PROBATION

AN EXAMINATION OF SENTENCING DISPARITY IN TASMANIA

by

P.M. Donnelly and J.G. Mackay

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ABSTRACT

During and following 1980 there occurred some unaccountable variation in the probation population in Tasmania. This study found that this was in part the consequence of demographic changes which occurred between 1976 and 1981. More importantly it was found that the notions of rehabilitation and punishment implicit in the sentencing process also contributed to this variation. An emphasis on one or the other influences the duration of the probation order imposed by the court, and the propensity of courts to combine supervised probation orders with other penalties.

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PART 1

INTRODUCTION

In contempory society sentencing is a topic of widespread concern.[1] There is increasing discussion and empirical research into the principles and factors involved in the decision-making process within the courts. Other areas of concern include the disparity between the sentences given by magistrates.

Magistrates exercise a broad discretion over the type and length of sentence to be imposed upon offenders. Although the maximum penalty for a particular type of offence is set by statute, minimum penalties are rarely prescribed. This gives a magistrate the scope to sentence offenders on their own merits. Magistrates take into account a wide variety of factors in selecting the appropriate sentencing option. Without being exhaustive these factors include the seriousness of the offence and its frequency within the community, the culpability of the offender, the existence of a prior criminal record and the circumstances surrounding the offence as well as an offenders social background.

Court decisions may also be influenced by the views of magistrates on the aims of punishment. That is, whether the primary function of legal sanctions is for general or individual deterrence, retribution, rehabilitation, prevention, protection of the community, or some composite of these elements.

As a result of the variety of factors which need to be considered before the imposition of a sentence, judicial discretion is important. It enables an appropriate sentence to be selected, in terms of the nature of the offence and, the circumstances surrounding it, as well as the situation of the offender.

Such apparent differential treatment has led to much debate centred around inconsistency and disparity of sentences, and has led to claims of arbitrariness and injustice within the system.

A brief review of some of the empirical research in the area of sentencing will be examined before proceeding with the specific aims and

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1. See, for example, Australian Institute of Criminology 1974; Devlin 1970; Devlin 1979; Gross and von Hirsch 1981; The Law Reform Commission of Canada 1974; Thomas 1970; Thomas 1979; Walker 1969.

objectives of this study.

Green's investigation in 1961 of the factors underlying sentencing practice in the Criminal Court of Philadelphia is an important study of sentencing patterns. Green examined the significance of both legal and non-legal factors in the judicial decision making process, and in the first category he included four factors.

i) the type of offence committed;

ii) the number of indictments on which the defendant is convicted;

iii) the offender's prior criminal record;

iv) the recommendations contained in pre-sentence reports.

The non-legal factors were age, sex, race, and birth place. After ensuring that the types of cases dealt with in each court were similar, Green suggests that the primary factors contributing to variations in sentencing practice are the seriousness of the offence and the offender's prior convictions. When he controlled for legal variables, he observed that the non-legal factors had little or no influence upon sentencing practice.

In a study of magistrates' courts in England and Wales, Hood discovered in 1971 differences in the use of imprisonment, probation and fines. Hood suggested that sentencing disparities arise from different magistrates' perceptions of the aims or philosophy of sentencing, and from differences of opinion about the actual effectiveness of alternative sentencing options available to the magistrate.

Tarling investigated a sample of 30 English Magistrates' Courts in 1979 with the aim of determining the extent of sentencing variation and to account for the factors contributing to it. Some of the variation he observed was due, however to differences in the types of offenders appearing before the various courts. Even so, Tarling noted that

particular aspects of judicial tradition and procedure, courts' resources, and local circumstances, contribute to sentencing variation. He suggested that the number and variety of reforms discussed highlighted the problems involved in attempting to achieve greater consistency, while providing sufficient flexibility to enable each case to be treated on its own individual merits.

On the other hand, Softley attempted to explain differences in magistrates' choice of particular sanctions in 1980 by examining a sample of convicted persons. Softley suggested that magistrates tend to see unemployment as a mitigating circumstance which makes it inappropriate to impose fines. He also observed that a serious criminal record is associated with a greater likelihood of a discharge and explained this in the terms of the magistrates tendency to impose more lenient penalties where others have failed to deter or reform an offender. Even so, Softley found that decisions to impose a custodial sentence, instead of a fine were associated with a serious record more than with the nature and gravity of the offence.

Recently, in the United States there has been an abundance of literature on sentencing disparity reflecting the individual or personal idiosyncracies of magistrates. The central theme of this literature focusses upon the rehabilitative model of corrections as the major source of indeterminate sentences and consequent inconsistency in the treatment of offenders who commit similar offences. These claims imply that the choice of sentence is arbitary or that individual magistrates are somehow influenced, by factors such as age, sex, or ethnicity, and that the sentencing process is unjust or efficacious.

These claims are generally accompanied by suggestions that the sentencing process should be reformed and that judicial discretion should be curtailed. The object of these proposals is to ensure that a penalty is commensurate with the gravity of an offence, and that like cases are similarly treated. Amongst the suggested reforms which have been implemented in some States by statute are mandatory sentences and sentencing guidelines. Sentencing Councils constituted by members of the legal profession, other participants within the criminal justice system, and members of the public have also been

established.

A number of studies have shown that the information which a magistrate receives in the form of a pre-sentence or a psychiatric report will affect the court's decision. Hine showed a high level of concordance between the recommendations contained in pre-sentence reports and the type and length of sentences imposed. However, this relationship may be a consequence of probation officers drafting their reports to accommodate particular magistrates' predispositions rather than denoting magistrates' acceptance of the objective recommendations contained in reports.

Australian Studies

In Australia there has been little systematic investigation and evaluation of sentencing practice in Lower Courts. Cashman (1979:2) points to the irony of this, given the overwhelming majority of cases heard in Lower Courts.[2] Thus there is a lack of objective information related to developments and trends in the actual sentencing practice of these courts.

Nevertheless, there have been a number of small-scale research projects which have provided information regarding some of the factors involved in decision-making within criminal courts.[3]

An example of the increasing interest and discussion of sentencing is the 'Judicial Seminar on Sentencing' and the 'Sydney Project on Sentencing' (1969). The themes of the seminar were the avoidance of disparity and the desirability of uniformity in sentencing. An important finding of the Sydney project was that different courts appear to use different practices in dealing with pre-sentence reports. For example, it was found that the younger an offender the more likely he is to be the subject of a pre-sentence report. The project also concluded that one factor which appears to have a significant bearing

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2. In Tasmania, for the year ending June 1980, 48,681 cases appeared in Courts of Petty Sessions whereas Judges' Courts dealt with only 279 individuals.

3. See, for example, Douglas 197; Newton 1974; The Australian Institute of Criminology, 1976.

on an offender's chance of probation is the court in which he appears. It was also asserted that sentencing variations cannot be entirely explained by reference to the type of offenders, their previous convictions, or family background.

Two related research projects conducted for the South Australian Royal Commission into the Non-Medical Use of Drugs (1978) examined judicial reasoning behind drug sentencing decisions and identified the changing use of particular penalties and sentencing trends. Over and above the influence of recent increases in legislative penalties for drug offences in South Australia, the study found that there had been -

(a) an increase in the proportion of cases resulting in a fine;

(b) a decrease in the proportion of cases resulting in imprisonment;

(c) a decrease in the proportion of cases resulting in a suspended sentence; and

(d) a relative consistency in the acquittal rate.

The Royal Commission in its final report suggested that the figures indicate a change in magistrates' attitudes, particularly towards cannabis, which has led to a more lenient policy.

With specific reference to sex offenders in New South Wales, Potas (1977) also examined sentencing principles and decision-making within the courts. He discovered that the most significant factor in sentencing these offenders involves an assessment of the seriousness of the offences, which includes consideration of the degree of violence the offender used. Among the variety of other factors taken into account by courts when dealing with these cases are the use of weapons, the extent of injury to the victim, the influence of alcohol, the degree of premeditation in the part of the offender, and whether the crime was out of character in regard to the offender.

In a simulated jury experiment Syme (1976) showed that female defendants were dealt with more leniently than male defendants, which he argued supported his hypothesis regarding the existence of paternalism in Australian courts. Hancock and Hiller's findings in 1979 regarding Juvenile Courts in Victoria support the proposition that gender influences sentencing practice. They found that if charged with illegal behaviour girls were more likely than boys to receive lesser penalties, such as a warning or a fine. However, they indicate that where females offend against moral standards the penalties for them were comparatively high.

Cashman (1979:13) cites the findings of an investigation of Magistrates and Justices of the Peace in Victoria which shows the existence of variations in the use of bonds, imprisonment, and fines across several offender categories. Homel (1981), in his study of drink-driver sentencing in New South Wales, found that extra-legal factors were consistently related to the penalty after factors such as the seriousness of the offence and prior record had been taken into account. The most important of the extra-legal factors was the location of the court. He also found that social class and legal representation had a consistent but relatively moderate effect on the penalty. Age was the most important offender characteristic influencing the courts' decisions. In Tasmania, Varne (1974) concluded that disparity in sentencing does exist between individual magistrates, even when the offence and, to some extent, age are taken into account.

The most extensive and sophisticated contribution to the study of sentencing patterns within Australia is the Law Reform Commission's project on sentencing which culminated in its report entitled 'Sentencing Federal Offenders' (1980). This Commission addressed a range of topics and problems related to sentencing, such as the existence of disparity, minimum standards for the treatment of offenders, the sentencing options available, and the extent of judges' and magistrates' discretion. A major concern of the project was to identify the primary sources of inconsistency and lack of uniformity in the punishment of persons convicted of Commonwealth offences. Apart from variations stemming from the different structures of the State criminal justice system, the Commission reported the existence

of very large elements of personal discretion, even within one jurisdiction, which led to significant differences of punishment.

The Sentencing Process

Before describing and analysing the regional differences in magistrates' use of probation in Tasmania and following section describes the organisational structure of lower courts in Tasmania. The position, responsibilities and appointment of magistrates is also outlined and a discussion of some of the broad principals of sentencing is included which points to some of the complexities involved.

The Common Law System

As is the case in other Australian States, the Tasmanian legal system is based on common law. With few exceptions, legislation defines the maximum penalty which may be imposed for a particular offence. As minimum penalties are rarely prescribed it is a matter for the magistrate's discretion to impose any type or length of sentence within the statutory maximum. Some legislation is more specific than others regarding type of penalty. For example, the only sentencing options available to magistrates when dealing with offences under the Traffic Act are fines, demerit points, and driving licence disqualifications, although non payment of fines may result in imprisonment. On the other hand, under the Criminal Code, where the offence categories are much more serious and diverse, the whole range of sentencing options is available to the magistrate.

Thus, legislation defines both the broad parameters of sentencing jurisdiction and of the activities and discretion of magistrates. Acts of Parliament typically do not prescribe specific criteria or particular offences where certain options and lengths are to be used by the sentencing court. On the contrary, when providing penalties in legislation, Parliament establishes relatively general conditions of application, thereby giving scope for the exercise of sentencing discretion. In other words, the court is able to specify penalty appropriate both in terms of the offence, and the offender. This provision is important, given the wide range of offences, varying

levels of offence seriousness, the diversity of persons charged with offences, and the problems of ascertaining the extent of the defendant's responsibility. In general, the legislation does not specify the factors which a magistrate should emphasise and consider most relevant when imposing a sentence.

In Tasmania both the Crown and the defendant have the right of appeal as to sentence, to the Supreme Court. This enables the Court of review to consider both the leniency and the severity of sentences imposed. In England by comparison only the defendant has the right to appeal, and as Thomas (1978:4-5) suggests, an offender would not be likely to initiate an appeal unless he or she was dissatisfied with the sentence imposed and had a belief that there was some chance of a more favourable outcome.

In sum, appellate review of sentence provides sentencing guidelines and principles which sentencers in inferior courts should consider, as a guide to the use and extent of discretion. Any actual review of a sentence may affect the magistrate's discretion, as a decision handed down by the Supreme Court prevails over any made below. Finally, the possibility of appellate review presumably promotes accountability in Lower Courts as it represents a reminder to sentencers to apply the relevant principles and penalties with care.

The Tasmanian Judicial System

Three main courts deal with offences under the Tasmanian Criminal Code, Police Offences Act - and the other major acts of parliament which prescribe certain acts and set penalties. They are the Children's Court, the Court of Petty Sessions, and the Supreme Court sitting in its criminal jurisdiction. Magistrates preside over Children's Courts and Petty Session matters whereas the Supreme Court is constituted by the Chief Justice and five Puisne Judges. Justices of the Peace may also preside over lower courts in limited circumstances.[4]

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4. Two or more lay Justices may sentence in Courts of Petty Sessions, although this is not very common in areas other than minor traffic matters carrying fixed mandatory penalties.

Magistrates

One of the most striking differences in the organisation of courts in Tasmania as compared with England is that magistrates with legal training and at least five years legal practice almost invariably preside over Tasmanian lower courts. On the other hand, nearly all sentencing in English lower courts is performed by Justices of the Peace who are not necessarily members of the legal profession.[5]

Sentencing Principles

When sentencing, the magistrate is confronted with a diversity of information from various sources. He receives information regarding the type, circumstances and seriousness of the offence with which the defendant is charged. He also obtains information about the defendant from a number of sources, including the defence counsel and, when requested, from a probation officer, in the form of a pre-sentence report, from the Mental Health Services Commission in the form of a psychiatric or welfare officer's report and from the Department of Community Welfare in the form of a Child Welfare Officer's report. This information about the offender ideally outlines his family background, employment, financial situation, marital circumstances, prior convictions, and general social background.

The sentence of the court is intended to reflect the offender's culpability and to have a deterrent effect, both specifically upon the convicted offender and, in general, upon other members of the community. This type of sentence is known as a tariff (Thomas 1978). It usually takes the form of a fixed term of imprisonment or a fine, the length or amount of which is adjusted, according to the type and gravity of the offence and the court's assessment of the circumstances

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5. Salaried Justices do exist in Britain. They are known as Metropolitan Magistrates in London and outside as Stipendary Magistrates. While two or more lay Justices must sit together, Magistrates have the authority to sentence autonomously. As is the case in Tasmania, the salaried Magistrate must previously have been a barrister or a solicitor for a specified time period. (Hood 1962:5).

surrounding the act. Offences which frequently attract tariff sentences include robbery, rape, crimes of personal violence, and drug trafficking. However, when making a judgment pertaining to any kind of offence, not just those in the more serious category, the magistrate may stress the offender's responsibility for any illegal act. He may also emphasise the need for a reduction of crime through deterrence. In other words, some magistrates may use tariff sentences only for particular types of offences, whereas others may emphasise the type and severity of the current offence with regard to the 'public interest', when dealing with all cases.

In some instances, magistrates, may emphasise the possibility of the defendant's reform or rehabilitation when sentencing. He may perceive the situation of the defendant, his problems or welfare needs, as having more bearing upon the type of option to be imposed than the type or gravity of the actual offence. The magistrate might consider the offender's characteristics - for example, his personal, financial and/or family circumstances - rather than his culpability for a certain offence, thus individualising the sentence.

A primary objective of individualised sentences is to influence the future behaviour of the convicted offender through training, treatment, or supervision. The aim being to prevent subsequent law-breaking activities. This, of course, is also an objective of the tariff sentence as expressed in penal deterrence. Even so, the central aim within the latter approach is to assign the appropriate penalty in terms of the type and gravity of the offence rather than by placing primary importance upon the offender's circumstances. The conditions magistrates frequently impose with the aim of rehabilitating or reforming the offender include probation orders. Within the context of this report this particular aspect of sentencing theory will have particular relevance.

In sum, the two broad approaches to sentencing outlined above reflect different penal objectives and are informed by different principles. Consequently the application to similar offences of different criteria and emphasis may result in a variation in outcome. This is one of the basic dilemmas in sentencing practice (Thomas 1978:8). In some situations both objectives may be pursued within the same sentence,

for example - work orders or suspended sentences which are punitive or potentially punitive yet provide the opportunity for rehabilitation. However, in general, the two objectives tend to be incompatible. Imposing a penalty adjusted to the severity and type of offence committed may not contribute to rehabilitation. On the other hand, the imposition of a measure designed to assist the offender and to influence his subsequent behavious may appear to diminish the magnitude of the punishment - presumably the offender's just desert, given the gravity of the offence. In addition, it may reduce the potential for deterrence.

The Aims and Parameters of the Study

Within the range of sentencing options available to the magistrates in Tasmania is the probation order which can be imposed under the provisions of the Probation of Offenders Act 1973. This study is not concerned with the efficacy or effectiveness of these orders, rather it is to identify and analyse those factors which contribute most significantly to the regional differences and to the changes in magistrates' use of probation orders. The focus upon specific sentencing options sets it apart from previous investigations, both in Australia and overseas, into sentencing practice.

The approach adopted is both empirical and comparative. The research indicates the existence of changes and regional variation in the length and number of orders imposed during the period January 1977 and March 1982. In addition, it identifies variations in magistrates' propensity to combine a probation order with another penalty such as, a prison sentence, a fine, a work order, or a suspended sentence.

In order to identify and explain the variations in sentencing practice a number of factors are examined. Demographic changes and regional differences and similarities in the numbers and types of offenders charges and convicted will be examined. Other variables examined include the type of offence on which the probation order is made, and the geographic location and type of court which imposed the order. The age, gender and occupation of the probationer, his employment status, and the frequency and type of prior convictions are also examined. In addition, the magistrates' perceptions of the role and

effectiveness of probation and their consequent expectations of this sentencing option are addressed. A central hypothesis within this project is that these perceptions contribute significantly to the regional variation and to the changes in the imposition of probation orders by lower courts.

As background to specific sentencing practices, changes are examined in the demographic composition of the three regions over time, as well as court and police statistics.

The emphasis of this report is descriptive - not prescriptive. This discussion does not attempt to assess the impact or consequences of the sentences imposed by the courts. Nor does it attempt to propose organisational reform or to suggest procedures which would increase uniformity and consistency in magistrates' use of probation. On the contrary, it seeks to identify and model the various conditions under which magistrates tend to impose probation orders. This study aims to isolate some major factors which are of central importance in the magistrate's decision to impose a probation order, and which influence magistrates' propensity to use a long or short order, or to combine the order with another type of penalty.

Probation in Tasmania

Although the smallest of the six Australian States, both in size and population, Tasmania was the first to introduce a statutory probation service. Established in 1946, with one officer operating out of Hobart, the capital city, the service now consists of some 60 officers, including administrative and support staff, the Chief Probation and Parole Officer, District and Senior Officers, and Field Officers.

In Part III of the Probation of Offenders Act 1973, section 6(1) describes probation as an order of the court which specifies that the person against whom it is made must be of good behaviour for the duration of the order imposed by the court.

This statute also defines the maximum length of a probation order as 36 months. The court may impose a probation order with or without

supervision. The offender who is made subject to a supervised probation order is required to submit to the supervision of a probation officer for the duration of the order. In addition, the court may attach conditions relating to the offender's place of residence, his employment, and his consumption of alcohol. The order may also include special conditions dealing with matters such as fines, restitution and attendance for medical or psychiatric treatment.

The probation order is a direct and independent order rather than just a condition attached to a recognisance or a bond. After fines, probation orders and bonds are the most frequently used dispositions (Biles 1977:110), and, according to Scutt (1979:1), "Probation is a measure that may be used to give the offender a second chance". Scutt suggests that the imposition of probation orders are appropriate in the case of first offenders where the court considers assistance and supervision will benefit the defendant.

In being placed on probation the probationer has a number of obligations and responsibilities. Violation of the conditions of a probation order may result in further proceedings and the probationer's return to court for further sentence. The maximum penalty for breach of probation is $100 fine or six months' imprisonment, or both.

Although there has been much discussion regarding the place, and purpose of probation within the criminal justice system, Probation orders contain both punitive and rehabilitative or welfare components. According to Thomas (1978:231) the probation order is clearly the most important individualised measure available to the sentencer. In addition, the Mitchell Committee indicated that probation is suitable where the offender has not yet manifested a high degree of criminality but does show signs of personal inability to cope with stress and thus requires a measure of help in the form of supervision and conditions, but not 'punishment', such as a fine or imprisonment.

The imposition of probation orders, however, does involve the use of legal authority on the part of the probation officer and places restrictions upon the probationer's freedom. As long as the

probationer is abiding by the law and the conditions imposed by the court the probation officer's major focus is upon the offender's rehabilitation. The probation officer's welfare activities involve counselling and guidance, with the object of assisting probationers in the management of problems such as unemployment and financial management and income and family difficulties.

The Tasmanian Act

In Tasmania, supervised probation orders can be made in conjunction with a conviction, that is, a person may have been sentenced to a fine, a work order, a term of imprisonment or simply convicted and a probation order made simultaneously against him. It is important to note that the situation is different in England and other Australian states where their respective Acts involve the use of a probation order as an alternative to sentencing the offender. In Tasmania, section 7(3) of the Probation of Offenders Act 1973 permits the court:

> "Where a defendant has been convicted of an offence ... whether or not it imposes a fine, or a term of imprisonment upon, or a work order against him, make a probation order against him".

The courts in Tasmania also have the option to impose probation orders in lieu of another sentence (Section 7(2) Probation of Offenders Act) or conditionally release offenders without proceeding to conviction (Section 7(1) Probation of Offenders Act 1973).

In sum, probation orders are a wide and flexible sentencing option, especially when contrasted with their use in other Australian states and in England.

Research Strategy

The information regarding the factors and conditions which influence sentence practices and effect magistrate's use of probation is drawn primarily from three sources:

Files maintained by the Probation and Parole Service were sampled.

The population from which the sample was taken consists of all those persons who received their first probation order in a lower court between January 1977 and March 1982. Probationers sentenced by Judges or Justices of the Peace, and those who received probation orders interstate, were excluded from the sample. As one of the primary concerns of the study is the examination and explanation of regional differences in the use of probation, the files were classified into three groups according to the geographic location of the court which imposed the convicted offender's first probation order. A random sample of ten cases per quartile was extracted from each of the three sub-categories - the South, the North, and the North-West. This strategy resulted in a sample of 630 files.

The data taken from these files forms two broad categories. The first relates to the probationer's offence. It contains information concerning the type and frequency of the offence on which the probation order was made. It also includes details of the length of the order, and whether the magistrate combined with it another penalty, such as a prison sentence. The date of the court order, the type of court and its regional location, are also part of this category. In addition, whether or not a pre-sentence report was submitted and information concerning the probation officer's recommendation were extracted. Police records provided details of the probationer's prior convictions.

The second category includes information regarding the probationer and includes, for example, educational achievement, occupation, employment status, and source of income. Personal attributes such as age, gender and marital status were also coded.

In order to identify those factors which significantly contribute to variation in sentencing practice, demographic data provided by the Australian Bureau of Statistics was analysed.

Court statistics were also examined to determine whether the incidence of certain offence categories varied regionally and across time. In addition, police statistics provide information regarding changes in regional differences in the types and frequency of offences coming under their notice between 1977 and 1982.

The third component of the research consists of focussed interviews with current magistrates as well as with a number of those magistrates who sat on the Bench during the period under investigation. The aim of this approach is to examine magistrates' expectations of and orientation towards probation as a sentencing option. It also provides information regarding their perceptions of the purpose of probation, and of its effectiveness in achieving both legal and social goals.

These interviews illustrated the multiplicity of factors magistrates consider to be of central importance in the decision whether or not to impose a probation order.

PART 2

DATA ANALYSIS

Probation Statistics

As had been touched upon previously the Jurisdiction of the lower courts in Tasmania is regionally based on the three Australian Bureau of Statistics statistical divisions. Magistrates are essentially based in, and sentence in only one of these regions.[6] (See Figure I).

The first indication that there had been some possible change or shift in sentencing occurred in mid 1981 when a substantial decrease in the total probation caseload in Tasmania was observed. Previously there had been, with the exception of 1978, a slow but appreciable increase in the total number of supervised probation orders over the preceding six years. However beginning in 1981 this number had dropped by 412 cases by July 1982, a decline of some 20%.

TABLE 1

Year	Total Probation Caseload
1976	1905
1977	1915
1978	1831
1979	1976
1980	1981
1981	1703
1982	1569

TABLE 1: total number of individuals subject to supervised probation orders as at the 1st July each year.

6. Exceptions would include short term transfers to cover absence or leave.

FIGURE 1

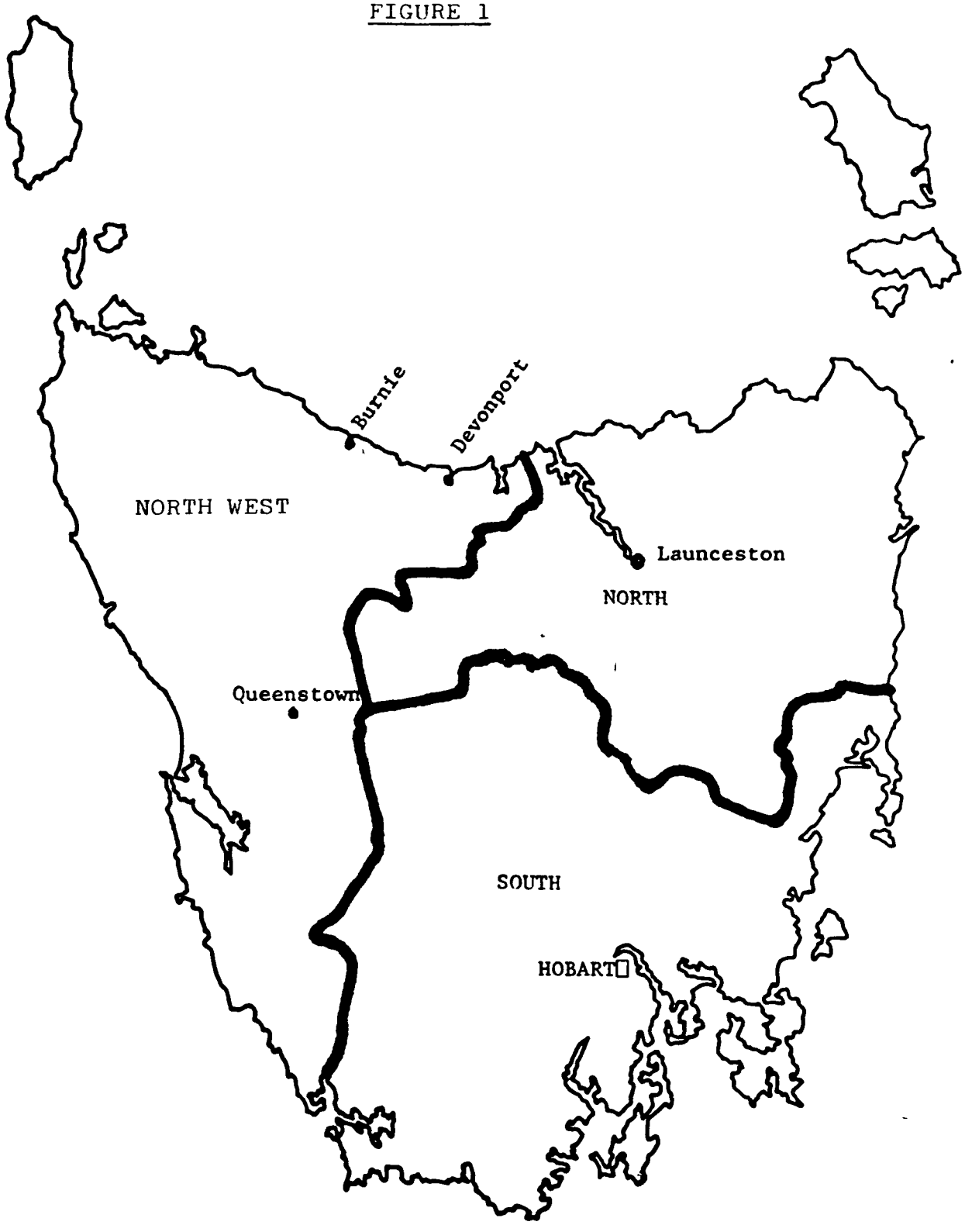

FIGURE 1. STATE REGIONS

A break down of these figures on a regional basis shows that this decline was however not uniform across the State. It can be best demonstrated by a comparison of the total number of new probation cases reveived in each district as against the total number of cases discharged in each district.

TABLE 2

Year	South	District North	North West
1976	150	12	22
1977	-107	94	-20
1978	- 43	34	30
1979	27	43	- 4
1980	-183	-24	- 4
1981	- 94	- 5	-57
1982	- 69	-32	-52

TABLE 2: nett loss or gain in probation cases by district.

Table 2 shows that the most significant and sustained change in case numbers occurred in the southern region. All three regions show sustained declines after 1980, though in the north of the State this decline is a function more of a higher discharge of cases between 1979 and 1982 and does not represent decline in the number of new orders imposed. In the north the number of new orders imposed in actually rose from 238 in 1976 to 283 in 1981.

TABLE 3

Year	South	North	North West
1978	63	20	11
1979	53	24	11
1981	43	24	10

TABLE 3: mean number of new probation orders per month.

From Table 3 it can be clearly seen that the most substantial decline occurred in the southern region of the State, followed by a very small decline in the North-West of the State. The northern district actually showed an increase.

Thus these tables indicate that over the period under study a large proportion of the decline in total case numbers under supervision occurred in the southern region of the State and was a function of both a decline in absolute terms of the number of probation orders imposed by the court and of an increase in the number of orders expiring each year.

These two factors are both dependant on magistrates sentencing practice. In the first instance magistrates in the southern region imposed fewer probation orders after 1979 than they had in previous years, in contrast to an increase in the number of orders imposed by northern and north western magistrates.

Secondly, southern courts, in contrast with their northern and North Western counterparts impose on average shorter probation order.

This chapter will address, in part, the second of these two factors, that is, regional differences in the length of probation orders imposed by the courts. In Tasmania probation orders may be imposed for any period up to three years, (Section 6(3) Probation of

Offenders Act 1973). In practice orders are imposed with little variation for periods of 3, 6, 12, 18, 24 or 36 months.

TABLE 4

Region	6 months or less	12 months	18 months and above	
South	16	42	42	100%
North	1	34	65	100%
North West	4	29	67	100%

TABLE 4: percentage breakdown of length of probation orders over the 6 months period 31 June 1980 - 1 July 1981.

From Table 4 it can be seen that in the twelve months following July 1980 there is significant regional variation in the propensity to impose probation orders of any particular lengths. In the south of the state 16% of all orders imposed during this period were of 6 months or less duration as compared with 1% and 4% respectively in the north and north west regions. What is of more importance is that there has been a slow but definite increase prior to and following 1977 in the southern region in the imposition of probation orders of 6 months duration or less.

TABLE 5

Year	6 months or less
1977	10%
1978	12%
1979	11%
1980	16%
1981	16%

TABLE 5: % of probation orders of 6 months or less imposed by Southern courts.

With a shift to shorter probation orders in the southern region there were some obvious consequences. At some point in time the more traditional longer probation orders of 1 or 2 years would expire to be replaced by a much higher proportion of shorter orders. This would have the effect of substantially increasing the rate at which cases are discharged, until equilibrium was re-established.

The rapid decline in the total number of supervised probation orders following 1980 can now be understood in the following way; Coincidently there occurred an increased tendency on the part of southern magistrates to impose shorter probation orders coupled with a decline in absolute terms of the number of probation orders imposed by the same magistrate.

The questions that now have to be answered are:

1. Why did the number of supervised probation orders imposed by southern courts decline.

2. Why do magistrates in the north and north west of Tasmania impose probation orders that are on average longer than the orders imposed by southern magistrates.

DEMOGRAPHIC INFORMATION

The purpose of this section is to determine the extent to which demographic change in Tasmania may have had on the number of offenders made subject to supervised probation orders during the period under study. In the period between 1976 and 1981 the population of Tasmania as a whole rose some 3.2%. This rise however was not uniform across the state nor was it uniform across various age cohorts. The focus of this study means that some analysis of these age cohort changes must be undertaken. This study is concerned with those offenders who are most likely to be subject to probation orders for the first time in the period 1977 to March 1982. From an analysis of the age distribution of our sample we can define our major at risk population as those individuals who fall within the 15 to 25 age cohort. As can be seen in Table 5 this group forms almost 80% of all individuals subject to probation orders.

TABLE 6

Age cohort	-17	17-19	20-24	25+	
	19.3	34.9	25.8	20.0	100%
	80.0			20.0	100%

TABLE 6: % breakdown into age groups of the survey sample.

The balance of the sample some 20%, have no discernable concentration but are scattered from 25 years to 40 years with some individuals as old as 60 being recorded.

Having identified our target group the 15 - 25 year cohort, any changes in the absolute size of this group during the period under study can now be identified, and for this purpose material from the 1976 census and the 1981 census has been used.

Any population changes can then be compared with any absolute increase

in the probation population in each of the three regions of the state.

TABLE 7

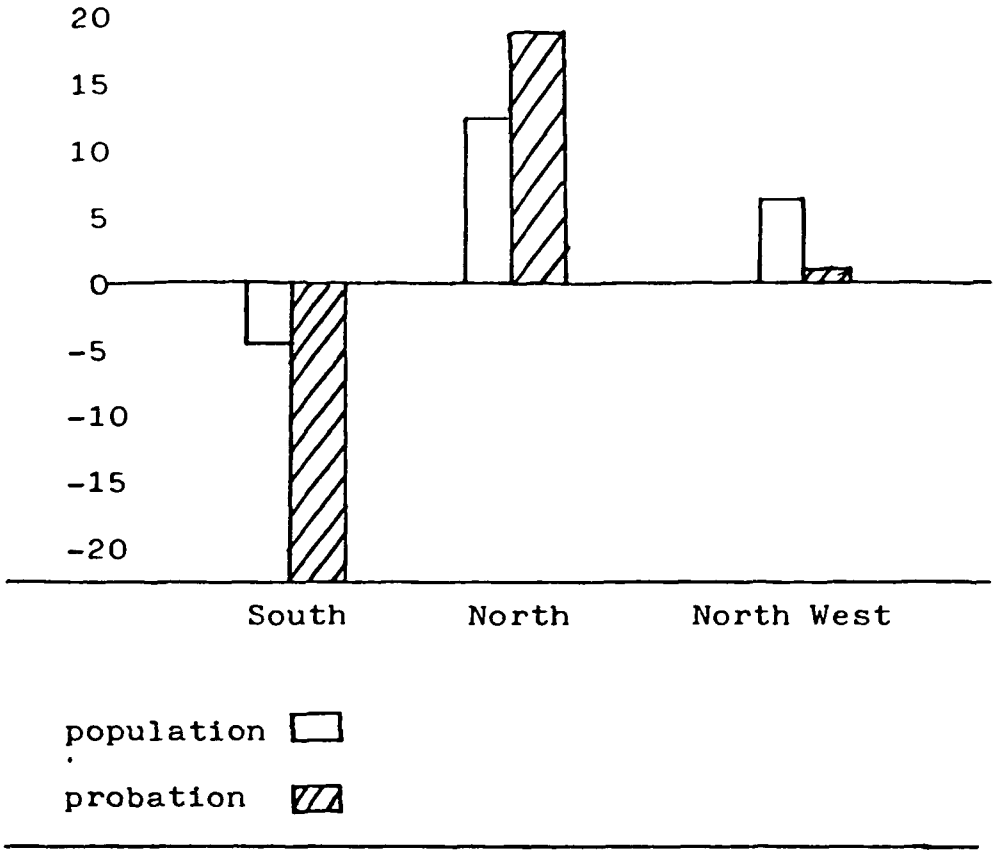

TABLE 7: gross % comparison of probation and age cohort (males aged 15 - 25) change between 1976 and 1981.

From Table 7 it can be seen that age cohort changes are to an extent mirrored by probation population changes. However the relationship is not colinear. Figures for the male cohort have been used because they form the substantial majority of probationers (93%) during the period under study.

It can be argued that a decline in absolute terms of the 'at risk' population should lead to a corresponding decline in the potential numbers of first probation orders imposed by the various courts. This to an extent appears to be the case, though there is in each region a substantial discrepancy between age cohort shift and the absolute probation population. When looked at on an annual basis this discrepancy is most striking after 1981 in the southern region. Prior

to that date the probation population more accurately reflected the age cohort decline (6% as against an estimated 3%). On this basis then it would appear that demographic change accounts for in the main any shift in the population until 1980/81. Thereafter some other factors appear to have compounded the difference. In contrast to this the northern region and to an extent the north western region, the percentage difference between age cohort change and probation population is less marked.

To further complicate any analysis of demographic data it must be realised that during the period under study there was within the southern region a fairly substantial migration to outer suburban broadacre state housing department areas. A consequence of which was that our 'at risk' population changed its residency patterns.

TABLE 8

Suburb	% Change
Hobart	-12.0%
Glenorchy	+ .6%
Clarence	+ 3.2%
Brighton	+97.0%

TABLE 8: % variation in 15 - 25 age cohort in the main Southern suburbs between 1976 and 1981.

It may well be that such migration of our traditional 'at risk' age cohort to new broadacre housing areas may have delayed potential 'criminal behaviour'.

An examination of Probation statistics does indicate that there was a lag of some 2-3 years between the increase in the at risk group in the Brighton area, and a consequent increase in the number of new

probation orders originating from that area.[7]

In sum, the demographic changes that have occurred between 1977 and 1981 can only in part help to explain the sudden decline in the number of new probation orders imposed by the courts in Southern Tasmania. For a more complete explanation it will be necessary to consider less easily identifiable factors which relate to basic sentencing practices.

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7. The Brighton Municipality is some 20 kilometres from Hobart and was the focus of substantial State Housing department development activity during the period under study.

CRIME STATISTICS

Police and court statistical data were examined to determine whether there occurred any change in conviction rates which could help account for a decline in the imposition of probation orders by the Court.

In the examination of court and police statistics substantial analytical problems were encountered. As the focus of this project was on individuals and the length and type of orders imposed on them, then the examination of other statistical information required a similar focus. Unfortunately, court statistics in Tasmania are based on the number of complaints dealt with by the courts, a figure that within most offence categories cannot be related to the number of individuals who have actually been convicted. This relationship in certain offence categories is also subject to variation across time and can result from legislative amendments and policing policy.

Police statistics were found to be more suitable, in that they record the number of individuals who are charged as well as the number of complaints laid in various offence categories. However, these figures do not represent the number of individuals who are found guilty rather, only those actually charged by the police. Unfortunately this is the best measure of potential individual court appearances readily available, and is used in this study as a comparative measure.

Police statistical records are in Tasmania quite detailed and are broken down into the twelve police divisions in the State. Consequently it was possible to extract from them the precise number of individuals who were charged by the police in the districts that correspond to the regional jurisdiction of the lower courts in Tasmania. It was hoped that in examining statistical records of the number of individuals charged with offences any regional fluctuations would be apparent. It was of special interest to see if these regional variations proceeded the downturn in new probation orders after 1979 in the southern region. Tasmanian Police statistical returns were broken down into some 100 different offence categories and it was obvious that they could not all be used for this exercise. Accordingly it was decided to select as indicators those specific

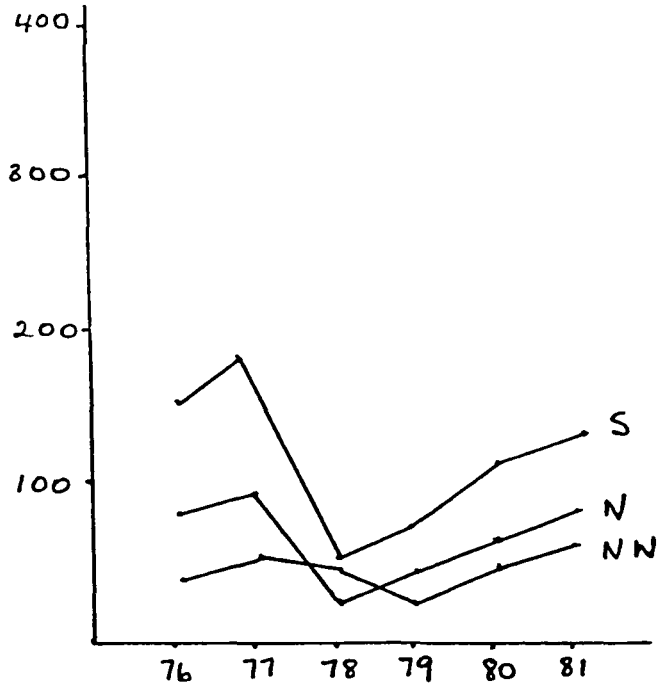
offence categories most frequently associated with the imposition of a first probation order. It was also decided to examine those aggregate categories from which we have selected our specific offence categories. The offence categories selected were:-

1. Motor Vehicle stealing.
2. Drive whilst disqualified.
3. Property damage.
4. Burglary.
5. Stealing (general).
6. All offences against property.
7. All offences against the person.
8. All miscellaneous offences which includes offences such as resist arrest and general "street" offences.

The major conclusion that can be drawn from this statistical data is that all offence categories showed substantial fluctuations, but more importantly these fluctuations varied regionly in certain instances.

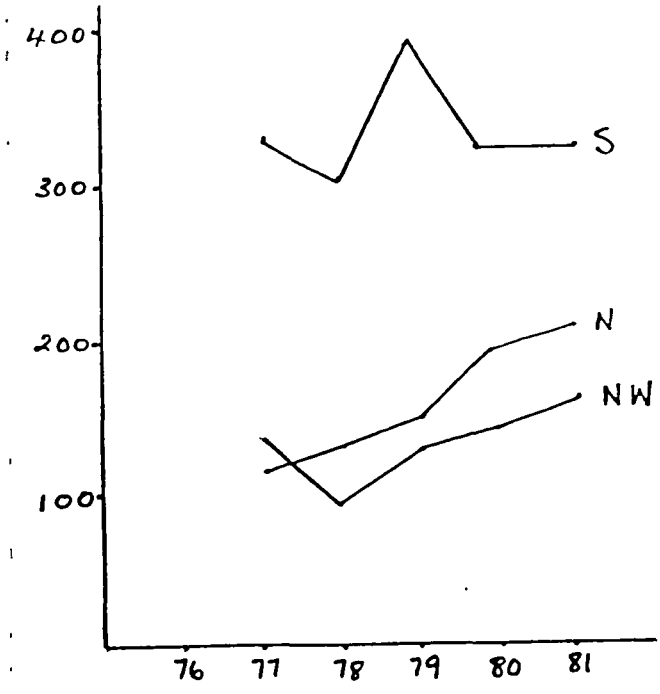
Within the offence categories selected for study a number show substantial declines in the number of offenders charged by the police. These declines are most marked in the southern region prior to 1979. To an extent these declines are mirrored in other regions, but are not as extreme. For instance Table 9 shows a drop in the number of offenders charged with motor vehicle stealing which between 1976 and 1978 represents a decline of 59% in the southern region. In the north the decline was slightly less, whereas in the north west the decline was only 9%. Within the category of stealing (Table 13) the southern region recorded a decline of some 19% whereas the other two regions recorded increases between 1976 and 1979. Again within the category of total property offences, the southern region recorded a decline of some 11% whereas the north and north west increases were recorded.

TABLE 9



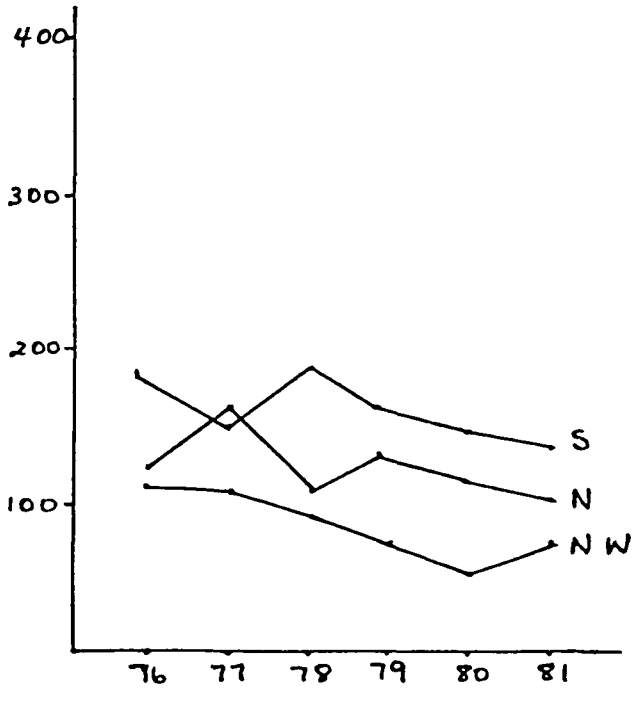
Motor Vehicle Stealing

TABLE 10



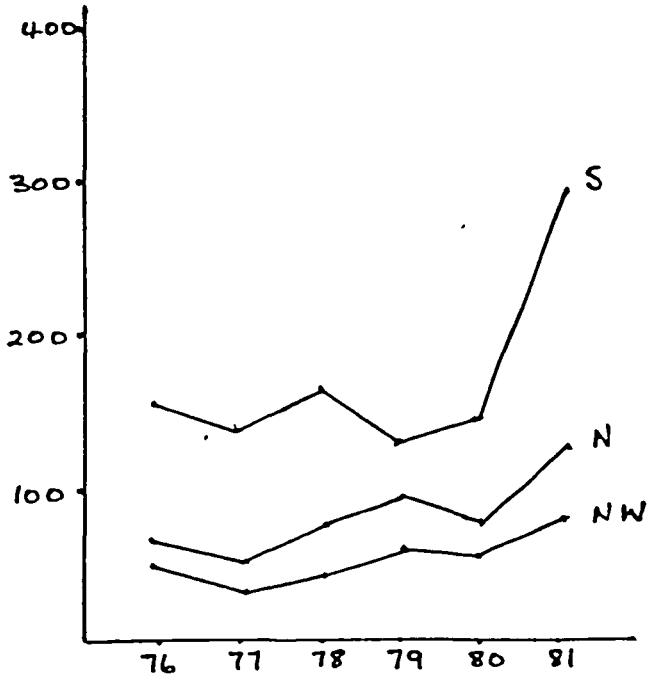
Driving whilst Disqualified

TABLE 11



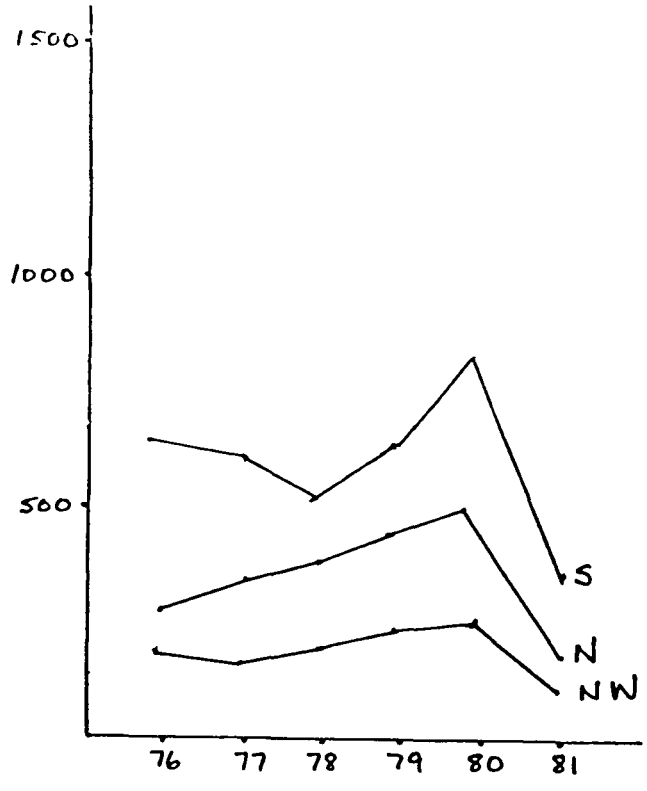
Property Damage

TABLE 12



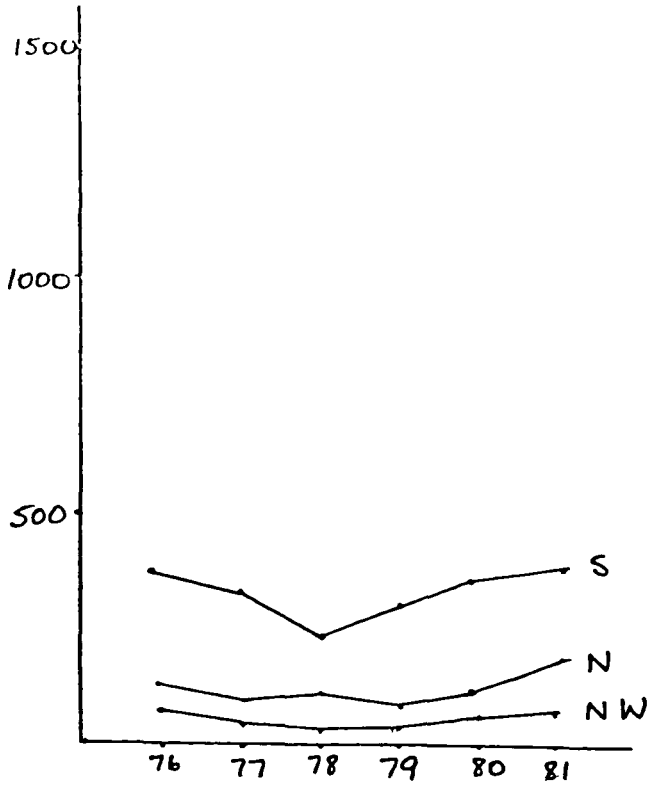
Burglary of a Dwelling

TABLE 13



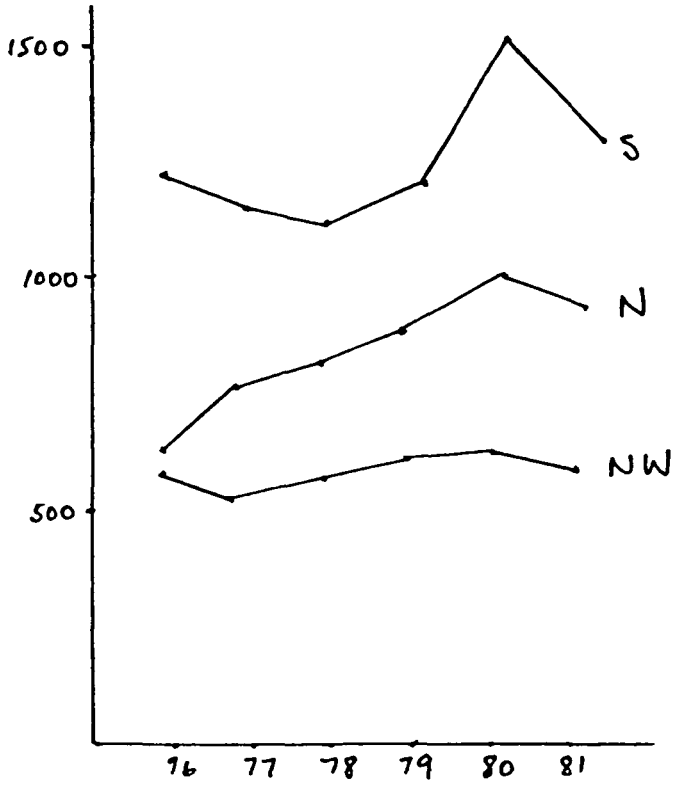
Stealing (General)

TABLE 14



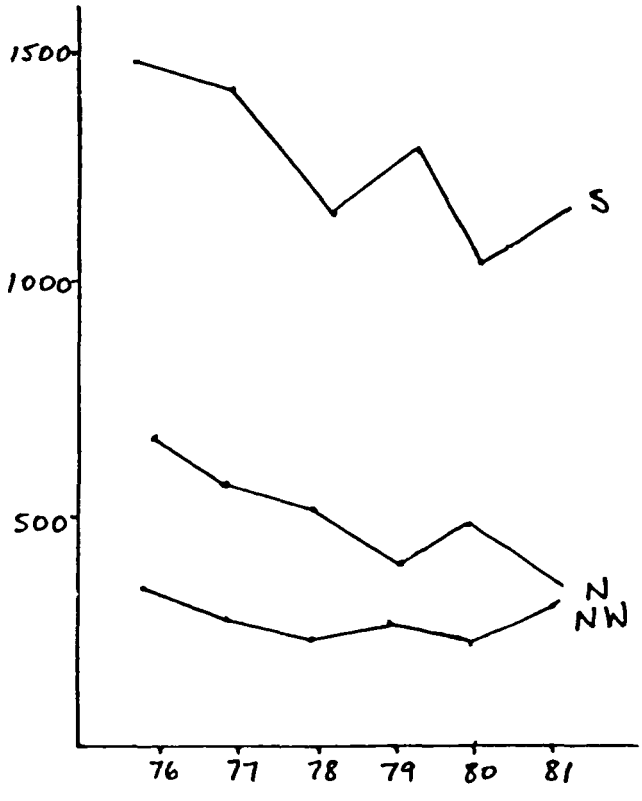
All Offences against the Person

TABLE 15



Total Property Offences

TABLE 16



Total Miscellaneous Offences

From this data it is not possible to point to any trend that was consistant across all offence categories. However two main features common to a number of the offence categories can be isolated.

In Tables 9, 11 and 16 declines were recorded across all three regions prior to 1979. However the decline in the southern region was in each instance the most substantial. In Tables 12, 13, 15 and 14 declines were recorded in the southern regions whilst increases were recorded in the north and north west region. In Table 10 an increase in the number of offenders charged with driving whilst disqualified was recorded across the state prior to 1979. However, in the southern region this increase was some 15% prior to 1979 and declined thereafter by some 4% by 1981. In the north however, the increase was sustained across that period and represented an increase of some 62%. The north west, though experiencing a decline between 1977 and 1978 had an overall increase of 50% to 1982.

We can summarise the general trends as follows:

i) In a number of offence categories the southern region experienced declines in the number of individuals charged, which far exceeded the decline in the other two regions.

ii) The southern region experienced declines in charge rates in some other offence categories whilst the north and north west experienced increases in those same categories.

The examination of this data appears to show that preceeding the downturn of new probation cases in the southern region there was a downturn in the number of individuals charged with offences in a number of categories. These offence categories being those most commonly associated with the impositions of new probation orders.

MAGISTRATES PERCEPTIONS OF PROBATION

There are a number of factors which affect both magistrates' perception of probation orders and influence their actual use of this particular sentencing option. These factors, it is hypothesised, contribute to the regional differences in the use of probation, and to variation in the actual length of orders most frequently imposed by magistrates. As previous chapters suggest, regional differences in sentencing patterns cannot be explained entirely by reference to demographic factors, or solely in terms of variations in the types of offences coming before the lower courts in the respective areas.

For this report 10 of the 16 currently serving magistrates, as well as two magistrates who had recently left the bench were interviewed. These interviews were focused and were based on a prepared schedule to be found at appendix "A".

One of the most striking regional differences among the magistrates is their varying perceptions of the role and prupose of probation as a sentencing option. This in turn affects their pre-disposition to use probation for particular types of defendants and offence categories. For example, magistrates in the north and north west of Tasmania, did not in general perceive probation as a penalty. Rather they saw it as having a substantial welfare component; a tool with which to assist people, who in the view of the court require counselling, guidance and supervision. Northern magistrates commented that they do not consider a probation order as punitive, but rather as supportive, a chance for the offender to mend his ways, a form of assistance. In their view probation represented the offer of support, and stability. Factors which the defendant may not have had at home.

In line with this conception northern magistrates tend to use probation orders under particular conditions. These Magistrates indicated that they would order probation where the defendant is young and the behaviour immature and where for example, the offence is against good order, vandalism or an offence of dishonesty. A magistrate commented that he does not like sending young offenders to goal. He indicated that in cases where the defendant is young, immature, susceptible to peer group pressures and lives in a home

which is considered to be unstable and there may be some hope of rehabilitation, then probation will be worth trying. Magistrates in the north west expressed the view that probation orders are inappropriate for older defendants who they perceive as 'set in their ways'. This is commensurate with the view of probation as a welfare option; a chance for reform and rehabilitation.

Magistrates in the southern region whilst accepting that supervised probation orders have a substantial rehabilitation and welfare component expressed the view that probation orders constitute a form of penalty either because of the nature of the order itself or because it is perceived this way by the recipients. It was seen by a southern magistrate, as having distinctiveness as a penalty. It contains good behaviour provisions and a probationer can be brought back to court for further penalty. Other southern magistrates stressed the punitive aspects of probation orders. In certain other instances it was seen as a means by which the court can avoid imposing a sentence. Southern magistrate commented that they did not like combining probation orders with other penalties.

The decision to impose a probation order in the northern region appears to be influenced more by the situation, and family background of the defendant, rather than by the type of offence with which the magistrate is dealing. A magistrate commented that if a number of factors are present such as difficulties with employment, financial and matrimonial position and/or problems with alcohol, he will frequently impose a probation order. Another magistrate described the aim of probation as the resolution of personal problems with the help and assistance of a probation officer. In his view probation is valuable in assisting anti-social attitudes and a primary role of this sentencing option is that of "loco parentis".

The existance of this orientation toward probation is reinforced by comments made by northern and north west magistrates, that they would combine a probation order with another sentencing option in situations of a 'more serious offence' where a penalty is required. Again, an important factor magistrates take into account before imposing a probation order is the age of the defendant; probation orders are given most frequently to young offenders in the north of the State. This contrasts with the south of the State where older

offenders are much more likely to receive probation orders.

Table 17

AREA	15-17	17-19	19-25	25+	
South	18	30	24	28	100
North	24	37	23	16	100
N'West	16	38	29	17	100

Table 17. Percentage break down of age at imposition of 1st probation order.

A northern magistrate indicated that he often gives probation to young persons with no fixed abode, and who are in difficult financial circumstances; Another commented that he gives probation orders to those offenders who have a limited criminal record, and in situations where there is a real possibility of behaviour modification.

Whilst magistrates in the southern region expressed similar expectation as to the useful rehabilitative functions of probation orders there was a significant amount of stress placed on the punative aspects of the probation order, and it was regarded by some as a penalty because of the possibility of a return to court to face breach action. There was also expressed by southern magistrates a reluctance to combine probation orders with other penalties if it could be avoided. It was also commented that a probation order could be used as a means of avoiding the imposition of a sentence. A point of view more in line with probation as a conditional discharge and reflects the statutes of other Australian States and of England.

As can be seen in Part 2 (Probation Statistics, Table 4) the length of orders imposed by magistrates varies across the State, with northern magistrates favouring longer orders than their southern counterparts.

It would appear that in part this difference is tied to their perception of probation as a welfare, rehabilitation role.

The prevalence of this view contributes to an explanation for the use of longer orders in the north and north west in comparison with those used in the south. Northern magistrates commented that they give very few 6 month orders, as that time period is insufficient to ameliorate the probationer's situation. They also referred to the extended time necessary to establish rapport between probation officer and client, and to the amount of counselling required to assist rehabilitation and reform.

Again tied to this notion of predominantly welfare function, northern magistrates and in particular north western magistrates are concious of the scatter of population in the region. The north west coast is predominantly a rural area with its population spread throughout the region in small towns and townships. It was suggested by a north west magistrate that this scatter made the work of the probation service more difficult and as a consequence they required more time to fulfil their welfare and rehabilitative roles. Short orders were seen as ineffective and allowed insufficient time for counselling.

In Tasmania, in the sentencing of offenders, the Pre-Sentence Report provided by the probation service plays a significant role, with some 1173 reports being provided by the service in 1982. Across the state magistrates appear to be fairly uniform in their reasons for requesting Pre-Sentence Reports. Most mentioned that age was an important factor with Pre-Sentence Reports being requested on young offenders especially if a prison sentence is contemplated. However, as is seen in Table 18 magistrates in the north of the state request pre-sentence reports more frequently than courts in other districts.

This analysis suggests that to a greater extent magistrates in Launceston depend upon the activities of the probation service, whereas in the north west and in the south magistrates make sentencing decisions more independantly of probation officers, their reports and submissions.

In sum, it can be argued that magistrates in Tasmania view probation orders as combining both rehabilitative and punative components. However an emphasis on its rehabilitative functions leads it to be

used more frequently in the north and north west of the state. Further this perception of the nature of the rehabilitative process leads northern and north western magistrates to impose on average, longer probation orders than southern magistrates.

TABLE 18

Region	Pre-Sentence Report	No Pre-Sentence Report	
South	58%	42%	100
North	78%	22%	100
North West	56%	44%	100

TABLE 18: % breakdown of Probation orders by Pre-Sentence Reports in the period 1976 - 1981.

MODELLING THE SENTENCING PROCESS

When magistrates sentence offenders in courts of petty sessions a whole range of factors play a role in their final decision. This study does not attempt to make any comments about this process in general but rather to confine its analysis to factors which appear to affect the decision to impose a probation order, its length, and how it is associated with other penalties. In order to do this some 24 different variables were initially selected for use in the analysis. These variables could be split into the two broad categories of offence characteristics such as the type of offence, its frequency, prior criminal record, and offender characteristics such as age, gender, marital status and employment status. The analysis was undertaken in such a way as to assess how these variables were differentially weighted by magistrates in the three jurisdictions in the sentencing process. Preliminary analysis indicated that there was little or no variation across the three regions for the majority of the variables. That is to say such factors as employment status, gender, marital status, educational background did not differentially vary the length of probation orders imposed in the three court jurisdictions.

However, three factors were found to vary significantly across the three regions, and it is these variables it is hypothesised that affect in the first instance the length of the probation order and whether the order is associated with another penalty. These variables are:

1. The age of an offender.
2. The offence category.
3. Whether a Pre-Sentence Report was submitted to the court.

The major statistical tool used to analyse this data was Davis' "d" statistic, a measure of proportional difference which can be used to assess the strength of a relationship. Dichotomous cross tabulations of variables were computer generated and "d" statistics calculated.[7]

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7. An examination of Causal Modelling can be found in A.L. Stinchcombe, Constructing Social Theories, New York, 1968.

The resulting "d" values were then used to develop a causal model or linear flow graph of the process.

FIG. 2

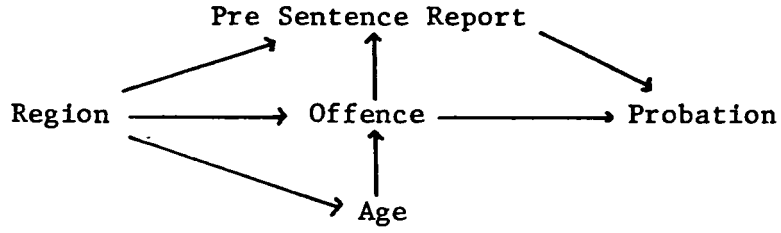
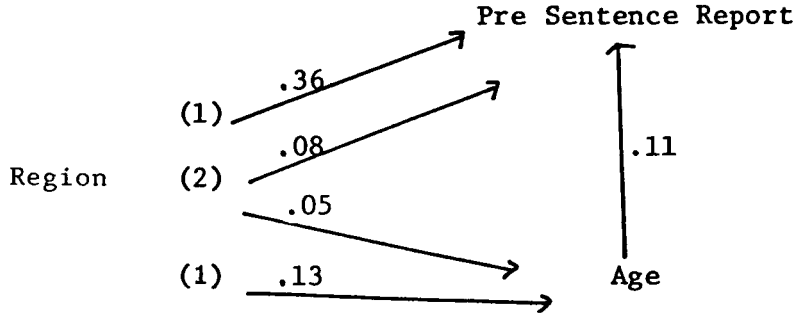


Figure 2. Causal model of the Sentencing Process leading to the imposition of a probation order.

This outline model shows how the length of a probation order, and the penalty with which it is associated is influenced both by the region of the state in which it imposed and via three major intervening variables.

In order to explain this complex process the model will now be broken down into its basic constituant parts and analysed in detail. In the first instance it was found convenient to discuss regional variations as a deviation from a base level and in this instance the Southern region has been used for this purpose. That is, regional variations will be discussed as a percentage deviation from southern data expressed as a "d" value.

FIG. 3



(1) North
(2) North West

Figure 3. Model of Region, Offence and Pre-Sentence Report.

In absolute terms the courts in the three regions of the state use pre-sentence reports with varying frequency, (see table 18) and as can be seen in figure 3 a report is 36% more likely to be requested in the Northern region and 8% more likely in the North Western Region than in Hobart.

There is some small variation in the type of offence which attracts a probation order, (.05 and .13).[8] However what is more important is the "d" value which reflects the relationship between offence type and the request for a pre-sentence report.

The value of .11 though small at this stage represents a propensity of southern courts to request pre-sentence reports within more specific offence categories than in other regions of the State.

TABLE 19

Offences	South	North	North West
Stealing Offences	56	75	59
Traffic Offences	31	67	29
Drug Offences	57	75	65
Miscellaneous Offences	39	75	56

TABLE 19: % likelihood of a Pre-Sentence Report request by offence category.

8. "d" values as an expression of the strength of a relationship are usually assessed as follows:

Less than .05	trivial
.05 - .149	small
.150 - .299	moderate
.300+	strong

As Table 19 indicates the likelihood of a request for a pre-sentence report in Northern courts remains fairly constant across all offence categories with a maximum deviation of some 8%. In Southern courts however, there is a deviation of some 25%.

In sum, the court of origin influences the incidence of a pre-sentence report request absolutely and in line with the basic sentencing principles touched upon in the introduction, pre-sentence reports are requested equally across all offence categories in the northern region and relatively equally in the north west. In the southern region this is not the case with pre-sentencing reports requests varying across offence categories. In the north and in the north west with the exception of traffic offences it appears that no matter what offence is committed there is an equal probability that magistrates will wish to examine social background material on an offender.

FIG. 4

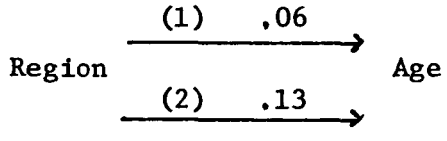


Figure 4. Model of Region and Age.

In the north and north western regions there was a .06% and 13% increase respectively in the likelihood of these courts to select offenders under 19 years of age as the recipients of probation orders, this propensity was especially marked within the under 17 group in the northern region. The wider implications of this tendancy when connected with demographic information are fairly obvious as it is this age cohort which has increased by some 10% in the northern region. Obviously this increase in the age cohort, coupled with an increased propensity when compared with the southern region, to impose probation orders on this younger group can account for in part the increase in probation orders in the northern region.

FIG. 5

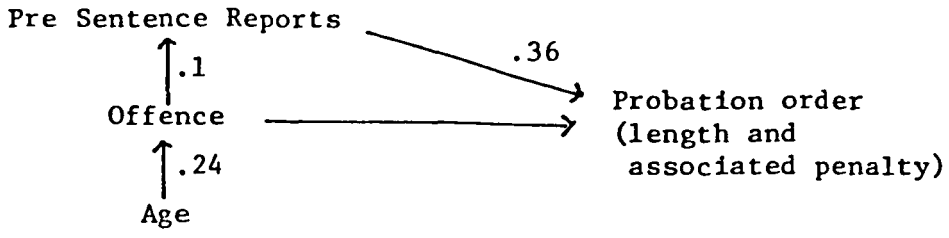


Figure 5. Model of Pre Sentence Report, Offence, Age and Probation.

In figure 5 there can be seen a strong association between the submission of a Pre-Sentence report and the consequent length of a probation order. In the southern region as is indicated in Table 4 there is a much greater propensity for the courts to impose probation orders of 12 months or less, and in marked contrast to the north and north western regions, orders of six months and less. The submission of a pre-sentence report has the effect of increasing the likelihood that the order will be over 12 months in duration.

This was apparent in all regions of the state but was most marked in the northern region.

TABLE 20

% of orders 12 months and over			
Region	without pre-sentence report	with pre-sentence report	% diff
South	27	38	11
North	45	62	17
North West	58	63	5

Table 20. Percentage breakdown of Pre-Sentence reports by region.

The consequence of this is that magistrates, and especially those in Launceston when sentencing with reference to a pre-sentence report, tend to impose longer probation orders.

The last effect to be examined is the varying propensity of courts to couple probation orders with other penalties.

TABLE 21

Region	No Other Penalty	Imprison-ment	Fire	Work Order	Suspended Sentence	License Disqual.	Total
South	35	2	21	24	17	1	100
North	27	5	30	15	21	2	100
North West	17	4	31	23	23	2	100

TABLE 21: % breakdown of probation orders associated with other penalties by region.

Table 21 indicates that courts in the 3 regions of Tasmania do not couple probation orders with other penalties with the same frequency. In fact some marked regional variations can be discerned. Of particular interest is the southern courts propensity to use probation order on their own, in some 35% of all cases. This contrasts with the north and north western regions where probation orders are used on their own only in 27% and 17% of cases respectively.

Further these two regions combine probation orders with prison sentences with twice the frequency and with fines some 30% more frequently than do southern courts. This data is consistant with comments made by magistrates, who in the south did not like combining probation with other penalties. It further supports the comments made by the magistrates in the northern and north western region, who indicated that probation orders would be combined with other sentences.

Again informed by our interviews with magistrates it would appear that this decision to impose a probation order, is in the north and north west of the State made after consideration of general penalty requirements and is made with the expectation of rehabilitation being possible.

CONCLUSION

There exist in Tasmania regional differences in the use of the probation orders by magistrates. These differences consist of regional variations in the frequency with which the orders are imposed and variations in the length of the orders when they are imposed.

This study has shown that demographic change has to a certain extent an impact on this difference in that there have been some age cohort changes which have altered the size of the "at risk" group. However, it does not explain it all. Rather it is a central hypothesis of this report that magistrates' perception of the nature and usefulness of probation can account in a meaningful way for the variation in its use. A literature search and focused interviews with magistrates indicated that magistrates are informed by the two different though often combined sentencing principles of rehabilitation and punishment.

The data supports the hypothesis that an emphasis on either one of these principles will substantially effect how probation is used as a sentencing option.

An emphasis on rehabilitation will result in the more frequent use of supervised probation orders and will result in their being combined with other penalties such as fines and imprisonment. Their focus will be a predominantly young group of offenders, and will be added after a sentencing decision has been made. An emphasis on an offender's social circumstances and his consequent rehabilitation through the medium of a Pre-Sentence report has the effect of increasing the likelihood that the supervision order will be for more than twelve months duration.

Alternatively where probation is viewed as functioning as a penalty as well as a rehabilitive tool and where the decision to impose a probation order forms part of the sentencing decision, then it is less likely to be used in conjunction with other penalties, and is more likely to be imposed for a period of 12 months or less.

The consequences of such sentencing principles is that where

the number of offenders made subject to supervised probation orders is constant across the State, the actual number of offenders subject to supervision in any particular region would vary. Probation officers in the southern region would have case loads which were on average smaller than their northern and northwestern colleagues. However they would effectively "turn over" the same number of cases, within a given period, and would consequently experience different demands on their time and expertise.

Finally the project has demonstrated that sentencing patterns can be studied so as to isolate the various contributing factors which result in apparent sentencing disparity. It was possible to examine demographic changes and assess the extent to which they contribute to the incidence of probation order imposition and in conjunction with focussed interviews and empirical data it was possible to account for the variations in the probationer population in Tasmania.

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APPENDIX "A"

Questionnaire

1. What in your view is the primary role/purpose of probation as a sentencing option?

2. How effective is probation in achieving these objectives?

3. Under what conditions would you impose a probation order, i.e. for what types of
   - i. offenders;
   - ii. offences

   is probation an appropriate sentence?

4. How do these cases differ from those on which you would impose
   - i. a fine
   - ii. a prison sentence
   - iii. a suspended sentence
   - iv. admonish and discharge the case.

5. What are the most important factors you take into account when determining the length of a probation order, or deciding whether to combine it with another penalty such as a fine, work orders, or a prison sentence?

6. Do you favour long or short probation orders? Why? What is the purpose of less than 12 month orders?

7. It has been suggested in other Australian states that the bulk of probation officers' work and progress with clients usually occurs within the first 6-12 months of an order. In the light of this, what do you consider to be the primary purpose of longer orders?

8. In your view, is the current offence the most important factor to consider when deciding the appropriateness of a probation order?

9. To what extent do you take into account an offender's prior convictions when determining a sentence, specifically a probation order?

10. In your view are there certain types of

    i. offences
    ii. offenders

for which probation orders could be given more/less frequently? If so, which ones?

11. What do you perceive to be the primary contribution of PSRs to the sentencing process?

    i. objective information
    ii. the recommendation