

NEW FOUNDATIONS

OCCASIONAL PAPERS ON CORRECTIONAL TOPICS FROM THE CONNECTICUT DEPARTMENT OF CORRECTION



No. I:

TERMS OF THE

ALTERNATE SENTENCING DEBATE

49836

DEPARTMENT OF CORRECTION



JOHN R. MANSON
COMMISSIONER

STATE OF CONNECTICUT



ELLA T. GRASSO
GOVERNOR

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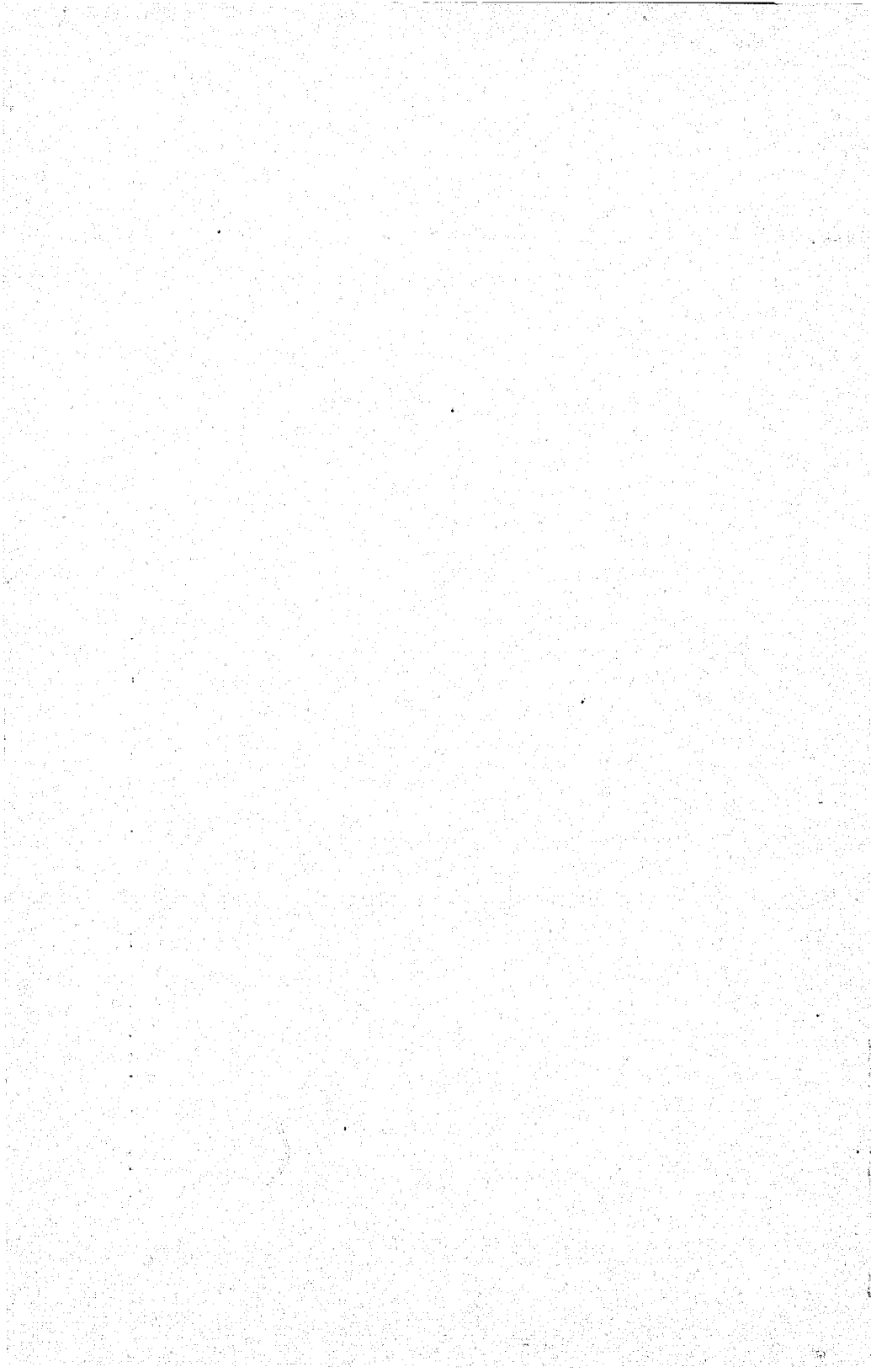
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ACQUISITIONS

INTRODUCTION

The Connecticut General Assembly will be considering a number of measures which would change current Connecticut criminal sentencing laws. This brochure is the first of a series intended to provide Connecticut citizens with information through which to follow this issue, and to make rational, informed decisions.

This particular publication defines the most frequently used terms in the alternate sentencing debate. While local variations in terms may exist, these definitions are the most commonly used in Connecticut and are the most useful for examining statements from local and national legislators, criminal justice professionals, and academic theorists.



SENTENCE

The sentence is the formal disposition a judge gives a defendant as a consequence of conviction. The Connecticut General Statutes authorize the following types of sentences: 1. under special conditions, and with special procedures, the death sentence; 2. a term of imprisonment; 3. a fine; 4. a term of imprisonment and a fine; 5. a term of imprisonment, with the serving of this term of imprisonment suspended (entirely, or after a period set by the court), and the substitution of a period of probation, a period of conditional discharge, and/or a fine; and 6. a sentence of unconditional discharge (no conditions imposed upon the defendant's immediate release). The Statutes provide general guidance for determining which convicted offenders and which offenses require which particular types of sentences.

FELONY

Any offense for which a person upon conviction may be sentenced to a term of imprisonment exceeding one year is a felony. In Connecticut, most felonies are grouped by order of severity into four classes: A, B, C, and D. The penalty for the commission of any of these felonies is determined on the basis of the class to which the felony is assigned. Those felonies not grouped into classes (all drug offenses, some sex offenses, and some weapons offenses) carry specific legislatively-defined penalties.

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MISDEMEANOR

Any offense for which a person upon conviction may be sentenced to a term of imprisonment not exceeding one year is a misdemeanor. As with felonies, most misdemeanors are grouped by severity into four general classes, and penalties are imposed on the basis of class.

PROBATION

Probation is an extensively used alternative to imprisonment. Connecticut Statutes provide that a presiding judge may suspend a sentence of imprisonment and direct the convicted offender to serve a term of probation if (1) the defendant's institutional confinement is not necessary for the public's protection, (2) the defendant is in need of guidance, training, or assistance which can be effectively administered through probation supervision, and (3) a term of probation is not inconsistent with the ends of justice. A term of probation may not exceed five years for a felony conviction, or three years for a misdemeanor conviction.

When an offender serves a period of probation, he reports to a Probation Officer as soon as directed by the court, and as frequently thereafter as directed by the Probation Officer. He must, in addition, live within a general set of conditions established by the court which are generally related to his rehabilitation. General conditions may include: (1) maintain steady employment or school attendance, (2) undergo specific medical or psychological treatment, (3) make financial payments (such as support to a spouse) as directed,

(4) make restitution, (5) remain within the law, or (6) live within a specific community reintegration facility. In addition, courts sometimes list specific conditions relating to the offender's rehabilitation or to the ends of justice. These may include, for example, participation in a specific drug rehabilitation program, or avoidance of the victim or the vicinity of the offender's crime.

According to a recent report to the U. S. Congress by the Comptroller General, probation is the most frequently used criminal disposition in the United States, accounting for approximately 70% of all 1975 felony and misdemeanor dispositions. Recent information from Connecticut's Judicial Department shows that Connecticut's Superior Court (which generally disposes of all felonies and the most serious misdemeanors) uses probation (often accompanied by a period of imprisonment) for approximately 50% of its dispositions.

INDETERMINATE SENTENCE

Under the Indeterminate Sentence, convicted felony offenders are sentenced to both a minimum and maximum term of imprisonment. The "classically pure" example is the 0 - life sentence found in several states. In most jurisdictions, however, legislatures have considerably limited these ranges. In Connecticut, for example, a person convicted for armed robbery (which is classified as Robbery I) is guilty of a "Class B" felony and is technically liable to a term of imprisonment of not less than one year nor more than 20 years. In practice, judges limit the ranges of indeterminate terms even.

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further. A typical indeterminate sentence for Robbery I in Connecticut is a term of imprisonment of not less than five nor more than 10 years. Different judges use different ranges for different types of offenders and for crimes committed under different circumstances. The indeterminate sentence structure is the predominant structure used for convicted felony offenders both in Connecticut and in other states.

INDEFINITE SENTENCE

In some jurisdictions, the Indeterminate Sentence is defined only as the very wide ranging sentence of 0 - life, while the more narrowly defined sentence (one - twenty) is called the Indefinite Sentence. In Connecticut, however, the Indefinite Sentence is a special kind of Indeterminate Sentence, and is defined as follows: Male felony offenders between the ages of 16 and 21 and female felony offenders of any age who are (1) convicted of any offense for which the term of imprisonment would ordinarily be less than the offender's natural life, and (2) who appear to the presiding judge to be amenable to reformatory rehabilitation methods, may be sentenced to an "indefinite" term of imprisonment at either Connecticut Correctional Institution, Cheshire (males) or Connecticut Correctional Institution, Niantic (females). For males, this term of imprisonment may not exceed two, three or five years, depending upon the offense. (Male defendants who are, for example, convicted of Robbery I and fulfill the above requirements may be sentenced to an indefinite term of imprisonment at Cheshire not to exceed five years.) The maximum term for females is not legislatively pre-

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scribed; an 11-year maximum is thought to be the longest imposed. There is no legislatively set minimum term, and release prior to the maximum is determined by the Parole Board (the sentences are thus 0 - 2, 0 - 3, 0 - 5, or 0 - "x" years).

PAROLE

Parole is the vehicle by which inmates sentenced under the indeterminate structure (including indefinite sentences) are released from confinement before their maximum term is served. Parole is divided into two functions, parole release and parole supervision.

1. Parole Release: When the minimum term of any offender given an indeterminate sentence is nearly served (e.g., five years less "good time" on a five - 10 year sentence), he appears before a group of persons appointed by the Governor and called the Parole Board. People given a Connecticut indefinite sentence appear at any time the Parole Board selects since there is no legislatively set minimum. This Board (which, in Connecticut, is independent of the Department of Correction) is authorized by Connecticut Statutes to release offenders from prison when their minimum term less good time is served (or at any time for those with indefinite sentences) if in their opinion there is reasonable probability the inmate being considered will live at liberty without violating the law, and if such release is not incompatible with the welfare of society. In order to inform this decision, Board members review large amounts of written material about each inmate, including records of behavior within the correctional institution, family background,

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criminal record, rehabilitative program participation, plans for housing and employment upon release, and statements from family, friends, attorneys, prosecutors, victims, or relatives of victims of the offender's crime.

In addition, Board members hold a formal hearing with each eligible inmate in order to hear his case and to ask pertinent questions. Immediately after the hearing, the Board makes a "release decision", informs the inmate, and gives him the reasons for their decision. Those inmates denied release must remain under correctional supervision and the Board is required to hold another "release hearing" within at least 18 months. While each case is determined individually; "denied" inmates usually reappear before the Parole Board within approximately six months. Inmates released by the Parole Board must report immediately after release to officers of the Division of Parole Supervision, Department of Correction.

2. Parole Supervision: Shortly before an inmate approved for release by the Parole Board leaves the correctional facility, he signs a "Parole Agreement." Through this document the inmate, now called a parolee, pledges that he will remain within the law, will not carry firearms, ammunition, or other weapons, will maintain gainful employment, will notify the Parole Office within 48 hours of any arrest or any change of residence, employment or marital status, will not leave the State of Connecticut without permission, and will report as directed to the Parole Officer. The Parole Board may also specify certain additional conditions for individual parolees. These may include participation in specific alcohol, drug abuse, or

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mental health programs, or avoidance of the
victim or the vicinity of the offender's crime.

The Parole Officer's function is to enforce all these conditions through supervision, and also to aid released offenders as they re-enter the free community (through employment placement and counseling, for example).

If a parolee seriously violates his Parole Agreement (either by disregarding one or more conditions or by committing a new offense), he may be arrested. After a series of due process notices and hearings, evidence detailing the violation is presented to the Parole Board. This body will, with this new information, determine at a hearing whether this person's parole should be revoked and the person re-manded to prison, or whether parole should be reinstated (with or without certain additional special conditions) and the person set again at liberty.

A parolee is legally liable to a parole term which extends from the date of his release on parole until the expiration of his maximum sentence. The Board of Parole, however, can discharge a person from parole and thus from his sentence at any point after his release if he has shown that supervision is not necessary for the protection of society. The Board usually requires that a person spend at least one year on parole and normally considers him only after he has served one-half of his parole term. Those under life sentences and habitual offenders are considered for discharge only after serving at least five years on parole.

DEFINITE SENTENCE

Definite sentences differ from indeterminate sentences in that convicted offenders are sentenced to a specific, single number of years rather than to a range of years. A person convicted of Robbery I, for example, might, under a definite sentence structure, receive a sentence of eight years rather than an indeterminate 5 - 10 years. In Connecticut, all misdemeanants are sentenced in this fashion and some 16-21 year old felony offenders may be. Several states, including Maine and Louisiana, employ this structure for all felony sentences as well.

Under this structure a sentencing judge's discretion to select a sentence from a wide span of possibilities may or may not be limited. Those convicted of Robbery I in Maine, for example, receive a definite sentence, but the judge is allowed to select from within the relatively wide range of 0 - 20 years. "First-time burglars" in Louisiana are also sentenced to definite terms but judges select the sentence from within the range of 0 - 9 years. Under new California statutes a presiding judge will sentence convicted armed robbers to a definite sentence within the relatively narrow range of 5 - 7 years.

Parole release and supervision — necessities of the indeterminate sentence — may or may not be part of a definite sentencing structure. Maine has eliminated both parole release and supervision in its new stat-

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utes, California has eliminated parole release but retains parole supervision, while Louisiana operates both parole functions. (The "definiteness" of Louisiana's long-standing law is functionally mitigated in that the Board of Parole considers inmates for parole after they have served one-third of their definite sentence.)

Definite sentences are sometimes heralded as limiting the sentencing discretion of judicial or correctional officials. As seen above, however, the primary difference in discretion between definite and indeterminate (and indefinite) sentence structures is not necessarily the degree, but the locus of discretion. Narrowing discretion and eliminating parole supervision, for example, are "options" that may or may not be added to a definite sentence structure.

MANDATORY SENTENCE

Mandatory sentences require that persons convicted of certain legislatively selected crimes spend a certain period of time in correctional confinement. This structure is usually associated with Mandatory Minimum sentencing, where a convicted offender must be sentenced to at least a certain legislatively prescribed period of time in jail or prison. Judges have no sentencing discretion with mandatory sentences, because statutes always require that convictions result in sentences of confinement which may not be "suspended." This last clause is very significant because in most states including Connecticut the only way convicted felons may

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be diverted from confinement to alternatives such as probation is for the sentencing judge to "suspend execution" of the sentence, and award the convicted defendant the alternate disposition. Another common characteristic is that mandatory sentences cannot be reduced either by good time consideration or by early release to parole.

Familiar examples of the mandatory sentence include the Massachusetts gun law (any person convicted in Massachusetts of possessing an unregistered firearm must spend one year in jail), the "Rockefeller Drug Law" (commonly interpreted to mean that any person convicted of certain drug offenses must serve a life sentence in prison), and United States Senator Edward Kennedy's proposed federal legislation establishing mandatory minimums (without, he says, the possibility of probation or parole) for burglary, aggravated assault, Murder II, crimes in which a handgun or dangerous weapon is used, rape, robbery with violence, and trafficking in heroin.

Connecticut has enacted a number of mandatory minimum sentences. The General Statutes, as amended, provide that persons convicted of certain manslaughter, assault, kidnapping, burglary, or sexual offenses with a usable firearm must spend at least one year in prison. Further, persons convicted of the most serious robberies, burglaries and assaults with the aid of a usable firearm are liable to a five-year mandatory minimum prison sentence.

FLAT, FIXED, DETERMINATE (AND SOMETIMES DEFINITE) SENTENCE

These terms all relate to a form of sentencing increasing in theoretical popularity. In these structures legislators establish definite sentences (as defined above) and provide relatively narrow sentence ranges which judges must use in sentencing. Judges are usually required to give the sentence in the middle of the range unless they state in written form that certain specific aggravating or mitigating factors are present in the particular case. Examples of these narrow ranges for armed robbery are as follows: Illinois (proposed), eight years plus-or-minus two years for aggravating or mitigating factors; California (enacted), six years plus-or-minus one year; Florida (proposed), eight years plus-or-minus two years.

Depending upon the proponent of the structure, sentences may or may not be suspended (to allow for post-conviction diversion like probation), may or may not be subject to good time credit, may or may not terminate in parole supervision (all proponents eliminate parole release), and may or many not have a new sentence review function. Actually, the move toward "fixed, flat, determinate, etc." sentences is a move toward definite sentencing, as defined above, but with vastly narrowed degrees of judicial discretion. Other features (good time, parole supervision, sentence review, etc.), like options on an auto-

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mobile, are added by individual proponents to conform with their personal beliefs or with research evidence about the nature of justice in America and the effectiveness of the criminal justice system.

PRESUMPTIVE SENTENCING

The operating assumption of presumptive sentencing is that conviction of a certain crime predictably results in a certain sentence; this sentence can then be modified by mitigating or aggravating factors. More specifically, presumptive sentencing means that armed robbers who commit similar offenses with similar criminal backgrounds, and with other specific similarities, would predictably incur the same sentence. Its purpose is to provide equity and certainty in the criminal sentencing process.

Presumptive sentencing is not a unique sentencing structure, but is a mode which fits well within (1) the indeterminate system with wide judicial and correctional discretion, (2) the definite system with wide judicial discretion, or (3) within the "flat" sentence system with narrow judicial discretion. For example, recent federal judicial efforts in the Second Circuit to establish sentencing guidelines within the indeterminate structure represents a movement toward presumptive sentencing. The Report of the Twentieth Century Fund advocates a definite system with presumptive sentencing and, as an example, suggests a definite presumptive sentence of five years for armed robbery, but within the relatively wide range of 3 - 12 years. The re-

cently enacted "flat" California legislation requires a presumptive sentence of six years for armed robbery, within the narrow range of 5 - 7 years. The Report of the Committee on the Study of Incarceration suggests a sentence for armed robbery of approximately 27 months within a range of 18 months to three years.

AGGRAVATING AND MITIGATING FACTORS

Each proposal for sentencing reform suggests that sentences be tempered, at least to some degree, by aggravating factors (which would increase the sentence) or mitigating factors (which would decrease the sentence). The Report of the Twentieth Century Fund lists sample factors:

Aggravating

1. The defendant was the leader of the criminal enterprise.
2. The crime involved several perpetrators.
3. The crime involved several victims.
4. The victim(s) were particularly vulnerable.
5. The victim(s) were treated with particular cruelty.
6. The degree of physical harm inflicted was particularly great.
7. The amounts of money or property taken were great.
8. The defendant, though able, has refused to make restitution.
9. The defendant had no pressing need for the money taken; he was motivated by the thrills or the desire for luxuries.

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10. The defendant has threatened witness or has a history of violence against witnesses.

Mitigating

1. The defendant played a minor role in the crime.
2. The defendant committed the crime under some degree of duress, coercion, threat, or compulsion insufficient to constitute a complete defense, but which significantly affected his conduct.
3. The defendant exercised extreme caution in carrying out the crime.
4. The victim provoked the crime to a significant degree by his conduct.
5. The defendant believed he had a claim or a right to the property.
6. The defendant was motivated by a desire to provide necessities for his family or for himself.
7. The defendant was suffering from a mental or physical condition that significantly reduced his culpability for the offense.
8. The defendant, because of his youth or old age, lacked substantial judgment in committing the crime.
9. The amounts of money or property taken were deliberately very small and no harm was done or gratuitously threatened against the victim(s).
10. The defendant, though technically guilty of the crime, committed the offense under such unusual circumstances that it is unlikely that a sustained intent to violate the law motivated his conduct.

Legislative proposals usually include lists of factors such as the above in order both to give guidance to the judiciary and to simultaneously limit its discretion.

GOOD TIME

This term is jargon for the more complete "time off (the sentence) for good behavior." Connecticut Statutes currently authorize four forms of good time: (1) Statutory Good Time (time awarded all Connecticut sentenced inmates for good behavior while incarcerated); (2) Jail Credit Good Time (time awarded all Connecticut sentenced inmates for good behavior while incarcerated in Connecticut facilities prior to conviction); (3) Seven Day Work Week Good Time (time awarded sentenced inmates who satisfactorily perform their assigned tasks at employment or academic sites which require a seven-day work week); (4) Outstandingly Meritorious Good Time (time awarded any sentenced inmate who displays exceptional personal achievement, accomplishment, or any other outstandingly meritorious conduct, as determined by the Commissioner of Correction).

Most correctional administrators believe that awards of good time are incentives for good inmate institutional behavior. Consequently, nearly all proposals for change of the indeterminate sentence structure include provisions for good time.

This brochure has been prepared by the Connecticut Department of Correction. Any questions, requests for information, or criticisms should be addressed to

James Harris
Department of Correction
340 Capitol Avenue
Hartford, Connecticut 06115
Telephone: 203/566-7456

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