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Highlights of this issue

The California Determinate Sentence Law

The authors compare the day-to-day workings of California's Determinate Sentencing Law in three counties in the state. Most people who had supported passage of the law believed that it would lead to an increase in the rate of prison commitments over those under the state's previous Indeterminate Sentencing Law. However, in the long run the "best predictor of what [has] happened after passage of the DSL was what had been happening before it."

In Defense of the Defenders: The Vietnam Vet Syndrome

Television dramas and news footage have been our chief source of information on the "Vietnam Vet" syndrome—flashbacks accompanied by vivid hallucinations of combat situations. These outbursts may point to a related defense in a criminal case and this article covers all phases of that defense.

Workshops

- Privileges—Their Nature and Operation
- Fire Hazards as Constitutional Torts
- Arrests on Reasonable Suspicion

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September-October 1983

The California Determinate Sentence Law

By Jonathan D. Casper,* David Brereton and David Neal†**

The California Determinate Sentence Law, implemented in 1977, markedly changed that state's sentencing practice. From an indeterminate sentence system with exceptionally high maximum terms and extensive parole discretion, the new system gives control over sentencing and sentence length to courtroom participants, particularly the judge and prosecutor. This article explores the implementation of the new law in three counties. The authors' research allows them to assess the effects of the new law on prison commitment rates and on the rate and timing of guilty pleas, and its integration into the plea-bargaining process.

Although short-term comparison of before and after periods has often been taken as evidence that the new law has had substantial impact, this assessment of the evidence suggests that if longer time periods are taken into account, it is not clear that the new sentencing law has caused substantial change in sentencing patterns or disposition processes.

This article will be especially interesting to those in the public policy arena and to lawyers who are undecided about the relative merits and demerits of a California-type approach to sentence reform.

Introduction

In July 1977, California began a major reform in its policy dealing with prison sentences. The Uniform Determinate Sentence Law (DSL) replaced a system of indeterminate sentencing (ISL) that had been in existence for sixty years. Long a leader in penal reform, California had been one of the early adopters of the rehabilitative or medical model of imprisonment, as well as its concomitant, indeterminate sentencing, when this wave of reform swept the nation in the first decades of the

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twentieth century. Moreover, California's indeterminate sentencing policy carried the medical model close to its logical extremes, sentencing most prisoners for terms with a maximum of life. Just as California had been a pioneer in the indeterminate sentence reform movement, so it was with the current wave of reform moving many states toward determinate sentencing policies. The DSL introduced many important changes in California sentencing practice: When imposing sentence in a prison case, the judge now selects a specific term from an apparently limited set of possibilities specified by the legislature; the discretion of the parole board (called the Adult Authority under the ISL) to determine actual release dates for prisoners was effectively eliminated; new and strict rules making it difficult for the state to take away prisoners' time off for good behavior were adopted; and, finally, the system of parole supervision after release and the possibility of recommitment for the original term as a penalty for parole violation were virtually abolished.

The new DSL thus radically changed the process under which prison term lengths were set, shifting the locus of influence from the parole board to decisions made by the judge and prosecutor in the context of case disposition and sentencing. Many argued that the new law might improve the quality of life in prison by removing some of the uncertainty characterizing the exceptionally open-ended sentences of the ISL. The passage of the law itself was the product of extended legislative debate and of a coalition built of law enforcement interests as well as "due process liberals" and prisoner support groups. The potential effects of the law upon such things as numbers of people sentenced to prison and length of terms served were the subject of much debate and conjecture during the legislative debate and many conflicting expectations were generated. The administration of the new law has been the subject of much discussion in California and of further legislative activity. Indeed, substantial alterations of term length were enacted during the nine-month period between initial passage of the DSL (in September 1976) and its effective date (July 1977). Since then, numerous bills have been passed increasing the length of terms and mandating prison sentences in various types of cases.

The California experience has been the subject of attention in other states, many of which are considering determinate sentence legislation themselves. The same concerns and interests that produced change in California are at work in other places as well, and increased determinacy in sentencing may be a reform whose time has come. New York, for example, is involved in a heated debate about determinate

sentences with the California experience serving as a central part of the argument. It is too early to begin the process of attempting to assess the effects of the California Determinate Sentence Law, for only a few years have elapsed since it went into effect and its ultimate impact may take many years to be fully worked out. Moreover, the law has changed rapidly, and in some ways it is hard to decide what the DSL is or was, for its current form differs in significant respects from the law that went into effect in 1977 (e.g., the terms for many crimes are now substantially longer). By the same token, though, because of the importance of the issue of determinate sentence reform, the salience of the California experience, and the fact that other states are currently wrestling with what to do about the same issues that are at play in California, some preliminary research and discussion seems useful, tentative though our conclusions may be.

The focus of this article is upon a particular aspect of the impact of the DSL—its effects upon decisions made in criminal courts. Thus, it examines the impact of the law in three California counties (San Bernardino, San Francisco, and Santa Clara) and, in particular, its integration into the courtroom work-group culture that exists in these jurisdictions. How has the law affected the process by which sentences are decided upon in the three counties, particularly decisions about whether to send convicted defendants to prison? Has the law had any impact upon the process by which defendants are induced to plead guilty? Has it increased the rate of guilty pleas or affected their timing? How have the provisions in the law dealing with probation eligibility and length of terms been integrated into the negotiation process which is at the centerpiece of most criminal courts? Have its provisions become chips in the bargaining process? Has the new law altered influence patterns in the bargaining process, giving more power to the prosecutor or judge?

These are the kinds of questions that were the subject of expectations at the time the law was passed, as well as assertions since passage, and which will be focused upon here. One major issue not dealt with in any detail is that of the impact of the law on length of sentences. Under the old law, sentence length was determined by a state agency—the Adult Authority—and thus the appropriate unit of analysis for assessing the impact of the law on the length of terms is the state, not the county. Because of the focus here upon decisions at the county level, then, we do not have the appropriate data for detailed discussion of the length-of-term issue.

Formal Provisions of the DSL

The DSL was in some respects quite limited in its potential impact on court sentencing practices and in others quite sweeping. It was limited in that it placed relatively few constraints upon the decision of *whether* to send a defendant to prison—it said nothing about sentences for misdemeanors and had only a couple of provisions that attempted to disqualify certain types of defendants from receiving probated sentences (e.g., those who committed great bodily injury on vulnerable victims or those with certain specified current and prior violent offenses). The DSL affected most directly the decision on sentence length for those receiving prison terms.

Before turning to the formal provisions dealing with sentence length, however, it is worth observing that many participants in and observers of the process that led to passage of the DSL were of the view that the law *would* cause larger numbers of defendants to be sentenced to prison. Many believed that under the ISL, judges were reluctant to send "marginal" defendants to prison when terms were so open-ended and appeared potentially so long. Thus, a second-degree burglary was, under the ISL, to be sentenced to a term of one to fourteen years. In cases in which the defendant was on the borderline between a prison term and a long jail sentence, the open-ended nature of the ISL was often said to lead judges to select a local jail term. If prison terms were short and determinate, it was argued, judges would send more marginal defendants to prison. Thus, although its formal provisions did not directly constrain the prison/no prison choice to any substantial degree, many of those supporting its passage were operating on the assumption that it would increase prison rates via this informal process.

The new law's provisions appear, on the surface, to be straightforward and simple. For each crime, the legislature specified three possible penalties. The most common were the choice between sixteen months, two years, or three years; two, three, or four years; or three, four, or five years.[1] The middle term was the presumptive choice, unless the judge found the case to involve mitigating or aggravating circumstances. Thus, in a single count second-degree burglary case, the judge first retained the option to sentence a defendant to a term of probation, perhaps with a jail sentence as a condition of the imposition of probation. Should the judge decide on a prison sentence, the term was to be either sixteen months, two years, or three years. In a strong-

[1] Subsequent legislation has increased the terms for various offenses, for example from two-three-four to two-three-five or from three-four-five to four-six-eight.

arm robbery, by the same token, the judge could either impose probation or a term of two, three, or four years.

The relative simplicity of the above examples disguises a good deal more complexity and discretion in most cases. In cases with multiple counts, the judge must decide whether terms are to be served consecutively or concurrently. In a "simple" burglary case involving four counts of second-degree burglary, the possible terms that may be imposed range from sixteen months to five years and include, at a rough count, a total of eight possible sentences, depending upon how decisions on stacking terms are made.

In addition, the legislature provided that sentences for defendants may be "enhanced" if the defendant had engaged in certain forms of behavior (e.g., carried a weapon, used a gun, inflicted great bodily harm) or had an especially serious prior record. Such terms could be imposed or stayed if the enhancement is pled and proved.

As a result of these changes, the new law effectively turned over control of the sentencing process to courtroom participants—to prosecutors via their control over charges (counts and enhancements) and to judges via their selection of particular sentences. The opportunities for sentence bargaining were greatly increased. Under the ISL, the judge simply sentenced the defendant to the term prescribed by law and the Adult Authority set the actual release date. There was substantial negotiation under the ISL regarding charges and sentences, but it had a somewhat ritualistic character. The prosecutor might agree to drop counts in return for a plea, but these were "silent beefs"—charges of which the defendant was not convicted but which survived to influence Adult Authority release decisions. Moreover, although a judge might agree to sentence concurrently rather than consecutively, the Adult Authority retained such substantial influence over ultimate time served that these decisions, like charge bargains, served more to make the plea acceptable to the defendant than to constrain greatly the actual sentence to be served.

Finally, the DSL established "good time" provisions which permitted a defendant to earn up to a third off the sentence imposed in return for obedience to prison rules and participation in various programs. A prisoner's good time was vested each year, and relatively elaborate procedural protections circumscribed the process by which good time might be taken away in any given year. At the time of sentencing, defendants could know with relative assurance what their maximum terms and actual release dates were likely to be.

The effects of the new law on length of prison terms were difficult to predict. The middle terms were selected because they approximated median time served under the ISL. Thus, in simple one-count cases, the third off for good time might be expected to decrease term length on the average. On the other hand, median time served under the ISL included time informally added by the Adult Authority for various case attributes (e.g., violence, use of weapons, prior record, etc.) that were now to be added to the principal term as enhancements. From this perspective, in cases that involve enhancements, one might expect on average some increase in term length. A final confounding factor is the possibility—indeed, experience has already shown it to be a propensity—that the legislature might increase term length under the DSL. It has repeatedly done so, making both comparison with past practice and predictions about the future difficult.

In sum, the formal provisions of the law dealt only with defendants who were sentenced to prison, although most believed that an increase in prison commitment rates would result from the move to determinate sentencing. Although the terms available appeared to be quite circumscribed for each offense, decisions about concurrent versus consecutive sentencing and about the imposition of terms for enhancements meant that judges, prosecutors, defense attorneys, and defendants had both increased resources and incentives to bargain over pleas in prison cases.

A Note on Data Sources

Before presenting the findings of the study, a brief word on the sources of the data for this article is in order. The authors utilize both qualitative and quantitative data in discussing the impact of the law in the three counties. The qualitative data consist of interviews with courtroom participants and direct observation of plea-bargaining discussions. Twenty-six experienced judges, prosecutors, and defense attorneys in the three cities were interviewed and their perceptions of the purposes and effects of the new law were sought. In addition to interviewing, the authors spent approximately three to four months in each jurisdiction during 1978-1979 following participants, observing pretrial conferences and less formal plea-bargaining sessions, and attempting to discover how current patterns contrasted with those under the ISL. They observed on the order of seventy-five to 150 pretrial conferences in each city, and prepared transcripts of what was said in forty to fifty such conferences for each city.

Two sources of quantitative data were used. The California Bureau of Criminal Statistics (BCS) provided data tapes for all cases in the three counties during the years 1974-1978 (1977 data were missing for Santa Clara County). BCS data include most serious charge and defendant characteristics (race, sex, past record), as well as mode of disposition and sentence imposed. The analysis focuses mainly upon two common arrest charges—robbery and burglary—and upon cases disposed of in the California Superior Court. Unless otherwise noted, all the data discussed here come from the BCS tapes or published BCS data for 1979 and 1980.[2] The other source of data was a small effort mounted by the authors themselves, who gathered information from California Superior Court files on burglary and robbery cases in two twelve-month periods (calendar year 1976 and July 1, 1978–June 30, 1979), focusing upon seriousness of arrest and disposition charges, as well as allegation and disposition of enhancement and probation disqualifiers. They gathered data on the universe of superior court cases during the pre- and post-law periods in which robbery was the most serious charge and a 50 percent random sample of burglary cases.[3]

The Three Cities

Because the focus of this research is upon the process by which the DSL was implemented at the local level, we chose three cities that differed in a variety of respects. Our field work and data analysis looks at the implementation of the law in San Francisco, Santa Clara, and San Bernardino counties. They varied in several ways, including the nature of plea bargaining under the ISL, patterns of influence in the plea-bargaining process, and general levels of harshness in sentencing.

San Francisco best fitted the common image of a crowded urban court. There was great emphasis in the superior court upon keeping the docket moving and worry about the development of a backlog of unresolved cases. The mechanism developed for dealing with these concerns, dating from the early 1970s, was a form of judge-dominated

[2] Our analysis of the raw data tapes for 1974-1978 permitted us to examine defendant attributes and to determine that there were no significant changes that might account for alterations observed in sentence patterns. For 1979 and 1980, because we rely on published data, we do not have access to individual-level data to control for the rival hypotheses that changes in sanctioning patterns may reflect changes in defendant characteristics.

[3] In our analysis and discussion here, a "robbery" or "burglary" case is defined as one in which robbery or burglary was the most serious *arrest* offense, even though the most serious conviction offense may involve another crime.

sentence bargaining. Nearly all cases had a formally scheduled pretrial conference—the bulk presided over by the Master Calendar Judge—at which plea bargains were discussed and typically agreed to. Relatively little bargaining between defense attorney and prosecutor took place before the pretrial conference, largely because of the dominant influence of the judge. The pretrial conferences did not resemble bargaining; rather, they were very rapid presentations to the judge of the issues each side believed to be important (seriousness of crime and past record, factual disputes, quality of evidence), followed by an announcement by the judge of a proposed sentence. The sentence was typically a specific number of months in jail or prison, though occasionally it involved a range (for example, the judge might specify that a sentence in county jail would be between six and nine months, depending upon the recommendation contained in the pre-sentence report). There was little in the way of negotiation in the sense of possible sentences being presented, argued about, or revised and agreement gradually zeroing in on a final "bargain." Rather, the judge listened, questioned, commented, and finally announced a figure, and this sentence was usually not changed as a result of further discussion. The prosecutor's control over charges seemed of limited significance in San Francisco—unlike in the other cities—because of norms of deference to the judge. Thus, the judge routinely exercised his authority to sentence concurrently or consecutively and to stay time on enhancements, all in service of reaching the number that he had decided to be appropriate. Perhaps most telling, in San Francisco, judges hardly ever seemed to ask the prosecutor to drop allegations that rendered defendants presumptively or mandatorily ineligible for probation (e.g., a record of two prior felonies). Rather, if a defendant who was ineligible was to receive a probated sentence, the judge simply *assumed* that the prosecutor would drop whatever charges were required in order to render the defendant technically eligible for the sentence the judge wished to impose. Under the ISL, San Francisco had routinely engaged in sentence bargaining in jail cases although, of course, their ability to do so in prison cases was greatly constrained by the nature of the sentence structure. In terms of sentence severity, San Francisco was slightly below average for the state during the years prior to implementation of the DSL.

Santa Clara differed from San Francisco in a variety of respects, although the overall level of harshness (as measured by rate of prison commitments among those convicted in superior court) was only marginally higher than San Francisco's. If San Francisco looked much like

the common image of an overcrowded bureaucratic court system, Santa Clara was closer to the ideal type of a more professionally oriented, legalistic system. The dominant figure in the disposition process in Santa Clara was the district attorney rather than the judge. Judges were much more deferential to prosecutors' decisions, less willing to become involved in sentence bargaining (although it surely was not unknown), and in general fit better the more "professional" role of an arbiter sitting above the hurly-burly of plea bargaining. The predominant type of bargaining in Santa Clara was a form of modified sentence bargaining, called the conditional plea or no-state-prison bargain. The prosecuting and defense attorneys would come to an agreement over charges and the prosecutor would agree that the defendant should receive a local jail sentence. If the judge who ultimately sentenced the defendant (Santa Clara used a Master Sentence Calendar system, as did the others) decided to impose a prison term, the defendant was entitled to withdraw the plea. In conditional plea cases, the bargain was usually open as to sentence, with the ultimate constraint that the term was very unlikely to exceed twelve months and would be served locally. In prison cases, there was limited sentence bargaining, but the judge was substantially less active and less dominant than in San Francisco.

In San Francisco, if the judge desired to impose a probated sentence and the defendant was technically ineligible for probation, the prosecutor was assumed to be willing to drop whatever allegation stood in the way of the bargain. In Santa Clara, in similar cases, the judge attempted to *persuade* the prosecutor to drop the allegation that prevented probation and if the prosecutor refused, a no-state-prison bargain simply was not struck. Of course, prosecutors were not indifferent to the suggestions of judges, but they were free of the presumption of the San Francisco system that whatever the judge wanted was to be accommodated by prosecutory concessions. The system, thus, was one with a limited form of sentence bargaining, more judicial distance from the settlement process than characterized San Francisco, a more legalistic orientation (e.g., the importance of formal eligibility in the discussion decision about probation), and very strong prosecutory influence.

San Bernardino, a geographically enormous county lying to the east of Los Angeles, was the third site studied. As with several other southern California counties, the levels of imprisonment were historically much higher in San Bernardino than in northern California counties. The Central District of the San Bernardino court system (the

focus of observation, though the quantitative data in this article encompasses the whole county) lay somewhere between San Francisco and Santa Clara in terms of influence in plea bargaining. More than either of the others, San Bernardino disposed of a substantial number of its felony cases by an early form of disposition called "certification." In about a third of felony cases, the defendant pled guilty to a felony charge in municipal court on the day of the scheduled preliminary hearing and was then "certified" to superior court for sentencing. Most of these were charge bargains and open as to sentence, and often involved serious cases (the rate of imprisonment in certification cases was about the same as the rate in cases disposed of via plea in superior court). In the few certifications in San Francisco (typically they were used in fewer than one-tenth of the number of cases in the other two counties), the agreement both covered charge and sentence and was cleared with the Master Calendar Judge in superior court prior to entry of the plea in municipal court. In San Bernardino such clearances were not common, and thus the superior court judges did not participate in plea negotiation in a substantial number of the cases they ultimately sentenced. In cases that did come up to superior court for disposition, the judge played a facilitative role, evaluating the arguments of each side, offering comments, and ultimately suggesting a sentence (or a range to be refined by a pre-sentence report). Although the judge seemed more inclined to exercise influence over the prosecutor than in Santa Clara, there was much less dominance than in San Francisco. The feature that seemed most to distinguish San Bernardino was a sense of shared expectations about the judge and a generally more relaxed atmosphere. Things were less hurried there, and a single judge presided over all superior court pretrial conferences and did all of the sentencing (with the exception of cases resulting from conviction at trial). Because a single judge did so much, deals were worked out without the direct judicial participation that would occur in San Francisco. The certification procedure seems an example of anticipated reactions—such cases were settled early without judicial participation but with strong expectations about what the judge in superior court was likely to do. The generally consensual character of the system—agreement not so much on what ought to be done but on what was likely to be done—appeared to be the linchpin for the San Bernardino system, and to permit rapid case disposition without the detailed agreements that characterized San Francisco.

In sum, then, the three cities had somewhat differing styles of plea bargaining, emphasis upon and concern for legal formalities, and

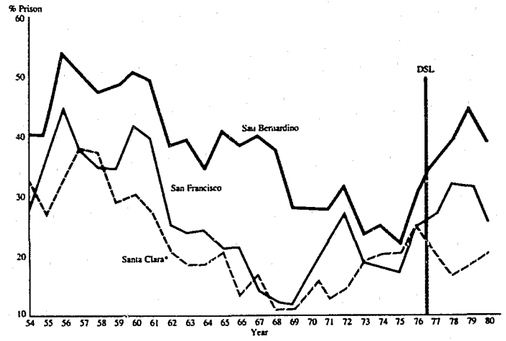
influence patterns. It was these different environments into which the DSL entered and which mediated its implementation. In terms of the most discussed and most important dependent variable—rates of prison commitment—the law's impact was similar across the three jurisdictions. The best predictor of what happened after passage of the DSL was what had been happening before it.

Prison Commitment Rates

No one interviewed by the authors seemed to believe that the DSL would *reduce* the number of prison commitments, and most believed that it would cause an increase in the rate at which defendants were sent to state prison. This, indeed, was one of the major features of the reform that attracted the support of the law enforcement community. Three related factors associated with the move to determinate sentencing were typically suggested as reasons why prison rates were likely to increase: (1) the increased inclination of judges to send "marginal" defendants to prison if the terms were short and determinate; (2) the effects of the probation disqualifiers that were part of the bill itself (although they were of admittedly rather limited scope); and (3) the general thrust of the legislation, with its renunciation of rehabilitation and emphasis on punishment, might cause a general toughening of sentencing policy.[4]

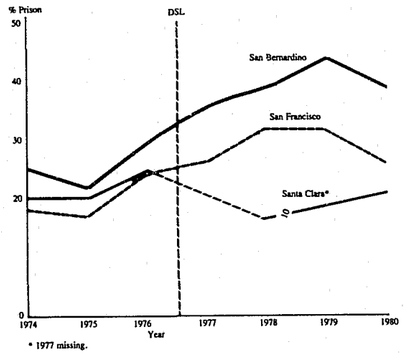
Prison commitment rates in the years immediately following implementation of the DSL did increase in the state as a whole and in the three counties studied here. Most observers, including many of the court personnel interviewed, concluded, therefore, that their expectations had been fulfilled. The authors' examination of the available data in the three counties made them somewhat skeptical whether this conclusion is well supported. Prison commitment rates are subject to substantial variation over time. They may be tied to economic conditions and alterations in demographic characteristics of the population, both of which may influence crime rates, or to changes in penalty structures (e.g., the move to decriminalize certain consensual crimes), prison capacities, changes in penal philosophy (e.g., the

[4] The preamble of the DSL begins with the legislative finding that the "purpose of imprisonment for crime is punishment." Even this apparently clear statement is subject to the ambiguities of the supporting coalition structure discussed above. Law enforcement interests viewed this initial statement as a renunciation of the ideal of rehabilitation and an endorsement of more punitive sentence policies. Due process liberals saw it, by the same token, as a renunciation of rehabilitation but in service; not of more punitive sentencing policy, but a more just-deserts-oriented and perhaps less disparate sentencing philosophy.



* 1977 missing.

Fig. 1. Prison rates, superior court convictions, 1954-1980.*

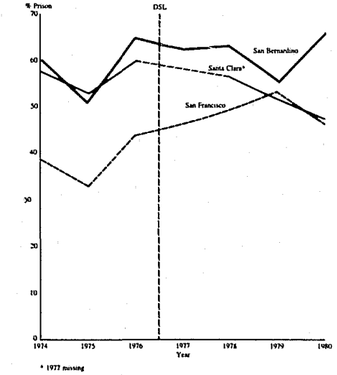


* 1977 missing.

Fig. 2. Prison rates for all superior court convictions, 1974-1980.*

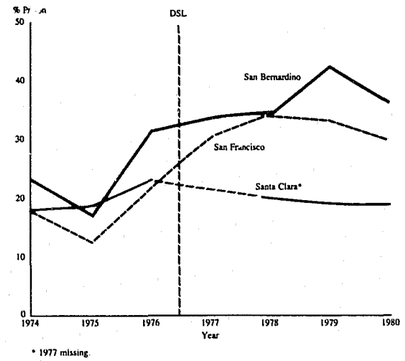
"community corrections" and "alternatives to incarceration" movements of the 1960s and 1970s), and changes in public attitudes toward sentencing practices. These and other factors produce both secular trends and short-term fluctuations in prison commitment rates. There are difficulties in sorting out all the potential effects of any particular innovation from rival causal factors, and thus attributing changes to it.

In the case of the DSL in the three counties studied, examination of long-term and short-term trends in prison commitment rates suggests that the rate of imprisonment rose "prematurely" in relation to the assertion that the move to determinate sentencing "caused" the increases in prison commitment rates seen in the post-law years. Figures 1, 2, 3, and 4 present trend data on commitment rates for all offenses and robbery and burglary cases over both a twenty-five-year period and during seven years in which the implementation of the DSL is em-



* 1977 missing

Fig. 3. Prison rates for robbery cases, superior court convictions, 1974-1980.*



* 1977 missing.

Fig. 4. Prison rates for burglary cases, superior court convictions, 1974-1980.*

bedded. The lack of extensive post-innovation data makes assessment of the impact of the law particularly difficult, and there are also some problems with the quality of the data from Santa Clara County, but the evidence available does suggest that in all three, the rate of imprisonment appears to begin to rise in 1976 or earlier, too soon to be attributed to the effects of the DSL (which was formally implemented on July 1, 1977), and, moreover, they have not continued to rise consistently in the years since implementation.

A better measure of the effects of the DSL examines not simply prison commitment rates themselves. The primary mechanism by which DSL was supposed to cause an increase in prison commitment rates involved the movement of defendants who in the past received long jail terms into the category of short prison terms (the so-called

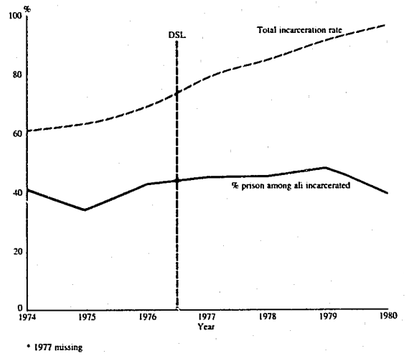


Fig. 5. Trends in incarceration rates, San Bernardino Superior Court convictions, 1974-1980.*

marginal defendants). Thus, one would expect that the fraction of all those incarcerated (jail plus prison) who receive prison terms should increase. If it does not (that is, if both jail and prison sentences rise equally), this would suggest a generally more punitive sentencing policy—a ratcheting up of probation to jail, jail to prison, rather than the expected effects of the DSL on marginal defendants. Figures 5, 6, and 7 examine overall incarceration rates (jail plus prison) and the proportion of all those incarcerated who receive prison terms. The expected rise does not appear marked in any of the counties.

Finally, examination of available data on defendant characteristics and charges does not suggest that there has been substantial change during the pre- and post-law periods.[5] Defendants in the post-law periods in all three counties have somewhat more serious past records, an attribute that would in general lead to increased prison rates independent of the effects of DSL. There is no evidence, then, for the proposition that defendants in the early post-law periods have attributes that make them *less* likely to be candidates for prison, thus masking the potential impact of the DSL on prison commitment rates.

What, then, can be said about the effects of the DSL on prison commitment rates in the three counties? This is the issue on which many supporters pinned their hopes, and which worried many others who chose to support the legislation for other reasons. Moreover, the distaste that many original supporters of the bill are now evincing has emerged not only because of law enforcement supporters' success in

[5] As noted above, this assertion is valid only for defendant populations in 1974-1978. Similar data for 1979-1980 are not included, although there is no reason why they ought to have changed markedly.

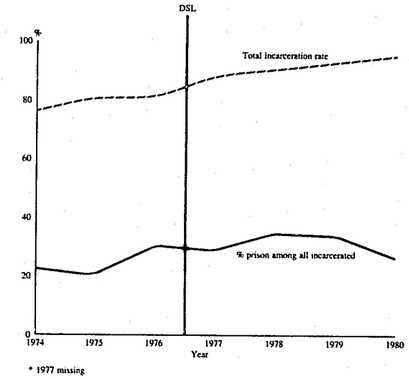


Fig. 6. Trends in incarceration rates, San Francisco Superior Court convictions, 1974-1980.*

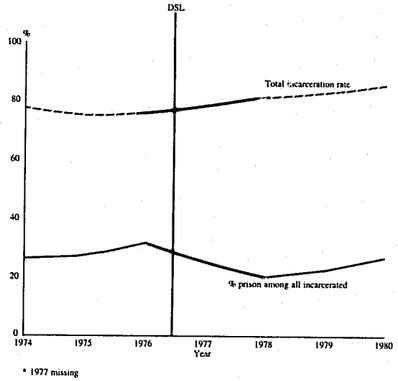


Fig. 7. Trends in incarceration rates, Santa Clara Superior Court convictions, 1974-1980.*

raising prison terms, but because of the belief that the new law *is* leading to increased prison commitment rates.

Although the data to make a statewide assessment are not available and there are problems with the data for the three counties, the conservative conclusion is that there is no persuasive evidence that prison rates have increased as a result of implementation of the new law.

Prison rates, in fact, began to increase in all three counties prior to passage and implementation of the new law, and an argument that this reflects anticipation of the DSL is not convincing. Much of the evidence cited in support of the view that the law has, as expected, "caused" an increase in prison rates seems based upon the fact that rates have gone up since the law was implemented. But this conclusion

fails to take account of trends already at work and relies too heavily on simple and short-term before-and-after comparisons.

It is not necessary to argue that the evidence available is *inconsistent* with attributing an increase in prison commitment rates to passage of the DSL, although the results seem to point in this direction. It may be that courtroom participants who perceived this effect were correct. Even if the rates of imprisonment *were* rising before the law came into effect, its implementation may have had some impact upon the rate (e.g., made it go up faster than it might have absent passage of the law or made it rise more for some crimes than it might have). Rather, the evidence does not permit a clear inference, for these three counties at least, that the law has had such an effect.

Finally, the evidence available is potentially supportive of the view that the law is in part better viewed not as a *cause* of increased prison rates but rather as itself an *effect* of broader social processes militating toward increased resort to imprisonment. Recall that the twenty-five-year trends indicated an upward movement predating passage of the DSL in two of the three counties considered in this study. Recall that in the short-term data, it is not only prison rates that are rising, but total incarceration rates as well, suggesting a general trend toward increased punitiveness in sentencing. Recall, finally, that the history of consideration of the DSL suggests that criticism of the defects of indeterminate sentencing by due process liberals and prisoner support groups predated support for determinate sentencing by law enforcement interests. It was the coming around of law enforcement interests that provided the crucial addition to the coalition that pushed through determinate sentencing. All of these pieces of evidence suggest that California was experiencing shifts in opinion—both mass and elite—that favored increased resort to imprisonment for several years prior to passage and implementation of the DSL. These shifts were already being linked to judicial sentencing policy during these years, as prison as well as jail commitment rates turned up. The passage of the DSL *may* have accelerated this trend for some marginal defendants but the available evidence does not permit firm assertion of such a conclusion. Rather, the evidence is simply that the prison rate showed some increase after passage of the law at least, and that this may or may not have been influenced by the effects of the law itself.

Guilty Pleas and the Plea Bargaining Process

The superior courts in all three counties, as in California generally, relied upon guilty pleas to produce the bulk of their convictions. Rates

of pleas varied by crime, but ranged from 80 to 95 percent for all three counties, and were typically the product of bargains in which the defendant received charge or sentence concessions in return for forgoing a trial. Many observers suggested that a move to determinate sentencing might increase the rate of guilty pleas and perhaps cause them to be entered somewhat earlier in the disposition process. Although the high rate under the ISL imposed a ceiling affect—there were so many guilty pleas to begin with that they simply couldn't increase too much—several features of determinate sentencing were said to facilitate plea bargaining. Particular attention was focused upon "sure" prison cases—those in which it was comparatively certain that the defendant would go to prison and the only real issue was for how long. As noted above, under the ISL, the room for negotiation of prison terms was limited and often somewhat cosmetic. Charge concessions could be made (e.g., dropping two of three counts of armed robbery) but the defendant still went up on a five-to-life term and the parole authorities often saw through the conviction offense to the initial charges and tended to tailor release dates to the "real" offense as opposed to the conviction offense. The same was true for concurrent versus consecutive sentences, with the judge able to agree to impose concurrent terms but the life maximum on a single count still left the term length a matter of relatively unconstrained discretion by the Adult Authority.

Under the new law, though, with counts tied more directly to time served, and concurrent versus consecutive sentencing making a specific and measurable difference, the opportunities for bargaining were greatly enhanced. A defendant facing a prison term can see much more graphically the advantages of a plea bargain (or, conversely, the costs of going to trial and receiving a harsher term). If a defendant's maximum exposure is ten years and the deal offered is a six-year term, the defendant sees directly what is to be gained by the plea. An offer to drop a three-year enhancement for great bodily injury is, likewise, much more tangible than under the ISL. As a result, it was suggested before passage of the new law that more and earlier pleas in prison cases might be produced under the DSL.

A more subtle and cross-cutting expectation suggested that in another class of "prison cases" there might be some reduction in pleas, at least in the short-run. If the offers to marginal defendants moved from long county jail terms to the minimum prison term, and they had expected—on the basis of their own past experience or jailhouse talk—to be offered a jail term, they might initially balk at pleading guilty. If

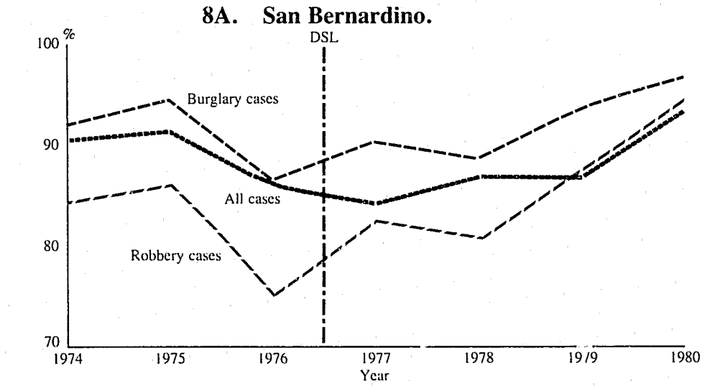
defendants in burglary cases, for example, were offered a sixteen-month term instead of a "bullet" (twelve months in the county jail) and felt that the worst they were likely to do after trial was the middle term of twenty-four months, they might turn down the deal and risk a trial. As time went by, of course, the going rate for such defendants would move up to a short prison term, and such dashed expectations would diminish.

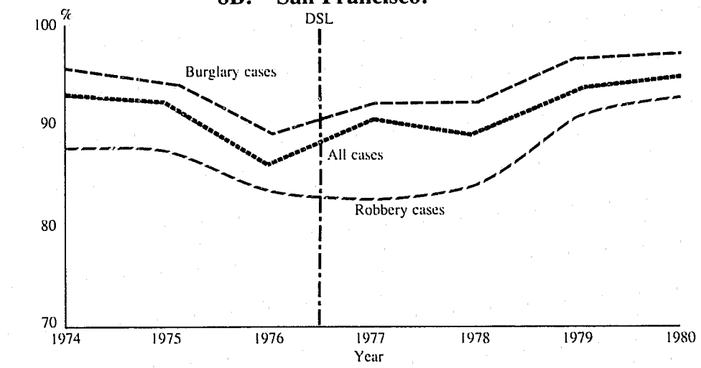
Interviews with courtroom participants in all three cities revealed a widespread belief that the DSL had caused an increase in the rate of guilty pleas. Defendants were said to be more likely to plead guilty in prison cases because they knew how long they would have to serve and could see the advantages of a plea-bargain more clearly. The data on guilty pleas in the three counties before and after implementation of the DSL paint a somewhat mixed pattern. Figures 8A, 8B, and 8C trace the rate of guilty pleas in each county over a three-year period before and after the DSL went into effect. Time perspective is important in interpreting the trends. If one looks at the post-DSL period, in all three counties the rate of guilty pleas has, indeed, increased both overall and for burglary and robbery cases. Moreover, as the hypothesis that focuses upon the effects of the DSL on prison cases suggests should be true, the rate of increase appears to be somewhat larger for robbery than for burglary cases, for they more often involve prison terms.[6]

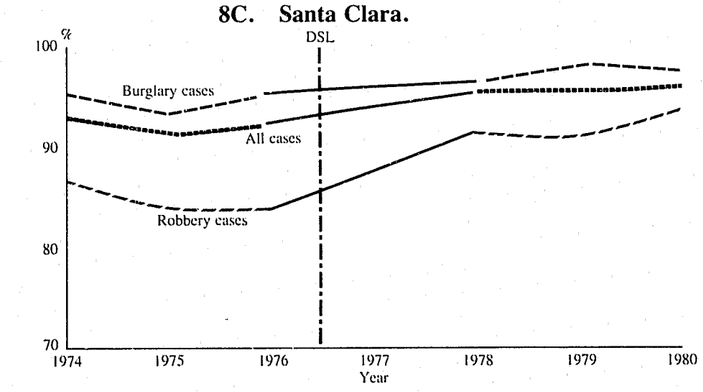
Several caveats should be entered, though, before accepting the view that the DSL has produced higher rates of guilty pleas. The rate of guilty pleas appears to have substantial variability over time, and the increase in the post-DSL years may be part of secular fluctuations rather than simply attributable to the law. The rates of guilty pleas observed in the post-law years are not markedly different from those observed in some earlier time periods.[7] The overall rate of guilty pleas is not the best index of the effects of the law. Its effects ought to be seen largely in the context of guilty pleas in prison cases, for these constitute the class in which the ability to emphasize sentence differentials

[6] Prison commitment rates for robbery cases in the three counties ranged from about 40 to 60 percent during the period, and 20 to 40 percent for burglary cases. See Figs. 2, 3. Burglary cases in the three counties during the pre-law period were typically characterized by a guilty plea rate of 90 percent or more; in robberies the rate was typically between 80 and 90 percent. The operation of a ceiling effect, given that some cases will go to trial for one reason or another, is relevant for each, but more so for burglary than robbery. See Figs. 8A, 8B, 8C.

[7] In two of the three counties, in fact, 1976 was an abnormally *low* year for guilty pleas. The return in 1978 to a more typical level may account for the respondents' views that the law had caused an increase in guilty pleas, given that they were probably thinking of a comparison between the time immediately prior to the new law and that subsequent to its implementation.







* 1977 missing.

Figs. 8A-8C. Guilty plea rates, superior court convictions 1974-1980.*

has been altered. Examination of prison cases is possible in the data for 1974-1978. Although not presented here, the patterns are similar to those in Figure 8—increase after the law's passage, but a return to rates similar to those in the past. For these years, moreover, when one attempts to examine guilty plea cases in "sure" prison cases versus "marginal" cases (those in which the defendant received a prison term but would not have reasonably been expected to receive it), one does not observe the expected increase in guilty pleas in sure prison cases and decrease in marginal cases.[8]

To sum up, the data on guilty plea rates are consistent with the view that determinate sentencing may promote larger numbers of guilty pleas, although there are reasons to treat this conclusion with care.

A similar finding appears when the timing of guilty pleas is examined. It has been suggested that the new law may lead defendants to plead guilty more quickly because of the certainty about sentence available under DSL:

> Data . . . indicate an appreciable increase [of] guilty pleas at the time of arraignment and a decline in cases where a defendant changes from a not guilty to guilty plea after arraignment. Perhaps this reflects the greater certainty, under the DSL, of what a case is "worth," so that a bargain can be struck at the time of arraignment for minor cases or cases involving no serious questions about guilt. . . . Data indicate that many cases are being disposed of more quickly. Attorneys and judges identify those more readily settled cases as those involving the least serious offenses. If so, this suggests that the DSL may have accomplished a more desirable use of courtroom resources—ready disposition of minor cases, permitting more thorough consideration of serious cases.[9]

In Figure 9, aggregate data from the three counties on the timing of entry of guilty pleas in superior court is presented. The rates at which pleas were entered at an early stage in the proceeding do appear higher in all three counties in the post-DSL year than in the years just preceding enactment of the legislation. Placing these rates in the context of the decade for which data are available, though, somewhat clouds the picture. In all three there appears to have been substantial variability over time, the quite high rates of guilty pleas experienced in

[8] A "sure" prison case is defined as one in which the defendant was charged with robbery and had served a prior prison term; a "marginal" prison case was one in which a defendant was charged with burglary and had no prior criminal record. Defendants in both categories who *had* received prison terms were examined and no differences across the 1974-1978 period in rates of guilty pleas were found. See J. Casper, D. Brereton & D. Neal, *The Implementation of the California Determinate Sentence Law* (1982).

[9] A. Lipson & M. Peterson, *California Justice Under Determinate Sentencing* 16-17 (1980).

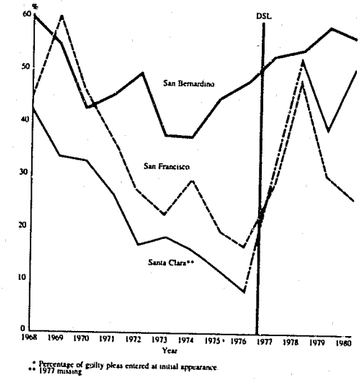


Fig. 9. Timing of entry of guilty pleas, superior court, 1968-1980.*

1978 and afterward are typically matched by similar rates in the late 1960s, and the post-law period itself appears to be characterized by substantial variation. Because the trend data indicate such variability in the rate at which early guilty pleas are entered, a substantially larger number of post-law data points is necessary to exclude the possibility that other factors might explain the increase.

The authors are also somewhat skeptical about another commonly discussed impact of the DSL—the assertion that it has greatly increased the influence of the prosecutor in the disposition process. The move to determinate sentencing has clearly weakened the influence of the Adult Authority and increased that of courtroom participants. It is frequently suggested that, in fact, the new law has put prosecutors firmly in the driver's seat, making them more influential in the courtroom setting than the judge or defense attorney. One difficulty with assessing this assertion is simply that of objectifying "influence" in the interaction of judge, prosecutor, and defense attorney that occurs in most cases. There is some evidence that prosecutors in all of the three counties have tended to exercise their newfound influence by dropping enhancements less frequently under the DSL than they did under the ISL. Thus "real" bargains are being offered less frequently than the cosmetic ones available under the ISL when the Adult Authority did the actual term-setting.

Although it seems unarguable that the DSL has shifted important influence over sentencing from the Adult Authority to courtroom participants, it is not necessarily true that this has given the bulk of influence to one of these participants, the district attorney. In the three

counties, interviews with courtroom personnel suggest that most do not perceive a substantial shift in influence vis-à-vis prosecutor and judge. Moreover, our observations suggest substantial variation in the influence of prosecutor and judge in the three counties. In San Francisco, which under the ISL had judge-dominated plea bargaining, the same pattern appeared to be continuing. The DA in San Francisco might refuse to drop a count or an enhancement, but judicial power to stay sentences for either, plus a traditional inclination on the part of DAs to defer to judges, have resulted in continued judicial dominance.

The two counties that were said to be more prosecutor-dominated under the ISL also continued as before. Moreover, to the extent that the DSL appears to have changed prosecutor/judge influence, it may have *increased* the influence of the judge. In Santa Clara, for example, the crucial bargaining was and is over the decision about whether to send a defendant to prison. If the DA does not offer a conditional plea, the judge typically declines to do so. But if it is clearly a prison case, there appears to be a good deal of explicit sentence bargaining, in which the judge has become an active participant. Such bargaining was much less possible under the ISL, for there was little to discuss about sentence length. As a result, in the two prosecutor-dominated jurisdictions there has been some increase in influence by the judge, at least in prison cases. This is largely a result of the peculiar feature of California's indeterminate sentence scheme, in which the extraordinarily open-ended nature of the terms made sentence bargaining relatively difficult. The new law makes sentence bargaining much more attractive in prison cases and enables judges to participate more actively than under the old system.

The DSL does provide the DA with the *resources* to put the heat on the judge and hence to exercise increased influence in the disposition process. Under the old law, the judge in a prison case could send a defendant to prison for a one-to-life term instead of accepting a prosecution demand for a five-to-life term and hardly fear appearing lenient. Under the DSL, with terms tied to counts, a prosecution staff can routinely demand harsher terms than judges choose to impose, and thus make judges appear lenient in more graphic ways than were available before. Moreover, the mandatory probation disqualifiers do give the DA substantially more leverage. The crucial issue, though, is whether prosecution offices *choose* to exercise their influence. In the long run they may, and in some jurisdictions they may already be doing so. What our observations suggest though, is a cautionary note: Where prosecutors were dominant before, they may continue to dominate under the DSL (although even here, the judge may have an opportunity to be more active in sentence bargaining in prison cases). Yet where judges were dominant before, this pattern may continue, for the norms of courtroom culture are powerful inertial forces. What the future will bring in such judge-dominated systems remains to be seen, but our evidence does not suggest that the DSL has quickly or inevitably made the prosecutor the dominant participant in the disposition process.

Probation Disqualifiers, Enhancements and Plea Bargaining

These provisions can be viewed and utilized in a variety of ways. From a formal-legal perspective, probation disqualifiers state legislative policy that certain types of defendants shall receive prison terms. Moreover, the DSL and other recent legislation moved the status of several disqualifying characteristics from simply presumptive (to be operative unless the judge found exceptional circumstances) to mandatory (not permitting the exercise of judicial discretion to impose a lesser sentence upon a person whose status as ineligible has been alleged and proved). The sentence enhancement provisions, seen from a similar perspective, establish legislative policy that defendants who commit certain types of acts (e.g., use a gun, inflict great bodily injury) shall receive punishments beyond those of others who commit similar crimes but do not engage in such aggravated behavior.

From the perspective of courtroom participants, such provisions may have quite different meanings. In addition to their role as statements of legislative policy, they provide issues over which compromise may be reached in the plea negotiation process, and may run up against existing norms about sentencing practice that have grown up in a local court system. Thus, if a "going rate" is approximated by a new probation disqualifier, one would expect more ready compliance than if it varied substantially from new legislative policy. In the case of conflict between going rates and new policies, one would expect various adaptive strategies to be pursued by court participants, for example, dropping of allegations of ineligibility in cases in which participants believed that the defendant did not merit prison. In the long run, given turnover in criminal court personnel, one might expect that the going rate would gradually shift toward that embodied in legislative policy, but one would not expect that such change would occur

Table 1

Allegation and Disposition of Probation Ineligibility Characteristics, 1978-1979

	San Bernardino	*San Francisco*	*Santa Clara*
Two prior designated felonies (1203.08)			
Robberies in which alleged	0% (173)	1.4% (289)	6.9% (232)
Allegations struck	—	*	25.0% (16)
Burglaries in which alleged	1.0% (300)	1.0% (293)	10.4% (346)
Allegations struck	*	*	47.3% (36)
Personal use of gun (1203.06)			
Robberies in which alleged	0% (232)	10.0% (289)	22.0% (232)
Allegations struck	—	37.9% (29)	35.3% (51)
Crimes against elderly or disabled person *(1203.09)			
Robberies in which alleged	0% (232)	2.8% (289)	0%
Allegations struck	—	*	—

* No percentage calculated for N < 10.

SOURCE: Superior court records.

immediately in the case of provisions which called for sentencing decisions widely at variance with ongoing practice.

Although in the localities we examined prosecutor offices had declared "full enforcement" policies, both probation disqualifiers and enhancements were relatively rarely alleged; when alleged they were commonly dropped.

Tables 1 and 2 present data on allegation and disposition of selected probation disqualifiers and enhancements for burglary and robbery cases in the last year prior to implementation of the DSL and the first full year thereafter. The common pattern in both is the relatively infrequent use of both types of provisions. This is partly the result of the limited scope of several of the provisions, for some simply do not

Table 2

Allegation and Disposition of Selected Enhancements 1976, 1978-1979

	San Bernardino		*San Francisco*		*Santa Clara*	
	1977	*1978-1979*	*1976*	*1978-1979*	*1976*	*1978-1979*
Robbery Cases	(97)	(173)	(264)	(289)	(291)	(232)
Use of gun (12022.5)						
Cases alleged	36.1%	31.8%	25.8%	27.3%	43.6%	30.6%
Allegations struck	60.0	40.0	64.7	22.8	48.9	40.8
Armed with gun (12022)						
Cases alleged	7.2	26.6	1.9	9.0	15.7	15.5
Allegations struck	**	58.7	**	19.2	87.0	38.9
Prior felony/prison term (667.5)						
Cases alleged	6.2	6.4	27.7	19.0	23.4	10.8
Allegations struck	**	45.5	86.3	43.6	83.8	44.0
GBI (12022.7)						
Cases alleged	*	4.6	*	4.8	*	4.3
Allegations struck	*	**	*	64.3	*	70.0
Burglary Cases	(221)	(300)	(260)	(293)	(350)	(341)
Prior felony/prison term (667.5)						
Cases alleged	5.0%	5.7%	51.9%	16.0%	24.3%	11.0%
Allegations struck	81.4	23.5	89.6	38.3	94.1	28.9

* Law not in effect.
** No percentage computed for N < 10.

SOURCE: Court records.

cover very wide groups of defendants. For others, this explanation does not seem plausible. For example, Correction Department data suggest that in 1979, among all prisoners who were committed, the rate of *allegation* of a past prison term enhancement *among those who had in fact served prison terms* was about 44 percent for the state as a whole and ranged from 22 percent to 59 percent to 66 percent for San Bernardino, San Francisco, and Santa Clara, respectively; the numbers whose terms were increased by the actual *imposition* of an enhancement were, of course, even lower.[10]

[10] Board of Prison Terms, *Sentencing Practices* (1981).

The evidence available from interviews with participants suggests that low use of these provisions at the allegation stage did not reflect a sophisticated bargaining strategy—e.g., threatening to file the provision but refraining in return for an early plea agreement. Rather, low use apparently reflected largely ignorance and confusion about the provision (e.g., confusion between the enhancement for prior prison terms and the probation disqualifier for prior felony convictions), varying degrees of bureaucratic efficiency in discovering defendant attributes (e.g., the ease with which past records could be obtained and verified), and simply a slow learning process.

The disposition of the allegations, on the other hand, suggests their integration into the plea negotiation process. In our observations of plea bargaining sessions, agreements over dropping enhancements were common and often seemed not to be the result of changes in the state of evidence (the alleged gun turns out to be a toy) but weakness in the state's case, a feeling that the defendant was not likely to receive the enhanced term anyway and hence it could be dropped without losing too much, or simply hard-nosed bargaining in which the defense attorney persuaded the district attorney that the defendant would not plead unless the one or three years was saved. Evidence about the use of probation ineligibility provisions was more sparse as a result of the infrequency with which they were alleged. Observation of negotiations suggested that dropping of an allegation as a result of a bargain was common. Very tentative evidence suggests that those provisions furthest from going rates—e.g., the prior felony rule in burglary cases—were most often the subject of bargains to avoid application of the provision.[11]

In sum, these provisions were quickly integrated into the bargaining process and became the subject of negotiations designed to settle cases. Given the importance of guilty pleas and the work style of negotiation that characterizes criminal courts, this result is not surprising. Indeed, a finding consistent with a formal-legal perspective—that such provisions were fully used and legislative policy quickly followed—would have been implausible. Provisions like disqualifiers or enhancements deal with matters crucial to the operation of courts and affect ongoing norms that are perceived by participants as being important. Legislative changes are by no means irrelevant, and the fact that they may not be implemented immediately does not mean that they

[11] See J. Casper, D. Brereton, & D. Neal, note 8 *supra*.

make no difference. Rather their effects are mediated by settled patterns within court systems, by the need to dispose of cases by negotiation and the consequent inclination to treat doctrinal changes as not only policies but resources, and by the relationship between the legislative policy and participant's developed norms about what types of outcomes are appropriate.

The Future of the California DSL

Speculation about the future is, to be sure, a risky enterprise, and made more so by the relative newness of the innovations we have been studying. Yet a few possibilities seem worthy of discussion. Interviews with court personnel and with lobbyists and legislative aides suggest that the coalition that came together to support the DSL is well on the way to dissolution, if it has not already been dissolved. Due process liberals who supported the bill with reservations have found one of their fears borne out: Once legislators get into the business of setting prison terms, there is little to stop them from raising them substantially. Terms have been raised several times already, and many new probation disqualifiers have been introduced since the 1976 passage of the DSL.[12] The appetite for more punitive sentence policy is difficult to satisfy. Even though increasing numbers of defendants are sentenced to prison for increasing amounts of time, there will always be "mistakes" and for some prisoners a determinate sentence will never be "long enough." The "mistakes" will be comprised of the inevitable number of defendants in any given year who will receive probation and then prove by their subsequent crimes that society would have been better served had they been isolated in state prison. The other "mistakes" will not be noticed, for those who are locked up in prison but who are not in need of incapacitation cannot prove that they are not dangerous. The other difficulty that is becoming increasingly apparent to law enforcement interests is twofold: The terms appear to some to be too short and they are, by definition, determinate. Thus, prisoners will, under the DSL, be let out *sometime*, even those who may be likely to commit crimes again. The short-run solution to these two problems will probably be that California will see in the next several years increasing prison commitment rates and increasing terms for those sent to prison.

[12] Including, very recently, the much-discussed Proposition 8, which contained, among other provisions, requirements for extended sentences for defendants with prior prison records.

These policy outcomes are not going to please due process liberals, although they may feel themselves powerless to resist effectively. Two factors may intervene to cause increasing dissatisfaction on the part of law enforcement interests as well. First, without the escape valve provided by a parole system, longer determinate terms and increased commitment rates will produce larger prison populations. Prison construction is an expensive and politically sensitive proposition. Thus, political and fiscal problems may come to confront those pleased by the increase in prison terms and rates.[13]

Moreover, they may encounter increased resistance in the implementation of new prison term laws. As terms get longer, the sense of equity of judges and prosecutors may be offended. The willingness of judges and prosecutors to send marginal offenders to prison for short terms may diminish as the terms get longer. To the extent that the legislature couples increased terms with attempts to reduce judicial discretion by probation disqualifiers, further resistance may be encountered. Defendants may, moreover, begin to resist the temptation to plead guilty to sure and long prison terms. Though the advantages of a plea will be manifest, the length of the term and knowledge that they *cannot* be released before serving a minimum of two-thirds of their time may prove sufficiently unpleasant to induce some not to agree to plead guilty. Given overcrowded courts, a small increase in the trial rate is potentially of great significance. Thus, putting these two together, the implementation process may produce increased resistance to legislative attempts to increase prison commitment rates and prison terms.

This resistance will, in the short run, produce attempts to restrict judicial discretion by tighter rules about probation eligibility and staying of time for enhancements or counts. The latter legislative strategy will turn further influence over to the prosecutor and, because of both equity and disposition concerns, many will engage in evasive behavior. Moreover, law enforcement interests may increasingly feel the fiscal pinch of increased prison populations.

Eventually, one could hypothesize, law enforcement interests may come to identify the problem as being the determinate sentence law itself. Determinacy has removed the power of the parole board, and is forcing "weak" judges to impose long terms, which they have proved

[13] California citizens, unlike those in some other states, appear to be willing to pay for increased prison commitment rates and longer terms. The same election that saw passage of Proposition 8 also approved a half-billion-dollar bond issue for prison construction.

(in this scenario at least) less than willing to do. Law enforcement interests may turn to some form of indeterminate sentences for prisoners who continue to be dangerous. Reintroduction of indeterminate sentencing and a parole board may thus appear as a "solution" to the problem seen by both camps. Due process liberals, long unhappy with increased prison rates and terms, may welcome the chance to get the legislature out of the business of setting prison terms, even though it will be at the cost of reintroducing the discretion of the parole board. As a result, the new "solution" to the "problem" of sentencing may eventually be adopted, and it may look quite like the old ISL (but, perhaps, with somewhat less open-ended terms).

Clearly, the above is speculative, and it may not turn out to characterize policymaking in the future. Yet it does sound suspiciously familiar and it is. Sentencing reform has typically involved coalitions that supported common solutions to quite different "problems." As a result, these coalitions have been relatively fragile, have broken apart, and have eventually come together again. Whether this will happen again, what form it will take, and how long the state may have to wait for the next wave of reform are all open questions. What seems less open to question is the assertion that the difficult policy choices in this area are the products of substantial political and ideological conflict and that the evolution of policy over the long run is intimately tied to the process by which one wave of reform is worked out in local courts and how this process becomes tied to evaluation of the reform and efforts at introducing new ones.

END