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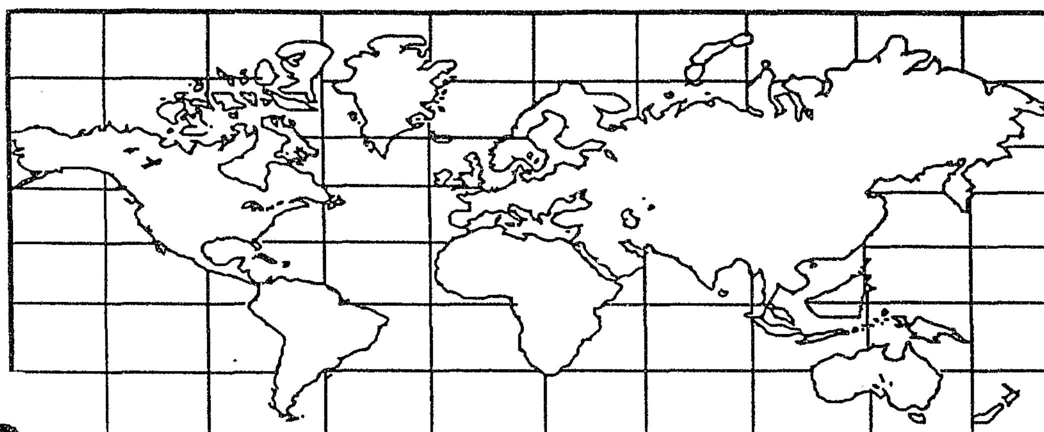
# OBSERVATIONS ON PAROLE:

## A COLLECTION OF READINGS FROM WESTERN EUROPE, CANADA AND THE UNITED STATES



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ASSOCIATION OF PAROLING AUTHORITIES

INTERNATIONAL

NOVEMBER 1987

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# OBSERVATIONS ON PAROLE:

# A COLLECTION OF READINGS FROM

# WESTERN EUROPE, CANADA AND THE

# UNITED STATES

Proceedings of the First
International Symposium on Parole
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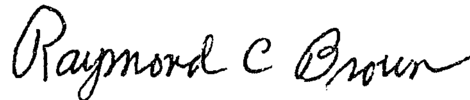
FOREWORD

On April 6-9, 1986, the Association of Paroling Authorities International (APAI) hosted the first International Symposium on Parole at the Lyndon B. Johnson School of Public Affairs, University of Texas in Austin, Texas.

The Symposium brought together over 150 parole and criminal justice professionals from Europe, the United States and Canada. For three days the participants discussed the many complex issues, and problems impacting on their respective jurisdictions. Of significance were the attendance and presentations by representatives from five European countries and Canada.

A majority of the presentations made during the Symposium are included in this document. They have not been edited or revised. Rich in detail, they cover a wide array of topics confronting paroling authorities in much of the Western world. The articles offer a "sympathetic" assessment concerning the current status and future prospects of parole, as well as the relationship of parole to the other components of the criminal justice system. Together, the articles provide far-reaching proposals and insightful analyses--written from the point of view of policymakers and committed advocates of criminal justice reform.

The National Institute of Corrections is making these papers available so that those who did not attend the Symposium can review the proceedings. The presentations contained here offer an opportunity to reconsider the issues and concerns voiced during the First International Symposium on Parole in the United States.



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# PART I

# INTERNATIONAL PERSPECTIVES

# ON PAROLE

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# THE IMPACT OF SENTENCING GUIDELINES ON PAROLE IN MINNESOTA AND FLORIDA

By
Donnie A. Lee

## History of Parole in Minnesota

In 1900, Minnesota abolished determinate sentencing, but releasing discretion continued to be exercised by the Governor through the pardoning power until 1911. In that year, Minnesota's first parole board was created, consisting of the Warden of the State Prison, the Superintendent of the State Reformatory and one citizen member. In 1923, the Superintendent of the Minnesota Correctional Institution for Women was added, along with another citizen member. In 1931, the ex-officio members were replaced by citizens.

Until 1948, corrections officials made releasing decisions governing juveniles committed to state correctional institutions, while the citizen parole board made releasing decisions for adults. In that year, the Youth Conservation Commission (YCC) was created to make releasing decisions for juveniles and youthful offenders (those between ages 18 and 21 at the time of conviction). The YCC consisted of part-time citizen members appointed by the Governor, confirmed by the State Senate, and paid on a per diem basis. In 1963, the adult paroling authority was replaced by the Adult Corrections Commission (ACC), and a new indeterminate sentencing law was enacted. The ACC consisted of four part-time citizen members appointed by the Governor, confirmed by the Senate, and paid on a per diem basis, and a full-time chairman appointed by the Commissioner of Corrections.

In 1973, the legislature abolished the YCC and returned juvenile releasing decisions to the Department of Corrections. The ACC was abolished and replaced by the Minnesota Corrections Authority, and its jurisdiction was expanded to cover youthful and adult offenders. It was Minnesota's first full-time adult paroling authority. The 1974 legislature changed its name to the Minnesota Corrections Board (MCB).

While it is clear that the 1973 legislature expected that a full-time parole board would make "better" decisions, the law provided no criteria or guidelines for the MCB to follow in making parole decisions. The primary change was to create a new parole board consisting of five new full-time members.

## Origin of the Parole Guidelines

The MCB came into existence on January 1, 1974. It consisted of four full-time members appointed by the Governor, with Senate confirmation, to staggered six-year terms. The full-time chairman was appointed by the Commissioner of Corrections and served at his pleasure. The chairman was an officer in the Department of Corrections with the rank of deputy commissioner. While the chairman provided a link between the Department of Corrections and the MCB, the MCB operated as an in dependent executive agency of government.

The MCB approved any release of an inmate from state correctional institutions--via parole, medical parole, temporary parole (furloughs), or work release. It also had responsibility for the parole revocation process, and the discharge of sentences prior to expiration.

None of the members serving on the MCB had prior experience in parole decision-making. The legislation creating the MCB provided no criteria or guidelines to follow in making parole decisions. The 1963 criminal code provided only broad direction, stating that the purposes of the criminal code were to protect the public, deter crime, and rehabilitate offenders.

In 1973, Legal Assistance for Minnesota Prisoners (LAMP) filed a suit in federal court against the then part-time adult parole board, contending that the absence of criteria for parole decisions resulted in an arbitrary and capricious exercise of discretion. The suit was continued and amended to name the MCB after 1974.

The following factors, then, contributed to the development of parole guidelines:

1. The absence of prior parole decision-making experience by members of the new full-time board, and thus, their willingness to consider alternative methods of exercising their discretion;

2. The broad discretion conferred on the MCB, unguided by statutory criteria;

3. The possibility of federal court intervention.

Accordingly, in February 1974--one month after they came into existence--the MCB submitted a grant to the Governor's Commission on Crime Prevention and Control to develop parole decision-making guidelines. The grant was funded and became operational shortly thereafter.

The Minnesota Corrections Board (Parole) had three main goals: (1) to protect the public, (2) to deter crime, and (3) to rehabilitate offenders. In order to accomplish these goals, the Minnesota Corrections Board considered factors relating to risk of failure on parole, severity of the committing offense, and inmate behavior and conduct while imprisoned to determine the length of time individual inmates would be incarcerated.

The objectives of the parole decision-making guidelines were:

1. To provide a rational method of determining length of incarceration which allowed the Minnesota Corrections Board to accomplish its goals;

2. To establish a method of parole decision-making that assured equitable treatment of inmates.

3. To assign target release dates to inmates at their initial appearance before the Minnesota Corrections Board.

Development of the Minnesota Sentencing Guidelines

During the 1970"s social unrest, and the Attica prison riot, the value of parole came to the forefront in Minnesota. Sentencing reform captured the interest of policy makers throughout the country. Many states adopted major changes in sentencing laws aimed at increasing the certainty and uniformity of sentencing. Minnesota was not unusual in its concern with the issue of sentencing during that time. This brought about a strange relationship between the liberals (majority) and the conservatives (minority). Both groups were ready for a change.

The "liberals" wanted to:

1. Abolish Indeterminate Sentences because judges had too much discretion in imposing sentences. There was no proportionality between the offender who committed the offense and the type of offense committed. It was felt that members of the minority groups (blacks and Indians) received longer sentences than members of the majority group (Caucasians).

2. Introduce Determinate Sentencing to bring about "Truth in Sentencing" or the "Just Dessert" approach to sentencing offenders.

The "conservatives" wanted to:

1. Abolish Indeterminate Sentencing in favor of "flat time" because it was thought to be more punitive.

2. Implement Determinate Sentencing to punish criminals.

3. Abolish parole because there was no scientific proof that parole really worked.

Criticism of indeterminate sentencing reflected a number of concerns, including disparate sentences that resulted from individualized sentencing, doubts as to the efficacy of rehabilitation, and concern that the indeterminate sentencing sometimes resulted in lenient sentences that depreciated the seriousness of the offense committed. Not all critics agreed with all criticisms, but critics did tend to converge to support a sentencing structure that would (1) emphasize increased uniformity in sentencing; (2) base sanctions on factors related to a justice model of sentencing such as the crime committed instead of on the utilitarian goal of rehabilitation; and (3) provide a structure to reflect these changes in goals and philosophy--that is, eliminate parole and establish determinate sentences defined by the legislature and imposed by the judiciary, with the discretion of whether to imprison left to the courts. Also, largely at the insistence of the chief proponent of determinate sentencing, a state senator whose vocation was law enforcement, the proposed change in the sentencing structure had to result in prison populations that would fit existing state correctional resources.

Defenders of indeterminate sentencing maintained that extensive discretion in the criminal justice system was necessary to reflect differences among offenders and offenses, and to achieve the utilitarian goals of rehabilitation, deterrence, and incapacitation. Maintenance of the structure that had developed to administer indeterminate sentencing, principally

the Minnesota Corrections Board, was central to the campaign. Proponents of indeterminate sentencing felt that abuses arising from the exercise of extensive discretion could be effectively limited while retaining the existing structure and utilitarian goals by adopting administrative rules. The Minnesota Corrections Board implemented parole decision-making guidelines in 1976 in order to better structure their discretion while retaining the basic features and goals of indeterminate sentencing.

Throughout the legislative debate, the membership of the state Senate was virtually unanimous in supporting a determinate sentencing structure. The membership of the state House of Representatives was somewhat more divided, but the House Criminal Justice Committee, which acted as a gate keeper on sentencing matters, was strongly committed to an indeterminate system. The membership of the House of Representatives did pass a determinate sentencing bill in 1976, as did the Senate, but the Governor vetoed the bill, ostensibly because the bill lacked enhancement provisions for repetitive felons. Determinate sentencing never again mustered a majority in the House of Representatives; and in 1978, the stalemate was resolved with the passage of legislation that created the Sentencing Guidelines Commission.

The Sentencing Guidelines Commission was directed to establish the circumstances under which imprisonment of an offender is proper as well as fixed presumptive sentences. The Guidelines were to be advisory to the district court with the court required to make findings of fact as to the reason for the sentence imposed, and to submit written reasons for departure from the Sentencing Guidelines in each case in which the court imposes or stays a sentence that deviates from the Sentencing Guidelines recommendation. The indeterminate sentencing code with its long statutory maximums was left intact and available to the Commission in establishing Sentencing Guidelines and to the Courts in imposing sentences.

The legislation established that vested good time would be earned at the rate of one day for each two days during which no disciplinary violations occurred. The earned good time is deducted from the sentence and is served on supervised release at the end of the term of imprisonment. For example, a 24-month executed sentence could yield a maximum of eight months earned good time, with 16 months of the sentence served in prison and eight months of the sentence served on supervised release, at which point the sentence would expire.

The Commission was instructed to submit Sentencing Guidelines to the legislature January 1, 1980 for review. Unless the legislature acted to the contrary, the Sentencing Guidelines would go into effect for crimes committed on or after May 1, 1980.

The legislation determined the fundamental structural issue of where sentencing discretion would be exercised--essentially by the courts within the constraints of Sentencing Guidelines, with parole eliminated. The Minnesota Corrections Board retained jurisdiction over all inmates and parolees sentenced for crimes committed prior to May 1, 1980. No discretionary releasing authority was available for offenders committed to the Commissioner of Corrections for crimes committed on or after May 1, 1980, except through work release.

Observations on Sentencing Guidelines and Parole in Minnesota

1. Some judges favor Sentencing Guidelines because they provide a basis for "standard sentences."

2. Some judges do not like Sentencing Guidelines because they removed their discretion.

3. Some prosecutors like Sentencing Guidelines because they have inherited the discretion previously held by judges. Prosecutors can plea-bargain cases or stack criminal history points to manipulate the guidelines.

4. Some prosecutors do not like Sentencing Guidelines because they consider them to be too lenient.

5. Most Public Defenders like them because they know what sentence will be imposed upon their client before they go to court.

6. Most legislators like them because they can control the prison population by altering the guidelines.

7. Department of Corrections personnel like the guidelines for the same reason as the legislators.

8. The majority of the public has accepted guidelines as the best alternative for sentencing offenders.

9. Offenders like guidelines because 75 percent of the felony offenses result in a recommendation for probation.

Minnesota has the lowest incarceration rate of our 50 states. It has a population of 4.5 million and incarcerates 52 out of every 100,000 residents. The current prison population is approximately 2,700 inmates.

Perhaps one reason for this low rate of incarceration is the homogeneous population of Minnesota: 97 percent of the state is Caucasian, 1½ Black, 1% Indian and ½% other. This ratio of population, regardless of race, significantly reduces problems that stem from cultural or ethnic differences. Minnesota also has exceptional educational standards, above average wages and liberal social programs.

In the mid-70's, the legislature passed the Community Corrections Act that gave local counties the option of relying on the State Correctional System or developing their own correctional program. In Minnesota, there are 12 County Correctional Associations that service 60 percent of the State's population. This involves approximately 400 parole/probation agents and supervisors that service 20,000 clients. There are 48 counties that provide probation services involving 130 agents and 7,000 juveniles, and misdemeanants.

The Minnesota Department of Corrections serves 60 of the State's 87 counties, which accounts for 40 percent of the State's population. There are 71 state agents that serve 6,000 clients. There are approximately 33,000 to 35,000 offenders under supervision in Minnesota.

In 1974, the Minnesota Corrections Board (MCB) was established. It was the first full-time parole board and was given total discretion over the release of inmates. The board was composed of five members that were appointed by the Governor and confirmed by the Senate. Unfortunately, none of the members had any experience in rendering parole decisions. Their unbridled discretion and parole release decisions soon came under criticism. As a result, the legislature attempted to abolish parole in 1976 and 1977, but was unsuccessful. In 1978, the legislature created the Sentencing Guidelines Committee to study the feasibility of developing Sentencing Guidelines. The guidelines were implemented in 1980; and in 1981, the Committee recommended that the parole board be abolished. The legislature abolished the parole board in 1982.

For whatever reasons, it is my opinion that the parole board never had an opportunity to establish itself and function as a full-time professional board. Two years after it was created, legislation was introduced to abolish it. The board was fighting for its life rather than being about to devote its time and energy to rendering valid parole decisions.

## Development of Sentencing Guidelines in Florida

During the late 1970's, two of Florida's Circuit Court Judges attended a judge's conference in Nevada. They attended a session on Sentencing Guidelines presented by representatives from the State of Minnesota. Returning to Florida, the judges shared the information on sentencing guidelines with the Chief Justice and Attorney General. Both men were favorably impressed and became strong supporters of Sentencing Guidelines.

Florida decided upon the theme of "Truth in Sentencing." A bill was introduced to the legislature concerning determinate sentencing. The Governor vetoed the passage of the bill with the stipulation that a blue ribbon commission would be created to study the feasibility of determinate sentencing. The Chief Justice was appointed chairman of the 15-member commission.

The Sentencing Guidelines Commission conducted extensive research to determine the length of sentences imposed for similar offenses. Later, a pilot project was conducted in four (4) judicial circuits. After a period of evaluation, the Commission made a recommendation to the Governor which stated that if the public and the legislature felt a change in the judicial system was needed to bring about progressive reforms, Sentencing Guidelines would be the best alternative. The Guidelines were then developed as a compromise between Indeterminate and Determinate Sentencing and became effective October 1, 1983.

The legislation states that "Sentences imposed by trial court judges must be in all cases within any relevant minimum and maximum sentence limitations provided by statute and must conform to all other statutory provisions. The failure of a trial court to impose a sentence within the Sentencing Guidelines shall be subject to appellate review pursuant to Chapter 924."

"The Sentencing Guidelines shall provide that any sentences imposed outside the range recommended by the guidelines be explained in writing by the trial court judge."

"A person convicted of crimes committed on or after October 1, 1983, or any other person sentenced pursuant to sentencing guidelines adopted under this section shall be released from incarceration only:

A. Upon expiration of his sentence.
B Upon expiration of his sentence as reduced by accumulated gain time, or
C. As directed by an executive order granting clemency."

Ofenses have been grouped into nine (9) offense categories:

Category 1 - Murder, Manslaughter
Category 2 - Sexual Offenses
Category 3 - Robbery
Category 4 - Violent Personal Crimes
Category 5 - Burglary
Category 6 - Thefts, Forgery, Fraud
Category 7 - Drugs
Category 8 - Weapons
Category 9 - All Other Felony Offenses

There are five (5) factors that the Court must consider when scoring an offender to determine the length of sentence to be imposed:

1. Primary offense at conviction.
The primary offense is defined as the most serious offense at the time of conviction.

2. Additional Offense(s) at Conviction
All other offenses for which the offender is convicted and which are pending before the court.

3. Prior Record
Any past criminal conduct on the part of the offender, resulting in conviction, disposed of prior to the commission of the primary offense. Includes all prior Florida, Federal, out-of-state, military and foreign convictions.

4. Legal Status at Time of Offense
Determine whether offender is on parole, probation, community control, in custody serving a sentence, on escape, fugitives who have fled to avoid prosecution, or who have failed to appear for a criminal judicial proceeding or who have violated conditions of bond and offenders in pretrial intervention or diversion programs.

5. Victim Injury (Physical)
Physical injury suffered by victim shall be scored if it is an element of any offense at conviction.

Positive Results of Sentencing Guidelines

The most agreed-upon positive result of Sentencing Guidelines is the reduction of disparity in sentencing. Unless there exist mitigating or aggravating circumstances, the sentence imposed should fall within the range of time recommended by the guidelines. If the judge imposes a

sentence less than the one recommended by the guidelines, the State Attorney may appeal the decision. However, this seldom occurs. Should the judge impose a sentence greater than the one recommended by the guidelines, the defendant has the right to appeal. This occurs quite often and will also be addressed under the Negative Results of Sentencing Guidelines. In any case, if the judge imposes a sentence less than or greater than the one recommended by guidelines, he must give written reasons that are clear and convincing.

Other factors that received some favorable comment were the abolishment of parole and the idea that Sentencing Guidelines represented "Truth in Sentencing." A circuit court judge may have best described Sentencing Guidelines in his statement that he gave to the news media: "Sentencing Guidelines is a noble experiment that has provided some good research data."

## Negative Results of Sentencing Guidelines

There are many negative aspects of the guidelines that were mentioned by Judges, State Attorneys, Public Defenders, and Probation and Parole Commissioners.

1. Limits the discretion of Judges.
2. Abolishes parole.
3. Guidelines are too lenient.
4. Offenders receive shorter sentences.
5. Gain time has increased.
6. Inmates serve shorter sentences.
7. No post-release supervision.
8. No Parole Commission to address if you oppose the release of an offender.
9. Appeals have increased.
10. Increased cost to taxpayers.
11. Increasing prison population.
12 "We are still playing games with the System," according to one State Attorney.

## Status of the Florida Probation and Parole Commission

The Florida Probation and Parole Commission was created in 1941. It originally consisted of five (5) members, but was later expanded to seven (7) and eventually expanded to its current number of nine (9) members. While the Commission is comprised of nine (9) members, it votes in teams of two members, and a majority decision is not required for the parole of an inmate. Two board members may release any inmate considered for parole. This procedure provided support for negative criticism. Like any paroling authority, the Commission was criticized for making poor decisions.

Other sources feel the Commission was insensitive to the Department of Corrections and other criminal justice agencies. The Commission may also have been insensitive to the mood swing of the public. While the public wanted truth in sentencing, the Commission continued releasing inmates much earlier in their sentence. As one Commissioner explained, "one or two years on a life sentence." Judges also feel the Commission totally disregarded the length of sentence imposed. One Circuit Judge believes this one factor probably contributed to the downfall of parole. For whatever reasons, parole in Florida is scheduled to be abolished on July 1, 1987.

The theme of "Truth in Sentencing" sounded like a good idea and opponents found the concept difficult to argue against. Political supporters (members of the legislature, Attorney General, some Circuit Court Judges, and other elected officials) liked the theme because it could be sold to the public. The Sentencing Guidelines Legislation was tied to a bill to "sunset" the Florida Probation and Parole Commission for expiration effective July 1, 1987. According to the Probation and Parole Commission Chairman Kenneth Simmons, the Sentencing Guidelines bill which also provided for the abolishment of the Probation and Parole Commission passed by a single vote.

"Truth in Sentencing" has not come to fruition. The idea was to impose a specific sentence within a limited range of time, and eliminate the possibility of parole. Everyone in the criminal justice system and the public would know how much time the offender would serve. Three years would mean three years. However, at the same time, the Sentencing Guidelines were implemented and the Parole Commission sunsetted for extinction, the legislature increased the amount of Gain Time awarded by the Department of Corrections from approximately 33 percent to 50 percent and also passed the 98 percent law which states if the prison facilities reach 98 percent of maximum capacity for a period of seven (7) consecutive days, the Department of Corrections has the authority to release certain inmates that meet established criteria.

Sentencing Guidelines have failed to address the problems of increasing crime or an increasing prison population. Since fewer offenders are being sent to state prisons, Sentencing Guidelines may have temporarily transferred the problems from the state level to the county level. Seven out of eight cases are adjudicated Non-State Custody Cases and offenders are sent to county jails to serve their sentences. As a result, many of Florida's county jails are now under Federal Court Order due to overcrowding conditions.

The Sentencing Guidelines Act of 1982, which in effect abolished the Commission, also provides for legislative review to determine the future of the Parole Commission.

I believe Parole will be continued or reinstated in Florida. There are too many unanswered questions about the status of 27,069 inmates. Thousands already have a presumptive parole month scheduled after July 1, 1987. The Governor and his six cabinet members simply would not have the time to consider clemency or revocation of parole.