

# **North Carolina's Community Penalties Program** An Evaluation of Its Impact on Felony Sentencing in 1987-88

Laura F. Donnelly and Stevens H. Clarke

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Laura F. Donnelly and Stevens H. Clarke

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U.S. Department of Justice  
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## Introduction

North Carolina's Community Penalties Program stems from a 1982 report<sup>1</sup> of the Citizens' Commission on Alternatives to Incarceration, a privately funded group established to address the problem of overcrowding in North Carolina's prisons. One of the commission's recommendations was that the state establish sentence-planning programs following the "client-specific planning" approach.<sup>2</sup> This approach involves preparing a plan for sentencing that emphasizes sanctions such as restitution to the victim or community service, rather than prison, based on the individual circumstances of the offender. The North Carolina General Assembly followed the commission's recommendation when it enacted the Community Penalties Act of 1983.<sup>3</sup> The purpose of the act was "to reduce prison overcrowding by providing the judicial system with community sentences to be used in lieu of and at less cost than imprisonment." This was to be accomplished by providing the following:

1. "[L]ocal sentencing alternatives for felons who require less than institutional custody but more than regular probation supervision";
2. "Increased opportunities for nonviolent felons to make restitution to victims of crime through financial reimbursement or community service";
3. "Local involvement in the development of community penalties to assure that they are specifically designed to meet local needs";
4. "Reduced expenditures of State funds through an emphasis on alternative penalties for offenders so that new prisons need not be built or new space added."<sup>4</sup>

The Community Penalties Act authorizes creation of local programs to prepare *community penalty plans* (hereinafter referred to as sentencing plans) for use by judges in sentencing defendants who have been convicted of nonviolent felonies in Class H, I, or J,<sup>5</sup> or of nonviolent misdemeanors, and who are "facing an imminent and substantial threat of imprisonment." Community penalties programs are still in a pilot stage. They have gradually expanded since the first local program began in Fayetteville in 1983. When this study was done, twelve programs existed across the state: the Fayetteville Area Sentencing Center, Inc. (FASC), serving Cumberland and Hoke counties; One Step Further, Inc. (OSF), serving Guilford County; ReEntry, Inc.

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1. *Report of the Citizens' Commission on Alternatives to Incarceration* (Durham, N.C.: North Carolina Prison and Jail Project, 1982).

2. For a description of this model and the theory on which it is based, see Leonard N. Berman and Herbert J. Hoelter, "Client Specific Planning," *Federal Probation* 45 (June 1981): 37-43; and Herbert J. Hoelter, "Client Specific Planning: Balancing the Scales at Sentencing," *Criminal Defense* 8 (July-August 1981): 13-17.

3. N.C. GEN. STAT. §§ 143B-500 through -507 (1987).

4. N.C. GEN. STAT. § 143B-500 (1987).

5. These include such felonies as felonious breaking or entering, larceny, possession or receiving of stolen goods, forgery and uttering forged instruments, embezzlement, other fraud crimes, and some offenses of possession and sale of drugs.

## North Carolina's Community Penalties Program

(REE), serving Wake County; Repay, Inc. (REP), serving Catawba, Caldwell, and Burke counties; Community Corrections Resources, Inc. (CCR), serving Forsyth County; Western Carolinians for Criminal Justice, Inc. (WCCJ), serving McDowell, Rutherford, Polk, Henderson, and Transylvania counties; Durham Community Penalties Program (DCPP), serving Durham County; Jacksonville Community Penalties, Inc. (JCP), serving Duplin, Jones, Onslow, and Sampson counties; Orange-Chatham Community Penalties Program (OCCP), serving Orange and Chatham counties; Appropriate Punishment Options, Inc. (APO), serving Alexander, Iredell, Davie, and Davidson counties; and Buncombe Alternatives (BA), serving Buncombe County.<sup>6</sup>

To a great extent the community penalties programs have introduced the concept of sentence planning into the courts in which they are involved. In North Carolina courts, presentence investigations are the exception rather than the rule. Under North Carolina law, whether to order a written or an oral presentence investigation for any offense is entirely within the sentencing judge's discretion.<sup>7</sup> Presentence reports—even oral ones—are rarely ordered.<sup>8</sup> Defense attorneys sometimes provide their own sentencing briefs, but this is uncommon.

The Community Penalties Act gives each local program the following tasks:

1. Selecting for services defendants charged with nonviolent crimes who face an imminent and substantial threat of imprisonment;
2. Preparing detailed sentencing plans for presentation to the sentencing judge (this is usually done by the defendant's attorney);
3. Arranging with public and private agencies for services described in the sentencing plan;
4. Monitoring the progress of defendants under sentencing plans; and
5. Evaluating the programs' effect on prison commitments.<sup>9</sup>

Community penalties programs are private organizations that contract with the state to provide the services just described. The programs follow guidelines issued by the North Carolina Department of Crime Control and Public Safety,<sup>10</sup> but have some discretion with regard to the kinds of defendants they serve and working procedures.

### Origin of This Study

The study reported here was conducted at the request of Dennis Schrantz, who at the time was grants administrator of the North Carolina Department of Crime Control and Public Safety, Division of Victim and Justice Services, and managed community penalties programs statewide. The study was based on information provided by the North Carolina Department of Crime Control and Public Safety. It concerned the

6. Buncombe Alternatives is administered by the North Carolina Administrative Office of the Courts, not by the North Carolina Department of Crime Control and Public Safety. However, it voluntarily provides the same information to the Department of Crime Control and Public Safety as the other programs provide. Three of the programs served only part of their districts in fiscal year 1987-88: Community Penalties Program, Jacksonville Community Penalties, and Appropriate Punishment Options.

7. N.C. GEN. STAT. § 15A-1332 (1988).

8. A recent study indicates that a written presentence report is prepared in about 9 percent of the cases involving sentencing of convicted felons, whereas oral reports are prepared in about 17 percent. See North Carolina Administrative Office of the Courts, *Presentence Reports to Judges* (Raleigh, N.C., 1988), 11, 23.

9. N.C. GEN. STAT. §§ 143B-503 through -504 (1987).

10. N.C. ADMIN. CODE tit. 14A, r. 11.0200.

programs during the 1987-88 fiscal year, including the types of defendants they served and their impact on the prison sentencing of those defendants. The study did not deal with recidivism and other aspects of offenders' behavior in the community when they had been sentenced according to a plan recommended by a community penalties program.

The major objective of the study was to compare the actual sentences imposed on defendants who were the recipients of community penalties services with the sentences that were likely to have been imposed on them if they had not received such services. This was done by determining statistically whether defendants were "prison-bound," meaning whether they were likely to receive a substantial active (i.e., not suspended) prison sentence without the program's intervention. In classifying defendants as prison-bound or not prison-bound, statistical models were employed that were based on data concerning felony sentencing in twelve representative North Carolina counties in 1981.<sup>11</sup> The models were used to develop a score associated with a defendant's probability of receiving an active sentence of twelve months or more. Of the factors tested in this statistical study, the ones that turned out to be the best predictors of a prison sentence—and the ones used in the prison-risk score—were the time the defendant spent in pretrial detention (jail) before indictment, the number of prior convictions in local records, the total number of current felony charges, and whether the defendant was on probation or parole when court processing of the current charge(s) began.

Two tests of whether defendants are prison-bound are used by community penalties programs and were employed in the study. One test is whether the defendant has a prison-risk score of more than 1,000; this corresponds to a probability of more than 50 percent that the defendant will receive an active sentence of twelve months or more. The second test, less stringent than the first, is whether the defendant has a score of more than 800; this score corresponds to a probability of more than 34 percent that the defendant will receive an active sentence of twelve months or more.

The second test is often used in practice by community penalties programs, especially when program staff have other information relevant to the defendant's probable sentence to consider along with the prison-risk score.<sup>12</sup> The staff may think that certain defendants are likely to receive substantial prison terms, even though their point totals are less than 1,000, because, for example, they may have prison records or the district attorney, in plea bargaining, may have indicated a preference for substantial prison sentences.

11. These models, like other statistical prediction techniques used in criminal justice, involve substantial inaccuracy. When applied to the twelve-county data from which it was developed, the model of receiving an active sentence of twelve months or more for a nonviolent felony resulted in a false positive rate of 23 percent and a false negative rate of 18 percent. See W. LeAnn Wallace and Stevens H. Clarke, *The Institute of Government's Prison Risk Scoresheet: A User's Manual* (Chapel Hill, N.C.: Institute of Government, University of North Carolina, 1984), 3-5.

12. The prison-risk scoresheet was designed to be used in conjunction with the judgment and special knowledge of staff. See Wallace and Clarke, *Prison Risk Scoresheet*, 12.

### **Determination of Whether Defendants Were Likely to Go to Prison**



## North Carolina's Community Penalties Program

This study compared the sentences predicted using both of the above methods with the sentences actually received by defendants for whom community penalties programs prepared sentencing plans that were submitted to the sentencing court.<sup>13</sup> The study also examined the types of defendants served and their charges, the use of community-based sanctions, the implementation of sentencing plans, and the acceptance of sentencing plans by judges.

### Data Base

The North Carolina Department of Crime Control and Public Safety provided information on the defendants served by each of twelve community penalties programs in North Carolina. This information took the form of a completed community penalties program cover sheet for each defendant for whom the program prepared a sentencing plan.<sup>14</sup> Each cover sheet identified the program that served the defendant and supplied information on the date of service; the defendant's sex, age, and race; the number and the types of charges; objective indicators of prison risk (those used in the statistical prediction model); other factors that might be indicative of prison risk; the acceptability of the sentencing plan to the judge; and the sentence imposed by the judge.

### Prison-Risk Factors

The cover sheet provided information on the four prison-risk factors just described (detention time, prior convictions, number of current felony charges,<sup>15</sup> and probation/parole status). The prison-risk score was computed as follows:

$$\begin{aligned}
 \text{Prison-Risk Score} = & \\
 & \text{On Probation/Parole (0 = No; 1 = Yes) x 258} \\
 & \quad + \\
 & \text{Number of current felony charges x 158} \\
 & \quad + \\
 & \text{Number of days pretrial jail x 6} \\
 & \quad + \\
 & \text{Number of prior convictions x 96}
 \end{aligned}$$

A prison-risk score over the cutoff (1,000 points or 800 points, as already explained) was taken as an indication that the defendant would be convicted and would receive an active prison sentence of twelve months or more without the intervention

13. For an unknown, but probably substantial, number of defendants referred to them, community penalties programs do not actually prepare sentencing plans. A study of the program in Guilford County (OSF) indicates this usually occurs because of lack of cooperation by the defendant. See Stevens H. Clarke and W. LeAnn Wallace, "Diversion from Prison by Sentence-Planning: Evaluation of a Program in Greensboro, N.C.," *Justice System Journal* 12 (Winter 1987), 335, 348. Also a substantial percentage of plans are not submitted to court—for example, because the defendant may obtain a more favorable sentence bargain from the prosecutor than that recommended by the plan.

14. No information was provided for defendants who were referred to the program, but for whom no plans were prepared.

15. The cover sheets had a blank labeled "Total # indictments." The number shown in this blank did not always correspond to the number of felony charges shown under "Original charges and number." Therefore we obtained the number of felony charges by counting those listed elsewhere on the cover sheets.

of the program. Defendants with scores at or below the cutoff were predicted either to receive an active sentence of less than twelve months or to receive no active sentence.

In addition to the prison-risk factors just discussed, information about ten other factors was provided on the cover sheets:

#### Other Factors

1. Had the defendant previously been convicted for the same offense?
2. Had the defendant previously been incarcerated? If so, for how long?
3. If the defendant had previously been incarcerated, had it been for the same type of charge as that pending?
4. Had probation or parole previously been revoked?
5. Was restitution still owed? If so, in what amount?
6. Had the case been unfavorably publicized?
7. Had the district attorney refused to allow a guilty plea arrangement without an active sentence? If so, what had been the district attorney's best offer regarding the sentence?
8. Had there been aggravating factors, as defined by the Fair Sentencing Act?
9. Had there been mitigating factors, as defined by the Fair Sentencing Act?
10. Was there any other information that might be important?

Although these factors do not enter into the statistical model predicting prison risk, they often are considered by community penalties programs in determining which defendants should receive services. In the study no attempt was made to analyze how these factors were used by community penalties programs.

The cover sheet indicated whether the plan prepared by the program had been accepted in full, accepted in part, or rejected by the judge at the time of sentencing. There was some inconsistency in this information. Apparently in 1987-88 confusion existed concerning under what circumstances plans should be considered accepted and to what degree.<sup>16</sup>

#### Plan Acceptance

The cover sheet provided the following information on the sentence imposed on the defendant: (1) the amount of active imprisonment, if any; (2) the active portion of any special probation ("split") sentence; (3) whether intensive probation was ordered; (4) whether regular probation was ordered; (5) the amount of restitution ordered; and (6) the number of community service hours ordered. We defined the total active time for each defendant to include any active imprisonment ordered, on either an active prison sentence or the active portion of a special probation sentence. Consecutive active terms (if any) were added to compute this total.

#### Sentence

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16. Distinguishing between acceptance (partial or full) and rejection was less problematic, although here too, there appeared to be some confusion. For example, for 9 percent of the defendants whose plans were labeled as rejected, no active prison time was ordered. Since 1987-88, clearer criteria for labeling plans have been developed.

## Program Implementa- tion

Results from twelve programs are presented here. Table 1 lists all of them and indicates for each one the judicial district where it is located, the total number of plans its staff wrote (that is, the number of cover sheets that were provided), the number of cases excluded from the evaluation of the program, and the number of cases included in the evaluation.

Table 1 shows that cover sheets were provided for 393 defendants, with dates of service from July 1987 to June 1988. In the analysis 57 (14.5 percent) of these 393 defendants were excluded: 40 because no felony charges were listed on their cover sheets (7 of these cases involved probation violation; the others usually involved only misdemeanors)<sup>17</sup>; 8 because the felony charges against them were either violent or not in Class H, I, or J<sup>18</sup> (the prison-risk model used in the study was designed to be used on defendants charged with nonviolent felonies in Class H, I, or J, not other defendants<sup>19</sup>); 4 because no sentence was shown on the cover sheet by reason of deferred prosecution; 3 because inadequate information existed; and 2 because the cover sheet was a duplicate of another.

Figure 1 shows the distribution of prison-risk scores (using the formula discussed previously) for all of the defendants served and for those served by each of the individual programs. The first bar in Figure 1 represents all programs considered together. Overall, very low prison-risk scores were rare, only 3.9 percent of them being 250 points or less and only 6.3 percent being between 250 and 500 points. With an additional 7.1 percent of the scores falling between 500 and 750 points, 17.3 percent of the defendants had prison-risk scores of 750 or below. The proportion between 750 and 1,000 points was 13.1 percent. The majority of defendants served, 69.6 percent, scored in excess of 1,000 points, and 79.4 percent scored in excess of 800 points. It is interesting to note that 20.8 percent of all defendants had prison-risk scores greater than 2,500 points.<sup>20</sup> Overall, prison-risk scores ranged from 158 to 23,728 points, with an average value of 1,931.

For eight of the twelve programs represented in Figure 1, 10.0 percent or less of the prison-risk scores were at or below 500 points. Exceptions were WCCJ with 33.3 percent of its scores at or below 500 points, BA with 20.0 percent, REE with 18.5 percent, and JCP with 16.7 percent. Two programs had large proportions of scores falling between 1,500 and 2,500 points: DCCP, 58.3 percent, and OCCP, 50.0 percent. A relatively large proportion of REP defendants, 40.6 percent, scored in excess of 2,500 points.

Because the intent of G.S. 143B-500 is that the Community Penalties Program affect prison admissions of nonviolent Class H, I, and J felons and nonviolent misdemeanants,<sup>21</sup> the programs must focus their efforts on the defendants who are most

17. The exclusion of 40 cases (10.2 percent) because they did not involve felony charges indicates that although most of the programs' efforts are aimed at defendants charged with felonies, services are provided on a regular, but infrequent, basis to defendants charged with misdemeanors. This is allowable under G.S. 143B-500.

18. Four of the 8 cases involved common law robbery, an offense accepted by the programs under special circumstances. One case involved felony charges that were not Class H, I, or J. Three of the 8 cases involved violent charges that were later reduced to nonviolent charges. Such cases would meet the eligibility requirements outlined in G.S. 143B-500, which defines targeted offenders as "persons convicted of nonviolent misdemeanors or nonviolent Class H, I, or J felonies who are facing an imminent and substantial threat of imprisonment."

19. For cases involving violent charges that are reduced to nonviolent charges, it may be appropriate to employ the prison-risk model that was developed for use specifically when there are violent felony charges. See Wallace and Clarke, *Prison Risk Scoresheet*, 12.

20. The score of 2,500 points corresponds to an estimated probability of 99 percent of receiving a sentence of twelve months or more.

21. As noted previously, defendants charged only with misdemeanors were excluded from this evaluation.

likely to serve active prison terms. To explore this issue, we examined whether the defendants served would have been considered prison-bound without the programs' services. As explained earlier, two tests of whether a defendant is prison-bound are used by community penalties programs, one a 1,000-point prison-risk score and the other an 800-point score. We report the results here using both the 1,000-point and the 800-point cutoff. Defendants were treated as high risk if their scores exceeded the cutoff, as low risk otherwise.

Figure 2 presents the proportions of defendants served by each program who were high risk and low risk *as defined by the 1,000-point cutoff*. Overall, 31.0 percent of the defendants served by the twelve programs were low risk, and 69.0 percent were high risk. This result, that over two thirds of the defendants were high risk, also held true for most programs. However, a few programs had relatively high proportions of low-risk defendants.<sup>22</sup> The programs with proportions of low-risk defendants that exceeded the overall proportion were WCCJ, BA, REE, APO, and JCP (the proportion for JCP was only slightly higher than the overall). On the other hand, DCPP, CPP, CCR, and REP were notable in that over three fourths of the defendants served by their programs were high risk.

Figure 3 presents the proportions of defendants served by each program who were high risk and low risk *as defined by the 800-point cutoff*. Overall, 20.6 percent of the defendants were low risk, and 79.4 percent were high risk. For most programs over three quarters of the defendants served were high risk. However, WCCJ, BA, REE, and JCP served proportionately fewer high-risk defendants, with percentages ranging from about 57 to 67.

In sum, the majority of defendants served by the programs were those who were likely to receive substantial active sentences. This was true using either definition of prison-bound. About 70 percent of defendants served were high risk when applying the 1,000-point cutoff, and about 80 percent were high risk when applying the 800-point cutoff. These results suggest that the programs, as intended, are devoting most of their resources to defendants who would be prison-bound without their intervention.

Of the 336 defendants for whom data were available, 276 (82.1 percent) were male. Two hundred six (61.3 percent) were white, 128 (38.1 percent) were black, and 2 (0.6 percent) were Indian. Ages ranged from 16.8 to 61.4 years and averaged 27.1 years.

Information about the types of charges against each defendant was coded by categorizing the charges as involving theft, fraud, sex offenses, drug offenses, violent misdemeanors,<sup>23</sup> or other offenses. Defendants with charges of more than one type were counted in each applicable category. The theft category encompassed such charges as breaking and entering, larceny, possession of stolen goods, and financial card theft. Charges falling into the fraud category were embezzlement, forgery, uttering a forged instrument, obtaining property by false pretenses, and worthless

## Description of Defendants and Their Charges

22. The Department of Crime Control and Public Safety is considering evaluating the efficacy of these programs using another model.

23. Although rare, defendants' charges may have included violent misdemeanors in addition to non-violent Class H, I, or J felonies. It is likely that these defendants were actually convicted of less serious nonviolent charges (making them eligible for program services). Future program evaluations could ascertain whether this is in fact true.

checks. The sex category included sex and morals offenses, such as indecent liberties and crime against nature, and the drug category comprised all types of drug offenses. Misdemeanors involving the element of violence were coded as violent misdemeanors. Charges not falling into one of the preceding categories were categorized as "other." The majority of cases, 177 (52.7 percent), involved charges of theft; 102 (30.4 percent) involved drug offenses, 94 (28.0 percent) charges of fraud, 10 (3.0 percent) sex offenses, 3 (0.9 percent) violent misdemeanors, and 34 (10.1 percent) charges in the "other" category.

### Actual Sentence Received

Information on the sentence imposed was recorded for each defendant. Most important for purposes of the evaluation was the information on the amount of active prison or jail time ordered. Also of interest was the use of intensive and regular probation, victim restitution, and community service as sanctions.

### Active Sentence Length

The results presented in this section deal with the total active time ordered for the defendants served by the programs, without regard to whether their plans were accepted or rejected (the results are broken down by plan acceptance in a later section, "Acceptance of Sentencing Plans by Judges"). Total active time for each defendant was defined as the amount of time ordered on an active sentence or the active portion of a special probation ("split") sentence.<sup>24</sup> This information was available for 326 defendants.<sup>25</sup> In 49.4 percent of the cases, no active time was ordered. For the remaining 50.6 percent, or 165 defendants, sentence lengths ranged from 0.1 months to 216.0 months, with an average length of 33.9 months.

Figure 4 shows the distribution of sentence lengths for all of the defendants and for the defendants served by each of the twelve programs (without regard to whether the plans were accepted or rejected). Overall, and for all programs except CCR, CPP, and DCCP, about three quarters or more of the defendants received active prison terms of six months or less. In fact, about 50 percent of the defendants served by most programs received no active time. Figure 4 also shows that sentences of six to twelve months were extremely rare (only one defendant) and that terms of twelve to twenty-four months were infrequent (nine defendants). Overall, 24.5 percent of the defendants received active sentences of at least twelve months.

### Predicted versus Actual Active Sentence Length: 1,000-Point Cutoff

Figure 5 compares the proportions of high- and low-risk defendants, as defined by the 1,000-point cutoff, who received active prison terms of twelve months or more.<sup>26</sup> For the programs together, about 13 percent of low-risk defendants (those not predicted to receive twelve-month or longer active sentences) received sentences of

24. There were no cases in which a defendant received special probation for one charge and a regular active sentence for another.

25. Because information on either the active time ordered or the active portion of a special probation sentence was unavailable for 10 of the 336 cases in the sample, the number of cases included in analyses relating to total active time was only 326.

26. As noted on Figure 5, results within risk categories for some programs were excluded because the number of defendants in these groups was fewer than 10. The exclusions were REP—Low Risk; CPP—Low Risk; CCR—Low Risk; WCCJ—High Risk; DCCP—Low Risk; JCP—Low and High Risk; OCCP—Low and High Risk; APO—Low and High Risk; and BA—Low and High Risk.

twelve months or more.<sup>27</sup> Most of these low-risk defendants were clients of FASC, REE, and WCCJ.<sup>28</sup> The large majority of programs had no low-risk defendants who received sentences of twelve months or more.

To determine whether programs reduced imprisonment, we examined whether individuals who were predicted to receive active sentences of twelve months or more without any alternative sentencing intervention actually did receive such sentences. As shown in Figure 5, 29.8 percent of the high-risk defendants (defined using the 1,000-point cutoff) received active sentences of twelve months or more. Thus, of high-risk defendants for whom plans were prepared, 70.2 percent received sentences of less than twelve months (or no active sentence).<sup>29</sup> For most programs the proportion of high-risk defendants receiving such terms ranged from about 20 to 30 percent. However, a large proportion of high-risk defendants served by CCR (63.0 percent) received sentences of twelve months or more. The proportion for DCCP was also relatively high (36.4 percent).

Figure 6 compares the proportions of high- and low-risk defendants, as defined by the 800-point cutoff, who received active prison terms of twelve months or more.<sup>30</sup> Overall, 7.5 percent of the low-risk defendants received active terms of twelve months or more. This represented only five cases and involved four programs. REE had two such cases; REP, CPP, and CCR had one each. The remaining eight programs had no low-risk defendants who received sentences of twelve months or more.

Figure 6 shows that on the basis of the 800-point cutoff, 29.0 percent of the high-risk defendants received active sentences of twelve months or more. For most programs the proportion of high-risk defendants receiving such terms ranged from about 15 to 30 percent. CCR remained the clear exception, with over 60 percent of its high-risk defendants receiving sentences of twelve months or more. This may have been because CCR tended to serve clients with exceptionally high prison-risk scores. The average risk score for CCR was 2,451 points, whereas the overall average was 1,931 points (see Figure 1). Also, CCR's rate of full acceptance of plans by judges was the lowest in the state (see Figure 9).

Figure 7 shows the proportions of defendants receiving various active sentence lengths, separately for high- and low-risk defendants as defined by the 1,000-point cutoff.<sup>31</sup> For all programs considered together, 44.9 percent of the 225 high-risk defendants received no active time. The range of active time ordered for the remain-

**Predicted versus  
Actual Active  
Sentence Length:  
800-Point Cutoff**

**Active Sentence  
Length by Risk  
Category: 1,000-  
Point Cutoff**

27. This 13 percent rate for defendants who were predicted not to receive active sentences but actually did is well within the 15-18 percent false negative rate reported by Wallace and Clarke in *Prison Risk Scoresheet*.

28. REE and WCCJ were two of the five programs that served relatively high proportions of low-risk defendants. This may suggest that there are important factors indicative of true prison risk for defendants served by these programs that are not measured by the current prison-risk assessment instrument. A prediction model tailored to these individual locations might be more appropriate.

29. When predicted and actual sentences were compared, the false positive rate reported by Wallace and Clarke in *Prison Risk Scoresheet* was 23 percent. Thus, even without any sentencing intervention, it would be expected that 23 percent of the defendants who were predicted to receive extensive active sentences (based on the 1,000-point cutoff) would not actually receive such sentences.

30. As noted on Figure 6, results within risk categories for some programs were excluded because the number of defendants in these groups was fewer than ten. The exclusions were FASC—Low Risk; REP—Low Risk; CPP—Low Risk; CCR—Low Risk; WCCJ—Low Risk; DCCP—Low Risk; JCP—Low and High Risk; OCCP—Low and High Risk; APO—Low and High Risk; BA—Low and High Risk.

31. The exclusions listed in Footnote 26 also apply here.

ing 124 high-risk defendants was 0.3 months to 216.0 months, with an average sentence of 39.3 months. In terms of individual programs, nearly three quarters of high-risk defendants received six months or less, with the exception of those served by CCR. High-risk defendants in the CCR program were more likely to receive longer sentences, often in excess of two years.

Of the 101 defendants in the low-risk category, 59.4 percent received no active time. The remaining 40.6 percent received some active time, ranging from 0.1 months to 144.0 months, with an average sentence of 17.7 months. Well over three quarters of all low-risk defendants received six months or less.<sup>32</sup> This finding held for all programs represented in Figure 7. In fact, all low-risk defendants in the OSF program received six months or less.

With regard to differences between sentences for high- and low-risk defendants, a higher percentage of high-risk defendants received some active time, as would be expected. The difference was especially noticeable in sentence lengths of over two years.

#### Active Sentence Length by Risk Category: 800-Point Cutoff

Figure 8 shows the distribution of active sentence lengths for high- and low-risk defendants as defined by the 800-point cutoff.<sup>33</sup> Of the 259 high-risk defendants, 45.6 percent received no active time. The range of active time ordered for the remaining 141 high-risk defendants was 0.3 months to 216.0 months, with an average sentence of 37.0 months. With regard to individual programs, about three quarters of high-risk defendants received six months or less (including those who received no active time), again with the exception of those served by CCR. Also, high-risk defendants were much more likely than low-risk defendants to receive sentences in excess of two years.

Overall, 64.2 percent of the 67 low-risk defendants received no active time. The remaining 35.8 percent received active time that ranged from 0.1 months to 144.0 months, with an average of 15.5 months. Low-risk defendants rarely received terms in excess of six months (only 7.5 percent did).

#### Use of Regular and Intensive Probation in Sentences

Regular probation was frequently a part of community penalties clients' sentences; intensive probation was much less frequent. Of 334 defendants,<sup>34</sup> 69.2 percent received regular probation, and 23.4 percent received intensive probation. Some defendants (13.2 percent) received *both* regular and intensive probation (on different charges). A substantial proportion (20.7 percent) received neither type of probation. To understand why these defendants received no probation, we analyzed these cases in terms of the programs providing service, the dates of service, the ordering of active time (if any), and acceptance or rejection of the plans. Results showed that all programs were represented and that the dates of service spanned the entire fiscal year, with no pattern evident. The analysis indicated that 62 of the 69 defendants

32. As noted previously, only about 13 percent of low-risk defendants received active sentences of twelve months or more. This was less than the false negative rate (18 percent) expected from the prison-risk assessment instrument, perhaps because of the programs' services.

33. The exclusions listed in Footnote 30 also apply here.

34. Whether or not regular or intensive probation was ordered was unknown for two defendants.

(89.9 percent) were ordered to serve some active time. Thus in only 7 cases (2.0 percent of the total) did the sentence ordered include neither probation nor active prison terms. The plans for 5 of these 7 defendants were accepted in full; the plans for the remaining 2 were accepted in part.<sup>35</sup> In addition, sentences in 6 of these 7 cases included some sort of drug treatment.

Information on whether special probation was ordered was reported for 330 defendants, of whom 54 (16.4 percent) received such sentences. Sentence length for these defendants ranged from 0.1 months to the statutory limit<sup>36</sup> of 6 months, with 33.3 percent receiving the latter term.

Data on whether restitution was ordered were available for 332 defendants,<sup>37</sup> of whom 194 (58.4 percent) received this sanction. The amount of restitution was recorded for 149 of these defendants<sup>38</sup> and ranged from \$20 to \$41,863, with an average of \$2,971.

Defendants were often ordered to perform community service as part of their sentences. Information on whether community service was ordered was available for 332 defendants,<sup>39</sup> 168 (50.6 percent) of whom were required to perform it. The amount ordered was recorded for 144 defendants.<sup>40</sup> It ranged from 20 to 400 hours and averaged 119 hours.

The study addressed the question of the percentages of plans accepted in full, accepted in part, or rejected. As noted earlier, there was some discrepancy during fiscal year 1987-88 in how acceptance and rejection were interpreted, both within and across programs. Therefore the results should be regarded with caution.

Overall, 173 plans (54.2 percent) were labeled as accepted in full, 113 (35.4 percent) as accepted in part, and only 33 (10.3 percent) as rejected.<sup>41</sup> Figure 9 shows acceptance rates overall and by program.

We also compared the active sentence lengths received by defendants depending on whether their plans were accepted or not. Overall, 29.5 percent of defendants whose plans were accepted in full received some active time. The percentage was much higher when plans were labeled as accepted in part: 68.1 percent of the

35. Of the 5 fully accepted plans involving no probation, the defendant in one case received a prayer for judgment continued, contingent on community service and restitution. Another was a felony diversion case (under the Felony Diversion Program of Wake County). Information on the other 3 cases was unavailable.

36. See N.C. GEN. STAT. § 15A-1351(a) (1988).

37. In 4 cases the cover sheet did not sufficiently list the sanctions that were ordered.

38. In 45 cases it was known that victim restitution was ordered, but the amount was not indicated on the cover sheet. An analysis showed that 82 percent of these cases involved charges of theft or fraud, 11 percent sex offenses, and 7 percent drug charges.

39. See Footnote 38.

40. For 24 defendants community service was ordered, but the number of hours was not provided on the cover sheets.

41. The total number of cases considered in measuring plan acceptance was 319 because of 10 exclusions in which active time ordered was unknown and 7 exclusions in which the program made no recommendation as to sentence (e.g., sentence mitigation plans).

**Use of Special Probation in Sentences**

**Use of Victim Restitution and Community Service in Sentences**

**Acceptance of Sentencing Plans by Judges**



defendants in this category received some active time. Defendants whose plans were rejected were quite likely to receive sentences that included some active time; 90.9 percent did so. Sentence lengths ranged from .1 months to 144.0 months for defendants whose plans were accepted in full, 0.3 months to 168.0 months for those whose plans were accepted in part, and 6.0 to 180.0 months for those whose plans were rejected. The average sentence length for defendants receiving active sentences was 18.7 months when their plans were accepted in full, 24.6 months when their plans were accepted in part, and 63.2 months when their plans were rejected.

Figure 10 shows the proportions of defendants receiving various active sentence lengths within each category of plan acceptance. Most (92 percent) of the fully accepted plans recommended six months or less, or no active sentence; 8 percent recommended sentences in excess of six months.<sup>42</sup> Of the 113 defendants whose plans were partially accepted, 73 percent received six months or less; 4 percent, more than six months, up to two years; 18 percent more than two years, up to five years; and 5 percent more than five years. We believe that when only part of a plan was accepted, it was usually the recommended sentence length that was rejected (i.e., a longer-than-recommended active sentence was imposed). When plans were rejected, defendants were quite likely to receive active sentence lengths of more than two years (76 percent did).

## Summary and Conclusion

This evaluation concerned 336 defendants for whom sentencing plans were prepared by twelve community penalties programs operating in North Carolina during fiscal year 1987-88.

On the basis of two cutoff points for prison-risk scores, most defendants for whom plans were prepared were high risk (i.e., prison-bound). With the 1,000-point cutoff (corresponding to an estimated probability of 50 percent or more of receiving at least twelve months of active imprisonment), about 70 percent of defendants served were high risk; with the 800-point cutoff (corresponding to an estimated probability of 34 percent or more of receiving at least twelve months of active imprisonment), about 80 percent were high risk. Very low prison-risk scores were rare; about 10 percent of the defendants' scores were 500 or less. *Thus the programs appear to have been targeting most of their efforts on defendants who were likely to receive substantial prison terms without the intervention of the programs.*

We assessed the impact of community penalties programs on prison sentences by comparing actual sentences with those that were predicted based on defendants' prison-risk scores. With either cutoff, about 70 percent of the defendants who were predicted to receive active sentences of at least twelve months actually received shorter active sentences or no active time. *This suggests that the programs sharply reduced the use of prison sentences of twelve months or longer.* About three quarters of the high-risk defendants (on the basis of either cutoff) received six months or less active time, with about 45 percent of the high-risk defendants receiving *no* active time.

Regular probation was ordered in over two thirds of the cases, intensive probation in about one quarter. When neither type of probation was ordered, it was quite

42. It is unclear why sentences in excess of six months were recommended in sentencing plans.

likely that the defendant was required to serve an active prison term. However, seven defendants received neither active prison terms nor probation. Special probation was used in about 16 percent of the cases; a third of these sentences were for the statutory limit of six months.

Victim restitution was ordered in about 58 percent of the cases. The average amount was nearly \$3,000. About half of the defendants were ordered to perform community service, with an average of 119 hours.

Over half of the plans prepared were fully accepted by the sentencing judge, and 10 percent were rejected. About 30 percent of defendants whose plans were fully accepted received some active time, compared with about 68 percent of defendants whose plans were partially accepted and about 91 percent of defendants whose plans were rejected. Not only were defendants whose plans were not fully accepted much more likely to receive active sentences, but their sentences also tended to be much longer. The average sentence length when plans were accepted in full (about nineteen months) was less than one-third of that when plans were rejected (about sixty-three months).

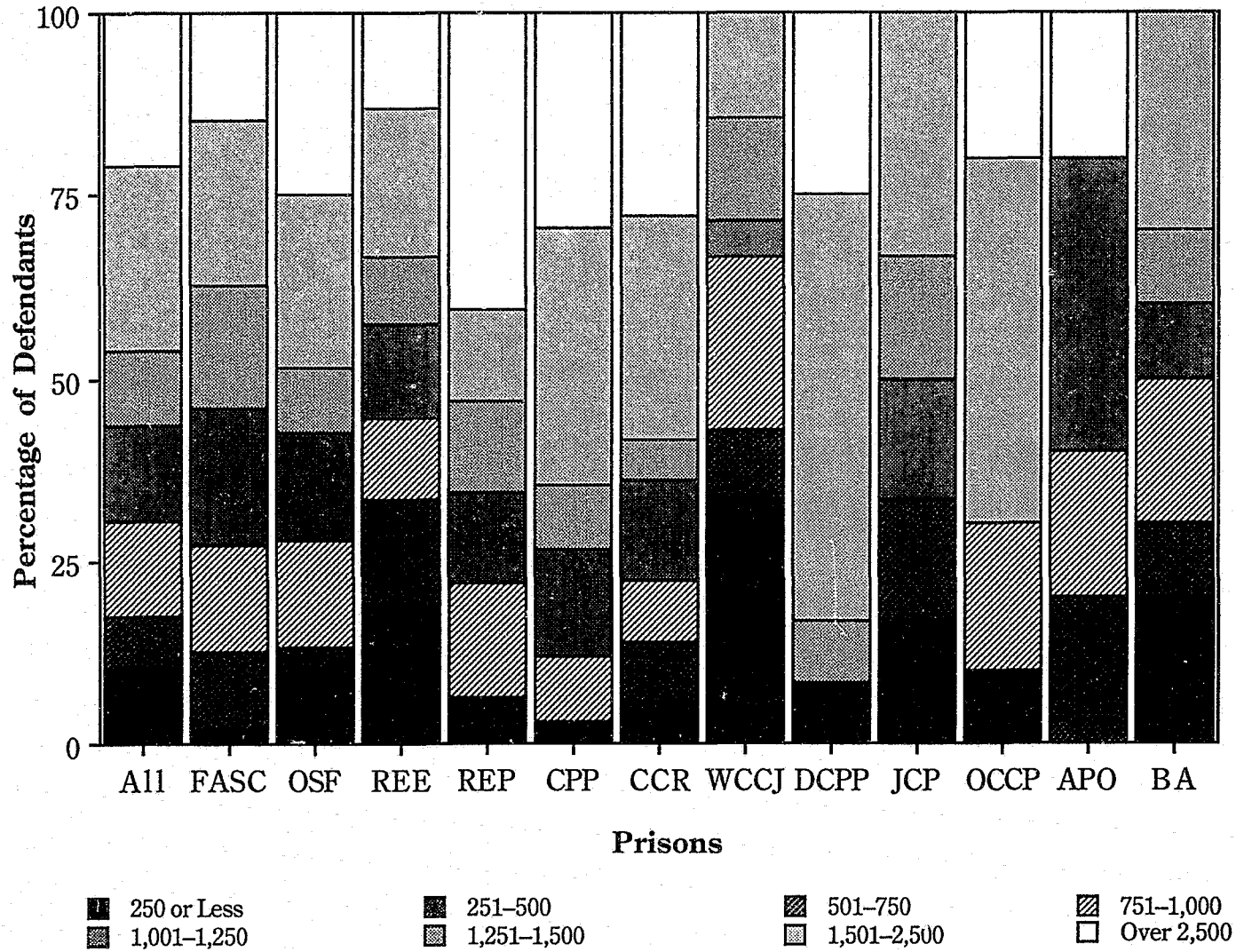
## North Carolina's Community Penalties Program

**Table 1**  
**Community Penalties Programs and Cases Included in the Evaluation**

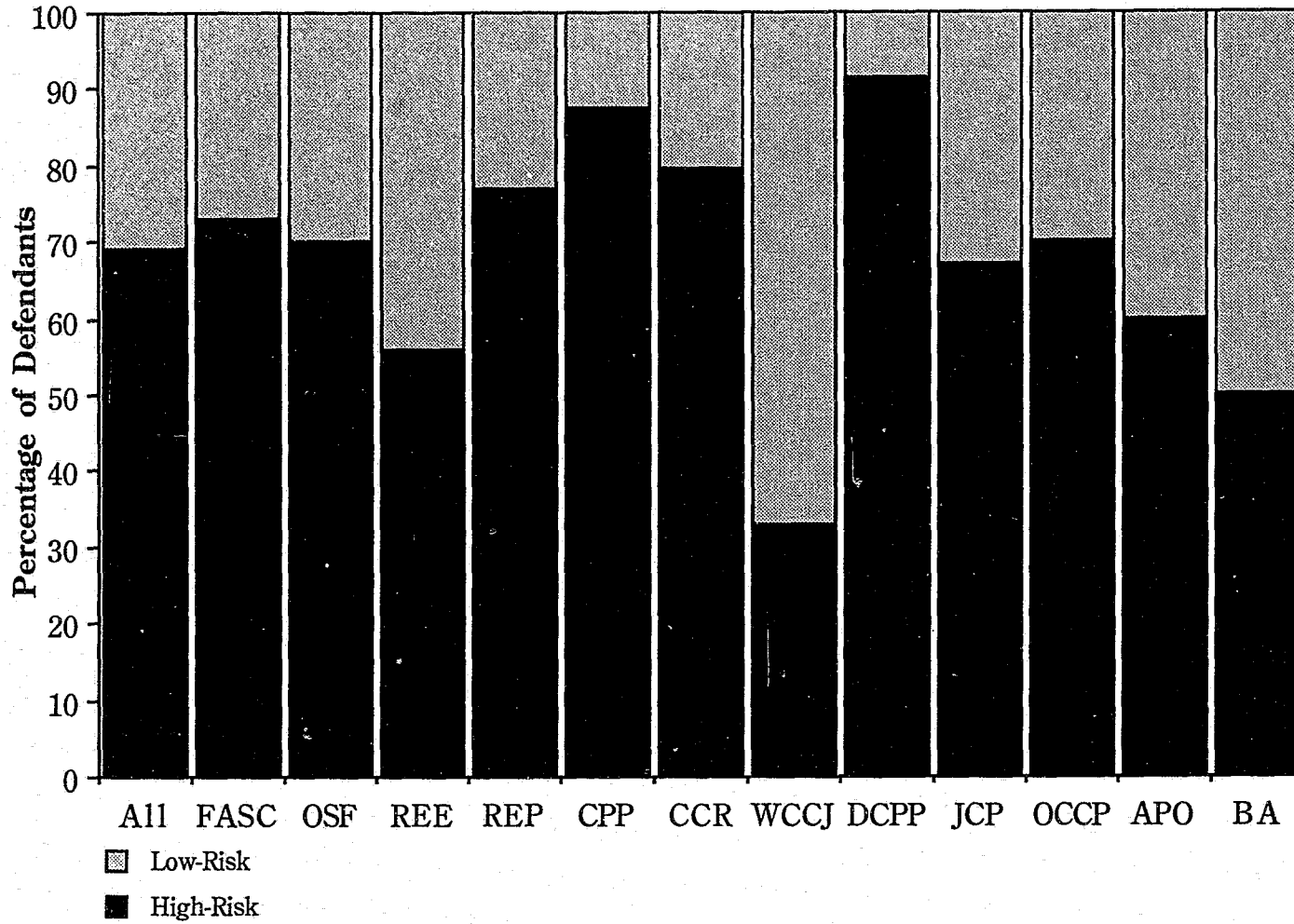
Program	Judicial District	Plans Written <sup>a</sup>	Cases Excluded	Cases Included
Fayetteville Area Sentencing Center, Inc. (FASC)	12	49	1	48
One Step Further, Inc. (OSF)	18	82	14	68
ReEntry, Inc. (REE)	10	65	11	54
Repay, Inc. (REP)	25	34	2	32
Community Penalties Program, Inc. (CPP)	5	38	4	34
Community Corrections Resources, Inc. (CCR)	21	41	5	36
Western Carolinians for Criminal Justice, Inc. (WCCJ)	29	24	3	21
Durham Community Penalties Program (DCPP)	14	16	4	12
Jacksonville Community Penalties, Inc. (JCP)	4	7	1	6
Orange-Chatham Community Penalties Program (OCCP)	15B	10	0	10
Appropriate Punishment Options, Inc. (APO)	22	12	7	5
Buncombe Alternatives (BA)	28	15	5	10
<b>Total</b>		<b>393</b>	<b>57</b>	<b>336</b>

<sup>a</sup>A few programs were not in operation at the beginning of fiscal year 1987-88. That fact helps explain the relatively low number of plans they prepared. These programs, and the earliest month for which cover sheets were provided, were Durham Community Penalties Program, February 1988; Jacksonville Community Penalties, April 1988; Orange-Chatham Community Penalties Program, December 1987; and Buncombe Alternatives, November 1987.

**Figure 1.**  
**Distribution of Prison-Risk Scores**



**Figure 2.**  
**Distribution of High- and Low-Risk**  
**Defendants, 1,000-Point Cutoff**



**Figure 3.**  
**Distribution of High- and Low-Risk**  
**Defendants, 800-Point Cutoff**

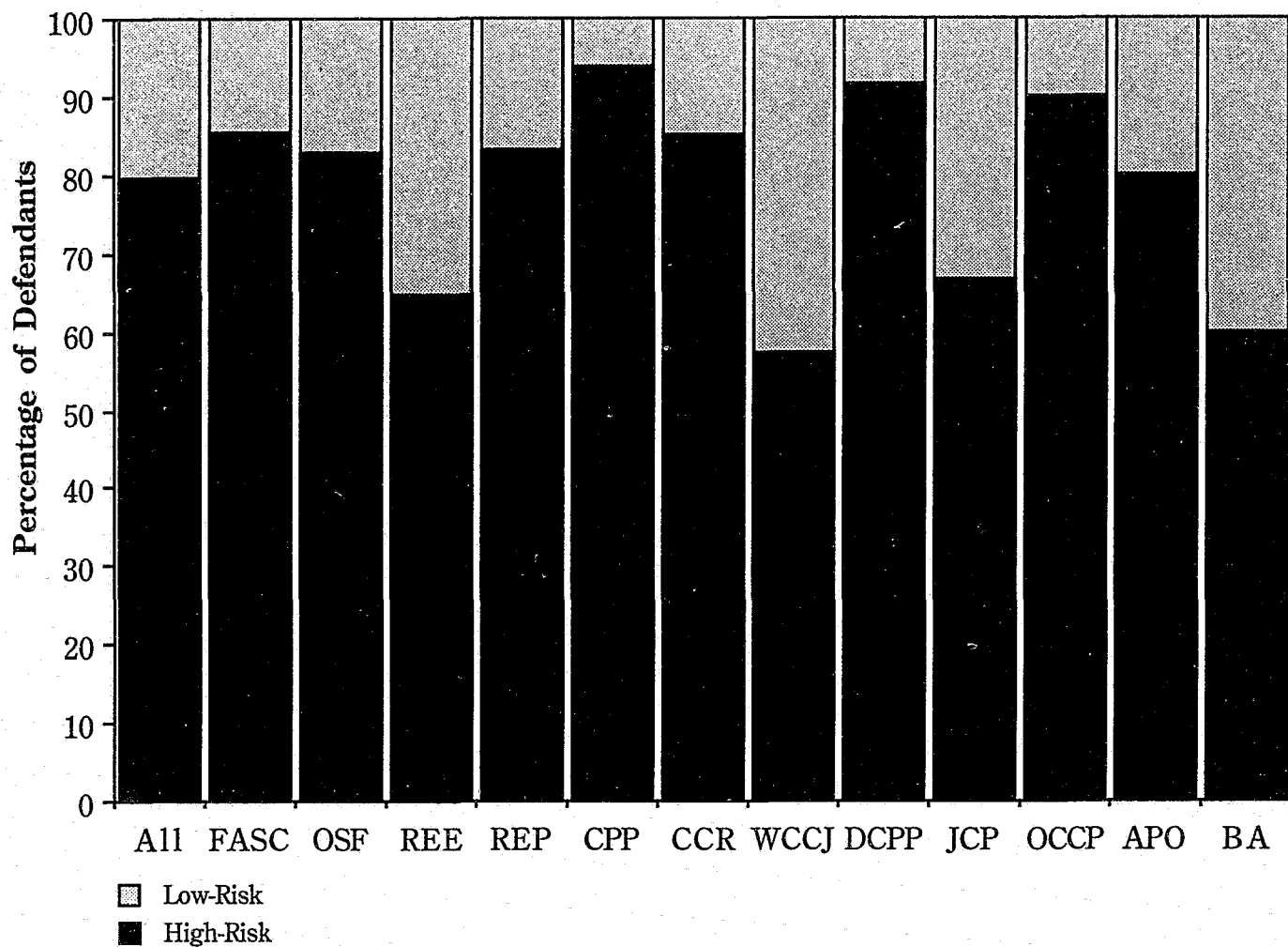
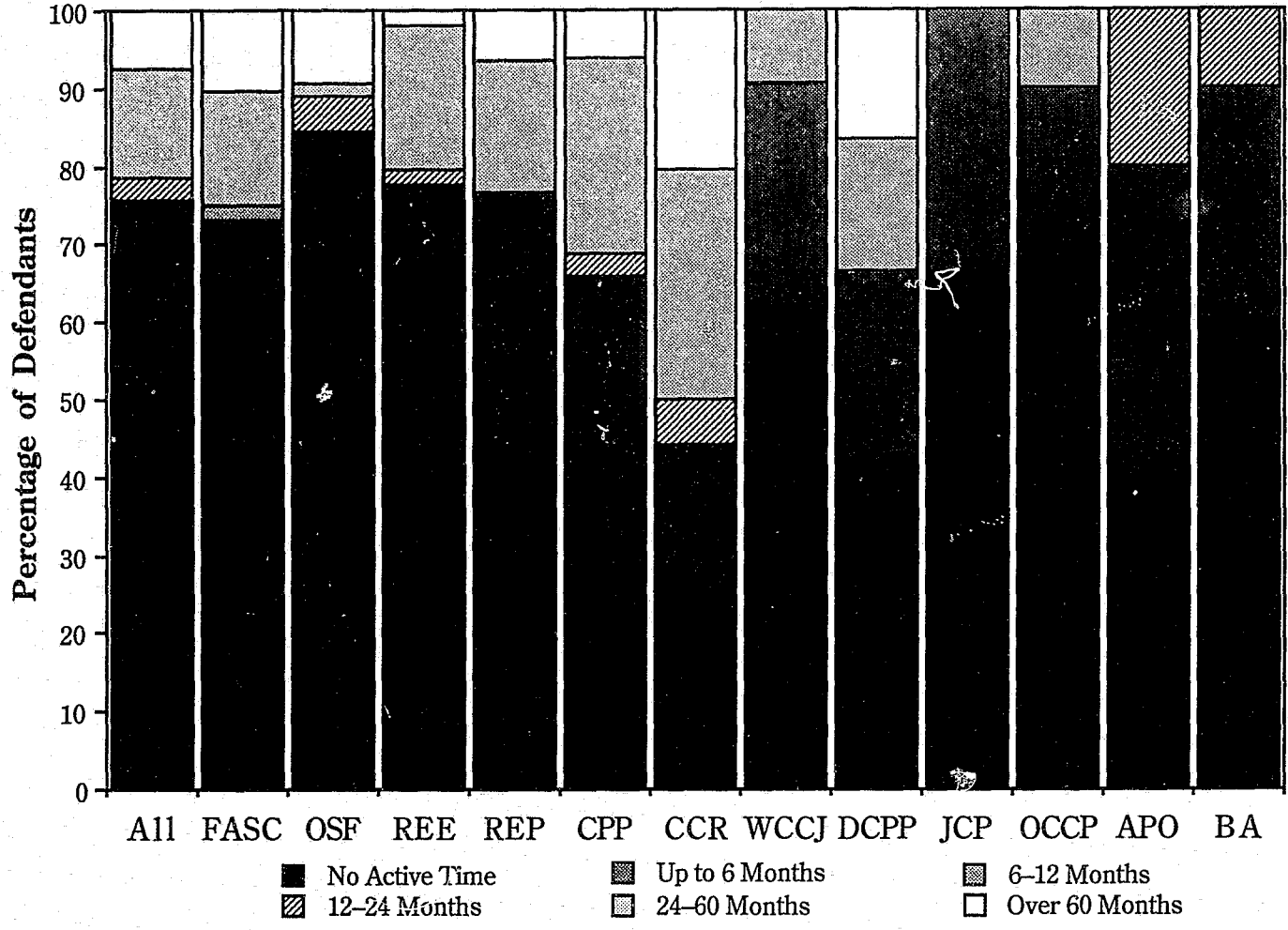
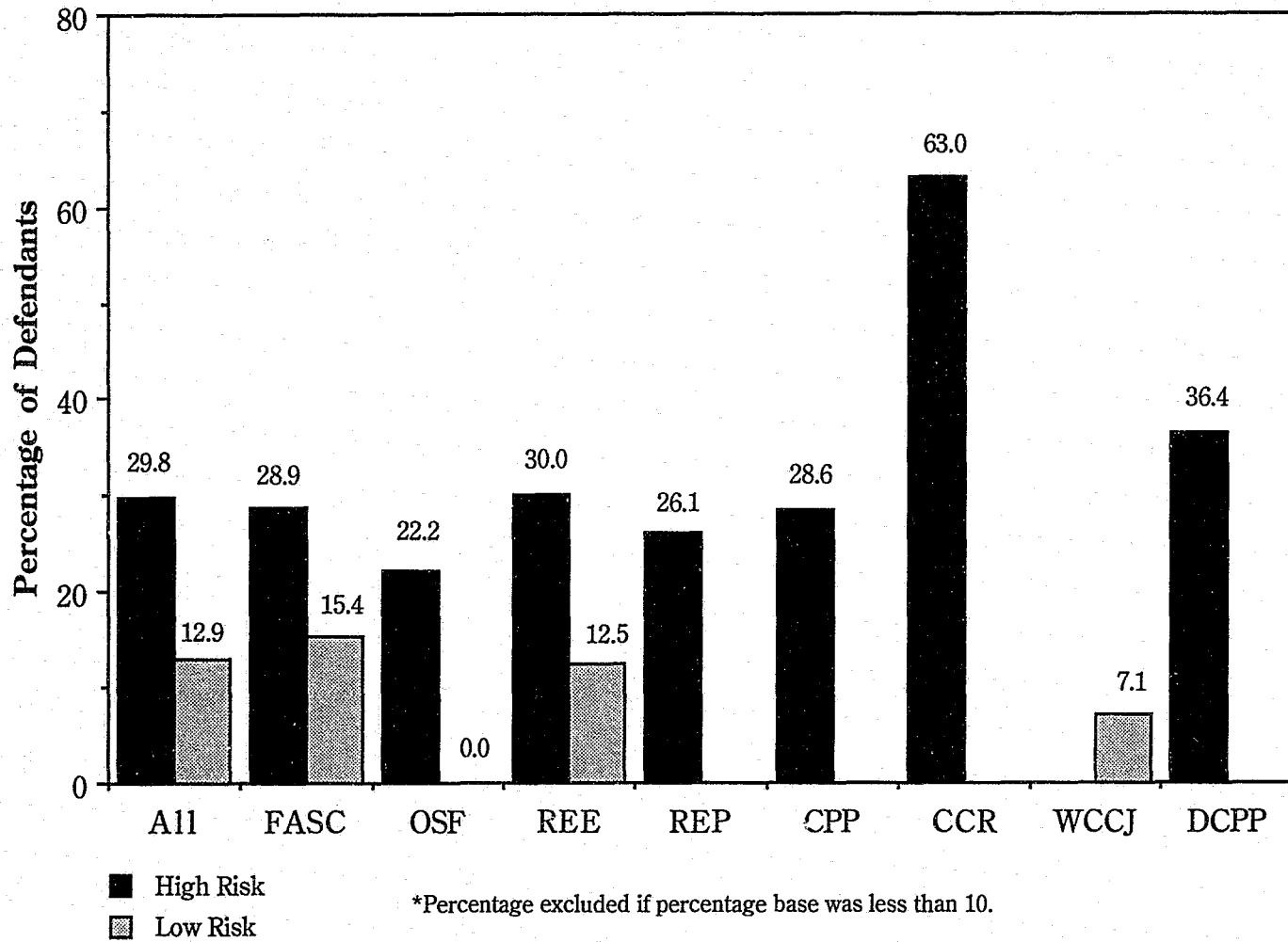


Figure 4.  
Distribution of Active Sentence Lengths

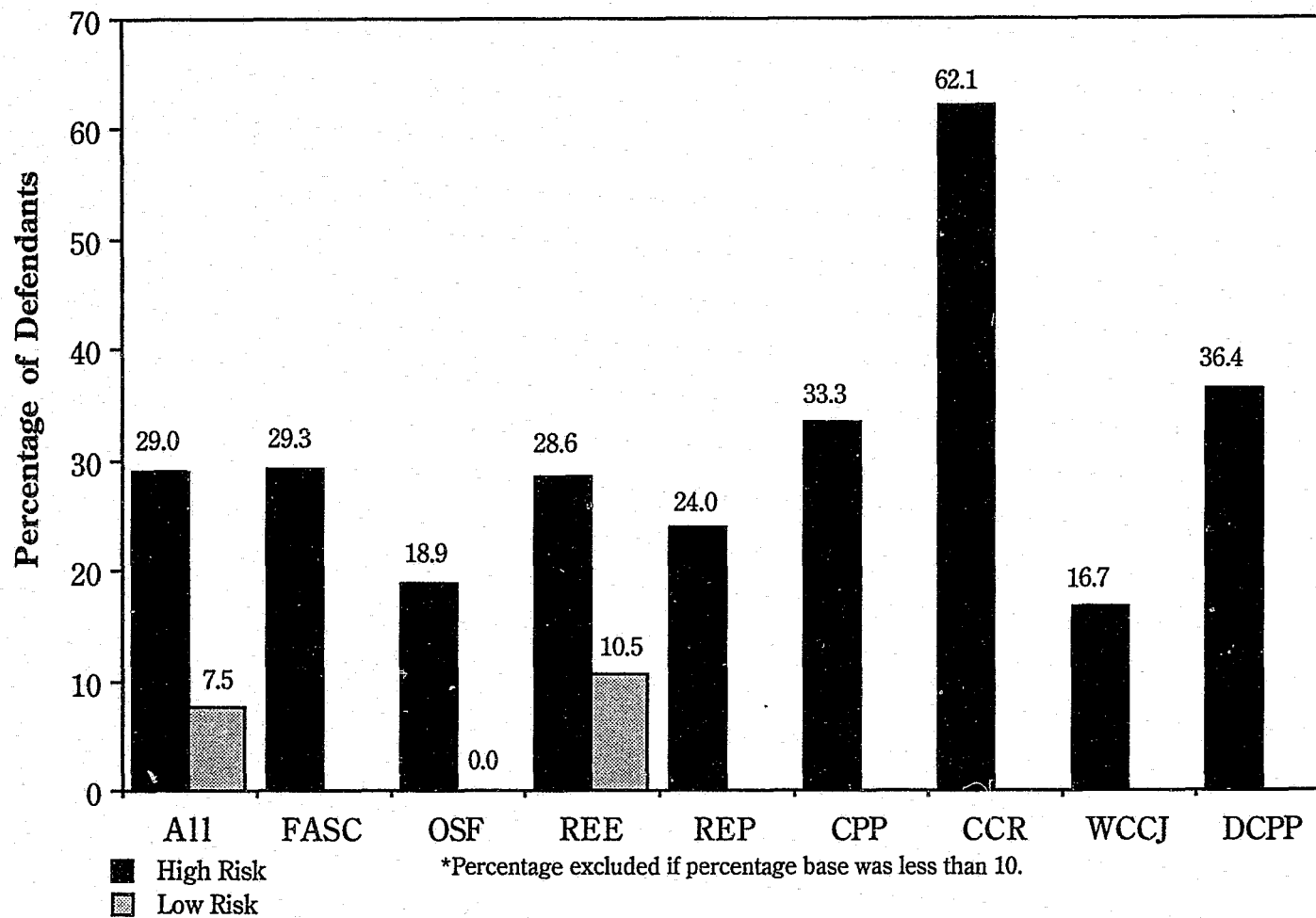


**Figure 5.**  
**Proportions of Defendants Who Received**  
**Active Sentences of 12 Months or More,**  
**by High and Low Risk, 1,000-Point Cutoff\***

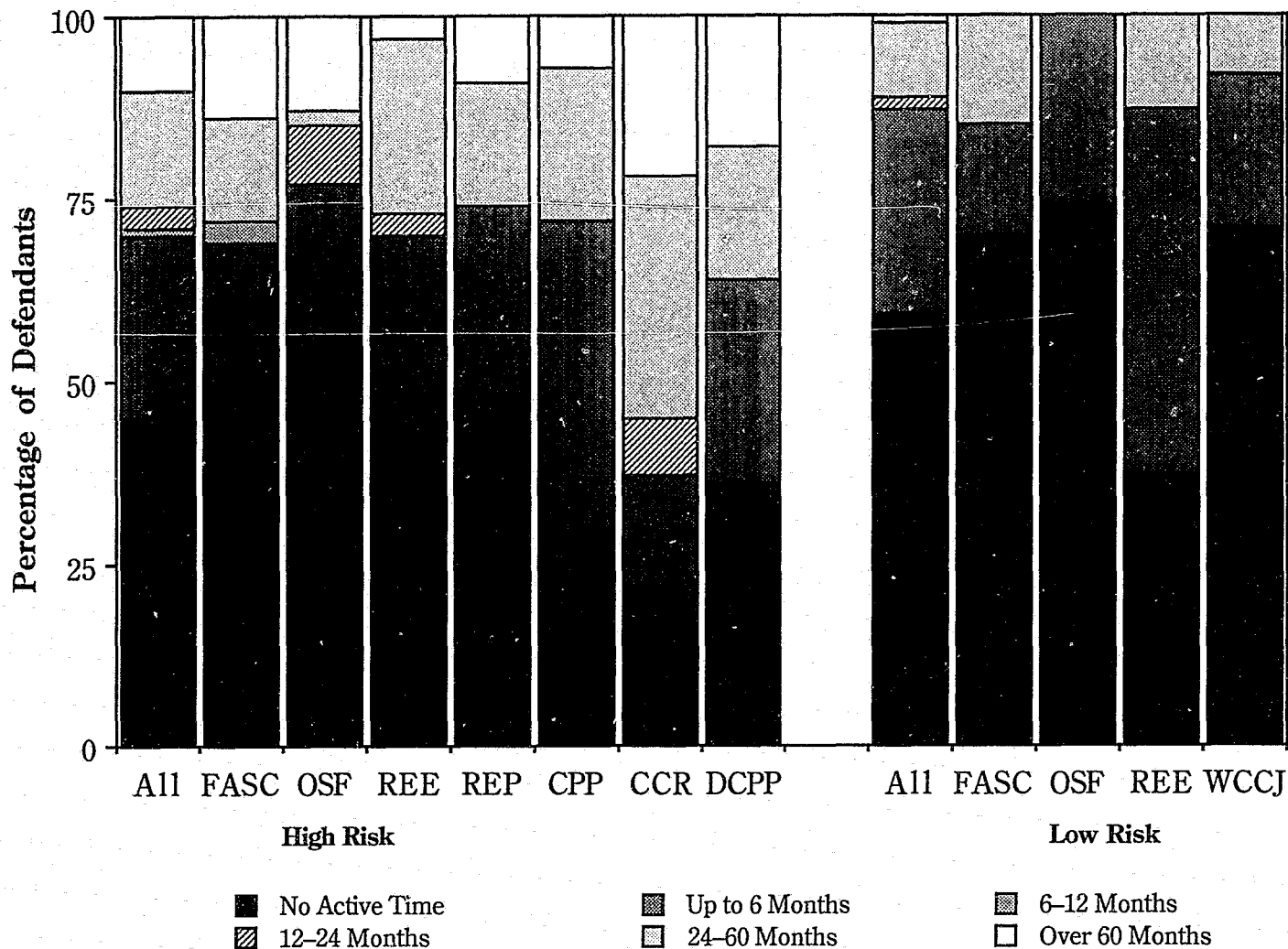




**Figure 6.**  
**Proportions of Defendants Who Received**  
**Active Sentences of 12 Months or More,**  
**by High and Low Risk, 800-Point Cutoff\***

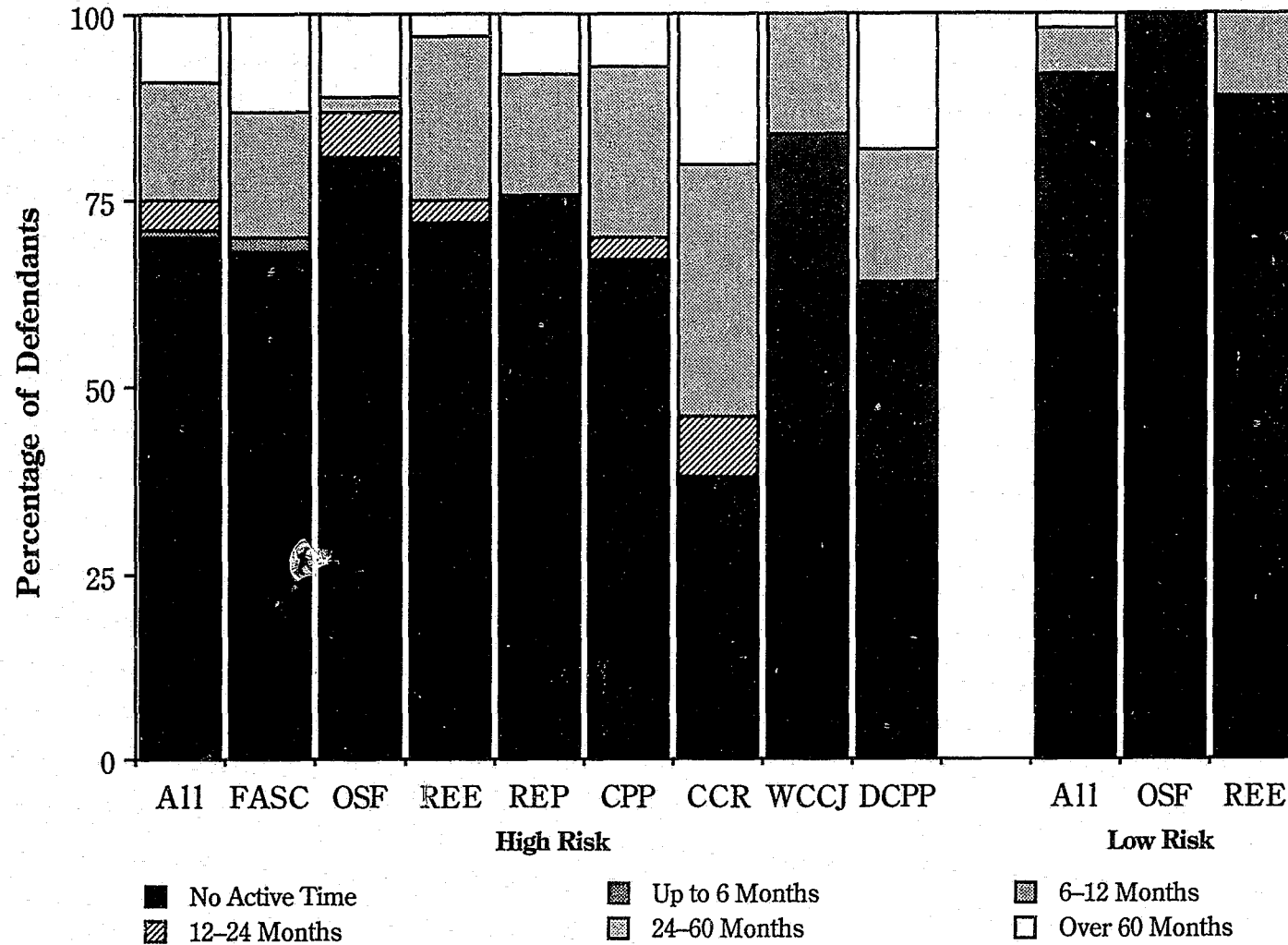


**Figure 7.**  
**Proportions of Defendants Who Received Various Active**  
**Sentence Lengths by High and Low Risk, 1,000 Point Cutoff\***



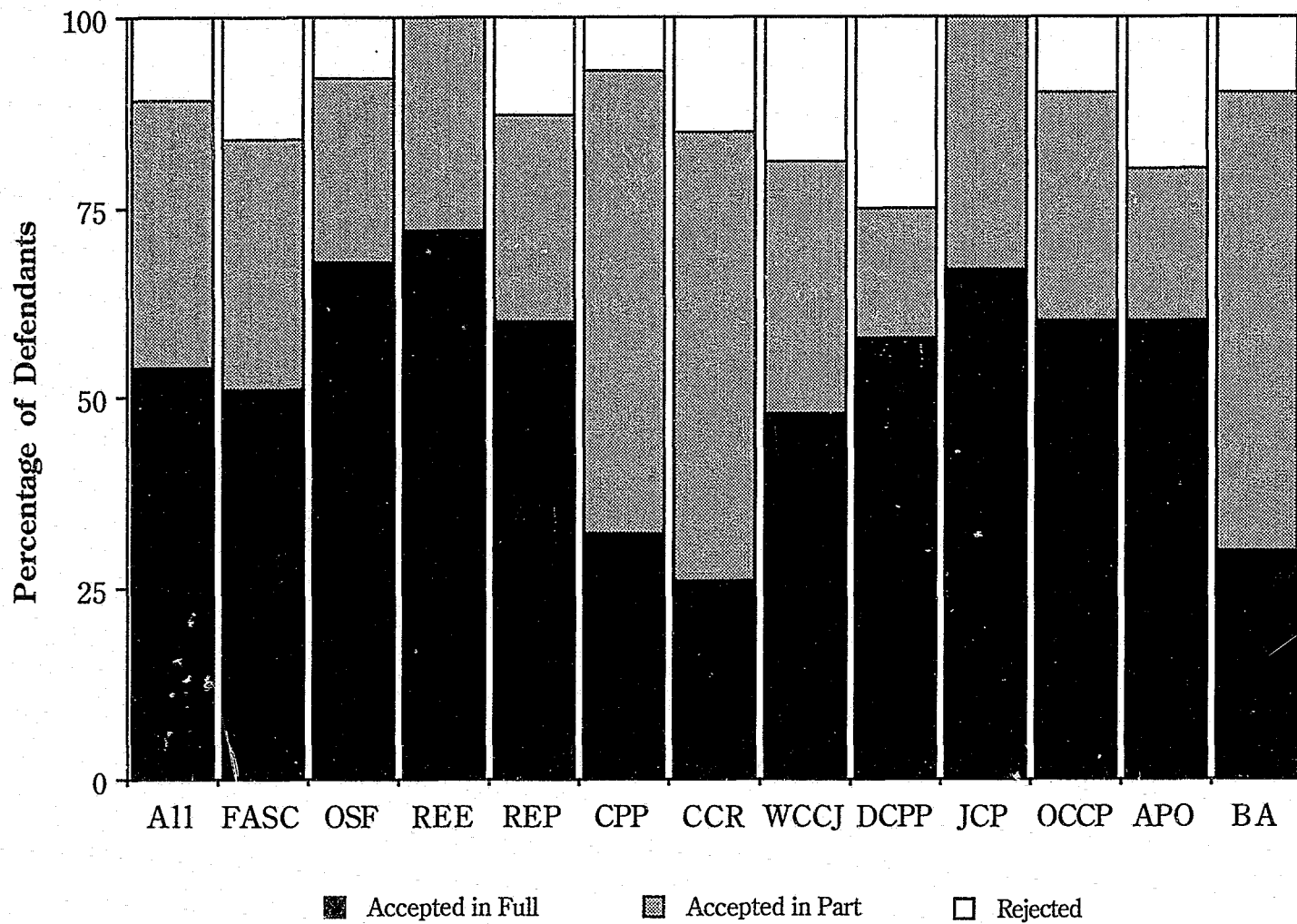
\*Percentage excluded if percentage base was less than 10.

**Figure 8.**  
**Proportions of Defendants Who Received Various Active Sentence Lengths, by High and Low Risk, 800-Point Cutoff\***



\*Percentage excluded if percentage base was less than 10.

**Figure 9.**  
**Acceptance Rates for Prepared Plans**



**Figure 10.**  
**Proportions of Defendants Who Received**  
**Various Active Sentence Lengths, by Plan Acceptance**

