12-1966

0113 Criminal Laws and Indeterminate Sentencing

Colorado Legislative Council

0113 Criminal Laws and Indeterminate Sentencing

Report to the Colorado General Assembly:

CRIMINAL LAWS AND INDETERMINATE SENTENCING

COLORADO LEGISLATIVE COUNCIL

RESEARCH PUBLICATION NO. 113

DECEMBER 1966

LEGISLATIVE COUNCIL

OF THE

COLORADO GENERAL ASSEMBLY

Senators	Representatives
Floyd Oliver, Chairman	C. P. (Doc) Lamb, Vice Chairman
Fay DeBerard	Forrest Burns
Vincent Massari	Allen Dines, Speaker
L. T. Skiffington	Richard Gebhardt
Ruth Stockton	Harrie Hart
Robert L. Knous, Lt. Governor	Mark Hogan
	John R. P. Wheeler

* * * * * * * * *

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

During the sessions, the emphasis is on supplying legislators, on individual request, with personal memoranda, providing them with information needed to handle their own legislative problems. Reports and memoranda both give pertinent data in the form of facts, figures, arguments, and alternatives.

LEGISLATIVE COUNCIL

OF THE

COLORADO GENERAL ASSEMBLY

Senators	Representatives
Floyd Oliver, Chairman	C. P. (Doc) Lamb, Vice Chairman
Fay DeBerard	Forrest Burns
Vincent Massari	Allen Dines, Speaker
L. T. Skiffington	Richard Gebhardt
Ruth Stockton	Harrie Hart
Robert L. Knous, Lt. Governor	Mark Hogan
	John R. P. Wheeler

* * * * * * * *

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

During the sessions, the emphasis is on supplying legislators, on individual request, with personal memoranda, providing them with information needed to handle their own legislative problems. Reports and memoranda both give pertinent data in the form of facts, figures, arguments, and alternatives.

CRIMINAL LAWS
AND
INDETERMINATE SENTENCING

Legislative Council

Report To The

Colorado General Assembly

Research Publication No. 113
December 1966

COLORADO GENERAL ASSEMBLY

LEGISLATIVE COUNCIL

ROOM 341, STATE CAPITOL
DENVER, COLORADO 80203
222-9911 - EXTENSION 2285

November 29, 1966

To Members of the 46th General Assembly:

In accordance with the provisions of House Joint Resolution No. 1024, 1965 session, and House Joint Resolution No. 1005, 1966 session, the Legislative Council submits the accompanying report and recommendations relating to Colorado criminal laws and the subject of indeterminate sentencing.

The report and recommendations of the committee appointed to carry out these studies were accepted by the Council at its meeting on November 28, 1966, for transmission to the members of the Forty-sixth General Assembly.

Respectfully submitted,

Senator Floyd Oliver
Chairman

FO/mp

COLORADO GENERAL ASSEMBLY

LEGISLATIVE COUNCIL

ROOM 341, STATE CAPITOL
DENVER, COLORADO 80203
222-9911 - EXTENSION 2285

November 18, 1966

Senator Floyd Oliver, Chairman
Colorado Legislative Council
Room 341, State Capitol
Denver, Colorado

Dear Mr. Chairman:

In accordance with the provisions of House Joint Resolution No. 1024, 1965 session, and House Joint Resolution No. 1005, 1966 session, your committee appointed to continue the criminal code study and to study the subject of the sentencing of offenders in all of its phases has completed its work for 1965-66 and submits the accompanying report and recommendations.

The committee has agreed to submit three bills that would consolidate and clarify existing Colorado laws with respect to criminal attempt, theft, and sanity testing procedures. In addition, the members also are recommending areas where changes need to be made in Colorado's sentencing process. However, much work remains to be done and the committee therefore concludes that further study is needed.

Respectfully submitted,

Senator Paul E. Wenke,
Chairman
Criminal Code Committee

PEW/mp

FOREWORD

Among other things, House Joint Resolution No. 1024, 1965 session, directed the Legislative Council to continue efforts to prepare a revision of Colorado's criminal laws. Subsequently, H.J.R. No. 1005, adopted in the 1966 session, assigned a study of the subject of sentencing of offenders, with particular emphasis on the indeterminate sentencing of such offenders, to the Legislative Council. Because of the closely-related nature of these two subjects, both were assigned to the Council's Criminal Code Committee along with an expansion of the committee's membership in 1966. The members appointed to this committee were:

Senator Paul E. Wenke, Chairman
Rep. Ben Klein, Vice Chairman
Senator Clarence Decker
Senator David Hahn
Senator James C. Perrill
Rep. John Carroll
Rep. Ruth Clark
Rep. Dominic Coloroso
Rep. T. Everett Cook*
Rep. Victor B. Grandy
Rep. C. P. Lamb*
Rep. J. D. MacFarlane*
Rep. Phillip Massari
Rep. Keith Singer*

*Added in 1966.

Senator Floyd Oliver, chairman of the Legislative Council, also served as an ex officio member of the committee.

Early in the committee's deliberations, the members agreed to concentrate on particular aspects of Colorado's criminal laws where immediate changes would be most beneficial or needed rather than continuing an over-all revision and codification of these laws. Later, in view of the assignment added to the committee in 1966, the members devoted most of their time and attention to sentencing procedures and problems in Colorado.

Phillip E. Jones, senior research analyst for the Legislative Council, had the primary responsibility for the staff work on this study, with the aid of Roger M. Weber, research assistant. Mr. James C. Wilson, Jr., assistant attorney general, Legislative Reference Office, had primary responsibility for bill drafting services provided the committee.

November 28, 1966

Lyle C. Kyle
Director

TABLE OF CONTENTS

CRIMINAL CODE COMMITTEE FINDINGS AND RECOMMENDATIONS

With the adoption of House Joint Resolution No. 1024 in the 1965 session, the members of the General Assembly directed the Legislative Council to continue its criminal code study and to complete the preparation of a draft to revise Colorado's criminal laws. By way of background, the Legislative Council Committee on Administration of Justice was assigned a criminal code study in 1959 along with the question of judicial organization and administration. However, since the committee's major concern was with the latter two subjects, little was done on the criminal code study other than a preliminary examination of sentencing problems, a comparative analysis of crimes and penalties in selected states, the licensing and regulation of bail bondsmen, and the provision of counsel for indigent defendants. The committee consequently recommended that the criminal code study be continued by a committee that would have no other assignment.

A Legislative Council Committee on Criminal Code was appointed in 1961 pursuant to the directives of the General Assembly. This committee focused its attention on some of the more controversial aspects involved in a codification of criminal laws, spending a major portion of its time on sentencing and related matters, criminal insanity and narcotics control. Although these subjects were studied extensively, committee recommendations were concerned primarily with inchoate crimes (attempt and solicitation) and with subjects which, although important, were incidental to the committee's major study assignment, such as the regulation of bail bondsmen and permissive legislation to establish the office of public defender.[1]

Following the 1963 session, as directed by the General Assembly, the Legislative Council appointed a committee to continue the criminal code study. This committee tried to avoid some of the procedural problems encountered by the previous committees by avoiding such controversial subjects as sentencing, criminal insanity, and capital punishment. Instead, the 1963-64 committee devoted its time to a statute-by-statute review and revision of crimes against the person, crimes against property, and crimes affecting public decency. The efforts of this committee resulted in the preparation of a preliminary revision of the state's criminal laws, but the committee was unable to complete all of the measures necessary for a final draft.[2] For example, the committee noted that no satisfactory decision could be made on the suggested reclassification of penalties by type of offense until some more basic decisions were made on sentencing objectives and procedures. Moreover, the committee did not have time to review its preliminary revisions with interested members of the bench, the bar, law enforcement agencies, and the general public.

1. Colorado Criminal Law, Colorado Legislative Council, Research Publication No. 68, December 1962.

2. Preliminary Revision of Colorado Criminal Laws, Colorado Legislative Council, Research Publication No. 98, November 1964.

Accordingly, among other things, H.J.R. No. 1024, 1965 session, directed the Legislative Council to complete the preparation of a draft to revise Colorado's criminal laws and to submit its report thereon to the 1967 session. Specifically, the resolution directed the Council or one of its committees to:

1. Draft definitions applicable to the specific and general provisions contained in the final revision;

2. Prepare a rational classification of penalties and grade the offenses accordingly;

3. Examine the vast number of procedural and regulatory provisions that provide incidental criminal sanctions to determine which ones, through reference to the revised code of substantive criminal law, could be omitted;

4. Review and examine the prosecution of violators of the criminal laws of this state, including the powers and duties of municipal, county, district, and state officers with respect to such prosecution, and recommend proposed legislation to eliminate duplication, to fill gaps, and to clarify and revise statutory provisions relative thereto;

5. Codify the state's nonsubstantive criminal laws, including arrest and bail, venue, information and indictment, probation, sentencing, appeals, and parole, and to revise such laws to eliminate injustices, abuses, and conflicts with the Colorado Rules of Criminal Procedure; and

6. Conduct hearings and conferences on the proposed revision of criminal law and the proposed revision of criminal procedure with members of the bench, bar, and other interested groups and individuals before preparation of a final draft for consideration by the General Assembly.

During the 1966 regular session, the General Assembly adopted House Joint Resolution No. 1005 which provided, in part, for the Legislative Council to appoint a committee to study the subject of sentencing of offenders in all of its phases, with particular emphasis on the indeterminate sentencing of such offenders, and to submit a report to the 1967 session. At its first meeting following the 1966 session, the Council appointed four new members to the criminal code committee and assigned the study on sentencing to this expanded committee since the committee was already closely involved with substantive criminal laws and sentencing of offenders thereunder.

Prior to the 1966 session, the members of the criminal code committee had agreed: (1) To review a general theft statute as proposed by the previous committee; (2) To review a draft of a revised general attempt statute; (3) Beginning with Section 40-1-1, C.R.S. 1963, to review the language of present Colorado criminal laws, comparing these sections with the provisions of the Model Penal Code

for omissions, and placing all of the state's criminal laws into Chapter 40; and (4) To review criminal penalties in Colorado. In view of the action of the members of the General Assembly in the 1966 session, however, the members of the criminal code committee reassessed their study objectives and decided to devote major emphasis to developing information with respect to indeterminate sentencing and related matters. The committee, while therefore unable to complete its assignment to prepare a criminal code for submission to the 1967 session, submits the following findings and recommendations on those matters closely reviewed by the members during 1965 and 1966.

Criminal Laws

The committee concentrated on three specific criminal laws -- a general attempt statute, a general theft statute, and correcting the law on procedures governing the test for a determination of a defendant's sanity.

General Attempt Statute. Colorado's present criminal attempt law -- Sections 40-25-1 through 40-25-5, C.R.S. 1963 -- was enacted in 1963. The committee was informed, however, that many courts and district attorneys are concerned about the vagueness of these provisions and many attorneys have raised serious questions as to the constitutionality of this 1963 act. Additionally, other attorneys, in response to an inquiry from the committee, indicated that a simplified, clear-cut general attempt statute would be preferable to those provisions contained in the law at the present time.

The committee therefore recommends that Colorado's present criminal attempt provisions in Section 40-25-1, C.R.S. 1963, be replaced by the provisions contained in Bill A accompanying this report.

General Theft Statute. Over the years, the members of the General Assembly have met specific problems involving the crime of theft by enacting laws dealing with specific types of theft. The result is that (1) our statutes contain numerous laws applying to specific crimes of theft and (2) prosecuting attorneys are faced with procedural difficulties in filing charges to fit the offense to the specific crime alleged to have been committed. In other words, under this situation the opportunity exists for an offender to evade punishment due to a technicality resulting from being charged with a violation of the incorrect law among the many Colorado now has spread throughout its statutes.

The committee believes this situation should be corrected and therefore recommends the adoption of attached Bill B. This bill would provide the state with a general theft statute applicable to all types of theft except the embezzlement of public moneys, which is an offense referred to in the state's constitution (Section 4, Article XII). As the language of this bill points out, "it is the intent of the general assembly to define one crime of theft and to incorporate therein such crimes, thereby removing distinctions and technicalities which previously existed in the pleading and proof of such crimes." The enactment of this bill would also result in

the repeal of 36 theft sections that are presently contained in the statutes.

Sanity Testing Procedures. The 1965 act concerning pleas of insanity in criminal cases (Chapter 125, Session Laws of 1965) contains some language that suggests the act is applicable only to persons coming under its provisions following its effective date of June 2, 1965, while other language therein suggests that the act's release criteria apply to those persons committed as criminally insane prior to the adoption of this act. Representatives from the Attorney General's Office met with the committee to explain the circumstances of several pending court cases, each of which involved the question of whether this 1965 act was applicable to patients committed to the state Hospital at Pueblo prior to the act's effective date and whether such persons were being denied equal protection of the law.

In order to resolve these questions, the committee recommends that Bill C be adopted in the 1967 session. This bill would preserve the provisions and procedures under the 1965 act and, in addition, would restore procedures applying prior to the adoption of this act so that procedures for release would be uniform but different tests to determine sanity would be applied based on the test followed at the time of commitment.

Indeterminate Sentencing

The theory underlying the sentencing of criminal offenders in this country has undergone various changes over the years. During the colonial period and for at least the first 100 years of our nation's history, punishment was considered the major reason for imprisonment. Imprisonment as a means of punishment, it was felt, would act as a deterrent to the incarcerated criminal with respect to his future actions as well as to others who would be less likely to commit offenses because of the fear of similar retribution.

While the concept of punishment is still an important factor in the sentencing of criminal offenders today, modern penology is based on the premise that institutional confinement should serve two purposes -- the protection of society and rehabilitation of the offender. Moreover, the second purpose cannot be stressed to the detriment of the first so that both probation and parole should be judiciously granted and competently supervised.

The adoption of assessing minimum and maximum sentences implements the approach to penology that incorporates the principle of protecting society with the principle of rehabilitating the offender. This system provides a flexible sentence period within which an offender may be released, depending on his behavior and his prospects for the future, and at the same time the lengths of the minimum and maximum sentences reflect the punishment aspect since these may be set according to the severity of the crime, i.e., "making the punishment fit the crime."

In the broadest sense, indeterminate sentencing may be defined as any method of sentencing that includes a flexible rather than a fixed period for imprisonment. On the other hand, a narrowly-defined indeterminate sentencing program involves a flexible sentencing structure that includes the possibility of immediate parole being granted in cases where this prompt release appears justified and likewise permits detention for the life of the convicted person where this seems called for, both of which decisions would be reached without regard to the particular crime for which an offender had been convicted. This latter method of sentencing actually provides an indefinite sentence rather than an indeterminate one and is similar to the penalty provided in Colorado's sex offender law.

Colorado generally provides for a rather loose form of indeterminate sentencing for convicted felons -- rather than a fixed sentence, an offender is given a maximum and minimum sentence set by the judge which must be within the maximum and minimum limits contained in the statutes.[3] An offender sentenced to the state penitentiary must serve his minimum sentence, less statutory good time, before he is eligible for parole.[4] If an offender is sentenced to the state reformatory, he receives an indefinite sentence, with no minimum or maximum being set by the court, but the offender cannot be incarcerated for a period longer than the maximum set by statute for confinement in the penitentiary for the crime for which he had been convicted. Thus, the offender sentenced to the reformatory may be released at any time within the statutory maximum at the discretion of the state parole board, although usually nine months must be served before the parole board even considers the case.

During the course of the committee's meetings this year, plus information developed by previous committees of the Legislative Council, several impediments to the successful functioning of the sentencing process in Colorado were identified. Some of these impediments result from sentencing practices within the statutory limits and others appear to be inherent within the system itself. These impediments include sentencing disparities, the relationship between minimum and maximum sentences imposed, rigid good time allowance provisions in the law, and other effects of the present sentencing-and-parole program.

Sentencing Disparities -- One problem of great concern to correctional officials is the disparity in sentences of prison inmates convicted of similar crimes committed under similar circumstances. As pointed out by Mr. Harry C. Tinsley, state chief of corrections and former warden of the state penitentiary, "those persons who have received severe sentences are thrown into daily contact with those who have received more lenient sentences for what may be the same crime committed under similar circumstances by those with much the same

3. Some statutes provide only for a sentence of not more than a certain number of years. However, the supreme court has ruled that the judge must also set a minimum time for imprisonment.

4. Statutory good time is received for good behavior and work performance while in the penitentiary.

individual backgrounds. The person who has received the light sentence generally feels fortunate, but also he may think that his sentence was not so long but what he can afford to have another try at his criminal activities. On the other hand, the individual who has received the longer sentence is understandably embittered toward society in general and toward authority in particular...This makes it extremely difficult to effect any positive change for the better in this prisoner's makeup during the time he is in the institution; for whether or not there has been an actual injustice, he himself is convinced that he has received unfair treatment. Often this conviction makes it impossible to produce any positive or corrective change in him during his stay at the penitentiary. Because his minimum sentence is near his maximum sentence, he leaves the institution with a comparatively short period of parole which he, probably, can and will do in a satisfactory manner. But he often feels that he must get his revenge against society for being unfair to him."[5]

In addition to contributing to behavior problems of inmates while in the penitentiary, sentencing disparities also may influence their behavior while under the supervision of the state parole board and the adult parole division. In short, sentencing disparities are felt to reduce the effectiveness of the rehabilitation aspects of the state's present correctional and parole programs.

Relationship Between Minimum and Maximum Sentences -- One reason why an indeterminate sentence is felt to be more satisfactory than a definite sentence of a specific number of years is that the flexibility provided by a minimum and a maximum sentence offers a greater probability that a offender may be released at a time when he is best able to make a successful return to society. In addition, society is further protected under a system of indeterminate sentencing because the offender is placed under parole supervision until the expiration of his maximum sentence. On the other hand, with a sentence of a fixed duration, it is assumed that an offender's debt to society is paid upon completion of the sentence and he is free to do as he wishes.

The advantage of flexibility under a system of indeterminate sentencing may be negated by the imposition of sentences with the minimum and maximum dates set so close together that the effect is the same as if a determinate sentence had been imposed, e.g., a sentence of from nine years and 11 months to ten years or from four years and six months to five years. Too large a number of the inmates in the state penitentiary have received sentences under which the maximum and minimum figures were set so close together that their sentences were not actually indeterminate, thereby cancelling the flexibility benefits included in these laws by the General Assembly.

Good Time Allowances -- Another way to cancel the advantage of sentencing flexibility results in the use of statutory good time allowances to decrease the minimum sentence which must be served

5. See Appendix A, page 6.

before becoming eligible for parole. Statutory good time allowances are disigned to reward prison inmates for good behavior while they are in the penitentiary, and the subtraction of good time allowances from the minimum sentence considerably advances the date when an offender becomes eligible for parole.[6] However, there is not necessarily any correlation between good behavior during confinement and an offender's readiness to return to society.

While the parole board has the authority to determine the date of a prisoner's release under present Colorado law, each inmate knows that he is eligible for parole upon completion of his minimum sentence less his good-time credit earned. In fact, the general practice build up over the years by the parole board has been to release most inmates on this basis, and the inmates have come to expect this release date as a matter of course. Thus, the net effect is that any substantial change from this practice could cause prison officials to be faced with a difficult situation.

Other Impediments -- Two other impediments to the successful functioning of the sentencing process in Colorado also relate directly to decreasing the benefits that might normally be anticipated from the rehabilitation aspects of our penal program. First, at present, adult offenders are sentenced by our courts to the penitentiary or to the state reformatory, or they may be sent to the state hospital for treatment. However, it was brought to the attention of the comittee that some offenders are mentally retarded and should not be placed in the penitentiary, in the reformatory, or in the state hospital since the program for the mentally retarded under the department of institutions is geared for the institutions at Ridge and Grand Junction. Consequently, these mentally-retarded offenders receive little if any rehabilitation benefits under the present sentencing program.

A final impediment is that some offenders may be released too soon or too late under the present program. That is, approximately 95 per cent of all committed offenders return to society sooner or later, even if some return only for relatively short periods of time, It is the opinion of correctional authorities and some judges and attorneys that the inadequacies of Colorado's present sentencing procedures result in some offenders being incarcerated longer than necessary for society's protection and in other offenders being released who should remain in prison for a much longer period of time, if indeed they should be released at all. The state's chief of corrections, the warden at the state penitentiary, and the director of the adult parole division have observed that unless an offender is released at the time he appears to have the best opportunity for a successful return to society, the changes of rehabilitation are considerably lessened and perhaps are eliminated entirely.

Sentencing, imprisonment, and parole are all parts of a continuous correctional process. The separate components of the correctional process should be coordinated to achieve maximum results with respect to the protection of society and the rehabilitation of

6. See Appendix A, Table I, page 8, for effect on minimum court-imposed sentence terms.

offenders and, insofar as possible, the same philosophy should serve as a foundation for the total program.

However, sentencing is the key to a successful corrections program since, even if the institutions and parole agency are staffed with qualified, dedicated personnel and their programs are aimed at rehabilitation, the possibilities of success are minimized if the method of sentencing used does not permit the parole authority to release an offender at the time that he is considered a good risk for a return to society. At the same time, it is doubtful that much can be accomplished by a change in the method of sentencing if accompanying changes, as needed, are not made or at least initiated in the institutional programs. In addition to a qualified parole board, correctional institutions and facilities must have properly qualified and experienced professional personnel on their staffs, not only to develop and emphasize rehabilitation programs, but also to make evauluations and prepare the pertinent data needed by parole board members in making their decisions. That is, for example, some of the more important components of the correctional program in this respect are: initial evaluation, classification, and placement; vocational training and education programs; counseling and testing; psychiatric services; and pre-parole planning and guidance.

Of course, any consideration of changes in Colorado's sentencing practices and correctional institution programs involves the question of whether the benefits to be derived from such changes are worth the additional costs incurred. So far as this state is concerned, revamping our sentencing process under an increased form of indeterminate sentencing would require various increased costs, both in terms of facilities and in continuing operating expenses. For example, as a general guideline, a revised indeterminate sentencing program for Colorado could necessitate the building and staffing of diagnostic center as an integral part of the program; it could mean having a full-time parole board; and additional professional staff could be required to work with inmates at the penitentiary and the reformatory if such a revised program were to achieve its optimum effectiveness.

The members of this committee agree that changes are needed in Colorado's sentencing process:

(1) To commit offenders under a flexible process so that greater treatment benefits can be gained by placement in the proper institution;

(2) To eliminate disparities in sentencing and the problems in confinement and rehabilitation resulting therefrom; and

(3) To provide for the retention of offenders until they appear to be best able to make a successful return to society.

As a beginning step to obtain these benefits, the members therefore recommend the concept of indeterminate sentencing for crimes of

non-violence with compulsory psychiatric evaluation and care for those committed thereunder. This recommendation would necessitate changes along the following lines:

(1) Offenders of non-violent crimes would be committed to the director of institutions for placement in the proper institution.

(2) The creation of a professional full-time parole board.

(3) The construction and staffing of a diagnostic and treatment center.

So far as the sentencing provisions in our criminal laws are concerned, the members are of the opinion that a great deal of additional study and consideration is needed before the details of this proposal can be worked out.

Study Continuation

The committee believes that much work remains to be done with respect to Colorado's criminal laws, including the subject of sentencing in all of its aspects, and therefore recommends the creation of a similar criminal code committee to function during the 1967-68 biennium.

BILL A

A BILL FOR AN ACT

CONCERNING THE CRIME OF ATTEMPT.

Be It Enacted by the General Assembly of the State of Colorado:

SECTION 1. 40-25-1, Colorado Revised Statutes 1963, is REPEALED AND RE-ENACTED, WITH AMENDMENTS, to read:

40-25-1. Criminal attempt. (1) An attempt to commit a crime requires that the person has an intent to perform any act, and to attain any result which, if accomplished, would constitute such crime, and that he does any act toward the commission of the crime which demonstrates, under the circumstances, that he formed that intent and would commit the crime except for the intervention of another person or some other extraneous factor.

(2) If any person attempts to commit a crime, the person so offending shall, on conviction, in the case of an attempt to commit a felony, be punished by a fine of not to exceed five thousand dollars, or by imprisonment in the state penitentiary for a term of not less than one nor more than ten years, or by both such fine and imprisonment, and in the case of an attempt to commit a misdemeanor, be punished by a fine of not to exceed one thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment, but in no event shall the maximum penalty for attempt exceed the maximum penalty for the felony or misdemeanor so attempted.

SECTION 2. Repeal. 40-25-5, Colorado Revised Statutes 1963, is repealed.

SECTION 3. Saving clause. The amendment or repeal of any statute or part of a statute by this act shall not release, extinguish, alter, modify, or change in whole or in part any penalty,

liability, or right which may have been incurred or obtained under such statute or part of a statute; and such statute or part of a statute so amended or repealed shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings, and prosecutions, for the enforcement of such penalty, liability, or right, as well as for the purpose of sustaining any judgment, decree, or order which can or may be rendered, entered, or made in such actions, suits, proceedings, or prosecutions imposing, inflicting, or declaring such penalty or liability or enforcing such right.

SECTION 4. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

BILL B

A BILL FOR AN ACT

CONCERNING THE CRIME OF THEFT.

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

SECTION 1. 40-5-2, Colorado Revised Statutes 1963, is REPEALED AND RE-ENACTED, WITH AMENDMENTS, to read:

40-5-2. Theft. (1) (a) Any person commits theft when he knowingly:

(b) (i) Obtains or exerts unauthorized control over anything of value of another; or

(ii) Obtains by deception control over anything of value of another; or

(iii) Obtains by threat control over anything of value of another; or

(iv) Obtains control over any stolen thing of value knowing the thing of value to have been stolen by another; and

(c) (i) Intends to deprive another permanently of the use or benefit of the thing of value; or

(ii) Knowingly uses, conceals, or abandons the thing of value in such manner as to deprive another permanently of such use or benefit; or

(iii) Uses, conceals, or abandons the thing of value intending that such use, concealment, or abandonment will deprive another permanently of such use or benefit.

(2) (a) Any person who commits theft where the value of the thing involved does not exceed one hundred dollars, and any person who commits theft twice or more within a period of six months and from the same person where the aggregate value of the things involved does not exceed one hundred dollars, is guilty

of a misdemeanor and, upon conviction, shall be punished by a fine of not more than three hundred dollars, or by imprisonment in the county jail not to exceed six months, or by both such fine and imprisonment.

(b) Any person who commits theft where the value of the thing involved exceeds one hundred dollars, and any person who commits theft twice or more within a period of six months from the same person and has not been placed in jeopardy for the prior offense, where the aggregate value of the things involved exceeds one hundred dollars, is guilty of a felony and, upon conviction, shall be punished by imprisonment in the state penitentiary for not less than one year nor more than ten years.

(3) In every indictment or information charging a violation of this section, it shall be sufficient to allege that, on or about a day certain, the defendant committed the crime of theft by unlawfully taking a thing or things of value of a person or persons named in the indictment or information. (SEE: People v. Anderson, 12 Cal.Rep. 500, 361 P.2d 32 (1961).)

(4) Wherever any law of this state refers to or mentions larceny, stealing, embezzlement (except embezzlement of public moneys), false pretenses, confidence game, or shoplifting, said law shall be interpreted as if the word "theft" were substituted therefor: (SEE: People v. Myers, 206 Cal. 480, 275 Pac. 219 (1929).) and in the enactment of this section, it is the intent of the general assembly to define one crime of theft and to incorporate therein such crimes, thereby removing distinctions and technicalities which previously existed in the pleading and proof of such crimes.

SECTION 2. 8-4-11, Colorado Revised Statutes 1963, is amended to read:

8-4-11. Concealing estray. If any person shall conceal any estray found or taken up by such person, or shall efface or change any mark or brand thereon, or carry the same beyond the limits of the county where found, or knowingly permit the same to be done, or shall neglect to notify or give information of estray animals to the state board of stock inspection commissioners, every such person so offending shall be deemed guilty of ~~larceny and may be fined in any sum at the discretion of the court~~ THEFT AND SHALL BE PUNISHED IN THE MANNER PROVIDED BY LAW FOR THEFT.

SECTION 3. 8-10-4 (1), Colorado Revised Statutes 1963, is amended to read:

8-10-4. Selling without bill of sale - theft. (1) Any persons who may sell or offer for sale or trade any neat stock upon which such persons have not their recorded mark or brand, or for which the person so offering has neither bill of sale nor power of attorney from the owner of such stock authorizing such sale, shall be deemed guilty of ~~larceny~~ THEFT, unless such person upon trial shall establish and prove that he was at the time the actual owner of the stock so sold or traded, or offered for sale or trade, or that he acted by the direction of one shown and proven to be the actual owner of such stock.

SECTION 4. 40-5-10, Colorado Revised Statutes 1963, is amended to read:

40-5-10. Entering motor vehicle with intent to commit theft. (1) Every person who shall break and enter any motor vehicle,

with the intent to commit the crime of ~~larceny~~ THEFT, shall be deemed guilty of a felony, and upon conviction thereof, shall be punished by imprisonment in the STATE penitentiary for not less than one year nor more than ten years.

(2) Every person who shall enter without breaking any motor vehicle, with the intent to commit the crime of ~~larceny~~ THEFT and steals therefrom money, goods, or other valuable thing, ~~of a value of more than five dollars,~~ shall be deemed guilty of a felony, and upon conviction thereof, shall be punished by imprisonment in the STATE penitentiary for not less than one year or more than ten years.

SECTION 5. 40-5-11, Colorado Revised Statutes 1963, is REPEALED AND RE-ENACTED, WITH AMENDMENTS, to read:

40-5-11. Obtaining control over stolen thing of value - conviction. Every person who obtains control over any stolen thing of value, knowing the thing of value to have been stolen by another, may be tried, convicted, and punished either before or after the trial of the principal.

SECTION 6. 40-5-12, Colorado Revised Statutes 1963, is amended to read:

40-5-12. Property stolen restored - action to recover. All property obtained by ~~larceny~~ THEFT, robbery, or burglary shall be restored to the owner, and no sale, whether in good faith on the part of the purchaser or not, shall divest the owner of his right to such property. Such owner may maintain his action not only against the felon, but against any person in whose possession he may find the same.

SECTION 7. 40-5-16, Colorado Revised Statutes 1963, is

REPEALED AND RE-ENACTED, WITH AMENDMENTS, to read:

40-5-16. Embezzlement of public moneys. Every officer or employee in any public department, agency, or institution of the government of this state, or of any political subdivision of this state, who shall embezzle any public moneys, of whatever description, being the property of the state or of any political subdivision of the state shall be guilty of embezzlement of public moneys and on conviction shall be punished by confinement in the state penitentiary for a term of not less than one year nor more than ten years. Every person convicted under the provisions of this section forever thereafter shall be ineligible and disqualified from being a member of the general assembly of this state or from holding any office of trust or profit in this state.

SECTION 8. 40-5-30, Colorado Revised Statutes 1963, is amended to read:

40-5-30. Concealment of goods as prima facie evidence of the crime of theft. If any person shall willfully conceal unpurchased goods, wares, or merchandise owned or held by and offered or displayed for sale by any store or other mercantile establishment, whether such concealment be on his own person or otherwise and whether on or off the premises of said store or mercantile establishment, such concealment shall constitute prima facie evidence that such person intended to ~~convert-same-to-his own-use-without-paying-the-purchase-price-therefor-within-the meaning-of-section-40-5-28~~ COMMIT THE CRIME OF THEFT.

SECTION 9. 40-5-31, Colorado Revised Statutes 1963, is amended to read:

40-5-31. Questioning of person suspected of theft without

civil liability. If any person shall ~~commit-the-offense-of-shoplifting,-as-defined-in-section-40-5-28,-or-if-any-person-shall~~ willfully conceal upon his person or otherwise any unpurchased goods, wares, or merchandise held or owned by any store or mercantile establishment, the merchant or any employee thereof or any peace or police officer, acting in good faith and upon probable caused based upon reasonable grounds therefor, may question such person, in a reasonable manner for the purpose of ascertaining whether or not such person is guilty of ~~shoplifting as-defined-in-section-40-5-28~~ THEFT. Such questioning of a person by a merchant, merchant's employee, or peace or police officer shall not render such merchant, merchant's employee, or peace or police officer civilly liable for slander, false arrest, false imprisonment, malicious prosecution or unlawful detention.

SECTION 10. 40-7-9, Colorado Revised Statutes 1963 (1965 Supp.), is amended to read:

40-7-9. Officer purloining records - penalty. If any judge, sheriff, coroner, clerk, recorder, or other public officer, or any person whatsoever, shall steal, ~~embezzle~~ FRAUDULENTLY CONVERT, alter, corrupt, withdraw, falsify, or avoid any record, process, charter, gift, grant, conveyance, bond, or contract, or shall knowingly and willfully take off, discharge, or conceal any issue, forfeited recognizance, or other forfeiture, or shall forge, deface, or falsify any document or instrument recorded, or any registry, acknowledgment, or certificate, or shall alter, deface, or falsify any minute, document, book, or proceeding whatever, of or belonging to any public office within this state, the person so offend-

ing upon conviction shall be punished by confinement in the STATE penitentiary for a term not less than one year nor more than seven years.

SECTION 11. 40-26-1, Colorado Revised Statutes 1963 (1965 Supp.), is amended to read:

40-26-1. Failure to pay over assigned accounts - theft. (1) Where under the terms of an assignment of an account as defined in section 155-9-106, C.R.S. 1963, the assignor, being permitted to collect the proceeds from the debtor, is to pay over to the assignee any of such proceeds, and after collection thereof, the assignor willfully and wrongfully fails to pay over to the assignee such proceeds, the assignor shall be guilty of ~~larceny~~ THEFT and punished accordingly.

(2) In any case in which the assignor of an assigned account, if a natural person, would be guilty of ~~larceny~~ THEFT under subsection (1) of this section, and the assignor is a corporation or a partnership, any officer, director, partner, or agent of such assignor who willfully and wrongfully fails to pay over to the assignee or causes the assignor to fail to pay over to the assignee such proceeds, shall be guilty of ~~larceny~~ THEFT and punished accordingly.

SECTION 12. 40-26-3, Colorado Revised Statutes 1963 (1965 Supp.), is amended to read:

40-26-3. Theft of secured property. If a person who has given a security interest in personal property as defined in section 155-1-201 (37), C.R.S. 1963, during the existence of such security interest, shall sell, transfer, or in any way encumber such property, or any part thereof, or cause the same to be

sold, transferred, or encumbered, such sale, transfer, or encumbrance shall be deemed a ~~larceny~~ THEFT of such property and the person who has given such a security interest in personal property shall be deemed guilty of such ~~larceny~~ THEFT, ~~the same, to all intents and purposes, as though there had been a felonious taking and conversion of such property by such person,~~ and on conviction thereof shall be punished accordingly, unless at the time of making such sale, transfer, or encumbrance such person shall fully advise and acquaint the party to whom such sale, transfer, or encumbrance may be made, with the fact of the prior encumbrance and security interest, and also first fully apprise the secured creditor of the intended sale, giving to such secured creditor the name and place of residence of the party to whom the sale, transfer, or encumbrance is to be made.

SECTION 13. 40-26-4, Colorado Revised Statutes 1963 (1965 Supp.), is amended to read:

40-26-4. Concealment or removal of secured property. If a person who has given a security interest in personal property as security interest is defined in section 155-1-201 (37), C.R.S. 1963, or other person with actual knowledge of such security interest, during the existence of such security interest, shall conceal, or remove the encumbered property from the state of Colorado without written consent of the secured creditor, he shall be deemed guilty of the ~~larceny~~ THEFT of such property, and upon conviction be punished accordingly.

SECTION 14. 40-26-5, Colorado Revised Statutes 1963 (1965 Supp.), is amended to read:

40-26-5. Failure to pay over proceeds deemed theft - when. (1) Where, under the terms of any instrument creating a security interest in personal property as security interest is defined in section 155-1-201 (37), C.R.S. 1963, the person giving the security interest and retaining possession of the encumbered property and having liberty of sale or other disposition, is required to account to the secured creditor for the proceeds of such sale or other disposition and willfully and wrongfully fails to pay to the secured creditor the amounts due on account thereof, the person giving such security interest shall be guilty of ~~larceny~~ THEFT and punished accordingly.

(2) In any case in which an organization giving a security interest in personal property, if a natural person, would be guilty of ~~larceny~~ THEFT under subsection (1) of this section and such organization is a corporation or partnership, any officer or director, partner or agent of such organization who willfully and wrongfully diverts or causes such organization to fail to account to the secured creditor for the proceeds of sale or other disposition or to pay to the secured creditor the amounts due on account thereof shall be guilty of ~~larceny~~ THEFT and punished accordingly.

SECTION 15. 62-6-22, Colorado Revised Statutes 1963, is amended to read:

62-6-22. Fines and penalties. Any person violating this article shall be deemed guilty of a misdemeanor, and shall be fined in a sum not to exceed one hundred dollars, or imprisoned in the county jail for not more than sixty days, or by both such

fine and imprisonment. The unlawful taking, stealing, or carrying away of raw furs or green pelts shall be ~~larceny~~ THEFT, and punishable as by law provided for the crime of ~~larceny~~ THEFT.

SECTION 16. 72-1-28 (1), Colorado Revised Statutes 1963, is amended to read:

72-1-28. Theft by agent - penalty - responsibility of company. (1) An insurance agent or broker who acts in negotiating a contract of insurance, or who collects premiums for an insurance company lawfully doing business in this state, and who ~~embezzles or~~ fraudulently converts to his own use, or with intent ~~to use or embezzle,~~ takes, secretes, or otherwise disposes of or fraudulently withholds, appropriates, lends, invests, or otherwise uses or applies any money or substitute for money received by him as such agent, contrary to the instructions or without the consent of the company for or on account of which the same was received by him, shall be guilty of ~~larceny~~ THEFT and be punished accordingly.

SECTION 17. 72-9-31 (3), Colorado Revised Statutes 1963, is amended to read:

72-9-31. False entries - theft - penalties. (3) Any officer, director, employee, or agent of any mutual benefit association who shall, directly or by indirection, ~~embezzle, abstract, or fraudulently~~ convert to his own use, or cause to be ~~embezzled, abstracted, or~~ fraudulently ~~misapplied,~~ CONVERTED, any of the moneys, securities, or other property of any such association, shall be deemed guilty of ~~larceny~~ THEFT and punished accordingly.

SECTION 18. 118-10-93, Colorado Revised Statutes 1963, is amended to read:

118-10-93. Theft of certificate. Certificates of title and duplicate certificates entered or issued under this article shall be subjects of ~~larceny~~ THEFT, and anyone stealing any such certificate shall, upon conviction thereof be ~~deemed~~ guilty of ~~grand-larceny~~ A FELONY and punished ~~accordingly~~ BY IMPRISONMENT IN THE STATE PENITENTIARY FOR NOT LESS THAN ONE YEAR NOR MORE THAN TEN YEARS.

SECTION 19. Repeal. 8-2-21, 8-2-22, 8-2-25, 8-2-26, 8-2-30, 8-2-31, 8-2-32, 40-5-3, 40-5-4, 40-5-5, 40-5-6, 40-5-7, 40-5-8, 40-5-9, 40-5-13, 40-5-14, 40-5-15, 40-5-17, 40-5-18, 40-5-19, 40-5-20 40-5-21, 40-5-28, 40-5-29, 40-5-32, 40-10-1, 40-10-2, 40-10-3, 40-12-1, 40-14-2, 40-14-13, 40-15-5, 40-15-6, 40-15-7, 40-15-8, and 92-30-5, Colorado Revised Statutes 1963, are repealed.

SECTION 20. Saving clause. The amendment or repeal of any statute or part of a statute by this act shall not release, extinguish, alter, modify, or change in whole or in part any penalty, liability, or right which may have been incurred or obtained under such statute or part of a statute; and such statute or part of a statute so amended or repealed shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings, and prosecutions, for the enforcement of such penalty, liability, or right, as well as for the purpose of sustaining any judgment, decree, or order which can or may be rendered, entered, or made in such actions, suits, proceedings, or prosecutions imposing, inflicting, or declaring such penalty or liability or enforcing such right.

SECTION 21. Severability clause. If any provision of this act or the application thereof to any person or circumstances is

held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SECTION 22. Effective date. This act shall take effect July 1, 1967.

SECTION 23. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

BILL C

A BILL FOR AN ACT

CONCERNING PLEAS OF INSANITY IN CRIMINAL CASES AND PROVIDING FOR PROCEDURES IN RELATION THERETO.

Be It Enacted by the General Assembly of the State of Colorado:

SECTION 1. 39-8-14 (4), Colorado Revised Statutes 1963, as amended by section 1 of chapter 125, Session Laws of Colorado 1965, is hereby amended to read:

39-8-4. Verdict - sentence or commitment - release. (4)(a) AS TO ANY PERSON CHARGED WITH ANY CRIME ALLEGEDLY COMMITTED ON OR AFTER JUNE 2, 1965, the test for determination of a defendant's sanity for release from commitment, or his eligibility for conditional release, shall be: "That the defendant has no abnormal mental condition which would be likely to cause him to be dangerous either to himself or to others or to the community in the reasonably foreseeable future."

(b) AS TO ANY PERSON CHARGED WITH ANY CRIME ALLEGEDLY COMMITTED PRIOR TO JUNE 2, 1965, THE TEST FOR DETERMINATION OF A DEFENDANT'S SANITY FOR RELEASE FROM COMMITMENT. OR HIS ELIGIBILITY FOR CONDITIONAL RELEASE. SHALL BE THE SAME TEST PROVIDED BY LAW AT THE TIME OF SUCH CRIME TO DETERMINE THE SANITY OR INSANITY OF SUCH DEFENDANT.

SECTION 2. Repeal. 39-8-5, Colorado Revised Statutes 1963 (1965 Supp.), is repealed.

SECTION 3. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

APPENDIX A

MEMORANDUM

March 7, 1966

TO: Committee on Criminal Code

FROM: Legislative Council Staff

SUBJECT: General Background Information Relating to Sentencing

House Joint Resolution No. 1005, 1966 session, directs the Legislative Council to appoint a committee "to study the subject of the sentencing of offenders in all its phases, with particular emphasis on the indeterminate sentencing of such offenders." The report of this committee is to be submitted to the first regular session of the 46th General Assembly and is to be accompanied "by the necessary drafts of amendments to statutory law to effectuate the recommendations of the committee."

The sentencing of offenders in Colorado has been the subject of consideration by three different Council committees since 1961 -- the criminal code committee in 1961-62, the state institutions committee in 1963-64, and the organization of state government committee in 1965. As a result, a rather substantial amount of information has been developed, much of which provides the basic material for the information in this memorandum.

Summary of Committee Recommendations

None of the studies made by these three committees resulted in specific recommendations for statutory changes in the sentencing process. Instead, each indicated the necessity for additional committee consideration.

1961-62 Criminal Code Committee

This committee reported that "the subject of sentencing is an extremely complex one, especially when considered within the context of the total correctional process. Further, it is difficult to recommend specific changes in sentencing until the entire criminal code has been reviewed and revised as needed." The committee therefore did not make any specific recommendations on the sentencing of criminal offenders. The members of the committee were of the opinion, however, that if any change were to be made in sentencing procedures in Colorado, one of the following three alternatives should be used:

1. Set sentence by statute -- Either the maximum and minimum sentences would be set by statute or the maximum would be set by statute and the court could impose a minimum sentence not to exceed

one-third of the maximum. "Good time" earned would apply only against the maximum sentence.

The parole board would have the authority to review and release an offender after one-half of the minimum sentence had been served. Offenders not paroled prior to the expiration of their maximum sentence, less their good time allowance, would be released under parole supervision, with this supervision to continue until the dates their maximum sentence expire. Other offenders who are released on regular parole could be kept under supervision until expiration of their maximum sentences or they could be released sooner by the parole board.

2. Provide court with sentencing options -- Under this alternative, in sentencing an offender the court could choose from various options:

A -- The court could designate the length of sentence within the maximum prescribed by statute and also the minimum term which must be served before an offender would become eligible for parole, which term may be less than but could not be more than one-third of the maximum sentence imposed;

B -- The court could set the maximum sentence as prescribed by statute, specifying that the offender would become eligible for parole at such time as may be determined by the parole board; or

C -- The court could commit the offender to the Department of Institutions for extensive study and evaluation. Under this approach, it would be assumed that the maximum statutory sentence had been imposed, pending the results of the department's study and evaluation, which would be furnished the committing court within three months unless the court granted additional time for this study and evaluation.

After the court receives the department's report and recommendations, it may do one of the following: place an offender on probation; affirm the sentence already set and let the parole board determine the date of parole eligibility; affirm the maximum sentence and set a minimum sentence not exceeding one-third of the maximum; or reduce the sentence already imposed and set a date for parole eligibility not exceeding one-third of the maximum sentence.

(Under either alternative 1 or 2 the court could also place an offender on probation or commit him to the state reformatory.)

3. Adopt the Model Penal Code provisions -- Under the Model Penal Code, all crimes would be classified into several grades: felonies of the first degree, second degree, and third degree; misdemeanors; and petty misdemeanors. The court would establish the minimum and maximum terms within the limits specified for the grade of crime within which the offense falls. These limits would be greater for persistent offenders, professional criminals, and dangerous mentally-abnormal persons. The court would be prevented from imposing what in effect would be a fixed sentence by the requirement that the minimum sentence could not be more than one-half of the maximum. The parole

board would determine the date of parole release after the minimum sentence, less any good time allowance, had been served.

1963-64 State Institutions Committee

During the course of the committee's study, it was suggested that perhaps the state should establish a full-time parole board to handle both juvenile and adult parolees in place of the two part-time boards used by the state at the present time. The committee pursued this matter with representatives of both the adult and juvenile parole boards, including a review of practices in other states. The representatives of these two boards agreed that the concept of a full-time parole board may need to be developed eventually in Colorado, but separate boards are necessary for juvenile and adult cases and it would be preferable to continue with part-time boards in this state, at least for the time being. The committee made no specific recommendation on this point.

1965 Organization of State Government Committee

In reviewing the question of statutory impositions on the Governor's time, the committee considered the assignment of the Governor as a member of the State Board of Parole. As part of this consideration, the members reviewed the workload of the members of this board, its increase in recent years, and they expressed interest in pursuing the feasibility and advisability of establishing a full-time adult parole board during 1966. No formal committee action was taken on this question, however, and the members of this committee probably will take no action in view of the specific study directive on sentencing made in the 1966 session.

Sentencing of Criminal Offenders

The theory underlying the sentencing of criminal offenders in this country has undergone various changes over the years. During the colonial period and for at least the first 100 years of our nation's history, punishment was considered the major reason for imprisonment. Imprisonment as a means of punishment, it was felt, would act as a deterrent to the incarcerated criminal with respect to his future actions and to others who would be less likely to commit offenses because of the fear of similar retribution. Consequently, the concept of rehabilitation of criminal offenders did not play an important role in penal programs and institutions during this period.

While the concept of punishment as a preventive measure is still an important factor in the sentencing of criminal offenders today, modern penology is based on the premise that institutional confinement should serve two purposes -- the protection of society and the rehabilitation of the offender. Moreover, the second purpose cannot be stressed to the detriment of the first so that both probation and parole should be judiciously granted and competently supervised.

The adoption of assessing minimum and maximum sentences implements the approach to penology that incorporates the principle of protecting society with the principle of rehabilitating the offender. This system provides a flexible sentence period within which an offender may be released, depending on his behavior and prospects for the future, and at the same time the length of the minimum and maximum sentences reflect the punishment aspect since these may be set according to the severity of the crime, i.e., "making the punishment fit the crime."

The major problem with respect to sentencing appears to exist in making these various purposes of imprisonment compatible. While views on these purposes have generally changed, the concepts of punishment, retribution, and deterrence are still cited as the essential reasons for confinement. To a certain extent, these three purposes of confinement are not necessarily incompatible with rehabilitation, but according to many correctional authorities, their emphasis diminishes, if not removes entirely, the possibility of developing productive rehabilitation programs. They argue that such programs of rehabilitation, even with their present limitations, offer the best prospect for the protection and safety of society and for the offender to become a useful citizen. On the other hand, law enforcement officials generally have placed considerable emphasis on the concepts of punishment and deterrence, and they have been joined in this point of view by many citizens who have been the victims of criminal acts.

So far as the present situation is concerned, there appears to be no state or other jurisdiction whose correctional programs embody all aspects of the rehabilitation approach to penology to the exclusion of other concepts. It can be and has been argued that until much more is known about man and his reaction to his environment, society is best served through the continued reliance on the older, established concepts of incarceration, although these concepts are being questioned more and more.

Different Approaches to Sentencing

In the broadest sense, indeterminate sentencing may be defined as any method of sentencing that includes a flexible rather than a fixed period for imprisonment. This definition applies regardless of whether sentencing is a judicial prerogative, is set by statute, or is the responsibility of a parole board or similar authority.

While this broad definition of indeterminate sentencing encompasses at least some part of the penal codes of more than two-thirds of the states, including Colorado, a more restricted definition would apply to relatively few of the states. Advocates of sentencing reform usually refer to indeterminate sentencing as a system in which judicial authority and responsibility extend only to the finding of guilt -- the determination of actual sentence is the responsibility of the parole board or some similarly-constituted commission and the courts only may impose the statutory limits in passing sentence. That is, for example, the courts might impose the maximum penalty provided by law with the parole authority determining the minimum period for imprisonment.

Some advocates of a narrowly-defined indeterminate sentencing program believe in a flexible sentencing structure that includes an immediate parole in cases where this prompt release appears justified and likewise permits detention for the life of the convicted person where this seems called for, both of which decisions would be reached without regard to the particular crime for which an offender had been convicted. This approach assumes that knowledge of human behavior has advanced to the stage where legal safeguards are unnecessary because the vesting of this power in a parole board or similar group would not result in the board exercising this power arbitrarily or capriciously. This method of sentencing actually provides an indefinite sentence rather than an indeterminate one and is similar to the penalty provided in Colorado's sex offender law. In this connection, the American Correctional Association has stated:

"...The only form of sentencing which would place full discretion with the parole board to select and to release prisoners on parole at the time they are most ready for release and to retain in confinement as long as necessary those who are not ready for release would be an indeterminate sentence of one day to life for every offense for which a prison sentence could be given. In a model correctional system with all the necessary diagnostic and treatment resources within the institution to prepare prisoners for release, with a professional board of parole to determine the optimum time for release, and with sufficient trained parole staff to give supervision, the complete indeterminate sentence law would be workable and practical. However, to place the power of life sentence over all prisoners with parole board members who were not appointed for their professional knowledge and competence, to permit lifelong confinement without legal safeguards in institutions without sufficient staff or facilities for effective treatment would be unthinkable."[1]

Sentencing in Colorado

Colorado provides for a rather loose form of indeterminate sentencing for convicted felons -- rather than a fixed sentence, an offender is given a maximum and minimum sentence by the judge which must be within the maximum and minimum limits contained in the statutes.[2] An offender sentenced to the state penitentiary must serve his minimum sentence, less statutory good time, before he is eligible for parole. (Statutory good time is received for good behavior and work performance while in the penitentiary.) If an offender is sentenced to the state reformatory, he receives an indefinite sentence, with no minimum or maximum being set, but the offender cannot be incarcerated for a period longer than the maximum set by statute for confinement in

1. Manual of Correctional Standards, American Correctional Association, 1959, p. 535.
2. Some statutes provide only for a sentence of not more than a certain number of years. However, the supreme court has ruled that the judge must also set a minimum time for imprisonment.

the penitentiary for the crime for which he had been convicted. Thus, the offender sentenced to the reformatory may be released at any time within the statutory maximum at the discretion of the parole board, although usually six months must be served before the parole board even considers the case.

Several impediments to the successful functioning of the sentencing process in Colorado have been identified by a number of judges, lawyers, and correctional officials. Some of these impediments result from sentencing practices within the statutory limits and others appear to be inherent in the system itself. These impediments include sentencing disparities, the relationship between minimum and maximum sentences imposed, rigid good time allowance provisions in the law, and other effects of the present sentencing-and-parole program.

Sentencing Disparities. One problem of great concern to correctional officials is the disparity in sentences of prison inmates convicted of similar crimes committed under similar circumstances. In this connection, in 1961 Harry C. Tinsley, then warden of the state penitentiary at Canon City and now chief of corrections for the state, wrote:

"It is obvious that in the population of over sixteen hundred in the Colorado State Penitentiary, going there pursuant to sentences imposed in seventeen separate judicial districts, there is a great disparity in the sentences of prisoners who have been sentenced for similar crimes committed under rather similar circumstances. The prisoners at the penitentiary work closely together, are celled closely together, take their recreation in the same places, do the same things every day and, in general, receive the same general type of treatment. Those persons who have received severe sentences are thrown in daily contact with those who have received more lenient sentences for what may be the same crime committed under similar circumstances by those with much the same individual backgrounds. The person who has received the light sentence generally feels fortunate, but also he may think that his sentence was not so long but what he can afford to have another try at his criminal activities. On the other hand, the individual who has received the longer sentence is understandably embittered toward society in general and toward authority in particular. This natural feeling may be heightened when he finds his short-term fellow prisoners back again in prison for crimes committed after their release, while he himself is still serving his original long sentence. This makes it extremely difficult to effect any positive change for the better in this prisoner's makeup during the time he is in the institution; for whether or not there has been an actual injustice, he himself is convinced that he has received unfair treatment. Often this conviction makes it impossible to produce any positive or corrective change in him during his stay at the penitentiary. Because his minimum sentence is near his maximum sentence, he leaves the institution with a comparatively short period of parole which he, probably, can and will do in a satisfactory manner. But he often feels that he must get his revenge against society for being unfair to him. This, no doubt, is unsound thinking, but it is to be remembered that those who populate our correctional institutions are not

here because they have done sound and constructive thinking in their past lives."[3]

Relationship Between Minimum and Maximum Sentences. One reason why an indeterminate sentence is felt to be more satisfactory than one of a set number of years is that the flexibility provided by a minimum and a maximum sentence offers a greater probability that an offender may be released at the time when he is best able to make a successful return to society. In addition, society is further protected under a system of indeterminate sentencing because the offender is placed under parole supervision until the expiration of his maximum sentence. On the other hand, with a sentence of a fixed duration, it is assumed that an offender's debt to society is paid upon completion of the sentence and he is free to do as he wishes.

These potential advantages of indeterminate sentencing may be negated in two ways: (1) by the imposition of sentences with the minimum and maximum dates set so close together that the effect is the same as if a determinate sentence had been imposed, e.g., nine years and 11 months to ten years, or four years and six months to five years; and (2) by the use of statutory good time allowances to decrease the minimum sentence which must be served.

So far as the first negative action is concerned, an examination of the penitentiary's annual statistical report for fiscal year 1961 shows that almost ten per cent of the offenders confined in that institution as of June 30, 1961, received sentences in which the maximum and minimum sentences were set so close together that their sentences were not actually indeterminate. Slightly more than one-third of the inmates confined in the penitentiary as of June 30, 1961, received sentences in which the minimum sentence was more than one-half the maximum sentence.

Good Time Allowances. Under the provisions of Section 105-4-4, C.R.S. 1963, "every convict who is, or may be imprisoned in the penitentiary, and who shall have performed faithfully, and all who shall hereafter perform faithfully, the duties assigned to him during his imprisonment therein, shall be entitled to a deduction from the time of his sentence for the respective years thereof, and proportionately for any part of a year, when there shall be a fractional part of a year in the sentence: For the first year, one month; for the second year, two months; for the third year, three months; for the fourth year, four months; for the fifth year, five months; for the sixth and each succeding year, six months." In addition, Section 105-4-5, C.R.S. 1963, authorizes granting trusty prisoners "good time in addition to that allowed by law as the department of institutions may order, not to exceed ten days in any one calendar month. ..." The figures in Table I demonstrate the effect of "good time" allowances on minimum sentences imposed by the court.

3. Harry C. Tinsley, "Indeterminate Sentencing of Criminals," Rocky Mountain Law Review, Volume 33, Number 4, June 1961, pp. 536-543.

TABLE I

EFFECT OF GOOD TIME ON MINIMUM COURT-IMPOSED TERM OF PENITENTIARY SENTENCE

Minimum Court-imposed Term of Sentence	Minimum Time Required to Serve Sentence[a]		
Years	Years	Months	Days
1	0	7	22
2	1	3	7
3	1	9	7
4	2	3	7
5	2	8	15
6	3	1	22
7	3	7	0
8	4	0	7
9	4	5	15
10	4	10	22
11	5	4	0
12	5	9	7
13	6	2	15
14	6	7	22
15	7	1	0
16	7	6	7
17	7	11	15
18	8	4	22
19	8	10	0
20	9	3	7
21	9	8	15
22	10	1	22
23	10	7	0
24	11	0	7
25	11	5	15
26	11	10	22
27	12	4	0
28	12	9	7
29	13	2	15
30	13	7	22

For each additional year of sentence, add 5 months and 7 days to minimum required time to serve.

a. Minimum court-imposed term of sentence minus statutory and trusty good time.

Source: Division of Adult Parole.

Statutory good-time allowances are designed to reward prison inmates for good behavior while they are in the institution. As may be noted from the figures in Table I, the subtraction of good time allowances from the minimum sentence considerably advances the date when an offender becomes eligible for parole. In this connection, however, there is not necessarily any correlation between good behavior during confinement and an offender's readiness to return to society.

While the parole board has the authority to determine the date of a prisoner's release, each inmate knows that he is eligible for parole upon completion of his minimum sentence less his good time credit earned. In fact, the general practice built up over the years by the parole board has been to release most inmates on this basis, and the inmates have come to expect this release date as a matter of course. The net effect is that any substantial change from this practice could cause prison officials to be faced with a difficult situation. Yet, as pointed out by Professor Austin W. Scott, Jr., of the University of Colorado School of Law, "such a uniform practice is out of step with the whole philosophy of parole, which calls for the release of a prisoner on parole only when, in the light of his individual situation, he is ready for it."4

Effects of Present System. A final impediment to the successful functioning of the sentencing process in Colorado may be placed under the catch-all grouping of the effects of the present system. That is, approximately 95 per cent of all committed offenders return to society sooner or later, even if some return only for relatively short periods of time. It is the opinion of correctional authorities and some judges and attorneys that the inadequacies of Colorado's present sentencing procedures result in some offenders being incarcerated longer than necessary for society's protection and in other offenders being released who should remain in prison for a much longer period of time, if indeed they should be released at all.

The state's chief of corrections, the warden at the state penitentiary, and the director of the adult parole division have observed that unless an offender is released at the time he appears to have the best opportunity for a successful return to society, the chances of rehabilitation are considerably lessened and perhaps are eliminated entirely.

Many of those who have expressed concern over the present program for the sentencing of offenders in Colorado feel that only minor changes are needed. Others, however, have expressed the opinion that a complete revision is needed. The 1961-62 criminal code committee concluded, based on its study and discussions, that thus far no method of sentencing was perfect, although the approaches taken in some jurisdictions may be more satisfactory than the present procedures in Colorado.

4. Austin W. Scott, Jr., "Comment on Indeterminate Sentencing of Criminals," Rocky Mountain Law Review, Volume 33, Number 4, June 1961, p. 545.

Sentencing in Other States[5]

Sentencing as a Judicial Function. In twenty-four of the states having indeterminate sentencing as broadly defined, setting the sentence is a judicial responsibility. In five of these twenty-four states, one of the two extremes is fixed mandatorily by statute while the other may be varied by the sentencing authority. These five states include: Michigan, South Dakota, Tennessee, Texas, and Wisconsin. In all except Michigan, the court may set the maximum term, but not the minimum, which is set by statute. In Michigan, the maximum term imposed is the statutory maximum, while the judge has the discretion to set the minimum.

In eighteen of these twenty-four states, the judge sets the maximum and minimum at his discretion within the statutory limits. These states include: Arizona, Arkansas, COLORADO, Connecticut, Illinois, Maine, Massachusetts, Minnesota, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Oregon, Pennsylvania, Vermont, and Wyoming. In Georgia, sentence is prescribed by the jury within the statutory minima and maxima.

In three of these states, there are statutory provisions designed to prevent a judge from fixing a minimum term so closely identical to the maximum that the combined effect would approximate a definite sentence (e.g., 4½-5 years). The statutes in these states (Maine, New York, and Pennsylvania) provide that the minimum term may not exceed half of the maximum term imposed.

Generally, in these twenty-four states, parole eligibility depends upon completion of the minimum sentence. The exceptions are as follows:

State	Earliest Date of Possible Parole Release
Georgia	when one-third of minimum sentence has been served.
New Hampshire	parole possible after two-thirds of minimum sentence, if minimum is two years or more.
New Mexico	when one-third of minimum sentence is served, if minimum less than 10 years; if more than ten years, must serve one-third of first ten plus one month for each additional year.

5. Excerpted from Colorado Criminal Law, Legislative Council Research Publication No. 68, December 1962, pp. 8-11.

State	Earliest Date of Possible Parole Release
North Carolina	when one-fourth of minimum sentence has been served.
Texas	with perfect prison conduct record, when either minimum or one-fourth the maximum has been served, whichever is less; with imperfect conduct record, one-third of maximum or fifteen years, whichever is less, must be served.
Wisconsin	after two years, or one-half maximum sentence, whichever is less.

Several of these states allow prisoners time off for good behavior (known as statutory good time and trusty good time). This "good time" is subtracted from the minimum sentence in determing eligibility for parole release.[6]

In the states which allow release prior to completion of the minimum sentence, the parole authority in effect has some of the powers of the sentence-fixing board in that it can release an inmate sooner than was prescribed in the minimum sentence. It would appear that the parole authorities in the states where the minimum (less good time) must be served still has some sentencing discretion, because the parole boards have the discretionary power to withhold release until the maximum is served. In actual practice this may not be the case, if the Colorado practice of releasing almost every inmate of the penitentiary on parole upon completion of minimum sentence less statutory good time is an example of the procedures in these other states.

Sentence Set by Statute. In twelve states, the courts have the responsibility only for the determination of guilt. In seven of these states (California, Indiana, Kansas, Nevada, New Mexico, Ohio, and West Virginia), the sentence imposed is a restatement of the maximum and minimum set by statute. In the other five states (Florida, Idaho, Iowa, Utah, and Washington), there is no minimum sentence and the statutory maximum sentence is imposed.

Maximum and Minimum Set by Statute -- Parole board authority and application of statutory good time varies among the seven states in which both the maximum and minimum are set by statute. These differences are indicated in the following table:

6. In Wisconsin, statutory good time is deducted from the maximum sentence to insure that every inmate will be subject to at least some parole supervision after release.

State	Parole Eligibility	Good Time Allowance
California	after one-third of minimum if more than one year, if minimum less than one year, six months or end of minimum	applies to maximum sentence
Indiana	must serve at least one year of minimum sentence (less good time)	applies to minimum sentence
Kansas	after minimum sentence (less good time)	applies to minimum sentence
New Mexico	if minimum sentence is 10 years or less, must serve at least one-third of minimum; if minimum is more than 10 years, must serve one-third of 10 years plus one month for each year over 10	applies to maximum sentence
Nevada	must serve at least one year of minimum sentence (less good time), unless three prior felony convictions; seven years must be served with three prior felony convictions	applies to minimum sentence
Ohio	statutes not clear as to whether minimum (less good time) must be served or board can release prior to expiration of minimum sentence	applies to minimum
West Virginia[a]	after minimum sentence, if conduct record good for three months prior to date of eligibility, except those with definite sentence must serve one-third	applies to definite sentences only

a. The provision for parole eligibility after one-third of a definite sentence is served was apparently designed to cover inmates incarcerated prior to the adoption of indeterminate sentences.

As shown by the above table, in four of the states (California, Indiana, Nevada, and New Mexico), an inmate may be paroled prior to the expiration of his minimum sentence. In two of these states (Indiana and Nevada), good time allowances are subtracted from the minimum time to be served. It has been indicated that many correctional authorities feel that good behavior and parole readiness do

not necessarily coincide, yet these two states as well as Kansas and Ohio (which require the minimum, less good time, to be served) provide for good time deductions from the minimum time to be served. This conflict was apparently recognized in Indiana where another statutory section states that parole release is not a reward for good conduct or efficient performance of duties in the institution, but depends on the inmate's readiness to return to society and the reasonable probabilities of his success.[7]

In addition to Kansas and Ohio, West Virginia also requires that the minimum sentence be served. It is the only one of the three, however, in which good time allowances do not apply to the minimum sentence.

No Minimum; Statutory Maximum -- In the five states where there is no minimum, good time is deducted from the maximum sentence. There are, however, some differences in the date of parole eligibility and parole board authority among these states. In Utah, the Board of Paroles and Pardons has full authority to set the minimum sentence but both the judge and the prosecutor make sentence recommendations to the board. These recommendations are accompanied by information concerning the crime and surrounding circumstances and any other pertinent data. The board is not bound by these judicial recommendations but must review them prior to setting the minimum sentence.

Judges and prosecutors may also make recommendations as to sentence to the Washington Parole Board. While the board is not bound by these recommendations, there are certain statutory restrictions which must be adhered to in setting the minimum sentence. Any first offender who is sentenced for a crime involving the use of a deadly weapon must serve at least five years. Any offender with a previous felony conviction who is sentenced for a crime involving a deadly weapon must serve at least seven and one-half years. Habitual offenders (three previous felony convictions) must serve at least 15 years, and embezzlers of public funds must serve at least five years.[8]

In Iowa, the parole board may release a first offender after conviction, but prior to incarceration. (A further examination of the Iowa statutes indicates that there are no provisions for probation, so that this method of parole is actually a probation substitute. This premise is confirmed further by the statute providing that the committing judge may recommend immediate parole release.) Offenders in Florida must serve at least six months before being considered for parole

7. 13-15-33, Burns Indiana Statutes Annotated. It is not known how the Indiana Parole Board reconciles the two different philosophies expressed by statute; that of rewarding an inmate for good institutional behavior by good time deductions. while at the same time specifying that parole release is not a reward for such behavior.
8. 9.95.040, Revised Statutes of Washington.

release. Florida has a statutory provision very similar to Indiana's, which specifies that parole is not a reward for good conduct and efficient performance and that: "No person shall be placed on parole until and unless the commission shall find that, there is reasonable probability that if he is placed on parole, he will live and conduct himself as a respectable and law abiding person, and that his release is compatible with his own welfare and the welfare of society."[9]

Federal Approach to Sentencing

Under the provisions of Public Law 85-752 (1958), federal judges are provided with several alternatives to follow when sentencing those offenders for whom the court feels that a sentence of at least one year is required to serve "the ends of justice and the best interests of the public."

First, the court may designate the length of the sentence within the maximum prescribed by statute and also the minimum term which must be served before an offender becomes eligible for parole. This minimum term may be less than but may not be more than one-third of the maximum sentence imposed. Thus, this alternative incorporates the flexibility of indeterminate sentencing since, even though a definite maximum sentence is imposed (e.g., ten years), the offender will be eligible for parole no later than the completion of one-third of the sentence, or three years and four months if the maximum sentence were ten years, and possibly sooner if the court so indicates.

Second, the court may set the maximum sentence as prescribed by statute and may specify that the offender may become eligible for parole at such time as the board of parole may determine. This alternative is quite similar to the method of sentencing followed in some states where the maximum sentence is set by statute and the minimum is determined by the parole authority.[10]

As a third alternative, if the federal court desires more detailed information as a basis for determining the sentence to be imposed, the court may commit the defendant to the custody of the Attorney General for purposes of extensive study and evaluation. If this alternative is followed by the court, it is deemed that the sentence imposed is the maximum prescribed by law. However, after the court receives the evaluation report and any recommendations that the director of the Bureau of Prisons believes may be helpful in determining the sentence, the court may do one of the following:

1. Place the offender on probation;

2. Affirm the maximum sentence and leave it to the parole board to determine the date of parole eligibility;

9. 947.18, Laws of Florida, 1957.
10. Washington, Utah, Florida, and Iowa.

3. Affirm the maximum sentence and set a date for parole eligibility which may be less than but not more than one-third of the maximum sentence; or

4. Reduce the maximum sentence already imposed and set a date for parole eligibility which may be less than but not more than one-third of the maximum.

In addition to these first three alternatives, two other sentencing procedures are afforded the court with respect to offenders convicted of any offense not punishable by death or life imprisonment. Under one of these, regardless of the maximum penalty provided by law, the court may suspend sentence and place the offender on probation for a period not to exceed five years. Also, as a final alternative, if the maximum penalty provided by law is imprisonment for more than six months, the court may set a sentence in excess of six months with the provision that the offender be confined in a jail-type or treatment institution for a period not exceeding six months. After completion of this six-month period, the remainder of the sentence may be suspended and the offender is placed on probation for a period not exceeding five years.

In all instances where probation is granted by a federal court, the court has the authority to revoke or modify any condition of probation or may change the period of probation; however, the total period of probation may not exceed five years.

Sentencing Method Proposed in the Model Penal Code

Under the sentencing methods contained in the proposed official draft of the Model Penal Code, dated May 4, 1962, for other than an offender who has been convicted of murder, the court is provided with the option of imposing a suspended sentence; placing an offender on probation and, in the case of a person convicted of a felony or misdemeanor, sentencing the offender to imprisonment for a term fixed by the court of not exceeding 30 days to be served as a condition of probation; imposing a fine; imposing a fine together with probation or imprisonment; or imposing a sentence of imprisonment (Sec. 6.02).

With respect to sentences of imprisonment for conviction of a felony, the proposed official draft of the Model Penal Code contains alternative provisions. Under Section 6.06, felonies are classed by one of three degrees, with minimum and maximum penalties varying with the degree of the felony. For a first degree felony, the minimum sentence is not less than one year nor more than ten years and the maximum is life imprisonment; for a second degree felony, the minimum sentence is not less than one year nor more than three years and the maximum is ten years; for a third degree felony, the minimum sentence is not less than one year nor more than two years and the maximum is five years.[11]

11. Convicted defendants determined to be persistent offenders, professional criminals, or mentally dangerous may be sentenced to more extended terms of imprisonment under the provisions of Sections 6.07 and 7.03.

Under the provisions of Alternate Section 6.06, almost identical minimum and maximum sentences are prescribed as those in Section 6.06. However, the alternate section also provides: "No sentence shall be imposed under this Section of which the minimum is longer than one-half the maximum, or, when the maximum is life imprisonment, longer than ten years."

At the discretion of the court, based on the nature and circumstances of the crime and the history and character of the defendant, the court may enter judgment of conviction for a lesser degree of crime than the defendant is charged with, and impose sentence accordingly (Sec. 6.12). The court is also given an option when the offender is a chronic alcoholic, narcotic addict, or person suffering from mental abnormality to order the civil commitment of such person to a hospital or other institution for medical, psychiatric, or other rehabilitative treatment if the court believes that this will substantially further the rehabilitation of the defendant and will not jeopardize the protection of the public (Sec. 6.13).

The Model Penal Code also contains a list of criteria for the court to observe in withholding a sentence of imprisonment and placing a defendant on probation (Sec. 7.01). As provided in Section 7.06, the court must observe certain limitations in sentencing offenders convicted of several crimes.

Article 305 of the proposed official draft contains provisions relating to an offender's release on parole. Included in this article is the reduction of a prison term for good behavior by the offender (Sec. 305.1). The total amount of this reduction is to be deducted from an offender's minimum term of imprisonment, to determine the date of his eligibility for release on parole, and from his maximum term of imprisonment, to determine the date when his release on parole becomes mandatory.

While correctional authorities appear to be in general agreement that there is little relationship between institutional good behavior and readiness for a return to society, a good case can be made for allowing good time credits to be applied to the maximum sentence. Good time deduction from the maximum sentence, however, should not result in an offender being released without supervision prior to the expiration of his maximum sentence. Rather it should be used as a method of providing parole supervision, even if only for a limited time, for every offender.

The offender who has not been released on parole prior to the completion of his maximum sentence, or who has failed on parole, poses the greatest potential menace to society. Yet if he is released after completion of his maximum sentence, he has paid his debt to society and is free to leave the institution without supervision. It is possible for an offender to accumulate credit for good behavior without the parole board considering him ready for release prior to the completion of his maximum sentence less good time deductions. The approach contained in the proposed official draft of the Model Penal Code would prevent this situation from arising in that such an offender would be released under parole supervision after he had completed his maximum sentence, less good time, and would remain under supervision until expiration of his maximum sentence.

Use of Boards to Determine Sentences

Integrated within much of the sentencing procedures discussed thus far is the use of parole boards to determine when an offender has reached the stage where he becomes a good prospect to return to society. To a certain extent, then, parole boards may be considered in many jurisdictions as the de facto sentencing body. This has led to the proposal that broad sentencing determination powers be given to parole boards to the exclusion of the courts. Some of the major arguments for and against this proposal may be summarized as follows:

For: (1) Legal training does not necessarily equip judges to make proper determinations of the sentence to be imposed. Consequently, the sentence may not bear any relationship to the period of incarceration needed before an offender is ready for a successful return to society. Some violators need little, if any confinement, while others may never be released safely.

(2) The courts for the most part do not have enough adequately-trained probation officers to provide judges with sufficient pre-sentence information to assist them in setting sentences commensurate with an offender's possibilities for rehabilitation.

(3) Sentencing practices differ among judges -- not only among those whose courts are in different districts, but also among judges in the same district. This disparity is known to convicted offenders who compare sentences and it lessens the success of institutional rehabilitation programs for this reason.

(4) Judicial sentencing, when combined with statutory good time deductions, results in virtually automatic parole for all inmates upon completion of their minimum sentences minus good time allowances. Such parole release may or may not coincide with an inmate's potential for a successful return to society. In those cases where inmates are not ready for parole, an injustice is done both to them and society. An injustice is also done to those inmates who perhaps are ready for release but who are retained because their minimum sentences were lengthy. The inclusion of statutory good time presumes that there is a direct correlation between institutional good behavior and readiness for release, which may not be the case, especially for the institution-wise prisoner.

(5) Length of sentence can be more adequately and fairly determined by a full-time qualified board removed from the heat and emotionalism of the courtroom and community attitudes toward the crime. This is especially true when the board has the assistance of competent, professional institutional personnel who can observe and evaluate the offender during his period of incarceration.

Against: (1) The judge is the person most acquainted with the case. He has presided during the trial, has observed the offender, and is acquainted with his record. Consequently, the judge can do a better job of setting sentence than a board whose determination would be based primarily on secondary written reports and brief personal observation.

(2) There is no basis for assuming that a board would be any better at sentencing than the court, either with respect to length of

sentence or sentence variation for the same offense. In fact, a qualified board could do much worse than the courts if the institutions are not adequately staffed to provide the data the board needs and if the board members are not well qualified and cannot devote full time to their deliberations.

(3) There is the possibility of recourse in the courts if the offender believes that he has been given an unfair sentence. What recourse would be available from an unjust sentence determination on the part of a parole board?

(4) There are institution-wise prisoners who can deceive professional staff personnel as easily as they can accumulate good time credits. Institutional conduct may not indicate that a man is ready for release, but it does show an effort to conform and obey rules and regulations, and it therefore should be a factor of consideration in determining the release date.

(5) The paroling authority will be subjected to undue public pressure and criticism if it exercises sentencing authority. Mistakes made by the board will cause public reaction which in turn could limit the board's effectiveness by forcing it to be more conservative in its actions regardless of the worthiness and facts of the cases before it.

Parole Board Composition. If considerable sentencing discretion were to be given to the parole authority, most authorities generally agree that the board should be composed of professionally trained and experienced members who serve on a full-time basis. The American Correctional Association recommends the following qualification standards for parole board members:12

> Personality -- He must be of such integrity, intelligence, and good judgment as to command respect and public confidence. Because of the importance of his quasi-judicial function, he must possess the equivalent personal qualifications of a high judicial officer. He must be forthright, courageous, and independent. He should be appointed without reference to creed, color, or political affiliation.
>
> Education -- A board member should have an educational background broad enough to provide him with a knowledge of those professions most closely related to parole administration. Specifically, academic training which has qualified the board member for professional practice in a field such as criminology, education, psychiatry, psychology, social work, and sociology is desirable. It is essential that he have the capacity and desire to round out his knowledge, as effective

12. Manual of Correctional Standards, American Correctional Association, 1959, pp. 537 and 538.

performance is dependent upon an understanding of legal process, the dynamics of human behavior, and cultural conditions contributing to crime.

Experience -- He must have an intimate knowledge of common situations and problems confronting offenders. This might be obtained from a variety of fields, such as probation, parole, the judiciary, law, social work, a correctional institution, a delinquency prevention agency.

Other -- He should not be an officer of a political party or seek or hold elective office while a member of the board.

As may be noted in Table II, 22 states and the federal government are reported as having professional parole boards. The membership on these boards range from three in 12 states to a nine-member board in New York. Members are appointed for specific terms of from three to seven years except in Michigan and in Wisconsin where the members are civil service appointees.

Of these 23 jurisdictions, nine of them have no statutory qualifications for parole board members and three others have only general qualifications such as residence and good moral character. The remaining 11 states, however, do require parole board members to meet varying professional qualifications. These 11 states include California, Florida, Idaho, Indiana, Kentucky, Michigan, Mississippi, Missouri, Ohio, West Virginia, and Wisconsin.

Wisconsin Board of Parole. As an example of one of the two states where parole board members are civil servants, and a state which has received national recognition for its correctional program, Wisconsin's six-member parole board functions in two capacities -- as a parole board for adult offenders and as a juvenile review board for juvenile offenders. Three members sit as a three-man board at the prison to handle adult parole; two members sit as a two-man board for juvenile matters; and three members sit as a board at all other types of meetings. Members serve interchangeably on adult and juvenile matters as the need may require. Based on the workload in 1964, about 300 adult cases and 300 juvenile cases are acted upon each month.

The director of the division of corrections, which is a component of the public welfare department, serves as chairman of the parole board. The board is in continuous session, meeting monthly at all the adult correctional institutions and several times a month at the reception centers. Hearings at some of the institutions require as much time as one week each month.

Of necessity, the chairman's time is reported to be quite fully taken up with his duties as director of the division of corrections and, as a result, his activities as chairman of the parole board are usually limited to matters of administration and policy. The chairman therefore designates one of the other board members as vice chairman and delegates immediate responsibility for administration of the board to this officer.

TABLE II

PROFESSIONAL PAROLE BOARDS

State	Number of Members	Terms	Jurisdiction	Qualifications	Salary
Alabama	3	6	Adult	Residence	$10,000
California	7	4	Adult	Broad background in appraisal of law offenders	18,190
Florida	3	6	Adult	Residence, knowledge of penology and social welfare	10,500
Georgia	3	7	Adult	None	5,000 and sub-sistence
Idaho	3	6	Adult	1 psychiatrist 1 penologist 1 business administration	7,000
Indiana	3	4	Adult-Juvenile	Related knowledge - training - experience	11,000 to 14,000
Kansas	3	4	Adult	None	8,500
Kentucky	5	4	Adult	Knowledge and experience in correctional treatment or crime prevention	
Massachusetts	5	5	Adult	None	14,000 chairman and 12,000 member

TABLE II
(Continued)

State	Number of Members	Terms	Jurisdiction	Qualifications	Salary
Michigan	5	Indefinite	Adult	Civil service examination - degree in Behavioral Sciences - supervisory experience in correctional work	$11,859 to $14,783
Mississippi	4	4	Adult	Knowledge and experience to perform duties	5,000 expenses
Missouri	3	6	Adult	Ability and experience to perform duties	10,900 chairman 9,000 member
Nevada	5	4	Adult	None	9,360
New York	9	6	Adult	None	24,000 chairman 19,500 member
North Carolina	3	4	Adult	None	10,500 chairman per diem and 10,000 member per diem
Ohio	5	6	Adult	2 attorneys with 6 years experience; 2 men with at least 6 years experience in field of corrections	12,000

TABLE II
(Continued)

State	Number of Members	Terms	Jurisdiction	Qualifications	Salary
Pennsylvania	3	4	Adult	Good moral character	$15,500 chairman 14,500 member
Texas	3	6	Adult	Residence, good character	11,000 milleage per diem
United States	8	6	Adult	None	18,500 chairman and per diem 17,500 per diem member
Virginia	3	6	Adult	None	12,000
Washington	5	5	Adult	None	12,500 per diem and mileage
West Virginia	3	3	Adult	Experience in field of Social Sciences or administration of penal institutions	8,200 and per diem

TABLE II
(Continued)

State	Number of Members	Terms	Jurisdiction	Qualifications	Salary
Wisconsin	6	Lifetime	Adult-Juvenile	Civil service examination - 2 years graduate work in accredited school of Social Work - 8 years progressively responsible experience in corrections.	$16,500 chairman 8,796 to 11,376 member

SOURCE: Division of Adult Parole and Division of Youth Services, Colorado Department of Institutions

Colorado Board of Parole. By way of comparison with the board in Wisconsin, Colorado's State Board of Parole consists of "the governor, the attorney general, and five members, other than law enforcement officers or officials, of known devotion to parole and rehabilitation work, with practical knowledge in criminology and kindred subjects, to be appointed for overlapping (six-year) terms by the governor alone" (Sec. 39-18-1, C.R.S. 1963).[13] All of the board members serve on a part-time basis and the five members appointed by the Governor are reimbursed for their expenses and receive the sum of ten dollars per day in the performance of their duties. (In 1965, the Legislative Council's Committee on Organization of State Government recommended that this ten-dollar figure be increased to 20 dollars per day.)

The present members of the parole board, other than the Governor and the Attorney General, include: Mr. Harry Brofman, retired police officer; Mr. John C. Casey, retired school administrator; Mr. Charles Chaves, businessman; Mr. Francis Knauss, retired supreme court justice; and Mr. Archie Reeves, retired businessman.

The division of parole within the Department of Institutions serves as the staff arm of the State Board of Parole. The executive director of the division is specifically authorized to "exercise the power of suspension of paroles in the interim of the meetings of the board and, in connection therewith, may arrest such suspended parolee without warrant and return him to the institution from whence he was paroled," and "the director shall perform such other duties as may be prescribed by the board or imposed by statute" (Sec. 39-17-2 (1) (a) and (b), C.R.S. 1963).

Since 1951, when the present adult parole program was started, the correctional process has evolved considerably in Colorado. The executive director of the division of parole reports that, until recent years, there was no need for a full-time professional parole board in this state; today, however, demands are evident for increased service, both in terms of quantity and quality. Professional horizons were limited in 1951 when the adult parole division was established and accountability was the first and almost exclusive order of business. Since this time, the director points out, the division has developed professionally to a point where the operational goals and standards of 1951 are viewed as part of a "horse and buggy" period.

13. In addition to the State Board of Parole, which deals with adult offenders, Colorado also has a juvenile parole board consisting of seven part-time members, two of whom have no power of vote (Sec. 39-20-1, C.R.S. 1963, as amended by chapter 128, Session Laws of 1965). The five voting members are appointed by the Governor from the administrative staffs of the State Department of Education; the State Department of Public Welfare; the State Department of Institutions; the State Department of Employment; and the State Department of Rehabilitation. The two non-voting members are appointed from the staff of Lookout Mountain School for Boys and the Mount View Girls' School.

Similarly, this growth in the correctional process has had a profound effect upon the functions of the parole board. For example, the director points out that in 1951 a board member could satisfy himself and the interested public by making a decision consistent with criteria of the past, but he must now make the same decision with a broader understanding of the subtleties of human behavior and their relationship to the complexities of modern society. Moreover, a review of board interviews over the past few years indicates a steady increase in the workload of the members, as follows:

1961 -- 1,970 interviews averaging 18 man minutes per interview.
1962 -- 1,995 interviews averaging 18 man minutes per interview.
1963 -- 2,496 interviews averaging 16 man minutes per interview.
1964 -- 2,530 interviews averaging 17 man minutes per interview.

Sentencing and Institutional Programs

Sentencing, imprisonment, and parole are all parts of a continuous correctional process. Regardless of how this process is organized, 95 per cent of all committed offenders sooner or later return to society, even if some return only for relatively short periods of time. The separate components of the correctional process should be coordinated to achieve maximum results with respect to the protection of society and the rehabilitation of offenders and, insofar as possible, the same philosophy should serve as a foundation for the total program.

Sentencing is considered the key to a successful corrections program. Even if the institutions and parole agency are staffed with qualified, dedicated personnel and their programs are aimed at rehabilitation, the possibilities of success are minimized if the method of sentencing used does not permit the parole authority to release an offender at the time that he is considered a good risk for a return to society. If he must remain in the institution for a longer period, the effects of the program are diminished or perhaps even completely negated. By the same token, if he is released from the institution before he is considered ready, then the program has little chance of being helpful and both society and the offender are losers.

Conversely, it is doubtful that much can be accomplished by a change in the method of sentencing if accompanying changes, as needed, are not made or at least initiated in institutional programs. In addition to a qualified parole board, correctional institutions and facilities must have properly qualified and experienced professional personnel on their staffs, not only to develop and emphasize rehabilitation programs, but also to make evaluations and prepare the pertinent data needed by parole board members in making their decisions. That is, for example, some of the more important components of the correctional program in this respect are: initial evaluation, classification, and placement; vocational training and education programs; counseling and testing; psychiatric services; and pre-parole planning and guidance.

Any consideration of changes in a state's sentencing practices and correctional institution programs involves the question of whether the benefits to be derived from such changes are worth the additional costs incurred. Most correctional authorities agree that a program such as that of Wisconsin's represents the most successful approach as yet developed to meet the problems of sentencing, incarceration, and release. Yet it is extremely difficult, even for correction officials in states with such programs, to measure accurately the extent to which their programs contribute to parole success. This is especially true when comparisons are attempted. Several reasons why measurement is difficult were cited in correspondence from correction officials in California, Wisconsin, and other states.[14]

1. It is difficult to compare present results with results in the state previous to adoption of the present program because:

   A. Few records were kept formerly.

   B. Very few offenders were released on parole previously, and these were the ones most likely to succeed.

   C. There have been changes in the nature and type of crimes and criminals which make comparisons impossible.

2. It is impossible to compare states because of:

   A. Differences in use of probation and and parole (In some states parole is not used extensively so that those who are paroled are more likely to be successful. Use or nonuse of probation has a great bearing on institutional population. First offenders who perhaps should have been placed on probation are committed and then paroled with better chance for success than a two- or three-time loser.); and

   B. Regional and local differences in crime rates, community attitudes, and related factors.

3. It is very difficult to measure parole success or to determine accurately the reasons therefor since:

   A. The rate of success depends on how parole success is defined and the length of time being considered. (For example, should technical violations be included or just new offenses? Should two, three, or five years be used, or should the successful completion of

14. These responses were a result of a staff questionnaire sent to selected states in April, 1960, but they seem as applicable today as they were then.

parole -- regardless of length of time -- be the criterion?)

B. There are so many factors involved in each parole success, and they vary from case to case, it is hard to tell precisely which is the most important. Among these factors are institutional programs, time of release, family and community acceptance, employment, parole supervision, and previous background and record.

Three Possible Approaches to Sentencing Changes in Colorado

The 1961-62 Legislative Council Criminal Code Committee examined three possible approaches to sentencing changes in Colorado. These included:

1) Limitation on judicial sentencing discretion accompanied by broader parole board authority, similar to the practice in California, Utah, Washington, and Wisconsin;

2) The sentencing alternative embodied in the 1958 federal legislation; and

3) The method of sentencing outlined in the Model Penal Code.

To determine how these approaches to sentencing might be adopted in Colorado, the following subjects were examined:

1) Administrative changes, staff needs, and cost;

2) Effect on other aspects of the judicial and law enforcement processes;

3) Broad social implications; and

4) Possible statutory changes.

As a first step in making this analysis, these three approaches to sentencing were defined more precisely in the form in which they might be applied in Colorado.

1) Sentence Set by Statute.[15] This approach was limited to two variations:

a) maximum and minimum sentences would be set by statute; and

15. Under all three approaches, the court would have the discretionary authority to place offenders on probation as at present.

b) maximum set by statute, court could impose minimum, not to exceed one-third of the maximum. Good time allowances would apply only against the maximum sentence.

The parole board would have the authority to review and release an offender after half of the minimum sentence had been served. Offenders not paroled prior to the expiration of their maximum sentences, less good time allowance, could be released under parole supervision at that time, such supervision to continue until the date of maximum sentence expiration. Offenders released on regular parole could be kept under supervision until expiration of their maximum sentence, unless released sooner by the parole board.

2) Federal Sentencing Option. In sentencing an offender, the court could choose among several options:

a) The court could designate the length of sentence within the maximum prescribed by statute and also the minimum term which must be served before an offender would become eligible for parole, which term may be less than but could be no more than one-third of the maximum sentences imposed.

b) The court could set the maximum sentence as prescribed by statute, in which event the court could specify that the offender would become eligible for parole at such time as the parole board may determine.

c) The court could commit the offender to the custody of the Department of Institutions for extensive study and evaluation. Under this alternative, it would be considered that the maximum statutory sentence had been imposed, pending the results of this study and evaluation which would be furnished to the committing court within three months, unless the court granted additional time to complete the study (not to exceed three months). After the court receives the department's report and recommendations, it could do one of several things:

i) place the offender on probation;

ii) affirm the maximum sentence already imposed and let the parole board determine the date of parole eligibility;

iii) affirm the maximum sentence already imposed and set a date for parole eligibility which could be less than but not more than one-third of the maximum; or

iv) reduce the sentence already imposed and set a date for parole eligibility which could be less than but not more than one-third of the maximum.

(In Colorado, another option would be commitment to the state reformatory, unless the reformatory commitment laws were changed. The court could commit to the reformatory initially or after diagnosis and evaluation by the Department of Institutions.)

3) Model Penal Code. All crimes would be divided into several grades: felonies of the first degree, second degree, and third degree; misdemeanors; and petty misdemeanors. The court would fix the minimum and maximum terms within the limits specified for the grade of crimes within which the offense falls. The limits would be higher for persistent offenders, professional criminals, and dangerous mentally abnormal persons. The court would be prevented from imposing what in effect would be a fixed sentence by the requirement that the minimum could not be more than half of the maximum. The parole board would determine parole release after the minimum sentence, less any good time allowance, had been served.

There would be some limitations on the authority of the court to impose an extensive consecutive sentence on an offender convicted of several crimes in a single trial. On the other hand, the court would have the discretionary authority to alleviate hardship in a particular case by entering a judgment of conviction for a lesser degree of crime than the offense for which found guilty when, in view of all the circumstances, the punishment would otherwise be too harsh.

Sentences for felony convictions would include, as a separate portion thereof, an indefinite parole term of one to five years. A parolee could be discharged from parole by the parole board any time after one year and before five years.

Possible Costs Involved in Changing the Method of Sentencing

Full-time Parole Board. Many of the states in which sentencing discretion is vested to a considerable extent in the parole authority have full-time parole boards, and such boards are generally recommended by correctional and parole officials. It would appear that the adoption of either of the first two approaches to sentencing outlined above would require a full-time professional parole board in order to be successful. A full-time board would be less necessary under the method of sentencing which follows the Model Penal Code because the authority of the parole board would be more limited than in either of the other two approaches.

Full-time parole boards in other states vary in size from three to nine members. Qualifications for board members vary, but they usually include experience and training in one or more of the following fields:

1) parole and probation;

2) law;

3) law enforcement, correction, or both;

4) psychology; and

5) social work.

Colorado's present part-time parole board costs the state approximately $10,000 per year. A full-time parole board in Colorado might cost from $68,000 to $90,000 annually, depending on whether it would be a three- or five-member board. This cost estimate is based on the following:

1)	Parole board members (annual salary, $12,000) three board members	$36,000
2)	Administrative secretary	4,800
3)	Legal stenographer	4,200
4)	Clerk-typist	3,300
5)	Supplies, travel expense, etc.	20,000
		$68,300
	(two additional board members)	24,000
	Total	$92,300

It might be possible initially for a full-time board to use the staff of the adult parole division for clerical work, and thus reduce the annual cost $7,000 to $8,000.

Diagnostic Center. If Colorado adopted the federal sentencing program, a professionally-staffed diagnostic facility would be needed for offenders who might be referred by the courts for diagnosis and evaluation. At least 1,200 offenders are sentenced each year to the reformatory and penitentiary. (In addition, there are a large number placed on probation, many of whom might be committed by the courts for evaluation, should such a facility and service be available.) Even if only ten per cent of the committed offenders (plus the same proportion of potential probationers) were referred for evaluation, at least 180 to 200 violators would be involved, and it is likely that this estimate is low. Even on the basis of three or four commitments per week, a facility for 35 to 50 inmates would be needed if most of them were to be kept for observation and evaluation for the full 90 days provided in the federal system.

It is very difficult to present even a fairly adequate estimate of construction and operation costs for such a facility and program. Many policy questions are involved such as the following:

1) Should the diagnostic facility be located near the penitentiary?

2) Should the penitentiary be responsible for over-all administration and correctional services?

3) Should the reformatory and penitentiary be permitted to send offenders already incarcerated to the center for evaluation and study upon approval of the director of institutions, or should the facility be limited to court referrals?

4) Should the center be operated in conjunction with a facility for the criminally insane?

If the answers to the first two questions are in the affirmative, the costs would be considerably less because it would be extremely expensive to staff a small facility with a sufficient number of correctional officers in addition to professional, clerical, and maintenance personnel. Professional staff is very expensive and extremely difficult to recruit; thus, it would appear more feasible to share professional personnel, insofar as possible. This could be accomplished by having such a diagnostic center attached either to the penitentiary or to a special facility for the criminally insane, although separated from it.

If the reformatory and penitentiary are allowed to send inmates to the diagnostic facility for evaluation and study, it would more than likely increase the size of the facility needed and perhaps the number of professional staff members. On the other hand, it might be quite shortsighted to have such a facility and not to use it as needed as an adjunct to the institutional rehabilitation program.

From the few examples cited above it can be seen that a change in sentencing involves much more than statutory revision or policy decisions which relate only to sentencing. These broader implications should be considered: 1) in order to decide whether Colorado should follow the federal system; 2) in order to present the General Assembly with a comprehensive picture of the factors and costs involved in adopting such an approach; and 3) in order to avoid potential difficulties through careful planning.

Cost estimates, as indicated above, are almost impossible to make without basic policy decisions; however, construction might cost at least $500,000, depending on whether inmate labor is used. It would cost approximately $26,000 annually to employ a psychiatric team (psychiatrist, clinical psychologist, and psychiatric social worker) based on present civil service salary levels. It is doubtful whether one team would be adequate, but the number of additional professional employees needed would depend on whether professional staff is to be shared and what the function of the diagnostic center would include.

Additional Institutional Staff. Under two of the three sentencing approaches (excluding the Model Penal Code), it is likely that additional professional staff would be required at the penitentiary and reformatory within a short period of time, if not initially. These professional employees (psychologists, counselors, social workers) would be necessary, if the experience of other states is indicative (Wisconsin, for example), to provide the full-time parole board with information, analyses, and evaluations which it would require as reference material in reviewing cases and making parole determination.

Again it is difficult to make an accurate cost estimate, but such additional personnel to the two institutions, whether employed by the institution or the adult parole division, could easily cost from $50,000 to $100,000 per year.

Summary. The cost estimates and related material presented in this section indicate some possible impacts of sentencing changes

upon institutional facilities, staffs, and programs. These are not all the factors and costs involved, nor are the cost estimates to be considered accurate; and further study is needed.

Broader Implications of Sentencing Changes

Judicial Functions. Under the first two suggested approaches to sentencing, judicial discretion would be limited. In the first proposal, judges would have the responsibility only to determine guilt, sentence would be according to statute (although as an alternative it is suggested that there might be a judicially imposed minimum not to exceed one-third of the maximum). If changes in sentencing followed the federal system, judges would have more assistance and options in the disposition of offenders, but they would also be subject to certain limitations with respect to the imposition of a minimum sentence. The method of sentencing embodied in the Model Penal Code would leave the judge considerable latitude, but not as much as at present, because statutory maximums and minimums would not only be determined by the type of crime but also by the severity of the offense. Further, the court could not impose a minimum that is more than one-half the maximum.

A comprehensive survey of the attitudes of district judges toward sentencing and possible changes was made by the Legislative Council Administration of Justice Committee, which discussed this topic at its regional meetings. In its report to the General Assembly, the Administration of Justice Committee summarized the sentencing discussions at the regional meetings as follows:[16]

> Two-thirds of the 27 district judges with whom sentencing was discussed at the committee's regional meetings favored a change in the method of sentencing. The other nine judges advocated retention of the present judicial sentencing authority. Most of the judges favoring change felt that the California system had merit and recommended that the maximum and minimum sentences be set by statute, with the courts' function confined to a determination of guilt. One district judge advocated one day to life sentences in all felonies, with the parole board to determine release within this range. Another district judge felt that the parole board should be given the discretionary authority to determine release at any time after six months had been served. These judges were unanimous in the opinion that a qualified full-time parole board would be necessary to make such a change in sentencing procedures successful. Fixed statutory sentences were favored rather than open-ended sentences to limit the effect of arbitray parole board action, which might result in incarceration of unjust length.

16. Judicial Administration in Colorado, Research Publication No. 49, Colorado Legislative Council, 1960, p. 139.

Several reasons were given by the district judges in favor of adopting a system of statutory sentencing. Some judges said that it is not possible to determine at the time sentence is imposed what the offender's possibility for rehabilitation might be five to 10 years in the future. It was pointed out that legal training does not give judges special competence to determine what to do with a man after he has been found guilty. Even recognizing differences between individual cases, several judges felt that there was inequality in the imposition of sentences and that the proposed change would provide more opportunity for release on the basis of an offender's prospects for a successful return to society.

The judges who opposed a change in the method of sentencing pointed out that the sentencing judge is much more acquainted with the case and the offender than any board would be after reviewing the record and interviewing the offender months or years after the crime had been committed. In imposing sentence, these judges said they took into consideration the crime and extenuating circumstances as well as the information developed through the presentence investigation.

Attorneys and other judges with whom the committee discussed sentencing at the regional meetings were also divided two to one on this question; the reasons advanced for both positions were very similar to those of the district judges.

Law Enforcement Officials. A change in sentencing which would limit the court's discretion might be looked upon by law enforcement officers, especially district attorneys, as hampering their efforts because with fixed maximums and minimums, the elimination of good time, and the placement of prison release determination in the parole board, there is no way in which a lighter sentence can be guaranteed to an offender for cooperation. The best that could be promised is that a report on the offender's cooperation would be included in the material reviewed by the parole board and a recommendation made for a short minimum sentence before parole eligibility.

That the possibility of such opposition to a change in sentencing by law enforcement officials is not farfetched is demonstrated by what happened in the state of Washington when the statutory sentencing system was adopted in 1934. For several years district attorneys and sheriffs opposed the system and the parole board. The crux of the opposition can be found in two questions raised by the Washington State Association of Prosecuting Attorneys in a meeting with the state parole board. "Why do the sentences you set vary so much from what we recommended?" "Why doesn't the Board back our deals with inmates?"[17]

17. Law and Contemporary Problems, "Sentencing by an Administrative Board," Vol. XXIII, No. 3, Norman S. Hayner, Duke University School of Law, p. 481.

After numerous conferences and years of experience working with the new sentencing system, it became generally accepted by law enforcement officers and prosecuting attorneys, many of whom decided that the board knew more about the offenders than they did and also asked how they could assist the board by preparing better statements of the crimes and their investigations.[18]

The foregoing comments are not intended as criticism of prosecuting attorneys or law enforcement officers. Rather, the purpose is to show the need for cooperation and the problems which can result from the lack of communication. It is understandable that law enforcement officials might become upset if they feel that their efforts are being hampered because of restrictions placed upon them through the adoption of a sentencing system which, unless explained, is perceived as a means of rapidly returning dangerous offenders to society.

Changes in Society's Approach to Crime. The first two sentencing alternatives would give more legal sanction to the current trend in the handling of criminals away from retribution, punishment, and deterrence and toward emphasis on society's protection and rehabilitation efforts. On the surface this may appear as a "get soft" approach. Those who support this shift in emphasis argue that the contrary is true because: 1) Release of an offender at the time he appears to be best able to return to society successfully protects society far more than if he is released after serving the required amount of time, regardless of his chances to be a good citizen. 2) Parole supervision protects society and helps the offender to keep from backsliding; release without supervision is far more dangerous. 3) If an offender has an incentive, he is more likely to try to face reality and the real causes of his problems; such incentive is provided if an offender knows that the time of his release depends to a great extent upon himself. There is little motivation if he knows he has to serve a certain length of time anyway. 4) Focusing more attention on the offender rather than concentrating on the crime committed makes it possible to release offenders at the time they are considered ready to be returned to society and to hold dangerous offenders as long as the law will allow.

The problem, therefore, is not only one of equalizing sentences for like crimes (although disparity has been demonstrated by penitentiary statistics), but also to provide a sentence tailored to a particular offender to the extent that through his own efforts (with assistance) he can be released sooner if it is determined to be safe to do so, and he can be held for the maximum period if it is in society's best interest.

Both the California-Wisconsin-Washington method of sentencing and the federal system are in line with this approach. Equalization of sentences for like crimes is recognized by imposition of the statutory maximum and by either the statutory minimum or limitations on the length of minimum sentence which may be judicially imposed.

18. Ibid.

(The court may request diagnostic assistance under the federal system in considering carefully what is best for the offender and for society.) Within these sentence limitations, there is no automatic formula to guarantee the date of release; this is dependent upon the offender and evaluation of his chances of becoming a useful citizen.

The same remarks apply, but to a lesser extent, with respect to the method of sentencing embodied in the Model Penal Code because the Model Penal Code places much more emphasis on the severity of the crime in establishing maximum and minimum sentences, provides for good time allowances, and allows the court to set both minimum and a maximum sentence, although the minimum cannot exceed one-half the maximum.

Concluding Comments and Questions

As may be noted from the foregoing material, the subject of sentencing includes a number of complex problems, and several questions may need to be answered before committee members are in a position to consider final findings and recommendations. Some of these questions have been raised specifically in the preceding material. Other general questions to which committee members may wish to direct their attention could include the following:

1. What changes in the present sentencing process in Colorado need to be made in order to achieve the desired goals such as punishment and rehabilitation?

2. What effect would these changes have in terms of cost, judicial functions, institutional programs, law enforcement, and the behavior of prisoners?

3. What changes would need to be made, for example, in the parole program in Colorado to implement any recommended changes in the sentencing process?

4. What statutory and budgetary changes would need to be made?

To assist in arriving at answers to these and other questions, the committee may well want to meet with judges, law enforcement representatives, and correctional and parole officials.