

MINUTES OF THE MEETING OF THE JUDICIARY COMMITTEE
January 9, 1981

The meeting of the House Judiciary Committee was called to order at 8:00 a.m. by Chairman Kerry Keyser presiding. All committee members were present. Jim Lear, attorney of the Legislative Council, was also present.

HOUSE BILL 12 REP. GOULD, chief sponsor of the bill, stated this bill, if passed, would have relatively small effect on prison population. If there was a persistant felony offender, it would make that offender aware he/she would receive a mandatory sentence of a minimum of ten years. This would not jeopardize the person who at a young age had a few problems of one or two felony convictions and then had gone straight for a number of years to suddenly commit another felony. This bill would be strictly for the persistant felony offender.

CURT CHISHOLM, Department of Institutions, did not feel there would be any significant impact on the prison population should this bill be passed. CHISHOLM did not anticipate any major fiscal implementations on the prison. The persistant felony offender must be dealt with and he was in favor of this bill.

There were no other proponents.

There were no opponents.

No questions were asked by committee members.

HOUSE BILL 20 REP. GOULD stated that in 1977 the legislature passed a bill, signed by the Governor, which gave from a two to ten year sentence for a first conviction and a four to twenty year sentence for a second offense, for using a fire arm when committing a felony. This bill makes sure that a sentence is a consecutive and not a concurrent sentence. REP. GOULD implied we should control the criminal and not the gun.

CURT CHISHOLM, Department of Institutions, noted this bill would provide for additional sentences and judges would have certain rules to follow in sentencing a convicted person. There would be no fiscal impact on the prisons or the Department of Institutions of a great demand.

There were no other proponents.

There were no opponents.

CHAIRMAN KEYSER stated all the bills concerning criminal sentencing would be assigned to a sub-committee for research and recommendation.

REP. SEIFERT inquired if there would be a problem with the type of weapons used. REP. GOULD stated there would be no problem but a clarification could be made in the bill.

No further questions were asked by committee members.

HOUSE BILL 10 REP. GOULD spoke on behalf of House Bill 10. The main point to consider is if a person robs a store at gun point and steals \$200 in one town; and another person steals \$200 from another store at gun point in a different town, those two people should be convicted of the same crime with the same punishment. Fifty percent of the inmates in prison want this type of bill passed. Many inmates feel they received a sentence that was not equal to the crime committed. REP. GOULD feels this is a good bill and well thought out.

REP. KEEDY, sponsor of the bill, expressed the bill does require three main things: (1) the crime itself; (2) any circumstances aggravating the defendant; and, (3) the personal criminal history of the person. If a sentence cannot be deferred, a fixed sentence should be given. A sentence should not vary from one judge to another. Men and women should not be convicted for the types of people they are but for the crime that they performed.

REP. KEEDY further stated that a person is sentenced for what he did to society and not what he might do. Prisons are for punishment and not necessarily for rehabilitation.

Inmates currently do not have faith in the judicial system. If a bill of this type were passed, it would help restore their faith in the system knowing that everyone will be treated equally and fairly. There is no guarantee we can adequately change the crime rate; but implementation of this bill would help to control the crime rate.

This bill will undoubtedly have the opposition of the people in the community and the judges around the State.

Proponents

D. W. STEWART, representing himself, made his feelings known to the committee. He expressed that he was angry as he watched people who were sentenced to have it all suspended or most of it. He noted a case in Great Falls where a man injured a woman. The man was off for a suspended sentence before the woman was even out of the hospital. STEWART noted in the Independent-Record of November 20 there was an article of a cocaine dealer who was sentenced ten years, suspended nine years and with good behavior would probably spend only six months in jail.

STEWART feels the attitudes of the judges are bad. The criminal justice system is a place, in STEWART'S opinion, where the accused can have his act "whitewashed" from the record. STEWART feels there is a lack of mandatory sentencing, and lawyers do little to improve the sentence. STEWART noted a personal case concerning how judges let people they know off easier. STEWART feels if a man is turned loose, he will likely commit the same crime again.

There were no other proponents.

Opponents included RON KUNIK, representing himself. MR. Kunik gave the committee a testimony letter from the firm of Gibbs, Gaillard, Rowell, & Tanenbaum, Attorneys, in South Carolina. See Exhibit 1. MR. KUNIK's thoughts concerning the mandatory law of South Carolina and other views are enclosed on written testimony. See Exhibit 2.

Opponent MIKE MELOY, Montana Trial Lawyers Association, noted this bill is wrong from a philosophical, practical, constitutional, and financial standpoint. This bill is allowing the legislators to become judges. It is invading that part of the judicial system. You are taking over the prerogative of the judge as the constitution provides. Judges are probably as harsh on some of MELOY's clients as the public thinks they are lenient. The constitution requires there be a balancing of effort toward rehabilitation of the prison society. All the factors which go into rehabilitation are removed in this bill. No consideration is given to will this person commit this crime again. You are assuming if they commit two crimes they will commit three crimes. It removes the factor of rehabilitation so it is unconstitutional.

From a practical standpoint the problem with mandatory sentencing is that it does not differentiate the different things that go into crime. It does not distinguish the difference between the use of a machine gun to the use of a finger in the pocket.

MELOY further stated if a jury knows a person will receive 40 years mandatory sentence, the jury will acquit the person. The judge will have no say in the matter. From a financial standpoint, this bill will cost the people of Montana a fortune. MELOY felt that anyone who feels judges are irresponsible has not actually taken the time to be involved with the system and to really listen. Passing this bill would be a big mistake in the viewpoint of MELOY.

CURT CHISHOLM, Department of Institutions, stated he did not know the impact this bill would have as statistical figures were not available. Simple arithmetic, however, indicates this would have an impact on the prisons. Other states that have passed this type of bill note there has been significant impact on the prisons. Women prisoners would probably increase in Montana. Present

facilities do not have much more room for women inmates.

There were no other opponents.

In closing, REP. KEEDY was surprised that district court judges were not here to respond to the bill. He stated MR. KUNIK's son's case would not have happened in Montana because there must be an intent to perform a crime. It was the fault of the jury's verdict not the law itself. House Bill 10 would not find the person guilty of what they did not commit.

REP. KEEDY noted by passing this bill we are not taking innocent people off the street and throwing them in jail. This would only be for people who have committed previous crimes. The punishment should fit the crime that is committed. Legislators have a social contract to the society they represent. The main point of the bill is to get uniformity in the system.

Committee members asked questions following the closing concerning the wording of the bill. A report on sentencing in Montana was given to committee members. See Exhibit 3.

HOUSE BILL 9 REP. YARDLEY, chief sponsor of this bill, said this bill concerned good time provisions for inmates. At least half a month of good time can be accumulated per month. He noted the bill would not allow a prisoner to receive good time provisions if the inmate was out on parole.

CURT CHISHOLM, Department of Institutions, indicated the Department has a great interest in this bill concerning good time. The provision of good time is allowed by law. The prison has been giving good time accordingly to the maximum ceilings allowed by law. But, it is necessary for the warden to have authority over the amount of good time given. Although the inmates must have good time earned and is an incentive to the inmates, the prison officials must have control of the time given so the officials are running the prison and not the prisoners.

There were no other proponents.

There were no opponents.

REP. HANNAH inquired if there was a maximum number of days an inmate can accumulate.

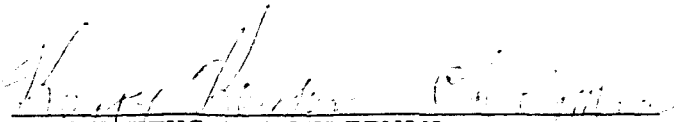
DAN RUSSELL, Department of Institutions, responded that a maximum of 25 days per month. The bill proposed will allow 28 days.

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CHISHOLM stated he believes they have the administrative capacity of how good time is given so the inmates can be controlled. Good time essentially is deducted from the time an inmate is up for parole.

The meeting was adjourned at 10:15 a.m.

Respectfully submitted,


KERRY KEYSER, CHAIRMAN

Maureen Richardson, Secretary

GIBBS, GAILLARD, ROWELL & TANENBAUM

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November 24, 1980

TO WHOM IT MAY CONCERN:

I have been requested by Mr. Ronald Kunik of Kalispell, Montana to write a letter concerning what I view to have been the experience in South Carolina with the mandatory sentencing under the Armed Robbery Statute.

The maximum punishment in South Carolina for armed robbery is imprisonment not to exceed twenty five years. The minimum sentence that may be imposed is ten years, and under no circumstances is a person sentenced for armed robbery eligible for parole in less than seven years.

The Parole Statutes currently make all persons ineligible for parole until they have served at least one third of their sentence, or ten years, whichever is less. (In murder cases, twenty years must be served before parole eligibility.)

Accordingly, we have a statutory scheme whereby all persons convicted of armed robbery must serve a minimum of seven years imprisonment. The South Carolina Youthful Offenders Act, which allows indeterminate sentencing of youthful persons, cannot apply to armed robbery convictions.

In my personal view, and in that of the Bar at large, this has had certain undesirable results.

The first is that it precludes the Judge, in a case which a Judge might find appropriate, from dealing leniently with a first offender who has the misfortune of being convicted of armed robbery. It has the obvious affect of making the minimum sentence for armed robbery seven years, and the maximum sentence one third of twenty five years, to wit, 8.33 years. The spread between the minimum and the maximum obviously gives a Judge very little discretion.

A second result has been to cause the trial of a great many armed robbery cases that ordinarily would have been disposed of by guilty plea. When a trial only subjects a person to a maximum of one year and four months greater penalty than the least sentence under a guilty plea, there is little incentive for a person to plead guilty.

As a practical matter, prior to the enactment of the mandatory ten years, seven years before eligibility for parole sentence, Judges ordinarily were delivering quite serious sentences in armed robbery cases, generally in the range of fifteen to twenty years. Very occasionally, in the most unusual case, a more moderate sentence would be imposed, and in those cases, there was a general concensus that such a sentence was appropriate. There was no general outcry, editorials in newspapers, etc., that sentences in armed robbery cases were too lenient prior to the enactment of the minimum sentence provisions.

Armed robbery was and continues to be a quite serious problem in this state, and apparently the owners of merchantile establishments either prevailed upon the legislature, or the legislature seeking to carry favor with that group, enacted the Statutes.

As a lawyer who defends persons charged with crimes, I am aware that the disparate sentences sometimes imposed creates problems. I personally would favor granting to both the state and the defendant the right to appeal sentences, so that some uniformity, taking into consideration the personal history of the defendant, the seriousness of the crime, and other relevant matters, could be obtained.

Trusting that this will be of some help in considering these matters, I am with best wishes and kindest personal regards,

Yours very truly,


Coming B. Gibbs, Jr.

CBG/db

Ladies and Gentlemen;

I am not accustomed to public speaking so I would like to read to you my feelings on this bill.

Through a personal experience, involving my son, I am acquainted with what can happen under mandatory sentencing.

My son, Steve, is 23 years old, was career navy, never in any trouble in his life, and in many ways a model young man.

Steve is not normally a heavy drinker, but drank heavily following the death with extreme pain and suffering of my father. Steve was with me and my father the last few days of my dad's life. It affected Steve deeper than I knew. This happened a few days before his troubles. When Steve returned home he started drinking, trying I guess, to ease the pain of what he had been through.

One night, while drunk, two friends, living with him asked him to take them to K-Mart, where unknown to Steve, they planned to rob K-Mart drug dept. Upon arrival, Steve fell asleep. One of the other boys went in and robbed the store. Steve was charged with armed robbery. He pleaded not guilty, but was found guilty even though one of the other boys admitted Steve knew nothing of the crime before hand. The boy who committed the crime, pleaded guilty and received 18 years, he must serve 7 years. Steve pleaded not guilty, he received 24 years, must serve 8 years. Under So. Carolina mandatory law one must serve a minimum of 7 years, regardless of circumstances.

In the first week of maximum security, he almost lost his life twice within 2 days, as he was attacked twice. Thank God, our attorney managed to get him transferred to a medium security, where it is not quite as bad. Steve has since told me, that to survive in there, he would have to become as mean and savage as the others. This he did not think he could do, or if life would be worth living like that.

Steve went to prison not a criminal, and I can only pray to God he will come out somewhat near the person he was before he went in.

The warden of the Reception and Evaluation center of S.C. told my wife and me, that since mandatory sentencing came about, the prisons were too over crowded, that the prisoners run the prison. All the guards could do was to keep them within the walls. The state was going broke building new prisons and trying to maintain them. In his opinion mandatory sentencing was not working.

I know we need more uniform sentencing and I am for it to a point, but I am against the taking away from the judges discretionary powers so as to judge each case individually, especially as to first offenders. I do believe that some of the sentences are very strong, especially the large increase when aggravating circumstances are involved.

Sponsors of this bill would give you the impression that this bill would omit the person who was a first offender.

46-18-201 section 2 gives the judge discretionary powers involving the first offender and to those who have mitigating circumstances under 46-18-222. If this were true, I probably wouldn't be here. If you look at page 4, new section - section 3, it says "Mandatory sentences to be imposed for felonies (exceptions) except as provided in 46-18-201 the court shall impose the mandatory sentences provided by law for a felony offense (unless) the court finds in accordance with page 5 - section 5 that aggravating circumstances are present, or in accordance with section 6 page 8 that mitigating ~~circumstances/are/deleted//so/anything/with/aggravating~~ circumstances are present. I would like you to note that in all felonies with aggravating circumstances section 6 46-18-222 mitigating circumstances are deleted, so anything with aggravating circumstances automatically voids 46-18-201 and 46-18-222 so what they givith, they also taketh away.

I have copies for each of you, a letter from a very prominent attorney in S.C. where they have mandatory sentencing laws. Please read it. I agree with his idea, that the real answer to more uniform sentencing can be arrived at by giving the state and the defendant equal opportunity to appeal the sentence. The judge should give his reasons for sentences in writing. If appealed it should then go before ~~a knowledgeable~~

a knowledgeable board. I think you would then solve the uniform sentencing problem and at the same time save the state millions of dollars.

I really believe a ~~judge~~ should have discretionary powers, especially as to the first offender and those with mitigating circumstances. WE MUST KEEP HUMANITY IN THE LAW, and try to save and rehabilitate those we can before they become hard core criminals..

Mandatory sentencing at its best can only fill the already over crowded prisons and cost the state more than it could ever afford and possibly destroy and make into hardened criminals those that could possibly be rehabilitated and made into useful citizens.

There is not one of us, who can say, what might happen to us or our children in the future that could cause us to commit an irrational act, one that we would never under ordinary circumstances ever dream of doing and would never in a lifetime do again. Should that type person be put into prison for 20 to 60 years with no hope? I don't believe we should. Any one of; us at any time given the right circumstances can make a mistake. If you really believe that this is the punishment all deserve, then let us dismiss our judges, install a computer, program it and be done with the human factor. Again I BELIEVE WE MUST KEEP HUMANITY IN THE LAW.

Also, why in all of these proposed changes are the dope pushers ignored? One dope peddler can ruin a thousand or more lives, yet these people usually get off with the least punishment.

There are many things I would like to say but time does not allow. I want to thank you all for listening and ask you to vote against this bill as it is presently written.

EXHIBIT 3

A R E P O R T
O N S E N T E N C I N G
I N T H E S T A T E O F M O N T A N A

The following report is based on statistical information provided by the Department of Institutions, Information and Systems Bureau.

The graphs show actual numbers of persons sentenced under several major felonies in the State of Montana from July 1, 1978, to December 12, 1979. Not all crimes are included in this report. The shaded bars on the graphs indicate sentences other than actual prison time. The black bars indicate actual prison sentences. In effect, this means that if a sentence includes a suspended portion, only the time an individual is actually sentenced to serve in prison is shown in black, and the suspended portion is indicated under "Part Suspended", with a shaded bar.

These figures reflect sentences by District Judges, and do not include changes made by the Sentence Review Division. If an individual is given a deferred or suspended sentence which is later revoked, both sentences are shown. As a result, the graphs may reflect more sentences than there were actual convictions. If one individual is sentenced separately for more than one crime stemming from one incident, each sentence is shown.

It should be noted that there are mitigating and aggravating circumstances which are considered by judges when imposing sentences. Some of these are prior felony convictions, use of weapons or violence in commission of the offense, and the age of the offender. While it would be helpful if such information were included, obtaining and presenting it goes far beyond the scope of this report.

It should also be noted that a prison sentence as indicated here does not accurately portray "time served". An individual is eligible for consideration for parole when one-fourth of his sentence has been served, or when one-half is served if he is designated by the Court to be a "dangerous offender". By law, a person with a very lengthy sentence cannot be incarcerated more than 17.5 years on one sentence without being considered for parole, and a person serving a life sentence must be considered for parole after 30 years less good time. A judge can, however, declare an offender ineligible for parole.

Good time consists of days taken off an individual's sentence as incentive to appropriate behavior in prison. He may earn ten (10) days a month for being available to work, plus added days of good time for participating in various self-help groups. At the present time, an individual can earn a maximum of 25 days good time per month.

Prepared by:

Lois A. Broyles, Secretary
Sentence Review Division

DELIBERATE HOMICIDE

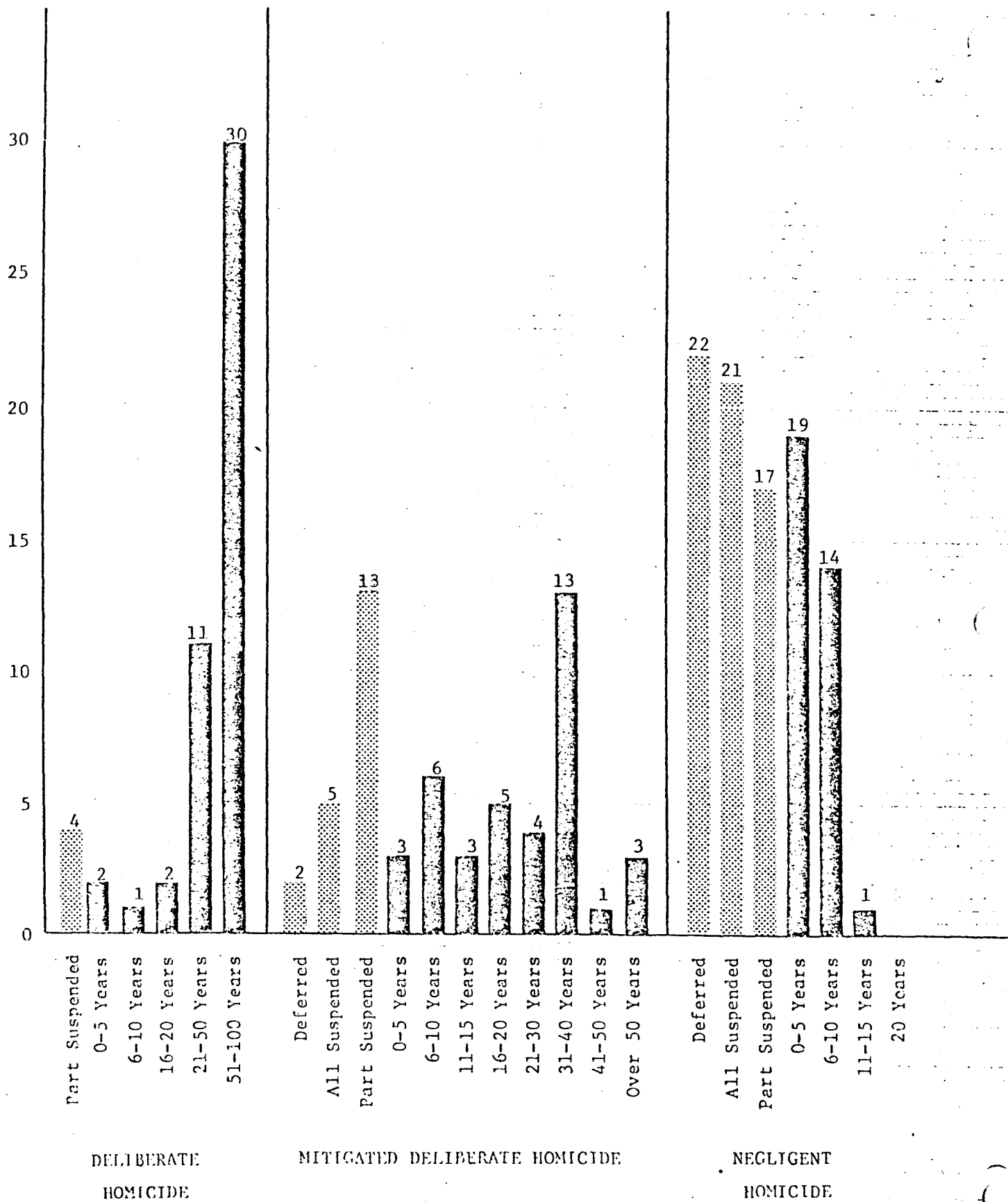
MITIGATED DELIBERATE HOMICIDE

NEGLIGENT HOMICIDE

The total number of individuals sentenced for Deliberate Homicide was 46, with one not coded. This is due to the fact that one individual, while convicted of three crimes, received only one sentence--the death penalty. Of the 45 remaining convictions for Deliberate Homicide, the average sentence was 72 years in prison. It is interesting to note that two sentences for Deliberate Homicide were for terms of five years in prison, plus some time on probation.

There were 45 convictions for Mitigated Deliberate Homicide, with the average prison sentence being 24 years. Seven persons convicted of Mitigated Deliberate Homicide received deferred or suspended sentences, and were not sent to prison.

Of a total of 77 convictions for Negligent Homicide, the average prison term is 2.7 years. This figure reflects the fact that one-half of those convicted of Negligent Homicide were not sentenced to prison, receiving deferred or suspended sentences. Suspended sentences for this offense range from one year to thirty (30) years.



SEXUAL INTERCOURSE WITHOUT CONSENT

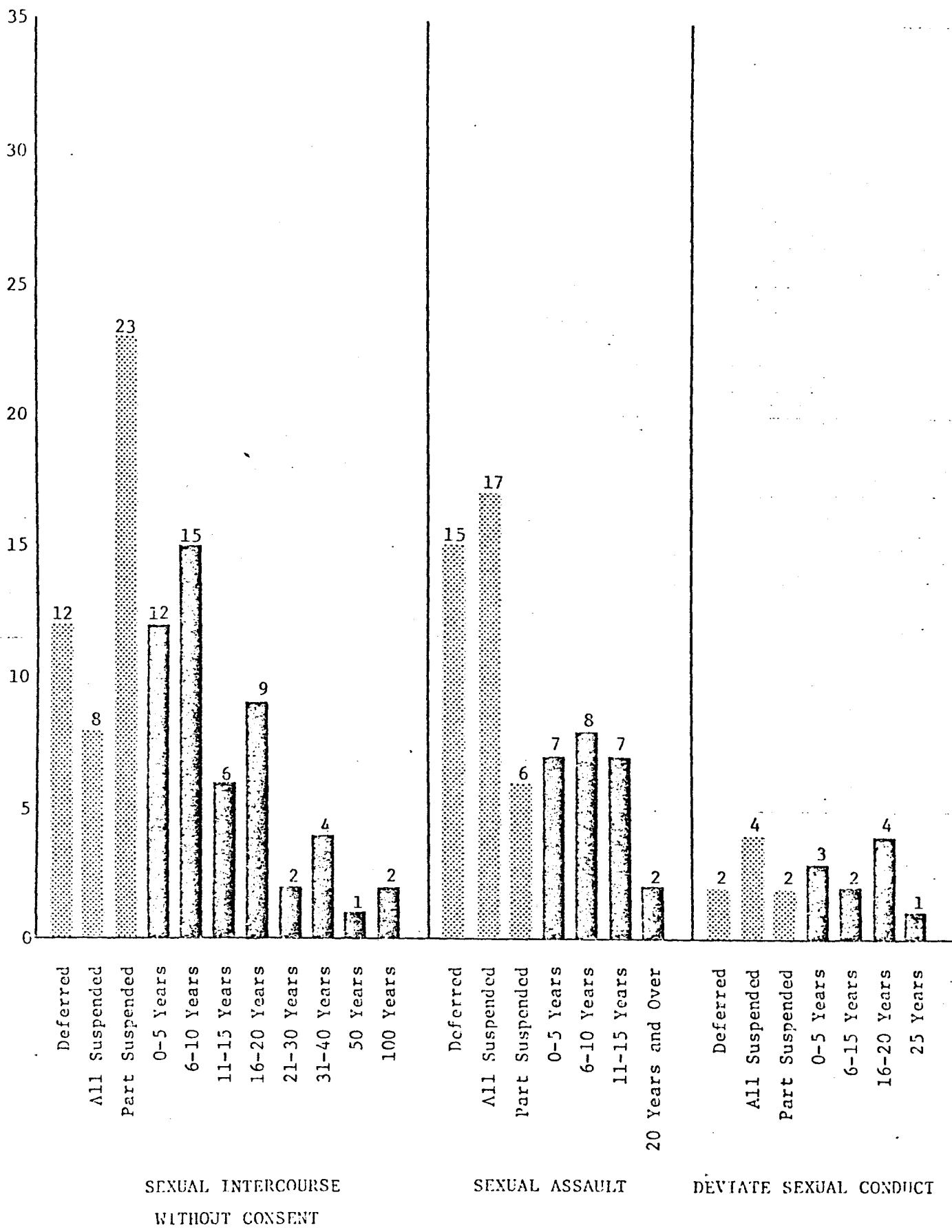
SEXUAL ASSAULT

DEVIATE SEXUAL CONDUCT

Of a total of 71 convictions for Sexual Intercourse Without Consent, 28% received deferred or suspended sentences. The average prison sentence was 12.8 years.

For Sexual Assault there were 56 convictions. The average prison sentence was 4.5 years. Deferred or suspended sentences were given to 57% of those convicted of Sexual Assault.

Deviate Sexual Conduct convictions resulted in an average prison sentence of 8.9 years, from a total of sixteen (16) convictions.



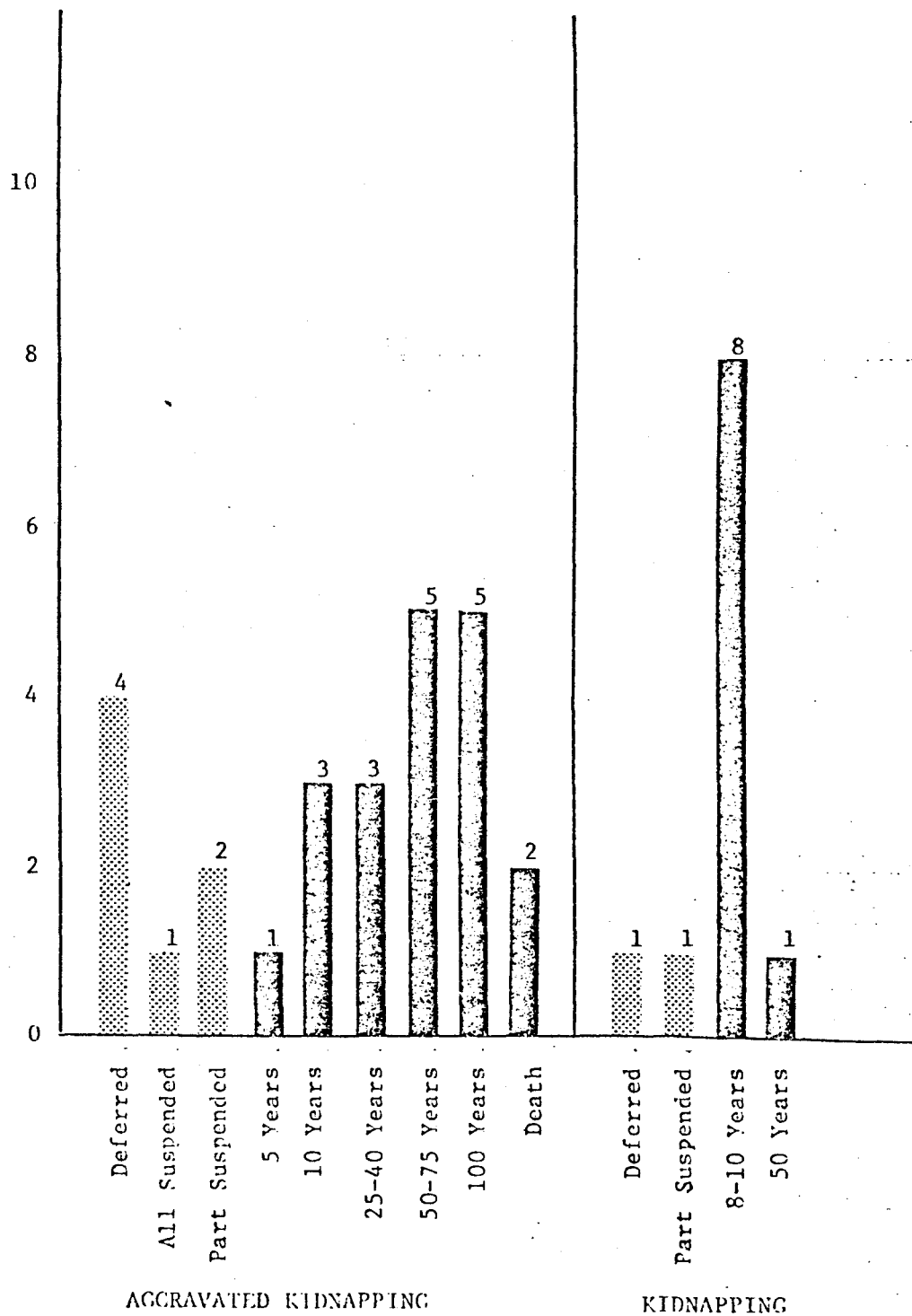
AGGRAVATED KIDNAPPING

KIDNAPPING

There were a total of 24 Aggravated Kidnapping convictions, resulting in sentences ranging from deferred sentences to the death penalty. Eliminating the two death penalties, the remaining 22 convictions for Aggravated Kidnapping have an average prison term of 46 years.

Most convictions for simple Kidnapping result in prison terms of from eight (8) to ten (10) years, the average being pulled up to 12.8 years by one 50-year sentence.

It is interesting to note that five people, about 20% of convictions for Aggravated Kidnapping, received deferred or suspended sentences, whereas one person, or 10% of convictions for the lesser crime of Kidnapping, received a deferred sentence.

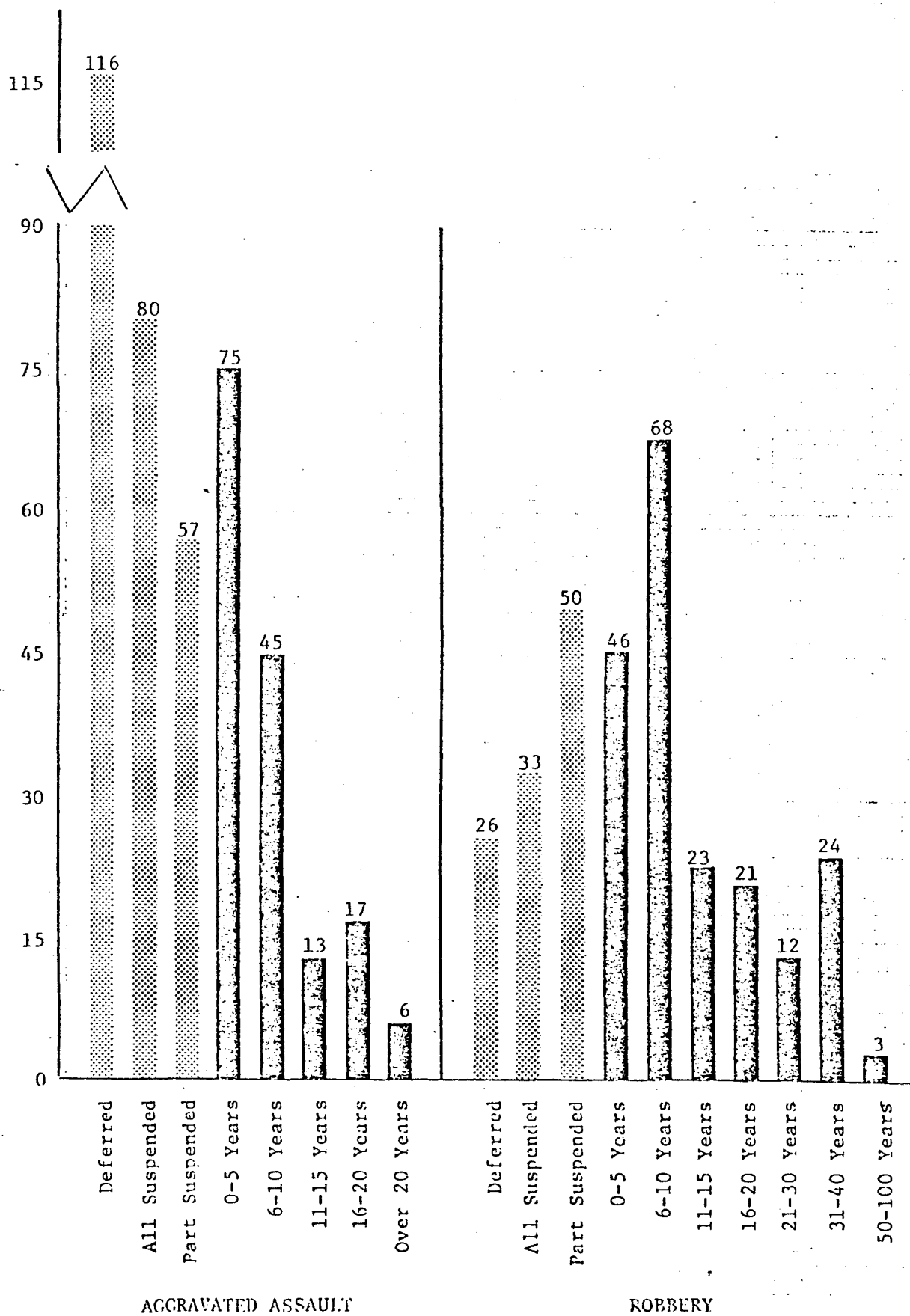


AGGRAVATED ASSAULT

ROBBERY

There were 352 convictions for Aggravated Assault, resulting in an average prison term of 4 years. 45% of persons convicted of Aggravated Assault serve some time in prison.

Of 256 convictions for Robbery, the average prison sentence is 8.4 years; over twice the length of the average sentence for Aggravated Assault. 77% of persons convicted of Robbery serve some time in prison.



ESCAPE

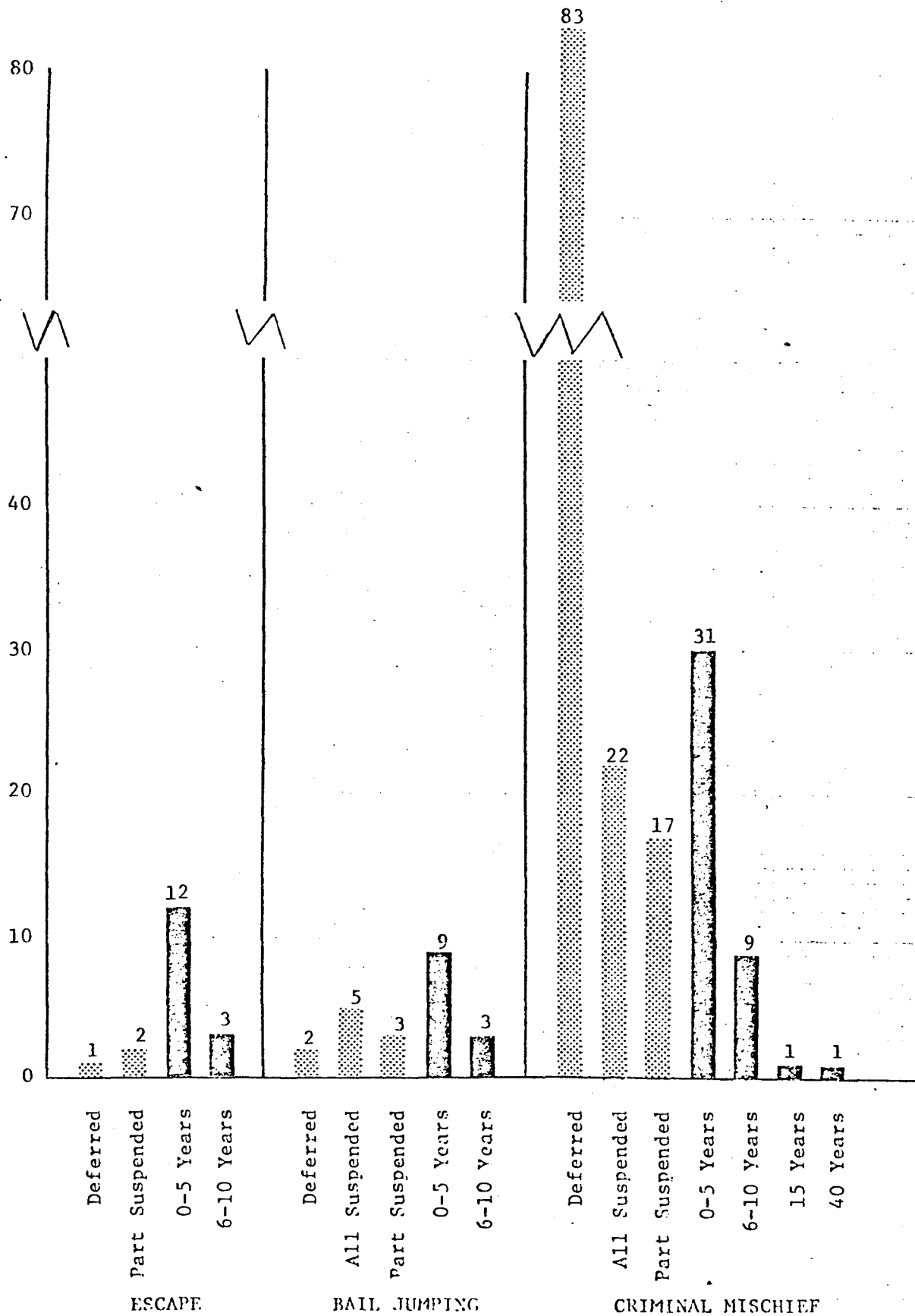
BAIL JUMPING

CRIMINAL MISCHIEF

For the crime of Escape, there were sixteen (16) convictions, for an average prison sentence of 3.6 years.

Of a total of nineteen (19) convictions for Bail Jumping, the average prison sentence is 2.7 years.

There were 147 convictions for Criminal Mischief, with an average prison sentence of 1.6 years. Suspended or deferred sentences were given to 71% of those convicted of Criminal Mischief.

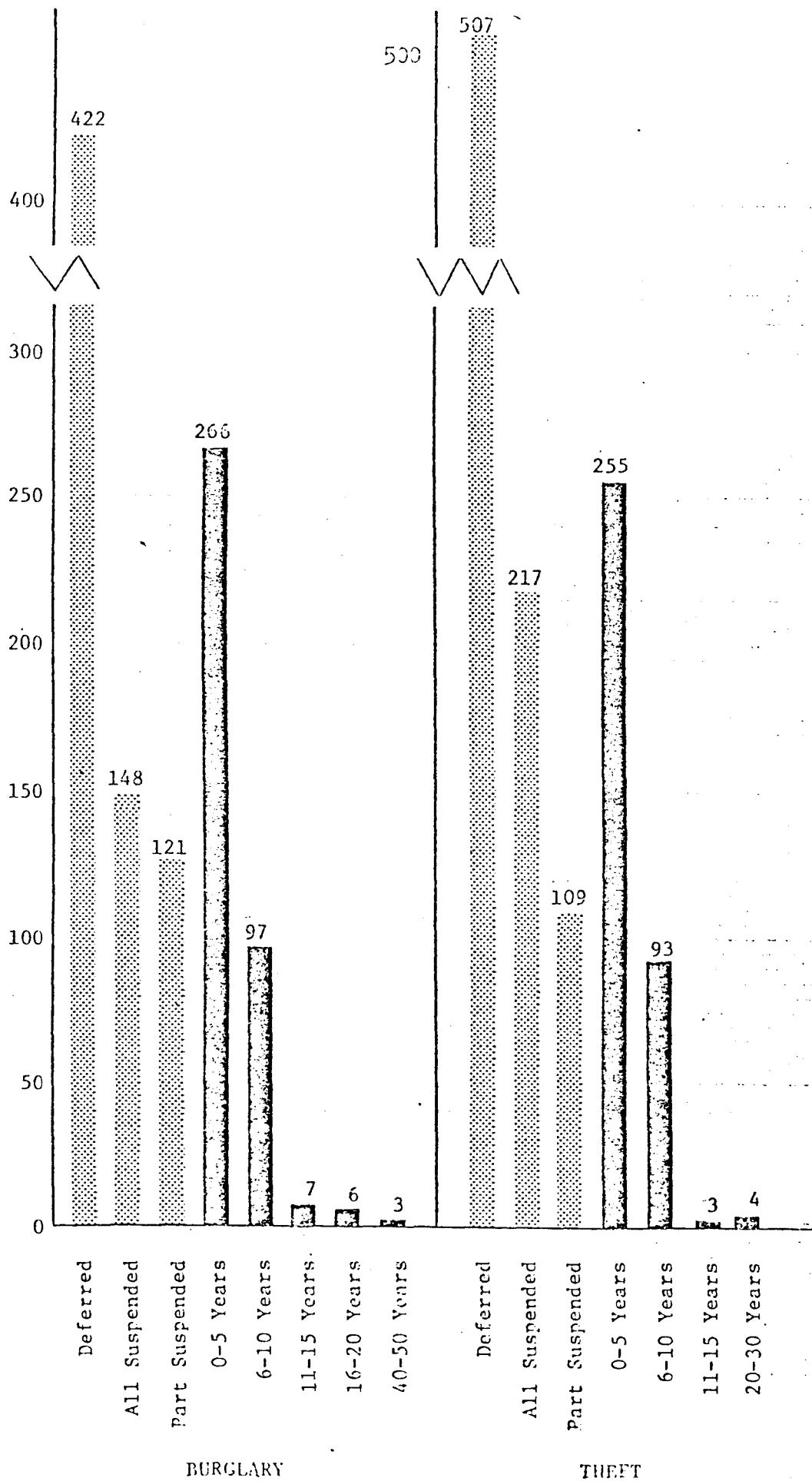


BURGLARY

THEFT

The total number of persons convicted of Burglary was 947. The average prison sentence for these was 2.2 years. Suspended and deferred sentences constitute 60% of all sentences for Burglary, and range from one year to twenty-five (25) years.

Of a total of 1076 convictions for Theft, the average prison sentence was 1.6 years. Two-thirds of those convicted of Theft receive suspended or deferred sentences, ranging from 180 days to thirty (30) years.



ISSUING BAD CHECKS

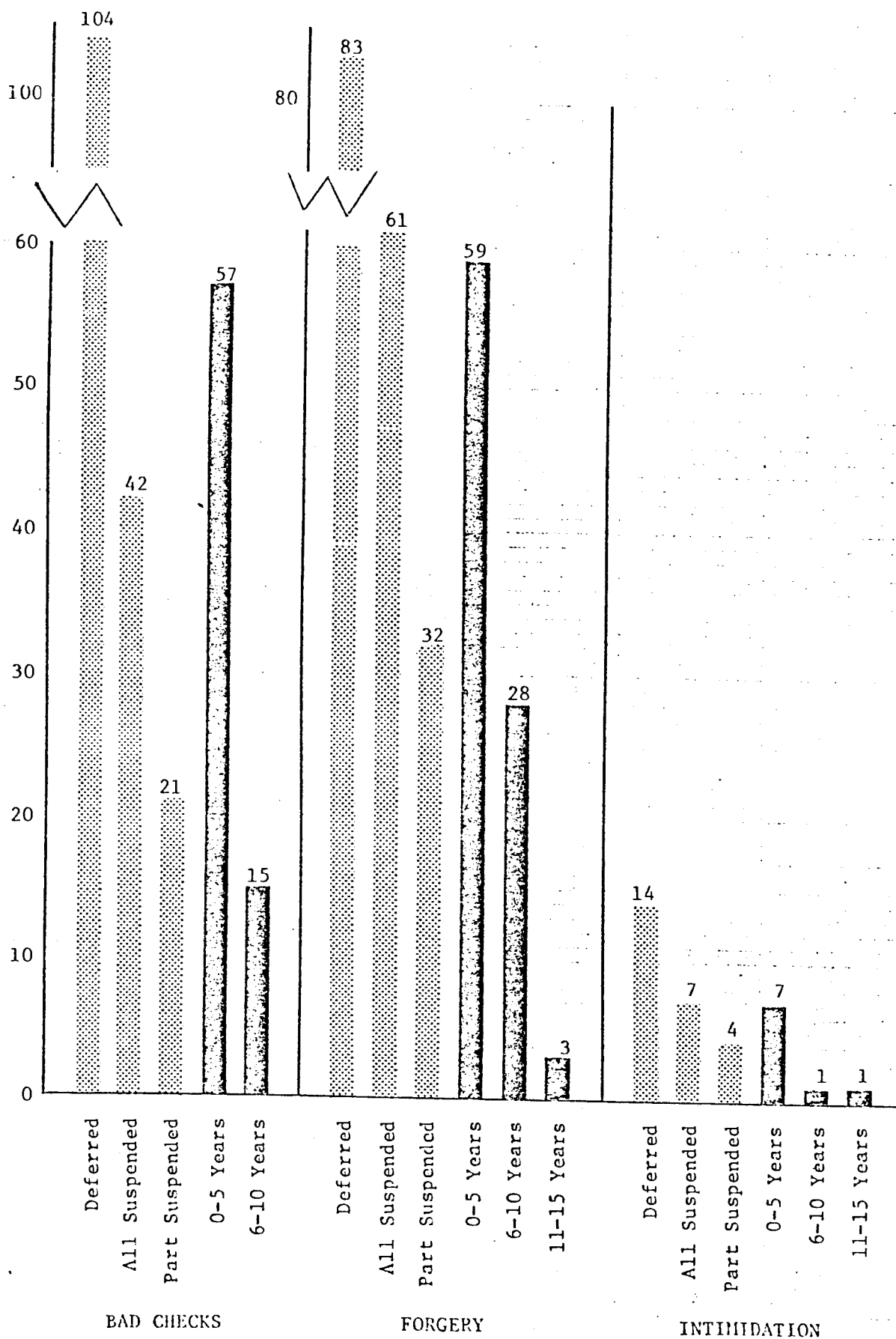
FORGERY

INTIMIDATION

A total of 218 convictions for Issuing Bad Checks resulted in an average prison sentence of 1.4 years. Two-thirds of those convicted of this offense received deferred or suspended sentences.

There were 235 convictions for Forgery, with an average prison sentence of 2.1 years. Suspended and deferred sentences constitute 61% of all sentences for Forgery.

Thirty (30) convictions for Intimidation resulted in an average prison sentence of 1.7 years.



CRIMINAL SALE OF DANGEROUS DRUGS

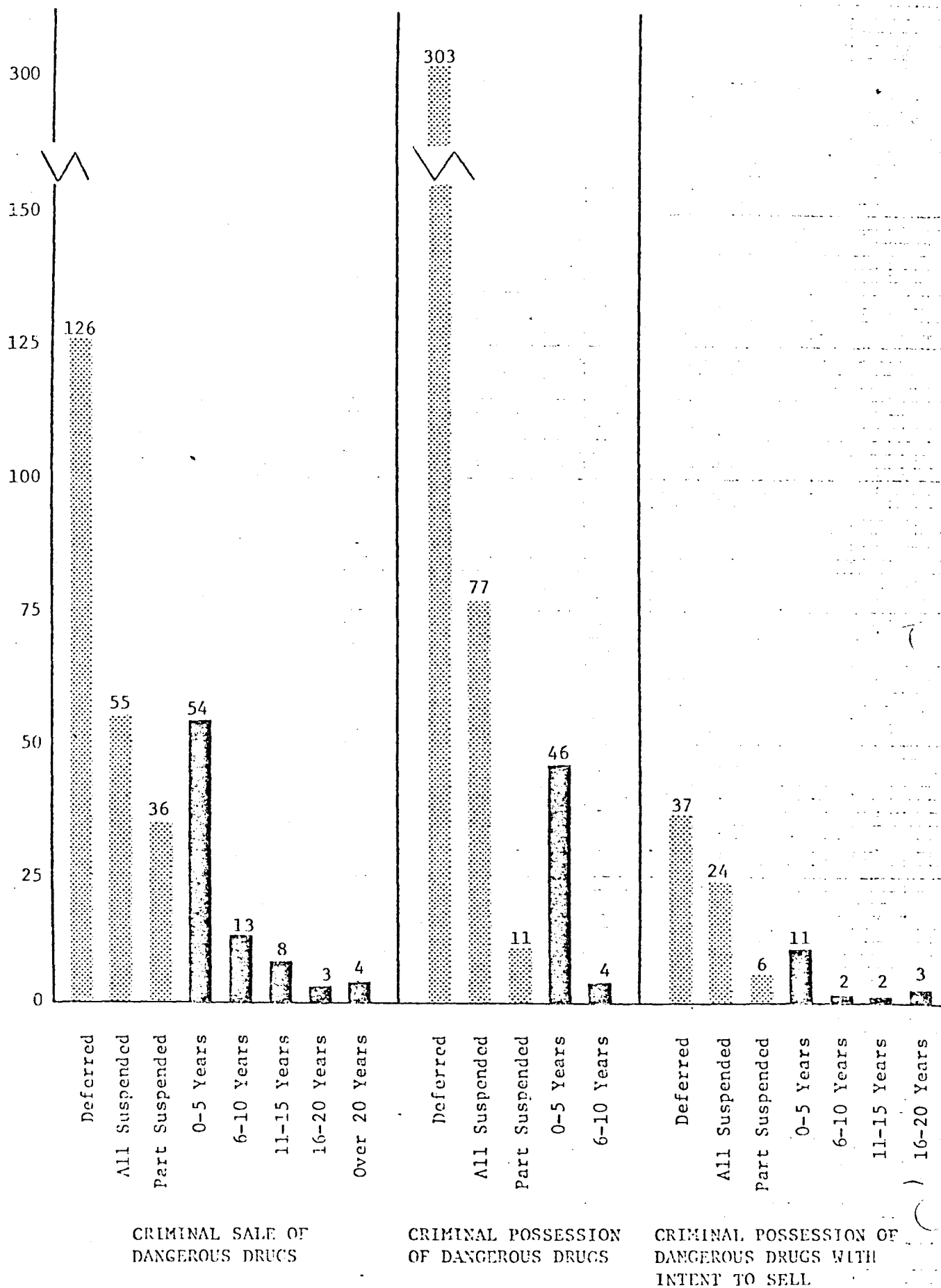
CRIMINAL POSSESSION OF DANGEROUS DRUGS

CRIMINAL POSSESSION OF DANGEROUS DRUGS WITH INTENT TO SELL

There were 262 convictions for Criminal Sale of Dangerous Drugs, which resulted in an average prison sentence of 4.4 years. Over two-thirds of those convicted of this offense received deferred or suspended sentences ranging from 180 days to 30 years.

Of a total of 429 convictions for Criminal Possession of Dangerous Drugs, 88% received deferred or suspended sentences. The average prison sentence for this offense was five months.

There were 79 convictions for Possession with Intent to Sell. The average prison sentence for these was 1.8 years. 77% received deferred or suspended sentences for this offense.



NEGLIGENT ARSON

ARSON

Of a total of five (5) convictions for Negligent Arson, one person received a 2-year prison sentence. One received a suspended sentence, and three were given deferred sentences.

There were 17 convictions for Arson. Of these, ten (10) received deferred or suspended sentences. Prison terms of ten (10) years were given to two people, and five people received five years or less in prison.

Because there were so few convictions for these two crimes, they were not charted on a graph.

VISITORS' REGISTER

HOUSE JUDICIARY COMMITTEE

ILL 9

Date 1/9/81

NSOR Yardley

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IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

HOUSE JUDICIARY COMMITTEE

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Date 1/9/81

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IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

HOUSE SUBCOMMITTEE COMMITTEE

HOUSE

COMMITTEE

ILL 12

Date 1/9/81

NSOR Gould

NAME _____

RESIDENCE

REPRESENTING

SUPPORT

OPPO.

WET CHALK

LIST of INSTRUCTIONS

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IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

HOUSE JUDICIARY COMMITTEE

20

ILL _____

Date 1/9/81

NSOR Gould

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IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.