Report to the Colorado General Assembly:

RECOMMENDATIONS FOR 1979
COMMITTEE ON:

Judiciary -- Sentencing Legislation

COLORADO LEGISLATIVE COUNCIL

RESEARCH PUBLICATION NO. 240

December, 1978

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OF THE

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The Legislative Council, which is composed of six Senators, six Representatives, plus the Speaker of the House and the Majority Leader of the Senate, serves as a continuing research agency for the legislature through the maintenance of a trained staff. Between sessions, research activities are concentrated on the study of relatively broad problems formally proposed by legislators, and the publication and distribution of factual reports to aid in their solution.

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COLORADO LEGISLATIVE COUNCIL

RECOMMENDATIONS FOR 1979

COMMITTEE ON JUDICIARY

- SENTENCING LEGISLATION

Legislative Council

Report to the

Colorado General Assembly

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COLORADO GENERAL ASSEMBLY

LEGISLATIVE COUNCIL

ROOM 46 STATE CAPITOL
DENVER, COLORADO 80203
839-3521
AREA CODE 303

December 22, 1978

To Members of the Fifty-second Colorado General Assembly:

Submitted herewith is the final report and recommendations of the 1978 Interim Committee on Judiciary, concerning Colorado's felony classification system, presumptive sentencing law, and other related factors in the sentencing process. The final report and the proposed bill concerning sentencing are transmitted with favorable recommendation.

Respectfully submitted,

/s/ Representative Carl Gustafson
Chairman
Colorado Legislative Council

CG/pm

FOREWORD

The Legislative Council appointed the 1978 Interim Committee on Judiciary to study Colorado's felony classification system and other procedures which have an impact upon the terms of sentence, pursuant to Senate Joint Resolution No. 29 of the 1978 Session. This study included further examination of Colorado's presumptive sentencing law which is contained in House Bill 1589, enacted during the 1977 Session, and which is currently scheduled to become effective on April 1, 1979.

This volume includes the Committee on Judiciary's report and recommended bill, which were accepted by the Legislative Council at its meeting on November 27, 1978. This report summarizes the committee's efforts in regard to the aforementioned studies, and forwards committee recommendations for legislation to the General Assembly for its consideration. A background report is also included in this volume as a summary of the information presented to the committee.

The committee is appreciative of the assistance provided to the committee in its hearings and deliberations by numerous persons.

The committee and the staff of the Legislative Council were assisted by Mike Risner of the Legislative Drafting Office in the preparation of the committee bill.

December, 1978

Lyle C. Kyle
Director

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* Representative Gorsuch (Vice Chairman) presided over those meetings dealing with Classification of Felonies.

COMMITTEE ON JUDICIARY - SENTENCING LEGISLATION

Committee Report

Introduction

On June 3, 1977, the Colorado General Assembly enacted House Bill 1589, "Concerning Criminal Procedures, and Providing for Definite and Uniform Sentencing". The act was intended to eliminate disparate sentences which result from the operation of the present system through accomplishment of the following three primary purposes:

1. That those who have committed similar crimes, if sentenced to imprisonment, would be sentenced for similar lengths of time;

2. That the sentence imposed is based upon the crime that was committed, and the circumstances surrounding it; and

3. That offenders who are sentenced to imprisonment will serve the sentence which is imposed by the court, minus the good time which they can earn.

Provisions of House Bill 1589. Under the present sentencing system, a judge can sentence an offender from 10 to 50 years for a Class 2 felony, from 5 to 40 years for a Class 3 felony, from 1 day to 10 years for a Class 4 felony, and from 1 day to 5 years for a Class 5 felony, unless the offender falls within the mandatory sentencing law. House Bill 1589 abolishes these penalties and substitutes a "presumptive sentence" of 7 1/2 years plus one year of parole for a Class 2 felony, 4 1/2 years plus one year of parole for a Class 3 felony, 2 years plus one year of parole for a Class 4 felony, and 18 months plus one year of parole for a Class 5 felony.

A person who has been convicted of a Class 2, Class 3, Class 4, or Class 5 felony shall be punished by imposition of the presumptive sentence unless the court, in its discretion, finds that mitigating or aggravating circumstances are present and would justify imposition of a lesser or greater sentence. The sentence so imposed shall not vary from the presumptive sentence by more than 20 percent; except that, if the person to be sentenced has previously been convicted of a felony, the court may increase by not more than 50 percent the presumptive sentence. The court must enter on the record of the case the specific circumstances and factors which constitute the reasons for increasing or decreasing the presumptive sentence.

Governor's veto. On August 9, 1977, the Governor attempted to veto House Bill 1589. His stated reasons at that time were:

1. "By lumping together, across the board, each class of felony based on the average time now served, the bill arrives at some very unwise proposed sentences."

2. "...the provisions allowing current prison inmates to elect to serve their sentences under the new law ... could lead to a mass exodus from the state penitentiary next July ..."

Invalidity of the veto. Questions concerning the validity of the Governor's veto were raised in the 1977 interim. This dispute resulted in the submission of interrogatories to the Colorado Supreme Court. In December, 1977, Representative Anne M. Gorsuch, the sponsor of House Bill 1589, and the leadership of the House and Senate, requested the Governor to place the following two items on his call for consideration by the legislature in the 1978 Session:

1. Sentence lengths contained in the bill and a refinement of the present classification of felonies; and

2. Retroactive application of the bill.

The Governor failed to place these items on his call. On April 10, 1978, the Supreme Court declared the Governor's veto of House Bill 1589 invalid. The act became law and was scheduled to become effective on July 1, 1978.

Special session. The July 1, 1978, effective date was established by the 1977 legislature in order to provide time to evaluate the implications of the bill and to modify it in the 1978 Session if it proved necessary. Because of the veto question and the Governor's failure to place the issue on the call, this period of scrutiny was not utilized. On May 16, 1978, the Governor proclaimed that an extraordinary occasion had arisen and now exists and convened the legislature in special session on May 22. The extraordinary occasion was "...the result of changes in the state sentencing system caused by the enactment of House Bill 1589, creating serious inconsistencies in the administration and application of the sentencing system; and the complexities of this matter suggest that it should be examined in depth during the First Regular Session of the Fifty-Second General Assembly;..." The purpose for which the General Assembly was convened was solely for the business of changing the effective date of House Bill 1589.

The First Extraordinary Session enacted House Bill 1001, which delayed the effective date of House Bill 1589 until April 1, 1979.

Study committee. The 1978 legislature concluded that it was desirable to review the existing classification of felonies and to refine them if deemed necessary and appropriate. To accomplish this objective, the General Assembly adopted Senate Joint Resolution No. 29, which directed the Legislative Council to appoint a committee to undertake: "A study of the classification of felonies. Such study shall include, but shall not be limited to, an examination of other procedures, including but not limited to parole and "good time", which have an impact upon terms of sentence." The Legislative Council assigned this study to the Committee on Judiciary.

Committee Procedure

The Committee on Judiciary held five meetings relating to the study of Colorado's felony classification system, various provisions of House Bill 1589, and related topics in the criminal justice area. The committee attempted to organize the various meetings so as to concentrate on specific issues of House Bill 1589 at each meeting. Since House Bill 1589 is scheduled to go into effect on April 1, 1979, the committee sought to resolve apparent or existing problems with the bill so that legislation could be introduced and adopted prior to the effective date. Problems and questions which the committee attempted to resolve centered around the following topics: the reclassification of felonies under existing Colorado law; the length of sentence appropriate to the various classes of felonies under the "presumptive determinate sentence" approach of House Bill 1589; whether aggravating or mitigating circumstances which could affect the sentence length under House Bill 1589 should be spelled out by statute or be left to the discretion of the sentencing court; what type of good time or earned time system should be implemented and what effect such a system would have on the length of sentence served; whether parole should be continued under House Bill 1589 and what the appropriate role of the Colorado Parole Board should be, if continued; whether the "Habitual Criminal Act" should be amended to conform to the bill; and to what degree the bill should be retroactive.

In order to resolve these questions and problems, the committee sought and received input and advice from representatives of the Department of Corrections, the District Judges Association, the Colorado Division of Criminal Justice, the American Civil Liberties Union, the Colorado Judicial Department, the State Public Defender's Office, the Colorado Bar Association, the Denver Bar Association, the Colorado District Attorney's Council, the Attorney General's Office, the Colorado Association of Chiefs of Police, the Colorado Parole Board and the Division of Adult Parole, and various experts in the criminal justice area.

Because various and somewhat conflicting statistics were presented to the committee by different groups concerning length of average sentences served under the current system, a subcommittee was established to attempt to study and resolve the accuracy of the data being submitted to the committee. This subcommittee was chaired by Representative Anne Gorsuch and was composed of representatives from most of the aforementioned groups, along with other interested parties. This subcommittee met on three occasions in an effort to examine the data concerning sentence lengths. The subcommittee was able to agree upon certain assumptions which were necessary to arrive at a projected sentence length under the provisions of House Bill 1589. However, there were certain unknowns which the subcommittee was unable to resolve. Efforts were then undertaken to build a more reliable information base by which to answer these unknown factors. The statistical data that was accumulated by the subcommittee was then presented to the entire Judiciary Committee. This data is contained in the background report.

A discussion of how the committee attempted to resolve these issues, the material and information which was considered by the committee, and a discussion of proposed solutions is included in the background report. This may serve as useful information to the General Assembly in consideration of sentencing legislation in the 1979 Session.

Committee Recommendations

At the final meeting on November 17, the committee attempted to resolve some of the major problems with House Bill 1589. The committee voted on concepts rather than specific bills. It was agreed that all of the approved concepts would be incorporated into one bill. Discussed below are the areas in which the committee was able to reach some agreement, which is reflected in Bill 56. A more detailed discussion of these issues is included in the background report.

1. Credit against sentence for pre-commitment confinement. The committee adopted the concept of allowing a credit against the sentence for all time spent in incarceration prior to commitment to the Department of Corrections.

2. Retroactivity. The following four possibilities concerning the retroactivity of sentencing legislation was considered by the committee: 1) make the legislation totally prospective in application; 2) preserve the concept of House Bill 1589; 3) provide that the legislation is retroactive only to those who are sentenced to an indeterminate sentence (Class 4 and 5); or 4) provide that the legislation shall be totally retroactive (apply to all classes of felony, except Class 1). The committee voted to make the legislation totally prospective in application.

3. Reclassification of felonies and sentence lengths. An overall reclassification of the present felony classification system was presented to the committee by the Division of Criminal Justice. Other suggested changes were presented by the Division of Adult Parole, the Attorney General's Office, and the Public Defender's Office. All these proposed changes were discussed, but the committee decided to make no recommendation in this area. Various proposals were submitted to the committee concerning adjustments to the presumptive sentence lengths in House Bill 1589. The committee made no recommendations concerning sentence lengths other than those changes that are encompassed in the Howe-Wham proposal discussed below.

4. Good time and earned time. The committee considered the following various proposals on how to deal with good or earned time allowances: 1) the one-third good time benefits of House Bill 1589 as introduced; 2) the earned time concept, such as that contained in Senate Bill 59 (1978 Session), and 3) the one-half good/earned time concept of House Bill 1589 as adopted. The committee recommends that the earned time concept as set forth in House Bill 1589 (section 16-11-310 (b) (I), C.R.S. 1973, which provides for additional good

time to be awarded for outstanding progress) be deleted from the provisions of House Bill 1589. This concept will carry over to the Howe-Wham proposal discussed below.

5. Habitual criminal statute. The committee considered several changes to the habitual criminal statute as outlined by various interested parties; however, the committee makes no recommendations thereon.

6. Presumptive sentence concept of House Bill 1589. At its final meeting, the committee adopted a proposal introduced by Representative Chuck Howe and Senator Robert Wham, which, in effect, is a substitute for the presumptive sentencing concept contained in House Bill 1589. The proposal will use the presumptive sentences of House Bill 1589, but only as a guide to the sentencing judge.

To implement the concept of using the presumptive sentences in House Bill 1589 as a guide to judges, section 15 of House Bill 1589 (which repeals and reenacts Section 18-1-105, C.R.S. 1973) is amended to provide that the sentencing system will be based on the current minimum and maximum penalty scheme, with the added condition that the presumptive sentence must be imposed unless the judge sets forth, in the record, his reasons for not imposing the presumptive sentence. The indeterminate sentences for Class 4 and Class 5 felonies would be abolished. The proposed system is set forth as follows:

Class	Minimum Sentence	Maximum Sentence	Presumptive Sentence
1	Life Imprisonment	Death	Life imprisonment or death
2	Six years imprisonment	Fifty years imprisonment	Six years to nine years imprisonment
3	Three years, seven months, six days imprisonment	Forty years imprisonment	Three years, seven months, and six days to five years, four months, and twenty-four days
4	One year imprisonment, or two thousand dollars fine	Ten years imprisonment,or thirty thousand dollars fine, or both	One year, seven months, and six days to two years, four months, and twenty-four days
5	One year imprisonment, or one thousand dollars fine	Five years imprisonment, or fifteen thousand dollars fine, or both	One year, two months, and twelve days to one year, nine months, and eighteen days

The column entitled "Presumptive Sentence" will serve as a guide to the sentencing judge who may impose a minimum and maximum penalty within the range set forth in the column. If the sentencing judge chooses to impose either a minimum or maximum sentence outside of the range specified in the column, the judge must set forth, in the record, the reasons therefore. It is thought that this sentencing system will promote uniformity of sentencing and avoid disparate sentencing practices, and at the same time vest the judicial system with broad discretion to vary the presumptive sentence when the factors of the case demand variance. Justifying reasons must be given, on the record, when a judge varies from the presumptive sentence.

The presumptive sentence range as set forth above is based on the presumptive sentences specified in House Bill 1589. The twenty percent variance from the presumptive sentence permitted by House Bill 1589, depending on the presence of aggravating or mitigating circumstances, is used to establish the range for the presumptive sentence in each class of felony. In other words, the minimum presumptive sentence is twenty percent below the presumptive sentence specified in House Bill 1589 and the maximum presumptive sentence is twenty percent above the sentence set forth in House Bill 1589. These recommendations are contained in Bill 56.

Under the committee bill, the one-year parole term required to be served under House Bill 1589 is abandoned. It is thought that more serious offenders may require a longer term of parole supervision and that this judgment is best determined by the Colorado Parole Board. The bill therefore amends House Bill 1589 to provide that the offender will be required to serve a parole term up to the maximum sentence or for a period not to exceed five years, whichever is less. An offender, under this bill, will become eligible for parole consideration when he has served his minimum term, less allowance for good time.

The committee bill deals only with establishing sentencing guidelines for the judiciary. No proposals for reclassifying felonies are made in the bill.

The committee bill also creates a Sentencing Review Commission composed of three persons whose responsibility will be to review sentences imposed and to reduce sentences when deemed appropriate to achieve uniformity.

COMMITTEE ON JUDICIARY

BILL 56

A BILL FOR AN ACT

CONCERNING CRIMINAL JUSTICE.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Imposes minimum and maximum punishments for the conviction of a felony and sets forth a presumptive sentence. Requires the court to state reasons for any sentence other than the presumptive sentence. Creates a sentence review commission. Limits the term of parole. Authorizes the awarding of flat good time. Makes an appropriation for the sentence review commission.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 16-11-101 (1)(b), Colorado Revised Statutes 1973, 1978 Repl. Vol., as amended, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

16-11-101. Alternatives in sentencing. (1) (b) The defendant may be sentenced to imprisonment for a time within the minimum and maximum sentence authorized for the class of offense of which the defendant was convicted.

SECTION 2. 16-11-101 (1) (e) and (1) (h), Colorado Revised Statutes 1973, 1978 Repl. Vol., as amended, are amended to read:

(e) The defendant may be sentenced to the payment of a fine or to a term of imprisonment or to both a term of imprisonment and the payment of a fine. ~~No fine shall be imposed for conviction of a felony except as provided in section 18-1-105, C.R.S. 1973.~~

(h) The defendant may be sentenced to the Colorado state reformatory pursuant to sections 16-11-301 ~~and 16-11-302~~ TO 16-11-303.

SECTION 3. Part 1 of article 11 of title 16, Colorado Revised Statutes 1973, 1978 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

~~16-11-104.~~ Sentences other than presumptive - reasons on record. If the trial court imposes a sentence to imprisonment within the minimum and maximum sentence authorized for the class of felony of which the defendant was convicted which is other than that set forth as the presumptive sentence in section 18-1-105, C.R.S. 1973, the court shall enter on the record of the case the specific circumstances and factors which constitute the reasons for varying from the presumptive sentence.

SECTION 4. 16-11-212 (1), Colorado Revised Statutes 1973, 1978 Repl. Vol., as amended, is amended to read:

16-11-212. Work and education release programs. (1) As a specific condition of probation for a person convicted of a felony or misdemeanor, the court may require the probationer to participate for a period not to exceed two years or the MAXIMUM term to which he might be sentenced for the offense committed,

whichever is less, in a supervised work release or education release program. Utilization of the county jail, a municipal jail, or any other facility may be used for the probationer's full-time confinement, care, and maintenance, except for the time he is released for scheduled work or education.

SECTION 5. 16-11-302, Colorado Revised Statutes 1973, 1978 Repl. Vol., as amended, is amended to read:

16-11-302. Duration of sentences. Except as otherwise provided in the "Colorado Children's Code", title 19, C.R.S. 1973, courts sentencing any person to the Colorado state reformatory or state penitentiary shall ~~fix a definite term as provided by section 18-1-105, C.R.S. 1973~~ NOT, EXCEPT AS PROVIDED IN SECTION 16-11-309, FIX A MINIMUM TERM BUT MAY FIX A MAXIMUM TERM LESS THAN THE MAXIMUM PROVIDED BY LAW FOR THE OFFENSE. The persons so sentenced shall be imprisoned, RELEASED UNDER PAROLE, and discharged as provided by other applicable statutes. No person sentenced to the Colorado state reformatory or state penitentiary shall be subjected to imprisonment for a term exceeding the MAXIMUM term provided by the statute fixing the MAXIMUM length of the sentence for the crime of which he was convicted and for which he was sentenced. No person committed to the Colorado state reformatory as a delinquent child shall be imprisoned for a term exceeding two years. A PERSON SENTENCED TO A TERM OF IMPRISONMENT AT THE COLORADO STATE REFORMATORY SHALL BE ENTITLED TO THE SAME TIME CREDITS AS IF HE WERE SENTENCED TO A TERM OF IMPRISONMENT AT THE STATE PENITENTIARY.

SECTION 6. 16-11-303, Colorado Revised Statutes 1973, 1978 Repl. Vol., is RECREATED AND REENACTED, WITH AMENDMENTS, to read:

16-11-303. Definite sentence to reformatory not void. If, through oversight or otherwise, any person is sentenced or committed to imprisonment in the Colorado state reformatory for a definite period of time, the sentence or commitment shall not for that reason be void, but the person so sentenced or committed shall be subject to the liabilities and entitled to the benefits which are applicable to those persons who are properly sentenced to the Colorado state reformatory.

SECTION 7. 16-11-304, Colorado Revised Statutes 1973, 1978 Repl. Vol., as amended, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

16-11-304. Maximum and minimum sentences to penitentiary - presumptive sentence. (1) When a person is sentenced to the state penitentiary, other than for life, the court imposing the sentence shall not fix a definite term of imprisonment, but shall establish a maximum and a minimum term for which said person may be incarcerated. A person who has been convicted of a class 2, class 3, class 4, or class 5 felony and sentenced to the state penitentiary shall be punished by the imposition of the presumptive sentence set forth in section 18-1-105, C.R.S. 1973, unless the court, in its discretion, finds that aggravating circumstances are present and would justify imposition of a greater sentence; except that in no case shall the maximum term be longer than the longest term fixed pursuant to section

18-1-105, C.R.S. 1973, for the punishment of the offense of which he was convicted. The minimum term shall not be less than the shortest term fixed pursuant to 18-1-105, C.R.S. 1973, for the punishment of the offense of which he was convicted.

(2) In all cases in which a sentence other than the presumptive sentence is imposed, the court shall enter on the record of the case the specific circumstances and factors which constitute the reasons for increasing the presumptive sentence.

SECTION 8. 16-11-305, Colorado Revised Statutes 1973, 1978 Repl. Vol., is RECREATED AND REENACTED, WITH AMENDMENTS, to read:

16-11-305. Sentence not void if for definite period. If, through oversight or otherwise, any person is sentenced to imprisonment for a definite period of time, said sentence shall not be void for that reason, but the person so sentenced shall be deemed to have been sentenced to the minimum term of incarceration provided by the statute for violation of which the defendant was convicted. The definite period of time contained in the erroneous sentence shall be considered the maximum term of incarceration for which the defendant may be held.

SECTION 9. 16-11-306 (3), Colorado Revised Statutes 1973, 1978 Repl. Vol., as amended, is amended to read:

16-11-306. Sentencing - consideration of presentence confinement. (3) If the MAXIMUM sentence imposed is longer than the statutory maximum for the offense less the amount of allowable presentence confinement, it shall be presumed that the judge did not consider the presentence confinement.

SECTION 10. 16-11-307 (1)(b), Colorado REVISED Statutes 1973, 1978 Repl. Vol, is amended, and the said 16-11-307 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

16-11-307. Credit for confinement. (1) (b) A defendant whose sentence is stayed pending appeal after July 1, 1972, but who is confined pending disposition of the appeal, is entitled to credit against the maximum and minimum terms of his sentence for ~~that part~~ THE ENTIRE PERIOD of such confinement ~~which does not exceed sixty days~~; and this is so even though the defendant could have elected to commence serving his sentence before disposition of his appeal.

(1.5) A person who is confined pending his committal to the department of corrections pursuant to section 16-11-308 is entitled to credit against the maximum and minimum terms of his sentence for the entire period of such confinement.

SECTION 11. 16-11-309 (1), Colorado Revised Statutes 1973, 1978 Repl. Vol., as amended, is amended to read:

16-11-309. Mandatory sentences for violent crimes. (1) Any person convicted of a crime of violence shall be sentenced to ~~the~~ AT LEAST THE MINIMUM term of incarceration provided for such offense, ~~in section 18-1-105 (6), C.R.S. 1973~~; without suspension; except that, within ninety days after he has been placed in the custody of the department of corrections, the department shall transmit to the sentencing court a report on the evaluation and diagnosis of the violent offender, and the court, in a case which it considers to be exceptional and to involve

unusual and extenuating circumstances, may thereupon modify the sentence, effective not earlier than one hundred twenty days after his placement in the custody of the department. Such modification may include probation if the person is otherwise eligible therefor. Whenever a court finds that modification of a sentence is justified, the judge shall notify the state court administrator of his decision and shall advise said administrator of the unusual and extenuating circumstances that justified such modification. The state court administrator shall maintain a record, which shall be open to the public, summarizing all modifications of sentences and the grounds therefor for each judge of each district court in the state.

SECTION 12. Part 3 of article 11 of title 16, Colorado Revised Statutes 1973, 1978 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

16-11-311. Sentence review commission created - duties - compensation. (1) There is hereby created in the office of the governor the sentence review commission, referred to in this section as the "commission". The commission shall consist of three members to be appointed by the governor with the consent of the senate. Members of the commission shall be at least thirty-five years of age and have a demonstrated interest in sentencing. Members shall serve three-year terms; except that of those first appointed, one shall be appointed for a one-year term, one shall be appointed for a two-year term, and one shall be appointed for a three-year term. No member shall serve more

than two three-year terms. The governor shall designate one of the members as chairman.

(2) In order to minimize disparity in sentences, the commission shall review, except a sentence imposed for conviction of a class 1 felony, each sentence to incarceration resulting from a felony conviction. The commission shall be entitled to examine the entire record of each proceeding and, in its discretion, may reduce the sentence imposed (but not totally abrogate it) in light of all relevant facts relating to the character and record of the individual defendant or circumstances of the particular case and in light of statewide sentencing practices for the commission of the same or a similar felony.

(3) The annual salary of a member of the commission shall be the same as that of a judge of the court of appeals. Each member shall be reimbursed for expenses necessarily incurred in the performance of his official duties.

SECTION 13. 16-11-501, Colorado Revised Statutes 1973, 1978 Repl. Vol., as amended, is amended to read:

16-11-501. Judgment for costs and fines. ~~Where~~ WHENEVER any person, association, or corporation is convicted of an offense, the court shall give judgment in favor of the state of Colorado and against the offender for the amount of the costs of prosecution and any fine imposed. ~~No fine shall be imposed for conviction of a felony except as provided in section 18-1-105, C.R.S. 1973.~~ Such judgments shall be enforceable in the same manner as are civil judgments, and, in addition, the provisions

of section 16-11-502 shall be applicable.

SECTION 14. 16-11-502 (2), Colorado Revised Statutes 1973, 1978 Repl. Vol., as amended, is amended to read:

16-11-502. Fines - methods of payment. (2) Where the court imposes a fine, the sentence ~~shall~~ MAY provide that, except in the case of a corporation, if the defendant fails to pay the fine in accordance with the direction of the court, the defendant shall be imprisoned until the fine is satisfied or the defendant is released as provided in subsections (3) and (6) of this section. This provision ~~shall~~ MAY be added at the time sentence is pronounced OR AT ANY LATER DATE WHILE THE FINE OR ANY PART THEREOF REMAINS UNPAID. IF THE PROVISION IS ADDED AT A TIME SUBSEQUENT TO THE PRONOUNCEMENT OF SENTENCE, THE DEFENDANT SHALL BE PERSONALLY PRESENT WHEN IT IS ADDED. If the defendant fails to pay a fine as directed, the court may issue a warrant for his arrest.

SECTION 15. 16-11-502 (3) (a), Colorado Revised Statutes 1973, 1978 Repl. Vol., is RECREATED AND REENACTED, WITH AMENDMENTS, to read:

16-11-502. Fines - methods of payment. (3) (a) Where the fine was imposed for a felony, the period shall not exceed one year;

SECTION 16. 17-2-201 (5)(a), Colorado Revised Statutes 1973, 1978 Repl. Vol., is amended to read:

17-2-201. State board of parole. (5) (a) The board has the sole power to grant or refuse to grant parole and to fix the

condition thereof and has full discretion to set the duration of the term of parole granted, but in no event shall the term of parole exceed the maximum sentence imposed upon the inmate by the court OR FIVE YEARS, WHICHEVER IS LESS.

SECTION 17. Article 20 of title 17, Colorado Revised Statutes 1973, 1978 Repl. Vol., is amended BY THE ADDITION OF A NEW SECTION to read:

17-20-126. Flat good time. Notwithstanding any other provision of this article, each person committed to the department of corrections on or after April 1, 1979, whose conduct indicates that he has substantially observed all the rules and regulations of the institution in which he has been incarcerated and has faithfully performed the duties assigned to him shall be entitled to a good time deduction of ten days a month from his sentence. Such deduction shall begin, in the case of each person so committed, on the first day of his delivery into the custody of the department. The good time deduction authorized by this section shall vest monthly. No person subject to the good time credits of section 17-20-107 shall be eligible for the good time deduction authorized by this section.

SECTION 18. 18-1-105, Colorado Revised Statutes 1973, 1978 Repl. Vol., as amended, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

18-1-105. Felonies classified, penalties. (1) Felonies are divided into five classes which are distinguished from one another by the following penalties which are authorized upon

conviction:

Class	Minimum Sentence	Maximum Sentence	Presumtive Sentence
1	Life	Death	Life or death
2	Six years	Fifty years	Six years to nine years
3	Three years, seven months	Forty years	Three years, seven months to five years, four months
4	One year or two thousand dollars fine	Ten years, or thirty thousand dollars fine, or both	One year, seven months to two years, four months
5	One year or one thousand dollars fine	Five years, or fifteen thousand dollars fine, or both	One year, two months to one year, nine months

A corporation which has been found guilty of a class 2 or class 3 felony shall be subject to imposition of a fine of not less than five thousand dollars nor more than fifty thousand dollars. Except as otherwise provided by statute, felonies are punishable by imprisonment in the state penitentiary. Nothing in this section shall limit the authority granted in part 1 of article 13 of title 16, C.R.S. 1973, to increase sentences for habitual criminals.

(2) Every person convicted of a felony, whether defined as

such within or outside this code, shall be disqualified from holding any office of honor, trust, or profit under the laws of this state or practicing as an attorney in any of the courts of this state during the time of actual confinement or commitment to imprisonment or release from actual confinement on conditions of probation or parole. Upon his discharge after completion of service of his sentence or after service under probation or parole, the right to hold any office of honor, trust, or profit shall be restored, except as provided in section 4 of article XII of the constitution of the state of Colorado.

(3) A person who has been convicted of a class 1 felony shall be punished by life imprisonment unless the proceeding held to determine sentence according to the procedure set forth in section 16-11-103, C.R.S. 1973, results in a verdict which requires imposition of the death penalty, in which event such person shall be sentenced to death.

(4) In the event the death penalty as provided for in this section is held to be unconstitutional by the Colorado supreme court or the United States supreme court, a person convicted of a crime punishable by death under the laws of this state shall be punished by life imprisonment. In such circumstance, the court which previously sentenced a person to death shall cause such person to be brought before the court, and the court shall sentence such person to life imprisonment.

SECTION 19. Repeal. 16-11-310, Colorado Revised Statutes 1973, 1978 Repl. Vol., as amended, are repealed.

SECTION 20. Appropriation. There is hereby appropriated out of any moneys in the state treasury not otherwise appropriated, to the office of the governor, for the fiscal year commening July 1, 1979, the sum of _____ dollars ($), or so much thereof as may be necessary, for the sentence review commission.

SECTION 21. Effective date. This act shall take effect April 1, 1979.

SECTION 22. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Philosophy of Sentencing and Corrections

Several arguments concerning the justification of punishment by incarceration have been advanced throughout our history. As our ideas and moral concepts change and evolve from one generation to the next, so too does the rationale behind punishment by incarceration. The following paragraphs outline the major views explaining the rationale of why we punish criminal behavior by incarceration, the strength of each depending upon the societal attitude at a particular state in history.

Restraint, isolation, or disablement. One of the main purposes in punishing the criminal is to reduce the chance that he will commit future crimes. In order to prevent a person from committing further criminal acts, he is physically deprived of his freedom of movement and is kept away from the other members of the society by imprisonment for a certain period of time.

Individual deterrence or prevention. As a general rule, people are rewarded for good behavior and punished for bad behavior. Through the punishment of bad (criminal) behavior, it is hoped that some type of modification or elimination of a criminal's proclivity towards antisocial behavior will take place, and that he will conform to the laws of society. Thus, punishment by incarceration will hopefully deter this particular individual from committing future crimes.

General deterrence. In order to prevent others from committing crimes, the individual criminal, by his imprisonment, serves as a warning to others that they will be dealt with in a similar fashion if they should break the law. This method seeks to discourage would-be criminals by making an example of the suffering of convicted criminals.

Rehabilitation or reform. Over the last few years, the stress in many correctional institutions has been on the concept of rehabilitation or reform rather than on punishment per se. The rehabilitation concept assumes that the criminal is disturbed, troubled, or ill, and that he needs understanding, guidance, and professional counseling and help in order to overcome his mental difficulties and conform to the rules and regulations of society. While this has been the dominant theme of the past years, recent studies have questioned whether the various types of programs that have been established to rehabilitate the criminal and to prevent him from returning to criminal behavior are actually effective. Because of these studies and the increasing disillusionment with the concept of rehabilitation, greater emphasis is currently placed on the idea of deserts.

Deserts. The philosophy underlying the concept of deserts is that people are morally responsible agents and should be held accountable for their behavior. If a person has committed a crime, he is punished because this is the right thing to do. Through imprisonment, a person who has broken the laws of society is receiving his just deserts, he is "paying for" the wrong he perpetrated upon society; he is receiving justice.

It is readily apparent that the various theories described above tend to conflict with each other at various points. The theories of deterrence and prevention call for harsh treatment of prisoners, but such treatment may often defeat the chances for rehabilitation. The disablement theory calls for imprisonment until the criminal is no longer a danger to society; the general deterrence theory leads to sentences which vary with the crime but not with the character of the criminal; and the rehabilitation theory would let the criminal go whenever reformed regardless of the crime for which convicted. Thus, the deterrence theory seems to call for fixed and definite sentences, and the disablement and rehabilitation theories seem to call for flexible or indeterminate sentences.

Echoed and re-echoed in Colorado Legislative Council reports and other studies is the theme of balancing the legitimate ends of institutional confinement, the protection of society, and the rehabilitation of offenders. A history of legislative efforts in Colorado to develop a sentencing system and efforts to classify various felony offenses and to assess punishment for violation of those offenses is set forth in the next section of this report. Colorado's Criminal Sentencing Act of 1967, the Community Corrections Act, Senate Bills 11 and 12 of 1973, and the scheme of indeterminate sentencing enacted in 1973 seem to emphasize a state commitment to rehabilitation. Deterrence and prevention however, seem to remain viable confinement goals, as demonstrated in 1976 by the enactment of the mandatory sentencing law, and the presumptive sentencing law in 1977. Mandatory sentencing seems to be concerned with the deterrent and incapacitative functions of the sentencing system, while a definite sentencing system seems to primarily emphasize the retributive objective. Definite sentencing proposals attempt to achieve appropriate and just punishment which is proportionate to the crime. "Let the punishment fit the crime" determines, for example, that the life imprisonment to death sentence range for murder in the first degree, a Class 1 felony, be harsher than the ten to fifty year imprisonment sentence range for second degree murder, a Class 2 felony. Although these ends -- rehabilitation and prevention or deterrence -- may not be entirely incompatible, it seems clear that disagreement exists in Colorado between people who feel that emphasis on punishment diminishes the possibility of productive rehabilitation, and people who wish to emphasize punishment and deterrence. The development of a coherent sentencing and corrections scheme based on a unified purpose -- whether punishment, deterrence, protection of society, or rehabilitation -- seems not to have been clearly defined by statute in Colorado. Perhaps further discussion of the goals to be obtained by punishment through incarceration will achieve greater unanimity of sentencing and correctional goals.

Determining the Length of Incarceration within a Determinate Sentencing Structure

The debate over who has discretion in determining the length of incarceration which should be served for punishment has continued over the years. In past years, broad power and discretion have been given

to the judicial and executive branch in determining the length of incarceration which is to be served by an offender. This was largely the result of indeterminate sentencing laws. More recently, however, due largely to an effort to overcome sentencing disparity, proposals have been advanced and adopted to implement a determinate or definite sentencing system.

Three distinguishable approaches for determining who has sentencing discretion in a definitive sentencing system, as well as other sentencing systems, have evolved over the years: (1) legislative approach; (2) judicial approach; and (3) administrative approach. There are, of course, arguments for and against each approach. Only a brief description of each approach, and not the arguments for and against, are set forth. These approaches to sentencing discretion are differentiated according to how they deal with discretion in terms of who has it, in what amounts, and at what point is it exercised. The practical questions raised by the issue of discretion are: Should the legislature fix definite terms statutorily or should there be a range of discretion permitted in the sentencing statutes? Should it be the judiciary or the parole board which has exclusive authority to set dates of inmate release, or alternatively, should this power be apportioned between them? How much discretionary latitude should the sentencing or releasing authority have?

Legislative approach. Generally, with the legislative approach, the legislature fixes the terms of imprisonment for offenses within each felony class which the trial judge must impose following a guilty verdict, if it is determined that imprisonment is necessary. The sentencing judge may be required to choose a mid-point term from a narrow range. If aggravating or mitigating circumstances are present, the judge may be permitted to increase or decrease that term within very limited bounds. The allowable deviation from the prescribed fixed median term may depend upon the seriousness of the offense. The possibility for early release on parole may be abolished under this approach.

Judicial approach. Under the judicial approach, the legislature establishes maximum terms for each felony class within which the judge must impose a term of fixed duration, if he decides imprisonment is the appropriate penalty. Under this approach, the judge retains discretion to sentence an offender to a fixed term up to the statutory maximum. With the elimination of early parole release for those sentenced, this approach places more emphasis on certainty than on dealing with the problem of equalizing sentences.

Administrative approach. The administrative approach to definite sentencing can be accomplished by narrowing the discretion of the parole board or the releasing authority. By establishing in advance definite parole release ranges and dates according, primarily, to the nature of the offense and, secondly, with respect to the offender's personal background and circumstances, discretion as to when an offender will be released is considerably narrowed. This approach may be broadly conceived as a definite sentencing approach in that a defi-

nite release date is set by the paroling authority.

Presumptive sentencing in Colorado. Through the enactment of House Bill 1589 (1977 Session), the Colorado General Assembly adopted a "presumptive" or definite sentencing system which is scheduled to become effective on April 1, 1979. This sentencing system follows the legislative approach described above, since the legislature has fixed the terms of imprisonment for offenses within each felony class. The sentencing judge is allowed some discretion in sentencing, depending upon the presence of aggravating or mitigating circumstances.

Alternative Sentencing Structures

Various approaches have been adopted by different states in the sentencing of convicted persons. These approaches are summarized below.

Indeterminate sentencing. Under this system, the judge imposes both a minimum and a maximum sentence, and the convicted person is generally eligible for parole after serving the minimum sentence.

As previously mentioned, Colorado presently has a form of the indeterminate sentencing system whereby minimum and maximum limits are statutorily delineated, for Class 1, 2, and 3 felonies, with the judge having the discretion to narrow the range within these limits. For Class 4 and 5 felonies, the sentencing judge can impose only a maximum sentence, with no minimum sentence imposed. The maximum sentence is to be no less than 1/3 of the maximum sentence provided by law, and may go up to the full maximum statutory sentence. Both good time allowance and parole review are provided for under Colorado statutes.

Determinate sentencing. A determinate sentencing system provides that a convicted person is given a definite number of years to serve. In many determinate sentencing systems, the judge is provided a wide range, usually established by the legislature, within which the sentence may be set. While theoretically parole is not supposed to be available, some states provide that parole is available after a person has served a certain percentage of his term. Many believe that this undermines the philosophy behind the determinate sentencing system.

Flat-time sentencing. This is a special type of determinate sentencing system in which the judge has no discretion (or greatly reduced discretion) as to the length of a prison sentence.

Mandatory sentencing. Mandatory sentencing does not address the issue of sentence length, but the issue of imprisonment. It provides that a convicted person must be sentenced to prison. Probation, conditional discharge, or periodic imprisonment cannot be used as alternatives.

Presumptive sentencing. This is a hybrid of the determinate sentencing system in which a specific penalty for each crime or each

general class of felony is established, but which also allows the sentencing judge to impose either a lesser or greater sentence depending upon the existence of either mitigating or aggravating circumstances. This is the system that is contained in House Bill 1589 (1977 Session). Details of the bill are discussed elsewhere in this report.

Guideline sentencing. There is currently in operation, in Denver District Courts, a sentencing guideline system which seeks to structure judicial discretion. The purpose of this system is to aid judges in reaching a fair and equitable sentencing decision.

This guideline system is composed of a grid system with one grid for each category of the felony-misdemeanor class system. Each grid places a measure of offense seriousness on the vertical axis and an offender score on the horizontal axis. The offender score consists of five items of information: prior incarcerations, probation or parole revocations, legal status of the offender at the time of his offense; prior convictions; and employment history. The offense score is based upon the felony class in which the particular crime is classified. The offense score is then compared or plotted against the offender score, and is directed to the cell in the grid which indicates the suggested length and/or type of sentence. These suggestions are based on gradual build-up of case-by-case decisions which results in an incremental development of a sentencing policy. Analysis was done on a case-by-case basis and this data was used to develop the suggested sentence for each grid. A detailed explanation of the sentencing guideline system is available in the Legislative Council office.

Factors to be Considered in Determining Length of Incarceration

In determining the length of time to be served in incarceration by an offender, there may be certain factors which the legislature should examine. For example, decisions concerning the amount of time that an offender must be incarcerated as punishment for committing a criminal offense may well have an economic impact which should be considered.

If sentence lengths are too long, the prison population will increase and will require more services and will therefore cost more. The 1977 Corrections Master Plan estimated the "per unit" cost of incarceration in Colorado is about $7,800 per inmate per year. Theoretically, one way to stabilize these costs would be to control the size of the inmate population. A policy of definite or "presumptive" sentencing, together with limitations placed on parole time, may standardize sentencing practices. How may this policy affect the Colorado prison population? The 1977 Corrections Master Plan estimates that no change in population will occur if the average "presumptive" sentence continues to equal the existing average length of sentence. However, each additional month added to the average length of stay would increase the base population by about 5 percent.

In determining the length of sentence to be imposed upon conviction of a crime, decision-makers may either synthesize their own normative reactions to different crimes or they may codify the previous average sentences for those crimes. The latter method was used in determining the "presumptive" sentences in H.B. 1589. Variations on the above methods may include: 1) combining both normative reactions and a quantitative analysis of previous sentencing; or 2) allowing an increase (or decrease) by a given percentage for aggravating (or mitigating) circumstances. The committee has examined the average sentences in Colorado for the various classes of crime in order to determine what the appropriate length of incarceration should be. Information on average lengths of time served is discussed later in this report.

Alteration of the system of earning good time also has an impact on prison population. The 1977 Corrections Master Plan analyzes the effects on prison population of altering the various kinds of good time which can be earned. If all good time were eliminated, the Corrections Master Plan estimates that the 1981 most likely population would increase by approximately 53 percent. The committee examined the good time system and made recommendations thereon.

The relationship between the length of incarceration and the recidivism rate also may be important. Longer sentences may result in a decrease in recidivism while increasing the cost of incarceration. Shorter sentences may decrease the cost of incarceration while increasing the recidivism rate or cost.

Felony Classification: Distinguishing Characteristics

The question of how to classify felonies and what types of criteria should be used to distinguish one felony class from another is difficult. Whenever there is an analysis of felony offenses and an attempt is made to determine what ones are "worse" and should elicit more severe penalties, subjective value judgments become a factor. The diversity of values in a culture such as ours makes classification of felonies difficult; what may be a minor crime to one person may be seen by another to be a major crime. However, there appears to be some degree of concensus as to which criminal acts are more serious and which acts are less serious.

The following paragraphs reflect some of the criteria which is generally used to determine the seriousness of criminal offenses.

The general nature of the crime itself. The type of crime that is committed is, in itself, the major factor in determining the appropriate felony class in which to place the criminal act. Some criminal acts (for example, murder, rape, and kidnapping) are heinous by nature. Society as a whole expresses moral outrage when these acts are committed. Such acts greatly offend people's sensibilities about morally responsible behavior. Other crimes (such as wiretapping, pandering, and misuse of public information), although considered fel-

onies, do not evoke the moral outrage that crimes of violence do.

The degree of violence or physical harm done in the commitment of the crime. This is a primary distinguishing characteristic in the seriousness of criminal acts. In Colorado, kidnapping is a Class 1 felony if there is serious bodily injury suffered by the victim, and a Class 2 felony if the victim is released unharmed. Similarly, criminal abortion is a Class 2 felony if the woman dies as a result of the abortion attempt; otherwise, criminal abortion is a Class 4 felony.

Crimes of violence against public officials. Some states have special provisions making a crime more serious if perpetrated upon a public official who is acting in an official capacity, for example the assault on or killing of a policeman or fireman.

Use of a deadly weapon. Because of use of a deadly weapon increases the likelihood that someone will be injured, crimes are considered more serious when a weapon is used in their commission. In Colorado, the Class 4 felony of robbery is increased to a Class 3 felony if a deadly weapon is used.

Intent. The purpose of the person committing the crime is a significant factor in the classification of a crime. Intent means that a person is fully aware of the nature and possible consequences of the act he is about to commit (or that a reasonable man should know these things) and that he commits the act willingly and conscionably. The difference between murder in the first degree and murder in the second degree is that the former is done after thought, deliberation, and done intentionally, while the latter is committed without premeditation.

The amount of money or property stolen or damaged. The greater the value of the items stolen or damaged, the more serious the offense. This is one distinguishing characteristic between the various degrees of robbery and theft, and also crimes such as arson and criminal mischief. In Colorado, criminal mischief is a Class 4 felony if the property that is damaged is valued at one hundred dollars or more; theft is a Class 4 felony if the item or items stolen are valued at two hundred dollars or more.

Victim characteristics. Such things as the victim's age, the mental, emotional, and physical condition of the victim, and the victim's vulnerability contribute to the seriousness of the crimes. For instance, offenses such as rape and selling narcotics are more serious if the victim is under a certain age.

Number of persons affected by the crime. If a number of victims are involved in the commission of a crime, it makes the criminal act more serious than if a single victim is involved.

Prior record of offender. The punishment for the commission of a crime by a person who has a prior felony record or who has served prior prison terms is usually greater than for a person who has no

prior record. Taking into account the violent and past criminal behavior of an offender allows for increasing the punishment for the habitual offender.

History of Sentencing of Offenders in Colorado

The purpose of this section is to provide a brief history of legislative efforts in Colorado to develop a sentencing procedure system and efforts to classify various felony offenses and to assess penalties for violation of those offenses. This section addresses only those procedures of sentencing which result in the incarceration of the offender. It does not address the alternatives to incarceration which are available, in certain circumstances, under the Criminal Code. It also does not address the sentencing system as it relates to misdemeanors or juveniles.

The sentencing of offenders in Colorado has been the subject of consideration by nine different Legislative Council study committees since 1961 -- the Criminal Code Committee in 1961-62, the State Institutions Committee in 1963-64, the Organization of State Government Committee in 1965, the Criminal Laws and Indeterminate Sentencing Committee in 1966, the Committee on the Criminal Code in 1968, the Committee on Criminal Justice in 1972, the Committee on Criminal Justice in 1973, the Committee on Criminal Justice in 1974, and the Committee on Judiciary in 1975. All of these committees recognized that the sentencing of offenders is one of the most important components of any effective criminal justice system.

All of the above-mentioned committees noted that there were several problems with the then existing sentencing procedures. One of these problems was the disparity of sentences and the imposition of long-term definite fixed sentences. Disparity of sentences occurs when there are unequal sentences for the same offense or for offenses of comparable seriousness, when all other factors are equal. Closely related to the problem of disparity of sentences were the problems created by the long-term definite fixed sentences. The statutory authority for judges to set sentences is limited to a minimum sentence and a maximum sentence; judges are permitted to set minimum and maximum sentences anywhere within the statutory limitations. When a judge imposes a sentence of nine years and six months to 10 years, the sentence is, in effect, a fixed sentence. This method of sentencing is said to cause problems in the rehabilitation of the inmate and in the proper planning of programs to occupy the inmate's time.

Consideration of Alternative Sentencing Procedures

Since 1961, several alternative changes in the sentencing procedures have been considered by the various study committees.

These alternatives are summarized below:

1. Retention of the status quo. The old method of sentencing vested full authority with the judges to set a sentence within the limits of minimum and maximum sentences set by statute. One exception to complete judicial authority is the sentencing to the state reformatory where inmates do not receive a minimum sentence. Judges could choose the institution of an offender's incarceration.

The principal argument for retaining that system was that judges are probably the best qualified persons to determine the offender's sentence at the time sentence is passed. Along with information from a pre-sentence investigation, judges are close to the communities and can take facts about each case into consideration when imposing sentences. It was suggested that if judges lost their sentencing authority, the public would not receive adequate protection from offenders because offenders could be released before they should be released.

2. Indefinite sentence. The concept of indefinite sentencing was recommended by the 1968 Criminal Code Committee. As the committee used the term, an indefinite sentence would have no minimum sentence with a maximum sentence of up to the statutory maximum sentence. Judges would be able to impose a maximum sentence of less than the statutory maximum. Colorado has had a program of indefinite sentencing at the state reformatory since the inception of that institution in 1889. The committee found that, in general, the experience with this type of sentencing system had been successful and that there had been few disciplinary problems within the institution.

It was argued that indefinite sentencing would create severe disciplinary problems at the penitentiary because good time credits would no longer apply. The 1968 committee found, however, that indefinite sentencing at the reformatory actually improved institutional discipline because inmates were aware that they could be paroled at any time. One of the conditions of parole eligibility is good institutional behavior. The 1968 committee also noted that there is little evidence to suggest a relationship between an offender's length of incarceration and his chance for successful parole and accepted social behavior, and that long periods of incarceration tend to reduce chances for successful parole.

Opponents of indefinite sentencing have based their arguments on four points: (1) the institutions and the parole board would have complete power of determining an offender's sentence; (2) discipline of inmates may become a serious problem; (3) the institutions need time to experiment with modified indefinite sentencing before implementing a complete program; and (4) the truly dangerous offenders will eventually have to be released because they will have served their maximum sentences. Despite these arguments the 1968 committee recommended a system of indefinite sentencing. This recommendation was never adopted by the General Assembly.

3. Indeterminate sentencing. Simply defined, indeterminate sentencing means sentencing an offender from one day to life imprisonment. Colorado has had experience with the indeterminate sentence under the Sex Offenders Act. Indeterminate sentencing offers all of the advantages of indefinite sentencing in the sense of being able to release inmates at the point when they are best suited for release. In addition, the problem of holding the truly dangerous offender is solved since, in theory, all sentences could be life sentences. The major disadvantage to an indeterminate sentence is that prejudice of correctional authorities and parole officials may be involved in determining the release or continued custody of certain offenders. Complete power of releasing offenders would be vested in the parole board.

4. Other sentencing modifications. In addition to the three major changes in sentencing suggested above, some of the most recent legislative committees have considered other proposals known variously as "fixed", "flat", "definite", or "determinate" sentencing. No formal recommendations concerning "determinate" sentencing were made by the committees.

Theory of sentencing procedures. Past legislative committees have recognized that sentencing, imprisonment, and parole are all parts of a continuous correctional process, and past legislative actions have sought to coordinate the separate components of the correctional process in order to achieve maximum results with respect to the protection of society and the rehabilitation of offenders.

Sentencing has been considered the key to a successful corrections' program by previous study committees.

> Even if the institutions and parole agency are staffed with qualified, dedicated personnel and their programs are aimed at rehabilitation, the possibilities of success are minimized if the method of sentencing used does not permit the parole authority to release an offender at the time that he is considered a good risk for a return to society. If the offender remains in the institution for a longer period of time, the effects of the program are diminished or perhaps even completely negated. On the other hand, if he is released from the institution before he is considered ready, then the program has little chance of being helpful and both society and the offender are losers.
>
> Conversely, it is doubtful that much can be accomplished by a change in the method of sentencing if accompanying changes, as needed, are not made or at least initiated in institutional programs. In addition to a qualified full-time parole board, correctional institutions and facilities must have qualified and experienced professional personnel on their staffs, not only

to develop and emphasize rehabilitation programs, but also to make evaluations and prepare the pertinent data needed by parole board members in making their decisions.

(Criminal Laws and Indeterminate Sentencing, Colorado Legislative Council Research Publication No. 113, December, 1966, pp.25-26.)

The Colorado General Assembly appears to have accepted this concept and has attempted to develop a coordinated system by the creation of a full-time parole board and by the establishment, in 1973, of the reception and diagnostic program at the penal institutions. The development of these programs appears to have paved the way for the enactment of a modified form of indeterminate sentencing.

Indeterminate Sentencing Law -- 1973

The 1972 Legislative Council Committee on Criminal Justice recommended the enactment of a modified form of indeterminate sentencing. The recommendation was adopted by the General Assembly in 1973 (Senate Bill No. 8, 1973 General Assembly). The law became effective July 1, 1973.

The indeterminate sentencing law in Colorado (Section 16-11-101 (1) (b) and Section 16-11-304, C.R.S. 1973) provides a form of indeterminate sentencing for persons convicted of Class 4 and 5 felony violations. In these cases the sentencing courts are to impose only a maximum sentence, with no minimum imposed. The maximum sentence is to be no less than one-third of the maximum provided by law up to the full maximum statutory sentence. The maximum sentence for a Class 4 felony is 10 years and the maximum sentence for a Class 5 felony is five years. The parole board is required to review the matter of parole of each inmate within nine months of the inmate's arrival and within each six months thereafter.

Impact of indeterminate sentencing. Data submitted to the 1975 Committee on the Penitentiary by the Parole Board indicated that the number of inmates with an indeterminate sentence at the penitentiary increased from 11 percent of the population on July 1, 1973, to approximately 60 percent of the population on December 31, 1974. Thus, the percentage of parole applications granted to parole hearings conducted has been decreasing since the board is required to conduct more hearings.

The Office of Research and Planning of the Division of Correctional Services estimated, in 1975, that approximately 60 percent of the population at the penitentiary is presently on an indeterminate sentence. More recent data from the 1977 Corrections Master Plan indicates that 47 percent of the offenders sentenced to the department are sentenced for Class 4 and 18 percent are sentenced for Class 5. Thus, 65 percent of offenders sentenced are sentenced to an indetermi-

nate term. Data submitted as of May, 1978, indicate that approximately 68 percent of offenders sentenced are sentenced to an indeterminate term. Class 4 offenders serve an average length of time of 16.18 months and Class 5 offenders serve an average length of time of 12.70 months.

Mandatory Sentencing Law -- 1976

In 1976, the General Assembly enacted a mandatory sentencing law for repeat offenders and offenders who commit violent crimes. The act, House Bill 1111 (1976 Session), provided that certain repeat offenders and offenders who commit violent crimes were not eligible for an indeterminate sentence if the offense was a Class 4 or Class 5 felony. If the offense for which the person was being sentenced was a Class 5 felony, the authorized minimum sentence shall be not less than one year imprisonment, and, if a Class 4 felony, the authorized minimum sentence shall be not less than two years imprisonment. An analysis of the impact of House Bill 1111 on population is contained in the 1977 Corrections Master Plan.

Presumptive Sentencing Law -- 1977

On June 3, 1977, the Colorado General Assembly enacted House Bill 1589, "Concerning Criminal Procedures, and Providing for Definite and Uniform Sentencing". The act was intended to eliminate disparate sentences which result from the operation of the present system through accomplishment of the following three primary purposes:

1. That those who have committed similar crimes, if sentenced to imprisonment, would be sentenced for similar lengths of time;

2. That the sentence imposed is based upon the crime that was committed, and the circumstances surrounding it; and

3. That offenders who are sentenced to imprisonment will serve the sentence which is imposed by the court, minus the good time which they can earn.

Provisions of House Bill 1589. Under the present sentencing system, a judge can sentence an offender from 10 to 50 years for a Class 2 felony, from 5 to 40 years for a Class 3 felony, from 1 day to 10 years for a Class 4 felony, and from 1 day to 5 years for a Class 5 felony, unless the offender falls within the mandatory sentencing law. H.B. 1589 abolishes these penalties and substitutes a "presumptive sentence" of 7 1/2 years plus one year of parole for a Class 2 felony, 4 1/2 years plus one year of parole for a Class 3 felony, 2 years plus one year of parole for a Class 4 felony, and 18 months plus one year of parole for a Class 5 felony.

A person who has been convicted of a Class 2, Class 3, Class 4,

or Class 5 felony shall be punished by imposition of the "presumptive sentence" unless the court, in its discretion, finds that mitigating or aggravating circumstances are present and would justify imposition of a lesser or greater sentence. The sentence so imposed shall not vary from the "presumptive sentence" by more than 20 percent, except that, if the person to be sentenced has previously been convicted of a felony, the court may increase by not more than 50 percent the presumptive sentence. The court must enter on the record of the case the specific circumstances and factors which constitute the reasons for increasing or decreasing the presumptive sentence. The "presumptive sentence" lengths were based on figures which were the actual average time now served, plus 1/3.

Governor's veto. On August 9, 1977, the Governor attempted to veto House Bill 1589. His stated reasons at that time were:

> 1. By lumping together, across the board, each class of felony based on the average time now served, the bill arrives at some very unwise proposed sentences.
>
> 2. ...the provisions allowing current prison inmates to elect to serve their sentences under the new law ... could lead to a mass exodus from the state penitentiary next July ....

Invalidity of the Governor's veto. Questions concerning the validity of the Governor's veto were raised in the 1977 interim. This dispute resulted in the submission of interrogatories to the Supreme Court. In December, 1977, the sponsor of House Bill 1589 and the leadership of the House and Senate requested the Governor to place two items on his call for consideration by the legislature:

1. Sentence lengths contained in the bill and a refinement of the present classification of felonies; and

2. Retroactive application of the bill.

The Governor failed to place these items on his call. On April 10, 1978, the Supreme Court declared the Governor's veto of House Bill 1589 invalid. The act became law and was scheduled to become effective on July 1, 1978.

Special session. The July 1, 1978, effective date was established by the 1977 legislature in order to provide time to evaluate the implications of the bill and to modify it in the 1978 Session if it proved necessary. Because of the veto question and the Governor's failure to place the issue on his call, this period of scrutiny was not utilized. On May 16, 1978, the Governor proclaimed that an extraordinary occasion had arisen and now exists and convened the legislature in special session on May 22. The extraordinary occasion was "... the result of changes in the state sentencing system caused by the enactment of House Bill 1589, creating serious inconsistencies

in the administration and application of the sentencing system; and the complexities of this matter suggest that it should be examined in depth during the First Regular Session of the Fifty-second General Assembly; ..." The purpose for which the General Assembly was convened was solely for the business of changing the effective date of House Bill 1589.

The First Extraordinary Session enacted House Bill 1001, which delayed the effective date of House Bill 1589 until April 1, 1979.

HISTORY OF CLASSIFICATION OF OFFENSES AND CORRESPONDING PENALTIES IN COLORADO

1964 Legislative Council Committee Study

In 1964, a Colorado Legislative Council committee made a report following a considerable study relating to criminal code revisions which recommended "classifications" of offenses. The committee reported on page xix, Colorado Legislative Council Research Publication No. 98, November, 1964, that:

> Limitation of time has also precluded the committee from assessing the relative seriousness of each offense. Proposed statutes were adopted without regard to the possible penalty each might provide. The committee agreed that the relative seriousness of each offense should be assessed only after all offenses were defined. Also, each offense should be labeled as to class, and the classification should be dealt with in separate sections. Felonies and misdemeanors were tentatively graded as follows:

CLASS	MINIMUM PENALTY	MAXIMUM PENALTY
Felonies		
1	Life imprisonment	Death
2	Not Less Than 1 Year	Life imprisonment
3	Not Less Than 1 Year	20 Years
4	Not Less Than 1 Year	15 Years
5	Not Less Than 1 Year	10 Years
6	Not Less Than 1 Year	5 Years
Misdemeanors		
1	6 Months or $500	12 Months and $1,000
2	3 Months or $250	6 Months and $500
3	30 Days or $100	3 Months and $250
4	No imprisonment or fine	30 Days and $100
5	No imprisonment or fine	$100

No minimum terms of imprisonment for felonies, other than for a class 1 felony, were set by the committee. However, the minimum term should be fairly low so as to give the court the maximum choice in selecting the penalty to fit the offender. Also, because of the possibility of probation, high statutory minimum penalties are almost meaningless.

The 1964 committee recommended that "... a legislative committee be created upon the adjournment of the 1965 Regular Session for the purpose of: ... 2) Preparing a rational classification of penalties and grading the offense accordingly; ..."

1969-70 Legal Services Committee Draft of Criminal Code

From 1965 to 1970, very little legislative action occurred in the area of classification of offenses. In 1969-1970, the Committee on Legal Services employed retired Supreme Court Chief Justice O. Otto Moore as a consultant to prepare a codified, systematic "criminal code" for consideration by the General Assembly. An advisory committee met with Justice Moore periodically to review the work product and to make substantive recommendations. This effort resulted in the introduction of Senate Bill 262 (the Colorado Criminal Code) in the 1971 Session. The bill was drafted and introduced as a "code" in an attempt to govern the construction of and punishment for any offense defined in any statute of this state which was committed after the effective date (July 1, 1972).

One of the express purposes of the bill, in Section 40-1-102 (3), C.R.S. 1963, was "To differentiate on reasonable grounds between serious and minor offenses, and prescribe penalties which are proportionate to the seriousness of offenses, and which permit recognition of differences in rehabilitation possibilities as between individual offenders;". Offenses under the bill were divided into ten classes. There were five classes of felonies, three classes of misdemeanors, and two classes of petty offenses. As introduced, the bill provided for the following penalties for each felony class:

Class	Minimum Sentence	Maximum Sentence
1	Life Imprisonment	Death
2	Ten Years	Fifty Years
3	Five Years	Twenty-five years
4	One Year	Ten Years
5	One year, or one thousand dollars fine	Five Years, or fifteen thousand dollars fine

Unfortunately, very few records or minutes of the meetings were maintained to reflect the work or the thinking of the advisory committee. Thus, there is no indication as to the rationale of the drafters behind this particular classification system. The comments to this particular section, which were prepared by Justice Moore, state:

> The classifications of felonies and misdemeanors contained in 40-1-105 to 40-1-107 are patterned, with some variations, after the New York Code (article 15). The Model Penal Code classifies offenses in article 6. In the Michigan proposal the committee recommends adoption of three classes of felonies, three classes of misdemeanors, and for lesser offenses a classification called "violations". However, both Model Penal Code and the Michigan proposal are involved with indeterminate sentence provisions and are thus not very helpful as models. ...During the sessions of the Advisory Committee a number of suggestions for change in the minimum and maximum sentences authorized in the different classes of felonies, as well as misdemeanors, were considered, but the final consensus view of those participating is represented by the sections to which this comment is directed.

The New York Code [McKinney's Consolidated Law of New York, (Penal Law 55.05)] provides for five classes of felonies and three classes of misdemeanors. It may be assumed that the drafters of S.B. 262 relied on this code as a model, and attempted to place all offenses within these five classes. Under Colorado law prior to S.B. 262, separate sentences were prescribed individually in the statutory sections that defined the offenses. The implied purpose of the classification system designed in S.B. 262 is to provide a method for tying offenses into a sentencing structure where the sentences for all offenses are set forth in one place. It apparently is premised on the view that the length and nature of the sentence rest in part upon the seriousness of the crime and not just on the character of the offender. This effort to rationalize and place crimes into classes resulted in the reduction of distinctions between crimes to a relatively few categories. There is, of course, an arbitrary element involved in the selection of five categories of felony offenses, or any other number of categories or classes. No written rationale for selecting the five classes of felonies has been found, other than the statement that the five categories in the New York law were selected as a starting point.

S.B. 262 -- 1971 Session

During the 1971 Session, the maximum sentence for a Class 3 felony was amended in the Senate and the 25 year maximum was changed to a 40 year maximum. The sentences for a Class 4 felony were amended by the House to provide that the minimum sentence is "One year imprisonment, or two thousand dollars fine" and the maximum sentence is "Ten years imprisonment, or thirty thousand dollars fine, or both." These amendments were accepted by the General Assembly, and the bill was adopted on April 28, 1971, and became effective July 1, 1972.

Indeterminate Sentencing Law -- 1973

In 1973, the General Assembly enacted an indeterminate sentencing provision for Class 4 and Class 5 felonies (Senate Bill 8, 1973 Session). The act provided that in Class 4 and Class 5 felonies no minimum sentence for imprisonment shall be entered but the court shall impose only a maximum sentence which shall be no more than the maximum sentence provided by law for violation of the statute involved, and which shall be no less than one-third of the maximum sentence.

Accordingly, the penalty classification statute was amended in 1974 to reflect this indeterminate sentencing law. Senate Bill 53 (1974 Session) amended the penalties for Class 4 and Class 5 felonies as follows:

Class	Minimum Sentence	Maximum Sentence
4	One ~~year~~ DAY (SUBJECT TO THE PROVISIONS OF SECTIONS 39-11-101 (1) (b) AND 39-11-304 (2) (a), C.R.S. 1963), or two thousand dollars fine	Ten years or thirty thousand dollars fine, or both
5	One ~~year~~ DAY (SUBJECT TO THE PROVISIONS OF SECTIONS 39-11-101 (1) (b) AND 39-11-304 (2) (a), C.R.S. 1963), or one thousand dollars fine	Five years, or fifteen thousand dollars fine, or both

Mandatory Sentencing Law -- 1976

As described previously, the General Assembly, in 1976, enacted a mandatory sentencing law for repeat offenders and offenders who commit violent crimes. Accordingly, the penalty sections for Class 4 and Class 5 felonies were amended by House Bill 1111 to refer to these mandatory sentencing provisions. The amended law is as follows:

Class	Minimum Sentence	Maximum Sentence
4	One day (Subject to the provisions of sections 16-11-101 (1) (b) and (1) (d), 16-11-304 (2) (a), AND 16-11-309, C.R.S. 1973), or two thousand dollars fine	Ten years, or thirty thousand dollars, or both
5	One day (Subject to the provisions of sections 16-11-101 (1) (b) and (1) (d), 16-11-309, C.R.S. 1973), or one thousand dollars fine	Five years, or fifteen thousand dollars, or both

Present Law

The current law (Section 18-1-105, C.R.S. 1973), as amended from 1970 through 1976, is set forth below:

18-1-105. Felonies classified, penalties. (1) Felonies are divided into five classes which are distinguished from one another by the following penalties which are authorized upon conviction:

Class	Minimum Sentence	Maximum Sentence
1	Life imprisonment	Death
2	Ten years	Fifty years
3	Five years	Forty years
4	One day (Subject to the provisions of sections 16-11-101 (1) (b) and (1) (d), 16-11-304 (2) (a), and 16-11-309, C.R.S. 1973), or two thousand dollars fine	Ten years, or thirty thousand dollars fine, or both
5	One day (Subject to the provisions of sections 16-11-101 (1) (b) and (1) (d), 16-11-304 (2) (a), and 16-11-309, C.R.S. 1973), or one thousand dollars fine	Five years, or fifteen thousand dollars fine, or both

House Bill 1589 - Presumptive Sentencing -- 1977

On April 1, 1979, House Bill 1589 is scheduled to become effective. This act will repeal and reenact Section 18-1-105, C.R.S. 1973, and will provide for the following penalties for each class of felony:

18-1-105. Felonies classified, presumptive penalties. (1) Felonies are divided into five classes which are distinguished from one another by the following presumptive penalties which are authorized upon conviction:

Class	Presumptive Sentence
1	Life imprisonment or death
2	Seven and one-half years plus one year of parole
3	Four and one-half years plus one year of parole
4	Two years plus one year of parole
5	Eighteen months plus one year of parole

A person who has been convicted of a Class 2, Class 3, Class 4, or Class 5 felony shall be punished by the imposition of the presumptive sentences set forth above, unless the court, in its discretion, finds that mitigating or aggravating circumstances are present and would justify imposition of a lesser or greater sentence than the presumptive sentence. If the court imposes a sentence other than the presumptive sentence, the sentence so imposed shall not vary from the presumptive sentence by more than twenty percent and shall be for a definite term. If the person to be sentenced has previously been convicted of a felony the court may increase the presumptive sentence by not more than fifty percent.

Committee Consideration of Classification of Felonies

Colorado's Felony Classification System

As set forth in a previous section of this report, the present Colorado felony classification system was enacted with the Colorado Criminal Code (effective July 1, 1972) which, in turn, was patterned after the New York Code and the Model Penal Code. The purpose of establishing the felony classification system was to differentiate between the seriousness of various offenses and to prescribe various penalties based upon this seriousness. As noted previously in this report, an exact expression of legislative intent concerning why certain crimes were assigned to the various classes of felonies is not available.

It may be assumed that the legislature had in mind two major components (harm and culpability) of crime seriousness when it assigned a particular crime to a felony class. The degree of injury caused or risked may be considered the primary factor in the determination of the seriousness of the crime; for example, in assault or

rape cases, the more serious the harm done, the greater the penalty for the crime. The degree of the offender's culpability may also determine the seriousness of the offense. The criteria for determining the level of an offender's culpability depends upon whether his actions are either intentional, reckless, negligent, or accidental.

Over the years, the General Assembly has revised the crimes within the various classes of felonies, depending upon the moral traditions and changing standards of the time. For example, the penalty for possession of dangerous drugs was reduced (placed in a lower class of crimes), while at the same time the penalty for the commission of various crimes with a deadly weapon was increased (placed in a higher class of crime). Although the classification scheme has been changed from time to time by adjusting various crimes within the five classes, the system remains basically the same as when it was established in 1971.

Currently the state of Colorado has approximately 252 classified felonies which are contained in the statutes and which are divided into five classes. A statutory search of all classified felonies conducted by the Legislative Council staff in May, 1978, indicates that there are five separate felonies in Class 1, 14 separate felonies in Class 2, 29 separate felonies in Class 3, 69 separate felonies in Class 4, and 134 separate felonies in Class 5. This survey provides the Colorado Revised Statutes 1973 citation and a brief description of each offense. This survey is attached as Appendix A.

Penalties established for the various classes. Under present law there is a wide range of penalties which can be imposed for the various crimes within each felony class. For violation of a Class 2 felony, an offender could be sentenced from a minimum of 10 years to a maximum of 50 years; for violation of a Class 3 felony, the penalty ranges from a minimum of five years to a maximum of 40 years; for violation of a Class 4 felony, the penalty ranges from one day to 10 years (an indeterminate term); and for violations of a Class 5 felony, the penalty ranges from one day to five years (an indeterminate term).

Penalties imposed. Recent information submitted to the committee by the Department of Corrections concerning an analysis of sentences given in Fiscal Year 1977-78 indicates that the average minimum penalty for both indeterminate and determinate sentences imposed for Class 2 felonies ranges from 10 years to 30 years, and that the maximum penalty ranges from 15 years to 50 years. The average minimum penalty for both indeterminate and determinate sentences imposed for Class 3 felonies ranges from 3.2 years to 11.6 years and the maximum penalty imposed ranges from 7 years to 27.5 years. The average minimum penalty for both indeterminate and determinate sentences imposed for a Class 4 felony ranges from 0 years to 7 years, and the maximum penalty ranges from 3.6 years to 10 years. The average minimum penalty for both indeterminate and determinate sentences imposed for a Class 5 felony ranges from 0 years to 0.8 years, and the maximum ranges from 1.9 years to 5 years.

DEPARTMENT OF CORRECTIONS

ANALYSIS OF SENTENCES GIVEN

FY 1977-78

Class	Offense	Indeterminate	Avg. max.	Determinate	Avg. min.	Avg. max.	Total	Avg. min.	Avg. max.
1	1st° Murder	-	-	15	life	life	15	life	life
1	1st° Kidnapping	-	-	1	life	life	1	life	life
2	2nd° Murder	6	12.8	15	14.4	23.9	21	10.3	20.7
2	Criminal conspiracy to commit class I	1	11.0	4	33.2	48.7	5	30.6	41.2
2	1st° Kidnapping	1	12.0	2	31.2	40.0	3	20.8	30.7
2	1st° Sexual Assault	-	-	1	27.0	50.0	1	27.0	50.0
2	Attempt to commit class I	-	-	1	10.0	15.0	1	10.0	15.0
3	1st° Assault	7	10.7	22	11.9	17.7	29	9.0	16.0
3	Aggravated Robbery	45	9.2	77	11.0	17.3	122	7.0	14.3
3	1st° Sexual Assault	7	7.9	30	14.3	21.6	37	11.6	19.0
3	2nd° burglary of dwelling	19	10.3	19	11.3	20.9	38	5.7	15.6
3	1st° Burglary	7	9.5	6	7.0	12.2	13	3.2	10.7
3	1st° Arson	2	12.5	-	-	-	2	0	12.5
3	Child Abuse	1	12.0	2	8.5	17.5	3	5.7	15.7
3	Conspiracy to commit class II	-	-	2	6.0	27.5	2	6.0	27.5
3	Sexual Assault on Child	1	12.0	2	10.4	20.4	3	6.9	17.6
3	Holding Hostages	-	-	1	4.5	8.5	1	4.5	8.5
3	Attempt to commit class II	-	-	1	5.0	7.0	1	5.0	7.0
3	Assault during escape	-	-	1	8.0	10.0	1	8.0	10.0
4	2nd° Forgery	52	6.0	9	4.5	7.7	61	.7	6.3
4	2nd° Assault	30	6.9	20	4.0	6.8	50	1.6	6.9
4	Robbery	70	6.0	25	4.3	8.0	95	1.1	6.6
4	Theft(class IV)	52	8.2	19	4.5	8.7	71	1.2	8.3
4	2nd° Burglary	210	6.0	49	4.3	7.3	259	.8	6.3
4	2nd° Kidnapping	8	8.1	4	4.7	8.0	12	1.6	8.1
4	Manslaughter	17	8.2	1	3.5	5.0	18	.2	8.0
4	2nd° Sexual Assault	16	6.2	4	5.2	8.7	20	1.0	6.7
4	Conspiracy to commit class III	13	6.6	3	3.3	6.0	16	.6	6.5
4	Vehicular Homicide	5	4.6	1	8.0	10.0	6	1.3	5.5
4	3rd° Sexual Assault	4	2.0	1	5.0	10.0	5	1.0	3.6
4	2nd° Arson	6	6.3	-	-	-	6	0	6.3
4	Attempt to commit class III	11	6.4	5	5.0	8.4	16	1.6	7.1
4	Sexual Assault on child	15	7.0	2	4.0	7.0	17	.5	7.0
4	Criminal mischief	12	4.3	1	8.0	10.0	13	.6	4.7
4	Fraud by Check	7	3.1	2	4.0	6.0	9	.0	3.8
4	Escape	3	10.0	3	4.0	10.0	6	2.0	10.0

Class	Offense	Indeterminate	Avg. max.	Determinate	Avg. min.	Avg. max.	Total	Avg. min.	Avg. max.
4	1st° Perjury	1	9.0	1	5.0	8.0	2	2.5	8.5
4	Accessory to Crime	4	6.9	-	-	-	4	0	6.9
4	Joyriding	-	-	2	4.5	10.0	2	4.5	10.0
4	1st° Forgery	2	9.0	1	2.0	10.0	3	.7	9.3
4	Possession weapon previous offender	-	-	1	5.0	7.0	1	5.0	7.0
4	Fraudulent use of a credit device	3	6.3	-	-	-	3	0	6.3
4	4th° Arson	2	4.2	-	-	-	2	0	4.2
4	Criminal Extortion	1	5.0	-	-	-	1	0	5.0
4	Tampering w/witness	-	-	1	5.0	10.0	1	5.0	10.0
4	Aggravated Incest	3	9.3	-	-	-	3	0	9.3
4	Intimidating a wit.	1	10.0	-	-	-	1	0	10.0
4	Embezzlement	1	5.0	-	-	-	1	0	5.0
4	Attempted Escape	-	-	1	7.0	9.0	1	7.0	9.0
5	Menacing	22	4.0	2	1.0	5.0	24	.1	4.1
5	1st° Criminal tresp.	53	4.1	9	1.8	4.6	62	.3	4.2
5	Theft (all class V)	146	3.8	13	2.0	4.5	159	.2	3.4
5	Possession weapon by prev. offender	5	3.4	3	2.2	5.0	8	.8	4.0
5	Joyriding	7	3.1	-	-	-	7	0	3.1
5	Vehicular Assualt	5	4.4	-	-	-	5	0	4.4
5	Conspiracy to commit class 4 or 5	41	4.2	12	2.0	3.9	53	.5	4.1
5	Attempt to commit class 4 or 5	84	3.7	17	1.8	4.3	101	.3	3.8
5	3rd° Burglary	11	3.2	1	1.0	5.0	12	.1	3.3
5	Escapes	8	3.6	1	3.0	4.0	9	.3	3.6
5	Poss. of burg. tools	5	3.2	1	3.0	5.0	6	.5	3.5
5	Criminal Impersonation	2	3.8	-	-	-	2	0	3.8
5	Driving after judgemt.	4	5.0	-	-	-	4	0	5.0
5	Non-support	1	5.0	-	-	-	1	0	5.0
5	Sale of unreg. sec.	1	3.0	-	-	-	1	0	3.0
5	Accessory to Crime	2	3.5	-	-	-	2	0	3.5
5	Fraud. obt. pub. asst.	1	5.0	-	-	-	1	0	5.0
5	Pandering	1	5.0	-	-	-	1	0	5.0
5	Attempted Escape	1	3.0	3	.7	1.5	4	.5	1.9
U	Obt. narc. drugs by fraud or deceit	5	4.8	8	1.6	4.2	13	1.0	4.5
U	Sale narcotic drugs	7	7.4	10	4.9	9.0	17	2.9	8.3
U	Dispensing narc. drugs	6	7.2	7	3.1	8.3	13	1.7	7.8
U	Poss narcotic drugs	10	7.1	9	5.0	8.7	19	2.4	7.8
U	Consp. to Commit narc. drug offense	9	4.4	6	6.7	9.5	15	2.7	6.5
U	Attempt to commit narc. drug offense	4	3.4	2	1.2	3.0	6	.4	3.2
U	Habitual Criminal	-	-	2	life	life	2	life	life
U	Habitual Criminal	-	-	2	16.5	18.0	2	16.5	18.0
U	Poss. of Contraband	-	-	-	1.5	2.5	2	1.5	2.5
U	Intro. contraband 1°	1	10.0	-	-	-	1	0	10.0
U	Introducing contraband 2nd°	2	2.5	-	-	-	2	0	2.5
U	Sex Offenders Act	21	life	-	-	-	21	0	life
M	Misdemeanors	50	1.0	-	-	-	50	0	1.0
	Totals	1161	5.5	468	7.4	12.3	1629	2.1	7.4

As can be seen from Table 1, the range of sentences imposed for violation of crimes within each class varies greatly. For example, the average minimum penalty for both determinate and indeterminate sentences imposed in Class 3 ranges from 3.2 years (1st° burglary) to 11.6 years (1st° sexual assault). The wide range of sentences imposed within each class of felony has led to criticism of House Bill 1589. Since the presumptive sentence for each class of felony established by the bill was based on the average length of time served for those convicted of all crimes within each class plus 1/3 good time, those who criticize the bill maintain that the presumptive sentence in the bill will be unfair (will increase their sentence) to some offenders in the class and will be generous (will decrease their sentence) to other offenders in the class, based on the available data concerning sentences imposed for violation of a particular crime rather than the class of felony within which the crime falls. In other words, under House Bill 1589, the penalty for each class of felony is based on what is thought to be the current average length of confinement (plus 1/3) for all crimes within that class during the past several years. However, inside each class of felony, certain crimes have historically received a lower or higher period of confinement than the average.

This inability of House Bill 1589 to handle exceptions and variances is considered by some to be a flaw of the bill. Some persons maintain that it is imperative that the sentencing categories reflect the ability to keep the exceptionally dangerous individuals restricted from society as well as insure that inordinate harsh sentencing not be imposed for lesser types of offenders. Given the presumptive sentencing system of House Bill 1589, it is argued that the present classification system should be altered -- some crimes be moved up or down or more classes be created -- to bring the presumptive sentence more into line with the historical treatment of those crimes.

Proposed Changes to Classification System

With the above criticism and background in mind, the committee sought and received several suggestions on how to accomplish the reclassification of felonies within the concept of presumptive sentencing. Summarized below are some of the ideas presented to and discussed by the committee concerning the reclassification of felonies.

Hypothetical felony classification system. In order to assist the Judiciary Committee, the Colorado Division of Criminal Justice developed a hypothetical felony classification system (Appendix B) based upon a statewide survey of criminal justice practioners, which was designed to assess the perceived seriousness of felonies in Colorado. The responses obtained from this survey were then compared with the existing felony classification system to determine where differences existed. The responses were grouped together on a scalar seriousness continuum, and tentative dividing points in the seriousness scale were identified, as establishing the different classes of felonies. Some adjustments were made in order to take into account

incarceration date from the Colorado Department of Corrections. These dividing points then became the divisions of the different classes of felonies. Because Class 5 felonies held more than half the offenses and contained some internal inconsistencies, a sixth felony category was added.

The limitations of this survey were outlined for committee members by the Division of Criminal Justice. The survey was sent to a total of 720 persons; replies were received from 212 of these persons, a response rate of approximately 29 percent. Within the specific subgroups of these professionals, the rate of response ranged from 13 percent to 59 percent. These low response rates leave open to question the degree of representativeness of the groups polled, and the caveat that the results be used with a great deal of caution, recognizing that different results may have been produced with a higher response rate.

Recommendations from the Attorney General. Another suggested change in the felony classification system was recommended by the Attorney General. Recent Colorado Supreme Court cases have held that the state legislature cannot constitutionally set the penalty for assault higher than the penalty for an attempted homicide when the two crimes are committed with the same mental intent and differ only in the result caused (i.e., the death or injury of the victim).1/ In light of these rulings, the Attorney General made the following recommendations:

(1) Manslaughter should be reclassified as a Class 3 felony;

(2) C.R.S. 1973, 18-3-105 (1) (b), defining criminally negligent homicide as including one who acts in the unreasonable good faith belief that he is justified, should be included in the definition of manslaughter as a Class 3 felony;

(3) Criminally negligent homicide should be classed as a felony rather than a misdemeanor;

(4) C.R.S. 1973, 18-2-101 (5), regarding criminal attempt to commit a Class 3, 4, or 5 felony, should be amended so that those attempt crimes are punished at the same level as the substantive crimes.

Recommendations from the Division of Adult Parole. Another group of suggested changes to the felony classification system was proposed by the Colorado Division of Adult Parole, which proposed the creation of a new felony Class 3B, which would contain present Class 4

1/ For further clarification see People v. Bramlett, 573 P.2d 94 (Colo. 1977); People v. Montoya, 582 P.2d 673 (Colo. 1978); and People v. Watkins, No. 27914 (Colo. Oct. 23, 1978).

and Class 5 felonies which the Division of Adult Parole suggests should be upgraded into a more serious felony class. The following list contains these suggested changes:

Proposed Class 3B
(Presently Class 4)

C.R.S. 1973 Citation	
18-4-301	Robbery
18-3-104	Manslaughter
18-3-403	2nd Degree Sexual Assault
18-3-203	2nd Degree Assault
18-3-302	2nd Degree Kidnapping
18-8-208	Escape
18-2-101	Attempt to Commit Class 3
18-3-405	Sexual Assault on Child
18-2-206	Conspiracy to Commit Class 3
18-3-404	3rd Degree Sexual Assault
18-3-207	Extortion
18-12-108	Possession of Weapon by Previous Offender
18-8-604	Intimidating a Witness
18-3-106	Vehicular Homicide
18-4-103	2nd Degree Arson

Proposed Class 3B
(Presently Class 5)

18-12-108	Possession of a Weapon by Previous Offender
18-3-206	Menacing
18-6-101	Child Abuse
18-3-205	Vehicular Assault

Recommendations from the Colorado Public Defender. The Colorado State Public Defender suggested the enactment of a bill to reduce the felony classification for first and second degree assault when the crime that has been committed is performed without deliberation, under the heat of passion, and as a result of a highly provoking act by the victim.

Recommendations of Colorado District Attorneys Council (CDAC). The CDAC recommended that the legislature either reclassify offenses within the existing classes or create additional classifications, particularly as concerns violent offenses. One suggestion was to include sentence enhancements for such things as use of a firearm in the commission of a felony, serious bodily injury, and prior felony record.

Specifically, the CDAC proposed that second degree burglary

should be separated from the other Class 3 felony offenses. The CDAC also recommended that the Legislative Council staff conduct a study of the Class 4 and Class 5 offenders released or discharged during the first nine months of this year, on a case-by-case basis. The particular offenses could then be placed within the classification which most nearly equals one another in terms of time served.

Recommendations of Colorado Bar Association. The Colorado Bar Association (CBA) recommended that the current review of crime classification be broadened, and instead of relying solely upon statistical input on the average or range of time served for a particular crime, consideration be given to many other factors. In considering crime classification, the CBA proposes that there should be a balance between the crime itself, the offender, social policy, aggravating or mitigating circumstances, and other relevant factors.

It is the belief of the CBA that a major flaw in House Bill 1589 is the lack of any attempt to deal with the problem of classification of crimes. There must be a review and study of crime classification based upon a number of factors and not merely upon statistics which reveal the time which has been served in the past for a given crime. Such a study will take considerable effort and be time consuming.

To accomplish this review, the CBA proposed the establishment of a Sentencing Review Commission, with guidelines established by the legislature.

The CBA further recommended that such a commission be established for a defined term, and whose existence, except upon a showing of extraordinary conditions, should not be extended. Subsequent review of the commission's work could be accomplished by periodic reports to the legislature by the Department of Corrections or such other department or agency designated by the legislature. The CBA recognizes the cost factor inherent in such a proposal and urges the use of existing government agencies, departments, or branches which could be directed to take on such endeavor without establishing additional bureaucratic structures.

Committee recommendations. The committee makes no recommendations concerning the aforementioned proposed changes relating to Colorado's felony classification system.

Committee Consideration of Sentence Lengths

As indicated earlier, a judge can now sentence an offender from 10 to 50 years for a Class 2 felony, from 5 to 40 years for a Class 3 felony, from 1 day to 10 years for a Class 4 felony, and from 1 day to 5 years for a Class 5 felony. House Bill 1589 abolishes these penalties and substitutes a presumptive sentence of 7-1/2 years plus one year of parole for a Class 2 felony, 4-1/2 years plus one year of

parole for a Class 3 felony, 2 years plus one year of parole for a Class 4 felony, and 18 months plus one year of parole for a Class 5 felony.

A person who has been convicted of a Class 2, Class 3, Class 4, or Class 5 felony shall be punished by imposition of the presumptive sentence unless the court, in its discretion, finds that mitigating or aggravating circumstances are present and would justify imposition of a lesser or greater sentence. The sentence so imposed shall not vary from the presumptive sentence by more than 20 percent; except that, if the person to be sentenced has previously been convicted of a felony, the court may increase by not more than 50 percent the presumptive sentence. The court must enter on the record of the case the specific circumstances and factors which constitute the reasons for increasing or decreasing the presumptive sentence.

Presumptive sentence lengths

The sentence lengths prescribed in House Bill 1589 were established to represent the actual average time of incarceration for each class of felony, plus 1/3 of that average. The 1/3 addition represents the amount of regular good time available under House Bill 1589 to be earned by an inmate upon reasonable compliance with all rules and regulations. The premise of this approach to the bill is that budgetary constraints upon the state dictate that the prison population should not be increased by imposing sentences longer than those now actually served.

In March, 1977, the Department of Institutions completed an analysis of what length of presumptive sentences would be necessary for Class 2, 3, 4, and 5 felonies in order to maintain the present system-wide average length of time served (estimated then to be approximately 20 months). The best available average length of stay data by class of felon is the average length of stay data for first time parolees compiled during FY 1976-77 by the Department of Institutions. The table below summarizes those average lengths of stay documented for those released as first time parolees during FY 1976-77. Incorporated within each felony class are offenders released who were serving single, concurrent, and consecutive sentences. Based on this data, the average length of stay was calculated to be 19.98 months.

First Time Parolees
Average Length of Stay in Months
FY 1976-77

Class of Felon	Number Paroled	Average Length of Stay in Months
I	4	122.75
II	18	61.79
III	149	28.36
IV	366	16.18
V	185	12.70
Narcotics (Unclassified)	83	19.88
Habitual offenders (Unclassified)	5	87.36
Sex offenders (Unclassified)	1	20.20
Total Felonies	811	19.98

This data was subsequently revised by the new Department of Corrections for first time parolees released in FY 1977-78. The same average length of stay of 19.98 months was arrived at and is set forth below:

First Time Parolees
Average Length of Stay in Months
FY 1977-78

Class	Indeterminate Sentences	Ave. Stay	Determinate Sentences	Avg. Stay	All Releases	Avg. Stay
I	-	-	5	148.9	5	148.9
II	6	26.9	10	67.3	16	52.1
III	92	19.8	67	46.6	159	31.1
IV	430	16.4	14	28.3	444	16.8
V	262	14.4	3	12.6	265	14.4
Narcotics	38	12.8	39	24.1	77	18.5
Sex Offenders	6	36.1	-	-	6	36.1
Habitual Criminal	-	-	3	56.1	3	56.1
Misdemeanor	11	9.3	-	-	11	9.3
Total	845	16.1	141	43.1	986	19.98

By using the calendar year 1977 data on the number of felons received in each class and comparing it to the data established above on length of stay for first time parolees, the approximate length of stay was calculated to be 20.4 months.

Calendar Year 1977 Single and Concurrent Felony Proportions
vs.
FY 1976-77 Single and Concurrent Felony Length of Stays
in Months for First Time Parolees

Class	Number received in 1977	Percentage received in 1977	FY 1976-1977 average length of stay in months	Percentage times length of stay
Class I	18	1.43	122.75	175.53
Class II	31	2.47	61.79	152.62
Class III	197	15.67	27.46	430.30
Class IV	536	42.64	15.77	672.43
Class V	337	26.81	12.63	338.61
Narcotics	85	6.76	19.88	134.39
Misdemeanor	31	2.47	17.57	43.40
Habitual Criminal	10	0.80	87.36	69.89
Sex Offenders	12	0.95	20.20	19.19
Total	1,257	100.00	-	2,036.36

2,036.36/100 = 20.4

Average length of stay = 20.4

For those felons released as first time parolees during July-December, 1977, the minimum and maximum length of stay for each felon class is set forth in the following table.

Class	July - Dec. 1977 1st Time Parolees Number Released	Minimum Length of Stay in months	Maximum Length of Stay in months
I	-	-	-
II	7	20.2	85.7
III	85	8.03	111.4
IV	237	6.8	52.9
V	147	5.7	33.3
Narcotics	39	7.1	51.8
Sex Offenders	3	24.6	47.4
Total	518	-	-

Since no Class I felons were released during this period, there are no minimum or maximum length of stays shown on the above table. Similar data was collected for first time parolees during the July-December, 1976, period. That data revealed a range from a minimum of 113.3 months to a maximum of 157.8 months for Class I.

To maintain the approximate 20 month average for time served,

the presumptive sentences under House Bill 1589, assuming the one-third good time requirements of the bill as introduced, were established as follows:

Class of Felony	Presumptive Sentence	Less Good Time	Actual Time (After Good Time Credit)
2	90 months	30 months	60 months
3	54 months	18 months	36 months
4	24 months	8 months	16 months
5	18 months	6 months	12 months

This sentencing pattern would result in average time of service of approximately 20.07 months.

Recent data on time served. In 1976, House Bill 1111 was enacted which imposed mandatory minimum terms of confinement for certain repeat and violent offenders. Research documented in the 1977 Master Plan for Corrections concluded that this legislation would increase the prison population by 492 inmates by the year 1980. This is roughly equivalent to an increase in length of stay of four months. On the basis of this prediction, the length of stay for inmates should be approximately 24 months by 1980. Departmental population projections have used this 24-month figure as the basis for predicting future population levels.

The length of stay for those being released today was used in calculating the population impact. The department maintains that the Parole Board has been releasing fewer offenders during this period, and have been releasing only the least serious offenders. The department concludes that the current length of stay is artificially low because of these factors. Efforts are being made to obtain more current and reliable data concerning the average length of stay for those who are presently incarcerated. It is estimated that current average length of stay may approximate 27 to 28 months.

The committee was made aware that many other factors may influence the presumptive sentence which is imposed and the resulting average length of stay. In order to determine the impact or effect of these other factors on sentence length, the Committee on Judiciary established a subcommittee to analyze the available data on the variables which affect the actual length of incarceration. These factors and the conclusions of the subcommittee are discussed in the next section of this report.

Case-by-case study of Class 2 and Class 3 offenders by the Colorado District Attorneys Council. In November, 1978, the CDAC completed a case-by-case analysis of all Class 2 and 3 felons released on parole or discharged from the Department of Corrections during the first nine months by 1978. The information necessary to complete this case-by-case analysis was secured from the institutions involved,

court records, and the Parole Board. The study does not involve either sampling or estimates. It is a complete factual account, case-by-case, and the information on each case has been maintained to answer any questions.

Eighty-eight offenders were included in the study. Excluded from the 88 were those serving consecutive sentences (only six in number) and the 16 who were returned to the institution under parole violations, so as not to increase the average time served because of those two contingencies. The population surveyed did not include individuals paroled to halfway houses, work-release programs or other residential facilities or programs. The following items of information were collected to analyze the length of sentences served by the population:

a) The name of each individual;

b) The Department of Corrections number of each individual;

c) The date of receipt by the Department of Corrections;

d) The sentence actually given, expressed in months;

e) The date of parole;

f) If the sentence given was a single sentence, an indication of whether or not the individual was convicted of additional counts;

g) Notes to explain peculiarities of a particular sentence.

h) The institution to which the individual was sentenced by the court;

i) An indication of whether or not the individual has been paroled previously for the same Class 2 or Class 3 felony.

Time served was calculated in months and fractions of months. The method of calculating length of stay in months is as follows:

a) Less than 10 days = 0 month;
b) 10 to 20 days = 0.5 month; and
c) 21 to 31 days = 1 month.

Means of sentences given and times actually served were calculated for felons by class and by selected crimes. A summary of these findings is set forth below:

Length of Stay in Months by Felony Class
January 1, 1978 - September 30, 1978

Felony Class	Determinate No.	Determinate Avg. Min.	Determinate Avg. Max.	Determinate Avg. Stay	Indeterminate No.	Indeterminate Avg. Max.	Indeterminate Avg. Stay	Composite No.	Composite Avg. Max.	Composite Avg. Stay
II	9	163	285*	67.2	2	150	26.0	11	235	59.7
III	36	85	168	40.5	40	113*	20.8	76	140*	30.2

Length of Stay in Months by Crime Type
January 1, 1978 - September 30, 1978

Offense	Determinate No.	Determinate Avg. Min.	Determinate Avg. Max.	Determinate Avg. Stay	Indeterminate No.	Indeterminate Avg. Max.	Indeterminate Avg. Stay	Composite No.	Composite Avg. Max.	Composite Avg. Stay
2° Murder	8	161	240*	65.6	2	150	26.0	10	222	57.7
Aggravated Robbery	22	89	175	40.7	14	86	21.3	36	140	33.2
2° Burglary	9	51	105	30.8	19	118	16.3	28	114	21.0
Rape	2	174	360	71.0	3	150*	37.3	5	255	50.8

* Average maximum sentences exclude life sentences.

Factors Affecting Sentence Lengths

Two of the areas reviewed by the subcommittee relates to the judge's use of discretion in the presumptive sentencing process. Efforts were made to determine, if possible, the impact of this discretion on sentence lengths.

Mitigating and Aggravating Circumstances

As House Bill 1589 is presently written, a sentencing judge is permitted to increase or decrease the presumptive sentence by 20 percent depending upon the presence of either mitigating or aggravating circumstances. Thus, the presumptive sentence for a Class 2 felony could range from six years to nine years; for a Class 3 felony, from three years, seven months to five years, four months; for a Class 4 felony, from one year, seven months to two years, four months; and for a Class 5 felony, from one year, two months to one year, nine months. In addition, the bill provides that a judge may increase the presumptive sentence by 50 percent for offenders previously convicted of a felony.

The concern surrounding the presumptive sentences in the bill is the assumption that the presumptive sentences authorized will, in practice, be the average sentence imposed. Given the high percentage of commitments with prior felony incarcerations (estimated to be approximately 45 percent), and the fact that many other offenders have served terms on probation and have had prior convictions (approximately 65 percent), many persons are concerned that the average sentence imposed will be in excess of the presumptive sentence. Testimony before the committee indicated that this is the experience in California. The population impact, if the average sentence imposed is above the presumptive sentence, could be significant. The subcommittee estimated that approximately 15 percent of those sentenced would receive the 20 percent reduction because of mitigating circumstances; 50 percent of those sentenced would receive the presumptive sentence; 15 percent of those sentenced would receive the 20 percent enhancement because of aggravating circumstances; and 20 percent of those sentenced would receive the 50 percent enhancement because of prior felony convictions. This generally averages out to mean that the actual sentence imposed will be approximately 10 percent above the presumptive sentence. The population impact of this factor, together with the good time provisions of the bill, could mean an increase of 181 ADA, as estimated by the Department of Corrections.

Anticipated Use of Consecutive Sentences

The extent to which judges will impose consecutive sentences was of concern to the committee because of the potential impact on the prison population and the average length of stay. The concern is that judges will be inclined to increase the rate of usage of consecutive sentencing. At the present time, it is estimated that approximately 1.3 percent of all offenders committed to the Department of Corrections arrive with two or more sentences which are to be served consecutively. House Bill 1589 does not abridge any judge's discretion in considering the use of consecutive or concurrent sentences. As indicated earlier in this report, there is a concern that the presumptive sentences of House Bill 1589 are too short for many serious offenders. The thought was also expressed that district attorneys will prosecute multiple charges under the bill in the hope that consecutive sentences will be imposed. The belief was also expressed that judges will, in fact, impose more consecutive sentences. An increase in consecutive sentences would reintroduce sentence disparity and greatly increase ADA at the prison.

In an effort to determine the extent to which district attorneys and judges will seek or impose consecutive sentences, a survey was prepared and distributed to sentencing judges, asking them to reevaluate the sentences imposed for the last three cases before their court in light of the presumptive sentences of House Bill 1589. It is thought that the results of this survey will provide more reliable information on the extent to which judges will impose consecutive sen-

tences. The results have not yet been tabulated or analyzed.

Based upon an analysis of current practice the department estimates that offenders with consecutive sentences spend approximately 82 percent longer than those with single or concurrent sentences of the same class. The department estimates that an increase in the rate of use of consecutive sentences of just one percent (i.e., 1.3 percent increasing to 2.3 percent) would increase inmate population by 56 ADA. Based upon recent data collected by the department in May, 1978, it is known that 2,500 offenders incarcerated had, collectively, in excess of 4,000 separate mittimae. An examination of the first offense listed on each of these mittimae disclosed that 83 percent of the crimes were recorded as follows:

TOTAL = 4,003

Crime	Class	Number of Mittimae		Percentage of Total
Murder	?	20		
1st° Murder	1	118	--	246 = 6.145
2nd° Murder	2	108		
Manslaughter	?	19		
Manslaughter	2	1	--	46 = 1.149
Manslaughter	4	12		
Manslaughter	4	14		
Rape	?	37		
Rape	3	25		
Rape	3	13		
Rape	4	22	--	136 = 3.397
Rape	4	0		
Rape	4	5		
Rape	4	2		
Rape	5	32		
Robbery	-	175		
Aggravated Robbery	3	417	--	700 = 17.486
Simple Robbery	4	108		
Kidnapping	-	8		
1st° Kidnapping	1	4	--	39 = 0.974
1st° Kidnapping	2	10		
2nd° Kidnapping	4	17		
Assault	-	39		
Assault/Escape	1	2		
Assault/Escape	2	1	--	279 = 6.969
1st° Assault	3	81		
2nd° Assault	4	96		
Vehicular Assault	5	9		
Menacing	5	51		

Theft	-	241)		
Theft	4	156)		
Theft	4	6)		
Theft	5	20)		
Theft	5	10)	--	462 = 11.541
Theft	-	14)		
Theft	4	5)		
Theft	4	3)		
Theft	5	7)		
Arson	-	3)		
Arson	3	5)	--	16 = 0.399
Arson	4	7)		
Arson	4	1)		
Forgery	-	30)		
Forgery	4	4)		
Forgery	4	131)	--	175 = 4.371
Forgery	5	3)		
Forgery	5	2)		
Forgery	5	5)		
Drug Abuse	U			265 = 6.620
Burglary	-	77)		
1st° Burglary	3	54)		
Burglary	3	74)	--	954 = 23.832
2nd° Burglary	4	611)		
Burglary	5	21)		
Trespassing	5	117)		

While the actual percentage increase in the use of consecutive sentences cannot, with available data, be reliably predicted, an increase from 1.3 percent to 8.3 percent is anticipated by the department. It is anticipated by members of the subcommittee that the use of consecutive sentences will go up because of more pressure on judges and because indeterminate sentences (roughly 70 percent of all sentences) will be abolished. The subcommittee determined that, in view of the lack of information on this factor, an increase of from 6.3 percent to 8.3 percent is the best available estimate at this time. The judicial survey may help clarify this situation. The ADA impact of this increase is not available at this time.

Good Time/Earned Time Allowances

House Bill 1589, as introduced, provided that good time could be earned at the rate of 10 days for every 30 days served (Section 16-11-310 (3) (a), C.R.S. 1973, as amended by House Bill 1589). This provision was amended in the Senate to provide for an additional one month for every six months served to be credited against sentence length if there was a determination by the Parole Board (discretionary) that a prisoner "had made outstanding progress" in each of the

following categories: (a) work and training; (b) group living; (c) attitudinal changes; and (d) progress toward goals established by the diagnostic program (Section 16-11-310 (3) (b), C.R.S. 1973, as amended by House Bill 1589). The rationale for this amendment was that some reduction mechanism must be available in the law for the truly model prisoner.

Section 16-11-310, C.R.S. 1973, as amended by Section 12 of House Bill 1589, authorizes sentence reductions of up to approximately 43 percent of the sentence on account of the new good time system. This is based on the assumption that inmates will not receive both old and new good time and that an election has to be made (discussed later in this section). If an offender earns all possible time reductions, a Class 2 felon could be released in four years, three months, and two days, a Class 3 felon could be released in two years, six months, and 25 days; a Class 4 felon could be released in one year, one month, and 21 days; and a Class 5 felon could be released in ten months and eight days. This information was furnished by the Office of Information Systems of the Department of Corrections.

During the 1978 Session, Senate Bill 59 was introduced, considered, and subsequently defeated. The bill would have substituted an "earned time" system for the good time and progress system contained in House Bill 1589. The purpose of the earned time proposal was to motivate the individual inmate to take an active role in reducing his sentence by initiating behavior in which he would actually earn time to be deducted from his sentence, rather than it being automatically granted to him. Senate Bill 59 provided for an earned time system which would have made an inmate eligible for earned time allowances against his sentence not to exceed one and one-half days for each day of sentence served. The premise behind the earned time concept is that the automatic awarding of good time serves no purpose except for that of negative reinforcement. It is thought that change can be brought about through positive reinforcement of appropriate behavior and performance. Senate Bill 59 was advocated because it was thought that House Bill 1589 did not provide the structure to effect a positive incentive program.

The committee explored the impact of the good time deductions under House Bill 1589 upon the length of stay, the election provision in House Bill 1589, and the impact of alternative proposals, such as the earned time system.

Impact of good time and progress under House Bill 1589. In analyzing the ADA impact of the good time and progress deductions under House Bill 1589, the proportion of felonies received, based on CY 1977 data, is matched with the presumptive sentence for each class of felony, less the ratio of good time which is estimated will be received. An important assumption made in this analysis is that the current practice in consecutive sentencing remains unchanged.

Assuming that consecutive sentencing practices remain unchanged, that offenders will routinely receive 0.50 days for each

day incarcerated, and that 40 percent of cases reviewed by the Parole Board will receive the additional time awarded for progress by the board, the Department of Corrections estimates that the average length of stay would be 20.3 months. Based on this average length of stay, the impact would be an 11 ADA decrease. The Office of Information Systems in the department believes that this distribution of good time credits is the most likely circumstance to occur under House Bill 1589.

Using a good time ratio of 0.35 days for each day incarcerated, and assuming that one-half of the inmate population will receive maximum time credits, one-fourth of the population will receive one-half of the maximum time credits, and one-fourth of the population will receive no time credits, the average length of stay would be approximately 23.5 months. Based on this average length of stay, the ADA impact would be a 330 ADA increase.

The subcommittee concluded that a good time or earned time ratio within the range of 0.35 to 0.45 days for each day incarcerated would be the most likely to occur under House Bill 1589, if the additional days awarded for progress were eliminated from the bill.

Impact of earned time system. Senate Bill 59 proposed to substitute an earned time system for the good time and progress system in House Bill 1589. Senate Bill 59 would have allowed an inmate to receive earned time credits not to exceed one day for each day of sentence served. The Department of Corrections has conducted an analysis of the impact such a proposal would have on inmate population, and that analysis is available from the department.

Election of good time. Section 16-11-310 (4), C.R.S. 1973 (Section 12 of House Bill 1589), provides:

> (4) Any person sentenced for a crime committed prior to April 1, 1979, shall be released and discharged pursuant to the law in force on the date he was sentenced, and such law shall continue in force for this purpose as if this section were not enacted; except that any such person may elect to be released and discharged pursuant to this section. Upon such election, he shall be released and discharged as if this section were in force on the date he was sentenced.

Section 16-11-310 provides for the good time allowance and the limitation on parole and reincarceration after parole violation. It has been argued by some that, pursuant to the election provision set forth above, an offender may elect to receive both the old good time of 17-20-107, C.R.S. 1973, and the new good time of 16-11-310, C.R.S. 1973. Since House Bill 1589 did not repeal or limit the provisions of 17-20-107, C.R.S. 1973, as amended by Senate Bill 587 (1977 Session), it was argued that the good time provisions of 17-20-107, C.R.S. 1973, would remain applicable to all persons sentenced both under preexisting law and under the determinate sentencing provisions of House Bill

1589. This raised the possibility that by electing to be covered by the good time provisions of 16-11-310, C.R.S. 1973, an inmate now incarcerated could greatly increase the amount of good time to which he would otherwise be entitled. Likewise, an inmate sentenced under the presumptive sentencing provisions of House Bill 1589 could benefit from the parallel provisions of 17-20-107, C.R.S. 1973.

The subcommittee concluded that the parallelism between the two provisions indicates that the legislature intended that an election or trade-off be made. The clear meaning of the word "elect" is to choose between two alternatives, not to allow the application of both alternatives. Thus, 17-20-107, C.R.S. 1973, is applicable only to inmates sentenced for crimes committed prior to April 1, 1979, and those good time credits earned pursuant to the section are to be forfeited upon election to be treated under 16-11-310, C.R.S. 1973.

This election provision has been further clarified in the bill recommended by the committee. The bill, in Section 17, provides for good time and states that "no person subject to the good time credits of section 17-20-107 shall be eligible for the good time deduction authorized by this section."

Parole. Section 16-11-310 (5), C.R.S. 1973 (as amended by House Bill 1589), provides that "in no event shall any person spend more than one year under parole supervision and reincarceration...". Periods of reincarceration, due to violations of parole conditions, may not exceed six months. The good time deduction authorized by House Bill 1589 shall apply to periods of reincarceration.

As of May, 1978, the Department of Corrections estimated that the average length of stay upon reincarceration of a parole violator is about ten months. Approximately 220 such persons are returned each year. However, the new parole period under House Bill 1589 will be shorter than under existing practice, and the person, barring a new conviction, must discharge in one year regardless of an intervening revocation. Under the new provisions of 16-11-310 (5), C.R.S. 1973, an offender may not be reincarcerated for more than six months and, with maximum earned time, could be released in four months. Given these facts, it seems reasonable to suppose that far less than 220 revocations per year will occur under House Bill 1589. The net effect of these changes is almost certain to be a reduction in the inmate population. If revocations are cut in half, to about 110 per year, and the average length of reincarceration is 5 months, the department estimates that the inmate population could be reduced by 137 ADA.

It is also known that approximately 1,200 persons are paroled each year for an average period of about two years, resulting in a normal parole caseload of about 2,400 persons. The new statutory parole period of one year under House Bill 1589 should reduce Colorado's parolee population by approximately 1,200.

Since the release and discharge provisions of 16-11-310, C.R.S. 1973, appear to be available to persons serving sentences for crimes

committed prior to April 1, 1979, through the election option, the 1,200 ADA decrease in parole population and the 137 ADA decrease in prison population due to the one year limit on combined parole and reincarceration time, should occur in April 1, 1979.

The subcommittee which examined these figures and estimates concluded that the 110 figure for parole revocations was too low, and that a range from 110 to 130 was more likely. The subcommittee also concluded that an average reincarceration time ranged from 3.5 to 5 months was more likely than the 5 month average as calculated by the department.

It was also estimated that the 1,200 caseload reduction in parole supervision was too low because it included parolees who are supervised under the Interstate Compact on Supervision of Probationers and the Division of Adult Parole has to supervise these individuals regardless of the effect of state law. It is estimated that, instead of the impact of House Bill 1589 on parole caseload being cut in half (from 2,400 to 1,200), the impact will be a reduction of approximately one-fourth.

As reported to the committee by the Division of Adult Services, Office of Adult Parole, in November, the cost for each person on parole in the community is approximately $490.00 a year. This estimated cost is based on the annual budget of the Office of Parole and the average number of persons maintained on parole a year.

Information on the leading cause of parole revocations was sought and received by the committee. Based on statistics maintained by the Office of Adult Parole concerning parole violations, the leading cause of parole revocation appears to be technical parole violations involving possession of a deadly weapon by a parolee. During the period from July 1, 1977 to July 1, 1978, the Parole Board revoked the parole of 314 offenders on parole in Colorado. One hundred and seventy (170) offenders had their parole revoked for technical parole violations (any violation of conditions of parole that does not involve conviction for a crime committed while on parole is regarded as a technical parole violation within the department). Of the 314, 84 offenders had their parole revoked for the commission of a crime while on parole. Sixty offenders had their parole revoked because of both technical violations and commission of a new crime while on parole.

Pretrial Confinement

Section 16-11-310 (2), C.R.S. 1973 (Section 12 of House Bill 1589), provides that "any pretrial confinement shall be credited to the sentence." Under existing law (16-11-306, C.R.S. 1973), a judge must consider "that part of any presentence confinement which the defendant has undergone with respect to the transaction for which he is to be sentenced." A judge need not, however, reduce the imposed

sentence by an amount equal to this presentence confinement. He must simply consider this confinement before imposing sentence.

The Department of Corrections estimates that approximately 26 percent of all commitments to the Department of Corrections have one day or more of presentence confinement applied to the sentence imposed, approximately 74 percent of all commitments do not have such credits given by the sentencing judge. The average amount of time given to those receiving jail credits is approximately 125 days. On the basis of this data, 74 percent of the inmate population (or about 957 inmates per year) could receive sentence reductions of as much as 125 days each. This would have the effect of reducing the inmate population by 328 ADA. However, since the new language in 16-11-310, C.R.S. 1973, refers to pretrial confinement, and not presentence confinement, it is anticipated that lesser amounts of jail time might actually be credited. Further, jail time is now often credited only to those who have an extraordinary amount of presentence confinement. Thus, the average of 125 days is probably longer than will be the case when all commitments are examined. The actual impact of this new provision, therefore, would appear to be less than the estimated 328 ADA reduction.

Consideration of Proposed Changes to Sentence Lengths and to Factors Affecting Sentence Lengths

Various persons and groups, in response to requests from the committee, suggested certain changes to the sentence lengths contained in House Bill 1589. Other proposals were made to amend or change the factors which affect the length of sentence.

Proposed Changes to Sentence Lengths

Various proposals were submitted to the committee to either increase or reduce the presumptive sentence lengths in House Bill 1589. These proposals are discussed below.

Colorado District Attorneys Council proposal. Based on the analysis of average time served by felons released on parole or discharged from January 1, 1978 to September 30, 1978 conducted by the CDAC (discussed earlier in this report), the CDAC recommends several amendments to House Bill 1589.

Assuming that House Bill 1589 would continue to have a maximum good or earned time of one-half of the presumptive sentence, and assuming that second degree burglaries are excluded from the present Class 3 felony category, in order to gear House Bill 1589 presumptive sentences to the actual average time now being served by Class 2 and 3 felony offenders who have received determinate sentences, section 15 of the bill should be amended as follows:

"Class	Presumptive Sentence
2	~~Seven-and-one-half~~ ELEVEN YEARS, TWO MONTHS plus one year of parole
3	~~Four-and-one-half-years~~ SIX YEARS, NINE MONTHS, plus one year of parole"

To the extent that House Bill 1589 is amended to change the maximum good or earned time to less than the present one-half of the presumptive sentence, this suggested amendment would have to be modified accordingly. Thus, if the maximum good or earned time were changed to one day for each two days served, then the above recommended amendment for Class 2 and 3 felonies should be as follows:

"Class	Presumptive Sentence
2	~~Seven-and-one-half~~ EIGHT YEARS, five months plus one year of parole
3	~~Four-and-one-half-years~~ FIVE YEARS, ONE MONTH, plus one year of parole"

As a more easily understood schedule, the CDAC offered the following alternative, designed to cause the actual length of time served, after allowing for maximum earned or good time, to be:

Unchanged for Class 1
Six years for Class 2
Four years for Class 3
Two years for Class 4
One year for Class 5

To accomplish this result, section 15 of House Bill 1589 would have to be amended, as follows:

(1) With the present House Bill 1589 maximum good time of half the presumptive sentence:

"Class	Presumptive Sentence
1	Life imprisonment or death
2	~~Seven-and-one-half~~ TWELVE years plus one year of parole
3	~~Four-and-a-half~~ EIGHT years plus one year of parole
4	~~Two~~ FOUR years plus one year of parole
5	~~Eighteen-months~~ TWO YEARS plus one year of parole"

(2) If the maximum good/earned time is reduced to one day for each two days served, then to accomplish this result the following amendment to section 15 would be required as to Class 2, 3 and 4 felonies only:

"Class	Presumptive Sentence
1	Life imprisonment or death
2	~~Seven-and-one-half~~ NINE years plus one year of parole
3	~~Four-and-a-half~~ SIX years plus one year of parole
4	~~Two~~ THREE years plus one year of parole
5	Eighteen months plus one year of parole"

State Public Defender proposal. Given the fact that the presumptive sentences in House Bill 1589 can be increased by 50 percent for a prior felony conviction, the State Public Defender believes that House Bill 1589 will result in a substantial increase in the institutional population. This belief is based on the following reasons:

(1) Dr. Allen Ault estimates that 45 percent of the present inmate population has been previously confined. It is estimated that an additional 35-45 percent have been on felony probation without confinement.

(2) The average sentence presently served for each class of felony includes the aggravating factor of a prior felony conviction.

(3) By enhancing the average sentence by an additional 50 percent for a prior felony conviction, we may be increasing our historical length of confinement for each class of felony by up to 50 percent.

The State Public Defender proposed that the length of the presumptive sentences should be reduced to correct double punishment for prior felonies. In addition, the State Public Defender proposed the following amendment to section 15 of House Bill 1589 [an amendment to section 18-1-105 (6), C.R.S. 1973], which would delete the 50 percent enhancement requirement for prior felony conviction.

"(6) A person who has been convicted of a Class 2, Class 3, Class 4, or Class 5 felony shall be punished by the imposition of the presumptive sentences set forth in subsection (1) of this section unless the court, in its

discretion, finds that mitigating or aggravating circumstances are present and would justify imposition of a lesser or greater sentence than the presumptive sentence. However, if the court imposes a sentence other than the presumptive sentence, the sentence so imposed shall not vary from the presumptive sentence by more than twenty percent and shall be for a definite term.: ~~except--that,--if--the-person-to-be-sentenced-has-previously-been-convicted-of-a-felony,-the-court-may-increase by-not-more-than-fifty-percent-the-presumptive--sentence provided--for--in-this-section.~~ THE PRESUMPTIVE SENTENCE SHALL NOT BE INCREASED FOR PRIOR FELONY CONVICTIONS, EXCEPT UNDER THE PROVISIONS OF THE REPEAT OFFENDER STATUTE, PART I OF ARTICLE 13 OF TITLE 16, C.R.S. 1973, AS AMENDED."

The State Public Defender expressed his opposition to the present method of sentence enhancement in the discretion of the trial judge without prior notice. It was maintained that this allows an element of surprise and uncertainty which is contrary to ordinary concepts of fairness. It was proposed that sentence enhancement should only be involved upon motion by the District Attorney, with the defense being notified of the reasons for seeking penalty enhancement. To implement this recommendation, the State Public Defender proposed adoption of the following amendment to section 15 of House Bill 1589 [an amendment to section 18-1-105 (7), C.R.S. 1973].

"(7) IN ALL CASES IN WHICH A SENTENCE LONGER THAN THE PRESUMPTIVE SENTENCE IS IMPOSED, THE PROCEDURE FOR SENTENCING SHALL BE AS FOLLOWS:

(a) IF THE DISTRICT ATTORNEY IS SEEKING A SENTENCE LONGER THAN THE PRESUMPTIVE SENTENCE, HE SHALL SERVE ON THE DEFENSE ATTORNEY A MOTION FOR ENHANCED SENTENCING WHICH SHALL SET FORTH IN FACTUAL DETAIL THE AGGRAVATING CIRCUMSTANCES RELIED UPON IN SEEKING THE LONGER SENTENCE. THE MOTION FOR ENHANCED SENTENCING SHALL BE DELIVERED TO DEFENSE COUNSEL AT LEAST TEN (10) DAYS BEFORE SENTENCING.

(b) IF THE DISTRICT ATTORNEY HAS NOT REQUESTED ENHANCED SENTENCING, BUT THE SENTENCING JUDGE BELIEVES THAT A SENTENCE LONGER THAN THE PRESUMPTIVE SENTENCE SHOULD BE CONSIDERED, THEN THE JUDGE SHALL GIVE NOTICE ON THE RECORD OR IN WRITING TO DEFENSE COUNSEL THAT AN ENHANCED SENTENCE WILL BE CONSIDERED AND SHALL STATE IN FACTUAL DETAIL THE AGGRAVATING CIRCUMSTANCES RELIED UPON. UPON REQUEST, DEFENSE COUNSEL SHALL BE ENTITLED TO CONTINUE THE SENTENCING HEARING FOR AT LEAST TEN (10) DAYS FROM THE DATE ON WHICH HE RECEIVED NOTICE OF THE COURT'S INTENTION TO CONSIDER ENHANCED SENTENCING.

(8) UPON MOTION OF THE DISTRICT ATTORNEY, DEFENSE COUNSEL SHALL BE REQUIRED TO FILE A MOTION FOR MITIGATED SENTENCING, WHICH SHALL SET FORTH IN FACTUAL DETAIL THE MITIGATING CIRCUMSTANCES RELIED UPON IN SEEKING A SENTENCE SHORTER THAN THE PRESUMPTIVE SENTENCE. IN THE ABSENCE OF A REQUEST BY THE DISTRICT ATTORNEY, NO MOTION FOR MITIGATED SENTENCING SHALL BE REQUIRED.

(9) THE PRESUMPTIVE SENTENCE SHALL NOT BE INCREASED UNLESS SPECIAL AGGRAVATING FACTORS EXIST BEYOND THE STATUTORY ELEMENTS OF THE CRIME FOR WHICH THE DEFENDANT IS BEING SENTENCED.

~~(7)~~(10) In all cases in which a sentence other than the presumptive sentence is imposed, the court shall enter on the record of the case the specific circumstances and factors which constitute the reasons for increasing or decreasing the presumptive sentence."

Colorado Bar Association proposal. The CBA expressed the opinion that House Bill 1589 too severely limits judicial discretion. Guidelines, limits, legislative priorities and presumptive sentences are desirable, but the result should not provide a structure in which the judge is confined to a sentence inappropriate to the defendant before the bench. The CBA believes that the 20 percent deviation provided for in House Bill 1589 is inadequate to handle the ranges between commission of similar crimes by dissimilar offenders under dissimilar circumstances. The CBA offered no specific recommendations to the committee, but advised that the subject should be studied further by an appointed Sentencing Commission. In those cases where there are factors present which have not been considered by the sentencing commission or the legislature, the CBA recommends that the court should, based upon specific finding which are made a part of the record, be vested with broad discretion to vary the presumptive sentence based on those factors.

American Civil Liberties Union proposal. The ACLU proposed that all presumptive sentences under House Bill 1589 be reduced by 20 percent. The rationale for this proposal is that the current average sentence is already affected by those prisoners who are being punished because of repeat offenses, aggravating circumstances and multiple crimes.

Colorado Association of Chiefs of Police proposal. A survey of members of the Colorado Association of Chiefs of Police resulted in a suggested sentence structure delineating the suggested sentence for each crime. This suggested sentence structure is attached to this report as Appendix C.

Committee Recommendations on Sentence Lengths

The committee made no recommendations concerning the various proposals discussed above. At the final committee meeting, a proposal concerning a change in the sentencing structure of House Bill 1589 was submitted to the committee by Senator Wham and Representative Howe.

This proposal would amend section 15 of House Bill 1589 (18-1-105, C.R.S. 1973) to provide that the sentencing system will be based on the prior minimum and maximum penalty scheme, with the added condition that the presumptive sentence will serve as a guide to judges and must be imposed unless the judge sets forth, in the record, his reasons for not imposing the presumptive sentence. The proposed system is set forth as follows:

Class	Minimum Sentence	Maximum Sentence	Presumptive Sentence
1	Life Imprisonment	Death	Life imprisonment or death
2	Six years imprisonment	Fifty years imprisonment	Six years to nine years imprisonment
3	Three years, seven months, six days imprisonment	Forty years imprisonment	Three years, seven months, and six days to five years, four months and twenty-four days
4	One year imprisonment, or two thousand dollars fine	Ten years imprisonment, or thirty thousand dollars fine, or both	One year, seven months and six days to two years, four months and twenty-four days
5	One year imprisonment, or one thousand dollars fine	Five years imprisonment, or fifteen thousand dollars fine, or both	One year, two months and twelve days to one year, nine months and eighteen days

The column entitled "Presumptive Sentence" will serve as a guide to the sentencing judge who may impose a minimum and maximum penalty within the range set forth in the column. If the sentencing judge chooses to impose either a minimum or maximum sentence outside of the range specified in the column, the judge must set forth, in the record, the reasons therefor. The committee concluded that this sentencing system will promote uniformity of sentencing and avoid disparate sentencing practices and at the same time vest the judicial system with broad discretion to vary the presumptive sentence when the factors of the case demand variance. Justifying reasons must be given on the record when a judge varies from the presumptive sentence.

The presumptive sentence range as set forth above is based on the presumptive sentences specified in House Bill 1589. The twenty percent variance from the presumptive sentence permitted by House Bill 1589, depending on the presence of aggravating or mitigating circumstances, is used to establish the range for the presumptive sentence in each class of felony. In other words, the minimum presumptive sentence is twenty percent below the presumptive sentence specified in

House Bill 1589 and the maximum presumptive sentence is twenty percent above the sentence set forth in House Bill 1589.

This proposal was adopted by the committee and is contained in Bill 56. The rationale supporting this proposal, as presented to the committee in a November 15 memo by Senator Wham and Representative Howe, is set forth below.

"It is our belief that the limits on judicial discretion and the defined ranges of sentences contained in House Bill 1589 are inadequate to handle the ranges between commission of similar crimes by dissimilar offenders under dissimilar circumstances. Presumptive sentences are desirable, but the result should not provide a structure in which a judge's discretion is too severely limited and should not confine a judge to a sentence which may be inappropriate to a particular offender before the judge. As much disparity may result from a presumptive determinate sentencing system as exists under an indeterminate sentencing system, with less flexibility to cure the problem. A system which treats all offenders alike, granted the vast array of differing circumstances and individuals, may result in disparity. Some discretion must exist to deal with this disparity. If discretion is not possible at sentencing, then it may be manifested in processes of charging and plea bargaining.

A sentencing system which utilizes the presumptive sentences in House Bill 1589 as a guide to exercising judicial discretion, but permits the judge more discretion in deviating from the guide, seems more desirable. The presumptive sentences under House Bill 1589, when used as a guide, offer a middle course between retaining the present system with its disparate sentences, and presumptive sentences set by a legislature unaware of the particular circumstances surrounding a case on which a judge is required to pass sentence. Utilizing the presumptive sentences in House Bill 1589 as a guide to sentencing, and not as the sentence itself, appears to be an appropriate means to guide and structure - not limit - judicial discretion, so as to aid judges in reaching a fair and equitable sentencing decision."

Proposals on Aggravating and Mitigating Circumstances

The State Public Defender proposed that specific guidelines, with the emphasis on the nature of the crime itself, concerning aggravating and mitigating circumstances be included in the bill to guide the judges discretion in modifying the presumptive sentence. No specific language was proposed.

The American Civil Liberties Union proposed that House Bill 1589 be amended to allow for a 50 percent reduction in the presumptive sentence for mitigating circumstances. It is thought by the ACLU that youth, entrapment, mental disability which reduces culpability, lack of intent to commit a criminal act, etc., are all factors which should provide the judge with considerable latitude.

Information was submitted to the committee by the Legislative Council staff outlining the procedure and statutory language in California, Illinois, and Indiana regarding the increasing or decreasing of a sentence term due to aggravating or mitigating circumstances. This information is included herein as an example of how other states have dealt with this problem.

California. The California determinate sentencing law specifies three possible sentence terms for each felony. If a judge decides to send an offender to prison, he must impose the middle term specified for that particular crime, unless aggravating (upper term) or mitigating (lower term) circumstances are found and stated on the record. In determining whether there are circumstances that justify imposition of the upper or lower term, the judge may consider the record in the case, the probation officer's report and other reports including the diagnosis and recommendations of the Director of the Department of Corrections, statements in aggravation or mitigation submitted by the prosecution or the defendant, and any further evidence introduced at the sentencing hearing.

What constitutes "circumstances in aggravation or mitigation of the crime" is not set forth in the California statutes, but is enumerated in the California Rules of Court (Rules 421 and 423). Circumstances in aggravation include:

(a) Facts relating to the crime, including the fact that:

(1) The crime involved great violence, great bodily harm, threat of great bodily harm, or other acts disclosing a high degree of cruelty, viciousness or callousness, whether or not charged or chargeable as an enhancement.

(2) The defendant was armed with or used a weapon at the time of the commission of the crime, whether or not charged or chargeable as an enhancement.

(3) The victim was particularly vulnerable.

(4) The crime involved multiple victims.

(5) The defendant induced others to participate in the commission of the crime or occupied a position of leadership or dominance of other participants in its commission.

(6) The defendant threatened witnesses, unlawfully prevented or dissuaded witnesses from testifying,

suborned perjury, or in any other way illegally interfered with the judicial process.

(7) The defendant was convicted of other crimes for which consecutive sentences could have been imposed but for which concurrent sentences are being imposed.

(8) The planning, sophistication or professionalism with which the crime was carried out, or other facts, including premeditation.

(9) The defendant used or involved minors in the commission of the crime.

(10) The crime involved an attempted or actual taking or damage of great monetary value, whether or not charged or chargeable as an enhancement.

(11) The crime involved a large quantity of contraband.

(12) The defendant took advantage of a position of trust or confidence to commit the offense.

(b) Facts relating to the defendant, including the fact that:

(1) He has engaged in a pattern of violent conduct which indicates a serious danger to society.

(2) The defendant's prior convictions as an adult or adjudications of commission of crimes as a juvenile are numerous or of increasing seriousness.

(3) The defendant has served prior prison terms whether or not charged or chargeable as an enhancement.

(4) The defendant was on probation or parole when he committed the crime.

(5) The defendant's prior performance on probation or parole was unsatisfactory.

Circumstances in <u>mitigation</u> include:

(a) Facts relating to the crime, including the fact that:

(1) The defendant was a passive participant or played a minor role in the crime.

(2) The victim was an initiator, willing participant, aggressor or provoker of the incident.

(3) The crime was committed because of an unusual circumstance, such as great provocation, which is unlikely to recur.

(4) The defendant participated in the crime under circumstances of coercion or duress, or his conduct was partially excusable for some other reason not amounting to a defense.

(5) A defendant with no apparent predisposition to do so was induced by others to participate in the crime.

(6) The defendant exercised caution to avoid harm to persons or damage to property, or the amounts of money or property taken were deliberately small, or no harm was done or threatened against the victim.

(7) The defendant believed he had a claim or right to the property taken, or for other reasons mistakenly believed his conduct was legal.

(8) The defendant was motivated by a desire to provide necessities for his family or himself.

(b) Facts relating to the defendant, including the fact that:

(1) He has no prior record or an insignificant record of criminal conduct considering the recency and frequency of prior crimes.

(2) The defendant was suffering from a mental or physical condition that significantly reduced his culpability for the crime.

(3) The defendant voluntarily acknowledge wrongdoing prior to arrest or at an early stage of the criminal process.

(4) The defendant is ineligible for probation and but for the ineligibility would have been granted probation.

(5) The defendant made restitution to the victim.

(6) The defendant's prior performance on probation or parole was good.

Once a judge has made his decision regarding a base term, he may further increase the defendant's term by adding "enhancements". Enhancements (increases in the length of a prison sentence) result from aggravating factors which are either specifically involved in the

crime -- armed with a weapon, use of a firearm, great bodily injury, and great loss of property -- or are general -- prior prison terms and consecutive sentences.

Illinois. The Illinois law provides sentence ranges for murder, under certain conditions, and for each of five felony classes. If an offender is not released on probation, the judge must impose a specific term which falls within the sentence range listed for tha class of offense. The judge must also state the reasons he chose that particular sentence.

Before reaching a decision on a sentence, the judge must:

(1) Consider the evidence received at the trial.

(2) Consider any presentence reports. (Among other data, the presentence report includes information about the defendant's background and status since arrest, the effect the offense had upon the victim(s), any compensatory benefit that various sentencing alternatives would confer on the victim(s), results of any physical or mental examination of the defendant, and special resources within the community which might be able to assist the defendant's rehabilitation.)

(3) Consider evidence and information offered by the parties pertaining to aggravating and mitigating circumstances.

(4) Hear arguments as to sentencing alternatives.

(5) Afford the defendant the opportunity to make a statement in his own behalf.

All sentences must be imposed by the judge based upon his independent assessment of the elements specified above and any agreement on a sentence by the parties involved.

The "factors in mitigation" which the judge must weigh in favor of withholding or minimizing a sentence of imprisonment are specified in Section 1005-5-3.1, Illinois Revised Statutes, as follows:

(1) the defendant's criminal conduct neither caused nor threatened serious physical harm to another;

(2) the defendant did not contemplate that his criminal conduct would cause or threaten serious physical harm to another;

(3) the defendant acted under a strong provacation;

(4) there were substantial grounds tending to excuse or justify the defendant's criminal conduct, though failing to establish a defense;

(5) the defendant's criminal conduct was induced or facilitated by someone other than the defendant;

(6) the defendant has compensated or will compensate the victim of his criminal conduct for the damage or injury that he sustained;

(7) the defendant has no history of prior delinquency or criminal activity or has led a law-abiding life for a substantial period of time before the commission of the present crime;

(8) the defendant's criminal conduct was the result of circumstances unlikely to recur;

(9) the character and attitudes of the defendant indicate that he is unlikely to commit another crime;

(10) the defendant is particularly likely to comply with the terms of a period of probation;

(11) the imprisonment of the defendant would entail excessive hardship to his dependents;

(12) the imprisonment of the defendant would endanger his or her medical condition.

The "factors in aggravation" which the judge must weigh in favor of imposing a term of imprisonment, or which he may weigh in favor of imposing a more severe sentence, are specified in Section 1005-5-3.2, Illinois Revised Statutes, as follows:

(1) the defendant's conduct caused or threatened serious harm;

(2) the defendant received compensation for committing the offense;

(3) the defendant has a history of prior delinquency or criminal activity;

(4) the defendant, by the duties of his office or by his position, was obliged to prevent the particular offense committed or to bring the offenders committing it to justice;

(5) the defendant held public office at the time of the offense, and the offense related to the conduct of that office;

(6) the defendant utilized his professional reputation or position in the community to commit the offense, or to afford him an easier means of committing it;

(7) the sentence is necessary to deter others from committing the same crime.

If certain factors in aggravation are found by the judge and the offender is at least 17 years old, the judge may choose to impose a sentence for the offense which falls within a higher minimum-maximum range. For instance, normally a specific sentence for a Class X felony must fall within a range of 6 to 30 years. However, if a judge finds certain factors in aggravation present, he may sentence an offender to a specific term which falls within a range of 30 to 60 years.

The two factors in aggravation which the judge may consider as reasons to impose an extended term are as follows:

(1) When a defendant is convicted of any felony, after having been previously convicted in Illinois of the same or greater class felony, within 10 years, excluding time spent in custody, and such charges are separately brought and tried and arise out of different series of acts; or

(2) When a defendant is convicted of any felony and the court finds that the offense was accompanied by exceptionally brutal or heinous behavior indicative of wanton cruelty.

Indiana. Before sentencing a person for a felony, the court must conduct a sentencing hearing to consider the facts and circumstances relevant to sentencing. In determining what sentence to impose for a crime, the court is required to "... consider the risk that the person will commit another crime, the nature and circumstances of the crime committed, and the prior criminal record, character, and condition of the person." If the court decides not to release the offender on probation, it must impose the base term specified in statute for that felony. However, if aggravating or mitigating circumstances are found, the court may add or subtract a fixed number of years, within specified limits, to the base term.

Some of the factors which the court may consider as mitigating circumstances or as favoring suspending the sentence and imposing probation are specified in Section 35-8-1A-7 (b), Indiana Statutes, as follows:

(1) The crime neither caused nor threatened serious harm to persons or property, or the person did not contemplate that it would do so.

(2) The crime was the result of circumstances unlikely to recur.

(3) The victim of the crime induced or facilitated the offense.

(4) There are substantial grounds tending to excuse or justify the crime, though failing to establish a defense.

(5) The person acted under strong provocation.

(6) The person has no history of delinquency or criminal activity, or he has led a law-abiding life for a substantial period before commission of the crime.

(7) The person is likely to respond affirmatively to probation or short-term imprisonment.

(8) The character and attitudes of the person indicate that he is unlikely to commit another crime.

(9) The person has made or will make restitution to the victim of his crime for the injury, damage, or loss sustained.

(10) Imprisonment of the person will result in undue hardship to himself or his dependents.

Some of the factors which the court may consider as aggravating circumstances or as favoring imposing consecutive terms of imprisonment are specified in Section 35-8-1A-7 (c), Indiana Statutes, as follows:

(1) The person has recently violated the conditions of any probation, parole, or pardon granted him.

(2) The person has a history of criminal activity.

(3) The person is in need of correctional or rehabilitative treatment that can best be provided by his commitment to a penal facility.

(4) Imposition of a reduced sentence or suspension of the sentence and imposition of probation would depreciate the seriousness of the crime.

(5) The victim of the crime was sixty-five [65] years of age or older.

(6) The victim of the crime was mentally or physically infirm.

Michigan Bar Proposal Re: Aggravating and Mitigating Circumstances. In the February, 1977 issue of the Michigan State Bar Journal, the State Bar of Michigan presented its proposal for changes in the sentencing provisions of the Michigan Criminal Code. Included in this proposal was a suggested list of several aggravating and mitigating circumstances which the court may consider in imposing a sentence greater or less than the proposed standard sentence set for second degree murder, attempted murder, and Class A (e.g., first degree kidnapping) and B (e.g., first degree burglary) felonies. The following are proposed aggravating circumstances which the court could consider:

(1) The defendant was the leader of the criminal enterprise.

(2) The crime involved several perpetrators.

(3) The crime involved several victims.

(4) The victim or victims were particularly vulnerable.

(5) The victim or victims were treated with particular cruelty during the perpetration of the crime.

(6) The degree of physical harm inflicted on the victim or victims was particularly great.

(7) The amounts of money or property taken were considerable.

(8) The defendant, though able to make restitution, has refused to do so.

(9) The defendant had no pressing need for the money taken; he was motivated by thrills or by the desire for luxuries.

(10) The defendant has threatened witness or has a history of violence against witnesses.

(11) The defendant, prior to age 18, has committed an act or acts the nature of which constitute a felony or felonies.

(12) Defendant demonstrated a reckless disregard for the safety of other persons during the commission of the crime.

The court would be required to consider a record of prior felony conviction(s) as an aggravating factor.

The following are proposed mitigating circumstances which the court could consider:

(1) The defendant played a minor role in the crime.

(2) The defendant committed the crime under some degree of duress, coercion, threat, or compulsion insufficient to constitute a complete defense but which significantly affected his conduct.

(3) The defendant exercised extreme care for the health, personal safety, or property of others in carrying out the crime.

(4) The victim or victims provoked the crime to a significant degree by their conduct.

(5) The defendant believed he had a claim or a right to the property.

(6) The defendant was motivated by an immediate need to provide necessities for his family or himself.

(7) The defendant was suffering from a mental or physical condition that significantly reduced his culpability for the offense.

(8) The defendant, because of his youth or old age, lacked sufficient judgment in committing the crime.

(9) The amounts of money or property taken were deliberately very small and no harm was done or gratuitously threatened against the victim or victims.

(10) The defendant, though technically guilty of the crime, committed the offense under such unusual circumstances that it is unlikely that a sustained intent to violate the law motivated his conduct.

(11) The defendant has lead a respectable, law-abiding life for a substantial period prior to the commission of the crime.

Colorado Study -- Analysis of Sentencing Patterns For Three Felony Offenses. In June, 1977, a study concerning the Colorado Judicial System was completed. This study, entitled "Analysis of Sentencing Patterns for Three Felony Offenses", attempted to answer the questions: 1) What variables are significantly correlated with sentencing decisions in Colorado; and 2) Does disparity, defined as divergent sentences for similar defendants, exist in Colorado? The conclusions were based on sentences imposed in Colorado for aggravated robbery, second degree burglary, and second degree assault.

In regards to aggravated robbery, the study concluded that the offense is considered so serious by Colorado judges that the offense alone appears to account for the frequent imposition of prison sentences. Other variables which were determined to significantly affect a judge's decision concerning this crime are:

1) Age
2) Occupation
3) Drug history
4) Prior felony arrest, and convictions, by type
5) Prior misdemeanor arrests and convictions, by type
6) Weapon usage
7) Type of bond
8) Judicial district.

The variables which were determined to be significantly correlated with judges decisions regarding sentencing for second degree assault are:

1) Previous felony arrests, by type
2) Previous institutionalizations, by type
3) Condition of victim
4) Class of more serious charge filed
5) Bond type
6) Trial
7) Judicial district.

The variables which were determined to be significantly correlated with judges decisions regarding sentencing for second degree burglary are:

1) Age
2) Marital status
3) Number of children
4) Education
5) Occupation
6) Income
7) Alcohol and drug history

8) Previous felony and misdemeanor arrests and convictions, by type
9) Previous institutionalizations, by type
10) Bond type
11) Trial
12) Felony class of conviction
13) Judicial district.

Committee recommendation. The committee made no recommendations concerning the proposals on aggravating and mitigating circumstances.

Proposals on Consecutive Sentencing

State Public Defender proposal. It was maintained by the State Public Defender that House Bill 1589 would greatly increase the incentive for prosecutors to seek consecutive sentences. An increase in the use of consecutive sentences would reintroduce sentence disparity and greatly increase the institutional population. To alleviate this problem, the State Public Defender proposed to amend House Bill 1589 to (1) prohibit consecutive sentences for crimes arising from the same transaction, (2) to create a strong, statutory presumption against consecutive sentences, and (3) to require specific findings of aggravation for consecutive sentencing.

American Civil Liberties Union proposal. The ACLU maintained that the most drastic variable and least predictable factor in House Bill 1589 is the possibility of multiple consecutive sentences. It was maintained that this single factor could have a tremendous fiscal impact and would give prosecutors an undue advantage in plea bargaining. An unlimited number of consecutive sentences could impose an unnecessarily severe sentence upon the convicted felon. The ACLU proposed that House Bill 1589 should be amended to limit the number of consecutive sentences which could be imposed for a single series of crimes or incidents. Consecutive sentences should be limited to no more than twice the presumptive sentence.

Committee recommendation. The committee made no recommendations concerning the proposals on consecutive sentencing.

Colorado District Attorneys Council proposal. The CDAC recommended that earned time, rather than good time, should be established, with a maximum time earnable of one day for each two days served. The CDCA proposed that the system should be operated by a single department - the Department of Corrections - and not divided between a parole board and the department.

In order to convert the good time concept of House Bill 1589 to a system of earned time, it would be necessary to amend subsection (3) (a) of section 12 of House Bill 1589 [16-11-310 (3) (a), C.R.S. 1973], by making amendments contained in Senate Bill 59 in the form in which it passed the Senate during the 1978 Session.

In order to reduce the maximum good or earned time to one day for each two days served, as was the original principle contained in House Bill 1589 as introduced, it would be necessary to amend House Bill 1589 by deleting subsection (3) (b) of section 12 [16-11-310 (3) (b), C.R.S. 1973]. This would entail deletion of the bottom three lines on page 6 and deletion of the first 17 lines on page 7 of House Bill 1589.

It was argued by the CDAC that the provision of House Bill 1589 [16-11-310 (1) (a) (1), C.R.S. 1973], which allows for possible additional good time of up to "one month for every six months of a sentence served", creates various problems. If generally granted (which, based upon past history, the CDAC expects), it would reduce the average sentence of less than 21 months by three months, or a 15 percent sentence reduction from the present sentence average. By using the language "of a sentence served" it is unclear whether this extra good time applies to the full presumptive sentence without regard to the one-third good time, or to the sentence after the one-third good time has been taken into consideration. In other words, it could be argued that House Bill 1589 permits additional good time of one month for every four months in custody, if it is construed that the regular one-third good time is part "of the sentence served". This would effect an even greater average sentence reduction.

The additional good time provided by House Bill 1589 would be administered by the Parole Board. The CDAC argued that this would create administrative problems. The Department of Corrections would administer one good time system, and the Parole Board would administer another, with no assurance that their policies and administration would be compatible and consistent.

State Public Defender proposal. The State Public Defender recommended that any good time system under House Bill 1589 should (1) vest monthly, (2) accrue unless taken away by due process, and (3) be administered by an impartial decision maker. The State Public Defender preferred a good time system over an earned time system, but was doubtful that House Bill 1589 provided due process procedures for the handling of good time. The State Public Defender preferred a day-for-day granting of good time as an incentive toward good institutional behavior but only if: (1) the system is administered by an impartial body, (2) the burden of proof is on the state, (3) penalties are limited, and (4) due process is provided. The State Public Defender believed that an arbitrary good time system would be worse than none at all.

Colorado Bar Association proposal. In the opinion of the CBA, a good time system can be philosophically consistent with the concept of presumptive determinate sentencing. The use of earned time, i.e., the reduction of an offender's length of stay in an institution by time awarded by the institution and corrections officials, based on the prisoner's performance in the institution, subverts the certainty of sentencing, enhances sentence disparity, and places discretion in the hands of those who are not visibly accountable to the public for

their actions. However, institutional control and institutional rules and regulations are an important part of any corrections system. The CBA feels it would be desirable for institutions to establish rules requiring participation by inmates in work or educational programs. A violation of those rules would be sufficient cause for a hearing to withhold the automatic applications of good time. To the extent the application of such rules is open to abuse on a variety of levels, the areas in which such non-participation would be a cause for hearing would need to be strictly monitored.

Committee recommendation. The committee recommends that the award of additional good time for progress, as permitted in section 12 of House Bill 1589 [16-11-310 (b) (I), C.R.S. 1973] be deleted from the bill. Consequently, there will be a flat good time deduction of ten days a month from the sentence. This recommendation is contained in Bill 56.

Proposals on Use of Parole and the Role of the Parole Board

House Bill 1589, as discussed previously, will cut the parole period from an average of two years to one year. This will approximately cut in half the parolee population. Several changes to this requirement were proposed to the committee. In addition, the role of the Parole Board as an early release mechanism was discussed and recommendations thereon were submitted to the committee.

Office of Adult Parole proposal. The Office of Adult Parole suggested that the period of parole be increased for certain classes of felonies and for certain types of offenders. The concern is with the fact that no distinction is made between the first time non-violent offender and the repeat violent offender. It was suggested, therefore, that the length of parole be extended for those individuals who have demonstrated a pattern of criminal involvement. This suggestion could be implemented by requiring that repeat Class 4 and 5 non-violent felons serve a parole period of two years, and that repeat offenders in Class 2, 3, and the new Class 3B, as proposed by the Office of Adult Parole, serve a three-year parole period.

Colorado District Attorneys Council proposal. The CDAC proposed to eliminate the parole board's power to grant early release of felons. It was maintained that this principle is a necessary foundation for the entire concept of presumptive sentencing. The principle was contained in House Bill 1589 as originally approved by the House of Representatives, but abandoned in the final version. Parole services after release, as opposed to parole as an early release mechanism, would be continued.

State Public Defender. The State Public Defender agreed with the role envisioned for the parole system in House Bill 1589 and did not propose any changes.

Parole Board proposal. One issue that was raised for committee consideration was whether the Colorado Parole Board is using the right determinants for parole selection, and the relative weight that should be given to each of these factors in parole determination. As a solution to these problems, the committee was presented with a matrix system to guide parole boards in their decision making. This matrix system is similar to the one discussed earlier which used to guide judges in their determination of appropriate sentences. In the matrix system vis-a-vis the parole board, a type of grid system is used in the decision of whether or not to grant parole. First of all, a "salient factor score" is determined for each offender based on factors such as prior convictions, prior commitments, education, employment history, marital history, etc. The offense is then rated from low to high severity, depending upon the nature of the crime. After determination of both the salient factor score and the offense severity rating, a chart is consulted which indicates the amount of time an offender with a given background and salient factor score should serve for an offense of a given severity, assuming a reasonably good institutional performance. All the factors involved in the salient factor index were determined on the basis of research, and have some predictability for success on parole. This system is being used by the U.S. Board of Parole. The Colorado Parole Board is presently studying such a system to determine whether it can be implemented in Colorado.

Committee recommendation. As recommended to the committee by Senator Wham and Representative Howe, and subsequently adopted by the committee, the one-year parole term required to be served under House Bill 1589 is abandoned. It is thought that more serious offenders may require a longer term of parole supervision and that this judgment is best determined by the Parole Board. The committee bill, Bill 56, therefore amends House Bill 1589 to provide that the offender will be required to serve a parole term up to the maximum sentence or for a period not to exceed five years, whichever is less (section 16 of Bill 56). An offender, under the recommended committee bill, will become eligible for parole consideration when he has served his minimum term, less allowance for good time.

Proposals on Pretrial Confinement

State Public Defender proposal. The State Public Defender proposed to substitute the term "pre-incarceration" confinement for the term "pretrial" confinement. To accomplish this, it was proposed that 16-11-306 be rewritten as follows:

> 16-11-306. SENTENCING - CREDIT FOR PRE-INCARCERATION CONFINEMENT. (1) IN SENTENCING A DEFENDANT TO IMPRISONMENT, THE JUDGE SHALL SET A DEFINITE SENTENCE WITHOUT GIVING CREDIT FOR PRESENTENCE CONFINEMENT. THE SENTENCING JUDGE SHALL, HOWEVER, CLEARLY SET FORTH IN THE MITTIMUS THE DATES WHICH THE DEFENDANT HAD BEEN CONFINED PRIOR TO SENTENCING.

(2) The sentence of any person committed to the custody of the department of institutions shall commence to run on the date on which such person is received into the custody of the department, but any ~~pretrial confinement~~ PRE-INCARCERATION CONFINEMENT shall be credited to the sentence.

(3) IN ORDER TO FACILITATE CREDIT FOR PRE-INCARCERATION CONFINEMENT, THE SHERIFF OR OTHER OFFICER HAVING CHARGE OF THE DEFENDANT PRIOR TO HIS COMMITMENT TO THE DEPARTMENT OF INSTITUTIONS, SHALL CERTIFY IN WRITING TO THE DEPARTMENT OF INSTITUTIONS THE LENGTH OF TIME SERVED BY THE DEFENDANT FROM THE DATE OF HIS SENTENCE TO THE DATE OF HIS COMMITMENT TO THE DEPARTMENT OF INSTITUTIONS.

American Civil Liberties Union proposal. The ACLU proposed that all jail time served prior to commitment should be applied to the sentence.

Committee recommendations. The committee recommended that an amendment to House Bill 1589 be drafted to provide that a person who is confined pending his committal to the department is entitled to credit against the maximum and minimum terms of his sentence for the entire period of such confinement. This concept is included in section 10 of the committee bill (Bill 56).

The Habitual Criminals Act and the Sex Offenders Act

During committee deliberations, concern was expressed that House Bill 1589 did not provide for sentence adjustments for multiple prior felonies. Under House Bill 1589, a judge is permitted to increase the presumptive sentence up to 50 percent if a person has a prior felony conviction. It was argued that the bill did not allow for an increase in the sentence if a person who has more than one prior felony conviction. It was suggested that perhaps the bill should be amended to create a formula to allow for additional increases for additional numbers of prior felony convictions, with particular emphasis on those which are crimes of violence.

It was pointed out that as to continous or physically dangerous felons, the Habitual Offenders Act, which provides a sentence lengthening mechanism for those previously convicted of two or more felonies, and the Sex Offenders Act, which allows the court to impose a sentence of one day to life, have not been affected by House Bill 1589.

It was suggested that an analysis of the present prison population, the make-up of the prior felony convictions, and the sentencing increases which the courts have generally applied in those cases, is necessary to determine an appropriate amendment. It was also sug-

gested that an analysis should be undertaken concerning the effect of the greater number of habitual criminal filings and multiple prosecutions which may be filed in an effort to handle the serious and career criminals. An analysis of the number of defendants with two or more prior felony convictions may be necessary in order to determine the expected load of habitual criminal prosecutions and sentences.

State Public Defender proposal. The State Public Defender proposed the following amendment to the habitual criminal statute:

> SENTENCING OF ~~HABITUAL--CRIMINALS~~ REPEAT OFFENDERS 16-13-101. Punishment for ~~habitual-criminals.~~ REPEAT OFFENDERS (1) Every person convicted in this state of any felony ~~for-which-the-maximum-penalty-prescribed-by law-exceeds-five-years~~ who, within ten years of the date of the commission of the said offense, has been ~~twice~~ previously convicted upon charges separately brought and tried, either in this state or elsewhere, of a felony or, under the laws of any other state, the United States, or any territory subject to the jurisdiction of the United States, of a crime which, if committed, within this state, would be a felony shall be adjudged ~~an-habitual-criminal~~ A REPEAT OFFENDER and shall ~~be-punished-by-confinement-in-the--state--penitentiary--for--a term--of--not--less-than-twenty-five-years-nor-more-than fifty-years.~~ HAVE HIS SENTENCE INCREASED BY 20 PERCENT. ~~(1)~~(2) Every person convicted in this state of any felony who has been twice previously convicted upon charges separately brought and tried, either in this state or elsewhere, of a felony or, under the laws of any other state, the United States, or any territory subject to the jurisdiction of the United States, of a crime which, if committed within this state, would be a felony, shall be adjudged ~~an-habitual-criminal~~ A REPEAT OFFENDER and shall ~~be--punished-by-confinement-in-the state-penitentiary-for-a-term-of-not-less-than-the-longest-term,-nor-more-than-three--times--the--longest--term prescribed--upon--a--first-conviction.~~ HAVE HIS SENTENCE INCREASED BY 40 PER CENT.
>
> (3) FOR EACH ADDITIONAL PRIOR FELONY CONVICTION SEPARATELY BROUGHT AND TRIED WITHIN THE PREVIOUS TEN YEARS, A PERSON SHALL BE ADJUDGED A REPEAT OFFENDER AND SHALL HAVE HIS SENTENCE INCREASED BY 20 PERCENT FOR EACH SUCH FELONY CONVICTION. ~~(3)~~(4) No drug law conviction shall be counted as a prior felony conviction under this section unless such prior offense would be a felony if committed in this state at the time of the commission of the new offense.
>
> (5) PRIOR FELONY CONVICTIONS SHALL BE CHARGED IN THE INDICTMENT OR INFORMATION. UPON A FINDING OF GUILTY TO THE PRINCIPAL CHARGE, THE REPEAT OFFENDER COUNTS OF

THE INFORMATION SHALL BE DETERMINED BY A TRIAL TO THE COURT, WITHOUT A JURY.

(6) ANY CONSECUTIVE SENTENCE IMPOSED IN THIS STATE SHALL BE LIMITED TO A 20 PER CENT INCREASE OVER THE LONGEST SENTENCE IMPOSED BY THE COURT, EXCEPT FOR OFFENSES WHICH ARE COMMITTED BY A PERSON DURING THE TIME HE IS INCARCERATED IN A PENAL INSTITUTION OR IN THE STATE HOSPITAL AS A RESULT OF CRIMINAL PROCEEDINGS.

American Civil Liberties Union proposal. The ACLU recommended that the penalty for repeat offenders, including the habitual criminal statutes, apply only to people who are reconvicted within five years of being released from their sentence.

Committee recommendation. The committee made no recommendations concerning the sentencing of habitual criminals and the "Colorado Sex Offenders Act of 1968".

Retroactivity

Section 18-1-410 (1) (f), C.R.S. 1973, permits a defendant to file a post-trial motion in the district court alleging "that there has been a significant change in the law applied to the applicant's conviction or sentence, allowing, in the interest of justice, the retroactive application of the changed legal standard." This statute has been implemented procedurally through Rule 35 of Colorado's Rules of Criminal Procedure which permits a defendant to file such an option at any time until 120 days after his conviction has become final (i.e. 120 days after sentence is imposed or 120 days after his appeal is decided). A trial court has virtually no discretion in deciding whether to grant the requested relief.

Thus, any defendant whose conviction has not become final prior to December 1, 1978 (120 days prior to April 1, 1979) will be eligible for resentencing under the terms of House Bill 1589.

No current, accurate statistics as to the number of sentenced felons eligible for resentencing are presently available. In early 1978, the Attorney General's Office estimated that they had over 400 suspense cases (i.e. only notice of appeal has been received) and roughly 200 pending criminal cases. The Attorney General's Office estimated that there were approximately 100 notices of appeal which had been filed at that time, but which the Attorney General's Office had not yet received. Additionally, there are virtually hundreds of recent convictions that have not yet reached the appellate stage. There are also those sentences to be imposed between now and April 1, 1979. In short, there are many people who will be eligible for Rule 35 motions.

As was pointed out to the committee, section 18-1-410, C.R.S. 1973, and Supreme Court Rule 35 (b) have been the law of the State of Colorado for approximately seven years. These provisions were designed to implement the minimum standards for criminal justice promulgated by the American Bar Association. Based on these provisions, all felons sentenced before April 1, 1979 whose cases are on appeal, plus all those sentenced after December 1, 1978, would be entitled under present Colorado law, as a matter of right, to have their sentences adjusted to those in House Bill 1589.

As noted earlier in this report, only that section of House Bill 1589 which defines the good time available and the limitation on parole and re-incarceration after parole violation, is available to prisoners sentenced for crimes committed prior to April 1, 1979. The bill as a whole is not retroactive, only the section described above.

The following four possibilities concerning the retroactivity of House Bill 1589 were considered by the committee: 1) make the legislation totally prospective in application; 2) preserve the concept of House Bill 1589, which makes the act retroactive to those who elect the new good time provisions and the limitation on parole and re-incarceration after parole violation; 3) provide that the legislation is retroactive only to those who are sentenced to an indeterminate term (Class 4 and 5); or 4) provide that the legislation shall be totally retroactive (apply to all classes of felony, except Class 1).

Colorado District Attorneys Council proposal. The CDAC recommended that any retroactivity be eliminated and that the new law be applicable to offenses occurring after the effective date of the law. To make the new sentencing law totally retroactive would be to disregard the rules and presumptions upon which the judges originally sentenced defendants.

In order to avoid all the problems, litigation, and inequality attendant to an attempt to make House Bill 1589 retroactive, the CDAC thought that it would be necessary to amend section 12 of House Bill 1589 (16-11-310, C.R.S. 1973) and particularly sub-sections (4) and (5) thereof, to make it clear that the election language contained in those two sections deals only with good or earned time, and does not deal with an election to be governed by the sentences in House Bill 1589. In addition, the CDAC proposed that it would be necessary to add a new secton to House Bill 1589 to add a new sub-paragraph (8) to 18-1-105, C.R.S. 1973, to read:

> (8) NOTWITHSTANDING THE PROVISIONS OF SECTION 18-1-410 (1)(F) C.R.S. 1973, OR OF ANY OTHER LAW, THE PROVISIONS OF THIS SECTION SHALL APPLY ONLY TO PERSONS CONVICTED OF A CRIME COMMITTED ON OR AFTER APRIL 1, 1979.

To the extent that justice requires adjustment of sentences of those convicted of crimes committed before the effective date of House Bill 1589, such adjustments should be effected through the commuta-

tion/executive clemency process. This was the course of action taken by the legislature when the present Criminal Code and sentencing patterns were adopted in 1972. The CDAC thought that any attempt to deal with necessary adjustments in any other manner would flood the courts and not result in uniform consideration of requested adjustments.

State Public Defender proposal. The State Public Defender supported full retroactivity, with some mechanism provided to determine whether the presumptive sentence should be reduced or enhanced due to mitigating or aggravating circumstances. The State Public Defender thought that this could probably be best accomplished by resentencing under Rule 35(a).

The State Public Defender thought that prospective application of the law would be viewed as arbitrary and capricious by present inmates, and the likelihood of severe unrest cannot be discounted. Furthermore, if the goal of the law is reasonable parity in sentencing, it seems inconsistent to create a clear-cut disparity in length of confinement for those presently behind bars.

To implement this suggestion, the following amendment to 16-11-310 C.R.S. 1973 was proposed by the State Public Defender:

> (1) ANY PERSON CONFINED UNDER A SENTENCE OF IMPRISONMENT ON THE EFFECTIVE DATE OF THIS LAW MAY ELECT TO BE RESENTENCED UNDER THE PROVISIONS OF THIS LAW AND THE PROVISIONS OF 16-13-101 et. seq., AS AMENDED.
>
> (2) UPON RESENTENCING, THE SENTENCING JUDGE SHALL BE ENTITLED TO REDUCE OR INCREASE THE PRESUMPTIVE SENTENCE IN ACCORDANCE WITH THE PROVISIONS OF 18-1-105 AND IN ACCORDANCE WITH THE PROVISIONS OF 16-13-101 et. seq., AS AMENDED.
>
> (3) IN THE EVENT THAT THE PROVISIONS FOR RETROACTIVITY CONTAINED IN THIS SECTION ARE DECLARED UNCONSTITUTIONAL, THEN THERE SHALL BE NO RETROACTIVITY WHATSOEVER, AND THE PROVISIONS OF 18-1-410 (f) SHALL NOT APPLY.

Committee recommendation. The committee recommends that the provisions contained in the committee bill be totally prospective in application.

APPENDIX A

List of Classified Felonies

CLASS 1 FELONY

C.R.S. 1973 Citation	Description of Offense
12-22-322	Narcotic drug offenses. No person, with intent to induce or aid another to unlawfully use or possess narcotic drugs shall: a) Possess for sale a narcotic drug except in accordance with the provisions of part 3 of article 22 of title 12, C.R.S. 1973; b) Sell a narcotic drug except in accordance with the provisions of this part 3; c) Induce or attempt to induce any other person to unlawfully use or administer a narcotic drug; d) Unlawfully dispense or administer a narcotic drug to any other person; e) Employ, induce, or use any other person to unlawfully transport, carry, dispense, produce, or manufacture a narcotic drug; f) Induce or attempt to induce any other person to violate any of the provisions of part 3 of article 22 of title 12, C.R.S. 1973; g) Induce or attempt to induce any other person to use a narcotic drug except in accordance with the provisions of this part 3; h) Conspire with another person to violate paragraphs (a) to (g) of this subsection (1). If any such "other person", as specified in paragraphs (c) through (g) above is twenty-five years of age or under at the time of such violation, such violator commits a class 1 felony.
18-3-102	Murder in the first degree. A person commits the class 1 felony of murder in the first degree if:

CLASS 1 FELONY (Continued)

C.R.S. 1973 Citation	Description of Offense
18-3-102 (Continued)	a) After deliberation and with the intent to cause the death of a person other than himself, he causes the death of that person or of another person; or b) Acting either alone or with one or more persons, he commits or attempts to commit arson, robbery, burglary, kidnapping, sexual assault in the first or second degree as prohibited by section 18-3-402 or 18-3-403, or a class 3 felony for sexual assault on a child as provided in section 18-3-405 (2), and, in the course of or in furtherance of the crime that he is committing or attempting to commit, or of immediate flight therefrom, the death of a person, other than one of the participants, is caused by anyone; or c) By perjury or subornation of perjury he procures the conviction and execution of any innocent person; or d) Under circumstances manifesting extreme indifference to the value of human life, he intentionally engages in conduct which creates a grave risk of death to a person other than himself, and thereby causes the death of another.
18-3-301	First degree kidnapping. Any person who does any of the following acts with the intent thereby to force the victim or any other person to make any concession or give up anything of value in order to secure a release of a person under the offender's actual or apparent control commits first degree kidnapping: a) Forcibly siezes and carries any person from one place to another; or

CONTINUED

1 OF 2

C.R.S. 1973 Citation	Description of Offense
18-3-301 (Continued)	b) Entices or persuades any person to go from one place to another; or c) Imprisons or forcibly secretes any person. Whoever commits first degree kidnapping is guilty of a class 1 felony if the person kidnapped shall have suffered bodily injury; but no person convicted of first degree kidnapping shall suffer the death penalty if the person kidnapped was liberated alive prior to the conviction of the kidnapper.
18-8-206	Assault during escape. Any person confined in any lawful place of confinement within the state who, while escaping or attempting to escape, commits an assault with intent to commit bodily injury upon another person with a deadly weapon, or by any means of force likely to produce serious bodily injury, commits a class 1 felony, if the person has been convicted of a class 1 felony.
18-11-101	Treason. A person commits the class 1 felony of treason if he levies war against the state of Colorado or adheres to its enemies, giving them aid and comfort.

CLASS 2 FELONY

C.R.S. 1973 Citation	Description of Offense
18-2-101	Criminal attempt. If a person intentionally engages in conduct which constitutes a substantial step toward the commission of a class 1 felony, that person commits a class 2 felony.
18-2-206 (1)	Criminal conspiracy. Conspiracy to commit a class 1 felony is a class 2 felony.
18-2-301	Criminal solicitation. A person who attempts to pursuade another person to commit a class 1 felony commits a class 2 felony.
18-3-103	Murder in the second degree. Consists of an unlawful killing without premeditation.
18-3-301	First degree kidnapping. This is a class 2 felony if the kidnapped person was liberated unharmed.
18-3-402	Sexual assault in the first degree. This is a class 2 felony if: (a) more than one person aids in the assault; or (b) the victim suffers serious bodily injury; or (c) the actor uses a deadly weapon.
18-4-202	First degree burglary. This is a class 2 felony if narcotic drugs are involved.
18-4-303	Aggravated robbery of drugs. This involves the use of a deadly weapon in the robbery.
18-6-102	Criminal abortion. If the woman dies because of the abortion, this is a class 2 felony.
18-6-103	Pretended criminal abortion. If the woman dies because of the pretended abortion, this is a class 2 felony.
18-8-201	Aiding an escape. If the person aided was in custody or confinement for conviction of a class 1 or class 2 felony, this becomes a class 2 felony.

CLASS 2 FELONY (Continued)

C.R.S. 1973 Citation	Description of Offense
18-8-206	Assault during escape. If a person other than a class 1 felon commits an assault intended or likely to produce bodily harm while attempting to escape, this is a class 2 felony.
18-8-208	Escapes. A person who is convicted of a class 1 or class 2 felony commits a class 2 felony when he escapes from custody or confinement.
18-12-109	Unlawful possession or use of explosives or incendiary devices. When an explosive or incendiary device is used to commit a felony, the person commits a class 2 felony.

CLASS 3 FELONY

C.R.S. 1973 Citation	Description of Offense
12-22-322	Narcotic offenses. For a third or subsequent offense of the narcotic laws, it is a class 3 felony. These offenses include: a) manufacturing or producing narcotics without a license from the Department of Health; b) selling or dispensing narcotics without a license; c) operating a withdrawal or maintenance program without a license for the treatment program; d) selling narcotic drugs without a prescription; e) obtaining narcotic drugs by fraud, deceit, misrepresentation, or by forgery, or by concealment of material fact, etc.; f) illegally possessing, receiving, selling, buying, administering, dispensing narcotics; g) maintaining a place where narcotics are illegally kept or illegally used; and stealing narcotic drugs.
12-22-412 (4)	Manufacturing or dispensing of dangerous drugs. Any person who is convicted of manufacturing or dispensing dangerous drugs for the second or any subsequent time commits a class 3 felony.
18-2-101	Criminal attempt. If a person intentionally engages in conduct which constitutes a substantial step toward the commission of a class 2 felony, that person commits a class 3 felony.
18-2-206	Conspiracy. Conspiracy to commit a class 2 felony is a class 3 felony.
18-3-202	Assault in the first degree. If any person intentionally causes serious injury to another person through the use of a deadly weapon, or conduct which creates a grave risk of death, or in the commission of a crime he causes serious injury to another; also, if a person threatens a peace officer or fireman or person employed by a detention facility with a deadly weapon with intent to cause harm, that person commits a class 3 felony.

C.R.S. 1973 Citation	Description of Offense
18-3-402	Sexual assault in the first degree. This is a class 3 felony when the actor inflicts sexual penetration on a victim through physical force or threat, or the victim is physically helpless, or the victims ability to control his conduct has been impaired by the actor.
18-3-403	Sexual assault in the second degree. A class 3 felony is committed when the actor causes submission to sexual intrusion against the victim's will by use of physical force or threats.
18-3-405	Sexual assault on a child. An actor commits a class 3 felony if he subjects to any sexual contact a victim who is less than fifteen years of age, and the actor is at least four years older than the victim, through the use of force, intimidation, or threat.
18-4-102	First degree arson. A person who sets fire to, or through the use of explosives, causes to be damaged or destroyed any building or occupied structure commits a class 3 felony.
18-4-202	First degree burglary. If a person unlawfully enters a building with intent to commit a crime and if said person assaults or menaces any person, or is armed with explosives or a deadly weapon, he commits a class 3 felony.
18-4-203	Second degree burglary. A class 3 felony is committed if a person unlawfully enters a dwelling place with intent to commit a crime against a person or property.
18-4-302	Aggravated robbery. If the use of a deadly weapon is involved in a robbery by the actor or a confederate, it is a class 3 felony.
18-4-401(2)(d)	Theft. Theft is a class 3 felony if the value of the thing involved is ten thousand dollars or more.

C.R.S. 1973 Citation	Description of Offense
18-4-401 (4)	Theft. Theft is a class 3 felony if the person has committed theft twice or more within a six month period and the value of the thing involved is ten thousand dollars or more.
18-4-402 (5)	Theft of rental property. Theft of rental property is a class 3 felony where the value of the property involved is ten thousand dollars or more.
18-4-409 (3) (b)	Aggravated motor vehicle theft. Aggravated motor vehicle theft is a class 3 felony if the value of the motor vehicle or motor vehicles involved is more than ten thousand dollars or if the defendant has twice previously been convicted of charges separately brought and tried.
18-4-410 (5)	Theft by receiving. When a person receives, retains, loans money by pawn or pledge on, or disposes of another's property, knowing that said property has been stolen, and he intends to deprive the owner permanently of the property, and the value of the property is ten thousand dollars or more, the person commits a class 3 felony.
18-4-410 (6)	Theft by receiving. When the value of the property involved is $200 or more and the person is engaged in the business of buying and selling of stolen goods for profit, theft by receiving is a class 3 felony.
18-5-206 (1) (d)	Defrauding a secured creditor. A person who impairs, renders worthless or unenforceable any security interest, sells, assigns, transfers, conveys, pledges, encumbers, conceals, destroys, or disposes of any collateral subject to a security interest, and the value of the collateral is ten thousand dollars or more, commits a class 3 felony.

C.R.S. 1973 Citation	Description of Offense
18-5-206 (2) (d)	Defrauding a debtor. If a creditor sells, assigns, transfers, conveys, pledges, buys, or encumbers a promissory note or contract signed by the debtor, and the amount owing on such note or contract is ten thousand dollars or more, he commits a class 3 felony.
18-6-401	Child abuse. If serious bodily injury to the child results, child abuse is a class 3 felony. If no serious bodily injury to the child results, child abuse is a class 2 misdemeanor.
18-6-402 (3)	Trafficking in children. Selling, exchanging, bartering, or leasing a child and receiving money or other consideration or thing of value for the child as a result of such transaction is a class 3 felony.
18-8-201	Aiding escape. If a person assists another person in escaping and the person aided has been convicted of a felony other than a class 1 or class 2 felony, said person commits a class 3 felony.
18-8-206	Assault during escape. If a person who is being held or charged with but not convicted of a felony attempts to escape and assaults another intentionally with a deadly weapon, or another means of force likely to produce injury, he commits a class 3 felony.
18-8-207	Holding hostages. If, while escaping a person holds another in hostage by force or threat, that person commits a class 3 felony.
18-8-208	Escapes. If a person who has been convicted of a felony other than a class 1 or class 2 felony escapes from custody or confinement, he commits a class 3 felony.

C.R.S. 1973 Citation	Description of Offense
18-8-211	Riots in correctional institutions. A person who engages in violent conduct which creates grave danger and obstructs performance of the institution with two or more other persons and with the use of a deadly weapon, commits a class 3 felony.
18-8-302	Bribery. A class 3 felony is committed if a person attempts to offer a pecuniary benefit to or bribe a public official or if he is a public official and accepts a bribe.
18-9-115	Endangering public transportation. If a person tampers with a facility of public transportation intentionally to cause damage which would result in possible bodily harm or death; or he intents to commit a crime on the public conveyance or he threatens anyone with a deadly weapon on a public conveyance, he commits a class 3 felony.

CLASS 4 FELONY

C.R.S. 1973 Citation	Description of Offense
8-1-144	Penalty for false statements--Industrial Commission - Division of Labor. If, under the statutory provisions of the sections concerning the Industrial Commission - Division of Labor, anyone willfully makes a false statement or misrepresentation for the purposes of obtaining benefit under said section, he commits a class 4 felony.
8-55-130	Penalty for false statements/articles 40 to 54 of title 8, Colorado Revised Statutes 1973. If anyone willfully makes a false statement or misrepresentation under oath in order to obtain benefits under articles 40 to 54 of title 8, Colorado Revised Statutes 1973, concerning labor benefits, he commits a class 4 felony.
9-6-104	Death by negligence. Any person who knowingly and unlawfully places or allows to be placed explosives on a vehicle which results in the death of another commits a class 4 felony.
11-20-117	Penalty for violation or non-performance of duties concerning the State Banking Commission. Any person who willfully fails to perform any act required, or commits any act in violation of his duties concerning bank examinations and liquidations, commits a class 4 felony.
11-41-127	Defrauding saving and loan associations. Any employee of any savings and loan association who attempts to steal or defraud the association of any of its funds, securities, or properties, commits a class 4 felony.
12-22-322	Narcotic drug offenses. It is a class 4 felony to commit any of the following violations relating to narcotic drugs:

C.R.S. 1973 Citation	Description of Offense
12-22-322 (Continued)	a) to unlawfully manufacture or dispense narcotic drugs, unlawfully conduct a drug treatment program, or unlawfully violate regulations relating to pharmaceutical prescriptions. b) to unlawfully possess, buy, steal, or administer any narcotic drug, or to maintain a place which is used for these purposes. c) to steal or conspire to steal a narcotic drug from an authorized dispensor.
12-22-412	Dangerous drug offenses. It is a class 4 felony to commit the following violations relating to dangerous drugs: a) to dispense, possess, manufacture, etc., any dangerous drug. b) for any person eighteen years or older to transfer or dispense more than one ounce of cannabis to another person under the age of eighteen years of age.
18-2-101	Criminal attempt. If a person intentionally engages in conduct which constitutes a substantial step toward the commission of a class 3 felony, that person commits a class 4 felony.
18-2-206	Criminal conspiracy. Conspiracy to commit a class 3 felony is a class 4 felony.
18-3-104	Manslaughter. A person commits manslaughter if: (a) he recklessly causes the death of another person; or (b) he intentionally causes or aids another person to commit suicide; or (3) he intends to cause the death of another, but because of a provoking act under the heat of passion he kills that person without premeditation. Manslaughter is a class 4 felony.

C.R.S. 1973 Citation	Description of Offense
18-3-106	Vehicular homicide. If a person causes the death of another while recklessly operating a motor vehicle, or while under the influence of alcohol, he commits a class 4 felony.
18-3-203	Assault in the second degree. A person commits assault in the second degree if: (a) he intentionally causes serious bodily injury to another; or (b) he attempts to cause serious bodily injury with a deadly weapon; or (c) with intent to prevent a peace officer or fireman from doing his duty he causes bodily injury; or (d) he recklessly causes serious injury by means of a deadly weapon; or (e) he harms someone by means of administering a drug or other substance; or (f) when lawfully confined he uses physical force against a peace officer or fireman in the performance of his duties. Assault in the second degree is a class 4 felony.
18-3-207	Criminal extortion. A class 4 felony is committed when a person threatens a person, his property, or his reputation, to induce that person to act against his will to do an act or refrain from doing a lawful act.
18-3-302	Second degree kidnapping. Any person who kidnaps a child not his own and under the age of eighteen years of age commits a class 4 felony.
18-3-403	Sexual assault in the second degree. An actor commits second degree sexual assault if: (a) he causes the submission of a victim to sexual penetration against the victim's will; or (b) the victim is less than fourteen years of age and the actor is four years older than the victim; or (c) the victim is less than eighteen years old and the actor is the victim's guardian; or (d) the actor has supervisory authority over the victim in

C.R.S. 1973 Citation	Description of Offense
18-3-403 (Continued)	some capacity; or (e) the actor engages in treatment or examination of the victim for other than bona fide medical purposes. Sexual assault in the second degree is a class 4 felony.
18-3-404	Sexual assault in the third degree. Any actor who subjects a victim to any sexual contact commits sexual assault in the third degree if: a) the actor knows that the victim does not consent; or b) the actor knows that the victim is incapable of appraising the nature of the victim's conduct; or c) the victim is physically helpless and the actor knows that the victim is physically helpless and the victim has not consented; or d) the actor has substantially impaired the victim's power to appraise or control the victim's conduct by employing, without the victim's consent, any drug, intoxicant, or other means for the purpose of causing submission; or e) at the time of the commission of the act, the victim is less than eighteen years of age and the actor is the victim's guardian or is otherwise responsible for the general supervision of the victim's welfare; or f) the victim is in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over the victim and uses this position of authority, unless incident to a lawful search, to coerce the victim to submit; or g) the actor engages in treatment or examination of a victim for other than bona fide medical

C.R.S. 1973 Citation	Description of Offense
18-3-404 (Continued)	purposes or in a manner substantially inconsistent with reasonable medical practices.
	Sexual assault in the third degree is a class 4 felony if the actor compels the victim to submit by use of force, intimidation, or threat.
18-3-405	Sexual assault on a child. Any actor who subjects to sexual contact a child that is less than fifteen years of age while that actor is at least four years older than the victim commits a class 4 felony.
18-4-103	Second degree arson. If the damage is over one hundred dollars in an arson case, it is a class 4 felony.
18-4-104	Third degree arson. A person who, by means of fire or explosives, intentionally damages any property with intent to defraud commits a class 4 felony.
18-4-105	Fourth degree arson. A person who places another in bodily danger or a building in danger of damage through arson commits a class 4 felony.
18-4-203	Second degree burglary. A person commits a class 4 felony if he unlawfully enters a building with the intent to commit a crime.
18-4-301	Robbery. A person who takes anything of value from a person by the use of force, threats, or intimidation commits a class 4 felony.
18-4-401	Theft. A class 4 felony is committed when a person knowingly exercises control over anything which is valued at two hundred dollars or more, without authorization or by threat or deception.

C.R.S. 1973 Citation	Description of Offense
18-4-402	Theft of rental property. If a person engages in the theft of rental properal when the value is two hundred dollars or more, it is a class 4 felony.
18-4-408	Theft of trade secrets. Any person who steals or discloses to an unauthorized person a trade secret or makes or causes to be made a copy of an article representing a trade secret commits theft of a trade secret. If a second or subsequent offense is committed within five years of a prior conviction, it is a class 4 felony.
18-4-409	Motor vehicle theft. A person who takes any motor vehicle without the consent of the owner or lawful possessor, and uses said vehicle in the commission of a crime commits a class 4 felony.
18-4-410	Theft by receiving. If a person receives a thing of value which is valued at two hundred dollars or more, which he believes or knows to be stolen, and he intends to deprive the lawful owner permanently of the use or benefit of the thing of value, he commits a class 4 felony.
18-4-501	Criminal mischief. A person commits a class 4 felony when he intentionally damages real or personal property valued at one hundred dollars or more.
18-5-102	First degree forgery. A person commits a class 4 felony if, with intent to defraud, he makes or alters money, stamps, stocks, valuable instruments, etc., which are issued by the government, a corporation, or other organization.
18-5-103	Second degree forgery. A person commits a class 4 felony if, with intent to defraud, he alters or makes a public document, a will, a contract, a written instrument, transportation tokens, etc.

C.R.S. 1973 Citation	Description of Offense
18-5-202	Fraudulent use of credit device. If a person uses a credit card or other credit device with intent to defraud, he commits a class 4 felony if the credit, property, or services he obtains is valued at one hundred dollars or more.
18-5-205	Fraud by check. Any person who deceitfully issues a check which is not paid because the drawer has insufficient funds with the drawee issues a fraudulent check and commits fraud by check. It is a class 4 felony if the offender has been twice previously convicted, or the fraudulent check was for two hundred dollars or more, or if the offender is convicted of fraud by check involving two or more checks within a thirty-day period totaling two hundred dollars or more in the aggregate.
18-5-206	Defrauding a secured creditor or debtor. (a) If a person intends to defraud a creditor by rendering unenforceable any security interest or any collateral subject to a security interest, he commits a class 4 felony if the value of the collateral is two hundred dollars or more. (b) If a creditor with intent to defraud a debtor transfers, buys, etc., a promissory note or contract signed by the debtor, he commits a class 4 felony if the value of the collateral is two hundred dollars or more.
18-5-302	Unlawful activity concerning the selling of land. If any person, with intent to defraud, sells the same land twice, he commits a class 4 felony.
18-5-502	Failure to pay over assigned accounts. A class 4 felony is committed when an assignor for the collection of a debt account fails to pay the assignee any money collected from the debtor, where the sum of money involved is one hundred dollars or more.

C.R.S. 1973 Citation	Description of Offense
18-5-504	Concealment or removal of secured property. If a person has given security interest in personal property and conceals or removes the encumbered property from Colorado without written consent, he commits a class 4 felony where the amount of the proceeds withheld is one hundred dollars or more.
18-5-505	Failure to pay over proceeds. Any person giving security interest and retaining possession of the encumbered property and having liberty of sale or other disposition, and wrongfully fails to pay to the secured creditor the amounts due on account thereof, that person giving the security interest commits a class 4 felony where the amount of the proceeds withheld is one hundred dollars or more.
18-6-102	Criminal abortion. Any person who intentionally ends the pregnancy of a woman by any means other than justified medical termination or birth commits the class 4 felony of criminal abortion.
18-6-302	Aggravated incest. Any person who has sexual intercourse with his or her natural child, stepchild, or child by adoption commits a class 4 felony.
18-8-105	Accessory to crime. A person who renders assistance to another who has committed a crime in order to prevent his apprehension and punishment commits a class 4 felony if he knows that the person being assisted has committed a class 1 or class 2 felony.
18-8-203	Introducing contraband in the first degree. If a person attempts to introduce a deadly weapon or dangerous drug into a detention facility, or if a person is confined in a detention facility and has possession

C.R.S. 1973 Citation	Description of Offense
18-8-203 (Continued)	of a deadly weapon or dangerous drug, he commits a class 4 felony.
18-8-204.1	Possession of contraband. Possession of contraband which involves a dangerous instrument is a class 4 felony.
18-8-208	Escapes. If a person has been charged but not convicted of a felony and he escapes confinement, he commits a class 4 felony.
18-8-208.1	Attempt to escape. If a person who is in custody or confinement following the conviction of a felony attempts to escape, he commits a class 4 felony.
18-8-306	Attempt to influence a public servant. Any person who attempts to influence any public servant by means of deceit, threat of violence, or economic reprisal commits a class 4 felony.
18-8-407	Embezzlement of public property. A class 4 felony is committed when a public servant converts public moneys or properties to his own use or to any use other than the public use as authorized by law.
18-8-502	Perjury in the first degree. If a person makes a materially false statement under oath in any official proceeding, he commits perjury in the first degree, which is a class 4 felony.
18-8-602	Bribing a witness. A person commits a class 4 felony when he offers or confers any benefit upon a witness in any official proceeding in an attempt to influence that witness.
18-8-603	Bribe-receiving by a witness. A witness accepting any benefit for the purpose of influencing his presence or testimony at an official proceeding commits a class 4 felony.

C.R.S. 1973 Citation	Description of Offense
18-8-604	Intimidating a witness. If, in an attempt to influence a witness, a person threatens harm or injury to any person or property, he commits a class 4 felony.
18-8-605	Tampering with a witness. If a person attempts to influence a witness without bribery or threats, he commits a class 4 felony.
18-8-606	Bribing a juror. A person who attempt attempts to influence a juror's decision by offering or conferring any benefit upon the juror commits a class 4 felony.
18-8-607	Bribe-receiving by a juror. Any juror who accepts any benefit for the purpose of influencing his vote commits a class 4 felony.
18-8-608	Intimidating a juror. A person commits a class 4 felony if he attempts to influence a juror's vote by use of threat of harm or injury to any person or property.
18-9-103	Arming rioters. If a person supplies a deadly weapon or destructive device for use in a riot, or teaches another to use such weapon or device in a riot, he commits a class 4 felony.
18-9-104	Engaging in a riot. If a person employs a deadly weapon or destructive device while engaged in a riot, he commits a class 4 felony.
18-9-116.5	Vehicular eluding. Any person who attempts to elude a peace officer while operating a motor vehicle, and which results in bodily injury to another person, commits a class 4 felony.
18-11-102	Insurrection. Any person who intentionally, by force, resists the execution of state law or engages or participates with any armed force to invade the state commits the class 4 felony of insurrection.

C.R.S. 1973 Citation	Description of Offense
18-11-201	Advocating overthrow of government. Anyone who advocates the destruction or overthrow of the government of the United States or of Colorado by violent force or action commits sedition, which is a class 4 felony.
18-11-203	Membership in anarchistic and seditious associations. Any person who is a member of an unlawful organization which advocates violent and forceful change in the state of Colorado or in the United States commits a class 4 felony.
18-12-108	Possession of weapons by previous offenders. Anyone who has previously been convicted of a felony involving the use of force or the use of a deadly weapon within ten years of his release or escape from incarceration commits a class 4 felony for a second or subsequent offense under this section.
18-12-109	Unlawful possession or use of explosives or incendiary devices. Any person who possesses or controls an explosive or incendiary device and who intends to use such or cause such to be used in the commission of a felony, commits a class 4 felony.
18-13-104	Dueling. Persons who by agreement engage in a fight with deadly weapons commit dueling, which is a class 4 felony.
18-15-102	Extortionate extension of credit. Any agreement between a creditor and a debtor to the effect that delay or failure in making repayment for extension of credit will result in the use of extortionate means of collection results in extortionate extension of credit, which is a class 4 felony.

C.R.S. 1973 Citation	Description of Offense
18-15-105	Financing extortionate extensions of credit. Any person advancing money or property to another whom he reasonably suspects will use such money or property for the purpose of making an extortionate extension of credit commits a class 4 felony.
18-15-107	Collection of extensions of credit by extortionate means. Any person who uses extortionate means to collect any extension of credit commits a class 4 felony.
24-80-902	Punishment for illegal use of state emblems and symbols. Any person who illegally uses the seal of the state of Colorado is guilty of a class 4 felony.
33-4-112	Penalties - Wildlife Commission and Board of Parks and Outdoor Recreation. Any person who buys or sells such licenses, permits, stamps, passes, cards, or certificates without being a license agent in good standing, or who sells such licenses, permits, stamps, passes, cards, or certificates for an amount different from the face value thereof, or who fails to present unsold licenses, permits, stamps, passes, cards, or certificates for redemption as required by the wildlife commission or the board of parks and outdoor recreation commits a class 4 felony.
42-5-102	Stolen auto parts - buying, selling. Any person who buys or sells, or aids in the buying or selling of any automobile part which is the property of another person commits a class 4 felony.

CLASS 5 FELONY

C.R.S. 1973 Citation	Description of Offense
1-2-208 (3)	Violation of election laws. Giving false information on a voter registration form is a class 5 felony.
1-13-104	Violation of election laws. Where an offense against the election laws is denominated as being a felony, it is a class 5 felony.
1-40-110	Receiving money to circulate petition. Any person who pays to or receives from any other person money as an inducement to circulate any initiative or referendum petition or as an inducement to the signing of any such petition commits a class 5 felony.
6-1-114	Promoting pyramid promotional scheme. Anyone who is convicted of a second or subsequent offense of promoting a pyramid promotional scheme commits a class 5 felony.
8-2-106	Armed guards. Anyone who brings workmen into this state under arms, or removes them from one place to another under arms, without a permit from the governor, commits a class 5 felony.
9-1-106	Willful negligence to observe construction requirement. If any lives are lost by reason of the willful negligence and failure to observe the construction and fire regulations for buildings to be used for public assemblages, the person through whose default such loss of life was occasioned commits a class 5 felony.
9-6-103	Unlawfully transporting explosives. Any person who unlawfully transports explosives in violation of Article 6 of Title 9 commits a class 5 felony.

C.R.S. 1973 Citation	Description of Offense
9-6-104	Death of person from unlawful transportation of explosives. When the death of any person is caused by the unlawful transportation of explosive material, that person commits a class 5 felony.
10-3-810	Violation of insurance laws. Any person who violates the provisions of Article 8 of Title 10 (Regulation of Insurance Holding Companies), commits a class 5 felony.
11-11-108	Violation of banking laws. Any person responsible for any act or omission expressly declared to be criminal by the banking code, if the act or omission was intended to defraud, commits a class 5 felony.
11-20-117	Bribes, gratuities, rewards forbidden. Any person employed by the Division of Banking who receives any salary or compensation from any bank or who makes a false or fraudulent report of the condition of any bank commits a class 5 felony.
11-51-124	Violation of securities act. Any person who violates the provisions of the "Securities Act" (Article 51 of Title 11) commits a class 5 felony.
11-55-105	Violation of "Uniform Fascimile Signature of Public Officials Act". Any person who violates the provisions of Article 55 of Title 11 commits a class 5 felony.
12-6-210	Violation of automobile dealer "Anti-monopoly Financing Law". Any person who violates the provisions of Part 2 of Article 6 of Title 12 commits a class 5 felony.
12-11-110	Butchering animals of another. Any person who butchers the animal of another unlawfully commits a class 5 felony.

C.R.S. 1973 Citation	Description of Offense
12-16-113	Defrauding by commission merchant. Any person engaged in business as a commission merchant, dealer, broker, or agent who, with intent to defraud, makes a check, draft, or order, without sufficient funds or credit to cover the check, draft, or order commits a class 5 felony.
12-22-125	Violation of pharmacy laws. Any person who violates the provisions of the pharmacy laws for a second or subsequent time commits a class 5 felony.
12-22-322	Violation of narcotic drug laws. For a first offense of the narcotic drug laws, it is a class 5 felony. These offenses include: a) manufacturing or producing narcotics without a license; b) selling or dispensing narcotics without a license; c) operating a withdrawal or maintenance program without a license for the treatment program; d) selling narcotic drugs without a prescription; e) obtaining narcotic drugs by fraud, deceit, misrepresentation, or by forgery, or by concealment of material fact, etc.
12-22-412 (10)	Violation of dangerous drug law. Any person who is convicted of a second offense of the dangerous drug law involving stimulant or hallucinogenic drugs commits a class 5 felony.
12-24-214	Operation of theatrical employment agency. Any person who violates the provisions of the "Theatrical Employment Agencies Law of 1935" commits a class 5 felony.

C.R.S. 1973 Citation	Description of Offense
12-30-107	False advertising of cancer cure. Any person who is convicted of a third or subsequent offense of willfully and falsely representing a device, substance, or treatment as being of value in the treatment, alleviation, or cure of cancer, commits a class 5 felony.
12-32-109	Practicing podiatry without license. Any person who practices podiatry without a valid certificate commits a class 5 felony.
12-36-129	Practicing medicine without license. A person who practices medicine under a false or assumed name or who uses false or forged evidence to obtain a license commits a class 5 felony.
12-38-120	Practicing nursing without a license. A practical nurse who practices without a license, during suspension of the license, or who fraudulently obtains a license, commits a class 5 felony.
12-44-102	Procuring food or accommodations with intent to defraud. Any person who procures food or accommodations with intent to defraud and the amount due under the agreement with the public establishment is more than $50, commits a class 5 felony.
12-53-109	Violation of laws concerning motor clubs. Any person who violates the provisions of Article 53 of Title 12 with intent to deceive or defraud any person commits a class 5 felony.
12-61-407	Acting as subdivision developer without registering. Any person who acts as a subdivision developer without having been properly and legally registered commits a class 5 felony.
13-45-114	Avoiding writ. Any person who attempts to avoid a writ of habeas corpus commits a class 5 felony.

C.R.S. 1973 Citation	Description of Offense
14-6-101	Nonsupport of spouse and children. Any person who willfully neglects, fails, or refuses to provide reasonable support and maintenance for his spouse or for his legitimate or illegitimate children commits a class 5 felony.
16-19-133	Concealment of fugitives. Whoever willfully conceals or harbors a fugitive commits a class 5 felony.
17-1-108	Transfer of inmates. Any person who transfers an inmate to another institution, agency, or person for care must also transfer a complete set of records regarding the inmate to the person or agency receiving the inmate, otherwise the person commits a class 5 felony for failure to transfer the records.
18-2-101 (4)	Criminal attempt. Criminal attempt to commit a class 4 or 5 felony is a class 5 felony.
18-2-101 (5)	Criminal attempt. Criminal attempt to commit a felony defined outside of the criminal code is a class 5 felony.
18-2-201	Conspiracy. Conspiracy to commit a felony defined outside of the criminal code is a class 5 felony.
18-2-206	Criminal conspiracy. Conspiracy to commit a class 4 or 5 felony is a class 5 felony.
18-3-205	Vehicular assault. Any person who drives a car in a reckless manner or while under the influence of any drug or intoxicant, and this conduct is the proximate cause of a serious bodily injury to another, he commits a class 5 felony.
18-3-206	Menacing. Any person who menaces another by use of a deadly weapon commits a class 5 felony.

C.R.S. 1973 Citation	Description of Offense
18-3-304 (1)	Violation of custody. Any person who takes or entices any child under the age of 18 from the custody of his parents, guardian, or legal custodian, commits a class 5 felony.
18-3-304 (2)	Violation of custody. Any parent who violates an order of court granting custody of a child to any person, agency, or institution, with the intent to deprive the lawful custodian of the custody of the child commits a class 5 felony.
18-4-204	Third degree burglary. A person who enters or breaks into any vault, safe, cash register, coin vending machine, product dispenser, money depository, safety deposit box, coin telephone, coin box, etc., commits a class 5 felony.
18-4-205	Possession of burglary tools. A person who possesses burglary tools and intends to use the tools or knows that some person intends to use them, commits a class 5 felony.
18-4-401 (5)	Theft. Theft from another person by means other than the use of force, threat, or intimidation is a class 5 felony without regard to the value of the thing taken.
18-4-502	First degree criminal trespass. A person who unlawfully enters a building or enters a car with intent to steal anything of value commits a class 5 felony.
18-4-602	Unlawful transfer for sale of sound recordings. Any person who, without the consent of the owner, transfers any copyrighted sound recordings with the intent to sell such article on which such sounds are recorded or to cause the same to be sold for profit, commits a class 5 felony.

C.R.S. 1973 Citation	Description of Offense
18-5-105	Criminal possession of first degree forged instrument. Any person who possesses forged instrument and intends to use the instruments to defraud, commits a class 5 felony.
18-5-109	Criminal possession of forgery devices. Any person who possesses forgery devices with the intent to fraudulently use them commits a class 5 felony.
18-5-113	Criminal impersonation. Any person who assumes a false or fictitious identity or capacity and in such identity or capacity does an act with intent to unlawfully gain a benefit for himself or another or to injure or defraud another commits a class 5 felony.
18-5-114	Offering a false instrument for recording. Any person who offers a false instrument for recording with intent to defraud commits a class 5 felony.
18-5-115	Charitable fraud. Any person who fraudulently solicits or receives contributions for charitable organizations commits a class 5 felony.
18-5-210	Receiving deposits in a failing financial institution. Any officer, manager, or other person directing a financial institution, who receives deposits or investments, knowing that the institution is insolvent, commits a class 5 felony.
18-5-302	Unlawful activity concerning the selling of land. Any person who knowingly makes a false representation as to the existence of an ownership interest in land which he has a seller or which his principal has, and which is relied upon, commits a class 5 felony.

C.R.S. 1973 Citation	Description of Offense
18-5-401 (1)	Commercial bribery. Any person who accepts a benefit for knowingly violating a duty to which he is subject as an agent or employee; or trustee, guardian, or other fiduciary; or lawyer, physician, accountant, appraiser, or other professional advisor; or officer, director, partner, manager, or other participant in the direction of a corporation; or duly elected or appointed representative or trustee of a labor organization or employee welfare trust fund; or arbitrator or other purportedly disinterested adjudicator or referee; commits a class 5 felony.
18-5-401 (2)	Breach of duty to act disinterestedly. A person who holds himself out to the public as being engaged in the business of making disinterested selection, appraisal, or criticism of commodities, property, or services, commits a class 5 felony if he solicits, accepts, or agrees to accept any benefit to alter, modify, or change his selection, appraisal, or criticism.
18-5-401	Bribery. Any person who confers any benefit upon the individuals named in subsections (1) and (2) above, commits a class 5 felony.
18-5-403	Bribery in sports. Any person involved in bribery in sports contests or of sports participants commits a class 5 felony.
18-5-506	Fraudulent receipt. A warehouseman who fraudulently issues a receipt for goods knowing that the goods have not been actually received by the warehouseman, or are not under his actual control at the time of issuing the receipt, commits a class 5 felony.
18-5-508	Duplicate receipt not marked. A warehouseman who issues a duplicate or additional negotiable receipt for

C.R.S. 1973 Citation	Description of Offense
18-5-508 (Continued)	goods knowing that a former negotiable receipt for the same goods is outstanding and uncancelled, without placing upon the face thereof the word "duplicate", commits a class 5 felony.
18-6-103	Pretended criminal abortion. Any person who intentionally pretends to end the real or apparent pregnancy of a woman by means other than justified medical termination or birth commits a class 5 felony.
18-6-201	Bigamy. Any married person who, while still married, marries or cohabits with another commits bigamy which is a class 5 felony.
18-6-301	Incest. Any person who knowingly marries or has sexual intercourse with an ancestor or descendant, a brother or sister of the whole or half blood, or an uncle, aunt, nephew, or niece of the whole blood commits incest, which is a class 5 felony.
18-7-104	Promoting aggravated obscene material. Promotion of aggravated obscene material or an aggravated obscene performance is a class 5 felony.
18-7-106	Promoting aggravated sadomasochistic material. Promotion of aggravated sadomasochistic material or an aggravated sadomasochistic performance is a class 5 felony.
18-7-203	Pandering. Any person who induces another person by menacing or criminal intimidation to commit prostitution commits a class 5 felony.
18-7-206	Pimping. Any person who knowingly lives on or is supported or maintained by money earned by another person through prostitution commits pimping, which is a class 5 felony.

C.R.S. 1973 Citation	Description of Offense
18-8-105	Accessory to crime. Being an accessory to crime is a class 5 felony if the offender knows that the person being assisted is suspected of or wanted for a class 1 or class 2 felony, or that the person being assisted has committed, or has been convicted of, or is charged by pending information, indictment, or complaint of a felony other than a class 1 or class 2 felony.
18-8-110	False report of explosives. Any person who reports that a bomb or other explosive has been placed in any public or private place or vehicle, knowing that the report is false, commits a class 5 felony.
18-8-201.1	Aiding escape from mental hospital. Any person who aids the escape of an inmate in a mental hospital commits a class 5 felony.
18-8-204	Introducing contraband in the second degree. Any person who introduces contraband (any article or thing which a person confined in a detention facility is prohibited from possessing) into a detention facility commits a class 5 felony.
18-8-201.1	Possession of contraband. Any person confined in a detention facility who possesses contraband (liquor or drugs) commits a class 5 felony.
18-8-208 (6)	Escape. A person who has been confined pursuant to the criminal insanity law commits a class 5 felony if he escapes his confinement and travels outside of the state of Colorado.
18-8-208 (8)	Escape. A person commits a class 5 felony if he escapes while in custody or confinement pursuant to the "Uniform Extradition Act". (Article 19 of Title 16).

C.R.S. 1973 Citation	Description of Offense
18-8-208.1	Attempt to escape. If a person, while in custody or confinement and held for or charged with but not convicted of a felony, attempts to escape from the custody or confinement, he commits a class 5 felony.
18-8-210	Escape. A person who is in custody or confinement for a felony offense which is unclassified and escapes commits a class 5 felony.
18-8-211	Riots in correctional institutions. A person confined in any correctional institution commits a class 5 felony if, during a riot, he intentionally disobeys an order to move, disperse, or refrain from specified activities.
18-3-303	Compensation for official behavior. A person commits a class 5 felony if he accepts compensation for having, as a public servant, given a decision, opinion, recommendation, or vote favorable to another or for having otherwise exercised a discretion in his favor, or if he offers compensation for such a favor.
18-8-307	Designation of supplier prohibited. Any public servant who requires or directs a bidder or contractor to deal with a particular person in procuring goods or services required in submitting a bid to or fulfilling a contract with any government commits a class 5 felony.
18-8-402	Misuse of official information. Any public servant, in contemplation of official action by himself or in reliance on information to which he has access in his official capacity and which has not been made public, commits a class 5 felony if he: (1) acquires a pecuniary interest in any property, transactions, or enterprise which may be affected by such information or official action; or (2) speculates or wagers on the basis of

C.R.S. 1973 Citation	Description of Offense
18-8-402 (Continued)	such information or official action; or (3) aids, advises, or encourages another to do any of the foregoing with intent to confer on any person a special pecuniary benefit.
18-8-406	Issuing a false certificate. A public servant who is authorized to make and issue official certificates or other official written instruments commits a class 5 felony if he makes and issues such an instrument containing a statement which he knows is false.
18-8-609	Jury tampering. Jury tampering in any class 1 felony trial is a class 5 felony.
18-8-610	Tampering with physical evidence. Tampering with physical evidence is a class 5 felony.
18-9-102	Inciting riot. Any person who incites or urges a group of five or more persons to engage in a riot and injury to a person or damage to property results therefrom commits a class 5 felony.
18-9-118	Firearms, explosives, or incendiary devices in facilities of public transportation. A person commits a class 5 felony if, without legal authority, he has any loaded firearm or explosive or incendiary device in his possession in, or carries, or brings any of such items into, any facility of public transportation.
18-9-302	Wiretapping and eavesdropping devices prohibited. Any person who possesses instruments or devices for wiretapping or eavesdropping with intent to unlawfully use or employ such devices commits a class 5 felony upon a second or subsequent offense.

C.R.S. 1973 Citation	Description of Offense
18-9-303	Wiretapping prohibited. Wiretapping is a class 5 felony.
18-9-304	Eavesdropping prohibited. Eavesdropping is a class 5 felony.
18-9-309	Illegal telecommunications equipment. Any person who makes, possesses, or uses illegal telecommunications equipment, or who furnishes or sells such equipment to another, commits a class 5 felony if it is the second or subsequent violation within five years.
18-9-310	Unlawful use of information. Any person who, having obtained information pursuant to a court order for wiretapping or eavesdropping, knowingly uses, publishes, or divulges the information to any person or in any manner not authorized by law commits a class 5 felony.
18-10-103	Professional gambling. A person who engages in professional gambling and is a repeated gambling offender commits a class 5 felony.
18-10-105	Possession of gambling devices. Possession of gambling devices by a repeated gambling offender is a class 5 felony.
18-10-106	Gambling information. Any person who transmits or receives gambling information commits a class 5 felony if he is a repeating gambling offender.
18-10-107	Gambling premises. A repeating gambling offender who maintains gambling premises commits a class 5 felony.
18-11-202	Inciting to destruction of life or property. Any person who advocates the unlawful destruction of private or public property by the use of physical force, or the unlawful injury of any person, or the unlawful

C.R.S. 1973 Citation	Description of Offense
18-11-202 (Continued)	taking of human life, as a policy or course of conduct, under circumstances constituting a clear and present danger that violent action will result therefrom, commits a class 5 felony.
18-12-107	Offenses relating to firearms. Any person who has within five years previously been convicted of possessing an illegal weapon, possessing a defaced firearm, unlawfully carrying a concealed weapon, or using a weapon in a prohibited manner, shall upon conviction for a second or subsequent offense be guilty of a class 5 felony.
18-12-108	Possession of weapons by previous offenders. Any person previously convicted of a felony involving the use of force or violence or the use of a deadly weapon, within ten years next preceding or within ten years of his release or escape from incarceration, who possesses, uses, or carries a firearm commits a class 5 felony.
18-12-109	Possession of explosives. Any person who gives, mails, sends, or causes to be sent any false, facsimile, or hoax explosive or incendiary device to another person or places any such purported explosive or incendiary device in or upon any real or personal property commits a class 5 felony.
18-13-105	Criminal libel. Criminal libel is a class 5 felony.
18-15-104	Criminal usury. Any person who knowingly charges, takes, or receives any money or other property as a loan finance charge where the charge exceeds an annual percentage rate of forty-five percent or the equivalent for a longer or shorter period commits a class 5 felony.

C.R.S. 1973 Citation	Description of Offense
18-15-106	Financing criminal usury. Any person who finances criminal usury commits a class 5 felony.
18-15-108	Records of criminal usury. Any person who possesses or conceals records of criminally usurious transactions with intent to aid, assist, or facilitate criminal usury commits a class 5 felony.
24-6-309	Sunshine Law violations. Any person who violates the provisions of the Sunshine Law is guilty of a misdemeanor, and is prohibited for a period of 3 years from attempting to influence the passage or defeat of any proposed legislation; from appearing before a committee of the general assembly; from attempting to influence the passage or defeat of any rule, standard, rate, or decision by any board or commission, and if such person violates this prohibition he commits a class 5 felony.
24-22-110	Personal profit on state moneys unlawful. If the state treasurer or any employee in the department of the treasury accepts any fee in consideration of the deposit of state money with any person or in consideration of any agreement or arrangement touching upon the use of state moneys he commits a class 5 felony.
24-22-111	State moneys. Any person who pays to the state treasurer or an employee of that office any fee in consideration of the deposit or investment of state moneys with any person commits a class 5 felony.
24-30-202 (15)	State moneys. Any person (state treasurer or controller or any other state officer or employee) who receives any profit in consideration of the loan or deposit of state moneys for any purpose not authorized by law commits a class 5 felony.

C.R.S. 1973 Citation		Description of Offense
24-30-202 (16)		State moneys. Any person who offers compensation to the state treasurer or controller or to any other state officer or employee in consideration of the loan or deposit with such person of state moneys commits a class 5 felony.
26-1-127		Social Services - fraudulent acts. Any person who obtains public assistance or vendor payments to which he is not entitled, public assistance or vendor payments greater than those to which he is justly entitled, by means of a willfully false statement or representation, or by impersonation, or by any other fraudulent device, if the amount of overpayment to which the recipient or vendor is not entitled if $500 or more, commits a class 5 felony.
26-2-130	Repealed by H.B. 1539 - 1977 Session	Public assistance - fraudulent acts. Any person who obtains public assistance to which he is not entitled, public assistance greater than that to which he is justly entitled, or payment of any forfeited installment grant, by means of a willfully false statement or representation, or by impersonation, or by other fraudulent device, commits a class 5 felony.
27-35-108	Repealed by H.B. 1052 - 1977 Session	Interest in contracts. Any person directly or indirectly interested in any contract for building, repairing, furnishing, or supplying the school for the deaf and blind or who accepts a drawback or secret discount commits a class 5 felony.
28-3-701		Misuse of property and funds by military. Any national guard personnel who misuses military property or funds commits a class 5 felony.
33-6-127 (7)		Willful destruction of big game. Any person who captures, kills, or destroys any of the big game animals and detaches or removes from the carcasses

C.R.S. 1973 Citation	Description of Offense
33-6-127 (7) (Continued)	or bodies, with the intent to abandon the carcass or body thereof, only the head, hide, antlers, horns, tusks, or any or all of such parts, or captures or mutilates such big game animals by removing such parts, commits a class 5 felony.
33-6-127 (8)	Theft of game. Any person who takes wildlife from another or steals from another person's trap commits a class 5 felony.
33-6-127 (9)	Big game - commercial sale. Any person who sells, offers for sale, captures, kills, or takes any big game animal for the purpose of commercial sale commits a class 5 felony.
34-40-110	Bureau of Mines - conflict of interest. Any employee of the bureau of mines who acts as a manager, agent, or lessee for any mining company commits a class 5 felony.
34-46-105	Mining equipment - violation. Any person who violates the provisions of law concerning mining equipment and the transportation thereof commits a class 5 felony.
34-53-104	Failure to account for mine proceeds. Any owner, manager, or agent employed in extracting gold who neglects to account for, or pay over and deliver, all the proceeds thereof to the owner commits a class 5 felony.
35-43-128	Theft of certain animals. Theft of cattle, horses, mules, sheep, goats, swine, or asses, is a class 5 felony.
35-53-112	Shipping prior to inspection. Any person who violates the provisions of the law concerning the transportation of livestock commits a class 5 felony, if it is for a third or subsequent violation.

C.R.S. 1973 Citation	Description of Offense
35-59-113	Wrongful use of inedible meat. Any person who adds to, mixes with, or substitutes any inedible meat for food intended to be used for human consumption commits a class 5 felony.
37-7-104	Penalty for fraud by officer of water and irrigation district. Any officer of a water or irrigation district who misuses district money commits a class 5 felony.
37-24-107	Officer interested in contract. Any drainage district officer who is interested in any contract awarded by the board or in the profits thereof, or who receives a bribe or gratuity, commits a class 5 felony.
37-31-123	Officer interested in contract. Any director or officer of the Grand Junction Drainage District who is interested in any contract awarded by the board, or in the profits thereof, or who receives a bribe or gratuity, commits a class 5 felony.
37-41-108	Officer interested in contracts. Any director or officer of an irrigation district who is interested in any contract awarded by the board, or in the profits thereof, or who receives a bribe or gratuity, commits a class 5 felony.
37-42-110	Officer interested in contracts. Same offense as above as applied to Irrigation District Law of 1921.
37-44-142	Officer interested in contracts. Same offense as described above and as applied to officers or directors of an Internal Improvement District.
38-36-192	Theft of certificate. Theft of a certificate of title to real estate is a class 5 felony.

C.R.S. 1973 Citation	Description of Offense
38-36-194	Fraudulently procuring certificate of title to land. Whoever fraudulently procures any certificate of title to land commits a class 5 felony.
38-36-195	Forging seal or signature. Any person who forges the seal of the registrar of titles commits a class 5 felony.
39-21-112	Department of Revenue employees. Any officer or employee of the department of revenue who: (1) extorts or willfully oppresses any person through use of his authority; (2) knowingly demands greater sums than are authorized by law or receives any fee, compensation, or reward for the performance of his job; (3) makes opportunity for any person to defraud the state by intentionally failing to perform his duty; (4) conspires or colludes with any other person to defraud the state; (5) commits or omits to do any act with the intent to enable any other person to defraud the state; (6) makes or signs any fraudulent entry in any book or makes or signs any fraudulent certificate, return, or statement; etc., commits a class 5 felony.
39-21-118	Department of Revenue - penalty for fraud. Any person who, concerning any matter within the jurisdiction of the department of revenue, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, makes any false, fictitious, or fraudulent statement or representation, or makes or uses any false writing or document knowing the same to contain any false statement or entry, commits a class 5 felony.
39-22-621	Interest and penalties - income tax. Any person required to pay over any income tax who willfully fails to pay over such tax, or in any manner evades

C.R.S. 1973 Citation	Description of Offense
39-22-621 (Continued)	or defeats any income tax imposed or the payment thereof, commits a class 5 felony.
39-23-150	Officers or employees taking fees or rewards. Any executive director or any inheritance or gift tax analyst or other employee of the department of revenue who takes or demands for his own use any fees or rewards from any person commits a class 5 felony.
39-27-104	Motor fuel and special fuel tax - no distributor license. It is unlawful for any person to act as a refiner of motor fuel or as a distributor first receiving motor fuel in this state without having a license therefor. If a person engages in such a business without a license he commits a class 5 felony.
40-27-101	Owner driving stock on track. If the owner of any stock drives any stock on the line of the track of any railway company with intent to injure the company he commits a class 5 felony.
42-2-206	Driving after judgment of habitual offender. Any person who has been adjudged a habitual traffic offender and who subsequently drives a car commits a class 5 felony.
42-5-104	Theft of auto parts. Any person who steals auto parts from an auto and such parts form a total or combined value of twenty dollars or more commits a class 5 felony.
42-6-141	Altering or using altered certificate. Any person who alters or forges or causes to be altered or forged any certificate of title to an automobile commits a class 5 felony.

APPENDIX B

HYPOTHETICAL FELONY CLASSIFICATION

Introduction. The attached list contains all Colorado felonies arranged into six categories designated Class 1 through Class 6. This hypothetical classification schedule is based on the results of the crime seriousness survey conducted by the Division of Criminal Justice. The results of that survey have been presented in the report entitled Perceptions of Crime Seriousness in Colorado,* and the reader should refer to that report for the details of the survey.

Table A, "Hypothetical Felony Classification," shows the CRS 1973 citation number and a capsule description of the offense. Within each category, the citations are arranged in numerical order, which automatically places the various types of crime (e.g., offenses against persons, etc.) together in the list. If a number appears in the right hand column, it indicates the current classification, but it only appears when that classification is different from the hypothetical classification. The basic source for the total list is the Legislative Council Memorandum "List of Classified Felonies," dated May 19, 1978.

Process. The bases for the differences between the current felony classifications and those found in the attached table are the scalar crime seriousness data and the average incarceration term lengths derived from the DCJ survey. These data will be found in Tables 1 and 2 of the survey report.*

The hypothetical classifications were established through a three-step process. First, the scalar seriousness data were used to locate tentative dividing points in the seriousness scale. This analysis was done separately for offenses against persons, offenses against property and frauds combined, and all other offenses. This process resulted in a tentative reclassification schedule, to which the incarceration length data was then applied. At this second step, a number of additional adjustments were made to take into account this dimension of the survey.

The final step consisted of sorting through the tentative class groups and examining the substance of the offenses. A few final adjustments were made in the interest of consistency within the various groups and to maintain where possible the logic of the statutes (e.g., second degree offenses are generally classified higher than third degree offenses).

During this final step, the felonies which were not included in the survey instrument were placed into the schedule by matching them with other similar offenses.

The result was generally satisfactory except that class 5 now held more than half of all the offenses, and was not entirely consistent internally. Consequently, it seemed appropriate to establish a sixth category, Class 6 felonies. Into this category were placed the "victimless" crimes (prostitution and gambling),

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*Colorado Division of Criminal Justice, Perceptions of Crime Seriousness in Colorado: A Preliminary Report (Denver, 1978)(Mimeographed).

technical offenses (e.g., operating without a license), minor offenses against the government, and similar offenses not involving harm to persons or to personal property. With that final subdivision, the hypothetical schedule was complete.

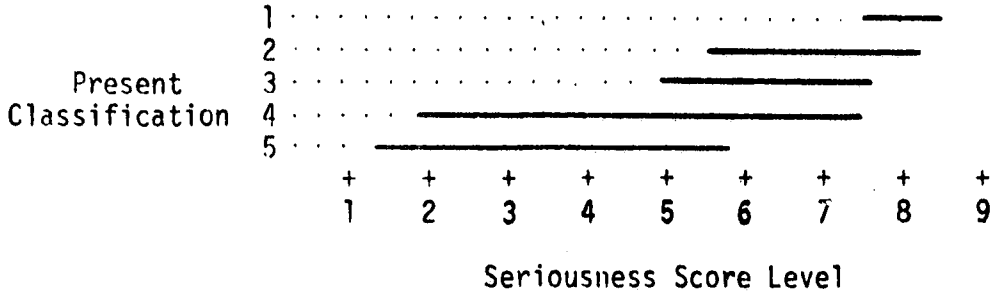
Results: The product of the process described above might be judged by comparison with the present classification system. In the survey, the respondents were asked to judge the seriousness of various crimes on a scale from 1 (least serious) to 9 (most serious). These responses were averaged and are listed in Table 1 of the preliminary report cited earlier. These seriousness score ranges are arranged by the current Colorado felony classifications in the following table:

RANGE OF SCORES ON SERIOUSNESS SCALE BY PRESENT CLASSIFICATION

Present Classification	Seriousness Score Range
Class 1	7.45 - 8.42
Class 2	5.48 - 8.21
Class 3	4.91 - 7.60
Class 4	1.83 - 7.55
Class 5	1.31 - 5.81

In graphic form, that same information looks as follows:

RANGE OF SCORES ON SERIOUSNESS SCALE BY PRESENT CLASSIFICATION



As can be seen in the table and the sketch, there is considerable overlap in the present classification schedules. For instance, at seriousness level 5.60, offenses can be found in every class from 2 down through 5. Put another way, the respondents believe that some Class 5 felonies are more serious than some Class 2 felonies are. Presumably, the reasons for the classification system are to indicate the relative seriousness of offenses, and to group them for sentencing purposes. Judged against that rationale, the present classification scheme is not adequate.

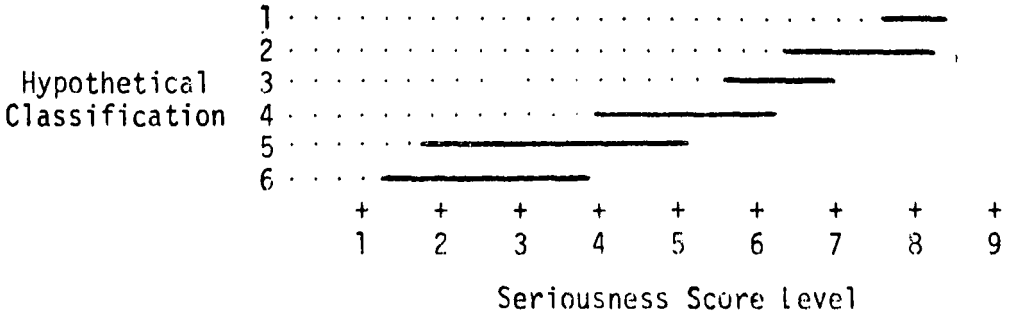
By contrast, the hypothetical classification schedule removes much of the overlap. In the following table, the seriousness score ranges are arranged by the hypothetical classifications:

RANGE OF SCORES ON SERIOUSNESS SCALE BY HYPOTHETICAL CLASSIFICATION

Hypothetical Classification	Serious Score Range
1	7.47 - 8.42
2	6.28 - 8.21
3	5.48 - 6.98
4	4.05 - 6.17
5	1.83 - 5.13
6	1.31 - 3.90

In graphic form, that same information looks as follows:

RANGE OF SCORES ON SERIOUSNESS SCALE BY HYPOTHETICAL CLASSIFICATION



The only seriousness score overlap remaining in this schedule occurs between consecutive categories. That is, while category 3 overlaps category 2, and categories 3 and 4 overlap, category 2 and category 4 do not overlap as they do in the current arrangement. Moreover, most of the remaining overlap is present for defensible reasons. For instance, at the seriousness levels in the overlap area people crimes are classified higher than property crimes, property crimes are sorted on dollar values involved and the logic of statutory definitions is generally preserved.

Finally, in those cases where 10% or more of the DCJ survey respondents recommended that an offense be decriminalized, that fact is indicated in the table by symbols in the right margin and explanatory footnotes.

HYPOTHETICAL FELONY CLASSIFICATION		
CRS CITATION	DESCRIPTION	CHANGE FROM CLASS-*
	CLASS 1	
12-22-322	Dangerous Drugs-"Other Person" Under 25	
18-3-102	1° Murder	
18-3-301	1° Kidnapping	
18-8-206	Assault During Escape(Conviction of Class 1 or 2 Felony)	
18-11-101	Treason	
	CLASS 2	
12-22-322	Dangerous Drugs-Certain Sections, 3 or More Offenses	
18-2-101	A/T/C Class 1	
18-2-206	C/T/C Class 1	
18-2-301	Criminal Solicitation,Class 1	
18-3-103	2° Murder	
18-3-104	Manslaughter	4
18-3-301	1° Kidnapping	
18-3-302	2° Kidnapping (Of a Child)	4
18-3-402	1° Sexual Assault (Aggravated)	3
18-3-403	2° Sexual Assault	3 & 4
18-3-405	Sexual Assault on a Child (Force)	3
18-4-102	1° Arson	3
18-4-302	Aggravated Robbery	3
18-4-303	Aggravated Robbery (Drugs)	
18-6-102	Criminal Abortions (When Woman Dies)	
18-6-103	Pretended Criminal Abortion (When Woman Dies)	
18-6-401	Child Abuse (Serious Bodily Injury)	3
18-8-201	Aiding Escape(Of Person Convicted of Class 1 or 2 Felony)	
18-8-206	Assault During Escape (By Person Convicted of Other Than Class 1 Felony)	3
18-8-207	Holding Hostages	3
18-8-208	Escape (By Person Convicted of Class 1 or 2 Felony)	
18-9-104	Engaging in Riot (Armed)	4
18-12-109	Unlawful Use of Explosives	

*No entry in this column means no reclassification is necessary.

HYPOTHETICAL FELONY CLASSIFICATION		
CRS CITATION	DESCRIPTION	CHANGE FROM CLASS-*
	CLASS 3	
12-22-322	Narcotic Drugs-Certain Offenses, 2nd or 3rd Time	
12-22-412	Dangerous Drugs-Certain Offenses, 2nd Time	
18-2-101	A/T/C Class 2	
18-2-106	C/T/C Class 3	
18-2-301	Solicitation Class 2	
18-3-202	1° Assault	
18-3-402	1° Sexual Assault	
18-3-405	Sexual Assault on a Child	4
18-4-105	4° Arson (People Endangered)	4
18-4-202	1° Burglary (Including Drugs)	2
18-4-206	Defrauding Secured Creditor or Debtor ($10,000 or More)	
18-4-401	Theft ($10,000 or More or Twice in Six Months)	
18-4-402	Theft of Rental Property ($10,000 or More)	
18-4-409	Aggravated Motor Vehicle Theft	
18-4-410	Theft By Receiving ($10,000 or More or $200 or More and Accused Is Fence)	
18-6-402	Trafficking in Children	
18-8-201	Aiding Escape (Of Person Convicted of Other Than Class 1 or 2 Felony)	
18-8-204.1	Possession of Contraband	
18-8-206	Assault During Escape (Armed, Not Convicted)	
18-8-208	Escape (Convicted of Other Than Class 1 or 2 Felony)	
18-8-208.1	Attempt to Escape (Convicted of Felony)	4
18-8-211	Riots in Correctional Institution (Armed)	
18-9-103	Arming Rioters	4
18-9-115	Endangering Public Transportation	
	CLASS 4	
9-1-106	Loss of Life (Construction-Negligence)	5
9-6-104	Death by Negligence	
11-20-117	Malfeasance-State Banking Commission	5

*No entry in this column means no reclassification is necessary.

HYPOTHETICAL FELONY CLASSIFICATION		
CRS CITATION	DESCRIPTION	CHANGE FROM CLASS-*
	CLASS 4, Continued	
11-41-127	Theft by Savings and Loan Employee	
▼ 12-22-322	Narcotic Drugs (Certain Sections, 1st Offense) (Certain Sections, 2nd Offense)	5
▼ 12-22-412	Dangerous Drugs(Certain Sections, 1st Offense) (Certain Sections, 3rd Offense)	
12-30-107	Misrepresenting Cancer Cure	5
18-2-101	A/T/C Class 3	
18-2-206	C/T/C Class 4	
18-2-301	Solicitation, Class 3	
18-3-106	Vehicular Homicide	
18-3-203	2^{0} Assault	
18-3-205	Vehicular Assault	5
18-3-206	Menacing (Deadly Weapon)	5
18-3-207	Criminal Extortion	
18-3-404	3^{0} Sexual Assault	
18-4-103	2^{0} Arson	
18-4-104	3^{0} Arson	
18-4-105	4^{0} Arson (Property Only)	
18-4-203	2^{0} Burglary (Including Dwelling)	3
18-4-301	Robbery	
18-4-401	Theft ($200 or More)	
18-4-409	Motor Vehicle Theft (And Crime Committed)	
18-4-410	Theft By Receiving ($200 or More)	
18-5-102	1^{0} Forgery	
18-6-102	Criminal Abortion	
18-6-103	Pretended Criminal Abortion	5
▼ 18-6-302	Aggravated Incest	

*No entry in this column means no reclassification is necessary.

▼10-19 percent of the Division of Criminal Justice Survey respondents recommended decriminalization.

HYPOTHETICAL FELONY CLASSIFICATION		
CRS CITATION	DESCRIPTION	CHANGE FROM CLASS-*
	CLASS 4, Continued	
18-8-105	Accessory to Known Class 1 or 2 Felony	5
18-8-203	1° Introducing Contraband	
18-8-204.1	Possession of Contraband (Dangerous Instrument)	
18-8-208	Escape (Charged but Not Convicted of Felony)	5
18-8-208.1	Attempt to Escape (After Conviction)	
18-8-302	Bribery	3
18-8-306	Attempt to Influence a Public Servant	
18-8-407	Embezzlement of Public Property	
18-8-502	1° Perjury	
18-8-602	Bribing a Witness	
18-8-603	Bribe Receiving by a Witness	
18-8-604	Intimidating a Witness	
18-8-606	Bribing a Juror	
18-8-607	Bribe Receiving by a Juror	
18-8-608	Intimidating a Juror	
18-8-610	Tampering With Physical Evidence	5
18-9-102	Inciting a Riot	5
18-11-102	Insurrection	
▼▼ 18-11-201	Advocating Overthrow of Government	
▼▼ 18-11-202	Inciting to Destruction of Life or Property	5
▼▼ 18-11-203	Membership in Anarchistic and Seditious Organizations	
18-12-108	Possession of Weapons by Previous Violent Offenders-(2nd Offense)	5
18-13-104	Dueling	
18-15-102	Extortionate Extension of Credit	
18-15-105	Financing Extortionate Extension of Credit	
18-15-107	Collection of Extension of Credit by Extortionate Means	

*No entry in this column means no reclassification is necessary.

▼▼20-29 percent of the Division of Criminal Justice Survey respondents recommended decriminalization.

HYPOTHETICAL FELONY CLASSIFICATION

	CRS CITATION	DESCRIPTION	CHANGE FROM CLASS-*
		CLASS 5	
	6-1-114	Promoting Pyramidal Promotion Scheme	
	8-1-144	False Statements-Labor Benefits	4
	8-53-130	False Statements-Labor Benefits	4
	11-11-108	Violating Banking Laws	
	11-20-117	Bribing Division of of Banking Employee or False Report	4
	11-55-105	Use of Facsimile Seal	
	12-6-210	Violation of Antimonopoly Financing Law	
	12-11-110	Butchering of Another's Animals	
	12-16-113	Fraud by Commission Merchant	
	12-22-125	Forging Prescription (2 or More Offenses)	
▼	12-22-322	Narcotic Drugs-Certain Sections	4
▼	12-22-412	Dangerous Drugs-Certain Sections(2 or More Offenses)	4
	13-45-114	Avoiding Writ Penalty	
	14-6-101	Nonsupport of Spouse and Children	
	16-19-133	Concealment of Fugitives	
	18-2-101	A/T/C Class 4 or 5, or Felony Outside Criminal Code	
	18-2-201	C/T/C Felony Outside Criminal Code	
	18-2-206	C/T/C Class 4 or 5	
	18-2-301	Solicitation, Class 4 or 5	
	18-3-304	Violation of Custody	
	18-4-204	3^0 Burglary	
	18-4-205	Possession of Burglary Tools	
	18-4-401	Theft (No Force)	
	18-4-402	Theft of Rental Property	4
	18-4-408	Theft of Trade Secrets	4
	18-4-409	Motor Vehicle Theft (Crime, or Over 72 Hours)	4
	18-4-501	Criminal Mischief	4
	18-4-502	1^0 Criminal Trespass	
	18-4-602	Copying Copyrighted Recordings For Sale	

*No entry in this column means no reclassification is necessary.

▼10-19 percent of the Division of Criminal Justice Survey respondents recommended decriminalization.

HYPOTHETICAL FELONY CLASSIFICATION			
	CRS CITATION	DESCRIPTION	CHANGE FROM CLASS-*
		CLASS 5, Continued	
	18-5-103	2° Forgery	4
	18-5-109	Criminal Possession of Forgery Devices	
	18-5-115	Charitable Fraud	
	18-5-202	Fraudulent Use of Credit Device	4
	18-5-205	Fraud by Check	4
	18-5-206	Defrauding Secured Creditor or Debtor	4
	18-5-210	Receiving Deposits in Failing Financial Company	
▼▼▼	18-5-302	Selling Land Twice	4
	18-5-401	Commercial Bribery	
	18-5-502	Failure to Pay Over Accounts	4
▼	18-5-504	Concealing Secured Property	4
▼▼	18-5-505	Failure to Pay Over Proceeds	4
▼▼▼	18-6-301	Incest (Siblings)	
	18-8-105	Accessory to Suspected Class 1 or 2	
	18-8-110	False Reports of Explosives	
	18-8-201.1	Aiding Escape From Mental Institution	
	18-8-204	2° Introducing Contraband	
	18-8-204.1	Possession of Contraband	
	18-8-208	Certain Escapes	
	18-8-208.1	Attempt to Escape (Before Conviction)	
	18-8-210	Escape (Unclassified Felony)	
	18-8-211	Riots in Correctional Institution	
	18-8-303	Compensation for Official Behavior	
	18-8-307	Designation of Supplier	
	18-8-402	Misuse of Official Information	
	18-8-406	Issuing a False Certificate	
	18-8-605	Tampering With a Witness	4

*No entry in this column means no reclassification is necessary.

▼10-19 percent of the Division of Criminal Justice Survey respondents recommended decriminalization.

▼▼20-29 percent of the Division of Criminal Justice Survey respondents recommended decriminalization.

▼▼▼30 percent or more of the Division of Criminal Justice Survey respondents recommended decriminalization.

HYPOTHETICAL FELONY CLASSIFICATION		
CRS CITATION	DESCRIPTION	CHANGE FROM CLASS-*
	Class 5, Continued	
18-8-609	Jury Tampering	
18-9-102	Inciting a Riot (Resulting in Injury or Damage)	
18-9-116.5	Vehicular Eluding (Resulting in Injury)	4
18-9-118	Explosives, Etc., in Public Transportation Facilities	
18-9-302	Wiretapping & Eavesdropping Devices(2 or More Offenses)	
18-9-303	Wiretapping	
18-9-309	Illegal Telecommunications Equip.(2 or More Offenses)	
18-9-310	Unlawful Use of Information	
18-12-102	Possession of Illegal Weapon	
18-12-107	Weapons Offenses (2 or More Offenses)	
18-12-108	Possession of Weapons by Previous Violent Offenders	
18-12-109	Unlawful Possession of Explosives	4
▼ 18-13-105	Criminal Libel	
18-15-104	Criminal Usury	
18-15-106	Financing Criminal Usury	
18-15-107	Collection of Credit by Extortionate Means	4
24-22-110	Personal Profit on State Money	
24-22-111	Bribing State Treasurer or Employee	
24-30-202(15)	Illegal Use of State Funds	
24-30-202(16)	Bribing State Treasurer or Controller	
24-1-127	Social Services Fraud	
24-80-902	Illegal Use of State Seal	4
28-3-701	Misuse of Military Property	
33-4-112	Wildlife & Parks, Stamps, Licenses, etc.	4
33-6-127	Theft, Destruction or Sale of Big Game	
34-46-105	Destroying Mining Equipment	
34-53-104	Failure to Account for Proceeds	
35-43-128	Theft of Livestock	

*No entry in this column means no reclassification is necessary.

▼10-19 percent of the Division of Criminal Justice Survey respondents recommended decriminalization.

	HYPOTHETICAL FELONY CLASSIFICATION		
	CRS CITATION	DESCRIPTION	CHANGE FROM CLASS-*
		CLASS 5, Continued	
	35-59-113	Wrongful Use of Inedible Meat	
▼	37-7-104	Fraud by Water District Officer	
	37-24-107	Bribery of District Officer	
	39-22-621	Failure to Collect or Evading Tax	
	42-2-206	Driving by Habitual Offender	
	42-5-102	Buying or Selling Stolen Auto Parts	4
		CLASS 6	
	1-2-208	False Voting Information	5
	1-13-104	Violation of Election Laws	5
▼▼	1-40-110	Receiving Money to Circulate Petition	5
▼	8-2-106	Employing Armed Guards Without Permit	5
	9-6-103	Unlawfully Transporting Explosives	5
	10-3-810	Violation of Insurance Laws	5
	11-51-124	Violation of Securities Act	5
	12-24-214	Operating Theatrical Agency Without a License	5
	12-32-109	Practicing Podiatry Without a License	5
	12-36-129	Practicing Medicine Without a License	5
	12-38-120	Practicing Nursing Without a License	5
	12-44-102	Drafrauding a Landlord	5
▼▼	12-53-109	Operating Motor Club Without a License	5
	12-61-407	Developing Subdivision Without Registering	5
	17-1-108	Transfer of Inmate Without Records	5
	18-5-105	Criminal Possession of 1^{O} Forged Instrument	5
	18-5-113	Criminal Impersonation	5
	18-5-114	Offering False Instrument for Recording	5
	18-5-302	False Representation of Ownership	5

*No entry in this column means no reclassification is necessary.

▼10-19 percent of the Division of Criminal Justice Survey respondents recommended decriminalization.

▼▼20-29 percent of the Division of Criminal Justice Survey respondents recommended decriminalization.

	HYPOTHETICAL FELONY CLASSIFICATION		
	CRS CITATION	DESCRIPTION	CHANGE FROM CLASS-*
		CLASS 6, Continued	
	18-5-401	Failure to Act Disinterestedly	5
	18-5-403	Bribery in Sports	5
▼	18-5-506	Fraudulent Receipt	5
	18-5-508	Failing to Mark Duplicate Receipt	5
▼	18-6-201	Bigamy	5
	18-7-104	Promoting Aggravated Obscene Material	5
	18-7-106	Promoting Aggravated Sadomasochistic Material	5
	18-7-203	Pandering (Through Intimidation)	5
▼▼	18-7-206	Pimping	5
▼	18-9-304	Eavesdropping	5
▼	18-10-103	Gambling	5
▼	18-10-105	Possession of Gambling Devices	5
▼	18-10-106	Gambling Information	5
▼	18-10-107	Maintaining Gambling Premises	5
	18-12-109	Explosives (Hoax)	5
	18-15-108	Concealing Records of Criminal Usury	5
▼	24-6-309	Violation of Sunshine Law	5
	34-40-110	Conflict of Interest-Bureau of Mines	5
	35-53-112	Shipping Prior to Inspection (3 or More Violations)	5
	37-31-123	Malfeasance-Grand Junction Drainage District	5
	37-41-108	Malfeasance-Irrigation Districts	5
	37-42-110	Malfeasance-Irrigation Districts	5
	37-44-142	Malfeasance-Internal Improvement Districts	5
	38-36-192	Theft of Certificate of Title	5
	38-36-194	Fraudulently Procuring Certificate of Title	5
	38-36-195	Forging Signature or Seal	5

*No entry in this column means no reclassification is necessary.

▼10-19 percent of the Division of Criminal Justice Survey respondents recommended decriminalization.

▼▼20-29 percent of the Division of Criminal Justice Survey respondents recommended decriminalization.

HYPOTHETICAL FELONY CLASSIFICATION

CRS CITATION	DESCRIPTION	CHANGE FROM CLASS-*
	CLASS 6, Continued	
39-21-112	Malfeasance-Department of Revenue	5
39-21-118	Fraud-Revenue Matters	5
39-23-150	Malfeasance-Department of Revenue	5
▼▼ 39-27-104	Distributing Motor Fuel Without a License	5
40-27-101	Driving Stock on Track	5
42-5-104	Theft of Auto Parts	5
42-6-141	Altering Certificate of Title	5

*No entry in this column means no reclassification is necessary.

▼▼20-29 percent of the Division of Criminal Justice Survey respondents recommended decriminalization.

BJ:lk
October, 1978

APPENDIX C

COLORADO ASSOCIATION OF CHIEFS OF POLICE

SUGGESTED SENTENCE

DESCRIPTION	CRS 1973 CITATION	SUGGESTED SENTENCE
Criminal Solicitation	18-2-301	10 Yrs
1° Sexual Assault [3]	18-3-402	10 Yrs
Possession Explosives	18-12-109	8 Yrs
A/T/C Murder	18-2-101	12.5 Yrs
C/T/C Murder	18-2-206	10 Yrs
Assault during Escape	18-8-206	9 Yrs
2° Kidnapping	18-3-302	6.5 Yrs
Child Abuse[1]	18-6-401	7.5 Yrs
1° Arson	18-4-102	10 Yrs
Assault during Escape[2]	18-8-206	7 Yrs
Agr. Robbery	18-4-302	11.4 Yrs
Holding Hostages	18-8-207	6.75 Yrs
Engaging in Riot	18-9-104	7 Yrs
1° Kidnapping	18-3-301	8 Yrs
1° Sexual Assault	18-3-402	9 Yrs
Escapes[2]	18-8-208	8 Yrs
Pretended Criminal Abortion[4]	18-6-103	7 Yrs
Arming Rioters	18-9-103	7 Yrs
Criminal Abortions[4]	18-6-103	7 Yrs
Sexual Assault on a Child (Force)	18-3-405	8 Yrs
Manslaughter	18-3-104	7 Yrs
Aggravated Robbery of Drugs	18-4-303	11.4 Yrs
2° Sexual Assault (Force)	18-3-403	8 Yrs
2° Sexual Assault	18-3-403	7.5 Yrs
Riots in Prisons	18-8-211	7 Yrs
Aiding Escape[2]	18-8-201	7 Yrs
1° Burglary	18-4-202	8.5 Yrs
Attempt to Escape	18-8-208.1	6 Yrs
4° Arson	18-4-105	5 Yrs
Endangering Public Transportation	18-9-115	7 Yrs
1° Assault	18-3-202	7 Yrs
2° Murder	18-3-106	12.5 Yrs
Vehicular Homicide	18-3-106	9.5 Yrs
Sexual Assault on a child	18-3-403	7 Yrs
Insurrection	18-11-102	6 Yrs
A/T/C Class 2 Felony	18-2-101	6 Yrs

[1] If death or injury occur

[2] By person already convicted

[3] Under aggravating circumstances

[4] If woman dies

SUGGESTED SENTENCE

DESCRIPTION	CRS 1973 CITATION	SUGGESTED SENTENCE
Intimidating a Witness	18-8-604	10 Yrs
Possession of Contraband	18-8-204.1	6 Yrs
Intimidating a Juror	18-8-608	9 Yrs
Bribing a Witness	18-8-602	9 Yrs
1° Introducing Contraband	18-8-203	6 Yrs
1° Burglary of Drugs	18-4-202	8.5 Yrs
Accessory to Class 1 Felony	18-8-105	7 Yrs
Escape, Class 1 or 2 Felony	18-8-208	5.5 Yrs
Aiding Escape Class 1 or 2 Felony	18-8-201	4.7 Yrs
Criminal Extortion	18-3-207	5 Yrs
Attempting to Influence a Public Servant	18-8-306	5 Yrs
Bribing a Juror	18-8-606	8 Yrs
Bribery	18-8-302	7 Yrs
Escape	18-8-208	4.5 Yrs
Bribe Receiving by a Witness	18-8-603	5 Yrs
Embezzlement of Public Property	18-8-407	5 Yrs
A/T/C Class 3 Felony	18-2-101	5 Yrs
Criminal Abortions	18-6-102	5 Yrs
3° Sexual Assault	18-3-404	7 Yrs
3° Arson	18-4-104	5 Yrs
1° Perjury	18-8-502	6 Yrs
Bribe Receiving by a Juror	18-8-607	5 Yrs
Robbery (Force)	18-4-301	6 Yrs
Stealing Narcotics	12-22-322	5 Yrs
2° Arson (Over $100)	18-4-103	5 Yrs
2° Burglary	18-4-203(1)	7 Yrs
Membership in Anarchistic & Seditious Assoc.	18-11-203	5 Yrs
Attempt to Manufacture or Dispense Dangerous Drugs	12-22-412(2)	5 Yrs
Manufacture or Dispense Dangerous Drugs	12-22-412	6.5 Yrs
Dueling	18-13-104	5 Yrs
Advocating Overthrow of Government	18-11-201	5 Yrs
Extortionate Extension of Credit	18-15-102	4.5 Yrs
Death by Negligence	9-6-104	6 Yrs
Aggravated Incest	18-6-302	10 Yrs
Theft by Savings and Loan Employee	11-41-127	5 Yrs
Theft by Receiving (Over $200)	18-4-410	5 Yrs
1° Forgery	18-5-102	6 Yrs
2° Assault	18-3-203	5.5 Yrs
Selling of Land Twice	18-5-302	6 Yrs
Fraudulent Use of Credit Device	18-5-202	6 Yrs
Buying or Selling Stolen Auto Parts	42-5-102	5 Yrs
Possession Dangerous Drugs (2nd Time)	12-22-412(4)	8 Yrs

SUGGESTED SENTENCING

DESCRIPTION	CRS 1973 CITATION	SUGGESTED SENTENCING
Possession of Dangerous Drugs	12-22-412(3)	6 Yrs
Motor Vehicle Theft	18-4-409(3)	4 Yrs
Theft of Trade Secrets	18-4-408	4 Yrs
Vehicular Eluding	18-9-116.5	3.5 Yrs
Collections of Credit by Extortionate Means	18-15-107	3.75 Yrs
2° Forgery	18-5-103	5 Yrs
Fraud by Check	18-5-205	4 Yrs
Tampering with a Witness	18-8-605	7 Yrs
Possession of Narcotics	12-22-322(2B	5 Yrs
Defrauding a Secured Debtor or Creditor (Over $200)	18-5-206	3 Yrs
Possession of Cannabis	12-22-412(12)	2.5 Yrs
Theft of Rental Property (Over $200)	18-4-402	4 Yrs
Illegal Use of State Seal	24-80-902	3.5 Yrs
Concealing of Secured Property	18-5-504	3 Yrs
Criminal Mischief (Over $200)	18-4-501	3.5 Yrs
Failure to Pay Over Proceeds	18-5-505	2 Yrs
Failure to Pay Over Assigned Accounts	18-5-502	2 Yrs
Menacing	18-3-206	4 Yrs
Tampering with Physical Evidence	18-8-610	5 Yrs
Poss. of Weapons by Prev. Violent Offenders	18-12-108	6 Yrs
Sale of Narcotics	12-22-322(2a)	6.5 Yrs
Escape (leaving state)	18-8-208	5.5 Yrs
Sale of Narcotics	12-22-322	5 Yrs
Vehicular Assault	18-3-205	5 Yrs
Accessory to Class 1 or 2 Felony	18-8-105	6 Yrs
Avoiding Writ Penalty	13-45-114	4 Yrs
Misrepresenting Cancer Cure	12-30-107	4 Yrs
Dispensing Narcotic Drugs w/o Prescription	12-22-322(2A)	5 Yrs
Loss of Life (Construction)	9-1-106	5 Yrs
Concealment of Fugitives	16-19-133	5 Yrs
Attempt to Escape	18-8-208.1	4 Yrs
Personal Profit on State Moneys	24-22-110	5 Yrs
Attempt Class 4 or 5 Felony	18-2-101	4.5 Yrs
Inciting a Riot	18-9-102	5 Yrs
Bribery of State Treasurer	24-30-202(16)	5 Yrs
Theft	18-4-401	5 Yrs
Inciting to Destruction of Life or Prop.	18-11-202	5 Yrs
Possession of Dangerous Drugs	12-22-412(10)	5 Yrs
Misuse of Official Information	18-8-402	4 Yrs
Criminal Poss. of Forgery Devices	18-5-109	5 Yrs
Compensation for Past Official Behavior	18-8-303	4 Yrs
Wrongful Use of Inedible Meat	35-59-113	4 Yrs

SUGGESTED SENTENCE

DESCRIPTION	CRS 1973 CITATION	SUGGESTED SENTENCE
Bribing State Banking Commissioner	11-20-117	5 Yrs
Misuse of Military Property	28-3-701	4 Yrs
Bribing State Treasurer or Controller	24-22-111	5 Yrs
Violating Banking Laws	11-11-108	4.5 Yrs
Accessory to Class 2 Felony	18-8-105	5 Yrs
Issuing a False Certificate	18-8-406	5 Yrs
Illegal use of State Funds	24-30-202(15)	5 Yrs
Aiding Escape from Mental Institution	18-8-201.1	4 Yrs
Poss. of Illegal Weapon	18-12-102	5 Yrs
Forging Prescription	12-22-125	4 Yrs
2° Introducing Contraband	18-8-204	5 Yrs
Theft of Livestock	35-43-128	4 Yrs
Poss. of Burglary Tools	18-4-205	5 Yrs
Pretended Criminal Abortion	18-6-103	5 Yrs
Poss. of Contraband	18-8-201.1	4 Yrs
Designation of Supplier	18-8-307	3 Yrs
Use of Facsimile Seal	11-55-105	3 Yrs
Wiretapping & Eavesdropping Devices (2nd Time)	18-9-302	3 Yrs
Violation of Custody	18-3-304	3 Yrs
Concealing Records of Criminal Usury	18-15-108	4 Yrs
Criminal Possession of 1° Forged Instrument	18-5-105	5 Yrs
Bribery	37-24-107	4 Yrs
False Report of Explosives	18-8-110	5 Yrs
1° Criminal Trespass	18-4-502	4 Yrs
Gambling Premises	18-10-107	3 Yrs
Joyriding	18-4-409	3 Yrs
Wiretapping	18-9-303	5 Yrs
Violation of Securities Act	11-51-124	4 Yrs
Charitable Fraud	18-5-115	4 Yrs
Theft of Certificate	38-36-192	3.5 Yrs
Libel	18-13-105	2 Yrs
Forging Signature	38-36-195	3.75 Yrs
Jury Tampering	18-8-609	5 Yrs
Shipping Prior to Inspection	35-53-112	3 Yrs
Theft of Auto Parts	42-5-104	3.5 Yrs
Destroying Mining Equipment	34-46-105	3.5 Yrs
Violation of Anti-monopoly Financing Law	12-6-210	5 Yrs
Fraudulently Procuring Cert. of Title	38-36-194	3 Yrs
Willful Destruction of Big Game	33-6-127(9)	3 Yrs
3° Burglary	18-4-204	4 Yrs
Altering Certificate of Title	42-6-141	3 Yrs
Theft of Big Game	33-6-127(8)	3 Yrs
Offering a False Instrument for Recording	18-5-114	3.75 Yrs
Unlawful Transfer for Sale	18-4-602	4 Yrs
Gambling	18-10-103	3.5 Yrs
Bribery in Sports	18-5-403	4 Yrs
Engaging in Criminal Usury	18-15-104	4.5 Yrs
Illegal Telecommunications Equipment	18-9-309	3 Yrs
Driving by Habitual Offender	42-2-206	4 Yrs

SUGGESTED SENTENCE

DESCRIPTION	CRS 1973 CITATION	SUGGESTED SENTENCE
Fraud by Water District Officer	37-7-104	4 Yrs
Receiving Deposit of Investment Failing Financial Company	18-5-210	3 Yrs
Violation of Explosives-Transportation Law	9-6-103	3 Yrs
Criminal Impersonation	18-5-113	4 Yrs
Under Reporting Income for Tax	39-22-621	3 Yrs
Poss. of Gambling Devices	18-10-105	3 Yrs
Gambling Information	18-10-106	3 Yrs
Conflict of Interest-Bureau of Mines	34-40-110	3 Yrs
Butchering Another's Animals	12-11-110	3 Yrs
Nonsupport of Spouse and Children	14-6-101	3 Yrs
Defrauding Landlord	12-44-102	3 Yrs
Fraud by Commission Merchant	12-16-113	3 Yrs
Violation of Insurance Laws	10-3-810	3 Yrs
Failing to Mark Duplicate Receipt	18-5-508	1.5 Yrs
Failure to Account	34-53-104	1.5 Yrs
Developer of Subdivision without License	12-61-407	2.5 Yrs
Violation of Sunshine Law	24-6-309	2.5 Yrs
Eavesdropping	18-9-304	2.5 Yrs
Incest	18-6-301	4 Yrs
Practicing Medicine without License	12-36-129	3 Yrs
Pimping	18-7-206	3.5 Yrs
Fraudulent Receipt	18-5-506	3 Yrs
Violation of Election Laws	1-2-208	2.5 Yrs
Practicing Podiatry without License	12-32-109	2.5 Yrs
Bigamy	18-6-201	2.5 Yrs
Armed Guards without Permit	8-2-106	20 Mos
Operating Agency without License	12-24-214	21 Mos
Operating Motor Club without License	12-53-109	21 Mos
Receiving Money to Circulate Petition	1-40-110	21 Mos
Distributing Motor Fuel without License	39-27-104	21 Mos
2° Burglary	18-4-203(2)	8.5 Yrs

END