



Research Publication

Truth in Sentencing. Impact of the Sentencing Act, 1989: Report 1

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SUMMARY

The Sentencing Act, which commenced on the 25th September 1989, was introduced to "restore truth in the sentencing system in New South Wales". This study seeks to determine the effect of the Sentencing Act, 1989 on the size of the New South Wales prison population and to examine changes in sentencing practices following the introduction of the Act. The time served and sentences imposed for a group of prisoners sentenced before the change in legislation (prisoners discharged between 1st January 1989 and 30th June 1989) are compared with those sentenced after the change in legislation (prisoners received between 1st October 1989 and 31st March 1990). The principal findings, for the period sampled, are outlined below.

1. The average time (to be) served in custody has increased.

- * The average minimum or fixed terms handed down following the change in legislation (294 days) are significantly longer than the average time served in custody prior to the change in legislation (244 days).
- * The overall increase of 50 days in the average time to serve in custody is equivalent to an overall increase in the prison population of 525 additional sentenced prisoners held on any day.
- * It is estimated that the increase in the prison population will be most marked during the period 4 - 17 months after the introduction of the legislation, i.e., from February 1990 to March 1991.
- * Minimum terms handed down soon after the change in legislation tended to be longer than those handed down in more recent months.

2. Less prisoners are receiving periods of community supervision and for those with periods of community supervision, the average period of supervision is shorter.

- * After the change in legislation a significantly smaller proportion (31.8%) had sentences which included a period of community supervision than before (56.0%).
- * The average period on community supervision, for those given any community supervision, was much shorter following the change in legislation (205 days) than prior to the change in legislation (799 days).
- * The ratio of the period on community supervision to the period confined in custody has decreased from 2.40, on average, before the change in legislation to 0.39, on average, after the change in legislation.

3. The average aggregate sentences handed down following the change in legislation are shorter.

* The average aggregate sentence (sum of minimum and additional terms) handed down following the change in legislation (360 days) was shorter than the average aggregate head sentence prior to the change in legislation (738 days).

INTRODUCTION

The Sentencing Act commenced on 25th September, 1989, replacing the Probation and Parole Act, 1983. This Act was introduced to "restore truth in the sentencing system in New South Wales" (Hansard, 10.5.89, p. 7906). It was designed "to bring certainty to sentencing in this State ... (and) ... to ensure that the public and prisoners know exactly when a sentence shall commence and exactly when a prisoner will be eligible for consideration for parole" (Hansard, 10.5.89, p. 7910). The objects of this Act are stated to be:

- "(a) to promote truth in sentencing by requiring convicted offenders to serve in prison (without any reduction) the minimum or fixed term of imprisonment set by the court; and
- (b) to provide that prisoners who have served their minimum terms of imprisonment may be considered for release on parole for the residue of their sentences."

The Act was described as turning "the sentencing process on its head" (Hansard, 10.5.89, p. 7906). The language of sentencing changed under the new Act which no longer used the terms "head sentence", "non-parole period" and "non-probation period" but rather introduced the terms "fixed term", "minimum term" and "additional term". The "minimum term" is that period which must be served in custody. The "additional term" is that part of the sentence during which the person may be released on parole. The sum of the minimum term and the additional term ("total sentence") would be equivalent to that which used to be termed "head sentence". The "fixed term" is similar to the minimum term in that it is the period which must be served in custody, however unlike the minimum term, it has no additional term specified. Sentences of six months or less are required, under the Act, to be fixed terms.

Described as "revolutionary" (Hansard, 11.5.89, p. 8143) this Act abolished all forms of remission (time previously deducted from both the non-parole period and head sentence), established a 1:3 ratio of the additional term to the minimum term and removed the presumption in favour of parole for certain prisoners. Not all prisoners will be released at the expiry of their minimum term. Instead of using remission as an incentive for good behaviour while in gaol, the Act provides for Visiting Justices dealing with major breaches of prison discipline to be able to increase, by up to 28 days, the period which a prisoner must spend in gaol. Prisoners whose minimum plus additional terms sum to more than three years are not released automatically to parole at the expiry of their minimum period, rather they are considered for release by the Offenders Review Board.

The potential effect of the Sentencing Act on the size of the N.S.W. prison population was of concern. In the Act's Second Reading Speech the Minister for Corrective Services emphasized

that "the Government is not seeking to make sentences longer" (Hansard, 10.5.89, p. 7907). This was echoed by the guide to the Sentencing Act which was published by the Department of Corrective Services in which it was stated that it was "not the Government's intention that, as a consequence of the Sentencing Act, longer sentences be served. It will mean that the operation of the Act will not heighten the overcrowding problem with which we are currently dealing" (N.S.W. Department of Corrective Services, 1989, p. 7). In contrast, the member for the Opposition stated: "As the legislation now stands, the surest outcome will be a massive growth in the number of people in prison" (Hansard, 11.5.89, p. 8135). In Chan's (1989) paper on sentencing violent offenders she argued "that unless the Government gives express legislative direction to the judiciary to adjust their sentences and accepts responsibilities for educating the public about the consequences of the Act, prison sentences in New South Wales will increase dramatically, especially for violent offenders" (p.3).

During the Second Reading speech for the Sentencing Bill, concern was expressed by the member for the Opposition about: the lack of guidelines for the judiciary in how its members should amend their sentences; the curtailment of the discretionary powers of judges to vary sentences according to circumstances of individual cases; the likely massive growth in the number of people in prison and the treatment of parole as an optional extra (Hansard, 11.5.89).

The current study seeks to address two main research questions:

- a) What is the likely effect of the change in legislation on the size of the N.S.W. prison population, that is, do offenders tend to spend a different period of time in gaol following the legislation they did than prior to it?;
- b) Have judicial officers (judges and magistrates) changed their sentencing practices following the change in legislation?

METHODOLOGY

In order to determine the effects of the Sentencing Act, 1989 on the size of the N.S.W. prison population and the sentencing practices of judicial officers, it is necessary to compare the sentences imposed and time served for those sentenced before the change in legislation with those sentenced after the change in legislation. This study is restricted to an examination of sentences of imprisonment, as it is to these sentences that the Sentencing Act applies. The Sentencing Act does not directly affect other sentencing options such as bonds, fines, community service orders, etc.

The "Before Group" in this analysis were sentenced prisoners discharged from N.S.W. gaols during the six month period 1st January, 1989 to 30th June, 1989. Excluded from this analysis were prisoners who had been discharged from a period of imprisonment in default of payment of a fine (fine defaulters), life sentence prisoners, forensic patients, offenders sentenced only for offences against Commonwealth legislation and periodic detainees. Also excluded were prisoners whose period of imprisonment had been interrupted by a period at large in the community such as escapees and offenders returned to gaol for breach of parole or licence. Since this "Before Group" had already been discharged, their actual time served in custody was known. The use of a "discharge cohort" for the "Before Group" had a further advantage of excluding all prisoners who would have been in custody at the time the Sentencing Act was introduced ("Transition Prisoners") and whose sentences had to be modified to take into consideration the transitional remission entitlements.

The "After Group" were new sentenced receptions received after the change in legislation. The initial analysis included those received between 1st October, 1989 and 31st March, 1990. Excluded from the analysis were prisoners received into N.S.W. gaols who did not come under the scope of the Sentencing Act, that is, fine defaulters, forensic patients, offenders sentenced only for offences against Commonwealth legislation and periodic detainees. Also excluded were prisoners received into custody to resume serving the balance of a previous sentence such as recaptured escapees and offenders returned to gaol for breach of parole or licence.

All data were obtained from the Department of Corrective Services' computerised Offender Records System by staff of the Computer Services Division. The data extracted are itemised in Table 1, below.

Table 1: Data extracted *

Before Group: Sentenced prisoners
discharged from N.S.W. gaols between
1.1.89 and 30.6.89 **

After Group: Sentenced prisoners
received into N.S.W. gaols between
1.10.89 and 31.3.90 **

1. Identification No. (M.I.N.)	1. Identification No. (M.I.N.)
2. Sex	2. Sex
3. Date of birth	3. Date of birth
4. Sentence commencement date	4. Sentence commencement date
5. Actual date of release	5. Earliest possible date of release
6. Expiry date of aggregate head sentence	6. Expiry date of aggregate sentence
7. Discharge type code	7. Reception type code
8. Aggregate head sentence in days (without remission) [(6)-(4)]	8. Total sentence in days [(6)-(4)]
9. Actual time served in custody in days [(5)-(4)]	9. Aggregate minimum term or fixed term [(5)-(4)]
10. Time under supervision in days [(6)-(5)]	10. Aggregate additional term [(6)-(5)]
11. Most serious offence	11. Most serious offence
12. Head sentence for most serious offence	12. Minimum term or fixed term for most serious offence
	13. Additional term for most serious offence

* Data were extracted from the N.S.W. Department of Corrective Services' computerised Offender Records System.

** Excluded from the analysis were: fine defaulters, life sentence prisoners, forensic patients, offenders sentenced only for offences against Commonwealth legislation, periodic detainees, recaptured escapees, offenders returned to gaol for breach of parole or licence.

In addition to sentencing information, data were extracted on basic demographic factors such as age and sex so that any difference in the "Before" and "After" Groups on these factors could be allowed for and not attributed to the Sentencing Act.

The sentencing of criminal offenders is a complex process. Variability in the sentences handed down can be caused by a large number of factors including:

nature of the offence,
circumstances surrounding the offence,
criminal history of the offender,
sex of the offender,
age of the offender,
employment history of the offender,
family and other social support available to the offender,
legal representation,
presentation in court,
sentencer,
community attitudes to that offence at that time,

to name a few. In this study we wanted to isolate the effect of the change in legislation on sentencing. In order to do this, the most easily measurable factors of age and sex of the offender were statistically controlled for in this study by using the Analysis of Covariance technique which enables differences in sentencing patterns over and above those attributable to sex and age of the offender to be isolated. Where numbers allowed, different categories of most serious offence were analysed separately to reduce the variation in sentencing expected when considering vastly different types of offences together. It was not practical, and in some cases not possible, to control for other factors which could affect sentences handed down, e.g., criminal history of the offender, circumstances surrounding the offence, presentation in court, etc. It was necessary to assume that these factors can vary within the two groups and that there were no systematic differences between those in the Before Group and those in the After Group which would bias the sentences handed down.

Analysis

The size of the prison population held at any one time depends on both the number of prisoners received and their length of stay. In order to examine the effects of the Sentencing Act on the size of the N.S.W. prison population the average actual time served in custody (item 9) for the Before Group was compared with the average aggregate minimum term or fixed term (item 9) for the After Group.

The effects of the Sentencing Act on the sentencing practices of judicial officers were examined along a number of dimensions:

- the aggregate head sentence (item 8) of the Before Group was compared to the total sentence (item 8) for the After Group;
- the percentage of the Before Group released without any community supervision was compared to the percentage of the After Group sentenced to "fixed terms" requiring no after-care supervision;
- for those with after-care supervision, the maximum potential time under community supervision (item 10) for the Before Group was compared with aggregate additional term (item 10) for the After Group;
- considering each category of most serious offence separately, the head sentence for most serious offence (item 12) for the Before Group was compared to the total sentence for the most serious offence for the After Group. Similarly, considering each category of most serious offence separately time in custody for the Before Group was compared with the minimum (or fixed) term for the After Group. The maximum potential time under community supervision for the Before and After Groups for each category of most serious offence were also compared;

- changes in sentencing practices over time following the introduction of the Sentencing Act were also examined. Differences in the aggregate minimum (or fixed term) were compared for prisoners commencing their sentences in each calendar month from October 1989 to March 1990. Similarly differences in additional terms and in aggregate sentences were examined for prisoners commencing their sentences in the different calendar months from October 1989 to March 1990.

RESULTS

The sex, age and most serious offence distributions for the Before Group (n=1832) and the After Group (n=1910) are outlined in Appendix 1.

1. Effect on the size of the N.S.W. prison population

The daily average number of prisoners held in N.S.W. gaols has been increasing since the 1984-85 financial year. The daily average of 4358 prisoners (excluding periodic detainees) for the most recent complete financial year (1988-89) was the highest this century. (For further information on past trends in the N.S.W. prison population refer to Appendix 2.) The prison population has increased still further during the current financial year, see Figure 1. It can be seen that the prison population was increasing prior to the introduction, and even the planning of, the Sentencing Act.

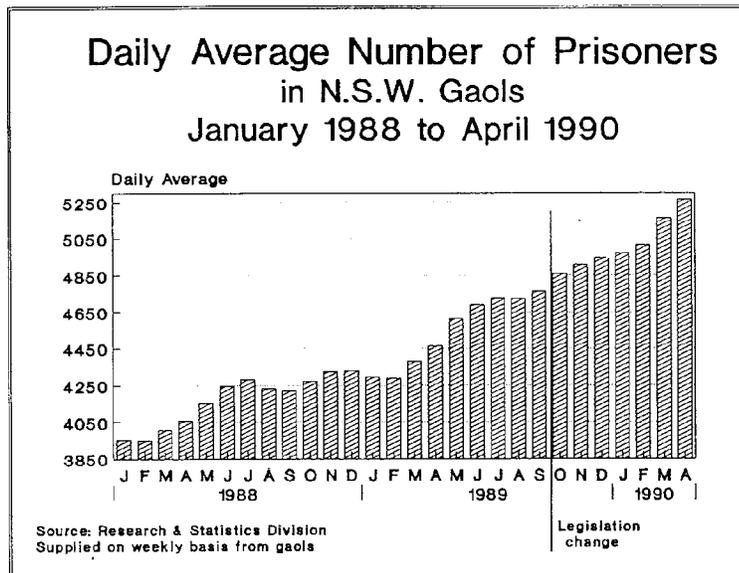


Figure 1

In order to gain an estimate of the effect of the Sentencing Act, the time served in custody (i.e. the non-parole period minus remissions or head sentence minus remissions) for the Before Group can be compared to the average minimum (or fixed) term set for the After Group. From Figure 2, it can be seen that since the change in legislation fewer people tend to be serving shorter periods in custody and more tend to be serving longer periods.

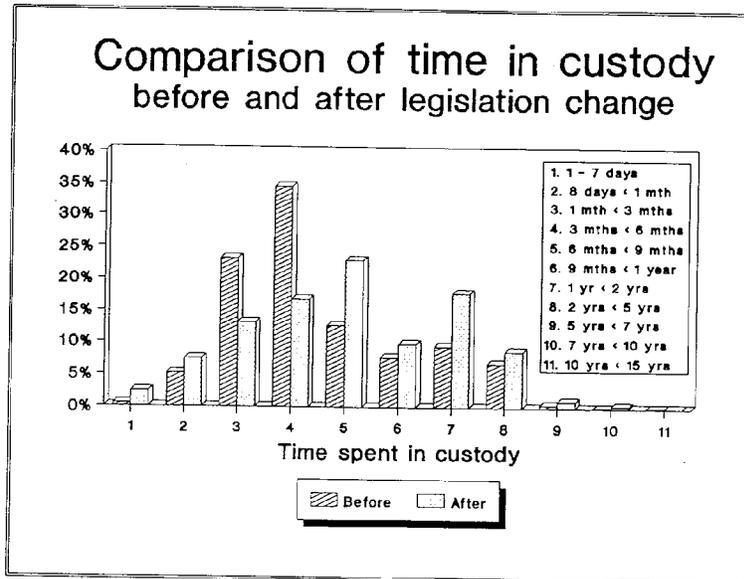


Figure 2

When differences in the composition of the Before and After groups in terms of sex and age (see Appendix 1) were statistically allowed for using an Analysis of Covariance (ANCOVA), it was found that the average minimum or fixed terms handed down following the change in legislation (294 days) were significantly longer than the average term served prior to the change in legislation (244 days) ($F_{1,3738} = 26.863, p < .001$).

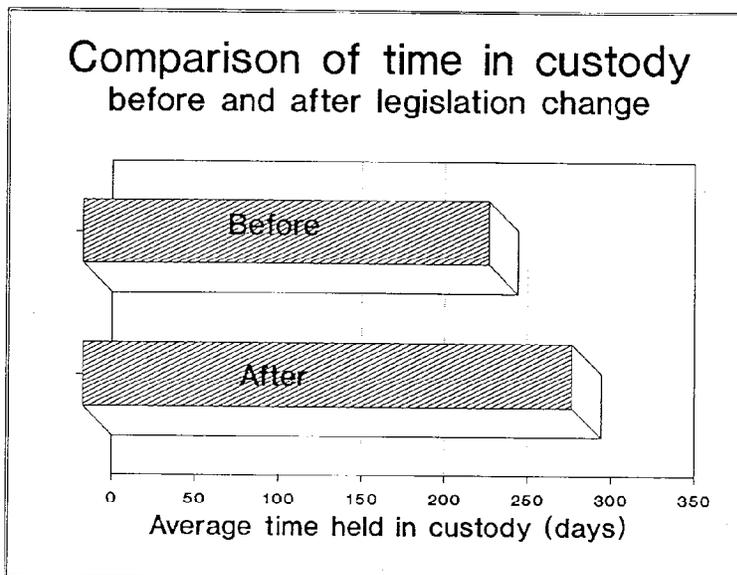


Figure 3

This pattern of the minimum term set after the change in legislation being longer than the period served in custody prior to the change was also apparent when prisoners were grouped by the category of their most serious offence and the sentence distributions compared for each most serious offence category. It was found that the average minimum or fixed term after the legislation change was longer for prisoners in each of the following most serious offence categories:

- * 'Assaults' (168 days Before versus 223 days After);
- * 'Sex offences' (580 days Before versus 846 days After);
- * 'Robbery' (750 days Before versus 965 days After);
- * 'Break & Enter' (273 days Before versus 424 days After);
- * 'Fraud' (180 days Before versus 320 days After);
- * 'Receiving' (122 days Before versus 196 days After);
- * 'Other theft' (151 days Before versus 250 days After);
- * 'Justice' (115 days Before versus 163 days After);
- * 'Driving' (108 days Before versus 153 days After)
- * and 'Licence and Registration' offences (83 days Before versus 124 days After)

(refer to Figure 4 and Appendix 3). The only category of most serious offence for which the average minimum or fixed term following the change in legislation was shorter was 'Offensive Behaviour' (102 days Before versus 39 days After). Other categories of most serious offence had too few numbers to test for the statistical significance of differences in averages.

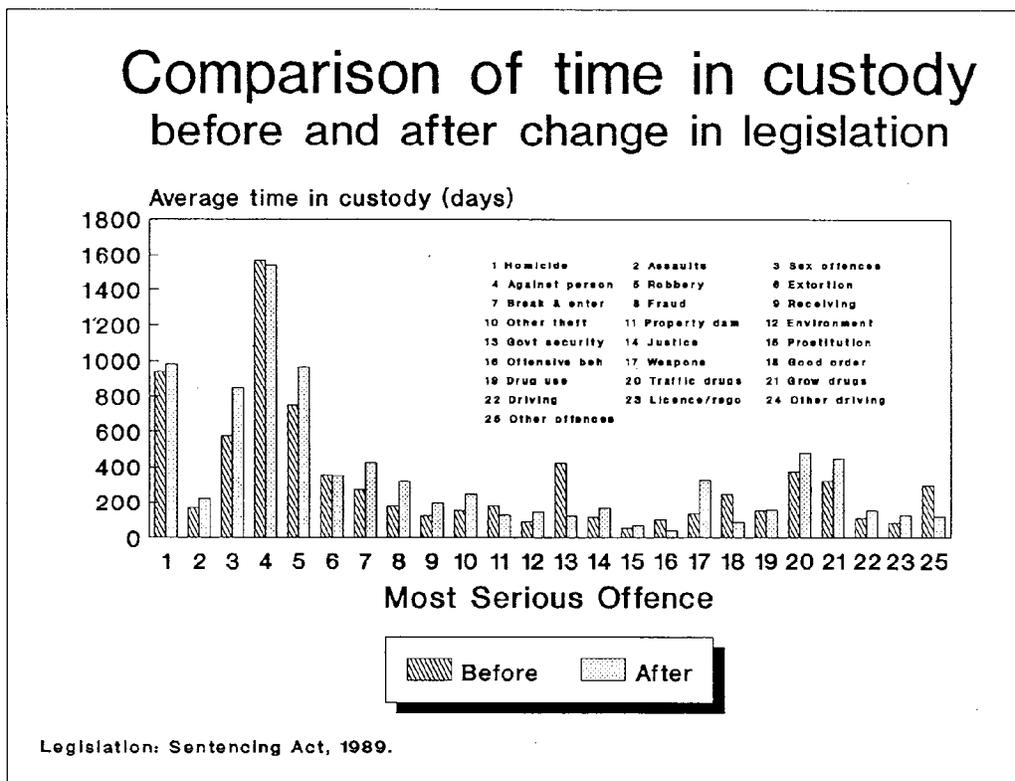


Figure 4

The overall increase of 50 (294 - 244) days (or 20%) in the average time to serve is equivalent to an overall increase in the prison population of 525 additional sentenced prisoners held on any day. It is estimated that the increase in the prison population will be most marked during the period 4 - 17 months after the introduction of the legislation, i.e., February, 1990 to March, 1991 (see Figure 5). (For further details on calculation of estimated increase and rate of increase please refer to Appendix 4.)

It should be noted that this estimated increase in the sentenced prison population is likely to be an underestimate in that it is based on all members of the After Group being released at the expiry of their minimum period. Not all prisoners will be released at the expiry of their minimum (or fixed) terms. It is possible, though expected to be a rare occurrence, that Visiting Justices may extend the sentences of some prisoners for infringements of prison rules. Those prisoners whose minimum plus additional terms sum to more than three years (139 prisoners or 7.3% of the After Group) are not released automatically at the end of their minimum period, rather they are considered for release by the Offenders Review Board.

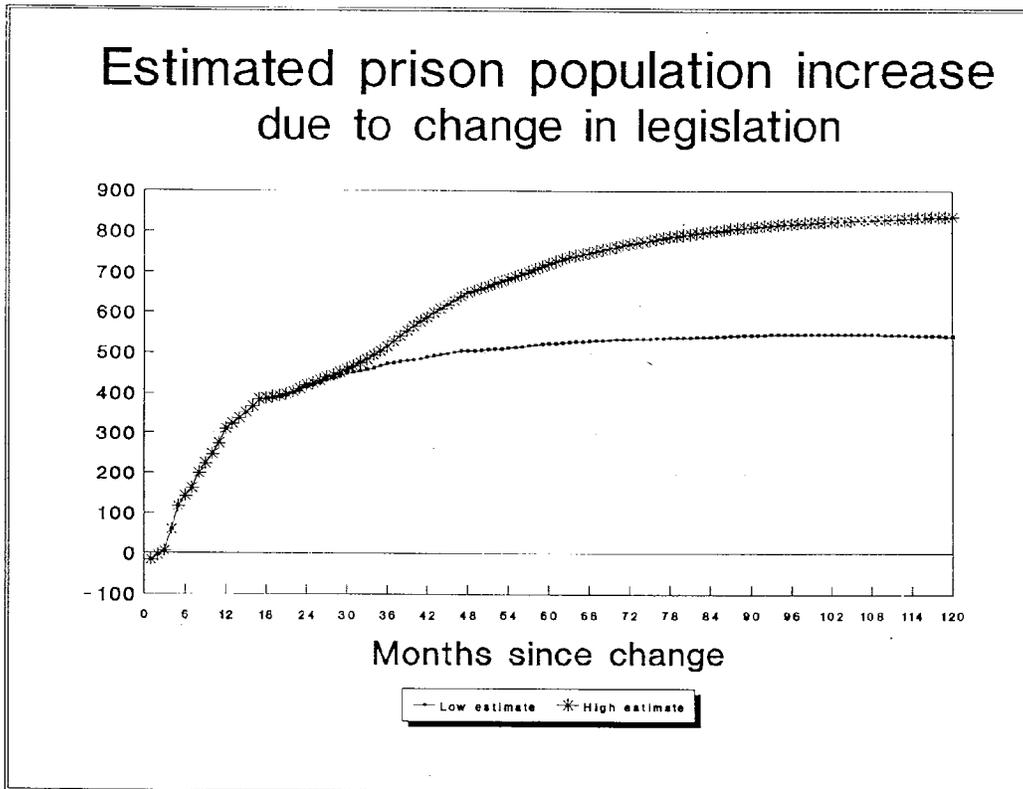


Figure 5

If, considering the other extreme, all of those whose release depended upon the discretion of the Offenders Review Board were held in custody for the maximum period (i.e. until the expiry of their additional period) this would result in an increase of 79 (323-244) days in the average time to serve which is equivalent to an increase of 831 additional sentenced prisoners held on any day. Hence, if future sentencing patterns remain unchanged, the expected increase in the size of the prison population would be between 525 and 831 additional prisoners. The two estimates of the increase in the prison population do not begin to diverge until approximately 27 months after the commencement of the legislation (i.e. December, 1991) that is, at the time of the expiry of the minimum terms for those with sentences of more than three years.

It is of interest to note that unlike the periods served which remained fairly constant over the six months sampled prior to the introduction of the legislation (January to June, 1989), there have been differences in the average minimum or fixed terms handed down during the months following the introduction of the legislation (see Figure 6). When differences in the composition of those sentenced in the different months in terms of age and sex distribution were allowed for using an analysis of covariance, it was found that the minimum or fixed terms differed statistically significantly ($F_{5,1902} = 10.586, p < .0005$). More specifically, the average minimum terms and fixed terms handed down for prisoners whose sentences commenced in January 1990 and March 1990 were less than those handed down for prisoners whose sentences commenced in October, November and December, 1989. The average minimum and fixed terms handed down for those whose sentences commenced in November, 1989 and February, 1990 were both less than that handed down for those whose sentences commenced in October, 1989.

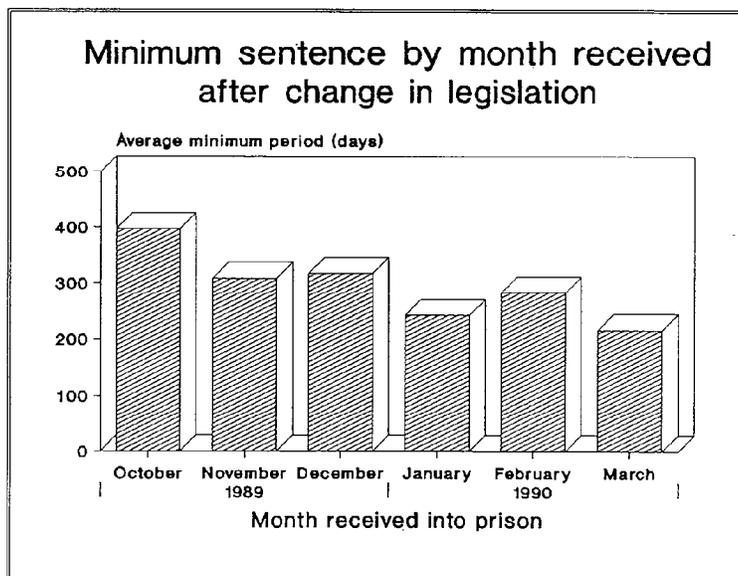


Figure 6

2. Effect on sentencing practices of judicial officers

It is common for a sentence of imprisonment to be composed of two components: a period in custody followed by a period of conditional liberty (parole, after-care probation or licence) in the community under the supervision of the Probation and Parole Service. In the past it was possible to have a relatively long head sentence comprised of a short period in custody, followed by a longer period of community supervision. This implied a threat that given any breach in the community, the offender could be returned to gaol to serve the balance of the entire period in custody. Given the parameters of the Sentencing Act, it was necessary that the sentences imposed by judges and magistrates would change from those imposed under the Probation and Parole Act, 1983. Under the Sentencing Act it was specified that "The additional term (potential period of supervision in the community) must not exceed one-third of the minimum term unless the court decides that there are special circumstances" (Section 5.3).

The changes in sentencing practices are considered below in terms of: the aggregate head sentence (aggregate total sentence); the proportion given sentences including a period of community supervision; the maximum length of the period of community supervision and the ratio of the period under community supervision to the period spent in custody.

a) Comparison of aggregate head sentences

Figure 7 clearly shows that in percentage terms, the distribution of length of aggregate sentence has changed since the legislation has been enacted. Under the new Sentencing Act, 1989, the total aggregate sentence given has been consistently less than that given before the legislation change. That is, sentence profiles since the legislation change have shown that these new aggregate sentences tend, in percentage terms, to be in shorter sentence length categories.

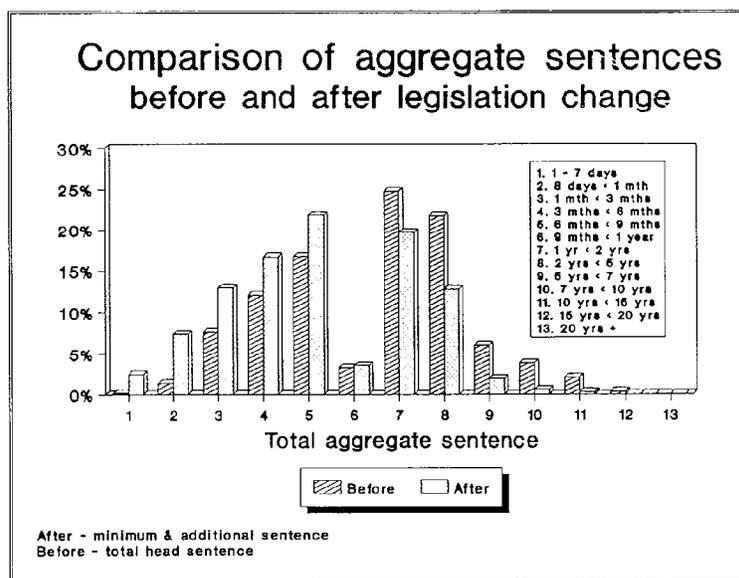


Figure 7

When differences in the composition of the Before and After groups in terms of sex and age were statistically allowed for, it was found that the average aggregate sentence handed down following the change in legislation (360 days) was shorter than the average aggregate head sentence prior to the change in legislation (738 days) ($F_{1,3741} = 226.990, p < .00005$). This is a reduction of 51% in the average aggregate head sentence given prior to the change in legislation.

The average aggregate sentence was shorter for the After Group for each of the following most serious offence categories:

- * 'Assaults' (483 days Before versus 267 days After);
- * 'Sex offences' (1810 days Before versus 1112 days After);
- * 'Robbery' (2369 days Before versus 1375 days After);
- * 'Break and enter' (870 days Before versus 523 days After);
- * 'Fraud and misappropriation' (577 days Before versus 383 days After);
- * 'Other theft' (429 days Before versus 288 days After);
- * 'Property damage' (526 days Before versus 147 days After);
- * 'Offensive behaviour' (261 days Before versus 42 days After);
- * 'Traffic Drug' (1174 days Before versus 635 days After);
- * 'Driving' (252 days Before versus 161 days After).

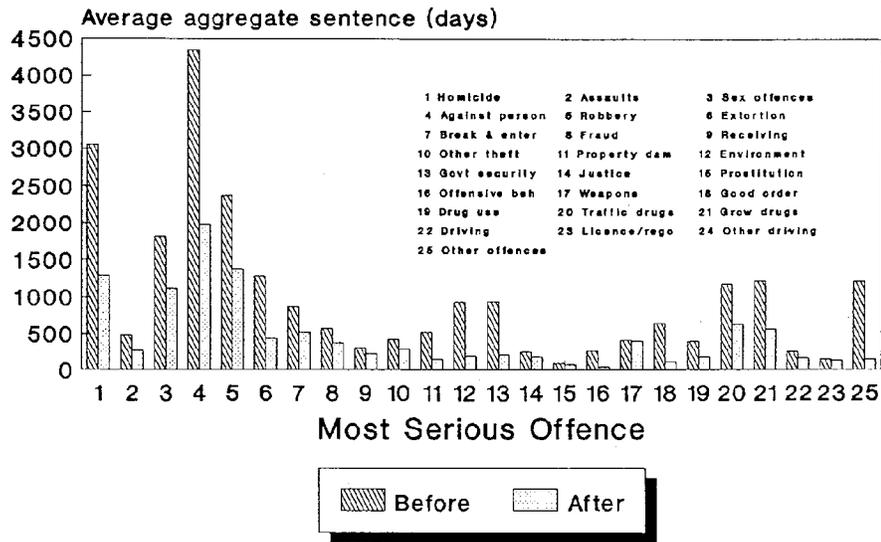
There were no most serious offence categories for which the average aggregate sentence was significantly longer following the change in legislation. The average aggregate sentence was not statistically different following the change in legislation for the 'Receiving', 'Justice Procedures', or 'Licence or Registration Offences' most serious offence categories. For further information please refer to Figure 8 and Appendix 3.

The average aggregate sentences handed down differed between the various months sentences commenced ($F_{5,1902} = 10.586, p < .0005$). The average aggregate sentence handed down for prisoners whose sentences commenced in January and March, 1990 was less than those handed down for prisoners whose sentences commenced in October, November and December, 1989. The average aggregate sentences handed down for those received in November, 1989 and February, 1990 were less than those handed down for those received in October, 1989. (See Figure 9.) These differences directly reflect the differences in minimum or fixed terms handed down, discussed previously.

b) Proportion receiving sentences including a period of community supervision

More than half of those in the Before Group (56.0%) were discharged to community supervision (after-care probation or parole). After the change in legislation a significantly smaller proportion (31.8%) had sentences which included a period of community supervision (i.e. had an additional term), $\chi^2 = 222.12, d.f.=1, p < .00005$.

Comparison of aggregate sentences before and after legislation change



Legislation: Sentencing Act, 1989

Figure 8

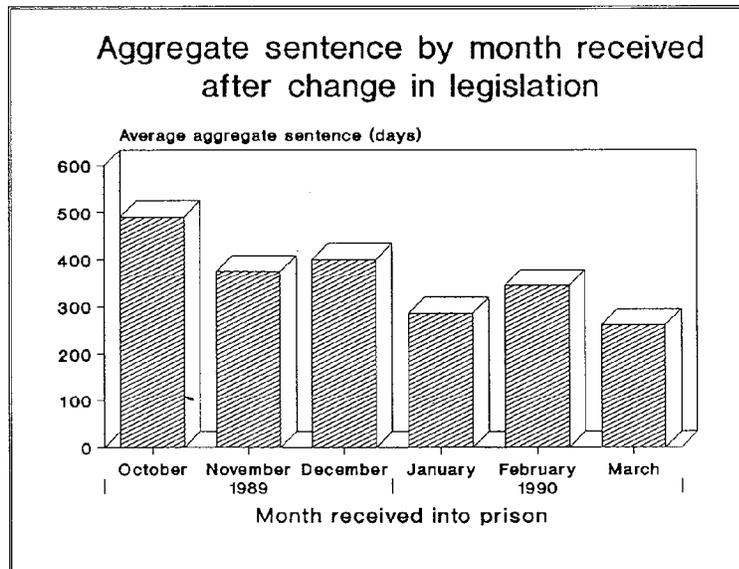


Figure 9

With aggregate sentences for prisoners convicted of a number of offences, it is possible that the additional terms imposed for earlier sentences are "swallowed up" by subsequent minimum or fixed terms which are accumulated. For this reason the sentencing patterns for only the Most Serious Offence for those in the After Group were also examined. Once again, the proportion receiving a sentence including a period of community supervision (31.5%) was significantly smaller.

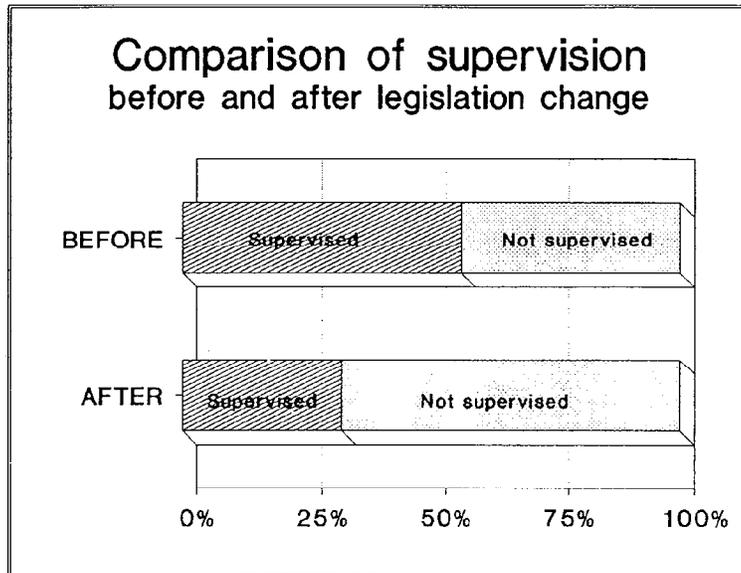


Figure 10

Under both the Sentencing Act, 1989 and the Probation and Parole Act, 1983 only offenders with sentences exceeding six months could be given a community supervision period (i.e. non-probation period or non-parole period under the earlier legislation or additional term under the Sentencing Act). This reduction in the proportion receiving sentences including a period of community supervision is a result of both:

- * a larger proportion of the After Group (59.6%) having sentences not exceeding six months for their most serious offence than the Before Group (38.2%), ($X^2 = 170.91$, d.f. = 1, $p < .0001$);
- * while the majority of those with sentences exceeding six months were given community supervision periods in both the Before and After Groups, those in the After Group (77.8%) were less likely to be given community supervision than those in the Before Group (88.0%), ($X^2 = 34.22$, d.f. = 1, $p < .0001$).

c) Length of community supervision

The periods of community supervision considered here are "maximum potential" periods of supervision. The average number of days on community supervision was calculated only for those who were given community supervision. For the Before Group, the number of days on community supervision was calculated as the number of days between release to parole or after-care probation and the expiry of the head sentence. In practice an offender may not have been supervised for this entire period as the Probation and Parole Service maintained the right of discretionary or early termination of community supervision. For the After Group, the number of days on supervision was equated to the number of days in the additional term. Once again this is a "maximum potential" period of supervision since not all prisoners will necessarily be released to community supervision at the expiry of their minimum terms.

For those whose sentences included a period of supervision, the periods of supervision were shorter following the introduction of the Sentencing Act, 1989 (see the distribution of periods under supervision in Figure 11). When the differences in the composition of the Before and After Groups in terms of sex and age were statistically allowed for, it was found that the average period on community supervision, for those given any community supervision, was much shorter following the change in legislation (205 days) than prior to the change in legislation (799 days) ($F_{1,1629} = 418.238, p < .0005$). This represents a reduction of 74% in the average maximum period of supervision handed down prior to the change in legislation.

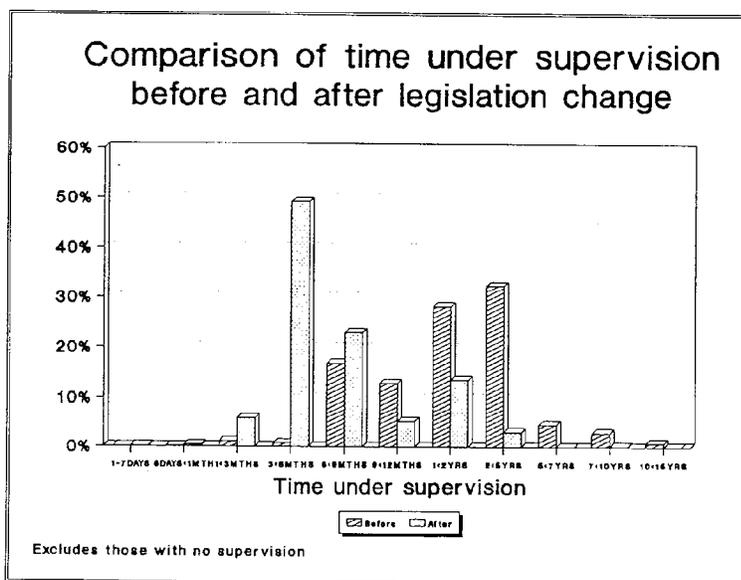


Figure 11

The average period on supervision was shorter for each of the following most serious offence categories:

- * 'Assaults' (597 days Before versus 192 days After);
- * 'Sex offences' (1272 days Before versus 322 days After);
- * 'Robbery' (1655 days Before versus 463 days After);
- * 'Break and Enter' (695 days Before versus 170 days After);
- * 'Fraud and misappropriation' (641 days Before versus 161 days After);
- * 'Other theft' (467 days Before versus 128 days After);
- * 'Traffic Drug' (910 days Before versus 241 days After).

There were no most serious offence categories for which average periods on supervision were significantly longer following the change in legislation (see Figure 12 and Appendix 3).

In summary, following the change in legislation fewer prisoners are being given periods of after-care community supervision. For those who are given periods of community supervision, the periods of supervision are shorter.

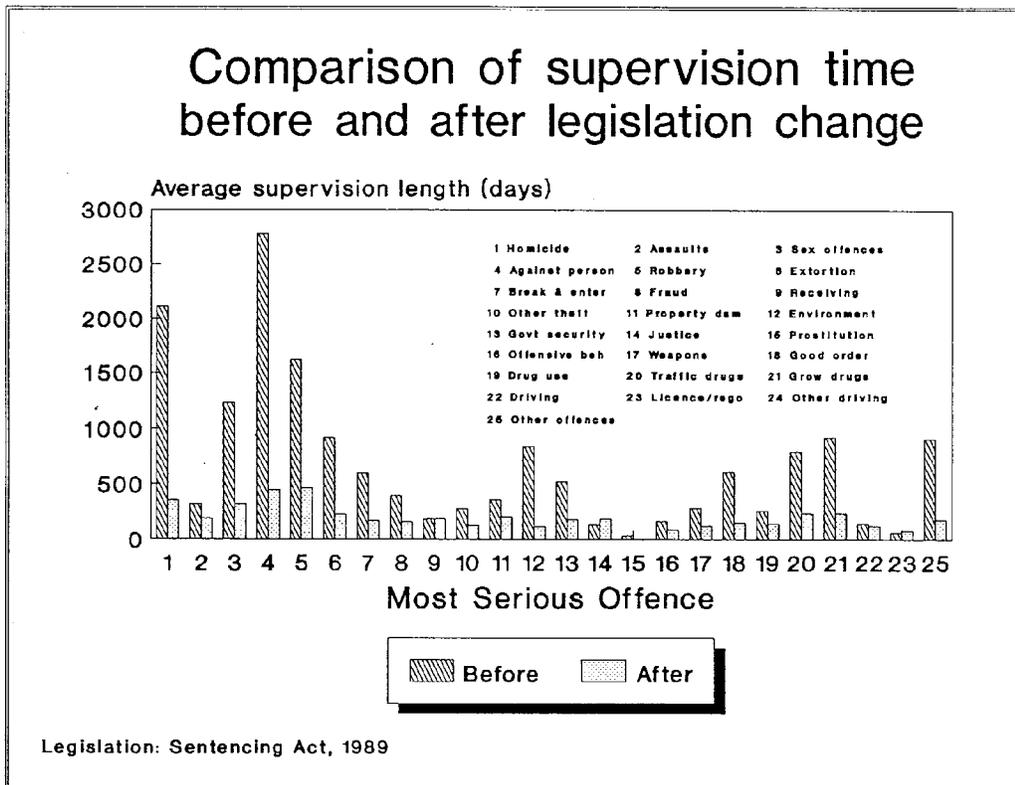


Figure 12

There were no statistical differences in the periods of community supervision handed down for prisoners received during the different calendar months (from October 1989 to March 1990) following the change in legislation ($F_{5,586} = 1.952, p < .084$).

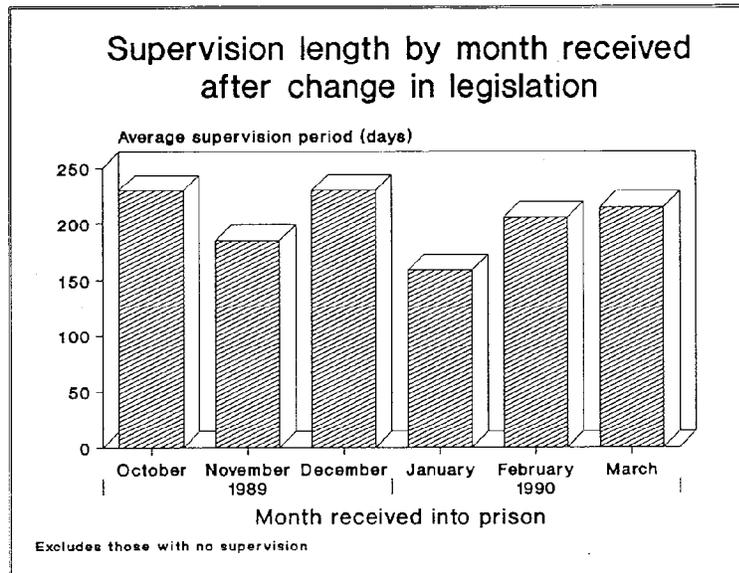


Figure 13

d) Ratio of period under community supervision to the period in custody

The ratio of the period on community supervision to the period confined in gaol has decreased since the Sentencing Act was introduced ($F_{1,2420} = 122.681, p < .0005$), refer to Figure 14. For those given community supervision, the period on supervision was, on average, almost two and a half (2.40) times as long as the period spent in custody prior to the change in legislation and just over one-third (0.39) as long as the period in custody following the change in legislation.

As stated previously, Section 5.3 of the Sentencing Act states that the "additional term must not exceed one-third of the minimum term unless the court decides that there are special circumstances". It is of interest to note that for those prisoners whose sentences commenced between 1st October 1989 and 31st March 1990, in only 7.1% of cases of those with an additional term did the additional term exceed 0.34 times of the minimum term.

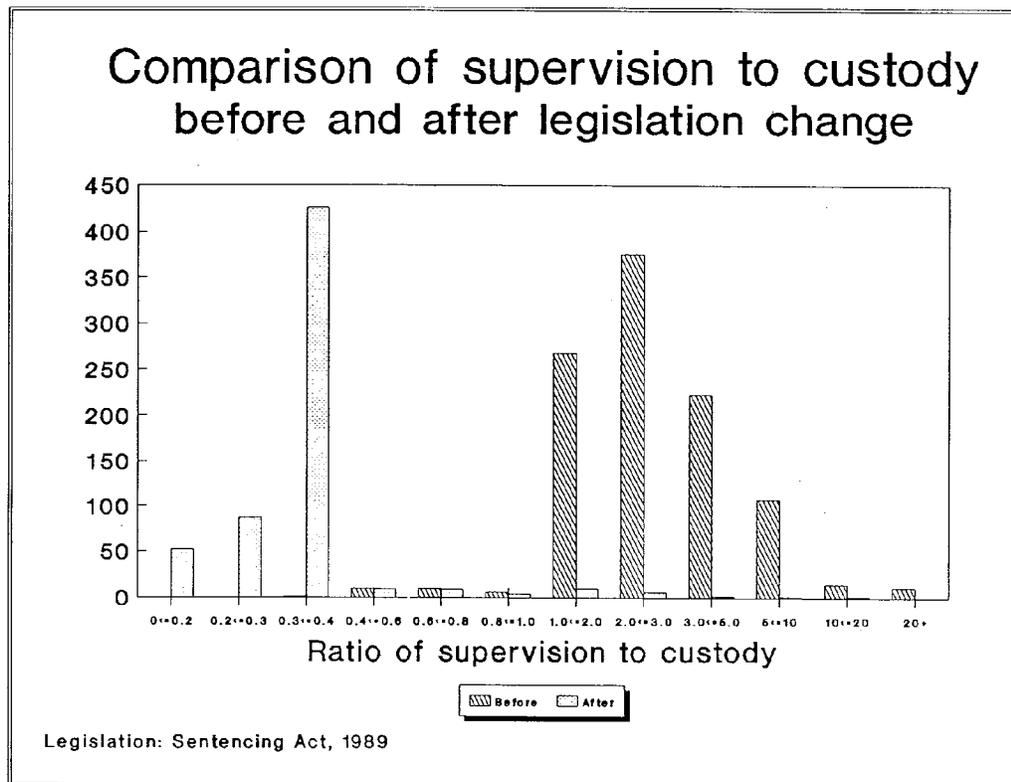


Figure 14

3. A further examination of sentencing patterns

As stated previously, the Sentencing Act ties the length of potential community supervision to the length of time spent in custody, which had not been the case under the Probation and Parole Act, 1983. Prior to the introduction of the new legislation it was not known how the Sentencing Act would affect the sentences handed down. Some of the possibilities which were considered are outlined below.

- i) If head sentences had been the primary concern previously, then under the new legislation one would expect that the total sentences handed down would resemble the old head sentences. This, however, would result in a much higher minimum term than that served under the previous legislation, as the new minimum period would need to be three-quarters of the old head sentence.
- ii) Another possibility would be that the new minimum terms would resemble the old non-probation or non-parole periods (for those with n.p.p.s) prior to the deduction of remission

or old head sentences prior to the deduction of remission (for those for whom n.p.p.s would not have been set previously). This would result in shorter supervision periods because these would, for the most part, be restricted to one-third of the length of the n.p.p. and hence would also result in shorter aggregate sentences.

- iii) A third possibility would be that the new minimum terms would be closer to the old n.p.p.s after remission had been deducted. That is, that the new minimum terms would resemble the terms actually served in custody under the Probation and Parole Act. While not leading to an increase in the prison population, this would also result in shorter community supervision periods and shorter aggregate sentences.

In order to examine patterns in sentences handed down, those whose sentencing patterns would not be confounded by accumulative sentences (i.e. those whose most serious offence was their only offence or whose sentences for other offences were all being served concurrently with their most serious offence) for the four most frequently occurring individual offences (in order to eliminate variation between different types of offences) were selected. Over one-fifth (22.6% of the Before Group and 21.7% of the After Group) of the sample were in gaol for one of four specific offences: 'Break, Enter and Steal' (B.E.S.), 'Stealing', 'Drive whilst Disqualified' (D.W.D.), or 'Assault Occasioning Actual Bodily Harm' (A.O.A.B.H.). For these subgroups of prisoners, the average minimum (or fixed) term for those in the After Group was compared with:

- i) $3/4$ x average head sentence for those in the Before Group (i.e., possibility i) above);
- ii) $3/2$ x average time served for those in the Before Group, i.e., the average period of N.P.P. or head sentence before remissions were deducted (i.e., possibility ii));
- iii) the average time served in custody for those in the Before Group, i.e. the average period of N.P.P. less remissions or head sentence less remissions (i.e., possibility iii)).

In addition the percentage change between average minimum (or fixed) term for the After Group and average time served in custody for the Before Group, and the percentage change between average minimum (or fixed) term for the After Group and $3/2$ x average time served in custody for the Before Group were calculated for each of the four individual offences (see Table 2).

The percentage change between the average head sentence for the Before Group and the average total sentences for the After Group are calculated for the four individual offences and displayed in Table 3. The percentage change in average maximum potential community supervision period is calculated and displayed in Table 4.

Table 2: Comparison of average minimum/fixed term handed down after change in legislation with time in custody and minimum sentence prior to deduction of remissions before change in legislation, for specific offences

(in days)

M.S.O.	After Group Minimum/Fixed Term	Before Group		Old time in custody	% change from old time in custody	% change from old N.P.P. before deduction of remi- ssion
		3/4 head sentence	3/2 time in custody			
Break, enter & steal	371.9	531.7	317.6	211.7	+ 75.7%	+ 17.1%
Stealing	171.5	189.4	148.8	99.2	+ 72.9%	+ 15.3%
Drive whilst Disqualified	111.2	101.8	122.4	81.6	+ 36.3%	- 9.2%
Assault OABH	218.7	315.8	220.4	146.9	+ 48.9%	- 0.8%
All offences*	268.7	442.8	297.2	198.1	+ 35.7%	- 9.6%

* Includes only those whose aggregate sentence was the same as the sentence for their most serious offence (M.S.O.)

From an inspection of the averages in Table 2, it would seem that there is no clear pattern linking the average minimum (or fixed) term after the legislation with the average time in custody or average minimum sentence prior to the deduction of remission before the change in legislation. The average minimum (or fixed) terms after the change in legislation for the two property offences ("Break, enter and steal" and "Stealing") were greater than both the average times in custody and the average minimum sentences prior to the deduction of remissions. The average minimum (or fixed) terms for the other two offences ("Drive whilst disqualified" and "Assault occasioning actual bodily harm") while larger than the average periods spent in custody, were less than the estimated average minimum sentences prior to the deduction of remissions.

Table 3: Comparison of average total sentence after change
in legislation with average head sentence before change in
legislation, for specific offences

(in days)

M.S.O.	Before Group	After Group	% change
Break, enter & steal	708.9	476.9	-32.7%
Stealing	252.5	194.4	-29.9%
Drive whilst Disqualified	135.7	113.6	-16.3%
Assault O.A.B.H.	421.1	261.1	-38.0%
All offences*	590.4	335.6	-43.2%

(Differences in averages not statistically significant.)

* Includes only those whose aggregate sentence was the same as the sentence for their most serious offence (M.S.O.).

Table 4: Comparison of average maximum potential period on
community supervision, for specific offences

M.S.O.	Before Group	After Group	% change
Break, enter & steal	497.2	170.6	-65.7%
Stealing	153.3	115.5	-24.6%
Drive whilst Disqualified	54.1	91.5	+69.1%
Assault O.A.B.H.	274.2	164.8	-39.9%
All offences*	396.3	209.5	-47.1%

(Difference in average are not significantly different.)

* Includes only those whose aggregate sentence was the same as the sentence for their most serious offence (M.S.O.).

Similarly, from an inspection of Tables 3 and 4, there does not seem to be any simple relationship between the average total (head) sentence or average period under supervision before versus after the change in legislation.

When considering the reduction in the proportion of prisoners receiving sentences with a community supervision component following the change in legislation, it is of interest to note that while all of those in the Before Group for each of the four specific offences considered in this section had community supervision, only 27.9% of the 'Break, Enter and Steal', 19.8% of the 'Stealing', 1.4% of the 'Drive Whilst Disqualified' and 25.7% of the 'Assault Occasioning Actual Bodily Harm' in the After Group had additional terms (community supervision periods). Almost all (99.0%) of those whose aggregate sentence was the same as the sentence for their most serious offence in the Before Group had been released to community supervision, yet less than one-third (31.9%) of those in the After Group had any community supervision.

DISCUSSION

The study has revealed that the time served and sentences handed down for those discharged from N.S.W. gaols between 1st January, 1989 and 30th June 1989 (the Before Group) differ from the sentences given to those received in N.S.W. gaols between 1st October, 1989 and 31st March, 1990 (the After Group). Specifically it has found that offenders in the After Group, on average, are spending more time in custody but much less potential time on community supervision.

That the minimum (or fixed) terms have shown a tendency to decrease from October 1989 to March 1990, indicates that the sentences for those received in future months will need to be monitored to ascertain whether minimum terms are going to further decrease, stabilise, or whether the March figures were a fluctuation from the general trend and perhaps future minimum terms will increase. The estimates included in this report on the effects of the Sentencing Act on the size of the N.S.W. prison population are based on the overall average and distribution of sentences for the full six month period, 1st October 1989 to 31st March, 1990. To the extent that sentences of prisoners received after 31st March 1990 differ from those in the six month period considered in this report, the estimates of the long-term effect on the size of the prison population presented in this report will need to be changed. If, for example, the average minimum (or fixed) term handed down continues to decrease in coming months, this will result in a lesser increase in the size of the prison population in the long term.

After eight months the predicted increase in the number of sentenced prisoners due to the legislation change was 200, compared to an actual increase of 319. The predicted value was calculated on the basis of average sentence lengths and reception rates remaining constant, and the difference between predicted and actual numbers at this stage could be the result of short term variations in these factors, or the increase in receptions before the legislation came into effect.

This report does not seek to be the definitive document on the effects of the Sentencing Act, 1989. Rather it provides an examination of sentencing patterns for prisoners received in the first six months following the introduction of the Act. As has been stated above, at this stage sentencing patterns following the introduction of the Act do not appear to have stabilised. No consideration of the results of appeals against sentence severity following the introduction of the Act are included in this analysis.

Differences in sentencing patterns between the Before Group and After Group could be related to other factors in addition to the introduction of the Sentencing Act. For example, changes in other legislation, changes in the distribution of types of offenders being sent to gaol, changes in community attitudes, could be having a hidden effect on sentence distribution. The use of a discharge cohort as the Before Group provided a number

of advantages, which are discussed in the Methodology section. The use of a discharge cohort also leads to some problems of interpretation. That is, although these offenders are all discharged during the one period, they were sentenced over a number of years. To the extent that attitudes towards sentencing changed over time, those in the discharge cohort would represent a range of different attitudes towards sentencing from different time periods, rather than all being sentenced during the one period. This, however, is not considered a major problem as an examination of date sentence commenced revealed that more than six out of every ten in the Before Group were sentenced since 1st October, 1988 and the majority (86.4%) were sentenced since 1st January, 1988 (refer to Appendix 1 for more information). Whilst other legislation may have changed during this period, any effects would be confined to the individual offence groupings to which the legislation referred, unlike the Sentencing Act which pertained to all offenders sentenced to a term(s) of imprisonment. Although other factors could have influenced differences in sentencing patterns between the Before and After Group, many of these other factors and their potential effects would be unmeasurable. The analyses provided in this report provide the best estimates of the effect of the Sentencing Act available at this time.

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APPENDIX 1: CHARACTERISTICS OF PRISONERS INCLUDED IN THE ANALYSIS

Table A1.1: Comparison of sex distribution of
Before versus After Group

Sex	<u>Before Group</u>		<u>After Group</u>		<u>Total</u>	
	n	%	n	%	n	%
Male	1711	93.4%	1741	91.2%	3452	92.3%
Female	121	6.6%	169	8.8%	290	7.7%
Total	1832	100.0%	1910	100.0%	3742	100.0%

There were fewer females in the Before Group than in the After Group ($\chi^2 = 6.27$, d.f. = 1, $p < .0123$).

Table A1.2: Comparison of distribution of Most Serious Offence of
Before versus After Group

<u>Category of M.S.O.</u>	<u>Before Group</u>		<u>After Group</u>		<u>Total</u>	
	n	%	n	%	n	%
Homicide	18	1.0	15	0.8	33	0.9
Assaults	212	11.6	294	15.4	506	13.5
Sex offences	65	3.5	58	3.0	123	3.3
Other Against Person	5	0.3	6	0.3	11	0.3
Robbery	91	0.5	35	1.8	126	3.4
Extortion	1	0.0	5	0.3	6	0.2
Break & enter	352	19.2	282	14.8	634	16.9
Fraud & Misapp.	118	6.4	107	5.6	225	6.0
Receiving	80	4.4	103	5.4	183	4.9
Other theft	330	18.0	340	17.8	670	17.9
Property Damage	39	2.1	48	2.5	87	2.3
Environment	2	0.0	3	0.2	5	0.1
Govt. security	2	0.0	2	0.1	4	0.1
Just. Procedure	103	5.6	142	7.4	245	6.5
Prostitution	1	0.0	4	0.2	5	0.1
Offensive Behaviour	21	1.1	36	1.9	57	1.5
Unlawful weapon	8	0.4	11	0.6	19	0.5
Other Good Order	3	0.2	6	0.3	9	0.2
Possess/Use Drug	29	1.6	31	1.6	60	1.6
Traffic Drug	122	6.7	92	4.8	214	5.7
Grow Drug	29	1.6	14	0.7	43	1.1
Driving	115	6.3	156	8.2	271	7.2
Lic. Rego Offence	82	4.5	113	5.9	195	5.2
Other	4	0.2	7	0.4	11	0.3
Total	1832	99.7	1910	100.0	3742	99.7

The offences in Table A1.2 were categorised in terms of the Draft Australian National Code of Offences (DANCO).

The offence distribution of those discharged before the change in legislation was different from the offence distribution of those received after the change in legislation ($\chi^2 = 79.226$, d.f. = 17, $p < .00005$). There was a smaller proportion of persons with an Assault offence as their most serious offence ($\chi^2 = 28.241$, d.f. = 1) or Break and Enter ($\chi^2 = 11.673$, d.f. = 1) and a larger proportion of persons with Robbery ($\chi^2 = 13.156$, d.f. = 1) offences in the Before Group in comparison to the After Group.

Despite "lifers" being excluded from the analysis, 33 prisoners (18 Before and 15 After) whose most serious offence was grouped in the "homicide" category were included. The most serious offence for each of these prisoners is specified in Table A1.3 below.

Table A1.3: Most serious offence for prisoners in "homicide" category

M.S.O.	<u>Group</u>		
	<u>Before</u>	<u>After</u>	<u>Total</u>
Murder	4	1	5
Wound with intention to murder	1	-	1
Conspire to murder	-	1	1
Solicit to murder	-	1	1
Manslaughter	8	3	11
Accessory after the fact to murder	1	-	1
Culpable driving cause death	3	8	11
DUI cause death	1	1	2
Total	18	15	33

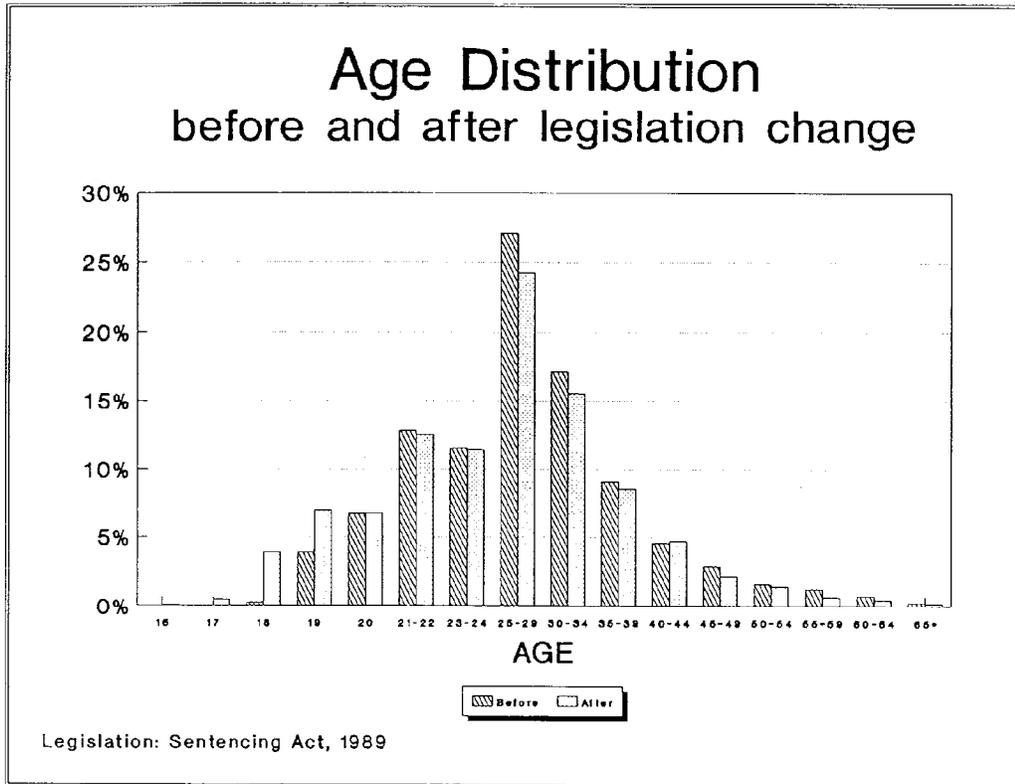


Figure A1.1

Those in the Before Group tended to be born before those in the After Group (1959 compared to 1961). This, however, was related to the design of the study with prisoners in the Before Group being discharged following serving their sentences eight months prior to prisoners in the After Group commencing their sentences. There was no significant difference in the age at date sentence commenced for those in the Before Group (28 years 3 months) and those in the After Group (28 years 5 months), ($t_{3740} = 0.79$, $p < .431$).

It is of interest to note that only two of the Before Group were sentenced before 1980 (in May 1978 and March 1979). The majority of the Before Group (86.4%) were sentenced after the 1st January 1988 and more than six out of every ten (60.9%) were sentenced since 1st October, 1988.

APPENDIX 2: PAST TRENDS IN THE PRISON POPULATION

Historically, the average prison population has fluctuated quite widely. However, the overall trend in prisoner numbers from the beginning of the century has shown an ever-increasing prison population. Average prisoner numbers for the last several years have actually been higher than the general upward trend shown this century.

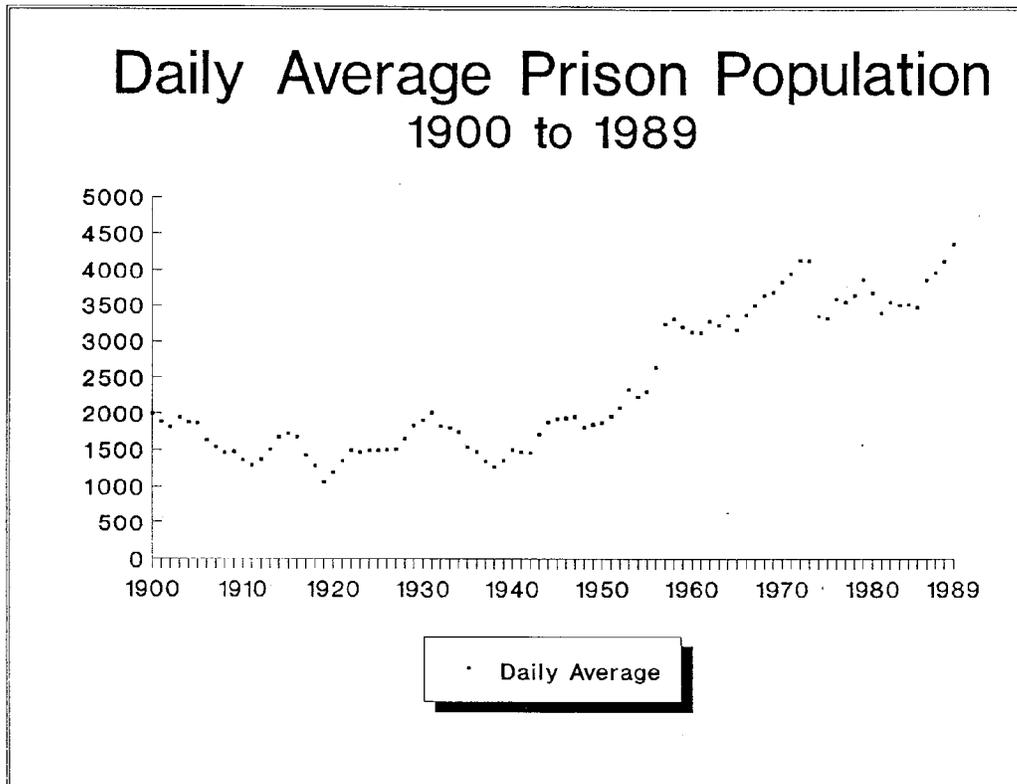


Figure A2.1

Considering only more recent trends, the daily average number of prisoners held in N.S.W. gaols has been increasing since the 1984-85 financial year. The daily average of 4358 prisoners (excluding periodic detainees) for the most recent complete financial year (1988-89) was the highest this century. During that year the prison population varied from a low of 4187 to a high of 4742 prisoners. It is of interest to note that the lowest prison population (4187) for that year was higher than the highest prison population in any of the financial years 1973-1974 to 1985-1986.

The rise in total prison population has been divided fairly evenly by proportionate rises in both the sentenced and unsentenced (including appellants) prisoner populations. Sentenced prisoner numbers have increased from 2300 in 1984 to 3800 in 1989. Unsentenced prisoner numbers have increased from 560 in 1984 to 1100 in 1989.

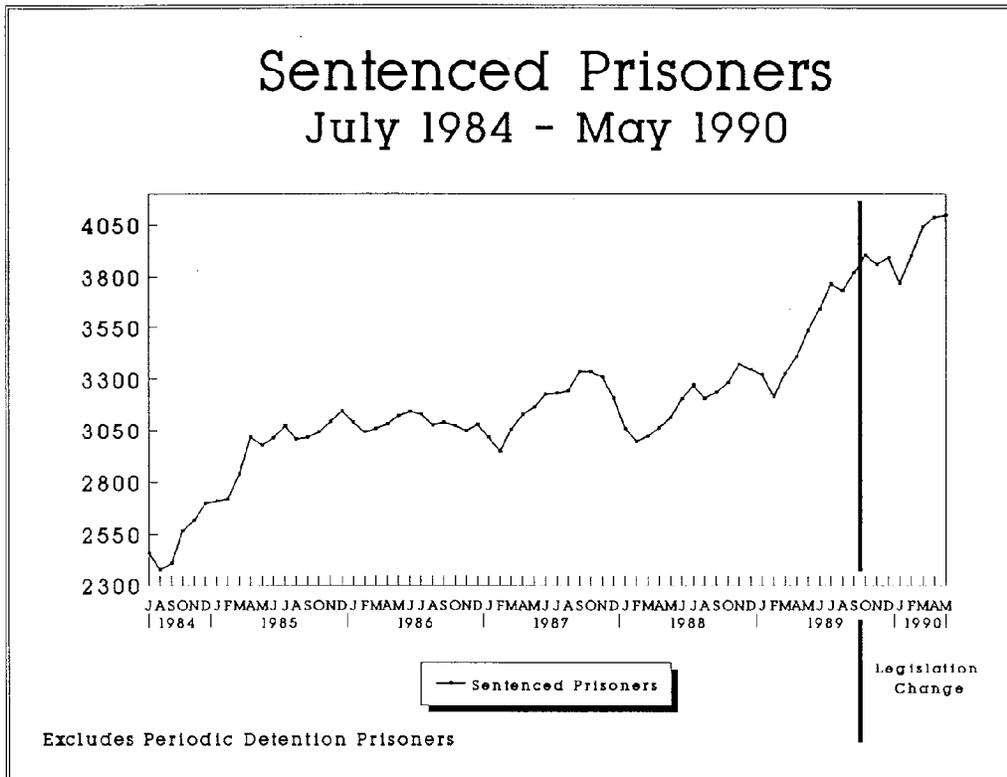
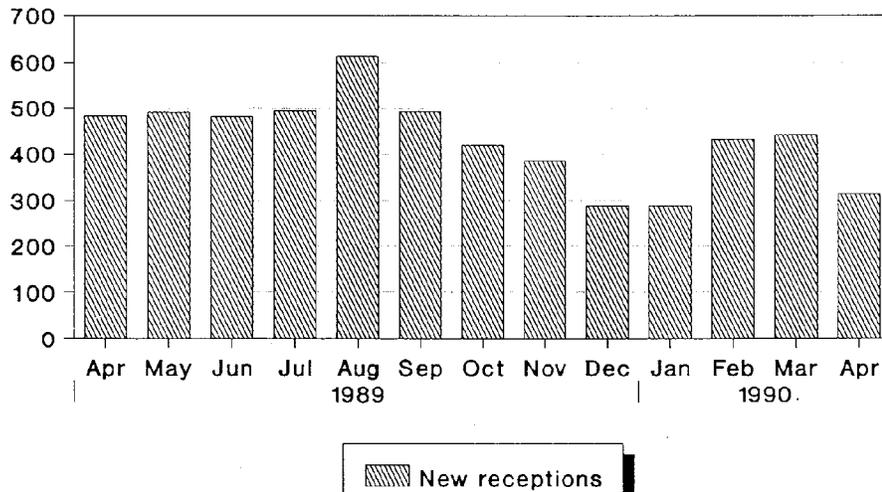


Figure A2.2

The size of the prison population on any one day is a function of the number of prisoners received and how long they are held in gaol. It is of interest to note the increase in the number of sentenced prisoners (excluding fine defaulters and periodic detainees) received prior to the change in legislation (see Figure A2.3). Anecdotal information from some gaol superintendents attributed this increase in sentenced prisoners received to offenders pleading guilty and attempting to push their sentences through the court prior to the proclamation of the Sentencing Act, believing that they would receive shorter sentences this way.

Number of New Sentenced Receptions April 1989 - April 1990



Excludes fine defaulters
and periodic detainees

Figure A2.3

APPENDIX 3: FURTHER COMPARATIVE INFORMATION - BEFORE GROUP VERSUS AFTER GROUP

1. Comparison of average time in custody

Table A3.1: Comparison of average time in custody by most serious offence (in days)

<u>M.S.O.*</u>	<u>Before change in legislation</u>			<u>After change in legislation</u>			<u>Results of ANCOVA</u>
	<u>mean</u>	<u>No. in subgroup</u>	<u>(Standard deviation)</u>	<u>mean</u>	<u>No. in subgroup</u>	<u>(Standard deviation)</u>	
Homicide	939.2	18	(711.65)	983.0	15	(875.49)	**
Assaults	167.8	212	(203.95)	222.5	294	(270.66)	F _{1,502} = 6.309 p<.012
Sex offences	579.6	65	(538.78)	845.6	58	(694.77)	F _{1,119} = 5.417 p<.022
Other Against Person	1571.8	5	(1468.67)	1537.2	6	(296.81)	**
Robbery	749.5	91	(546.78)	964.7	35	(581.71)	F _{1,122} = 11.812 p<.001
Extortion	354.0	1	(0.0)	349.6	5	(152.87)	**
Break & enter	272.5	352	(265.00)	423.7	282	(306.10)	F _{1,630} = 50.546 p<.001
Fraud & Misapp.	179.8	118	(255.05)	320.1	107	(334.72)	F _{1,221} = 15.296 p<.001
Receiving	122.3	80	(92.89)	195.5	103	(252.77)	F _{1,179} = 6.409 p<.012
Other theft	151.3	330	(123.49)	249.8	340	(236.71)	F _{1,666} = 47.645 p<.001
Property Damage	185.0	39	(272.68)	125.4	48	(210.59)	N.S.
Environment	90.0	2	(93.34)	144.7	3	(192.38)	**
Govt. sec	422.0	2	(534.57)	120.5	2	(0.71)	**
Just Procedure	115.0	103	(108.50)	163.1	142	(258.40)	F _{1,241} = 4.788 p<.030
Prostitution	53.0	1	(0.0)	70.8	4	(67.16)	**
Offensive Behaviour	102.0	21	(105.69)	38.9	36	(54.20)	F _{1,53} = 7.352 p<.009
Unlawful weapon	133.8	8	(112.82)	327.9	11	(308.55)	**
Other Good Order	248.0	3	(364.14)	85.3	6	(166.23)	**
Possess/Use Drug	151.1	29	(188.63)	153.5	31	(179.48)	**
Traffic Drug	372.7	122	(366.70)	480.1	92	(479.99)	F _{1,210} = 6.426 p<.012
Grow Drug	325.6	29	(261.45)	447.5	14	(418.72)	**
Driving	108.3	115	(96.35)	152.9	156	(88.99)	F _{1,267} = 15.052 p<.001
Lic. Rego							
Offence	83.2	82	(36.60)	123.7	113	(107.36)	F _{1,191} = 11.302 p<.001
Other	298.5	4	(86.03)	117.7	7	(171.18)	**
Overall	244.1	1832	(328.97)	294.4	1910	(362.15)	F _{1,3738} = 26.863 p<.001

* Offences categorised in terms of Draft Australian National Code of Offences (DANCO)

** Insufficient numbers to test for statistical significance of differences in averages

N.S. = Difference in averages is not statistically significant

For the Before Group, actual time in custody is known. However, for the After Group, the aggregate fixed term or minimum term is used as an estimate of the time to be spent in custody.

From Table A3.1 it can be seen that:

- a.) the overall average number of days in custody after the change in legislation is longer than the overall average number of days in custody before the change in legislation;
- b.) the average number of days in custody was longer after the change in legislation for each of the following most serious offence categories:
 - 'Assaults';
 - 'Sex offences';
 - 'Robbery';
 - 'Break and Enter';
 - 'Fraud and Misappropriation';
 - 'Receiving';
 - 'Other theft';
 - 'Justice Procedures';
 - 'Traffic Drug';
 - 'Driving';
 - 'Licence and Registration offences';
- c.) the average number of days in custody was shorter after the change in legislation for the 'Offensive Behaviour' category of most serious offence;
- d.) the average number of days in custody was not statistically different following the change in legislation for the 'Property Damage' category of most serious offence.

Since it was the only offence group for which the average number of days in custody was shorter, the specific offences grouped in the 'Offensive Behaviour' category are itemised in Table A3.2.

Table A3.2: Specific offences categorised as
"Offensive Behaviour"

<u>M.S.O.</u>	<u>Group</u>		<u>Total</u>
	<u>Before</u>	<u>After</u>	
Domestic Violence	1	-	1
Make false statement to cause serious alarm or affront	1	-	1
Riotous assembly	3	-	3
Behave in a threatening manner	-	1	1
Make false statement	-	2	2
Found near building with intent to peep or pry	1	-	1
Use obscene, offensive or indecent language on telephone	-	2	2
Obscene exposure	8	-	8
Peep or pry	-	1	1
Expose person	2	1	3
Behave in disorderly or offensive manner on railway	-	1	1
Behave in offensive manner	2	18	20
Use indecent/obscene/offensive language	2	9	11
Possess prohibited article	1	-	1
Fail or refuse to pay for goods or services rendered	-	1	1
TOTAL	21	36	57

From an inspection of the individual offences included in the 'Offensive Behaviour' category, there is no obvious reason as to why the average number of days in custody was shorter after the change in legislation. Out of interest, the average number of days in custody were calculated for the three specific offences in the "Offensive Behaviour" category which were represented in both the Before and the After Groups. It was found that the average time spent in custody for the two persons convicted of 'expose person' in the Before Group (83.5 days) was longer than that of the one person in the After Group (14 days). For those convicted of "behave in offensive manner" the average for the Before Group was 18.0 days (2 persons) and for the After Group the average was 29.8 days (18 persons). For those convicted of using indecent/obscene/offensive language, the average for the Before Group was 19.5 days (2 persons) and for the After Group was 38.6 days (9 persons). In all cases the numbers convicted of the specific offences within the Before Group or the After Group were too small from which to draw conclusions.

Table A3.3 Comparison of median number of days in custody by most serious offence

<u>M.S.O.</u>	<u>Before Group</u>	<u>After Group</u>
Homicide	1097	547
Assaults	109	166
Sex offences	442	668.5
Other against person	1055	1461
Robbery	639	912
Extortion	354	274
Break and Enter	204.5	365
Fraud and misappropriation	108.5	184
Receiving	107.5	151
Other theft	114	182
Property Damage	76	37
Environment	90	59
Government sec	422	120.5
Justice procedure	76	92
Prostitution	53	43.5
Offensive behaviour	58	20.5
Unlawful weapon	113.5	212
Other good order	69	24
Possess/use drug	72	92
Traffic drug	225	365
Grow drug	241	335.5
Driving	103	181
Lic rego offs	82.5	92
Other	329	32

* Offences categorised in terms of Draft Australian National Code of Offences (DANCO)

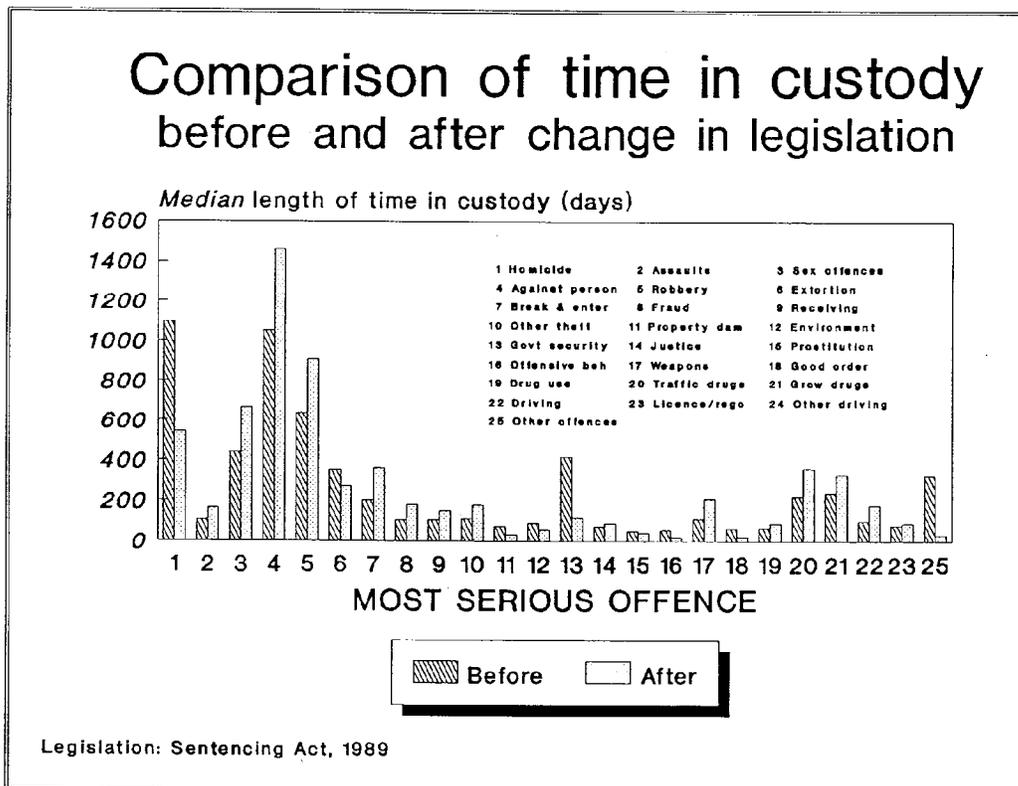


Figure A3.1

2. Comparison of average aggregate sentence

Aggregate head sentence was used as aggregate sentence for the Before Group; aggregate total sentence was used as aggregate sentence for the After Group.

Table A3.4: Comparison of average aggregate sentence by most serious offence (in days)

M.S.O.*	Before change in legislation			After change in legislation			Results of ANCOVA
	mean	No. in subgroup	(Standard deviation)	mean	No. in subgroup	(Standard deviation)	
Homicide	3053.4	18	(1931.63)	1289.4	15	(1140.68)	**
Assaults	483.0	212	(632.46)	267.0	294	(370.97)	F _{1,502} = 23.098 p<.0005
Sex offences	1810.3	65	(1147.17)	1112.3	58	(834.61)	F _{1,119} = 14.278 p<.0005
Other Against Person	4346.4	5	(3358.31)	1983.8	6	(372.02)	**
Robbery	2369.4	91	(1303.15)	1375.1	35	(873.77)	F _{1,122} = 8.875 p<.003
Extortion	1277.0	1	(0.0)	440.8	5	(259.67)	**
Break & Enter	870.2	352	(720.33)	523.3	282	(388.66)	F _{1,630} = 47.909 p<.0005
Fraud & Misapp.	577.3	118	(721.84)	383.3	107	(426.00)	F _{1,221} = 4.446 p<.036
Receiving	308.2	80	(325.15)	221.0	103	(318.00)	N.S.
Other theft	429.3	330	(478.31)	288.8	340	(286.35)	F _{1,666} = 20.784 p<.000
Property Damage	525.7	39	(686.66)	146.9	48	(280.09)	F _{1,83} = 11.864 p<.001
Environment	933.0	2	(1262.89)	184.7	3	(261.25)	**
Govt. sec	942.5	2	(1249.46)	212.0	2	(130.11)	**
Just Procedure	245.2	103	(332.26)	178.9	142	(326.75)	N.S.
Prostitution	91.0	1	(0.0)	70.6	4	(67.16)	**
Offensive Behaviour	260.6	21	(353.73)	41.5	36	(66.36)	F _{1,53} = 13.074 p<.001
Unlawful weapon	421.9	8	(494.43)	406.3	11	(382.94)	**
Other Good Order	652.3	3	(872.32)	110.8	6	(228.60)	**
Possess/Use Drug	409.0	29	(569.20)	177.1	31	(222.21)	**
Traffic Drug	1174.3	122	(901.96)	634.5	92	(646.19)	F _{1,210} = 20.329 p<.0005
Grow Drug	1219.9	29	(779.10)	567.3	14	(561.02)	**
Driving	251.6	115	(290.33)	161.4	156	(104.58)	F _{1,267} = 13.296 p<.0005
Lic. Rego							
Offence	148.5	82	(78.91)	125.9	113	(109.72)	N.S.
Other	1209.3	4	(844.09)	143.6	7	(234.03)	**
Overall	737.6	1832	(935.72)	359.5	1910	(478.32)	F _{1,3741} = 226.990 p<.00005

* Offences categorised in terms of Draft Australian National Code of Offences (DANCO)

** Insufficient numbers to test for statistical significance of differences in averages

N.S. = Difference in averages is not statistically significant

From Table A3.4 it can be seen that:

- a.) the overall average aggregate sentence after the change in legislation is shorter than the overall average aggregate head sentence before the change in legislation;
- b.) the average aggregate sentence was shorter for each of the following most serious offence categories:
 - 'Assaults';
 - 'Sex offences';
 - 'Robbery';
 - 'Break and Enter';
 - 'Fraud and Misappropriation';
 - 'Other theft';
 - 'Property Damage';
 - 'Offensive Behaviour';
 - 'Traffic Drug';
 - 'Driving';
- c.) there were no most serious offence categories for which the average sentence was longer following the change in legislation;
- d.) the average aggregate sentence was not statistically different following the change in legislation for the 'Receiving', 'Justice Procedures' or 'Licence or registration offences' most serious offence categories.

Table A3.5 Comparison of median aggregate sentence by most serious offence

<u>M.S.O.*</u>	<u>Before Group</u>	<u>After Group</u>
Homicide	3104.5	730
Assaults	241.5	181
Sex offences	1461	1004
Other against person	2557	1903
Robbery	2192	1155
Extortion	1277	365
Break and Enter	730	485
Fraud and misappropriation	365	184
Receiving	181	151
Other theft	365	182
Property Damage	273	37
Environment	933	59
Government sec	942.5	212
Justice procedure	181	92
Prostitution	91	43.5
Offensive behaviour	91	20.5
Unlawful weapon	273	283
Other good order	304	24
Possess/use drug	181	92
Traffic drug	1095	485.5
Grow drug	1280	396.5
Driving	182	181
Lic rego offs	122	92
Other	1095	32

* Offences categorised in terms of Draft Australian National Code of Offences (DANCO)

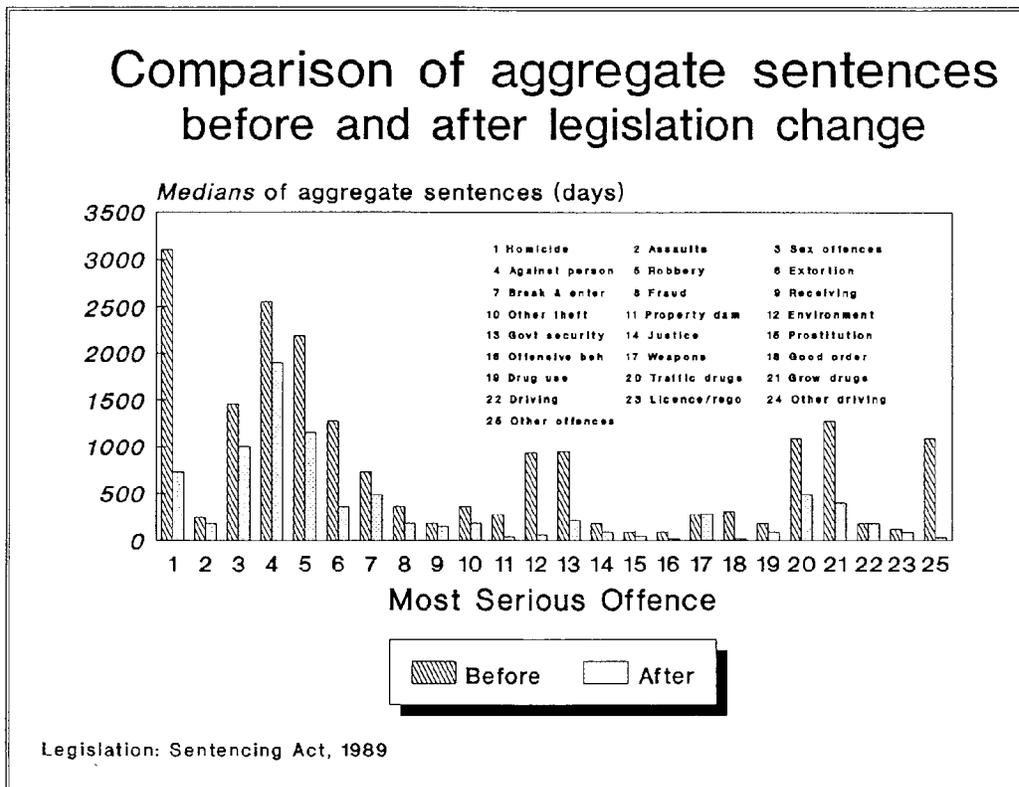


Figure A3.2

3. Comparison of average number of days on community supervision

Average number of days on community supervision was calculated only for those who were given community supervision. Before the change in legislation, the number of days on community supervision was calculated as the number of days between release to parole or after-care probation and the expiry of the head sentence. After the change in legislation, the number of days on community supervision was equated to the number of days in the additional term.

Table A3.6: Comparison of average number of days on community supervision by most serious offence

M.S.O.*	Before change in legislation			After change in legislation			Results of ANCOVA
	mean	No. in subgroup	(Standard deviation)	mean	No. in subgroup	(Standard deviation)	
Homicide	2114.3	18	(1247.05)	353.5	13	(259.08)	**
Assaults	596.8	102	(520.95)	192.3	68	(176.70)	F _{1,165} = 38.433 p<.0005
Sex offences	1272.1	61	(739.94)	322.2	48	(215.80)	F _{1,104} = 76.556 p<.0005
Other Against Person	2774.6	5	(2012.27)	446.7	6	(103.03)	**
Robbery	1654.8	88	(898.07)	463.4	31	(528.30)	F _{1,115} = 38.250 p<.0005
Extortion	923.0	1	(0.0)	228.0	2	(193.75)	**
Break & Enter	695.0	284	(506.92)	170.2	165	(90.45)	F _{1,444} = 168.681 p<.0005
Fraud & Misapp.	640.7	66	(556.91)	161.1	42	(99.48)	F _{1,93} = 42.416 p<.0005
Receiving	474.4	24	(281.02)	187.9	14	(128.66)	**
Other theft	467.1	168	(470.56)	127.5	104	(62.99)	F _{1,267} = 55.636 p<.0005
Property Damage Environment	670.5	17	(485.98)	207.0	5	(124.37)	**
Govt. sec	-	0	(-)	120.0	1	(0.0)	**
Just Procedure	1026.0	1	(0.0)	183.0	1	(0.0)	**
Prostitution	420.9	20	(460.13)	186.4	12	(202.70)	**
Offensive Behaviour	-	0	(-)	-	0	-	**
Unlawful weapon	554.6	5	(252.99)	92.0	1	(0.0)	**
Other Good Order	541.3	4	(454.99)	123.1	7	(61.83)	**
Possess/Use Drug	606.5	2	(525.38)	153.0	1	(0.0)	**
Traffic Drug	603.3	11	(486.55)	146.0	5	(49.76)	**
Grow Drug	909.6	105	(560.87)	240.6	59	(201.86)	F _{1,159} = 75.478 p<.0005
Driving	994.5	26	(498.58)	239.6	7	(111.72)	**
Lic. Rego Offence	350.8	30	(327.23)	121.2	11	(81.56)	**
Other	208.0	7	(77.28)	81.3	3	(35.22)	**
Overall	1204.0	3	(758.70)	81.0	1	(0.0)	**
	798.7	1048	(713.81)	205.0	607	(197.18)	F _{1,1629} = 418.238 p<.0005

* Offences categorised in terms of Draft Australian National Code of Offences (DANCO)

** Insufficient numbers to test for statistical significance of differences in averages

From Table A3.6 it can be seen that:

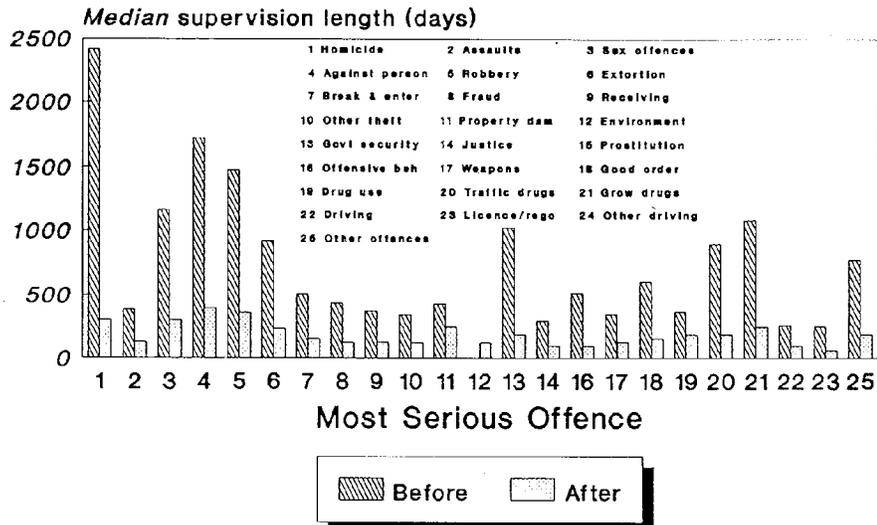
- a.) the overall average period on supervision, for those given any supervision, was shorter following the change in legislation than before it;
- b.) the average period on supervision was shorter for each of the following most serious offence categories:
 - 'Assaults';
 - 'Sex offences';
 - 'Robbery';
 - 'Break and Enter';
 - 'Fraud and Misappropriation';
 - 'Other theft';
 - 'Traffic Drug';
- c.) there were no most serious offence categories for which average periods on supervision were longer following the change in legislation.

Table A3.7: Comparison of median number of days on community supervision by most serious offence

<u>M.S.O.*</u>	<u>Before Group</u>	<u>After Group</u>
Homicide	2418	304
Assaults	388	122
Sex offences	1161.5	304
Other against person	1725	396
Robbery	1480	365
Extortion	923	228
Break and Enter	508	153
Fraud and misappropriation	437	120
Receiving	378	124
Other theft	347	120
Property Damage	433	243
Environment	-	120
Government sec	1026	183
Justice procedure	298	92
Offensive behaviour	516	92
Unlawful weapon	351	122
Other good order	606.5	153
Possess/use drug	373	181
Traffic drug	900.5	183
Grow drug	1086.5	244
Driving	262	92
Lic rego offs	244.5	61
Other	776	181

* Offences categorised in terms of Draft Australian National Code of Offences (DANCO)

Comparison of supervision time before and after legislation change



Legislation: Sentencing Act, 1989

Figure A3.3

APPENDIX 4: CALCULATIONS OF ESTIMATED INCREASE AND RATE OF INCREASE IN THE SIZE OF THE N.S.W. PRISON POPULATION

1. Calculation of magnitude of estimated increase in the N.S.W. prison population

Size of increase = Average increase in time served (in days)
X Number of prisoners received per day
= 50 X (1910/182)
= 525 sentenced prisoners held on any one day.

It should be noted that this estimated increase in the size of the prison population is likely to be an underestimate in that it is based on all members of the After Group being released at the expiry of their minimum period.

N.B. This estimated increase is based on the assumptions that

1. the average of the minimum and fixed terms set following the introduction of the Sentencing Act will remain at 294 days; and that
2. the rate sentenced prisoners were received between 1st October 1989 and 31st March 1990 (1910 in 6 months) is representative of the rate of receptions in subsequent months.

2. Calculation of rate of estimated increase in the N.S.W. prison population

1. The distribution of the time spent in custody prior to the change in legislation was compared to the distribution of the minimum or fixed term set after the change in legislation in the following way:
 - a.) for simplification, the actual time spent/to be spent in gaol by each group was compared by grouping the time periods into months by dividing the number of days by 30.4 and truncating;
 - b.) the cumulative percentage distribution was calculated for each of the Before Group and After Group;
 - c.) each cumulative percentage was then subtracted from 100% in order to obtain the distribution of people still in gaol after different time periods for those sentenced at a given point of time, i.e., to obtain what percentage of people served/would serve more than that number of months in gaol;
 - d.) the difference between these distributions (100% - cumulative % for After Group) minus (100% - cumulative % for Before Group) was calculated. This gives the distribution of percentage

differences in people still in gaol after different time periods, following the change in legislation.

2. In order to consider the effect over successive sentence periods (months), these differences were then added for each ascending month, i.e. the cumulative frequency of the differences (1d above) was calculated.
3. To convert the numbers in 2 (above) to expected increase in numbers of sentenced prisoners, they were multiplied by:

$$\begin{aligned} & (\text{no. of receptions})/(\text{no. of months}) \times 1/100 \\ & = 1910/6 \times 1/100 \\ & = 3.183 \end{aligned}$$

It is this distribution which is graphed in Figure 5 in the body of the report.

4. From an examination of the slope of the graph, it was determined that the rate of increase in the sentenced prison population would be greatest from the 4th to the 17th month following the change in legislation, i.e. from February 1990 to March 1991.

N.B. This estimated rate of increase is based on the assumptions that:

- 1.) the distribution of minimum and fixed terms handed down between 1st October 1989 and 31st March 1990 is representative of the distribution of minimum and fixed terms handed down in subsequent months;

and
- 2.) the rate sentenced prisoners were received between 1st October 1989 and 31st March 1990 is representative of the rate of receptions in subsequent months.

Table A4.1: Estimated increase in the size of the N.S.W. sentenced prison population by months since change in legislation

<u>Months since change in legislation</u>	<u>Estimated prisoner increase</u>	
	Low estimate*	High estimate*
1	-17	-17
2	-6	-6
3	5	5
4	59	59
5	117	117
6	143	143
7	162	162
8	200	200
9	224	224
10	247	247
11	274	274
12	310	310
13	322	323
14	336	336
15	351	352
16	366	367
17	383	385
18	386	388
19	388	390
20	391	394
21	394	398
22	400	404
23	407	412
24	416	421
25	420	426
26	426	433
27	433	440
28	437	446
29	443	453
30	449	460
31	452	467
32	455	475
33	459	484
34	463	493
35	468	504
36	474	516
37	476	529
38	478	541
39	481	554
40	483	566
41	486	577
42	490	587
43	493	598
44	496	609
45	499	619
46	502	629
47	505	639
48	505	649
49	506	655

Cont'd

Table A4.1: Estimated increase in the size of the N.S.W. sentenced prison population by months since change in legislation

<u>Months since change in legislation</u>	<u>Estimated prisoner increase</u>	
	Low estimate*	High estimate*
50	507	661
51	508	667
52	509	673
53	511	679
54	512	685
55	514	690
56	516	697
57	518	703
58	520	709
59	523	716
60	524	722
:	:	:
65	525	746
:	:	:
70	525	764
:	:	:
75	525	780
:	:	:
80	525	792
:	:	:
85	525	802
:	:	:
90	525	811
:	:	:
95	525	818
:	:	:
100	525	822
:	:	:
105	525	827
:	:	:
110	525	830
:	:	:
115	525	834

*"Low estimate" is estimate of increase based on all prisoners being released at the expiry of their minimum or fixed terms.

"High estimate" is estimate of increase based on prisoners whose release is to be determined by the Offenders Review Board being held in custody for their total sentence, with other prisoners being released at the expiry of their minimum or fixed terms.