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**The Role of Probation Officers' Reports in Magistrates' Sentencing  
Decisions**

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Thesis submitted in partial fulfilment of the requirements for the degree of  
Doctor of Philosophy in the Faculty of Social Sciences  
at the University of Kent at Canterbury

March 2001



# THE ROLE OF PROBATION OFFICERS' REPORTS IN MAGISTRATES' SENTENCING DECISIONS

## ABSTRACT

During the past decade research findings have suggested effective ways for probation officers to work with offenders. At the same time, the Criminal Justice Act 1991 changed the sentencing framework, as well as the manner in which probation officers write court reports and supervise offenders. Both of these changes led to an increase in the monitoring and evaluation of probation officers' work, and the appropriate targeting of sentence proposals, as well as take-up rates for proposals, took on greater significance and became more closely monitored than ever before.

The present study examines the effects of these changes on probation officers' selection and presentation of community sentence proposals, and it looks at factors that affect court rates of take-up for these proposals, including the offence committed, gender of offender, risk of custody, the presence of social problems and risk of re-offending. The main focus of the study is upon the sentencing choice between community service and probation, which partly reflects the choice between punishment and rehabilitation. Data relating to sentence proposals and outcomes are analysed using cross-tabulation tables, which provide a readily understood method of examining outcomes relative to proposals. These quantitative analyses are combined with three qualitative studies of written reports, which provide insights into reasons for sentencing decisions not apparent from the statistical data alone.

The study discusses ways in which probation officers and magistrates may take differing perspectives concerning the main aims of sentencing and hence may disagree over what constitutes the most appropriate sentence. The study concludes that despite the requirements of both effective practice guidelines and the CJA 1991, the probation service has been unsuccessful in convincing magistrates that the probation order is capable of achieving multiple sentencing objectives for more serious offenders.

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# THE ROLE OF PROBATION OFFICERS' REPORTS IN MAGISTRATES' SENTENCING DECISIONS

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# THE ROLE OF PROBATION OFFICERS' REPORTS IN MAGISTRATES' SENTENCING DECISIONS

## INTRODUCTION

### **The Changing Role of the Probation Service in England and Wales**

The past decade has seen enormous changes within the probation service that have come about largely as a result of two very different influences.

#### *Meta Analysis and the Influence of the 'What Works' Movement*

First, the development of the statistical technique known as meta analysis enabled researchers to combine the findings from different probation studies and to identify a number of factors that were linked with positive outcomes. This generated a renewed sense of optimism within the probation service and after years of concern that perhaps 'nothing worked' in preventing re-offending, interest now focused on the implementation of what became known as the 'What Works' approach to the supervision of offenders. This approach required that work with offenders should be based on principles and techniques that research had shown to be effective. It also stressed the importance of monitoring and evaluating outcomes, which was facilitated by the developments that had taken place in relation to information technology and computerised record systems.

#### *The Criminal Justice Act 1991*

Second, the Criminal Justice Act 1991 dramatically changed sentencing practice, as well as the manner in which probation officers wrote reports for the courts and supervised offenders in the community, both of which became regulated by 'national standards'. Probation officers had to be trained how to write the 'new style' reports and how to make sentence proposals to the courts that were in line with the new sentencing framework (which was then subsequently modified by the Criminal Justice Act 1993). As a result of the CJA 1991, probation orders and community service orders changed in a number of ways, and in some respects reversed their traditional positions in the sentencing 'tariff'. Probation officers' compliance with the new national standards also became subject to monitoring and evaluation, both internally and through external inspections, and probation officers' work thus came under much closer scrutiny than had previously been the case.

This was therefore a time of important changes for the probation service, whom, it was suggested, would move 'centre stage' following the implementation of the CJA 1991. However, it also meant that probation officers came under increasing pressure, both to adapt to the new ways of working and to demonstrate that their work



with offenders was both effective in reducing offending and complied with the required standards. These pressures were further compounded by financial constraints and budgetary cutbacks within the service, which caused probation managers to become increasingly concerned about the best allocation of scarce resources.

All of this meant that the appropriate targeting of community sentence proposals in probation officers' reports to the courts and court rates of take-up for these proposals took on a greater significance and became more closely monitored than ever before.

### **Background to My Research**

It was through my work as a probation officer that I learnt about the Criminal Justice Act 1991, national standards, the 'What Works' debate and evidence-based practice, as well as the importance of appropriately targeting community sentence proposals. This had suggested, inter alia, that for more serious offenders who required probation intervention in order to reduce the risk of re-offending, a proposal for probation supervision with attendance at groups based on 'What Works' principles was likely to be appropriate.

Probation measures of effectiveness included the monitoring of rates of take-up for probation officers' proposals and, by implication, there was an expectation that report proposals would be followed. Yet it appeared to me that some types of proposal were considerably more likely to be followed by the courts than others. Moreover, a proposal for probation with groupwork appeared to be the proposal that the courts were least likely to follow. If this were the case, I believed that it had important implications, both in relation to the monitoring of rates of take-up for probation officers' proposals and for the monitoring of the effectiveness of probation officers' work with offenders. Furthermore, there seemed little point in probation services drawing up groupwork programmes based on 'What Works' principles if the courts were not willing to sentence offenders to such programmes. It therefore appeared relevant to undertake research that examined whether some types of proposal were more likely to be followed than others, and if this were found to be the case, to ask in what circumstances this was likely to happen.

At the same time, publicity in the media concerning research findings in relation to reconviction rates following different sentences, as well as the then Home Secretary's assertion that 'prison works', led me to examine what existing research had to say about the different community sentences. I found that research into probation orders with groupwork, for the most part, looked at whether groupwork programmes were effective in terms of changing offenders' attitudes, or in reducing subsequent reconviction rates, or was in relation to 'programme integrity'. However, it generally failed to address the question of whether, in the first place, courts were willing to follow probation officers' proposals for probation with groupwork. It also seemed to me that researchers tended to focus either on probation supervision *or* on community service, but were seldom concerned with



making comparisons between these two very different types of sentence unless it was in terms of what appeared to be somewhat unreliable measures of rates of re-offending.

I therefore concluded that a study of factors that influence probation officers' choice of sentence proposals and court rates of take-up for these proposals was both timely and relevant.

## **Outline of Research**

### *Research Focus*

The focus of my research is on community sentences in the magistrates' courts. This is because it is community sentences for which the probation service is mainly responsible and because the majority of criminal cases are dealt with in the magistrates' courts. Moreover, magistrates generally request a pre-sentence report in those cases where they are considering imposing a community sentence.

My research aims to answer questions in relation to how probation officers select and present community sentence proposals in pre-sentence reports to the magistrates' courts and it considers some of the factors that may affect magistrates' rates of take-up for these different proposals.

### *Research Data*

The probation services in England and Wales record a considerable amount of information in relation to offenders on whom reports have been requested by the courts, as well as on offenders for whom they have statutory responsibility. This data collection had its origins in the National Probation Index – a computerised system for collecting information that was established in 1979. This required probation services to submit offender details that included name, date of birth, gender, type of case, most serious type of offence for which sentenced, date of sentence, length, additional requirements, court name and summary of types of previous sentences received. The computerised records of this information (PROBIS) can be used to generate a variety of data on sentencing and on offenders that is used both locally and nationally. This is made available to the public through publications such as probation service annual reports and Home Office statistical bulletins. However, I was extremely fortunate in being given access to the computerised records of the Kent Probation Service PROBIS database and it is upon these records for the years 1993-97 that the statistical analyses in my thesis are based. However, in order to achieve a fuller understanding of sentencing decisions than is likely to be available from statistical data alone, I also undertook a qualitative study of written reports. For this, I was equally fortunate in being given access to the written reports of two probation teams in Kent, which form the basis of the qualitative studies.



My research is therefore based upon both a quantitative and a qualitative approach. However, I should state that to some extent the research is also 'participatory' in the sense that I approached the research from the perspective of a report-writing probation officer.

### *Thesis Outline*

The thesis is divided into two sections. In Part 1 of the thesis, chapter 1 considers the background history to probation officers' court reports and we examine sentencing legislation and guidance. We also consider ways in which probation officers and magistrates may take differing perspectives concerning the main aims of sentencing, and hence may differ in their views of what constitutes the most appropriate sentence outcome. Chapter 2 then gives an overview of existing research relating to probation officers' reports and factors that may influence both probation officers' and magistrates' sentencing decisions.

Part 2 of the thesis contains the results of my research, which is based on Kent probation officers' pre-sentence reports to the magistrates' courts during the years 1993-97. Four chapters contain statistical analyses of data relating to probation officers' community sentence proposals and court sentence disposals, and three chapters are based on qualitative analyses of three samples of written reports. My main interest was in the sentencing choice between community service and probation, which to some extent reflects the choice between punishment and rehabilitation. Since probation is regarded as a rehabilitative sentence, I hypothesised that probation officers would select probation supervision for offenders assessed at high risk of re-offending, whereas they would select community service for offenders at lower risk of re-offending and hence not in need of probation supervision. However, I also anticipated that magistrates' rates of take-up for these different proposals would be influenced by factors relating to both the offence and the offender, as has been suggested by previous research.

In chapter 3, we begin by examining a sample of 18 pairs of matched pre-sentence reports that were written during 1993/94, when we consider factors that could explain why the proposal was followed in one report but not in the other. In chapters 4 – 7 we then move on to an examination of the statistical data. In chapter 4 we look at overall differences in rates of take-up between the different community sentence proposals, when I anticipated that significant differences would be found. We then examine whether these sentencing decisions were affected by the offence that had been committed (chapter 4), or by the gender of the offender (chapter 5).

The research outlined so far was only able to make approximate matches between offenders in terms of level of 'seriousness'. However, from 1995 onwards, Kent Probation Service statistical records included data relating to level of seriousness, according to the statistical probability of offenders receiving a custodial sentence. This then enabled me to make comparisons of sentencing decisions, both between differing levels of seriousness and within the same level of seriousness. The findings from these comparisons are reported in chapter 6.

Also from 1995, the statistical information recorded by Kent Probation Service included more detailed information on social factors that probation officers considered to be related to offending. Data from these records are analysed in chapter 7, which examines the relationship between social problems and probation officers' sentence proposals. Here I hypothesised that those offenders for whom probation supervision had been proposed would have more social problems than those offenders for whom officers had proposed community service. Chapter 7 also examines the effect of social problems on court rates of take-up for probation officers' proposals, when I anticipated that courts would be more likely to follow proposals for probation where reports had identified social problems that required addressing through probation supervision.

In chapters 8 and 9 we return to the qualitative studies of reports that were written during 1996, when we focus on the offences of theft under £500 (chapter 8) and driving whilst disqualified (chapter 9), which were the two offences for which Kent probation officers most commonly wrote reports. These written reports provide additional information relating to sentencing decisions that was not available through examination of statistical data alone.

Finally, in chapter 10 there is a summary of the study's findings, as well as discussion of conclusions and implications for the future.



## **PART 1**

### **Background History and Overview of Existing Research**

## PERSPECTIVES ON SENTENCING

### Background History, Sentencing Aims, Legislation and Guidelines

#### Introduction

The writing of reports for the courts to assist them in reaching a sentencing decision has always formed an important part of the work of probation officers. It is also an aspect of probation work towards which a considerable amount of research effort has been directed.

The first detailed guidance on the content of probation reports in England and Wales was provided by the Streatfeild Committee in 1961, since when there have been many refinements concerning their role, content, and structure, which culminated in 'national standards' for probation reports during the 1990s (Home Office et al. 1992; Home Office et al. 1995).

Over the years there has been a change of emphasis from reports that provided details of the offender's social history to reports that focused on offending behaviour. There has also been a shift from what was viewed as the most appropriate form of 'treatment' for the offender to what was viewed as the most appropriate 'restriction of liberty' commensurate with the seriousness of the offence. Since the implementation of the 1991 Criminal Justice Act, there has also been a change of name from social inquiry reports (SIRs)<sup>1</sup> to pre-sentence reports (PSRs).

In the present chapter we take a look at the background history to probation officers' reports to the courts and we examine sentencing legislation and guidance. We also consider ways in which probation officers and magistrates may take differing perspectives concerning the main aims of sentencing, and hence may differ in their views of what constitutes the most appropriate sentence outcome.

#### 1 Background History

##### *1.1 The Origins of the Probation Service*

Probation officers had their origins as police court missionaries at the end of the nineteenth century, when their initial function was 'reclaiming drunkards'. However, their work expanded to include the release of minor offenders on the condition that they kept in touch with the missionary and accepted his/her guidance. (Weston,

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<sup>1</sup> Reports were also sometimes referred to as Social Enquiry Reports (SERs).



1987, p.27.) This informal supervision was given a statutory basis by the Probation of Offenders' Act 1907, which introduced the probation order. This required offenders to be under the supervision of a probation officer, whose duty was to 'advise, assist and befriend' the offender. Throughout its history, the probation service has thus been mainly concerned with the rehabilitation of offenders.

### *1.2 The History of Probation Reports*

The first detailed guidance on the content of probation reports in England and Wales was provided in 1961 by the Streatfeild Inter-Departmental Committee on the Business of the Criminal Courts. (Home Office 1961) The Streatfeild Committee noted that originally probation reports were used primarily where the court was considering putting the offender on probation. However, reports were also found helpful where the court was considering whether any other form of sentence might divert the offender from crime. The Committee therefore proposed that it was appropriate for probation officers to express 'opinions' in their reports on such matters as:

- whether a probation order stood a good chance of diverting an offender from crime;
- whether a custodial sentence seemed better suited for this purpose, or might be more likely to confirm an offender in crime; or
- whether probation appeared unnecessary because the offender had a stable background and was unlikely to re-offend.

However, the Streatfeild Committee also pointed out that probation officers' opinions in social inquiry reports related to only one of the possible considerations in the court's mind: how to stop the offender from offending again. The court, on the other hand, had also to consider the nature of the offence and the public interest. Streatfeild therefore proposed that 'the probation officer should never give his opinion in a form which suggested that it relates to all the considerations in the court's mind'. (Quoted in Harris 1979, p.77.)

Just a year later the Morison Departmental Committee on the Probation Service expressed doubts about probation officers' knowledge of the likely effects of different 'treatments' on offenders, saying they 'are not now equipped by their experience, and research cannot yet equip them to assume, a general function of expressing opinions to the courts about the likely effect of sentences'. Despite this, in 1974 a Home Office circular contained the directive that 'if an experienced probation officer feels able to make a specific recommendation in favour of (or against) any particular form of decision being reached he should state it clearly in his report'. (Both quoted in Harris 1979, p.75.)

In 1986 a further Home Office circular on social inquiry reports signalled the shift towards more offence-focused reports when it defined their purpose as setting 'offending behaviour into the individual's social context' and assessing 'the likely effect of the range of measures available to the court on the offender'. Reports were now to contain recommendations whenever possible. (Quoted in Holt and Wargent 1989, p.17-



18.) However, probably the most significant change to probation reports came with the implementation of the Criminal Justice Act 1991, which will be discussed in more detail below.

### *1.3 Expansion of the Sentencing Framework*

Community service orders were introduced as an additional sentencing option by the Criminal Justice Act 1972 and were originally expected to divert offenders from custodial sentences. The community service order embodied a number of different elements that made it particularly attractive to sentencers. It involved reparation, enabling offenders to pay back their 'debt to society', both actually and symbolically, by performing work for the benefit of the community. It was punitive in that it required offenders to perform unpaid work in their leisure time. It was economical to operate and it was also unlikely to harm an offender's personal family life or to disrupt an offender's employment record.

The 1980s saw the introduction of further sentencing options through the development of programmes of intensive probation supervision, with probation day centres and specified activities programmes introduced by the Criminal Justice Act 1982. Intensive probation programmes had their origins in North America and were largely a response to the problem of how to limit prison overcrowding at the same time as limiting government spending. However, they also grew out of a need to restore judicial confidence in the ability of the probation service to provide appropriate sentences to reduce the level of crime amongst 17-25 year olds. (Mair et al 1994) Although these programmes were rationalised by probation officers as being rehabilitative, they were promoted to the courts as injecting incapacitative and retributive elements into probation. (Hudson, 1993) They therefore enabled the probation service to appear 'tough on crime' and thus achieved the 'latent' goals of gaining more funding for the probation service and of enhancing the professional and personal self-esteem of probation officers. (See Byrne 1990, Clear and Hardyman 1990, Tonry 1990.)

Like community service, intensive probation programmes should have appealed to sentencers, since as well as reducing the prison population and saving money, they were expected to rehabilitate the offender and protect the public. However, it would appear that although such programmes appealed to probation officers, community service, with its more obviously reparative and punitive aspects, continued to appeal more readily to sentencers.

The 1990s brought the combination order, a sentence that combined probation with community service, which was introduced by the Criminal Justice Act 1991. This sentence was intended for serious offenders and it was originally envisaged that it would generally be used in the Crown Courts rather than the magistrates' courts. However, in practice this did not happen, possibly because the combination order provided magistrates with the attractive possibility of both reforming and punishing offenders at the same time.



#### *1.4 The Growth of the 'What Works' Movement*

As well as considering changes in the sentencing framework that resulted from legislation, we also need to consider the influence of research and technology, particularly in relation to the growth of what is referred to as the 'What Works' movement.

During the 1970s the work of criminologists such as Martinson in America (Martinson 1974) and Brody from the Home Office Research Unit in England (Brody 1976), combined with the disappointing results from what were known as the IMPACT studies (Folkard, Smith et al. 1976) had led to the conclusion that 'nothing worked' and that more supervision did not mean less offending<sup>2</sup>. However, the development of a statistical technique known as meta analysis enabled researchers such as Ross in Canada (Ross 1990) and Lipsey in America (Lipsey 1992) to combine the results of a number of different studies and identify factors that were linked with positive outcomes.

Although researchers using meta analyses produced some encouraging results, others remained sceptical, pointing out that selective decisions by authors and editors had tended to overestimate effects. (See, for example, Lab and Whitehead 1990, Losel 1995, Mair 1997.) Nevertheless, the revised interest in the possibility of rehabilitation, combined with an increasing emphasis on punishment in the community, led to the further development of intensive groupwork programmes based on the findings from these studies. (See McGuire 1995.)<sup>3</sup>

One of the main findings from meta analyses was that effective treatment programmes used techniques that had an impact on offenders' thinking, as demonstrated by the 'Reasoning and Rehabilitation' programme that was developed by Ross and his colleagues in Canada. Meanwhile, in this country McGuire and Priestley had already developed cognitive-behavioural programmes that taught 'skills and stratagems for going straight' (McGuire and Priestley 1985), which probably had as great an impact on probation officers' work with offenders as did the research from North America.

The importance attached to what came to be known as the 'What Works' approach to offender supervision was underlined by the establishment of the 'What Works' project in 1996 by HM Inspectorate of Probation, as well as by the more recent Home Office Pathfinder scheme of accredited probation programmes. Despite this, the 'What Works' movement has been criticised for using inappropriate methods by which to evaluate what is essentially an 'unmeasurable' human process and doubts have been expressed about whether it is possible to

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<sup>2</sup> Although Martinson is frequently cited as having concluded that rehabilitative efforts had no appreciable effect on recidivism, he in fact found 'some slight evidence that, at least under some circumstances, probation may make an offender's future chances better than if he had been sent to prison'. (Martinson 1974 p.41)

<sup>3</sup> For a review of 'What Works' research studies, as well as a critique of meta-analysis, see also Vennard, Sugg et al. 1997.



identify and replicate principles of effective programmes. Probation officers have also expressed concerns about the rigid and mechanistic approach to offender supervision that tends to be required. (See, for example, Gorman 1993.)

It should be noted that a variety of criteria have been used for measuring the 'success' of different programmes. These have included the number of such orders made, the number of offenders diverted from custodial sentences, the number of orders successfully completed, changes in offenders' attitudes, programme 'integrity', and, frequently, the reconviction rate of offenders who have completed the programme. However, so far as I am aware, very little research has been directed towards court levels of take-up for probation officers' proposals for such programmes. HM Inspectorate of Probation's Guide to Effective Practice, for example, refers to 'variable patterns of referral resulting in inequality of opportunity afforded to offenders and inefficient use of programmes' (Chapman and Hough 1998 p.3), but does not appear to consider whether there are variable patterns of take-up by the courts.

Detailed consideration of 'What Works' is outside the remit of the present thesis. However, brief details have been included here because it has undoubtedly influenced the programmes of supervision for offenders that are provided by the probation service, as well as the type of sentencing proposals that probation officers make in pre-sentence reports. It therefore appears relevant to examine court rates of take-up for such proposals, as we will be doing in the present study.

## **2 The Principles of Sentencing**

If we wish to examine the role of probation officers' reports in magistrates' sentencing decisions, it is necessary to understand something of the basic principles of sentencing.

### *2.1 Sentencing Aims*

Traditionally, there are four aims to be considered in relation to sentencing: retribution, deterrence (both individual and general), reformation (or rehabilitation) and incapacitation (or protection of the public). To these, some writers have also added the further aims of reparation and the denunciation of crime. (See, for example, Samuels 1987, Wright 1991, Ashworth 1997.)

Ashworth (1997) describes these differing aims of sentencing and the rationales behind them. Retributive sentencing requires 'ordinal proportionality' and a scale of values that can be used to assess the gravity of the current offence. Deterrent sentencing, on the other hand, is more concerned with the prevention of further offences. Rehabilitative sentencing is aimed at the reformation of the offender's law-breaking tendencies, with sentences 'tailored' to the needs of particular offenders. Ashworth suggests that the pre-sentence report is an essential element in the pursuit of a rehabilitative approach to sentencing. Incapacitative sentencing is chiefly



concerned with the protection of potential victims and thus is not concerned with causes of offending. Reparative sentencing aims at repairing the harm done to the victim and to the community and may also involve victim-offender mediation. (Ashworth 1997, p. 1097-1100.)

It has been suggested that denunciation and retribution are the prime objectives of criminal justice policy, with rehabilitation of the offender 'a poor third or fourth place in the British government's proclaimed agenda of goals.' (Losel et al 1992, p. 171.) This is borne out by training information for sentencers, which advises that a sentence should not normally be justified on merely deterrent or 'treatment' grounds. 'Properly reflecting the relative gravity of the offence, and fairness between different offenders, are more important aims in the individual case.' (Home Office, 1990, p. 8.) Moreover, sentencers are also advised that 'It is not usually considered to be the responsibility of the probation officer ... to advise on the question whether the treatment of the offender is the aspect of sentencing to which the court should give priority.' (op. cit, p.13.)

## *2.2 Sentencing Dilemmas*

One of the standard works of reference on sentencing is Thomas's Principles of Sentencing (Thomas 1979). In this, he pointed out that our legislative structure has created two distinct systems of sentencing, reflecting different penal objectives and governed by different principles. These two systems are referred to as 'tariff' sentencing versus 'individualised' sentencing.

It has been proposed that an individualised sentence is one 'which will reform, deter or control the offender in question', whilst a tariff sentence is one which is determined by 'legislatures and judiciaries'. (Walker and Hough 1988, p. 1.) Individualised sentences have historically been associated with the aim of reformation and Thomas viewed the probation order as the most important individualised measure available to the sentencer. Tariff sentences, on the other hand, have been associated with punishment and retribution according to the severity of the crime that has been committed. Wroath (writing as a magistrate) believed that the difficulty of resolving these two different approaches was the 'sentencing dilemma' (Wroath 1995).

Some writers prefer to talk in terms of 'retributive' versus 'utilitarian' sentencing. (See, for example, Fitzmaurice and Pease 1986, Walker 1991 and Lacey 1995.) This approach views punishment as being of two types: retributive and utilitarian. Retributive punishment makes amends for harm done and includes denunciation as well as retribution proper. It is what the offender deserves ('just deserts'), expresses society's denunciation of the crime committed and concentrates on past behaviour. Utilitarian punishment, on the other hand, is concerned with deterrence, incapacitation and rehabilitation and thus concentrates more on future behaviour.

With the implementation of the Criminal Justice Act 1991 (see below), the emphasis was on 'just deserts' for the crime committed and sentences were required to involve a restriction on liberty commensurate with the



seriousness of the offence. It therefore became necessary to introduce tariff elements into the probation order. However, as we shall see later, the difficulty of incorporating tariff elements into what was traditionally an individualised sentence concerned with rehabilitation presented something of a 'proposal dilemma' for probation officers.

### *2.3 Deterrent Sentencing*

And what of the aim of deterrence? It has often been noted that no matter how severe penalties have been, both throughout history and across cultures, crime has always continued. One reason for this apparent lack of success is that the deterrent effect of sentences has to depend upon the probability, first, of any further crime being detected and, second, of the offender being apprehended and ultimately convicted. Although this will vary according to the type of crime committed, it would seem that the probability of being convicted and sentenced is relatively low. For example, a Home Office Digest of Information on the Criminal Justice System (Home Office 1991) showed that only three in 100 criminal offences resulted in a conviction.

Ashworth (Ashworth 1989) also pointed out that many crimes go unreported, that of those reported and recorded by the Police, only about 35% are 'cleared up', and that of those 'cleared up', just over half result in conviction or formal cautioning. This led Ashworth to conclude that the offences for which courts pass sentence represent only 7% of all offences committed in a given year – a slightly higher figure than that provided by the Home Office above, but still a remarkably small proportion. Similar findings were reported by Lacey (Lacey 1995) who quoted Home Office research that showed that one man in three has a conviction for an indictable offence by the age of 35, even though only one crime in 50 reaches court. He also stated that British Crime Survey figures would suggest that only one third of crime is in fact reported. There is thus no neat dividing line between criminals and non-criminals on which to base an assessment of the deterrent effect of sentences.

There are, moreover, a number of further difficulties in relation to deterrent sentences. First, as pointed out by Pease, 'The imposition of exceptionally severe sentences at times when a crime is prevalent, followed by a decline in the rate of the crime, is likely on the basis of regression alone'. (Pease 1987, p. 38.) Second, attempts to measure how long an offender has avoided re-offending have often failed to distinguish between the deterrent and reformatory aspects of crime prevention (Hood and Sparks 1970), with, for example, no distinction made between the possible deterrent effect of imprisonment and the possible reformatory effect of probation. Finally, deterrent sentences are based upon the doubtful assumption that offenders make rational and accurate judgements about the probability of detection and punishment before deciding to commit a crime.

Despite these problems, the proposal that 'prison works' put forward by the then Home Secretary, Michael Howard, at the 1995 Conservative Party Conference, suggested that he was attempting to appeal to a widely



held belief. However, as commentators on Michael Howard's proposals were quick to point out, the likelihood of detection is a far more effective deterrent than the severity of the sentence. Thus imprisonment can only act as a deterrent if criminals think that they are likely to be caught and it can only incapacitate offenders if they are caught and convicted.

Although the question of whether sentencing policy can affect the crime rate is largely outside the scope of this thesis, it appears likely that the debate concerning whether or not 'prison works' had the potential to affect sentencing practice, including sentencers' use of community sentences versus sentences of imprisonment. Moreover, the problems associated with attempting to assess the deterrent effect of sentences also have a bearing on associated issues relevant to my research, such as attempts to compare reconviction rates for different sentences, or to evaluate the effectiveness of rehabilitative sentence measures such as probation.

### **3 'Just Deserts' and the Criminal Justice Act 1991**

Probably the most dramatic changes to probation officers' reports to the courts were those brought about by the Criminal Justice Act 1991. This created a new sentencing framework, based on the seriousness of the offence and a 'just deserts' model of sentencing. Raynor et al believed that the CJA 1991 was the most significant piece of legislation for the probation service for the past 20 years, which was combined with direct attempts by the government to influence the practice of probation officers through the imposition of national standards. (Raynor, Smith et al. 1994, p.151.)

The Act rested on two key principles: -

- that the punishment should be proportionate to the seriousness of the offence, and
- that the more serious the offence, the greater should be the restriction on the offender's liberty.

A purely 'just deserts' approach to sentencing would ignore consideration of how to deal fairly with people who committed similar offences, but under different circumstances, with differing attributions of blameworthiness. In order to deal with this potential problem, the CJA 1991 also introduced aggravating and mitigating factors that were to be included in the assessment of offence seriousness.

Sentences were divided into three bands, with thresholds between them that were to be judged according to level of seriousness. Thus a custodial sentence could only be given if an offender had been convicted of an offence that was 'so serious' that a community sentence could not be considered, and a community sentence could only be given if an offender had been convicted of an offence that was 'serious enough' to warrant such a sentence. One consequence of this was that probation orders could no longer be made on 'welfare' grounds alone, as had sometimes happened in the past.

In its original form, the CJA 1991 allowed courts to consider the offence and one other associated offence when assessing the level of seriousness. Restrictions were imposed on the relevance of previous convictions, which



could only be taken into account when they revealed aggravating factors of the current offence. The reasoning behind this was that offenders had already been sentenced and punished for past offences and thus should not be punished again. However, this aspect of the Act proved to be very unpopular and was subsequently amended through the Criminal Justice Act 1993, which allowed the court to look at all offences before it and to take account of previous convictions, as well as any failure to respond to previous sentences. However, some writers such as Henham (Henham 1995) felt that this provided evidence of a deliberate realignment of sentencing policy towards punishment and deterrence at the expense of proportionality and just deserts.<sup>4</sup>

Probation reports (now called pre-sentence reports) were to be written with a view to assisting the court in determining the most suitable method of dealing with an offender according to the above principles. This resulted in a change of emphasis from reports that contained a detailed social history to reports that contained a detailed analysis of offending behaviour.

Initially, there were some concerns over probation officers being required to make judgements about seriousness, partly on the grounds that any negative information in the PSR could make future work with the offender more difficult. Cochrane et al also suggested that 'If probation reports are likely to be used negatively in the determination of seriousness then the client should have the right to legal representation in the interview'. (Cochrane, Pratt et al. 1993) They believed that probation officers should not be required to take a direct part in 'the aggravation/mitigation debate' and considered that they were not trained to make moral judgements about culpability. They concluded that 'it is inappropriate and ultimately unhelpful to involve probation officers in the retributive calculation of seriousness'. In the event, these fears appear to have been unjustified and both probation officers and sentencers have generally concluded that an analysis of the context of the offence, including exploration of culpability, is desirable. Thus, 'the offender's account of the offence should not be taken at face value, but assessed in the light of all the facts'. (Teague 1997) And it became easier for probation officers to do this because they were now to be provided with the Crown Prosecution Service documentation, including witness statements.

Although sentencing was to be based on proportionality and just deserts, as Hudson (Hudson 1993) pointed out, the way in which community sentences were proposed to the courts in fact became much more individualised. This was because reports containing proposals for probation supervision were now required to provide an outline of the proposed supervision plan that included: 'a description of the purposes and desired outcomes of the proposed sentence; the methods envisaged and activities likely to be undertaken; a time-scale for achieving each objective in the programme; the intensity of supervision envisaged; and the likely effect on other members of the family'. (Home Office et al. 1995, p.12.)

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<sup>4</sup> Since then, the Criminal Justice and Public Order Act 1994 and the Crime (Sentences) Act 1997 have attached greater importance to deterrence and incapacitation and have thus continued this trend.



In order to gain the confidence of the courts and of the public, orders supervised by probation officers were to be tough, demanding and rigorously enforced. Orders were to involve measurable, graduated restrictions on liberty and the restriction on liberty was to be proportionate, or commensurate, with the seriousness of the offence. So far as community service orders were concerned, this did not pose too many problems, since community service required offenders to give up their time and required effort to undertake a measured number of hours of unpaid work. However, restriction on liberty and proportionality were less straightforward with regard to probation orders, where it was much more difficult to measure graduated restrictions on liberty and where probation officers had tended to see their role as providing help rather than providing punishment.

Although it was suggested that the probation order had the capacity to 'stretch up tariff', either through the use of stricter expectations and demands, or through the use of additional requirements (Stone 1987), a statement that offenders on probation would be required to report weekly during the first three months of the order was not comparable with the community service requirement that offenders perform a specified number of hours of unpaid work each week. The National Association for the Care and Re-settlement of Offenders (NACRO) therefore suggested that in assessing the degree of restriction on liberty, consideration should be given to the content of the activity as well as its duration and they proposed that confrontation of offenders' attitudes and behaviour could indeed be very 'restrictive' and intensive. (NACRO 1992, p. 19.) Or as Raynor put it, active participation in a probation order is more demanding than 'mere passive availability'. (Raynor 1995, p.122.)

Nevertheless, issues of proportionality did not sit easily alongside issues of need and ran counter to traditional expectations of probation orders held by probation officers and magistrates, as well as by offenders. As we will see later, the difficulties experienced by both probation officers and magistrates concerning comparability of restriction of liberty between probation and community service were evident throughout much of my research.

#### **4 Guidance for Report Writers**

We will end this chapter with a description of some of the guidance that has been provided for probation report writers concerning the selection of a suitable sentence proposal.

##### *4.1 General Guidance*

Prior to the Criminal Justice Act 1991 and the introduction of national standards, sentencing guidance was available for both magistrates and probation officers through such publications as *The Sentence of the Court* (Home Office 1990)<sup>5</sup>, as well as through Court of Appeal decisions.

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<sup>5</sup> First published in 1964, following a recommendation by the Streatfeild Committee that sentencers should be supplied with information about the content and effect of the various sentences.



One of the early guides specifically for report-writers was that provided by Perry (Perry 1975). Some of this now sounds somewhat dated and patronising, for example: “If his leisure is apparently spent in a casual way it could be indicative of a general aimlessness, of drift and apathy...” (p. 11). Nevertheless, it contained much useful advice for probation officers that was subsequently formalised through national standards. This included highlighting the importance of verifying facts and the suggestion that “If you feel the subject needs supervision, think it through and show the court why he needs it and what *outline plan* you have for dealing with him if your recommendation is followed.” (op. cit. p. 20, my emphasis.)

Writing in 1988, Bottoms and Stelman (Bottoms and Stelman 1988) suggested that in selecting a suitable sentence proposal, report-writers needed to assess the risk of re-offending by examining: -

- a) predisposing hazards that had been identified by research workers from large statistical samples, such as number of previous convictions, age, gender, previous custody and time lapse between convictions, and
- b) situational hazards, such as heavy drinking, drug addiction and unemployment.

They made an important distinction between these two types of hazards and suggested that situational hazards were ‘potentially susceptible to social work help, in a way that the predisposing hazards are not’ (op. cit. p. 76).

Probation officers also consulted Magistrates’ Association Sentencing Guidelines (Magistrates Association 1993, 1997). These had been produced in an attempt to minimise sentencing disparities between magistrates<sup>6</sup>, but were used by probation officers to ensure that their proposals were both legal and appropriate. In practice, however, it was suggested that probation officers’ selection of sentence proposal tended to be based largely on experience, or on a ‘gut’ reaction to the offender. Whitehead, for example, considered that probation officers’ selection of candidates for probation orders ‘hardly complies with a rigorously scientific, or academic assessment procedure, nor are the findings of research considered; rather, selection is determined more by feelings and emotive responses to individual offenders during interview’. (Whitehead 1990, p.166.)

#### 4.2 National Standards

Following the implementation of the CJA 1991, more detailed guidance concerning the preparation of PSRs was given in the National Standards for the Supervision of Offenders in the Community (Home Office et al. 1992; Home Office et al. 1995), which contained the required standards of practice for the probation service. These stated that ‘The purpose of the PSR is to provide a professional assessment of the nature and the causes of a person’s offending behaviour and the action which can be taken to reduce re-offending’. (Home Office et al 1995, p. 7.) National standards also gave guidance concerning the different aims of probation and community service orders. Probation officers were required to ‘have regard to which community order is most suitable for the offender and most likely to be completed without the commission of a further offence’ (op. cit.

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<sup>6</sup> For discussion of sentencing disparities see, for example, Tarling (Tarling 1979), Forst (Forst 1982), Tarling, Moxon & Jones (Tarling, Moxon et al. 1985), Council of Europe (Council of Europe 1989), Stone (Stone 1994).



p. 12). It was in this assessment of suitability for the different community orders that the expertise of the probation officer was seen to lie, rather than in the assessment of an appropriate level of punishment, which was generally not considered to be the probation officer's task.

The aims of a probation order were shown as securing the rehabilitation of the offender, protecting the public from harm from the offender, and preventing the offender from committing further offences (op. cit. p. 17). The main purpose of a community service order, on the other hand, was shown as 'to prevent further offending by re-integrating the offender into the community'. This was to involve 'punishment' and 'reparation to the community', which was to be achieved by the offender being required to perform 'socially useful' and 'demanding unpaid work' (op. cit. p. 34).

Further detailed guidance in addition to that contained in national standards was provided for probation officers through such publications as the Guide to Offence Seriousness (Gilyeat 1994). There was also NACRO's 'Pre-sentence Reports: A Handbook for Probation Officers and Social Workers' (NACRO 1992). This suggested that, when considering sentence proposal, the report-writer will go through a three-stage process: assessment of seriousness, identification of possible sentences containing a degree of restriction of liberty which corresponds to the seriousness of the offence, and assessment of which of these options is the most suitable for the offender. Details of aggravating and mitigating factors that may affect seriousness were provided by the handbook.

The guidance described above was mainly concerned with the selection of an appropriate sentence within the appropriate sentence band, (that is, whether the offence was 'serious enough' to merit a community sentence, or 'so serious' that custody must be considered). Guidance with regard to actual sentence level, such as length of order, was somewhat less clear. The original 1992 national standards contained a chart that suggested it was appropriate for probation officers' proposals to specify the length of orders. (Home Office et al 1992, p. 27.) Similarly, the report examples contained in NACRO's training handbook on pre-sentence reports (NACRO 1992) made reference to a specific number of hours of community service and a specific length probation order. The subsequent 1995 national standards continued to require probation officers to make an accurate assessment of offence seriousness 'in order to ensure that the restriction on liberty ... is commensurate with the nature of the offence'. However, they also stated that '**the report should not express a firm judgement about the seriousness of an offence ... that is the responsibility of the court**'. (Home Office et al 1995, p. 9, original emphasis.) It is perhaps therefore not surprising that there was some uncertainty over whether assessment of offence seriousness should lead to a proposal that specified actual sentence level as well as sentence type.

### *4.3 Gatekeeping*

At this point mention should also be made of probation service 'gatekeeping'. This is a quality control procedure whereby PSRs are checked by and discussed with colleagues prior to being finalised and submitted to



court. Gatekeeping was initially introduced as part of anti-discriminatory practice, to ensure that reports did not contain irrelevant, prejudicial information such as racist or sexist language, stereotypes or negative images. It subsequently included checks on spelling, grammar and use of jargon, as well as consideration of whether the report met the required standards and contained an appropriate and well-argued sentence proposal. Gatekeeping thus provides a means by which probation officers can discuss their reports with colleagues and receive advice regarding the appropriateness of their sentence proposals.

#### *4.4 Assessment Scales*

Rather more formal attempts to ensure that probation officers' reports contain appropriate sentencing proposals have resulted in the development of a variety of assessment scales. These include 'risk of custody' scales (which attempted to predict court behaviour), 'risk of reconviction' scales (which attempted to predict offenders' behaviour), and sentence proposal matrices (which combined assessment of offence seriousness with assessment of type of intervention required). One of the original assessment scales for use by probation officers was Bale's Cambridgeshire Risk of Custody Scale. This was developed to assist probation officers to appropriately target offenders at risk of receiving a custodial sentence for high tariff community proposals, and was subsequently amended following the changes brought about by the CJA 1991. (Bale 1987, Bale 1992)

There are, however, a number of difficulties associated with the use of such scales. Harris (Harris 1992) questioned whether we should be using statistical prediction indicators (such as age, number of previous convictions), clinical prediction indicators (such as mental health, or motivation to change), or structural variables (such as poverty or unemployment). There was also a potential problem concerning the calculated level of 'seriousness' being affected by the offence with which the offender had been charged. This arose because Crown Prosecution Service charging standards and plea bargaining, as well as administrative and financial considerations, sometimes resulted in a charge being 'discontinued' and a lesser charge being brought, as has been highlighted by writers such as Davies (Davies 1995). Additionally, it was pointed out by writers such as Creamer and Williams (Creamer and Williams 1996) that statistical prediction instruments had the potential to perpetuate discriminatory practices, since discretionary decisions in the criminal justice process will be reflected as part of the statistical basis of the scales. Moreover, although such scales could predict the statistical probability of sentencing outcomes, they were unable to predict the outcome for individual offenders.

There was, moreover, some initial opposition to the use of assessment scales from both probation officers and government. The government Green Paper 'Strengthening Punishment in the Community' (Home Office 1995) concluded that probation officers' use of seriousness scales in an attempt to graduate community sentences was 'undesirable because in some cases it led to over technical and legalistic PSRs which gave the appearance of usurping the role of the sentencer' (op. cit. p.13). Meanwhile the National Association of Probation Officers (NAPO) suggested that 'Probation staff have always believed that the chances of the reconviction of an offender



were based on factors such as job prospects, education ... not on square roots and algebra' (Fletcher 1995 cited in Colombo and Neary 1998).

Despite this, assessment tools have come to be widely accepted and a variety of ever more complex instruments have been developed. In 1996 a probation circular announced the introduction of OGRS (Offender Group Reconviction Scale), which was developed on the basis of demographic characteristics and offending histories of a large sample of offenders and was intended for use as an assessment tool by PSR writers. In its original draft form this had proposed that to calculate the relevant 'score', probation officers must start with the number 31, subtract 3 if female, subtract age of offender, subtract number of previous youth custody sentences, then (i) take total previous guilty appearances, (ii) calculate number of years since first conviction, then add 5, (iii) divide (i) by (ii) then take the square root of this, multiply by 75, round to the nearest number and add to the score. Then add or subtract a number defined by the current offence. (Quoted by Mills 1995.)

Actuarial prediction instruments such as OGRS were based on static risk factors. Other assessment instruments have considered dynamic risk factors that were linked with offending ('criminogenic' needs), or have combined structured assessment measures with indices of areas of work to be undertaken during the supervision process. These include:

- LSI-R (Level of Service Inventory-Revised): a combined risk and needs assessment tool that was developed in Canada and validated in North America;
- ACE (Assessment Case Recording and Evaluation System): an assessment and evaluation tool developed in partnership between the Probation Studies Unit at the University of Oxford and Warwickshire Probation Service<sup>7</sup>;
- The Case Management Instrument developed by Oldfield in Kent 'to enable and ensure the rigorous, systematic and consistent assessment and supervision of offenders'. (Oldfield 1998)
- OASys, a detailed risk assessment tool that has been developed on a national basis for use by both the Prison Service and the Probation Service.

HM Inspectorate of Probation's Evidence Based Practice Guide (written prior to OASys) advised probation services to use either LSI-R or ACE assessment tools as they were the only tools that were being evaluated nationally. (Chapman and Hough 1998) However, when Colombo and Neary (Colombo and Neary 1998) questioned the 54 regional Probation Services in England and Wales during the first six months of 1998, they found a considerable lack of uniformity amongst the different services, with 39.6% of services using OGRS, 18.8% using LSI-R, 8.3% using ACE and 58.3% of services using their own in-house assessment scales.<sup>8</sup>

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<sup>7</sup> See Gibbs 1999 for a description of the development and use of ACE.

<sup>8</sup> Figures do not round to 100% because some services were using more than one type of scale.



It can thus be seen that guidance for report-writers has become increasingly detailed and sophisticated. The assessment tools described above have probably enabled probation officers better to target their sentence proposals and have also provided a means by which managers can monitor whether officers are making appropriate proposals in pre-sentence reports.<sup>9</sup> However, we need to bear in mind that statistical tools such as these are dependent upon the input of accurate information. Unfortunately this is not always possible and the more complex the information that has to be included, the greater the likelihood of errors or omissions. Oldfield, for example, found discrepancies in data relating to previous criminal histories and drew attention to the problems sometimes encountered by probation officers in accessing such information. (Oldfield 1996) Statistical assessment tools also fail to take account of the social and political context within which sentencing takes place and they ignore the possible differences in sentencing philosophies held by probation officers and magistrates. Moreover, as we have seen, the PSR is only part of the information the court is required to consider when forming a view on seriousness and deciding appropriate sentence. Thus, no matter how complex the assessment tools, they can only provide approximate answers and no matter how detailed the sentencing guidelines, it appears unlikely that probation officers and magistrates will ever be in total agreement.

## Conclusion

This chapter has discussed the background history to probation officers' reports and their use as aids to court sentencing decisions. We have examined the manner in which sentencing decisions are likely to be influenced by conflicting sentencing philosophies, as well as by changing social, administrative and political considerations. We have seen that, since it came into being, the *raison d'être* of the probation service has had to change from the rehabilitation of less serious offenders, to the provision of alternatives to custody, to the enforcement of punishment in the community. We have also considered the extent to which differing perspectives on sentencing are held by probation officers and magistrates and have seen that dilemmas can arise as a result of conflicts about the aims and effectiveness of different sentences, despite the development of increasingly detailed sentencing guidelines.

The present thesis examines some of the practical outcomes of these changes and dilemmas, when we will be looking at factors that affect probation officers' proposals to the courts, as well as factors that affect court rates of take-up for these proposals. This will be based upon the statistical analysis of sentencing data, as well as upon examination of written reports. However, in the following chapter we will first consider what existing research can tell us about probation officers' reports and factors that influence court sentencing decisions.

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<sup>9</sup> HM Inspectorate of Probation's Evidence Based Practice Guide states that managers should set clear targets for appropriate referrals and monitor staff performance, intervening proactively if targets were not met. (Chapman and Hough 1998, p.29.)



## OVERVIEW OF EXISTING RESEARCH

### Introduction

Although the national standards for pre-sentence reports referred to in chapter one contain some elements that clearly owe their existence to the desire to appear 'tough on crime', many of the requirements are in line with the considerable amount of research that has been carried out, both into probation reports themselves and into 'what works' to reduce re-offending.

This research has been conducted by researchers from a number of different countries and with widely differing backgrounds, ranging from statisticians within the Home Office Research Unit to practitioners within probation teams, with a variety of academics and policy-makers in between. As a result, studies have ranged from sophisticated statistical research designs to small-scale local 'evaluations'. Although the findings from such widely differing studies cannot be regarded as comparable, I believe that this variety of approaches can provide insights into probation officers' report-writing and magistrates' sentencing decision-making.

The majority of criminal cases are dealt with in the magistrates courts<sup>10</sup>. Despite this, much of the research into probation reports and into sentencing practice has been carried out in the Crown Court. However, sentencing practices between the magistrates courts and the Crown Court differ, with the Crown Court generally dealing with the more serious offences and able to impose longer custodial sentences. Hedderman and Moxon (Hedderman and Moxon 1992) also found that magistrates courts were much more likely than Crown Courts to impose sentences in line with SIR recommendations and that judges were three times as likely as magistrates to impose immediate custody for matched cases. It therefore needs to be borne in mind that research results obtained in the Crown Court cannot necessarily be generalised to the magistrates courts.

We also need to be aware that, no matter how sophisticated the research design or how complex the statistical analyses, 'statistics provide an approximation rather than a direct reflection of reality' (Oldfield 1996). In relation to sentencing research, this is partly because of a variety of what Fitzmaurice and Pease (Fitzmaurice and Pease 1986) refer to as 'extra-legal' variables. These include such factors as sentencer's personality or pre-existing attitudes, or the appearance of the defendant, which are difficult to control for in studies that are based upon the analysis of recorded criminological data. In addition, these statistical analyses are often dependent upon information that has been provided by probation officers. As we saw in chapter one, accurate information in relation to previous criminal history is not always readily available to probation officers and their data coding

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<sup>10</sup> Downing and Lynch (1997) put this figure at 98%.



may not always be as accurate as researchers would wish. Thus we need to bear in mind that the 'objectivity' of statistical analyses can sometimes be an illusion.

In the present chapter we will look at previous research that helps to provide a better understanding of the role of probation officers' reports in magistrates' sentencing decisions. For the purposes of this overview, research findings will be considered under the following headings: Structure and Content of Probation Officers' Reports, Probation Officers' Decision-Making, Take-up Rates for Probation Report Proposals, Factors That Influence Magistrates' Sentencing Decisions, Gender and Race Issues, The Role of Social Factors, Conflicting Aims of Sentencing, and Reducing Re-offending. However, we need to bear in mind that some of the research we will be examining covers more than one area and not all fits neatly into these categories.

## **1 Structure and Content of Probation Officers' Reports**

We saw in chapter one that guidance for probation officers concerning the content of their reports has become increasingly prescriptive. We will therefore start this chapter by examining what previous research can tell us about the structure and content of probation officers' reports.

Twenty years ago research undertaken by the Home Office Research Unit found that probation officers were selective in their use of available information, in order to support their sentencing argument and to place the offender in the best possible light. (Thorpe 1979) A similar finding was reported by Spencer (Spencer 1988), who used the technique of discourse analysis in his study. He found that the structure and content of probation officers' reports in a county probation department in America could be explained by various formal and informal protocols. He examined how officers addressed the selectional problem of which information to include and how to present it. He suggested that probation officers selectively used material gained during the course of an interview, which involved them selectively *choosing* information and also selectively *representing* information in the text. (Original emphasis.) He found that frequently information was selected on the basis that it justified the recommendation that followed. He also found that officers and judges had shared 'typologies' of defendants and sentences and that 'Officers selectively choose and present information from earlier parts of the report in ways which account for their recommendations based on these typologies' (p. 77).

Spencer also discussed the power/status relationship that existed between probation officers and judges. He suggested that the detailed information on defendants that officers possess and the fact that they have interpreted this information and made an appropriate sentencing recommendation leads to the tacit claim that 'they are uniquely qualified to make decisions regarding proper disposition of the case' (p. 76). He proposed that this served as a potential challenge to the superior status of the judge, which may be resolved by an explicit display of deference toward the judge through the use of phrases such as 'Your honor, I respectfully recommend...'.



Stone (Stone 1987) also believed that the information gathered by probation officers got 'massaged' according to their professional outlook. He pointed out that 'As probation officers feel increasingly bound to promote non-custodial outcomes and to write reports in which the 'recommendation' flows logically from the foregoing information, the stance of manipulator towards social work-based disposals is likely to be more identifiable' (p.171).

Horsley (Horsley 1984) was concerned that reports were written in such a way that defendants were unlikely to be able to understand what was being written about them. Although her research is based on only a small number of cases, she found that the large majority of reports contained unnecessarily complex vocabulary and syntax. She also found that probation officers used set phrases such as 'I believe' or 'I feel' to denote opinion, 'it would seem' or 'it appears' to denote unsubstantiated facts, and 'he informs me' or 'I am told that' to denote the defendant's viewpoint. She noted that officers avoided responsibility for something unpleasant by making the initiative seem to come from the court, such as 'the court will probably be thinking about some sort of psychiatric intervention/help', or by using the passive tense, such as 'it would appear that'. Horsley concluded that probation officers used complex language in their reports to impede communication in order to maintain power and status, and also out of fear of doing damage to their relationship with the defendant.

Brown (Brown 1991) undertook a detailed study of magisterial decision-making, which was carried out from 1985-1988 in juvenile courts in six court areas, in which she observed courts, gathered accounts from magistrates and analysed social inquiry reports. She found that report-writers made judgements of 'badness' or 'goodness' in relation to offenders and then presented these as authoritative statements in reports, frequently involving the use of stereotypes. As Brown pointed out, the ideal family background was presented as a 'cornflake packet' stereotype. Many of the statements made by both the probation officers/social workers and the magistrates in her study now appear sexist, classist or judgmental and, one would hope, would no longer be found in probation reports today.

Gelsthorpe and Raynor (Gelsthorpe and Raynor 1995) undertook a study of the quality and effectiveness of Crown Court probation reports as part of a pilot study organised by the Home Office in relation to the implementation of the Criminal Justice Act 1991. They found that the majority of reports contained errors of spelling, grammar, or punctuation. Again, it is to be hoped that 'gatekeeping' (see chapter one) will now have eliminated such mistakes. Gelsthorpe and Raynor analysed reports in terms of the proportions devoted to social history, offending behaviour and sentencing considerations and found that social history remained the dominant category of content. This was despite the emerging consensus that reports should concentrate more on offending and on sentencing response, with social history included only where it was relevant to these two considerations.



Gelsthorpe and Raynor also interviewed a total of 15 judges and recorders regarding the quality of the reports they had received, when they found that there was some concern about 'unrealistic' recommendations. However, they pointed out that this appeared to have as much to do with the 'tone' of the recommendation as with the actual content, thus providing further evidence for Spencer's suggestion that probation officers needed to demonstrate deference toward sentencers by 'persuading' rather than by 'telling' them what to do.

Celnick and McWilliams (Celnick and McWilliams 1995) cited an earlier study by Celnick in South Yorkshire, when she compared matched pre-CJA social inquiry reports and post-CJA pre-sentence reports for a single Crown Court, where the recommendation was for probation. She found that pre-sentence reports were more likely to have been based on seeing prosecution documentation and therefore to contain more verified information. She also found that PSRs were significantly more likely to discuss the seriousness of the offence and the attitude of the offender to the offence, and less likely to contain information unconnected with offending behaviour. Celnick and McWilliams concluded that the evidence of careful assessment contained in the PSRs contributed to the logic behind the argument for probation rather than for community service. However, in the absence of any assessment of reports containing proposals for community service, it is difficult to evaluate this conclusion.

Cavadino (Cavadino 1997) also undertook a 'before-and-after' study using matched samples of SIRs from 1991 and PSRs from 1993, drawn from four court areas in the north of England and matched according to age, gender and type of current offence. Perhaps not surprisingly in view of national standards, he found that PSRs were significantly more likely to list summary sources, follow prescribed headings and use advance disclosure than were SIRs. He also found that PSRs were much more likely than SIRs to focus upon offending behaviour and to discuss the seriousness of the offence. More interestingly, he found that this change 'had the effect of *substantially narrowing, if not completely extinguishing, the differences between reports on males and females in the relevant respects*' (p. 540, original emphasis). Although it was not possible for Cavadino to compare levels of concordance between the two samples of reports, he found that report-writers and sentencers were generally positive about the change to the 'new-style' pre-sentence reports.

Atkinson (Atkinson 1997) undertook a small-scale study in Dorset Probation Service that examined factors that influenced report writers when making proposals for probation. His study was based on interviews with eight probation officers and analysis of a total of 16 of their reports, eight of which proposed and secured a disposal involving probation supervision, and eight of which proposed and secured disposals not involving supervision. When he examined the reports that proposed probation, he found that they generally included recognisable supervision plans, although they tended not to conform to national standards in respect of the requirements to give time-scales for achieving objectives and to state likely effect on family members.



Similarly, inspections of pre-sentence reports undertaken by the Association of Chief Officers of Probation/HM Inspectorate of Probation, in which all probation services participated, found that report content frequently failed fully to conform to national standards, with many reports lacking adequate offence analysis and offender assessment. For example, in 29% of cases where there were previous offences, patterns of offending were not assessed, and outcomes of previous sentences were not considered in 31% of cases. In addition, 29% of reports did not assess the offender's capacity or motivation to change. (Cited in HM Inspectorate of Probation 1999.)

## **2 Probation Officers' Decision-Making**

We will now turn to an examination of research concerned with how probation officers decide upon a suitable sentence proposal. As we saw in chapter one, factors that influence probation officers' choice of sentence proposal include a variety of sentencing guidelines, including risk/needs assessment scales, sentence proposal matrices and the requirements of national standards. However, as Atkinson (Atkinson 1997) pointed out, comparatively little research has been done into how probation officers in England and Wales make their sentence proposal decisions.

Over twenty years ago Hardiker had examined the ideology of probation officers to see what bearing this had on report writing. In particular, she was interested in whether probation officers subscribed to a 'treatment' or a 'classical justice' ('tariff') model of sentencing. Hardiker proposed that probation officers operated what she called a 'reverse tariff', whereby they wrote reports that were to help sentencers determine where an offender stood on a matrix combining tariff and social need. She suggested that this could present probation officers with a dilemma if they believed that an offender was facing a custodial sentence unless 'needs' could be identified to support a recommendation for 'treatment' through the medium of a probation order. (Hardiker 1977; Hardiker 1979) Similar views were expressed by Bottoms and McWilliams who proposed that within a medium band of offence seriousness 'one of the main determinants of the use of custody will be the offender's perceived social need. ... the more convincingly the offender can be portrayed as a victim of his social circumstances, the more likely are probation officers to recommend, and judges to seek, non-custodial possibilities'. (Bottoms and McWilliams 1979 p180-81.)

Paley and Leeves (Paley and Leeves 1982) were critical of Hardiker's 'reverse tariff theory', which they viewed as a summary of outcomes rather than a model of decision-making. They also believed that it under-estimated the complexity of the decision-making process, when probation officers were likely additionally to take account of such factors as the motivation of the offender, or the sentence they thought the magistrates had in mind. They also proposed that the tariff was not as straightforward as Hardiker suggested, but had three dimensions: past (previous criminal history), present (seriousness of offence) and future (risk of further offending). Today, many of these early ideas remain relevant to the choice of sentence proposal, particularly in relation to risk assessment and the use of sentencing matrices.



During the early years of community service, Pease and McWilliams (Pease and McWilliams 1980) examined the reasons probation officers put forward to sustain their recommendations. They found that 31% stated that the sentence would be of benefit to the offender, 19% stated that it was an alternative to custody, 4% stated that it would benefit the community and 46% gave mixed reasons that combined some or all of the other reasons. Since then, a number of writers have attempted to define those cases which could be regarded as appropriate for probation and those which could be regarded as appropriate for community service. Lloyd (Lloyd 1994), for example, suggested that 'Where the focus is protection of the public, rehabilitation of the offender or prevention of re-offending, the choice is ... probation. Where it is reparation to the community and direct demands on the offender, it is community service. The most pertinent factor in making the choice is the risk of re-offending'.

Burnett (Burnett 1996) examined assessment and allocation decisions, based on interviews with 80 probation officers and 40 senior probation officers drawn from four teams in ten probation services, when she focused on proposals for probation supervision. As part of this study she examined reasons why probation officers would recommend a probation order with groupwork as opposed to a 'straight' probation order. She found that the most commonly mentioned reason was that it met a frequent or a neglected need, such as a group that addressed unemployment or alcohol abuse, or a group for women offenders. She also looked at reasons probation officers decided *against* making referrals for probation supervision with groupwork, which included doubts about whether the offender could realistically be expected to comply with attendance requirements and uncertainty about the suitability of the group for the offender.

In relation to probation officers' use of needs assessment scales, Aubrey and Hough (Aubrey and Hough 1997) reported findings from a research project in which they piloted three versions of a needs assessment scale for the probation service. They concluded that probation officers found 'no overwhelming difficulty' in using such scales and that they could be of considerable value in helping to structure assessment. However, they also drew attention to the problem of offenders not disclosing all their needs/problems at PSR stage, which could lead to any assessment of progress made during probation supervision showing an apparent worsening of problems over time.

Atkinson's small-scale study in Dorset Probation Service (Atkinson 1997, referred to above) found that where reports contained proposals for probation supervision, four of the eight officers stated that they had selected such a sentence because it was the option best suited to address offending behaviour. However, where proposals did not involve supervision, he found that officers considered that probation intervention was either not deserved (because of past failure to co-operate) or not justified (because of the presence of existing structure/support and no pattern of offending). He concluded that when considering a proposal for probation, officers look for, firstly, an indication of likely compliance and, secondly, a perceived need or 'worthiness'.

A discussion paper produced by the Magistrates Association, the Association of Chief Officers of Probation and the Justices' Clerks Society (Magistrates Association, ACOP et al. 1993) summarised the factors that probation officers are likely to take account of in deciding on a sentence proposal. This stated that within the limits of



what was justified by the seriousness of the offence, probation officers will focus on the risk and possible form of further offending and will propose the kind of intervention which will most satisfactorily reduce this risk. In considering an offender's suitability for different sentences, it was suggested that probation officers would consider at least the following four factors: - risk of re-offending and/or potential harm to others, what each order demands and offers, likelihood of completion and offender need (e.g. drug/alcohol treatment). The paper also stated that 'It is ... generally thought better to place those who have a higher risk of reconviction on probation, where the offender can be more closely monitored and where work can take place to address the factors which lead to further offences.'

### **3 Take-up Rates for Probation Report Proposals**

In this section we will consider research that has examined court rates of take-up for probation officers' proposals, towards which much attention has been focused.

White (White 1972) reviewed early research on social inquiry reports at a time when recommendations in SIRs tended to be solely in relation to probation orders. He suggested that where the courts followed such recommendations, this was likely to be because 'a sentencer minded to put an offender on probation is more likely to ask for a report than one not so minded' (p.235), rather than because the reports were encouraging greater use of probation. Thus it was not possible to say whether sentencers had been influenced by probation officers' proposals, or whether probation officers were merely providing support for the sentences that would have been imposed anyway.

Thorpe and Pease (Thorpe and Pease 1976) examined a total of 212 reports written during 1972 and found that recommendations were included in 83% of reports, of which 78% were taken up by the court. Mott (Mott 1977) also found high levels of agreement between probation officers' 'advice' and court disposal. She collected data on 133 male juveniles who appeared before the courts in the mid-1960s and found that 'advice' was not followed in only 11 out of the 111 cases where advice on a specific disposal was offered. She concluded that this agreement might be because of deference by the sentencer to the probation officer's advice. However, she went on to point out that it could equally be because it was acceptable or 'obvious' advice, or because 'the sentencer and the probation officer had independently used the same criteria to select the disposal'. (p. 425.) Rawson (Rawson 1982) also pointed out that it was possible that some of these earlier studies into the influence of probation officers' recommendations on sentencing disposals may in fact have been looking at the influence of social information on sentencing, rather than at the influence of the recommendation.

Another reason suggested for high levels of concordance was that probation officers 'second guess' what sentence the court has in mind. (Hine, McWilliams et al. 1978, Pearce and Wareham 1977) This may be because probation officers seek to maintain a good relationship with sentencers by providing 'acceptable' recommendations. However, in more recent years it could also be due to probation officers being encouraged



to use magistrates' sentencing guidelines, as we saw in chapter one, and to the growing emphasis on probation service measures of 'effectiveness' that include measurements of take-up rates for proposals in probation officers' reports. In this connection, Humphrey Pease and Carter (Humphrey, Pease et al. 1993) undertook a study of the introduction of accountable management techniques in four probation areas from 1990-91. They found extensive monitoring of court sentencing and the take-up rate of probation report recommendations and concluded that staff were routinely seeking to best predict the court's likely sentencing decision.

Further reasons for high rates of concordance include the possibility that when requesting a report, sentencers may have given an indication of the sentence they had in mind, or they may have stated that they wished the probation officer to assess the offender's suitability for a specific sentence, such as a community service order. Such information is likely to affect the levels of agreement between probation officers' proposals and sentence outcomes, yet this information is unlikely to be available to researchers examining concordance levels.

Following the implementation of the Criminal Justice Act 1991, sentencers requesting pre-sentence reports were in fact encouraged to give an indication of the sentence they had in mind. So rather than 'second-guessing', probation officers could now be given a clear indication of likely sentence. This led Downing (Downing 1995) to postulate that concordance rates between proposals and outcomes would increase. He examined 179 magistrates court reports written in the six months prior to the implementation of the Act and 188 reports written by the same probation team, for the same court, in the six months following implementation. However, he found that rates of take-up for proposals declined, with a rate of 68.72% concordance in the six months prior to the Act's implementation and a rate of 61.17% in the six months post-October 1992. Although Downing did not state whether or not this was a statistically significant difference, he suggested that the finding was linked with a decline in the use of the probation order and a move towards more obviously punitive penalties by the sentencing magistrates. As we saw in chapter one, such changes in sentencing practice are likely to be influenced by factors such as political considerations or policy decisions that are generally outside the sentencing framework considered by researchers. Downing's findings therefore draw attention to some of the difficulties involved in deciding upon 'appropriate' rates of take-up for probation officers' proposals.

We should also note that the majority of researchers have generally failed to distinguish between the different types of proposal that probation officers make, or have only examined one type of proposal, such as for probation. Celnick was an exception to this and did compare levels of concordance between different types of orders. She found levels of 63% agreement for supervisory recommendations and 45% agreement for recommendations for community service orders (Celnick 1986). However, it should be borne in mind that this was at a time when supervisory recommendations tended to be made for less serious offenders and community service recommendations tended to be made as 'alternatives to custody' for more serious offenders.



Whitehead (Whitehead 1990) only looked at recommendations for probation and found a take-up rate of 48.3%, with outcomes in the remaining cases more or less evenly divided between other non-custodial sentences and custodial sentences. He then compared those who received probation with those who were sentenced to custody and found that the latter group had, on average, been charged with more offences and had more previous court appearances than those who received probation. Since then, the introduction of seriousness rating scales (as discussed in chapter one) should have made it easier for researchers to make comparisons between offenders who are rather better matched in terms of level of 'seriousness'.

With regard to rates of take-up for combination order proposals, a review of combination orders undertaken by HM Inspectorate of Probation in February 1993 found that very few combination orders were the result of PSR proposals. Lloyd (Lloyd 1994) quoted the results of this review, as well as the results of a survey by the National Association of Probation Officers. He pointed out that both of these had shown that, despite the original intention that combination orders would generally be used in the Crown Courts, 80% of combination orders had in fact been made in magistrates courts, mostly without such a proposal having been made in the probation report. One possible explanation for this was that magistrates were making combination orders because probation officers were writing reports that contained a proposal for a probation order, but which also mentioned the availability of community service. Lloyd suggested that this resulted in the court assuming that a proposal for probation with confirmation of availability of community service equalled suitability for a combination order. However, even when revised national standards (Home Office et al. 1995) required probation officers to provide a single proposal for the most suitable sentence disposal, this trend still continued, possibly because the combination order provided the attractive possibility of both reforming and punishing offenders at the same time.

Downing and Lynch (Downing and Lynch 1997) examined a sample of pre-sentence reports from a magistrates' court in south-west England to see whether there was a positive association between the quality of reports and higher levels of concordance between report recommendation and sentencing outcome. Contrary to expectations, they found little overall relationship and although there was some relationship between quality of report and concordance for those reports that proposed community sentences, this was not significant. Similarly, a local probation service internal inspection of probation reports found that although reports that were rated higher on overall 'credibility' were more likely to have the proposal accepted, of the 16 'best' reports identified in the sample, in only nine cases was the proposal accepted by the court. (Blake 1995)

Research relating to probation programmes based on the 'What Works' approach (see chapter one) has mainly been concerned with measures of programme effectiveness and has thus tended to examine outcomes *after* sentence, rather than examine take-up rates for such proposals. However, a few researchers have included mention of rates of take-up as part of their overall evaluations. Mair, Lloyd et al (Mair, Lloyd et al. 1995), for example, undertook a study that looked at intensive probation programmes for high risk offenders that ran for



two years from 1990. Although the main focus of the study was on how the programmes were run, they included details of take-up, when they reported that of 1,677 referrals, fewer than half (45%) were sentenced to an intensive probation programme.

Hedderman, Ellis et al (Hedderman, Ellis et al. 1999) reported on two probation demonstration projects which ran from April 1997 to March 1998 in Teesside and Shropshire, when sentencers were given more information about the content of community sentences. In both areas they found that communication and relations between the probation service and sentencers improved as a result of the projects and this led to an increased use of probation orders with additional requirements. However, as this was at the expense of other community penalties, they concluded that the projects had not lead to overall greater use of community sentences.

As part of their evaluation, Hedderman, Ellis et al examined the extent to which sentencing decisions reflected report proposals. In Teesside they found that, where a report was available, the proportion of sentences that matched the proposal increased from 78% (before the project) to 90% (after). However, they also found that sentencers were sometimes making probation orders with additional requirements without adjourning for a pre-sentence report. In Shropshire a report was available in all magistrates' court cases in which a probation order with requirements was imposed. However, in contrast to Teesside, the proportion of such orders that had been proposed by probation officers fell from 65% in the 'before' period to 54% in the 'after' period. This led the researchers to conclude that the increased use of such orders was not driven by the probation service. However, although it may not have been 'driven' by report proposals, it appears likely that this outcome was influenced by the more detailed information on programme content that the probation service had already provided to sentencers. Sentencers may thus have been 'persuaded' to make such orders even in the absence of a probation report confirming offender suitability for such a sentence. These findings again suggest that rates of concordance are likely to be influenced by additional factors outside the immediate framework within which sentencing takes place.

#### **4 Factors That Influence Magistrates' Sentencing Decisions**

A number of researchers have examined the different factors that are likely to influence magistrates' sentencing decisions. Kapardis, for example, reviewed 40 sentencing studies and identified 26 factors that had been reported to influence sentencing, fifteen of which were classified as 'extraneous' (that is, not legitimately connected with sentence), such as race or attractiveness of offender, or characteristics of sentencer. (Kapardis 1987.)

Other researchers, such as Oldfield and May below, have considered sentencers' views of probation officers' reports as aids to sentencing decisions.



Oldfield conducted an internal survey in Kent in 1995, to which some 340 magistrates responded<sup>11</sup>, 97% of whom stated that they found pre-sentence reports useful as an aid to sentencing. In 73% of cases, magistrates said that they frequently followed probation officers' proposals, which Oldfield stated was about the average 'take-up' rate for community-based proposals in reports prepared by probation officers in Kent. Reasons for not following a proposal included 'proposal too lenient for offence' in 21% of cases. However, 89% of magistrates stated that they were satisfied with the appropriateness of proposals contained in reports. (Oldfield 1995) Similarly, in Hedderman et al's study of two community sentence demonstration projects (discussed above), they found that the majority of magistrates in both areas stated that they were 'always' or 'frequently' influenced in their choice of sentence by pre-sentence reports and most thought that PSR proposals were generally appropriate. (Hedderman, Ellis et al.1999)

May (May 1995) conducted a questionnaire survey to assess the satisfaction of courts with the work of the probation service, which included a section on pre-sentence reports. Questionnaires were distributed to 625 lay magistrates and 35 stipendiary magistrates, with response rates of 87% and 80% respectively. 24% of the lay magistrates in his survey found PSRs 'consistently useful' and 69% found them 'usually useful'. However, in relation to sentencers' two most recent reports, lay magistrates felt that in 27% of reports the proposals for sentence were inappropriate, with stipendiaries feeling that in 46% of reports the proposals were inappropriate. At the end of the questionnaire there was space for general comments, when one of the main criticisms was that probation officers made 'unrealistic' proposals in reports.

Hine, McWilliams and Pease (Hine, McWilliams et al. 1978) made an early attempt to overcome the problem of how to isolate the effect of the probation officer's recommendation from other items of information that were available to the court when reaching a sentencing decision. They presented reports to magistrates who were asked to decide what sentence they would be most likely to pass, using three experimental conditions: (i) basic information only (offence and previous convictions); (ii) basic information plus social information; and (iii) basic information plus social information plus recommendation. Their results suggested that recommendations "had a substantially greater influence in attracting 'sentences' than did social information alone" (p.97). However, it is worth noting that the magistrates in their study complained that it failed to simulate the conditions in a 'real' court, "where they would have sight of the offender" (p. 98), thus suggesting that defendant's appearance was a factor that influenced their 'real-life' sentencing decisions.

Other research has involved the use of sophisticated statistical techniques to examine 'real-world' data rather than using experimental conditions. In America, Konecni and Ebbesen (Konecni and Ebbeson 1982) examined the factors that judges considered in making sentencing decisions and the relative weights that were assigned to these different factors. They found that judges' sentencing decisions were directly 'caused' by probation officers' recommendations, which in turn were 'caused' by three factors: crime severity, previous record and

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<sup>11</sup> The survey questionnaire was sent out to some 800 magistrates, with a response rate of some 43%.



jail/bail status. They pointed out (as they said, 'tongue-in-cheek') that their causal model of sentencing was so simple and straightforward that both judges and probation officers could easily be replaced by a very simple computer programme that took account of the above three factors. They also suggested that to improve the performance of probation officers, they could be provided with 'a complete and specific list of variables and weights to be assigned to each [and] would also have to be taught how to take into account 5 or 6 variables at the same time' (p. 331). Konecni and Ebesen may have said this 'tongue in cheek', but it is, in fact, the direction in which the probation service has now moved, with the development of such scales as the Home Office Offender Group Reconviction Scale (OGRS), as discussed in chapter one.

Stafford and Hill (Stafford and Hill 1987) used multiple regression analysis to examine the relative predictive power of type of offence, previous convictions, previous disposals and social inquiry report recommendations on court sentencing decisions. Their work was based on a sample of 1561 cases in the English juvenile courts. They found that previous sentences and current offence/s were powerful predictors of both report recommendations and magistrates' decisions and that when the SIR recommendation was included as one of the variables, it greatly improved the prediction of the court outcome. However, they pointed out that this did not necessarily demonstrate a causal relationship and that the probation officer (or social worker) could merely be recommending (or 'second-guessing') the sentence he or she expected the court to give.

Moxon (Moxon 1988) undertook a comprehensive study of sentencing practice between June 1986 and February 1987 in which he examined factors relating to both the offence and the offender that were associated with the use of the different sentencing options. Although based on 18 Crown Courts, his findings are likely also to be relevant to magistrates' sentencing decisions. Factors that were associated with a higher use of probation included treatment for addiction, offender convicted on four counts or more, severe stress, being female, one or more offences taken into consideration, good response to supervision and being unemployed. Moxon suggested that probation was very much an individualised disposal that was particularly appropriate for offenders with personal problems. It was not strongly associated with particular offences (apart from a disproportionate use for sex offenders). Community service, on the other hand, was likely to be used for offences of burglary, robbery and violence. Factors that were associated with a higher use of community service included a large sum involved, use of weapon, serious injuries mentioned, property recovered, age 17-20, and being male.

Rumgay (Rumgay 1995) conducted a study of magistrates' sentencing decisions (covering the period 1987-1990) which explored the relative contributions of a stable court culture and intervening situational factors. Her study involved interviews with magistrates as well as observation in court, a survey of court files and the collection of statistical information on sentencing. She found that situational factors such as an unfavourable or inadequate probation report, inadequate mitigation, or an 'outsider' defendant or defence solicitor were influential in producing a decision to impose custody.



Hedderman and Gelsthorpe (Hedderman and Gelsthorpe 1997) undertook a study of gender differences in sentencing (see below) in which they found that sentencing decisions were the outcome of the interactive effect of a number of factors, including the nature of the offence, the offender's circumstances, the way offence and offender were portrayed by other participants in the courtroom, the offender's appearance and behaviour in court, and how the members of the bench interacted. They concluded that 'Together these factors shape the court's perception of an offender as essentially troubled or troublesome, and this in turn determines whether help or punishment is at the heart of the court's response' (op. cit. p. 56).

A large-scale study of sentencing decisions was that conducted by Flood-Page and Mackie, who surveyed 3,000 sentenced cases in 25 magistrates courts and 2,000 sentenced cases in 18 Crown courts as well as interviewing 126 magistrates. (Flood-Page and Mackie 1998, Flood-Page, 1998) Their study aimed to provide a detailed account of the way in which magistrates and judges were using the new sentencing framework following the Criminal Justice Act 1991. Amongst the questions that they examined were 'when are community sentences used, and what factors lead to the use of one rather than another'. With regard to choice between community sentences, they found that 81% of those who received a probation order were unemployed, compared with a figure of 65% for both combination orders and community service orders. They also found that a greater proportion of those who received a community service order had no previous convictions (21%) than had those who received either probation or a combination order (both 10%). Those receiving a combination order were more likely to be sentenced for more than one offence than were those given a community service order (83% compared with 63%). They were also more likely to have been convicted of violence or burglary offences, whereas a greater proportion of those sentenced to probation or community service had been convicted of property offences. Interestingly, Flood-Page and Mackie found that whilst the use of combination orders could be predicted quite well, it was harder to predict who would receive a probation order or community service.

## **5 Gender and Race Issues**

We will now turn to consideration of research that has focused on the effect of gender or of race on sentencing decisions.

### **5.1 Gender**

Gelsthorpe (Gelsthorpe 1992) undertook a substantial study of social inquiry reports between 1989 and 1991, in which she examined race and gender issues. When she analysed report content, she found that reports on women contained references to stress, early childhood difficulties and depression. She also found the contrast between reports for males and females was much greater than that between different ethnic groups.

Allen (Allen 1987) undertook a qualitative study which attempted to explain the quantitative difference between male and female defendants in the use of psychiatric measures by the courts, where women had been found to



be twice as likely as men to be dealt with by psychiatric means. Allen's study involved detailed analysis of texts and decision-making processes in relation to serious offenders, such as murderers. She found that reports on female defendants contained more text relating to their 'mental lives' than did the reports on male defendants, with an average of 55 lines of text for females, compared with an average of 18 lines for males. Reports on women referred to the internal significance of the matters described, whereas those on men gave external detail. Thus the males were described in terms of action (what he did, how he acted), whereas the females were purely passive (what happened to her). Allen has, however, been criticised by writers such as Harris for reading too much into a small and non-randomly selected sample. (Harris, quoted in Stephen 1993.)

Moxon's Crown Court study referred to above (Moxon 1988) found that probation reports contained recommendations for probation for 29% of female offenders compared with 20% of male offenders, but that community service was only recommended for 12% of females, compared with 20% of males. Moxon also looked at the proportion of male and female offenders convicted of different types of offence and found that seven times as many females were convicted of shoplifting and four times as many males were convicted of burglary. Female offenders were also disproportionately involved in handling, fraud and drug offences. With regard to sentence outcomes, he found that men were more likely to be sentenced to custody or community service, whereas women were more likely to receive a probation order or a conditional discharge. Moxon pointed out that these differences had much to do with differences in offending and criminal record, although even allowing for this, he found that women were significantly more likely than men to receive a non-custodial sentence.

Hedderman (Hedderman 1990) studied the effects of defendants' demeanour on sentencing, when she found that one of six factors related to sentence severity was how nervous the defendant was. She concluded that women may receive more lenient sentences than men because they are more nervous and act more respectfully and deferentially to the Bench.

Stephen (Stephen 1993) reviewed the literature on female offenders and concluded that 'women offenders attract more treatment-oriented disposals than do their male counterparts, whether that treatment is medical/psychiatric or a welfare-oriented probation order' (p. 12). She cited a 1987 study by Jackson and Smith (Jackson and Smith 1987), who had analysed 69 social inquiry reports on women who had been imprisoned for theft offences, when they had found that some of the women had not been recommended for community service because of their domestic responsibilities. She commented that 'it is ironic that these women had been given custody instead' (p. 16). Stephen also conducted her own study of 62 reports on property offenders (half male and half female), when she looked at the explanations for offending given in the reports. She found that male and female defendants gave similar explanations for their offences, with social factors the most common explanation. However, in a number of reports probation officers gave alternative or additional explanations to that given by the defendant. For females, she found that they were more likely to give underlying emotional



problems as an explanation than they were for males and this was particularly apparent when the probation officer was recommending a probation order for a female defendant.

Worrall (Worrall 1996) examined sentencing practice in relation to female offenders. She drew attention to concerns that too many women had been placed on probation at too early a stage of their criminal careers and suggested that the social inquiry report had been identified as a key document in the social construction of female offenders as suitable candidates for supervision.

McIvor (McIvor 1998) studied gender differences in relation to referrals for community service. She too cited the Jackson and Smith findings referred to above, as well as the findings of two probation thematic inspections that had shown that probation officers sometimes did not consider community service for women with domestic responsibilities despite the availability of child-care provision, or were unaware of child-care arrangements and thus did not make them clear to sentencers. McIvor examined data from three Scottish courts during 1992 and found that community service was recommended in respect of 46% of male offenders but only 28% of females. However, she pointed out that this may have been because of differences in the tariff positions of male and female offenders, since the men were more likely to have been remanded in custody prior to conviction, whereas the women were more likely to be first offenders and less likely to have served a previous custodial sentence.

A major study of gender differences in sentencing was that undertaken by Hedderman and Gelsthorpe, (Hedderman and Gelsthorpe 1997). They looked at sentencing patterns for men and women convicted of shoplifting, violence and drug offences in 1991. Their study was based on more than 13,000 cases and also involved interviews with magistrates about what they thought were the main influences on their sentencing decision-making. They cited the differences in the proportions of males and females receiving particular types of sentences, as shown in official sentencing statistics such as the Criminal Statistics 1995. In that year it was found that adult women sentenced for indictable offences were twice as likely to be discharged or to be put on probation as men, but half as likely to be given a prison sentence. Hedderman and Gelsthorpe therefore sought to answer the question: 'do sex differences in sentencing statistics simply reflect differences in the type and number of offences for which male and female offenders are convicted or something more?' (p. 1). Their study found that women were more likely to be discharged than men even when their circumstances appeared comparable. They concluded that this might have been because sentencers were reluctant to fine women, although this reluctance sometimes resulted in the women being given a more severe community penalty.

Flood-Page and Mackie's study of sentencing practice in the mid-1990's referred to above (Flood-Page and Mackie 1998) found that among those given a community sentence, women were less likely than men to receive a community service order or a combination order, and more likely to receive a probation order. They also found that among those with previous convictions, four per cent of females received a custodial sentence,



compared with sixteen per cent of males and that even when other factors were taken into account, men still had a significantly higher probability of receiving a custodial sentence than did women.

## 5.2 Race

With regard to race, Green (Green 1961) undertook an early study of judicial attitudes in sentencing based on 1437 cases that were tried at the Philadelphia Court of Quarter Sessions during 1956/57. He found that 'whites' were more likely to receive probation than 'negroes', but that if offence type and previous record were controlled, no differences were found.

Some twenty years later, McConville and Baldwin (McConville and Baldwin 1982) examined Crown Court cases in Birmingham and London from 1975-79 to see whether there was any relationship between race and severity of sentence, using matched black and white defendants. In no instance did they find any sentencing differences that reached a level of statistical significance, although they concluded that this did not mean that racism was not present in other stages of the criminal justice process, such as policing, bail decisions and jury selection.

Moxon's study of Crown Court offenders referred to above (Moxon 1988) found support for McConville and Baldwin's finding that there were no significant differences in the use of custody for different racial groups sentenced at Crown Court. However, he did find that 18% of white offenders pleaded not guilty compared with 24% of Asian offenders and 29% of black offenders. He also found that 37% of black offenders had no report prepared, compared with 22% of white offenders (part of the reason for this being that white offenders were less likely to plead not guilty) and that black offenders were less likely to receive a probation order.

Denney (Denney 1992) carried out research into social enquiry reports during 1987, based on reports on 25 black and 25 white defendants and interviews with probation officers. He found more negative comments in reports on black offenders than in reports on white offenders. He also found that some probation officers were reluctant to write reports 'that did not include moral judgements, innuendo and quasi-scientific conjecture, since they thought that such a style was expected by sentencers' (p.168).

Hood (Hood 1992) undertook a major study on race and sentencing in the Crown Court in the West Midlands, based on 2884 males and 433 females. He used statistical techniques, including chi-square tests and multivariate analyses, to examine differences relating to the legal processing, type of offence committed, previous convictions and personal and social characteristics of different ethnic groups. Amongst his findings were that black defendants were more likely to plead not guilty and less likely to have a social inquiry report than were white defendants. Hood found about 100 variables 'the possession of which by blacks was associated with a greater use of custody' (p. 63). He went on to construct a model based on 15 variables, which



described over 50 attributes of the offence and criminal record and which correctly predicted whether a case would receive custody or not in 75% of cases. He suggested that 'a considerable amount of the variance of the 'raw' custody rates observed for white, black and Asian defendants was explained by the fact that a high proportion of cases involving blacks and a lower proportion involving Asians were of the kind which would have resulted in a custodial sentence irrespective of the race of the defendant' (p 87-88).

Flood-Page and Mackie (Flood-Page and Mackie 1998) reviewed previous research on race and sentencing as part of their larger study on sentencing practice (see above) and found that this had shown that ethnic minorities were treated and acted in different ways at key stages in the criminal process. They gave as an example FitzGerald's finding that Afro-Caribbeans were less likely to admit an offence, which made them ineligible for a caution and less likely to benefit from a sentence 'discount' for a guilty plea. They too pointed out that because PSRs were not normally prepared for those pleading not guilty, ethnic minorities were less likely to have a pre-sentence report, which in turn made a community sentence less likely.

## **6 The Role of Social Factors**

In recent years there has been a growing emphasis on probation officers basing their report proposals upon assessments that include 'dynamic' risk factors and 'criminogenic' needs. (See chapter one.) Despite this, there has been comparatively little research into the role of social factors in sentencing decisions.

Some of the early research had suggested that where offenders were facing a possible custodial sentence, probation officers identified social 'needs' in order to justify proposals for probation supervision. (See, for example, Hardiker 1977, Bottoms and McWilliams 1979.) However, the more recent research discussed below has tended to be based on correlations between social factors and different sentence outcomes, or to be concerned with the relationship between social problems and the likelihood of reconviction.

Stone (Stone 1994) examined sentencing trends following the implementation of the Criminal Justice Act 1991 and the subsequent amendments made by the Criminal Justice Act 1993, when he reviewed statistics published by the Home Office Research Department. Amongst other things, he found that there were variations in the use of the probation order according to the offender's employment status. Unemployed offenders were found to be more likely to receive a probation order and less likely to receive a fine, presumably because unemployed offenders find it more difficult to pay a financial penalty and because probation orders are used to assist unemployed offenders in seeking work. In addition, unemployed adult males were found to be more likely to receive a custodial sentence than were employed adult males. In relation to these findings, it should be noted that it is generally accepted that there is an association between unemployment and crime, although as pointed out by Bottomley and Pease (Bottomley and Pease 1986), the relationship is likely to be indirect and complex. It could, for example, be due to unemployment being linked with poverty and the availability of time, or to a



criminal record making it more difficult to obtain employment, or to crime providing an alternative means of achieving 'status'.

Oldfield (Oldfield 1996) looked at social factors that had been identified by probation officers as part of his study of reconviction rates for 857 offenders who commenced probation supervision in Kent during 1991. He found that 35% of offenders were identified as having an alcohol problem, 34% as having a drugs problem, 60% as having an accommodation problem, 26% offended with delinquent peers, 47% were experiencing financial problems, 15% offended with other members of their families, 42% had relationship problems and 79% had problems relating to unemployment/employment, with many offenders having multiple social problems. However, because his study was only concerned with offenders who had been sentenced to probation, it is not possible to assess the extent to which offenders who had been sentenced to community service experienced similar problems.

Rex (Rex 1999) examined the role of social factors in relation to desistance from offending. She interviewed 21 probation officers and 60 probationers in 1994 and reported that a lack of stable employment 'pervaded the entire sample'. She also found that over a third experienced at least three of the following problems: unsatisfactory or unstable accommodation; shortage of money and/or debt; addiction to alcohol or drugs; mental health; and relationship difficulties. She concluded that improving offenders' reasoning skills as advocated by the 'What Works' literature must be accompanied by attention to some of the social difficulties that exist within the environments within which decisions are made.

May (May 1999) undertook a large-scale study that examined the contribution of social factor variables recorded by probation services to the prediction of reconviction for offenders who receive community penalties. He used data from 1993 on more than 7,000 offenders from six probation areas, when information was available on the following five social variables: accommodation, employment, alcohol, drugs and finance. He found that social variables were significantly related to reconviction and concluded that probation work with offenders in tackling problems with drugs, employment, accommodation and finances may play a role in reducing re-offending, although the link between reconviction and alcohol problems was less clear.<sup>12</sup> May also examined factors that affected courts' choice of community sentence disposal based on criminal history variables and social factor variables, but which took no account of the proposal that was contained in the pre-sentence report. He found that those most likely to be sentenced to community service were males with no social problems and concluded that social factors affected the courts' choice of disposal. May thus studied offenders sentenced by the courts to a community penalty and he made comparisons between them in relation to social factors recorded by probation officers. However, it appears he did not examine the effect of such factors on probation officers' choice of sentence proposal, nor the extent to which courts were aware of the recorded social problems at the

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<sup>12</sup> It is relevant that Oldfield had found that alcohol problems were predominantly associated with those committing offences with low reconviction rates such as violence against the person. (Oldfield 1996, p. 20.)



time of sentence. Despite this, he proposed that more consistent information on social factors 'could be used to ensure that sentencing proposals in pre-sentence reports are better targeted and that relevant social problems are brought to sentencers' attention'. (op cit. p.49.)

## **7 Conflicting Aims of Sentencing**

We saw in chapter one that conflicts about the aims of sentencing can create dilemmas for probation officers and magistrates in relation to sentencing decisions. We will therefore now examine research that is concerned with sentencing aims and the 'reasons' given for sentences.

One of the early studies of probation officers' reports was that undertaken by Hogarth in Canada during the 1960s (Hogarth 1971). Hogarth proposed that probation officers' reports were associated with 'individualising' the sentencing process by enabling the court to select the sentence that was most likely to suit both the needs of the offender and the protection of society. His findings suggested that magistrates were more likely to be concerned with retribution (or 'justice') and deterrence, whereas probation officers showed more favourable attitudes towards rehabilitation (or 'modernism'). He drew attention to the influential role of sentencers' penal philosophies and attitudes, pointing out that 50% of the sentencing disparities that he found were dependant on factors relating to the sentencer, and only 9% accounted for by objectively defined facts. Thus, 'one can explain more about sentencing by knowing a few things about the judge than by knowing a great deal about the factors of the case.' (Ewart and Pennington, 1987, p. 181.)

Henham (Henham 1990) undertook a study that examined the sentencing principles that magistrates used in reaching a sentencing decision, which he commenced in 1981. He found that 69% of magistrates rated protection of society as a 'very important' objective of sentencing, with 99% of magistrates attaching 'at least some importance' to it. He also found that the most significant factors regarding magistrates' choice of imprisonment were offence seriousness and the desire to protect society from the offender. With regard to community sentences, Henham found that the most significant factor influencing the choice of probation or community service was where magistrates thought the offender would benefit. Although Henham made no reference to the role of probation reports, this would appear to be an area where probation reports could have an influence. In Moxon's study referred to above, for example, he had found that although probation reports did not have much success in diverting offenders from custody, 'where the court decided on a non-custodial sentence, the social inquiry report [exercised] real influence over the choice between alternatives' (Moxon 1988 p. 62).

Some of the magistrates in Henham's study were in favour of individualised sentencing. He suggested that a particularly important factor in this approach was the demeanour of the defendant. He went on to say that magistrates taking this approach felt that 'no amount of information about the comparative efficacy of various



sentences could replace an on the spot assessment made by experienced magistrates of the likely effect of a particular sentence on a particular individual' (Henham 1990, p. 173).

Acres (Acres 1987), writing as a magistrate, suggested that after making the choice between exemplary and individualised sentences, if the sentence is to be individualised, magistrates will then decide which disposal will limit the chance of re-offending. He went on to say that 'Community Service Orders come to mind here. This is not only a punitive disposal but has the attraction of being one of the few disposals available which alters the concept the offender has of himself. ...[Through Community Service] the offender may, for the first time, obtain satisfaction in being praised for doing something useful rather than something antisocial' (p. 63). Acres thus viewed community service as a sentence that enabled the court to indicate public displeasure without undermining the offender's self-image. He also viewed it as a sentence that reduced the risk of re-offending, which contrasts with the view generally held by probation officers that a probation order is the sentence most likely to reduce the risk of re-offending.

Brown (Brown 1992) conducted a study of magistrates in Oxfordshire in which he asked what considerations magistrates took account of in making probation and community service orders. For probation orders, the rank order of factors that were considered of importance 'always' or 'most of the time' were as follows:-

1. Giving the defendant the opportunity to change. (91%)
2. Helping the defendant with their problems. (90%)
3. Preventing re-offending. (78%)
4. Protecting the public. (52%)
5. Diverting from custody. (59%)
6. Punishing the defendant. (45%)
7. Providing reparation to the community. (38%)

However, with regard to community service orders, a different picture was obtained. Here, 85% of respondents ranked providing reparation to the community as the most important consideration, followed by punishing the defendant (83%), with 57% of respondents believing that community service was effective in terms of both reparation and punishment.

As part of their large-scale study of sentencing decisions (see above), Flood-Page and Mackie interviewed magistrates, when they found that most magistrates believed that probation and community service were appropriate for offences of similar seriousness, with the choice between the two sanctions depending on the needs of the offender rather than the seriousness of the offence. Despite this, some magistrates were sceptical that probation served as a punishment at all, or provided a restriction on liberty. They also found that magistrates all applauded the introduction of the combination order, which they saw as combining the 'helping' role of probation with the 'punishment' aspect of community service, with one group describing it as 'manna from heaven'. (Flood-Page and Mackie 1998, Flood-Page, 1998)



Although their study was mainly concerned with enforcing community sentences, Ellis, Hedderman and Mortimer (Ellis, Hedderman et al. 1996) included consideration of the role of pre-sentence reports in relation to combination order sentencing decisions. They pointed out that in 1994, 9,898 combination order disposals were made at magistrates' courts, although only 4,982 combination order proposals had been made. They suggested that a combination order outcome was likely to arise where magistrates did not regard a probation order as a punishment and 'added a CS component to a proposal for a probation order, as a way of ensuring that the offender made some reparation to the community through physical work' (p.35).

Ewart and Pennington (Ewart and Pennington 1988) carried out a study of the reasons for sentence that were stated in both magistrates and Crown Courts. Regarding the principle underlying the sentence, they found that retribution was the most frequently expressed aim, followed by individual deterrence. Reasons for sentence were given in 66% of magistrates' courts and in 92% of Crown Court cases. In all the courts that they surveyed, they found that the following four factors accounted for 54% of the reasons that were cited:- seriousness of offence, previous history, principle underlying sentence and perceived cause of crime. However, as pointed out by Lloyd-Bostock (Lloyd-Bostock 1988), we need to bear in mind that reasons publicly given for sentences are likely, to a large degree, to be justifications.

A substantial study of magistrates' sentencing decisions was undertaken by Parker Sumner and Jarvis (Parker, Sumner et al. 1989), who examined how the courts dealt with offenders who were at risk of receiving a custodial sentence. With regard to sentencing principles, they found that none of the courts adhered exclusively to a single objective or philosophy. When asked what they hoped the penalties they imposed would achieve, 35% mentioned matters relating to individual deterrence, 28% to rehabilitation, 26% to retribution and just 9% to general deterrence. In almost half of the cases in which magistrates wanted to exact retribution, a non-custodial penalty was seen as sufficient.

When Parker et al examined influences on magistrates' sentencing decisions, they found that the most frequently mentioned influence was the probation report (mentioned in 79% of the cases in which they were available) followed by magistrates' own assessment of defendant's personality (68%), seriousness of offence (64%), antecedent records (41%) and protection of the public (31%). This latter finding is in contrast to that of Henham above, who had found that 69% of magistrates rated protection of society as a 'very important' objective of sentencing. (Henham 1990) Possibly this discrepancy is due to sentencers having differing views of sentencing influences (as studied by Parker et al) compared with sentencing objectives (as studied by Henham).

Concerning reasons for sentences imposed, in Parker et al's study seriousness of offence was the most frequently mentioned reason (mentioned in 60% of cases), compared with probation report recommendation which was mentioned in just 24% of the cases involving young adults. This contrasts with their finding that the



probation report was the most frequently mentioned influence on sentencing decisions and again demonstrates that strikingly different results are obtained depending upon whether the researcher is examining influences on sentencing decisions, sentencing objectives, or reasons for sentences imposed.

## 8 Reducing Re-offending

In chapter one we discussed the importance that is attached to comparative rates of reconviction between the different sentences. This is also a frequently quoted area of research, which has included consideration of whether probation reports provide sentencers with information that enables them to select the most suitable sentence in terms of reducing re-offending. However, prior to examining such research, it should first be noted that there are a number of problems associated with reconviction data that are linked with the problems relating to the deterrent effect of sentencing that we considered in chapter one.

- (i) *Criminal statistics do not measure the actual crime rate.* As we saw in chapter one, criminal statistics only deal with a very small proportion of the crimes that are actually committed. Indeed, as Harris (Harris 1992) pointed out, when attempts have been made to measure levels of criminal activity through self-report studies, these have tended to confirm the view that minor delinquency is almost universal among the young.
- (ii) *Criminal statistics are records of decisions taken within social and legal contexts.* As pointed out by Bottomley and Pease (Bottomley and Pease 1986) criminal statistics are records of decisions and are the product of personal interactions within social and legal contexts. Thus, official crime rates and measures of reconviction are likely to be affected by such factors as: victims' readiness to report crime; the effectiveness of policing and changes within the police force (such as number of police, cautioning policy or recording practices); changes in the law; changes in attitudes, etc.
- (iii) *Reconviction data are not always comparable.* Some reconviction studies have failed to take account of whether the frequency of offending has reduced, or whether the re-offending involved a crime that was less serious than the original offence. Different studies may also have used different follow-up periods, which makes comparison between them difficult. Additionally, the time-lag between offending and conviction can sometimes result in 'pseudo-reconvictions'.

Nevertheless, despite these various difficulties, much importance continues to be attached to comparative rates of reconviction between the different sentences.

An early study of recidivism was that undertaken by Hood who was invited by the Clerk to the Sunderland Justices to assess whether the adoption of the 1961 Streatfeild Report proposals relating to probation reports had



led to the choice of more 'effective treatments', when the criterion of 'effectiveness' was whether the proportion of offenders subsequently reconvicted had fallen. He had two samples (pre and post Streatfeild) and followed up both samples for two years. He found that the same proportion again appeared before the courts in both samples. He concluded that implementing Streatfeild had not led to any drop in reconvictions and suggested that in terms of reconviction rates, possibly it did not matter which sentence was chosen. (Hood 1966, Hood and Taylor 1968)

Mott (Mott 1977) undertook her study of social inquiry reports and decision-making in a juvenile court (see above) at a time when it was assumed that 'if the courts were provided with as much information as possible about the social circumstances of offenders they would be enabled to improve the selection of the most suitable disposals for particular offenders so that the effectiveness of disposals, in terms of *reducing the offender's likelihood of reconviction*, would be increased' (my emphasis, p.421). Data were collected on 133 male juveniles who appeared before the courts between October 1965 and December 1967, who were then followed up for five years. After the follow-up period Mott found that 51% of those placed on probation had been reconvicted, compared with 30% of those who had been conditionally discharged. However, one problem with this type of finding is that those offenders who magistrates decided to conditionally discharge may very well have been those who were the least likely to re-offend anyway.

Walker Farrington and Tucker (Walker, Farrington et al. 1981) examined whether any given type of sentence was consistently associated with better (or worse) reconviction rates than other types of sentence. They pointed out that such an examination needed to take account of the variation in conviction rates for different types of offence. Using a log-linear analysis, they found the strongest association between choice of sentence and likelihood of reconviction was in relation to first offenders, who had markedly more reconvictions after probation and suspended sentences than the calculation from offence types would lead one to expect. However, they suggested that their findings could be attributable not to differences in the nature of sentences, but to some other variable/s which affected the court's choice of sentence, but which had not been taken account of in the analysis, such as employment status.

A more recent Home Office study of reconviction rates by Lloyd et al (Lloyd, Mair et al. 1994) reviewed a number of reconviction studies prior to reporting their own findings. They concluded that previous research suggested that the key correlates of reconviction were age, sex, offence and criminal history, but pointed out that perhaps this was because most reconviction studies only considered these variables<sup>13</sup>. In their own study they used statistical techniques to calculate expected rates of reconviction by looking at the offender's age and gender, previous custodial sentences, previous court appearances and the type of offence. They analysed the reconviction patterns of 18,000 offenders and compared expected against actual reconviction rates over a two-

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<sup>13</sup> See also Kershaw (1998) for an update on methods used by the Home Office to interpret and analyse reconviction information.



year period for community and custodial sentences. They drew attention to the problem of pseudo-reconvictions (that is offences committed *prior* to the index offence but sentenced *after*). After adjusting for this factor, they found that 54% of those sent to prison were reconvicted within two years, compared with 49% of those given community service and 43% of those given a 'straight' probation order. However, of those given a probation order with additional requirements (such as to attend groups at a probation centre) 63% were reconvicted within two years. They pointed out that the differing rates of reconviction between 'straight' probation and probation with additional requirements could be accounted for by the very different characteristics (and therefore different risks of reconviction) of offenders who were sentenced to these different disposals. They concluded that once demographic and criminal record variables were taken into account, there was little difference in terms of preventing reconviction between the different sentences.

Despite the increasing sophistication of the statistical analyses that are used in reconviction studies, a major problem remains in relation to the unreliability of using measures of reconviction when what we are really interested in is measures of re-offending. The Lloyd et al study, for example, had found that burglary was the type of crime with the highest rate of reconviction (66%), in contrast to sex offenders who had the lowest rate of reconviction (25%). (Lloyd, Mair et al. 1994) However, this could arise if those who commit burglaries are more likely to be arrested and convicted than are those who commit sex offences (who are, in fact, often found to have committed considerably more offences than they have been convicted of). Nevertheless, reducing the risk of re-offending remains a major consideration in probation officers' choice of sentence proposal and research findings in relation to comparative rates of reconviction remain likely to be used as the basis on which the effectiveness of sentences is judged.

## **Conclusion**

The present chapter has examined existing research relating to probation officers' court reports and we have considered factors that may influence both probation officers' and magistrates' sentencing decisions.

We have seen that magistrates' sentencing decisions are based upon legislative guidance, precedent and experience, as well as upon individual pre-existing attitudes and preferences. We have noted that sentencing decisions are likely to be influenced by a large number of factors, which it has been possible for researchers to examine as a result of the development of increasingly detailed computerised databases and sophisticated statistical techniques. Studies based upon statistical analyses of databases have suggested that sentencing decisions are influenced by a variety of factors including crime severity, previous record, 'jail/bail' status, the gender or employment status of the offender, and the probation report recommendation. Other studies have suggested that sentencing decisions are influenced by a number of less-easily defined factors, such as the appearance of the defendant, or the culture of the court. However, we also noted a need for caution in interpreting some of these results, since what appear to be objectively-defined variables may be dependent upon



information that has already been 'judged', selected and filtered, as a result of social, political and administrative considerations outside the immediate sentencing framework. Moreover, the proposals that are contained in probation officers' pre-sentence reports are also likely to have been influenced by external factors. These include 'what works' principles, measures of effectiveness and management directives, as well as the changing objectives for the probation service from the rehabilitation of less serious offenders, to the provision of alternatives to custody, to the supervision of punishment in the community.

We have noted that magistrates have to respond to external pressures, which sometimes assert that 'prison works' and at other times demand a reduction in the prison population. On the one hand, sentencers are required to reduce sentencing disparities by acting consistently, on the other hand, they are required to sentence according to the most suitable penalty for individual offenders in order to protect the public and reduce the likelihood of re-offending. Hence, as suggested by Whitehead (Whitehead, 1995), the many different influences that affect sentencing mean that take-up rates for probation officers' reports may reveal more about the climate of sentencing that is affecting the courts than about the report-writing abilities of probation officers. Despite this, the introduction of accountable management techniques and the growth of measures of effectiveness within the probation service have led to an increase in the monitoring of take-up rates for probation officers' proposals (Humphrey, Pease et al 1993). The implication is that there is a desirable level of take-up towards which probation officers should strive, although it is unclear what this 'correct' level should be.

In part 1 of the thesis we have discussed sentencing dilemmas that may arise because sentencers need to take account of the conflicting aims of retribution, deterrence and rehabilitation, and we have seen that the different sentences that courts impose are likely to reflect different sentencing aims and philosophies. Thus, probation supervision tends to be associated with rehabilitation, community service with punishment and reparation, and imprisonment with punishment, incapacitation and deterrence.

The historical origins of the probation service led it to focus upon the rehabilitation of less serious offenders through the medium of the probation order. This has traditionally been viewed as an 'individualised' sentence, in relation to which the pre-sentence report was an essential element (Ashworth 1997). However, we have seen that following the implementation of the Criminal Justice Act 1991, sentences were to be based on 'just deserts' and on punishment commensurate with the severity of the offence. As a result, the probation service was required to introduce retributive elements into the probation order, and to portray it as capable of providing measurable punishment. At the same time, the introduction of measures of effectiveness meant that the probation order's traditional aim of rehabilitation came under much closer scrutiny, with the probation service to be judged according to its ability to reduce rates of reconviction. This was despite the fact that reconviction was an unreliable measure of re-offending that was likely to have been influenced by policies and processes outside the sentencing framework. The probation service was thus faced with the difficult task of incorporating



'tariff' elements into an order that was traditionally an individualised sentence, whilst at the same time it was to be judged according to unreliable measures in relation to its ability to rehabilitate offenders.

### *Thesis Rationale*

The present thesis contends that the changes introduced by the Criminal Justice Act 1991 and consequent conflicts concerning different sentencing aims and philosophies will be reflected in probation officers' pre-sentence reports, as well as in court take-up rates for probation officers' sentence proposals. I would argue that to study the role of probation officers' reports in magistrates' sentencing decisions is both worthwhile and feasible despite the many 'extraneous' factors that have to be considered. Such a study is important for a number of reasons. First, if rates of take-up for probation officers' proposals are to be monitored and used as a measure of effectiveness, we need to know whether some types of proposal are more (or less) likely to be followed than others. Second, if some proposals are found to be less likely to be taken up, we need to examine the effect that this has on sentence outcomes for offenders. For example, do magistrates sentence offenders more (or less) severely according to the proposal that the probation officer has made? Third, the 'what works' movement and HM Inspectorate of Probation (Chapman and Hough 1998) encouraged probation officers to make proposals for probation with groupwork for more serious offenders and required managers to set targets and to monitor staff performance in this respect. We therefore need to assess the extent to which sentencers are willing to follow such proposals, particularly since some of the findings of research into probation with groupwork suggest low rates of take-up (Mair, Lloyd et al 1995, Hedderman Ellis et al 1999). Finally, although we cannot control for factors outside the immediate sentencing framework, nor take account of all the many variables that relate to sentencing decisions, the research reviewed in part 1 of the thesis would suggest that there are a number of factors that are likely to be important and whose effects can be systematically considered. These include the seriousness of the offence, the gender of the offender and the presence of social problems.

In part 2 of the thesis we will therefore be looking at factors that influence probation officers' selection of community sentence proposals, we will consider how probation officers present these proposals in their pre-sentence reports, and we will examine factors that affect court rates of take-up for these proposals. The study focuses upon the choice between the different community sentences. This is because magistrates generally request a pre-sentence report when they are considering imposing a community sentence and because it has been suggested that probation reports are most likely to influence sentencers in their choice between the different community sentences (Moxon 1988). The study is based upon quantitative analyses of statistical data extracted from the Kent Probation Service PROBIS database for the years 1993-97. In order to achieve a fuller understanding of sentencing decisions than is likely to be apparent from statistical data alone, these quantitative analyses are combined with a qualitative study of three samples of written reports.

The main focus of the study is upon the sentencing choice between community service and probation, which to some extent reflects the choice between punishment and rehabilitation. We have noted that the Criminal Justice



Act 1991 changed the traditional 'tariff' positions of community service and probation, following which community service was no longer regarded as an 'alternative to custody' and probation became a sentence in its own right, suitable for all levels of offence seriousness. Nevertheless, probation continued to be regarded as a rehabilitative measure and I therefore hypothesised that probation officers would select probation supervision for offenders assessed at high risk of re-offending, whereas they would select community service for offenders at lower risk of re-offending and hence not in need of probation supervision. However, I anticipated that magistrates' rates of take-up for these proposals would be influenced by factors relating to both the offence and the offender, as has been suggested by previous research. I also anticipated that there was likely to be a delay in magistrates incorporating the new sentencing philosophy into their sentencing practice, since sentencing decisions are likely to be based in part upon established practice. I therefore expected that rates of take-up would increase over the period of the study, as probation officers and magistrates became more familiar with the changes introduced by the Criminal Justice Act 1991.

With regard to the effect of gender on sentencing decisions, previous research has suggested that probation tends to be the preferred sentence for females and community service the preferred sentence for males (Moxon 1988, Hedderman and Gelsthorpe 1997, McIvor 1998, Flood-Page and Mackie 1998). I therefore anticipated that probation officers and magistrates would select probation supervision for female offenders, whereas they would select community service for males. However, previous research showing gender differences in sentence outcomes, for the most part failed to consider whether such differences had their origins in probation officers' pre-sentence reports. The present study therefore examines the extent to which magistrates are following probation officers' proposals and also looks at gender differences in the content and wording of written reports.

Concerning social problems, the study examines whether probation officers make the courts aware of social problems through the medium of the pre-sentence report and considers whether such problems have an effect on probation officers' and magistrates' sentencing decisions. Based on the national standards statement that one of the aims of probation supervision was "helping the offender to resolve personal difficulties linked with offending" (Home Office, 1992, p. 32), I hypothesised that those offenders for whom probation supervision was proposed were likely to have more social problems than those offenders for whom officers proposed community service. I also anticipated that the presence of social problems would increase the likelihood of courts following proposals for probation supervision.

The present study thus examines factors that influence probation officers' selection and presentation of community sentence proposals in pre-sentence reports to the magistrates' courts and it considers some of the factors that may affect magistrates' rates of take-up for these different proposals. In the following chapter we will begin by taking a preliminary look at a small sample of written reports.



**PART 2**

**Kent Probation Officers' Pre-Sentence Reports to the Magistrates' Courts, 1993-97**



Chapter Three  
**WRITTEN REPORTS CONTAINING PROPOSALS FOR COMMUNITY SENTENCES**  
**Study One – Magistrates Courts 1993-94**

**Introduction**

Before we turn to an examination of the quantitative data in relation to pre-sentence report proposals and disposals, we will first take a preliminary look at the written reports themselves. My first study of written reports examined pre-sentence reports written by one probation team in Kent during the years 1993-94. Since previous research had suggested that it was in the choice between community sentences where probation reports were most likely to exert an influence (see, for example, Moxon 1988), I only included reports where the outcome was a community sentence<sup>14</sup>. By examining such cases, I hoped to be able to identify factors that related to magistrates' take-up rates for probation officers' proposals for probation and for community service. To ensure that the circumstances in which sentencing took place were as similar as possible, I only included reports that were presented to the magistrates' courts.

In order to obtain my sample, I produced a computer print-out from the Kent Probation Service PROBIS database which listed community disposal cases following pre-sentence reports that had been written by one probation team during 1993/94. The print-out gave name of offender, type of main offence, previous history, age and sex of offender, together with the sentence proposed in the report, the actual court outcome and the code of the probation officer who had written the report. This produced a list of 259 cases, of which 95 contained proposals for community service, 84 contained proposals for basic probation and 34 contained proposals for probation with additional requirements (probation+). From this, a small sample of cases was selected to cover a range of different offences where the probation officer's proposal was not followed, which were then matched with similar cases where the proposal was followed. Thus for every report where the proposal was not followed, there was a 'matched' report where a similar proposal was followed.<sup>15</sup>

There were obviously limitations to this 'matching' since the computer print-out only showed the main offence, when in fact there were sometimes a number of additional offences, or additional matters taken into consideration. In addition, the records only showed types of previous convictions and did not give any indication of how many or over what time-scale. However, many of the matched cases were surprisingly similar, with, for example, both cases involving psychiatric problems, or peer group pressure, or excessive consumption of alcohol.

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<sup>14</sup> 'Community sentence' is taken to refer to community service orders, probation orders with and without additional requirements and combination orders.

<sup>15</sup> In two cases, the original report selected from the print-out had to be discarded. In one case the offender had moved to a different area and a copy of the report was not available. In the other case, on examination of the report it was found that the offence had been incorrectly coded.



I selected 18 matched pairs of reports, making a total of 36 reports, details of which are listed in Table 3.1 in Appendix 4. The reports were written by ten probation officers from a single probation team that covered three different magistrates' courts. Six of the officers were females and four were males. Prior to examination, all names of offenders and of probation officers were blanked out.

For this preliminary study of written reports my intention was to examine each pair of reports to see whether there were any factors that could explain why the probation officer's proposal had been followed in one report but not in the other. The sample was too small to permit statistical analysis and it was not my intention to carry out a detailed content analysis. It should also be noted that the introduction of revised national standards in 1995, the expansion of 'gatekeeping' (see chapter one), and probation officers' increasing familiarity with the new style pre-sentence reports, mean that these reports cannot be regarded as representative of current report writing practice. Despite this, a number of interesting factors emerged from this study.

### **Example of Pre-Sentence Report**

An example of a pre-sentence report is reproduced in full below. This case involved a 31-year-old male (Case 4), who had been convicted of assault occasioning actual bodily harm (on his wife) and criminal damage to a police car. The proposal was for a probation order, which was followed by the court. Since the report was written in early 1994, revised national standards have introduced further changes to the layout and content of probation reports. Nevertheless, the example gives a broad indication of the kind of information that probation officers include in their reports, as well as the manner in which this information is presented to the court.

#### **31-year-old male convicted of assault occasioning actual bodily harm (Case 4)**

##### **Sources of Information**

This report is based upon an interview with X at ... Probation Office and upon telephone conversations with..., his former supervising Officer, and Y, Psychiatrist with the ... Community Mental Health Team. I have also read the relevant CPS [Crown Prosecution Service] documentation and Probation records supplied by ... Probation Service.

##### **Current Offence**

X has pleaded guilty to offences of assault on his wife, occasioning actual bodily harm, and criminal damage to the rear window of a Police van. At the time of these offences, X tells me that he, his wife and her three children from a previous relationship were living with his father in ... However, it appears that there were numerous problems with this arrangement. On the day the offences occurred,



X says that he and his wife had been out drinking with his aunt, when he accepts that he had drunk “too much”. With the arrival of his father, trouble had started and when they subsequently got home, X remembers being “mad” at his wife because there was washing all over the kitchen. He says that he then went to lie down on his bed and that he has no recollection of hitting his wife, although he accepts that he must have done so. He says that he now very much regrets what happened and wishes that he could “turn the clock back”.

With regard to the criminal damage offence, X can recollect kicking in the windows of the van, which he says he did because the Police were trying to put him into a Police “dog van”.

As the Court will be aware, X has previous convictions for offences of violence, which include previous assaults upon his wife and an assault on his wife’s son. This will be regarded as an aggravating feature in relation to the current offences as will his prior consumption of alcohol. In mitigation, X has expressed his remorse and has since voluntarily sought help in relation to his problem behaviour.

#### **Relevant Information about Offender**

X had a somewhat unhappy childhood, with his parents separating when he was aged four and his mother committing suicide when he was aged sixteen.

He met his wife when they were both living in ... with whom he has lived for five and a half years and whom he married in .. during July 1992. His wife has five children from a previous relationship, the two eldest having now left home. The three youngest children are currently on the Social Services Department “at risk” register, which X acknowledges is because of his violence towards his wife and the effect that this had had upon the children. He tells me that his wife is now staying with her eldest daughter in .. and is saying that she wants a separation, which X is finding very difficult to come to terms with.

After seeing the injury that he caused to his wife’s eye, X tells me that he realised he had to do something about his violent behaviour. He went to his GP, who referred him to the Community Mental Health Team, where he kept a number of appointments with the Psychiatrist, Y. I have spoken on the telephone with Y, who confirmed that X has acknowledged the link between his violence and his consumption of alcohol, and is now making efforts to control his drinking. Y feels that X could benefit from continuing to receive counselling with a view to helping him to resolve some of the outstanding issues relating to his family background.



X states that he has been unemployed since February 1992, when ... Borough Council made him redundant from his post as a carpenter with their repairs department. His previous work experience includes working as a carpenter on a self-employed basis, work as a glazier and work as a security guard. He has also done a desktop publishing course and would now like to obtain employment using these skills.

On ... X moved to the above address in ..., where he is living with his younger brother and his "wife to be". Since moving to ... he says that he has successfully controlled his drinking, which has enabled him to "think straight" and to start to try and sort himself out. He is currently in receipt of £44 Income Support a week, out of which he pays £20 for his "board" and £4 off outstanding fines. His only other outgoing is for fares to look for work, which he is actively seeking. He has recently been for an employment interview at the local warehouse for Gateway Supermarkets, but at the time of writing, was still awaiting a definite offer.

### **Conclusion and Proposal**

X is aware that the Court will regard these offences as serious, particularly in view of his previous convictions for similar offences. X acknowledges that he has a problem with controlling his temper with which he now wishes to receive help. X has been subject to Probation supervision in the past, with which he has fully co-operated and from which he appears to have gained some benefit. In this instance, I would therefore request that the Court give consideration to making a twelve month Probation Order, when supervision would focus on the following areas:-

- Relationships and family problems
- Anger and stress management techniques
- Alcohol education
- Job search, including referral to ... Probation Service Employment Officer.

X could also be assisted to make contact with the local Community Mental Health Team if this were felt appropriate. X fully understands the commitment that would be required of him were he to be made subject to a Probation Order and he has indicated his willingness to fully comply with requirements.

(Signed) Probation Officer



## **Factors That May Explain Apparent Sentencing Discrepancies**

The above case had been matched with Case 3, which had similarly involved an offence of assault occasioning actual bodily and criminal damage, and both cases appeared to have a similar record of previous convictions. However, the two defendants had been dealt with in two different courts (one being out of the area). When the reports were examined, it also became apparent that both cases had been referred to a psychiatrist through their GP. The report on Case 3 had similarly contained a proposal for a probation order, but on this occasion the sentence imposed by the court was a combination order. The main differences between the two offenders were that Case 3 had assaulted British Rail employees in what appeared to be a more serious assault (hospital treatment was required), had shown “little sense of remorse for his actions” and appeared less motivated than Case 4 to seek help to change his behaviour. These factors could account for the different outcome in these two cases, as could the different courts involved. However, this also illustrates that there are no clear-cut answers to why some probation report proposals are followed and others are not.

Nevertheless, examination of the matched reports generally revealed a variety of factors that could account for why one report proposal had been followed but not the other, the majority of which were not apparent from the statistical data alone. These factors included the following:

- the offence was more serious than suggested by the computer print-out;
- time had been spent in custody on remand;
- magistrates’ inclination to sentence female offenders to probation;
- the offender’s progress whilst subject to an existing order;
- the probation officer’s advance knowledge of likely sentence outcome;
- the remorse of the offender;
- the appeal of the combination order to magistrates;
- the report not ending with the preferred sentencing option;
- whether the tone of the report showed deference to the court;
- the presence (or absence) of personal/social problems for the offender.

These different factors are examined in greater detail below and are illustrated by extracts from reports.

However, there were also a few instances when it was difficult to identify any reason why one report proposal had been followed but not the other.

### **1 Offence Seriousness**

In order to assist report writers to assess the level of seriousness of the offence and to ensure that the sentencing proposal contained in the report fell within the appropriate band of the sentencing tariff, a number of probation



areas introduced 'seriousness' rating scales. (See chapters 1 and 6.) The area from which my sample was drawn introduced a revised seriousness rating scale in June 1995, so the reports in this preliminary sample were written *prior* to the introduction of this scale. However, in order to check that the 'matched' reports in my sample were of an approximately comparable level of seriousness, I used the rating scale shown at Appendix 2 to calculate scores for each report in my sample. It should be noted that the scores were only approximate because the information from which I was working did not always contain the necessary detail. For example, my data contained information on types of previous conviction but gave no indication of total number of previous convictions or dates when these were received.

Calculated approximate seriousness scores are included in the list of matched cases in Table 3.1. These show that in eleven out of the eighteen matched pairs of reports, the seriousness scores were the same or reasonably similar, which provides some confirmation that there was a fairly good match between the paired reports. Of the remaining seven pairs, in four instances where the court did not follow the probation officer's proposal the seriousness score was higher than it was for the matched report where the proposal was followed (Cases 1, 5, 13, and 27). Factors that contributed to the higher scores (and which had not been apparent when the reports were selected) included the following:

- offender had additional offences or matters 'taken into consideration';
- offender was in breach of a current order (that is, he/she had failed to co-operate or had re-offended whilst already subject to probation or community service).

However, there were also three instances of reports where the 'followed' proposal in fact scored higher than the matched 'not followed' proposal (Cases 24, 26 and 32). Factors that may have influenced the outcomes of these cases are discussed in the relevant sections below.

In some of the cases in my sample, it appeared that probation officers had in fact misjudged the level of seriousness. In Case 21, for example, the offender was convicted of driving whilst disqualified and with no insurance and had a previous conviction for driving whilst disqualified as well as for driving with excess alcohol. Yet the report writer stated that the offences were "just serious enough for community sentences" and the proposal was for "a short Community Service Order". The outcome of this case was a combination order. Similarly, in Case 31 the offender was convicted of burglary (non-dwelling) and was in breach of a conditional discharge, yet the probation officer stated that "a Probation Order of six months duration would appear adequate in this case". Here, the outcome was a 200-hour community service order.



## **2 Time Already Spent in Custody on Remand**

Sometimes offenders are remanded in custody prior to sentence. This is more likely in cases involving serious offences (and hence more likely in Crown Court cases than in magistrates court cases), or where offenders have failed to answer bail and a warrant has been issued for their arrest. If offenders have spent time in custody, the magistrates may take this into account when sentencing, which can sometimes lead to an apparently lenient sentence being passed.

In my sample, one offender had been remanded in custody prior to sentence (Case 26). This involved a 20-year-old male who had been convicted of burglary (non-dwelling). Examination of the report revealed that this had been of a garage from which he and a co-defendant had taken £350 cash and a cigarette machine and contents valued at £2,000. There was also an offence of theft of a radio cassette from a car, two matters were taken into consideration, and the offender had previously failed to attend court and was therefore additionally charged with failing to answer bail. The report proposal was for an 18 month probation order and gave a detailed supervision plan “to address X’s offending behaviour”, although the writer ended by stating that as X was currently remanded in custody “I must therefore leave it to the Court as to the best way to proceed in this case”. The court outcome was that the proposal for probation was followed. This case had been paired with Case 25, an 18-year-old male who had been convicted of burglary (non-dwelling). The report had revealed that this had been of a school from which he and co-defendants had taken a computer that was subsequently recovered. This offender was sentenced to a combination order. In this example, the apparently more lenient treatment of the more serious offender may have been due to the time he had already spent in custody on remand.

## **3 Sentencing of Female Offenders to Probation**

Although the provisions of the CJA 1991 should have ensured equality of access to community service for female offenders, we noted in part 1 that probation has traditionally been viewed as the more appropriate sentence for females. We also saw that research has suggested that there has sometimes been a reluctance to sentence females to community service. (See, for example, Jackson and Smith 1987, McIvor 1998.)

In my sample, Cases 1 and 2 both involved offences of assault occasioning actual bodily harm. Examination of the written reports revealed that Case 1 was the more serious offender and had additionally been convicted of two assaults on Police and a shoplifting offence. The two offenders were similar in age (18 and 19 years respectively) and both had one previous conviction. However, the main difference between them was that Case 1 was female and Case 2 was male. The report on the female offender revealed that she was currently subject to a probation order. Both reports contained a proposal for a community service order. The outcome at court was that Case 2 (the male) received community service in line with the proposal, but Case 1 (the female) received a further probation order.



Cases 23 and 24 both involved female offenders who had been convicted of burglary of a dwelling, for whom the probation officers had made proposals for community service. The report on Case 23 referred to a number of personal problems, but confirmed that she was already receiving appropriate help through her GP, who had prescribed anti-depressants and had referred her to a counsellor. The report ended with a proposal for a community service order and confirmed that work was available that would accommodate her health problems. However, the outcome at court was a combination order, that is, a community service order *and* a probation order, possibly because the court felt that this offender was in need of additional 'help' from probation. Case 24 appeared to be the more serious offender and was already subject to a probation order. Her report described personal and monetary problems but stated that these were "currently being addressed by way of a Probation Order". She was therefore already receiving traditional probation 'help' and in this instance the court followed the proposal for community service.

#### **4 Offender's Progress Whilst Subject to an Existing Order**

Prior to the CJA 1991, a probation order was, literally, a probationary period 'instead of' a sentence. Offenders who re-offended whilst subject to probation supervision were regarded as having 'breached' their orders and were liable to be re-sentenced (and possibly move up the 'tariff'). This is no longer the case and probation is now a sentence in its own right. However, report-writers are required by national standards to include information on offenders' response to previous or current supervision. As we saw in part 1, considerable importance is attached to comparative reconviction rates between the different sentences and there is an expectation that offenders who are subject to supervision will not re-offend, or at least will re-offend less. Information concerning response to previous supervision is therefore important and re-offending is potentially a difficult area for report-writers to address.

The reports in my sample that involved re-offending whilst subject to a current order suggested that probation officers often felt it necessary to propose a different sentence to the current order. However, it appeared that the courts were sometimes willing to give offenders 'another chance' at the *same* order, provided that they had been making reasonable progress. An example of such an outcome was provided by Case 1 above, where the probation officer had made a proposal for community service for an offender who was currently subject to a probation order, with which she had been complying. As we saw, the court outcome was a further probation order.

A further example of a report that involved re-offending whilst subject to supervision was provided by Case 5, which involved a 20-year-old male convicted of burglary (non-dwelling). He was already subject to probation supervision and had numerous problems. The report concluded:



“X’s response to supervision has been satisfactory in regards to his punctuality and reporting behaviour and his readiness to discuss at length his problems, although there are some communication difficulties because of his reluctance to express his feelings and a limited grasp of language. X has shown that he needs help and can respond to supervision, in spite of this recent series of offences committed in support of a friend in need. I would ask the Court to allow the present Orders to continue and to deal with the current matters by way of an additional 100 hours of Community Service. I suggest this would be in keeping with the seriousness of the offence and would restrict liberty for up to fifteen hours a week for a further two months. Such a disposal will enable counselling and supervision to continue with the aim of undermining the peer group pressures which are a regular feature of X’s offending behaviour.”

Again, the court did not follow the proposal for community service but instead sentenced this offender to a further probation order with additional requirements.

### **5 Probation Officer’s Advance Knowledge of Likely Sentence Outcome**

As we saw in part 1, 1992 national standards stated that “a sentencer may give a preliminary indication of his or her view of the seriousness of the offence and the sentence which may be appropriate” (Home Office et al, 1992, p.14). It therefore appeared likely that where the probation officer had made a proposal that was in line with what the court had indicated, the proposal would be followed. The statistical records did not contain information on whether the court had indicated likely sentence outcome. However, an examination of the written reports sometimes revealed this information, as in the following examples:

“As requested by the Court, I have discussed with X the possibility of performing unpaid work for the community through a Community Service Order. I can confirm that he would be considered suitable and that appropriate work is available. X fully understands the commitment that would be required from him and he has confirmed his willingness to comply with such an Order.” (Case 10)

“The Court indicated that it was considering a custodial sentence or a Community Service Order for X today. Custody would disrupt his efforts to re-build a future with his girlfriend and son, and also lose him his current job. I would propose that the Court impose a Community Service Order on X which would keep him working and seeing his family whilst still marking the seriousness with which the Court sees these offences. X is aware of the requirements and sanctions of a Community Service Order, work is available for him and he is willing to do it.” (Case 18)

However, sometimes the report-writer was able to make a successful proposal for a sentence that went against that indicated by the court, as in Case 8. This was on a 19-year-old male convicted of burglary (non-dwelling).



The report referred to family traumas, learning difficulties and numerous personal and social problems and suggested that X's limitations "leave him vulnerable to the wrong influences". It concluded:

"I understand that, when the case was adjourned for reports, the Court had a Community Service Order in mind. Although X is assessed as suitable for that option, I would respectfully propose that a Probation Order for one year would be more appropriate to his development. If the Court accepts this, the aims would be to refer X to our KUEGO Officer for remedial education, to widen his horizons through participation in The Fairbridge Drake Scheme, and to check out whether any elements of diet and lifestyle need to be changed to overcome his hyperactivity and sleep loss."

In this instance the proposal for probation was followed, despite the court having indicated that they were considering community service.

## **6 Expression of Remorse**

In court, defence lawyers frequently refer to the offender's expression of remorse as a mitigating factor and probation officers, similarly, often refer to the offender's remorse in their reports. Indeed, the frequency with which courts are informed that defendants 'bitterly regret' their actions or have expressed 'genuine remorse' risks such expressions becoming meaningless. Nevertheless, remorse remains a factor that courts will take into account in reaching a sentencing decision and national standards require report-writers to obtain information relevant to the offence, which "may include the offender's explanation for the offence, acceptance of responsibility and feelings of guilt or remorse...". (Home Office et al, 1992, p.15.)<sup>16</sup> Of the eighteen reports in my sample where the proposal was followed, twelve made some reference to the offender regretting the offence that often included an explanation of how and why the offender felt remorse. Examples from these reports are given below.

"X realises the stupidity of his actions that night and regrets the injury he caused to the owner of the car. He is adamant that this behaviour is out of character for him and feels both embarrassed and ashamed of himself." (Case 2)

"X regrets the offence and recognises such behaviour is unacceptable. However, he stated that he was caught up in the crowd and went with it, fuelled by the alcohol he had consumed. ... He said that he had been the victim of an assault recently and knew what it was like to be on the receiving end of such behaviour." (Case 14)

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<sup>16</sup> The 1995 revised national standards placed greater emphasis on the victim, but continued to require report-writers to assess remorse and draw attention "to any evidence of acceptance or minimisation of responsibility, remorse or guilt and any expressed desire to make amends". (Home Office et al, 1995, p.10,)



“X is now extremely remorseful about what she has done and says that she has found the experience of being arrested and appearing in Court ‘terrifying’. As the Court will be aware, X is of previous good character ... and would like to assure the Court that she will not re-offend.” (Case 36)

By contrast, of the eighteen reports where the proposal was not followed, only three made a brief reference to remorse. In the absence of any expression of remorse, report writers tended to state that the offender realised that he had done wrong or had acted foolishly. Examples from ‘not followed’ reports are given below.

“X now accepts that what he did was very stupid.” (Case 9)

“X is well aware that this behaviour is irresponsible.” (Case 17)

“On reflection X admits his behaviour was irresponsible and he did not fully think through the consequences of his actions at the time.” (Case 19)

“In retrospect X realises it was a very stupid and unnecessary trip to try and make.” (Case 21)

“X describes his behaviour on this occasion as silly and recognises that there are other legal ways to obtain money.” (Case 25)

These results suggest that where remorse had not been expressed spontaneously by offenders, probation officers felt compelled by national standards to include something on remorse. However, for this to have any impact, it was necessary for the report to include an explanation of how and why the offender felt remorse. It also appeared that such an explanation was more likely to be provided in reports where the proposal was followed than in reports where the proposal was not followed.

## **7 The Appeal of the Combination Order to Magistrates**

Shortly after the implementation of the CJA 1991, it was found that magistrates were keen to impose combination orders, often against the proposal contained in the pre-sentence report and despite the fact that these had originally been intended for use in the Crown Court (see part 1). We also saw in part 1 that magistrates sometimes assumed that probation officers’ confirmation of suitability for community service followed by a proposal for probation equalled a proposal for a combination order. This appears to have been the case in the following example, where the court outcome was a combination order.



Case 11: 25-year-old female convicted of theft <£500

“X is fit and able to participate in a Community Service Order. The requirements and sanctions have been explained to her, work is available for her and she is willing to do it. Nevertheless, I would propose that a one-year Probation Order is made in this case. This would require X to attend probation appointments every week for the first three months and every fortnight thereafter. The purpose of this Order would be to look at alternatives to offending while offering support during a difficult period in her life when she is in temporary accommodation.... I would also propose that the Court make an additional requirement under Schedule 1A (2) of the Criminal Justice Act 1991 that X attends a Women’s Group [details are attached]. I believe a Probation Order plus condition to attend the Women’s Group will go some way to preventing a reoccurrence of this type of offending in the future.”

It also appeared from my sample that probation officers sometimes made proposals for probation in cases where magistrates wanted to make a community service order and, occasionally, made proposals for community service in cases where magistrates wanted to make a probation order. In such circumstances, the introduction of the combination order meant that magistrates could follow both their own sentencing preference and the advice of the probation officer by sentencing the offender to both. Examples from such reports are given below, the first two of which contained proposals for probation, and the second two proposals for community service. In all instances the court outcome was a combination order.

Case 3: 23-year-old male convicted of assault occasioning actual bodily harm.

The report revealed that this offender had also been convicted of common assault and criminal damage and was receiving psychiatric treatment. The report stated that “The Court may ... feel that these offences are so serious as to warrant a custodial sentence. However, such a sentence would not serve to address X’s anti-social behaviour nor the deep-rooted problems underlying it. ... if the Court were willing to consider a community sentence, I would propose that X be made subject to a one year Probation Order. Such an Order would restrict X’s liberty in that he would be expected to attend interviews initially on a weekly basis, entering into discussion about his offending behaviour; the underlying reasons for his actions; and future plans in respect of employment and training. X would also be encouraged to mix with others in order to reduce his sense of isolation by attending a life and social skills group, run by the Probation Service, on a voluntary basis. In addition, X would benefit from the professional help of a Psychiatrist, and as stated earlier, a referral has already been made through the appropriate channels. I believe that such a package would directly tackle X’s offending behaviour and would address the problems which have contributed to this. I have fully discussed the conditions of a Probation Order with X and he is willing to commit himself to such an Order.”



Case 7: 21-year-old male convicted of burglary (non-dwelling)

After referring to problems relating to excessive drinking, unemployment and previously 'living rough' the report concluded: "X's current social circumstances indicates he needs some assistance in helping him to relieve his evident boredom and urge to drink. I would therefore propose that the Court considers a 12 month Probation Order with aims of: (a) acting as a restriction of his liberty in that he would have to see a Probation Officer on a weekly basis; (b) assist X in controlling his drinking through either individual counselling or by use of the Probation Service's Alcohol Education Group; (c) assist X in finding suitable employment or training by referral to our Employment Officer. X is agreeable to this proposal and is aware of the conditions of such an Order."

In the above two examples the court made a community service order in addition to the probation order that had been proposed in the report. However, in the following two examples, rather more unusually, they made a probation order in addition to the community service order that had been proposed in the report.

Case 21: 26-year-old male convicted of driving whilst disqualified

The report concluded with a proposal for community service, stating that: "The requirements and sanctions have been explained to him, work is available and he is willing to do it." However, the report contained references to a number of problems which may have led the magistrates to conclude that probation would also be appropriate (outstanding fines totalling £1,899.69 listed to be heard at the Means Court, a nervous disposition and an allergy to sunlight that was aggravated by stressful situations).

Case 23: 35-year-old female convicted of burglary (dwelling)

This case was discussed under section 3 above and concerned a female offender whom the report writer had confirmed was already receiving appropriate treatment for problems with depression. The report concluded: "I would propose that X be dealt with by way of a Community Service Order. Such a sentence would significantly restrict X's liberty as well as enabling her to work for the benefit of the community. She is willing to commit herself to an Order and the Community Service Officer has confirmed that work is available, which would accommodate her health problems."

In this instance, the court appear to have viewed the offender as an appropriate candidate for traditional probation 'help' in addition to the community service order.

## **8 Conclusion Not Ending With Preferred Sentencing Option**

Out of the total of eighteen reports where the court did not follow the probation officer's proposal, ten of these reports made reference to more than one sentencing option in their conclusion. This compared with six reports



that made reference to more than one sentencing option out of the eighteen reports where the proposal was followed. However, all six of these reports concluded with the preferred sentencing option after explaining why other options might be less suitable, as shown by the following examples from reports where the proposal was followed.

Case 2: 19-year-old male convicted of assault occasioning actual bodily harm

“The Court have indicated that this offence is serious enough to warrant a community penalty. In my view, X is not in need of Probation intervention as, from what he tells me, there is a low risk of him re-offending. Due to X’s remorse for the victim and his co-operation with the Police, I would ask the Court to consider a short Community Service Order. He has been assessed as suitable and work is available. X is agreeable to such an Order being made and is aware of the requirements.”

Case 22: 30-year-old male convicted of driving whilst disqualified.

“Although X acknowledges he has a few financial problems he stated he is now starting to sort them out with assistance from the CAB and his father. I do not feel any further practical support could be offered if he were to receive a Probation Order. I would ask the Court to consider imposing a Community Service Order. Such a sentence is, I feel, commensurate with the degree and seriousness of the offences X has committed. He would be expected to carry out unpaid supervised work in the community, normally when he would be enjoying his own leisure time, thereby placing a restriction on his liberty ...”

Case 36: 31-year-old female convicted of theft by employee

“As requested by the Court, I have considered X’s suitability for Probation and Community Service. With regard to Community Service, I can confirm that X would be considered suitable and that appropriate work is available. However, in view of X’s feelings of depression that led up to her commission of this offence and her continuing worries about finding employment and financial difficulties, in this instance the Court may feel that a two year Probation Order would provide an appropriate disposal. Through such an Order, X would be required to report weekly during the first three months of the Order, when work would focus on the following areas: [a detailed supervision plan is given].”

By contrast, five out of the ten ‘not followed’ reports that referred to more than one sentence option failed to end with the sentence that was being proposed, ending instead with confirmation of suitability for a possible alternative sentence, as shown in the following examples:



Case 19: 20-year-old male convicted of driving whilst disqualified.

The report writer made a proposal for a probation order which included a detailed description of the aims of the order, but then ended with the following paragraph: “Should the Court decide that this offence is so serious and wish to impose a Combination Order, I have discussed Community Service with X and he would be agreeable. He is assessed as suitable and work is available.” (The court outcome was a combination order.)

Case 29: 31-year-old male convicted of theft v.£500-2000.

After making a detailed proposal for a probation order, which included consideration of the aims of the order and of the restriction that this would involve on the defendant’s liberty, the report concluded with the following paragraph: “Should the Court consider a Community Service Order more appropriate, I have discussed what would be required of X. He is willing to comply with the conditions of the Order and there is work available.”(The court outcome was a community service order.)

The reports in my sample were written in 1993/1994, since when the practice of discussing more than one sentencing option in the conclusion has become less common. Indeed, the 1995 national standards state that “Unless the court has specifically asked for the report to consider a number of options, any proposal that is made should be for a single specific sentence.” (Home Office et al, 1995, p.11) Nevertheless, courts still sometimes request probation officers to consider “all options”, when it is likely to be necessary to refer to more than one sentencing option in the conclusion. The above findings suggest that where reference is made to more than one sentencing proposal, it is important for the report-writer to explain why the alternative sentence has been ‘ruled out’ and to end the report with the preferred sentencing option.

## **9 Tone of the Report and Deference to the Court**

The 1992 national standards stressed that it is the sentencer who has sole responsibility for imposing sentence. In order to assist the court in determining the most suitable sentence, the report writer may present facts or advice relevant to a particular sentence, “*provided* the distinct role of the sentencer is respected.” (Home Office et al, 1992, p. 13, original emphasis). The subsequent 1995 national standards continued to stress that judgement about the seriousness of an offence is the responsibility of the court and that, if judged appropriate by the court, the report should contain a proposal “inviting the court to consider its merits” (Home Office et al, 1995, p.11).

We saw in chapter 2 that research has suggested that the ‘tone’ of probation officers’ proposals needs to show deference toward the sentencer. (See, for example, Spencer 1988, Gelsthorpe and Raynor 1995.) During the eighties it was quite common to see reports that ‘respectfully requested’ the court to consider a particular sentencing option. Although it is now less common for this to be stated so explicitly, probation officers



generally continue to accept the necessity to be respectful and to avoid telling sentencers what to do. However, it was apparent from reading the reports in my sample that some expressed 'more' deference (when the officer made it clear that it was for the court to decide sentence through the use of such phrases as 'I would ask the court to consider ...'), and some expressed 'less' deference, (when the officer simply made a sentencing proposal, but omitted to suggest that it was for the court's consideration).

In fourteen out of the eighteen cases where the proposal was followed, the tone of the report was more deferential, as shown in the following examples:

"I would ask the Court to consider ..." (Case 2). "I would therefore request that the Court give consideration to ..." (Case 4). "I would respectfully propose ... If the Court accepts this ..." (Case 8). "As requested by the Court ..." (Case 10). "I would therefore ask the Court to ..." (Case 12). "I would therefore propose that the Court considers ..." (Case 14). "If the Court is sympathetic to the view that ..." (Case 16). "I would ask the Court to consider..." (Case 22). "... if the Court is inclined towards ..." (Case 24). "I must therefore leave it to the Court ..." (Case 26). "If the Court considers ..." (Case 28). "... in this instance the Court may feel that ..." (Case 32). "The Court may consider ... If the Court is willing to ..." (Case 34). "As requested by the Court ... the Court may feel that ..." (Case 36).

However, such 'deference' was only shown in eight out of the eighteen cases where the proposal was not followed, with the tone of the report in the remaining ten cases appearing less deferential, as shown in the following examples:

"I would therefore propose that ... In addition, I strongly propose that ..." (Case 1). "...I do not feel the offences are so serious that a custodial sentence is the only option...I do however consider the offences serious enough for a community sentence ... Nevertheless, I would propose that a one year Probation Order is made in this case." (Case 11). "In these circumstances the most appropriate disposal would appear to be a further short Community Service Order" (Case 13). "Having considered the sentencing guidelines I propose that a Probation Order would be a more appropriate sentence [than custody] at this time." (Case 19). "... I would regard these offences as not so serious that custody is the only option. The offences are however just serious enough for community sentences." (Case 21). "I would propose that X be dealt with by way of ..." (Case 23). "...in my view due to his immaturity this would not be an appropriate disposal at this time." (Case 25). "My proposal in this case, therefore, is that the Court make a two year Probation Order..." (Case 27). "A Probation Order of six months duration would appear adequate in this case." (Case 31). "I suggest a Probation Order as being a more appropriate form of disposal..." (Case 35).



Although there were likely to have been other factors that will have influenced the eventual outcome, the above results suggest some relationship between the 'tone' of the report and magistrates' willingness to follow the report proposal.

## **10 The Role of Personal and Social Problems**

National standards made reference to one of the aims of probation supervision as "helping the offender to resolve personal difficulties linked with offending and to acquire new skills" (Home Office et al, 1992, p.32). Community service, on the other hand, was intended "to re-integrate the offender into the community through: positive and demanding unpaid work, ... and reparation to the community by undertaking socially useful work ..." (p.67). I therefore anticipated that reports making a proposal for probation would make reference to 'personal difficulties', but that such difficulties were likely to be absent from reports making a proposal for community service.

### *10.1 Reports Containing Proposals for Probation*

Within my sample, a total of eleven reports contained a 'not followed' proposal for probation (all types), which had been matched with eleven reports containing a probation proposal that was followed. All of the reports that contained probation proposals that were followed made reference to a variety of personal and social factors that were considered to be linked to offending. All of these reports also set out a supervision plan that related to the personal and social problems that had been identified. Examples from three such reports where the proposal was followed are given below.

Case 4: 31-year-old male convicted of assault occasioning actual bodily harm.

Personal/social problems identified in report: relationship problems, excessive consumption of alcohol, violence, unemployment, and mental health problems. Extract from proposal: "I would therefore request that the Court give consideration to making a twelve month Probation Order, when supervision would focus on the following areas:-

- Relationship and family problems,
- Anger and stress management techniques,
- Alcohol education,
- Job search, including referral to ... Probation Service Employment Officer.

X could also be assisted to make contact with the local Community Mental Health Team if this were felt appropriate."



Case 26: 20-year-old male convicted of burglary (non-dwelling).

Personal/social problems identified in report: lack of self-esteem, relationship difficulties, unemployment, and difficulty mixing with own age-group. Extract from proposal: “Specifically, I would propose that X be made subject to an 18 month Probation Order, the aim of which would be address X’s offending behaviour by focusing on –

- i) tackling X’s need to show off in front of friends younger than him, and challenging the image which he has constructed for himself;
- ii) looking at alternative, legitimate ways of building up his self-esteem;
- iii) discussing the gains/losses of his offending and the consequences of this, both for himself and his victims;
- iv) encouraging X to pursue friendships with people of his own age and who do not offend..”

Case 34: 18-year-old male convicted of criminal damage.

Personal/social problems identified in report: excessive consumption of alcohol, difficulty controlling temper, parents’ financial problems. Extract from proposal: “In my view the most suitable disposal would appear to be a six months Probation Order, for although X has a supportive family I believe he could benefit from additional guidance. If the Court is willing to make such an Order the aim would be to help X in his intentions to avoid further offences by:

- i) Increasing his insight into why he offends;
- ii) Assisting him to develop strategies to control his temper;
- iii) Helping him to understand the effects of alcohol upon his behaviour.”

Of the eleven probation proposals that were not followed, ten of these similarly made reference to personal and social factors which were considered to be linked to offending and, again, report writers went on to outline supervision plans which dealt with the personal and social problems that had been identified. However, in eight of these ten cases the court made a combination order. This suggests that the court accepted that probation supervision was appropriate, but decided that they also wanted the offender to perform community service. Extracts from two reports where a probation proposal resulted in a combination order are given below.

Case 15: 18-year-old male convicted of common assault and breach of combination order.

Personal/social problems identified in report: bereavement, excessive consumption of alcohol, unemployment, aggressive behaviour and lack of control. Extract from proposal: “I recommend for the Court’s consideration a new two year Probation Order with a condition under Schedule 1A to undertake a course of counselling on alcohol abuse, to be arranged by the Probation Department. Such an Order would replace the existing Combination Order which could then be revoked. The aims of a new Order would include the following:

- (1) The avoidance of excessive drinking in all situations.



- (2) Counselling on handling conflict and aggression.
- (3) Advice on employment/training opportunities involving a referral to the Employment Officer employed by the Probation Department.
- (4) Liaising with X's family to help provide a network of support in respect of the aims outlined in (1) and (3) above."

In this case the outcome was a further combination order and possibly the court may have felt that having breached a combination order, to re-sentence to probation even with additional requirements would have been too lenient.

Case 19: 20-year-old male convicted of driving whilst disqualified

Personal/social problems identified in report: lack of stability in life, unemployment, and former lack of settled accommodation (although offender had recently found accommodation through a voluntary organisation). Extract from proposal: "The aims of the [probation] order would be:-

- a) To discuss X's past offending behaviour and encourage his recent more mature outlook.
- b) To arrange an appointment with the ... Probation Service Employment Officer to look at appropriate employment, hopefully enabling X to use his building skills.
- c) To arrange constructive use of leisure, training or sport.
- d) To offer support and guidance to X at this crucial time of change.

Should the Court decide that this offence is so serious and wish to impose a Combination Order, I have discussed Community Service with X and he would be agreeable. He is assessed as suitable and work is available."

Again, the outcome was a combination order, in this case possibly because the report writer did not end with the preferred sentence proposal (see section 8 above).

In two cases where probation had been proposed and reference had been made to personal/social problems, the court decided that probation was not appropriate and made a community service order instead. In one report (Case 31) personal/social problems were identified (problematic childhood, difficulties in sustaining relationships, accommodation problems, drug and alcohol problems). A detailed supervision plan was provided, with the suggestion that "a Probation Order of six months duration would appear adequate in this case". Although the length of the proposed order was likely to have appeared too lenient (the offender had been convicted of burglary (non-dwelling) and breach of a conditional discharge), it is unclear why in this instance the court decided to make a community service order instead of a probation order. In the other report (Case 33), problems were identified in relation to an obsession with motor vehicles and a proposal was made for probation with a condition to attend a special group for auto offenders. However, the report writer again failed to end with the preferred sentencing option and the final paragraph stated: "Alternatively, I discussed the



possibility of a Community Service Order. There is work available, X is suitable and willing to comply should such an Order be made.” The court outcome was a community service order.

The remaining report where a probation proposal was not followed (Case 29) failed to identify any particular personal or social problems apart from financial difficulties. The report writer described the offender as a married man with a supportive family, who was of previous good character. He was described as bitterly regretting his actions (dishonestly handling stolen goods), his offending having come about when he was in financial difficulties following the collapse of two companies of which he had been director. The impression given was that the offender was a capable person and it was stated that he was sorting out his financial problems with the help of both sets of parents and that it appeared unlikely that he would re-offend. The proposal was for a probation order “to assist X to examine his reasons for the commission of this offence and address his present financial situation”, which did not follow logically from the main body of the report. Again, the report-writer did not end with the preferred sentence proposal, but concluded “Should the Court consider a Community Service Order more appropriate, I have discussed what would be required of X. He is willing to comply with the conditions of the Order and there is work available.” In this case, perhaps not surprisingly, the court made a community service order.

### *10.2 Reports Containing Proposals for Community Service*

With regard to reports that contained community service proposals, seven reports had been selected where the proposal was not followed, which had then been matched with seven reports where the proposal had been followed. It should, however, be noted that the computer printout of community sentence disposals from which my sample was selected contained 95 proposals for community service, of which only eight proposals were not followed, thus limiting the number of such reports available for inclusion in the study.

Of the seven selected reports where the proposal was followed, only one of these made reference to any personal or social problems (Case 24) and in this case the offender was already subject to a probation order. The report writer confirmed that the problems were being addressed through probation supervision before going on to make a proposal for community service. The remaining six reports where community service proposals were followed generally made reference to such matters as a stable family background, or regular employment, as in the following examples:

Case 2: 19-year-old male convicted of assault occasioning actual bodily harm

“X lives at home with his parents. Although initially angry with him about this offence they have remained supportive and concerned. He tells me he is a self-employed landscape gardener and has been so for two years; after stoppages he take home £90.00 per week.”



Case 6: 22-year-old male convicted of burglary (non-dwelling)

“X lives at home with his parents, who are supportive of him. The defendant stated that although he is currently unemployed, his parents allow him to do manual work on their farm to keep him occupied.”

Case 18: 24-year-old male convicted of driving whilst disqualified

“X has a reasonably good employment record and at present he is painting and decorating, ... [X] visits his ex-partner and three year old son each week and is now re-establishing a good relationship with both of them. He is hoping they will eventually be together again, and with the job market improving, that he will be able to pick up more permanent work.”

Somewhat surprisingly, only one of the reports where a proposal for community service was followed made reference to there being an assessed low risk of reoffending and hence no need for probation supervision. This was Case 2, where the report stated: “In my view, X is not in need of Probation intervention as, from what he tells me, there is a low risk of him re-offending.” However, it was not until the later, 1995, version of national standards that probation officers were specifically required to include such an assessment.

The national standards that were in operation at the time these reports were written stated that if a significant amount of social work intervention was required, a probation or combination order was likely to be more appropriate than a community service order (Home Office et al, 1992, p.69). Despite this, the seven reports where the proposal for community service was not followed all made reference to personal and social problems, as detailed below.

Case 1: 18-year-old female convicted of assault occasioning actual bodily harm

Report referred to financial difficulties, feeling depressed, low self-esteem, childhood difficulties, death of father, accommodation problems and employment difficulties.

Case 5: 20-year-old male convicted of burglary (non-dwelling)

Report referred to living ‘rough’, a very disturbed childhood, difficult family relationships, communication difficulties and limited grasp of language.

Case 9: 26-year-old male convicted of theft <£500

Report referred to financial difficulties, divorce, unemployment and debts.

In the above three cases the court made a probation order *instead of* a community service order, despite the fact that the probation officer had not proposed probation supervision. However, in the four examples that follow, the court made a combination order, that is, they made a probation order *as well as* a community service order.



Case 13: 27-year-old male convicted of common assault

Report refers to excessive consumption of alcohol, short temper, unemployment, relationship difficulties and young dependent children.

Case 21: 26-year old male convicted of driving whilst disqualified

Report refers to outstanding fines totalling nearly £2,000, two failed marriages and lack of contact with children, an allergy that is aggravated by stressful situations and a nervous disposition.

Case 23: 35-year-old female convicted of burglary (dwelling)

Report refers to arguments with husband, depression, medical problems and limited finances.

Case 17: 22-year-old male convicted of driving whilst disqualified (already on combination order)

Report refers to homelessness, relationship difficulties, substantial previous convictions, drug problems and a very chaotic life.

In all of these cases the court appeared to feel that the offender would benefit from probation supervision, either instead of or as well as community service. However, this was a comparatively rare outcome and was far less common than the tendency for courts to make community service orders instead of, or as well as probation orders, as discussed in the previous section.

## **Conclusion**

Previous research has drawn attention to sentencing discrepancies, both between different courts and within the same court, and has also sought to explain the differing levels of take-up for probation officers' report proposals, frequently through statistical analyses of quantitative data. By examining the actual written reports, this small-scale study has demonstrated that many apparent sentencing discrepancies can in fact be accounted for and that in many cases a variety of sometimes quite subtle reasons can be found for why one report proposal was followed but not another.

Factors that could account for apparent sentencing discrepancies included:

- Differing levels of seriousness, due to the presence of additional offences, or matters taken into consideration, or breach of an existing order.
- Time already spent in custody on remand.
- Magistrates' inclination to sentence female offenders to probation.
- Offender's progress whilst subject to an existing order.
- Probation officer's advance knowledge of likely sentence outcome.



- The extent to which the offender expressed remorse.
- The appeal of the combination order to magistrates.
- The conclusion not ending with the preferred sentence proposal.
- Whether the tone of the report showed deference to the court.
- The identification of personal and social problems.

In addition to the above factors, there are likely to have been many other variables that were not studied and that will have affected the sentence outcome. However, these results suggest that magistrates' sentencing decisions may not be as inconsistent as has sometimes been suggested by previous research. They also demonstrate that by examining the actual written reports it is possible to identify a number of explanatory factors for apparent sentencing discrepancies that are not identifiable from statistical data alone.

In the present chapter we have considered the type of information that probation officers include in their reports and the manner in which they word this information. In the following chapter we will now turn to the larger-scale, quantitative analysis of statistical data that has been recorded in relation to Kent probation officers' reports to the courts.



**TAKE-UP RATES FOR COMMUNITY SENTENCING PROPOSALS  
Magistrates Courts 1993-97**

**Introduction**

As we saw in part 1, previous research into court take-up rates for the sentencing proposals contained in probation officers' reports has produced a variety of findings. We have also seen that researchers have sometimes failed to distinguish between the different community sentences, or only examined rates of take-up for one type of sentence, such as probation. Much of the early research tended to find fairly high levels of concordance, which may have been because probation officers were proposing the sentence the court already had in mind, or were 'second guessing' the sentence outcome. Subsequent research found differing rates of take-up, some of which were related to differing levels of 'seriousness', or to differences in offender characteristics. Following the implementation of the Criminal Justice Act 1991, it might have been expected that rates of concordance would become more consistent as a consequence of national standards and the increased use of sentencing guidelines and proposal matrices by probation officers. However, this did not in fact happen, possibly because of changes in court sentencing practice as a result of political considerations and policy decisions that were outside the immediate sentencing framework.

National standards state that pre-sentence reports are prepared 'with a view to assisting the court in determining the most suitable method of dealing with an offender'. Where the report writer concludes that a suitable community sentence could be arranged, 'the report should contain a proposal inviting the Court to consider its merits'. (Home Office et al. 1995 p. 7-11.) I therefore considered it relevant to ask whether probation officers and the courts were in agreement over what constituted a 'suitable' sentence.

We have seen that the 'what works' movement and HM Inspectorate of Probation's Evidence Based Practice Guide (Chapman and Hough 1998) encouraged probation officers to make appropriate proposals for probation with groupwork and required managers to set targets and monitor staff performance in this respect. However, my experience as a probation officer and the findings of previous research (Mair, Lloyd et al 1995, Hedderman Ellis et al 1999) suggested that rates of take-up for such proposals were likely to be low. We have also seen that the growth of measures of effectiveness within the probation service led to the monitoring of rates of take-up for probation officers' proposals (Humphrey, Pease et al 1993) and, by implication, the expectation that report proposals would be followed. I therefore believed that it was important to examine whether there were differences in rates of take-up between the different community sentence proposals and, if some types of proposal were more likely to be followed than others, to ask in what circumstances this was likely to happen.

We will therefore now turn to an examination of the quantitative data in relation to differences in levels of take-up for Kent Probation Service pre-sentence report proposals to the magistrates courts for the years 1993-1997.



The data used in this and subsequent chapters have been extracted from the Kent Probation Service PROBIS database and have been analysed using the Statistical Package for the Social Sciences (SPSS) computer programme, version 8.0. The statistical data that Kent Probation Service recorded in relation to these pre-sentence reports included the following information: court, probation team and officer code, name of offender, offence type, main offence, previous convictions, date of birth, gender, race, sentence proposal, sentence disposal, date of sentence and length of sentence, as well as information on a variety of social factors<sup>17</sup>. The majority of this information was recorded by the probation officer who wrote the pre-sentence report and was then entered by clerical staff on to the computerised records, to which I was given access.

In the present chapter we look at overall differences in rates of take-up between the different community sentence proposals, as well as differences in take-up rates according to the type of offence that has been committed.

### **1 Overall Levels of Take-up for Probation Officers' Community Sentence Proposals**

During the five years 1993-1997, Kent probation officers wrote a total of 15,764 pre-sentence reports for the magistrates' courts, or an average of approximately 3,150 reports a year. In fact, the number of reports requested by the courts rose steadily year by year, increasing from 2,635 reports in 1993 to 3,497 reports in 1997. Figures 1(a) and 1(b) below show community sentence proposal and disposal trends for the years 1993-97. The sentence disposals shown in figure 1(b) represent commencements of community service, probation, probation+ and combination orders to which published criminal statistics refer. Where numbers of proposals and numbers of disposals for a particular sentence appear similar, it should be noted that this does not necessarily mean that they refer to the same offenders. It could be, for example, that the courts made the majority of probation disposals following report proposals for a conditional discharge, or that large numbers of combination order disposals were made following report proposals for probation.

It can be seen from figures 1(a) and 1(b) that community service has consistently been both the most popular sentence proposal and the most popular sentence disposal. It can also be seen that probation with additional requirements (probation+) was more popular as a sentence proposal with probation officers than it was as a sentence disposal with magistrates, whereas the combination order was more popular with magistrates as a sentence disposal than it was with probation officers as a sentence proposal. From 1994 onwards, there was a slight decrease in the number of proposals that were made for basic probation, whereas there was a gradual increase in the number of proposals (and disposals) that were made in respect of the other three community sentences.

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<sup>17</sup> Details of the main variable categories are shown at Appendix 1. From 1995 onwards KPS also recorded information in relation to levels of 'seriousness', as well as more detailed information on social factors.



Figure 1 Community Sentence Proposals and Disposals 1993-97

Figure 1(a) Proposals

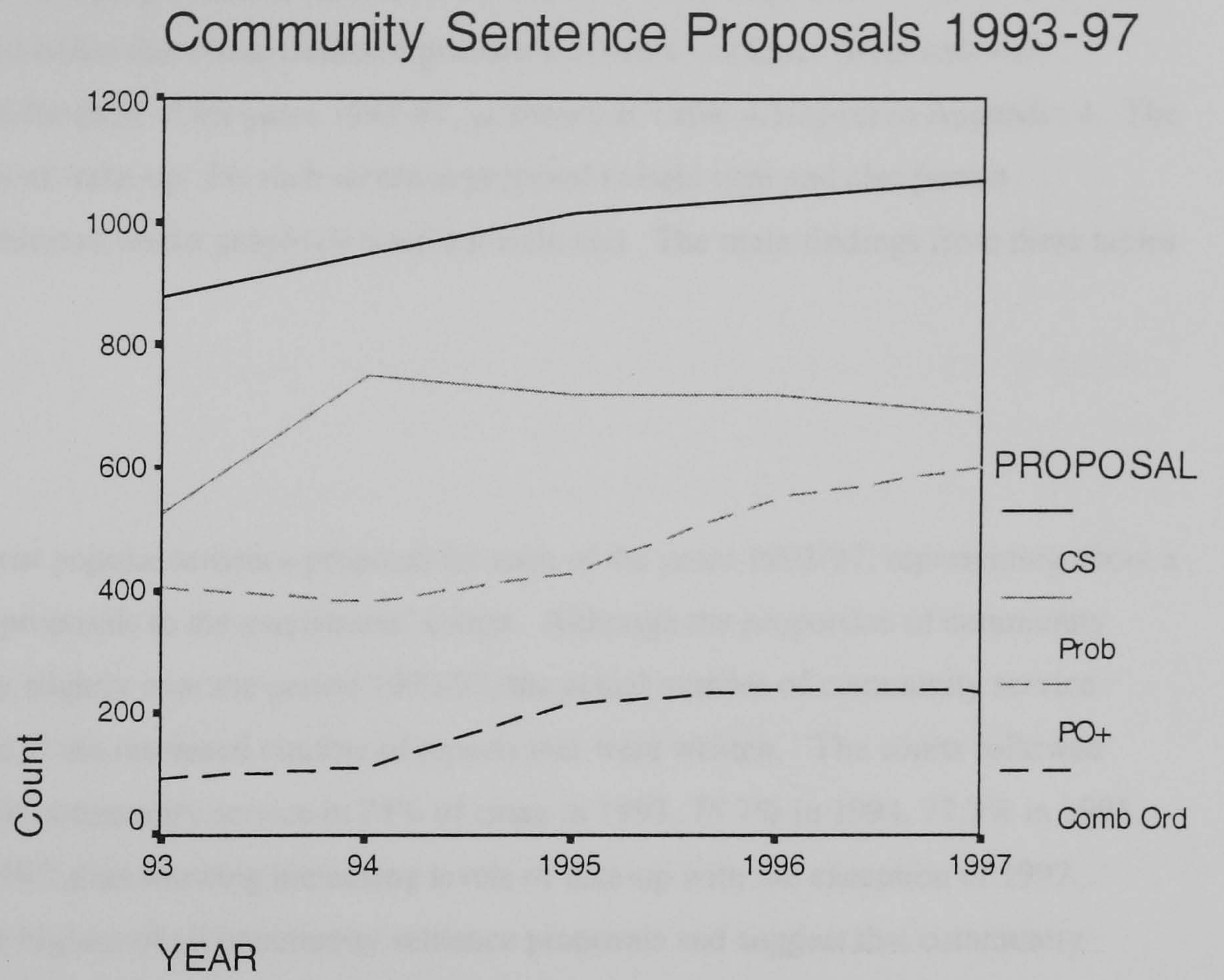


Figure 1(b) Disposals

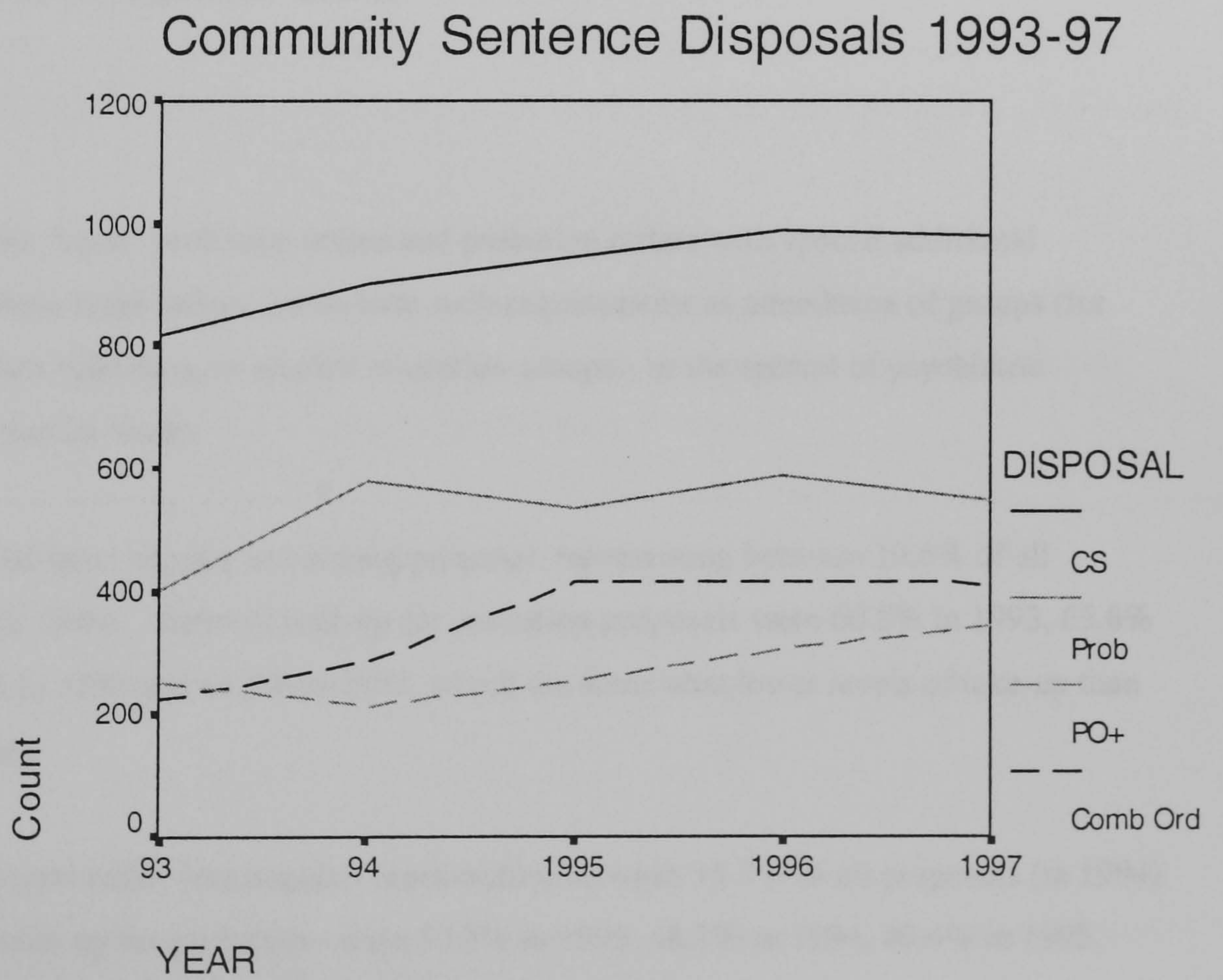




Figure 1 above shows separate charts for probation officers' proposals and magistrates' disposals. However, what was of greater interest was the relationship between proposals and disposals, including the extent to which sentence disposals were in line with proposals and what the outcome was when disposals were not in line with proposals. I therefore produced tables that cross-tabulated probation officers' sentence proposals with magistrates' sentence disposals for each of the years 1993-97, as shown at Table 4.1(a)-(e) in Appendix 4. The tables give the percentage rates of 'take-up' for each sentence proposal in bold type and also permit examination of actual court outcomes where proposals were not followed. The main findings from these tables are discussed below.

### *Community Service Orders*

Community service was the most popular sentence proposal for each of the years 1993-97, representing about a third of all probation officers' proposals to the magistrates' courts. Although the proportion of community service proposals declined very slightly over the period 1993-97, the actual number of community service proposals in fact increased, due to the increased number of reports that were written. The courts followed probation officers' proposals for community service in 73% of cases in 1993, 75.7% in 1994, 77.7% in 1995, 81.3% in 1996 and 75.8% in 1997, thus showing increasing levels of take-up with the exception of 1997. These rates of take-up were the highest of all community sentence proposals and suggest that community service is a popular sentence with the magistrates' courts.

### *Probation Orders*

Probation orders are divided into 'basic' probation orders and probation orders with special additional requirements (probation+). These latter orders can include such requirements as attendance of groups (for example anger management, auto offending, or alcohol education groups), or the receipt of psychiatric treatment, or residence in a probation hostel.

'Basic' probation was the second most popular sentencing proposal, representing between 19.6% of all proposals (in 1997) and 25% (in 1994). Rates of take-up for probation proposals were 60.8% in 1993, 65.6% in 1994, 58.8% in 1995, 67.1% in 1996 and 64.2% in 1997, which are somewhat lower levels of take-up than for community service proposals.

Probation+ sentence proposals were rather less popular, representing between 12.7% of all proposals (in 1994) and 16.3% (in 1996). Rates of take-up for probation+ were 53.7% in 1993, 48.7% in 1994, 49.4% in 1995, 51.5% in 1996 and 51.5% in 1997 and thus were consistently lower than for community service or basic probation.



### *Combination Orders*

The combination order combines community service and probation (with or without additional requirements) and was introduced in October 1992. It was originally intended for use in the Crown Courts rather than in the magistrates courts and probation officers therefore made very few combination order proposals in the magistrates courts. However, as we saw in part 1, magistrates nevertheless made a number of combination order disposals, often against the proposals contained in reports.

These previous findings are borne out by the figures obtained in the present study, which show that probation officers' proposals for combination orders accounted for between 3.6% of all proposals (in 1993) and 7.1% (in 1996). However, combination order court disposals accounted for between 8.5% of all disposals (in 1993) and 12.7% (in 1995). Take-up rates for combination order proposals were 59.6% in 1993, 64% in 1994, 69.6% in 1995, 66.9% in 1996 and in 1997 the figures were 61.2% for basic combination orders and 56.0% for combined+<sup>18</sup>. Although these rates of take-up were higher than those for probation+, it should be noted that they are based on comparatively small numbers of cases.

In order to examine whether these differences in take-up rates between the different community sentence proposals were statistically significant, I created a new variable, 'Outcome'. This had two levels: Proposal Followed, (where the sentence outcome was the same as the sentence proposal) and Not Followed, (where the sentence outcome was different from the sentence proposal). Using the outcome data, I then conducted Chi-square tests<sup>19</sup>, which showed that the differences in rates of take-up were highly statistically significant for each of the years 1993-97.

These findings are presented in figure 2 below, from which it can be seen that for each of the years studied, community service had the highest rates of take-up and probation+ the lowest rates of take-up, with take-up rates for basic probation and combination order proposals falling between the two.

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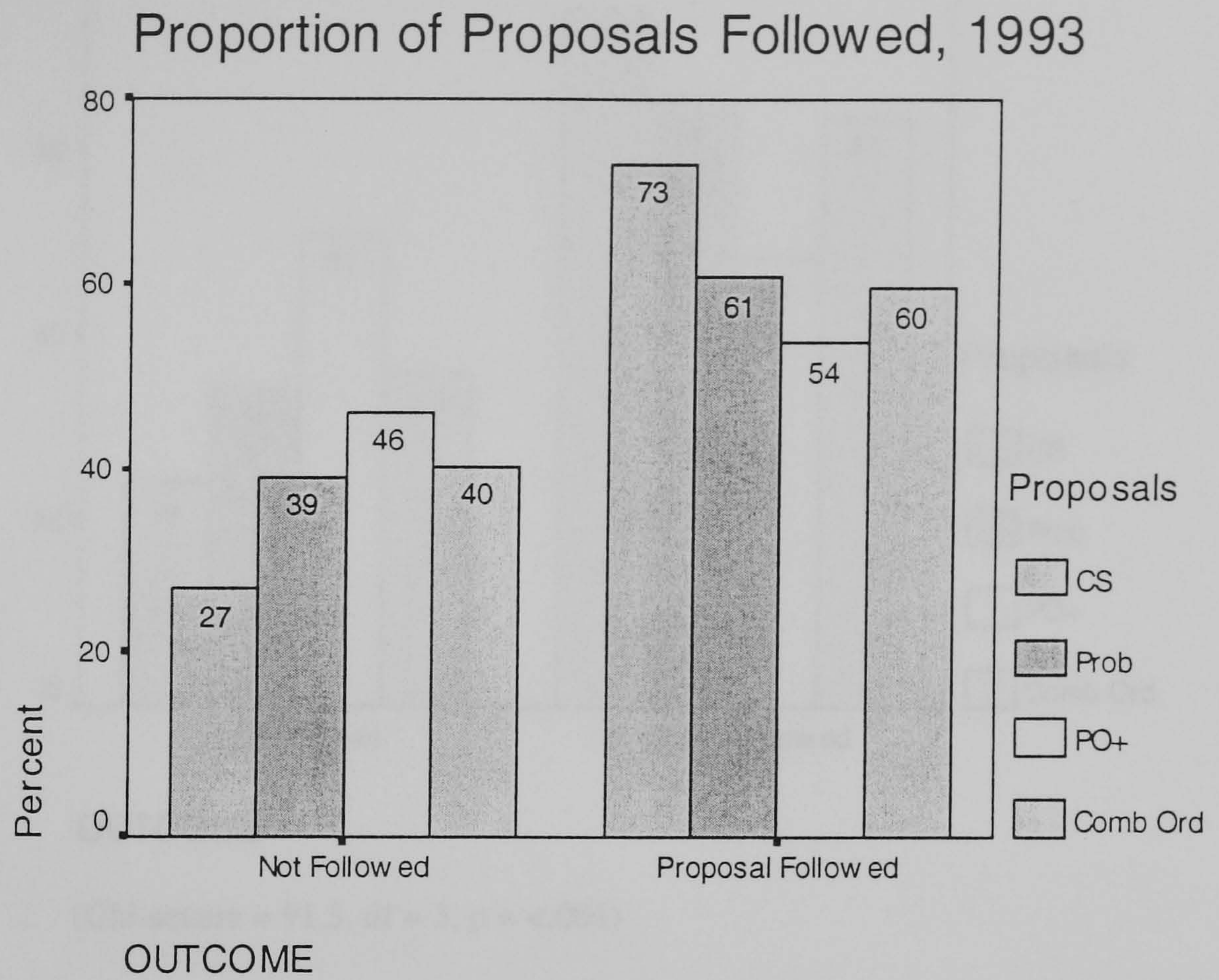
<sup>18</sup> From 1997 onwards Kent Probation Service separated combination orders into combination orders with basic probation ('combined') and combination orders with probation+ ('combined+').

<sup>19</sup> The Chi-square test is best viewed conceptually as a test about proportions. (Minium 1978) It provides a measure of the discrepancy between expected and obtained frequencies and may be used to test the significance of relationships between variables of a categorical nature. In the present study a significance level of .05 or less is regarded as significant. That is, only differences that have a probability of 5% or less of occurring by chance are regarded as significant.



Figure 2 Proportion of Community Sentence Proposals Followed, 1993-97<sup>20</sup>

Figure 2(a) 1993



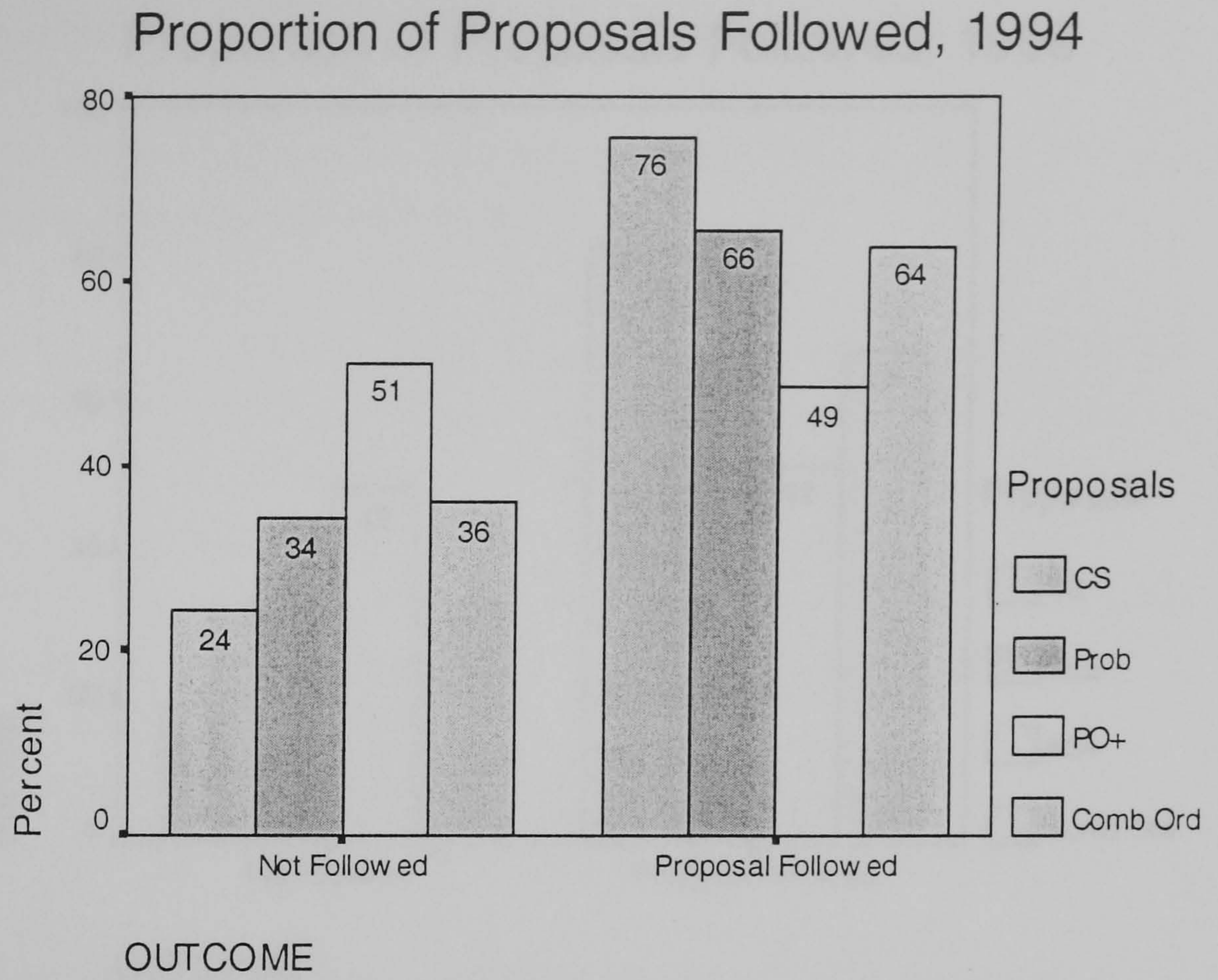
(Chi-square = 52.7,  $df^{21} = 3$ ,  $p = <.001$ )

<sup>20</sup> For 1997, the figures for combined and combined+ have been shown together to enable comparisons to be made with the four preceding years.

<sup>21</sup>  $df$  = degrees of freedom (the number of cells in the table that are free to vary).

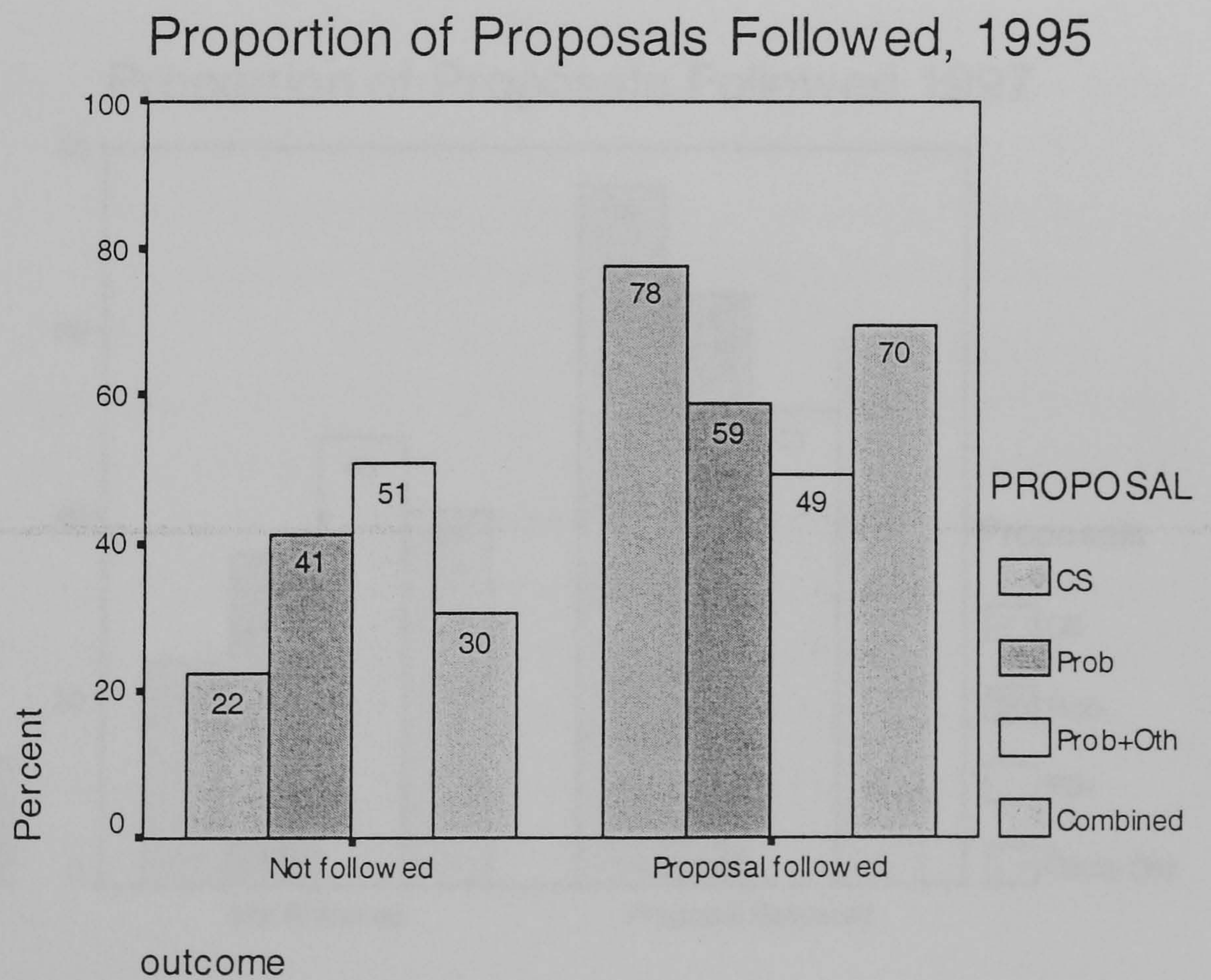


Figure 2(b) 1994



(Chi-square = 91.3, df = 3, p = <.001)

Figure 2(c) 1995



(Chi-square = 136.67, df = 3, p = <.001)



### Proportion of Proposals Followed, 1996

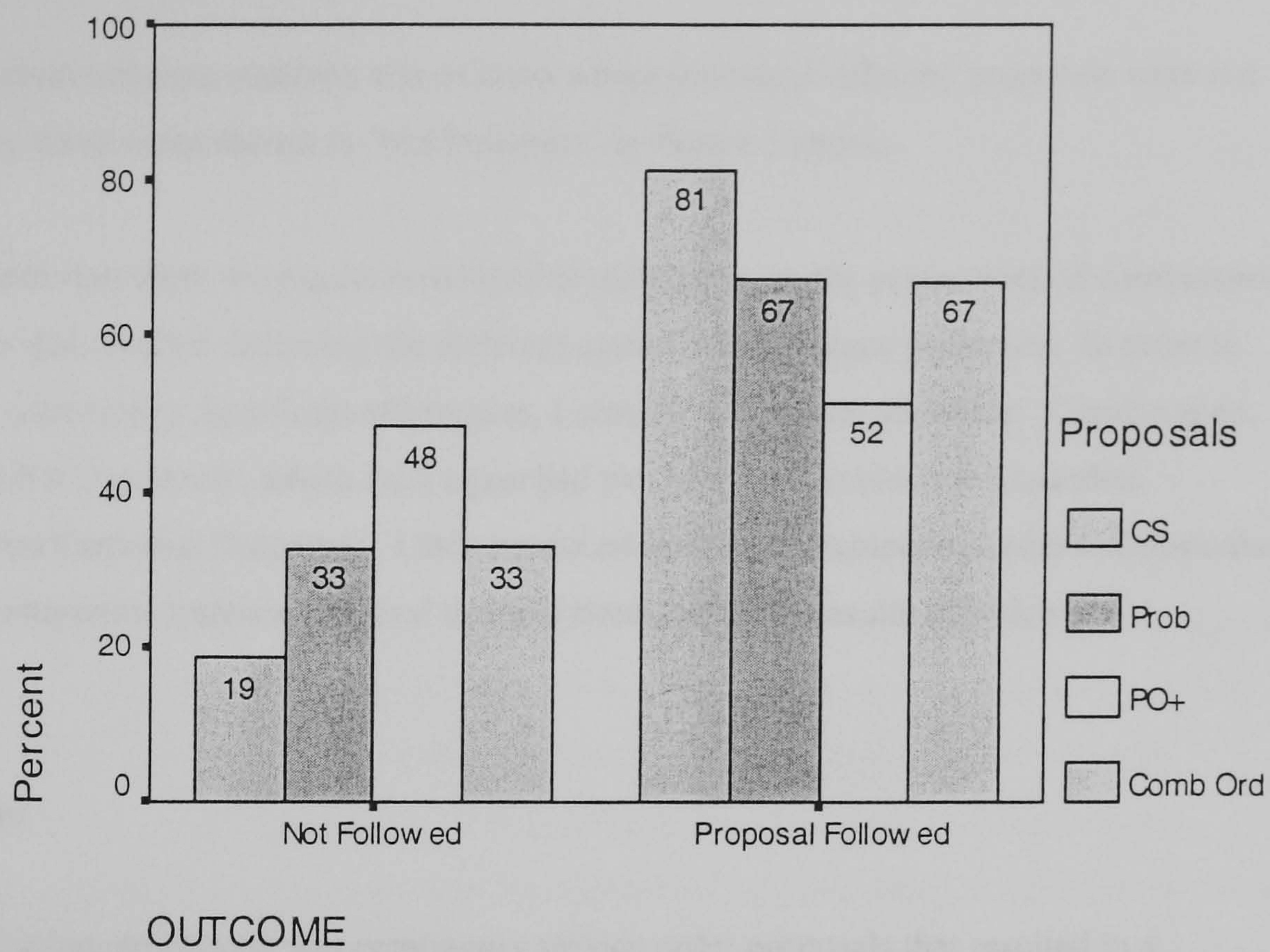


Figure 2(d) 1996

(Chi-square = 154.52, df = 3, p = <.001)

### Proportion of Proposals Followed 1997

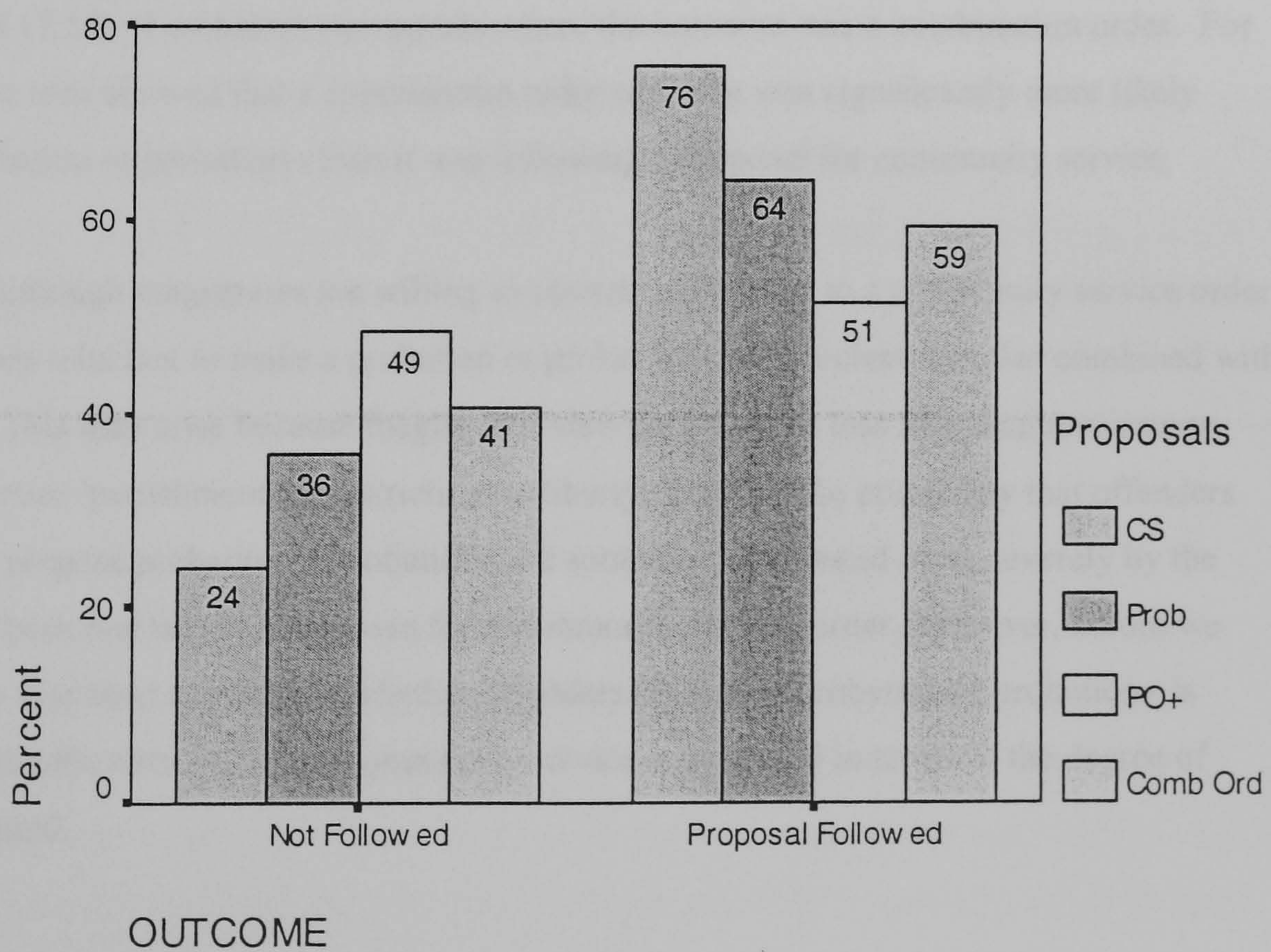


Figure 2(e) 1997

(Chi-square = 103.61, df = 3, p = <.001)



## **2 Outcomes Where Probation Officers' Community Sentence Proposals Were Not Followed**

We now examine what the actual sentence outcome was in cases where probation officers' proposals were not taken up by the courts, that is, those cases shown as 'Not Followed' in Figure 2 above.

Table 4.1 in Appendix 4 reveals that there were quite considerable differences in the proportions of combination order and custodial outcomes that resulted following the different community sentence proposals. In order to examine whether these were statistically significant differences, I created two further variables: 'Combination Order Outcomes' and 'Custodial Outcomes', which each again had two levels (Combination/Custodial Outcome and Not Combination/Custodial Outcome). I then produced tables of combination order and custodial outcomes according to the community sentence proposal that had been made, the results of which are summarised below.

### *Combination Order Outcomes*

The proportions of basic probation, probation+ and community service order proposals that resulted in a combination order disposal at court are set out in Table 4.2 in Appendix 4. This shows that for each of the years studied, magistrates were more likely to make a combination order following a proposal for basic probation or probation+, than they were to make a combination order following a proposal for community service. For example, in 1996, 3.7% of proposals for community service resulted in a combination order outcome, compared with 15.1% of probation and 17.1% of probation+ proposals where the outcome was a combination order. For each year studied, Chi-square tests showed that a combination order outcome was significantly more likely following a proposal for probation or probation+ than it was following a proposal for community service.

These findings suggest that although magistrates are willing to sentence offenders to a community service order on its own, they are sometimes reluctant to make a probation or probation+ order unless it is also combined with a community service order. This may arise because magistrates view probation as less able than community service to provide an appropriate 'punishment' or restriction on liberty. It raises the possibility that offenders for whom probation officers propose probation or probation+ are sometimes sentenced more severely by the courts than they would have been had the proposal been for a community service order. However, before we can draw this conclusion, we first need to establish whether offenders for whom probation or probation+ is proposed are comparable with offenders for whom community service is proposed in terms of the degree of sentence severity that is required.



### *Custodial Outcomes*

The proportions of community service, basic probation, probation+ and combination order proposals that resulted in a custodial sentence at court are set out in Table 4.3 in Appendix 4. This shows that for each of the years studied, a proposal for probation+ or for a combination order was more likely to result in a custodial outcome than was a proposal for community service or probation. For example, in 1995, 9.7% of community service proposals and 8.7% of probation proposals resulted in a custodial outcome at court, compared with 22.4% of probation+ proposals and 23.0% of combination order proposals that resulted in a custodial outcome. The number of community service proposals that resulted in custody varied from 6.5% in 1996 to 13.7% in 1993. Probation proposals that resulted in custody varied from 7.9% in 1996 to 13.8% in 1993. Probation+ proposals that resulted in custody varied from 18.8% in 1997 to 22.9% in 1993 and combination order proposals that resulted in custody varied from 23.0% in 1995 to 26.1% in 1994. There was thus some variation in levels of custodial outcomes across the five years of the study that is likely to be related to factors such as court attitudes towards the use of custody. Nevertheless, with the exception of 1993, a custodial outcome was between twice and three times as likely following a proposal for probation+ or for a combination order as it was following a proposal for community service or for basic probation. Chi-square tests again showed that these differences were statistically significant for each of the years of the study.

These differences in custodial outcomes could arise because probation officers make probation+ or combination order proposals for more serious offenders who are more likely to receive a custodial sentence, whereas they make community service or probation proposals for less serious offenders who are less likely to be sentenced to custody. However, even if this is the case, the high proportion of custodial sentences following probation+ and combination order proposals is still of interest because these sentences are intended to be ‘high tariff’ community-based alternatives to custody. The fact that around a quarter of such proposals resulted in custody suggests that magistrates may not regard these sentences as adequate alternatives.

### **3 Levels of Take-up for Community Sentence Proposals According to Offence Committed**

The preceding sections have looked at overall differences in sentence outcomes following the different community sentence proposals. However, this has not taken account of differences in the type of offence for which offenders were sentenced and the possibility that this was having an effect both on probation officers’ choice of sentence proposal and upon magistrates’ willingness to follow such proposals. It was possible, for example, that probation officers were making probation+ and combination order proposals for offenders who had committed more serious offences than those for whom they were proposing basic probation or community service. This could then account for the higher incidence of custodial outcomes following proposals for the two former sentences. In this section of the chapter we therefore turn to an examination of differences in court rates of take-up for probation officers’ community sentence proposals according to the type of offence committed.



Home Office (and Probation Service) statistical records divide offences into different offence types, such as violence against the person (VAP), burglary, motor theft, theft/handling, fraud, criminal damage, motoring, drugs, etc. The two main types of offence for which Kent probation officers wrote pre-sentence reports for the magistrates courts from 1993-97 were theft/handling and motoring (other than motor theft). Taken together, these two offence types accounted for between 37.2% (in 1997) and 49% (in 1996) of all reports.

However, these offence type categories are very broad and do not in fact give a very good indication of the comparative seriousness of the offence(s) covered by the reports. A better indication of this is given by the data that are recorded in relation to the actual main offence that has been committed. For main offence committed, around eighty different categories are provided, as listed in Appendix 1. These categories contain information that is considerably more specific than the 'offence type' information. For example, for the offence of theft, the value of the goods is specified (less than £500, £500-£2,000, or more than £2,000), as well as whether the theft is more serious because it is from an OAP, or from an employer. This information therefore provides a better indication of whether the differences in take-up rates between the different sentence proposals can be accounted for by differences in the offences for which offenders are being sentenced.

The five main offences for which Kent probation officers prepared pre-sentence reports for the magistrates courts during each of the years 1993-97 are listed below. It should, however, be noted that the numbers of reports prepared in relation to these main offences are likely to be affected by factors arising at earlier stages of the criminal justice system. For example, the apparent fall in the number of reports on the offence of assault occasioning actual bodily harm and the apparent increase in the number of reports on the lesser offence of common assault may have been due to changes in Crown Prosecution Service charging standards. Similarly, increases in the number of reports on the offences of driving with excess alcohol and driving whilst disqualified could be due to Police targeting of drink drivers, leading to more drivers being disqualified and thus potentially able to commit the offence of driving whilst disqualified. It should also be noted that these offences all relate to cases where magistrates have requested a probation report prior to sentence. More minor offences (where a report is not necessary) and more serious offences (which go to Crown Court) are therefore excluded.

*Main Offences for which Kent Probation Officers Prepared Pre-sentence Reports, 1993-97*

Main Offence	No.	%	Cum %
1993			
Theft <£500 pounds	449	17.0	17.0
Driving whilst disqualified	364	13.8	30.9
Going equipped/burglary <1000 pounds	237	9.0	39.8
Driving with excess alcohol	235	8.9	48.8
Actual Bodily Harm	119	4.5	53.3



1994			
Theft <£500 pounds	553	18.4	18.4
Driving whilst disqualified	387	12.9	31.3
Going equipped/burglary <1000 pounds	203	6.8	38.0
Driving with excess alcohol	200	6.7	44.7
Actual Bodily Harm	124	4.1	48.8
1995			
Theft <£500 pounds	654	20.1	20.1
Driving whilst disqualified	484	14.9	35.0
Driving with excess alcohol	358	11.0	46.0
Going equipped/burglary <1000 pounds	166	5.1	51.1
Common Assault	135	4.2	55.3
1996			
Theft <£500 pounds	695	20.6	20.6
Driving whilst disqualified	481	14.2	34.8
Driving with excess alcohol	377	11.2	46.0
Fraud <£2000 pounds	174	5.2	51.2
Common assault	159	4.7	55.9
1997			
Theft <£500 pounds	716	20.5	20.5
Driving whilst disqualified	475	13.6	34.1
Driving with excess alcohol	380	10.9	44.9
Common assault	182	5.2	50.1
Actual Bodily Harm	139	4.0	54.1

It can be seen that the two most common offences for which the magistrates courts requested a pre-sentence report were theft under five hundred pounds and driving whilst disqualified. These are two very different types of offence, with driving whilst disqualified regarded as a considerably more serious offence than theft <£500. Taken together, they accounted for between 30.8% and 45.4% of all reports between the years 1993 and 1997. Probation officers thus prepared more reports on theft <£500 and driving whilst disqualified than they did on any other type of offence<sup>22</sup>.

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<sup>22</sup> The finding that driving whilst disqualified is such a common offence suggests that offenders routinely disregard court orders not to drive and, as a consequence, drive without insurance and thus place other road users at risk. This has implications in relation to Section 40 of the Crime (Sentences) Act 1997, which allows courts to impose a period of driving disqualification on fine defaulters, although at the time of writing, this was only available in some areas.



We will now look at comparative rates of take-up for community sentence proposals for these two different offences.

#### *Theft <£500*

Cross-tabulations of probation officers' sentence proposals with magistrates' sentence disposals for the offence of theft <£500 showed that both probation officers and magistrates appeared to regard either basic probation or community service as a suitable sentence. This is in contrast to the findings in section (1) above, when we saw that, overall, community service was consistently more popular as a sentence proposal and as a sentence disposal than was basic probation.

For the offence of theft <£500, basic probation accounted for between 26.8% (in 1997) and 30.6% (in 1994) of all sentence proposals, whilst basic probation disposals varied between 23.2% (in 1995) and 27.7% (in 1994) of all disposals. Rates of take-up for proposals for basic probation varied between 67.0% in 1995 and 73.3% in 1996. Community service was also popular, accounting for between 22.1% (in 1994) and 29.1% (in 1996) of sentence proposals, with community service disposals varying between 22.8% (in 1995) and 27.2% (in 1996). Rates of take-up for community service proposals varied between 70.4% in 1993 and 82.7% in 1996 and were thus somewhat higher than rates of take-up for basic probation.

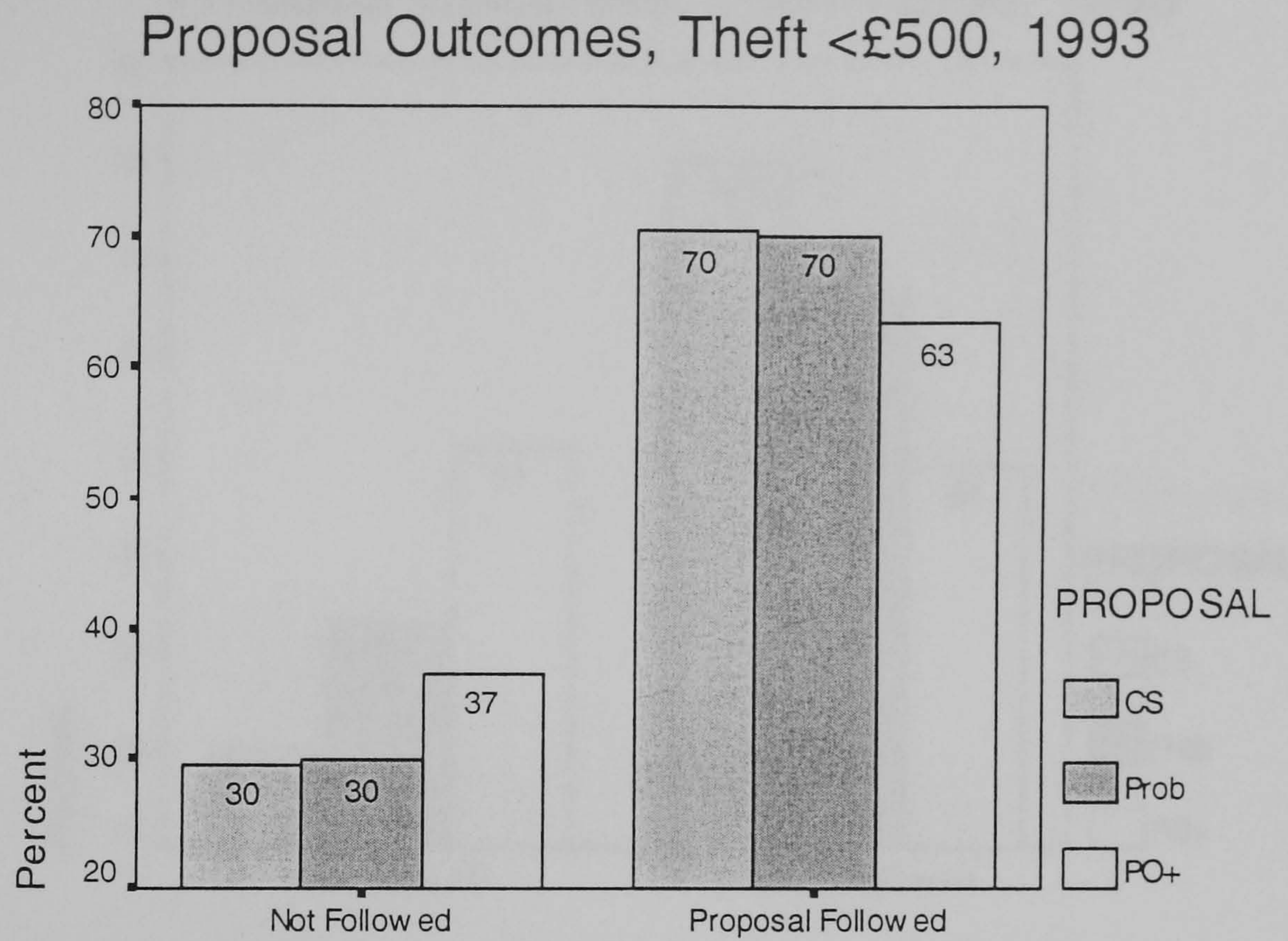
Probation+ and combination orders were less popular for this offence. Probation+ accounted for between 7.8% (in 1994) and 10.9% (in 1997) of all sentence proposals, with probation+ disposals varying between 5.1% (in 1994) and 7.6% (in 1993). Rates of take-up for probation+ varied between 49.2% in 1995 and 63.4% in 1993. Combination orders only accounted for between 1.6% (in 1993) and 3.4% (in 1995) of sentence proposals, but accounted for between 6.5% (in 1994) and 11% (in 1995) of sentence disposals. Rates of take-up varied between 54.5% (in 1994) and 81.0% (in 1997), although these figures are based on a very small number of cases.

Figure 3 below shows the proportion of community sentence proposals for the offence of theft <£500 that were taken up by the courts during the years 1993-97, from which combination orders have been excluded because of the low number involved. It can be seen that in 1994, 1995 and 1996 a proposal for community service was more likely to be taken up by the courts than a proposal for basic probation, which in turn was more likely to be taken up than a proposal for probation+. Chi-square tests showed that these were statistically significant differences. However, in 1993 and 1997 a proposal for probation was equally as likely to be followed as a proposal for community service, when it also appeared that these two proposals were more likely to be taken up by the courts than a proposal for probation+. However, Chi-square tests showed that outcome differences in 1993 and 1997 were not statistically significant.



Figure 3 Proportion of Community Sentence Proposals Followed, Theft <£500, 1993-97<sup>23</sup>

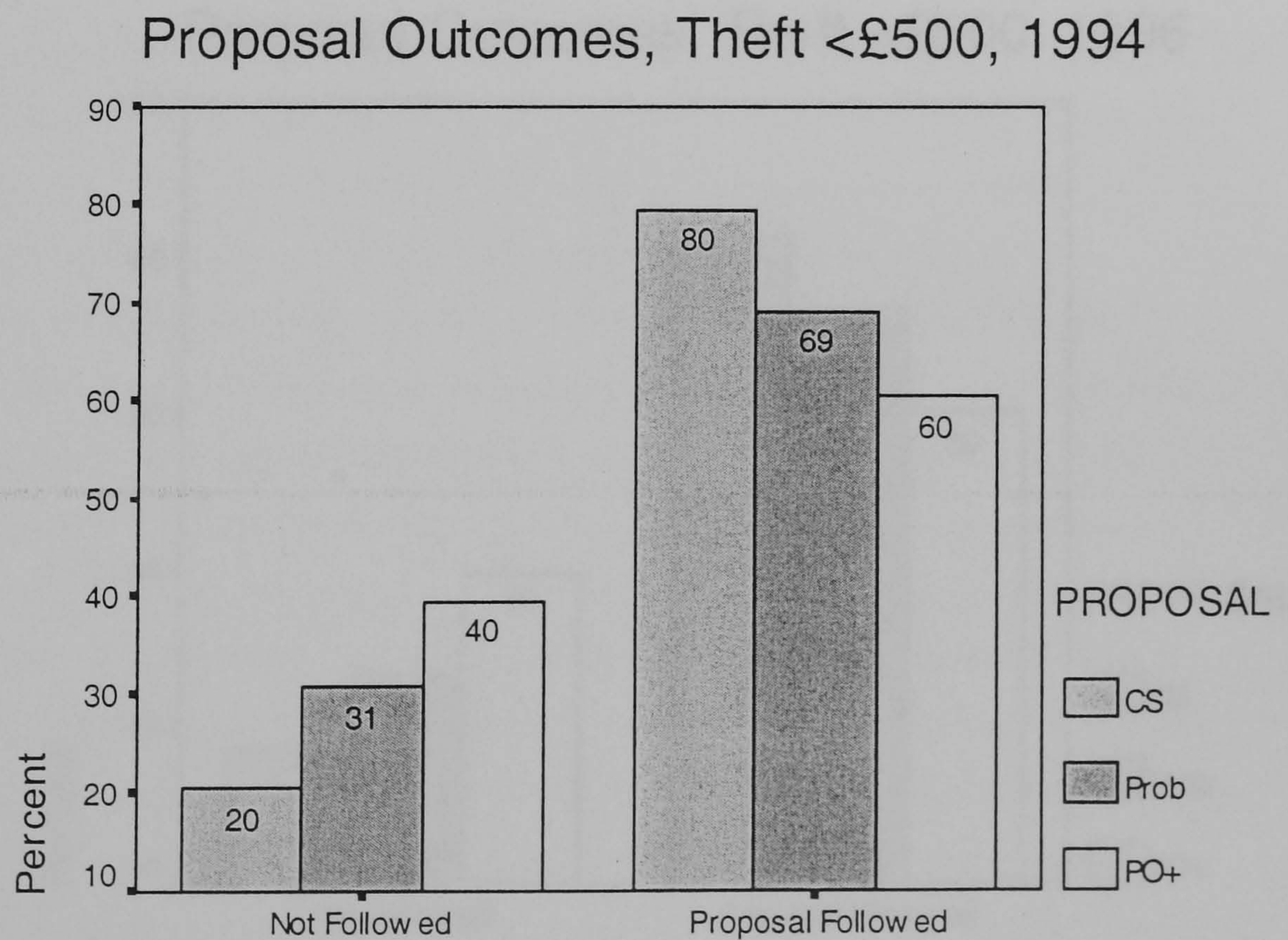
Figure 3(a) 1993



OUTCOME

Chi-square = .769, df = 2, p = .681 (Not Significant)

Figure 3(b) 1994



OUTCOME

Chi-square = 6.87, df = 2, p = .03

<sup>23</sup> Combination Order proposals have been excluded because of low numbers.



Figure 3 (c) 1995

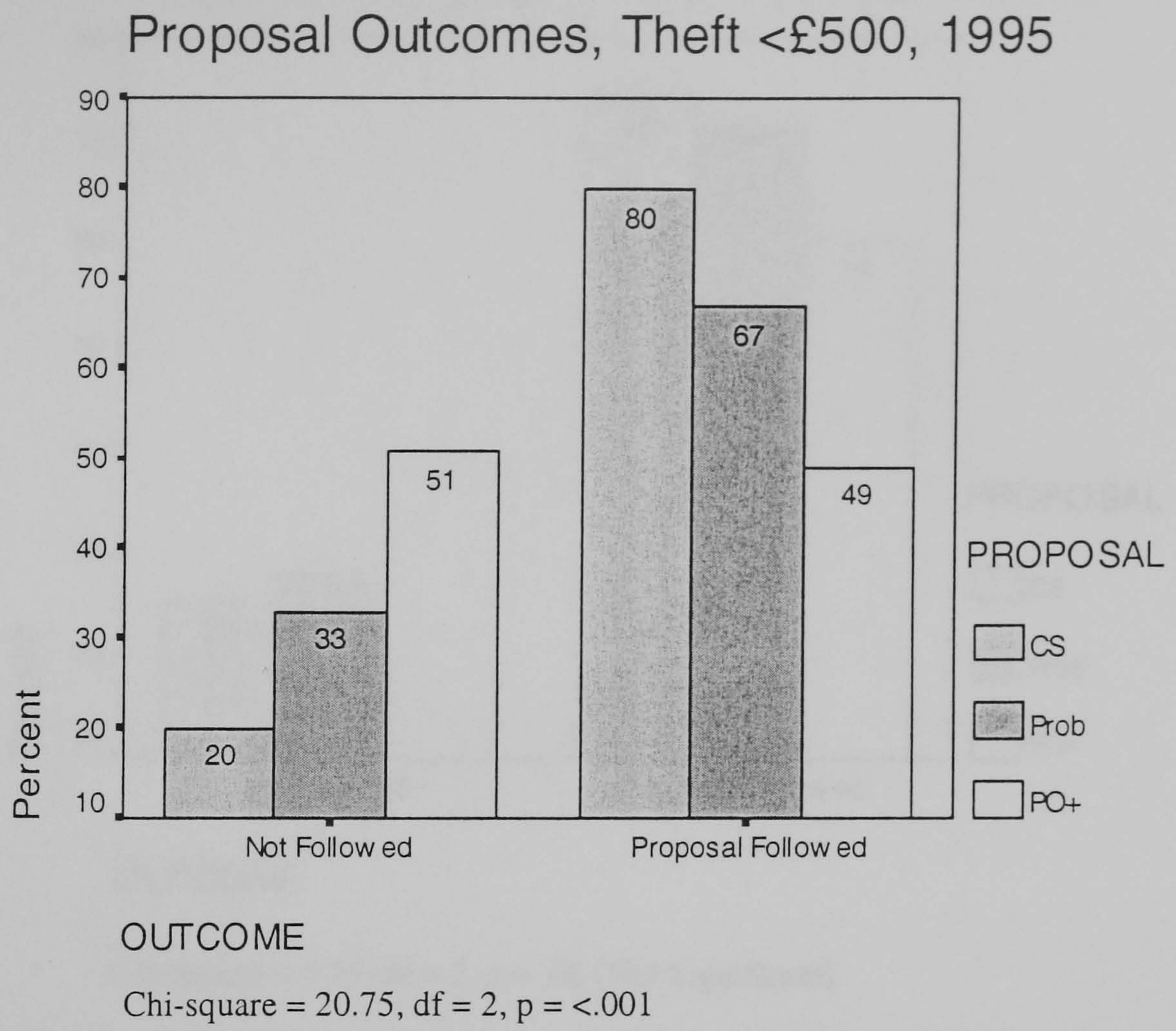
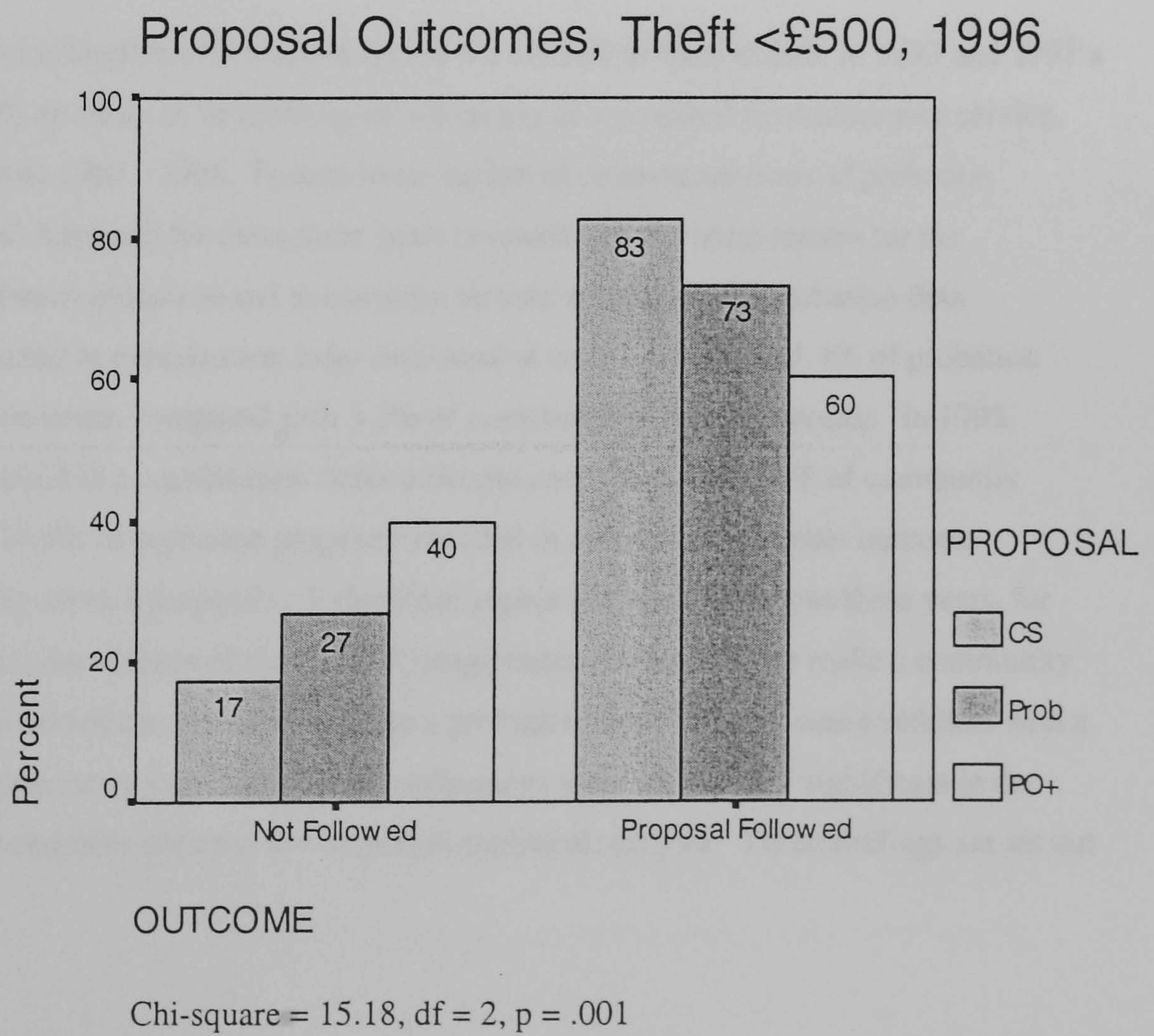


Figure 3(d) 1996





### Proposal Outcomes, Theft <£500, 1997

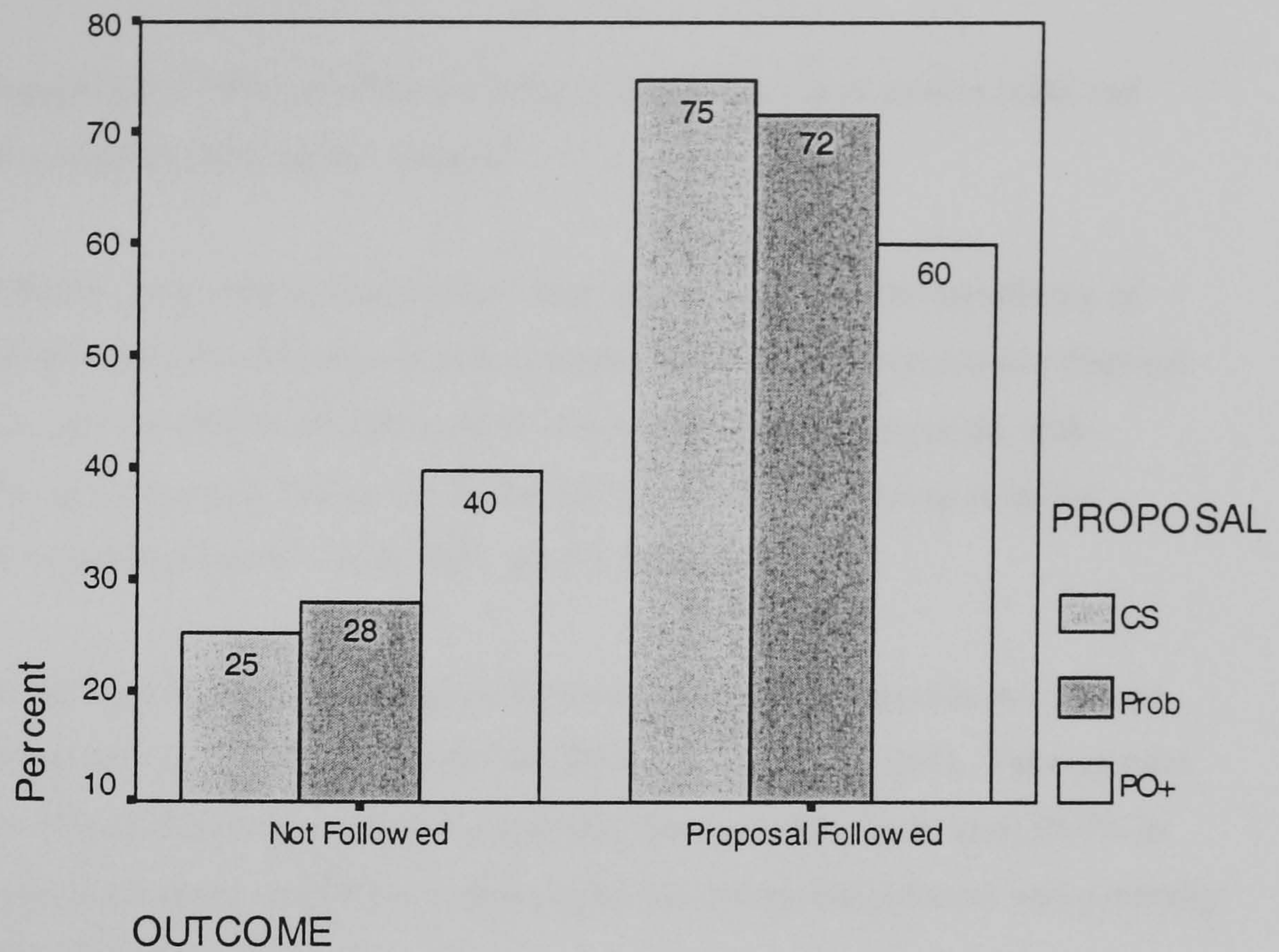


Figure 3(e) 1997

Chi-square = 5.75, df = 2, p = .06 (Not Significant)

We can therefore conclude that for offenders who had committed the offence of theft <£500, in 1993 and 1997 a proposal for probation was equally as likely to be taken up by the courts as a proposal for community service. However, this was not the case from 1994 - 1996. Further examination of cross-tabulations of probation officers' proposals by magistrates' disposals for these three years revealed that the main reason for the differences in rates of take-up between probation and community service was that more probation than community service proposals resulted in combination order outcomes at court. In 1994, 12.4% of probation proposals resulted in a combination order, compared with 3.3% of community service proposals. In 1995, 19.0% of probation proposals resulted in a combination order outcome compared with 6.3% of community service proposals. And in 1996, 14.9% of probation proposals resulted in a combination order outcome compared with 4.5% of community service proposals. It therefore appeared that during these three years, for offenders who had committed the same offence of theft <£500, magistrates were willing to make a community service order on its own, but were sometimes reluctant to make a probation order unless it was combined with a community service order. Chi-square tests showed that these differences were statistically significant in the years 1995 and 1996, but in 1994 numbers were too low to permit statistical analysis. These findings are set out in Table 4.4 in Appendix 4.



### *Driving Whilst Disqualified*

The offence of driving whilst disqualified involves offenders driving in contravention of a court order and without any insurance cover and is regarded as a serious offence.

Cross-tabulations of probation officers' proposals by magistrates' disposals showed that for the offence of driving whilst disqualified community service was both a popular community sentence proposal and disposal. Community service accounted for between 30.6% (in 1996) and 43.1% (in 1993) of all proposals, with community service disposals varying between 25.5% (in 1997) and 38.7% (in 1993). Take-up rates for proposals for community service varied between 67.7% in 1994 and 78.4% in 1995.

Basic probation was considerably less popular and accounted for between 8.6% of all proposals in 1997 and 18.1% in 1994, with probation disposals varying between 4.4% (in 1997) and 11.6% (in 1994). Take-up rates for probation proposals were also considerably lower than for community service and ranged from 39.0% in 1997 to 57.1% in 1994. Where probation proposals were not taken up by the courts, the outcome was generally a custodial sentence, or a combination order.

With regard to probation with additional requirements, this was likely to involve attendance at a group specifically for auto offenders, with the aim of reducing the risk of re-offending. This was therefore a fairly popular sentence with probation officers, who made proposals for probation+ in 30.4% of cases in 1996, which was only slightly lower than the 30.6% of proposals that were made for community service in that year. However, take-up rates for proposals for probation+ were low, ranging from 31.1% in 1997 to 43.2% in 1996, with probation+ accounting for between 8.5% of all disposals in 1993 and 13.7% of all disposals in 1996. Where probation+ proposals were not taken up by the courts, again the outcome was generally a custodial sentence or a combination order.

Combination order proposals accounted for between 4.9% of all proposals in 1994 and 12.1% of all proposals in 1996. However, combination orders were rather more popular with magistrates, accounting for between 11.3% of all disposals in 1993 and 17.7% of all disposals in 1996 and, as stated above, combination orders were often made following probation officers' proposals for probation or probation+. Take-up rates for combination order proposals varied considerably between 48.1% (in 1997) and 72.7% (in 1995)

Figure 4 below shows the proportion of community sentence proposals that were taken up by the courts in relation to the offence of driving whilst disqualified for the years 1993-97. Chi-square tests showed that the differing rates of take-up according to community sentence proposal were highly statistically significant for each of the years 1993-97.



Figure 4 Proportion of Community Sentence Proposals Followed, Driving Whilst Disqualified, 1993-97

### Proportion of Proposals Followed, 1993

#### Disqualified Driving

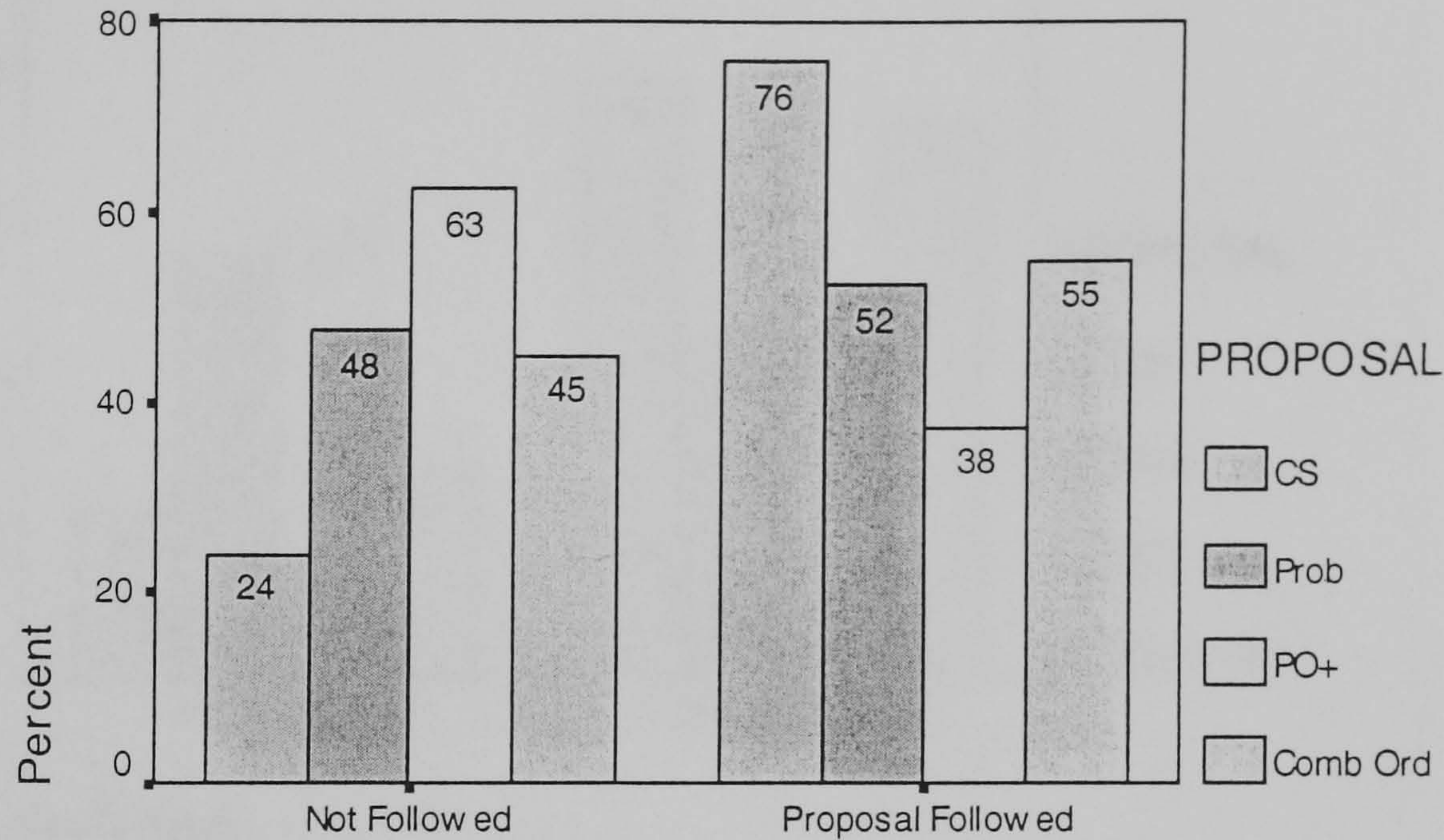


Figure 4(a) 1993

#### OUTCOME

Chi-square = 34.59, df = 3, p = <.001.

### Proportion of Proposals Followed, 1994

#### Disqualified Driving

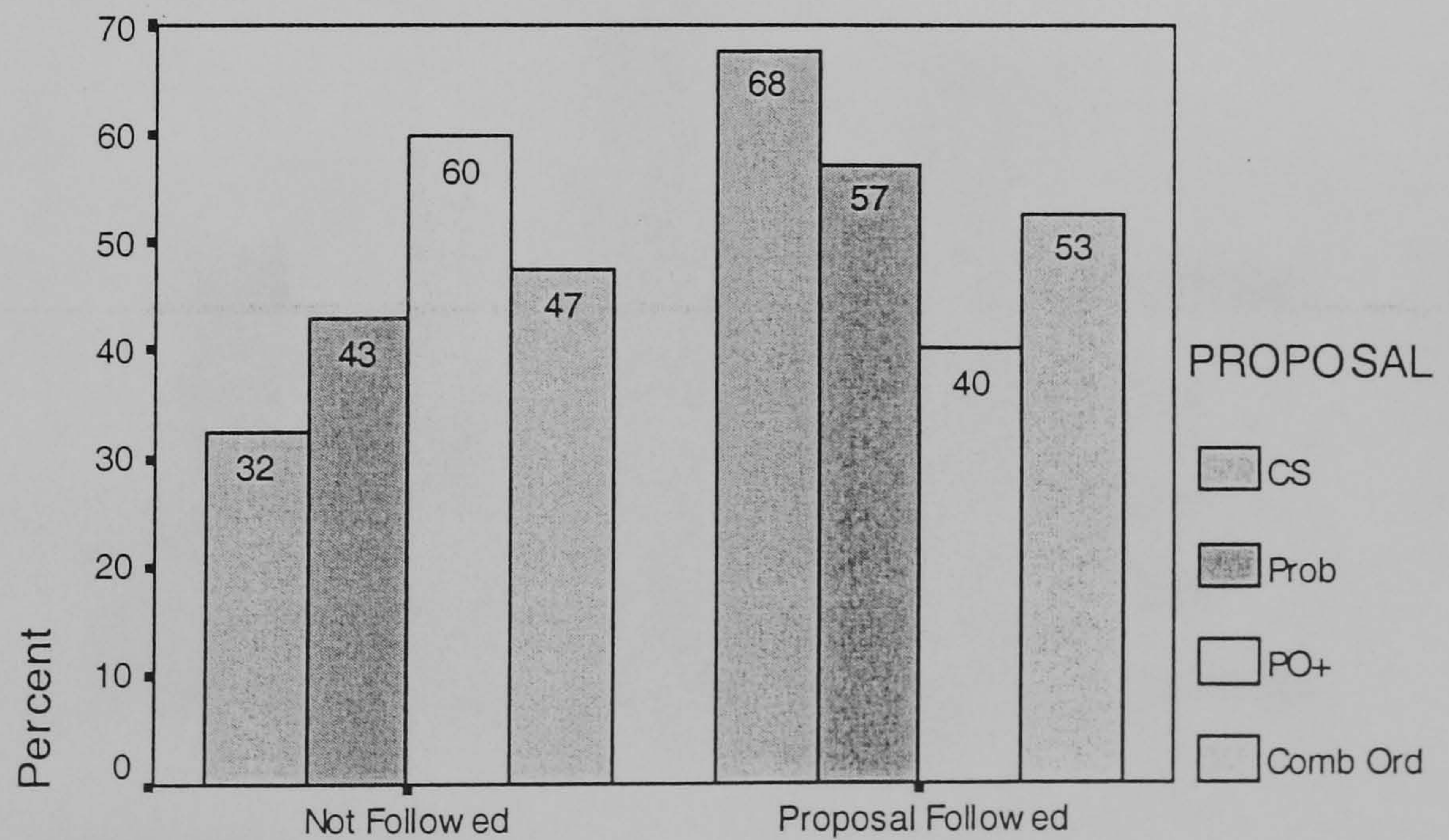


Figure 4(b) 1994

#### OUTCOME

Chi-square = 17.06, df = 3, p = .001



## Proportion of Proposals Followed, 1995

### Disqualified Driving

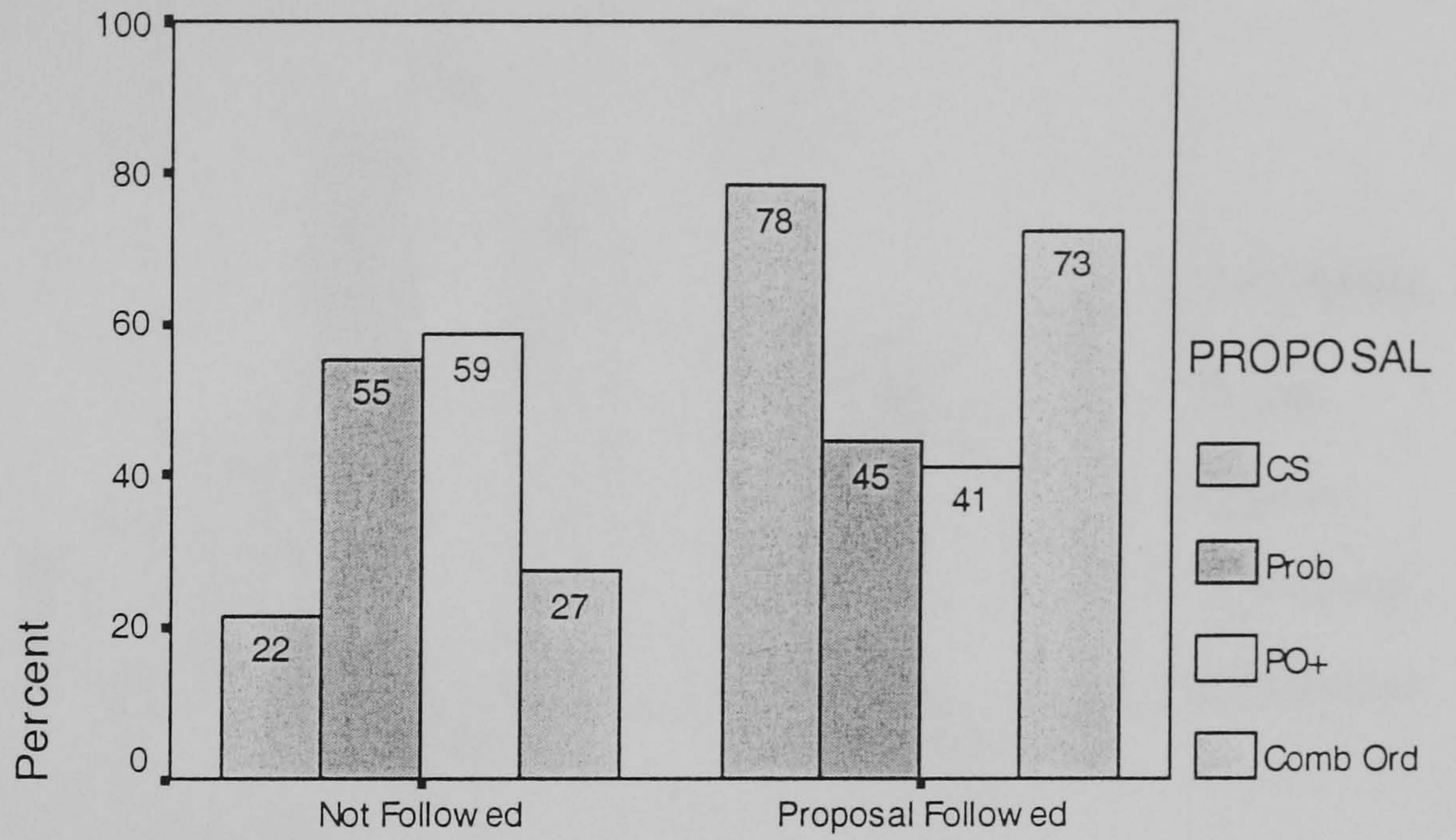


Figure 4(c) 1995

### OUTCOME

Chi-square = 50.66, df = 3, p = <.001

## Proportion of Proposals Followed, 1996

### Disqualified Driving

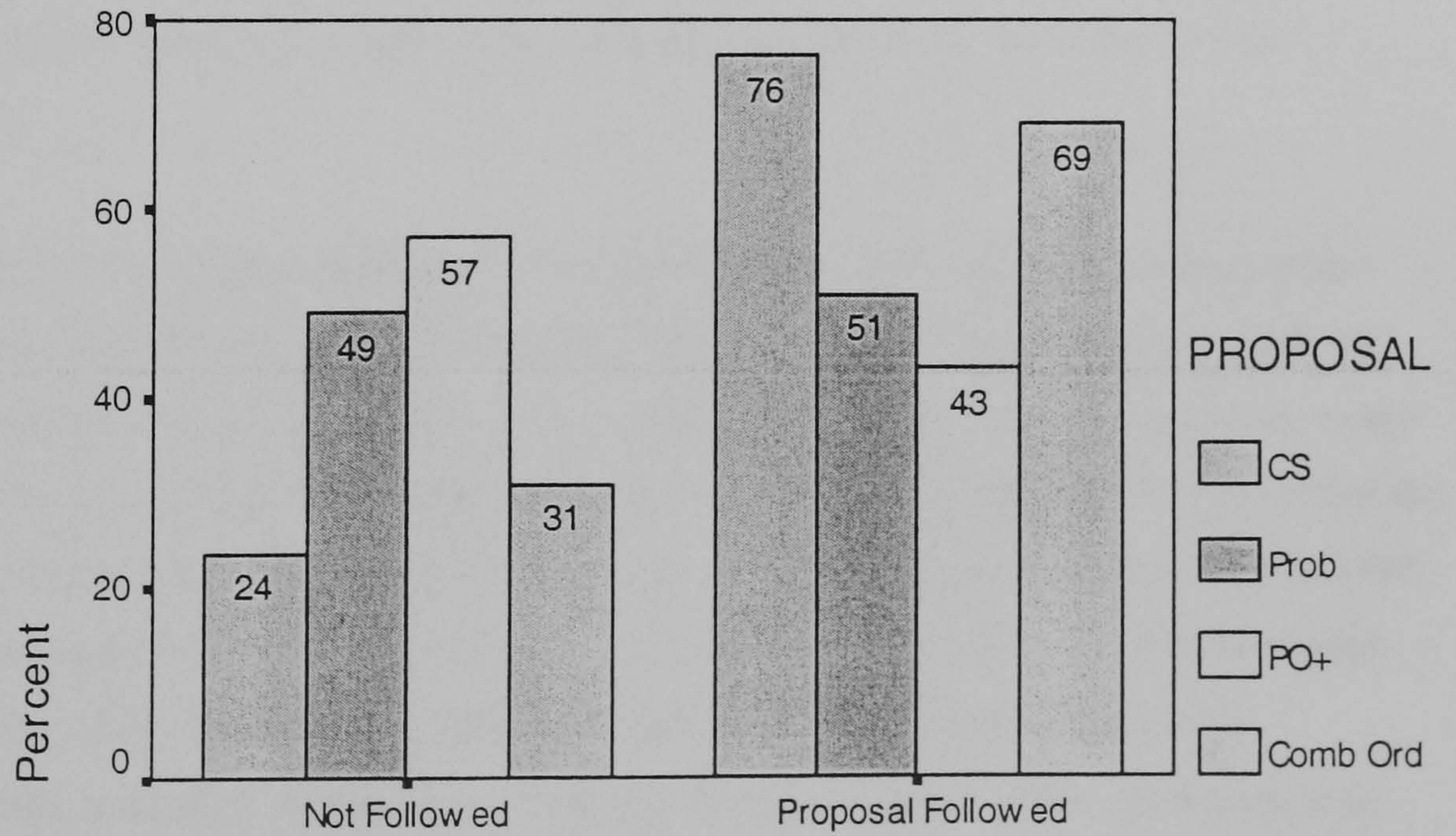


Figure 4(d) 1996

### OUTCOME

Chi-square = 37.11, df = 3, p = <.001.



## Proportion of Proposals Followed, 1997

### Disqualified Driving

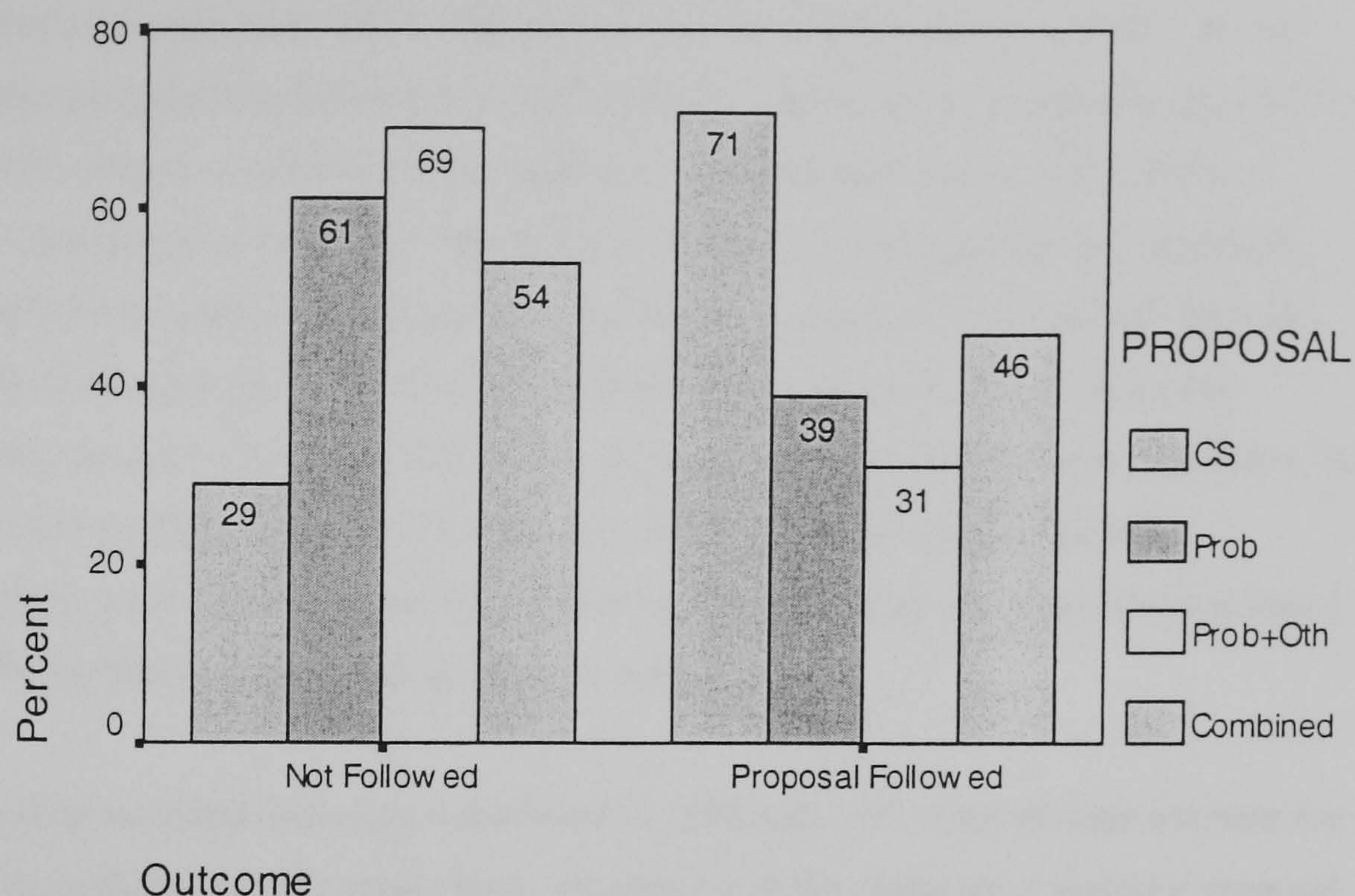


Figure 4(e) 1997

Chi-square = 48.15, df = 3, p = <.001.

The above findings show that for disqualified driving offenders, for every year studied, a proposal for community service was the most likely to be taken up by the courts and a proposal for probation+ was the least likely to be taken up. Take-up rates for probation and combination orders fell between the two, although there was some variation across the five years of the study. These results suggest that there is some conflict between probation officers' and magistrates' views with regard to the suitability of probation+ as a sentence for disqualified driving offenders.

If we look at sentence outcomes where probation officers' proposals were not taken up by the courts, cross-tabulations of sentence proposals by sentence disposals show that in many cases where the probation officer made a proposal for probation or probation+ the outcome was a combination order. However, the courts rarely made a combination order following a proposal for community service. Table 4.5 in Appendix 4 shows that the proportion of community service proposals that resulted in a combination order ranged from just 2.0% in 1996 to 5.8% in 1997, whereas the proportion of probation+ proposals that resulted in a combination order ranged from 15.5% in 1995 to 25.9% in 1997. Proposals for basic probation similarly resulted in quite high proportions of combination order outcomes, ranging from 16.9% in 1994 to 27.7% in 1995. Chi-square tests showed that the differences between the proportions of community service, probation and probation+ proposals that resulted in a combination order outcome at court were statistically significant for each year with the exception of 1993, when numbers were too low to permit statistical analysis. Disqualified driving offenders for whom probation or probation+ is proposed thus appear to receive more severe sentences than disqualified driving offenders for whom community service is proposed.



Cross-tabulations of proposals by disposals also revealed that the courts passed a large number of custodial sentences for the offence of driving whilst disqualified, with custody representing between 25.8% of all sentences in 1993 and 33.7% of all sentences in 1997. Chi-square tests showed that differences between the proportions of community sentence proposals that resulted in a custodial outcome were statistically significant only in the years 1995 and 1997, as set out in Table 4.6 in Appendix 4. This shows that in 1995, 32.0% of probation+ proposals resulted in a custodial sentence compared with 14.4% of community service proposals, with basic probation and combination order proposals each accounting for around 23% of custodial outcomes. In 1997, 38.5% of combination order proposals, 35.6% of probation+ proposals and 29.3% of probation proposals resulted in a custodial sentence, compared with 17.5% of community service proposals. However, in 1993 and 1994 combination order numbers were too low to permit statistical analyses and in 1996 no statistically significant differences were found between the different community sentence proposals in terms of the proportion of proposals that resulted in a custodial sentence at court.

Thus although some differences in custodial outcomes were found in 1995 and 1997, rates of imprisonment for the offence of driving whilst disqualified were generally high, irrespective of the community sentence proposal that had been made, demonstrating the serious view that is taken of this offence.

## **Conclusion**

In the first part of this chapter we looked at all types of offences for which Kent probation officers prepared pre-sentence reports for the magistrates' courts from 1993-97. For each year studied, it was found that community service was the sentencing proposal most likely to be followed by magistrates and probation+ was the sentencing proposal least likely to be followed. Magistrates were also more likely to make a combination order following a proposal for basic probation or probation+, than they were to make a combination order following a proposal for community service. These findings suggest that although magistrates are willing to sentence offenders to a community service order on its own, they are sometimes reluctant to make a probation or probation+ order unless it is also combined with a community service order. This may arise because magistrates view probation as less able than community service to provide an appropriate 'punishment' or restriction on liberty. However, it raises the possibility that offenders for whom probation officers propose probation or probation+ are sometimes sentenced more severely by the courts than are offenders for whom community service has been proposed.

It was also found that for each year of the study, probation+ and combination order proposals were more likely to result in a custodial sentence than were basic probation or community service proposals. There was, however, some variation across the five years of the study that is likely to be related to factors such as court attitudes towards the use of custody. Nevertheless, with the exception of 1993, a custodial outcome was between twice and three times as likely following a proposal for probation+ or for a combination order as it was



following a proposal for community service or for basic probation. These differences in custodial outcomes could arise because probation officers make probation+ and combination order proposals for more serious offenders who are more likely to receive a custodial sentence, whereas they make community service and probation proposals for less serious offenders who are less likely to be sentenced to custody. However, even if this is the case, the high proportion of custodial sentences following probation+ and combination order proposals is still of interest because these sentences are intended to be 'high tariff' community-based alternatives to custody. The fact that around a quarter of such proposals resulted in custody suggests that magistrates may not regard these sentences as adequate alternatives.

In the second part of the chapter we looked at proposal, disposal and take-up differences, based on the two offences of theft under five hundred pounds and driving whilst disqualified.

For the offence of theft <£500, both probation officers and magistrates appear to favour either basic probation or community service as a suitable sentence. This is in contrast to the findings for offences overall, when community service was considerably more popular than basic probation, both as a sentence proposal and as a sentence disposal. Probation+ proposals were comparatively few, as were combination order proposals, and the courts passed comparatively few custodial sentences for this offence. From 1994 – 1996 a proposal for community service was found to be more likely to be taken up than was a proposal for probation, which was linked with the finding that more probation than community service proposals resulted in combination order outcomes at court. However, in 1993 and 1997 a proposal for probation was equally as likely to be taken up by the courts as was a proposal for community service.

With regard to disqualified driving offenders, community service was found to be the most popular sentence proposal and disposal, whereas basic probation was a less popular sentence proposal and disposal. Probation+ was popular with probation officers as a sentence proposal, but was less popular as a sentence disposal with magistrates and rates of take-up for probation+ proposals were low. Combination orders, on the other hand, were more popular with magistrates than with probation officers, with many combination orders made following proposals for probation or probation+. Differences in take-up rates between community sentencing proposals for disqualified driving offenders were found to be highly statistically significant for each of the years 1993-97, with a proposal for community service the most likely to be taken up by the courts and a proposal for probation+ the least likely to be taken up. These results suggest that there is some conflict between probation officers' and magistrates' views with regard to the suitability of probation+ as a sentence for disqualified driving offenders. In contrast to the theft offenders, a large number of custodial sentences were passed for the offence of driving whilst disqualified, emphasising the serious view that is taken of this offence.

This chapter has shown that there were overall differences in court rates of take-up for the different community sentence proposals, as well as differences in the proportion of such proposals that resulted in combination order



and custodial outcomes. In order to control for the possibility that such differences were due to the type of offence that had been committed, further analyses were carried out based on the two offences of theft <£500 and driving whilst disqualified. Differences in rates of take-up for community sentence proposals continued to be found, particularly in relation to the offence of driving whilst disqualified. However, the actual offence committed is not the only factor that is likely to affect probation officers' sentence proposals and magistrates' sentence disposals, as we have seen in part 1. It is to an examination of some of these other factors that we now turn in the following chapters.



**FACTORS THAT MAY AFFECT SENTENCING DECISIONS (1)**

**Gender of Offender**

**Introduction**

The actual offence that has been committed is not the only factor that is likely to affect probation officers' sentencing proposals and magistrates' sentencing disposals. Previous research outlined in part 1 showed that another important factor is the gender of the offender. Research has suggested that probation is the preferred sentence for females and community service the preferred sentence for males. It has also been found that males are more likely to receive a custodial sentence or a fine than are females and that females are more likely to be discharged than are males. However, it has been pointed out that some of these differences can be accounted for by the fact that male and female offenders tend to commit different types of offence and have different criminal records. (Moxon 1988, Hedderman and Gelsthorpe 1997, McIvor 1998, Flood-Page and Mackie 1998.) Research into gender differences in sentence outcomes has, however, generally failed to consider whether or not these outcome differences may have their origins in the pre-sentence reports that are prepared by probation officers.

In the present chapter we therefore examine gender differences in community sentence proposals and disposals, when I anticipated that probation officers and magistrates would tend to select probation supervision for female offenders, whereas they would tend to select community service for males. We also examine gender differences in court rates of take-up for probation officers' proposals, when I expected that probation proposals would be more likely to be taken up for female offenders, whereas community service proposals would be more likely to be taken up for male offenders.

As in the previous chapter, statistical analyses have been carried out using data relating to Kent Probation Service pre-sentence reports to the magistrates courts for the years 1993-97. It should, however, be noted that considerably more reports were prepared on male offenders than on female offenders. This varied from nearly eleven times as many reports on males as on females in 1993 to approximately seven times as many in 1997. This has an effect on the comparative frequency with which males and females appear in the statistical records and means that in some circumstances the number of female offenders was too low to permit statistical analysis.



## 1 Community Sentence Proposals and Disposals for Male and Female Offenders

Figure 1 below shows community sentence proposal and disposal trends for the years 1993-97 for male and female offenders<sup>24</sup>.

Since male offenders account for the majority of pre-sentence reports that are written, the graphs for community sentence proposals and disposals for male offenders follow a very similar pattern to the graphs in figure 1 in the previous chapter, which showed proposals and disposals for offenders overall. For male offenders, community service was consistently the most popular community sentence proposal and disposal. Basic probation and probation+ were somewhat less popular and it can be seen that there was a slight decrease in the number of basic probation proposals that were made for male offenders after 1994 that was linked with slight increases in proposals for probation+ and combination orders. The graphs for male offenders also demonstrate the differences between probation officers' sentence proposals and magistrates' sentence disposals in relation to probation+ and combination orders, as discussed in the previous chapter. Thus probation officers made more proposals for probation+ than for combination orders, whereas (with the exception of 1993) magistrates made more combination order disposals than probation+ disposals.

For female offenders a very different pattern emerges, with basic probation consistently more popular as a community sentence proposal and disposal than community service, although the gap appears to be narrowing. As for males, there was a fall in basic probation proposals in 1995, which was linked with slight increases in proposals for probation+ and for community service. However, unlike male offenders, basic probation proposals for female offenders increased again in 1996. Differences between probation officers and magistrates in respect of proposals and disposals for probation+ and combination orders can also be seen. Thus in 1994, probation officers made a similar number of proposals for probation+ and combination orders, but the courts made more combination order disposals, whereas in 1996 the courts made a similar number of probation+ and combination order disposals although probation officers had made more probation+ proposals. However, the numbers of female offenders included in these two latter categories were very low indeed.

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<sup>24</sup> It should be noted that the four graphs are not drawn to the same scale.



Figure 1 Community Sentence Proposals and Disposals for Male and Female Offenders 1993-97

Figure 1(a) Male Proposals

Community Sentence Proposals  
Males, 1993 - 97

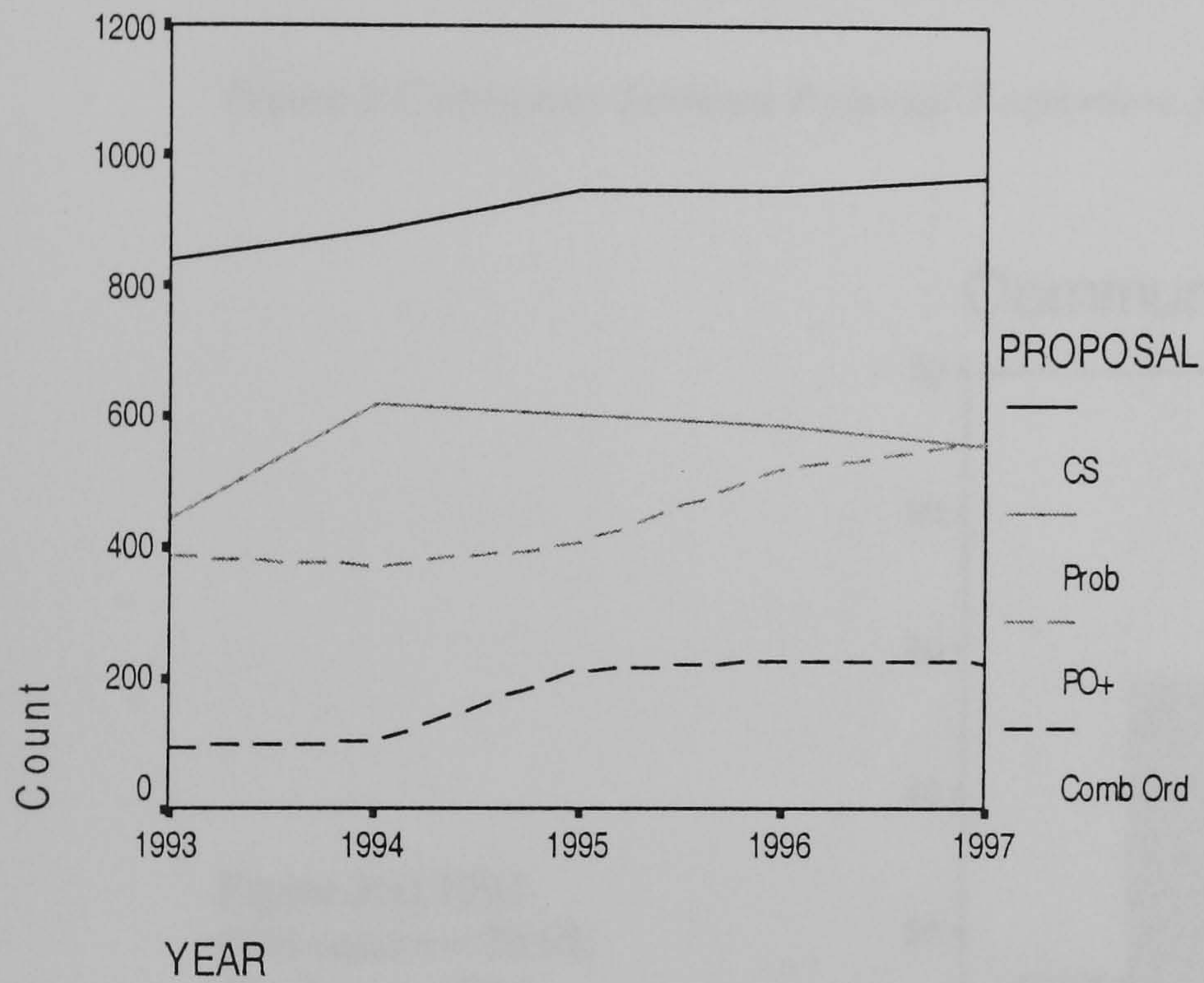


Figure 1(b) Male Disposals

Community Sentence Disposals  
Males, 1993 - 97

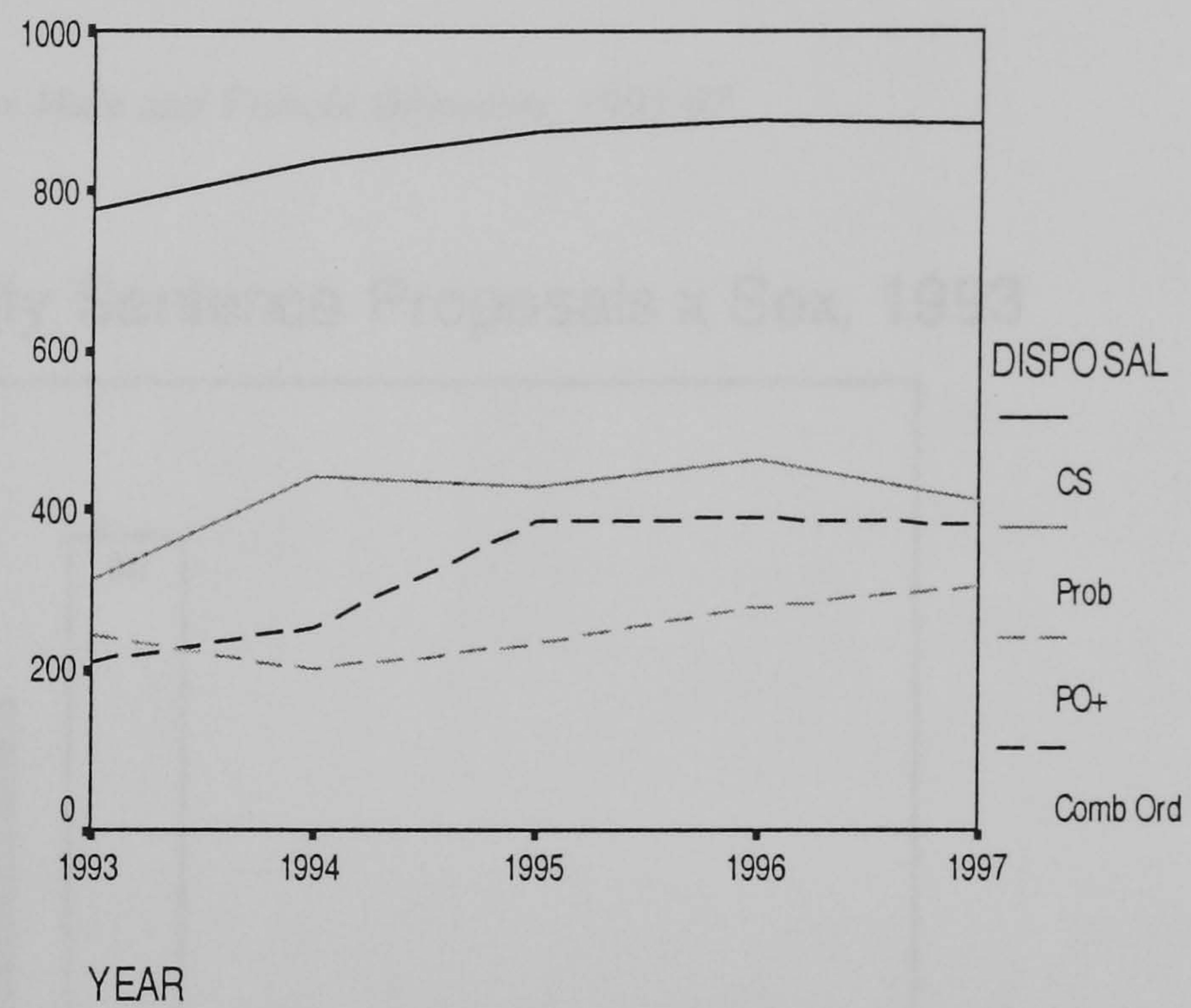


Figure 1(c) Female Proposals

Community Sentence Proposals  
Females, 1993 - 97

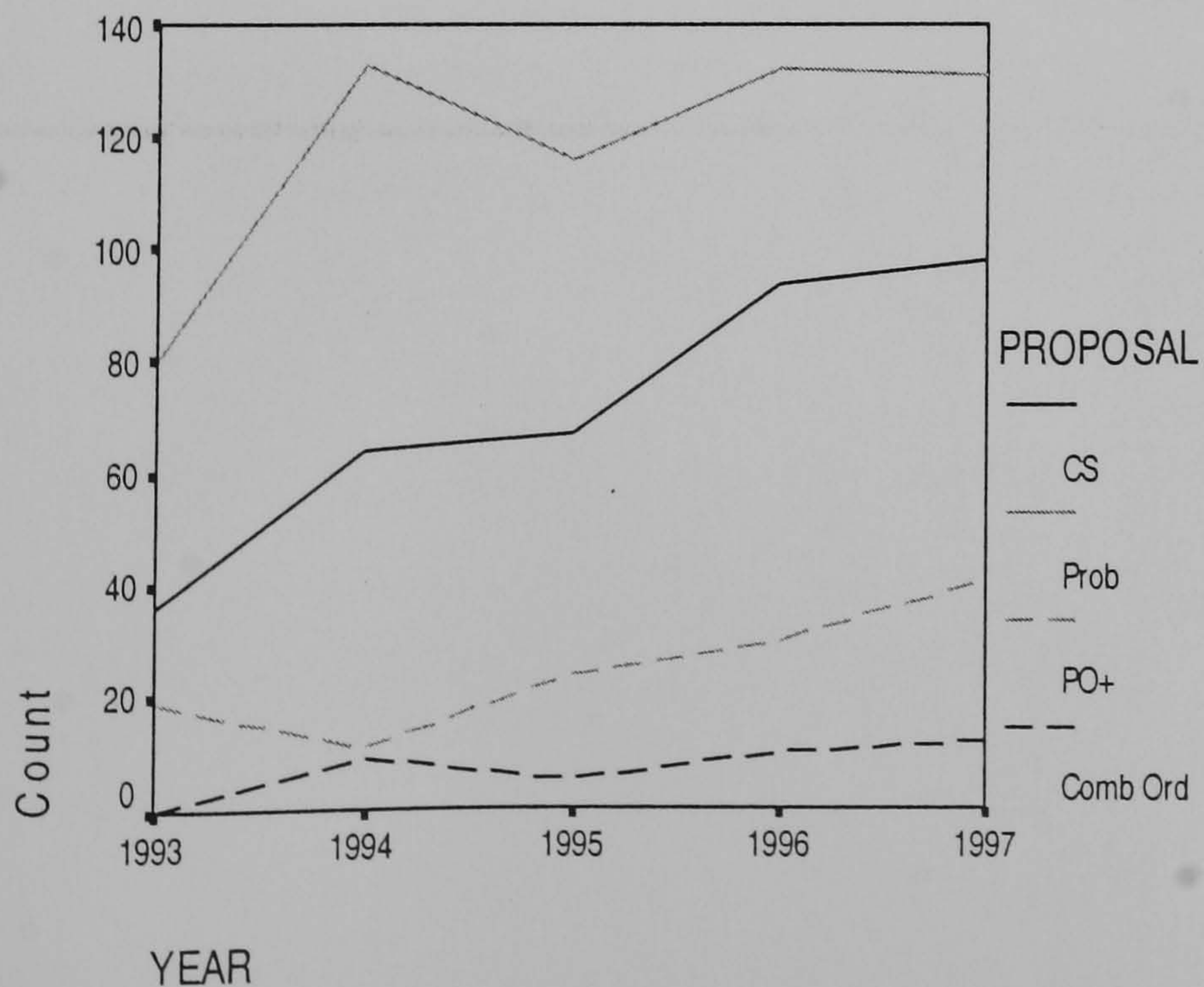
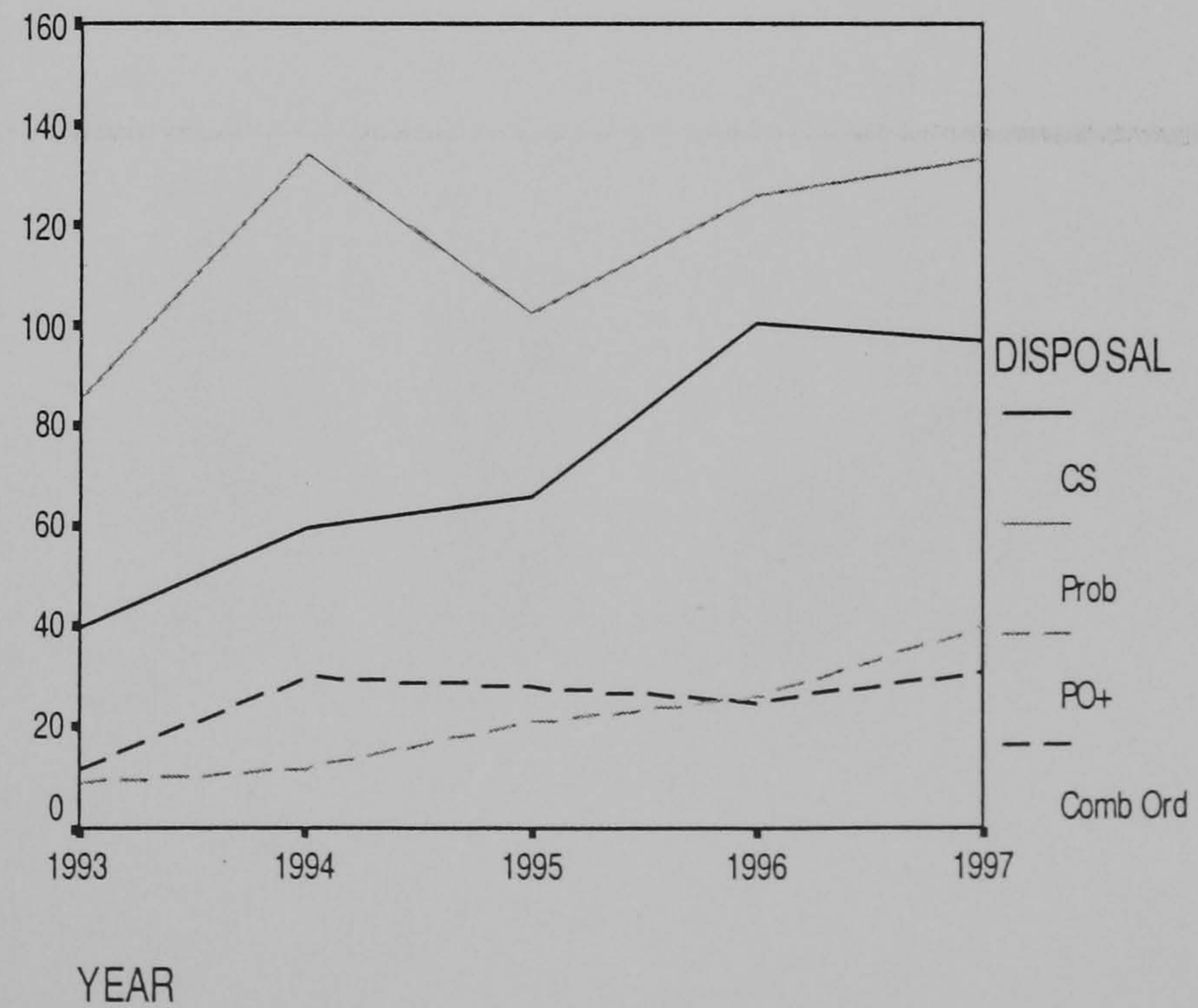


Figure 1(d) Female Disposals

Community Sentence Disposals  
Females, 1993 - 97





The above graphs give community sentence proposals and disposals for male and female offenders in terms of sentence frequencies. We now examine proportions of community sentence proposals for male and female offenders, as shown in figure 2 below. For each of the years studied, the charts demonstrate that proportionately more proposals for basic probation were made for female offenders than for male offenders, whereas proportionately more proposals for community service, probation+ and combination orders were made for male offenders than for female offenders. Chi-square tests showed that these differences between male and female offenders were statistically significant for each of the years 1993-97.

Figure 2 Community Sentence Proposal Proportions for Male and Female Offenders, 1993-97

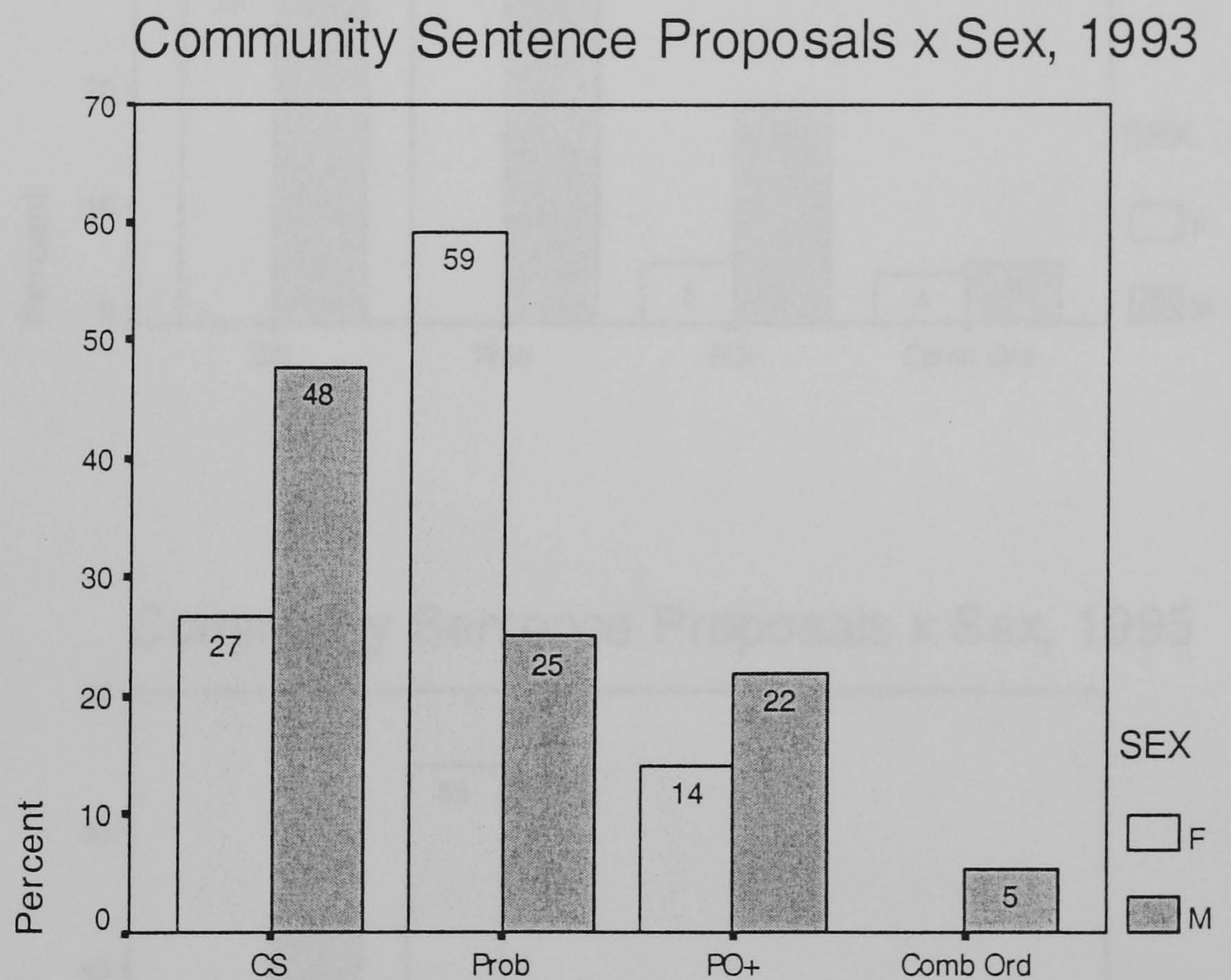


Figure 2(a) 1993  
(Chi-square = 76.02,  
df = 3, p = <.001)



### Community Sentence Proposals x Sex, 1994

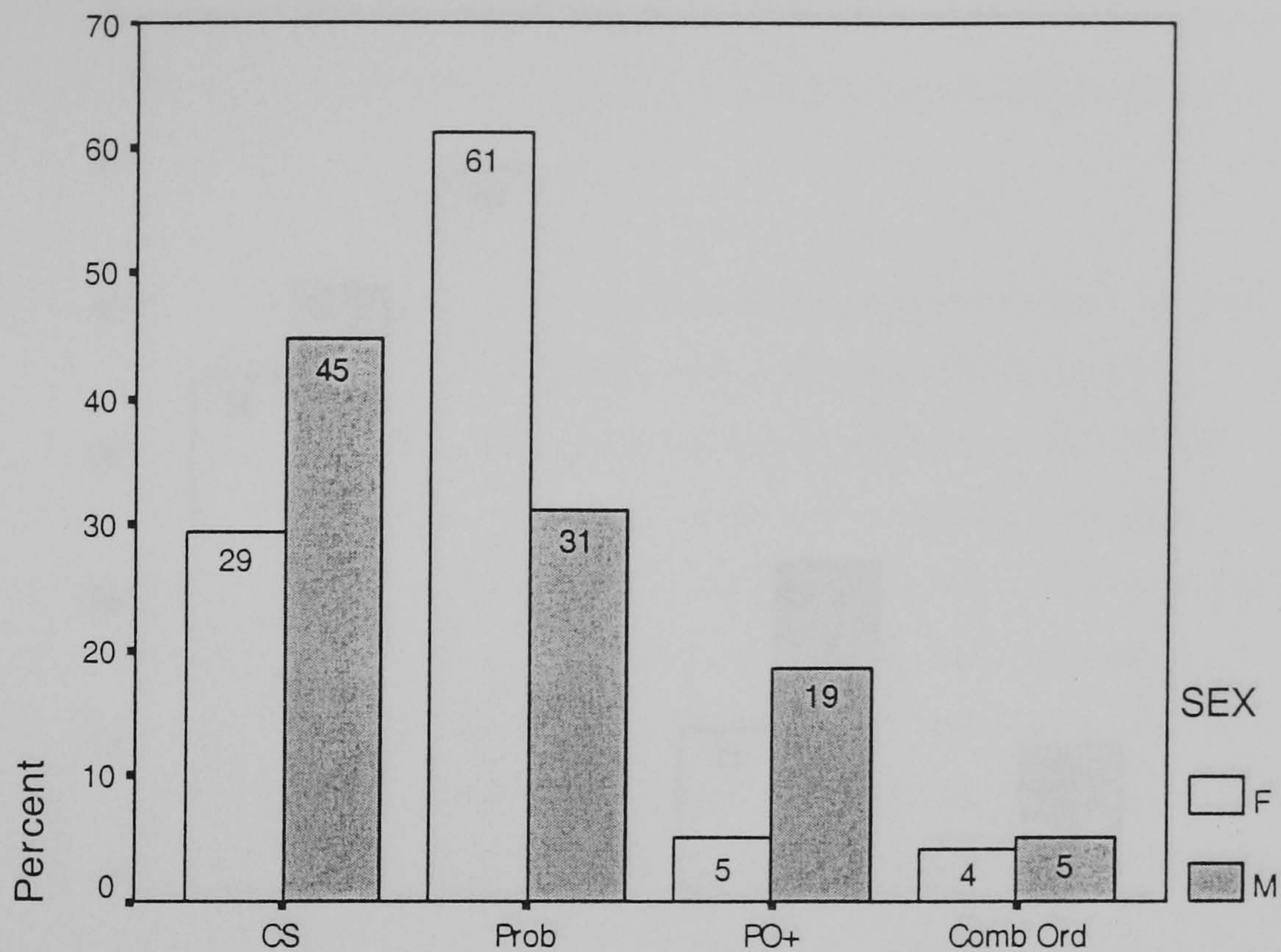


Figure 2(b) 1994  
(Chi-square = 83.59,  
df = 3, p = <.001)

### Community Sentence Proposals x Sex, 1995

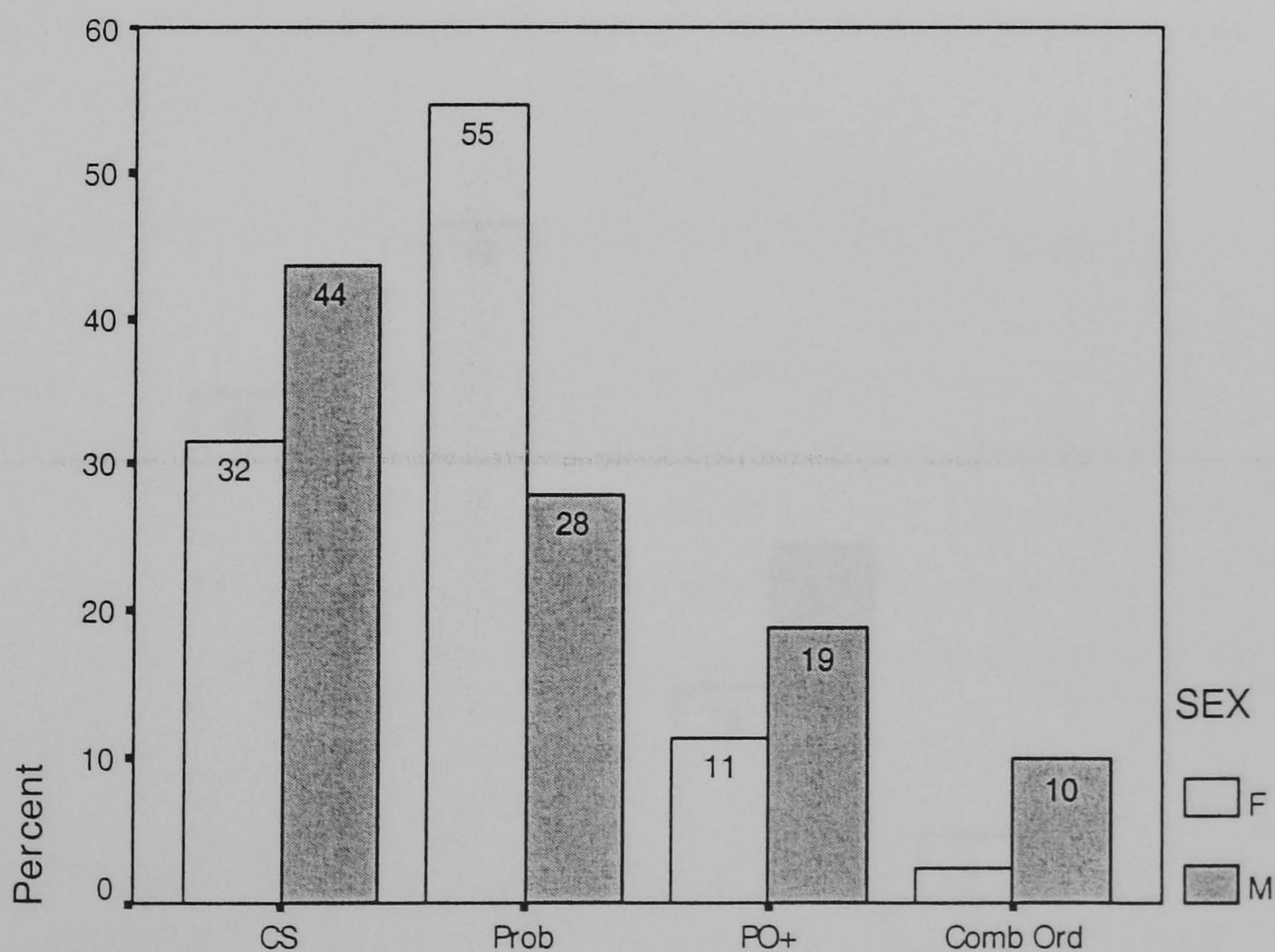


Figure 2(c) 1995  
(Chi-square = 69.86,  
df = 3, p = <.001)



### Community Sentence Proposals x Sex, 1996

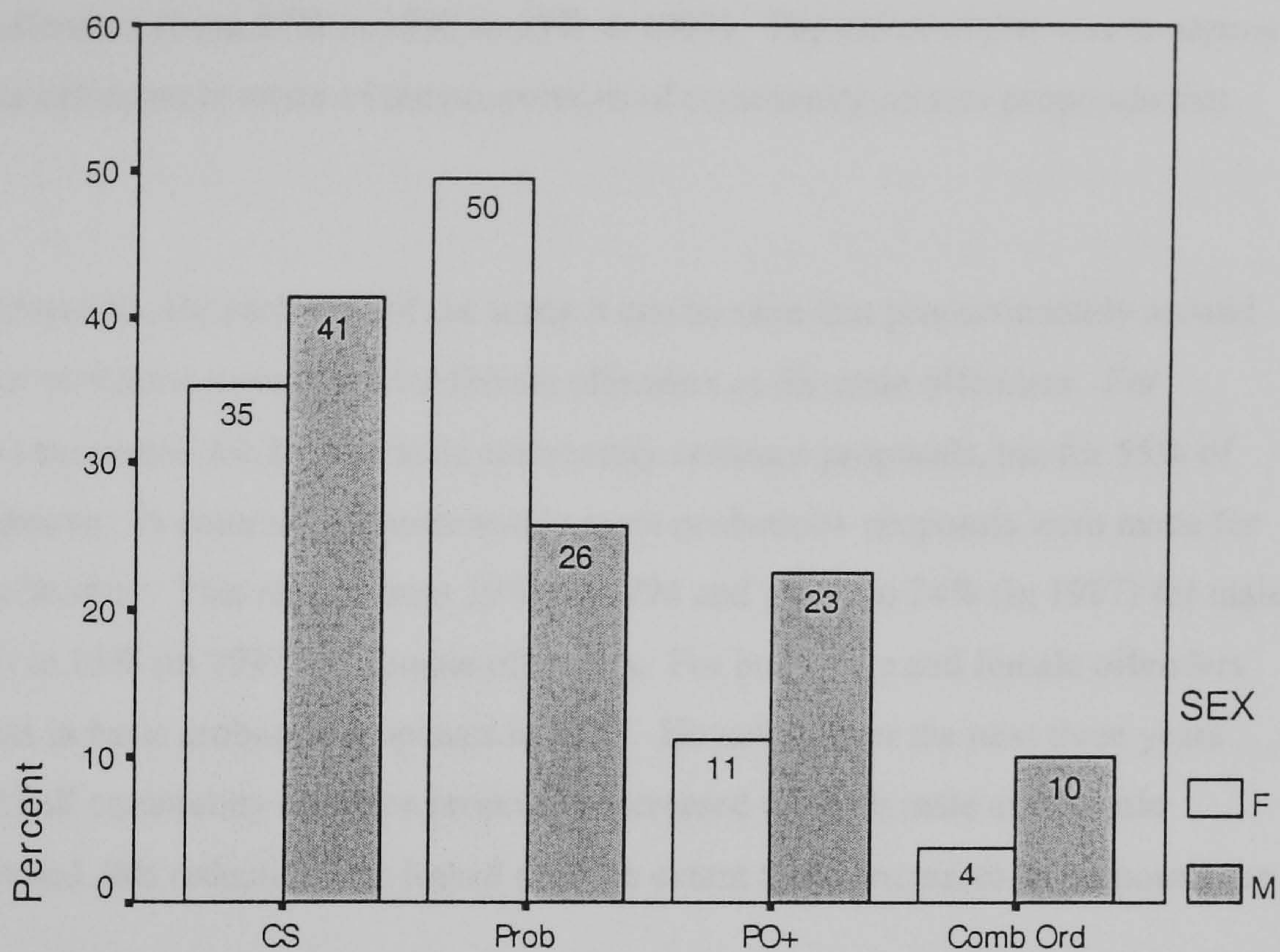


Figure 2(d) 1996  
(Chi-square = 74.76,  
df = 3, p = <.001)

### Community Sentence Proposals x Sex, 1997

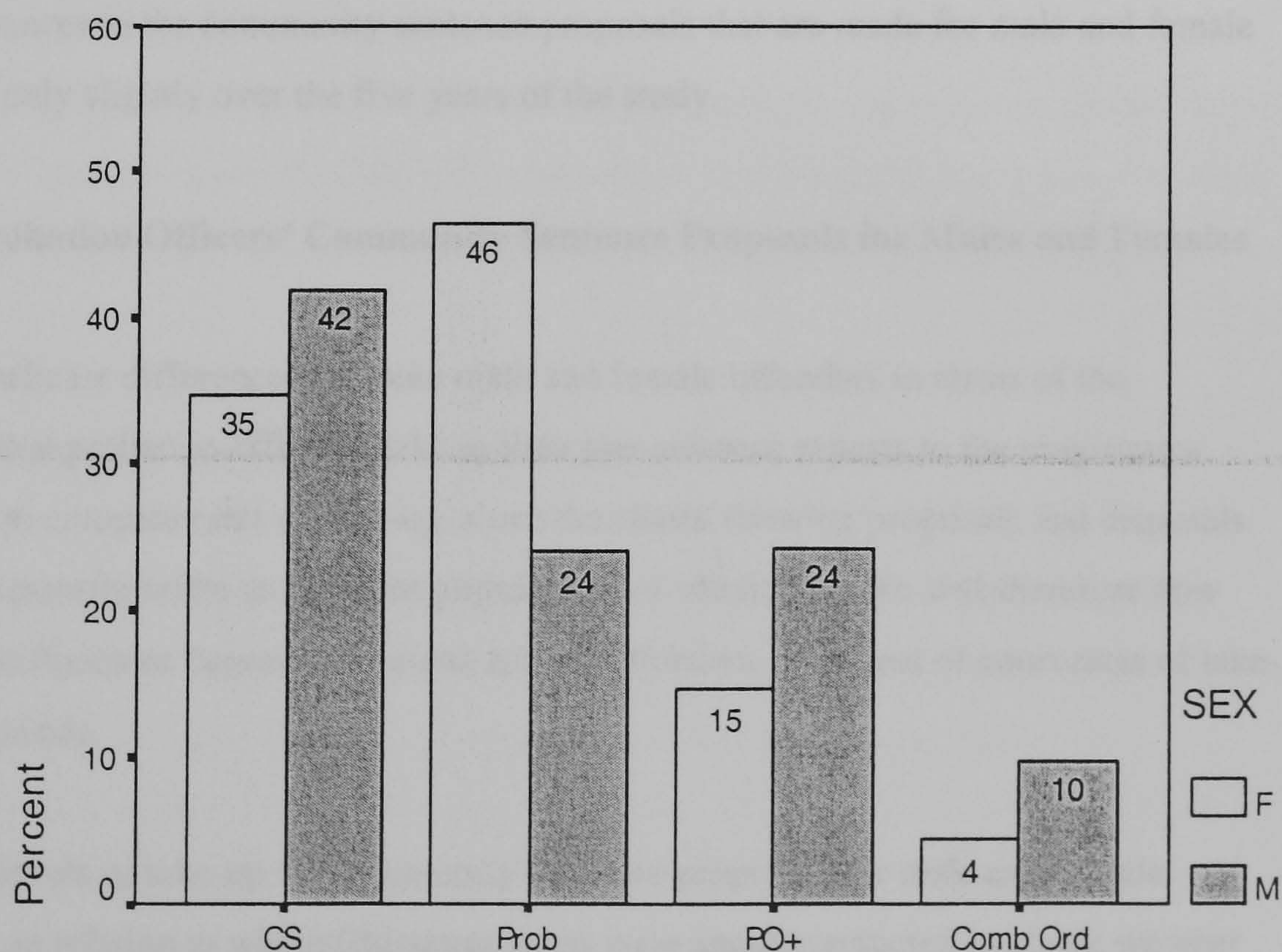


Figure 2(e) 1997  
(Chi-square = 69.07,  
df = 3, p = <.001)



It can also be seen from the above charts that over the period 1993-97, community service as a proportion of all community sentence proposals decreased somewhat for male offenders (from 48% in 1993 to 42% in 1997), but gradually increased for female offenders (from 27% in 1993 to 35% in 1997). The effect of this was to narrow the gap between male and female offenders in terms of the proportions of community service proposals that were made.

With regard to basic probation proposals, for each year of the study it can be seen that proportionately around twice as many proposals for basic probation were made for female offenders as for male offenders. For example, in 1995 basic probation accounted for 28% of male community sentence proposals, but for 55% of female community sentence proposals. In contrast, proportionately more probation+ proposals were made for male offenders than for female offenders. This ranged from 19% (in 1994 and 1995) to 24% (in 1997) for male offenders and from 5% (in 1994) to 15% (in 1997) for female offenders. For both male and female offenders there was a proportionate increase in basic probation proposals in 1994. However, over the next three years basic probation as a proportion of all community sentence proposals decreased for both male and female offenders. As we have already noted, this reduction was linked to some extent to the increases in proposals for probation+.

Probation officers made very few proposals for combination orders. This ranged from 0 to 4% as a proportion of all community sentence proposals for female offenders and from 5% to 10% for male offenders.

There are thus significant differences in the community sentence proposals that are made for male and female offenders, which have changed only slightly over the five years of the study.

## **2 Levels of Take-up for Probation Officers' Community Sentence Proposals for Males and Females**

We have seen that there are significant differences between male and female offenders in terms of the community sentence proposals that probation officers make in their pre-sentence reports to the magistrates courts. However, we also need to compare rates of take-up, since the charts showing proposals and disposals contained in Figure 1 do not necessarily relate to the same populations of offenders. We will therefore now examine whether there are also differences between male and female offenders in respect of court rates of take-up for community sentence proposals.

Table 5.1 in Appendix 4 shows levels of take-up for community sentence proposals for male and female offenders for the years 1993-97, in relation to which Chi-square tests were again conducted to check whether obtained differences in levels of take-up between male and female offenders were statistically significant.



No significant differences between males and females were found in respect of rates of take-up for community service proposals. These varied between 70% (in 1994) and 85% (in 1996) for female offenders and between 73% (in 1993) and 81% (in 1996) for male offenders. However, for each of the years 1993-97, it was found that there were significant differences between males and females in respect of rates of take-up for basic probation proposals. Rates of take-up for basic probation proposals for female offenders were 79% in 1993 and 77% in 1994. This then fell to 70% in 1995 prior to increasing again to 78% in 1996 and 80.2% in 1997. This compared with rates of take-up for basic probation proposals for male offenders that varied between 57% in 1995 and 65% in 1996. Proposals for basic probation were thus more likely to be followed by the courts for female offenders than they were for male offenders and Chi-square tests showed that these differences were statistically significant for each year of the study.

Some differences were also found between male and female offenders in respect of rates of take-up for probation+ during the years 1996 and 1997. Again, these were found to be significantly more likely to be taken up by the courts for female offenders than for male offenders. Thus for female offenders, 73% of such proposals were taken up in 1996, and 76% in 1997, which compared with rates of take-up of 50% for both years for male offenders.

Because of the low number of female offenders for whom combination orders had been proposed, it was not possible to make comparisons between males and females in relation to levels of take-up for combination order proposals.

Previous research has suggested that female offenders are sometimes disadvantaged because community service is regarded as inappropriate for them. However, the findings in the present study suggest that it is in fact male offenders who may be disadvantaged because the courts regard basic probation as less appropriate for male offenders.

### **3 Differences in Custodial Outcomes Between Males and Females**

We saw in part 1 that previous research has found that male offenders are more likely to receive a custodial sentence than are female offenders. Further analyses were therefore carried out to examine whether there were any differences between male and female offenders in the present study in terms of the proportion of community sentence proposals that resulted in a custodial outcome at court. Because of the low number of female offenders who were sentenced to custody, the analyses are based on custodial outcomes for *all* community sentence proposals rather than on custodial outcomes for each different community sentence proposal.



Table 5.2 in Appendix 4 shows differences in custodial outcomes for male and female offenders following community sentence proposals for the years 1993-97, with the results of Chi-square tests of whether these differences were statistically significant.

For each of the years studied it was found that male offenders for whom a community sentence proposal had been made were significantly more likely to be sentenced to custody than were female offenders for whom a community sentence proposal had been made. For both male and female offenders the highest rates of custody following a community sentence proposal were in 1993 and the lowest rates were in 1996. Thus in 1993, 17% of community sentence proposals resulted in a custodial outcome for males, compared with 10% for females, and in 1996, 12% of community sentence proposals resulted in a custodial outcome for males, compared with 3% for females. These findings are in line with previous research, although it should be noted that the analyses fail to take account of possible differences between male and female offenders in relation to factors such as offence seriousness, previous convictions and different offender characteristics.

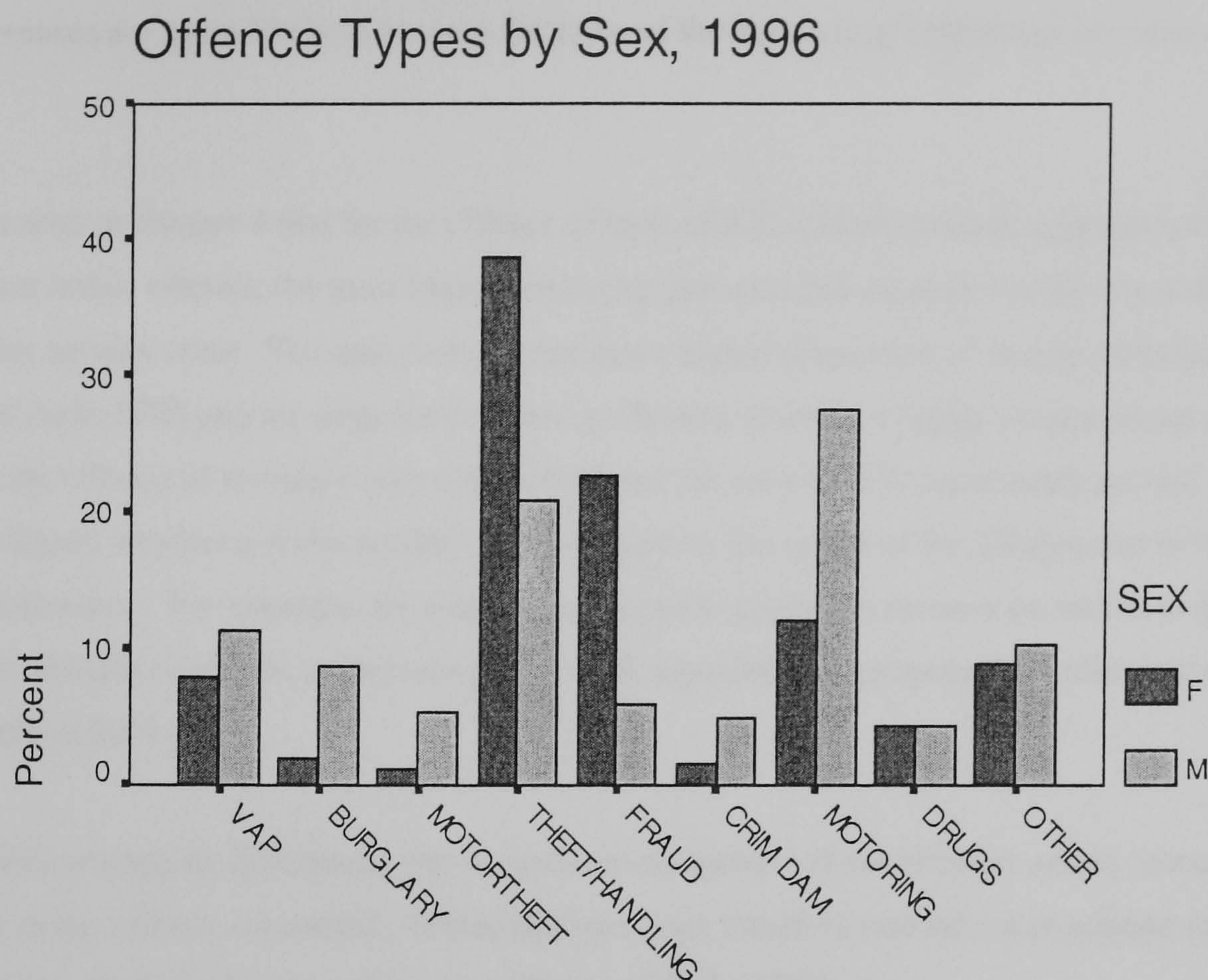
#### **4 Offence Differences Between Males and Females**

It has previously been suggested that some of the differences in sentencing between male and female offenders can be accounted for by the different types of offences that they commit. We therefore now look at the types of offences that were committed by the male and female offenders on whom Kent Probation Officers wrote pre-sentence reports for the magistrates courts over the period 1993-97.

For each year of the study it was found that female offenders committed much higher proportions of theft/handling and fraud offences than did male offenders. Male offenders, on the other hand, committed higher proportions of the generally more serious offence types of violence against the person, burglary, motor theft and motoring. These offence type proportions for male and female offenders were reasonably consistent across the five years of the study and were as in the example given in Figure 3 below, which shows offence types by gender for the year 1996.



Figure 3 Types of Offences Committed by Male and Female Offenders, 1996<sup>25</sup>



(N = 3376, Chi-square = 243.49, df = 8, p = <.001.)

These findings suggest that some of the sentencing differences between male and female offenders can indeed be accounted for the different types of offence they commit. However, as was noted in chapter 4, these offence type categories are very broad and do not give a particularly good indication of the level of seriousness of the offence that has been committed. For a better indication of this, we need to examine the actual main offence.

We saw in chapter 4 that the two most common offences in relation to which magistrates courts requested a pre-sentence report from Kent Probation Officers were theft under five hundred pounds and driving whilst disqualified. If we now examine differences between male and female offenders in respect of these two offences, we find that for male offenders, the offence of driving whilst disqualified accounted for between 14.0% (in 1994) and 26.5% (in 1996) of all offences on which reports were prepared. However, for female offenders this offence only accounted for between 3.6% (in 1993) and 11.8% (in 1996) of all offences on which reports were prepared. With regard to the offence of theft <£500, this accounted for between 14.7% (in 1993) and 18.3% (in 1996 and 1997) of reports on males. However, for female offenders, the proportion of reports on the offence of theft <£500 was considerably higher, ranging from 35.1% (in 1994) to 42.2% (in 1993). Thus driving whilst disqualified accounted for a higher proportion of reports on male offenders, whereas theft <£500

<sup>25</sup> VAP = Violence Against the Person. Motoring offences include driving whilst disqualified and driving with excess alcohol.



accounted for a higher proportion of reports on female offenders. Since the offence of driving whilst disqualified is regarded as a considerably more serious offence than the offence of theft <£500, these main offence differences are again likely to account for some of the sentencing differences between male and female offenders.

We have also seen in chapter 4 that for the offence of theft <£500, a likely sentencing proposal and disposal is a basic probation order, whereas the most likely sentencing proposal and disposal for driving whilst disqualified is a community service order. The data demonstrate that a higher proportion of female offenders both commit the offence of theft <£500 and are sentenced to basic probation, whereas a higher proportion of male offenders both commit the offence of driving whilst disqualified and are sentenced to community service. However, the data do not indicate whether it is the gender of the offender or the nature of the offence that is 'causing' the sentencing differences. For example, are females sentenced to probation because probation is regarded as appropriate for female offenders, or because probation is regarded as appropriate for offenders who commit the offence of theft <£500?

In order to study sentencing differences that were due to the gender of the offender and to 'control' differences that were due to the offence committed, further analyses were therefore carried out in relation to male and female offenders who had committed the *same* offence of theft <£500.

Figure 4 below shows community sentence proposal and disposal trends for male and female offenders who had committed the offence of theft <£500, over the years 1993-97.

For male theft offenders, it can be seen that, with the exception of 1994, probation officers made rather more proposals for community service than they did for basic probation. Similarly, magistrates consistently made rather more community service disposals than basic probation disposals. With regard to probation+ and combination orders for males, probation officers consistently made more proposals for probation+ than for combination orders, whereas from 1994 onwards magistrates made more combination order disposals than probation+ disposals.

For female offenders, however, basic probation was consistently considerably more popular than community service, both as a sentence proposal and as a sentence disposal, although there was a slight dip in basic probation disposals in 1995 and a slight increase in both proposals and disposals for community service in 1996. It can also be seen that probation officers made virtually no proposals for combination orders for female offenders, whereas magistrates did make a number of combination order disposals for females, although the numbers involved were very small.



Figure 4 Community Sentence Proposals and Disposals for Male and Female Offenders, Theft <£500, 1993-97

Figure 4(a) Male Proposals

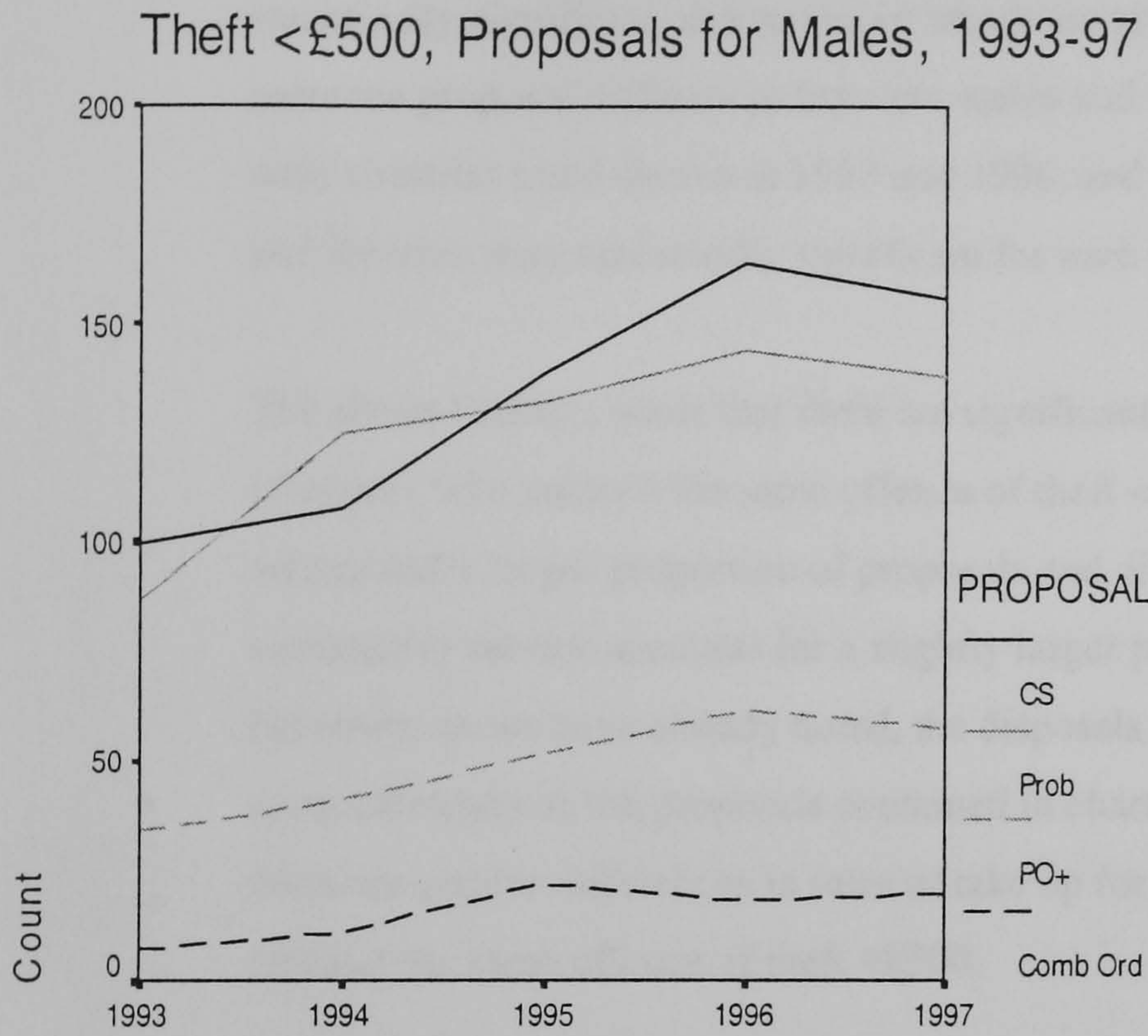


Figure 4(b) Male Disposals

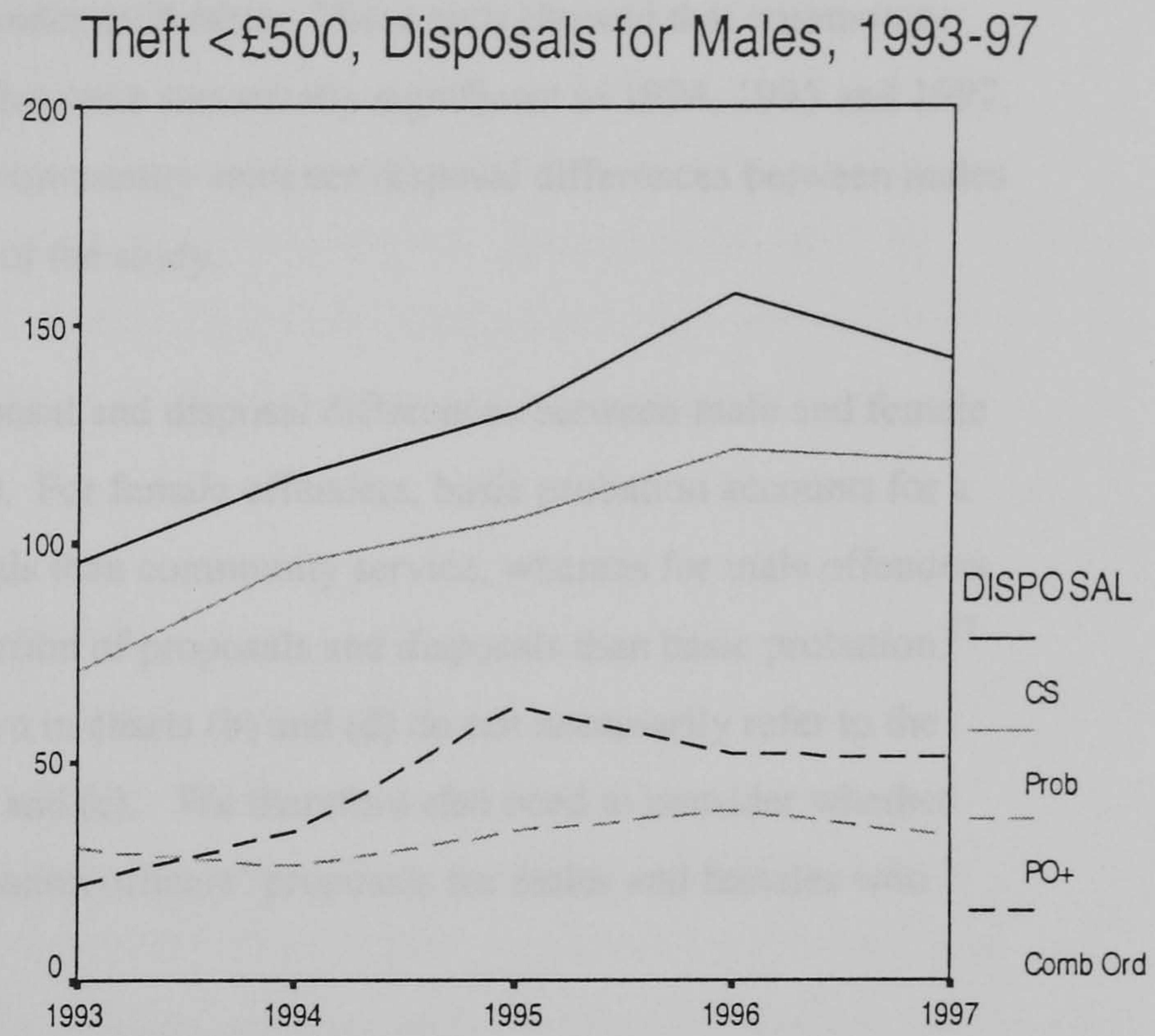


Figure 4(c) Female Proposals

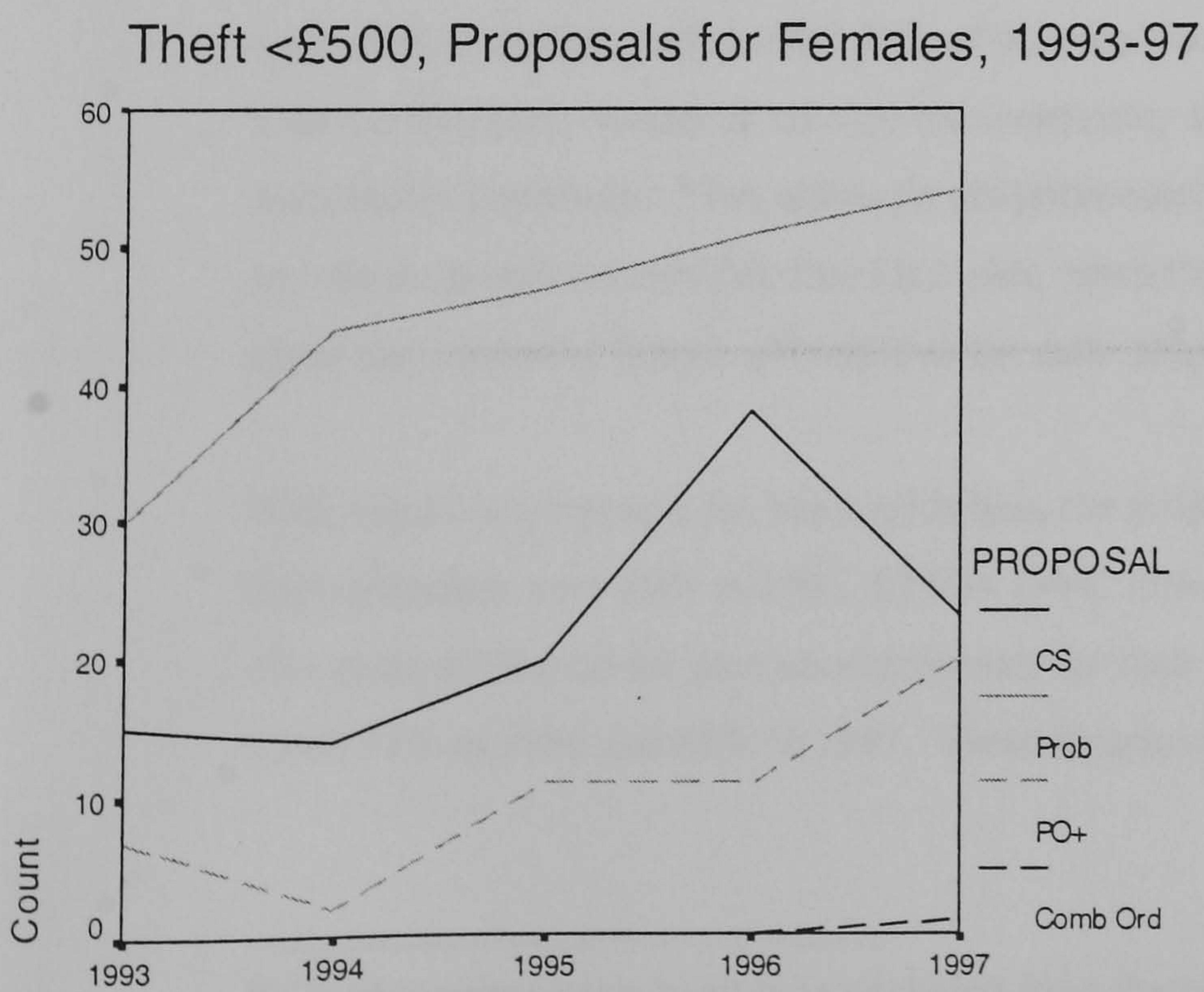
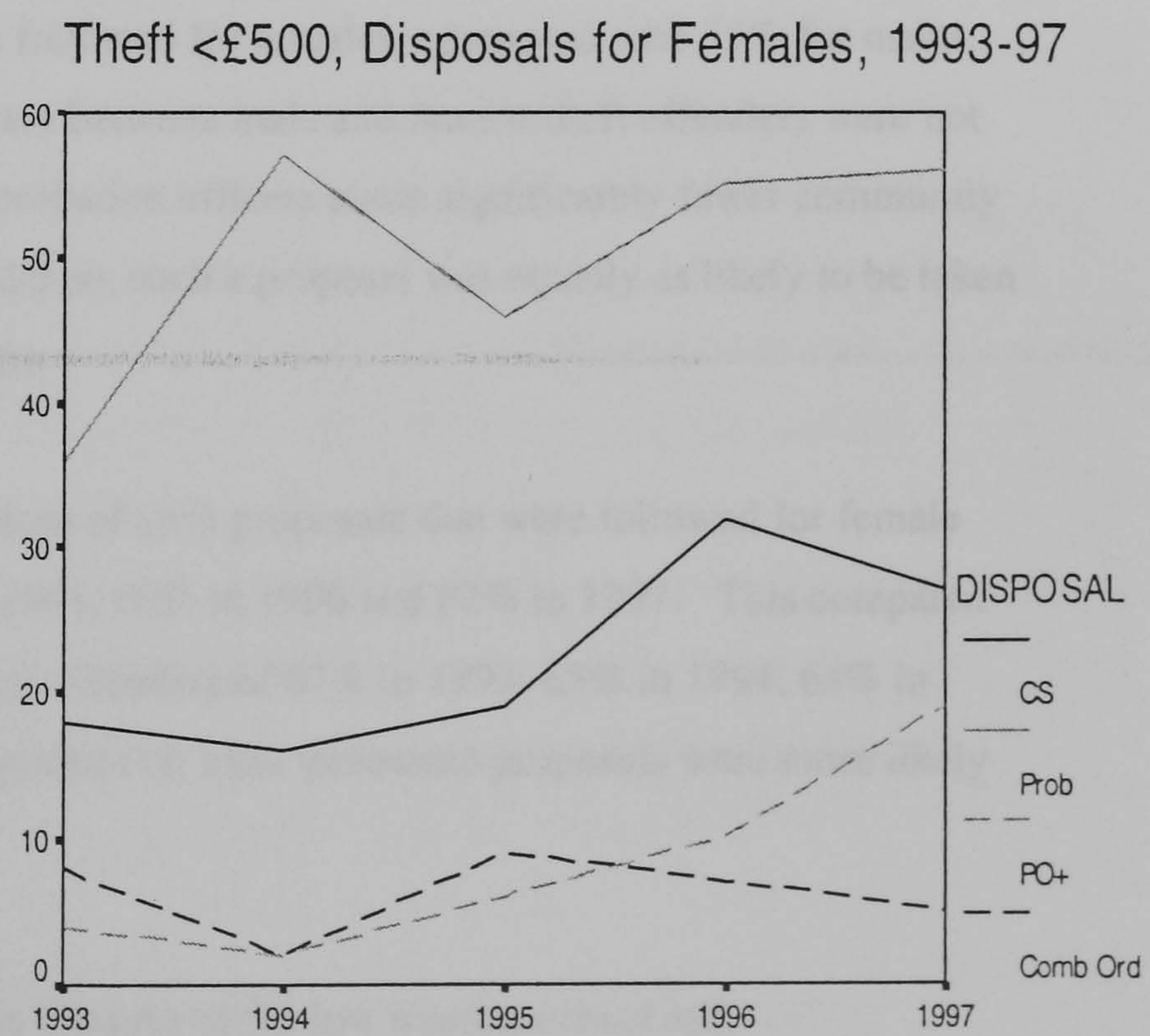


Figure 4(d) Female Disposals



Note: The charts for male and female offenders are not drawn to the same scale.



The detailed figures on which Figures 4(a) – 4(d) are based are given in Tables 5.3 and 5.4 in Appendix 4. These contain community sentence proposals according to gender, and community sentence disposals according to gender, for the years 1993-97<sup>26</sup>. Chi-square tests were again conducted to see whether proposal and disposal differences between male and female offenders who had committed the same offence of theft <£500 were statistically significant, the results of which are given under each table. These tests showed that community sentence proposal differences between males and females were statistically significant in 1994, 1995 and 1997, with a similar trend shown in 1993 and 1996, and that community sentence disposal differences between males and females were statistically significant for each year of the study.

The above findings show that there are significant proposal and disposal differences between male and female offenders who commit the same offence of theft <£500. For female offenders, basic probation accounts for a substantially larger proportion of proposals and disposals than community service, whereas for male offenders community service accounts for a slightly larger proportion of proposals and disposals than basic probation.<sup>27</sup> However, as we have already noted, the disposals shown in charts (b) and (d) do not necessarily refer to the same offenders as the proposals contained in charts (a) and (c). We therefore also need to consider whether there are gender differences in rates of take up for probation officers' proposals for males and females who commit the same offence of theft <£500.

Because of low cell frequencies for female offenders, it was only possible to conduct Chi-square significance tests in relation to gender differences in rates of take-up following proposals for community service in 1996 and 1997 and following proposals for basic probation in all years studied. Looking first at community service, in 1996 79% of proposals were followed for female theft offenders, compared with 84% of such proposals for male theft offenders, and in 1997 74% of proposals were followed for females, compared with 75% for males. These differences in rates of take-up for community service between male and female theft offenders were not statistically significant. Thus although, proportionately, probation officers made significantly fewer community service proposals for females than for males, when they did so, such a proposal was equally as likely to be taken up by the courts for female offenders as for male offenders.

With regard to proposals for basic probation, the proportions of such proposals that were followed for female theft offenders were 80% in 1993, 82% in 1994, 75% in 1995, 80% in 1996 and 82% in 1997. This compared with rates of take-up for probation proposals for male theft offenders of 67% in 1993, 65% in 1994, 64% in 1995, 71% in 1996 and 68% in 1997. These figures suggested that basic probation proposals were more likely

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<sup>26</sup> Combination orders have been excluded from the tables because of the low numbers involved.

<sup>27</sup> This excludes 1994, when slightly more proposals for male offenders were for basic probation than for community service.





to be taken up for females than for males. However, these differences only reached a level of statistical significance during the year 1994 ( $p = .04$ ), although 1997 showed a similar trend ( $p = .075$ ).

These findings demonstrate that for males and females who committed the same offence of theft <£500, there were significant gender differences in relation to sentence proposals, sentence disposals and, in respect of proposals for basic probation, some differences in levels of take-up. This would suggest that some of the sentencing differences between males and females are due to the gender of the offender, rather than because they have committed different types of offence. However, the possibility remains that these differences had arisen because the male theft offenders were different from the female theft offenders in some other way, such as previous criminal record. We will therefore now turn to differences between male and female offenders in relation to previous record.

## **5 Gender Differences in Relation to Previous Record**

For the purposes of the present analyses, previous criminal record comparisons are made on the basis of most serious previous sentence. In order to examine whether there were previous record differences between male and female offenders who had committed the same offence of theft <£500, tables were produced showing most serious previous sentence according to gender of offender. Results are given in Table 5.5 in Appendix 4, which also includes the results of Chi-square tests<sup>28</sup>. These showed that, with the exception of 1996, previous record differences between male and female theft offenders were statistically significant for each of the years studied. The main differences between males and females were in respect of previous custody, previous probation supervision and no previous criminal record, as described below.

For male theft offenders, a substantially larger proportion had received a previous custodial sentence than had female theft offenders. The proportion of males whose most serious previous sentence was custody ranged from 44% (in 1995 and 1996) to 52% in 1994, whereas the proportion of females whose most serious previous sentence was custody ranged from 13% (in 1994) to 39% (in 1996). During this latter year there were no statistically significant differences between males and females in respect of most serious previous sentence.

Probation supervision, on the other hand, was more common as the most serious previous sentence for female theft offenders than it was for males. The proportions of offenders whose most serious previous sentence was probation supervision were 23% for females and 8% for males in 1993, 26% for females and 9% for males in 1994, 14% for females and 8% for males in 1995 and 20% for females and 7% for males in 1997.<sup>29</sup>

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<sup>28</sup> The tables exclude the small number of cases where previous convictions are not known. The category 'custody' includes suspended sentences of imprisonment.

<sup>29</sup> In 1996, when there were no statistically significant gender differences, the figures were 5% for females and 8% for males.



Females were also consistently more likely to have no previous convictions than were males. The proportions of female theft offenders with no previous convictions ranged from 16% (in 1995) to 20% (in 1996), whereas the proportions of males with no previous convictions ranged from 8% (in 1993 and 1994) to 14% in (1996).

Thus males who had committed the offence of theft <£500 were more likely than females to have received a previous custodial sentence, whereas females were more likely than males to have no previous convictions, or for probation supervision to be their most serious previous sentence. These findings demonstrate that (with the exception of 1996) male theft offenders were significantly more likely than female theft offenders to have a more serious previous criminal record in terms of the most serious previous sentence received. This suggests that some of the gender differences in sentencing could also be related to differences in previous criminal record.

Finally, in order to control for gender differences in relation to both type of offence committed and previous criminal record, further analyses were carried out using males and females who had committed the same offence of theft <£500 *and* who had no previous convictions. Because of the low numbers involved, this was only undertaken in respect of community service and basic probation proposals and disposals, when data for the years 1995, 1996 and 1997 were combined<sup>30</sup>.

Results are presented in Figure 5 below, from which it can be seen that there was still a tendency for probation officers to make probation proposals for female offenders and to make community service proposals for male offenders, with a similar tendency demonstrated in relation to magistrates' sentence disposals. Chi-square tests showed that these gender differences were statistically significant in relation to both probation officers' sentence proposals and to magistrates' sentence disposals, the results of which are given below each chart.

These findings therefore suggest that for offenders who have committed a similar offence and who have a similar criminal record, for both probation officers and magistrates, probation continues to be the preferred sentence for females and community service the preferred sentence for males.

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<sup>30</sup> Data from 1993 and 1994 were not included because of coding changes in relation to data on previous record.



Figure 5 Theft <£500, Community Service and Probation Proposals and Disposals According to Gender for Offenders with No Previous Convictions, 1995-97<sup>31</sup>

Theft <£500, No Previous  
Proposals x Sex, 1995-97

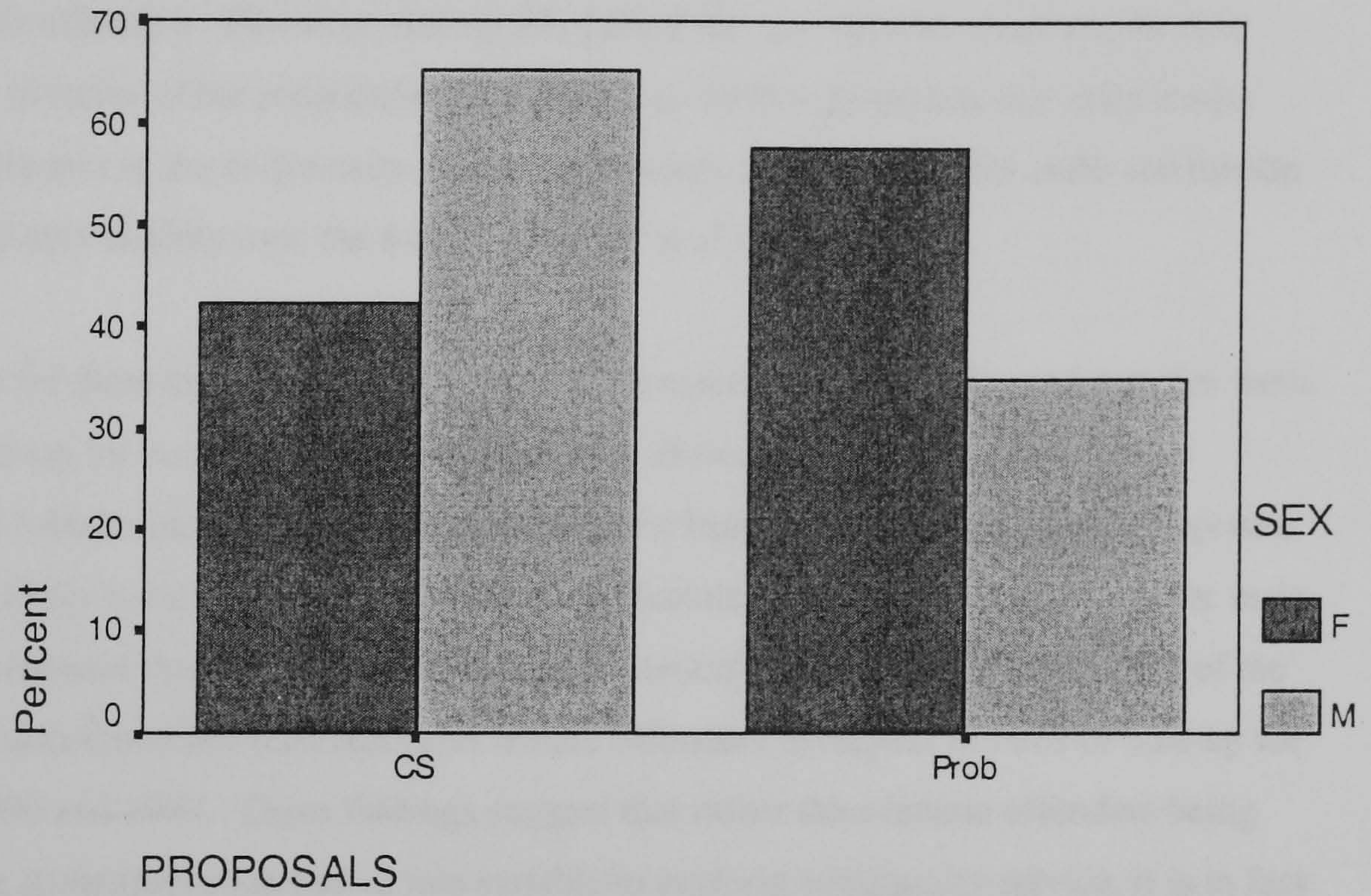


Figure 5(a) Proposals  
Chi-square = 7.38,  
df = 1, p = .008

Theft <£500, No Previous  
Disposals x Sex, 1995-97

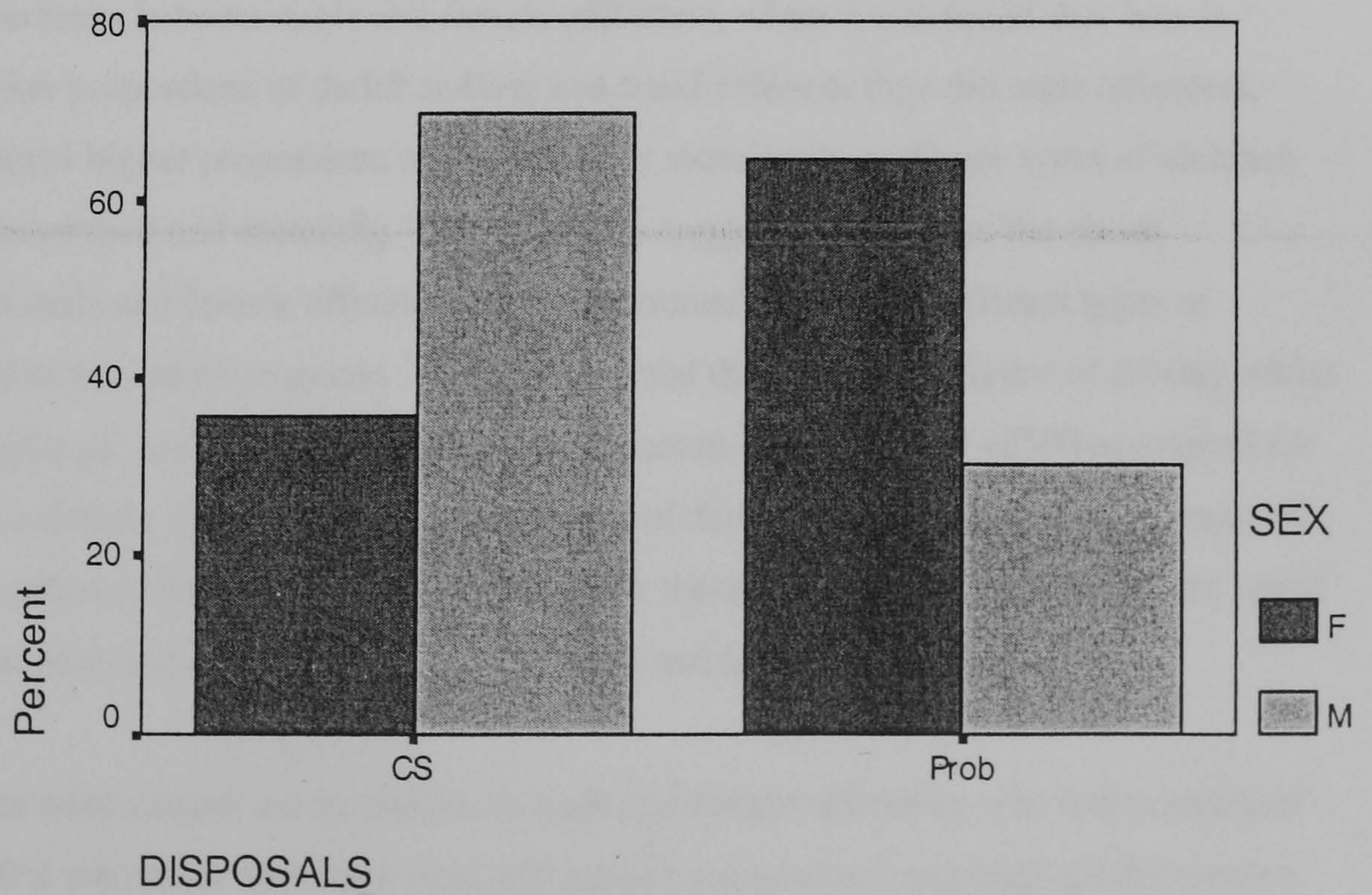


Figure 5(b) Disposals  
Chi-square = 15.96,  
df = 1, p = <.001.

<sup>31</sup> Continuity correction computed for 2x2 table and Fisher's Exact Test used.



## Conclusion

The results presented in the current chapter show that, overall, proportionately more proposals for basic probation were made for female offenders than for male offenders, whereas proportionately more proposals for community service, probation+ and combination orders were made for male offenders than for female offenders. Across the five years of the study, around twice as many proposals for basic probation were made for female offenders as for male offenders. However, during this period the gap between male and female offenders narrowed somewhat in terms of the proportions of community service proposals that were made. There are thus significant differences in the community sentence proposals that are made for male and female offenders, which have changed only slightly over the five years of the study.

With regard to rates of take-up for these proposals, no significant differences between males and females were found in respect of rates of take-up for community service proposals. However, there were significant differences between males and females in respect of rates of take-up for basic probation proposals. Proposals for basic probation were more likely to be followed by the courts for female offenders than they were for male offenders and Chi-square tests showed that these differences were statistically significant for each year of the study. Some differences were also found between male and female offenders in respect of rates of take-up for probation+ during the years 1996 and 1997. These findings suggest that rather than female offenders being disadvantaged because they are sometimes regarded as less suitable to perform community service, it is in fact male offenders who are disadvantaged because they are sometimes regarded as less suitable to undertake probation. Where community sentence proposals were not taken up by the courts, it was found that male offenders were more likely to receive a custodial sentence than female offenders, in line with previous research.

We then looked at offence differences between male and female offenders, when it was found that female offenders committed much higher proportions of theft/handling and fraud offences than did male offenders, whereas male offenders committed higher proportions of the generally more serious offence types of violence against the person, burglary, motor theft and motoring. These findings suggest that some of the above sentencing differences between male and female offenders can be accounted for by the different types of offence they commit, as has previously been proposed. It was also found that the main offence of driving whilst disqualified accounted for a higher proportion of reports on male offenders, whereas theft <£500 accounted for a higher proportion of reports on female offenders. Since the offence of driving whilst disqualified is regarded as a considerably more serious offence than the offence of theft <£500, these main offence differences are again likely to account for some of the sentencing differences between male and female offenders.

However, when further analyses were carried out in relation to male and female offenders who had committed the *same* offence of theft <£500 it was found that there were still significant proposal and disposal differences between male and female offenders. For female offenders, basic probation accounted for a substantially larger



proportion of proposals and disposals than community service, whereas for male offenders community service accounted for a slightly larger proportion of proposals and disposals than basic probation.

For these theft offenders, no significant differences were found between males and females with regard to take-up rates for community service proposals during any of the years studied. Thus although, proportionately, probation officers made significantly fewer community service proposals for female theft offenders than for males, when they did so, such a proposal was equally as likely to be taken up by the courts for females as for males. Proposals for basic probation appeared to be more likely to be taken up for female theft offenders than for male theft offenders. However, these differences only reached a level of statistical significance during the year 1994, although the figures for 1997 showed a similar trend.

These findings demonstrate that for males and females who have committed the same offence of theft <£500, there were significant gender differences in relation to sentence proposals, sentence disposals and, in respect of proposals for basic probation, some differences in levels of take-up. This would therefore suggest that some of the sentencing differences between males and females are in fact due to the gender of the offender, rather than because they have committed different types of offence. However, we also considered whether these results could have been influenced by gender differences in previous criminal record. Here, it was found that males who had committed the offence of theft <£500 were more likely than females to have received a previous custodial sentence, whereas females were more likely than males to have no previous convictions, or for probation supervision to be their most serious previous sentence. These findings demonstrate that (with the exception of 1996) male theft offenders are significantly more likely than female theft offenders to have a more serious previous criminal record in terms of the most serious previous sentence received.

Finally, for male and female offenders who had committed the same offence of theft <£500 and who had no previous criminal convictions, it was found that basic probation remained more likely as a sentence proposal and disposal for females whereas community service remained more likely as a sentence proposal and disposal for males. We may therefore conclude that for less serious offenders who have no criminal record, for both probation officers and magistrates, probation continues to be the preferred sentence for females and community service the preferred sentence for males.



## FACTORS THAT MAY AFFECT SENTENCING DECISIONS (2)

### Level of Seriousness

“**Seriousness** addresses the likely response of the court to the offender ... By an objective assessment of seriousness, probation staff can ensure that the proposals in their PSRs are commensurate with the seriousness of the offence, thus ensuring the confidence of the court in such proposals.” (Oldfield, 1998)

#### Introduction

We saw in part 1 that some of the differences in rates of take-up for probation officers’ proposals that were revealed by previous research can be accounted for by the fact that offenders were not comparable in terms of ‘seriousness’. We also saw that over the past few years guidance for report-writers has become increasingly detailed and sophisticated, including the development of a variety of ‘seriousness’ assessment scales intended to assist probation officers in making appropriate sentence proposals. These scales have also meant that comparisons between offenders who are similar in terms of seriousness are now easier to make.

From 1995 onwards, Kent Probation Service recorded data in relation to the statistical probability of a custodial sentence being passed on offenders for whom pre-sentence reports were written. These ‘risk of custody’ scores were calculated by report-writers, who added together a number of different scores based on factors that had been found to be statistically predictive of a custodial sentence. These included: actual offence committed, number of additional offences, number of previous offences within the last 10 years, number of previous custodial offences within last 10 years, whether the court was magistrates or Crown, whether the offence was in breach of a current sentence and whether the offender was on bail or in custody. The resulting scores were then divided into four ‘risk’ groups: Low Risk (5% chance of custody), Medium-Low Risk (13% chance of custody), Medium-High Risk (25% chance of custody) and High Risk (60% chance of custody). A copy of the Kent Probation Service PSR proposal matrix that was in use at the time of my study is given at Appendix 2.

It should, however, be noted that although such calculations give the appearance of being objective, there are a number of problems associated with the use of these scales. This is partly because statistical assessment tools are dependent upon the input of accurate information, which in practice may not always be possible. This could arise because the required information was not available (for example, details of previous convictions may be missing), or because probation officers had coded statistical data incorrectly. Offenders’ risk of receiving a custodial sentence is also likely to be affected by factors such as changes in sentencing law, or as a result of political campaigning, such as ‘prison works’, or changes in policing or prosecution practices. For example, an apparent reduction in risk scores could arise if changes in Crown Prosecution Service charging standards or



'plea bargaining' led to offenders being charged with a lesser offence rather than a more serious offence. Moreover, if probation officers become more successful in diverting offenders from custody, 'risk' scores will no longer correctly predict the statistical probability of a custodial sentence.

Nevertheless, despite these difficulties, risk of custody scores have enabled probation officers to make more objective assessments of the 'seriousness' levels of offenders and have assisted them in making appropriate sentence proposals. For the purposes of the present study, they have also permitted comparisons to be made between the different community sentences, based on offenders who are of similar levels of 'seriousness' in terms of risk of custody scores.

In the present chapter we examine community sentence proposals and court rates of take-up in relation to risk level, when comparisons will be made between offenders who have committed comparably serious offences and who have comparable previous criminal records, as calculated by the risk of custody scores. We also re-examine some of the gender differences in sentencing discussed in chapter 5, but with risk level now controlled. Once again, Chi-square tests have been used to test whether any differences that we find are statistically significant.<sup>32</sup>

## **1 Risk Levels of Offenders on Whom Pre-sentence Reports Were Prepared**

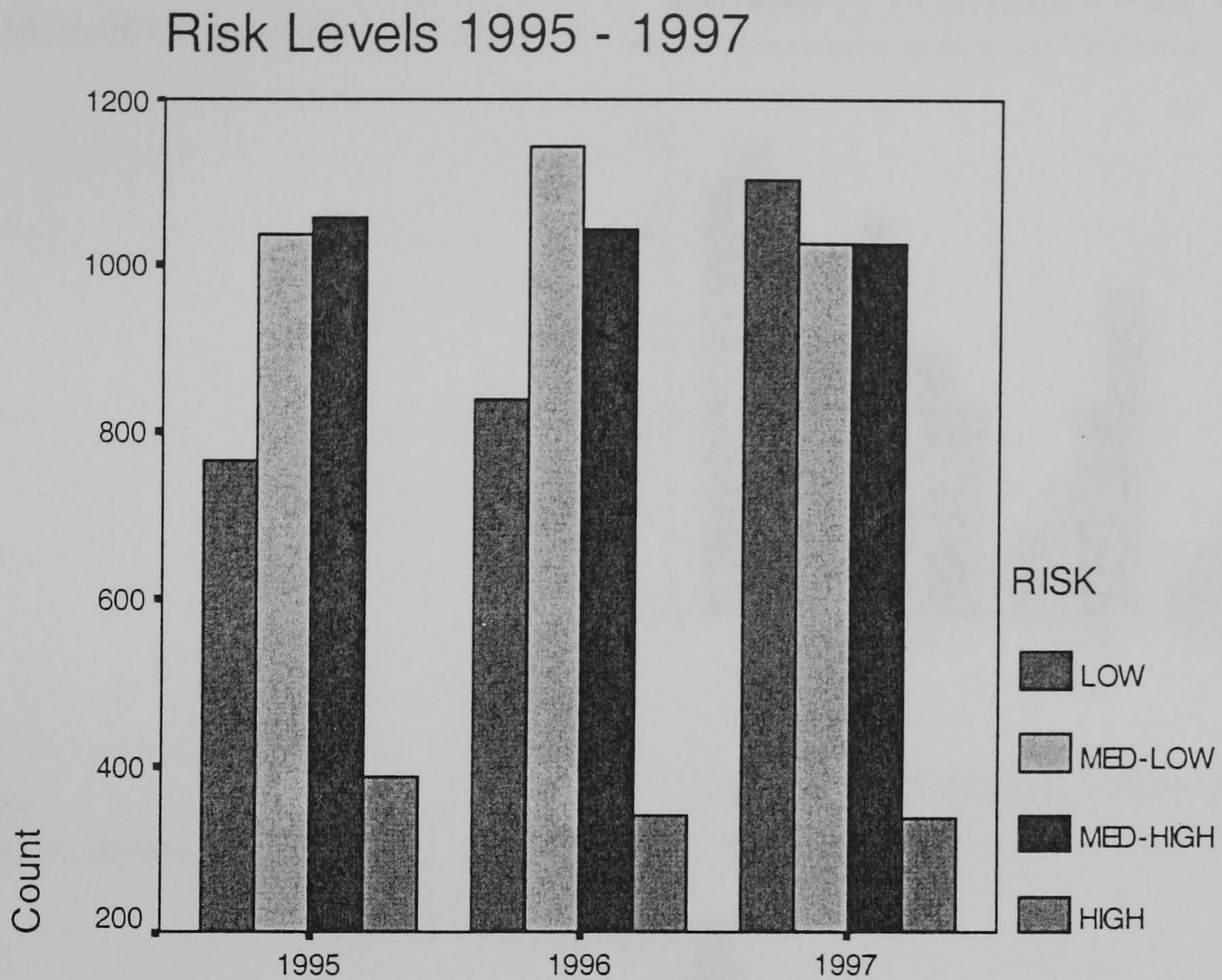
Figure 1 below shows the numbers of offenders within each of the four 'risk of custody' categories on whom Kent Probation Officers prepared pre-sentence reports for the magistrates courts from 1995-97. The chart is based on the figures contained in Table 6.1 in Appendix 4 and includes all offenders on whom pre-sentence reports were prepared. It can be seen that in 1995 and 1996, the majority of offenders were classified as being within the two 'medium' categories of risk. However, the number assessed as at low risk of custody increased over the three-year period and by 1997 exceeded the numbers classified in the medium risk bands. It should also be noted that the number of offenders who were classified as high risk was comparatively low for each of the years studied due to the fact that the majority of more serious offenders are dealt with at the Crown Court rather than the magistrates' courts.

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<sup>32</sup> For 2 x 2 tables with one degree of freedom, Chi-square tests have been conducted using Yates' correction for continuity and Fisher's Exact Test.



Figure 1 Offenders' Calculated Risk of Custody, 1995-97



## 2 Probation Officers' Proposals According to Risk Level

Figure 2 below shows the proportions of community sentence proposals made by probation officers for the four levels of risk for each of the years 1995–97, together with the results of Chi-square tests of whether proposal differences according to level of risk were statistically significant. The charts are based on the figures contained in Table 6.2 in Appendix 4.

It can be seen that for each year, for low, medium-low and medium-high risk offenders, probation officers were most likely to make a proposal for community service, but that for high risk offenders they were most likely to make a proposal for probation+. Proportionately more combination order proposals were made for high risk offenders and proportionately more basic probation proposals were made for low risk offenders, although there was little difference in the proportions of basic probation proposals that were made for the two middle categories of risk. It can also be seen that as risk level increased, community service and basic probation tended to account for a *smaller* proportion of probation officers' proposals, whereas probation+ and combination orders accounted for a *larger* proportion of proposals as risk level increased. These proposal differences according to risk level were highly statistically significant for each of the years studied.



Figure 2 Probation Officers' Community Sentence Proposals by Risk Level, 1995-97

Figure 2(a) 1995

Chi-square = 170.03, df = 9, p = <.001

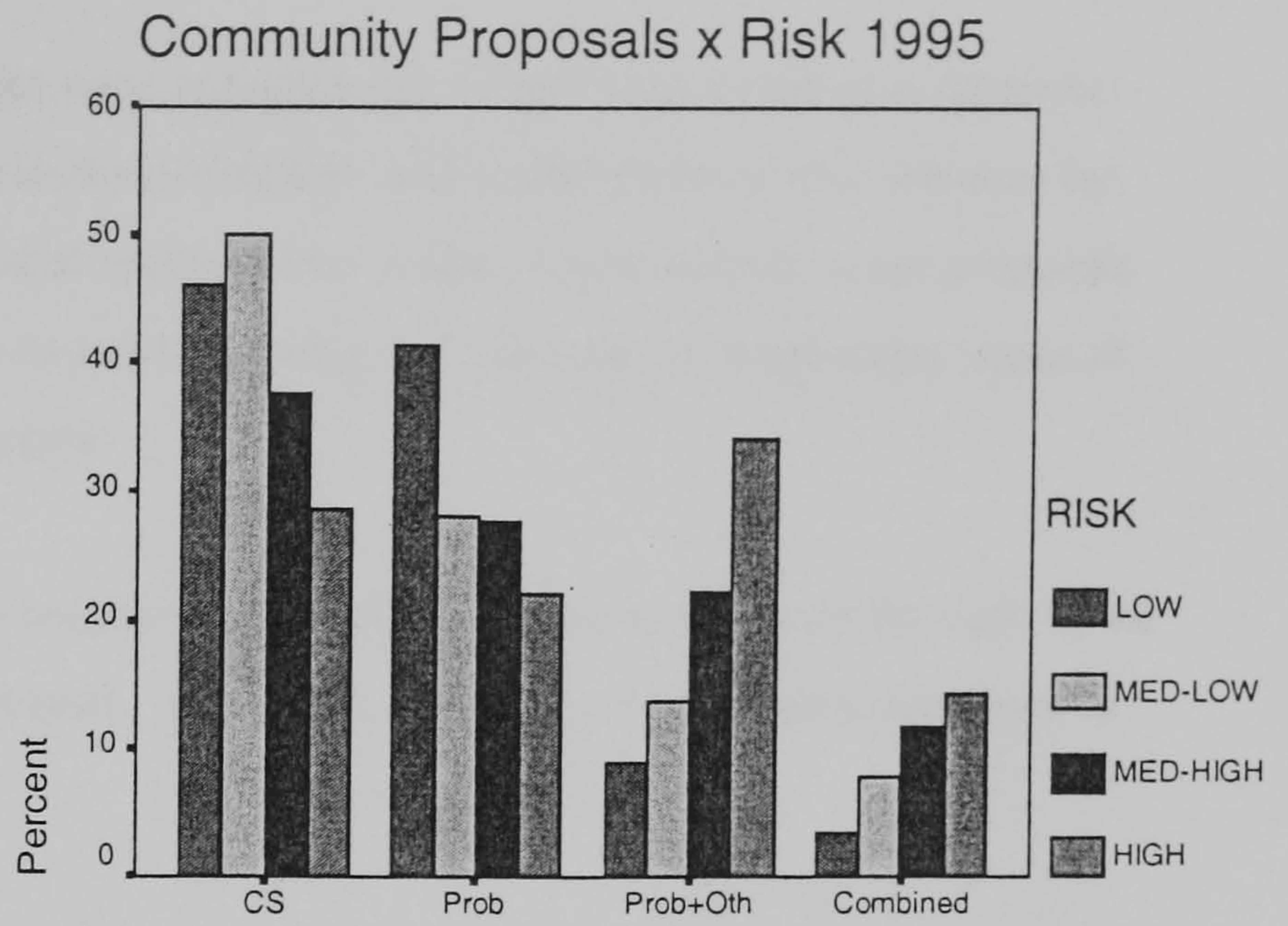


Figure 2(b) 1996

Chi-square = 237.36, df = 9, p = <.001

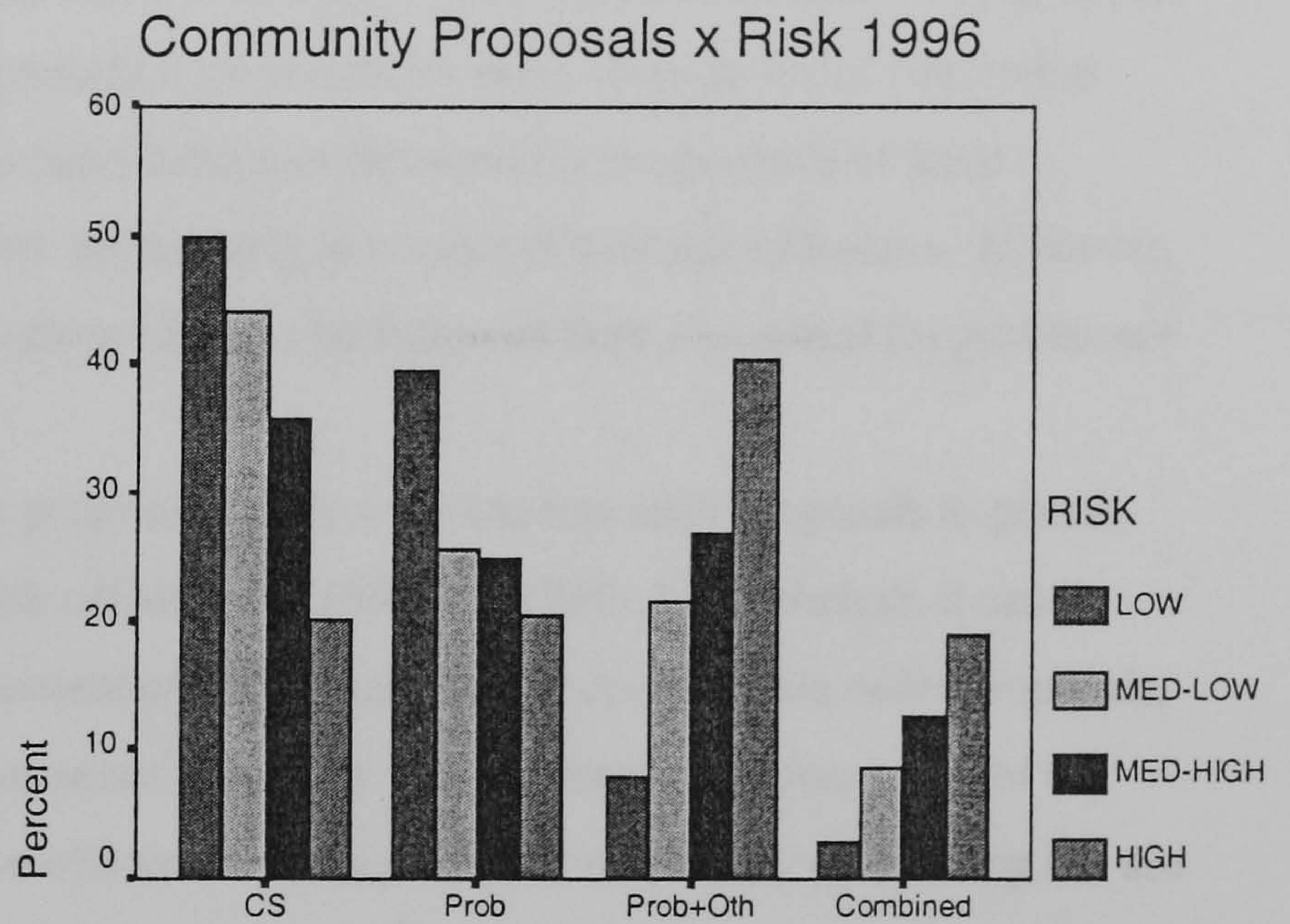
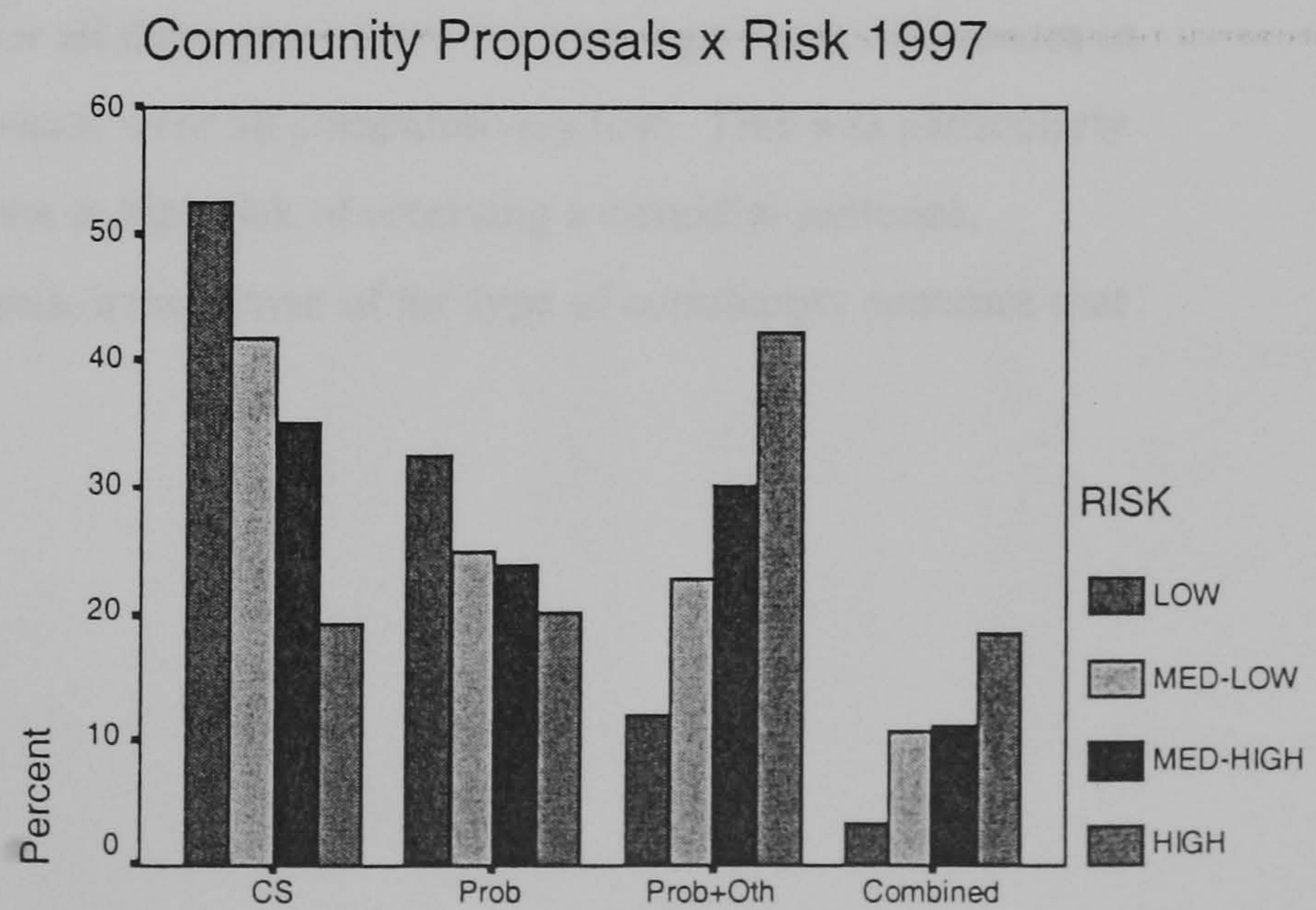


Figure 2(c) 1997

Chi-square = 228.99, df = 9, p = <.001





### 3 Overall Take-up Rates for Different Risk Levels

The above findings demonstrate that for offenders who were at higher risk of receiving a custodial sentence probation officers made proportionately more proposals for probation+ and combination orders, whereas for offenders who were at lower risk of receiving a custodial sentence they made proportionately more proposals for basic probation and community service. We now examine the effect of risk level on magistrates' rates of take-up for these different community sentence proposals.

Figures 3-5 below show take-up rates for community sentence proposals according to risk level for each of the years 1995-97, together with the results of Chi-square tests. The charts are based on the figures contained in Tables 6.3, 6.4 and 6.5 in Appendix 4.

It can be seen that for all three years, for low, medium-low and medium-high risk offenders (charts a, b and c), a proposal for community service was consistently more likely to be followed by magistrates than was a proposal for probation+. However, rates of take-up for basic probation proposals for these three levels of risk varied across the three years of the study. In 1995 there was little difference between the proportions of basic probation and probation+ proposals that were followed, particularly in respect of low risk offenders. However, in 1996 and 1997, a proposal for basic probation was more likely to be followed than a proposal for probation+.

With regard to rates of take-up for combination order proposals, there were too few such proposals to permit their inclusion in Chi-square tests in respect of low risk offenders in 1995 and 1996. Nevertheless, it can be seen from the remaining charts that there was no consistent pattern of take-up for combination order proposals, with rates of take-up relative to the three alternative sentence proposals varying across the three years of the study. This finding may have reflected both probation officers' and magistrates' uncertainty concerning the use of the combination order and its appropriate place in the sentencing tariff.

For high risk offenders (chart d), it can be seen that for all three years there were no significant differences in rates of take-up for community sentence proposals, which were all comparatively low. This was particularly apparent in 1997, when it can be seen that for offenders at high risk of receiving a custodial sentence, magistrates only followed a little over 50% of proposals, irrespective of the type of community sentence that had been proposed.



Figure 3 Take-up Rates for Community Sentence Proposals According to Risk Level 1995

Figure 3(a) Low Risk, 1995  
 Chi-square = 7.85, df = 2, p = .02  
 (excluding Combination Orders)

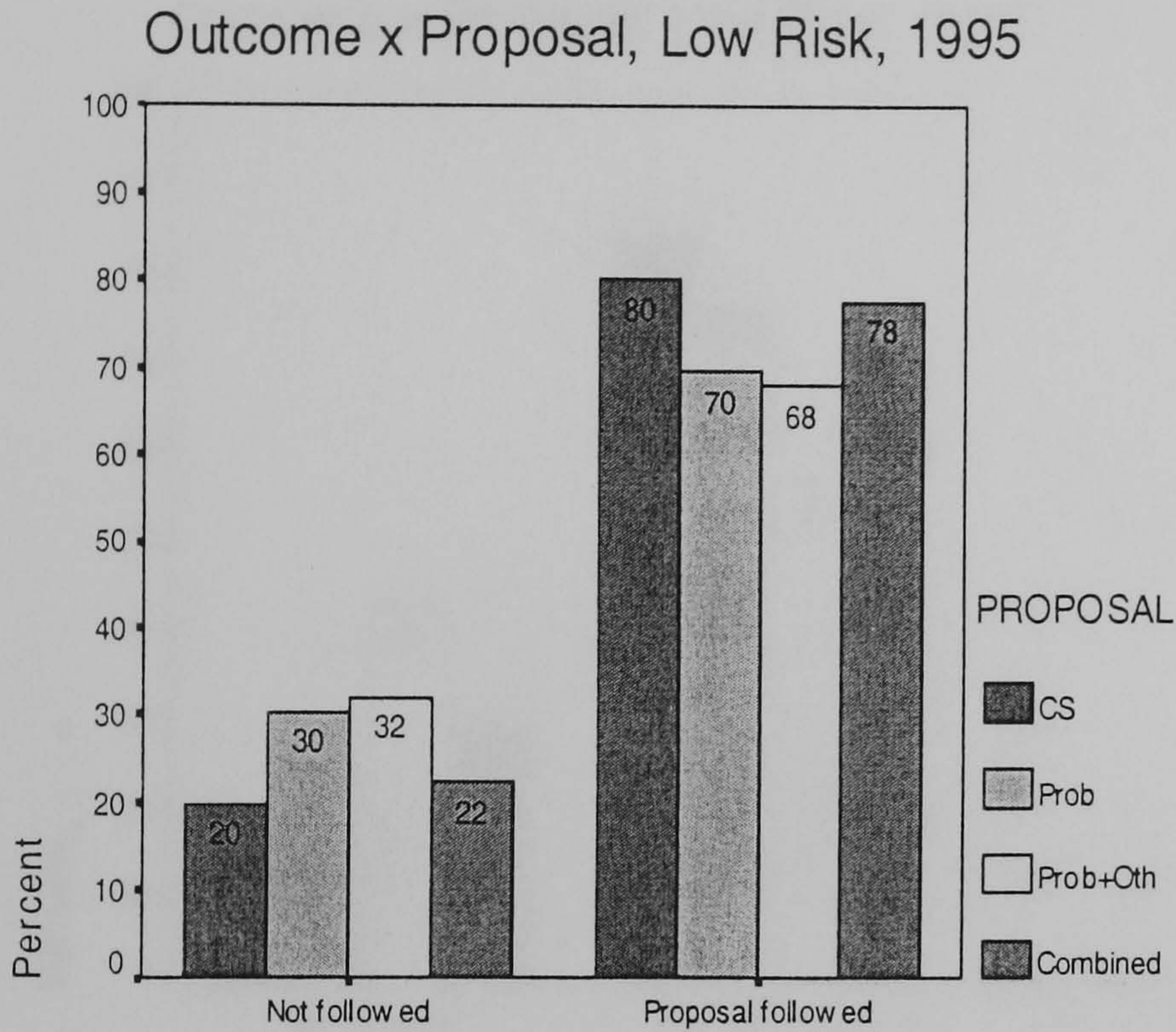


Figure 3(b) Med-Low Risk 1995  
 Chi-square = 58.17, df = 3, p = <.001

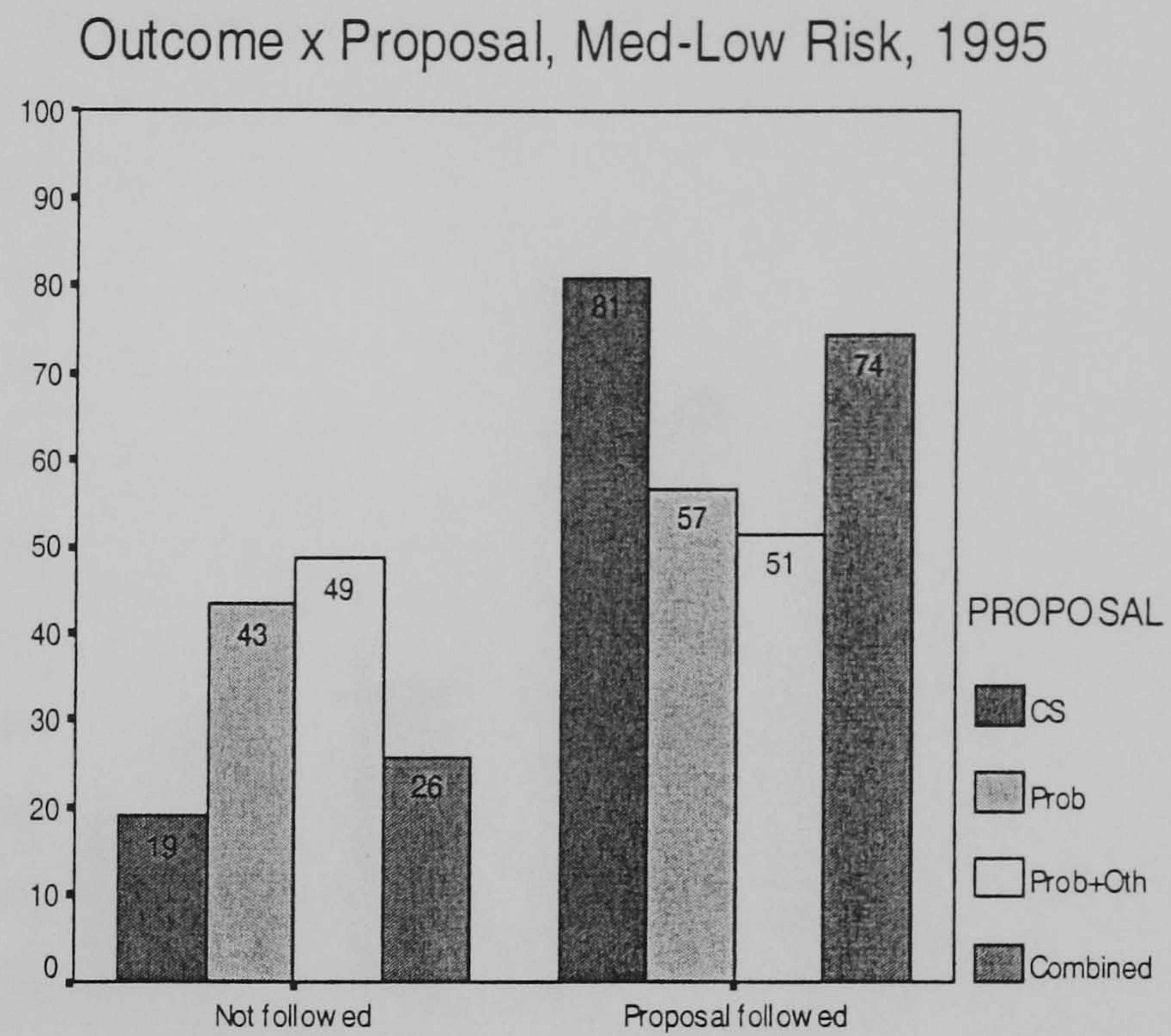


Figure 3(c) Med-High Risk, 1995  
 Chi-square = 62.05, df = 3, p = <.001

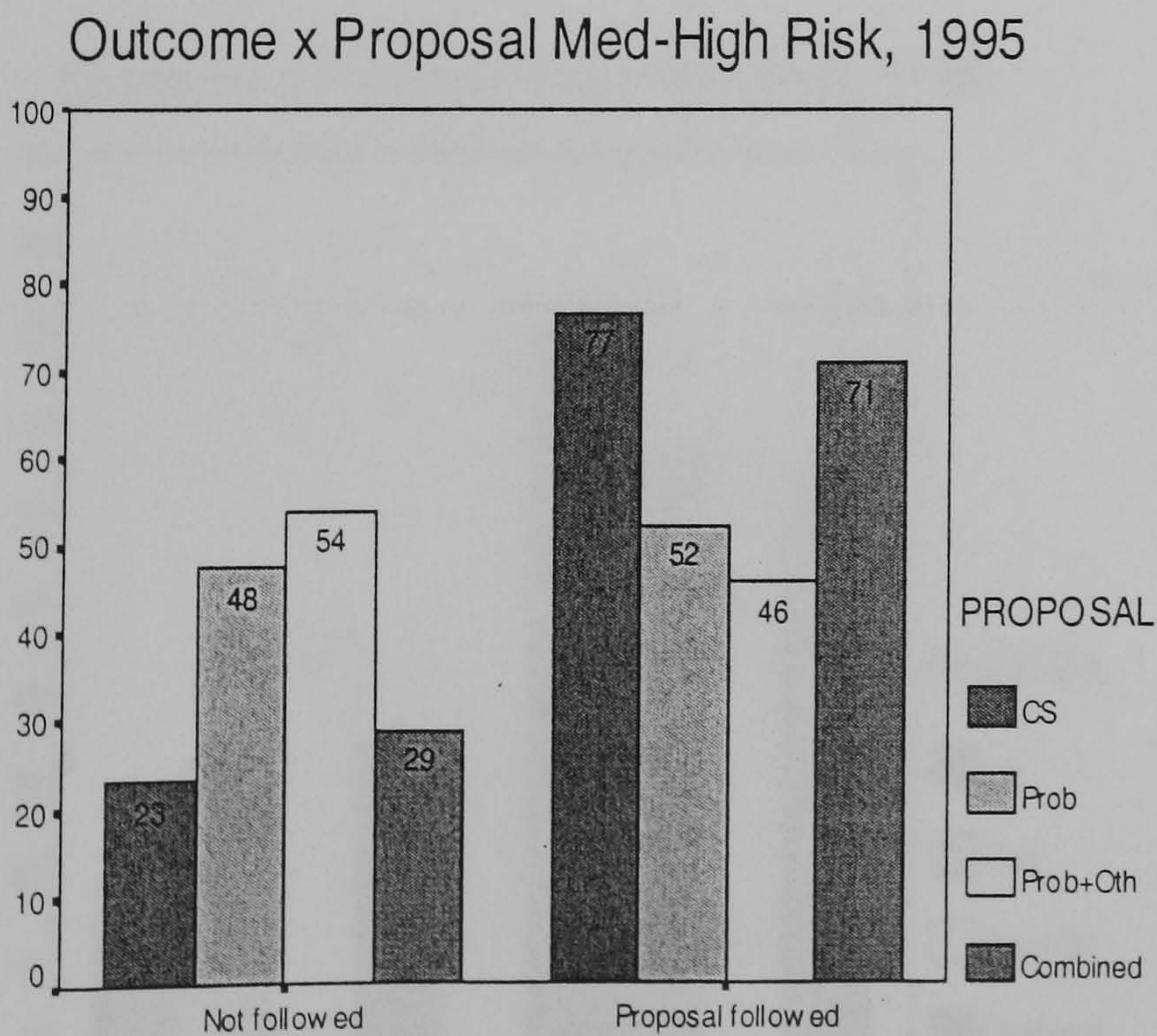


Figure 3(d) High Risk, 1995  
 Chi-square = 2.55, df = 3, p = .47 (N.S.)

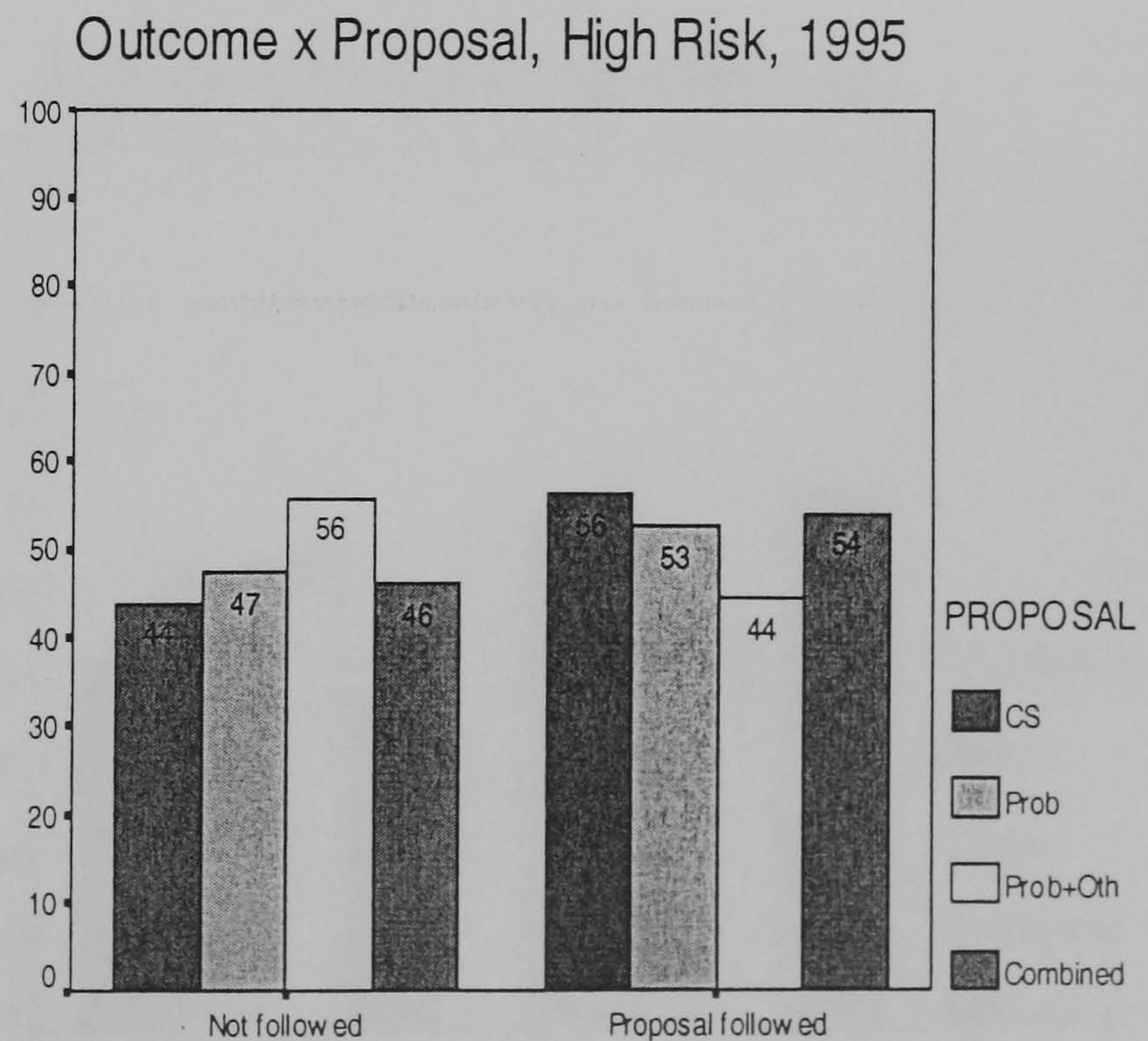




Figure 4 Take-up Rates for Community Sentence Proposals According to Risk Level 1996

Figure 4(a) Low Risk, 1996  
 Chi-square = 20.35, df = 2, p = <.001  
 (excluding Combination Orders)

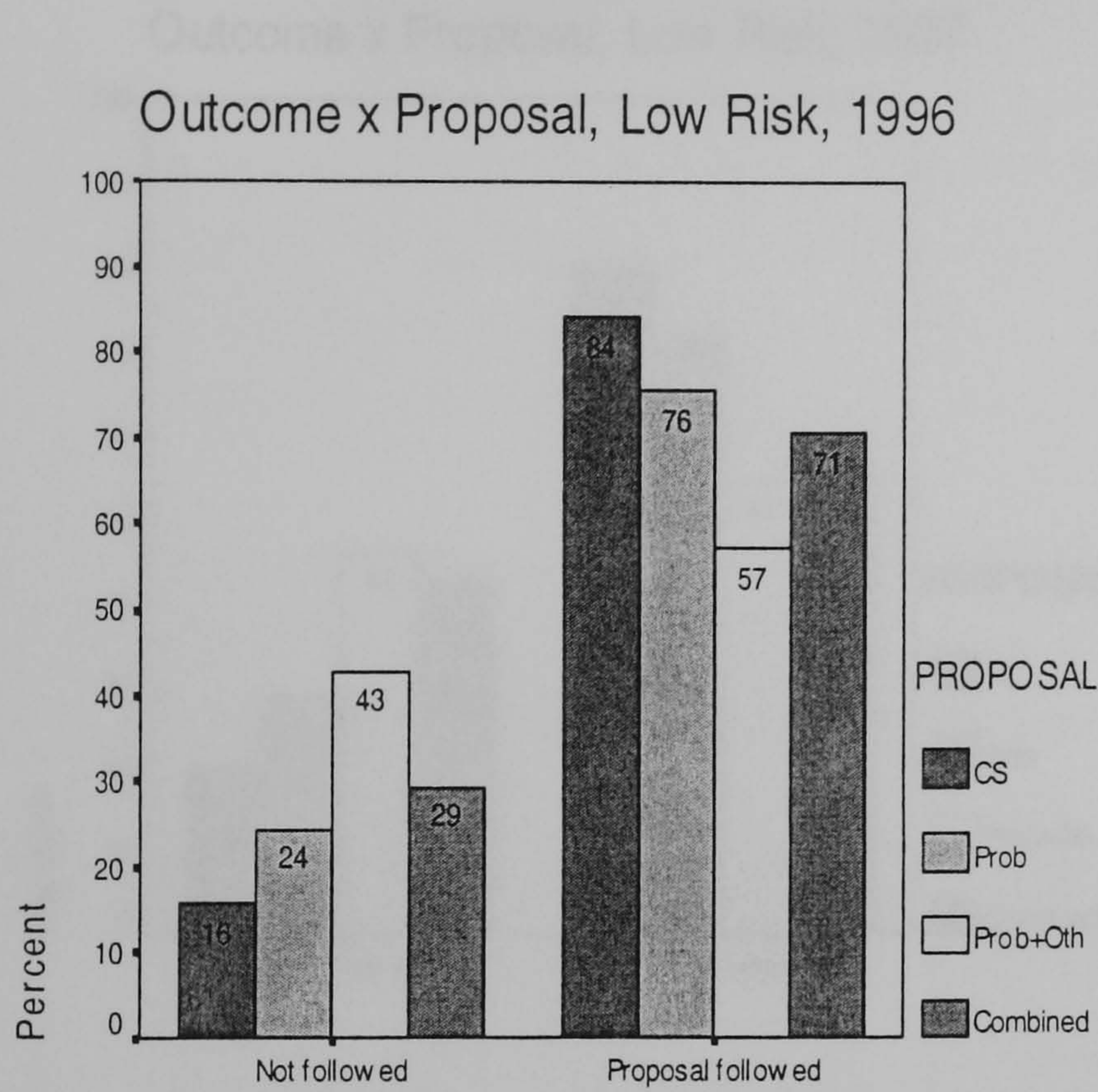


Figure 4(b) Med-Low Risk, 1996  
 Chi-square = 69.68, df = 3, p = <.001

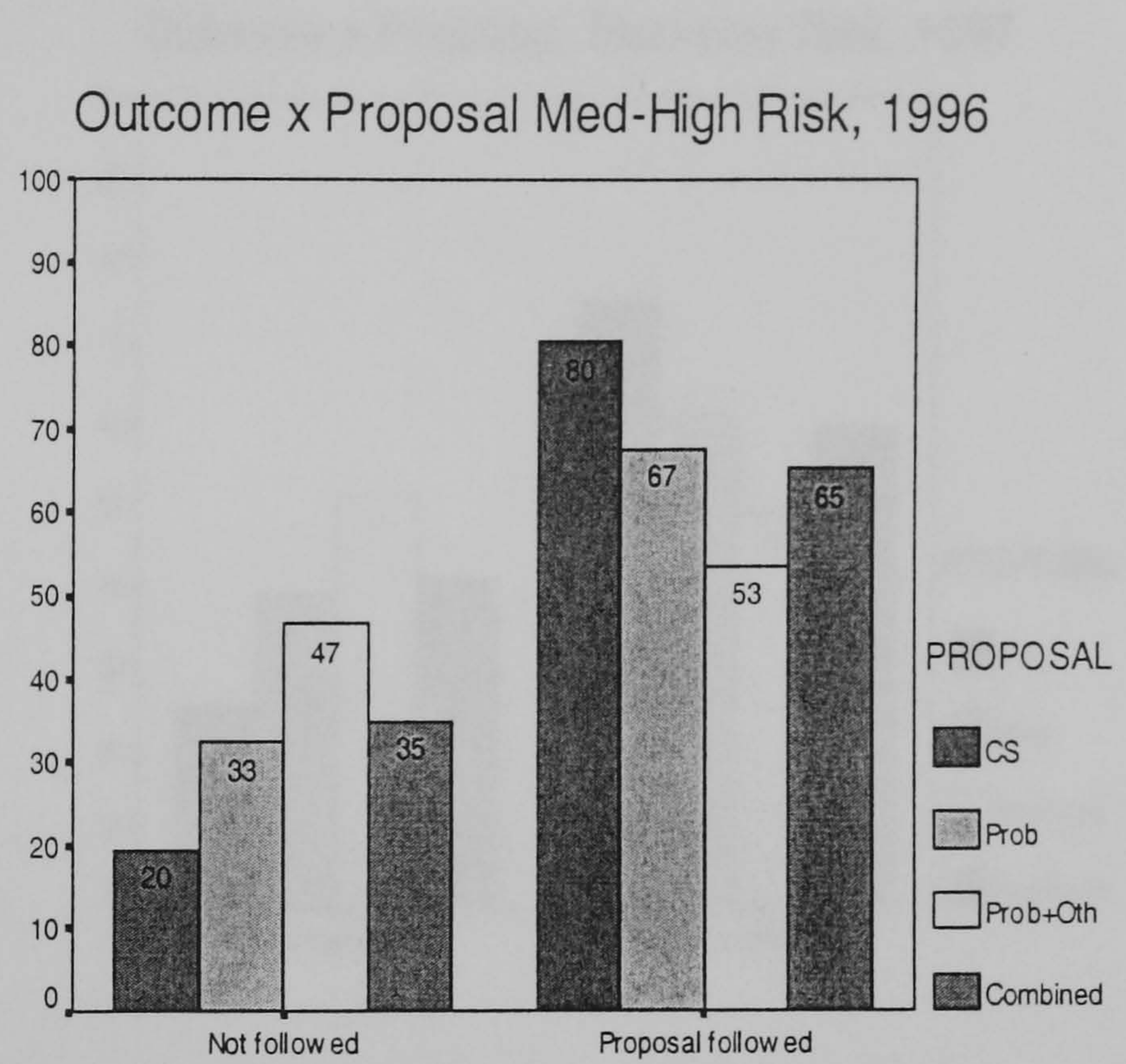


Figure 4(c) Med-High Risk, 1996  
 Chi-square = 42.75, df = 3, p = <.001

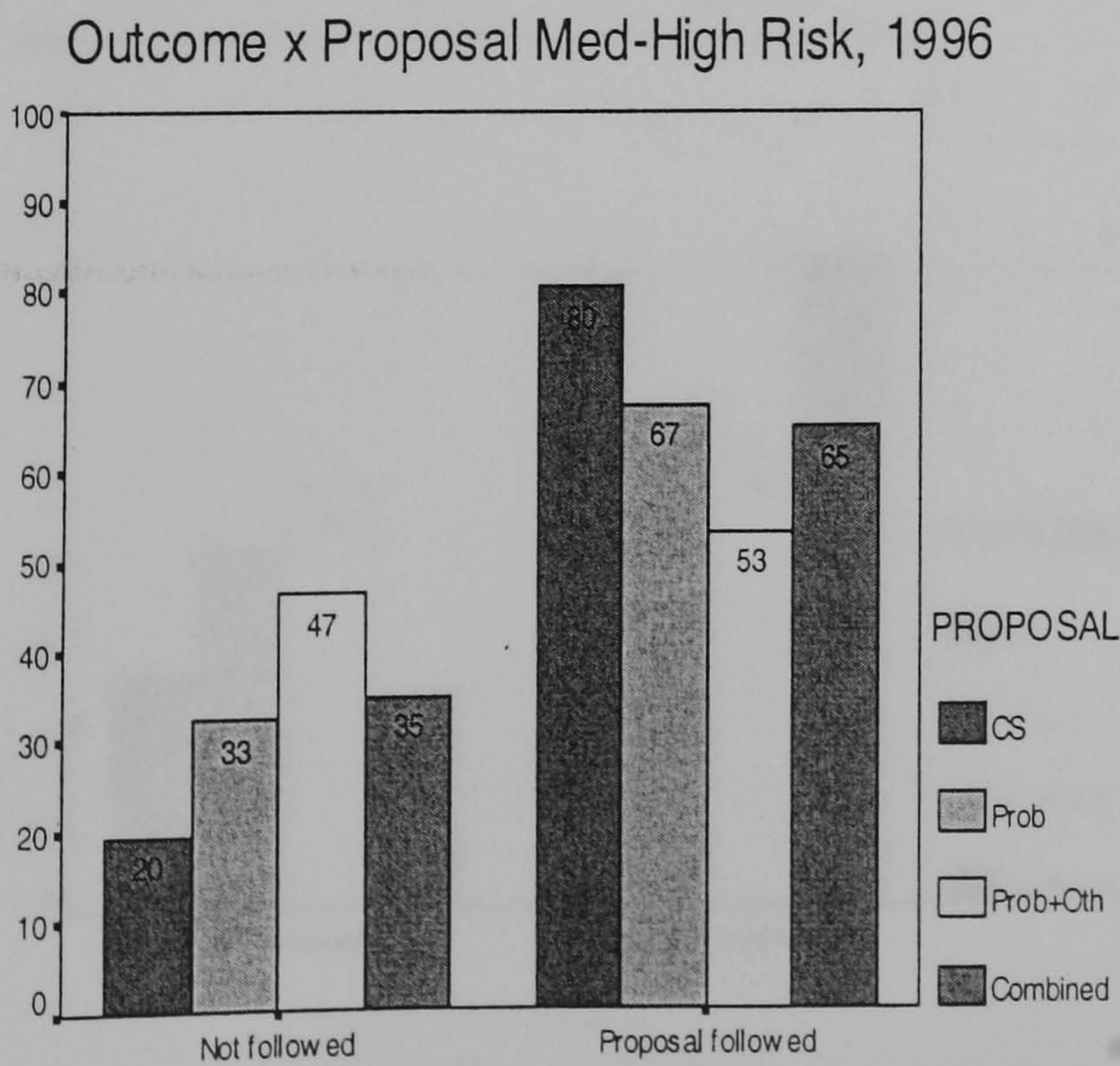


Figure 4(d) High Risk, 1996  
 Chi-square = 3.54, df = 3, p = .32 (N.S.)

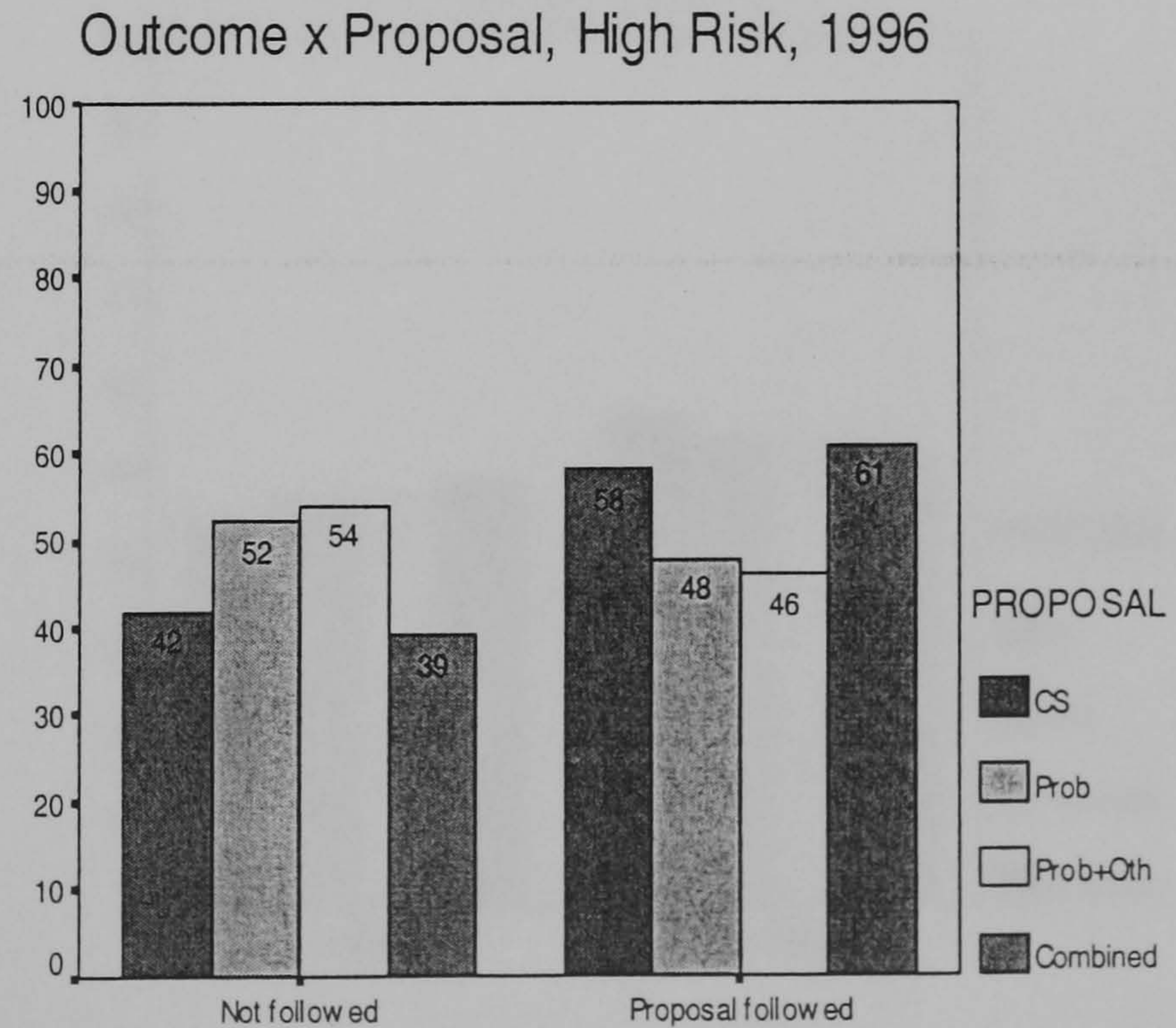




Figure 5 Take-up Rates for Community Sentence Proposals According to Risk Level 1997

Figure 5(a) Low Risk, 1997  
Chi-square = 32.34, df = 3, p = <.001

Figure 5(b) Med-Low Risk, 1997  
Chi-square = 35.54, df = 3, p = <.001

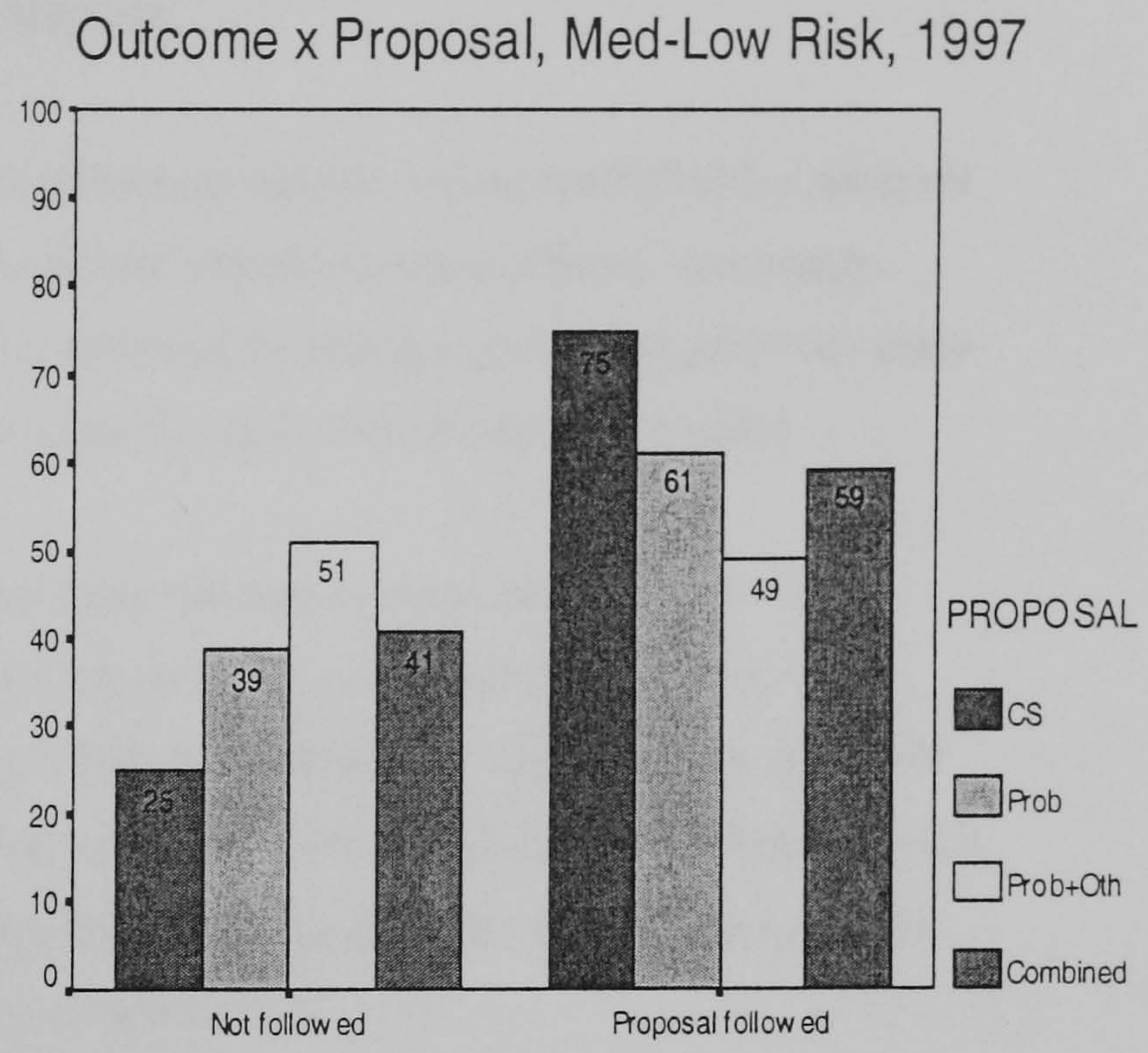
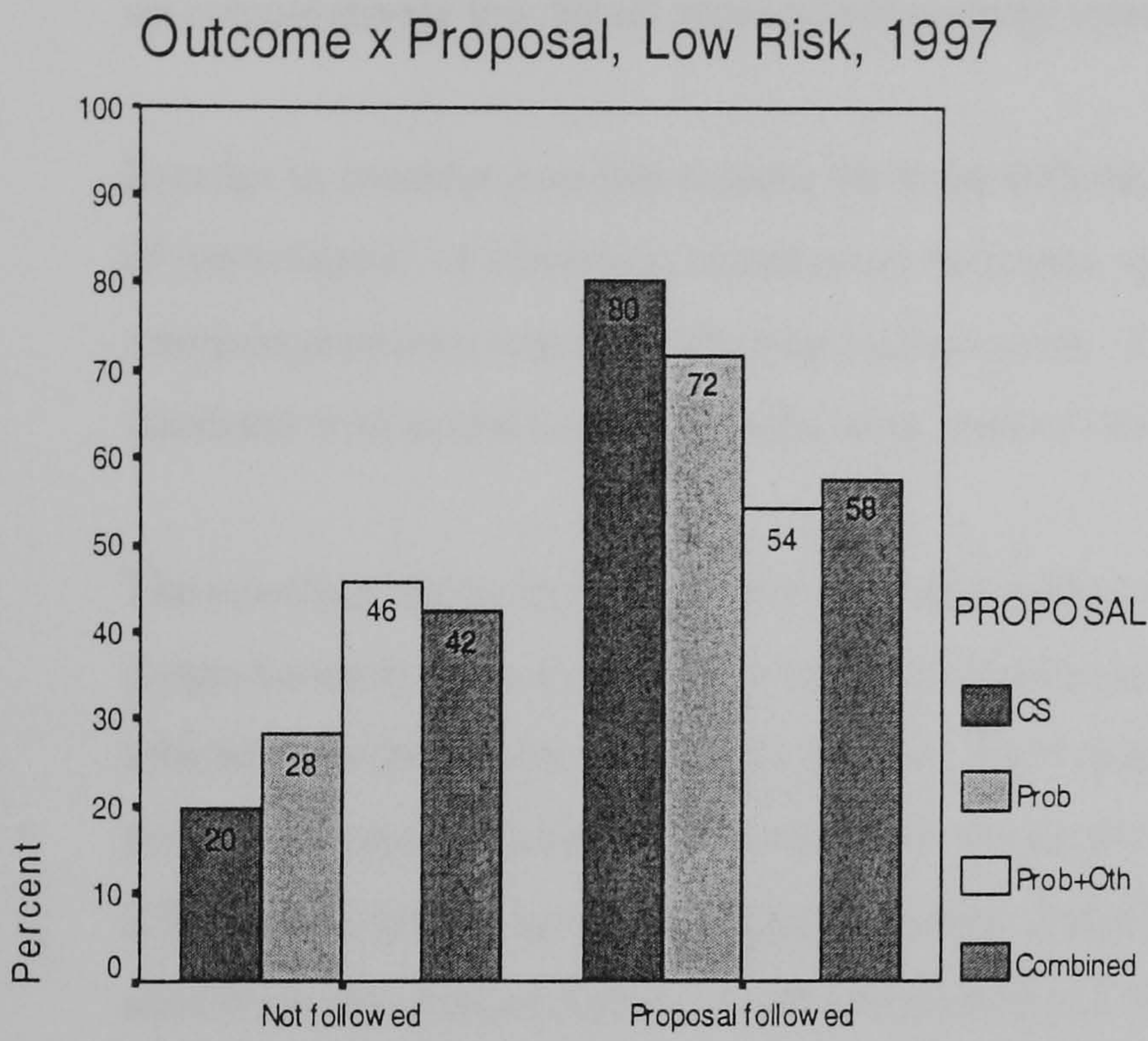
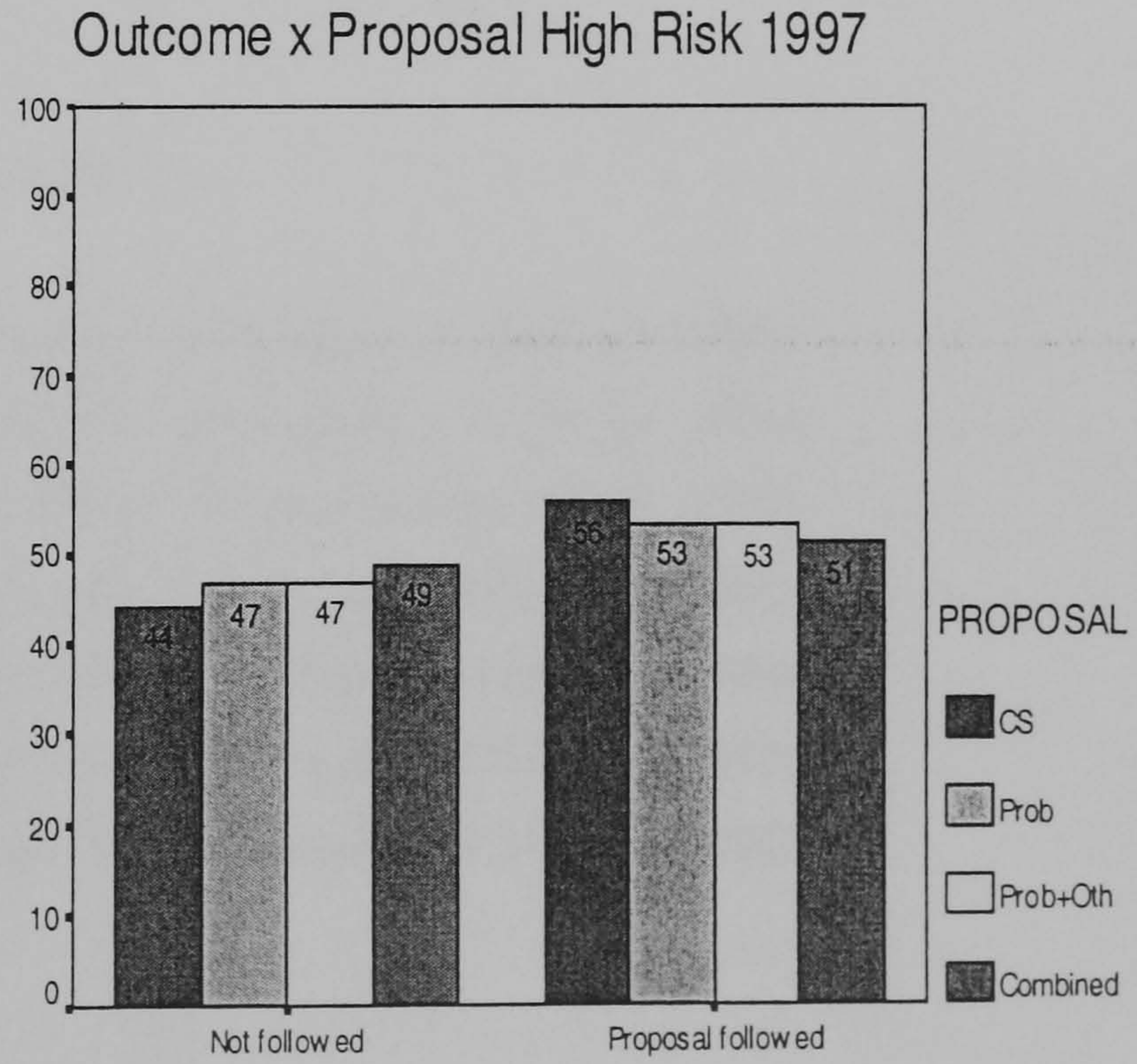
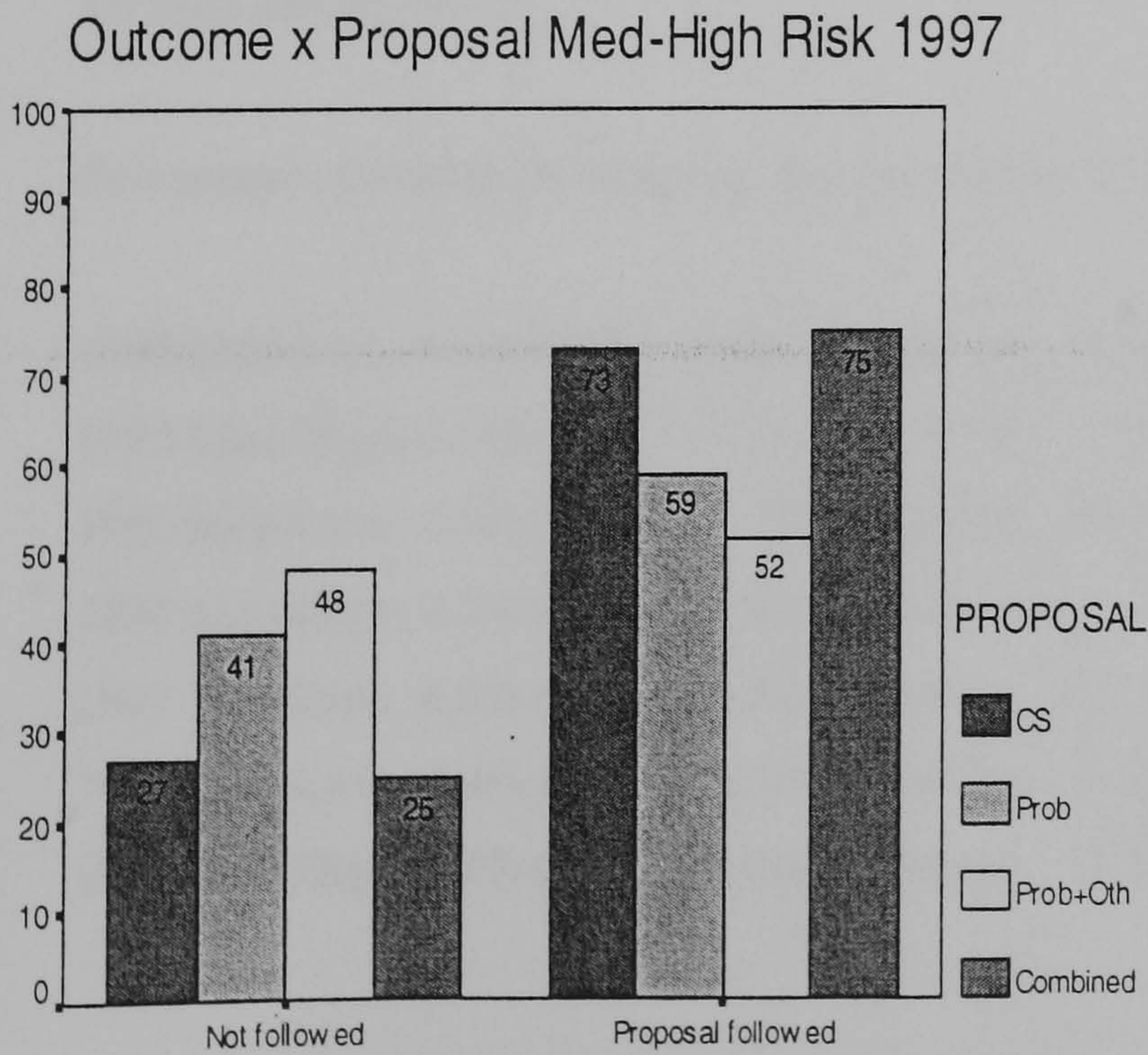


Figure 5(c) Med-High Risk, 1997  
Chi-square = 31.58, df = 3, p = <.001

Figure 5(d) High Risk, 1997  
Chi-square = .18, df = 3, p = .98 (N.S.)





We can conclude from the above findings that for offenders of comparable 'seriousness', at low, medium-low and medium-high risk, a proposal for community service was consistently more likely to be taken up by the courts than was a proposal for probation+. However, for offenders at high risk of receiving a custodial sentence, there was little difference between the proportions of proposals that were followed, with rates of take-up comparatively low for all types of community sentence proposal.

In order to consider possible reasons for these differing rates of take-up despite having controlled for the level of 'seriousness' of offenders, actual court outcomes were examined where probation officers' community sentence proposals were not taken up by the courts. This was achieved by producing tables of proposals cross-tabulated with actual court disposals, with level of risk controlled, for each of the three years studied.

The resulting tables showed that for offenders within the first three risk bands, magistrates were making proportionately more combination orders following proposals for probation or probation+ than they were following proposals for community service. For example, in 1996, for medium-low risk offenders, 17.2% of probation proposals and 25% of probation+ proposals resulted in a combination order disposal, compared with 2.7% of community service proposals. Similar findings applied across all three years of the study, as can be seen from the detailed figures that are contained in Table 6.6 in Appendix 4.

Chi-square tests were then conducted in relation to the proportion of combination order outcomes that followed probation, probation+ and community service proposals. Results showed that the differences in combination order outcomes between these sentence proposals were statistically significant for medium-low and medium-high risk offenders across the three years of the study, as well as for low risk offenders in 1997. These findings are summarised below.

*Percentage of proposals resulting in Combination Order outcomes<sup>33</sup>:*

1995 Med-Low:	3.6% CSO,	22.8% Probation,	19.6% Probation+	(Chi-square = 56.48, p = <.001)
1995 Med-High:	4.1% CSO,	21.2% Probation,	17.6% Probation+	(Chi-square = 39.19, p = <.001)
1996 Med-Low:	2.7% CSO,	17.2% Probation,	25.0% Probation+	(Chi-square = 69.76, p = <.001)
1996 Med-High:	4.1% CSO,	11.8% Probation,	13.7% Probation+	(Chi-square = 15.97, p = <.001)
1997 Low Risk:	4.0% CSO,	12.2% Probation,	17.7% Probation+	(Chi-square = 26.40, p = <.001)
1997 Med-Low:	4.4% CSO,	15.7% Probation,	19.0% Probation+	(Chi-square = 29.34, p = <.001)
1997 Med-High:	4.7% CSO,	14.0% Probation,	21.8% Probation+	(Chi-square = 33.44, p = <.001)

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<sup>33</sup> Tests were based on two degrees of freedom. Expected cell frequencies were too low to permit statistical analyses in relation to low risk offenders in 1995 and 1996. There were no statistically significant differences in relation to high risk offenders.



So why was a proposal for probation or probation+ more likely to result in a combination order than a proposal for community service, even when offenders were of comparable 'seriousness'?

There are a number of possible explanations. First, within the community sentencing 'band', probation officers have generally tended to propose community service when risk of re-offending is low, but to propose probation or probation+ when supervision is required because risk of re-offending is high (see part 1). Thus reports containing a proposal for community service were likely to have concluded that risk of re-offending was low and that the offender was therefore not in need of probation supervision. By contrast, reports that contained a proposal for probation or probation+ were likely to have concluded that there was a risk of re-offending that required addressing through probation supervision. It therefore appears likely that it is easier for probation officers to 'rule out' probation supervision on the grounds that it is not required, than it is for them to 'rule out' community service, since the desirability of making reparation to the community is likely to apply to all offenders. It could also be that magistrates were inclined to pass more severe sentences on offenders assessed at higher risk of re-offending than they were on offenders at low risk of re-offending. Or it could be that by drawing attention to offenders' problems that needed to be addressed through probation supervision, probation proposals gave a more negative impression of offenders than did community service proposals, which were likely to contain positive references to reparation. Finally, it could be that magistrates are generally predisposed to sentence all offenders to community service. However, where a report contains a proposal for probation or probation+, rather than go against a proposal that is aimed at reducing the risk of re-offending, they end up sentencing the offender to both.

These issues will be considered further when we examine the actual wording of pre-sentence reports in subsequent chapters. However, these findings again raise the possibility that offenders for whom probation has been proposed are sometimes sentenced more severely to probation *and* community service than apparently comparable offenders for whom community service has been proposed.

Table 6.6 also shows that for offenders within the medium-low and medium-high risk bands, magistrates were passing proportionately more custodial sentences following proposals for probation+ or for a combination order than they were following proposals for community service or for basic probation. For example, for medium-low risk offenders in 1997, 23% of probation+ proposals and 27.2% of combination order proposals resulted in a custodial sentence, compared with 10.9% of community service proposals and 12% of probation proposals. Chi-square tests were again conducted, this time in relation to the proportion of custodial outcomes that followed probation, probation+, community service and combination order proposals. Results showed that custodial outcome differences between these sentence proposals were statistically significant for medium-low risk offenders across all three years of the study and for medium-high risk offenders in 1995 and 1996. These findings are summarised below.



*Percentage of proposals resulting in custodial outcomes<sup>34</sup>:*

1995 Med-Low: 7.7% CSO, 7.8% Probation, 15.9% Probation+, 14.5% CombO (Chi-square = 9.15, p = .027)

1995 Med-High: 11.8% CSO, 13.9% Probation, 22.5% Probation+, 24% CombO (Chi-square = 15.31, p = .002)

1996 Med-Low: 4.7% CSO, 9.4% Probation, 13.8% Probation+, 21.8% CombO (Chi-square=28.92, p=<.001)

1996 Med-High: 9.9% CSO, 9.4% Probation, 21.5% Probation+, 25.2% CombO (Chi-square=26.85, p=<.001)

1997 Med-Low: 10.9% CSO, 12% Probation, 23% Probation+, 27.2% CombO (Chi-square=22.48, p=<.001)

1997 Med-High: 9.4% CSO, 14.4% Probation, 16.4% Probation+, 14.8% CombO (Not Significant, p = .237)

Probation officers (and PSR proposal matrices) tend to target probation+ and combination orders as high tariff proposals for offenders who are at risk both of re-offending and of receiving a custodial sentence. It is therefore perhaps to be expected that there would be more custodial outcomes following such proposals. However, the calculation of 'seriousness' should have ensured that all offenders were at comparable risk of custody. The higher rates of custody following probation+ and combination order proposals therefore suggests that, for those at risk of re-offending, magistrates may not regard these sentences as adequate alternatives to custody.

The above discussion has focused on offenders at medium-low and medium-high risk of custody. With regard to high risk offenders, as we have seen, there were no statistically significant differences in rates of take-up between the different community sentence proposals, nor in the proportions of combination order and custodial outcomes that followed the different proposals. Perhaps not surprisingly, bearing in mind that these offenders had been assessed as at high risk of receiving a custodial sentence, custody was in fact what many of them received, irrespective of the community sentence proposal that had been made.

#### **4 Probation Officers' Proposals for Male and Female Offenders of Similar Risk Level**

We saw in chapter 5 that community service was the most popular sentence proposal for male offenders, whereas basic probation was the most popular sentence proposal for female offenders. Proposals for basic probation were more likely to be taken up for female offenders than for male offenders and female offenders were less likely to be sentenced to custody than were male offenders. However, we also saw that male offenders tended to commit more serious types of offence and to have a more serious previous criminal record than female offenders. In the present chapter we re-examine gender differences in relation to magistrates' rates of take-up for probation officers' community sentence proposals, but we now make comparisons between male and female offenders who have been assessed as being at a similar risk of receiving a custodial sentence.

Figure 6 below shows the proportions of male and female offenders in each of the four risk categories for the years 1995-97. The figures on which the charts are based are contained in Table 6.7 in Appendix 4.

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<sup>34</sup> Tests were based on three degrees of freedom. For low risk offenders, expected cell frequencies were too low to permit statistical analyses. There were no statistically significant differences for high risk offenders.



Figure 6 Risk Levels According to Gender of Offender, 1995-97

Figure 6(a) 1995  
Chi-square = 87.83, df = 3, p = <.001

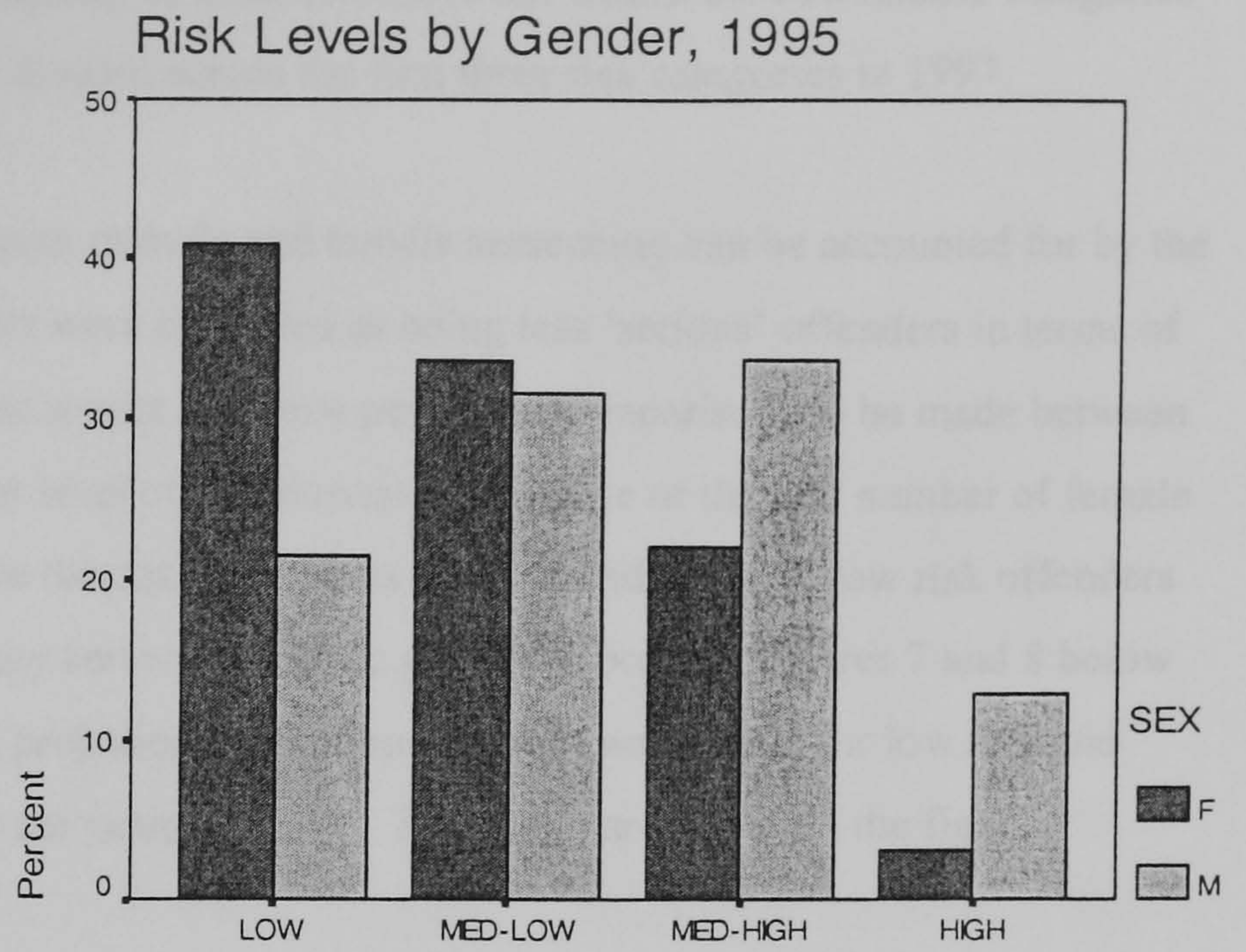


Figure 6(b) 1996  
Chi-square = 65.92, df = 3, p = <.001

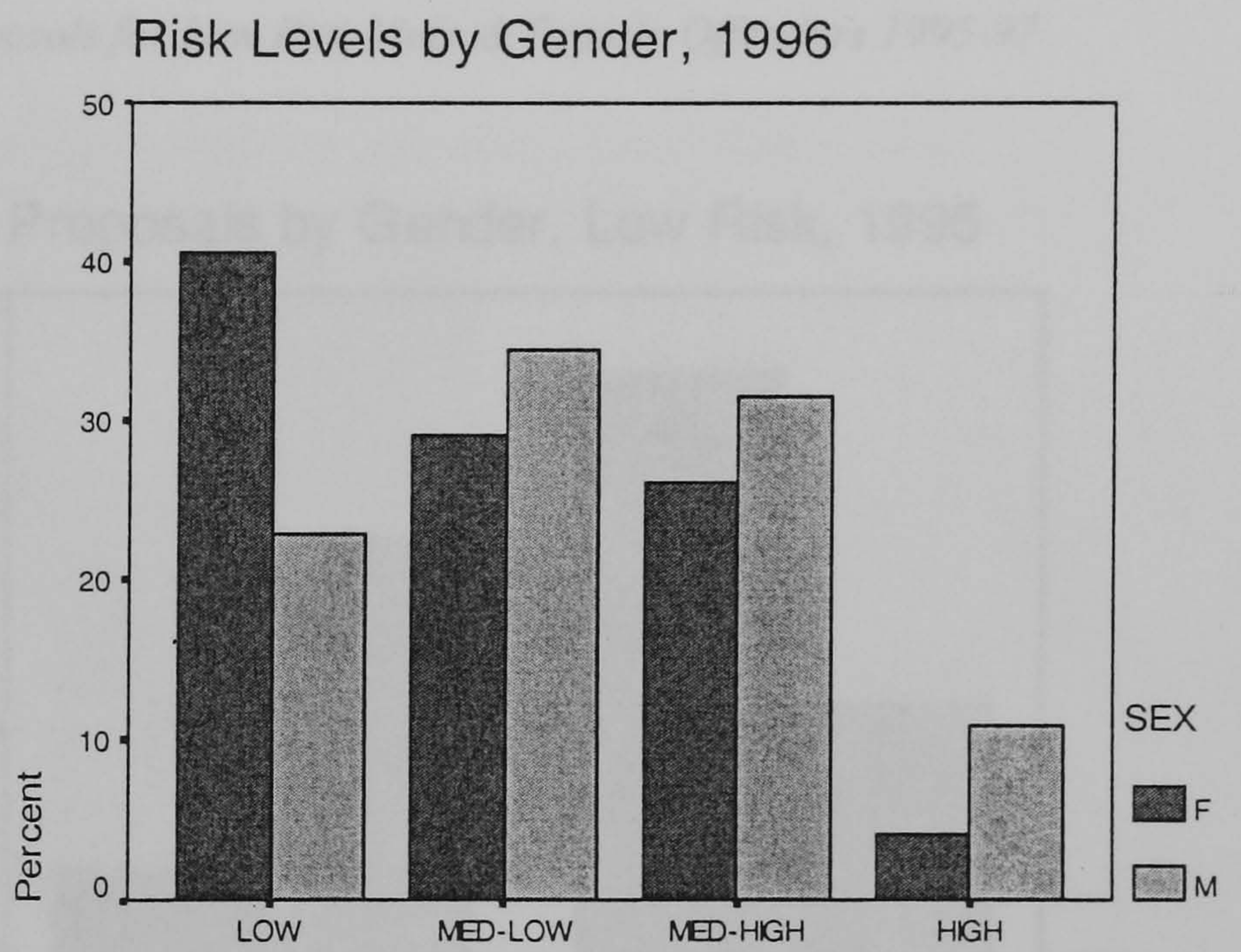
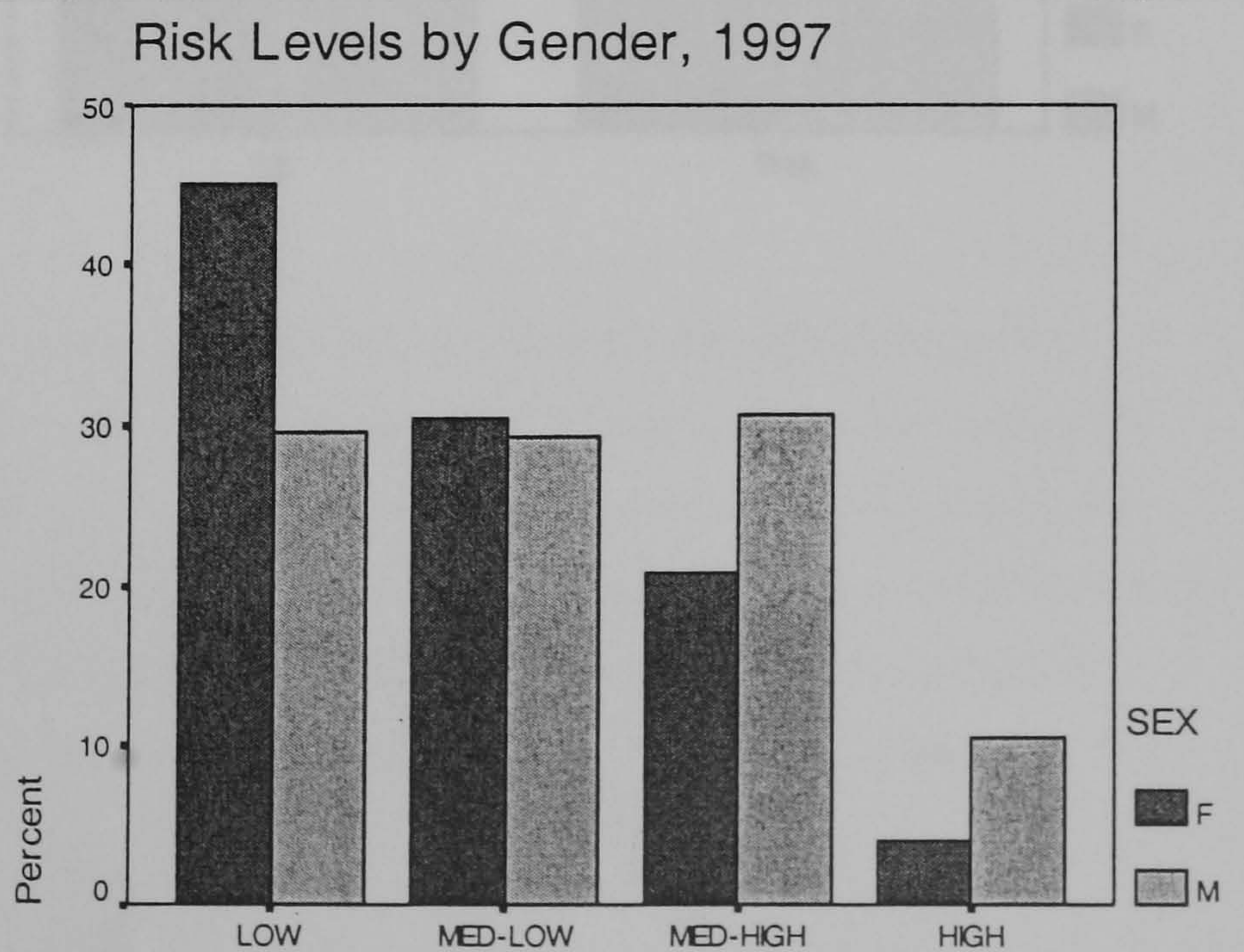


Figure 6(c) 1997  
Chi-square = 57.76, df = 3, p = <.001





For each year studied, it can be seen that the majority of female offenders were classified as being at low risk of receiving a custodial sentence. However, the majority of male offenders fell within the two middle categories of risk in 1995 and 1996 and were fairly evenly divided across the first three risk categories in 1997.

These findings confirm that some of the differences in male and female sentencing can be accounted for by the fact that proportionately more females than males were classified as being less 'serious' offenders in terms of risk of custody scores. However, the use of these scores also now permitted comparisons to be made between male and female offenders who were of a similar level of 'seriousness'. Because of the low number of female offenders in the study, it was only possible to use the data relating to low risk and medium-low risk offenders and to make comparisons in respect of community service and basic probation orders. Figures 7 and 8 below show the proportions of community service and probation order proposals that were made for low risk and medium-low risk male and female offenders for the years 1995-97. The charts are based on the figures contained in Table 6.8 in Appendix 4.

Figure 7 Community Service & Probation Proposals for Low Risk Male & Female Offenders 1995-97

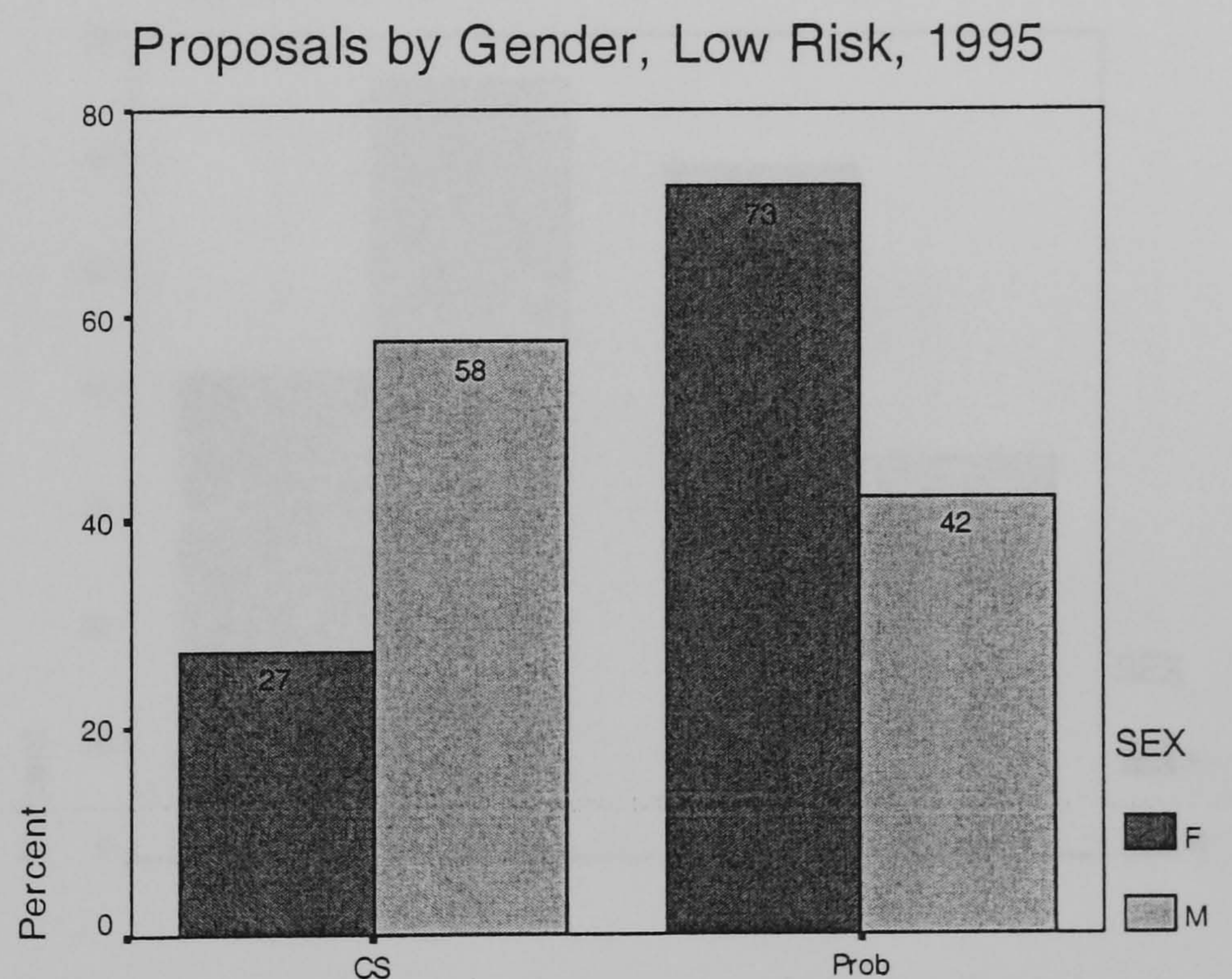


Figure 7(a) 1995

Chi-square = 21.09, df = 1, p = <.001



Figure 7(b) 1996

Chi-square = 10.85, df = 1, p = .001

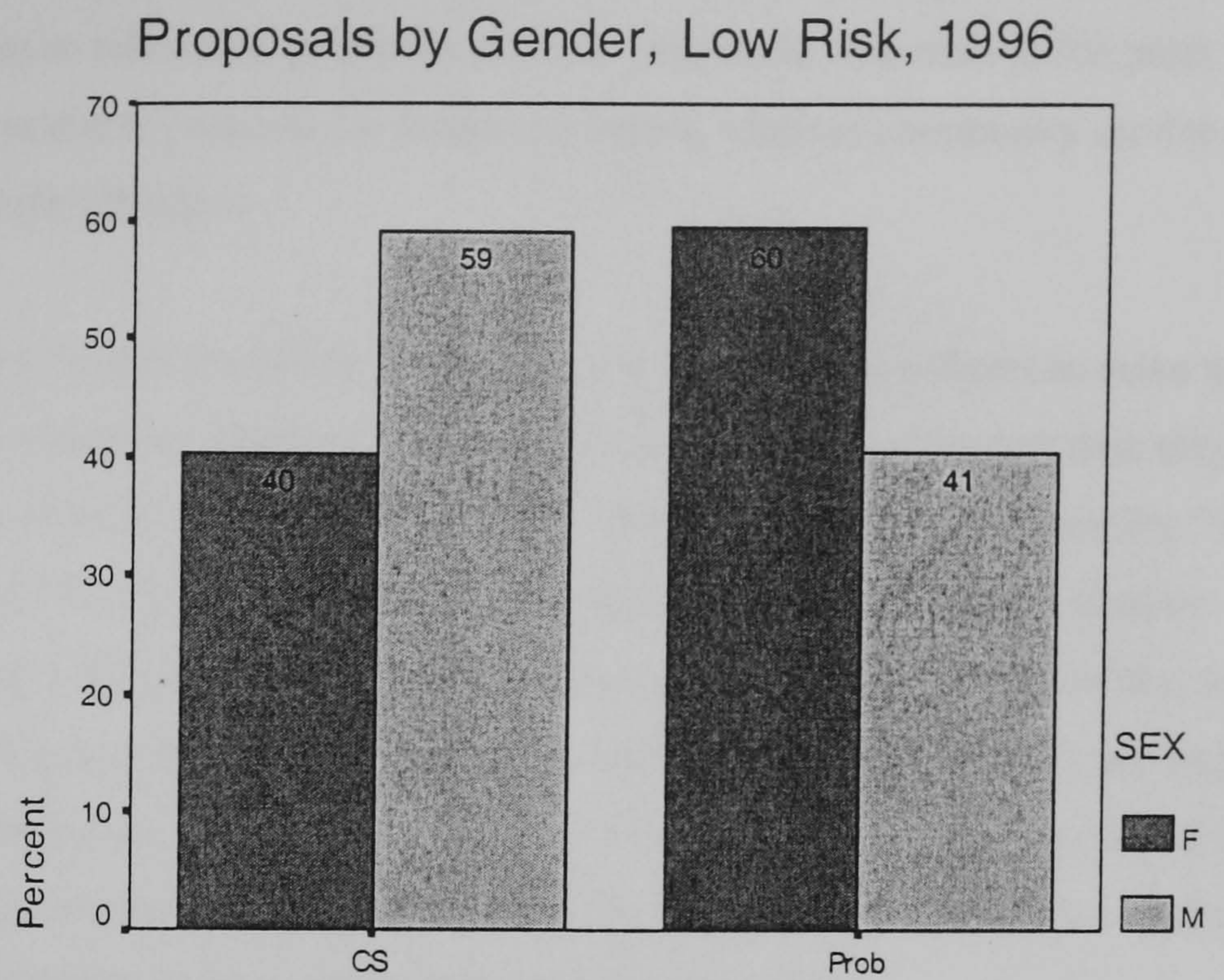
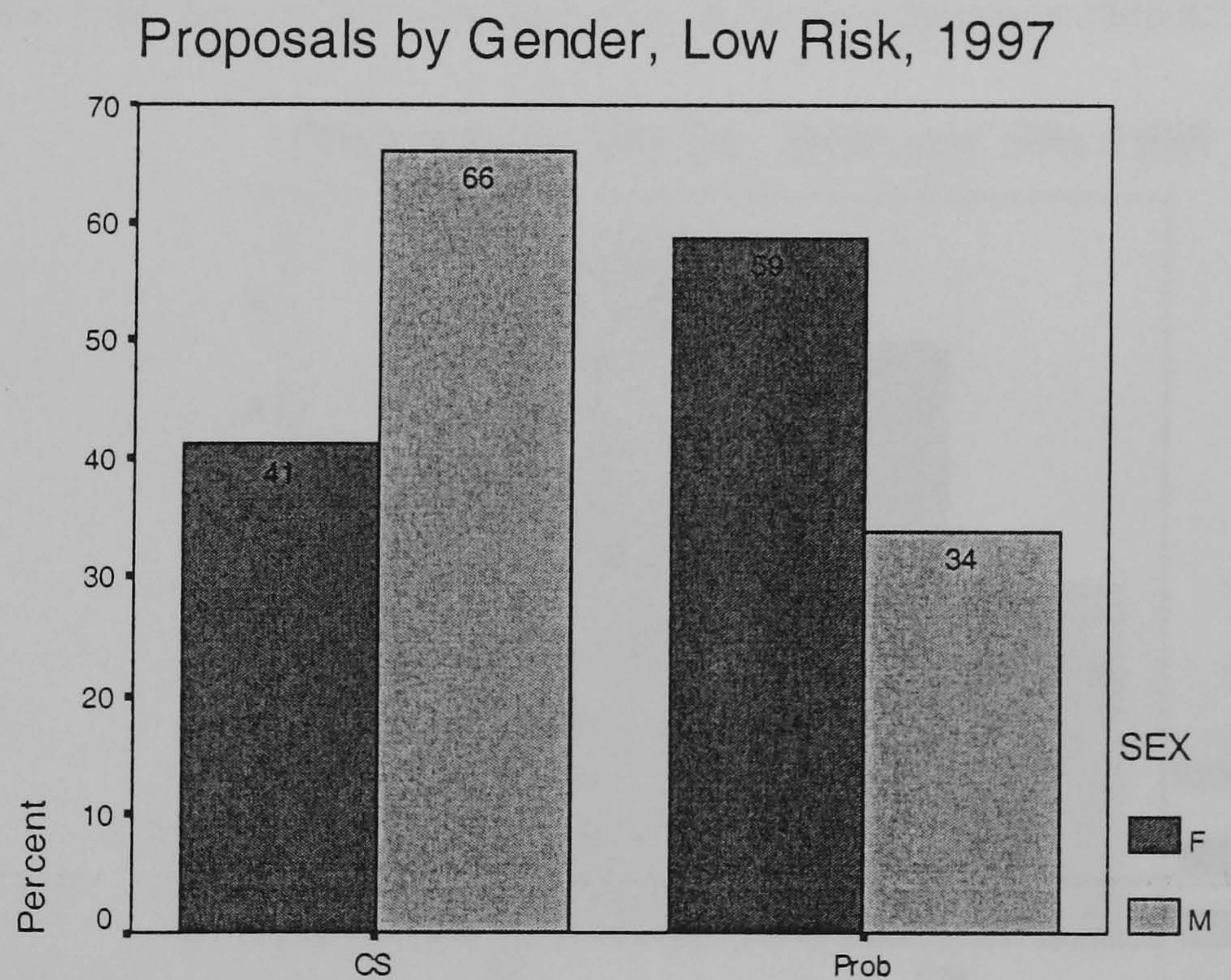


Figure 7(c) 1997

Chi-square = 24.95, df = 1, p = <.001



The above results show that for comparably low risk offenders there were statistically significant gender differences in relation to probation officers' proposals for probation and community service. For each of the years studied, probation officers were more likely to propose probation for female offenders and to propose community service for male offenders. However, it can also be seen that for female offenders, the proportionate use of probation proposals gradually decreased and the proportionate use of community service proposals gradually increased over the three-year period, with a similar trend shown for low risk male offenders.



For male and female offenders at medium-low risk of custody, Figure 8 below shows that again there were statistically significant gender differences in relation to probation officers' proposals. For each of the years studied, probation was more likely as a sentence proposal for female offenders, whereas community service was more likely as a sentence proposal for male offenders.

If we compare Figures 7 and 8, it can also be seen that there was a tendency for probation officers to make more community service proposals and fewer probation proposals for medium-low risk female offenders than they did for females in the low risk group. In 1995, for example, for low risk females, probation accounted for 73% of proposals and community service for 27% of proposals, whereas for medium-low risk females, probation accounted for 56% of proposals and community service for 44% of proposals. These findings suggest that for female offenders, as risk of custody increases, a proposal for community service rather than for basic probation becomes increasingly likely. For male offenders, in 1995 and 1996 there was a similar tendency for probation officers to make proportionately more community service proposals and fewer probation proposals for medium-low risk males than for low risk males, although no such differences were found in 1997.

Figure 8 Community Service & Probation Proposals for Med-Low Risk Male & Female Offenders 1995-97

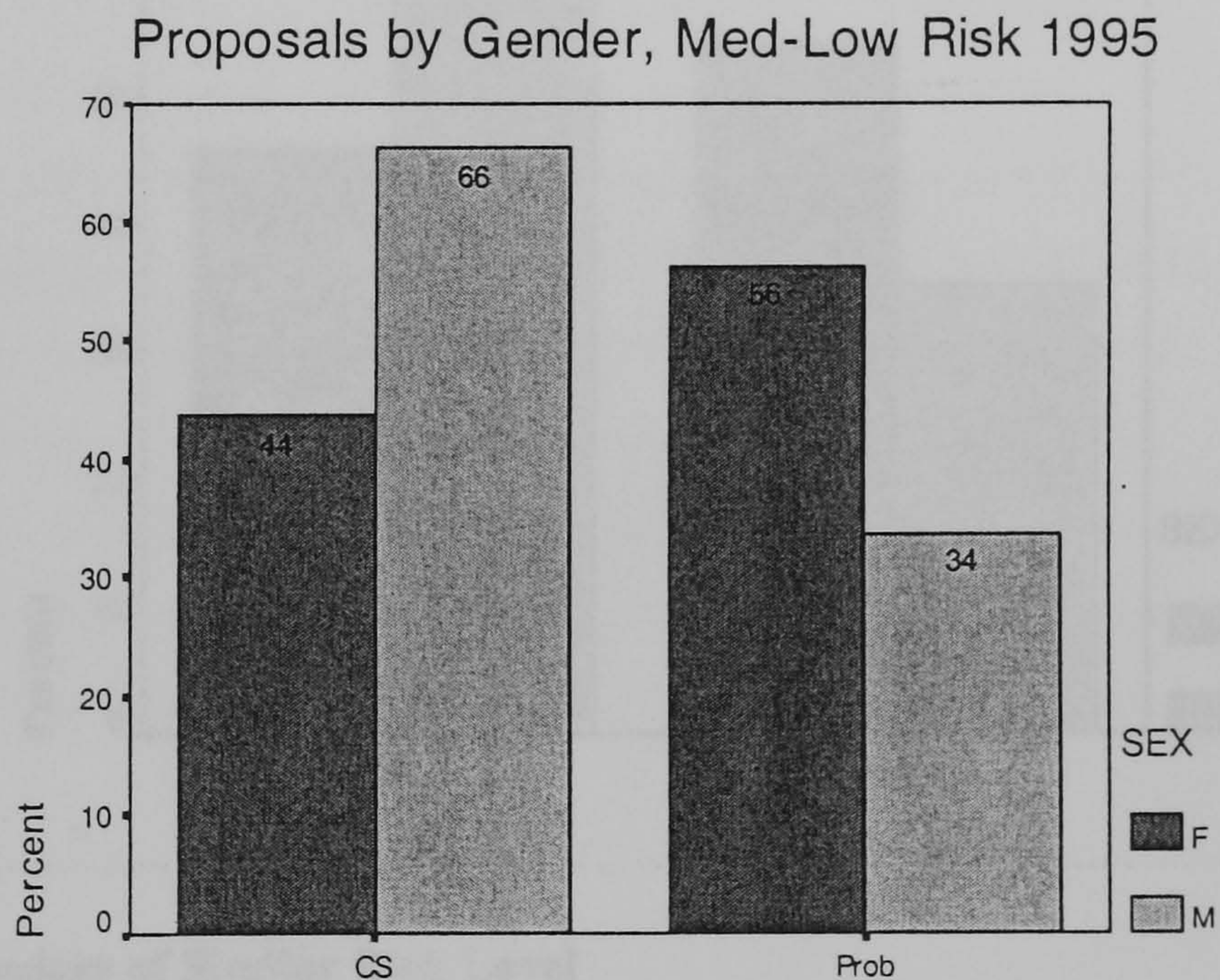


Figure 8(a) 1995  
Chi-square = 11.66, df = 1, p = .001



Figure 8(b) 1996  
 Chi-square = 8.75, df = 1, p = .003

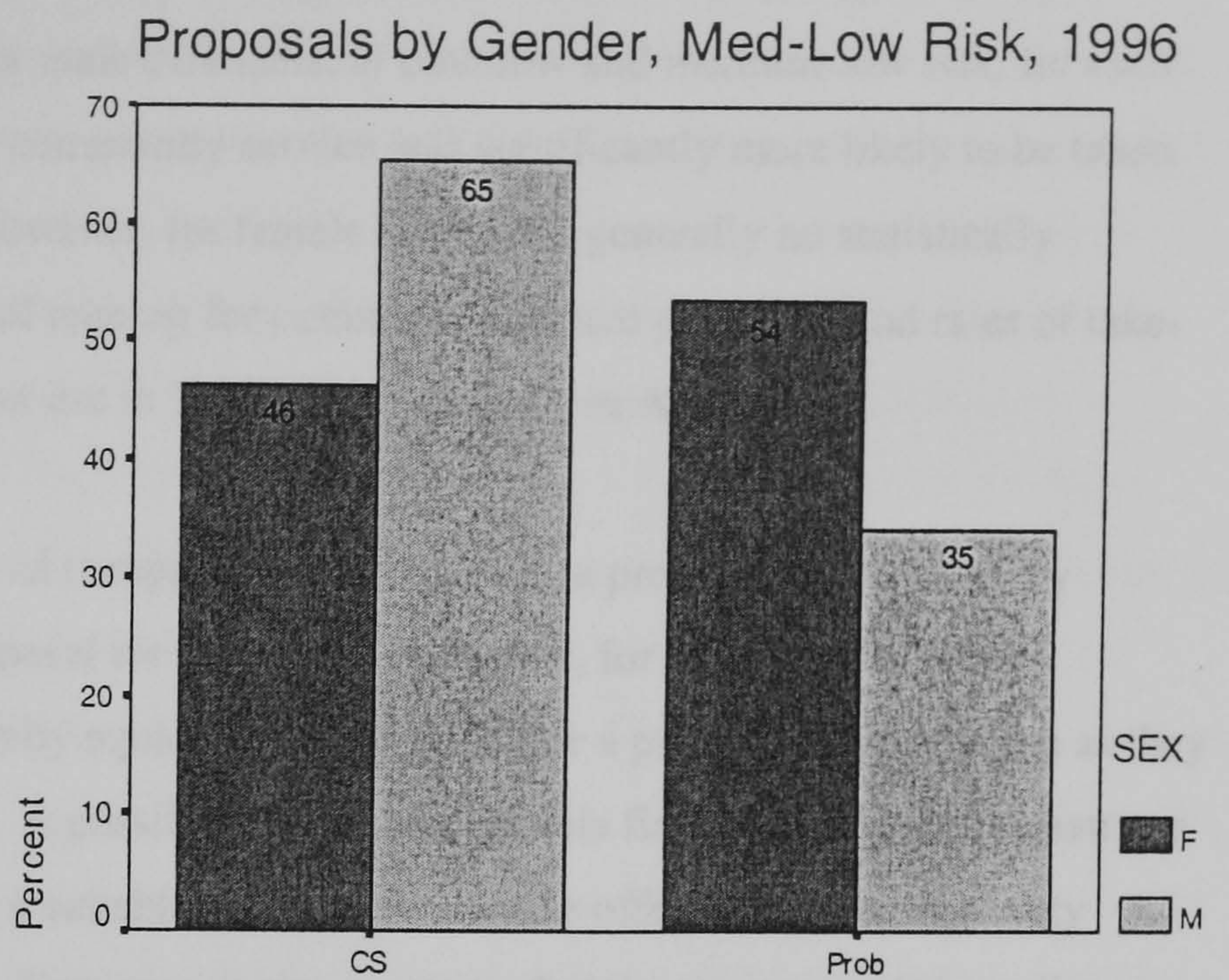
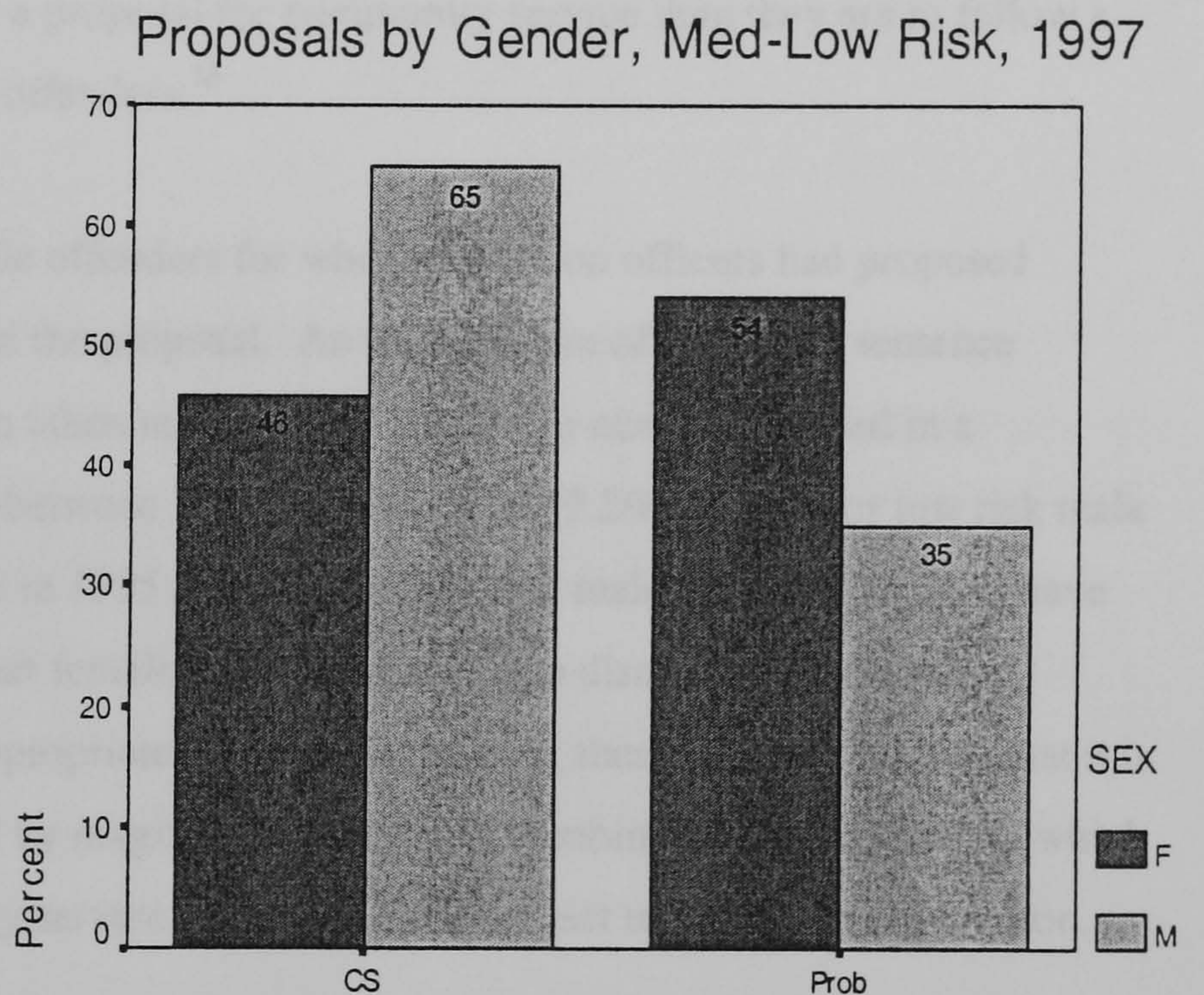


Figure 8(c) 1997  
 Chi-square = 7.58, df = 1, p = .005



### 5 Take-up Rates for Male and Female Offenders of Similar Risk Level

No statistically significant gender differences were found in rates of take-up for community service proposals for any of the years studied, with magistrates equally as likely to follow community service proposals for female offenders as for male offenders. There were also no statistically significant gender differences in rates of take-up for probation proposals in 1995 and 1996. However, in 1997, for both low and medium-low risk offenders, it was found that a proposal for probation was more likely to be taken up for female offenders than for male offenders, with a similar tendency in respect of probation proposals for low risk offenders in 1996, (when  $p = .08$ ). The findings for 1997 are set out in Table 6.9 in Appendix 4.



Further analyses were then carried out in respect of each sex to see whether there were take-up differences according to the proposal that had been made. For male offenders, at both low and medium-low risk, for each of the three years it was found that a proposal for community service was significantly more likely to be taken up by the courts than a proposal for probation. However, for female offenders, generally no statistically significant differences were found between rates of take-up for community service proposals and rates of take-up for probation proposals.<sup>35</sup> These findings are set out in Tables 6.10 and 6.11 in Appendix 4.

These results demonstrate that for male offenders of comparable 'seriousness', a proposal for community service was more likely to be followed than a proposal for probation. However, for female offenders of comparable 'seriousness', magistrates were generally equally as likely to follow a proposal for probation as they were to follow a proposal for community service. A possible explanation for this finding is that the magistrates in the study held traditional views of probation as a suitable sentence for female offenders and community service as a suitable sentence for male offenders. However, it also suggests that the present study's earlier finding that magistrates are more likely to follow a proposal for community service than they are to follow a proposal for probation is only applicable to male offenders.<sup>36</sup>

It is also relevant to ask what happened to the male offenders for whom probation officers had proposed probation, but where magistrates had not followed the proposal. An examination of the actual sentence outcomes where probation proposals had not been taken up revealed that a large number resulted in a combination order outcome at court. This varied between 13.5% in 1997 and 19.2% in 1996 for low risk male offenders, and between 17.7% in 1997 and 24.6% in 1995 for medium-low risk male offenders. As we have already noted, it has previously been suggested that female offenders have been disadvantaged because community service is sometimes regarded as inappropriate for them. However, these findings suggest that it is in fact male offenders who may be disadvantaged by magistrates' use of the combination order, through which they require male offenders to perform community service as well as to be subject to probation supervision.

## **Conclusion**

In the present chapter we have examined offenders who have been assessed as being at comparable risk of receiving a custodial sentence. In the first part of the chapter, we saw that, within the three lower levels of 'seriousness' (that is, the majority of offenders who are sentenced in the magistrates courts), a proposal for community service is more likely to be taken up by the courts than a proposal for probation+. A possible explanation for this finding could be that offenders for whom community service is proposed are assessed to be

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<sup>35</sup> The one exception was for female offenders at medium-low risk in 1996, when it was found that a proposal for community service was more likely to be taken up by the courts than a proposal for probation.

<sup>36</sup> Where analyses fail to differentiate between male and female offenders, results are likely to relate predominantly to male offenders because of the comparatively low number of female offenders in the study.



at low risk of re-offending, whereas offenders for whom probation+ is proposed are assessed as requiring probation with groupwork because they are at a higher risk of re-offending. Magistrates may thus be more willing to follow community sentence proposals for offenders at low risk of re-offending than they are to follow such proposals for offenders at higher risk. However, as stated previously, magistrates' apparent preference for community service could also be due to its more obviously punitive and reparative aspects. Whatever the reason, the finding that a proposal for community service is more likely to be followed than a proposal for probation+ has implications for probation officers in relation to the monitoring of levels of take-up for their proposals. This is of particular concern in view of HM Inspectorate of Probation's requirement that "Managers should set clear targets for appropriate referrals [to probation+ programmes] and monitor staff performance intervening proactively if targets are not met." (Chapman and Hough, 1998, p. 29.)

For offenders at comparable risk of custody, the results also show that a combination order outcome is generally more likely following a proposal for probation or probation+ than following a proposal for community service. This finding has implications for offenders because it suggests that those for whom probation or probation+ has been proposed may be sentenced more severely than offenders of comparable 'seriousness' for whom community service has been proposed.

In the second part of the chapter we again looked at gender differences, but now in relation to offenders of comparable 'seriousness'. We continued to find that probation officers make proportionately more community service proposals for male offenders and proportionately more probation proposals for female offenders. With regard to rates of take-up, for male offenders, magistrates were similarly more likely to follow a proposal for community service than a proposal for probation and a substantial number of probation proposals for male offenders resulted in a combination order outcome at court. However, for female offenders, magistrates were generally equally likely to follow a proposal for community service as a proposal for probation. This again suggests that rather than female offenders being disadvantaged because community service is regarded as inappropriate for females, it is in fact male offenders who are disadvantaged because probation without community service is sometimes regarded as inappropriate for males.

In the present chapter we have taken account of factors that have been found to have an effect on offenders' likelihood of receiving a custodial sentence. This information has enabled us to make comparisons between offenders of comparable 'seriousness', although, as pointed out at the beginning of the chapter, there are a number of problems associated with the use of these risk scores. This is partly because missing data or inaccurate coding may have effected the calculations. However, it could also be that probation officers' sentence proposals and magistrates' sentence disposals are influenced more by 'situational' risk factors such as unemployment, homelessness or drink and drug addictions than they are by the 'static' risk factors that we have considered in the present chapter. It is therefore to consideration of social problems such as these that we will now turn.



## FACTORS THAT MAY AFFECT SENTENCING DECISIONS (3)

### The Presence of Social Problems

#### Introduction

We saw in part 1 that comparatively little research has examined the role of social factors in sentencing decisions, apart from in relation to offenders' employment status. Here, it has been found that unemployed offenders are more likely to be sentenced to probation or to custody, whereas employed offenders are more likely to receive community service or a fine. (Stone 1994, Flood-Page and Mackie 1998.) With regard to other social problems such as drug addiction or homelessness, May's research (May 1999) was mainly concerned with the relationship between social problems and rates of reconviction. However, he did find a relationship between court sentence disposal and the social problems recorded by probation officers on statistical forms, which suggested that those most likely to be sentenced to community service were males with no social problems.

We start the chapter by looking at the effect of employment status on community sentence proposals and disposals. Again, this is based on the statistical data recorded by Kent Probation Service in relation to offenders on whom pre-sentence reports were prepared during the years 1993-97, which included information on employment status. The analyses focus on offenders who were in employment or who had been unemployed for more than a year and it will be seen that considerably more reports were prepared on the latter than on the former.

In addition, from 1995 onwards, Kent probation officers were required to complete statistical forms that included information on social problems that were considered to be related to offending. These were grouped under the following headings: accommodation, alcohol abuse, drug abuse, family offending, financial pressures, gambling, peer group influence, psychiatric history, lack of social skills, unemployment, family relationships and 'other', as detailed in Appendix 3. For each social factor that was considered to be relevant, the officer was required to code the degree of the problem - that is, whether it represented a slight, moderate or severe problem for the offender. Probation officers could cite as many of these factors as they considered were relevant to offending. However, they were also required to indicate which single factor represented the most serious social problem for the offender. The second part of the chapter is based upon analyses of this social factor information, when I was interested in comparing offenders for whom probation officers had proposed probation with those for whom they had proposed community service.



National standards state that one of the aims of probation supervision was ‘helping the offender to resolve personal difficulties linked with offending’ (Home Office, 1992, p.32). Community service, on the other hand, was intended ‘to re-integrate the offender into the community through: positive and demanding unpaid work, ... and reparation to the community by undertaking socially useful work ...’ (op. cit. p.67). I therefore hypothesised that those offenders for whom probation supervision had been proposed were likely to have more social problems than those offenders for whom officers proposed community service. With regard to rates of take-up for these proposals, we have already seen that magistrates are generally more likely to follow proposals for community service than proposals for probation. However, I now wished to examine whether the presence of social problems had any effect on the rates of take-up. Here, I anticipated that where probation officers identified social problems that required addressing through probation supervision, court rates of take-up for probation proposals would be higher.

## **1 Employment Status**

### **1.1 Community Sentence Proposals and Disposals According to Offenders’ Employment Status**

Tables 7.1 and 7.2 in Appendix 4 show, respectively, probation officers’ community sentence proposals and magistrates’ community sentence disposals according to employment status of offender for each of the years 1993-97. Chi-square tests were again conducted to see whether there were significant differences between both sentence proposals and sentence disposals according to employment status. These showed that both proposal and disposal differences according to employment status were statistically significant for each year of the study.

Figure 1 below shows community sentence proposals and disposals according to employment status of offender for each of the years 1993-97, based on the figures contained in Tables 7.1 and 7.2. It can be seen from Figure 1(a) that for employed offenders, for each year of the study, probation officers consistently made more proposals for community service than for any other community sentence. Magistrates’ sentence disposals for employed offenders are shown in Figure 1(b) and followed a fairly similar pattern to probation officers’ proposals so far as community service is concerned. However, with the exception of 1993, Figure 1(b) shows that for employed offenders magistrates made more combination order disposals than probation+ disposals, which is in contrast to probation officers who made more probation+ proposals than combination order proposals, as shown in Figure 1(a). This latter outcome has consistently been found throughout the study and it appears likely to be related to probation officers’ general preference for probation+ over combination orders, in contrast to magistrates’ general preference for combination orders over probation+.



Figure 1 Community Sentence Proposals and Disposals for Employed and Unemployed Offenders, 1993-97

Figure 1(a) Employed Proposals

Figure 1(b) Employed Disposals

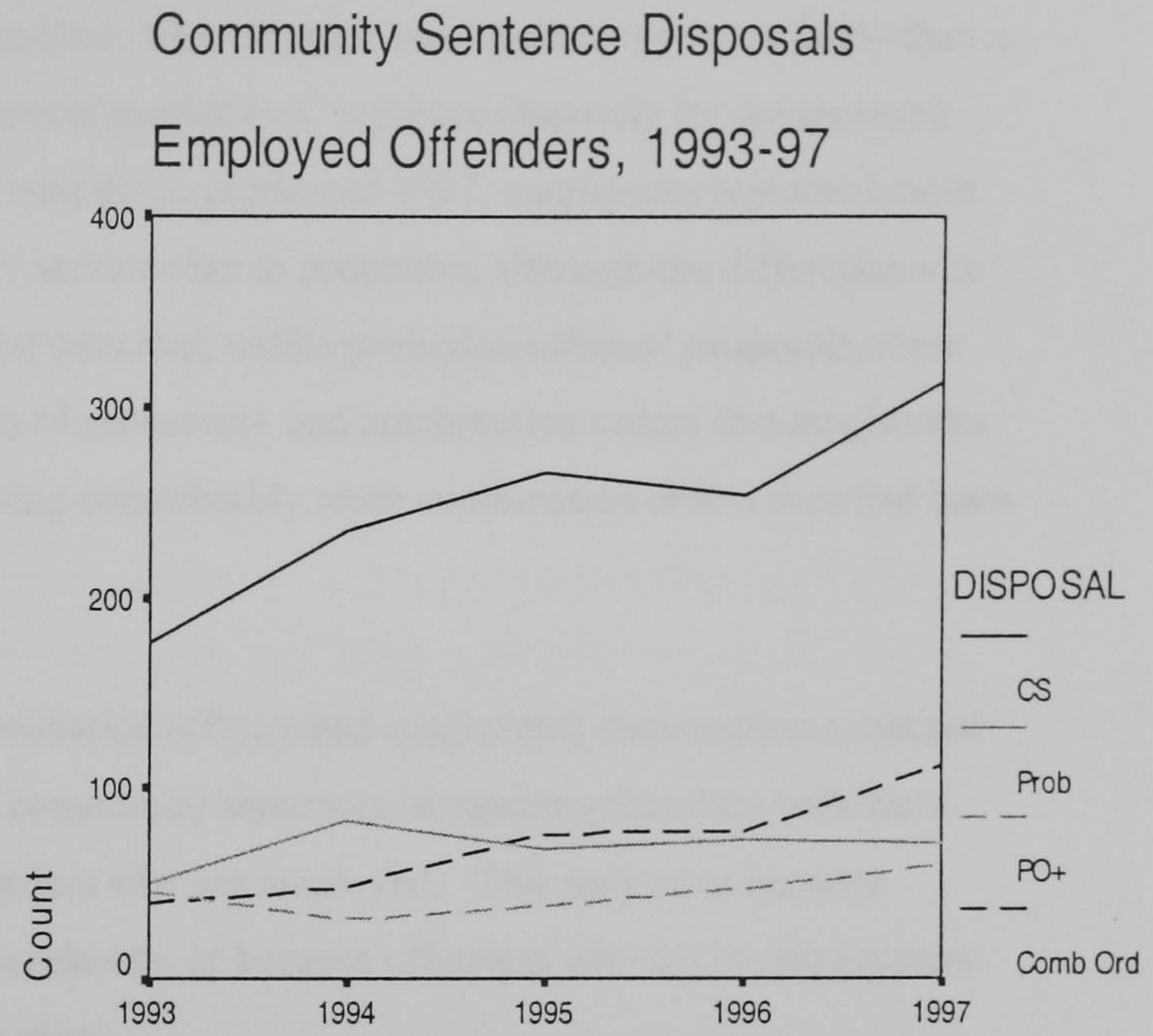
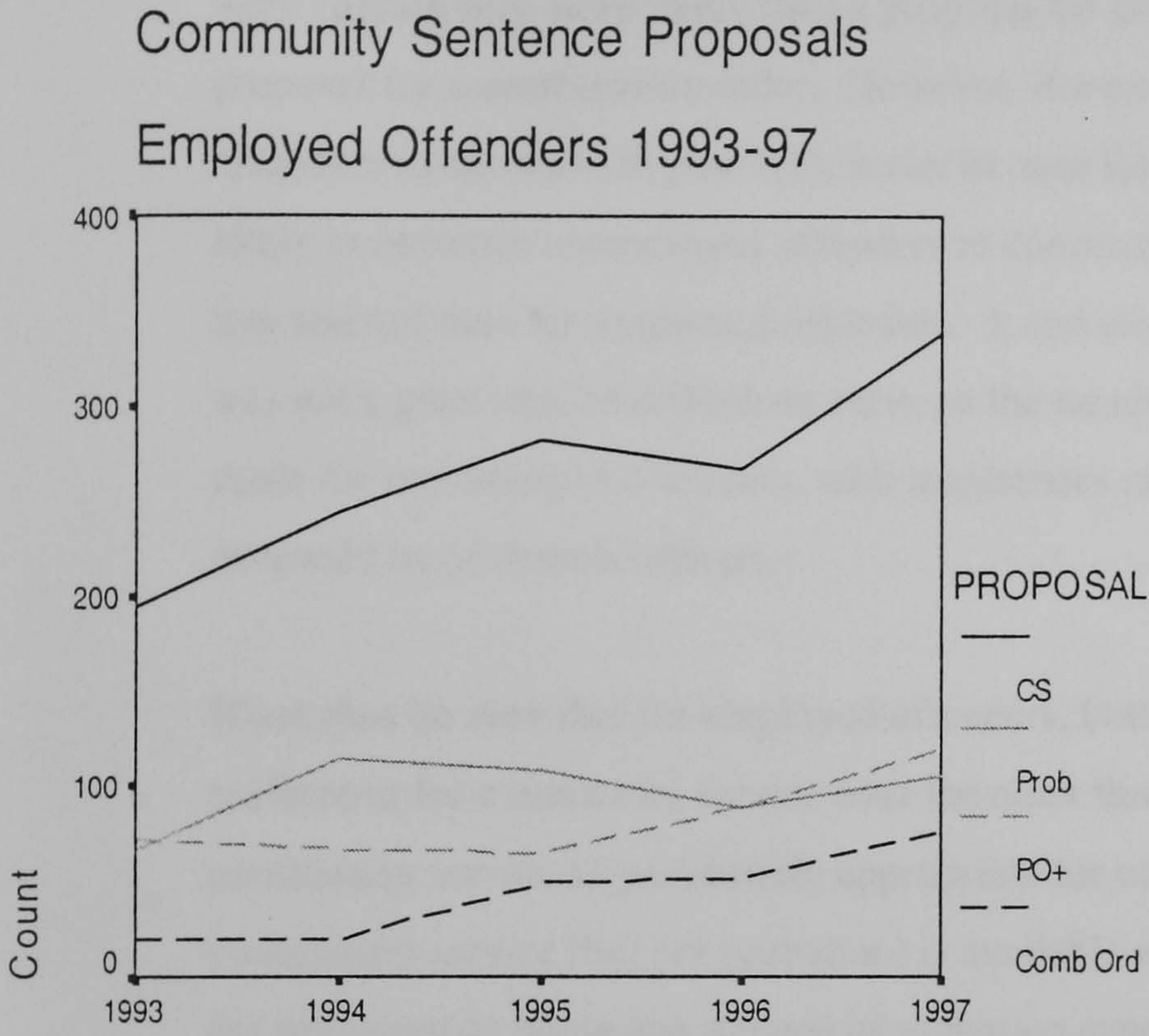
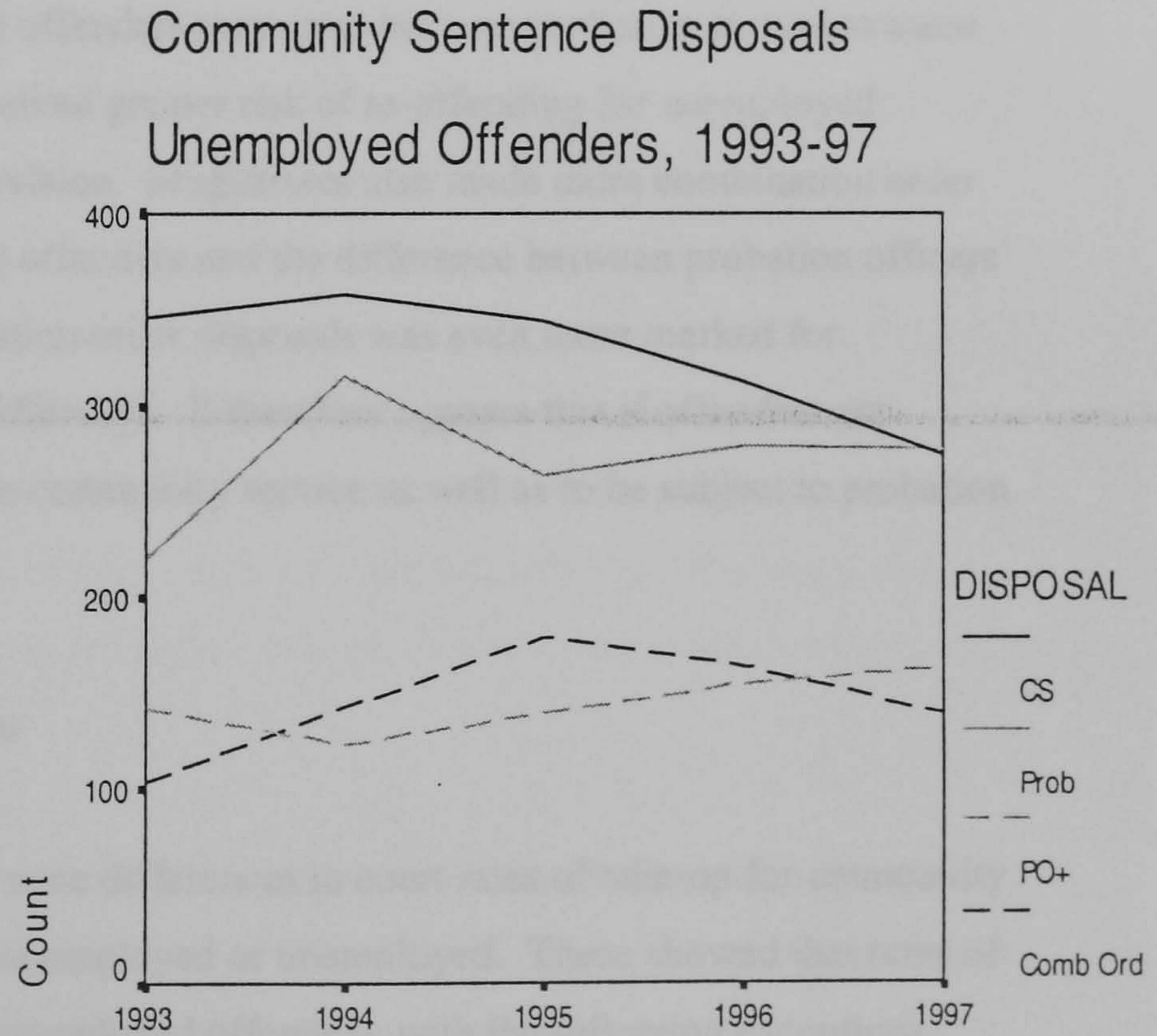
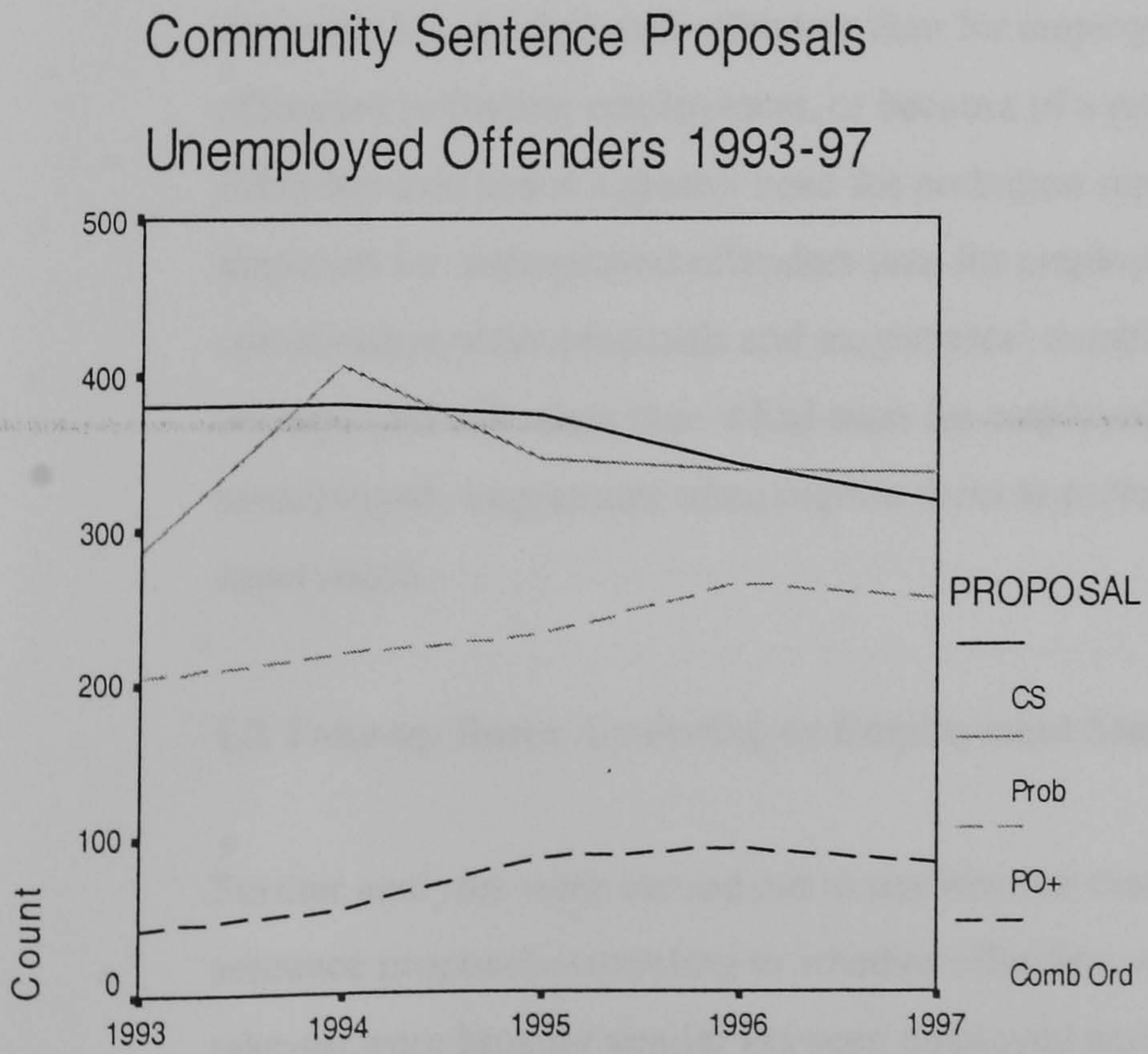


Figure 1(c) Unemployed Proposals

Figure 1(d) Unemployed Disposals





If we then look at Figures 1(c) and 1(d), which show community sentence proposals and disposals for offenders who have been unemployed for more than a year, a very different pattern of sentencing emerges. Figure 1(c) shows that for unemployed offenders, with the exception of 1993, there was little difference between the number of community service and basic probation proposals that probation officers made. These two proposals were consistently more likely than a proposal for probation+, which in turn was consistently more likely than a proposal for a combination order. However, if we examine magistrates' sentence disposals for unemployed offenders as shown in Figure 1(d), it can be seen that, with the exception of 1997, magistrates remained more likely to sentence unemployed offenders to community service than to probation, although the difference was less marked than for employed offenders. It can also be seen that, unlike probation officers' proposals, there was not a great deal of difference between the numbers of probation+ and combination orders that magistrates made for unemployed offenders, with magistrates making considerably more combination orders than had been proposed by probation officers.

It can thus be seen that for employed offenders, both probation officers and magistrates demonstrate a marked preference for community service over the other three community sentences, suggesting that they both view community service as particularly appropriate for offenders who are employed. This may arise because community service (but not probation) is available at weekends, or because offenders who are in employment are perceived as being less in need of probation supervision.

However, for unemployed offenders, both probation officers and magistrates are more inclined to select basic probation than they are for employed offenders. This greater likelihood of basic probation proposals and disposals for unemployed offenders than for employed offenders may arise because probation is used to assist offenders in finding employment, or because of a perceived greater risk of re-offending for unemployed offenders and hence a greater need for probation supervision. Magistrates also made more combination order disposals for unemployed offenders than for employed offenders and the difference between probation officers' combination order proposals and magistrates' combination order disposals was even more marked for unemployed offenders than it had been for employed offenders. It therefore appears that if offenders are unemployed, magistrates often require them to perform community service as well as to be subject to probation supervision.

## **1.2 Take-up Rates According to Employment Status**

Further analyses were carried out to see whether there were differences in court rates of take-up for community sentence proposals according to whether offenders were employed or unemployed. These showed that rates of take-up were broadly similar between employed and unemployed offenders, with the following exceptions.



Community service proposals were found to be more likely to be taken up for employed offenders than for unemployed offenders in 1994 and 1997. In 1994 79% of community service proposals were followed for employed offenders, compared with 72% of such proposals for unemployed offenders, and in 1997 79% of community service proposals were followed for employed offenders, compared with 70% for unemployed offenders. Chi-square tests showed that these differences were statistically significant at levels of  $p = .05$  and  $p = .02$ , respectively. Examination of cross-tabulations of probation officers' proposals with magistrates' disposals suggested that these results were linked with the finding that during those two years a proposal for community service was more likely to result in a custodial outcome at court if the offender was unemployed than if they were employed. Thus in 1994 15% of community service proposals resulted in custody for the unemployed, compared with 10% of such proposals that resulted in custody for those in employment and in 1997 14% of community service proposals resulted in a custodial outcome for those who were unemployed, compared with a figure of 7% for those in employment. Chi-square tests of custodial outcomes according to employment status showed that these differences were statistically significant in 1997 (when  $p = .01$ ), with a similar trend shown in 1994, (when  $p = .09$ ). However, in 1993, 1995 and 1996, there were no statistically significant differences between employed and unemployed offenders in relation to take-up rates for community service proposals, or to custodial outcomes following community service proposals.

No statistically significant differences in rates of take-up between employed and unemployed offenders were found in respect of proposals for probation or for probation+, with the exception of probation+ proposals in 1997. During that year, 57% of proposals for probation+ were taken up for unemployed offenders compared with 45% of probation+ proposals that were taken up for employed offenders. Further examination of the sentence outcome data for 1997 showed that this finding was linked to a higher proportion of combination order outcomes following probation+ proposals for employed offenders than for unemployed offenders. During that year, 28% of probation+ proposals for employed offenders resulted in a combination order outcome at court, compared to 12% of probation+ proposals that resulted in a combination order outcome for unemployed offenders. Chi-square tests in relation to combination order outcomes showed that this was a highly statistically significant difference ( $p = <.001$ ). This was an unexpected outcome and it does not appear to be because probation+ proposals were resulting in combination order outcomes for employed offenders, but in custodial outcomes for unemployed offenders<sup>37</sup>. There is thus no readily apparent explanation for this finding and no differences between employed and unemployed offenders in respect of rates of take-up for probation+ proposals were found during any of the other years.

With regard to combination order proposals, these were found to be more likely to be taken up for employed offenders than for unemployed offenders in 1993, 1995 and 1996. In 1993 80% of combination order proposals were taken up for employed offenders, compared with 48% of proposals that were taken up for unemployed

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<sup>37</sup> 17% of probation+ proposals resulted in a custodial outcome for employed offenders, compared with 19% of probation+ proposals that resulted in a custodial outcome for unemployed offenders.



offenders. In 1995 rates of take-up were 82% and 63% respectively and in 1996 the figures were 75% and 59%. Chi-square tests showed that these differences were statistically significant at the levels of  $p = .03$ ,  $p = .03$  and  $p = .07$  respectively. During these three years further examination of the data showed that these results were linked with higher proportions of custodial outcomes following combination order proposals for unemployed offenders than for employed offenders. Thus in 1993 31% of combination order proposals for unemployed offenders resulted in a custodial outcome, compared with a figure of 15% for employed offenders. In 1995 the comparable figures for custodial outcomes were 29% and 14%, and in 1996 the figures were 29% and 17%. However, the numbers of combination order proposals that were made were too low for these findings to reach levels of statistical significance in Chi-square tests, although custodial outcome differences between employed and unemployed offenders for whom a combination order had been proposed approached a level of statistical significance in 1995 (when  $p = .06$ ). Nevertheless, the findings suggest that for employed offenders, their possession of a job may sometimes persuade magistrates to follow a proposal for a combination order rather than to imprison them.

Although there were no consistent findings across the five years of the study in respect of take-up differences according to the employment status of the offender, the findings in relation to custodial outcomes are in line with previous research and suggest that employed offenders may be less likely to be imprisoned than unemployed offenders. In 1994 and 1997 this applied to offenders for whom community service had been proposed and in 1993, 1995 and 1996 this applied to offenders for whom a combination order had been proposed. Thus it appears that offenders are more likely to be able to avoid a sentence of imprisonment if they are both in employment and willing to perform unpaid work for the benefit of the community during their leisure time.

## **2 Relationship Between Social Problems and Sentence Proposals**

We will now turn to consideration of the relationship between offenders' social problems as recorded by Kent probation officers on statistical record forms and the community sentence proposals that they make in their pre-sentence reports<sup>38</sup>.

For each of the years 1995-97, problems relating to alcohol abuse, drug abuse and to unemployment were the three most commonly cited 'most serious' social problems. Alcohol abuse was identified as the most serious social problem both for offenders whose reports proposed community service and whose reports proposed probation supervision. Problems relating to unemployment were more commonly cited as the most serious problem for offenders whose reports proposed community service, but problems relating to drug abuse were more commonly cited as the most serious problem for offenders whose reports proposed probation supervision.

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<sup>38</sup> Although combination order proposals have been included for completeness, the numbers of such proposals were comparatively low and are not discussed in the current section.



The next three most commonly cited 'most serious' problems related to financial pressures, peer group influence and family relationships. Financial pressures and peer group influence were more commonly cited as the most serious problem for offenders whose reports proposed community service. However, family relationship problems were cited as the most serious social problem both for offenders whose reports proposed community service and whose reports proposed probation supervision. Problems relating to gambling or to family offending were rarely cited by probation officers as being the most serious social problem for offenders.

Cross-tabulation tables were produced of sentence proposals by degree of problem for the above six most commonly cited 'most serious' social problems, when Chi-square tests were again conducted to check whether proposal differences according to problem severity were statistically significant. In addition, a similar table was produced for accommodation problems, as the recorded data showed that accommodation was frequently cited as a problem for offenders, even though it was generally not cited as the 'most serious' problem. The results obtained are shown below in the form of bar charts and the tables on which the bar charts are based are contained in Tables 7.3-7.7 in Appendix 4. Tables were also produced for each social factor problem giving details of the types of problems that were experienced by offenders according to degree of problem severity, the results of which are described in the first paragraph under each section.

## **2.1 Accommodation Problems and Sentence Proposal**

For each of the three years studied, the data showed that the most common accommodation problems that were experienced by those with slight or moderate problems were in relation to private rented accommodation or to 'living with family'. However, for those with severe housing problems, the most common problem cited was having no settled address.

Figure 2 below shows community sentence proposals according to degree of accommodation problem for each of the years 1995-97. It can be seen that for all three years, for people with no accommodation problems, a community service order was the most likely proposal and was proposed for nearly half of all such offenders (49% in 1995, 46.1% in 1996 and 49.4% in 1997). For those with slight accommodation problems, a community service order was still the most likely sentence proposal for each of the three years. However, for those with moderate or severe housing problems, a basic probation order was the most likely sentence proposal. For those with severe accommodation problems, basic probation accounted for 43.8% of proposals in 1995, 40.6% in 1996 and 44% in 1997. Those with severe housing problems were also more likely to receive a proposal for probation+ (which could include a requirement to reside as directed such as in a probation hostel) than they were to receive a proposal for a community service order. Again, this finding applied to each of the three years studied. These proposal differences according to degree of accommodation problem were shown to be statistically significant by Chi-square tests.



Figure 2 Community Sentence Proposals According to Degree of Housing Problems 1995-97

Offenders with Housing Problems  
by Community Proposal, 1995

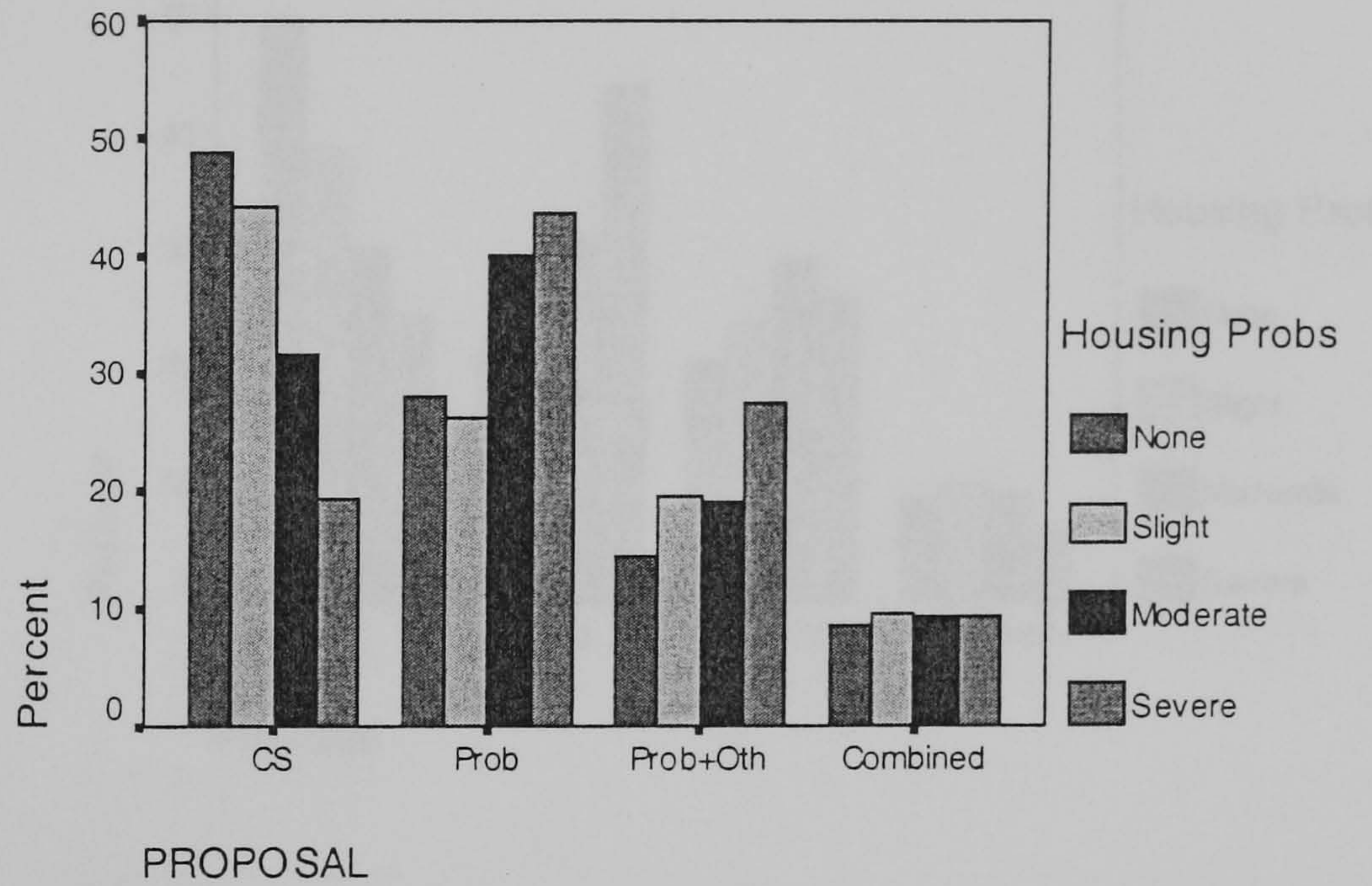


Figure 2(a) 1995

Chi-square = 93.13, df = 9, p = <.001

Offenders with Housing Problems  
by Community Proposal, 1996

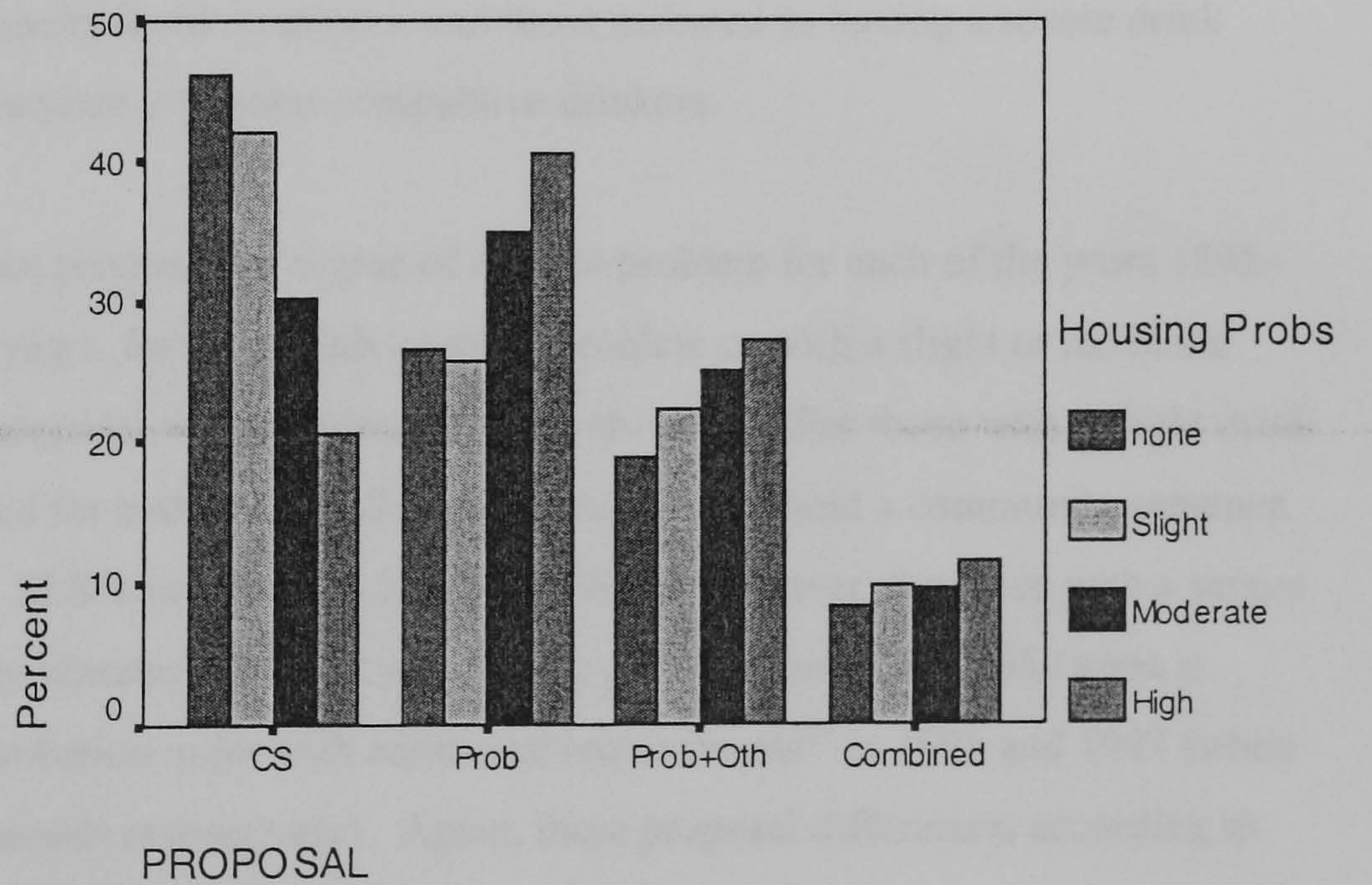


Figure 2(b) 1996

Chi-square = 63.02, df = 9, p = <.001



### Offenders with Housing Problems by Community Proposal, 1997

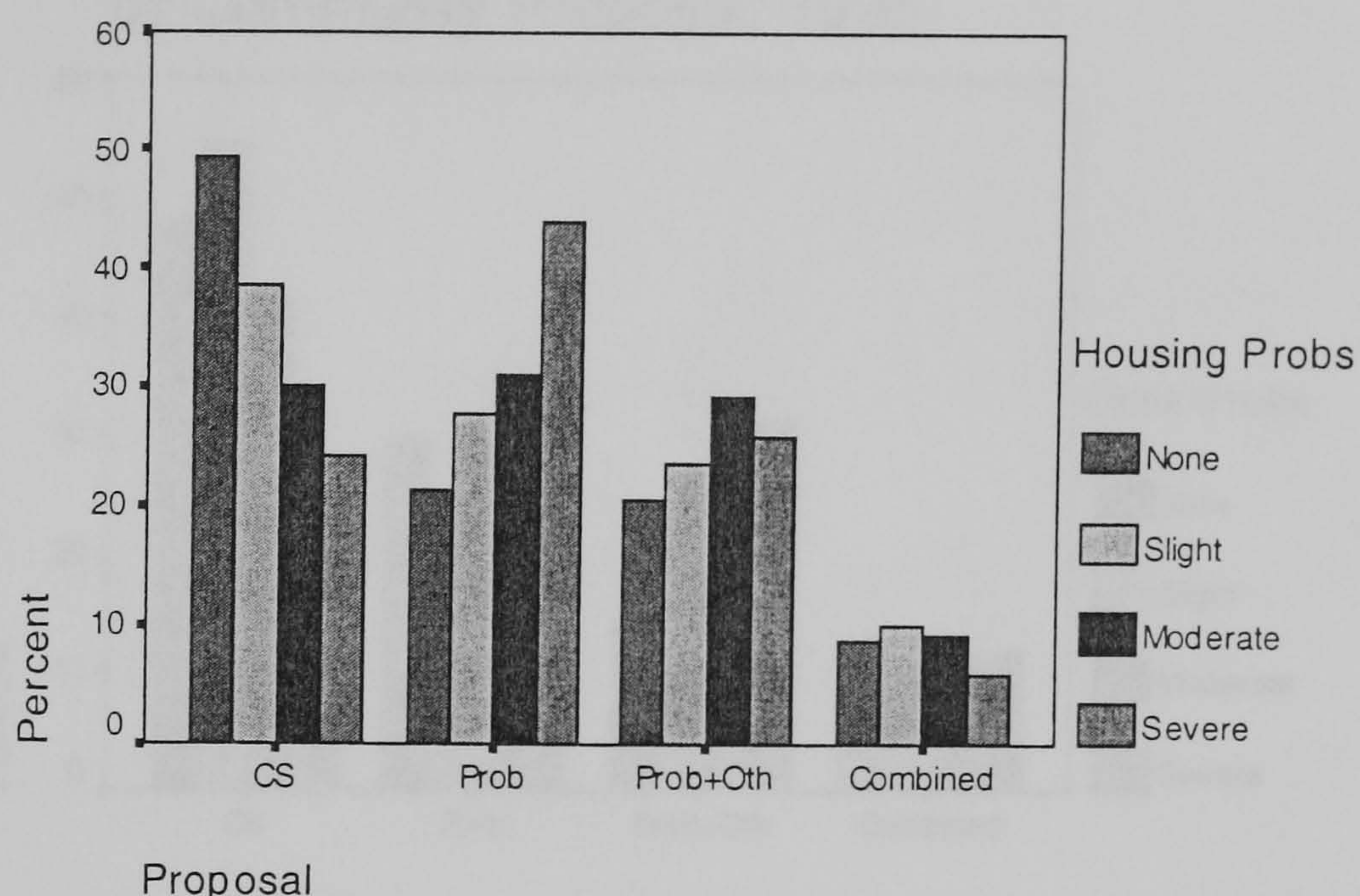


Figure 2(c)1997

Chi-square = 84.58, df = 9, p = <.001

## 2.2 Alcohol Abuse Problems and Sentence Proposal

For each of the three years studied, the records indicated that those assessed as having a slight or moderate drink problem tended to be people who occasionally drank to excess, and those assessed as having a severe drink problem tended to be people who were frequent or regular compulsive drinkers.

Figure 3 below shows community sentence proposal by degree of alcohol problem for each of the years 1995–97. It can be seen that for each of these years, for those with no drink problem or with a slight or moderate drink problem, the most likely sentence proposal was a community service order. For those with a slight drink problem, community service was proposed for over half of all such offenders for whom a community sentence proposal had been made (54.7% in 1995, 52.8% in 1996 and 55.6% in 1997). However, for those with a severe drink problem, the most likely community sentence proposal was a basic probation order in 1995 (when it accounted for 34.3% of proposals) or a probation order with additional requirements<sup>39</sup> in 1996 and 1997 (when it accounted for 35.3% and 34.4% of proposals respectively). Again, these proposal differences according to degree of alcohol problem were found to be statistically significant for all three years.

<sup>39</sup> This was likely to involve attendance at a probation alcohol education group.



Figure 3 Community Sentence Proposals According to Degree of Drink Problems 1995-97

Figure 3(a) 1995

Chi-square = 128.04, df = 9, p = <.001

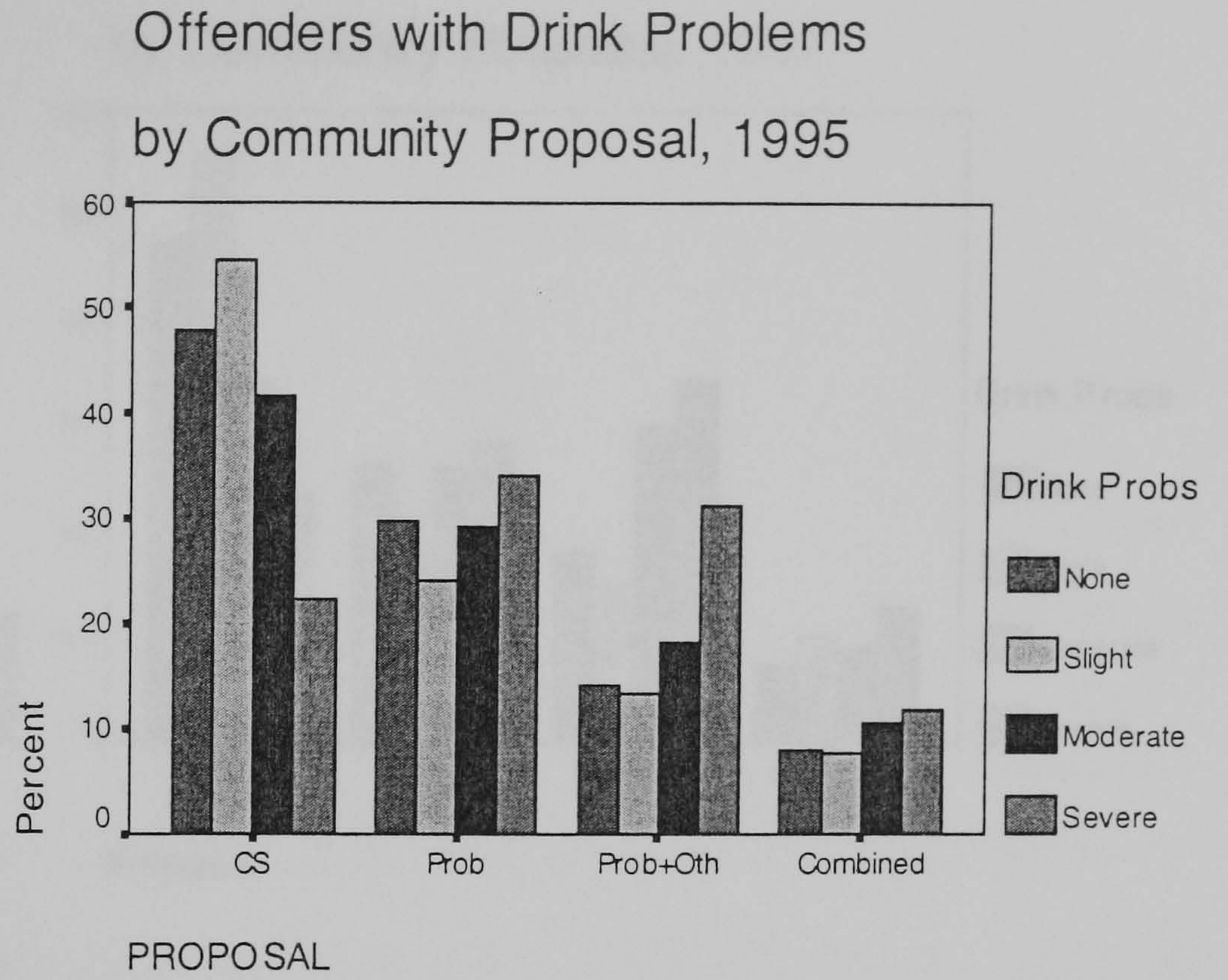
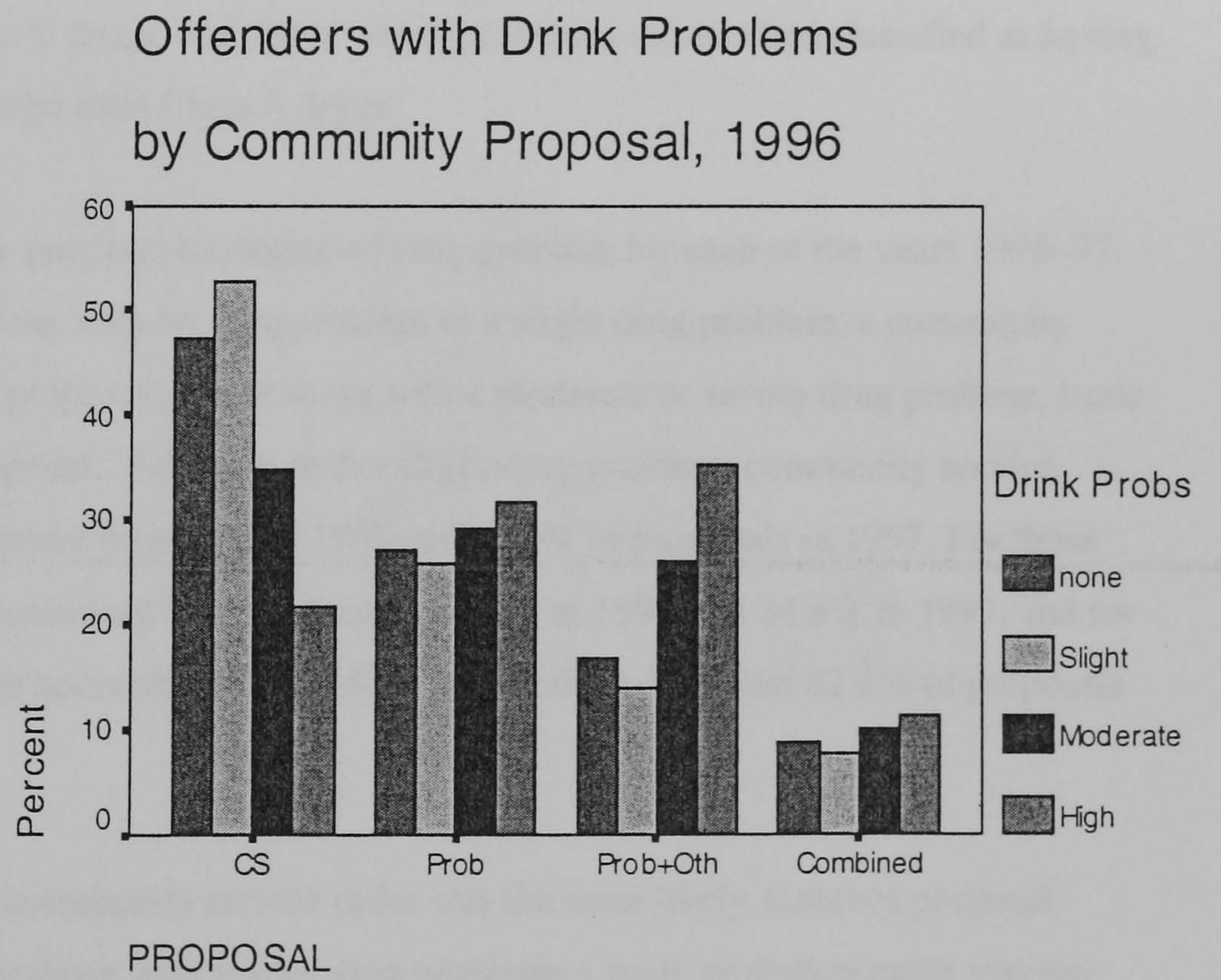


Figure 3(b) 1996

Chi-square = 149.78, df = 9, p = <.001





### Offenders with Drink Problems by Community Proposal, 1997

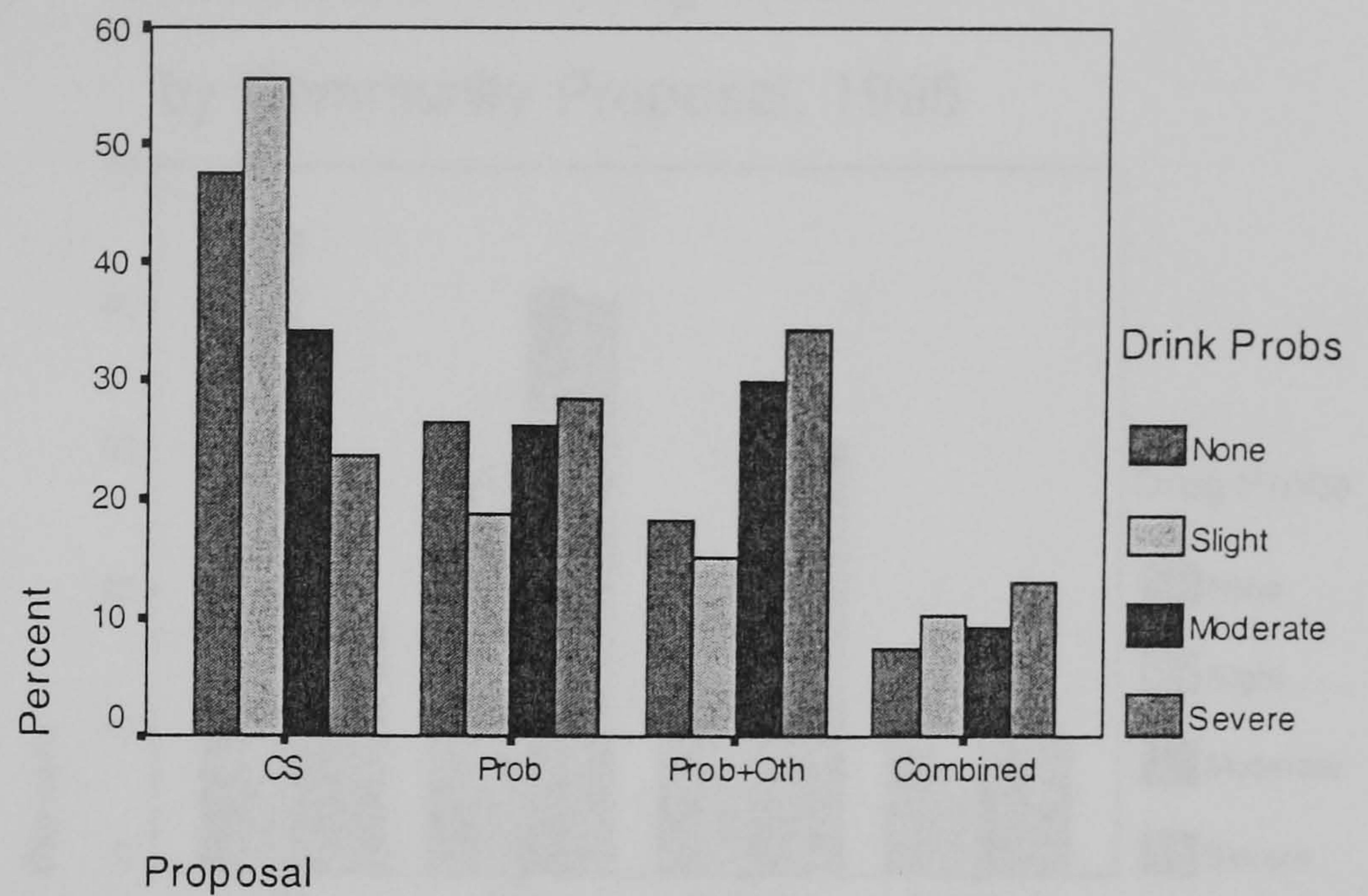


Figure 3(c) 1997

Chi-square = 145.15, df = 9, p = <.00

### 2.3 Drug Abuse Problems and Sentence Proposal

For each of the three years, those whom probation officers had classified as having a slight or moderate drug problem were mainly those who used Class B drugs, and those whom probation officers had classified as having a severe drug problem were mainly those who used Class A drugs.

Figure 4 below shows community sentence proposal by degree of drug problem for each of the years 1995–97. It can be seen that in 1995 and 1997, for those with no drug problem or a slight drug problem, a community service order was the most likely sentence proposal and for those with a moderate or severe drug problem, basic probation was the most likely sentence proposal. For those with a slight drug problem, community service accounted for 45.6% of all community sentence proposals in 1995 and 46.4% of proposals in 1997. For those with a moderate drug problem, probation accounted for 41.4% of proposals in 1995 and 34.8% in 1997, and for those with a severe drug problem, probation accounted for 40.6% of proposals in 1995 and 42.8% of proposals in 1997.

In 1996, for those with no drug problem, a community service order was the most likely sentence proposal (accounting for 44.5% of proposals) and for those with severe drug problems a basic probation order was the most likely sentence proposal (accounting for 42.8% of proposals). However, for those with slight or moderate drug problems, there was little difference between the proportions of community service and probation orders that were proposed.



Figure 4 Community Sentence Proposals According to Degree of Drug Problems 1995-97

Offenders with Drug Problems  
by Community Proposal, 1995

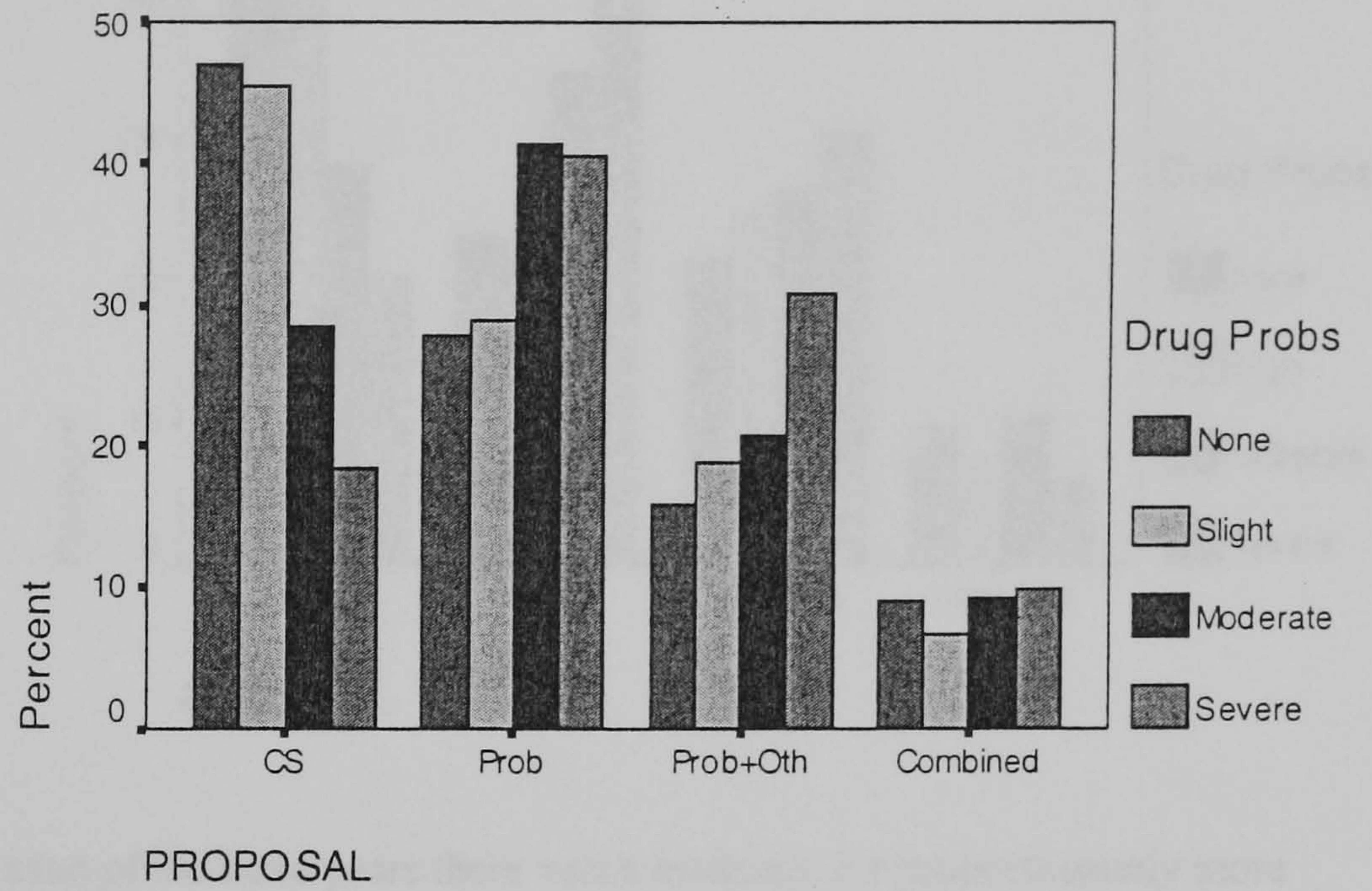


Figure 4(a) 1995

Chi-square = 105.16, df = 9, p = <.00

Offenders with Drug Problems  
by Community Proposal, 1996

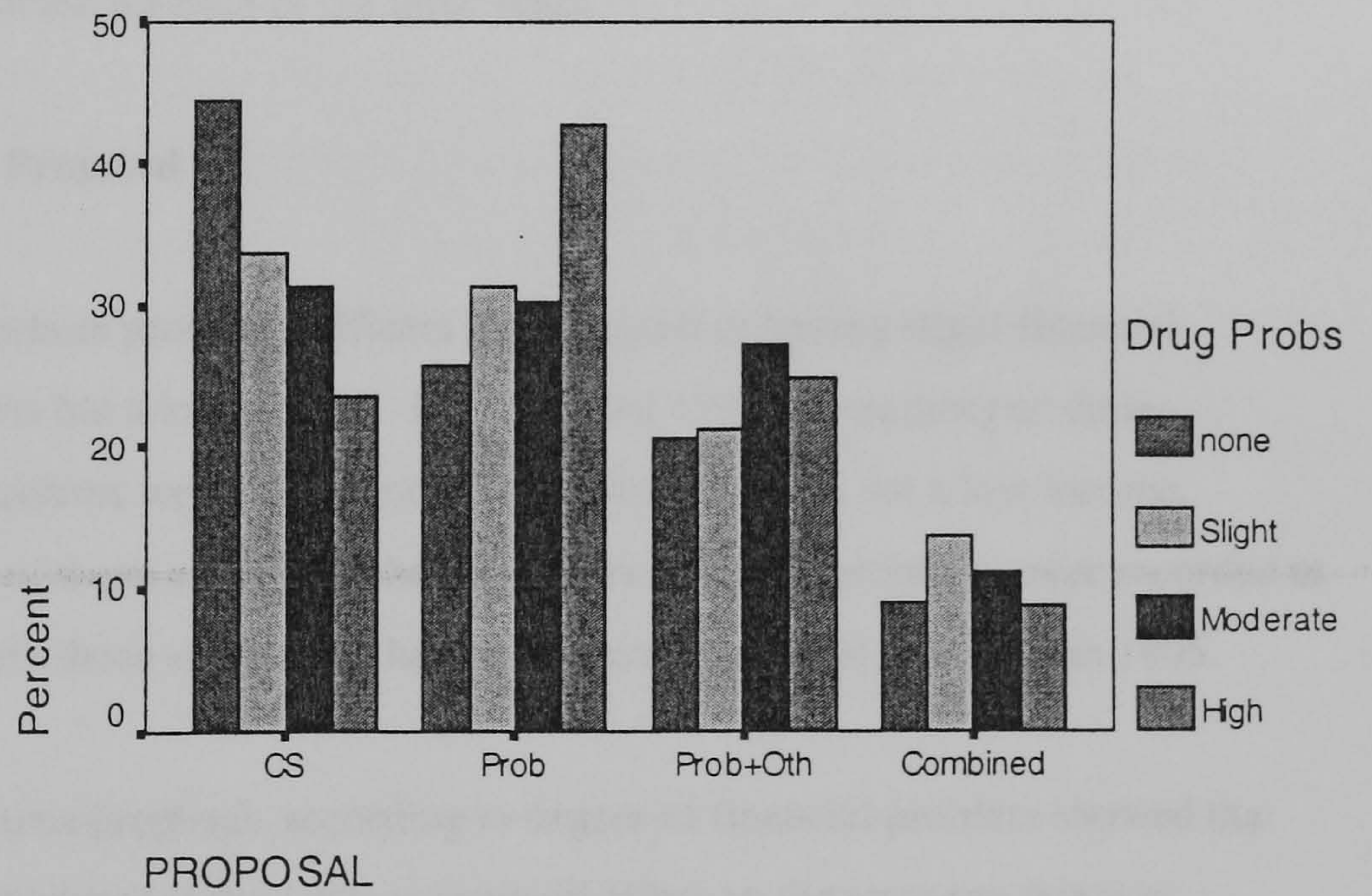


Figure 4(b) 1996

Chi-square = 69.04, df = 9, p = <.001



## Offenders with Drug Problems by Community Proposal, 1997

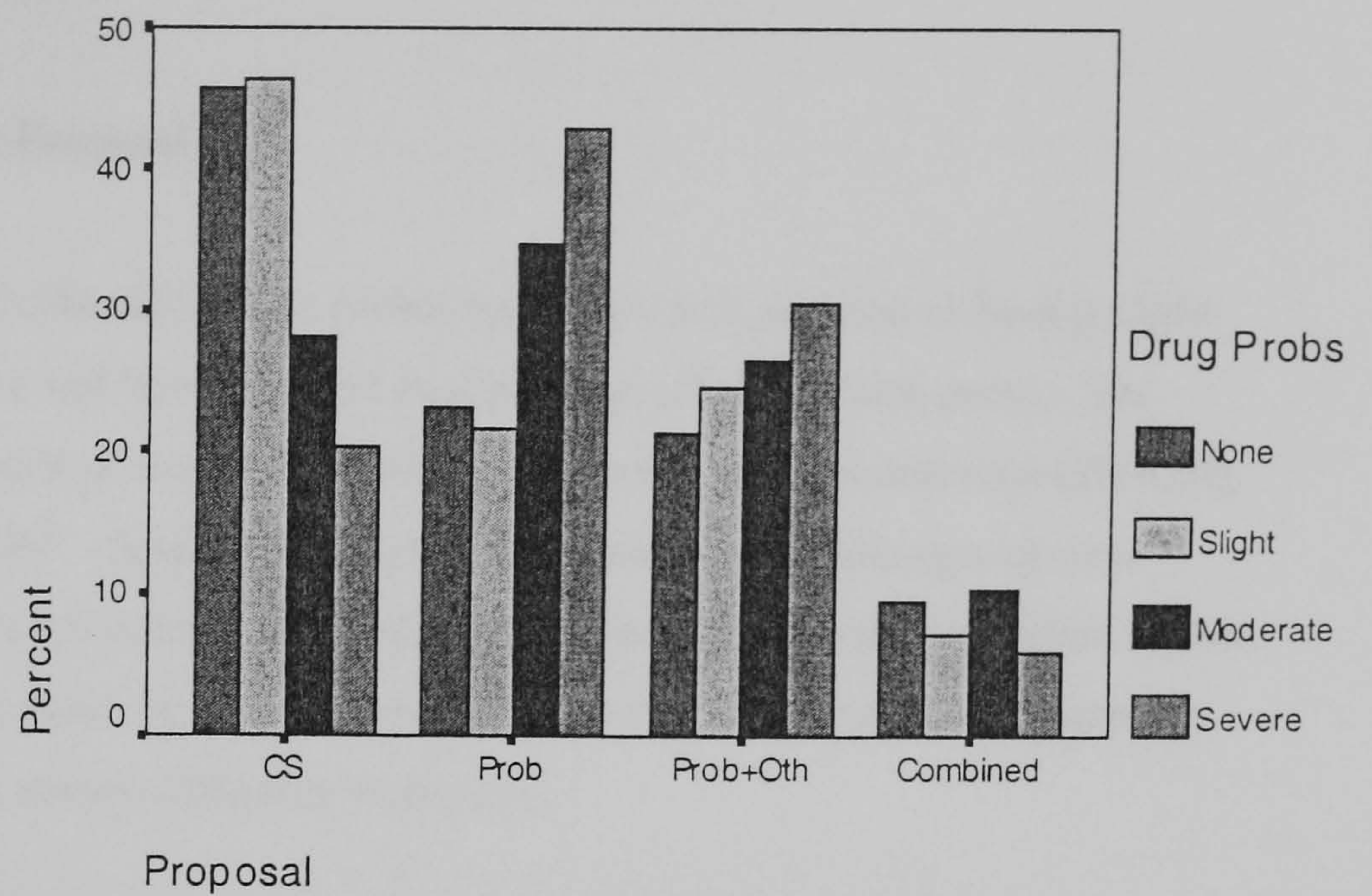


Figure 4(c) 1997

Chi-square = 120.42, df = 9, p = <.001

It can also be seen from Figure 4 that for each of the three years there was a tendency for proportionately more proposals for probation+ to be made as severity of drug problem increased.

These differences between probation officers' sentence proposals according to degree of drug abuse problems were again found to be statistically significant for each of the three years.

### 2.4 Financial Problems and Sentence Proposal

For all three years, the majority of those whom probation officers had assessed as having slight financial problems were recorded as having no debts but a low income. For 1996 and 1997 the majority of those assessed as having moderate financial problems were also recorded as having no debts but a low income. However for all three years, the majority of those assessed as having severe financial problems were recorded as being on a low income *and* in debt, as were those assessed as having moderate financial problems in 1995.

The cross-tabulations of community sentence proposals according to degree of financial problem showed that the presence of financial problems did not appear to have any substantial effect on the sentence that was proposed. In all cases, a community service proposal was more likely than a probation proposal, irrespective of whether the offender had been assessed as having no, slight, moderate or severe financial pressures<sup>40</sup>. Although some differences were found between proportions of different sentence proposals according to degree of financial problems, this did not follow any consistent pattern and did not reach high levels of statistical

<sup>40</sup> The only exception to this was offenders with severe financial problems in 1995, when 38.3% received a proposal for probation, compared with 37.4% who received a proposal for community service.



significance. Possibly this was because 'financial pressure' was common to a large number of offenders and was not a factor that probation officers considered relevant in their choice between proposals for community service and proposals for probation supervision.

## **2.5 Peer Group Influence and Sentence Proposal**

For each of the three years, the majority of offenders whom probation officers had assessed as having slight problems in relation to peer group influence had been recorded as sometimes offending with peers. The majority of those assessed as having moderate peer problems had also been recorded as sometimes offending with peers in 1995 and 1996, although in 1997 slightly more of the 'moderate' peer problem group were recorded as frequently offending with peers. For those assessed as having severe problems in relation to peer group influence, for each of the three years these were evenly divided between those recorded as frequently offending with peers and those recorded as always offending with peers.

However, once again the cross-tabulations of community sentence proposals by degree of peer group problems showed little relationship between the degree of the problem and the type of sentence that probation officers proposed. In 1995, a community service proposal was more likely for offenders with no or slight peer problems, but for those with moderate or severe peer problems a community service proposal or a probation proposal were equally likely. In 1996, a community service proposal appeared to be more likely for those assessed as having no, slight or moderate peer problems, and probation and community service proposals equally likely for those assessed as having severe peer problems. However, these differences were not statistically significant. In 1997, a community service proposal was more likely for offenders assessed as having no or slight peer problems, whereas for those with moderate or severe peer problems, community service, probation and probation+ proposals were equally likely. Again, the different results obtained across the three years suggested that peer group influence was not a factor that probation officers considered important when deciding on appropriate sentence proposal.

## **2.6 Employment Problems and Sentence Proposal**

In the first part of this chapter we considered the effect of offenders' employment status upon probation officers' proposals and magistrates' disposals. In this section, we now consider employment in terms of whether probation officers have identified it as a problem for offenders that is related to offending. In this instance, it was found that the majority of those whom probation officers had assessed as having moderate or severe employment problems had been unemployed for 12 months or more. However, those whom probation officers had assessed as having slight employment problems were almost equally divided between offenders who had been unemployed for 12 months or more and offenders who were in full-time employment. This suggested that although moderate or severe employment problems were related to being unemployed, for slight



employment problems the problem was equally as likely to be in relation to current work as it was to being unemployed. These findings were consistent across all three years.

Figure 5 below shows community sentence proposals by degree of employment problem for the years 1995–97. For each of these years, it can be seen that community service was the most likely sentence proposal for all categories ranging from those with no employment problems to those with severe employment problems. However, it can also be seen that community service accounted for a much larger proportion of proposals for offenders with no employment problems than it did of proposals for offenders with moderate or severe employment problems. This was in contrast to probation+, which accounted for proportionately more proposals for offenders with moderate or severe employment problems than for offenders with no or slight employment problems. Although these differences were not as obvious as those in respect of accommodation, alcohol or drug problems, they were, nevertheless, found to be statistically significant for all three years.

Figure 5 Community Sentence Proposals According to Degree of Employment Problems 1995-97

Offenders with Employment Problems  
by Community Proposal, 1995

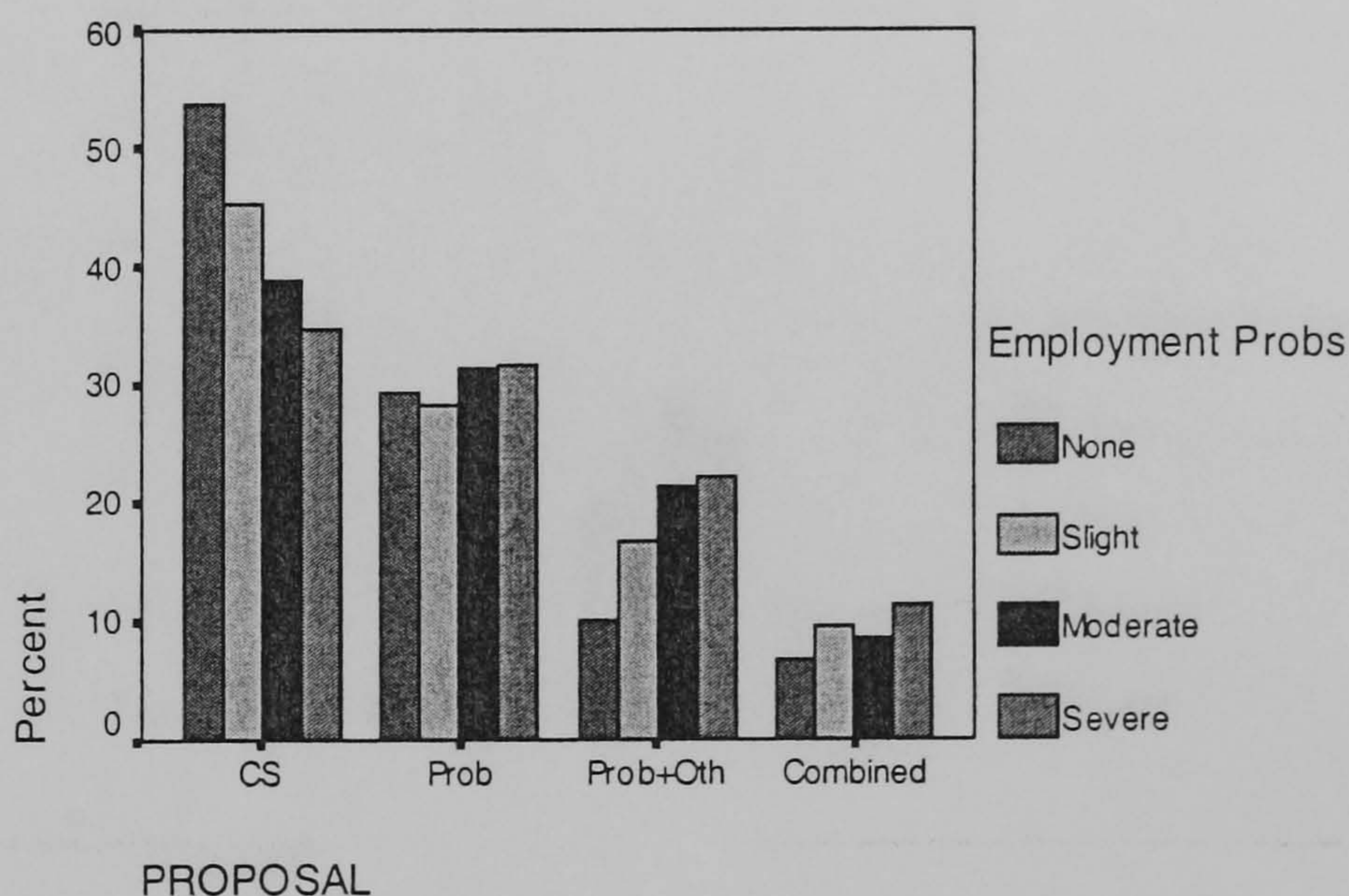


Figure 5(a) 1995

Chi-square = 65.37, df = 9, p = <.001



Figure 5(b) 1996

Chi-square = 33.86, df = 9, p = <.001

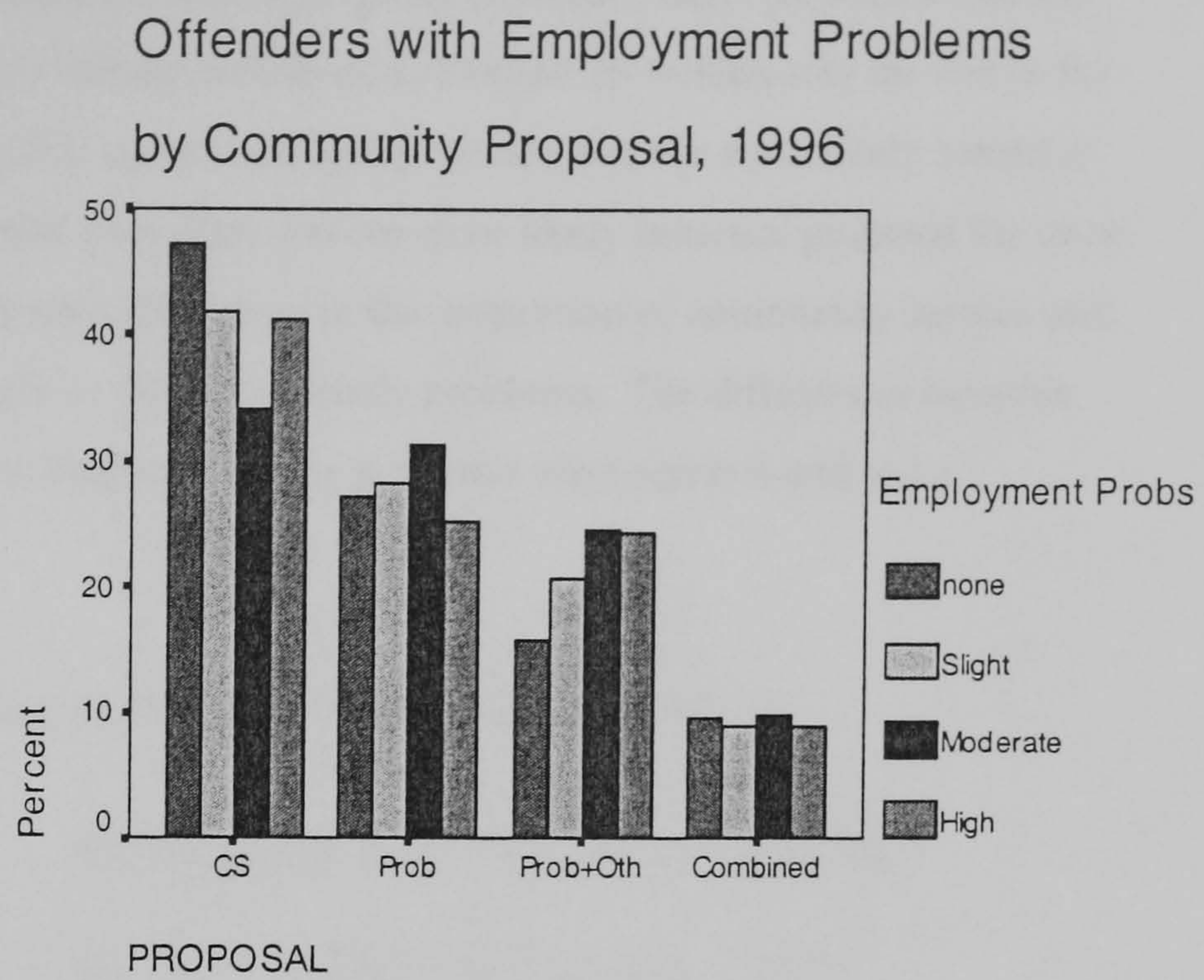
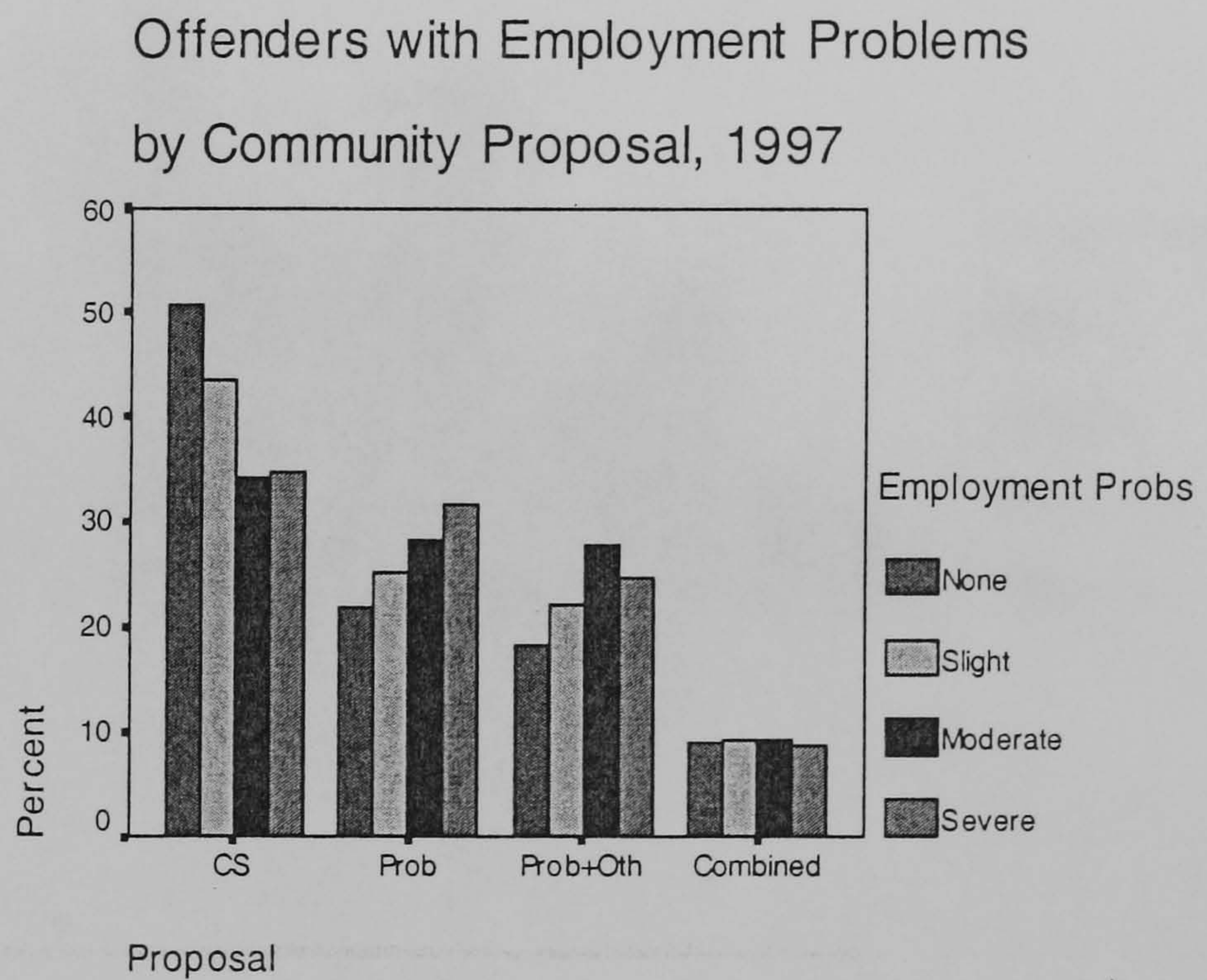


Figure 5(c) 1997

Chi-square = 53.36, df = 9, p = <.001



## 2.7 Family Problems and Sentence Proposal

For all three years, the majority of offenders that probation officers had assessed as having slight or moderate family problems had been recorded as having occasional family problems, whereas those assessed as having severe problems had mainly been recorded as experiencing continuous family problems.

Figure 6 below shows community sentence proposals according to degree of family problem for each of the years 1995-97. It can be seen that in 1995 for those with no family problems community service was the most



likely sentence proposal, but that for those with moderate or severe family problems, basic probation was the most likely sentence proposal. For those with slight family problems, a proposal for community service or for basic probation was equally likely. In 1996 and 1997, again community service was the most likely sentence proposal for those with no family problems and basic probation was the most likely sentence proposal for those with severe family problems. However, there was little difference in the proportion of community service and basic probation proposals made for those with slight or moderate family problems. The differences between probation officers' sentence proposals according to degree of family problems were again found to be statistically significant for all three years.

Figure 6 Community Sentence Proposals According to Degree of Family Problems 1995-97

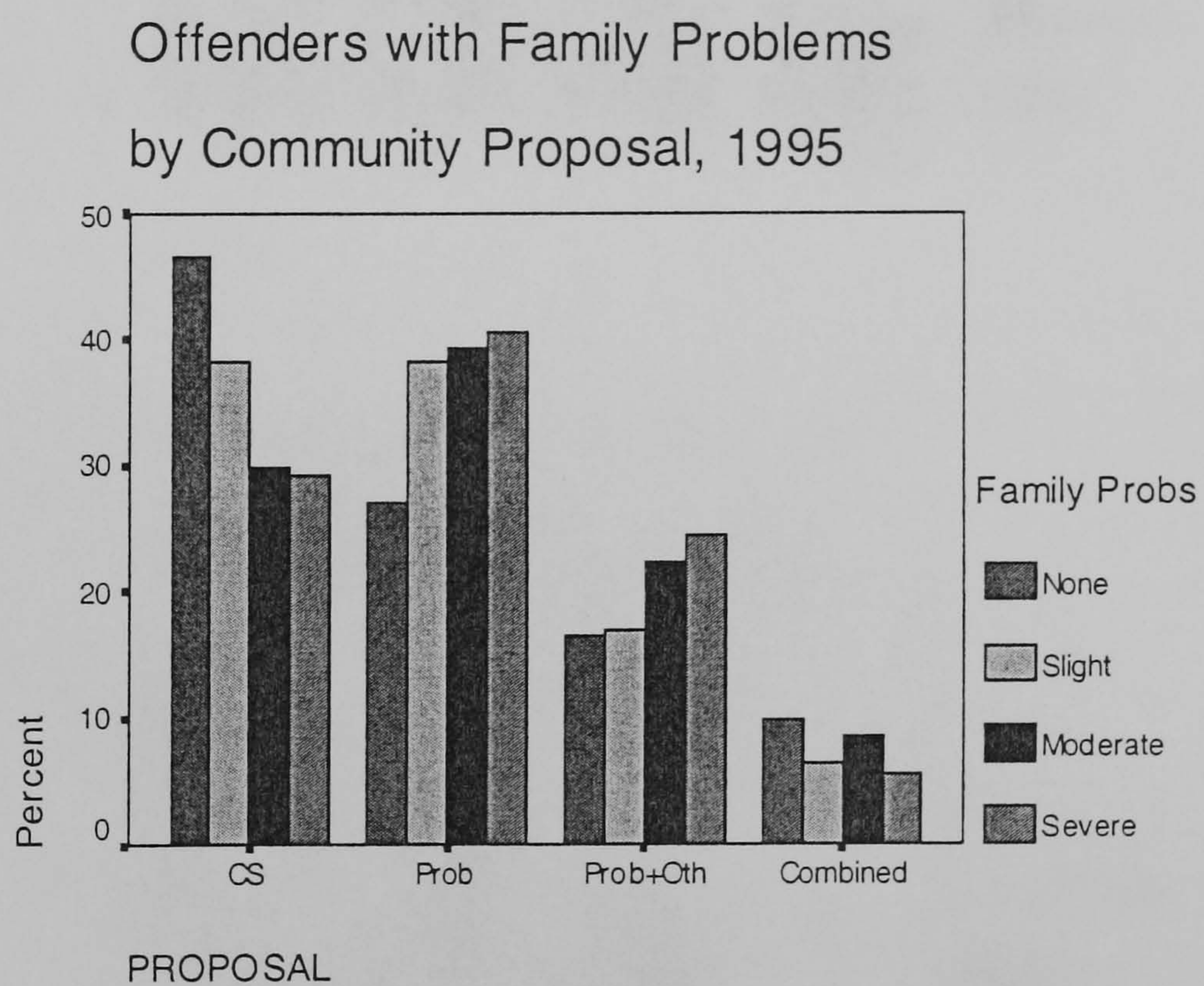


Figure 6(a) 1995

Chi-square = 66.55, df = 9, p = <.001



### Offenders with Family Problems by Community Proposal, 1996

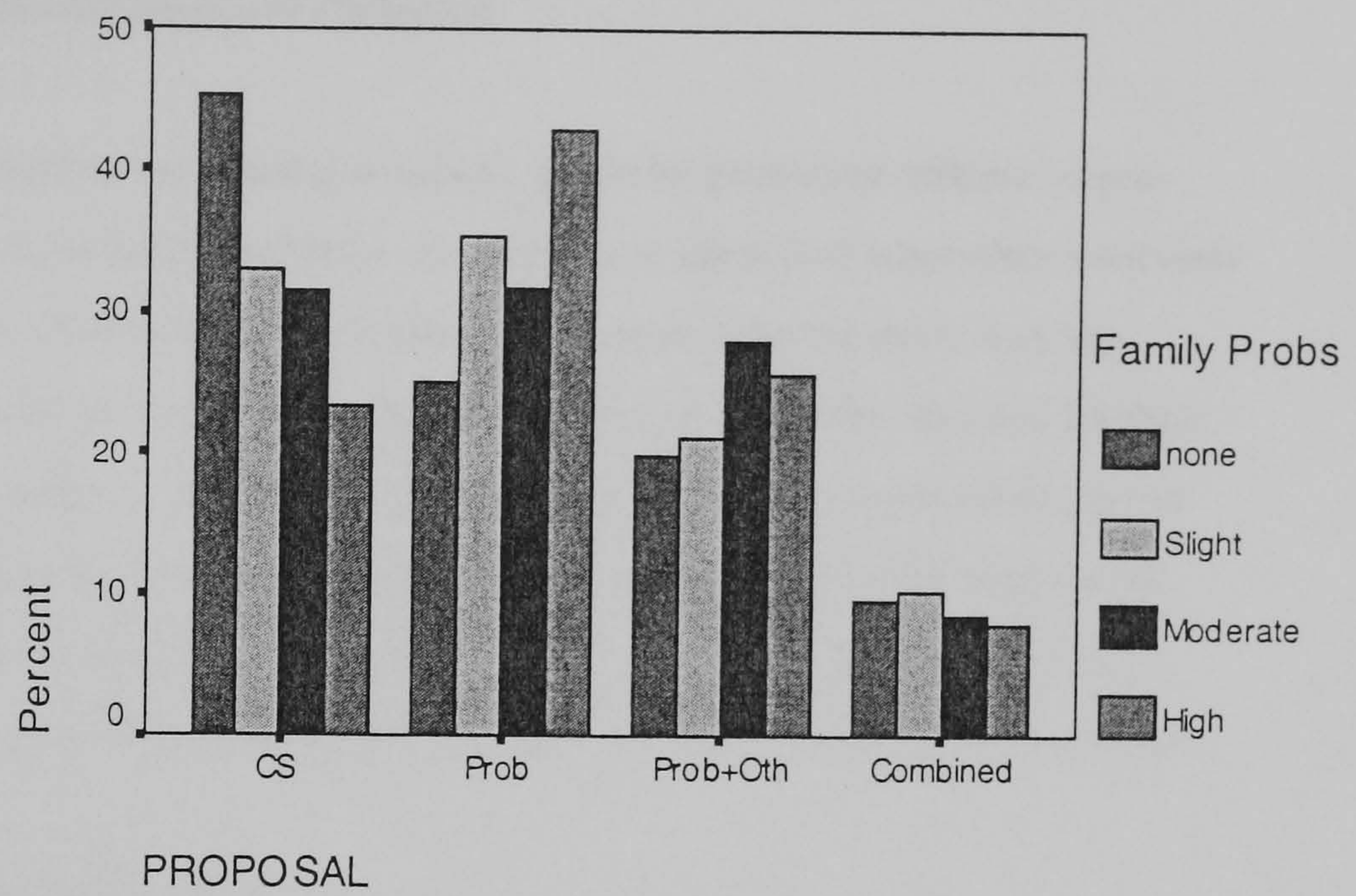


Figure 6(b) 1996

Chi-square = 77.77, df = 9, p = <.001

### Offenders with Family Problems by Community Proposal, 1997

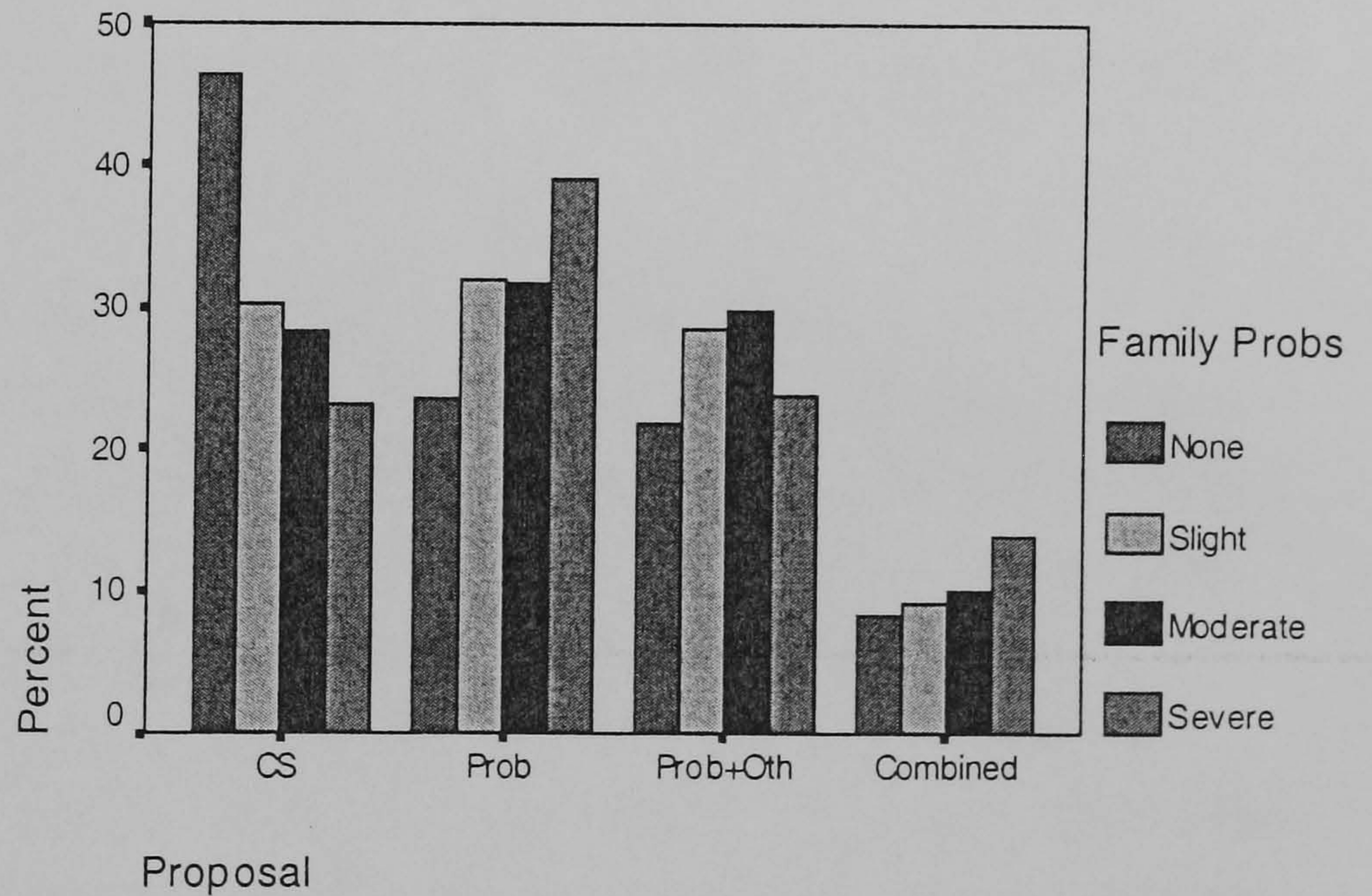


Figure 6(c) 1997

Chi-square = 91.85, df = 9, p = <.001

The above findings show that where probation officers have identified severe problems relating to accommodation, alcohol abuse, drug abuse, or the family, they are generally more likely to make a proposal for basic probation (or probation+ in the case of offenders with severe alcohol problems). However, where there are no such problems, or the problems are slight, they are generally more likely to make a proposal for community service. The findings also indicate that probation officers tend to make proportionately fewer community service proposals and proportionately more probation and probation+ proposals as severity of



employment problems increase. However, problems relating to financial difficulties and peer group influence do not appear to be factors that influence probation officers' choice of community sentence proposal.

### **3 Relationship Between Social Problems and Sentence Outcome**

The above results demonstrate that the community sentencing proposals made by probation officers in pre-sentence reports are related to some of the social factor problems that they have identified when they interview the offender for the preparation of the report. However, I also wanted to examine whether there was any relationship between the identification of social problems by probation officers and the take-up rates for their proposals by the sentencing magistrates. In order to do this, I produced tables that cross-tabulated degree of problem severity with court outcome according to community sentence proposal for each of the five social problems that had been found to have a relationship with sentence proposals. Chi-square tests were also conducted to check whether outcome differences according to problem severity were statistically significant.

#### **3.1 Accommodation Problems and Sentence Outcome**

As we have seen in section 2.1 above, for offenders identified as having slight accommodation problems, probation officers were most likely to propose community service, whereas for offenders identified as having moderate or severe accommodation problems, they were most likely to propose probation. For offenders identified as having severe housing problems, probation officers were also more likely to propose probation+ than to propose community service.

With regard to court rates of take-up for these proposals, during 1995 it was found that severity of accommodation problems had no effect on court rates of take-up for community sentence proposals. That is, there were no statistically significant differences between outcomes according to severity of accommodation problem for any of the community sentence proposals. In 1996, severity of accommodation problems had no effect on rates of take-up for proposals for basic probation. However, it was found that as severity of accommodation problems increased, community service proposals became less likely to be taken up by the courts. Thus, 80.9% of community service proposals were followed for offenders with slight housing problems, compared with 73.4% of proposals for offenders with moderate housing problems and 67.6% of proposals for offenders with severe housing problems. This was a statistically significant difference at the level of  $p = .012$ . However, this finding was not repeated in 1997, when there were no significant differences in rates of take-up for community service proposals according to severity of accommodation problems. These inconsistent findings across the three years of the study suggest that where differences in rates of take-up were found, they may have been caused by factors other than accommodation problems.



### **3.2 Alcohol Abuse Problems and Sentence Outcome**

We have seen in section 2.2 above that for offenders with slight or moderate drink problems probation officers were more likely to propose community service, but that for offenders with a severe problem of alcohol abuse they were more likely to make a proposal for probation or for probation+. We now consider whether degree of drink problem had any significant effect on court outcomes for these community sentence proposals.

In 1995, it was found that fewer community service proposals were followed as severity of drink problem increased. 81.4% of proposals were followed for those with a slight drink problem, compared with 77.6% of proposals that were followed for those with moderate drink problems and 68.0% for those with severe drink problems. Although a Chi-square test showed that this was not a statistically significant difference ( $p = .084$ ), it demonstrated a trend. However, no significant differences in rates of take-up according to severity of drink problem were found for probation and probation+ proposals.

In 1996, once again the more severe the drink problem, the fewer community service proposals that were followed. 86.8% of community service proposals were followed for those with a slight drink problem, compared with 80.2% for those with a moderate drink problem and 71.6% for those with severe drink problems. This was found to be a statistically significant difference at the level of  $p = .024$ . However, no statistically significant differences were found in respect of rates of take-up according to severity of drink problem for probation or probation+ proposals.

In 1997, again the more severe the drink problem, the fewer community service proposals that were followed. 85% of proposals were followed for those with slight drink problems, compared with 75.4% for those with moderate problems and 66.2% for those with severe problems. Again, this was a statistically significant difference, at the level of  $p = .014$ . However, once again no statistically significant differences were found in respect of rates of take-up according to severity of drink problem for probation or probation+ proposals.

These results suggest that for all three years the courts became less willing to follow probation officers' proposals for community service as severity of alcohol problems increased, (although in 1995 this did not reach a level of statistical significance). However, the presence of alcohol abuse problems generally appeared to have little or no effect on court rates of take-up for proposals for probation or probation+.

### **3.3 Drug Abuse Problems and Sentence Outcome**

We saw in section 2.3 above that for offenders with a severe drug problem for all three years probation officers were most likely to make a proposal for basic probation. In 1995 and 1997 they were also most likely to make a proposal for probation for offenders with moderate drug problems and to make a proposal for community



service for those with slight drug problems. However in 1996 little difference was found in the proportions of community service and probation proposals that probation officers made for offenders with slight or moderate drug abuse problems. We now consider whether degree of drug problem had any significant effect on court outcomes according to the community sentence proposal that had been made.

For all three years, it was found that as severity of drug problems increased, the court take-up rate for community service proposals decreased. In 1995, 75.6% of proposals were followed for offenders with slight drug problems, compared with 61.5% of proposals for offenders with severe drug problems. In 1996, 88.9% of proposals were followed for offenders with slight drug problems, compared with 61.1% of proposals for offenders with severe drug problems. For both of these years, these were statistically significant differences (1995  $p = .032$ , 1996  $p = <.001$ ). In 1997, for those with slight drug problems, 82.2% of community service proposals were taken up by the courts, compared with 66.2% for those with severe drug problems, although this was not a statistically significant difference ( $p = .159$ ). However, no significant differences were found in rates of take-up for proposals for probation or probation+ for any of the years, irrespective of the degree of drug problem that had been identified by the probation officer.

These results suggest that the presence of more severe drug problems reduces take-up rates for community service proposals. However, the presence of such problems appears to have no effect on court rates of take-up for probation or probation+ proposals.

### **3.4 Employment Problems and Sentence Outcome**

Section 2.6 above had found some differences between probation officers' sentencing proposals according to severity of employment problems, with community service accounting for a much larger proportion of proposals for offenders with no employment problems than it did of proposals for offenders with moderate or severe employment problems. This was in contrast to probation+, which accounted for proportionately more proposals for offenders with moderate or severe employment problems than for offenders with no or slight employment problems.

When further analyses were carried out to check whether degree of employment problem had any effect on court outcomes according to the community sentence proposal that had been made, it was found that severity of employment problem had no effect on court rates of take-up for community service or probation+ proposals. For basic probation proposals, in 1996 it was found that proposals were increasingly less likely to be followed as severity of employment problems increased. (79.6% of proposals were followed where offenders had slight employment problems, 65.2% were followed where offenders had moderate employment problems and 57.3% were followed where offenders had severe employment problems.) However, although these differences were highly statistically significant ( $p = <.001$ ), no such differences were found in respect of probation proposals for



the years 1995 and 1997. It therefore appears likely that the take-up differences for basic probation proposals that were found in 1996 may have been caused by some other factor than employment problems.

The above results suggest that employment problems are not an important factor in relation to court rates of take-up for any type of community sentence proposal. This is in contrast to the findings concerning employment *status*, as reported in section 1 above. Here, we saw that proposals for community service or for a combination order were more likely to be taken up for employed offenders than for unemployed offenders, which was linked with the finding that unemployed offenders were more likely to receive a custodial sentence than were employed offenders. These contrasting results draw attention to the importance of distinguishing between employment *status* (that is, whether an offender is employed or unemployed) and employment *problems*, (which could relate to current employment). Thus, so far as court sentence outcomes are concerned, it appears that it is employment status that matters, rather than employment problems.

### **3.5 Family Problems and Sentence Outcome**

Section 2.7 above showed that for offenders with family problems, probation officers were generally more likely to make a proposal for probation than for community service.

When further analyses were carried out to check whether degree of family problem had an effect on court outcomes, for all three years it was found that severity of family problems had no effect on the court rates of take-up for any of the community sentence proposals. Again, these results suggest that family problems are not an important factor in relation to court rates of take-up for probation officers' proposals.

The above findings have shown that probation officers' identification of problems relating to accommodation, employment and the family has little or no effect on court rates of take-up for any of the community sentence proposals. However, where probation officers have identified alcohol or drug abuse problems, fewer proposals for community service are taken up by the courts as severity of problem increases, although the presence of such problems appears to have little effect on court take-up rates for proposals for probation or probation+. Thus, contrary to my expectations, the presence of severe alcohol or drug abuse problems does not have any significant effect on magistrates' sentencing decisions in relation to proposals for probation, but does have an effect on their sentencing decisions in relation to proposals for community service.

### **Conclusion**

In the first part of this chapter we looked at the effect of employment status on sentencing decisions, when it was found that both probation officers and magistrates favoured community service for employed offenders and probation for unemployed offenders, in line with previous research. There are likely to be a number of possible reasons for this. These include the possible use of probation orders to assist offenders to find employment and



the availability of community service (but not probation) at weekends. Additionally, it may be that probation officers and magistrates view unemployed offenders as more at risk of re-offending and hence in greater need of probation supervision.

When we looked at comparative rates of take-up for community sentence proposals according to offenders' employment status, we found some differences in rates of take-up between employed and unemployed offenders in respect of proposals for community service and combination orders. These two proposals were found to be more likely to be taken up for employed than for unemployed offenders, which was linked with higher proportions of custodial outcomes following such proposals for unemployed offenders than for employed offenders. These findings suggest that for employed offenders, their possession of a job may sometimes persuade magistrates to follow a proposal for community service or for a combination order rather than to imprison them. Possible reasons for this could be that magistrates want offenders who are in employment to retain their jobs, or that they consider that offenders who are employed pose less of a risk to the public. However, whatever the reason, it appears that offenders are more likely to be able to avoid a sentence of imprisonment if they are both in employment and willing to perform unpaid work for the benefit of the community during their leisure time.

In the second part of this chapter we looked at the effect of social problems on probation officers' choice of community sentence proposal and on court rates of take-up for community sentence proposals.

With regard to probation officers' proposals, the findings were in line with my hypothesis that those offenders for whom probation supervision was proposed would have more social problems than those offenders for whom officers proposed community service. The results show that where probation officers identify serious problems relating to accommodation, alcohol abuse, drug abuse, or the family, they are generally more likely to make a proposal for basic probation (or probation+ in the case of offenders with severe alcohol problems). Where there are no such problems, or the problems are slight, they are generally more likely to make a proposal for community service. The findings also indicate that probation officers tend to make proportionately fewer community service proposals and proportionately more probation and probation+ proposals as severity of employment problems increase. However, problems relating to financial difficulties and peer group influence do not appear to affect probation officers' choice of community sentence proposal.

When we looked at the relationship between recorded social problems and court rates of take-up for probation officers' proposals, the results showed that rates of take-up are affected by the presence of alcohol abuse and drug abuse problems, with fewer community service proposals taken up by the courts as severity of alcohol or drug abuse problems increases. However, the presence of alcohol or drug abuse problems was found to have little effect on court take-up rates for probation or probation+ proposals. Accommodation, employment and family problems generally did not have any significant effect on take-up rates for any of the community



sentence proposals. We also noted that, so far as court sentence outcomes are concerned, it appears that it is employment *status* that matters, rather than employment *problems*.

Thus, contrary to my expectations, it appears that the presence of social problems does not have any significant effect on magistrates' sentencing decisions in relation to proposals for probation. However, the presence of severe alcohol or drug problems does have a negative effect on their sentencing decisions in relation to proposals for community service.

Finally, it should be borne in mind that although probation officers may have identified the presence of social problems and noted these on statistical record forms, this does not necessarily mean that magistrates will have been aware that such problems existed. Nevertheless, social problems are commonly referred to by probation officers in pre-sentence reports, as we will see in the following chapters.



**WRITTEN REPORTS CONTAINING PROPOSALS FOR COMMUNITY SENTENCES**

**Study Two – Magistrates Courts 1996**

**(a) Theft Offenders**

**Introduction**

In previous chapters we have examined factors that are related to probation officers' choice of community sentence proposals, as well as factors that are related to magistrates' rates of take-up for these proposals, based on quantitative analyses of statistical data. In chapter 5 we examined the effect of gender on sentencing decisions and in chapter 7 we saw that probation officers identified more serious social problems for offenders for whom they proposed probation supervision than they did for offenders for whom they proposed community service. However, although probation officers had noted the presence of such problems on statistical record forms, this did not necessarily mean that they referred to these problems in their reports to the courts.

We therefore now return to a study of probation officers' written reports, when I considered that a qualitative approach would be more informative than the presentation of further statistical analyses. My earlier study of pre-sentence reports written in 1993/94 (see chapter 3) discussed a number of factors that provided possible explanations for why some proposals were taken up by the courts and others were not. One finding was that some offenders who appeared comparable on the computer printout were, in fact, of differing levels of 'seriousness'. This had largely arisen because offenders had committed additional offences that only became apparent when I examined the actual reports. However, Kent Probation Service's introduction of a 'Seriousness Rating Scale' for report-writers in 1995 (see chapter 6) meant that it became easier to make comparisons between reports that were on offenders of similar levels of seriousness.

In this second study of written reports we again examine factors that affect probation officers' choice of community sentence proposal and magistrates rates of take-up. However, we now compare offenders who are of similar levels of seriousness, and we base comparisons on the actual written reports, rather than on analyses of quantitative data recorded on statistical record forms.

**1 Selection of Reports**

We saw in chapter 4 that the two most common offences for which magistrates requested a pre-sentence report were theft <£500 and driving whilst disqualified. I therefore decided to base my second study of written reports on these two offences. The present study again relates only to the magistrates' courts and uses reports that were written by probation officers in a single team in Kent during 1996.



Kent Probation Service statistical records showed that during 1996 the team prepared a total of 371 reports for the magistrates courts, out of which the two offences of theft <£500 and driving whilst disqualified accounted for 41.8%. In the present chapter we look at the offence of theft <£500, when the majority of offenders were classified as at low risk of receiving a custodial sentence, and we focus on factors relating to the choice between probation and community service. In the following chapter we look at the offence of driving whilst disqualified, when, by the nature of the offence, offenders fall within the higher risk categories and we focus on factors relating to the choice between probation+ and community service.

The statistical records indicated that during 1996 the team prepared a total of 80 reports for the magistrates' courts on the offence of theft <£500. Cross-tabulations of probation officers' sentence proposals by actual court disposals in relation to this offence are set out in Table 8.1 in Appendix 4. This shows that the team made an equal number of proposals for community service as for basic probation supervision (n = 24 for both), of which 75% of the proposals for community service were followed, compared with 83.3% of proposals that were followed for probation supervision.

The records also showed that the majority of these offenders (n = 57, or 71.3%) were in risk level 1, the category at 'low risk' of receiving a custodial sentence, and that within that category, 63.2% were male offenders and 36.8% were female offenders. In order to ensure that reports were comparable in terms of 'seriousness', all the reports in my sample were selected from this 'low risk' category.

A further table was produced for these low risk theft offenders, giving probation officers' proposals cross-tabulated with actual court disposals, for male and female offenders, as shown in Table 8.2 in Appendix 4. In order to identify and trace the actual reports, I also produced a computer printout that gave name of offender, date of birth, sex, risk level, sentence proposal, sentence disposal and code of probation officer who prepared the report. This showed that the reports were written by a total of twelve different probation officers, six of whom were female and six of whom were male.

It can be seen from Table 8.2 that there were eleven probation proposals for female offenders (with a take-up rate of 100%) and ten probation proposals for male offenders (with a take-up rate of 90%). However, when the actual reports were examined, it was found that the report on the one male offender where the probation proposal was not followed had been incorrectly coded and this report was therefore excluded from the sample.<sup>41</sup> For the remaining twenty reports there was thus a take-up rate of 100% for probation proposals for both male and female low risk offenders who had committed the offence of theft <£500. Twelve of these reports were included in my sample, six on female offenders and six on male offenders.

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<sup>41</sup> Although the statistical code used was for theft <£500, the offence that had been committed was in fact the more serious offence of burglary.



Table 8.2 also shows that there were four proposals for community service for female offenders (of which only one proposal was followed) and thirteen proposals for community service for male offenders (of which ten proposals were followed). However, on examination of the more detailed printout, it was found that one report on a male offender had been entered twice. This left a total of sixteen reports, of which eleven reports were traced for inclusion in the sample. When these written reports were examined, it was found that one of the reports that had been coded as being on a male offender was in fact on a female offender. It was also found that a report on a female offender that had been coded as a proposal for community service was in fact a proposal for a conditional discharge. This report was therefore excluded from the study, as were two further reports that had been incorrectly coded as being in the 'low risk' category.<sup>42</sup> This left eight reports containing a proposal for community service for inclusion in the study, three of which were on female offenders and five on male offenders.

The above difficulties draw attention to the possibility that probation officers had committed a number of coding errors, as well as to the dangers of drawing conclusions from a single source of data. The errors also mean that the community service figures and rates of take-up shown in Tables 8.1 and 8.2 in Appendix 4 should be treated with caution.

## **2 Probation Officers' Choice between Probation and Community Service**

As we have already seen, probation officers' proposal decisions are likely to be based on a variety of factors, including legislation, national standards, sentencing guidelines and evidence-based practice. The requirements of national standards and evidence-based practice suggest that probation officers' are likely to make proposals for probation where they have identified personal/social problems (or 'criminogenic needs') that require addressing through probation supervision. Thus national standards state that probation supervision may be suitable where the offender has "personal problems to do with attitudes, skills, motivation or relationships which influence his or her offending and which might be addressed through probation order supervision." (Home Office 1992, p.33.) "If a significant amount of social work intervention is required and if justified by the seriousness of the offence", a probation order or combination order is likely to be more appropriate than a community service order. (op cit. p. 69) Similarly, HM Inspectorate of Probation's Guide to Effective Practice suggests that "the content of intervention should be designed to effectively address criminogenic needs (those factors which have a direct link to offending)". (Chapman and Hough, 1998, p. 14)

We have also seen that probation has tended to be regarded as an appropriate sentence for female offenders and that the probation order was originally viewed as a 'low tariff' sentence through which 'help' could be provided, whereas community service was originally viewed as a 'high tariff' alternative to custody. However,

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<sup>42</sup>The reports revealed that, as well as the offence of theft <£500, the offenders had also committed the more serious offence of driving whilst disqualified.



following the implementation of the Criminal Justice Act 1991, these roles were to some extent reversed, with community service now regarded as mainly suitable for offenders who are not at risk of re-offending. Probation supervision, on the other hand, is now directed towards those whose personal/social problems lead to a higher risk of re-offending, with probation orders no longer able to be made on 'welfare' grounds alone.

So how do these requirements and expectations affect probation officers' choice of community sentence proposal and the manner in which they word these proposals in their pre-sentence reports to the magistrates' courts?

## **2.1 Reports Containing a Proposal for Probation**

On examination of the written reports, it was found that all reports proposing probation did indeed make reference to a variety of personal and social problems and that this was irrespective of whether the offender was male or female, as shown by the following examples.

### *a) Female Offenders*

Case 1. Female offender, convicted of theft of men's socks v. £14.99 from Army & Navy stores. This offence placed her in breach of a conditional discharge for shoplifting. The report described many personal problems. She was suffering from depression and receiving anti-depressant tablets from her GP. Ten years ago she was diagnosed as having cervical cancer and thyroid problems. She also had a number of other ailments for which she was receiving treatment. The information in the report had been verified through the use of detailed sources, including a psychiatric report. The report concluded that this offender was not suitable for community service because of her ill health. However, "the Court may consider a short one year Probation Order might be appropriate in assisting her to reduce her propensity to offend". A detailed supervision plan was given covering restriction of liberty by weekly reporting, assisting her to maintain her motivation to avoid re-offending, examining the reasons behind her offending and offering financial and budgeting advice.

Case 2. Female offender convicted of theft of children's books from WH Smith. This offender had a substantial history of previous offending. Detailed sources of information were given, including a discussion with her GP, who had prescribed anti-depressant medication. Numerous personal problems were described including an unstable and disruptive upbringing, periods of depression, self-mutilation and a suicide attempt. It was stated that in times of stress shoplifting would become "like an addiction". The risk of reoffending was assessed as "considerably lower than in the past: with ongoing support this risk could be further reduced." The report concluded: "In my view the most appropriate option would be Probation." A detailed supervision plan was provided covering maintaining



motivation not to re-offend, assisting to manage stress and negative feelings, and assisting to develop an appropriate support network within the community.

Case 4. Female offender convicted of theft from shop v. £48.64. The report described a number of personal problems including financial difficulties following her former husband's reluctance to pay maintenance, and feelings of depression and isolation following the death of her mother, who had lived with her until she died of cancer. She was depressed at the time of the offence "but to her credit X did not attempt to use this to excuse her behaviour." Reference was made to deep humiliation following her arrest and feelings of shame. The report considered both community service and probation as sentence options. "Whilst X is suitable for Community Service and work is available, it would not, in my view, assist her in addressing the factors that appear to have influenced her offending." The report ended with a proposal for probation and provided a detailed supervision plan which covered the identification of factors which had influenced her offending and the development of strategies to avoid possible re-offending, help with budgeting, counselling support and referral for bereavement counselling if appropriate.

Case 5. Female offender convicted of theft of a personal stereo from Tandy's store. The report stated that "at that time she was under considerable stress, was not thinking clearly and was prone to acts of forgetfulness." The offence placed her in breach of a two-year conditional discharge for shop theft in similar circumstances. Prior to this, previous convictions were over ten years ago. Reference was made to numerous personal problems including separation from her husband with whom she had argued on the day of the offence, and worry about her five grandchildren, whom she had brought up, one of whom had started committing offences. The report stated that "X is clearly ashamed of her behaviour" and she was "upset and embarrassed" about appearing before the Court at a time when she was striving to bring her grandchildren up to be law-abiding citizens. The report stated that "X certainly now intends to keep out of trouble. However, until she is able to resolve some of the problems that she currently faces, I feel that the risk will remain that she could re-offend." The report concluded: "In this instance I would request that the Court give consideration to making a short Probation Order, the main aim of which would be to help X better cope with the personal problems that led to her offending."

Cases 3 and 6 similarly make reference to numerous personal problems. These include financial pressures, emotional stress, depression, panic attacks, a difficult home situation and a husband whose behaviour was erratic due to a heroin dependency (Case 3), and an unhappy childhood, a sense of isolation, difficulties with her mother, problems in her marriage and voids and emptiness in her personal life (Case 6).



The offenders described in the above examples can probably be regarded as fairly representative of the type of female offender for whom the probation order has traditionally been regarded as an appropriate sentence through which to provide help and support with problems. However, in line with current requirements, these reports all state that 'help' with such problems is being proposed in order to reduce the risk of re-offending. In only one of these reports (Case 1) did the probation officer state that the offender was not suitable for community service (due to ill health). However, in two cases it was suggested that although the offender was suitable for community service, a probation order would be more appropriate. These were Case 4 (see above) and Case 6, whose report states "I have assessed X as suitable for all community options but do not think in her case that the interests of justice would be served by her performing a Community Service Order."

The above examples also demonstrate a continuing tendency for female offending to be linked with feelings of stress and depression. However, the following examples from reports on male offenders suggest that probation officers are equally as likely to identify such problems in their reports containing probation proposals for males.

#### *b) Male Offenders*

Case 8. Male offender convicted of stealing a handbag from a parked car. Numerous personal problems were described. Three years' ago his father was battered to death by the defendant's elder brother. The brother received a Hospital Order but committed suicide less than 18 months' later. His mother had a nervous breakdown following her husband's death. The report stated that "These events form the backdrop to X's recent history and three years after the tragic death of his father, he, like his mother, remains clearly affected by these traumatic events." The report concluded by considering community sentencing options: "X would seem to represent a suitable candidate for the Community Service scheme and accordingly I have explained to him what is involved. He has indicated that he would be happy to be made subject to a Community Service Order but I would nevertheless seek to persuade the Court to impose another sentence in this case. ... In my discussions with X and his mother it is clear that recent events still prey heavily on their minds. In Mrs. X's view her son's unsettled state of mind has not allowed him to move forward and has made him susceptible to the loss of judgement demonstrated by this offence. ... In these circumstances, the Court may be persuaded that these matters are best dealt with by means of a Probation Order which would have the following aims: [a detailed supervision plan was then provided]."

Case 9. Male offender convicted of theft from his employer that had involved him taking a TV and video from the office of his Chief Officer following a Christmas party. Personal problems were described. He had been overworking and was "stressed and depressed" at the time of the offence as he was going through a divorce and was on sick leave from work. The information in the report had been verified, including through the GP. The report stated: "Given that the offences appeared to be a



response to a very specific set of circumstances, committed whilst X was experiencing a considerable amount of personal stress, I would not anticipate a high risk of re-offending of this nature.” The report concluded by considering community sentence options. Community service was ruled out for medical reasons and a proposal was made for probation, with a detailed supervision plan covering reducing risk of re-offending, stress management, counselling support, and liaison with community resources and psychiatric services as appropriate.

Case 11. Male offender convicted of thefts from cars, with others. He had denied any involvement and, presumably, had been found guilty after a trial. The report stated: “It has been difficult to explore X’s attitude towards these offences and their impact on the victims because ... in interview he was adamant he took no part...”. Reference was made to personal problems including “mood swings, anger, depression and [being] unable to cope.” He was already subject to a community service order and the Community Service Officer was “concerned regarding the depressed and agitated state he appears to be in.” Reference was made to psychiatric problems and at the suggestion of the Probation Officer a psychiatric report had been requested by the Court. The report concluded: “If the Court consider a community sentence appropriate in this case, I would propose that X be made subject to an 18 month Probation Order.” A detailed supervision plan was provided which included “to encourage X to seek the advice of his GP and to engage in any further assessment or treatment he finds appropriate.”

Case 12. Male offender convicted of joint theft from supermarket v. £35.15, after he had been drinking. He was with his brother and they had no money and were hungry. His only previous conviction was a minor offence. His state of mind was described as confused and a medical certificate showed that he was suffering from clinical depression. Numerous personal problems were referred to and he was currently receiving psychiatric care. The risk of re-offending was assessed as low “should he receive sufficient support to overcome the personal difficulties outlined above.” He was assessed as unsuitable for community service because of his medical situation and because this would not address the roots of his offending. The report ended with a proposal for probation and gave a detailed supervision plan that included reducing the risk of re-offending, providing counselling support in relation to drinking, liaising with the community psychiatric nurse and a referral to an alcohol counselling agency if appropriate.

Cases 7 and 10 similarly describe personal problems that include foster care, previous child guidance for behavioural problems at school and poor self-esteem (Case 7) and disability problems, alcohol abuse and repeated drunk and disorderly offending (Case 10). Both of these reports also state reasons for why community service might not be a suitable sentence: Case 7 was already subject to two such orders and Case 10 had a disability that was likely to prevent him from performing community service.



The above reports again make it clear that probation help with personal problems is being proposed in order to reduce the risk of re-offending (although in Case 9 it was stated “I would not anticipate a high risk of re-offending of this nature”). However, unlike the reports on female offenders, all of the reports containing probation proposals for male offenders explicitly ‘rule out’ community service prior to proposing probation.

These findings confirm that probation officers’ reports proposing probation supervision are likely to contain references to personal/social problems that are linked with offending. Since all of these proposals were taken up by the courts, the results also suggest that where such problems have been identified in pre-sentence reports on low risk theft offenders, courts are likely to follow proposals for probation. Possibly this is because for less serious offenders, the presence of such problems provides an ‘acceptable’ explanation for their offending and hence reduces the need for them to be more obviously punished. It also appears that these findings are equally likely to apply to reports on male offenders as to reports on female offenders. However, the reports containing probation proposals for male offenders were more explicit in ‘ruling out’ community service than were the reports containing probation proposals for female offenders. This suggests that probation officers expect to have less difficulty in persuading courts to take up probation proposals for females than for males, in line with traditional attitudes regarding the suitability of probation supervision for female offenders.

## **2.2 Reports Containing a Proposal for Community Service**

Where reports contained a proposal for community service, I had anticipated that examination of the written reports would reveal that there were no personal and social problems that placed the offender at risk of re-offending. However, this was not the outcome and of the eight reports in my sample that proposed community service, in only two cases (Cases 18 and 19) was it stated that there was a low risk of re-offending and no problems that required addressing through probation supervision. The remaining six reports all made reference to a variety of problems and some risk of re-offending, as can be seen from the following examples.

### *a) Female Offenders*

My sample included three reports containing a proposal for community service for female offenders, two of which were taken up by the courts and one of which was not. In the following example, the proposal was not followed.

Case 13. Female offender convicted of shop theft v. £21.99, which she said was a Christmas present for her daughter. She had many previous shoplifting offences and had served several previous custodial sentences for similar offences. She had two children aged 10 and 9. The report referred to previous personal difficulties and stated that she had many financial problems. In the past she had abused alcohol and drugs, but was now leading a more settled lifestyle. The report concluded: “X



does show more insight into her offending behaviour and I would suggest that Probation supervision would only be able to offer support for X in maintaining her more stable, hopefully, offence-free lifestyle.... X is assessed as suitable [for community service] and I can confirm that work is available. Such a sentence would test the defendant's resolve not to re-offend, whilst allowing her to make reparation to the community and act as a long-term reminder of the consequences of her anti-social behaviour."

The outcome at court was that the magistrates did not follow this proposal for community service, but instead made a probation order with additional requirements. Possibly this was because the information contained in the report led the court to conclude that this offender was at risk of re-offending and thus in need of the type of help and support that could be provided through probation supervision. Equally, it could have been due to a reluctance to sentence female offenders to community service. However, in the following two examples, the proposals for community service for female offenders were taken up by the court.

Case 14. Female offender convicted of theft of cosmetics from Sainsbury's v. £37.03 when she was with her boyfriend. The goods were recovered. The report described many personal problems and an "extremely disturbed and unsettled" adolescence. Reference was made to Social Services involvement, living in a squat, foster homes, an older violent boyfriend, threats to kill her and a women's refuge and it was stated that "it is not surprising that X's experiences impacted on her mental health." She had been prescribed anti-depressant medication and was awaiting an appointment with the Community Psychiatric Nurse. She was currently subject to a Probation Order, about which it was stated: "The areas of focus will be continued development of strategies to combat the factors leading to her offending, which at the heart are financial difficulties. Negotiations are already in hand with ... to reduce the level of payments required. X is also in the process of seeking a referral from her doctor for counselling in respect of her depression related to her past experiences. In the circumstances the Court may take the view that a short Community Service Order would be the most appropriate sentence today. The offence of shop theft impacts on the community and it is to the community that X's reparation may most appropriately be made. Such an Order would restrict her liberty and provide an opportunity for X to give back to the community through positive, demanding and unpaid work. I can confirm that work is available and X is suitable. X consents to a Community Service Order and is aware that failure to comply will result in her return to Court."

Unlike the previous offender, this offender was already subject to probation supervision, through which she was receiving help with her various personal problems in order to reduce the risk of reoffending. The outcome at court was that this proposal for community service was followed.



The third report that contained a community service proposal for a female offender suggests that probation supervision is no longer appropriate on welfare grounds alone, but rather is a sentence for those whose problems place them at risk of re-offending. In this case the proposal for community service was again followed.

Case 15. Female offender (incorrectly coded as male) convicted of theft of goods v. £79.93 (sweets, stamps, etc.) when working at a service station, where she had been seen on security camera taking goods without payment. During interview she had revealed some health problems (irritable bowel syndrome, kidney problems and asthma), which she had volunteered in response to enquiries in relation to community service and not as an excuse for her offending. Various personal problems and pressures were described in the report (marital, financial and health) and it was also stated that she had experienced some stress due to having a new 'boss' who had made some staff redundant. The report concluded: "Because of the combination of problems and pressures described above, which appeared from her account to be present at the time of the offences, I have carefully considered whether Probation supervision would be appropriate. However, several of them seem to have been temporary and X seems now to be more in control of her circumstances. This, coupled with a lack of any previous offending pattern or other focus for such supervision, leads me to discount such a proposal." The report ended with a positive proposal for community service.

The above three reports all refer to numerous social problems, despite being reports that contain proposals for community service. In one case (Case 14) these problems were already being dealt with through an existing probation order, and in another (Case 13) the problems appear to have prompted the court to make a probation order. However, in the third case (Case 15) the writer successfully 'rules out' probation on the grounds that the problems have been resolved and the risk of re-offending is low.

#### *b) Male Offenders*

My sample included five reports containing a proposal for community service for male offenders, three of which were taken up by the court and two of which were not.

In the following two examples the probation officer's proposal for community service was not followed and the offender was instead sentenced to a combination order (that is, a community service order *and* a probation order).

Case 16. Male offender convicted of theft of children's clothes v. £80.89, which he intended selling to obtain cash for socialising with friends. He was currently on probation for offences of shoplifting and threatening behaviour. Supervision was focusing on anger management but reference was made to



“the limited progress which has been achieved” and he was assessed as continuing to be at risk of re-offending. The focus of future probation supervision was described, which included a referral to the probation service employment officer. There were five months to go to the end of the probation order and the report concluded: “The five months left of X’s current Probation Order will provide sufficient time to achieve these further objectives of supervision. The Court may therefore consider that a further period of supervision is not required.” The report ended with a proposal for a community service order.

Although this offender was currently subject to probation supervision, unlike the female offender (Case 14 above), little progress was being made and the court appear to have concluded that a further period of supervision was required in addition to the community service order. A further instance of an offender who was making little progress through current supervision is provided by the next example.

Case 17. Male offender convicted of theft of fish and chips from Sainsbury’s. He had also acted as look-out whilst a co-defendant took a book from WH Smith, prior to taking a taxi together without paying. The sources of this report were extremely comprehensive: three interviews with the defendant, telephone conversations with a psychiatrist, a psychologist and a social worker and with the manager of the community home where X resided. A psychiatric report on X had also been examined. The defendant had numerous personal problems: both parents were dead and he lived in a community home with support from social services and other agencies. He was poorly adjusted socially and had learning difficulties that left him open to the influence of others and impaired his recognition of the seriousness of his anti-social behaviour. The report writer concluded that because X was already being supervised by social services, probation supervision was not necessary: “I have spoken to the clinical psychologist and he agrees that the additional intervention of the Probation Service is unlikely to improve X’s current low levels of motivation to co-operate with the service already being provided. In my view a Probation Order would therefore be inappropriate.” The report ended with a proposal for a community service order.

The report makes reference to numerous social problems. Although this offender was being supervised by social services, little progress had been being made and the court appear to have concluded that in these circumstances probation supervision in addition to community service was appropriate.

In contrast to the above cases, in Cases 18 and 19 below no personal/social problems are identified and the risk of re-offending is assessed as low. In both of these cases the proposal for community service was taken up by the court.



Case 18. Male offender convicted of going equipped for theft, the Police having found balaclavas gloves, screwdrivers etc. in his car during a routine search. The defendant had denied any criminal intent and had said “the full face balaclavas were for the purpose of keeping his head warm on the winter mornings.” Prior to the current offence there had been a five-year gap since the last offence. No personal problems were described and it was stated that the defendant was employed as a driver, delivering fruit and vegetables. Concerning the risk of re-offending the writer stated: “This appears to be an isolated instance of offending, which does not reflect X’s conduct over the last five years. Accordingly, despite concerns due to his denial of responsibility for this offence, I would assess the risk of re-offending as relatively low.” The report concluded: “Whilst X offered his full co-operation with community sentencing options, his denial of responsibility means that there is no realistic focus for Probation intervention. ... The Court may conclude that a Community Service Order would act as a continuous reminder of the consequences of any recurrence of criminal conduct, whilst simultaneously enabling him to make reparation to the community for his behaviour...”.

Case 19. Male offender convicted of abstracting electricity. Apart from financial difficulties at the time of the offence, the report does not identify any personal problems and the defendant is assessed as at low risk of re-offending as he has no pattern of offending. The report went on to state that “Should the Court wish to consider community sentencing options, there are in my view no issues that could usefully be addressed by Probation supervision” and then concluded with a proposal for a community service order.

The above two examples meet my community service criteria of low risk of re-offending and no requirement for probation supervision. However, that is not the case in the following example, which makes reference to numerous personal problems.

Case 20. Male offender convicted of theft of T-shirts from Marks and Spencer v. £182, which he intended to sell to obtain money to buy amphetamines. The report contained a detailed offence analysis, as well as details of reasons for previous offending. Numerous personal problems were described, including depression following the break-up of a relationship and a long-standing drug problem, and it was stated that “without external support, X tends to be vulnerable, chaotic and open to the influence of others”. He had been subject to previous probation supervision, in relation to which he had “appreciated the opportunity to obtain practical assistance and emotional support from the Probation Service but has shown limited motivation to make significant changes to his life”. The report concluded: “The Court may wish to consider the option of a Probation Order. ... However, it would be difficult to identify a positive strategy for such an Order and, given the fact that X has experienced a prolonged period of contact with the Probation Service, a further Probation Order may not be considered appropriate at this juncture. ... The Court may be led to the conclusion that the most



appropriate sentence, given all the circumstances, would be a medium length Community Service Order. X is currently stable and has demonstrated, in recent years, that he can comply with such a sentence. A Community Service Order would reintroduce a greater degree of structure into the defendant's life and, were there an opportunity to place him sympathetically, may provide him with a positive lesson that he can make a valuable contribution to the community in which he lives."

Although personal problems are identified in this final report, the writer describes the offender as 'currently stable' and proposes community service as a positive option for the defendant. The fact that he has already been subject to a prolonged period of probation supervision may also have influenced the court's decision to follow the proposal for community service.

As with the reports on female offenders, several of the above reports on male offenders refer to numerous personal/social problems, despite being reports that contain proposals for community service. In only two cases (Cases 18 and 19) does the report describe the offender as at low risk of re-offending and therefore not requiring probation supervision. The reports in this small sample therefore do not provide confirmation for the hypothesis that community service proposals will be made where there are no personal and social problems that place the offender at risk of re-offending. The inclusion of such references in reports that contain proposals for community service may have arisen because offenders tend to use social problems as explanations for their offending, or because probation officers remain inclined to focus on social problems despite the demise of the 'social inquiry' report.

### **3 Factors Affecting Court Rates of Take-up for Probation Officers' Proposals**

My earlier study of reports written from 1993/94 (see chapter 3) had examined reports where proposals had not been followed, which had been 'matched' with reports where proposals had been followed. This had suggested a number of possible factors that may have affected court rates of take-up, including: the probation officer's advance knowledge of the sentence the court had in mind; the extent to which the offender expressed remorse; the offender's progress whilst subject to an existing order; the deference shown to the court by the report-writer; the report conclusion ending with the preferred sentence proposal; magistrates' reluctance to sentence female offenders to community service and the appeal of the combination order to magistrates.

In the present study, it was not possible to 'match' reports in this way because there were too few cases where the probation officer's sentence proposal was not taken up by the court. Nevertheless, the reports were examined in relation to some of the above factors that the first study had suggested could have a bearing on rates of take-up.



No evidence was found of probation officers having advance knowledge of the likely sentence outcome, although in many cases it appeared that the court had requested that all sentencing options be considered. This seems to have arisen as a result of a change of court policy between 1993/94 and 1996. Thus, although it had originally been suggested that “a sentencer may give a preliminary indication of ... the sentence which may be appropriate” (Home Office 1992, p. 14), sentencers subsequently became reluctant to do this, possibly because they did not wish to limit the sentencing options for any future bench.

The reports in the present sample, almost without exception, referred to the offender’s remorse and showed deference to the court, as can be seen from the extracts that have been cited. Perhaps this was to be expected, since by 1996 probation officers would have been familiar with the revised national standards. These required report-writers to draw attention “to any evidence of acceptance or minimisation of responsibility, remorse or guilt” and also required them to present a sentence option, “inviting the court to consider its merits” (Home Office, 1995, p. 10-11). Also almost without exception, report-writers were now ending their reports with the preferred sentence proposal, again as evidenced in the extracts cited above. However, the findings do suggest that offenders’ progress whilst subject to an existing order and the appeal of the combination order to magistrates remain factors that may affect court outcomes and in one case (Case 13) there was evidence of possible reluctance to sentence female offenders to community service.

## **Conclusion**

Although the small size of the sample used in the present study limits the conclusions that may be drawn, these reports can, nevertheless, be regarded as reasonably representative of probation officers’ reports on less ‘serious’ offenders. They permit examination of the structure and content of pre-sentence reports, demonstrate the manner in which probation officers present their community sentence proposals to the courts and provide explanations for some of the court outcomes.

The results confirm that reports proposing probation supervision are likely to contain references to personal and social problems that are linked with offending. The results also suggest that where such problems have been identified for low risk theft offenders, the courts are likely to follow probation officers’ proposals for probation. Possibly this is because for less serious offenders, the presence of such problems provides an ‘acceptable’ explanation for offending and hence reduces the need for more obvious punishment. It also appears that these findings are equally likely to apply to reports proposing probation for male offenders as to reports proposing probation for female offenders. However, reports proposing probation for male offenders are likely to be more explicit in ‘ruling out’ community service than are reports proposing probation for female offenders. This suggests that probation officers expect to have less difficulty in persuading courts to take up probation proposals for females than for males, in line with traditional attitudes regarding the suitability of probation supervision for female offenders.



With regard to reports that contain proposals for community service, contrary to my expectations, in only two cases did the report state that there were no personal and social problems that placed the offender at risk of re-offending. The three reports in the study that proposed community service for female offenders all referred to numerous social problems, although in two of these cases, probation was successfully 'ruled out'. However, in the third case, the reference to such problems appears to have prompted the court to make a probation order. For male offenders, three out of five reports referred to numerous social problems, despite containing proposals for community service, and in two cases this appears to have prompted the court to make a combination order.

It is possible that probation officers include such references because offenders use personal/social problems as explanations for their offending, or because probation officers remain inclined to focus on social problems despite the demise of the 'social inquiry' report. However, whatever the reason, it appears that references to such problems in reports that propose community service may sometimes encourage courts to sentence offenders to probation as well as to (or instead of) community service.

Finally, when we examined some of the factors that my earlier study of written reports had suggested could affect sentence outcomes, it was found that the reports in the present sample, almost without exception, referred to offenders' remorse, showed deference to the court and ended with the preferred sentence proposal. However, the current findings suggest that offenders' progress whilst subject to an existing order and the appeal of the combination order to magistrates remain factors that may affect court sentence outcomes and there was also some evidence of possible continuing reluctance to sentence female offenders to community service.



**WRITTEN REPORTS CONTAINING PROPOSALS FOR COMMUNITY SENTENCES**

**Study Two – Magistrates Courts 1996**

**(b) Disqualified Driving Offenders**

**Introduction**

We now turn to consideration of reports in relation to the more serious offence of driving whilst disqualified, when the main focus is on the sentencing choice between community service and probation with additional requirements (probation+). As we have already seen in chapter 4, for this offence, probation+ is a fairly popular sentence proposal with probation officers, although there is substantial variation in actual sentence outcomes, with a custodial sentence comparatively likely.

The study is again based on reports that were written by the same team of probation officers during 1996. The statistical records indicated that the team prepared a total of 75 reports for the magistrates courts on the offence of driving whilst disqualified, of which 67 reports were on male offenders and just 8 on female offenders. Although driving whilst disqualified thus appears to be a 'male' offence, the low number of female offenders may partly be due to such factors as a greater tendency for the police to stop male drivers than female drivers.

Probation officers' sentence proposals for these disqualified driving offenders were cross-tabulated with actual court disposals, as set out in Table 9.1 in Appendix 4. This shows that out of the 75 magistrates' court reports covering this offence, a similar number of reports contained a proposal for community service as contained a proposal for probation+ (both  $n = 22$  or 29.3%). This is broadly in line with the county as a whole, where 30.6% of 1996 magistrates court reports on the offence of driving whilst disqualified contained a proposal for community service and 30.4% contained a proposal for probation+ (see chapter 4). The statistical records also indicated that during 1996 driving whilst disqualified was the offence for which the team was most likely to make a probation+ proposal, accounting for over half of the total of 42 probation+ proposals that they made.

Table 9.1 also shows that out of the 22 proposals for probation+, just eight (36.4%) were taken up by the courts, with eight proposals resulting in a combination order and four resulting in imprisonment. This compares with 19 out of the 22 proposals for community service that were taken up (86.4%), with two proposals resulting in imprisonment and none in a combination order. The take-up rate for community service was thus 86.4%, compared with 36.4% for probation+ proposals.



It was, however, possible that probation officers were proposing probation+ for more serious disqualified driving offenders who were at higher risk of custody, and community service for less serious offenders who were at lower risk of custody. A table was therefore produced that showed probation officers' proposals according to 'risk of custody' level, the results of which are set out in Table 9.2 in Appendix 4. This shows that 54.5% of community service proposals fell within the medium-low risk category and 31.8% within the medium-high risk category. This compares with 36.4% of probation+ proposals that fell within the medium-low risk category and 50.0% that fell within the medium-high risk category, with an equal number of community service and probation+ proposals falling within the high-risk category.<sup>43</sup> Although the numbers involved are small, these findings suggest that the higher rates of take-up for community service than for probation+ may partly be accounted for by these differing levels of 'seriousness'.

However, further cross-tabulations of proposals by disposals at the *same* level of risk showed that at risk level 2 (medium-low), eleven out of the twelve proposals for community service were followed, compared with two out of the eight proposals for probation+. The six offenders for whom probation+ proposals were not followed all received combination orders (that is, probation or probation+ *and* community service). At risk level 3 (medium-high), all seven proposals for community service were followed, compared with four out of the eleven proposals for probation+. Of the seven offenders for whom probation+ proposals were not followed, three received custodial sentences, two received combination orders and one received a community service order. All of these offenders had committed the same offence of driving whilst disqualified and had similar 'risk' scores.

We have already seen in chapter 6 that for offenders at medium-low and medium-high risk of custody, the courts were more likely to take up a proposal for community service than they were to take up a proposal for probation+. We also saw that for offenders at comparable risk of custody, a combination order outcome was more likely following a proposal for probation or probation+ than following a proposal for community service. We now examine a sample of written reports in relation to disqualified driving offenders and consider whether these different outcomes are influenced by information contained in the reports that was not apparent from the statistical data alone.

## 1 Selection of Reports

As with the theft offenders described in the previous chapter, I produced a detailed printout covering offenders who had committed the offence of driving whilst disqualified, for whom the magistrates had requested a pre-sentence report from one team in Kent during 1996. The printout showed court, name of offender, date of birth, sex, risk level, sentence proposal, sentence disposal and code of probation officer who prepared the report, from which I was able to identify reports containing community sentence proposals for inclusion in the study.

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<sup>43</sup> Because driving whilst disqualified is regarded as a serious offence, it is not possible for offenders to fall within the low risk category.



For driving whilst disqualified offenders my intention was to examine reports containing community sentence proposals for offenders at similar medium-high risk of custody (risk level 3) and to focus mainly on community service and probation+ proposals. A total of twenty-five reports contained community sentence proposals for offenders at medium-high risk. Seven proposals were for community service (all of which were followed), four proposals were for basic probation (all of which were followed), eleven proposals were for probation+ (four of which were followed) and three proposals were for a combination order (one of which was followed).

However, when the actual reports were examined, although the offence code shown on the printout was for driving whilst disqualified, five reports were in fact found to relate to the offence of driving with excess alcohol. These reports were therefore excluded from the sample, along with three reports that proved difficult to trace. This left seventeen reports containing a community sentence proposal at risk level 3, to which I added five reports from risk level 2 and five reports from risk level 4, making a total of twenty-seven reports in total.

## **2 Reports Containing a Proposal for Community Service**

As we have seen, community service has always been a very popular sentence with the courts, possibly due to its ability to combine quantifiable punishment of the offender with reparation, or 'making amends' to the community. I anticipated that probation officers would draw attention to these positive features of community service in their report proposals for disqualified driving offenders. As with the theft offenders, I also hypothesised that reports containing a community service proposal would indicate that there was a low risk of re-offending and no offence-related personal or social problems that required addressing through probation supervision.

A total of eight reports containing a proposal for community service are included in the sample, two at medium-low risk, five at medium-high risk and one at high risk of custody. In all of these cases, the proposal for community service was followed by the court.

In almost every case the reports confirm that probation officers draw attention to the punitive and reparative aspects of community service and that generally the offender is assessed as being at low risk of re-offending and not in need of probation supervision. This then enables probation officers to put forward positive proposals for community service, as shown in the following two examples.

Case 1 (med-low risk) is a female offender who has been convicted of driving whilst disqualified and dangerous driving, who had initially given a false name following a police chase. She has five children and was pregnant at the time of the offence. The report states that she had said she was driving to hospital because she was worried that she was about to give birth. The baby was in fact born about two weeks later. The report states that "... my discussions with X indicate that these offences represent a particular response to a unique set of circumstances which is unlikely to be



repeated. There seems little doubt that X was under particular stress that morning. Her arrest for these offences already appears to have exerted a particularly salutary effect and she has expressed a strong wish not to commit further offences of a similar nature. In these circumstances, I would assess the risk of re-offending to be low.” The writer then suggests that there would be little point in probation supervision: “Whilst X has expressed her wish to fully co-operate with all community sentences, I would assess that there would be no specific focus for Probation intervention at the present moment. Given a low risk of further reoffending, there are in my view no specific areas of offending behaviour that could usefully be addressed.” The report concludes: “...the Court may well judge that the offences are so serious that a period of Community Service is appropriate. This would restrict her liberty and act as a continuous reminder of the inevitable consequence of any further offending, whilst simultaneously enabling her to make recompense to the community for the harm she has caused.”

Case 2 (med-low risk) is a male offender who had been banned from driving for an earlier offence of driving with excess alcohol, but had failed to tell either his parents or his employer. He had been delivering goods for his employer when he was pulled over by the police in a routine check. It is stated that “X realises in retrospect that his behaviour was both irresponsible to himself and to others and showed a disregard for the authority of the court.” Although the report cites a number of problems at the time of the earlier excess alcohol offence (the breakdown of a nine-year relationship that coincided with his being made redundant, depression and drinking), he was now living with his family who were providing support. The report-writer assesses him as now being at low risk of re-offending and as suitable for all community options. The report concludes: “it is not my view at this current time that he has any problems which need to be addressed by way of a Probation Order as he appears to have overcome his depression and sense of loss from his relationship and he benefits from continued support from his family. However, this is a serious matter which in the Court’s view will merit a restrictive disposal. It is my proposal to the Court that the defendant be made subject to a medium length Community Service Order ... X is willing to comply and will, in my opinion, find this option onerous ... [he will] have to work in his leisure time which will severely curtail his lifestyle and effectively confirm to him the irresponsibility of his actions in a constructive way for the rest of society.”

Similarly, in Cases 3 and 6 (both at medium-high risk of custody) the report draws attention to the ability of community service to provide both punishment and reparation and also states that there are no personal or social problems that require addressing through probation supervision. The report on Case 3 states that the offender is a machine operator who lives with his partner and two children, and it is stated “he does not appear to be vulnerable to further offending, so there is nothing to be addressed by the intervention of Probation supervision.” Case 6 lives with his partner and her four children. He is described as having been a good and caring partner until these offences, about which his partner was very angry, and the report states “I do not



consider that a period of Probation supervision would add significantly to X's own motivation not to re-offend. Nor do I see any particular intractable problems on which Probation supervision would focus."

The following three cases are slightly different, since the reports do not assess the risk of re-offending to be low and in two cases reference is made to current personal problems. Nevertheless, they demonstrate that if satisfactory progress is already being made through current probation supervision, report writers are still able to make positive proposals for community service.

Case 4 (med-high risk) was already well known to the report-writer and was subject to a combination order (for joint burglary). The current offence of driving whilst disqualified had occurred prior to the start of the combination order. The offender suffers from epilepsy, for which he receives medication, and is described as "someone who tries hard to avoid offending but from time to time succumbs, often at the behest of his peers." The offender had previously been considered for probation with groupwork, "but it was felt more appropriate in his case to undertake work on a one to one basis." The report states: "In my view X is easily led by his local peer group and lacks the foresight to see where his actions will lead. ... he is not gifted with the perception that some of his contemporaries possess when before the Courts." His progress on the combination order is described, when it is stated that his community service work is of a high standard and that he attends for probation supervision regularly, during the course of which he has made some good progress with the literacy tutor. The report-writer points out that the frequency and seriousness of his offending is reducing, "giving some hope that there has been a growth in maturity". It is also stated that the current combination order has some time to run, "leaving ample scope for further work to be undertaken with X". The report concludes with a proposal for a further community service order, "as reparation in the form of unpaid work for the community."

Case 8 (high risk) had been convicted of driving a van whilst disqualified and was already subject to a recent combination order. The report is an addendum to an earlier report and it is stated that "He was motivated to offend as he saw an opportunity to buy and sell scrap material using the van, and suggested that his major reason for doing so was to provide for his young family. ... I had the sense that X's regret for his conduct was sincere, but I am also aware that he appears to have frequently found himself in situations where he does not think the consequences of his behaviour through to their logical conclusions. This is currently being addressed in Probation supervision. ... However, the current offences indicate that Probation intervention has not yet begun to be effective." The report concludes: "I am of the opinion that a period of custody, however well deserved, would not address the roots of his offending and could also terminate the work which has just begun to address the fundamental problems which underpin his offending behaviour. ... In the event that the Court judges



it right to consider a non-custodial sentence, I would propose a lengthy Community Service Order is the most appropriate disposal on this occasion.”

Similarly, Case 5 (med-high risk) is already subject to supervision (for joint theft). The current offence is described as a “lapse in his good intentions rather than evidence of an entrenched cycle of like offending” and with continued supervision, it is considered that the risk of re-offending is likely to be reduced. The report ends with a proposal that the existing order should continue and that the court make a lengthy community service order, “which would involve both a restriction on X’s liberty and recompense to the community.”

In the final case involving a proposal for community service, the writer makes the proposal after first having ‘ruled out’ probation supervision. However, on this occasion it is on the grounds that it is unlikely to be effective.

Case 7 (med-high risk) had been stopped by the police, who recognised him as a disqualified driver. He had stated that he was taking his father to hospital for an appointment and that they had no money for a taxi. The report states that “X clearly regretted his offences which, with the benefit of hindsight, now appeared to him to be a result of a rash judgement which he had not thought through to its logical conclusion.” He was already subject to a community service order for abstracting electricity, but had not been complying with this and the writer states that the community service officer would be seeking revocation in court unless X could show a strong commitment towards completing his community service. X had told the report-writer that he had terminated his offending and therefore did not present a risk of re-offending. However, the writer states “... given his offending history, the Court may well conclude there may be a degree of risk of re-offending”. The report concludes: “Should the Court judge it appropriate to consider community sentencing options on this occasion, X has expressed a wish to co-operate with all community sentences, his earlier lack of co-operation with Community Service notwithstanding. ... I have explored with X in some detail what he would hope to achieve in Probation supervision. I formed the view that there was no specific focus for Probation intervention at the present time. Although X expressed a desire to co-operate, I had the sense that he is not yet ready to address his offending via Probation intervention. ... Should the Court decide to consider a community sentence on this occasion, it may wish to conclude that a lengthy Community Service Order is the most appropriate sentencing option.”

In all of the above proposals for community service, the report suggests that probation supervision is not necessary (or is not appropriate). This then enables the probation officer to make a positive proposal for community service that stresses its ability to provide both measurable punishment and reparation to the community. Unlike some of the reports containing community service proposals for theft offenders discussed in the previous chapter, the majority of these reports do not refer to current personal and social problems.



Possibly this is because disqualified driving offenders tend not to use such problems as explanations for why they offend, stating instead that they were driving in response to an emergency (such as driving to hospital), or out of necessity (such as in relation to work). However, as can be seen from the examples that follow, current personal and social problems are likely to be referred to in reports on disqualified driving offenders for whom a sentence of probation or probation+ has been proposed.

### **3 Reports Containing a Proposal for Probation**

Although the main focus in the present chapter is on proposals for community service or probation+, two reports are included that contain proposals for basic probation, both at medium-high risk of custody, and both of which were followed.

As we have seen, probation orders are now required to focus on reducing the risk of re-offending and can no longer be made on welfare grounds alone, although the traditional view of probation appears sometimes to persist. Cases 9 and 10 below both concern female offenders who were already subject to probation supervision. However, unlike Cases 4, 5 and 8 above, where community service was proposed for males already subject to probation supervision, for these two female offenders the proposal is for further probation.

Case 9 (med-high risk) is a female offender with three young children, one of whom has severe health problems (which the report-writer had confirmed with the hospital). The offence of driving whilst disqualified had occurred when she had been taking her son to hospital and she had no money for alternative transport. However, the exhaust had fallen off the car and a passing police car had stopped, when it was discovered that she was a disqualified driver. It is stated that “With hindsight she realises not only the stupidity of her behaviour but also the potential danger to other road users. She expressed regret for her illegal actions and appeared very resolved that she would never drive again whilst disqualified.” She was already subject to probation supervision, with which she had been co-operating. The report-writer considers all sentencing options, but rules out community service because of her child’s ill-health: “... the Court may consider that [the child’s] fragile health requires her full-time care, in which event she could not be considered suitable for such a sentence.” The writer suggests that the current probation order should continue and be extended by the imposition of a new order. A detailed supervision plan is provided covering restriction of liberty, victim awareness, strategies to combat factors that lead to offending, reinforcement of adherence to disqualification periods, a responsible attitude to driving, and support and assistance in maintaining permanent and stable accommodation.

Case 10 (med-high risk) is a female offender who had been driving home from work. She had told the report-writer that she was usually collected from work by mini bus, but this had not been possible on



the day of the offence. The report states that she has a long history of offending and has breached a previous probation order, although more recent involvement has been more successful. The offender lives with her husband (who is a heavy drinker), her daughter, her granddaughter, her son and her son's girlfriend. The report states that "X presents as a vulnerable person whose family situation is characterised by an almost perpetual state of chaos and crisis." She is described as "distressed by her domestic situation, which has been chaotic, unstable and dysfunctional for a number of years." The risk of re-offending is assessed as high, although the writer suggests that "with ongoing support and assistance to enable X to take greater responsibility for her behaviour, this risk could conceivably be reduced." All sentencing options are considered and she is assessed as suitable for community service but not for groupwork. The report concludes that X has "demonstrated an ability to form a more constructive and trusting one to one relationship with her supervising Probation Officer over the last year, and she has improved her commitment to maintain regular contact during her Order. In my view, this initial progress could be maintained and built upon through the imposition of a longer period of Probation supervision." A detailed supervision plan is given, which includes maintaining motivation not to offend, providing counselling support, assisting to become more aware of what constitutes legal and illegal driving, developing strategies for maintaining a lengthy period of disqualification and for withstanding pressure from others.

The above two reports contain references to personal and social problems that place these offenders at risk of re-offending, in relation to which some progress was being made through current supervision. In Case 9 community service is 'ruled out' (because of the child's fragile health). However, Case 10 raises the question of whether such a proposal would have been made, and taken up by the court, had the offender been male. Although there are too few females in the sample to permit conclusions to be drawn, it appears possible that had this been a male offender, the outcome would not have been a further probation order.

#### **4 Reports Containing a Proposal for Probation with Groupwork**

Probation with groupwork (probation+) is a sentence that probation officers are required to consider where the 'seriousness' score suggests that there is a strong possibility that the offender will receive a custodial sentence. Probation with groupwork is also the sentence most closely linked with the 'what works' research and it is generally viewed by probation officers as the sentencing option most likely to reduce the risk of re-offending.<sup>44</sup> I therefore anticipated that reports containing a proposal for probation+ would refer to the need to reduce a high risk of re-offending and, as with proposals for basic probation, would refer to personal and social problems linked with offending that required addressing through probation supervision.

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<sup>44</sup> Since completion of the thesis, structured individual programmes of probation supervision have been developed, also based on 'what works' principles of effectiveness.



Eleven reports containing a proposal for probation+ are included in the sample, eight at medium-high risk of custody, one at medium-low risk and two at high risk. However, only four of these proposals were taken up by the courts, which suggests that magistrates do not consider probation+ a particularly appropriate sentence for disqualified driving offenders.

One possible reason for this is that courts are generally less inclined to make probation+ orders because they do not provide such obvious and easily quantified punishment as community service orders. However, I also wished to examine whether, by referring to a high risk of re-offending, reports containing proposals for probation+ contained more negative information about offenders than did reports containing proposals for community service. This could then lead the courts to perceive a greater need for such offenders to be sentenced more severely.

We have already seen that reports confirming suitability for community service, in conjunction with a proposal for probation, are likely to result in a combination order outcome at court. In the following two examples suitability for community service is confirmed in conjunction with a proposal for probation+. In both cases the outcome was a combination order.

Case 11 (med-low risk) was seen driving by the police, who recognised him as a disqualified driver, when he said that he was driving to find work. The court had requested consideration of all sentencing options and the report suggests that there is a risk of re-offending. The report concludes: "I have assessed the defendant as suitable for a Community Service Order and I can confirm that work is available. Although such an order would allow the defendant to make reparation to the community, I would suggest that it would do little to address his offending behaviour. It would appear that X would benefit from Probation supervision which would specifically concentrate upon confrontation and discussion of his offending behaviour. I have liaised with colleagues from the Kent Probation Groupwork scheme and we have agreed that it would be appropriate for the defendant to take part in an auto-offenders' group. This would provide an effective means of confronting X with the possible consequences for himself and others of driving whilst disqualified whilst also enabling him to form strategies to avoid committing offences."

Case 17 (med-high risk) was convicted of driving whilst disqualified and failing to provide a specimen<sup>45</sup>. He had previously been disqualified from driving for ten years for an earlier offence of driving with excess alcohol (the long period of disqualification being due to previous similar convictions), when he had also received a sentence of four months' imprisonment. It is stated that the precipitating factor for the current offences had been a serious argument with his partner, who had asked him to leave, when he had used the car to take his belongings to an alternative address.

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<sup>45</sup> This offence is treated in a similar manner to the offence of driving with excess alcohol.



Numerous problems are described, including a history of alcohol abuse, a former home being repossessed, the ending of a former relationship and the current partner being in poor health. The report states that in an attempt to deal with his long-standing abuse of alcohol, X attends local meetings of Alcoholics Anonymous and the Kent Council for Addictions and that he had initiated this prior to the current offences. After confirming suitability for community service, the report ends with a proposal for probation with condition to attend the group for drink-drivers. A leaflet about this group is attached and it is stated that other aspects of supervision would “address relationships, work search, financial management and general compliance with the Order”.

In these two cases suitability for community service is confirmed, followed by a proposal for probation+. The outcome was that the court sentenced these offenders to both orders, through the imposition of a combination order. Such an outcome could arise because courts regard community service as the more appropriate sentence for disqualified driving offenders, but rather than go against a probation+ proposal that is aimed at reducing the risk of re-offending, they sentence the offender to both. However, a combination order was not the outcome in the following example in which community service is ‘ruled out’ rather more specifically.

Case 18 (med-high risk) is a female offender who had a previous offence of driving whilst disqualified, for which she had been sentenced to ten months’ imprisonment after she had breached the combination order to which she had originally been sentenced. At that time, abuse of heroin had been a major underlying factor in her non-compliance. The current offence had involved her driving whilst disqualified and driving with excess alcohol, during the course of which she hit several parked cars and drove into a wall. The report states that whilst serving her previous sentence of imprisonment “X undertook a great deal of positive work in trying to address her drug problems” and that whilst on licence “it was apparent that X was keen to change her offending behaviour.” It is stated that X had ceased abusing heroin, but “unfortunately it would appear that X has substituted alcohol for her previous heroin abuse.” The report is long and detailed and states that “Although X is assessed as suitable to complete a Community Service Order and work is available, I would be reluctant to suggest that she be made subject to such an order as it appears that she is currently struggling to deal with her serious addiction and extra pressure at this time might prove counter-productive.” The report ends with a proposal that she be made subject to an intensive programme of probation supervision through a probation order with condition to attend a drink-drivers group and a women and offending group.

The outcome of this case was that the proposal for probation+ was followed. This offender is described as having made positive progress and as being well-motivated to change her offending behaviour. After successfully ‘ruling out’ community service, a positive probation+ proposal is made. However, the court’s willingness to follow this proposal may also have been influenced by the fact that this was a female offender, as we have already seen with cases 9 and 10 above.



In the following two examples, there is negative information concerning offenders, as well as reference to a high risk of re-offending.

Case 13 (med-high risk) had many previous convictions for both driving whilst disqualified and driving with excess alcohol. He had received a five-year driving disqualification in 1986, a seven-year disqualification in 1989 and a three-year disqualification in 1995 and had already received most sentences of the court, including imprisonment, combination orders and probation with condition to attend an auto offenders' group. Risk of re-offending is assessed as high and the court had requested that all sentencing options be considered. It is stated that "With regard to Community Service, X has completed a total of 420 hours Community Service work over the last three years. Unfortunately he breached the last order on two occasions, receiving an extra 20 hours for the first breach and a fine for the second breach. As a result of this, there are reservations about X's suitability to perform a further Community Service Order, although X has said that he would be willing to perform such unpaid work and to comply with requirements." The report concludes "If the Court felt able to consider a community penalty for X, I believe that a Probation Order, with a groupwork condition would best address X's offending and would require a considerable level of commitment from him, commensurate with the seriousness of the offence." It is stated that X's suitability had been assessed for the groupwork programme and "although he has previously attended an auto offenders' group, it is felt that it would be appropriate for him to now repeat this." A detailed supervision plan is given, including requirements for group attendance, which includes six sessions of the core offending group (covering reasoning skills, victim awareness, life skills, relationships, relapse prevention) and eight sessions of the group for auto offenders.

Case 14 (med-high risk) was stopped by the police whilst driving, who were acting on information received. He had been disqualified from driving for three years for an offence of driving with excess alcohol, when he had also received a three-month sentence of imprisonment. The report states: "In interview X was unable to give a satisfactory explanation for his actions, but with hindsight recognises how reckless they will appear to the Court. ... My view is that X acted impulsively and thoughtlessly, rather than with any deliberate intention to offend. ... Without some challenge to X's attitudes to driving, the risk of his re-offending in a similar fashion must remain quite high." The report concludes: "The Court is invited to impose a period of supervision which incorporates a 1A condition to attend ten sessions of no more than four hours each in length, with a focus on auto offending. This is to supplement a two year Probation Order, or if the Court considered that this did not adequately reflect the seriousness of the offence, form part of a Combination Order which would include an appropriate level of Community Service." However, there appeared to be some doubt about X's ability to comply with community service as the report states (unusually) that he would be required to sign a community service contract by court duty probation staff.



Both of the above cases received sentences of imprisonment, as did Case 15, a similar offender. However, in the following two cases, at similar medium-high risk of custody, the outcomes were 'other' (Case 16) and a community service order (Case 12).

Case 16 (med-high risk) was convicted of driving whilst disqualified and driving with excess alcohol. He told the report-writer that whilst he was in a public house with a friend, the friend had chest pains so he decided to drive the friend to get his angina tablets, using the friend's car. The writer makes a detailed proposal for probation+, stating that "For the above reasons I would respectfully propose that a Probation Order with a [groupwork] condition would be a timely disposal today."

The sentence outcome was recorded as 'Other', which includes the category of Conditional Discharge, which would have been an unexpectedly lenient outcome. However, the statistical data also showed that although the report was written in March, the defendant was not sentenced until July. This would suggest that something else may have intervened to influence this outcome, such as the offender being remanded in custody on other matters.

Case 12 (med-high risk) had driven his friend's car to a shop that was within walking distance. He had four similar previous convictions, was currently subject to a combination order and had previously been on licence following a custodial sentence. The report states that "Past Probation Service files indicate that, although X kept to the basic conditions of his licence, he was reluctant to engage in any structured work directed at issues which could be identified as being pertinent to his offending." However, the report-writer goes on to say that under the current order he is much more positive. He has successfully completed the community service aspect of the combination order and "has come to Probation sessions motivated and prepared to discuss issues which we have identified as contributing to his offending." The writer makes a proposal for a probation order with condition to attend the auto offenders' group. A detailed supervision plan is provided, as well as a leaflet giving information on the groupwork programme.

Although this proposal was intended to provide relevant groupwork in addition to the individual probation supervision that the offender was already receiving through the combination order, the sentence outcome was a further community service order. This again suggests that courts regard community service as generally the most appropriate sentence for disqualified driving offenders. The fact that this offender received a community sentence rather than imprisonment may have been influenced by his co-operation with both aspects of a current combination order and by his motivation to change, unlike the offenders in Cases 13 and 14 above. Motivation to change is similarly drawn attention to in the following case, which also successfully 'rules out' community service.



Case 21 (high risk) was convicted of driving whilst disqualified and driving with excess alcohol and had a previous excess alcohol offence for which he had received a community service order. He had told the report-writer that the current offences had occurred after a friend had driven to a public house, when he had booked a taxi home. However, threats had been made against them and rather than wait for the taxi, he had decided to drive (being the most sober of the group). The report-writer states that "In discussing the commission of these offences I formed the view that X genuinely regretted what he had done and had a clear idea of the risks he posed to other road users." At the time of the offences it is stated that his "life was in disarray". However, he is now described as having "a lot to lose" and it is stated that he had made a fresh start with a new partner and a new job. "If he is able to tackle the issue of his drinking successfully, I would expect the risk of his re-offending to be diminished accordingly." The report states that X expected to be sent to prison. "Such a sentence, whilst protecting the public for its duration, would, at the same time inhibit the progress he is now making in respect of his regular employment after such a lengthy spell of being out of work." After drawing attention to possible attendance problems in relation to community service, the report concludes: "In my assessment X is eminently suitable for a Probation Order. He has demonstrated a willingness to accept that he needs to make and sustain changes in his lifestyle if he is to put a stop to his offending and my impression of him was that he was genuinely motivated to do so. ... In recognition of the seriousness with which the Court will be viewing these offences, I referred X for assessment by the Kent Probation Service groupwork officer", when he was found to be "highly suitable" for the drink drivers' group and the auto offenders' group. A detailed supervision plan is provided, as well as details of the groupwork programme.

This offender is described as having made positive progress and as being motivated to change his offending behaviour, which enables the report-writer to make a positive proposal for probation+. Despite this offender being at high risk of custody, the proposal for probation+ was taken up by the court.

A further example of an offender assessed at high risk of custody but who received a probation+ order in line with the probation officer's proposal is provided by the following case.

Case 20 (high risk) was convicted of driving whilst disqualified and driving with excess alcohol, for which he had been remanded in custody prior to sentence. He had previously received a 200 hour community service order for driving whilst disqualified and driving with excess alcohol, which he had breached, when he had been re-sentenced to a combination order with condition to attend the groupwork programme. However, he had again failed to respond to both aspects of the order and was breached again, when he was re-sentenced to four and a half months' imprisonment. The risk of re-offending is assessed as high and the report concludes by reviewing all options "in the event that the Court give consideration to a community sentence". Reservations are expressed in relation to



community service “due to the serious lack of commitment on two previous occasions”. Similar reservations are expressed concerning X’s level of motivation to comply with a further probation order, although the report-writer states that “he has said to me that he now considers he has a significantly more serious problem regarding his use of alcohol than he has previously realised and is now keen to address this problem.” The report ends with a proposal for probation+, with condition to attend ten sessions of the drink/driving group, as well as individual probation supervision through which he would be referred to a drug/alcohol counselling service.

This offender has already been imprisoned for breaching previous orders and has already spent time in custody for the current offences, which may have been why the court were now willing to follow the proposal for probation+, despite the negative information contained in this report.

In the final example involving a proposal for probation+, careful verification of the information contained in the report may have been influential in persuading the court to take-up the probation officer’s proposal.

Case 19 (med-high risk) had several previous offences of driving whilst disqualified, for which he had previously been sentenced to a combination order as well as to probation with condition to attend the auto offenders’ group. To prepare the report, the probation officer had had three interviews with the defendant and a discussion with his GP, as well as consultation of Crown Prosecution Service documents, probation records and a psychiatric report. The current offence had been committed whilst the offender was subject to a young offender licence, when his ex-partner had rung to say that their child had been taken to hospital. The report contains a detailed description of personal and social problems, including separation from his wife, financial pressures, and a history of depression and overdoses. An additional report had been prepared by a psychiatrist and the report-writer had consulted with the offender’s doctor. The court had requested that all sentencing options be considered. The report-writer suggests that there is a risk of self-harm if X were imprisoned, which had not in any case previously dissuaded him from re-offending. The report concludes: “The Court may take the view that it is possible to give X one final chance to address his offending behaviour whilst remaining in the community.” Suitability for community service is confirmed, but the writer ends with a proposal for probation with condition to attend ten sessions of the auto offenders’ group. A detailed supervision plan is provided, that contains the aims of groupwork as well as of individual supervision.

In this report the information relating to mental health problems has been very carefully verified and possibly dissuaded the court from also making a community service order, or from passing a custodial sentence.



The above findings provide some confirmation that reports containing proposals for probation+ refer to a high risk of re-offending and serious personal/social problems and thus draw attention to negative factors. In these circumstances, courts appear unwilling to follow proposals for probation+. However, the above examples also suggest that reports sometimes refer to a number of additional factors that may influence courts towards taking up probation+ proposals. These include reasons for 'ruling out' community service, offender's positive response to a previous order, offender's motivation to co-operate and to change behaviour, and time already spent in custody.

## **5 Reports Containing a Proposal for a Combination Order**

Six reports are included where the proposal is for a combination order, two at medium-low risk of custody, two at medium-high risk and two at high risk.

Combination orders require offenders to be subject to probation supervision *and* to perform community service. As we have seen, they rapidly became a popular sentence with magistrates, who often passed such sentences against the proposal contained in the pre-sentence report. Where probation officers made proposals for a combination order, I anticipated that their reports would contain references to both the need for probation supervision because of personal/social problems that placed the offender at risk of re-offending, and to the ability of community service to provide punishment/reparation.

In the two following cases who are at similar risk of custody, both of these aspects of the combination order are referred to. However, the court outcomes are very different.

Case 22 (med-low risk) appeared in a court that was outside Kent and had been convicted of his third offence of driving whilst disqualified within 15 months. He lives on an isolated estate with a limited bus service and no community facilities. He has been suffering from depression, is unemployed and there are some marital difficulties. The report-writer suggests that the risk of re-offending "could be reduced by a sentence of imprisonment to remove X from the opportunity to offend, or by attention to the underlying causes". The report concludes with a proposal for a combination order, when it is stated that this would serve to demand a constructive use of X's time in reparation on community service, and would also address the specific issues underlying his offending through the groupwork programme for auto offenders. A leaflet giving details of this programme was attached to the report and it is also stated that the probation aspect of the order would provide X with help to find employment and counselling for his depression.

This proposal was not followed by the court and the sentence outcome was a community service order. Possibly this was because the court was outside the area and thus not familiar with the local groupwork programme.



However, it is still a somewhat surprising outcome, particularly in view of the repeated offending and the presence of personal and social problems that place this offender at risk of re-offending. It contrasts with the outcome in the following case.

Case 23 (med-low risk) had been convicted of driving whilst disqualified and driving with excess alcohol. He had three previous similar offences and had breached a previous community service order. The report makes reference to numerous problems which had led to depression and drinking. The report discusses all sentencing options and states that although custody “would protect the public in the short term, it would not address the underlying issues of X’s offending behaviour and therefore do little to protect society in the longer term”. The report concludes with a proposal for a combination order that includes a supervision plan for the probation part of the order.

In this case the offender had failed to co-operate with a previous community service order. The outcome at court was a sentence of imprisonment, as was also the outcome in the following case, despite the fact that this offender had previously successfully completed a community service order.

Case 24 (med-high risk) had been convicted of driving whilst disqualified and failing to provide specimens. The offences had occurred following an argument with his former partner, when he asked her to return the car to him, following which he went for a drink with a friend. He later crashed the car and was found by the police, when he refused to take a breath test. Numerous personal problems are described in the report, including relationship difficulties, drink problems and depression, for which he was taking medication. The report states that X had said that things were now better, “However, I am conscious that he expressed the same optimism when I interviewed him in [date] and that optimism, about having made changes which would preclude him from re-offending, proved to be somewhat premature.” The report concludes: “Custody would protect the public in the short term but would not address the difficulties he has in dealing with problematic situations in his life. ... If the Court consider there to be merit in a community penalty, in my view a Combination Order could be viewed as equating with the seriousness of the offences.” It is stated that X had previously completed a community service order, when he had been described as a hard worker and a supervision plan is provided for the probation aspect of the order.

The sentence outcome again was imprisonment. These results suggest that combination order proposals for disqualified driving offenders are likely to result in a custodial sentence unless the report contains good reasons against this, as appears to be the case in the following example.

Case 26 (med-high risk) had been convicted of two offences of driving whilst disqualified. The report states: “He told me he has a ‘compulsion’ to drive and that he acted on the ‘spur of the moment’



without any consideration towards other road users or the possible consequences of his actions. He has acknowledged a problem and has requested help from the Probation Service in order to address his behaviour.” It is also stated that since 1989 some 24 charges of driving whilst disqualified as well as other related road traffic offences were recorded against X, who had been subject to probation and community service and had served eight custodial sentences. “X’s pattern of offending appears to be underpinned by his lack of reasoning skills and difficulty in controlling his behaviour and response in difficult situations. It is apparent he is not used to thinking through his actions and he has much to learn about cause and effect. He needs to attain insight into the essentially immature and destructive nature of his offending behaviour. It is my assessment that unless these issues are addressed, there remains a high risk of re-offending.” The report concludes that previous custody has not had any impact and that X is now saying that he has ‘had enough’ of continuous court appearances and prison sentences. It was three years since he was last on probation and the writer states: “I feel that he has reached a point where he is open to advice and guidance. ... The work that lies ahead of him will not be an easy option, and he will have to show his commitment to all parts of this Order.” The proposal is for a combination order with groupwork programme condition, consisting of 27 sessions of the core group and auto offenders group. A detailed explanation of this is provided, as well as details of the aims of the groups and of individual supervision.

This proposal for a combination order was followed, when the outcome may have been influenced by the suggestion that this offender was finally motivated to cease offending and had requested help to do so.

Cases 25 and 27 both involved combination order proposals for offenders assessed as at high risk of custody, when the court’s willingness to follow such a proposal for one but not for the other again appears to be related to motivation to change. In Case 25, the probation officer expresses “some reservations regarding his capacity to sustain his commitment” and the report makes reference to previous breach of a community service order, as well as further charges pending, to which the offender would be pleading guilty. For this offender, the outcome at court was a sentence of imprisonment, which is in contrast to the outcome for Case 27 shown below.

Case 27 (high risk) was remanded in custody and had been convicted of driving whilst disqualified following a trial. He had 16 previous convictions for driving whilst disqualified, for which he had been imprisoned on four previous occasions. He had never held a driving licence and had been an habitual offender over the past five years, almost exclusively involving motoring offences. Up until now custodial sentences had failed to deter him and he had not responded to community sentences in the past, although more recently he had shown a more encouraging response to supervision whilst on licence. The report states: “There are three factors which give some hope that X may be ready to change his ways. Firstly, he has the potentially steadying influence of marriage and regular employment. Secondly, his response to supervision on licence was encouraging. Thirdly he



recognises that he cannot win and stands to lose more than he gains through offending. He has signalled a determination to co-operate with a community sentence if given the opportunity.” The report concludes with a proposal for a combination order with groupwork condition. The offender’s suitability for community service is confirmed and a detailed description of the groupwork programme is provided.

The outcome in this final example was that the court followed the proposal for a combination order, when the magistrates may have been influenced by this offender’s motivation to change and time already spent in custody on remand.

Since probation officers generally only make combination order proposals for more serious offenders, it is perhaps hardly surprising that a high proportion of such proposals result in custodial outcomes at court. In the two above instances where a combination order proposal was followed, both offenders had served numerous prison sentences that had failed to deter them, but now appeared motivated to change an entrenched pattern of offending.

## **Conclusion**

As with the reports on theft offenders, these reports on disqualified driving offenders suggest that it is now standard practice for probation officers to word their proposals in a manner that shows deference to the court and to end the report with the preferred sentence option. Similarly, courts appear no longer to be indicating likely sentence outcome, but instead requesting that ‘all options’ be considered. With regard to expression of remorse, although the majority of reports on disqualified drivers refer to remorse, this does not always appear ‘genuine’, with reports stating, for example, that ‘with hindsight’ offenders regret their actions. The reports on disqualified drivers also demonstrate a tendency for offenders to make excuses for having driven (such as stating that they were driving to hospital) rather than to express remorse for having done so. However, none of these factors appear to affect whether or not sentence proposals are followed.

Because of the very small number of females in the present study, it is not possible to make comparisons between sentence outcomes for male and female disqualified driving offenders. However, it is of interest that the two reports in the study that propose probation supervision are both on female offenders who were already subject to probation supervision, and that the courts followed these proposals for further probation supervision. This is in contrast to the three reports on male offenders already subject to probation supervision, for whom community service proposals were made, which similarly were followed by the courts. This again suggests that the traditional view of probation as more suitable for female offenders and community service as more suitable for male offenders may still persist.



The reports containing proposals for community service suggest that when making such a proposal, probation officers generally draw attention to positive factors, such as obvious and quantifiable punishment or restriction of liberty, measured in hours of work, and the opportunity for offenders to make visible reparation to the community for their wrong-doing. These reports also show that probation officers are likely to propose community service where there is a low risk of re-offending and hence no need for probation intervention, or where problems associated with offending are already being satisfactorily addressed through an existing probation order. However, community service can also be proposed where probation supervision is unlikely to be effective, when it is able to provide a straightforward punishment. Thus in all of the reports containing a proposal for community service, the probation officer suggests that probation supervision is not necessary (or is not appropriate) and then makes a positive proposal for community service that stresses its ability to provide both measurable punishment and reparation to the community.

Proposals for probation+, on the other hand, are more likely to draw attention to negative factors such as a high risk of re-offending and serious personal/social problems. Proposals for probation+ are considerably less likely to be taken up by the courts than are proposals for community service and, as we have seen previously, confirmation of suitability for community service followed by a proposal for probation+ can result in the court making a combination order. Such an outcome may arise because courts regard community service as the more appropriate sentence for disqualified driving offenders, but rather than go against a probation+ proposal that is aimed at reducing the risk of re-offending, they sentence the offender to both. However, the findings also suggest that reports may sometimes refer to a number of additional factors that can influence courts towards taking up probation+ proposals. These include reasons for 'ruling out' community service, the extent to which an offender is co-operating with an existing community sentence, the degree of motivation that an offender shows towards changing offending behaviour, and time already spent in custody on remand.

With regard to combination order proposals, since probation officers generally only make such proposals where they assess that there is a high risk of custody, it is perhaps not surprising that a number of these proposals resulted in a custodial sentence. In the two instances where such a proposal was followed, both offenders had served numerous prison sentences and now appeared motivated to change an entrenched pattern of offending.

Finally, it should be noted that in selecting the reports on both theft and disqualified driving offenders, evidence was found of a number of errors of coding in the statistical records, as a result of which several reports had to be excluded from the samples. This again draws attention to problems of inaccurate coding and suggests the need for caution in interpreting findings that rely solely on analyses of statistical data. The present study's use of qualitative analyses of written reports in conjunction with quantitative analyses of statistical data acted as an accuracy check for the statistical data and provided additional information about sentencing decisions that was not obtainable from statistical records.



## CONCLUSIONS AND IMPLICATIONS

### Introduction

Criminal statistics are generally based on court disposals and fail to take account of whether such disposals are in line with the proposals contained in probation officers' reports. However, probation service effective practice guidelines and measures of effectiveness stress the importance of probation officers appropriately targeting their sentence proposals and of having their proposals taken up by the courts. The present study has therefore looked at how probation officers select a suitable community sentence proposal and how they present proposals in their reports to magistrates' courts, as well as factors that affect court rates of take-up for these proposals.

The main focus of the study has been upon the choice between community service and probation, which partly reflects the choice between punishment and rehabilitation. Because probation is regarded as a rehabilitative measure I had hypothesised that probation officers would select probation supervision for offenders at high risk of re-offending, whereas they would select community service for offenders at lower risk of re-offending and hence not in need of probation supervision. I also hypothesised that magistrates' rates of take-up for the different community sentence proposals would vary and I anticipated that sentence outcomes would be influenced by a number of factors relating to both the offence and the offender, as had been suggested by previous research. These included the offence that has been committed, the gender of the offender, the level of 'seriousness' and the presence of social problems.

Data relating to sentencing were examined using cross-tabulations of probation officers' report proposals with magistrates' sentence disposals, which provided a readily understood method of examining rates of take-up and outcomes where proposals were not followed. These quantitative analyses were combined with a qualitative examination of written reports, which provided insights into reasons for court sentencing decisions that were not apparent from the statistical data alone.

### 1 Comparative Rates of Take-up for Community Sentence Proposals

We have noted that previous research into court rates of take-up for probation officers' proposals has generally failed to distinguish between the different types of community sentence proposal, (see, for example Downing and Lynch 1997), or has only examined one type of proposal, such as for probation (see, for example, Whitehead 1990). In the present study we have compared rates of take-up for the different community sentence proposals, and we have found significant differences in take-up rates between the different sentence proposals.



When we looked at all cases for which Kent probation officers prepared pre-sentence reports for the magistrates' courts from 1993-97, we found that for each year studied, a proposal for community service was most likely to be taken up and a proposal for probation with additional requirements (probation+) was least likely to be taken up. We then examined sentence outcomes in cases where probation officers' proposals were not taken up by the courts. For each of the years 1993-97, we found that magistrates were more likely to make a combination order following a proposal for basic probation or probation+, than they were to make a combination order following a proposal for community service. Thus although magistrates were willing to follow a proposal for community service on its own, they were sometimes reluctant to follow a proposal for probation or probation+ on its own, choosing instead to combine probation supervision with a community service order.

These findings raised the possibility that offenders for whom probation officers propose probation or probation+ may be sentenced more severely by the courts than offenders for whom community service has been proposed. However, before we could draw this conclusion, we first needed to consider whether offenders for whom probation or probation+ is proposed are comparable with offenders for whom community service is proposed. Further analyses were therefore carried out in relation to offence committed, gender of offender, level of 'seriousness' and personal/social problems, all of which had been shown to be related to sentencing differences by previous research. (Konecni and Ebbeson 1982, Moxon 1988, Hedderman and Gelsthorpe 1997, Flood-Page and Mackie 1998, May 1999.)

## **2 Offence Differences**

In order to 'control' for the possibility that differences in rates of take-up were due to offence differences, further analyses were carried out based on the two offences of theft <£500 and driving whilst disqualified, which were the two most common offences on which Kent probation officers prepared reports for the magistrates courts.

### **2.1 The Offence of Theft <£500**

For the less serious offence of theft <£500, we found that probation officers made a fairly similar number of proposals for basic probation as they did for community service. This contrasts with the findings for offences overall, when community service was considerably more popular as a sentence proposal than basic probation. We also found that from 1994-96 a proposal for community service was more likely to be taken up by the courts than a proposal for probation, with the latter more likely to result in a combination order outcome than the former, as discussed above. However, in 1993 and 1997, for offenders who had committed the offence of theft <£500, a proposal for basic probation was equally as likely to be taken up by the courts as was a proposal for community service.



## **2.2 The Offence of Driving Whilst Disqualified**

When we looked at disqualified driving offenders, community service was found to be the most popular sentence proposal, with basic probation proposals somewhat less common, although probation+ was popular as a sentence proposal for this offence. This latter sentence was likely to include the requirement that offenders attend a special group for auto offenders. With regard to court rates of take up for these proposals, we found that for disqualified driving offenders a proposal for community service was most likely to be taken up by the courts and a proposal for probation+ least likely to be taken up. These differences in rates of take-up between community sentence proposals were found to be highly statistically significant for each of the years 1993-97. In many cases where probation officers made proposals for probation or probation+ the outcome at court was a combination order, although the courts rarely made a combination order following a proposal for community service. This again suggests that offenders for whom probation or probation+ has been proposed may be sentenced more severely by the courts than offenders for whom community service has been proposed.

In contrast to the theft offenders, a large number of custodial sentences were passed for this offence. In 1995 and 1997 it was found that a proposal for probation+ was significantly more likely to result in a custodial outcome at court than a proposal for community service. However, during the remaining years, rates of custody were high, irrespective of the community sentence proposal that had been made, emphasising the serious view that is taken of driving whilst disqualified.

These findings show that for the less serious offence of theft, probation officers make a similar number of proposals for probation as they do for community service, and that magistrates are generally willing to follow either proposal. However, for the more serious offence of driving whilst disqualified, the results suggest some conflict between probation officers and magistrates concerning the suitability and adequacy of probation+ programmes for disqualified driving offenders.

## **3 Gender Differences**

We then turned to an examination of gender differences in sentencing. Previous research had suggested that probation tends to be the preferred sentence for females and community service the preferred sentence for males. (Moxon 1988, Hedderman and Gelsthorpe 1997, McIvor 1998, Flood-Page and Mackie 1998.) I therefore hypothesised that magistrates would make proportionately more probation orders for female offenders and proportionately more community service orders for males. However, I was also interested in examining whether gender differences in sentence outcomes continued to be associated with gender differences in the proposals contained in probation officers' reports, as had been found by Moxon during the 1980s (Moxon, 1988).



We found that across the five years of the study probation officers made proportionately around twice as many proposals for basic probation for female offenders as for males, whereas they made proportionately more proposals for community service, probation+ and combination orders for male offenders than for females. These results suggest that where research into sentence outcomes has shown that courts are more likely to sentence females to probation, this may have its origins in the proposals that are contained in probation officers' pre-sentence reports.

We then looked at gender differences in rates of take-up for probation officers' proposals, when no significant gender differences were found in respect of rates of take-up for community service proposals. However, we did find significant gender differences in respect of rates of take-up for basic probation proposals, with magistrates more likely to follow proposals for basic probation for female offenders than for male offenders. These findings suggest that rather than female offenders being disadvantaged because the courts regard them as less suitable than males to perform community service (Jackson and Smith 1987), it is in fact male offenders who are disadvantaged because magistrates may regard them as less suitable to undertake probation.

Where proposals were not taken up by the courts, it was found that male offenders were more likely to receive a custodial sentence than were female offenders, in line with previous research (Moxon 1988, Hedderman and Gelsthorpe 1997, Flood-Page and Mackie 1998). However, we need to bear in mind that this finding fails to take account of possible gender differences in relation to factors such as offence seriousness and previous convictions.

### **3.1 Gender Differences in Offending**

Since it was possible that some of these sentencing differences arose because of gender differences in offending, we also looked at offence differences between male and female offenders. It was found that female offenders committed much higher proportions of theft/handling and fraud offences than did male offenders, whereas male offenders committed higher proportions of the generally more serious offence types of violence against the person, burglary, motor theft and motoring. These findings were again in line with previous research (Moxon 1988), and suggest that some of the sentencing differences between male and female offenders found in the present study can be accounted for by the different types of offence committed.

The present study also found that the main offence of driving whilst disqualified accounted for a higher proportion of reports on male offenders, whereas the offence of theft <£500 accounted for a higher proportion of reports on female offenders. Since the offence of driving whilst disqualified is regarded as a considerably more serious offence than the offence of theft<£500, these main offence differences are again likely to account for some of the sentencing differences between male and female offenders.



However, when further analyses were carried out in relation to male and female offenders who had committed the *same* offence of theft <£500, it was found that there were still significant proposal and disposal differences between male and female offenders. For female theft offenders, basic probation accounted for a substantially larger proportion of proposals and disposals than community service, whereas for male theft offenders community service accounted for a slightly larger proportion of proposals and disposals than basic probation<sup>46</sup>. No significant gender differences were found in respect of take-up rates for community service proposals for theft offenders during any of the years studied. Thus although, proportionately, probation officers made significantly fewer community service proposals for female theft offenders than for males, when they did so, such a proposal was equally as likely to be taken up by the courts for females as for males. Proposals for basic probation appeared somewhat less likely to be taken up for male theft offenders than for female theft offenders. However, these differences only reached a level of statistical significance during the year 1994, although the figures for 1997 showed a similar trend.

These findings demonstrate that for males and females who have committed the same offence of theft <£500, there are significant gender differences in relation to probation officers' sentence proposals and some slight gender differences in court rates of take-up in respect of proposals for basic probation. This would therefore suggest that some of the sentencing differences between males and females are in fact due to the gender of the offender, rather than because they have committed different types of offence.

### **3.2 Gender Differences in Previous Criminal Record**

However, we also needed to consider whether these results could have been influenced by gender differences in the previous criminal records of male and female offenders who had committed the offence of theft <£500. Further analyses showed that for this offence, males were more likely to have received a previous custodial sentence, whereas females were more likely to have no previous convictions, or for probation supervision to be their most serious previous sentence. The findings thus show that male theft offenders are more likely than female theft offenders to have a more serious previous criminal record in terms of the most serious previous sentence received, which again could account for some of the differences in sentencing.

Finally, we looked at male and female offenders who had committed the same offence of theft <£500 *and* who had no previous criminal convictions. For these similar offenders, it was found that basic probation remained more likely as a sentence proposal and disposal for females, whereas community service remained more likely as a sentence proposal and disposal for males. These findings demonstrate that, despite the changes introduced by the Criminal Justice Act 1991, for less serious offenders who have no criminal record, both probation officers and magistrates continue to favour probation for females and community service for males.

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<sup>46</sup> With the exception of proposals for male theft offenders in 1994, when slightly more proposals for basic probation were made than for community service.



Much of the previous research into gender differences in sentencing has examined gender differences in respect of sentence outcomes. By examining probation officers report proposals and court rates of take-up for these proposals, the present study has shown that gender differences in sentencing are likely to originate from probation officers. The findings also suggest that rather than female offenders being disadvantaged because community service is regarded as unsuitable for females, it may in fact be males who are disadvantaged because magistrates regard them as less suitable for probation.

#### **4 Risk of Custody Differences**

The introduction of a 'seriousness' rating scale by Kent Probation Service in 1995 enabled us to examine take-up differences between offenders who were of comparable levels of 'seriousness' in terms of their risk of receiving a custodial sentence.

Within the three lower risk groups (that is, the majority of offenders who are sentenced in the magistrates' courts) it was found that, for offenders of comparable 'seriousness', a proposal for community service was more likely to be taken up by the courts than a proposal for probation+. This was in line with my earlier findings reported above (when level of 'seriousness' had not been controlled).

When we looked at court outcomes where proposals had not been taken up by the courts, we again saw that a combination order outcome was more likely following a proposal for probation or probation+ than following a proposal for community service. This was line with findings already reported above, (when level of 'seriousness' had not been controlled) and suggests that offenders for whom probation officers propose probation or probation+ may be sentenced more severely by the courts than offenders at comparable risk of custody for whom community service has been proposed.

As we have already noted, there are a number of possible explanations for this outcome. First, magistrates may view community service as better able to provide an appropriate 'punishment' or restriction on liberty than probation. Thus magistrates may favour making a community service order, but rather than go against a proposal that is intended to reduce the risk of re-offending, they sentence offenders to both community service *and* probation supervision. Second, in the absence of a plan and focus for probation supervision, magistrates are unlikely to seek to make a probation order in addition to a community service order, whereas there is no such constraint against magistrates making a community service order in addition to a probation order. Third, if probation officers propose probation supervision for offenders at higher risk of re-offending and community service for offenders at lower risk of re-offending, it may be that magistrates seek to impose more severe sentences on those at higher risk of re-offending.



We then returned to an examination of gender differences in sentencing, but this time for offenders at a comparable risk of custody. We again saw that probation officers made proportionately more community service proposals for male offenders and proportionately more probation proposals for female offenders. With regard to court rates of take-up for these proposals, for female offenders, magistrates were generally equally as likely to follow a proposal for community service as a proposal for probation. However, for male offenders, magistrates were somewhat less likely to follow a proposal for probation than a proposal for community service and a large number of probation proposals for male offenders were found to result in a combination order outcome at court. This again suggests that male offenders may sometimes be disadvantaged because magistrates regard probation without community service as inappropriate for male offenders, whereas for females at comparable risk of custody, a probation order on its own is regarded as sufficient.

These findings in relation to offenders at comparable risk of custody have implications for both the probation service and for offenders. We have noted HM Inspectorate of Probation's requirement that "Managers should set clear targets for appropriate referrals [to probation+ programmes] and monitor staff performance intervening proactively if targets are not met" (Chapman and Hough, 1998, p. 29). It is therefore of concern that the study has shown that for offenders at comparable risk of custody, a proposal for probation+ is significantly less likely to be taken up by the courts than a proposal for community service. However, the findings probably have more serious implications for offenders, since they suggest that offenders at comparable risk of custody may be sentenced more severely following a proposal for probation or probation+ than they would have been had the proposal been for community service. We have discussed the possibility that these apparent sentencing discrepancies may in fact arise because of differences in offender risk of re-offending, with offenders at higher risk of re-offending sentenced on the basis of what they might do in the future as well as for the current offence. For such offenders, the Criminal Justice Act 1991's original aims of proportionality and 'just deserts' appear likely to be overridden by the aims of punishment and deterrence.

## **5 Employment Status Differences**

Previous research has found that unemployed offenders are more likely to be sentenced to probation supervision than are employed offenders and that unemployed adult males are more likely to be sentenced to custody than are employed adult males (Stone 1994). In the present study we found that for employed offenders, probation officers showed a marked preference for community service proposals over the other three community sentences. However, for unemployed offenders, with the exception of 1993, we found little difference between the number of community service and basic probation proposals that probation officers made. This increased use of basic probation proposals for unemployed offenders may arise because probation supervision is used to assist offenders in finding employment, or because of a perceived greater risk of re-offending for unemployed offenders and hence a greater need for probation supervision. It may also be related to the availability of community service (but not probation) at weekends.



When we looked at comparative rates of take-up for community sentence proposals according to offenders' employment status, it was found that rates of take-up were broadly similar between employed and unemployed offenders, with the exception of some differences in respect of proposals for community service and combination orders. Community service proposals were found to be less likely to be taken up for unemployed than for employed offenders in 1994 and 1997, which was linked with higher proportions of custodial outcomes following community service proposals for unemployed offenders than for employed offenders during those two years. Combination order proposals were found to be less likely to be taken up for unemployed than for employed offenders in 1993, 1995 and 1996, which was linked with higher proportions of custodial outcomes following combination order proposals for unemployed offenders than for employed offenders during those three years. These findings suggest that for employed offenders, their possession of a job may sometimes persuade magistrates to follow a proposal for community service or a combination order rather than to imprison them.

## **6 The Presence of Social Problems**

Based on the national standards statement that one of the aims of probation supervision was "helping the offender to resolve personal difficulties linked with offending" (Home Office 1992, p. 32), I had hypothesised that those offenders for whom probation officers proposed probation would have more social problems than those offenders for whom they proposed community service. I also anticipated that the presence of social problems would increase the likelihood of courts taking up proposals for probation supervision.

My results showed that where probation officers had identified serious problems relating to accommodation, alcohol abuse, drug abuse, or the family, they were generally more likely to make a proposal for basic probation (or probation+ in the case of offenders with severe alcohol problems). Where there were no such problems, or the problems were slight, they were generally more likely to make a proposal for community service. The findings also indicated that probation officers tended to make proportionately fewer community service proposals and proportionately more probation and probation+ proposals as severity of employment problems increased. However, we found that problems relating to financial difficulties and peer group influence did not affect probation officers' choice of community sentence proposals, possibly because such problems are common to the majority of offenders on whom probation officers write pre-sentence reports.

With regard to court outcomes, we found that rates of take-up for probation officers' proposals were affected by the presence of problems relating to alcohol abuse and drug abuse. Results showed that fewer community service proposals were taken up by the courts as severity of alcohol or drug abuse problems increased. However, contrary to my expectations, the presence of such problems generally appeared to have little effect on court take-up rates for probation or probation+ proposals.



Take-up differences according to severity of accommodation, family, or employment problems were generally not significant for any of the community sentence proposals. This latter finding contrasts with the finding above that proposals for community service or for combination orders were more likely to be taken up for employed than for unemployed offenders. However, it should be noted that this earlier finding referred to whether offenders were in employment or were unemployed, whereas the present finding relates to whether problems in relation to employment/unemployment had been identified by the probation officer preparing the pre-sentence report. Thus it was possible that some offenders were unemployed but not experiencing this as a problem, whilst other offenders were in employment but were experiencing problems with their employment.

We have noted that effective practice guidelines point out that criminal history variables and 'static' social factors such as age and gender cannot be changed. It is therefore suggested that probation officers work with 'dynamic' social factors linked with offending (or 'criminogenic' needs) that *are* susceptible to change<sup>47</sup>. There is therefore a growing interest in recording social factor variables in a more consistent manner on national databases. However, it should be noted that probation officers' recording of the presence of social problems on statistical databases does not necessarily mean that magistrates are aware of the existence of such problems when making sentencing decisions. Magistrates may be made aware of the existence of social problems in a number of ways, including the appearance and demeanour of the offender, what is said by the offender's legal representative, and what is included in the probation officer's pre-sentence report. It was to consideration of the latter that we turned in our three studies of written reports.

## **7 The Written Reports**

In order to assess the type of information that probation officers include in their pre-sentence reports and to consider factors that may not be apparent from statistical data, the thesis also included a qualitative study of three samples of written reports.

### **7.1 First Study of Written Reports**

My first study of written reports examined a sample of 18 pairs of matched reports that had been written in 1993/94, when it was found that a number of explanations could be provided for why one proposal had been followed but not the other. These included:

- Differing levels of seriousness, due to the presence of additional offences, or matters taken into consideration, or breach of an existing order.

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<sup>47</sup> In some ways this is an unhelpful distinction. Thus, although being male or the extent of a previous criminal record cannot be changed in themselves, programmes of probation supervision can change offenders' attitudes and beliefs with regard to 'masculinity' or 'criminality'.



- Time already spent in custody on remand.
- Magistrates' inclination to sentence female offenders to probation.
- Offender's progress whilst subject to an existing order.
- Probation officers' advance knowledge of likely sentence outcome.
- The extent to which the offender expressed remorse.
- The appeal of the combination order to magistrates.
- The conclusion not ending with the preferred sentence proposal.
- The tone of the report showing deference to the court.
- The identification of personal and social problems.

These results demonstrate that by examining the actual written reports it is possible to identify a number of explanatory factors for apparent sentencing discrepancies that are not identifiable from statistical data alone. They also suggest that magistrates' sentencing decisions may not be as inconsistent as has sometimes been suggested by previous research. (See, for example, Forst 1982, Tarling, Moxon et al. 1985.)

## **7.2 Written Reports on Low Risk Theft Offenders**

We subsequently examined a sample of 20 reports on 'low risk' offenders who had committed the offence of theft under £500. These reports were written in 1996 and contained proposals for probation or for community service. I had hypothesised that reports containing probation proposals would contain references to personal/social problems that placed the offender at risk of re-offending, whereas reports containing proposals for community service would refer to a low risk of re-offending and no 'criminogenic' needs.

The findings confirmed that reports proposing probation contain references to personal and social problems that are linked with offending. The results also showed that where such problems had been identified for low risk theft offenders, the courts were likely to follow probation officers' proposals for probation. Possibly this was because, for these less serious offenders, the presence of such problems provided an 'acceptable' explanation for offending and hence reduced the need for more obvious 'punishment'. These findings applied equally to reports proposing probation for male offenders as to reports proposing probation for female offenders. However, the reports proposing probation for male offenders were found to be more explicit in 'ruling out' community service than were reports proposing probation for female offenders. This suggests that probation officers expect to have less difficulty in persuading courts to take up probation proposals for females than for males, in line with traditional attitudes regarding the suitability of probation supervision for female offenders. However, contrary to my expectations, the majority of the reports that contained proposals for community service also referred to numerous social problems. It is suggested that this finding may have arisen because offenders tend to use personal/social problems as explanations for their offending, or because probation officers remain inclined to focus on social problems despite the demise of the 'social inquiry' report.



The reports in this later study, almost without exception, referred to offenders' remorse, showed deference to the court and ended with the preferred sentence proposal. Possibly this was because probation officers were by now more familiar with these expectations. However, it could also be because the majority of these proposals were taken up by the courts. Hence there were very few reports where proposals had not been followed, in contrast to the 'matched' reports that were used in the earlier study. Nevertheless, the findings in this second study did indicate that offenders' progress whilst subject to an existing order and the appeal of the combination order to magistrates remain factors that may affect court rates of take-up for probation officers' proposals.

### **7.3 Written Reports on Disqualified Driving Offenders**

Finally, we examined a sample of 27 reports on higher risk offenders who had committed the offence of driving whilst disqualified, all of which had been written in 1996, when my main focus was on proposals for community service or for probation+. As with the theft offenders, I hypothesised that the reports containing probation+ proposals would contain references to personal/social problems that placed the offender at risk of re-offending, whereas reports containing proposals for community service would contain references to a low risk of re-offending and no offence-related personal or social problems that required addressing through probation supervision.

The reports containing community service proposals for disqualified driving offenders were found to draw attention to positive factors, such as obvious and quantifiable punishment or restriction of liberty, measured in hours of work, and the opportunity for offenders to make visible reparation to the community for their wrongdoing. These reports confirmed that probation officers are likely to propose community service where there is a low risk of re-offending and hence no need for probation intervention, or where problems associated with offending are already being satisfactorily addressed through an existing probation order. Thus in all of the reports containing a proposal for community service, the probation officer suggested that probation supervision was not necessary (or was not appropriate) and then made a positive proposal for community service that stressed its ability to provide both measurable punishment and reparation to the community. These proposals for community service were all taken up by the courts.

The reports containing proposals for probation+, on the other hand, showed that probation officers draw attention to negative factors such as a high risk of re-offending and serious personal/social problems. These references to negative factors appear to prompt the courts to sentence these offenders more severely than offenders at a similar risk of custody for whom community service is proposed. Where probation+ proposals were not taken up by the courts, the wording of some reports again suggested that confirmation of suitability for community service followed by a proposal for probation+ was likely to result in the court making a combination order. Out of the eleven reports in the study that contained proposals for probation+, in three cases the court outcome was a sentence of imprisonment and in only four cases was the probation+ proposal followed. These



latter reports suggested that offender motivation to change, or offender co-operation with an existing community sentence may be factors that can persuade magistrates to follow proposals for probation+.

As with the reports on theft offenders, these reports showed that it is now standard practice for probation officers to word their proposals in a manner that shows deference to the court and to end the report with the preferred sentence option. Similarly, courts appeared no longer to be giving advance indication of likely sentence outcome, but instead requested that 'all options' be considered. With regard to expression of remorse, although the majority of reports on disqualified drivers referred to remorse, this did not always appear 'genuine', with reports stating, for example, that 'with hindsight' offenders regretted their actions. The reports on disqualified drivers also demonstrated a tendency for offenders to make excuses for having driven rather than to express remorse for having done so. However, none of these factors appeared to affect whether or not sentence proposals were taken up by the courts.

Because of the very small number of females who are convicted of the offence of driving whilst disqualified, it was not possible to make detailed comparisons between reports on male and female disqualified driving offenders. However, it is of interest that the two reports in the study that proposed basic probation supervision were both on female offenders who were already subject to probation supervision, and that the courts followed these proposals for further probation supervision. This was in contrast to the three reports on male offenders already subject to probation supervision, for whom community service proposals were made, which again were followed by the courts. This again suggests the persistence of traditional views of probation as more appropriate for female offenders and community service as more appropriate for male offenders, and that these gender differences have their origins in probation officers' reports.

The above results demonstrate that examination of written reports can provide explanations for sentencing outcomes that are not apparent from statistical data alone. However, in selecting the reports on both theft and disqualified driving offenders, evidence was found of a number of errors of coding in the statistical records, as a result of which several reports had to be excluded from the samples. This draws attention to problems of inaccurate coding and indicates that without better checks on the accuracy of statistical data, it is unwise to reach conclusions that are based solely on this single source of data. The use of assessment tools such as OGRS, ACE, LSI-R and OASys suggests that the extent and complexity of forms that probation officers are required to complete are likely to increase. If such tools are to be of value, consideration needs to be given to how the accuracy of data recording might be improved, including allowing probation officers more time for the completion of pre-sentence reports.<sup>48</sup>

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<sup>48</sup> An 'average' pre-sentence report is expected to be completed in four hours, which includes interviewing the defendant to obtain information and explain requirements of the different sentences, reading prosecution documents and previous probation records, possible additional enquiries, writing the report, discussing it with the 'gatekeeper' and completing all the required assessment forms and statistical records.



## Conclusions

### *The Impact of the Criminal Justice Act 1991 and 'What Works' Research*

Following the implementation of the Criminal Justice Act 1991, there were major changes, both in sentencing practice and in the philosophy behind the different community sentences. One of the main features of the Act was that sentencing was to be based on 'just deserts', with restrictions on liberty graduated according to offence seriousness. This had a particular impact upon the probation order, the main sentence for which the probation service has had responsibility since its inception. Probation orders became sentences in their own right, rather than a literal probationary period instead of a sentence. They were to entail a measurable restriction on liberty, through which the risk of re-offending was to be 'addressed' and reduced and they could no longer be made on welfare grounds alone, as had sometimes happened in the past. The probation service therefore ceased to be concerned with offenders' welfare needs unless they were directly relevant to offending.

Alongside this, there was also the development of a different type of probation order, which probation officers were encouraged to propose for more serious offenders. These new style probation orders required attendance at a structured programme of offence-focused groupwork, based upon the findings of 'what works' and probation effective practice guidelines. They thus involved a very different type of supervision from the welfare-oriented supervision that both magistrates and offenders had come to expect.

However, despite the requirement that probation officers' work with offenders should be based on programmes of supervision that research had shown to be effective, there appears to have been comparatively little research into court rates of take-up for such proposals. Moreover, although much thought (and training) was invested in the Criminal Justice Act 1991, the main focus was upon differences between the three sentencing bands, with rather less consideration given to comparability of the different sentences within the middle, community sentencing band.

### *The Present Thesis*

As concluded in Chapter 2, the present thesis contends that the changes introduced by the Criminal Justice Act 1991 and consequent conflicts concerning different sentencing aims and philosophies will be reflected in probation officers' pre-sentence reports, as well as in court take-up rates for probation officers' sentence proposals. The thesis has focused upon the choice between the different community sentences and has considered factors that influence probation officers' selection and presentation of community sentence proposals, as well as court rates of take-up for these proposals.

The study has thus sought to answer the following questions:



- Were there take-up differences between the different community sentence proposals?
- Did some types of proposal result in more severe sentence outcomes for offenders?
- Did rates of take-up increase over the period of the study?
- What factors influenced the choice of community sentence?

With regard to the latter, the study examined a number of factors that previous research had suggested were likely to be important and whose effects could be systematically considered. These included the seriousness of the offence, the gender of the offender and the presence of social problems.

#### *Take-up Differences Between Probation and Community Service*

The present study found that the sentence proposal that is the least likely to be taken up by the courts is that advocated by probation effective practice guidelines. Thus, probation officers' proposals for probation+ were found to be significantly less likely to be taken up by the courts than proposals for community service. In addition, magistrates were found to be significantly more likely to make a combination order following a proposal for probation or probation+ than they were following a proposal for community service. We therefore concluded that offenders for whom probation supervision is proposed are likely to be sentenced more severely than offenders of comparable 'seriousness' for whom community service is proposed.

We have considered possible reasons for these findings, including the different sentencing objectives with which the different community sentences are associated. We noted that community service provides readily measurable punishment, as well as reparation to society, whereas probation supervision is associated with the aim of rehabilitation. Hence magistrates may have a preference for the sentencing objectives achieved by community service, but rather than go against a proposal for probation supervision that is intended to reduce re-offending, they sometimes end up sentencing the offender to both sentences. The combination order therefore permits magistrates to follow both their own sentencing preferences and the advice of the probation officer, and it is able to achieve multiple sentencing objectives. However, where the proposal is for community service, it is likely that the probation officer's report will not have identified any need for rehabilitation or any focus for probation supervision. In the absence of this, magistrates may conclude that the sentencing objectives achieved through community service alone are sufficient.

However, we noted that the above findings are less likely to apply to female offenders or to less serious offenders, when magistrates are more likely to be willing to follow proposals for probation supervision. Thus for female offenders and males who have committed less serious offences, the aim of rehabilitation appears to be sufficient. This suggests that traditional attitudes towards the probation order as a low tariff sentence that is particularly suitable for female offenders persist amongst both probation officers and magistrates, despite the changes introduced by the Criminal Justice Act 1991.



We have also considered whether offenders for whom the different community sentences are proposed can, in fact, be regarded as comparable. We saw that where the proposal is for a probation order, probation officers are likely to identify a high risk of re-offending linked with personal/social problems ('criminogenic' needs) that require addressing through probation supervision. By drawing attention to these factors, reports proposing probation supervision may give a negative impression of offenders, unlike reports containing proposals for community service, which tend to describe a low risk of re-offending and the absence of problems that would indicate probation supervision. The negative information contained in reports proposing probation supervision may then lead magistrates to perceive a need for these offenders to be punished more severely, on the basis of what they may do in the future, as well as on their 'just deserts' for the current offence. Thus, although they may be at comparable risk of receiving a custodial sentence according to statistically-based prediction scales, they are not at similar risk of re-offending, and therefore cannot be regarded as comparable with offenders for whom community service is proposed.

#### *Did Rates of Take-up Increase?*

Both probation officers and magistrates underwent extensive training in relation to the revised sentencing framework following the Criminal Justice Act 1991. It might have been expected that over time there would have been a reduction in the differing rates of take-up between community sentence proposals, as they both became more familiar with the new sentencing framework and with the new style of probation supervision. However, the findings in the present study were remarkably consistent over a five-year period. It therefore appears that the probation service has been unsuccessful in convincing magistrates that probation supervision is capable of providing a comparable, but different restriction on liberty to community service. Hence, although effective practice research may have convinced probation management that offender supervision should be based upon 'what works', at the time of the present study (1993/97), magistrates remained to be convinced and appeared to take the view that such an approach was incapable of fulfilling adequate sentencing objectives.

The findings of Hedderman Ellis et al (1999) suggest that improved communications between the probation service and sentencers outside of the immediate sentencing framework can lead to an increase in court use of probation orders with additional requirements. It therefore appears that rate of take-up for probation+ might be improved through the provision of better information to magistrates prior to the sentencing process. This could include the manner in which programme attendance entails a restriction on liberty, as well as the manner in which programme content relates to effective practice research.

However, there remain a number of difficulties associated with achieving higher rates of take-up for probation+ proposals. First, if probation officers are proposing probation+ programmes for more serious offenders, there is an inherently higher risk of re-offending and less chance of meeting targets relating to compliance and reductions in offending. Second, reductions in reconviction rates are related to the processes that are involved



in 'being convicted', which are outside the control of the probation service, such as policing and prosecution practices, whilst reductions in re-offending cannot be measured. I would therefore suggest that, in addition to providing the above information to magistrates, the probation service also needs to establish better communication with the Home Office concerning the difficulties involved in achieving compliance with high risk offenders, as well as the difficulties involved in measuring re-offending.

### *Social Factors and Sentencing Objectives*

More than twenty years ago researchers such as Hardiker (Hardiker, 1977) and Bottoms and McWilliams (Bottoms and McWilliams, 1979) showed that probation officers identified social needs in order to support recommendations for probation supervision. Since then, it has been suggested that much of the early research into the influence of probation officers' recommendations on sentence outcomes was in fact looking at the effect of social information on sentencing.

The findings in the present study indicate that the social information contained in probation officers' reports may influence magistrates in their choice of sentencing objective, and hence in their choice of sentence. Thus, reports containing proposals for community service are more likely to contain positive social information, such as references to a stable lifestyle and low risk of re-offending. In these circumstances, retribution in proportion to the seriousness of the offence is likely to be viewed as sufficient. However, reports containing proposals for probation supervision are more likely to draw attention to negative social information, including 'criminogenic' needs that place the offender at higher risk of re-offending. Where such reports relate to females or to less serious offenders, magistrates appear willing to sentence according to the objective of rehabilitation. However, where reports relate to more serious offenders, it appears that magistrates seek a sentence that achieves the objectives of both rehabilitation *and* retribution.

Since the implementation of the Criminal Justice Act 1991, the probation service has been required to provide punishment in the community. However, it seems that it is to be judged according to its ability to rehabilitate offenders through probation supervision, despite the fact that probation supervision is not viewed as a punishment. If the probation service is to achieve the targets set for it (and upon which future funding is likely to be dependent), I would suggest that the service needs to re-examine the comparability of the aims and objectives of the different community sentences for which it is responsible. As we have seen, the aims and objectives of community service are stated as 'to prevent further offending by re-integrating the offender into the community, through: **punishment** - by means of positive and demanding unpaid work, keeping to disciplined requirements; and **reparation to the community** - by undertaking socially useful work.' (Home Office et al 1995, p 34, original emphasis.) However the aims and objectives of the probation order are stated as 'securing the rehabilitation of the offender, protecting the public from harm from the offender, or preventing the offender from committing further offences.' (Home Office et al 1995, p 17.) For community service, the



emphasis is thus upon achieving the objectives of ensuring that offenders undertake positive and demanding unpaid work and make reparation to the community, with further offending 'prevented' by the re-integration of the offender into the community. These objectives are likely to be more easily achievable than the objectives set for probation supervision of rehabilitating the offender, protecting the public and preventing re-offending per se.

#### *Are Combination Orders the Answer?*

We have seen that although probation orders are now expected to achieve the sentencing objectives of both retribution and rehabilitation, for more serious offenders magistrates may not regard probation supervision as providing adequate punishment. In these circumstances, they additionally sentence such offenders to community service by imposing a combination order. Although the Criminal Justice Act 1991 set the community service component of combination orders at a maximum of 100 hours<sup>49</sup>, probation officers have nevertheless expressed concerns that the combination order is a high tariff sentence that is inappropriate for use in the magistrates courts. However, I would suggest that there is no reason why the probation and community service components of combination orders cannot be set at levels involving an appropriate restriction on liberty that is commensurate with the seriousness of the offence and in line with magistrates' maximum sentencing powers. The relative contribution of each component part could then be set according to offender suitability and motivation.

Thus, rather than attempting to make probation orders more restrictive, it may be that probation officers would be better advised to demonstrate a greater willingness to make proposals for combination orders. Probation reports containing combination order proposals would then be able to contain positive references to the benefits of community service. Since it appears likely that the courts would follow such proposals, this would then enable the probation service to be judged on factors that are not solely concerned with rehabilitation. Moreover, given that the effective reduction of crime is likely to be dependent upon rather more than weekly attendance for time-limited supervision sessions, there would likely be additional positive benefits from the more central role that probation service input would play in offenders' lives. Benefits would also be expected from the higher level of offender contact at the start of the order, when it has been shown most likely to have an impact.

Combination orders thus enable the probation service to meet sentencer requirements for multiple sentencing objectives that encompass both retribution and rehabilitation. They also enable the probation service, as well as offenders, to be evaluated on the basis of a wider range of objectives, rather than being judged solely on doubtful measures of re-offending.

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<sup>49</sup> This compares with a maximum of 240 hours for a community service order that stands on its own.



### *Concluding Comments*

The findings of the present study demonstrate that whilst magistrates may be willing to consider rehabilitative sentences for female offenders and for less serious offenders, for more serious offenders they seek sentences that both rehabilitate and punish. I would therefore suggest that the probation service risks becoming a scapegoat for failing criminal justice policies if it allows itself to be judged solely on its ability to rehabilitate offenders. This is partly because offenders assessed at high risk of re-offending are, by definition, at high risk of re-offending. However, it is also because reductions in re-offending are virtually impossible to measure, whilst reductions in reconviction rates are related to processes involved in being convicted that are outside the control of the probation service, such as policing and prosecution practices.

For more serious offenders, probation officers have been encouraged to make proposals for probation supervision, based on effective practice research, and have been discouraged from making combination order proposals in the magistrates courts. The findings in the present study indicate that such an approach does not find favour with magistrates. Magistrates, and indeed government, appear to require sentences that are able to achieve the multiple objectives of restriction of liberty, reparation and the prevention of re-offending. The probation service would be well advised to take heed of this and to show a greater willingness to make proposals that enable the service to be judged on more than rehabilitation alone.



## APPENDICES



## Appendix 1

### Variable Information

OFFENCE	Wounding Police Officer
Reckless Driving	Malicious Wounding
Violence Against the Person	Cruelty/neglect/assault children
Sexual	Threat to murder/wounding with intent
Burglary	Affray/Violent Disorder
Robbery	Endangering Life
Motortheft	Murder
Theft/Handling	Manslaughter
Fraud	Indecency between males
Criminal Damage	USI – both juveniles
Motoring	Indecent Assault
Drugs	USI – adult under 25 with 15 yr old
Other	Living on immoral earnings
	USI – adult with patient/girl under 15
TEAM	Buggery/assault w.i. buggery
	Gross Indecency
Maidstone	Indecent assault on child
Tunbridge Wells	Buggery/incest involving child
Tonbridge/Malling	Rape
Crown Court	Going equipped/burglary <£1000
Medway Super	Burglary £1000-2999
Dartford	Burglary £3000+
Gravesend	Aggravated burglary/dwelling house
Rochester	Assault w.i. to rob
Sittingbourne	Robbery <£1000
Medway CS	Robbery £1000+
Medway Centre	Armed robbery
Sheppey	Being carried – no damage
Canterbury	Being carried – damage
Margate	Interfering with motor vehicle
Ramsgate	Stealing/TWOC – no damage
Dover	Stealing/TWOC – damage
Folkestone	Theft <£500
Ashford	Theft £500=2000
Medway Day Cen	Theft £2000+
East Kent DC	Stealing by employee <£500
Medway PC	Stealing by employee £500+
East Kent PC	Theft from OAP <£500
Fleming House	Theft from OAP £500+
Hollywood Man	Deception <£500
MAINOFF	Deception £500-2000
	Deception £2000+
Injury by reckless driving	Fraud<£2000
Death by reckless driving	Fraud/Deception £2000+
Common Assault	Criminal Damage <£500
Airgun Offences	Criminal Damage £500-2000
Actual Bodily Harm	Criminal Damage £2000+
Offensive Weapon	Arson
Grievous Bodily Harm	Arson w.i. to cause harm
Possession of explosives/firearms	Forgery/MOT etc.
	Forged licence/insurance
	Dangerous Speed or manner



Reckless driving	COURTNAME
Driving whilst disqualified	Ashford
Driving whilst disqualified (age)	Canterbury
Possession of Cannabis	Dartford
Possession of amphetamines	Dover
Cultivate/supply cannabis	Sittingbourne
Supply amphetamines	Sheerness
Possess heroin/cocaine	Faversham/Sittingbourne
Supply heroin/cocaine	Folkestone
Export/import/produce drugs	Gravesham
Bomb hoax	Maidstone
Kidnapping/terrorism	Margate
Blackmail	Medway
Other road traffic offences	Ramsgate
Excess alcohol/failure provide specimen	Sevenoaks
Threatening behaviour	Tonbridge & Malling
Drunk disorderly/loitering	Malling
Indecent exposure	Tunbridge W & Cranbrook
Obstructing police officer	Cranbrook
Assaulting Police Officer	Maidstone CC
Other	Canterbury CC
Breach of PO	Rochester CC
Breach of CS	Other CC
Breach of Suspended Sentence	Other Mag
	Other
PREVIOUS	
Custody	HOUSING
Community Service	Not Known
Supervision	No settled address
Fine	Living rough
No Previous	Squat
Not Known	Bed & Breakfast
Previous but Not Known	Private Rented
Other Sentence/Order	Housing Dept Rented
	Owner Occupier
BIRTHDAY	Hostel
Birthday DAY	Custody
Birthday MONTH	With family
Birthday YEAR	With friends
	Hospital
DISPOSAL	
Disposal DAY	DRINK
Disposal MONTH	None
Disposal YEAR	Freq/reg compulsive
	Freq regular
COURT	Occasional compulsive
Juvenile	Occ excessive
Magistrates	Other
Crown	DRUGS
Family High Court	None
County	Class A Drug User
Not England/Wales	



Class B Drug User  
Uses non-controlled drug  
Other

WORK

None  
Full time parent/carer  
Employed FT  
Unemployed < 1 mth  
Unemployed 1-6 mths  
Unemployed 7-12 mths  
Unemployed 12 mths+  
Part-time  
Other

DISPOSAL

None  
Custody  
Susp Sent  
SSSO  
YOI  
CS  
Probation  
Prob4B  
Prob4A  
PO+  
Fine  
Con Discharge  
Other  
Comb Ord

PROPOSAL

None  
Custody  
Susp Sent  
SSSO  
YOI  
CS  
Probation  
Prob4B  
Prob4A  
PO+  
Fine  
Other  
Comb Ord

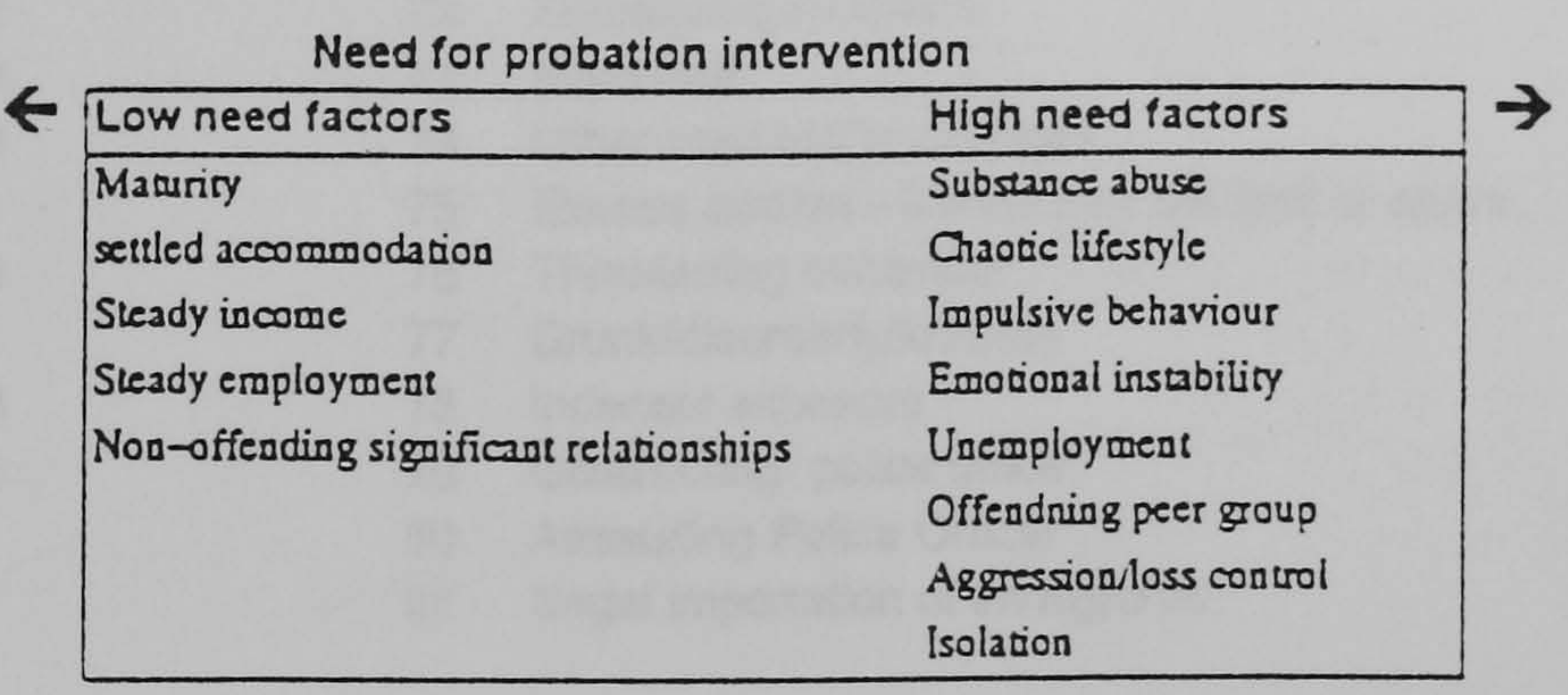
SEX

RACE

Not Known  
Black  
White



28			Combination order	
27				
26				
25				
24	High	CSO (medium/long)	med/long term prob. + condition	Probation + Prob Cent PO + Hostel/Conds
23				
22				
21				
20				
19				
18	Med-High	CSO (medium)	Probation CSO (medium/long)	Probation (medium) + conds)
17				
16				
15				
14	Med-Low	CSO (short)	Probation (short)	Probation (short)
13				
12				
11				
10				
9				
8				
7	Low	Fine/Discharge		
6				
5				
4				
3				
2				
1				
		Low	Medium	High
<i>need for professional intervention</i>				



**Offending Profile**

Court:	mag = 2 crown = 3
Offence Seriousness score:	plus:
Additional offences & TICs	
none	0
1-5	1
6-10	2
11+	3
Previous Offending in last 10yrs	
none	0
1-3	2
4-7	3
8+	4
Offence on Bail/Breach	
YOI/CD	2
Deferred sent/Bail	3
Probation	4
CS	5
Parole/Susp/PO+/Comb	6
Previous Custody in last 10yrs	
1-3	2
4+	3
On Bail/In Custody	
On Bail	0
In Custody	2

Scores between :		
		<b>% chance of custody</b>
1 to 12 =	Low	5%
13 to 17 =	Med-Low	13%
18 to 24 =	Med-High	25%
25 plus =	High	60%

**Instructions**

- 1) Calculate offender profile using seriousness score (see list attached) and details of previous offending. Locate position on scale.
- 2) Decide what degree of professional intervention necessary and consider aggravating/mitigating factors. Assess suitability. This corresponds to 'low', 'medium' or 'high' on the horizontal axis.
- 3) Move up from degree of professional intervention and across from seriousness score. The intersection of the two should indicate a suitable proposal.



# Offence Severity Weightings

code: Offence

1	Injury by reckless driving	14	40	Stealing/TWOC - damage	16
2	Death by reckless driving	20	41	Theft under £500	5
3	Common Assault	8	42	Theft £500-£2000	7
4	Airgun offences	6	43	Theft £2000+	11
5	Actual Bodily Harm	12	44	Theft by employee £0-500 +	12
6	Offensive Weapon	6	45	Stealing by employee £500 +	14
7	Grievous Bodily Harm	15	46	Theft from OAP lt £500	12
8	Possession of explosives/firearms	16	47	Theft from OAP £500 +	14
9	Wounding Police Officer	15	48	Deception 0-£500	6
10	Malicious Wounding	16	49	Deception £500-2000	12
11	Cruelty/neglect/assault child	15	50	Deception £2000+	14
12	Threat to murder/Wounding w.i.	16	51	Fraud < £2000+	14
13	Affray/Violent Disorder	15	52	Fraud £2000+	16
14	Endangering Life	17	53	Criminal Damage < £500	8
15	Murder	25	54	Criminal Damage £500-2000	12
16	Manslaughter	21	55	Criminal Damage £2000+	13
17	Indecency between males	1	56	Arson	15
18	USI - both juveniles	2	57	Arson w.i.to cause harm	20
19	Indecent Assault	12	58	Forgery/MOT etc	3
20	USI - adult under 25 with 15	8	59	Forged licence/insurance	4
21	Living on immoral earnings	13	60	Dangerous Speed or manner	10
22	USI -adult with patient/girl	17	61	Reckless Driving	12
23	Buggery/assault w.i. buggery	19	62	Driving disq/Alcohol Less than 3 times limit	13
24	Gross Indecency	15	64	Possession of Cannabis	8
25	Indecent assault on child	16	65	Possession of amphetamines	11
26	Buggery/incest involving child	20	66	Cultivate/supply cannabis	14
27	Rape	20	67	Supply amphetamines	17
28	Burglary lt £1000/going equipped	9	68	Possess heroin/cocaine	15
29	Burglary £1000-2999	12	69	Supply heroin/cocaine	19
30	Burglary £3000+	15	70	Export/import/produce drugs	19
31	Burglary - aggravated/dwelling	17	71	Bomb hoax	16
32	Assault w.i to rob	18	72	Kidnapping/terrorism	20
33	Robbery £0-100	19	73	Blackmail	20
34	Robbery £100+	20	74	Other road traffic offences	5
35	Armed robbery	21	75	Excess alcohol - 3 times over the limit or above	18
36	Being carried - no damage	10	76	Threatening behaviour	15
37	Being carried - damage	11	77	Drunk/disorderly/loitering	8
38	Interfering with motor vehicle	10	78	Indecent exposure	10
39	Stealing/TWOC - no damage	14	79	Obstructing police officer	6
			80	Assaulting Police Officer	12
			81	Illegal importation of immigrants	17
			91	Other offence (use judgement to assess)	

A list of aggravating and mitigating factors appears on the next page



### Instructions for Completion of Social Factors

social factors listed on statistics forms allow officers to record which of these factors affect the people with whom we work. The revised form now contains two tick boxes for each social factor. The left hand side box - 'factor' - should contain a category which describes the person's problem if the social factor is, in your opinion, related to the person's offending. The codes for each factor are given below. The 'degree' box indicates to what extent you consider this problem affects this person, where 1 = slight, 2 = moderate and 3 = severe. The accommodation and employment factors are mandatory: please complete them in all cases whether or not they are assessed as a problem for the person concerned.

#### Codes:

#### Accommodation

Settled address	1
Living rough - 'on streets'	2
Homeless	3
Homeless & Breakfast accommodation	4
Homeless - Rented	5
Homeless - Housing Department rented	6
Homeless - Other Occupier	7
Homeless - Hostel	8
Homeless - Lodging	9
Homeless - Family	10
Homeless - Friends	11
Homeless - Hospital	12

#### Alcohol Abuse

Permanent or regular compulsive drinking	1
Permanent or regular drinking but not compulsive	2
Occasional compulsive drinking	3
Occasional excessive drinking but not compulsive	4

#### Drug Abuse

Any "Class A" drug, Heroin or Diamorphine based drug, Cocaine, LSD, "Crack", "ice" etc.	1
Cannabis, Amphetamines, Barbiturates or any Class B" drug or solvents	2
Prescription Tranquillisers, other non controlled drugs or prescribed drugs	3

#### Family Offending

More than one other of this person's immediate family involved in offending.	1
Another member of this person's immediate family involved in offending.	2
None of this person's immediate family are involved in offending but member(s) of her extended family are.	3

#### Financial Pressures

High income but in debt due to financial mismanagement	1
Low income but due to low income	2
High income but difficulty in managing finances	3
Low income but low income	4

#### Gambling

Frequent or regular compulsive gambling.	1
Frequent or regular excessive gambling, although not compulsive	2
Occasional compulsive gambling	3
Occasional excessive gambling, but not compulsive	4

#### Peer Group Influence

This person <u>always</u> offends as part of, or under the influence of, a group.	1
This person <u>frequently</u> offends as part of, or under the influence of a group	2
This person <u>sometimes</u> offends as part of, or under the influence of a group.	3

#### Psychiatric History

This person has been treated in hospital for a psychiatric illness within the last year	1
This person has been treated as an out patient for a psychiatric illness within the last year.	2
This person has been treated by their GP for a psychiatric illness within the last year.	3
This person has a known history of psychiatric illness but has received no treatment in the last year.	4
Person does not suffer from a mental illness as defined under the Mental Health Act, but from a personality disorder.	5

#### Lack of Social Skills

This is such a wide category that no classification has been devised. You are asked to indicate whether the person has a problem which could be described as 'lacking social skills' by entering 1 in the first box and then the degree as usual in the second box.

#### Unemployment (mandatory for all cases)

YTS/YOP/College/Training scheme	1
Not working - full time parent/carer	2
Employed full time	3
Unemployed less than 1 month	4
Unemployed 1 - 6 months	5
Unemployed 7 -12 months	6
Unemployed 12 months +	7
Employed part-time	8

#### Family relationships

This person experiences continuous difficulty with family relationships.	1
This person experiences occasional difficulty with family relationships.	2
This person has no contact with members of her/his family	3



## **APPENDIX 4**

### **Tables**



Table 3.1 List of Matched Cases –Study One

Case No.	Offence	Age	Sex	Previous History <sup>1</sup>	Sentence Proposed	Sentence Outcome	Seriousness Score (approx.)
1	AOABH	18	F	2	CSO	Probation	21
2	AOABH	19	M	4	CSO	CSO	17
3	AOABH	23	M	12345	Probation	Combination	20
4	AOABH	31	M	12348	Probation	Probation	20
5	BurglaryNon Dwelling	20	M	1234	CSO	Probation+	21
6	BurglaryNon Dwelling	22	M	245	CSO	CSO	15
7	BurglaryNon Dwelling	21	M	5	Probation	Combination	14
8	BurglaryNon Dwelling	19	M	5	Probation	Probation	14
9	Theft <£500	26	M	4	CSO	Probation	9
10	Theft <£500	27	M	4	CSO	CSO	10
11	Theft <£500	25	F	1258	Probation+	Combination	13
12	Theft <£500	19	F	2345	Probation+	Probation+	14
13	Common Assault	27	M	12348	CSO	Combination	21
14	Common Assault	22	M	24	CSO	CSO	12
15	Common Assault	18	M	A345	Probation+	Combination	18
16	Common Assault	22	M	124	Probation+	Probation+	17
17	Disqualified Driving	22	M	12345	CSO	Combination	21
18	Disqualified Driving	24	M	1234	CSO	CSO	21

<sup>1</sup> Key to previous sentences: 1 = custodial, 2 = supervision, 3 = CSO, 4 = fine, 5 = other, 8 = suspended custodial, 9 = none, A = Combination Order.



19	Disqualified Driving	20	M	12345	Probation	Combination	23
20	Disqualified Driving	20	M	12345	Probation+	Probation+	23
21	Disqualified Driving	26	M	2	CSO	Combination	18
22	Disqualified Driving	30	M	5	CSO	CSO	18
23	Burglary Dwelling	35	F	235	CSO	Combination	21
24	Burglary Dwelling	21	F	2345	CSO	CSO	27
25	BurglaryNon Dwelling	18	M	9	Probation	Combination	14
26	BurglaryNon Dwelling	20	M	4	Probation	Probation	19
27	Excess Alcohol	26	M	12348	Probation	Combination	27
28	Excess Alcohol	31	M	123458	Probation+	Probation+	18
29	Theft £500-2000	31	M	9	Probation	CSO	9
30	Theft £500-2000	40	M	1845	Probation	Probation	10
31	BurglaryNon Dwelling	34	M	123458	Probation	CSO	18
32	BurglaryNon Dwelling	31	M	12348	Probation	Probation	21
33	Criminal Damage	23	M	5	Probation+	CSO	16
34	Criminal Damage	18	M	45	Probation	Probation	17
35	Theft by Employee	28	F	2	Probation	Combination	17
36	Theft by Employee	31	F	9	Probation	Probation	15

Note: Odd numbers = proposal not followed; even numbers = proposal followed.



Table 4.1 Probation Officers' Proposals by Court Disposals, 1993-97

Table 4.1(a) 1993

Disposals	1993								
	Proposals								Total
	None	Cust	CS	Prob	PO+	Fine	Other	Comb Ord	
Custody	62 50.8%	33 <b>66.0%</b>	120 13.7%	72 13.8%	93 22.9%	23 11.3%	23 6.4%	24 25.5%	450 17.1%
CS	11 9.0%	9 18.0%	641 <b>73.0%</b>	29 5.5%	13 3.2%	43 21.1%	66 18.4%	6 6.4%	818 31.0%
Prob	8 6.6%	1 2.0%	15 1.7%	318 <b>60.8%</b>	8 2.0%	7 3.4%	40 11.2%	3 3.2%	400 15.2%
PO+	6 4.9%		8 .9%	11 2.1%	218 <b>53.7%</b>	1 .5%	9 2.5%		253 9.6%
Fine	11 9.0%	5 10.0%	29 3.3%	9 1.7%		104 <b>51.0%</b>	25 7.0%	2 2.1%	185 7.0%
Other	23 18.9%	1 2.0%	32 3.6%	13 2.5%	18 4.4%	24 11.8%	191 <b>53.4%</b>	3 3.2%	305 11.6%
Comb Ord	1 .8%	1 2.0%	33 3.8%	71 13.6%	56 13.8%	2 1.0%	4 1.1%	56 <b>59.6%</b>	224 8.5%
Total	122 4.6%	50 1.9%	878 33.3%	523 19.8%	406 15.4%	204 7.7%	358 13.6%	94 3.6%	2635 100.0%

Table 4.1(b) 1994

Disposals	1994								
	Proposals								Total
	None	Cust	CS	Prob	PO+	Fine	Other	Comb Ord	
Custody	97 70.3%	31 <b>66.0%</b>	109 11.5%	79 10.5%	84 22.0%	19 9.5%	29 6.8%	29 26.1%	477 15.9%
CS	5 3.6%	5 10.6%	719 <b>75.7%</b>	30 4.0%	16 4.2%	27 13.6%	91 21.4%	6 5.4%	899 29.9%
Prob	5 3.6%	1 2.1%	12 1.3%	493 <b>65.6%</b>	16 4.2%	14 7.0%	35 8.2%	2 1.8%	578 19.2%
PO+	4 2.9%	1 2.1%	2 .2%	14 1.9%	186 <b>48.7%</b>	1 .5%	4 .9%	1 .9%	213 7.1%
Fine	10 7.2%	3 6.4%	37 3.9%	11 1.5%	7 1.8%	114 <b>57.3%</b>	51 12.0%	1 .9%	234 7.8%
Other	16 11.6%	4 8.5%	30 3.2%	23 3.1%	16 4.2%	20 10.1%	209 <b>49.1%</b>	1 .9%	319 10.6%
Comb Ord	1 .7%	2 4.3%	41 4.3%	101 13.4%	57 14.9%	4 2.0%	7 1.6%	71 <b>64.0%</b>	284 9.5%
Total	138 4.6%	47 .6%	950 31.6%	751 25.0%	382 12.7%	199 6.6%	426 14.2%	111 3.7%	3004 100.0%



Table 4.1(c) 1995

Disposals	1995								
	Proposals								Total
	None	Custody	CS	Prob	Prob+Oth	Fine	Dischrge	Combined	
Custody	112 56.9%	37 <b>80.4%</b>	98 9.7%	63 8.7%	96 22.4%	16 8.7%	49 11.0%	50 23.0%	521 16.0%
CS	18 9.1%	4 8.7%	787 <b>77.7%</b>	19 2.6%	12 2.8%	31 16.8%	62 13.9%	9 4.1%	942 29.0%
Prob	16 8.1%	2 4.3%	17 1.7%	424 <b>58.8%</b>	21 4.9%	7 3.8%	44 9.9%	1 .5%	532 16.4%
Prob+Oth	6 3.0%	1 2.2%	2 .2%	23 3.2%	212 <b>49.4%</b>		7 1.6%	3 1.4%	254 7.8%
Fine	11 5.6%		36 3.6%	15 2.1%	4 .9%	108 <b>58.7%</b>	29 6.5%		203 6.2%
Dischrge	32 16.2%	2 4.3%	28 2.8%	37 5.1%	21 4.9%	21 11.4%	243 <b>54.6%</b>	3 1.4%	387 11.9%
Combined	2 1.0%		45 4.4%	140 19.4%	63 14.7%	1 .5%	11 2.5%	151 <b>69.6%</b>	413 12.7%
Total	197 6.1%	46 1.4%	1013 31.2%	721 22.2%	429 13.2%	184 5.7%	445 13.7%	217 6.7%	3252 100.0%

Table 4.1(d) 1996

Disposals	1996								
	Proposals								Total
	None	Custody	CS	Prob	Prob+Oth	Fine	Dischrge	Combined	
Custody	134 57.8%	34 <b>70.8%</b>	68 6.5%	57 7.9%	107 19.4%	17 10.1%	48 12.8%	58 24.3%	523 15.5%
CS	13 5.6%	1 2.1%	846 <b>81.3%</b>	26 3.6%	14 2.5%	29 17.2%	49 13.1%	10 4.2%	988 29.3%
Prob	17 7.3%	4 8.3%	13 1.2%	484 <b>67.1%</b>	30 5.4%	10 5.9%	28 7.5%	2 .8%	588 17.4%
Prob+Oth	4 1.7%	1 2.1%	2 .2%	8 1.1%	284 <b>51.5%</b>	1 .6%	3 .8%	2 .8%	305 9.0%
Fine	14 6.0%	2 4.2%	39 3.7%	13 1.8%	4 .7%	90 <b>53.3%</b>	34 9.1%	1 .4%	197 5.8%
Dischrge	47 20.3%	6 12.5%	34 3.3%	24 3.3%	18 3.3%	20 11.8%	205 <b>54.7%</b>	6 2.5%	360 10.7%
Combined	3 1.3%		39 3.7%	109 15.1%	94 17.1%	2 1.2%	8 2.1%	160 <b>66.9%</b>	415 12.3%
Total	232 6.9%	48 1.4%	1041 30.8%	721 21.4%	551 16.3%	169 5.0%	375 11.1%	239 7.1%	3376 100.0%



Table 4.1(e) 1997

Disposals	1997									
	Proposals									Total
	None	Custody	CS	Prob	Prob+Oth	Fine	Dischrge	Combined	Combined +	
Custody	167 60.1%	40 <b>72.7%</b>	102 9.6%	75 10.9%	113 18.8%	15 8.5%	40 10.1%	34 22.4%	27 32.1%	613 17.5%
CS	18 6.5%	1 1.8%	808 <b>75.8%</b>	34 4.9%	15 2.5%	41 23.3%	53 13.4%	9 5.9%	1 1.2%	980 28.0%
Prob	16 5.8%	4 7.3%	13 1.2%	441 <b>64.2%</b>	21 3.5%	6 3.4%	38 9.6%	7 4.6%		546 15.6%
Prob+Oth	4 1.4%	2 3.6%	1 .1%	15 2.2%	310 <b>51.5%</b>		7 1.8%	2 1.3%	2 2.4%	343 9.8%
Fine	17 6.1%		47 4.4%	7 1.0%	10 1.7%	97 <b>55.1%</b>	37 9.3%	1 .7%		216 6.2%
Dischrge	49 17.6%	8 14.5%	49 4.6%	23 3.3%	21 3.5%	16 9.1%	218 <b>54.9%</b>	2 1.3%	1 1.2%	387 11.1%
Combined	7 2.5%		40 3.8%	90 13.1%	56 9.3%	1 .6%	4 1.0%	93 <b>61.2%</b>	6 7.1%	297 8.5%
Combined +			6 .6%	2 .3%	56 9.3%			4 2.6%	47 <b>56.0%</b>	115 3.3%
Total	278 7.9%	55 1.6%	1066 30.5%	687 19.6%	602 17.2%	176 5.0%	397 11.4%	152 4.3%	84 2.4%	3497 100.0%



Table 4.2 Proportion of Community Service, Probation and Probation+ Proposals Resulting in a Combination Order, 1993-97

Results of Chi-square tests:

1993 Chi-square = 54.97 df = 2 p = <.001  
 1994 Chi-square = 56.09 df = 2 p = <.001  
 1995 Chi-square = 98.52 df = 2 p = <.001  
 1996 Chi-square = 92.40 df = 2 p = <.001  
 1997 Chi-square = 90.67 df = 2 p = <.001

Table 4.2(a) 1993

**CS and Probation Proposals Resulting in Combination Orders, 1993**

			CombO Outcomes		Total
			CombO Outcome	Not CombO Outcome	
PROPOSAL	CS	Count	33	845	878
		% within PROPOSAL	3.8%	96.2%	100.0%
	Prob	Count	71	452	523
		% within PROPOSAL	13.6%	86.4%	100.0%
	PO+	Count	56	350	406
		% within PROPOSAL	13.8%	86.2%	100.0%
Total	Count		160	1647	1807
	% within PROPOSAL		8.9%	91.1%	100.0%

Table 4.2(b) 1994

**CS and Probation Proposals Resulting in Combination Orders, 1994**

			CombO Outcomes		Total
			CombO Outcome	Not CombO Outcome	
PROPOSAL	CS	Count	41	909	950
		% within PROPOSAL	4.3%	95.7%	100.0%
	Prob	Count	101	650	751
		% within PROPOSAL	13.4%	86.6%	100.0%
	PO+	Count	57	325	382
		% within PROPOSAL	14.9%	85.1%	100.0%
Total	Count		199	1884	2083
	% within PROPOSAL		9.6%	90.4%	100.0%



Table 4.2(c) 1995

**CS and Probation Proposals Resulting in Combination Orders, 1995**

			CombO Outcomes		Total
			CombO Outcome	Not CombO Outcome	
PROPOSAL	CS	Count	45	968	1013
		% within PROPOSAL	4.4%	95.6%	100.0%
	Prob	Count	140	581	721
		% within PROPOSAL	19.4%	80.6%	100.0%
	PO+	Count	63	366	429
		% within PROPOSAL	14.7%	85.3%	100.0%
Total	Count	248	1915	2163	
	% within PROPOSAL	11.5%	88.5%	100.0%	

Table 4.2(d) 1996

**CS and Probation Proposals Resulting in Combination Orders, 1996**

			CombO Outcomes		Total
			CombO Outcome	Not CombO Outcome	
PROPOSAL	CS	Count	39	1002	1041
		% within PROPOSAL	3.7%	96.3%	100.0%
	Prob	Count	109	612	721
		% within PROPOSAL	15.1%	84.9%	100.0%
	PO+	Count	94	457	551
		% within PROPOSAL	17.1%	82.9%	100.0%
Total	Count	242	2071	2313	
	% within PROPOSAL	10.5%	89.5%	100.0%	

Table 4.2(e) 1997

**CS and Probation Proposals Resulting in Combination Orders, 1997**

			CombO Outcomes		Total
			CombO Outcome	Not CombO Outcome	
PROPOSAL	CS	Count	46	1020	1066
		% within PROPOSAL	4.3%	95.7%	100.0%
	Prob	Count	92	595	687
		% within PROPOSAL	13.4%	86.6%	100.0%
	PO+	Count	112	490	602
		% within PROPOSAL	18.6%	81.4%	100.0%
Total	Count	250	2105	2355	
	% within PROPOSAL	10.6%	89.4%	100.0%	



Table 4.3 Proportion of Community Sentence Proposals Resulting in a Custodial Sentence, 1993-97

Table 4.3(a) 1993

**Community Sentence Proposals Resulting in Custody, 1993**

			Custodial Outcomes		Total
			Custodial Outcome	Not Custodial Outcome	
PROPOSAL	CS	Count	120	758	878
		% within PROPOSAL	13.7%	86.3%	100.0%
	Prob	Count	72	451	523
		% within PROPOSAL	13.8%	86.2%	100.0%
	PO+	Count	93	313	406
		% within PROPOSAL	22.9%	77.1%	100.0%
	Comb Ord	Count	24	70	94
		% within PROPOSAL	25.5%	74.5%	100.0%
Total	Count		309	1592	1901
	% within PROPOSAL		16.3%	83.7%	100.0%

Chi-square = 25.84 df = 3 p = <.001

Table 4.3(b) 1994

**Community Sentence Proposals Resulting in Custody, 1994**

			Custodial Outcomes		Total
			Custodial Outcome	Not Custodial Outcome	
PROPOSAL	CS	Count	109	841	950
		% within PROPOSAL	11.5%	88.5%	100.0%
	Prob	Count	79	672	751
		% within PROPOSAL	10.5%	89.5%	100.0%
	PO+	Count	84	298	382
		% within PROPOSAL	22.0%	78.0%	100.0%
	Comb Ord	Count	29	82	111
		% within PROPOSAL	26.1%	73.9%	100.0%
Total	Count		301	1893	2194
	% within PROPOSAL		13.7%	86.3%	100.0%

Chi-Square = 47.05 df = 3 p = <.001



Table 4.3 (c) 1995

**Community Sentence Proposals Resulting in Custody, 1995**

			Custodial Outcomes		Total
			Custodial Outcome	Not Custodial Outcome	
PROPOSAL	CS	Count	98	915	1013
		% within PROPOSAL	9.7%	90.3%	100.0%
	Prob	Count	63	658	721
		% within PROPOSAL	8.7%	91.3%	100.0%
	PO+	Count	96	333	429
		% within PROPOSAL	22.4%	77.6%	100.0%
	Comb Ord	Count	50	167	217
		% within PROPOSAL	23.0%	77.0%	100.0%
Total		Count	307	2073	2380
		% within PROPOSAL	12.9%	87.1%	100.0%

Chi-square = 74.66 df = 3 p = <.001

Table 4.3(d) 1996

**Community Sentence Proposals Resulting in Custody, 1996**

			Custodial Outcomes		Total
			Custodial Outcome	Not Custodial Outcome	
PROPOSAL	CS	Count	68	973	1041
		% within PROPOSAL	6.5%	93.5%	100.0%
	Prob	Count	57	664	721
		% within PROPOSAL	7.9%	92.1%	100.0%
	PO+	Count	107	444	551
		% within PROPOSAL	19.4%	80.6%	100.0%
	Comb Ord	Count	58	181	239
		% within PROPOSAL	24.3%	75.7%	100.0%
Total		Count	290	2262	2552
		% within PROPOSAL	11.4%	88.6%	100.0%

Chi-square = 107.70 df = 3 p = <.001



Table 4.3(e) 1997

**Community Sentence Proposals Resulting in Custody, 1997**

			Custodial Outcomes		Total
			Custodial Outcome	Not Custodial Outcome	
PROPOSAL	CS	Count	102	964	1066
		% within PROPOSAL	9.6%	90.4%	100.0%
	Prob	Count	75	612	687
		% within PROPOSAL	10.9%	89.1%	100.0%
	PO+	Count	113	489	602
		% within PROPOSAL	18.8%	81.2%	100.0%
	Comb Ord	Count	61	175	236
		% within PROPOSAL	25.8%	74.2%	100.0%
Total		Count	351	2240	2591
		% within PROPOSAL	13.5%	86.5%	100.0%

Chi-square = 62.98 df = 3 p = <.001



Table 4.4 Proportion of Community Service, Probation and Probation+ Proposals Resulting in a Combination Order, Theft <£500, 1995-96

Table 4.4(a) 1995

**Theft <£500, Proposals Resulting in Combination Orders, 1995**

			CombO Outcomes		Total
			CombO Outcome	Not CombO Outcome	
PROPOSAL	CS	Count	10	149	159
		% within PROPOSAL	6.3%	93.7%	100.0%
	Prob	Count	34	145	179
		% within PROPOSAL	19.0%	81.0%	100.0%
	PO+	Count	7	56	63
		% within PROPOSAL	11.1%	88.9%	100.0%
Total		Count	51	350	401
		% within PROPOSAL	12.7%	87.3%	100.0%

Chi-square = 12.42, df = 2, p = .002

Table 4.4(b) 1996

**Theft <£500, Proposals Resulting in Combination Orders, 1996**

			CombO Outcomes		Total
			CombO Outcome	Not CombO Outcome	
PROPOSAL	CS	Count	9	193	202
		% within PROPOSAL	4.5%	95.5%	100.0%
	Prob	Count	29	166	195
		% within PROPOSAL	14.9%	85.1%	100.0%
	PO+	Count	5	68	73
		% within PROPOSAL	6.8%	93.2%	100.0%
Total		Count	43	427	470
		% within PROPOSAL	9.1%	90.9%	100.0%

Chi-square = 13.50, df = 2, p = .001



Table 4.5 Proportion of Community Service, Probation and Probation+ Proposals Resulting in a Combination Order, Disqualified Driving, 1994-97

Table 4.5(a) 1994

**Disqualified Driving, Proposals Resulting in a Combination Order, 1994**

			CombO Outcomes		Total
			CombO Outcome	Not CombO Outcome	
PROPOSAL	CS	Count	6	155	161
		% within PROPOSAL	3.7%	96.3%	100.0%
	Prob	Count	12	59	71
		% within PROPOSAL	16.9%	83.1%	100.0%
	PO+	Count	19	63	82
		% within PROPOSAL	23.2%	76.8%	100.0%
Total		Count	37	277	314
		% within PROPOSAL	11.8%	88.2%	100.0%

Chi-square = 22.07, df = 2. p = <.001

Table 4.5(b) 1995

**Disqualified Driving, Proposals Resulting in a Combination Order, 1995**

			CombO Outcomes		Total
			CombO Outcome	Not CombO Outcome	
PROPOSAL	CS	Count	7	187	194
		% within PROPOSAL	3.6%	96.4%	100.0%
	Prob	Count	18	47	65
		% within PROPOSAL	27.7%	72.3%	100.0%
	PO+	Count	15	82	97
		% within PROPOSAL	15.5%	84.5%	100.0%
Total		Count	40	316	356
		% within PROPOSAL	11.2%	88.8%	100.0%

Chi-square = 30.71, df = 2, p = <.001



Table 4.5(c) 1996

**Disqualified Driving, Proposals Resulting in a Combination Order, 1996**

			CombO Outcomes		Total
			CombO Outcome	Not CombO Outcome	
PROPOSAL	CS	Count	3	144	147
		% within PROPOSAL	2.0%	98.0%	100.0%
	Prob	Count	11	44	55
		% within PROPOSAL	20.0%	80.0%	100.0%
	PO+	Count	31	115	146
		% within PROPOSAL	21.2%	78.8%	100.0%
Total		Count	45	303	348
		% within PROPOSAL	12.9%	87.1%	100.0%

Chi-square = 26.86, df = 2, p = <.001

Table 4.5(d) 1997

**Disqualified Driving, Proposals Resulting in a Combination Order, 1997**

			CombO Outcomes		Total
			CombO Outcome	Not CombO Outcome	
PROPOSAL	CS	Count	9	145	154
		% within PROPOSAL	5.8%	94.2%	100.0%
	Prob	Count	7	34	41
		% within PROPOSAL	17.1%	82.9%	100.0%
	PO+	Count	35	100	135
		% within PROPOSAL	25.9%	74.1%	100.0%
Total		Count	51	279	330
		% within PROPOSAL	15.5%	84.5%	100.0%

Chi-square = 22.30, df = 2, p = <.001



Table 4.6 Proportion of Community Sentence Proposals Resulting in a Custodial Sentence, Disqualified Driving, 1995 and 1997

Table 4.6(a) 1995

**Disqualified Drivers, Proposals Resulting in Custody, 1995**

			Custodial Outcome		Total
			Custodial Outcome	Not Custodial Outcome	
PROPOSAL	CS	Count	28	166	194
		% within PROPOSAL	14.4%	85.6%	100.0%
	Prob	Count	15	50	65
		% within PROPOSAL	23.1%	76.9%	100.0%
	PO+	Count	31	66	97
		% within PROPOSAL	32.0%	68.0%	100.0%
	Comb Ord	Count	10	34	44
		% within PROPOSAL	22.7%	77.3%	100.0%
Total		Count	84	316	400
		% within PROPOSAL	21.0%	79.0%	100.0%

Chi-square = 12.31, df = 3, p = .006

Table 4.6(b) 1997

**Disqualified Drivers, Proposals Resulting in Custody, 1997**

			Custodial Outcome		Total
			Custodial Outcome	Not Custodial Outcome	
PROPOSAL	CS	Count	27	127	154
		% within PROPOSAL	17.5%	82.5%	100.0%
	Prob	Count	12	29	41
		% within PROPOSAL	29.3%	70.7%	100.0%
	PO+	Count	48	87	135
		% within PROPOSAL	35.6%	64.4%	100.0%
	Comb Ord	Count	20	32	52
		% within PROPOSAL	38.5%	61.5%	100.0%
Total		Count	107	275	382
		% within PROPOSAL	28.0%	72.0%	100.0%

Chi-square = 15.15, df = 3, p = .002



Table 5.1 Gender Differences in Outcomes for Community Sentence Proposals 1993-97

Table 5.1(a) 1993

Community Sentence Proposal Outcomes x Sex, 1993

PROPOSAL				OUTCOME		Total
				NF	PF	
CS	SEX	F	Count	10	26	36
			% within SEX	27.8%	72.2%	100.0%
		M	Count	227	615	842
			% within SEX	27.0%	73.0%	100.0%
	Total		Count	237	641	878
			% within SEX	27.0%	73.0%	100.0%
Prob	SEX	F	Count	17	63	80
			% within SEX	21.3%	78.8%	100.0%
		M	Count	188	255	443
			% within SEX	42.4%	57.6%	100.0%
	Total		Count	205	318	523
			% within SEX	39.2%	60.8%	100.0%
PO+	SEX	F	Count	11	8	19
			% within SEX	57.9%	42.1%	100.0%
		M	Count	177	210	387
			% within SEX	45.7%	54.3%	100.0%
	Total		Count	188	218	406
			% within SEX	46.3%	53.7%	100.0%
Comb Ord	SEX	M	Count	38	56	94
			% within SEX	40.4%	59.6%	100.0%
	Total		Count	38	56	94
			% within SEX	40.4%	59.6%	100.0%

Note: NF = Not Followed, PF = Proposal Followed.

Results of Chi-square Tests<sup>2</sup>:

CS	n = 878	df = 1	Chi-square = .00	Not Significant
Prob	n = 523	df = 1	Chi-square = 11.89	p = <.001
Prob+	n = 406	df = 1	Chi-square = .64	Not Significant
CombO	n = 94	(no statistics computed because male sex is a constant)		

<sup>2</sup> Continuity correction computed for 2x2 tables and Fisher's Exact Test used.



Table 5.1(b) 1994

Community Sentence Proposal Outcomes x Sex, 1994

PROPOSAL				OUTCOME		Total
				NF	PF	
CS	SEX	F	Count	19	45	64
			% within SEX	29.7%	70.3%	100.0%
		M	Count	212	674	886
			% within SEX	23.9%	76.1%	100.0%
	Total		Count	231	719	950
			% within SEX	24.3%	75.7%	100.0%
Prob	SEX	F	Count	30	103	133
			% within SEX	22.6%	77.4%	100.0%
		M	Count	228	390	618
			% within SEX	36.9%	63.1%	100.0%
	Total		Count	258	493	751
			% within SEX	34.4%	65.6%	100.0%
PO+	SEX	F	Count	3	8	11
			% within SEX	27.3%	72.7%	100.0%
		M	Count	193	178	371
			% within SEX	52.0%	48.0%	100.0%
	Total		Count	196	186	382
			% within SEX	51.3%	48.7%	100.0%
Comb Ord	SEX	F	Count	2	7	9
			% within SEX	22.2%	77.8%	100.0%
		M	Count	38	64	102
			% within SEX	37.3%	62.7%	100.0%
	Total		Count	40	71	111
			% within SEX	36.0%	64.0%	100.0%

CS	n = 950	df = 1	Chi-square = .79	Not Significant
Prob	n = 751	df = 1	Chi-square = 9.35	p = .002
Prob+	n = 383	df = 1	Chi-square = 1.72	Not Significant
CombO	n = 111	(female numbers too low to permit analysis)		



Table 5.1(c) 1995

Community Sentence Proposal Outcomes x Sex, 1995

PROPOSAL				OUTCOME		Total
				NF	PF	
CS	SEX	F	Count	18	49	67
			% within SEX	26.9%	73.1%	100.0%
		M	Count	208	738	946
			% within SEX	22.0%	78.0%	100.0%
	Total		Count	226	787	1013
			% within SEX	22.3%	77.7%	100.0%
Prob	SEX	F	Count	35	81	116
			% within SEX	30.2%	69.8%	100.0%
		M	Count	262	343	605
			% within SEX	43.3%	56.7%	100.0%
	Total		Count	297	424	721
			% within SEX	41.2%	58.8%	100.0%
PO+	SEX	F	Count	8	16	24
			% within SEX	33.3%	66.7%	100.0%
		M	Count	212	193	405
			% within SEX	52.3%	47.7%	100.0%
	Total		Count	220	209	429
			% within SEX	51.3%	48.7%	100.0%
Comb Ord	SEX	F	Count	3	2	5
			% within SEX	60.0%	40.0%	100.0%
		M	Count	63	149	212
			% within SEX	29.7%	70.3%	100.0%
	Total		Count	66	151	217
			% within SEX	30.4%	69.6%	100.0%

CS	n = 1013	df = 1	Chi-square = .60	Not Significant
Prob	n = 721	df = 1	Chi-square = 6.40	p = .01
Prob+	n = 429	df = 1	Chi-square = 2.56	Not Significant
CombO	n = 217	(female numbers too low to permit analysis)		



Table 5.1(d) 1996

Communitiy Sentence Proposal Outcomes x Sex, 1996

PROPOSAL				OUTCOME		Total
				NF	PF	
CS	SEX	F	Count	14	80	94
			% within SEX	14.9%	85.1%	100.0%
	M	Count	181	766	947	
		% within SEX	19.1%	80.9%	100.0%	
	Total	Count	195	846	1041	
		% within SEX	18.7%	81.3%	100.0%	
Prob	SEX	F	Count	29	103	132
			% within SEX	22.0%	78.0%	100.0%
	M	Count	208	381	589	
		% within SEX	35.3%	64.7%	100.0%	
	Total	Count	237	484	721	
		% within SEX	32.9%	67.1%	100.0%	
PO+	SEX	F	Count	8	22	30
			% within SEX	26.7%	73.3%	100.0%
	M	Count	259	262	521	
		% within SEX	49.7%	50.3%	100.0%	
	Total	Count	267	284	551	
		% within SEX	48.5%	51.5%	100.0%	
Comb Ord	SEX	F	Count	3	7	10
			% within SEX	30.0%	70.0%	100.0%
	M	Count	76	153	229	
		% within SEX	33.2%	66.8%	100.0%	
	Total	Count	79	160	239	
		% within SEX	33.1%	66.9%	100.0%	

CS	n = 1041	df = 1	Chi-square = .74	Not Significant
Prob	n = 721	df = 1	Chi-square = 8.11	p = .003
Prob+	n = 551	df = 1	Chi-square = 5.14	p = .015
CombO	n = 239	(female numbers too low to permit analysis)		



Table 5.1(e) 1997

Community Sentence Proposal Outcomes x Sex, 1997

PROPOSAL				OUTCOME		Total
				NF	PF	
CS	SEX	F	Count	21	77	98
			% within SEX	21.4%	78.6%	100.0%
		M	Count	237	731	968
			% within SEX	24.5%	75.5%	100.0%
	Total		Count	258	808	1066
			% within SEX	24.2%	75.8%	100.0%
Prob	SEX	F	Count	26	105	131
			% within SEX	19.8%	80.2%	100.0%
		M	Count	220	336	556
			% within SEX	39.6%	60.4%	100.0%
	Total		Count	246	441	687
			% within SEX	35.8%	64.2%	100.0%
PO+	SEX	F	Count	10	31	41
			% within SEX	24.4%	75.6%	100.0%
		M	Count	282	279	561
			% within SEX	50.3%	49.7%	100.0%
	Total		Count	292	310	602
			% within SEX	48.5%	51.5%	100.0%
Comb Ord	SEX	F	Count	3	9	12
			% within SEX	25.0%	75.0%	100.0%
		M	Count	93	131	224
			% within SEX	41.5%	58.5%	100.0%
	Total		Count	96	140	236
			% within SEX	40.7%	59.3%	100.0%

CS	n = 1066	df = 1	Chi-square = .30	Not Significant
Prob	n = 687	df = 1	Chi-square = 17.09	p = <.001
Prob+	n = 602	df = 1	Chi-square = 9.23	p = .002
CombO	n = 236	(female numbers to low to permit analysis)		



Table 5.2 Differences in Male and Female Custodial Outcomes Following Community Sentence Proposals, 1993-97<sup>3</sup>

Table 5.2(a) 1993

**Custodial Outcomes for Community Sentence Proposals by Sex, 1993**

			Custodial Outcome		Total
			Custodial Outcome	Not Custodial Outcome	
SEX	F	Count	13	122	135
		% within SEX	9.6%	90.4%	100.0%
	M	Count	296	1470	1766
		% within SEX	16.8%	83.2%	100.0%
Total		Count	309	1592	1901
		% within SEX	16.3%	83.7%	100.0%

Chi-square = 4.18 df = 1 p = .03

Table 5.2(b) 1994

**Custodial Outcomes for Community Sentence Proposals by Sex, 1994**

			Custodial Outcome		Total
			Custodial Outcome	Not Custodial Outcome	
SEX	F	Count	10	207	217
		% within SEX	4.6%	95.4%	100.0%
	M	Count	291	1686	1977
		% within SEX	14.7%	85.3%	100.0%
Total		Count	301	1893	2194
		% within SEX	13.7%	86.3%	100.0%

Chi-square = 16.04 df = 1 p = <.001

<sup>3</sup> Continuity correction computed for 2x2 tables and Fisher's Exact Test used.



Table 5.2(c) 1995

**Custodial Outcomes for Community Sentence Proposals by Sex, 1995**

			Custodial Outcome		Total
			Custodial Outcome	Not Custodial Outcome	
SEX	F	Count	14	198	212
		% within SEX	6.6%	93.4%	100.0%
	M	Count	293	1875	2168
		% within SEX	13.5%	86.5%	100.0%
Total		Count	307	2073	2380
		% within SEX	12.9%	87.1%	100.0%

Chi-square = 7.61 df = 1 p = .004

Table 5.2(d) 1996

**Custodial Outcomes for Community Sentence Proposals by Sex, 1996**

			Custodial Outcome		Total
			Custodial Outcome	Not Custodial Outcome	
SEX	F	Count	8	258	266
		% within SEX	3.0%	97.0%	100.0%
	M	Count	282	2004	2286
		% within SEX	12.3%	87.7%	100.0%
Total		Count	290	2262	2552
		% within SEX	11.4%	88.6%	100.0%

Chi-square = 19.67 df = 1 p = <.001

Table 5.2(e) 1997

**Custodial Outcomes for Community Sentence Proposals by Sex, 1997**

			Custodial Outcome		Total
			Custodial Outcome	Not Custodial Outcome	
SEX	F	Count	10	272	282
		% within SEX	3.5%	96.5%	100.0%
	M	Count	341	1968	2309
		% within SEX	14.8%	85.2%	100.0%
Total		Count	351	2240	2591
		% within SEX	13.5%	86.5%	100.0%

Chi-square = 26.07 df = 1 p = <.001



Table 5.3 Theft <£500, Community Sentence Proposals According to Gender, 1993-97

CS, Probation and Probation+ Proposals x Sex, Theft <£500, 1993-97

Year	PROPOSAL	CS	Count	SEX		Total
				F	M	
1993		CS	Count	15	100	115
			% within SEX	28.8%	45.2%	42.1%
		Prob	Count	30	87	117
			% within SEX	57.7%	39.4%	42.9%
PO+	Count	7	34	41		
	% within SEX	13.5%	15.4%	15.0%		
Total	Count	52	221	273		
	% within SEX	100.0%	100.0%	100.0%		
1994		CS	Count	14	108	122
			% within SEX	23.3%	39.4%	36.5%
		Prob	Count	44	125	169
			% within SEX	73.3%	45.6%	50.6%
PO+	Count	2	41	43		
	% within SEX	3.3%	15.0%	12.9%		
Total	Count	60	274	334		
	% within SEX	100.0%	100.0%	100.0%		
1995		CS	Count	20	139	159
			% within SEX	25.6%	43.0%	39.7%
		Prob	Count	47	132	179
			% within SEX	60.3%	40.9%	44.6%
PO+	Count	11	52	63		
	% within SEX	14.1%	16.1%	15.7%		
Total	Count	78	323	401		
	% within SEX	100.0%	100.0%	100.0%		
1996		CS	Count	38	164	202
			% within SEX	38.0%	44.3%	43.0%
		Prob	Count	51	144	195
			% within SEX	51.0%	38.9%	41.5%
PO+	Count	11	62	73		
	% within SEX	11.0%	16.8%	15.5%		
Total	Count	100	370	470		
	% within SEX	100.0%	100.0%	100.0%		
1997		CS	Count	23	156	179
			% within SEX	23.7%	44.3%	39.9%
		Prob	Count	54	138	192
			% within SEX	55.7%	39.2%	42.8%
PO+	Count	20	58	78		
	% within SEX	20.6%	16.5%	17.4%		
Total	Count	97	352	449		
	% within SEX	100.0%	100.0%	100.0%		

Results of Chi-square tests:

1993 Chi-square = 6.09, df = 2, p = .048

1994 Chi-square = 16.13, df = 2, p = <.001

1995 Chi-square = 10.24, df = 2, p = .006

1996 Chi-square = 5.18, df = 2, p = .075

1997 Chi-square = 13.67, df = 2, p = .001



Table 5.4 Theft <£500, Community Sentence Disposals According to Gender, 1993-97

CS, Probation and Probation+ Disposals x Sex, Theft <£500, 1993-97

Year	DISPOSAL	CS		SEX		Total
				F	M	
1993		CS	Count	18	96	114
			% within SEX	31.0%	48.7%	44.7%
		Prob	Count	36	71	107
			% within SEX	62.1%	36.0%	42.0%
		PO+	Count	4	30	34
			% within SEX	6.9%	15.2%	13.3%
Total	Count	58	197	255		
% within SEX		100.0%	100.0%	100.0%		
1994		CS	Count	16	116	132
			% within SEX	21.3%	48.7%	42.2%
		Prob	Count	57	96	153
			% within SEX	76.0%	40.3%	48.9%
		PO+	Count	2	26	28
			% within SEX	2.7%	10.9%	8.9%
Total	Count	75	238	313		
% within SEX		100.0%	100.0%	100.0%		
1995		CS	Count	19	130	149
			% within SEX	26.8%	48.1%	43.7%
		Prob	Count	46	106	152
			% within SEX	64.8%	39.3%	44.6%
		PO+	Count	6	34	40
			% within SEX	8.5%	12.6%	11.7%
Total	Count	71	270	341		
% within SEX		100.0%	100.0%	100.0%		
1996		CS	Count	32	157	189
			% within SEX	33.0%	49.4%	45.5%
		Prob	Count	55	122	177
			% within SEX	56.7%	38.4%	42.7%
		PO+	Count	10	39	49
			% within SEX	10.3%	12.3%	11.8%
Total	Count	97	318	415		
% within SEX		100.0%	100.0%	100.0%		
1997		CS	Count	27	142	169
			% within SEX	26.5%	48.3%	42.7%
		Prob	Count	56	119	175
			% within SEX	54.9%	40.5%	44.2%
		PO+	Count	19	33	52
			% within SEX	18.6%	11.2%	13.1%
Total	Count	102	294	396		
% within SEX		100.0%	100.0%	100.0%		

Results of Chi-square tests:

1993 Chi-square = 12.71, df = 2, p = .002  
 1994 Chi-square = 29.34, df = 2, p = <.001  
 1995 Chi-square = 14.93, df = 2, p = .001  
 1996 Chi-square = 10.48, df = 2, p = .005  
 1997 Chi-square = 15.18, df = 2, p = .001



Table 5.5 Theft <£500, Most Serious Previous Conviction According to Gender, 1993-97

Table 5.5(a) 1993

**Theft <£500 Previous x Sex, 1993**

			SEX		Total
			F	M	
PREVIOUS CUSTODY	Count	17	169	186	
	% within SEX	18.1%	49.0%	42.4%	
CS	Count	8	55	63	
	% within SEX	8.5%	15.9%	14.4%	
SUPERVISION	Count	22	27	49	
	% within SEX	23.4%	7.8%	11.2%	
FINE	Count	12	48	60	
	% within SEX	12.8%	13.9%	13.7%	
NO PREVIOUS	Count	17	29	46	
	% within SEX	18.1%	8.4%	10.5%	
OTHER	Count	18	17	35	
	% within SEX	19.1%	4.9%	8.0%	
Total	Count	94	345	439	
	% within SEX	100.0%	100.0%	100.0%	

Chi-square = 60.97 df = 5 p = <.001

Table 5.5(b) 1994

**Theft <£500 Previous x Sex, 1994**

			SEX		Total
			F	M	
PREVIOUS CUSTODY	Count	15	215	230	
	% within SEX	12.9%	51.7%	43.2%	
CS	Count	18	71	89	
	% within SEX	15.5%	17.1%	16.7%	
SUPERVISION	Count	30	36	66	
	% within SEX	25.9%	8.7%	12.4%	
FINE	Count	17	46	63	
	% within SEX	14.7%	11.1%	11.8%	
NO PREVIOUS	Count	20	33	53	
	% within SEX	17.2%	7.9%	10.0%	
OTHER	Count	16	15	31	
	% within SEX	13.8%	3.6%	5.8%	
Total	Count	116	416	532	
	% within SEX	100.0%	100.0%	100.0%	

Chi-square = 78.32, df = 5, p = <.001



Table 5.5(c) 1995

**Theft <£500 Previous x Sex, 1995**

			SEX		Total
			F	M	
Most serious previous sentence	Custody	Count	39	227	266
		% within SEX	28.9%	43.7%	40.7%
	Combined	Count	5	22	27
		% within SEX	3.7%	4.2%	4.1%
	CSO	Count	16	70	86
		% within SEX	11.9%	13.5%	13.1%
	Probation	Count	19	42	61
		% within SEX	14.1%	8.1%	9.3%
	Fine	Count	25	62	87
		% within SEX	18.5%	11.9%	13.3%
	Other	Count	9	32	41
		% within SEX	6.7%	6.2%	6.3%
	No previous	Count	22	64	86
		% within SEX	16.3%	12.3%	13.1%
Total	Count	135	519	654	
	% within SEX	100.0%	100.0%	100.0%	

Chi-square = 15.01, df = 6, p = .020

Table 5.5(d) 1996

**Theft <£500 Previous x Sex, 1996**

			SEX		Total
			F	M	
Most serious previous sentence	Custody	Count	57	238	295
		% within SEX	38.5%	43.5%	42.4%
	Combined	Count	3	25	28
		% within SEX	2.0%	4.6%	4.0%
	CSO	Count	20	74	94
		% within SEX	13.5%	13.5%	13.5%
	Probation	Count	8	43	51
		% within SEX	5.4%	7.9%	7.3%
	Fine	Count	19	50	69
		% within SEX	12.8%	9.1%	9.9%
	Other	Count	12	38	50
		% within SEX	8.1%	6.9%	7.2%
	No previous	Count	29	79	108
		% within SEX	19.6%	14.4%	15.5%
Total	Count	148	547	695	
	% within SEX	100.0%	100.0%	100.0%	

Chi-square = 7.32, df = 6, Not Significant.



Table 5.5(e) 1997

Theft <£500 Previous x Sex, 1997

			SEX		Total
			F	M	
Previous	Custody	Count	46	255	301
		% within SEX	29.9%	45.4%	42.0%
	Combined	Count	2	32	34
		% within SEX	1.3%	5.7%	4.7%
	CSO	Count	19	73	92
		% within SEX	12.3%	13.0%	12.8%
	Probation	Count	30	38	68
		% within SEX	19.5%	6.8%	9.5%
	Fine	Count	13	57	70
		% within SEX	8.4%	10.1%	9.8%
	Other	Count	18	41	59
		% within SEX	11.7%	7.3%	8.2%
	No previous	Count	26	66	92
		% within SEX	16.9%	11.7%	12.8%
Total		Count	154	562	716
		% within SEX	100.0%	100.0%	100.0%

Chi-square = 38.13, df = 6, p = <.001



Table 6.1 Offenders' Calculated Risk of Custody, 1995 - 1997

Risk Levels 1995 - 1997

			RISK				Total
			LOW	MED-LOW	MED-HIGH	HIGH	
YEAR	1995	Count	766	1040	1059	387	3252
		% within RISK	28.2%	32.4%	33.8%	36.3%	32.1%
	1996	Count	843	1144	1047	342	3376
		% within RISK	31.1%	35.6%	33.4%	32.1%	33.3%
	1997	Count	1103	1029	1028	337	3497
		% within RISK	40.7%	32.0%	32.8%	31.6%	34.5%
Total		Count	2712	3213	3134	1066	10125
		% within RISK	100.0%	100.0%	100.0%	100.0%	100.0%



Table 6.2 Probation Officers' Community Sentence Proposals by Risk Level, 1995-97

Risk Level x Community Proposal x Year

Year				PROPOSAL				Total
				CS	Prob	Prob+Oth	Combined	
1995	RISK	LOW	Count	238	214	47	18	517
			% within RISK	46.0%	41.4%	9.1%	3.5%	100.0%
		MED-LOW	Count	388	219	107	62	776
			% within RISK	50.0%	28.2%	13.8%	8.0%	100.0%
		MED-HIGH	Count	314	231	187	100	832
			% within RISK	37.7%	27.8%	22.5%	12.0%	100.0%
		HIGH	Count	73	57	88	37	255
			% within RISK	28.6%	22.4%	34.5%	14.5%	100.0%
	Total		Count	1013	721	429	217	2380
			% within RISK	42.6%	30.3%	18.0%	9.1%	100.0%
1996	RISK	LOW	Count	304	241	49	17	611
			% within RISK	49.8%	39.4%	8.0%	2.8%	100.0%
		MED-LOW	Count	402	233	196	78	909
			% within RISK	44.2%	25.6%	21.6%	8.6%	100.0%
		MED-HIGH	Count	292	203	219	103	817
			% within RISK	35.7%	24.8%	26.8%	12.6%	100.0%
		HIGH	Count	43	44	87	41	215
			% within RISK	20.0%	20.5%	40.5%	19.1%	100.0%
	Total		Count	1041	721	551	239	2552
			% within RISK	40.8%	28.3%	21.6%	9.4%	100.0%
1997	RISK	LOW	Count	426	263	96	26	811
			% within RISK	52.5%	32.4%	11.8%	3.2%	100.0%
		MED-LOW	Count	320	191	174	81	766
			% within RISK	41.8%	24.9%	22.7%	10.6%	100.0%
		MED-HIGH	Count	277	188	238	88	791
			% within RISK	35.0%	23.8%	30.1%	11.1%	100.0%
		HIGH	Count	43	45	94	41	223
			% within RISK	19.3%	20.2%	42.2%	18.4%	100.0%
	Total		Count	1066	687	602	236	2591
			% within RISK	41.1%	26.5%	23.2%	9.1%	100.0%

1995: Chi-square = 170.03, df = 9, p = <.001

1996: Chi-square = 237.36, df = 9, p = <.001

1997: Chi-square = 228.99, df = 9, p = <.001



Table 6.3 Take-up Rates for Community Sentence Proposals According to Risk Level, 1995

Outcome x Proposal According to Risk Level, 1995

RISK				PROPOSAL				Total
				CS	Prob	Prob+Oth	Combined	
LOW	outcome	Not followed	Count % within PROP	47 19.7%	65 30.4%	15 31.9%	4 22.2%	131 25.3%
		Proposal followed	Count % within PROP	191 80.3%	149 69.6%	32 68.1%	14 77.8%	386 74.7%
	Total	Count % within PROP	238 100.0%	214 100.0%	47 100.0%	18 100.0%	517 100.0%	
MED LOW	outcome	Not followed	Count % within PROP	74 19.1%	95 43.4%	52 48.6%	16 25.8%	237 30.5%
		Proposal followed	Count % within PROP	314 80.9%	124 56.6%	55 51.4%	46 74.2%	539 69.5%
	Total	Count % within PROP	388 100.0%	219 100.0%	107 100.0%	62 100.0%	776 100.0%	
MED- HIGH	outcome	Not followed	Count % within PROP	73 23.2%	110 47.6%	101 54.0%	29 29.0%	313 37.6%
		Proposal followed	Count % within PROP	241 76.8%	121 52.4%	86 46.0%	71 71.0%	519 62.4%
	Total	Count % within PROP	314 100.0%	231 100.0%	187 100.0%	100 100.0%	832 100.0%	
HIGH	outcome	Not followed	Count % within PROP	32 43.8%	27 47.4%	49 55.7%	17 45.9%	125 49.0%
		Proposal followed	Count % within PROP	41 56.2%	30 52.6%	39 44.3%	20 54.1%	130 51.0%
	Total	Count % within PROP	73 100.0%	57 100.0%	88 100.0%	37 100.0%	255 100.0%	

Low Risk: (excluding Combination Orders) Chi-square = 7.85, df = 2, p = .02

Med-Low: Chi-square = 58.17, df = 3, p = <.001

Med-High: Chi-square = 62.05, df = 3, p = <.001

High: Chi-square = 2.55, df = 3, p = .466 (N.S.)



Table 6.4 Take-up Rates for Community Sentence Proposals According to Risk Level, 1996

Outcome x Proposal According to Risk Level, 1996

RISK				PROPOSAL				Total
				CS	Prob	Prob+Oth	Combined	
LOW	outcome	Not followed	Count	48	59	21	5	133
			% within PROP	15.8%	24.5%	42.9%	29.4%	21.8%
	Proposal followed	Count	256	182	28	12	478	
		% within PROP	84.2%	75.5%	57.1%	70.6%	78.2%	
Total		Count	304	241	49	17	611	
		% within PROP	100.0%	100.0%	100.0%	100.0%	100.0%	
MED-LOW	outcome	Not followed	Count	72	89	97	22	280
			% within PROP	17.9%	38.2%	49.5%	28.2%	30.8%
	Proposal followed	Count	330	144	99	56	629	
		% within PROP	82.1%	61.8%	50.5%	71.8%	69.2%	
Total		Count	402	233	196	78	909	
		% within PROP	100.0%	100.0%	100.0%	100.0%	100.0%	
MED-HIGH	outcome	Not followed	Count	57	66	102	36	261
			% within PROP	19.5%	32.5%	46.6%	35.0%	31.9%
	Proposal followed	Count	235	137	117	67	556	
		% within PROP	80.5%	67.5%	53.4%	65.0%	68.1%	
Total		Count	292	203	219	103	817	
		% within PROP	100.0%	100.0%	100.0%	100.0%	100.0%	
HIGH	outcome	Not followed	Count	18	23	47	16	104
			% within PROP	41.9%	52.3%	54.0%	39.0%	48.4%
	Proposal followed	Count	25	21	40	25	111	
		% within PROP	58.1%	47.7%	46.0%	61.0%	51.6%	
Total		Count	43	44	87	41	215	
		% within PROP	100.0%	100.0%	100.0%	100.0%	100.0%	

Low Risk: (excluding Combination Orders) Chi-square = 20.35, df = 2, p = <.001

Med-Low: Chi-square = 69.68, df = 3, p = <.001

Med-High: Chi-square = 42.75, df = 3, p = <.001

High: Chi-square = 3.55, df = 3, p = .32 (N.S.)



Table 6.5 Take-up Rates for Community Sentence Proposals According to Risk Level, 1997

Outcome x Proposal According to Risk Level, 1997

RISK				PROPOSAL				Total
				CS	Prob	Prob+Oth	Combined	
LOW	outcome	Not followed	Count	84	74	44	11	213
			% within PROP	19.7%	28.1%	45.8%	42.3%	26.3%
	Proposal followed	Count	342	189	52	15	598	
		% within PROP	80.3%	71.9%	54.2%	57.7%	73.7%	
Total		Count	426	263	96	26	811	
		% within PROP	100.0%	100.0%	100.0%	100.0%	100.0%	
MED-LOW	outcome	Not followed	Count	80	74	89	33	276
			% within PROP	25.0%	38.7%	51.1%	40.7%	36.0%
	Proposal followed	Count	240	117	85	48	490	
		% within PROP	75.0%	61.3%	48.9%	59.3%	64.0%	
Total		Count	320	191	174	81	766	
		% within PROP	100.0%	100.0%	100.0%	100.0%	100.0%	
MED-HIGH	outcome	Not followed	Count	75	77	115	22	289
			% within PROP	27.1%	41.0%	48.3%	25.0%	36.5%
	Proposal followed	Count	202	111	123	66	502	
		% within PROP	72.9%	59.0%	51.7%	75.0%	63.5%	
Total		Count	277	188	238	88	791	
		% within PROP	100.0%	100.0%	100.0%	100.0%	100.0%	
HIGH	outcome	Not followed	Count	19	21	44	20	104
			% within PROP	44.2%	46.7%	46.8%	48.8%	46.6%
	Proposal followed	Count	24	24	50	21	119	
		% within PROP	55.8%	53.3%	53.2%	51.2%	53.4%	
Total		Count	43	45	94	41	223	
		% within PROP	100.0%	100.0%	100.0%	100.0%	100.0%	

Low Risk: Chi-square = 32.34, df = 3, p = <.001  
 Med-Low: Chi-square = 35.54, df = 3, p = <.001  
 Med-High: Chi-square = 31.58, df = 3, p = <.001  
 High: Chi-square = .18, df = 3, p = .98 (N.S.)



Table 6.6(a) Court Disposals by Community Sentence Proposals for Offenders at Low, Medium-Low and Medium-High Risk of Custody, 1995

Disposal x Proposal x Risk Level, 1995

RISK				PROPOSAL				Total
				CS	Prob	Prob+Oth	Combined	
LOW	DISPOSAL	Custody	Count	10	2	1	4	17
			% within PROP	4.2%	.9%	2.1%	22.2%	3.3%
	CS	Count	191	5	1		197	
			% within PROP	80.3%	2.3%	2.1%		38.1%
	Prob	Count	5	149	6		160	
			% within PROP	2.1%	69.6%	12.8%		30.9%
	Prob+Oth	Count	1	4	32		37	
			% within PROP	.4%	1.9%	68.1%		7.2%
	Fine	Count	10	8			18	
			% within PROP	4.2%	3.7%			3.5%
	Dischrge	Count	9	13	2		24	
% within PROP			3.8%	6.1%	4.3%		4.6%	
Combined	Count	12	33	5	14	64		
		% within PROP	5.0%	15.4%	10.6%	77.8%	12.4%	
Total			Count	238	214	47	18	517
			% within PROP	100.0%	100.0%	100.0%	100.0%	100.0%
MED-LOW	DISPOSAL	Custody	Count	30	17	17	9	73
			% within PROP	7.7%	7.8%	15.9%	14.5%	9.4%
	CS	Count	314	6	4	5	329	
			% within PROP	80.9%	2.7%	3.7%	8.1%	42.4%
	Prob	Count	5	124	5	1	135	
			% within PROP	1.3%	56.6%	4.7%	1.6%	17.4%
	Prob+Oth	Count		7	55	1	63	
			% within PROP		3.2%	51.4%	1.6%	8.1%
	Fine	Count	14	5	1		20	
			% within PROP	3.6%	2.3%	.9%		2.6%
	Dischrge	Count	11	10	4		25	
% within PROP			2.8%	4.6%	3.7%		3.2%	
Combined	Count	14	50	21	46	131		
		% within PROP	3.6%	22.8%	19.6%	74.2%	16.9%	
Total			Count	388	219	107	62	776
			% within PROP	100.0%	100.0%	100.0%	100.0%	100.0%
MED-HIGH	DISPOSAL	Custody	Count	37	32	42	24	135
			% within PROP	11.8%	13.9%	22.5%	24.0%	16.2%
	CS	Count	241	8	6	2	257	
			% within PROP	76.8%	3.5%	3.2%	2.0%	30.9%
	Prob	Count	7	121	8		136	
			% within PROP	2.2%	52.4%	4.3%		16.3%
	Prob+Oth	Count	1	8	86	1	96	
			% within PROP	.3%	3.5%	46.0%	1.0%	11.5%
	Fine	Count	12	2	1		15	
			% within PROP	3.8%	.9%	.5%		1.8%
	Dischrge	Count	3	11	11	2	27	
% within PROP			1.0%	4.8%	5.9%	2.0%	3.2%	
Combined	Count	13	49	33	71	166		
		% within PROP	4.1%	21.2%	17.6%	71.0%	20.0%	
Total			Count	314	231	187	100	832
			% within PROP	100.0%	100.0%	100.0%	100.0%	100.0%



Table 6.6(b) Court Disposals by Community Sentence Proposals for Offenders at Low, Medium-Low and Medium-High Risk of Custody, 1996

Disposal x Proposal x Risk Level, 1996

RISK	DISPOSAL			PROPOSAL				Total
				CS	Prob	Prob+Oth	Combined	
LOW		Custody	Count	9	3	6	2	20
			% within PROP	3.0%	1.2%	12.2%	11.8%	3.3%
		CS	Count	256	6	2	2	266
			% within PROP	84.2%	2.5%	4.1%	11.8%	43.5%
		Prob	Count	5	182	4		191
			% within PROP	1.6%	75.5%	8.2%		31.3%
		Prob+Oth	Count	1	2	28		31
			% within PROP	.3%	.8%	57.1%		5.1%
		Fine	Count	12	1			13
			% within PROP	3.9%	.4%			2.1%
Dischrge	Count	11	6	1	1	19		
	% within PROP	3.6%	2.5%	2.0%	5.9%	3.1%		
Combined	Count	10	41	8	12	71		
	% within PROP	3.3%	17.0%	16.3%	70.6%	11.6%		
Total	Count	304	241	49	17	611		
	% within PROP	100.0%	100.0%	100.0%	100.0%	100.0%		
MED-LOW		Custody	Count	19	22	27	17	85
			% within PROP	4.7%	9.4%	13.8%	21.8%	9.4%
		CS	Count	330	10	1	2	343
			% within PROP	82.1%	4.3%	.5%	2.6%	37.7%
		Prob	Count	6	144	12		162
			% within PROP	1.5%	61.8%	6.1%		17.8%
		Prob+Oth	Count	1	3	99	1	104
			% within PROP	.2%	1.3%	50.5%	1.3%	11.4%
		Fine	Count	22	6	3	1	32
			% within PROP	5.5%	2.6%	1.5%	1.3%	3.5%
Dischrge	Count	13	8	5	1	27		
	% within PROP	3.2%	3.4%	2.6%	1.3%	3.0%		
Combined	Count	11	40	49	56	156		
	% within PROP	2.7%	17.2%	25.0%	71.8%	17.2%		
Total	Count	402	233	196	78	909		
	% within PROP	100.0%	100.0%	100.0%	100.0%	100.0%		
MED-HIGH		Custody	Count	29	19	47	26	121
			% within PROP	9.9%	9.4%	21.5%	25.2%	14.8%
		CS	Count	235	9	8	5	257
			% within PROP	80.5%	4.4%	3.7%	4.9%	31.5%
		Prob	Count	2	137	10	2	151
			% within PROP	.7%	67.5%	4.6%	1.9%	18.5%
		Prob+Oth	Count		2	117		119
			% within PROP		1.0%	53.4%		14.6%
		Fine	Count	5	4	1		10
			% within PROP	1.7%	2.0%	.5%		1.2%
Dischrge	Count	9	8	6	3	26		
	% within PROP	3.1%	3.9%	2.7%	2.9%	3.2%		
Combined	Count	12	24	30	67	133		
	% within PROP	4.1%	11.8%	13.7%	65.0%	16.3%		
Total	Count	292	203	219	103	817		
	% within PROP	100.0%	100.0%	100.0%	100.0%	100.0%		



Table 6.6(c) Court Disposals by Community Sentence Proposals for Offenders at Low, Medium-Low and Medium-High Risk of Custody, 1997

Disposal x Proposal x Risk Level, 1997

RISK	DISPOSAL			PROPOSAL				Total
				CS	Prob	Prob+Oth	Combined	
LOW	Custody	Count	25	12	10	9	56	
		% within PROP	5.9%	4.6%	10.4%	34.6%	6.9%	
	CS	Count	342	12	3	2	359	
		% within PROP	80.3%	4.6%	3.1%	7.7%	44.3%	
	Prob	Count	4	189	7		200	
		% within PROP	.9%	71.9%	7.3%		24.7%	
	Prob+Oth	Count		6	52		58	
		% within PROP		2.3%	54.2%		7.2%	
	Fine	Count	17	5	4		26	
		% within PROP	4.0%	1.9%	4.2%		3.2%	
Dischrge	Count	21	7	3		31		
	% within PROP	4.9%	2.7%	3.1%		3.8%		
Combined	Count	17	32	17	15	81		
	% within PROP	4.0%	12.2%	17.7%	57.7%	10.0%		
Total		Count	426	263	96	26	811	
		% within PROP	100.0%	100.0%	100.0%	100.0%	100.0%	
MED-LOW	Custody	Count	35	23	40	22	120	
		% within PROP	10.9%	12.0%	23.0%	27.2%	15.7%	
	CS	Count	240	11	4	4	259	
		% within PROP	75.0%	5.8%	2.3%	4.9%	33.8%	
	Prob	Count	4	117	5	4	130	
		% within PROP	1.3%	61.3%	2.9%	4.9%	17.0%	
	Prob+Oth	Count		2	85	1	88	
		% within PROP		1.0%	48.9%	1.2%	11.5%	
	Fine	Count	8				8	
		% within PROP	2.5%				1.0%	
Dischrge	Count	19	8	7	2	36		
	% within PROP	5.9%	4.2%	4.0%	2.5%	4.7%		
Combined	Count	14	30	33	48	125		
	% within PROP	4.4%	15.7%	19.0%	59.3%	16.3%		
Total		Count	320	191	174	81	766	
		% within PROP	100.0%	100.0%	100.0%	100.0%	100.0%	
MED-HIG H	Custody	Count	26	27	39	13	105	
		% within PROP	9.4%	14.4%	16.4%	14.8%	13.3%	
	CS	Count	202	10	8	4	224	
		% within PROP	72.9%	5.3%	3.4%	4.5%	28.3%	
	Prob	Count	5	111	6		122	
		% within PROP	1.8%	59.0%	2.5%		15.4%	
	Prob+Oth	Count	1	6	123	3	133	
		% within PROP	.4%	3.2%	51.7%	3.4%	16.8%	
	Fine	Count	22	2	4	1	29	
		% within PROP	7.9%	1.1%	1.7%	1.1%	3.7%	
Dischrge	Count	8	4	6	1	19		
	% within PROP	2.9%	2.1%	2.5%	1.1%	2.4%		
Combined	Count	13	28	52	66	159		
	% within PROP	4.7%	14.9%	21.8%	75.0%	20.1%		
Total		Count	277	188	238	88	791	
		% within PROP	100.0%	100.0%	100.0%	100.0%	100.0%	



Table 6.7 Risk Levels According to Gender of Offender, 1995-97

Table 6.7(a) 1995

**Sex x Risk Level, 1995**

			RISK				Total
			LOW	MED-LOW	MED-HIGH	HIGH	
SEX	F	Count	142	117	77	11	347
		% within SEX	40.9%	33.7%	22.2%	3.2%	100.0%
	M	Count	624	923	982	376	2905
		% within SEX	21.5%	31.8%	33.8%	12.9%	100.0%
Total		Count	766	1040	1059	387	3252
		% within SEX	23.6%	32.0%	32.6%	11.9%	100.0%

Table 6.7(b) 1996

**Sex x Risk Level, 1996**

			RISK				Total
			LOW	MED-LOW	MED-HIGH	HIGH	
SEX	F	Count	159	114	102	16	391
		% within SEX	40.7%	29.2%	26.1%	4.1%	100.0%
	M	Count	684	1030	945	326	2985
		% within SEX	22.9%	34.5%	31.7%	10.9%	100.0%
Total		Count	843	1144	1047	342	3376
		% within SEX	25.0%	33.9%	31.0%	10.1%	100.0%

Table 6.7(c) 1997

**Sex x Risk Level, 1997**

			RISK				Total
			LOW	MED-LOW	MED-HIGH	HIGH	
SEX	F	Count	194	131	89	17	431
		% within SEX	45.0%	30.4%	20.6%	3.9%	100.0%
	M	Count	909	898	939	320	3066
		% within SEX	29.6%	29.3%	30.6%	10.4%	100.0%
Total		Count	1103	1029	1028	337	3497
		% within SEX	31.5%	29.4%	29.4%	9.6%	100.0%

Results of Chi-square tests:

1995 Chi-square = 87.83, df = 3, p = <.001

1996 Chi-square = 65.92, df = 3, p = <.001

1997 Chi-square = 57.76, df = 3, p = <.001



Table 6.8 Proposals According to Gender for Low and Med-Low Risk Offenders, 1995-97

Table 6.8(a) Low Risk

Proposal x Sex, Low Risk, 1995-97

YEAR	PROP	CS		SEX		Total
				F	M	
1995	PROP	CS	Count	20	218	238
			% SEX	27.4%	57.5%	52.7%
	Prob	CS	Count	53	161	214
			% SEX	72.6%	42.5%	47.3%
	Total	CS	Count	73	379	452
			% SEX	100.0%	100.0%	100.0%
1996	PROP	CS	Count	40	264	304
			% SEX	40.4%	59.2%	55.8%
	Prob	CS	Count	59	182	241
			% SEX	59.6%	40.8%	44.2%
	Total	CS	Count	99	446	545
			% SEX	100.0%	100.0%	100.0%
1997	PROP	CS	Count	49	377	426
			% SEX	41.2%	66.1%	61.8%
	Prob	CS	Count	70	193	263
			% SEX	58.8%	33.9%	38.2%
	Total	CS	Count	119	570	689
			% SEX	100.0%	100.0%	100.0%

1995: Chi-square = 21.09, df = 1, p = <.001 1996: Chi-square = 10.85, df = 1, p = <.001  
1997: Chi-square = 24.95, df = 1, p = <.001

Table 6.8(b) Med-Low Risk

Proposal x Sex, Medium-Low Risk, 1995-97

YEAR	PROP	CS		SEX		Total
				F	M	
1995	PROP	CS	Count	28	360	388
			% SEX	43.8%	66.3%	63.9%
	Prob	CS	Count	36	183	219
			% SEX	56.3%	33.7%	36.1%
	Total	CS	Count	64	543	607
			% SEX	100.0%	100.0%	100.0%
1996	PROP	CS	Count	32	370	402
			% SEX	46.4%	65.4%	63.3%
	Prob	CS	Count	37	196	233
			% SEX	53.6%	34.6%	36.7%
	Total	CS	Count	69	566	635
			% SEX	100.0%	100.0%	100.0%
1997	PROP	CS	Count	28	292	320
			% SEX	45.9%	64.9%	62.6%
	Prob	CS	Count	33	158	191
			% SEX	54.1%	35.1%	37.4%
	Total	CS	Count	61	450	511
			% SEX	100.0%	100.0%	100.0%

1995: Chi-square = 11.66, df = 1, p = .001, 1996: Chi-square = 8.75, df = 1, p = .003,  
1997: Chi-square = 7.58, df = 1, p = .005



Table 6.9 Gender Differences in Outcomes for Community Service and Probation Proposals for Low and Medium-Low Risk Offenders 1997

Table 6.9(a) Low Risk

Sex x Outcome x Proposal, Low Risk, 1997

PROPOSAL				OUTCOME		Total
				NF	PF	
CS	SEX	F	Count	10	39	49
			% within SEX	20.4%	79.6%	100.0%
	M	Count	74	303	377	
		% within SEX	19.6%	80.4%	100.0%	
	Total	Count	84	342	426	
		% within SEX	19.7%	80.3%	100.0%	
Prob	SEX	F	Count	12	58	70
			% within SEX	17.1%	82.9%	100.0%
	M	Count	62	131	193	
		% within SEX	32.1%	67.9%	100.0%	
	Total	Count	74	189	263	
		% within SEX	28.1%	71.9%	100.0%	

Community Service: Not Significant ( $p = .85$ ). Probation: Chi-square = 4.99,  $df = 1$ ,  $p = .02$ .

Table 6.9(b) Medium-Low Risk

Sex x Outcome x Proposal, Medium-Low Risk, 1997

PROPOSAL				OUTCOME		Total
				NF	PF	
CS	SEX	F	Count	5	23	28
			% within SEX	17.9%	82.1%	100.0%
	M	Count	75	217	292	
		% within SEX	25.7%	74.3%	100.0%	
	Total	Count	80	240	320	
		% within SEX	25.0%	75.0%	100.0%	
Prob	SEX	F	Count	6	27	33
			% within SEX	18.2%	81.8%	100.0%
	M	Count	68	90	158	
		% within SEX	43.0%	57.0%	100.0%	
	Total	Count	74	117	191	
		% within SEX	38.7%	61.3%	100.0%	

Community Service: Not Significant ( $p = .49$ ). Probation: Chi-square = 6.10,  $df = 1$ ,  $p = .01$ .

Note: NF = Not Followed. PF = Proposal Followed.



Table 6.10 Outcomes for Community Service and Probation Proposals for Male and Female Offenders  
Low Risk, 1995-97

Table 6.10(a) 1995

Proposal x Outcome x Sex, Low Risk, 1995

SEX				OUTCOME		Total
				NF	PF	
F	PROPOSAL	CS	Count	6	14	20
			% within PROPOSAL	30.0%	70.0%	100.0%
	Prob	CS	Count	12	41	53
			% within PROPOSAL	22.6%	77.4%	100.0%
	Total	CS	Count	18	55	73
			% within PROPOSAL	24.7%	75.3%	100.0%
M	PROPOSAL	CS	Count	41	177	218
			% within PROPOSAL	18.8%	81.2%	100.0%
	Prob	CS	Count	53	108	161
			% within PROPOSAL	32.9%	67.1%	100.0%
	Total	CS	Count	94	285	379
			% within PROPOSAL	24.8%	75.2%	100.0%

Table 6.10(b) 1996

Proposal x Outcome x Sex, Low Risk, 1996

SEX				OUTCOME		Total
				NF	PF	
F	PROPOSAL	CS	Count	8	32	40
			% within PROPOSAL	20.0%	80.0%	100.0%
	Prob	CS	Count	9	50	59
			% within PROPOSAL	15.3%	84.7%	100.0%
	Total	CS	Count	17	82	99
			% within PROPOSAL	17.2%	82.8%	100.0%
M	PROPOSAL	CS	Count	40	224	264
			% within PROPOSAL	15.2%	84.8%	100.0%
	Prob	CS	Count	50	132	182
			% within PROPOSAL	27.5%	72.5%	100.0%
	Total	CS	Count	90	356	446
			% within PROPOSAL	20.2%	79.8%	100.0%

Table 6.10(c) 1997

Proposal x Outcome x Sex, Low Risk, 1997

SEX				OUTCOME		Total
				NF	PF	
F	PROPOSAL	CS	Count	10	39	49
			% within PROPOSAL	20.4%	79.6%	100.0%
	Prob	CS	Count	12	58	70
			% within PROPOSAL	17.1%	82.9%	100.0%
	Total	CS	Count	22	97	119
			% within PROPOSAL	18.5%	81.5%	100.0%
M	PROPOSAL	CS	Count	74	303	377
			% within PROPOSAL	19.6%	80.4%	100.0%
	Prob	CS	Count	62	131	193
			% within PROPOSAL	32.1%	67.9%	100.0%
	Total	CS	Count	136	434	570
			% within PROPOSAL	23.9%	76.1%	100.0%

1995: Females: Cell frequencies too low for analysis. Males: Chi-square = 9.15, df = 1, p = .003

1996: Females: Not Significant (p = .59). Males: Chi-square = 9.40, df = 1, p = .002

1997: Females: Not Significant (p = .81). Males: Chi-square = 10.29, df = 1, p = .001



Table 6.11 Outcomes for Community Service and Probation Proposals for Male and Female Offenders at Med-Low Risk 1995-97

Table 6.11(a) 1995

Proposal x Outcome x Sex, Medium-Low Risk, 1995

SEX				OUTCOME		Total
				NF	PF	
F	PROPOSAL	CS	Count	6	22	28
			% within PROPOSAL	21.4%	78.6%	100.0%
	Prob	CS	Count	15	21	36
			% within PROPOSAL	41.7%	58.3%	100.0%
	Total	CS	Count	21	43	64
			% within PROPOSAL	32.8%	67.2%	100.0%
M	PROPOSAL	CS	Count	68	292	360
			% within PROPOSAL	18.9%	81.1%	100.0%
	Prob	CS	Count	80	103	183
			% within PROPOSAL	43.7%	56.3%	100.0%
	Total	CS	Count	148	395	543
			% within PROPOSAL	27.3%	72.7%	100.0%

Table 6.11(b) 1996

Proposal x Outcome x Sex, Medium-Low Risk, 1996

SEX				OUTCOME		Total
				NF	PF	
F	PROPOSAL	CS	Count	3	29	32
			% within PROPOSAL	9.4%	90.6%	100.0%
	Prob	CS	Count	11	26	37
			% within PROPOSAL	29.7%	70.3%	100.0%
	Total	CS	Count	14	55	69
			% within PROPOSAL	20.3%	79.7%	100.0%
M	PROPOSAL	CS	Count	69	301	370
			% within PROPOSAL	18.6%	81.4%	100.0%
	Prob	CS	Count	78	118	196
			% within PROPOSAL	39.8%	60.2%	100.0%
	Total	CS	Count	147	419	566
			% within PROPOSAL	26.0%	74.0%	100.0%

Table 6.11(c)1997

Proposal x Outcome x Sex, Medium-Low Risk, 1997

SEX				OUTCOME		Total
				NF	PF	
F	PROPOSAL	CS	Count	5	23	28
			% within PROPOSAL	17.9%	82.1%	100.0%
	Prob	CS	Count	6	27	33
			% within PROPOSAL	18.2%	81.8%	100.0%
	Total	CS	Count	11	50	61
			% within PROPOSAL	18.0%	82.0%	100.0%
M	PROPOSAL	CS	Count	75	217	292
			% within PROPOSAL	25.7%	74.3%	100.0%
	Prob	CS	Count	68	90	158
			% within PROPOSAL	43.0%	57.0%	100.0%
	Total	CS	Count	143	307	450
			% within PROPOSAL	31.8%	68.2%	100.0%

1995: Females: Not Significant (p = .11). Males: Chi-square = 36.48, df = 1, p = <.001.

1996: Females: Chi-square = 3.23, df = 1, p = .042. Males: Chi-square = 28.71, df = 1, p = <.001.

1997: Females: Not Significant (p = 1.0). Males: Chi-square = 13.45, df = 1, p = <.001.



Table 7.1 Community Sentence Proposals by Employment Status, 1993-97

Community Sentence Proposals x Employment Status, 1993-97

Year	PROPOSAL	CS		WORK		Total
				Employed	Unemployed 1 yr +	
1993		CS	Count	194	379	573
			% within WORK	55.0%	41.7%	45.4%
			Prob	67	284	351
			% within WORK	19.0%	31.3%	27.8%
			PO+	72	203	275
1994		CS	Count	244	382	626
			% within WORK	55.0%	36.0%	41.6%
			Prob	114	405	519
			% within WORK	25.7%	38.2%	34.5%
			PO+	67	220	287
1995		CS	Count	282	373	655
			% within WORK	55.8%	36.0%	42.5%
			Prob	109	345	454
			% within WORK	21.6%	33.3%	29.4%
			PO+	65	232	297
1996		CS	Count	267	341	608
			% within WORK	53.7%	32.9%	39.7%
			Prob	89	337	426
			% within WORK	17.9%	32.5%	27.8%
			PO+	89	265	354
1997		CS	Count	338	317	655
			% within WORK	52.8%	32.0%	40.2%
			Prob	106	336	442
			% within WORK	16.6%	33.9%	27.1%
			PO+	120	255	375
1993	Total		Count	353	908	1261
			% within WORK	100.0%	100.0%	100.0%
			Count	444	1061	1505
			% within WORK	100.0%	100.0%	100.0%
			Count	505	1037	1542
1994	Total		% within WORK	100.0%	100.0%	100.0%
			Count	497	1036	1533
			% within WORK	100.0%	100.0%	100.0%
			Count	640	991	1631
			% within WORK	100.0%	100.0%	100.0%

1993 Chi-square = 24.59, df = 3, p = <.001  
 1994 Chi-square = 46.85, df = 3, p = <.001  
 1995 Chi-square = 63.90, df = 3, p = <.001  
 1996 Chi-square = 71.85, df = 3, p = <.001  
 1997 Chi-square = 98.28, df = 3, p = <.001



Table 7.2 Community Sentence Disposals by Employment Status, 1993-97

Community Sentence Disposals x Employment Status, 1993-97

Year	DISPOSAL	CS		WORK		Total	
				Employed	Unemployed 1 yr +		
1993		CS	Count	177	345	522	
			% within WORK	56.9%	42.5%	46.5%	
			Prob	Count	50	221	271
			% within WORK	16.1%	27.2%	24.1%	
			PO+	Count	45	142	187
1994		CS	% within WORK	14.5%	17.5%	16.7%	
			Comb Ord	Count	39	104	143
			% within WORK	12.5%	12.8%	12.7%	
			Total	Count	311	812	1123
			% within WORK	100.0%	100.0%	100.0%	
1995		CS	Count	236	357	593	
			% within WORK	59.3%	38.0%	44.3%	
			Prob	Count	83	316	399
			% within WORK	20.9%	33.6%	29.8%	
			PO+	Count	31	124	155
1996		CS	% within WORK	7.8%	13.2%	11.6%	
			Comb Ord	Count	48	143	191
			% within WORK	12.1%	15.2%	14.3%	
			Total	Count	398	940	1338
			% within WORK	100.0%	100.0%	100.0%	
1997		CS	Count	266	344	610	
			% within WORK	59.4%	37.1%	44.3%	
			Prob	Count	68	264	332
			% within WORK	15.2%	28.4%	24.1%	
			PO+	Count	38	140	178
1997		CS	% within WORK	8.5%	15.1%	12.9%	
			Comb Ord	Count	76	180	256
			% within WORK	17.0%	19.4%	18.6%	
			Total	Count	448	928	1376
			% within WORK	100.0%	100.0%	100.0%	
1997		CS	Count	253	312	565	
			% within WORK	56.3%	34.2%	41.5%	
			Prob	Count	72	279	351
			% within WORK	16.0%	30.6%	25.8%	
			PO+	Count	47	156	203
1997		CS	% within WORK	10.5%	17.1%	14.9%	
			Comb Ord	Count	77	165	242
			% within WORK	17.1%	18.1%	17.8%	
			Total	Count	449	912	1361
			% within WORK	100.0%	100.0%	100.0%	
1997		CS	Count	312	274	586	
			% within WORK	56.3%	32.0%	41.6%	
			Prob	Count	71	277	348
			% within WORK	12.8%	32.4%	24.7%	
			PO+	Count	59	164	223
1997		CS	% within WORK	10.6%	19.2%	15.8%	
			Comb Ord	Count	112	140	252
			% within WORK	20.2%	16.4%	17.9%	
			Total	Count	554	855	1409
			% within WORK	100.0%	100.0%	100.0%	

1993 Chi-square = 22.87, df = 3, p = <.001

1994 Chi-square = 52.94, df = 3, p = <.001

1995 Chi-square = 67.11, df = 3, p = <.001

1996 Chi-square = 69.27, df = 3, p = <.001

1997 Chi-square = 118.04, df = 3, p = <.001



Table 7.3 Community Sentence Proposals According to Housing Problems, 1995-97

Table 7.3(a) 1995

Housing Problems x Proposal, 1995

			Housing Problems				Total
			None	Slight	Moderate	Severe	
PROPOSAL	CS	Count	489	389	96	39	1013
		% within Column	49.0%	44.4%	31.6%	19.2%	42.6%
	Prob	Count	279	231	122	89	721
		% within Column	28.0%	26.4%	40.1%	43.8%	30.3%
	Prob+Oth	Count	143	172	58	56	429
		% within Column	14.3%	19.6%	19.1%	27.6%	18.0%
	Combined	Count	86	84	28	19	217
		% within Column	8.6%	9.6%	9.2%	9.4%	9.1%
Total	Count	997	876	304	203	2380	
	% within Column	100.0%	100.0%	100.0%	100.0%	100.0%	

Table 7.3(b) 1996

Housing Problems x Proposal, 1996

			Housing Problems				Total
			none	Slight	Moderate	High	
PROPOSAL	CS	Count	485	425	94	37	1041
		% within column	46.1%	42.1%	30.2%	20.6%	40.8%
	Prob	Count	280	259	109	73	721
		% within column	26.6%	25.7%	35.0%	40.6%	28.3%
	Prob+Oth	Count	198	226	78	49	551
		% within column	18.8%	22.4%	25.1%	27.2%	21.6%
	Combined	Count	89	99	30	21	239
		% within column	8.5%	9.8%	9.6%	11.7%	9.4%
Total	Count	1052	1009	311	180	2552	
	% within column	100.0%	100.0%	100.0%	100.0%	100.0%	

Table 7.3(c) 1997

Housing Problems x Proposal, 1997

			Housing Problems				Total
			None	Slight	Moderate	Severe	
PROPOSAL	CS	Count	532	400	94	40	1066
		% within Column	49.4%	38.6%	30.2%	24.1%	41.1%
	Prob	Count	230	287	97	73	687
		% within Column	21.3%	27.7%	31.2%	44.0%	26.5%
	Prob+Oth	Count	223	245	91	43	602
		% within Column	20.7%	23.6%	29.3%	25.9%	23.2%
	Combined	Count	93	104	29	10	236
		% within Column	8.6%	10.0%	9.3%	6.0%	9.1%
Total	Count	1078	1036	311	166	2591	
	% within Column	100.0%	100.0%	100.0%	100.0%	100.0%	



Table 7.4 Community Sentence Proposals According to Drink Problems, 1995-97

Table 7.4(a) 1995

Drink Problems x Proposal, 1995

			Drink Problems				Total
			None	Slight	Moderate	Severe	
PROPOSAL	CS	Count	715	70	125	103	1013
		% within Column	47.9%	54.7%	41.7%	22.4%	42.6%
	Prob	Count	444	31	88	158	721
		% within Column	29.8%	24.2%	29.3%	34.3%	30.3%
	Prob+Oth	Count	213	17	55	144	429
		% within Column	14.3%	13.3%	18.3%	31.3%	18.0%
	Combined	Count	120	10	32	55	217
		% within Column	8.0%	7.8%	10.7%	12.0%	9.1%
Total	Count	1492	128	300	460	2380	
	% within Column	100.0%	100.0%	100.0%	100.0%	100.0%	

Table 7.4(b) 1996

Drink Problems x Proposal, 1996

			Drink Problems				Total
			none	Slight	Moderate	High	
PROPOSAL	CS	Count	743	76	106	116	1041
		% within Column	47.4%	52.8%	34.8%	21.6%	40.8%
	Prob	Count	425	37	89	170	721
		% within Column	27.1%	25.7%	29.2%	31.7%	28.3%
	Prob+Oth	Count	263	20	79	189	551
		% within Column	16.8%	13.9%	25.9%	35.3%	21.6%
	Combined	Count	136	11	31	61	239
		% within Column	8.7%	7.6%	10.2%	11.4%	9.4%
Total	Count	1567	144	305	536	2552	
	% within Column	100.0%	100.0%	100.0%	100.0%	100.0%	

Table 7.4(c) 1997

Drink Problems x Proposal, 1997

			Drink Problems				Total
			None	Slight	Moderate	Severe	
PROPOSAL	CS	Count	735	80	118	133	1066
		% within Column	47.7%	55.6%	34.3%	23.7%	41.1%
	Prob	Count	409	27	90	161	687
		% within Column	26.5%	18.8%	26.2%	28.7%	26.5%
	Prob+Oth	Count	283	22	104	193	602
		% within Column	18.4%	15.3%	30.2%	34.4%	23.2%
	Combined	Count	115	15	32	74	236
		% within Column	7.5%	10.4%	9.3%	13.2%	9.1%
Total	Count	1542	144	344	561	2591	
	% within Column	100.0%	100.0%	100.0%	100.0%	100.0%	



Table 7.5 Community Sentence Proposals According to Drug Problems, 1995-97

Table 7.5(a) 1995

**Drug Problems x Proposal, 1995**

			Drug Problems				Total
			None	Slight	Moderate	Severe	
PROPOSAL	CS	Count	880	41	40	52	1013
		% within Column	47.1%	45.6%	28.6%	18.5%	42.6%
	Prob	Count	523	26	58	114	721
		% within Column	28.0%	28.9%	41.4%	40.6%	30.3%
	Prob+Oth	Count	296	17	29	87	429
		% within Column	15.8%	18.9%	20.7%	31.0%	18.0%
	Combined	Count	170	6	13	28	217
		% within Column	9.1%	6.7%	9.3%	10.0%	9.1%
Total		Count	1869	90	140	281	2380
		% within Column	100.0%	100.0%	100.0%	100.0%	100.0%

Table 7.5(b) 1996

**Drug Problems x Proposal, 1996**

			Drug Problems				Total
			none	Slight	Moderate	High	
PROPOSAL	CS	Count	889	27	53	72	1041
		% within Column	44.5%	33.8%	31.4%	23.5%	40.8%
	Prob	Count	514	25	51	131	721
		% within Column	25.7%	31.3%	30.2%	42.8%	28.3%
	Prob+Oth	Count	412	17	46	76	551
		% within Column	20.6%	21.3%	27.2%	24.8%	21.6%
	Combined	Count	182	11	19	27	239
		% within Column	9.1%	13.8%	11.2%	8.8%	9.4%
Total		Count	1997	80	169	306	2552
		% within Column	100.0%	100.0%	100.0%	100.0%	100.0%

Table 7.5(c)1997

**Drug Problems x Proposal, 1997**

			Drug Problems				Total
			None	Slight	Moderate	Severe	
PROPOSAL	CS	Count	899	45	51	71	1066
		% within Column	45.8%	46.4%	28.2%	20.4%	41.1%
	Prob	Count	454	21	63	149	687
		% within Column	23.1%	21.6%	34.8%	42.8%	26.5%
	Prob+Oth	Count	423	24	48	107	602
		% within Column	21.5%	24.7%	26.5%	30.7%	23.2%
	Combined	Count	189	7	19	21	236
		% within Column	9.6%	7.2%	10.5%	6.0%	9.1%
Total		Count	1965	97	181	348	2591
		% within Column	100.0%	100.0%	100.0%	100.0%	100.0%



Table 7.6 Community Sentence Proposals According to Employment Problems, 1995-97

Table 7.6(a) 1995

**Employment Problems x Proposal, 1995**

			Employment Problems				Total
			None	Slight	Moderate	Severe	
PROPOSAL	CS	Count	277	254	266	216	1013
		% within Column	53.9%	45.4%	38.8%	34.8%	42.6%
	Prob	Count	151	159	215	196	721
		% within Column	29.4%	28.4%	31.3%	31.6%	30.3%
Prob+Oth	Count	51	94	147	137	429	
	% within Column	9.9%	16.8%	21.4%	22.1%	18.0%	
Combined	Count	35	53	58	71	217	
	% within Column	6.8%	9.5%	8.5%	11.5%	9.1%	
Total	Count	514	560	686	620	2380	
	% within Column	100.0%	100.0%	100.0%	100.0%	100.0%	

Table 7.6(b) 1996

**Employment Problems x Proposal, 1996**

			Employment Problems				Total
			none	Slight	Moderate	High	
PROPOSAL	CS	Count	290	267	251	233	1041
		% within Column	47.2%	41.8%	34.1%	41.2%	40.8%
	Prob	Count	167	181	230	143	721
		% within Column	27.2%	28.4%	31.3%	25.3%	28.3%
Prob+Oth	Count	98	133	182	138	551	
	% within Column	16.0%	20.8%	24.8%	24.4%	21.6%	
Combined	Count	59	57	72	51	239	
	% within Column	9.6%	8.9%	9.8%	9.0%	9.4%	
Total	Count	614	638	735	565	2552	
	% within Column	100.0%	100.0%	100.0%	100.0%	100.0%	

Table 7.6(c) 1997

**Employment Problems x Proposal, 1997**

			Employment Problems				Total
			None	Slight	Moderate	Severe	
PROPOSAL	CS	Count	328	322	235	181	1066
		% within Column	50.7%	43.5%	34.4%	34.9%	41.1%
	Prob	Count	142	187	194	164	687
		% within Column	21.9%	25.2%	28.4%	31.6%	26.5%
Prob+Oth	Count	119	164	191	128	602	
	% within Column	18.4%	22.1%	27.9%	24.7%	23.2%	
Combined	Count	58	68	64	46	236	
	% within Column	9.0%	9.2%	9.4%	8.9%	9.1%	
Total	Count	647	741	684	519	2591	
	% within Column	100.0%	100.0%	100.0%	100.0%	100.0%	



Table 7.7 Community Sentence Proposals According to Family Problems, 1995-97

Table 7.7(a) 1995

**Family Problems x Proposal, 1995**

			Family Problems				Total
			None	Slight	Moderate	Severe	
PROPOSAL	CS	Count	823	36	87	67	1013
		% within Column	46.6%	38.3%	29.9%	29.3%	42.6%
	Prob	Count	478	36	114	93	721
		% within Column	27.1%	38.3%	39.2%	40.6%	30.3%
	Prob+Oth	Count	292	16	65	56	429
		% within Column	16.5%	17.0%	22.3%	24.5%	18.0%
	Combined	Count	173	6	25	13	217
		% within Column	9.8%	6.4%	8.6%	5.7%	9.1%
Total	Count	1766	94	291	229	2380	
	% within Column	100.0%	100.0%	100.0%	100.0%	100.0%	

Table 7.7(b) 1996

**Family Problems x Proposal, 1996**

			Family Problems				Total
			none	Slight	Moderate	High	
PROPOSAL	CS	Count	838	42	103	58	1041
		% within Column	45.3%	33.1%	31.5%	23.3%	40.8%
	Prob	Count	465	45	104	107	721
		% within Column	25.1%	35.4%	31.8%	43.0%	28.3%
	Prob+Oth	Count	368	27	92	64	551
		% within Column	19.9%	21.3%	28.1%	25.7%	21.6%
	Combined	Count	178	13	28	20	239
		% within Column	9.6%	10.2%	8.6%	8.0%	9.4%
Total	Count	1849	127	327	249	2552	
	% within Column	100.0%	100.0%	100.0%	100.0%	100.0%	

Table 7.7(c) 1997

**Family Problems x Proposal, 1997**

			Family Problems				Total
			None	Slight	Moderate	Severe	
PROPOSAL	CS	Count	884	36	85	61	1066
		% within Column	46.3%	30.3%	28.4%	23.1%	41.1%
	Prob	Count	451	38	95	103	687
		% within Column	23.6%	31.9%	31.8%	39.0%	26.5%
	Prob+Oth	Count	416	34	89	63	602
		% within Column	21.8%	28.6%	29.8%	23.9%	23.2%
	Combined	Count	158	11	30	37	236
		% within Column	8.3%	9.2%	10.0%	14.0%	9.1%
Total	Count	1909	119	299	264	2591	
	% within Column	100.0%	100.0%	100.0%	100.0%	100.0%	



Table 8.1 Report Proposals by Court Disposals for the Offence of Theft Under £500

Proposals x Disposals, Team Reports on Theft Under £500, Magistrates Courts, 1996

			Proposal						Total	
			None	CS	Prob	Prob+Oth	Fine	Dischrge		Combined
Disposal	Custody	Count	1	1	1			1	1	5
		% within REC	16.7%	4.2%	4.2%			5.6%	100.0%	6.3%
	CS	Count		18				1		19
		% within REC		75.0%				5.6%		23.8%
	Prob	Count			20		1	1		22
		% within REC			83.3%		33.3%	5.6%		27.5%
	Prob+Oth	Count	1	1		3				5
		% within REC	16.7%	4.2%		75.0%				6.3%
Fine	Count	1				2	2		5	
	% within REC	16.7%				66.7%	11.1%		6.3%	
Dischrge	Count	3	1				11		15	
	% within REC	50.0%	4.2%				61.1%		18.8%	
Combined	Count		3	3	1		2		9	
	% within REC		12.5%	12.5%	25.0%		11.1%		11.3%	
Total	Count	6	24	24	4	3	18	1	80	
	% within REC	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	

Table 8.2 Report Proposals by Court Disposals According to Gender for Low Risk Theft Offenders

Low Risk Male & Female Proposals x Disposals, Team Reports on Theft Under £500, Magistrates Courts 1996

SEX				PROPOSAL					Total
				None	CS	Prob	Fine	Dischrge	
F	DIS	Custody	Count		1				1
			% within PROP		25.0%				4.8%
		CS	Count		1			1	2
			% within PROP		25.0%			16.7%	9.5%
		Prob	Count			11		1	12
			% within PROP			100.0%		16.7%	57.1%
	Prob+Oth	Count		1				1	
% within PROP			25.0%				4.8%		
Dischrge	Count		1			4	5		
	% within PROP		25.0%			66.7%	23.8%		
Total		Count		4	11		6	21	
		% within PROP		100.0%	100.0%		100.0%	100.0%	
M	DIS	CS	Count		10			10	
			% within PROP		76.9%			27.8%	
		Prob	Count			9			9
			% within PROP			90.0%			25.0%
		Fine	Count	1			2	2	5
			% within PROP	100.0%			100.0%	20.0%	13.9%
	Dischrge	Count					6	6	
% within PROP						60.0%	16.7%		
Combined	Count		3	1		2	6		
	% within PROP		23.1%	10.0%		20.0%	16.7%		
Total		Count	1	13	10	2	10	36	
		% within PROP	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	



Table 9.1 Report Proposals by Court Disposals for the Offence of Driving Whilst Disqualified

**Proposals x Disposals for Team Reports on Driving Whilst Disqualified, Magistrates Courts 1996**

		Proposal							Total		
		None	Custody	CS	Prob	Prob+Oth	Fine	Dischrge		Combined	
Disposa	Custody	Count	3	2	2	1	4		2	5	19
		% within P	50.0%	100.0%	9.1%	16.7%	18.2%		33.3%	55.6%	25.3%
CS	Count			19		1	1	1	1	1	23
		% within P			86.4%		4.5%	50.0%	16.7%	11.1%	30.7%
Prob	Count				4			1			5
		% within P				66.7%		16.7%			6.7%
Prob+Otl	Count					8					8
		% within P					36.4%				10.7%
Fine	Count			1			1	1			3
		% within P			4.5%		50.0%	16.7%			4.0%
Dischrge	Count	3				1		1	1	1	6
		% within P	50.0%				4.5%	16.7%	11.1%	11.1%	8.0%
Combine	Count				1	8				2	11
		% within P				16.7%	36.4%			22.2%	14.7%
Total	Count	6	2	22	6	22	2	6	9	9	75
		% within P	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Table 9.2 Report Proposals by Risk Level for Disqualified Driving Offenders

**Proposals x Risk, Team Reports on Driving Whilst Disqualified, Magistrates Courts 1996**

			RISK			Total
			MED-LOW	MED-HIGH	HIGH	
Proposal	None	Count		3	3	6
		% within Prop		50.0%	50.0%	100.0%
	Custody	Count			2	2
		% within Prop			100.0%	100.0%
	CS	Count	12	7	3	22
		% within Prop	54.5%	31.8%	13.6%	100.0%
	Prob	Count	1	4	1	6
		% within Prop	16.7%	66.7%	16.7%	100.0%
	Prob+Oth	Count	8	11	3	22
		% within Prop	36.4%	50.0%	13.6%	100.0%
	Fine	Count	2			2
		% within Prop	100.0%			100.0%
	Dischrge	Count	3	2	1	6
		% within Prop	50.0%	33.3%	16.7%	100.0%
	Combined	Count	2	3	4	9
		% within Prop	22.2%	33.3%	44.4%	100.0%
Total		Count	28	30	17	75
		% within Prop	37.3%	40.0%	22.7%	100.0%



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