

County's prison-sentencing rate among lowest

BY LANE WALLACE
STAFF WRITER

Santa Cruz County has one of the lowest rates in California for sending criminals to state prison at least the first time around.

State Department of Justice statistics show prison sentences were imposed in 15 percent of Santa Cruz County Superior Court felony cases last year, placing the county 14th out of 58 counties and well below the 34 percent state average.

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age.
In the state, 12.4 percent of people arrested on felony charges went to prison last year; Santa Cruz sent 4.2 percent, 53rd in the state.

The figures on prison commitments for arrestees and Superior Court cases differ because felonies are occasionally dismissed and often reduced to misdemeanors before they get to Superior Court.

But the state statistics don't

count prison sentences for probation violations in any of the counties. Defense attorneys say that's a crucial omission, because Santa Cruz County Superior Court judges tend to give county jail sentences and probation instead of prison more often than judges in other counties.

If you ask defense attorneys about the judges' policies, they'll say giving jail time and probation, often with drug treatment re-

quired, is more humane and costs taxpayers less than sending people to prison.

If you ask District Attorney Art Danner and some of his top attorneys, they'll say judges give probation too often.

"It sends the absolute wrong message," Danner said, giving the impression that a criminal can get off easier in Santa Cruz than another county, and it puts a potential criminal back on the streets.

Defense attorney Jon Minsloff said he believes Santa Cruz County sentencing policies are "in the long run, harder."

"(Judges) are forcing people into treatment" by holding the prison sentence over their heads, he said. If they violate probation, defendants can be sent to prison.

How often a probation violator is sent to prison is a matter of debate. Prosecutors complain that

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judges sometimes give a defendant a third chance. Defense attorneys don't see it that way, and point out that judges often send defendants to prison for violations that aren't crimes, such as leaving a drug program.

The judges' stance, Danner said, "is a real factor in the system," and influences what sentences prosecutors push for and what probation officers recommend in the pre-sentencing reports they prepare on nearly every felony defendant.

Bob Hulse, division director for the Probation Department, said probation officers must follow strict guidelines in making their recommendations; he doesn't think judges' tendencies influence them.

"I think we send a lot of people to prison in this county," Hulse said.

Assistant District Attorney Gary Brayton, who handles most of the sentencings in Superior Court, said judges have "settlement fever" and too often push for a plea bargain. Although judges don't have the authority to force plea bargains, they can influence them by indicating what sentence they will give, Danner said.

Jon Hopkins, chief deputy district attorney, said judges are too willing to "discount" sentences — giving less jail or prison time for a guilty plea than a defendant would get if found guilty in a trial.

John Marlo, Superior Court presiding judge, disagrees. He said judges often try to avoid trials by urging plea bargains, "but never at the expense of victims." "I'm not giving away the store," he said.

There are five Superior Court judges, but the one who handles the day-to-day criminal calendar handles 90 percent or more of the criminal cases. Sam Stevens took over that duty in July from Bill Kelsay, who handled the calendar for 2½ years.

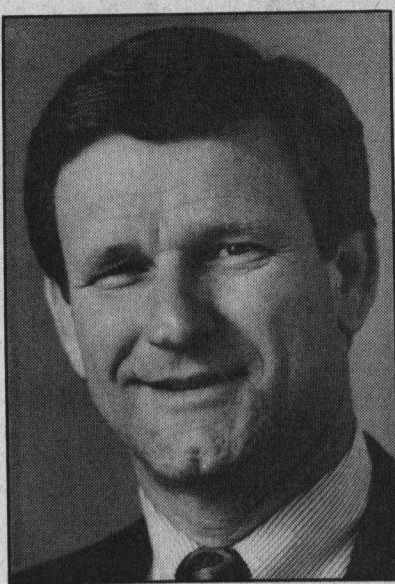
In a brief interview, Kelsay called the state figures meaningless and pointed out that they don't include numbers on prison sentences from probation violations.

In court, Kelsay, a vocal supporter of drug-treatment programs, has often stated his willingness to give defendants a second chance by granting probation. But Kelsay is inclined to give prison sentences when violence is involved, and there have been times when he has imposed prison when a probation officer had recommended probation.

Brayton said Stevens is slightly less inclined to give probation and drug programs than Kelsay. Both judges, Brayton said, "have the view that on petty property offenders, they've got nothing to lose" by imposing probation.

Stevens declined to comment for this article.

Santa Cruz has one of the highest rates in the state for revoking probation — 71 percent of the cases closed in 1990 were probation revocations, and the others successfully completed their time.



District Attorney Art Danner says Santa Cruz County judges give probation too often.

Prison bound

Percentage of Superior Court felony dispositions resulting in prison sentences in 1991. Does not count sentences on probation violations.

Selected counties

| | |
|---------------|----|
| Kings* | 50 |
| Kern | 49 |
| Los Angeles | 38 |
| San Benito | 36 |
| Mariposa** | 13 |
| Monterey | 31 |
| San Francisco | 30 |
| Santa Clara | 19 |
| Santa Cruz | 15 |
| State average | 34 |

*Highest in state.

**Lowest, not counting tiny Alpine and Sierra counties, which had no prison sentences.

Source: California Dept. of Justice

The state average is 45 percent revocation.

Defense attorneys say the high revocation rate indicates judges are tough on probation violations, while prosecutors say it's an indicator too many people are put on probation.

Hulse of the Probation Department said the long probation terms given in Santa Cruz County are a key reason for the high revocation rate.

Kelsay often gave five-year probation sentences, but Stevens tends toward three-year probation. District Attorney Danner said it's too early to tell what effect Stevens' shorter probations will have.

The disagreements over local sentencing practices come at a time when the state prison system "is sending the word out that too many people are being sent to prison," said Ben Rice, president of the county Criminal Defense Attorney's Association.

"Judge Kelsay was ahead of his time," Rice said.

People in law enforcement, Rice said, have been pushing for prison sentences as a way of decreasing crime. But the crime rate hasn't gone down, and that's an indication that handing out more prison sentences isn't the way to cut

crime, Rice said.

Public defender Larry Biggam said sending people to prison "should not be a routine decision."

"Judges try very hard to make individualized decisions," Biggam said. "They don't make them lightly."

Biggam and other attorneys also say statistics on the number of arrestees going to prison in Santa Cruz County are skewed because the district attorney has a tendency to file felony charges that should be misdemeanors.

One of the defense lawyers making that allegation is Peter Chang, who served as Santa Cruz County's district attorney from 1967 to 1975 and hired Danner and Kelsay as assistant district attorneys. Now in private practice, Chang takes cases in other California counties and in other states.

"There's a lot of overcharging" of cases as felonies that would be misdemeanors in other counties, said Chang.

Chang nominated Kelsay for an award by a national defense lawyers' group this year, citing Kelsay's willingness to look at each case individually.

Judges here "are not more lenient" than in other areas, Chang said.

But two members of Danner's staff who held high-level prosecution positions in other counties say Santa Cruz County's felony-filing policies are similar to their old counties'.

Kate Canlis, who now oversees felony filings in Santa Cruz County, was chief deputy district attorney in Sacramento County, where prison sentences were imposed nearly twice as often as Santa Cruz County.

"I'm not filing any differently," she said. "The courts (judges) must be different."

Mike Bartram, who didn't run for re-election as Monterey County district attorney two years ago and is now an assistant district attorney in Santa Cruz County, said filing practices in Monterey weren't different.

Bartram said he's been surprised to see probation given in Santa Cruz County cases that probably would have been prison sentences in Monterey County.

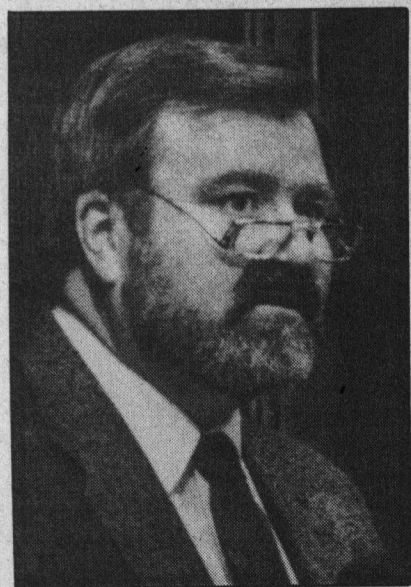
"I've had three drug cases where people wanted to have the transaction in Santa Cruz County rather than Monterey County," Bartram said, because the penalties would be less if they got caught north of the county line.

Jon Minsloff, a defense lawyer and one of Biggam's partners, said half the cases in Superior Court are drug cases, "and 90 percent of those are nickel-and-dime street sellers."

"Big-time drug dealers go to the joint (state prison)," he said.

It's not fair, Minsloff said, to send a young person charged with dealing a small amount of drugs to prison.

Prosecutors in some other counties use state prison as a "glorified county jail," Minsloff said, sending people to prison for sentences of less than a year and a half.



Superior Court Judge Bill Kelsay says the statistics on prison sentencings are meaningless.