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STAFF REPORT 76-26

ACQUISITIONS

July 1, 1976

SUBJECT: FEASIBILITY OF ENACTING LAWS TO PRESCRIBE EXACT AND MANDATORY PENALTIES FOR CERTAIN CRIMINAL OFFENSES

PREPARED BY: Research Department, Arkansas Legislative Council

PREPARED FOR: Committee on Judiciary, Arkansas Legislative Council
and

Joint Interim Committee on Judiciary of the Arkansas
General Assembly

Interim Study Proposal 75-20 by Representative Bobby Glover directs
the Legislative Council to:

"...make a study of the feasibility of enacting legislation to prescribe specific penalties for certain offenses rather than the maximum-minimum penalties now prescribed by law. Such study shall include a determination of the number of other states which prescribe specific penalties for certain offenses rather than maximum-minimum penalties, the offenses for which specific mandatory penalties are prescribed and the penalties prescribed in such states."

SUMMARY

Sentencing laws have come under attack recently in several states. The rising crime rate has sparked an examination of present sentencing policies. All states have some form of indefinite sentencing. Apparently none of the states has enacted flat time sentences, but such proposals are now being considered in three states.

Forms of Indefinite Sentencing in the States

Presently, all states have some variety of indefinite sentencing.* In one variation, the law imposes a minimum-maximum sentence of imprisonment for a crime or a class of crimes. For example, the crime of robbery may be punished in one state with a term of three (3) to twenty (20) years. In another state, robbery may be classified as a "Class Felony" and Class X felonies may carry a term of three (3) to twenty (20) years. Once

* See note in Appendix II.

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in a prison, in either state, the offender's actual sentence is determined by a parole board which releases the convict at some point between three (3) and twenty (20) years. Often, the convict can reduce the maximum sentence of twenty (20) years in this example by taking advantage of "good time" provided by law, and qualify for early parole eligibility.

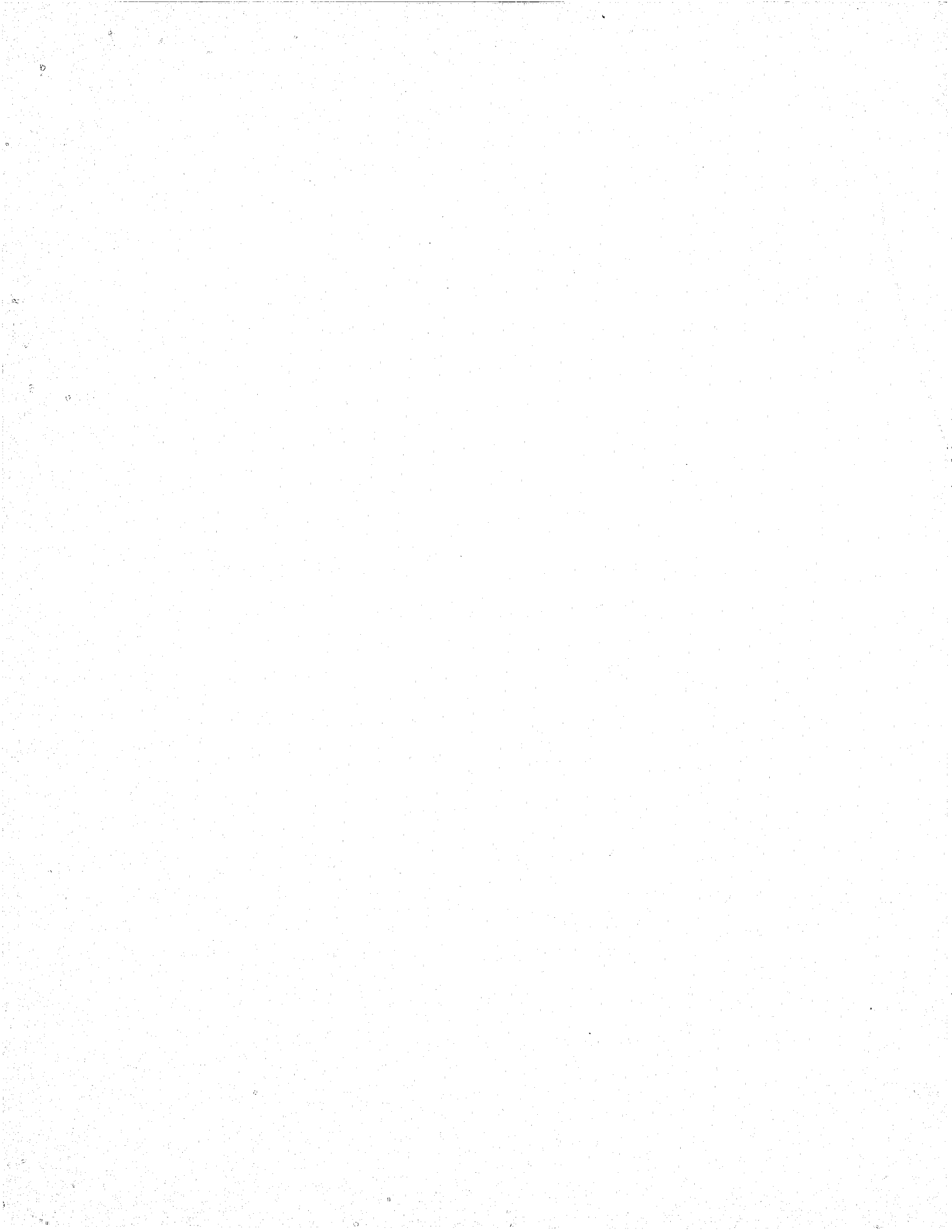
Under the second variation of indefinite sentencing, the law imposes a minimum-maximum term as in the first example. The difference is that the actual sentence is set by the judge at the conclusion of the trial, instead of by the parole board at some point in the future, and it is a definite sentence for a term of years. Where an offender is convicted of a Class X Felony carrying a sentence of three (3) to twenty (20) years, the judge can fix the sentence at any number of years within that range. Under this system, the convict knows just how many years he must serve from the start of his sentence. Usually, the parole board can reduce the convict's actual stay in prison below the stated sentence through the use of "good time" and statutory parole eligibility.

Arkansas follows this second variation. In Arkansas an offender convicted of a Class B Felony, such as robbery, receives a definite sentence within the minimum-maximum range of three (3) to twenty (20) years. Thus, the judge may sentence the robber to four (4) years or eighteen (18) years or twenty (20) years, if he wishes. Again, the offender can rely on statutory parole eligibility and good time to reduce his sentence.

Dissatisfaction With Indeterminate Sentencing

Indefinite sentencing systems like those just described have been criticized recently for a number of reasons. The primary criticism of indeterminate sentencing is that there are great disparities in sentencing treatment. Rural judges will impose a stiffer sentence for a given crime than an urban judge, in some parts of the country. This is true in Illinois, according to David Fogel, Director of the Illinois Law Enforcement Commission. Even in the same locality, sentencing policies will vary from judge to judge on the same crime, when confronted with similar offenders. This problem was recognized in a Colorado study which remains relevant though slightly dated. The study said in part:

"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 (Colorado) 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 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'."

Criminal Laws and Indeterminate Sentencing, Colorado Legislative Council, Research Publication No. 113, December, 1966.

Another criticism has been that criminals are released unrehabilitated and are released too early. Critics point to high recidivism rates and they question the ability of parole boards to determine who should leave prison early. Critics also point out that the parole board's task is made difficult by the convict's natural tendency to "con" the parole board with insincere evidence of rehabilitation, in order to secure early release, and allege the result is that criminals are released on parole before serving their full sentences, unrehabilitated.

Parole board treatment of prisoners is another source of dissatisfaction throughout the country. Board actions are said to be based on fragmentary, superficial information about an offender, and allegedly results in uninformed, even apparently arbitrary decisions by the board. This in turn engenders prisoner dissatisfaction and even violence, say critics.

The same Colorado study cited above also generally questions the utility of parole in these words:

"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."

Criminal Laws and Indeterminate Sentencing, Supra.

Existing Arkansas Sentencing Law

Under the Arkansas Criminal Code, felonies and misdemeanors are graded according to their seriousness, and a schedule of sentences has been established. The schedule provides the minimum and maximum sentences possible for each class of crime. When an offender is convicted the judge sets a definite sentence from the range available. For example, one convicted of robbery, which is a Class B Felony can be sentenced to serve anywhere from three (3) to twenty (20) years in prison. The parole board later considers the offender's progress toward rehabilitation for parole purposes and the amount of good time accumulated in its decision to retain or release the offender.

Below is a table showing the present statutory classification of crime and the minimum-maximum penalties in Arkansas:

ARKANSAS SENTENCES BY CLASSES
OF FELONY AND MISDEMEANOR*

<u>FELONIES-CLASS</u>	<u>PRISON TERM</u>	<u>FINES</u>
A	5-50 years	\$0 to \$15,000
B	3-20 years	\$0 to \$15,000
C	1-5 years	\$0 to \$10,000
D	0-3 years	\$0 to \$10,000

<u>MISDEMEANORS-CLASS</u>	<u>PRISON TERM</u>	<u>FINES</u>
A	to 1 year	\$0 to \$1,000
B	to 90 days	\$0 to \$500
C	to 30 days	\$0 to \$100

*Violations are not included, since only a fine or civil penalty is exacted.

Arkansas also has a considerable number of felonies and misdemeanors punishable with imprisonment that are not classified under the code and do not fall into the above schedule. The punishments reflect the same minimum-maximum sentence approach taken by the code, but have their own individual ranges of prison time.

Status of Other States' Sentencing Laws

All states presently have some variation of indefinite sentencing. In a very restricted sense, however, each state has some form of determinate sentencing, usually for aggravated murder, whereby the state requires a sentence of death or life without parole. In Arkansas, death or life without parole are the only sentences available upon conviction of Capital Felony Murder. For lesser felonies, Arkansas and other states have indeterminate

sentences and either set a minimum-maximum range of years for each offense or have classes of offenses with a range of years for each class of offense.

Proposals for determinate, flat-time sentences have been made in at least three states, including California, Minnesota and Illinois. These states are considering bills which impose flat-time, definite sentences, but none of these states has yet enacted such sentences into law.

The following text is a short description of the highlights of those bills.

The Illinois Proposal

The Illinois proposal, Senate Bill 1885 of 1976 by Senator Morris, et al, would be easily adaptable to Arkansas' sentencing law. The bill sets flat sentences for the different classes of felonies in Illinois, allowing the judge to slightly decrease or increase the sentences for mitigating or aggravating circumstances. There is no possibility of parole, but there is time off for good behavior, or "good time". The judge may also suspend or place offenders on probation, called "mandatory supervision" in the Bill. S. B. 1885 also provides for extended flat-time terms for repeat offenders, with some small latitude in increasing or decreasing the sentences. Provisions for probation, concurrent and consecutive sentences are similar to current Arkansas law.

Below are tables showing the determinate sentences the bill would impose on dangerous or repeat offenders under the Illinois bill:

FELONY SENTENCES

<u>CLASS</u>	<u>SENTENCES</u>
Murder, Aggravated	Death, or Life imprisonment
Murder, Non-Aggravated	25 years, <u>+</u> 5 years
Class 1 Felony	8 years, <u>+</u> 2 years
Class 2 Felony	5 years, <u>+</u> 2 years
Class 3 Felony	3 years, <u>+</u> 1 year
Class 4 Felony	2 years, <u>+</u> 1 year

EXTENDED TERMS DANGEROUS REPEAT OFFENDERS

<u>CLASS</u>	<u>SENTENCES</u>
Class 1 Felony	15 years, <u>+</u> 3 years
Class 2 Felony	9 years, <u>+</u> 2 years
Class 3 Felony	6 years, <u>+</u> 2 years
Class 4 Felony	4 years, <u>+</u> 1 year

Dr. David Fogel, the architect of the Illinois Flat Time sentencing proposal above had this to say about his proposal:

"Our proposed system offers the offender a set date for release from 'day one' of his incarceration. He knows that he can cut his sentence in half by good behavior. . .giving him a high stake in law-abiding conduct. He can participate in education, training and other service if he chooses to -- but his release date will not vary in either case. Similarly, after release he is considered a free man -- he may choose to go it alone, or else avail himself of a wide range of services. In short, the proposed system is impartial, non-discretionary, definite, and volitional."

Testimony Prepared for House Judiciary Committee II of the Illinois General Assembly, by Dr. David Fogel, Executive Director, Illinois Law Enforcement Commission, September 11, 1975.

The following chart shows in condensed form the advantages Dr. Fogel expects to result from adoption of his program:

CURRENT AND PROPOSED STANDARDS CONTRASTED BY ISSUE

<u>ISSUE</u>	<u>CURRENT</u>	<u>PROPOSED</u>
<u>Prison Sentences</u>	Highly variable--minimum and maximum represent a wide range	Judicial discretion to modify flat-time sentences by + 20 percent in most cases
<u>Plea Bargaining</u>	Great abuse - no standards no visibility, no review-ability	Use limited, because of mandatory pre-sentence investigation and record of reasons for sentence
<u>Parole Release</u>	Arbitrary, a cause of inmate unrest	Abolished - All offenders released at expiration of sentence minus good time
<u>Services to Inmates (Vocational/Academic, etc.)</u>	Inmate service use is distorted by their need to "con the board"	Services will be available but use will not affect release
<u>Cost-release supervision of offenders</u>	Parole officers ineffectively supervise a large number of parolees while experiencing a police/helper role conflict	Parole is abolished - Services (like employment assistance) are provided by a state funded agency without sanctions for non-use.

This chart is taken from Dr. David Fogel's testimony before the Illinois General Assembly House Judiciary Committee II on September 11, 1975.

Determinate Sentencing: California's Proposals

Bill #1. The California Legislature has considered three bills that present different forms of determinate sentencing. The first is S. B. 1880 by Senator Richardson, which sets flat sentences for each crime with no margin for increasing or decreasing the sentence. The bill amends the present law that sets minimum-maximum penalties and makes sentences determinate and exact. For example, Section 11363 of the California Health and Safety Code presently prescribes a penalty of one to ten years for cultivation of peyote. Senator Richardson's bill amends that section to read, "Every person who plants, . . . peyote . . . shall be punished by imprisonment in the state prison for a period of five years."

Since California law does not categorize crimes into classes of felonies, Senator Richardson's bill amends each section of the criminal code to provide a specified penalty for each crime. Felonies not given a new, specific punishment are all punishable by three (3) years imprisonment.

This bill would eliminate parole and fines as punishment for felonies, except for corporations. It would prescribe multiplied sentences for each subsequent conviction of any felony until the conviction of a fourth felony at which time imprisonment would be for life.

Bill #2. The second proposal is S. B. 42, By Senators Nejedly and Way, as amended on April 22, 1976. This bill substitutes for the indeterminate sentence a system whereby the judge selects a term of imprisonment from three statutory choices, with a new state agency administering revised provisions relating to sentencing, good time credit and parole; and more specifically the changes made would include the following:

Under existing law, felony crimes are punishable by various specified maximum and minimum periods of imprisonment in the state prison, or, in cases where the period of imprisonment is not specified, by imprisonment not exceeding five (5) years with a minimum of six (6) months; and in cases where a minimum is specified without a maximum, the maximum is life. This bill would revise such provisions to specify for numerous crimes fixed alternative sentences such as 2, 3, or 4 years; or 3, 4, or 5 years; or 5, 6, or 7 years, and to provide for an alternative of sixteen (16) months or two (2) or (3) years where the terms are not otherwise prescribed.

Under existing law the judge in sentencing a convicted person to imprisonment in a state prison is prohibited from fixing the term of imprisonment. Under this bill the judge would choose from among the three available

alternatives specified for the various felony crimes. This bill would provide various procedures to be followed by the trial judge in sentencing, including the statement of reasons for his sentence choice, and informing the defendant that generally he may be on parole for one (1) year after his sentence expires.

Under existing law inmates receive good behavior credit according to a specified formula. This bill would provide for the granting of a one-third (1/3) sentence reduction for good time and provide procedures for the denial of such credit.

Under existing law, prisoners are eligible for parole after serving the minimum, or one-third (1/3) of the minimum term prescribed by law, as specified, and a prisoner may be on parole until the expiration of the maximum term of imprisonment for the crime he committed. Under this bill prisoners would, in the absence of waiver for good cause, be on parole for one (1) year after the expiration of the prescribed sentence. Time served in prison after parole revocation would be limited to six (6) months or the end of the one (1) year period computed from the time parole began, whichever is sooner.

Under existing law prisoners after being on parole for two (2) years, may be determined to be rehabilitated and discharged. Under this bill, all prisoners paroled would be discharged upon successful completion of parole or after such one (1) year.

Bill #3. The third proposal is from Assemblymen Torres and Alatorre, in the form of Assembly Bill No. 2311. This bill would establish a Commission on Criminal Sanctions, which would establish a schedule which would provide fixed, determinate sentences to be served without provision for fine, probation, suspension of sentence or parole for every offense which is a felony.

The schedule of terms would reflect the seriousness of the offense and would be adjusted appropriately for offenders who were armed with or used deadly weapons during the crime. The terms fixed by the commission would be within the range of a minimum of zero and a maximum of the national median for time served for each offense as determined by the commission from available statistics. For any crime for which statistics are not available, the median for similar offenses shall be used as the ceiling within which the commission shall set the terms. Repeat offenders would be punished under a revised schedule of increased penalties.

Fines, suspension of sentence, or probation will not be allowed except for specified fines for corporations and other defendants which are not natural persons.

The Minnesota Proposal

Minnesota has also proposed a system of determinate sentencing. H. F. 1865 provides that the convict shall serve the determinate sentence provided by law and shall not be paroled before the expiration of the sentence except that the sentence may be reduced by earned good time. The bill has replaced the minimum-maximum form of sentences with specific sentences with an exact number of years. Where the punishment for a crime is not spelled out, H. F. 1865 imposes a flat two (2) year sentence for felonies and maximum sentences of one (1) year and ninety (90) days for misdemeanors.

The bill further provides that the court may increase or decrease the definite sentence by up to fifteen (15) percent and the court is to state the reasons in writing for doing so. The increase and decrease is to allow for aggravating and mitigating circumstances. Sentences that are increased or decreased by up to fifteen (15) percent may be appealed to the Minnesota Supreme Court for review. That court may dismiss the appeal, remand, affirm, reduce or vacate the sentence.

The trial court may not suspend or put on probation any offender where he has been twice convicted of using a gun, or has been convicted three (3) times of a felony in the last ten (10) years.

CONCLUSION

Arkansas law can be amended to replace minimum-maximum sentences with specific, flat-time sentences. This can be done in one of two ways. The first way would be to go through the statutes and assign a certain penalty to each crime. A second way would be to establish a specific sentence for each class of felony and misdemeanor. Instead of a broad range of years to choose from, each class of felony and misdemeanor would have one specific penalty. Of course, there are many crimes under Arkansas Statutes that are not codified in the Criminal Code, and sentences would have to be prescribed for each of them individually since they do not fall under the Code's classification schedule of felonies and misdemeanors.

The Illinois Proposal is similar to the Minnesota and California proposals in its elimination of parole. The authors of these bills do not believe that parole is effective. Good time, however, is retained by all bills, including the Illinois proposal.

The sentences imposed under the definite sentencing schemes, including the Illinois bill, are considerably short of today's maximum sentences. The idea seems to be that the shorter sentences will be served more nearly to the end without parole than today's longer sentences. The goal is uniformity of sentence as punishment for a given crime. Less emphasis is placed on gauging rehabilitation potential for each prisoner on an individual basis. All proposals provide rehabilitative opportunities, but do not shorten sentences with parole on the basis of a prisoner's participation in prison academic and civic activities.

Attached are appendices with excerpted portions of the Minnesota Bill, the Illinois Bill, and a breakdown of the general sentencing options available to lawmakers.

APPENDIX

APPENDIX I

Minnesota Bill
H.F. 1865

Sec. 3. (DETERMINATE SENTENCING) After a person has been convicted of a felony and sentenced to imprisonment, the court shall immediately place that person in the commissioner's custody. That person shall serve the determinate sentence provided by law for the crime of his conviction and he shall not be paroled or otherwise released from the correctional institution wherein he is confined until that determinate sentence expires, except as is provided in section 8 of this act, and except as his sentence is reduced by any good time earned.

Sec. 12. Minnesota Statutes 1974, Section 609.03, is amended to read:

609.03 (PUNISHMENT WHEN NOT OTHERWISE FIXED.) If a person is convicted of a crime for which no punishment is otherwise provided he may be sentenced as follows:

- (1) If the crime is a felony, to imprisonment for two years; or
- (2) If the crime is a gross misdemeanor, to imprisonment for not more than one year or to payment of a fine of not more than \$1,000 or both; or
- (3) If the crime is a misdemeanor, to imprisonment for not more than 90 days or to payment of a fine of not more than \$300 or both; or
- (4) If the crime is other than a misdemeanor and a fine is imposed but the amount is not specified, to payment of a fine of not more than \$500, or to imprisonment for a specified term of not more than six months if the fine is not paid.

Sec. 13. Minnesota Statutes 1974, Section 609.10, is amended to read:

609.10 (SENTENCES AVAILABLE.) Subdivision 1. Upon conviction of a felony and compliance with the other provisions of this chapter the court, if it imposes sentence may, unless the sentence is to an extended term of imprisonment, increase or decrease the statutory time period of the sentence by up to fifteen (15) percent. If the length of the sentence imposed is increased or decreased, consecutive sentences imposed for multiple offenses, or an extended term of imprisonment is imposed, the sentencing court shall state the reasons for the increase, decrease, imposition of consecutive sentences, or imposition of an extended term in a memorandum accompanying the imposition of sentence.

Subd. 2. An appeal from the district court to the supreme court of the increased or decreased sentence or consecutive sentences or an extended term imposed may be filed by a defendant.

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- (4) If the crime is other than a misdemeanor and a fine is imposed but the amount is not specified, to payment of a fine of not more than \$500, or to imprisonment for a specified term of not more than six months if the fine is not paid.

Sec. 13. Minnesota Statutes 1974, Section 609.10, is amended to read:

609.10 (SENTENCES AVAILABLE.) Subdivision 1. Upon conviction of a felony and compliance with the other provisions of this chapter the court, if it imposes sentence may, unless the sentence is to an extended term of imprisonment, increase or decrease the statutory time period of the sentence by up to fifteen (15) percent. If the length of the sentence imposed is increased or decreased, consecutive sentences imposed for multiple offenses, or an extended term of imprisonment is imposed, the sentencing court shall state the reasons for the increase, decrease, imposition of consecutive sentences, or imposition of an extended term in a memorandum accompanying the imposition of sentence.

Subd. 2. An appeal from the district court to the supreme court of the increased or decreased sentence or consecutive sentences or an extended term imposed may be filed by a defendant.

APPENDIX I

Minnesota Bill
H.F. 1865

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- (3) If the crime is a misdemeanor, to imprisonment for not more than 90 days or to payment of a fine of not more than \$300 or both; or
- (4) If the crime is other than a misdemeanor and a fine is imposed but the amount is not specified, to payment of a fine of not more than \$500, or to imprisonment for a specified term of not more than six months if the fine is not paid.

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609.10 (SENTENCES AVAILABLE.) Subdivision 1. Upon conviction of a felony and compliance with the other provisions of this chapter the court, if it imposes sentence may, unless the sentence is to an extended term of imprisonment, increase or decrease the statutory time period of the sentence by up to fifteen (15) percent. If the length of the sentence imposed is increased or decreased, consecutive sentences imposed for multiple offenses, or an extended term of imprisonment is imposed, the sentencing court shall state the reasons for the increase, decrease, imposition of consecutive sentences, or imposition of an extended term in a memorandum accompanying the imposition of sentence.

Subd. 2. An appeal from the district court to the supreme court of the increased or decreased sentence or consecutive sentences or an extended term imposed may be filed by a defendant.

Subd. 3. On appeal pursuant to subdivision 2 the supreme court may review the sentence imposed to determine whether the sentence is inconsistent with statutory requirements, is unjustifiably disparate in comparison with cases of a similar nature, or is excessive, unreasonable or inappropriate under the circumstances. This power shall be in addition to all other powers of review presently existing or hereafter conferred by law. Upon consideration of the appeal, the supreme court may dismiss the appeal, affirm, reduce, vacate, or set aside the sentence imposed, remand the case and direct the entry of an appropriate sentence or order, or direct such further proceedings to be had as may be required under the circumstances. The supreme court shall state the reasons for its actions except when the appeal is dismissed or the sentence is affirmed.

Section 14. Minnesota Statutes 1974, Section 609.135, Subdivision 1, is amended to read:

609.135 (STAY OF IMPOSITION OR EXECUTION OF SENTENCE.) Subdivision 1. Except as herein provided, any court may stay imposition or execution of sentence and place the defendant on probation with or without supervision and on such terms as the court may prescribe. The court may order the supervision to be under the probation officer of the court, or, if there is none and the conviction is for a felony, by the commissioner of corrections, or in any case by some other suitable and consenting person.

The execution or imposition of sentence may not be stayed:

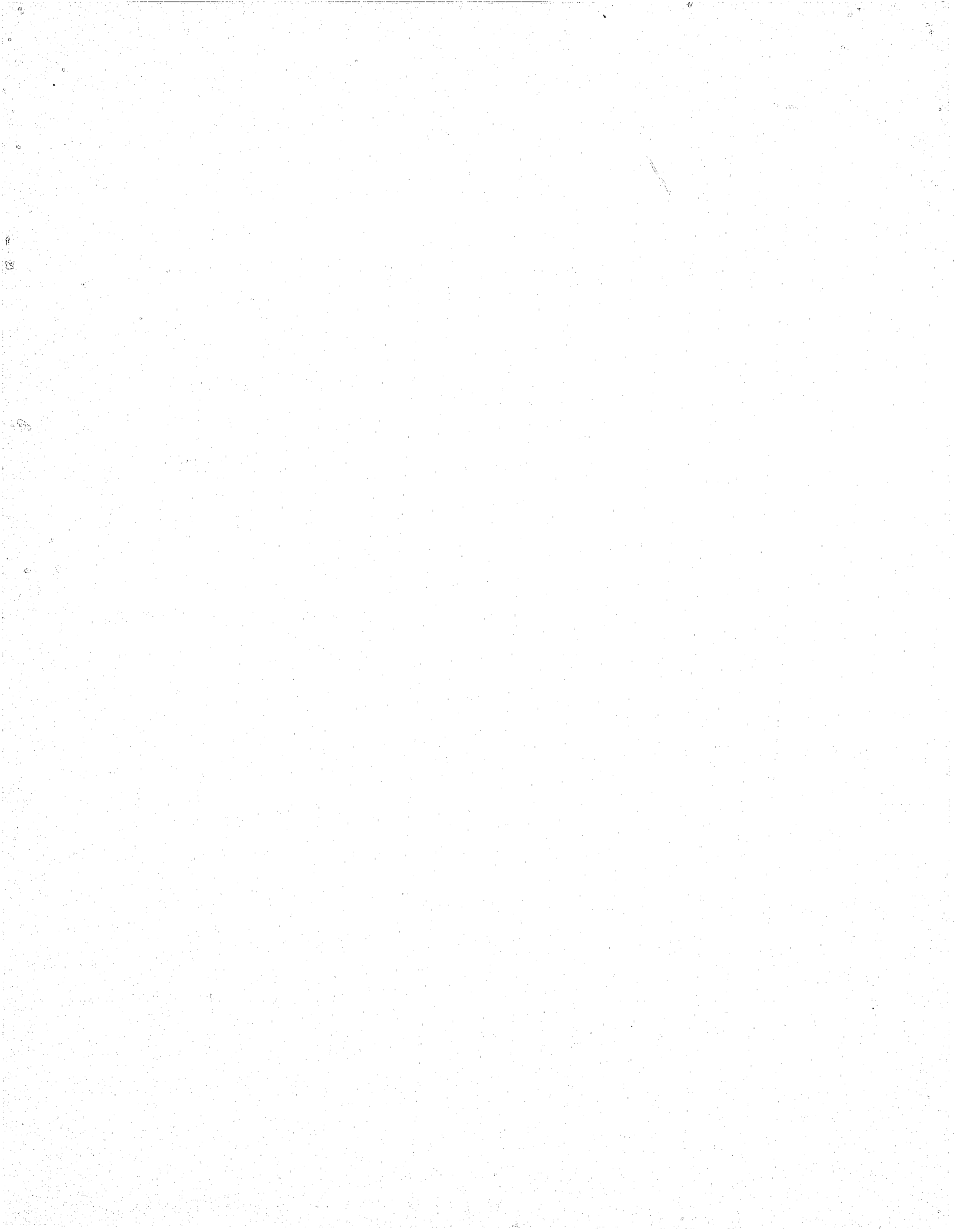
(a) upon a conviction for a violation of sections 609.185, 609.19, 609.342; or

(b) in any case in which the defendant is convicted of a second or subsequent crime against the person and during the commission of each of those crimes, he had on his person a firearm or used another dangerous weapon. Provided that each conviction must arise from a separate course of conduct; or

(c) upon the conviction of the defendant for at least his third felony violation within a ten (10) year period, if the violations arose out of at least three (3) separate courses of conduct; provided that

(1) at least one of the felony violations was a crime against the person; or

(2) in the commission of at least one of the felonies the defendant had on his person a firearm or used another dangerous weapon.



Section 15. (EXTENDED TERM.) Subdivision 1. An extended term hearing shall be held in any case where the imposition or execution of sentence is not permitted to be stayed. An extended term of imprisonment may be imposed if:

(1) Notice is served on the defendant or on his attorney advising him of the hearing at least 14 days prior to the hearing; and

(2) A summary hearing, at which the defendant is entitled to be heard on the issues raised and to be represented by counsel, is held pursuant to the notice to consider evidence for and against the imposition of an extended term of imprisonment; and

(3) The court finds:

(a) that the defendant in the commission of the felony for which he is presently being sentenced inflicted on another death or permanent or protracted loss of the function of any bodily member or organ; or

(b) that the defendant has been convicted of at least three felony offenses within a ten year period, including the felony violation giving rise to the hearing, if the violations arose out of at least three separate courses of conduct; provided that

1. at least one of the felony violations was a crime against the person; or

2. in the commission of at least one of the felonies the defendant had on his person a firearm or used another dangerous weapon.

The provisions of this clause shall apply if the prior convictions occurred in the state or were for similar crimes prosecuted in another state or federal court.

If an extended term of imprisonment is imposed, the court shall impose a sentence of a determinate number of years established for the felony for which the defendant is presently being sentenced and not more than three times that term.

ILLINOIS BILL
SENATE BILL 1885

(Ch. 38, par. 1005-8-1)

Sec. 5-8-1. Sentence of Imprisonment for Felony. (a) A sentence of imprisonment for a felony shall be a determinate sentence set by the

court under this Section according to the following limitations:

(b) Except as provided in paragraphs (a)(2) and (a)(3) of Section 5-5-3.2 of this Code, a defendant convicted of a felony offense and sentenced to a term of imprisonment shall have that term set as follows:

(1) for murder, the term shall be:

(A) Death or life imprisonment, if the offense was a murder committed in the circumstances set forth in Section 5-8-1A of this Code, with sentence to be imposed and reviewed as provided in that Section;

(B) Life imprisonment, if the offense was a murder not involving the circumstances set forth in Section 5-8-1A of this Code, but with respect to which the court finds:

- (i) The offense was accompanied by exceptionally brutal or heinous behavior, indicative of wanton cruelty; and
- (ii) The offender otherwise merits imprisonment for an extended period as measured by the standards set forth in paragraphs (a)(2) and (a)(3) of Section 5-5-3.2 of this Code.

(C) 25 years, with up to 5 years added or subtracted for aggravating or mitigating circumstances in all other cases.

(2) for a Class 1 felony, the term shall be 8 years, with up to 2 years added or subtracted for aggravating or mitigating circumstances.

(3) for a Class 2 felony, the term shall be 5 years, with up to 2 years added or subtracted for aggravating or mitigating circumstances.

(4) for a Class 3 felony, the term shall be 3 years, with up to 1 year added or subtracted for aggravating or mitigating circumstances.

(5) for a Class 4 felony, the term shall be 2 years with up to 1 year added or subtracted for aggravating or mitigating circumstances. Such sentence shall be served under the supervision of the Bureau of Community Safety or local correctional officials, unless the Class 4 felony is to be served consecutively or concurrently with any other felony.

(c) Offenders subject to paragraphs (a)(2) and (a)(3) of Section 5-5-3.2 of this Code shall be sentenced as provided in Section 5-8-2.

(d) The court may reduce or modify, but shall not increase the length of a sentence by order entered not later than thirty (30) days from the date that sentence was imposed. This shall not enlarge the jurisdiction of the court for any other purpose.

(e) All sentences to terms of imprisonment imposed pursuant to this Section shall be without possibility of parole.

(f) All sentences imposed pursuant to paragraphs (a), (b), or (c) of this Section, as modified by paragraph (d) of this Section shall be subject to review....

Sec. 5-8-2. Extended Term - Dangerous or Repeat Offenders. (a) Whenever the court,... finds that a felony offender should serve an extended term of imprisonment, the following schedules of sentences shall be applicable:

(1) For the conviction of a Class 1 felony, the term of imprisonment shall be fifteen (15) years, with up to three (3) years added or subtracted for aggravating or mitigating circumstances;

(2) For the conviction of a Class 2 felony, the term of imprisonment shall be nine (9) years, with up to two (2) years added or subtracted for aggravating or mitigating circumstances;

(3) For the conviction of a Class 3 felony, the term of imprisonment shall be six (6) years, with up to two (2) years added or subtracted for aggravating or mitigating circumstances.

(4) For the conviction of a Class 4 felony, the term of imprisonment shall be four (4) years, with up to one (1) year added or subtracted for aggravating or mitigating circumstances.

APPENDIX II

Note: For purposes of simplification, the paper states that all states have some form of indeterminate sentencing. What follows is a more detailed breakdown of sentencing approaches used throughout the country. The paper used "indefinite sentence" to mean the lack of a flat-time sentencing approach.

*1) Definite Sentence: No maximum or minimum; sentence could be set by statute or court; a limited amount of flexibility could be provided by deduction of good time credit.

2) Maximum and Minimum Limits Set by Statute, Court Sets Sentence Within Statutory Limits: This approach followed by several states, including Colorado. Most of these states allow good time deductions from minimum sentence. Parole release is usually not possible until expiration of minimum term (less good time).

3) Maximum and Minimum Limits Set by Statute, Court Sets Sentence Within Statutory Limits, Except that Court is Restricted on the Length of the Minimum Sentence: This approach is very similar to 2) above except that the court may impose a minimum not to exceed a certain proportion of the maximum (e.g., one-third or one-half.)

4) Either Maximum or Minimum Sentence Set by Statute, With the Other End of the Sentence Set by the Court: If the minimum is set by statute, the court's authority extends only to the determination of the maximum period of incarceration. The parole board may fix a release date after completion of the minimum sentence or sooner, if so provided by law. Good time may be allowed and in some jurisdictions applies to the minimum sentence and in others to the maximum. If the maximum sentence is set by statute, the court's discretion extends only to the determination of the minimum sentence. The parole board then has discretion between completion of the judicially-imposed minimum and statutory maximum, although eligibility for release after completion of a certain portion of the minimum term may be provided by law. Again good time may be allowed, with a difference among the states which have this provision as to whether good time is deducted from the minimum or maximum sentence.

5) Maximum and Minimum Sentence Set by Statute: The court's only function is the determination of guilt. The paroling authority determines release within the statutory sentence limits, although the statutes may provide that an offender is eligible for parole after completion of a specified portion of the statutory minimum. Good time may also be allowed under this approach, applying to the minimum sentence in some jurisdictions and to the maximum sentence in others.

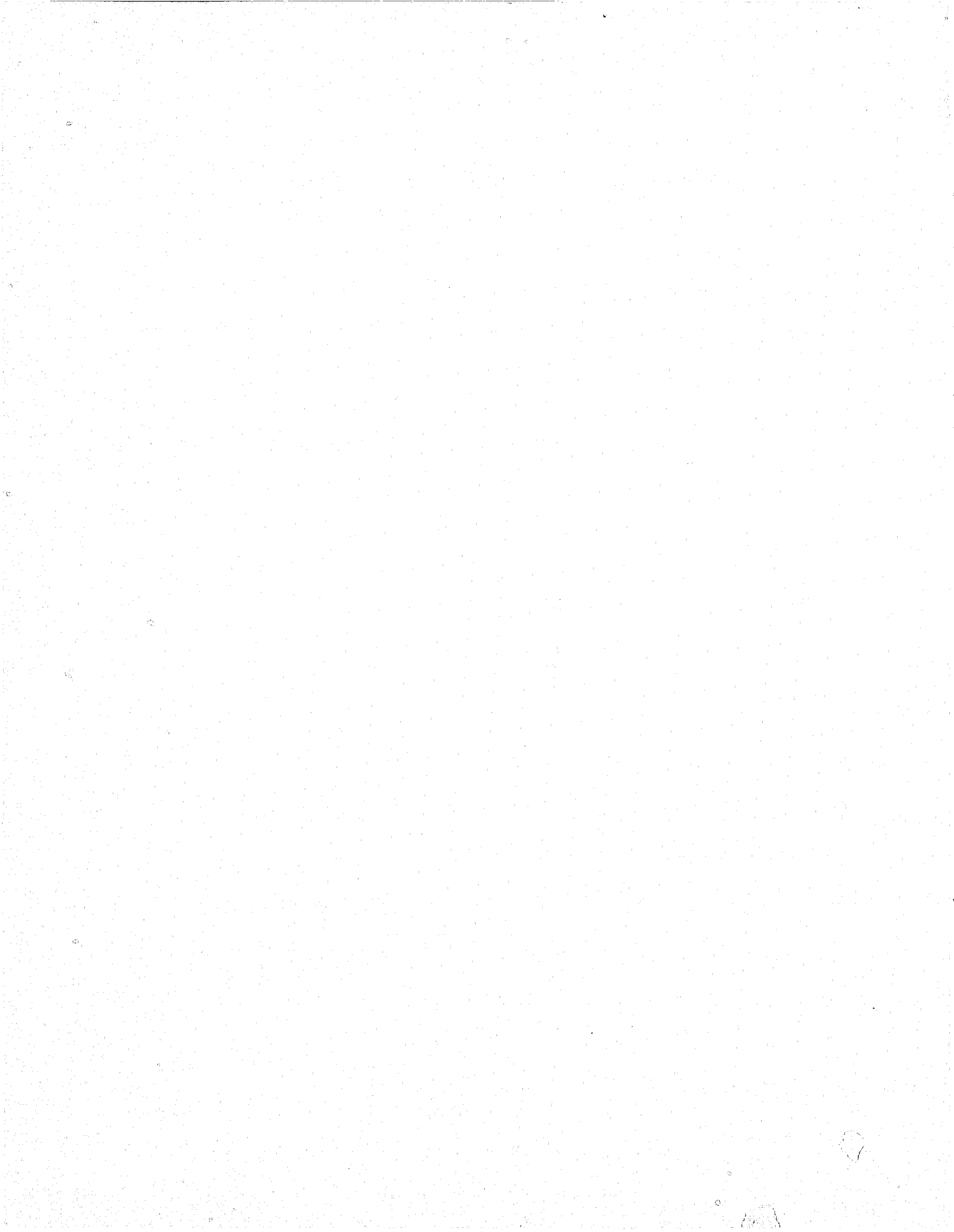
6) Maximum Sentence Set by Statute, No Minimum: As in the preceding approach, the court's function is limited to a determination of guilt. The paroling authority fixes the minimum sentence by determining the release date. Good time allowances apply to the maximum sentence.

It should be noted that 2) through 6) above do not apply to capital crimes or certain others where life imprisonment is the penalty. There may be other crimes as well, such as armed robbery, or multiple convictions for which a specified term of confinement is provided by law before an offender is eligible

for release. A number of states provide that an offender may be considered for parole release after a specified number of years of a life sentence has been served. In others, the life term offender may be considered for commutation of sentence after serving a specified number of years.

Progress Report of the Legislative Council Criminal Code Committee on Sentencing of Criminal Offenders, dated November 21, 1961.

*This is the kind of sentencing discussed in this paper.



END