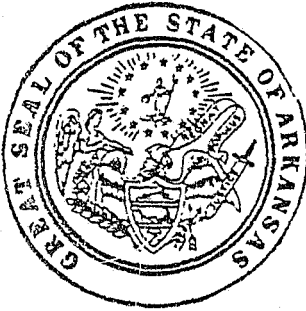


69902



STATE OF ARKANSAS
LEGISLATIVE COUNCIL
315 STATE CAPITOL
LITTLE ROCK
72201

RECEIVED

AUG 4 1978

ACQUISITIONS

SURVEY OF ARKANSAS' CRIMINAL SENTENCING LAW
AND RECENT ENACTMENTS OF OTHER STATES

A REPORT PUBLISHED
BY

THE BUREAU OF LEGISLATIVE RESEARCH

STAFF REPORT 78-21

April 25, 1978

69902

1
2
3
4 JOINT INTERIM COMMITTEE ON JUDICIARY
5
6 OF THE
7 ARKANSAS GENERAL ASSEMBLY
8 1977/78 Biennium
9
10

11 SENATE MEMBERS

12 Senator Max Howell, Chairman
13
14 Senator John F. Gibson, V. Chmn.
15 Senator Nick Wilson
16 Senator Bill Walmsley
17 Senator Harold King
18 Senator Larry Douglas
19 Senator Ralph Patterson
20
21
22
23
24
25
26
27

HOUSE MEMBERS

Representative James L. Shaver, Jr.,
Chairman
Representative N. B. Murphy, V. Chmn.
Representative Thomas E. Sparks
Representative J. Gayle Windsor, Jr.
Representative W. E. Beaumont, Jr.
Representative Donald L. Corbin
Representative Art A. Givens
Representative Clayton N. Little
Representative Bobby L. Glover
Representative Henry J. Osterloh
Representative Michael K. Wilson
Representative Larry S. Patterson
Representative Carolyn Pollan
Representative Joe Peacock
Representative Larry Mahan
Representative Grover Richardson
Representative Pat Flanagan
Representative William L. Clark
Representative Carl E. Rose
Representative Richard Barclay

28
29 Prepared By

30
31 LEGAL SECTION

32
33 THE BUREAU OF LEGISLATIVE RESEARCH
34
35
36

1 Interim Study Proposal 77-106 by Representative Carolyn Pollan requests
2 the Joint Interim Committee on Judiciary to

3 ...conduct a study of the feasibility and desirability of
4 replacing our present criminal indeterminate sentencing law
5 and the parole law with a law providing for determinate
6 sentencing resulting in a flat time sentence with good time
7 credit but no parole.

8 SCOPE OF STUDY

9 This report discusses the current Arkansas statutory law pertaining to
10 sentencing, imprisonment and parole of convicted felons. Arizona, California,
11 Indiana and South Dakota have recently enacted legislation designed to equalize
12 criminal sentences for like crimes within their states. The basic provisions
13 of these acts are summarized in this report.

14 ARKANSAS LAW

15 The Arkansas Criminal Code (Act 280 of 1975, as amended) classifies
16 felonies as Capital Felony Murder, Class A, Class B, Class C, Class D and
17 Unclassified. The penalty for Capital Felony Murder is death or life
18 imprisonment without parole. The permissible term of imprisonment for a
19 Class A felony is not less than five (5) years nor more than fifty (50) years,
20 or life; for a Class B felony not less than three (3) years nor more than twenty
21 (20) years; for a Class C felony not less than two (2) years nor more than ten
22 (10) years; for a Class D felony not exceeding five (5) years; and with regard
23 to an unclassified felony, whatever penalty is specified in the statute
24 defining the felony.

25 Section 1 of Act 228 of 1953, as amended, and Section 1001 of Act 280
26 of 1975 both provide for increasing the term of imprisonment for habitual
27 offenders.

28 Section 1 of Act 78 of 1969, as amended, provides (in the discretion of
29 the court) an additional imprisonment not to exceed fifteen (15) years when
30 a person convicted of a felony employed a firearm in the commission of the
31 felony or escape from such felony.

32 Except for persons previously convicted of two or more felonies, and
33
34
35
36

1 persons convicted of capital murder, 1st degree murder, 2nd degree murder,
2 1st degree rape, kidnapping or aggravated robbery, the court has the power to
3 suspend the imposition of imprisonment. Such authority was granted by
4 Section 1 of Act 158 of 1945, Section 1 of Act 818 of 1973, Section 4 of Act
5 378 of 1975, as amended, and Section 1201 of Act 280 of 1975, as amended. As
6 an alternative to imprisonment, the court may put the offender on probation
7 or divert the offender to an alternative service program. Once an offender is
8 in the custody of the Department of Correction, the actual length of imprison-
9 ment, as opposed to the term of imprisonment contained in the sentence,
10 depends on several factors. Article 6, Section 18 of the Arkansas Constitu-
11 tion empowers the Governor to grant pardons, reprieves and commutations of
12 sentences. Therefore, the Governor can reduce the sentence to any term of
13 years or pardon an offender and thereby grant immediate release from imprison-
14 ment. The length of imprisonment will depend upon the amount of meritorious
15 good time earned by the inmate, in that Section 2 of Act 510 of 1971 provides
16 that not only is meritorious good time used in computing parole eligibility
17 but it also reduces the term of imprisonment. The Board of Correction is
18 given the authority to promulgate rules and regulations pertaining to the
19 award of meritorious good time within the statutory maximum of thirty (30)
20 days good time for each month served in an institution maintained by the
21 Department of Correction.

22 The length of imprisonment of an inmate in an Arkansas institution
23 maintained by the Department of Correction will also depend on the parole
24 eligibility of the inmate. Act 93 of 1977 (applicable to persons who
25 commit felonies after April 1, 1977) classifies inmates
26 as 1st, 2nd, 3rd and 4th offenders, and provides a parole eligibility formula
27 of each classification of inmate. Under this Act, any first offender under
28 the age of twenty-one (21) is eligible for parole at any time, unless a
29 minimum time to be served is imposed by the sentencing court. Such minimum
30 time to be no more than one-third (1/3) of the total sentence. In the event
31 such first offender is sentenced to a minimum time, he is eligible for
32 parole after serving the minimum time with credit for good time allowances.
33 A first offender over twenty-one (21) years of age is eligible for parole
34 after serving one-third (1/3) of his sentence with credit for good time,
35 unless such first offender used a deadly weapon in commission of the crime,
36 in which case he would be eligible for parole after serving one-half (1/2) of

1 his sentence with good time credit. A third offender would be eligible for
2 parole after serving three-fourths (3/4) of his sentence with good time credit,
3 and persons imprisoned for the fourth or subsequent time are not eligible for
4 parole.

8 ARIZONA

9 The Arizona Revised Criminal Code will go into effect October 11, 1978
10 [Chapter 142 of the Arizona Laws of 1977]. Under the new Code there are
11 six classifications of felonies. The penalty for the Class 1 felony is life
12 imprisonment or death. The terms of imprisonment for the remaining felonies
13 are as follows: Class 2 felony is seven years imprisonment; Class 3 felony
14 is five years imprisonment; Class 4 felony is four years imprisonment; Class
15 5 felony is two years imprisonment; and Class 6 felony is one and one-half
16 years imprisonment. Due to aggravating circumstances enumerated by statute
17 the court may increase a Class 2 or 3 felony by as much as 100% or in
18 view of mitigating circumstances specified by statute, the court may reduce
19 the sentence for a Class 2 or 3 felony by as much as 25%. The court may
20 increase the sentence for a Class 4, 5 or 6 felony by as much as 25% due
21 to aggravating circumstances or decrease the sentence by as much as 50%
22 due to mitigating circumstances. The court must reflect in the record
23 its reasons for imposing the sentence. The Code makes provision for lengthening
24 the sentence of habitual offenders and persons using deadly weapons in the
25 commission of crimes. The Code makes provisions for suspension of sentence,
26 probation and parole. An inmate is eligible for parole (1) after serving
27 one-half of the sentence if the inmate has served more than one
28 year, or (2) if he has less than sixty days left before expiration of
29 his term, or whichever is less. The new law eliminates good time credit.

31 CALIFORNIA

32
33 The California Uniform Determinate Sentencing Act of 1976 [Chapter 1139
34 of California Laws of 1976] became effective July 1, 1977. This legislation
35 gives the judge three statutory sentence choices for each crime. For
36 instance, robbery is punishable by imprisonment for two (2) years, three (3)

1 years or four (4) years. The California Judicial Council is required by
2 the new act to promote uniformity in sentencing by the adoption of rules
3 providing criteria for the consideration of the trial judge at the time of
4 sentencing regarding the court's decision to (a) grant or deny probation;
5 (b) impose the lower or upper prison term; (c) impose concurrent or con-
6 secutive sentences; (d) consider an additional sentence for prior prison
7 terms; or (e) impose an additional sentence for being armed with a deadly
8 weapon, using a firearm, or excessive taking or damaging, or the infliction
9 of great bodily injury. Good time and participation credit is authorized not
10 to exceed one-half (1/2) of the sentence. An inmate is paroled after serving
11 his sentence less good time, parole supervision to last no longer than one
12 year and provision is made for waiving parole supervision altogether.

14 INDIANA

15 Indiana adopted a determinate sentencing law in the form of Public Law
16 148 of 1976, as amended, effective October 1, 1977. Felonies are classified
17 into five (5) categories. Murder is a separate category with a sentence of
18 forty (40) years with as much as twenty (20) additional years for aggravating
19 circumstances, or a decrease of as much as ten (10) years for mitigating
20 circumstances. Class A felonies carry a thirty (30) year prison term with
21 as much as twenty (20) additional years for aggravating circumstances or as
22 much as ten (10) years decrease for mitigating circumstances. Class B
23 felonies carry a ten (10) year sentence with as much as (10) additional years
24 imprisonment for aggravating circumstances and as much as four (4) years
25 decrease for mitigating circumstances. Class C felonies carry a five (5)
26 year term of imprisonment with as much as three (3) additional years impri-
27 sonment for aggravating circumstances and as much as three (3) years decrease
28 for mitigating circumstances. Class D felonies carry a two (2) year term of
29 imprisonment with as much as two (2) additional years for aggravating
30 circumstances and no reduction for mitigating circumstances. Habitual
31 offenders are subject to an additional thirty (30) years imprisonment. The
32 judge has the discretion to suspend the sentence and parole is possible at
33 the end of the term less good time. Class 1 inmates receive meritorious
34 good time of one (1) day for each day served; Class 2 inmates receive
35 meritorious good time of one (1) day for each two (2) days imprisonment; and
36 Class 3 inmates receive no good time.

ADDENDUM

November 8, 1979

MODEL SENTENCING AND CORRECTIONS ACT

The Model Sentencing and Corrections Act drafted by the Uniform Law Commissioners and approved at the annual conference in 1978 was the result of several proposals from different individual groups and requests an abandonment of the traditional practice in sentencing. The traditional approach to sentencing is to tailor the sentence imposed in each case to the needs of the offender and of society. This approach, which until now has had universal acceptance, was the basis of recommendations by the National Advisory Commission on Criminal Justice Standards and Goals and the American Bar Association.

In the prefatory notes on the Model Sentencing and Corrections Act, it is noted that abandonment of the traditional practice in sentencing recognizes that individualized sentencing had failed and should be replaced by a system that provides a higher degree of equal treatment. The indeterminate sentence with parole was replaced with a flat, determinate sentence, and the discretion to select a particular sentence was severely restricted. Sentences were no longer to reflect the rehabilitative potential of the defendant, but rather to insure a punishment justly deserved for the offence committed.

The Act seeks to enhance the rehabilitative potential of correctional environments by authorizing a wide variety of programs and giving offenders a voice in and a greater incentive for their own self-improvement.

END