

SENTENCING

A Selected Annotated Bibliography

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For two months after the cover page date of this bibliography, the materials cited herein are restricted to the use of the Legislature and of State agency officials whose work station is in Albany.

SENTENCING

I. GENERAL SENTENCING STANDARDS

Item

- 1 American Bar Association. Section of Judicial Administration.
State Trial Judge's Book. St. Paul, Minnesota, West, 1965. 314 p.

LAW LIB

A "beginner's" book, covering the full scope of judicial duties, problems, methods, and practices with which a new judge should be conversant. A short chapter (pp. 231-243) concerns criminal verdicts.

- 2 Bardwell, Richard W.
Sentencing Alternatives Under Wisconsin Law; Before State Judicial Conference, January 1970, in Wisconsin Bar Bulletin, April 1970, vol. 43, 18-31.

LAW LIB

A circuit court judge explains the considerations and procedures he adopts in the sentencing process and reviews statutory developments in Wisconsin relating to pre-sentence investigations and reports, treatment of sex deviants, indeterminate sentencing and release of prisoners for employment purposes (the Huber Law).

- 3 California. Legislature. Assembly. Interim Committee on Criminal Procedure.
Deterrent Effects of Criminal Sanctions; Progress Report. Sacramento 1968. 71 p.

S364.609794 qC1523

A three-part study by the California Legislature includes: (1) A survey of public knowledge of criminal penalties; (2) an examination of the effectiveness of the present adult correction system; and (3) an examination of alternatives to the policy of criminal penalties. Especially interesting is the vast ignorance shown to exist in the public at large as to the extent and severity of various sentencing provisions.

- 4 Cannon, Joe A., et al.
Law and Tactics in Sentencing. Washington, D.C. Coiner Publications,
1970. 201 p.

LAW LIB

A handbook on sentencing, prepared at Georgetown University Law Center. Contains a concise summary of the statutes, references to controlling cases, and sections on various forms of specialized sentencing.

- 5 Clark, Tom C.
Sentencing and Corrections, in University of San Francisco Law Review, October 1970, vol. 5, 1-9.

LAW LIB

Analysis of sentencing and corrections. With recidivism still rising, constructive suggestions for change are offered, beginning with a close review of the basic aims of these areas of criminal justice.

- 6 Cohen, Fred.
The Legal Challenge to Corrections. Washington, Joint Commission on Correctional Manpower and Training, 1969. 107 p.

S343.0973 C678

Chapter II, pages 15-25, presents an excellent and concise overview of the area of sentencing. The report "develops in a logical and scholarly way how the courts are insisting that representation by counsel, due process, access to the courts, and fundamental fairness doctrines apply to prisoners, probationers, and parolees substantially as they do to free men."

- 7 ---
Sentencing, Probation and The Rehabilitative Ideal:
The View from Mempa v. Rhay, in Texas Law Review, December 1968,
vol. 47, 1-59.

LAW LIB

An extended discussion of the peno-correctional processes. The possibility of a requirement for a hearing with counsel for sentencing or revocation of probation may lead to a court-made Code of Correctional Procedures. Includes an appendix of state sentencing procedures.

- 8 Colorado. Legislative Council.
Indefinite Sentencing and the Colorado Correctional System. 1968.
Denver, 1968. 40 p. (Research Publication no. 139)

S364.61 qC7185 1968

This study points out three problems with the sentencing procedure as it was in 1968: 1) disparity, 2) long-term fixed minimums and 3) judicial inability to modify sentences unless there was an error. Indefinite sentencing and judicial empowerment to change a sentence from imprisonment to probation after a 90-day cooling off period are recommended.

- 9 Correctional Association of New York.
Newsletter. (any issue)

LEGIS REF

Quarterly publication dealing with various programs and conditions in the correctional process, some of which involve sentencing problems. The Association publishes an annual list of recommendations to the legislature in which sentencing proposals are included.

- 10 Craig, Walter E.
Sentencing in Federal Tax Fraud Cases; Before Institute on Defending Tax Fraud Prosecutions of the Practising Law Institute, Las Vegas, December 12-13, 1969, in Federal Rules Decisions, December 1970, vol. 49, 97-115.

LAW LIB

A survey of the criteria employed by individual judges in exercising their discretionary sentencing powers over tax violators. The author elicits responses in four specific categories: 1) whether a distinct policy of sentencing is followed in a particular area; 2) whether there is a deterrent effect both on the defendant and the public; 3) various factors considered in arriving at sentences; and, 4) difference in factors between tax fraud sentencing and other felonies.

- 11 Crime and Delinquency. (any issue)

S364.6 N111

A quarterly publication reviewing trends in the prevention and correction of crime and delinquency. Articles of particular interest include: "A Legislative Study of the Effectiveness of

Criminal Penalties", July 1969, vol. 15, pp. 354-359; "Developments in Correctional Law", April 1970, vol. 16, pp. 185-198 and "Criminal Justice System: A View from the Outside", January 1972, vol. 18, pp. 23-30.

12 Crime and Delinquency Literature. (any issue)

S016.364 C929

Quarterly publication of the National Council on Crime and Delinquency. Occasionally has articles abstracted or books reviewed that deal with sentencing. Each issue has subject index.

13 Cross, Alfred Rupert Neale.

Paradoxes in Prison Sentences. Oxford, Clarendon Press, 1965. 26 p.

LAW LIB

Lecture by University of Oxford Vinerian Professor of English Law. Speaker sees a trend to simplification of the criminal law and the emergence of the sentencing process as a subject of enormous interest to the judiciary. Discusses the intrinsic character of the offense, the individualization of punishment, and the relevance (to the type and length of the sentence) of the harm done by the accused.

14 Dawson, Robert O.

Sentencing: The Decision as to Type, Length, and Conditions of Sentence. Boston, Little Brown, 1969. 428 p.

LAW LIB

Deals with the imposition of a sentence and the practical consequences which follow. Various possibilities in sentencing procedure are studied, with particular emphasis on the statutory proposals of the American Law Institute's Model Penal Code (See Item 114) and the National Council on Crime and Delinquency's Model Sentencing Act (See Item 115). Of particular interest are: Chapter I, "Methods of Obtaining Pre-Sentence Information" (p. 15-55); Chapter II, "Assuring Accuracy of Pre-sentence Information" (p. 56-66); Chapter VI "The Sentence as an Administrative Accommodation" (p. 173-192); Chapter VII "The Sentence as an Individualization of Justice" (p. 193-214); and Chapter VIII "Sentence Disparity". (p. 215-221).

- 15 D'Esposito, Julian C. Jr.

Sentencing Disparity: Causes and Cures, in Journal of Criminal Law, Criminology and Police Science, June 1969, vol. 60, 182-94.

LAW LIB

Sentencing disparity is precipitated by a number of variables, among which are the trend toward individualization of sentences, lack of proper sentencing guidelines for judges and an absence of limitations on possible abuses in the exercise of judicial discretion. Potential remedies for disparity are found among the model proposals advanced by various groups, legislatively fixed maximum sentences and mandatory appellate review of sentences. The author concludes that a constitutional mandate exists to remove the subjective factors which produce unjustified disparity in sentencing.

- 16 Dorsen, Norman, ed.

The Rights of Americans; What They Are--What They Should Be. New York, Random House, 1971. 679 p.

S323.40973 R571

A collection of essays commemorating the 50th anniversary of the American Civil Liberties Union. The chapter "The Rights of Criminal Defendants" (pp. 433-450) has a section on Sentencing which finds flaws in present procedures and recommends disclosure of presentence reports, a statement from the judge as to the reasons for the particular sentence, and appellate review of sentences as a further safeguard.

- 17 Edelhertz, Herbert.

The Nature, Impact, and Prosecution of White-Collar Crime. Washington, U.S. Department of Justice, Law Enforcement Assistance Administration, 1970. 77 p.

S364.1 E21

Focus is on defining white-collar crime, its impact on society, and the problems of law enforcement in this area of criminal activity. Contains chapters on plea bargaining, sentencing, and the inconsistent laws concerning these subjects.

- 18 Empey, Lamar T.

Alternatives to Incarceration. [Washington] U.S. Office of Juvenile Delinquency and Youth Development, 1971. 88 p.

S364.6 E55

An examination of the choices with which the court is faced when choosing between the various sentencing alternatives. The author focuses on the three traditional alternatives (the suspended sentence, fines, and probation), and also studies other suggestions: fines and restitution on an installment basis, work furloughs, non-residential community programs and residential group centers.

- 19 Frankel, Sandor.

Sentencing Morass and a Suggestion for Reform, in Criminal Law Bulletin, 1967, vol. 3, 365-383.

LAW LIB

Disparity in sentences is more frequently due to judicial inconsistency than to an attempt to treat the individual. The author recommends a requirement that judges be obligated to give written reasons for the sentence. Another recommendation is for appellate review of sentences.

- 20 Glaser, Daniel and Fred Cohen.

Sentencing and Parole Process. Washington, U.S. Department of Health, Education, and Welfare, 1966. 26 p.

364.62 G548

An exploration of the relationship between legislatures, courts, and parole boards in the sentence-fixing process. Focuses on the relationship between sentencing and parole since parole is viewed as a strategic opportunity for reinforcement of the rehabilitative concept.

- 21 Great Britain. Home Department.

The Sentence of the Court; a Handbook for Courts on the Treatment of Offenders. 2nd ed. London, HMSO, 1969. 75 p.

S343.1 G7864

A discussion of the forms of treatment available to the courts in dealing with offenders, with particular reference to the provisions of the Criminal Justice Act of 1967. In general, the

available programs are similar to those in the U.S. A statistical evaluation concludes the handbook.

22 Green, Edward.

Judicial Attitudes in Sentencing: A Study of the Factors Underlying the Sentencing Practice of the Criminal Court of Philadelphia. New York, St. Martin's Press, 1961. 149 p.

LAW LIB

A review of 1,437 convictions in Philadelphia criminal courts over a 17 month period in 1956-57. The author studies both the legal and non-legal factors in sentencing and provides individual case studies to verify the results of the statistical analysis.

23 Hogarth, John.

Sentencing as a Human Process. Toronto, University of Toronto Press, 1971. 432 p. + index (includes bibliography)

346.6 H715

An empirical examination by a professor in the University of Toronto's Centre of Criminology, of the sentencing process in the magistrates' courts (criminal cases). The major finding was that there are wide disparities from one judge to another in nearly every aspect of the sentencing process. Recommendations are for action on a number of levels: simplification and standardization of the grading of offenses for sentencing purposes; statutory criteria for the selection of specific sentences in specific types of situations; legislation that makes incarceration the last resort, rather than the basic penalty; initial and ongoing training for judges; and better usage of existing information to allow the judge a more accurate estimate of the impact of the contemplated sanction on the offender.

The supporting statistical data has been ordered from the Centre of Criminology, University of Toronto.

24 Hood, Roger G.

Sentencing in Magistrates' Courts: A Study in Variation of Policy. [London] Stevens, 1969. 145 p.

LAW LIB

Research project undertaken at the request of the Home Office. Findings include: that the proportion of men imprisoned by two of the six courts examined was far greater than in the other

four courts, despite the fact that the defendants did not differ extensively. Each magistrate's imprisonment policies appear to be sociologically related to the area he serves and to his own individual social bent. There is little feedback to the magistrate concerning the success or failure of his sentences. Other findings concern length of sentence, use of fines, probation, and conditional discharges.

25 James, Howard.

Crisis In the Courts. New York, David McKay, 1968. 267 p.

S347.9973 J27

See Chapter 10: "The Sentencing Wonderland". The author recommends the use of sentencing boards, stating that extension or intensification of the present system will not alleviate the problem of unjustly disparate sentences.

26 Johnson, Phillip E.

Multiple Punishment and Consecutive Sentences: Reflections on the Neal Doctrine, in California Law Review, March 1970, vol. 58. 357-90.

LAW LIB

California has a statutory provision forbidding multiple punishments under different statutes for the same criminal acts. Author contends that the multiple punishment doctrine is unrealistic and inefficient because of indeterminate sentencing. He argues further that consecutive sentencing is the excessive punishment and should be abolished.

27 LEAA Newsletter. (any issue)

LEGIS REF

See regular column: "Research Briefs from the National Institute of Law Enforcement and Criminal Justice" which summarizes significant research relating to the adjudicative process. "Research Briefs" appears several times a year, beginning with the December 1972 issue. Additionally, the newsletter provides occasional articles dealing with current sentencing trends and events.

- 28 McClean, John David and J.C. Wood.
Criminal Justice and the Treatment of Offenders. London, Sweet and Maxwell, 1969. 327 p.

LAW LIB

Written by two law professors as an introduction to the process of criminal trial and the treatment of offenders. Includes both sentencing and diversion methods for adults, youth, and special groups. Authors suggest that the current attention to the efficacy and cost of institutional treatment have stimulated investigation into the development of alternative, non-custodial measures, rather than sentences of commitment.

- 29 Mueller, Gerhard O.W., and Fré Le Poole-Griffiths, eds.
Comparative Criminal Procedure. New York, New York University Press, 1969. 252 p.

LAW LIB

A collection of the U.S. Senate memoranda prepared for the Subcommittee on Improvement in Judicial Machinery. Of particular interest is Chapter 8, "Sentencing Procedures and Appellate Review of Legal but Excessive Sentences" (pp. 199-230).

- 30 National Council on Crime and Delinquency. Council of Judges.
Guides to Sentencing the Dangerous Offender. New York, 1969. 21 p.

S345.73077 N2734

The guides are for judges who want to apply the procedures of the NCCD Model Sentencing Act (1963) in States where the legislation has not yet been passed. (See Item 115).

- 31 ---
Guides to the Judge in Sentencing in Racketeering Cases. New York, 1968. 8 p.

S343.097303 N2734g

Guides that can be used by any judge without the need for changed laws. Deals with the possibility of just and rehabilitative sentences which remove the offender from further contact with the rackets while at the same time imposing substantial burdens on organized crime.

32 Newman, Donald.

Conviction: The Determination of Guilt or Innocence Without Trial. Boston, Little, Brown, 1966. 259 p.

LAW LIB

Chapters 4 and 13 are specifically related to sentencing. Author discusses the impropriety of harsher penalties for the defendant who requested a trial vs. the one who pleaded guilty. He also investigates the reasons for judicial reduction of charges when a legal maximum or minimum sentence has been set.

33 Procedural Due Process at Judicial Sentencing for Felony,
in Harvard Law Review, 1968. vol. 81, pt. 1, 821-846.

LAW LIB

Consideration of different theories of sentencing and recent interpretations of the due process clause and the effect of these on sentencing procedure. Also examines the role of counsel in sentencing.

34 Radinowicz, Leon and Marvin E. Wolfgang, eds.
Crime and Justice. New York, Basic Books, 1971.

364 R13C v.II and III

Volume II, The Criminal in Confinement, 703 p., discusses probation, recidivism, reconviction, parole, and experimental studies such as Provo and Highfields. Volume III, Judicial Decision-Making Processes, 445 p., covers principles and standards of sentencing, presentence information, sentencing disparities, jury sentences, sentencing by administrative board, and appellate review.

35 Rau, Richard M.

Sentencing in the Federal District Courts (mimeographed). Washington, U.S. Law Enforcement Assistance Administration, 1972. 34 p. + Appendix.

LEGIS REF

An analysis of sentencing data for the 93 Federal District Courts from 1967-1970. The district of trial was found to have a more direct effect on the sentence than any of the defendant's characteristics, except that there was a higher frequency of prison sentences for men than for women.

36 Rubin, Sol.

Disparity and Equality of Sentences--A Constitutional Challenge,
in Federal Rules Decisions, 1966. vol. 40, 55-78.

LAW LIB

Stress is on the need for individualization of sentences in order to provide equal treatment for all. Three administrative requirements to realize this goal are: 1) a mandatory statement of the judge's rationale for a particular sentence, 2) required use of presentence investigations in all cases; and, 3) increased availability of collected data from all cases, both for judges and other interested parties. The unequal treatment received by youthful offenders as compared to adult offenders who are guilty of the same act is commented on. Attention is also drawn to the wide variances in minimum sentences which possibly violate equal sentencing criteria.

37 Samuels, Alec.

Extended Sentences, in New Law Journal, February 12, 1970. vol. 120, 146-47.

LAW LIB

The Criminal Justice Act of 1967 (Great Britain) permits the court, upon the fulfillment of three conditions, to impose an extended term of punishment if deemed necessary to protect the public from a particular offender for a substantial period of time. The three conditions are: 1) the offender must have been incarcerated less than three years previous to the current offense; 2) the offender must have at least three convictions for serious offenses since the age of twenty-one; and 3) the aggregate of previous sentences must be at least five years (with a separate set of statutory conditions attached). The author disapproves of the extended sentence as being merely a means to pass sentences in excess of legal maximums. He favors discretionary sentencing power for judges with mandatory review by the Parole Board.

38 Schreiber, Aaron M.

Indeterminate Therapeutic Incarceration of Dangerous Criminals: Perspectives and Problems, in Virginia Law Review, May 1970. vol. 56, 602-34.

LAW LIB

A review of the effort to combine indeterminate sentences and therapeutic treatment, with particular attention devoted to the problems of definition and identification posed by statutory

ambiguities. The author proposes several reforms for current procedures: indeterminate sentences being imposed only for specific crimes, a more precise formulation of the probability of future criminal actions, "extendable" sentences replacing indeterminate sentences with the burden of proof for further incarceration shifting to the state, and a regrouping and re-direction at the administrative level.

- 39 Scott, Bonnie B.

Discriminatory Sentencing and the Unitary Trial: Two Areas for Application of the U.S. v. Jackson [390 U.S. 570 (1968)] Rationale, in University of Pittsburgh Law Review, Fall 1969. vol. 31, 118-27.

LAW LIB

The Supreme Court decision in Jackson declared that the defendant cannot be placed in the situation of having to risk his life in order to plead not guilty. A similar dilemma may occur from other causes. The author examines two such sets of circumstances and contends that the Jackson rule should be extended to include these situations as well.

- 40 Sentencing,

in Judicature, 1969. vol. 53, (entire issue)

LAW LIB

Two editorials and six articles that cover the spectrum of sentencing problems.

- 41 Sentencing and Corrections--a Symposium,

in American Criminal Law Review, Fall 1972. vol. 11, Entire issue. (includes bibliography)

LAW LIB

Recommendations for reform in sentencing which were then under consideration by Congress and the legal profession. The symposium was held under the auspices of the American Bar Association Section of Criminal Law.

- 42 Smith, Kathleen J.

A Cure for Crime; the Case for the Self-Determinate Prison Sentence. London, G. Duckworth, [1965]. 112 p.

LAW LIB

Written by a former Assistant Governor in a British prison and recommended by the Royal Commission that examined the British penal system. The author proposes that the offender pay for

his crime on a monetary level by fully compensate employment in prison, and that crime victims be compensated by the offender from private monies, prison earnings, or a combination of both. An unusual and interesting idea, presented in detail.

- 43 Stubbs, Robert S. II.

Jury Sentencing In Georgia--Time for a Change? in Georgia State Bar Journal, May 1969. vol. 5, 421-30.

LAW LIB

Concerns the present practice of the jury's imposition of the criminal sanction in a noncapital felony case. Author opposes this because the jury is seldom aware of available alternatives to imprisonment, is less objective than a judge, and is generally ignorant of sentences given in similar cases.

- 44 Tappan, Paul W.

Crime, Justice and Correction. New York, McGraw, 1960. 781 p.

S364 T17c

A classic on crime and its treatment. Author relates the usual sociological orientation of criminological study to the significance of law and jurisprudence. Several chapters deal with sentencing and other forms of case disposition.

- 45 Thomas, D.A.

Principles of Sentencing; The Sentencing Policy of the Court of Appeal Criminal Division. London, Heineman, 1970. 350 p.
(Cambridge Studies in Criminology, vol. 27)

LAW LIB

A detailed examination of the practices, principles, and consideration which shape the thinking of the judges of this court. Based on an analysis of every decision between January 1962 and October 1969.

- 46 U.S. Congress. House. Select Committee on Crime.

Street Crime in America, Part 3: Prosecution and Court Innovations, hearings, 93rd Cong., 1st Sess., May 1-3, 8, 9, 1973. Washington, Government Printing Office, 1973. 969-1369.

LEGIS REF

Testimony by Philadelphia District Attorney (pp. 972-1006) includes impact of diversion on crime rate. Testimony by President of the National District Attorneys Association (pp. 1077-1121) covers Texas' use of LEAA grant funds for pretrial release programs and (pp. 1089-1121) advisability of sentence bargaining. Testimony by U.S. Court of Appeals Judge (pp. 1122-1141) gives his views on sentencing review. Testimony by Professor at University of Virginia Law School supports the adoption of the English appellate practice in criminal cases (a single review of conviction and sentence), and for greater consistency in sentencing.

- 47 U.S. Administrative Office of the United States Courts.
Federal Offenders in United States District Courts, 1971.
Washington, 1973. 160 p.

S365.973 U465

Statistical compilation contains information on presentence reports, disposition of cases, sentencing and sentencing alternatives.

- 48 U.S. District Attorney. Southern District of New York.
1972 Sentencing Study. (mimeographed) [New York, 1972]. 20 +
appendices.

LEGIS REF

Analysis of all sentences imposed in the district between May 1 and October 31, 1972. Statistics of these cases do not show a differentiation in sentencing based on race per se, but do show different treatment of those convicted of white collar crimes vs. those convicted of non-violent common crimes. Other disparities in the ideal of even-handed justice were found in variations of sentence for the same offense between judges who permit differences in personal views to control the sentence, and in wide variations in sentences for the same crime between districts. The recommendations include sentencing institutes, and circulation of detailed quarterly reports on sentencing. Fixed sentences in certain cases with judicial discretion as to length are also considered.

- 49 U.S. National Advisory Commission on Criminal Justice Standards and Goals.
Corrections. Washington, Government Printing Office, 1973. 636 p.

LEGIS REF

The chapter on sentencing (pp. 141-196) covers probation, fines, judicial visits to institutions, and sentencing institutes and councils.

50

Courts. Washington, Government Printing Office, 1973. 358 p.

LEGIS REF

Chapter 5, "Sentencing" (pp. 109-11) suggests that sentencing be retained as a court function, with the trial judge determining the maximum sentence. A further recommendation is to limit correctional discretion by continuing the jurisdiction of the trial court over cases.

51

U.S. President's Commission on Law Enforcement and Administration of Justice.

The Challenge of Crime in a Free Society. Washington, Government Printing Office, 1967. 340 p.

S364.12 qU656

Recommends reexamination of criminal codes and statements of criteria to guide judges in sentencing, elimination of mandatory minimum sentences, and expansion of probation and parole. Chapter 5 contains a section "Sentencing Policies and Procedures", which is of particular interest.

52

The Courts; Task Force Report. Washington, Government Printing Office, 1967. 178 p.

S347.9973 qU652

See especially Chapter 2, pp. 14-28, on sentencing. Recommends disclosure of presentence reports, expansion of sentencing institutes, and improvement of probation services.

53

Walker, Nigel.

Sentencing In a Rational Society. London, Allen Lane, 1969. 239 p.

LAW LIB

The author deals with the approach to crime in our society and presents ideas seldom raised elsewhere. He reviews different problems and solutions in the sentencing area, among which are: devices proposed to control those who impose sentences; an

examination of disparity in sentencing--with a conclusion that such a practice is proper; the granting of increased discretion to prison staff members in determining a prisoner's release date; and the imposition of penalties being a judicially reviewable process.

II. PROBATION AND SUSPENDED SENTENCES

Item

- 54 Carter, Robert M. and Leslie T. Wilkins, eds.
Probation & Parole: Selected Readings. New York, Wiley, 1970.
694 p.

S364.6 C324

An anthology of significant historical, traditional, operational and legal readings.

- 55 Correction in the United States, A Survey for the President's Commission on Law Enforcement and Administration of Justice,
in Crime and Delinquency, January 1967. vol. 13, entire issue.

S364.6 N111

Contains full text of the 1966 survey made by NCCD on the entire apparatus of criminal justice. See especially Chapters 5 and 7 on Probation.

- 56 Council of Europe.
Explanatory Report on The European Convention on The Supervision of Conditionally Sentenced and Conditionally Released Offenders.
Strasbourg, 1970. 22 p.

364.63 C853

The European Convention is similar to the United States' Interstate Probation and Parole Compact. This publication is based on the text of a report submitted by the committee of experts to the Committee of Ministers. Includes a copy of the European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders. (See also below.)

- 57 Council of Europe. European Committee on Crime Problems.
Practical Organization of Measures for the Supervision and After-Care of Conditionally Sentenced or Conditionally-Released Offenders,
[Strasbourg] 1970. 286 p.

364.63 C8533p

The resolution on suspended sentence, probation, and other alternatives to imprisonment adopted by the Committee of Ministers in 1965 stressed the importance and advantage of

using alternative measures to imprisonment. This study is on the implementation of such non-institutional measures in various countries of the European Community, and recommends further extension and improvement of the use of such measures.

58

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Suspended Sentence, Probation and Other Alternatives.
[Strasbourg] 1966. 128 p.

S364.63 C8533

Contains replies to a questionnaire on current practice in 15 non-Communist European countries. After study, the Committee recommended changes in legislation where necessary, to permit the use of probation or other conditional measures in all first-offense cases that are not of special gravity. The committee also suggested that steps designed to avoid imprisonment be taken in as many subsequent cases as possible.

59 Dressler, David.

Practice and Theory of Probation and Parole. 2nd ed. New York, Columbia University Press, 1969. 347 p.

S364.62 D773pt2

Textbook discussion of the origins, evolution and current trends in probation and parole in our system of criminal justice. Closing chapter "New Directions" includes commentary on due process, prisoner access to the presentence investigation, parole or probation revocation, problem drinkers, furloughs, and use of offenders as correctional staff.

60 Federal Probation. (any issue)

S364.6305 qF293

Most issues have articles relating to probation and/or parole. Several have an article directly on sentencing, such as:

March 1970, "The Defense Lawyer's Role in the Sentencing Process", by Sheldon Portman

December 1970, "Group Procedures in Sentencing:

A Decade of Practice", by Charles T. Hosner

December 1971, "Recognizing and Sentencing the
Exceptional and Dangerous Offender", by
Charles E. Smith

March 1972, "A Law Enforcement Officer Looks at
Sentencing", by John B. Hotis

- 61 Florida. Parole and Probation Commission.
Thirty Second Annual Report, June 30, 1972. Tallahassee, [1973]
52 p.

S364.62 F6385

Florida has increased the use of probation as an alternative to imprisonment. Economic feasibility, the observable impact upon many offenders under supervision, and the benefits to the community appear to justify expanded use of both parole and probation, but caseloads have become unmanageable.

- 62 Great Britain. Home Office.
Trends and Regional Comparisons in Probation (England and Wales).
by Hugh Barr and Erica O'Leary. London, HMSO, 1966. 50 p.
(Studies in the Causes of Delinquency and the Treatment of Offenders. Probation Research no. 8)

S364.630942 B268t

Historical and geographic study on the growth and development of the probation service. Figures show lack of uniformity and similarity in application of probation, plus a decrease in the use of probation due to the availability of new treatment methods.

- 63 Judicial Conference of the United States.
Report of the Proceedings. Washington, Government Printing Office,
any year.

S347.9 J922

The reports include a short report of the Committee on the Administration of the Criminal Law (appellate review of sentencing) and a longer report on the operations of the Federal Division of Probation. The 1972 report showed that increase in persons under probationary supervision was 3.8% between 1969-1970; 10.8% between 1970-1971; and 15.2% between 1971-1972. This report shows probationers received from U.S. magistrates increasing 227.8% over 1971.

64 Kentucky. Legislative Research Commission.

Kentucky Corrections: The Case for Reform. Frankfort, 1973. 131-141. (Research Report no. 102, new series)

S328.769 qK37r

Kentucky's Division of Probation and Parole supervises both pre- and post-incarceration offenders. In 1972, legislation was passed to allow misdemeanants to be placed on probation; this forced a staff expansion financed in part by LEAA funds. Kentucky underutilizes probation, with only about 1/3 of the convicted offenders receiving probation. (See next item.)

65 Kentucky. Legislative Research Commission. Subcommittee on Probation and Parole.

1967 Report. Frankfort, Kentucky, Legislative Research Commission, 1967. 23 p. (Informational Bulletin no. 63)

S364.6209769 qK37855 1967

Due to extensive improvement since a 1963 NCCD survey, the system was considered generally satisfactory in this 1967 review. Recommendations were for increase in treatment personnel, a similar system for misdemeanants, halfway houses, and the reinstitution of conditional release.

66 National Council on Crime and Delinquency. Survey Services.

A Probation and Detention Plan: Rock Island and Henry Counties, Illinois. Austin, Texas, 1970. 80 p.

365.977338 qN2736

Contains recommendations for both state and local action. A shortage of qualified probation staff is repeatedly noted.

67 New York (State). Identification and Intelligence System. Bureau of Systems Development.

NYSIIS Parole and Probation Study; Final Report. Albany [1970]. 109 p.

LEGIS REF

Report of a special project conducted in association with Project SEARCH. Goals were to survey and document the information needs of probation and parole agencies. Type and frequency of NYSIIS

assistance to the system agencies is described, as well as revisions needed and a description of the planned system. Follow-up has not yet been feasible.

- 68 New York (State). Temporary Commission on the New York State Court System.

...And Justice for All, Part II. [Albany, 1973]. 73 p.

LEGIS REF

New York City probation services are currently under a multi-agency jurisdictional structure; upstate services are under the general supervision of the Division of Probation in the executive branch of State government and for direct supervision and financing are under the executive branch of local governments. The Commission recommends (pp. 43-46) that all probation services in New York State be wholly included in the court system.

- 69 Paris. Université. Department of Criminal Science.

Suspended Sentence. London, Heinemann, 1971. 102 p. (Cambridge Studies in Criminology, volume XXVII)

364.63 P23273

A discussion of the ways in which the suspended sentence works in France. Concludes that the suspended sentence (France or elsewhere) "is a valid and sound method of non-institutional reaction against crime, based on consideration of the personality of the offender." Contains a statistical appendix for France and other countries.

- 70 Rochester Bureau of Municipal Research, Inc.

A Plan For Court and Probation Services. Rochester, New York, 1968. 106 p. + appendix.

S364.63 qR67692

Study was undertaken because of the "dislocation between the benefits received and the costs paid" for the service. The duality of the responsibility of local probation departments to both the courts and the State Division of Probation results in a confusion of authority. Recommends restructuring of current probation functions, separating presentence investigations, family court services, direct supervision of probationers,

removing some State probation staff to the Administrative Board of the Judicial Conference, and recombining State probation and parole functions with other rehabilitative services as a separate division outside the Department of Correction.

- 71 Saeed, Sultana.
Suspended Sentences, in Current Legal Problems, 1970. vol. 23,
71-97.

LAW LIB

Suspended sentences were introduced in England under the Criminal Justice Act of 1967; and were made mandatory in short-term cases. Findings are that, in the first 3 years of operation, suspension of sentence has worked well. Suggestions are made for continuation of the judge's option to use suspension and perhaps broaden the classification of cases to which it can be applied.

- 72 Smith, Robert L.
A Quiet Revolution. Washington, Government Printing Office, 1971.
90 p.

LEGIS REF

A history of the first five years' operation of California's Probation Supervision subsidy program. The program holds out a financial incentive to counties to reduce the rate of commitments to State correctional agencies. The act which permitted this program to operate was based on the idea of increased protection to the citizens and improved supervision of the probationers. This change, initiated in 1966, has altered the entire structure of California's correctional system.

- 73 Thomas, D.A.
Current Developments in Sentencing--The Criminal Justice Act in Practice, in Criminal Law Review, 1969. 235-249.

LAW LIB

Suspended sentences; future trends in England, as a result of the Criminal Justice Act of 1967.

74 White, Stephen.

Suspended Sentences--Recent Developments, in New Law Journal,
January 1-8, 1970. vol. 120, 17-18, 41-43.

LAW LIB

A review of appellate decisions on the recently-instituted (1967) practice of suspending sentences in Great Britain. The author examines judicial rationales and conflicting decisions in the two years since such discretion was granted trial judges by the Criminal Justice Act of 1967. Problems arise in suspending imprisonment and different court approaches are explored in such areas as several sentences being imposed consecutively, legal limitations over the sentencing of young offenders and possible conflict with the provisions of the Firearms Act of 1968.

III. APPELLATE REVIEW OF SENTENCES

Item

75 Brandon, Barbara.

In Van Alstyne's Wake: North Carolina v. Pearce, in University of Pittsburgh Law Review, Fall 1969. vol. 31, 101-17.

LAW LIB

Suggests that an article by Professor William Van Alstyne in the Yale Law Journal (v. 74, p. 606) of March 1965 had an influence on the U.S. Supreme Court's decision in two cases where a heavier sentence was imposed on defendants who had successfully attacked their first convictions. Conclusion is that access to postconviction relief must not be accompanied by the possibility of harsher resentencing.

76 Criminal Law--Resentencing Jury May Impose a Harsher Sentence on Retrial, in Vanderbilt Law Review, May 1970. vol. 23, 859-67.

LAW LIB

Concerning Pinkard v. Henderson 6 Grim. L. Rptr. 2148 (Tenn. Crim. App. 1969). wherein a defendant sentenced to 20 years had his conviction set aside and on retrial received a jury-imposed sentence of 99 years. The threat of a harsher sentence frustrates the pursuit of post-conviction remedy. Concludes that even the rule in Pearce (see Item 75 above) is sufficient.

77 De Costa, Frank A., Jr.

Disparity and Inequality of Criminal Sentences: Constitutional and Legislative Approaches to Appellate Review and Reallocation of the Sentencing Function, in Howard Law Journal. Winter 1968. vol. 14, 29-59.

LAW LIB

Traces the Supreme Court's position on review on sentences and proposes legislation to create a sentencing board, thus lifting the burden from the individual judges.

78 Devine, Myles J.

Solution to an "Incredible Dilemma"--The Original Sentence as a Ceiling, in South Dakota Law Review. Winter 1968. vol. 13, 130-145.

LAW LIB

Defendants risk being subject to a greater penalty at retrial, upon an appeal, than the sentence which was imposed at original conviction. The author examines the four theories usually advanced to justify this practice: (1) Nullity, (2) Waiver, (3) Deterrent, and (4) Discretionary Power. After developing due process, equal protection, and double jeopardy arguments against harsher penalties, the author concludes that the original sentence should be an absolute ceiling which the appellate court could not transcend in resentencing the defendant.

79 Dix, George E.

Judicial Review of Sentences: Implications for Individualized Disposition, in Law and the Social Order (Arizona State Law Review). 1969. vol. 3, 369-418.

LAW LIB

A survey of 30 years of appellate review in Arizona. Author concludes there has been little effect on trial court sentencing primarily because of the review court's reluctance to exercise its authority. Author also reviews a possible alternative for a rational sentencing structure, the indeterminate sentence, and individualization of the sanction against the offender.

80 Honigsberg, Peter J.

Limitations Upon Increasing a Defendant's Sentence Following a Successful Appeal and Reconviction, in Criminal Law Bulletin. July-August 1968. vol. 4, 329-342.

LAW LIB

The threat of a harsher sentence can stifle the right to appeal; it violates due process and double jeopardy clauses, as well as the right to equal protection. Recommends that upon appeal and reconviction, the sentencing authority give credit for all time served and be limited to imposition of a sentence no longer than the original.

- 81 Hruska, Roman L.

Appellate Review of Sentence, in American Criminal Law Quarterly.
Fall 1969. vol. 8, 10-15.

LAW LIB

Because U.S. laws have only recently permitted disparity in sentencing, an anomaly has arisen. We have not kept pace with other countries in providing the safeguard of discretionary sentence review. Judges run the human risk of error and no individual should be deprived of years of his liberty by the unchangeable decision of a single person.

- 82 McElroy, Pender R.

Criminal Law--Sentencing--Denial of Credit for Time Served or Longer Sentence Imposed at Retrial, in North Carolina Law Review. February 1968. vol. 46, 407-18.

LAW LIB

Discussion of several cases that involve harsher penalties on retrial, with particular attention to Patton v. North Carolina 381 F. 2d 636 (4th Cir. 1967).

- 83 Mueller, Gerhard O.W., and Fré Le P. 1968.

Appellate Review of Legal But Excessive Sentences: A Comparative Study, in Vanderbilt Law Review. May 1968. vol. 21, 411-424.

LAW LIB

There are seldom sentencing criteria in laws. Judicial review of sentences is therefore generally not available. Authors examine and evaluate the continental system and conclude that the U.S. must also have a statutory statement of peno-correctional aims so that a sound sentencing and review system can be established.

- 84 Phillips, C. A. 1968.

Increased Sentence Upon Retrial, in Washington and Lee Law Review. Spring 1968. vol. 25, 60-69.

LAW LIB

Consideration of the case of Patton v. North Car 381 F 2d 636 (4th Circuit 1967). In this case, the increased sentence was reversed because it denied due process, equal rights, and constituted double jeopardy.

85 Rehbock, Ernest Z.

Sentence Appeals in Perspective: The Alaska Way, in Judicature.
November 1970. vol. 54, 156-61.

LAW LIB

Sitka Sentence Seminar conferees expressed a preference for an inexpensive sentence appeal procedure which would result in the gradual development of sentencing criteria via Supreme Court opinions.

86 Thomas, D.A.

Appellate Review of Sentences and the Development of Sentencing Policy; The English Experience, in Alabama Law Review. 1968. vol. 20, 193-226.

LAW LIB

In England, sentence review has been available for over 60 years. The author presents the case for appellate review of sentences in the U.S. and the subsequent development of an extensive case-law of sentencing.

IV. PRESENTENCE REPORTS

Item

87 Bach, Maxim N.

The Defendant's Right of Access to Presentence Reports, in Criminal Law Bulletin. April 1968, vol. 4, 160-170.

LAW LIB

Since the majority of cases are disposed of through a guilty plea, the judge has only the pre-sentence report to rely on in sentencing. The defendant, even when pleading guilty has three constitutional rights; confrontation, due process, and effective counsel. He should be allowed to review the pre-sentence report.

88 Beals, Robert L.

Presentence Reports--Allegations of Prior Criminal Activity--Factual Determination--Degree and Burden of Proof, in Ohio State Law Journal. 1972, vol. 33, 960-971.

LAW LIB

An examination of United States v. Weston, 448 F. 2d 626 (9th Cir. 1971) which was a significant departure from the existing procedure in sentencing hearings. The Ninth Circuit held that, when there is disclosure of a presentence report to a defendant and reliance by the trial judge upon that report in determining what sentence to impose, the defendant has an undeniable right to a factual determination of allegations of other criminal behavior or misconduct. The decision asserts that disputed facts must be found persuasively true before they can be relied upon, which implies that both the trial court and appellate courts must examine all the underlying relevant documentation before arriving at a determination of its veracity.

89 Campbell, Rutheford B., Jr.

Sentencing: The Use of Psychiatric Information and Presentence Reports, in Kentucky Law Journal. 1971-1972. vol. 60, 285-321.

LAW LIB

A brief history of presentence reports prefaces an analysis of the particular role the psychiatric profession plays in the disposition of defendants. The author examines the defendant's right to a hearing at the sentencing stage in order to controvert the presentence report and the information on which it is based.

The difficulty in disputing the psychiatric portion of the report leads to the conclusion that use of psychiatric information must be subject to a procedure which will check its biases and errors in order to assure due process and fairness.

- 90 Gillick, John E., Jr. and Robert E. Scott, Jr.

The Presentence Report: An Empirical Study of Its Use in the Federal Criminal Process, in Georgetown Law Journal. February 1970. vol. 8, 451-486.

AW LIB

Study financed by a research grant from the Federal Judicial Center. Presentence reports were originally begun to assist the judge in disposing of a case and they have a potential for expanded use within the criminal justice system. Analysis of data gathered for this study showed the need for closer cooperation between the prosecuting attorney and the probation officer who prepares the presentence report, the extended role of the probation officer into additional areas which requires coordination of social services resources within the community, and the need for more extensive manpower in the probation service.

- 91 Lehigh, Richard S.

The Use and Disclosure of Presentence Reports in the United States, in Federal Rules Decisions, May 1969. vol. 47, 225-252.

LAW LIB

A review of federal and state court procedures in the use of and requirements for presentence reports. The author examines many of the leading decisions relating to presentence investigations and reports and provides a brief summary of the constitutional issues raised, particularly in relation to disclosure, availability of counsel, and opportunity for defendant rebuttal.

- 92 Lieberman, Joel D., S. Andrew Schaffer, and John M. Martin.

The Bronx Sentencing Project of the Vera Institute of Justice. Washington, Government Printing Office, 1972. 53 p.

LEGIS REF

Describes an experiment with a shortened form of presentence reports. The project was established to fill the need for such reports in an area where the caseload of the Office of Probation

was such that only 20% of the misdemeanor cases could receive a presentence investigation. With these reports, judges were enabled to grant supervised or unsupervised release in many cases where the defendant would probably have otherwise been imprisoned. The project was terminated in 1971 and shortly afterwards, New York State law was amended to permit use of this shortened form of the pre-sentence report.

93 Saalfeld, Robert J.

Buchea v. Sullivan: Disclosure of Presentence Reports, in Willamette Law Journal. December 1972. vol. 8, 458-467.

LAW LIB

The Oregon Supreme Court in Buchea v. Sullivan, 497 P. 2d 1169 (1972) held that a defendant has a constitutional right to see that part of his presentence report which relates to his criminal record. The author believes Buchea procedure lends itself to the possibility of abuse and provides little improvement over the former statute which left disclosure to the discretion of the judge. The author favors a more extensive, mandatory disclosure procedure.

94 Steele, Walter W., Jr.

Counsel Can Count in Federal Sentencing, in American Bar Association Journal. January 1970. vol. 56, 37-40.

LAW LIB

Concerns the effect of a federal probation officer's report in determination of a sentence.

95 Thomas, D.A.

Establishing a Factual Basis for Sentencing, in Criminal Law Review. February 1970. 80-90.

LAW LIB

Presentence investigations have centered on social and other facets of the offender's background and history. Author states that such reports should also establish an accurate factual description of the offense and of the offender's participation in it, and that the lack of this information relating to the offense is one of the weakest links in the criminal justice system.

- 96 U.S. Administrative Office of the United States Courts. Probation Division.
The Presentence Investigation Report. Washington, 1965. 39 p.

S364.6 U465

A study of the quality, sources, and format of presentence reports in the federal court system with recommendations for improvement in both uniformity and consistency. Includes a report by a subcommittee of the Judicial Conference Committee on the administration of the Probation System which outlines the functions and objectives of the presentence investigation report and provides guidelines and suggestions as to content and procedure.

- 97 Zastrow, William G.
Disclosure of the Presentence Investigation Report, in Federal Probation. December 1971. vol. 35, 20-22.

S364.6305 qF293

A summary of the arguments for and against disclosure of presentence investigation reports. The author reports on the practice of disclosure in the Eastern District of Wisconsin where the presentence report has been routinely available to the defense counsel for the past five years.

V. JUDICIAL EDUCATION

Item

- 98 American Bar Association. Judicial Administration Division.
National College of the State Judiciary. [Reno, Nevada], 1973.
60 p.

LAW LIB

A brochure explaining the purposes and operation of the college. Also available is a catalog listing resident courses to be given in 1974.

- 99 Friesen, Ernest C., Jr.
The Judicial Seminar: Foundation of Judicial Education, in Journal of the American Judicature Society. 1962. vol. 46, 22-27.

LAW LIB

Explores the lack of organized training for holders of judicial office and the different problem areas encountered by the newly-created judge. The author examines different aspects of the judge's duties and operations, including: 1) interpreting rules of law in the light of determined facts; 2) instruction of juries; 3) reviewing the work of courts, administrative agencies, and officers; 4) enforcing the rules of the court; and 5) orders to the executive branch. The author recommends the establishment of a college of judicial administration to upgrade the administration of justice.

- 100 Gutman, Daniel.
An Experiment in Judicial Education, in Judicature. 1969. vol. 52, 366-369.

LAW LIB

Description of the unique all-year continuing program of seminars held by the New York Academy for the Judiciary. (See Item 106.)

- 101 Institute of Judicial Administration.
Judicial Education in the United States: A Survey. New York, 1965.
276 p.

LAW LIB

An extensive review of programs, seminars and institutes dealing with the education and training of judges. Educational programs for appellate, federal district, state trial, traffic, and juvenile

court judges are examined in different chapters and the faculties, curriculum, facilities and finances are evaluated. The final three chapters deal with sentencing institutes; miscellaneous judicial education programs and prospects in judicial education.

102 Karlen, Delmar.

Judicial Education, in American Bar Association Journal. November 1966. vol. 52, 1049-1054.

LAW LIB

Description of national and local programs designed for the continuing education of judges. The author reviews five general areas of ongoing judicial training: 1) Seminar for appellate judges; 2) Programs for Trial judges; 3) Programs for minor court judges; 4) Specialized program for juvenile court judges; and 5) Specialized program for sentencing.

103 Kleinschmidt, R.A.

Increase the Responsibility, Independence and Ability of the Bench, in Illinois Bar Association Proceedings. 1912. vol. 1912, 134-143.

LAW LIB

Compares the American judicial system, which author sees as weak and sluggish, with that of England, where administration of the law is said to be swift, fair and certain. The author especially criticizes inadequate compensation for judges, political favoritism, the recall of judges, and insufficient tenure in office for sitting judges. In spite of the year the article was written, the observations retain a remarkable degree of currency.

104 Leflar, Robert A.

The Appellate Judges Seminar, in Arkansas Law Review and Bar Journal Association. Summer 1967. vol. 21, 190-196.

LAW LIB

Tenth-year report on the seminar. Lists curriculum, methods, readings, and participants for the 1967 seminar. Topics for discussion were: 1) judicial administration by Appellate Courts; 2) nature and function of the judicial process; 3) judicial opinions; 4) state courts and the federal system; 5) special areas of appellate review; and 6) special areas of general law.

105 ---

The Appellate Judges Seminars at New York University, in Journal of Legal Education. 1957. vol. 9, 359-365.

LAW LIB

Description of the first seminar for appellate judges at New York University Law School. Includes a listing of the twelve subjects discussed and a list of principal participants. A brief evaluation of the seminar concludes the article.

106 New York Academy of the Judiciary.

Report of the Dean. New York Institute of Judicial Administration, 1968-1970.

LAW LIB

Report on a judicial education venture funded for three years by the Ford Foundation. The academy was under the Appellate Division, First Department, and administered by the Institute of Judicial Education.

107 New York (State). Temporary Commission on the State Court System.
...And Justice For All, Part III. [Albany] 1973. 62 p.

LEGIS REF

Statutes proposed by the Commission include (§ 220) the establishment of institutes for sentencing, and provision for seminars and meetings designed to promote the continuing improvement of judicial skills.

108 O'Connell, Kenneth J.

Continuing Legal Education for the Judiciary, in Journal of Legal Education. 1964. vol. 16, 405-415.

LAW LIB

An alumnus of the IJA appellate judges' seminar describes the benefits of, and suggests authorized sabbaticals for, study and self-improvement in a permanent judicial education program. The author believes law schools hold the key to development of sustained programs of education for judges.

109 Pilot Institute on Sentencing, Boulder, Colorado, July 16 and 17, 1959,
in Federal Rules Decisions, July 1959. vol. 26, 232-383.

LAW LIB

A series of institutes on sentencing have been held under the auspices of the Judicial Conference of the United States. The purpose of the institutes is the production of meaningful criteria for sentencing, and particularly for reducing the disparity in Federal sentences. Other published institutes on sentencing are reported in:

41 FRD 467

37 FRD 111

45 FRD 149

30 FRD 185

30 FRD 401

42 FRD 175.

27 FRD 287

39 FRD 523

VI. MODEL AND PROPOSED LAWS, STANDARDS, AND PROCEDURES

Item

- 110 American Bar Association. Advisory Committee on Sentencing and Review. Standards Relating to Criminal Appeals. Approved Draft, 1970. [New York], Institute of Judicial Administration, 1969-1970. 109 p. + bibliography + supplement.

LAW LIB

Civil cases have predominated in appellate courts, shaping the character of the appeals procedure for criminal cases as well. The unique problems of criminal appeals call for a different manner of treatment. This report establishes standards for such cases in three areas:

1. Structure of appellate system and nature of access by the parties.
2. The transition of cases from trial to appellate courts.
3. The internal processing of appeals by appellate tribunals.

The standards recommended give a broad right of appeal by the prosecution, defense counselling of prospective appellants to avoid "frivolous appeal", supervision of appeals by court officials, and transcript provision for counsel of indigent appellants.

- 111 --- --- Project on Minimum Standards for Criminal Justice. Standards Relating to the Appellate Review of Sentences. Tentative Draft. New York, Institute of Judicial Administration, 1967. 160 p.

S343.097303 A5126ap

No other country in the free world permits one man to exercise such unrestricted power as the U.S. grants to a sentencing judge. Sentence review will correct grossly excessive and non-objective sentences, avoid retrials in cases where only the sentence is defective, and will increase respect for the system. Contains standards of review with commentary, copies of several states' review statutes, and proposals for new statutes.

112 --- ---

Standards Relating to Probation, Approved Draft, 1970. [New York],
Institute of Judicial Administration, 1970. 110 p.

LAW LIB

Premise of this report is that the judicial response in a sentencing situation should be probation, unless there are factors in the case that require imprisonment. The judge's choice of an overcrowded prison vs. lightly supervised probation is a failure of the legislative process. "...an adequate correctional system will place great reliance on appropriately funded and manned probation services...can lead to significant improvement in the preventive effects of the criminal law." It is an approach to the control of crime which should give better results at less cost.

113 --- ---

Standards Relating to Sentencing Alternatives and Procedures;
Tentative Draft. [New York, Institute of Judicial Administration]
1967. 345 p.

LAW LIB

Stresses need for greater judicial flexibility in sentencing and suggests this may be obtained with a less-circumscribing penal code. Recommends fewer prison terms; more fines and probation.

114 American Law Institute.

Model Penal Code; Proposed Official Draft with Revisions.
Philadelphia, 1962. 346 p.

LAW LIB

American Law Institute's classic version. Of particular interest in the field of Sentencing are: Article 6, "Authorized Disposition of Offenders" (pp. 91-105); Article 7, "Authority of Court in Sentencing" (pp. 106-22); Article 301, "Suspension of Sentence, Probation", (pp. 242-8); Article 302, "Fines", (pp. 249-51); Alternative Article 404, "Division of Probation and Parole", (pp. 337-41); and Article 405, "Division of Probation" (pp. 342-6).

- 115 Model Sentencing Act, Crime and Delinquency, October 1972, 2nd ed., vol. 18.
335-371.

S364.6 N111

Revision of the benchmark 1963 Model Act; adds new features including the gradual phasing out of most correctional institutions, restitution as an alternative, and removal of barriers to expanded use of parole and probation.

- 116 New Jersey. Criminal Law Revision Commission.
The New Jersey Penal Code, 2 vols.

Vol. 1 - 240 p.
Vol. 2 - 370 p.

Newark, 1971.

LEGIS REF

The final report of the Commission and the recommended new code is in volume 1; commentary in volume 2. Chapters 44-46 concern sentencing. The proposed revision specifies that in offenses where the penal code does not provide for a sentence of imprisonment, the Court shall deal with the convicted offender without imposing a sentence of imprisonment unless that form of sentence is deemed necessary for the protection of the public. Provision is also made for extended terms of imprisonment. Criteria are given for both. The proposal is being final-drafted in bill form for the current legislative session, with three changes in the sentencing provisions: removal of the death penalty, increase in amount of fines, and removal of the "use of firearms" as a criterion for an extended term of imprisonment. Public hearings are expected to, per telephone call March 1, 1974.

- 117 Rubin, Sol.

Constitutional Aspects of the Model Sentencing Act, in Federal Rules Decisions, 1967. vol. 42, 226-233.

LAW LIB

The author believes that the possibility of the Model Sentencing Act being open to constitutional challenges is negated by the fact that the wording of the Act actually solves the problems of statutory minimums, youthful offenders, and sexual psychopath laws.

- 118 U.S. Judicial Conference of the United States.

Preliminary Draft of Proposed Amendments to Rules of Criminal Procedure for the United States District Courts; prepared by Committee on Rules of Practice and Procedure, in Federal Rules Decisions, January 1970. vol. 48, 547-647.

LAW LIB

Includes sections on sentence and judgment and on presentence investigation.

- 119 U.S. National Commission on Reform of Federal Criminal Laws.

Study Draft of a New Federal Criminal Code. Washington, Government Printing Office, 1970. 344 p.

S343.0973 U62 s 1970

Focuses on revision of Title 18 of the U.S. Code (Crimes and Criminal Procedure). A major overhaul of the sentencing system was part of the congressional mandate to the Commission and part C of this draft (pp. 267-311) details the sentencing system. Over 100 different classifications of offenses have been reduced to 6 and a consistent plan of grading offenses is proposed. The Commission suggests that minimum sentences should be dropped in most cases. Other areas covered include probation, mandatory parole, regulation of cumulative sentencing, a system of fines, appellate review of sentences, and innovations in the conditions of confinement.

- 120 ---

Working Papers (2 vols.) Washington, Government Printing Office, 1970. 1450 p.

S343.0973 U62

Material collected for use in the study draft preparation of a new federal criminal code. Thorough explanations of the presented statutory text are included along with possible alternatives to the suggested reforms.

VII. BIBLIOGRAPHIES

Item

- 121 American Judicature Society.

Sentencing Patterns and Problems: An Annotated Bibliography.
Chicago, 1969. 53 p. (Report no. 28)

S347.9973 qA514

- 122 Klein, Fannie J.

Annotated Bibliography, National Conference on the Judiciary,
March 11-14, 1971. New York, Mellen Press, 1971. 53 p.

S016.3479973 K64

- 123 Tompkins, Dorothy C.

Sentencing the Offender. Berkeley, Institute of Governmental
Studies, University of California, 1971. 102 p.

S016.3646 T662s

- 124 U.S. National Criminal Justice Reference Service.

Abstracts on Sentencing. Washington, 1974. 68 p.

LEGIS REF

VIII. ON ORDER

Item

- 125 American Judicature Society.

Sentencing Patterns and Problems. Chicago, 1974.

An update of the 1969 bibliography (see item 124).

- 126 Carrigan, Jim R., Esq.

Inherent Powers of the Courts. 1973.

Published under the auspices of the National College of the State Judiciary (an activity of the Judicial Administration Division of the American Bar Association).

- 127 Carter, R.M.

Pre-Sentence Information and Decision-Making, in Judges Journal. 1969. vol. 8, #1, 11 p.

Author finds that pre-sentence reports often contain a great amount of irrelevant information. Suggests that such reports be limited to relevant data so that the investigator can spend more time on those few which do need an extensive investigation.

- 128 Frankel, Marvin E.

Criminal Sentences: Law Without Order. 1973. 124 p.

By a New York judge who says the sentence is critical because it is "the fundamental judgment determining how, where, and why the offender should be dealt with for what may be much or all of his remaining life." Judge Frankel advocates a permanent commission on sentencing, parole, and corrections and to formulate proposed laws.

- 129 Guidebook of Projects for Prosecution and Defense Planning.

National Center for State Courts.

- 130 Lee, Thomas E. and Ben F. Overton.

Judicial Discretion. 1972.

The authors are judges. The book was published under the auspices of the National College of the State Judiciary (an activity of the Judicial Administration Division of the American Bar Association).

- 131 Mullen, Joan et al.

Evaluation of Pre-Trial Intervention Program of the Manpower Administration, U.S. Department of Labor, 1st and 2nd Interim Reports. Abt Associates for U.S. Department of Labor, Manpower Administration. (July and September) 1972.

- 132 National Conference of Judges on Sentencing Proceedings.

Toronto, Toronto University Centre of Criminology, 1970. includes bibliography.

The main thrust of the conference was on sentencing, probation, parole, presentence investigations, alternatives, and administrative support.

- 133 Revelle, George H.

Sentencing and Probation. 1973.

The author is a judge. The book was published under the auspices of the National College of the State Judiciary (an activity of the Judicial Administration Division of the American Bar Association).

- 134 Ross, Susan C.

The Rights of Women; The Basic ACLU Guide to a Woman's Rights. Avon, New York, 1973.

An American Civil Liberties Union Handbook. Contains a short chapter that discusses the discrepancies in sentence length for men and women who are convicted of the same crime.

- 135 West, D.J. ed.

The Future of Parole; Commentaries on Systems in Britain and U.S.A. London, Duckworth, 1972. 212 p.

END