

**CRIME SERIOUSNESS AND SENTENCING:**

**A COMPARISON OF**

**COURT PRACTICE**

**AND THE PERCEPTIONS OF A SAMPLE OF THE**

**PUBLIC AND JUDGES**

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**PERCEPTIONS OF CRIME**  
**SERIOUSNESS AND SENTENCING**

**DAVID**  
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## PREFACE

Public debates about the proper function of sentencing have as much to do with belief and preference as they have with empirical evidence as to the effects of a sentence. The trend in the United States, for example, has been toward proportionality in sentencing. In New South Wales "Truth in Sentencing" legislation has recently been introduced. The present study raises points relevant to the debate on sentencing policy. These are matters which, in application finally rest with the Government and the judiciary. There are a number of indications that both these institutions are open to such a debate and the kind of information contained in the present report. It is hoped that the report, which represents a psychological analysis of attitudes toward crime, will be useful to the debate.

This paper joins a growing body of psychological studies on sentencing issues which have appeared since Hogarth's (1970) seminal work on "Sentencing as a Human Process". The work by Fitzmaurice and Pease (1986) on the psychology of judicial sentencing in the United Kingdom and Doob and Roberts (1984; 1986; 1989) in Canada are viewed as important developments in this literature.

The psychological perspective on sentencing contrasts with the legal approach. The assumptions, interests and methodology of psychological analysis are alien to legal scholars. It is hoped this contrast will be beneficial to those seeking a different perspective on sentencing.

Although the present study is restricted to an examination of public attitudes in relation to sentencing, it is important to recognize that there has been a large amount of highly refined and comprehensive work completed recently on sentencing. The reader is advised, in particular, to refer to the Report of the Canadian Sentencing Commission (Canada, 1987) together with the most recent issue of the Canadian Journal of Criminology (July, 1990) for the Canadian work; in Australia to the Victorian Sentencing Committee Report (Victoria, 1988) and the two Australian Law Reform Commission Reports (ALRC, 1980; 1988) and in the United Kingdom to the recent White Paper (U.K. 1990). These reports comprise comprehensive reviews of all matters pertaining to sentencing. The analysis contained in the present study is simply a small exploration that may be relevant to a consideration of local practice and attitudes. Much of the design of the present study was inspired by one of Canadian Sentencing Commissioners; Professor Anthony Doob, Director of the Centre of Criminology at the University of Toronto.

## SUMMARY

This study provides a comparison of court practice and public attitudes in terms of the judged seriousness of a selected range of crimes. The study was based in Perth, Western Australia. As an adjunct to the main study a small sample (15) of Supreme and District Court judges and two other sentencers were interviewed with the same measurement instrument used to gauge public attitude. The study included analyses of fear of crime, victimization, views of the media, and various other issues related to criminal justice policy.

The results of this study indicate that there is general agreement between the community, judges and the courts regarding the relative seriousness of the six crimes studied. However, the results indicate differences between the courts, the judges and the public in the quantum of the penalty considered appropriate for most crimes. The public sample suggested, for almost every offence studied, longer periods of imprisonment and greater proportions of offenders to be imprisoned. The public sample also expressed less acceptance of "time off" prison sentences through remission and parole.

The results of the present study point to some areas of agreement and divergence between community attitudes and judicial views. The community and the judiciary tend to agree that judgements of seriousness should be based on the "harm done" and the seriousness of the offence and the harm done to the victim are the two most important factors that judges should consider when sentencing offenders.

The main points of disagreement are typical of previous work in this area. Firstly, and mainly, the public seem to want the penalty of imprisonment used more than the judges or the court but particularly with rape. Secondly, the offence of armed robbery stands out as the one offence judged as deserving of more punishment by the courts and the judiciary than the public, this has been explained in terms of different understandings of "harm done".

The results suggest that the general public are less convinced of the relevance of rehabilitation as a purpose of sentencing than the judges surveyed. The results also demonstrate how questions regarding the overall functions of sentencing if asked in a general way can actually mask functions which are specific to the type of offender and offence. Incapacitation and retribution together account for most (60%) of the community responses to a question regarding the purposes of sentencing offenders convicted of serious violent crimes. In contrast individual deterrence and rehabilitation account for most (73%) of responses offered when considering the sentencing of young offenders convicted of property offences.

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# **INTRODUCTION**

## 1. INTRODUCTION

### 1.1 Public Attitudes to Sentencing

Public perception of the criminal justice system remains as topical and controversial today as it ever has been. This is attested to by the perennial nature of "law and order" on the political agenda. In Western Australia recently much attention has centered on public attitude and sentencing policy in relation to juvenile offenders.

The relationship between public perception and criminal justice is important from a number of perspectives. From a theoretical point of view, the issue is whether law is essentially the outcome of consensus - the enforcement of community standards or alternatively the enforcement of the standards of an elite on the community. One view gives a legitimate and important role to "public attitude". The alternate view sees the administration of justice as something which should be removed from the vicissitudes of public opinion. There are a number of indications, reinforced by the results of the current study, which suggest that the administrators of justice are indeed sensitive to public opinion although, this may not necessarily be reflected in court practice due to various restrictions which affect sentencers.

The practical question of whether the judiciary should be cognizant of, or even guided by, public attitude is the subject of some conjecture. Griffith (1977) argues that despite their sensitivity to public opinion the judiciary maintain a "myth of impartiality". However, at the point of sentencing reference is frequently made to public attitude, or what the sentencer understands that attitude to be. Further indications of the relevance of public attitude to sentencers behaviour can be found in the results of the present study.

The salience of public perception may be well established, however, its measurement and its relationship with criminal justice system practice is often misunderstood or glossed over. Given the importance of public attitude to public policy and sentencing it is somewhat surprising that not more attention is paid to the accurate determination of that attitude. There are many ways, as will be discussed briefly below, in which media representations of public opinion can be distorted and public opinion polls can unwittingly produce misleading results. Previous work in Perth (Broadhurst and Indermaur, 1982; Indermaur 1987) and the work of Doob and Roberts in Canada (e.g. Roberts and Doob, 1989); Hough and colleagues in the United Kingdom (e.g. Hough, Lewis and Walker, 1989) and Cullen and colleagues in the United States (e.g. Cullen, Cullen and Wozinak, 1988) have re-examined much of the earlier work on public attitude to sentencing and found it to be poorly informed and misleading. The revisionist perspective has challenged the myth of the "punitive public" which is seen as the outcome of simplistic interpretation of poorly designed opinion polls.

The present study is designed to continue the earlier work in Perth by examining public attitudes to sentencing and crime seriousness. Public perceptions will be compared with indications of crime seriousness based on court practice and sentencers own attitudes. The purposes of sentencing will be examined and analysed with a view to discerning a perspective relevant to an informed interpretation of the results of public attitude surveys.

Many studies of public attitude to crime and punishment have focused on sentencing. The most popular question asked in relation to the sentencing practice of the courts is some variant of: *"Do you think that the sentences handed down by the courts are too severe, about right or not severe enough?"* Typically most respondents answer with *"not severe enough"*. These findings are well known. However, an innovative design by Canadians Doob and Roberts (1983) explored this response by asking respondents immediately following their response to the previous question:.... *"What type of criminal were you thinking of when you answered that question?"*. They found that 57% of those which answered stated they were thinking of a violent or repeat offender. A replication of this procedure in Perth (Indermaur, 1987) found that 70% of respondents were thinking of a violent crime. Roberts and Edwards (1988) report on similar findings from other studies. As only a very small proportion of all crime is violent (approximately 4%) this finding suggests that the earlier research is not useful for informing us on public attitudes to sentencing practice. Rather, questions on crime which are general or unspecified are read by a significant proportion of the public to mean *"violent crime"* and they should be interpreted as such. Much of the study of public attitudes to crime may, then, only apply to the subject of violent crime.

The importance of providing accurate information on public perceptions of sentencing is underlined by the danger of sentencers falling prey to *"false consensus bias"* (assuming one's own belief reflects most other people's). As Fitzmaurice and Pease (1986, p.19) recount, social psychological research has demonstrated that people tend to generalize falsely from their own views to a belief in consensus. These author's cite (p.20) the related observation of Ashworth et al. (1984) in regard to their study of judges

*"It seemed from our pilot study that most judges thought they were capable of identifying "informed public opinion" and that a majority believed it coincided with their own opinions."*

The suggestion of the Australian Law Reform Commission (1980) that their proposed Sentencing Council could perform the function of providing relevant information (such as accurate and meaningful information on public attitude) to the judiciary has, unfortunately, not been adopted by any Government in Australia. The proposed Sentencing Council could also serve to provide information to the Legislature which is also, naturally, sensitive to public opinion and often

introduces changes to penalties provided for offences on the basis of its perception of public attitude.

The main needs, as discussed above are to continue in the analysis of public perception of sentencing. This study is important, not only to provide clear, reliable and valid information for decision makers in the criminal justice system and the legislature but also to understand how public perception is formed, in particular how inaccurate perceptions are created and maintained. The presence of "faulty" public perceptions is a particular concern because many in the political arena and in the judiciary seem perhaps too ready and willing to enact what they understand the public "mood" to be.

As crime is first and foremost a community concern, accurate information on crime, and on public perception of crime should be provided for the community, at least as much as for the criminal justice system. Central to this understanding is some basic orientation regarding the relative seriousness with which types of offences are viewed. This is the focus of the present study.

## **1.2 Crime Seriousness: The Concept and its Importance**

*The seriousness of criminal acts represents a conceptual dimension of criminality indispensable in every day discourse, in legal theory and practice, and in sociological work. (Rossi, Waite, Bose and Berk, 1974, P.224)*

"Crime seriousness" remains a useful and viable concept largely because it has been shown to operate in a consistent, functional and meaningful way across diverse groups in the community (e.g. see Rossi et al., 1974; Krus, Sherman and Krus, 1977). Most research indicates a considerable degree of consensus in judgements of offence seriousness (see Fitzmaurice and Pease, 1986 for a discussion of these later studies). "Crime seriousness" has also been found to be one of the main predictors of sentence length in studies of sentencing practice (e.g. Wilkins, 1980; Fitzmaurice, 1981; Jackson, 1971). The concept of crime seriousness has also been incorporated into the sentencing guidelines employed in the United States.

Despite the popularity and utility of the concept of crime seriousness, at both the level of sociological study and in sentencing practice, there has been little work done on the relationship between community judgements of offence seriousness and the severity of penalties attracted by offences in the courts. The brief consideration given to this relationship in the author's earlier study is suggestive of an overall level of concordance, with, perhaps, some interesting but isolated deviations. The relationship between community perceptions of crime seriousness and court practice regarding those crimes may provide useful and relevant information on the level of public support for current sentencing practice.

A recent Canadian study attempted to test the relationship between public attitude and court practice. Roberts and Doob (1989) asked a representative sample of Canadians to state what percentage of offenders committing certain crimes should be incarcerated. They then compared this figure with the percentage which actually are incarcerated for such offences in Canada, they found that the average incarceration rates (66%) indicated by these two sources were very close. However, the rank ordering of the seriousness of offences by the public was somewhat different from the rank ordering of seriousness of offences generated on the basis of sentencing practice. Kidnapping, arson and assaulting a police officer were the three most serious offences in the eyes of the public sample. Robbery, perjury and kidnapping were the three most serious judging by court practice. Roberts and Doob (1989, p.15) concluded:

*It is clear then that while the public favour the use of imprisonment to approximately the same degree as the court, they would utilize this sanction for offenders other than the ones being incarcerated by the courts. Differences here may reflect disagreements about the relative harm inflicted by various offences. This topic awaits the attention of further research.*

The suggestion for further research on the topic of crime seriousness is also made in studies of sentencing (e.g. Australian Law Reform Commission, 1980) and studies of public perception of sentencing (e.g. Indermaur, 1987; Collins, 1987). The implications for public policy are obvious: if and where significant disparity is found between public rankings of crime seriousness and the average length of sentence those crimes attract, important questions concerning sentencing policy and/or practice are raised. Observed disparity may indicate that sentencers' ranking of crime seriousness differs from that exhibited by the public or, alternatively, that their assessment of offence gravity is not a major determinant of sentence length. In either case, such information should be of considerable interest to those involved in the administration of justice.

Ideally, the maximum permissible sentences established by legislation would provide an official grading of offence seriousness. However, as Fox, (1987, p.231) notes "in practice this is not so" and describes various attempts to distill a grading of crimes on the basis of maximum allowable penalties contained in legislation in Australia by the Australian Law Reform Commission (ALRC, 1980) and in the United Kingdom by the Home Office (1978).

Fox argues that

*the present statutory maxima for indictable offences are generally no longer able to provide an accurate theoretical or practical guide to the relative seriousness of different crimes (p.231).*

Broadhurst (1981, 43-44) attempted to compare the results of a survey on community attitude to sentencing with the provisions of the statutes, using the mid point of the maximum sentence as the basis for his calculations. He concluded that the results suggested that there is a strong indication that some penalties are considered inadequate (e.g. violent crime) and some are too severe (e.g. victimless/moral crime).

### 1.3 Judgements of Crime Seriousness

Most studies of crime seriousness have been based on surveys of community or student groups. Few studies have focussed on how judges and/or magistrates determine seriousness and how that judgement affects court practice. Hood (1972) reports a significant association between magistrates rankings of offence seriousness and their choice of sentence. Pease, Ireson, Billingham and Thorpe (1976) report that rankings of crime seriousness by students, clerks, probation officers and magistrates in the United Kingdom were very similar and highly correlated. Levi and Jones (1985) found that public and police tended to rate offenses such as violence and theft by a police officer similarly but disagreed on the rating of frauds, burglary, and victimless crimes.

Regardless of the group studied, methodological issues have continued to be a focus in the literature in this area (e.g. see Miethe, 1982; Cullen, Link, Travis and Wozinak, 1985). In any study of crime seriousness the first and most important question becomes "How do we define the crime?". There are essentially two possibilities: the general or the specific.

Most studies (e.g. Broadhurst and Indermaur, 1982, ABS, 1980; Chappell et al, 1990; Wilson et. al., 1986) have opted for "the specific" and employ a vignette (a short scenario or description) containing key offence and offender variables. The argument for this option is that it allows the judgement to be more meaningful and focussed because for most crimes offender variables (such as age, prior record, premeditation) are as important, or more important, than offence variables.

However, if we wish to compare community perceptions with court practice and/or we are particularly interested in assessing the relative seriousness of the offence, in isolation from offender variables, using a vignette which specifies offender details is not very useful as it contaminates the comparison. The "specific" or "vignette" strategy has the effect of taking the focus off the offence variable. The results of my previous work in Perth (Indermaur, 1987, p. 176 -177) demonstrated that judgements regarding sentencing could be readily influenced by manipulation of offender variables:

*The results suggest that when respondents indicated their preferred penalties for a particular offence their response related to a stereotyped offender. When presented with*

specific cases involving mitigating or aggravating circumstances they readily adjusted their preferred maxima and minima. In other words, the maximum and minimum penalties respondents chose were not absolute maximum and minimum penalties but the maximum and minimum for the stereotyped offender. Therefore, the results of the present study suggest that the operation of stereotypes should be considered as a contributing and/or alternative factor to explain the kinds of results produced in this study and similar studies.

Collins (1986) noted that only one offence studied by Wilson, Walker and Mukherjee (1986) allowed a comparison with court practice (a case of industrial negligence) and in this case, Collins concluded that the Court's decision "was totally out of step with public sentiment on the matter" (p.5). Collins suggested that to allow comparisons with court practice public attitude surveys need to contain offence descriptions which will allow or facilitate such comparisons.

In regard to the study of crime seriousness the interest is on the general positioning of offence stereotypes. However, it must be remembered that to the extent that details of the offence and offender are included in questions about the seriousness of particular crimes, the response will be focused by the offender variables and move away from the general offence category. As Collins (1987) argued:

*..seriousness alone is not a good indicator of sentence choice ... seriousness seems to measure one's concern with the crime itself, while the sentence selected seems to depend heavily on the nature (actual or perceived) of the offender..... and one's predisposition for advocating punishment, rehabilitation a community protection.*

Similarly, Rossi, Simpson and Miller (1985) concluded that their analyses indicated that there was not a direct relationship between public perceptions of the seriousness of criminal acts and desired sanctions. These authors noted that crime seriousness was modified by the characteristics of the offenders and victims and by the consequences of the crimes.

Although there is naturally interest in the effect of mitigating factors, if the study of public stereotypes is to be the focus, as it is with crime seriousness studies, then a more valid approach is to eliminate contamination due to offender variables. Inclusion of offender variables makes comparison of indications of "crime seriousness" between studies difficult and/or misleading. For example, the results of the present study could not be compared with the ABS (1980) survey in New South Wales since that survey contained quite specific offender variables which were likely to significantly affect the assignment of penalties as discussed above.

In terms of achieving a comparison with court practice, unless a detailed specification of offence and offender variables



together with sentencing outcomes can be achieved (which would be an enormous undertaking) the best alternative and the one adopted in the present study is to remove offender variables from the survey questions to allow a comparison with court practice in relation to all offenders convicted of a certain crime.

This process allows a very general view of the concordance between public views and court practice in relation to the general offence category. As mentioned previously, the sentencing process tends to be largely informed or influenced by offender variables. Whether these offender variables tend to cancel each other out, therefore allowing overall and average court practice to reflect its view of the seriousness of the offence is uncertain. This would indeed be a good subject for further research as the results could indicate the degree of clustering or association of certain offender variables with certain crimes. These results would be relevant to communication with the public in regard to sentencing policy. For the purposes of the present study an examination of the general relationship between court practice and public attitude is considered worthwhile and indeed the presence of significant offender variables may be suggested by the results of the comparison.

Apart from the comparisons of crime seriousness the present study continues on from earlier work by the author in Perth, to examine public perception of sentencing practice (Indermaur, 1987). A range of questions was framed to allow further exploration of issues raised by the earlier research such as: attitudes to remission and parole; strategies to overcome prison overcrowding; the purposes of sentencing; perceptions of the fairness of the courts; predictions of personal victimization and fear of crime. To allow an unbiased view of public attitudes on these matters questions were framed in an open ended manner and the responses subsequently coded into a comprehensive range of categories.

# **METHODOLOGY**

## 2. METHODOLOGY

### 2.1 Design and Measurement

The present study was designed to test the relationship between public perceptions of crime seriousness and indications of crime seriousness based on court practice. Court practice indications of crime seriousness are based on the proportions of convicted offenders imprisoned and the terms of imprisonment imposed for the crimes studied.

Ancillary aims of the present study concern: 1. an analysis of community views in regard to factors relevant to sentencing (the purpose of sentencing, factors to be considered by the sentencer etc.); 2. a comparison of community views on crime seriousness and other matters related to sentencing with the views of a small sample of higher court judges (N = 15); 3. an analysis of rates of victimization, perceptions of the likelihood of victimization and fear of crime.

The achievement of the main aim of the study (comparison of public perceptions with court practice) requires two separate and distinct measurement tasks, (i.e. measurement of public attitudes and court practice) and then a test of relationship between these two measures.

#### 2.1.1 Measurement of Community Perceptions of Crime Seriousness

There are a number of different techniques which have been developed to produce a rank ordering of the seriousness of crimes. The three main ones are: the method of paired comparisons; the magnitude estimation method; and the categorization method.

The method of paired comparisons involves presenting pairs of crimes and asking respondents to indicate which, in their view, is the more serious. This technique was originally employed by Thurstone (1927) and has been replicated in 1966 (Coombs, 1967) and in 1976 (Krus, Sherman and Krus, 1977).

The magnitude estimation method is well known through the work of Sellin and Wolfgang (1964). Sellin and Wolfgang used two methods - an 11 point category scale (requiring respondents to indicate which category of seriousness was appropriate) and a "magnitude estimation" or "ratio" scale (requiring the respondent to estimate how much more serious offences are than some standard offences). More recently Wolfgang, Figlio, Tracy and Singer (1985) constructed a magnitude estimation scale of crime seriousness based on the responses given to the question "how much more serious is this crime than stealing a bicycle?"

The methods used by Sellin and Wolfgang (1964) and Wolfgang et. al. (1985) have been criticized on methodological grounds by a number of authors (e.g. Rose, 1966; Collins, 1988). The validity of the magnitude estimation method has been questioned because it essentially asks respondents to compare events which are qualitatively dissimilar. The technique

quantifies these judgements between qualitatively different events. Serious crimes are quite different events than bicycle theft, they evoke different feelings and they have substantially different consequences. However, various studies suggest that different measures of crime seriousness yield similar results (e.g. Sellin and Wolfgang 1964; Ekman, 1962).

A method used more frequently in recent studies for gauging public perceptions of crime seriousness asks the respondent to directly indicate the penalty considered appropriate for various crimes (e.g. Scott and Al Thakeb 1977; Broadhurst and Indermaur, 1982). The length of sentence is then converted into a score (such as "days in prison") and a rank ordering of offences compiled on the basis of these scores. A variation on this method is to ask the respondent to indicate what proportion of offenders convicted of a certain crime should be imprisoned (e.g. Roberts and Doob, 1989). These later techniques may be more useful to our understanding of the relationship between offence severity and sentence length allocated in the courts as they allow a more realistic comparison.

In the present study six techniques or approaches were employed to gauge community perceptions of crime seriousness resulting in the construction of six scales summarized below:

- (1) A scale based on paired comparisons. Six selected crimes were placed in every possible pair combination (15 pairs) and respondents asked to nominate which crime in each pair is the more serious;
- (2) Proportion of convicted offenders respondents thought should be imprisoned. Respondents were asked to indicate the gravity of a crime by suggesting what proportion of all convicted offenders for particular crimes should eventually receive a prison sentence;
- (3) The maximum term of imprisonment thought to be appropriate for each crime;
- (4) The minimum term of imprisonment thought to be appropriate for each crime;
- (5) The average term of imprisonment considered appropriate for each crime;
- (6) The selection from a penalty scale (see Appendix 1) of a code (associated with a range of penalties) that was considered appropriate for each crime;

Earlier research (Indermaur, 1987) indicated that most community respondents approach the sentence allocation task with the picture of a stereotyped offender in mind. To ameliorate this effect somewhat, the instructions for this part of the survey asked "what proportion of all those convicted of the offence of "....." should be imprisoned?" and "considering all the various types of offenders imprisoned for "....." what do you think should be the maximum length of

imprisonment? What should be the minimum? What should be the average?"

The offences chosen for study comprise the more distinct and serious crimes: assault causing grievous bodily harm; driving whilst intoxicated; rape; armed robbery; breaking and entering a house; and car stealing. In addition the offence of dangerous driving causing death was also included in judgement tasks 2 to 6 and the offences of use of heroin, use of cannabis, tax cheating, receiving stolen goods and murder were included in judgement task 6 (penalty code selection task).

### 2.1.2 The Measurement of Court Practice

The basic sources of data on court practice in Western Australia are the statistics published by the Australian Bureau of Statistics. These statistics are organized according to the Australian National Classification of Offences. The practice of the courts can be gauged by an examination of "all penalties" or "the most serious offence of distinct persons". Both techniques have advantages and disadvantages. For the purposes of the present study the analysis of all sentencing penalties is appropriate because of the focus on the offence seriousness. The results derived from either measure tend not to differ greatly (See Appendix 3 for a discussion of these differences). The proportions of convictions for selected crimes that result in imprisonment are calculated in Table 1.

TABLE 1 CALCULATION OF AVERAGE IMPRISONMENT RATES<sup>1</sup> IN W.A.<sup>2</sup>

OFFENCE	Courts of Petty Higher Courts Sessions (1987-88) ABS (1986-87) ABS		Average Imprisonment Rate	
	Rate	(n) <sup>3</sup>	Rate	(n) <sup>3</sup>
Murder	1.00	( 9)	-	= 1.00
Rape (agg sex ass)	0.83	( 99)	-	= 0.83
Armed Robbery	0.93	( 92)	-	= 0.93
Assault Causing G.B.H.	0.71	( 35)	0.18	( 167) = 0.27
Car Stealing	0.68	(215)	0.53	( 1,027) = 0.55
Break & Enter (Dwelling)	0.56	(886)	0.29	( 295) = 0.49
Driving Causing Death	0.37	( 8)	0.00	( 17) = 0.19
Receiving Stolen Goods	0.24	(250)	0.06	( 382) = 0.13
Driving Whilst Intoxicated	-		0.02	(13,962) = 0.02
Use of Cannabis	0.00	( 2)	0.01	( 3,606) = 0.01
Use of Heroin	1.00	( 1)	0.06	( 103) = 0.07

1. Imprisonment rate = number of imprisonments / number of convictions
2. Sources: Higher Courts A.B.S. Catalogue 4501.5 Court Statistics 1987-88. Courts of Petty Sessions A.B.S. Catalogue 4502.5 Court Statistics 1986-87.
3. Figure in brackets indicates the number of cases. This figure is used to weight imprisonment rates to allow the calculation of the overall rate of imprisonment.

Further scales were calculated on the basis of maximum and minimum terms of imprisonment which are limited by the available statistics. The figures used are the integers (in terms of years) the term does not exceed. In other words, the figures used tend to slightly overestimate the actual maximum and minimum terms and thus may give the appearance that the sentences passed by the courts are more severe than they actually are. To allow calculation of averages the category "over 10 years" was arbitrarily set at 15 years and the category "indeterminate" set at 20 years. Again the effect of this methodology is to overestimate the severity of court sentences. The rationale for adopting this procedure is that the issues relevant when comparing court practice are more likely to be the relative leniency of the court compared to public opinion. Therefore the procedure adopted minimizes the criticism that the method underestimates court severity.

To arrive at an overall average maximum term the averages were first calculated for each court based on the number of penalties of imprisonment. Then based on the proportion of the total number of penalties passed by each court the average figure was calculated for all penalties. Therefore, the average figure arrived at is an average maximum term for all penalties of imprisonment passed by the higher courts and the Courts of Petty Sessions. To get a fairer indication of the relative gravity of the offence one needs to marry this figure with the proportion of all convicted offenders imprisoned because an offence category may see only 5% of convicted offenders imprisoned but those that are imprisoned may be sentenced to large maxima. An offence category that sees 80% of offenders imprisoned may on average have a lower maximum and thus appear less serious. However, when considered in concert with the rate of imprisonment the severity of sentencing will be more fairly revealed. This procedure was adopted in the results that use "severity" as the comparison measure (see Figures 7 and 10).

## **2.2      Sampling Methodology**

The current study adopted the same sampling procedure used in the earlier Perth study (Indermaur, 1987). The size of the sample frame was reduced somewhat as the earlier study discovered that the results on public perception were quite reliable and the same results were revealed by half ( $n = 250$ ) the total size of the sample ( $n = 500$ ). Therefore, expecting a 65% response rate and seeking a final sample of approximately 350, the sample frame was set at 550. In fact 410 responses were gained so that the actual final response rate was 74.52%

The survey instrument (Appendix 1) was administered directly to those in the sample frame that agreed to be interviewed. The order of presentation of the first three segments of the questionnaire concerning the scales of crime seriousness as well as the order of presentation of items within these segments was varied to overcome any possible effects which may rely on order of presentation. The questionnaire itself was the product of fairly extensive pilot testing by the author

and the procedure and format was designed to allow swift and efficient questioning of respondents given the constraints of the topic. Feedback from interviewers suggested that respondents found the method of paired comparisons easiest, followed by the code selection task. The task requiring indications of percentage of offenders to be imprisoned and maximum, minimum and average penalties appeared to be the most difficult both in terms of grasping the question and arriving at an answer. Most other questions did not present any difficulty. The interview took an average of 20 minutes to complete. As with the earlier study, potential respondents were informed that their participation was voluntary and their anonymity was fully protected.

The sampling frame consisted on one adult from each of 22 residences in 25 census collectors districts (C.D.'s) in the Perth metropolitan area (i.e. 550 individuals).

The Australian Bureau of Statistics (A.B.S.) in Perth provided a random selection of 25 census collectors districts in the Perth metropolitan area. A.B.S. advised that a random selection such as this would produce a sample unlikely to be biased in terms of socioeconomic status or any other major demographic variable. The method for selecting households within the selected C.D.'s was guided by the A.B.S. using methods employed in A.B.S. surveys. Two random numbers were selected which determined an intersection point on a transparency which was placed on a map of each C.D. The determined point became the start point of the interviewers walk through the C.D.

Interviewers chose the house closest to the "start point" and then walked in a preset direction to approach every fifth house until a total of 22 houses had been approached this then comprised the selected houses for each C.D. Interviewers returned to follow up those respondents not at home on their first approach. Interviewers were instructed to achieve a response rate of at least 16 out of 22 houses and to achieve a higher rate if possible. Interviewers rates of follow up therefore depended to some extent on the initial response rate. The area that achieved the lowest response rate (Nollamara, 59%) received two follow ups. The area that received the highest response rate (Belmont, 95%) required only one follow up. The person opening the door was approached in a standard manner (see Appendix 1). The adult whose birthday came closest to the day of the interview and who was available at the time of the interview was nominated as the preferred respondent. However, if there was a language barrier the respondent was considered unsuitable and excluded from the 22 houses which formed the sample base. In these cases the residence was 'transferred' to the next house at the end of the series.

To maintain consistency and comparability of responses all the interviews were completed between the 30.9.89 and the 31.10.89 (4.5 weeks). All interviews were conducted after 4.30 p.m. on weekdays or on weekends to enable the availability of both home based and office based workers.

### 2.3 Data Analysis: Comparison of Public Perceptions with Court Data

Interview responses were recorded on a standard protocol (Appendix 1) and entered onto computer disc. An S.A.S. programme was run to provide descriptive summary statistics, cross tabs and chi-square test results.

As most of the derived scales were order scales, the appropriate statistics are non parametric and the rank ordered scales were compared in terms of Spearman Rank Order Correlation's. Although the essential tests of concordance between scales are statistical, individual variations can be quite meaningful and require qualitative analysis. The range of measures is illustrated in Table 2.

Certain topics required an open ended question format (e.g. questions regarding what makes one crime more serious than another?; purposes of sentencing and kinds of offenders treated too severely by the courts). The "open ended" approach is preferred so as not to inhibit nor direct the kind of response that would be recorded. This approach required the responses given in the interview to be coded by a trained coder into a comprehensive range of categories. Most coding categories categorized responses into one of nine categories. Occupations were coded according to the Australian Standard Classification of Occupations (ABS, 1986).

Questions about the length of imprisonment were recorded as the respondent chose to express it (i.e. in terms of weeks, days, months or years) for easy recording purposes and so as not to suggest to the respondent the kind of sentence which was to be expected. The figure was then converted to "years in prison" by an arithmetic formula.

**TABLE 2: THE RANGE OF CRIME SERIOUSNESS MEASURES USED**

<u>M E A S U R E</u>				
	Crime seriousness measured by paired comparison	Sentence allocation task (Code Selection)	Proportion of offenders imprisoned	Maximum; Minimum and Average penalties
Community Sample (N = 410)	1	2	3	4, 5, 6
Sample of the Judiciary (N = 17)	7	8	9	10, 11, 12
A.B.S. Statistics on Court Practice	N.A.	N.A	13	14, 15, N.A.



## 2.4 Measurement of Judicial Attitude

The co-operation of the judiciary allowed for the questionnaire format used in the public survey to be adapted and administered within the context of a structured interview with 17 Judges and Magistrates. This sample is made up of 6 Judges of the Supreme Court of Western Australia, 9 Judges of the District Court of Western Australia and two Stipendiary Magistrates. The sample is therefore heavily weighted toward the more senior members of the judiciary in Western Australia and the results may be seen as reflective of this sector. The interviews with the judges were conducted personally by the author.

Without more thorough study it would be difficult to ascertain the extent to which magistrates views conferred with the indications provided by the sample studied here. However, it may be worth noting that the indications provided by the present judicial sample could be considered important in terms of providing a view of the attitudes of what could widely be considered "judicial leaders" as the views expressed in higher court judgements is often taken by more junior judicial officers as an indication of the proper direction of sentencing practice. On the other hand the types of offences which arrive at the higher courts are often the more serious cases of offences which in their less serious forms are dealt with by the lower courts. The views of the higher court judges may well reflect this "serious end" aspect of their practice. An indication of the difference in severity of offences presenting at the higher courts and the Court of Petty Sessions is indicated by the imprisonment rates of those courts displayed in Table 1.

The results of this section allow some indication of the concordance between judicial attitude, public attitude and court practise. Naturally the anonymity of the judicial respondents was fully protected. Only group responses are analyzed and discussed.

An informal examination of the results suggested that the two "non - high court" judicial officers gave similar responses to the high court judges and summary statistics computed when these two officers were removed from the sample were almost the same as for the total sample.

Not all judicial respondents answered every question. Perhaps reflecting the caution often associated with their office these respondents would often defer from answering questions that they considered ambiguous and often had difficulty with phrases such as "in general...", "on average..." etc. The statistics for various items were calculated on the basis of those responses which were available. For example, in the section which asks the respondent to indicate which one of two crimes is more serious if a respondent opted to make no distinction or to say that the two crimes were equally serious, the statistics are based on those respondents who did make a distinction

**RESULTS**

**AND**

**DISCUSSION**

### 3. RESULTS AND DISCUSSION

#### 3.1 RESULTS BASED ON THE COMMUNITY SURVEY, COURT STATISTICS AND THE INTERVIEWS WITH JUDGES

Figures 1 to 3 suggest and Table 4 indicates there is a high correlation between scales of crime seriousness based on community and judicial perceptions. Correlations between community scales and court practice are also large and significant (see Table 4). Although, as these figures indicate, there is a good deal of agreement between the relative seriousness of this small range of crimes, Figures 1 and 2 also indicate the considerable disparity in the quantum of punishments considered appropriate by the public and judicial samples. For the six standard offences used in all scales, the community sample suggested an average imprisonment rate of 77%, the judicial sample suggested an imprisonment rate of 59% and the actual imprisonment rate was 51%

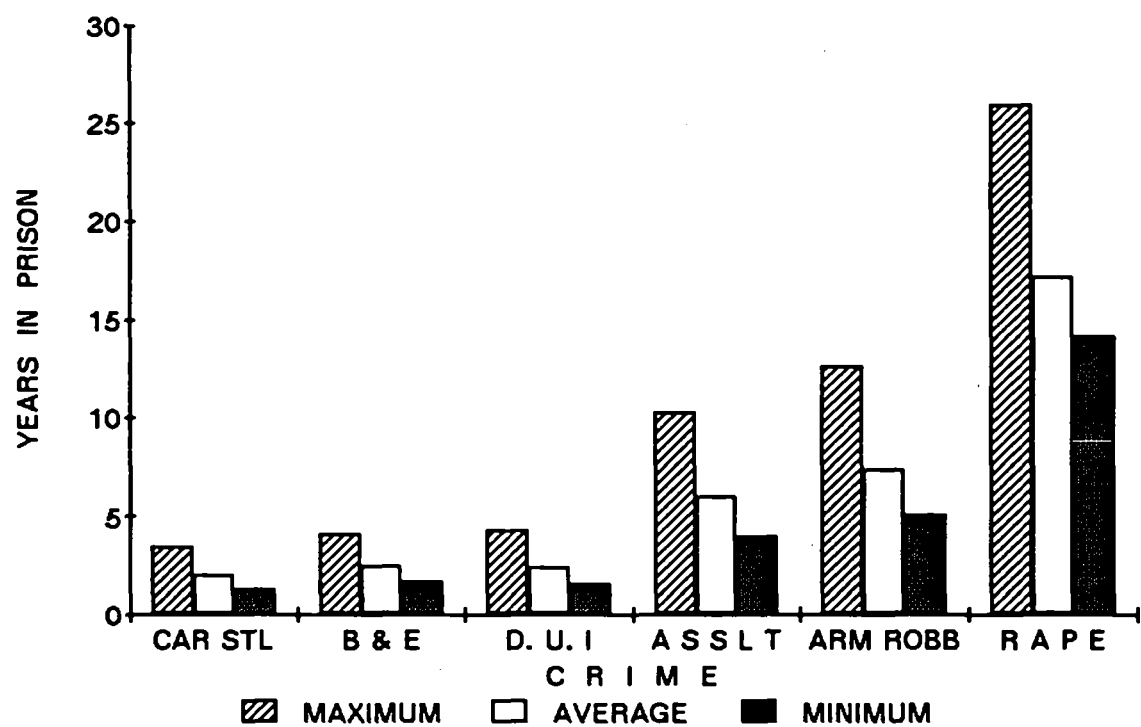
As the judicial sample largely comprised judges of the Supreme and District Courts a fairer comparison would be with the practice of the higher courts. If we recalculate the imprisonment rate based on the practice of the higher courts we arrive at an overall average imprisonment rate of 62%, closely reflecting judicial views, and also closer to community views.

The practice of the higher courts also is also more similar than "all courts" in terms of crime seriousness rankings to both community and judicial views (see Figures 5 and 8). The notable exception to this observation is the crime of armed robbery which still attracts more severe penalties than rape. As will be discussed later this relationship may reflect different understandings if "harm", and therefore "seriousness", between the public and the courts.

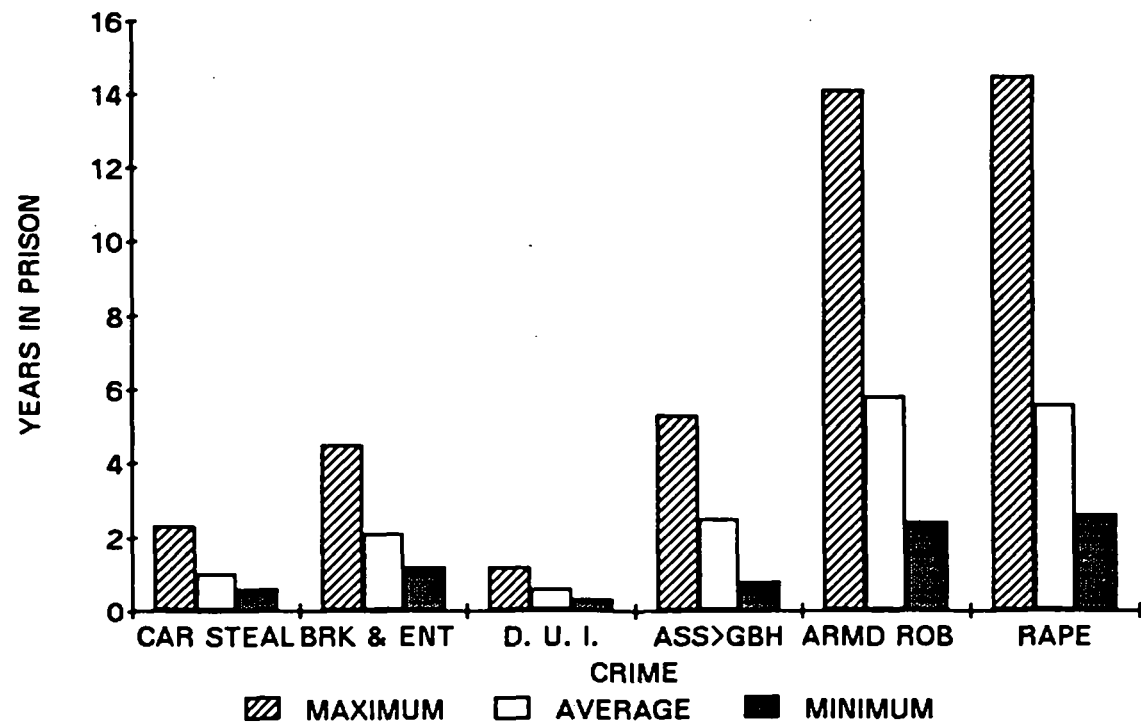
The fact that the practice of the higher courts more closely reflects public views may also be a function of the likely stereotyping amongst the public which leads them to think of crimes in terms of the more serious instances. In other words, the public tends when posed a question about all crime or any specific crime to think of the more dramatic, the more serious forms of crime. This phenomenon was discussed in the introduction and at length in a previous paper (Indermaur, 1987). The Court of Petty Sessions may deal with the same category of crime but would tend to deal with the less serious cases of these crimes.

The six crimes studied are indicated by the following codes in the following figures: Car stealing = CAR STEAL; Breaking and entering a dwelling = BRK & ENT; Driving whilst intoxicated = D.U.I.; Assault causing grievous bodily harm = ASS>GBH; Armed robbery = ARMD ROB and Rape = RAPE.

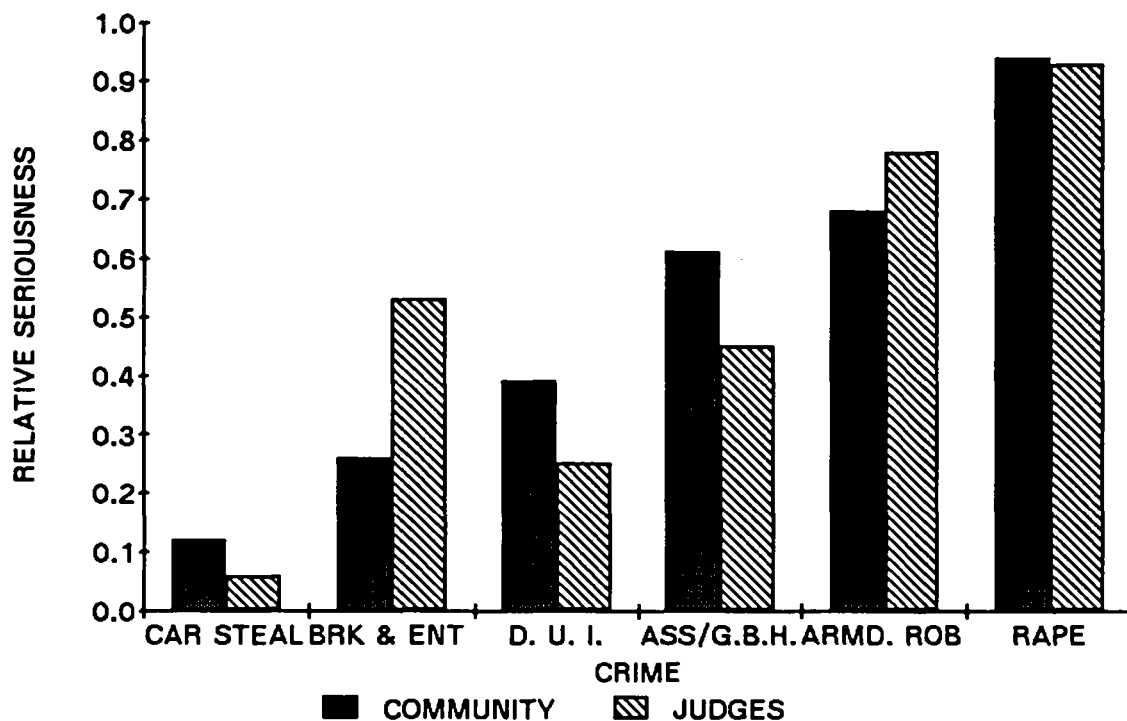
**FIGURE 1 INDICATIONS OF CRIME SERIOUSNESS BASED ON THE MAXIMUM, AVERAGE AND MINIMUM PENALTIES SUGGESTED BY THE COMMUNITY SAMPLE**



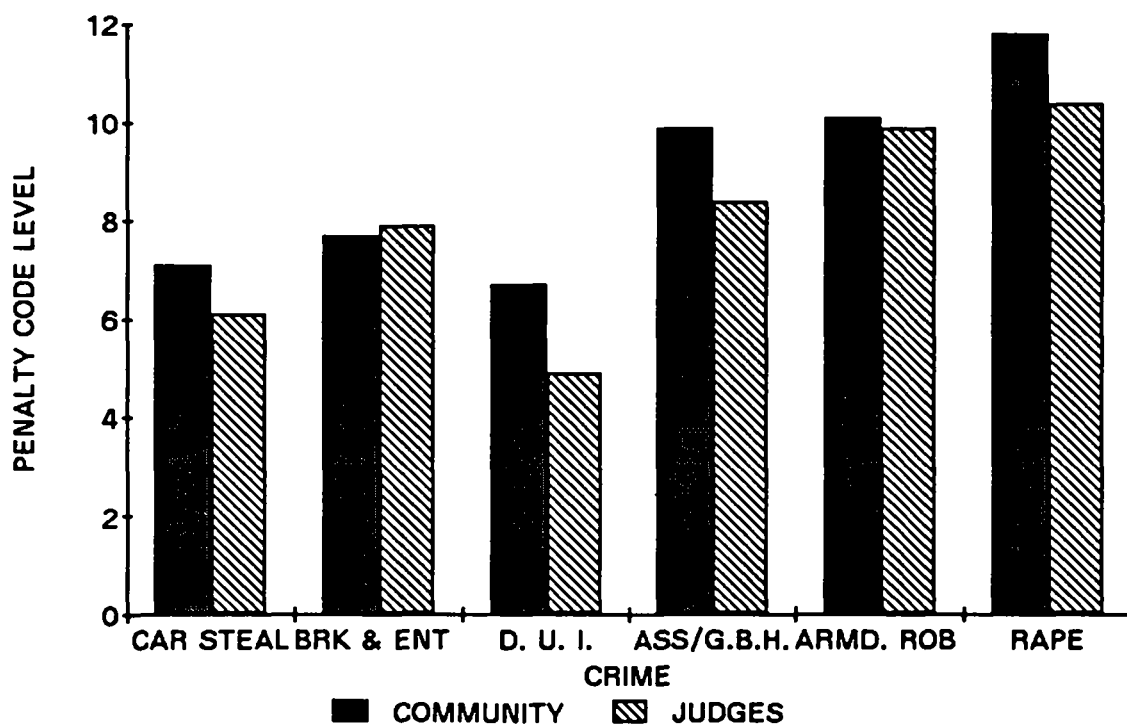
**FIGURE 2 JUDGES VIEWS OF CRIME SERIOUSNESS BASED ON THE SUGGESTED MAXIMUM, AVERAGE AND MINIMUM TERMS OF IMPRISONMENT.**



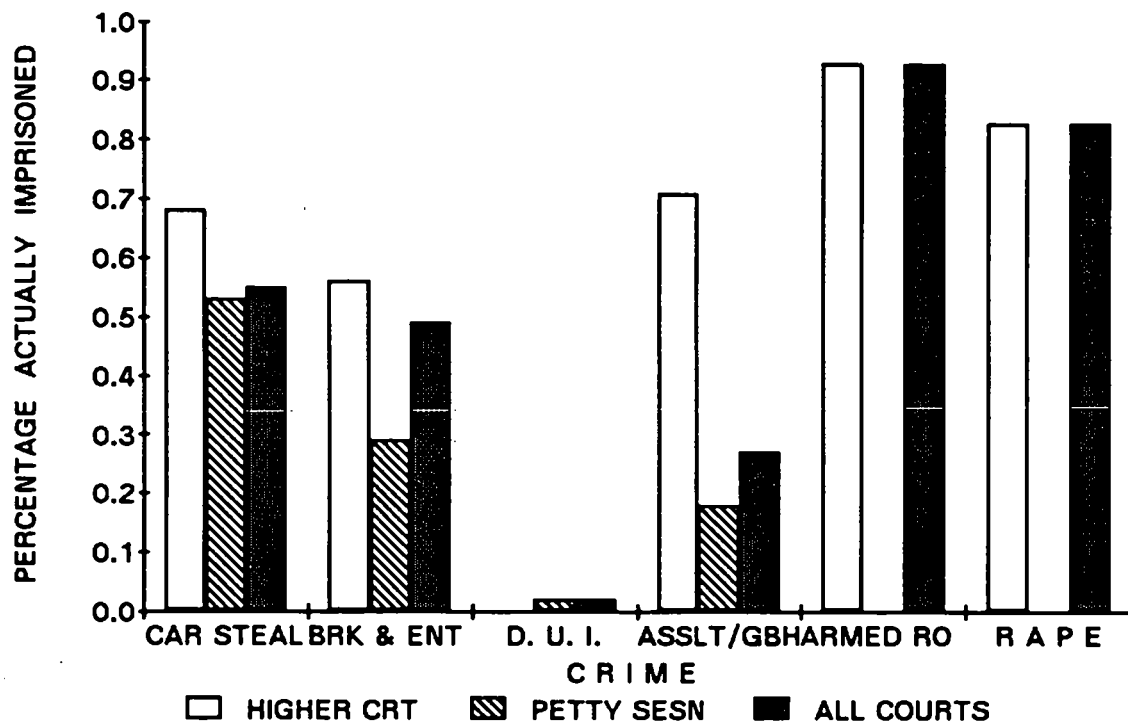
**FIGURE 3 COMMUNITY AND JUDGES VIEWS OF CRIME SERIOUSNESS BASED ON PAIRED COMPARISONS (i.e. limited amount of seriousness to distribute)**



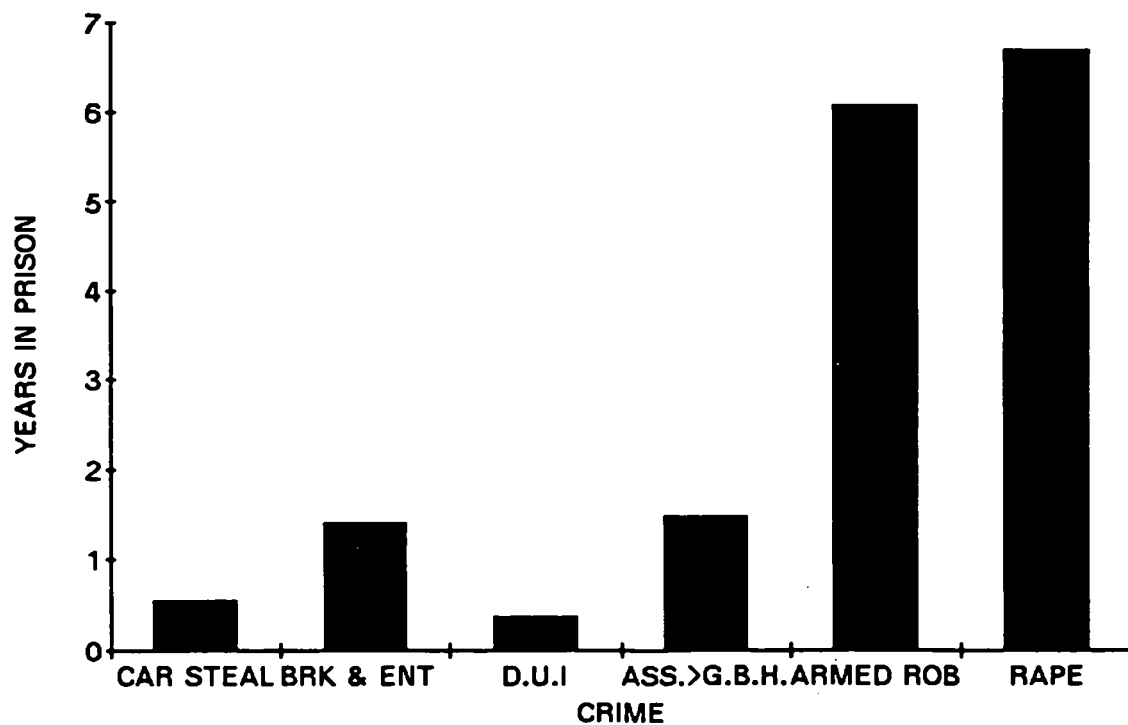
**FIGURE 4 COMMUNITY AND JUDGES VIEWS OF CRIME SERIOUSNESS BASED ON THE PENALTY LEVEL SELECTED FROM THE PENALTY SCALE.**



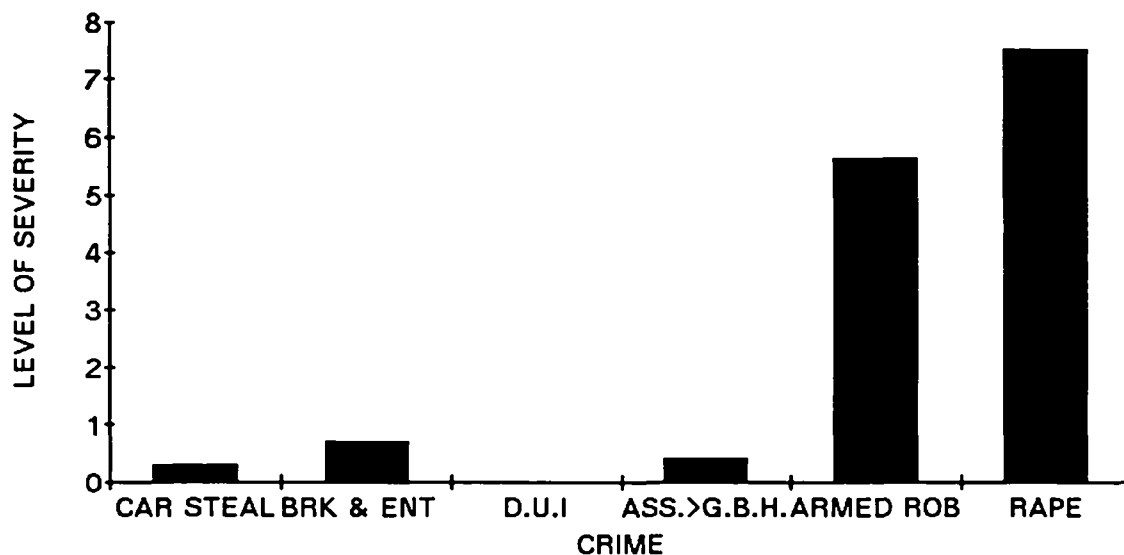
**FIGURE 5 INDICATIONS OF CRIME SERIOUSNESS BASED ON THE PERCENTAGE OF CONVICTED OFFENDERS IMPRISONED IN WESTERN AUSTRALIA BY THE COURT OF PETTY SESSIONS IN 1986-87 AND THE HIGHER COURTS IN 1987-88.**



**FIGURE 6 INDICATIONS OF CRIME SERIOUSNESS BASED ON THE AVERAGE OF MAXIMUM TERMS OF IMPRISONMENT PASSED IN RELATION TO OFFENCES BY ALL COURTS.**

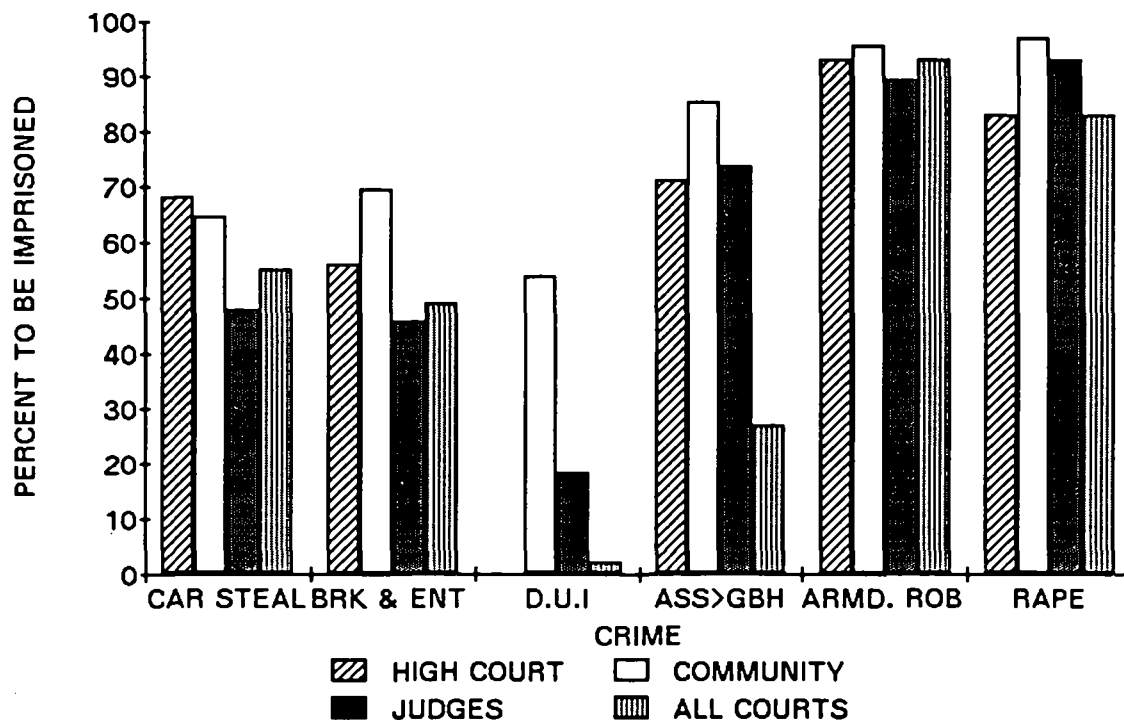


**FIGURE 7. INDICATIONS OF CRIME SERIOUSNESS BASED ON A COMBINATION OF THE PROPORTION OF CONVICTED OFFENDERS IMPRISONED (BY BOTH COURT LEVELS) AND THE AVERAGE MAXIMUM TERM OF IMPRISONMENT (IN YEARS).**

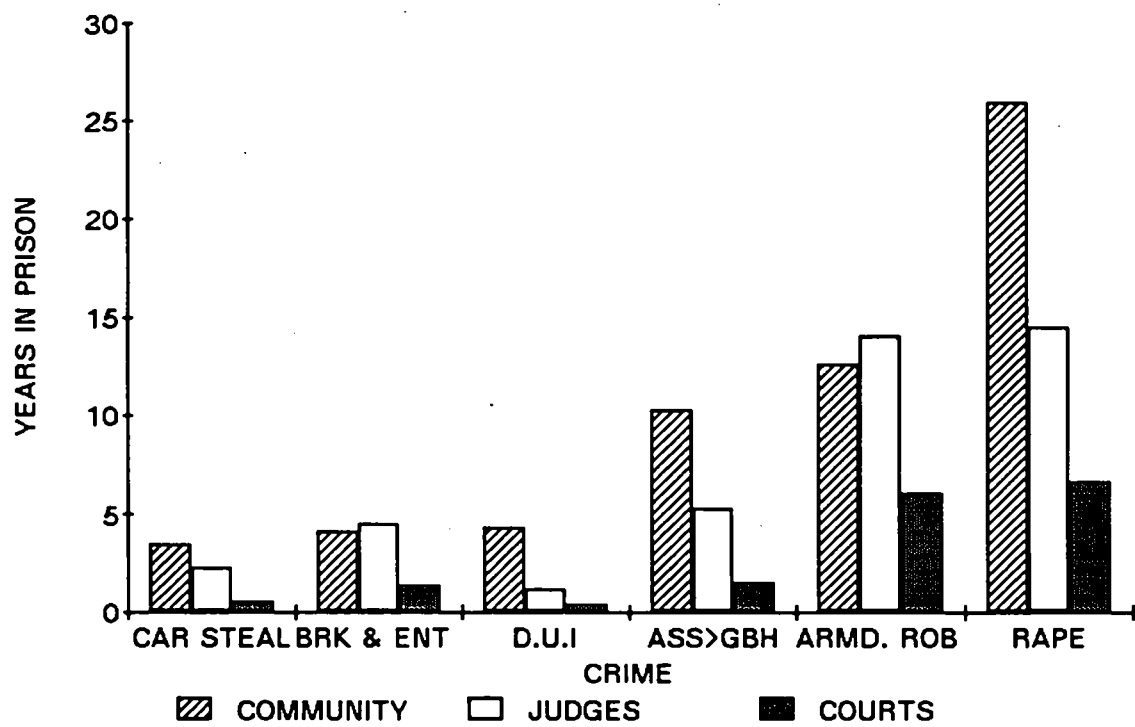


### **3.2 COMPARISON OF INDICATIONS OF CRIME SERIOUSNESS BASED ON THE THREE SOURCES**

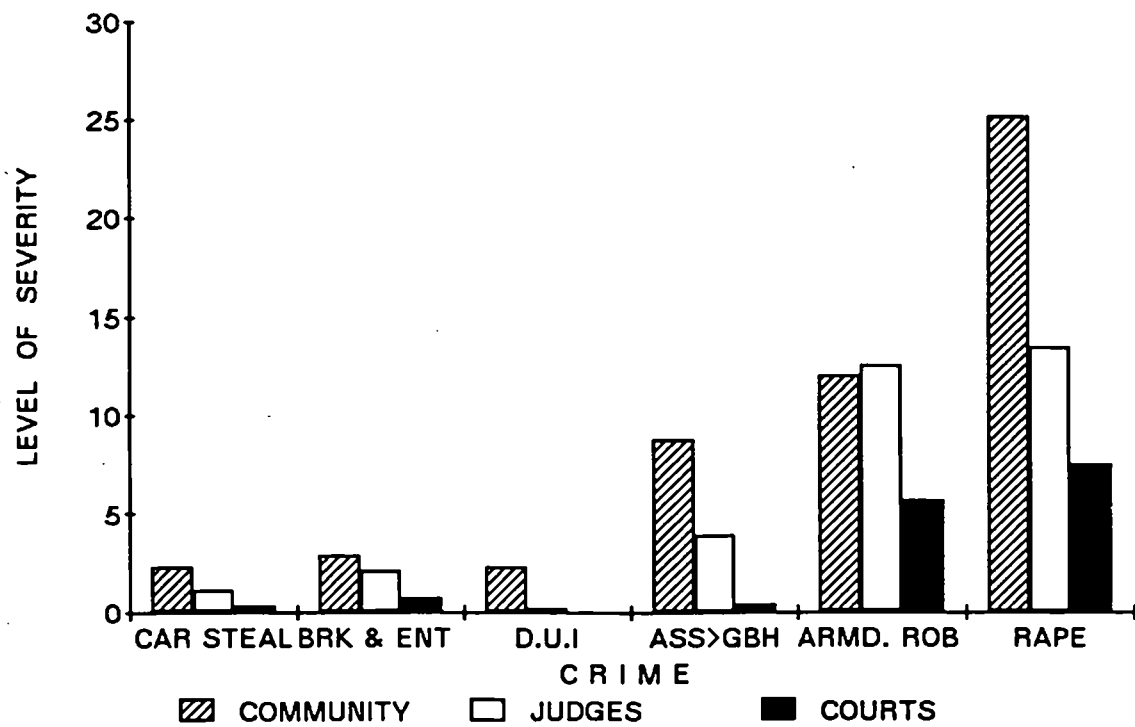
**FIGURE 8 COMMUNITY, JUDICIAL AND COURT INDICATIONS OF CRIME SERIOUSNESS BASED ON THE PROPORTION OF OFFENDERS IMPRISONED**



**FIGURE 9 COMMUNITY, JUDICIAL AND TOTAL COURT INDICATIONS OF CRIME SERIOUSNESS BASED ON THE AVERAGE MAXIMUM PENALTY.**

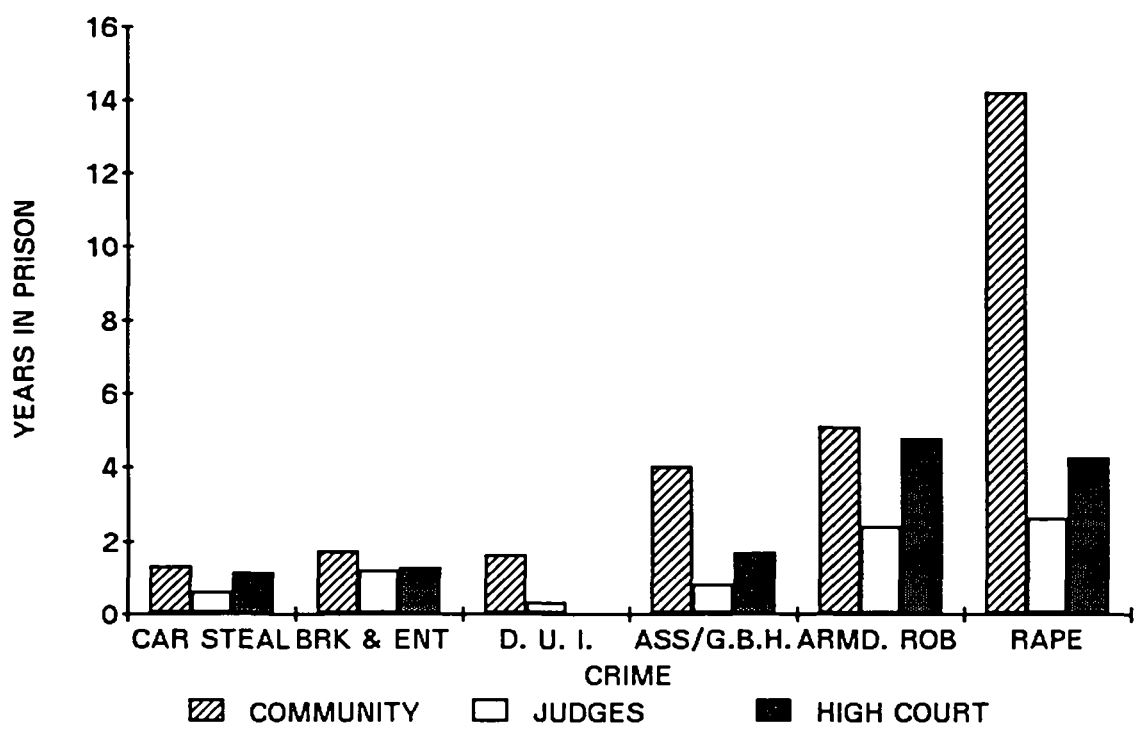


**FIGURE 10 INDICATIONS OF CRIME SERIOUSNESS AS A FACTOR OF THE PROPORTION OF OFFENDERS IMPRISONED AND THE MAXIMUM TERM OF IMPRISONMENT (IN YEARS).**

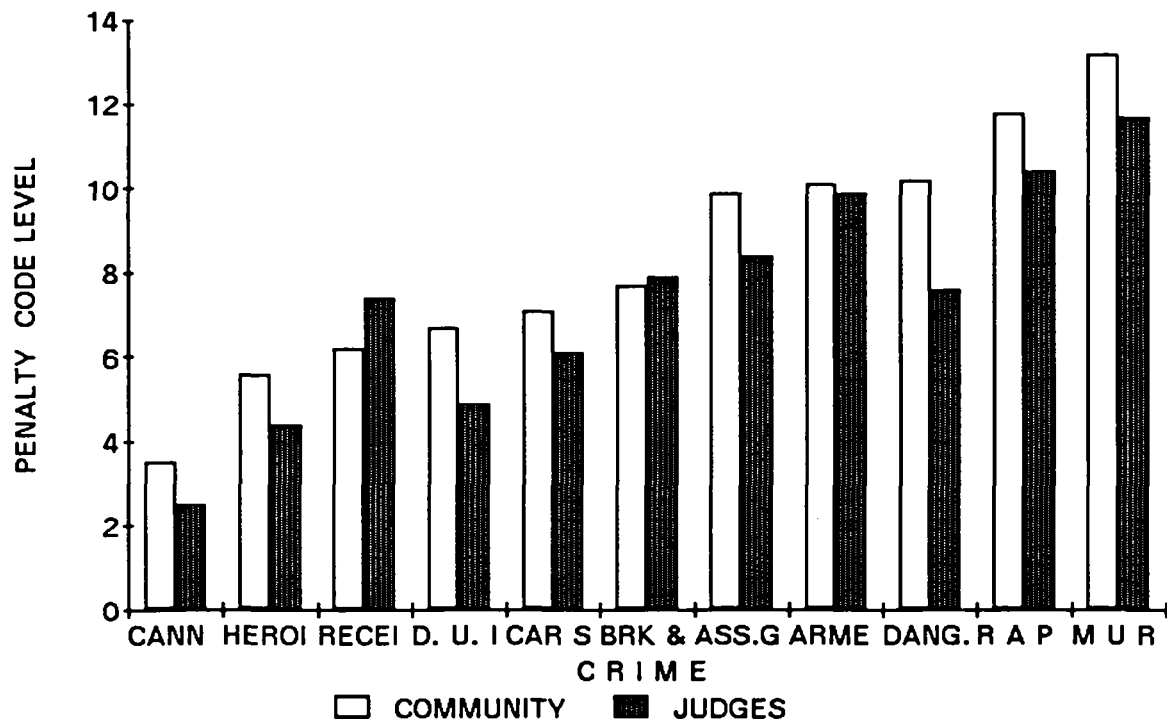




**FIGURE 11 INDICATIONS OF CRIME SERIOUSNESS BASED ON THE MINIMUM TERM OF IMPRISONMENT (HIGHER COURTS).**



**FIGURE 12 COMPARISON OF INDICATIONS OF CRIME SERIOUSNESS FROM THE COMMUNITY AND JUDICIAL SAMPLES BASED ON THE PENALTY CODE SELECTION METHOD FOR 11 OFFENCES.**



Figures 1 to 4 display essential similarities and differences between scales derived between different sources and using different methods. The high level of correlations found between methods in the community survey (see Table 3) suggests that the underlying construct or psychological scale of crime seriousness is quite robust as it is not affected substantially by the different approaches. This would suggest that any of the methods used could be taken individually as a valid indicator of crime seriousness.

**TABLE 3 Values of Gamma and Spearman's Rank Order Correlation Coefficient for the Six Community Seriousness Scales. (Gamma Value cited first, followed by Spearman's Rank Order Correlation Coefficient).**

SCALE (6th SCALE IS CMDCODE)					
	1 (CRPCOMP)	2 (CPCTIMP)	3 (CMAX)	4 (CAVE)	5 (CMIN)
2	0.73 0.83				
3	1.00 1.00	0.73 0.83			
4	0.87 0.94	0.87 0.94	0.87 0.94		
5	0.87 0.94	0.87 0.94	0.87 0.94	1.00 1.00	
6	0.85 0.88	1.00 0.97	0.85 0.88	1.00 0.97	1.00 0.97
Ave	0.86 0.92	0.84 0.90	0.86 0.92	0.92 0.96	0.92 0.96

Ave for CMDCODE = 0.94; 0.93

Given this general agreement between scales further research should be informed by factors such as the ease of presentation. If crime seriousness is the focus rather than the actual question of the penalty or some other specific information the results of the present study would suggest that the penalty selection task is preferable; mainly because of its ease of presentation. The scale of seriousness based on this method has the highest overall Gamma when measured against other scales suggesting the highest construct validity, although the intercorrelation between all scales is high.

The other factor which is relevant to the utility of the scales concerns the variability of the measures. Scales are useful to the degree to which they separate and therefore describe a range of possibilities in any particular field.

Therefore the more even the distribution of crimes over scale points the more useful the scale may be.

In terms of comparing scales the most useful measure of association between actual data that the scales represent is gamma. The main limitation in interpreting gamma is the assumption of a non-skewed distribution. So for the purposes of general use and comparisons between scales the more useful scales will have a flat or normal distribution. The limitations of skewed distributions also affect the interpretation of Spearman's Rank Order Correlation Coefficient.

Community and judicial scales of crime seriousness can be compared with those derived from court practice by means of Spearman's Rank Order Correlation Coefficients. For this comparison the rank order of the six standard offences (Break and Enter, Rape, Car Stealing, Armed Robbery, Assault Causing Grievous Bodily Harm and Driving Whilst Intoxicated) were compared between sources as shown in Table 4.

These results suggest a generally high level of correlation between the rank orders as would be expected. However only the correlations between maximum terms reached statistical significance and it must be remembered that these correlations only suggest that there is a broad agreement in regard to the ranking of the seriousness of the six crimes. The correlations should be considered together with the earlier results which suggest a large difference in the quantum of the penalty between sources. The correlations simply suggest that this difference is evenly and consistently spread over the six crimes.

**TABLE 4 Spearman's Rank Order Correlation Coefficients (RHO) and their Probability (for Rank Order of Crime Seriousness Between Scales).**

CRITERIA MEASURES	GROUP	RHO	P
By Proportion of Convicted Offenders Imprisoned	Judges/Community	1.00	0.00
	Judges/Court	0.77	0.07
	Community/Court	0.71	0.11
By Maximum Term of Imprisonment	Judges/Community	0.81	0.05
	Judges/Court	1.00	0.00
	Community/Court	0.83	0.04

### **3.3 Demographic Associations of Judgements of Crime Seriousness**

In terms of overall crime seriousness ratings there appears to be no effect by gender or age, although there is an effect between occupational group and a measure of punitiveness based on the penalty code selection method ( $\chi^2 = 15.97$ ,  $p = 0.01$ ). This association with occupational group suggests that the more highly qualified occupations on average tend to be less punitive in their judgements of crime seriousness.

An association between "interviewer" and measures derived to indicate over all "punitiveness" on some scales was also detected but this effect also tends to occur by socioeconomic status of areas. As interviewers tended to focus on specific areas it is difficult to ascertain whether the effect, if not artifactual, is a feature of the area or the interviewer or perhaps even a combination of both. Future surveys should perhaps endeavor to disperse individual interviewers to different areas to overcome this nexus of interviewer/area. In the current analysis punitiveness is not the focus of study and furthermore results are grouped across areas/interviewers.

No significant relationships were found between the major variables studied and the date, time of interview or order. Descriptive demographic data on the respondent sample is presented in Appendix 2.

### **3.4 Perceptions of Sentencing Practice**

#### **3.4.1 Factors Relevant to Sentencing**

In terms of factors which people think should be considered by the judge at time of sentencing the seriousness of the offence and the harm done to the victim appear by far the most important. Furthermore, the two concepts appear to be almost the same as evidenced by the response to the question "what makes one response more serious than another?". The next most frequently cited factors to be considered in sentencing are "the probability of the offender repeating the offence" and "the offenders record" the other factors are perhaps notable in that so few respondents chose them.

The responses to the question: "In your opinion what are the two most important factors for a judge to consider when sentencing an offender?" may also be compared to the results of a similar question asked by Doob and Roberts (1983). This comparison is outlined in Table 5.

**Table 5 Factors a judge should consider when sentencing:  
A comparison of indications from Canada and  
Australia.[Based on the responses from the  
community sample in Perth (n=410). Figures are  
percentages of the total responses in each column].**

<u>FACTOR</u>	<u>Canada (1983)</u>		<u>Perth (1989)</u>	
	<u>RESPONSE</u>		<u>RESPONSE</u>	
	<u>1st</u>	<u>2nd</u>	<u>1st</u>	<u>2nd</u>
* Seriousness of Offence (Australia) Whether offence was violent (Canada)	15%	17%	42%	26%
* If Crime was Premeditated or planned	22%	16%	- A -	-
* Harm to Victim	16%	13%	24%	28%
* Likelihood of Recidivism	11%	9%	12%	18%
* Criminal Record	16%	18%	10%	14%
* Offenders Psychological Problem	- A -	-	4%	3%
* Offenders Age	4%	5%	3%	4%
* Frequency of Offence in Community	3%	3%	2%	4%
* Other/don't know	13%	19%	3%	3%
	100%	100%	100%	100%

A = This option/factor not presented

In retrospect it would have perhaps been more beneficial in the current study not to include "seriousness" as that notion really is an amalgam of more basic concepts such as "harm to the victim", "degree of premeditation" and the "degree of violence" involved, as indeed the responses to Question Eight ("What do you think makes one offence more serious than another?") reveal. 68% of respondents proffered "harm to the victim", 17% "If it involves violence" and 7% "the intention of the offender" or "the degree of premeditation".

The relative weight or importance of these factors is confirmed by Questions 5 and 6 which probe the answer to Question 4 by clarifying exactly how important the first chosen factor is. The two most important factors are clearly the seriousness of the offence and the harm to the victim. The results of the community survey are compared to judicial responses in Table 6.

Although most of the judicial sample, like most of the public sample saw "harm done" as being the central and most important component of offence seriousness it may be that the judiciary were more able to expand the concept of harm to abstracts such

as "harm to society", "harm to the rule of law" than the community sample. If true, this may be one of the major differences between sentencers, who are some of the most intelligent and trained elites society produces and the general community. Judges are able to see more abstract and perhaps more meaningful concepts of harm. On this basis armed robbery may be as serious, or more serious, than rape (as suggested by the results displayed in Figures 2 and 5) because of the threat posed to the general rule of property ownership. For the less educated and intellectually able community sample the question more relevant was "was someone hurt?", and/or "how much hurt or damage was incurred?" the community may indeed be operating at a lower level of some scales of moral development (e.g. Kohlberg's). However this raises the question of whether the courts should enforce the morality of the community or a more highly refined set of principles able to be reached by intellectual elites.

**TABLE 6 MOST IMPORTANT FACTOR FOR JUDGE TO CONSIDER WHEN SENTENCING: THE RESULTS OF THE COMMUNITY AND JUDICIAL SURVEYS (FIGURES ARE PERCENTAGES).**

FACTOR	COMMUNITY (N = 410)	JUDGES (N = 17)
Seriousness of the offence	43	82
Harm to the victim	33	6
Probability of the offender repeating the offence	12	
Other	<u>12</u>	<u>12</u>
	100	100

#### **3.4.2 The Functions of Sentencing**

In terms of the most important purpose or function of sentencing, the approach of the present study was again informed by Doob and Roberts. These authors found that the traditional responses regarding "functions of sentencing" could be clarified and made more meaningful through more specific questioning. Rather than asking about the functions of sentencing "in general" the present survey followed the procedure adopted by Roberts and Doob (1989) and asked the question distinguishing major and minor types of offender.

Table 7 shows a good deal of similarity between responses in Perth and those in Canada. Furthermore, these results are useful in demonstrating how general questions regarding the functions of sentencing can actually mask more meaningful and specific functions, related to the type of offender and

offence. This process is generally overlooked in discussions regarding the purposes or functions of sentencing.

The importance of the type of offence to the function of sentencing is clearly evidenced from Table 7. Incapacitation being the most frequently chosen function of sentencing offenders convicted of serious violent crimes. In contrast individual deterrence and rehabilitation are clearly the more popular purposes when considering the sentencing of young offenders convicted of property offences.

**TABLE 7 PURPOSES OF SENTENCING: COMPARISON OF RESULTS FROM 3 STUDIES (figures represent percentages)**

	<u>TYPE OF OFFENDER</u>				
	<u>GENERAL</u>	<u>MAJOR/ VIOLENT</u>		<u>MINOR/ PROPERTY</u>	
	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>E</u>
Deterrence (individual) )	27	11	19	34	43
Deterrence (general) )		5	5	13	6
Retribution/Denunciation	28	32	23	25	13
Rehabilitation	22	7	13	16	24
Incapacitation	21	39	37	5	4
Other	-	2	2	6	9
Don't Know	2	4	1	2	1
	100%	100%	100%	101%	100%

**A** = Indermaur (1987) Perth Residents, "All Offenders".

**B** = Roberts & Doob (1987) Canadians, Major Offenders  
*"Now turning to more serious crimes such as sexual assault or robbery, please say whether or not each is relevant."*

**C** = Present Study, Perth Residents, "Serious Violent Crime"

**D** = Roberts & Doob (1989) Canadians, Minor Offenders  
*"Please say whether or not you consider each purpose (definition provided) relevant to sentencing an offender convicted of relatively minor crimes such as shoplifting or causing a disturbance."*

**E** = Present Study, Perth Residents "Property Offenders"

### **3.4.3 The Role of Public Attitude**

In terms of the role public attitude itself should have on sentencing, the public themselves seem somewhat unsure, only

8.3% of respondents said it should be considered in "all cases". 18% said it should be considered "in most cases". 30% thought it should be considered in "some" cases, 12% "only in very rare cases" and 31% thought it should never be considered. Interestingly these figures contrast with the views of sentencers themselves who put much more importance on the value of public attitude (81% saying it should be considered in some, most or all cases).

#### **3.4.4 Information on Sentencing and Media Reporting**

The main source of information the public has on court practice is quite predictably the news media (97%). This confirms the earlier finding reported in Broadhurst and Indermaur (1982) and other studies in North America. The sample again tended to be quite divided on their views of the accuracy of media reporting of court practice and this uncertainty is also reflected in the tendency to avoid the extreme labels "very accurate" or "very inaccurate".

The most common response of judges to the question of media reporting was that the media was inaccurate (53% of respondents). However three of the nine judges responding to this question suggested that the problem was not so much that the media reporting was inaccurate as it was inadequate. More of the judiciary were willing to rate media reporting as very inaccurate than the public sample, perhaps because they were in a position to make such an assessment. The clustering of the public sample's responses about the less extreme options suggests a lack of strong feeling on this matter, or it may indeed reflect on lack of sufficient knowledge upon which to make an assessment.

Crosstabulations between source of information and punitiveness, as well as between subjects rating of media accuracy and punitiveness suggest that there is no significant relationship between punitiveness and the source of information or how accurate people believe that source to be.

#### **3.4.5 Remission and Parole**

Do people generally support the granting of remission and parole? Two questions were asked regarding this issue, one direct, one indirect. Firstly, after respondents had nominated sentences they thought were appropriate for a range of offences they were asked "For the length of time in prison you have suggested do you mean that to be the actual length of time the offender should serve in prison?" 84% of respondents answered "yes", 8% said "no" and 7% said it "depends".

Following up this response the next question was asked to all respondents "What percentage of the sentence should be allowed off for good behaviour or early release on parole?" About half (53%) of respondents indicated that no time should be allowed off; 14% suggested 10% or less; 17% of respondents suggested between 10% and a quarter of the sentence should be allowed off; 10% suggested somewhere between a quarter and a



half and only 1.2% suggested something more than half the sentence.

Besides underlining the importance of not taking survey results on face value, these results indicate that there is a general misunderstanding or lack of faith in the current system which routinely awards prisoners one third off as remission and parole which can reduce the original sentence by up to two thirds. The views of the community sample contrasts with that of the judicial sample, which seems more accepting of time off for good behaviour and/or parole. Perhaps more needs to be done to explain the logic and benefits of the current system. Conversely reform should perhaps take cognizance of the public views on this matter.

Despite judicial and legislative definitions, formulae and terminology, for the public sample the final result, or the sentence, tends to be thought of in terms of "time in prison" underlying the notion that a large part of the general public tend to subscribe to the notion of "just deserts" and/or proportionality in sentencing.

#### 3.4.6 Prison Overcrowding

In response to the question regarding prison overcrowding ("*2 solutions have been proposed to overcome overcrowding of prisons:- build more prisons or sentence more offenders to alternatives to imprisonment such as probation, restitution, community service orders and fines. In which direction would you favour the Government spending your money?*") This question was designed by Roberts and Doob (1989) who report that in their Canadian sample 70% of respondents suggested that alternatives to imprisonment was the preferred solution. This result actually contrasts with the results of the Perth sample where only 45% of respondents suggested this option. 34% of the Perth sample actually choose "*build more prisons*" and 18% suggested that both solutions need to be pursued.

It is not clear whether the Perth sample is less tolerant to the idea of alternatives to incarceration or whether the results simply reflect different contexts within which the question was placed. In either case it seems the majority of respondents would wish for alternatives to incarceration to be explored and developed as much as possible. This of course must be considered together with indications we get from the public regarding the appropriate use of incarceration as a sanction.

On this last point three questions asked in the earlier Perth survey may be useful. The first question asked was: "*In the case of an offender convicted of breaking and entering and stealing goods to the value of \$500, would you be in favour of the offender doing some work in the community or the victim rather than being fined or sent to prison?*"; 26% of the 553 respondents chose the option "Yes, in all cases"; 32.5% chose "Yes, in most cases", 26.2% chose "Yes, in some cases". Only 15% chose the last two options "Only in very rare cases" or "never".

In response to the question about providing community work for fine defaulters instead of sending them to prison, 70.7% chose "Yes, in all or most cases". Finally, in response to the question that asked whether those sentenced to less than three months in prison should do special courses rather than go to prison again 75% chose "Yes, in all or most cases"

The results from the previous study have been interpreted as indicating that the public is quite willing to accept reasonable propositions and schemes to reduce the use of incarceration. However, these schemes must be aimed at the non-violent, non "serious" offender. In this context the question posed in the present survey in regard to prison overcrowding may be understood to have produced the results observed because the type of offender was not specified.

### **3.4.7 Perceptions of Current Sentencing Priorities**

The next section of the survey focussed on perceptions of fairness or consistency. The question posed was:- "Do you think the sentences handed down by the courts are generally fair and consistent or do you think they tend to be too soft on some offenders and too hard on others?" 87% of respondents answered "not fair"; 3% responded that they "didn't know" and 10% said they were fair. As with other areas of public perception and survey methodology, interpretation of this response must be considered carefully. It is most likely that when answering this question members of the general public would consider sentencing in general and perhaps recall well publicised cases (Roberts and Doob, 1989). A more precise interpretation of the question would consider the behaviour of the courts within the parameters of the law. It is feasible that the courts may act fairly but the final observable response to the public would seem unfair because of the influence of other factors provided for in the legislation. This interpretation is favored and is consistent with the responses from the judicial survey where 65% of the respondents said that the sentencing practice of the courts is fair and consistent.

The general public perception of "unfairness" was probed by a follow up question. The question was asked of the 87% of respondents who thought the courts were not fair. When asked which type of offenders "get off too easily" 62% responded by mentioning a form of violent crime ("violent crimes", "murder", "rape", "sex crimes" etc); 16% mentioned "juveniles". When asked "which types of offenders are treated too severely?" the responses were more variable. 15% mentioned a specific case, most (81%) of these cited the notorious Mickelberg case (W.A. Mint Swindle). 14% specified "property crime that does not involve violence". 10% specified drug use, 7% mentioned petty crime. 22% retorted with a categorical "none" suggesting that at least for this group they had answered the question out of dissatisfaction with the perceived leniency of the courts.

Responses citing non violent crime and/or petty crime made up 92% of all the categories of crime thought to be treated too severely. Clearly then, much of the dissatisfaction the public has with the courts has to do with a perception that the courts do not consider violence seriously enough. This tends to confirm the picture gained earlier in relation to the question: *"What makes one crime more serious than another?"*. The notion of violence and direct harm to an individual victim seemed to predominate, the focus and concern with violence is consistent with this view.

The observation that public perceptions of crime and crime seriousness are largely dominated by images of, and concerns with, violence has been the subject of considerable research as discussed earlier. The results of this section of the survey may be useful to both policy makers and sentencers in reaffirming the importance of violence to considerations regarding sentencing.

### **3.5 Victims of Crime**

In regard to victimization, 15.6% (64) respondents reported that they had been the victim of a crime in the previous 12 months. Appendix 2 lists detailed responses for this section. Housebreaking offences (attempted break and enter, break, enter and steal etc.) accounted for half of all offences. Vehicle theft and related offences accounted for about a third of victimizations. Violent offences and threats of violence accounted for 8% of victimizations.

About three quarters of victims (73%) reported the offence to the police. Reporting was mostly (45% of cases) for insurance or recovery purposes, 15% thought it was *"The right thing to do"*. 11% gave as their reason for reporting to the police *"that they want the offender caught and/or punished"*. The main reasons for not reporting to the police were categorized as: *"offence too trivial"* (47%) and *"police couldn't/wouldn't do anything about it"* (41%).

The results from the present survey cited above tend to confer with both the ABS survey of victims of crime conducted in 1983 and a recent international survey (Walker, Wilson, Chappell and Weatherburn, 1990). The ABS survey found that for Western Australia 9.1% of households were victims of household property theft and that a further 12.5% of the population aged 15 or more were the victims of "personal crimes" (not necessarily violent crime). It should be remembered that the ABS survey included young people from 15 to 19 years old and that this group, together with the 20-24 age range has the highest rate of victimization. The recent international survey included people from 16 years and older. This would contribute to the higher reported rate of victimization in those surveys.

The ABS survey found that only about half of victims reported the crime to the police. The rather high figure found in the present study (73%) may reflect particular local conditions, but more likely reflects the greater proportion of crimes in the present survey which are "household property theft" and

motor vehicle theft. These crimes naturally tend to have much higher report rates (94.1% for motor vehicle theft and 68.7% for break and enter according to the 1983 ABS survey). Another factor which may have some effect is the slightly higher proportion of females in the sample of the present study (54.6%) as females are typically victimized at about half the rate of males. This general finding is also supported by the results of the present study; victims were more likely to be male than female ( $X^2 = 60$ ,  $p = 0.01$ )

8.3% of respondents had a family member who had been the victim of a crime in the last 12 months. The vast majority of these crimes involved house breaking or related crimes (31.3%) car stealing (35.2%) or other theft (14.6%).

About three quarters of this group reported their crime to the police. The most common reasons given were to retrieve their property (or claim insurance), that it was the right thing to do, or so that the offender would be caught or punished. For the minority that did not report the crime the most common reasons given that it was too trivial (47%) or that the police couldn't or wouldn't do anything about it (41.2%). Again, these figures agree with both the 1983 ABS survey results and the recent international survey.

It may also be interesting to monitor that section of the victimized population that report the crime to the police out of a sense of duty. This can be linked with the second most common reason for not reporting crime to the police (that police couldn't/wouldn't do anything about it). Both of these have implications for the criminal justice system. Firstly, if many people don't report crime because of the expected inability of the system to "do something about it" then we have the paradox that ineffective systems will be rewarded with lower reported crime rates and effective systems may well lead to an increase in reporting and an apparent increase in crime rates. This effect also applies to any improvement in victim services or any positive responses to awareness campaigns on domestic violence, child abuse etc. These are matters that need to be clearly understood and monitored closely in order to properly evaluate the effectiveness of the police and other services in the criminal justice system.

### **3.6 Fear of Crime**

In relation to fear of crime, which may be conceptualized as secondary crime victimization, 70% of respondents chose responses "unsafe" or "very unsafe" to describe how they felt walking alone at night in Perth city, whereas only 38% said they felt "unsafe" or "very unsafe" walking alone at night in their own neighbourhood. Perth city is, therefore, seen by most respondents to be more unsafe than their own neighbourhoods. This is not a surprising finding and confers with other studies on fear of crime which suggests that familiarity tends to reduce fear. Brantingham, Brantingham and Butcher (1982) found that even residents of high crime areas were less afraid of their own areas than some unfamiliar area of the city.

Fear of crime as measured in the present survey was found to be related to the age and gender of respondents. Furthermore, feelings of safety vary between areas when areas are broken down into lower socioeconomic, middle class and upper class (based on a S.E.S. index used by the A.B.S;  $\chi^2 = 19.18$ ;  $p = 0.004$ ). Whereas almost half of respondents living in lower socioeconomic areas said they felt "unsafe" or "very unsafe" in their own neighbourhoods, only about a third of middle or higher class residents said they felt unsafe.

In terms of age, the oldest group (60+) were more likely to say they felt "very unsafe" in their own neighbourhood. There was also a significant effect by sex. Almost 60% of women said they felt "unsafe" or "very unsafe" in their own neighbourhood. Only 14% of men felt similarly unsafe. The strong effect by age and sex also held up if we consider how safe respondents feel walking alone in Perth city at night.

Being the victim of a crime (in this survey as in others, the crime is almost always a property crime) does not appear to affect respondent's fear of crime. This result agrees with the literature on this topic.

The questions regarding fear of crime were asked in the earlier Perth survey, with very similar results. In that study it was found that respondents who expressed fear were more likely to view the courts as too lenient in their sentencing.

### **3.7 Accuracy of Respondents Prediction of their Likelihood of Victimization.**

The issue of fear of crime is closely related to, but not identical with, the issue of a person's own perception of their risk of victimization (partly because some people are more concerned about being victimized than others). To gain a perspective on the respondent sample's prediction of the likelihood of their future victimization an "accuracy table" was constructed (Table 10). Table 10 is based on an assessment of the likelihood of victimization calculated from the ABS (1986) victimization survey data. These estimates were naturally rough. However, as the ABS data involved the "double counting" of victims the estimates used are likely to be conservative as they probably overestimate the likelihood of victimization. Further, the margin for accuracy was generous and favoured the classification "accurate".

There are no significant associations between accuracy of prediction and other variables studied. However, victims identified in the present survey tended to give a higher estimate of their chances of being the victim of further property crime.

Based on the ABS figures the likelihood of a resident of Western Australia being a victim of a property crime can be estimated as 12.7% per annum; the likelihood of being the victim of a violent crime can be estimated as 5.2% per annum.

Compared with the 1986 survey there is a reduction in the "don't know" group in 1989. If this group of "don't knows" is removed from the analysis there is virtually no substantial difference in the prediction rates between 1986 and 1989.

In terms of violent crime, 52.1% of respondents estimated their chances to be 7% or less (i.e. "accurate" in terms of estimates based on the A.B.S. figures). 28.3% of respondents estimated their chances to be 10%-30% (classified as a "small overestimate") and 14.3% of respondents rated their chances as 40% or higher (classified as a "large overestimate"). In the case of violent crime the reduction in the size of the "don't know" category seems to have resulted in increasing the proportion of the sample that gave a correct estimate of their chances of victimization.

**TABLE 8      COMPARISON      OF      RESPONDENT      PREDICTION      OF      THE  
LIKELIHOOD      OF      VICTIMIZATION      IN      TWO      SURVEYS      WITH  
VICTIMIZATION      SURVEY      DATA      (see      text      for  
explanation of estimates).**

	<u>PROPERTY CRIME</u>			<u>VIOLENT CRIME</u>	
	<u>1986</u>	<u>1989</u>		<u>1986</u>	<u>1989</u>
ACCURATE ESTIMATE (0-10%)	22%	29%	ACCURATE ESTIMATE (0%-9%)	22%	52%
SMALL OVERESTIMATE (15%-49%)	16%	24%	SMALL OVERESTIMATE (10%-30%)	27%	28%
LARGE OVERESTIMATE (50%-100%)	49%	45%	OVERESTIMATE (MORE THAN 30%)	20%	14%
DON'T KNOW	12%	2%	DON'T KNOW	30%	6%

### **3.8      Selected Features of the Judicial Survey**

There are a number of specific observations, discussed below, which perhaps provide some clues as to the different assumptions and interests of sentencers and social scientists. These observations should be considered to be hypotheses generated on the basis of responses provided in the interviews.

In completing individual interviews with 17 sentencers, the sensitivity of the judiciary to public perceptions of sentencing became apparent. Principally, sentencers are driven by other forces (the law, their training, direction from legislation and the Court of Criminal Appeal) to carry out their duty as they understand it. However, in the same way that an actor is not able to control the script yet remains sensitive to the reviews of the play, judges remain sensitive

to the reactions of the public to sentencing decisions. Judges are often perceived as having more discretion than in fact they have and are therefore often blamed unjustly for the final result - the sentence passed.

### **3.8.1. Sentencing is "Case Driven"**

It seems clear from their responses that for judges and magistrates sentencing is a prescriptive process in which the sentencer operates like a physician and applies a sentence (a "remedy") to an offender. Each case is considered individually with attention to individual offence and (especially) offender variables.

Recognition of the "case-driven" characteristic of the sentencing process is important to an understanding of what may appear to be sentencing disparity. As demonstrated in Indermaur (1987) presenting details about possible offenders alters perceptions of the public about the maximum and minimum sentences thought appropriate for all offenders. As most people seem to think in terms of a stereotyped offender a more useable understanding of public attitudes in this area may be rendered by specifically probing for the relevance and weight which should be given to various offender variables and other mitigating and aggravating variables.

The "case-driven" quality of sentencing obviously underlies problems regarding actual or apparent consistency in sentencing across offenders within offence categories. As Lord Lane, English Chief Justice has pointed out in *R v Bibi* "We are not aiming at uniformity in sentencing, that would be impossible, we are aiming at uniformity of approach ..." (1980, C. App.360-362 cited in Victorian Sentencing Committee Report, 1988, p.148, 360-362). In a recent analysis Corns (1990) has pointed out the difficulty that exists in the Victorian courts in achieving agreement about general principles which should guide sentencing.

Disparity in sentencing can also be the outcome of differing views on the general principles of sentencing as well as differing views on the relative weight of mitigating and aggravating factors as pointed out by the Victorian Sentencing Committee Report (1988, p.157-158). Unfortunately the focus on case specific variables can over-ride attempts to discern general views and therefore it is possible that these views which may be cited in one case (eg the value of general deterrence) can change between cases.

### **3.8.2. Judges become Vehicles of the Law**

Throughout the interviews judges tended to respond automatically on the basis of the provisions of the statutes. Penalties indicated in the legislation seemed to form the basis of judge's thoughts in terms of appropriate sentences. This observation is important in understanding that judge's actions and their choice of sentence are likely to be largely informed by the statutes. Psychologically, the perceptions,

views and attitudes of the judge become aligned with the provisions of the statute.

Yaworsky (1977) has demonstrated that information about the penalties provided for various crimes can affect judgements concerning their seriousness. As Yaworsky argued, it is difficult to ascertain which is in line with which, the provisions of the statutes with opinion or opinion with the provisions of the statutes. Yaworsky suggested that a more useful approach may be to explore the satisfaction of the public via questions about perceptions of "fairness" of the sentence. Based on the previous discussion this approach is endorsed as it encompasses the consideration that sentencing may not be a salient issue for many people. Furthermore, most people seem to have little information on the law and sentencing so that the broader approach is likely to be more valid.

As explained earlier, the public are likely to consider the question concerning the "fairness" of court practice to relate to both the law and court practice whereas judges are likely to interpret this question in relation to the actual process of sentencing rather than the fairness of the law and sentencing together.

Although most of the judicial sample responded that the practice of the courts was fair there was a fairly common dissatisfaction expressed with the newly introduced parole law. The new law requires the sentencer to firstly fix the "head sentence" and then after that has been done consider whether the offender should be eligible for parole. The direction of the new Western Australian Parole Act has been under discussion for some time and is currently being reviewed by a Joint Parliamentary Committee.

### **3.8.3. Positivism and Rehabilitation**

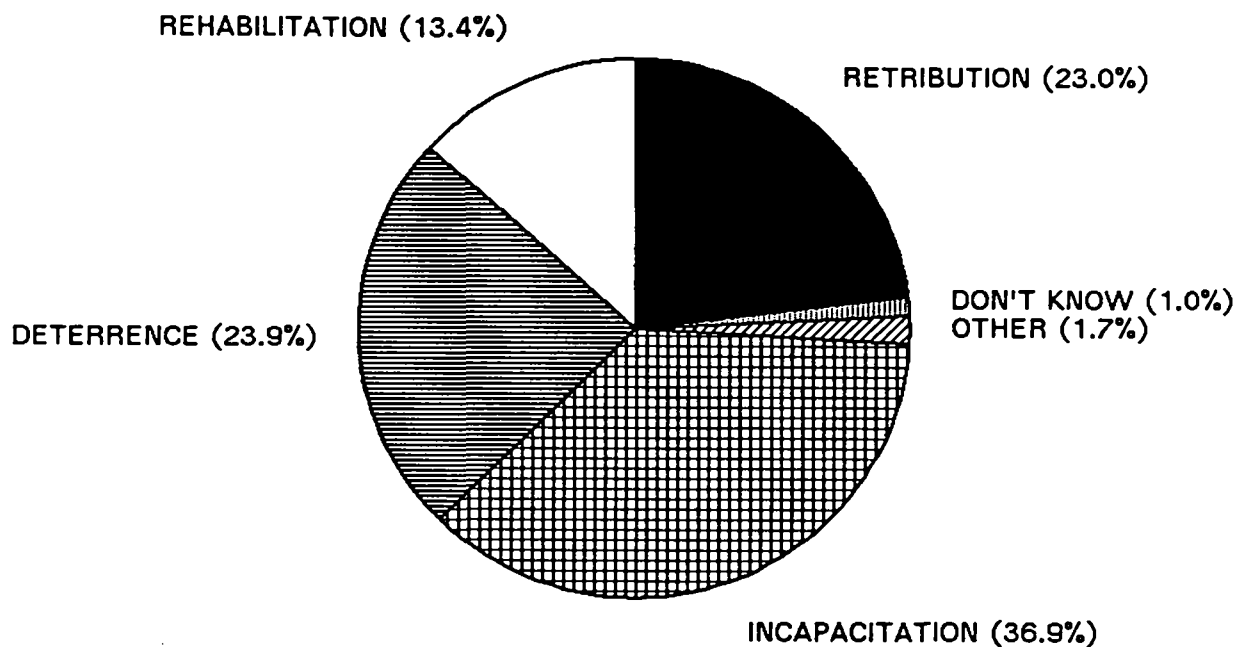
Previous discussion has considered the importance to sentencers of individual "offender variables". This importance is suggestive of a positivist approach, that is one which focuses on the sentence as a prescription for the treatment of the offender's behaviour. The approach which sees sentencing as a process of "applying a remedy" to an offender can also be described as "individualization" as Broadhurst (1990, p19) does when explaining its incompatibility with the principle of "just deserts"

The focus on the situation of the individual offender is also suggested by the results of the present study regarding judges views on the purposes of sentencing. Responses which were categorized "rehabilitation" and "specific deterrence" were represented more often than in the community sample (see Figures 13 and 14). The results displayed in these figures suggest that the general public are less convinced of the relevance of rehabilitation as a purpose of sentencing than the judges surveyed. This issue is taken up in the conclusion.

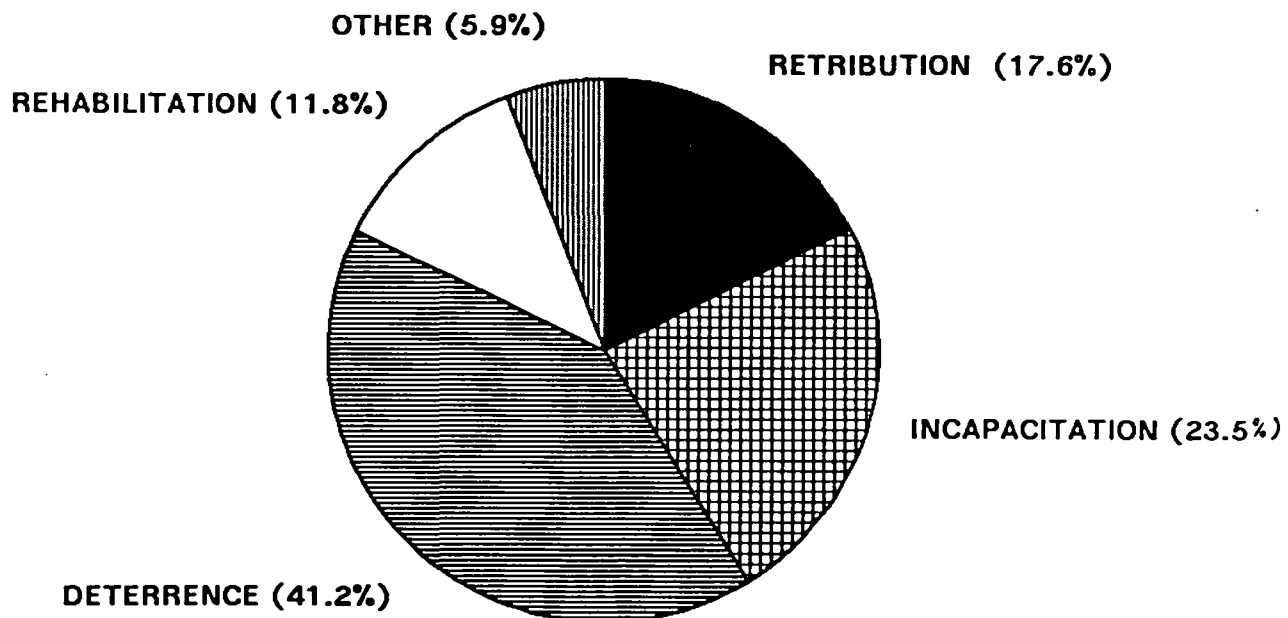


**FIGURE 13 PURPOSES OF SENTENCING. COMPARISON OF COMMUNITY AND JUDICIAL VIEWS IN REGARD TO THE SERIOUS VIOLENT OFFENDER**

**A. COMMUNITY VIEWS ON THE PURPOSE OF SENTENCING SERIOUS VIOLENT OFFENDERS.**

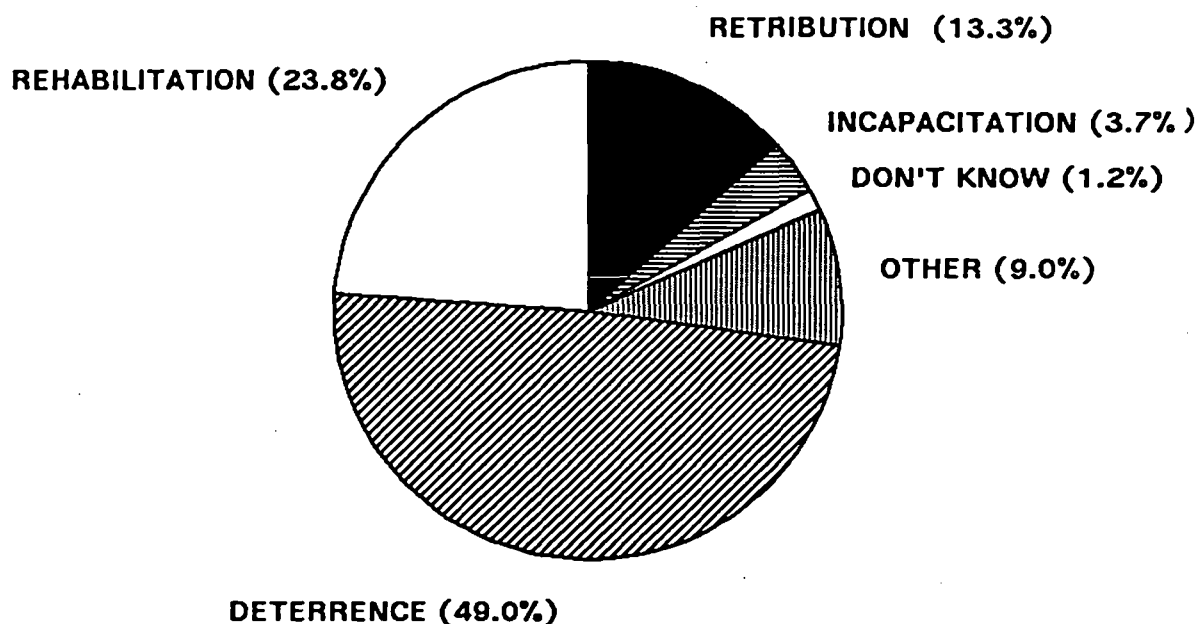


**B. JUDGES VIEWS ON THE PURPOSE OF SENTENCING SERIOUS VIOLENT OFFENDERS.**

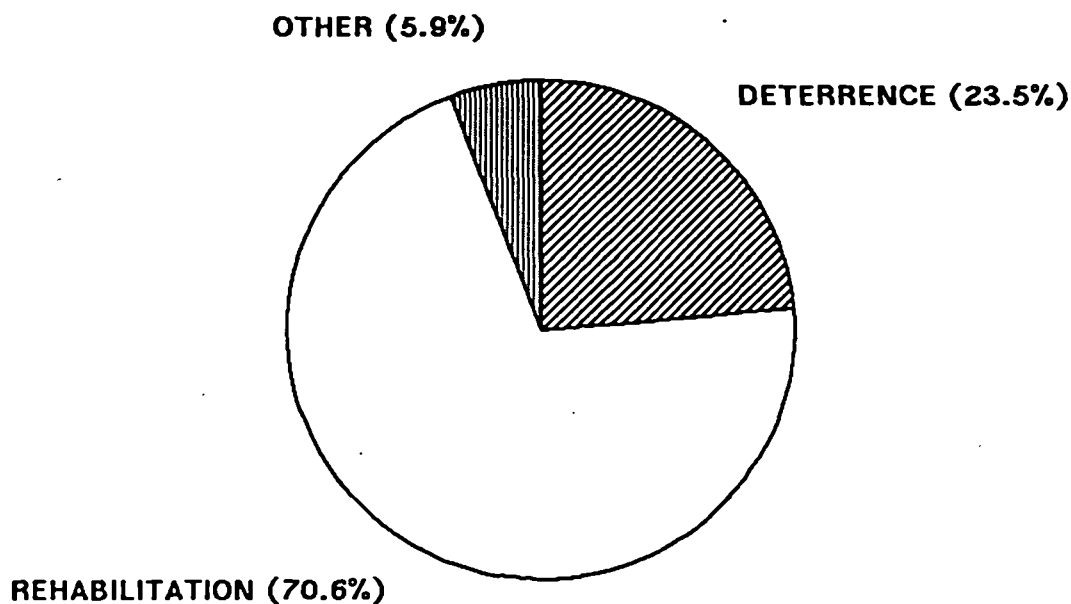


**FIGURE 14 PURPOSES OF SENTENCING: A COMPARISON OF  
COMMUNITY AND JUDICIAL VIEWS IN RELATION TO THE  
YOUNG PROPERTY OFFENDER**

**A. COMMUNITY VIEWS ON THE PURPOSE OF SENTENCING YOUNG PROPERTY  
OFFENDERS**



**B. JUDGES VIEWS ON THE PURPOSE OF SENTENCING YOUNG PROPERTY  
OFFENDER**



#### **3.8.4. Sensitivity to Public Attitude**

Responses to the question on whether the courts should consider public attitude when sentencing offenders suggests that the judiciary believe in the importance and relevance of public attitude more than the public does.

25% of the sentencers said public attitude should be considered in all cases; 25% said in most cases and 31% said in some cases. In all 81% of sentencers who responded to this question thought public attitude should be considered in all, most or some cases. This contrasts with only 57% of the public who think public opinion should be considered in all, most or some cases. Furthermore the public seems less willing to be categorical about this matter with only 8% agreeing that public attitude should be considered in all cases.

The results of the present study confer with a similar analysis by Walker, Hough and Lewis (1988) in the United Kingdom. The British study found that a fifth of community respondents indicated that judges and magistrates "when making up their minds about sentences" should pay "little" or "no" attention to what the public thinks. About half of the British sample suggested that sentencers should pay "a lot" of attention to public views and the majority (65%) thought judges were "out of touch with what ordinary people think".

#### **3.8.5. Attitudes to Parole and Remission**

Probably one issue on which most members of the judiciary would agree was the inadequacy of the present parole arrangements. The current legislation actually requires the sentencer not to consider the effect of parole on the sentence passed at the point of fixing sentence - after which the sentencer must separately consider whether the offender should be eligible for parole. If the offender is considered eligible a formula for parole will determine the time served.

However, on the whole, the judiciary were more accepting of the provisions for release from prison through parole and remission than were the general public. 73% of judicial respondents indicated that the times they had suggested for minimum, average and maximum penalties in question 2 could be reduced through parole and remission. This contrasts with only 15% of the community respondents. Furthermore, when asked, in question 2B "What percentage of the sentence should be allowed off for good behaviour or early release on parole", half of the community respondents replied "no time off at all", and only 11% suggested any reduction above a quarter of the sentence. The judicial respondents were more receptive to time off. Most (62%) suggested a reduction of a third of the sentence or more was acceptable. Only 15% of the judicial sample suggested a figure less than a quarter of the sentence.

# **CONCLUSION**

#### 4. CONCLUSION: BALANCING PUBLIC ATTITUDES, SENTENCING AND CRIMINAL JUSTICE POLICY

The results of the present study point to some areas of agreement and divergence between community attitudes, judicial views and court practice. In general the results suggest that the community and the courts agree about the relative seriousness of the crimes studied. Further, the community and the judiciary tend to agree that judgements of seriousness should be based on the harm done.

The main points of disagreement are typical of previous work in this area. Firstly the public seem to want the penalty of imprisonment used more than the judges or the court but particularly with rape. As Figure 9 suggests there is a fairly consistent reduction in punitiveness (the severity of suggested sanctions) from the community to the judiciary to the courts. Secondly, the offence of armed robbery stands out as the one offence judged as deserving of more punishment by the courts and the judiciary than the public, this has been explained in terms of different understandings of "harm done". Thirdly, whereas the majority of the community sample did not think the courts were fair and consistent (87%) only a minority of the sample of judiciary (31%) shared this view. However, it is likely that a member of the general public would consider the question in the context of the overall result of court practise which comprises both the provisions of the legislation together with the individual sentence. On the other hand judges are likely to take legislation as a "given" and interpret the question as to the fairness of the courts within these constraints. This interpretation bears further study and raises the important question of the degree to which public responses to questions about sentencing reflect their more general views about perceptions of the overall achievement of justice by the whole criminal justice system.

The research on perceptions of crime seriousness provides some clues about the relationship of public attitude, judicial perceptions and court practice.

Firstly it is interesting that all the indices of public perception and judicial perception of seriousness used in the present study yield similar results. This would seem to indicate that the variables we are dealing with do indeed reflect a consistent and meaningful aspect of perception or judgement.

Secondly, the differences in the quantum of punishment thought appropriate between the judicial and community samples are considerable and this supports the conclusion that the public tend, at a superficial level at least, to favour the use of custodial penalties more than the judiciary.

Thirdly, the differences in the ranking of offence seriousness between the community and the judiciary suggest that although there is a good deal of agreement, there are some notable anomalies that require some analysis. The most significant of

these is the relative seriousness of armed robbery in judicial perception. Armed robbery was the only offence which was judged as more serious (in terms of the amount of punishment thought appropriate) by the judiciary than the community sample. This anomaly has been discussed in terms of differing concepts of "harm done" which seems to be the common component of seriousness for both judges and the community.

Finally, indications of crime seriousness based on the proportion of offenders imprisoned by all courts show no significant rank order correlations with either judicial or community based indications of crime seriousness (see Figure 8 and Table 4). However, Table 4 also indicates high correlations between rank orders of crime seriousness of the judges and the community. Because the rank order correlation is a fairly indelicate measure and because we are restricting the analysis to the six crimes studied, it is more helpful to study the "raw" data displayed in Figure 8 for an indication of the different indications of seriousness.

It should be noted that the sort of analysis conducted in the present study is only one way of gaining a view on the relationship between attitudes and court practice. In a recent unpublished analysis of the same issue, Broadhurst (1990b) has considered the sentencing practice of the Higher Courts in Western Australia over the last five years for which data is available (1983 - 1988). The results of that analysis indicated that although there has been no significant change in sentencing practice in terms of offences against the person, there have been significant reductions in the proportion of offenders imprisoned for robbery, breaking and entering, and theft and other fraud. These results can be interpreted as suggesting that Higher Court practice is moving in a general direction which is in keeping with the main features of public attitude, that is, maintaining the severity of sentencing of violent offenders whilst reducing the use of imprisonment for property offenders.

The results of the present study confirm earlier indications (e.g. Broadhurst and Indermaur, 1982) that almost the only source of information used by the public for information on the justice system is the news media. It could be argued therefore, that the news media can fulfill an important role informing the public about sentencing. If this is the case then perhaps the most realistic strategy to overcome the disturbing effects of media sensationalism (which have been discussed at length elsewhere - e.g. Ericson, Baranek and Chan, 1989) is for the courts or some body attached to the court to arrange informative and usable media 'copy' specifying accurately the important aspects of sentences handed down. This may then overcome the possible mistrust the public has of the veracity of media reports and the complaint that media reports were not so much "inaccurate" as "incomplete".

Again, in this context some sort of sentencing information "clearing house" to provide information to the public, to agencies and to sentencers themselves would appear to be

needed. Perhaps some version of the Sentencing Information System being developed by the Judicial Commission of New South Wales would be helpful.

The need for clear, precise and comprehensive information about sentencing both at an aggregate and on case level would seem to have multiple benefits and be within the ambit of several agencies who accept the responsibility of "public education" on these matters.

The results point to community concern with sentencing practice which reflects the importance of sentencing to the whole criminal justice system. It is really only at the point of sentence that the whole philosophy and rationale of the system is required to be expressed. The detection and prosecution of offences is governed by well established procedures. However, at the point where a conviction has been achieved the system is required to take some action and it is here that the some statement is made about the meaning of the punishment of the offender. Even to talk of "punishing" an offender is contentious.

Although there is likely to be universal agreement that a convicted offender should be visited with some form of consequence for his or her offence, there is considerable dispute about what form such consequences should take and the reason they are being applied. Some would like to think that these consequences are being applied for the offenders own good (the "benign" or "treatment" approach) others see them as a necessary evil that will do nothing at all for the offender but must be applied to uphold public respect for the law.

The issue of the appropriate purpose of sentencing is the subject of heated debate both within legal circles and the general community. The matter is obviously largely a matter of belief and reflects the currency given to certain belief systems. In many jurisdictions there has been a shift toward proportionality in sentencing. In the criminological literature the demise of rehabilitation has been widely discussed, not only because of the general paucity of evidence regarding the efficacy of treatment programmes but also on philosophical grounds and in terms of offenders rights.

The results of the present study point to the continuing belief of sentencers in rehabilitation. Hogarth (1970, p 70) reported in his well known Canadian study that nearly all of the magistrates he studied (65 out of 71) believed that it was their role to prevent crime through sentencing. Hogarth also reported that magistrates as a group tended to rate "reformation" as the most important purpose of sentencing.

It may be that sentencers continue to justify sentences in terms of rehabilitation because of the less odious attributes of this rationale. Further, to the extent that a sentencer may believe in rehabilitation any misgivings regarding the punitive nature of the action may be assuaged. In the final analysis, however, there appears to be little in the way of evaluated, sustained or systematic therapeutic treatment of

prisoners in Western Australia. There is little effort made to seriously consider the effectiveness of the treatment programmes that are applied. The recent work of Broadhurst, Maller, Maller and Duffecy (1989) suggests that recidivism rates remain high and are mainly determined by the demographic variables of age, Aboriginality and gender.

The point is not so much to do with the efficacy of rehabilitative programmes (there is a vast literature on this topic) but that there may be a lack of honesty and frankness regarding what can be achieved through a sentencing and what can not be achieved. The point here is that we may be hoping to achieve more through sentencing than is realistic.

The fact that there always tends to be a combination of purposes associated with both individual sentences and sentencing in general (i.e. eclecticism) reflects the vagueness and the uncertainty regarding the role of sentencing. This uncertainty, it is argued, is not malicious but simply a result of the unrealistic expectations that derive from a general utilitarian or "crime control" rationale for sentencing.

Most informed analyses suggest that because of the microscopic proportion of offenders actually convicted, sentencing can really only direct an effect through its symbolic value. The audience for the symbolic display may be potential offenders or the law abiding. Possible effects on actual law breakers or potential law breakers are rather dubious (Canadian Sentencing Commission, 1987) and virtually impossible to assess. The secondary general deterrent effect (Salem and Bowers, 1970) which is aimed at reassuring the law abiding requires a display of "just deserts" (so that the dividend for their compliant position is keenly defined). However, public dissatisfaction with sentencing may suggest that this effect is not being achieved satisfactorily either.

The eclectic approach may provide a convenient cover for the necessity to actually choose one purpose and examine the objective and its achievement in any detail. However, the confusion or uncertainty regarding the reasons why we sentence offenders may also lie at the base of much of the antagonism the public feels in relation to sentencing and its frustration with the current sentencing system. Current parole laws reflect this confusion well.

The recent amendments to the Parole Act appear to be based on the notion that the principle issue in regard to the sentence is the rehabilitation, or at least the "neutralization" of the offender. Together with current remission provisions, which are also often justified on similar grounds, a prisoners sentence can be cut by two thirds. The frustration of the public with this state of affairs is likely to be based on the fact that they don't necessarily subscribe to the belief in rehabilitation which the legislation reflects. Unless there can be communication over this basic philosophy the frustration is likely to remain. Of course this analysis



assumes that both the parole and remission provisions were introduced in the interests of offender rehabilitation.

An alternative explanation is that they were introduced as a means to reduce the state's rate of imprisonment and contain the burgeoning prison population. Certainly these are issues which have been a concern of the Government's for some time. In fact the new parole legislation was announced as part of strategy to reduce the rate of imprisonment by the Hon. Joe Berinson, Minister for Corrective Services in the Legislative Council in 1987. Similarly, the increase in prison remission rates from a quarter to a third came about as a result of a recommendation of the Dixon enquiry into the rate of imprisonment in Western Australia.

Although the rate of imprisonment in Western Australia is a considerable concern, if it is being tackled by reducing terms of imprisonment across the spectrum of all offenders it may be adding to the confusion and frustration the public already feel in regard to sentencing policy. An approach which would be much more in keeping with public sentiment would be to not imprison minor offenders and/or the lesser property offenders. This argument can be supported by the results of the 1986 Perth (Indermaur, 1987) survey which asked three questions related to this issue and found wide support for the notion of alternatives to prison for those serving less than three months in prison, minor property offenders (break and enter) and those in prison in default of a fine. As mentioned earlier there are some encouraging signs that this approach is being reflected in the sentencing practice of the Higher Courts over the last five years. However, this trend has only been in terms of decreasing proportions of offenders imprisoned, there has been no complementary trend to increase the proportion of violent offenders imprisoned. Furthermore there have been no analyses conducted examining the trends in actual length of sentence and the effect of the recent amendments to the Parole Act which are likely to have reduced the length of the effective sentence.

Doob (1990, p 415) noting community support for "front end" strategies to reduce the imprisonment rate argues:-

*The Canadian public is supportive of the use of community sanctions rather than imprisonment for many offenders presently being given custodial sentences....the reasons for our apparent failure is that we do little to ensure that any sanctions are used appropriately. Without a coherent sentencing policy there seems little hope of bringing sentencing practice under control. In order to implement a policy of reduced use of imprisonment, two of the necessary conditions appear the enactment by Parliament of a coherent sentencing policy that endorses the use of community sanctions and a method of providing authoritative and unambiguous guidance on sentencing to judges. These two conditions, combined with a programme of well run community*

*sanctions are necessary to accomplish a goal that has been accepted in Canada for over half a century.*

As mentioned earlier, Doob's call is echoed in many other reports which have observed there is little that can be achieved in terms of guiding or evaluating criminal justice practice without a clearly determined, legislatively based sentencing policy (U.K. White Paper, 1990; Ashworth, 1983; Broadhurst, 1990). To be complete, such a policy needs to clarify the purposes and limitations of sentencing, given the continuing tendency of the legislature, judiciary and public to look to sentencing as a means to "control crime".

Establishing a proper role for sentencing in the context of a total criminal justice policy may allow public attitudes to be addressed in a meaningful way. Much of what has been interpreted as public dissatisfaction with the courts and sentencing is often expressed by comparing the sentence the offender receives with the predicament of the victim. It would seem, therefore, that at least part of the public sentiment concerns the overall perceived injustice inherent in the victims position. Calls for harsher penalties may be an expression of a desire to see the restoration of the social balance which has been threatened by the offence. However, this method of attempting to address the disruption in the social balance is in direct conflict with the need to treat the offender humanely, attempt rehabilitation and government policies aimed at reducing the rate of imprisonment.

A more effective strategy would place current sentencing practice and other government policy in a context that would acknowledge public attitude by providing adequate services and compensation to victims of crime. Separating the sentencing task from that of addressing public grievances will allow both sets of needs to be dealt with more effectively. Given that such a small proportion of all recorded crime involves violence (about 5%) providing comprehensive and high profile services to victims of violent crime would be relatively inexpensive whilst eliminating the most visible and symbolic instances of injustice. Although there are some indications that the public would be favorable to such a shift in focus more needs to be done to establish the effects on public attitude of strategies designed to restore social equity through services to victims.

Given that sentencing can not in any realistic assessment serve as a means to control crime, sentencing must achieve its purpose through its symbolic value. Without other measures to achieve justice there is pressure on the courts to use sentencing to achieve justice through retribution. However, this pressure could be reduced by working to improve the situation of the crime victim. To the extent the focus is taken off the offender by satisfactorily "restoring" the victim (in concrete and psychological terms) there will be less pressure on sentencing policy. The history of failure in sentencing reform points to the limitations of sentencing in general and the need to find alternative methods of addressing public concerns.

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# **APPENDIX 1 :**

## **THE SURVEY INSTRUMENT**



CRIME SERIOUSNESS RESEARCH

INTERVIEWER: 1    2    3    4    5    6	COLUMN (1)
LOCATION (SELECTION NUMBER): _____	
C.D. AREA NUMBER: _____	(2-3)
TIME: _____ DATE: _____ (HOUR IF PM) (DAY FROM OCTOBER 1) (9 IF 12 NOON OR AM)	(4-6)

INTRODUCTION

- . HELLO, I AM FROM THE W.A. COLLEGE OF ADVANCED EDUCATION AND WE ARE DOING A SURVEY ON PUBLIC ATTITUDES TO CRIME AND PUNISHMENT. THE SURVEY IS IMPORTANT TO GET THE PUBLIC OPINION ON THIS SUBJECT, IT IS SHORT AND INTERESTING.
- . YOUR HOUSEHOLD HAS BEEN SELECTED AT RANDOM AND YOUR RESPONSES ARE COMPLETELY CONFIDENTIAL.
- . I WOULD LIKE TO GET THE OPINION OF THE PERSON IN THE HOUSE NOW WHO IS OVER 18 YEARS OLD AND WHOSE BIRTHDAY COMES CLOSEST TO TODAY.

[INTERVIEWERS - VARY ORDER OF PRESENTATION OF Q.1, Q.2, Q.3]

---

Q.1 COULD YOU PLEASE TELL ME WHICH CRIME IN EACH PAIR ON THIS SHEET (HAND RESPONDENT GOLD CARD) IS THE MOST SERIOUS IN YOUR OPINION? [ENCOURAGE RESPONDENT TO MAKE DISTINCTION EVEN IF IT IS ONLY SLIGHT - CIRCLE "1" OR "2"]

ASSAULT = 1	RAPE = 2	(7)
CAR STEAL = 1	DUI = 2	(8)
ARM. ROBB = 1	BREAK & ENTER = 2	(9)
RAPE = 1	CAR STEAL = 2	(10)
DUI = 1	ASSAULT = 2	(11)
BREAK & ENTER = 1	RAPE = 2	(12)
CAR STEAL = 1	BREAK & ENTER = 2	(13)
ASSAULT = 1	ARM. ROBB. = 2	(14)
RAPE = 1	DUI = 2	(15)
ARM. ROBB. = 1	CAR STEAL = 2	(16)
BREAK & ENTER = 1	ASSAULT = 2	(17)
RAPE = 1	ARM. ROBB. = 2	(18)
DUI = 1	BREAK & ENTER = 2	(19)
ASSAULT = 1	CAR STEAL = 2	(20)
DUI = 1	ARM. ROBB. = 2	(21)

Q.2 I AM GOING TO ASK YOU SOME QUESTIONS ABOUT THE SENTENCING OF OFFENDERS. [HAND RESPONDENT BLUE CARD] FIRSTLY, IN YOUR OPINION, FOR THE OFFENCE OF BREAKING AND ENTERING A HOUSE, WHAT PERCENTAGE OF ALL OFFENDERS CONVICTED OF THIS OFFENCE DO YOU THINK SHOULD BE IMPRISONED? ... [DON'T KNOW = 999] NOW FOR THOSE THAT ARE IMPRISONED [PAUSE] WHAT DO YOU THINK SHOULD BE THE MAXIMUM LENGTH OF IMPRISONMENT, IN YOUR OPINION?

WHAT DO YOU THINK SHOULD BE THE MINIMUM LENGTH OF IMPRISONMENT?

WHAT DO YOU THINK THE AVERAGE LENGTH OF IMPRISONMENT SHOULD BE?

[LIFE IMPRISONMENT = 50 YRS; DEATH = 60 YRS]

[ASK ALL QUESTIONS; RECORD ALL DIGITS, VARY ORDER OF OFFENCES AFTER 1ST]

BREAK AND ENTER A HOUSE ?

PERCENTAGE IMPRISONED? =						___	___	___	(22-24)
YRS	MNTHS	WKS	DAYS	D.K.	W.S.	MAXIMUM =	___	___	(25-27)
1	2	3	4	5	6				
YRS	MNTHS	WKS	DAYS	D.K.	W.S.	MINIMUM =	___	___	(28-30)
1	2	3	4	5	6				
YRS	MNTHS	WKS	DAYS	D.K.	W.S.	AVERAGE =	___	___	(31-33)
1	2	3	4	5	6				

ARMED ROBBERY ?

PERCENTAGE IMPRISONED? =						___	___	___	(34-36)
YRS	MNTHS	WKS	DAYS	D.K.	W.S.	MAXIMUM =	___	___	(37-39)
1	2	3	4	5	6				
YRS	MNTHS	WKS	DAYS	D.K.	W.S.	MINIMUM =	___	___	(40-42)
1	2	3	4	5	6				
YRS	MNTHS	WKS	DAYS	D.K.	W.S.	AVERAGE =	___	___	(43-45)
1	2	3	4	5	6				

## CAR STEALING ?

PERCENTAGE IMPRISONED? =						_____	(46-48)	
YRS 1	MNTHS 2	WKS 3	DAYS 4	D.K. 5	W.S. 6	MAXIMUM =	_____	(49-51)
YRS 1	MNTHS 2	WKS 3	DAYS 4	D.K. 5	W.S. 6	MINIMUM =	_____	(52-54)
YRS 1	MNTHS 2	WKS 3	DAYS 4	D.K. 5	W.S. 6	AVERAGE =	_____	(55-57)

## RAPE ?

PERCENTAGE IMPRISONED? =						_____	(58-60)	
YRS 1	MNTHS 2	WKS 3	DAYS 4	D.K. 5	W.S. 6	MAXIMUM =	_____	(61-63)
YRS 1	MNTHS 2	WKS 3	DAYS 4	D.K. 5	W.S. 6	MINIMUM =	_____	(64-66)
YRS 1	MNTHS 2	WKS 3	DAYS 4	D.K. 5	W.S. 6	AVERAGE =	_____	(67-69)

## DANGEROUS DRIVING CAUSING DEATH ?

PERCENTAGE IMPRISONED? =						_____	(70-72)	
YRS 1	MNTHS 2	WKS 3	DAYS 4	D.K. 5	W.S. 6	MAXIMUM =	_____	(73-75)
YRS 1	MNTHS 2	WKS 3	DAYS 4	D.K. 5	W.S. 6	MINIMUM =	_____	(76-78)
YRS 1	MNTHS 2	WKS 3	DAYS 4	D.K. 5	W.S. 6	AVERAGE =	_____	(79-81)

## ASSAULT CAUSING GREVOUS BODILY HARM ?

PERCENTAGE IMPRISONED? =						_____	(82-84)	
YRS 1	MNTHS 2	WKS 3	DAYS 4	D.K. 5	W.S. 6	MAXIMUM =	_____	(85-87)
YRS 1	MNTHS 2	WKS 3	DAYS 4	D.K. 5	W.S. 6	MINIMUM =	_____	(88-90)
YRS 1	MNTHS 2	WKS 3	DAYS 4	D.K. 5	W.S. 6	AVERAGE =	_____	(91-93)

## DRIVING WHILST INTOXICATED ?

PERCENTAGE IMPRISONED? = \_\_\_\_\_ (94-96)

YRS 1 MNTHS 2 WKS 3 DAYS 4 D.K. 5 W.S. 6 MAXIMUM = \_\_\_\_\_ (97-99)

YRS 1 MNTHS 2 WKS 3 DAYS 4 D.K. 5 W.S. 6 MINIMUM = \_\_\_\_\_ (100-102)

YRS 1 MNTHS 2 WKS 3 DAYS 4 D.K. 5 W.S. 6 AVERAGE = \_\_\_\_\_ (103-105)

Q.2A FOR THE LENGTH OF TIME IN PRISON YOU HAVE SUGGESTED - DO YOU MEAN THAT TO BE ACTUAL LENGTH OF TIME THE OFFENDER SHOULD SERVE IN PRISON?

YES = 1  
NO = 2  
DEPENDS ON OFFENCE = 3  
DON'T KNOW = 9 (106)

Q.2B WHAT PERCENTAGE OF THE SENTENCE SHOULD BE ALLOWED OFF FOR GOOD BEHAVIOUR OR EARLY RELEASE ON PAROLE.  
[DON'T KNOW = 99]  
[NONE = 22] \_\_\_\_\_ (107-109)

Q.2c 2 SOLUTIONS HAVE BEEN PROPOSED TO OVERCOME OVERCROWDING OF PRISONS:- BUILD MORE PRISONS OR SENTENCE MORE OFFENDERS TO ALTERNATIVES TO IMPRISONMENT SUCH AS PROBATION RESTITUTION, COMMUNITY SERVICE ORDERS AND FINES. IN WHICH DIRECTION WOULD YOU FAVOUR THE GOVERNMENT SPENDING YOUR MONEY?

BUILD MORE PRISONS = 1  
ALTERNATIVES = 2  
BOTH = 3  
NEITHER = 4  
DON'T KNOW = 5 (110)

Q.3 HERE IS A CARD [HAND RESPONDENT YELLOW CARD] WITH A SCALE OF PENALTIES FOR CRIMES. 14 IS THE MOST SEVERE WHILE 1 IS THE LEAST SEVERE. FOR EACH OF THE FOLLOWING OFFENCES GIVE ME YOUR OWN OPINION OF WHAT YOU THINK THE AVERAGE SENTENCE SHOULD NORMALLY BE, USING THIS SCALE.

[VARY ORDER OF OFFENCES] [DON'T KNOW = 99] [WON'T SAY = 98]

<u>CAR STEALING</u>	_____	_____	( 1-2)
<u>DRIVING UNDER INFLUENCE OF ALCOHOL</u>	_____	_____	( 3-4)
<u>RECEIVING STOLEN GOODS</u>	_____	_____	( 5-6)
<u>ARMED ROBBERY</u>	_____	_____	( 7-8)
<u>BREAKING AND ENTERING A HOUSE</u>	_____	_____	( 9-10)
<u>RAPE</u>	_____	_____	(11-12)
<u>ASSAULT OCCASIONING GRIEVOUS BODILY HARM</u>	_____	_____	(13-14)
<u>DANGEROUS DRIVING CAUSING DEATH</u>	_____	_____	(15-16)
<u>MURDER</u>	_____	_____	(17-18)
<u>PERSONAL USE OF MARIJUANA</u>	_____	_____	(19-20)
<u>PERSONAL USE OF HEROIN</u>	_____	_____	(21-22)
<u>TAX CHEATING</u>	_____	_____	(23-24)

Q.4 IN YOUR OPINION WHAT ARE THE 2 MOST IMPORTANT FACTORS FOR A JUDGE TO CONSIDER WHEN SENTENCING AN OFFENDER? [HAND RESPONDENT GREEN CARD]

4A 1ST FACTOR = \_\_\_\_\_ (25)

4B 2ND FACTOR = \_\_\_\_\_ (26)

-----

5c GOOD, THANKS, WHICH IS MOST IMPORTANT?

(27)

-----  
6d HOW MUCH MORE IMPORTANT IS IT THAN THE FIRST FACTOR? (OUT OF  
100 POINTS HOW MUCH WOULD THE FIRST FACTOR GET?)

(28-29)

-----  
Q.7 WHAT DO YOU SEE AS THE MOST IMPORTANT PURPOSE, OR FUNCTION IN  
SENTENCING OFFENDERS CONVICTED OF SERIOUS VIOLENT CRIMES?

\_\_\_\_\_  
(30)

-----  
Q.8 WHAT DO YOU THINK MAKES ONE OFFENCE MORE SERIOUS THAN  
ANOTHER, IN YOUR OPINION? (RECORD UP TO 2)

1ST MENTIONED =

(31)

\_\_\_\_\_  
2ND MENTIONED =

(32)

-----  
Q.9 WHAT DO YOU SEE AS THE MOST IMPORTANT PURPOSE OR FUNCTION  
IN SENTENCING YOUNG OFFENDERS CONVICTED OF PROPERTY  
OFFENCES?

\_\_\_\_\_  
(33)

Q.10 DO YOU THINK THAT THE COURTS SHOULD CONSIDER PUBLIC  
ATTITUDE WHEN SENTENCING OFFENDERS? [HAND RESPONDENT PINK CARD]

- YES, IN ALL CASES = 1
- YES, IN MOST CASES = 2
- YES, IN SOME CASES = 3
- ONLY IN VERY RARE CASES = 4
- NEVER = 5
- WON'T SAY = 8
- DON'T KNOW = 9

(34)

Q.11 WHAT IS YOUR MAIN SOURCE OF INFORMATION ON THE  
SENTENCES HANDED DOWN BY THE COURTS?

- ("MEDIA" = 1; "TV AND NEWSPAPERS" = 2 ;"TV" = 3;
- "NEWSPAPERS" = 4; "RADIO" = 5; "RADIO AND TV" = 6
- "OTHER" = 8)

(35)

Q.12. HOW WOULD YOU RATE THE ACCURACY OF MEDIA REPORTING  
OF COURT PRACTICE? [READ RESPONDENT THE 4 OPTIONS]

- VERY ACCURATE = 1 NOT ACCURATE = 3
- ACCURATE = 2 VERY INACCURATE = 4

(36)

Q.13 NOW LOOKING AT WHAT THE COURTS ACTUALLY DO. DO YOU THINK  
THE SENTENCES HANDED DOWN BY THE COURTS ARE GENERALLY FAIR AND  
CONSISTENT OR DO YOU THINK THEY TEND TO BE TOO SOFT ON SOME  
OFFENDERS AND TOO HARD ON OTHERS? (IF "FAIR" GO TO Q.15)

- FAIR = 1
- NOT FAIR = 2
- D.K. = 9

(37)



Q.14A IF TOO SOFT ETC ... WHICH TYPES OF OFFENDERS DO  
YOU THINK GET OFF TOO EASILY?

1ST MENTIONED = (38)

---

2ND MENTIONED = (39)

---

Q.14B AND IN COMPARISON, WHICH TYPES OF OFFENDERS ARE  
TREATED TOO SEVERLY?

1ST MENTIONED = (40)

---

2ND MENTIONED = (41)

---

Q.15 HAVE YOU YOURSELF BEEN THE VICTIM OF ANY CRIME  
IN THE LAST 12 MONTHS? (IF "NO" GO TO Q.18)

YES = 1 NO = 2 PASS = 3 (42)

---

Q.16 IF YES - WHAT TYPE OF CRIME?

(TRIVIAL TRAFFIC = 1 TRIVIAL PROPERTY (LESS THAN \$50) = 2)

---

 (43)

---

Q.17 DID YOU REPORT IT TO THE POLICE?

YES = 1 NO = 2

(44)

---

17A WHY OR WHY NOT?

(45-46)

---

Q.18 HAS ANY MEMBER OF YOUR HOUSEHOLD BEEN THE  
VICTIM OF A CRIME IN THE LAST 12 MONTHS?  
(IF "NO" GO TO Q.22) (47)  
(YES = 1 NO = 2 D.K. = 3 PASS = 4)

---

Q.19 WHAT TYPE OF CRIME?  
\_\_\_\_\_ (48)

---

Q.20 DID THEY REPORT IT TO THE POLICE?  
YES = 1 NO = 2 D.K. = 3 PASS = 4  
\_\_\_\_\_ (49)

---

Q.21 WHY OR WHY NOT?  
\_\_\_\_\_ (50-51)

---

Q.22 HOW SAFE DO YOU FEEL WALKING ALONE AT NIGHT IN PERTH CITY?  
(SHOW WHITE CARD) [IF SAYS "NEVER DO" SAY "IMAGINE" ETC  
IF SAYS "WHERE?.." SAY "IN MIDDLE OF PERTH CITY"]  
  
VERY SAFE = 1 UNSAFE = 3  
SAFE = 2 VERY UNSAFE = 4 (52)

---

Q.23 AND IN YOUR OWN NEIGHBOURHOOD?  
  
VERY SAFE = 1 UNSAFE = 3  
SAFE = 2 VERY UNSAFE = 4 (53)

---

Q.24 IN YOUR OPINION WHAT ARE THE CHANCES (OUT OF 100) THAT  
YOU WILL HAVE SOME OF YOUR PROPERTY STOLEN IN  
THE NEXT 12 MONTHS?  
(D.K. = 999) \_\_\_\_\_ (54-56)

---

Q.25 IN YOUR OPINION WHAT ARE THE CHANCES (OUT OF 100) THAT  
YOU WILL BE THE VICTIM OF A VIOLENT CRIME IN THE NEXT  
12 MONTHS?

(D.K. = 999)

(57-59)

Q.26 WOULD YOU AGREE THAT THERE ARE TIMES WHEN POLICE  
SHOULD NOT CARRY GUNS?

YES THERE ARE TIMES WHEN THEY SHOULD NOT CARRY GUNS = 1

SHOULD CARRY GUNS AT ALL TIMES = 2

DON'T KNOW = 3

OTHER = 4

(60)

NOW A FEW QUESTIONS TO MAKE SURE WE HAVE A WIDE RANGE OF PEOPLE IN OUR  
SAMPLE

Q.27 HOW OLD ARE YOU? 18-20 = 1 21-25 = 2 26-30 = 3

31-35 = 4 36-40 = 5 41-50 = 6

51-60 = 7 OVER 60 = 8 (61)

Q.28 WHAT LEVEL OF EDUCATION HAVE YOU REACHED? (RECORD CODE)  
[SHOW BUFF CARD]

PRIMARY = 1

SECONDARY = 2 (FOR "SOME") OR 3 (FOR "COMPLETED")

TECHNICAL = 4 (FOR "SOME") OR 6 (FOR "COMPLETED")

TERTIARY = 5 (FOR "SOME"); 7 ("COMPLETED"); 8 ("ADVANCED")

(62)

Q.29 WOULD YOU DESCRIBE YOUR INCOME AS LOW, MEDIUM OR HIGH

LOW = 1

MEDIUM = 2

HIGH = 3

(63)

Q.30 CAN YOU GIVE AN INDICATION OF YOUR INCOME (AFTER TAX)

(RECORD CODE) [SHOW WHITE CARD]

LESS THAN \$10,000 = 1

10,000 - 15,000 = 2

15,000 - 20,000 = 3

20,000 - 25,000 = 4

25,000 - 30,000 = 5

30,000 - 40,000 = 6

MORE THAN 40,000 = 7

DON'T KNOW = 8

WON'T SAY = 9

(64)

Q.31 WHAT IS YOUR OCCUPATION? (PROBE - DO NOT ACCEPT  
GENERAL RESPONSES OR COMPANIES E.G. "PUBLIC SERVANTS"  
OR "I WORK FOR TELECOM" OR "MANAGER" GET SPECIFIC  
OCCUPATION)

(65)

Q.32. SEX? MALE 1

FEMALE 2

(66)

IN YOUR OPINION WHICH CRIME IS MORE SERIOUS?

"ASSAULT CAUSING GRIEVOUS BODILY HARM".....OR....."RAPE"

"CAR STEALING".....OR....."DRIVING WHILST INTOXICATED"

"ARMED ROBBERY".....OR....."BREAK AND ENTER A HOUSE"

"RAPE".....OR....."CAR STEALING"

"DRIVING WHILST INTOXICATED".....OR....."ASSAULT CAUSING  
GRIEVOUS BODILY HARM"

"BREAK AND ENTER A HOUSE".....OR....."RAPE"

"CAR STEALING".....OR....."BREAK AND ENTER A HOUSE"

"ASSAULT CAUSING GRIEVOUS BODILY HARM".....OR....."ARMED ROBBERY"

"RAPE".....OR....."DRIVING WHILST INTOXICATED"

"ARMED ROBBERY".....OR....."CAR STEALING"

"BREAK AND ENTER A HOUSE".....OR....."ASSAULT CAUSING GRIEVOUS  
BODILY HARM"

"RAPE".....OR....."ARMED ROBBERY"

"DRIVING WHILST INTOXICATED".....OR....."BREAK AND ENTER A HOUSE"

"ASSAULT CAUSING GRIEVOUS BODILY HARM".....OR....."CAR STEALING"

"DRIVING WHILST INTOXICATED".....OR....."ARMED ROBBERY"

PENALTY SCALE

LEVEL OF SEVERITY

SOME EXAMPLES OF SOME  
SENTENCES FOR EACH LEVEL

MOST SEVERE



- 14 • DEATH PENALTY
- 13 • LIFE IMPRISONMENT OR MORE THAN 20 YEARS
- 12 • 12 YEARS TO 20 YEARS IN PRISON
- 11 • 8 YEARS TO 12 YEARS IN PRISON
- 10 • 5 YEARS TO 8 YEARS IN PRISON
- 9 • 2 YEARS TO 5 YEARS IN PRISON
- 8 • 1 YEAR TO 2 YEARS IN PRISON
- 7 • 6 MONTHS TO A YEAR IN PRISON
- 6 • 1 MONTH TO 6 MONTHS IN PRISON.
- 5 • 1 DAY TO 1 MONTH IN PRISON
- 4 • 200 HOURS COMMUNITY WORK OR HEAVY FINE
- 3 • 100 HOURS COMMUNITY WORK OR MEDIUM FINE
- 2 • SMALL FINE
- 1 • CAUTION (NO CRIMINAL CONVICTION)

LEAST SEVERE

FACTORS AFFECTING SENTENCE

THE AGE OF THE OFFENDER

THE PSYCHOLOGICAL PROBLEMS OF THE OFFENDER

PUBLIC ATTITUDE

WHETHER THE OFFENDER PLEADS GUILTY

THE SERIOUSNESS OF THE OFFENCE

THE RECORD OF THE OFFENDER

THE LIKLIHOOD OF THE OFFENDER REPEATING THE CRIME

THE FREQUENCY OF THE OFFENCE IN THE COMMUNITY

THE HARM CAUSED TO THE VICTIM

**CODING KEYS**

**FOR**

**CRIME SERIOUSNESS RESEARCH**



Q.7 AND Q.9 MOST IMPORTANT PURPOSE OR FUNCTION IN SENTENCING OFFENDERS

CODE

. TO DISCOURAGE THE OFFENDER FROM COMMITTING  
FURTHER CRIMES (INDIVIDUAL DETERRENCE) 1

---

. TO PROVIDE PUNISHMENT THAT REFLECTS THE  
SERIOUSNESS OF THE OFFENCE (JUST DESERTS) 2

---

. TO REHABILITATE THE OFFENDER (REHABILITATION) 3

---

. TO DISCOURAGE OTHERS FROM COMMITTING CRIMES  
(GENERAL DETERRENCE) 4

---

. TO SHOW SOCIETY'S DISAPPROVAL OF THE CRIME  
(DENNUNCIATION) 5

---

. TO PREVENT THE OFFENDER FROM COMMITTING FURTHER  
CRIMES (INCAPACITATION) 6

---

. TO PROVIDE RESTITUTION TO THE VICTIM 7

---

. OTHER 8

---

. DON'T KNOW 9

---

**Q.8**

WHAT DO YOU THINK MAKES ONE OFFENCE MORE SERIOUS THAN ANOTHER?

HARM CAUSED TO VICTIM = 1

WHETHER IT INVOLVES VIOLENCE = 2

WHAT THE LAW SAYS = 3

AMOUNT OF DAMAGE/LOSS = 4.

PAST RECORD OF OFFENDER = 5

**OTHER** = 8

**DON'T KNOW** = 9

"VIOLENT CRIME"	= 1
"MURDER"	= 2
"RAPE/SEX CRIME"	= 3
"DRUGS"	= 4
"DRINK-DRIVING"	= 5
"YOUNG KIDS"	= 6
"PROPERTY CRIME"	= 7
"OTHER"	= 8
"DON'T KNOW"	= 9

TYPES OF CRIME

1. BREAK AND ENTER

- 1.1 ATTEMPTED BREAK AND ENTER
  - 1.2 ACTUAL BREAK AND ENTER
  - 1.3 ACTUAL BREAK AND ENTER AND STEALING
  - 1.4 ACTUAL BREAK AND ENTER AND CAR STOLEN
  - 1.5 BREAK AND ENTER AT WORKPLACE
- 

2. HOUSEHOLD PROPERTY THEFT

- 2.1 TRIVIAL - LESS THAN \$50.00
  - 2.2 SUBSTANTIAL
  - 2.3 BICYCLE THEFT (FROM YARD)
  - 2.4 HOUSEHOLD VANDALIZED
  - 2.5 HOUSEHOLD OR YARD - VANDALIZED - MINOR
- 

3. MOTOR VEHICLE THEFT

- 3.1 VEHICLE THEFT - ATTEMPTED
  - 3.2 ACTUAL VEHICLE THEFT
  - 3.3 ATTEMPTED THEFT OF PARTS OF VEHICLE
  - 3.4 ACTUAL THEFT OF PARTS OF VEHICLE
  - 3.5 MOTOR VEHICLE DAMAGE - VANDALIZED
- 

4. ROBBERY

- 4.1 ATTEMPTED ROBBERY WITHOUT FORCE/WEAPON
- 4.2 ACTUAL ROBBERY WITHOUT FORCE/WEAPON
- 4.3 ATTEMPTED ROBBERY WITH FORCE/WEAPON
- 4.4 ACTUAL ROBBERY WITH FORCE/WEAPON

5. OTHER THEFT

- 5.1 PERSONAL POSSESSIONS STOLEN FROM CAR
  - 5.2 PERSONAL POSSESSIONS STOLEN AT WORK
  - 5.3 PERSONAL POSSESSIONS STOLEN ON WAY TO WORK
  - 5.4 PERSONAL POSSESSIONS STOLEN WHILE AWAY FROM HOME  
(E.G. AT CINEMA, SHOPS, ETC)
  - 5.5 FRAUD - 1 - PASSED BAD CHEQUES
  - 5.6 FRAUD - 2 - USE OF CREDIT CARD
  - 5.7 FRAUD - 3 - CHEATED
- 

6. SEXUAL ASSAULT

- 6.1 MINOR ATTEMPTED SEXUAL ASSAULT - SEXUAL HARASSMENT
  - 6.2 NON-MINOR ATTEMPTED SEXUAL ASSAULT
  - 6.3 ACTUAL SEXUAL ASSAULT - NOT RAPE
  - 6.4 ACTUAL SEXUAL ASSAULT - RAPE
  - 6.5 INCEST - SEXUAL RELATIONS IN FAMILY
  - 6.6 OBSCENE PHONE CALLS
  - 6.7 EXPOSURE (FLASHERS)
- 

7. ASSAULT (THREATENED OR ACTUAL USE OF VIOLENCE EXCEPTING SEXUAL ASSAULT AND ROBBERY)

- 7.1 ATTEMPTED ASSAULT - MINOR
- 7.2 ATTEMPTED ASSAULT - MAJOR
- 7.3 ACTUAL ASSAULT - MINOR
- 7.4 ACTUAL ASSAULT - MAJOR - 1 - HURT
- 7.5 ACTUAL ASSAULT - MAJOR - 2 - HOSPITALIZED
- 7.6 KIDNAPPED
- 7.7 THREATS OF VIOLENCE
- 7.8 ASSAULT & PROPERTY DAMAGE

8. TRAFFIC

- 8.1 MINOR OR TRIVIAL TRAFFIC ACCIDENT  
(I.E. LESS THAN \$50.00)
  - 8.2 TRAFFIC ACCIDENT - MODERATE DAMAGE TO CAR OR UNSPECIFIED
  - 8.3 MAJOR TRAFFIC ACCIDENT - 1 - PEOPLE SUFFERING INJURY
  - 8.4 MAJOR TRAFFIC ACCIDENT - 2 - PEOPLE DEAD
  - 8.5 TRAFFIC ACCIDENT OR MAJOR TRAFFIC ACCIDENT WHERE THE  
OFFENDER WAS DRUNK
- 

9. DON'T KNOW OR WON'T SAY

REPORT TO POLICE -

BECAUSE A CRIME WAS COMMITTED )	
MORAL OBLIGATION/CITIZEN DUTY ETC )	1
TO TRY/HOPED TO GET PROPERTY BACK/INSURANCE	2
INSURANCE	3
RESTITUTION FROM OFFENDER OR COMPENSATION FROM COURT	4
TO TRY AND STOP IT HAPPENING AGAIN	5
WANT OFFENDER CAUGHT/PUNISHED	6
FEAR OF HARM TO SELF OR OTHER PERSON	7
OTHER	8
DON'T KNOW	9

NO REPORT TO POLICE - WHY NOT?

TOO TRIVIAL/UNIMPORTANT	11
SOMEONE ELSE DID	12
POLICE COUNT'T/WOULDN'T DO ANYTHING ABOUT IT	13
PRIVATE MATTER WOULD TAKE CARE OF MYSELF	14
TOLD SOMEONE ELSE INSTEAD	15
OFFENDER THOUGHT, OR KNOWN TO BE A CHILD	16
DID NOT WANT OFFENDER PUNISHED	17
AFRAID OF REPRISAL	18
TOO CONFUSED/UPSET/INJURED	19
OTHER	10
D.K.	20

## **APPENDIX 2 :**

### **COMMUNITY SURVEY RESPONSES**

#### **A. RESPONSES TO QUESTIONS**

#### **B. DEMOGRAPHICS**



## APPENDIX 2

### A. RESPONSES TO QUESTIONS

#### Q.4 TWO MOST IMPORTANT FACTORS FOR A JUDGE TO CONSIDER WHEN SENTENCING AN OFFENDER.

##### FIRST FACTOR

	PERCENTAGE	FREQUENCY
SERIOUSNESS OF THE OFFENCE	42.4	174
HARM TO VICTIM	24.1	99
PROBABILITY OF OFFENDER REPEATING OFFENCE	12.4	51
OFFENDERS RECORD	10.2	42
OFFENDERS PSYCHOLOGICAL PROBLEMS	4.2	17
OFFENDERS AGE	3.4	14
FREQUENCY OF THE OFFENCE IN THE COMMUNITY	1.7	7
PUBLIC ATTITUDE	<u>0.7</u>	<u>3</u>
<b>TOTAL</b>	<b>100</b>	<b>410</b>

##### SECOND FACTOR

	PERCENT	FREQUENCY
HARM TO VICTIM	28.3	116
SERIOUSNESS OF OFFENCE	26.1	107
PROBABILITY OF OFFENDER REPEATING OFFENCE	17.6	72
OFFENDER RECORD	14.4	59
FREQUENCY OF OFFENCE IN THE COMMUNITY	4.1	17
OFFENDERS AGE	3.7	15
OFFENDERS PSYCHOLOGICAL PROBLEMS	3.4	14
PUBLIC ATTITUDE	1.5	6
WHETHER THE OFFENDER PLEADS GUILTY	<u>1.0</u>	<u>4</u>
<b>TOTAL</b>	<b>100</b>	<b>410</b>

##### MOST IMPORTANT FACTOR

	PERCENT	FREQUENCY
SERIOUSNESS OF THE OFFENCE	42.7	175
HARM TO VICTIM	33.2	136
PROBABILITY OF OFFENDER REPEATING OFFENCE	12.2	50
OFFENDERS RECORD	5.1	21
OFFENDERS PSYCHOLOGICAL PROBLEMS	2.7	11
FREQUENCY OF OFFENCE IN COMMUNITY	2.0	8
OFFENDERS AGE	1.5	6
WHETHER THE OFFENDER PLEADS GUILTY	0.5	2
PUBLIC ATTITUDE	<u>0.2</u>	<u>1</u>
<b>TOTAL</b>	<b>100</b>	<b>410</b>

**Q.2a FOR THE LENGTH OF TIME IN PRISON YOU HAVE SUGGESTED - DO YOU MEAN THAT TO BE THE ACTUAL LENGTH OF TIME THE OFFENDER SHOULD SERVE IN PRISON?**

	PERCENTAGE	FREQUENCY
"YES"	84.1	345
"NO"	8.3	34
"DEPENDS ON OFFENCE"	6.8	28
DON'T KNOW/WON'T SAY	<u>0.7</u>	<u>3</u>
<b>TOTAL</b>	<b>100</b>	<b>410</b>

**Q.2B WHAT PERCENTAGE OF THE SENTENCE SHOULD BE ALLOWED OFF FOR GOOD BEHAVIOUR OR EARLY RELEASE ON PAROLE? (EXPRESSED AS A PROPORTION OF THE SENTENCE)**

	PERCENTAGE	FREQUENCY
NONE	53.4	219
LESS THAN 10%	5.1	21
10 TO 20%	10.8	44
20 TO 30%	15.1	64
30 TO 50%	6.4	26
50% AND ABOVE	5.6	23
DON'T KNOW/WON'T SAY	<u>3.7</u>	<u>15</u>
<b>TOTAL</b>	<b>100</b>	<b>410</b>

**Q.2C TWO SOLUTIONS HAVE BEEN PROPOSED TO OVERCOME CROWDING OF PRISONS; BUILD MORE PRISONS OR DEVELOP ALTERNATIVES WHICH DO YOU PREFER?**

	PERCENTAGE	FREQUENCY
BUILD MORE PRISONS	33.7	138
ALTERNATIVES	45.4	186
BOTH	17.6	72
NEITHER	1.5	6
DON'T KNOW	<u>2.0</u>	<u>8</u>
<b>TOTAL</b>	<b>100</b>	<b>410</b>

**Q.7 WHAT DO YOU SEE AS THE MOST IMPORTANT PURPOSE OR FUNCTION IN SENTENCING OFFENDERS CONVICTED OF SERIOUS VIOLENT CRIMES?**

	PERCENT	FREQUENCY
INCAPACITATION	6.8	151
INDIVIDUAL DETERRENCE	19.0	78
RETRIBUTION	18.8	77
REHABILITATION	13.4	55
GENERAL DETERRENCE	4.9	20
DENUNCIATION	4.1	17
OTHER	1.7	7
DON'T KNOW	<u>1.0</u>	<u>4</u>
<b>TOTAL</b>	<b>100</b>	<b>410</b>

**Q.9 WHAT DO YOU SEE AS THE MOST IMPORTANT PURPOSE OR FUNCTION IN SENTENCING YOUNG OFFENDERS CONVICTED OF PROPERTY OFFENCES?**

	PERCENTAGE	FREQUENCY
INDIVIDUAL DETERRENCE	42.9	176
REHABILITATION	23.9	98
RETRIBUTION	6.3	26
GENERAL DETERRENCE	6.3	24
DENUNCIATION	7.1	29
RESTITUTION	4.6	19
INCAPACITATION	3.7	15
OTHER (eg balance of all of the above)	4.4	18
DON'T KNOW	<u>1.2</u>	<u>5</u>
TOTAL	100	410

**Q.8 WHAT DO YOU THINK MAKES ONE OFFENCE MORE SERIOUS THAN ANOTHER? (FIRST RESPONSE)**

	PERCENT	FREQUENCY
HARM TO VICTIM/HARM DONE /EFFECT ON VICTIM	68.0	279
IF IT INVOLVES VIOLENCE	16.8	69
INTENTION OF OFFENDER	7.1	29
OTHER	5.2	21
DON'T KNOW	<u>2.9</u>	<u>12</u>
TOTAL	100	410

**Q.10 DO YOU THINK THAT THE COURTS SHOULD CONSIDER PUBLIC ATTITUDE WHEN SENTENCING OFFENDERS?**

	PERCENTAGE	FREQUENCY
YES, IN ALL CASES	8.3	34
YES, IN MOST CASES	18.3	75
YES, IN SOME CASES	30.0	123
ONLY IN VERY RARE CASES	12.0	49
NEVER	31.2	128
DON'T KNOW/WONT SAY	<u>0.2</u>	<u>1</u>
TOTAL	100	410

**Q.11 WHAT IS YOUR MAIN SOURCE OF INFORMATION ON THE SENTENCES HANDED DOWN BY THE COURTS?**

	PERCENTAGE	FREQUENCY
MEDIA	24.6	101
T.V. & NEWSPAPERS	25.4	104
T.V.	17.8	73
NEWSPAPERS	25.4	104
RADIO	1.7	7
RADIO & T.V.	2.4	10
OTHER	<u>2.7</u>	<u>11</u>
<b>TOTAL</b>	<b>100</b>	<b>410</b>

**[THE MOST COMMON REPLY TO THIS ITEM FROM JUDGES WAS THE JUDGEMENTS OF THE COURT OF CRIMINAL APPEAL]**

**Q.12. HOW WOULD YOU RATE THE ACCURACY OF MEDIA REPORTING OF COURT PRACTICE?**

	PERCENT	FREQUENCY
VERY ACCURATE	1.5	6
ACCURATE	44.1	181
INACCURATE	42.9	176
VERY INACCURATE	8.5	35
DON'T KNOW/WON'T SAY	<u>2.9</u>	<u>12</u>
<b>TOTAL</b>	<b>100</b>	<b>410</b>

**[3 JUDGES SPECIFIED THAT MEDIA REPORTS ARE NOT SO MUCH INACCURATE AS INADEQUATE]**

**Q.13 DO YOU THINK THE SENTENCES HANDED DOWN BY THE COURTS ARE GENERALLY FAIR AND CONSISTENT OR DO YOU THINK THEY TEND TO BE TOO SOFT ON SOME OFFENDERS AND TOO HARD ON OTHERS?**

	PERCENT	FREQUENCY
FAIR	10.5	43
NOT FAIR	86.8	356
DON'T KNOW/WON'T SAY	<u>2.7</u>	<u>11</u>
<b>TOTAL</b>	<b>100</b>	<b>410</b>

**Q.14A IF COURTS ARE NOT FAIR WHICH OFFENDERS DO YOU THINK GET OFF TOO EASILY? (ASKED OF 'NOT FAIR' AND 'DON'T KNOW' GROUP ABOVE)**

FIRST OFFENDER GROUP MENTIONED		PERCENT	FREQUENCY
VIOLENT CRIME	10.0)	(62.4)	36
MURDER	20.7)		75
RAPE/SEX CRIME	31.7)		115
DRUGS		1.6	6
DRINK DRIVING		2.7	10
JUVENILES		16.0	58
PROPERTY CRIME		6.3	23
OTHER		10.5	38
DON'T KNOW		<u>0.5</u>	<u>2</u>
TOTAL		100	363

[THE FIVE MEMBERS OF THE JUDICIARY WHO PERCEIVED UNFAIRNESS IN COURT PRACTICE CONFORMED TO THE GENERAL PATTERN OF SEEING SERIOUS/VIOLENT OFFENDERS BEING DEALT WITH TOO LENIENTLY AND PROPERTY OFFENDERS TOO HARSHLY.]

**Q.14B IN COMPARISON WHICH TYPES OF OFFENDERS ARE TREATED TOO SEVERELY?**

FIRST OFFENDER GROUP MENTIONED	PERCENT	FREQUENCY
MENTION OF A SPECIFIC CASE:		
"MICKELBERG"	11.9	43
"NINA"	1.9	7
OTHER	0.8	3
PETTY CRIME	7.2	26
PROPERTY CRIME WITH NO EVIDENCE	14.1	51
SOCIAL SECURITY FRAUD	2.4	9
JUVENILES	1.4	5
DRUG USE	9.7	35
NONE	23.3	84
OTHER	22.4	81
DON'T KNOW	<u>4.7</u>	<u>17</u>
TOTAL	100	361

**Q.15 HAVE YOU YOURSELF BEEN THE VICTIM OF ANY CRIME IN THE LAST 12 MONTHS?**

	PERCENT	FREQUENCY
YES	15.6	64
NO	<u>84.4</u>	<u>346</u>
TOTAL	100	410

**Q.16 WHAT TYPE OF CRIME?**

	PERCENT (OVERALL)	PERCENT (OF VICTIMS)	FREQUENCY
ATTEMPTED BREAK AND ENTER	1.2	7.8	5
ACTUAL BREAK AND ENTER	3.7	23.4	15
ACTUAL BREAK ENTER AND STEAL	1.0	6.2	4
ACTUAL BREAK ENTER AND CAR STOLEN	0.5	3.1	2
HOUSEHOLD PROPERTY THEFT (MINOR)	1.5	9.4	6
HOUSEHOLD PROPERTY THEFT (MAJOR)	0.5	3.1	2
BICYCLE THEFT FROM YARD	1.0	6.2	4
HOUSEHOLD OR YARD VANDALIZED	0.5	3.1	2
ATTEMPTED VEHICLE THEFT	0.2	1.6	1
ACTUAL VEHICLE THEFT	1.7	10.9	7
THEFT OF VEHICLE PARTS	0.7	4.7	3
MOTOR VEHICLE DAMAGED	0.7	4.7	3
ARMED ROBBERY	0.2	1.6	1
PERSONAL POSSESSIONS STOLEN	1.2	7.8	5
SEXUAL ASSAULT	0.2	1.6	1
ASSAULT	0.5	3.1	2
THREATS OF VIOLENCE	<u>0.2</u>	<u>1.6</u>	<u>1</u>
TOTAL	15.7	100	64

**Q.17 DID YOU REPORT IT TO THE POLICE?**

YES	47 (73% OF VICTIMS)
NO	<u>17 (27% OF VICTIMS)</u>
TOTAL	64

**Q.18 MAIN REASONS FOR REPORTING CRIME?**

	PERCENT	FREQUENCY
. TO GET PROPERTY BACK OR INSURANCE BECAUSE A CRIME WAS COMMITTED	44.7	21
. MORAL OBLIGATION DUTY ETC.	14.9	7
. WANT OFFENDER CAUGHT OR PUNISHED	10.6	5
. FEAR OF HARM TO SELF OR OTHERS	8.5	4
. BECAUSE ANGRY/ANNOYED	4.2	2
. BECAUSE INJURED	4.2	2
. TO PREVENT RECURRENCE	2.1	1
. OTHER	<u>10.4</u>	<u>5</u>
TOTAL	100	47

**Q.18b MAIN REASON FOR NOT REPORTING TO POLICE?**

TOO TRIVIAL/NOTHING TAKEN	47.0	8
SOMEONE ELSE REPORTED IT	5.9	1
POLICE HELPLESS	35.3	6
POLICE INACTIVE	5.9	1
CONFUSED/UPSET	<u>5.9</u>	<u>1</u>
TOTAL	100	17

**Q.19 HAS ANY MEMBER OF YOUR HOUSEHOLD BEEN A VICTIM OF CRIME IN THE LAST 12 MONTHS?**

	PERCENT	FREQUENCY
YES	8.3	34
NO	<u>91.7</u>	<u>376</u>
TOTAL	100	410

**Q.20 TYPE OF CRIME?**

	PERCENT	FREQUENCY
ATTEMPTED BREAK AND ENTER	2.9	1
ACTUAL BREAK AND ENTER	17.6	6
ACTUAL BREAK ENTER AND STEALING	11.8	4
BICYCLE THEFT	8.8	3
MOTOR VEHICLE THEFT (ATTEMPTED)	5.8	2
ACTUAL VEHICLE THEFT	14.7	5
ACTUAL/ATTEMPTED THEFT OF VEHICLE PARTS	14.7	5
ARMED ROBBERY	2.9	1
PERSONAL POSSESSIONS STOLEN FROM CAR	5.8	2
SEXUAL HARASSMENT	2.9	1
ASSAULT	8.8	3
TRAFFIC ACCIDENT	<u>2.9</u>	<u>1</u>
TOTAL	100	34

**Q.20 DID THEY REPORT IT TO THE POLICE?**

	PERCENT (OF VICTIMS)	FREQUENCY
YES	77	26
NO	<u>23</u>	<u>8</u>
TOTAL	100	34

**Q.21 MAIN REASON FOR REPORTING TO THE POLICE?**

	PERCENT	FREQUENCY
RETRIEVE PROPERTY/INSURANCE	42.3	11
MORAL OBLIGATION	15.3	4
PREVENT RECURRENCE	7.6	2
PUNISH OFFENDER	7.6	2
FEAR OF SELF OR OTHERS	3.8	1
OTHER	<u>26.9</u>	<u>7</u>
TOTAL	100	26

**Q.21b MAIN REASON FOR NOT REPORTING TO THE POLICE**

	PERCENT	FREQUENCY
TOO TRIVIAL/NOTHING TAKEN	62.5	5
POLICE HELPLESS	12.5	1
BEAURACRACY/HASSLE	12.5	1
DON'T KNOW	<u>12.5</u>	<u>1</u>
TOTAL	100	8

**Q.22 HOW SAFE DO YOU FEEL WALKING ALONE AT NIGHT IN PERTH CITY?**

	PERCENT	FREQUENCY
VERY SAFE	2.4	10
SAFE	27.1	111
UNSAFE	40.2	165
VERY UNSAFE	30.0	123
DON'T KNOW	<u>0.2</u>	<u>1</u>
TOTAL	100	410

**Q.23 HOW SAFE DO YOU FEEL WALKING ALONE AT NIGHT IN YOUR OWN NEIGHBOURHOOD?**

	PERCENT	FREQUENCY
VERY SAFE	15.6	64
SAFE	46.1	189
UNSAFE	31.2	128
VERY UNSAFE	<u>7.2</u>	<u>29</u>
TOTAL	100	410

**Q.24 IN YOUR OPINION WHAT ARE THE CHANCES (OUT OF 100) THAT YOU WILL HAVE SOME OF YOUR PROPERTY STOLEN IN THE NEXT 12 MONTHS?**

ESTIMATED PROBABILITY (%)	PROPORTION	FREQUENCY
0%	7.1	29
1-5	11.9	49
10	9.5	39
15-25	15.1	62
30-40	8.5	35
50	26.3	108
55-75	9.7	40
80	4.6	19
90-99	2.9	12
100	1.9	8
DON'T KNOW	<u>2.2</u>	<u>9</u>
TOTAL	100	410



**Q.25 IN YOUR OPINION WHAT ARE THE CHANCES (OUT OF 100) THAT YOU WILL BE THE VICTIM OF A VIOLENT CRIME IN THE NEXT 12 MONTHS?**

ESTIMATED PROBABILITY	PROPORTION	FREQUENCY
0	19.5	80
1%	8.5	35
2%	4.9	20
3%- 7%	19.0	78
10%	16.8	69
15%-25%	9.0	37
30%-40%	3.9	16
50%	10.2	42
55%-75%	1.9	8
70%-75%	0.7	3
80%	0.5	2
95%-99%	0.5	2
DON'T KNOW	<u>5.1</u>	<u>21</u>
TOTAL	100	410

(ABOUT ONE FIFTH SAY NO CHANCE, ABOUT A THIRD RATE THEIR CHANCES AS LESS THAN 7%. ALMOST THREE QUARTERS OF THOSE VENTURING ON OPINION RATE THEIR CHANCES AS 10% OR LESS)

**Q.25 WOULD YOU AGREE THAT THERE ARE TIMES WHEN THE POLICE SHOULD NOT CARRY GUNS?**

	PERCENT	FREQUENCY
YES THERE ARE TIMES WHEN THEY SHOULDN'T	39.0	160
SHOULD CARRY GUNS ALL TIMES	59.8	245
DON'T KNOW	<u>1.2</u>	<u>5</u>
TOTAL	100	410

# **DESCRIPTIVE FREQUENCY STATISTICS FOR PENALTY SELECTION METHOD**

## **A. THE PENALTY SCALE (SEE APPENDIX 1 FOR PRESENTATION STYLE)**

CODE	PENALTY
1	CAUTION
2	SMALL FINE
3	100 HOURS COMMUNITY WORK
4	200 HOURS COMMUNITY WORK
5	1 TO 30 DAYS IN GOAL
6	1 TO 6 MONTHS IN GOAL
7	6 TO 12 MONTHS IN GOAL
8	1 TO 2 YEARS IN GOAL
9	2 TO 5 YEARS IN GOAL
10	5 TO 8 YEARS IN GOAL
11	8 TO 12 YEARS IN GOAL
12	12 TO 20 YEARS IN GOAL
13	LIFE IMPRISONMENT

**B. DESCRIPTIVE STATISTICS (NUMBERS REFER TO SCALE POINTS)**

OFFENCE	MEDIAN	MODE	MEAN	STD.DEV
CAR STEALING	7	7	7.06	2.12
DRIV. WH. INTOX.	7	7	6.23	2.29
RECEIVING	6	7	6.23	2.25
ARMED ROBBERY	10	10	10.11	1.55
BREAK & ENTER	8	8	7.71	1.93
RAPE	12	13	11.81	1.61
AGGRAV. ASSAULT	10	10	9.87	1.75
D. DRIV CSING DEATH	10	10	10.21	2.02
MURDER	13	14	13.22	0.95
USE MARIJ.	2	1	3.54	2.83
USE HEROIN	6	4	5.63	3.22
TAX CHEATING	6	4	6.02	2.83

**SUMMARY STATISTICS: SENTENCE ALLOCATION TASK**

**A. AVERAGES**

OFFENCE	MEAN	MODE	MEDIAN	STD. DEV.
BREAK & ENTER	2.55	1	1	3.76
ARMED ROBBERY	7.36	5	5	7.11
CAR STEALING	2.04	1	1	2.51
RAPE	17.24	10	10	15.72
DRIVE	8.13	3	5	9.79
ASSAULT	6.00	5	5	5.75
DUI	2.38	1	1	5.52

**B. MINIMA**

OFFENCE	MEAN	MODE	MEDIAN	STD. DEV.
BREAK & ENTER	1.70	0.5	0.5	3.26
ARMED ROBBERY	5.15	5	3	6.60
CAR STEALING	1.32	0.5	0.5	1.86
RAPE	14.16	5	8	16.40
DRIV.	5.98	1	3	9.28
ASSAULT	4.02	1	1	4.88
DUI	1.62	0.5	0.5	4.76

## APPENDIX 2

### B. DEMOGRAPHICS

AGE	PERCENT	GENDER	PERCENT
18-20	6.3	MALE	45.4
21-35	12.1	FEMALE	<u>54.6</u>
26-30	11.6		
31-35	13.5		100.00
36-40	11.1		
41-50	9.9		
60+	<u>17.4</u>		
	100.00		

INCOME	PERCENT	EDUCATIONAL LEVEL	PERCENT
10,000	30.7	PRIMARY	3.9
10,000-15,000	23.2	SOME SECONDARY	25.8
15,000-20,000	19.6	COMPLETED SECONDARY	26.3
20,000-25,000	12.3	SOME TECHNICAL	11.6
25,000-30,000	6.8	SOME TERTIARY	8.5
30,000-40,000	2.7	COMPLETED TECHNICAL	10.1
40,000	2.4	COMPLETED TERTIARY	10.6
D.K/W.S.	2.2	ADVANCED TERTIARY	3.1
	100.00		100.00

OCCUPATION	PERCENT
MANAGER/ADMIN	4.3
PROFESSIONAL	12.1
PARA-PROFESSIONAL	5.3
TRADESPERSON	10.4
CLERK	14.3
SALES/SERVICE	5.3
PLANT/MACHINE	4.3
UNSKILLED	42.8
D.K/WS	1.2
	100.00

**APPENDIX 3:**

**SCALE CONSTRUCTION**

**CALCULATIONS**

### APPENDIX 3: SCALE CONSTRUCTION CALCULATIONS

#### 1. Scales Constructed on the Basis of Paired Comparisons.

##### 1.1 Based on Choices made by the Community Sample

The following matrix indicates the proportion of the sample which judged the offence listed at the top of columns as being more serious than the offence leading the rows of the matrix. Averages are provided on the last line

	ASSAULT	CAR	RAPE	D.U.I.	ARMED ROBBERY	B. & E.
ASSALT	****	0.90	0.31	0.05	0.59	0.08
CAR	0.10	***	0.06	0.01	0.11	0.01
RAPE	0.69	0.94	***	0.26	0.79	0.36
D.U.I.	0.95	0.99	0.74	***	0.97	0.77
ARMED	0.41	0.89	0.21	0.03	***	0.06
<u>B&amp;E</u>	0.92	0.99	0.64	0.23	0.94	***
AVE'S=	0.61	0.94	0.39	0.12	0.68	0.26

##### 1.2 Based on Choices made by the Judicial Sample

The following matrix indicates the proportion of the sample which judged the offence listed at the top of columns as being more serious than the offence leading the rows of the matrix. Averages are provided on the last line (cases of "Don't Know" or "equal" excluded)

	Assault	Rape	Car Steal	DUI	Arm Robb	B&E
Assault	---	1.00	0.00	.06	.78	.07
Rape	0.00	---	0.00	.06	0.00	0.00
Car Steal	1.00	1.00	--	.77	1.00	1.00
DUI	.94	.94	.23	--	.87	0.69
Arm Robb	.21	1.0	0.00	.12	--	0.00
<u>B&amp;E</u>	.93	1.0	0.00	.31	1.00	----
Ave =	.62	.99	.05	0.26	0.73	.35

## **2. CALCULATON OF MAXIMUM TERMS OF IMPRISONMENT**

**A. SOURCES: 1. ABS HIGHER COURT STATISTICS, 1987-88, TABLE 5, p 14 - 15 ABS CATALOGUE 4501.5**

**2. ABS COURT STATISTICS: COURTS OF PETTY SESSIONS, 1986 - 87 TABLE 5, P14 ABS CATALOGUE 4502.5.**

### **B. EXPLANATORY NOTES.**

Calculations for the propotion of offenders imprisoned and the maximum and minimum terms of imprisonment are based on the the penalties attracted by all offences. The alternate procedure would be to analyse court practice in terms of sentences received to the most serious offence of distinct persons. There tends not to be a great degree of difference between these two techniques in the present analysis especially for the more serious offences. (The differences in imprisonment rates based on the two techniques are 2% for rape; 3% for armed robbery, 1% for the assault offence; 5% for car stealing 14% for break and enter; 0% for driving whilst intoxicated). The overall imprisonment rate for the six offences studied is 51.5% for the "penalties" procedure and 47.7% for the "distinct persons" procedure, thus the method adopted is the one which errs on the side of expressing the severity of court practice.

Calculation of the maximum terms of imprisonment is limited by the available statistics. For the higher courts statistics the figures are compiled according to the duration of the maximum term. This means that the figure used is the integer (in terms of years) the actual sentence does not exceed. In other words the figures used tend to slightly overestimate the actual maximum terms or give the appearance that the sentences passed by the courts are more punitive than they actually are. To allow calculation of averages the category "over 10 years" was arbitrarily set at 15 years and the category "indeterminate" set at 20 years. Again the effect of this methodology is to overestimate the punitiveness or severity of court sentences. The rationale for adopting this procedure is that the issues relevant when comparing court practice are more likely to be the relative leniency of the court compared to public opinion. Therefore the procedure adopted minimizes the criticism that the method underestimates court severity.

To arrive at an overall average maximum term the averages were first calculated for each court based on the number of penalties of imprisonment. Then based on the proportion of the total number of penalties passed by each court the average figure was calculated for all penalties. The average figure arrived at then is an average maximum term for all penalties of imprisonment passed by the higher courts and the Courts of Petty Sessions.

To get a fairer indication of the relative gravity of the offence one need to marry this figure with the proportion of all convicted offenders imprisoned because an offence category may see only 5% of convicted offenders imprisoned but those that are

imprisoned may be sentenced to large maximums. An offence category that sees 80% of offenders imprisoned may on average have a lower maximum and thus appear less serious. However, when considered in concert with the rate of imprisonment the severity of sentencing will be more fairly revealed. This procedure was adopted.

#### **ASSAULT CAUSING GRIEVOUS BODILY HARM**

HIGHER COURTS: 25 penalties; average maximum term = 2.84 years

PETTY SESSIONS: 31 penalties; average maximum term = 0.38 years

ALL COURTS: 56 PENALTIES; AVERAGE MAXIMUM TERM = 1.49 YEARS

#### **RAPE (AGGRAVATED SEXUAL ASSAULT)**

HIGHER COURTS: 82 penalties; average maximum term = 6.71 years

PETTY SESSIONS: not dealt with at this court

ALL COURTS: 82 PENALTIES; AVERAGE MAXIMUM TERM = 6.71 YEARS

#### **ARMED ROBBERY**

HIGHER COURTS: 86 penalties; average maximum term = 6.09 years

PETTY SESSIONS: not dealt with at this court

ALL COURTS: 86 PENALTIES; AVERAGE MAXIMUM TERM = 6.09 YEARS

#### **DRIVING WHILST INTOXICATED**

HIGHER COURTS: not dealt with at this court

PETTY SESSIONS: 299 penalties; average maximum term = 0.37 years

ALL COURTS: 299 PENALTIES; AVERAGE MAXIMUM TERM = 0.37 YEARS

#### **BREAK AND ENTER (A DWELLING)**

HIGHER COURTS: 493 penalties; average maximum term = 1.59 years

PETTY SESSIONS: 85 penalties; average maximum term = 0.39 years

ALL COURTS: 578 PENALTIES; AVERAGE MAXIMUM TERM = 1.41 YEARS

#### **CAR STEALING (INCLUDES UNLAWF. USE OF M.V.)**

HIGHER COURTS: 146 penalties; average maximum term = 1.22 years

PETTY SESSIONS: 544 penalties; average maximum term = 0.36 years

ALL COURTS: 690 PENALTIES; AVERAGE MAXIMUM TERM = 0.54 YEARS

### **3. CALCULATION OF MINIMUM TERMS OF IMPRISONMENT**

**A. SOURCE: 1. ABS HIGHER COURT STATISTICS, 1987-88, TABLE 6, p  
16 - 17 ABS CATALOGUE 4501.5**

#### **B. EXPLANATORY NOTES**

ABS reports minimum terms according to the duration of the minimum term as "years not exceeding". As with maximum terms this means that the figure used is the integer (in terms of years) the actual minimum term does not exceed. In other words the figures used tend to slightly overestimate the actual minimum terms or give the appearance that the sentences passed by the courts are more punitive than they actually are. To allow calculation of averages the category "over 10 years" was arbitrarily set at 15 years and the category "indefinite" set at 20 years. The rationale for adopting this procedure is that the issues relevant when comparing court practice are more likely to be the relative leniency of the court compared to public opinion. Therefore the procedure adopted minimizes the criticism that the method underestimates court severity.

As with the calculation of maximum sentences the present analysis takes as its data source all penalties of imprisonment attracted by the offences studied. Statistics are also available according to the most serious offence of "distinct persons". This latter technique produces minima very similar to those produced by the former technique [1.6 years for the assault offence, 4.10 years for rape, 4.94 years for armed robbery, 1.31 years for breaking and entering a dwelling, 1.31 years for car stealing]. As with maximum terms, to get a fairer indication of the relative gravity of the offence one needs to marry this figure with the proportion of offenders imprisoned.

#### **ASSAULT CAUSING GRIEVOUS BODILY HARM**

HIGHER COURTS: 25 penalties; average minimum term = 1.68 years

#### **RAPE (AGGRAVATED SEXUAL ASSAULT)**

HIGHER COURTS: 82 penalties; average minimum term = 4.27 years

#### **ARMED ROBBERY**

HIGHER COURTS: 86 penalties; average minimum term = 4.77 years

#### **DANGEROUS DRIVING CAUSING DEATH**

HIGHER COURTS: 3 penalties; average minimum term = 1 year

#### **BREAK AND ENTER (A DWELLING)**

HIGHER COURTS: 493 penalties; average minimum term = 1.24 years

#### **CAR STEALING (INCLUDES UNLAWF. USE OF M.V.)**

HIGHER COURTS: 146 penalties; average minimum term = 1.12 years