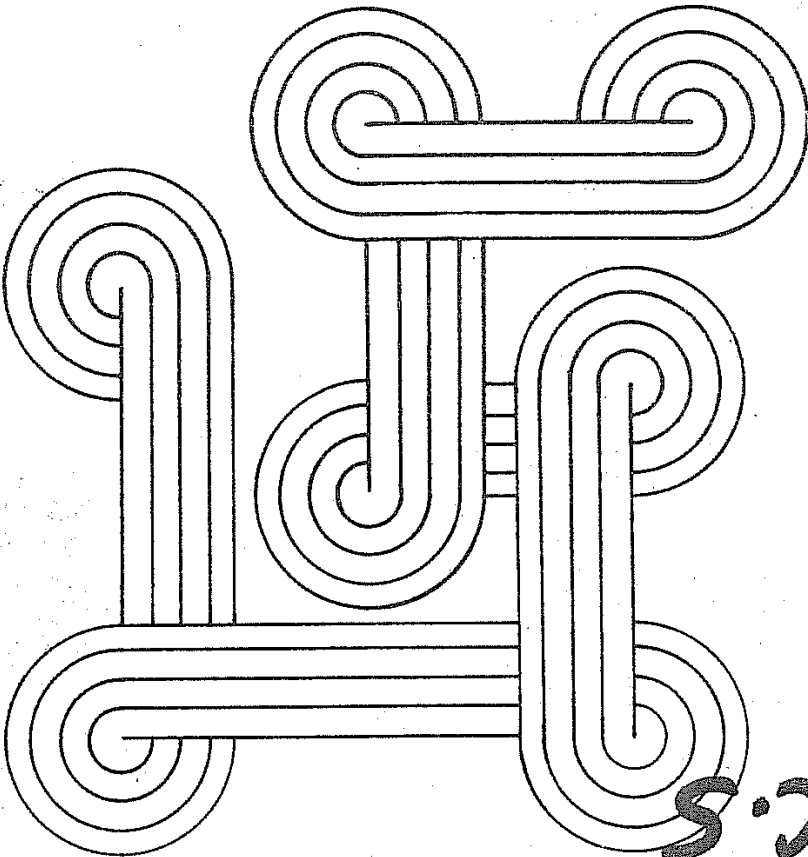


INTERNATIONAL CRIMINAL JUSTICE DOCUMENT TRANSLATION

Short-Term Prison Sentences and the Possibilities
for Their Replacement Through Other Sanctions



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National Institute of Law Enforcement and Criminal Justice
Law Enforcement Assistance Administration
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FOREWORD

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Table of Contents

	<u>Page Number</u>
PART ONE: IMPRISONMENT	I
I. THE PORTRAIT OF IMPRISONMENT	I
A. Interim Summary of Sentencing	3
B. Employment of Sentences of Imprisonment in Connection with Specific Categories of Offenses	4
C. Prison Sentences Being Served in Germany on a Particular Day	6
D. Use of Imprisonment Under Existing Law — As Influenced by Efforts at Reform	6
E. Unanswered Questions	6
II. CRITICISM OF IMPRISONMENT	6
A. Effects of Imprisonment on Recidivism — Statistical Investigations	7
1. The Material in the Federal Office of Statistics (<u>Statistisches Bundesamts</u>)	7
2. Other Statistical Material	8
3. Results	9
a. Correlation of the Sanctions for First, Second and Third Offenses	9
b. Effectiveness of the Sanctions as Regards Recidivism	10
c. Offenders with Long Records of Convictions	13
d. Length of Time Between Punishment and the Next Offense	13
e. Effectiveness of Short-Term Sentences According to Groups of Offenses and Characteristics and Occupation of the Offender	14
(1). Recidivism in Relation to the Offender's Age	15
(2). Recidivism in Relation to the Offender's Sex	16
(3). Recidivism in Relation to the Offender's Marital Status	16
(4). Recidivism in Relation to the Offender's Occupation	16
4. Calculation of the Significance of the Divergent Findings by the Chi-Square Method	17
5. Findings: Comparison of the Effectiveness of the Various Sanctions	17
B. Criticism of Imprisonment — Other Points of View	18
1. The Problem of Short-Term Imprisonment	18
2. The Harmful Effects of Longer-Term Imprisonment	19

a.	Isolation	19
(1).	Solitary Confinement	19
(2).	Ordinary Confinement	20
b.	Social Degradation	20
c.	Jeopardization of Employment	20
d.	Punishment of the Offender's Relatives	21
3.	The Favorable Effects of Longer-Term Imprisonment	21
4.	The Effects of Short-Term Imprisonment	22
a.	Harmful Effects	22
b.	Positive Effects? — Comparison with Long-Term Imprisonment	23
5.	Should Short-Term Imprisonment Be Retained?	23
	PART TWO: POSSIBLE SUBSTITUTES FOR SHORT-TERM IMPRISONMENT	25
I.	EXPANSION OF SUSPENDED SENTENCE WITH PROBATION	26
II.	PERIOD-OF-TIME FINES	27
III.	PROBATION SERVICE — CITIZENSHIP TRAINING	30
IV.	LIMITING RANGE OF CRIMINAL LAW	32

SHORT-TERM PRISON SENTENCES AND THE POSSIBILITIES FOR THEIR
REPLACEMENT THROUGH OTHER SANCTIONS

(Die kurzfristige Freiheitsstrafe und die Möglichkeiten zu ihrem Ersatz durch andere
sanktionen) by Dieter Stenner

A SUMMARY

PART ONE - IMPRISONMENT

I. THE PORTRAIT OF IMPRISONMENT

The German penal code of 1871 is one of the great penal codifications of the 19th Century. Basically, it goes back to the Prussian penal code of 1851, which in turn was strongly influenced by the Bavarian penal code of 1813, which was drawn up by Feuerbach. It was also influenced by the code penal of 1810.

The leading idea of the Prussian (1851) and German (1871) penal codes was the citizen's freedom with respect to the state, the offender's responsibility for his own actions, and the rejection of police-state and pedagogical influence.

Punishment was intended as retribution and atonement for the offense. No effort was made to educate the offender. Punishment was harsh, and if its harshness served to deter others from committing the same crime, such deterrence was a byproduct, not the main purpose.

In an effort to humanize criminal justice, imprisonment was introduced in Germany toward the end of the 16th century as a substitute for capital punishment. However, doubts soon arose as to its effectiveness, particularly because of the impression produced by the phenomenon of recidivism. The prison reforms of the 19th century, which brought new ideas and methods, greater financial efforts, and more modern institutions and prison systems, also necessarily resulted in a more optimistic way of looking at this form of punishment.

Imprisonment stood at the center of the punishment system of the penal code of 1871. In order to provide for the greatest amount of differentiation possible, and to make the punishment fit the crime as fairly as possible, four different forms of imprisonment were provided:

- o Penitentiary sentences from one to 15 years or for life. This was the severest form, and it was intended as punishment for the most serious crimes and also for multiple convictions for crimes of medium seriousness.
- o Prison sentences of from one day to five years - or ten years in cases of multiple convictions. This was a punishment of medium severity, not entailing any personal disgrace.
- o Confinement sentences from one day to 15 years. This punishment did not entail personal disgrace and was intended for political opponents of the government or offenders whose motives were recognized as honorable.
- o Jail sentences from one day to six weeks - or three months in cases of multiple convictions. This was a mild punishment not entailing personal disgrace and was intended for those convicted of the least serious crimes.

The penal code of 1871 also called for fines and for the death penalty for murder. By far the most important punishment was imprisonment, however, mostly as a substitute for the death penalty but also as an alternative to a fine. According to E. Rosenfeld, imprisonment sentences averaged 70 percent of all sentences imposed from 1882 to 1887, for example, and 58 percent of all sentences during that period were for imprisonment for three months or less.

With the rapid development of Germany as an industrial and commercial nation at the end of the 19th and the beginning of the 20th centuries, a far-reaching change came in the conditions prevailing, and many attitudes also changed.

Since the penal code of 1871 was not capable of coping with this sudden change, a considerable amount of supplementary legislation has been passed, and the sentencing practices of the courts have altered during the past 70 years in an effort to adapt to the altered situation.

Related to this was the development of an attitude giving greater emphasis to social thinking in regard to punishment. The reform movement, under the leadership of Franz von Liszt, called for greater consideration to be given to the individual offender and the effects of punishment. Since the living, human offender rather than his action receives the punishment, the sentence should be fitted to the offender, with the goal of reforming and educating him and reintegrating him into human society. Detering the chance of offender and protecting society against the incorrigible are additional goals.

From this fundamental concept arose the following demands for reform:

- o Elimination or at least a diminishment in the number of sentences to imprisonment, particularly short-term imprisonment.
- o Elimination of the penitentiary, especially because resocialization is difficult.
- o Elimination of the consequences of punishment involving personal disgrace.
- o Intensification of efforts at resocialization in the corrections system.

Because of these reform efforts, particularly in regard to the elimination or diminishment of sentences of imprisonment, the number of imprisonment sentences fell off strongly over the years, while the number of fines increased proportionately. Thus in 1882, 69.1 percent of all sentences imposed were for imprisonment and 25.3 percent called for fines, whereas 30.64 percent of all sentences in 1962 were for imprisonment and 69.36 percent called for fines--in effect reversing the positions of the two types of sentences in a period of 80 years. (The suspended sentence did not appear until 1935; if suspended sentences were taken into consideration, the percentages for 1966 would be 25.02 percent imprisonment and 62.73 percent fines--contrasting even more drastically with the 1882 percentages.)

The 1953 amendment to the Criminal Law Statute introduced into the penal code the possibility of giving a suspended sentence with probation for the purpose of cutting down the number of sentences of imprisonment, and particularly short-term imprisonment. By Paragraph 23 of the penal code, complete remission of the remaining portion of an imprisonment sentence is possible for good behavior during a probationary period. Actually, such sentences had been imposed some time before this was done.

The idea of the suspended sentence began to take hold in Germany toward the end of the 19th century as part of the reform movement, because of the increasing conviction that short-term imprisonment was ineffective and unsound. It first appeared in the form of the so-called conditional sentence, which meant the conditional suspension of a sentence of imprisonment.

After initial strong resistance, the suspended sentence was accepted and used by the courts to a large extent. By 1932 a similar measure, the so-called conditional sentence, was generally recognized and established. In 1954, 33.94 percent of all sentences

were suspended sentences with probation; by 1959, the rate had increased to 43.35 percent. Then a gradual decrease set in, and by 1966, only 35.9 percent of all sentences were suspended sentences with probation. However, the number of imprisonment sentences still being carried out remains quite high (about 62 percent), and this shows that the suspended sentence with probation in its present form does not suffice to bring about a further reduction in the number of short-term sentences.

The practice of releasing prisoners conditionally after they have served two-thirds (but at least three months) of their prison sentences, in accordance with paragraph 26 of the penal code, could be regarded as a means of helping to do away with imprisonment. The subjects can be given unconditional freedom on good behavior during a probationary period. However, this is only a means of shortening the time spent in prison and does not do away with imprisonment. Furthermore, it probably was not intended to accomplish that purpose.

By the Decree on Property Penalties and Fines of 1924, fines took the place of imprisonment to a certain extent. The primary punishment here is the fine; if he does not pay the fine, the offender can be imprisoned. Here the court is faced with the question as to whether a mere fine suffices to accomplish the purpose of the punishment, and there have been many differences of opinion on this point. There is no uniformity of opinion on the purpose of the punishment, and the law (Paragraph 27b of the penal code) does not define it accurately. In any event, this provision is not very significant, since the fines involved are quite small.

A. INTERIM SUMMARY OF SENTENCING

As a result of the increasing use of fines by the courts, the laws on fines, and the institution of suspended sentence with probation, the proportion of imprisonment sentences to the total of all punishments dropped off continuously. Whereas prison sentences were imposed for 228,136 people, or 69.1 percent of all cases in 1882; prison sentences were served by 111,195 people, or only 21.5 percent of all cases in 1964.

Taking 1964 as a typical year in recent times, 2.98 percent of all sentences of imprisonment in that year were to the penitentiary, 94.63 percent were to prison, 0.74 percent to confinement, and 1.65 percent to jail. This year was typical of the period from 1961 to 1964, and thus it can be seen that prison sentences dominate the picture.

Since sentences of imprisonment today constitute from 19.5 to 21.5 percent of all sentences, it can be seen that the efforts to cut back sentences of imprisonment over the centuries have not been entirely successful. However, the reform efforts were directed primarily at short-term prison sentences, and, therefore, it is of interest to determine what has been accomplished in that area.

Since no firm time limitation for short-term sentences has been agreed on in the literature, they will be dealt with as falling into three categories, where the available material permits: up to one month, up to three months, and up to nine months.

The first extensive investigations regarding short-term sentences were made by E. Rosenfeld. He found that in Germany from 1882 to 1887, on the average, 70 percent of all sentences were for imprisonment and 53 percent of all such sentences were for less than three months. Only 23 percent of all imprisonment sentences and only 16 percent of the total sentences were for more than three months. From this Rosenfeld concluded that the entire system of punishments of the penal code should be done away with. Short-term sentences dominated the punishment system, so the continued existence of short-term sentences was not justified.

Today the situation has changed. Now only 25 percent of all sentences are sentences of imprisonment and only 13.4 percent are for short-term imprisonment, so they no longer dominate the punishment system, but the imprisonment picture is nevertheless dominated by short-term sentences up to one month, or at least up to three months.

However, while the number of prison sentences of three months or less has been reduced to 13.4 percent of all sentences, that figure nevertheless represents a total of 69,633. Since the total number of sentences passed in Germany in the past 82 years has increased from 329,968 to 516,895, that figure of 69,633 seems extraordinarily high in view of the 70-year struggle against short-term prison sentences. Furthermore, there has been an increasing tendency to impose short-term sentences and a falling off in the number of suspended sentences with probation in recent years.

B. EMPLOYMENT OF SENTENCES OF IMPRISONMENT IN CONNECTION WITH SPECIFIC CATEGORIES OF OFFENSES

Almost half of the total number of sentences in West Germany in 1964 were for traffic offenses, including drunken driving. For young people from 18 to 21, the traffic offenses proportion was even higher.

For purposes of this book, offenses in 1964 covered by the penal code are divided into the following categories:

- o Morals offenses, 2.1 percent of all sentences.
- o Offenses against the state, public order, and public officials' offenses, 3.63 percent of all sentences.
- o Offenses against the person, 9.82 percent of all sentences.
- o Offenses against property, 24.67 percent of all sentences.
- o Offenses dangerous to the public welfare, 2.59 percent of all offenses.
- o Traffic offenses not involving alcohol, 22.4 percent of all offenses. Traffic offenses involving alcohol, 4.86 percent of all offenses.

Fines were imposed in the great majority of cases of traffic offenses not involving alcohol. They were imposed in more than half of the cases of offenses dangerous to the public welfare (68.7 percent), offenses against the person (53 percent), and offenses against the state and public order (51.5 percent).

For the six different categories, sentences of imprisonment in 1964 were imposed as follows:

- o In morals cases, 4,882 out of 10,856 sentences, or 44.5 percent of the time, with 6.45 percent of all sentences for terms up to three months.
- o In offenses against property, 43,020 out of 127,526 sentences, or 33.59 percent of the time, with 13.5 percent of all sentences for terms up to three months.
- o In offenses against the state and public order, 5,820 out of 18,738 sentences, or 31.12 percent of the time, with 24.4 percent of all sentences for terms up to three months.

- o In offenses against the person, 13,219 out of 50,735 sentences, or 25.9 percent of the time, with 14.9 percent of all sentences for terms up to three months.
- o In offenses dangerous to the public welfare, 2,327 out of 13,426 sentences, or 17.3 percent of the time, with 12 percent of all sentences for terms up to three months.
- o In traffic offenses not involving alcohol, 4,556 times out of 116,042, or 3.93 percent of the time, with 3.72 percent of all sentences for terms up to three months.
- o In traffic offenses involving alcohol, 17,116 out of 25,122 sentences or 68.4 percent of the time, with 67.2 percent of all sentences for terms up to three months.

The above figures indicate that traffic offenses present a special problem as far as punishment is concerned, since there was such a high proportion of short-term sentences when alcohol was involved and such a low proportion when alcohol was not involved--fines were usually imposed in the latter cases. A further analysis of the figures revealed the following:

- o In 18,940 cases of endangering traffic through intoxication, sentences of up to three months were imposed 12,950 times.
- o In 1,715 cases of intoxication in connection with a traffic accident, sentences of up to three months were imposed 730 times.
- o In 4,467 cases of leaving the scene of an accident involving intoxication, sentences of up to three months were imposed 3,118 times.
- o In 16,312 cases of leaving the scene of an accident where intoxication was not involved, sentences of up to three months were imposed 1,680 times. This crime was committed almost four times as often by sober offenders as by those intoxicated, but imprisonment sentences were imposed in only about 10 percent of the former cases. In the latter cases, they were imposed about 75 percent of the time. Thus it appears that the question as to whether intoxication is involved seems to be the determining factor as far as the severity of the sentence is concerned. This attitude on the part of the courts is not defensible, because, if there is no personal injury, merely leaving the scene of an accident where intoxication is involved is not a punishable offense within the meaning of Paragraph 142 of the penal code.
- o In 6,133 cases of endangering traffic not involving intoxication, sentences of up to three months were imposed 229 times.
- o In 94,270 cases of bodily injury through negligence (the most frequent offense of all), sentences of up to three months were imposed 2,316 times. Fines were imposed in 93.37 percent of these cases, so prevention of this offense was not the primary purpose of the punishment. Rather, since negligence is involved, it is regarded as an offense involving a minor degree of guilt, and a minor punishment is imposed in retaliation. The purpose of preventing the individual from repeating this offense might also be argued as a contributing factor here, however.

C. PRISON SENTENCES BEING SERVED IN GERMANY ON A PARTICULAR DAY

On March 31, 1964, a total of 46,432 offenders were serving sentences. Of these, 8,087 were in penitentiaries, 30,942 were in prisons, 5,802 were in juvenile correctional institutions, and 1,601 were undergoing other types of imprisonment. Of the 46,432 inmates on that day, only 6,884 were serving sentences of up to three months. This, of course, is because those with longer sentences naturally remain in prison longer and therefore their number is larger.

The actual burden imposed by short-term sentences on the correctional institutions results from the extra work the institutional personnel must do because of the constant coming and going of inmates. Thus, a total of 69,633 offenders served sentences of under three months and 21,141 served sentences of up to nine months in 1964; but on March 31, 1964, only 6,884 and 12,779 inmates, respectively, of the two types were actually present in institutions.

D. USE OF IMPRISONMENT UNDER EXISTING LAW -- AS INFLUENCED BY EFFORTS AT REFORM

Sentences to prison (rather than the penitentiary) are the most frequently imposed, comprising 94 percent of all imprisonment sentences, with the short-term imprisonment sentence the most prevalent.

The courts have a tendency to impose sentences at or near the lower limit of permissible severity, thus making the milder sentence the rule rather than the exception. Furthermore, the practice of releasing an inmate on probation after he has served two-thirds of his time tends to make many sentences short-term sentences, although this does not show up in the statistics.

According to Rangol, if one leaves traffic offenses and offenses not covered by the penal code out of account, fewer people are committing crimes and misdemeanors in Germany at present than at any time in the past.

Although no definitive explanation can be given for this phenomenon, it can be said that the big swing from imprisonment to fines as the most prevalent form of punishment during the last 80 years certainly has not led to a threatening increase in criminality in West Germany.

E. UNANSWERED QUESTIONS

Fines, as a substitute for imprisonment, and suspended sentences with probation now have an assured place in the system and have great, or even dominant significance in that system. However, it must be doubted that any further reduction of the number of imprisonment sentences or the elimination of short-term sentences can be achieved by substituting any of the other punishments now available for them.

The question as to whether the lowest possible limit for imprisonment sentences has been reached, so that any further reduction in the number of such punishments would seriously weaken the system, will not be discussed at this point.

II. CRITICISM OF IMPRISONMENT

The increasing attitude of distaste for the imprisonment sentence is certainly the result of the criticism to which it has been subjected for a long time. This criticism arises primarily from doubts as to the effectiveness of imprisonment.

Whereas special attention was given in the 19th century to the idea of reforming the corrections system, the so-called modern school is examining the punishment itself, and particularly such specific forms of it as short-term imprisonment and penitentiary sentences.

If one looks for favorable and unfavorable effects of punishment of a particular duration, one may come to the conclusion that the advantages and disadvantages just about balance each other. There is also the argument, perhaps most justified at this point, that, in the long view, imprisonment certainly cannot yet be done away with. However, the situation is different with short-term imprisonment up to one, three, six, and even nine months, but there is no indication of agreement on this subject in the literature.

A. EFFECTS OF IMPRISONMENT ON RECIDIVISM — STATISTICAL INVESTIGATIONS

In order to form a critical opinion of a form of punishment, and with a view to possibly calling for its replacement by something else in the course of a criminal justice reform program, it seems that one must first gain some information about its effectiveness. One can, in effect, merely say, "Let the punishment fit the crime," but this attitude leaves out of consideration the question as to whether it is suited to the task of countering criminality or whether it has a positive effect on the person being punished.

However, such a view would make all genuine efforts at reform meaningless. If a punishment that is imposed frequently is ineffective or even harmful, as imprisonment now is, any government should be interested in improving its use and replacing it with something more suitable when possible. This is especially true because the harmful effects of this form of punishment continue into the future to a particularly high degree.

Therefore, in considering short-term imprisonment critically, the following questions need to be asked:

- o Why should short-term imprisonment sentences be done away with? Are they really ineffective or even harmful?
- o What effect does serving a short-term prison sentence have on the offender's subsequent life, especially in regard to recidivism?
- o Why are short-term sentences indispensable?

During the deliberations of the Big Criminal Law Commission (Grosse Strafrechtskommission) the demand was made that it first be determined to what extent short-term imprisonment sentences were being served as a substitute for a fine, and especially what effect a short-term sentence had on recidivism. Up to that time, no statistical data covering these questions was available.

1. The Material in the Federal Office of Statistics (Statistischen Bundesamts)

The material on the subject published by the Federal Office of Statistics, such as statistics on the administration of justice, criminal prosecutions, corrections, and probation, provides scarcely any information on these special questions. Categories of information include: nature and length of the sentence, number of previous convictions and length of time between incarcerations, as well as sources of information that have or have not proved reliable.

According to the figures of the Office of Statistics for 1964, the number of recidivists is amazingly high. For adults, not including traffic offenses, the rate was 52 percent, and the rate for traffic offenses was 32.8 percent. It is also noteworthy that the number of those with two to four previous convictions (49,688) and more than four previous convictions (43,070) are both larger than the number of offenders with one previous conviction (34,956).

Of the total number of 48,012 inmates and detainees on March 31, 1964, 38,635, or 80.5 percent, had previous convictions. Thus it can be concluded that for 80.5 percent of these inmates one or more previous convictions had no deterrent effect and did not result in reform.

Naturally, the corrections system cannot be condemned on the basis of these figures, since they say nothing about those who have not been convicted a second time; but at the International Congress for Criminology in London in 1955, the statement was made that every case of recidivism represents a failure of society in dealing with offenders. In 1889, Krohne stated that 30 percent of those who committed crimes had records of previous convictions. However, the proportion has increased since then, as the figures above show, and one must gain the impression from this that the state is in danger of losing the battle against crime.

The statistical material available up to now provides no information on the nature of the original offense, the length and nature of the first sentence, the comparative figures on the imposition of short-term imprisonment, fines as a substitute for imprisonment and suspended sentences with probation for first offenses, and subsequent offenses. Therefore, no conclusion can be drawn as to the effect of a sanction imposed for the first time, particularly a short-term sentence.

2. Other Statistical Material

Records of convictions were examined in order to investigate the effectiveness of short-term sentences and to discover differences in the effectiveness of penal sanctions according to whether the first, second or third offense was involved. Records of convictions are kept by the provincial court districts for each person born in each individual district. Each offender is assigned a page to himself which is called the Punishment Record A (Strafnachricht A). If there is more than one entry it becomes a Punishment List (Strafliste). These pages contain the names, places of residence, occupations, and marital status of the offenders and names of the offenders' parents. To these are added the nature, number, and dates of their sentencing, identification of the courts passing sentence, and information on the serving of the sentence.

The investigation was made in the records of convictions of the public prosecutor's office of the provincial court of the city of Mainz, with the permission of the Attorney General. These records cover the provincial court district of Mainz. This corresponds, at least for the period in question, to the Rheinhesen administrative district, which had 438,062 inhabitants on June 30, 1959.

Since 10 January 1881, entries have been made covering 198,368 single offenses, with 176,251 of these being expunged, leaving 22,117 still on file. Entries had been made for 218,628 multiple offenses, with 151,227 of these being expunged, leaving 67,401 still on file. The total still on file, then, is 89,518.

There is an average of about 4.2 convictions per Punishment List. Thus, with 22,117 entries for single offenses (Punishment Record A) and 16,021 Punishment Lists (with a total of 67,401 punishment entries), sentences for 38,138 people were included. Names beginning with a letter of the alphabet under which an average number of names fell were

selected for analysis. This comprised a group of 1,987 people who had been convicted one or more times.

The following were excluded from this list: reports on placing persons under the control of a trustee or guardian; on changes of name, including changes through adoption, changes in parental control, etc.; and on arrest warrants if they did not admit of definite conclusions as to the consequences of specific previous sanctions.

Not included were the actions of juvenile courts, since the present work concerns only offenses against the provisions of the penal code by adults. Offenses against the communications, weapons, and wine law and the tax regulations were not included because no imprisonment sentences were imposed under them. Also cases involving suspended sentences with probation where the probation period was still running were not considered.

Furthermore, a special analysis of the cases falling in the period between about 1910 and 1947 was necessary because the sanctions picture would have been greatly altered, particularly by the suspended sentence with probation, but also earlier, by various immunity laws. Therefore the investigation refers approximately to the period from 1953 to 1964, corresponding approximately to the length of time a sentence of imprisonment for an offense remains in the punishment record if there is no further conviction.

Thus, of the 1,987 cases selected for analysis, 994 were eliminated (169 of these because they fell in the 1910 - 1947 period and 27 because probation periods were still running). This left 993 cases to be analyzed. In order to compare the effects of short-term imprisonment, it was first necessary to differentiate fines, fines as a substitute for imprisonment, suspended sentences with probation, and imprisonment. Fines were differentiated as small — up to 250 West German marks (approximately \$100) — and large — 250 marks or more. A distinction was made between suspended sentences with probation and imprisonment; imprisonment in this work is always used to mean a sentence that is served in a correctional institution. Imprisonment was broken down into sentences of up to three months, up to six months and up to nine months. The main emphasis of this analysis will fall on these three types of sentences because it could be expected from the total West German figures that the number of longer-term sentences would fall off sharply, not leaving enough material for an analysis among the 1,987 cases selected.

3. Results

a. Correlation of the Sanctions for First, Second and Third Offenses. A total of 1,259 entries for first to third convictions was contained in 993 lists and reports. There were 884 entries for first convictions (not 993 because certain entries were not considered for analysis for reasons mentioned above in connection with first convictions, whereas the entries in connection with later conviction were included in the analysis), 255 entries for second, and 120 entries for third convictions.

Fines were the most frequent punishment, with a total of 615 entries, or 48.85 percent. Small fines, with 568 entries, far outnumbered large fines, with 47.

Fines were imposed by the courts especially (53.17 percent of the time) in first conviction cases. They were used less frequently (32.5 percent of the time) in third conviction cases. This is especially true of small fines (28.33 percent of all third convictions), while the percentage of large-fines increased somewhat (4.17 percent in third conviction cases compared to 3.93 percent in first conviction cases).

Fines as a substitute for imprisonment were imposed 14.81 percent of the time for first convictions, 11.37 percent of the time for second convictions, and 12.5 percent of the time for third convictions.

Suspended sentences with probation were imposed 17.89 percent of the time for first convictions, 17.25 percent of the time for second convictions, and 15.83 percent of the time for third convictions.

It is astonishing that the proportion of these two types of sentences does not fall off appreciably for the second and third convictions. In the case of short-term sentences, however, the proportion of such sentences increases. Imprisonment sentences of up to three months increased from 10.29 percent of the time for first convictions to 24.7 percent of the time for second convictions and to 29.17 percent of the time for third convictions.

Imprisonment sentences of from three to six months increased from 2.74 percent of the time for first convictions to 4.31 percent of the time for second convictions and to 9.17 percent of the time for third convictions.

These increases are striking, and one might conclude that short-term sentences are chiefly used when other punishments have failed - i.e., have proved to be ineffective. This is contradicted, however, by the fact that imprisonment of up to three and up to six months is imposed very often as a first sentence.

On the other hand, the number of sentences of up to nine months was very small, and there was no increase in the percentage rate of such sentences.

In summary, it can be said that the most frequent punishment was the fine, even when traffic offenses were not included. The proportion of imprisonment up to three months (15.01 percent of all sentences) was almost the same as that of suspended sentence with probation (17.63 percent) and fine as a substitute for imprisonment (13.9 percent).

For first offenses, suspended sentences with probation were imposed somewhat more frequently (159 times) than fines as a substitute for imprisonment (131 times) and imprisonment of up to three months (91 times) and up to six months (21 times).

However, it is interesting that imprisonment sentences of up to three months for second offenses (24.7 percent) were imposed more frequently than suspended sentences with probation (17.25 percent) and fines as a substitute for imprisonment (11.37 percent). For third offenses, imprisonment of up to three months (29.17 percent) was even imposed more frequently than small fines (28.33 percent).

b. Effectiveness of the Sanctions as Regards Recidivism. In all, fines were imposed 615 times, with 145 cases (23.57 percent) of recidivism. Fines of up to 250 marks were imposed 568 times, with 135 cases (23.76 percent) of recidivism. Fines of 250 marks or more were imposed 47 times, with 10 cases (21.27 percent) of recidivism. Thus, the danger of recidivism was slightly greater with a small fine than with a large one.

The following tables show recidivism rates for fines imposed for first, second, and third offenses.

RECIDIVISM RATES FOR SENTENCES OF FINES

	Total Convictions	Recidivists	Percentage Rate
<u>First Offense:</u>			
All Fines	470	86	18.3
Fines up to 250 marks	440	83	18.86
Fines of 250 marks or more	30	3	10.00
<u>Second Offense:</u>			
All Fines	106	46	43.39
Fines up to 250 marks	94	40	42.55
Fines of 250 marks or more	12	6	50.00
<u>Third Offense:</u>			
All fines	39	13	33.33
Fines up to 250 marks	34	12	35.29
Fines of 250 marks or more	5	1	20.00

Thus, the danger of recidivism is less with a large fine than with a small one. As regards recidivism, a fine as a substitute for imprisonment is an excellent punishment, but this can be said unreservedly only when this punishment is imposed for a first offense.

FINE AS A SUBSTITUTE FOR IMPRISONMENT

	Convictions	Recidivists	Percentage Rate
Total Offenses	175	46	26.29
First Offense	131	25	19.08
Second Offense	29	8	27.59
Third Offense	15	13	86.66

It can be concluded that the impression made by this punishment is no longer sufficient when it is imposed for a third offense. The small amount of money on hand to pay the fine for a third offense cannot, of course, be left out of consideration in this connection. Nevertheless, it should be emphasized that a fine as a substitute for imprisonment seems to be very effective as a punishment for a first offense.

The rate of recidivism for imprisonment sentences up to three and six months is twice and three times as high, respectively, as with the sanctions not involving imprisonment. It is striking, also, that the rate increases when these sentences are imposed for second and third offenses.

RECIDIVISM RATE FOR IMPRISONMENT SENTENCES

<u>Suspended sentence with probation:</u>	Convictions	Recidivists	Percentage Rate
Total offenses	220	49	22.27
First offense	157	35	22.29
Second offense	44	11	25.00
Third offense	19	3	15.8
<u>Imprisonment of up to three months:</u>			
Total offenses	188	105	55.85
First offense	91	45	49.85
Second offense	61	34	55.73
Third offense	36	26	72.22
<u>Imprisonment of from three to six months:</u>			
Total offenses	43	31	72.09
First offense	21	13	61.9
Second offense	11	7	63.6
Third offense	11	11	100.00

Although the figures involved in the following table are small and consequently should be treated with some reserve, it can be observed that the rate of recidivism for imprisonment sentences up to nine months is higher than that for sanctions not involving imprisonment, although not as high as that for imprisonment sentences up to three and up to six months.

RECIDIVISM RATES FOR IMPRISONMENT OF FROM SIX TO NINE MONTHS

	Convictions	Recidivists	Percentage Rate
Total offenses	15	4	26.7
First offense	12	4	33.3
Second offense	2	-	--
Third offense	1	-	--

At least for first convictions, the effectiveness of the sanctions not involving imprisonment as regards recidivism varies between 18.86 percent for small fines and 22.29 percent for suspended sentences with probation (leaving large fines, with a recidivism rate of only 10 percent, out of consideration). Thus, no definite conclusions can be arrived at from these figures as to which of these forms of punishment is preferable. At the least, the type of crime and type of offender must be taken into consideration.

Where the differences are larger, however, as was perceived in comparing punishments that involve imprisonment and those that do not, it is obviously possible to draw conclusions. Thus, at least as far as the rate of recidivism is concerned, it can be concluded that short-term imprisonment is not only inferior to the sanctions not involving imprisonment but that it must be regarded as definitely harmful.

c. Offenders with Long Records of Convictions, When the 169 cases from the years 1910 to 1947, which were originally excluded, are taken into consideration the short-term sentence situation is altered considerably.

In these lists, 1,363 punishments are imposed upon 169 people, which amounts to about eight punishments apiece. Of these 1,363 punishments, 654, or almost half, were imprisonment sentences up to six months and the recidivism rate was extraordinarily high.

Of the 89 who received sentences of up to three months for a first offense, all became recidivists and two even had more than 30 further convictions. Of the 63 who received sentences of up to three months for second and third offenses, only nine did not become recidivists, and two had from 15 to 20 further convictions.

Of the 169 individuals involved, 14 received a fine as a substitute for imprisonment for the first offense, eight received a suspended sentence with probation, and five had a portion of their sentences suspended, with probation. Two received a sentence of more than one year for the first offense. All became recidivists.

The last punishment in 10 cases was a fine as a substitute for imprisonment, in four cases it was a suspended sentence with probation, in 11 cases the remainder of the sentence was suspended with probation, and in 25 cases it was an imprisonment sentence of more than one year.

Excluding the 169 cases, the rate of recidivism after an imprisonment sentence of up to three months is a little over 50 percent. If the 169 offenders with long lists of convictions are added, the rate rises to 72.9 percent as shown in the following table. This rate is close to that for sentences of up to six months (excluding the 169 cases), which is also around 72 percent.

RECIDIVISM RATES FOR IMPRISONMENT OF UP TO THREE MONTHS

	Convictions	Recidivists	Percentage Rate
Total offenses	340	248	72.9
First offense	180	134	74.4
Second offense	101	69	68.3
Third offense	59	45	76.3

Thus, about three-fourths of those sentenced up to three months of imprisonment became recidivists, and these recidivists averaged seven subsequent convictions.

d. Length of Time Between Punishment and the Next Offense (Comparison of Fines up to 250 "marks" with Imprisonment Up to Three Months (a limitation imposed to avoid confusing the reader with a superfluity of data)). When small fines were imposed on 440 people for a first offense, 83 of them (18.86 percent) became recidivists, 18 of them (21.68 percent) within six months, 9 of them (10.84 percent) in from six to 12 months, 12 of them (14.45 percent) in from one to two years, and 30 of them (36.14 percent) in from two to five years. Fourteen of them (16.48 percent) became recidivists later.

When small fines were imposed on 94 people for second offenses, 40 of them (42.55 percent) became recidivists, seven of them (17.5 percent) within six months, 9 of them (22.5 percent) in from six to 12 months, 9 of them (22.5 percent) in from one to two years, and 12 of them (30 percent) in from two to five years. Three of them (7.5 percent) became recidivists later.

When imprisonment sentences of up to three months were imposed on 91 people for a first offense, 45 of them (49.45 percent) became recidivists, 14 of them (31.1 percent) within six months, five of them (11.1 percent) in from six to 12 months, eight of them (17.7 percent) in from one to two years, and ten of them (22.2 percent) in from two to five years. Nine of them (20 percent) became redicivists later.

When imprisonment sentences of up to three months were imposed on 61 people for a second offense, 34 of them (55.73 percent) became recidivists, 13 of them (38.2 percent) within six months, four of them (11.76 percent) in from six to 12 months, 6 of them (17.64 percent) in from one to two years, and eight of them (23.5 percent) in from two to five years. Four of them (11.76 percent) became recidivists later.

On the other hand, after being sentenced to a nine-month imprisonment sentence, one person became a recidivist between one and two years later, two did so between two and five years later, and one did so after five years had passed.

e. Effectiveness of Short-Term Sentences According to Groups of Offenses and Characteristics and Occupation of the Offender. The following table compares recidivism as indicated by the figures for those convicted of crimes against property and of traffic offenses involving intoxication:

RECIDIVISM IN CRIMES AGAINST PROPERTY AND TRAFFIC OFFENSES

Offense	Imprisonment Sentences up to:						Suspended Sentences with Probation	
	3 months			6 months			Convictions	Recidivists
	Convictions	Recidivists	Convictions	Recidivists	Convictions	Recidivists		
<u>Crimes Against Property:</u>								
1st Conviction	30	27	15	10	46	13		
2nd Conviction	23	18	6	4	15	6		
3rd Conviction	13	12	10	10	7	1		
<u>Traffic/Intoxication:</u>								
1st Conviction	45	7	--	--	52	6		
2nd Conviction	25	6	--	--	12	2		
3rd Conviction	8	1	--	--	3	--		

The number of short-term prison sentences for both these groups of crimes is high, but the proportion of these sentences to all sentences is significantly higher for traffic offenses involving intoxication in the case of first offenses. For a first offense, 45 out of 102 sentences for traffic offenses involving intoxication were for imprisonment of up to three months, while such sentences were only given in 30 out of 260 cases of crimes against property. This confirms the figures given earlier which showed that short-term imprisonment is imposed far more frequently for traffic offenses involving intoxication than for any other offense. In all, short-term sentences are imposed for first offenses for this group of offenses a little less frequently than for all the other types of offenses put together.

By comparison with those guilty of crimes against property, those guilty of traffic offenses involving intoxication showed an exceedingly low rate of recidivism.

It would seem therefore, that as a measure for preventing multiple offenses by the individual, the short-term sentences could be done away with for traffic offenses involving intoxication, and particularly since just as good or even better results could be obtained with the other sanctions that do not involve imprisonment. Furthermore, offenses involving intoxication make up considerably less than half of all traffic offenses, so that it would not be necessary to employ short-term imprisonment here as a general deterrent.

Traffic offenses are a special problem, but short-term sentences are extremely ineffective for other offenses. For crimes against property, the recidivism rate was 90 percent for a sentence up to three months for a first offense and 66.7 percent for a six-month sentence.

In the case of third convictions, the situation is particularly interesting. For sentences of up to three months for crimes against property, 12 out of 13 people became recidivists; for sentences of up to six months, 10 out of 10; for suspended sentences with probation, only 1 out of 7.

(1) Recidivism in Relation to the Offender's Age. The younger the offender, the greater is the danger of recidivism. Also, recidivism is more frequent with three-to-six month sentences than with sentences of up to three months. Either the former punishment does more harm or the young offenders are more susceptible to a repetition of their offenses and are not much influenced by this punishment.

Recidivism in Relation to the Offender's Age

	Sentences up to 3 months Convictions	Recidivists	Sentences from 3 to 6 months Convictions	Recidivists
<u>18 to 21-year-olds</u>				
1st Conviction	19	17	3	2
2nd Conviction	9	7	4	4
3rd Conviction	6	6	1	1
<u>21 to 25-year-olds</u>				
1st Conviction	22	12	7	4
2nd Conviction	18	13	3	2
3rd Conviction	7	5	2	2
<u>25 and older</u>				
1st Conviction	50	17	11	7
2nd Conviction	36	15	4	1
3rd Conviction	21	13	8	8

The results were better when a suspended sentence with probation was imposed. Then, 3 out of 12 persons (25 percent) 18 to 21 years old, 10 out of 30 (33 percent) between 21 and 25 years old, and 22 out of 117 (18.8 percent) over 25 became recidivists.

The following table compares the various sanctions as regards recidivism rates when used as a first punishment:

Sanctions vs. Recidivism (In Percent)

Age	Fines	Fines as a Substitute for Imprisonment		Imprisonment up to:	
		Suspended Sentence	Suspended Sentence	3 months	6 months
18 to 21	14.3	66.7	25.0	89.9	66.7
21 to 25	17.5	17.4	33.0	54.5	57.1
25 and over	15.9	16.2	18.8	34.0	63.7

Here again recidivism is considerably higher after an imprisonment sentence of up to six months than after punishments not involving imprisonment.

(2) Recidivism in Relation to the Offender's Sex. The following table indicates recidivism rates for male and female offenders according to the types of sentences imposed:

Recidivism in Relation to the Offender's Sex

Offender	Fines	Fines as a Substitute for Imprisonment		Imprisonment up to 3 months	
		Suspended Sentence	Suspended Sentence	3 months	3 months
Male	18.8	20.9	23.6	48.2	48.2
Female	14.3	16.0	15.6	75.0	75.0

Obviously, a sentence of imprisonment has a more unfavorable effect on female than on male offenders. This is all the more striking because the recidivism rates for the other sanctions were lower for the female than for the male offenders.

(3) Recidivism in Relation to the Offender's Marital Status. After a first conviction where imprisonment of up to three months was imposed, 21 out of 30 (70 percent) single offenders, 20 out of 51 (39.2 percent) married offenders, 4 out of 8 (50 percent) divorced offenders, and 1 out of 2 (50 percent) widowed offenders became recidivists.

After a first conviction where a suspended sentence with probation was imposed, 12 out of 38 (31.6 percent) single offenders, 20 out of 112 (17.8 percent) married offenders, and 3 out of 8 (37.5 percent) divorced offenders became recidivists.

The rate of recidivism was lower for the suspended sentence with probation than for imprisonment of up to three months. The fact that the recidivism rate for married people is lower is probably attributable to the influence of family ties, which prevented the individuals from committing as many offenses as the unmarried ones.

(4) Recidivism in Relation to the Offender's Occupation. The following table indicates recidivism rates of offenders belonging to various occupational categories:

Recidivism for Various Occupational Categories

Occupation	Fines	Fines as a Substitute for Imprisonment		Imprisonment up to 3 months	
		Suspended Sentences	Suspended Sentences	3 months	3 months
Laborers	24.2	31.2	28.7	55.7	55.7
White-collar workers	15.6	14.2	15.2	37.5	37.5
Government officials	4.8	-	-	-	-
Self-employed	12.7	14.3	11.7	25.0	25.0
Housewives	12.5	5.3	15.8	100.0	100.0

The effectiveness of fines as a substitute for imprisonment with housewives, who were chiefly convicted of a single shoplifting offense, was striking. The designations self-employed and housewife both cover a broad field of individuals, so caution is recommended in evaluating the effectiveness of punishment.

4. Calculation of the Significance of the Divergent Findings by the Chi-Square Method

The differences between short-term imprisonment and punishments not involving imprisonment which have been discovered in the course of this investigation of a random sample of statistics were examined by means of statistical methods in order to determine whether the divergences discovered were purely accidental or whether they go beyond any chance of being accidental. This question was answered by means of the chi-square test. The assumption was made that the rate of recidivism is essentially the same for different sanctions.

The results confirm the premise postulated in the foregoing section that the recidivism rate after short-term sentences of up to six months is higher than after punishments not involving imprisonment. This relationship is statistically valid at least for first offenders.

No statistically significant divergences exist among the punishments not involving imprisonment, but it was claimed earlier that these punishments are about the same for effectiveness.

5. Findings: Comparison of the Effectiveness of the Various Sanctions

As regards recidivism, the following relationship to sanctions was discovered:

	Recidivism following fines (Percent)	Increasing With the Number of Convictions
Up to 250 marks	23.76	Not definitely detectable
Over 250 marks	21.27	Not definitely detectable
Fines as a substitute for imprisonment	28.57	Yes
Suspended Sentence	22.27	No
Imprisonment:		
Up to 3 months	55.85	Strongly
Up to 6 months	72.09	Strongly
Up to 9 months	26.70	

According to this, recidivism was much greater for imprisonment of up to three and six months than for the other punishments, and it increased with the number of convictions. B. Boerjeson came to similar conclusions in Sweden. One could agree that judges mostly impose short-term imprisonment when the offender's criminal proclivities are already strongly marked -- when, so to speak, the offender is already a potential recidivist. However, this argument calls for one to believe that a judge can pick out a potential multiple offender from a group of offenders without the assistance of expert opinions or predictions prepared by making use of prognosis tables. As a rule, at least, the judge's

impression of the offender, formed during the trial, and the nature of the crime are not enough in themselves to make it possible to make such a difficult decision.

Even if it is assumed that a judge can recognize a potential multiple offender at his first appearance as a defendant, that does not explain how it is justified in imposing a sentence of short-term imprisonment. It should be considered that the judge, on the basis of his training and experience, knows that short-term imprisonment encourages, or does not hinder, recidivism. Therefore, it is justified in assuming that a judge, whatever his position may be on the purpose of punishment, would impose as rarely as possible a sentence that he knows, or can assume, will bring the individual back before him time after time at shorter and shorter intervals.

However, from the number of short-term imprisonment sentences imposed on first offenders, it would appear that judges do not see the danger or have resigned themselves to the situation for lack of other, better sanctions. Aside from the question as to whether short-term sentences foster recidivism — that is, encourage crime — it can be seen from the results of the present investigation that such sentences at least show no qualities tending to check recidivism.

There is something else. Short-term imprisonment is imposed to a great extent for crimes against property and for multiple offenders. They are ineffective and harmful in these cases. Recidivism is extraordinarily high in both groups, and significantly higher than with punishments not involving imprisonment. This is corroborated by recent investigations in Israel and Japan which indicated that indiscriminate imposition of short-term imprisonment was not suitable for these groups of offenders.

B. CRITICISM OF IMPRISONMENT — OTHER POINTS OF VIEW

1. The Problem of Short-Term Imprisonment

Each form of punishment influences the individual inmate in a different way. Imprisonment pending trial, the serving of a prison sentence, protective custody, and house of correction are all different, but solitary and normal confinement differ from each other especially.

Then there are the effects of the type of work done, the food, and the treatment of inmates. Inmates are affected very differently by imprisonment in accordance with their ages, sex, marital status, health, intelligence, occupations, origin, characters, attitudes toward the state and society, their crimes, and their sentences.

As long as no interest existed in achieving something by influencing the inmates, the punishment of imprisonment was a comparatively simple matter. However, history shows a gradual shifting of the purpose of punishment from that of protection, retribution, and deterrence to the prevalent idea of preventing further criminal activity.

On the other hand, the following are recognized as possible purposes of punishment: retribution and atonement in expiation of the offense and general and individual prevention. An accommodation or combination theory is popular which says, in effect, that prevention can only be carried out within the framework of rightful retribution. This means that the sequence or purposes of punishment should be: rightful retribution for the offense, atonement, then general prevention. Sometimes the prevention purposes are put directly after retribution on a basis of equality.

This sequence no longer seems justified. It certainly might be that, for example, general prevention most likely goes hand in hand with rightful retribution in the sense of significant and necessary punishment. One must also agree unreservedly with the decisions of the constitutional courts, which derived the inadmissibility of punishment not suited to the offense from the general principles of the basic law.

It lies in the nature of the absolute theory of punishment that it does not pay any attention to the side effects of punishment. This leads to the danger of punishments that are meaningless from the point of view of criminal justice policy; produce unjust effects in individual cases; and, finally, increase recidivism. In addition, efforts are no longer made in correctional institutions to take action in retribution for the offense, and, therefore, the danger arises of a lack of convergence of the purposes of punishment as between courts and corrections.

On the other hand, the fact that individual preventive influence is justifiable in itself does not mean that any means at all are permissible, so some limitation is necessary. The possibility exists of finding this limitation in the degree of guilt. As regards the punishment purpose of general prevention, P. Noll has shown that no contradiction exists between guilt and normative prevention and that the additional condition of culpability is susceptible to preventive efforts and can be motivated through criminal law.

Starting from the point of departure that criminal law is legal protection of property, which today can probably not be doubted, the parallels with individual prevention can be drawn. Guilt then — Mautach's ideas are applicable to that extent — becomes not only a connecting link but also a point of limitation for punishment. What is involved is a modification of the phrase, "the punishment must fit the crime" to "the punishment can only fit the crime" or "individually preventive influence" — i. e., the punishing influence which is the most effective possible — "is limited by the offense."

Therefore, the concept of preventive purposes that underlies any modern system of criminal law should give priority to the pursuit of individual prevention, and here the upper limit of its influence springs from the thought of rightful expiation of guilt. In this way the identity of the purpose of the punishment and of the carrying out of the punishment would be assured.

2. The Harmful Effects of Longer-Term Imprisonment

a. Isolation. Imprisonment in its present form is the withholding of freedom, combined with various forms of isolation and immobility. Particularly, if it continues for a long time, this has to affect the prisoner's mind and body strongly.

(1). Solitary Confinement. The prisoner has no opportunity for conversation and discussion, which are necessary for his spiritual development and for considering his own guilt. The consequences are the diminishment of his ability to concentrate, indifference, and also embitterment and feelings of hatred.

The prisoner does not come to grips with his guilt, or only does so in mitigation, and this attitude is reinforced by the feeling that the punishment is too harsh, so that he thinks of revenge rather than of his guilt.

The prisoner's ability to get along with people declines, and he tends to develop a reluctance to make new acquaintances. Difficulties in adapting to his family and society after his release can result from this unsociable attitude and the loss of the ability to make contacts.

The prisoner is less able to cope with life after his release than before his imprisonment. There are no opportunities for responsible activities and the making of independent decisions within the rigid routine of the institution.

The solitary confinement prisoner's health usually suffers from lack of movement in the fresh air and sometimes because of poor food, and this results in a mental burden. Solitary confinement does not educate the prisoner to get along when he is released; it only educates him for the institution he is in.

This is confirmed by the statistical findings cited above. The number of multiple offenders and the long criminal records of many of them lead to the conclusion that each new imprisonment sentence increases the danger of recidivism, while at the same time the individual's ability to cope with life is reduced.

(2). Ordinary Confinement. Association with other inmates also can have unfavorable effects. Lack of any opportunity for privacy can be harmful. If the prisoner cannot be alone at all, he cannot use his free time for meaningful purposes leading toward re-socialization.

The danger of mutual antisocial infection among the inmates has always existed and continues to exist. Furthermore, there is the continual tension between the guards and the inmates, with each group often demonstrating its own solidarity and hostility toward the other group. In order to get along in the institution, an inmate must not only comply with the regulations of the institutional administration but also with those of his fellow inmates.

Because of the negative influence of fellow prisoners, there is the danger that after release, the individual will use criminal techniques he learned in the institution. Thus, he will become a recidivist due to pessimism or an exaggerated idea of the profitability of crime.

b. Social Degradation. Any punishment involving imprisonment has more far-reaching disadvantageous social consequences for the offender than the other sanctions. Most prominent among these is social degradation.

After his release, there is tension between the offender and society, and he becomes segregated and thereby desocialized. It is not so much the crime as the fact of imprisonment that constitutes the stigma that attaches to the offender in the eyes of society.

Thus the offender, under certain circumstances, may perhaps find his return to the outer world harder than his entry into the institution. Fearing rejection by society, he may associate with people he met in the institution. Then the only hindrances to a return by him to criminal activities may be special family ties and possibly a lack of opportunity to engage in crime. It can be said that in such cases only individuals with strong ties somewhere can escape becoming multiple offenders.

c. Jeopardization of Employment. In times of full employment, this may not be the offender's greatest problem after his release, but long, unsuccessful efforts to find a job are possible, accompanied by persecution, ostracism, and going from one job to another to escape gossip and slander. Furthermore, a person may be fired when it is learned that he once was imprisoned.

Efforts have been made to control the attitudes of society toward former prisoners by governmental order, but with little success. Since the very serious social consequences

of imprisonment to a great extent cannot be avoided, that punishment should be imposed as sparingly as possible.

d. Punishment of the Offender's Relatives. The offender's family is punished more severely by imprisonment than by any other punishment. If the father is imprisoned, the family's income drops off considerably, usually to the level where going on welfare is necessary. If the mother is imprisoned, the very existence of the family is often threatened.

Many released prisoners report that they were estranged from their families to a great extent. The sense of family fades particularly in cases of long imprisonment since the offender cannot help his family and since his family is forced to do the best they can. The offender's family also is necessarily hit by social degradation.

On the other hand, these effects of imprisonment are not present to the same extent when other punishments are imposed. Although a fine possibly lowers the living standard of a family, it does not constitute a permanent threat to its existence.

3. The Favorable Effects of Longer-Term Imprisonment

It is an indication of favorable effects of imprisonment if the offender does not revert to criminal activity when his sentence has been served. Here the correction effort must be effective on behalf of society to the maximum extent possible in the sense of combatting recidivism — that is, it must be governed primarily by the idea of individual prevention.

The question of education in correctional institutions is a disputed one. A considerable number of adult inmates have proved not to be susceptible to the methods used thus far. The opponents of the modern school, who to a great extent lump resocialization and education together, state that educating adults through punishment is not possible at all, and so they reject resocialization as the main purpose of punishment.

Certainly an offender cannot be resocialized in the sense of being incorporated into society while he is still in the institution. Resocialization in the institution can only consist of efforts to prepare him for living an orderly life later on in freedom. In this sense, education can take place during imprisonment and education (i. e., reeducation) can be equated with resocialization.

Paschek has concluded that any conformity by inmates is only apparent and that it disappears after they leave. This conclusion has not been completely confirmed by other investigations. Instead one can say that there are no "incorrigible criminals" because of malicious callousness, but rather that there frequently are positive inclinations which make them responsive to efforts to help them.

It should be understood quite generally that the goal of the education-resocialization correction effort is to give the inmate a mental attitude that is accustomed to legality, which is what is needed to avoid recidivism. He must be given the strength as well as the desire to live within the law, and the external conditions also must be shaped so as to favor his doing so.

Basically, there exists in the offender a far-reaching need for punishment that is linked to the thought that liberation from that need will result from serving the sentence and resolving the feeling of guilt internally. Of course, if the offender only feels resentment this effect will be weakened.

Imprisonment has a protective function. Therefore it can lead to introspection and meditation, resulting in a clarifying internal adjustment. Many former prisoners report that after the inconstant unsettled life they had formerly led, reflection and concentration were now possible in the institution, and they realized that the act for which they were being punished had not paid and that they had been better off living in freedom and holding an honest job.

The orderly, strictly planned and scheduled life in the institution can lead to the forming of orderly habits and thus to the developing or reinforcing of self-discipline.

The work an inmate is required to do also can help to restore self-confidence and overcome the feeling of humiliation that follows arrest, trial, and imprisonment, especially if the work is meaningful, provides him with an occupation he can engage in after his release, and pays him for his efforts.

However, the circumstances of present-day imprisonment in a correctional institution militate against the possible favorable effects described above. Armed guards and security measures, barred windows, walls, alarm installations, and the censoring of inmates' mail certainly do not tend to raise the offender's feelings of self-esteem.

Finally, the inmates' free time can be made a meaningful part of their lives while in the institution. Special instruction and discussion groups, on a voluntary basis, can be used to arouse their interest in such cultural subjects as pictorial art and music. Sport and games can work against the danger of the loss of social capability. Participation in self-government can also give the inmate perception of the problems of the administration of the institution, and this can contribute to his self-understanding.

It cannot be predicted with any certainty that such efforts will succeed. In case of longer sentences, the favorable effects will be continually weakened, and finally they will be replaced by hopelessness and callousness.

The effects of imprisonment are more severe than people generally are inclined to think, and, in combination with the unpleasant features mentioned earlier, it can produce a salutary shock in the individual.

Imprisonment is a means society uses to get effective protection against a dangerous criminal for a definite period of time or permanently. There is always the possibility that the dangerous condition will change in the course of time and as a result of the punishment.

It is believed that the following disadvantages of long-term imprisonment can be avoided: the antisocial influence of inmates on each other, punishment of the offender's family through his imprisonment, loss of occupation or loss of the means of earning a living, and physical damage with spiritual repercussions.

4. The Effects of Short-Term Imprisonment

a. Harmful Effects. The danger of the antisocial influence of the inmates on each other is especially emphasized as a harmful effect of short-term imprisonment. What is meant here is the effect of hardened criminals on first offenders. With short-term imprisonment, it is not primarily physical and spiritual damage that need to be feared. However, certain disadvantageous effects of long-term imprisonment also make themselves felt here; such as the unjust side-effects of imprisonment, which are different for each offender because individuals differ from each other. These are the various unpleasant aspects of life in prison that were mentioned previously.

Social degradation and punishment of the offender's family. It is rightly feared that public opinion will turn against first offenders and those guilty of negligent offenses, with harmful results.

There is a loss of the deterrent power of imprisonment. Once the unpleasantness of life in the institution has faded into the background in the offender's mind, he may find the imagined advantages of criminal activity attractive again.

b. Positive Effects? — Comparison with Long-Term Imprisonment. In addition to the harmful effects listed previously, no possibility exists, as it does with long-term imprisonment, for bringing about improvement through resocialization efforts. Rather, the main objection to this type of punishment has been, for a long time, its capacity for working directly against resocialization efforts.

Because of the short time involved, it is not possible to exert a positive influence on the offender and to get something meaningful started with him. He merely serves his time, and this cannot be justified from the point of view of criminal justice policy.

There remains the theory of the salutary shock effect of imprisonment as a sort of object lesson intended to teach the offender that the state reacts in an unpleasant way when the law is broken. However, the statistics cited earlier on recidivism after short-term sentences, even for first offenses, argue against the validity of this idea. It is apparent that only those with something to lose, because of occupation or family ties, are actually influenced by this sort of shock, and they are mostly people who would feel the same sort of shock effect from a lesser punishment, such as a suspended sentence with probation.

It can be argued that judges are always right. They only sentence incorrigibles to imprisonment, and that is why the recidivism rate is so high. Well, the so-called incorrigibles do not exist. One should only speak of those who are particularly in danger of becoming multiple offenders, and such people should not receive such a dangerous punishment as short-term imprisonment because it causes recidivism. The judges should be given a more effective means of punishing them.

5. Should Short-Term Imprisonment Be Retained?

Although there is considerable agreement in regard to the harmfulness of the effects of short-term imprisonment—at least there appears to be a willingness to agree—disagreement on the question as to whether it can be dispensed with or absolutely must be retained, seems to be insurmountable. Even those who favor this punishment mostly agree that it is ineffective and harmful, but they consider it indispensable over the long run.

If it is done away with, it is feared that there will be a gap in the punishment system. This means that retribution is still being given priority over general and individual prevention. Sentences are scaled in accordance with the reprehensibility of the crime, and elimination of short-term imprisonment would leave a gap that, in the long run, would lead to harmful consequences. Therefore, it is said that this punishment is a necessary evil that must be accepted.

The answer to this is that, because of the very different side effects of imprisonment on offenders, it is impossible to adjust the punishment so that it constitutes an exact equivalent to the crime. But if this purpose of punishment cannot be achieved, why keep on fruitfully trying to achieve the other — individual prevention — when short-term imprisonment actually works against it?

As regards the harmful consequences of the elimination of short-term imprisonment, one is moved to ask whether the consequences could possibly be less satisfactory. The figures on recidivism in connection with this punishment cited earlier showed how harmful the consequences are, while the figures on recidivism with sentences not involving imprisonment are considerably lower.

The fear has been expressed that judges would feel moved to give longer sentences - say, six months where they formerly would have given four. But this would go counter to the principles of justice. Furthermore, judges already have fines and suspended sentences at their disposal as substitutes. In order to eliminate or cut down on the number of short-term sentences, substitute punishments must be provided.

There is a danger that lighter penalties will be ineffective if they are not backed by harsher alternative penalties. But short-term sentences should not be replaced by lighter penalties. They should be penalties that very likely may hit harder but which, to the extent required, designedly produce a resocializing effect. Even if short-term imprisonment was the harsher alternative penalty behind a lighter penalty, it would at least not be a primary penalty any longer. Also, if other punishments are sufficiently resocializing in their effects, imprisonment as a substitute will not be needed - or will be seldom, needed.

One cannot say that the idea of guilt demands the retention of short-term imprisonment, because without it punishments would be too light. Fines, fines as a substitute for imprisonment, and suspended sentences with probation regularly have a lighter effect than imprisonment, but their imposition does not go contrary to the idea of guilt.

According to the statistics, short-term sentences still are employed to an extraordinarily large extent, but the large number of such sentences does not prove that they are necessary. Their frequent use entails another important disadvantage, the extraordinarily high burden the corrections system has to bear in processing inmates into and out of the institutions.

The penalty of imprisonment finds itself in a critical situation. Building up its pedagogical and beneficial potentialities, which certainly do exist, by special, intensified efforts and exerting all available energy constitutes the best chance of improving it. But it will be impossible to do this if the correctional institutions are permanently overburdened.

The complaint is also made, in this connection, that there is a lack of capable corrections personnel. This is not surprising where one has to do with a repressive penalty such as short-term imprisonment which, in the final analysis, does not accomplish anything useful. Capable corrections personnel certainly will not want to be mere lookers-on. They also will not be willing merely to oversee the serving of sentences and the formalities of reception and release, while probably doubting that their chosen occupation makes sense when they see most of the inmates returning to the institution over and over again.

On the other hand, however, there are people who are qualified for pedagogical tasks, but as long as short-term sentences constitute the majority of all imprisonment sentences, this will be less and less the case.

Traffic offenders certainly constitute a special problem. A large number of short-term sentences are imposed for these offenses. It is alleged on behalf of short-term sentences in these cases that there is no need for resocialization here because no criminal propensities are present. However, these offenders often need a reminder, in the form of a punishment, which will startle them and make them reflect. The questionable value of

"reflection" during imprisonment has already been discussed. Furthermore, it is questionable whether such a harsh punishment is meaningful, necessary, and, consequently, at all justified.

One can conclude from the fact that in most cases no resocialization is necessary that these punishments are meaningless. From the point of view of resocialization, one can add that these offenders, when imprisoned, are exposed to the desocializing effects of that form of punishment, and that does not make much sense either. It is clear that increasing the penalties for traffic offenses is intended to accomplish general preventive purposes, but such a claim does not make this punishment meaningful.

Also, its general preventive effectiveness is very questionable. The effectiveness may be reduced if it is used too often. For example, if people from all walks of life, or even one's own co-workers or superiors, are sentenced more and more often for this sort of offense, the deterrent effect of it will soon abate.

PART TWO — POSSIBLE SUBSTITUTES FOR SHORT-TERM IMPRISONMENT

In regards to the corrections system the following requirements must be made a part of any reform — whether partial or total — of the criminal justice system:

- o The abolition of penitentiary sentences; and the abolition, or at least a curtailment, of short-term sentences. The fewer imprisonment sentences served the better.
- o To the extent that imprisonment remains unavoidable, the corrections system— which is overburdened with the handling of short-term offenders— must above all be improved at the same time its burden is removed.

In order to fulfill the first requirement, one can either further expand punishments that have already been tried or attempt to create entirely new sanctions. The 1962 reform proposal retains penitentiary sentences and does not expand suspended sentence with probation. As regards fines, taking over the Scandinavian daily payment system would not be so much the introducing of a new type of punishment as of a new method of calculation. With this daily rate system, two decisions must be made: first, how many daily payments are appropriate as punishment and what the amount of the daily payment is to be, computed in accordance with the offender's personal situation and financial status. The number of days is supposed to give expression to the seriousness of the offense and of the guilt involved; the daily rate is supposed to protect the principle of victim equality. The number of days multiplied by the daily rate then gives the total amount of the fine.

At first glance, this appears progressive, but it actually only amounts to substituting one fine for another. Perhaps the results will be more equitable, but nothing more. This does not constitute a means of refining the punishment system, and particularly it is not a substitute for short-term imprisonment or a means of curtailing it.

Furthermore, the introduction of a new type of sanction in the area of short-term imprisonment is being planned — the so-called confinement (strafhaft) for a period of from one week to six months — along with prison sentences or fines, as preferred. A similar sanction of confinement under the present penal code applies mainly to minor infractions. Since the 1962 proposal both eliminates minor infractions and requires prison sentences to be at least a month long, it is thought that the use of this new type of sanction cannot be avoided, even to scale down the sentence in cases of unjust guilty verdicts.

Thus, the 1962 proposal attempted to create a new sanction, but this contributes nothing to the centuries-long effort to curtail short-term sentences, as indeed its authors admit.

As far as expanding the use of existing punishments is concerned, one thinks of the suspended sentence with probation and fines. One can also try to create special punishments, and they would consist of measures that up to now have been considered incidental consequences of punishment but now would be imposed as primary punishments instead of fines or imprisonment.

I. EXPANSION OF SUSPENDED SENTENCE WITH PROBATION

Some people take the view that the suspended sentence with probation is not a new type of punishment, but is only a modification of imprisonment. Even those who hold this opinion, however, cannot deny that this sanction is capable of curtailing imprisonment—especially short-term imprisonment—and taking the place of such sentences. A curtailment of imprisonment has taken place, but it certainly has not been replaced by the suspended sentence with probation, so the latter sanction has not yet been expanded sufficiently. Furthermore, and especially in view of its outstanding effects in comparison with the disadvantages of imprisonment, the suspended sentence with probation should not be limited to 9 months duration.

A proposal by Peters can be used as a starting point here. He believes that an extraordinary amount of individualization of corrections is necessary, giving the offender the chance to act in the way that best suits him. That is, the purpose of correction is spiritual and ethical assistance in social adjustment and adjustment to the law.

The reform program should begin with the shape the corrections take. This should be educational, and Peters calls for a program of treatment in accordance with modern criminal pedagogy, with the selection of corrections officials being carried out according to those pedagogical ideas.

These requirements make it necessary to keep the number of inmates as small as possible. In order to cut down this number, Peters calls for criminal law limitation and the expansion of the suspended sentence with probation. He also proposes a legal regulation requiring that, with sentences of up to six months of imprisonment, a suspended sentence with probation will automatically go into effect if the orderly serving of the sentence has not begun within a year after the sentence became legally valid.

This solution is intended to do away to a large extent with the serving of sentences of up to six months as primary punishment. In addition, it points to the possibility of suspending nine-month sentences with probation, too. The advantage of this proposal is that, because it is less drastic, it is likely that it might obtain general approval. However, because suspension of sentences is obligatory in the lower range of punishments, it seems to be particularly suited to the function of working against the tendency toward recidivism in the application of punishment.

Nevertheless, since the serving of sentences regularly does begin within a year after the sentence becomes legally valid, the possibility of suspended sentences is quite limited. Furthermore it would lie on the discretion of the corrections authorities—in this case, the public prosecutor's office—to make the decision regarding suspended sentence with probation by ordering the offender to begin serving his sentence within the designated period. Because of the number of these authorities, this would entail the danger of unequal treatment.

It is possible to allow short-term imprisonment to continue to exist, but not as a primary punishment. Its place in that capacity would be taken by suspended sentence with probation. This can now be rounded out, as paragraphs 74 and 75 of the 1962 proposal and paragraph 41 of the 1967 alternative reform proposal show, with a "full-fledged catalogue of dispositions and instructions," and it can thereby become considerably more effective than short-term imprisonment as regards individual prevention.

The second way—expanding the use of the suspended sentence with probation—is the path taken by the 1966 alternative reform proposal. It offers—in a modern concept—an extensive catalogue of possibilities for substitute penalties with a balanced and compact punishments law.

The types of punishment proposed are imprisonment, suspended sentence with probation as a genuine, indirect imprisonment sentence served in freedom, and fines. The dividing line between imprisonment that must be served and imprisonment sentences that can be suspended lies between six months and two years. Thus, at the worst, imprisonment sentences begin at six months, and therefore there can be no such thing as serving a primary short-term imprisonment sentence.

II. PERIOD-OF-TIME FINES

There is also the possibility of restructuring fines. The 1966 alternative proposal also took this path. The Scandinavian daily payment fine system only offers a new way of calculating fines, but the period-of-time fine system is a punishment not involving imprisonment, which is intended to take the place of imprisonment. It goes back to J. Baumann's counterproposal to the 1962 proposal and embodies the criminal justice policy concept of more freedom — that is a smaller range of criminal law and less imprisonment. This concept is to be found most clearly, of course, in the punishments system. As regards the retention of penitentiary sentences, confinement, and prison sentences of from one week to five years, the proposal impressed one as conservative. In regard to the period-of-time fine, which was something entirely new, Baumann took the following basic concepts as his point of departure:

- o Short and medium-term imprisonment sentences should be avoided to the extent possible, since their effect is unfavorable as regards criminal justice policy.
- o The evils of imprisonment are the deprivation of freedom and the lowering of one's living standard. The deprivation of freedom, in particular, has unfavorable consequences.
- o In paragraphs 23 ff., 26 and 27 b of the penal code the unfavorable effects of imprisonment are mentioned.
- o Thus it was important to create a punishment that only involved the second evil — putting restrictions on one's standard of living — and thereby giving more consideration to the value of freedom referred to in the penal code.

If the wish is to restructure fines, making them a punishment that puts restrictions on the standard of living and thus making it possible to make them the new basic punishment, the following will be important:

- o Fines must be of such a nature that they deprive the offender of money, and consequently of the possibility of obtaining the goods he desires.

- o If fines are particularly intended to take the place of the evil of the deprivation of freedom, as occurs with imprisonment, the standard of living must of course only be lowered for a certain period of time.

For this purpose, the fine can be assigned a period of time. Both Baumann and, subsequently, the 1967 alternative proposal tried this. However, whereas Baumann still planned to retain short-term imprisonment, the period-of-time fine of the alternative proposal, in conjunction with the structuring of the punishment system, gains special significance, because short-term imprisonment of up to six months is completely eliminated. The idea of a period-of-time fine has aroused opposition right from the start. It is argued that fines differ from imprisonment in that they concern belongings that the individual offenders possess in differing degrees - namely, wealth. The pulsebeat of justice is less perceptible than with other punishments. However, it was pointed out earlier that imprisonment affects the individual inmates in many different ways, too, so this argument is unjustified to that extent.

This point of view could be persisted in if the offender's financial capacity were not taken into consideration, since it would be specifically the poor man who would be imprisoned because he could not pay a fine in any case. But this would not be the case, since, in accordance with even-handed administration of justice, the probability that the offender will be unable to pay the fine does not preclude its imposition as a sentence.

It must be admitted that there is a certain amount of inequality in the social effect because of the fact that no two people's assets are the same and judges are not in a position to impose fines exactly adjusted to each individual case. But this is also true of imprisonment, where the purpose of fitting the punishment to the offender also cannot be achieved with any accuracy. The opponents of fines admit that these socially unjust effects are the result of inadequate legal regulations and that they can be eliminated by insisting that judges fit the fines more accurately to the offenders' financial status. This is one of the exact purposes of the period-of-time fine, and to this extent it is a further development of the Scandinavian daily payment system.

The question now arises as to whether this is possible. It is objected that a judge will not want to carry on activities similar to those of the Finance Office (Finanzamt) in investigating an offender's financial situation. But the personal and financial situation of the offender also must be taken as the basis for determining a sentence of imprisonment. It also can be argued that obtaining information on an offender's financial situation is considerably easier than determining an offender's degree of guilt. The 1966 alternative proposal offers a way out of these difficulties by authorizing estimates and the obtaining of information from banks and tax authorities. As for the argument that bringing the Finance Office into the investigation involves a violation of tax information secrecy, the 1966 alternative proposal points out that the investigations made in connection with trials sometimes uncover intimate matters that a defendant would be most desirous of keeping secret! Therefore there is no apparent reason why the financial side of his affairs should be protected.

It is feared that the period-of-time fine—like all fines—will hurt the offender's family too severely, whereas imprisonment can be depended upon to hurt the offender himself. However, as pointed out earlier, imprisonment hurts the offender's family in many ways — and indeed any punishment at all will hurt the entire family as well as the offender, as long as it remains a unit. In any event, the family will be better off with a reduced income than with no income at all.

Here the period-of-time fine has a special advantage over imprisonment. The offender remains with his family and can see how its standard of living is lowered, and this will

act as an incentive to him. At the same time, he does not experience the desocializing influences of confinement and the feeling that he can do nothing to help his family.

The objection is also raised that the unpleasant effects of a fine are too easily transferred to the offender's family or to a third party—perhaps someone who can afford to pay the fine quite painlessly—and therefore the individual might think he could afford to commit crime. However, the fear of building up a criminal record and receiving much stiffer sentences later on would militate against this. Anyhow, no matter how much an offender gained from a particular crime, the period-of-time fine would reduce his standard of living to the existence level during the period in question, and this would be seriously unpleasant. It is good administration of justice practice, in cases where the danger exists that someone else will pay the fine, to assume that the purpose of punishment would not be achieved by a fine. However, such cases are so infrequent that one could consider imposing a prison sentence of appropriate length when they do occur.

It is also argued that individuals differ in their attitude toward money and that consequently some people would feel themselves hit less hard by a fine than others. However, others argue that being deprived of freedom is equally painful to everybody. Certainly it is true that a fine — like any other punishment — is only effective if it is felt as a severe punishment. At any rate, the period-of-time fine, much more than fines levied just once, will always be palpable and severe because of its long-lasting function of reducing the standard of living. Furthermore, it can be said that sensitivity to punishment decreases with each additional short-term imprisonment sentence, but this is much less true of fines.

The objection is also raised, as with all punishments that seem lighter, that there is a danger of weakening the administration of the criminal law if one can make up for practically anything with money. But it would not be possible because, by the nature of the period-of-time fine, it can be a very severe punishment in individual cases.

There is also the danger of unequal treatment in applying the period-of-time fine in cases where the offender has a high income from private means, investments, or real estate. Since restrictions on the standard of living can only be applied for the period specified in the sentence, it is obvious that a permanent withdrawal or reduction of the offender's property cannot be carried out. In order to achieve an equitable existence-level standard of living even in those cases, ways would have to be found of limiting the income of such offenders appropriately during the period in question.

One could prescribe that the fine could only be paid from a certain type of income—for example, that from manual or communal labor—but the general objection to hard-labor punishment makes it doubtful that this would be accepted. The question of substituting so-called free labor for imprisonment will not be dealt with here.

Again, if income from physical labor was required, there would be inequality because a laborer is accustomed to doing such work, whereas a person who only manages his own estate would be hard hit if he had to do manual labor. However, it will probably not be necessary to go so far.

In order to arrive at an equitable existence-level standard of living, where the offender owns considerable property, the typical arrangement made by a bankrupt person to compensate his creditors could be taken as a model.

Among other things, it is argued that a fine tempts the criminal to obtain the money to pay it by illegal means rather than by working to earn it. If the period-of-time involved

is long, this danger may be increased. However resocialization is the main concern of the new punishment system, so if that danger exists, a period-of-time fine is not the appropriate penalty. The danger that the offender will obtain the money required by illegal means is considerably greater if preference is assigned to impartial retribution rather than general prevention in imposing sentence.

Also, it is stated that it will be difficult to achieve the purpose of the period-of-time fine of keeping the offender's standard of living at the existence level for some time. However, a corrections court can handle such problems as this. If the offender's financial situation changes for the worse it is possible to adjust the times of payment and perhaps the amounts to be paid without having to resort to imprisonment as a substitute punishment. If the offender's economic position improves, the 1966 alternative proposal rightly allows him to retain his gains, as an incentive to resocialization, and forbids increasing his fine in such an event.

Finally, it is argued against fines in their present form that one cannot deduce the amount of wrongfulness in the offender's act from a specific fine because the fine represents an indistinct conglomeration made up of the wrongfulness of the act and the offender's financial situation. In the case of the period-of-time fine, it is not the amount of the daily rate of payment but the length of the period of time that reflects the amount of guilt. The amount of wrongfulness is easily perceived from the length of the period of time.

In contrast to the disadvantages cited above, fines have a number of pronounced advantages. They can be adjusted to the offender's status and financial situation. Furthermore, and especially in contrast with imprisonment, it offers the possibility of making reparation in cases of mistaken verdicts, which can always happen. Fines avoid the danger of all the various harmful effects of imprisonment mentioned above, and, in addition, the imposition of a fine almost never becomes known to the offender's neighbors, so he does not feel degraded on that account. Fines cut down corrections costs, while preserving the offender's productive power for society in general.

III. PROBATION SERVICE — CITIZENSHIP TRAINING

Hellmuth Mayer has made far-reaching suggestions for cutting back and, in part, replacing imprisonment by something else. In his opinion, the 1962 proposal pays too little attention to ending the intolerable inflation of criminal law.

The new punishments system proposed by Mayer is based on the following fundamental ideas.

In his opinion, the goal of improving the average correctional institution inmate by educational treatment is utopian. The inmate cannot be educated by confinement, as such, to make proper use of his free time. Consequently, the main purpose of the administration of criminal law continues to be general prevention, which is achieved by impartial, retributive punishment. This cannot be abandoned, and the individual is more or less sacrificed to this purpose. For this reason, however, it is important to strive for optimum legal security and a minimum of personal suffering and disarrangement of individual lives.

Furthermore, it is desirable to restrain the misuse of collective power and the indiscreet use of the forces of law and order as much as possible, in order to avoid side effects of governmental interference disturbing to individuals. According to Mayer, this is possible because present-day society is so consolidated within itself that it can scarcely be endangered by criminal encroachments by individuals. From the viewpoint of difficulty

in getting along with people in today's social conditions, a lawbreaker's social helplessness is considerably greater than his dangerousness — for example, tramps and swindlers.

Nevertheless, the severity of punishment must be preserved. Therefore Mayer proposes to restrict old-fashioned imprisonment, which is characterized by physical confinement, to cases of serious crimes and multiple offenders. For crimes of lesser or medium seriousness, fines, probation, and punishment service in the form of citizenship training in open facilities and of probation service will be used. These are discussed in the following:

- o Mayer would have fines imposed only for lesser offenses, because the law on fines has only proved itself for such offenses. This punishment should be established by law and should also be available as an alternative.
 - o Since an accused is considered innocent until found guilty, a judge cannot procure material to be used in computation of fines until after the trial. At that time, a computation session will have to be held, possibly by a Finance office.
 - o From the theory that the freer one makes the relationship between educator and pupil the more easily one gets genuine education, Mayer arrives at the idea of the Institute of Punishment Service. Citizenship training is seen as an easier and shorter type of punishment service. It is to last from one to eight weeks and is to take the place of short-term imprisonment, which would be retained as an alternative form of punishment. Offenders would be housed in training centers that would be open to a great extent. The participants would be formed into appropriate groups, would have lessons and meals together, and would get their required rest at night in the training building. Intensive training with practical structuring of free time would be carried out. Religious and psychological counseling would be provided.
 - o For offenses of medium seriousness, Mayer would impose the so-called probation service for terms of three to 12 months. This punishment would involve open facilities, without confinement and security precautions. The offender would remain in the institution or return to it at the prescribed time. It is important that he accepts authority and the instructors' directions, and does work or other services he is required to perform in a creditable manner. Approximately two-thirds of the normal pay for the work he does is to be used to make good any harm he has done. The remainder is to go to the offender. As can be seen, the idea of education is also pursued here.
 - o Confinement would be the subsidiary punishment for citizenship training and prison sentences for probation service, both to be of appropriate length. Since citizenship training and probation service naturally cannot be used over and over for the same offenders, fines, confinement, or prison sentences would be used for recidivists.
- Mayer would retain the imprisonment punishments already existing, but with different upper and lower limits. Prison sentences would regularly begin with 12 months, and short-term sentences would not be avoided, since confinement from one to eight weeks would be retained.

Mayer's proposals seem promising because they carry through the idea of education and improvement very logically, with the least possible impingement on the offender's personality.

Objections to Mayer's proposals are primarily of a practical nature. The training centers for citizenship training and the camps for probation service would be in addition to the existing correctional institutions, and they would require a large number of unusually highly trained personnel. It would be hard to get these people unless the burden of the corrections system were lightened very definitely, at least by eliminating short-term imprisonment.

Aside from the fact that they attempt to save the first offender from the corrections system and could succeed in doing so, Mayer's proposals could also be regarded as pointing in the right direction in two ways:

- o Both citizenship training and probation service definitely have resocializing functions because they appeal to the offender personally and call for his cooperation, and therefore they would be suitable for providing something beyond the mere sitting out of an imprisonment sentence.
- o They would put into practice the idea of open correctional facilities, which also have a resocializing effect, by calling for personal responsibility and increasing the offender's self-respect.

The idea of punishment service will come up against the objection to the so-called hard-labor punishments. It is somewhat similar to the so-called hard-labor punishment in the form of work for the public benefit in paragraph 52 of the 1967 alternative proposal, which, however, was only intended as a substitute for fines, but with the possibility of later extension.

IV. LIMITING RANGE OF CRIMINAL LAW

Finally, limiting the range of the criminal law should be demanded. This would take the form of legally separating out the trivial offenses and the minor breaches of the law that can better be punished in a different way. The laws that apply would have to be altered to accomplish this.

Also, more possibilities should exist for withdrawal of charges when, for example, serious efforts at reparation are made or the offender gives other proof of a law-abiding attitude. When charges are withdrawn a (unrecorded) reprimand should be administered.

The alteration of paragraph 27b of the penal code would be more far-reaching and could be regarded as a genuine substitute for imprisonment sentences. Instead of an imprisonment sentence of less than three months for an offense, either a reprimand with the sentence deferred, a fine, or some other penalty not involving imprisonment (or all three) could be imposed. Thought also could be given to measures that now are employed as incidental side effects of punishment and as obligations imposed on offenders.

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The various possibilities, such as discontinuation, probation, or, as a middle course between the two, the reprimand with deferred sentence of Guertner's proposal, which can

be designated as suspensions on good behavior, appear to be significant as substitutes for short-term imprisonment.

It appears entirely possible to substitute a number of punishments for short-term or even for medium-term imprisonment. It also appears possible to set up a promising catalogue of punishments in response to the demand for a far-reaching abandonment of imprisonment as a primary sanction. Thus the validity of the main argument for the retention of short-term imprisonment, in particular, is called into question.