

ANALYSIS OF DISMISSALS
FROM
SIX-AREA STUDIES

NCJRS
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ACQUISITIONS

Law Enforcement Planning Commission
Statistical Analysis Center
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HIGHLIGHTS OF FINDINGS

In the Idaho Six Area Robbery/Burglary Studies, it was found that 33.2% of all arrests ended in dismissals. Further study of dismissals revealed the following:

1. Of all those who had their cases dismissed, 36.4% returned to the Criminal Justice System via subsequent felony arrest, as compared to a felony rearrest rate of 16.5% among those convicted in the same Six Area Studies.
2. Of those individuals whose cases were plea-bargained, 75% have been subsequently rearrested on one or more felony charges, according to CIB "rap sheet" information.
3. Those individuals who recidivated (defined as subsequent felony arrest) were rearrested at an average rate of 1.6 times each and charged with an average of 2.5 felony offenses each. 41.4% of subsequent offenses charged were for robbery or burglary.
4. Prosecutors described 36.8% of known dismissal causes as an inherent, even "healthy," part of a democratic Criminal Justice System.
5. Witness problems accounted for over 19% of all known dismissal causes. Prosecutors felt that some witness problems were unavoidable, as when a witness was found to be unreliable. However, other dismissals due to witness problems, such as those witnesses who could not be located, generated a 75% recidivism rate and therefore merit increased attention on the part of the Criminal Justice System.

In September of 1977, the Statistical Analysis Center (SAC) of the Idaho Law Enforcement Planning Commission published a research report on 1975 robbery and burglary arrests in seven Idaho counties (found in the FY 78 Crime Analysis). Six of these counties* were surveyed for all 1975 adult robbery arrests and six** for all 1975 adult burglary arrests, and the resultant systems rates studies were therefore entitled "Six-Area Studies." These studies revealed that 33.2 percent of these arrests ended in dismissal. Because this dispositional category was so large, it seemed appropriate to examine dismissals in greater detail to ascertain whether this phenomenon is inherent in the system or problematic. To do this, individual prosecuting attorneys were interviewed concerning the precise factors contributing to each and every dismissal. The entire Six-Area Study included 455 arrests and 151 of these cases had been dismissed. Of these, Idaho prosecutors had detailed memory of 125 cases. The 26 cases which could not be recalled are included in this study, but have been removed to their own category to distinguish them from cases about which details are known.

Table 1 lists the number of arrests, prosecutions, and dismissals in the individual counties studied. For Ada, Bannock, Bonneville, Canyon and Kootenai Counties, these figures represent both robberies and burglaries. Twin Falls figures are for burglaries only and Cassia figures are robbery only.

TABLE I
Arrests, Prosecutions, and Dismissals
1975 Dismissals

County	Arrests	Prosecutions	Dismissals	Dismissals as a % of Arrests
Ada	176	90	66	37.5%
Bannock	78	49	24***	30.8%
Bonneville	86	50	31	36.0%
Canyon	31	21	10	32.3%
Cassia****	9	2	3	33.3%
Kootenai	33	28	4	12.1%
Twin Falls****	42	33	13	31.0%
TOTALS	455	273	151	33.2%

* Ada, Bannock, Bonneville, Cassia, Kootenai and Nampa City representing Canyon

** Ada, Bannock, Bonneville, Kootenai, Twin Falls and Nampa City representing Canyon

*** Two more dismissals occurred in Bannock County following conviction. The defendants in both cases were incarcerated elsewhere.

**** Cassia is robbery only and Twin Falls is burglary only.

Note that the number of dismissals, when added to the number of cases prosecuted, does not necessarily total the number of arrests. The 31 cases not accounted for in this chart were either never filed or the defendants absconded prior to prosecution. Refer to the Six-Area Studies for further information on cases that were neither prosecuted nor dismissed, or for information on the results of prosecution.

Table 2 identifies those counties which were able to provide detailed information, either through adequate files or prosecutor case recall, regarding dismissals.

TABLE 2
Sources of Dismissal Information
1975 Dismissals

County	Provided Detailed Information	General Information From Files Only	No Information Available	Total Dismissals
Ada	55	5	6	66
Bannock	21	3	0	24
Bonneville	24	6	1	31
Canyon	8	0	2	10
Cassia	3	0	0	3
Kootenai	3	1	0	4
Twin Falls	11	2	0	13
Totals	125	17	9	151

As results of inquiries were tallied, three broad categories of dismissals were identified and, for convenience, have been labeled: (1) Economic Dismissals, (2) Inherent (to the system) Dismissals, and (3) Error Dismissals.

Economic dismissals are those in which the defendant is not released from prosecution, but rather enters into plea bargaining, is already incarcerated, or has several charges against him consolidated. The philosophy applied to such cases assumes that justice will be served while at the same time the state and the taxpayer are saved the time and money involved in prosecuting several charges separately. 57 dismissals fall under this general category and are examined in detail in Table 3. They constitute 37.7 percent of all dismissals. Plea bargaining and case consolidations account for the greatest portion of this category (37 of the 57 cases), followed by cases settled out of court to the satisfaction of the victim.

TABLE 3
Economic Dismissals
1975 Dismissals

<u>Dismissal Cause</u>	<u>Number</u>	<u>Number Rearrested</u>	<u>Percentage Rearrested</u>
I. Plea bargain	16	12	75%
II. To consolidate cases or pursue other charges (4--defense counsel demonstrated evidence for "unbeatable" case)	21	7	33%
III. Defendant already incarcerated on other charges	5	3	60%
IV. To defer jurisdiction to another authority for prosecution	5	1	20%
V. To grant immunity in exchange for testimony in another case	2	2	100%
VI. To avoid a felony record for a young man in whom the prosecutor had confidence (charges refiled as misdemeanor)	1	0	0
VIII. Settled out of court: restitution made and victim disinterested in pursuing punishment. (3 of these allowed to enter military service as condition of settlement)	7	1	14%
Totals	57	26	46%

Note that 75 percent of those cases plea bargained show a record of rearrest. In other words, the Idaho Criminal Identification Bureau records show that three-fourths of those individuals whose cases ended in dismissal through plea bargaining were subsequently rearrested on one or more felony charges. Rearrest does not imply guilt or conviction, only re-entry into the criminal justice system. It is possible that some portion of these rearrests were considered in the plea bargain which took place in 1975. The same may be true of case consolidations.

The appearance is that economic dismissals, although they do not release the defendant from the system, do take place among the group of individuals generating the greatest number of felony crime rearrests in the community. Rearrest is discussed in more detail later in this report.

Inherent dismissals were the second largest category of dismissals, and together with the economic category accounted for 68.2 percent of all dismissed cases. Inherent dismissals alone accounted for 30.5 percent of all dismissals. Inherent dismissals occur when there is sufficient

Probable cause to arrest a defendant, but followup investigations fail to produce proof of the defendant's guilt beyond a reasonable doubt. As itemized in Table 4, 46 cases fell into this general category.

TABLE 4

Inherent Dismissals
1975 Dismissal Causes

Dismissal Cause	<u>Number</u>	<u>Number Rearrested</u>	<u>Percentage Rearrested</u>
Breakdown of Insufficient Evidence Causes . . .			
A. Probable cause for arrest; insufficient evidence to prove guilt beyond reasonable doubt.	14	3	21%
B. Breakdown of Witness Losses	24	10	42%
1. Could not locate; witness unavailable	8	6	75%
2. Out-of-state witness could not be retrieved within statutory time limits; judge declined to waive time limits	4	0	0
3. Witness/victim absconded	3	0	0
4. Witness recanted	4	3	75%
5. Witness unable to make positive identification	2	1	50%
6. Witness unreliable	1	0	0
7. Victim died; also considered unreliable	1	0	0
8. Juvenile witness in process in juvenile court, and unavailable to prosecution	1	0	0
I. Total Insufficient Evidence	38	13	34%
II. Defendant Considered Mentally Incompetent	3	0	0
III. Defendant Overcharged, Without Fault	5	3	60%
Totals	46	16	35%

Because inherent dismissals were characterized by justifiable arrests, but too little evidence for a good prosecution, no remedies were suggested for them. In fact, they were generally considered a necessary, even "healthy," part of a democratic system. Frequently the witness evidence was lacking. For example, in one case, the victim was unwilling to submit to the exposure of pressing prosecution after reporting the incident to the police. However, because witness problems were so prevalent -- accounting for 16 percent of all dismissals -- it is felt that a strong witness/victim program might be of help to both law enforcement and prosecutor personnel, and would assure that no cases were lost due to neglect of witnesses and victims.

Inherent dismissal cases exhibited a 35 percent rearrest rate, as compared to 46 percent for economic dismissals and 32 percent for error dismissals. Rearrest data is discussed at greater length later in this report.

Error dismissals are dismissals resulting from failure of the arresting agency, the judge, the prosecutor, or clerical staff to observe appropriate conduct of the case. 19 cases, detailed in Table 5, fell into this general category. They comprise 12.6 percent of dismissals in this study.

TABLE 5

Error Dismissals
1975 Dismissals

Dismissal Causes	Number	Number Rearrested	Percentage Rearrested
I. Clerical errors resulting in violations of statutory time limits (4--prosecutor's clerk, 1--court's clerk)	5	2	40%
II. Arrest errors	9	2	22%
6--should not have been arrested			
2--arrested on wrong charge			
1--evidence deficiencies stemming from arrest			
III. Prosecutor procedural errors	4	2	50%
IV. System malfunction: calendaring delays resulted in depletion of evidence	1	0	0%
Totals	19	6	32%

Error dismissals constituted the smallest and most subjective category of dismissals. Agencies interviewed were found to be quite candid concerning problematic areas leading to dismissals and had generally already taken steps to avoid recurrences. Ada and Canyon counties emphasized low pay and high turnover as a barrier to maintaining the highly skilled personnel less likely to commit errors. In Ada County, for instance, three cases, all against "habitual" criminals, had to be dismissed because a new clerk in the prosecutor's office failed to file papers binding the defendant over to district court within a 10-day statutory time limit. In another case, a novice deputy prosecutor misunderstood a judge's ruling, thought his most crucial evidence would not be admitted, and consequently moved to dismiss the case.

The largest number of error dismissals stemmed from problems with arrest procedures, although prosecutors were seldom critical of arresting officers. They generally emphasized the necessity for officers to make hasty judgements at times, and stressed on-going training and personnel screening as the best preventive measures for problems which develop in this area.

As will be shown later, error dismissals enjoyed a lower rearrest rate than inherent and economic dismissals, but the rearrest rate was still nearly twice as high as for those convicted.

Table 6 explores the 29 remaining dismissals. Two of these were considered by the prosecution to be strong cases, but were considered by the judge to have evidentiary deficiencies. These cases were not appealed to the Supreme Court for judgement on this question, so no conclusions can be drawn in this report concerning justification of opinions on the validity of the evidence. There were no rearrests discovered for the recipients of these dismissals.

TABLE 6
Miscellaneous Dismissals
1975 Dismissals

Dismissal Cause	Number	Number Rearrested	Percentage Rearrested
I. Conflict in judgement of value of evidence 2--prosecutor felt he had strong evidence; judge found no probable cause 1--defendant passed 3 polygraph tests successfully	3	0	0%
II. Causes unknown: file states "Interests of Justice," "Good Cause Appearing," "Insufficient Evidence," etc.	20	5	25%
III. Files state judge found no probable cause for charge of burglary in case of rape and beating of female by her boyfriend	1	1	100%
IV. No file, no information	5	1	20%
Totals	29	7	24%

The twenty-six cases in Parts II, III, and IV of Table 6 could not be recalled by prosecutors. Although the files of one among these elaborated on the cause of dismissal, the remaining 20, together with five cases for which neither files nor recall exist, constitute 26 cases for which this study was unable to determine the exact cause of dismissal. It is interesting to note that the rearrest rate among these individuals was somewhat lower than for economic, inherent, or error dismissals.

As a result of the foregoing analyses, six areas of possible concern were examined:

1. Witness problems accounted for 19.2 percent of all known dismissal causes, or 5.3 percent of all arrests in the study. When questioned about resources which might prevent the loss of witnesses, prosecutors identified four cases out of the 26 which had potential for resolution: the four charges, all against one defendant, in which a continuance was required for witness retrieval processes. The judge declined to grant such a continuance and thereby infringe on the defendant's right to speedy legal process.

2. Arrest errors represented 7.2 percent of known dismissal causes, or 2 percent of all arrests in the study. All prosecutors interviewed encouraged ongoing training for officers in arrest procedures, evidentiary requirements, and elements of crimes. It was felt, however, that demands upon officers to make spontaneous decisions under pressure would always result in some error.

3. Clerical errors, 4 percent of known dismissals and 1.1 percent of arrests, were described as a phenomenon of the human element in a stressful system, and suggestions for amendment included increased training, supervision, and salary increases.

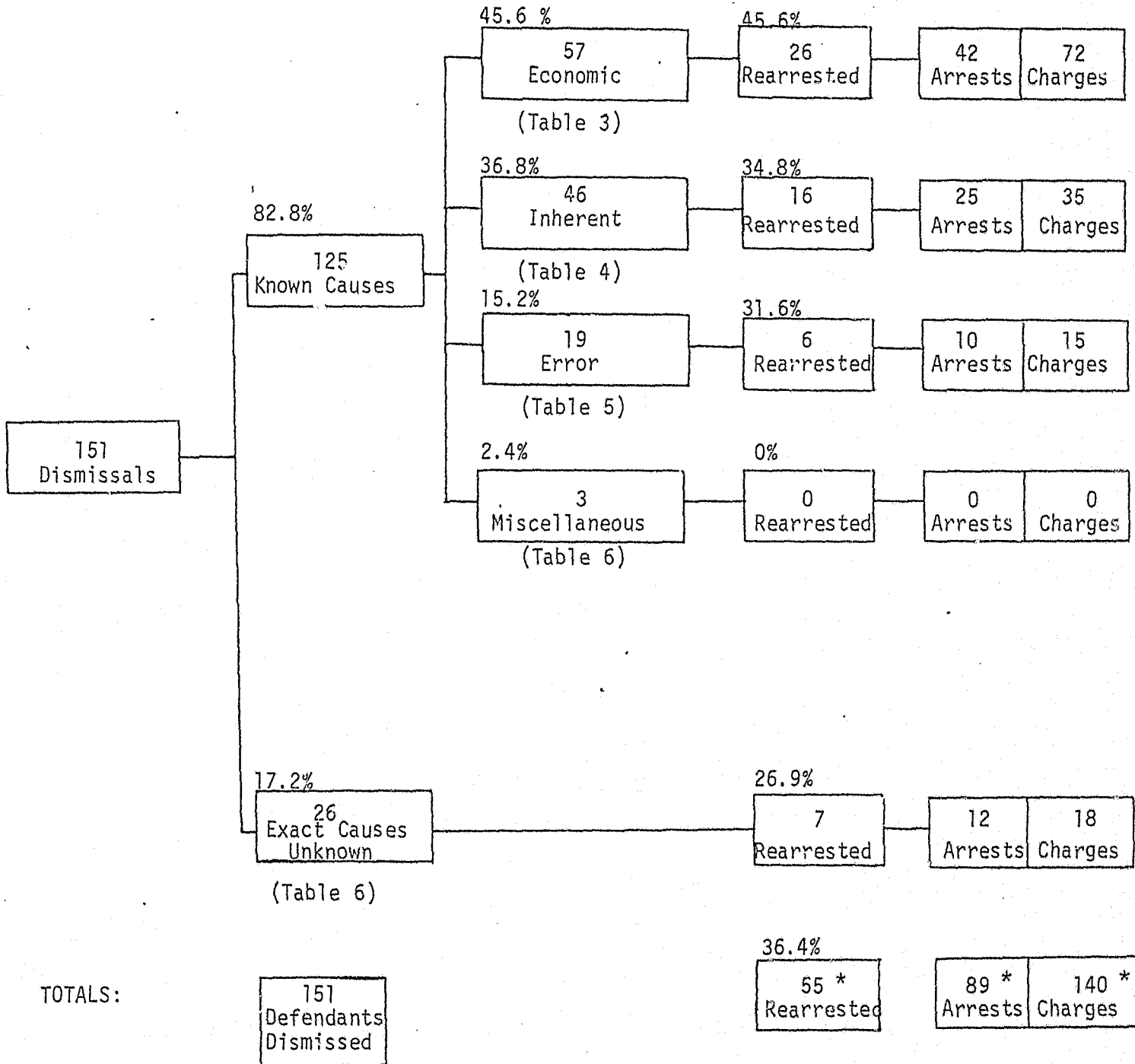
4. Prosecutorial errors, 3.2 percent of known dismissals, or .9 percent of arrests, were all committed by deputy prosecutors. Deputies were described as being traditionally chosen from new law school graduates and likely to polish their skills and commit their first errors during their initial year of practice in a prosecutor's office.

5. Ambiguous, catch-all phrases used to identify causes for dismissal represent a barrier to analyzing this phase of the system. In the original Six-Area Study, 78 cases were described on files as dismissals "In the Interests of Justice," "Good Cause Appearing," "No Probable Cause," or for "Insufficient Evidence." They represent 51.7 percent of the 151 dismissals. In the course of this manual review, that number was reduced to 20, which means that for 13.2 percent of all dismissals, the exact causes are still unknown.

6. There also appears to be general citizen concern about recidivism and the freeing of repeat offenders. The SAC unit therefore studied the criminal histories of those convicted or dismissed in the Six-Area Studies (refer to 1975 Recidivism Study), and the percentage of individuals who were rearrested following dismissal appears in Chart I. Note that other charts and tables throughout this report include rearrest data. Individual charts for each county are appended to this report. Note that figures in all of these charts and tables represent rearrest on felony charges, and do not reflect prosecutions and/or convictions.

Also note that Chart I removes the 26 cases for which causes of dismissal could not be determined, and bases percentages of dismissal causes on the remaining 125. This report has heretofore quoted percentages as a ratio of all 151 dismissals. It is possible that the ratio of dismissal causes among the 26 undetermined cases would correspond proportionately to the percentage of known causes among the 125, and that we would find the same trends existent in both groups. It is also possible, however, that the trends would not match, particularly if those for which causes are not known have a common element not prevalent in the known group. It is therefore useful to look at the percentages in both ways: as a ratio of all 151 dismissals, as previously discussed in this report, and as a ratio of the 125 for which causes are known, as in Chart I.

1975 SEVEN COUNTY DISMISSAL STUDY
DISMISSAL CAUSES AND REARRESTS



*The fifty-five were rearrested as follows:
 2 arrests on 2 charges of robbery,
 33 arrests on 56 charges of burglary,
 54 arrests on 82 other felony charges.

Overall, cases ending in dismissal were found to have a higher profile of recidivism* than other dispositions. The SAC 1975 Recidivism Study, which examines convictions among the same Six-Area Study group, revealed a 16.5 percent recidivism rate for convictions, a striking contrast to the 36.4 percent recidivism rate among dismissed cases. It should be noted that persons who were rearrested were usually charged with more than one felony offense upon the occasion of that arrest. Table 7 tabulates the number of arrests and the number of charges entered on rap sheets, concluding that 55 individuals were arrested 89 times on 140 felony charges subsequent to the 1975 study crime.

TABLE 7

<u>Dismissal Category</u>	<u>#</u>	<u>Individuals Rearrested</u>	<u>Number of Rearrests</u>	<u>Ratio of Rearrests to Dismissals</u>	<u>Number of Charges</u>	<u>Ratio of Charges to Dismissals</u>
Economic	57	26	42	74%	72	126%
Inherent	46	16	25	54%	35	76%
Error	19	6	10	53%	15	79%
Miscellaneous & Unknown	29	7	12	41%	18	62%
Totals	151	55	89	59%	140	93%

Table 7 implies that one out of every 2.7 individuals (whose cases were dismissed) were rearrested. These individuals were rearrested an average of 1.6 times each on an average of 2.5 subsequent felony charges. As noted in Chart I, two of the later offenses charged were robbery, 56 were burglary, and 82 charges were various other types of felony offenses. Obviously, those persons who entered the system originally on a 1975 robbery or burglary arrest were subsequently re-entering the system on felony offenses other than just robbery or burglary.

The greatest number of subsequent crimes charged were generated by those individuals receiving economic dismissals, and, as suggested previously, this phenomenon may be related to the fact that plea bargaining is more likely to take place when a defendant is charged with several offenses at about the same time. However, the felony rearrest rate among combined inherent, economic, and error dismissals is high enough to warrant increased attention on the part of the entire criminal justice system, to establish with certainty whether this apparent recidivism rate can be reduced.

*Recidivism defined as the appearance of subsequent felony arrest(s) on CIB-FBI rap sheets for individuals studied as of July 1, 1977.

In summary, 33.2 percent of the burglary and robbery arrests in the Six-Area Studies ended in dismissal. The majority of dismissals had an economic basis, consolidating prosecutorial efforts against a single defendant who was not released from the system, but who recidivated at a very high rate compared to other dispositional categories.

Most remaining dismissals were precipitated by evidentiary deficiencies which prosecutors described as inherent in a democratic criminal justice system. Few dismissals were the result of absolute error. In these categories, too, recidivism rates were high compared to other dispositional categories. As of July 1, 1977, over 36 percent (55) of those 151 individuals who had their cases dismissed had been rearrested and charged with 140 subsequent felonies.

Prosecutors interviewed did not seem concerned about reducing the number of dismissals; indeed, many dismissals were seen as appropriate, necessary, and even a "healthy" sign for the system. It was generally felt that economic dismissals should continue to take place to relieve burdens of cost and caseloads in the courtroom, and inherent dismissals were generally seen as a democratic "checks and balances" procedure.

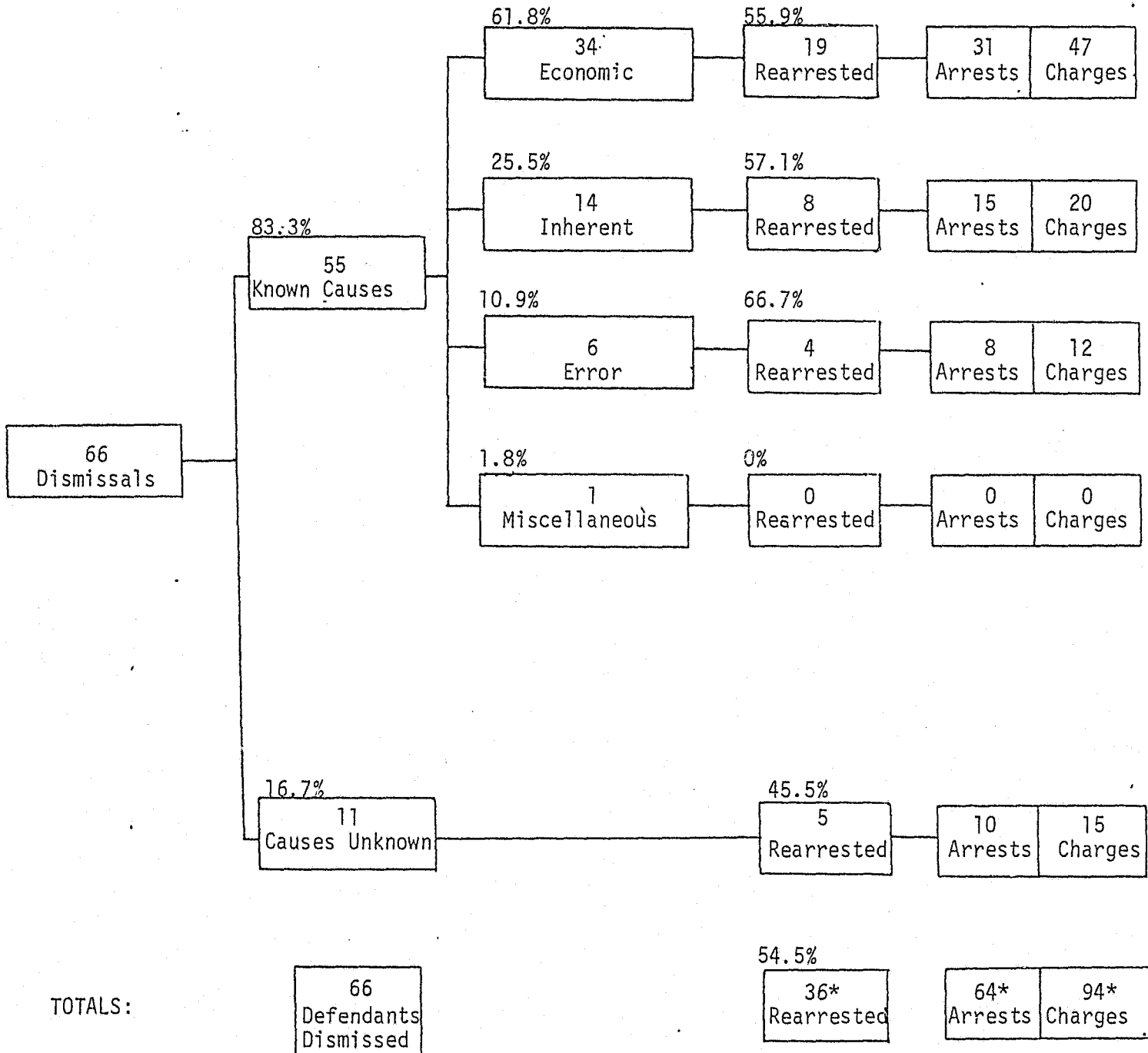
It was pointed out that police officers must sometimes make arrests that should not be prosecuted, as when a mentally incompetent person is caught in the act of committing an offense, or when several persons must be arrested at once and degrees of responsibility for the offense must be sorted out later. It was also felt that officers should have the freedom to make decisions under pressure which the prosecutor might later find to be based on insufficient evidence, but it was emphasized that the quality of officers chosen and the training they receive should be shaped by this need to make hasty judgements.

Even error dismissals were accepted by prosecutors as being unavoidable so long as the human element and low pay and high turnover are present in the system.

However, it is evident that training efforts and witness/victim programs could at least address error dismissals and many inherent dismissals, and follow-up studies can determine whether improvements might be made in this system. Citizen concern over system costs and recidivism certainly warrant attention in the form of remedies to dismissals, the most highly recidivating dispositional category in the Six-Area Studies.

CHART 2

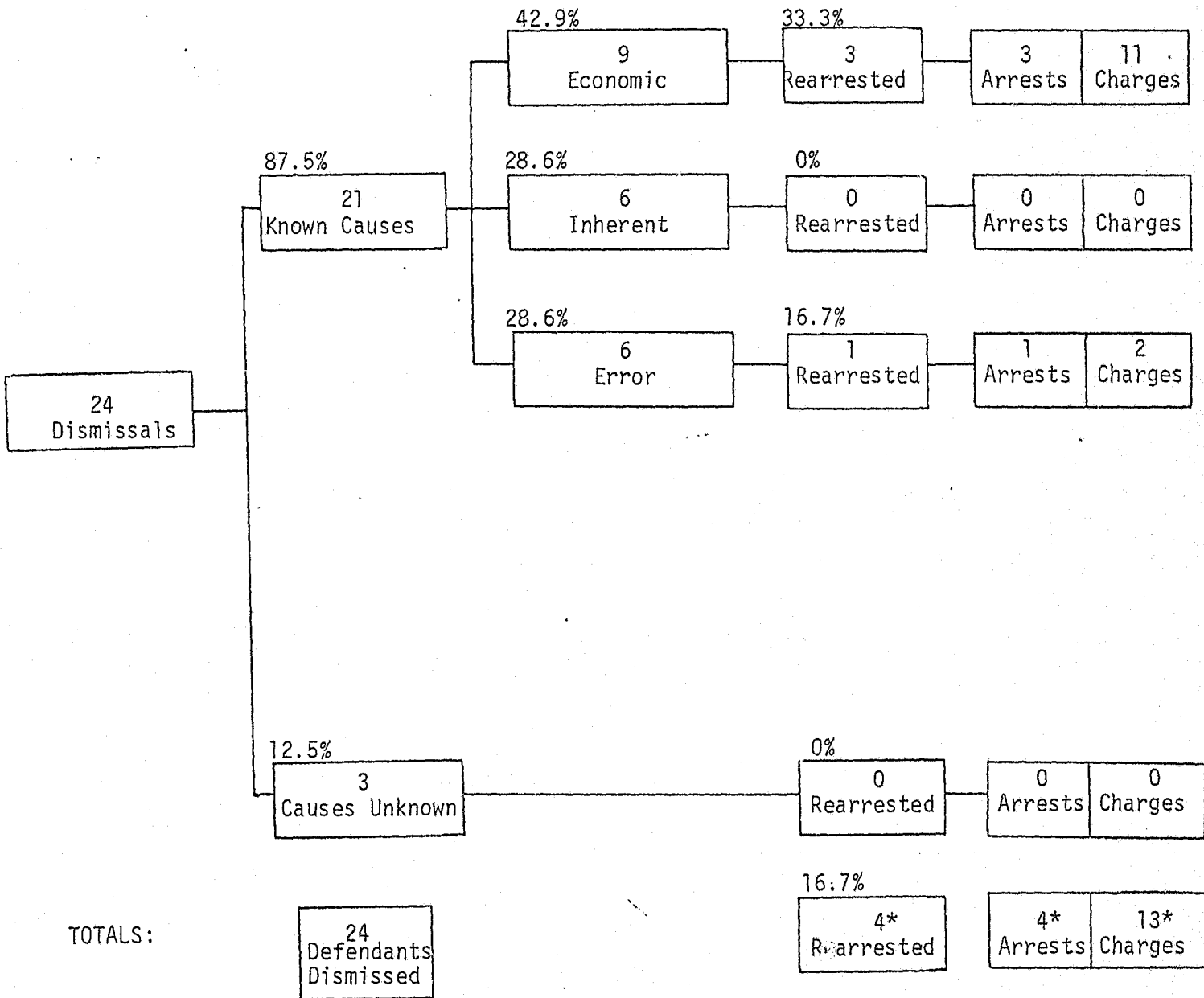
1975 ADA COUNTY DISMISSAL STUDY
DISMISSAL CAUSES AND REARRESTS



*The thirty-six were rearrested as follows:
 2 arrests on 2 charges of robbery,
 23 arrests on 34 charges of burglary,
 39 arrests on 58 other felony charges.

CHART 3

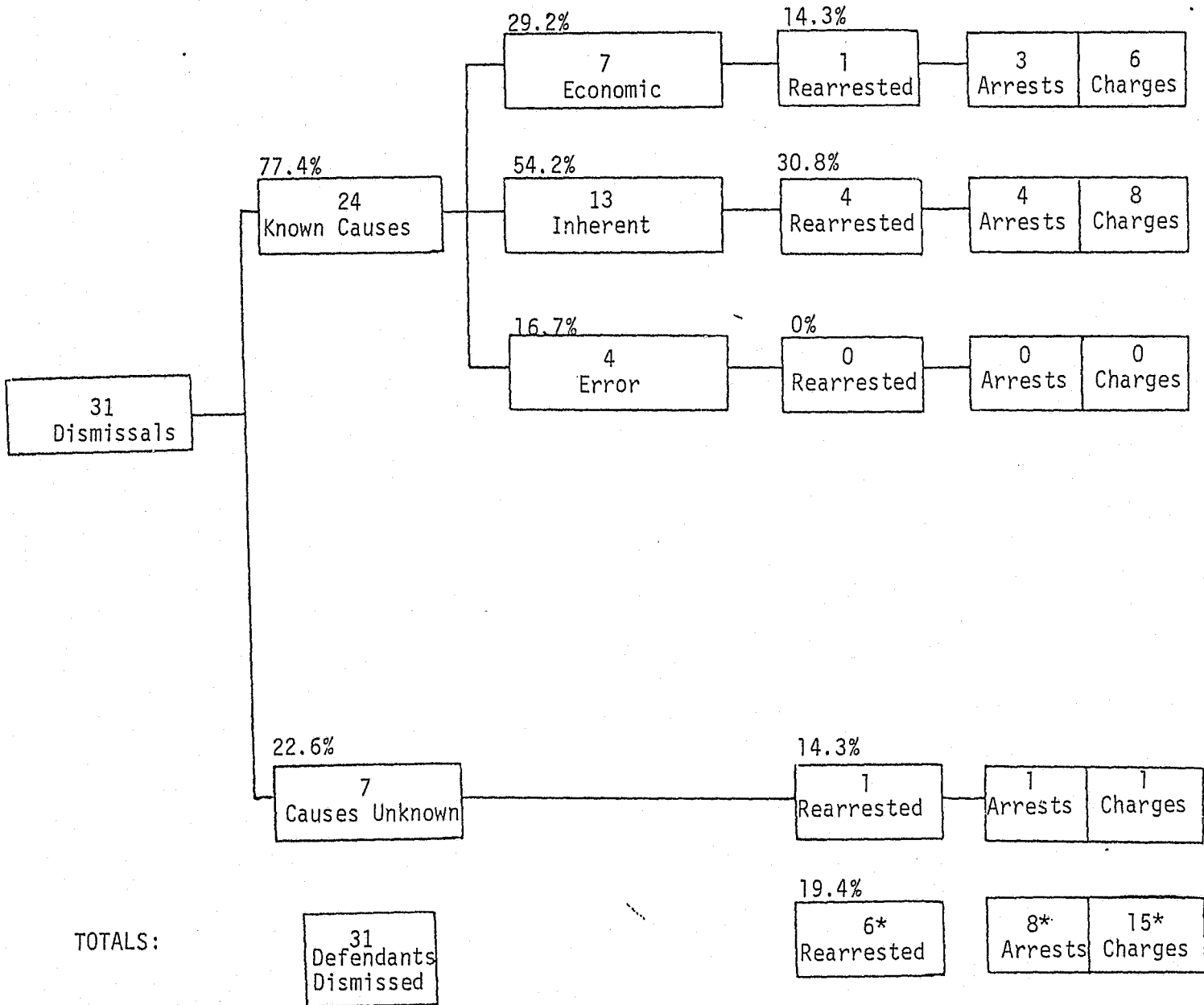
1975 BANNOCK COUNTY DISMISSAL STUDY
DISMISSAL CAUSES AND REARRESTS



*The four were rearrested as follows:
2 arrests on 10 charges of burglary,
2 arrests on 3 other felony charges.

CHART 4

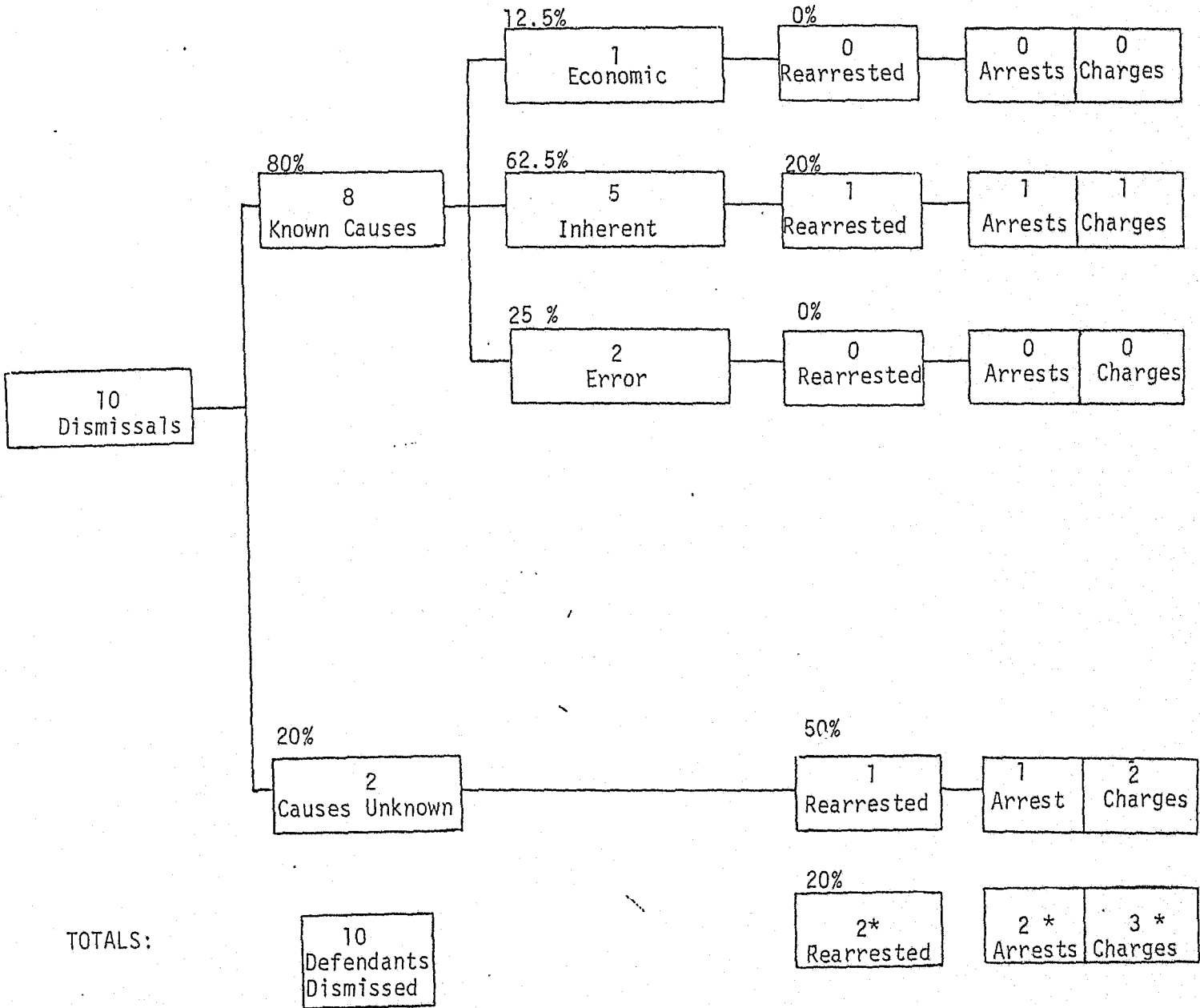
1975 BONNEVILLE COUNTY DISMISSAL STUDY
DISMISSAL CAUSES AND REARRESTS



*The six were rearrested as follows:
2 arrests on 3 charges of burglary,
6 arrests on 12 other felony charges.

CHART 5

1975 CANYON COUNTY DISMISSAL STUDY
DISMISSAL CAUSES AND REARRESTS



*The two persons were rearrested 2 times on 3 felony charges other than robbery or burglary.

1975 CASSIA COUNTY DISMISSAL STUDY
DISMISSAL CAUSES AND REARRESTS

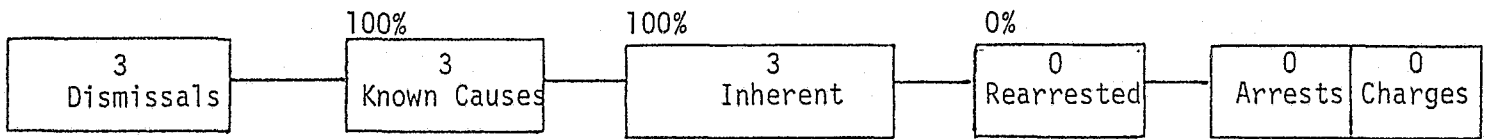
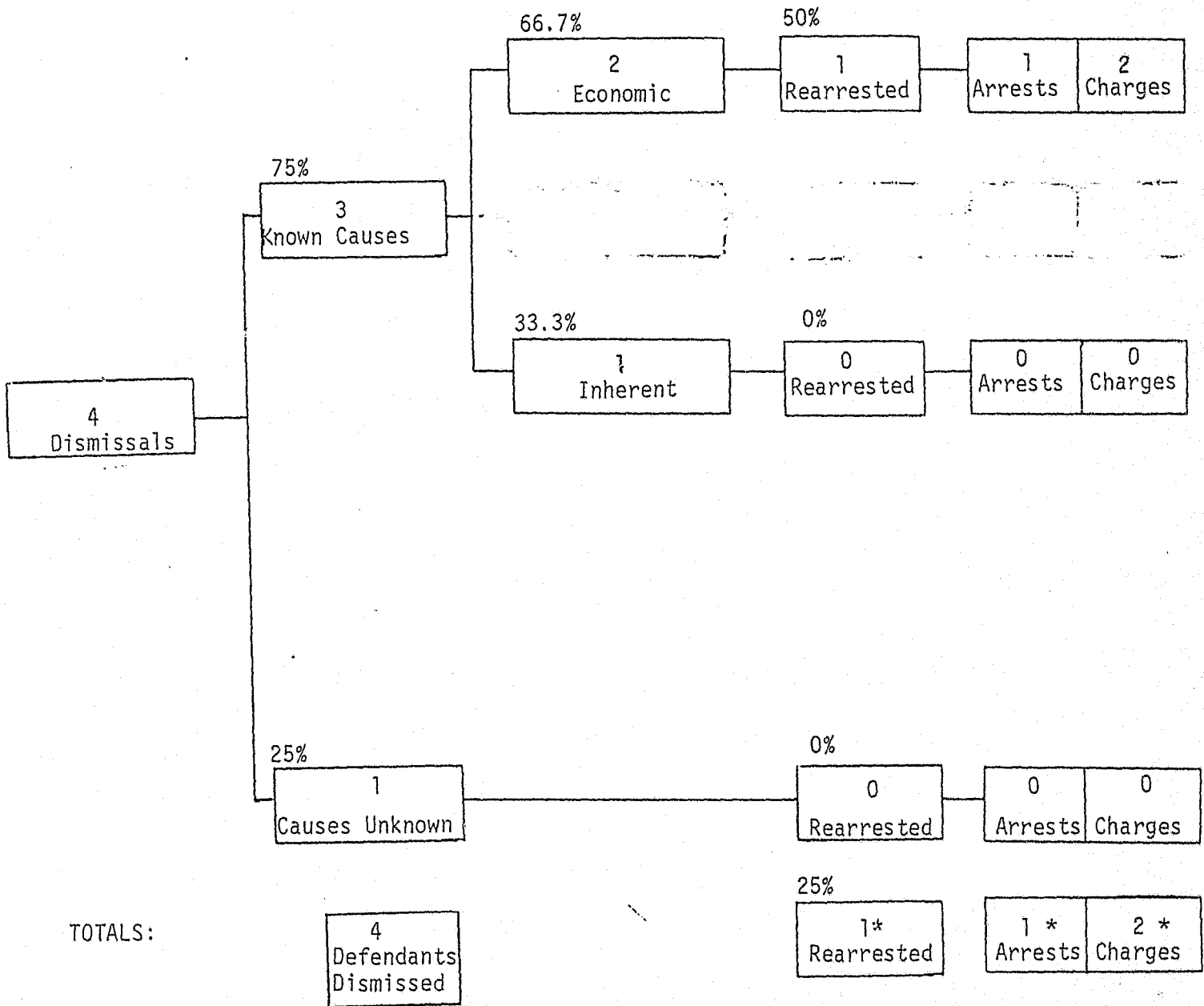


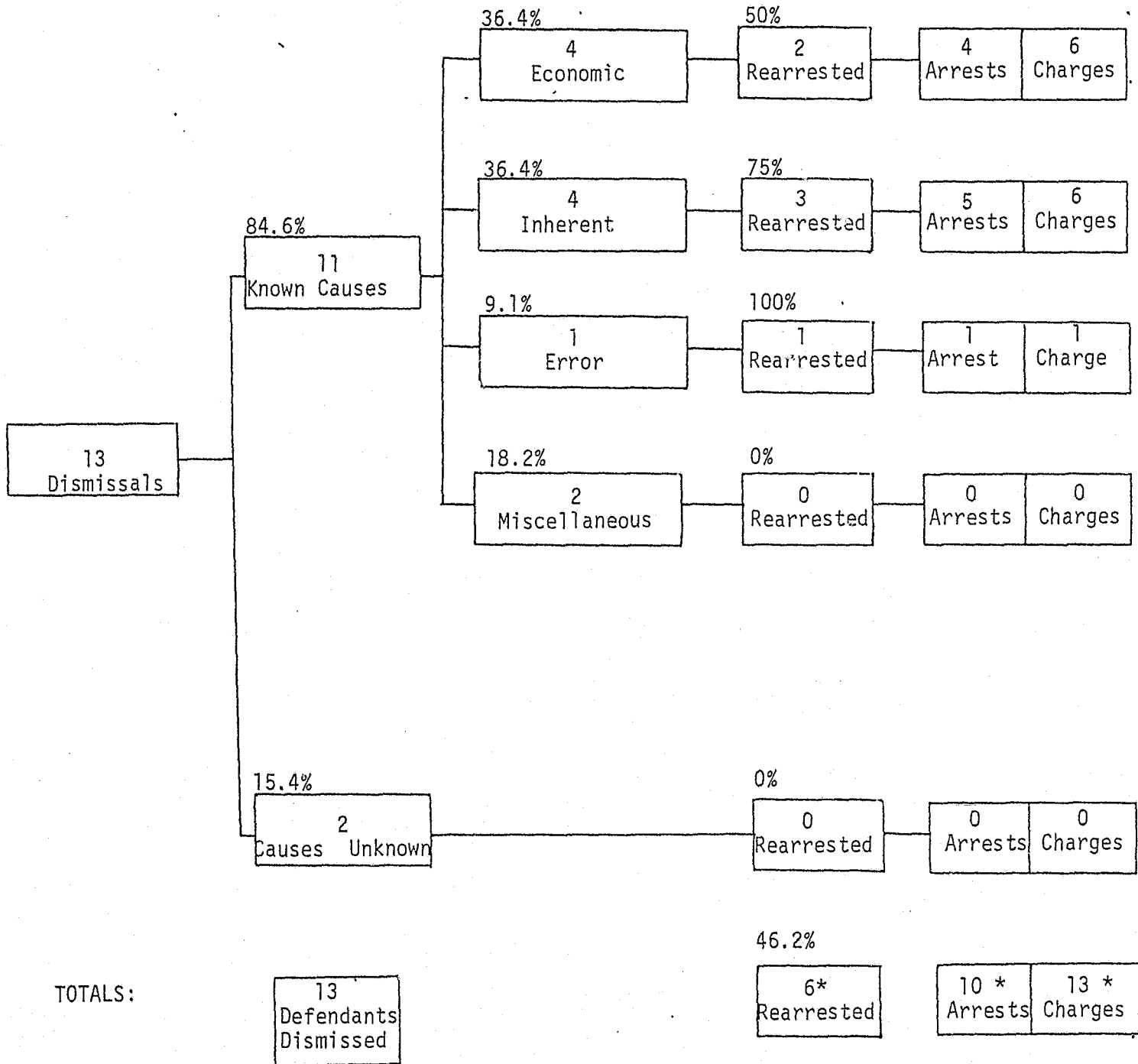
CHART 7

1975 KOOTENAI COUNTY DISMISSAL STUDY
DISMISSAL CAUSES AND REARRESTS



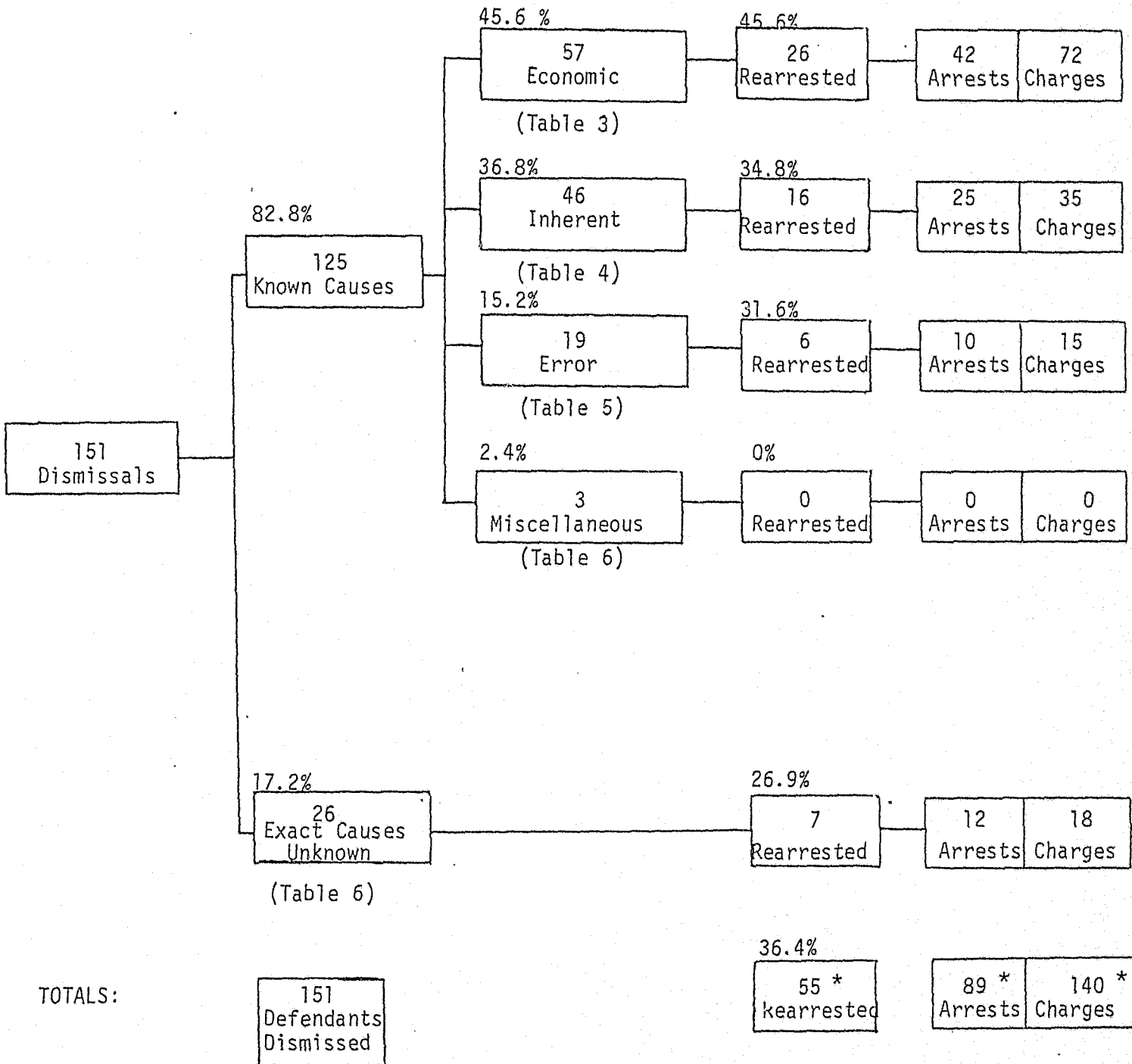
*The one person rearrested was arrested once on 2 charges of burglary.

1975 TWIN FALLS COUNTY DISMISSAL STUDY
DISMISSAL CAUSES AND REARRESTS



*The six persons were rearrested as follows:
5 arrests on 7 charges of burglary.
5 arrests on 6 other felony charges.

1975 SEVEN COUNTY DISMISSAL STUDY
DISMISSAL CAUSES AND REARRESTS



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Most remaining dismissals were precipitated by evidentiary deficiencies which prosecutors described as inherent in a democratic criminal justice system. Few dismissals were the result of absolute error. In these categories, too, recidivism rates were high compared to other dispositional categories. As of July 1, 1977, over 36 percent (55) of those 151 individuals who had their cases dismissed had been rearrested and charged with 140 subsequent felonies.

Prosecutors interviewed did not seem concerned about reducing the number of dismissals; indeed, many dismissals were seen as appropriate, necessary, and even a "healthy" sign for the system. It was generally felt that economic dismissals should continue to take place to relieve burdens of cost and caseloads in the courtroom, and inherent dismissals were generally seen as a democratic "checks and balances" procedure.

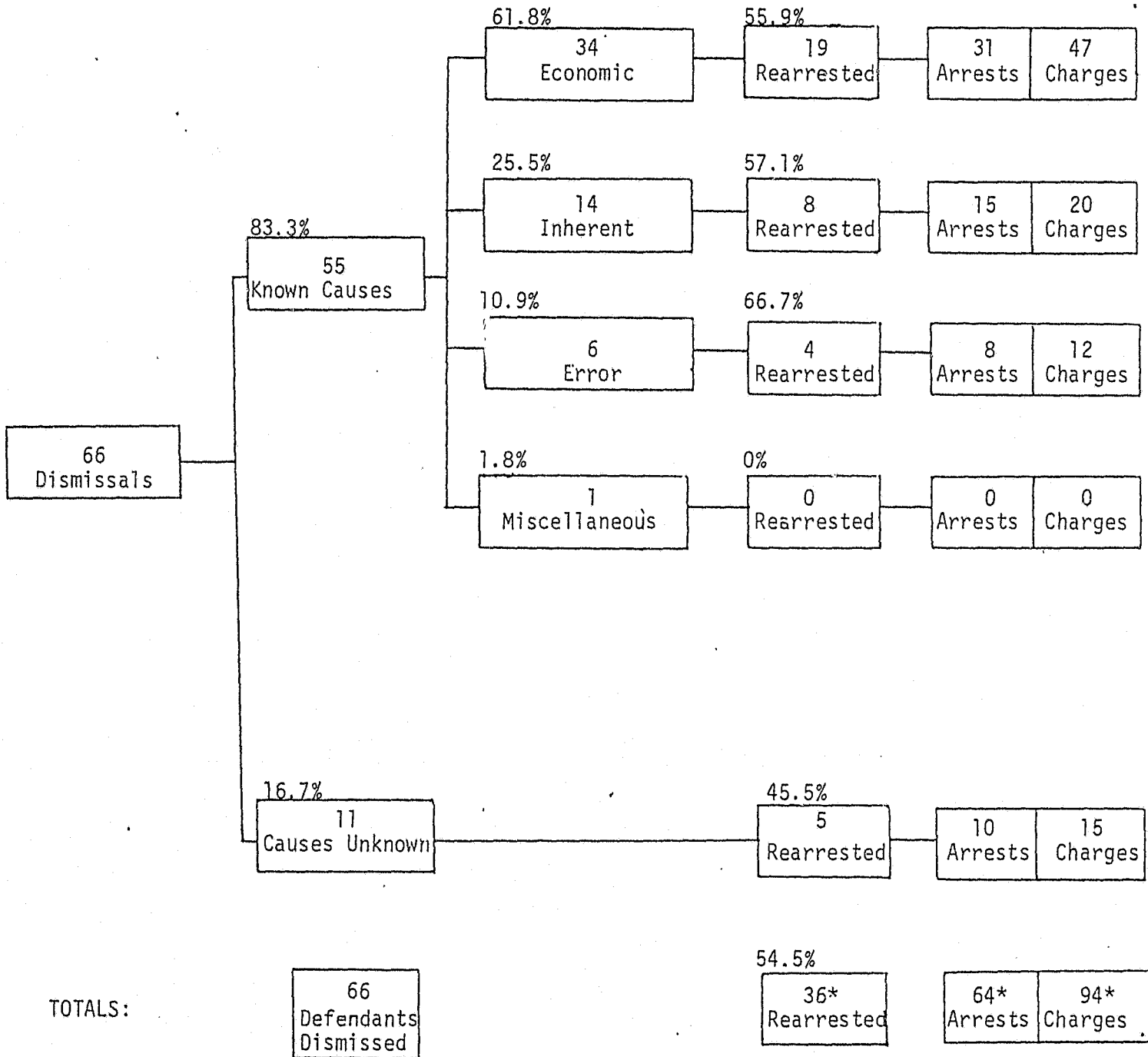
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CHART 2

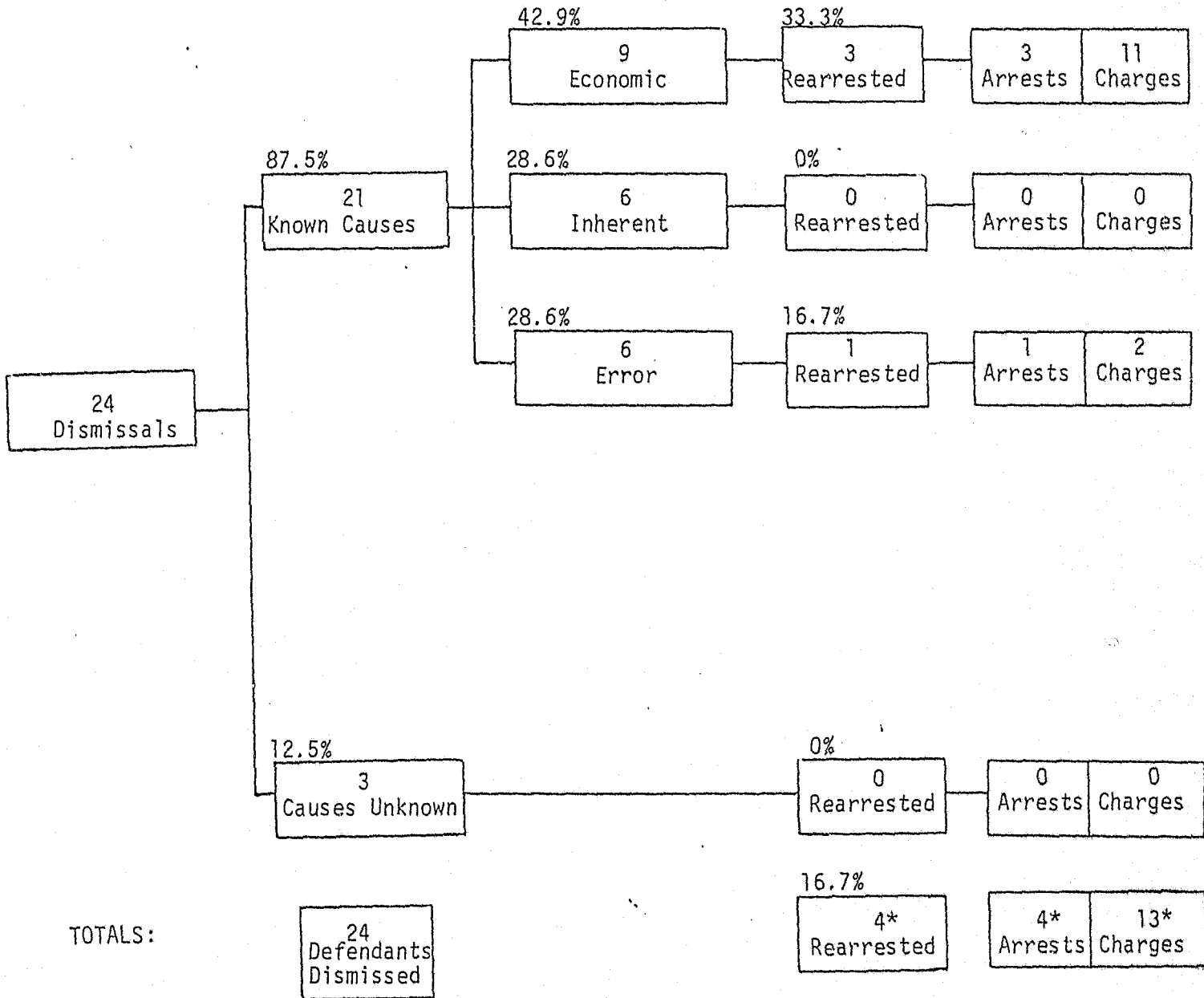
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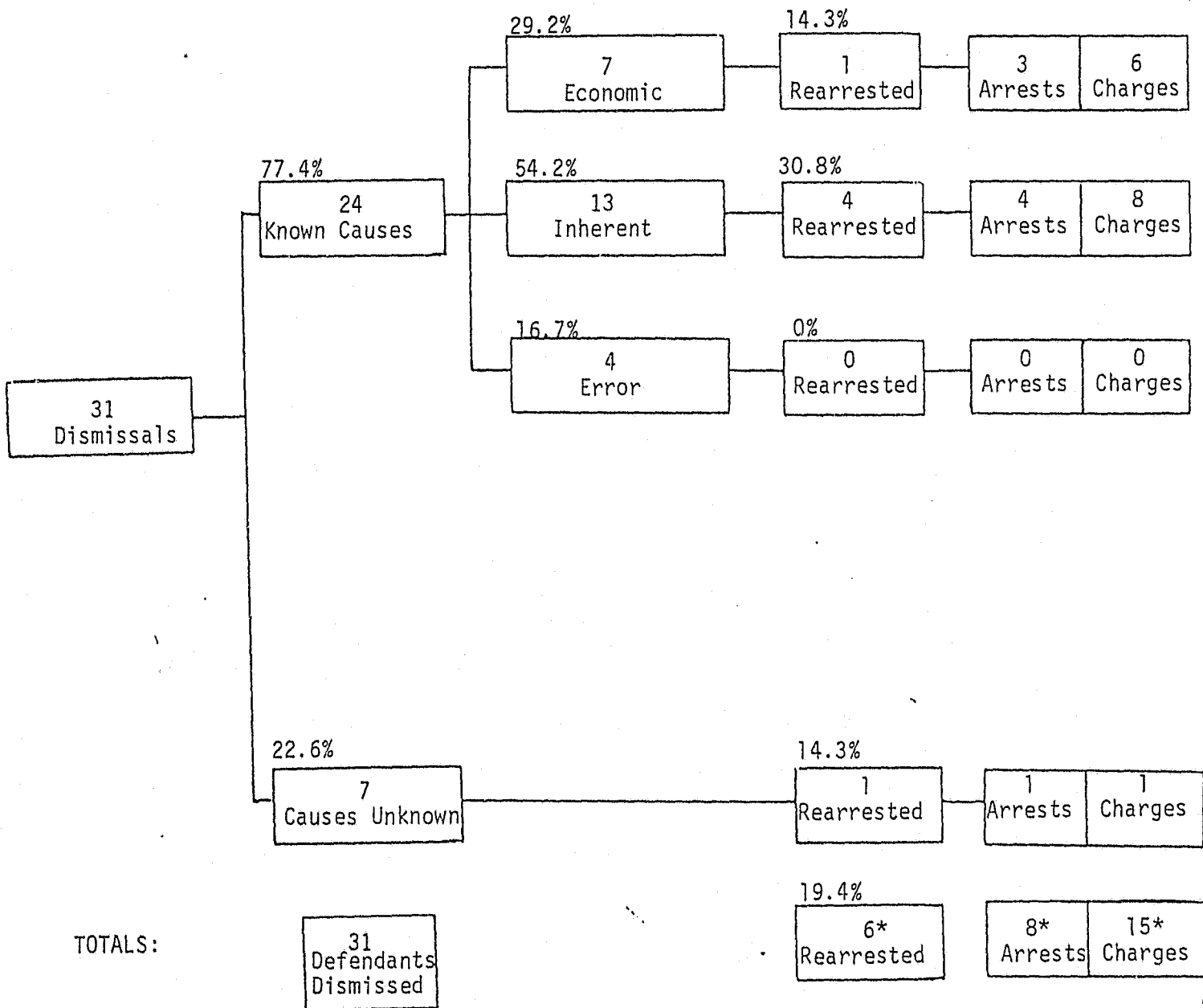
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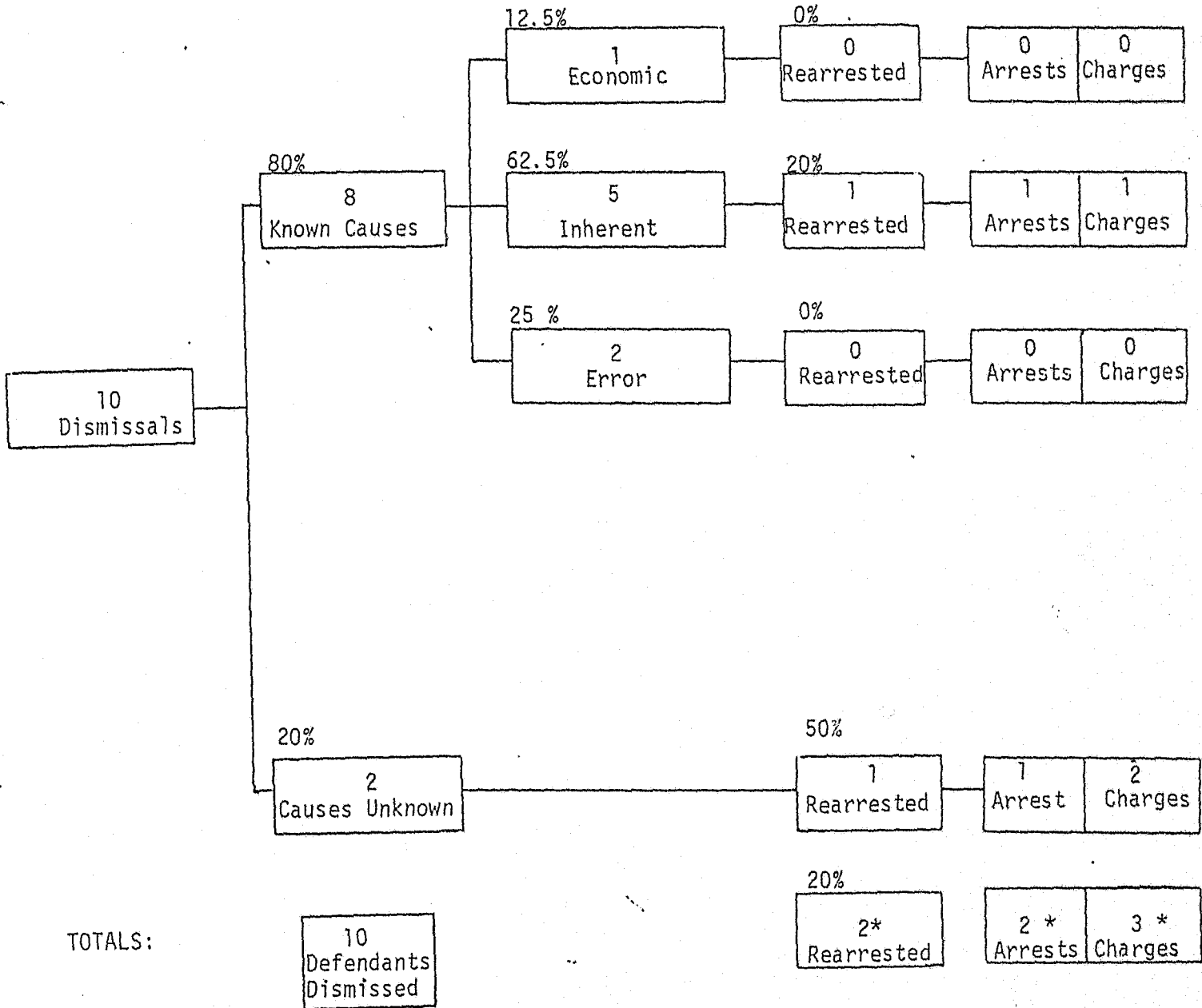
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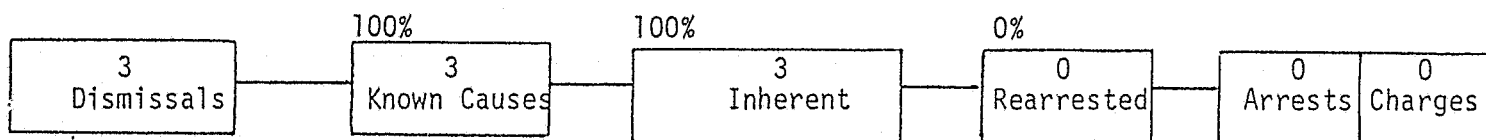
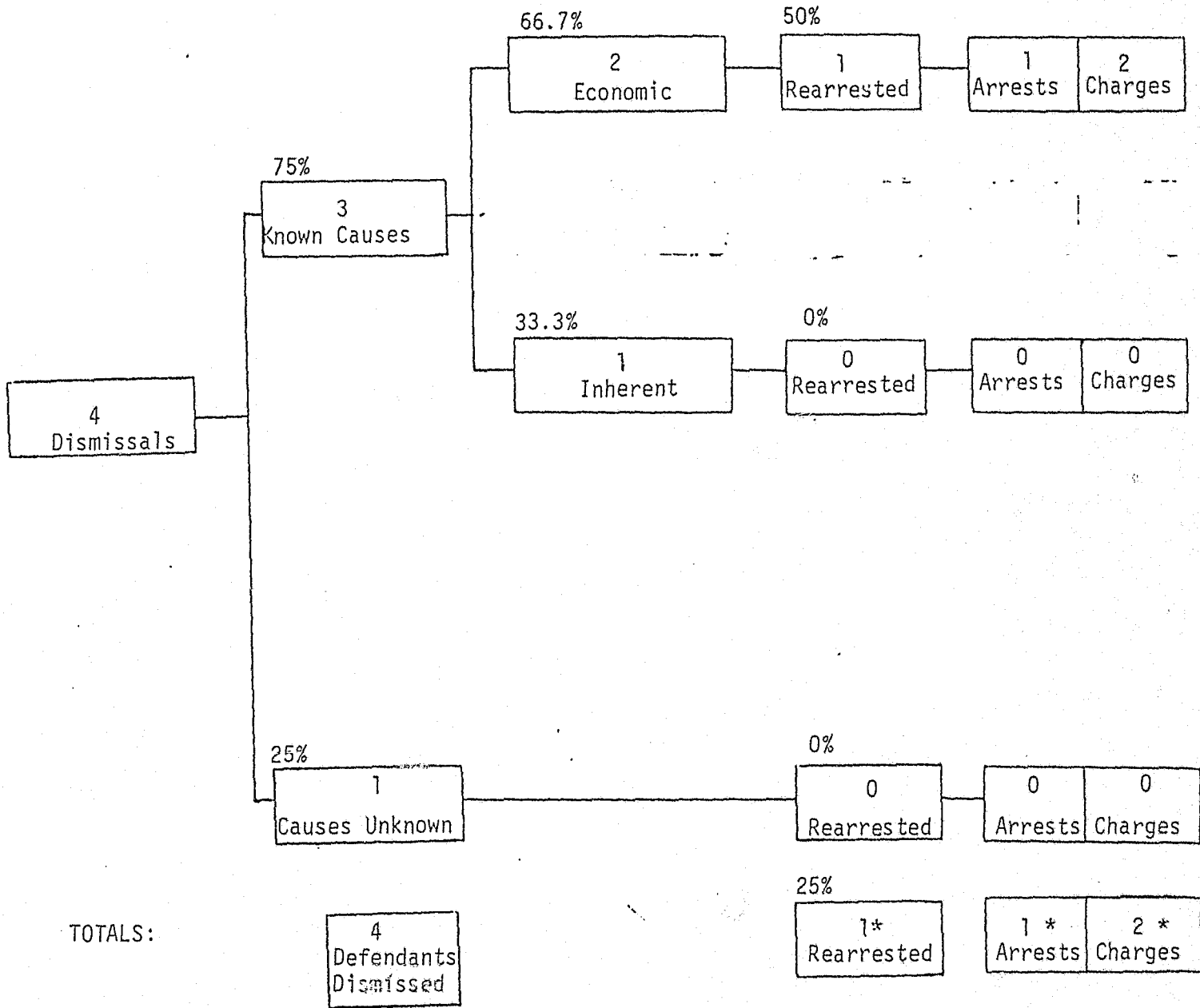


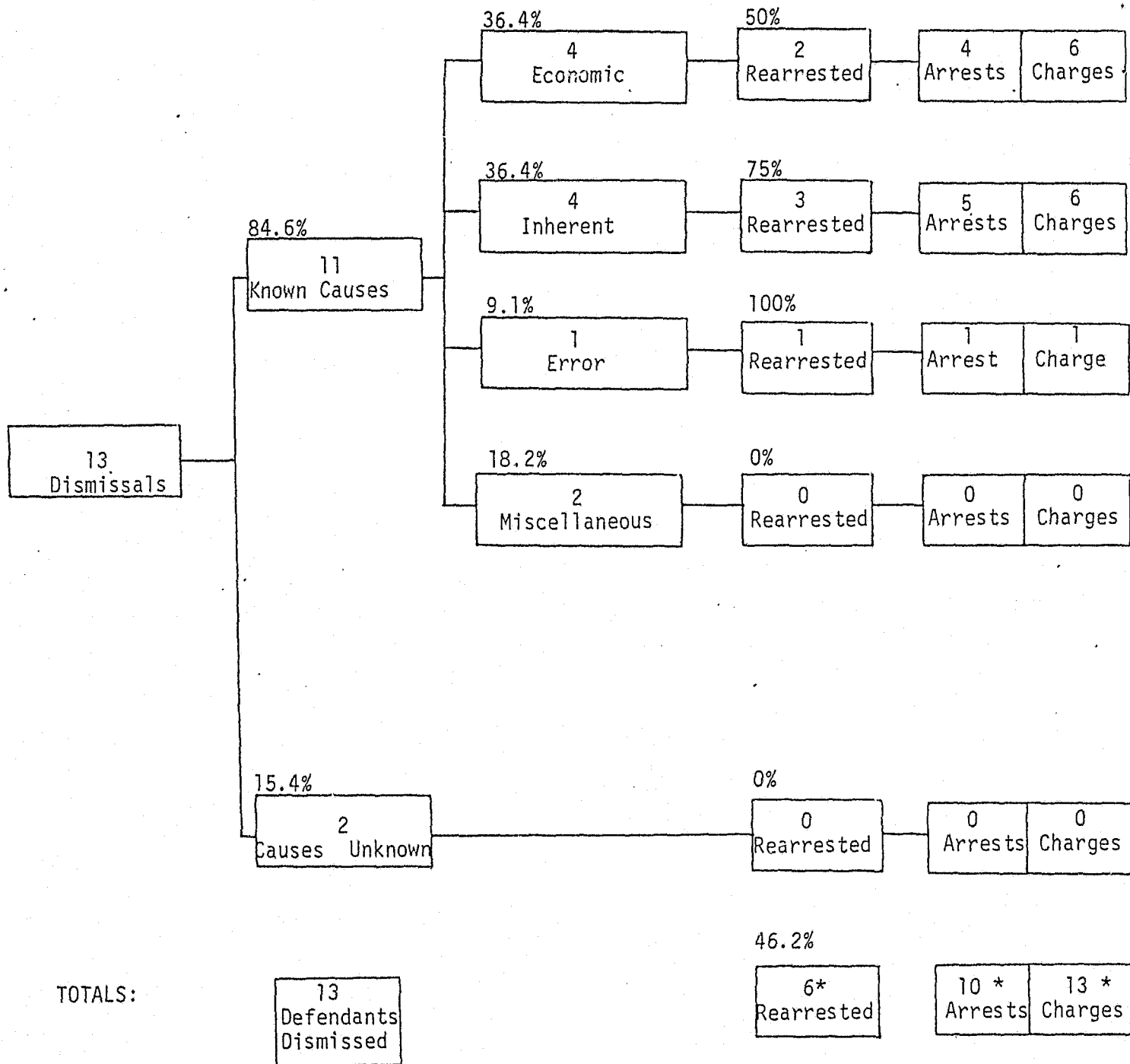
CHART 7

1975 KOOTENAI COUNTY DISMISSAL STUDY
DISMISSAL CAUSES AND REARRESTS

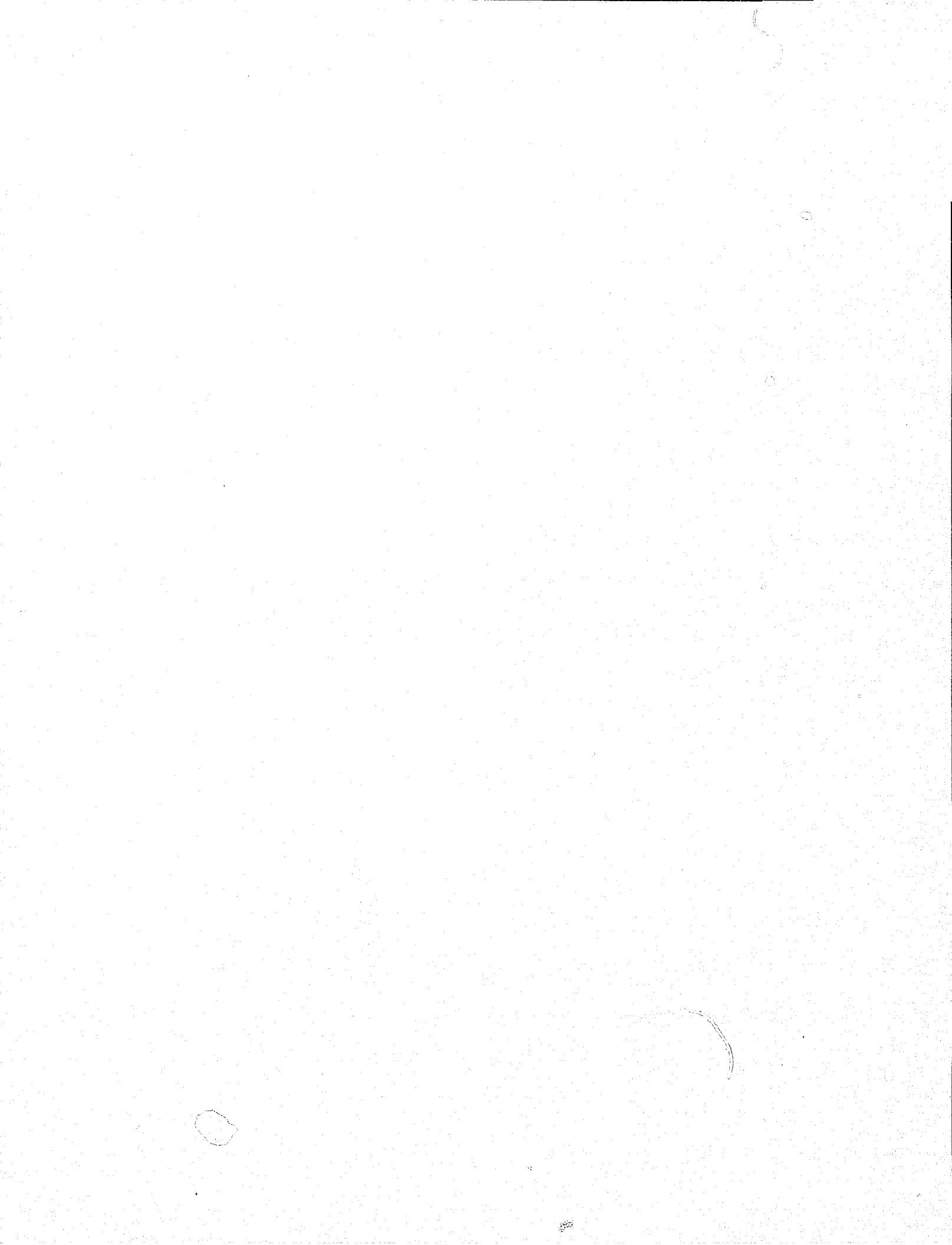


*The one person rearrested was arrested once on 2 charges of burglary.

1975 TWIN FALLS COUNTY DISMISSAL STUDY
DISMISSAL CAUSES AND REARRESTS



*The six persons were rearrested as follows:
5 arrests on 7 charges of burglary.
5 arrests on 6 other felony charges.



END