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NEW MEXICO CRIMINAL JUSTICE COUNCIL, 7 MAR 1978

DATE: March 3, 1978

MEMORANDUM

TO: Ms. Debbie Stawicki
FROM: Fred E. Velarde, Grants Manager *Fred Velarde*
SUBJECT: 76-DF-06-0013, Evaluation Report
MESSAGE:

As you requested, enclosed is a copy of the Evaluation Report for the above referenced grant. If you have any questions, please call.

NCJRS

MAR 29 1978

ACQUISITIONS

45977



STATE OF NEW MEXICO
GOVERNOR'S COUNCIL ON CRIMINAL JUSTICE PLANNING

425 OLD SANTA FE TRAIL
SANTA FE, NEW MEXICO 87501

7 MAR 1978

JERRY APODACA, Governor
Chairman

DR. CHARLES E. BECKNELL
Executive Director

TELEPHONE: (505) 827-5222

November 21, 1977

Department of Justice
Law Enforcement Assistance Administration
Office of Criminal Justice Programs
Room 1142
633 Indiana Avenue
Washington, D.C. 20531

RE: Grant # 76-DF-06-0013

Dear Sir:

Enclosed is the original plus one copy of the Evaluation Report for the above mentioned discretionary grant entitled, "PROD II (Priority and Repeating Offender's Division).

Please feel free to contact this office if you have any questions pertaining to this matter.

Sincerely,

FRED F. VELARDE
Grants Manager

FEV:thc:G3,5

Enclosure

76-06-0013

UNIVERSITY of ALBUQUERQUE

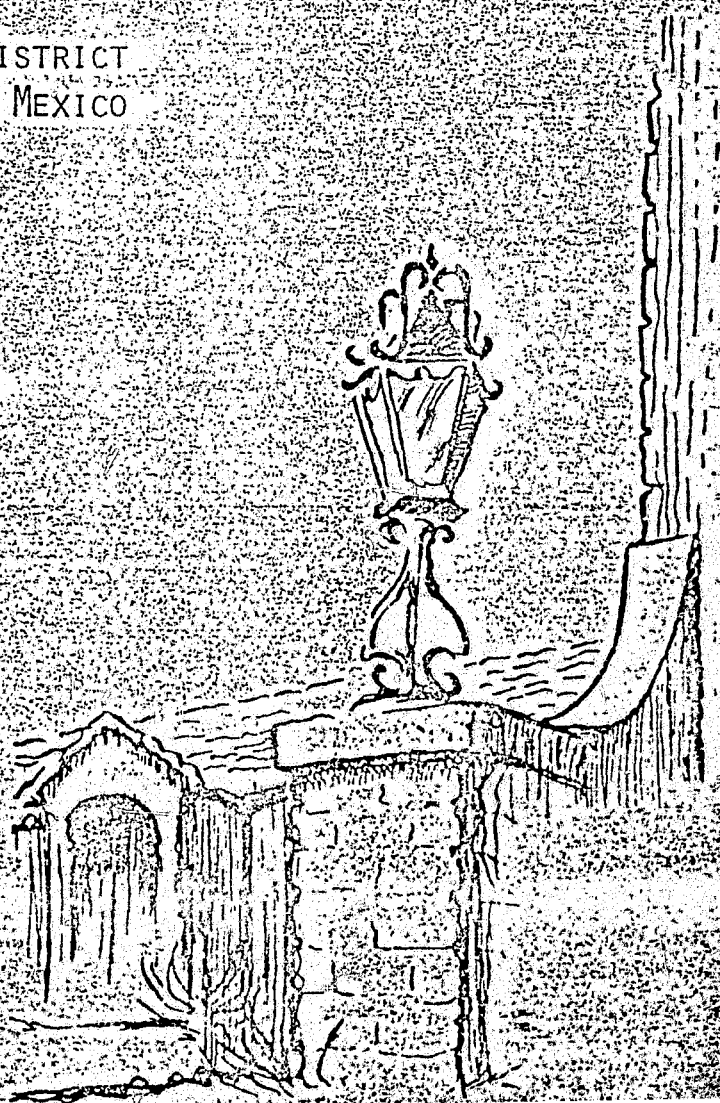
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CENTER FOR CRIMINAL JUSTICE STUDIES

PRIORITY AND REPEATING OFFENDER'S DIVISION EVALUATION

SECOND JUDICIAL DISTRICT
ALBUQUERQUE, NEW MEXICO

JUNE 1977



FINAL EVALUATION

OFFICE OF THE DISTRICT ATTORNEY
SECOND JUDICIAL DISTRICT

PRIORITY AND REPEATING OFFENDERS PROGRAM
ALBUQUERQUE, NEW MEXICO

SUBMITTED BY:

WALTER V. NIEDERBERGER

and

JAMES R. HALL

JUNE 1977

This project was supported by grant no: 76-DF-06-0013, awarded to the Office of the District Attorney, Second Judicial District, Albuquerque, New Mexico, who engaged the Center for Criminal Justice Studies for the purposes of evaluation. The grant was awarded by the Law Enforcement Assistance Administration, U. S. Department of Justice, under the Omnibus Crime Control and Safe Streets Act of 1968, as amended. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the U. S. Department of Justice.

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ABSTRACT

This report represents an evaluation of a prosecution program in the office of the District Attorney, Second Judicial District, Albuquerque, New Mexico.

The District Attorney established a Priority and Repeating Offenders Division (P.R.O.D.) as part of the office organization. The main goal of this division was the expeditious processing of career criminals.

After a year's experience with what was called "P.R.O.D. One", the District Attorney implemented an L.E.A.A. grant designed to meet a set of objectives related to achieving the overall goal. Criteria for P.R.O.D. cases were outlined, coordination with law enforcement agencies established, and the use of paralegal and data collection staff implemented.

The methodology used to analyze the program involves the use of the panel design for comparisons of a "during-during" nature based upon time-phases since the establishment of the Priority and Repeating Offenders Division. These include comparisons between "P.R.O.D. One" and "P.R.O.D. Two" which represent a modified "before-after" design ("before", however, refers simply to "before L.E.A.A. funding" and not before the introduction of variables).

Frequency measures and tests of significance have been applied where appropriate. Interview data have been used in a descriptive manner to ascertain staff's awareness of procedure and problems.

The findings support a claim for success in five explicit conclusions: The handling of career criminals; screening procedures; time periods from arrest to disposition; jury convictions; and sentencing.

Suggestions for an increase in efficiency levels are included.

PROJECT DESCRIPTION

This report includes an analysis of a prosecutorial project implemented by the office of the District Attorney, Second Judicial District for the State of New Mexico in Albuquerque.

As early as 1974, in the Annual Report the District Attorney for the Second Judicial District expressed an interest in developing a procedure "which will provide for the rapid identification of repeat offenders so that their case will be given top priority."¹

The rationale underlying the goals of the project has ample theoretical base:

The nuclear problem of crime lies in dangerous repetitive criminality, not in the occasional, accidental, or circumstantial offenses committed by persons who are essentially non-criminal in disposition. Crimes committed by such individuals are very numerous in aggregate and, in the interest of general prevention of crime, they cannot be tolerated. Indulgence would encourage transgressions among less socialized members of the community who now pause fearfully at the narrow border that separates the law-abiding from the criminal . . . Endeavors to prevent recidivism among (the repetitive criminal) have been far from successful, largely because of the inefficiency of the measures at hand. These may be improved and, as we gain further understanding of their requirements, it is hoped that an increasing proportion of the seemingly intractable will respond . . . Our recidivist legislation has been quite unsatisfactory in dealing with them.²

¹The Annual Report of the District Attorney, Second Judicial District, Albuquerque, N.M., 1974, p. 47.

²Tappan, Paul, W., Crime Justice and Correction, N.Y., N.Y., 1960, McGraw-Hill, pp. 471-72. See also Tappan, "Habitual Offender Laws and Sentencing Practices in Relation to Organized Crime", in Morris Ploscowe (ed.) Organized Crime and Law Enforcement, report to the American Bar Association, 1952, pp. 113-17.

Tappan's statements in the fifties and early sixties were reiterated by Johnson in the mid-sixties:

"... divorce from the dominant culture is fundamental to the professional criminal . . . Crime is his means of livelihood and his way of life . . . The professional criminal rationalizes his set of values by describing the system of criminal justice as hypocritical, devious, slow moving, favoring special groups, and either corrupt or inconsistent in administration."³

Since these reports in the early sixties and, indeed since the implementation of the project, other reports circulated to perhaps a wider reading audience than that of the two scholars cited above, have started to appear:

At a time when the nation appears to be losing its battle to reduce the spiraling crime rate, the Career Criminal Program--now in operation in 19 major cities--is holding out some hope that crime can be reduced.⁴

Another article relating to the same subject appeared in Reader's Digest in the June, 1977 issue entitled "Crime in America--A Turn-around at Last?"⁵

³ Johnson, Elmer, Hubert, Crime Correction and Society, Homewood, Ill., 1964, The Dorsey Press, p. 243.

⁴ Reprinted from an article by Timothy D. Shellhardt in the Wall Street Journal, in Reader's Digest, Feb., 1977, p. 112. Entitled "Pursuing The Career Criminal."

⁵ Methvin, Eugene, "Crime in America--A Turnaround at Last?", Reader's Digest, June 1977, p. 61.

A more definitive article citing L.E.A.A. funding involvement appeared in The U.S. News & World Report: "Take aim at the repeater and put him away for a long time: That's the way backers of the new program figure the crime rate can be cut."⁶

This last article lists Albuquerque, New Mexico, as one of the federally funded Career Criminal Programs operating as of November, 1976.

The Office of the District Attorney established what they call Project P.R.O.D.--a Priority and Repeating Offenders Division--as part of the regular office organization.

This Division has as its main goals the identification and expeditious processing of the violent recidivistic career criminal.

Individuals with previous felony convictions or numerous previous felony charges are processed if they fall into one of the following categories:

1. Persons charged with committing a felony offense during the time they are out on bond on a separate felony charge.
2. Persons charged with committing a felony offense while out on pending appeal appearance from a prior felony conviction.
3. Persons charged with a felony offense within one year after they are released from a penal institution or adult probation program.
4. Persons with previous felony convictions who are charged with specific felonies that are presenting a current particular community problem, such as house robberies, convenience store hold-ups, etc.

⁶"A War on Career Criminals Starts to Show Results," U.S. News & World Report, Nov., 22, 1976, p. 73.

Cases are first screened by liaison officers from law enforcement agencies housed in the District Attorney Offices. They are then sent to para-legal coordinators who apply the acceptance criteria of the Division (see appendix A) and forward the case to the project director for acceptance as a PROD case. The project director then sends it to attorneys for prosecution.

From July 26, 1976 to November 18, 1976, the following criteria was adopted and applied for acceptance and prosecution of felony cases by the division:

I. A felony defendant who meets one or more of the following criteria will be accepted and prosecuted as a PROD Offender:

1. After indictment for a felony, the indictee commits another felony or felonies. (This applies to any felony committed while pending trial, or appeal thereafter.)
2. Any defendant on parole or probation for a felony, who commits another felony during such parole or probation, or within one year of the conclusion of such parole or probation. (This applies to any Federal, New Mexico, or out-of-state parole or probation--does NOT include pre-prosecution probation.)
3. Any defendant who has two separate felony convictions within five years of the present felony offense.
4. Any defendant with three or more felony convictions who then commits the present felony offense.

II. Upon acceptance of a felony case for PROD prosecution, the following actions will be taken by the PROD Division:

1. Seek probation revocation in Second Judicial District probation cases--and--notify other parole or probation

authorities of violation of their parole/probation conditions.

2. Seek a CASH OR SURETY BOND (not 10% bond) sufficiently high to assure the defendant's appearance at all motions and at trial, and discourage or prevent flight pending trial or appeal thereafter. (Police should notify the PROD Division of any information bearing on defendant's flight potential; i.e., concealing identity, flight to avoid arrest, failures to appear, escape efforts, comments he made that he will not go back to prison, etc. If possible, this information should be in writing, or, if dictated, must be specific in source(s) of that information, dates or circumstances or occurrence, witnesses to it if they can be named, etc.)
3. Request expedited trial of the defendant in the District Court. This means trial within 60 days or less.
4. Upon conviction, seeking consecutive sentences, and filing and prosecuting Habitual Offender supplemental informations to enhance these sentences. (Police or other reliable citizens possessing information relevant and helpful to a sentencing judge--in favor of, or against a defendant--should personally contact or telephone the PROD Assistant D.A. and give specific details of the information.
5. Request victims to appear at defendant's sentencing, or at least to submit their observations, opinions, and any residual effects of defendant's criminal conduct on them, to the sentencing judge--and to the parole board when a defendant is considered for parole.
6. At sentencing--if appeal is taken--seek the highest possible appeal bond to assure defendant's appearance for and service of sentence, and minimize or prevent defendant's further criminal conduct.

III. Plea Negotiation and Pleas of Guilty;

The ultimate goals of the PROD Division are to remove the repeat felony offender from society as long as possible during any rehabilitative efforts he is undergoing, and to try to prevent a repeated or incorrigible felon from committing further felonies. In this way, he will be unable to commit or continue such felonies, his sentence will deter other would-be career criminals from embarking on such a career. Therefore, the PROD Division expects to go to trial in at least 75% of the PROD cases because only very high pleas will be accepted prior to trial: EXAMPLES:

1. A plea to all Charges of the Indictment, no guarantee on habitual offender charges, in exchange for D.A. silence at sentencing.
2. A plea to the top charge(s) of the Indictment, and admission to one or two prior felony convictions for enhancement of the sentence on the top charge(s).
3. A plea to the top charge on an Indictment, and admission of three prior felony convictions (life sentence).
4. A plea to all charges, with a guarantee that no more than two prior felony convictions will be alleged and prosecuted for enhancement.

Before such a plea is accepted to anything less than all charges and all possible habitual criminal allegations, the Assistant District Attorney handling the case will notify the victim(s) and/or the major police investigator and seek the approval of such person(s) for acceptance of the plea. (Such opinion or approval of such victim/witness investigator is not conclusive, but will be given extremely great weight).

A PROD case will NOT be dismissed, or discontinued, if a defendant agrees to plead guilty to another non-PROD felony, or to felonies in Federal Court or other states--absent a highly justifiable reason, and approval in writing of the Chief of the PROD Division, the Chief Deputy District Attorney, or the District Attorney himself. Any promises to the contrary by an Assistant District Attorney, police officer, or other official or citizen have no binding weight, and will not affect continuation of a PROD prosecution, except as noted above.

On November 18, 1976, the criteria for accepting cases for "Career Criminal" prosecution was changed to the following:

1. Any person under confinement, or released on bond or recognizance or any State of Federal Felony charges--whether (a) on Criminal Complaint, pending Indictment or Information; or (b) Indictment of Information, pending or during trial thereon; or (c) on appeal after conviction on such felony charges.
2. Any person serving sentence, or within five (5) years of admission to parole or probation, or a felony conviction (State or Federal).
3. Any person who has been convicted of three (3) or more felonies (State or Federal) committed in separate felony episodes. This generally means three (3) or more separate felony prosecutions, but could include a single prosecution involving three or more separate felony episodes.
4. Any person committing either of the following in a six month period (occurring within eighteen months of the Indictment(s) charging such felonies):
 - (a) SIX (6) or more third-degree--or higher--felonies.
 - (b) EIGHT (8) or more fourth-degree--or higher--felonies.

The foregoing are guidelines, but in rare cases, a person meeting the above criteria MAY be rejected for PROD prosecution (e.g., an 18-year old with no prior record charged with carrying a gun in a bar, and after Indictment, has 10 ounces of marijuana. The same would apply to other person who technically fall within the above guidelines, but based on their past, or the peculiar circumstances of the case, the defendant shows strong evidence of not being a "career" criminal--yet. Additionally, in a rare case, a person not STRICTLY meeting the foregoing guidelines may--on a case-by-case review--be accepted for "career criminal" prosecution. E.G., a man committing a felony after a felony arrest, but before a criminal complaint is filed (i.e., escape from jail pending the criminal complaint); or a man committing seven fourth-degree felonies in six months and 12 days; etc. Except in those very rare cases, however, the foregoing will be the guidelines upon which persons with TRIABLE felonies will be prosecuted as career criminals under the PROD Grant--effective the commencement of the second year of operation/funding:

Recently there has been a change in the project director. As far as the evaluators can ascertain, the same criteria are in effect and no major new directional thrusts have been made or anticipated at the time of this writing.

However, some problems have been identified by project staff and efforts are underway to solve these problems in the anticipated next federally funded period.

The evaluators were contracted September 2, 1976 and have been allowed freedom of access to PROD ONE and PROD TWO files⁷ as well as interview time with paralegals, liaison officers and attorneys.

⁷ PROD ONE refers to those cases handled by the division prior to the present project.

EVALUATION DESIGN AND RATIONALE

Methodological Note

The approach to methodology which is taken in evaluative research must be tied to the objectives of the program which is being evaluated. With the rapid growth in sophisticated research techniques, there has been an inclination to use models for evaluation which are methodologically sound in themselves but are not necessarily in keeping with the objectives and goals of the project as developed. There has often been an inclination to use one variation or another of the classical research design, whether or not that design is appropriate.

Operational programs have, as their major goal, the attempt to meet some existing need by developing a project that can be introduced to correct problems that are perceived as existing in the system.

A methodology, therefore, has to be selected that allows for a distinction between projects that are perceived to be operational and those that are designed as demonstrational.

Selection

It appeared to the evaluators that the PROD program was conceived as an operational rather than a demonstration program. The development of the program arose out of a consideration of a need in the Second Judicial District to give high priority to cases involving repeat offenders.

The major goal of the PROD program is not the proof or disproof of a single hypothesis but the attempt to meet what is considered to be an existing need in the system.

Main objectives are the identification and expeditious processing of the violent recidivist career criminal. The effectiveness of the identification process will be determined by a frequency analysis of the screening process to determine the number of cases processed and the number of cases assigned to PROD.

We conducted interviews with the screening officers to determine the administrative procedures involved and the criteria applied in screening.

We have analyzed by use of frequency measures and tests of significance, where appropriate, the reasons for specific recommendations (priority handling, rejection, or referral to another trial team) in the screening process.

The measurement of expeditious processing was based on data reporting the total time from Indictment to end of trial or plea of guilty.

We have used the panel design for comparisons of a "during-during" nature based on the time phases of the project (an interim report was submitted in December of 1976.) The time phases involve what we are calling PROD One and PROD Two. PROD One refers to the year of operation prior to the present program, PROD Two refers to the present program.

Our analysis includes types of crime, criminal background, and dispositions. We have used tables where applicable for the illustration of comparisons.

ANALYSIS OF DATA

The population dealt with by the PROD program are, by the screening criteria, individuals defined as career criminals. The background characteristics of the 273 individuals dealt with by PROD II (includes dispositions, rejections by PROD and pending cases) presented in TABLE 1 indicate that nearly 60% of the individuals were on some form of conditional release or had a significant number of prior convictions.

TABLE 1

CRIMINAL BACKGROUND CHARACTERISTICS OF PROD II PROCESSED INDIVIDUALS

STATUS	NUMBER	PERCENT
Probation	59	21.61
Parole	58	21.25
Pending Cases	19	6.96
Two or More Prior Convictions	27	9.89
PROD Offenses Only	110	40.29
TOTAL	273	100%

Of the 120 defendants studied the dominant majority were male (91%); relatively young at the time of conviction (27.1 years); single at the time of conviction (55%) with a long history of arrests (10.9) and prior convictions (2 priors). The ethnic background of these defendants indicate that 71% are Spanish, 21% Anglo and 8% are Black. Available information suggests that a large percentage of these individuals were addicted to or involved in drug use (74.1%). This is indicated by the high percentage of cases involving drug or drug-related charges (burglaries, larcenies).

TABLE 2
 TYPES OF CRIMES PROCESSED BY
 PROD II

TYPE OF CRIME	PERCENT
Sale or Possession of a Narcotic Drug	27.8
Burglary	23.8
Larceny	19.2
Felonious Assaults	10.6
Robbery	9.9
Kidnapping	4.6
Criminal Sexual Penetration	2.6
Homicide	1.3

Firearms also played a large role in the crimes dealt with by PROD II with 15% of the defendants possessing a firearm at the time of the crime and 8.3% utilizing a firearm in the commission of the crime. These data show that the individuals processed by PROD represent career criminals who meet the criteria established by PROD for inclusion in the program.

One of the goals of the PROD program is to reduce the amount of time from apprehension of a suspect to a disposition of the case. This goal is aimed at reducing the potential time a career criminal may spend out on bail and to gain a speedy disposition in order to avoid dismissals posed on extensive delays. Table 3 presents the number of days involved from acceptance by PROD to disposition.

TABLE 3

DAYS FROM PROD ACCEPTANCE
TO DISPOSITION

DAYS	FREQUENCY	PERCENT	CUMULATIVE PERCENT
0-14	6	2.89	2.89
15-28	11	5.31	8.2
29-42	18	8.69	16.89
43-56	22	10.62	27.51
57-70	25	12.07	39.58
71-84	26	12.56	52.14
85-98	14	6.76	58.9
99-112	13	6.28	65.18
113-126	13	6.28	71.46
127-140	5	2.41	73.87
141-154	17	8.21	82.08
155-168	7	3.38	85.46
169-182	7	3.38	88.84
183-196	4	1.93	90.77
197-210	5	2.41	93.18
211-224	6	2.89	96.07
225-238	4	1.93	98.
239-252	3	1.44	99.44
253-266	1	.05	99.49
TOTAL	207 Cases		
MEAN	98.8 Days		
MEDIAN	82.08 Days		
MODAL CATEGORY	71-84 Days		

As is shown by Table 3, the mean number of days from acceptance to disposition is 98.8 days. Caution must be exercised in interpreting mean data when extreme scores are involved in that the mean will tend to be skewed by these extreme scores. A more valid measure is represented by the median which presents the point at which 50% of the cases had been processed. The cumulation percentage data indicate that over 70% of the cases were processed in 120 days or less. These data are suggestive of a relatively rapid processing period. A comparison with data drawn from PROD I indicates that the present program is not significantly more efficient in time involved than was its predecessor ($\chi^2=2.56$ $p < .05$, $df, 5$). A number of factors including increased PROD II case load, court calendars, investigation time, etc. can have a significant influence on this time period. Although the overall data are generally acceptable, this represents an area that needs greater stress to reduce as much as possible the time period involved.

Data that are based on the time from arrest to disposition indicate a similar time picture. The mean time from arrest to disposition was 100 days with the median being 93 days. Mean data on time from arrest to arraignment indicate an average of 47 days, data on time from arrest to grand jury show a mean of 38 days and data on time from arrest to trial provides an interesting and significant aspect to understanding the time data. It appears that a significant portion of the time may be due to court calendar and trial delays. The causes for this, such as defense attorney delays and continuances, can not be discerned from these data. It

is imperative that significant scrutiny be given to this aspect in an attempt to reduce the time period from arrest to disposition.

Part of the mechanisms for reducing the time period from arrest to disposition is the processing of the case to determine its merits and assignment to priority status. An important aspect of PROD's activities includes this screening process. Data on the period of time involved from receipt by PROD to completion of the screening process (acceptance or rejection by PROD) indicate a mean of 1.3 days with a standard deviation of 2.4 days. Over 80% of the cases were processed within two calendar days. The reasons for rejecting cases are present in Table 4.

TABLE 4
CASES REJECTED BY PROD II

REASONS	NUMBER	PERCENT
Not Fit PROD Criteria	50	67.6
Insufficient Evidence	10	13.5
Combined Files	3	4.1
Misdeameanor	1	1.4
Not Priority	5	6.8
Other	5	6.8
TOTAL	74	100%

As shown by Table 4 the primary reason for rejecting cases was that the defendant did not meet the criteria of a career criminal. The majority of these cases were referred to other program areas for prosecution. It appears that any case where there is a possibility of PROD, are routinely referred to PROD for screening. Although this screening is an important aspect of PROD, it is possible that providing more clear-cut guidelines to screening officers could lessen the time involved by the PROD staff. This is especially true for such things as determining priority where a long period has elapsed. When comparing the screening process in PROD I with PROD II, it becomes apparent that a more stringent and better defined process is being done by PROD II.

In giving an overall evaluation of the time reduction goal, many factors that may be outside the control of the PROD unit become important. At the present, it can be stated that PROD II is actively working to reduce the time period involved and has succeeded to a reasonable degree. A more systemic analysis appears appropriate to pinpoint the specific factors that may be hindering a future reduction in the time involved.

An important goal of PROD centers around increasing the conviction rate of PROD defendants. The disposition of 217 cases is presented in Table 5.

TABLE 5

DISPOSITIONS PROD II CASES
July 1, 1976 to April 15, 1977

DISPOSITIONS	NUMBER	PERCENT
Convictions	35	16.1
Plea to Charge*	63	29.
Plea to New Information**	16	7.3
Plea to Lesser	26	12.
Acquittals	4	1.8
Nolle Pros	34	15.7
Dismissals	34	15.7
Rejected for Trial	5	2.3
TOTAL	217 Cases	100%

Conviction Rate 64.4%

*Plea to charge includes pleas to top felony or to all charges

**Plea to new information includes pleas to top felony in another case

The charge for the 35 convicted defendants are presented in Table 6.

TABLE 6

CHARGES AGAINST CONVICTED PROD DEFENDANTS

CHARGES	NUMBER
Assault	5
Burglary	3
Kidnapping	3
Larceny	4
Rape	1
Robbery	4
Narcotics	2
Others	13
TOTAL	35

The data presented in Table 5 indicate that convictions or pleas to top felony were obtained in 45% of the cases. This percentage is increased to some extent when "plea to new information" is included in that the majority of the pleas were to a felony on the new information bill. These data show that in over 50% of the total cases a felony conviction eventuated. It is important to note that 60% of the individuals charged were convicted or plead to charges. These data suggest a relatively high conviction rate with a concurrent reduction of plea bargaining. A comparison with the PROD I data shown in Table 7 indicates a significant increase in convictions along with a significant reduction in pleas to lesser charges. Z test analyses of these data revealed statistically significant differences ($p < .05$) for both categories of dispositions.

TABLE 7

DISPOSITION OF PROD I CASES
July 1975 to April 15, 1976

DISPOSITIONS	NUMBER	PERCENT
Convictions	19	10.9
Plea to Charge	59	33.7
Plea to New Information	15	8.6
Plea to Lesser	34	19.4
Acquittals	1	.6
Nolle Pros	17	9.7
Dismissals	11	6.3
Rejected for Trial	19	10.9
TOTAL	175 Cases	100.1

An analysis of the reasons given for Nolle Prosequi and dismissals sheds further light on the nature of the dispositions. These data are presented in Table 8.

TABLE 8

REASONS GIVEN FOR NOLLE PROS
AND DISMISSALS*

REASONS	NUMBER	PERCENT
Insufficient or Incorrect Evidence	19	27.9
No Victim or Victim Cooperation	9	13.2
Witness Availability & Credibility	8	11.8
Time Limit for Prosecution	3	4.4
No Investigation	4	5.9
Miranda Violation	1	1.5
Grand Jury Refusals	11	16.2
Other	13	19.1
TOTAL	68	100%

*Does Not Include Nolle Pros Due To Plea Negotiation

As is shown by these data, many of the reasons for failure to gain a conviction were outside the control of the PROD unit. A number of the evidentiary problems were tied to insufficient or incorrect evidence which can be seen as a problem of investigation rather than prosecution. These problems suggest the need for greater integration and interaction between the prosecutory unit and the investigatory processes. This is shown dramatically in the category that indicates that there was a failure to investigate 4 alleged

felonious acts.

Problems relating to witness availability are tied both to the difficulty and expense of returning witnesses and to discretionary non-prosecutions based on the nature of the witnesses (informants in some cases and a mentally incompetent witness in another).

The inability to discover an identifiable victim (lack of identification of stolen objects, etc.) are understandable. However, non-prosecutions due to victim cooperation merit a more in-depth analysis. Victim intimidation by defendants or lack of cooperation due to more generalized fears (fear of getting involved; time involved, etc.) are problems that need to be confronted through the development of closer relations between prosecutory staff and victims. Perhaps greater utilization of interpersonal contact and closer contact with the Witness/Victim Assistance Program could mitigate some of these problems.

An evaluation of the goals of a high conviction rate and increased witness cooperation suggests that although there are some problems tied to investigations and witness cooperation, PROD II is procuring a relatively high and acceptable conviction rate. The program should be lauded for its efforts in reducing plea bargaining cases and appears to be attempting to gain top felony convictions wherever possible. The plea bargaining that is occurring appears to focus on gaining at least some form of significant incarceration for career criminals.

Evaluation of the goal of increasing sentences for career criminals is exceedingly difficult in that the sentences handed down

may be as much a function of the particular judge as of the charges or the activities of the PROD team. Issues relating to revocation of probations or paroles; the use of consecutive and concurrent sentences; the existence of determinate and indeterminate sentences; and the use of rehabilitative alternatives to incarceration all militate against a direct statistical analysis. Sentencing data for regular determinate and regular indeterminate sentences for 87 cases are presented in Table 9.

TABLE 9
REGULAR DETERMINATE AND INDETERMINATE
SENTENCE

TYPE OF SENTENCE	NUMBER OF CASES	NUMBER OF DEFENDANTS	MEAN NUMBER OF YEARS
Determinate Sentences.	7	7	
Consecutive Sentences	1		1.0
Determinate Sentences	7		.9
Indeterminate Sentences	79*	57	
Consecutive Minimums	18		5.6
Minimum Sentences	79		4.2
Maximum Sentences	79		15.9
TOTAL	87		

*Mean Range of Sentences is 11.7 Years

As is shown by Table 9, 90% of the regularly sentenced defendants received sentences of between 4.2 and 15.9 years. These figures indicate a relatively long sentence for regularly sentenced individuals. The data on suspension of all or part of the sentence is incomplete, but do suggest that in a number of cases, these incarceration figures are somewhat spurious. A case in point is an

individual who received a sentence of 10 to 50 years with suspension on the proviso of receiving rehabilitative therapy. Without intending to impugn or question the discretionary judgment of the judiciary, it can be conjectured that the effectiveness of PROD in increasing minimum sentences may be invalidated through judicial discretion. It is exceedingly difficult to interpret the regular sentencing data in terms of the PROD goal under these circumstances.

Sentencing under special provisions such as the Habitual Offender Act indicates that relatively stringent sentencing criteria are being applied. The mean sentence for 7 individuals sentenced under special sentencing procedures indicate a minimum of 6.7 years and a maximum of 25.7 years. These figures suggest that for habitual offenders relatively stringent sentences are being given.

INTERVIEWS

Liaison officers of the law enforcement agencies as well as the paralegal and data collection staff were interviewed in the course of our evaluation.

In addition, the project directors were interviewed for brief periods of time.

The interview technique employed was unstructured. Liaison officers and project staff were asked about the criteria being applied to PROD cases and the procedure followed for inclusion or exclusion as a PROD case.

Project directors as well as liaison officers were asked to identify problem areas and whether any steps were being taken to correct the problem areas.

The data obtained is, of course, subjective in nature and our interpretation of the data is merely descriptive.

As far as we could ascertain, the criteria set out in the project description of this report (implemented in July of 1976 and modified in November of 1976) is being adhered to.

In analyzing the data abstracted from PROD files, it would appear that better background information on some few cases would have resulted in the case not going through the PROD procedure to the point of being first accepted and later rejected, i.e., finding out that the habitual charge would be invalidated because of a late discovery of lack of previous conviction on one of the charges. Also, some cases which ended in a "Nolle Pros" because of the type of evidence (sometimes in narcotic charges), or witness unavailability, might have been discerned earlier and saved PROD time.

While possible PROD cases are flagged by liaison officers (in the case of the B.C.S.O., this seems to amount only to placing it in a different color file jacket if the person is on probation or parole); if it is not accepted by PROD and is transferred to another trial division, the liaison officers are not notified as to the reasons. It seems to the evaluators that it might be important to have this information sent back to law enforcement so that future cases with like possibilities may be screened more carefully.

It is our understanding that more time will be spent with law enforcement agencies by PROD staff in the future, so that this problem may be solved in training and orientation sessions.

A problem identified by PROD staff is that of delays while information (claimed not to have been received by defense) is made available.

The project director has indicated that complete information will automatically be made available upon arraignment and that defense counsel will have to sign upon receipt, so that trial requests for delays may be kept down.

A major problem identified by PROD staff is that of personnel turnover. While this is recognized, no discernible solution could be provided. It appears to the evaluators that a portion of these changes could be attributed to a change in the District Attorney position itself. Changes in personnel will probably level off as the new District Attorney completes his reorganization. However,

effects of overall reorganization on priority projects, such as this one, should clearly be kept in mind before implementation. Latent or residual effects can be kept at a minimum if such spin off is discerned as a possibility from the start.

The Trial Calendar method presently being employed, was listed by the project director as another possible problem area.

There is presently some discussion going on as to the possibility of changing to a different Trial Master Calendar which, from PROD's point of view, may prove to be more beneficial.

While one of the objectives listed in the project was to attempt to get victims and/or witnesses to appear at sentencing, this has apparently not taken place. Instead, victims are encouraged to write PROD attorneys and make information available to PROD for possible use at the sentencing date.⁸

We really couldn't discern how frequent this is occurring or what impact it may have upon sentencing.

Overall, interview data seem to suggest that a concerted cooperative effort is being made to accomplish PROD goals. This, in spite of personnel change and some overall office reorganization.

While some of the data collection efforts that the evaluators were privy to were spotty in some few areas, overall, for personnel performing functional roles (as opposed to research efforts), the staff is performing well.

⁸ See criteria and modification of PROD criteria on pages 4 - 8 of this report.

Those interviewed seem to be aware of problems that, if corrected, could enhance efficiency and, with the exception of personnel turnover, had some possible solution in mind.

Clearly, some of the variables impinging upon overall goals are not within the project's control, i.e., cases where the judge has sentenced ten to fifty years and then suspends sentence with various conditions attached.

It would be interesting to conduct a longitudinal study of the suspended sentences to see what effect this has on those defined as "career criminals" by project criteria.

In some cases, apparently "treatment oriented" motives were at work, while in others long sentences were already in progress.

SUMMARY AND CONCLUSIONS

The data presented in the Analysis Section must be interpreted in light of the history of the program, its stated purposes and more subjective data presented in this evaluation. From the statistical data the following conclusions can be drawn: 1) PROD II is consistently involved with defendants who are career criminals; 2) PROD II is screening these defendants in a rapid and efficient manner; 3) PROD II is currently completing cases in an acceptable period of time although greater emphasis needs to be placed on factors impinging on further time reductions; 4) PROD II is successfully prosecuting the majority of cases handled by its office with a proportional increase in jury convictions and a proportional decrease in plea bargaining over its predecessor; 5) PROD II needs to develop mechanisms to reduce investigatory and witness cooperation difficulties although these areas represent a relatively small percentage of total activity; 6) PROD II appears to be vigorously prosecuting career criminals and gaining relatively long sentences. All of these conclusions are drawn from the available data and must be interpreted in light of the other information presented in this report.

Subjective data seem to support the conclusion that the project is amenable to better communication for screening purposes.

Time delays due to defense information are recognized by staff and steps have already been taken to correct them.

The project has undergone personnel changes, but does not seem to have encountered major changes in direction.

Finally, it should be recognized that not all of the variables in obtaining convictions or gaining sentences for career criminals can be controlled by the prosecutorial arm of the Criminal Justice System. The systematic nature of functional interface of the various elements of the system to bring them to bear upon career criminals should not be forgotten in any project of this kind.

APPENDIX

PROD II Accept-Reject Form

(1.) Felony committed after Criminal Complaint on prior felony while:

Pend. Ind. ___ Pend. Trial ___ Pend. Appeal ___

(2.) Defendant serving sentence: _____

Committed while on Parole/Probation: _____

Committed 5 years after Parole/Probation: _____

State ___ Federal ___ Out-of-State ___

(3.) 3 or more Felony Convictions: _____

(4.) 6 or more 3rd Degree or higher felonies within 6 month period

8 or more 4th Degree or higher felonies within 6 month period

(5.) Habitual Offender 2nd ___ 3rd ___ 4th ___ Conviction

ACCEPTED _____

REJECTED _____

Prepare for Grand Jury _____

Return to Liaison _____

Assigned _____

Return to Original Division _____

Send Additional Reports _____

Send Lab Analysis _____

Dismiss _____

Send Further Investigation _____

Reasons: _____

ES: _____



END