would play much of a role in reducing discrepancies in commitment rates among jurisdictions would be to ask a very great deal, since nothing else that has come into being has accomplished much along that line. The information on the percentages of convicted felons sentenced to the Department of Corrections shown in Table 16 for the years 1969-72 are reminiscent of those presented in Table 1 (page 3) for the years 1954-57. While the percentages for the later period are of course much lower, the differences among the counties are still very substantial. In fact, if one observes the record of the 1203.03 program to this point, one would have to conclude that it has had very substantial problems with disparities between the operating units in the program itself. This would seem to be an inevitable consequence of creating another system which is given much discretion and little in the way of guidelines for decision-making.

The new program which is supposed to render some assistance to the old system with its problems quickly develops its own problems with non-uniformity. However, the Department of Corrections can legitimately claim that it has confronted its problems in this area to a greater extent than is the case with many agencies making decisions bearing on the sentencing of convicted felons, including the vast majority of probation departments and courts. It has systematically accumulated information on decisions that are made in relation to 1203.03 cases and attempted to deal with the problem of non-uniformity among units with some success.

Up to this point, the efforts that have been made to reduce non-uniformity have primarily been based upon the sharing of information, discussions between research and operating unit staffs, and discussions and standard-setting within the operating units themselves. At this point, it would seem worthwhile to attempt to determine the factors that enter into the decisions made concerning these cases and to assign weights to them through the use of multiple regression techniques. The weighted factors could be used in an additive fashion in conjunction with cut-off scores in arriving at decisions for the Z-cases,

Table 16

PERCENTAGES OF CONVICTED SUPERIOR COURT DEFENDENTS SENTENCED  
TO THE CALIFORNIA DEPARTMENT OF CORRECTIONS FROM COUNTIES WITH A POPULATION  
GREATER THAN 50,000 IN THE BASE PERIOD (1954-57)

1969 - 72

County	Percentage of Felony Convictions Committed to CDC				
	1969	1970	1971	1972	Four-year Combined
Alameda - - - - -	8.8	11.5	14.9	15.6	12.6
Butte - - - - -	21.3	25.4	28.9	21.5	24.0
Contra Costa - - - - -	8.8	9.2	12.6	15.3	11.4
Fresno - - - - -	19.0	21.2	13.3	16.5	17.4
Humboldt - - - - -	20.5	11.6	13.9	9.3	13.1
Imperial - - - - -	13.8	13.8	13.8	13.9	13.8
Kern - - - - -	20.6	22.1	17.9	16.9	19.2
Los Angeles - - - - -	6.6	6.0	5.4	7.0	6.2
Marin - - - - -	13.1	13.0	7.9	6.4	10.1
Mendocino - - - - -	13.8	10.4	8.3	10.4	10.6
Merced - - - - -	15.7	8.4	12.3	13.3	12.3
Monterey - - - - -	16.3	11.7	10.8	11.3	12.3
Napa - - - - -	7.2	10.5	7.1	17.6	9.7
Orange - - - - -	12.7	13.1	10.3	11.5	11.7
Riverside - - - - -	10.4	12.3	12.9	11.9	11.8
Sacramento - - - - -	23.0	24.9	20.4	16.4	21.1
San Bernardino - - - - -	19.5	19.3	22.0	26.7	22.0
San Diego - - - - -	9.1	11.3	9.7	8.6	9.7
San Francisco - - - - -	8.3	10.4	11.0	12.1	10.6
San Joaquin - - - - -	14.4	17.8	13.3	15.3	15.1
San Luis Obispo - - - - -	19.9	24.8 <sup>a</sup>	34.5	29.3	27.1
San Mateo - - - - -	14.4	11.5	10.3	8.6	11.0
Santa Barbara - - - - -	13.3	12.4	12.5	10.6	12.1
Santa Clara - - - - -	7.1	11.2	16.0	21.9	14.8
Santa Cruz - - - - -	17.2	20.5	20.5	19.5	19.4
Solano - - - - -	12.5	20.3	15.0	19.7	17.0
Sonoma - - - - -	9.9	11.5	8.6	15.2	11.2
Stanislaus - - - - -	19.1	21.7	25.1	21.3	21.7
Tulare - - - - -	10.0	15.2	8.3	12.3	11.4
Ventura - - - - -	8.8	11.0	10.4	10.7	10.1
Yolo - - - - -	15.7	12.4	10.1	16.1	13.6
State - - - - -	9.8	10.1	9.7	11.6	10.2

<sup>a</sup>Data reported for ten months only.

thereby controlling much intra-rater disagreement and much intra-rater inconsistency across cases. An effort is currently being made to develop such a system. If the system proves workable, it could serve as a model for other decision-making bodies including the courts, where the development and utilization of such a procedure is long overdue (cf. Frankel, 1973, pp. 111-115).

Monetary Savings Resulting from the 1203.03 Program

One important index of the value of a program is the monetary savings resulting from it. The authors have concluded that the 1203.03 program has resulted in considerable monetary savings to the taxpayers of the State of California and will present an estimate of these savings in this section of the report for the year 1970. Since the utilization of the Z-case alternative has increased in subsequent years, the savings are likely to be even greater after 1970. It seems clear that the combination of sentencing alternatives made possible by Section 1203.03 consisting of a short prison term, followed (possibly) by a short jail sentence as a condition of probation, followed by a return to the community on probation is more financially advantageous than a prison sentence followed by parole. When the matter is viewed from the standpoint of career costs, the monetary savings resulting from the Z-case procedure are likely to be even greater. The concept of career costs refers to the costs or the potential costs of the totality of the institutional confinements of a given case. For example, the potential career costs of imprisonment for an individual being sentenced to prison in California for the first time include the costs for this institutionalization plus parole plus any subsequent reimprisonments resulting from parole revocations. The estimates of career costs should reflect the possibility that a sentence to prison is a more likely disposition for a new felony conviction received by a person with a prior imprisonment than for a conviction received by a person with no prior sentence to prison even though the types of crimes, past and present, that the men have been convicted of may be the same. Therefore, the short-term confinement available under 1203.03 can be seen not only as a means of diversion in terms of the present conviction but, to some extent, of future ones also.

The estimate that will be developed in this part of the report will be restricted to the savings to the State of California relating to the conviction which resulted in the Z-case commitment. It might be contended that the Z-case saves the state a fair amount of money but that these savings are illusory, since the costs are passed on to the local governments who operate and raise taxes for such things as jails and probation departments. It is highly unlikely that the costs of the combination of short-term imprisonment, short-term jail, and probation is equivalent to the cost of imprisonment in a state institution, for imprisonment tends to be both long in duration and expensive per unit of time. The median time served for those released from prison for the first time from this sentence in the first quarter of 1974 was 34 months. The estimated per capita cost for the year 1973-74 was \$5,520. Not only is there this substantial cost for maintaining an inmate in the existing institutions, but the Department has recently been faced with an increase in population of such magnitude that the construction of new prisons may be necessary.

## Process of Estimating Monetary Savings

The estimate of savings to the State of California arising from the Z-case program is for the year 1970, the last year for which certain critical data are available from the Bureau of Criminal Statistics, in particular the percentage of cases recommended by probation officers for a denial of probation who were in fact denied probation by the courts. The process of arriving at the estimate of the monetary savings for the year 1970 is as follows:

1. The base figure for arriving at an estimate of the savings accruing from the program in 1970 should be the number of those who were recommended for a community disposition by the RGC's and for whom the recommendation was accepted by the courts. It is inappropriate to include for purposes of this savings estimate those who were recommended by the RGC's for prison but who were granted a community disposition by the courts. The appropriate figure from Table 6 is 797 (851-54).

2. The figure of 797 must be adjusted for those cases which would have been granted probation without going through the Z-case procedure. As indicated previously in this report, the vast majority of Z-cases have been recommended for a denial of probation by the probation officer in his pre-sentence report. On the basis of the data from the six-county survey referred to above, it will be assumed that 95 percent of the estimated 797 cases were recommended for a denial of probation and five percent for probation and that all of the latter cases would have received a grant of probation (95 percent of 797 = 757, five percent of 797 = 40).

3. On a statewide basis in 1970 according to data from the Bureau of Criminal Statistics\*, 57.2 percent of the probation officers' recommendations for a denial of probation were accepted by the courts. It seems inappropriate to employ this percentage in this analysis, since the cases sent in under Section 1203.03 should have been more marginal than the cases who were also recommended for a denial by the probation officer but who were placed directly under the supervision of some community correctional agency by the courts. It will, therefore, be estimated that 65 percent of those recommended for a denial by the probation officer and were committed as Z-cases would have been committed to prison without the 1203.03 procedure (65 percent of 757 = 492).

On a statewide basis in 1970, 96.1 of the probation officers' recommendations for probation were accepted by the courts. However, because of the fact that the cases committed under 1203.03 that were originally recommended for probation by the probation officer must necessarily have been seen by the judges as more marginal than the majority of the cases recommended for probation, it will be assumed in this analysis that probation would have been granted to only 75 percent of these cases in the absence of the Z-case procedure (75 percent of 40 = 30).

The estimated number of Z-cases who would have been committed without the Z-case procedure in 1970 is therefore 502 (492 + (40-30) = 502).

\*Adult Probation Reference Tables, 1968, 1969, 1970. California Department of Justice, Bureau of Criminal Statistics.

4. From the estimate of 502 cases who would have been committed to the Department of Corrections without the Z-case procedure should be subtracted those who were sentenced to prison for new felonies or for probation violations within the standard follow-up period of two years. This step is followed because it seems inappropriate to consider as diverted from prison by the Z-case procedure those who within a short period of time from their grant of probation end up there anyway. A limited amount of follow-up information is available from the six-county survey referred to previously. Only 87 cases from this survey met the criteria of being recommended for probation, being granted probation, and having had two years elapse from the time of the original grant of probation. The data from the one-year follow-up reported above, while available on a larger number of cases was not used because of the shortness of the follow-up period. Of these ten (or 11 percent) had been sentenced to prison on a new felony count or for a violation of probation. Since this 11 percent factor is the only thing available at the present time in the way of a usable estimate, it will be necessary to adjust the figure of 502 with it (502-11 percent or 55 = 447).

5. In order to develop an estimate of monetary savings to the state for the estimated 447 cases who were diverted from the prison system, it will be necessary to hypothesize a median length of sentence that the cases would have served if they had been committed to prison. The median length of sentence for those released for the first time from their current commitment to the Department of Corrections in 1970 was approximately 36 months. The group on which this median was computed included individuals who committed offenses not likely to be represented among those committed by the individuals released to the community through the Z-case procedure; for example, there were not any individuals who were convicted of the more severe offenses such as murder among the Z-cases recommended for probation and granted it by the courts in 1970. This being the case the median of 36 months should be adjusted downward for the purposes of this analysis. Somewhat arbitrarily 30 months was selected as the estimated median sentence the 447 cases would have served had they been sentenced to prison. This yielded a further estimate of 1,117.5 (447 x 30) as the total number of years that would have been served by the 447.

6. As an estimate of the cost per inmate year, the figure for the year 1970-71 that was printed in the budget was used. This figure is \$3,375. Multiplying it by the estimate of years saved yields in turn an estimate of \$3,771,562. This estimate should be adjusted by the costs to the state of probation subsidy, a program through which counties were paid \$4,000 for each commitment less than a specified number. There is no way of determining how many of the 447 cases the counties received compensation for under probation subsidy, however, the simplest assumption (and for these purposes a very conservative one) is that they all were. Employing this assumption leads to an estimate of probation subsidy costs of \$1,788,000. If this is subtracted from the figure of \$3,771,562, the resulting figure is \$1,983,562.

7. Finally, from this figure must be subtracted the costs of the Z-case processing in the guidance centers. Unfortunately, the cost of processing a case through a guidance center is not available. Therefore, some attempt must be made to estimate it. The average length of time for processing a case

through the guidance centers was less than two months in 1970. The guidance center costs are greater than those for the general institution programs because of the enriched staffing used in the evaluation process. It was inappropriate, therefore, to simply take one-sixth of the cost figure for the inmate year quoted in the previous section. However, taking one-fourth of that figure might serve as a crude estimate of the cost of the guidance center services for a Z-case (one-fourth of \$3,375 = \$843.75). Multiplying this figure by the 447 cases we have estimated as being diverted from prison by the diagnostic observation program gives an estimated processing cost for them of \$377,156. Subtracting this from the revised figure in the above section (\$1,983,562) gives a final estimate of the total savings accruing from the Z-case program in the year 1970 of \$1,606,406.

#### Concluding Statement

It seems reasonable to the authors to conclude this report by saying that the Department of Corrections can be satisfied with the 1203.03 program for a number of reasons. The increased use of the program by the courts represents some kind of favorable commentary. While the program has not solved all of the problems of the courts relating to sentencing, it certainly appears that it is making some kind of a contribution. With the passage of time, it has become apparent that the courts are using the program as a means for committing convicted felons to prison on a short-term basis as well as a pre-sentence diagnostic service. The acceleration in the use of the 1203.03 commitment may in fact, reflect interest in the option of a short-term imprisonment and the possibility of its deterrent effects as much or more than a desire to obtain assistance in making decisions about sentencing. The apparent degree to which the 1203.03 commitment is coming to be employed for purposes of providing a short-term confinement suggests the possibility of explicitly recognizing that this is occurring through enacting legislation that would expand the "language" of the existing statutes. If this were done, then it would be possible to use the short-term commitment more widely and to evaluate its impact systematically in contrast to commitments of longer duration.

As the number of Z-case commitments has grown, the significance of the program as a mechanism for the diversion of cases from the Department of Corrections has correspondingly grown. The diversionary achievements and potential of 1203.03 have considerable significance from the standpoint of savings in human costs. They likewise have considerable significance from the standpoint of savings in monetary costs. The authors have presented an estimate for the year 1970 of monetary savings amounting to more than \$1,600,000. This estimate does not include the costs for new construction that would be necessitated by the greater number of commitments that would be entering the Department of Corrections in the absence of the 1203.03 option. This is of particular significance at this point in time when the prison population is in a phase of considerable growth.

Decision-making in the Z-case program has, until the time of the collection of the data presented in this report, been representative of decision-making in other contexts in the criminal justice system. That is, it has taken place in the absence of clear standards or guidelines and any kind of feedback

of outcomes related to those decisions. One of the results of this situation was the same thing that occurs elsewhere in the system, a significant dissimilarity in the decisions rendered in different operating units in the absence of indications of differences in clientele that would justify such discrepancies. The usual response to this problem is to ignore it or to adopt some kind of inadequate "solution". The enterprise depicted in its early stages in this report represents an unusual collaboration between information providers (in this case, the CDC Research Division) and decision-makers. The outcome of the collaboration has been a responsiveness to information on the part of the decision-makers that is shown in a reasonably successful effort to minimize inconsistency in decision patterns. This information provided by the researchers has not, as is so typical, ended up on some dusty shelf, there to remain unheeded.

## SUMMARY

The purpose of this report is to survey the utilization and impact of Section 1203.03 of the California Penal Code since its enactment into law in 1957. This section authorizes the criminal courts to send, prior to sentencing, an individual convicted of an offense punishable by imprisonment to a Reception-Guidance Center (RGC) of the California Department of Corrections for a period of up to 90 days. During this time, the staff of the Department is to prepare for the court an evaluation of the man, including a recommendation for an appropriate sentence, i.e., probation, prison, etc. Section 1203.03 is the embodiment of a recommendation for legislation that was submitted by a special study commission appointed by former Governor Goodwin Knight in its report on probation services. It was suggested as one approach to dealing with the problem of inappropriate commitments to prison or, to express it in another way, disparities among the courts in their use of the various sentencing alternatives.

### Findings

#### Growth in the Utilization of the Program:

1. The number of cases sent to the Department of Corrections for evaluation under Section 1203.03 has increased steadily year-by-year since 1965 when the requirement of reimbursement of the Department by the committing county was eliminated. In 1965, 761 male felons were diagnosed and returned to court; in 1972, 2,644 were processed.

2. This increase in utilization cannot be accounted for simply on the basis of gains in the population of the state or in the number of felony convictions.

#### Acceptance by the Courts of RGC Recommendations:

1. The acceptance of recommendations for community dispositions has been substantially greater than that of recommendations for prison. For example, during each of the years from 1964 through 1972, more than 90 percent of the recommendations for community dispositions were accepted by the courts, while the percentage of acceptance of the recommendations for prison varied from 71.6 in 1967 to 52.6 in 1972.

#### Differences Between the Guidance Centers, 1964-71:

1. In this period, the differences between the guidance centers in patterns of recommendations were substantial. In general, the Southern Reception-Guidance Center at Chino (SRGC) recommended a greater percentage of its cases for commitment to the Department of Corrections than the Northern Reception-Guidance Center at Vacaville (NRGC). In 1970, the SRGC recommended 60 percent of its cases for prison as opposed to 30 percent for the NRGC. In 1971, the percentages of recommendations for prison were 26.3 for the NRGC and 57.7 for the SRGC. In these two years, there were discrepancies of the

same magnitude (necessarily) between the guidance centers in their use of the recommendation for a community disposition.

2. It is unlikely that these differences in recommendation patterns could be explained solely on the basis of differences in the types of cases handled. A major factor operating to produce them seemed to be a difference in decision-making "cultures" in the two guidance centers, i.e., a difference in the standards or guidelines employed in making decisions.

3. The markedly greater percentage of recommendations for community dispositions produced in the NRGC in 1970 and 1971 was not responded to by the courts with an equivalently greater percentage of rejections. The courts were more likely to reject the more conservative (prison) recommendations of the SRGC.

#### Returns to Prison from Probation:

1. Among the cases returned to the courts in 1970 with a recommendation for a community disposition that was accepted by the courts, those processed in the NRGC (with its more liberal policy of recommending for the community) had a significantly higher percentage of probation revocations. However, the difference in percentages of revocations (2.7 vs. 7.8) was not enough to justify the more restrictive policy of the SRGC in recommending community dispositions.

#### Movement Toward Convergence in Recommendation Patterns in 1972:

1. The information that had been developed on the discrepancies between the guidance centers in their recommendations was presented to the RGC staffs in the early part of 1972 by members of the CDC Research Division. The result was a shift on the part of the SRGC to a much greater use of the recommendation for community-based programs and a corresponding decrease in the use of the recommendation for commitment to the Department of Corrections. This is an example of an all too rarely seen responsiveness of a decision-making unit to information about the outcome of its decisions.

2. In the second half of 1972, the SRGC recommended 58 percent of its cases for the community compared to 63 percent for the NRGC. In other words, there was almost a convergence between the guidance centers in the percentages of these recommendations.

3. The increase in recommendations for community dispositions from the SRGC in 1972 was not met by an increase in their rejection by the courts.

#### Perspectives on the 1203.03 Program, 1957-72:

1. There is considerable evidence that one of the factors contributing to the increase in the use of the 1203.03 commitment is the possibility it affords for giving a man a short-term exposure to prison.

2. Disparities in sentencing practices among the courts continue to be very striking. There is no evidence that the use of Section 1203.03 or anything else for that matter, has had any significant impact on this problem.

3. The number of long-term commitments to the Department of Corrections has undoubtedly been reduced because of the possibilities for diversion available through Section 1203.03. This has resulted in a considerable monetary savings both in costs for maintenance and new construction.

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