A NATIONAL SURVEY OF PAROLE RELATED LEGISLATION:

ENACTED DURING THE 1979 LEGISLATIVE SESSION

Uniform Parole Reports
Series IV:1:79

NCCD

Research Center West
National Council on Crime and Delinquency
760 Market Street, Suite 433
San Francisco, CA 94102

December 1979

A NATIONAL SURVEY OF PAROLE RELATED LEGISLATION: Enacted During the 1979 Legislative Session

By

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This paper was presented by Mr. Michael Kannensohn at the 1979 Uniform Parole Reports Seminar held on October 15, 16, and 17, 1979. The UPR project sponsors a national annual seminar for professionals in the parole/corrections field under a grant (79-SS-AX-0002) from National Criminal Justice Information Statistics Service, Law Enforcement Assistance Administration, U.S. Department of Justice. Mr. Kannensohn holds an M.A. in Political Science and is Special Assistant for Criminal Justice at the Council of State Governments in Lexington, Kentucky. This was the third year in succession that Mr. Kannensohn presented a legislative update at the UPR Seminar. His paper, along with the other major presentations at the Seminar, will be published in the 1979 Uniform Parole Reports Seminar Report forthcoming in February, 1980.

Introduction

In recent years, state legislatures have increasingly turned their attention to state parole systems. Two developments appear to have precipitated this emergent interest in parole. The first was case law changes reflected most prominently in Morrissey v. Brewer (408 U.S. 471, 1972), which expanded into the post-conviction process the procedural protections enumerated several years earlier by Goldberg v. Kelly (397 U.S. 254, 1970). As is now well known, Morrissey required that parole be revoked only in accordance with the due process clause, a requirement designed to protect the

integrity of the fact-finding process by granting the parolee the right, inter alia, to a hearing with notice, disclosure, witnesses, and a record. While that decision applied only to parole revocation proceedings, its implications were more manifest as the 1970s progressed, for almost every discretionary decision in correctional systems came under legal attack. Within a few years following Morrissey, court decisions were handed down requiring a variety of due process procedures for such matters as rescinding an unexecuted grant of parole, increasing a term, granting parole, and requiring disclosure of records and reports.

At the same time that parole systems were under legal challenges, a second development found the broadly discretionary indeterminate sentencing (of which release decisions by parole boards are an important feature) under concentrated political attack by legislators, leading academicians, criminal justice system officials, and the public.

Two divergent and perhaps contradictory motivations seem to have prompted this political concern with indeterminate sentencing. The first is the growing public alarm over the continued rise in crime, particularly that involving violence and personal injury. The underlying criticism of indeterminate sentencing supporting this attitude is that the lack of sentencing certainty undercuts the deterrent effectiveness of the criminal law, thereby contributing to recidivism and high crime rates. The other element of

discontent lies in the inequities, arbitrariness, and unfairness to offenders attributed to the system of indeterminate sentencing. The principal concern here has been with the allegedly wide and unwarranted disparities in prison terms. As an important feature of the indeterminate sentencing system, release decisions of the parole board have been a principal target of political attack and legislative action. To anticipate the dimensions and directions of these changing political attitudes toward parole, it is important that parole officials continue to be informed and aware of the recent legislative trends affecting state parole systems.

Methodology

To obtain the necessary data, a questionnaire was forwarded to the legislative research agency in each state requesting information on legislative action during the 1979 session for ten generic categories of parole related legislation (see Attachment A). Forty of the fifty legislative research agencies responded to the questionnaire as well as to the state updates at the UPR Seminar. While there were variations in the specific subject matter of the legislation placed within ten categories, these classifications capture the general thrust of parole related legislative activity.

Given the breadth of survey topics and the number of bill introductions and statutory enactments cited, this paper will concentrate principally on the general legislative trends and major distinguishing features of the legislation.

Treatment of specific state legislation will emphasize those statutes which are either particularly unique or represent illustrative examples of certain legislative trends. Although this paper will generally only deal with statutory enactments, attached is a chart (Attachment B) which depicts bill introductions, as well as enactments for those interested in overall and specific state patterns.

Legislation

Sentencing

Legislative efforts of recent years to eliminate or narrow parole release decision-making have obviously been a matter of vital importance to state parole officials. Here, as with several legislative categories covered in this survey, momentum has slowed considerably. It may be that state legislatures have come to recognize the potentially substantial economic implications of sentencing changes, particularly with respect to the impact of mandatory and even determinate sentencing on prison populations. Despite this slowdown, some measures have been proposed and enacted during 1979. Two distinguishable types of sentencing reform approaches can be discerned from state legislative activity in this area. The first is measures which aim at replacing indeterminate sentences with some form of determinancy. Mandatory and determinate sentencing statutes are representative of this approach and are designed to abolish parole release decision-making.

A second approach has been to enact legislation which

improves upon existing indeterminate sentencing systems by attempting to revise some of their more criticized features. Contract parole and parole eligibility date revisions are among the methods intended to institute more certainty into the parole process.

Of the two approaches--replacing indeterminate sentencing entirely or reforming it--legislatures have been more inclined toward the former.

Determinate Sentencing Model

Under the determinate sentencing model, three types of legislation have emerged.

Presumptive Sentencing. The first is presumptive sentencing legislation. Under this system, a presumptive sentence is fixed within the statute for each class of offense. If the judge decides upon a sentence of imprisonment, s/he must impose that presumptive term unless aggravating or mitigating factors are found, in which case s/he may increase or reduce respectively the presumptive term within the constraints of narrow sentencing ranges. The discretionary latitude permitted for most legislation typically averages around twenty to twenty-five per cent in either direction, with the ranges widening as the severity of offense increases.

States passing presumptive legislation during the period surveyed include New Jersey (Chapter 95), New Mexico (Chapter 152, Sections 1 and 2), and North Carolina (Chapters 749 and 760). With the actions of these three states, a total

of six states have passed presumptive bills (Alaska, Arizona, California).

Determinate Discretionary. A second type of determinate sentencing model is what can be labeled, for lack of a better term, "determinate discretionary." With these measures, the legislature establishes ranges of sentences, which widen considerably as the severity of the offense increases. For example, Illinois Class X offenses range from six to thirty years; Indiana Class A felonies range from forty to eighty years. Within these ranges, the judge can impose any prison term s/he chooses; however, that penalty must be fixed and determinate.

Only two states--Tennessee (Chapter 318) and Missouri (no citation available)--have passed determinate sentencing legislation of this type. Tennessee joins Colorado, Illinois, and Indiana as states enacting determinate discretionary legislation.

Sentencing Guidelines. Sentencing guidelines are a third method for instituting a determinate sentencing system. While Minnesota and Pennsylvania passed legislation of this variety and several other states gave guideline bills serious consideration in 1978, it was surprising to find that guideline systems were not implemented in any state and that only in Washington was such legislation even introduced. To the contrary, it was anticipated that where determinate sentencing bills were found, they would reflect the guidelines approach,

given the retrospective questions now being raised about the practical wisdom of fixing determinate sentences statutorily.

Some of the experience to date in California has suggested that once fixed terms are specified by statute, the tendency of the legislature, under continuing public pressure to "get tough" with criminals, will be to lengthen sentences without any corresponding mechanism to ameliorate terms. Thus, sentencing guidelines bills are designed to create a presumably more rational process for structuring and narrowing sentencing discretion than exists in the state legislative process.

Under this model, a sentencing commission is established which determines a narrowed range of penalties structured according to a two-dimensional grid based on severity of offense and prior criminal record. Proposed sentencing ranges under guidelines systems have tended to permit more discretionary latitude although they are still narrower than most indeterminate systems. Judges, furthermore, are not restricted to presumptive terms but must only stay within the prescribed range. The judge is only allowed to go outside the range for compelling reasons which must be justified in writing. If the judge does go above the range, the defendant has the automatic right of appeal, while the prosecutor has the same privilege if the judge goes below. The sentence imposed by the judge is fixed and definite in nature. As with the presumptive and determinate discretionary methods, parole release decision-

making is abolished while a formal period of parole supervision is retained in Minnesota and Pennsylvania--the only two states thus far to pass guidelines bills.

Sentences can be reduced or discounted through provisions in the four determinate sentencing statues passed in 1979 for vested, banked "good time." In most of these statutes, good time is awarded on a day-for-day basis. That is, for each day of discipline-free behavior, an inmate can reduce his/her prison term by one day. Thus, an offender sentenced to ten years of imprisonment could potentially be released in five years under most determinate sentencing statutes. With these liberal good time provisions, substantial incentives exist for good behavior on the part of inmates. It is ironic that a public, which has been so critical of "early release" of prisoners before expiration of their maximum term, does not generally comprehend a similar sentence discounting mechanism at work with vested good time provisions under determinate sentencing laws.

In each of the 1979 determinate sentencing enactments, the parole release mechanism was abolished except for those offenders sentenced under the previous indeterminate sentencing systems. However, each of the measures provide for a formal post-release supervision period which typically varies according to the severity of offense and length of incarceration. For parole revocations, limits are placed on the period of reconfinement. In general, a parole violator cannot be

reconfined beyond the remaining time in his/her parole supervision period.

Although only bill enactments are treated here, determinate sentencing is of such considerable interest that it is useful to look at the states where determinate sentencing proposals received serious consideration but failed to pass during the 1979 sessions. Presumptive sentencing was introduced but not passed in Massachusetts, Montana, New York, and Wisconsin. As previously noted, guidelines legislation was considered only in Washington. No determinate discretionary bills are pending in any state.

Mandatory Sentencing Model

A second type of sentencing approach impacting significantly on parole systems is mandatory sentencing. The survey found more legislative enactments in this area than for determinate sentencing. However, the number of mandatory bills passed in 1979 was far below the 1977 and 1978 levels. Proposals to institute mandatory sentencing are still commonly confused with definite sentencing. To clarify this problem, mandatory sentencing eliminates judicial and parole board discretion by requiring imprisonment for selected categories of offenses; determinate sentencing involves terms of imprisonment while retaining judicial choice to prescribe penalties other than incarceration (probation, restitution, etc.) where appropriate. Although the second difference is less clear-cut,

mandatory sentencing, unlike determinate sentencing, also tends to be oriented toward selected categories of offenses, usually those involving armed, violent, drug, or repeat offenders.

Seventeen states in 1979 passed one or more mandatory sentencing bills covering violent, mandatory, and/or repeat offenders. California (SB 469), Florida (Chapter 709), Louisiana (HB 926), and Tennessee (Chapter 318) included mandatory statutes for drug offenders. Idaho (no citation), Iowa (902.7), Maine (Chapter 512), Montana (Chapter 587), New Mexico (Chapter 158, Section 1), Ohio (SB 41), Tennessee (Chapter 318), and West Virginia (HB 807) took similar action for repeat offenders.

Violent offenses such as kidnapping, arson, rape, murder, and armed robbery were singled out for mandatory sentences in: Arkansas (Act 1118), Arizona (Chapter 144), California (SB 406), Illinois (SB 32, 184, 208, 783; HB 919), Iowa (902.8), Kansas (Chapter 90), Louisiana (SB 110), Montana (Chapter 322), Nevada (AJR 30), New Mexico (Chapter 152, Section 3), North Carolina (Chapter 749), Ohio (HB 267), Oregon (Chapter 2849), and Tennessee (Chapter 318).

Indeterminate Sentencing Model

Almost no interest has been evidenced through legislative action in improving indeterminate sentencing systems.

Contract Parole. One of the more acclaimed correctional programs in recent years has been contract parole.

Yet, only one state--Tennessee--enacted contract parole in 1979, making a total of twelve states where such programs are legislatively authorized.

Parole Guidelines. New parole regulations establishing definite parole release ranges and dates have been issued by parole boards, either anticipating or responding to criticisms of their decision-making policies, practices, and procedures and as a means of deflating legislative determinate sentencing initiatives. Florida's action in 1978 represents only the second state to implement a parole guidelines system statutorily. Although no other states have yet followed Florida and Oregon's lead, it is anticipated that either legislative authorization of parole guidelines systems or implementation of judicial sentencing guidelines will become the dominant forms of structuring and reducing discretion. Legislative authorization of parole guidelines represents probably the only approach of the various sentencing reform methods for continuing parole boards as viable actors in the sentencing process.

Minimum Parole Eligibility Dates. Although the motivation differs from contract parole and parole guidelines, legislation revising minimum parole eligibility dates also impacts upon parole release practices within an indeterminate sentencing system. In most cases, these changes are intended to make prisoners serve longer terms before they are eligible for parole and, as such, represent another "get

tough" approach toward crime by state legislatures. Arizona, Kansas, Maine, Montana, Nevada, North Carolina, South Dakota, and Tennessee have passed such legislation.

Due Process Protections in Parole Proceedings

In the years since Morrissey, most states have moved to comply with that ruling and other court mandates governing parole revocation proceedings and parole hearings through revisions in administrative rules, regulations, policies, and procedures. Moreover, some states have gone beyond these actions and given certain due process protections the force of statutory law.

During the 1979 session, five states enacted legislation either requiring specified due process protections for parolees during parole revocation proceedings or tightening existing requirements in this area: Indiana, Kansas, Nevada, Pennsylvania, and South Dakota. Combining the action taken over the last three years, there are now at least eight states which provide statutory due process protections during parole revocation proceedings. Only Pennsylvania and Tennessee, however, enacted legislation in 1979 providing for the right to counsel during a parole hearing. This is not to imply that states are lax in allowing legal representation as it is more often covered by administrative policy rather than by statutory authorization.

Indiana passed a statute permitting inmates the right of access to and review of their criminal history files

prior to parole hearings. In the previous two sessions, Tennessee was the only state passing legislation of this type.

Organization and Funding of Parole Services

Although efforts to place limits on parole discretionary systems have dominated the legislative agenda, other important legislation has been enacted affecting parole. As part of a growing movement toward restructuring state government generally and corrections particularly, parole agencies have been the target of correctional reorganization activities. Missouri, North Carolina, Tennessee, and West Virginia are states which have most recently reorganized the parole component. For the most part, these reorganizations reflect the trend of recent years toward the unification of corrections. Unification efforts, however, have moved away from housing institutional and community-based services in human services agencies and more toward the public safety umbrella or independent corrections agency model.

While the trend at the state level has been to consolidate agencies into larger organizational units, a corresponding development has been the enactment of subsidy programs, which are designed to stimulate a greater array of community-based alternatives and, at the same time, create a more decentralized system for delivery of correctional services at the local level. Indiana, West Virginia, and Wisconsin

enacted subsidy legislation; twenty states have now authorized adult correctional subsidy programs.

Other Legislation

The survey also revealed other significant legislation not amenable to the general classification scheme of this paper. Oregon enacted legislation which provides minimum funds to parolees upon release from institutions. A new law in North Carolina requires that a parolee whose parole was revoked can be recommitted only for the unserved portion of his/her maximum term.

Utah (HB 220) expanded the membership of the Board of Pardons from three to five members. This legislation also requires a majority of the full board to adopt any rule, regulation, or policy of the board.

For serious offenders, Indiana requires that parole extend to the end of the determinate sentence, unless an earlier release is granted.

Connecticut established a commission to study sentencing guidelines and the factors to be considered in establishing guidelines.

In Louisiana, restitution may now be a condition of probation and parole. Also, the Louisiana Legislature passed legislation providing that inmates convicted of serious crimes cannot be released on furlough.

ATTACHMENT A

A NATIONAL SURVEY

OF PAROLE RELATED LEGISLATION:

Enacted or Proposed During
the 1979 Legislative Session

Please complete and return as soon as possible to:

Michael Kannensohn,
Special Assistant
Council of State Governments
P.O. Box 11910
Lexington, KY 40578

Please indicate by checking the appropriate blanks whether legislation in the following areas has been enacted. Where further information about the substance of the legislation is requested, please also check the appropriate blank, or otherwise complete as instructed. When returning this questionnaire, please enclose any legislation noted below.

1. Mandatory Sentencing (legislation which requires a sentence of imprisonment and prohibits imposition of probation or release on parole).

   Introduced_____ Enacted_____

2. Determinate Sentencing (also known as presumptive) (allows sentences of probation but eliminates parole releasing authority).

   Introduced_____ Enacted_____

If enacted, give citation_____

and year of enactment_____.

If either introduced or enacted, does the legislation provide for a period of parole supervision for offenders?

Yes_____ No_____

If yes, what is the period of parole supervision?

3. Legislation establishing a Contract Parole Program

Introduced_____ Enacted_____

If enacted, give citation_____

and year of enactment_____.

4. Legislation affording the right of due process before parole revocation actions (i.e., not function, hearing, representation, etc.).

Introduced_____ Enacted_____

If enacted, give citation_____

and year of enactment_____.

5. Legislation changing the method of computing good time reductions

Introduced_____ Enacted_____

If enacted, give citation_____

and year of enactment_____.

6. Legislation reorganizing parole services

Introduced_____ Enacted_____

If enacted, give citation_____

and year of enactment_____.

7. Legislation establishing or changing minimum parole eligibility dates for inmates

Introduced_____ Enacted_____

If enacted, give citation_____

and year of enactment_____.

8. Legislation authorizing state subsidies to community-based correctional programs

Introduced_____ Enacted_____

If enacted, give citation_____

and year of enactment_____.

If enacted, can subsidies be used to support programs for parolees?

Yes_____ No_____

9. Legislation providing right to counsel for inmates at their Parole Board interview

Introduced_____ Enacted_____

If enacted, give citation_____

and year of enactment_____.

10. Legislation enabling prisoner access to their criminal files prior to the parole hearing

Introduced_____ Enacted_____

If enacted, give citation_____

and year of enactment_____.

11. Please list any other enacted parole related legislation, the statutory citation, and a brief description of the legislation:

Name_____

Title_____

State_____

Agency_____

Telephone_____

ATTACHMENT B

LEGISLATIVE UPDATE

STATE	Mandatory Sentencing Drug	Repeat	Violent	Determ. Sentencing Pre-sump.	Det. Disc.	Guide-lines	Right of due Process	Changing Good Time Computation	Reorg. Parole Serv.	Min. Pa-role Elig. Dates	State Sub-sidies	Right to Counsel	Prisoner Access to Files	Contract Parole
Alabama														
Alaska														
Arizona			X							X	✓			
Arkansas			X											
California	X		X					X						
Colorado														
Connecticut	✓	✓	✓					✓				✓		✓
Delaware														
Florida	X								X					
Georgia														
Hawaii														
Idaho			X											
Illinois			X											
Indiana							X		X		X		X	
Iowa		X	X											
Kansas			X				X			X				
Kentucky														
Louisiana	X		X					✓			✓			
Maine		X								X				
Maryland														
Massachusetts	✓	✓	✓	✓			✓	✓		✓				
Michigan			✓					X						
Minnesota														
Mississippi														
Missouri									X	**				

KEY:

X Enactment

✓ Introduction

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ATTACHMENT B

(continued)

STATE	Mandatory Sentencing Drug	Repeat	Violent	Determ. Sentencing Pre-sump.	Det. Disc.	Guide-lines	Right of due Process	Changing Good Time Computation	Reorg. Parole Serv.	Min. Parole Elig. Dates	State Sub-sidies	Right to Counsel	Prisoner Access to Files	Contract Parole
Montana		X	X	✓					✓	X				
Nebraska														
Nevada			X*				X		X	X				
New Hampshire	✓							X						
New Jersey	✓	✓	✓	X			✓	✓	✓	✓				
New Mexico		X	X	X										
New York		✓	✓	✓				✓				✓		
North Carolina			X	X				X	X	X				
North Dakota		✓	✓											
Ohio	✓	X	X											
Oklahoma		✓												
Oregon	✓		X✓				✓	✓	X		X			
Pennsylvania							X	X				X		
Rhode Island														
South Carolina			✓											
South Dakota							X			X				
Tennessee					X				X	X		X		
Texas		✓	✓											
Utah														
Vermont	✓		✓											
Virginia														
Washington						✓		✓	✓	✓	✓			
West Virginia		X						X			X			
Wisconsin	✓			✓					✓	✓	X			
Wyoming														

KEY:

* (Resolution amendment)

X Enactment

✓ Introduction

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