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Perspectives on Determinate Sentencing

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National Institute of Justice

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PERSPECTIVES ON DETERMINATE SENTENCING

A Selected Bibliography

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INTRODUCTION

During the past decade, there has been a significant shift in sentencing philosophy and practice in the United States. In the 1950's, rehabilitation of the criminal offender gained preeminence over retribution, deterrence, and incapacitation as the primary goal of criminal sentencing. Recently, however, many professionals have questioned the efficacy of rehabilitation and the fairness and effectiveness of the indeterminate sentence.

Since the late 1960's, there have been calls for restructuring sentencing procedures on several grounds: first, existing sentencing disparities are unfair; second, rehabilitation does not work; and third, harsher sentences may afford greater protection against rising crime rates.

Proposals for sentencing reform have come from various sources with an assortment of motivations and expectations. Most proponents base their arguments on the concepts of fairness, deterrence, incapacitation, and "just deserts." Advocates of more fairness in sentencing are now allied with supporters of tougher laws, harsher sentences, and more predictable punishment. "Same time for the same crime" is the slogan of those who seek greater equity by assuring that individuals with similar backgrounds and criminal histories receive comparable sentences. Many who decry seemingly overlenient sentencing and parole policies—especially for repeat offenders and those considered dangerous or violent—also rally under this banner.

The trend toward greater determinacy in the sentencing process has been apparent in both judicial and legislative sentencing reform efforts. While judicial initiatives have been directed toward structuring discretion with sentencing guidelines, legislative proposals have taken many forms, including mandatory and determinate sentencing statutes that abolish or sharply limit release decisions as a function of parole boards.

Determinate sentencing—which includes, among other approaches, "flat time" or "presumptive" sentencing—uses legislatively prescribed terms of imprisonment but retains judicial discretion to impose alternative sentences such as probation, community service, or fines. Under determinate sentencing strategies, judges can also increase or decrease penalties somewhat, with written justification. In another legislative approach, some States established sentencing commissions or panels with authority to develop sentencing guidelines for use by the judiciary.

Mandatory sentencing is often confused with determinate sentencing. In some States, mandatory sentencing eliminates both judicial and parole board discretion by requiring imprisonment for certain classes of offenses—usually violent, drug-related, or repeat offenses, or offenses involving specific types of weapons. In other States, the law establishes a mandatory minimum sentence, leaving some judicial discretion to set the maximum sentence and/or some parole board discretion to grant conditional release after the minimum term has been served.

The development and use of parole guidelines is another approach gaining popularity as a way of limiting and structuring discretion, and, at the same time, providing greater certainty and fairness in sentencing. Such guidelines are now used by paroling authorities in a number of States and have been implemented statutorily in two States.¹

¹ *A National Survey of Parole—Related Legislation Enacted During the 1979 Legislative Session*, Bureau of Justice Statistics, Washington, 1979.

The debate over reform measures for sentencing and release has produced far-reaching effects. One indication is the growing advocacy for greater determinacy in sentencing and release of juvenile offenders. Indeed, the sentencing debate in the United States has kindled controversy over sentencing objectives and practices in other nations as well.

The movement toward determinacy has broad implications for several aspects of criminal justice. Perhaps the most significant of these is its impact on correctional treatment and prison populations. For example, there might be an even greater rush to determinacy in sentencing if the economic implications didn't loom so large. The prospect of longer or harsher sentences could wreak havoc on State correctional systems, with more than half of the States currently under court order to reduce overcrowding and improve prison conditions. The cost of operating existing institutions exceeds \$4 billion annually.² A recent study found that another \$8-\$10 billion in construction costs alone would be needed to meet the minimum standard of 60 square feet per inmate, based on the 1978 State prison populations.³

By the end of the 1979 legislative sessions, 10 States had enacted some form of determinate sentencing legislation; in addition, legislation was introduced but not passed in 4 other States.⁴ Two states have enacted legislation that mandates sentencing guidelines, and 17 States passed one or more mandatory sentencing bills in 1979, bringing the total number of States with mandatory sentencing laws for selected categories of offenses to 27.

The actual experience with determinate sentencing and the abolition of parole is relatively new. Maine enacted the first legislation in this area in 1976. Now, with the publication of the 5-volume *American Prisons and Jails*, the first indications of the correctional impacts can be assessed. *Volume II: Population Trends and Projections* of this massive report includes State-by-State projections. *Volume IV: Supplemental Report—Case Studies of New Legislation Governing Sentencing and Release* examines the impact of revisions in sentencing and release policies on inmate population flows, including case studies of two determinate sentencing statutes, a mandatory sentencing law, and parole release guidelines. The citations for these five volumes may be found in the section *American Prisons and Jails—A National Survey* immediately following this introduction.

Periodic reports on the size and nature of imprisoned and released populations are published by the Bureau of Justice Statistics based on data collected by the Bureau of the Census and the National Council on Crime and Delinquency. Eventually, these two reports—*Parole in the U. S.* and *Prisoners in State and Federal Institutions*—will yield valuable information about the impact of sentencing reform on corrections.

Because experience with determinate sentencing is still so limited, it is too early to conclude definitively what the ultimate effects will be on various segments of the criminal justice process. This bibliography has been compiled to review the early experience and provide some background and insight into the impact of determinacy on corrections and other components of criminal justice systems.

The citations have been arranged in the following chapters for ease of reference. Because there is considerable overlap between chapters, readers are advised to review all sections for citations relevant to their interests.

Chapter 1—The Issues. Arguments for and against determinate sentencing, including population projections and attendant problems.

Chapter 2—Legislation. Descriptions and discussions of determinate sentencing legislation.

² Testimony of Anthony Trivizano before the U. S. Attorney General's Task Force on Violent Crime (cited in *Corrections Digest*, February 27, 1981).

³ *American Prisons and Jails—Volume 1*, National Institute of Justice, Washington, 1980. Page 119.

⁴ *A National Survey of Parole-Related Legislation Enacted During the 1979 Session*.

Chapter 3—Impact on Corrections. Reports, analyses, and descriptions of the effect of sentencing reforms—both actual and projected—on specific State correctional systems.

Chapter 4—Effect on Inmates. How determinate sentencing affects offenders: inmate attitudes, studies of career criminals, the incapacitation effect.

Chapter 5—Parole and Determinate Sentencing. Relationship between determinate sentencing and proposals for abolishing parole.

Chapter 6—Determinate Sentencing in Juvenile Justice. Discussions about the move toward determinacy for juvenile offenders.

Chapter 7—International Perspectives. Views from Australia and Canada about sentencing reforms in the United States.

Information about how to obtain the documents cited may be found on the inside back cover.

AMERICAN PRISONS AND JAILS— A NATIONAL SURVEY

J. MULLEN, K. CARLSON, and B. SMITH. AMERICAN PRISONS AND JAILS, VOLUME 1 — SUMMARY AND POLICY IMPLICATIONS OF A NATIONAL SURVEY. ABT ASSOCIATES, INC., CAMBRIDGE, MA 02138. 171 p. 1980. **NCJ-75752**

THIS VOLUME SUMMARIZES THE MAJOR FINDINGS OF A NATIONAL SURVEY OF AMERICAN PRISONS AND JAILS AND DRAWS IMPLICATIONS FOR CORRECTIONS POLICY. THE SURVEY WAS MANDATED TO DETERMINE WHETHER THE NATION'S FEDERAL, STATE, AND LOCAL CORRECTIONS FACILITIES WERE ADEQUATE TO MEET THE NEEDS OF THEIR EXPANDING PRISON POPULATIONS; WHAT COULD BE EXPECTED ABOUT THE SIZE OF THE FUTURE PRISON POPULATION; AND HOW VARIOUS PROPOSALS FOR MORE DETERMINATE SENTENCING STRUCTURES MIGHT AFFECT THE USE OF IMPRISONMENT AND THE NEED FOR ADDITIONAL CORRECTIONAL RESOURCES. TO PROVIDE THE CONTEXT FOR THE SELECTION OF MEASURES TO DETERMINE THE ADEQUACY OF PRISON HOUSING, THE VOLUME PROVIDES A BRIEF PERSPECTIVE ON THE ROLE OF JUDICIAL, EXECUTIVE, AND PROFESSIONAL AGENCIES IN DEVELOPING STANDARDS OF FACILITY OPERATIONS. IT INTRODUCES THE DECISION TO FOCUS ON STANDARDS THAT WOULD ASSIST IN QUANTIFYING THE EXTENT OF CROWDING AMONG THE NATION'S PRISONS AND SUGGESTS THAT SIGNIFICANT CHANGES SHOULD BE MADE IN CONFINEMENT POLICIES IN MANY STATES. IN ADDITION, THE PROJECTION MODELS SUMMARIZED ATTEMPTS TO DESCRIBE THE WAYS IN WHICH ACTORS THROUGHOUT THE CRIMINAL JUSTICE SYSTEM NOW BEHAVE AND THE FUTURE CONSEQUENCES FOR PRISONS AND JAILS IF THEY CONTINUE TO FOLLOW THE PATTERNS ESTABLISHED IN THE 1970's. THE LIMITED ANALYSES SUMMARIZED ON THE IMPACT OF MANDATORY SENTENCING LAWS AND PRACTICES IN SEVERAL STATES SUGGEST THAT THE DYNAMICS OF POPULATION FLOW MAY HAVE BEEN ALTERED BUT THAT AVERAGE DAILY POPULATIONS HAVE NOT DEPARTED SIGNIFICANTLY FROM THE TRENDS OBSERVED PRIOR TO THE STATUTORY CHANGES. FINALLY, THE VOLUME DISCUSSES SOME OF THE POLICY OPTIONS COMMONLY CONSIDERED IN FEDERAL, STATE, AND LOCAL EFFORTS TO REMEDY THE CROWDED CONDITIONS THE SURVEY FOUND. AMONG THE RECOMMENDATIONS OFFERED IS THE SUGGESTION THAT LEGISLATURES ADOPT STANDARDS DEFINING THE MINIMUM LIVING SPACE AND CONDITIONS TO BE PROVIDED EACH PRISONER. CHAPTER NOTES, TABLES, GRAPHS, DIAGRAMS, AND APPENDIXES WITH SUPPORTING DATA ARE INCLUDED.

Sponsoring Agency: US DEPARTMENT OF JUSTICE, NATIONAL INSTITUTE OF JUSTICE, 633 INDIANA AVENUE NW, WASHINGTON, DC 20531.

Availability: GPO Stock Order No. 027-000-01085-7; National Criminal Justice Reference Service MICROFICHE PROGRAM.

K. CARLSON, R. EVANS, and J. FLANAGAN. AMERICAN PRISONS AND JAILS, VOLUME 2 — POPULATION TRENDS AND PROJECTIONS. ABT ASSOCIATES, INC., CAMBRIDGE, MA 02138. 185 p. 1980. **NCJ-75753**

AS PART OF A LARGER STUDY OF AMERICAN PRISONS AND JAILS, THIS VOLUME EXAMINES TRENDS AND PROJECTIONS WITH RESPECT TO THE POPULATION OF FEDERAL, STATE, AND LOCAL CORRECTIONS FACILITIES. STUDY DATA WERE GATHERED FROM THE NATIONAL PRISONER STATISTICS, THE NATIONAL JAIL CENSUS, AND OTHER SOURCES. THE VOLUME REVIEWS THE RECENT HISTORY OF INCARCERATION, TRACING SUCCESSIVE PERIODS OF GROWTH AND DECLINE WHICH MARKED THE LAST 50 YEARS OF STATE PRISON POPULATIONS THAT CULMINATED IN THE ERA OF RAPID GROWTH IN THE 1970's. REGIONAL COMPONENTS OF THIS TREND ARE PRESENTED SHOWING THE DOMINANT ROLE PLAYED BY SOUTHERN PRISON SYSTEMS IN ACCELERATING THE OVERALL GROWTH OF PRISON POPULATIONS. SHIFTS IN THE DEMOGRAPHIC COMPOSITION OF THE INMATE POPULATION ARE TRACED, AND THIS POPULATION'S RELATIONSHIP TO THE CIVILIAN POPULATION IS BRIEFLY EXAMINED. IN REVIEWING PRISON POPULATION PROJECTION METHODS, THE VOLUME DISCUSSES LEADING INDICATORS OF FUTURE TRENDS (CRIME RATES, PRESENT PRISON POPULATION CHARACTERISTICS, PRISON FACILITY CAPACITY, UNEMPLOYMENT RATES) AS WELL AS CHANGES IN CRIMINAL JUSTICE POLICY THAT CAN INTERFERE WITH THE OUTCOME VALIDITY OF TREND ESTIMATES. THE VOLUME PRESENTS THREE SERIES OF NUMERICAL PROJECTIONS FOR YEARS UP TO 1983, EACH CORRESPONDING TO A DIFFERENT SET OF ASSUMPTIONS: (1) AN EQUILIBRIUM EXISTS BETWEEN COSTS OF IMPRISONMENT AND THE GAINS EXPECTED FROM FURTHER INCREASES IN INCARCERATION AND PRISON CAPACITY WILL REMAIN UNCHANGED OVER THE NEXT 5 YEARS; (2) THE FUTURE DISCREPANCY BETWEEN RATES OF PRISONER INTAKE AND RELEASE WILL REMAIN CONSTANT; AND (3) INTAKE WILL CONTINUE AT CURRENT RATES AND RELEASES WILL LAG BEHIND

INTAKE BY A SPECIFIED AMOUNT. THE POPULATION PROJECTIONS GIVEN CAN HELP POLICYMAKERS GAIN A FULLER APPRECIATION OF THE FORCES WHICH DETERMINE CORRECTIONAL POPULATIONS, AS WELL AS AN UNDERSTANDING OF THE POINTS AT WHICH THOSE FORCES ARE EXERTED. THEY CAN ALSO GIVE THE POLICYMAKER A BETTER SENSE OF THE LIKELY RANGES WITHIN WHICH THE POPULATIONS CAN BE EXPECTED TO MOVE. STATE AND LOCAL USE OF THESE PROJECTIONS ARE DISCUSSED. CHAPTER NOTES, GRAPHS, CHARTS, AND TABULAR DATA ARE SUPPLIED, AND APPENDICES PRESENT SUPPORTING DATA, STATE-BY-STATE PROJECTION RESULTS, PROJECTION COMPUTATION METHODS, SUMMARIES OF SELECTED STATE AND LOCAL PROJECTION REPORTS, AND A DISCUSSION AND DATA ON THE RELATIONSHIP BETWEEN PRISON POPULATIONS AND PRISON CAPACITIES.

Sponsoring Agency: US DEPARTMENT OF JUSTICE, NATIONAL INSTITUTE OF JUSTICE, 633 INDIANA AVENUE NW, WASHINGTON, DC 20531.

Availability: GPO Stock Order No. 027-000-01086-5; National Criminal Justice Reference Service MICROFICHE PROGRAM.

J. MULLEN and B. SMITH. AMERICAN PRISONS AND JAILS, VOLUME 3—CONDITIONS AND COSTS OF CONFINEMENT. ABT ASSOCIATES, INC., CAMBRIDGE, MA 02138. 370 p. 1980.

NCJ-75754

PART OF A NATIONAL SURVEY OF AMERICAN PRISONS AND JAILS, THIS VOLUME DISCUSSES THE PHYSICAL CONDITIONS AND COSTS OF THE INSTITUTIONS SURVEYED, INCLUDING AN ASSESSMENT OF INSTITUTIONAL CAPACITIES BASED ON THE APPLICATIONS OF STANDARDS PROMULGATED BY STANDARD-SETTING GROUPS. THE SURVEY WAS CONFINED TO ADULT CORRECTIONAL FACILITIES. SURVEY INSTRUMENTS WERE COMPLETED BY 521 STATE AND 38 FEDERAL FACILITIES, AND SITE VISITS WERE CONDUCTED AT 24 STATE, 24 LOCAL, 2 FEDERAL, AND 2 COMMUNITY-BASED PRERELEASE FACILITIES. THE VOLUME PROVIDES A BASIC DESCRIPTION OF THE CORRECTIONAL FACILITIES IN THE SURVEY, REPORTING INSTITUTIONAL CHARACTERISTICS AS WELL AS THE CHARACTERISTICS OF INMATES HOUSED IN 1978. ALSO INCLUDED IS AN OVERVIEW OF COURT ORDERS AND INMATE LITIGATIONS (PENDING OR EFFECTIVE ON MARCH 31, 1978) THAT HAVE ATTEMPTED TO MEDIATE OR QUESTION THE CONDITIONS OF CONFINEMENT AND A COMPARATIVE ACCOUNT OF THE CAPACITY OF PRISONS AND JAILS USING A UNIFORM STANDARD OF MEASURED SPACE. THE REPORT DESCRIBES THE DISTRIBUTION OF PERSONS WITHIN CONFINEMENT UNITS, THUS PRESENTING A NATIONAL PICTURE OF PRISON DENSITY, INMATE PRIVACY, FREEDOM OF MOVEMENT, AND OTHER MEASURES THAT ADDRESS THE ISSUE OF CROWDING. AN EXAMINATION OF STAFFING LEVELS BEGINS WITH A DISCUSSION OF HISTORICAL STAFF POPULATION TRENDS AND THEN INVESTIGATES INMATE-TO-STAFF RATIOS BY JURISDICTION AND REGION, WITH AN EMPHASIS ON CUSTODIAL AND SERVICES PERSONNEL. TO ASSIST THE CORRECTIONS PLANNER OR PRACTITIONER IN ASSESSING THE FISCAL IMPLICATIONS OF PROPOSED STANDARDS, THE VOLUME PROVIDES A COMPARATIVE REVIEW OF THE OPERATING AND CAPITAL COSTS OF PRISONS AND JAILS. TABULAR DATA, GRAPHS, DIAGRAMS, AND CHAPTER NOTES ARE SUPPLIED. APPENDICES PRESENT SUPPLEMENTARY DATA ON FACILITY CHARACTERISTICS; LITIGATION ISSUES; CELL SIZE, OCCUPANCY, AND DENSITY; INMATE/CUSTODIAL, INMATE/SERVICE STAFF RATIOS IN LOCAL JURISDICTIONS; AND OPERATING COSTS.

Sponsoring Agency: US DEPARTMENT OF JUSTICE, NATIONAL INSTITUTE OF JUSTICE, 633 INDIANA AVENUE NW, WASHINGTON, DC 20531.

Availability: GPO Stock Order No. 027-000-01087-3; National Criminal Justice Reference Service MICROFICHE PROGRAM.

R. KU. AMERICAN PRISONS AND JAILS, VOLUME 4, SUPPLEMENTAL REPORT—CASE STUDIES OF NEW LEGISLATION GOVERNING SENTENCING AND RELEASE. ABT ASSOCIATES, INC., CAMBRIDGE, MA 02138. 278 p. 1980.

NCJ-75755

AS PART OF A LARGER STUDY TO SURVEY EXISTING AND FUTURE NEEDS OF STATE CORRECTIONAL FACILITIES, THIS VOLUME PRESENTS FIVE CASE STUDIES OF RECENTLY AMENDED LAWS GOVERNING SENTENCING AND RELEASE PRACTICES. THE CASE STUDIES EXPLORE THE DEGREE TO WHICH THE CHANGES IN SENTENCING AND RELEASE POLICIES HAVE AFFECTED THE SIZE OF PRISON AND JAIL POPULATIONS. THE CASE STUDIES PRESENT THE BACKGROUND AND INTENT, KEY STATUTORY PROVISIONS, AND IMPACT OF THE 1975 FIREARM LAW IN FLORIDA, THE UNIFORM DETERMINATE SENTENCING ACT IN CALIFORNIA, PUBLIC LAW 148 IN INDIANA, MINNESOTA'S COMMUNITY CORRECTIONS ACT, AND HOUSE BILL 2013 IN OREGON. FLORIDA'S MANDATORY MINIMUM 3-YEAR PRISON TERM FOR CERTAIN FELONY CONVICTIONS INVOLVING FIREARMS SOUGHT A GREATER DETERRENT EFFECT THROUGH STIFFER PENALTIES AND GREATER CERTAINTY OF THEIR IMPOSITION. ANALYSIS OF THE LAW'S IMPACT FOUND THAT THE LARGER PERCENTAGE OF ARMED ROBBERS SERVING 3 YEARS OR MORE AFTER THE LAW WENT INTO EFFECT MAY RESULT IN A LONG-TERM GRADUAL INCREASE IN THE STATE'S PRISON POPULATION, BEGINNING IN MID-1978. THE RESULTS OF CALIFORNIA'S DETERMINATE SENTENCING LAW GENERALLY VIOLATED THE PRELAW EXPECTATIONS OF NO CHANGE IN ADMISSION VOLUME AND TYPICAL LENGTH OF STAY; IN THE 2 YEARS SINCE DETERMINATE SENTENCING WENT INTO EFFECT IN 1977, THE VOLUME OF NEWLY RECEIVED FELONS IS THE LARGEST IN THE HISTORY OF THE STATE, WITH SHORT-TERM PRISON POPULATION INCREASES AS A RESULT. THE FIRST 10-MONTHS' EXPERIENCE WITH THE NEW INDIANA CRIMINAL CODE, CONTAINING A NUMBER OF MANDATORY IMPRISONMENT PROVISIONS, FOUND NO INDICATION OF INCREASED PRISON ADMISSION VOLUMES. FURTHER EXPERIENCE IS NEEDED IN INDIANA TO ASSESS THE LAW'S IMPACT ON SENTENCING PRACTICES. MINNESOTA'S COMMUNITY CORRECTIONS ACT OF 1973, WHICH PROMOTED COMMUNITY-BASED ALTERNATIVES TO IMPRISONMENT, RESULTED IN DECLINING TRENDS AMONG PARTICIPATING COUNTIES IN THE PROBABILITY OF INCARCERATION FOR CONVICTED FELONS. FINALLY, THE OREGON LAW, MANDATING THE ESTABLISHMENT OF GUIDELINES TO BE USED BY THE PAROLE BOARD IN DETERMINING THE LENGTH OF IMPRISONMENT TIME BEFORE PAROLE RELEASE, RESULTED IN INCREASES IN THE PROPORTION OF THE PRISON POPULATION PAROLED EACH YEAR. AREAS REQUIRING FUTURE RESEARCH ARE RECOMMENDED, SUCH AS AN ANALYSIS OF THE EFFECTS OF CHANGING STATUTES ON POLICIES AND PRACTICES OF SPECIFIC AGENCIES IN RELATION TO OTHER FACTORS WHICH ARE BELIEVED TO AFFECT THESE AGENCIES' CONTRIBUTION TO THE CRIMINAL JUSTICE SYSTEM WORKLOAD. TABULAR DATA, GRAPHS, AND CHAPTER NOTES ARE INCLUDED, AND APPENDICES PRESENT AN OVERVIEW OF GOOD TIME PROVISIONS AND THE REFORM LAWS OF INDIANA, MINNESOTA, AND OREGON.

Sponsoring Agency: US DEPARTMENT OF JUSTICE, NATIONAL INSTITUTE OF JUSTICE, 633 INDIANA AVENUE NW, WASHINGTON, DC 20531.

Availability: GPO Stock Order No. 027-000-01088-1; National Criminal Justice Reference Service MICROFICHE PROGRAM.

W. DeJONG. AMERICAN PRISONS AND JAILS, VOLUME 5, SUPPLEMENTAL REPORT—ADULT PRE-RELEASE FACILITIES. ABT ASSOCIATES, INC., CAMBRIDGE, MA 02138. 136 p. 1980.

NCJ-75756

THIS SEGMENT OF A NATIONWIDE SURVEY OF ADULT CORRECTIONAL FACILITIES EXAMINED THE CONDITIONS AND COSTS OF COMMUNITY-BASED PRERELEASE CENTERS, THOSE CORRECTIONAL FACILITIES THAT HOLD THEIR RESIDENTS FOR LESS THAN 24 HOURS PER DAY. THE SURVEY ENCOMPASSED ALL PRERELEASE CENTERS HAVING SENTENCED RESIDENTS UNDER FEDERAL OR STATE JURISDICTION IN 1978, INCLUDING BOTH PUBLICLY AND PRIVATELY OPERATED FACILITIES. SPECIFICALLY, THE STUDY DETERMINED HOW MUCH SPACE WAS AVAILABLE TO HOUSE THE RESIDENTS ASSIGNED TO THESE FACILITIES BY APPLYING A UNIFORM, MINIMUM STANDARD OF 60 SQUARE FEET PER PERSON. IT ALSO INVESTIGATED NUMBERS OF STAFF AVAILABLE IN BOTH SERVICE AND CUSTODIAL CAPACITIES AND THE COSTS OF OPERATING THE FACILITIES. DATA WERE OBTAINED FROM 402 PRERELEASE CENTERS; TELEPHONE FOLLOWUP CALLS WERE MADE AFTER THE SURVEY INSTRUMENTS WERE RETURNED. RESULTS INDICATED THAT ONE-THIRD OF ALL RESIDENTS WERE PROVIDED WITH LESS SPACE THAN REQUIRED UNDER THE 60 SQUARE-FOOT MINIMUM; ONLY 45 PERCENT OF THE RESIDENTS LIVED IN UNITS THAT MET BOTH DENSITY AND PRIVACY STANDARDS (ONLY ONE OR TWO RESIDENTS PER UNIT). MOREOVER, ONLY 47 PERCENT OF THE SURVEYED FACILITIES, HOUSING JUST 23 PERCENT OF ALL

RESIDENTS, MET THE STANDARD CALLING FOR FACILITIES TO HOUSE NO MORE THAN 20 RESIDENTS. IN ADDITION, PRERELEASE FACILITIES IN THE SOUTH WERE LESS LIKELY TO MEET STANDARDS RELATED TO DENSITY AND PRIVACY THAN FACILITIES IN OTHER PARTS OF THE COUNTRY. THE MOST COMMON USE OF RESIDENTS FOR WORK AT THE FACILITIES WAS FOR CLERICAL AND MAINTENANCE WORK; 153 FACILITIES INDICATED THAT THEY HAD NO FULL-TIME GUARDS OR CORRECTIONAL OFFICERS, AND ONLY ONE-FOURTH OF THE PRERELEASE CENTERS INDICATED THEY USED VOLUNTEERS IN ANY CAPACITY. TOTAL OPERATING EXPENSES FOR FISCAL YEAR 1977 WERE REPORTED BY 327 OF THE 402 SURVEYED FACILITIES. THESE COST FIGURES RANGED FROM \$7,200 TO NEARLY \$3 MILLION, WITH A MEDIAN OF \$184,124. THE MEDIAN PER DIEM COST PER RESIDENT WAS ESTIMATED AT NEARLY \$19. THE SOUTH REPORTED THE LOWEST AVERAGE COSTS PER PERSON SERVED, WHILE THE HIGHEST FIGURES WERE CITED BY FEDERAL FACILITIES AND THOSE IN THE NORTH-EAST. TABULAR DATA, CHAPTER NOTES, AND GRAPHS ARE PROVIDED. THE APPENDICES PRESENT THE SURVEY INSTRUMENT AND ADDITIONAL DATA.

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Availability: GPO Stock Order No. 027-000-01089-0; National Criminal Justice Reference Service MICROFICHE PROGRAM.

PERSPECTIVES ON DETERMINATE SENTENCING

THE ISSUES

1. **G. ADKINS. PRISONS—WHAT'S GOING ON BEHIND THE WALLS?** SANGAMON STATE UNIVERSITY, SPRINGFIELD, IL 62708. *ILLINOIS ISSUES*, V 4, N 3 (MARCH 1978), P 7-11. **NCJ-50772**

OVERCROWDING IN ILLINOIS PRISONS, PRISON CONSTRUCTION AND/OR EXPANSION, CRIME DETERRENCE, AND IMPROVEMENT OF THE INMATE'S ENVIRONMENT ARE TOPICS COVERED IN THIS ARTICLE. STATE PRISONS IN ILLINOIS ARE OVERCROWDED, WITH AS MANY AS 10,000 CONVICTS HOUSED IN FACILITIES EQUIPPED TO HANDLE NO MORE THAN 7,500 PERSONS ACCORDING TO FEDERAL GOVERNMENT STANDARDS. ONLY ONE NEW PRISON HAS BEEN CONSTRUCTED IN THE PAST 40 YEARS, AND THREE FACILITIES AT LEAST 100 YEARS OLD ARE IN OPERATION. THE LEGISLATURE HAS APPROVED THE CONSTRUCTION OF TWO MEDIUM-SECURITY PRISONS DURING THE 1978-1979 PERIOD, AT A COST OF \$58 MILLION. THE PRISON POPULATION IS EXPECTED TO INCREASE SIGNIFICANTLY BY 1980, WITH UP TO 17,000 INMATES BY 1985. PRISON CONDITIONS VARY SUBSTANTIALLY, AND MANY FACILITIES HAVE INADEQUATE VENTILATION, LIGHTING, AND HEAT AND ARE INFESTED WITH INSECTS, RATS, AND MICE. A SENTENCING LAW PASSED IN 1978, KNOWN AS 'CLASS X,' ALLOWS OFFENDERS TO BE INCARCERATED FOR LONGER PERIODS OF TIME FOR CRIMES IN THIS CATEGORY. ARMED ROBBERY IS A CLASS X CRIME FOR WHICH OFFENDERS WILL BE IMPRISONED FOR AN AVERAGE OF 9 YEARS, AN INCREASE OF 5.2 YEARS OVER THE AVERAGE NUMBER OF YEARS THAT WERE SERVED FOR COMMITTING THAT CRIME. IT REMAINS TO BE SEEN WHETHER CLASS X WILL HAVE ANY IMPACT ON THE DETERRENCE OF CRIME IN ILLINOIS. THE TYPICAL INMATE IN THE ILLINOIS PRISON IS A BLACK MALE OF 27 YEARS. EVEN THOUGH BLACKS COMPRISE ONLY 13 PERCENT OF THE STATE'S TOTAL POPULATION, 58 PERCENT OF ALL PRISONERS ARE BLACK. ROBBERY IS THE MOST COMMON CRIME, WITH THE SECOND MOST COMMON OFFENSE BEING BURGLARY. FIGURES INDICATE THAT BLACKS ARE MORE LIKELY TO BE IMPRISONED FOR CRIMES OF VIOLENCE THAN WHITES WHO ARE TYPICALLY SENTENCED FOR PROPERTY CRIMES SUCH AS BURGLARY. ECONOMIC INEQUITIES UNDERLIE THE PROBLEM OF UNEQUAL SENTENCING FOR MINORITIES. PRIMARY ECONOMIC INEQUITIES INCLUDE UNEMPLOYMENT AND LACK OF EDUCATION. SOLUTIONS FOR IMPROVING PRISON LIFE APPEAR TO BE EXPENSIVE.

2. **B. S. ALPER and J. W. WEISS. MANDATORY SENTENCE—RECIPE FOR RETRIBUTION.** ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS, SUPREME COURT BUILDING, WASHINGTON, DC 20544. *FEDERAL PROBATION*, V 41, N 4 (DECEMBER 1977), P 15-20. **NCJ-47976**

MANDATORY SENTENCING AND OTHER REFLECTIONS OF A TREND TOWARD 'GET TOUGH' ATTITUDES ABOUT CRIME AND PUNISHMENT ARE CRITICIZED. THE PROPONENTS OF MANDATORY SENTENCING ARE CRITICIZED FOR FAILING TO CONSIDER THE SOCIAL AND ECONOMIC SITUATIONS THAT UNDERLIE THE CRIMES THEY SEEK TO DETER, FOR FAILING TO DIRECT THEIR PUNITIVE STRATEGIES TO WHITE COLLAR CRIMINALS AS WELL AS TO STREET CRIMINALS, FOR IGNORING THE COSTS INVOLVED IN STEPPED-UP ENFORCEMENT OF MANDATORY SENTENCES, AND FOR DISREGARDING HISTORICAL EVIDENCE OF THE CONSEQUENCES OF OVERCROWDING PRISONS. IT IS POINTED OUT THAT, AT THE SAME TIME PRISONS AND REHABILITATION ARE UNDER FIRE, PRESSURE IS MOUNTING TO BUILD MORE PRISONS AND TO SENTENCE MORE OFFENDERS TO PRISON FOR LONGER PERIODS OF TIME. THE CRUX OF THE CONFLICT BETWEEN THOSE WHO URGE FIXED MANDATORY SENTENCES AND THOSE WHO ARGUE FOR INDIVIDUALIZATION OF TREATMENT IN THE COURTS AND IN PRISONS IS SAID TO BE THE FALSE CLAIM BY THE FORMER THAT REHABILITATION HAS BEEN TRIED AND PROVEN A FAILURE. PROPONENTS OF MANDATORY SENTENCES ARE URGED TO DIRECT THEIR EFFORTS TO ALLEVIATING THE CONDITIONS THAT UNDERLIE MOST CRIMES AND TO IMPROVING PRISON CONDITIONS AND PROGRAMS. IT IS NOTED THAT A PHILOSOPHY THAT TREATS ALL CRIMES ALIKE, AS THOUGH ALL CRIMINALS WERE ALIKE, IS DEHUMANIZING AND HAS GRAVE IS DEHUMANIZING AND HAS GRAVE IMPLICATIONS FOR ALL OF SOCIETY.

Availability: National Criminal Justice Reference Service MICROFICHE PROGRAM.

3. **J. BENEDICT, I. PILLER, and J. FRIEDMAN. ANALYSIS OF RESPONSES TO THE NEW JERSEY CORRECTIONAL MASTER PLAN.** NEW JERSEY DEPARTMENT OF CORRECTIONS, P O BOX 7387, TRENTON, NJ 08628. 33 p. 1977. **NCJ-54181**

THE RESPONSES OF CITIZENS, EDUCATORS, COURT AND CORRECTIONS PERSONNEL, AND GOVERNMENT PLANNERS TO NEW JERSEY'S CORRECTIONAL MASTER PLAN ARE ANALYZED. IN MARCH 1977, NEW JERSEY INTRODUCED ITS COR-

RECTIONAL MASTER PLAN AT A 2-DAY STATEWIDE CONFERENCE AND ASKED THE 213 CONFERENCE PARTICIPANTS TO ASSESS THE PLAN. THE 145 CONFEREES WHO COMPLETED THE PLAN ASSESSMENT QUESTIONNAIRE ANSWERED QUESTIONS REGARDING THE ADEQUACY OF THE STATE'S EXISTING CORRECTIONAL POLICIES AND PRACTICES, THE CLARITY AND ACCEPTABILITY OF THE PLAN'S MAJOR RECOMMENDATIONS, AND THE FEASIBILITY OF IMPLEMENTING THE RECOMMENDATIONS. EMPHASIS WAS PLACED ON RECOMMENDATIONS RELATING TO SENTENCING AND PAROLE PHILOSOPHY AND POLICY (A MODIFIED 'JUST DESERTS' MODEL OF CORRECTIONS, USE OF FORMAL SENTENCING CRITERIA AND DETERMINATE SENTENCES, USE OF THE PRINCIPLE OF LEAST RESTRICTIVE DISPOSITION, REDUCTION OF PAROLE BOARD DISCRETION, REDUCTION OF RACIAL DISPARITY IN CORRECTIONS); A PLAN FOR INCREASING LOCAL PARTICIPATION IN CORRECTIONS; AND STATE BEDSPACE CONSTRUCTION TO ALLEVIATE PRISON OVERCROWDING. VIRTUALLY ALL OF THE CONFERENCE PARTICIPANTS EXPRESSED DISSATISFACTION WITH THE OVERALL DIRECTION OF THE MASTER PLAN. DESPITE THE FACT THAT THE PLAN REPRESENTS A MAJOR CHANGE FROM EXISTING POLICIES AND PRACTICES, THREE-FOURTHS OF THE RESPONDENTS FELT THAT IMPLEMENTATION WAS FEASIBLE. RESPONDENTS EXPRESSED SOME RESERVATIONS ABOUT RECOMMENDATIONS CONCERNING PAROLE DECISIONMAKING. SUPPORT FOR THE PLAN WAS STRONGER AMONG EDUCATORS, PLANNERS, STATE CORRECTIONS PERSONNEL, AND CITIZEN GROUPS THAN AMONG PROBATION, PAROLE, COURTS, AND COUNTY CORRECTIONS PERSONNEL. NEARLY ALL PARTICIPANTS FOUND THE PLAN CLEAR, ANTICIPATED ACCEPTANCE OF THE PLAN BY THE JUDICIARY, AND JUDGED THE RECOMMENDATIONS ADMINISTRATIVELY FEASIBLE. HOWEVER, SOME RESPONDENTS SAW DIFFICULTIES IN GAINING LEGISLATIVE AND PUBLIC ACCEPTANCE AND IN PROCURING THE FISCAL RESOURCES NEEDED FOR IMPLEMENTATION. SUPPORTING TABULAR DATA ARE INCLUDED. SEE NCJ-54180 FOR THE MASTER PLAN. AUTHOR ABSTRACT MODIFIED)

Availability: National Criminal Justice Reference Service MICRO-FICHE PROGRAM.

4. **L. A. BENNETT. DETERMINATE OR INDETERMINATE SENTENCING—THE CHANGING SCENE (FROM CRITICAL ISSUES IN CRIMINAL JUSTICE, 1979, BY R G IACOVETTA AND DAE H CHANG—SEE NCJ-63717).** CAROLINA ACADEMIC PRESS, 1003 CHAPEL HILL STREET, P O BOX 8791, DURHAM, NC 27707. 17 p. 1979. **NCJ-63739**
- ARGUMENTS FOR AND AGAINST INDETERMINATE SENTENCING ARE EXAMINED, THE HISTORY OF PRISON PHILOSOPHY IS GIVEN, AND A MIDDLE-GROUND APPROACH TO PUNISHMENT IS PRESENTED. INDETERMINATE SENTENCING ACCOMPANIED THE MEDICAL MODEL APPROACH TO CORRECTIONS AND DIAGNOSIS OF ROOTS OF JUVENILE DELINQUENCY. OFFENDERS WERE BELIEVED TO BE MALADJUSTED EMOTIONALLY AND CORRECTABLE THROUGH TREATMENT; THUS INDETERMINATE SENTENCES WERE PRESCRIBED TO ALLOW THE TREATMENT AS LONG AS WOULD BE NECESSARY. EVENTUALLY, THE FAIRNESS OF THIS TYPE OF SENTENCING WAS BROUGHT INTO QUESTION, PARTICULARLY AFTER THE IDEA OF REHABILITATION FELL INTO DISREPUTE AND THE PUBLIC BEGAN TO FEEL MORE AND MORE THAT THEY WERE NOT BEING PROPERLY PROTECTED—THAT DANGEROUS INMATES WERE BEING RELEASED WHEN THEY SHOULD NOT BE. WHAT IS ONLY BEGINNING TO BECOME CLEAR IS THAT PUNISHMENT SHOULD BE RECOGNIZED AS THE BASIC RATIONALE FOR INCARCERATION, BUT WITH THESE ACCOMPANYING GOALS: RETRIBUTION, DETERRENCE, REHABILITATION, AND VENGEANCE. THIS PLACES MULTIPLE DEMANDS ON CORRECTIONS. THERE ARE SEVERAL APPROACHES TO DETERMINATE SENTENCING, INCLUDING FLAT-TIME SENTENCING (CONSIDERED TOO INFLEXIBLE

BY SOME), DEFINITE SENTENCING FOR WHICH GUIDELINES WOULD BE SET, AND PRESUMPTIVE SENTENCING, SIMILAR TO DEFINITE SENTENCING. A MODIFIED PROCEDURE, RECOMMENDED HERE, WOULD INCORPORATE FEATURES OF THE DEFINITE SENTENCE APPROACH BUT WOULD ALSO RETAIN THE FLEXIBILITY OF THE INDETERMINATE SENTENCING SYSTEM. LEGISLATION WOULD BE REQUIRED TO PROVIDE THE PHILOSOPHICAL BASE FOR OPERATION PLUS REQUIRE THE PAROLE BOARD TO ADOPT REGULATIONS AND OPERATING PROCEDURES TO PLACE THAT PHILOSOPHY INTO OPERATION. WITHIN THIS FRAMEWORK, THE PAROLING AUTHORITY COULD OUTLINE SUGGESTED RULES AND REGULATIONS AND CONDUCT PUBLIC HEARINGS BEFORE ADOPTION OF ANY PROCEDURES. THE DETERMINATION OF THE SENTENCE WOULD OCCUR WITHIN A FEW WEEKS AFTER INDUCTION INTO THE PRISON SYSTEM. DISCUSSION QUESTIONS AND NOTES ARE PROVIDED.

5. **P. BIGMAN. DISCRETION, DETERMINATE SENTENCING AND THE ILLINOIS PRISONER REVIEW BOARD—A SHOTGUN WEDDING.** CHICAGO LAW ENFORCEMENT STUDY GROUP, 109 NORTH DEARBORN STREET, SUITE 303, CHICAGO, IL 60602. 70 p. 1979. **NCJ-63528**
- THE REPORT EXAMINES THE RESPONSIBILITIES OF THE ILLINOIS PRISONER REVIEW BOARD AND DISCUSSES EXECUTIVE CLEMENCY, ADULT PAROLE RELEASE, MANDATORY SUPERVISED RELEASE, PAROLE REVOCATION, AND OTHER ISSUES. THE ILLINOIS PRISONER REVIEW BOARD REPLACED THE ILLINOIS PAROLE AND PARDON BOARD WHEN ILLINOIS INSTITUTED DETERMINATE SENTENCING AND ABOLISHED PAROLE RELEASE IN 1978. AN INDEPENDENT STATE AGENCY, THE PRISONER REVIEW BOARD IS APPOINTED BY THE GOVERNOR WITH THE CONSENT OF THE STATE SENATE. BOARD MEMBERS, WHO SERVE FOR A 6-YEAR PERIOD, MUST HAVE AT LEAST 5 YEARS OF APPROPRIATE EXPERIENCE. THE BOARD HAS SEVERAL FUNCTIONS, INCLUDING AN INVESTIGATORY AND ADVISORY ROLE IN CLEMENCY PROCEEDINGS. IT ALSO HAS TWO MAJOR FUNCTIONS CONNECTED WITH PLACING PRISONERS ON MANDATORY SUPERVISED RELEASE: (1) PRISONERS SENTENCED TO AN INDETERMINATE SENTENCE CARRYING A MINIMUM TERM OF LESS THAN 20 YEARS UNDER THE OLD LAW ARE OFFERED THE OPTION OF ACCEPTING A DETERMINATE SENTENCE WITH A SET RELEASE DATE AND (2) THE BOARD SETS THE CONDITIONS OF MANDATORY SUPERVISED RELEASE. THE ABOLITION OF DISCRETIONARY PAROLE IS PREMISED ON A BELIEF THAT THE LENGTH OF A PRISONER'S INCARCERATION SHOULD BE BASED UPON THE NATURE OF THE OFFENSE COMMITTED AND SUBSEQUENT INSTITUTIONAL BEHAVIOR, AND NOT UPON A JUDGMENT THAT THE INDIVIDUAL IS 'READY' FOR RELEASE. RELEASE IS SEEN AS AN EARNED RIGHT RATHER THAN A GRANTED PRIVILEGE. MANDATORY SUPERVISED RELEASE IS ESSENTIALLY PAROLE SUPERVISION WITHOUT PAROLE RELEASE AND REPRESENTS AN ABRIDGMENT OF THE ORIGINAL INTENT OF DETERMINATE SENTENCING. PAROLE REVOCATION HEARINGS MAY RESULT FROM COMMISSION BY A PAROLEE OF EITHER A NEW CRIMINAL OFFENSE OR A TECHNICAL VIOLATION OF THE TERMS OF PAROLE. IN CASES INVOLVING A NEW OFFENSE, PAROLE IS ALMOST ALWAYS REVOKED, WHEREAS THE REVOCATION RATE FOR TECHNICAL VIOLATORS IS SUBSTANTIALLY LOWER (ABOUT 71 PERCENT). RECOMMENDATIONS FOR BOTH LONG-TERM AND INTERIM REFORMS ARE ENUMERATED FOR THE FOLLOWING AREAS: REVOCATION OF GOOD CONDUCT CREDITS AND GOOD TIME, MANDATORY SUPERVISED RELEASE AND DISCRETIONARY PAROLE RELEASE, INFORMATION FOR PRISONERS, STRUCTURE OF THE PRISONER REVIEW BOARD, AND THE FUTURE OF THE PRISONER REVIEW BOARD. CHARTS, FOOTNOTES, AND FIVE APPENDIXES (HISTORICAL PERSPECTIVE, BASIS FOR DENYING PAROLE, MEMORANDUM, CONDITIONS OF PAROLE OR MAN-

DATORY SUPERVISED RELEASE, AND MEANS OF EFFECTING RECOMMENDATIONS) ARE PROVIDED.

Availability: CHICAGO LAW ENFORCEMENT STUDY GROUP, 109 NORTH DEARBORN STREET, SUITE 303, CHICAGO, IL 60602.

6. **A. BLUMSTEIN. STATEMENT OF ALFRED BLUMSTEIN (FROM RESEARCH INTO CRIMINAL SENTENCING, 1978—SEE NCJ-62872).** US CONGRESS HOUSE COMMITTEE ON SCIENCE AND TECHNOLOGY, WASHINGTON, DC 20515. 17 p. 1978. **NCJ-62876**
- THE BACKGROUND, CONCEPTS, AND IMPACT OF SENTENCING REFORMS ARE DESCRIBED BY THE URBAN SYSTEMS INSTITUTE DIRECTOR AT CARNEGIE-MELLON UNIVERSITY; HE FAVORS SENTENCING COMMISSIONS OVER SENTENCING FORMULAS. AN OUTSIDER OBSERVING THE CRIMINAL JUSTICE SYSTEM IS STRUCK BY THE CONTRAST BETWEEN THE CAREFUL REGULATION IMPOSED ON THE TRIAL PROCESS AND THE ARBITRARINESS OF SENTENCING DECISIONS. PROPOSALS FOR SENTENCING REFORM ARE AFOOT AND CAN BE CLASSIFIED AS (1) THE MANDATORY MINIMUM SENTENCE LEGISLATIVELY MANDATED FOR SERIOUS OFFENSES, (2) PRESUMPTIVE SENTENCES WHICH PERMIT THE JUDGE TO INVOKE MITIGATING CIRCUMSTANCES TO JUSTIFY ALTERNATIVES TO IMPRISONMENT, AND (3) GUIDELINES DEVELOPED BY A SENTENCING COMMISSION. RESEARCH ON CURRENT SENTENCING PRACTICES OF JUDGES IN PENNSYLVANIA INDICATED THAT JUDGES DO SENTENCE ACCORDING TO THE MANDATORY MINIMUM CONCEPT, ESPECIALLY WHEN DECIDING ON SERIOUS OFFENSES AND OFFENSES OUTSIDE LARGE URBAN CENTERS. LEGISLATIVELY MANDATED SENTENCES WILL RESULT IN A NEED FOR CURRENTLY UNAVAILABLE RESOURCES IN THE CORRECTIONS SYSTEM; CONSEQUENTLY, A SENTENCING COMMISSION TO REVIEW CURRENT PRACTICES AND PROPOSE GUIDELINES WOULD BE MORE FEASIBLE. A NATIONAL ACADEMY OF SCIENCES REPORT SHOWS THAT RESEARCH ON DETERRENCE IS INCONCLUSIVE BUT STATES THAT A MAJOR REDUCTION IN CRIME THROUGH INCREASED USE OF INCARCERATION WOULD REQUIRE A SIGNIFICANT INCREASE IN THE PRISON POPULATION.
- Supplemental Notes:** TESTIMONY GIVEN ON MAY 17, 1978.
7. **B. BRADSHAW and P. J. ECK, Eds. REHABILITATION—WHAT PART OF CORRECTIONS? UNIVERSITY OF TEXAS AT ARLINGTON RESEARCH AND SERVICE DIVISION INSTITUTE OF URBAN STUDIES, ARLINGTON, TX 76019. 159 p. 1977. **NCJ-56718****
- THESE PARAPHRASES OF REHABILITATION CONFERENCE ADDRESSES CONSTITUTE THE LAST OF A FIVE-VOLUME SET OF CONFERENCE PROCEEDINGS DESIGNED TO ENHANCE CITIZEN EFFORTS IN ADDRESSING CRIMINAL JUSTICE ISSUES. ONE ADDRESS TRACES MAJOR TRENDS IN CORRECTIONS OVER THE LAST 300 YEARS, BRIEFLY DESCRIBING THREE MAJOR DEVELOPMENTS—INSTITUTIONALIZATION (IMPRISONMENT), REHABILITATION IN A PRISON CONTEXT, AND DEINSTITUTIONALIZATION YOKED WITH COMMUNITY-BASED PROGRAMS. JUDICIAL SENTENCING, PARTICULARLY IN NEW MEXICO, IS DISCUSSED, AND IT IS INDICATED THAT WHILE THE PUBLIC AND MANY LEGISLATORS URGE HARSHER PRISON SENTENCES, COURTS, REALIZING THE FUTILITY OF SUCH AN APPROACH IN REDUCING THE CRIME RATE, SHOULD OPT, WHEN POSSIBLE, FOR PROBATION OR SHORT PRISON TERMS. A STATEWIDE VOLUNTEER PROGRAM FOR JAIL AND PRISON INMATES IN VIRGINIA IS DESCRIBED, AND LAW ENFORCEMENT AND REHABILITATION PROGRAMS FOR A NEW MEXICO INDIAN RESERVATION, ALONG WITH DIVERSIONARY PROGRAMS CONDUCTED BY THE STATE OF NEW MEXICO, ARE DISCUSSED. ANOTHER ADDRESS CRITIQUES EXTREME FORMS OF THE REHABILITATION MODEL MANIFESTED IN INDETERMINATE SENTENCING AND CONCLUDES THAT THE IMPLEMENTATION OF SUCH A

MODEL UNDERMINES THE TRADITIONAL CONCEPT OF JUSTICE WHICH REQUIRES THAT THE PUNISHMENT FIT THE CRIME RATHER THAN THE PROBLEMS OF OFFENDERS. BLOCKS TO REHABILITATION IN A PRISON SETTING ARE IDENTIFIED AND DISCUSSED, AND A STRATEGY FOR IMPROVED REHABILITATION IS PROPOSED. ANOTHER ADDRESS PRESENTS A CRISIS INTERVENTION MODEL DESIGNED FOR HELPING EX-OFFENDERS AT CRITICAL POST-RELEASE PERIODS. A NEW DETERMINATE SENTENCING LAW IN NEW MEXICO IS EXPLAINED, AND ITS IMPLICATIONS FOR CORRECTIONS IN THE STATE ARE CONSIDERED. A REALISTIC APPROACH TO THE OPERATION OF COMMUNITY-BASED TREATMENT PROGRAMS IS ADVOCATED, BOTH IN DEALING WITH CLIENTS AND GAINING SUPPORT AND FUNDING. REHABILITATION PROGRAMS FOR FEMALE INMATES IN GENERAL ARE CONSIDERED IN ONE ADDRESS, WITH PARTICULAR ATTENTION GIVEN TO PROGRAMS FOR FEMALE OFFENDERS IN NEW YORK STATE. A SERIES OF ALTERNATIVES TO INSTITUTIONALIZATION IS DISCUSSED IN ANOTHER ADDRESS. REFERENCES ARE PROVIDED FOR SOME OF THE ADDRESSES.

Supplemental Notes: NEW DIRECTIONS FOR CORRECTIONS—CREATIVE CONCEPTS FOR FUTURE CRIMINAL JUSTICE PLANNING—CONFERENCE HELD IN ALBUQUERQUE (NM), MAY 2-4, 1977—CO-SPONSORED BY THE DIVISION OF PUBLIC ADMINISTRATION, UNIVERSITY OF NEW MEXICO AND INSTITUTE FOR URBAN STUDIES, UNIVERSITY OF TEXAS AT ARLINGTON.

Sponsoring Agencies: US DEPARTMENT OF JUSTICE NATIONAL INSTITUTE OF JUSTICE, 633 INDIANA AVENUE NW, WASHINGTON, DC 20531; TEXAS CRIMINAL JUSTICE COUNCIL.

Availability: National Criminal Justice Reference Service MICRO-FICHE PROGRAM.

8. **P. L. BRANTINGHAM. DYNAMIC MODELLING OF THE FELONY COURT SYSTEM.** 340 p. 1977. **NCJ-53837**
- DESCRIPTIVE MODELS ARE DEVELOPED FOR CRIMINAL COURTS IN GENERAL AND FOR THE FLORIDA COURTS. A DYNAMIC SIMULATION MODEL BASED ON THESE DESCRIPTIONS IS USED TO EXAMINE PLEA BARGAINING, FLAT-TIME SENTENCING, AND OPERATIONS. THE FIRST TWO CHAPTERS EXAMINE THE OPERATION OF ADULT CRIMINAL COURTS, IDENTIFYING THE DECISION POINTS AND DESCRIBING POSSIBLE EFFECTS OF CHANGES IN PROCEDURE. THE USE OF A DYNAMIC SIMULATION MODEL TO INVESTIGATE THESE CHANGES IS DESCRIBED AND THE DEVELOPMENT OF SUCH A MODEL, BASED ON THE DYNAMO SIMULATION LANGUAGE, IS DETAILED. THIS DISCUSSION IS AMPLY ILLUSTRATED WITH FLOW CHARTS AND DIAGRAMS. FINALLY, THE DYNAMO MODEL IS USED TO INVESTIGATE RESOURCE ALLOCATION, THE ELIMINATION OF PLEA BARGAINING, AND MANDATORY OR FLAT-TIME SENTENCING. EQUATIONS FOCUS ON THREE MAJOR DECISION POINTS: CHARGING, BARGAINING, AND SENTENCING. IT IS CONCLUDED THAT IF RESOURCES ARE INSUFFICIENT, CASES MUST BE FUNNELED OUT OF THE SYSTEM BY EXPEDITING PROCEDURES AT ONE OF THESE POINTS. IT IS CONCLUDED ALSO THAT ELIMINATION OF PLEA BARGAINING AND THE INTRODUCTION OF FLAT-TIME SENTENCING WILL MERELY CHANGE THE POINT OF DISCRETION FROM BARGAINING OR SENTENCING TO CHARGING. A DISCUSSION ON DISCRETION CONCLUDES THE PRESENTATION. TABLES, FIGURES, AND CHARTS PRESENT THE STUDY DATA. A TECHNICAL APPENDIX CONTAINS THE MATHEMATICAL DATA. REFERENCES ARE INCLUDED.
- Supplemental Notes:** FLORIDA STATE UNIVERSITY—DOCTORAL DISSERTATION.
- Availability:** UNIVERSITY MICROFILMS, 300 NORTH ZEEB ROAD, ANN ARBOR, MI 48106. Stock Order No. 78-1463. (Microfiche)

9. **M. BURDMAN. TESTIMONY OF MILTON BURDMAN (FROM RESEARCH INTO CRIMINAL SENTENCING, 1978—SEE NCJ-62872).** US CONGRESS HOUSE COMMITTEE ON SCIENCE AND TECHNOLOGY, WASHINGTON, DC 20515. 33 p. 1978. **NCJ-62873**

THE PRESIDENT OF THE AMERICAN JUSTICE INSTITUTE CRITICIZES DETERMINATE SENTENCING AND DISCUSSES PAROLE AND THE JUDICIAL OPTION OF DECIDING WHETHER OR NOT TO COMMIT AN OFFENDER TO PRISON. IN THE CONTROVERSY OVER DETERMINATE AND INDETERMINATE SENTENCING, BASIC RESEARCH INTO SENTENCING POLICIES, ALTERNATIVES, AND CONSEQUENCES OF SENTENCING PRACTICES HAS BEEN NEGLECTED. DISCRETION IN SENTENCING HAS BEEN CLEARLY ABUSED, BUT REFORMERS HAVE PROPOSED A REDUCTION IN DISCRETION BASED ON A CONDEMNATION OF THE REHABILITATION CONCEPT AND PAROLE BOARD JUDGMENT. THE OBJECTIVES OF PAROLE ARE WIDELY MISUNDERSTOOD. A PAROLE BOARD PROVIDES A MEANS OF COMPENSATING FOR DISPARATE SENTENCING PRACTICES AMONG DIFFERENT COMMUNITIES AND COURTS. IT ALSO IS A RELEASE OPTION IN WHICH A PORTION OF THE PRISON TERM IS SERVED UNDER SUPERVISED COMMUNITY PLACEMENT. RESTRICTING THE ROLE OF PAROLE BOARDS AND JUDGES WILL NOT MAKE SENTENCES MORE EQUITABLE FOR THREE REASONS: (1) CRIMINAL CODES WILL NEVER BE CAPABLE OF PLACING ALL CRIMES AND OFFENDERS IN SUFFICIENTLY NARROW CATEGORIES SO THAT INDIVIDUAL JUDGMENT IS UNNECESSARY, (2) FLAT SENTENCING IGNORES THE DISCRETIONARY CHOICE OF WHETHER OR NOT TO SENTENCE A CONVICTED OFFENDER TO PRISON, AND (3) JUDICIAL OPTIONS ARE NECESSARY TO ACCOUNT FOR INDIVIDUAL DIFFERENCES IN OFFENDERS. TO ILLUSTRATE THE PREVAILING USE OF DISCRETION, DATA FROM CALIFORNIA ARE PRESENTED WHICH SHOW THAT ONLY 26 PERCENT OF PERSONS CONVICTED IN 1976 WERE PLACED IN STATE CORRECTIONAL INSTITUTIONS. BOARDS AND COURTS NEED EXPLICIT GUIDELINES, BUT THE BASIC PRINCIPLES UNDERLYING INDETERMINATE SENTENCING ARE SOUND. LONG-TERM SYSTEMS FOR CRIMINAL JUSTICE DATA COLLECTION AND ANALYSIS SHOULD BE DEVELOPED TO ASSIST DECISIONMAKERS.

Supplemental Notes: TESTIMONY GIVEN ON MAY 16, 1978.

10. **P. CAINES, F. G. GREBER, R. LEVINE, W. A. SHAFFER, and B. SMITH. PRISON POPULATION AND POLICY CHOICES, V 2—TECHNICAL APPENDIX.** ABT ASSOCIATES, INC, 55 WHEELER STREET, CAMBRIDGE, MA 02138. 179 p. 1977. **NCJ-44357**

THE METHODOLOGY EMPLOYED FOR SURVEYING CORRECTIONS AGENCIES AND INSTITUTIONS IS SUMMARIZED AND AN OUTLINE OF A MARKOV MODELING EXERCISE TO BE APPLIED IN PHASE II IS PRESENTED. AN OVERVIEW OF THE DYNAMIC CORRECTIONAL PLANNING MODEL, WHICH UTILIZES THE METHODOLOGY OF SYSTEM DYNAMICS, IS PRESENTED. THE APPLICATIONS OF THE MODEL IN THE POLICE, COURT, SENTENCING, CORRECTIONS, AND PRISON CAPACITY SECTORS ARE DISCUSSED. THE VALIDATION OF THE CORRECTIONAL PLANNING MODEL, THE METHOD USED TO SURVEY CORRECTIONS AGENCIES AND INSTITUTIONS, AND RESULTS OF THE DYNAMIC MODELING EXERCISE AND OF THE POLICY-BLIND PROJECTIONS ARE DESCRIBED. THE MARKOV MODEL, A STATISTICAL MODEL OF THE FLOW OF PERSONS THROUGH THE CRIMINAL JUSTICE SYSTEM, IS INTRODUCED. WHEN COMPLETED IT WILL PRODUCE PROJECTIONS OF THE FUTURE AVERAGE LEVELS OF PERSONS IN THE VARIOUS SECTORS OF THE CRIMINAL JUSTICE SYSTEM. IT WILL ALSO PRODUCE VARIANCES FOR THESE LEVELS. THESE VARIANCES PROVIDE A DESCRIPTION OF THE RANGE OF UNCERTAINTY IN THE PROJECTED QUANTITIES. THE REPORT POINTS OUT THE CONSTRUCTION AND WEAKNESSES OF THE MARKOV MODEL. AN ATTACHMENT PRESENTS THE

MARKOV CHAINS WITH FEEDBACK. FOR VOLUME I SEE NCJ-44356. THIS DOCUMENT AND ITS COMPANION NCJ-44356 ARE INTERIM REPORTS PRODUCED BY THE STUDY 'AMERICAN PRISONS AND JAILS,' NCJ-75752-6.

Sponsoring Agency: US DEPARTMENT OF JUSTICE LEAA NATIONAL INSTITUTE OF LAW ENFORCEMENT AND CRIMINAL JUSTICE, 633 INDIANA AVENUE NW, WASHINGTON, DC 20531.

Availability: National Criminal Justice Reference Service MICROFICHE PROGRAM.

11. **W. T. CAREY. DETERMINATE SENTENCING IN CALIFORNIA AND ILLINOIS—ITS EFFECT ON SENTENCE DISPARITY AND PRISONER REHABILITATION.** WASHINGTON UNIVERSITY SCHOOL OF LAW, ST LOUIS, MO 63130. *WASHINGTON UNIVERSITY LAW QUARTERLY*, V 1979, N 2 (SPRING 1979), P 551-569. **NCJ-67103**

CURRENT TRENDS IN DEFINITE SENTENCING PRACTICES ARE EXPLORED THROUGH THE CALIFORNIA AND ILLINOIS EXAMPLES OF STATUTORY REVISIONS CURTAILING JUDICIAL DISCRETION AND ELIMINATING TRADITIONAL PAROLE. INDETERMINATE SENTENCING ACCOMPANIED THE REHABILITATION IDEAL, WHICH, DESPITE ITS NOBILITY, HAS BECOME UNACHIEVABLE IN THE OVERBURDENED AMERICAN PENAL SYSTEMS. PRESENT PRISON FACILITIES ARE INEFFECTIVE IN CURING SOCIALLY AND MENTALLY IMPAIRED PRISONERS, AND TERMS SERVED BY OFFENDERS UNDER THE INDETERMINATE SYSTEM DIFFER ARBITRARILY. CALIFORNIA AND ILLINOIS LEAD THE MOVEMENT AWAY FROM THE INDETERMINATE SENTENCE SYSTEM TOWARD THE MORE REALISTIC AND MORE EVENHANDED STRUCTURES OF THE DETERMINATE SENTENCE AND THE ELIMINATION OF PAROLE IN ITS TRADITIONAL FORMS. ILLINOIS LEGISLATION OUTLINES MORE PRECISE PROCEDURES FOR IMPLEMENTING THE NEW SENTENCING APPROACH, BUT CALIFORNIA ALSO HAS DESIGNED A PLAN THAT WILL LIKELY INCREASE THE UNIFORMITY OF SENTENCES AND REDUCE JUDICIAL DISCRETION. HOWEVER, NEITHER SENTENCING PLAN FULLY ERADICATES SENTENCE DISPARITY. BOTH STATES ALLOW FOR CONSIDERATION OF THE DEFENDANTS' PERSONAL NEEDS AND SITUATIONS. THIS INEVITABLY INTRODUCES ELEMENTS OF INEQUITABLE TREATMENT AMONG DEFENDANTS FOR SIMILAR CRIMES. ILLINOIS CONSIDERS FACTORS IN AGGRAVATION AND MITIGATION OF THE DEFENDANTS' OFFENSE AND CALIFORNIA MANIPULATES POSTIMPRISONMENT TERMS THROUGH A COMMUNITY RELEASE BOARD, WHICH ALSO INJECTS ELEMENTS OF PERSONAL ATTENTION INTO AN OTHERWISE FAIR SENTENCING PROCEDURE. NEVERTHELESS, BOTH ATTEMPTS REPRESENT SIGNIFICANT STEPS AWAY FROM SENTENCING DISPARITY AND TOWARD UNIFORMITY SENTENCING. (AUTHOR ABSTRACT MODIFIED)

12. **K. CARLSON, P. EVANS, J. FLANAGAN, D. FOGEL, I. GREENBERG, and R. KU. PRISON POPULATION AND POLICY CHOICES, V 1—PRELIMINARY REPORT TO CONGRESS.** ABT ASSOCIATES, INC, 55 WHEELER STREET, CAMBRIDGE, MA 02138. 277 p. 1977. **NCJ-44356**

THIS PHASE I STUDY ASSESSES CAPACITY AND ADEQUACY OF CORRECTIONAL INSTITUTIONS, SEARCHES FOR THE CAUSES OF FLUCTUATIONS IN PRISON POPULATIONS, AND SUGGESTS METHODS FOR PROJECTING FUTURE PRISON POPULATIONS. A NATIONAL SURVEY WAS CONDUCTED OF ALL FEDERAL AND STATE CORRECTIONAL INSTITUTIONS, AN ASSESSMENT WAS MADE OF FORECASTING TECHNOLOGY AND PRELIMINARY APPLICATION OF FOUR PROJECTION TECHNIQUES, AND CASE STUDIES WERE UNDERTAKEN TO ILLUMINATE THE MECHANISMS DETERMINING PRISON POPULATION POLICY BY STATE GOVERNMENTS. IMPORTANT DIFFERENCES REGARDING THE PRISON CROWDING PROBLEM IN FOUR STATES ARE DISCUSSED. DATA OF THE NATIONAL SURVEY OF STATE AND FEDERAL CORRECTIONS AGENCIES AND INSTITUTIONS ARE ANALYZED WITH PARTICULAR REFERENCE TO THE ISSUES OF CAPACITY AND ADEQUACY OF

FEDERAL AND STATE PRISONS. THE RATIONALE FOR THE PARTICULAR METHODS USED IN THE STUDY IS PRESENTED, AND THE UNDERLYING ASSUMPTIONS AND LIMITATIONS OF THESE METHODS ARE OUTLINED. THE RELATIONSHIP BETWEEN POLICY AND PROJECTIONS IS EXPLORED. RESULTS FORM THE TWO TREND ANALYSIS TECHNIQUES UTILIZED DURING PHASE I ARE PRESENTED. THESE POLICY-BLIND METHODS ASSUME, RESPECTIVELY, THAT INTAKE AND RELEASE RATES CONTINUE AT THEIR PRESENT LEVELS, PRODUCING CONSTANT GROWTH IN THE INMATE POPULATION; AND THAT SENTENCE LENGTH AND ADMISSIONS TO PRISON PERSIST AT THEIR PRESENT LEVELS CAUSING POPULATIONS TO CEASE GROWING AFTER TWO YEARS. THE SCOPE AND LIMITATIONS OF THE DYNAMIC MODELING TECHNIQUE WHICH ATTEMPTS TO ACCOUNT FOR THE DIFFERENTIAL IMPACT OF SPECIFIC POLICY ALTERNATIVES IS REVIEWED. THE POLICY SCENARIOS ARE DESCRIBED IN SOME DETAIL, ALONG WITH THE RESULTS OF THE MODELING EXERCISE THAT WAS APPLIED TO FIVE STATES AND TO THE FEDERAL PRISON SYSTEM. THE EXPLORATORY NATURE OF THIS EXERCISE IS EMPHASIZED. FINALLY, A NUMBER OF KEY POLICY ISSUES ARISING FROM THE STUDY WHICH CONFRONT FEDERAL AND STATE GOVERNMENTS ARE OUTLINED. A BIBLIOGRAPHY IS INCLUDED. FOR VOLUME II SEE NCJ-44357.

Sponsoring Agency: US DEPARTMENT OF JUSTICE LEAA NATIONAL INSTITUTE OF LAW ENFORCEMENT AND CRIMINAL JUSTICE, 633 INDIANA AVENUE NW, WASHINGTON, DC 20531.

Availability: National Criminal Justice Reference Service MICROFICHE PROGRAM.

13. **N. A. CARLSON. MORE BALANCED CORRECTIONS PHILOSOPHY.** FEDERAL BUREAU OF INVESTIGATION, WASHINGTON, DC 20535. *FBI LAW ENFORCEMENT BULLETIN*, V 46, N 1 (JANUARY 1977), P 22-25. **NCJ-58264**

CURRENT ISSUES FACING THE CRIMINAL JUSTICE SYSTEM, SUCH AS THE VALIDITY OF REHABILITATION, THE GROWING PRISON POPULATION, AND CONDITIONS OF INCARCERATION ARE DISCUSSED. EVERY SEGMENT OF THE CRIMINAL JUSTICE SYSTEM IS UNDERGOING CRITICAL EXAMINATION AT THIS TIME, AS THE RATE OF CRIME IS STEADILY RISING. THE COURTS ARE ACCUSED OF BEING TOO LENIENT AND INCONSISTENT IN SENTENCING, AND LAW ENFORCEMENT OFFICERS ARE CRITICIZED FOR NOT APPREHENDING MORE CRIMINALS. SOME INDIVIDUALS INSIST THAT PRISONS ARE PAMPERING INMATES WHILE OTHERS ACCUSE CORRECTIONS OFFICERS AND ADMINISTRATORS OF EXCESSIVE BRUTALITY. CLEARLY, A 'GET TOUGH' MOOD EXISTS; 35 STATES HAVE PASSED NEW DEATH PENALTY LAWS, AND 12 HAVE REPLACED DISCRETIONARY SENTENCING WITH FIXED-TERM, MANDATORY SENTENCES FOR CERTAIN OFFENSES. IN ADDITION, THE VALIDITY OF REHABILITATION AS THE MAJOR GOAL OF INCARCERATION IS QUESTIONED. IT IS NOW ACKNOWLEDGED THAT THE SYSTEM CANNOT CHANGE OFFENDERS WHO DO NOT HAVE THE DESIRE TO CHANGE THEMSELVES; THE CHANGE MUST BE VOLUNTARY, AND THE ROLE OF THE SYSTEM FACILITATIVE IN PROVIDING OPPORTUNITIES FOR THOSE WHO WILL ACCEPT THEM. INCREASING DEMAND EXISTS FOR MANDATORY SENTENCING AND FOR AN END TO INDETERMINATE SENTENCING. TO ESTABLISH A SYSTEM OF DETERMINATE SENTENCING, SEVERAL BILLS ARE NOW BEFORE CONGRESS ARGUING THAT THE CERTAINTY OF PUNISHMENT WOULD SERVE AS AN EFFECTIVE DETERRENT TO MANY CRIMES. OVERCROWDING IN PRISONS IS ALSO AN ISSUE AT A TIME WHEN BOTH STATE AND FEDERAL COURTS ARE INCREASINGLY INSISTENT ON MORE HUMANE CONDITIONS IN INSTITUTIONS AND ON THE PROTECTION OF INMATES' CIVIL RIGHTS. THE CRACKDOWN ON CRIMINAL ACTIVITY AND RECOGNITION OF THE NEED FOR MORE HUMANE INCARCERATION, DESPITE THE PROBLEMS, REPRESENT POSITIVE STEPS TOWARD IMPROVING

THE CRIMINAL JUSTICE SYSTEM. A TABLE OF PRISON POPULATION DATA IS INCLUDED.

Availability: National Criminal Justice Reference Service MICROFICHE PROGRAM.

14. **T. R. CLEAR. CORRECTIONAL POLICY, NEO-RETRIBUTIONISM, AND THE DETERMINATE SENTENCE.** INSTITUTE FOR COURT MANAGEMENT, 1624 MARKET STREET, SUITE 210, DENVER, CO 80202. *JUSTICE SYSTEM JOURNAL*, V 4, N 1 (FALL 1978), P 26-48. **NCJ-51980**

THE NEORETRIBUTIVE MOVEMENT, WITH ITS EMPHASIS ON MINIMIZING CORRECTIONAL TREATMENT AND RESTRUCTURING SENTENCING DISCRETION, IS CRITICIZED. MOST DISCUSSIONS OF CORRECTIONS HAVE ASSUMED THAT ITS PURPOSES ARE PRIMARILY HUMANITARIAN: REHABILITATION OF THE OFFENDER, ISOLATION, DETERRENCE, AND SO FORTH. ONLY IN THE LAST FEW YEARS HAS A RENEWED INTEREST IN THE NONUTILITARIAN, RETRIBUTIVE PURPOSES OF PUNISHMENT EMERGED. ARGUMENTS AGAINST REHABILITATIVE TREATMENT SEEM TO FLOW FROM TWO DIFFERING VIEWPOINTS: THE PRAGMATIC POSITION, WHICH SEES NOTHING INHERENTLY EVIL IN TREATMENT, BUT FINDS THAT THE IMPLEMENTATION OF TREATMENT REQUIRES CAUTION; AND THE IDEALISTIC POSITION, WHICH FINDS TREATMENT TO BE INHERENTLY WRONG. WHILE THE TWO THEMES OF THE INEFFECTIVENESS AND ABUSIVENESS OF TREATMENT EMERGE IN THE PRAGMATIC POSITION, THE CENTRAL POINT OF THE IDEALISTIC POSITION IS AN AFFIRMATIVE ONE, THAT PUNISHMENT IS THE ONLY PROPER PURPOSE OF CORRECTIONS. MUCH OF THE CRITICISM OF TREATMENT OR REHABILITATION IS DIRECTED TOWARD THE MEDICAL-MODEL OF CRIME, WHICH IS A PSYCHOTHERAPEUTIC APPROACH TO TREATMENT. MUCH OF THE PRAGMATIC CRITICISM OF TREATMENT, AS WELL AS ALLEGATIONS OF ABUSE OF DISCRETION, MAY BE DIRECTED TOWARD THIS MEDICAL-MODEL APPROACH. HOWEVER, NEORETRIBUTIVE THINKING HAS RESULTED IN DETERMINATE SENTENCING REFORM IN SOME STATES. A RETURN TO THE DETERMINATE SENTENCE IDEALLY WILL ELIMINATE SENTENCE DISPARITY, BUT VIRTUALLY ALL AUTHORITIES AGREE THAT A SYSTEM OF TOTAL ENFORCEMENT WITH IDENTICAL PENALTIES FOR LEGALLY EQUIVALENT ACTS WOULD BE IMPOSSIBLE, INTOLERABLE, AND UNJUST. DETERMINATE SENTENCING MAY ALSO LEAD TO PRISON OVERCROWDING AND MAY, WITH 'GOOD TIME' REPLACING PAROLE, LEAD TO ADMINISTRATIVE MANIPULATION OF INMATES BY THE CORRECTIONAL STAFF AND THE LOSS OF THE DUE PROCESS SAFEGUARDS APPLICABLE TO PAROLE BOARD HEARINGS. REFERENCES ARE FOOTNOTED.

Availability: INSTITUTE FOR SCIENTIFIC INFORMATION, 3501 MARKET STREET, UNIVERSITY CITY SCIENCE CENTER, PHILADELPHIA, PA 19104.

15. **T. R. CLEAR and R. G. CULBERTSON. DETERMINATE V INDETERMINATE SENTENCING—SOME MYTHS IN THE CONTROVERSY (FROM ISSUES IN POLICE AND CRIMINAL PSYCHOLOGY, 1978, BY WILLIAM TAYLOR AND MICHAEL BRASWELL—SEE NCJ-59796).** UNIVERSITY PRESS OF AMERICA, 4720 BOSTON WAY, LANHAM, MD 20801. 25 p. 1978. **NCJ-59798**

INDETERMINATE SENTENCING HAS FALLEN INTO DISFAVOR BECAUSE IT IS IDENTIFIED WITH THE TREATMENT MODEL OF CORRECTIONS. DETERMINATE SENTENCING WILL NOT ELIMINATE DISCRETION, IT WILL MERELY SHIFT IT TO THE PROSECUTOR. THE DEBATE OVER DETERMINATE VERSUS INDETERMINATE SENTENCING IS ACTUALLY A DEBATE BETWEEN PROPONENTS OF THE MEDICAL OR TREATMENT MODEL OF CORRECTIONS (WHICH HAS NOT PROVED EFFECTIVE) AND THOSE WHO FAVOR THE PUNITIVE MODEL (WHICH MAY LEAD TO TYRANNY). THE MAJOR ARGUMENTS PUT FORTH IN FAVOR OF DETERMINATE SENTENCING ARE (1) IT WILL ELIMINATE UNJUSTIFIED SENTENCING DISPARITY AND (2) IT WILL ELIMINATE UNDULY HARSH OR UNDULY LENIENT SEN-

TENCING. BOTH OF THESE ARGUMENTS ASSUME THAT THE JUDGE OR THE JURY DETERMINES AN OFFENDER'S SENTENCE. HOWEVER, THE DETERMINATION IS OFTEN MADE FARTHER DOWN THE LINE, WHEN POLICE DECIDE TO CHARGE OR NOT TO CHARGE THE OFFENDER, OR WHEN THE PROSECUTOR ENTERS INTO PLEA NEGOTIATIONS. MANDATORY SENTENCING ONLY SHIFTS MORE DECISIONS OUT OF THE COURTS AND DOWN TO THE PROSECUTORIAL LEVEL. THE MAJOR AREAS OF CONCERN IN THE DETERMINATE VERSUS INDETERMINATE DEBATE ARE THE EFFECTIVENESS, THE HUMANENESS, AND THE JUSTICE OF THE SENTENCING PROCESS. THE PRO AND CON ARGUMENTS FOR EACH SIDE ARE SUMMARIZED. THE BEST ANSWER SEEMS TO BE A SENTENCING RANGE WITH DISCRETION OF PAROLE BOARDS LIMITED BY CLEARLY DEFINED GUIDELINES. A TABLE SUMMARIZES THE DETERMINATE AND PARTIALLY INDETERMINATE ARGUMENTS. NOTES AND REFERENCES ARE INCLUDED.

16. **T. R. CLEAR, J. D. HEWITT, and R. M. REGOLI. DISCRETION AND THE DETERMINATE SENTENCE—ITS DISTRIBUTION, CONTROL, AND EFFECT ON TIME SERVED.** NATIONAL COUNCIL ON CRIME AND DELINQUENCY, CONTINENTAL PLAZA, 411 HACKENSACK AVENUE, HACKENSACK, NJ 07601. *CRIME AND DELINQUENCY*, V 24, N 4 (OCTOBER 1978), P 428-445. **NCJ-51618**

THE SENTENCING REFORM (DETERMINATE SENTENCING) INCORPORATED IN THE 1977 INDIANA PENAL CODE IS EVALUATED REGARDING REFORM PROMISE AND DELIVERY WITHIN A BUREAUCRATIC STRUCTURE. SENTENCING REFORMERS HAVE CRITICIZED CURRENT SENTENCING PRACTICES AS BEING ABUSIVE AND ROOTED IN UNREALISTIC ASSUMPTIONS. MOST REFORMERS AGREE THAT CHANGES MUST REDUCE OR ELIMINATE THE DISCRETION AVAILABLE TO SENTENCING JUDGES, REDUCE OR ELIMINATE DISCREPANCIES IN SENTENCING, AND PREVENT UNREASONABLE INCREASES IN PRISON POPULATIONS. THE INDIANA PENAL CODE REPRESENTS COMPREHENSIVE RESTRUCTURING OF THE INDIANA CRIMINAL LAW TO PROVIDE FOR DETERMINATE SENTENCING. HOWEVER, IT IS FELT THAT THE POTENTIAL FOR DISCRETION HAS NOT BEEN REDUCED. SIX CRIME CLASSIFICATIONS ARE USED TO DESCRIBE 200 OFFENSES, AND A SENTENCING SCHEME IS ALLOTTED TO EACH OF THE CATEGORIES. THE CODE GREATLY EXTENDS PROSECUTORIAL DISCRETION, INCREASES JUDICIAL DISCRETION PARTICULARLY WITH RESPECT TO INTERPRETATION OF AGGRAVATING AND MITIGATING FACTORS WHICH INFLUENCE THE DECISION TO SUSPEND SENTENCES OR THE SELECTION OF FIXED PENALTIES, AND ELIMINATES PAROLE DECISIONS WHILE ALLOCATING CONSIDERABLE DISCRETION TO CORRECTIONAL OFFICIALS WITH REGARD TO DETERMINING INMATES' CREDIT TIME FOR PAROLE. FIXED SENTENCING WAS INTENDED TO BENEFIT BOTH THE LEGISLATURE, BY INCREASING ITS INFLUENCE OVER SENTENCE SUSPENSIONS, AND THE INMATES, BY ALLOWING THEM THE ABILITY TO CONTROL CREDIT TIME THROUGH INSTITUTIONAL BEHAVIOR. HOWEVER, THESE CONTROLS ARE SIGNIFICANTLY REDUCED BY THE PROSECUTOR'S ABILITY TO BYPASS SUSPENSION REQUIREMENTS AND THE CORRECTIONAL OFFICERS' INCREASED CONTROL OVER CREDIT TIME PROVISIONS. THE PROSECUTOR'S ABILITY TO PLEA BARGAIN IS ENHANCED BY PROVISIONS PROHIBITING SUSPENDED SENTENCES FOR SECOND-FELONY OFFENDERS. FIRST OFFENDERS CAN BE COERCED INTO PLEADING GUILTY TO REDUCED CHARGES, FOR WHICH SUSPENSION IS PERMITTED. A PROJECTION OF THE IMPACT OF THIS PENALTY SCHEME INDICATES THAT SOME SENTENCES MAY BE ALMOST 50 PERCENT LONGER IN INDIANA FOR SOME FIRST-TIME FELONY OFFENDERS. IT IS CONCLUDED THAT MANY OF THE CODE'S PROBLEMS COULD BE ELIMINATED BY REDUCING THE

LENGTH OF PRISON SENTENCES. REFERENCES AND TABULAR DATA ARE PROVIDED. (AUTHOR ABSTRACT MODIFIED)

Supplemental Notes: PAPER PRESENTED AT THE ANNUAL MEETING OF THE AMERICAN SOCIETY OF CRIMINOLOGY, NOV 1977, ATLANTA, GEORGIA.

Availability: UNIVERSITY MICROFILMS, 300 NORTH ZEEB ROAD, ANN ARBOR, MI 48106; INSTITUTE FOR SCIENTIFIC INFORMATION, 3501 MARKET STREET, UNIVERSITY CITY SCIENCE CENTER, PHILADELPHIA, PA 19104.

17. **T. R. CLEAR and J. D. HEWITT. DISPARITY, HUMANENESS AND THE POLITICS OF REFORM A CRITICAL ANALYSIS OF THE DETERMINATE SENTENCE.** GEORGIA STATE UNIVERSITY SCHOOL OF URBAN LIFE, ATLANTA, GA 30303. *CRIMINAL JUSTICE REVIEW*, V 3, N 1 (SPRING 1978), P 81-90. **NCJ-57630**

IT IS ARGUED THAT INSTITUTION OF THE DETERMINATE SENTENCE MAY NOT ACHIEVE ITS PRIMARY AIM, THE ELIMINATION OF UNEQUAL SENTENCING PRACTICES, AND MAY ACTUALLY HAVE UNDESIRABLE SIDE EFFECTS. THE MAJOR INDICTMENT OF THE INDETERMINATE SENTENCE BY REFORMERS IS THAT IT IS BASED ON ARBITRARY AND UNRELIABLE INTUITION. THE RESULT IS A GREAT DISPARITY IN TIME-SERVED OFFENSES CREATED UNDER THE RUBRIC OF HELP. SENTENCE DISPARITY AND ARBITRARINESS IN PAROLE DECISIONS HAVE BEEN CITED AS FACTORS IN PRISON DISTURBANCES. THE READINESS ARGUMENT, I.E. A PAROLE BOARD MAKING THE DECISION AS TO WHEN AN OFFENDER IS READY TO BE RELEASED ON PAROLE, CAN EASILY BECOME A RATIONALE FOR UNEQUAL TREATMENT OF PRISONERS. HOWEVER, CRITICS OF THE DETERMINATE SENTENCE ARGUE THAT IT IS UNLIKELY THAT REMOVAL OF PAROLE RELEASE DISCRETION WILL SUBSTANTIALLY REDUCE SENTENCE DISPARITY. MUCH OF THE CURRENT DISPARITY IS RELATED TO URBAN-RURAL DISCREPANCIES AND DIFFERENCES IN PROSECUTORIAL CHARGING AND BARGAINING PATTERNS. THE GREATEST DISPARITY EXISTS BETWEEN URBAN AND RURAL JURISDICTIONS BECAUSE OF THE DIFFERENCES IN PERCEPTIONS OF THE SERIOUSNESS OF THE OFFENSE. PLEA NEGOTIATIONS WILL CONTINUE AFTER INSTITUTION OF DETERMINATE SENTENCING AND WILL BE SUBJECT TO THE SAME DISPARITIES: EXPERIENCED V. INEXPERIENCED OFFENDERS, TOUGH V. SOFT PROSECUTORS, ETC. IN ADDITION, THESE CRITICS MAINTAIN THAT THE OPERATION OF 'GOOD-TIME' (TIME OFF FOR GOOD BEHAVIOR) PROVISIONS WILL BE SUSPENDED UNDER A DETERMINATE SYSTEM AND TREATMENT WILL BE PLAYED DOWN, LEAVING SERIOUS DOUBTS AS TO THE HUMANENESS OF THE NEW SYSTEM. FINALLY, THE CURRENT POLITICAL ENVIRONMENT MAKES IT LIKELY THAT THIS REFORM WILL CREATE INCREASINGLY HARSH SENTENCES. ALTERNATIVES SHOULD BE DEVELOPED WITH THE GOALS OF CONTROLLED TREATMENT, REDUCED PRISON POPULATIONS, AND THE USE OF DISCRETION WHICH IS ARTICULATED AND PUT IN WRITTEN FORM. NOTES ARE INCLUDED.

18. **G. F. COLE. WILL DEFINITE SENTENCES MAKE A DIFFERENCE?** AMERICAN JUDICATURE SOCIETY, SUITE 1606, 200 WEST MONROE STREET, CHICAGO, IL 60606. *JUDICATURE*, V 61, N2 (AUGUST 1977), P 58-65. **NCJ-43373**
- THE MOVEMENT TOWARD USE OF DEFINITE SENTENCES AS A 'JUST PUNISHMENT' FOR CRIMES IS TRACED, AND THE EFFORTS OF MAINE, ILLINOIS, AND CALIFORNIA TO PASS DEFINITE SENTENCE CODES ARE DETAILED. EFFECTS OF THIS MOVEMENT ARE ASSESSED. DISENCHANTMENT WITH THE POOR RECIDIVISM RECORDS OF THOSE 'TREATED' BY CORRECTIONAL INSTITUTIONS HAS LED TO A MOVEMENT TOWARD DEFINITE SENTENCES WITH INCARCERATION SEEN AS 'JUST PUNISHMENT' FOR THE CRIME COMMITTED. PART OF THIS MOVEMENT INCLUDES DEFINING JUST HOW MUCH TIME MAY BE TAKEN OFF THE SENTENCE FOR GOOD BEHAVIOR, SPELLING OUT THE AUTHORITY OF PAROLE ADMIN-

ISTRATORS IN SHORTENING A SENTENCE, AND MANDATING TIME WHICH MUST BE SPENT IN PRISON FOR A PARTICULAR CRIME. SINCE PAROLE IS DESIGNED TO WORK IN CONJUNCTION WITH THE INDEFINITE SENTENCE, WITH THE INCEPTION OF DEFINITE SENTENCE SYSTEMS, THE PURPOSE OF EARLY RELEASE THROUGH PAROLE VANISHES. ILLINOIS, MINNESOTA, AND MAINE LEGISLATION ALL ABOLISH PAROLE, WHILE THE NEW CALIFORNIA LAW RETAINS A PERIOD OF SUPERVISION FOLLOWING EXPIRATION OF THE PRISON TERM. IN MAINE, THE DEFINITE SENTENCE CODE SLIPPED THROUGH THE LEGISLATURE QUIETLY AND BECAME LAW ON MARCH 1, 1976. IN ILLINOIS, THE DEFINITE SENTENCE PROVISION BECAME THE OBJECT OF STORMY DEBATE AND ELECTION YEAR POLITICS. DEBATE HAS BEEN CONTINUED INTO A SPECIAL SESSION AND, AS OF SEPTEMBER 1977, STILL HAD NOT PASSED. IN CALIFORNIA, SUCH SENTENCING WAS APPROVED IN SEPTEMBER, 1976, AFTER A LONG SERIES OF HEARINGS. AT THE SAME TIME, THE CALIFORNIA ADULT AUTHORITY, THE STATE'S SENTENCING BODY, ISSUED A NEW SET OF REGULATIONS PROVIDING FOR FIXED PAROLE RELEASE DATES. DEFINITE SENTENCING WILL PROBABLY NOT AFFECT THE AMOUNT OF TIME MOST OFFENDERS WILL BE INCARCERATED. THE FACT THAT REFORM ADVOCATES ARE USING MEDIAN TIME NOW SERVED AS A BASIS FOR PROPOSED SENTENCES WORKS AGAINST MUCH SHIFT. GIVEN THE PRESENT LACK OF PROSECUTION AND ADJUDICATIVE FACILITIES, DEFINITE SENTENCING WILL PROBABLY NOT AFFECT THE CERTAINTY OF PUNISHMENT. THE POTENTIAL FOR CRIME CONTROL IS ALSO UNCERTAIN. HOWEVER, DEFINITE SENTENCING WILL ENHANCE THE SYMBOLIC VALUES OF OPENNESS AND FAIRNESS AND MAY BE A MAJOR SUCCESS IF MEASURED AGAINST SO MANY OTHER CRIMINAL JUSTICE REFORMS.

19. **L. COLEMAN. PRISONS—THE CRIME OF TREATMENT.** OPINION PUBLICATIONS INC, 82 COCHITUATE ROAD, FRAMINGHAM, MA 01701. *PSYCHIATRIC OPINION*, V 11, N 3 (JUNE 1974), P 5-16. **NCJ-52153**

THE TREATMENT PHILOSOPHY OF PRISONS AND THE PSYCHOLOGICAL IMPACT OF INDETERMINATE SENTENCING ARE ADDRESSED, AND IT IS RECOMMENDED THAT TREATMENT AND REHABILITATION PROGRAMS FOR INMATES BE IMPROVED. AS A FIRST STEP IN PRISON REFORM, CLOSE ATTENTION SHOULD BE GIVEN TO PRINCIPLES OF CORRECTIONAL TREATMENT PHILOSOPHY, INSTITUTIONS THAT HAVE DEVELOPED TO AFFECT THESE PRINCIPLES, AND THE IMPACT OF THE TREATMENT PHILOSOPHY OF PRISONS ON INMATES. A TRULY MOTIVATED PRISONER, UNDER A SYSTEM WHERE EMPHASIS IS PLACED ON THE MAN RATHER THAN ON THE DEED AND WHERE RELEASE FROM PRISON IS GEARED TO A PERSON'S RESPONSE TO TREATMENT, CAN WORK ON HIS PROBLEM AND IMPROVE HIMSELF WHILE SPEEDING UP RELEASE. IN THIS MANNER, GREATER INFLUENCE CAN BE EXERTED BY PSYCHIATRISTS AND OTHER MENTAL HEALTH PROFESSIONALS. EVIDENCE SEEMS TO INDICATE THAT EXISTING THERAPEUTIC ENDEAVORS HAVE BEEN INEFFECTIVE, AND CONSIDERATION MUST BE GIVEN TO THE OVERALL IMPACT OF THE PHILOSOPHY RESPONSIBLE FOR REPLACING PUNISHMENT WITH TREATMENT. TREATMENT PROGRAMS HAVE MADE LITTLE DIFFERENCE, BUT THE PHILOSOPHY OF TREATMENT IS OF MAJOR CONSEQUENCE. MOST STATES HAVE SOME FORM OF INDETERMINATE SENTENCING. THE THEORY OF AN INDEFINITE PERIOD OF REHABILITATION INEVITABLY FOLLOWS FROM HUMAN CONSIDERATIONS OF THE EXISTING TREATMENT MODEL. IT IS NECESSARY, HOWEVER, TO ASCERTAIN THE PSYCHOLOGICAL IMPACT OF AN INDIVIDUAL'S LIFE BEING COMPLETELY IN THE CONTROL OF OTHERS DURING THE PROCESS OF REHABILITATION. THIS IS PARTICULARLY THE CASE DURING PAROLE WHEN PAROLE OFFICERS HAVE A LARGE AMOUNT OF AUTHORITY OVER RELEASED PRISONERS. IN-

HUMANE CONDITIONS IN PRISON (ISOLATION, IDLENESS, LOSS OF LOVED ONES, AND DAILY DEGRADATION OF PRIDE AND SELF-ESTEEM) ARE FACTORS IN EVALUATING THE PSYCHOLOGICAL IMPACT OF INDETERMINATE SENTENCING. ALTHOUGH PRISONERS SEE REHABILITATION AS A MEANINGLESS CONCEPT, THEY RECOGNIZE THAT PLEASING ADULT AUTHORITIES WILL ENHANCE THEIR CHANCE OF RELEASE. IN CALIFORNIA, THE RESPONSE TO VIOLENCE HAS BEEN MORE PSYCHIATRIC TREATMENT. ADJUSTMENT CENTERS HAVE BEEN ESTABLISHED IN THE STATE AND SERVE AS AN EXAMPLE OF THE HARM RESULTING FROM THE TRANSPLANTATION OF PSYCHIATRIC IDEALS INTO THE PRISON SETTING. BEHAVIOR MODIFICATION UNITS ARE EMERGING FROM FEDERAL AND STATE PRISON SYSTEMS WITH INCREASING REGULARITY. UNCHECKED POWER IS THE BASIS OF THE PSYCHOLOGICAL BRUTALITY OF CONTEMPORARY PRISON LIFE. JUSTICE REQUIRES A SYSTEM OF FIXED SENTENCING, WITH THE TERM SET AT THE TIME OF CONVICTION AND RELATED TO THE NATURE OF THE CRIME. THE PAROLE SYSTEM SHOULD BE ABOLISHED, PSYCHIATRIC SERVICES SHOULD BE AVAILABLE BUT ON A VOLUNTARY BASIS, AND EDUCATIONAL AND JOB TRAINING PROGRAMS SHOULD BE EXPANDED.

20. **CONTACT, INC, P O BOX 81826, LINCOLN, NE 68501. LET THE PUNISHMENT FIT THE CRIME.** 223 p. **NCJ-42324**

THIS BOOKLET CONTAINS A WIDE VARIETY OF MATERIAL BASED ON THE THEME OF DETERMINATE, OR FIXED, SENTENCING. INCLUDED ARE STANDARDS AND GOALS RELATED TO SENTENCING AND AN OVERVIEW OF FIXED SENTENCING IN THE STATES. RELEVANT PUBLICATIONS AND PAPERS ON THE TOPIC ARE LISTED, SUMMARIZED, AND IN SOME CASES, REPRINTED. THE DEFINITE SENTENCING SYSTEMS OF CALIFORNIA, ILLINOIS, MAINE, AND MINNESOTA ARE DESCRIBED IN A COMPARATIVE ANALYSIS. FIXED SENTENCING AND ITS ACCOMPANYING ABOLITION OF PAROLE ARE DEBATED WITH ARGUMENTS FROM PROponents SUCH AS DAVID FOGEL, NORVAL MORRIS, AND JAMES Q. WILSON AND OPPONENTS SUCH AS THE AMERICAN CORRECTIONAL SOCIETY, SOL RUBIN, AND ROBERT MARTINSON. MINNESOTA'S FIXED SENTENCING BILL IS PROVIDED AS A SAMPLE PIECE OF LEGISLATION.

Availability: National Criminal Justice Reference Service MICROFICHE PROGRAM.

21. **R. J. CROWLEY, F. KOPECKY, and MITCHELL, Eds. RESTORING THE OFFENDER TO USEFUL CITIZEN: HIP.** ILLINOIS LEGISLATIVE STUDIES CENTER SANGAMON STATE UNIVERSITY, SPRINGFIELD, IL 62708. 80 p. 1976. **NCJ-44553**

PROCEEDINGS OF A CONFERENCE ON THE REFORM OF THE ILLINOIS CORRECTION SYSTEM ARE DETAILED. THE ISSUES IN POINT ARE DETERMINATE SENTENCING, BEHAVIOR CHANGE, AND COMMUNITY-BASED CORRECTIONS. THE THREE SEMINARS OF THIS CONFERENCE HAVE AS A FOCUS THE REHABILITATION OF THE OFFENDER, BUT EACH IS FROM A DIFFERENT VIEWPOINT. THE FIRST SEMINAR APPROACHES THE QUESTION: 'TO WHAT EXTENT SHOULD THE STATE OF ILLINOIS ADOPT DETERMINATE SENTENCING TO A MUCH GREATER DEGREE THAN AT PRESENT?' THE PRO ARGUMENT FOR THIS QUESTION DISCUSSES THE DIFFERENCE BETWEEN DETERMINATE AND MANDATORY SENTENCING, AND CONCLUDES THAT DETERMINATE SENTENCING WOULD BE MUCH FAIRER THAN INDETERMINATE SENTENCING, WHERE LONG UNFAIR SENTENCES ARE GIVEN. THE CON ARGUMENT CLAIMS THAT DETERMINATE SENTENCING WOULD ACTUALLY CAUSE MORE INJUSTICES. THIS APPARENTLY UNSOLVABLE DEBATE IS SOMEWHAT RESOLVED IN THE ENSUING DISCUSSION, WHERE IT IS NOTED THAT THE ISSUE IS NUMBER OF YEARS AND THE FIXING OF THE DETERMINATE SENTENCE, NOT THE ACTUAL POLICY OF SENTENCING. THE

SECOND QUESTION IS 'TO WHAT EXTENT SHOULD THE STATE OF ILLINOIS EMPHASIZE BEHAVIOR CHANGE IN ITS CORRECTIONAL INSTITUTIONS TO A MUCH GREATER DEGREE THAN AT PRESENT?' THE GOAL OF PRISONS IS BEHAVIOR CHANGE, SINCE CRIMINALS ARE TO BE REHABILITATED AND REINTRODUCED TO SOCIETY, SO, AS THE PRO ARGUMENT CONTENDS, THEY ARE ALREADY USING A FORM OF BEHAVIOR CHANGE. BUT CERTAIN TYPES OF MODIFICATION MAY VIOLATE THE RIGHTS OF PRISONERS. THEREFORE IT IS SUGGESTED THAT NEW EXPERIMENTAL METHODS OF BEHAVIOR MODIFICATION BE MADE VOLUNTARY. THE CON SIDE COUNTERS THIS ARGUMENT BY SAYING THAT THIS MAY BE A THREAT TO THE RIGHTS AND WELL BEING OF THE PRISONER. THEY CITE THE FAILURE OF THE EXPERIMENT AT STATEVILLE PRISON IN JOLIET AS AN EXAMPLE. THE DISCUSSION CONCLUDES THAT THE REAL QUESTION IN POINT IS THE CHOICE OF ENTERING INTO THE PROGRAM. THE FINAL QUESTION DEBATED IS: 'TO WHAT EXTENT SHOULD THE STATE OF ILLINOIS ACCELERATE THE EXPANSION OF COMMUNITY-BASED ALTERNATIVES TO CORRECTIONAL INSTITUTIONS TO A MUCH GREATER DEGREE THAN AT PRESENT?' ON THE PRO SIDE, IT IS ARGUED THAT THE RETREAT FROM COMMUNITY-BASED CORRECTIONS MUST BE SLOWED DOWN. THE PRESENT CORRECTIONAL SYSTEM IS VIOLENT AND UNJUST, AND FINDINGS SHOW THAT COMMUNITY-BASED CORRECTIONS ARE CHEAPER AND MORE SUCCESSFUL. THE PROBLEMS STATED BY THE CON SIDE INCLUDE CORRUPTION AND THE FACT THAT LOCAL POLICE ARE DIVERTING TOO MUCH TIME TO THE COMMUNITY HOUSES, AND THEIR INPUT EXCEEDS THE OUTPUT OF COMMUNITY-BASED CORRECTIONS PAST THE POINT OF DIMINISHING RETURN. THE DISCUSSION WHICH FOLLOWED SUGGESTED THAT THE PEOPLE BE ASKED WHICH SYSTEM THEY PREFERRED, SINCE THEY WERE THE ONES MOST DIRECTLY AFFECTED BY THE SYSTEM.

Supplemental Notes: PROCEEDINGS OF SEMINARS HELD AT SAWGAMON STATE UNIVERSITY, FEBRUARY, 13, 1976.

22. **E. CZAJKOSKI. CRIMINAL JUSTICE VS REHABILITATION (FROM REHABILITATION WHAT PART OF CORRECTIONS?, 1977, BY BRENDA BRADSHAW AND PETER J ECK—SEE NCJ-56718).** UNIVERSITY OF TEXAS AT ARLINGTON RESEARCH AND SERVICE DIVISION INSTITUTE OF URBAN STUDIES, ARLINGTON, TX 76019. 7 p. 1977. **NCJ-56723**
- EXTREME FORMS OF THE REHABILITATION MODEL, INCLUDING INDETERMINATE SENTENCING, ARE CRITIQUED AS UNDERMINING THE CONCEPT OF JUSTICE. TRADITIONAL AND HISTORIC CONCEPTS OF JUSTICE PRESCRIBE PRECISE PUNISHMENTS FOR SPECIFIC CRIMINAL OFFENSES WITHOUT DISCRIMINATION OR DISPARITY. THE REHABILITATION MODEL FOR SENTENCING AND CORRECTIONS, PARTICULARLY IN ITS EXTREME FORMS, WHERE OFFENDERS ARE GIVEN INDETERMINATE SENTENCES WHOSE TERMINATION IS DEPENDENT UPON THE JUDGEMENT OF THERAPISTS THAT REHABILITATION HAS BEEN ACCOMPLISHED, UNDERMINES THIS CONCEPT OF JUSTICE. THIS SUBVERSION OF JUSTICE OCCURS BECAUSE THE SOCIAL CONTROLLERS HAVE BEEN RELEASED FROM PRECISE LEGISLATIVE MANDATES FOR ADMINISTERING JUSTICE. THE PROGRAMS OF CORRECTIONS ARE INSTEAD DETERMINED BY THE SUBJECTIVE AND FREQUENTLY ARBITRARY STANDARDS FOR 'NORMAL' BEHAVIOR HELD BY THOSE WHO HAPPEN TO BE OPERATING A PARTICULAR REHABILITATION PROGRAM. THE EPITOME OF REHABILITATION MODELS IS MANIFEST IN THE AMERICAN PENAL CODE, THE AMERICAN LAW INSTITUTE, AND THE MODEL SENTENCING ACT OF THE NATIONAL COUNCIL ON CRIME AND DELINQUENCY, WHICH STRUCTURES SENTENCING ON THE BASIS OF THE DIAGNOSIS OF THE OFFENDER RATHER THAN ON THE BASIS OF THE CRIME COMMITTED. DIVERSION PROGRAMS HAVE ALSO SUBVERTED CONCEPTS OF JUSTICE, BECAUSE THEY HAVE CREATED A NEW APPEN-

DAGE TO THE CRIMINAL JUSTICE SYSTEM WHICH DOES NOT OPERATE UNDER DUE PROCESS PROCEDURES AND WHICH COMMANDS OBEDIENCE UNDER THE THREAT OF PROSECUTION. THE ADMINISTRATION OF CRIMINAL JUSTICE SHOULD RETREAT FROM THE EXTREME FORMS OF THE REHABILITATION MODEL TO EXECUTE ITS PRIMARY RESPONSIBILITY OF ASSURING JUSTICE ACCORDING TO LAW.

23. **J. DEBRO. INSTITUTIONAL RACISM WITHIN THE STRUCTURE OF AMERICAN PRISONS (FROM BLACK PERSPECTIVES ON CRIME AND THE CRIMINAL JUSTICE SYSTEM, 1977 BY ROBERT L WOODSON—SEE NCJ-44997).** G K HALL, 70 LINCOLN STREET, BOSTON, MA 02111. 18 p. 1977. **NCJ-45004**

THE EFFECTS OF COLLECTIVE, INSTITUTIONAL RACISM DIRECTED AGAINST BLACKS ON PRISON DISCIPLINE, INMATES' WORK ASSIGNMENTS, AND THE DEEMPHASIS OF REHABILITATION AS A MAIN OBJECTIVE OF THE CORRECTIONS SYSTEM ARE EXPLORED. MANY STUDIES HAVE SHOWN THAT BLACKS ARE MORE VULNERABLE TO ARREST THAN WHITES; OTHERS HAVE SHOWN THAT EVEN AFTER CONVICTION BLACKS ARE THE OBJECTS OF DISCRIMINATION, AS THEY RECEIVE LONGER PRISON SENTENCES AND LESS OFTEN RECEIVE THE BENEFITS OF PROBATION AND PAROLE. IN THE 10 YEARS SINCE 1967, THE PRISON SYSTEM'S POPULATION HAS SHIFTED FROM A MAJORITY OF WHITES TO A MAJORITY OF BLACKS. THE AUTHOR ASSERTS THAT A NEW STRATEGY HAS BEEN DESIGNED TO ENSURE THAT WHEN A BLACK OFFENDER RETURNS TO THE COMMUNITY HE IS WORSE THAN WHEN HE WAS COMMITTED. THE FOREMOST EXAMPLE OF INSTITUTIONAL RACISM IN THE ADMINISTRATION OF CRIMINAL JUSTICE IS WHITE DOMINATION OF THE STRUCTURES AND AGENCIES WHICH ADMINISTER JUSTICE—THE POLICE, THE CORRECTIONAL SYSTEM, AND THE COURTS. STATISTICAL RELATIONSHIPS HAVE BEEN SHOWN BETWEEN THE RACE OF DEFENDANTS AND THE SENTENCES THEY RECEIVE, HOWEVER, IT IS EXTREMELY DIFFICULT TO PROVE A CAUSAL RELATIONSHIP. WITH REGARD TO DISCIPLINE WITHIN PRISONS, CERTAIN COURTS HAVE REACHED THE CONCLUSION THAT BLACK INMATES ARE MORE LIKELY THAN WHITE INMATES TO BE SUBJECTED TO SEVERE PENALTIES, AND IF SENTENCED TO PUNITIVE ISOLATION, ARE LIKELY TO STAY THERE LONGER THAN WHITES. THE PHILOSOPHY OF REHABILITATION HAS COME UNDER ATTACK FROM CORRECTIONS AUTHORITIES; PROPOSALS HAVE SUGGESTED A RETURN TO FIXED AND DETERMINATE SENTENCES, RETAINING REHABILITATION ONLY AS A SUPPLEMENTARY GOAL OFFERED ON A VOLUNTARY BASIS. SUCH VIEWS HAVE BEEN STATED AS OFFICIAL POLICY BY THE DIRECTOR OF THE FEDERAL BUREAU OF PRISONS. COVERT RACISM IN THE PRISON SYSTEM MAY ALSO TAKE THE FORM OF ASSIGNMENTS WITHIN THE INSTITUTION; WHITES GENERALLY ARE GIVEN THE CHOICE WORK ASSIGNMENTS, AND OFTEN BLACKS ARE GIVEN CUSTODY CLASSIFICATIONS WHICH LIMIT THEIR MOVEMENT WITHIN THE INSTITUTION. A DISCUSSION OF THE PROBLEM BY OTHER CRIMINAL JUSTICE EXPERTS IS PRESENTED, AND REFERENCES ARE INCLUDED.

24. **S. DE LESSEPS. REAPPRAISAL OF PRISON POLICY (FROM CRIME AND JUSTICE, 1978, BY HOYT GIMLIN—SEE NCJ-58807).** CONGRESSIONAL QUARTERLY, INC, 1414 22ND STREET, NW, WASHINGTON, DC 20037. 20 p. 1978. **NCJ-58811**

THE CHANGE OF PHILOSOPHICAL PERSPECTIVES IN THE FIELD OF CORRECTIONS, FROM BELIEF IN REHABILITATION TO A PREFERENCE FOR PUNITIVE MEASURES IS DISCUSSED. THE BASIC ASSUMPTIONS ON PRISONER REHABILITATION ARE SUBJECT TO SCRUTINY, ESPECIALLY DURING A TIME WHEN PRISONS ARE DANGEROUSLY OVERCROWDED, AND RESOURCES FOR EXTENSIVE TREATMENT ARE UNAVAILABLE. A PUNITIVE THEORY OF CRIMINAL JUSTICE, APPLIED

TO CORRECTIONS, MIGHT EFFECTIVELY PREVENT CRIME. IN PRACTICE, THE SYSTEM WOULD DEMAND THAT ANYONE CONVICTED OF A SERIOUS CRIME SPEND SOME TIME IN PRISON. IT IS FELT THAT THE USE OF DETERMINATE SENTENCES WOULD ENSURE ADEQUATE RETRIBUTION FOR MAJOR CRIMES AND WOULD PREVENT SUBJECTIVE FACTORS FROM AFFECTING THE SENTENCE. IRONICALLY, THE POLICY OF MANDATORY SENTENCING HAS BECOME POPULAR AT A TIME WHEN MANY PRISON SYSTEMS HAVE BEEN COMPELLED TO RELEASE PRISONERS FROM OVERCROWDED JAILS. SEVERAL COURT DECISIONS HAVE DECLARED PRISON CONDITIONS TO BE BARBARIC AND INHUMAN, AND MANY STATES HAVE ALLOCATED FUNDS TO IMPLEMENT THE POLICIES OF CONTINUED INCARCERATION WITHIN JUDICIAL GUIDELINES. THE HISTORY OF THE REHABILITATION MODEL IS PRESENTED FROM ITS INCEPTION AS A REFORM OVER PHYSICAL PUNISHMENT, TO ITS DECLINE AS DEMONSTRATED BY THE ATTICA AND RAHWAY PRISON RIOTS. ISSUES FACING PENOLOGISTS INCLUDED THE MANNER IN WHICH SENTENCING WILL BE CONDUCTED AND THE FUTURE USE OF PAROLE. FOOTNOTES AND A SELECTED BIBLIOGRAPHY ARE PROVIDED.

25. **A. DERSHOWITZ. LET THE PUNISHMENT FIT THE CRIME (FROM SOCIAL PROBLEMS IN TODAY'S WORLD, 1978, BY JOHN PERRY AND ERNA PERRY).** LITTLE BROWN AND COMPANY, 200 WEST STREET, WALTHAM, MA 02154. 7 p. 1978. **NCJ-56928**

THE TREND TOWARD GREATER CERTAINTY AND UNIFORMITY IN SENTENCING AS OPPOSED TO INDETERMINATE SENTENCING IS EXAMINED IN TERMS OF CRIME AND PUNISHMENT. ALMOST EVERY STATE GIVES CONSIDERABLE SENTENCING DISCRETION TO JUDGES, AND ALL STATES AND THE FEDERAL GOVERNMENT EMPLOY INDETERMINATE SENTENCING FOR MOST SERIOUS CRIMES. INDETERMINATE SENTENCING MEANS THAT THE AMOUNT OF TIME A CONVICTED CRIMINAL SERVES IS DECIDED BY AN ADMINISTRATIVE AGENCY, GENERALLY CALLED A PAROLE BOARD OR AN ADULT AUTHORITY, DURING THE TIME PRISONERS ARE SERVING THEIR SENTENCE RATHER THAN BY LEGISLATURES OR SENTENCING JUDGES. INDETERMINATE SENTENCING REPRESENTS A MAJOR REFORM DESIGNED TO SUBSTITUTE REHABILITATION FOR RETRIBUTION. WHILE LAW AND ORDER CONSERVATIVES MAINTAIN THAT INDETERMINATE SENTENCING IS JUST ONE MORE FORM OF CODDLING CRIMINALS, DEFENDERS OF PRISONERS AND PRISONERS THEMSELVES FEEL THAT IT HAS RESULTED IN TOO MUCH POWER BEING VESTED IN PAROLE BOARDS AND LONGER STAYS IN PRISONS. CONSENSUS IS EMERGING ABOUT THE CONCEPT OF UNIFORMITY IN SENTENCING, BASED ON DISPARITIES IN SENTENCING DECISIONS. THE CRITICAL ISSUE IS NOT WHETHER TO ABOLISH INDETERMINATE SENTENCING WHILE RETAINING JUDICIAL DISCRETION. RATHER, THE ISSUE IS WHETHER THE SYSTEM OF WIDE JUDICIAL DISCRETION. RATHER, THE ISSUE IS WHETHER THE SYSTEM OF WIDE JUDICIAL DISCRETION COUPLED WITH INDETERMINATE SENTENCING SHOULD BE REPLACED BY LEGISLATIVELY FIXED SENTENCES. TWO MAJOR REFORM PROPOSALS ALONG THE LATTER ISSUE HAVE BEEN MADE. THE FIRST, CALLED FLAT TIME SENTENCING, MEANS THAT LEGISLATURES DEFINE ONE SINGLE SENTENCE FOR EACH CRIME. THE SECOND, KNOWN AS THE MANDATORY MINIMUM SENTENCE, ELIMINATES ALL DISCRETION TO GO BELOW A CERTAIN MINIMUM SENTENCE THAT MUST BE SERVED FOR A GIVEN CRIME REGARDLESS OF CIRCUMSTANCES. CERTAIN GROUPS FAVOR FIXED MANDATORY SENTENCES FOR PARTICULAR CRIMES, AND MANY CONSERVATIVE PROPOONENTS OF CAPITAL PUNISHMENT FAVOR THE LEGISLATIVE ENACTMENT OF MANDATORY DEATH PENALTY STATUTES. MORE FUNDAMENTALLY, HOWEVER, THERE SEEMS TO BE WIDESPREAD AGREEMENT

THAT THE EXISTING SYSTEM OF SENTENCING DOES NOT WORK AND THAT THERE IS A CLEAR RELATIONSHIP BETWEEN THE FACT THAT MANY DEFENDANTS WHO ARE SENTENCED TO PRISON RECEIVE EXTREMELY LONG SENTENCES AND MANY CONVICTED SERIOUS CRIMINALS RECEIVE NO IMPRISONMENT AT ALL. IT APPEARS THAT REFORM GEARED TO MAKING PUNISHMENT FIT THE CRIME IS FORTHCOMING.

Supplemental Notes: REPRINTED FROM THE NEW YORK TIMES MAGAZINE, DECEMBER 27, 1975, P 26-27.

26. **L. ESPEY. TOWARDS CERTAINTY IN SENTENCING—CORRECTIONAL ALTERNATIVES.** NEW JERSEY DIVISION OF CRIMINAL JUSTICE 13 ROSTZEL ROAD, CN 14, PRINCETON, NJ 08540. *CRIMINAL JUSTICE QUARTERLY*, V 4, N 3 (FALL 1976), P 111-128. **NCJ-40982**

NUMEROUS ALTERNATIVES TO THE DISCRETIONARY SYSTEM UNDER WHICH SENTENCES ARE DECIDED AND IMPOSED ARE CONSIDERED IN THIS EXAMINATION OF THE NEED FOR SENTENCING REFORM. THE STRENGTHS AND WEAKNESSES OF THE THREE BASIC SENTENCING STRUCTURES (INDETERMINATE, INDEFINITE, AND DEFINITE) ARE EXPLORED ALONG WITH SEVERAL OF THE ALTERNATIVES TO FULL-TIME INCARCERATION (PARTIAL CONFINEMENT, RESTITUTION, FINES, OR SPECIAL CONDITIONS COUPLED WITH PROBATION). PROPOSALS FOR PARTIALLY DIVESTING THE TRIAL COURT OF ITS SENTENCING AUTONOMY, AS A MEANS OF REDUCING DISCRETION, ARE THEN EVALUATED. SUGGESTIONS RELATING TO THE MOST APPROPRIATE AGENCY FOR IMPOSING SENTENCE INCLUDE MULTI-JUDGE PANELS, SENTENCING TRIBUNALS WHICH INCORPORATE NON-JUDICIAL MEMBERS, MANDATORY LEGISLATIVE SENTENCING, AND SENTENCING BY THE TRIAL JURY. BASED ON THE FOREGOING DISCUSSION, THE AUTHOR RECOMMENDS THE CREATION OF A PERMANENT LEGISLATIVE COMMISSION TO IMPLEMENT A QUANTITATIVE OR MATRIX SENTENCING STRUCTURE BASED ON THE WEIGHTING OF A TABLE OF VARIABLES. DEFINITE-TERM SENTENCING AND AN ACROSS THE BOARD LOWERING OF MAXIMUM TERMS WOULD BE ADJUNCTS OF THE MATRIX SYSTEM. THIS SENTENCING PHILOSOPHY IS CONSISTENT WITH THE PROPOSED NEW JERSEY PENAL CODE OR THE NEW JERSEY CORRECTIONAL MASTER PLAN. THE SENTENCING STRUCTURES OF THE OTHER 49 STATE JURISDICTIONS AND THE DISTRICT OF COLUMBIA ARE ALSO PRESENTED.

27. **FLORIDA DEPARTMENT OF OFFENDER REHABILITATION BUREAU OF PLANNING, RESEARCH AND STATISTICS, 1311 WINEWOOD BOULEVARD, TALLAHASSEE, FL 32301. HISTORICAL ANALYSIS OF FIXED VS INDETERMINATE SENTENCING FOR INMATES COMMITTED TO THE CUSTODY OF THE DEPARTMENT OF OFFENDER REHABILITATION—RESEARCH STUDY.** 3 p. 1977. **NCJ-67610**

A STUDY ANALYZING THE HISTORICAL TRENDS IN FIXED VERSUS INDETERMINATE SENTENCING PATTERNS IN FLORIDA SINCE 1957 FOR THE PURPOSE OF FORECASTING FUTURE SENTENCING TRENDS IS DISCUSSED. IN 1957 THE FLORIDA LEGISLATURE ENACTED STATUTE 921.18, WHICH PROVIDED FOR INDETERMINATE SENTENCING OF FELONY OFFENDERS TO A PERIOD OF FROM 6 MONTHS TO A MAXIMUM NOT GREATER THAN THE MAXIMUM PROVIDED FOR THE SPECIFIC OFFENSE AND NOT LESS THAN THE MINIMUM PROVIDED FOR THAT SAME OFFENSE. SINCE 1957 THE STATUTE HAS BEEN REVISED SIX TIMES. THE MAIN DIFFERENCE BETWEEN THE ORIGINAL STATUTE AND THE STATUTE TODAY IS THE EXCLUSION OF HABITUAL OFFENDERS AND FELONS CONVICTED OF CAPITAL OFFENSES. EXAMINATION OF THE DATA REFLECTING FIXED VERSUS INDETERMINATE SENTENCING PRACTICES SINCE 1957 REVEALS THAT AFTER PASSAGE OF THE LAW THERE WAS A PERIOD OF INCREASING USAGE OF ITS PROVISION FOR INDETERMINATE SENTENCES. APPROXIMATELY 5 YEARS PASSED BEFORE THE

MAXIMUM USAGE OF THE STATUTE WAS REACHED IN 1961 THROUGH 1962, WHEN 36.1 PERCENT OF THE TOTAL NUMBER OF FELONS SENTENCED RECEIVED INDETERMINATE SENTENCES. AFTER THIS HIGH POINT, HOWEVER, THERE WAS A STEADY DECLINE IN ITS USAGE. IN 1975 THROUGH 1976 ONLY 8.8 PERCENT OF THOSE SENTENCED RECEIVED INDETERMINATE SENTENCES. IF THE DECREASING TREND IN THE USE OF INDETERMINATE SENTENCES CONTINUES, IT IS EXPECTED THAT BY FISCAL YEAR 1980 THROUGH 1981 VIRTUALLY NO COMMITMENTS WITH INDETERMINATE SENTENCES WILL BE RECEIVED. THE TREND TO IMPOSE FIXED RATHER THAN INDETERMINATE SENTENCES MIGHT BE EXPLAINED AS THE COURT'S REACTION TO CURRENT FEELINGS THAT REHABILITATION DOES NOT WORK, AND THEREFORE SENTENCES SHOULD BE KEYED TO THE OFFENSE RATHER THAN TO THE REHABILITATION OF THE OFFENDER. ANOTHER POSSIBILITY IS THAT THE TREND REPRESENTS ACKNOWLEDGMENT THAT PAROLE FUNCTIONS IN MANY WAYS AS AN INDETERMINATE SENTENCE, AND THEREFORE THE FORMAL STATEMENT OF THE INDETERMINATE SENTENCE IS UNNECESSARY. A TABLE IS PROVIDED.

Availability: National Criminal Justice Reference Service MICROFICHE PROGRAM.

28. **D. FOGEL. JUSTICE MODEL FOR CORRECTIONS (FROM PRISONS PAST AND FUTURE, 1978, BY JOHN C FREEMAN—SEE NCJ-58327).** HEINEMANN EDUCATIONAL BOOKS LTD, 22 BEDFORD SQUARE, LONDON WC1B 3HH, ENGLAND. 28 p. 1978. **NCJ-58334**

A LIMITED SET OF OBJECTIVES FOR PRISONS, BASED ON A JUSTICE PERSPECTIVE OF CORRECTIONS, IS PROPOSED. PROPOSITIONS ABOUT THE PURPOSES OF IMPRISONMENT ARE SET FORTH AS THE BASIS FOR A CRITIQUE OF EXISTING SENTENCING, PAROLE, AND PRISON ADMINISTRATION PRACTICES, WHICH ARE DESCRIBED AS ESSENTIALLY RULELESS. THE NEED TO CONCEPTUALIZE IMPRISONMENT DIFFERENTLY—AS ONLY A TEMPORARY DEPRIVATION OF LIBERTY—AND TO NARROW RHETORICAL CLAIMS ABOUT WHAT PRISON CAN ACCOMPLISH IS BROUGHT OUT, AS IS THE IMPORTANCE OF VIEWING THE SENTENCE AS PART OF THE CONTINUUM OF JUSTICE AND AS SOMETHING TO BE EXPERIENCED AS JUST, REASONABLE, AND CONSTITUTIONAL. THE FOLLOWING SHORT-RANGE OBJECTIVES FOR IMPLEMENTING A JUSTICE PERSPECTIVE IN PRISONS ARE RECOMMENDED: (1) RECOGNIZING THAT ALL THE RIGHTS ACCORDED FREE CITIZENS BUT CONSISTENT WITH MASS LIVING AND THE EXECUTION OF A SENTENCE RESTRICTING FREEDOM OF MOVEMENT) FOLLOW AN OFFENDER INTO PRISON, AND (2) ELIMINATING ALL NONVOLUNTARY INMATE PROGRAMS AND SERVICES. MIDDLE-RANGE OBJECTIVES ARE AS FOLLOWS: (1) RETURNING TO FLAT-TIME SENTENCES WITH PROCEDURAL RULES GOVERNING SENTENCE SELECTION; (2) ELIMINATING PAROLE BOARDS AND PAROLE AGENCIES; (3) TRANSFORMING FORTRESS PRISONS INTO INSTITUTIONS FOR NO MORE THAN 300 PERSONS, FURTHER DIVISIBLE INTO SUBUNITS OF 30 CONTAINING PEOPLE SENTENCED TO SIMILAR TERMS; AND (4) DETERMINING RELEASE DATES THROUGH A NARROW, REVIEWABLE SYSTEM OF FIXED GOOD-TIME RULES. THE ELEMENTS OF EACH OBJECTIVE AND ALTERNATIVE STRATEGIES FOR IMPLEMENTATION ARE DISCUSSED. RECOGNITION OF THE FOLLOWING POINTS IS URGED: THAT CRIME AND CRIMINALS ARE NOT ABERRATIONS; THAT INCARCERATION FOR SOME WILL BE NECESSARY; THAT THE PRISON ADMINISTRATOR'S FIRST PRIORITY IS TO ACCOMPLISH INCARCERATION JUSTLY; AND THAT THE SEARCH FOR MESSIANIC TREATMENTS AS A WAY OF CHANGING PEOPLE SHOULD END.

29. **D. FOGEL. JUSTICE PERSPECTIVE IN CORRECTIONS.** STATE TECHNICAL INSTITUTE OF MEMPHIS, 5983 MACON COVE AT INTERSTATE 40, MEMPHIS, TN 38134. *QUARTERLY JOURNAL OF CORRECTIONS*, V 1, N 3 (SUMMER 1977), P 14-29. **NCJ-43708**

ALTERNATIVE SENTENCING, PAROLE, AND PRISON ADMINISTRATION PRACTICES ARE SUGGESTED IN A PROPOSAL FOR INTRODUCING A JUSTICE PERSPECTIVE INTO CORRECTIONAL OPERATIONS. THE LACK OF SPECIFIC CORRECTIONAL PURPOSE IN PRISONS IS POINTED OUT. PROPOSITIONS CONCERNING MAN AND LAW IN THE CONTEXT OF JUSTICE ARE SET FORTH AS FOUNDATIONS FOR PRISON OBJECTIVES. THE NEED TO CONCEIVE OF INCARCERATION AND ITS PLACE IN CRIMINAL JUSTICE IN A NEW WAY IS POINTED OUT, AND A TWO-PRONGED REFORM STRATEGY IS SUGGESTED. THE SHORT-RANGE ELEMENT OF THE STRATEGY INVOLVES A RECONCEPTUALIZATION OF IMPRISONMENT AS REPRESENTING ONLY A DEPRIVATION OF LIBERTY IMPOSED AS THE LEGAL COST FOR VIOLATING LAWS. IT IS SUGGESTED THAT, WITHIN THE RESTRAINTS IMPOSED BY INSTITUTIONAL LIVING AND THE EXECUTION OF A SENTENCE THAT RESTRICTS FREEDOM OF MOVEMENT, PRISONERS SHOULD MAINTAIN ALL THE RIGHTS ACCORDED FREE CITIZENS. THE MIDDLE-RANGE STRATEGY INVOLVES A RETURN TO FLAT-TIME SENTENCES WITH PROCEDURAL RULES GOVERNING SENTENCE SELECTION, THE ELIMINATION OF PAROLE BOARDS AND PAROLE AGENCIES, AND THE TRANSFORMATION OF FORTRESS PRISONS INTO INSTITUTIONS HOLDING NO MORE THAN 300 PERSONS AND FURTHER DIVISIBLE INTO SUBUNITS OF 30. SENTENCING AND PAROLE ALTERNATIVES ARE SUGGESTED, AND DETAILS OF THE PROPOSED FLAT TIME SYSTEM ARE OFFERED. PROGRAM ELEMENTS (E.G., OMBUDSMAN, SELF-GOVERNANCE, LAW LIBRARY) CONDUCIVE TO OPERATIONAL JUSTICE IN PRISONS ARE NOTED. A LIST OF REFERENCES IS PROVIDED.

30. **D. FOGEL. WE ARE THE LIVING PROOF—THE JUSTICE MODEL FOR CORRECTIONS—SECOND EDITION.** ANDERSON PUBLISHING COMPANY, 646 MAIN STREET, CINCINNATI, OH 45201. 359 p. 1979. **NCJ-66871**

THIS TEXT PRESENTS A JUSTICE MODEL OF PRISON ADMINISTRATION BASED ON THE IDEA THAT JUSTICE—AS FAIRNESS—IS THE PURSUIT WE SHOULD BE INVOLVED WITH IN PRISON RATHER THAN WITH TREATMENT MODELS. IMPETUS FOR THE TEXT CAME FROM A SERIES OF 1973 MID-WESTERN PRISON DISTURBANCES WHICH WERE FOLLOWED BY AN LEAA-SPONSORED CHICAGO MEETING OF STATE CRIMINAL JUSTICE PLANNING DIRECTORS AND CORRECTION DEPARTMENT HEADS. AN OPENING CHAPTER TRACES THE HISTORY OF THE AMERICAN PRISON HERITAGE, A HERITAGE WITH FEW BRIGHT SPOTS. AMONG LANDMARKS DISCUSSED ARE THE DEVELOPMENT OF CELLS OR CUBICLES FOR INDIVIDUAL PRISONERS, THE ESTABLISHMENT OF PRISONER CLASSIFICATION SYSTEMS, INTRODUCTION OF PRISON LABOR, THE NEW PENOLOGY OF 1870-1930 THAT SPURNED VINDICTIVE AND CORPORAL PUNISHMENTS AND LAUNCHED REFORMS FOR REHABILITATION OF PRISONERS, AND THE LATER TREATMENT MOVEMENT. CORRECTIONAL HISTORY, IT IS PROPOSED, MAY BE ANALYZED AS A SERIES OF CONFLICTS CENTERING ON SUCCESSFUL AND UNSUCCESSFUL EFFORTS ON THE PART OF THE INMATE TO CHANGE HIS CORRECTIONALLY ASCRIBED STATUS. INMATES' LEGAL STRUGGLE, HOWEVER, MUST BE STUDIED ALONGSIDE THE WORK AND ROLE OF CORRECTIONAL GUARDS. THE PLIGHT OF THE 'KEEPER' IS EXAMINED FOLLOWING THIS HISTORICAL TREATMENT WITH EMPHASIS ON THE INHERENT CONTRADICTIONS, NEGLECT, AND FOSSILIZATION OF THE CUSTODIAN'S ROLE AND ON POSSIBILITIES FOR IMPROVEMENT. TWO RELATED PHENOMENA ARE ALSO EXAMINED: THE REHABILITATION (TREATMENT) PROGRAMS ATTEMPTED IN THE LAST QUARTER OF A CENTURY AND THE GROWING CORRECTIONAL CASE LAW OF THE LAST DECADE. BOTH ARE EXPLORED AS A STRUGGLE BY TREATERS AND PRISONERS TO GAIN POWER IN CORRECTIONAL SETTINGS. THE TEXT ALSO PROPOSES AN OPERATIONAL DEFINITION OF CRIMINALITY AND SUGGESTS THAT THE QUEST FOR A SCIENTIFIC UNI-

FIED THEORY IS FUTILE. IT RECOMMENDS VIEWING THE CRIMINAL AS LARGELY VOLITIONAL AND PROPOSES AN ELABORATE JUSTICE MODEL FOR PRISON ADMINISTRATION. THIS MODEL REQUIRES A HARNESSING OF DISCRETION IN SENTENCING, PAROLE, AND ADMINISTRATION. IT INCLUDES INMATE-STAFF COUNCILS TO RESOLVE INMATE-STAFF CONFLICTS AND TO ADVISE ON CORRECTIONAL PROGRAMS, LEGAL AID IN PRISONS, ADMINISTRATIVE DUE PROCESS, AND ESTABLISHMENT OF AN OMBUDSMAN PROGRAM IN PRISONS. NEW SENTENCING PROCEDURE AND THE ABOLITION OF PAROLE IS PROPOSED. A FINAL CHAPTER FOCUSES ON THE RESIDUAL OFFENDER WHO MUST BE INCAPACITATED, BEHAVIORAL MODIFICATION TECHNIQUES, AND THE NEED FOR PUBLIC INVOLVEMENT AND FOR LEGISLATIVE SUPPORT. APPENDIXES INCLUDE RESULTS OF A PRISONER'S SURVEY AND LETTERS FROM PRISONERS ON SENTENCING, MEMOIRS OF A JAILHOUSE LAWYER, A LETTER FROM A SAN QUENTIN CONVICT, EXCERPTS FROM THE OFFICIAL REPORT OF THE NEW YORK STATE SPECIAL COMMISSION ON ATTICA, 1972, AND A PAPER ON THE EFFECT OF FLAT-TIME SENTENCES ON TIME SERVED. A BIBLIOGRAPHY IS PROVIDED.

Supplemental Notes: CRIMINAL JUSTICE STUDIES.

Sponsoring Agency: US DEPARTMENT OF JUSTICE LEAA NATIONAL INSTITUTE OF LAW ENFORCEMENT AND CRIMINAL JUSTICE, 633 INDIANA AVENUE NW, WASHINGTON, DC 20531.

Availability: ANDERSON PUBLISHING COMPANY, 646 MAIN STREET, CINCINNATI, OH 45201.

31. **D. F. FOGEL. JUSTICE, NOT THERAPY—A NEW MISSION FOR CORRECTIONS.** AMERICAN JUDICATURE SOCIETY, SUITE 1606, 200 WEST MONROE STREET, CHICAGO, IL 60606. *JUDICATURE*, V 62, N 8 (MARCH 1979), P 373-380. **NCJ-55580**

THE REHABILITATION AND JUSTICE MODELS FOR CORRECTIONS ARE DISCUSSED AS BEING COMPLEMENTARY RATHER THAN MUTUALLY EXCLUSIVE. THE REHABILITATION MODEL, IN ITS PUREST FORM PERMITS THE COURTS TO IMPOSE AN OPEN-ENDED SENTENCE (INDETERMINATE), WITH THIS APPROACH, CLINICAL EXPERTS ARE SUPPOSED TO DIAGNOSE THE PRISONER'S PROBLEMS, TREAT HIM, AND RELEASE HIM SOMETIME BEFORE THE MAXIMUM SENTENCE EXPIRES IF HE MAKES SUFFICIENT PROGRESS. IT THUS GIVES PRISON AUTHORITIES ENORMOUS DISCRETION AND DIVESTS THE COURT OF THE RESPONSIBILITY FOR THE ACTUAL (NOT SENTENCED) TIME A PRISONER SERVES. THE JUSTICE MODEL, ON THE OTHER HAND, OFFERS JUSTICE-AS-FAIRNESS AS THE TREATMENT MODALITY IN PRISON. IT SEEKS GREATER CERTAINTY IN SENTENCING THROUGH THE REDUCTION OF JUDICIAL DISCRETION, ON-THE-RECORD REASONS AS WELL AS STATUTORY CRITERIA FOR THE IMPOSITION OF SENTENCES, AND A SENTENCE APPELLATE PROCESS. A NUMBER OF STUDIES ('CRIMINOLOGY' BY EDWIN H. SUTHERLAND, 'FAIR AND CERTAIN PUNISHMENT: REPORT ON CRIMINAL SENTENCING' BY ALAN DERSHOWITZ, AND OTHERS LISTED) SHOW THAT INDETERMINATE SENTENCING IN THE INTEREST OF REHABILITATION HAS LED TO GENERALLY LONGER SENTENCES, PARTICULARLY FOR FEMALES AND YOUNG MALES, THAN DETERMINATE SENTENCING BECAUSE MEASURES OF PROGRESS FOR AN OFFENDER ARE SUBJECTIVELY ESTABLISHED BY VARIOUS PENAL AUTHORITIES. IN MANY CASES, THE INMATE PUTS ON AN ACT ACCORDING TO THE SCRIPT WRITTEN BY THE AUTHORITIES IN ORDER TO GAIN RELEASE. COERCIVE REHABILITATION, ANOTHER CHARACTERISTIC OF THE REHABILITATION MODEL, TENDS TO CREATE A MANIPULATIVE RELATIONSHIP BETWEEN OFFENDER AND CLINICIAN, PARTICULARLY WHEN AN AUTHENTIC DESIRE FOR CHANGE IS ABSENT IN THE OFFENDER. THE CORRECTIONS SYSTEM MUST PROMULGATE JUSTICE, AND THIS MEANS ASSURING THE OFFENDER THAT HE WILL NOT BE CONTROLLED BY

THE STATE BEYOND THE TIME JUSTLY DESERVED FOR HIS PARTICULAR CRIME. DURING THE PERIOD OF HIS SENTENCE, QUALITY REHABILITATION PROGRAMS WOULD BE AVAILABLE, BUT THEY WOULD BE VOLUNTARY.

32. **V. FOX, Ed. SOUTHERN CONFERENCE ON CORRECTIONS—ANNUAL PROCEEDINGS, 24TH.** FLORIDA STATE UNIVERSITY SCHOOL OF CRIMINOLOGY, TALLAHASSEE, FL 32306; CENTER FOR PROFESSIONAL DEVELOPMENT AND PUBLIC SERVICE. 363 p. 1979. **NCJ-59373**

TO MEET THE NEEDS OF NEWLY APPOINTED CORRECTIONAL LEADERS, THESE PRESENTATIONS BY PARTICIPANTS IN THE ANNUAL SOUTHERN CONFERENCE ON CORRECTIONS ADDRESS PROBLEMS FACING LEADERS OF CORRECTIONAL INSTITUTIONS. EXPERTS IN THE FIELD OF CORRECTIONAL MANAGEMENT AND PUBLIC ADMINISTRATION DISCUSS A VARIETY OF LEADERSHIP CONCERNS, SUCH AS THE IMPACT OF DETERMINATE SENTENCING ON THE REHABILITATIVE IDEAL, THE CONSUMER'S PERSPECTIVE IN CORRECTIONS, EXPERIENCES OF FEMALE INMATES ON TEMPORARY RELEASE FROM INCARCERATION, AN OVERVIEW OF PRISON TERRORISM, THE EFFECTS OF DRUG ABUSE ON INCARCERATED ADDICTS, THE IRRELEVANCE OF RECIDIVISM TO CRIMINAL JUSTICE EVALUATION, THE TREATMENT OF VIOLENT YOUTH AS ADULT CRIMINALS, AND A CRIMINAL JUSTICE PLANNING BUDGET. IN ADDITION, PARTICIPANTS ANALYZE THE BACKGROUND OF DIRECTORS OF CORRECTIONS, THE POLITICAL ENVIRONMENT OF BUREAUCRATIC LEADERS, AND DIFFICULTIES IN BUREAUCRATIC LEADERSHIP; REFLECT UPON THEIR EXPERIENCES AS CORRECTIONAL LEADERS; AND COMMENT ON STATEMENTS MADE BY OTHER PARTICIPANTS. ADDITIONAL TOPICS ADDRESSED INCLUDE THE ETHICS OF CORRECTIONAL MANAGEMENT, THE ROLE OF THE COMMUNITY COLLEGE IN CRIMINAL JUSTICE HIGHER EDUCATION, AN ANALYSIS OF SENTENCE DISPARITY, ANTHROPOLOGICAL OBSERVATIONS ON REHABILITATION THERAPY, COMMITMENT AND DELINQUENCY IN INDIA, AND A COMPARISON OF VICTIMS' AND OBSERVERS' RESPONSES TO CRIME. FINALLY, THE STATEMENT BY THE DIRECTOR OF THE FEDERAL BUREAU OF PRISONS BEFORE THE CONGRESSIONAL SUBCOMMITTEE ON CRIMINAL JUSTICE IS REPRODUCED, AS WELL AS THE RUTHERFORD COUNTY (TENN.) YOUTH DIVERSION PROJECT. REFERENCES ARE PROVIDED FOR MOST PRESENTATIONS, INCLUDING SOME FORMS, CHARTS, AND TABULAR DATA.

Supplemental Notes: CONFERENCE HELD FEBRUARY 28-MARCH 2, 1979, TALLAHASSEE, FLORIDA.

Availability: FLORIDA STATE UNIVERSITY SCHOOL OF CRIMINOLOGY, TALLAHASSEE, FL 32306.

33. **G. FRANCHINI. JUDICIAL REHABILITATION (FROM REHABILITATION—WHAT PART OF CORRECTIONS?, 1977, BY BRENDA BRADSHAW AND PETER J ECK—SEE NCJ-56718).** UNIVERSITY OF TEXAS AT ARLINGTON RESEARCH AND SERVICE DIVISION INSTITUTE OF URBAN STUDIES, ARLINGTON, TX 76019. 6 p. 1977. **NCJ-56720**

TRENDS IN SENTENCING THROUGHOUT THE UNITED STATES AND SPECIFICALLY IN NEW MEXICO ARE DISCUSSED, AND AN APPROACH TO SENTENCING FROM A JUDGE'S PERSPECTIVE IS PROPOSED. GENERALLY, THE PUBLIC IS PRESSURING COURTS TO IMPOSE HARSHER SENTENCES INVOLVING LONGER PERIODS OF INCARCERATION. THIS IS BASED PRIMARILY IN AN IRRATIONAL FEAR OF VICTIMIZATION, ALONG WITH A FRUSTRATION THAT SEEKS SIMPLE ANSWERS TO COMPLEX PROBLEMS FOR WHICH THERE ARE NO READILY AVAILABLE ANSWERS. IF LEGISLATURES AND THE JUDICIARY SUCCUMB TO THIS PRESSURE, MATTERS CAN ONLY GET WORSE. INCREASED IMPRISONMENT IS EXTREMELY COSTLY, BOTH FINANCIALLY AND SOCIALLY. BUILDING AND CUSTODIAL COSTS WILL PLACE A HEAVY BURDEN ON THE TAXPAYER, AND THE PREPONDERANCE OF EVIDENCE POINTS TOWARD IMPRISONMENT INCREASING THE PROB-

ABILITY OF RECIDIVISM UPON RELEASE. IT IS PREDICTED THAT A NEW DETERMINATE SENTENCING ACT PASSED IN NEW MEXICO COULD INCREASE THE PRISON POPULATION, DEPENDING ON HOW JUDGES USE IT, AND PLANS ARE UNDER WAY TO BUILD A NEW MINIMUM SECURITY PRISON. IN 1972, THE PENAL POPULATION IN NEW MEXICO WAS 263, AND IN MAY 1977 IT WAS 1,444, EXCLUDING JUVENILES. THIS TREND CAN ONLY AGGRAVATE THE PROBLEMS OF CRIME AND CORRECTIONS IN THE STATE. JUDGES SHOULD OPT FOR PROBATION IF THERE IS SOME CHANCE THAT IT MIGHT WORK. IF A PRISON SENTENCE IS BELIEVED BEST FOR ACCOMPLISHING PUNISHMENT, PUBLIC PROTECTION, AND REHABILITATION, THEN THE SHORTEST SENTENCE POSSIBLE SHOULD BE IMPOSED, BECAUSE EVIDENCE INDICATES THAT LONG SENTENCES REDUCE THE PROBABILITY OF ADJUSTMENT TO SOCIETY UPON RELEASE. WHERE IMPRISONMENT DOES OCCUR, THEN WORK RELEASE AND EDUCATIONAL PROGRAMS SHOULD BE PRIMARY IN PREPARING OFFENDERS TO RETURN TO SOCIETY.

34. **J. FRIEDMAN, J. L. BENEDICT, and I. PILLER. NEW JERSEY—CORRECTIONAL MASTER PLAN.** NEW JERSEY DEPARTMENT OF CORRECTIONS, P O BOX 7387, TRENTON, NJ 08628. 230 p. 1977. **NCJ-54180**

NEW JERSEY'S CORRECTIONAL MASTER PLAN SETS FORTH THE STATE'S CORRECTIONAL PHILOSOPHY AND PRESENTS GUIDELINES FOR THE DEVELOPMENT OF STATE AND LOCAL CORRECTIONS AND PROBATION AND PAROLE SERVICES. THE PLAN'S MAJOR RECOMMENDATIONS RELATE TO SENTENCING AND PAROLE POLICY, LOCALLY ORIENTED CORRECTIONS, AND ALLEVIATION OF OVERCROWDING IN STATE INSTITUTIONS. A CORRECTIONAL PHILOSOPHY IS RECOMMENDED THAT ACKNOWLEDGES PUNISHMENT AS A LEGITIMATE GOAL OF THE CORRECTIONAL SYSTEM AND EMPHASIZES EQUITY OF PUNISHMENT. IT IS RECOMMENDED THAT FORMALIZED SENTENCING CRITERIA BE USED IN DETERMINING DISPOSITIONS WITHIN A STATED RANGE OF AVAILABLE DISPOSITIONS, WITH EMPHASIS ON THE OFFENSE RATHER THAN ON THE OFFENDER. IT IS FURTHER RECOMMENDED THAT DETERMINATE SENTENCES FOR FIXED MAXIMUM PERIODS REPLACE INDETERMINATE SENTENCES, THAT THE PRINCIPLE OF LEAST RESTRICTIVE DISPOSITION GUIDE SENTENCING DECISIONS, AND THAT PAROLE DISCRETION BE MINIMIZED THROUGH USE OF PRESUMPTIVE PAROLE AT FIRST ELIGIBILITY. A PLAN FOR INCREASING THE ROLE OF LOCAL CORRECTIONAL PROGRAMS IS PRESENTED, TOGETHER WITH GUIDELINES FOR IMPLEMENTING THE PLAN. UNDER THE LOCAL CORRECTIONS PLAN, THE STATE WOULD PROVIDE FUNDING AND OTHER ASSISTANCE TO LOCAL GOVERNMENTS FOR THE CARE OF LESS SERIOUS OFFENDERS WHO OTHERWISE WOULD BE COMMITTED TO STATE INSTITUTIONS. ON THE BASIS OF BEDSPACE NEED PROJECTIONS IT IS RECOMMENDED THAT 1,200 NEW BEDSPACES BE CONSTRUCTED TO ALLEVIATE SEVERE OVERCROWDING CONDITIONS THAT HAVE RESULTED IN SUBSTANDARD INMATE LIVING CONDITIONS. PRIORITIES FOR CONSTRUCTION ARE SET FORTH. THE MASTER PLAN ALSO INCLUDES A DESCRIPTION OF THE CORRECTIONAL PLANNING PROCESS, RECOMMENDATIONS FOR THE SUPPORT AND IMPROVEMENT OF SPECIFIC CORRECTIONAL COMPONENTS, AN ANALYSIS OF STATE-LEVEL CORRECTIONAL ORGANIZATION, AND SUPPORTING DOCUMENTATION AND DATA. THE PLAN'S DISCUSSION OF CORRECTIONAL PHILOSOPHY TOUCHES ON SENTENCING AND PAROLE DECISIONMAKING IN NEW JERSEY AS WELL AS SUCH PHILOSOPHICAL ISSUES AS OFFENSE-BASED VERSUS OFFENDER-BASED POLICIES, DETERMINATE VERSUS INDETERMINATE SENTENCING, THE VALIDITY OF THE YOUTH OFFENDER CLASSIFICATION, DISPOSITION CRITERIA, COMMUNITY PROGRAM ALTERNATIVES TO

INSTITUTIONALIZATION, AND DECRIMINALIZATION. FOR RELATED DOCUMENTS, SEE NCJ-54178, 54179, AND 54181.

Sponsoring Agency: NEW JERSEY DEPARTMENT OF INSTITUTIONS AND AGENCIES, 135 WEST HANOVER STREET, TRENTON, NJ 08625.

Availability: National Criminal Justice Reference Service MICROFICHE PROGRAM.

35. **M. R. GARDNER. RENAISSANCE OF RETRIBUTION—AN EXAMINATION OF DOING JUSTICE.** UNIVERSITY OF WISCONSIN LAW SCHOOL, MADISON, WI 53706. *WISCONSIN LAW REVIEW* (1976), P 781-815. **NCJ-48006**

A JUST DESERTS-BASED MODEL OF DETERMINATE SENTENCING PROPOSED IN A FORTHCOMING BOOK IS CRITICALLY ANALYZED AND SUPPLEMENTED. DOING JUSTICE, A BOOK BY ANDREW VON HIRSCH, IS A FURTHER CRITIQUE OF THE REHABILITATIVE IDEAL OF IMPRISONMENT FOR TREATMENT PURPOSES AND OF THE RELATED PRACTICES OF INDIVIDUALIZING DISPOSITIONS THROUGH INDETERMINATE SENTENCING AND INCARCERATION BASED ON PREDICTIONS OF DANGEROUSNESS. IT IS SUGGESTED BY VON HIRSCH THAT TREATMENT MAY BE MORE INHUMANE AND CRUEL THAN A PUNITIVE APPROACH. MOREOVER HE ARGUES, PREDICTION IS INACCURATE, AND INDETERMINATE SENTENCES RESULT IN UNEQUAL ADMINISTRATION OF JUSTICE AND IMPOSE EXTRA HARDSHIP AND SUFFERING ON OFFENDERS. THE MODEL PROPOSED TO REPLACE THE REHABILITATIVE MODEL IS BASED ON SEVERAL MORAL ASSUMPTIONS: (1) PERSONAL LIBERTY IS TO BE PROTECTED SO LONG AS IT IS CONSISTENT WITH THE LIBERTY OF OTHERS; (2) THE STATE IS REQUIRED TO ADOPT THE LEAST RESTRICTIVE ALTERNATIVE TO ACHIEVE SOCIAL PURPOSES; AND (3) PUNISHMENT SHOULD BE BASED ON AN ASSESSMENT OF WHAT THE OFFENSE DESERVES, WITH DESERVED SENTENCES DETERMINED ON THE BASIS OF PUBLIC CONSENSUS OF THE SERIOUSNESS OF A CRIME. SENTENCING WOULD BE DETERMINATE WITH LITTLE ROOM FOR DISCRETION AND WITH EMPHASIS ON WIDER UTILIZATION OF ALTERNATIVES TO INCARCERATION AND SHORTER SENTENCES. PAROLE AND EARLY RELEASE WOULD BE ABANDONED, AND REHABILITATIVE PROGRAMS FOR INMATES WOULD BE PROVIDED ONLY ON A VOLUNTARY BASIS. HOWEVER, WITH THIS MODEL A JUST DESERTS RATIONALE COULD BECOME THE BASIS FOR CRUEL AND REPRESSIVE PUNISHMENTS AND THE THEORY COULD BE EASILY PERVERTED IN PRACTICE. IT COULD HAVE NEGATIVE EFFECTS IN THE AREA OF PRISONERS' RIGHTS, AND MAINTAINING PRISON DISCIPLINE MAY BECOME MORE DIFFICULT. FINALLY, THE NOTION OF CULPABILITY DOES NOT OFFER AN ADEQUATE GUIDE FOR LAWMAKERS IN DECIDING WHICH CONDUCTS REQUIRE CRIMINAL SANCTIONS OR IN ASSESSING THE JUSTIFICATION OF PUNISHMENT UNDER THE NEGLIGENCE AND STRICT LIABILITY PROVISIONS. MOREOVER, SERIOUS PHILOSOPHICAL DIFFICULTIES EXIST REGARDING THE JUSTIFICATIONS FOR PUNISHMENT AND THE DETERMINATION OF MORAL BLAMEWORTHINESS IN DETERREING DESERVED PUNISHMENT. THE MAJOR DIFFICULTY WITH THE MODEL IS ITS LACK OF SERIOUS CONSIDERATION OF THE CONCEPT OF CULPABILITY. IT IS SUGGESTED THAT INCORPORATION OF THE DETERMINATION OF CULPABILITY BASED ON A FREE JURY EXAMINATION OF THE OFFENDER'S LIFE HISTORY, MOTIVES, TEMPTATIONS, AND CAPACITIES IN SENTENCING MIGHT PROVIDE A PARTIAL SOLUTION TO THE PROBLEM OF CULPABILITY. WHERE DIMINISHED RESPONSIBILITY IS ADJUDGED, SENTENCING CAN BE MITIGATED. FURTHER, CONTROLS ON THE APPARATUS FOR DETAINING THE DANGEROUS OFFENDER WILL BE NEEDED. IT IS CONCLUDED THAT A SUPPLEMENTED JUST DESERTS MODEL MIGHT BETTER ACCOMMODATE THE DEMANDS FOR JUSTICE, ORDER AND CHARITY. REFERENCE CITATIONS ARE PROVIDED.

36. **B. J. GEORGE JR, W. L. CAHALAN, GILMORE H W, and P. M. JOHNSON. CRIMINAL JUSTICE ISSUES—SENTENCING ALTERNATIVES.** CITIZENS RESEARCH COUNCIL OF MICHIGAN, 500 GUARDIAN BLDG, SOUTH, DETROIT, MI 48226. 44 p. 1977. **NCJ-44912**

PAPERS IN THIS SERIES ON SENTENCING ALTERNATIVES INCLUDE A BACKGROUND PAPER, AN EXAMINATION OF FLAT OR MANDATORY MINIMUM SENTENCING, A DISCUSSION OF PRESUMPTIVE OR STANDARD SENTENCING, AND A SENTENCING REFORM PROPOSAL. THE OVERVIEW OF SENTENCING ALTERNATIVES PRESENTS THE LEGAL STATUS OF SENTENCING UNDER MICHIGAN LAW; SUMMARIZES THE PURPOSES OF CRIMINAL SANCTIONS (I.E., RETRIBUTION, DETERRENCE, REHABILITATION, AND ISOLATION/SEGREGATION); OUTLINES THE COMPETING SENTENCING STRUCTURES OF FLAT SENTENCING, PRESUMPTIVE SENTENCING, AND MODIFIED INDETERMINATE SENTENCING; AND DISCUSSES PENDING LEGISLATIVE PROPOSALS IN MICHIGAN. AFTER REVIEWING AND CRITICIZING SENTENCING PRACTICES IN MICHIGAN AND THE ENTIRE UNITED STATES, THE AUTHOR OF AN ARTICLE ADVOCATING FLAT SENTENCING SUGGESTS THAT THE LEGISLATIVE BRANCH OF GOVERNMENT DETERMINE WHAT SENTENCE SHALL BE IMPOSED FOR EACH AND EVERY CRIME; UPON CONVICTION, IT WOULD BE MANDATORY THAT THE PERSON CONVICTED BE SENTENCED FOR THAT PERIOD OF TIME WITH NO PAROLE AND NO PROBATION. A PROPOSAL OF PRESUMPTIVE OR STANDARD SENTENCING ALSO CRITICIZES SENTENCING DISPARITY; HE PROPOSES THAT THE LEGISLATURE ADOPT A PRESUMPTIVE SENTENCE WHICH WOULD BE IMPOSED ON A TYPICAL FIRST OFFENDER WHO COMMITTED THE CRIME IN A TYPICAL FASHION AND WHICH COULD BE CHANGED ONLY UPON THE FINDING OF SPECIFIC AGGRAVATING OR MITIGATING CIRCUMSTANCES BASED ON FREQUENTLY RECURRING CHARACTERISTICS OF THE CRIME AND THE CRIMINAL. PROPOSED AGGRAVATING AND MITIGATING FACTORS ARE LISTED. THE FINAL PAPER AIMS TO SHOW THAT A REDUCTION IN VIOLENT CRIME IS POSSIBLE THROUGH SELECTIVE QUARANTINE OF CONVICTED OFFENDERS BASED ON THEIR POTENTIAL FOR VIOLENCE; THE IMPLICATIONS OF THIS PROPOSAL FOR SENTENCING ARE NOTED. A CORRECTIONS DISCRETION MODEL AND A CORRECTIONS-JUDICIAL DISCRETION MODEL FOR INCREASING THE EFFICIENCY OF SELECTIVE QUARANTINE AND A SENTENCING MODEL FOR IMPLEMENTING SELECTIVE QUARANTINE ARE PRESENTED. REFERENCES ARE PROVIDED FOR SOME OF THE PAPERS.

Sponsoring Agencies: WEBBER FOUNDATION, 1206 WOODWARD AVENUE, DETROIT, MI 48226; MCGREGOR FUND, 2026 COMMONWEALTH BOULEVARD, DETROIT, MI 48226; NATIONAL BANK OF DETROIT, WOODWARD AVENUE, DETROIT, MI 48226.

Availability: CITIZENS RESEARCH COUNCIL OF MICHIGAN, 500 GUARDIAN BLDG, SOUTH, DETROIT, MI 48226.

37. **S. GETTINGER. KEEPING CLEAN IN CALIFORNIA—THE NATION'S ONLY REMAINING CIVIL COMMITMENT PROGRAM FOR ADDICTS HAS FALLEN ON HARD TIMES.** CRIMINAL JUSTICE PUBLICATIONS, INC, 801 SECOND AVENUE, NEW YORK, NY 10017. *CORRECTIONS MAGAZINE*, V 6, N 2 (APRIL 1980), P 44-50. **NCJ-66618**

THE CALIFORNIA CIVIL ADDICT PROGRAM (CAP) PRACTICING CIVIL COMMITMENT OF NARCOTICS ADDICTS TO COMPULSORY TREATMENT AT THE STATE REHABILITATION CENTER IS DESCRIBED. THE 1,500 MEN AND WOMEN IN CAP HAVE BEEN CONVICTED OF A FELONY AND HAVE CHOSEN TO DO TIME IN INSTALLMENTS AT THE REHABILITATION CENTER INSTEAD OF SERVING A CONTINUOUS STRETCH IN THE STATE PRISON. A COMPROMISE BETWEEN IMPRISONMENT AND COMMUNITY-BASED TREATMENT, THE ALTERNATIVE PROGRAM DOES NOT AIM TO CURE ADDICTION BUT TO INTERRUPT ITS CYCLE AND MINIMIZE DEPENDENCE ON NARCOTICS. A 7-YEAR PROCEDURE IS INVOLVED, PROVIDING SHORT

PERIODS OF INSTITUTIONALIZATION FOR DRYING OUT, REFLECTION, AND SOME TREATMENT. IT IS HOPED THAT THE DRUG ABUSE HABIT CAN THUS BE KEPT UNDER CONTROL ENOUGH TO PREVENT THE ADDICT FROM REVERTING TO CRIME. INSTITUTED BY AN ACT OF CONGRESS IN 1967, CIVIL COMMITMENT IS A PRACTICE SINCE DROPPED IN ALL STATES BUT CALIFORNIA, WHERE THE PROGRAM IS ALSO DWINDLING (ALTHOUGH EFFORTS ARE UNDER WAY TO REFORM IT). CRITICS CONTENT THAT COMPULSORY TREATMENT IS A CONTRADICTIONARY CONCEPT; THEY ARGUE THAT THE CENTERS ARE MUCH LIKE MINIMUM SECURITY PRISONS. MOREOVER, RECENT DETERMINATE SENTENCING PROVISIONS IN CALIFORNIA HAVE MADE THE CIVIL COMMITMENT OPTION LESS ATTRACTIVE TO ADDICT OFFENDERS. THE PRINCIPAL TREATMENT FORM IS GROUP THERAPY; OTHER INMATE ACTIVITIES INCLUDE ACADEMIC AND VOCATIONAL PROGRAMS, WITH JOB SKILL TRAINING CURRENTLY GETTING THE MOST EMPHASIS. THE CENTER HAS HAD PROBLEMS WITH INMATE DISTURBANCES, ESCAPES, RACIAL TENSION, AND WIDESPREAD DRUG AVAILABILITY. PROGRAM EFFECTIVENESS STUDIES REPORT CONFLICTING RESULTS. SUPPORTERS OF CIVIL COMMITMENT ARGUE THAT THE PROCEDURE IS FOR MONITORING ADDICTS' RELAPSES TO ADDICTION AND FOR HAVING A MEANS OF CURTAILING THE PROCESS. ILLUSTRATIONS ARE INCLUDED.

Supplemental Notes: PRICE QUOTED IS FOR SINGLE ISSUE. REPRINTS OF ARTICLE AVAILABLE IN LARGE QUANTITIES.

Availability: CRIMINAL JUSTICE PUBLICATIONS, INC, 801 SECOND AVENUE, NEW YORK, NY 10017.

38. **H. R. GLICK. MANDATORY SENTENCING—THE POLITICS OF THE NEW CRIMINAL JUSTICE.** ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS, SUPREME COURT BUILDING, WASHINGTON, DC 20544. *FEDERAL PROBATION*, V 43, N 1 (MARCH 1979), P 3-9. **NCJ-60268**

A CRITICAL ASSESSMENT OF THE MOTIVES AND LIKELY IMPACT OF THE SHIFT FROM INDETERMINATE TO DETERMINATE SENTENCING POLICIES IS PRESENTED. COMPLAINTS ABOUT JUDICIAL AND PRISON SYSTEMS THAT LED TO SENTENCING REFORMS ARE NOTED. THE PROPONENTS AND OPPONENTS OF DETERMINATE SENTENCING ARE IDENTIFIED AND THEIR POSITIONS REVIEWED. FUNDAMENTAL PROBLEMS WITH DETERMINATE SENTENCING ARE POINTED OUT, AND THE EMPIRICAL LITERATURE ON THE IMPACT OF DETERMINATE SENTENCING IS REVIEWED. IT IS CONCLUDED THAT, WERE MANDATORY AND FIXED SENTENCING LAWS FULLY APPLIED, THEY MIGHT PRODUCE SOME BENEFITS BEYOND THEIR IMMEDIATE POLITICAL APPEAL. HOWEVER, UNLESS LEGISLATURES ARE WILLING TO IMPRISON ALL OFFENDERS FOR LENGTHY PERIODS AND TO FUND PERPETUAL NEW PRISON CONSTRUCTION, AND UNLESS THE COURTS ARE WILLING TO APPLY MANDATORY SENTENCES IN ALL APPROPRIATE CASES, THE DETERMINATE SENTENCING LAWS PROBABLY WILL HAVE VERY LITTLE IMPACT. WHEN MANDATORY SENTENCING IS USED ONLY AS A BARGAINING TOOL, WHEN JURIES REFUSE TO CONVICT UNDER MANDATORY SENTENCING, AND WHEN MANDATORY SENTENCING LAWS APPLY ONLY TO CERTAIN OFFENSES, THE THRUST OF THE NEW POLICY IS LOST. WITH ONLY CERTAIN FELONS CONVICTED UNDER THE NEW LAWS, FEELINGS OF INJUSTICE CONTINUE TO PERVADE THE JAILS AND PRISONS. FURTHERMORE, THE PUNISHMENT RHETORIC OF DETERMINATE SENTENCING IS LIKELY TO END EFFORTS TO REHABILITATE OFFENDERS. THE WISDOM OF ABANDONING EVEN THE CHANCE OF REHABILITATION FOR SOME OFFENDERS IN FAVOR OF AN UNEQUALLY APPLIED SELECTIVE PUNISHMENT POLICY IS QUESTIONED. DIRECTIONS FOR RESEARCH ON THE RELATIONSHIP BETWEEN SENTENCING AND CRIME ARE SUGGESTED.

Availability: National Criminal Justice Reference Service MICROFICHE PROGRAM.

39. **D. M. GOTTFREDSON. SENTENCING TRENDS IN THE UNITED STATES—IMPLICATIONS FOR CLINICAL CRIMINOLOGY (FROM TODAY'S PROBLEMS IN CLINICAL CRIMINOLOGY—RESEARCH AS DIAGNOSIS AND TREATMENT, 1979, BY L. BELIVEAU ET AL.—SEE NCJ-65021).** UNIVERSITE DE MONTREAL CENTRE INTERNATIONAL DE CRIMINOLOGIE COMPAREE, SOCIAL SCIENCES BUILDING, P O BOX 6128, MONTREAL, QUEBEC, CANADA H3C 3J7; UNIVERSITE DE GENES CENTRE INTERNATIONAL DE CRIMINOLOGIE CLINIQUE, GENES, ITALY; INSTITUT PHILIPPE PINEL DE MONTREAL, 12, 333 BOULEVARD, MONTREAL, QUEBEC 478, CANADA. 17 p. 1979. **NCJ-65036**

RECENT SENTENCING TRENDS IN THE U.S. ARE DESCRIBED, WITH EMPHASIS ON THE SHIFT FROM INDETERMINACY TO THE JUST DESERTS MODEL AND THE EFFECTS ON REHABILITATIVE DIAGNOSIS AND TREATMENT OF INMATES BY CLINICIANS. IN CONTRAST WITH THE CONTINENTAL MODEL OF CRIMINAL PROCEEDINGS, AMERICAN TRIALS HAVE TWO DISTINCT PHASES: THE FIRST IS TO DETERMINE CRIMINAL LIABILITY; THE SECOND IS TO DETERMINE THE APPROPRIATE SENTENCE. ALTHOUGH SENTENCING DECISIONS AFFECT ROLES AND BEHAVIORS OF POLICE, PROSECUTORS, CORRECTIONAL ADMINISTRATORS, AND CLINICIANS, THERE IS MUCH DEBATE AND NO AGREEMENT ABOUT THE PURPOSES OF SENTENCING. FOUR SENTENCING GOALS ARE DETERRENCE, INCAPACITATION, TREATMENT, AND DESERT OR PUNISHMENT. UNTIL RECENTLY, THE TREATMENT GOAL WAS PARAMOUNT. INDETERMINATE SENTENCES WERE THUS THE GENERAL RULE. SUCH SENTENCES WERE CRITICIZED, HOWEVER, FOR BEING ARBITRARY, CAPRICIOUS, AND CONDUCTIVE TO UNWARRANTED DISPARITY. THE RECENT SHIFT HAS BEEN TO DETERMINATE SENTENCING AND AN EMPHASIS ON DESERT. FUTURE TRENDS WILL PROBABLY INCLUDE NONCOERCIVE INMATE TREATMENT, RIGID TIME CONSTRAINTS ON INMATE TREATMENT, MORE CERTAIN PENALTIES, PENALTIES CLOSELY RELATED TO THE CRIME'S CHARACTERISTICS RATHER THAN THE OFFENDER'S CHARACTERISTICS, REDUCED PARTICIPATION OF CLINICIANS IN PAROLE AND SENTENCING DECISIONS, AND DECREASED EMPHASIS ON PREVENTION OR REHABILITATION AS PURPOSES OF CORRECTION. THESE CHANGES IMPLY INCREASED PENALTIES IN A WAY NOT ENVISIONED BY THE DESERT THEORIST. VOLUNTARY TREATMENT MAY MEAN THAT ONLY MORE EASILY TREATABLE INMATES WILL VOLUNTEER FOR TREATMENT. TIME AVAILABLE FOR TREATMENT WILL BE RELATED TO THE CRIME'S SERIOUSNESS RATHER THAN TO THE INMATES NEED FOR TREATMENT. RESEARCH ON EFFECTIVENESS OF DIFFERENT TREATMENTS MAY BE HINDERED. FINALLY, PRISON MANAGEMENT MAY NEED TO CHANGE TO MORE AUTHORITARIAN SYSTEMS BECAUSE OF THEIR LOSS OF ONE FORM OF SOCIAL CONTROL, AND PRISONS MAY BECOME OVERCROWDED DUE TO INCREASED TERMS. THESE PROBLEMS MAY HAVE A CUMULATIVE EFFECT. THE CHANGES TO INCREASED FAIRNESS IN SENTENCING HAVE BEEN ACCOMPLISHED BY REJECTION OF THE TRADITIONAL TREATMENT AIM. THESE CHANGES, WHICH MAY BE PART OF A MORE GENERAL SOCIAL MOVEMENT IN THE U.S., PRESENT A FUNDAMENTAL CHALLENGE TO CLINICAL CRIMINOLOGY. A REFERENCE LIST IS INCLUDED.

40. **D. F. GREENBERG and D. HUMPHRIES. COOPTATION OF FIXED SENTENCING REFORM.** NATIONAL COUNCIL ON CRIME AND DELINQUENCY, CONTINENTAL PLAZA, 411 HACKENSACK AVENUE, HACKENSACK, NJ 07601. *CRIME AND DELINQUENCY*, V 26, N 2 (APRIL 1980), P 206-225. **NCJ-66612**

'STRUGGLE FOR JUSTICE,' A REPORT BY THE AMERICAN FRIENDS SERVICE COMMITTEE WORKING PARTY (AFSC) HAD WIDE-RANGING INFLUENCE ON CRIMINAL JUSTICE MODELS OF SENTENCING, AIDING A SWITCH FROM TREATMENT TO FIXED SENTENCING. THE TREATMENT MODEL OF CORREC-

TION ORIGINATED AFTER THE CIVIL WAR WHEN REFORMERS CRITICIZED FIXED SENTENCING AS RETRIBUTIVE AND MECHANICAL. PRISON SENTENCES WERE TO BE INDEFINITE, WITH RELEASE DECISIONS MADE ON THE BASIS OF REHABILITATIVE CRITERIA. CRITICISM OF THIS TREATMENT MODEL BEGAN TO ERUPT IN 1970 WITH THE AFSC BEING ONE OF THE MOST INFLUENTIAL REFORMERS. IN ITS REPORT, THE PARTY POINTED OUT THAT THE CRIMINAL JUSTICE SYSTEM HAD NEVER ACQUIRED THE EXPERTISE TO MAKE THE TREATMENT MODEL WORK, ATTACKED COERCIVE THERAPY AS UNDIGNIFIED, AND CALLED INDIVIDUALIZATION IN SENTENCING A VIOLATION OF THE FUNDAMENTAL NORMS OF DISTRIBUTIVE JUSTICE AND PROPORTIONALITY. PARTY REFORMERS ADVOCATED PROSECUTING AND PENALIZING CRIME ACCORDING TO ITS SOCIAL HARMFULNESS AND REPLACING DISCRETIONARY DECISIONMAKING WITH SHORTER SENTENCES OF FIXED LENGTH. IT WAS HOPED THAT ADOPTION OF FORMAL RULES WOULD BRING ABOUT SUBSTANTIVE REFORM OF CRIMINAL LAW. IN ADDITION, THE AFSC PROPOSALS WERE INTENDED TO SHIFT POWER TO DEFENDANTS AND PRISONERS, ENABLING THEM TO SET THEIR OWN PRIORITIES. ALTHOUGH THE REPORT HAD WIDELY FELT REPERCUSSIONS, MOST CONCEPTUAL FRAMEWORKS FOR REFORM BASED ON REPORT IDEAS MODIFY ITS RADICAL PROPOSALS. THE CONCEPT OF JUST DESERTS, WHICH ADVOCATES THAT LAW VIOLATORS SHOULD BE PUNISHED ACCORDING TO WHAT THEY DESERVE BASED ON WHAT THEY HAVE DONE, IS FOUND IN MANY SENTENCING SCHEMES OF THE 1970'S. IT REPRESENTS A DISTINCT GAIN FOR THOSE WHO ARE NOW SOCIALLY DISADVANTAGED EVEN THOUGH, IN SOME CASES, UNJUST SENTENCING MIGHT OCCUR. NEW SENTENCING BILLS, INTRODUCED POST-AFSC-REPORT, HOWEVER, HAVE NOT REDUCED SUBSTANTIVE, POLITICAL, AND CULTURAL BIASES, AND SOME OF THEM HAVE KEPT THEIR REHABILITATIVE AND PREDICTIVE CRITERIA. PROSECUTORS AND JUDGES ALSO RETAIN SUBSTANTIAL DISCRETION, AND SENTENCE LENGTHS WILL BE INCREASED RATHER THAN REDUCED. HOPE FOR SHORT-RUN CHANGES LIES WITH THE STATE'S LIMITED ABILITY TO COPE WITH MORE STRINGENT SENTENCING SCHEMES, GIVEN CURRENT BUDGETARY CONSTRAINTS, AND WITH POSSIBLE ADMINISTRATIVE OPPOSITION. FOOTNOTES ARE GIVEN.

Supplemental Notes: PRICE QUOTED FOR NCCD IS FOR SINGLE ISSUE. AN EARLIER VERSION OF THIS PAPER WAS PRESENTED AT THE 1976 MEETING OF THE AMERICAN SOCIETY OF CRIMINOLOGY.

Availability: NATIONAL COUNCIL ON CRIME AND DELINQUENCY, CONTINENTAL PLAZA, 411 HACKENSACK AVENUE, HACKENSACK, NJ 07601; UNIVERSITY MICROFILMS, 300 NORTH ZEEB ROAD, ANN ARBOR, MI 48106; INSTITUTE FOR SCIENTIFIC INFORMATION, 3501 MARKET STREET, UNIVERSITY CITY SCIENCE CENTER, PHILADELPHIA, PA 19104.

41. **L. GREENHOUSE. ALTERNATIVE SENTENCING—A WAY OUT?** NATIONAL CONFERENCE OF STATE LEGISLATORS. *STATE LEGISLATURES*, V 5, N 2 (FEBRUARY 1979), P 12-15. **NCJ-58304**

A TREND IN THE INCREASE OF NEW PRISONS IS NOTED, AND A COUNTERTEND IN SENTENCING ALTERNATIVES TO INSTITUTIONALIZATION IS DESCRIBED, ALONG WITH A DISCUSSION OF THE TREND TOWARD DETERMINATE SENTENCES. THE UNITED STATES IS IN THE MIDST OF A PRISON BUILDING BOOM, WITH SOME \$2.2 BILLION WORTH OF NEW STATE PRISON FACILITIES NOW UNDER CONSTRUCTION OR IN THE PLANNING STAGES IN 45 STATES. PROPOSALS TO RESTRICT THE DISCRETION OF SENTENCING JUDGES OR CURTAIL THE POWERS OF PAROLE BOARDS TO GRANT EARLY RELEASE ARE ON THE LEGISLATIVE CALENDAR IN MOST STATES THIS YEAR AND HAVE RECENTLY BEEN ADOPTED IN SOME FORM IN AT LEAST TEN, MAKING IT LIKELY THAT PRISONS WILL BE FILLED AS QUICKLY AS THEY

CAN BE BUILT. THIS TREND IS LARGELY IN RESPONSE TO PUBLIC PRESSURE TO GET TOUGH WITH CRIMINALS IN THE FACE OF PUBLIC PERCEPTIONS OF VULNERABILITY TO VICTIMIZATION. THOSE FAMILIAR WITH EMPIRICAL STUDIES, HOWEVER, ARE AWARE THAT IMPRISONMENT IS NOT ONLY AN EXPENSIVE WAY OF HANDLING OFFENDERS, BUT IS MOST LIKELY TO REINFORCE AND EXACERBATE CRIMINAL TENDENCIES. AT THE SAME TIME, THERE IS A COUNTERTEND SPEARHEADED BY JUDGES AND OTHER CRIMINAL JUSTICE EXPERTS AROUND THE COUNTRY WHICH EMPHASIZES SENTENCE ALTERNATIVES TO INSTITUTIONALIZATION. INSTEAD OF IMPRISONMENT, MANY JUDGES ARE SENTENCING NONVIOLENT OFFENDERS (THE MAJORITY OF OFFENDERS) TO PERIODS OF COMMUNITY SERVICE, THE FULFILLMENT OF EDUCATIONAL REQUIREMENTS, FINANCIAL RESTITUTION TO VICTIMS, AND OTHER COMMUNITY-BASED ACTIVITIES DEEMED APPROPRIATE FOR PARTICULAR OFFENDERS AND SPECIFIC OFFENSES. THOSE SUPPORTING THIS TREND VIEW IT AS BEING MORE EFFECTIVE IN REDUCING RECIDIVISM THAN IMPRISONMENT. THE TREND TOWARD DETERMINATE SENTENCING, WHICH LIMITS THE JUDGE'S SENTENCING DISCRETION, IS UNCLEAR AS TO ITS POSSIBLE EFFECTS ON THE FREQUENCY AND LENGTH OF IMPRISONMENT. IT MAY POSSIBLY ENCOURAGE THE USE OF IMPRISONMENT AND LEAD TO LONGER PRISON TERMS. INCREASED IMPRISONMENT, LARGELY A RESPONSE TO AN INCREASE IN CRIME IN THE EARLY 70'S, MAY PROVE TO BE AN OVERREACTION TO THE PEAK OF A POPULATION CYCLE THAT PRODUCED A LARGE NUMBER OF YOUNG PEOPLE IN THE CRIME-PRONE AGES IN THE EARLY 70'S. THE CYCLE IS NOW TAKING A DOWNWARD TURN. THIS, COUPLED WITH PROPOSITION 13 FEVER, MAY PROVE TO REVEAL THE PRISON BOOM AS A SERIOUS PLANNING AND POLICY ERROR.

42. **D. J. HALPERIN. DETERMINATE FELONY SENTENCING.** NATIONAL CENTER FOR STATE COURTS PUBLICATIONS DEPARTMENT, 300 NEWPORT AVENUE, WILLIAMSBURG, VA 23185. *STATE COURT JOURNAL*, V 2, N 1 (WINTER 1978), P 8-12, 41. **NCJ-44899**

AN OVERVIEW IS PRESENTED OF ISSUES IN THE DEBATE OVER DETERMINATE VERSUS INDETERMINATE SENTENCING FOR FELONS. THE VARIETY OF PROPOSALS ENCOMPASSED BY THE APPELLATIONS 'DETERMINATE' AND 'INDETERMINATE' IS NOTED, WITH REFERENCE TO VARIATIONS IN DETERMINATE SENTENCING SYSTEMS IN CALIFORNIA, MAINE, AND INDIANA. IT IS POINTED OUT THAT, AS GENERALLY USED, DETERMINATE SENTENCING DOES NOT MEAN MANDATORY SENTENCING, ALTHOUGH THE TWO CONCEPTS ARE NOT UNRELATED. ALLEGED DEFECTS IN INDETERMINATE SENTENCING ARE SUMMARIZED, SUCH AS ADVERSE EFFECTS ON PRISONERS AND THEIR FAMILIES, DEPENDENCE ON THE REHABILITATION MODEL, ARBITRARINESS IN PAROLE BOARD DECISIONMAKING, AND OTHER ISSUES. NEW PROBLEMS LIKELY TO BE POSED BY THE USE OF DETERMINATE SENTENCING ARE DISCUSSED, INCLUDING THOSE RELATED TO STATUTORILY FIXED SENTENCES AND TO THE BASIC CONCEPT OF FLAT-TIME SENTENCING REGARDLESS OF THE DEGREE OF JUDICIAL DISCRETION. THE POSSIBILITY THAT OTHER ALTERNATIVES TO INDETERMINATE SENTENCING MAY BE POSSIBLE IS POINTED OUT. ARIZONA'S APPROACH, WHICH INVOLVES A NARROWING OF BOTH JUDICIAL AND PAROLE BOARD DISCRETION, IS CITED. THE NEED FOR CAREFUL EVALUATION PRIOR TO ENACTING RADICALLY ALTERED SENTENCING POLICIES IS NOTED.

43. **N. HARLOW and M. R. MONTILLA. COLLOQUIUM ON CORRECTIONAL FACILITIES PLANNING—SUMMARY REPORT (FROM CA. DEPT. OF CORRECTIONS REPORT ON THE COLLOQUIUM ON CORRECTIONAL FACILITIES PLANNING, NOVEMBER 3-4, 1977, BY NORA HARLOW—SEE NCJ-46915).** CALIFORNIA DEPARTMENT OF CORRECTIONS, 630 K STREET, SACRAMENTO, CA 95814; AMERICAN JUSTICE INSTITUTE, 1007 7TH STREET, SACRAMENTO, CA 95814. 60 p. 1978. **NCJ-46916**

THIS REPORT SUMMARIZES THE PROCEEDINGS OF A COLLOQUIUM WHICH BROUGHT TOGETHER A GROUP OF CONSULTANTS WITH PROFESSIONAL EXPERTISE IN RELEVANT AREAS TO PROVIDE A COMPREHENSIVE BASE FOR CALIFORNIA FACILITIES PLANNING. ALTHOUGH THE NEED FOR A COMPREHENSIVE AND LONG-RANGE SYSTEMS APPROACH TO PLANNING IS WIDELY ACKNOWLEDGED, THERE ARE A NUMBER OF CONSTRAINTS TO SUCH PLANNING WITHIN CRIMINAL JUSTICE AND CORRECTIONS. THESE CONSTRAINTS INCLUDE SYSTEM FRAGMENTATION; COMPETITION AMONG SYSTEM COMPONENTS; PUBLIC PRESSURES FOR QUICK AND EASY SOLUTIONS; POLITICAL CONSIDERATIONS; LACK OF STRONG LEADERSHIP, AN ADMINISTRATIVE STRUCTURE CONDUCTIVE TO PLAN IMPLEMENTATION, AND EXPLICIT AND RATIONAL GOALS; ADHERENCE TO FAMILIAR RELATIONSHIPS; AND THE SEPARATION OF PLANNING FROM POLICYMAKING. ESSENTIAL TO COMPREHENSIVE PLANNING PROCESSES ARE THE DESCRIPTION OF THE EXISTING SITUATION, THE DEFINITION OF OBJECTIVES, THE IDENTIFICATION OF PROBLEMS, THE ASSESSMENT OF ALTERNATIVES, THE SELECTION OF A PROPOSED COURSE OF ACTION AND PLAN, AND PROVISION FOR CONTINUOUS EVALUATION OF THE PLAN. AN ACCEPTED SYSTEMS PLANNING MODEL SHOULD DESCRIBE THE CRIMINAL JUSTICE SYSTEM AND INCLUDE, AS MUCH AS POSSIBLE, DESCRIPTIONS OF INTERACTING JUSTICE AND NONJUSTICE SYSTEMS WHICH PLAY AN INTEGRAL ROLE IN GOAL ACHIEVEMENT. AN ASSESSMENT OF A NUMBER OF CRIMINAL JUSTICE CONSIDERATIONS SUCH AS THE IMPACT OF LEGISLATION AND JUDICIAL DECISIONS ON THE SYSTEM'S NEEDS AND THE IMPACT OF THE CRIMINAL JUSTICE SYSTEM IN NONSYSTEM AREAS MUST BE MADE. INSTITUTIONAL OBJECTIVES IN CORRECTIONS APPEAR TO BE MOVING IN THE DIRECTION OF DETERRENCE/PUNISHMENT AND INCAPACITATION. HOWEVER, IT IS ALSO NECESSARY THAT RESTORATIVE, SELF-IMPROVEMENT, AND REHABILITATIVE OPPORTUNITIES BE BUILT INTO FACILITY DESIGN. ADDITIONAL OBJECTIVES IN FACILITY DESIGN INCLUDE INCORPORATION OF FEATURES TO INSURE SAFE, HUMANE, CONSTITUTIONAL CUSTODY AND CARE WHICH IS ALSO COST-EFFECTIVE. PROBLEMS SUCH AS PRISON OVERCROWDING AND SYMPTOMS SUCH AS INMATE VIOLENCE MUST BE DEFINED AND TREATED IN THE FACILITY DESIGN. ANTICIPATING TRENDS AND CHANGE IN FACILITY PROBLEMS AND NEEDS IS NECESSARY. ALTERNATIVES TO INCARCERATION WHICH WOULD RESOLVE SOME OF THESE PROBLEMS OR MEET NEEDS WERE IDENTIFIED. IN GENERAL, CONSULTANTS RECOMMENDED SMALL AND DECENTRALIZED CORRECTIONAL FACILITIES IN URBAN OR NEAR-URBAN LOCATIONS. MAJOR DESIGN RECOMMENDATIONS INCLUDED THAT THE FACILITY BE DESIGNED TO PERMIT FLEXIBILITY IN MEETING CHANGING NEEDS OR GOALS AND THAT SPACE AND DESIGN CRITERIA ADHERE TO WELL-ESTABLISHED ARCHITECTURAL STANDARDS WHILE ALSO HAVING PROGRAMMATIC RELEVANCE. CONSTRUCTION COSTS WERE ESTIMATED BETWEEN \$15,000 AND \$85,000 PER INMATE. IN CONCLUSION, AN EFFECTIVE PLAN WILL INCORPORATE FLEXIBILITY AND WIDELY ACCEPTED STANDARDS FOR CORRECTIONAL INSTITUTIONS, WILL REQUIRE THE DEVELOPMENT OF AN EFFECTIVE PLANNING MECHANISM, WILL INCORPORATE INPUT FROM PARTIES WITH VITAL INTERESTS IN CORRECTIONAL

OPERATIONS, AND WILL INCORPORATE CONTINUOUS PROGRAM REEVALUATION AND MODIFICATION.

Availability: National Criminal Justice Reference Service MICROFICHE PROGRAM.

44. **J. P. HARRIS. INCREASING THE IMPACT OF RESEARCH ON PUBLIC POLICY DECISIONS (FROM CRIMINAL JUSTICE STATISTICS ASSOCIATION, INC—PROCEEDINGS... 1978—SEE NCJ-63086).** CRIMINAL JUSTICE STATISTICS ASSOCIATION, 444 NORTH CAPITAL STREET, WASHINGTON, DC 20001. 6 p. 1978. **NCJ-63093**

GUIDELINES FOR USING RESEARCH RESULTS TO IMPACT CRIMINAL JUSTICE POLICY DECISIONS ARE DISCUSSED, BASED UPON THE EXPERIENCE OF THE CONNECTICUT LEGISLATIVE SENTENCING COMMISSION. IN 1976, THE CONNECTICUT GENERAL ASSEMBLY CREATED A SPECIAL LEGISLATIVE COMMISSION TO STUDY THE VARIETY OF WAYS IN WHICH CRIMINALS COULD BE SENTENCED AND TO DEVELOP RECOMMENDATIONS AND LEGISLATION. THE COMMISSION RECOMMENDED A DETERMINATE SENTENCING SYSTEM WITH DECREASED CORRECTIONAL GOOD TIME ALLOWANCES AND THE ELIMINATION OF PAROLE. THE COMMISSION'S WORK AND CONCLUSIONS WERE BASED UPON THE FINDINGS OF RELEVANT RESEARCH IN THE AREAS OF SENTENCING AND CORRECTIONS. CERTAIN LESSONS ABOUT THE USE OF RESEARCH ANALYSIS IN PUBLIC POLICY DECISIONMAKING WERE LEARNED THROUGH THE COMMISSION'S EXPERIENCE. THE PRIMARY PURPOSE OF ANY CRIMINAL JUSTICE RESEARCH ENTERPRISE IS TO INFORM POLICYMAKERS ABOUT ISSUES INVOLVED IN THEIR DECISIONMAKING. RESEARCH, THEREFORE, MUST ORIENT ITSELF TO THE NEEDS AND REALITIES OF THE POLITICAL ARENA. FURTHER, RESEARCH ORGANIZATIONS MUST MAKE KNOWN TO PUBLIC OFFICIALS THE KINDS OF SERVICES THEY OFFER AND HOW THEY RELATE TO THE POLICYMAKING ENDEAVORS OF OFFICIALS IN PARTICULAR AREAS. THE CULTIVATION OF A LIAISON BETWEEN RESEARCH ENTERPRISES AND PUBLIC DECISIONMAKING BODIES IS THE PRIMARY MEANS FOR CLOSING THE TRADITIONAL GAP BETWEEN SCIENTIFIC KNOWLEDGE AND PUBLIC POLICY.

45. **HAWAII INTAKE SERVICE CENTERS, 2199 KAMEHAMEHA HIGHWAY, HONOLULU, HI 96819. STUDY OF FLAT-TIME, OR DETERMINATE, SENTENCING, 1977.** 62 p. 1977. **NCJ-56767**

INDETERMINATE, DETERMINATE, AND MANDATORY SENTENCING MODELS ARE DISCUSSED AND COMPARED, WITH A VIEW TO THE INTRODUCTION OF SENTENCING REFORMS IN HAWAII. THE PURPOSE OF THE REPORT IS TO ORGANIZE AND CLARIFY FOR THE HAWAII LEGISLATURE ISSUES SURROUNDING FLAT-TIME (DETERMINATE) SENTENCING. INCLUDED ARE DEFINITIONS OF THE VARIOUS SENTENCING MODELS, A DESCRIPTION OF HAWAII'S SENTENCING SYSTEM, AN OVERVIEW OF DETERMINATE SENTENCING LEGISLATION IN CALIFORNIA, AND A SUMMARY OF THE PRO'S AND CON'S OF BOTH DETERMINATE AND INDETERMINATE SENTENCING. HAWAII HAS A RELATIVELY NEW PENAL CODE AND CORRECTIONAL MASTER PLAN, BOTH OF WHICH RELY HEAVILY ON INDETERMINATE SENTENCING. IT IS SUGGESTED THAT THE CODE AND PLAN BE GIVEN ADEQUATE TIME TO PROVE THEMSELVES BEFORE HAWAII CONSIDERS SWITCHING TO DETERMINATE SENTENCING. IT IS FURTHER NOTED THAT IT IS TOO SOON TO EVALUATE THE IMPACT OF DETERMINATE SENTENCING IN STATES THAT HAVE ABANDONED THE INDETERMINATE SENTENCING CONCEPT. THE LEGISLATURE IS URGED TO CONSIDER ASSIGNING ANY FURTHER ASSESSMENT OF SENTENCING ISSUES TO A JUDICIAL OR LEGISLATIVE GROUP RATHER THAN TO THE CORRECTIONS OFFICE THAT PREPARED THIS REPORT. APPENDED MATERIALS INCLUDE DATA ON AVERAGE MINIMUM SENTENCES IN HAWAII FOR VARIOUS TYPES OF OFFENSES, SENTENCING RECOMMENDATIONS BY A NATIONAL COMMIS-

SION, AND A DIGEST OF CALIFORNIA'S DETERMINATE SENTENCING LAW.

Sponsoring Agency: US DEPARTMENT OF JUSTICE LAW ENFORCEMENT ASSISTANCE ADMINISTRATION, 633 INDIANA AVENUE, NW, WASHINGTON, DC 20531.

46. **P. B. HOFFMAN and M. A. STOVER. REFORM IN THE DETERMINATION OF PRISON TERMS—EQUITY, DETERMINACY, AND THE PAROLE RELEASE FUNCTION.** HOFSTRA UNIVERSITY SCHOOL OF LAW, HEMPSTEAD, NY 11550. *HOFSTRA LAW REVIEW*, V 7, N 1 (FALL 1978), P 89-121. **NCJ-59054**

THE PROBABLE CONSEQUENCES OF VARIOUS SENTENCING REFORM STRATEGIES ARE EXAMINED IN THIS LAW REVIEW ARTICLE FROM AN OPERATIONAL OR PRACTICAL PERSPECTIVE. THE MAJOR CONCERNS OF UNWARRANTED SENTENCING DISPARITY AND INDETERMINACY HAVE ENCOURAGED THE PASSAGE OF REFORM LAWS WHICH PROMISE GREATER EQUITY AND MORE DETERMINACY. THERE IS SUBSTANTIAL DISAGREEMENT, HOWEVER, REGARDING THE STRUCTURE AND PROCEDURES MOST LIKELY TO ACHIEVE THE DESIRED GOALS. THERE IS INCREASING AWARENESS IN THE CRIMINAL JUSTICE FIELD THAT UNENVISIONED AND UNINTENDED CONSEQUENCES OF REFORM PROPOSALS TOO OFTEN HAVE AGGRAVATED, RATHER THAN MITIGATED, THE PROBLEMS LEADING TO THEIR ENACTMENT. FROM A PRACTICAL PERSPECTIVE, THE DUAL AUTHORITY MODEL FOR SENTENCING IS SUBSTANTIALLY MORE LIKELY TO PRODUCE THE ACTUAL IMPROVEMENT OF SENTENCING PRACTICES. BY INCORPORATING MULTIPLE CHECKS ON DISCRETION, THE DUAL AUTHORITY MODEL ELIMINATES GROSS DISPARITIES IN SENTENCING WITHOUT PRECLUDING THE POSSIBILITY FOR RESPONSE TO SIGNIFICANT CHANGES IN CIRCUMSTANCES. UNDER SUCH A MODEL, THE JUDGES WOULD DECIDE, PURSUANT TO GUIDELINES, WHETHER TO IMPOSE A FINE, PROBATION TERM, OR JAIL SENTENCE. THE ACTUAL DURATION OF ANY TERM OF IMPRISONMENT WOULD BE DETERMINED BY THE PAROLE AUTHORITY UNDER GUIDELINES AND PRESUMPTIVE DATA PROCEDURES. ALTHOUGH A SINGLE DECISIONMAKING AUTHORITY WOULD APPEAR TO BE MORE ECONOMICAL, THE USE OF DUAL AUTHORITY MAKES THE SYSTEM MORE RESPONSIVE TO THE NEEDS OF PRISON DISCIPLINE, OVERCROWDING, AND THE RIGHTS OF THE INMATES. THE DUAL SYSTEM WOULD BE PREFERABLE TO THE USE OF A SINGLE SENTENCING COMMISSION AS PROPOSED BY THE 95TH CONGRESS. TABULAR DATA CONCERNING SENTENCING GUIDELINES ARE PROVIDED. FOOTNOTES ARE INCLUDED IN THE TEXT.

47. **G. W. HOWARD and J. J. MCHUGH. FIXED SENTENCES EMERGE AS NEW TREND IN CORRECTIONS.** AMERICAN CORRECTIONAL ASSOCIATION, 4321 HARTWICK ROAD, COLLEGE PARK, MD 20740. *AMERICAN JOURNAL OF CORRECTION*, V 40, N 4 (SEPTEMBER/OCTOBER 1978), P 30-31, 33-34. **NCJ-52198**

THE EMERGENCE OF FIXED SENTENCES AS AN ALTERNATIVE TO INDETERMINATE SENTENCING AND PAROLE IS DISCUSSED. THE UNDERLYING PRESUMPTION IN THE FIXED SENTENCING CONCEPT IS THAT A FINDING OF GUILT WILL PREDICTABLY INCUR A PARTICULAR FIXED SENTENCE UNLESS MITIGATING OR AGGRAVATING FACTORS ARE ESTABLISHED. THE ENACTMENT OF FIXED SENTENCING BY THE CONGRESS WILL SHARPLY LIMIT THE POWER OF FEDERAL JUDGES AND THE U.S. PAROLE COMMISSION IN DECIDING HOW MANY YEARS A CONVICTED CRIMINAL WILL REMAIN IN PRISON. ENACTMENT INTO LAW OF MANDATORY AND FIXED SENTENCES WILL MAKE CRIMINAL PUNISHMENT MORE UNIFORM, SINCE DIFFERENT JUDGES FREQUENTLY IMPOSE VARYING PUNISHMENT FOR IDENTICAL CRIMES COMMITTED UNDER SIMILAR CIRCUMSTANCES. ALTHOUGH THE SENTENCE MOST FREQUENTLY IMPOSED IS PROBATION, THIS SENTENCE DOES NOT ACCOMPLISH ITS DUAL

OBJECTIVES OF PROTECTING THE COMMUNITY AND REHABILITATING OFFENDERS. THE INDETERMINATE SENTENCE ACT IN THE DISTRICT OF COLUMBIA PROVIDES THAT A JUDGE OR JUSTICE, IN SENTENCING A PERSON CONVICTED OF A FELONY, MUST IMPOSE A SENTENCE CONTAINING BOTH A MAXIMUM AND A MINIMUM TERM. DESPITE TRENDS IN CORRECTIONS TO EMPHASIZE BOTH THE CRIME AND THE PERPETRATOR AND THE SENTENCING PROCESS THAT FOCUSES ON THE PROTECTION OF SOCIETY THROUGH PUNISHMENT AND DETERRENCE, THE CONCEPT OF REHABILITATION IS STILL A VIABLE OBJECTIVE OF CRIMINAL LAW. PROTECTION FOR VICTIMS OF CRIME IS IMPORTANT AND, IN THIS REGARD, A TREND IN SENTENCING THAT IS GAINING IN MOMENTUM EMPHASIZES MANDATORY AND FIXED SENTENCES FOR THOSE CONVICTED OF CERTAIN TYPES OF VIOLENCE AND FOR REPEAT OFFENDERS. THE DETERRENT EFFECT OF THE MANDATORY AND FIXED SENTENCE IS RECOUNTED BY RECIDIVIST OFFENDERS AND ENCOMPASSES SUCH IDEAS AS CERTAINTY OF PUNISHMENT AND IMPRISONMENT WITHOUT REHABILITATION. A SENATE BILL PROPOSING MAJOR REVISION AND REORGANIZATION OF THE FEDERAL CRIMINAL STATUTES CONTAINS THE FOLLOWING PROVISIONS: MANDATORY MINIMUM PRISON SENTENCES FOR HEROIN TRAFFICKERS, ELIMINATION OF SIMPLE POSSESSION OF SMALL AMOUNTS OF MARIHUANA AS A FEDERAL CRIME, SENTENCING GUIDELINE SYSTEM TO DEAL WITH THE PROBLEM OF UNWARRANTED SENTENCING DISPARITY BETWEEN JUDGES, CREATION OF A SENTENCING AUTHORITY FOR THE TRIAL JUDGE TO BAR PAROLE FOR 9/10THS OF THE TERM OF IMPRISONMENT IMPOSED, BETTER COVERAGE FOR WHITE COLLAR CRIMES, IMPROVED PROVISIONS TO FIGHT ORGANIZED CRIME, PROGRAM TO COMPENSATE VICTIMS OF VIOLENT CRIMES WITH FUNDS DERIVED FROM CRIMINAL FINES, AND EXPANSION OF THE CIVIL AND CRIMINAL JURISDICTION OF U.S. MAGISTRATES. LEGISLATION ENACTED BY CONGRESS SINCE 1925 HAS MADE AVAILABLE TO JUDGES A WIDE RANGE OF SENTENCING ALTERNATIVES AIMED AT INDIVIDUALIZED TREATMENT OF CRIMINAL OFFENDERS. THESE ALTERNATIVES AND THEIR REHABILITATION OBJECTIVES ARE DISCUSSED, AND THE VALUE OF INDETERMINATE SENTENCING IS CONSIDERED. FOOTNOTES ARE INCLUDED.

48. **F. HUSSEY. JUST DESERTS AND DETERMINATE SENTENCING—IMPACT ON THE REHABILITATIVE IDEAL (FROM SOUTHERN CONFERENCE ON CORRECTIONS—PROCEEDINGS, 1979, BY V FOX—SEE NCJ-59373).** FLORIDA STATE UNIVERSITY SCHOOL OF CRIMINOLOGY, TALLAHASSEE, FL 32306; CENTER FOR PROFESSIONAL DEVELOPMENT AND PUBLIC SERVICE. 19 p. 1979. **NCJ-59378**

THE CONCEPTS OF THE REHABILITATIVE IDEAL ARE COMPARED AND CONTRASTED WITH THE GROWING INTEREST IN DETERMINATE SENTENCING; DIFFERENCES BETWEEN DETERMINACY IN THEORY AND IN PRACTICE ARE HIGHLIGHTED. IN LIGHT OF INCREASING RECIDIVISM RATES, A MOVE TOWARD DETERMINATE SENTENCING HAS OCCURRED IN CRIMINAL JUSTICE SYSTEM DEBATE. THE MOST CRUCIAL ISSUE RAISED BY THE IMPLEMENTATION OF DETERMINATE SENTENCING CODES IS THE DEMISE OF THE REHABILITATIVE IDEAL. RESULTS OF SEVERAL INVESTIGATIONS HAVE LED SCHOLARS TO CONCLUDE THAT REHABILITATION HAS FAILED AND MUST BE ABANDONED. THE REHABILITATIVE IDEAL HOLDS THAT WHEN AN OFFENDER HAS BEEN CONVICTED OF A CRIMINAL ACT, THE WELFARE OF SOCIETY AND OF THE OFFENDER IS OF CONCERN, AND THAT BOTH COULD BE SERVED BEST IF THE SANCTION RECEIVED BY THE OFFENDER COULD BE INFORMED BY A STUDY OF THE OFFENDER'S NEEDS. UNDER DETERMINATE SENTENCING, ALL PENALTIES MUST BE COMMENSURATE WITH THE SERIOUSNESS OF THE OFFENSE. NO DEVIATION WOULD BE PERMITTED FOR SUCH ENDS AS INCAPACITATION OR REHABILITATION.

THE GOALS OF DETERMINATE SENTENCING, IN THEORY, ARE TO SENTENCE ON THE BASIS OF PAST RATHER THAN FUTURE BEHAVIOR, TO ELIMINATE DISPARITY OF SENTENCING, TO LIMIT JUDICIAL DISCRETION, AND TO ENSURE JUST SENTENCES. IN PRACTICE, HOWEVER, CURRENT DETERMINATE SENTENCING CODES IN FIVE JURISDICTIONS DO LITTLE TO MODIFY JUDICIAL DISCRETION OR SENTENCING DISPARITY. THE PROPORTIONALITY BETWEEN CRIME SEVERITY AND SEVERITY OF SENTENCE IS OFTEN POOR, AND THE LENGTHS OF SENTENCES POSSIBLE UNDER THESE CODES ARE NOT FAIR IN AN ABSOLUTE SENSE. THE REHABILITATIVE IDEAL SHOULD NOT BE COMPLETELY ELIMINATED; THE IDEALS OF INDIVIDUALIZED JUSTICE SHOULD BE RETAINED WHILE MODIFYING CERTAIN PROCEDURES TO REMOVE ARBITRARY DISCRETION. AN ALTERNATIVE TO THE PRESENT SYSTEM WOULD BE IMPLEMENTATION OF PAROLE GUIDELINES; DETERMINATE SENTENCING WOULD MERELY CREATE MORE PROBLEMS THAN IT WOULD SOLVE. FOOTNOTES ARE INCLUDED.

49. **JOHN HOWARD ASSOCIATION, 67 EAST MADISON STREET, SUITE 216, CHICAGO, IL 60603. GOVERNOR WALKER'S PROPOSED JUSTICE MODEL—AN ANALYSIS OF ITS IMPACT.** 13 p. 1975. **NCJ-29608**

THIS DOCUMENT PRESENTS THE RESPONSE OF THE JOHN HOWARD ASSOCIATION TO PROBATION, DETERMINATE SENTENCING, AND PAROLE REVISIONS PROPOSED BY ILLINOIS GOVERNOR WALKER IN FEBRUARY 1975. THE ASSOCIATION ENDORSED THE GOVERNOR'S RECOMMENDATION THAT PRE-SENTENCE INVESTIGATION REPORTS BE MANDATORY IN ALL FELONY CASES AND MISDEMEANOR CASES CARRYING A JAIL SENTENCE OF MORE THAN 90 DAYS. THEY FURTHER PROPOSED STRENGTHENING THE GOVERNOR'S PROBATION SERVICE PROPOSALS BY ESTABLISHING A STATEWIDE SYSTEM OF JUVENILE AND ADULT PROBATION SERVICES TO BE ADMINISTERED BY THE ILLINOIS DEPARTMENT OF CORRECTIONS. THE RECOMMENDATION TO ABOLISH INDETERMINATE PRISON SENTENCES IN FAVOR OF FIXED, FLAT-TIME PENALTIES IS EXAMINED, AS WELL AS MAJOR DEFECTS SUCH AS LONGER PRISON SENTENCES, LACK OF FACILITIES NEEDED TO HOUSE AN INCREASED POPULATION, AND PROHIBITIVE COST. THE PROPOSAL'S CONTENTION THAT PAROLE IS NOT EFFECTIVE AS A CRIME PREVENTION DEVICE, UPON WHICH THE GOVERNOR BASED HIS RECOMMENDATION TO ABOLISH PAROLE IN FAVOR OF GOOD-TIME CREDIT, IS REFUTED AND CONFORMITY WITH RELEVANT NATIONAL ADVISORY COMMISSION ON CRIMINAL JUSTICE STANDARDS AND GOALS (NAC) RECOMMENDATIONS IS ADVISED. APPENDIXES CONTAIN NAC STANDARDS DEALING WITH SENTENCING THE NON-DANGEROUS OFFENDER AND SENTENCING TO EXTENDED TERMS AS WELL AS PROVIDING STATISTICS ON PAROLED MALE OFFENDERS IN ILLINOIS FROM 1968 TO 1973.

Availability: National Criminal Justice Reference Service MICROFICHE PROGRAM.

50. **M. KANNENSOHN. SENTENCING CRIMINAL OFFENDERS.** COUNCIL OF STATE GOVERNMENTS, IRON WORKS PIKE, LEXINGTON, KY 40578. *STATE GOVERNMENT (WINTER 1977)*, P 7-11. **NCJ-46319**

PROPOSALS FOR NARROWING SENTENCING DISCRETION THROUGH THE LEGISLATION OF DEFINITE SENTENCING ARE DISCUSSED. DEFINITE SENTENCING ATTEMPTS TO NARROW THE RANGE OF DISCRETION ALLOWED JUDGES IN SETTING SENTENCES INVOLVING TERMS OF IMPRISONMENT WHILE ALLOWING THEM TO RETAIN THEIR DISCRETION TO PRESCRIBE PENALTIES OTHER THAN IMPRISONMENT, WHERE APPROPRIATE. IT IS DISTINGUISHED FROM MANDATORY SENTENCING, WHICH IS DIRECTED AT ELIMINATING JUDICIAL AND PAROLE BOARD DISCRETION BY REQUIRING IMPRISONMENT FOR SELECTED CATEGORIES OF OFFENSES. PROPO-

NENTS OF DEFINITE SENTENCING BELIEVE THAT IT HAS GREATER DETERRENT VALUE THAN INDETERMINATE SENTENCING BECAUSE OF ITS GREATER CERTAINTY AND PREDICTABILITY OF PUNISHMENT. OTHER SUPPORTERS ASSUME THAT NARROWED SENTENCING DISCRETION WILL REDUCE DISPARITIES WHICH EXIST IN AN INDETERMINATE SENTENCING SYSTEM. SEVERAL STATES HAVE ALREADY PASSED DEFINITE SENTENCING LEGISLATION, AND OTHERS ARE CONSIDERING IT. THREE CATEGORIES OF NARROWING SENTENCING DISCRETION HAVE EVOLVED IN THE STATE DECISIONS: THE LEGISLATIVE, JUDICIAL, AND ADMINISTRATIVE APPROACHES. THEY ARE DIFFERENTIATED ACCORDING TO HOW THEY DEAL WITH DISCRETION IN TERMS OF WHO HAS IT, IN WHAT AMOUNTS, AND AT WHAT POINT IT IS EXERCISED. WITH THE LEGISLATIVE APPROACH, THE STATE LEGISLATURE FIXES TERMS OF IMPRISONMENT FOR OFFENSES WITHIN EACH FELONY CLASS WHICH THE TRIAL JUDGE MUST IMPOSE, IF HE DETERMINES IMPRISONMENT IS NECESSARY. ONLY A SMALL AMOUNT OF DEVIATION IS ALLOWED. WITH THE JUDICIAL APPROACH, THE LEGISLATURE SETS A MAXIMUM TERM FOR EACH FELONY WITHIN WHICH THE JUDGE MUST IMPOSE A TERM OF FIXED DURATION, IF HE DECIDES TO IMPOSE IMPRISONMENT. HE RETAINS HIS DISCRETION TO SENTENCE AN OFFENDER TO A FIXED TERM UP TO THAT MAXIMUM. BOTH THE LEGISLATIVE AND THE JUDICIAL APPROACHES ELIMINATE THE POSSIBILITY OF PAROLE RELEASE. THE ADMINISTRATIVE APPROACH ACTS TO NARROW DISCRETION AT THE PAROLE END OF THE SYSTEM BY ESTABLISHING IN ADVANCE DEFINITE PAROLE RELEASE RANGES AND DATES ACCORDING TO THE NATURE OF THE OFFENSE AND WITH RESPECT TO THE OFFENDER'S PERSONAL BACKGROUND AND CIRCUMSTANCES. MANY OPONENTS OF DEFINITE SENTENCING SEE IT AS A REACTIONARY PROPOSAL TO RESCIND CORRECTIONAL REFORMS AND RETURN TO A SYSTEM WITH NO POSSIBILITY OF INDIVIDUALIZED TREATMENT OF OFFENDERS. SEVERAL COMMON MISCONCEPTIONS ABOUT DEFINITE SENTENCING ARE THEREFORE EXPLAINED AND CLARIFIED. THESE ARE THAT: (1) INCARCERATION WILL BE MANDATORY; (2) SENTENCE LENGTHS WILL BE LONGER; (3) PAROLE BOARDS AND PAROLE SUPERVISION WILL BE ABOLISHED; (4) DEFINITE TERMS OF IMPRISONMENT WILL BE MANDATORY MINIMUMS; (5) DEFINITE SENTENCING WILL DRASTICALLY REDUCE OR ELIMINATE CORRECTIONAL REHABILITATION PROGRAMS; (6) THE SCOPE OF THE LEGISLATIVE APPROACHES WILL COVER JUVENILE AS WELL AS ADULT OFFENDERS; AND (7) CORRECTIONAL POPULATIONS WILL SPIRAL EVEN BEYOND RECENT INCREASES EXPERIENCED BY MANY STATES.

51. **J. KAPLAN. AMERICAN MERCHANDISING AND THE GUILTY PLEA—REPLACING THE BAZAAR WITH THE DEPARTMENT STORE.** UNIVERSITY OF TEXAS SCHOOL OF LAW, 2500 RED RIVER, AUSTIN, TX 78705. *AMERICAN JOURNAL OF CRIMINAL LAW*, V 5, N 2 (MARCH 1977), P215-224.

NCJ-55434

THE USE OF DISCRETION IN THE CRIMINAL JUSTICE SYSTEM IS EVALUATED, WITH EMPHASIS ON THE HANDLING OF GUILTY PLEAS MADE BY CRIMINALS AND THE PLEA BARGAINING PROCESS. TWO ATTITUDES ABOUT CRIME CAUSES ARE NOT SUPPORTED: (1) THE CRIMINAL JUSTICE SYSTEM SHOULD BE IGNORED BECAUSE IT HAS NO INFLUENCE ON CRIME, AND (2) IMPROVING THE CRIMINAL JUSTICE SYSTEM WILL HAVE A MAJOR EFFECT ON CRIME. IMPORTANT INFLUENCES ON CRIME, OTHER THAN THE CRIMINAL JUSTICE SYSTEM, ARE POVERTY, SLUMS, RACISM, FAMILY BREAKDOWN, AND INEQUALITY. DETERRENCE AND ISOLATION ARE NOT EFFECTIVE IN CRIME CONTROL, EXCEPT WHERE EXORBITANT RESOURCES ARE EXPENDED. THE PROBLEM IS THAT THERE ARE TOO MANY CRIMINALS. PLEAS MADE BY CRIMINALS ARE GENERALLY THE RESULT OF BARGAINING. THE PLEA BARGAINING SYSTEM IS A CONSTANT SOURCE OF IN-

JUSTICE. IT CAUSES SOME DEFENDANTS TO PLEAD GUILTY WHEN THEY ARE NOT GUILTY, PITS THE DEFENSE AGAINST THE CLIENT IN WHAT CRIMINOLOGISTS CALL A CONFIDENCE GAME, CAUSES PROSECUTORS TO OVERCHARGE DEFENDANTS SO THAT A PLEA CAN BE MADE FOR THE OFFENSE PROBABLY COMMITTED, FORCES PROSECUTORS TO LOBBY CONSTANTLY IN LEGISLATURES FOR HIGHER SENTENCES, PREVENTS RATIONALITY IN SENTENCING SINCE JUDGES ARE RESTRAINED BY THE PLEA BARGAIN, AND OFTEN ALLOWS CRIMINALS TO EVADE RESPONSIBILITY FOR THEIR ACTS. TWO MOVEMENTS ARE PARTICULARLY NOTEWORTHY WITH REGARD TO AMELIORATING PROBLEMS INHERENT IN PLEA BARGAINING: (1) ATTEMPTS TO DECRIMINALIZE VICTIMLESS CRIMES AND (2) CREATION OF A DIVERSION SYSTEM. THE PROBLEM WITH DIVERSION, HOWEVER, IS THAT IT EXTENDS FURTHER DISCRETION TO PROSECUTORS. ALTERNATIVES SUCH AS ELIMINATING THE PLEA NEGOTIATION PROCESS AND THE EXCLUSIONARY RULE AND DEVOTING MORE RESOURCES TO THE PROBLEM OF CRIME ARE LIKEWISE NOT FEASIBLE OR COST-EFFECTIVE. IT IS PROPOSED THAT A GUILTY PLEA BE CONSIDERED AS A MITIGATING FACTOR IN A FLAT-TIME SENTENCE SCHEME. AS A FIRST APPROXIMATION, A GUILTY PLEA SHOULD REDUCE A SENTENCE BY 50 PERCENT. CHECKS AGAINST OVERCHARGING BY PROSECUTORS CAN BE BUILT INTO THE SCHEME. THUS, PROSECUTORS WHO HAVE CHARGED A CRIME MAY SIMPLY HAVE TO REVEAL WHAT THEIR EVIDENCE IS IN A GUILTY PLEA DISCUSSION. ONE MAJOR ADVANTAGE OF THE FLAT-TIME SENTENCE SCHEME IS THAT IT GIVES LEGISLATURES AN OPPORTUNITY FOR OPEN CHOICES, E.G., IF PRISONS ARE OVERCROWDED, LEGISLATURES MUST PUBLICLY MAKE THE CHOICE OF EITHER BUILDING MORE SPACE AT CONSIDERABLE EXPENSE OR LOWERING SENTENCES.

52. **E. M. KENNEDY. TOWARD A NEW SYSTEM OF CRIMINAL SENTENCING—LAW WITH ORDER.** AMERICAN BAR ASSOCIATION CRIMINAL JUSTICE SECTION, 1800 M STREET, NW, 2ND FLOOR, WASHINGTON, DC 20036. *AMERICAN CRIMINAL LAW REVIEW*, V 16, N 4 (SPRING 1979), P 353-382.

NCJ-59112

BECAUSE OF THE FAILURE OF TRADITIONAL SENTENCING PRACTICES TO PROVIDE FAIR TREATMENT TO OFFENDERS, AN INNOVATIVE APPROACH TO SENTENCING IS ADVOCATED WHICH CURBS JUDICIAL DISCRETION. THE DISPARITY IN SENTENCING OF PRISONERS IS CONSIDERED BY SENATOR EDWARD KENNEDY TO BE THE MAJOR FLAW IN THE EXISTING FEDERAL CRIMINAL JUSTICE SYSTEM. ALTHOUGH THE CORRECTION OF THE ARBITRARY AND CAPRICIOUS METHODS OF SENTENCING WILL NOT CURE ALL PROBLEMS CONFRONTING CRIMINAL JUSTICE ADMINISTRATORS, SENTENCING MUST STILL BE MADE FAIR AND MORE CERTAIN. THE FEDERAL CRIMINAL CODE REFORM ACT OF 1978 WOULD IMPROVE FEDERAL SENTENCING PRACTICES THROUGH THE CONTROL OF JUDICIAL DISCRETION, THE ELIMINATION OF INDETERMINATE SENTENCES, THE PHASING OUT OF PAROLE RELEASE, AND THE RESTRUCTURING OF CRIMINAL CODES. FEDERAL JUDGES HAVE BEEN ACTING WITHOUT ANY GUIDELINES OR APPELLATE REVIEW, AND FEDERAL LAW CONFERS UNLIMITED DISCRETION ON THE SENTENCING JUDGE TO IMPOSE A SENTENCE, AND ALLOWS THE PAROLE BOARD WIDE DISCRETION ON DETERMINING A RELEASE DATE. UNDER THE PROPOSED REFORM ACT, A UNITED STATES SENTENCING COMMISSION WOULD PROVIDE GUIDELINES ON THE BASIS OF THE REHABILITATIVE, DETERRING, AND PUNITIVE PURPOSES OF THE SENTENCE. FLEXIBILITY WOULD REMAIN, BUT DEVIATIONS FROM THE GUIDELINES WOULD REQUIRE SPECIFIC EXPLANATIONS FROM THE COURT. SENTENCES WOULD BE SUBJECT TO APPELLATE REVIEW, AND DETERMINATE SENTENCES WOULD BE REQUIRED IN MOST CRIMINAL CASES. THE PROPOSED ACT WOULD ELIMINATE THE DIFFERENTIAL COMPUTATION

OF GOOD TIME ON THE BASIS OF THE LENGTH OF THE PRISON TERM. INSTEAD, THERE WOULD BE A UNIFORM MAXIMUM RATE OF 3 DAYS A MONTH FOR ALL TIME IN PRISON BEYOND THE FIRST YEAR. PAROLE RELEASE COULD ONLY BE USED IN THE RARE CASES IN WHICH A SENTENCE WAS WHOLLY OR PARTIALLY INDETERMINATE. A LIBRARY OF CONGRESS STUDY ESTIMATES THAT UNDER THE REFORM ACT THE AVERAGE IMPOSED SENTENCES WOULD BE ONE-THIRD THE LENGTH OF SENTENCES OTHERWISE SUBJECT TO PAROLE RELEASE. FOOTNOTES AND TABULAR DATA ARE PROVIDED.

Availability: UNIVERSITY MICROFILMS, 300 NORTH ZEEB ROAD, ANN ARBOR, MI 48106.

53. **N. N. KITTRIE. DANGERS OF THE NEW DIRECTIONS IN AMERICAN SENTENCING (FROM NEW DIRECTIONS IN SENTENCING, P 32-50, 1980, BY BRIAN A GROSMAN—SEE NCJ-69395).** 19 p. 1980. NCJ-69398

WEAKNESSES OF INDETERMINATE SENTENCING PROCEDURES ARE SUMMARIZED, EFFORTS TO CORRECT SENTENCING DISPARITIES AND REDUCE OFFENDER UNCERTAINTY ARE LISTED, AND THE ADVERSE EFFECTS OF A RETURN TO FIXED SENTENCES ARE CITED. WEAKNESSES OF THE THERAPEUTIC MODEL OF SENTENCING THAT HAVE RESULTED IN A RETURN TO THE TRADITIONAL PENAL APPROACH OF REDUCED JUDICIAL DISCRETION AND DIMINUTION OF THE REHABILITATIVE IDEAL, INCLUDE (1) SENTENCE DISPARITIES RESULTING FROM PLEA BARGAINING; (2) SENTENCING DECISIONS REFLECTING THE PERSONAL VALUES OF THE JUDGE OR THE PROSECUTOR, RATHER THAN THE OBJECTIVE NATURE OF THE CRIME; (3) THE USE BY THE COURTS OF THE INDETERMINATE SENTENCE OR A SENTENCE SUBJECT TO PAROLE AS A MEANS OF PASSING THE DECISION OF A RELEASE DATE TO THE CORRECTIONAL AUTHORITIES OR TO PAROLE BOARDS, AND (4) THE LACK OF OPPORTUNITY FOR OFFENDERS TO HAVE THEIR SENTENCE REVIEWED BY A HIGHER COURT. TWO PRIMARY GOALS OF RECENT SENTENCING INITIATIVES ARE THE CURING OF SENTENCE DISPARITY AND THE REDUCTION OF OFFENDER UNCERTAINTY. METHODS OF REALIZING THESE GOALS INCLUDE THE INTRODUCTION OF UNIFORM SANCTIONS, THE CURTAILMENT OF JUDICIAL DISCRETION BY LEGISLATIVE FIAT, THE ABOLITION OR REDUCTION IN PAROLE BOARD AUTHORITY, AND THE CREATION OF SENTENCING COUNCILS COMPOSED OF SEVERAL SITTING JUDGES. HOWEVER, ANY INCREASE IN AVERAGE SENTENCE LENGTH FROM SENTENCING REFORMS MAY OVERCROWD THE PRISONS. ADDITIONALLY, THE INCREASED POWER EXERCISED BY STATE LEGISLATURES VIS-A-VIS THE COURTS AND SENTENCING POLICIES MAY RESULT IN LESS FLEXIBILITY IN SENTENCING POLICY, AND MAY MAKE THE FIELD OF SENTENCING MORE SUSCEPTIBLE TO POLITICAL INFLUENCE. ALSO, THE DIMINUTION OF JUDICIAL FLEXIBILITY FOR IMPOSING INDIVIDUAL SENTENCES MAY QUASH DIVERSIONARY PROGRAMS. IT IS CONCLUDED THAT FIXED SENTENCES ARE SIMPLISTIC ANSWERS TO COMPLEX SENTENCING NEEDS, AND THAT REFORMS, ALTHOUGH NEEDED, SHOULD RETAIN INCENTIVES FOR REHABILITATION AND SHOULD REAFFIRM THE PRIMARY RESPONSIBILITIES OF THE COURTS AND CORRECTIONS AUTHORITIES IN SENTENCING REFORM. A TOTAL OF 29 NOTES ARE PROVIDED.

Availability: BUTTERWORTH, 2265 MIDLAND AVENUE, SCARBOROUGH, ONTARIO, CANADA M1P 4E1.

54. **S. P. LAGOY, F. A. HUSSEY, and J. H. KRAMER. PROSECUTORIAL FUNCTION AND ITS RELATION TO DETERMINATE SENTENCING STRUCTURES (FROM PROSECUTOR, 1979, BY WILLIAM F MCDONALD—SEE NCJ-60507).** SAGE PUBLICATIONS, INC, 275 SOUTH BEVERLY DRIVE, BEVERLY HILLS, CA 90212. 29 p. 1979. NCJ-60515

REFORM IN CRIMINAL SENTENCING POLICIES MUST CONSIDER THE POWERFUL ROLE OF PROSECUTORS IN THE FOR-

MULATION OF CRIMINAL CHARGES, AND THEIR ABILITY TO PROVIDE OR WITHHOLD INFORMATION AND RECOMMENDING SENTENCES. ALTHOUGH PROSECUTORS ARE CONCERNED WITH CONVICTION RATES, THEY ALSO MUST ATTEND TO THE 'PRODUCTION FUNCTION' OF EFFICIENTLY PROCESSING OFFENDERS THROUGH THE CRIMINAL JUSTICE SYSTEM. WHETHER OR NOT PROSECUTORIAL POWER IS EXERCISED IN A DISCRETIONARY MANNER DEPENDS ON SYSTEMATIC PRESSURE FOR ECONOMICAL OPERATION. TO ACHIEVE MAXIMUM EFFICIENCY IN THE ADJUDICATORY PROCESS, THE CRIMINAL JUSTICE SYSTEM RELIES ON GUILTY PLEAS AND THE DEFENDANT'S WAIVER OF CONSTITUTIONAL RIGHTS. JUDGES HAVE A STRONG ROLE IN THE SENTENCING OF OFFENDERS, BUT IN MANY STATES THIS ROLE IS WEAKENED BY USE OF DETERMINATE SENTENCING LAWS. IN SUCH JURISDICTIONS, THE PROSECUTORS ASSUME CONTROL OF SENTENCING THROUGH THEIR INHERENT ABILITY TO SELECT APPROPRIATE CHARGES FOR EACH SUSPECT. MAINE, CALIFORNIA, INDIANA, AND ILLINOIS HAVE ABANDONED THE IDEALS OF INDIVIDUALIZED TREATMENT AND ACCEPTED POLICIES OF DETERMINATE SENTENCING. IN MAINE, EVEN THE CONCEPT OF PAROLE HAS BEEN VIRTUALLY ABOLISHED. AN ANALYSIS OF THE PROSECUTORIAL IMPACT ON SENTENCING INDICATES THAT PROSECUTORS HAVE GAINED GREATER CONTROL OF DISCRETION IN SYSTEMS USING DETERMINATE SENTENCING. PROSECUTORIAL POWER IN MAINE IS LESSEMED BY THE DISCRETION GIVEN TO JUDGES FOR ADJUSTING SENTENCES BELOW THE FIXED MAXIMUMS, WHILE PROSECUTORS IN INDIANA ARE QUITE POWERFUL BECAUSE OF THE ABILITY TO RECOMMEND CHANGES IN SENTENCES ACCORDING TO AGGRAVATING CIRCUMSTANCES. TABULAR DATA AND REFERENCES ARE PROVIDED.

55. **A. G. LEFRANCOIS. EXAMINATION OF A DESERT-BASED PRESUMPTIVE SENTENCE SCHEDULE.** PERGAMON PRESS, INC, MAXWELL HOUSE, FAIRVIEW PARK, ELMSFORD, NY 10523. *JOURNAL OF CRIMINAL JUSTICE*, V 6, N 1 (SPRING 1978), P 35-46. NCJ-47738

A CRITICAL EXAMINATION OF THE COMMITTEE FOR THE STUDY OF INCARCERATION'S PROPOSED DESERT-BASED SCHEDULE FOR DETERMINATE SENTENCING IS PRESENTED. THE FOCUS IS ON FAIRNESS, DETERRENCE, AND REHABILITATION. UNDER THE PROPOSAL, SENTENCING DISCRETION WOULD BE TAKEN AWAY FROM THE JUDGE AND A LEGISLATIVELY MANDATED SCHEDULE OF SENTENCES WOULD BE IMPOSED. SUCH A SCHEDULE WOULD BE DETERMINED ON THE BASIS OF DESERVED PUNISHMENT FOR THE OFFENSE. A THEORY OF COMMENSURATE DESERTS MAINTAINS THAT ONE SHOULD GET THE BLAME/ PUNISHMENT HE HAS EARNED, AND THAT PUNISHMENT SHOULD NOT ANTICIPATE FUTURE OFFENSES WHICH MIGHT BE COMMITTED NOR PREDICT WHAT REHABILITATIVE LEVEL MIGHT BE REACHED; RATHER, PUNISHMENT SHOULD BE INVOKED SOLELY ON THE BASIS OF WHAT THE OFFENDING BEHAVIOR WARRANTS. THE THEORETICAL FRAMEWORK FOR THE COMMITTEE'S PROPOSAL, PRESENTED IN 'DOING JUSTICE' (VON HIRSCH, 1976), CONTAINS A NUMBER OF PROBLEMS. FOR VON HIRSCH, DESERT PLAYS AN ESSENTIAL ROLE IN SENTENCING. IT IS SUGGESTED THAT CONCEPT OF DESERT MIGHT BE BETTER SUITED TO LIMITING OR ESTABLISHING FAIRNESS OF THE SENTENCE, BUT THAT IT IS DIFFICULT TO SEE HOW IT MAY BE USED TO ACTUALLY ESTABLISH SENTENCES. FURTHER DIFFICULTIES ARISE IN DETERMINATIONS OF THE SERIOUSNESS OF THE OFFENSE, FOR SERIOUSNESS INVOLVES COMPONENTS OF BOTH HARM AND CULPABILITY. IT IS QUESTIONED WHETHER THE TAXONOMY OF OFFENSES IS SOPHISTICATED ENOUGH TO WARRANT SENTENCES BASED ON HARM DONE OR RISKED FOR ANY GIVEN TYPE OF OFFENSE. FURTHER, GIVEN THE CRITERIA OF DESERTS IT WOULD SEEM THAT THE DISADVANTAGED OF-

FENDER MIGHT BE LESS CULPABLE AND THEREFORE DESERVING OF LESS PUNISHMENT THAN A MORE ADVANTAGED OFFENDER. THE USE OF PRIOR CRIMINAL RECORD AS DETERMINANT OF SEVERITY OF OFFENSE AND THUS PUNISHMENT IS ADVOCATED BY THE COMMITTEE, AND LIGHT SENTENCES FOR FIRST OFFENDERS ARE JUSTIFIED ON THE GROUNDS THAT A SEVERE PUNISHMENT FOR ONE MISTAKE IS UNFAIR TO DISADVANTAGED OFFENDERS WHO HAVE FEWER OPTIONS FOR THEIR CHOICE OF BEHAVIORS. WHY THIS ARGUMENT IS NOT APPLICABLE TO LATER OFFENSES IS UNCLEAR. FURTHER, HOW CAN A THEORY BASED ON DESERTS JUSTIFY THE SENTENCING DISPARITIES THAT WOULD OCCUR AS A RESULT OF DISPARITIES IN APPREHENSION FOR AN OFFENSE? VON HIRSCH'S ARGUMENTS AGAINST A REHABILITATIVE MODEL OF PUNISHMENT ON THE BASIS THAT IT CREATES INJUSTICES THROUGH COERCION AND DISPROPORTIONATE LENIENCY OR SEVERITY ARE REVIEWED. A MAJOR PROBLEM WITH USING DESERTS IN SENTENCING DECISIONS ARISES FIRST FROM THE CASUAL USE THAT IS MADE OF THE TERM WITHOUT REFERENCE TO THE DIFFICULT EMPIRICALLY NONVERIFIABLE PROBLEMS INVOLVED IN ITS USE AS A STANDARD FOR BALANCING PUNISHMENT AIMS. FINALLY, WITH THE CONCEPT OF DESERT, THERE IS A GREAT TENDENCY TO IGNORE PUNITIVE MEASURES OTHER THAN IMPRISONMENT. IT IS CONCLUDED THAT BECAUSE A PRINCIPLE SUCH AS DESERTS MAY BE ABUSED, PRESUMPTIVE SENTENCES MAY APPEAR MORE JUST AND APPROPRIATE THAN WARRANTED. A MUCH MORE RIGOROUS PHILOSOPHICAL TREATMENT OF DESERTS WILL BE NEEDED BEFORE IT MAY BE USED AS A PUNISHMENT SCHEDULE. NOTES AND REFERENCES ARE INCLUDED.

Availability: INSTITUTE FOR SCIENTIFIC INFORMATION, 3501 MARKET STREET, UNIVERSITY CITY SCIENCE CENTER, PHILADELPHIA, PA 19104.

56. **J. R. MANSON. DETERMINATE SENTENCING.** NATIONAL COUNCIL ON CRIME AND DELINQUENCY. *CRIME AND DELINQUENCY*, V 23, N 2 (APRIL 1977), P 204-207.

NCJ-48015

PROBLEMS ARISING FROM SENTENCING AND PAROLE PRACTICES AND AN EMPHASIS ON REHABILITATION ARE EXAMINED, AND ADOPTION OF A DETERMINATE SENTENCING POLICY WITH UNCONDITIONAL DISCHARGE IS RECOMMENDED. PAROLE AND INDETERMINATE SENTENCES EMERGED DURING THE 19TH CENTURY. BOTH WERE DESIGNED TO MITIGATE LONG HARSH SENTENCES AND ALLOW DISCRETION IN SENTENCING AND RELEASE DECISIONS. WHILE, ORIGINALLY, THE PERIOD WITHIN WHICH PAROLE COULD BE GRANTED WAS NARROWLY PRESCRIBED, IT BECAME WIDER UNTIL SENTENCES OF 1 YEAR TO LIFE BECAME INCREASINGLY COMMON. THIS HAS HAD SERIOUS CONSEQUENCES FOR CRIMINAL JUSTICE; IT REMOVED DECISIONS WHICH HAD BEEN JUDICIAL PREROGATIVES FROM THE COURTROOM AND IT PLACES MANY OFFENDERS UNDER CORRECTIONAL AUTHORITY FOR LONG PERIODS OF TIME. STUDIES HAVE INDICATED THAT PAROLE DOES NOT APPEAR TO BE A CRITICAL FACTOR IN SUCCESS OR FAILURE OF THE RELEASED OFFENDER IN THE COMMUNITY. COMPARED TO UNCONDITIONAL DISCHARGE, PAROLE DOES NOT ENHANCE SOCIAL REINTEGRATION, NOR IS IT COST EFFECTIVE. FURTHER, PAROLE FAILS TO PROVIDE PROTECTION TO THE COMMUNITY AND DOES NOT MEET STANDARDS FOR THE EQUAL ADMINISTRATION OF JUSTICE. REHABILITATION DOES NOT APPEAR TO WORK FOR A SUBSTANTIAL PROPORTION OF OFFENDERS, AND MUCH OF WHAT PASSES FOR REHABILITATION MAY ACTUALLY BE GAME-PLAYING ON THE PART OF OFFENDERS WHO SEEK TO GAIN EARLY RELEASE BY DEMONSTRATING THEIR SO-CALLED REHABILITATION. IF FLAT SENTENCES WERE INTRODUCED WITHOUT PAROLE BOARD MECHANISMS FOR RELEASE, PARTICIPATION IN VOLUNTARY TREATMENT AND REHABILITATION PROGRAMS

ONLY BY THOSE WHO REALLY DESIRE THEM WILL IMPROVE THE QUALITY OF SUCH PROGRAMS AND STAFF TIME CAN BE FOCUSED ON THOSE WHO ARE GENUINELY MOTIVATED. PROponents OF FIXED SENTENCES MAY BE INCLINED TO PLACE BLAME FOR THE INEFFECTIVENESS OF THE EXISTING SYSTEM ON THE PAROLE BOARD. HOWEVER, THE PROBLEMS LIE NOT WITH CORRECTIONAL PERSONNEL BUT WITHIN THE CRIMINAL JUSTICE SYSTEM. REHABILITATIVE CHANGE CAN NOT BE COERCED. FLAT SENTENCES CAN HELP REMOVE SOME OF THE INEQUITIES AND INEFFICIENCIES WITHIN THE SYSTEM AND PERMIT JUST AND EQUAL TREATMENT OF OFFENDERS, WORK AND LEARNING OPPORTUNITIES, AND THE CHANCE TO DISCHARGE THE SENTENCE WITH DIGNITY.

57. **E. MAY. OFFICIALS FEAR LONG FLAT TERMS.** CORRECTIONAL INFORMATION SERVICE, INC, 801 SECOND AVENUE, NEW YORK, NY 10017. *CORRECTIONS MAGAZINE*, V 3, N 3 (SEPTEMBER 1977), P 43-46.

NCJ-43229

SIX CORRECTIONS ADMINISTRATORS, ALL OF WHOM WERE CRITICAL OF DETERMINATE SENTENCING, WERE INTERVIEWED. VIEWS OF SOME PROponents OF FIXED SENTENCING ARE ALSO PRESENTED. LAWS AND PROPOSALS FOR DETERMINATE SENTENCING, ESPECIALLY THOSE IN WHICH LEGISLATURES WOULD ESTABLISH FLAT PRISON TERMS, ARE A SUBJECT OF MUCH CONCERN AMONG CORRECTIONS OFFICIALS. THE, DETERMINATE SENTENCING PROPOSALS ARE DESIGNED SO THAT SHORTER PRISON TERMS WOULD ACCOMPANY FIXED AND UNIFORM PUNISHMENT. THE COMMISSIONERS QUESTIONED PREDICT, HOWEVER, THAT PUBLIC OPINION CALLING FOR HARSHER PUNISHMENT WILL FORCE LEGISLATORS TO MANDATE LONGER SENTENCES. SOME OF THE CORRECTIONS ADMINISTRATORS FEAR THAT PROSECUTORIAL DISCRETION WILL INCREASE TO COUNTERACT THE DROP IN JUDICIAL DISCRETION WHICH THE REFORMS MAY GENERATE, AND THAT, IF PAROLE IS ELIMINATED, MANY INMATES WILL BE DEPRIVED OF THE HOPE OF EARLY RELEASE WHICH HELPS REDUCE THE TENSIONS OF CONFINEMENT. ADMINISTRATORS FIND THAT DETERMINATE SENTENCING APPEALS TO BOTH LIBERALS AND CONSERVATIVES, BUT FOR DIFFERENT REASONS: LIBERALS WISH TO GET RID OF GLARING DISPARITIES IN SENTENCING, WHILE CONSERVATIVES SEEK TO RAISE MINIMUM SENTENCES FOR PUNITIVE PURPOSES. MANY OF THE COMMISSIONERS EXPRESSED CONCERN THAT THE DETERMINATE SENTENCING MOVEMENT IS A 'FAD' AND PREFERRED TO EXERCISE CAUTION BEFORE ADOPTING UNTESTED MEASURES. SOME PROponents OF SENTENCING REFORM FAVOR LIMITING DISCRETION BY INSTITUTING SPECIFIC WRITTEN GUIDELINES FOR PAROLE BOARDS AND JUDGES.

58. **MICHIGAN DEPARTMENT OF CORRECTIONS, STEVENS T MASON BUILDING, LANSING, MI 48913. DILEMMA OF SENTENCING.** 10 p. 1977.

NCJ-44180

THE PURPOSES AND STRUCTURE OF CRIMINAL SENTENCING IN MICHIGAN ARE OUTLINED, DETERMINATE AND ALTERNATIVE SENTENCING STRUCTURES ARE DESCRIBED, AND CRITERIA FOR EVALUATING ALTERNATIVES ARE STATED. IN MICHIGAN, PUBLIC PROTECTION IS VIEWED AS THE OVERALL AIM OF ANY CRIMINAL PENALTY. RETRIBUTION, DETERRENCE, REHABILITATION, AND ISOLATION ARE THE ASPECTS OF PENALTY RELATED TO CRIME PREVENTION AND PUBLIC SAFETY. OTHER ASPECTS INCLUDE JUSTICE AND COST-EFFECTIVENESS. MICHIGAN'S MODIFIED INDETERMINATE SENTENCING STRUCTURE AND PAROLE SYSTEM HAVE BEEN CRITICIZED FOR THE DISPARITIES AND FAILURES OF JUSTICE THAT SOMETIMES OCCUR. ALTERNATIVE SENTENCING STRUCTURES INCLUDE DETERMINATE OR FLAT SENTENCING, MANDATORY PRISON TERMS, AND PRESUMPTIVE SENTENCING. THE BASIC ADVANTAGES OF THE EXISTING INDETERMINATE SENTENCING/PAROLE STRUCTURE ARE

POINTED OUT. A MAJOR ADVANTAGE IS THAT THE CORRECTIONAL SYSTEM HAS THE OPPORTUNITY TO REACT TO CHANGES IN INDIVIDUAL OFFENDERS. THE NEED FOR REVISIONS IN THE EXISTING STRUCTURE TO PROTECT AGAINST ABUSES IS NOTED. IT IS RECOMMENDED THAT PROPOSALS TO REVISE SENTENCING POLICIES BE JUDGED BY THE FOLLOWING CRITERIA: (1) INCLUSION OF ADEQUATE PENALTIES FOR VERY SERIOUS CRIMES; (2) PROVISION OF A REASONABLE RANGE OF DISCRETION FOR JUDGES; (3) PROVISION FOR THE CORRECTIONS SYSTEM TO ACT IN LIGHT OF WHAT IT LEARNS ABOUT AN OFFENDER; (4) LIMITATION AND CONTROL OF THE CORRECTIONS SYSTEM'S DISCRETION; AND (5) CONSIDERATION OF THE OFFENDER'S CONDUCT AS A FACTOR IN PAROLE DECISIONS.

Availability: National Criminal Justice Reference Service MICRO-FICHE PROGRAM.

59. **H. S. MILLER. CURRENT PERSPECTIVES IN CORRECTIONS—A CACOPHONY.** DUKE UNIVERSITY LAW SCHOOL, DURHAM, NC 27706. *LAW AND CONTEMPORARY PROBLEMS*, V 41, N 1 (WINTER 1977), P 132-163.

NCJ-44688

ISSUES IN THE DEBATE OVER THE PROPER RELATIONSHIP BETWEEN CRIME AND PUNISHMENT ARE DISCUSSED, WITH REFERENCES TO PROPOSED PENAL REFORMS, LITERATURE, AND SENTENCING AND CORRECTIONAL POLICIES. AT ISSUE IS WHETHER PUNISHMENT SHOULD FIT THE CRIME OR THE INDIVIDUAL WHO COMMITS THE CRIME. CONFLICTING VIEWS AND CHANGING ASSUMPTIONS CONCERNING HUMAN NATURE HAVE AFFECTED SENTENCING AND CORRECTIONAL POLICIES AND THEIR IMPLEMENTATION IN THE UNITED STATES. CONTROVERSY IN THE FIELD OF CORRECTIONS HAS FOCUSED ON REHABILITATION AND REFORMATION, INDETERMINATE AND DETERMINATE SENTENCING, PROBATION AND PAROLE, INDIVIDUALIZED TREATMENT, PRISON UNREST, THE PRISON ENVIRONMENT, AND THE COSTS OF PRISON. FEW AUTHORITIES IN THE FIELD BELIEVE THAT THE CORRECTIONS SYSTEM IN THE UNITED STATES HAS BEEN SUCCESSFUL. HOWEVER, ANALYSES OF THE PROBLEMS ARE AS DIVERGENT AS THE IDEOLOGIES ON WHICH THEY REST. ALTHOUGH SOME SUGGEST THAT A CONSENSUS IS FORMING WITH REGARD TO THE PROPER CONTEXT FOR CORRECTIONS, SUCH A CONSENSUS, IF IT EXISTS, IS NOT UNANIMOUS. MANY PROPOSED CODES AND STANDARDS INDICATE THAT THE REHABILITATIVE IDEAL AND THE DISCRETIONARY AUTHORITY ASSOCIATED WITH IT ARE STILL ALIVE. ONE THEORIST HOLDS THAT THE CORRECTIONS SYSTEM IS IN A TRANSITIONAL STAGE, IN WHICH NEW EXPLANATIONS ARE BEGINNING TO COMPETE WITH OLD ONES, BUT THAT FUNDAMENTAL CHANGE WILL NOT OCCUR UNTIL A NEW VIEW OF THE NATURE OF HUMANITY EMERGES. MOST SUGGESTED REFORMS REVOLVE AROUND THE NOTION THAT, THROUGH REHABILITATION, PUNISHMENT, DETERRENCE, THE 'JUST PRISON,' OR SOME MUTATION OR COMBINATION OF THESE, THE CORRECTIONAL SYSTEM WILL HAVE SOME IMPACT ON CRIME. HOWEVER, THERE IS LITTLE EVIDENCE TO SUPPORT THIS NOTION. A FAIR AND EFFICIENT CRIMINAL JUSTICE SYSTEM, WORK AND EDUCATION PROGRAMS FOR OFFENDERS, AND COMMUNITY ALTERNATIVES TO INCARCERATION ALL ARE IMPORTANT. HOWEVER, IT IS A PRETENSE TO CLAIM THAT SUCH EFFORTS ARE BY THEMSELVES THE MOST EFFECTIVE WAY TO COMBAT CRIME. CRIME PREVENTION REQUIRES A TRULY JUST SOCIETY, NOT ONLY A JUST PRISON.

60. **MINNESOTA CITIZENS COUNCIL ON DELINQUENCY AND CRIME, 1427 WASHINGTON AVENUE, SOUTH, MINNEAPOLIS, MN 55404. SENTENCING GUIDELINES—A MORE POSITIVE APPROACH FOR DETERMINATE SENTENCING.** 13 p. 1977.

NCJ-49753

THIS REPORT STUDIES VARIOUS ALTERNATIVES TO CURRENT SENTENCING PRACTICES IN MINNESOTA AND RECOM-

MENDS THE ESTABLISHMENT OF A SENTENCING COMMISSION TO SET JUDICIAL GUIDELINES AND PRISON RELEASE POLICIES. THIS REPORT BY A SUBCOMMITTEE OF THE MINNESOTA CITIZENS COUNCIL ON DELINQUENCY AND CRIME FINDS THAT THE PRESENT SENTENCING SYSTEM, BASED ON INDETERMINATE LENGTHS OF INCARCERATION, RELEASE BY A PAROLE BOARD, AND VARIOUS ALTERNATIVES TO IMPRISONMENT SUCH AS PROBATION, IS NOT PROVING A DETERRENT TO CRIME. FURTHER, INCONSISTENCIES IN SENTENCING ARE UNDERMINING RESPECT FOR THE CRIMINAL JUSTICE SYSTEM. THE SUBCOMMITTEE EXAMINES THE ADVANTAGES AND DISADVANTAGES OF LEGISLATIVELY DETERMINED SENTENCES AND DECIDES THAT SUCH AN APPROACH IS TOO RIGID. IT IS CONCLUDED THAT THE MINNESOTA SUPREME COURT SHOULD APPOINT A SENTENCING COMMISSION COMPOSED OF PERSONS EXPERIENCED IN CRIMINAL JUSTICE TO ESTABLISH GUIDELINES AND SUGGEST MINIMUM RECOMMENDED SENTENCES FOR VARIOUS OFFENSES. THIS WOULD STILL ALLOW JUDICIAL DISCRETION FOR UNUSUAL CASES. IT IS ALSO RECOMMENDED THAT THE COMMISSION CONSIDER ESTABLISHING STANDARDIZED RELEASE POLICIES FOR CORRECTIONAL INSTITUTIONS, THAT THE PAROLE BOARD BE ABOLISHED, AND THAT A PLAN FOR CONTINUING EVALUATION OF SENTENCING REFORMS BE ESTABLISHED. A SERIES OF QUESTIONS ON SENTENCING ARE ANSWERED.

Sponsoring Agency: CORRECTIONAL SERVICE OF MINNESOTA, 1427 WASHINGTON AVENUE, SOUTH, MINNEAPOLIS, MN 55404.

Availability: National Criminal Justice Reference Service MICRO-FICHE PROGRAM.

61. **N. MORRIS. PUNISHMENT, DESERT AND REHABILITATION (FROM EQUAL JUSTICE UNDER LAW, 1977).** US DEPARTMENT OF JUSTICE, WASHINGTON, DC 20530. 32 p. 1977.

NCJ-43529

THE THEORIES OF PARSIMONY, REHABILITATION OR REFORM, AND DESERT ARE CONSIDERED IN THIS ARGUMENT AGAINST MANDATORY SENTENCES. BY MANDATING SENTENCES, THE LAW WOULD MERELY SUBSTITUTE PROSECUTORIAL FOR JUDICIAL DISCRETION. SOME ARGUE THAT EQUALITY OF TREATMENT SHOULD BE THE OBJECT OF SENTENCING; THIS PAPER ARGUES FOR INEQUALITY OF SENTENCING JUST BECAUSE IT IS IMPOSSIBLE FOR THE LAW TO TAKE CIRCUMSTANCES INTO ACCOUNT. THE THEORY OF PARSIMONY, THE IDEA OF THE LEAST AFFLICTIVE SANCTION NECESSARY TO ACHIEVE A DEFINED SOCIAL PURPOSE, MANDATES INEQUALITY. CRACKDOWNS AGAINST DRUNKEN DRIVING TO REDUCE ROAD CARNAGE OR SEVERE ASSAULT SENTENCES FOR THOSE PARTICIPATING IN RACIAL VIOLENCE ARE EXAMPLES OF THE USE OF INEQUALITY TO DETER OTHERS FROM BEHAVIOR. TAX COURTS ARE VERY SELECTIVE IN CASES THEY PROSECUTE, BUT THE DETERRENT EFFECT CAN BE AS GREAT AS IF ALL TAX VIOLATORS WERE SENT TO PRISON, WHILE RESOURCES USED ARE MUCH LESS. THE NOTION OF REHABILITATION SHOULD HAVE NO BEARING ON SENTENCING; SENTENCES SHOULD BE PUNISHMENT. ANY PARTICIPATION IN REHABILITATION SHOULD BE VOLUNTARY. THE ABUSE OF PAROLE BOARDS USING REHABILITATION PROGRAM PARTICIPATION TO SET RELEASE DATES HAS BEEN WELL DOCUMENTED. THE THEORY OF DESERTS, THE AMOUNT OF PUNISHMENT A CRIME DESERVES, SHOULD SET MAXIMUM AND MINIMUM LIMITS FOR SENTENCES BUT CANNOT HANDLE THE FINE DISTINCTIONS IN BETWEEN. IT IS SUGGESTED THAT FLAT-TIME SENTENCES WITH TIME OFF FOR GOOD BEHAVIOR MAY MEET THE NEED FOR JUSTICE BUT THAT MANDATORY SENTENCING DOES NOT. THE AMERICAN LAW INSTITUTE'S MODEL PENAL CODE IS CONSIDERED A GOOD GUIDE TO REFORM IN SENTENCING PROCEDURES. IT IS SUGGESTED THAT MANDATORY SENTENCES WOULD INCREASE PLEA

BARGAINING, SENTENCE BARGAINING, AND OTHER PRETRIAL MANEUVERS, THUS SUBSTITUTING PROSECUTORIAL DISCRETION FOR JUDICIAL DISCRETION.

Supplemental Notes: BICENTENNIAL LECTURE SERIES PRESENTED AT THE UNIVERSITY OF COLORADO COLLEGE OF LAW, DENVER, COLORADO, NOVEMBER 12, 1976.

Sponsoring Agency: US DEPARTMENT OF JUSTICE, WASHINGTON, DC 20530.

62. **N. MORRIS. TOWARDS PRINCIPLED SENTENCING.** UNIVERSITY OF MARYLAND SCHOOL OF LAW, 500 WEST BALTIMORE STREET, BALTIMORE, MD 21201. *MARYLAND LAW REVIEW*, V 37, N 2 (1977), P 267-285. **NCJ-53668**

ISSUES OF SENTENCING REFORM ARE DISCUSSED BY THE UNIVERSITY OF CHICAGO'S DEAN OF LAW AND CRIMINOLOGY IN REFERENCE TO PROPOSED LEGISLATION AND ARGUMENTS CONCERNING SENTENCE DISPARITY, DISCRETION, AND PAROLE. FOUR SENTENCING ISSUES ARE DISCUSSED: (1) DISPARITY, INDIVIDUALIZATION, AND EQUALITY; (2) PAROLE AND ITS DOUBTFUL FUTURE; (3) LEGISLATIVELY FIXED TERMS; AND (4) DISTRIBUTING SENTENCING DISCRETION. IN THE AREA OF DISPARITY, INDIVIDUALIZATION, AND EQUALITY, IT IS COMMONLY ARGUED THAT JUDGES ACCOUNT FOR THE UNJUST VARIATION THAT EXISTS PRESENTLY IN SENTENCING. IT IS SUGGESTED THAT THE ALTERNATIVE OF FIXED SENTENCES CANNOT DEAL WITH THE UNIQUE CRIME-TO-CRIMINAL RELATIONSHIP. THE JUDICIARY SHOULD NOT BE STRIPPED OF ITS SENTENCING POWERS. THE ABOLITION OF PAROLE IS ADVOCATED. THERE ARE SIX TRADITIONAL ARGUMENTS IN FAVOR OF PAROLE: (1) PAROLE BOARDS CAN FIND THE OPTIMUM MOMENT FOR RELEASE; (2) BOARDS CAN PROVIDE AN INCENTIVE FOR THE PRISONER'S REHABILITATION; (3) BOARDS CAN FACILITATE PRISON CONTROL AND DISCIPLINE; (4) BOARDS CAN SHARE SENTENCING RESPONSIBILITY TO MAXIMIZE DETERRENCE WHILE REDUCING TIME SERVED; (5) BOARDS CAN CONTROL THE SIZE OF THE PRISON POPULATION; AND (6) BOARDS CAN RECTIFY UNJUST DISPARITIES IN SENTENCING. THESE TRADITIONAL ARGUMENTS ARE DISPOSED OF AS DISCRETIONARY, ARBITRARY, UNJUST, AND EMPIRICALLY FALSE. THOSE IN FAVOR OF LEGISLATIVELY FIXING SENTENCES ARGUE THAT SUCH ACTION WOULD ELIMINATE SENTENCING DISCRETION. STRIPPING THE JUDGES OF THIS POWER, HOWEVER, WOULD ONLY SHIFT THE DISCRETIONARY POWER OVER TO THE PROSECUTOR WHO ULTIMATELY WOULD DECIDE WHICH CRIME WITH WHICH TO CHARGE AN OFFENDER. THE FOGEL PLAN AND THE HART-JAVITS BILL ARE NOT SEEN AS ADEQUATE ALTERNATIVES TO PRESENT DAY SENTENCING. FINALLY, THE KENNEDY BILL, WHICH PROPOSES TO DISTRIBUTE SENTENCING DISCRETION, IS ADVOCATED. THE BILL INVOLVES A LEGISLATIVE ATTEMPT TO PROVIDE UNIFORM CRITERIA FOR SENTENCING. FOOTNOTES WITH SOURCES ARE PROVIDED IN THE TEXT.

63. **G. O. W. MUELLER. FUTURE OF SENTENCING—BACK TO SQUARE ONE (FROM NEW DIRECTIONS IN SENTENCING, P 13-18, 1980, BY BRIAN A GROSMAN—SEE NCJ-69395).** 6 p. 1980. **NCJ-69396**

THE HARMFUL EFFECTS OF A RECENT REVERSION TO FIXED AND SEVERE SENTENCING AS CRIMINAL PUNISHMENT ARE DESCRIBED, AND COUNTERARGUMENTS ARE MADE AGAINST THE CRITICS OF AN UTILITARIAN-HUMANITARIAN SENTENCING SYSTEM. IN THE LAST GENERATION, SENTENCING AND CORRECTIONS HAVE GONE THROUGH FOUR DISTINCT ERAS: (1) THE ERA OF RETRIBUTION, MARKED BY RELATIVELY FIXED AND SEVERE SENTENCING; (2) THE ERA OF UTILITARIANISM, CHARACTERIZED BY THE BELIEF THAT THE BEHAVIOR OF OFFENDERS COULD BE MANIPULATED THROUGH SENTENCING AND CORRECTIONAL SCHEMES; (3) AN ERA OF HUMANISM AIMED AT GREATER RECOGNITION OF THE CRIMINAL'S HUMAN RIGHTS; AND (4) THE ERA OF NI-

HILISM, OR REVERSION TO FIXED SENTENCING SCHEMES IN OPERATION AROUND THE TURN OF THE CENTURY. THE DEMORALIZING IMPACT OF THE RESTORATION OF FIXED SENTENCES ON JUDICIAL AND CORRECTIONAL PERSONNEL IS DESCRIBED. IN ADDITION, THREE ARGUMENTS AGAINST THE UTILITARIAN-HUMANITARIAN SENTENCING SYSTEM ARE IDENTIFIED. THOSE OPPOSED TO THIS TYPE OF SENTENCING ARGUE THAT MANY OFFENDERS DO NOT NEED REHABILITATION BECAUSE THEY ARE WELL-ADJUSTED COMMUNITY MEMBERS, AND THE JUDGMENT OF CONVICTION DOES NOT MAKE IT OTHERWISE. ALSO, REHABILITATION REQUIRES MANIPULATIONS OF THE HUMAN PERSONALITY, WHICH CONSTITUTES AN INVASION OF THE MOST INTIMATE LAST RESERVE OF THE PERSONALITY. FURTHER, REHABILITATION EFFORTS REQUIRE VARIATIONS IN TREATMENT, THUS MAKING INEQUALITY IN SENTENCES INCONSISTENT WITH THE PRINCIPLE OF JUSTICE THAT MANDATES EQUAL TREATMENT FOR THE SAME OFFENSE. PROPONENTS OF REHABILITATION CLAIM THAT THE COURTS SHOULD BE ABLE TO PROTECT INDIVIDUALS AGAINST UNWARRANTED INVASIONS OF PRIVACY IN THE REHABILITATIVE PROCESS; THE IDEA OF ESTABLISHING GUIDELINES FOR REHABILITATION BASED ON JUDICIAL SENTENCING PATTERNS DESERVES FURTHER STUDY; AND NATIONAL CRIME RATES ARE MORE DEPENDENT ON NATIONAL, SOCIAL, EDUCATIONAL, AND ECONOMIC POLICIES THAN ON THE SENTENCING ZEAL OF JUDGES OR THE ZEAL OF POLICE DEPARTMENTS. MOREOVER, REHABILITATION NOT ONLY REINTEGRATES OFFENDERS BACK INTO SOCIETY BUT ALSO ENABLES THEM TO FUNCTION SOCIALLY AND ECONOMICALLY. THE UNITED NATIONS INTERNATIONAL PLAN OF ACTION FOR CRIME PREVENTION IS DISCUSSED, AND THE PREVIOUS HISTORY OF JUSTICE IS TRACED. NINE NOTES ARE PROVIDED.

Availability: BUTTERWORTH, 2265 MIDLAND AVENUE, SCARBOROUGH, ONTARIO, CANADA M1P 4S1.

64. **S. NAGEL, M. NEEF, and T. WEIMAN. RATIONAL METHOD FOR DETERMINING PRISON SENTENCES.** AMERICAN JUDICATURE SOCIETY, SUITE 1606, 200 WEST MONROE STREET, CHICAGO, IL 60606. *JUDICATURE*, V 61, N 8 (MARCH 1978), P 371-375. **NCJ-52415**

A METHOD FOR CALCULATING THE FLAT SENTENCE THAT WILL MINIMIZE THE COSTS OF BOTH RECIDIVISM AND INCARCERATION FOR A GIVEN CRIME IS SET FORTH AND ILLUSTRATED WITH HYPOTHETICAL DATA ON GRAND LARCENY. IN SPECIFYING DETERMINATE SENTENCES, LEGISLATORS GENERALLY EITHER SYNTHESIZE THEIR OWN NORMATIVE REACTIONS TO DIFFERENT CRIMES OR CODIFY THE PREVIOUS AVERAGE SENTENCES FOR THOSE CRIMES. THESE APPROACHES MAY BE RATIONAL ONLY IF IT IS ASSUMED THAT THE EXISTING SYSTEM REFLECTS THE BENEFITS AND COSTS OF ALTERNATIVE SENTENCING. A DIFFERENT APPROACH TO COMPUTING DETERMINATE SENTENCES INVOLVES MINIMIZING THE SUM OF THE RECIDIVISM COSTS ASSOCIATED WITH SHORT SENTENCES AND THE INCARCERATION COSTS ASSOCIATED WITH LONG SENTENCES TO DETERMINE THE OPTIMUM FLAT SENTENCE FOR A GIVEN CRIME. DATA ON LENGTH OF SENTENCE AND SUBSEQUENT RECIDIVISM FOR PERSONS CONVICTED OF A GIVEN CRIME ARE USED TO CALCULATE A WEIGHTED RECIDIVISM SCORE FOR EACH LENGTH OF SENTENCE. THAT SCORE REFLECTS BOTH THE SEVERITY AND RECENCY OF SUBSEQUENT CRIMINAL BEHAVIOR, THE WEIGHTED RECIDIVISM COST SCORES AND INCARCERATION COST SCORES ON THE VERTICAL AXIS AND DURATION OF SENTENCE ON THE HORIZONTAL AXIS. THE GRAPH IS THEN USED TO DETERMINE THE SENTENCE DURATION THAT MINIMIZES BOTH COSTS. HYPOTHETICAL DATA FOR FIVE GRAND LARCENY CASES INDICATE THAT THE OPTIMUM FLAT SENTENCE FOR THAT CRIME IS APPROXIMATELY 3 YEARS. PLANS TO REFINE THE METHOD

DETERMINATE SENTENCING

THE ISSUES

AND TO TEST IT ON ACTUAL DATA FROM THE U.S. BUREAU OF PRISONS ARE NOTED.

65. **W. G. NAGEL. PRISONIA—AMERICA'S GROWING MEGALOPOLIS.** PENNSYLVANIA ASSOCIATION ON PROBATION, PAROLE & CORRECTION, 4075 MARKET STREET, CAMP HILL, PA 17011. *QUARTERLY*, V 36, N 3 (AUTUMN 1979), P 47-54. **NCJ-64695**

AMERICA'S GROWING PRISON POPULATION, REASONS FOR ITS INCREASE, AND WAYS TO REDUCE NUMBERS OF PRISONERS ARE DISCUSSED. IF ALL OF AMERICA'S PRISON AND JAIL INMATES WERE INCORPORATED INTO A CITY ('PRISONIA'), IT WOULD BE A MEGALOPOLIS RANKING BEHIND ST. LOUIS AND JUST AHEAD OF DENVER. IT WOULD BE LARGER IN POPULATION THAN 21 OF THE UNITED NATION'S CURRENT MEMBER NATIONS. IN PRISONERS PER 100,000 POPULATION, THE UNITED STATES IS SURPASSED ONLY BY THE SOVIET UNION AND SOUTH AFRICA, AND SOME OF THE STATE'S IMPRISONMENT RATES EXCEED EVEN THOSE COUNTRIES'. FURTHER PRISON GROWTH CAN BE EXPECTED, LARGELY DUE TO PUBLIC PERCEPTIONS OF INCREASING CRIME, PUBLIC POLICY SHIFTS TOWARD DETERMINATE AND/OR MANDATORY SENTENCES, AND PLANS IN MANY JURISDICTIONS TO BUILD NEW AND EXPAND OLD PRISONS AND JAILS. ALTHOUGH VICTIMIZATION STUDIES FAIL TO SUPPORT PUBLIC PERCEPTIONS OF INCREASING CRIME, OFFICIAL STATISTICS DO FEED THAT PERCEPTION, AND THE PREDOMINANT PUBLIC REACTION TO PERCEIVED CRIME INCREASES IS A DEMAND FOR MORE AND LONGER PRISON SENTENCES. IN STATES WHERE DETERMINATE AND/OR MANDATORY SENTENCING HAS BEEN IMPLEMENTED, PRISON SENTENCES HAVE TENDED TO BE LONGER, THUS INCREASING THE PRISON POPULATION EVEN THOUGH THE NUMBER OF ADMISSIONS MAY NOT HAVE INCREASED. STUDIES HAVE SHOWN THAT, IN STATES WHERE PRISON CAPACITIES HAVE BEEN ENLARGED, PRISON SENTENCES HAVE INCREASED TO FILL THE NEW CELLS. IN JURISDICTIONS WHERE THE INCREASE IN PRISON CAPACITY HAS BEEN LIMITED, PRISON POPULATIONS HAVE STABILIZED OR DECREASED. THE USE OF PRISON FOR VENGEANCE OR THE INCREASED INCAPACITATION OF OFFENDERS HAS NOT BEEN SHOWN TO DECREASE CRIME, AND MANY STUDIES HAVE DOCUMENTED THE CRIMINALIZING ASPECTS OF IMPRISONMENT. IF THE PRISON POPULATION IS TO BE REDUCED, GREATER EFFORTS MUST BE MADE TO DEVELOP ALTERNATIVES. THE SUCCESS OF SUCH EFFORTS CAN BE SHOWN IN SUCH NATIONS AS SWITZERLAND AND THE NETHERLANDS AND IN STATES SUCH AS PENNSYLVANIA.

Supplemental Notes: PRESENTED AT A SEMINAR FOR LEGISLATORS ON ALTERNATIVES TO NEW PRISON CONSTRUCTION, BROOKINGS INSTITUTION, WASHINGTON, DC, SEPTEMBER 18, 1979.

66. **A. NEIER. CRIME AND PUNISHMENT—A RADICAL SOLUTION.** 239 p. 1976. **NCJ-34788**

THIS TEXT PRESENTS A SERIES OF RECOMMENDATIONS WHICH CALL FOR THE RESTRUCTURING OF PUBLIC POLICY ON STREET CRIME THROUGH DECRIMINALIZATION OF LESS SERIOUS CRIMES AND REVISION OF THE METHODS OF SENTENCING AND PUNISHMENT. THE AUTHOR POINTS OUT THE INEQUALITIES OF THE EXISTING CRIMINAL JUSTICE PROCESS, WHICH EXPENDS A DISPROPORTIONATE AMOUNT OF TIME AND MONEY DEALING WITH CRIMES THAT HARM NO ONE WHILE AFFORDING INADEQUATE PROTECTION AGAINST SERIOUS CRIMES. IN THE FIRST SECTION OF THIS TEXT, THE AUTHOR OFFERS PROPOSALS FOR REDIRECTING THE ENERGIES OF LAW ENFORCEMENT TO MAKE IT MORE EFFECTIVE IN COMBATING CRIME. CHANGES IN PUBLIC POLICY AIMED AT MITIGATING THE CAUSES OF CRIME ARE ALSO PROPOSED. RECOMMENDATIONS ARE PROVIDED ON DECRIMINALIZATION OF CONSENSUAL SEXUAL RELATIONS,

POSSESSION OF DRUGS, AND STATUS OFFENSES; STRICT LIMITATIONS ON GUN OWNERSHIP; POLICE MANAGEMENT POLICIES WHICH ALLOW POLICE CORRUPTION; AND REFORMS OF SOCIAL AGENCIES TO REDUCE FAMILY DISRUPTION CAUSED BY THESE BUREAUCRACIES. IN THE SECOND PART OF THIS TEXT, THE AUTHOR PROPOSES AN END TO PLEA BARGAINING, ABOLISHMENT OF PAROLE, ABANDONMENT OF THE REHABILITATIVE MODEL OF CORRECTIONS, USE OF PRISON AS PUNISHMENT FOR SERIOUS CRIMES, AND ADOPTION OF A POLICY OF DETERRENCE WITH RESPECT TO IMPRISONMENT.

67. **NEW YORK GOVERNOR'S EXECUTIVE ADVISORY COMMITTEE ON SENTENCING, ALBANY, NY 12224. CRIME AND PUNISHMENT IN THE NEW YORK—AN INQUIRY INTO SENTENCING AND THE CRIMINAL JUSTICE SYSTEM.** 236 p. 1979. **NCJ-63184**

NEW YORK'S INDETERMINATE SENTENCING SYSTEM IS ANALYZED AND FOUND FLAWED IN THEORY AND PRACTICE. ITS REPLACEMENT WITH A SYSTEM OF SENTENCING GUIDELINES IS RECOMMENDED, TOGETHER WITH SOME JUDICIAL DISCRETION RESTRICTIONS. THE NEW YORK STATE ADVISORY COMMITTEE ON SENTENCING FOUND THE PRESENT SENTENCING LAWS IN NEED OF REFORM, ESPECIALLY WITH REGARD TO THE EXCESSIVE DISCRETIONARY POWERS OF JUDGES, PAROLE BOARDS, AND PROSECUTORS. THE PRESENT SYSTEM OF INDETERMINATE SENTENCING BY JUDGES DIFFERING IN PERSONALITY AND VIEWPOINT CREATES SENTENCE DISPARITY; ITS UNPREDICTABILITY BREEDS CYNICISM AND BEWILDERMENT IN THE GENERAL PUBLIC, REDUCES THE DETERRENT POWER OF SENTENCING BY ITS UNCERTAINTY, AND IS UNFAIR TO ALL PARTIES INVOLVED. THE COMMITTEE RECOMMENDS THAT JUDICIAL DISCRETION BE LIMITED (ALTHOUGH NOT ABOLISHED) BY THE REQUIREMENT THAT SENTENCING FOLLOWS A SET OF GUIDELINES ESTABLISHED BY AN APPOINTED, INDEPENDENT COMMISSION OF EXPERTS, WHO WOULD ALSO MONITOR THEIR OPERATION AND ALTER THEM PERIODICALLY, IF NEEDED. JUDGES WOULD RETAIN LIMITED DISCRETION IN DEPARTING FROM THE SENTENCING GUIDELINES, BUT WOULD BE REQUIRED TO JUSTIFY EACH SENTENCE WITH FINDINGS OF FACT. THE SENTENCE THUS PASSED WOULD BE SUBJECT TO APPELLATE COURT REVIEW. A BASIC GUIDELINE WOULD BE THE APPLICATION OF THE LEAST SEVERE SANCTION NECESSARY TO ACHIEVE LEGITIMATE SENTENCING GOALS, AVOIDING CONFINEMENT WHENEVER POSSIBLE. THE PRESENT DISCRETIONARY RELEASE POWERS OF THE PAROLE BOARD WOULD BE LIMITED TO INMATES SENTENCED UNDER THE PRIOR INDETERMINATE SYSTEM. PAROLE RELEASE ITSELF WOULD BE ABOLISHED, BUT THE PAROLE BOARD WOULD EXERCISE POSTRELEASE SUPERVISION TO REDUCE RECIDIVISM. OTHER RECOMMENDATIONS OF THE COMMITTEE CALLED FOR THE MAINTENANCE OF THE GOOD-TIME SENTENCE REDUCTION SYSTEM FOR INMATES OBSERVING INSTITUTIONAL RULES; CONTINUED EMPHASIS ON INMATE REHABILITATION AND PHASED SOCIAL REINTEGRATION; AND EXPANSION OF ALTERNATIVES TO INCARCERATION BEYOND THE CURRENT LIMITED OPTIONS (CHIEFLY PROBATION) TO INCLUDE RESTITUTION, DAY FINES, AND COMMUNITY SERVICE ORDERS. FOOTNOTES ARE INCLUDED.

Availability: National Criminal Justice Reference Service MICROFICHE PROGRAM.

68. **V. O'LEARY, M. GOTTFREDSON, and A. GELMAN. CONTEMPORARY SENTENCING PROPOSALS (FROM INVISIBLE JUSTICE SYSTEM—DISCRETION AND THE LAW, 1978, BY BURTON ATKINS AND MARK POGREBIN—SEE NCJ-46813).** ANDERSON PUBLISHING COMPANY, 646 MAIN STREET, CINCINNATI, OH 45201. 15 p. 1978. **NCJ-46818**
- THE CONTRIBUTIONS OF THREE SOCIAL THINKERS TO A SEMINAR ON CONTEMPORARY SENTENCING REFORMS WITH REGARD TO THE INCARCERATION OF THE ADULT FELONY

OFFENDER ARE SUMMARIZED. THE SEMINAR FOCUSED ON THREE PARTICIPANTS WHO HAD DEVELOPED, AS A RESULT OF INDEPENDENT STUDIES, A SERIES OF PROPOSALS FOR SENTENCING REFORM: NORVAL MORRIS HAD BEEN CONCERNED PRIMARILY WITH DEVELOPING CRITERIA FOR THE SELECTION OF INMATES FOR MAXIMUM-SECURITY PRISON, ANDREW VON HIRSCH HAD ADDRESSED THE PRINCIPLES UNDERLYING THE GENERAL USES OF INCARCERATION, AND LESLIE WILKINS HAD DEVELOPED—WHILE WORKING ON A PAROLE DECISIONMAKING PROJECT—A SET OF PROPOSALS WHICH HAD DIRECT REFERENCE TO SENTENCING. THE DOMINANT GOALS OF SENTENCING—DETERRENCE, INCAPACITATION, TREATMENT, AND DESERT—ARE DISCUSSED. THE CHANGING EMPHASIS OF SENTENCING GOALS IS UNDERSCORED AND THE VALIDITY OF REHABILITATIVE AIMS IS EXAMINED IN DETAIL. IT IS NOTED THAT ANY CRIME-CONTROL PURPOSE HAS DIFFICULTIES WHEN IT COMES TO THE ACCURACY OF ITS MEASURES AND THAT THE CONTINUING DISILLUSIONMENT WITH THE EMPIRICALLY DEMONSTRATED OUTCOMES OF TREATMENT EFFECTS IS EQUALLY APPLICABLE TO DETERRENT AND INCAPACITATIVE PURPOSES. THE THREE ALTERNATIVE SYSTEMS ARE DISCUSSED INDIVIDUALLY. MORRIS' PROPOSAL DEALS WITH DESERT AS A LIMITING CONSTRAINT: THE SENTENCING JUDGE WOULD EXERCISE DISCRETION, BUT ONLY TO IMPOSE A LESSER PENALTY, NEVER A GREATER ONE. WILKINS PROPOSED MORE STRINGENT CONTROL OF JUDICIAL DISCRETION: AN OFFENDER WOULD RECEIVE A SENTENCE DERIVED ACCORDING TO HOW HIS PARTICULAR OFFENSE RANKED ON A SERIOUSNESS SCALE AND HOW HIS PERSONAL CHARACTERISTICS WERE TRANSLATED INTO A RANK ON AN EMPIRICALLY DERIVED RISK SCALE. VON HIRSCH TAKES A STRONG POSITION THAT DESERT SHOULD BE THE CENTRAL ORGANIZING PRINCIPLE OF A SENTENCING SYSTEM: THE PUNISHMENT IMPOSED IN A GIVEN CASE WOULD BE COMMENSURATE WITH THE SERIOUSNESS OF THE OFFENSE AND WITH THE SERIOUSNESS OF THE OFFENDER'S PRIOR OFFENSES; THERE WOULD BE A PRECISE PRESUMPTIVE SENTENCE FOR EACH GRADATION OF SERIOUSNESS OF OFFENSE AND OF PRIOR RECORD; AND VARIATION FROM THIS PRESUMPTIVE OR DESERVED SENTENCE WOULD BE ALLOWED ONLY TO A LIMITED DEGREE FOR OTHER SENTENCING PURPOSES, SUCH AS DETERRENCE, TREATMENT OR INCAPACITATION. THE PROBLEM OF SETTING THE MAXIMUM TERMS IS DISCUSSED WITH ATTENTION TO CONSIDERATION OF DESERT, THE PRINCIPLE OF PROPORTIONALITY, THE PREDICTION OF CRIMINALITY, AND ASPECTS OF PRIOR CRIMINAL BEHAVIOR. THE NEED FOR FIXING PRECISE PENALTIES IS STRESSED; MITIGATING AND AGGRAVATING CIRCUMSTANCES AND THE ISSUE OF MANDATORY SENTENCING ARE DISCUSSED. NOTES ARE PROVIDED.

Supplemental Notes: REPRINTED FROM CRIMINAL LAW BULLETIN, V 11, N 5 (1975).

69. **L. ORLAND. FROM VENGEANCE TO VENGEANCE—SENTENCING REFORM AND THE DEMISE OF REHABILITATION.** HOFSTRA UNIVERSITY SCHOOL OF LAW, HEMPSTEAD, NY 11550. *HOFSTRA LAW REVIEW*, V 7, N 1 (FALL 1978), P 29-56. **NCJ-61821**
- TRENDS IN SENTENCING REFORM DESIGNED TO ACHIEVE SENTENCE UNIFORMITY ARE CRITIQUED. A SENTENCING CODE PREMISED ON THE TOTAL INEFFECTIVENESS OF REHABILITATION AND PUNISHMENT AS THE PRIMARY PURPOSE OF SENTENCING MAY UNDERMINE THE VALUE OF WELL-TRAINED TREATMENT STAFFS AND SOUND TREATMENT PROGRAMS. LOWER BUT DISPARATE SENTENCES ARE PREFERABLE TO HIGHER BUT EQUAL SENTENCES. NEW STATE SENTENCING CODES INTENDED TO CREATE SENTENCING EQUALITY ARE LIKELY TO PROVIDE HIGHER UNEQUAL SENTENCES TO REPLACE LOWER UNEQUAL SENTENCES. DISCRETIONARY RELEASE OF OFFENDERS BY

PRISON DISCIPLINE COMMITTEES, BASED ON 'GOOD TIME' CREDIT, IS NOT AN IMPROVEMENT OVER THE PAROLE SYSTEM, SINCE REASON AND EXPERIENCE DICTATE THAT SUCH COMMITTEES WILL ACT AT LEAST AS ARBITRARILY AS PAROLE BOARDS. UNDER THE NEW DETERMINATE SENTENCING STRUCTURES, UNCONTROLLED JUDICIAL SENTENCING DISCRETION MAY WELL BE REPLACED BY UNCONTROLLED PROSECUTORIAL SENTENCING DISCRETION, DUE TO PROSECUTORS' POWER OVER THE CHARGING PROCESS AND THE PREVALENCE OF PLEA BARGAINED SENTENCES. THE RESULT MAY BE A NET INCREASE IN THE CAPRICIOUSNESS AND DISPARITY IN SENTENCES SERVED. SENTENCING COMMISSIONS, PARTICULARLY AS FASHIONED BY THE PROPOSED FEDERAL CRIMINAL CODE, ARE A POTENTIALLY ATTRACTIVE SOLUTION TO THE PROBLEM OF DISPARITY; HOWEVER, SENTENCING COMMISSIONS MAY INCREASE INCARCERATION LEVELS UNLESS THE MAXIMUM SENTENCING TERMS ARE REDUCED AND COMMISSIONS ARE AUTHORIZED TO IMPOSE THE LEAST OPPRESSIVE SENTENCE. (AUTHOR ABSTRACT MODIFIED)

70. **J. PETERSILIA and P. W. GREENWOOD. MANDATORY PRISON SENTENCES—THEIR PROJECTED EFFECTS ON CRIME AND PRISON POPULATIONS.** RAND CORPORATION, 1700 MAIN STREET, SANTA MONICA, CA 90406. 36 p. 1977. **NCJ-49917**
- MANDATORY PRISON SENTENCES MAY REDUCE CRIME WHILE INCREASING PRISON POPULATIONS. AT ISSUE IS WHAT CATEGORY OF CRIMINALS SHOULD RECEIVE MANDATORY SENTENCES OF WHAT LENGTH AND AT WHAT COST. IN 1975-1976 DURING THE 94TH CONGRESS, MORE THAN 30 SEPARATE BILLS CALLING FOR MANDATORY-MINIMUM PRISON SENTENCES WERE INTRODUCED. MOST OF THE BILLS LIMIT MANDATORY SENTENCING TO SPECIFIED CRIMES OR TO PARTICULAR CATEGORIES OF CRIMINALS. THE MOST COMMON TYPE OF CRIMINAL RECOMMENDED FOR MANDATORY SENTENCING IS THE REPEAT CRIMINAL, ON THE GROUNDS THAT THE SENTENCE SHOULD BE MADE SEVERE IN PROPORTION TO THE NUMBER OF PAST CONVICTIONS. SENTENCING REFORMS, HOWEVER, IMPLY GREATER CRIMINAL JUSTICE SYSTEMS COSTS, AND IT IS THEREFORE NECESSARY THAT SUCH REFORMS BE PRECEDED BY AN EVALUATION OF POTENTIAL BENEFITS IN CRIME REDUCTION AS COMPARED TO LIKELY COSTS ASSOCIATED WITH INCREASED PRISON POPULATIONS. ADVOCATES OF MANDATORY SENTENCING SCHEMES GENERALLY IGNORE THE PROJECTED EXTRA BURDEN ON THE CORRECTIONAL SYSTEM. POLICYMAKERS NEED TO KNOW WHAT TYPE OF OFFENDER SHOULD RECEIVE WHAT LENGTH OF SENTENCE TO PRODUCE THE LARGEST REDUCTION IN CRIME AND SECONDLY, WHAT IMPACT THESE MANDATORY PENALTIES WILL HAVE ON THE PRISON POPULATION. IT IS SUGGESTED THAT MANDATORY SENTENCING POLICIES CAN REDUCE CRIME AS A RESULT OF INCAPACITATION EFFECTS BUT THAT THE INCREASE IN THE PRISON POPULATION RESULTING FROM SUCH POLICIES MAY BE UNACCEPTABLY LARGE. TO REDUCE THE CRIME LEVEL BY HALF, EVERY PERSON CONVICTED OF A FELONY, REGARDLESS OF PRIOR CRIMINAL HISTORY, WOULD HAVE TO BE IMPRISONED FOR 5 YEARS. IF ONLY DEFENDANTS WHO HAVE A PRIOR ADULT CONVICTION ARE IMPRISONED, THE CRIME REDUCTION EFFECT IS ABOUT HALF THAT PRODUCED BY SENTENCING EVERY CONVICTED FELON TO PRISON. THE MOST EFFICIENT POLICY, IN THE SENSE OF PRODUCING THE HIGHEST CRIME REDUCTION AND THE LOWEST INCREASE IN THE PRISON POPULATION, APPEARS TO BE THAT OF SENTENCING ALL CONVICTED FELONS TO 1.2 YEARS OF PRISON. THIS POLICY REDUCES THE CRIME RATE BY 20 PERCENT WHILE RAISING THE PRISON POPULATION BY 85 PERCENT. JUDGES CAN BE SUCCESSFUL IN DISTINGUISHING AMONG DEFENDANTS WHO POSE MORE OR LESS SERIOUS RISKS TO THE COMMUNITY.

MANDATORY-MINIMUM SENTENCING POLICIES THAT FOCUS ONLY ON DEFENDANTS WITH PRIOR RECORDS APPEAR TO BE LESS EFFECTIVE THAN POLICIES WHICH IGNORE PRIOR RECORDS. A LIST OF REFERENCES IS PROVIDED. (AUTHOR ABSTRACT MODIFIED)

Sponsoring Agency: US DEPARTMENT OF JUSTICE LEAA NATIONAL INSTITUTE OF LAW ENFORCEMENT AND CRIMINAL JUSTICE, 633 INDIANA AVENUE NW, WASHINGTON, DC 20531.

Availability: RAND CORPORATION, 1700 MAIN STREET, SANTA MONICA, CA 90406. Stock Order No. P-6014; National Criminal Justice Reference Service MICROFICHE PROGRAM.

71. **J. POTTER. GROWTH SLOWS—AT LEAST FOR NOW—ANNUAL PRISON POPULATION SURVEY.** CRIMINAL JUSTICE PUBLICATIONS, INC, 801 SECOND AVENUE, NEW YORK, NY 10017. *CORRECTIONS MAGAZINE*, V 6, N 2 (APRIL 1980), P 25-30. **NCJ-66615**
- THE NUMBER OF ADULTS IN STATE AND FEDERAL PRISONS GREW ONLY BY 1 PERCENT IN 1979, TO STAND AT 307,207 ON JAN. 1, 1980, BUT OVERCROWDING IN PRISONS REMAINS AN EXPLOSIVE PROBLEM. THIS IS PARTLY DUE TO THE FACT THAT PRISONS NEVER CAUGHT UP WITH THE RISE OF PRISON POPULATIONS BY MORE THAN 10 PERCENT A YEAR IN THE MID-1970'S. MOREOVER, CORRECTIONS OFFICIALS FEAR THAT A NEW ROUND OF GROWTH MAY BEGIN AGAIN, FUELED BY THE FLAT SENTENCING LAWS AND SENTENCING GUIDELINES ADOPTED BY STATE LEGISLATURES IN RECENT YEARS. OVERCROWDING, WHICH WAS ONCE A MAJOR CONCERN IN THE SOUTHEAST, IS NOW A PROBLEM OF LARGE STATES IN ALL PARTS OF THE COUNTRY. IN CALIFORNIA, THOUSANDS OF PRISONERS ARE DOUBLED UP IN CELLS; TEXAS HAS MORE PRISONERS NOW THAN THE U.S. BUREAU OF PRISONS; AND OVERCROWDING CAUSES TENSION IN PRISONS IN NEW YORK AND ILLINOIS. THE NUMBER OF PRISONERS HELD IN STATE SYSTEMS (275,850) INCREASED AT ABOUT THE SAME RATE LAST YEAR AS THE YEAR BEFORE, BUT THIS WAS OFFSET BY A 16-PERCENT DROP IN THE NUMBER OF PRISONERS IN THE FEDERAL SYSTEM. FEDERAL OFFICIALS ATTRIBUTE MUCH OF THIS DECREASE TO A SHIFT IN EMPHASIS ON PROSECUTION FROM STREET CRIME TO WHITE-COLLAR CRIME. PRISON POPULATIONS DECLINED IN 19 STATES DURING 1979, BUT AMONG THE 11 STATE SYSTEMS WITH MORE THAN 10,000 INMATES, ONLY FLORIDA REGISTERED A DECLINE. BESIDES NEW SENTENCING LAWS AND PAROLE GUIDELINES, OTHER FACTORS HAVE AFFECTED PRISON POPULATIONS, SUCH AS A GENERAL ECONOMIC SLOWDOWN, POPULATION SHIFTS, AND A MORE PUNITIVE ATTITUDE THROUGHOUT THE COUNTRY AMONG JUDGES, PAROLE BOARDS, AND LEGISLATORS. A CHART AND PHOTOGRAPHS COMPLEMENT THE TEXT.
72. **J. POTTER, R. WILSON, and M. S. SERRILL. PRISON POPULATION RISES AGAIN, BUT AT A SLOWER RATE.** CRIMINAL JUSTICE PUBLICATIONS, INC, 801 SECOND AVENUE, NEW YORK, NY 10017. *CORRECTIONS MAGAZINE*, V 4, N 2 (JUNE 1978), P 20-24. **NCJ-47688**
- THE RESULTS OF A 1978 SURVEY OF THE INMATE POPULATIONS OF STATE AND FEDERAL PRISONS ARE PRESENTED. THE SURVEY, CONDUCTED BY CORRECTIONS MAGAZINE, SHOWED THAT THE NUMBER OF PEOPLE IN THE CUSTODY OF STATE AND FEDERAL CORRECTIONAL SYSTEMS INCREASED BY 5 PERCENT (12,987 PERSONS) FROM JANUARY 1, 1977 TO JANUARY 1, 1978. AUTHORITIES STUDYING THE PROBLEM OF OVERCROWDING PRISONS HAD PREDICTED THAT THE POPULATION WOULD CONTINUE TO GROW AT A RAPID RATE AND WOULD EASILY TOP 300,000 BY THE BEGINNING OF 1978. A SUDDEN STABILIZATION DURING THE LAST 3 YEARS IN THE PRISON POPULATIONS OF SEVERAL STATES WITH PREVIOUS RAPID GROWTH RATES PREVENTED THIS. STATES SHOWING A DECLINE IN PRISON POPULATION WERE ARIZONA, CALIFORNIA, CONNECTICUT, NEBRASKA, NEW HAMPSHIRE, OKLAHOMA, UTAH, WISCONSIN, AND

WEST VIRGINIA. THE MOST SIGNIFICANT DECLINE OCCURRED IN CALIFORNIA, WHERE THE NUMBER OF MEN AND WOMEN IN STATE PRISONS DROPPED 6 PERCENT, FROM ALMOST 21,000 TO 19,600. ACCORDING TO STATE OFFICIALS, THIS WAS LARGELY DUE TO THE RELEASE OF MANY INMATES AFTER THE IMPLEMENTATION OF CALIFORNIA'S NEW DETERMINATE SENTENCING LAW. IN FACT, ADMISSIONS TO THE STATE DEPARTMENT OF CORRECTIONS WERE AT A RECORD HIGH LAST YEAR, AND THE POPULATION HAS ALREADY BEGUN TO RISE AGAIN. AMONG THE OTHER STATES THAT SHOWED A DECLINE WERE ARIZONA, WHERE THE POPULATION HAD INCREASED BY MORE THAN ONE-THIRD FROM 1975 TO 1977, AND OKLAHOMA, WHICH HAD SHOWN A SIMILAR INCREASE. IN 10 STATES, THE PRISON POPULATIONS STABILIZED, INCLUDING ARKANSAS, GEORGIA, KENTUCKY, MARYLAND, VIRGINIA, MASSACHUSETTS, NEW JERSEY, OHIO, OREGON, AND PENNSYLVANIA. SOME STATES REPORTED NO ABATEMENT AT ALL IN POPULATION GROWTH. THE LARGEST PERCENTAGE INCREASES OCCURRED IN SPARSELY POPULATED STATES THAT HAVE LITTLE IMPACT ON THE NATIONAL STATISTICS: ALASKA (27 PERCENT), HAWAII (19 PERCENT), NEVADA (19 PERCENT), NEW MEXICO (19 PERCENT), AND WYOMING (23 PERCENT). THE LARGEST NUMERICAL INCREASE WAS IN NEW YORK, WHICH EXPERIENCED A NET INCREASE OF ALMOST 2,000 PRISONERS. A TABLE PROVIDING A BREAKDOWN OF INMATE POPULATIONS BY STATE FOR 1977 AND 1978 IS INCLUDED, AND SPECIAL ATTENTION IS GIVEN TO THE INMATE POPULATION CHANGES THAT OCCURRED IN ARIZONA, CALIFORNIA, FLORIDA, MICHIGAN AND NEW YORK.

73. **S. T. REID. INDETERMINATE SENTENCE UNDER FIRE (FROM INSTITUTE OF CONTEMPORARY CORRECTIONS AND THE BEHAVIORAL SCIENCES, 12TH ANNUAL INTERAGENCY WORKSHOP—PROCEEDINGS, 1977 SEE NCJ-50660).** SAM HOUSTON STATE UNIVERSITY CRIMINAL JUSTICE CENTER, HUNTSVILLE, TX 77340. 5 p. 1977. **NCJ-50671**
- THE HISTORY OF INDETERMINATE SENTENCING IS PRESENTED, AND CURRENT CRITICISMS OF IT ARE DISCUSSED, WITH ATTENTION TO THE USE OF THE INDETERMINATE SENTENCE IN MARYLAND. IT IS NOTED THAT IN THE 1950'S THE CONCEPT OF THE INDETERMINATE SENTENCE WAS FORMULATED AS AN OUTGROWTH OF THE TREATMENT MODEL FOR OFFENDERS. UNDER THE INDETERMINATE SENTENCE CONCEPT, AN OFFENDER WOULD REMAIN IN THE CUSTODY OF THE STATE UNTIL HIS REHABILITATION WAS COMPLETE, HOWEVER LONG OR SHORT A TIME MIGHT BE REQUIRED. IT IS INDICATED THAT THE PRACTICAL PROBLEMS OF IMPLEMENTING THE INDETERMINATE SENTENCE ARE AT THE ROOT OF CURRENT CRITICISMS OF IT. LACK OF OBJECTIVITY ON THE PART OF TREATMENT PERSONNEL, THE INABILITY TO PREDICT HUMAN BEHAVIOR (ESPECIALLY DANGEROUS BEHAVIOR), AND PROBLEMS IN IMPLEMENTING TREATMENT PROGRAMS ARE DISCUSSED AS THE CHIEF PROBLEMS UNDERMINING THE CONCEPT OF THE INDETERMINATE SENTENCE. PROBLEMS ASSOCIATED WITH THE ESTABLISHMENT OF PATUXENT INSTITUTION IN MARYLAND UNDER THE DEFECTIVE DELINQUENCY OF SEVERE DELINQUENTS FOR TREATMENT PURPOSES, ARE DISCUSSED. THE POLICY STUDY LEADING TO THE 1976 REPEAL OF THE DELINQUENCY STATUTE IS DISCUSSED. THE STUDY CONCLUDED THAT THE EXISTING PROGRAM AT PATUXENT INSTITUTION SHOULD BE SIGNIFICANTLY MODIFIED AND THE STATUTORY PROVISIONS FOR THE INDETERMINATE SENTENCE AND THE CONCEPT OF DEFECTIVE DELINQUENCY REPEALED. WHILE THE ARGUMENTS OPPOSING INDETERMINATE SENTENCING ARE VIEWED BY THE AUTHOR AS VALID, HE CAUTIONS AGAINST ABANDONING THE TREATMENT MODEL OF CORRECTIONS IN FAVOR OF A RETRIBUTIVE MODEL THAT WOULD MATCH PRECISE SENTENCES TO PARTICULAR CRIMES. IT IS BELIEVED THAT THE SUCCESS OF TREATMENT

MODELS OF VARIOUS TYPES HAS BEEN SUFFICIENT TO WARRANT THEIR CONTINUED USE WITH REVISIONS BASED ON COMPETENT EVALUATIONS.

Availability: National Criminal Justice Reference Service MICROFICHE PROGRAM.

74. **S. RUBIN. NEW SENTENCING PROPOSALS AND LAWS IN THE 1970'S.** ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS, SUPREME COURT BUILDING, WASHINGTON, DC 20544. *FEDERAL PROBATION*, V 43, N 2 (JUNE 1979), P 3-8. **NCJ-61971**

MYTHS ABOUT INDETERMINATE SENTENCING AND PAROLE, NEW DETERMINATE SENTENCING STATUTES, AND NEEDED PAROLE, SENTENCING, AND PRISON REFORM ARE DISCUSSED; APPROPRIATE REMEDIES ARE EMPHASIZED. CURRENT SENTENCING LEGISLATION AND PHILOSOPHICAL VIEWS SUPPORT THE REPEAL OF THE INDETERMINATE SENTENCE AND THE ABOLITION, OR NEAR ABOLITION, OF PAROLE. THESE REPEAL ARGUMENTS, HOWEVER, SEEK TO AVOID THE REALITIES OF THE SITUATION, AND ARE BASED ON WHOLLY MYTHICAL ASSUMPTIONS. IT IS ASSERTED THAT THE INDETERMINATE SENTENCE EQUALS REHABILITATION. IN FACT, INDIVIDUALIZED TREATMENT IS NEGATED BY THE ALMOST UNIVERSAL PREVALENCE OF MANDATORY MINIMUM TERMS (NO MATTER HOW MUCH SOONER AN INDIVIDUAL IS SUITABLE FOR RELEASE) AND BY STATUTORY PROVISIONS IN MANY INDETERMINATE SENTENCE STATUTES. IT IS ALSO ARGUED THAT THE MODERN PRISON, OPERATING UNDER THE INDETERMINATE SYSTEM, IS A FAILURE. SUCH FAILURE, HOWEVER, IS NOT DIRECTLY ATTRIBUTABLE TO THE INDETERMINATE SENTENCING SYSTEM; DEFECTS ARE THE PROVISION FOR MINIMUM PAROLE ELIGIBILITY, THE AUTOMATIC MAXIMUM, AND SENTENCE-FIXING POWERS OF PAROLE BOARDS. SUPPOSEDLY, INDETERMINATE SENTENCE AND PAROLE REMAIN TOGETHER, BUT ALL STATES HAVE PAROLE SYSTEMS, WHETHER THE SENTENCING SYSTEM IS 'INDETERMINATE' OR NOT. WHILE CORRECTIONAL TREATMENT IN PRISONS DEFINITELY SHOULD BE REFORMED, IT CANNOT BE PROVEN THAT THE FAILURE IS DIRECTLY ATTRIBUTABLE TO INDETERMINATE SENTENCING AND PAROLE PER SE, BUT RATHER THE LEGISLATIVE AND PRACTICAL INTERPRETATIONS GIVEN THEM TODAY. TO SAY THAT INDETERMINATE SENTENCE LAWS ARE A CAUSE OF PRISON FAILURE IS INACCURATE BECAUSE THE SENTENCE FORM IS IRRELEVANT TO PRISON PRACTICES AND PROGRAMS. THE NEW DETERMINATE SENTENCE STATUTES PASSED RECENTLY IN CALIFORNIA, MAINE, AND INDIANA, AMONG OTHER STATES, HAVE MERELY SERVED TO CONTINUE OR WORSEN EXISTING PRACTICES AND PRISON TERMS. IT IS SUGGESTED THAT SENTENCING REFORMS SHOULD FOCUS ON THE REDUCTION OF THE LENGTH OF PRISON SENTENCES FOR ALL BUT THE MOST SERIOUS OFFENSES. PAROLE REFORMS SHOULD INCLUDE REPRESENTATION OF THE PRISONER BY COUNSEL IN A FAIR HEARING, ELIMINATION OF MINIMUM TERM OF ELIGIBILITY FOR PAROLE, AND ARTICULATION OF PAROLE OR DISCHARGE PROVISIONS IN THE STATUTES. PRISON REFORMS ARE ALSO URGENTLY NEEDED, INCLUDING ADEQUATE MEDICAL CARE, REPRESENTATION BY COUNSEL IN MATTERS RELATING TO PRISON LIFE, AND ABOLITION OF HUGE MAXIMUM SECURITY PRISONS. FOOTNOTES ARE INCLUDED.

Availability: National Criminal Justice Reference Service MICROFICHE PROGRAM.

75. **E. SAGARIN and A. KARMEN. CRIMINOLOGY AND THE REAFFIRMATION OF HUMANIST IDEALS (FROM CRIMINOLOGY—NEW CONCERNS, 1979, BY EDWARD SAGARIN—SEE NCJ-59332).** SAGE PUBLICATIONS, INC, 275 SOUTH BEVERLY DRIVE, BEVERLY HILLS, CA 90212. 16 p. 1979. **NCJ-59336**

IN THE CONTINUING INTERPLAY OF THEORIES AND REALITY WITHIN THE FIELD OF CRIMINOLOGY, CRIMINOLOGISTS

SHOULD NOT LOSE SIGHT OF THE NECESSITY FOR CREATING A JUST AND HUMANE CRIMINAL JUSTICE SYSTEM. FEW CRIMINOLOGISTS DENY THAT THERE HAS BEEN A SHARP INCREASE IN CRIME AND A SHARP CONFLICT WITHIN CRIMINOLOGY OVER THE LAST FEW YEARS. THESE CONFLICTS HAVE CREATED A SITUATION IN WHICH HARD-LINE LAW AND ORDER ADVOCATES HAVE COME TO DOMINATE CRIMINAL JUSTICE POLICY. WHAT IS LACKING IN SUCH AN APPROACH IS A CLEAR UNDERSTANDING OF THE FACT THAT CRIME DERIVES FROM THE MORAL AMBIANCE AND STRUCTURE OF SOCIETY. IT FAILS TO RECOGNIZE THE RELATIONSHIP BETWEEN SOCIETAL TOLERANCE OF WHITE COLLAR CRIME AND THE INCREASE IN STREET CRIME. THE HARD-LINE CALL FOR STRICT PUNISHMENT OF CRIMINALS HAS GAINED INCREASING ACCEPTANCE EVEN THOUGH EXPERIENCE HAS SHOWN THAT SUCH AN APPROACH HAS NOT PROVIDED THE ANSWER. WITH THE DOMINANCE OF THE HARD-LINE APPROACH REAL DANGERS EXIST THAT SIGNIFICANT CONSTITUTIONAL RIGHTS MAY BE SACRIFICED IN ORDER TO ACHIEVE A GREATER SENSE OF SOCIETAL SECURITY. IN ADDITION, THE INCREASING USE OF CORRECTIONAL REFORMS AS DETERMINATE SENTENCING POSES THE POTENTIAL FOR SERIOUS ABUSE RESULTING IN DEHUMANIZED AND BRUTAL INSTITUTIONS. HOWEVER, THESE REFORMS CAN ALSO BE GEARED AT CREATING MORE HUMANE AND EFFECTIVE FACILITIES. THE NECESSARY RESPONSE TO CRIME IS JUSTICE THROUGHOUT THE CRIMINAL JUSTICE SYSTEM (IN POLICE OPERATIONS, THE COURTS AND CORRECTIONAL FACILITIES.) REFERENCES ARE PROVIDED.

76. **S. E. SCHLESINGER. THERAPY ON A TREADMILL—THE ROLE OF THE PRISON PSYCHOTHERAPIST.** AMERICAN PSYCHOLOGICAL ASSOCIATION, 1200 17TH STREET, NW, WASHINGTON, DC 20036. *PROFESSIONAL PSYCHOLOGY*, (JUNE 1979), P 307-317. **NCJ-60705**

A CLINICAL PSYCHOLOGIST ARGUES THAT PSYCHOTHERAPY IN MEDIUM AND HIGH SECURITY PRISONS DOES NOT AND CANNOT WORK AND THEREFORE SHOULD NOT BE PRACTICED IN THE CURRENT PRISON SYSTEM. EVALUATIONS OF PRISONS' PSYCHOTHERAPEUTIC PROGRAMS MUST REST ON THEIR EFFECTS ON RECIDIVISM RATES. LITERATURE ON THERAPY PROGRAMS INDICATES THAT EVEN UNDER OPTIMAL CONDITIONS, THERAPY MAY HAVE LITTLE OR NO EFFECT. LITERATURE ON PRISON THERAPY IS INCONCLUSIVE AND SUFFERS FROM METHODOLOGICAL WEAKNESS. USE IN PRISONS OF BEHAVIOR MODIFICATION THERAPIES, BUT NOT INSIGHT-ORIENTED THERAPY, HAS BEEN CHALLENGED IN COURT. NECESSARY CONDITIONS FOR EFFECTIVE INSIGHT-ORIENTED THERAPY ARE TRUST, CONFIDENTIALITY, AND VOLUNTARINESS OF THE INTRINSIC MOTIVATION FOR CHANGE. NONE OF THESE CONDITIONS IS POSSIBLE IN THE CURRENT PRISON SYSTEM. THE INSIGHT-ORIENTED THERAPIES MAY THEREFORE BE AS UNSUITABLE TO THE PRISON ENVIRONMENT AS THE COURTS HAVE ALREADY RULED THE BEHAVIOR THERAPIES TO BE. FURTHER, PRISONS ARE STILL FAILING TO PERMIT THE CONDITIONS NECESSARY FOR EFFECTIVE PSYCHOTHERAPY. MOREOVER, THE PRACTICE OF PRISON PSYCHOTHERAPY IS PROBABLY A VIOLATION OF THE AMERICAN PSYCHOLOGICAL ASSOCIATION'S ETHICAL STANDARDS. IN ADDITION, THE ENTIRE REHABILITATION MODEL ON WHICH PRISON THERAPY IS BASED MAY BE INCONSISTENT WITH CURRENT KNOWLEDGE ABOUT HUMAN BEHAVIOR. POSSIBLE ALTERNATIVE APPROACHES INCLUDE SKILL DEVELOPMENT WITH JOB PLACEMENT, FIXED SENTENCING TO PERMIT PSYCHOTHERAPY FREE OF CONTINGENCIES, TRAINING IN EFFECTIVE INTERPERSONAL SKILLS, AND PSYCHOLOGICAL SERVICES TO EX-OFFENDERS. FURTHER RESEARCH ON THERAPY, CONDITIONS NECESSARY FOR ITS EFFECTIVENESS, CLARIFICATION OF ITS OVERALL GOALS, AND ETHICAL CON-

SIDERATIONS IS RECOMMENDED. REFERENCES ARE INCLUDED.

Supplemental Notes: EARLIER VERSION OF THIS ARTICLE WAS PRESENTED AT A SYMPOSIUM ON PSYCHOLOGY AND THE CRIMINAL JUSTICE SYSTEM, EASTERN PSYCHOLOGICAL ASSOCIATION, BOSTON (MA), APRIL 1977.

77. **M. D. SCHWARTZ, T. R. CLEAR, and L. F. 3R. D. TRAVIS. CORRECTIONS—AN ISSUES APPROACH.** ANDERSON PUBLISHING COMPANY, 646 MAIN STREET, CINCINNATI, OH 45201. 322 p. 1980. **NCJ-64649**

DEBATE AND DISCUSSION HIGHLIGHT THE ISSUES OF SENTENCING, IMPRISONMENT, COMMUNITY-BASED CORRECTIONS, PROBATION AND PAROLE, REHABILITATION AND TREATMENT, AND RESTITUTION. ACKNOWLEDGING THAT THE CORRECTIONS FIELD IS CURRENTLY A BATTLEFIELD OF IDEAS AND IDEOLOGIES, THIS BOOK ATTEMPTS TO PRESENT BASIC ARGUMENTS AND COUNTERARGUMENTS TO STIMULATE DISCUSSION ON SOME OF THE 'THRESHOLD' QUESTIONS OF THE U.S. POSTADJUDICATORY SYSTEM (E.G., SHOULD PRISONS EXIST AT ALL?). DESIGNED TO ACQUAINT STUDENTS WITH BOTH SIDES OF THE ISSUES, THE TEXT MAY BE USED TO SUPPLEMENT MORE TRADITIONAL TEXTBOOKS. CORRECTIONAL GOALS AND FUNCTIONS ARE DISCUSSED IN THEIR HISTORICAL FRAMEWORK, COMPARING PRISON LEGISLATION FROM THE STATE OF INDIANA TO THAT OF THE COUNTRY OF BELGIUM. ISSUES REGARDING THE EXISTENCE OF CORRECTIONAL INSTITUTIONS ARE VIEWED WITH ATTENTION TO THE EXTRAVAGANCE, THE NECESSITY, THE PATHOLOGY, AND THE PSYCHOLOGICAL POWER OF IMPRISONMENT. PAROLE AND PROBATION ARE EXAMINED IN THE CONTEXT OF THE COMMUNITY'S INVOLVEMENT IN CORRECTIONS. THE TREATMENT AND REHABILITATION VERSUS CUSTODY ISSUES IS DEBATED WITH REFERENCE TO MEDICAL MODELS, COUNSELING, AND COERCION. FINALLY, CONSIDERATION IS GIVEN TO EMERGING ISSUES, SUCH AS 'LAWLESSNESS IN SENTENCING,' DECEPTIVE DETERMINATE SENTENCING, ELECTRONIC SURVEILLANCE, AUTHORITY VERSUS AUTONOMY IN THE CONTROL OF CONDUCT, RESTITUTION, AND DISCRETION. PERSPECTIVES ON EACH OF THE MAJOR ISSUES ARE ILLUSTRATED WITH QUOTES FROM THE 1970'S JUXTAPOSED TO QUOTES FROM THE EARLY 20TH, LATE 19TH, OR LATE 17TH CENTURIES. SELECTED BIBLIOGRAPHIES ARE PROVIDED FOR EACH ISSUE, AND AN INDEX IS INCLUDED.

Availability: ANDERSON PUBLISHING COMPANY, 646 MAIN STREET, CINCINNATI, OH 45201.

78. **R. D. SCHWARTZ. TESTIMONY OF RICHARD D SCHWARTZ (FROM RESEARCH INTO CRIMINAL SENTENCING, 1978—SEE NCJ-62872).** US CONGRESS HOUSE COMMITTEE ON SCIENCE AND TECHNOLOGY, WASHINGTON, DC 20515. 18 p. 1978. **NCJ-62878**

A SYRACUSE UNIVERSITY LAW PROFESSOR FAVORS SENTENCING REFORM LEGISLATION AND DISCUSSES THE RESPONSIBILITIES OF A SENTENCING COMMISSION. THE ESTABLISHMENT OF A COMMISSION TO SET PRESUMPTIVE SENTENCING GUIDELINES IS A SERIOUS ATTEMPT TO SOLVE THE PROBLEM OF SENTENCE DISPARITY; BUT DETERMINATE SENTENCING COULD ADVERSELY AFFECT OTHER LEGAL PROCESSES, AND THESE CHANGES SHOULD BE EVALUATED SO THAT REFORM CAN BE A CONTINUING EFFORT. THE SENTENCING COMMISSION IS GIVEN RESPONSIBILITY FOR DEVELOPING SENTENCING GUIDELINES AND ESTABLISHING METHODS TO MEASURE THE EFFECTIVENESS OF SENTENCES. IT SEEMS INEVITABLE THAT THE COMMISSION WILL BE DRAWN INTO A CLOSE WORKING RELATIONSHIP WITH THE APPELLATE COURTS AND THAT THE TWO BODIES WOULD STABILIZE AND CLARIFY THE SENTENCING PROCESS. THE LEGISLATURE SHOULD SET OBJECTIVES, AND THEN THE COMMISSION CAN DEVELOP AND IMPLEMENT POLICIES SUBJECT TO LEGISLATIVE APPROVAL. THE COM-

MISSION SHOULD INVOLVE THE PUBLIC, AS WELL AS RELEVANT DECISIONMAKERS, IN ITS WORK. THE IMPORTANCE OF THE EVALUATIVE FUNCTIONS OF THE COMMISSION HAS BEEN UNDEREMPHASIZED. THE SENTENCING COMMISSION SHOULD ALSO EXAMINE THE COMPLEXITIES OF INCAPACITATION AND DETERRENCE SINCE NEITHER CONCEPT SHOWS A RELATIONSHIP TO CRIME REDUCTION.

Supplemental Notes: TESTIMONY GIVEN ON MAY 12, 1978.

79. **M. S. SERRILL and S. GETTINGER, Eds. DETERMINATE SENTENCING—MAKING THE PUNISHMENT FIT THE CRIME.** *CORRECTIONS MAGAZINE*, V 3, N 3 (SEPTEMBER 1977) SPECIAL ISSUE, P 1-72. **NCJ-43226**

ARTICLES IN THIS MAGAZINE SPECIAL REPORT PRESENT DIFFERENT ASPECTS OF THE DEBATE SURROUNDING DETERMINATE OR FLAT-TERM SENTENCING. THE NEW SENTENCING LAWS IN CALIFORNIA, MAINE AND INDIANA ARE DISCUSSED IN DEPTH. THE MOVEMENT TO CONTROL THE ABUSE OF DISCRETION IN THE CRIMINAL JUSTICE SYSTEM THROUGH DETERMINATE SENTENCING HAS BEGUN TO SEE ITS THEORIES PUT INTO PRACTICE: MAINE, CALIFORNIA, AND INDIANA ARE THE FIRST STATES TO ADOPT SOME FORM OF FIXED SENTENCING, AND THEIR SYSTEMS ARE THE SUBJECT OF CAREFUL SCRUTINY. FOLLOWING AN OVERVIEW OF SENTENCING PROCEDURES PAST AND PRESENT, THE NEW SENTENCING LAWS AND PROPOSALS AND THEIR RAMIFICATIONS ARE EXAMINED. ASPECTS OF THE CONTROVERSY TREATED IN THE ARTICLES INCLUDE: (1) THE QUESTION OF WHETHER TO ABOLISH, RETAIN, OR REFORM THE PAROLE RELEASE SYSTEM; (2) THE FATE OF PAROLE SUPERVISION UNDER DETERMINATE SENTENCING; (3) CONCERN ABOUT INCREASING ALREADY LARGE PRISON POPULATIONS; AND (4) DIFFICULTIES IN DECIDING WHO SHOULD SET FLAT TERMS AND WHO SHOULD EXERCISE DISCRETION.

Sponsoring Agency: US DEPARTMENT OF JUSTICE LEAA NATIONAL INSTITUTE OF LAW ENFORCEMENT AND CRIMINAL JUSTICE, 633 INDIANA AVENUE NW, WASHINGTON, DC 20531.

Availability: CORRECTIONAL INFORMATION SERVICE, INC, 801 SECOND AVENUE, NEW YORK, NY 10017.

80. **M. S. SERRILL. DETERMINATE SENTENCING—THE HISTORY, THE THEORY, THE DEBATE.** CORRECTIONAL INFORMATION SERVICE, INC, 801 SECOND AVENUE, NEW YORK, NY 10017. *CORRECTIONS MAGAZINE*, V 3 N 3 (SEPTEMBER 1977), P 3-13. **NCJ-43227**

THIS ARTICLE DISCUSSES THE ABUSES OF DISCRETION IN THE CRIMINAL JUSTICE SYSTEM AND THE MOVEMENT TO CONTROL ITS PRACTICE. PROPOSALS FOR REFORM AND PROBLEMS OF IMPLEMENTATION ARE PRESENTED. THE 'DETERMINATE SENTENCING' MOVEMENT WOULD ABOLISH OR TIGHTLY CONTROL DISCRETION AS PRACTICED BY PROSECUTORS IN CHOOSING CHARGES OR PLEA BARGAINING, BY JUDGES IN SENTENCING, BY PRISON ADMINISTRATORS IN DECIDING PRISONER TREATMENT METHODS, AND BY PAROLE BOARDS IN RELEASING OR NOT RELEASING PRISONERS. CLEAR, UNIFORM PENALTIES FOR ALL CRIMES, PRESCRIBED EITHER THROUGH LEGISLATION OR GUIDELINES, WOULD BE ADOPTED. A HISTORY OF DISCRETION IN SENTENCING AND RECENT EXAMPLES OF SENTENCING DISPARITY SHOW THAT DISCRETION HAS OFTEN BEEN ABUSED. SINCE THE 1971 PUBLICATION OF A BOOK DETAILING A HAZARDOUS SENTENCING AND PAROLE SITUATION IN CALIFORNIA STATE PRISONS, DETERMINATE SENTENCING HAS BEEN A CONTROVERSIAL SUBJECT IN THE CRIMINAL JUSTICE COMMUNITY. SENTENCING REFORMS CITED ADVOCATE GOALS SUCH AS PUNISHMENT OF THE OFFENDER AND HUMANIZATION OF CORRECTIONAL INSTITUTIONS, WHICH WOULD BE ACHIEVED THROUGH 'PRESUMPTIVE' SENTENCING (A PARTICULAR SENTENCE FOR A PARTICULAR CRIME) GRADED ACCORDING TO THE SEVERITY OF THE OFFENSE, OR THROUGH THE ABOLITION OF PAROLE BOARDS AND THE

ESTABLISHMENT OF 'FLAT TIME' SENTENCES (A SINGLE SENTENCE FOR EACH CLASS OF FELONIES), ALTHOUGH MOST MEMBERS OF THE ACADEMIC, PRISON REFORM, OR LIBERAL POLITICAL COMMUNITY FAVOR A REDUCTION IN THE AMOUNT OF DISCRETION CURRENTLY EXERCISED, SPECIFIC PROPOSALS FOR DETERMINATE SENTENCING GIVE RISE TO DEBATE OVER THEIR IMPLEMENTATION. ONE CENTRAL QUESTION INVOLVES WHICH OFFENDERS SHOULD GO TO PRISON AND WHICH SHOULD NOT. THERE IS COMMON AGREEMENT THAT UNIFORMITY IN SENTENCING CANNOT TAKE INTO CONSIDERATION EITHER THE DISTINCTION BETWEEN INDIVIDUAL OFFENSES AND INDIVIDUAL OFFENDERS OR THE CONDITIONS OF THE PUNISHMENT AND AN OFFENDER'S CAPACITY FOR SUFFERING THAT PUNISHMENT. A TRULY FAIR, JUST, AND RATIONAL CRIMINAL JUSTICE SYSTEM WILL BE DIFFICULT, IF NOT IMPOSSIBLE, TO ACHIEVE.

81. **M. P. SHAIN, D. MIMULKA, and M. K. REED. QUEST FOR JUSTICE—REPORT OF THE COLORADO CONFERENCE ON SENTENCING AND CORRECTIONS, DECEMBER 1975.** COLORADO COMMISSION ON CRIMINAL. 53 p. 1975. **NCJ-54173**

SENTENCING, CORRECTIONS, FLAT TERM SENTENCING, AND COMMUNITY-BASED CORRECTIONS ARE ADDRESSED IN THIS OVERVIEW OF COLORADO'S FIRST CONFERENCE ON SENTENCING AND CORRECTIONS. IN DECEMBER 1975, 250 COLORADO CITIZENS—JUDGES, DISTRICT ATTORNEYS, PUBLIC DEFENDERS, LAW ENFORCEMENT PERSONNEL, GOVERNMENT OFFICIALS, CORRECTION SPECIALISTS, EX-OFFENDERS, AND COMMUNITY PEOPLE—MET TO DISCUSS THE ROLES AND RIGHTS OF THE SENTENCING PROCESS. THE PURPOSE OF THE CONFERENCE WAS TO PINPOINT CURRENT PROBLEMS AND AREAS OF CONFLICT, TO IMPROVE SYSTEM COMMUNICATIONS, AND TO BEGIN DEVELOPMENT OF EFFECTIVE SENTENCING POLICIES FOR COLORADO. THE STEPS MADE TO PLAN THE CONFERENCE ARE DETAILED, ALONG WITH THE MAJOR PROBLEMS OF SENTENCING AND CORRECTIONS IN COLORADO, AND PANEL CONCLUSIONS. SUBJECTS DISCUSSED BY THE THREE SPEAKERS INCLUDE: MAJOR PROBLEMS IN SENTENCING AND CORRECTIONS, ILLINOIS'S FLAT TERM SENTENCING STRUCTURE, AND MINNESOTA'S EXPERIENCE WITH COMMUNITY-BASED CORRECTIONS. THE CONFERENCE RECOMMENDED THE EXPANDED USE OF COMMUNITY-BASED TREATMENT. FUNDING WAS SEEN AS THE MAJOR OBSTACLE TO A MORE RIGOROUS USE OF COMMUNITY FACILITIES AND IT WAS SUGGESTED THAT THE STATE BE THE MAJOR SOURCE FUNDING COLORADO'S DIAGNOSTIC PROGRAM, DESIGNED TO EXAMINE, EVALUATE, AND PRESCRIBE INCENTIVE PROGRAMS FOR OFFENDERS. A REEVALUATION OF THIS DIAGNOSTIC PROGRAM IS RECOMMENDED BY THE CONFERENCE. IN THE AREA OF SENTENCING, THE MAJORITY OF GROUPS ADVOCATED THE RETENTION OF INDETERMINATE SENTENCING AS IT NOW EXISTS UNDER COLORADO LAW. THE CONFERENCE HAS ALREADY HAD SOME EFFECT ON COLORADO'S SENTENCING SYSTEM, WITH JUDGES REPORTEDLY SHOWING A WILLINGNESS TO RECEIVE DIAGNOSTIC REPORTS ON ALL OFFENDERS SENTENCED TO INCARCERATION. A LIST OF PARTICIPANTS IS PROVIDED.

Sponsoring Agency: US DEPARTMENT OF JUSTICE NATIONAL INSTITUTE OF JUSTICE, 633 INDIANA AVENUE NW, WASHINGTON, DC 20531.

Availability: National Criminal Justice Reference Service MICROFICHE PROGRAM.

82. **S. SHANE-DUBOW, W. F. SMITH, and K. B. HARALSON. FELONY SENTENCING IN WISCONSIN.** WISCONSIN CENTER FOR PUBLIC POLICY, INC, 315 WEST GORHAM, MADISON, WI 53703. 365 p. 1979. **NCJ-64321**
- A RESEARCH STUDY DESIGNED TO ADDRESS THE ISSUES OF SENTENCING VARIABILITY AND POSSIBLE SENTENCING

REFORM IN WISCONSIN IS DISCUSSED; DETERMINATE AND INDETERMINATE PLAN COMPARISONS ARE HIGHLIGHTED. THE PURPOSE OF THE STUDY WAS TO REPRESENT WHAT ACTUALLY OCCURS IN CRIMINAL SENTENCING PRACTICES AND PROCEDURES UNDER WISCONSIN'S INDETERMINATE SENTENCING STRUCTURE AND TO PROJECT THE IMPACT SENTENCING REFORM MIGHT HAVE HAD ON THE INDETERMINATE SENTENCING STRUCTURE AS IT EXISTED IN 1974 AND 1975. TO ESTABLISH THE DATA BASE, RESEARCHERS SELECTED FELONIES CHARGED AND PROCESSED IN FIVE WISCONSIN COUNTIES DURING 1974 AND 1975. THESE FELONIES WERE ANALYZED TO ASCERTAIN IF THERE WAS ANY SYSTEMATIC VARIABILITY IN THE SENTENCE IMPOSED. ANALYSIS SOUGHT TO DETERMINE IF THERE WERE VARIABLES OR CLUSTERS OF VARIABLES IN RELATION TO THE OFFENDER, THE OFFENSE, OR THE COURT ASSOCIATED WITH SYSTEMATIC OR PATTERNED SENTENCING DISPARITY. EXTRAPOLATIONS WERE THEN MADE REGARDING EFFECTS OF SENTENCING CHANGES ON THE INDETERMINATE SYSTEM. PARTICULAR ATTENTION WAS GIVEN TO POSTSENTENCING INSTITUTIONALIZATION. LESS QUANTITATIVE INFORMATION WAS ALSO CONSIDERED INCLUDING A HISTORIC REVIEW OF THE DEVELOPMENT OF PUNISHMENT AND INTERVIEWS WITH INMATES AND CRIMINAL JUSTICE PERSONNEL. ANALYSIS OF THE DATA ON 3,589 CHARGES INDICATED 3 MAJOR FINDINGS. FIRST, ALTHOUGH THE IDENTITIES OF INDIVIDUAL JUDGES OCCASIONALLY HAD A SIGNIFICANT IMPACT ON A DECISION REGARDING SENTENCE TYPE, THEY DID NOT INFLUENCE A GIVEN DECISION TYPE ANY MORE THAN VARIABLES WHICH MIGHT LEGITIMATELY BE SEEN AS CAUSES FOR DIFFERENCES IN SENTENCING. SECOND, THE DISTRICT ATTORNEY'S RECOMMENDATION WAS FOUND TO HAVE THE GREATEST EFFECT ON THE DECISION AS TO SENTENCE TYPE. THIRD, THE IDENTITIES OF INDIVIDUAL JUDGES WERE ASSOCIATED WITH VARIATIONS IN SENTENCE LENGTH, SUPPORTING CRITICISMS OF INDETERMINATE SENTENCING. IMPLEMENTATION OF DETERMINATE SENTENCING IN WISCONSIN REMAINS PROBLEMATIC. PERHAPS THE CONCEPT OF SENTENCING GUIDELINES WOULD BEST HELP TO REDUCE THE SENTENCING VARIABILITY ASSOCIATED WITH PARTICULAR JUDGES. ANOTHER POSSIBILITY IS THE ADOPTION OF THE MODEL SENTENCING ACT. FOOTNOTES, TABLES, APPENDIXES CONTAINING STUDY DATA AND METHODOLOGY, AND A BIBLIOGRAPHY, WITH APPROXIMATELY 150 ENTRIES, ARE PROVIDED.

Sponsoring Agencies: US DEPARTMENT OF JUSTICE NATIONAL INSTITUTE OF JUSTICE, 633 INDIANA AVENUE NW, WASHINGTON, DC 20531; WISCONSIN COUNCIL ON CRIMINAL JUSTICE, 122 WEST WASHINGTON, MADISON, WI 53702; WISCONSIN JUDICIAL PLANNING COUNCIL, 25 WEST MAIN, MADISON, WI 53214.

83. **R. SINGER. IN FAVOR OF 'PRESUMPTIVE SENTENCES' SET BY A SENTENCING COMMISSION.** NATIONAL COUNCIL ON CRIME AND DELINQUENCY, CONTINENTAL PLAZA, 411 HACKENSACK AVENUE, HACKENSACK, NJ 07601. *CRIME AND DELINQUENCY*, V 24, N 4 (OCTOBER 1978), P 401427. **NCJ-51617**

MISUNDERSTANDINGS ABOUT PROPOSALS FOR SENTENCING REFORMS ARE ADDRESSED, AND THE POSSIBILITY OF INSTITUTING PRESUMPTIVE SENTENCING THROUGH THE MECHANISM OF A SENTENCING COMMISSION IS RAISED. PRESUMPTIVE SENTENCING IS A SCHEME BY WHICH THE 'NORMAL' SENTENCE FOR THE 'NORMAL' OFFENDER IS PREDETERMINED, AND SENTENCING JUDGES VARY FROM THAT NORM ONLY IN EXCEPTIONAL CASES, WITH THEIR JUSTIFICATION FOR VARIANCE STATED IN A WRITTEN OPINION. IN CONSIDERING PRESUMPTIVE SENTENCING, TWO POINTS ARE ESPECIALLY IMPORTANT: (1) PRESUMPTIVE SENTENCING DOES NOT ABOLISH JUDICIAL DISCRETION AND (2) THE PROPER MECHANISM FOR ESTABLISHING PRESUMPTIVE SENTENCE GUIDELINES IS A SENTENCING COMMISSION,

DETERMINATE SENTENCING

NOT THE LEGISLATURE. PRESUMPTIVE SENTENCING ALLOWS SOME FLEXIBILITY FOR INCREASING OR DECREASING A SENTENCE AND PERMITS THE SENTENCING JUDGE TO RETAIN A REASONABLE AMOUNT OF REVIEWABLE DISCRETION. 'SENTENCING BY COMPUTER' WOULD NOT OCCUR. THE POSSIBILITY THAT LEGISLATURES WILL SET PRESUMPTIVE SENTENCES TOO HIGH OR ALLOW SUCH LEEWAY FOR AGGRAVATING AND MITIGATING CIRCUMSTANCES THAT ESSENTIALLY NO REFORM WILL RESULT CAN BE AVOIDED BY PLACING THE RESPONSIBILITY FOR SETTING SENTENCING GUIDELINES AND PRESUMPTIVE SENTENCES WITH A SEPARATE, NONPOLITICAL BODY COMPOSED OF LAY MEMBERS AND REPRESENTATIVES OF THE CRIMINAL JUSTICE COMMUNITY. SUCH A BODY WOULD NEITHER SET SENTENCES IN INDIVIDUAL CASES NOR SIT AS AN APPELLATE TRIBUNAL. ITS JOB IS RULEMAKING, SETTING SENTENCING GUIDELINES BY WHICH JUDICIAL DISCRETION IS MEASURED, AND COLLECTING DATA ON SENTENCES IMPOSED TO DETERMINE WHETHER JUDGES ARE FOLLOWING THE GUIDELINES AND, IF NOT, WHETHER CHANGES IN THE GUIDELINES ARE JUSTIFIED. PERHAPS THE MOST IMPORTANT REASON FOR ESTABLISHING SENTENCING COMMISSIONS IS THAT, DIVORCED FROM THE DAILY PRESSURES OF THE COURTS AND THE LEGISLATIVE PROCESS, THEY CAN OBJECTIVELY, OVER A PERIOD OF TIME AND AFTER PUBLIC HEARINGS, PROPOSE A SYSTEM OF PROPORTIONATE SENTENCES THAT WILL REFLECT SOCIETY'S GENERAL VIEW OF THE SERIOUSNESS OF SPECIFIC OFFENSES. THE JUST DESERTS-PRESUMPTIVE SENTENCE SCHOOL OF THOUGHT ARGUES THAT PUNISHMENT, FAIRNESS, AND EQUALITY MUST BE THE BASIS OF SENTENCING. THOSE WHO SUPPORT PRESUMPTIVE SENTENCING DO NOT PROPOSE TO END ALL ATTEMPTS TO TREAT OR REHABILITATE INMATES. THEY ONLY SEEK TO REMOVE REHABILITATION FROM THE PURPOSES OF SENTENCING.

Supplemental Notes: EARLIER VERSION OF THIS PAPER APPEARED IN CRIMINAL JUSTICE QUARTERLY, JANUARY 1978, P 88-105.

84. **R. G. SINGER. JUST DESERTS—SENTENCING BASED ON EQUALITY AND DESERT.** BALLINGER PUBLISHING COMPANY, 17 DUNSTER STREET, HARVARD SQUARE, CAMBRIDGE, MA 02138. 176 p. 1979. **NCJ-59412**

THE IMPLEMENTATION OF A COMMENSURATE DESERTS APPROACH TO SENTENCING, I.E., ONE IN WHICH SENTENCES ARE BASED ON THE NATURE OF THE OFFENSE, IS DISCUSSED. COMMENSURATE DESERTS SENTENCING HAS TWO BASIC TENETS: (1) PEOPLE WHO HAVE COMMITTED SIMILARLY SERIOUS OFFENSES (IN TERMS OF HARM DONE AND THREATENED) SHOULD BE BLAMED AND PUNISHED SIMILARLY (WITH ANY DIFFERENCES IN SENTENCE ACCOUNTED FOR BY DIFFERENCES IN THE WAY THE CRIME ITSELF WAS PERPETRATED) AND (2) SENTENCES SHOULD BE PROPORTIONATE TO THE SERIOUSNESS OF THE OFFENSE. SUCH AN APPROACH REQUIRES A RESTRUCTURING OF THE SENTENCING SYSTEM, WHICH CAN BEST BE ACCOMPLISHED BY A COMMISSION REPRESENTATIVE OF ALL ACTORS IN THE CRIMINAL JUSTICE PROCESS. THE COMMISSION MUST DETERMINE THE STRUCTURE OF THE SENTENCING SCHEME, DEFINE THE PRESUMPTIVE SENTENCES TO BE IMPOSED FOR VARIOUS OFFENSES OR TYPES OF OFFENSES, AND THEN SPECIFY AGGRAVATING AND MITIGATING CIRCUMSTANCES UNDER WHICH JUDGES MAY VARY FROM THE PRESUMPTIVE SENTENCES. A COMMENSURATE DESERTS APPROACH NEED NOT LEAD TO OVERCROWDED PRISONS. NOR DOES IT REQUIRE THAT EFFORTS TO REHABILITATE OFFENDERS BE ABANDONED. IT DOES, HOWEVER, REQUIRE THAT POSTSENTENCE METHODS FOR REDUCING IMPOSED SANCTIONS (E.G., PAROLE, GOOD-TIME ALLOWANCES) BE MINIMIZED AND THAT PLEA BARGAINING AT LEAST BE LIMITED THROUGH GUIDELINES. A STATE-BY-STATE ANALYSIS OF THE STATUS OF SENTENCING REFORMS SHOWS LITTLE

PROMISE. MANY REFORMERS HAVE USED THE DESERTS MODEL ONLY TO LEND LEGITIMACY TO PUNISHMENT, IGNORING THE MODEL'S REQUIREMENT OF MODERATION IN PUNISHMENT. CALIFORNIA IS THE ONLY JURISDICTION WITH SOME HOPE OF ACHIEVING EQUALITY IN SENTENCING, BUT DATA ON DISPOSITIONS UNDER THAT STATE'S PRESUMPTIVE SENTENCING LAW INDICATE THAT THE HOPE IS SLIM. THE LIMITATIONS OF REFORM EFFORTS TO DATE NEED NOT PRECLUDE EFFECTIVE REFORMS IN THE FUTURE, IF THOSE REFORMS TRULY REFLECT A COMMENSURATE DESERTS MODEL. A MODEL SENTENCING REFORM ACT, A BIBLIOGRAPHY, AND AN INDEX ARE PROVIDED.

Availability: BALLINGER PUBLISHING COMPANY, 17 DUNSTER STREET, HARVARD SQUARE, CAMBRIDGE, MA 02138.

85. **M. P. SWAIN. COLORADO—SENTENCING AND CORRECTIONS IN COLORADO—A FUNCTIONAL OVERVIEW.** COLORADO COMMISSION ON CRIMINAL. 69 p. 1975. **NCJ-54176**

AN OVERVIEW OF SENTENCING AND CORRECTIONS IN COLORADO, FROM IMPOSITION OF SENTENCE THROUGH PAROLE, IS PRESENTED. THE OVERVIEW WAS PREPARED FOR THE INFORMATION OF PARTICIPANTS IN A SENTENCING/CORRECTIONS CONFERENCE. PHILOSOPHIES OF SENTENCING AND CORRECTIONS ARE OUTLINED. ALTERNATIVES AVAILABLE TO SENTENCING JUDGES, PARTICULARLY PROBATION AND INSTITUTIONALIZATION, ARE EXAMINED, AS ARE THE PROCESSES BY WHICH THE COLORADO CORRECTIONS SYSTEM DECIDES IN WHICH INSTITUTION AN OFFENDER IS TO BE PLACED, WHEN AN OFFENDER SHOULD BE MOVED TO A FACILITY OF GREATER OR LESS SECURITY, AND WHEN COMMUNITY-BASED CORRECTIONS SHOULD BE EMPLOYED. THE DISCUSSION INCLUDES REFERENCES TO STATE STATUTES AND TO DATA ON RECIDIVISM FOR COLORADO OFFENDERS. POINTS TO BE CONSIDERED IN EXPLORING THE POSSIBILITY OF MODIFYING COLORADO'S INDETERMINATE SENTENCING STRUCTURE ARE BROUGHT OUT, WITH REFERENCE TO EXPERIENCES WITH DETERMINATE SENTENCING IN OTHER STATES. APPENDED MATERIALS INCLUDE DATA ON THE COLORADO INMATE POPULATION AND ON THE USE OF INCARCERATION AND COMMUNITY TREATMENT BY SENTENCING JUDGES, A SUMMARY OF PROPOSED SENTENCING REFORM LEGISLATION IN COLORADO, COPIES OF LEGISLATION PERTAINING TO SENTENCING AND CORRECTIONS REFORMS, AND A BIBLIOGRAPHY.

Sponsoring Agency: US DEPARTMENT OF JUSTICE NATIONAL INSTITUTE OF JUSTICE, 633 INDIANA AVENUE NW, WASHINGTON, DC 20531.

Availability: National Criminal Justice Reference Service MICROFICHE PROGRAM.

86. **S. M. TALARICO. WHAT DO WE EXPECT OF CRIMINAL JUSTICE? CRITICAL QUESTIONS OF SANCTION POLICY, SENTENCING PURPOSE AND THE POLITICS OF REFORM.** GEORGIA STATE UNIVERSITY SCHOOL OF URBAN LIFE, ATLANTA, GA 30303. *CRIMINAL JUSTICE REVIEW*, V 4, N 1 (SPRING 1979), P 55-72. **NCJ-60742**

PROPOSALS FOR SUBSTANTIVE AND PROCEDURAL REFORM OF THE CRIMINAL LAW, INCLUDING THE USE OF DETERMINATE SENTENCES AND THE MODIFICATION OF EXISTING INDETERMINATE SYSTEMS ARE ANALYZED. RECOGNIZING THE ESTABLISHED FACT OF SENTENCING DISPARITIES, AND QUESTIONING THE REHABILITATIVE ORIENTATION OF THE INDETERMINATE SENTENCING MODEL, MANY SOCIAL SCIENTISTS AND LEGAL AUTHORITIES HAVE ADVANCED A VARIETY OF POLICY PROPOSALS. THESE RANGE FROM THE INTRODUCTION OF DEFINITE SENTENCES TO THE USE OF VARIOUS PAROLE AND SENTENCING REFORM SCHEMES. REFORM MEASURES ARE EITHER BUILT ON THE PRESENT STRUCTURE AND REQUIRE MINIMAL LEGISLATIVE INITIATIVE, OR THEY REPRESENT RADICAL DEPARTURES FROM INDETERMINATE SENTENCING AND CALL FOR EXTENSIVE LEGIS-

LATIVE REFORMULATION. WHILE THE UNDERLYING SANCTION POLICY OF A SYSTEM CAN INCLUDE THE APPLICATION OF VON HIRCH'S 'JUST DESSERTS' THEORY OR APPLICATION OF DETERRENCE, THE AIMS OF THE POLICIES ARE THE SAME: REDUCE SENTENCING OPTIONS BY FORCING THE LEGISLATURE TO ADOPT NORMAL, EXPECTED, PRESUMPTIVE SENTENCES FOR EVERY OFFENSE. AS WITH PAROLE OR SENTENCING GUIDELINES, JUDGES AND OFFICIALS MAY DEPART FROM THE SENTENCE NORM ONLY WITHIN A PRESCRIBED RANGE. UNLIKE GUIDELINES, PRESUMPTIVE SENTENCES DO NOT ALLOW FOR APPLICATION OF PREDICTION MODELS IN SENTENCING. REFORM SCHEMES ADDRESS THE CONSTITUTIONALITY OF HAVING PROSECUTORS AND JUDGES ASSUME THE LEGISLATIVE PREROGATIVE FOR SETTING SENTENCES, AND ALSO ADDRESS THE DUE PROCESS ASPECTS OF USING DANGEROUSNESS PREDICTION TECHNIQUES IN PAROLE DETERMINATIONS. PRACTICAL ISSUES ARE RELATED TO THE ORGANIZATIONAL IMPACT OF ALTERNATIVE SENTENCING SYSTEMS. WITH THE USE OF DETERMINATE SENTENCES, THE POLICE AND PROSECUTORS COULD BECOME THE MOST IMPORTANT SANCTION APPLIERS. HOWEVER, MOST PROPOSALS FOR REFORM STILL LEAVE A FAIR AMOUNT OF DISCRETION WITH JUDGES, AND EVEN PERMIT SENTENCES TO DEVIATE FROM THE ESTABLISHED RANGE IF THE JUDGE CAN JUSTIFY THE DECISION IN WRITING. LONG-STANDING INTERESTS HELD BY OFFICIALS AND MEMBERS OF THE PUBLIC WILL BE CHALLENGED BY ANY SIGNIFICANT CHANGE IN THE SENTENCING SYSTEM. DIAGRAMS AND REFERENCES ARE PROVIDED.

Supplemental Notes: PRICE QUOTED IS FOR ENTIRE ISSUE. EARLIER VERSION OF THIS ARTICLE PRESENTED AT THE 1978 MEETING OF THE AMERICAN SOCIETY FOR PUBLIC ADMINISTRATION, PHOENIX (AZ), APRIL 9-12, 1978.

Availability: CRIMINAL JUSTICE REVIEW, C/O CRIMINAL JUSTICE PROGRAM, COLLEGE OF URBAN LIFE, GEORGIA STATE UNIVERSITY, UNIVERSITY PLAZA, ATLANTA, GA 30303.

87. **US CONGRESS SENATE SUBCOMMITTEE ON PENITENTIARIES AND CORRECTIONS, WASHINGTON, DC 20510. ROLE OF PRISONS IN SOCIETY—HEARINGS BEFORE THE SENATE SUBCOMMITTEE ON PENITENTIARIES AND CORRECTIONS, 95TH CONGRESS, 1ST SESSION, OCTOBER 5-6, 1977.** 135 p. 1978. **NCJ-55771**

THESE SUBCOMMITTEE HEARINGS ON PENITENTIARIES AND CORRECTIONS COVER SUCH AREAS AS SENTENCING DISPARITY AND GUIDELINES, SENTENCING ALTERNATIVES, AND SENTENCING SEVERITY. WITNESSES INCLUDE THE DIRECTOR OF THE FEDERAL BUREAU OF PRISONS, SEVERAL UNIVERSITY PROFESSORS OF CRIMINAL JUSTICE, AN INDEPENDENT CONSULTANT ON CRIMINAL JUSTICE PROBLEMS, THE COMMISSIONER OF THE OFFICE OF CHILDREN AND YOUTH OF THE STATE OF PENNSYLVANIA, AND A REPRESENTATIVE FROM THE AMERICAN FOUNDATION, INCORPORATED. THE TESTIMONY COVERED ARGUMENTS FOR SENTENCING ALTERNATIVES AS A HUMANE REPLACEMENT FOR INCARCERATION, SENTENCES TAILORED PRECISELY TO THE SEVERITY OF THE CRIME RATHER THAN ON SOME ASSESSMENT OF THE LIKELIHOOD OF REHABILITATION, AND VOLUNTARY PARTICIPATION IN REHABILITATION FOR OFFENDERS WITH FIXED SENTENCES. THE INDEPENDENT CONSULTANT, ON THE BASIS OF HER STUDIES, MAINTAINED THAT THE GENERAL RECIDIVISM RATE IS MUCH LESS THAN GENERALLY BELIEVED (ONLY AROUND 25 PERCENT AS OPPOSED TO THE USUALLY QUOTED 70 TO 80 PERCENT), A STATEMENT AIMED AT SUPPORTING COMMUNITY-BASED ALTERNATIVES. OTHER TESTIMONY AND STATEMENTS SUGGESTED REDUCING INSTITUTIONAL QUALITIES OF COMMUNITY-BASED TREATMENT TO ALLOW MORE CONTACT WITH NORMAL COMMUNITY LIFE, ENHANCED EMPLOYMENT SERVICES FOR RELEASEES, AND SHORTENED PRISON TERMS ALONG WITH SENTENCING ALTERNATIVES.

Availability: National Criminal Justice Reference Service MICRO-FICHE PROGRAM.

88. **E. VAN DEN HAAG. PUNITIVE SENTENCES.** HOFSTRA UNIVERSITY SCHOOL OF LAW, HEMPSTEAD, NY 11550. *HOFSTRA LAW REVIEW*, V 7, N 1 (FALL 1978), P 123-138. **NCJ-61824**

A STRUCTURE FOR SENTENCING DETERMINED SOLELY BY A DETERRENCE RATIONALE IS PROPOSED AND EXPLAINED. THE SOLE PURPOSE OF LAW SANCTIONS SHOULD BE TO DETER THE BEHAVIOR PROHIBITED. THIS RATIONALE IS BASED IN THE BELIEF THAT 'NORMAL' HUMAN BEHAVIOR IS DETERMINED BY A PERSON'S WEIGHING THE REWARDS AND PAINFUL CONSEQUENCES LIKELY TO ATTEND ALTERNATIVE BEHAVIORS. FOR EXAMPLE, THE REWARD OF IMMEDIATE WEALTH THAT CAN BE GAINED FROM STEALING MAKES SUCH BEHAVIOR ATTRACTIVE; HOWEVER, THE AWARENESS THAT SUCH BEHAVIOR WILL NOT BRING SUCH REWARDS, BUT PAINFUL CONSEQUENCES, WILL DETER STEALING BEHAVIOR IN FAVOR OF LAWFUL MEANS FOR ACQUIRING WEALTH. ALTHOUGH THERE IS A MINORITY ELEMENT IN ANY POPULATION WHOSE MENTAL PROCESSES DO NOT CONFORM TO THIS DETERRENT RATIONALE, THERE IS NO REASON TO ABANDON IT AS A MEANS OF SOCIAL CONTROL FOR THE MAJORITY WHO DO ACT ACCORDING TO THE PLEASURE-PAIN PRINCIPLE OF LAW PENALTIES. THE SERIOUSNESS OF A SANCTION WILL BE DETERMINED BY A SOCIETY'S COMMITMENT TO THE NEED TO DETER VARIOUS BEHAVIORS ACCORDING TO THE THREATS VARIOUS BEHAVIORS POSE TO THE SOCIOECONOMIC AND POLITICAL ORDER OF A SOCIETY AND THE LIVES OF INDIVIDUAL CITIZENS. IF THE DETERRENT FUNCTION OF SANCTIONS IS TO BE REALIZED, THE CERTAINTY THAT THE LAW'S PRESCRIBED CONSEQUENCES WILL FLOW FROM THE PROSCRIBED DEED MUST EXIST IN THE MINDS OF POTENTIAL OFFENDERS. THE CULTIVATION OF THIS CERTAINTY IS SERVED BY HIGH CLEARANCE RATES AND DETERMINATE SENTENCES THAT LIMIT THE DISCRETION INVOLVED IN SENTENCING. DETERMINATE SENTENCING INFORMS THE PUBLIC THAT CERTAIN CONSEQUENCES WILL SURELY FOLLOW FROM CONVICTION FOR CRIMINAL BEHAVIOR. THE AWARENESS THAT DETRIMENTAL CONSEQUENCES WILL CERTAINLY ACCOMPANY CRIMINAL BEHAVIOR BECOMES A STRONG INCENTIVE TO MODIFY BEHAVIOR. IN CASES WHERE PERSONS ARE CLEARLY IMMUNE TO THE DETERRENT FUNCTION OF SANCTIONS, INCAPACITATION MUST BE USED TO ASSURE THAT THE THREATENING BEHAVIOR CANNOT BE INFLICTED ON THE PUBLIC. FOOTNOTES ARE PROVIDED.

89. **T. C. WALES, Ed. SYMPOSIUM ON SENTENCING, PART 1.** HOFSTRA UNIVERSITY SCHOOL OF LAW, HEMPSTEAD, NY 11550. *HOFSTRA LAW REVIEW*, V 7, N 1 (FALL 1978), P 1-138. **NCJ-61819**

THIS FIRST VOLUME OF A TWO-VOLUME PRESENTATION OF PAPERS FROM HOFSTRA UNIVERSITY LAW SCHOOL'S 1978 SYMPOSIUM ON SENTENCING EXPLORES ISSUES RELATED TO SENTENCING REFORM. AN INTRODUCTORY PAPER PORTRAYS CURRENT SENTENCING PATTERNS AS A NATIONAL SCANDAL, DUE TO UNCONTROLLED SENTENCING DISCRETION. THE FAILURES OF THE INDETERMINATE SENTENCING CONCEPT, THE REHABILITATION IDEAL, AND THE INTENTIONS TO INDIVIDUALIZE JUSTICE THROUGH JUDICIAL SENTENCING DISCRETION ARE NOTED, AND FEDERAL LEGISLATION, S. 1437, DEALING WITH FEDERAL SENTENCING REFORM, IS CRITIQUED. ONE PAPER ASSESSING SENTENCING REFORM AT THE FEDERAL LEVEL APPLAUDS THE PRINCIPAL THRUST OF UNITED STATES SENATE BILL S. 1437 FOR ITS PROPOSED CREATION OF A FEDERAL SENTENCING COMMISSION TO SET SENTENCING GUIDELINES TO BE FOLLOWED BY FEDERAL JUDGES EXCEPT UNDER EXTRAORDINARY CIRCUMSTANCES IN GIVEN CASES. A HOUSE SUBCOMMITTEE'S PROPOSED BILL FOR SENTENCING REFORM IS CONSIDERED TOO WEAK TO EFFECT CHANGE. A SECOND PAPER DECRIES POPULAR SENTENCING REFORM MOVE-

MENTS THAT TOTALLY CONDEMN THE REHABILITATIVE FUNCTION OF SENTENCING, IN THE ABSENCE OF ANY EVIDENCE TO SHOW THAT SENTENCES BASED UPON THE PUNITIVE OR RETRIBUTIVE MODEL HAVE REDUCED CRIME. SENTENCING GUIDELINES ARE DEEMED USEFUL SO LONG AS THEY DO NOT RESULT IN HARSHER SENTENCING. IN A THIRD PAPER, SENTENCING GUIDELINE PROPOSALS IN S. 1437 ARE VIEWED AS UNDERMINING TOO SEVERELY JUDICIAL SENTENCING DISCRETION NECESSARY TO INDIVIDUALIZE SENTENCING IN THE INTERESTS OF JUSTICE AND REHABILITATION. APPELLATE REVIEW OF SENTENCING IS FAVORED IN ANOTHER PAPER, PROVIDED THAT ONLY DEFENDANTS ARE PERMITTED TO MAKE SUCH APPEAL AND AN INCREASE IN SENTENCE SEVERITY BY APPELLATE COURTS IS NOT ALLOWED. A FIFTH PAPER FOCUSES ON THE DIFFERENCES BETWEEN THE SINGLE AND DUAL AUTHORITY SENTENCING GUIDELINE MODELS AND PRESENTS THE ARGUMENT THAT, FROM AN OPERATIONAL PERSPECTIVE, THE DUAL AUTHORITY MODEL, INCORPORATING MULTIPLE CHECKS ON DISCRETION, IS MORE LIKELY TO PRODUCE THE DESIRED IMPROVEMENT IN SENTENCING PRACTICES. A FINAL PAPER DISCUSSES THE IMPLICATIONS FOR SENTENCING STRUCTURE WHEN DETERRENCE IS THE SOLE RATIONALE FOR SENTENCING. FOOTNOTES ARE PROVIDED THROUGHOUT. FOR VOLUME 2, SEE NCJ 61825.

90. **T. C. WALES, Ed. SYMPOSIUM ON SENTENCING, PART 2.** HOFSTRA UNIVERSITY SCHOOL OF LAW, HEMPSTEAD, NY 11550. *HOFSTRA LAW REVIEW*, V 7, N 2 (WINTER 1979), P 243-456. **NCJ-61825**

THIS SECOND VOLUME OF A TWO-VOLUME PRESENTATION OF PAPERS FROM HOFSTRA UNIVERSITY LAW SCHOOL'S 1978 SYMPOSIUM ON SENTENCING EXPLORES ISSUES RELATED TO SENTENCING REFORM. THE OPENING PAPER CAUTIONS THAT ALTHOUGH THERE IS EVIDENCE OF UNJUST SENTENCING DISPARITY RESULTING FROM UNCONTROLLED JUDICIAL DISCRETION, ANY REFORM BASED PRIMARILY UPON THE BELIEF THAT REHABILITATION AND PAROLE ARE INEFFECTIVE IS ILL-ADVISED, SINCE RESEARCH DOES NOT SUPPORT SUCH A SWEEPING CONCLUSION. A SECOND PAPER WARNS THAT EXPERIENCE WITH FEDERAL PAROLE GUIDELINES GIVES REASON TO BELIEVE THAT SENTENCING GUIDELINES, WHILE SERVING SENTENCE UNIFORMITY, MAY BE ROOTED IN ARBITRARY, UNJUST SENTENCING POLICIES. THE ABOLISHMENT OF PAROLE THROUGH FEDERAL LEGISLATION IS ADVOCATED IN A THIRD PAPER, IN THE INTEREST OF HAVING CLEAR DETERMINATE SENTENCES AND AVOIDING THE PROBLEMS POSED BY PAROLE BOARD DECISION-MAKING. A MODEL FOR THE STRUCTURE AND OPERATIONS OF A SENTENCING COMMISSION IS DESCRIBED AND COMPARED WITH THE SENTENCING COMMISSION DELINEATED IN SENATE BILL S. 1437 IN A FOURTH PAPER, FOLLOWED BY A PAPER DESCRIBING A RESEARCH PROGRAM DESIGNED TO DEVELOP A MECHANISM FOR FORMULATING SENTENCE GUIDELINES. IN A SIXTH PRESENTATION, RETRIBUTIVISM IS ADVOCATED AS THE ONLY ADEQUATE THEORY FOR SENTENCING, BECAUSE OTHER MAJOR THEORIES UNDERLYING SENTENCING TEND TOWARD A SEPARATION OF THE PENALTY FROM THE GRAVITY OF THE OFFENSE, THUS UNDERMINING JUSTICE. THE FINAL TWO PAPERS ARGUE FOR A PRESUMPTION AGAINST INCARCERATION IN SENTENCING AND CHALLENGE THE CRIMINAL JUSTICE SYSTEM TO EXPAND EFFECTIVE ALTERNATIVES TO INSTITUTIONALIZATION. FOOTNOTES ARE PROVIDED THROUGHOUT. FOR VOLUME 1, SEE NCJ 61819.

91. **B. WARD. INDETERMINATE SENTENCE—A COMMENTARY (FROM SOUTHERN CONFERENCE ON CORRECTIONS—ANNUAL, 22ND—MARCH 2-4, 1977—PROCEEDINGS, BY VERNON FOX—SEE NCJ-43422).** 21 p. 1977. **NCJ-58471**

INDETERMINATE SENTENCING SHOULD BE ABOLISHED, ACCORDING TO THIS ARTICLE, BECAUSE IT IS AN UNJUST BASIS FOR SENTENCING; AND SINCE IT IS PERCEIVED AS BEING UNJUST AND DISCRIMINATORY, IT MITIGATES AGAINST REHABILITATION. THE INDETERMINATE SENTENCE CAN BE DESCRIBED AS A NOBLE EXPERIMENT THAT HAS FAILED. THIS FAILURE IS ACCOUNTED FOR BY THE FACT THAT INDETERMINATE SENTENCING WAS BASED ON APPLICATION OF THE MEDICAL MODEL TO CRIMINAL BEHAVIOR. SINCE CRIMINALS WERE CONSIDERED SICK, IT WAS FELT THAT THEY COULD BE TREATED, AND THEIR CURE COULD BE OBSERVED AND SERVE AS THE BASIS FOR RELEASE. THIS PHILOSOPHY, EXPRESSED IN 1847 BY S. J. MAY, BECAME RAPIDLY ACCEPTED. HOWEVER, AFTER DECADES OF EXPERIENCE, THERE IS NO EVIDENCE THAT THE MEDICAL MODEL IS APPLICABLE. STRIPPED OF ITS THEORETICAL BASIS, INDETERMINATE SENTENCES SERVE ONLY TO INCREASE THE LENGTH AND DISPARITY OF SENTENCES AND TO BREED INMATE UNREST. WHILE ANY OFFENDER-ORIENTED SENTENCING SYSTEM REQUIRES A GREAT DEAL OF DISCRETION, MOST SYSTEMS OPERATE WITHOUT SPECIFIC LEGAL CRITERIA OR GUIDELINES. SINCE THE 1962 DEVELOPMENT OF THE MODEL PENAL CODE BY THE AMERICAN LAW INSTITUTE, EFFORTS HAVE BEEN UNDERTAKEN TO DEVELOP SUCH GUIDELINES. JUST DESERTS, THE JUSTICE MODEL, AND PRESUMPTIVE SENTENCING ARE EXAMPLES OF MODELS WHICH SEVERELY CURTAIL JUDICIAL AND ADMINISTRATIVE DISCRETION, MAKE THE PUNISHMENT FIT THE CRIME, MAKE REHABILITATION PROGRAMS VOLUNTARY, AND ALLOW TIME-OFF SENTENCES FOR GOOD BEHAVIOR. A NUMBER OF STATES INCLUDING MAINE, INDIANA, AND CALIFORNIA HAVE ENACTED DETERMINATE SENTENCING PROCEDURES. EXPERIENCE SHOWS THAT THE LENGTH OF TIME SERVED UNDER SUCH A SYSTEM IS EQUAL TO OR LESS THAN TIME SERVED UNDER AN INDETERMINATE SYSTEM. USE OF VOLUNTARY REHABILITATION PROGRAMS NEED NOT MEAN THAT INMATES WILL BE DENIED THE OPPORTUNITY TO PREPARE THEMSELVES FOR SUCCESSFUL REENTRY INTO SOCIETY. REFERENCES ARE PROVIDED.

Availability: National Criminal Justice Reference Service MICRO-FICHE PROGRAM.

92. **C. WHITTENBERGER. MAINE—BUREAU OF CORRECTIONS—POPULATION PROJECT FOR ADULT MALES.** MAINE BUREAU OF CORRECTIONS, 700 STATE OFFICE BUILDING, AUGUSTA, ME 04333. 52 p. 1976. **NCJ-41007**

THIS STUDY IS A DETAILED ANALYSIS OF THE IMPACT OF MAINE'S LAW REVISION CODE ON THE ADULT PRISON POPULATION, WITH MAJOR CHANGES IN THE CODE DESCRIBED AND SUMMARIZED. THE PROJECTIONS IN THIS REPORT ARE ESTIMATES BASED SOLELY ON CHANGES IN THE LAW, CHANGES IN SENTENCING, AND THE MAINE STATE PRISON STATISTICAL REPORT. THE PROJECTED SENTENCES ARE BASED ON THE ASSUMPTION THAT COURTS WILL CHANGE THEIR ACTUAL SENTENCES IN PROPORTION TO THE CHANGE IN THE MAXIMUM SENTENCE ALLOWABLE BY LAW. ADJUSTMENTS WERE ALSO MADE TO COMPENSATE FOR THE NEW CODE'S INCREASED GOOD TIME AND THE ELIMINATION OF THE PAROLE BOARD. THE EXTENSIVE CHARTS INDICATE THAT THE NEW CODE WILL CAUSE SIGNIFICANT PRISON POPULATION INCREASES.

93. **J. Q. WILSON. CHANGING CRIMINAL SENTENCES (FROM READINGS IN CRIMINAL JUSTICE, 1978-1979—ANNUAL EDITIONS, BY DONAL E J MACNAMARA—SEE NCJ-47702).** DUSHKIN PUBLISHING GROUP, INC, SLUICE DOCK, GUILFORD, CT 06437. 5 p. 1978. **NCJ-47722**

THE TREND AWAY FROM INDETERMINATE, INDIVIDUALIZED SENTENCING AND TOWARD UNIFORM, MANDATORY SENTENCING IS EXAMINED, WITH REFERENCE TO VARIOUS PLANS FOR REFORMING SENTENCING LAWS. CRITICS OF IN-

DETERMINATE SENTENCING NOTE THAT, ALTHOUGH SOME REHABILITATIVE PROGRAMS MAY WORK UNDER SOME CIRCUMSTANCES FOR SOME OFFENDERS, IT HAS NOT BEEN POSSIBLE TO CHANGE THE RECIDIVISM RATE FOR LARGE NUMBERS OF PERSONS FOR LONG PERIODS OF TIME. IF REHABILITATION IS NOT ACHIEVED, THE MAJOR ARGUMENT FOR INDETERMINATE SENTENCING COLLAPSES, AND ETHICAL OBJECTIONS TO THE PRACTICE BECOME OVERPOWERING. THE PROPOSED SOLUTION HAS BEEN TO DEVISE WAYS OF MAKING SENTENCING MORE DETERMINATE, I.E., MAKING THE DURATION OF THE SENTENCE KNOWN AT THE TIME OF SENTENCING. ONE APPROACH IS TO RESTORE POWER OVER SENTENCES TO JUDGES, REDUCING OR ELIMINATING THE ROLE OF PAROLE BOARDS. OTHER APPROACHES INCLUDE FLAT-TIME LAWS, WHICH LIMIT THE RANGE OF POSSIBLE SENTENCES FROM WHICH A JUDGE MAY SELECT; A VARIANT OF THIS APPROACH, KNOWN AS PRESUMPTIVE SENTENCING; AND SENTENCING GUIDELINES. STUDIES ON CRIME, SENTENCING, AND OTHER ASPECTS OF CRIMINAL JUSTICE ARE CITED, AND PROPOSED SENTENCING REFORMS ARE CONSIDERED IN THE CONTEXT OF STUDY FINDINGS. MORAL, PHILOSOPHICAL, AND PRACTICAL ISSUES RELATED TO SENTENCING PRACTICES ARE POINTED OUT. IT IS SUGGESTED THAT, IF PRISON HAS ANY SINGLE PURPOSE, IT IS TO PUNISH (TO DO JUSTICE), NOT TO DETER OR TO INCAPACITATE. HAVING DECIDED TO PUNISH LAWBREAKERS, SOCIETY MAY THEN ASK WHAT DETERRENT OR INCAPACITATIVE EFFECTS THAT DECISION WILL HAVE AND MAY ADJUST (AT THE MARGIN) THE SWIFTESS, THE CERTAINTY, AND PERHAPS THE SEVERITY OF THE PUNISHMENT IN ORDER TO MAXIMIZE OBJECTIVES OF DETERRENCE OR INCAPACITATION. (AUTHOR ABSTRACT MODIFIED)

Supplemental Notes: REPRINT FROM HARPER'S MAGAZINE (NOVEMBER 1977).

94. **M. ZALMAN. RISE AND FALL OF THE INDETERMINATE SENTENCE.** WAYNE STATE UNIVERSITY, DETROIT, MI 48202. *WAYNE LAW REVIEW*, V 24, N 3 (MARCH 1978), P 857-937. **NCJ-53533**

THIS ARTICLE DISCUSSES THE MOVEMENT TOWARD DEFINITE SENTENCING NATIONALLY, EMPHASIZING RECENT PROPOSALS AND LEGISLATION, AND THE DEFINITE SENTENCING DEBATE IN MICHIGAN. DEFINITE SENTENCING REFERS TO A SYSTEM WHEREBY DEFENDANTS ARE SENTENCED TO SERVE A SPECIFIC TERM (E.G. 4 YEARS) RATHER THAN A RANGING TERM (E.G. 4 TO 10 YEARS). A VARIATION OF DEFINITE SENTENCING IS PRESUMPTIVE SENTENCING WHICH REQUIRES THAT EVERY PERSON CONVICTED OF A SPECIFIED CRIME SERVE A SPECIFIED PRISON TERM PLUS OR MINUS AN AGGRAVATING OR MITIGATING TERM, LESS GOOD TIME. ANOTHER MODEL OF DEFINITE SENTENCING INVOLVES SENTENCING GUIDELINES WHICH CONSIST OF TABLES OF NORMAL SENTENCES WHICH JUDGES ARE TO METE OUT FOR OFFENSES OF A CERTAIN SERIOUSNESS TO OFFENDERS WITH CERTAIN CHARACTERISTICS. THE TWO PROGRAMS FOR SENTENCING CHANGE WHICH HAVE HAD THE GREATEST IMPACT ARE PRESUMPTIVE SENTENCING AND SENTENCING GUIDELINES. MAINE WAS THE FIRST STATE TO REVISE ITS SENTENCING STRUCTURE IN ACCORDANCE WITH THE RECENT ATTACK ON INDETERMINATE SENTENCING. THE MAINE LAW REQUIRES JUDGES TO SET DEFINITE SENTENCES, YET IT PROVIDES THAT ALL PRISON SENTENCES EXCEEDING 1 YEAR BE DEEMED TENTATIVE. INDIANA HAS PASSED A PRESUMPTIVE SENTENCING LAW REQUIRING JUDGES TO SET MANDATORY TERMS UPON CONVICTION FOR A CERTAIN FELONY CLASS, YET THE ABILITY TO AGGRAVATE OR MITIGATE SENTENCES MAKES THE MANDATORY REQUIREMENT ILLUSORY. THE CALIFORNIA DETERMINATE SENTENCING LAW SETS TERMS PROPORTIONATE TO THE SERIOUSNESS OF OFFENSES, YET IT PERMITS NONINCARCERATION OR LESS INCARCERATIVE

PUNISHMENTS OF FINES, PROBATION, OR SENTENCE SUSPENSION. THESE AND OTHER PROPOSALS ARE EVALUATED ACCORDING TO THE FOLLOWING CRITERIA: DO THEY RETAIN, MODIFY, OR ELIMINATE PROBATION AND PAROLE; DO THEY CONTROL UNWARRANTED JUDICIAL DISPARITY; DO THEY DEAL ADEQUATELY WITH PROBLEMS OF PROSECUTORIAL DISCRETION AND PLEA BARGAINING; DO THEY DELIVER CONTROL TO APPROPRIATE PERSONS; CAN THEY RESPOND TO CHANGING CONDITIONS; DO THEY ALLOW LOCAL AUTONOMY; DO THEY ESTABLISH APPROPRIATELY SEVERE SENTENCES; AND DO THEY ASSURE JUSTICE. THE EXAMINATION FOUND FLAWS IN EACH PROGRAM BUT ON BALANCE SHOWED THE SENTENCING GUIDELINES SYSTEM TO PROVIDE A RATIONAL CONTROL OF THE SENTENCING PROCESS THAT ACHIEVES UNIFORMITY WHILE ALLOWING GUIDED DISCRETION WHEN THE SITUATION DEMANDS IT. AN EXAMINATION OF THE MICHIGAN PROGRAMS FOUND THEM WANTING IN THEORY AND DESIGN. POLICYMAKERS ARE ADVISED TO RECONSIDER SENTENCING PLANS AFTER STUDYING THE THEORY OF SENTENCING GUIDELINES AND ITS APPLICATION IN VARIOUS JURISDICTIONS.

95. **F. E. ZIMRING. MAKING THE PUNISHMENT FIT THE CRIME—A CONSUMER'S GUIDE TO SENTENCING REFORM.** INSTITUTE OF SOCIETY, ETHICS AND THE LIFE SCIENCES, HASTINGS CENTER, 623 WARBURTON AVENUE, HASTINGS ON HUDSON, NY 10706. *HASTINGS CENTER REPORT (DECEMBER 1976)*, P 13-17. **NCJ-40638**

THIS ARTICLE IS A SUMMARY OF THE PRESENT ALLOCATION OF SENTENCING POWER IN THE CRIMINAL JUSTICE SYSTEM AND A DISCUSSION OF THE IMPLICATIONS OF THE STRUCTURAL REFORMS ADVOCATED IN SOME CURRENT LITERATURE. THE AUTHOR REVIEWS THE MULTIPLE DISCRETION OF THE LEGISLATURE, PROSECUTOR, JUDGE, AND PAROLE OR CORRECTIONAL AUTHORITY IN DETERMINING THE ACTUAL LENGTH OF CRIMINAL SENTENCES. PLEA BARGAINING, DISPARITY OF TREATMENT, AND UNCERTAINTY ARE ALL SEEN AS SYMPTOMS OF A LARGER MALAISE, THE ABSENCE OF RULES OR EVEN GUIDELINES IN DETERMINING THE DISTRIBUTION OF PUNISHMENTS. THE ALTERNATIVES OF PAROLE ABOLITION, FLAT-TIME OR DETERMINATE SENTENCING, AND LEGISLATIVE 'PRESUMPTIVE SENTENCING' ARE CONTRASTED WITH THE OBSTACLES TO REFORM: THE INCOHERENCE OF THE LAW, PROSECUTORIAL POWER, LEGISLATIVE VAGARIES, AND LACK OF CONSENSUS.

LEGISLATION

96. **ARKANSAS LEGISLATIVE COUNCIL, ROOM 315, STATE CAPITOL, LITTLE ROCK, AR 72201. FEASIBILITY OF ENACTING LAWS TO PRESCRIBE EXACT AND MANDATORY PENALTIES FOR CERTAIN CRIMINAL OFFENSES—STAFF REPORT.** 18 p. 1976. **NCJ-40577**

BRIEF EXPLANATION OF INDETERMINATE SENTENCING AND DISCUSSION OF THE SENTENCING PROPOSALS OF ILLINOIS, MINNESOTA, AND CALIFORNIA. APPENDICES CONTAIN MINNESOTA AND ILLINOIS LEGISLATION AND A GLOSSARY.

Availability: National Criminal Justice Reference Service MICROFICHE PROGRAM.

97. **J. J. BAGLEY. WHY ILLINOIS ADOPTED DETERMINATE SENTENCING.** AMERICAN JUDICATURE SOCIETY, SUITE 1606, 200 WEST MONROE STREET, CHICAGO, IL 60606. *JUDICATURE*, V 62, N 8 (MARCH 1979), P 390-398. **NCJ-55582**

FOLLOWING A DISCUSSION OF THE HISTORY OF REVISIONS IN ILLINOIS CRIMINAL LAW AND THE RATIONALE UNDERLYING THEM, RECENT LEGISLATION (H.B. 1500 AND CLASS X) DESIGNED TO INCREASE JUSTICE IN SENTENCING IS DISCUSSED. IN 1975, THE ADULT CORRECTIONS SUBCOMMITTEE OF THE ILLINOIS HOUSE JUDICIARY II COMMITTEE WAS CHARGED WITH REVIEWING THE ENTIRE SUBJECT OF SENTENCING AND ADULT CORRECTIONS INCLUDING SENTENCING PRACTICES, PROBATION AND PAROLE REFORM, REHABILITATION, AND RELATED COURT SERVICES TO OFFENDERS. THE GENERAL STATEMENT OF PRINCIPLES FOR THE CRIMINAL JUSTICE SYSTEM ISSUED BY THE SUBCOMMITTEE, CITED THE FOLLOWING FOUR SOCIAL PURPOSES FOR IMPOSING CRIMINAL PENALTIES: RETRIBUTION, INCAPACITATION, DETERRENCE, AND REFORMATION. STATING THAT UNDER INDETERMINATE SENTENCING, REHABILITATION HAD TOTALLY SUPERSEDED THE OTHER THREE, THE COMMITTEE CONCLUDED THAT THE SYSTEM HAD BECOME IMBALANCED IN FAVOR OF ONLY ONE PRIORITY WHICH, ACCORDING TO TESTIMONY BEFORE THE SUBCOMMITTEE, WAS NOT BEING ACHIEVED. IN THE FALL OF 1977, THE ILLINOIS LEGISLATURE ACTED ON THE SUBCOMMITTEE'S REPORT AND PASSED H.B. 1500 AND CLASS X. THE NEW LAW ESTABLISHES A SYSTEM OF DETERMINATE SENTENCING FOR ALL FELONIES IN THE STATE; ABOLISHES THE CONCEPT OF PAROLE RELEASE; REQUIRES THAT PERSONS CONVICTED OF FELONIES SERVE THE SPECIFIC AMOUNT OF TIME TO WHICH THEY HAVE BEEN SENTENCED BY A JUDGE, SUBJECT ONLY TO TIME CREDITED FOR GOOD BEHAVIOR; SETS FORTH GUIDELINES

FOR THE EXERCISE OF JUDICIAL DISCRETION IN IMPOSING SENTENCES; SIGNIFICANTLY REDUCES THE ARBITRARY AND UNREVIEWABLE DISCRETION PREVIOUSLY EXERCISED BY CORRECTIONS OFFICIALS; AND ESTABLISHES UNIFORMITY AND PARITY OF SENTENCES AS THE PUBLIC POLICY OF THE STATE. THE SO-CALLED CLASS X BILLS COVER SEVERAL AREAS, INCLUDING THE CREATION OF A NEW CLASSIFICATION (CLASS X) FOR THE MOST SERIOUS FELONIES, PUNISHABLE BY A MANDATORY PRISON SENTENCE. WHILE THERE ARE NO COMPELLING REASONS TO BELIEVE THAT THE SYSTEM CONSTRUCTED UNDER THE NEW LEGISLATION WILL BE MORE EFFECTIVE IN REHABILITATING OFFENDERS AND DETERRING CRIMINAL CONDUCT, IT IS A SINCERE ATTEMPT TO CREATE A SYSTEM THAT IS FAIR AND JUST.

98. **A. BERLOW. SENTENCING—CENTRAL ISSUE OF CRIMINAL CODE.** CONGRESSIONAL QUARTERLY, INC. 1414 22ND STREET, NW, WASHINGTON, DC 20037. *CONGRESSIONAL QUARTERLY WEEKLY REPORT*, V 36, N 28 (JULY 15, 1978), P 1807-1808, 1810-1814. **NCJ-49190**

PROPOSED CHANGES IN SENTENCING PRACTICES AND PROCEDURES IN THE CRIMINAL CODE REFORM ACT OF 1978 (S#1437), DESIGNED TO REDUCE SENTENCING DISPARITIES, ARE OUTLINED. ALTHOUGH THE SENTENCING PROVISIONS CONSTITUTE ONLY 30 PAGES IN THE 682-PAGE SENATE BILL, THEY CONSTITUTE A MAJOR LEGISLATIVE REFORM. ALTHOUGH THE JUSTICE DEPARTMENT AND THE SENATE WERE LARGELY CONVINCED OF THE PRACTICALITY OF THE PROPOSED SENTENCING MODEL, THE BILL HAS COME UNDER SUBSTANTIAL SCRUTINY IN THE HOUSE DEBATES. S 1437 PROPOSES A COMPLETE RESTRUCTURING OF THE CRIMINAL SENTENCING SYSTEM THAT WOULD VIRTUALLY INSTALL DETERMINATE SENTENCES. THE NEW SEVEN-MEMBER SENTENCING COMMISSION WOULD BE RESPONSIBLE FOR RESEARCHING CURRENT SENTENCING PRACTICES AND FOR ESTABLISHING GUIDELINE SENTENCING RANGES WITHIN EACH STATUTORY CATEGORY BASED ON THE CIRCUMSTANCES OF THE CRIME AND CERTAIN GENERAL OFFENDER CHARACTERISTICS. WHILE A JUDGE WOULD STILL BE PERMITTED DISCRETION IN SENTENCING OUTSIDE THIS RANGE, REASONS FOR GOING OUTSIDE THE RANGE WOULD HAVE TO BE STATED, AND THE SENTENCE COULD BE APPEALED BY THE DEFENDANT OR THE GOVERNMENT. OPPONENTS CONTEND THAT THIS WOULD RESULT IN LESS INDIVIDUALIZED JUSTICE, WHILE PROPONENTS HOLD THAT GUIDELINES WOULD ENSURE GREATER FAIRNESS.

GUIDELINES FOR DETERMINING WHEN PAROLE BEGINS IN A SENTENCE WOULD BE ESTABLISHED BY THE U.S. PAROLE COMMISSION. PAROLE AND GOOD TIME CREDITS WOULD BE ALL BUT ELIMINATED TO ACHIEVE MORE DETERMINATE SENTENCES. CRITICS SUGGEST THAT THIS WOULD CAUSE DIFFICULTIES FOR JUDGES EXPECTED TO CONFORM WITH GUIDELINES AND WOULD ALSO DANGEROUSLY CURTAIL THE JUDGE'S ABILITY TO REVIEW A SENTENCE. CONSIDERABLE CONTROVERSY HAS ALSO SURROUNDED THE GOVERNMENT'S RIGHT TO APPEAL SENTENCING DECISIONS; IT IS CONTENDED THAT IT COULD RESULT IN DOUBLE JEOPARDY IN CASES IN WHICH THE GOVERNMENT SEEKS HARSHER SENTENCES. HOWEVER, S 1437 DOES NOT CALL FOR A RETRIAL OR A RECONVICTION, AND THE GROUNDS FOR APPEAL WOULD BE FAILURE TO CONFORM TO GUIDELINES, NOT NEW INFORMATION ON THE DEFENDANT. ANOTHER ISSUE IS THAT LIMITATIONS ON JUDICIAL DISCRETION WILL GREATLY INCREASE PROSECUTORIAL DISCRETIONARY POWERS, RESULTING IN DISPARITIES UNDER THE CONTROL OF THE DEFENDANT'S ADVERSARIES RATHER THAN UNDER THE CONTROL OF A NEUTRAL JUDGE POSSESSING MORE COMPREHENSIVE FACTUAL INFORMATION ON WHICH TO BASE A DECISION. SUPPORTERS INSIST THAT IT WOULD BE THE RESPONSIBILITY OF THE JUDGE TO SEE THAT SUCH DISPARITIES DO NOT OCCUR. FINALLY, OPPOSITIONS SUGGEST THAT PRISON SENTENCES WILL INCREASE IN LENGTH AND THAT THE PRISON POPULATION WILL ALSO INCREASE. SUPPORTERS CONTEND THAT SUCH CONSIDERATIONS WILL BE TAKEN INTO ACCOUNT BY THE SENTENCING COMMISSION GUIDELINES.

Supplemental Notes: ORDERS MUST BE PREPAID.

Availability: CONGRESSIONAL QUARTERLY, INC, 1414 22ND STREET, NW, WASHINGTON, DC 20037.

99. COLORADO LEGISLATIVE COUNCIL, 46 STATE CAPITOL, DENVER, CO 80203. COLORADO LEGISLATIVE COUNCIL—COMMITTEE ON JUDICIARY SENTENCING LEGISLATION—RECOMMENDATIONS FOR 1979. 152 p. 1978. NCJ-59101

A BILL BEFORE THE COLORADO GENERAL ASSEMBLY IMPOSES BOTH MINIMUM AND MAXIMUM PUNISHMENTS FOR FIVE CLASSES OF FELONIES, SETS FORTH PRESUMPTIVE SENTENCES, CREATES A SENTENCE REVIEW COMMISSION, AND LIMITS PAROLE TERMS. A SIMILAR BILL WAS ENACTED IN 1977 BUT WAS VETOED BY THE GOVERNOR BECAUSE THE PROPOSED SENTENCES WERE BASED ON AVERAGE TIMES CURRENTLY SERVED AND NOT THE LENGTH OF INCARCERATION WHICH MIGHT BE DESIRABLE. IT ALSO ALLOWED INMATES CURRENTLY IN PRISON TO SERVE THEIR SENTENCES UNDER THE NEW LAW, WHICH COULD HAVE RESULTED IN A MASS EXODUS FROM THE STATE PENITENTIARY. THIS BILL SPECIFIES A SENTENCING RANGE FOR EACH CLASS OF FELONY AND BASES THE PRESUMPTIVE SENTENCE ON A PROPORTION OF THE MAXIMUM SENTENCE. A COURT WOULD HAVE TO JUSTIFY ANY SENTENCE OTHER THAN THE PRESUMPTIVE ONE. THE BACKGROUND REPORT FOR THE BILL REVIEWS VARIOUS RATIONALES FOR SENTENCING, THEN GIVES THE HISTORY OF SENTENCING IN COLORADO. SINCE 1961, 9 DIFFERENT LEGISLATIVE STUDY COMMITTEES HAVE TACKLED THE PROBLEM AND BOTH INDETERMINATE AND MANDATORY SENTENCING BILLS FOR CERTAIN CLASS 4 AND CLASS 5 OFFENDERS HAVE BEEN PASSED. THE PIECEMEAL APPROACH HAS PROVEN LESS THAN EFFECTIVE, SO THIS COMPREHENSIVE REVISION HAS BEEN DRAWN UP BASED ON AN ANALYSIS OF SENTENCES PREPARED BY THE DEPARTMENT OF CORRECTIONS. AGGRAVATING AND MITIGATING CIRCUMSTANCES WHICH SHOULD BE CONSIDERED ARE LISTED AND THE RETROACTIVE PROVISIONS OF THE BILL ARE EXPLAINED. APPENDICES CONTAIN A LIST OF CLASSIFIED FELONIES, A HYPOTHETICAL FELONY CLASSIFICATION, AND THE SENTENCE LENGTHS

SUGGESTED BY THE COLORADO ASSOCIATION OF CHIEFS OF POLICE.

Supplemental Notes: RESEARCH PAPER NO 240.

Availability: National Criminal Justice Reference Service MICROFICHE PROGRAM.

100. CORRECTIONAL INFORMATION SERVICE, INC, 801 SECOND AVENUE, NEW YORK, NY 10017. DETERMINATE SENTENCING—REFORM OR REGRESSION? PROCEEDINGS OF THE SPECIAL CONFERENCE ON DETERMINATE SENTENCING. 161 p. 1978. NCJ-46779

ISSUES RELATED TO THE PASSAGE AND ENACTMENT OF CALIFORNIA'S NEW DETERMINATE SENTENCING BILL ARE DISCUSSED BY CRIMINAL JUSTICE PRACTITIONERS AND OTHER EXPERTS IN THE FIELD. UNDER SENATE BILL 42, WHICH BECAME EFFECTIVE ON JULY 1, 1977, THE CHOICE OF PRISON TERMS IS NARROWLY CIRCUMSCRIBED FOR EACH OFFENSE, PAROLE IS RELEGATED TO A MARGINAL ROLE, AND THE AIM OF SENTENCING IS DECLARED TO BE THE PROTECTION OF SOCIETY AND THE IMPOSITION OF PUNISHMENT. THE PURPOSE OF THE CONFERENCE WAS TO EXAMINE HOW THE NEW BILL CAME ABOUT AND TO LOOK FORWARD TO WHAT IT MIGHT PRODUCE. A CONCEPTUAL OVERVIEW AND COMMENTARY ON THE MOVEMENT TOWARD DETERMINACY IN SENTENCING, INCLUDING CONSIDERATION OF ARGUMENTS FOR AND AGAINST THE ABOLITION OF PAROLE, ARE PRESENTED BY A PROPONENT OF SENTENCING REFORM. ANOTHER SELECTION DISCUSSES THE FORCES AND INTERESTS BEHIND DETERMINATE SENTENCING LEGISLATION FROM A HISTORICAL PERSPECTIVE; SPECIFIC PROVISIONS OF AND AMENDMENTS TO SENATE BILL 42 ARE DETAILED. 'FIXED' AND 'PRESUMPTIVE' SENTENCING SCHEMES OF THE SORT ENACTED IN CALIFORNIA ARE EXAMINED CRITICALLY BY A JURIST WHO FEELS THAT PROSECUTORIAL DISCRETION, PARTICULARLY IN THE FORM OF PLEA BARGAINING, SHOULD BE CHANNLED AND CONTROLLED IF DETERMINATE SENTENCING REFORMS ARE TO BE EFFECTIVE. THE EFFECT FLAT-TERM SENTENCING IS LIKELY TO HAVE ON THE ACTIONS OF CORRECTIONAL AGENCIES IS ASSESSED, WITH PARTICULAR EMPHASIS ON THE CONCEPTS OF 'GOOD TIME' AND 'FLEXIBLE INCARCERATION.' METHODS OF MONITORING AND EVALUATING THE NEW LEGISLATION ARE EXPLORED THROUGH AN ANALYSIS OF THE MAINE AND CALIFORNIA REFORM EXPERIENCES. UNINTENDED CONSEQUENCES POSSIBLE BECAUSE OF DETERMINATE SENTENCING AND CONCOMITANT RESTRICTION OR ABOLITION OF PAROLE DISCRETIONARY RELEASE ARE ADDRESSED IN THE FINAL SELECTION; ITS AUTHOR FEELS THAT DISPARITY ABUSE WILL BE EVEN GREATER IN THAT PAROLE BOARD DISCRETION WILL BE TRANSFERRED TO PROSECUTORS AND JUDGES, WHO ALREADY EXERCISE CONSIDERABLE DISCRETION THROUGH PLEA BARGAINING AND SENTENCING PRACTICES. PARTICIPANT DISCUSSION WHICH FOLLOWED EACH PRESENTATION IS SUMMARIZED, AND REFERENCES ARE PROVIDED FOR SOME SELECTIONS. A LIST OF CONFERENCE PARTICIPANTS IS APPENDED. THE CONFERENCE WAS ONE OF A SERIES OF SPECIAL NATIONAL WORKSHOPS OF THE NATIONAL CRIMINAL JUSTICE EXECUTIVE TRAINING PROGRAM OF THE NATIONAL INSTITUTE OF JUSTICE. PROGRAM.

Supplemental Notes: HELD AT BOALT HALL SCHOOL OF LAW, UNIVERSITY OF CALIFORNIA, BERKELEY, JUNE 2-3, 1977.

Sponsoring Agencies: US DEPARTMENT OF JUSTICE NATIONAL INSTITUTE OF JUSTICE, 633 INDIANA AVENUE NW, WASHINGTON, DC 20531; UNIVERSITY RESEARCH CORPORATION, 5530 WISCONSIN AVENUE, WASHINGTON, DC 20015.

Availability: GPO Stock Order No. 027-000-00654-0; National Criminal Justice Reference Service MICROFICHE PROGRAM.

101. CORRECTIONAL SERVICE OF MINNESOTA, 1427 WASHINGTON AVENUE, SOUTH, MINNEAPOLIS, MN 55404. DETERMINATE SENTENCING SURVEY. 9 p. 1976. NCJ-34960

DETERMINATE SENTENCING

SURVEY INSTRUMENT USED BY THE JOINT SENATE SUBCOMMITTEE ON DETERMINATE SENTENCING OF THE MINNESOTA LEGISLATURE TO OBTAIN SUGGESTIONS FROM KEY CRIMINAL JUSTICE PERSONNEL ON STRUCTURING A DETERMINATE SENTENCING SYSTEM. A FOUR PART QUESTIONNAIRE WAS USED. THE FIRST PART SOUGHT TO ASCERTAIN VIEWS OF CRIMINAL JUSTICE OFFICIALS ON THE PURPOSES OF SENTENCING. THE SECOND PART SOLICITED DESIGNS OF DETERMINATE SENTENCING SYSTEMS WHILE PART THREE PROBED INTO ADDITIONAL ISSUES TO BE CONSIDERED IN THE CONSTRUCTION OF ANY SYSTEM. THE FINAL SECTION CONTAINED QUESTIONS DESIGNED TO LEARN WHAT ROLES THOSE SURVEYED FELT THEY PLAY IN THE CRIMINAL JUSTICE SYSTEM. FOR SUMMARY RESULTS OF THE DETERMINATE SENTENCING SURVEY, SEE NCJ-34959.

Sponsoring Agency: US CONGRESS SENATE SUBCOMMITTEE ON DETERMINATE SENTENCING, WASHINGTON, DC 20510.

102. S. J. FABER. CALIFORNIA SENTENCING HANDBOOK. LEGA-BOOKS, 658 SOUTH BONNIE BRAE STREET, LOS ANGELES, CA 90057. 186 p. 1978. NCJ-57728

AN OVERVIEW OF CALIFORNIA'S DETERMINATE SENTENCE LAW IS PROVIDED, AND ENHANCEMENTS AND CONSECUTIVE SENTENCING, ADJUSTMENTS OF CUSTODY, SENTENCES OTHER THAN TO STATE PRISON, AND DEATH PENALTIES ARE REVIEWED. THE DETERMINATE SENTENCE LAW HAS BEEN CODIFIED IN TWO LEGISLATIVE BILLS. IT IS LIMITED TO THE SENTENCING AND DISPOSITION OF PERSONS WHO HAVE BEEN CHARGED WITH OR CONVICTED OF FELONIES. THE LAW BASICALLY CONSISTS OF THREE GROUPS OF STATUTES: (1) STATUTES THAT DEFINE SPECIFIC CRIMINAL BEHAVIOR AND PROVIDE THE QUANTUM OF PUNISHMENT UPON CONVICTION, (2) STATUTES THAT DESCRIBE PROCEDURES FOR SENTENCING CONVICTED FELONS TO PRISON, AND (3) STATUTES THAT DESCRIBE METHODS BY WHICH THE COMMUNITY RELEASE BOARD AND THE DEPARTMENT OF CORRECTIONS CAN INCREASE OR DECREASE PRISON TERMS. THERE ARE MANY SITUATIONS IN WHICH DEFENDANTS CAN BE VULNERABLE TO SENTENCES BEYOND BASE TERMS, AND SUCH SITUATIONS INVOLVE ENHANCEMENTS AND CONSECUTIVE SENTENCING. SENTENCES OTHER THAN TO STATE PRISON INCLUDE COMMITMENT FOR DIAGNOSTIC STUDY, COMMITMENT TO THE CALIFORNIA YOUTH AUTHORITY, COMMITMENT TO STATE PRISON AFTER A CERTAIN PERIOD, REDUCTION OF THE CRIME TO A MISDEMEANOR, NEGOTIATED PLEAS, AND PROBATION. THE COMMUNITY RELEASE BOARD, ESTABLISHED BY THE DETERMINATE SENTENCING LAW, HAS THE RESPONSIBILITIES OF MAKING RECOMMENDATIONS TO THE SENTENCING COURT, REVIEWING DISPARATE SENTENCES, MAKING PAROLE DECISIONS FOR INDETERMINATELY SENTENCED OFFENDERS, PROMULGATING PAROLE POLICIES, AND REVIEWING GOOD TIME DENIALS. THE DEATH PENALTY CAN BE IMPOSED UPON PERSONS CONVICTED OF COMMITTING CERTAIN ASSAULTS WHILE UNDERGOING LIFE SENTENCES IN STATE PRISON. ADDITIONAL INFORMATION ON THE DETERMINATE SENTENCE LAW, FELONIES AND PUNISHMENT, AND SENTENCING RULES AND GUIDELINES IS APPENDED. AN INDEX IS INCLUDED.

Availability: LEGA-BOOKS, 658 SOUTH BONNIE BRAE STREET, LOS ANGELES, CA 90057.

103. D. FOGEL. TESTIMONY OF DAVID FOGEL (FROM RESEARCH INTO CRIMINAL SENTENCING, 1978—SEE NCJ-62872). US CONGRESS HOUSE COMMITTEE ON SCIENCE AND TECHNOLOGY, WASHINGTON, DC 20515. 18 p. 1978. NCJ-62875

A CRIMINAL JUSTICE PROFESSOR DESCRIBES DETERMINATE SENTENCING STATUTES ADOPTED BY SEVERAL STATES AND CRITICIZES SOME PROVISIONS OF THE PROPOSED FEDERAL LEGISLATION ON SENTENCING REFORM. AFTER RE-

VIEWING OPINIONS CALLING FOR AN END TO INDETERMINATE SENTENCING, THE WITNESS SUMMARIZES THE FOLLOWING POINTS OF CONSENSUS AMONG EXPERTS: (1) SENTENCING CRITERIA SHOULD BE STATUTORILY REQUIRED AND BASED ON CLASSIFICATION OF OFFENDERS AND SERIOUSNESS OF THE OFFENSE; (2) SENTENCES SHOULD BE REVIEWABLE; AND (3) SENTENCES OF IMPRISONMENT SHOULD BE USED ONLY IF SATISFACTORY COMMUNITY-BASED SANCTIONS CANNOT BE FOUND. SEVERAL STATES HAVE INSTITUTED DETERMINATE SENTENCING SYSTEMS, INCLUDING MAINE, ILLINOIS, AND CALIFORNIA. THE BILL CURRENTLY UNDER CONSIDERATION BY THE HOUSE IGNORES SOME PRINCIPAL ISSUES AND IS CONTRARY TO MANY STATE ACTIVITIES CONCERNING DETERMINATE SENTENCING. THE BILL HAS NO FORCEFUL STATEMENT OF NATIONAL POLICY, BUT HAS MANY PROVISIONS IMPLYING SUPPORT FOR THE REHABILITATION MODEL. IT ALSO ELIMINATES THE PRESUMPTION OF ALTERNATIVES TO IMPRISONMENT THAT HAS BEEN A MAINSTAY OF FEDERAL POLICY. THE SENTENCING COMMISSION PROVISION IS VAGUE, COMPETES WITH THE U.S. PAROLE COMMISSION, AND CONFERS EXTRAORDINARY AUTHORITY FOR SETTING GUIDELINES WITHOUT CONGRESSIONAL APPROVAL. AN ALTERNATIVE APPROACH WOULD BE TO ABOLISH THE PAROLE COMMISSION AND SET LOWER MAXIMUM SENTENCES TO REFLECT THE ACTUAL TIME SERVED FOR A FELONY. POSTINSTITUTIONAL SUPERVISION COULD BE VOLUNTARY AND DIRECTED TOWARD REINTEGRATION. DETERMINATE SENTENCING, MITIGATED ONLY BY THE CONVICT'S LAWFUL BEHAVIOR WHILE INCARCERATED, WILL ENHANCE PUBLIC CREDIBILITY IN THE JUSTICE SYSTEM AND REDUCE PRISON TENSION.

Supplemental Notes: TESTIMONY GIVEN ON MAY 18, 1978.

104. S. GETTINGER. FIXED SENTENCING BECOMES LAW IN THREE STATES, OTHER LEGISLATURES WARY. CORRECTIONAL INFORMATION SERVICE, INC, 801 SECOND AVENUE, NEW YORK, NY 10017. CORRECTIONS MAGAZINE, V 3, N 3 (SEPTEMBER 1977), P 16-26, 28-30, 33, 36. NCJ-43228

NEW DETERMINATE SENTENCING LAWS IN CALIFORNIA, MAINE, INDIANA, AND OTHER STATES ARE DESCRIBED, AND THEIR UNDERLYING THEORY AND POSSIBLE RAMIFICATIONS ARE DISCUSSED. SEVERAL STATES HAVE ABANDONED THE INDETERMINATE SENTENCING SYSTEM. THIS ARTICLE DETAILS SOME OF THE TYPES OF SENTENCING PRACTICES WHICH ARE REPLACING INDETERMINATE SENTENCING, AND EXAMINES REFORMS ENACTED BY THREE STATES AND PROPOSED BY OTHER STATE LEGISLATURES. DEBATE OVER FIXED SENTENCING, WHICH CENTERS ON WHO SHOULD SET PRISON TERMS & HOW LONG THEY SHOULD BE, COMPLICATED THE EFFORT TO REVISE SENTENCING LAWS. THE EFFECTS OF DETERMINATE SENTENCING ON PRISONS, SUCH AS LONGER PRISON TERMS FOR SOME CATEGORIES OF OFFENDERS, POSSIBLE INCREASED PRISON POPULATIONS, AND THE ELIMINATION OF PAROLE BOARDS, ARE THE SUBJECT OF MUCH DISCUSSION IN THE CRIMINAL JUSTICE COMMUNITY. THE SYSTEM INSTITUTED IN CALIFORNIA SETS A 3-YEAR RANGE IN SENTENCING TO ALLOW FOR MITIGATING AND AGGRAVATING CIRCUMSTANCES; PERMITS A JUDGE TO ADD 'ENHANCEMENTS' TO THE BASE TERM FOR CRIMES INVOLVING WEAPONS, BODILY INJURY TO VICTIMS, AND PRIOR CONVICTIONS; AWARDS UP TO 10 DAYS PER MONTH 'GOOD TIME' FOR GOOD BEHAVIOR; AND REQUIRES ONE YEAR OF PAROLE SUPERVISION FOR MOST OFFENDERS. MAINE'S SENTENCING LAW CLASSIFIES OFFENSES INTO FIVE DEGREES OF SEVERITY, ALSO PROVIDES FOR GOOD TIME, AND ENTAILS NO PAROLE BOARD OR PAROLE SUPERVISION. THE PRESUMPTIVE SENTENCING LAW IN INDIANA, WHICH SETS PARTICULAR TERMS FOR CLASSES OF CRIMES WITH SUBSTANTIAL RANGE FOR JUDICIAL DISCRETION, IS DISCUSSED, ALONG WITH A PROPOSED PRESUMPTIVE SENTENCING REFORM IN ILLINOIS. NEW LAWS PASSED OR PROPOSED IN

OTHER STATES AND A MAJOR SENTENCING REFORM IN THE REVISED FEDERAL CRIMINAL CODE ARE ALSO EXAMINED.

105. **S. GETTINGER. PROFILE/MAINE.** CORRECTIONAL INFORMATION SERVICE, INC, 801 SECOND AVENUE, NEW YORK, NY 10017. *CORRECTIONS MAGAZINE*, V 1, N 6 (JULY/AUGUST 1975), P 13-26. **NCJ-28926**
AN OVERVIEW OF THE POLICIES AND OPERATIONS OF THE MAINE CORRECTIONAL SYSTEM IS PRESENTED, WITH ATTENTION TO COMMUNITY CORRECTIONS, FURLOUGHS, PRISON INDUSTRIES, PROBATION AND PAROLE, AND JUVENILE CORRECTIONS. THE STATE OF MAINE, WITH NO LARGE URBAN AREAS AND A HIGH DEGREE OF RACIAL HOMOGENEITY, HAS BEEN ABLE TO MAKE GREAT INNOVATIONS IN ITS PRISON SYSTEM. IN JUNE 1975, IT BECAME THE FIRST STATE IN THE COUNTRY TO ABOLISH MINIMUM-MAXIMUM SENTENCES AND INDETERMINATE SENTENCES IN FAVOR OF RELATIVELY SHORT, FLAT TERMS. IN ADDITION, THE STATE'S REVISED CRIMINAL CODE HAS ABOLISHED PAROLE AND SPELLED OUT THE PURPOSES OF SENTENCING FOR THE FIRST TIME. SINCE WARD MURPHY, THE FIRST WOMAN TO HEAD A STATE PRISON SYSTEM, BECAME DIRECTOR OF THE BUREAU OF CORRECTIONS IN 1970, THE SYSTEM HAS SEEN FURLOUGH PROGRAMS THAT ALLOW 75 PERCENT OF ELIGIBLE INMATES TO VISIT THEIR HOMES, THE ESTABLISHMENT OF HALFWAY HOUSES AND PRERELEASE CENTERS, AND A SIGNIFICANT DECLINE IN THE INMATE POPULATION. THE SYSTEM'S PRIMARY EMPHASIS IS NOW ON COMMUNITY CORRECTIONS, A CONCEPT WHICH HAS EVOKED MIXED RESPONSES FROM THE PUBLIC. A NUMBER OF INNOVATIONS HAVE BEEN MADE BY THE WARDEN OF THE STATE PRISON, WHO WAS 28 YEARS OLD WHEN HE TOOK OFFICE IN 1972. HE OPENED A MINIMUM-SECURITY RESIDENTIAL CENTER FOR INMATES IN TRAINING PROGRAMS AND BEGAN A FURLOUGH PROGRAM AT THE PRISON. A 1971 PROTEST BY INMATES LED TO A NUMBER OF IMPROVEMENTS IN INMATES' RIGHTS, SUCH AS THE FORMATION OF AN ELECTED INMATE COUNCIL, AND SEVERAL PHYSICAL IMPROVEMENTS. THE PRISON FURNITURE SHOP IS ITS MAIN INDUSTRY; INMATES ARE ALLOWED TO USE SHOP TOOLS TO CARVE NOVELTIES, WHICH ARE SOLD AND THE MONEY CREDITED TO THE MAKER'S ACCOUNT. THE PRISON OFFERS EVENING CLASSES IN CRAFTS AND IN ACADEMIC SUBJECTS; IT ALSO TRAINS SOME INMATES TO WORK WITH MENTALLY AND EMOTIONALLY DISTURBED PERSONS. THE WOMEN'S CORRECTIONAL CENTER WAS MOVED IN 1970 TO THE GROUNDS OF THE STATE'S RESIDENCE FOR FEMALE JUVENILES. THE WOMEN'S INSTITUTION IS AMONG THE MOST PROGRESSIVE IN THE STATE; A LACK OF FUNDING HAS FORCED THE ADMINISTRATORS TO FIND PROGRAMS AND SERVICES WITHIN THE COMMUNITY. THE STATE'S EXISTING PAROLE BOARD HAS BEEN RELEASING APPROXIMATELY 97 PERCENT OF ALL INMATES ASKING FOR PAROLE ON THEIR FIRST HEARING. AFTER THE NEW LAW ABOLISHING PAROLE GOES INTO EFFECT IN MARCH 1976, INMATES WILL HAVE SET SENTENCES, BUT WILL HAVE THE OPTION OF PETITIONING THE COURT FOR A REVIEW OF SENTENCE. THE STATE'S TWO INSTITUTIONS FOR JUVENILES HAVE DECLINED IN POPULATION CONSIDERABLY SINCE 1973 WHEN THE LEGISLATURE ELIMINATED INCARCERATION FOR STATUS OFFENDERS. JUVENILE OFFENDERS ARE SENTENCED TO INDEFINITE PERIODS OF RESIDENCE. BOTH FACILITIES OFFER ACADEMIC COURSES AND VOCATIONAL TRAINING, AND THE SCHOOL AT THE GIRLS' INSTITUTION HAS SUCH A GOOD REPUTATION THAT PARENTS FROM THE SURROUNDING COMMUNITY OFTEN SEND THEIR OWN CHILDREN TO ATTEND.
106. **D. HOWARD. DETERMINATE SENTENCING IN CALIFORNIA.** COUNCIL OF STATE GOVERNMENTS, IRON WORKS PIKE, LEXINGTON, KY 40578. 83 p. 1978. **NCJ-59464**
CALIFORNIA'S UNIFORM DETERMINATE SENTENCING ACT, WHICH PROVIDES MINIMUM AND MAXIMUM SENTENCES FOR

EACH FELONY, HAS REDUCED SENTENCING DISPARITY AND SENT MORE OFFENDERS TO PRISON, RESULTING IN INCREASED CORRECTIONS COSTS. THE ACT REPRESENTS A COMPLETE BREAK WITH THE 60-YEAR-OLD INDETERMINATE SENTENCING LAW WHICH WAS BASED ON OFFENDER REHABILITATION AND GAVE THE PAROLE BOARD ALMOST COMPLETE DISCRETION IN SETTING PRISON TERMS. IT PRESCRIBES A MIDDLE, MAXIMUM, AND MINIMUM TERM, THE MIDDLE ASSUMED TO BE MOST APPROPRIATE UNLESS THERE ARE MITIGATING OR AGGRAVATING CIRCUMSTANCES. THE LAW ALSO ALLOWS JUDGES TO IMPOSE CONCURRENT OR CONSECUTIVE SENTENCES FOR MULTIPLE CRIMES AND TO ADD ADDITIONAL TIME FOR GREAT BODILY INJURY, USE OF A WEAPON, OR OTHER AGGRAVATING CIRCUMSTANCES. PAROLE IS RETAINED BUT PAROLE BOARD DISCRETION IS REPLACED BY A 'GOOD TIME' FORMULA; PAROLE SUPERVISION IS FIXED AT 3 OR 5 YEARS DEPENDING ON THE OFFENSE. SENTENCING DISPARITY HAS BEEN REDUCED AND LARGER NUMBERS OF OFFENDERS ARE BEING SENT TO PRISON. THE IMMEDIATE COSTS OF THE ACT WERE SUBSTANTIAL. THE LEGISLATURE APPROPRIATED \$9,583,200 TO IMPLEMENT THE BILL--\$7,014,600 WENT TO THE CORRECTIONS DEPARTMENT AND \$2,568,600 TO THE COMMUNITY RELEASE BOARD. THE INCREASE IN PAROLE POPULATION COST AN ESTIMATED \$1.5 MILLION, AND THE INCREASED POPULATION IN THE INSTITUTIONS \$3,320,000 THE FIRST YEAR. A MAJOR EXPENSE WAS REVIEWING RECORDS OF 20,000 INCARCERATED FELONS WITH INDETERMINATE SENTENCES IN ORDER TO SET RELEASE DATES. HOWEVER, THE LARGER NUMBER OF PERSONS BEING SENT TO PRISON WILL PROBABLY RESULT IN CONTINUED HIGHER COSTS IN FUTURE YEARS. THIS ANALYSIS CONTAINS STATISTICS, NOTES, AND REFERENCES.

Sponsoring Agency: NATIONAL SCIENCE FOUNDATION, 1800 G STREET, NW, WASHINGTON, DC 20550.
Availability: COUNCIL OF STATE GOVERNMENTS, IRON WORKS PIKE, LEXINGTON, KY 40578.

107. **F. HUSSEY, J. KRAMER, D. KATKIN, and S. LAGOY. ANATOMY OF LAW REFORM—THE EFFECT OF CRIMINAL CODE REVISION ON SENTENCING—THE MAINE EXPERIENCE.** UNIVERSITY OF IOWA SCHOOL OF SOCIAL WORK, NORTH HALL, IOWA CITY, IA 52242. *IOWA JOURNAL OF SOCIAL WORK*, V 7, N 4, SPECIAL ISSUE (DECEMBER 1976), P 59-67. **NCJ-49385**

THIS REVIEW OF THE MAJOR ELEMENTS OF A 1975 REVISION OF THE MAINE CRIMINAL CODE DESCRIBES THE SECTIONS MOST SIMILAR TO CHANGES CALLED FOR BY VARIOUS REFORMERS AND SPECULATES ABOUT THE AMOUNT OF REFORM ACTUALLY ACHIEVED. THE REVISIONS ATTEMPT TO ELIMINATE SENTENCING DISPARITY THROUGH A FLAT-SENTENCE CODE. CRIMES ARE CLASSIFIED INTO FIVE CATEGORIES WITH AN UPPER LIMIT OF CRIMINAL SANCTION PRESCRIBED FOR EACH CATEGORY. CLASS A CRIMES HAVE A MAXIMUM PERIOD OF IMPRISONMENT OF 20 YEARS WHILE CLASS E CRIMES CALL FOR A DEFINITE PERIOD NOT TO EXCEED 6 MONTHS. MANDATORY PENALTIES ARE PRESCRIBED FOR FIRST AND SECOND DEGREE HOMICIDE. THE CODE ALSO SPECIFIES THE RATE AT WHICH NONVESTED GOOD TIME AND GAIN TIME CAN BE EARNED, ABOLISHES THE PAROLE BOARD AND PAROLE SUPERVISION, AND ASSIGNS MATTERS RELATING TO REDUCTION OF SENTENCE TO THE BUREAU OF CORRECTIONS. A PROVISION IS MADE FOR SO-CALLED SPLIT SENTENCES, WHICH COMBINE INCARCERATION FOLLOWED BY PROBATION. SECTION 1154 OF THE CODE, WHICH INDICATES THAT SENTENCES IN EXCESS OF 1 YEAR THAT ARE NOT SUSPENDED ARE TO BE CONSIDERED TENTATIVE, IS CRITICIZED BECAUSE SENTENCE REDUCTION IS PLACED IN THE HANDS OF THE DEPARTMENT OF CORRECTIONS AND, TO A DEGREE, THE ORIGINAL SENTENCING JUDGE. A PROCESS CALLED RESENTENCING IS

ALSO EXAMINED AND PROVISIONS OF THIS SECTION OF THE CODE ARE CRITICIZED. THE EFFECTS OF PLEA BARGAINING ON DETERMINATE SENTENCES ARE ALSO EXAMINED. SEVERAL CRITERIA FOR TRUE REFORM PRESENTED ARE BASED ON THE WORKS OF THE AMERICAN FRIENDS SERVICE COMMITTEE, DAVID FOGEL, JOHN IRWIN, AND THE AMERICAN CIVIL LIBERTIES UNION COMMITTEE FOR THE STUDY OF INCARCERATION. THE MAINE LEGISLATION IS CALLED A STEP IN THE DIRECTION OF REFORM. IT REMAINS TO BE SEEN IF THESE LEGISLATIVE CHANGES RESULT IN MEANINGFUL CHANGE IN THE OPERATION OF THE PENOLOGY SYSTEM. THE ARTICLE IS FOOTNOTED.

Supplemental Notes: PRESENTED AT THE AMERICAN SOCIETY OF CRIMINOLOGY, TUCSON, ARIZONA, NOVEMBER, 1976.

108. **M. KANNENSOHN. A NATIONAL SURVEY OF PAROLE-RELATED LEGISLATION ENACTED DURING THE 1979 LEGISLATIVE SESSION.** NATIONAL COUNCIL ON CRIME AND DELINQUENCY RESEARCH CENTER, 760 MARKET STREET—SUITE 433, SAN FRANCISCO, CA 94102. 21 p. 1979. **NCJ-64218**

RESULTS OF A NATIONAL SURVEY FOCUSING ON PAROLE-RELATED LEGISLATIVE ACTIVITY DURING 1979, AS PRESENTED AT THE UNIFORM PAROLE REPORTS SEMINAR, ARE DISCUSSED; GENERAL LEGISLATIVE TRENDS ARE EMPHASIZED. A QUESTIONNAIRE WAS FORWARDED TO THE LEGISLATIVE RESEARCH AGENCY IN EACH STATE REQUESTING INFORMATION ON LEGISLATIVE ACTION FOR 10 GENERIC CATEGORIES OF PAROLE-RELATED LEGISLATION. FORTY OF THE 50 AGENCIES RESPONDED. TWO DISTINGUISHABLE TYPES OF SENTENCING LEGISLATION REFORM APPROACHES COULD BE DISCERNED. THE FIRST TYPE AIMS AT REPLACING INDETERMINATE SENTENCES WITH SOME FORM OF DETERMINACY. MANDATORY AND DETERMINATE SENTENCING STATUTES ARE REPRESENTATIVE OF THIS APPROACH AND ARE DESIGNED TO ABOLISH PAROLE-RELEASE DECISIONMAKING. A SECOND APPROACH HAS BEEN TO ENACT LEGISLATION TO IMPROVE EXISTING INDETERMINATE SENTENCING SYSTEMS BY REVISING CONTROVERSIAL FEATURES. IN GENERAL, LEGISLATURES HAVE FOCUSED HEAVILY ON THE FIRST APPROACH. UNDER THE DETERMINATE SENTENCING MODEL, THREE TYPES OF LEGISLATION HAVE EMERGED: PRESUMPTIVE SENTENCING, DETERMINATE DISCRETIONARY, AND SENTENCING GUIDELINES. TO DATE, SIX STATES HAVE PASSED PRESUMPTIVE SENTENCING BILLS; ONLY TWO STATES HAVE PASSED DETERMINATE DISCRETIONARY PROVISIONS; AND SENTENCING GUIDELINES LEGISLATION WAS CONSIDERED ONLY IN THE STATE OF WASHINGTON. IN EACH OF THE 1979 DETERMINATE SENTENCING ENACTMENTS, THE PAROLE RELEASE MECHANISM WAS ABOLISHED EXCEPT FOR THOSE OFFENDERS SENTENCED UNDER THE PREVIOUS INDETERMINATE SYSTEM. THE SECOND TYPE OF SENTENCING APPROACH, MANDATORY SENTENCING, ELIMINATES JUDICIAL AND PAROLE BOARD DISCRETION BY REQUIRING IMPRISONMENT FOR SELECTED CATEGORIES OF OFFENSES. IN 1979, 17 STATES PASSED ONE OR MORE MANDATORY SENTENCING BILLS. OTHER LEGISLATIVE ACTIVITY FOCUSED ON CONTRACT PAROLE, PAROLE GUIDELINES, DUE PROCESS PROTECTIONS IN PAROLE PROCEEDINGS, AND PAROLE SERVICES FUNDING. A SURVEY FORM AND A TABLE DEPICTING 1979 PAROLE-RELATED LEGISLATION ARE APPENDED.

Supplemental Notes: UNIFORM PAROLE REPORTS SERIES PRESENTED AT THE 1979 UNIFORM PAROLE REPORTS SEMINAR HELD ON OCTOBER 15, 16, AND 17, 1979.

Sponsoring Agency: US DEPARTMENT OF JUSTICE BUREAU OF JUSTICE STATISTICS, 633 INDIANA AVENUE NW, WASHINGTON, DC 20531.

Availability: National Criminal Justice Reference Service MICROFICHE PROGRAM.

109. **S. P. LAGOY, F. A. HUSSEY, and J. H. KRAMER. COMPARATIVE ASSESSMENT OF DETERMINATE SENTENCING IN THE FOUR PIONEER STATES.** NATIONAL COUNCIL ON CRIME AND DELINQUENCY, CONTINENTAL PLAZA, 411 HACKENSACK AVENUE, HACKENSACK, NJ 07601. *CRIME AND DELINQUENCY*, V 24, N 4 (OCTOBER 1978), P 385-400. **NCJ-51616**
PROVISIONS FOR DETERMINATE SENTENCING IN THE CRIMINAL CODES OF MAINE, CALIFORNIA, INDIANA, AND ILLINOIS ARE COMPARED AND CONTRASTED, WITH EMPHASIS ON THE VARIATIONS POSSIBLE WITHIN THE CONTEXT OF DETERMINACY. THE CRITICAL FEATURE IN MAINE'S DETERMINATE SENTENCING SCHEME IS THE CENTRALITY OF THE JUDICIARY IN THE DETERMINATION OF THE SENTENCE. MAINE IS UNIQUE IN THAT ITS JUDGES ARE EMPOWERED TO IMPOSE FIXED SENTENCES LIMITED ONLY BY STATUTORY MAXIMA. IN CONTRAST TO MAINE'S JUDICIAL MODEL, THE CALIFORNIA LEGISLATURE ESTABLISHED A PRESUMPTIVE SENTENCING SCHEME THAT LIMITS PRISON TERMS TO A VERY NARROW RANGE OF POSSIBILITIES. PAROLE DISCRETION IS ABOLISHED, AND JUDICIAL DISCRETION IS DEFINED NARROWLY. THE SENTENCING PROVISIONS OF THE INDIANA CODE REPRESENT A HYBRID APPROACH TO DETERMINATE SENTENCING. WHILE ADOPTING THE MECHANICS OF PRESUMPTIVE SENTENCING (SPECIFIED PENALTIES, AGGRAVATING AND MITIGATING FACTORS, LIMITED PAROLE FUNCTION), THE INDIANA CODE GRANTS CONSIDERABLE JUDICIAL DISCRETION IN THE DETERMINATION OF SENTENCE LENGTHS. THE ILLINOIS REVISION HAS REVAMPED THE TRADITIONAL PAROLE DECISIONMAKING FUNCTION AND HAS VESTED THE JUDICIARY WITH PRIMARY RESPONSIBILITY FOR SETTING THE LENGTH OF DETERMINATE PRISON SENTENCES. AS IN MAINE, THERE ARE NO PRESUMPTIVE OR SUGGESTED TERMS BINDING SENTENCING DECISIONS; A JUDGE MAY SELECT ANY TERM OF IMPRISONMENT WITHIN LIMITS SET BY THE LEGISLATURE FOR EACH CLASS OF FELONY. UNLIKE MAINE, THESE LIMITS INCLUDE A LEGISLATIVELY FIXED MINIMUM AS WELL AS A MAXIMUM. UNLIKE ANY OF THE OTHER THREE STATES, ILLINOIS PROVIDES A SEPARATE SCHEDULE OF EXTENDED TERMS FOR REPEAT OFFENDERS AND FOR EXCEPTIONALLY CRUEL OR BRUTAL CRIMES. THERE ARE VAST DIFFERENCES AMONG THE FOUR STATES IN THE CONSTRAINTS ON THE JUDGE'S DECISION WHETHER TO INCARCERATE, IN THE DELIMITATION OF JUDICIAL DISCRETION IN SENTENCING, IN THE SPECIFICITY OF AGGRAVATING AND MITIGATING FACTORS, IN THE INSTITUTIONAL USE OF GOOD TIME, IN THE RANGE OF POSSIBLE PENALTIES, AND IN THE DEGREE TO WHICH DETERMINATE SENTENCING AS PRACTICED CAN RESEMBLE INDETERMINATE SENTENCING. ADVOCATES OF DETERMINACY STRESS ITS POTENTIAL FOR PRODUCING GREATER UNIFORMITY, MORE EQUALITY, AND LESS DISPARITY. HOWEVER, THE ANALYSIS OF THE STATES IN WHICH DETERMINATE SENTENCING HAS BEEN ADOPTED SUGGESTS THAT THESE GOALS MAY BE AS UNATTAINABLE AS REHABILITATION. IT IS CONCLUDED THAT THE SPEED WITH WHICH SENTENCING REVISIONS ARE BEING ENDORSED MAY HINDER REASONED ANALYSIS OF THE NEED FOR SENTENCING REFORM, THE NATURE OF DESIRED REFORM, AND THE OUTCOME OF REFORM ONCE IMPLEMENTED. SUPPORTING DATA ARE INCLUDED.

110. **P. D. MCANANY, F. S. MERRITT, and E. TROMANHAUSER. ILLINOIS RECONSIDERS 'FLAT TIME'—AN ANALYSIS OF THE IMPACT OF THE JUSTICE MODEL.** ILLINOIS INSTITUTE OF TECHNOLOGY CHICAGO-KENT COLLEGE OF LAW, 77 SOUTH WACKER DRIVE, CHICAGO, IL 60606. *CHICAGO-KENT LAW REVIEW*, V 52, N 3 (1976), P 621-662. **NCJ-36171**
THIS ARTICLE EXAMINES THE JUSTICE MODEL BILLS (1975 LEGISLATIVE PROPOSALS TO ESTABLISH DETERMINATE SENTENCING AND SENTENCE EQUALIZATION) AND DISCUSSES THE CHANGES THEY WILL INTRODUCE IN THE STATE CRIMINAL JUSTICE SYSTEM. THE CRITICISMS WHICH

HAVE OVERTAKEN THE EXISTING SYSTEM OF INDETERMINATE SENTENCING ARE FIRST SUMMARIZED, THE EMPHASIS BEING THE PRISON TERM DISPARITY CAUSED BY WIDESPREAD USE OF OFFICIAL DISCRETION. A REVIEW OF SEVERAL MAJOR ISSUES WHICH THE JUSTICE MODEL BILLS RAISE IN REGARD TO PRESENT SENTENCING AND CORRECTIONS STRUCTURE FOLLOWS. CONSIDERED ARE THE INTRODUCTION OF SENTENCING CRITERIA, FLAT TIME PRISON TERMS, AND APPELLATE REVIEW OF SENTENCES. ALSO DISCUSSED ARE THE ABOLITION OF PAROLE, THE IMPACT OF DETERMINATE SENTENCES ON SIZE OF PRISON POPULATION, AND THE INTERRELATED ISSUES OF GOOD TIME, DISCIPLINE, AND GRIEVANCE PROCEDURES. IN ADDITION, THE EFFECT OF DETERMINATE SENTENCES ON PROGRAMS AND THE DE-EMPHASIS ON REHABILITATION IS EXAMINED. A FINAL SECTION SUMMARIZES THE CRITIQUE OF THE JUSTICE MODEL BILLS AND PRESENTS SOME SUGGESTED ALTERNATIVES TO JUSTICE MODEL PROPOSALS WHICH THE AUTHORS CONSIDER CRITICAL FOR IMPROVEMENT OVER EXISTING STRUCTURE. (AUTHOR ABSTRACT)

111. **C. C. MCCALL. FUTURE OF PAROLE—IN REBUTTAL OF S.1437.** ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS, SUPREME COURT BUILDING, WASHINGTON, DC 20544. *FEDERAL PROBATION*, V 42, N 4 (DECEMBER 1978), P 3-10. **NCJ-56665**

THIS ARTICLE BY THE U.S. PAROLE COMMISSION CHAIRMAN EXPRESSES DISSATISFACTION WITH SENATE BILL 1437 AND ADVOCATES THE RETENTION OF PAROLE COMMISSION AS THE TERM SETTER FOR PRISON SENTENCES EXCEEDING 1 YEAR. SENATE BILL 1437 PROPOSES A SYSTEM OF CRIMINAL SENTENCING THAT WILL NOT ADEQUATELY ACHIEVE THE GOALS OF REDUCING SENTENCING DISPARITY AND UNCERTAINTY. HOWEVER, WITH AMENDMENTS WHICH COMBINE THE BEST FEATURES OF THE PAROLE COMMISSION ACT AND SENATE BILL 1437, A WORKABLE SYSTEM COULD BE DEVELOPED TO AVOID THE RISKS PRESENT IN THE UNREVISED BILL. JUDGES ARE PRESENTLY FREE TO IMPOSE, WITHIN THE STATUTORY LIMIT, WHATEVER SENTENCES ARE DEEMED APPROPRIATE. VALID EXERCISE OF JUDICIAL DISCRETION IS NOT REVIEWABLE. FOR PRISONERS ELIGIBLE FOR PAROLE, THE U.S. PAROLE COMMISSION HAS THE AUTHORITY TO DETERMINE THE ACTUAL LENGTH OF IMPRISONMENT WITHIN THE LIMITS OF THE JUDICIALLY IMPOSED SENTENCES. THE PROPOSED BILL EFFECTIVELY ELIMINATES THE PARTICIPATION OF THE COMMISSION. THIS CHANGE, HOWEVER, WILL PROBABLY NOT SUCCEED IN CREATING CONSISTENCY IN SENTENCING BECAUSE IT WILL COMPEL THE 500 FEDERAL JUDGES TO MAKE INDEPENDENT INTERPRETATIONS OF SENTENCING GUIDELINES. JUDGES HAVE NO INHERENT TENDENCY TOWARD UNIFORM DECISIONS, EVEN WHEN FACED WITH IDENTICAL FACTS, AND THE BILL LACKS ADEQUATE APPELLATE PROVISIONS TO CORRECT THE DISPARITIES. ARGUMENTS FOR THE RETENTION OF THE PAROLE REVIEW FUNCTION INCLUDE THE NEED TO OVERSEE FEDERAL JUDGES WHO MAY BE SUBJECT TO LOCAL PRESSURES AND THE NEED FOR FLEXIBILITY TO RESPOND TO CHANGING ATTITUDES TOWARD CERTAIN CRIMES. THE ENACTMENT OF SENATE BILL 1437 WOULD LEAD TO LONGER PRISON SENTENCES AND TO OVERCROWDING OF PRISONS. AN ALTERNATIVE BILL IS OFFERED WHICH RETAINS THE USE OF THE PAROLE COMMISSION. REFERENCES ARE PROVIDED.

Supplemental Notes: ARTICLE ABSTRACTED FROM TESTIMONY BEFORE THE HOUSE SUBCOMMITTEE ON CRIMINAL JUSTICE ON APRIL 7, 1978.

Availability: National Criminal Justice Reference Service MICROFICHE PROGRAM.

112. **R. A. MCGEE. CALIFORNIA'S NEW DETERMINATE SENTENCING ACT.** ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS, SUPREME COURT BUILDING, WASHINGTON, DC 20544. *FEDERAL PROBATION*, V 42, N 1 (MARCH 1978), P 3-10. **NCJ-47753**

THE CONTENT OF THE ACT IS EXPLAINED, FOLLOWED BY A COMMENTARY. CALIFORNIA'S NEW DETERMINATE SENTENCING ACT WENT INTO EFFECT JULY 1, 1978. THE GENERAL INTENT OF THE LAW CAN BE SUMMARIZED AS FOLLOWS: (1) A PRISON SENTENCE IS REGARDED AS A PUNITIVE SANCTION RATHER THAN COERCED TREATMENT WHOSE RATE AND DEGREE OF SUCCESS DETERMINE THE LENGTH OF PRISON STAY; (2) IT ATTEMPTS TO MAKE PENALTIES FOR EACH OFFENSE PRECISE; (3) THE DISCRETIONARY POWERS OF BOTH THE TRIAL COURTS AND LAY PAROLE BOARDS ARE REDUCED; (4) IT MAKES THE STATE JUDICIAL SYSTEM MORE OPENLY ACCOUNTABLE FOR SENTENCING IN THE CRIMINAL COURTS; AND (5) REHABILITATION SUCCESS IS STILL REWARDED THROUGH CREDITS FOR GOOD CONDUCT AND PARTICIPATION. IN THE APPLICATION OF RETROACTIVITY, THOSE ALREADY IN PRISON OR ON PAROLE UNDER THE OLD LAW ARE TO HAVE THEIR TERMS ADJUSTED BY THE COMMUNITY RELEASE BOARD IN COMPLIANCE WITH THE NEW ACT. UNDER THE ACT, THE COURT MAY EXTEND TERMS BEYOND PRESCRIBED SENTENCES FOR PARTICULAR OFFENSES IN CASES OF VIOLENT AND RECIDIVISTIC DEFENDANTS AND THERE IS VIRTUALLY NO CHANGE IN THE JUDGES'S POWER TO GRANT PROBATION IN LIEU OF PRISON IN CASES INVOLVING THE CONVICTION AND SENTENCE OF ADULT FELONS: THE ACT DOES NOT DEAL WITH THOSE FELONY CASES FOR YOUTHS BETWEEN 18 AND 21 YEARS OF AGE WHO HAVE BEEN TRIED AS ADULTS AND COMMITTED TO THE DEPARTMENT OF THE YOUTH AUTHORITY IN LIEU OF PRISON OR PROBATION. UNDER THE STATUTORY LANGUAGE OF THE YOUTH AUTHORITY ACT, YOUTHS SO COMMITTED CAN BE CONFINED UP TO THEIR 25TH BIRTHDAY AND ARE PAROLABLE WITHOUT RESPECT TO ANY STATUTORY MINIMUM TERM. IN 1976, HOWEVER, THE COURT DECISION OF PEOPLE V. OLIVAS HELD THAT THE YOUTH AUTHORITY BOARD COULD NOT HOLD CRIMINAL COURT WARDS IN CUSTODY LONGER THAN THEY MIGHT HAVE BEEN HELD IF THEY HAD BEEN SENTENCED TO PRISON OR JAIL AS ADULTS. AS A CONSEQUENCE, EACH YOUTH AUTHORITY CASE NOW HAS A MAXIMUM TERM COMPUTED ON THE BASIS OF THE DETERMINATE SENTENCE ACT.

113. **R. B. MCKAY. TESTIMONY OF ROBERT B MCKAY (FROM RESEARCH INTO CRIMINAL SENTENCING, 1978—SEE NCJ-62872).** US CONGRESS HOUSE COMMITTEE ON SCIENCE AND TECHNOLOGY, WASHINGTON, DC 20515. 14 p. 1978. **NCJ-62874**

SPEAKING IN FAVOR OF DETERMINATE SENTENCING, THE AMERICAN BAR ASSOCIATION COMMISSION ON CORRECTIONAL FACILITIES CHAIRMAN COMMENTS ON SENTENCING THEORIES AND CORRECTIONS AND SUGGESTS REFORMS. ALTHOUGH LARGE SUMS OF MONEY HAVE BEEN SPENT ON RESEARCH, PRINCIPALLY THROUGH THE LEAA, LITTLE PROGRESS HAS BEEN MADE IN UNDERSTANDING THE PROBLEMS OF CRIME IN THE UNITED STATES. EXPERTS DO NOT AGREE ABOUT BASIC ISSUES, SUCH AS REHABILITATION, DECRIMINALIZATION OF PROSTITUTION OR DRUG USE, OR SENTENCING OF WHITE-COLLAR CRIME. THE CURRENT INTEREST IN DETERMINATE SENTENCING DOES NOT REQUIRE ABANDONING THE EFFORTS TOWARD REHABILITATION, BUT IT DOES SHIFT THE EMPHASIS TO MAKE THE PUNISHMENT FIT THE CRIME. THE CRIMINAL JUSTICE SYSTEM ALSO LACKS CONCLUSIVE INFORMATION ON RECIDIVISM, THE DETERRENT EFFECTS OF CAPITAL PUNISHMENT, METHODS OF HELPING EX-OFFENDERS REINTEGRATE INTO SOCIETY, AND THE EFFECT OF HANDGUN CONTROLS ON CRIME.

A COORDINATED AND REALISTIC PLAN IS NEEDED TO GUIDE FUTURE ACTIVITIES, AND REFORMS WITHIN THE SYSTEM SHOULD CONCENTRATE ON IMPROVING THE FAIRNESS AND EFFICIENCY OF THE JUDICIAL PROCESS. THE SENTENCING STRUCTURE SHOULD BE REVISED, AND PAROLE DISCRETION ELIMINATED OR DRASTICALLY REDUCED. THE LEGISLATURE CAN PRESCRIBE NARROW LIMITS OF SENTENCES FOR OFFENSES, IT MAY DEFINE A PRESUMPTIVE SENTENCE, OR IT CAN DELEGATE THIS AUTHORITY TO A SENTENCING COMMISSION. ANY LEGISLATION SHOULD OFFER SANCTIONS OTHER THAN IMPRISONMENT, POSSIBLY RESTITUTION OR COMMUNITY SERVICE. THE LEAA AND THE FEDERAL RESEARCH EFFORT SHOULD BE REORGANIZED INTO A BODY THAT IS INDEPENDENT OF POLITICAL CONTROL BY ANY FEDERAL AGENCY.

Supplemental Notes: TESTIMONY GIVEN ON MAY 17, 1978.

114. **MINNESOTA SENTENCING GUIDELINES COMMISSION, SUITE 284 METRO SQUARE BUILDING, 7TH AND ROBERT STREETS, ST PAUL, MN 55101. MINNESOTA SENTENCING GUIDELINES COMMISSION—REPORT TO THE LEGISLATURE, JANUARY 1, 1980.** 58 p. 1980. **NCJ-69272**

THIS MINNESOTA COMMISSION REPORT TO THE STATE LEGISLATURE DESCRIBES GUIDELINES DEVELOPED TO SET FIXED PRISON TERMS FOR SPECIFIED OFFENSES, ELIMINATING SENTENCING DISPARITY. THE COMMISSION WAS MANDATED TO ESTABLISH STANDARD GUIDELINES FOR CIRCUMSTANCES UNDER WHICH OFFENDER IMPRISONMENT IS PROPER, AND FOR PRESUMPTIVE FIXED SENTENCING IN SUCH CASES. UNDER THE CURRENT SYSTEM, THE DISTRICT COURT JUDGES DECIDE WHETHER THE CONVICTED OFFENDERS SHOULD BE JAILED AND SET MAXIMUM SENTENCE LENGTHS WHICH ARE IN ESSENCE SYMBOLIC BECAUSE THE MINNESOTA CORRECTIONS BOARD (MCB) HAS THE AUTHORITY TO RELEASE PRISONERS AND THUS HOLDS THE REAL POWER TO ESTABLISH SENTENCE DURATION. THE COMMISSION BEGAN TWO MAJOR STUDIES IN 1979—A DISPOSITIONAL REVIEW WHICH EXAMINED JUDICIAL SENTENCING PRACTICES, AND A DURATIONAL STUDY WHICH EXAMINED THE RELEASING PRACTICES OF THE MCB. DATA ON ABOUT 50 PERCENT OF OFFENDERS CONVICTED IN FISCAL 1978 WERE COLLECTED FOR THE DISPOSITIONAL STUDY; IN ALL, 2,339 PRISONERS WERE SAMPLED. IN THE DURATIONAL STUDY, 847 CASES WERE SURVEYED, I.E., EVERY PERSON RELEASED IN FISCAL YEAR 1978. BOTH STUDIES EXAMINED DATA ON CURRENT OFFENSE, PRIOR CRIMINAL HISTORY, JUVENILE HISTORY, SOCIAL HISTORY, AND CRIMINAL JUSTICE AND SENTENCING INFORMATION. DATA FROM BOTH THE DISPOSITIONAL AND THE DURATIONAL STUDY WERE ANALYZED FOR FACTORS ASSOCIATED WITH IMPRISONMENT OR RELEASING DECISIONS MADE BY JUDGES AND THE MCB RESPECTIVELY. OFFENDERS' CRIMINAL HISTORIES AND OFFENSE SEVERITY WERE IDENTIFIED AS THE PRIMARY FACTORS ASSOCIATED WITH BOTH DECISIONMAKING PROCESSES. THESE RESULTS ENABLED THE COMMISSION TO SET UP A TWO-DIMENSIONAL GRID FOR DETERMINING APPROPRIATE JUDICIAL DECISIONS. A DISPOSITIONAL LINE REPRESENTS A MODIFIED 'JUST DESERTS' APPROACH, PRESUMING IMPRISONMENT FOR SUCH OFFENSES AS AGGRAVATED ROBBERY, ASSAULT, ARSON, CRIMINAL SEXUAL CONDUCT (FIRST DEGREE), KIDNAPPING (IF VICTIM HARMED), MANSLAUGHTER (FIRST DEGREE) AND MURDER (SECOND AND THIRD DEGREE). SENTENCE DURATION RANGE IS ESTABLISHED WITH REFERENCE TO THE CRIMINAL HISTORY INDEX. THE DURATIONAL OUTLINE SET UP BY THE COMMISSION IS BASED ON MCB POLICY AND SEVERAL PUNISHMENT PHILOSOPHY DURATIONAL MODELS. FAIR AND EFFECTIVE IMPLEMENTATION OF THE GUIDELINES WILL REQUIRE LEGISLATIVE CHANGES CONCERNING PROCEDURES FOR THE USE OF JUVENILE RECORDS, PRESENTENCE INVESTIGATION, AND SENTENCING GUIDELINES MONITORING. IF AP-

PROVED, THE GUIDELINES TAKE EFFECT MAY 1, 1980. THE SENTENCING GUIDELINES, GRID, OFFENSE SEVERITY REFERENCE TABLE, OFFENSES LISTS, REQUESTED LEGISLATION, AND DEFINITION OF TERMS ARE INCLUDED.

Availability: National Criminal Justice Reference Service MICROFICHE PROGRAM.

115. **B. NAON. WASHINGTON—REDIRECTING THE SENTENCING SYSTEM—STAFF REPORT.** WASHINGTON HOUSE OF REPRESENTATIVES, OFFICE OF PROGRAM RESEARCH, HOUSE OFFICE BUILDING, ROOM 202, OLYMPIA, WA 98504. 75 p. 1975. **NCJ-44377**

THE ABILITY OF WASHINGTON'S DETERMINATE SENTENCING STRUCTURE TO DETER CRIME AND REHABILITATE OFFENDERS IS ASSESSED, CHARGES THAT THE STRUCTURE IS DISCRIMINATORY AND INEQUITABLE ARE CONSIDERED, AND REFORMS ARE PROPOSED. THE MECHANICS OF SENTENCING IN WASHINGTON ARE DESCRIBED IN SECTIONS ON DIVERSIONARY PROGRAMS, DEFERRED PROSECUTION, SENTENCING ALTERNATIVES, AND PAROLE. RESEARCH SUGGESTING THAT REHABILITATIVE ASSUMPTIONS UNDERLYING INDETERMINATE SENTENCING STRUCTURES ARE FAULTY IS CITED. ARGUMENTS FOR AND AGAINST THE GENERAL AND INDIVIDUAL DETERRENT EFFECTS OF PUNISHMENT ARE NOTED. THE EQUITY OF THE DISCRETIONARY SYSTEM OF SENTENCING IS BROUGHT INTO QUESTION, WITH REFERENCES TO DISPARITY IN SENTENCING BY THE COURTS, DISPARITY IN SETTING RELEASE DATES BY PAROLE BOARDS, PAROLE BOARD USE OF BASE EXPECTANCY TABLES AND A SCALE OF OFFENSE SEVERITY IN DETERMINING RELEASE DATES, AND INTERFERENCE WITH THE HUMAN VALUES OF LIBERTY AND VOLITION. SENTENCING REFORM TRENDS ARE OUTLINED, AND RECOMMENDATIONS FOR REFORMS IN WASHINGTON ARE SET FORTH. THE RECOMMENDED SENTENCING STRUCTURE PROVIDES FOR A DETERMINATE SENTENCE FOR EACH CATEGORY IN THE STATE'S CRIMINAL CODE. EXTENDED TERMS FOR REPEAT AND DANGEROUS OFFENDERS ARE PROVIDED FOR. COURTS MAY SET SENTENCES WITHIN A RELATIVELY NARROW RANGE SUBJECT TO THE PRESENCE OF MITIGATING OR AGGRAVATING FACTORS. POLICIES WITH REGARD TO SUSPENDED AND DEFERRED SENTENCES FOR FIRST FELONY CONVICTIONS ARE PERMISSIVE. FISCAL AND HUMANITARIAN ARGUMENTS FOR THE PROPOSED REFORMS ARE PRESENTED. SUPPORTING MATERIALS, INCLUDING DETAILS OF THE PROPOSED SENTENCING STRUCTURE, ARE INCLUDED.

116. **NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS, 1155 EAST 60TH STREET, CHICAGO, IL 60637. UNIFORM LAW COMMISSIONERS' MODEL SENTENCING AND CORRECTIONS ACT.** 458 p. 1979. **NCJ-55600**

THE 1978 MODEL SENTENCING AND CORRECTIONS ACT IS PRESENTED IN DRAFT FORM AS DEVELOPED BY THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS UNDER THE SPONSORSHIP OF LEAA. SEVERAL MAJOR THEMES DISTINGUISH THE MODEL SENTENCING AND CORRECTIONS ACT: IT UNIFIES THE VARIOUS ELEMENTS OF THE CORRECTIONAL SYSTEM INTO ONE DEPARTMENT OF CORRECTIONS IN ORDER TO COORDINATE THE DEPLOYMENT OF SCARCE CORRECTIONAL RESOURCES; IT IMPLEMENTS THE LEGISLATIVE RESPONSIBILITY FOR DETERMINING BASIC CORRECTIONAL PURPOSES AND POLICIES; AND IT SEEKS TO REDUCE THE UNFAIRNESS AND INEFFECTIVENESS RESULTING FROM SENTENCING DISPARITY. THE ACT AUTHORIZES APPELLATE REVIEW OF SENTENCES, ABOLISHES PAROLE, AND PROVIDES FOR A WIDE VARIETY OF INMATE PROGRAMS GIVING OFFENDERS A GREATER VOICE IN, AND A GREATER INCENTIVE FOR, SELF-IMPROVEMENT. THE ACT RECOGNIZES THE INTERESTS OF VICTIMS IN THE SENTENCING AND CORRECTIONAL PROCESS. IT ALSO APPLIES TRADITIONAL MECHANISMS USED TO STRUCTURE

AND LIMIT GOVERNMENTAL DISCRETION TO SENTENCING AND CORRECTIONS. THE ACT IS DIVIDED INTO SIX ARTICLES, INCLUDING GENERAL PROVISIONS WHICH CONTAIN DEFINITIONS AND RULEMAKING PROCEDURES, A SECTION REGARDING ORGANIZATION OF THE DEPARTMENT OF CORRECTIONS, AND AN ARTICLE WHICH ESTABLISHES FUNDAMENTAL POLICIES AND PROCEDURES FOR SENTENCING CRIMINAL DEFENDANTS. AN ARTICLE ON TREATMENT OF CONVICTED AND CONFINED PERSONS DELINEATES THE PROTECTED INTERESTS OF CONFINED PERSONS (PHYSICAL SECURITY, MEDICAL CARE, PHYSICAL EXERCISE, LEGAL ASSISTANCE, RELIGIOUS FREEDOM, VISITS, SEARCHES, ETC.) AND REQUIRES THE ESTABLISHMENT OF GRIEVANCE PROCEDURES. GUIDELINES RELATING TO CORRECTIONAL MEDICATION, ASSIGNMENT, CLASSIFICATION, AND TRANSFER, AND TO DISCIPLINE, EMPLOYMENT, THE VOUCHER PROGRAM, WORKER'S COMPENSATION, AND COLLATERAL CONSEQUENCES OF CHARGE AND CONVICTION ARE PROVIDED. ARTICLE 5 ESTABLISHES A PROGRAM FOR ASSISTING THE VICTIMS OF CRIMINAL OFFENSES AND ARTICLE 6 PROVIDES FOR THE EFFECTIVE DATE OF THE ACT AND GOVERNS THE TRANSITION FROM PRIOR LAW TO THE PROVISIONS OF THE ACT. THE DOCUMENT INCLUDES PREFATORY NOTES AND COMMENTS.

Supplemental Notes: APPROVED AT THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS' ANNUAL CONFERENCE MEETING IN ITS 87TH YEAR, NEW YORK, NEW YORK, JULY 28-AUGUST 4, 1978.

Sponsoring Agency: US DEPARTMENT OF JUSTICE LEAA NATIONAL INSTITUTE OF LAW ENFORCEMENT AND CRIMINAL JUSTICE, 633 INDIANA AVENUE NW, WASHINGTON, DC 20531.

Availability: GPO Stock Order No. 027-000-00819-4; National Criminal Justice Reference Service MICROFICHE PROGRAM.

117. **NATIONAL COUNCIL ON CRIME AND DELINQUENCY, CONTINENTAL PLAZA, 411 HACKENSACK AVENUE, HACKENSACK, NJ 07601. FEDERAL SENTENCING AND PRISONS—IS THIS REFORM? 1437—STATEMENT BY THE NATIONAL COUNCIL ON CRIME AND DELINQUENCY, OCTOBER 26, 1977.** 13 p. 1977. **NCJ-54776**

THE NATIONAL COUNCIL ON CRIME AND DELINQUENCY URGES THE DEFEAT OF U.S. SENATE BILL S. 1437, A SENTENCING REFORM MEASURE. A SHORT HISTORY OF IMPRISONMENT IS PRESENTED. AFTER WORLD WAR II, THE PRISON POPULATION IN THE UNITED STATES DROPPED, REVERSING AN UPWARD TREND. THE HORRORS OF IMPRISONMENT DURING THE WAR AFFECTED THE WAYS IN WHICH SOCIETY VIEWED INCARCERATION. THIS EFFECT, HOWEVER, WORE OFF, AND THE PRISON POPULATION INCREASED UNTIL THE FEDERAL PRISON POPULATION REACHED A NEW HIGH IN 1961, THEN DECLINED ONCE AGAIN. BOTH POPULATION DROPS ARE ATTRIBUTED TO HUMANITARIAN CONCERNS STIMULATED BY RECENT WARS. THE BILL IS EXAMINED IN TERMS OF ITS IMPACT ON THE FOLLOWING: (1) PRISON SENTENCES, (2) SENTENCES OTHER THAN IMPRISONMENT, (3) PAROLE, (4) THE QUALITY OF LIFE IN FEDERAL PRISON, AND (5) OTHER PROVISIONS AFFECTING CORRECTION. IT IS PREDICTED THAT THE PASSAGE OF THE BILL WILL NOT REDUCE THE VIOLENCE, STRIKES, AND RIOTS PREVALENT IN FEDERAL PRISONS. THE CURRENT CLIMATE WILL NOT BE IMPROVED. IT IS RECOMMENDED THAT ALTERNATIVES TO IMPRISONMENT BE FOUND, SUCH AS THE SUBSTITUTION OF FINES FOR PRISON SENTENCES. THIS LEGISLATION IS ALSO CRITICIZED ON THE GROUNDS THAT ITS HARSH APPROACH TO PAROLE WILL KEEP MORE PRISONERS IN THE SYSTEM THAN ARE KEPT BY THE EXISTING LAW. IN REGARD TO THE QUALITY OF LIFE IN PRISON, NO PROVISIONS ARE MADE FOR DEALING WITH THE VIOLENCE, DREARINESS, AND HOPELESSNESS FOUND THERE. FINALLY, PROVISIONS FOR CONSECUTIVE OR CONCURRENT TERMS ARE NOT CONSID-

ERED TO BE INNOVATIVE. THE BILL IS SEEN AS PUNITIVE, NOT HUMANITARIAN.

Availability: National Criminal Justice Reference Service MICROFICHE PROGRAM.

118. **M. G. NEITHERCUTT and D. CRIM. PAROLE LEGISLATION. ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS, SUPREME COURT BUILDING, WASHINGTON, DC 20544. FEDERAL PROBATION, V 41, N 1 (MARCH 1977), P 22-26. NCJ-41669**

THIS ARTICLE PRESENTS AN OVERVIEW OF PROPOSED AND ENACTED LEGISLATION ON DETERMINATE SENTENCING AND THE USE OF PAROLE. SUMMARIES OF RECENTLY ENACTED LAWS IN INDIANA, MAINE, AND CALIFORNIA AND OF PROPOSALS IN ILLINOIS, MINNESOTA, AND WASHINGTON ARE PROVIDED. THE PHILOSOPHY UNDERLYING THESE LAWS IS ANALYZED AND THEIR IMPACT ASSESSED. (AUTHOR ABSTRACT MODIFIED)

119. **L. ORLAND. IS DETERMINATE SENTENCING AN ILLUSORY REFORM? AMERICAN JUDICATURE SOCIETY, SUITE 1606, 200 WEST MONROE STREET, CHICAGO, IL 60606. JUDICATURE, V 62, N 8 (MARCH 1979), P 381-389. NCJ-55581**

THE STATUTORY DETERMINATE SENTENCING STRUCTURE OF INDIANA IS CRITICIZED. AFTER AN EXAMINATION OF THE INDIANA LEGISLATION WHICH PROVIDES FOR DETERMINATE SENTENCING, THE FOLLOWING CONCERNS ARE EXPRESSED: (1) WELL-TRAINED TREATMENT STAFFS AND QUALITY TREATMENT PROGRAMS MAY BE JEOPARDIZED BY THE INTELLECTUAL PURITY OF A SENTENCING CODE WHICH DECLARES THAT REHABILITATION IS DEAD AND THAT THE PURPOSE OF SENTENCING IS TO PUNISH; (2) SENTENCING LEGISLATION THAT PURPORTS TO CREATE SENTENCING EQUALITY WILL POSSIBLY LEAD TO MORE LENGTHY SENTENCES; (3) DISCRETIONARY RELEASE ON CREDIT TIME BY PRISON DISCIPLINE COMMITTEES IS AT LEAST AS BAD, IF NOT WORSE, THAN RELEASE BY PAROLE BOARDS; (4) THE STRUCTURE OF THE NEW SENTENCING CODES, THE PROVISIONS FOR CONSECUTIVE SENTENCES AND LONG RECIDIVIST SENTENCES, AND THE DISCRETION GIVEN PROSECUTORS TO THREATEN INVOCATION OF THOSE PROVISIONS RAISE GRAVE RISKS THAT UNCONTROLLED JUDICIAL SENTENCING DISCRETION WILL BE REPLACED BY UNCONTROLLED PROSECUTORIAL PLEA BARGAINED SENTENCING; AND (5) THESE NEW SENTENCING CODES MAY WELL LEAD TO SUBSTANTIAL INCREASES IN THE PRISON POPULATION. DESPITE REHABILITATION'S CONSIDERABLE SHORTCOMINGS, IT IS A MISTAKE TO LEGISLATE IT OUT OF EXISTENCE AND, IN ITS PLACE, SUBSTITUTE A DRACONIAN SYSTEM OF SENTENCING WHICH WILL SUBSTANTIALLY INCREASE TIME SERVED IN PRISONS. AMERICAN PRISON SENTENCES ALREADY EXCEED THOSE OF MOST OTHER WESTERN NATIONS, AND TO EMBARK UPON REFORMS WHICH FURTHER INCREASE OUR PRISON POPULATIONS CAN ONLY EXPAND AN ALREADY HEAVY TAX BURDEN ON CITIZENS WHILE RETURNING US TO THE DAYS OF PUNITIVE CORRECTION. (AUTHOR ABSTRACT MODIFIED)

120. **H. S. PERLMAN and C. G. STEBBINS. IMPLEMENTING AN EQUITABLE SENTENCING SYSTEM—THE UNIFORM LAW COMMISSIONERS' MODEL SENTENCING AND CORRECTIONS ACT. VIRGINIA LAW REVIEW ASSOCIATION UNIVERSITY OF VIRGINIA SCHOOL OF LAW, CHARLOTTESVILLE, VA 22901. VIRGINIA LAW REVIEW, V 65, N 7 (NOVEMBER 1979), P 1175-1285. NCJ-66774**

THE MODEL SENTENCING AND CORRECTIONS ACT PROVIDES FOR A SENTENCING PROCESS COMMITTED TO EQUITABLY ALLOCATING PENALTIES AMONG CRIMINAL OFFENDERS. IMPLEMENTATION PROBLEMS OF THIS SENTENCING REFORM ARE EXAMINED. THE MODEL SENTENCING AND CORRECTIONS ACT, AS PROMULGATED BY THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE

LAWS, IS A PROPOSAL THAT ENCOMPASSES THE FULL RANGE OF ISSUES, RECOGNIZING THAT SENTENCING POWER IS DISPERSED WIDELY TO NUMEROUS AGENCIES AND INDIVIDUALS IN THE CRIMINAL JUSTICE SYSTEM AND THAT REFORM EFFORTS MUST EXTEND BEYOND THE COURTROOM OF THE SENTENCING JUDGE. FOR THIS REASON, THE SENTENCING REFORM POSSIBILITIES EVALUATED HERE ARE CONSIDERED IN RELATION TO SPECIFIC LEVELS OF SENTENCING POWER IN THE CRIMINAL JUSTICE SYSTEM. THE LEGISLATURE'S ROLE IN ESTABLISHING PARAMETERS OF DETERMINATE SENTENCING IS DISCUSSED FIRST, THE ANALYSIS ADDRESSING THE PURPOSES AND PRINCIPLES OF SENTENCING AND THE NATURE AND SELECTION OF SENTENCING VARIABLES. IN ADDITION, SENTENCING ALTERNATIVES, CONCURRENT AND CONSECUTIVE SENTENCES, AND THE MAXIMUM LENGTH OF STATUTORY SENTENCES ARE DISCUSSED. SECOND, THE PROPOSED SENTENCING COMMISSION'S ROLE IS EXPLAINED ON THE BASIS OF THE COMMISSION'S INTENDED PURPOSE—THE SENTENCING GUIDELINES IT IS EXPECTED TO CONSTRUCT. THIRD, THE COURT'S SENTENCING POWER IS ANALYZED THROUGH THE STUDY OF SENTENCING GUIDELINES, DEVIATION FROM APPELLATE REVIEW, AND SUSPENDED SENTENCES. FOURTH, SENTENCING POWER OF THE PAROLE BOARD IS ADDRESSED. THIS BODY IS DEEMED UNNECESSARY UNDER THE PROPOSED DETERMINATE SENTENCING SYSTEM. ITS PRESENT FUNCTIONS OF AFFECTING INMATE DISCIPLINE AND CONTROL, RELIEVING PRISON OVERCROWDING, AMELIORATING DISPARITY OF SENTENCING, AND PROVIDING COMPASSION ARE EVALUATED. FINALLY, THE SENTENCING POWERS OF THE PROSECUTORS AND THE CORRECTIONAL BUREAUCRACY ARE DISCUSSED. SENTENCING REFORM IS URGED ON AS WIDE A SCALE AS IS OUTLINED HERE; I.E., THROUGHOUT THE SYSTEM. FOOTNOTES AND SELECTED SENTENCING PROVISIONS ARE PROVIDED.

Supplemental Notes: PRICE QUOTED FOR FRED B. ROTHMAN AND COMPANY IS FOR ENTIRE ISSUE.

Availability: FRED B. ROTHMAN, 10368 W CENTENNIAL RD, LITTLETON, CO 80123; INSTITUTE FOR SCIENTIFIC INFORMATION, 3501 MARKET STREET, UNIVERSITY CITY SCIENCE CENTER, PHILADELPHIA, PA 19104.

121. **J. W. RUSHFORD, Ed. CALIFORNIA—UNIFORM DETERMINATE SENTENCING ACT, 2ND EDITION. CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION, 555 CAPITOL MALL, SUITE 1545, SACRAMENTO, CA 95814. 581 p. 1979. NCJ-61063**

PREPARED BY THE CALIFORNIA DISTRICT ATTORNEYS' ASSOCIATION, THIS MANUAL DESCRIBES STATUTES ENACTED IN THE WAKE OF THE UNIFORM DETERMINATE SENTENCING ACT OF 1976. DETERMINATE SENTENCING GAVE CALIFORNIA THE OPPORTUNITY TO TREAT OFFENDERS WITH A GREATER CERTAINTY OF EXACT PUNISHMENT THAN WAS POSSIBLE WITH INDETERMINATE SENTENCING. THE RESULT HAS BEEN AN INCREASE IN THE NUMBER OF STATE PRISON COMMITMENTS. CONTROVERSY OVER WHETHER THESE PRISON COMMITMENTS ARE INAPPROPRIATELY SHORT FOR VIOLENT CRIMES IS LEFT TO LEGISLATIVE DETERMINATION. DEATH PENALTIES, LIFE SENTENCES WITHOUT PAROLE, LIFE SENTENCES, PRISON FOR 25 YEARS TO LIFE, AND PRISON FOR 15 YEARS TO LIFE ARE SET BY JUDGES. OPERATIVE SECTIONS OF THE UNIFORM DETERMINATE SENTENCING ACT CONCERN CONSECUTIVE SENTENCING, ENHANCEMENTS, PROBATION AND PSYCHOLOGICAL EVALUATION, CREDIT, PAROLE, AND COMMUNITY RELEASE. THE COMPREHENSIVE SENTENCING MANUAL IS DESIGNED TO AID JUDGES, PROSECUTORS, CRIMINAL DEFENSE BAR MEMBERS, AND OTHER CRIMINAL JUSTICE PERSONNEL WHO HAVE DAILY CONTACT WITH SENTENCING CONSIDERATIONS. IT INCLUDES SENTENCING TABLES, A MENTALLY DISORDERED SEX OFFENDER SECTION, A PAROLE SECTION, A

SUMMARY OF DETERMINATE SENTENCING, AND THE TEXT OF COMMUNITY RELEASE BOARD REGULATIONS. ADDITIONALLY INCORPORATED ARE JUDICIAL COUNCIL SENTENCING RULES AND ARTICLES FROM THE CALIFORNIA CENTER FOR JUDICIAL EDUCATION. CHARTS, WORKSHEETS, AND FORMS RELEVANT TO SENTENCING ARE PROVIDED. CALIFORNIA YOUTH AUTHORITY PAROLE REGULATIONS, THE CALIFORNIA JUDGES BENCH GUIDE, INSTRUCTIONS FOR COMPLETING THE JUDICIAL COUNCIL ABSTRACT OF JUDGMENT FORM, AND INFORMATION ON DETERMINATE SENTENCE PROBLEMS ARE APPENDED. AN INDEX IS INCLUDED.

Sponsoring Agencies: US DEPARTMENT OF JUSTICE NATIONAL INSTITUTE OF JUSTICE, 633 INDIANA AVENUE NW, WASHINGTON, DC 20531; CALIFORNIA OFFICE OF CRIMINAL JUSTICE PLANNING, 7171 BOWLING DRIVE, SACRAMENTO, CA 95823; AHMANSON FOUNDATION, 3731 WILSHIRE BLVD, LOS ANGELES, CA 90010.

Availability: CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION, 555 CAPITOL MALL, SUITE 1545, SACRAMENTO, CA 95814.

122. **K. SKRIVSETH. ABOLISHING PAROLE—ASSURING FAIRNESS AND CERTAINTY IN SENTENCING. HOFSTRA UNIVERSITY SCHOOL OF LAW, HEMPSTEAD, NY 11550. HOFSTRA LAW REVIEW, V 7, N 2 (WINTER 1979), P 281-314. NCJ-61828**

THE PERCEIVED STRENGTHS OF SENATE BILL S. 1437, CREATING SENTENCING GUIDELINES, ARE DISCUSSED, AND AN AMENDMENT ABOLISHING PAROLE IS PROPOSED. SENATE BILL S. 1437 PROVIDES THE BENEFITS OF FOCUSING FEDERAL SENTENCING LAW AWAY FROM THE OUTDATED THEORY OF REHABILITATION, THEREBY PERMITTING A MORE BALANCED APPROACH TO SENTENCING; CREATING SENTENCING GUIDELINES FOR JUDGES WHICH WOULD PROVIDE FOR FAIRER SENTENCES, REDUCE UNWARRANTED DISPARITY IN SENTENCING; AND HAVE THE SENTENCING JUDGE RATHER THAN THE PAROLE COMMISSION DETERMINE THE APPROPRIATE EFFECTS OF OFFENSE AND OFFENDER CHARACTERISTICS ON A PRISONER'S RELEASE DATE, WITH THE PAROLE COMMISSION DETERMINING THE EFFECT THAT SUBSEQUENT EVENTS SHOULD HAVE ON THE RELEASE DATE IN THOSE UNUSUAL CASES IN WHICH PROGRESS IN A CORRECTIONAL PROGRAM IS RELEVANT TO THE RELEASE DATE. CONTINUAL REFINEMENT OF FEDERAL SENTENCING POLICY AND PRACTICES IS PERMITTED UNDER THE BILL BY PROVIDING FOR EVALUATION OF THE EFFECTIVENESS OF THE SENTENCING GUIDELINES AND FOR APPELLATE OPINIONS REGARDING SENTENCES OUTSIDE THE GUIDELINES. AMENDING S. 1437 TO ABOLISH PAROLE WOULD ELIMINATE THE LAST VESTIGES OF INDETERMINATE SENTENCING. THIS WOULD ALLOW BOTH OFFENDERS AND THE PUBLIC TO KNOW THAT AN ANNOUNCED PRISON SENTENCE IS THE ACTUAL LENGTH OF TIME AN OFFENDER WILL BE IN PRISON. ABOLISHING PAROLE WOULD ALSO ELIMINATE THE CURRENT COSTLY DUPLICATION OF EFFORT THAT EXISTS BECAUSE BOTH THE SENTENCING JUDGE AND THE PAROLE COMMISSION EVALUATE INFORMATION AVAILABLE AT THE TIME OF SENTENCING, OFTEN WITH DIFFERING RESULTS. ABOLISHING PAROLE WOULD HAVE A FAVORABLE EFFECT UPON PRISON DISCIPLINE AND PARTICIPATION IN REHABILITATION PROGRAMS, BECAUSE OF THE CERTAINTY OF THE RELEASE DATE, WHICH PROVIDES AN INCENTIVE TO PLAN FOR THE FUTURE. POSTRELEASE SUPERVISION WOULD BE LIMITED TO RELEASEES WHO MOST NEED IT, AND ALL OTHER RELEASEES WOULD HAVE SERVICES AVAILABLE IN A NONCOERCIVE CONTEXT. FOOTNOTES ARE PROVIDED.

123. **R. J. STANKO. IS OHIO HOUSE BILL 313 LEGISLATIVE PANIC? IF PASSED, THIS BILL VIRTUALLY ELIMINATES PAROLE IN OHIO. PENNSYLVANIA ASSOCIATION ON PROBATION, PAROLE & CORRECTION, 4075 MARKET STREET, CAMP HILL, PA 17011. QUARTERLY, V 35, N 2 AND 3, JUNE AND SEPTEMBER 1978, P 82-88. NCJ-54399**

OHIO HOUSE BILL 313, WHICH CHANGES THE METHOD OF SENTENCING FOR A FELONY CONVICTION FROM AN INDETERMINATE METHOD TO A DETERMINATE (FIXED) SENTENCE IS DISCUSSED. THE BASIC PHILOSOPHY SUPPORTING INDETERMINATE SENTENCING IS THAT CRIMINALS CAN BE REHABILITATED AND THAT PUNISHMENT SHOULD FIT THE CRIMINAL AND NOT THE CRIME. DETERMINATE SENTENCING, ON THE OTHER HAND, IS STEEPED IN THE PHILOSOPHY THAT SENTENCING SHOULD BE DESIGNED FOR PUNISHMENT. OHIO HOUSE BILL 313 WOULD SET FELONY PENALTIES BY STATUTE. THIS WOULD RADICALLY REDUCE THE AMOUNT OF A JUDGE'S ALLOWED DISCRETION. UNDER THE NEW BILL, THERE WOULD BE ONLY FOUR INSTANCES OF MITIGATING OR AGGRAVATING CIRCUMSTANCES, WHICH CARRY A SET NUMBER OF YEARS TO BE ADDED OR SUBTRACTED FROM THE SENTENCE DEPENDING WHETHER THE DEFENDANT IS A FIRST, REPEAT, OR DANGEROUS OFFENDER: (1) THE OFFENSE NEITHER CAUSED NOR THREATENED SERIOUS PHYSICAL HARM TO PERSON OR PROPERTY; (2) THE OFFENSE WAS THE RESULT OF CIRCUMSTANCES NOT LIKELY TO REOCCUR; (3) THE DEFENDANT ATTEMPTED OR INFLECTED SERIOUS BODILY INJURY ON ANOTHER; AND (4) THE DEFENDANT BY THE DUTIES OF HIS OFFICE WAS OBLIGED TO PREVENT THE PARTICULAR OFFENSE OR TO BRING THE OFFENDERS COMMITTING IT TO JUSTICE. ONCE SENTENCED, THE OFFENDER IS ALLOWED TO ACCUMULATE 'GOOD TIME' IN PRISON. THE BASIC ARGUMENT IN FAVOR OF REDUCING DISCRETION IS THAT IT HAS BEEN ABUSED AT ALL LEVELS. OPPONENTS OF THE BILL CLAIM THAT THE NEW LEGISLATION MERELY REMOVES DISCRETION FROM THE COURTS AND CORRECTIONS AND PLACES IT ALL IN THE HANDS OF POLICE AND PROSECUTION. PAROLE WILL VIRTUALLY DISAPPEAR. GROUPS SUPPORTING THE BILL FEEL THAT REHABILITATION HAS FAILED AND THAT DETERRENCE EFFORTS SHOULD BE STRENGTHENED. SWIFT AND HARSH PENALTIES ARE VIEWED AS NECESSARY TO DETERRENCE. GROUPS IN FAVOR OF THE BILL ALSO CITE RECIDIVISM RATES AS EVIDENCE AGAINST THE REHABILITATIVE PROGRAMS IN OHIO. GROUPS ARE NOT IN AGREEMENT OVER THE IMPACT THAT BILL 313 WILL HAVE ON THE PRISON POPULATION. A SELECTED BIBLIOGRAPHY IS APPENDED. (AUTHOR ABSTRACT MODIFIED)

124. **R. SWEET. WISCONSIN—INDETERMINATE SENTENCING AND ALTERNATIVES.** WISCONSIN LEGISLATIVE COUNCIL, ROOM 147 NORTH, STATE CAPITOL, MADISON, WI 53702. 39 p. 1978. **NCJ-54103**

AN EXAMINATION OF INDETERMINATE SENTENCING AND ITS ALTERNATIVES IS PRESENTED IN A BRIEF PREPARED BY LEGISLATIVE COUNCIL STAFF FOR A SPECIAL COMMITTEE ON DETERMINATE SENTENCING OF THE WISCONSIN LEGISLATURE. WISCONSIN'S EXISTING SYSTEM OF INDETERMINATE SENTENCING IS OUTLINED, AND BILLS INTRODUCED IN THE 1977 LEGISLATIVE SESSION PERTAINING TO SENTENCING POLICY ARE REVIEWED. DETERMINATE SENTENCING STATUTES IN MAINE, CALIFORNIA, INDIANA, AND ILLINOIS ARE EXAMINED, AND ARGUMENTS FOR AND AGAINST INDETERMINATE SENTENCING ARE OUTLINED. THE REPORT NOTES THAT WISCONSIN'S EXISTING SYSTEM GIVES THE PAROLE BOARD CONSIDERABLE DISCRETION IN DECIDING HOW LONG AN INMATE REMAINS IN PRISON. SEVERAL BILLS HAVE BEEN INTRODUCED IN THE WISCONSIN LEGISLATURE TO IMPOSE MANDATORY MINIMUM SENTENCES FOR SPECIFIC CRIMES OR OTHERWISE TO INCREASE THE AMOUNT OF TIME THAT MUST BE SERVED PRIOR TO BECOMING ELIGIBLE FOR PAROLE, BUT NONE OF THE BILLS HAS BEEN ENACTED. DETERMINATE SENTENCING STATUTES IN OTHER STATES ALL REDUCE OR ELIMINATE PAROLE BOARD DISCRETION. MAINE, ILLINOIS, AND INDIANA GIVE THE COURTS A GREAT DEAL OF DISCRETION IN SETTING SENTENCES, WHILE CALIFORNIA LIMITS THE RANGE OF SENTENCING ALTERNATIVES

AVAILABLE TO THE COURTS. THE MAIN ARGUMENTS FOR INDETERMINATE SENTENCING ARE THAT IT GRANTS JUDGES NEEDED FLEXIBILITY, PROVIDES INCENTIVES FOR INMATES TO REHABILITATE THEMSELVES, AND ALLOWS THE CRIMINAL JUSTICE SYSTEM TO ACCOMMODATE THE PUBLIC'S CHANGING VIEWS OF CRIME. ARGUMENTS IN FAVOR OF DETERMINATE SENTENCING ARE THAT IT ALLOWS SENTENCE LENGTH TO BE DETERMINED BY OFFICIALS WHO ARE ACCOUNTABLE TO THE PUBLIC, ELIMINATES SENTENCING DISPARITY, AND REDUCES THE SENSE OF UNCERTAINTY THAT BREEDS FRUSTRATION AND VIOLENCE AMONG INMATES. APPENDED MATERIALS INCLUDE A PAMPHLET EXPLAINING FLAT-TIME SENTENCING AND ARTICLES ARGUING FOR AND AGAINST INDETERMINATE SENTENCING. A BIBLIOGRAPHY IS INCLUDED.

Supplemental Notes: STAFF BRIEF 78-6.

125. **US CONGRESS HOUSE COMMITTEE ON SCIENCE AND TECHNOLOGY, WASHINGTON, DC 20515. RESEARCH INTO CRIMINAL SENTENCING—HEARINGS BEFORE THE HOUSE SUBCOMMITTEE ON DOMESTIC AND INTERNATIONAL SCIENTIFIC PLANNING, ANALYSIS, AND COOPERATION, 95TH CONGRESS, 2ND SESSION, MAY 16, 17, 1978.** 193 p. 1978. **NCJ-62872**

WITNESSES WITH RESEARCH EXPERIENCE PRESENT VARIOUS OPINIONS ON SENTENCING REFORM BEFORE THE HOUSE OF REPRESENTATIVES DURING A SESSION ON POSSIBLE REVISIONS TO THE U.S. CRIMINAL CODE. AFTER AN INTRODUCTORY STATEMENT BY THE COMMITTEE CHAIRMAN, A PROFESSOR OF LAW FROM HARVARD UNIVERSITY COMMENTED ON DISPARITIES IN THE CURRENT SENTENCING SYSTEM, CRITICIZED FLAT-TIME SENTENCING, AND ESPOUSED PRESUMPTIVE SENTENCING AS WELL AS SENTENCING COMMISSION TO DEVELOP GUIDELINES. A U.S. DISTRICT JUDGE CONCURRED WITH THE FIRST WITNESS AND ELABORATED ON THE CONCEPT OF A SENTENCING COMMISSION, WHILE A PRIVATE ATTORNEY WITH EXPERIENCE IN NEW YORK CITY GOVERNMENT ENDORSED PRESUMPTIVE SENTENCING, BUT EXPRESSED CONCERN OVER ITS EFFECTS ON OVERCROWDED PRISONS AND OTHER SUCH FACILITIES. THE COMMITTEE THEN HEARD DISSENTING COMMENTS FROM THE PRESIDENT OF THE AMERICAN JUSTICE INSTITUTE. THE DEAN OF THE CHICAGO LAW SCHOOL BEGAN THE SECOND DAY OF HEARINGS BY CATEGORIZING TRENDS IN SENTENCING REFORM AS THOSE WHICH RELY ON THE LEGISLATURE TO DEFINE CATEGORIES OF CRIME AND AGGRAVATING AND MITIGATING CIRCUMSTANCES AND THOSE WHICH DELEGATE THESE RESPONSIBILITIES TO SENTENCING COMMISSIONS. THE HEAD OF AN AMERICAN BAR ASSOCIATION COMMITTEE ON CORRECTIONAL FACILITIES AND SERVICES FAVORED DETERMINATE SENTENCING, DIRECTING HIS REMARKS TO THE DIVISION OF SENTENCING RESPONSIBILITY BETWEEN THE LEGISLATIVE AND JUDICIAL BRANCHES, JAIL STANDARDS, AND CRIMINAL JUSTICE RESEARCH. REMAINING WITNESSES WERE FROM ACADEMIC INSTITUTIONS AND COMMENTED ON STATE DETERMINATE SENTENCING SYSTEMS, SENTENCING COMMISSION VERSUS LEGISLATIVELY MANDATED SENTENCING FORMULAS, AND RESPONSIBILITIES OF A SENTENCING COMMISSION. A SUMMARY OF A 1978 REPORT BY A PANEL OF THE NATIONAL ACADEMY OF SCIENCES CONCERNING RESEARCH INTO THE RELATIONSHIPS BETWEEN CRIME, DETERRENCE, AND INCAPACITATION IS INCLUDED. AN ADDITIONAL STATEMENT FROM THE AMERICAN BAR ASSOCIATION IS APPENDED WHICH OPPOSES SEVERAL SENTENCING PROVISIONS OF THE LEGISLATION.

126. **A. VON HIRSCH. NEW INDIANA SENTENCING CODE—IS IT INDETERMINATE SENTENCING? (FROM ANATOMY OF CRIMINAL JUSTICE—A SYSTEM OVERVIEW, 1980, BY CLEON H FOUST AND D ROBERT WEBSTER SEE NCJ-64520).** HEATH LEXINGTON BOOKS, 125 SPRING STREET, LEXINGTON, MA 02173. 13 p. 1980. **NCJ-64527**

ALTHOUGH INDIANA'S NEW SENTENCING CODE AIMS AT PUNISHMENTS THAT ARE PREDICTABLE AND COMMENSURATE WITH A CRIME'S GRAVITY, THE CODE'S PARTICULARS MAKE IT QUESTIONABLE THAT THESE GOALS ARE BEING MET. ENHANCING PREDICTABILITY OF A PUNISHMENT REQUIRES STANDARDS IN SETTING PUNISHMENT AND INFORMING OFFENDERS OF THEIR PRISON STAY. EARLIER SENTENCING PRACTICES STRESSING REHABILITATION REQUIRED AN OFFENDER TO REMAIN IMPRISONED UNTIL OFFICIALS PRONOUNCED HIM 'CURED'; HOWEVER, THIS HAS BEEN REJECTED AS UNFAIR BY INDIANA. NEVERTHELESS, ALTHOUGH THE NEW INDIANA CODE SETS SENTENCES FOR ALL TYPES OF FELONIES, STIPULATIONS ABOUT MITIGATING OR AGGRAVATING CIRCUMSTANCES GIVE JUDGES AND CORRECTIONAL OFFICIALS GREAT DISCRETION. FOR EXAMPLE, SENTENCES FOR ARMED ROBBERY MAY VARY FROM 6 TO 20 YEARS, OR RAPE WITH A WEAPON, FROM 20 TO 50 YEARS. MOREOVER, UNDER THE NEW LAW AN OFFENDER IS CREDITED 50 PERCENT OF HIS SENTENCE FOR GOOD BEHAVIOR, A RIGHT WHICH HE LOSES IF HE VIOLATES ANY REGULATION OF THE CORRECTIONS DEPARTMENT. THUS, A PRISONER CANNOT BE CERTAIN OF HIS PRISON TERM REGARDLESS OF HIS SENTENCE. PENALTY SEVERITY HAS GREATLY INCREASED FOR MOST CRIMES, AND THE JUSTICE OF THIS IS QUESTIONED. ALSO, AS SENTENCES TEND TO BE BYPASSED OR PLEA-BARGAINED AS THEY BECOME MORE SEVERE, THE PRACTICALITY OF THESE SEVERE SENTENCES IS QUESTIONED. IT IS RECOMMENDED THAT INDIANA INVEST OFFENDERS WITH CREDIT TIME TO MAKE SENTENCES LENGTH MORE CERTAIN, AND REDUCE SENTENCE LENGTHS. NOTES AND TABLES ARE INCLUDED.

IMPACT ON CORRECTIONS

127. **T. ANAYA. CORRECTIONS IN STATE OF NEW MEXICO (FROM REHABILITATION WHAT PART OF CORRECTIONS? 1977, BY BRENDA BRADSHAW AND PETER J ECK—SEE NCJ-56718).** UNIVERSITY OF TEXAS AT ARLINGTON RESEARCH AND SERVICE DIVISION INSTITUTE OF URBAN STUDIES, ARLINGTON, TX 76019. 9 p. 1977. **NCJ-56726**

A NEW DETERMINATE SENTENCING LAW IN NEW MEXICO IS EXPLAINED, AND ITS IMPLICATIONS FOR CORRECTIONS IN THE STATE ARE CONSIDERED. A NEW SENTENCING BILL IN NEW MEXICO (SENATE BILL 18), WHICH BECOMES EFFECTIVE JULY, 1979, PROVIDES THAT COURTS SET PRECISE PRISON SENTENCES FOR VARIOUS KINDS AND DEGREES OF OFFENSES. THIS PROVISION FOR DETERMINATE SENTENCING REPLACES THE STATE'S PRACTICE OF INDETERMINATE SENTENCING. UNDER THE NEW ACT, AN OFFENDER MUST SERVE THE SPECIFIED SENTENCE BEFORE HE IS RELEASED ON 2-YEAR MANDATORY PAROLE. WHILE 'GOOD TIME' CAN BE ACCUMULATED AT THE RATE OF 12 DAYS PER MONTH, IT WILL BE RESERVED ONLY FOR THOSE WHO CONFORM TO THE STANDARDS OF PRISON AUTHORITIES. IT IS LIKELY THAT THE EFFECT OF THIS NEW LEGISLATION, WHICH WAS APPARENTLY ENACTED IN RESPONSE TO PUBLIC PRESSURE FOR HARsher AND MORE PREDICTABLE PUNISHMENT FOR OFFENDERS, WILL BE AN EXPANDED PRISON POPULATION. THE NEW MEXICO DEPARTMENT OF CORRECTIONS HAS ESTIMATED THAT WITH THE NEW SENTENCING LAW IN EFFECT, THE ADULT PRISON POPULATION COULD BE BETWEEN 5,000 AND 6,000 INMATES BY 1985, COMPARED TO A CURRENT POPULATION OF APPROXIMATELY 1500. IT WILL TAKE FROM 215 MILLION TO 315 MILLION DOLLARS TO HOUSE HUMANELY THIS EXPANDED PRISON POPULATION. WITH MORE FREQUENT AND LONGER PRISON TERMS, IT IS TO BE EXPECTED THAT THE DEBILITATING AND CRIMINALIZING EFFECTS OF PRISON WILL AGGRAVATE, RATHER THAN DECREASE, CRIME RATES. THE NEED FOR QUALITY INMATE REHABILITATION PROGRAMS WILL INCREASE WHILE THE DOLLARS AVAILABLE FOR SUCH PROGRAMS MAY DECREASE. IF THE REHABILITATION GOALS OF CORRECTIONS ARE NOT TO BE UNDERMINED BY RECENT TRENDS IN PUBLIC ATTITUDES AND POLITICAL EXPEDIENCY, PROFESSIONALS AND CITIZENS WHO RECOGNIZE THE IMPORTANCE OF PROVIDING JOB TRAINING, EDUCATIONAL IMPROVEMENT, AND POSTRELEASE COMMUNITY SUPPORT FOR EX-OFFENDERS MUST INFLUENCE THE POLITICAL PROCESS IN THESE DIRECTIONS.

128. **J. F. BARD. PRELIMINARY ANALYSIS OF A MUNICIPAL CRIMINAL JUSTICE SYSTEM.** AEROSPACE CORPORATION, 955 L'ENFANT PLAZA, SW, SUITE 4000, WASHINGTON, DC 20024. 151 p. 1976. **NCJ-42136**

THIS REPORT PRESENTS THE RESULTS OF A PRELIMINARY STUDY OF THE CRIMINAL JUSTICE SYSTEM WHICH WAS CONDUCTED IN AN EFFORT TO PROVIDE A QUANTITATIVE DESCRIPTION OF THE SYSTEM AND TO EVALUATE THE EFFECTS OF POLICY CHANGES. THE STUDY ATTEMPTED TO RELATE THE PRIMARY SYSTEM GOAL OF CRIME CONTROL TO A SET OF POLICY ALTERNATIVES DISTRIBUTED OVER EACH CRIMINAL JUSTICE SECTOR. A SIMULATION MODEL BASED ON THE TECHNIQUES OF 'INDUSTRIAL DYNAMICS' WAS DEVELOPED TO EVALUATE COMBINATIONS OF THE FOLLOWING POLICIES: SPEEDY TRIAL, ELIMINATION OF PLEA BARGAINING, RESTRICTED BAIL, AND DETERMINATE SENTENCING. THE ULTIMATE GOAL WAS TO PROVIDE A STRONGER BASIS FOR PLANNING BY DETERMINING THE CONSEQUENCES OF OPERATIONAL CHANGE. THE RESULTS OF THE ANALYSIS SUGGEST THAT THE SYSTEM IS BASICALLY INSENSITIVE TO SMALL PERTURBATIONS, BUT IS SUSCEPTIBLE TO DISRUPTION FROM LARGE CHANGES IN INPUT AND PROCEDURE. IT WAS CONCLUDED THAT, UNDER THE GIVEN ASSUMPTIONS, CONTINUATION OF CURRENT PRACTICES WILL LEAD TO A GRADUAL DECLINE IN PERFORMANCE THAT CAN ONLY BE STEMMED BY LARGE EXPENDITURES ON MANPOWER AND FACILITIES. (AUTHOR ABSTRACT MODIFIED)

Availability: AEROSPACE CORPORATION, P O BOX 92957, LOS ANGELES, CA 90009; National Criminal Justice Reference Service MICROFICHE PROGRAM.

129. **R. BEAUVAIS. USE OF COMPUTER-GENERATED DATA BY THE CORRECTIONAL ADMINISTRATOR (FROM OBSCIS COMPENDIUM—PROCEEDINGS FROM THE OBSCIS SEMINAR, 1978, BY ALLEN H LAMMERS—SEE NCJ-51740).** SEARCH GROUP INC, 925 SECRET RIVER DRIVE, SACRAMENTO, CA 95831. 13 p. 1978. **NCJ-51741**

THE NEW MEXICO DEPARTMENT OF CORRECTIONS' USE OF AN AUTOMATED INFORMATION SYSTEM IN PLANNING, MONITORING, AND RESPONDING TO EXECUTIVE AND LEGISLATIVE MANDATES IS DESCRIBED. NEW MEXICO'S OFFENDER-BASED STATE CORRECTIONS INFORMATION SYSTEM (OBSCIS) PROVIDES ADMINISTRATORS WITH HISTORICAL DATA FOR TREND ANALYSIS, WITH POINT-IN-TIME DATA ON PRISON POPULATIONS AND INDIVIDUAL CLIENTS, AND WITH PROJECTIONS FOR DEVELOPMENT OF CAPITAL

BUILDING REQUESTS AND BUDGETS. THE SYSTEM ALSO MAKES IT POSSIBLE FOR ADMINISTRATORS TO RESPOND READILY TO INQUIRIES FROM ELECTED OFFICIALS, THE MEDIA, CLIENTS' FAMILIES, AND OTHERS. THE SYSTEM'S APPLICATION IN PROGRAM DECISIONMAKING IS ILLUSTRATED IN THE GENERATION OF INMATE POPULATION MATRICES FOR USE IN DESIGNING A PROGRAM FOR A NEWLY AVAILABLE TREATMENT FACILITY AND ASSIGNING CLIENTS TO THE PROGRAM. BY PROVIDING DATA ON GRIEVANCE RESOLUTION, RECIDIVISM, TRENDS IN DISCIPLINARY INFRACTIONS, ESCAPE STATUS, AND TIME SPENT IN SEGREGATION, OBSCIS AIDS IN THE MONITORING OF THE EFFECTIVENESS AND EQUITABILITY OF THE CORRECTIONS PROGRAM. TWO INFORMATION SUBSYSTEMS, BUDGET ACCOUNTING AND AFFIRMATIVE ACTION/UPWARD MOBILITY ACCOUNTING, ARE BEING DESIGNED TO PROVIDE ADMINISTRATORS WITH ADDITIONAL MONITORING TOOLS. THE NEW MEXICO DEPARTMENT OF CORRECTIONS USED OBSCIS TO RESPOND TO A LEGISLATIVE REQUEST FOR AN ANALYSIS OF THE LIKELY IMPACT OF DETERMINATE SENTENCING LEGISLATION ON THE CORRECTIONS SYSTEMS. OBSCIS IS PRIMARILY A TOOL FOR THE LINE ADMINISTRATION OF INSTITUTIONAL AND FIELD (PROBATION AND PAROLE) SERVICE PROGRAMS. HOWEVER, USED PROPERLY, THE OBSCIS DATA BASE CAN PROVIDE THE STATE CORRECTIONAL ADMINISTRATOR WITH A SOPHISTICATED MONITORING AND DECISIONMAKING TOOL. BEFORE DEVELOPING AN AUTOMATED INFORMATION SYSTEM, ADMINISTRATORS MUST DECIDE EXACTLY HOW THEY ARE GOING TO USE THE SYSTEM IN PLANNING AND DECISIONMAKING. EXAMPLES OF OUTPUT FROM THE NEW MEXICO OBSCIS ARE INCLUDED.

130. CALIFORNIA JUDICIAL COUNCIL, STATE BUILDING, ROOM 4200, SAN FRANCISCO, CA 94102. JUDICIAL COUNCIL OF CALIFORNIA, PART 1—JUDICIAL COUNCIL REPORT TO THE GOVERNOR AND THE LEGISLATURE, 1980, AND PART 2—ADMINISTRATIVE OFFICE OF THE CALIFORNIA COURTS—ANNUAL REPORT, 1980 (ISSUED IN TWO PARTS). 236 p. 1980. NCJ-69509

THE CALIFORNIA JUDICIAL COUNCIL'S REPORT TO THE 1979/1980 REGULAR SESSION OF THE LEGISLATURE AND THE GOVERNOR, AND THE ANNUAL REPORT OF THE ADMINISTRATIVE OFFICE OF THE COURTS FOR THE FISCAL YEAR 1979 ARE REPRINTED. THE JUDICIAL COUNCIL'S REPORT FOCUSES ON THE IMPACT OF CALIFORNIA'S NEW DETERMINATE SENTENCING LAW ON THE JUDICIAL SYSTEM, THE SENTENCING PROCESS, AND PRISON COMMITMENT. SUPERIOR COURT STATISTICS INDICATE THAT AN INCREASE IN THE NUMBER OF GUILTY PLEAS AND A CORRESPONDING DECREASE IN TRIALS WERE OFFSET BY INCREASED APPELLATE COURT WORKLOAD RESULTING FROM THE NEW SENTENCING LAW. AT THE SAME TIME, PRISON COMMITMENT INCREASED NOTICEABLY. THE ANNUAL REPORT OF THE ADMINISTRATIVE OFFICE INCLUDES A SUMMARY OF LEGISLATIVE ACTION INITIATED ON THE COUNCIL'S RECOMMENDATION AS WELL AS OF OTHER LEGISLATIVE MEASURES AFFECTING THE ADMINISTRATION OF JUSTICE. AN EXTENSIVE STATISTICAL SECTION SUPPLIES JUDICIAL DATA (FILINGS, BUSINESS TRANSACTIONS, BACKLOGS AND DELAYS, ETC.) ON ALL COURT LEVELS. THE APPENDIX FURNISHES ADDITIONAL COURT DATA BY SUPPLYING COMPARATIVE STATISTICS FROM PREVIOUS YEARS.

131. CALIFORNIA JUDICIAL COUNCIL ADMINISTRATIVE OFFICE OF THE COURTS, 100 LIBRARY AND COURTS BUILDING, SACRAMENTO, CA 95814. CALIFORNIA—JUDICIAL COUNCIL REPORT TO THE GOVERNOR AND THE LEGISLATURE 1979, WITH THE ADMINISTRATIVE OFFICE OF THE CALIFORNIA COURTS—ANNUAL REPORT. 228 p. 1979. NCJ-58995

ADMINISTRATIVE OPERATIONS AND JUDICIAL STATISTICS OF CALIFORNIA COURTS ARE REPORTED FOR 1979, AND THE

IMPACT ON THE COURTS OF THE 1976 DETERMINATE SENTENCING LAW IS ASSESSED. THE CALIFORNIA DETERMINATE SENTENCING LAW HAS RESULTED IN A HIGHER PERCENTAGE OF CONVICTED FELONS RECEIVING PRISON SENTENCES, PARTICULARLY FOR NONVIOLENT AND LESS VIOLENT CRIMES. WHILE IT IS NOT POSSIBLE TO COMPARE SIMILAR CASES UNDER THE OLD AND NEW LAWS, IT IS PROBABLE THAT THE TIME SERVED IN PRISON UNDER DETERMINATE SENTENCES IMPOSED DURING THE FIRST YEAR OF THE NEW LAW WILL NOT BE GREATLY DIFFERENT FROM TIME TYPICALLY SERVED FOR THE SAME CRIME UNDER THE INDETERMINATE LAW. MORE TIME IS REQUIRED OF COURT STAFF TO FULFILL REQUIREMENTS OF THE NEW SENTENCING LAW. THE SENTENCING PROCESS ITSELF REQUIRES MORE JUDICIAL TIME THAN PREVIOUSLY, ALTHOUGH THIS EFFECT CANNOT BE PRESENTLY QUANTIFIED. THERE IS ALSO A POSSIBILITY THAT A SMALLER PERCENTAGE OF CASES GO TO TRIAL UNDER THE NEW LAW. MUCH DATA STILL MUST BE COLLECTED BEFORE AN ACCURATE ASSESSMENT OF THE IMPACT OF INDETERMINATE SENTENCING CAN BE MADE. SUMMARIES OF OTHER SIGNIFICANT ACTIONS CARRIED ON BY THE JUDICIAL COUNCIL PROVIDE INFORMATION ON 1978 LEGISLATIVE ACTION ON THE COUNCIL'S RECOMMENDATIONS AND OTHER SELECTED LEGISLATIVE MEASURES, CHANGES IN THE CALIFORNIA RULES OF COURT DURING 1978, JUDICIAL REDISTRICTING, JUSTICE COURT ORAL EXAMINATIONS, JUDICIAL COUNCIL LEGAL FORMS, FEDERALLY FUNDED PROJECTS, COORDINATION OF MULTICOURT CIVIL ACTIONS, ARBITRATION IN THE SUPERIOR COURT, AND CHANGE OF VENUE IN CRIMINAL CASES. JUDICIAL STATISTICS FOR FISCAL YEAR 1977-1978 ARE PROVIDED FOR THE SUPREME COURT, COURTS OF APPEAL, SUPERIOR COURTS, AND LOWER COURTS. INFORMATION ON JUDICIAL ASSIGNMENTS AND ASSISTANCE IS ALSO PROVIDED.

Availability: National Criminal Justice Reference Service MICROFICHE PROGRAM.

132. CALIFORNIA STATE UNIVERSITY, LONG BEACH DEPARTMENT OF CRIMINAL JUSTICE, 1250 BELLFLOWER BOULEVARD, LONG BEACH, CA 90840; NATIONAL INSTITUTE OF CORRECTIONS, 320 FIRST STREET, NW, WASHINGTON, DC 20534. IMPACT OF DETERMINATE SENTENCING ON CORRECTIONS—A HANDBOOK FOR DECISIONMAKERS. 34 p. 1980. NCJ-73539

THIS HANDBOOK FOR LEGISLATORS AND CORRECTIONAL ADMINISTRATORS OUTLINES THE ISSUES AND EXPECTED IMPACT SURROUNDING THE USE OF THE DETERMINATE SENTENCE. IT IS BASED ON A REVIEW OF THE RELEVANT LITERATURE ON THIS SUBJECT AND A CONFERENCE ON DETERMINATE SENTENCING HELD IN APRIL 1979. TO ASSIST POLICYMAKERS IN PLACING THIS TOPIC IN HISTORICAL CONTEXT, THE HANDBOOK PRESENTS A BRIEF OVERVIEW AND A DISCUSSION OF HOW INDETERMINATE SENTENCING WORKS. IT THEN SUMMARIZES HOW THE DETERMINATE MODEL HAS BEEN INTERPRETED BY LEGISLATION PASSED IN MAINE, CALIFORNIA, INDIANA, AND ILLINOIS AND PROPOSED IN FEDERAL BILLS. BASED ON THE EXPERIENCES AND LEGISLATION OF THOSE STATES WITH DETERMINATE SENTENCING, THE HANDBOOK OUTLINES SOME OF THE DISTINCTIVE FEATURES OF THE DETERMINATE SENTENCING APPROACH, INCLUDING ITS EMPHASIS ON THE RETRIBUTIVE, DETERRENT, AND INCAPACITATIVE PURPOSES OF IMPRISONMENT AND ITS ATTEMPTS TO LIMIT THE DISCRETIONARY SENTENCING POWERS OF THE JUDICIARY. IN ADDITION, THE HANDBOOK PRESENTS A SUMMARY OF RECENT RESEARCH THAT HAS FOCUSED ON THE IMPACT THAT DETERMINATE SENTENCING MAY HAVE ON PRISON POPULATIONS, LENGTH OF INCARCERATION, AND SEVERITY OF SENTENCES. FINALLY, MAJOR ISSUES RAISED BY THE TREND TOWARD DETERMINATE SENTENCING ARE ADDRESSED, INCLUDING THE CON-

CERN FOR SENTENCE LENGTHS, PRISON POPULATION, SENTENCING DISPARITY, RETROACTIVITY, 'GOOD TIME' CREDITS, THE EFFECTS ON STAFF AND PROGRAMS, AND THE IMPACT OF DETERMINATE SENTENCING ON THE INTERRELATED COMPONENTS OF THE CRIMINAL JUSTICE SYSTEM. IT IS CONCLUDED THAT THE USE OF DETERMINATE SENTENCING MAY RESULT IN LARGER PRISON POPULATIONS WITH MORE MINORITY GROUP INMATES AND CHANGES IN THE SOCIAL CLIMATE OF THE PRISONS, WHETHER INMATES WILL ACTUALLY SERVE LONGER TERMS OF INCARCERATION UNDER DETERMINATE SENTENCING IS UNKNOWN DUE TO A LACK OF RESEARCH IN THIS AREA. TABLES, NOTES, AND 42 REFERENCES ARE SUPPLIED. (AUTHOR ABSTRACT MODIFIED)

Sponsoring Agency: NATIONAL INSTITUTE OF CORRECTIONS, 320 FIRST STREET, NW, WASHINGTON, DC 20534.

133. A. K. CASSOU and B. TAUGHER. DETERMINATE SENTENCING IN CALIFORNIA—THE NEW NUMBERS GAME. PACIFIC LAW JOURNAL MANAGING EDITOR, 3201 DONNER WAY, SACRAMENTO, CA 95817. PACIFIC LAW JOURNAL, V 9, N 1 (JANUARY 1978), P 5-106. NCJ-49109

THE DETERMINATE SENTENCE LAW, ENACTED IN CALIFORNIA IN JULY 1977, IS DISCUSSED IN TERMS OF ITS IMPACT ON CRIME AND IMPRISONMENT AND THE SENTENCING AND PAROLE STRUCTURE. THE WEAKENING OF INDETERMINATE SENTENCING THROUGH JUDICIAL DECISIONS IS DESCRIBED, AND THE DETERMINATE SENTENCE LAW IS SUMMARIZED. ONE OF THE MOST NOTABLE CHANGES ENGENDERED BY THE LAW IS THE REQUIREMENT OF COMPUTING PRISON TERMS. A PRISON TERM UNDER LAW IS DETERMINED BY ADDING THE BASE TERM AND ANY ENHANCEMENTS THAT ARE PLEADED AND PROVED. EXCEPT FOR CRIMES WITH LIFE TERMS AND SEVERAL OTHERS OF LITTLE CONSEQUENCE, ALL CRIMES PUNISHABLE AS A FELONY CARRY SENTENCES OF A DETERMINATE RANGE. EACH RANGE SPECIFIES THREE POSSIBLE PERIODS OF INCARCERATION. THE JUDGE MUST CHOOSE THE MIDDLE TERM IN THE RANGE AS THE BASE TERM UNLESS CIRCUMSTANCES EXIST TO CAUSE THE SELECTION OF AN UPPER OR LOWER TERM. SPECIFIC ENHANCEMENTS RELATE TO THE COMMISSION OF A PARTICULAR CRIME, SUCH AS THE USE OF WEAPONS. GENERAL ENHANCEMENTS PERTAIN TO CRIMES COMMITTED BY AN OFFENDER FOR WHICH THE OFFENDER HAS SERVED PRIOR PRISON TERMS OR WILL SERVE CONSECUTIVE SENTENCES. OTHER PROVISIONS OF THE DETERMINATE SENTENCE LAW FOCUS ON THE SENTENCE HEARING, GOOD TIME CREDITS, THE COMMUNITY RELEASE BOARD, PAROLE, AND RETROACTIVITY. LIMITATIONS ON THE IMPOSITION OF ENHANCEMENTS AND THE IMPOSITION OF SENTENCES ARE ADDRESSED, AS WELL AS THE PROVISION FOR SENTENCE REVIEW. THE PAROLE SETTING, RELEASE OF THE DETERMINATELY SENTENCED INMATE, PAROLING LIFE PRISONERS, RESCISSION, AND REVIEW RIGHTS ARE DISCUSSED. PROVISIONS OF THE NEW LAW APPLY RETROACTIVELY TO INMATES ALREADY IN CUSTODY OF THE DEPARTMENT OF CORRECTIONS.

Availability: PACIFIC LAW JOURNAL MANAGING EDITOR, 3201 DONNER WAY, SACRAMENTO, CA 95817.

134. T. G. CRAGE and C. S. HROMAS. COLORADO—DEPARTMENT OF CORRECTIONS—INMATE POPULATION PROJECTIONS, 1980-1985. COLORADO DEPARTMENT OF CORRECTIONS OFFICE OF INFORMATION SYSTEMS, 6385 NORTH ACADEMY BOULEVARD, COLORADO SPRINGS, CO 80907. 20 p. 1980. NCJ-66381

COLORADO INMATE POPULATIONS ARE PROJECTED FOR 1980 THROUGH 1985. INMATE POPULATION PROJECTIONS, WHICH HAVE BEEN PREPARED BY THE COLORADO DEPARTMENT OF CORRECTIONS SINCE 1976, HAVE HAD AN AGGREGATE ERROR RATE OF 2.5 PERCENT FOR THE 5 PROJECTIONS ISSUED. PROJECTIONS ARE REVISED AFTER 6 OR 12

MONTH INTERVALS, DEPENDING ON WHETHER ANY MAJOR VIOLATION OF ASSUMPTIONS OCCURS DURING THE 6 MONTHS FOLLOWING RELEASE OF A PROJECTION. A CHANGE IN PROJECTION ASSUMPTIONS OCCURRED IN 1980 WITH THE PASSAGE OF A PRESUMPTIVE SENTENCING LAW (H.B.1589). THIS LAW CALLS FOR IMPOSITION OF A FIXED TERM OF INCARCERATION WITHIN A RELATIVELY NARROW RANGE, UNLESS AGGRAVATING OR MITIGATING CIRCUMSTANCES JUSTIFY A DIFFERENT SENTENCE. SINCE THE NEW LEGISLATION, THE NUMBER OF COMMITMENTS HAS BEEN HIGHER THAN PAST EXPERIENCE WOULD HAVE PREDICTED, AND THE AVERAGE LENGTH OF INCARCERATION APPEARS TO BE INCREASING. AS WITH OTHER RECENT PROJECTIONS, A STATISTICAL PROJECTION MODEL DRIVEN BY SEVERAL KEY ASSUMPTIONS ABOUT FUTURE EVENTS WAS USED. THE SET OF ASSUMPTIONS USED WERE AS FOLLOWS: (1) COLORADO'S UNEMPLOYMENT RATE WILL INCREASE TO 5 PERCENT BY DECEMBER 1981; (2) THE AVERAGE LENGTH OF INCARCERATION FOR OFFENDERS NOW BEING RECEIVED WILL BE 28.5 MONTHS; (3) A TOTAL OF 3.7 PERCENT OF ALL COMMITMENTS WILL HAVE CONSECUTIVE SENTENCES; (4) PRESUMPTIVE SENTENCES WILL AVERAGE 103 PERCENT OF THE MIDPOINT OF THE PRESUMPTIVE RANGES; AND (5) NO SIGNIFICANT LEGISLATIVE, JUDICIAL, OR EXECUTIVE CHANGES IN CRIMINAL LAW OR POLICY WILL OCCUR. BASED ON THESE ASSUMPTIONS, COLORADO CAN EXPECT A PRISON POPULATION OF 3,214 BY 1984, A 19 PERCENT INCREASE OVER THE NEXT 4 YEARS, OR GROWTH OF NEARLY 5 PERCENT ANNUALLY. THE APPENDICES CONTAIN TABULAR DATA.

Availability: National Criminal Justice Reference Service MICROFICHE PROGRAM.

135. J. J. ENOMOTO. PRISON PLANNING PROBLEM IN CALIFORNIA (FROM CORRECTIONAL FACILITIES PLANNING, 1979, BY M ROBERT MONTILLA AND NORA HARLOW—SEE NCJ-54616). HEATH LEXINGTON BOOKS, 125 SPRING STREET, LEXINGTON, MA 02173. 10 p. 1979. NCJ-54617

THIS DOCUMENT DESCRIBES THE 12 MAJOR CORRECTIONAL INSTITUTIONS IN CALIFORNIA, EXAMINES THE PROBLEMS OF PRISON GANGS, SURVEYS THE EFFECT OF THE DETERMINATE SENTENCING LAW, AND GIVES INMATE STATISTICS. FOLLOWING A BRIEF HISTORY OF THE RESOURCE ADVISORY COMMITTEE TO STUDY CORRECTIONAL PLANNING FOR THE STATE OF CALIFORNIA, THIS OVERVIEW SURVEYS THE PRESENT CONDITION OF CALIFORNIA CORRECTIONAL FACILITIES. IN FISCAL YEAR 1976 TO 1977 THE DEPARTMENT HAD A BUDGET OF \$258 MILLION AND 8,400 CAREER EMPLOYEES. IT OPERATED 12 MAJOR CORRECTIONAL INSTITUTIONS, 19 MINIMUM SECURITY CONSERVATION CAMPS, 2 COMMUNITY CORRECTIONAL CENTERS, 60 LOCAL PAROLE OFFICES, PLUS OUTPATIENT PSYCHIATRIC CLINICS AND A FEW COOPERATIVE PROGRAMS. THE SURVEY FINDS THAT EXISTING INSTITUTIONS ARE LARGE PHYSICAL PLANTS WHICH ARE EITHER SUBSTANDARD OR ARE LAID OUT IN A WAY THAT RESTRICTS THE ADMINISTRATOR'S ABILITY TO MANAGE INMATES SAFELY AND EFFECTIVELY. AGE, RACE, SEX, AND OFFENSE DATA ARE REVIEWED FOR INMATES. IT IS FOUND THAT THE INMATE POPULATION IS YOUNGER, MORE VIOLENT, AND MORE URBAN THAN IN YEARS PAST, AND THE PROBLEMS POSED BY PRISON GANGS ARE REVIEWED. RECENT INCREASES IN INMATE RIGHTS AND FEWER RESTRICTIONS ON INMATE BEHAVIOR HAVE FACILITATED THE OPERATIONS OF THESE GANGS. MAJOR CORRECTIONAL SYSTEM NEEDS ARE IDENTIFIED AS INCREASED PHYSICAL SAFETY FOR STAFF AND OTHER INMATES AND GREATER OPPORTUNITY FOR MEANINGFUL WORK FOR INMATES. THE EFFECT OF THE DETERMINATE SENTENCING LAW ON PRISON POPULATION IS REVIEWED. THE SUDDEN DECREASE IN NUMBER OF INMATES IN 1977 IS EXPECTED TO BE

OFFSET BY AN INCREASE IN 1978 AS MORE PERSONS ARE INCARCERATED UNDER THIS STATUTE. THE SYSTEM USED TO PROJECT PRISON POPULATION IS BRIEFLY DESCRIBED.

136. **FLORIDA BUREAU OF PLANNING RESEARCH AND STAFF DEVELOPMENT, TALLAHASSEE, FL 32304. COMPARISON OF FLAT-TIME SENTENCING WITH EXISTING SENTENCING PRACTICE IN FLORIDA.** 30 p. 1975. **NCJ-55181**

COMPARISONS OF FLAT-TIME SENTENCES WITH FLORIDA'S USE OF INDETERMINATE SENTENCES, SPLIT SENTENCES, AND PROBATION AND PAROLE FINDS THAT FLAT-TIME SENTENCING WOULD RESULT IN A GREAT INCREASE IN MAN-YEARS OF CORRECTIONAL TIME. THE ILLINOIS FLAT-TIME SENTENCING MODEL (WALKER-FOGEL JUSTICE MODEL) IS USED TO COMPARE THE EFFECTS OF A FLAT-TIME SENTENCING PROPOSAL MADE BY STATE SENATOR RICHARD J. DEEB WITH FLORIDA'S EXISTING SENTENCING PRACTICES. THE PREPARATION OF DATA FOR USE WITH THE MATHEMATICAL MODEL IS BRIEFLY EXPLAINED. TABLES COMPARE THE AVERAGE LENGTH OF SENTENCE FOR FIRST OFFENDERS AND FOR HABITUAL OFFENDERS, AND AVERAGE TIME ACTUALLY SERVED FOR BOTH FIRST-TIME AND HABITUAL OFFENDERS. THE PROPOSAL AND THE MODEL BOTH ARE CONCERNED WITH FIVE FELONY CLASSES: MURDER (CAPITAL) OR CAPITAL FELONIES, MURDER (NON-CAPITAL) OR LIFE FELONIES, AND CLASS I, CLASS II, AND CLASS III FELONIES. THE COMPARATIVE STUDY REVIEWS THE POSSIBILITY THAT 4,987 MAN-YEARS WILL BE ADDED ANNUALLY UNDER THE FLAT-TIME SENTENCING PROPOSAL. BY COMPARING LENGTH OF SENTENCES OF FIRST OFFENDERS AND HABITUAL OFFENDERS IT IS CONCLUDED THAT THE STATE CORRECTIONAL SYSTEM WOULD HAVE TO ACCOMMODATE AN ADDITIONAL 3,458 MAN-YEARS. THIS COULD RESULT IN THE NEED OF 6 ADDITIONAL 600-MAN INSTITUTIONS AT AN APPROXIMATE COST OF \$54 MILLION PLUS OPERATING COSTS OF \$3.3 MILLION PER INSTITUTION. THE PROPOSAL MADE BY SENATOR DEEB IS ATTACHED ALONG WITH A QUESTION-AND-ANSWER PRESENTATION REGARDING FLAT-TIME SENTENCING IN ILLINOIS.

Sponsoring Agency: FLORIDA DEPARTMENT OF OFFENDER REHABILITATION, 1311 WINEWOOD BOULEVARD, TALLAHASSEE, FL 32301.

Availability: National Criminal Justice Reference Service MICRO-FICHE PROGRAM.

137. **C. S. HROMAS and T. G. CRAGO. POPULATION PROJECTIONS—PAST AND PRESENT, 1975-1978.** COLORADO DEPARTMENT OF CORRECTIONS OFFICE OF RESEARCH AND EVALUATION, 6385 NORTH ACADEMY BOULEVARD, COLORADO SPRINGS, CO 80907. 19 p. 1978. **NCJ-67665**

ATTEMPTS IN 1975-1978 TO PROJECT COLORADO PRISON POPULATION FOR BUDGETARY PURPOSES ARE PRESENTED; PREDICTION ERRORS ARE DISCUSSED AS DUE TO ERRORS IN PROJECTION COMPUTATION VARIABLES, SUCH AS UNEMPLOYMENT ESTIMATES. DATA SHOW A HIGH CORRELATION BETWEEN COLORADO'S UNEMPLOYMENT RATE AND THE NUMBER OF NEW COURT COMMITMENTS. THUS, UNEMPLOYMENT RATES, STATE POPULATION FIGURES AND SEASONAL VARIATIONS IN COMMITMENTS AFFECT THE TOTAL PRISON POPULATION. THEY WERE COMBINED WITH PAROLE REVOCATION RATES AND PERCENTAGES OF DETERMINATE SENTENCES TO PREDICT THE PRISON POPULATION THROUGH 1980. HOWEVER, DATA COMPILED IN 1976 AND 1977 INDICATED THAT COMMITMENT PROJECTIONS WERE 6.9 PERCENT IN 1976 AND 14 PERCENT IN 1977. THESE INORDINATE ERRORS WERE ASCRIBED TO UNDERESTIMATING THE UNEMPLOYMENT RATE IN THE MODEL AND ASSUMING NO DIVERSION WOULD OCCUR. ALSO A HIGH CORRELATION BETWEEN UNEMPLOYMENT AND COMMITMENT IN THE MODEL WAS FOUND TO BE ERRONEOUS, THE ACTUAL RELATIONSHIP BEING INSIGNIFICANT. WITH THE LOSS OF THIS RELATIONSHIP, THE UNEMPLOYMENT RATE, OR DIVERSION RATE, ON

THE ACTUAL NUMBER OF COMMITMENTS CANNOT BE QUANTIFIED DUE TO THE AMOUNT OF ERROR ASSOCIATED WITH THE MODEL. FURTHER, THE MODEL DID NOT ACCOUNT FOR NEW PENAL LEGISLATION, CHANGES IN RATES OF PAROLE REVOCATION, AND OTHER MATTERS. A SECOND PROJECTION ATTEMPT, AIMED AT 1977-1981 POPULATIONS, RESULTED IN A 3.8 PERCENT UNDERPROJECTION FOR 1977, DUE TO ERRORS IN ESTIMATING THE UNEMPLOYMENT RATE, AVERAGE PRISON STAY, AND UNFORESEEN EVENTS SUCH AS A CHANGE IN ANY ASSUMPTION USED TO MAKE A PROJECTION, WHICH WILL MAKE BOTH SHORT-TERM AND LONG-TERM PROJECTIONS DIFFICULT. GRAPHS AND TABLES ARE INCLUDED.

Availability: National Criminal Justice Reference Service MICRO-FICHE PROGRAM.

138. **J. H. KRAMER, F. A. HUSSEY, S. P. LAGOY, D. KATKIN, and C. V. MACLAUGHLIN. ASSESSING THE IMPACT OF DETERMINATE SENTENCING AND PAROLE ABOLITION IN MAINE.** PENNSYLVANIA STATE UNIVERSITY. 72 p. 1979. **NCJ-61428**

THE IMPLEMENTATION OF MAINE'S NEW CRIMINAL CODE (1976) IS OBSERVED AND ANALYZED. PRIMARY ATTENTION IS ON THE CODE'S IMPACT ON DAY-TO-DAY OPERATIONS OF THE STATE'S COURTS AND CORRECTIONAL SYSTEM. TWO SETS OF DATA WERE COLLECTED, ONE CONCERNING CONDITIONS BEFORE IMPLEMENTATION OF THE CODE AND ONE REGARDING CONDITIONS AFTER THE CODE WENT INTO EFFECT. DATA WERE COLLECTED FOR THE FIFTH AND THIRD YEARS BEFORE THE CODE AND COMPARED BY OFFENSE CLASS TO POSTCODE DATA. DATA ANALYSIS REVEALED THAT USE OF INCARCERATION HAS BECOME LESS FREQUENT; THE LENGTH OF INCARCERATION HAS BECOME SHORTER FOR CLASS B AND C OFFENDERS, BUT LONGER FOR CLASS A OFFENDERS; AND CRIMINAL PUNISHMENTS HAVE BECOME GENERALLY LESS SEVERE IN MAINE SINCE THE ENACTMENT OF THE NEW CRIMINAL CODE. BY SHIFTING SENTENCING AUTHORITY INTO THE EXCLUSIVE CONTROL OF THE JUDGES, THE NEW CODE HAS PRECIPITATED A SIGNIFICANT CHANGE IN THE SEVERITY OF PUNISHMENTS. DATA ALSO INDICATE THAT THE TOTAL VARIANCE AMONG SENTENCES HAS INCREASED UNDER THE NEW CODE AND THAT THIS VARIATION IS NOT EXPLAINED BY SUCH RELEVANT VARIABLES AS OFFENSE SEVERITY, NUMBER OF OFFENSES, PRIOR INCARCERATION, OR AGE. DIFFERENCES IN THE SENTENCING BEHAVIOR OF JUDGES APPEAR TO ACCOUNT FOR MUCH OF THE VARIANCE. MAINE IS THE ONLY AMERICAN JURISDICTION IN WHICH INDIVIDUAL JUDGES HAVE NEAR TOTAL CONTROL OVER THE TIME AN OFFENDER WILL SERVE. IF THE UTILIZATION OF PROBATION REMAINS COMMON AND SHORT SENTENCES CONTINUE TO BE THE MODE OVER THE NEXT FEW YEARS (1978-83), THEN MAINE WILL HAVE DEMONSTRATED THAT THE SEVERITY OF CRIMINAL SENTENCES CAN BE REDUCED BY A SYSTEM OF UNDIVIDED SENTENCING AUTHORITY. TABULAR DATA AND FOOTNOTES ARE PROVIDED ALONG WITH APPENDIXES ON THE COURT COLLECTION INSTRUMENT AND THE DATA COLLECTION INSTRUMENT.

139. **M. R. MONTILLA and H. HARLON, eds. CORRECTIONAL FACILITIES PLANNING.** HEATH LEXINGTON BOOKS, 125 SPRING STREET, LEXINGTON, MA 02173. 229 p. 1979. **NCJ-54616**

THE PAPERS IN THIS ANTHOLOGY ARE BY EXPERTS IN CRIMINAL JUSTICE, PUBLIC ADMINISTRATION, AND ARCHITECTURE AND WERE PRESENTED AT A COLLOQUIUM ON PLANNING FOR CALIFORNIA STATE CORRECTIONAL FACILITIES. AN EXCERPT FROM THE CALIFORNIA DEPARTMENT OF CORRECTIONS' REPORT TO THE STATE LEGISLATURE OUTLINING THE PRISON PLANNING PROBLEM IS FOLLOWED BY THE SUMMARIES AND THE FULL TEXT OF PARTICIPATING CONSULTANTS' PAPERS. THE CONSULTANTS EMPHASIZED THE IMPORTANCE OF PLAN-

NING, ITS ESSENTIAL STEPS, THE NEED FOR A SYSTEMS APPROACH, THE HIGH COSTS OF IMPROPER OR INADEQUATE PLANNING, AND THE NECESSITY OF DEVELOPING A MASTER PLAN TO WHICH THE STATE IS COMMITTED AND WHICH IS PUBLISHED FOR BROAD REVIEW AND CRITICISM. CONSULTANTS ACKNOWLEDGED THAT MANY OF THE CONSTRAINTS IN CRIMINAL JUSTICE AND CORRECTIONS WHICH INTERFERE WITH LONG-RANGE PLANNING ARE SYSTEM FRAGMENTATION AND COMPETITION RATHER THAN COOPERATION, PUBLIC PRESSURES FOR QUICK AND EASY SOLUTIONS, AND POLITICAL CONSIDERATIONS WHICH DEMAND ONE OR ANOTHER RESPONSE. PLANNING STEPS SHOULD INCLUDE DESCRIBING EXISTING FACILITIES, DEFINING OBJECTIVES, IDENTIFYING PROBLEMS IN EXISTING FACILITIES, ASSESSING ALTERNATIVES, SELECTING PROPOSED COURSES OF ACTION, DEVELOPING A PLAN, AND CONSTANT EVALUATION OF THE PLAN. CORRECTIONAL STANDARDS CAN HELP PRISON PLANNERS BY ASSURING THAT A FULL RANGE OF SERVICES AND FUNCTIONS ARE PROVIDED, THAT A PROPER BALANCE OF SERVICES AND PROGRAMS EXIST, AND THAT NEW APPROACHES IN MANAGING INMATES REMAIN WITHIN ACCEPTABLE LIMITS. STANDARDS HAVE BEEN DEVELOPED BY THE NATIONAL ADVISORY COMMISSION ON CRIMINAL JUSTICE, THE NATIONAL CLEARINGHOUSE FOR CRIMINAL JUSTICE PLANNING AND ARCHITECTURE, AND THE AMERICAN BAR ASSOCIATION'S JOINT COMMITTEE ON THE LEGAL STATUS OF PRISONERS. PRISON DESIGN SHOULD REFLECT PLANNING IN TERMS OF RACIAL ISSUES, THE POTENTIAL FOR GANG VIOLENCE, AND THE POSSIBILITY OF DETERMINATE SENTENCING AND CUSTODY REPLACING INDETERMINATE SENTENCING AND REHABILITATION. PRISON PLANNING AND CONSTRUCTION EXPERIENCES IN OKLAHOMA AND FLORIDA ARE DESCRIBED. THE FINAL CHAPTERS SUMMARIZE RECOMMENDATIONS OF THE CALIFORNIA DIRECTOR OF CORRECTIONS. REFERENCES ARE PROVIDED.

Availability: HEATH LEXINGTON BOOKS, 125 SPRING STREET, LEXINGTON, MA 02173.

140. **D. NAGIN. CALIFORNIA—IMPACT OF FLAT-TIME SENTENCING LEGISLATION ON PRISON POPULATION AND SENTENCE LENGTH—A CASE STUDY.** 69 p. 1977. **NCJ-57101**

THE IMPACT OF CALIFORNIA'S PRESUMPTIVE SENTENCING STATUTE ON THE AVERAGE LENGTH OF PRISON TERMS AND THE SIZE OF THE PRISON POPULATION IS EXAMINED. EFFECTIVE SINCE JULY 1977, THE STATUTE SPECIFIES BASE PENALTY RANGES FOR EACH OFFENSE, CIRCUMSTANCES UNDER WHICH THE BASE TERM CAN BE INCREASED, AND THE AMOUNTS OF SUCH INCREASES. UNDER THE LAW, THE AVERAGE LENGTH OF PRISON TERMS IS LIKELY TO BE SHORTER THAN WAS THE CASE UNDER INDETERMINATE SENTENCING. HOWEVER, IF PRISON ADMISSIONS CONTINUE TO INCREASE AT THE 1970-1976 RATE (THERE ARE REASONS FOR SUSPECTING THAT PRESUMPTIVE SENTENCING MAY PROMOTE INCREASES IN ADMISSIONS), CALIFORNIA'S PRISON POPULATION IS LIKELY TO INCREASE DESPITE THE SHORTER PRISON TERMS UNDER PRESUMPTIVE SENTENCING, AND THE STATE MAY FACE A PRISON OVERCROWDING PROBLEM OF MAJOR DIMENSIONS. OVERCROWDING COULD BE AVERTED IF PROSECUTORS AND JUDGES WERE TO CURTAIL ADMISSIONS, FURTHER REDUCE AVERAGE SENTENCES, OR BOTH. HOWEVER, A LIKELY CONSEQUENCE OF SUCH AN EXERCISE OF PROSECUTORIAL AND JUDICIAL DISCRETION IS THAT THE PRESUMPTIVE SENTENCING LAW WOULD NOT BE APPLIED AS THE LEGISLATURE INTENDED. A SECOND LIKELY CONSEQUENCE IS THAT DISPARITY IN SENTENCING WOULD BE AGGRAVATED. THUS, IN THE PROCESS OF

AVERTING OVERCROWDING, THE CRIMINAL JUSTICE SYSTEM MAY PLACE IN JEOPARDY THE INTENT OF THE PRESUMPTIVE SENTENCING LAW AND MAY FORFEIT A KEY GOAL OF PRESUMPTIVE SENTENCING: REDUCING SENTENCING DISPARITY. CALIFORNIA SHOULD GIVE CAREFUL CONSIDERATION TO AUTHORIZING A NONLEGISLATIVE AGENCY TO PROMULGATE SENTENCING GUIDELINES AND PENALTY LEVELS. ALTHOUGH THIS APPROACH IS NOT WITHOUT PROBLEMS, IT WOULD OFFER FLEXIBILITY IN HANDLING PERIODIC OVERCROWDING PROBLEMS AND IN ADJUSTING PENALTY STRUCTURES. METHODS OF ANALYSIS ARE EXPLAINED IN DETAIL. SUPPORTING DATA ARE INCLUDED.

Sponsoring Agency: US DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE NATIONAL INSTITUTE OF MENTAL HEALTH, 5600 FISHERS LANE, ROCKVILLE, MD 20852.

Availability: DUKE UNIVERSITY INSTITUTE OF POLICY SCIENCES AND PUBLIC AFFAIRS, 4875 DUKE STATION, DURHAM, NC 27706.

141. **D. NAGIN. IMPACT OF DETERMINATE SENTENCING LEGISLATION ON PRISON POPULATION AND SENTENCE LENGTH—A CALIFORNIA CASE STUDY.** JOHN WILEY AND SONS, 605 THIRD AVENUE, NEW YORK, NY 10016. **PUBLIC POLICY**, V 27, N 1 (WINTER 1979), P 69-98. **NCJ-57967**

THE IMPACT OF CALIFORNIA'S DETERMINATE SENTENCING CODE ON THE STATE'S PRISON POPULATION IS EXAMINED, AND A NONTECHNICAL WAY TO ANALYZE THIS IMPACT IS PRESENTED. SEVERAL CHARACTERISTICS DEFINE MOST DETERMINATE SENTENCING PROPOSALS: (1) INCARCERATION IS NOT MANDATORY FOR MOST OFFENSES, THUS DETERMINATE SENTENCING SHOULD NOT BE CONFUSED WITH SENTENCING SCHEMES THAT MANDATE SOME MINIMUM PERIOD OF INCARCERATION; (2) WHILE INCARCERATION REMAINS DISCRETIONARY FOR MOST OFFENSES, DETERMINATE SENTENCING SYSTEMS NARROW THE WIDE RANGE OF POTENTIAL PENALTIES THAT TYPIFY INDETERMINATE SENTENCING STATUTES; AND (3) PAROLE POWERS ARE SHARPLY CURTAILED. A CAREFUL ANALYSIS OF THE IMPACT OF THIS TYPE OF SENTENCING ON PRISON POPULATIONS IS CRUCIAL TO THE FURTHER DEVELOPMENT OF DETERMINATE SENTENCING LEGISLATION. A RELATIVELY SIMPLE ANALYTICAL FRAMEWORK CAN BE USED FOR PROJECTING POPULATION IMPACTS IN A WAY THAT DOES NOT REQUIRE EXTENSIVE ANALYTICAL TRAINING TO PERFORM OR COMPREHEND. THIS METHOD OF ANALYSIS CONCENTRATES ON COMPREHENSIBILITY AND RETROSPECTIVE AND PROSPECTIVE ANALYSIS. THE RETROSPECTIVE ANALYSIS IS BASED ON THE ASSUMPTION OF UNALTERED ADMISSION PATTERNS; THE PROSPECTIVE ANALYSIS DERIVES FROM THE SAME ASSUMPTION BY PROJECTING THE IMPACT OF A CONTINUATION OF PREVIOUS ADMISSION PATTERNS. THE ANALYSIS SUGGESTS THAT (1) THE NEW CALIFORNIA CODE WILL SHORTEN TYPICAL PRISON TERMS, AND (2) DESPITE THE REDUCTION IN PRISON TERMS, BY ABOUT 1980 CALIFORNIA MAY ENCOUNTER A SERIOUS PRISON OVERCROWDING PROBLEM. THREE OPTIONS ARE AVAILABLE TO CALIFORNIA FOR DEALING WITH THE INCREASES: CREATING ADDITIONAL PRISON CAPACITY; THE LEGISLATURE MAY SELECTIVELY AMEND THE VERY PRECISE PENALTIES PRESCRIBED IN THE STATUTE (ONE COST OF THIS OPTION IS AN INCREASE IN INTERTEMPORAL DISPARITIES); AND THE LEGISLATURE MAY DO NOTHING AND HOPE THAT ADAPTIVE RESPONSES IN THE CRIMINAL JUSTICE SYSTEM WILL REDUCE THE POPULATION. HOWEVER, SUCH ADAPTIVE RESPONSES ARE LIKELY TO AGGRAVATE BOTH INTER- AND INTRATEMPORAL DISPARITIES. IT IS RECOMMENDED THAT THE CALIFORNIA DETERMINATE SENTENCING CODE BE MODIFIED TO BE MORE FLEXIBLE. A COMPLETE EXPLANATION OF THE ANALYTICAL METHOD

USED IS INCLUDED, AS ARE EXTENSIVE TABLES AND REFERENCES WHICH SUPPLEMENT THE TEXT.

Sponsoring Agency: US DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE NATIONAL INST OF MENTAL HEALTH CENTER FOR STUDIES OF CRIME AND DELINQUENCY, WASHINGTON, DC 20203.

142. **J. R. PAGE. EQUALITY OF SENTENCING BETWEEN JUVENILES AND ADULTS—A LOGICAL EXTENSION OF PEOPLE V. OLIVAS.** UNIVERSITY OF THE PACIFIC MCGEORGE SCHOOL OF LAW, STOCKTON, CA 95204. *PACIFIC LAW JOURNAL*, V 10, N 1 (JANUARY 1979), P 161-199.

NCJ-60552

DISPARITY IN THE DURATION OF CONFINEMENT AND PAROLE IMPOSED UPON JUVENILE AND ADULT OFFENDERS FOR COMMISSION OF AN IDENTICAL CRIME IS A VIOLATION OF THE JUVENILE'S GUARANTEE OF EQUAL PROTECTION. THIS REPORT STATES THAT CALIFORNIA HAS RECENTLY UNDERGONE A REVOLUTION IN THE THEORY AND PRACTICE OF CORRECTIONS SINCE ADOPTING THE UNIFORM DETERMINATE SENTENCING ACT IN 1976. WHILE THIS ACT ADDRESSED MANY OF THE FAILINGS OF ADULT CORRECTIONS, IT HAD ONLY AN INDIRECT AND LIMITED EFFECT UPON JUVENILES UNDER THE JURISDICTION OF THE JUVENILE COURT. TO FACILITATE AN UNDERSTANDING OF THIS DISPARITY, THE PAPER OUTLINES THE HISTORICAL DEVELOPMENT OF THE JUVENILE JUSTICE SYSTEM IN BOTH THE UNITED STATES AND CANADA. THE OUTLINE INCLUDES AN EXPLANATION OF THE CALIFORNIA STATUTORY CLASSIFICATION OF JUVENILES AND THE DISPOSITIONAL MEASURES AVAILABLE IN EACH CLASSIFICATION. IT THEN DEMONSTRATES THAT THERE ARE IDENTIFIABLE DISPARITIES BETWEEN THE SENTENCING PROVISIONS APPLICABLE TO SECTION 602 OFFENDERS, JUVENILES ADJUDGED BY A CALIFORNIA JUVENILE COURT TO HAVE COMMITTED A PUBLIC OFFENSE, AND ADULT CRIMINALS. THE DECISION OF THE CALIFORNIA SUPREME COURT IN PEOPLE V. OLIVAS IS EXAMINED WITH SPECIAL EMPHASIS UPON THE CONSTITUTIONAL ANALYSIS OF EQUAL PROTECTION EMPLOYED IN THAT CASE. THE REPORT CONCLUDES THAT DUE TO THE FACT THAT SECTION 602 OFFENDERS AND ADULTS ARE SIMILARLY SITUATED, THE DISPARITIES THAT EXIST BETWEEN THEIR INDIVIDUAL SENTENCING AND PAROLE SCHEMES MUST NOT BE IN CONFLICT WITH THE GUARANTEE OF EQUAL PROTECTION AS APPLIED BY THE CALIFORNIA SUPREME COURT. ONCE A STRICT SCRUTINY STANDARD IS APPLIED TO THE DISPARITY BETWEEN SECTION 602 OFFENDER AND ADULT SENTENCING SCHEMES, THE SECTION 602 OFFENDER'S GUARANTEE OF EQUAL PROTECTION WILL BE FOUND TO HAVE BEEN VIOLATED. THEREFORE, THE CALIFORNIA LEGISLATURE SHOULD MOVE TO ENACT LEGISLATION REGARDING SECTION 602 OFFENDERS THAT IS CONSISTENT WITH THEIR RIGHT TO EQUAL PROTECTION.

Supplemental Notes: REPRINT.

143. **T. PALMER. CORRECTIONAL INTERVENTION AND RESEARCH—CURRENT ISSUES AND FUTURE PROSPECTS.** HEATH LEXINGTON BOOKS, 125 SPRING STREET, LEXINGTON, MA 02173. 297 p. 1978. NCJ-53329

THIS REPORT SUGGESTS CORRECTIONAL TREATMENT THEORIES, AND RESEARCH WHICH SUPPORT THE IDEA THAT INTERVENTION IS USELESS HAVE IGNORED THE OFFENDER'S INDIVIDUALITY AND MISJUDGED THE SIGNIFICANCE OF RESEARCH RESULTS. THE 'ALMOST NOTHING WORKS' CONCEPT OF CORRECTIONAL TREATMENT, OUTLINED IN TWO ARTICLES BY ROBERT MARTINSON, WAS A PRODUCT OF WIDESPREAD SOCIAL DIFFICULTY, TRAUMATIC EVENTS WITHIN THE CRIMINAL JUSTICE SYSTEM, AND RELATED INCIDENTS IN THE LATE 1960'S AND EARLY 1970'S. TO ASSESS THE VALIDITY OF THIS VIEWPOINT, SUPPORTIVE RESEARCH STUDIES ON CORRECTIONAL TREATMENT AND THEIR CONCLUSIONS ARE EVALUATED FOR RESEARCH QUALITY, DIFFERENTIAL WEIGHTING OF VARIABLES, AND INSIGNIFICANT CHANGES. IT IS SUGGESTED THAT RESEARCH HAS IGNORED OFFENDERS' INDIVIDUALITY AND THE FACT THAT TREATMENT, TO BE USEFUL, DOES NOT HAVE TO BE EFFECTIVE IN ALL OR THE MAJORITY OF CASES. DATA FROM THE COMMUNITY TREATMENT PROJECT IN CALIFORNIA ARE USED TO SUPPORT THE SUGGESTION THAT A COMBINATION OF MODALITIES SHOULD BE USED WITH OFFENDER GROUPS, EITHER WITHIN OR OUTSIDE THE FRAMEWORK OF DETERMINATE SENTENCING. CORRECTIONAL TREATMENT PROGRAMS SHOULD NOT BE EVALUATED BY THEIR EFFECTS ON RECIDIVISM AND SHOULD HAVE OFFENDER-CENTERED ROLES. ATTITUDES OF DECISION-MAKERS AND THE PUBLIC REGARDING TREATMENT THEORIES ARE DISCUSSED, AND PROSPECTS AND STRATEGIES FOR CORRECTIONAL TREATMENT WHICH WOULD MAXIMIZE THE INFORMATION YIELD OF EXISTING RESEARCH ARE CONSIDERED. PROPOSALS FOR DIFFERENTIAL ANALYSIS, MULTISTUDY ANALYSES, AND SEQUENTIAL HYPOTHESIS-TESTING RESEARCH ARE PRESENTED ALONG WITH OUTLINES OF THREE ANALYSIS APPROACHES FOR INTEGRATING STUDY FINDINGS. AN INDEX AND REFERENCES ARE PROVIDED.

144. **V. RYAN. USES OF OBSCIS (OFFENDER-BASED STATE CORRECTIONS INFORMATION SYSTEM) STATISTICS—BRIEFING ADMINISTRATORS (FROM OBSCIS COMPENDIUM—PROCEEDINGS FROM THE OBSCIS SEMINAR, 1978, BY A H LAMMER—SEE NCJ-51740).** SEARCH GROUP INC, 925 SECRET RIVER DRIVE, SACRAMENTO, CA 95831. 20 p. 1978. NCJ-51748

Availability: HEATH LEXINGTON BOOKS, 125 SPRING STREET, LEXINGTON, MA 02173.

A SAMPLING OF THE OBSCIS REPORTS AND CHARTS USED BY ADMINISTRATORS IN THE CALIFORNIA DEPARTMENT OF CORRECTIONS IS PRESENTED, TOGETHER WITH A DISCUSSION OF HOW ADMINISTRATORS USE THE INFORMATION. MOST OF THE CHARTS AND TABLES SHOWN ARE ROUTINELY PRESENTED TO ADMINISTRATORS EITHER MONTHLY, QUARTERLY, ANNUALLY, OR ON AN AD HOC BASIS. THE CHARTS AND TABLES, PRESENTED WITH ORAL EXPLANATIONS AND ARRANGED TO REFLECT THE ORDER IN WHICH OFFENDERS ACTUALLY MOVE THROUGH THE CORRECTIONS SYSTEM, ALLOW ADMINISTRATORS TO FOLLOW THE WORKLOAD FLOW, TO LOCATE POINTS WHERE DECISIONS ARE NEEDED, AND TO ADJUST BUDGETS AS NECESSARY. OFTEN THE CHARTS AND TABLES CLEARLY REFLECT THE EFFECTS OF CHANGES BROUGHT ABOUT BY JUDICIAL DECISIONS, LEGISLATIVE MANDATES (E.G., CALIFORNIA'S TRANSITION FROM AN INDETERMINATE TO A DETERMINATE SENTENCING LAW), AND/OR ADMINISTRATIVE POLICIES. THE DESIGN OR FORMAT OF THE PRESENTATION IS VARIED ACCORDING TO THE AUDIENCE'S LEVEL OF UNDERSTANDING AND NEED. CONSIDERATION IS GIVEN TO INDIVIDUAL PREFERENCES FOR TABLES, CHARTS, OR NARRATIVE SUMMARIES. THE NATURE OF THE PROBLEM UNDER DISCUSSION AND THE LEVEL OF MANAGEMENT INVOLVED DETERMINE WHETHER THE DATA SHOULD BE IN THE FORM OF AN OVERVIEW, A SUMMARY, OR AN INDEPTH STUDY. TWENTY-EIGHT DIFFERENT CHARTS, GRAPHS, AND TABLES ILLUSTRATE THE PRESENTATIONS PREPARED BY THE MANAGEMENT INFORMATION SECTION OF THE CALIFORNIA DEPARTMENT OF CORRECTIONS. HIGHLIGHTS OF THE PRESENTATION, TOGETHER WITH COMMENTS ON THE USES TO WHICH THE INFORMATION IS PUT, ARE INCLUDED IN THE ACCOMPANYING NARRATIVE. A LIST OF DATA USERS (DEPARTMENT OF CORRECTIONS AND OTHER AGENCIES AND ORGANIZATIONS) IN DIRECT CONTACT WITH THE MANAGEMENT INFORMATION SECTION IS PROVIDED.

Sponsoring Agency: US DEPARTMENT OF JUSTICE NATIONAL INSTITUTE OF JUSTICE, 633 INDIANA AVENUE NW, WASHINGTON, DC 20531.

145. **US CONGRESS SENATE COMMITTEE ON THE JUDICIARY, WASHINGTON, DC 20510. PROBLEM OF PRISON OVERCROWDING AND ITS IMPACT ON THE CRIMINAL JUSTICE SYSTEM—HEARING BEFORE THE SENATORIAL SUBCOMMITTEE ON PENITENTIARIES AND CORRECTIONS, 95TH CONGRESS, 1ST SESSION, DECEMBER 13, 1977.** 116 p. 1978. NCJ-57846

THIS HEARING WAS HELD BEFORE THE SUBCOMMITTEE ON PENITENTIARIES AND CORRECTIONS OF THE SENATE COMMITTEE ON THE JUDICIARY IN DECEMBER 1977 TO ADDRESS THE PROBLEM OF OVERCROWDING IN PRISONS AND JAILS. STATEMENTS WERE PRESENTED AT THE HEARING BY SENATOR MATHIAS (MARYLAND), CONGRESSMAN EVANS (DELAWARE), THE GOVERNOR AND THE LIEUTENANT GOVERNOR OF DELAWARE, THE COMMISSIONER OF THE DELAWARE DEPARTMENT OF CORRECTIONS, THE PROGRAM DIRECTOR OF AND STATISTICIAN FROM THE GOVERNOR'S COMMISSION ON CRIMINAL JUSTICE IN DELAWARE, THE EXECUTIVE DIRECTOR OF THE DELAWARE COUNCIL ON CRIME AND JUSTICE, A STATE PROSECUTOR FROM DELAWARE'S DEPARTMENT OF JUSTICE, AND THE MANAGING ATTORNEY OF THE COMMUNITY LEGAL AID SOCIETY, INC., IN WILMINGTON, DEL. THE FOCUS OF STATEMENTS CENTERED AROUND PRISON OVERCROWDING AND ITS IMPACT ON THE CRIMINAL JUSTICE SYSTEM. CONSIDERATION WAS GIVEN TO THE CAPACITY OF THE FEDERAL PRISON SYSTEM AND STATE AND LOCAL PRISONS, PLEA BARGAINING, SENTENCING, PROBATION, PAROLE, THE CONCEPT OF EQUAL TIME FOR EQUAL CRIME, PUNISHMENT, INMATES, SPECIFIC TYPES OF CRIMES INCLUDING CRIMES OF VIOLENCE, FINANCIAL ASSISTANCE FOR CAREER CRIMINAL PROSECUTION PROGRAMS, TREATMENT OF PRISONERS, COSTS OF INCARCERATION, CONSTRUCTION OF PRISONS, PRISONER RIGHTS, PROGRAMS OF ASSISTANCE FOR INMATES, PRISON STANDARDS, FURLOUGH PROGRAMS, BURDEN OF PRISON OVERCROWDING ON TAXPAYERS, JUVENILE CORRECTIONS, FACILITIES FOR MEN AND WOMEN, PLANNING A MULTIPURPOSE PRISON FACILITY IN THE WILMINGTON AREA, INTAKE SERVICES, AND THE CONCEPT OF SECURITY WITHOUT BARS.

Availability: National Criminal Justice Reference Service MICROFICHE PROGRAM.

146. **M. G. YEAGER. DO MANDATORY PRISON SENTENCES FOR HANDGUN OFFENDERS CURB VIOLENT CRIME—TECHNICAL REPORT 1.** UNITED STATES CONFERENCE OF MAYORS, 1620 EYE STREET, NW, WASHINGTON, DC 20006. 36 p. 1978. NCJ-35034

THIS REPORT ARGUES THAT MANDATORY PRISON SENTENCES FOR GUN OFFENDERS WILL HAVE LITTLE IMPACT ON VIOLENT CRIME, WHILE CAUSING SEVERE STRAINS ON THE CRIMINAL JUSTICE SYSTEM; STRICT HANDGUN CONTROLS ARE RECOMMENDED INSTEAD. THE INTRODUCTION OF MANDATORY MINIMUM PRISON SENTENCES FOR THOSE CONVICTED OF USING OR CARRYING A GUN DURING THE COMMISSION OF A CRIME IS FREQUENTLY PROPOSED AS A METHOD FOR CURBING MISUSE OF WEAPONS. SUCH PROVISIONS HAVE ALREADY BEEN INCORPORATED INTO THE CRIMINAL LAWS OF MANY STATES, AND CURRENT OPINION AMONG PUBLIC OFFICIALS AT ALL LEVELS OF GOVERNMENT FAVORS INCREASED RELIANCE ON THIS CONCEPT. THIS REPORT, ISSUED BY THE UNITED STATES CONFERENCE OF MAYORS, EXPLORES THE LEGAL, PROCEDURAL, FISCAL, PRACTICAL, AND BEHAVIORAL QUESTIONS WHICH WILL DETERMINE WHETHER MANDATORY MINIMUM PRISON SENTENCES WILL DETER GUN CRIME. IT CONCLUDES THAT MANDATORY SENTENCES WILL NOT SIGNIFICANTLY REDUCE THE LEVEL OF SERIOUS CRIME, AND MAY IN FACT SEVERELY HAMPER THE CRIMINAL JUSTICE PROCESS. THE PROS AND CONS OF MANDATORY MINIMUM SENTENCES ARE ANALYZED IN ORDER TO DEVELOP A REALISTIC PICTURE OF WHAT THE IMPACT OF SENTENCING MIGHT BE ON GUN USING OFFENDERS. THE FOUR BASIC ASSUMPTIONS OF THE

PROPOSERS OF MANDATORY SENTENCING ARE EXAMINED IN TURN. THESE ARE: 1) THAT THE VIOLENT OFFENDERS WHO ARE CONVICTED UNDER OUR LEGAL SYSTEM ARE RESPONSIBLE FOR THE BULK OF VIOLENT CRIME; 2) SINCE MOST OF THESE OFFENDERS ARE RECIDIVISTS, IMPRISONING THEM WILL SIGNIFICANTLY REDUCE THE QUANTITY OF CRIMINAL VIOLENCE IN SOCIETY; 3) THAT MANDATORY PRISON SENTENCES WILL ACT AS A DETERRENT; AND 4) THAT MANDATORY PRISON SENTENCES WILL HAVE LITTLE ADVERSE EFFECT ON THE CRIMINAL JUSTICE SYSTEM AS A WHOLE. IN EXAMINING THESE ASSUMPTIONS, THE REPORT EXPLORES THE MANNER IN WHICH THE CRIMINAL JUSTICE SYSTEM TYPICALLY RESPONDS TO STATUTORY REQUIREMENTS TO IMPOSE MANDATORY MINIMUM PRISON SENTENCES. CENTRAL TO THESE EXPLORATIONS ARE CONSIDERATION OF THE JUDICIAL SYSTEM'S NEED FOR EFFICIENCY, ITS GOAL OF FAIRNESS, THE ROLE OF PLEA BARGAINING, THE USE OF PROSECUTORIAL DISCRETION, THE DEFENDANT'S RIGHT TO A JURY TRIAL, AND THE AVAILABILITY OF PRISON FACILITIES. EVIDENCE WHICH REFUTES EACH OF THE ASSUMPTIONS ON MANDATORY SENTENCING IS PRESENTED. THE AUTHOR CONCLUDES THAT MANDATORY SENTENCES WOULD REDUCE JUDICIAL EFFICIENCY, AND CAUSE SEVERE STRAINS ON THE CORRECTIONS SYSTEM. HE NOTES THAT THE U.S. CONFERENCE OF MAYORS FAVORS A BAN ON THE MANUFACTURE, IMPORTATION, SALE, AND PRIVATE POSSESSION OF HANDGUNS, EXCEPT FOR USE BY LAW ENFORCEMENT PERSONNEL, MILITARY, AND SPORTSMEN CLUBS. FOR A SECOND VOLUME IN THIS SERIES, SEE NCJ-35035. (AUTHOR ABSTRACT MODIFIED) (SNI ABSTRACT) **Availability:** UNITED STATES CONFERENCE OF MAYORS, 1620 EYE STREET, NW, WASHINGTON, DC 20006.

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147. **CORRECTIONAL SERVICE OF MINNESOTA, 1427 WASHINGTON AVENUE, SOUTH, MINNEAPOLIS, MN 55404. DETERMINATE SENTENCING SURVEY—SUMMARY RESULTS.** 13 p. 1976. **NCJ-34959**

SUMMARY RESULTS OF A SURVEY CONDUCTED BY THE MINNESOTA LEGISLATURE'S JOINT SENATE SUBCOMMITTEE ON DETERMINATE SENTENCING TO ASCERTAIN WHAT CRIMINAL JUSTICE OFFICIALS FEEL A DETERMINATE SENTENCING SYSTEM SHOULD LOOK LIKE. QUESTIONNAIRES WHICH WERE DESIGNED TO GIVE RESPONDENTS AN OPPORTUNITY TO DEAL WITH A BROAD RANGE OF DETERMINATE SENTENCING OPTIONS WERE SENT TO 1,080 KEY PERSONS IN MINNESOTA'S CRIMINAL JUSTICE SYSTEM WHICH INCLUDED A SAMPLE OF INMATES FROM THE MAJOR STATE ADULT INSTITUTION. RESPONSES WERE RETURNED FOR 64.2 PERCENT OF THE INDIVIDUALS TO WHOM QUESTIONNAIRES HAD BEEN SENT. RESPONSES WERE CATEGORIZED LAW ENFORCEMENT, JUDICIARY, CORRECTIONS AND OTHER CRIMINAL JUSTICE PEOPLE ACCORDING TO RESPONDENT'S POSITION IN THE CRIMINAL JUSTICE SYSTEM. THE NUMBERS IN EACH GROUP WERE WEIGHTED TO ADJUST FOR UNEQUAL NUMBERS IN THE RESPONDENT GROUPS. MAJOR RESULTS ARE SUMMARIZED IN THE BEGINNING OF THE REPORT. UNWEIGHTED RESPONSES ARE PRESENTED IN APPENDED TABLES TO MAKE DETERMINATION OF THE EFFECT OF ADJUSTMENTS POSSIBLE. A MORE DETAILED FINAL REPORT IS ANTICIPATED. FOR A COPY OF THE QUESTIONNAIRE USED, SEE NCJ-34960.

Sponsoring Agency: US CONGRESS SENATE SUBCOMMITTEE ON DETERMINATE SENTENCING, WASHINGTON, DC 20510.

Availability: National Criminal Justice Reference Service MICROFICHE PROGRAM.

148. **D. FOGEL. DETERMINATE SENTENCING AND DETERMINATE PRISON PROGRAM DESIGNS (FROM CA. DEPT. OF CORR.—REP. ON COLLQ. ON CORR. FACILITIES PLANNING, NOVEMBER 3-4, 1977, BY NORA HARLOW—SEE NCJ-46915).** CALIFORNIA DEPARTMENT OF CORRECTIONS, 630 K STREET, SACRAMENTO, CA 95814; AMERICAN JUSTICE INSTITUTE, 1007 7TH STREET, SACRAMENTO, CA 95814. 17 p. 1978. **NCJ-46924**

THE INADEQUACIES OF THE TREATMENT/REHABILITATION MODEL OF CORRECTIONS ARE EXAMINED, AND A JUSTICE MODEL FOR PRISONS IS ELUCIDATED. IT IS SUGGESTED THAT RHETORICAL CLAIMS IN CORRECTIONS MUST BE NARROWED, AND IMPRISONMENT MUST BE SEEN AS RESPONSIVE FOR EXECUTING THE SENTENCE THROUGH THE DEPRIVATION OF LIBERTY, BUT WITHIN THE CONTEXT OF JUSTICE, RATIONALITY, AND CONSTITUTIONALITY. THE PRISONER IS VOLITIONAL AND VOLITION IS SUBVERSIVE OF THE VERY BASIS OF THE CLINICAL MODEL. REHABILITATION REQUIRES A CHOICE ON THE PART OF THE INMATE TO BE REHABILITATED AND REQUIRES THAT THE INMATE FEEL INADEQUATE AND IN NEED OF REMEDIATION. IN A JUSTICE MODEL OF INCARCERATION, IMPRISONMENT MAY BE SEEN AS THAT PERIOD OF TIME IN WHICH THE PRISON TRIES TO REORIENT THE PRISONERS TO THE LAWFUL USE OF POWER. THIS INFLUENCE ATTEMPT MUST BE BASED UPON THE OPERATIONIZATION OF JUSTICE AS FAIRNESS, WITHOUT MORALIZING. WHILE OPPORTUNITIES SHOULD BE OFFERED FOR SELF-IMPROVEMENT, THEY SHOULD NOT BE MADE A CONDITION OF FREEDOM, FOR TO IMPOSE A PHILOSOPHY OF REHABILITATION OFFENDS SIMPLE JUSTICE. UNDER THE REHABILITATION MODEL, THE CONTINUUM OF JUSTICE IS DISRUPTED ONCE THE PRISONER ENTERS THE CORRECTIONAL SYSTEM. THE JUSTICE SYSTEM OUTSIDE CORRECTIONS EMPHASIZES THE VOLITION OF THE OFFENDER THROUGHOUT ARREST, TRIAL, AND CONVICTION; HOWEVER, ONCE THE OFFENDER ENTERS THE PRISON HE IS PLACED IN TREATMENT REGIMES WHICH ASSUME NONVOLITIONAL BEHAVIORS ON THE PART OF THE PRISONER BASED ON DETERMINISTIC PHILOSOPHIES WHICH NEGLECT CONCEPTS OF PERSONAL RESPONSIBILITY. MOREOVER, WHEN UNLAWFUL BEHAVIOR OCCURS WITHIN THE PRISON IT IS OFTEN DEALT WITH IN THE ABSENCE OF STANDARDS OF JUSTICE WHICH ARE INSISTED UPON OUTSIDE THE PRISON. SUCH TREATMENT IS NOT CONDUCTIVE TO TEACHING THE INMATE THE LAWFUL USE OF POWER. IN THE JUSTICE MODEL, THE OPERATIONIZATION OF FAIRNESS FOR BOTH THE STAFF AND THE INMATES WILL REQUIRE THE MITIGATION OF HARSHNESS, PEACEFUL CONFLICT RESOLUTION, AND A SAFER STAFF WORK ENVIRONMENT. THE PRISON SENTENCE SHOULD BE SEEN AS PUNISHMENT, BUT SHOULD NOT BE VENGEFUL. WHILE PROGRAMS SHOULD BE AVAILABLE TO INMATES, THESE PROGRAMS SHOULD BE BASED ON THE FREE CHOICE OF THE PRISONER; CHOICE IS NOT VIEWED AS AN INDICATOR OF CLINICAL PROGRESS OR A BASIS FOR RELEASE DECISIONS. FINALLY, ALTERNATIVES TO THE FORTRESS PRISON WILL BE NECESSARY TO THE IMPLEMENTATION OF A JUSTICE MODEL. SUCH ALTERNATIVES SHOULD BE BUILT IN OR NEAR URBAN CENTERS, AND BE ORGANIZED IN A DECENTRALIZED AND SEGREGATED MANNER (BY A VOLUNTARILY DEvised WORK, TREATMENT, EDUCA-

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TIONAL, OR OTHER PROGRAM). A PRISON TERM SHOULD BE REASONABLE AND PERMIT THE MAXIMUM AMOUNT OF INMATE DIGNITY, PERSONAL RESPONSIBILITY, AND SELF-DETERMINATION.

Availability: National Criminal Justice Reference Service MICRO-FICHE PROGRAM.

149. G. S. GREEN. MEASURING THE INCAPACITATIVE EFFECTIVENESS OF FIXED PUNISHMENT (FROM PREVENTING CRIME, 1978, BY JAMES A CRAMER—SEE NCJ-55274). SAGE PUBLICATIONS, INC, 275 SOUTH BEVERLY DRIVE, BEVERLY HILLS, CA 90212. 20 p. 1978. NCJ-55281

TWO APPROACHES TO ESTABLISHING SENTENCE LENGTHS UNDER A SYSTEM OF FIXED (DETERMINATE) SENTENCING, ONE BASED ON INCAPACITATION AND THE OTHER ON JUST DESERTS, ARE COMPARED FOR THEIR EFFECTIVENESS IN REDUCING CRIME. BLANKET INCAPACITATIVE SENTENCES CAN BE ALLOCATED BY IMPOSING THE SAME SENTENCE LENGTH ON ALL SERIOUS CRIMINALS OR BY GIVING DIFFERENT SENTENCE LENGTHS FOR DIFFERENT CRIMES (THE DIFFERENCE BEING THE FREQUENCY WITH WHICH A GIVEN CRIME OCCURS IN THE POPULATION, NOT ITS RELATIVE SEVERITY). THE MAJOR DIFFERENCE BETWEEN COLLECTIVE INCAPACITATION AND A JUST DESERTS MODEL IS THE BASIS FOR INCARCERATION. UNDER INCAPACITATION, INCARCERATION IS USED TO REDUCE CRIME. UNDER JUST DESERTS, SENTENCES ARE PUNISHMENTS AND ARE DISTRIBUTED ON THE BASIS OF JUSTICE. BOTH SYSTEMS CAN ALLOCATE THE SAME AMOUNT OF PUNISHMENT; THE CRITICAL DIFFERENCE LIES IN THE APPROACH TO DETERMINING WHO GETS WHAT PUNISHMENT. IN DECIDING WHETHER INCAPACITATION OR JUST DESERTS SHOULD GUIDE DETERMINATE SENTENCING, IT IS NECESSARY TO DETERMINE THE EXTENT TO WHICH EACH APPROACH REDUCES CRIME. IF COLLECTIVE INCAPACITATION DOES NOT REDUCE CRIME SIGNIFICANTLY BETTER THAN DOES THE JUST DESERTS MODEL, THEN THE LATTER SHOULD PREVAIL IN THE ALLOCATION OF PUNISHMENT IN A FREE SOCIETY. TO COMPARE INCAPACITATION AND JUST DESERTS, A 'VELOCITY OF CRIMINALITY' FORMULA IS DEVELOPED AND USED TO ANALYZE THE RELATIVE EFFECTIVENESS OF INCAPACITATION AND JUST DESERTS MODELS OF SENTENCING IN REDUCING CRIME AMONG A POPULATION OF 50,225 MALE AND FEMALE OFFENDERS RELEASED ON PAROLE DURING 1968 AND 1969. THE VELOCITY FORMULA, A RATIO BETWEEN THE NUMBER OF CRIMES COMMITTED BY AN INDIVIDUAL AND THE TIME THE INDIVIDUAL IS FREE TO COMMIT CRIMES, PROVIDES A BASIC UNIT OF MEASUREMENT FOR ASSESSING CRIME REDUCTION DUE TO INCAPACITATION. THE ANALYSIS SHOWS THAT THE JUST DESERTS SENTENCING MODEL IS 90 PERCENT AS EFFECTIVE AS COLLECTIVE INCAPACITATION IN REDUCING CRIME IN THE STUDY POPULATION. THE INCAPACITATIVE POTENTIAL OF DESERT-BASED SENTENCING APPEARS TO BE SUBSTANTIAL. ALTHOUGH THE ANALYSIS MERELY ILLUSTRATES THE QUANTIFIABILITY OF INCAPACITATIVE EFFECTIVENESS AND IS NOT TO BE GENERALIZED, IT DOES APPEAR THAT THE ADVANTAGES OF A JUST DESERTS SYSTEM OF PUNISHMENT MUST BE CONSIDERED. SUPPORTING DATA AND A LIST OF REFERENCES ARE INCLUDED.

150. P. W. GREENWOOD. RAND RESEARCH ON CRIMINAL CAREERS—PROGRESS TO DATE, AUGUST 1979. RAND CORPORATION, 1700 MAIN STREET, SANTA MONICA, CA 90406. 58 p. 1979. NCJ-67051

THIS REPORT DESCRIBES BOTH COMPLETED AND ONGOING STUDIES CONCERNED WITH CRIMINAL CAREERS AND PRESENTS MAJOR FINDINGS TO DATE (1979). THE PRINCIPAL COMPLETED PROJECTS IN THE RAND CORPORATION'S CRIMINAL CAREER RESEARCH PROGRAM INCLUDE (1) A STUDY OF CRIMINAL CAREERS INVOLVING INTERVIEWS WITH 49 PRISON INMATES, WHO HAD EACH SERVED AT

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LEAST ONE TERM PRIOR TO THEIR CURRENT CONVICTION AND WHO WERE CURRENTLY SERVING SENTENCES FOR ROBBERY; (2) A SURVEY OF 624 CALIFORNIA PRISON INMATES CONCERNING THEIR CURRENT CONFINEMENT; AND (3) AN ANALYSIS OF FELONY ARREST DISPOSITIONS IN FOUR SOUTHERN CALIFORNIA COUNTIES. RESEARCH IN PROGRESS ENCOMPASSES ANOTHER INMATE SURVEY OF BOTH PRISON AND JAIL INMATES FROM THREE STATES, A STUDY OF CHANGES IN PROSECUTION AND SENTENCING OUTCOMES UNDER CALIFORNIA'S DETERMINATE SENTENCING ACT, AND A STUDY OF HOW JUVENILE RECORDS ARE USED IN ADULT CRIMINAL PROCEEDINGS. MAJOR FINDINGS ON RESEARCH COMPLETED AS OF 1979 INDICATE THAT FEW OFFENDERS SPECIALIZE, BUT RATHER ENGAGE IN SEVERAL DIFFERENT CRIME TYPES; INDIVIDUAL CRIME RATES SHOW A MODERATE DECLINE WITH AGE AND SUBSTANTIAL INCREASE WITH PRIOR RECORD; A STRONG RELATIONSHIP EXISTS BETWEEN PRIOR RECORD AND CASE OUTCOMES; AND AT LEAST A 3-PERCENT INCARCERATION INCREASE WOULD BE REQUIRED TO BRING ABOUT A 1-PERCENT DECREASE IN CRIME. SOCIAL AND PSYCHOLOGICAL CORRELATES SHOW THAT IN GENERAL, HIGH-RATE OFFENDERS ARE MORE LIKELY THAN OTHER OFFENDERS TO EXPRESS HEDONISTIC REASONS FOR CRIME, AS OPPOSED TO ECONOMIC DURESS. FINALLY, A NATIONAL SURVEY, COVERING THE ENTIRE SPECTRUM OF CRIMINAL JUSTICE AGENCIES TO DETERMINE HOW THEY COULD COORDINATE THEIR ACTIVITIES WITH CAREER CRIMINAL PROSECUTION PROGRAMS, INDICATES THAT THE POLICE COULD PROVIDE MORE DIRECT ASSISTANCE TO THE PROSECUTOR, CONCENTRATE INVESTIGATION RESOURCES ON SUSPECTED CAREER CRIMINALS, AND UPGRADE THEIR GENERAL CRIME ANALYSIS AND INVESTIGATION EFFORTS. FOOTNOTES AND REFERENCES ARE PROVIDED. (AUTHOR ABSTRACT MODIFIED)

Supplemental Notes: RAND NOTE.

Sponsoring Agency: US DEPARTMENT OF JUSTICE LEAA NATIONAL INSTITUTE OF LAW ENFORCEMENT AND CRIMINAL JUSTICE, 633 INDIANA AVENUE NW, WASHINGTON, DC 20531.

Availability: National Criminal Justice Reference Service MICRO-FICHE PROGRAM.

151. R. F. HOLBERT and V. J. WEBB. INMATE SUPPORT FOR 'FLAT-TIME' SENTENCING AND RELATED PROPOSALS. GEORGIA STATE UNIVERSITY SCHOOL OF URBAN LIFE, ATLANTA, GA 30303. CRIMINAL JUSTICE REVIEW, V 3, N 1 (SPRING 1978), P 101-106. NCJ-57632

A SAMPLE OF 610 MALE INMATES WAS SURVEYED TO DETERMINE THE EXTENT TO WHICH THEY SUPPORT 'FLAT TIME' SENTENCING, 'DAY TO DAY' GOOD TIME, VOLUNTARY TREATMENT, AND THE ELIMINATION OF PAROLE. RESPONSES OF INMATES IN A PLAINS STATE CORRECTIONAL INSTITUTION SHOWED THAT A MAJORITY SUPPORTED ALL FOUR PROPOSALS. ABOUT 76 PERCENT SUPPORTED THE FLAT-TIME PROPOSAL, 95 PERCENT FAVORED 'DAY-TO-DAY' GOOD TIME, 85 PERCENT FAVORED VOLUNTARY TREATMENT, AND ABOUT 65 PERCENT SUPPORTED THE ELIMINATION OF PAROLE. WHILE A MAJORITY OF INMATES SUPPORT ALL FOUR PROPOSALS, THE AMOUNT OF SUPPORT VARIES SUBSTANTIALLY FROM A LOW OF 65 PERCENT ON THE PAROLE PROPOSAL TO A HIGH OF 95 ON GOOD TIME PROPOSAL. SUBSTANTIAL VARIABILITY ALSO EXISTS AMONG INMATE RESPONSES ON AT LEAST TWO PROPOSALS. WHILE 76 PERCENT OF THE RESPONSES ON THE FLAT-TIME PROPOSAL ARE FAVORABLE, ALMOST 16 PERCENT ARE AGAINST FLAT-TIME SENTENCING. A SIMILAR DISTRIBUTION OF RESPONSES EXISTS ON THE PROPOSAL TO ELIMINATE PAROLE, WITH 65 PERCENT IN FAVOR AND 21 PERCENT AGAINST THE PROPOSAL. THE INDICATORS, AMOUNT OF TIME SERVED AND PAST EXPERIENCE IN THE PRISON SYSTEM WERE USED TO EXPLAIN THIS VARIABILITY. HOWEVER, BOTH INDICATORS CORRELATED ONLY WEAKLY WITH

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THE RESPONSES TO THE PROPOSALS. THE STUDY REVEALS THAT FROM THE POINT OF VIEW OF THE INMATES THE FOUR PROPOSALS ARE ATTRACTIVE ALTERNATIVES TO THE PRESENT SYSTEMS, BUT THE VARIABLES OF AMOUNT OF TIME SERVED AND PAST EXPERIENCE IN THE PRISON SYSTEM CANNOT ADEQUATELY EXPLAIN THEIR SUPPORT OF THE PROPOSALS. STUDY DATA AND REFERENCES ARE PROVIDED.

152. R. J. HOMANT. DETERMINATE SENTENCING AND PRISONER ATTITUDES. HAWORTH PRESS, 149 FIFTH AVENUE, NEW YORK, NY 10010. OFFENDER REHABILITATION, V 2, N 4 (SUMMER 1978), P 351-369. NCJ-52620

AN EXPERIMENT INVOLVING INMATE ROLE PLAYING PRINCIPALLY EXAMINES WHETHER ELIMINATING THE PAROLE PROCESS AND GIVING PRISONERS A DEFINITE RELEASE DATE WOULD REDUCE NEGATIVE ATTITUDES. FIFTY-EIGHT REPRESENTATIVE SUBJECTS FROM THE WISCONSIN STATE PRISON PARTICIPATED IN THE STUDY. THE SUBJECTS WERE DIVIDED INTO 3 GROUPS: THE EXPERIMENTAL GROUP (N19) GIVEN AN ATTITUDE TEST AND A QUESTIONNAIRE ON BACKGROUND INFORMATION WHILE BEING ASKED TO IMAGINE BEING GIVEN A DETERMINATE SENTENCE; THE COSMETIC CONTROL GROUP (N20), WHICH UNDERWENT A PROCEDURE IDENTICAL TO THE EXPERIMENTAL GROUP WITH THE ADDITION OF BEING ASKED TO PROPOSE A LIST OF ABOUT 10 CHANGES THEY WOULD LIKE TO MAKE AT THE PRISON; THE CONTROL GROUP (N19), WHICH UNDERWENT THE SAME PROCEDURE AS THE OTHER TWO GROUPS, WITH THE ADDITION OF PROPOSING CHANGES IN THE OVERALL CRIMINAL JUSTICE SYSTEM AS WELL AS IN THE PRISON. THE ATTITUDE QUESTIONNAIRE WAS DESIGNED TO MEASURE CYNICISM, OPTIMISM, EXTRINSIC MOTIVATION, INTRINSIC MOTIVATION, PROGRAM INVOLVEMENT, AND PROGRAM SATISFACTION. RESULTS SHOWED THAT THE CLEAREST PICTURE OF PRISONER ATTITUDES EMERGED FROM AN EXAMINATION OF COMPLAINTS AND RECOMMENDED CHANGES. MOST OF THE CHANGE RECOMMENDATIONS PERTAINED TO PRISON CONDITIONS, WITH VISITING PRIVILEGES, INTERACTION WITH STAFF, PROPERTY RIGHTS, AND THE NEED FOR BETTER VOCATIONAL PROGRAMS RECEIVING THE MOST ATTENTION. THE EXPERIMENTAL GROUP DID PROVIDE EVIDENCE THAT A DETERMINATE SENTENCE COULD REDUCE THE AMOUNT OF EXTRINSIC MOTIVATION FOR BEHAVIORAL CHANGE, ALTHOUGH THERE WAS NO EVIDENCE THAT THIS DECREASE IN EXTRINSIC MOTIVATION WOULD GENERALIZE EITHER TO LOWERED CYNICISM OR INCREASED OPTIMISM. PRISON IMPROVEMENTS RAISED OPTIMISM SIGNIFICANTLY AND PRODUCED A TREND TOWARD DECREASED CYNICISM. IT IS GENERALLY CONCLUDED THAT ALTHOUGH THERE WAS SOME INDIRECT EVIDENCE THAT THE INDETERMINATE SENTENCE IS A SOURCE OF TENSION FOR THE SUBJECTS, THE ISSUE REMAINS OPEN. QUESTIONNAIRE ITEMS, REFERENCES, AND DATA FROM THE STUDY ARE INCLUDED.

153. C. A. MCNEECE and M. W. LUSK. CONSUMER'S VIEW OF CORRECTIONAL POLICY—INMATE ATTITUDES REGARDING DETERMINATE SENTENCING. SAGE PUBLICATIONS, INC, 275 SOUTH BEVERLY DRIVE, BEVERLY HILLS, CA 90212. CRIMINAL JUSTICE AND BEHAVIOR, V 6, N 4 (DECEMBER 1979), P 383-389. NCJ-64861

SURVEYS IN TWO CORRECTIONAL INSTITUTIONS SHOWED THAT INMATES STRONGLY PREFER DETERMINATE SENTENCING OVER THE MORE COMMONLY USED INDETERMINATE SENTENCING. INDEPENDENT RANDOM SAMPLES OF INMATES WERE DRAWN FROM TWO DIFFERENT KINDS OF CORRECTIONAL FACILITIES WITHIN KENTUCKY, WHERE 89 INMATES AGREED TO PARTICIPATE. A QUESTIONNAIRE ADMINISTERED TO SUBJECTS ASKED A NUMBER OF PERSONAL BACKGROUND AND OFFENSE-RELATED QUESTIONS AS WELL AS TWO ATTITUDINAL QUESTIONS ABOUT DETERMINATE SENTENCING AND REHABILITATIVE PROGRAMS. IN-

EFFECT ON INMATES

MATES WERE STRONGLY IN FAVOR OF DETERMINATE SENTENCING IN BOTH THE FEDERAL AND THE STATE PRISON. A LARGE MAJORITY ALSO REPORTED THAT THEY WOULD HAVE PARTICIPATED IN REHABILITATIVE OR TREATMENT PROGRAMS WHILE INCARCERATED EVEN IF THE INDUCEMENT OF PAROLE HAD NOT BEEN PRESENT. PERHAPS THE MOST SURPRISING FINDING IN THE STUDY WAS THAT THE MAJORITY OF THOSE INMATES WHO ARE THE DIRECT BENEFICIARIES OF INDETERMINATE SENTENCING POLICIES, THOSE WHO HAVE BEEN GRANTED PAROLE, ARE IN FAVOR OF DETERMINATE SENTENCING POLICIES; 75 PERCENT OF THOSE INMATES WHOSE PAROLE HAD BEEN DENIED INDICATED THAT THEY STILL WOULD HAVE PARTICIPATED IN REHABILITATIVE PROGRAMING. THE SURVEY INDICATES AN APPARENT READINESS AMONG INMATES IN BOTH FEDERAL AND STATE INSTITUTIONS TO ACCEPT REVISIONS IN SENTENCING POLICIES WHICH WOULD REMOVE THE UNCERTAINTIES CONCERNING THE DATE OF THEIR ANTICIPATED RELEASE. REFERENCES ARE GIVEN.

154. J. PETERSILIA. DEVELOPING PROGRAMS FOR THE HABITUAL OFFENDER—NEW DIRECTIONS IN RESEARCH (FROM CONTEMPORARY CORRECTIONS SOCIAL CONTROL AND CONFLICT, 1977 BY C RONALD HUFF—SEE NCJ-44951). SAGE PUBLICATIONS, INC, 275 SOUTH BEVERLY DRIVE, BEVERLY HILLS, CA 90212. 20 p. 1977. NCJ-44957

THE AUTHOR SUMMARIZES A NUMBER OF DEVELOPING 'HARD-LINE' POLICE OPTIONS FOR DEALING WITH THE VIOLENT CAREER (HABITUAL) OFFENDER. THE AUTHOR NOTES THAT THESE POLICY POSITIONS ARE IN PART BASED ON INFERENCES MADE FROM EMPIRICAL STUDIES, NAMELY THAT THE REHABILITATION MODEL OF IMPRISONMENT HAD FAILED AND THAT THE CRIME PROBLEM HAS BEEN EXACERBATED BY THE EXISTENCE OF A RELATIVELY SMALL NUMBER OF HARD-CORE HABITUAL OFFENDERS WHO ARE REPEATEDLY APPREHENDED AND WHO, AFTER BEING RELEASED, CONTINUE TO COMMIT CRIMES. THE AUTHOR ACKNOWLEDGES, HOWEVER, THAT SOME OF THESE NEW HARD-LINE POLICIES ARE BORN OUT OF FRUSTRATION AND DESPAIR AND THEREFORE NEED TO BE EVALUATED VERY THOROUGHLY BEFORE DECIDING ON THEIR EFFICACY IN SERVING THE GOAL OF IMPROVED JUSTICE. POLICY ISSUES SPECIFICALLY ADDRESSED IN THE PAPER INCLUDE: (1) SHIFTING THE VIOLENT JUVENILE OFFENDER FROM JUVENILE COURT TO ADULT FELONY PROCEEDINGS; (2) INCREASING RELIANCE ON INCAPACITATION AS A DESIRABLE GOAL; (3) ENHANCING PROSECUTORIAL EFFECTIVENESS VIA METHODS SUCH AS THE VERTICAL REPRESENTATION PROCEDURES USED BY CAREER CRIMINAL UNITS ESTABLISHED IN AT LEAST 18 CITIES; (4) EMPLOYING DETERMINATE SENTENCING; (5) CONDUCTING VOLUNTARY RATHER THAN COMPELLED REHABILITATION PROGRAMS; AND (6) INCREASING POLICE SURVEILLANCE. THE AUTHOR ADDRESSES THE PROBLEMS INHERENT TO THE ATTEMPT TO IDENTIFY THE TARGET POPULATION FOR WHOM THESE POLICIES ARE INTENDED AND PRESENTS DATA DERIVED FROM A STUDY OF A SMALL SAMPLE OF OFFENDERS CONSIDERED REPRESENTATIVE, TO SOME EXTENT, OF THE TARGET POPULATION. THE STUDY ILLUMINATES THE DEVELOPMENT OF SERIOUS CRIMINAL CAREERS AND THE INTERACTIONS OF THESE SERIOUS OFFENDERS WITH CRIMINAL JUSTICE AGENCIES. TOPICS SUCH AS THE RATES AT WHICH SERIOUS OFFENDERS COMMIT CRIMES OF DIFFERENT TYPES, HOW SUCH RATES VARY DURING A CRIMINAL CAREER, AND HOW PATTERNS OF CRIMINALITY ARE RELATED TO PERIODS OF IMPRISONMENT ARE DISCUSSED. THE MOST SIGNIFICANT IMPLICATION IDENTIFIED IS THAT THE SYSTEM MAY HAVE TO FOCUS THE CONTAINMENT POLICY ON YOUNG ADULTS. (AUTHOR ABSTRACT MODIFIED).

Sponsoring Agency: US DEPARTMENT OF JUSTICE LEAA NATIONAL INSTITUTE OF LAW ENFORCEMENT AND CRIMINAL JUSTICE, 633 INDIANA AVENUE NW, WASHINGTON, DC 20531.

155. **J. PETERSILIA. NEW DIRECTIONS FOR DEALING WITH THE SERIOUS OFFENDER.** CALIFORNIA DEPARTMENT OF THE YOUTH AUTHORITY, 4241 WILLIAMSBOROUGH DRIVE, SACRAMENTO, CA 95823. *CALIFORNIA YOUTH AUTHORITY QUARTERLY*, V 30, N 1 (SPRING 1977), P 2-12.
NCJ-41704

THIS PAPER, A PRODUCT OF THE RAND CORPORATION'S RESEARCH AGREEMENTS PROGRAM, FOCUSES ON THE SERIOUS HABITUAL OFFENDER AND SUMMARIZES CURRENT POLICY DIRECTIONS FOR DEALING MORE EFFECTIVELY WITH THIS TYPE OF OFFENDER. A NUMBER OF MAJOR POLICY ISSUES ARE ADDRESSED, AMONG THEM: SHIFTING THE VIOLENT JUVENILE TO THE ADULT CRIMINAL COURT; INCREASING THE RELIANCE PLACED ON MERE INCAPACITATION; MOVING TOWARD MANDATORY, DETERMINATE SENTENCING; MAKING USE OF VOLUNTARY REHABILITATION PROGRAMS; LESSENING PLEA BARGAINING; AND INCREASING THE USE OF PROACTIVE POLICING. (AUTHOR ABSTRACT)

156. **J. R. RAPPEPORT. PATUXENT REVISITED.** UNIVERSITY OF PITTSBURGH SCHOOL OF LAW, PITTSBURGH, PA 15260. *BULLETIN OF THE AMERICAN ACADEMY OF PSYCHIATRY AND THE LAW*, V 3, N 1 (MARCH 1975), P 10-16.
NCJ-54206

A MEMBER OF THE ADVISORY BOARD OF PATUXENT INSTITUTION, PROVIDING TREATMENT FOR 'DANGEROUS' OFFENDERS GIVEN INDETERMINATE SENTENCES ACCORDING TO A MEDICAL MODEL FOR CORRECTIONS, RESPONDS TO CRITICISM OF PATUXENT. THE AUTHOR, A MEMBER OF THE GOVERNING AND ADVISORY BOARDS OF THE PATUXENT INSTITUTION IN JESSUP, MD., FOR MANY YEARS, RESPONDS TO CRITICISM OF THE PROCEDURES GOVERNING THE PRISON'S OPERATION, AS PRESENTED IN 'THE EVALUATION OF PRISON TREATMENT AND PREVENTIVE DETECTION PROGRAMS: SOME PROBLEMS FACED BY THE PATUXENT INSTITUTION' (1974—SEE NCJ-49939). PATUXENT RECEIVES OFFENDERS DETERMINED BY PSYCHIATRIC EXAMINATION AND RECENT CRIMINAL BEHAVIOR TO BE 'DANGEROUS' AND COMMITTED BY JUDICIAL DECISION TO AN INDETERMINATE SENTENCE WITH PROVISION FOR DUE PROCESS. RELEASE OCCURS THROUGH A HEARING THAT DETERMINES WHETHER THE OFFENDER IS 'REASONABLY SAFE' FOR RETURN TO THE COMMUNITY. IN RESPONSE TO THE CRITICISM THAT 'DANGEROUSNESS' CANNOT BE SCIENTIFICALLY ASSESSED OR PREDICTED, IT IS ARGUED THAT A RECENT PATTERN OF VIOLENCE AND INJURIOUS BEHAVIOR IS A REASONABLE MEASURE OF THE LIKELIHOOD OF A CONTINUATION OF SUCH BEHAVIOR SHOULD NO TREATMENT INTERVENTION OCCUR. ON THE OTHER HAND, PREDICTIONS OF DANGEROUSNESS FOLLOWING TREATMENT OR A PERIOD OF INCARCERATION WHERE THE PREVIOUS THREATENING BEHAVIOR HAS CEASED ARE ACKNOWLEDGED TO BE DIFFICULT. THIS IS WHY A BROADER CRITERION OF 'REASONABLY SAFE' IS EMPLOYED FOR RELEASE FROM PATUXENT. CRITICISM OF THE INDETERMINATE SENTENCE AS ALLOWING FOR A PERIOD OF INCARCERATION THAT MAY EXTEND BEYOND A DETERMINATE SENTENCE DESIGNED TO FIT THE CRIME IS MET BY NOTING THAT THE AVERAGE LENGTH OF STAY IN PATUXENT IS 4 YEARS, WITH RESIDENTS BEING MOST OFTEN RELEASED SOONER THAN THEY WOULD HAVE BEEN UNDER A DETERMINATE SENTENCE FOR THE SAME CRIME. THE CRITICISM THAT AN EXPERIMENTAL STRUCTURE FOR DATA GATHERING TO EXAMINE OUTCOMES OF THE PATUXENT PROGRAM IS LACKING IS ACKNOWLEDGED TO BE VALID, ALTHOUGH IT IS MAINTAINED THAT SUCH SCIENTIFIC DEMANDS ARE NEITHER POSSIBLE UNDER THE CIRCUMSTANCES NOR IN THE PUBLIC INTEREST. IT IS GENERALLY CONCLUDED THAT, IN SPITE OF ACKNOWLEDGED LIMITATIONS, PATUXENT RELEASEES HAVE A GREATER CHANCE OF AVOIDING RECIDIVISM THAN IF THEY HAD SERVED DE-

TERMINATE SENTENCES IN A REGULAR CORRECTIONAL INSTITUTION.

157. **R. SHINNAR. INCAPACITATIVE FUNCTION OF PRISON INTERMENT—A QUANTITATIVE APPROACH.** 50 p. 1976.
NCJ-51469

USING MEASURABLE FACTORS, A MATHEMATICAL MODEL IS DEVELOPED TO SHOW THE EFFECT OF IMPRISONMENT AS INCAPACITATION ON CRIMES WITH A HIGH RECIDIVISM RATE. NOTING THAT CRIME IS INCREASING WHILE THE PRISON POPULATION AND THE AVERAGE LENGTH OF A PRISON STAY IS DECREASING, THE MATHEMATICAL MODEL DEVELOPED CLAIMS TO MEASURE THE EFFECT OF MORE AND LONGER IMPRISONMENT ON THE CRIME RATE. THE BASIC MODEL USED IN ESTIMATING THE INCAPACITATION EFFECTS OF PRISONS WAS DESIGNED BY AVI IZCHAK AND SHINNAR (1973) AND SHINNAR AND SHINNAR (1975). THE ASSUMPTIONS OF THE MODEL HAVE ALSO BEEN DISCUSSED BY OTHER INVESTIGATORS (BELKIN 1972). THE FACTORS USED IN THE EQUATION ARE DEFINED AND THE EQUATION PRESENTED. RELIABILITY OF ESTIMATES, EVALUATION OF PRESENT DATA, INDICATIONS FOR FUTURE RESEARCH, PREDICTIONS OF THE MODEL, AND INDICATIONS FOR POLICY ARE THE PRINCIPAL SUBJECTS DISCUSSED. THE MODEL INDICATES THAT A SIGNIFICANT REDUCTION OF RECIDIVIST CRIME WOULD REQUIRE THE FOLLOWING: HAVING COMMITTED A CRIME, (1) A HIGH PROBABILITY OF ARREST, AND HAVING BEEN ARRESTED, A HIGH PROBABILITY OF CONVICTION; (2) A PRISON SENTENCE OF AT LEAST 3 YEARS (PREFERABLY 5 FOR SECOND TIMERS) FOR CRIMES LIKE ROBBERY AND BURGLARY; (3) A HIGHER PROBABILITY OF ARREST, HAVING COMMITTED A CRIME, IN THE INNER CITIES AND BETTER SUPERVISION OF RECIDIVISTS; (4) A REDUCTION OF TIME BETWEEN ARREST AND COMMITMENT; AND (5) ADDITIONAL PRISON SPACE TO ACCOMMODATE INCREASES IN ARREST, CONVICTION, AND SENTENCES. WHILE IT IS BELIEVED THAT A REDUCTION IN RECIDIVIST CRIME CAN BE ACCOMPLISHED THROUGH ATTENTION TO THE FACTORS IN THE MATHEMATICAL MODEL, IT IS ACKNOWLEDGED THAT OTHER CONSIDERATIONS (COST, REHABILITATION EMPHASES, AND MORAL VALUES) ALSO AFFECT THE POLICY PURSUED. DATA USED IN THE MODEL ARE PROVIDED IN THE APPENDIX. REFERENCES ARE INCLUDED.

Sponsoring Agency: SLOAN (ALFRED P) FOUNDATION.

Availability: National Criminal Justice Reference Service MICROFICHE PROGRAM.

158. **C. R. BLOCK. GUIDE TO ILLINOIS PAROLE AND RELEASE DATA.** ILLINOIS LAW ENFORCEMENT COMMISSION STATISTICAL ANALYSIS CENTER, 120 S RIVERSIDE PLAZA, CHICAGO, IL 60606. 165 p. 1979.
NCJ-63240

A USER'S GUIDE TO THE COLLECTION, MAINTENANCE, AND AVAILABILITY OF ADULT PAROLE AND SUPERVISED RELEASE DATA FOR ILLINOIS INMATES IS PRESENTED. ILLINOIS HAS JUST CONVERTED FROM AN INDETERMINATE TO A DETERMINATE SENTENCING SYSTEM. UNDER THE LAW EFFECTING THIS CHANGE, PRISON TERMS ARE ESTABLISHED FOR SERIOUS OFFENSES AND FOR SUPERVISED RELEASE TERMS, AND PAROLE NO LONGER EXISTS. INSTEAD, THERE IS A FIXED RELEASE DATE, ASSUMING GOOD TIME IS SERVED, SET BY LAW AT THE BEGINNING OF THE PRISON TERM. THE PRISON REVIEW BOARD RECEIVES A PRINTOUT OF BACKGROUND AND INSTITUTIONAL HISTORY ON EACH PERSON APPEARING BEFORE THE BOARD FROM THE DEPARTMENT OF CORRECTIONS SYSTEM AND IS SENT A MONTHLY PACKET OF INFORMATION FROM EACH INSTITUTION. THE BOARD MAINTAINS RECORDS OF THE OUTCOME OF EACH DECISION, CARD FILES CONTAINING THE PAROLE HISTORY OF EACH PAROLEE, AND LEGAL PAPERS PERTINENT TO DECISIONS. RECORDKEEPING PRACTICES DIFFER IN EACH AREA OF ILLINOIS' PAROLE DISTRICTS. AT FINAL DISCHARGE, THE ADULT PAROLE SERVICES FILES ARE SENT BACK TO THE INSTITUTION WHERE THEY ARE STORED AND EVENTUALLY MICROFILMED. A MONTHLY REPORT GIVING COUNSELOR CASELOADS AND TRANSFERS IS PUBLISHED. THE MICROFILM UNIT OF THE DEPARTMENT OF CORRECTIONS IS RESPONSIBLE FOR MAKING MICROFILM RECORDS OF ALL MASTER FILES AND PRISONER REVIEW BOARD DECISIONS. FILES FROM 1945 THROUGH 1969 HAVE EITHER BEEN MICROFILMED OR DESTROYED; NONE ARE AWAITING PROCESS. ESSENTIALLY, ONLY INFORMATION ON PRISONERS RELEASED IN THE 1970'S IS AVAILABLE IN ANY DETAIL. THE DEPARTMENT OF CORRECTIONS MAINTAINS TWO COMPUTERIZED RECORD SYSTEMS. ACCESS TO THE SYSTEM REPORTS ON INDIVIDUALS IS GOVERNED BY ILLINOIS STATUTE, AS IS ACCESS TO SUPERVISION FOR RESEARCH PURPOSES. HISTORICAL FILES ARE IMPOSSIBLE TO USE FOR ALL PRACTICAL PURPOSES. INFORMATION ON WHERE TO OBTAIN DATA ON ILLINOIS INMATES PAROLED FROM THE FEDERAL CORRECTIONAL SYSTEM IS PROVIDED. APPEN-

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DIXES, TABULAR INFORMATION, AND FIGURES ARE INCLUDED.

Availability: National Criminal Justice Reference Service MICROFICHE PROGRAM.

159. **P. B. BURKE. IMPACT OF PAROLE GUIDELINES ON CORRECTIONAL MANAGEMENT (FROM AMERICAN CORRECTIONAL ASSOCIATION—PROCEEDINGS, P 173-176, 1981, BARBARA HADLEY OLSSON AND ANN DARGIS, ED.—SEE NCJ-76771).** 9 p. 1981.
NCJ-76789
- PRESENTED AT THE 110TH CONGRESS OF CORRECTION OF THE AMERICAN CORRECTIONAL ASSOCIATION, THIS PAPER DESCRIBES THE IMPACTS OF PAROLE GUIDELINES ON CORRECTIONAL SYSTEM FUNCTIONING IDENTIFIED IN A NATIONAL INSTITUTE OF CORRECTIONS STUDY. THE STUDY INVOLVED AN INVESTIGATION OF THE GUIDELINE SYSTEMS OF MINNESOTA, OREGON, WASHINGTON, AND THE UNITED STATES PAROLE COMMISSION. ALL OF THE GUIDELINES ASSIGNED SPECIFIC TIME SANCTIONS TO INDIVIDUAL OFFENDERS BASED ON OFFENSE SEVERITY AND PRIOR CRIMINAL HISTORY. THE GUIDELINES AFFECTED INSTITUTIONAL OPERATIONS ON TWO LEVELS. FIRST, THEY PROVIDED INFORMATION USEFUL IN INDIVIDUAL CASE MANAGEMENT. PROGRAMS COULD BE PLANNED TO APPROXIMATE THE INTENDED LENGTH OF STAY OF INMATES SO THAT RESOURCES COULD BE USED MOST EFFECTIVELY. INDIVIDUALS COULD BE MOVED THROUGH CUSTODY LEVELS SO THAT THEY WERE IN AN APPROPRIATE STATUS FOR RELEASE, AND CASEWORKERS COULD PLAN MORE EFFECTIVELY FOR INMATE RELEASE. AT THE SECOND LEVEL, THE GUIDELINES PROVIDED AN INSTITUTIONAL OR CORRECTIONAL SYSTEM MANAGEMENT TOOL. USING GUIDELINES, CORRECTIONS ADMINISTRATORS COULD MORE ACCURATELY PROJECT INSTITUTIONAL POPULATIONS AND STAFFING NEEDS. FOREKNOWLEDGE OF PRISONER RELEASE DATES ALSO ALLOWED ADMINISTRATORS TO PLAN FOR A WIDE RANGE OF NEEDS. ONE OF THE STATES DEVELOPED A COMPUTERIZED MODELING SYSTEM TO PROJECT POPULATION CHANGES. IN OREGON, PAROLE BOARD MATRIX RATINGS OF OFFENSE SERIOUSNESS AND PRIOR HISTORY WERE USED IN MAKING CLASSIFICATION DECISIONS AND IN DETERMINING CUSTODY STATUS AND PAROLE SUPERVISION ASSIGNMENTS, WHILE CORRECTIONS STAFF IN OTHER PROGRAMS REPORTED THAT THE GUIDELINES SIMPLIFIED PREPARATION OF REPORTS FOR PAROLE BOARDS. GUIDELINE CHANGES AND THE PAPERWORK ASSOCIATED WITH THEIR USE REPRESENTED

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SENT THE MAJOR PROBLEM AREAS FOR CORRECTIONAL ADMINISTRATORS IN USING THIS MECHANISM.

Availability: AMERICAN CORRECTIONAL ASSOCIATION, 4321 HARTWICK ROAD, COLLEGE PARK, MD 20740.

160. **CITIZENS' INQUIRY ON PAROLE AND CRIMINAL JUSTICE, INC. REPORT ON NEW YORK PAROLE.** 360 p. 1974. NCJ-35916

THIS REPORT CRITICIZES THE THEORY BEHIND AND THE PRACTICE OF THE NEW YORK STATE BOARD OF PAROLE. RECOMMENDATIONS ARE MADE FOR THE ABOLISHMENT OF PAROLE AS AN INSTITUTION, PROVIDING AN ALTERNATIVE CAN BE FOUND. PAROLEES AND PAROLE OFFICERS WERE INTERVIEWED. THE FIRST PART OF THE STUDY DESCRIBES THE DEVELOPMENT OF PAROLE, ITS ORGANIZATIONAL STRUCTURE IN NEW YORK STATE, THE PAROLE BOARD, AND THE PAROLE SERVICE. THE SECOND SECTION IS DEVOTED TO DECISION MAKING. TOPICS INCLUDE SENTENCING, THE CASE FILE, THE PAROLE RELEASE INTERVIEW, AND RELEASE CRITERIA. THE NEXT SECTION, COMMUNITY SUPERVISION, DISCUSSES THE ADMINISTRATION OF THE COMMUNITY SUPERVISION PROGRAM, THE EMPHASIS OF COMMUNITY SUPERVISION, THE PROBLEMS OF THE PAROLEE, THE PAROLE AGREEMENT, AND REVOCATION. THE FINAL SECTION CONTAINS CONCLUSIONS AND RECOMMENDATIONS ON THE EFFECTIVENESS AND USEFULNESS OF PAROLE.

161. **J. P. CONRAD. WHO NEEDS A DOOR-BELL PUSHER? THE CASE FOR ABOLISHING PAROLE.** *PRISON JOURNAL*, V 59, N 2 (AUTUMN-WINTER 1979), P 17-26. NCJ-68854

THE INSTITUTION OF PAROLE SHOULD BE ABOLISHED AND THE RELOCATION OF EX-OFFENDERS INTO THE COMMUNITY SHOULD BE GIVEN INCREASED ATTENTION. AS REHABILITATIVE PROGRAMS APPEAR TO HAVE NO CONSISTENT OR DETECTABLE INFLUENCE ON PRISONERS, THERE IS NO APPARENT BASIS FOR DIFFERENTIATING SENTENCES IN ACCORDANCE WITH CHANGE IN THE SOCIAL AND PSYCHOLOGICAL STATUS OF OFFENDERS. SINCE THERE IS NO WAY TO JUDGE CHANGE FOR THE BETTER OR WORSE, SENTENCING COULD BE REDUCED TO THE CONSIDERATIONS OF PUNISHMENT, INCAPACITATION, AND DETERRENCE. RECIDIVISM HAS NOT SHOWN TO SIGNIFICANTLY OR RELIABLY VARY WITH PERTURBATION OF THE SENTENCING PARAMETER. THEREFORE, TERMS SHOULD BE FLATTENED OUT, KEPT SHORT, AND PLACED WITHIN A SENTENCING STRUCTURE WHICH WILL NEITHER OVERCROWD PRISONS NOR REQUIRE ADDITIONAL STRUCTURES. THE PAROLE BOARD, ADMINISTERING INDETERMINATE SENTENCES, WOULD HAVE NO EVIDENT FUNCTION IF FLAT-TERM SENTENCING WERE TO BE IMPOSED BY THE COURTS WITH REMISSION FOR GOOD TIME TO BE ADMINISTERED BY THE PRISON WARDEN ON STRICT CONDITIONS LAID OUT IN THE LAW AND AUDITED BY FUNCTIONARIES INDEPENDENT OF THE CORRECTIONAL SYSTEM. ALTHOUGH GOOD BEHAVIOR IN PRISON IS NO GUARANTEE OF EARLY RELEASE, THE PROVISION OF CREDITS FOR GOOD TIME IS AN ESSENTIAL CONTROL STRATEGY. MOREOVER, PAROLE SERVICES CANNOT BE JUSTIFIED FOR SURVEILLANCE PURPOSES, WHICH ADD UP TO EXPENSIVE PSEUDO-SERVICES. WHILE PAROLE OFFICERS DO OFFER ESSENTIAL SOCIAL SERVICES, THESE CAN BE ASSUMED BY SOCIAL SERVICE PERSONNEL AND VOLUNTEERS. MANY PAROLE OFFICERS ARE AWARE OF THE OBSOLESCENCE OF THE SURVEILLANCE FUNCTION, WHICH SHOULD BE CARRIED OUT BY THE POLICE IF NEEDED, AND RECOGNIZE THE POTENTIAL FOR COERCION IN THE PAROLE OFFICER'S ROLE. THUS A REFERRAL SERVICE SHOULD BE MADE TO PRISONERS NEEDING AND WANTING HELP IN PREPARATION FOR

PERSPECTIVES ON

RELEASE, AND MORE VOLUNTEERS SHOULD BE WORKING IN PRISONER ASSISTANCE. FOOTNOTES ARE PROVIDED.

Supplemental Notes: THIS ARTICLE ADAPTED FROM A PAPER PRESENTED TO THE ANNUAL MEETING OF THE AMERICAN SOCIETY FOR CRIMINOLOGY, NOVEMBER 1, 1975.

162. **CORRECTIONAL INFORMATION SERVICE, INC. 801 SECOND AVENUE, NEW YORK, NY 10017. SUPERVISION (THE OTHER PAROLE) ALSO ATTACKED.** *CORRECTIONS MAGAZINE*, V 3, N 3 (SEPTEMBER 1977), P 56-59. NCJ-43231

THE MERITS AND DRAWBACKS OF THE PAROLE SUPERVISION SYSTEM ARE PRESENTED IN THIS ARTICLE. AN EXAMINATION IS MADE OF PAROLE SUPERVISION IN THREE STATES WHICH HAVE ADOPTED DETERMINATE SENTENCES. CRITICS OF PAROLE SUPERVISION CAN BE FOUND ON BOTH SIDES OF PRISON BARS: OFFICIALS AND SOME PAROLE AGENTS FEEL THAT THE SYSTEM IS TOO COSTLY AND NEITHER ASSISTS THE PAROLEE NOR PROTECTS THE PUBLIC, WHILE INMATES CONSIDER PAROLE SUPERVISION TO BE AN EXTENSION OF PUNISHMENT, A 'HELLISH LIMBO.' WITH THE INSTITUTION OF DETERMINATE SENTENCING, CALIFORNIA AND INDIANA HAVE RADICALLY ALTERED THEIR PAROLE SUPERVISION SYSTEMS, AND MAINE HAS ABOLISHED IT COMPLETELY. CALIFORNIA'S NEW SENTENCING LAW SHIFTS THE PAROLE EMPHASIS FROM SUPERVISION AND SURVEILLANCE TO SERVICES, AND LIMITS THE PAROLE TERM TO ONE YEAR. MOST PAROLE FUNCTIONS IN MAINE ARE PRESERVED THROUGH SUCH PROGRAMS AS HOME WORK-RELEASE AND FURLOUGH, WHICH REQUIRE COMMUNITY SUPERVISION, BUT THE SYSTEM HAS LOST THE ABILITY TO KEEP TRACK OF A RELEASED INMATE. THE EFFECTIVENESS OF PAROLE SUPERVISION IN GENERAL IS WIDELY DISPUTED, ALTHOUGH SOME RESEARCH STUDIES HAVE UPHELD THE SYSTEM AS SLIGHTLY MORE EFFECTIVE THAN STRAIGHT RELEASE FROM PRISON.

163. **L. ELLIS. AMERICA'S CONVICTS—HOW TO LET THEM GO.** *OFFENDER REHABILITATION*, V 1, N 1 (FALL 1976), P 5-16. NCJ-40128

BRIEF DISCUSSION OF THE DEVELOPMENT OF PENAL PHILOSOPHY WITH RESPECT TO PUNISHMENT, INCAPACITATION, DETERRENCE AND REHABILITATION, WITH EMPHASIS ON THE RECENT TURN FROM THE REHABILITATION MODEL. THE CONTENTION THAT REHABILITATION IS EFFECTIVE AND THAT COMMUNITY BASED FACILITIES HAVE NOT BEEN GIVEN A FAIR CHANCE ARE EXAMINED AND REJECTED. THE ARTICLE COVERS THE HIGHLY INACCURATE NATURE OF PAROLE PREDICTION AS WELL AS THE VARIOUS PROPOSALS TO ADOPT DETERMINATE PRISON SENTENCES AND TO ABOLISH PAROLE. THE AUTHOR CONCLUDES THAT THE PENAL SYSTEM SHOULD BE PREDICATED ON CERTAINTY, RATHER THAN SEVERITY, OF PUNISHMENT.

164. **F. A. HUSSEY. PAROLE—VILLAIN OR VICTIM IN THE DETERMINATE SENTENCING DEBATE.** NATIONAL COUNCIL ON CRIME AND DELINQUENCY, CONTINENTAL PLAZA, 411 HACKENSACK AVENUE, HACKENSACK, NJ 07601. *CRIME AND DELINQUENCY*, V 24, N 1 (JANUARY 1978), P 81-88. NCJ-44776

THE ARGUMENT THAT THE ALLEGED FAILURE OF PAROLE JUSTIFIES ABANDONING THE INDETERMINATE SENTENCING SYSTEM IN FAVOR OF DETERMINATE SENTENCING IS COUNTERED. PAROLE WAS ORIGINALLY CONCEIVED AS BRINGING TO FRUITION THE REHABILITATION PROCESS BEGUN IN THE PRISON, NOT AS BEGINNING REHABILITATION AFTER PUNISHMENT. IMPLEMENTATION OF THE REHABILITATIVE IDEAL DEMANDED AN INDETERMINATE SENTENCE, BECAUSE THE LENGTH OF TIME IT WOULD TAKE TO CORRECT OR REHABILITATE AN OFFENDER WAS NOT KNOWN AT THE TIME OF SENTENCING. A MECHANISM FOR RELEASE UPON COMPLETION OF REHABILITATION WAS NEEDED, AND PAROLE FUL-

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FILLED THIS DECISIONMAKING ROLE. IN ADDITION, PAROLE PROVIDED COMMUNITY SUPERVISION, THEORETICALLY TO AID THE OFFENDER IN HIS TRANSITION TO THE COMMUNITY. SEVERAL STUDIES HAVE QUESTIONED THE ABILITY OF PRISONS TO REHABILITATE OFFENDERS AND HAVE CONCLUDED GENERALLY THAT REHABILITATIVE PROGRAMS WITHIN THE CORRECTIONAL SYSTEM DO NOT REDUCE RECIDIVISM. TO EXPECT PAROLE TO REHABILITATE INMATES WHO HAVE BEEN DEBILITATED BY THE CORRECTIONAL PROCESS IS ASKING TOO MUCH. THE FAILURE OF PAROLE—OR OF ANY ONE OF THE COMPONENTS OF THE REHABILITATIVE IDEAL, INCLUDING PRESENTENCE INVESTIGATION, PSYCHIATRIC EXAMINATION, OR PRISONER CLASSIFICATION—IS INADEQUATE TO JUSTIFY THE CALL FOR DETERMINATE SENTENCING. IT IS THE REHABILITATIVE IDEAL ITSELF THAT IS AT ISSUE. AS FAITH IN THAT IDEAL DIMINISHES, JUSTIFICATION FOR THE INDETERMINATE SENTENCE AND FOR THE DECISION FUNCTION OF THE PAROLE SYSTEM BECOMES LESS TENABLE. THOSE CONCERNED ABOUT SENTENCING PRACTICES ARE URGED TO ASSESS ALL OF THE ISSUES AND TO EXAMINE A WIDE VARIETY OF SENTENCING ALTERNATIVES.

165. **K. KRAJICK. PAROLE—DISCRETION IS OUT, GUIDELINES ARE IN.** CRIMINAL JUSTICE PUBLICATIONS, INC. 801 SECOND AVENUE, NEW YORK, NY 10017. *CORRECTIONS MAGAZINE*, V 4, N 4 (DECEMBER 1978), P 39-49. NCJ-53033

THE MOVE AWAY FROM PAROLE BOARD DISCRETION IS UNDERSCORED IN THIS ARTICLE EXAMINING FEDERAL AND STATE INITIATIVES IN THE AREAS OF PAROLE RELEASE GUIDELINES, MANDATORY MINIMUM SENTENCES, AND DETERMINATE SENTENCE LEGISLATION. AT LEAST 15 STATES AND THE FEDERAL PRISON SYSTEM HAVE ADOPTED PAROLE RELEASE GUIDELINES OR WILL ADOPT THEM IN THE NEAR FUTURE. SIX STATES ARE ADOPTING DETERMINATE SENTENCING SYSTEMS. THUS, HALF THE NATION'S IMPRISONED ADULT OFFENDERS ARE OR SOON WILL BE SUBJECT TO RELEASE PROCEDURES THAT JUDGE THEM PRIMARILY NOT ON THE EXTENT OF THEIR REHABILITATION, BUT ACCORDING TO THE SEVERITY OF THEIR CRIMES AND PAST CRIMINAL RECORDS. THE FEDERAL PAROLE GUIDELINES, A MODEL FOR MANY OF THE STATE SYSTEMS, OPERATE WITHIN AN INDETERMINATE SENTENCING SYSTEM. THEY ARE USED TO SET A PRISONER'S TERM IN ADVANCE, AND THEY PLACE HEAVY EMPHASIS ON FACTORS (I.E., SERIOUSNESS OF OFFENSE, PAROLE PROGNOSIS) THAT ARE UNRELATED TO DETERMINING WHEN A PRISONER IS READY TO REENTER THE OUTSIDE WORLD. THERE ARE ACTUALLY TWO SETS OF GUIDELINES: ONE FOR SETTING ADULT TERMS AND ONE FOR SETTING THOSE SENTENCED UNDER EITHER THE FEDERAL YOUTHFUL OFFENDER ACT OR THE NATIONAL ADDICT REHABILITATION ACT. THE GUIDELINES WERE TRIED ON A PILOT BASIS IN THE NORTHEASTERN PRISONS IN 1972 AND 1973, AND AFTER SOME REFINEMENTS, WERE PUT INTO FULL EFFECT IN 1974 FOR EACH OF THE 20,000 CASES THE U.S. PAROLE COMMISSION HEARS ANNUALLY. THE PAROLE HEARING IS HELD WITHIN 120 DAYS OF CONFINEMENT FOR PRISONERS SERVING LESS THAN 7 YEARS. OTHER INMATES USUALLY MUST WAIT UNTIL ONE-THIRD OF THEIR SENTENCE IS OVER. IN THE HEARING, A PANEL OF TWO EXAMINERS REVIEWS THE INMATE'S RECORD AND THE DETAILS OF THE OFFENSE, AND PLACES THE INMATE IN A SERIOUSNESS CATEGORY. THEN, AFTER PRIVATE CONSIDERATION, THE EXAMINERS DISCUSS THEIR RECOMMENDATIONS WITH THE INMATE AND THEIR REASONS FOR ARRIVING AT THEIR DECISION. SINCE OREGON ADOPTED THE FIRST STATE GUIDELINES IN 1975, OTHER LOCALS HAVE FOLLOWED SUIT. ALTHOUGH THE FEDERAL GUIDELINES HAVE BEEN DEVELOPED AND REFINED IN AN EFFORT TO MAKE SENTENCES AS FAIR AND UNIFORM AS

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POSSIBLE AND TO SATISFY PRISONER COMPLAINTS OF ARBITRARY TREATMENT, THE U.S. PAROLE COMMISSION AND ITS COUNTERPARTS IN THE STATES WILL HAVE TO CONVINCE CRITICS THAT THEY CAN BE APPLIED FAIRLY IF THE GUIDELINE APPROACH IS TO SURVIVE. TABULAR DATA ARE PROVIDED.

Supplemental Notes: BACK ISSUES ALSO AVAILABLE.

Availability: CRIMINAL JUSTICE PUBLICATIONS, INC. 801 SECOND AVENUE, NEW YORK, NY 10017.

166. **R. C. LARKINS. PAROLE—A MATTER OF SURVIVAL.** 165 p. 1976. NCJ-45697

ISSUES IN PAROLE REFORM ARE DISCUSSED, PAROLE REFORM EFFORTS IN SIX STATES ARE ANALYZED, AND THE RESULTS OF A QUESTIONNAIRE SURVEY OF THE ATTITUDES OF PAROLE OFFICIALS TOWARD REFORM PROPOSALS ARE REPORTED. THE LITERATURE REVIEW TOUCHES ON THE ISSUES OF PAROLE, REHABILITATION, PAROLE DECISION-MAKING, AND SENTENCING. REFORM LEGISLATION IN CONNECTICUT, ILLINOIS, INDIANA, MAINE, NEW JERSEY, AND WISCONSIN IS EXAMINED. THE OPINIONS OF COMMISSIONERS AND/OR DIRECTORS OF CORRECTIONS AND PAROLE IN 48 STATES AND THE DISTRICT OF COLUMBIA REGARDING PAROLE AND PAROLE REFORM ARE ANALYZED FOR POSSIBLE RELATIONSHIPS TO STATE CRIME INDEXES AND PRISON POPULATIONS. IN FOUR OF THE SIX STATES STUDIED, REFORM ACTIVITIES WERE BEING DIRECTED TOWARD RETURN TO THE DETERMINATE SENTENCE. ONLY TWO OF THE STATES REMAINED COMMITTED TO THE REHABILITATION MODEL, PRIMARILY THROUGH IMPLEMENTATION OF CONTRACT PAROLE. WHERE ABOLITION OF PAROLE WAS NOT AN ISSUE, REFORM EFFORTS REFLECTED A GRADUAL EROSION OF THE DISCRETIONARY POWERS OF PAROLE BOARDS. THE QUESTIONNAIRE SURVEY DATA SHOW THAT THE ATTITUDES OF ADMINISTRATORS TOWARD PAROLE AND RELATED ISSUES ARE NOT INFLUENCED BY THE CRIME INDEXES OR PRISON POPULATION CHARACTERISTICS IN THEIR STATES. RESPONDENTS TEND TO REJECT THE IDEA THAT PAROLE SHOULD BE ELIMINATED AND IN SEVERAL INSTANCES ARE AT ODDS WITH REFORM PROPOSALS IN THEIR STATES. IT IS CONCLUDED THAT THE PAROLE PROCESS PROBABLY WILL CONTINUE TO EXIST BUT WILL UNDERGO CHANGE. HOWEVER, IF LEGISLATURES AND COURTS CONTINUE TO ADDRESS EXISTING PROBLEMS THROUGH CRIMINAL CODE REVISIONS AND CHANGES IN SENTENCING WITH NO INPUT FROM THE PAROLE SECTOR, THE PROSPECTS OF PAROLE REMAINING A NATIONAL NORM IN THE CORRECTIONAL PROCESS ARE DIM. SUPPORTING DATA AND A BIBLIOGRAPHY ARE INCLUDED.

Supplemental Notes: RUTGERS UNIVERSITY—MASTER'S THESIS.

Availability: National Criminal Justice Reference Service MICROFICHE PROGRAM.

167. **M. J. LERNER. DEFINITE SENTENCE PAROLE—AN EMPIRICAL EXAMINATION OF LOCAL JAIL PAROLE IN NEW YORK STATE.** 492 p. 1977. NCJ-44606

THIS STUDY EXAMINES THE EFFECTIVENESS OF A PAROLE SYSTEM THAT UTILIZES DEFINITE SENTENCING WITH MISDEMEANT OFFENDERS RATHER THAN INDETERMINATE SENTENCE AND DISCRETIONARY RELEASE TO PAROLE SUPERVISION. THE STUDY CONCENTRATES ON TWO ASPECTS OF THE DEFINITE SENTENCE PAROLE SYSTEM. FIRST, THE EFFECTS OF PAROLE SUPERVISION ON THE REDUCTION OF ANTI-SOCIAL BEHAVIOR AMONG DEFINITE SENTENCE PAROLEES ARE EXAMINED. EVIDENCE IS PRESENTED THAT PAROLE SUPERVISION DOES REDUCE THE SUBSEQUENT CRIMINAL ACTIVITY OF DEFINITE SENTENCE PAROLEES, AS COMPARED TO A CONTROL GROUP OF DEFINITE-SENTENCE INMATES NOT AFFORDED PAROLE SUPERVISION SERVICES. A HYPOTHESIS IS PRESENTED THAT THIS REDUCTION IN

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ANTISOCIAL BEHAVIOR IS DUE TO THE DETERRENT AND INCAPACITATIVE EFFECTS OF PAROLE SUPERVISION. THE SECOND PHASE OF THE STUDY CONCENTRATES ON THE MOTIVATION FOR APPLICATION FOR PAROLE ON THE PART OF DEFINITE SENTENCE INMATES. INTERVIEWS WERE HELD WITH 125 INMATES IN THREE SEPARATE NEW YORK STATE JURISDICTIONS. PAROLE APPLICATION MOTIVATION IS FOUND TO BE RELATED TO THE LIKELIHOOD THAT ONE'S APPLICATION WILL BE ACCEPTED. EVIDENCE IS PRESENTED THAT INMATES IN A LARGE METROPOLITAN INSTITUTION ARE DISCRIMINATED AGAINST IN PAROLE ACCEPTANCE RATES, AS COMPARED WITH THEIR COUNTERPARTS IN SUBURBAN AND RURAL LOCAL JAILS. INTERVIEWS WERE HELD WITH ALL MEMBERS OF THE BOARD OF PAROLE IN THIS SYSTEM, CONCENTRATING ON AN ANALYSIS OF THEIR USE OF DISCRETIONARY POWERS. THE STUDY OFFERS EVIDENCE THAT PAROLE SUPERVISION SERVICES CAN BE EFFECTIVE OUTSIDE OF THE INDETERMINATE SENTENCE MODEL. HOWEVER, APPARENT ABUSE OF DISCRETIONARY POWERS BY THE DECISIONMAKERS OF THE SYSTEM TENDS TO THWART POSSIBLE POSITIVE SOCIAL IMPLICATIONS OF PAROLE SUPERVISION SERVICES. SUPPORTING DATA AND A BIBLIOGRAPHY ARE PROVIDED. APPENDIXES INCLUDE NEW YORK'S RULES GOVERNING PAROLE, PAROLE AND DATA SHEETS, FORM FOR DENIAL OF PAROLE, AND QUESTIONNAIRES USED IN THE STUDY. (AUTHOR ABSTRACT MODIFIED)

Supplemental Notes: CITY UNIVERSITY OF NEW YORK—DOCTORAL DISSERTATION.

Sponsoring Agencies: NEW YORK DEPARTMENT OF CORRECTIONAL SERVICES, ALFRED E SMITH STATE OFFICE, BUILDING, P O BOX 7033, ALBANY, NY 12225; NEW YORK STATE DIVISION OF CRIMINAL JUSTICE SERVICES, EXECUTIVE PARK TOWER, STUYVESANT PLAZA, ALBANY, NY 12203; CITY UNIVERSITY OF NEW YORK.

Availability: UNIVERSITY MICROFILMS, 300 NORTH ZEEB ROAD, ANN ARBOR, MI 48106.

168. **W. H. MOSELEY. PAROLE—HOW IT IS WORKING.** PERGAMON PRESS, INC, MAXWELL HOUSE, FAIRVIEW PARK, ELMSFORD, NY 10523. *JOURNAL OF CRIMINAL JUSTICE*, V 5, N 3 (FALL 1977), P 185-203. **NCJ-44101**
A REVIEW OF INFORMATION ON PAROLE AND ON SEVERAL DETERMINATE SENTENCING PROPOSALS CONCLUDES THAT PAROLE BOARDS CAN FORMULATE AND USE DECISION GUIDELINES AND THAT SENTENCING DISCRETION CANNOT BE ELIMINATED. GUIDELINES FORMULATED BY THE U.S. PAROLE COMMISSION DEMONSTRATE THAT RELEASE DECISIONS CAN BE STRUCTURED TO (1) ENHANCE EQUITY, (2) FACILITATE THE EXPLANATION FOR DECISION VARIANCE, AND (3) EXPOSE DECISION POLICY TO PUBLIC EVALUATION AND DEBATE. EMPIRICALLY, PAROLEES HAVE A HIGHER SUCCESS RATE OR LOWER PROPORTION OF NEW CONVICTIONS THAN THOSE RELEASED IN OTHER WAYS. TO WHAT EXTENT THIS IS DUE TO THE ABILITY OF PAROLE BOARDS TO SELECT GOOD RISK CASES AS OPPOSED TO THE EFFECTIVENESS OF SUPERVISION AS A RELEASE METHOD MUST AWAIT FURTHER RESEARCH. THE DETERMINATE SENTENCING PROPOSALS DISCUSSED IN THIS PAPER, INCLUDING THOSE OF INDIANA, MAINE, ILLINOIS, AND CALIFORNIA, APPEAR TO HAVE DISPLACED DISCRETION TO OTHER AREAS WHERE IT IS LESS VISIBLE AND, HENCE, LESS SUBJECT TO CONTROL. TABLES PRESENT STATISTICS ON PAROLE GUIDELINES, DETERMINATE SENTENCING TERMS, AND PAROLE PERFORMANCE FOLLOWUP (AS MEASURED BY THE UNIFORM PAROLE REPORTS). NOTES AND REFERENCES ARE PROVIDED. (AUTHOR ABSTRACT MODIFIED).

169. **P. MURCHEK. SHOULD PAROLE BE ABOLISHED (FROM SOUTHERN CONFERENCE ON CORRECTIONS—ANNUAL, 22ND—MARCH 2-4, 1977 PROCEEDINGS, BY VERNON FOX—SEE NCJ-43422).** 7 p. 1977. **NCJ-58468**

PERSPECTIVES ON

AN ATTEMPT IS MADE TO FOCUS ATTENTION ON PAROLE AS THE END PRODUCT OF THE CRIMINAL JUSTICE SYSTEM THAT CANNOT BE BLAMED FOR EARLIER FAILURES IN THE SYSTEM AND CANNOT BE ABOLISHED. PAROLE WILL NEVER BE ABOLISHED AS LONG AS PEOPLE HAVE TO BE RELEASED FROM IMPRISONMENT, AND SOMEONE WITHIN THE CRIMINAL JUSTICE SYSTEM WILL HAVE TO MAKE DECISIONS CONCERNING THE RELEASE OF INMATES. AT PRESENT, BOTH THE PRISON AUTHORITIES (WHO DEVELOPED THIS IDEA) AND PAROLE BOARDS (WHICH ASSUMED RESPONSIBILITY FOR MAKING SUCH DECISIONS) HAVE FAILED TO IMPROVE OR MODIFY PAROLE OPERATIONS. THIS HAS LED TO THE PASSAGE OF UNDERBUDGETED AND UNDERSTAFFED LEGISLATIVE PROPOSALS WHICH HAVE RAISED EXPECTATIONS WHILE AT THE SAME TIME CREATING FURTHER DIFFICULTIES FOR THE SYSTEM. FURTHERMORE, THE PAROLE SYSTEM SERVES AS THE POINT AT WHICH ALL VARIOUS DISCRETIONARY DECISIONS MADE AT VARIOUS POINTS IN THE CRIMINAL JUSTICE SYSTEM (CITIZEN REPORTING OF CRIMES, POLICE DECISIONS REGARDING ARREST, AND JUDICIAL DECISION REGARDING PROSECUTION) COME MOST CLEARLY INTO FOCUS. THE PAROLE SYSTEM, THEREFORE, UNFAIRLY ASSUMES THE BLAME FOR RELEASING RECIDIVISTS. HOWEVER, STATISTICS FROM THE UNIFORM PAROLE REPORTS PROGRAM OF THE NATIONAL COUNCIL ON CRIME AND DELINQUENCY SHOW THAT PAROLE HAS BEEN VERY EFFECTIVE. OF THE 2,384 INMATES PAROLED FROM FLORIDA CORRECTIONAL INSTITUTIONS IN 1973, 87 PERCENT CONTINUED SUCCESSFULLY ON PAROLE FOR A PERIOD OF ONE YEAR. THAT KIND OF SUCCESS RATE CANNOT BE IGNORED AND IS INDICATIVE OF THE CAREFUL DECISIONS REACHED BY THE FLORIDA PAROLE SYSTEM IN ENSURING THAT THE POSSIBILITY OF RECIDIVISM ON THE PART OF THE PAROLEE IS MINIMAL. NO REFERENCES ARE PROVIDED.

Availability: National Criminal Justice Reference Service MICROFICHE PROGRAM.

170. **V. O'LEARY. PAROLE THEORY AND OUTCOMES REEXAMINED (FROM CORRECTIONS IN THE COMMUNITY—ALTERNATIVES TO IMPRISONMENT SELECTED READINGS, 2D ED., 1978 BY G G KILLINGER AND P F CROMWELL, JR—SEE NCJ-45910).** WEST PUBLISHING COMPANY, 50 WEST KELLOGG BOULEVARD, ST PAUL, MN 55102. 11 p. 1978. **NCJ-45916**

A CRITICAL ANALYSIS IS PRESENTED OF THE FINDING BY THE CITIZENS' INQUIRY ON PAROLE AND CRIMINAL JUSTICE THAT PAROLE IN NEW YORK STATE CANNOT BE REFORMED AND MUST BE ABOLISHED. THE FINDING WAS THE RESULT OF RESEARCH CONDUCTED BY A PRIVATE, NONPROFIT ORGANIZATION FOUNDED IN THE WAKE OF THE ATTICA UPRISING. THE CRITIQUE FOCUSES ON THE ORGANIZATION'S SUMMARY REPORT, WHICH CONCLUDES THE FOLLOWING: (1) THERE IS NO HARD EVIDENCE THAT THE PAROLE BOARD REDUCES SENTENCE DISPARITIES; (2) NEITHER A PAROLE BOARD NOR A PAROLE OFFICER CAN PREDICT THE NATURE AND LIKELIHOOD OF RECIDIVISM FOR INMATES IN GENERAL; (3) RECIDIVISM CANNOT BE MEASURABLY REDUCED THROUGH SOCIAL PROGRAMS IN THE PRISON OR IN THE COMMUNITY; (4) PAROLE SUPERVISION DOES NOT PROVIDE COMMUNITY PROTECTION, AS INDICATED BY THE SMALL NUMBER OF PAROLEES FOR WHOM REVOCATION PROCEEDINGS ARE INITIATED PRIOR TO APPREHENSION FOR A NEW OFFENSE; AND (5) PAROLE IS COSTING THE STATE MONEY (I.E., IF PAROLED PERSONS WERE INSTEAD ABSOLUTELY DISCHARGED FROM PRISON, THE STATE WOULD SAVE MONEY). EVIDENCE THAT THE ASSUMPTIONS REFLECTED IN THESE CONCLUSIONS MAY NOT BE WARRANTED IS PRESENTED. IT IS CONCLUDED THAT THE CITIZENS' INQUIRY WAS OF VALUE IN THAT IT IDENTIFIED PROBLEMS WITH PAROLE, BUT THAT ABOLISHING PAROLE IS NOT THE APPROPRIATE RESPONSE TO THE PROBLEMS. FOR THE CITIZENS' INQUIRY SUMMARY REPORT, SEE NCJ-32385.

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171. **G. TORODASH. PAROLE MUST NOT BE ABOLISHED—PAROLE OFFICERS' ANSWER.** NEW YORK STATE BAR ASSOCIATION, ONE ELK STREET, ALBANY, NY 12207. *NEW YORK STATE BAR JOURNAL*, V 47, N 4 (JUNE 1975), P 292-295. **NCJ-27790**

THE AUTHOR PROVIDES A POINT-BY-POINT REBUTTAL OF AN EARLIER ARTICLE WHICH ADVOCATED THE ABOLITION OF PAROLE, AND PRESENTS INFORMATION ON STUDIES AND REPORTS WHICH DEMONSTRATE THE EFFECTIVENESS OF PAROLE. THE AUTHOR TAKES ISSUE WITH THE STATEMENT THAT PAROLE HEARINGS ARE UNFAIR TO INMATES BECAUSE THEY ARE SO BRIEF; HE ARGUES THAT SINCE THE BOARD HAS BEEN SUPPLIED WITH EXTENSIVE BACKGROUND INFORMATION PRIOR TO THE HEARING, THERE IS NO NEED FOR A LENGTHY HEARING. THE AUTHOR ALSO MAINTAINS THAT EXTENDED PAROLE SUPERVISION PROVIDES INVALUABLE GUIDANCE TO THE INMATE AND PREVENTS A CONSIDERABLE NUMBER OF CRIMES. THE RESULTS OF TWO STUDIES WHICH INDICATED THAT PAROLEES HAD MORE FAVORABLE OUTCOMES THAN MANDATORY RELEASEES ARE SUMMARIZED.

172. **A. VON HIRSCH and K. J. HANRAHAN. ABOLISH PAROLE? CENTER FOR POLICY RESEARCH.** 61 p. 1978. **NCJ-43734**

VARIOUS ASPECTS OF PAROLE REFORM ARE EXAMINED, WITH ATTENTION TO MORAL ARGUMENTS, JUST DESERT MODELS, INSTITUTIONAL PROBLEMS, AND PAROLE DECISIONMAKING. THIS IS A SUMMARY OF A REPORT THAT ATTEMPTED TO GAUGE THE FOLLOWING ISSUES: (1) THE EXTENT TO WHICH THE DEFECTS OF THE PAROLE SYSTEM ARE REMEDIABLE; (2) WHETHER PAROLE CAN BE JUSTIFIED ON GROUNDS OTHER THAN REHABILITATION OR PREDICTION; (3) WHETHER ALL THE VARIOUS FUNCTIONS OF PAROLE ARE USELESS, OR WHETHER SOME SHOULD BE RETAINED; AND (4) THE AVAILABILITY OF ALTERNATIVES TO PAROLE AND THE PROBLEMS POSED BY THOSE ALTERNATIVES. PROBLEMS UNDERLYING PAROLE'S CENTRAL ROLE IN THE SENTENCING AND CORRECTIONAL SYSTEMS ARE DISCUSSED, WITH EMPHASIS ON THE MORAL ASSUMPTIONS PRIMARY TO SENTENCING AND CORRECTIONS, INCLUDING REHABILITATION, INCAPACITATION, DETERRENCE, AND THE PRINCIPLE OF COMMENSURATE DESERTS. THE SALIENT FEATURES OF THE DESERTS MODEL SANCTIONING SCHEME ARE DETAILED. THE TIMING OF PAROLE RELEASE IS DISCUSSED, INCLUDING EARLY AND LATE TIME-FIXING, TIME-FIXING UNDER THE DESERT MODEL, AND TIME-FIXING UNDER THE MODIFIED DESERT MODEL WITH PARTICULAR ATTENTION TO PREDICTION, REHABILITATION, AND GENERAL DETERRENCE. TIME-FIXING ENCOMPASSES NOTIFYING AN INMATE AT SENTENCING OR SHORTLY THEREAFTER OF THE PROBABLE DATE OF RELEASE. THAT DATE SUBSEQUENTLY CAN BE CHANGED ONLY WHEN SPECIFIED CIRCUMSTANCES INTERVENE. TIME-FIXING AND INSTITUTIONAL PROBLEMS ARE DISCUSSED, INCLUDING OVERCROWDING AND DISCIPLINE. PAROLE DECISIONMAKING IS EXAMINED IN TERMS OF THE LEGISLATURE AS THE STANDARD SETTER, THE PAROLE BOARD AS THE STANDARD SETTER, THE ROLE OF SENTENCING COMMISSIONS, AND WHETHER CERTAIN LEGISLATIVE CHANGES NECESSARILY DICTATE THE ABOLITION OF THE PAROLE BOARD. FINALLY PAROLE SUPERVISION IS CONSIDERED. PAROLE AS A SEPARATE ADJUDICATIVE SYSTEM IS DISCUSSED REGARDING LOWER STANDARDS OF PROOF, STANDARDS OF DISPOSITION, PREHEARING DETENTION, AND THE ABOLITION OF THE SEPARATE SYSTEM. CONVENTIONAL PAROLE SUPERVISION IS DISCUSSED IN TERMS OF THRESHOLD CRITERIA FOR EFFECTIVE PAROLE SUPERVISION AND DESERTS CONSTRAINT. THE QUESTION OF WHETHER THE PAROLE SUPERVISION SYSTEM CAN BE REFORMED IS EXAMINED, WITH EMPHASIS ON RATIONALITY, EFFECTIVENESS, THE CONSTRAINTS OF

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DESERT, THE EFFECT OF ELIMINATING THE REVOCATION SANCTION, ALTERNATIVE SANCTIONS, AND THE CONTENT AND SCOPE OF REFORMED SUPERVISION. PAROLEE SERVICES ARE DISCUSSED IN TERMS OF NEEDS FULFILLMENT AND WHETHER THERE SHOULD BE ANY COMPULSION FOR EX-OFFENDERS TO ACCEPT SUCH SERVICES. REFERENCES ARE FOOTNOTED. SEE ALSO NCJ-44641.

Supplemental Notes: CRIMINAL JUSTICE PERSPECTIVES.

Sponsoring Agency: US DEPARTMENT OF JUSTICE LEAA NATIONAL INSTITUTE OF LAW ENFORCEMENT AND CRIMINAL JUSTICE, 633 INDIANA AVENUE NW, WASHINGTON, DC 20531. **Availability:** GPO Stock Order No. 027-000-00721-0; National Criminal Justice Reference Service MICROFICHE PROGRAM.

173. **A. VON HIRSCH and K. J. HANRAHAN. ABOLISH PAROLE?** 211 p. 1977. **NCJ-44641**

ISSUES SURROUNDING THE DECISION TO RETAIN, CHANGE, OR ABOLISH COMMON FEATURES OF PAROLE PROGRAMS FOR ADULTS ARE EXAMINED. FOUR MAIN FEATURES OF TRADITIONAL PAROLE ARE IDENTIFIED: (1) THE DECISION TO RELEASE THE PRISONER IS MADE ON A DISCRETIONARY BASIS BY A BODY SUPPOSEDLY EXPERT IN ASSESSING THE OFFENDER'S NEED FOR TREATMENT AND HIS LIKELIHOOD OF OFFENDING AGAIN; (2) THE TIME-FIXING DECISION IS DEFERRED, I.E., THE INMATE DOES NOT KNOW WHEN HE WILL BE RELEASED UNTIL HE HAS SERVED PART OF HIS SENTENCE; (3) THE PAROLEE CAN BE REIMPRISONED THROUGH AN INFORMAL ADMINISTRATIVE PROCEEDING SHOULD HE BE SUSPECTED OF NEW CRIMINAL ACTIVITY; AND (4) THE PAROLEE IS TO BE SUPERVISED IN THE COMMUNITY. IT IS ARGUED THAT THE FIRST THREE OF THESE FEATURES SHOULD NOT BE RETAINED. THE RELEASE DECISION SHOULD BE GOVERNED BY STANDARDS SPECIFYING THE DURATION OF CONFINEMENT THAT SHOULD APPLY PRESUMPTIVELY TO CATEGORIES OF FELONY. THE PRISONER SHOULD BE NOTIFIED OF THE EXPECTED DATE OF HIS RELEASE UPON OR SHORTLY AFTER SENTENCING. PAROLEES WHO ARE SUSPECTED OF A NEW CRIME SHOULD BE PROSECUTED AS ANY OTHER SUSPECT. CONCLUSIONS REGARDING SUPERVISION OF PAROLEES IN THE COMMUNITY ARE LESS CLEAR-CUT. HOWEVER, WERE SUPERVISION REDUCED OR ELIMINATED, THERE WOULD REMAIN A NEED FOR A SYSTEM OF VOLUNTARY SOCIAL SERVICES FOR PAROLEES. DESPITE THESE CONCLUSIONS, CAUTION IS URGED IN ABOLISHING THE PAROLE BOARD AS THE AGENCY FOR DECIDING RELEASE FROM PRISON. AS THE OREGON CORRECTIONAL SYSTEM HAS DEMONSTRATED, THE PAROLE BOARD CAN BECOME THE VEHICLE FOR SUBSTANTIVE REFORM. ELIMINATING PAROLE BOARDS AND THE 'DUAL-TIME' APPROACH COULD CREATE THE APPEARANCE OF A SHIFT TOWARD LENIENCY EVEN IN THE ABSENCE OF ANY CHANGE IN THE LEVEL OF PUNISHMENT. IT IS RECOMMENDED THAT THE TRANSITION FROM THE EXISTING SENTENCING/PAROLE STRUCTURE TO A SYSTEM OF 'REAL-TIME' SENTENCES WITHOUT PAROLE BE UNDERTAKEN GRADUALLY. SUPPORTING DOCUMENTATION AND NOTES ARE INCLUDED.

Sponsoring Agencies: US DEPARTMENT OF JUSTICE LEAA NATIONAL INSTITUTE OF LAW ENFORCEMENT AND CRIMINAL JUSTICE, 633 INDIANA AVENUE NW, WASHINGTON, DC 20531; CENTER FOR POLICY RESEARCH.

174. **A. VON HIRSCH and J. S. ALBANESE. PROBLEMS WITH ABOLISHING PAROLE RELEASE—THE NEW YORK CASE.** WARREN, GORHAM AND LAMONT, INC, 210 SOUTH STREET, BOSTON, MA 02111. *CRIMINAL LAW BULLETIN*, V 15, N 5 (SEPTEMBER/OCTOBER 1979), P 416-435. **NCJ-60921**
RISKS IN ELIMINATING PAROLE RELEASE AS A SENTENCING OPTION ARE EXAMINED IN LIGHT OF A REPORT ISSUED BY THE NEW YORK ADVISORY COMMITTEE RECOMMENDING A DRASTIC RESTRUCTURING OF THE STATE'S SENTENCING SYSTEM. THE REPORT PROPOSES THAT SENTENCING

SHOULD BECOME MORE DETERMINATE, A SENTENCING COMMISSION SHOULD BE CREATED TO WRITE GUIDELINES FOR JUDGES TO FOLLOW, OFFENDERS SHOULD SERVE THEIR FULL SENTENCE OF IMPRISONMENT (LESS A MODEST FRACTION OFF FOR GOOD BEHAVIOR), AND PAROLE RELEASE (PRIOR TO THE EXPIRATION OF SENTENCE) SHOULD BE ELIMINATED. ALTHOUGH ADOPTING GUIDELINES TO STRUCTURE JUDICIAL SENTENCING DISCRETION IS A WORTHWHILE AIM, MEANS BY WHICH THE REPORT PROPOSES TO ACHIEVE THIS AIM ARE CRITICIZED. WHAT GUIDELINES ARE DESIGNED TO DO, IN THE WAY OF ALLEVIATING DISPARITY, INVOLVES THE REDUCTION OF UNEXPLAINED DEVIATION IN SENTENCING. IF GUIDELINES PRESCRIBE A GIVEN RANGE OF PENALTIES FOR CERTAIN CRIMINAL CONDUCT, DECISIONMAKERS MUST EITHER STAY WITHIN THE RANGE OR EXPLAIN WHY THEY GO OUTSIDE THAT RANGE. THE PURPOSE OF GUIDELINES, THEREFORE, IS TO REGULATE RATHER THAN ELIMINATE DISCRETION. THE NEW YORK PAROLE BOARD HAS DEVELOPED GUIDELINES TO GOVERN ITS RELEASE DECISIONS. RULES OF THE BOARD PRESCRIBE A RANGE OF MONTHS FOR DIFFERENT CATEGORIES OF OFFENDERS, BASED ON TWO MAJOR FACTORS: (1) SERIOUSNESS OF THE OFFENDER'S CURRENT OFFENSE; AND (2) EXTENSIVENESS OF THE OFFENDER'S PRIOR CRIMINAL RECORD. THE PAROLE BOARD HAS ALSO ADOPTED THE PRACTICE OF NOTIFYING OFFENDERS EARLY OF THEIR PROBABLE RELEASE DATE. THE ADVISORY COMMITTEE ARGUES THAT THE PAROLE BOARD'S RELEASE GUIDELINES CAN BE ELIMINATED BECAUSE THE BOARD'S REGULATORY FUNCTIONS CAN BE TRANSFERRED TO ANOTHER BODY. SOME OF THE RISKS IN ELIMINATING PAROLE RELEASE INCLUDE REDUCED ABILITY TO ENFORCE DURATIONAL GUIDELINES AND CREATION OF THE APPEARANCE OF LENIENCY WHEN SENTENCES BECOME NONPAROLABLE PENALTIES. SUPPORT IS INDICATED, HOWEVER, FOR THE ELIMINATION OF MANDATORY SENTENCES. CASE LAW IS CITED.

Availability: UNIVERSITY MICROFILMS, 300 NORTH ZEEB ROAD, ANN ARBOR, MI 48106.

175. **A. VON HIRSCH and K. J. HANRANHAN. QUESTION OF PAROLE—RETENTION, REFORM, OR ABOLITION?** BALLINGER PUBLISHING COMPANY, 17 DUNSTER STREET, HARVARD SQUARE, CAMBRIDGE, MA 02138. 208 p. 1979. NCJ-57580

RECOMMENDATIONS FOR MODIFYING TRADITIONAL PAROLE RELEASE AND SUPERVISION PRACTICES AND FOR RESTRUCTURING THE ROLE OF PAROLE BOARDS ARE PRESENTED. THE DISCUSSION OPENS WITH AN OUTLINE OF THE FEATURES OF THE TRADITIONAL PAROLE SYSTEM AND A STATEMENT OF ASSUMPTIONS REGARDING THE MORAL PRINCIPLES FUNDAMENTAL TO PENAL SYSTEMS. THE PAROLE SYSTEM'S PROCESSES FOR RELEASING OFFENDERS FROM PRISON AND SUPERVISING THEM IN THE COMMUNITY ARE EXAMINED IN LIGHT OF THESE ASSUMPTIONS, TOGETHER WITH THE QUESTION OF WHO SHOULD NOT BE CONTINUED IN ITS TRADITIONAL FORM. FOUR BASIC CHANGES ARE RECOMMENDED: (1) SPECIFIC STANDARDS GOVERNING DURATION OF CONFINEMENT, BASED PRIMARILY ON A JUST DESERTS RATIONALE, SHOULD REPLACE DISCRETIONARY RELEASE DECISIONS BASED ON CONSIDERATIONS OF REHABILITATION OR INCAPACITATION; (2) RELEASE DATA DECISIONS SHOULD BE MADE EARLY, AT SENTENCING OR SHORTLY THEREAFTER; (3) EX-PRISONERS SUSPECTED OF CRIMES SHOULD BE PROSECUTED AS ANY OTHER SUSPECT, RATHER THAN BEING SUBJECTED TO A PAROLE REVOCATION PROCEDURE WITH LOWER STANDARDS OF PROOF; AND (4) THE SUPERVISION OF EX-PRISONERS SHOULD BE ELIMINATED ENTIRELY (OR AT LEAST REDUCED IN SCOPE AND IN SEVERITY OF SANCTIONS FOR NONCOMPLIANCE, AND SCRUTINIZED CAREFULLY FOR EFFECTIVENESS AND COST). IT IS RECOGNIZED THAT,

WHATEVER ITS DEFECTS, THE PAROLE BOARD DOES PERFORM THE ESSENTIAL FUNCTION OF SCALING DOWN LENGTHY SENTENCES TO MORE REALISTIC PERIODS OF ACTUAL CONFINEMENT. THEREFORE, CAUTION IN ABOLISHING THE PAROLE BOARD'S POWER TO RELEASE PRISONERS IS URGED. SUGGESTIONS FOR REDEFINING THE PAROLE BOARD'S MISSION SO THAT IT CAN BECOME A VEHICLE OF REFORM ARE OFFERED. IT IS RECOMMENDED THAT ANY EFFORT TO PHASE OUT PAROLE RELEASE BE UNDERTAKEN GRADUALLY AND WITH CAREFULLY CONSIDERED SAFEGUARDS. AN INDEX AND SUPPORTING DOCUMENTATION ARE PROVIDED.

Availability: BALLINGER PUBLISHING COMPANY, 17 DUNSTER STREET, HARVARD SQUARE, CAMBRIDGE, MA 02138.

176. **R. WILSON. RELEASE—SHOULD PAROLE BOARDS HOLD THE KEY?** CORRECTIONAL INFORMATION SERVICE, INC. 801 SECOND AVENUE, NEW YORK, NY 10017. *CORRECTIONS MAGAZINE*, V 3, N 3 (SEPTEMBER 1977), P 47-55. NCJ-43230

PAROLE BOARD DISCRETION IN DETERMINING RELEASE OF OFFENDERS AND THE EFFECT THAT DETERMINATE SENTENCING WOULD HAVE ON THE PAROLE SYSTEM ARE DISCUSSED. DETERMINATE OR FIXED SENTENCING WOULD RENDER TRADITIONAL PAROLE BOARDS UNNECESSARY IN THAT PRISONERS' RELEASE DATES WOULD HAVE NOTHING TO DO WITH PROGRESS AND PARTICIPATION IN PRISON PROGRAMS. THE ACTUAL OR NEAR-ABOLITION OF PAROLE BOARDS IN CALIFORNIA, MAINE, AND INDIANA AS A CONSEQUENCE OF ADOPTING DETERMINATE SENTENCING IS DESCRIBED TO EXEMPLIFY WHAT CAN HAPPEN WHEN FIXED SENTENCING MODELS ARE FULLY IMPLEMENTED. FORMER ADVOCATES OF ABOLISHING PAROLE BOARDS THROUGH DETERMINATE SENTENCING PROCEDURES ARE RECONSIDERING AND FINDING USEFUL PURPOSES FOR THEM: AS RELEASE VALVES FOR OVERCROWDED PRISON POPULATIONS, AS TERM-SETTING AGENCIES WORKING WITHIN MAXIMUMS ESTABLISHED BY LEGISLATURES, OR AS SPONSORS OF COMMUNITY CORRECTIONS PROGRAMS. MANY PAROLE BOARDS HAVE INSTITUTED INTERNAL REFORMS TO LIMIT PAROLE BOARD DISCRETION; IN 1976, THE COMMISSION ON ACCREDITATION FOR CORRECTIONS ESTABLISHED A SET OF PAROLE BOARD STANDARDS, AND THE U.S. PAROLE COMMISSION WROTE INTO LAW IN 1974 FEDERAL GUIDELINES FOR PAROLE DECISIONMAKING. OTHER STATE AND FEDERAL LEGISLATION GOVERNING PAROLE BOARDS OR SENTENCING PRACTICES IS OUTLINED. MANY OBSERVERS FEEL THAT EVEN IF FLAT SENTENCING SYSTEMS ARE ESTABLISHED, PAROLE BOARDS WILL STILL BE NEEDED TO COUNTER PUBLIC OPINION BY MAKING JUDGMENTS ABOUT THE DANGEROUSNESS OF PARTICULAR OFFENDERS.

DETERMINATE SENTENCING IN JUVENILE JUSTICE

177. **J. P. BAKER. ABOUT JITTERBUGS AND JUVENILE JUSTICE.** FLORIDA BAR, TALLAHASSEE, FL 32304. *FLORIDA BAR JOURNAL*, V 52, N 10 (DECEMBER 1978), P 770-775. NCJ-58705

A JUVENILE DIVISION JUDGE IN FLORIDA OUTLINES THE DEVELOPMENT OF THE JUVENILE JUSTICE SYSTEM IN THE UNITED STATES, AND DISCUSSES FLORIDA'S JUVENILE JUSTICE ACT OF 1978. THE CONSPICUOUS FEATURES OF THE FLORIDA JUVENILE JUSTICE ACT OF 1978 INDICATE AN INTENTION TO RETURN TO DEALING WITH JUVENILE DELINQUENTS AS THOUGH THEY WERE CRIMINALS, RATHER THAN TREATING THEM AS THOUGH THEY WERE DEFICIENT IN SELF-CONTROL. THE ACT INTRODUCES NOTHING NEW TO THE DISPOSITION POWERS IN JUVENILE CASES, AND THE CHANGES ARE NOT MAJOR. THE ONE FUNDAMENTAL CHANGE MAKES THE JUVENILE JUSTICE SYSTEM PUNITIVE IN PRACTICE, AND IMPOSES LIMITATIONS ON THE COURTS' DEALING WITH YOUTHFUL OFFENDERS. BY PLACING A LIMIT ON THE TERM OF A COMMITMENT MEASURED BY THE MAXIMUM SENTENCE FOR AN ADULT ON THE SAME OFFENSE, THE LEGISLATURE DECREED THAT JUVENILES WILL RECEIVE DETERMINATE SENTENCES. THIS IS A MAJOR DEPARTURE FROM THE INDETERMINATE TREATMENT MODEL USED BY THE FLORIDA DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES. ALTHOUGH THE NEW RULES WHICH REGULATE THE DISPOSITIONAL POWER OF THE JUVENILE COURT JUDGE WILL LOWER THE EXPECTATIONS ABOUT CURES FOR DELINQUENTS, THE RULES SHOULD MAKE JUVENILE PROCEEDINGS LESS ARBITRARY. SANCTIONS FOR YOUTHFUL OFFENDERS WILL BE MORE CONSISTENT WITH THE OFFENSE, USING CRIMINAL JUSTICE AS A PARADIGM, RATHER THAN REHABILITATION. UNLIKE THE SITUATION OF IN RE GAULT (1968), IN WHICH A JUVENILE WAS SENTENCED TO 6 YEARS OF CONFINEMENT FOR AN OFFENSE WHICH WOULD HAVE WARRANTED LESS SEVERE PUNISHMENT FOR AN ADULT, JUVENILE CASES AFTER THE 1978 ACT WILL APPROXIMATE ADULT CRIMINAL PROCEEDINGS. ADDITIONAL DISCUSSION CONCERNS LEARNING DISABILITIES AND DELINQUENCY. TABULAR DATA AND REFERENCES ARE PROVIDED.

178. **J. E. BUTLER. STUDY ON THE ISSUE OF INDETERMINATE VERSUS DETERMINATE SENTENCING.** NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, BOX 8978, UNIVERSITY OF NEVADA, RENO, NV 89507. *JUVENILE AND FAMILY COURT JOURNAL*, V 30, N 4 (NOVEMBER 1979), P 39-45. NCJ-64647

SEVEN JUVENILE JUDGES AND TWO DIRECTORS OF JUVENILE INSTITUTIONS WERE INTERVIEWED CONCERNING THEIR OPINIONS ON INDETERMINATE AND DETERMINATE SENTENCING AND ON THE EFFECTS OF DETERMINATE SENTENCING ON JUVENILE OFFENDERS. THE JUVENILE JUSTICE TASK FORCE, IN TRYING TO RECONCILE THE REHABILITATIVE AND CRIME CONTROL ASPECTS OF THE JUVENILE COURT, RECOMMENDED THE ESTABLISHMENT OF FIXED TIME LIMITS ON JUVENILE SENTENCES IN ORDER TO ELIMINATE SENTENCING DISPARITIES. THE QUESTIONNAIRE SENT TO THE JUDGES AND DIRECTORS ASKED THREE QUESTIONS: (1) SHOULD A SENTENCE BE DETERMINED BY A JUDGE OR BY THE DIRECTOR OF THE CORRECTIONAL INSTITUTION; (2) DOES A JUVENILE INSTITUTIONALIZED ON AN OPEN-END SENTENCE RESPOND WITH 'INCREASED' DEFIANCE OR COMPLACENCY; AND (3) IS IT EASIER TO WORK WITH A DELINQUENT IF HE KNOWS HOW LONG HE WILL BE INCARCERATED OR IF HIS TERM DEPENDS ON COOPERATION. ALTHOUGH ANSWERS TO THE FIRST QUESTION VARIED, SEVERAL JUDGES AND BOTH DIRECTORS FELT THAT THE LENGTH OF STAY SHOULD BE LEFT TO THE INSTITUTIONAL AUTHORITIES WHO WERE IN A BETTER POSITION TO EVALUATE THE OFFENDER. RESPONDENTS FELT THAT THE ATTITUDE OF AN OFFENDER TOWARDS COOPERATION DEPENDED ON THE ABILITIES OF THE INSTITUTIONAL STAFF TO BE HONEST WITH THE CHILD AND MAKE SURE THAT HE OR SHE UNDERSTOOD THE GOALS THAT HAD TO BE ACHIEVED FOR RELEASE. SOME PARTICIPANTS FELT THAT INDETERMINATE SENTENCING WAS MORE CONDUCTIVE TO BEHAVIOR MODIFICATION BUT QUESTIONED ITS USES IN SOLVING BASIC PERSONALITY PROBLEMS. IN REALITY FUNDING CONSTRAINTS AND OVERCROWDED CONDITIONS GOVERN RELEASE UNDER THE OPEN-END SYSTEM RATHER THAN REHABILITATIVE PROGRESS. MANY JUDGES FELT THAT SENTENCING PROCEDURES SHOULD FOLLOW THE STANDARDS AND GOALS SET BY THE JUVENILE JUSTICE STANDARD PROJECT OF THE INSTITUTE OF JUDICIAL ADMINISTRATION AND AMERICAN BAR ASSOCIATION WHICH PROVIDE MINIMUM AND MAXIMUM SENTENCES DEPENDING ON THE CRIME SEVERITY. FOOTNOTES AND A BIBLIOGRAPHY ARE PROVIDED.

179. **R. H. CLARK. DEALING WITH THE JUVENILE PROPERTY OFFENDER (FROM SIXTH NATIONAL CONFERENCE ON JUVENILE JUSTICE, 1979).** NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, BOX 8978, UNIVERSITY OF NEVADA, RENO, NV 89507; NATIONAL DISTRICT ATTORNEYS ASSOCIATION, 708 NORTH PENDLETON STREET, ALEXANDRIA, VA 22314; TEACH 'EM INC., 625 NORTH MICHIGAN, CHICAGO, IL 60611. 1979. **NCJ-69068**

THE NEW WASHINGTON STATE JUVENILE CODE IS REVIEWED, AND CAREER CRIMINAL PROGRAMS FOR HARD-CORE JUVENILE OFFENDERS ARE SUGGESTED. A SENIOR DEPUTY PROSECUTOR DESCRIBES THE AIMS OF THE NEW CODE AS TO (1) PROTECT CITIZENS; (2) FACILITATE THE INVESTIGATION OF SUSPECTS; (3) HOLD OFFENDERS ACCOUNTABLE; (4) PROVIDE JUST PUNISHMENTS; (5) INSURE DUE PROCESS IN BOTH ADJUDICATED AND DIVERTED CASES; (6) PROVIDE FOR TREATMENT; (7) ENCOURAGE COMMUNITY-LEVEL SERVICES FOR OFFENDERS; (8) PROVIDE FOR RESTITUTION; AND (9) LIMIT COURT POWERS. DETERMINATE SENTENCES ARE ACHIEVED THROUGH A SYSTEM THAT ASSIGNS POINTS BASED ON THE OFFENDERS' AGES, THEIR CURRENT OFFENSES, AND THEIR PRIOR CRIMINAL HISTORIES. SINCE PRIOR CRIMINAL HISTORIES AFFECT THE DESIGN OF THE SENTENCES, HARDCORE OFFENDERS ARE MORE SEVERELY DEALT WITH. HOWEVER, CAREER CRIMINAL PROGRAMS FOR HARDCORE OFFENDERS HAVE PROVED EFFECTIVE IN CRIMINAL COURTS AND COULD FURTHER HELP IN THE PROTECTION OF THE PUBLIC FROM CHRONIC JUVENILE OFFENDERS. THE AUDIOTAPE CASSETTE IS SUITABLE FOR GENERAL AUDIENCES. A TABLE OF CONTENTS IS INCLUDED, BUT OTHER SUPPORTING MATERIALS ARE NOT PROVIDED.

Supplemental Notes: THIS PROGRAM IS PART OF THE FIRST SIDE OF THE CASSETTE, AND IS COMPLETED AS PART OF THE SECOND SIDE OF THE CASSETTE. FOR THE PROGRAM WHICH COMPRISES THE FIRST PART OF THE FIRST SIDE OF THE CASSETTE, SEE NCJ-69067. FOR THE PROGRAM WHICH COMPRISES THE REST OF THE SECOND SIDE OF THE CASSETTE, SEE NCJ-69069.

Availability: NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, BOX 8978, UNIVERSITY OF NEVADA, RENO, NV 89507 (Audio Cassette)

180. **F. COHEN. EQUITY VERSUS THE INDETERMINATE SENTENCE IN THE JUVENILE JUSTICE SYSTEM (FROM JUVENILE JUSTICE SYSTEM—NEW DIRECTIONS IN POLICY AND PROGRAMS, 1977, BY PETER J ECK AND BRENDA BRADSHAW—SEE NCJ-56707).** UNIVERSITY OF TEXAS AT ARLINGTON RESEARCH AND SERVICE DIVISION INSTITUTE OF URBAN STUDIES, ARLINGTON, TX 76019. 6 p. 1977. **NCJ-56710**

DETERMINATE SENTENCING ACCORDING TO SEVERITY OF OFFENSE IS ARGUED FOR JUVENILES TO REPLACE INDETERMINATE DISPOSITIONS BASED ON A REHABILITATION MODEL THAT FOCUSES ON PROBLEMS WITHOUT REFERENCE TO OFFENSE. THE CURRENT RATIONALE FOR THE OPERATING OF A JUVENILE JUSTICE SYSTEM HOLDS THAT YOUTH WITH BEHAVIORAL PROBLEMS PRESUMABLY BASED ON THEIR AGE-RELATED IMMATURETY SHOULD BENEFIT FROM STATE-COORDINATED REHABILITATION SERVICES TAILORED TO THE INDIVIDUAL NEEDS OF PROBLEM YOUTH. IN THEORY, THE NATURE OF THE OFFENSIVE BEHAVIOR IS TO HAVE NO INFLUENCE ON THE NATURE OF THE COURT'S DISPOSITION, EXCEPT AS IT PROVIDES HELP IN DIAGNOSING THE PROBLEMS TO BE TREATED. SUCH A SYSTEM IS BASED UPON TWO INVALID ASSUMPTIONS: (1) ACCURATE DIAGNOSTIC PROCEDURES EXIST AND ARE USED BY JUVENILE COURTS IN ANALYZING CLIENTS' PROBLEMS; AND (2) REHABILITATION PROGRAMS EXIST AND HAVE BEEN PROVEN ABSOLUTELY EFFECTIVE IN TREATING ALL MANNER OF BEHAVIORAL PROBLEMS SO THAT IT IS IN THE JUVENILES BEST INTERESTS TO KEEP HIM UNDER STATE SUPERVISION UNTIL REHABILITATION HAS BEEN COMPLETED. EMPIRICAL STUD-

IES HAVE FAILED TO ESTABLISH THE TRUTH OF THESE ASSUMPTIONS. IN THE ABSENCE OF PROVEN DIAGNOSTIC AND REHABILITATIVE PROCEDURES, IT MAKES SENSE TO FOCUS JUVENILE COURT DISPOSITIONS ON EQUITABLE AND JUST SANCTIONS TAILORED TO THE SEVERITY OF OFFENSES THAT ARE DEEMED CRIMES WHEN COMMITTED BY ADULTS; STATUS OFFENSES WOULD BE ELIMINATED. THE JUVENILE COURT WOULD CONTINUE AS A SEPARATE SYSTEM UNDER THE RATIONALE THAT AGE-RELATED IMMATURETY WARRANTS MORE LENIENT SANCTIONS FOR THE SAME OFFENSES FOR WHICH ADULTS RECEIVE SEVERE SANCTIONS. REHABILITATION PROGRAMS WOULD CONTINUE, BUT WOULD HAVE TO BE PERFORMED WITHIN TIME LIMITS SET BY COURT SUPERVISION. INDEPENDENT PROCESSES WOULD BE PROVIDED FOR THOSE DEEMED MENTALLY ILL. FOR RELATED DOCUMENTS, PLEASE SEE NCJ 56707-56709 AND 56711 AND 56717.

Availability: National Criminal Justice Reference Service MICROFICHE PROGRAM.

181. **F. COHEN. JUVENILE OFFENDERS—PROPORTIONALITY VS TREATMENT.** AMERICAN CIVIL LIBERTIES UNION, 132 WEST 43RD STREET, NEW YORK, NY 10036. *CHILDREN'S RIGHTS REPORT*, V 2, N 8 (MAY 1978), P 2-7. **NCJ-62089**

BASIC FLAWS INHERENT IN THE INDETERMINATE SENTENCING OF JUVENILE OFFENDERS ARE DISCUSSED; THE THERAPEUTIC MODEL AND SUGGESTED ALTERNATIVES ARE EMPHASIZED. JUVENILE COURT PHILOSOPHY FOCUSES ON THE PERSONAL CONDITION AND SOCIAL SITUATION OF THE CHILD. IN DOING SO, JUVENILE LAW MORE CLOSELY RESEMBLES THERAPEUTIC CIVIL COMMITMENT LAW THAN CRIMINAL LAW. STATUTORY GUIDES FOR THE SELECTION OF DISPOSITIONS AND FOR THE CONDUCT OF DISPOSITIONAL PROCEEDINGS ARE VIRTUALLY NONEXISTENT. THE 'BEST INTERESTS OF THE CHILD' AND 'THE PROTECTION OF THE COMMUNITY' REPRESENT THE MOST FREQUENTLY USED STATUTORY LANGUAGE, AND THESE ARE SO BROAD AND INHERENTLY CONTRADICTORY AS TO BE TOTALLY INEFFECTIVE. CURRENTLY THE TREATMENT/REHABILITATION IDEAL, UPON WHICH THE JUVENILE JUSTICE SYSTEM IS BASED, IS UNDER LEGITIMATE ATTACK. EFFORTS TO FACILITATE INDIVIDUAL CHANGE CANNOT BE BASED ON THE ASSUMPTION THAT AN ACT OF DELINQUENCY IS PATHOLOGICAL IN ORIGIN AND THAT WHATEVER EFFORTS ARE MADE MUST BE LIMITED TO THE PRINCIPLES OF LAW AND SIMULTANEOUSLY GUIDED BY THE PRINCIPLE OF VOLUNTARINESS. REMOVAL OF THE TREATMENT RATIONALE DOES NOT DESTROY THE RATIONALE FOR A SEPARATE SYSTEM OR FOR THE UTILIZATION OF AN AMELIORATIVE APPROACH. IT DOES, HOWEVER, REQUIRE A RATIONALE ENCOMPASSING REDUCTION OF DISCRETION AND DISPARITY, ACHIEVEMENT OF IMPARTIALITY AND EQUITY, OBJECTIVENESS, CONSIDERED IN AND ELIMINATION OF THE PROSPECT OF COERCION. FURTHER, IT IS RECOMMENDED THAT MODIFIED, FIXED SENTENCES FOR YOUTHFUL OFFENDERS WHO COMMIT FELONIES OR SERIOUS OFFENSES AGAINST PERSONS OR PROPERTY BE ADOPTED. TRAINING AND INDUSTRIAL SCHOOLS SHOULD BE CLOSED AND RESIDENTIAL FACILITIES WITH VARYING LEVELS OF SECURITY SHOULD BE ESTABLISHED. A FOOTNOTE IS INCLUDED IN THE ARTICLE.

182. **G. H. COX and E. T. DECOSTANZO. REASSESSING PROGRESS IN IMPLEMENTING GEORGIA'S YOUTHFUL OFFENDER ACT—1978.** GEORGIA DEPARTMENT OF OFFENDER REHABILITATION, 800 PEACHTREE ST, NE, TRINITY-WASHINGTON BUILDING, ATLANTA, GA 30308. 57 p. 1978. **NCJ-67769**

INFORMATION AND ANALYSIS DESIGNED TO SUPPORT AGENCY ADMINISTRATORS AND POLICYMAKERS IN FORMING CONSIDERED JUDGMENTS CONCERNING THE EFFECTIVENESS OF GEORGIA'S YOUTHFUL OFFENDER PROGRAM

ARE PRESENTED IN THIS REPORT. PREPARED BY THE OFFICE OF RESEARCH AND EVALUATION OF THE GEORGIA DEPARTMENT OF OFFENDER REHABILITATION AT THE DIRECTION OF THE COMMISSIONER OF THE AGENCY, THIS 1978 REPORT EVALUATES GEORGIA'S YOUTHFUL OFFENDER PROGRAM FOR ITS IMPACT UPON THE SUCCESSFUL REINTEGRATION OF YOUTHFUL OFFENDERS INTO THE MAINSTREAM OF PRODUCTIVE SOCIETY AND ABSENCE OF RECIDIVISM. THE EVALUATION FOCUSES ON THOSE ELEMENTS OF OPERATION WHICH WERE PERCEIVED BY THE PROGRAM ADMINISTRATORS TO BE FUNDAMENTAL TO THE IMPLEMENTATION OF THE YOUTHFUL OFFENDER ACT OF 1972 (AS AMENDED). PARTICULAR ATTENTION WAS PAID TO THE FUNDAMENTAL POLICIES, OPERATING PROCEDURES, AND OUTCOMES OF THE PROGRAM. STAFF AND MANAGEMENT PRACTICES AT THE INSTITUTIONS OPERATING THE PROGRAM WERE NOT INCLUDED IN THIS PROGRAMATIC EVALUATION. THE FIRST SECTION DESCRIBES THE SCOPE AND INTENT OF THE YOUTHFUL OFFENDER, INSTITUTIONAL ASSIGNMENT, PROVISION OF APPROPRIATE PROGRAMS, SENTENCES (SINCE 1975 DETERMINATE AND CONTRACT-SPECIFIED). THE EVALUATION OF THE YOUTHFUL OFFENDER PROGRAM IN TERMS OF THE APPARENT AGENCY PURPOSE AND LEGISLATIVE INTENT OF THE PROGRAM FINDS SHORTCOMINGS IN THE ENVISIONED REFORMS IN CORRECTIONAL PRACTICE. PARTICULARLY, THE INDIVIDUALLY ORIENTED INDETERMINATE SENTENCE BASED ON A CREATIVE CONTRACTING PROGRAM IS LACKING, AND THE PROGRAM HAS BECOME A SET OF ADMINISTRATIVE PROCEDURES GEARED TO TRADITIONAL PRISON CONCEPTS. THE SECOND SECTION EVALUATES OFFENDER SERVICES INCLUDING THE INITIAL DIAGNOSTIC EVALUATION OF EACH INMATE; THE FORMULATION OF THE OFFENDER'S CONTRACT; AND THE REHABILITATION PROGRAMS AND SERVICES, CONCLUDING THAT EFFECTIVE CASE MANAGEMENT IS HINDERED BY TOO MUCH PAPERWORK AND TOO LITTLE TIME FOR THE CLIENT. PRERELEASE SERVICES ARE FOUND LACKING A COHESIVE DEPARTMENTAL PHILOSOPHY AND DELIVERY IS CRITIQUED AS FRAGMENTED AND NONRESPONSIVE TO THE NEEDS OF YOUTHFUL OFFENDERS. SECTION THREE EVALUATES THE EFFECTIVENESS OF YOUTHFUL OFFENDER PROGRAMS IN TERMS OF RECIDIVISM RATES; CONCLUSIONS ARE HINDERED BY THE PRESENCE OF TOO MANY EXTRANEUS VARIABLES, HOWEVER. DESPITE ALL THE INADEQUACIES DESCRIBED IN THIS REPORT, FINAL RECOMMENDATIONS INCLUDE A PLEA FOR REAL IMPLEMENTATION OF THE YOUTHFUL OFFENDER ACT, NOT ITS REPEAL. SIX STATISTICAL TABLES AND ONE GRAPH ARE PROVIDED IN THE TEXT.

Availability: National Criminal Justice Reference Service MICROFICHE PROGRAM.

183. **S. Z. FISHER. DISPOSITION PROCESS UNDER THE JUVENILE JUSTICE STANDARDS PROJECT.** BOSTON UNIVERSITY SCHOOL OF LAW, 765 COMMONWEALTH AVENUE, BOSTON, MA 02215. *BOSTON UNIVERSITY LAW REVIEW*, V 57, N 4 (JULY 1977), P 732-753. **NCJ-44237**
- AN OVERVIEW AND A CRITIQUE OF THE DISPOSITION PROCESS DELINEATED IN THE PROPOSED STANDARDS DRAFTED BY THE JUVENILE JUSTICE STANDARDS PROJECT ARE PRESENTED. THE DISPOSITION PROCESS IS DESCRIBED IN THE PROJECT'S VOLUMES ON DISPOSITIONS, DISPOSITIONAL PROCEDURES, JUVENILE DELINQUENCY AND SANCTIONS, AND CORRECTIONS ADMINISTRATION. THE MAJOR ELEMENTS OF THE DISPOSITION PROCESS ARE SUMMARIZED AS THEY RELATE TO SUBSTANTIVE LIMITS AND GOALS, PROCEDURAL AND EVIDENTIARY REQUIREMENTS, AND MODIFICATION AND ENFORCEMENT. THE CRITIQUE ENCOMPASSES THREE ASPECTS OF THE DISPOSITION PROCESS: SCOPE OF THE JUDGE'S DECISION; DISPOSITION CRITERIA AND PROCEDURES; AND CRITERIA FOR MODIFYING THE DISPOSITION. THE STANDARDS PURPORT TO EFFECT A RADICAL SHIFT IN

JUVENILE COURT PHILOSOPHY AWAY FROM REHABILITATION AND TOWARD JUST DESERTS. HOWEVER, THE STANDARDS REFLECT SUBSTANTIAL CONFUSION AND AMBIGUITY ABOUT THE SHIFT. THE JUST DESERTS PRINCIPLE IS EVIDENT IN THE STANDARDS' TREATMENT OF GRADED MAXIMUM PENALTIES; THE REQUIREMENT THAT, WITHIN THE MAXIMUMS, THE COURT SELECT THE PENALTY MOST APPROPRIATE TO THE DELINQUENT'S CULPABILITY AND DEGREE OF MORAL RESPONSIBILITY; RESTRICTIONS ON THE COURT'S POWER TO BASE SENTENCES ON OFFENDER-RELATED INFORMATION; AND ABOLITION OF PAROLE. HOWEVER, OTHER ASPECTS OF THE STANDARDS QUALIFY AND, IN SOME CASES, CONTRADICT THE JUST DESERTS PRINCIPLE, AS IN THE ABSENCE OF MINIMUM SENTENCES, AMBIGUITY REGARDING GROUNDS FOR REDUCTION OF DISPOSITION, AND RESTRICTIONS ON CUSTODIAL DISPOSITIONS. IT IS CONCLUDED THAT THE STANDARDS' PURPORTED ADOPTION OF JUST DESERTS SENTENCING IS BELIED BY THE INCORPORATION OF SUCH OPPOSING PRINCIPLES AS PREVENTION AND REHABILITATION AND THAT THE STANDARDS FAIL TO ARTICULATE A COHERENT INTER-RELATIONSHIP AMONG VARIOUS SENTENCING AIMS AND CRITERIA. (AUTHOR ABSTRACT MODIFIED).

184. **HENNEPIN COUNTY COMMUNITY HEALTH AND WELFARE COUNCIL, 404 SOUTH 8TH STREET, MINNEAPOLIS, MN 55404; HENNEPIN COUNTY OFFICE OF PLANNING AND DEVELOPMENT, A2308 GOVERNMENT CENTER, 300 S 6TH STREET, MINNEAPOLIS, MN 55487. THE VIOLENT AND HARDCORE JUVENILE OFFENDER IN HENNEPIN COUNTY (MN), REVISED EDITION, 1976. 108 p. 1976. **NCJ-63167****

THIS REPORT PRESENTS AN ANALYSIS OF THE CHARACTERISTICS OF THE VIOLENT AND HARDCORE (VHC) JUVENILE OFFENDER IN HENNEPIN COUNTY, MINN. IT SURVEYS CORRECTIONAL PRACTICES AND SUGGESTS POSSIBLE IMPROVEMENTS. THE TARGET POPULATION IS LIMITED TO YOUTH WHO RESIDE IN HENNEPIN COUNTY AND HAVE COMMITTED MAJOR VIOLENT CRIMES AGAINST PERSONS OR HAVE REPEATEDLY COMMITTED MAJOR PROPERTY CRIMES. INFORMATION AND SUPPORTING DATA WERE OBTAINED FROM A LITERATURE REVIEW, SITE VISITS, INTERVIEWS WITH STAFF AT COMMUNITY CORRECTIONAL PROGRAMS AND CORRECTIONAL INSTITUTIONS, AND A SURVEY OF JUVENILE RECORDS. A DEMOGRAPHIC PROFILE OF VHC YOUTH IN HENNEPIN COUNTY SHOWS THAT MALES, MINORITIES, AND OLDER YOUTH (16 TO 18 YEARS) ARE DISPROPORTIONATELY REPRESENTED WHEN COMPARED WITH THE TOTAL JUVENILE DELINQUENT POPULATION. MOST VHC YOUTH (83 PERCENT) LIVE IN MINNEAPOLIS (COMPARED TO ONLY 56.5 PERCENT OF THE TOTAL JUVENILE DELINQUENT SAMPLE), MOST HAVE BEEN REFERRED TO COURT INTAKE FOUR OR MORE TIMES (A MUCH HIGHER RATE THAN FOR THE TOTAL SAMPLE), AND MOST ARE REPEAT MAJOR PROPERTY OFFENDERS. PROBATION, COMMITMENT TO THE HENNEPIN COUNTY HOME SCHOOL, OR COMMITMENT TO THE STATE DEPARTMENT OF CORRECTIONS WERE THE THREE MOST COMMON DISPOSITIONS. THE REPORT ANALYZES THE NEEDS AND AVAILABILITY OF PROGRAMS FOR VHC YOUTH AND DESCRIBES COURT CORRECTIONAL THEORIES AND PRACTICES. IT IS RECOMMENDED THAT COMMITMENT TO A SECURE FACILITY BE AN ALTERNATIVE DISPOSITION FOR JUVENILES WHO POSE A SERIOUS THREAT TO THE COMMUNITY. A MODIFIED DETERMINATE DISPOSITION SHOULD BE USED FOR COMMITMENT TO A SECURE FACILITY, AND A VARIETY OF CORRECTIONAL TREATMENT PROGRAMS SHOULD BE AVAILABLE THERE. TABULAR DATA, REFERENCES, A GLOSSARY, AND APPENDIXES CONTAINING A SYNOPSIS OF

CASE FILES AND THE COURT POSITION ON DETERMINATE SENTENCES ARE PROVIDED.

Supplemental Notes: CHILDREN AND YOUTH IN CRISIS PROJECT REPORT.

Availability: National Criminal Justice Reference Service MICROFICHE PROGRAM.

185. **J. KOMISAR. PUTTING JOHNNY IN JAIL.** MBA COMMUNICATIONS, INC, 555 MADISON AVENUE, NEW YORK, NY 10022. *JURIS DOCTOR*, V 8 (1978), P 16-23. **NCJ-65999**

TRENDS TOWARD TOUGHER POLICIES ON JUVENILE OFFENDERS INCLUDE DETERMINATE SENTENCING, JUVENILE WAIVERS, AND DUE PROCESS RIGHTS. MEDIA COVERAGE PROCLAIMING A YOUTH CRIME WAVE IN 1977 PROVOKED SEVERAL STATE LEGISLATURES INTO INCREASING PENALTIES FOR YOUNG PEOPLE CONVICTED OF SERIOUS OFFENSES. FOR EXAMPLE, NEW YORK STATE HAS SET MINIMUM SENTENCES FOR CERTAIN FELONIES AND INCREASED THE MAXIMUM RESTRICTIVE TIME THAT CAN BE IMPOSED ON JUVENILES. WAIVER LAWS WHICH LOWER THE AGE AT WHICH JUVENILES CAN BE SENT TO ADULT COURTS HAVE BEEN COMMON, ALTHOUGH SOME STATES HAVE IMPOSED RESTRICTIONS INVOLVING TYPE OF OFFENSE AND PREVIOUS RECORD. HISTORICALLY, JUVENILE COURTS HAVE ASSUMED THAT CHILDREN WERE NOT RESPONSIBLE FOR THEIR ACTIONS AND SHOULD BE TREATED RATHER THAN PUNISHED. THIS APPROACH HAS BEEN INEFFECTIVE, AND STATES HAVE MOVED TOWARD LIMITING THE DISCRETION OF JUVENILE JUDGES AND SOCIAL AGENCIES. THE CONCURRENT TREND TOWARD GRANTING JUVENILES MORE DUE PROCESS RIGHTS ALSO REJECTS THE TREATMENT IDEOLOGY AND HAS BEEN CRITICIZED FOR TURNING THE JUVENILE COURT INTO A MINI-ADULT SYSTEM. CIVIL LIBERTARIANS, HOWEVER, CHARGE THAT THE JUVENILE COURT STILL DENIES JUSTICE TO YOUTHFUL OFFENDERS BY IGNORING DUE PROCESSES SUCH AS RIGHT TO COUNSEL AND TRIAL BY JURY. A STUDY PUBLISHED BY THE AMERICAN BAR ASSOCIATION'S JUVENILE JUSTICE STANDARDS PROJECT STATES THAT THE PRESENT SYSTEM NEITHER HELPS CHILDREN NOR PROTECTS SOCIETY. THE ASSOCIATION HAS SUGGESTED PRINCIPLES FOR NEW STANDARDS, INCLUDING SANCTIONS BASED ON THE SERIOUSNESS OF THE OFFENSE, REMOVAL OF STATUS OFFENDERS FROM JUVENILE COURTS, AGE AND OFFENSE RESTRICTIONS ON WAIVERS, AND DUE PROCESS RIGHTS. IN THE DEBATE OVER THE RECOMMENDATIONS, JUDGES FAVOR SOME TYPE OF INDETERMINATE SENTENCING AND DO NOT WANT TO RELINQUISH JURISDICTION OVER STATUS OFFENDERS. SOCIAL SERVICE AGENCIES ARE CONCERNED THAT MORE JUVENILES WILL BE SENT TO CRIMINOGENIC INSTITUTIONS FOR LONGER PERIODS. DISTRICT ATTORNEYS SUPPORT DUE PROCESS PROCEDURES, BUT MAINTAIN THAT JUVENILES STILL NEED SOME SPECIAL PROTECTION. CRITICS ALL AGREE THAT THE CURRENT SYSTEM IS NOT WORKING, BUT FUTURE LEGISLATION DEPENDS MORE ON POLITICAL FACTORS AND PUBLICITY THAN EXPERT OPINIONS.

186. **K. KRAJICK. STEP TOWARD DETERMINACY FOR JUVENILES.** CORRECTIONAL INFORMATION SERVICE, INC, 801 SECOND AVENUE, NEW YORK, NY 10017. *CORRECTIONS MAGAZINE*, V 3, N 3 (SEPTEMBER 1977), P 37-42. **NCJ-55729**

THE CONTROVERSY SURROUNDING THE STATE OF WASHINGTON'S REVISED JUVENILE CODE IS REVIEWED. IT SETS UP CATEGORIES OF OFFENDERS AND OFFENSES, MANDATES DIVERSION FOR MINOR OFFENDERS, AND INSTITUTIONALIZATION FOR MAJOR OFFENDERS. THE CODE, WHICH TOOK EFFECT JULY 1, 1978, REPLACES A SIMPLE ONE-PAGE LAW WRITTEN IN 1913. IT DIVIDES OFFENDERS UNDER AGE 18 INTO THREE BASIC CLASSES: MINOR OR FIRST OFFENDERS, SERIOUS OFFENDERS, AND A GROUP

THAT FALLS IN BETWEEN. MINOR AND FIRST TIME PROPERTY OFFENDERS MUST BE DIVERTED OUTSIDE THE JURISDICTION OF THE COURT TO A BOARD OF COMMUNITY VOLUNTEERS. THE BOARD DECIDES WHETHER THE YOUTH NEEDS TO BE IN A COMMUNITY SUPERVISION PROGRAM. AND SETS RESTITUTION FOR PROPERTY LOSS. A SERIOUS OFFENDER IS A YOUTH OVER 15 WHO HAS COMMITTED A SERIOUS CRIME AGAINST ANOTHER PERSON, SUCH AS RAPE, ASSAULT, OR MURDER, OR WHO HAS A RECORD OF SERIOUS PROPERTY CRIMES. INSTITUTIONALIZATION WITHIN STATE-SET MINIMUM-MAXIMUM RANGES ARE MANDATED FOR THIS GROUP. OFFENDERS FALLING BETWEEN THESE EXTREMES ARE HANDLED ACCORDING TO THE DISCRETION OF PROSECUTORS AND JUDGES. COMPLAINTS WITH THE FORMER SYSTEM AGREE THAT IT LET TOO MANY SERIOUS OFFENDERS BACK INTO THE COMMUNITY TIME AND TIME AGAIN. OPPONENTS OF THE NEW LAW SAY THAT THE MANDATORY SENTENCING ASPECT SUBVERTS THE PURPOSE OF JUVENILE COURT. BOTH ARGUMENTS ARE EXAMINED IN DETAIL. THE IMPACT OF THE NEW LAW ON CASELOADS AND BUDGETS IS NOT KNOWN. THE LAW APPROPRIATES \$983,600 TO HELP INDIVIDUAL COUNTIES SET UP THEIR DIVERSIONARY BOARDS. THE CITY OF SEATTLE, WHICH HAS HAD SUCH BOARDS FOR A NUMBER OF YEARS AND WHICH PROVIDED THE MODEL FOR THE BILL, SPENDS ABOUT \$400,000 TO OPERATE ITS THREE PANELS OF VOLUNTEERS.

187. **J. M. MAHLER. RATIONAL APPROACH TO THE REALITY OF JUVENILE CRIME IN AMERICA.** COMMUNITY SERVICE SOCIETY OF NEW YORK, 105 EAST 22ND STREET, NEW YORK, NY 10010. 5 p. 1977. **NCJ-54681**

IN THIS REPORT, THE COMMUNITY SERVICE SOCIETY IN NEW YORK CITY PROPOSES DETERMINATE SENTENCING FOR JUVENILES, THE ASSESSMENT OF THE GRAVITY OF AN OFFENSE AT COURT INTAKE, AND SANCTIONS PROPORTIONATE TO CRIME SERIOUSNESS. POLICIES ARE RECOMMENDED BY THE SOCIETY THAT ENCOMPASS TWO PRINCIPLES; THE FIRST IS THAT THE POTENTIAL DAMAGE TO JUVENILES INCREASES WITH THE LENGTH AND COERCIVENESS OF INCARCERATION, AND THAT THE LEAST RESTRICTIVE ALTERNATIVE THAT WILL PROTECT SOCIETY MUST BE PROVIDED IN EVERY CASE. THE SECOND IS THAT CHILDREN CANNOT BE COERCIVELY REPAIRED; INDIVIDUALS WHO ARE FORCED TO PARTICIPATE IN PROGRAMS ENTER WITH HOSTILITY, RESENTMENT, AND RESISTANCE THAT DEFEAT THE INTENDED PURPOSE OF PARTICIPATION. A DETERMINATE SENTENCE FOR JUVENILES IS PROPOSED SO THAT THEY KNOW, AT THE TIME OF SENTENCING, WHERE THEY ARE GOING AND HOW LONG THEY WILL BE THERE. PUNISHMENT AND BASIC SOCIAL SERVICES ARE TWO SEPARATE FUNCTIONS, AND THE SOCIETY TENDS TO BELIEVE THAT COURTS WERE ESTABLISHED PRIMARILY TO SERVE SOCIAL FUNCTIONS OF SOCIAL CONTROL AND JUSTICE. IN NEW YORK STATE, JUVENILES MAY BE ADJUDICATED DELINQUENT AND PLACED FOR AN INDETERMINATE PERIOD OF UP TO 18 MONTHS, AND DEPENDING ON AGE, 1-YEAR EXTENSIONS MAY BE GRANTED BY THE COURT UNTIL JUVENILES REACH THE AGE OF 18 YEARS. IN MOST STATES JUVENILE DISPOSITIONS ARE NOT RELATED TO THE SERIOUSNESS OF THE PRESENTING OFFENSE, AND STATUS AND SERIOUS JUVENILE OFFENDERS ALIKE ARE PLACED FOR INDETERMINATE PERIODS. A CRIMINAL CODE UNIQUELY FOR JUVENILES IS PROPOSED THAT EXCLUDES CRIMES IMPOSSIBLE FOR JUVENILES TO COMMIT AS WELL AS CERTAIN VICTIMLESS CRIMES. A CASE ASSESSMENT BUREAU IS ALSO RECOMMENDED TO ANALYZE CHARGES FOR OFFENSES AND PREVENT THEM FROM BEING INAPPROPRIATELY LODGED AGAINST JUVENILES, SET TOO HIGH, SET TOO LOW, INFLATED BY THE POLICE, OR FILED WITHOUT ADEQUATE PROOF. VIOLENT CRIMES SHOULD BE DEALT WITH BY PUNISHMENT FOR A PERIOD PROPORTIONAL TO THE SERIOUSNESS OF THE CRIME. FOR

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VERY SERIOUS OFFENSES (MURDER, RAPE, AND KIDNAPING), THE MAXIMUM SENTENCE COMBINATION SHOULD BE 5 YEARS.

Availability: National Criminal Justice Reference Service MICROFICHE PROGRAM.

188. **L. W. MAYO and R. E. ISRALOWITZ. AMERICAN JUVENILE JUSTICE SYSTEM—AN EVALUATION OF STANDARDS.** CHILD WELFARE LEAGUE OF AMERICA, INC, 67 IRVING PLACE, NEW YORK, NY 10003. *CHILD WELFARE*, V 59, N 3 (MARCH 1980), P 131-144. **NCJ-66166**

THIS ARTICLE REVIEWS AND RESPONDS TO CRITICAL RECOMMENDATIONS MADE BY THE JOINT COMMISSION ON JUVENILE JUSTICE STANDARDS BASED ON ITS COMPREHENSIVE STUDY OF THE AMERICAN JUVENILE JUSTICE SYSTEM. THE RECOMMENDATIONS WERE BASED ON AN EXTENSIVE SURVEY BY THE COMMISSION WHICH POINTED TO ONE OBJECTIVE—THE OVERHAUL AND RECONSTRUCTION OF EVERY COMPONENT OF THE UNITED STATES JUVENILE JUSTICE SYSTEM. THE COMMISSION WAS ESTABLISHED BY THE INSTITUTE OF JUDICIAL ADMINISTRATION AND THE AMERICAN BAR ASSOCIATION AND WAS COMPOSED OF JUDGES, SOCIAL SCIENTISTS AND SOCIAL WORKERS WHO, OVER A 5-YEAR PERIOD, PRODUCED 24 VOLUMES OF ANALYSIS AND CRITICISM COVERING EVERY FACET OF THE JUVENILE JUSTICE SYSTEM. THE COMMISSION'S BASIC PREMISE WAS THAT RADICAL CHANGE IS NEEDED. ITS RECOMMENDATIONS BREAK WITH TRADITION AND CURRENT PRACTICE IN SIX FUNDAMENTAL AREAS: THE REJECTION OF THE TREATMENT OR REHABILITATION MODEL IN THE COURT SYSTEM, THE ELIMINATION OF THE JUVENILE COURTS AS A DISCRETE UNIT AND ITS INTEGRATION WITH THE ADULT COURT, THE CHANGE FROM THE INDETERMINATE TO THE DETERMINATE SENTENCE, THE REMOVAL OF STATUS OFFENDERS FROM COURT JURISDICTION, THE REDUCTION IN THE AUTHORITY OF THE COURT TO INTERVENE IN CASES OF ABUSE AND NEGLECT, AND THE PHASING OUT OF CORRECTIONAL INSTITUTIONS AND TRAINING SCHOOLS WITH ALTERNATIVE COMMUNITY-BASED FACILITIES AND METHODS OF CARE BEING SUBSTITUTED. ALTHOUGH THERE IS MUCH TO COMMEND IN THESE CONCLUSIONS, RADICAL CHANGES IN AUSPICES, STRUCTURE, AND PARTICULARLY IN PHILOSOPHY DO NOT CONSTITUTE A SOUND ROUTE TO REFORM. RECOMMENDATIONS FROM THE COMMUNITY SERVICE SOCIETY OF NEW YORK (CSS) AND THE AMERICAN PSYCHIATRIC ASSOCIATION (APA) OFFER A SOUNDER BASIS FOR SERIOUS CONSIDERATION. NEITHER WOULD ABANDON THE TREATMENT OR REHABILITATION MODEL. THEIR PROPOSALS INCLUDE CONTENT OF SUCH BASIC AND FAR-REACHING IMPORTANCE IN PHILOSOPHY, PRACTICE AND ADMINISTRATION CONCERNING CHILD WELFARE SERVICE AND THE JUVENILE SYSTEM THAT THEY CAN ILL AFFORD TO BE IGNORED. CHILD WELFARE AGENCIES ALSO SHOULD OFFER ASSISTANCE TO LEGISLATIVE BODIES TO FACILITATE THE PROCESS OF ANALYZING, CLARIFYING AND REACHING SOME CONCLUSIONS ON THE MAJOR RECOMMENDATIONS OF BOTH THE COMMISSION AND OTHER GROUPS. REFERENCES ARE CITED. FOR A RELATED ARTICLE, SEE NCJ 66167.

189. **J. MILLER. JUVENILE OFFENDERS IN NEW YORK STATE, SEPTEMBER 1, 1978—FEBRUARY 29, 1980.** NEW YORK STATE DIVISION OF CRIMINAL JUSTICE SERVICES. 20 p. 1980. **NCJ-70194**

THIS REPORT PRESENTS AND DISCUSSES COURT STATISTICS FOR JUVENILE OFFENDERS IN NEW YORK STATE FROM THE INCEPTION OF THE 'JUVENILE OFFENDER' LEGISLATION ON SEPTEMBER 1, 1978, TO FEBRUARY 29, 1980. THE 'JUVENILE OFFENDER' LEGISLATION PROVIDES THAT YOUTH AGED 13 THROUGH 15 WHO COMMIT CERTAIN VIOLENT FELONIES ARE SUBJECT TO PROSECUTION IN THE ADULT

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CRIMINAL COURT SYSTEM. A MANDATORY SENTENCING STRUCTURE IS DEFINED FOR THOSE JUVENILES WHO ARE FOUND GUILTY OF OFFENSES FOR WHICH THEY ARE CRIMINALLY RESPONSIBLE. SENTENCES RANGE FROM A MINIMUM OF 1 TO 3 YEARS FOR CERTAIN FELONY CONVICTIONS TO A MAXIMUM OF 9 YEARS TO LIFE FOR MURDER. AT ANY POINT IN THE PROSECUTION PROCESS, CASES CAN BE REMOVED TO FAMILY COURT, WHERE JUVENILES ARE NOT SUBJECT TO CRIMINAL RESPONSIBILITY. RECENT AMENDMENTS ALLOW YOUTHFUL OFFENDER TREATMENT UNDER CERTAIN CIRCUMSTANCES, AND JUVENILES CAN BE SENTENCED TO EITHER 5 YEARS PROBATION OR TO PRISON TIME OF LESS THAN 4 YEARS. TABLES PROVIDE INFORMATION ON ARRESTS BY COUNTY AND CRIME; COURT ACTION BY COUNTY; DISPOSITIONS OF INDICTED CASES; SENTENCES BY COUNTY; LENGTHS OF DETENTION; VICTIMS BY AGE AND COUNTY; AND STATEWIDE ARRESTS BY CHANGE, INDICTMENTS, DISPOSITIONS, AND SENTENCES. DURING THE 18-MONTH PERIOD, A TOTAL OF 2,099 JUVENILES WERE ARRESTED FOR CRIMES SUBJECT TO PROSECUTION IN THE ADULT SYSTEM. THE NUMBER OF ARRESTS HAS DECLINED CONSISTENTLY OVER THE THREE SIX-MONTH TIME PERIODS EXAMINED. MUCH OF THIS DECLINE IS DUE TO MORE CAREFUL EVALUATION OF ARREST CHARGES BY THE POLICE. OF THE 2,098 CASES PROCESSED IN CRIMINAL COURT, 35 PERCENT WERE REMOVED BY FAMILY COURT, 13 PERCENT WERE DISMISSED, 3 PERCENT WERE PENDING ACTION BY THE GRAND JURY, 23 PERCENT RESULTED IN INDICTMENTS, AND 16 PERCENT WERE DROPPED BY THE DISTRICT ATTORNEYS. OF THE 108 JUVENILES WHO WERE CONVICTED AND SENTENCED, 34 RECEIVED 5 YEARS PROBATION UNDER THE YOUTHFUL OFFENDER STATUTE AND NINE WERE SENTENCED TO 0 TO 4 YEARS. THE MOST COMMON PRISON SENTENCE IMPOSED WAS THE MINIMUM OF 1 TO 3 YEARS. IN TOTAL, 69 PERCENT OF THE SENTENCED JUVENILES WERE ORDERED TO SERVE PRISON TIME.

Availability: National Criminal Justice Reference Service MICROFICHE PROGRAM.

190. **A. M. MORRIS. REVOLUTION IN THE JUVENILE COURT—THE JUVENILE JUSTICE STANDARDS PROJECT.** SWEET AND MAXWELL, 11 NEW FETTER LANE, LONDON, ENGLAND. *CRIMINAL LAW REVIEW*, V 1978 (SEPTEMBER 1978), P 529-539. **NCJ-58080**

NEW JUVENILE JUSTICE STANDARDS ARE PROPOSED TO DEVELOP A MORE RATIONAL JUSTICE POLICY IN LIGHT OF INCREASING DEMANDS PLACED ON THE SYSTEM. SINCE 1960, ARRESTS OF JUVENILES FOR VIOLENT CRIMES HAVE INCREASED ABOUT 250 PERCENT. CHILDREN BETWEEN THE AGES OF 10 AND 17, 16 PERCENT OF THE POPULATION, NOW ACCOUNT FOR ALMOST HALF OF THE ARRESTS FOR THEFT, ROBBERY, AND ASSAULT. IT IS WIDELY RECOGNIZED THAT THE PRESENT SYSTEM, WITH TREATMENT AND REHABILITATION AS THE PREMISES, HAS FAILED. CONSEQUENTLY, NEW STANDARDS HAVE BEEN PROPOSED: (1) THE PRINCIPLE OF PROPORTIONALITY OF SANCTIONS—IN OTHER WORDS, THE PUNISHMENT SHOULD FIT THE SERIOUSNESS OF THE OFFENSE; (2) DETERMINATE SENTENCES OR DISPOSITIONS TO AVOID THE WIDE DISPARITY OF SANCTIONS RECEIVED FOR THE SAME OFFENSE; (3) SELECTION BY THE COURT OF THE LEAST RESTRICTIVE CATEGORY AND DURATION OF DISPOSITION THAT IS APPROPRIATE FOR THE OFFENSE; (4) REMOVAL FROM THE JURISDICTION OF THE JUVENILE COURT OF NONCRIMINAL BEHAVIOR SUCH AS RUNNING AWAY AND VICTIMLESS OFFENSES; (5) THE PRINCIPLE OF VISIBILITY AND ACCOUNTABILITY OF DECISIONMAKING—DISCRETION SHOULD BE LIMITED, GUIDELINES SET FOR DECISIONS AT EVERY STAGE OF THE PROCEEDINGS AND OPEN PROCEDURES SHOULD BE FOLLOWED, INCLUDING THE RIGHT OF A TRIAL BY JURY; (6) THE RIGHT OF LEGAL COUNSEL TO JUVENILES; (7) THE RIGHT OF JUVENILE

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NILES TO DECIDE ON ACTIONS AFFECTING THEIR LIVES AND FREEDOM UNLESS THEY ARE FOUND INCAPABLE OF DOING SO; (8) REDEFINITIONS OF THE ROLE OF PARENTS IN THE PROCEEDINGS, WITH PARTICULAR ATTENTION TO POSSIBLE CONFLICTS OF INTEREST; (9) LIMITATIONS ON INTERVENTION PRIOR TO ADJUDICATION AND DISPOSITION TO REDUCE THE VOLUME AND DURATION OF DETENTION DURING THIS PERIOD, AND LIMITATIONS ON TREATMENT WITHOUT THE JUVENILE'S INFORMED CONSENT; AND (10) THE PRINCIPLE OF WAIVER OF JUVENILE COURT JURISDICTION WHICH ALLOWS JUVENILES WHO HAVE COMMITTED SERIOUS OFFENSES TO BE TRANSFERRED TO A CRIMINAL COURT. THESE PRINCIPLES SHATTER THE PRINCIPLE OF REHABILITATION AS THE GOAL OF THE COURT SYSTEM. REHABILITATION IS STILL SUPPORTED, BUT IT IS NOT THE BASIS OF THE COURT'S JURISDICTION; JUSTICE IS THE PRIMARY GOAL, WHILE REHABILITATION IS CONSIDERED SECONDARY. FOOTNOTES ARE INCLUDED.

191. **W. NETHERLAND. CLASSIFICATION AND SENTENCING GUIDELINES FOR JUVENILES (FROM READINGS IN POLICY ANALYSIS, 1978—SEE NCJ-55834).** AMERICAN JUSTICE INSTITUTE, 1007 7TH STREET, SACRAMENTO, CA 95814. 8 p. 1978. **NCJ-55840**

RESULTS ARE REPORTED FROM A STUDY WHICH DEVELOPED A CLASSIFICATION SYSTEM FOR JUVENILES TO USE AS THE FOUNDATION FOR A STANDARDIZED LENGTH-OF-STAY POLICY FOR WASHINGTON STATE. A LACK OF CONSISTENCY IN RELEASE POLICIES OF THE BUREAU OF JUVENILE REHABILITATION (BJR) IN WASHINGTON HAD LED TO CONCERN OUTSIDE BJR ABOUT DEPARTMENT OPERATIONS. PARTIALLY IN RESPONSE TO THIS CONCERN, NEW LEGISLATION—THE JUVENILE JUSTICE ACT—DIRECTED THE BJR TOWARD A DETERMINATE SENTENCING PATTERN, BUT GAVE THE RESPONSIBILITY FOR DEVELOPING THIS SENTENCING STRUCTURE TO THE BJR. TWO OVERLAPPING EFFORTS WERE DEVELOPED BY BJR—THE DESIGN OF A FACTUAL-BASED CLASSIFICATION SYSTEM TO BE USED AS THE FOUNDATION FOR A STANDARDIZED LENGTH-OF-STAY POLICY, WHICH IN TURN PROVIDED THE GROUNDWORK FOR DEVISING A SENTENCING STRUCTURE. CRITERIA FOR THE CLASSIFICATION SYSTEM WERE AS FOLLOWS: (1) THE DEVELOPMENT OF DECISION-RELEVANT INFORMATION WITHOUT REDUNDANCY, (2) THE PROVISION OF ACCURATE INFORMATION, (3) THE PROVISION OF OBJECTIVE DATA, (4) REFLECTION OF THE COMMUNITY'S PERCEPTION REGARDING THE SERIOUSNESS OF VARIOUS DELINQUENT BEHAVIORS, (5) PROVISION OF INFORMATION WHICH INDICATES PROGRAM NEEDS FOR GROUPS OF YOUTH, (6) IDENTIFICATION OF SPECIFIC PROBLEM GROUPS FOR WHICH NEW PROGRAMS MUST BE DEVELOPED, (7) MAINTENANCE OF THE CAPABILITY OF DIVERSION AT THE POINT OF ENTRY, AND (8) ESTABLISHMENT OF INITIAL PLACEMENT WITH THE LEVEL OF SECURITY NEEDS. THE DEVELOPED CLASSIFICATION SYSTEM WAS DIVIDED INTO THREE SEGMENTS—OFFENSE INFORMATION, INDIVIDUAL INFORMATION, AND PROGRAM INFORMATION. TO INCORPORATE THE NEW SENTENCING INTO THE CLASSIFICATION SCHEME, RESEARCHERS EXPANDED THE NUMBER OF OFFENSE CATEGORIES TO NINE, AND ARRANGED THEM ALONG A CONTINUUM OF DEGREE OF DANGER. A YOUTH'S AGE AND CURRENT OFFENSE ESTABLISHED A BASE POINT NUMBER WHICH WAS MULTIPLIED BY POINTS RECEIVED FOR CRIMINAL HISTORY. THE RESULTING POINTS ESTABLISH WHAT THE STANDARD DISPOSITION WILL BE FOR THAT PARTICULAR YOUTH. A MAJOR OUTCOME OF THE PROCESS HAS BEEN THE CREATION OF AN INFORMATION NETWORK AMONG THE VARIETY OF ACTORS INVOLVED IN THE JUVENILE JUSTICE SYSTEM.

192. **M. S. SERRILL. POLICE WRITE A NEW LAW ON JUVENILE CRIME.** CRIMINAL JUSTICE PUBLICATIONS, INC., 801 SECOND AVENUE, NEW YORK, NY 10017. *POLICE MAGAZINE*, V 2, N 5 (SEPTEMBER 1979), P 47-52. **NCJ-59676**
- FOCUSING ON NEW SENTENCING GUIDELINES FOR JUVENILE OFFENDERS IN THE STATE OF WASHINGTON, THIS ARTICLE DISCUSSES REFORM MOVEMENTS IN THE JUVENILE JUSTICE SYSTEM. IN 1978, A NEW JUVENILE CODE TOOK EFFECT IN WASHINGTON THAT MANDATED THE COMMITMENT TO STATE INSTITUTIONS OF ALL SERIOUS JUVENILE OFFENDERS. UNDER THIS LAW, STATUS OFFENDERS—RUNAWAYS, TRUANTS, INCORRIGIBLES—AND MINOR OFFENDERS WILL STILL BE DIVERTED INTO COMMUNITY PROGRAMS. THE PASSAGE OF THE LAW WAS A UNIQUE COMPROMISE BETWEEN LIBERAL AND CONSERVATIVE FORCES. OTHER STATES HAVE AMENDED THEIR LAWS SO THAT JUVENILES WHO COMMIT CERTAIN CRIMES CAN BE PROSECUTED AS ADULTS AND SENTENCED TO LONG TERMS; IN NEW YORK CHILDREN AS YOUNG AS 13 ACCUSED OF MURDER CAN NOW BE SENT TO THE ADULT COURTS AND SENTENCED TO TERMS AS LONG AS LIFE. ANOTHER REFORM MOVEMENT HAS BEEN TO DIVERT STATUS OFFENDERS AND MINOR OFFENDERS OUT OF INSTITUTIONS—THE NUMBER OF JUVENILE OFFENDERS HELD IN STATE CORRECTIONAL INSTITUTIONS HAS DECLINED OVER THE LAST 15 YEARS FROM 43,000 TO THE CURRENT LOW OF ABOUT 26,000. ONE OF THE MOST IMPORTANT MOVEMENTS IN JUVENILE JUSTICE REFORM HAS BEEN THE AMERICAN BAR ASSOCIATION'S DEVELOPMENT OF STANDARDS FOR THE JUVENILE JUSTICE SYSTEM, WHICH ARE LIKELY TO BE USED IN FUTURE YEARS AS MODELS WHEN STATE LEGISLATURES RECONSIDER THEIR JUVENILE CODES. THE WASHINGTON LAW ADHERES CLOSELY TO MANY OF THESE STANDARDS, AND CAN SERVE AS A MODEL FOR THE NATION. THESE STANDARDS EMPHASIZE PROVIDING JUVENILES WITH THE SAME DUE PROCESS RIGHTS AS ADULTS RECEIVE. THEY RECOMMEND PUBLIC JURY TRIALS FOR JUVENILES AND THE INSTITUTION OF DETERMINATE SENTENCES, FLAT SENTENCES WITHOUT POSSIBILITY OF PAROLE. UNDER THESE STANDARDS, ALL JUVENILES CONVICTED OF CRIMES ARE SUBJECT TO A POINT SYSTEM; EACH RECEIVES A CERTAIN NUMBER OF POINTS ACCORDING TO HIS AGE, HIS PRIOR CRIMINAL RECORD, AND THE SEVERITY OF HIS CRIME. MINOR OFFENDERS WHO ACCUMULATE LESS THAN 110 POINTS WILL SELDOM GO TO INSTITUTIONS BUT WILL BE SUBJECTED TO PREDETERMINED SCHEDULES OF FINES, RESTITUTION TO THEIR VICTIMS, OR PERIODS OF COMMUNITY SERVICE WORK. JUDGES MAY USE DISCRETION IN ADHERING TO GUIDELINES CONCERNING MIDDLE AND SERIOUS OFFENDERS WHO ACCUMULATE MORE THAN 110 POINTS ONLY IF THE JUDGE DECLARES THAT IT WOULD BE A 'MANIFEST JUSTICE' TO SEND OR NOT TO SEND A CHILD TO PRISON. A BRIEF HISTORY OF THE JUVENILE COURTS AND ITS TREATMENT OF JUVENILE OFFENDERS IS PROVIDED.

Supplemental Notes: BACK ISSUES ALSO AVAILABLE.

Availability: CRIMINAL JUSTICE PUBLICATIONS, INC., 801 SECOND AVENUE, NEW YORK, NY 10017.

193. **D. SHICHOR. SOME ISSUES OF SOCIAL POLICY IN THE FIELD OF JUVENILE DELINQUENCY (FROM CRITICAL ISSUES IN JUVENILE DELINQUENCY, 1980, BY DAVID SHICHOR AND DELOS H KELLY SEE NCJ-65344).** HEATH LEXINGTON BOOKS, 125 SPRING STREET, LEXINGTON, MA 02173. 18 p. 1980. **NCJ-65359**
- CRITICAL ISSUES IN JUVENILE DELINQUENCY PREVENTION AND TREATMENT ARE EXAMINED FROM THREE THEORETICAL APPROACHES—LIBERAL, RADICAL, AND CONSERVATIVE—AND COMPROMISE STRATEGIES ARE SUGGESTED. SOCIAL POLICIES ARE FORMULATED BY POLITICIANS WHO MAY CONSIDER THE RECOMMENDATIONS OF

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SOCIAL SCIENTISTS. SOCIAL POLICIES DEALING WITH JUVENILE DELINQUENCY ARE DIVIDED INTO PREVENTIVE STRATEGIES AND PROGRAMS CONCERNED WITH TREATMENT AND REHABILITATION OF DELINQUENTS. BASED ON 19TH CENTURY REFORM MOVEMENTS, THE LIBERAL APPROACH HAS BEEN WIDESPREAD AND MOST INFLUENTIAL IN THE TREATMENT OF JUVENILE OFFENDERS. THIS TREND HAS BEEN CHARACTERIZED BY A PROTECTIVE ORIENTATION AND RELIANCE ON PSYCHOLOGICAL INTERPRETATIONS OF CRIME CAUSES AS EVIDENCED IN RESIDENTIAL TREATMENT CENTERS AND DIVERSION PROGRAMS. RADICAL CRIMINOLOGISTS ARE VERY CRITICAL OF THIS APPROACH; THEY CLAIM THAT THE CAUSES OF DELINQUENCY ARE ROOTED NOT IN THE INDIVIDUAL BUT IN THE CAPITALIST SYSTEM. POLITICAL ACTIVISM CHARACTERIZES RADICAL CRIMINOLOGISTS, WHO GENERALLY ADVOCATE COMMUNITY CONTROL AND DECENTRALIZATION. CONSERVATIVES PROPOSE A RETURN TO THE RETRIBUTIVE PRINCIPLE OF JUSTICE AND PROMOTE DETERMINATE SENTENCING AND INCARCERATION. WHILE NONE OF THESE APPROACHES ARE WITHOUT DRAWBACKS, SOME COMPROMISE STRATEGIES COULD COMBINE BENEFITS OF ALL OF THEM. SOME MODERATES HAVE SUGGESTED BASIC POLICY CHANGES TO REDUCE JUVENILE DELINQUENCY WITHOUT OVERHAULING THE ENTIRE SOCIAL SYSTEM. THE CHANGES WOULD FOCUS ON DEVELOPING A JUVENILE'S POSITIVE SELF-IMAGE AND SECURING A COMMITMENT TO CONFORMING BEHAVIOR. IMPLEMENTATION WOULD BE THROUGH COMMUNITY PROGRAMS TO GIVE JUVENILES MORE STATUS AND OPPORTUNITIES FOR RESPONSIBILITY. NOTES AND REFERENCES ARE PROVIDED.

194. **C. SMALL. DETERMINATE SENTENCES—A TRIAL JUDGE'S REACTION.** *YOUTH AUTHORITY QUARTERLY*, V 30, N 2 (SUMMER 1977), P 7-12. **NCJ-68019**
- DESPITE THREE RECENT LEGISLATIVE CHANGES IN CALIFORNIA LAW, THE DILEMMA OF PUNISHMENT VERSUS REHABILITATION CONTINUES. A MOVEMENT TOWARD LONG-TERM IMPROVEMENTS IN THE SYSTEM IS NEEDED. SENATE BILL 42 HOLDS THAT THE CONSEQUENCES OF CRIME MUST BE FIXED AT THE TIME OF CONVICTION BY JUDGMENT AND SENTENCE, AND THAT AN INMATE'S BEHAVIOR AFTER COMMITMENT WILL DO RELATIVELY LITTLE TO EITHER HELP OR HURT HIM. MOREOVER, THE CALIFORNIA SUPREME COURT HAS HELD THAT AN INMATE COMMITTED TO THE YOUTH AUTHORITY AS A YOUNG ADULT UPON A MISDEMEANOR CONVICTION CANNOT BE INCARCERATED LONGER THAN AN ADULT OFFENDER CAN BE DETAINED IN THE COUNTY JAIL UPON THE SAME CONVICTION. A THIRD MAJOR VECTOR IN THE CORRECTIONS FIELD SUBSTANTIALLY RECASTS JUVENILE COURT LAW, IMPLYING A LEGISLATIVE DETERMINATION TO EXPOSE SERIOUS JUVENILE OFFENDERS TO PROCESSING IN THE SAME MANNER AS ADULT CRIMINALS, AT LEAST TO THE EXTENT OF TRIAL IN A CRIMINAL DEPARTMENT RATHER THAN A JUVENILE COURT. HOWEVER, NO UNIFYING REASON UNDERLIES THESE CHANGES. THE CONFLICT OF CORRECTIONAL PHILOSOPHIES POSES REHABILITATION AGAINST RETRIBUTION WITH NO RESPECT FOR THE VIABILITY OF BOTH. EACH TRIAL COURT ADOPTS ITS OWN SOLUTIONS, MODULATING EXTREME PRACTICES TO ACCOMMODATE MEDIUM TERMS, WITHOUT REGARD TO THEIR APPROPRIATENESS, AND INITIATING LENGTHY HEARINGS IN RESPONSE TO NEW RULINGS. ADDITIONALLY, THE NEW LEGISLATION RENDERS IT VIRTUALLY IMPOSSIBLE TO RUN MINORS THROUGH AN ADEQUATE PROGRAM WHERE THE OCCASION FOR THE COURT'S INTERVENTION IS A MISDEANOR ONLY. ALSO, IN THE ABSENCE OF THE CORRECTIONAL STAFF'S LEVERAGE OF AUTHORITY IN DETERMINING AN INMATE'S ELIGIBILITY FOR RELEASE, PRISONS BECOME A TRAINING SCHOOL FOR YOUNG CRIMINALS WHO GAIN THEIR EDUCATION AND SELF-PERCEPTION FROM FELLOW INMATES. ONE FORTUNATE BYPRODUCT IS THAT JUDGES

AND PROSECUTORS WILL BE UNDER MORE PRESSURE TO EXPLAIN AND INTERPRET THE CORRECTIONAL PROCESS TO THEIR CONSTITUENTS. OVERALL, THE PUBLIC WOULD BE BEST SERVED IF THE LEGISLATURE APPOINTED A SELECT COMMITTEE TO EXAMINE THE ENTIRE PROBLEM AND FORMULATE RECOMMENDATIONS FOR A SOUND FOUNDATION OF CHANGE. REHABILITATION CAN BE ACHIEVED IF PROPER METHODS ARE EMPLOYED. NO REFERENCES ARE PROVIDED.

195. **J. M. STEINFELD. MAKING THE PUNISHMENT FIT THE CRIME—A PROPOSAL FOR DETERMINATE SENTENCES FOR JUVENILES.** COMMUNITY SERVICE SOCIETY OF NEW YORK, 105 EAST 22ND STREET, NEW YORK, NY 10010. 25 p. 1978. **NCJ-60464**

IN THIS PROPOSAL, THE COMMUNITY SERVICE SOCIETY, A VOLUNTARY SOCIAL SERVICE AGENCY, RECOMMENDS THE CONSIDERATION OF A SYSTEM OF DETERMINATE AND PROPORTIONAL SENTENCES FOR JUVENILE OFFENDERS. UNDER SUCH A SYSTEM, SANCTIONS OF A SPECIFIED KIND AND DURATION WOULD BE IMPOSED BY A FAMILY COURT JUDGE ON THE BASIS OF THE SERIOUSNESS AND CIRCUMSTANCES OF THE OFFENSE, THE JUVENILE'S AGE AND PRIOR RECORD OF ADJUDICATED OFFENSES, AND THE USE OF THE LEAST-RESTRICTIVE ALTERNATIVE CONSISTENT WITH THE PROTECTION OF SOCIETY. NO EARLY RELEASE OR EXTENSION OF PLACEMENT IS POSSIBLE, WITH LIMITED EXCEPTIONS FOR GOOD BEHAVIOR, FAILURE TO PROVIDE ADEQUATE SERVICES, AND OVERCROWDING. THE AGENCY PROPOSES A NEW JUVENILE CODE TO CLASSIFY OFFENSES ACCORDING TO DEGREE OF SERIOUSNESS, AND SPECIFIES THE TYPES OF SANCTIONS WHICH MAY BE IMPOSED AND THE MAXIMUM DURATION FOR EACH TYPE. THE PROPOSAL LODGES THE POWER OF DECISION IN DETERMINING THE LENGTH AND NATURE OF PUNISHMENT WITH THE FAMILY COURT JUDGE. IT STATES THAT THE REQUIREMENT OF A WRITTEN OPINION JUSTIFYING THE SANCTION ENCOURAGES THE HIGHEST LEVEL OF JUDICIAL CARE IN FORMULATING SANCTIONS AND, WHERE NECESSARY, FACILITATES APPELLATE REVIEW. THE PROPOSAL ALSO INSURES THAT HARSH SANCTIONS WILL NOT BE IMPOSED INDISCRIMINATELY, REQUIRES THE JUDGE IN EVERY CASE TO IMPOSE THE LEAST RESTRICTIVE SANCTION CONSISTENT WITH THE PROTECTION OF SOCIETY, AND ENCOURAGES THE USE OF CREATIVE COMBINATIONS IN DISPOSITIONS, SUCH AS COMMUNITY SERVICE IN CONJUNCTION WITH CONDITIONAL RELEASE. IT RECLUDES, MOREOVER, THE IMPOSITION OF SECURE PLACEMENT FOR CLASS 2 OFFENSES.

Supplemental Notes: REVISION OF REPORT DATED APRIL 1976—SEE NCJ-37605.

Availability: COMMUNITY SERVICE SOCIETY OF NEW YORK, 105 EAST 22ND STREET, NEW YORK, NY 10010; National Criminal Justice Reference Service MICROFICHE PROGRAM.

196. **TEACH 'EM INC., 625 NORTH MICHIGAN, CHICAGO, IL 60611; NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, BOX 8978, UNIVERSITY OF NEVADA, RENO, NV 89507; NATIONAL DISTRICT ATTORNEYS ASSOCIATION, 708 NORTH PENDLETON STREET, ALEXANDRIA, VA 22314. JUVENILE JUSTICE STANDARDS—HIGHLIGHTS AND RAMIFICATIONS (FROM JUVENILE JUSTICE—NATIONAL CONFERENCE, 4TH, LOS ANGELES (CA) FEBRUARY 1977—AUDIO TAPE CASSETTE HIGHLIGHTS, GROUP 2—SEE NCJ-67682). 0 p. 1977. **NCJ-67689****

THIS CASSETTE TAPE PRESENTS THE MAJOR RECOMMENDATIONS STIPULATED IN THE JUVENILE JUSTICE STANDARDS WHICH HAVE ESTABLISHED CHANGES IN THE METHODS OF THE JUVENILE CRIMINAL JUSTICE SYSTEM. THESE STANDARDS ESTABLISH JUVENILE, FAMILY, AND SURROGATE COURTS AS SPECIAL DIVISIONS UNDER THE JURISDICTION OF THE HIGHEST TRIAL COURT SYSTEM IN EACH STATE. THEY ALSO PROHIBIT THE USE OF REFEREES FOR

JUDICIAL FUNCTIONS, WHILE PERMITTING PLEA BARGAINING ON CHARGES ONLY AND NOT ON DISPOSITIONS. THE STANDARDS RESTRICT THE JUVENILE COURT'S JURISDICTION BY ELIMINATING FROM THE SYSTEM NONVIOLENT AND VICTIMLESS CRIMES, STATUS OFFENSES, AND CASES IN WHICH IMPRISONMENT WOULD NOT BE AN APPLICABLE PENALTY IF THE DEFENDANT WERE AN ADULT. INSTEAD, THE STANDARDS ENCOURAGE SOCIAL SERVICES PROVISION TO RESOLVE INTRAFAMILY CONFLICTS AND VOLUNTARY SOCIAL INTERVENTION FOR JUVENILES ENGAGED IN ACTIVITIES SUCH AS ALCOHOL OR MARIJUANA ABUSE AND GAMBLING. INSTITUTIONAL CONFINEMENT IS PROHIBITED FOR CHILDREN UNDER AGE 12, WHILE JUVENILE COURT JURISDICTION IS EXTENDED FROM MINIMUM AGE 10 TO MAXIMUM AGE 18. THE STANDARDS SEEK TO ELIMINATE JUDICIAL DISCRETION BY URGING LEGISLATIVELY PRESCRIBED MAXIMUM SENTENCES WHICH ARE DETERMINATE. HOWEVER, THIS DOES NOT CONSTITUTE MANDATORY SENTENCING BECAUSE JUDGES DO HAVE DISCRETION TO GIVE INCARCERATION, CUSTODIAL, OR NONCUSTODIAL SANCTION. THESE OPTIONS INCLUDE JUDGES' DISCRETION TO GRANT A 5 PERCENT REDUCTION FOR GOOD BEHAVIOR AFTER COURT REVIEW, NOMINAL OR CONDITIONAL DISPOSITIONS, AND INTERMITTENT OR CONTINUOUS INCARCERATIONS. JUDGES MUST GIVE VALID AND WRITTEN REASONS FOR THEIR DECISION OF CUSTODIAL OR INCARCERATION SANCTION. THE STANDARDS ASK FOR THE RELEASE FROM ADULT JAILS OF THE APPROXIMATELY 90 PERCENT OF INCARCERATED JUVENILES WHO HAVE NOT COMMITTED VIOLENT CRIMES, WHILE ALSO ASKING THAT ATTORNEYS FOR BOTH SIDES BE INVOLVED IN THIS PROCESS. OPPOSITION TO THE STANDARDS SEES AN END TO INDIVIDUALIZED JUSTICE, REDUCED JUDICIAL POWER, LACK OF HELP FOR STATUS OFFENDERS, NO SOCIAL HISTORY REVIEWS FOR DISPOSITIONAL DECISION-MAKING, AND WEAKENED DETERRENT EFFECTS THROUGH THE INTRODUCTION OF PLEA BARGAINS. OPPOSITION ALSO OBJECTED TO THE SECRECY EMPLOYED BY THE JOINT COMMISSION WHICH WROTE THE STANDARDS.

Supplemental Notes: FOR ENTIRE KIT, SEE NCJ-67682.

Availability: NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, BOX 8978, UNIVERSITY OF NEVADA, RENO, NV 89507 (Audio Cassette)

197. **TEACH 'EM INC., 625 NORTH MICHIGAN, CHICAGO, IL 60611; NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, BOX 8978, UNIVERSITY OF NEVADA, RENO, NV 89507; NATIONAL DISTRICT ATTORNEYS ASSOCIATION, 708 NORTH PENDLETON STREET, ALEXANDRIA, VA 22314. MANDATORY DISPOSITIONS V JUDICIAL DISCRETION (FROM JUVENILE JUSTICE NATIONAL CONFERENCE, 4TH, LOS ANGELES (CA), FEBRUARY 6-10, 1977—AUDIOTAPE CASSETTE HIGHLIGHTS, GROUP 2, 1977—SEE NCJ-67682).** 1977. NCJ-67683

THIS CASSETTE TAPE PRESENTS ARGUMENTS FOR AND AGAINST MANDATORY SENTENCING AS OPPOSED TO THE JUDICIAL DISCRETION NOW USED IN THE JUVENILE JUSTICE SYSTEM. THE SIDE THAT ARGUES AGAINST MANDATORY SENTENCING OUTLINES SEVERAL ASPECTS OF DISCRETION USED IN TODAY'S SYSTEM THAT MANDATORY SENTENCING DOES NOT TOUCH. THESE INCLUDE THE VICTIM'S DISCRETION TO CALL THE POLICE, THE DISCRETION OF THE POLICE OFFICER AT THE SCENE, THE OFFICER'S COMPLAINT AGAINST THE DEFENDANT, PROSECUTOR'S DISCRETION ON WHAT TO CHARGE, PLEA BARGAINING, THE JURY, AND THE WARDEN OF THE PRISON. MANDATORY SENTENCING REQUIRES THAT THE DEFENDANT BE SENTENCED BY WHAT'S GOOD FOR THE AVERAGE PERSON, AND THAT SENTENCE DETERMINED BY THE LEGISLATURE MAY BE TOO MUCH OR TOO LITTLE FOR A PARTICULAR INDIVIDUAL. THIS SIDE SUGGESTS THAT THE SYSTEM SHOULD PREVENT FUTURE OFFENSES BY INDIVIDUALIZING YOUNG OFFENDERS AND TEACHING THEM TO COPE WITH SOCIETY. SECONDLY, THE

SYSTEM SHOULD MAKE THE LEAST INTRUSION POSSIBLE INTO THE LIVES OF THE DEFENDANTS BECAUSE OF PUBLIC NEEDS. FINALLY, JUDGES SHOULD MONITOR WHAT IS DONE AFTER SENTENCING, WHEREAS MANDATORY SENTENCING STATES THAT WHAT HAPPENS NEXT IS NOT THE JUDGES' RESPONSIBILITY. IF CONVICTS ARE RELEASED EARLY, HEARINGS SHOULD BE HELD SO THAT JUDGES CAN HEAR BOTH SIDES OF THE QUESTION OF WHETHER IT IS SAFE OR DANGEROUS TO RETURN PARTICULAR OFFENDERS TO SOCIETY. HOWEVER, THE OTHER SIDE FAVORS MANDATORY SENTENCING FOR JUVENILE OFFENDERS OF SERIOUS CRIMES, AND CESSATION OF THE JUDGES' DISCRETIONARY ROLE WHEN THE SENTENCE IS IMPOSED. THIS SENTENCING WILL FORCE JUDGES TO IMPOSE SENTENCES OF IMPRISONMENT FOR SERIOUS CRIMES. THIS SIDE IS NOT CONCERNED WITH WHAT IS BEST FOR THE DEFENDANT. THIS SIDE ALSO BELIEVES THAT THE MANDATORY SYSTEM WILL EFFECT DETERRENCE BECAUSE DIFFERENT JUDGES WOULD IMPOSE THE SAME SENTENCE FOR THE SAME CRIME.

Supplemental Notes: THIS PROGRAM IS ONE WHOLE AUDIO-CASSETTE PLUS HALF SIDE OF ANOTHER AUDIOCASSETTE. FOR THE PROGRAM ON THE OTHER SIDE OF THE SECOND AUDIOCASSETTE, SEE NCJ-67684. FOR THE ENTIRE KIT, SEE NCJ-67682.

Availability: NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, BOX 8978, UNIVERSITY OF NEVADA, RENO, NV 89507 (Audio Cassette)

198. **TEACH 'EM INC., 625 NORTH MICHIGAN, CHICAGO, IL 60611; NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, BOX 8978, UNIVERSITY OF NEVADA, RENO, NV 89507; NATIONAL DISTRICT ATTORNEYS ASSOCIATION, 708 NORTH PENDLETON STREET, ALEXANDRIA, VA 22314. MORAL DEVELOPMENT MOVEMENT AND DELINQUENCY PREVENTION—CORRECTIONS CAUCUS (FROM JUVENILE JUSTICE—NATIONAL CONFERENCE, 4TH, LOS ANGELES (CA), FEBRUARY 1977—AUDIOTAPE CASSETTE HIGHLIGHTS, GROUP 1—SEE NCJ-67673).** 1977. NCJ-67681
- THE HANDLING OF JUVENILE STATUS OFFENDERS AND MANDATORY AND DETERMINATE SENTENCING OF JUVENILE OFFENDERS ARE DISCUSSED IN THIS AUDIO TAPE CASSETTE FROM THE FOURTH NATIONAL CONFERENCE ON JUVENILE JUSTICE. THE FIRST SPEAKER SUPPORTS THE JURISDICTION OF JUVENILE COURTS OVER STATUS OFFENDERS BECAUSE ONLY THE COURTS CAN ASSURE THAT THE RIGHTS OF THE JUVENILES ARE PROTECTED. THEN, OTHER SPEAKERS DISCUSS THE LAWS THAT DEAL WITH JUVENILE STATUS OFFENDERS IN MISSOURI, CALIFORNIA, NEW JERSEY, AND ALASKA. NEXT, MANDATORY SENTENCING IS DISTINGUISHED FROM DETERMINATE SENTENCING, AND AN EXAMPLE OF THE EFFECTIVENESS OF DETERMINATE SENTENCING FOR A MINNESOTA YOUTH FORESTRY CAMP IS PRESENTED. NO SUPPORTING MATERIALS ARE PROVIDED. FOR RELATED DOCUMENTS, SEE NCJ 67673-80.

Supplemental Notes: THIS PROGRAM IS ONE SIDE OF THE AUDIOCASSETTE. FOR THE PROGRAM ON THE OTHER SIDE, SEE NCJ-67680. FOR THE ENTIRE KIT, SEE NCJ-67673.

Availability: NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, BOX 8978, UNIVERSITY OF NEVADA, RENO, NV 89507 (Audio Cassette)

199. **TEACH 'EM INC., 625 NORTH MICHIGAN, CHICAGO, IL 60611; NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, BOX 8978, UNIVERSITY OF NEVADA, RENO, NV 89507; NATIONAL DISTRICT ATTORNEYS ASSOCIATION, 708 NORTH PENDLETON STREET, ALEXANDRIA, VA 22314. PARENS PATRIAE AND DUE PROCESS—IS THERE A CONFLICT? (FROM JUVENILE JUSTICE—NATIONAL CONFERENCE, 4TH, LOS ANGELES (CA), FEBRUARY 6-10, 1977 AUDIOTAPE CASSETTE HIGHLIGHTS, GROUP 2, 1977—SEE NCJ-67682).** 0 p. 1977. NCJ-67685
- THIS CASSETTE TAPE PRESENTS THE HISTORY OF THE PARENS PATRIAE CONCEPT IN THE JUVENILE COURT AND

ITS REPLACEMENT WITH DUE PROCESS, ALONG WITH REASONS WHY NEITHER HAS WORKED BY ITSELF AND WHY BOTH TOGETHER MIGHT WORK BEST. PARENS PATRIAE FUNCTIONS UNDER WHAT IS IN THE BEST INTERESTS OF THE CHILD BECAUSE THE PARENTS HAVE FAILED TO MAINTAIN HIS WELFARE. COURTS USING THIS CONCEPT ALONE, HOWEVER, WERE FINDING THAT ADULT JUDICIAL PROCEDURES WOULD BE BEST FOR CERTAIN DIFFICULT CHILDREN. RECENTLY, JUVENILE COURTS HAVE BEEN MOVING RAPIDLY FROM PARENS PATRIAE TO DUE PROCESS. A PURE DUE PROCESS SYSTEM WOULD INVOLVE NO DISCRETION, FIXED SENTENCES, AND NO PAROLE OR TIME OFF FOR GOOD BEHAVIOR. UNDER PARENS PATRIAE PROSECUTORS MUST BE FAIR AND INTERESTED, BUT UNDER DUE PROCESS THEIR INTEREST NEED NOT BE INVOLVED. WITHOUT A COMPLETE PARENS PATRIAE SYSTEM, DEFENSE ATTORNEYS CAN ACT: (A) IN THE BEST INTERESTS OF THE CHILD; (B) AS CLASSICAL CRIMINAL DEFENSE LAWYERS; (C) IN THE BEST INTERESTS OF THE PARENTS; (D) IN LINE WITH THEIR OWN POLITICAL AND PHILOSOPHICAL VIEWS; (E) IN THE BEST INTERESTS OF THE COMMUNITY; OR (F) IN THEIR OWN BEST INTERESTS. FOR 70 YEARS THE JUVENILE COURTS WERE NOT UNDER THE SCRUTINY OF THE SUPREME COURT BECAUSE THOSE UNDER 18 YEARS OLD WERE CONSIDERED UNIMPORTANT, THE CONCEPT OF PARENS PATRIAE WAS NOT UNDERSTOOD, AND THE OLD ADAGE 'OUT OF SIGHT, OUT OF MIND' PERPETUATED DISINTEREST. THE BEST WAY TO USE PARENS PATRIAE IS TO HAVE MOST CASES SETTLED OUT OF THE JUDICIAL SETTING AND REFERRED TO A COURT INTAKE UNIT WHICH COULD DIVERT THE DEFENDANT TO OTHER AGENCIES FOR PROPER TREATMENT. ONE JUDGE FEELS THAT PARENS PATRIAE FAILED BECAUSE MOST JUDGES LACK PSYCHOLOGICAL AND SOCIOLOGICAL BACKGROUNDS. ANOTHER JUDGE DISAGREES THAT JUVENILE COURTS HAVE FAILED AND THINKS THAT A 25 TO 30 PERCENT RECIDIVISM RATE SHOWS SOME SUCCESS. DUE PROCESS IS TOO DEHUMANIZING, WHILE PARENS PATRIAE CANNOT ACCOMPLISH ITS HUMANE GOALS WITHOUT AVAILABLE RESOURCES. JUDGES CAN EASILY MAKE DECISIONS AS TO WHAT JUVENILES NEED, BUT FIND IT DIFFICULT TO DISCOVER THE APPROPRIATE PROGRAM AVAILABLE IN THE COMMUNITY.

Supplemental Notes: THIS PROGRAM IS ONE SIDE OF ONE CASSETTE, AND ONE-HALF OF THE OTHER SIDE. FOR THE PROGRAM WHICH COMPRISES THE OTHER HALF, SEE NCJ-67686. FOR THE ENTIRE KIT, SEE NCJ-67682.

Availability: NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, BOX 8978, UNIVERSITY OF NEVADA, RENO, NV 89507 (Audio Cassette)

INTERNATIONAL PERSPECTIVES

200. G. A. CAVENDER 3RD. PAROLE—A CRITICAL ANALYSIS.
328 p. 1979. NCJ-67847

THE CONTROVERSY SURROUNDING PAROLE LARGELY FOCUSES ON ITS FAILURE TO REHABILITATE OFFENDERS; PAROLE'S CONTRIBUTIONS TO SOCIAL PROTECTION, PRISON MANAGEMENT, AND RELIEF FROM PRISON OVERCROWDING ARE IGNORED. A REVIEW OF THE HISTORICAL LITERATURE SHOWS THAT PAROLE DEVELOPED IN GREAT BRITAIN AS AN OUTGROWTH OF THE POLICY OF 'TRANSPORTATION'—THE SHIPPING OF CONVICTED PERSONS TO THE COLONIES IN, FIRST, AMERICA, AND THEN, AUSTRALIA. PAROLE WAS A MEANS TO SUPERVISE THESE FELONS WHILE THEY WERE INDENTURED TO COLONIAL FAMILIES; AT THIS TIME ITS PRIMARY PURPOSE WAS TO PROTECT SOCIETY. IN THE LATE 1800'S REFORMERS BEGAN TO LOOK UPON PAROLE AS A MEANS OF REHABILITATION. AN EXTENSIVE REVIEW OF CURRENT LITERATURE SHOWS THAT MUCH OF THE DISENCHANTMENT WITH PAROLE STEMS FROM ITS FAILURE AS A 'TREATMENT,' AS MEASURED BY RECIDIVISM RATES, DRUG USAGE, AND OTHER INDEXES OF UNDESIRABLE BEHAVIOR. CRITICS ALSO CHARGE THAT CAPRICIOUS PAROLE BOARDS VIOLATE DUE PROCESS. LAWS TO CURB SUCH ABUSES HAVE BEEN ENACTED IN MINNESOTA, DELAWARE, ARIZONA, CALIFORNIA, INDIANA, FLORIDA, MAINE, MICHIGAN, ILLINOIS, ALASKA, WASHINGTON, AND MARYLAND. IN ADDITION, THE FEDERAL GOVERNMENT IS REVISING ITS PAROLE LAWS. PAROLE ENABLES PRISON ADMINISTRATORS TO REWARD DESIRABLE BEHAVIOR, AND, THUS, AIDS PRISON MANAGEMENT. IT ALSO RELIEVES OVERCROWDING AND HELPS TO PROTECT SOCIETY FROM RECENTLY RELEASED FELONS. THESE CONTRIBUTIONS ARE IMPORTANT AND ARGUE FOR THE CONTINUATION OF PAROLE. IN ADDITION TO AN EXTENSIVE BIBLIOGRAPHY OF NEARLY 250 ENTRIES, THIS STUDY CONTAINS NUMEROUS TABLES PRESENTING PAROLE STATISTICS AND SUMMARIZING OTHER RESEARCH.

Supplemental Notes: SPECIAL PRICES FOR ACADEMIC INSTITUTIONS. FLORIDA STATE UNIVERSITY DOCTORAL DISSERTATION.

Availability: UNIVERSITY MICROFILMS, 300 NORTH ZEEB ROAD, ANN ARBOR, MI 48106. Stock Order No. 8001089. (Microfiche)

201. E. A. FATTAH. MOVING TO THE RIGHT—A RETURN TO PUNISHMENT? UNIVERSITY OF OTTAWA DEPARTMENT OF CRIMINOLOGY, OTTAWA, ONTARIO K1Y 1E5, CANADA. *CRIME ET/AND—JUSTICE*, V 6, N 2 (1978), P 79-92. NCJ-55863

ISSUES IN CRIME AND JUSTICE ARE EXPLORED, INCLUDING REHABILITATION AS THE GOAL OF THE PENAL SYSTEM, THE REDUCTION OF CRIME BY INCAPACITATING OFFENDERS, MODELS OF TREATMENT, AND PUNISHMENT AS AN EFFECTIVE DETERRENT. RIGHT AND LEFT WING STANCES ON PUNISHMENT ARE CONSIDERED IN A DISCUSSION ON THE SEEMING TENDENCY OF CANADIAN PUBLIC TO MOVE AWAY FROM A LIBERAL VIEW. FIVE ISSUES IN THE RIGHT WING STANCE ARE EXCESSIVE LENIENCY TOWARD OFFENDERS, FAVORING THE WELFARE AND RIGHTS OF OFFENDERS OVER THE WELFARE AND RIGHTS OF VICTIMS, EROSION OF DISCIPLINE AND RESPECT FOR AUTHORITY, RESENTMENT OVER WHAT IS SEEN AS THE SIGNIFICANT COST OF CRIME, AND EXCESSIVE PERMISSIVENESS. FIVE OTHER ISSUES CHARACTERISTIC OF THE LEFT WING POSTURE ARE: OVERCRIMINALIZATION, LABELING AND STIGMATIZATION, OVERINSTITUTIONALIZATION, OVERCENTRALIZATION OF AUTHORITY, AND DISCRIMINATORY BIAS. POLLS CONDUCTED BY THE CANADIAN GALLUP INSTITUTE SHOW THAT PUBLIC ATTITUDES TOWARD CRIMINALS ARE BECOMING MORE PUNITIVE, WITH MANY MORE PERSONS FAVORING CAPITAL PUNISHMENT IN 1977 THAN IN 1958. FOUR ARGUMENTS ARE GENERALLY USED TO SUPPORT THE NEED FOR A MODEL TO REPLACE THE REHABILITATION AND TREATMENT APPROACH; (1) REHABILITATION DOES NOT WORK; (2) PUNISHMENT IS INDISPENSABLE BECAUSE RETRIBUTION IS A NECESSARY INGREDIENT IN ANY CRIMINAL JUSTICE SYSTEM; (3) PUNISHMENT IS AN EFFECTIVE DETERRENT; AND (4) THE INCAPACITATION OF OFFENDERS IS A MAJOR FACTOR IN REDUCING CRIME. ALTERNATIVE MODELS HAVE BEEN PROPOSED, BUT FOUR ARE MOST POPULAR. THE JUSTICE MODEL ADVOCATES DETERMINATE SENTENCING AND SHARP CURTAILMENT OF JUDICIAL AND PAROLE DISCRETION. THE MODEL BASED ON MAKING PUNISHMENT FIT THE CRIME IS ROOTED IN COMMON SENSE NOTIONS OF EQUITY APPLIED BY PERSONS IN THEIR DAILY LIVES. THE OPPORTUNITIES MODEL STATES THAT THE ROLE OF THE CORRECTIONAL SYSTEM IS TO PROVIDE VARIOUS OPPORTUNITIES AND THE NECESSARY HELP FOR THOSE WHO WANT TO CHANGE RATHER THAN TO CHANGE OFFENDERS AND THEIR BEHAVIOR OR ACHIEVE REHABILITATION. THE SECURITY OR INCAPACITATION MODEL STRESSES THE PROTECTION OF SOCIETY AND POTENTIAL VICTIMS AS THE MAJOR AIM OF THE CRIMINAL JUSTICE SYSTEM. CONSIDERATION IS GIVEN TO THE IMPACT OF VARIOUS APPROACHES TO THE HANDLING OF OFFENDERS ON THE PREVENTION OF FURTHER

CRIMINAL ACTS AND ON RECIDIVISM AND ALSO TO HUMANIZATION OF THE PENAL SYSTEM. REFERENCES ARE CITED.
Supplemental Notes: PAPER PRESENTED AT THE THIRD CANADIAN CONFERENCE OF APPLIED CRIMINOLOGY, OTTAWA, MARCH 15-17, 1978.

202. **D. FOGEL. PENITENTIARY TREATMENT AND CONSTRAINT. (TRAITEMENT PENITENTIAIRE ET CONTRAINTÉ.)** EDITIONS MEDICINE ET HYGIENE, CASE 229, 1211 GENEVA 4, SWITZERLAND. *DEVIANCE ET SOCIÉTÉ*, V 3, N 2 (JUNE 1979), P 149-159. (In French) **NCJ-63971**

THE CONCEPT OF TREATMENT FOR PRISON INMATES AND REHABILITATION EXPECTATIONS ARE EXPLORED. THE GOALS OF THE MEDICAL MODEL FOR PRISONER REHABILITATION ARE THE CLASSIFICATION OF PATIENTS IN DIFFERENT TREATMENT GROUPS, CONTINUED EVALUATION OF EACH PATIENT TO DETERMINE SUITABILITY FOR PAROLE, AND MAINTENANCE OF TREATMENT FOR AN INDETERMINATE PERIOD. THEORETICALLY, EACH INSTITUTION IN THE UNITED STATES HAS ITS OWN TREATMENT SYSTEM, BUT REHABILITATION HAS NEVER BEEN SERIOUSLY ATTEMPTED, AS THE DEARTH OF QUALIFIED TREATMENT STAFF INDICATES. REHABILITATION SHOULD BE ON A VOLUNTARY, NOT AN OBLIGATORY BASIS, AS THE PRESENT SYSTEM, ESPECIALLY FOR THOSE WITH INDETERMINATE SENTENCES APPLIED IN EUROPE, REDUCES THE CLINICAL WORKER-INMATE RELATIONSHIP TO A GAME IN WHICH THE INMATE MUST PROVE HIS BETTERMENT TO ATTAIN LIBERTY. FURTHERMORE, MOST CLINICAL WORKERS REFUSE TO TURN THEIR BACKS ON THE STATUS QUO WHICH FEEDS THEM. A RETURN TO A SYSTEM OF DETERMINATE SENTENCES APPLIED STRICTLY ACCORDING TO JURIDICAL CRITERIA WOULD TRANSFORM THE THERAPIST-PATIENT RELATIONSHIP. SIMPLE EQUITY IS A MORE IMPORTANT PRISON GOAL AND TREATMENT, BUT INEQUITY, ARBITRARINESS, AND UNCERTAINTY ARE TYPICAL CHARACTERISTICS OF THE INDETERMINATE SENTENCE AND THE SYSTEM OF FREEDOM THROUGH PAROLE. EXECUTING IMPRISONMENT IN CONFORMANCE WITH THE LAW MAY CONVINCING CERTAIN DELINQUENTS TO STAY WITHIN THE LAW THEMSELVES. IN THIS SENSE EQUITABLE JUSTICE IS THE BEST TREATMENT. REFERENCES ARE FURNISHED.—IN FRENCH.

203. **B. A. GROSMAN, Ed. NEW DIRECTIONS IN SENTENCING.** 00320 p. 1980. **NCJ-71049**

THIS VOLUME CONTAINS TEXTS OF PRESENTATIONS GIVEN AT A CANADIAN CONFERENCE ON SENTENCING. CONTRIBUTORS REPRESENT THE RANGE OF PROFESSIONS INVOLVED WITH THE ADMINISTRATION OF CRIMINAL JUSTICE. THE PAPERS REFLECT THE PERSPECTIVES ON SENTENCING OF LAW PROFESSORS, CRIMINAL DEFENSE LAWYERS, PROSECUTORS, PSYCHOLOGISTS, PSYCHIATRISTS, CRIMINOLOGISTS, SOCIOLOGISTS, PRISON ADMINISTRATORS, SENIOR POLICE ADMINISTRATORS, PAROLE AND PROBATION OFFICERS, GOVERNMENTAL POLICY PLANNERS, LEGISLATORS, AND JUDGES FROM EVERY LEVEL OF THE COURTS IN CANADA. DIVIDED INTO FIVE TOPICAL PARTS, THE VOLUME BEGINS WITH PAPERS DEALING WITH NEW SENTENCING DIRECTIONS IN BOTH CANADA AND THE UNITED STATES. SENTENCING REFORM IS THE NEXT TOPIC ADDRESSED BY REFORMERS OF SENTENCING LAWS, FOLLOWED BY HISTORICAL CONSIDERATIONS, INCLUDING THE CAPITAL PUNISHMENT CONTROVERSY AND NEW KINDS OF SENTENCES THAT SEEM TO BE PART OF THE FUTURE TREND. THE SENTENCING OF SPECIFIC OFFENDERS LIKE JUVENILES AND SEXUAL OFFENDERS IS THEN CONSIDERED. THE TWO CONCLUDING PARTS REVEAL THE DEFENSE LAWYERS' AND THE SENTENCING JUDGES' VIEWPOINTS, RESPECTIVELY. AMONG THE ISSUES RAISED IN THESE PAPERS IS THE CRITICISM OF THE TREATMENT PHILOSOPHY IN SENTENCING AND THE ACCOMPANYING CALL FOR DETERRENCE, PUNISHMENT, AND

PUBLIC SECURITY INSTEAD. IN A REVIEW OF ATTEMPTS TO ELIMINATE WIDE VARIATIONS IN SENTENCING, THE PAPERS ADVOCATE OR REJECT THE FIXED, MANDATORY (FLAT) SENTENCING ALTERNATIVE, WHICH IS BASED ON CRIME SERIOUSNESS, SPECIFICS CONFINEMENT LENGTH, AND MAKES THE ROLE OF PAROLE BOARDS SUPERFLUOUS. CONTRIBUTORS ALSO TAKE ISSUE WITH JUDICIAL DISCRETION, SENTENCING GUIDELINES, THE LOSS OF PUBLIC CONFIDENCE IN THE SENTENCING PROCESS, PRETRIAL DETENTION, PLEA BARGAINING, THE ONUS OF PROOF, STIGMATIZING AND LABELING EFFECTS, THE SENTENCING OF WHITE-COLLAR CRIMINALS, SENTENCING DELAYS, AND DISCRIMINATION AGAINST MINORITIES. DIVERSION OF MINOR CRIME CASES, COMMUNITY INVOLVEMENT THROUGH RESTITUTIONAL SENTENCING, AND JUDGES' PARTICIPATION IN SENTENCING CONFERENCES TO EXPAND THEIR COMPETENCE AND UNDERSTANDING ARE SOME OF THE POSITIVE RECOMMENDATIONS MADE IN THESE ESSAYS. TABULAR DATA AND NOTES ARE PROVIDED WITH INDIVIDUAL PAPERS. FOR SEPARATE ARTICLES, SEE NCJ 69396-69410.

Supplemental Notes: PAPERS PRESENTED AT A CONFERENCE HELD IN SASKATOON, (SASK), CANADA, MAY 1979.

Availability: BUTTERWORTH, 2265 MIDLAND AVENUE, SCARBOROUGH, ONTARIO, CANADA M1P 4E1.

204. **C. HOWARD. ANALYSIS OF SENTENCING AUTHORITY (FROM RESHAPING THE CRIMINAL LAW, 1978, BY P R GLAZEBROOK—SEE NCJ-62387).** STEVENS AND SONS, 11 NEW FETTER LANE, LONDON, ENGLAND. 18 p. 1978. **NCJ-62398**

TYPES OF SENTENCES AND SENTENCING AUTHORITIES UNDER BRITISH LAW ARE CRITIQUED. AS A GENERAL PRINCIPLE, IT IS UNWISE FOR THE LEGISLATURE TO SPECIFY A MANDATORY, FIXED SENTENCE FOR ANY SERIOUS (INDICTABLE) CRIME, BECAUSE IT IS IMPOSSIBLE AT THE LEGISLATIVE LEVEL TO FORESEE THE VARIOUS CIRCUMSTANCES UNDER WHICH AN OFFENSE MAY BE COMMITTED. AN INDETERMINATE SENTENCE, WHICH SETS NO MAXIMUM LIMIT, IS DESIGNED TO BASE THE LENGTH OF A SENTENCE UPON RESULTS IN REHABILITATION, BUT IS DISADVANTAGEOUS BECAUSE OF THE MANY POSSIBILITIES FOR ABUSE. A MINIMUM SENTENCE IN COMBINATION WITH A MAXIMUM IS USEFUL, IN THAT THIS PROVIDES LEGISLATIVE GUIDANCE WHILE ALLOWING FOR JUDICIAL DISCRETION ACCORDING TO THE CIRCUMSTANCES OF EACH CASE. THE USE OF LIFE IMPRISONMENT AS A MAXIMUM, BUT NOT MANDATORY, SENTENCE SERVES A PURPOSE IN EXPRESSING LEGISLATIVELY THE SERIOUSNESS WITH WHICH THE COMMUNITY VIEWS PARTICULAR CRIMES. THE COURT IS THE PRINCIPAL SENTENCING AUTHORITY SUBORDINATE TO THE LEGISLATURE. WHILE THERE IS MUCH CRITICISM OF THE INCONSISTENCY, DISPARITY, AND BIAS INVOLVED IN JUDICIAL SENTENCING, THE CRITICISM IS NOT PERSUASIVE ENOUGH TO WARRANT REMOVING SENTENCING FROM THE HANDS OF THE JUDICIARY. ALTERNATIVE SUGGESTIONS, SUCH AS THE USE OF A NON-JUDICIAL SENTENCING TRIBUNAL COMPOSED OF MEMBERS FROM A VARIETY OF PROFESSIONAL DISCIPLINES, HAVE THE PRIMARY DISADVANTAGE OF SEPARATING THE SENTENCING FROM THE EVIDENCE PRESENTED AT TRIAL. THE PREFERRED REFORM IS TO IMPROVE THE QUALITY OF JUDICIAL DECISIONMAKING THROUGH THE TRAINING OF JUDGES AND BETTERING INFORMATION COLLECTION FOR SENTENCING. IN THE INTEREST OF THE PUBLIC AND SENTENCING CONSISTENCY, PROSECUTION AS WELL AS OFFENDER APPEALS OF SENTENCES SHOULD BE ALLOWED. THE CORRECTIONS DEPARTMENT IS GIVEN AUTHORITY TO DETERMINE WHERE AN OFFENDER WILL SERVE A PRISON SENTENCE AND WHETHER OR NOT THAT SENTENCE MAY BE REDUCED BASED ON GOOD BEHAVIOR. THE RETICENCE OF THE COURTS TO REVIEW DECISIONS BY THE CORRECTIONS DEPARTMENT WHICH AFFECT THE CONDITIONS AND LENGTH

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OF A SENTENCE IS DIFFICULT TO JUSTIFY. THE PAROLE BOARD SHOULD BE ABOLISHED IN FAVOR OF SUBMITTING EARLY RELEASE DECISIONS TO THE JUDICIARY. THE ORIGINAL TRIAL JUDGE SHOULD BE INVOLVED, IF POSSIBLE. FOOTNOTES ARE PROVIDED.

205. **INSTITUTE OF CRIMINOLOGY SYDNEY UNIVERSITY LAW SCHOOL, 173-175 PHILLIP STREET, SYDNEY, 2000, AUSTRALIA. TOWARDS AN ALTERNATIVE APPROACH TO SENTENCING (FROM SEMINAR ON SENTENCING—PROCEEDINGS OF THE INSTITUTE OF CRIMINOLOGY, 1978—SEE NCJ-53502.** 7 p. 1978. **NCJ-53507**

IT IS ARGUED THAT AUSTRALIA'S PAROLE OF PRISONERS ACT OF 1966 SHOULD BE ABOLISHED BECAUSE THE EXISTING SYSTEM LEADS TO UNFAIRNESS AND UNCERTAINTIES WHICH DEMORALIZE INMATES. DETERMINATE SENTENCING IS PROPOSED. THIS PAPER DISCUSSES THE ISSUE OF INDETERMINATE SENTENCING AS IT AFFECTS PRISONERS, PAROLEES, AND PROBATION AND PAROLE OFFICERS IN NEW SOUTH WALES. IT DESCRIBES A FEBRUARY 1978 CONFERENCE OF SENIOR PROBATION AND PAROLE STAFF WHICH RECOMMENDED 'AUTOMATIC PAROLE' AND A RETURN TO FULL JUDICIAL CONTROL OF SENTENCES. IT IS ARGUED THAT PAROLE ITSELF HAS NOT BEEN A FAILURE, RATHER, THE METHOD OF GRANTING PAROLE HAS FAILED. THE PAROLE ASSESSMENT PROCESS IS DESCRIBED, TOGETHER WITH ITS EFFECTS ON INMATES. IT IS CONCLUDED THAT PAROLE BOARD HEARINGS PRODUCE A GREAT DEAL OF ANXIETY, MAKING PRISON DISCIPLINE A PROBLEM. THE UNCERTAINTY OF THE PROCEDURE ALSO HINDERS RELEASE PLANNING. THE VALIDITY OF PAROLE BOARD ASSESSMENTS ARE OFTEN QUESTIONED, AND PAROLE STUDIES HAVE FOUND THAT THE BOARD'S PREDICTIONS OF 'DANGEROUSNESS' OFTEN HAVE NOT BEEN VALID. THE RATIONALE OF EARLY RELEASE FOR SOME INMATES BUT NOT OTHERS IS ALSO CRITICIZED. IT IS PROPOSED THAT THE JUDICIARY BE EMPOWERED TO DECIDE ON A DETERMINATE SENTENCE WITH SPECIFIC CONDITIONS FOR EARLY RELEASE CLEARLY SPELLED OUT. THIS WOULD GIVE BOTH THE PRISONER AND THE CRIMINAL JUSTICE SYSTEM STAFF A CLEAR UNDERSTANDING OF THE NATURE AND LENGTH OF THE SENTENCE, IT WOULD ELIMINATE THE VAST AMOUNT OF TIME NOW SPENT ASSESSING FOR PAROLE, IT WOULD FREE COUNSELORS TO HELP THOSE WHO TRULY WANT COUNSELING. PAROLE OFFICERS COULD FOCUS ON HELPING A PERSON RELEASED IN THE NORMAL COURSE OF THE JUSTICE SYSTEM PROCESS.

Supplemental Notes: RESOLUTION OF A STAFF CONFERENCE ON MAY 2, 1978.

206. **K. E. JOBSON. DISMANTLING THE SYSTEM.** CANADIAN CRIMINOLOGY AND CORRECTIONS ASSOCIATION, 55 PARKDALE, OTTAWA, ONTARIO, CANADA K1Y 1E5. *CANADIAN JOURNAL OF CRIMINOLOGY AND CORRECTIONS*, V 19, N 3 (JULY 1977), P 254-272. **NCJ-47453**

THE CRIMINAL JUSTICE SYSTEM IS COMPARED WITH AN INDUSTRY, AND IT IS SUGGESTED THAT IF A COMPANY PERFORMED AS POORLY AS THE CRIMINAL JUSTICE SYSTEM, IT WOULD BE ON THE VERGE OF BANKRUPTCY. COMPARING THE CRIMINAL JUSTICE SYSTEM WITH ITS MANY BRANCHES TO A MAJOR INDUSTRY IS NOT UNREASONABLE. IN CANADA, THIS INDUSTRY'S BUDGETARY OUTLAYS HAVE GROWN FROM \$0.6 BILLION IN 1966 TO AN ESTIMATED \$1.5 BILLION IN 1976. NEW PRISON PLANTS COST FROM \$70,000 TO \$100,000 PER CELL OR SPACE FOR ONE BED, AND THE PROVISION OF PRISON SERVICES FOR ADULT OFFENDERS COSTS \$1,000 PER MONTH PER PERSON. DESPITE THIS HIGH COST THE PRISONS DO NOT REFORM CRIMINALS, DETER PERSONS FROM COMMITTING CRIMES, OR PREVENT CRIME. THE PRISONS DO FULFILL ONE PROMISE, HOWEVER: THEY DO ATTEMPT TO ADMINISTER JUSTICE FAIRLY, ALTHOUGH THIS GOAL IS OFTEN SUBVERTED BY PAROLE COMMIS-

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SIONS. CRIMINAL JUSTICE SUFFERS FROM OVEREXPANSION. UNDER THE GUISE OF 'TREATMENT,' MANY WHO HAVE NOT COMMITTED SERIOUS OFFENSES ARE BROUGHT INTO THE SYSTEM. VARIOUS BRANCHES OF THE SYSTEM ARE INVOLVED IN DRUG TREATMENT PROGRAMS AND OTHER EFFORTS BETTER LEFT TO SOCIAL AGENCIES. LITTLE ATTENTION IS GIVEN TO PRETRIAL MEDIATION SERVICES AND OTHER MEASURES TO CURTAIL COURT INVOLVEMENT IN MINOR OFFENSES. WHILE THE POLICE, PROSECUTORS, AND JUDGES CONTRIBUTE TO THE PROBLEMS OF THE SYSTEM, IT IS AT THE CORRECTIONS LEVEL THAT OVEREXPANSION IS MOST EVIDENT. IF CRIMINAL JUSTICE IS TO BE AS WELL-RUN AS THE AVERAGE BUSINESS CONCERN, A COST-BENEFIT APPROACH MUST BE USED AS PART OF THE SENTENCING CRITERIA. CONSIDERING THE HIGH COST TO BOTH TAXPAYERS AND OFFENDERS, IMPRISONMENT SHOULD NOT BE USED FOR NONVIOLENT OFFENDERS. THEY SHOULD BE SENTENCED TO WORK IN THE COMMUNITY AND MAKE RESTITUTION FOR THE HARM THEY HAVE CAUSED. COURTS SHOULD BE RESTRUCTURED TO HANDLE MINOR NONVIOLENT OFFENSES MORE ECONOMICALLY. IN VICTORIA, BRITISH COLUMBIA, THE ESTIMATED COST OF A GUILTY PLEA CASE IN AN AVERAGE NONVIOLENT PROPERTY OFFENSE IS \$500. IF THE CASE IS CONTESTED AND A PRELIMINARY HEARING IS HELD, THE COST MAY REACH \$1,600. THE USE OF SIMPLIFIED PROCEDURES, COMMUNITY COURTS, OR OMBUDSMEN SHOULD BE INVESTIGATED AS ALTERNATIVES FOR MINOR CRIMES AND DISPUTES. ALSO, EMPLOYEES OF THE CRIMINAL JUSTICE SYSTEM SHOULD BE GIVEN THE SAME TRAINING, PAY, AND BENEFITS NOW ENJOYED BY WORKERS IN PRIVATE INDUSTRY. THE PAROLE BOARDS SHOULD BE ABOLISHED AND FIXED TERM SENTENCES GIVEN, ALLOWING A CHANCE FOR RELEASE AFTER A THIRD OF THE SENTENCE HAS BEEN SERVED. BY GETTING MINOR OFFENDERS OUT OF THE SYSTEM, ABOLISHING THE PAYROLLS ASSOCIATED WITH THE PAROLE PROCESS, AND CUTTING COURT COSTS, CRIMINAL JUSTICE AGENCIES WOULD SAVE ENOUGH MONEY TO UPGRADE THE SERVICES OFFERED AND WOULD END OVERCROWDING IN PRISONS.

207. **P. LANDREVILLE and P. CARRIERE. RELEASE MEASURES IN CANADA (FROM STUDIES ON IMPRISONMENT, 1976—SEE NCJ-54805).** LAW REFORM COMMISSION OF CANADA, 130 ALBERT STREET, OTTAWA, ONTARIO K1A 0L6, CANADA. 72 p. 1976. **NCJ-54807**

REMISSION OF IMPRISONMENT, PAROLE, DAY PAROLE, AND TEMPORARY RELEASE ARE DISCUSSED FROM A GENERAL PERSPECTIVE, WITH PARTICULAR REFERENCE TO CANADA. RECOMMENDATIONS ARE OFFERED. REMISSION, WHEREBY A SENTENCE OF IMPRISONMENT IS REDUCED AS A RESULT OF GOOD BEHAVIOR, IS DISCUSSED WITH RESPECT TO ITS GENERAL HISTORY OF APPLICATION, AND THE CURRENT LEGISLATION GOVERNING THE USE OF REMISSION IN CANADA IS CONSIDERED. THE CANADIAN LAW ON REMISSION IS SAID TO EMPHASIZE REMISSION AS A MEANS OF CONTROL IN MOTIVATING INMATES TO PARTICIPATE EFFECTIVELY IN PRISON WORK AND REHABILITATION PROGRAMS. DECISIONS TO GRANT OR FORFEIT REMISSION LIE BASICALLY WITH PRISON AUTHORITIES AS THEY OBSERVE AND SEEK TO REGULATE BEHAVIOR. THE POWER TO GRANT OR WITHOLD REMISSION IS, THEREFORE, TOO BLATANTLY MANIPULATIVE TO FULFILL A USEFUL PURPOSE. MORE APPROPRIATE MEANS FOR MOTIVATING INMATES TO PARTICIPATE IN REHABILITATION PROGRAMS ARE NOTED TO EXIST. THE PURPOSES OF PAROLE ARE CONSIDERED, AND THE EVOLUTION OF PAROLE IN CANADA IS DISCUSSED. THE STRUCTURE OF THE PAROLE SYSTEM, THE SCREENING PROCESS OF PAROLE BOARDS, AND PROCEDURES FOR REVOKING PAROLE ARE DESCRIBED. THE RECIDIVISM RATE FOR PAROLEES IS NO BETTER THAN THAT FOR OFFENDERS RELEASED AFTER SERVING THEIR FULL TERM IN PRISON.

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WHILE THIS FACT HAS BEEN USED BY SOME AS A BASIS FOR RECOMMENDING THE ABOLISHMENT OF THE PAROLE SYSTEM, IT IS MAINTAINED THAT THE PAROLE SYSTEM STILL OFFERS A POTENTIAL STRUCTURE FOR HELPING OFFENDERS DEAL WITH PROBLEMS OBSTRUCTING SUCCESSFUL REINTEGRATION. DAY PAROLE IS GRANTED FOR REHABILITATIVE PURPOSES TO ALLOW AN INMATE TO HOLD A REGULAR JOB; A PERIOD OF FULL-TIME IMPRISONMENT, HOWEVER, USUALLY IS REQUIRED BEFORE AN INMATE IS ELIGIBLE. TEMPORARY RELEASE CAN BE GRANTED VERY SOON AFTER CONFINEMENT, BUT ONLY FOR SHORT, SPECIFIED PERIODS OF TIME FOR SPECIAL PROJECTS AND NOT FOR INMATE EMPLOYMENT. IT IS SUGGESTED THAT THE CRITERIA FOR THE APPLICATION OF THESE RELEASE MEASURES BE MADE KNOWN TO INMATES AS THEY ENTER PRISON, AND THEY SHOULD BE USED IN CAREFULLY PLANNED STAGES. A BIBLIOGRAPHY IS PROVIDED.

208. **M. G. RECTOR. STATEMENT BEFORE THE NEW YORK STATE EXECUTIVE ADVISORY COMMITTEE ON SENTENCING.** NATIONAL COUNCIL ON CRIME AND DELINQUENCY, 1101 15TH STREET, NW, WASHINGTON, DC 20005. 7 p. 1978. **NCJ-54458**

DETERMINATE AND INDETERMINATE SENTENCING ARE JUDGED INEFFECTIVE. THE SYSTEM OF FINES USED IN SWEDEN, THE CORRECTIONAL PLANNING USED IN DENMARK, AND THE COMMUNITY CORRECTIONS ACT OF MINNESOTA PROVIDE ALTERNATIVES. THIS BRIEF STATEMENT BY THE PRESIDENT OF THE NATIONAL COUNCIL ON CRIME AND DELINQUENCY CONDEMNES A PROPOSAL TO CHANGE FROM INDETERMINATE TO DETERMINATE SENTENCES WITH THE ABOLITION OF PAROLE. THE GOAL SHOULD BE TO FIND WAYS OTHER THAN IMPRISONMENT TO PUNISH. THE POOR AND MINORITIES ARE MOST LIKELY TO BE IMPRISONED, AND IMPRISONMENT DOES LITTLE TO CHANGE BEHAVIOR. PRISONS ARE CONSIDERED TO BE CRIMINAL, VIOLENT, EXPENSIVE, LOW COST-BENEFIT ENVIRONMENTS. ALTERNATIVES ARE PROVIDED BY THE FINE SYSTEM OF SWEDEN AND COMMUNITY CORRECTIONS PROGRAMS, SUCH AS ARE BEING IMPLEMENTED IN MINNESOTA. IT IS SUGGESTED THAT SENTENCING GUIDELINES ARE SUBJECT TO THE SAME ABUSES AS PAROLE GUIDELINES AND THAT ONE OF THE MOST SEVERE LOSSES RESULTING FROM THE TREND IN DETERMINATE AND MANDATORY SENTENCING LAWS IS THE TRANSFER OF DISCRETION FROM JUDGES TO PROSECUTORS AND LAW ENFORCEMENT PERSONNEL. PROHIBITIONS AGAINST PROBATION ARE ALSO CONDEMNED AS SETTING COMMUNITY CORRECTIONS BACK AT LEAST FORTY YEARS. NEW YORK STATE IS WARNED AGAINST ASSUMING THAT THE DESIRED CHANGES WILL RESULT FROM CHANGES IN THE LAW. IT IS POINTED OUT THAT WHEN DENMARK CHANGED ITS CORRECTIONAL STATUTES, A COMMISSION WAS SET UP TO MONITOR THE IMPLEMENTATION TO MAKE SURE DESIRED RESULTS WERE ACHIEVED. THIS KIND OF MONITORING IS RECOMMENDED.

Availability: National Criminal Justice Reference Service MICROFICHE PROGRAM.

209. **M. RICHARDSON. SENTENCING—FEDERAL PAROLE SYSTEMS—AUSTRALIA.** LAW REFORM COMMISSION OF AUSTRALIA, 99 ELIZABETH STREET, SYDNEY, NSW 2000, AUSTRALIA. 89 p. 1979. **NCJ-61774**
- ISSUED BY THE AUSTRALIAN LAW REFORM COMMISSION, THIS PAPER DISCUSSES THE FEDERAL SYSTEMS OF PAROLE, VARIOUS CRITICISMS OF THE SYSTEM, AND PROPOSED REFORMS, AND CONCLUDES THAT THE FEDERAL SYSTEMS OF PAROLE SHOULD BE ABOLISHED AND SHOULD BE REPLACED WITH MORE DETERMINATE SYSTEMS OF SENTENCING. FOLLOWING AN INTRODUCTION TO THE AUSTRALIAN PAROLE SYSTEM, DISCUSSION TURNS TO SPECIFIC ASPECTS OF THE COMMONWEALTH PAROLE SYSTEM, INCLUDING

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SENTENCING AND PAROLE, RELEASE FROM PRISON, AND CONDITIONS OF RELEASE, AS WELL AS BREACH OF PAROLE OF LICENSE AND REMISSION. THE COMMONWEALTH PAROLE SYSTEM OPERATES FOR OFFENDERS AGAINST THE LAWS OF THE COMMONWEALTH UNDER THE PROVISIONS OF THE 1967 COMMONWEALTH PRISONERS ACT. THE ACT APPLIES TO THESE OFFENDERS IN BOTH THE STATES AND TERRITORIES, WHILE SEPARATE LEGISLATION ESTABLISHES A SYSTEM OF PAROLE FOR OFFENDERS AGAINST LAWS OF THE AUSTRALIAN CAPITAL TERRITORY. DATA WERE OBTAINED FROM THREE SURVEYS—A JUDICIAL OFFICERS SURVEY, A PRISONERS SURVEY, AND A PUBLIC SURVEY. THESE DATA, ALONG WITH THE RESULTS OF SEVERAL PREVIOUS REPORTS ON THE SYSTEM, LED THE COMMISSION TO COMMENT ON SUGGESTIONS ABOUT REFORMING THE PAROLE SYSTEM. THE MAIN OPTIONS INCLUDE AMENDING THE PROVISIONS ON THE COMMONWEALTH PRISONERS ACT TO REMOVE INJUSTICES, PLACING A COMMONWEALTH OFFICER IN EACH STATE TO HANDLE PAROLE, AND ESTABLISHING A COMMONWEALTH PAROLE SERVICE. OTHER OPTIONS ARE TO PRESCRIBE MINIMUM TERMS OF IMPRISONMENT BY STATUTE AND TO INSTITUTE PROCEDURES THAT RECOGNIZE THE REQUIREMENTS OF NATURAL JUSTICE, PRIVACY, AND FAIRNESS. HOWEVER, THE COMMISSION NOTES THAT A MORE PREFERABLE METHOD OF REDUCING THE RATE OF IMPRISONMENT IS TO CUT BACK ON THE MASS CRIMINAL LAWS WHICH ATTRACT IMPRISONMENT AS A PENALTY. A TOTAL OF 184 FOOTNOTES IS PROVIDED. FOR RELATED DOCUMENT, SEE NCJ 61773.

Supplemental Notes: RESEARCH PAPER NO. 6.

210. **F. RINALDI. GUIDELINES FOR PRISON REFORM.** UNIVERSITY OF SYDNEY, SYDNEY, NSW 2006, AUSTRALIA. *CURRENT AFFAIRS BULLETIN*, V 1 (MAY 1978), P 14-17, 19-23. **NCJ-63883**

THE NEED FOR PRISON REFORM IN AUSTRALIA IS DISCUSSED. SUGGESTIONS FOCUS ON IMPROVING PRISON FACILITIES, ALTERING THE OPPRESSIVE NATURE OF PRISON, PROMOTING ALTERNATIVE SENTENCES, AND ABOLISHING PAROLE BOARDS. HALF OF AUSTRALIA'S PRISONERS ARE HOUSED IN ANTIQUATED INSTITUTIONS, BUILT BETWEEN 1855 AND 1916, WHICH ARE TOO RESTRICTIVE TO PERMIT MEANINGFUL EXISTENCE. NEW PRISON CONSTRUCTION MUST BE GROUNDED ON THE PROVISION OF SAFETY AND SECURITY FOR PRISONERS AND STAFF. EACH PRISONER SHOULD HAVE HIS OWN ROOM, BE PERMITTED TO ASSOCIATE WITH OTHER INMATES UNTIL A REASONABLE HOUR AT NIGHT, TO ENGAGE IN PRODUCTIVE WORK, AND TO TAKE RECREATION IN THE OPEN AIR FOR AT LEAST 2 HOURS EACH DAY. INMATES SHOULD ALSO BE ALLOWED TO RECEIVE VISITORS WITHOUT INFRINGEMENTS ON THEIR PRIVACY. ALTHOUGH REHABILITATION CENTERS OR YOUTH TRAINING CENTERS FOR PRISONERS UNDER 21 YEARS HAVE FAILED TO ACHIEVE THEIR GOALS, IT IS TRAGIC TO DEPRIVE YOUTHS OF THEIR MOST PRODUCTIVE YEARS, TO FAIL TO GIVE THEM THE SKILLS TO COMPETE IN A HOSTILE EMPLOYMENT MARKET, AND TO APPLY A STIGMA WHICH WILL HAUNT THEIR SOCIAL LIFE AND INHIBIT THEIR PARTICIPATION IN THE COMMUNITY. ALTHOUGH NEWSPAPER ARTICLES OFTEN DEPICT THE LIFE OF PRISONERS IN ROSY HUES, THE REALITIES OF PRISON LIFE INCLUDE BOREDOM, DULL ROUTINE, AND ALMOST TOTAL SUPPRESSION OF INITIATIVE. STRICT RULES OF DISCIPLINE SHOULD AND ARE BEING MODIFIED THROUGHOUT AUSTRALIA'S PRISON SYSTEM, PARTICULARLY THOSE REGARDING INMATE CORRESPONDENCE AND PERSONAL APPEARANCE. IN ADDITION, PRISON SENTENCES SHOULD BE SHORTER, COUPLED WITH THE ABOLITION OF PAROLE BOARDS ON THE BASIS OF THEIR INABILITY TO PREDICT WHETHER A PRISONER WILL CEASE CRIME. PRISONERS SHOULD KNOW THEIR RELEASE DATES THE MOMENT THEY ARE SENTENCED, SO THEY CAN

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BEGIN ADAPTING THEMSELVES FOR THE PERIOD OF IMPRISONMENT. THE CONTINUATION OF WORK RELEASE PROGRAMS IS RECOMMENDED, PARTICULARLY WHEN A PRISON TERM OF 18 MONTHS OR LESS IS APPROPRIATE AND THE OFFENDER HAS A SOUND WORK RECORD. OTHER PRISON REFORM SUGGESTIONS FOCUS ON RESOLVING INMATE GRIEVANCES AND PREVENTING RIOTS, IMPROVING PRISON STAFF MORALE, AND REDUCING THE BUREAUCRACY OF PRISON ADMINISTRATION. PHOTOGRAPHS AND SUGGESTIONS FOR FURTHER READING ARE INCLUDED.

211. **M. ROBERTSON. COMPREHENSIVE PLAN (FROM STATE, DIRECTION AND FUTURE OF CORRECTIONS, PART 2—ALTERNATIVES TO IMPRISONMENT AUSTRALIA, 1979—SEE NCJ-62770).** INSTITUTE OF CRIMINOLOGY SYDNEY UNIVERSITY LAW SCHOOL, 173-175 PHILLIP STREET, SYDNEY, 2000, AUSTRALIA. 14 p. 1979. **NCJ-62773**

ALTERNATIVES TO IMPRISONMENT IN NEW SOUTH WALES, AUSTRALIA, ARE DISCUSSED BY THE PRESIDENT OF THE STATE'S PROBATION AND PAROLE OFFICERS' ASSOCIATION. THE NEED FOR THE NEW SOUTH WALES GOVERNMENT TO DRAW UP A COMPREHENSIVE PLAN AND STATEMENT OF OBJECTIVES FOR THE ENTIRE CRIMINAL JUSTICE PROCESS IS DISCUSSED, AS IS THE IMPORTANCE OF A POSITIVE ATTITUDE AMONG GOVERNMENT LEADERS TOWARD DEVELOPING ALTERNATIVES TO IMPRISONMENT. QUESTIONS TO BE ASKED IN REVIEWING EXISTING LEGISLATION AS THE FIRST STEP IN SEEKING ALTERNATIVES TO IMPRISONMENT ARE ADDRESSED. THE PROBATION AND PAROLE OFFICERS' ASSOCIATION'S SUPPORT OF A DETERMINATE SENTENCING POLICY IS NOTED. SPECIFIC TYPES OF ALTERNATIVES TO IMPRISONMENT—DIVERSIONARY PROGRAMS, PRESENTENCE AND REMAND PROGRAMS, COURT DISCHARGE, FINES, PROBATION, HOSTELS, ATTENDANCE CENTERS, COMMUNITY SERVICE ORDERS—ARE REVIEWED, WITH REFERENCE TO THEIR STATUS IN NEW SOUTH WALES AND ELSEWHERE. THE BENEFITS OF PERFORMANCE-BASED FUNDING FOR PROBATION AND PAROLE SERVICES ARE NOTED. PROBATION IS CONCLUDED TO BE THE PRIMARY CONTROLLED ALTERNATIVE TO IMPRISONMENT AND SHOULD PLAY A CENTRAL ROLE IN THE FUNCTIONING OF MOST OTHER ALTERNATIVES. FUNDING OF THE NEW SOUTH WALES PROBATION AND PAROLE AGENCY TO PROVIDE STATEWIDE SERVICES, A COMMUNITY SERVICE ORDER PROGRAM, AND HALFWAY HOUSES IS RECOMMENDED.

212. **R. TOMASIC and I. DOBINSON. FAILURE OF IMPRISONMENT—AN AUSTRALIAN PERSPECTIVE.** 164 p. 1979. **NCJ-71025**

THIS BOOK INVESTIGATES THE REHABILITATION FAILURE OF IMPRISONMENT IN THE AUSTRALIAN PRISON SYSTEM AND CONSIDERS HISTORICAL BACKGROUND, VIEWS ON PUNISHMENT, AND THE COMMUNITY CORRECTIONS MOVEMENT. IT PROPOSES THAT FUTURE REFORMS OF THE PRISON SYSTEM SHOULD MOVE IN THE DIRECTION OF EMPTYING PRISONS AND THAT ALTERNATIVES OUGHT NOT TO RESULT IN NEW FORMS OF COERCION. TO ACHIEVE THIS GOAL, HOWEVER, THE PRISON INSTITUTION WILL HAVE TO BE REMOVED FROM THE CENTER OF THE CORRECTIONS SYSTEM. ALTERNATIVE CORRECTIONAL METHODS SUCH AS PROBATION, HALFWAY HOUSES, AND COMMUNITY SERVICE ORDERS WILL HAVE TO BECOME SEPARATE SENTENCING ALTERNATIVES. THESE REFORM MEASURES SHOULD BE VIEWED NOT SO MUCH AS HUMANITARIAN BUT AS A NEEDED BUREAUCRATIC RESPONSE TO THE PREVAILING SOCIOECONOMIC CLIMATE IN WHICH TRADITIONAL INCARCERATION IS DIFFICULT TO JUSTIFY. THE NOTIONS OF PUNISHMENT, DANGEROUSNESS, AND THE SO-CALLED DANGEROUS OFFENDER SHOULD BE REASSESSED SINCE AMBIGUITIES EXIST IN THE MOTIVATION, AIMS, AND DEFINITION OF TRADITIONAL RETRIBUTIONIST DOCTRINES, DETERRENCE,

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AND SOCIAL DEFENSE. CURRENT PRACTICES IN PRISON WORK AND EDUCATION PROGRAMS INDICATE INEQUITIES IN PRISONER ACCESS TO SUCH PROGRAMS; LACK OF APPROPRIATE EQUIPMENT, PERSONNEL, AND PLANNING FOR EDUCATION; AND A GENERALLY DEGRADING PUNISHMENT ORIENTATION OF MOST WORK PROGRAMS. ALTERNATIVES TO IMPRISONMENT CURRENTLY PRACTICED IN COMMUNITY CORRECTIONS PROJECTS BEAR OMINOUS POTENTIAL FOR MANIPULATION AND COERCION AND EVENTUAL PERVASIVE INTRUSION OF THE SOCIAL CONTROL MECHANISM INTO THE COMMUNITY. PAROLE SHOULD BE ABOLISHED BECAUSE IT INVOLVES PREDICTION OF FUTURE BEHAVIOR. THIS PREDICTION IS POORLY JUSTIFIED AND, MOREOVER, AFFORDS THE OFFENDER LITTLE OR NO JUDICIAL PROTECTION. CONVERSELY, PROBATION SHOULD BE MAINTAINED AND EXPANDED. BOTH THE SENTENCING AND REVOCATION LEVELS SHOULD BE UNDER JUDICIARY CONTROL, WHILE ON-THE-STREET SUPERVISION AND AFTERCARE SHOULD BE ADMINISTERED BY A SEPARATE PROBATION AGENCY. ABOVE ALL, INNOVATIVE ALTERNATIVES NEED TO BE CLEARLY AND COMPLETELY SEPARATED AND DISTINGUISHED FROM THE TRADITIONAL PRISON SYSTEM AND THE ETHOS AND CULTURE OF IMPRISONMENT. TABULAR DATA, A BIBLIOGRAPHY, AND AN INDEX ARE PROVIDED.

Supplemental Notes: LAW IN SOCIETY SERIES, NUMBER 3. **Availability:** ALLEN AND UNWIN, P O BOX 978, EDISON, NJ 08817.

213. **M. S. UMBREIT. CORRECTIONS—A SCANDINAVIAN PERSPECTIVE.** PACT (PRISONER AND COMMUNITY TOGETHER, INC), P O BOX 177, MICHIGAN CITY, IN 46360. 1980. **NCJ-65606**

THIS SLIDE SHOW PRESENTATION FOCUSES ON DANISH PENAL POLICIES AND PRISON CONDITIONS, INCLUDING COMMUNITY-BASED CORRECTIONS, AND COMPARES THE DANISH SYSTEM OF PRISON USE WITH THAT OF AMERICAN STATES. DENMARK HAS LITTLE VIOLENT CRIME, NO CAPITAL PUNISHMENT, STRICT GUN CONTROL LAWS, AND RARE USE OF GUNS BY POLICE. BECAUSE DANISH CORRECTIONS OFFICIALS VIEW IMPRISONMENT AS INHERENTLY DESTRUCTIVE OF THE HUMAN SPIRIT, THEY HAVE ENCOURAGED A POLICY OF 'DEPENALIZATION' AND 'DOWNPENALIZATION' TO BOTH DECRIMINALIZE CERTAIN BEHAVIOR AND FURTHER REDUCE EXISTING PRISON POPULATIONS. STRONG SOCIETAL VALUES AGAINST OPPRESSION ARE EVIDENCED BY THE SHORT DETERMINATE SENTENCES GIVEN FOR MOST CRIMINAL OFFENSES. A TOTAL OF 81 PERCENT OF DANISH PRISONERS SERVE LESS THAN 1 YEAR, WHEREAS 98 PERCENT OF AMERICAN PRISONERS SERVE SENTENCES OF OVER 1 YEAR. IN ADDITION, THE INCARCERATION RATE, PER 100,000 CITIZENS, IS 54 IN DENMARK AND 250 IN THE UNITED STATES. FLORIDA AND GEORGIA EVEN EXCEED THE TOTALITARIAN COUNTRIES OF SOUTH AFRICA AND THE SOVIET UNION IN THE NUMBER OF PERSONS INCARCERATED. THE DANISH PRISON SYSTEM CONSISTS OF MAXIMUM TO MEDIUM SECURITY PRISONS, MINIMUM SECURITY SYSTEMS, AND DETENTION CENTERS. THE GOALS ARE NOT TO INFLICT FURTHER PUNISHMENT BUT TO PROVIDE AN INSTITUTIONAL ENVIRONMENT AS SIMILAR TO FREE LIFE AS POSSIBLE. TO THIS END, THE PRISONS HAVE A VARIETY OF NORMALIZING FEATURES INCLUDING COED FACILITIES, CONJUGAL VISITS, GOOD EDUCATIONAL FACILITIES AND FREQUENT FURLOUNDS, VOCATIONAL PROGRAMS, NO INMATE DRESS CODES, AND SHORT SENTENCES. COMPARISONS ARE MADE BETWEEN THE DANISH CLOSED PRISON AT NYBORG AND THE INDIANA STATE STATE PRISON IN MICHIGAN CITY, BOTH MAXIMUM SECURITY INSTITUTIONS. DENMARK'S INNOVATIVE PRISON AT RINGE IS ALSO DESCRIBED. THE DANISH RELIANCE ON COMMUNITY ALTERNATIVES TO PRISONS IS ILLUSTRATED BY THE SUCCESS OF THE NATION'S SIX HALFWAY HOUSES. ISSUES THAT AMERICANS MIGHT ADDRESS AFTER

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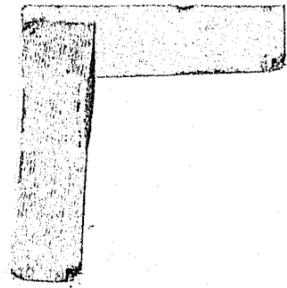
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