

# **“Tough” Laws: Policymaker Perceptions and Commitment**

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Surveys were administered to assess policymaker perceptions on the effectiveness and consequences of, and their commitment to “tough” criminal legislation in California. In relation to this, policymaker reaction to California’s 1982 DUI laws was assessed. Results suggest that the populations surveyed recognized that problems were created by “tough” laws, specifically jail crowding. Differences existed, however, between the various populations on the perceptions of the effectiveness of such law changes and their commitment to them. Policy implications drawn from this research are discussed.

Research on the impact of legal reform has proliferated in recent years. Whereas in the early nineteen-seventies these “implementation” studies were viewed as political threats,<sup>1</sup> they are now routinely carried out on a variety of legal issues.<sup>2</sup> Examples of such studies range in topic from the effects of the British “breathalyser” crackdown of 1967<sup>3</sup> to the impact of air pollution control laws.<sup>4</sup> Typically, three types of impact are assessed when this type of research is conducted. The first is measured in terms of the lawmaker’s stated purposes for the policy; the second, in terms of those purposes which are unstated yet, nonetheless, intended<sup>5</sup> and the third, as unforeseen consequences of the law’s implementation. Both “stated” and

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“unstated” purposes are obviously intended to have a positive impact on a given problem while those unforeseen are obviously not intended nor will their impacts necessarily be positive. California’s 1976 determinate sentencing law serves as an adequate example of the described effects. The stated purpose for this legislative act was to standardize sentencing within the state. For many of its proponents, however, an unstated, yet important, purpose of this law was the promotion “stiff” judicial sentencing. Judges, it was believed, would often feel that an indeterminate prison sentence was too punitive for many offences that could be sanctioned by jail time. This being the case, they would opt for the lesser sentence (i.e. to jail rather than to prison.) Using a determinate sentencing model allowed judges to begin sentencing to prison. An unforeseen consequence of this legislation was an increase in California’s prison population, further pressuring an already overloaded system.<sup>6</sup>

Micheal Rubinstein and Teresa White demonstrate the risk of unforeseen consequences in their analysis of Alaska’s ban on plea bargaining.<sup>7</sup> In 1975, the Attorney General of Alaska “issued written instructions forbidding all district attorneys and their assistants from engaging in plea bargaining.”<sup>8</sup> The prohibition included all crimes and eliminated negotiated sentence and charge reductions. The implementation of this policy resulted in drastic changes in judicial procedure which in turn effected the rest of the system, most specifically corrections. Two major effects were manifest in the courts: 1) judges became primarily responsible for sentencing and; 2) there was an increase in trials. The effects on corrections which resulted from the changes in court procedure were also twofold. First, there was an increase in “tough” sentencing. The “get tough” social movement was, at the time, just gaining momentum and clear social pressure to incarcerate was being directed at those responsible for punishment. With the judges sentencing, there was a 6% increase in prison terms dealt out for felony cases and a subsequent rise in prison populations.<sup>9</sup> Secondly, there was a drastic decrease in the time spent in pre-trial detention. Because no time was spent in the plea bargaining process, and because of the fear of court backlog with the increase in trials, the whole judicial process speeded up. In one of the jurisdictions measured, this time period dropped nearly 50%, from 192.1 days for felonies in the year prior to the policy change to 89.5 days in the year after.<sup>10</sup> Prisoner flow through the jails became, as a result, much more efficient.

Both the increase in prison sentence severity and the decrease in pre-trial jail time were unforeseen and unintended system impacts. In this case, Alaska’s corrections department was able to successfully adapt to these unexpected impositions. In fact, the overall effect of Alaska’s ban on plea bargaining was to “increase the productivity of the criminal justice system.”<sup>11</sup>

It is, however, possible that such change could have had an adverse effect on system functioning. If one does not account for the whole system when effecting change, regardless of the “clear and urgent need” to effect that change, it could lead to “disaster”<sup>12</sup> and threaten the continuance of the system in question. For example, a major negative impact on corrections occurred because of a change in the Connecticut speeding law.<sup>13</sup> Under these new laws, those convicted of speeding would lose their license for a minimum of 30 days. Connecticut law also provides

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