

FLAT-TIME PRISON SENTENCES

A PROPOSAL
FOR
SWIFT,
CERTAIN,
AND
EVEN-HANDED
JUSTICE

87646

...Y HASTING... THE WAY
...ED. ORIGINALS...
...I HAVE ASKED FOR A NEW
...A CONFIDENTIAL...
...WAYS THE SYSTEM...
...ALS IN ALL...
...ARTICLE...
...IT MUST...
...EVEN...
...CONFIDENTIAL...

INTRODUCTION

A legislative program requested by the Governor would dramatically change the current method of sentencing criminals, the way they serve their sentences, and the process by which they return to the community.

Criminals should have greater reason to fear society than society does to fear criminals. We all know that is not the case today.

There also must be even-handed justice in both the sentencing and the serving of those sentences. Under the present system, there is little possibility of either. We know that, too.

We propose to improve Illinois criminal law by:

... requiring swift and certain punishment for the guilty, punishment that is fair but firm ... ending the unequal sentencing of persons who have committed the same crime.

... strengthening the resources of the courts and corrections agencies to effectively administer the programs.

... requiring the convict to *earn* time off for good behavior, not be awarded time off as a matter of course.

THIS PAMPHLET DEALS WITH
QUESTIONS AND ANSWERS ON
THESE ISSUES—PREPARED BY
DAVID FOGEL, EXECUTIVE DI-
RECTOR, ILLINOIS LAW EN-
FORCEMENT COMMISSION, AT
THE REQUEST OF GOVERNOR
DAN WALKER.

**U.S. Department of Justice
National Institute of Justice**

This document has been reproduced exactly as received from the person or organization originating it. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the National Institute of Justice.

Permission to reproduce this copyrighted material has been granted by

Illinois Law Enforcement
Commission

to the National Criminal Justice Reference Service (NCJRS).

Further reproduction outside of the NCJRS system requires permission of the copyright owner.

Q. WHAT IS A FLAT-TIME DETERMINATE SENTENCE?

A. A set, certain sentence, for example, 5 years.

Q. IN A NUTSHELL, WHAT DOES THIS FLAT-TIME PROGRAM TRY TO DO?

A. Insure that all offenders sent to prison serve a certain sentence. Without parole. Insure as nearly as possible that similar offenders get similar sentences for the same crimes.

Q. NO PAROLE? ISN'T THAT TOO HARSH?

A. No. It simply lets everybody know where they stand. It is more equitable, more desirable and both law enforcement officials and convicts prefer it.

Q. HOW DO WE SENTENCE NOW?

A. Present law requires the Courts to sentence a criminal to an indeterminate sentence. Such as 1-10 years; 4 to 20 years; etc. Actual release is determined by the Parole Board.

Q. CAN YOU GIVE AN EXAMPLE OF INDETERMINATE SENTENCING?

A. Yes. The chart below shows indeterminate sentencing under present law. Under flat-time sentencing this chart would no longer apply.

PRESENT INDETERMINATE SENTENCING IN ILLINOIS
(Judges choose minimum and maximum within these ranges*)

Offense	Sentence
Murder	14 years to life
Felony—Class 1 (for example, rape, armed robbery)	4 years to life
Felony—Class 2 (for example, robbery and burglary)	1 to 20 years
Felony—Class 3 (for example, theft of \$150)	1 to 10 years
Felony—Class 4 (for example, petty theft)	1 to 3 years

*There is also parole supervision for two to five years.

Q. WHAT WOULD HAPPEN UNDER THE NEW PLAN?

A. Specific sentences for specific crimes. Fixed. Set. Specified prison terms without parole, based upon the existing classification of offenses. With a set schedule of ranges for aggravating or mitigating circumstances.

The next chart shows how flat-time sentencing would work. The sentences shown are for illustrative purposes only. The General Assembly would fix the terms.

EXAMPLE OF FIXED SENTENCE SYSTEM

Offense	Sentence	Range in Aggravation or Mitigation
Murder	Life or 25 yrs.	± up to 5 years
Felony—Class 1	8 years	± up to 2 years
Felony—Class 2	5 years	± up to 2 years
Felony—Class 3	3 years	± up to 1 year
Felony—Class 4	2 years	± up to 1 year

Q. BUT AREN'T THERE DIFFERENT DEGREES IN CRIME? COULDN'T ONE ARMED ROBBERY BE MORE VICIOUS THAN ANOTHER?

A. Yes. And in such cases there still would be leeway given the courts to increase or decrease the severity of the sentence. But, the final sentence would be for a stipulated flat-time, not an indeterminate period.

For example, under the schedule above, a person convicted of armed robbery (a Class 1 Felony) normally would receive an 8 year sentence. But the judge could decrease that sentence by up to 2 years or increase it by up to 2 years (i.e. give any sentence from 6 to 10 years) depending upon the facts of a particular case.

Q. WHAT ABOUT CAREER CRIMINALS OR REALLY DANGEROUS PERSONS? DOES THE NEW PROGRAM PROVIDE FOR THEM?

A. Yes, such criminals may receive longer flat-time sentences as provided by the General Assembly. For illustrative purposes, such a schedule is shown below.

EXAMPLE OF A SYSTEM OF LONGER SENTENCES		
Offense	Sentence	Range in Aggravation or Mitigation
Felony—Class 1	15 years	± up to 3 years
Felony—Class 2	9 years	± up to 2 years
Felony—Class 3	6 years	± up to 2 years
Felony—Class 4	4 years	± up to 1 year

Q. WHY CHANGE SENTENCING AT ALL?

A. Because two persons convicted of the same crime can and do receive greatly different sentences and actually serve vastly different lengths of time under the present set-up. This is illogical and unfair.

There is nothing to prevent one judge from sentencing armed robbers too lightly and another too harshly. Even if they received the same sentence, for example, 4-12, one could get out in less than 3 years, the other only after 12.

Q. SO WHAT?

A. This leads to convict frustration, prison tension and riots, and a greater threat to society. A prison term should be a deterrent and a punishment. Under today's system it is neither, because the criminal believes he can con his way out in a short period of time. Uncertain sentencing does not deter crime. The criminal should know in advance the penalty for what he is about to do. Now he doesn't. Under the new proposal he would know the punishment, no question about it.

PAROLE

Q. BUT DOESN'T OUR PAROLE BOARD DETERMINE WHO SHOULD BE RELEASED AND WHEN?

A. In theory that's right, but actually decisions on who gets released from prison and when, are arbitrary and based on a concept of "rehabilitation" which cannot be proven to have any relation to future criminal behavior. Not only that, parole dates don't seem to be related to the length of sentence imposed originally. (Of all burglars in Illinois paroled over the past two years, the average time served was 1 year, 9 months, although the average sentence for burglary was 4 years.) And let's face it, some convicts are slick enough to get an early parole while not-so-slick convicts serve a lot longer even though rehabilitated.

Q. ARE YOU SAYING THAT WHEN A JUDGE GIVES A CONVICTED CRIMINAL A LONG SENTENCE HE WON'T NECESSARILY SERVE THE SENTENCE?

A. That's right. Nobody knows because the sentence is "indeterminate". The offender *must* serve the minimum, or one third of the maximum of the term to which he is sentenced, less time off for good behavior, but he *may* serve up to the maximum. This is where the disparity and inequity for both the public and the offender becomes a reality.

Two offenders with similar backgrounds who have committed the same crimes often receive completely different sentences. This means one will come up for a parole hearing before the other. One may be paroled many years before the other. Just as bad, two offenders who have committed the same crimes and received the same sentences serve completely different sentences because one was more convincing before the parole board, although not necessarily a better bet to succeed in society.

The net effect of this present situation is that the public is never assured of just punishment, and the criminal suffers an equal injustice by never knowing how long he must serve. The system is not only illogical, but leads to serious problems of controlling offenders within prisons.

Q. HOW WOULD FIXED, CERTAIN SENTENCING CHANGE THE WAY CONVICTED OFFENDERS ARE SENTENCED?

A. As we have stated, a certain, fixed sentence would be given to every offender sent to prison. Three general rules would apply to all prison sentences:

- 1) The term would be fixed at the beginning of the term by the judge.
- 2) The offender would never have to guess what the punishment would be.
- 3) The disparity which now exists in sentencing would be eliminated.

Q. DOES CERTAIN, FLAT-TIME SENTENCING MEAN THAT NO OFFENDER WOULD BE PAROLED BEFORE HIS SENTENCE IS COMPLETED?

A. Right. "Parole", as we know it, is done away with. And along with it, the false pretense that we are releasing criminals only after they are safe. We propose to punish for the crime, and grant release after the punishment has ended.

Q. BUT ISN'T PAROLE USEFUL AS A REWARD FOR STAYING OUT OF TROUBLE IN PRISON?

A. Under the program, we would provide for early release from prison on the basis of "good time" earned.

Q. WHAT DO YOU MEAN BY "GOOD TIME"?

A. Good time is a reward for good and responsible behavior by offenders. In the new plan, every prisoner receives a day off his sentence for every

good, infraction-free day in prison. Thus, if a person receives a fixed sentence of 10 years, he will be out in 5 years if he is not found guilty of infractions while in prison.

Q. IF YOU'VE DONE AWAY WITH PAROLE, ARE YOU SCRAPPING THE IDEA OF REHABILITATION?

A. No. The fixed sentence program only rejects "rehabilitation" as the key to release from prison. If an inmate truly wants to rehabilitate himself voluntarily—in the sense of learning a trade, completing his basic education or seeking mental health services, even though he knows his release date doesn't depend on it—such services will continue to be made available to him.

The difference is that a convict will ask for these services only because he really wants them—not just so he can convince the Parole Board that he is rehabilitated. For the first time these helping services will be able to operate as they were supposed to—solely as personal incentives for those who wish to spend their time constructively. Because of this, we believe they will be much more effective.

Q. IS THE PARDON AND PAROLE BOARD ABOLISHED UNDER THE NEW PROGRAM?

A. No. The work of the Pardon and Parole Board takes on new meaning under the certain flat-time sentencing law. Its duties will include:

- 1) Establishing new flat-time release dates for all inmates sentenced under prior law, based upon new fixed-time law, and the actual term of imprisonment intended by the sentencing judge.
- 2) Certifying the legal release date for all prisoners sentenced under the new law.
- 3) Advising the Governor on executive clemency—the avenue for release from prison of unusual offenders whose continued imprisonment would be an injustice.

PROBATION

Q. DOES ALL THIS MEAN PROBATION IS ENDED?

A. No. It becomes even more important. First, let's define Probation: It is supervision outside of prison subject to conditions, aimed primarily at young or non-dangerous first offenders.

Q. WHAT HAPPENS TO PROBATION?

A. The system would be strengthened. The program proposes a unified statewide community corrections system under the Department of Corrections with strong local participation. That system would supervise all adult offenders not in prison.

The term "Probation" is changed to "Mandatory Supervision", because offenders really will be supervised under this new system. "Mandatory Supervision" will require additional conditions such as financial restitution to the crime victim, periodic imprisonment, fines, and so forth. This insures that every felony offender will receive some degree of punishment and will make probation a more realistic alternative.

Q. IF THIS CHANGE IN COMMUNITY CORRECTIONS SYSTEM IS ESTABLISHED, WHAT WILL HAPPEN TO THE PRESENT PROBATION OFFICERS?

A. All present county adult probation officers will remain employees of the court. They will have a crucial job of assisting the court in pre-sentence investigations for each convicted criminal. These investigative reports will be mandatory, and the judge will have to use them in sentencing of offenders.

APPEAL

Q. WITH EVERYTHING SO CUT AND DRIED WHAT ABOUT THE APPEAL OF THE SENTENCE?

A. The power of the Illinois Appellate Court to review the sentence imposed on convicted criminals will be expanded.

Q. WHY IS THIS SPECIAL REVIEW OF THE SENTENCE DESIRABLE?

A. The certain, fixed-time program is rooted in the principle that persons who commit the same offense in similar circumstances should receive substantially the same sentence. Right now there are great disparities in sentencing by trial judges which cannot be reviewed effectively because the legislature has permitted a wide range of sentences without clear standards. This plan corrects that problem. It provides clear standards to a trial judge for sentencing and permits the Appellate Court to modify a sentence.

Q. UNDER THE NEW PLAN, WHO MAY APPEAL A SENTENCE?

A. Either the defendant or the State may appeal the sentence. Under current law, the State cannot appeal.

Q. THUS FAR, ALL OF THE PROVISIONS OUTLINED IN THIS NEW PLAN ADDRESS THE ADULT CRIMINAL JUSTICE SYSTEM. WHAT ABOUT JUVENILES?

A. Flat-time is a program for *adult* criminals. Under present Illinois law, juvenile offenders are under the Juvenile Court Act. There are, however, two provisions in the new plan that would improve juvenile justice. They are:

- 1) Vesting juvenile release decisions in the Department of Corrections;
- 2) Guarantee of due-process rights for juveniles in custodial institutions.

Q. WHO GAINS MOST BY THE PASSAGE OF THIS PROGRAM?

A. These groups:
1) The general public is the chief beneficiary because flat-time sentencing is a more

- credible deterrent and it ends the abuses of the parole system.
- 2) Victims of crime and witnesses at trials who will see cases handled more quickly and with justice.
 - 3) Law enforcement officials who need no longer concern themselves with soft sentences and "soft-hearted" judges.
 - 4) Civil libertarians who will no longer be concerned about "hanging" judges and the inequities in the current system.
 - 5) Offenders who will receive uniform and reviewable sentences.
 - 6) Guards who will work in a better and safer atmosphere, one in which offenders have a stake in maintaining order.
 - 7) Professionals who have an opportunity to help those offenders who really want to learn and change.

Q. HOW IS THIS PROGRAM TO BE IMPLEMENTED?

A. The "Adult Corrections" Sub-committee of the Illinois House of Representatives Judiciary II (Criminal Law) Committee began to consider the Governor's certain fixed-time proposals in the fall, 1975. Thereafter the full Judiciary Committee then would propose legislation to the General Assembly for enactment. All can be reached by mail: Illinois House of Representatives, State Office Building, Springfield, Illinois 62706.

MEMBERS
ADULT CORRECTIONS SUBCOMMITTEE,
JUDICIARY II COMMITTEE

- Rep. Michael L. Getty (D-Dolton) (Chairman)
- Rep. Robert E. Mann (D-Chicago) (Vice-Chairman)
- Rep. Brian B. Duff (R-Wilmette)
- Rep. Robert W. Ewell (D-Chicago)
- Rep. Harry D. Leinenweber (R-Joliet)
- Rep. Harold A. Katz (D-Glencoe) (ex officio)
- Rep. Romie J. Palmer (R-Blue Island) (ex officio)

OTHER MEMBERS
JUDICIARY II COMMITTEE

- Rep. Harold A. Katz (D-Glencoe) (Chairman)
- Rep. Romie J. Palmer (R-Blue Island)
(Minority Spokesman)
- Rep. Roman J. Kosinski (D-Chicago)
(Vice-Chairman)
- Rep. Ken Boyle (D-Carlinville)
- Rep. Susan Catania (R-Chicago)
- Rep. Roscoe A. Cunningham (R-Lawrenceville)
- Rep. Lee A. Daniels (R-Elmhurst)
- Rep. Robert K. Downs (D-Chicago)
- Rep. Charles J. Fleck, Jr. (R-Chicago)
- Rep. Michael S. Holewinski (D-Chicago)
- Rep. Daniel L. Houlihan (D-Chicago)
- Rep. Joseph R. Lundy (D-Chicago)
- Rep. Leland Rayson (D-Tinley Park)
- Rep. George E. Sangmeister (D-Mokena)
- Rep. Eugene F. Schlickman (R-Arlington Heights)
- Rep. Ronald A. Stearney (R-Chicago)
- Rep. Harold Washington (D-Chicago)
- Rep. Anne Willer (D-Hillside)

Produced by the
Illinois Law Enforcement Commission.
120 N. Riverside Plaza, Chicago 60602

Printed by the Department of General Services



Printed by Authority of the
State of Illinois
12/75/20M