

State of Florida
Department of
Offender Rehabilitation

Louie L. Wainwright
Secretary

A Comparison of Flat-Time Sentencing with
Existing Sentencing Practice in Florida

Prepared by:
Research and Statistics Section
Bureau of Planning, Research and Staff Development

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State of Florida
Reubin O'D. Askew, Governor

Department of Offender Rehabilitation

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Louie L. Wainwright, Secretary

January 5, 1976

All Interested Parties

RE: Proposals for Flat Time Sentencing in Florida

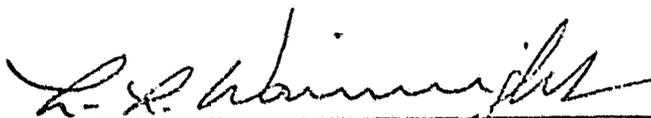
In response to a request by Senator Richard J. Deeb of St. Petersburg, the Department of Offender Rehabilitation has developed a comparison of Flat Time Sentencing with existing sentencing practice in Florida which is contained in this document.

Attachments 1 and 2 of this document contain information which has been forwarded to the Department of Offender Rehabilitation but does not necessarily reflect the opinions of this Department.

Flat Time Sentencing is a very complex proposal which could have far-reaching effects in the State of Florida. It is my opinion as Secretary of the Department of Offender Rehabilitation that based upon the preliminary results of this study, a great deal more time needs to be spent by all elements of the Criminal Justice System in a thorough study of this proposal.

This comparative study alone reveals the possibility of 4,987 man years that could be served under the Flat Time Sentencing proposal which would therefore require additional monies for housing and maintenance. By comparing length of sentences of first time offenders and habitual offenders in Tables I and II, it would indicate a total of 3,458 additional man years. Translated into facilities and operating cost, the impact of Flat Time Sentencing could result in the need of six additional 600-man institutions at an approximate cost of \$54 million plus operating costs of \$3.3 million per institution, for a total of \$19.8 million dollars in additional operating cost.

In addition, the increase in commitments during the calendar year 1975 just ended, amounted to 4,469 inmates, which almost exceeds the total net gain for the past 10 years combined.



LOUIE L. WAINWRIGHT, SECRETARY

STATE OF FLORIDA
DEPARTMENT OF OFFENDER REHABILITATION

A COMPARISON OF FLAT-TIME SENTENCING WITH
EXISTING SENTENCING PRACTICE IN FLORIDA

Purpose

This study compares the effect of a flat-time sentencing model (see attachment I) proposed by Senator Richard J. Debb of St. Petersburg with the existing sentencing practice in Florida. The existing sentencing practice involves the use of indeterminate sentences, split sentences, fixed sentences, mandatory minimum sentences, amelioration of sentencing through granting of statutory and extra gain time, and amelioration of sentencing through pardon and parole. Flat-time sentencing involves sentencing an offender to prison according to a prescribed length of sentence for each felony class. Under flat-time sentencing, gain time may be awarded for good behavior on a day-for-day basis. Parole would be abolished.

Background

The flat-time sentencing model proposed by Senator Deeb is based upon the Illinois flat-time sentencing model--The Walker-Fogel Justice Model (see attachment II). This is a comprehensive model which provides guidelines for flat-time sentencing of both first and multiple offenders. Its specific goal is "to improve Illinois criminal law by:

- (1) requiring a just and speedy trial for all accused criminals;
- (2) ending unequal sentencing of persons who have committed the same crime; and
- (3) strengthening the resources of the courts and the corrections agencies to effectively administer the program."

The Walker-Fogel model proposes to meet its goal by establishing sentences of a fixed length for each class of felony. Also, it provides for the abolishment of parole. Each prisoner sentenced under this system would be required to serve the full time for which he/she is sentenced, unless the requirements for "good time" are met. "Good time" in the Illinois model is awarded on a day-for-day basis: that is, for each infraction free day spent by the inmate, one day would be removed from his/her sentence. Under the maximum provision for good time, a prisoner could be released after serving no less than 50% of the flat sentence. Good time for second offenders would be computed using different values and thus would reflect longer sentences.

The model proposed by Senator Deeb for Florida identified five felony classes, namely Murder (capital) or Capital Felonies, Murder (non-capital) or Life Felonies, and Class I, Class II, and Class III felonies.*

Definitions

For the purpose of this analysis, a first offender is defined as a person now under sentence who has never been committed or confined in a state or federal correctional facility for one year or more on a felony conviction. Multiple or habitual offenders are those persons who have been

* The original proposal has been amended to reflect the categories as listed.

committed to a state or federal institution one or more times with a felony conviction for one year or more.

Methodology

For this analysis, data reflecting existing practices were selected from two sources: (1) to compare average length of sentences for existing sentencing practices, data were derived from the file for persons admitted to DOR during FY 73-74, and (2) to compare the average time served under the existing sentencing practices, data were derived from the Number 2 release cards for FY 1973-74 which are used in processing release papers.

In both instances the data reflect the most complete audited information currently available and this available data reflect the most current prevailing sentencing and releasing practices.*

Some difficulty was encountered in converting available data to conform to the criteria embodied in the flat-time sentencing model. It was necessary to make some arbitrary decisions in the classification of present offenses into the proposed felony classes. The classification method which was developed attempted to conform with the intent of the Florida Statutes as well as the purpose of flat-time sentencing. A generalized version of this classification scheme is as follows:

(1) Capital felonies with a death sentence under Florida Statutes were equated with the proposed "Murder (capital)" class;

(2) Life felonies and Capital felonies with a life sentence were equated with "Murder (non-capital)" class:

*Audited data for admissions for FY 74-75 will be available by December 1, 1975 and audited data for Releases for FY 74-75 will be available by January 1, 1976.

(3) Class I felonies under Florida Statutes were equated with the proposed Class I felonies:

(4) Class II felonies were equated with the proposed Class II felonies; and (5) Class III felonies were equated with the proposed Class III.

Findings

Data were analyzed to determine the probable impact upon the Department of Offender Rehabilitation if the proposed flat-time sentencing model was adopted in Florida.

Average Length of Sentence

A comparison of average length of sentence for the flat-time sentencing model and existing sentencing practice is presented in Table I and Table II. In order to reflect prevailing practice, life sentences in existing data were computed as being equivalent to a sentence of twenty-five years.*

The average length of sentence for first offenders, under existing sentencing practice, is greater in all categories except the Life Felony Category. Overall, the existing sentencing practice imposes longer sentences for first offenders, averaging 1.08 years more than under the proposed flat time sentencing model.

As the data in Table II indicate, the average length of sentence received by habitual offenders under flat-time sentencing would be increased an average of 3.27 years (45.1%) or an aggregate of 7,420.62 man years. The greatest effect would be noticed for habitual offenders convicted of Class I felonies. Under the present system, Class I offenders would receive an average sentence

*A life sentence imposed in lieu of a death sentence requires that a person serve twenty-five years prior to becoming eligible for parole. From another perspective, persons paroled serve on the average approximately 40% of their sentence prior to release. Applying the same ratio to persons paroled with a life sentence suggests that the equivalent of a life sentence is twenty-five years.

of 9.16 years, whereas under flat-time sentencing, the average sentence would be 15 years--an average increase of 5.84 years (63.7%). The opposite would be true of habitual offenders convicted of Class II felonies, wherein the average length of sentence under existing practices is 9.24 years, but this would be reduced under flat-time sentencing to 9 years--a difference of .24 years (2.6%).

Average Time Served

A comparison of average time served for flat-time sentencing model and existing sentencing practice is presented in Table III and Table IV. In computing the average time served under the flat-time sentence model, several assumptions were made. First, it was assumed that "good time" would be earned on a day-for-day basis and that each inmate would earn 90% of the good time available. It was further assumed (similar to the Illinois model) that at least two (2) months jail time would be credited to the statute sentence. Thus, time-to-be-served for each felony class was calculated according to the following formula:

$$T_i = X_i - .90 (.50 \times X_i) - 2 \text{ months,}$$

where: T = time-to-be-served

X = length of sentence in years

I = felony class (CF, LF, 1, 2, 3)

2 months = jail time, calculated as .16667 years

The resultant average time served for the various felony classes under the flat-time sentence model is shown in Tables III and IV. In these two tables data are not analyzed for the capital felony class since it is presumed that persons sentenced under this class will be executed. The remaining

data in both tables indicates an overall increase in time served if flat-time sentencing were adopted in Florida.

For first offenders, as indicated in Table III, the flat-time sentencing system would lengthen incarceration time for all felony classes except Class III. The average time served for all first offenders would be increased .73 years (33.64%), an aggregate increase of 2484.19 man-years.

A more important effect of flat-time sentencing, as indicated in Table IV, is the increase in the average time served by habitual offenders. On the average, flat-time sentencing would increase time served for this category by 2.97 years (109.59%). The greatest increase in any one felony class would be for Class I felonies. Under the existing sentencing practice, felons in this class would serve an average of 3.19 years. Under flat-time sentencing, the time served would be increased by 4.89 years (153%). The least effect would be experienced by felons convicted of Class III crimes. Flat-time sentencing would only increase time served for this latter category by 1.14 years (57.28%).

The average time served by habitual offenders under the flat-time sentencing model would be increased an average of 2.97 years (109.59%) or an aggregate of 2,502.59 man-years.

Under the proposed flat-time sentencing model, inmates committed to DOR during FY 1973-74 would have had to serve an additional 4,987 man-years prior to release.

Summary

The average length of sentence and the average time served were compared for each felony class under the proposed flat-time sentencing model and the existing sentencing practice for all offenders. Under the existing sentencing

practice, for first offenders, the average length of sentence would be greater, whereas the average time served would be less than under the proposed flat-time sentencing model. Conversely, for first offenders, the average length of sentence under flat-time sentencing would be less, but, based upon data for Fiscal Year 1973-74, the average time served would be greater. For habitual offenders, the average length of sentence under the existing model would be less than under the proposed flat-time sentencing model, and the average time served would also reflect a similar relationship.

Overall, the proposed flat-time sentencing model would impose additional demands for beds and maintenance upon the Department of Offender Rehabilitation--a total of 4,987 man-years of demand, and therefore would require that additional monies be appropriated to accommodate the inmates who would have to be housed in the system.

STATE OF FLORIDA
DEPARTMENT OF OFFENDER REHABILITATION

TABLE I

A COMPARISON OF AVERAGE LENGTH OF SENTENCE
UNDER THE EXISTING SENTENCING PRACTICE
AND THE FLAT TIME SENTENCING MODEL
FOR FIRST OFFENDERS

Existing Sentencing Practice*				Proposed Flat Time Sentencing Model				Difference**	
Class	N	Average Length Of Sentence	Man Years	Class	N	Average Length Of Sentence	Man Years	Length of Sentence	Man Years
Life	54	22.85 yrs.	1,233.90	Life	54	30 yrs.	1,620	+7.15	- 386.10
I	1414	8.40 yrs.	11,877.60	I	1414	8 yrs.	11,312	- .40	- 565.60
II	462	9.22 yrs.	4,259.64	II	462	5 yrs.	2,310	-4.22	-1,949.64
III	1486	4.02 yrs.	5,975.68	III	1486	3 yrs.	4,413	-1.02	-1,562.68
Total	3416	6.83 yrs.	23,346.82	Total	3416	5.75 yrs.	19,655	-1.03	-3,961.82

* Based upon records for inmates admitted to the Department of Offender Rehabilitation during FY 73-74 who have no prior felony commitments of one year or more to a state or federal correctional institution.

** Calculated in terms of the amount the existing sentencing practice differs from the proposed flat-time sentencing model.

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Bureau of Planning, Research & Staff Development
December 30, 1975

STATE OF FLORIDA
DEPARTMENT OF OFFENDER REHABILITATION

TABLE II

A COMPARISON OF AVERAGE LENGTH OF SENTENCE
UNDER THE EXISTING SENTENCING PRACTICE
AND THE FLAT TIME SENTENCING MODEL
FOR HABITUAL OFFENDERS*

Existing Sentencing Practice**				Proposed Flat Time Sentencing Model				Difference***	
Class	N	Average Length of Sentence	Man Years	Class	N	Average Length Of Sentence	Man Years	Length of Sentence	Man Years
Life	25	22.40 yrs.	560.00	Life	25	30 yrs.	750	+7.60	+ 190.00
I	979	9.16 yrs.	8,967.64	I	979	15 yrs.	14,685	+5.84	+5,717.36
II	270	9.24 yrs.	2,494.80	II	270	9 yrs.	2,430	- .24	- 64.80
III	960	4.35 yrs.	4,181.94	III	960	6 yrs.	5,760	+1.43	+1,578.06
Total	2234	7.25 yrs.	16,204.38	Total	2234	10.52 yrs.	23,625	+3.27	+7,420.62

*Those persons with one or more prior felony commitment.
**Based upon records for inmates admitted to the Department of Offender Rehabilitation during FY 73-74.

***Calculated in terms of the amount the existing practice differs from the proposed flat-time sentencing model.

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STATE OF FLORIDA
DEPARTMENT OF OFFENDER REHABILITATION

TABLE III

A COMPARISON OF AVERAGE TIME SERVED
UNDER THE EXISTING SENTENCING PRACTICE
AND THE FLAT TIME SENTENCING MODEL
FOR FIRST OFFENDERS

Existing Sentencing Practice*				Proposed Flat Time Sentencing Model				Difference**	
Class	N	Average Time Served	Man Years	Class	N	Average Time Served	Man Years	Time Served	Man Years
Life	25	7.8 yrs	195.00	Life	25	16.33 yrs.	408.33	+8.53	+ 213.33
I	1444	2.41 yrs.	3,480.04	I	1444	4.23 yrs.	6,108.12	+1.82	+2,628.08
II	461	2.53 yrs.	1,166.33	II	461	2.58 yrs.	1,189.38	+ .05	+ 23.05
III	1467	1.74 yrs.	2,551.43	III	1467	1.48 yrs.	2,171.16	- .26	- 380.27
Total	3397	2.17 yrs.	7,392.80	Total	3397	2.90 yrs.	9,876.99	+ .73	+2,484.19

*Based upon records for inmates released from the Department of Offender Rehabilitation during FY 73-74 who had no prior felony commitments of one year or more to the Department of Offender Rehabilitation.

**Calculated in terms of the amount that the proposed flat-time sentencing model exceeds the existing sentencing practice.

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December 30, 1975

STATE OF FLORIDA
DEPARTMENT OF OFFENDER REHABILITATION

TABLE IV

A COMPARISON OF AVERAGE TIME SERVED
UNDER THE EXISTING SENTENCING PRACTICE
AND THE FLAT-TIME SENTENCING MODEL
FOR HABITUAL OFFENDERS*

Existing Sentencing Practice**				Proposed Flat Time Sentencing Model				Difference***	
Class	N	Average Time Served	Man Years	Class	N	Average Time Served	Man Years	Time Served	Man Years
Life	9	8.60 yrs.	77.40	Life	9	16.33 yrs.	146.97	+7.73	+ 69.57
I	372	3.19 yrs.	1,186.68	I	372	8.08 yrs.	3,005.76	+4.89	+1,819.08
II	116	2.88 yrs	334.08	II	116	4.78 yrs.	554.48	+1.90	+ 220.40
III	346	1.99 yrs.	689.44	III	346	3.13 yrs.	1,082.98	+1.14	+ 393.54
Total	843	2.71 yrs.	2,287.60	Total	843	5.68 yrs.	4,790.19	+2.97	+2,502.59

*Those persons with one or more prior felony commitments to the Department of Offender Rehabilitation

**Based upon records for inmates released from the Department of Offender Rehabilitation during FY 73-74.

***Calculated in terms of the amount that the proposed flat-time sentencing model exceeds the existing sentencing practice.

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SENTENCING REFORM

The state of Florida is experiencing a continuing rise in reported crime activity - up another 17% for the first half of 1975!

We must face up to making some changes in our system of corrections, and perhaps sentencing and the execution of the sentence are the most important factors in the entire criminal justice process. The sentence tells the defendant what his penalty will be and it tells the state what its responsibilities are in relation to this defendant. The effects of the sentence carry over heavily to the correctional system. If we are serious about modernizing corrections, we must begin with the sentencing structure. Norman Carlson, Director of the Federal Bureau of Prisons, has said that a new sense of reality is now sweeping over the entire criminal justice system in this country, and this puts more importance on confinement of criminals. Experts predict that more criminals will be going to prison, with more punitive, surer and more swiftly imposed sentences. F.B.I. Director Clarence Kelley has said, "There is an urgent need for meaningful penalties as the certain consequence for those found guilty of crime, whatever their motivation."

Malcolm Beard, Chairman of the Florida Sheriff's Association Legislative Committee has stated, "The first thing we have to do is admit what we are doing is not working." He also stated:

"We need punishment for those who deserve it, with less emphasis on idealistic and wasteful rehabilitative programs for every offender."

"We need to reaffirm the right of society to protection under the law instead of continuing to guarantee the personal privileges of individual offenders at the expense of the public."

(MORE)

"We need to insure swift and sure punishment for all offenders and to allow no recourse to plea bargained sentences."

"We need to hold youthful offenders accountable for their actions. Age alone is no excuse for breaking the law, nor is it a protective blanket from retribution."

"The citizens are afraid. We must make some dramatic changes in order to turn this thing around and restore confidence of the people."

This was, indeed, the consensus of those participating in the panel on Sentencing at the June conference in Orlando on "Criminal Justice System Improvements" called by the Chief Justice of the Florida Supreme Court and the Secretary of H.R.S.

I propose that we should have a flat-time sentencing system. It should be procedurally sound, predictable, uniform, and reviewable. Specific sentences for specific crimes - fixed, set, specified sentences without parole. But with specified time off for every day of "good behavior," thus cutting down on problems among the prisoners and also establishing an every day pattern of good behavior. Good adjustment of prisoners also results from a knowledge that everyone serves the "same time for the same crime."

A model justice program calls for the following:

(MORE)

<u>Offense</u>	<u>Flat Sentence</u>	<u>Range in Aggravation or Mitigation</u>
Murder, (capital)	Death	
Murder (non capital)	Life or 25 years	+ or - up to 5 years
Felony-Class 1	8 years	+ or - up to 2 years
Felony-Class 2	5 years	+ or - up to 2 years
Felony-Class 3	3 years	+ or - up to 1 year
Felony-Class 4	2 years	+ or - up to 1 year

Under this system indeterminate sentences and parole, as we know it, would be done away with. And, along with it, the false pretense that we are releasing criminals only after they are safe. We should punish for the crime, and grant release after the punishment has ended.

It is recommended that rehabilitation of prisoners be available only for those who request it --- but that it no longer be used as a tool for prisoners to con the parole officers that they are ready to return to society. Some prison officials have called the prisons "drama schools," where the prisoners learn to play a part in order to gain their freedom. Many states are now following the lead of federal prisons in making the rehabilitation programs entirely voluntary. We should not forget that former Attorney General of the U.S. William Saxbe, called rehabilitation a "myth." Too often, according to criminologist Hans Mattick, we put a mugger in a woodshop course and all we get when he's through is a mugger who can cut wood.

"Mandatory Supervision" outside of prison should carry some conditions such as financial restitution to the crime victim, periodic imprisonment, fines, etc. This would insure that every felon would receive some degree of punishment.

The shift in philosophy from coddling prisoners to swift, sure

(NOPE)

and fair punishment should make our criminal justice system more just and safe. It should improve the quality of services, reduce prison tensions, and reduce expense (time off for good behavior at \$30 or so a day). Everyone should gain:

Victims would see cases adjudicated quickly and fairly.

Offenders would receive a uniform sentence.

Law enforcement officials need not fear "soft hearted" judges - nor do civil libertarians need fear "hanging" judges. Flat sentences narrow judicial discretion.

Guards are given a more possible job situation in an atmosphere in which offenders have a stake in maintaining order.

"Professionals" have an opportunity to service only those offenders who really want to learn and change for the better.

The importance of this type program is indicated by the fact that Illinois has already put a variation of it into effect and 26 other states are studying it. Maine has already approved this type program, as has one body of Clifornia's Legislature. Even the prisoners in California's Soledad Prison have voted 80% in favor of it. Surely transition will pose problems - but the advantages will make the change worthwhile.

(END)

DRAFT

FLAT - TIME

SERVING TIME IN PRISON:

A NEW WAY IN ILLINOIS:

"...the old way hasn't worked. The way we've handled criminals has itself been a crime. I have asked for a new model of justice, a comprehensive program that revamps the system of sentencing criminals in Illinois."

INTRODUCTION

A Legislative program requested by the Governor would dramatically change the current method of sentencing criminals, the way they serve their sentences, and the process by which they return to the community.

Criminals should have greater reason to fear society than society does to fear criminals. We all know that is not the case today.

There also must be even-handed justice in both the sentencing and the serving of those sentences. Under the present system, there is little possibility of either. We know that, too.

The most controversial part of the program you are about to read is the elimination of parole as we know it.

But both convicts and law enforcement officials favor the program.

We propose to improve Illinois criminal law by:

- ...requiring a just and speedy trial of all accused criminals.
- ...ending the unequal sentencing of persons who have committed the same crime.
- ...strengthen the resources of the courts and the corrections agencies to effectively administer the program.

THIS ENTIRE PAMPHLET DEALS WITH
QUESTIONS AND ANSWERS ON THE SUBJECT
PREPARED BY THE STAFF OF THE ILLINOIS
LAW ENFORCEMENT, DAVID FOGEL, EXECUTIVE
DIRECTOR.

Q. WHAT IS A FLAT-TIME SENTENCE?

A. A set, definite sentence - for example, 5 years.

Q. IN A NUTSHELL, WHAT DOES THIS FLAT-TIME PROGRAM TRY TO DO?

A. Insure that all offenders serve a flat-time sentence. Without parole. Insure as nearly as possible that each offender gets the same time for the same crime.

Q. NO PAROLE? ISN'T THAT TOO HARSH?

A. On the contrary. It lets everybody know where they stand. It is more equitable, more desirable and both convicts and law enforcement officials prefer it.

Q. HOW DO WE SENTENCE NOW?

A. Present law requires the Courts to sentence a criminal to an indeterminate sentence. Such as 1 to 10 years; 4 to 20 years; etc. Actual release is determined by the Parole Board.

Q. CAN YOU GIVE AN EXAMPLE OF INDETERMINATE SENTENCING?

A. Yes. The chart below shows indeterminate sentencing under present law. Under flat-time sentencing this chart would no longer apply.

PRESENT INDETERMINATE SENTENCING IN ILLINOIS

(Court chooses within these ranges*)

FELONIES

- Murder, Death or 14 years to Life
- Class 1, 4 years to life
(for example, rape, armed robbery)
- Class 2, 1 to 20 years
(for example, robbery and burglary)
- Class 3, 1 to 10 years
(for example, theft of \$150)
- Class 4, 1 to 3 years
(for example, petty theft)

* There is also parole supervision for two to five years

Q. WHAT WOULD HAPPEN UNDER THE NEW FLAT-TIME PLAN?

A. Specific sentences for specific crimes. Fixed. Set. Specified prison terms without parole. The next chart shows how flat-time sentencing would work. The sentences shown are for illustrative purposes only. The General Assembly would fix the terms.

EXAMPLE OF A FLAT-TIME SENTENCING SYSTEM

<u>Offense</u>	<u>Flat Sentence</u>	<u>Range in Aggravation or Mitigation</u>
Murder (capital)	Death	
Murder (non-capital)	Life or 25 years	+ up to 5 years
Felony-Class 1	8 years	+ up to 2 years
Felony-Class 2	5 years	+ up to 2 years
Felony-Class 3	3 years	+ up to 1 year
Felony-Class 4	2 years	+ up to 1 year

Under this schedule, the judge could sentence a murderer to death, or to life in prison, without eligibility for release except for executive clemency.

All other crimes, based upon the existing classification of offenses, would carry flat sentences with a set schedule of longer or shorter ranges for aggravating or mitigating circumstances.

Q. BUT AREN'T THERE DIFFERENT DEGREES IN CRIME? COULDN'T ONE ARMED ROBBERY BE MORE VICIOUS THAN ANOTHER?

A. Yes. And there still would be leeway given the courts to increase or decrease the severity of the sentence. But, the final sentence would be for a stipulated, flat-time.

Q. WHAT ABOUT CAREER CRIMINALS OR REALLY DANGEROUS PERSONS? DOES THE FLAT-TIME PROGRAM PROVIDE FOR THEM?

A. Yes. These criminals may receive enhanced or longer flat-time sentences as provided by the General Assembly. For illustrative purposes, such a schedule is shown below.

<u>ENHANCED SENTENCING</u>	
<u>Offense</u>	<u>Flat-Time</u>
Felony-Class 1	15 years
Felony-Class 2	9 years
Felony-Class 3	5 years
Felony-Class 4	5 years

Q. WHY CHANGE SENTENCING AT ALL?

A. Because two persons convicted of the same crime can and do receive greatly different sentences and actually serve vastly different time under the present set-up. This is illogical and unfair.

There is nothing to prevent one judge from sentencing armed robbers too lightly and another too harshly. Even if they received the same sentence, for example, 4-12, one could get out in 3 years, the other only after 12.

Q. SO WHAT?

A. This leads to convict frustration, prison tension and riots, and a greater threat to society. Uncertain sentencing does not deter crime. The criminal should know - in advance - the penalty for what he is about to do. Now he doesn't. Under flat-time he would.

PAROLE

Q. BUT DOESN'T OUR PAROLE BOARD DETERMINE WHO SHOULD BE RELEASED AND WHEN?

A. In theory that's right, but actually decisions on who gets released from prison and when, are arbitrary and based on a concept of "rehabilitation" which cannot be proven to have any relation to future criminal behavior. Not only that, parole dates don't seem to be related to the length of sentence imposed originally. (Of all burglars in Illinois paroled over the past two years, the average time served was 1 year 9 months, although the average sentence for burglary is 4 years.)

Q. ARE YOU SAYING THAT WHEN A JUDGE GIVES A CONVICTED CRIMINAL A LONG SENTENCE THAT HE WON'T NECESSARILY SERVE THE SENTENCE?

A. That's right. Nobody knows because the sentence is "indeterminate". The offender must serve the minimum or one third of the maximum of the term to which he is sentenced, less time off for good behavior. This is where the disparity and inequity for both the public and the offender becomes a reality.

Two offenders with similar backgrounds who have committed the same crimes often receive completely different sentences. This means one will come up for a parole hearing before the other. One may be paroled many years before the other.

The net effect of this present situation is that the public is never assured of just punishment, and the criminal suffers an equal injustice by never knowing how long he must serve. The system is not only illogical, but leads to serious problems of controlling offenders within prisons.

Q. HOW WOULD FLAT-TIME SENTENCING CHANGE THE WAY CONVICTED OFFENDERS ARE SENTENCED?

A. As we have stated, a flat-time sentence would be given to every offender. Three general rules would apply to all prison sentences:

- 1) The term would be fixed at the beginning of the term by the Judiciary.
- 2) The offender would never have to guess what the punishment would be.
- 3) The inequality which now exists in sentencing would be eliminated.

Q. DOES FLAT-TIME SENTENCING MEAN THAT NO OFFENDER WOULD BE PAROLED BEFORE HIS SENTENCE IS COMPLETED?

A. Right. "Parole", as we know it, is done away with. And along with it, the false pretense that we are only releasing criminals after they are safe. We propose to punish for the crime, and grant release after the punishment has ended.

DRAFT

Q. ISN'T PAROLE USEFUL AS A REWARD FOR MEN OUT OF TROUBLE IN PRISON?

A. Under the program, we would provide for early release from prison on the basis of "good time" earned.

Q. WHAT DO YOU MEAN BY "GOOD TIME"?

A. Good time is a reward for responsible behavior from offenders. Every prisoner receives a day off his sentence for every infraction-free day in prison. Thus, if a person receives a flat sentence of 8 years, he will be out in 4 years if he is not found guilty of any serious infractions while in prison.

Q. ARE YOU SCRAPPING THE IDEA OF REHABILITATION?

A. No. The flat-time program only rejects "rehabilitation" as the key to release from prison. But, if an inmate truly wants to rehabilitate himself voluntarily - in the sense of learning a trade, completing his basic education or seeking mental health services, even though he knows his release date doesn't depend on it - such services will continue to be made available to him.

The difference is that a convict will ask for these services only because he really wants them - not just so he can convince the Parole Board that he is rehabilitated. For the first time these helping services will be able to operate as they were supposed to - solely as personal incentives for those who wish to spend their time constructively. Because of this, we believe they will be much more effective.

Q. IS THE PARDON AND PAROLE BOARD ABOLISHED UNDER THE JUSTICE MODEL?

A. No. Quite the contrary is true. The work of the Pardon and Parole Board takes on new meaning under the flat-time sentencing law. Its duties will include:

1) Paroling and releasing of all inmates sentenced under prior law, based upon the new flat-time law, and the actual term intended by the sentencing court.

2) Reviewing for release all prisoners sentenced under the new law, certifying good time and time served by the Department of Corrections.

3) Advising the Governor in commuting, repleving, and pardoning offenders.

This function provides a "safety valve" and the avenue for release from prison of unusual offenders whose continued imprisonment would be an injustice.

PROBATION

Q. DOES ALL THIS MEAN PROBATION IS ENDED?

A. No. It becomes even more important.

First, let's define Probation:

It is supervision outside of prison subject to conditions, aimed at young or first offenders.

Q. WHAT HAPPENS TO PROBATION?

A. The system would be strengthened. The program proposes a Bureau of Community Safety within the Department of Corrections, to provide supervision of all adult offenders not in prison. This includes 30,000 adults now on probation.

The term "Probation" is changed to "Mandatory Supervision", which cannot be imposed without added conditions such as financial restitution to the crime victim, periodic imprisonment, fines, and so forth. This insures that every felony offender will receive some degree of punishment, even outside prison.

Q. IF THE BUREAU OF COMMUNITY SAFETY IS ESTABLISHED, WHAT WILL HAPPEN TO THE PRESENT PROBATION OFFICERS?

A. Circuit-wide departments of Court Services will be instituted under the authority of the Chief Circuit Judge. Employees of the Circuit Court Services departments shall remain County employees.

All present county adult and juvenile probation officers will remain employees in the Circuit Court Service Department embracing their county. They will have a crucial job of assisting the court in pre-sentence investigations of each convicted criminal. These investigative reports will become mandatory.

APPEAL

Q. WITH EVERYTHING SO CUT AND DRIED, WHAT HAPPENS TO THE RIGHT OF APPEAL?

A. It is retained as always.

DRAFT

Q. WHAT ABOUT THE APPEAL OF THE SENTENCE?

A. The power of the Illinois Appellate Court to review the sentence imposed on convicted criminals will be expanded.

Q. WHY IS THIS SPECIAL REVIEW DESIRABLE?

A. The flat-time program is rooted in the principle that persons who commit the same offense in similar circumstances should receive substantially the same sentence. Right now there are great disparities in sentencing by trial judges which cannot be effectively reviewed because the legislature has permitted a wide range of sentences without clear standards.

This legislation both provides clear standards and permits the Appellate Court to modify sentences imposed by the trial court to insure:

- 1) That the sentence was appropriate to the offense committed as aggravated or mitigated in that particular case;
- 2) The sentence was consistent with the public interest and safety of the community and most likely to work a full measure of justice between the offender and his victim;
- 3) The sentence was in line with the sentences imposed on other offenders for similar offenses committed in similar circumstances.

Q. WHO MAY APPEAL A SENTENCE TO THE APPELLATE COURT?

A. Either the defendant or the State may appeal the sentence, although the grounds upon which the State may appeal are restricted.

Q. THUS FAR, ALL OF THE PROVISIONS OUTLINED IN THE JUSTICE MODEL ADDRESS THE ADULT CRIMINAL JUSTICE SYSTEM. WHAT ABOUT JUVENILES? WHAT HAPPENS TO THEM?

A. First of all, it must be recognized that the program is an adult criminal law and correctional model. Under present Illinois law, juvenile (17 years and under) offenders are governed under the Juvenile Court Act (Chapter 37, Illinois Revised Statutes).

Juveniles are specifically excluded from the provisions of the flat-sentence program in recognition of the more malleable nature of youth, the difference in treatment accorded juveniles under present law, and the juvenile's likelihood for positive response to rehabilitative measures. There are, however, four major provisions in the Justice Program Model legislation that address various aspects of juvenile justice. They are:

- 1) Provisions for juvenile probation services
- 2) Removal of juvenile parole from the jurisdiction of the Parole and Pardon Board
- 3) Due-process rights of juveniles in custodial institutions.
- 4) The Department of Corrections is reorganized to provide for a "Bureau of Youth Services".

Q. WHO GAINS MOST BY THE PASSAGE OF THIS PROGRAM?

A. Six groups:

- 1) Victims of crime and witnesses at trials who will see cases handled more quickly and with justice.
- 2) Law enforcement officials who need no longer concern themselves with soft sentences and soft-hearted judges.
- 3) Civil libertarians need not be concerned about "hanging" judges and the inequities in the current system.
- 4) Offenders who receive uniform and reviewable sentences.
- 5) Guards who will work in a better atmosphere, one in which offenders have a stake in maintaining order.
- 6) Professionals who have an opportunity to service those offenders who really want to learn and change.

Q. HOW IS THIS PROGRAM TO BE IMPLEMENTED?

A. Representative Michael Getty has introduced legislation for a commission to report back on this program during 1975.



END