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PAROLE LEGISLATION CHANGES IN SOUTH AUSTRALIA

DEPARTMENT OF CORRECTIONAL SERVICES-OFFICE OF CRIME STATISTICS

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PREFACE

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Sections 1 to 3 were written by Dr. Adam Sutton, section 4 by Leigh Roeger and Frank Morgan and section 5 by Frank Morgan. Interviews were conducted by Lorraine Green. Lesley Giles typed a large proportion of the report and clerical work was undertaken by Scharlene Lamont.

Leigh Roeger researched the sections on sentencing and recidivism and also assisted Lorraine Green with the computer analysis of interview data. Project directors were Dr. Adam Sutton, Director of The South Australian Office of Crime Statistics, and Frank Morgan, Coordinator of Research and Planning, South Australian Department of Correctional Services.

CONTENTS

TABLES

FIGURES

1. INTRODUCTION

On 20 December 1983 legislation which transformed patterns of sentencing and the administration of parole became effective in South Australia. The provisions, incorporated in amendments to the Prisons Act, 1936-83*, removed the Parole Board's power to decide whether or not a prisoner sentenced to a year or more in gaol would be released at the end of the non-parole period, and allowed parole release dates to be brought forward by up to a third through remissions. As a result of these new laws, South Australia moved to the forefront of a national trend toward more clearcut or "determinate" modes of sentencing. Courts now had much greater responsibility for deciding actual terms of imprisonment and prisoners had increased incentives to shorten their time in gaol by earning remissions. The role of the Parole Board also changed significantly: its main functions now were to set and monitor conditions to be observed by offenders on parole and to institute breach proceedings where appropriate.

As with all major shifts in sentencing and correctional policy the changes were not without controversy. Historically, parole emerged as a system for returning prisoners to society before the period in custody prescribed by courts had elapsed. As a result, many people saw the 1983 legislation as little more than a mechanism for "automatic early release", and were convinced that people found guilty of serious offences would be spending much less time in prison. Yet another concern was that in removing the Board's power to refuse parole to offenders it considered bad risks

* Now the Correctional Services Act, 1982.

the new legislation would trigger off the release of a flood of dangerous recidivists.

This report offers research evidence on whether or not such predictions have been fulfilled. In broad terms it addresses two main issues: how successful the parole changes were in meeting their stated or implicit aims, and whether they had any unintended consequences. However, in the course of answering these questions it provides data on a range of other topics, including:

- the extent to which the parole changes were explained, understood and accepted throughout the correctional system;
- the impact the changes had on court sentencing practices and prison populations; and
- rates of recidivism by prisoners released before and after the legislation was introduced.

Overall, such findings suggest that the 1983 legislation did achieve many of its goals and that there were fewer negative outcomes than some critics had anticipated. However, there has been at least one unforeseen consequence - namely a tendency for more serious offenders to spend longer in gaol and for prison populations to increase. In the researchers' view, this trend will be further accentuated by modifications to the new parole rules which were introduced after the first two years of operation. A paradox of this reform, then, is that in making sentence-lengths more predictable it may also have laid the ground work for increases in inmate numbers and hence management problems for the prison system in the longer term. From research elsewhere in Australia and overseas, this seems to have been an issue wherever more determinate approaches to sentencing are

introduced. For this reason alone the results of the South Australian changes should be of importance for all jurisdictions.

PAROLE IN SOUTH AUSTRALIA

In analysing the contemporary law, it is essential to have a perspective both on previous legislation and the history of parole elsewhere. Although innovative, South Australia's most recent approach can by no means be seen as complete break with previous systems. A more balanced assessment is that it accelerated a process which had been occurring ever since parole was introduced, and which was consistent with trends elsewhere in Australia and overseas.

Put briefly, the tendency has been for legislators to move from "indeterminate" modes of parole to more "determinate" approaches. Indeterminate sentencing puts emphasis on ensuring that offenders are released only when considered by experts to have been rehabilitated and therefore unlikely to reoffend. Determinate models, on the other hand, stress that the court imposing sentence should have primary responsibility for deciding the period of incarceration, and that the wider community should have a clear idea what terms are served for specific offences.

South Australia's first parole laws, which became effective in 1969*, exemplified the indeterminate approach: assigning all responsibility for deciding prisoners' release dates and conditions to a five member Parole Board chaired by a person with "extensive

* Sec 42 of the Prisons Act 1936-76.

knowledge of, and experience in, the science of criminology, penology or any other related science". Under these provisions, unless the court had specified a minimum "non-parole" term - which in practice it rarely did - most prisoners become eligible to be considered for parole immediately they were sentenced*.

This approach was maintained for almost twelve years. In March 1981, however, Prisons Act amendments were introduced which limited the Parole Board's sovereignty over the length of prison terms by requiring that sentencing courts set a minimum sentence (or non-parole period) for every person receiving three months or more or a life sentence. Until this minimum term had been served, prisoners could neither apply for parole nor earn remissions, but once the non-parole period had elapsed responsibility for determining most release dates reverted to the Parole Board**. Indeed the 1981 legislation extended the range of factors which the Board could take into account in making these decisions.

It was by eliminating this final sphere of Parole Board discretion that the 1983 legislation entrenched the determinate approach. Although the latest laws retained the concept of a non-parole date, its meaning changed significantly. Rather than designating the minimum a prisoner would serve, the non-parole period now became the maximum, which could be further

* It should be noted that in theory the Prisons Act required prisoners to apply to the Chairman of the Board for parole. However, the Board automatically was notified of eligible people who had not applied for parole and unless prisoners objected their cases were considered (Cf Daunton-Fear, 1980:123).

** The exception was life-sentence prisoners, for whom the Board made recommendations to the Governor in Council.

shortened by remissions. The Parole Board no longer had authority over release-dates, concentrating instead on parole conditions and taking action on alleged breaches.

Proclamation of the 1983 legislation meant that in just fourteen years South Australia's parole system had run the cycle from one of the most indeterminate to the most determinate in Australia. The rapidity of these changes perhaps made it inevitable that in their wake there would be questioning and confusion. What this discussion seldom has acknowledged is the extent to which the shift in emphasis has been prompted by general disillusionment among Western legal theorists with the equity and effectiveness of parole and indeterminate sentencing - concern reflected in part even in the 1981 amendments. Before discussing the effects of the current legislation, the following pages briefly will review the history of parole and reasons for these misgivings. In the light of these discussions it will be relatively easy to understand what architects of the most recent changes were trying to achieve.

2. THE ORIGINS AND HISTORY OF PAROLE

Parole has its origins in English systems of transportation which were devised in response to rapid urbanisation and perceived "crime waves" during the 17th and 18th centuries. From 1597 the Vagrancy Act in England allowed for the deportation of "rogues, vagabonds and beggars" and in 1617 the Privy Council authorised its use for robbers and other felons. Initially transportation featured only as an element of executive pardon from the death penalty, but by 1717

legislation had been enacted which made transportation the standard penalty for larceny and felonious stealing (Cavender, 1982:6).

The initial destination for transportees was the American colonies, and most were bound under a "property in service" system. This allowed a contractor or shipmaster to be assigned rights to use of the prisoner's labour until the expiration of the sentence. Once the offender had arrived in the colonies these rights were re-sold to the highest bidder, who could use the prisoner as an indentured servant. The government took no further interest in transportees' behaviour unless they violated pardon by returning to England prior to the end of the sentence (Parker, 1975:15).

With America's revolutionary war, and rejection of the convict system in favour of other sources of cheap labour such as slavery, Australia became the main recipient of transportees. However, the relative lack of free settlers meant that an alternative to indentured service was needed. A ticket-of-leave approach was adopted, whereby the convict was given "a declaration, signed by the governor or his secretary, dispensing (the convict) from attendance at government work and enabling him, on condition of supporting himself, to seek employment in a specified district" (Parker, 1975:17). Until 1821 tickets-of-leave were granted liberally. After that date a formal scale was adopted whereby prisoners with sentences of seven years could obtain a ticket after four, those with fourteen could obtain them after six, and those with life sentences waited eight years.

Transportation to Australia continued until 1867, when protests by free colonists forced its abandonment. To relieve consequent gaol overcrowding, British governments gave legal status to ticket-of-leave systems operating domestically. The first legislation, enacted in England in 1853, was a failure due to "crime waves" blamed on inadequately controlled and supervised ticket-of-leave men. More success was attributed to a scheme introduced in Ireland in 1854, which established a civilian Inspector of Released Prisoners to supervise ticket-of-leave men resident in Dublin and which assigned responsibility for surveillance elsewhere to police (Parker, 1975:18-21).

In reviewing these 19th Century early release schemes it is clear that relief of prison overcrowding and perceived ability to control offenders in the community were keys both to their emergence and continued use. Some researchers (eg. Cavender, 1982) contend that these remain the paramount concerns, even though discussion of parole during the 20th Century has tended to be overlayed by a newer philosophy of reform and rehabilitation. One of the first administrators systematically to articulate the rehabilitation approach was Alexander Maconochie, superintendent at the Norfolk Island Penal Colony during the early 1840s. His regime put emphasis on indeterminate sentences and programs which ensured that inmates' living conditions and release dates were dependent on their behaviour and social progress in prison. Many of Maconochie's ideas subsequently were incorporated in the Irish ticket-of-leave system, which in turn became the model for parole in America. In 1870, a United States National Congress on Penitentiary and Reformatory Discipline endorsed the concepts of indeterminate sentencing and early release on parole,

and advocated the Irish approach to community supervision. The rationale was that prisons were for reformation, and that this would be best achieved by marks for good behaviour, graded classifications and no fixed sentence lengths. The Elmira reformatory in New York, opened in 1876 and an early practical implementation of these philosophies, subsequently was used as a prototype for prison and parole systems in other states.

When modern systems of parole appeared in Australia in the late 1950s*, they also were dominated by the rehabilitation ideal. As late as 1980 the Australian Law Reform Commission (ALRC) found that all Australian jurisdictions had opted for an indeterminate approach, with Parole Boards having broad powers to release prisoners prior to the expiry of their maximum sentence. There was considerable variation, however, in ways of deciding the minimum time to be served before parole eligibility. In New South Wales, Victoria and Western Australia the non-parole period was set by the judiciary. In Queensland it was a fixed proportion of the head sentence, specified in legislation. In South Australia and Tasmania prisoners could be considered for parole immediately the sentence commenced**.

This lack of national uniformity and consequent uncertainty among federal prisoners was one factor

* The order of implementation of parole by Australian States and Territories was: Victoria 1957; Queensland 1959; Western Australia 1963; New South Wales 1966; the Commonwealth 1967; South Australia 1969; Northern Territory 1971; Tasmania 1975 and Australian Capital Territory 1976 - see Australian Law Reform Commission, 1980:179.

** The Commission's review was prior to the 1981 and 1983 amendments to South Australia's legislation.

which prompted the Law Reform Commission to recommend abolition of parole and its replacement by "a more rational, uniform, determinate and fair system" (ALRC, 1980:211). However, in suggesting the new approach the Commission was not simply concerned about inequality. It also had been confronted by significant evidence of disillusionment about the value of parole and indeterminate sentencing among correctional administrators and researchers. At the time the Commission drafted its report, six US States already had abolished parole and indeterminate sentencing systems. Their main reasons included pessimism about the rehabilitative potential of prison-based programs, disillusionment at experts' ability to predict "dangerousness" or recidivism, and concern that unfettered Parole Board discretion may be undermining principles of natural justice. As Rothman (1980) has pointed out, many of these themes have been articulated in correctional 'reform' literature since the 1920s. However the most thoroughly documented critiques have appeared during the last few decades.

Perhaps the best known is by Martinson (1974), who focussed on the issue of rehabilitation. He reviewed all evaluations of prison programs published during the preceding twenty years and concluded that "with few and isolated exceptions", none had provided acceptable evidence of an effect in rehabilitating the offender. These findings confirmed earlier work by Bailey (1966), Robinson and Smith (1971) and Ward (1973) and subsequently were supported by Lipton et al's (1975) analysis of more than two hundred controlled treatment programs.

Such strong indications that not even the most lavishly-funded prison-based programs can be shown to

bring about a lasting reduction in antisocial behaviour have made it difficult to justify requirements that offenders be kept in gaol until "rehabilitated". The other rationale for indeterminate sentencing, of course, is that it enables authorities to thwart the careers of likely recidivists. However this assumption too has been undermined by research.

Several key studies (eg. Gottfredson, 1970; O'Leary and Glaser, 1971) have argued that parole boards are not capable of estimating with sufficient accuracy who will succeed upon release and who will fail. Moreover the problem of predicting future offending patterns becomes even more difficult when violent crimes rather than all crimes are singled out. From his review of systems for predicting violent behaviour Monahan (1981) concluded that the knowledge and clinical expertise of individuals such as parole board members are no more useful than purely actuarial systems. Even a purely statistical approach has significant drawbacks. For example, a widely cited study for the US National Council on Crime and Delinquency (Wenk et al, 1972) found that its most sophisticated prediction model would have failed to identify at least half the 104 violent recidivists in a sample of 4,000 young offenders in California, and that for every violent person correctly identified a further eight young offenders would have been detained unnecessarily.

Such results*, reviewed in conjunction with the apparent failure of rehabilitation (particularly in a prison setting), render parole and other forms of indeterminate sentencing increasingly vulnerable to yet a third type of criticism, based on concepts of natural justice.

* For a fuller review see Walker, 1985.

Struggle for Justice, published by the American Friends Service in 1971, was an early statement of these views, which have been developed further by such writers as Frankel (1972), Morris (1974), Fogel (1975) and Von Hirsh (1976). Among other things, these authors are concerned at the secrecy of early release procedures, and the capacity for inequity and inconsistency in decisions. They point out that because uncertain release-dates can be stressful to inmates, there is potential for precipitating individual and group violence within prisons (Park, 1976; Von Hirsh, 1976). In summary, critics of indeterminacy in parole and other aspects of sentencing argue strongly that it has no proven practical benefit and can create significant obstacles to justice and order within the correctional system.

In the context of these international trends, South Australia's adoption of a determinate approach toward parole becomes much less of a radical innovation than some have suggested. Nonetheless it was a major change: as yet no other Australian state has legislated to take away the Parole Board's power to set release dates, although returning prisoners to the community at the expiration of their non-parole period minus earned remissions did, until recently, seem to have become the practice in at least one other jurisdiction (New South Wales). Yet another distinguishing feature of South Australian legislation was the context in which it was introduced. Only nine months before the law was changed, in March 1983, inmates in the State's highest security institution, Yatala Labour Prison, had rioted and destroyed two of the gaol's three divisions. For quite some time before there had been allegations of poor management and of mistreatment of prisoners -

indeed the three years preceding the riots had seen one Royal Commission and two other major reviews of various reviews of aspects of Correctional administration (Swink 1981, 1983)..

While it is not possible to make a precise assessment of how critical these prison management problems were in precipitating a review of parole undoubtedly they were important. Both before and after the Yatala riot, spokesmen for prisoners had singed out parole decisions as a major cause of unrest, and in an article published in The Advertiser newspaper the Minister for Correctional Services identified this as one of the main causal factors. It also is clear that, compared with the developmental cycle for most legislation, the new parole laws were implemented rapidly, and that there had been consultation with prisoners.

Perhaps inevitably, these background factors have tended to overshadow broader philosophical issues in political and media discussions of the 1983 laws, with some commentators even arguing that the new roles were little more than a quick compromise introduced without adequate planning or explanation. In evaluating parole it is important to address such criticisms. No matter how well-founded a reform may have been, it is unlikely to succeed if it has been introduced too hastily and the detail of implementation has been neglected. To commence this study, therefore, the researchers surveyed people at the "grass roots" level - both offenders and correctional staff - on their understanding and acceptance of the legislation. These "process evaluation" results will be discussed before we consider the parole changes' effects on other aspects, such as sentencing and recidivism.

3. HOW THE PAROLE CHANGES WERE COMMUNICATED AND ACCEPTED

In determining whether a reform has succeeded at the administrative level, there can be no alternative to consulting those most affected. For the parole study, this was achieved by extensive interviews with more than 300 people - 101 prisoners, 92 prison officers, 52 parolees, 50 parole officers, 17 judges and magistrates and 7 prison managers - over an eight month period April to November 1985. For the first four groups, stratified sampling was used to ensure that interviews were representative and that there would be respondents acquainted with the correctional system both before and after the changes. For the judiciary and senior administrators, interview numbers were too small to be considered representative. Table 1 indicates population and sample sizes for each group.

TABLE 1 POPULATION AND SAMPLE SIZES FOR INTERVIEW GROUPS

	Prison Officers	Prisoners	Parole Officers	Parolees	Prison Managers	Judges
TOTAL POPULATION	569	374*	101	415	7	63
INTERVIEW SAMPLE	92	101	50	52	7	17

* Prisoners with sentences of 1 year or more, or with indeterminate sentences.

In all discussions the key question was whether or not the current (i.e. post - 1983) parole system was preferable to its predecessor. Without exception the response was that the change had been for the better. Majorities in favour varied from 59% for prison officers to 80% for parole supervisors (Table 2),

TABLE 2 PAROLE SYSTEM PREFERRED

	Prison Officers (n = 92)	Prisoners (n = 101)	Parole Officers (n = 50)	Parolees (n = 52)
Current (i.e. post - 1983)	59%	77%	80%	71%
Former	26%	21%	10%	19%
No Preference	15%	2%	10%	10%
	100%	100%	100%	100%

although it should be noted that the lower approval rate among prison officers was in part brought about by the higher proportion unwilling to express any opinion. When those who had no view or felt unqualified to comment* are excluded, just under 70% of prison officers favoured the new rules.

Although these figures indicate general satisfaction with the type of legislation enacted, close analysis, suggests a quite complex set of attitudes. Few respondents rejected the new parole system but criticism of administrative detail was widespread. Not all groups were convinced that the new approach had helped bring about permanent improvement in corrections.

Prison officers were the least enthusiastic. Almost 80% could nominate administrative difficulties - the main one being that the new parole rules were not adequately explained to them (56 out of 92 said that this had been the case). A substantial percentage (25 or 27%) also claimed that there had been confusion, lack of knowledge and lack of communication in prisons

* Generally because they had not been employed in the prison system prior to introduction of the new rules.

during the change-over period, with inmates experiencing a great deal of frustration and uncertainty. Most (47 or 55%) prison officers willing to express an opinion also thought the parole system could be improved, with many making adverse comment on remission procedures ("remissions should be earned, not a privilege"). Finally, despite hopes expressed by "natural justice" advocates of determinate sentencing, there was at best only equivocal evidence that prison officers saw the new approach to parole as having lessened conflict and tensions within the prisons. Some 41% of the officers who had been employed before December 1983 thought the situation in gaols had improved, but a substantial minority (29%) considered it actually had worsened, with the rest perceiving little change. However, when asked specifically about the impact the new parole laws had had on prison atmospheres, less than half (45%) thought it had been positive, 11% thought the impact had been negative while the remainder thought that the laws had had no influence or were unable to comment (Table 3).

TABLE 3 IMPACT OF PAROLE CHANGES ON PRISON ATMOSPHERE

	Number	Percentage of Respondents
Positive influence	41	44.6
Negative influence	10	10.9
No influence	39	42.4
Unable to say	2	2.2

Compared with prison staff, parole officers generally were more consistent in support for the legislation.

As mentioned earlier, eight out of ten considered the new system an improvement on its predecessor and a similar percentage saw the key aspect - release at the end of the non-parole period - as a positive feature.

Very few (less than 20%) parole officers thought parolees "had it easy" under the new rules, and a substantial majority (70%) were satisfied with their powers for supervision under the Act. Most respondents also thought that parole supervision had at least some effect in reducing recidivism (82%), and many thought it had other benefits such as being a stabilising influence or providing practical assistance (Table 4). Generally, parole officers emphasised the more personal aspects of supervision rather than those aspects relating to surveillance or behavioural change. Most also were confident that details of the new system had been explained to them.

TABLE 4 BENEFITS OF PAROLE SUPERVISION

	Number	Percentage of Respondents*
Provides a stabilizing influence	21	42
Provides practical assistance	21	42
Helps return to community	20	40
Depends on motivation of parolee	9	18
Surveillance - accountability	9	18
Conditions give structure	6	12
Assists behavioural change	6	12
A political issue - satisfies the community	6	12

* Percentages total to more than 100% because respondents gave more than one reason for benefits.

Despite this consistency parole staff also offered a wide range of criticisms. Indeed, less than a third though the new system was free from initial problems, and a similarly low proportion (34%) considered prisoners were being adequately prepared for parole. Most (62%) of the officers who had observed the initial change-over period in 1983 thought that, for a variety of reasons, it may have generated confusion among offenders, the judiciary and the public. When asked whether they would like to see some changes to the current system two out of three parole officers said they would, although there was little consensus on the nature of the desired amendment. The most frequent suggestions were for better and more frequent communication with the Parole Board (9 cases), better preparation of prisoners for parole (5 cases) and a provision to allow early discharge for selected paroles under long-term supervision (5 cases). Finally, at least fifty percent of officers could identify a condition of parole that was often imposed but was difficult to supervise effectively: conditions most frequently nominated being "abstain from alcohol or drugs" (48% of respondents), and "restriction on associates and places visited" (46%).

More than any others, such comments about conditions help highlight how difficult it is to implement a parole system that is acceptable from all points of view. As Table 5 shows, other parole supervisors nominated these very same restrictions, and others tailored to the situation of the individual, as useful and effective. In light of such lack of consensus the only reasonable conclusion is that even though the majority of respondents could identify some aspects which they would like to see "fine tuned" the great majority of parole officers preferred the new parole

approach. Similar acceptance was evident among prisoners and parolees - many of whose prospects had been affected quite significantly by the legislation.

TABLE 5 CONDITIONS REGARDED AS - A) USEFUL AND EFFECTIVE OR B) DIFFICULT TO SUPERVISE - BY PAROLE OFFICERS

	Number	Percentage
A) Useful and Effective Conditions (highest ranked 5)		
Referal for assessment and treatment	37	74
Weekly reporting	25	50
Associates and places frequented	21	42
Residence	16	32
Abstenance from alcohol and drugs	14	28
B) Conditions difficult to supervise (highest ranked 2)		
Abstinance from alcohol and drugs	24	48
Associates and places frequented	23	46

(No other condition was mentioned by more than 6 parole officers)

Almost three quarters of prisoners (73 respondents) expressed a general preference for the current system of fixed release and of those a high proportion (73%) maintained that they still would make this choice even if it meant that offenders would have to spend longer in prison. For those who preferred a determinate approach, the most positive features were its certainty (55 respondents or 74%) and removal of the inconsistencies which have been apparent in decisions of the former Parole Board (26 responses or 35%).

Most (N=72) prisoners interviewed also claimed they currently had no worries about parole and only a minority (less than 30%) could identify a change they would like to see made. A significant proportion of these respondents also agreed that the new remissions system was an incentive to good behaviour - an incentive more likely to be nominated spontaneously than other factors such as "incentives within self" or the need to "do time easy".

TABLE 6 PRISONER VIEWS ON INCENTIVES FOR GOOD BEHAVIOUR IN GAOL

		Number	Percentage of respondents
A.	Motivating factors in order nominated by prisoner		
	. Remissions	38	37.6
	. Incentives within self	25	24.7
	. Doing time easy	20	19.8
	. Better security rating	13	12.9
	. Other	5	4.9
	. No incentives for good behaviour	19	18.8
B.	Total in agreement with proposition that remissions are an incentive	72	71.3

A further important point to note in this context is that of the sixty three prisoners who had been in the system before the parole changes, no less than forty thought parole had had some bearing on the (generally poor) atmosphere which had prevailed prior to December 1983. Interestingly enough, however, even these prisoners did not see parole as the most important source of difficulties. While far more likely than prison officers to include the former parole system and Parole Board decisions in their list of problem areas this

still ranked second, behind "personalities of officers and inmates", in the order of factors nominated.

TABLE 7 VIEWS OF LONG TERM PRISONERS IN WHETHER PAROLE SYSTEM HAD BEEN AN IMPORTANT DETERMINANT OF THE PRIOR PRISON ATMOSPHERE PRIOR TO 1983

	Number	Percentage of respondents
A. Determinants of poor prison atmosphere prior to 1983 in order nominated by prisoners		
. Personalities of particular officers and inmates	26	41.3
. Parole system/former Parole Board's decisions	22	34.9
. Conditions and Attitudes in Gaol	16	25.4
. Management factors	16	25.4
. Prospect of a New System	12	19.0
. Interstaters Wanting Change	2	3.2
. Other	10	15.9
B. Total who saw parole as an important reason	40	

As had been the case with other groups, some less positive responses also came to light during the interviews with prisoners. A significant minority - about 20% - were opposed to the Courts setting release dates: the main reasons being that it reduced the possibility of an "individualised" approach to sentencing and deprived them of any hope of early release (Table 8)*. Moreover, these respondents provided

* Table 8 indicates that life sentenced prisoners were more likely to oppose the more determinate system. Patterns in the setting of non-parole periods since 1983 suggest that these prisoners had good reason to believe that the new system would cause them to spend more time in custody (see discussion of sentencing later in this report).

further support for the view that introduction of the new parole rules had been accompanied by a degree of confusion. About a third of prisoners questioned said they still did not understand parole, and a similar percentage claimed that the new system had not been fully explained to them.

TABLE 8 PRISONERS OPPOSED TO DETERMINATE PAROLE AND REASONS

A. Total opposed to determinate parole

	Number of this	Percentage of prisoners sentence type
Life Sentenced	5	35.7
Other	16	14.9
Total	21	20.8

B. Reasons for preferring an indeterminate approach

	Number*
Opportunity for Parole Board to take an "individual" approach	11
Some type of an early release	8
Doesn't specify the sentence	4
Is better for lifers	4
Keeps sentences shorter	3

* Total reasons not equal to 20 because some prisoners gave more than one reason.

Parolees were the final population for whom a representative sample could be surveyed, and in many respects their responses were similar to prisoners. Although almost sixty percent of interviewees had served terms and been released under the pre-1983 rules, most (71%) saw a determinate approach as preferable. As had been the case for prisoners, the majority of parolees

(37 out of 52) asserted that they would favour the new system even if it meant spending more of their sentence in custody: the main reason being that having a definite release date reduced anxieties among prisoners (response by 23, or 62% of those in favour). Only a minority could nominate changes they would like to see made to parole. The main critical note from these respondents was that a high proportion (32 or 62%) considered they had not adequately been prepared for release, with 25 parolees recounting that they had only become aware of their impending discharge within eight days of the event itself. It should be noted, however, that many parolees who claimed they had been inadequately prepared had been let out of prison either when the indeterminate rules applied or during the changeover period immediately after the 1983 legislation was introduced.

In all, then, a remarkably consistent picture has emerged from discussions with Correctional officers and offenders: people at the "grass roots" level who were most affected by the new parole system. Across the board, they accepted that a determinate approach was preferable, because it allowed certainty and planning both by prisoners and those responsible for supervision. At the same time, these respondents were sceptical of claims that the changes could resolve all tensions within prisons, pointing out that the sentencing regime was only one factor affecting gaol atmosphere. Finally, there was general agreement that, because the new rules had been implemented quickly, there had been administrative problems, with details of the new rules not always adequately communicated.

Of all these issues the last is, in many respects, the easiest to address since the Department of Correctional

Services has already taken steps to improve administrative aspects of parole. More fundamental questions are raised by the finding that although the post - 1983 approach generally is preferred, few see it as a panacea for conflict in prisons. This is consistent with more sophisticated United States research on the effects of determinate sentencing on inmate adjustment and institutional climate. In Determinate Sentencing and Imprisonment: A Failure of Reform Goodstein and Hepburn (1985) review the effects of sentencing reforms in three United States jurisdictions on the attitudes and behaviour of prisoners. All three States had implemented laws which provided inmates with certainty of release date, and which were expected to lessen associated tensions. Despite this, the research found "... no systematic support for the general hypothesis that determinate sentencing has an impact on prisoner attitudes and behaviour ... prisoner adjustment and institutional climates were not affected substantially by increased predictability and decreased inequity" (pp 157 and 164).

Goodstein and Hepburn rather pessimistically conclude that:

> "determinate sentencing reform should perhaps be added to the growing list of recent correctional reform efforts, including participatory management, support teams, citizen involvement and prisoner unionisation ... that have been largely unsuccessful in substantively changing our prisons..." (p 171)

In light of the consistency between their findings and the current research perhaps it needs to be acknowledged that in South Australia, too, determinate sentencing can no longer be seen as a possible "cure all" solution. Having made this point, however, it should be emphasised that both the United States and our studies provide unequivocal evidence that prisoners and prison

management prefer such an approach. Taking a more realistic approach to the potential of this sentencing reform does not mean that it should be rejected outright from a policy or justice point of view. It is simply that, as with all other measures, moves toward determinacy need to be assessed carefully both for their consistency with general sentencing philosophy and for possible unintended consequences. The main task for the remainder of this report is to assess those issues. Particular attention will be given to the parole changes' effects on court sentencing patterns, prison populations and recidivism - aspects which, as mentioned earlier, have featured prominently in media and other public discussion. To set the scene for this analysis it is appropriate briefly to review the researchers' final group of qualitative interviews with prison managers and the judiciary. They further highlight the conflicting demands that need to be reconciled by sentencers.

How Prison Managers and Judges Viewed the Parole Changes

To ascertain the views of prison managers, interviews were conducted with the heads of South Australia's seven major gaols. Two were in the Adelaide metropolitan area, the other five were country institutions.

Generally these managers' attitudes to the new parole rules were consistent with the approach taken by prison officers and other correctional staff. When asked outright which system they preferred all but one plumped for the post - 1983 regime. Even the dissenter could be better characterised as "ambiguous" (i.e. he could see advantages in both systems, and expressed regret at the way determinacy had limited the potential for

"individual" sentencing) than as an opponent of the new philosophy. For all institutional heads, the main reasons for supporting a determinate approach were its greater clarity and certainty, and that it restored authority in setting gaol terms to the courts.

This point made, the seven prison managers were sceptical about whether certainty of release - date was likely to have a dramatic effect on inmates' behaviour. Among those interviewed four were of the opinion it would make no difference, one asserted that it had improved things and the other two said it had affected some types of prisoners but not others. More positive assessments were made of the new remissions system: three prison heads said it had reduced behavioural problems "across the board" and two said it had had an effect at least on a percentage of prisoners. Nonetheless, only one respondent was prepared to state unequivocally that the task of managing a gaol was easier in 1985 than it had been in 1983.

Generally, then, these findings are consistent with "grass roots" opinion that factors other than parole are critical determinants of prison atmosphere. An advantage of these more intensive interviews, however, was that they provided an opportunity for respondents to provide more detailed reasons for their opinions. When asked to nominate the real determinants of tension in prisons all institutional heads nominated several issues - including the size and location of a gaol and the general quality of correctional administration - which they saw as more critical than parole. According to these respondents prison unrest in 1983 had been the product of a variety of factors, which included the high turnover of superintendents in the State's largest

prison, generally low morale among correctional administrators and an Australia-wide increase in prisoner militancy. Concern about parole merely had been a symptom and rallying-point for more deep seated grievances.

The final issue explored with this group was the extent to which the new approach to parole had been communicated and understood. On this, the institutional heads' impressions tended to be more favourable than prisoners and officers: all seven acknowledged that Head Office had provided ample written instructions. Nonetheless, managers were aware that the changeover phase had been confused, with prison staff required to assimilate a great deal of knowledge in limited time. Whether because of greater motivation or alleged "contacts" within and outside the system, prisoners often seemed, at that time, to have had more command of the administrative detail of parole than the officers.

Reflecting on initial problems with implementation of the 1983 changes, several superintendents mentioned the new remissions procedures. This theme also emerged from discussions with the twelve* Supreme and District Court judges who agreed to be interviewed.

Generally, members of the judiciary, like other groups surveyed, favoured a shift toward determinacy, and considered the court the most appropriate venue for establishing release-dates. Ten of the twelve judges agreed with the thrust of the current legislation to grant release powers to the courts rather than a Parole Board. One had no firm view on who should have this decision, while another saw advantages in a body with

* Out of thirty.

discretionary release powers. Reasons for prefering that this power be with the courts included that they were more open to public scrutiny, that the process could be reviewed, and that courts would produce greater consistency in decisions than a Parole Board. Judges saw it as preferable that a prisoner know a release-date soon after sentence rather than being required to wait for a Board decision.

On the question of remissions, however, there was clear evidence that several judges perceived difficulties. Four specifically mentioned remissions as causing problems at the sentencing stage, pointing out that the legislation did not make it clear whether - and to what extent - a judge should take account of their possible effect on time spent in prison.

These comments are made even more vehemently in the Annual Report of South Australia's fourteen Supreme Court judges for the calendar year ended 31 December, 1985*. In this report, the Chief Justice, the Hon. L.K. King, recommends outright abolition of the practice of deducting remissions for good behaviour either from head sentence or non-parole period. In theory, he points out, a judge is "... precluded by law from taking into account the likelihood of good conduct remissions". Therefore:

> When the appropriate sentence and non-parole period for the case, ... painstakingly arrived at, are reduced by administrative action by as much as one third, the sentencing exercise is rendered largely futile. Experience shows that in the overwhelming majority of cases,

** Report of the Judges of the Supreme Court of South Australia to the Attorney-General of the State Pursuant to Section 16 of the Supreme Court Act 1935 for the Year Ended 31 December 1985. By the Hon. L.J. King, Chief Justice, on behalf of the judges of the Supreme Court.

> the sentence and non-parole period are reduced by one third or almost one-third. Not only is the protection of the public, which the sentence seeks to achieve, thereby impaired, but the public is misled as to the practical effect of the sentence announced in Court". (pp. 19-20).

In quoting these comments, note should be made of changes to law which came into effect after 1985, and which have significantly altered the situation. On 8 December 1986 the Governor proclaimed amendments to the Criminal Law Consolidated Act which, among other things, required sentencing courts to take account of the likelihood that a sentence will be reduced by remissions. As a result of this amendment the Chief Justice*, has observed that South Australian courts now have the power to increase non-parole periods by up to fifty percent.

Such amendments could not, however, address all the concerns raised by the Supreme Court judges and other commentators. As long as a parole system with remissions remains in force there will be arguments that it brings about significant reductions in sentence-lengths and to an undermining of public safety due to the premature release of dangerous offenders. The final two sections of this report address these questions by examining empirical evidence on patterns of sentencing and recidivism before and after December 1983. First to the evidence on sentencing.

* In a Court of Criminal Appeal decision. (see report in The Advertiser, 3/7/87)

4. IMPACT OF PAROLE CHANGES ON SENTENCING

One of the public concerns about the new system was that it would operate as a form of early release and lead to prisoners serving much shorter terms of imprisonment. Research in other jurisdictions, however, has suggested that reforms which appear to shorten sentences may in fact result in similar jail terms as sentencers adjust their patterns of sentencing to the new system. (Weatherburn, 1985).

In South Australia, the new provisions were applied by King C J on 12 January 1984 (R v Tio and Lee, judgement No. 7271). From His Honour's remarks it was clear that he anticipated that the non-parole period would constitute a greater proportion of the sentence than in the past because of these new provisions. Similarly Sangster J on 20 January 1984 (R V Morris judgement No. 7282) stated that he regarded the alterations to the parole and remissions system as critical to the fixing of non-parole periods by a sentencing judge.

The rationale for these judgements would seem to be that as non-parole periods under the new legislation delineated the maximum period of incarceration non-parole periods would need to be increased if comparability was to be maintained with sentences passed under the previous system. In the light of these considerations it was hypothesised that non-parole periods would increase both in absolute terms and as a proportion of the head sentence following the implementation of the parole and remissions legislation of 1983.

4.1. METHOD

Information was collected on all sentences passed in the Supreme and District Criminal Courts during the period 1/7/82 to 31/12/86. This period represents three 18 month time periods; 18 months before the legislation changes, 18 months immediately following the changes and finally 18 months following from this second period.

In South Australia, the majority of criminal charges are determined by a Magistrate or Justices of the Peace sitting in Courts of Summary Jurisdiction. These courts however, do not usually deal with the more serious "indictable" offences. An examination of the six monthly period 1/1/83 to 30/6/83 revealed that only 23 sentences carrying a head sentence of 12 months or greater were passed in Courts of Summary Jurisdiction.

Data pertaining to the date the sentence was passed, the major offence and the length of the head sentence and non-parole period was collected.

The date the sentence was passed or the date of Court disposition refers to the date the accused was sentenced and thus the case was disposed of. Importantly, this disposition date need not be the court session month as most defendants are remanded (generally for more than a month) for sentence after being found guilty. Further, in some cases the head sentence is passed and then submissions are called for regarding the non-parole period. In these cases, the date that the non-parole period was set is taken to be the sentence date.

The major offence is, for our purposes, the charge for which the highest penalty was received. For example if a defendant is charged with a number of offences the major offence is the offence which incurs the longest head sentence. If two offences incur the same head sentence the offence with the highest statutory penalty is the major offence.

The head sentence is the length of the total sentence passed by the Court. In cases where the accused is found guilty of one offence and only one count of that offence, the head sentence will simply reflect the penalty for the major offence. Where the accused is found guilty of a number of offences or perhaps a number of counts of the same offence, the major offence refers to the offence which carried the longest head sentence. The head sentence however, in the report refers to the sum of the penalties to be served cumulatively. Similarly the non-parole period may encompass not only the major offence but also other findings of guilt.

Consider for example, a defendant who is found guilty of two counts of robbery. The major offence therefore is the robbery. The sentencing judge may direct that the two head sentences be served cumulatively and in this case the head sentence is the total of the two sentences. Only one non-parole period is set taking into consideration both counts of the offence.

It should be mentioned however, that the number of cases where the total imprisonment was greater than that imposed for the single charge receiving the highest penalty is relatively small. An examination of data provided by the Office of Crime Statistics (Crime and Justice, Series A, No. 8) revealed that during the six monthly period 1 January - 30 June 1983, only nine such cases occurred.

Data analysis was performed using SAS* running on an IBM/AT personal computer. To enable broad comparisons, offences have been grouped into 8 major types.

Observations relating to Murder charges or those with missing data, for example when a non-parole period was not set, were not included in the analysis. During the period encompassing the actual proclamation of the legislation sentences passed before December 20 1983 were placed in the 'before' group while sentences passed on or after December 20 1983 were placed in the first or second 'after' group.

Table 9 shows the number of sentences included in each time period by offence group.

TABLE 9

NUMBER OF SENTENCES BY OFFENCE GROUP

OFFENCE GROUP	BEFORE	AFTER1	AFTER2	TOTAL
Manslaughter	8	2	7	17
Against the Person	48	37	51	136
Sex Offences	74	62	68	204
Robbery	45	45	70	160
Drug Offences	37	57	61	155
Property Offences	19	10	15	44
Theft / Fraud	156	145	142	443
Good Order	9	14	13	36
TOTAL	**396**	**372**	**427**	**1195**

* Statistical Analysis System, Version 6, SAS Institute, Cary, North Carolina.

4.2. RESULTS

Figure 1 illustrates the average head sentence for the 3 time periods by offence group. Comparing the 'before' group with the 'after1' group average head sentences increased in 5 offence categories and decreased in 2 offence categories. Comparing the 'after1' group with the 'after2' group average head sentences increased in 6 offence categories and decreased in 1 offence category. Overall average head sentences have increased in each of the time periods. That is, average head sentences were higher in the 18 months following the legislation changes than in the 18 months immediately prior to the changes and increased yet again in the final 18 month time period.

Figure 1.
HEAD SENTENCE

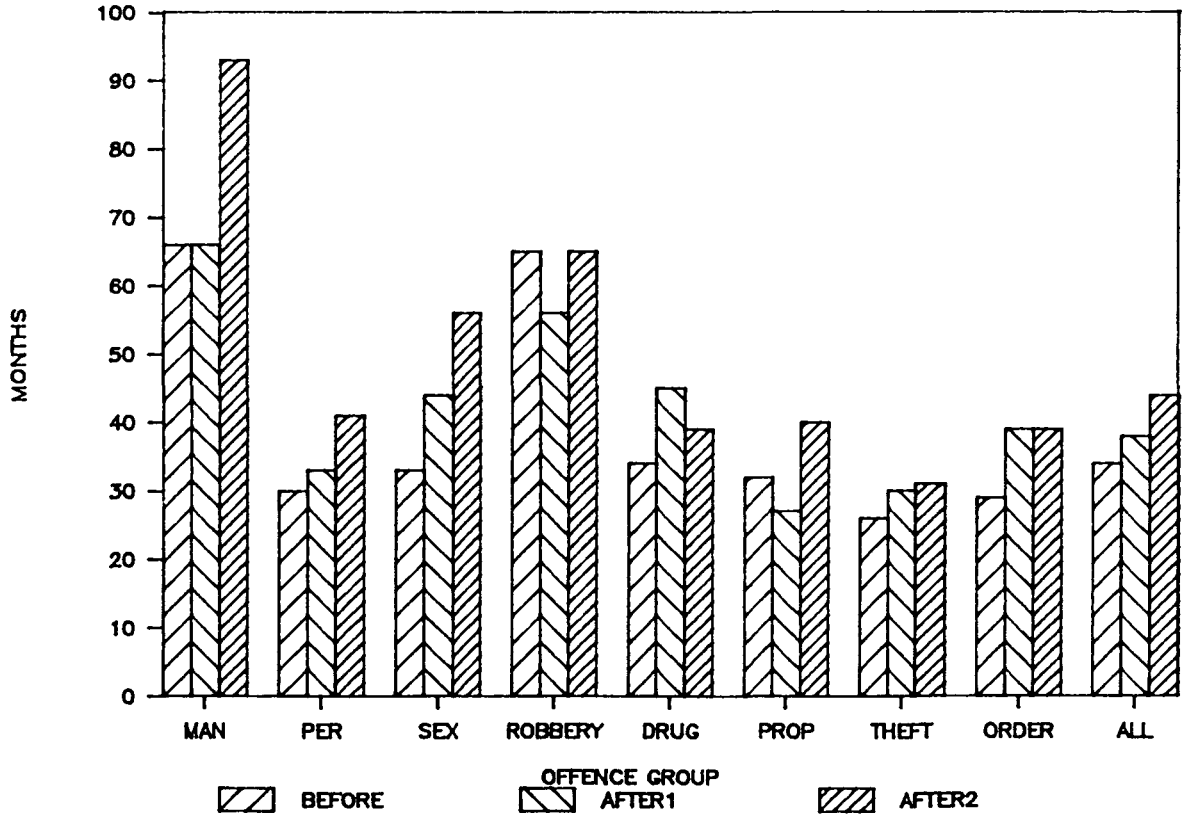


Figure 2.

NON PAROLE PERIOD

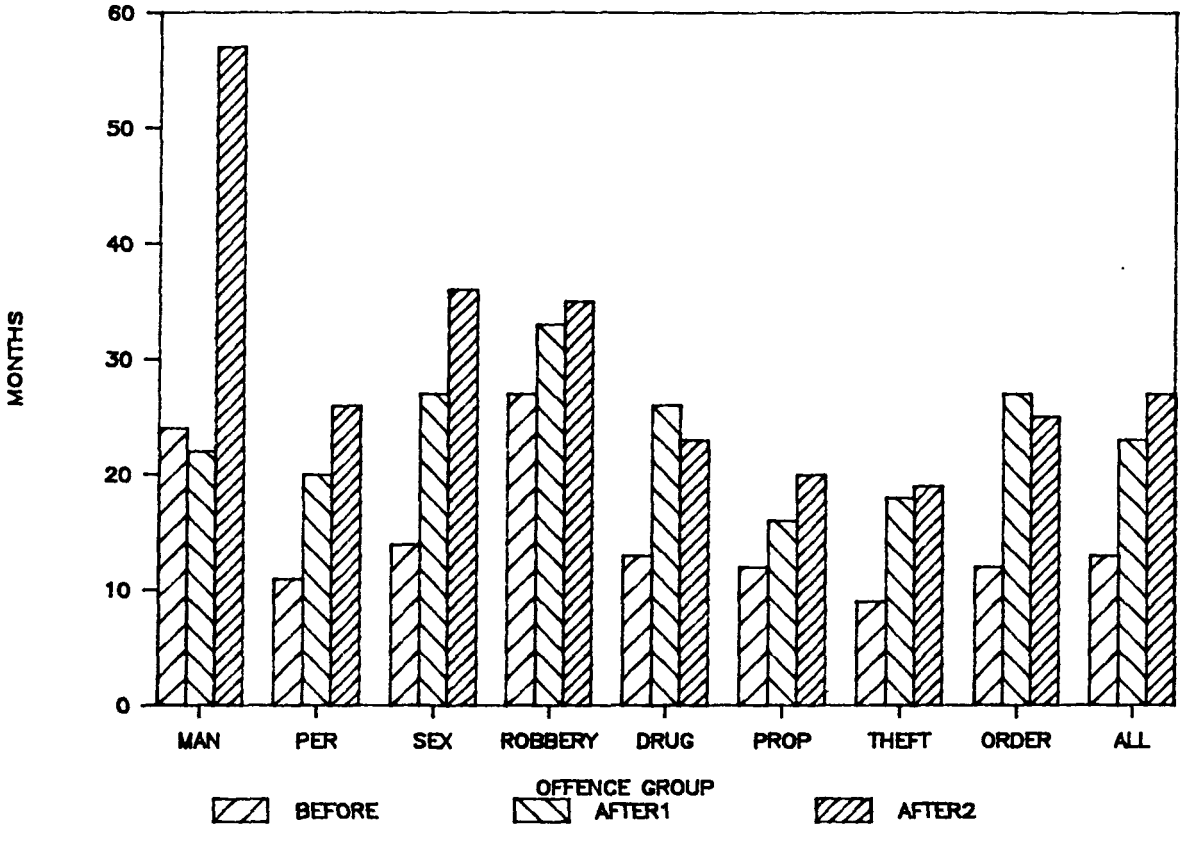


Figure 2 illustrates the average non-parole period for the 3 time periods by offence group. Comparing the 'before' group with the 'after1' group, it can be seen that average non-parole periods increased in every offence category except the manslaughter category where there was a slight decrease. Comparing the 'after1' group with the 'after2' group average non-parole periods increased in every offence category except for drug offences and offences against good order. Overall average non-parole periods increased quite markedly in the 18 months following the legislation changes, compared to the 18 months prior to the changes and continued to increase in the second 18 months after the changes but to a lesser extent.

Figure 3.

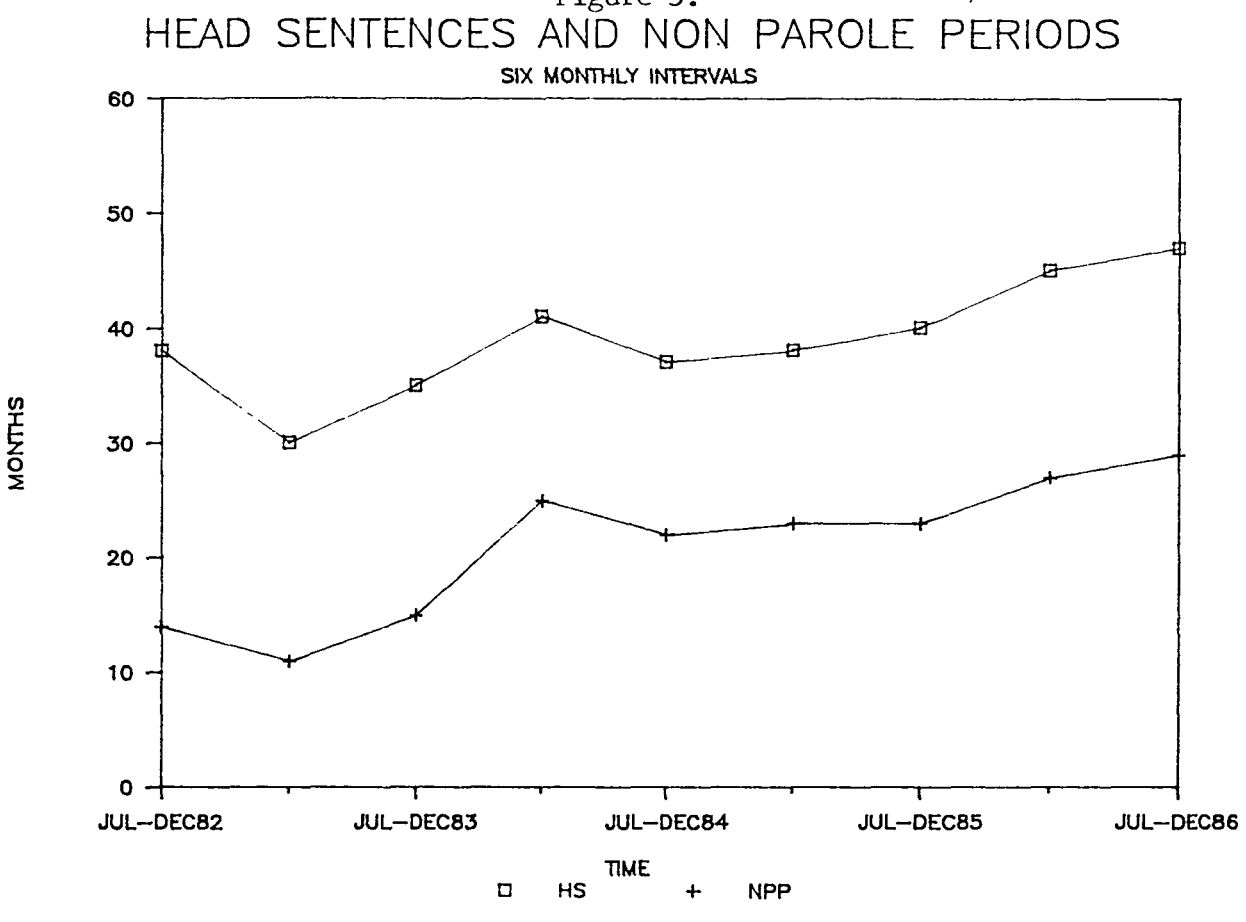


Figure 3 depicts average head sentences and non-parole periods for all offences by 9 6 monthly periods. Quite clearly following legislation changes (shown in the period following July - December 1983) non-parole periods increased significantly and while head sentences also increased this did not occur to the same extent. In other words after the legislation changes the length of non-parole periods have, on average, increased both in absolute terms and as a proportion of the head sentence.

Figure 4.
REGRESSION LINES

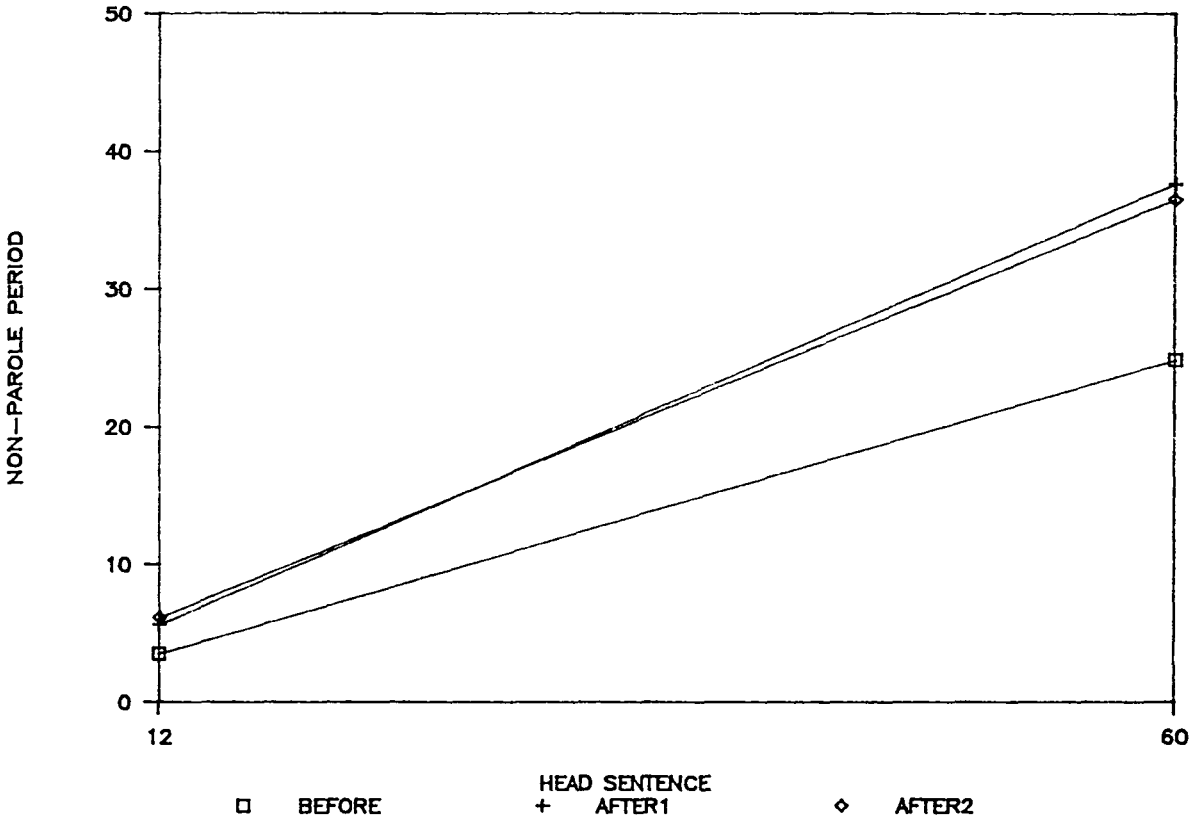


Figure 4 indicates how non-parole periods have increases as a proportion of head sentence. The graph shows the result of a simple linear regression analysis of non-parole period against head sentence for the three 18 month time periods under consideration. The non-parole period prior to legislation changes clearly was a smaller proportion of the head sentence than it was in both time periods after the changes.

The final time period shows a slightly flatter relationship between non-parole period and head sentence with the intermediate period having higher non-parole periods for short sentences and lower non-parole periods for longer sentences.

If the example of a 60 month head sentence is considered, then the expected non-parole periods are:-

. 24.9 months, before the changes,
. 37.6 months in the first 18 months after the changes, and
. 36.5 months in the final 18 months considered.

This example indicates that the ratio of non-parole period to head sentence increased by 51% in the first 18 months and then dropped slightly to be 46% longer than it was prior to the legislative change.

Examination of a scatterplot of head sentences by non-parole periods suggested that a strong linear relationship existed between these two variables and so a straight line was used to summarise the data.

The method used to fit this line to the observations was the method of least squares, which produces a line that minimises the sum of squared vertical distances from the data points to the line. Three such lines were produced representing sentences passed before and after the legislation changes.

The equations for these lines using non-parole periods as the dependent variable and head sentences as the independent variable are of the form:

$$NPP = A + B \times HS \qquad (1)$$

and the estimates are as follows:-

Before: A = -1.85, standard error = 0.54
B = 0.445, standard error = 0.012
(R2 = 0.767)

After 1: A = -2.44, standard error = 0.65
B = 0.668, standard error = 0.014
(R2 = 0.869)

After 2: A = -1.48, standard error = 0.77
B = 0.633, standard error = 0.014
(R2 = 0.821)

All regression lines fitted the data closely and the proportion of the variation in the non-parole period which is explained by the regression equation was 77%, 87% and 82% respectively. Thus immediately after the legisliation change there was a better linear association between non-parole periods and head sentences, the linear association worsening a little in the final 18 month period.

The slope of these lines (0.445, 0.668 and 0.633) is the change in predicted non-parole period for a one month change in head sentence. These slopes are approximately 50% greater for both of the periods after the legislation change. The regression analysis clearly shows the increase in non-parole period for a given head sentence after the changes.

Equation (1) can be re-expressed as;

NPP/HS = B + A/HS;

and in our regression models B is positive and A negative. In this form it can be seen that the ratio NPP/HS becomes larger with increasing head sentence in all of the time periods considered.

Figure 5.

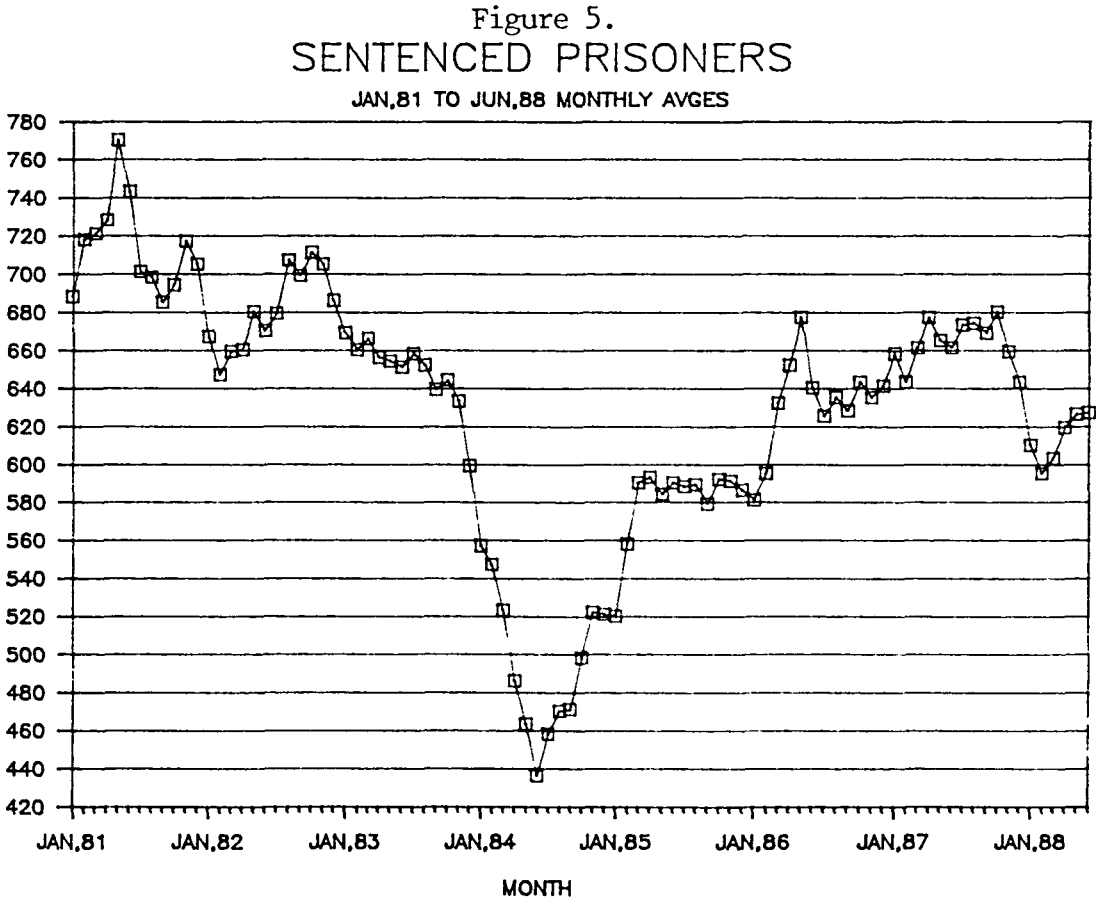
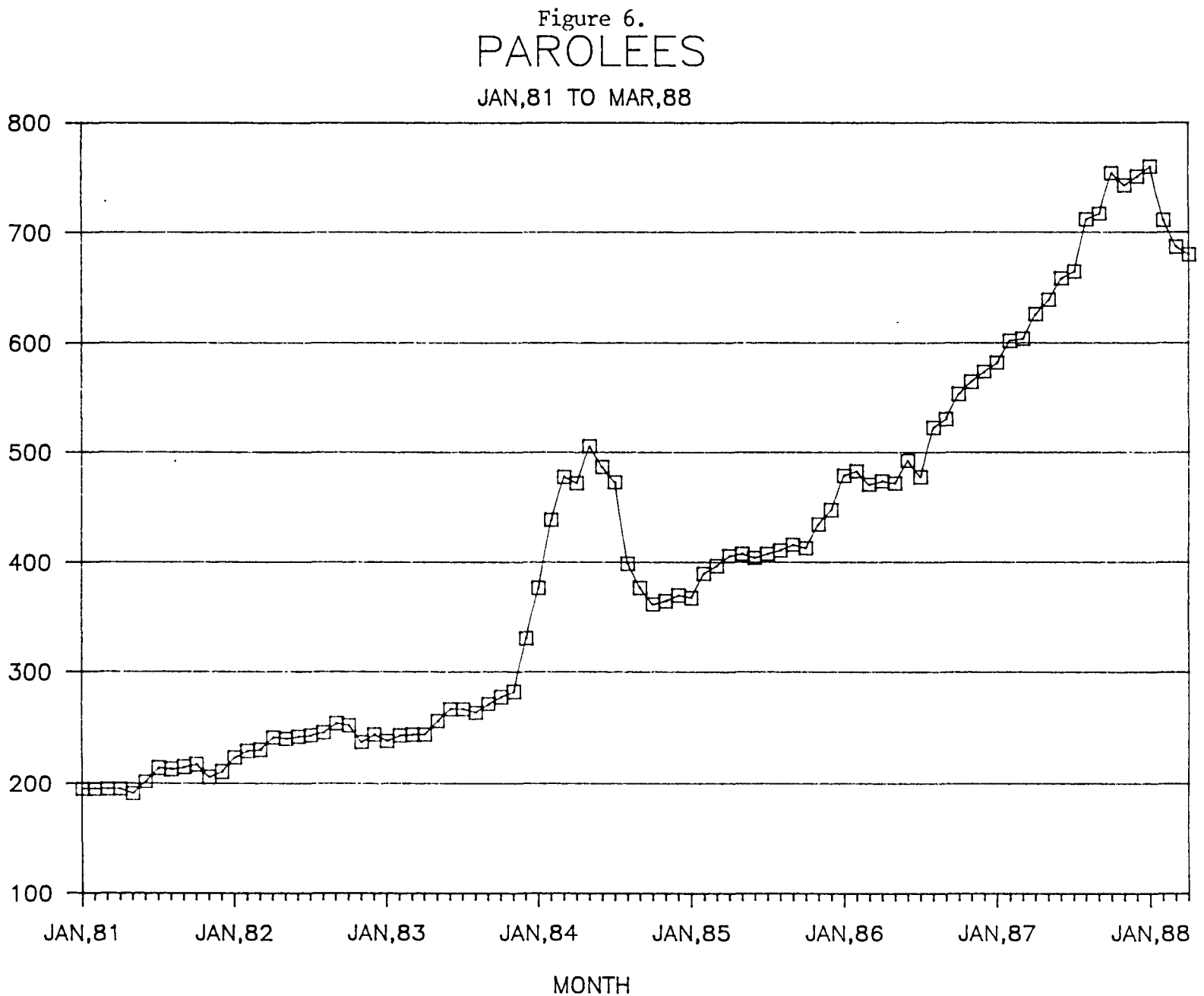


Figure 6.


PAROLEES
JAN,81 TO MAR,88
800
700
600
500
400
300
200
100
JAN,81
JAN,82
JAN,83
JAN,84
JAN,85
JAN,86
JAN,87
JAN,88
MONTH

4.3. TRENDS IN THE NUMBER OF PRISONERS AND PAROLEES

The impact of parole changes on the monthly average population of sentenced prisoners in South Australia is shown in Figure 5. There was a significant decline in the number of sentenced prisoners during and after December 1983 and this was arrested only after June 1984. From the middle of 1984 numbers of sentenced prisoners have risen but the growth pattern has been uneven. The potential growth in sentenced prisoners is not fully indicated by Figure 5 since the Department of Correctional Services has been using administrative release of prisoners in order to prevent crowding in prisons and also introduced a Home Detention program in February 1987.

There are currently (August 1988) 33 prisoners on Home Detention and the use of administrative release is estimated to reduce the prison population by between 30 and 40 prisoners. The total number of sentenced prisoners is therefore 60 to 70 lower due to these two measures.

The number of offenders supervised on parole is shown in Figure 6. There has been a significant growth in the number of parolees since the parole legislation was changed.

4.4. SUMMARY

The data analysed in this section indicate that judges increased non-parole periods as a proportion of head sentence since December 1983, although there was a slight relaxation in this trend in the final 18 month period considered. Also, average head sentenced increased in each of the three time periods.

These sentencing trends have increased the population of sentenced prisoners after the initial impact of parole releases. Over a period of time the number of parolees has increased significantly.

5. RECIDIVISM ANALYSIS

The final matter of interest to the general public and to the researchers was the impact of the changes on the recidivism rates of released offenders. Prior to December, 1983, prisoners were released selectively onto parole, or unconditionally at the end of their sentence - less earned remissions.

Under the current system, almost all prisoners with sentences of twelve or more months are released on parole under conditions set by the parole board but at a date (subject to earned remissions) determined by the courts.

The comparative recidivism rates of these groups of prisoners are of considerable interest.The primary comparison of interest for the researchers was the performance of all released prisoners before and after the change. Another important comparison was between the three groups consisting of selected parolees (before 1984), unselected parolees (1984 and after) and unconditionally released prisoners (before 1984).

The working hypotheses adopted were that there would be no difference in the recidivism rates of the "befores" and the "afters" as a whole, but that prisoners released by the Parole Board before December 1983 would perform better than unselected parolees who, in turn, would have a lower reconviction rate than prisoners who were unconditionally released. This effect would be expected due to the selection process, rather than any strong effects due to supervision.

Of additional interest was the comparison of the various subgroups of prisoners on the basis of age, previous convictions, sex, marital status, race and several other variables.

5.1 GROUPS OF PRISONERS STUDIED

The results presented here provide an extended follow up period over those presented previously by Roeger (1987).

The 866 prisoners in this study had served sentences of twelve months or more and were released on parole or unconditionally between July, 1982 and June, 1985. 437 prisoners were released prior to December 20, 1983,

(the "befores"), 177 of whom were paroled and 260 released unconditionally. A further 449 prisoners were paroled on or after this date, (the "afters"). Only 2.3% of the prisoners were female and 63% were aged between 18 and 30 at release. Married prisoners made up 18% with 12% having lived in defacto relationships and the same percentage being separated divorced or widowed.The remainder had never married. 11.4% of the prisoners were Aboriginal. The overwhelming majority had convictions prior to the one for which they had been imprisoned. 23% had between 0 and 5 prior convictions, 26% between 6 and 14, 26% between 15 and 28 and a further 25% had over 29 prior convictions. Only 4.4% had no convictions prior to the offence leading to their imprisonment.

Recidivism has the dictionary meaning of 'relapsing into crime' (Oxford) but must be defined in operational terms to be useful in an empirical study. The principal criterion for recidivism used in the study is reconviction as recorded in records held by the South Australian Police. Police records have the advantage of recording the date at which the offence was committed rather than the date of conviction and this is a bonus for researchers involved in recidivism studies. Issues involved in the selection of a recidivism criterion are discussed thoroughly by Maltz (1984) and Schmidt and

Witte (1988). For example if date of return to prison is used as a recidivism date then we measure a combination of the behaviour of the offender and also delays introduced by a series of criminal justice agencies. In general the closer we can get to the behaviour of the offender the better.

Of course no commonly used measure of recidivism is free from error. There are undetected crimes and also offences which may be detected in other jurisdictions apart from South Australia. The assumption made in this study is that these factors introduce no systematic variation in the pattern of recidivism measured between the different comparison groups. Choosing reconviction as the recidivism criterion also ensures that there is no systematic differentiation between different types of released prisoners (e.g parolees and unconditionally released prisoners) since technical breaches of parole conditions are not counted as recidivism. On the other hand any time spent by parolees in prison for technical breaches was subtracted from the 'time at risk' of parolees. A final advantage of reconviction as a measure of recidivism is that it is a definition commonly accepted by both laymen and professional researchers. The cut-off date for re-offending was the end of July, 1987. This data was collected in November, 1987 to allow

TABLE 10 : RESULTS OF SELECTED RECIDIVISM STUDIES

STUDY	COUNTRY	OFFENDER CHARACTER-ISTICS	RECIDIVISM MEASURE	FOLLOW-UP PERIOD	RECIDIVISM RATES	COMMENTS
Broadhurst R, (1986)	Australia (WA)	Released Prisoners	Return to prison	1 to 9 years	80% (male, Aboriginal) 50% (male, Non-Aboriginal) 75% (female, Aboriginal) 30% (female, Non-Aboriginal)	The WA study produced lifetime estimates of recidivism using parametric statistical methods
Beck A G Shipley B (1987)	U.S.A	Parolees between the ages of 17 & 22	Arrest Conviction for new offence Re-imprisonment	6 years	69% 53% 49%	Authors considered that there was an under reporting of reconviction date
Burgoyne P H (1979)	Australia (Vic.)	Serious offenders released from prison or youth training centres	Conviction for a new offence	5 years	30.1% (Homicide) 58.3% (Rapists) 63.1% (Robbers) 65.1% (Serious Assaults)	The Offence groupings refer to the original offence not to the type of reconviction.
Hoffman D Stone-Meier Rofer (1979)	U.S.A.	Sample of Federal (US) prisoners with sentences of 1 year or more	Arrest	6 years	60%	

STUDY	COUNTRY	OFFENDER CHARACTER-ISTICS	RECIDIVISM MEASURE	FOLLOW-UP PERIOD	RECIDIVISM RATES	COMMENTS
Illinois Criminal Justice Authority (1986)	U.SA.	Prisoners released from Illinois prisons in 1983	Arrest Re-imprisonment	27 to 29 months	60% 42%	
Jackson P (1983)	U.S.A.	Juvenile randomly assigned to parole or unsupervised release	Arrest	4 years	85% Unsupervised Release 82% Paroled	
Lerner M J (1977)	U.S.A.	Prisoners released on parole and unconditionally.	Arrest	2 years	62% (U) 45% (P)	
NSW Bureau of of Crime Statistics (1979)	Australia	Convicted Offenders	Reconviction	10 years after conviction	52% - general sample 73% - prisoner sub sample	Follow up did not account for time spent in prison
Petersilia J (1986)	U.S.A. California	Matched sample of 'felony probationers' and released prisoners	Arrest Filed Charge	2 years	72% (PR) 63% (FP) Arrest 53% (PR) 38% (FP) Filed Charge	PR refers to the prison sample whereas FP refers to the felony probation sample
Philpotts GJO Lancucki LB (1979)	England and Wales	A 1 in 6 sample of persons convicted in Jan. 1971	Reconviction	5 years period after conviction	50% (males) 22% (females)	

STUDY	COUNTRY	OFFENDER CHARACTER-ISTICS	RECIDIVISM MEASURE	FOLLOW-UP PERIOD	RECIDIVISM RATES	COMMENTS
Waller I (1974)	Canada	Prisoners released from Federal prisons by discharge or parole	Arrest	2 years	65% (discharge) 44% (parole)	
Ward P, with Keller L (1982)	Australia (N.S.W.)	Prisoners released in NSW with a 'loading of armed robbers in sample	Conviction and return to prison for 2 months or more	3 years	30.4% (parole) 46.3% (discharge)	

4 months for court processes to be completed and for the data to be added to Police records. This information allows a follow up period of a minimum of two years and a maximum of five years, depending on the actual release date of each prisoner.

It is not possible to justify direct comparisons of recidivism rates of offenders in different studies because of a variety of factors. The principal points of relevance are:

- the criterion used for recidivism,
- the length of the follow-up period,
- the characteristics of offenders in each study,
- the relative efficiency of different police in detecting offenders and
- the completeness of the criminal records in any jurisdiction.

The importance of the first three of these factors is illustrated by Table 10 which summarizes the results of a selection of recidivism studies. Choosing arrest as the recidivism criterion yields higher rates of recidivism that conviction which in turn leads to higher rates than imprisonment. Similarly, longer follow-up periods must yield higher rates than short periods even though most studies show that re-offending tends to level off after an initial risk period of two to three

years. Finally there are the effects of different characteristics of offender groups, samples of convicted offenders (e.g. N.S.W. Bureau of Crime Statistics (1979) and Phillpotts and Lancucki (1979)) will comprise many more low risk offenders than a sample of imprisoned offenders. Samples of young adult offenders will tend to have higher rates of recidivism than samples of older offenders. A Sample of parolees generally has lower recidivism rates than a sample of unconditionally released offenders. The principal reason is that parolees are generally selected whereas unconditional releases have often been passed over for release by Parole Boards.

5.2 METHOD OF ANALYSIS

The method used to analyse recidivism is called failure rate analysis (or, alternatively, survival analysis).

The approach used is to break down the period that an offender is "at risk" in the community into a number of shorter units - in this study, a period of two months.An offender is either successful (no reconviction) or fails in each time period of risk. Additionally, the method has a means of treating so called "censored" observations which are withdrawn from the analysis when the period of observation is complete. An example is an

offender who was released from prison just over 24 months from the cut off date for follow up. This offender is included in the analysis for 12 time periods and is "censored" during the 13th if no reconviction has been registered. An offender who is reconvicted during a particular time period is counted as a failure and is also withdrawn from the analysis.

The method allows the researcher to use all available data up until a set date. Traditional methods using a fixed time period for follow up would discard data which is available after the end of that time period, or discard cases which have a smaller than specified follow up time. For discussion of the advantages of failure rate methods see Maltz (1984), Schmidt and Witte (1988), Harris et al. (1981) and Blumstein et al (1986).
Two of the principal statistics generated by the failure rate method are the hazard rate and the cumulative failure rate. The hazard rate gives the probability that an offender who has survived to the beginning of a time period will fail during that period. There has been some debate in the criminological literature about how best to estimate the risk of offending after a specified time (see Berecochea et al, 1972), but the hazard rate provides a well defined measure of this risk.

The cumulative failure rate measures the probability of failure at the end of a specified time period. If a fixed follow up period for all individuals were to be chosen, then the final failure rate would be equal to the proportion of the whole group reconvicted.

There are several alternative methods of failure rate analysis. Maltz (1984) and Schmidt and Witte (1988) have produced the most definitive reviews to date on their use in recidivism research. Parametric models attempt to fit well defined curves to recidivism data but there is no universal agreement at present on which model or family of curves provide the best "fit". The first use of a parametric model appears to have been by Carr-Hill and Carr-Hill (1972) who estimated an exponential model. Stollmack and Harris (1974) explicitly considered an exponential survival model, while Maltz and McCleary (1977) extended this work by considering a split population model leading to the incomplete exponential distribution. Harris and Moitra (1978) introduced the Weibull model while Schmidt and Witte (1988) have tested a variety of models including the log-normal, log-logistic and La Guerre models.

It is perhaps unsurprising that several different models have been proposed given the different recidivism

criteria which have been used. U.S. studies using re-imprisonment as the criterion need a model that allows the hazard rate to increase at first before declining as time at risk increases. This is because there is very little chance that the criminal justice system will detect, re-convict and re-imprison a guilty offender and transfer that prisoner back to a State or Federal Prison very soon after release - even if the prisoner were to re-offend almost immediately. If the time to re-offend is used as the criterion it is much more likely that a model with a continually decreasing hazard rate will be required.

The absence of a dominant model provides a problem for the data in this study where the two principal groups for comparison were at risk for different time periods. The "before" group was at risk for between 3 years 6 months and 5 years, while the "after" group was at risk for between 2 years and 3 years 6 months. The choice of an inappropriate curve could bias the results for one group against the other.

The alternative approach is to use a <u>non-parametric</u> method of failure rate analysis. This approach generates an estimate for each point on a recidivism curve, instead of fitting a curve of any particular

shape. This method was chosen as more appropriate for the current study since the point estimates are not forced into any predetermined pattern. The use of non parametric models is discussed by Cox (1984) Barton and Turnbull (1981) and Schmidt and Witte (1988). The analysis was carried out using the "Lifetest" procedure in the SAS package.

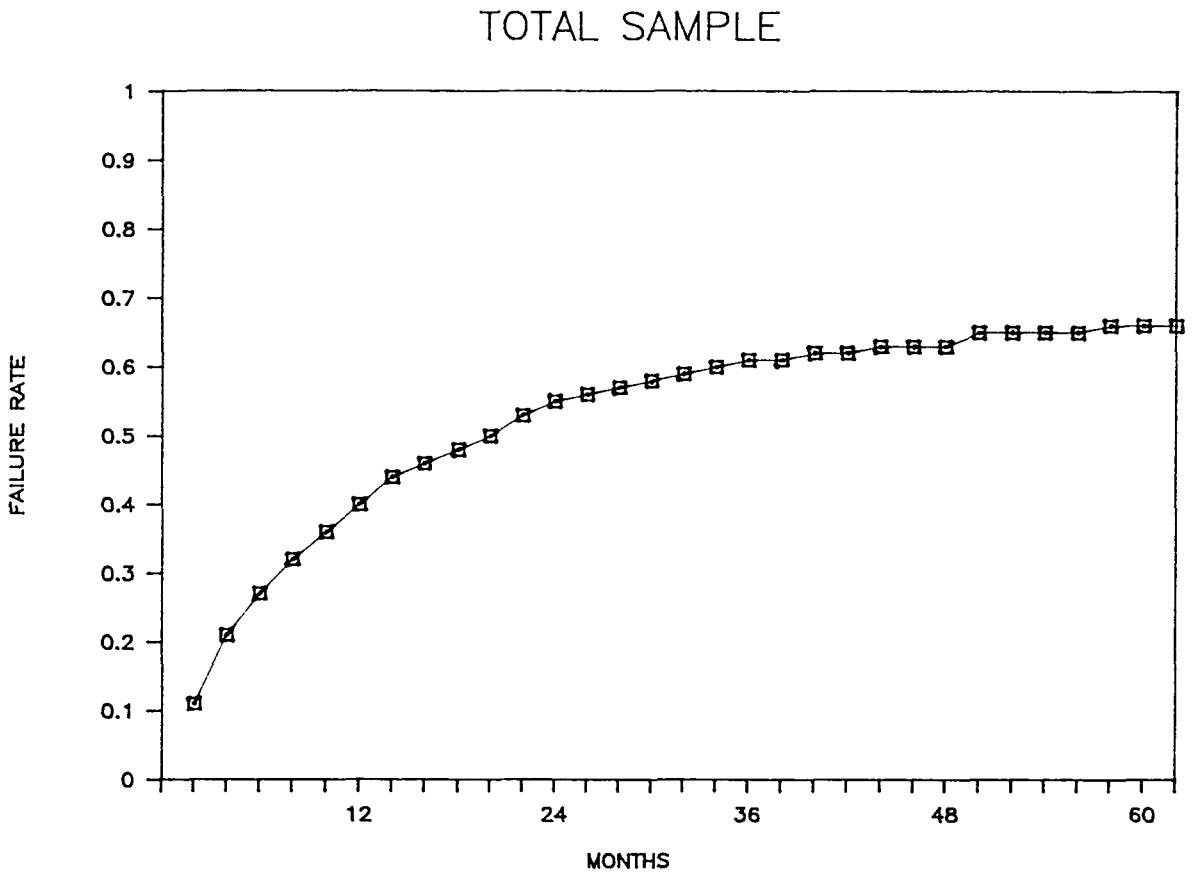
5.3 RESULTS

The key results of the recidivism study are presented here. They include the pattern of recidivism for the whole sample, the degree of recidivism risk over time after release, the before/after comparison and a comparison of some special subgroups of released offenders.

5_3.1 THE WHOLE SAMPLE

The pattern of recidivism for the whole sample is presented in figure 7. This graph indicates a steeply rising curve of reconviction in the early months after release and a gradual flattening out of the curve as time goes on, particularly after a period of about 30 months.

Figure 7



The estimate of the 5 year reconviction rate is 65%. The criterion of any reconviction is a relatively tough one and it should be pointed out that, under the alternative criterion of reconviction and return to prison, the 5 year recidivism estimate is 38%.

This indicates that courts judged a large proportion of the new offences to warrant a non-custodial penalty - in many cases, a fine.

5.3.2 THE HAZARD RATE

Figure 8

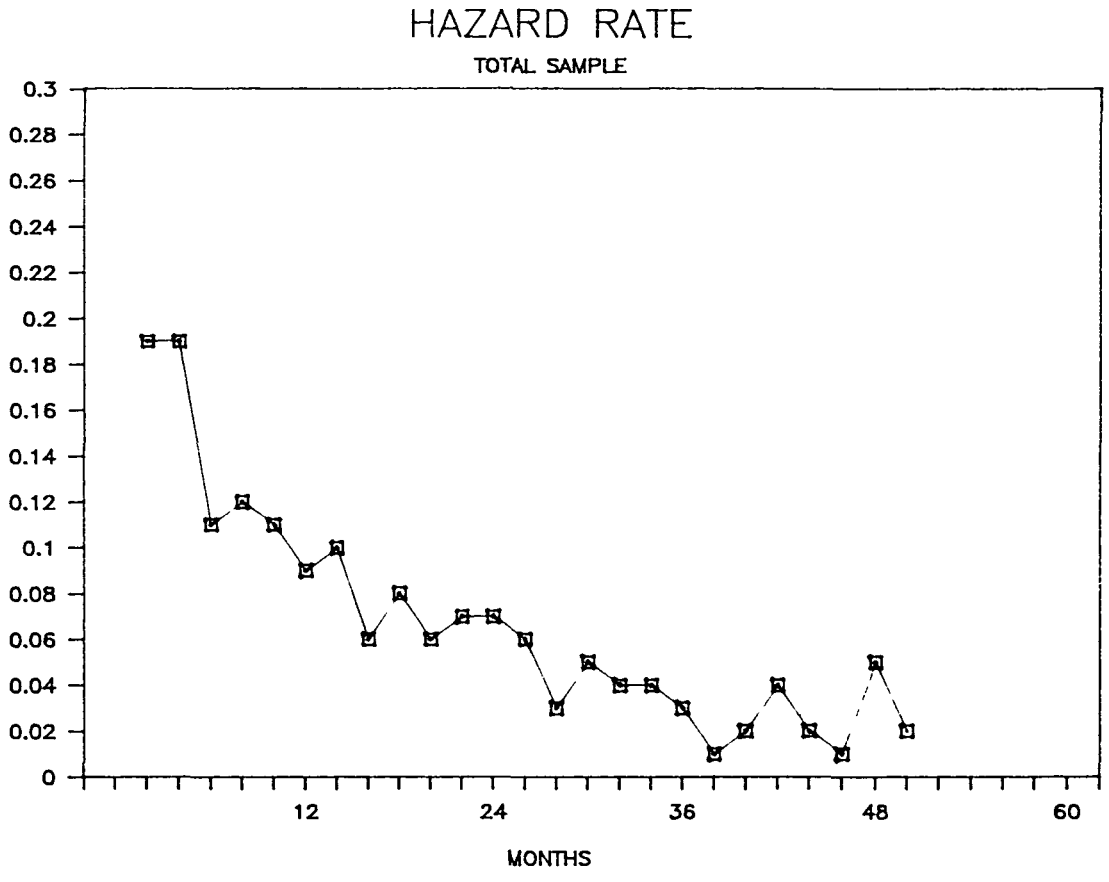


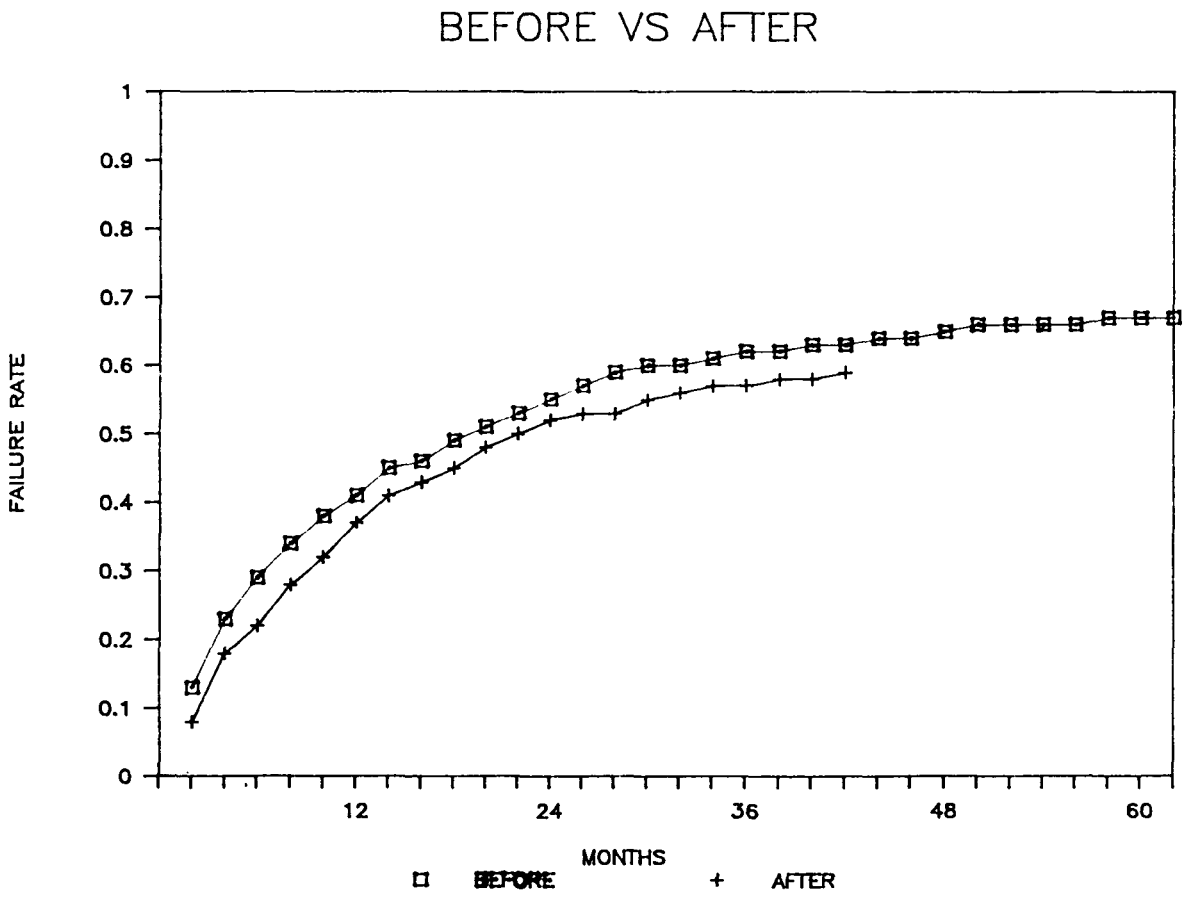
Figure 8 illustrates more clearly the variation in the risk of failure of the complete sample over time. The graph shows that during the early months of freedom, released prisoners are at far greater risk of failure than in later months. An alternative interpretation is that one or more subgroups of the population are highly likely to be reconvicted and that the early reconviction of such groups leaves behind a far less risky population with lower probability of reconviction.

This graph indicates the particular importance of monitoring and assisting released prisoners in the early months after release.

5.3.3 THE "BEFORES" AND "AFTERS"

The results of the principal comparison are presented in figure 9. This shows that those released on or after December 20, 1983 had slightly lower recidivism rates than those released before this date. The 3 year failure rate estimate is 62% for the "befores" and 59% for the "afters", but the difference between the groups is not statistically significant.

Figure 9



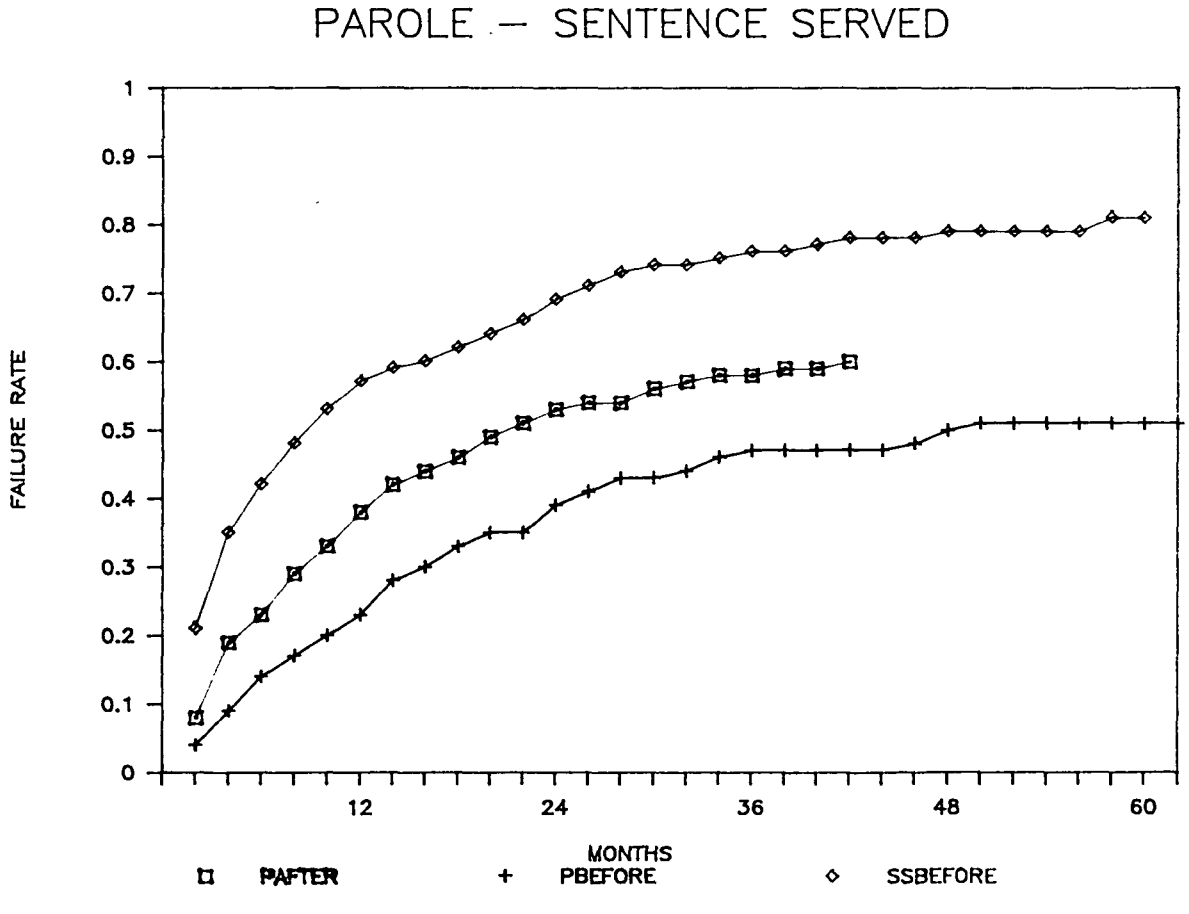
The "befores" consisted of selected parolees and prisoners released unconditionally and without supervision, while the "afters" were released on parole and hence with mandatory supervision. The results here are consistent with a number of other studies on the effects of parole on recidivism rates. These studies give results which lead to a somewhat less pessimistic interpretation than much of the "treatment" literature, and it is perhaps ironic that Robert Martinson, one of most trenchant critics of treatment programs, put in a plea to "save parole supervision" on the basis that parole was more successful in terms of recidivism than unconditional release (Martinson, and Wilks 1974).

Gottfredson et al (1982) reviewed a number of studies which compared recidivism rates of prisoners released on parole and unconditionally. They summarised the results as indicating that there is a small but non permanent effect of parole supervision on recidivism. The results of the research undertaken by Gottfredson et al. are themselves complex since the researchers used three different criteria for recidivism. The third criterion - any new court commitment during a five year follow up period - was the most even handed in comparing

parolees with prisoners released unconditionally. These results indicated an advantage for parolees over unconditionally released prisoner even when statistical controls for different risk groups were used.

The present study does not present a pure comparison of parolees with unconditionally released prisoners, but it does suggest that increasing the proportion of parolees among released prisoners reduces overall recidivism rates by a small amount. There is no suggestion that this small effect is limited to the period of parole supervision.

Figure 10



Another interest of the research was to look at the performance of selected parolees and unconditionally released prisoners prior to the parole changes and to compare each of these groups with the unselected parolees after December 1983. These results are presented in figure 10. The graph shows that, by selecting approximately 40% of eligible long term prisoners, the Parole Board was able to achieve a difference in recidivism rates of 30% after both 3 years 6 months and 5 years.

The performance of the selected parolees was better than that of unselected parolees, followed by those released unconditionally. Reconviction rates at 3 years 6 months were 47%, 59% and 77% respectively.

5.3.4 SUBGROUPS OF THE PRISON POPULATION

The research being described did not have a major focus on individual factors or combinations of factors which were particularly related to recidivism. It is interesting to note, however, that there are associations between recidivism and age, sex, previous convictions and original offence which.

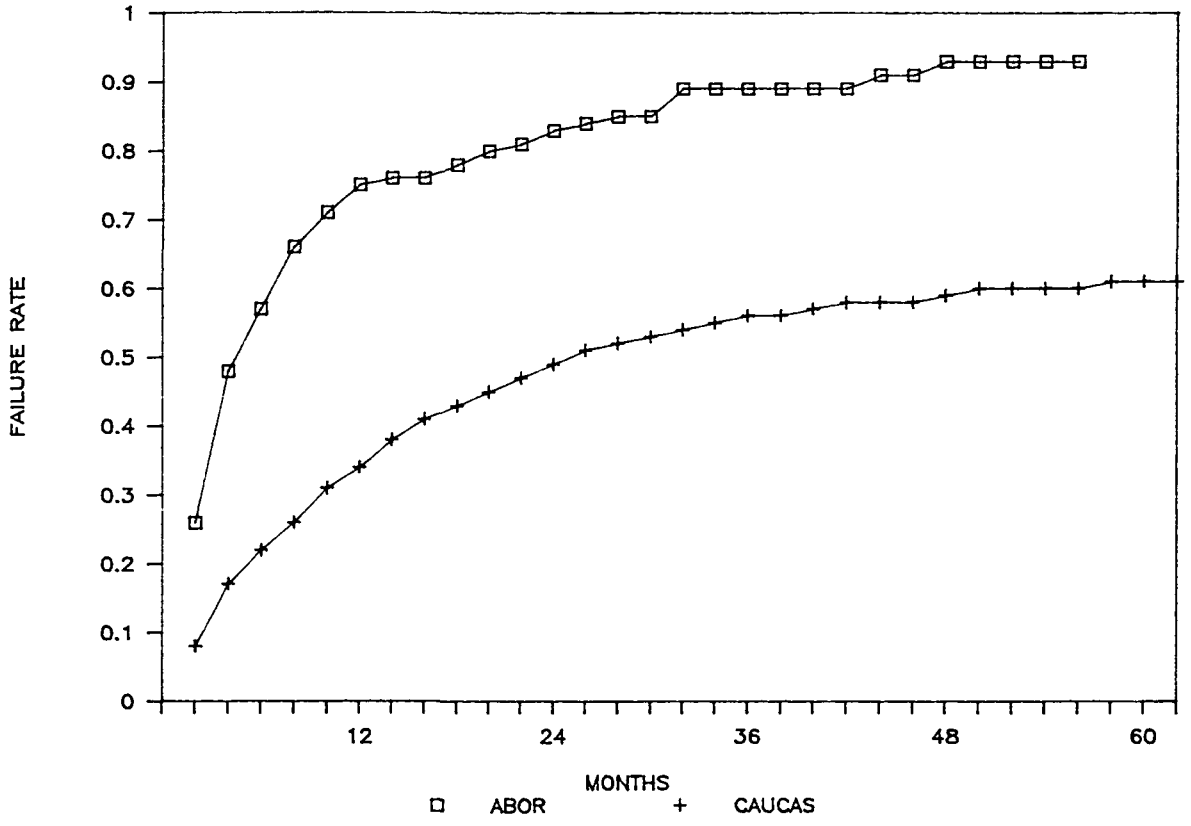
Male offenders have higher reconviction rates than females (64% compared with 35%), while younger offenders are more likely to be reconvicted than older offenders. The reconviction rates range from 77% for those 20 or under at release to 25% for those over 45. 30% of offenders with 0-5 previous convictions were reconvicted compared with 86% of these with over 45 previous convictions. Offenders imprisoned for theft (77%) were more likely to be reconvicted than those imprisoned for robbery (67%),sex offences or offences against the person (51%) and drug offences (43%).

The final graph to be presented is figure 11. This shows the recidivism rates of Aboriginal offenders against those of non-Aboriginal offenders. The results demonstrate a very similar pattern to those found recently in Western Australia (Broadhurst et al, 1988), although the recidivism criterion used in Western Australia was re-imprisonment.

The graph shows the very high reconviction rates of Aboriginal ex-prisoners, particularly in the first twelve months after release. The five year reconviction rate for Aboriginal offenders is 93% compared with the non-Aboriginal rate of 61%.

Figure 11

RACE



The study by Broadhurst et al. estimated a lifetime rate of return to prison for Aboriginal men of 80%, and for non-Aboriginal men of 50%. The median time of return to prison for Aboriginal men was 11 months compared with 19 months for non-Aboriginals.

The South Australian data show that 50% of the Aboriginal ex-prisoners have been convicted within 6 months, but this is based on date of offence rather than date of re-imprisonment.

5.3.5 SUMMARY

The results of the recidivism research show that the recidivism rate of all released prisoners is now slightly lower than it was before, but the difference is not statistically significant. Now that a new "steady state" has been reached, it appears that prisoners are serving approximately the same time in prison as before but their recidivism rates are slightly lower.

The research has drawn attention to the particularly high risk of reconviction in the early months after release and the relatively low probability of relapse for released offenders who have remained free of conviction for 30 months or more.

The recidivism result in itself does not show a significant advantage for the new system, nor were any expectations created that this would be the case. The results do show however that the new system is marginally better than the old in this regard.
A speculation, unanswered by the current research, concerns the effectiveness or otherwise of imprisonment itself. In a 1987 television program, "Out of Sight, out of Mind", the extremely poor physical conditions at many Australian prisons were exposed and the harmful physical and psychological effects of imprisonment portrayed. The

program stated that 60% of released prisoners would be re-imprisoned within two years, often for more serious offences, and that the harmful effects of imprisonment itself were to blame. The present study, and a basic knowledge of criminal justice processes, does not support such an extreme statement of the post release consequences of imprisonment.

While the five year reconviction rate in this study was 65%, there were many less serious offences included in that measure. The courts decided that 38% of released prisoners had, within five years,committed crimes serious enough to warrant re-imprisonment. Yet it is difficult to isolate the effect of one prison term when the average number of previous convictions was 22. Nor does the evidence from our study support a case for the effectiveness of imprisonment. Given that our sample of released prisoners had been released after serving a sentence of one year or more, it was to be expected that, purely by a "regression to the mean" effect, there would be fewer serious offences among the reconviction than the original convictions.

The recidivism of released prisoners is, in one sense, irrelevant to the conditions experienced by them prior to release. These conditions merit consideration in their own right for their immediate rather than their

future consequences. The effectiveness of imprisonment in Australia awaits some future research, perhaps along the lines of that conducted by Petersilia (Petersilia, 1986) in California.

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