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CRIMINAL SENTENCING PRACTICES

BACKGROUND INFORMATION FOR POLICY MAKERS

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The Governor's Justice Commission (GJC) is Rhode Island's State Criminal Justice and Coordinating Agency, involved in activities such as criminal justice program funding, policy development, research, and statistical analysis.

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FOREWORD

During the past ten years court sentencing practices in criminal cases have undergone rigorous examination throughout the country and, in some states, there have been major shifts in sentencing philosophy and significant changes in procedures. Debate has focused on a set of inter-related questions such as the following:

1. What is the fundamental purpose of criminal sentencing?
2. What is the appropriate level of involvement of state legislatures in establishing criminal penalties?
3. How much flexibility should judges have in making sentencing decisions?
4. How much control should prosecutors have over sentencing through plea bargaining?
5. Should parole boards be able to make prison release decisions that significantly alter original sentences imposed by judges?
6. What effects will alterations in sentencing practices have on prison populations?

These are complex questions; questions which, for the most part, cannot be definitively answered by review of criminal justice system data or even by examining experiences in other states. The answers depend at least as much on personal beliefs as they do on objective review of facts.

However discussion of the issues has suffered from confusion about definitions of terms. For example, there are important differences between determinate and mandatory sentencing that are not always understood. There is also confusion about the underlying

philosophies of different sentencing practices and the potential impacts of proposed changes.

In Rhode Island judges went through a detailed assessment of sentencing practices several years ago and have adopted a set of sentencing guidelines. The Attorney General has proposed legislation that would apply a determinate sentencing approach to thirteen major crimes. The legislation was not passed by the General Assembly in its 1983 session but is expected to be introduced agin in 1984. The Attorney General's proposal has been a source of concern to the Department of Corrections, which fears increases in prison population; and to the American Civil Liberties Union (A.C.L.U.), which fears harsher treatment of offenders.

At its December 1983 meeting the Planning and Administration Subcommittee of the Governor's Justice Commission (GJC) decided that the Commission might assist members of the General Assembly and other decision makers who will continue to grapple with sentencing practices. It was determined that this assistance should take the form of a background paper that would define terms and explore key issues. It would not set forth specific recommendations about what sentencing practices are best for Rhode Island but, rather, would present information that decision makers might use to rationally develop their own recommendations.

In attendance at that December subcommittee meeting were GJC Chairperson Frederick C. Williamson, Director of the the State Department of Community Affairs; Mr. Daniel Hackett representing GJC Vice Chairperson, Attorney General Dennis J. Roberts II; Mr. John Moran, Director of the State Department of Corrections; Mr. Leo

Trambukis of the Rhode Island State Police; Mr. Robert C. Harrall, Deputy State Court Administrator, representing Mr. Walter J. Kane, State Court Administrator; and Chief William P. Tocco, Jr. of Johnston, representing the Rhode Island Police Chiefs' Association.

INTRODUCTION

Increasing skepticism about the effectiveness of rehabilitation programs and concerns about apparent disparity in judicial decision making have precipitated movement away from indeterminate sentencing during the past decade. Critics have offered alternative practices that have been given labels such as determinate, mandatory, just deserts, fixed, and flat-time sentencing. There has been considerable confusion about the meaning of these terms, which has sometimes resulted in proposals of one type being erroneously debated on the characteristics of another type. The distinctions between mandatory sentencing and other approaches have been particularly puzzling to many.

Paralleling the national trend, sentencing practices have been of concern to criminal justice practitioners and other parties in Rhode Island during the last few years. In January 1981 a Sentencing Committee composed of representatives from Supreme, Superior, Family, and District Courts; the Department of Attorney General; the Office of Public Defender; and Brown University's Department of Political Science issued recommended guidelines /benchmarks for eleven crimes. These guidelines were later adopted and are being used by the courts.

In 1981, 1982, and 1983 the Attorney General submitted legislation proposing the use of determinate sentencing for thirteen serious crimes. Rhode Island's branch of the American Civil Liberties Union (ACLU) has opposed the legislation because of fears that it would result in harsher treatment of offenders. Both the

ACLU and the Department of Corrections have expressed concerns that the proposal would worsen prison overcrowding. The Attorney General maintains that this is not a necessary consequence of his bill. The legislation has not passed the General Assembly but is expected to be introduced again in 1984.

The Governor's Justice Commission (GJC), composed of representatives from all components of the criminal justice system, has been concerned about sentencing and prison overcrowding issues for some time. The Commission believes that it can best assist decision makers by providing information that will clarify terms, discuss underlying philosophies of various proposals, and consider possible implications of different sentencing practices.

This paper attempts to accomplish these objectives. Following this introduction are eight major sections.

The first defines terms. It distinguishes between indeterminate, determinate, and mandatory sentencing; explains the just deserts model; and considers other terms such as rehabilitation, retribution, and deterrence.

Next comes an overview of current trends in sentencing. This includes the shift in philosophy away from rehabilitation and the resulting movement toward determinate sentencing. Types of determinate sentencing adopted by other states are briefly discussed.

The third section considers the current Rhode Island situation. Where does the state rest on the indeterminate/determinate continuum? What are some of the specifics of the sentencing guidelines?

This is followed by an explanation of the Attorney General's

determinate sentencing proposal and reactions from the ACLU and Department of Corrections.

Because determinate sentencing - rather than mandatory - is the current topic of debate in Rhode Island, the next three sections address the potential ramifications of determinate practices for prision populations, parole, and plea bargaining.

The concluding section offers general observations but does not specifically endorse one philosophy of sentencing over another. The intent of the paper is to supply information that will enable decision makers to understand the issues and rationally adopt policies.

DEFINITIONS

The purpose of this section is to provide definitions of key terms related to sentencing practices.

. Determinate Sentencing - Sentencing systems under which judges order prison terms of fixed durations that cannot be shortened by parole boards but usually can be reduced by prison good time. This differs from indeterminate practices which give parole boards flexibility to reduce sentences. It also differs from mandatory sentencing which requires judges to order imprisonment. Determinate sentencing permits judges to make use of other options such as probation and restitution, but when prison is the alternative selected it is for a set time. Sentencing should probably be regarded as a continuum with purely indeterminate at one end and purely determinate at the other. Distinctions between the two blur in the middle ground. Determinate sentencing practices vary according to the amount of flexibility individual judges have to set sentences and the extent to which they can take aggravating and mitigating circumstances into account.

. Deterrence - Attempting to prevent future crime by punishing apprehended offenders. This is based on the assumption that if the consequences of illegal behavior are made unpleasant enough, some people who would otherwise commit crimes will not. Specific deterrence refers to the apprehended offender. It is hoped that punishment will convince him not to engage in future criminal activity. General deterrence refers to other potential offenders who might not commit crimes if they perceive that

punishment is likely to be swift and severe. Research about the deterrent value of punishment has been mixed, tending to indicate that certainty is more important than severity. This is problematic since less than twenty percent of serious crimes are cleared by arrests. Some critics contend that it is morally wrong to select a punishment for an offender based on the effects it might have on others.

- Disparity - Refers to differences in types of punishments and lengths of sentences ordered for similar criminal acts by different judges. The term usually has a negative connotation though some observers believe it unfortunately blurs an important distinction between sentencing variations that are justified and those that are not.
- Equity - Persons who commit similar criminal acts should be treated similarly - should receive comparable punishment.
- Fairness - The severity of the punishment should correspond to the seriousness of the crime: the more serious the crime the harsher the punishment.
- Fixed Sentencing - Statutes specify the exact penalties that accompany criminal offenses. This is a form of determinate sentencing in which judges have virtually no flexibility. See presumptive sentencing for a contrast.
- Flat Term Sentencing - A synonym for determinate sentencing which takes its name from the fact that offenders are given a basically unalterable sentence.
- Good Time - Reduction of prison terms based on offenders' prison behavior. This is the one means of shortening sentences that is

usually included in determinate sentencing practices. Some critics contend that good time is meaningful when used as an incentive to get inmates to participate in programs, but not when used as an automatic reward for staying out of trouble.

- Guidelines - A task force, commission or other body recommends ranges of penalties for various crimes. The guidelines may be officially adopted as a rule of the court and judges may be required to justify in writing any deviations. The guidelines are usually not legislatively mandated.
- Incapacitation - Imprisoning criminals in order to keep them from committing additional crimes. This differs from deterrence in that the concern is with controlling behavior during incarceration, not with affecting behavior after release.
- Indeterminate Sentencing - Sentencing systems under which judges order prison terms that may be adjusted by parole boards or other review authorities. This is contrasted with determinate sentencing under which the sentence imposed by the judge typically may not be modified except by the accumulation of good time.
- Just Deserts - A philosophy underlying determinate sentencing which asserts that determination of a punishment for a crime should be based on the nature and circumstances of the criminal act, not on hopes of rehabilitation or deterrence. Its two basic principles are that the punishment should be commensurate with the seriousness of the criminal conduct and that people should be punished similarly for similar conduct.
- Mandatory Sentencing - Sentencing practices which force judges

to order imprisonment for crimes. Judges may not utilize alternatives to prison such as probation, suspended sentences, or restitution, as they are permitted to do under determinate sentencing.

- Medical Model - One philosophy underlying rehabilitation which asserts that criminals are sick and need to be treated. The correctional agent/offender relationship is regarded as doctor/patient in nature. Sentences are indeterminate since the amount of rehabilitation criminals will require cannot be predicted until treatment begins.
- Parole - This has two meanings for which determinate sentencing has different implications. Parole boards are review panels which, under indeterminate sentencing practices, have the ability to modify prison sentences ordered by judges based on the offender's prison behavior and other factors which the board might choose to take into account. Under determinate sentencing practices parole boards either have their powers severely restricted or they are completely eliminated. Parole also refers to release of prisoners under supervision for a specified period of time after completion of their prison sentences in order to integrate them back into the community. It is possible to retain this concept under determinate sentencing.
- Plea Bargaining - Negotiations between prosecutors and accused offenders and their defense counsels as to what criminal charges should be brought against the accused and what penalties should be recommended to judges. Some fear that one of the results of determinate sentencing could be greatly enhanced power of

prosecutors since plea bargaining would determine the charge, which would determine the sentence, which could no longer be adjusted by parole boards to eliminate disparity. Since Rhode Island's judges are relatively active participants in negotiating pleas, and since sentencing guidelines restrict sentence reductions through pleas, this fear is probably unfounded here.

- Presumptive Sentencing - Statutes specify a normal sentence for various offenses but permit departures from the norm under certain circumstances. This is a form of determinate sentencing which is contrasted with fixed sentencing - also determinate in nature - under which specific penalties are set and no deviations permitted.
- Proportionality - One of the major precepts of the just deserts philosophy which underlies determinate sentencing. Punishment should be proportionate to the seriousness of the criminal behavior. The seriousness of the conduct may depend on its harm and the extent of the criminal's culpability.
- Punishment - The infliction of a penalty on an offender by a legal authority. It is distinguished from revenge, which is individual retaliation not legally sanctioned. To qualify as punishment the action should: involve pain or other unpleasantness, be for the offense, be intentionally administered, and be administered by a legal authority.
- Rehabilitation - Providing economic, psychological, socialization and other assistance to offenders in order to reduce the likelihood that they will engage in criminal activity

to order imprisonment for crimes. Judges may not utilize alternatives to prison such as probation, suspended sentences, or restitution, as they are permitted to do under determinate sentencing.

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in the future. Belief in the possibility of rehabilitation underlies indeterminate sentencing practices. It is felt that sentences should be open ended and adjusted depending on the rehabilitative progress of the offender. Skepticism about the effectiveness of rehabilitation programs is one of the major reasons determinate sentencing has replaced indeterminate practices in some places.

- Reintegration Model - One philosophy underlying rehabilitation which rejects the medical model and emphasizes changing portions of the environment. The focus is on collaboration between the corrections agent and offender rather than on a doctor/patient relationship. Maintenance of the offender in the community and reduced use of imprisonment are promoted.
- Retribution - Punishing offenders to express societal disapproval of their behavior without concern for whether the punishment will deter or rehabilitate. This is a cornerstone of the just deserts model and of determinate sentencing.
- Sentencing - An official process by which courts and/or other legally empowered agencies - such as parole boards - impose penalties on persons who admit criminal guilt or who are found guilty through formal adjudications. Sentencing decisions are bifurcated: have two parts. First is the selection of the type of penalty - imprisonment, etc. - and second is determination of the length of the penalty.

CURRENT TRENDS IN SENTENCING

Sentencing of criminal offenders is based on one or more of four objectives, defined in more detail in the "Definitions" section of this paper.[1]

- Rehabilitation - Providing assistance to the offender in order to reduce the likelihood that he/she will engage in future criminal activity.
- Deterrence - Making punishment for criminal conduct certain and/or severe in order to convince the offender and other potential criminals that the painful consequences of crime outweigh any benefits.
- Incapacitation - Separating the offender from society in order to prevent him/her from victimizing the public during the period of incarceration.
- Retribution - Punishing offenders in order to express societal disapproval of criminal behavior regardless of rehabilitative or deterrent benefits of the punishment.

Until the early or middle 1970's the objective of rehabilitation had top billing in most jurisdictions throughout the United States. It was believed that offenders could be converted to law-abiding behavior by providing them with assistance such as counseling, education, and job placement and training. As was true of many other social problems, there was also a feeling that society was at least partially responsible for individual criminal activity and that, therefore, emphasis should be placed on treatment not blame. The rehabilitative approach was based on the medical model of treatment which regarded the criminal as sick, not blameworthy, and

was fundamentally concerned with treating the illness.

Consistent with this model, sentencing practices were indeterminate almost everywhere. State legislatures established rather broad limits for criminal penalties and judges determined who went to prison, subject to plea-bargaining negotiations. Parole boards controlled the length of prison terms within broad parameters.[2] The notion was that the sentence was not so much a punishment as time necessary to rehabilitate and, therefore, the length of the sentence should not be fixed until the progress of the rehabilitation could be determined.

During the past ten years there has been a growing movement away from the medical rehabilitative model - a movement with two root causes. There has been much concern among conservatives and liberals about sentencing disparity. Indeterminate sentencing typically affords judges and parole boards considerable flexibility, which means that persons who commit similar crimes under similar circumstances may receive very different sentences from different judges. There has been a trend toward making penalties less indeterminate by narrowing the ranges of sentences available to judges, usually through legislation or sentencing guidelines.

It should be noted that implementing determinate sentencing without narrowing the ranges of sentences will not necessarily reduce sentencing disparity; in fact it may increase it. Most observers believe that parole boards have effectively functioned as a vehicle for controlling sentencing disparity since they have been able to adjust sentences that are disproportionate. Since determinate sentencing results in the elimination of parole boards'

sentence review authority, this control mechanism is lost. As will be discussed in the section on the Rhode Island situation, Rhode Island does have sentencing guidelines, so adoption of the Attorney General's determinate sentencing proposal probably would not increase disparity. Since the Rhode Island Parole Board uses percentage of sentence served as its basic criteria for parole eligibility it is questionable whether it is controlling disparity under present circumstances.

The second, and perhaps more important reason for the shift away from indeterminate sentencing to determinate practices has been dissatisfaction with the results of the medical model upon which indeterminate sentencing is based. The perception of the public and many, if not most criminal justice professionals - again an interesting coalition of conservatives and liberals - is that rehabilitation does not work.

In large part this is based on a 1975 study by a team led by criminologist Robert Martinson. Martinson and his colleagues extensively reviewed evaluations of all types of rehabilitation programs and essentially concluded that none could be demonstrated to be effective. These results were highly publicized and are still frequently referenced, and they provided ammunition to those who were frustrated with the medical model.

It should be noted that the failure of rehabilitation has probably been exaggerated. Martinson's 1979 follow-up study determined that some programs are beneficial under certain circumstances and other programs are harmful. Similarly, the 1977 Panel on Research on Rehabilitative Techniques concluded that the

"nothing works" notion is questionable. The panel admitted that it could offer no specific recommendations for rehabilitative strategies, but also stated that no significant changes in rehabilitative initiatives could be justified on empirical grounds.[3]

Others have argued that though rehabilitation as practiced by the medical model may not be effective, other types of rehabilitation efforts can be. The reintegration model, for example, emphasizes changing portions of the environment and collaboration between the corrections agent and offender rather than a doctor/patient relationship. This model promotes community based programs and intensive probation.[4]

There have also been concerns about abuses of incarceration in the name of rehabilitation/treatment. Under the indeterminate scenario offenders may not know how long they will be imprisoned since the release date will depend on their prison behavior and response to rehabilitation programs. This opens the door to abuses by persons in positions of power within institutions.

The movement away from the medical model, rehabilitation, and indeterminate sentencing has been toward the just deserts model and the sentencing goals of retribution, deterrence, and incapacitation, which are associated with determinate sentencing. The essence of just deserts is that criminals should get what they deserve, should receive sentences that are commensurate with their behavior and comparable to sentences given to others guilty of similar misconduct.

Pure just desert advocates argue that the only goal of sentencing should be retribution: expressing societal disapproval

of criminal behavior. They maintain that since the deterrent and incapacitative benefits of punishment are questionable they should not play a role in sentencing decisions. Others give primacy to retribution but also wish to pursue deterrence and incapacitation.

The idea is that since rehabilitation "has not worked" we ought to focus on punishment as a means of making the law credible rather than as a form of treatment. Rehabilitation opportunities may still be available but they will only be successful with inmates who are self-motivated to change. Consistent with this philosophy, sentences should be determinate: fixed by the judge.

The judge is the one most familiar with the facts and circumstances of the case and thus the one best qualified to determine the appropriate punishment. Since the punishment is only retrospective - based on past behavior - and not concerned with future actions such as prison behavior and participation in prison programs, there is no need for adjustments by parole boards. However determinate sentencing proposals do frequently muddy these waters by supporting the retention of good time credits, which permit offenders to reduce their sentences for good behavior.

In addition to determinate sentencing there have been other sentencing related reforms in some places. In order to reduce sentencing disparity some states have narrowed the range of sentencing options or lengths of sentences available to judges by changing statutes or by developing sentencing guidelines.

There has also been some interest in mandatory sentencing, which differs significantly from determinate sentencing but is often confused with it. Mandatory sentencing mandates that judges must

always order imprisonment for specified crimes, but the sentences may be either determinate (determined by judges) or indeterminate (subject to parole board modification). Determinate sentencing permits alternatives to imprisonment such as probation and suspended sentences, but does not permit parole board sentence adjustment when imprisonment is ordered.

Two of the best known mandatory sentencing laws are the New York State Drug Law and the Massachusetts Gun Law. A policy brief prepared by the National Institute of Justice that assessed the results of these two statutes concluded that:[5]

1. Laws designed to eliminate sentencing discretion may only succeed in displacing that discretion in ways that may be counter to legislative intent.
2. Attempts to anticipate and remedy these displacement effects may prove difficult.
3. To the extent that rigid controls can be imposed, the effect may be to penalize some less serious offenders, while the punishment for more serious cases is postponed, reduced, or avoided altogther.
4. It is difficult, perhaps fundamentally impossible, to substantiate the popular claims that mandatory sentencing is an effective tool for reducing crime.

According to the federal Bureau of Justice Statistics (BJS), twenty-five of the fifty states have adopted determinate sentencing practices. Rhode Island is one of those that has not, as will be discussed in more detail in succeeding sections of this paper. BJS data also show that thirty states have mandatory sentencing for one

or more crimes. Rhode Island is not one of these thirty.[6]

In order to illustrate the different forms in which determinate sentencing may be implemented it is instructive to briefly describe the procedures in two states.

In Maine judges have have been given total discretion to sentence up to the maximum permitted by law; there is no parole board. This is not pure determinate sentencing because sentencing disparities have been institutionalized by the new statute. All sentences in excess of one year are tentative and offenders may be sent back to court for resentencing. Sentences may also be reduced through accumulation of good time credits.[7]

California's procedures are regarded by some as the purest determinate sentencing practices yet developed. The judge is required to impose a selected sentence which, while usually fixed, can vary when there are mitigating or aggravating circumstances. Indeterminate sentences have been eliminated for all crimes except capital offenses, which carry a maximum penalty of life imprisonment or capital punishment.

Other felonies are divided into four categories and for each category the judge has three choices. The middle option must be selected unless there are mitigating or aggravating factors. Enhancements or additions to sentences are possible and the length of time served may be reduced by up to one-third through accumulation of good time.

Parole supervision has been retained without parole/early release. All inmates must serve three years on parole after completion of incarceration, except capital offenders who must serve

five years. There is a Community Release Board which fixes parole release dates, reviews prison sentences in their first year and recommends resentencing when disparity is found, and reviews use of good time.[8] Thus even the California system is not truly pure determinate sentencing.

It must also be mentioned that there are those who believe that determinate sentencing is more of a fad than a long term trend. Some observers argue that it will prove impossible to treat all like offenders similarly, in part because there is not sufficient correctional cell space to do so. They believe the result will be continuance of the present practice of giving severe sentences to a few and lenient dispositions to most, and continued use of discretion at all levels to keep the criminal justice system in balance.[9]

Others argue that coalitions of conservatives and liberals who initially band together to support determinate sentencing will ultimately break up after implementation of the new procedures. In a review of the California experience, Casper, Brereton and Neal state that once legislators began to set prison terms the inclination was to raise them, which upset liberals. On the other hand the law enforcement community was not satisfied because they felt some sentences were too light.[10]

The authors suggest that without the parole escape valve, longer sentences and increased commitment rates will lead to larger prisoner populations, which will strain capacity. Liberals may press for a return to more flexible sentencing to counteract the harshness they perceive, and law enforcement may want flexibility

for longer sentences for some dangerous offenders. The result may be the rediscovery of indeterminate sentencing and parole boards.[11]

CURRENT RHODE ISLAND SENTENCING PRACTICES

In its 1983 publication, Report to the Nation on Crime and Justice, the federal Bureau of Justice Statistics (BJS) categorized Rhode Island as having indeterminate sentencing practices.[12] Since the major difference between indeterminate and determinate sentencing is the existence of a parole board which determines prison release dates, this is an accurate characterization. The BJS review concludes that half of the states have indeterminate practices and the other half have converted to determinate sentencing.

Rhode Island does, of course, have an active parole board which has adopted guidelines for determining when imprisoned offenders should be eligible for parole. In general inmates must have served one-third to two-thirds of their sentences to be eligible for parole. It is because the exact length of sentences are not known at the time of sentencing that Rhode Island's practices are considered indeterminate.

However the state's procedures are not an example of pure indeterminacy. In a pure indeterminate system judges commit offenders to prison for an indeterminate period - such as 1 to 20 years - and the parole board or other review authority later determines the release date, usually based on prison behavior and rehabilitative progress. In Rhode Island judges sentence for fixed periods, but the periods may be adjusted by the parole board. Some offenders are not released on parole and serve out the entire sentence ordered by the judge.

The Bureau of Justice Statistics' classification also lists

Rhode Island as one of thirteen states that do not have mandatory sentencing for any offenses.[13] Strictly speaking this is true, but there is one important state statute that can be considered to qualify as mandatory sentencing. In 1982 the Rhode Island General Assembly approved a proposal by the Attorney General to mandate an additional term of imprisonment for habitual offenders.

Section 12-19-21 of the General Laws defines an habitual offender as:

> ...any person who has been previously convicted in this or any other state of two (2) or more felony offenses arising from separate and distinct incidents and sentenced on two or more such occasions to serve a term in prison.[14]

The statute provides that an habitual criminal:

> ...shall be sentenced by the court to an additional consecutive term of imprisonment of not exceeding twenty-five years; and provided further, that the court shall order the defendant to serve a minimum number of years of said sentence before he becomes eligible for parole.[15]

It is the requirement of a period of imprisonment that makes this a mandatory sentencing provision.

Rhode Island is one of approximately twenty-three states that have become involved in sentencing guidelines projects of some type at either the state or local level.[16] Sentencing guidelines refer to the development of sentencing ranges for crimes that are usually narrower than ranges prescribed by statute. They represent an attempt to eliminate disparity in sentences ordered by different judges for similar crimes.

In 1979 Chief Justice of the Supreme Court Joseph A. Bevilacqua appointed a committee chaired by Associate Supreme Court Justice Thomas F. Kelleher to analyze Rhode Island's sentencing practices and make recommendations for improvement. Also serving on the committee were representatives from Superior, Family and District Courts; Brown University; the Office of State Court Administrator; the Department of Attorney General; and the Office of Public Defender. Staff support was provided by the state Judicial Planning Unit and, through a federal Law Enforcement Assistance Administration (LEAA) grant, by the National Center for State Courts.

In January 1981 the committee issued its final report. The committee recommended a total of 28 guidelines/benchmarks for eleven offenses.[17]

- .Breaking and Entering a Dwelling
- .Entering a Business
- .Possession of a Stolen Vehicle
- .Assault with a Dangerous Weapon
- .Robbery
- .Larceny/Embezzlement/Receiving Stolen Goods
- .Driving to Endanger - Death Resulting
- .Manslaughter
- .Delivery of a Controlled Substance
- .Possession with Intent to Deliver
- .Possession of a Controlled Substance

For each of these crimes there are several benchmarks specifying different penalties depending on the circumstances. For example, the committee recommended a 12 to 18 month sentence for breaking and

entering an unoccupied dwelling in the daytime with no weapon, and a 3 to 3 1/2 year sentence for breaking and entering an unoccupied dwelling in the daytime with a weapon.[18]

Recommendations of the committee with respect to using the guidelines included the following:[19]

- .Departing from the benchmarks should occur only when substantial and compelling circumstances exist (these are listed).
- .The applicable benchmark is determined by the most serious offense.
- .The benchmarks assume that the defendant has no criminal history and has been found guilty after trial. Past criminal history may be a substantial and compelling circumstance justifying departure from the range. Where plea bargaining justifies departure it should be limited to within 25% of the lower end of the range.
- .The benchmarks represent time to be served in prison but do not preclude the use of suspended sentences, probation, and fines.
- .The benchmarks represent judicially ordered sentences and do not attempt to anticipate subsequent parole board modifications.

The sentencing guidelines have been put into effect by an order of the the Superior Court and implemention is generally proceeding smoothly.

THE ATTORNEY GENERAL'S DETERMINATE SENTENCING PROPOSAL

In 1981, 1982 and 1983 Rhode Island's Attorney General, Dennis J. Roberts II, introduced legislation proposing determinate sentencing for thirteen major crimes. The proposal was opposed by the Rhode Island Affiliate of the American Civil Liberties Union because of fears of overly harsh treatment of offenders. Concerns were also expressed by the Department of Corrections about possible effects on prison overcrowding. The legislation has not been approved and the Attorney General is expected to reintroduce it in 1984.

Attorney General Roberts proposes to give judges the authority to determine the length of prison sentences - without modification by the parole board - for persons convicted of any of the following thirteen crimes:[20]

- .Murder
- .Manslaughter
- .First Degree Arson
- .Kidnapping with Intent to Extort
- .Burglary
- .Robbery
- .Larceny from the Person
- .First Degree Sexual Assault
- .Assault with Intent to Murder
- .Felony Assault
- .Assault of a Person 60 Years or Older
- .Breaking and Entering Under 11-8-2
- .Breaking and Entering Under 11-8-2.1

The Attorney General is not recommending mandatory sentencing. That is, judges would still be able to suspend or defer sentences and order probation as alternatives to imprisonment. However in cases where a prison sentence is ordered by a judge it would be for a specified period that could not be adjusted by the parole board. This is the distinction between indeterminate and determinate sentencing.

The Attorney General is also not suggesting that the parole board be abolished. It would continue to make release decisions for persons sentenced prior to enactment of determinate sentencing, sentenced for crimes other than the thirteen listed, sentenced to one or more terms of life imprisonment, and sentenced under Rhode Island's habitual offender statute.[21]

Among the benefits the Attorney General believes would result from passage of his proposal are the following:[22]

- .Justice would be improved by providing for greater certainty of sentencing
- .Crime victims would know the precise penalty their victimizers would pay
- .Criminals would know they would have to serve the full sentence ordered by the judge
- .Judges would be certain of the real impact of their sentences and would not have to be concerned about parole board modifications.

The Attorney General also asserts that the determinate sentencing procedures would complement Superior Court's sentencing guidelines since the two policies would cover many of the same

crimes.[23]

The Attorney General points out that, as is true in other states that have adopted determinate sentencing, his proposal would not eliminate the accumulation of good time credits to reduce sentences. Section 42-56-24 of Rhode Island's General Laws states that:

> ...for each month that a prisoner who has been sentenced to imprisonment for six (6) months or more and not under sentence to imprisonment for life appears...to have faithfully observed all the rules and requirements of the institutions and not to have been subject to discipline, there shall...be deducted from the term or terms of sentence of such prisoner the same number of days that there are years in the said term of his sentence; provided that when the sentence is for a longer term than ten (10) years, only ten (10) days shall be deducted for one (1) month's good behavior; and provided further that in the case of sentences of at least six (6) months and less than one (1) year, one (1) day per month shall be deducted...[24]

The Rhode Island Affiliate of the American Civil Liberties Union (ACLU) has criticized the Attorney General's determinate sentencing proposal. A number of the ACLU's objections relate to the question of whether or not the proposal will result in increased use of imprisonment. This issue will be treated in the next section of this paper and, therefore, will not be discussed here. However other points raised by the ACLU can be noted.

The ACLU states that in an ideal situation it would support elimination of parole as a release mechanism. However it believes

the parole system currently serves as a safety valve which can correct disparate and disproportionate sentences.[25]

The ACLU also questions the logic of only applying determinate sentencing to thirteen offenses. It believes this is indicative of the fact that the bill:

> ...seeks to achieve in piecemeal fashion what can only be accomplished through a complete revision of the criminal code undertaken with careful consideration of its impact on the civil rights of criminal offenders and the capacities of the criminal justice system.[26]

Furthermore the ACLU contends that one of the benefits the Attorney General expects from the bill - victims of violent crimes knowing how long criminals will be imprisoned - will not occur. The accumulation of good time credits, which the Attorney General does not propose to eliminate, can reduce prison sentences by as much as one-third.[27]

POTENTIAL IMPACT OF DETERMINATE SENTENCING ON PRISON POPULATIONS

As mentioned in the preceding section, one of the major concerns expressed about the Attorney General's proposal to implement determinate sentencing in Rhode Island is its effect on the prison population. Will determinate sentencing result in more persons being sent to prison and longer sentences for those who are sent? Will prison cell capacity, already stretched to its limits, burst at the seams if determinate sentencing is implemented? These are questions being asked throughout the country and, unfortunately, there do not appear to be any definite answers.

The ACLU asserts that the Attorney General's bill symbolizes his belief that locking people up longer will reduce crime.[28] The ACLU contends that:

> ...most prisoners will serve much longer sentences than is currently the norm. In consequence the prison population will grow at a much faster rate than has been the case in the past few years of extraordinary growth. An already intolerable situation of overcrowding at the ACI will be greatly exacerbated.[29]

The Attorney General responds by insisting that he does not believe imprisoning people for longer periods will control crime,[30] and that the purpose of his determinate sentencing proposal is not to increase the use or length of imprisonment.[31] He states that his proposal is based on a belief that judges, not parole boards, are best qualified to make sentencing decisions.[32]

The Attorney General insists that increasing prison populations is not an inevitable outcome of his bill. Whether more people will

be incarcerated for longer periods will depend on how judges make use of their increased sentencing authority.[33] Since there is no reliable way to predict how judges will utilize the statute, there is no way to accurately predict the effect on prison space.

The Attorney General also speculates that even if longer sentences do result, they may reduce the number of new crimes committed by habitual offenders and reduce the number of new criminals sentenced to prison.[34] The argument is that the deterrent and incapacitative effects of longer, fixed sentences may counteract any prison population growth.

The Attorney General's observation that the deterrent and incapacitative effects of longer sentences - if sentences turn out to be longer - will counteract prison population growth is generally not supported by research. For example, in Criminal Justice and Corrections, Feeley and Ohlin state that the evidence suggests that increasing sentencing severity has little if any deterrent effect since deterrence is primarily a function of the probability of apprehension and conviction, and not length of sentence.[35]

However statistical risk assessment techniques, such as developed in Iowa, do show promise for reducing prison populations and recidivism while also increasing prison sentences for the most serious offenders. The Iowa system predicts recidivism and future violence of offenders based on factors such as age, age at first arrest, number of prior arrests, number of prior incarcerations, and type of convicting offense. It has been estimated that utilizing sentencing guidelines based in part on risk assessment could reduce the commitment rate to Iowa state prisons by 17 percent and could

reduce the probation violation rate by 30 percent.[36] If statistical risk assessment methods were developed in Rhode Island, and if Rhode Island's sentencing guidelines were modified to make use of them, it might be possible to lengthen some sentences without increasing prison population.

In any event, the debate about the impact of determinate sentencing on prison population seems, as the Attorney General suggests, to be fundamentally a question of how judges would use the new procedures. The Attorney General correctly states that there is nothing about determinate sentencing, at least as he is proposing it, that makes longer prison sentences for many people a logically inevitable result. At the same time it is clear that many observers believe that while it may not be a logically inevitable result, prison population growth is a realistically inevitable product of determinate practices.

Todd Clear, for example, has forecast this inevitability, suggesting that there may be a tendency toward increasingly severe sentences when there is no parole board to correct disproportionate sentences. He believes sentences may be progressively raised in response to public concern about crime.[37]

Tracing the history of sentence reforms, David J. Rothman observes that the initial coalition between conservatives and liberals who supported the California determinate sentencing law began to break down after implementation when the liberals found that sentencing time frames were inflated above earlier standards.[38]

In Overcrowded Time: Why Prisons are so Crowded and What Can be

Done, the Edna McConnell Clark Foundation states that the average prison stay at the Maine State Prison doubled in five years after the legislature abolished parole.[39]

In The Impact of Determinate Sentencing on Corrections, the National Institute of Corrections notes that California experienced a 25 percent increase in its prison population during the first year after implementing determinate sentencing. The publication states that projections indicate that determinate sentencing will significantly increase the sizes of inmate population.[40]

However in a 1982 review of the California determinate sentencing procedures, Casper, Brereton, and Neal conclude that there is no persuasive evidence that increases in California's prison rates are attributable to implementation of the new law.[41] They suggest that the law should not be perceived as the cause of increased prison rates but as an effect of a broader social process promoting more imprisonment.[42]

Nonetheless Casper, Brereton, and Neal do concur with Rothman's observation that liberals who originally supported the California determinate sentencing law with reservations found that once the legislature began to set prison terms the inclination was to raise them.[43] They too believe that without the escape valve of parole there will be longer determinate sentences, and that increased commitment rates will result in larger prisoner populations which will strain capacity.[44]

Thus though there does not seem to be any definitive statistical data that concludes that determinate sentencing must result in more serious prison overcrowding, it appears to be the opinion of many

observers that, realistically, larger prison populations will occur.

A recent survey by the Central Missouri State University National Prison Overcrowding Project found that the top five reasons offered by the directors of state adult correctional systems for prison overcrowding related to sentencing practices:

1. longer sentences,
2. public demands for increased sentences,
3. legislative responses to public demands,
4. mandatory sentences, and
5. increase in minimum sentence lengths.

One director indicated that his prison population had been drastically increased as a result of legislative enactment of a determinate sentencing code, a speedy trial program, and a new Parole Act. Other directors stated that public opinion is causing judges to order incarceration more often and making prosecutors reluctant to recommend probation.

The report from the Prison Overcrowding Project points out that though the costs of prison overcrowding are generally measured in terms of additional facilities and bed space, the costs go well beyond this. More inmates place increased strain on all support services including food service, sanitation, laundry, health care, and security. In addition rehabilitative programs suffer from the overload on space, staff, materials, and equipment. Of course overcrowding also greatly increases the potential for violent prison incidents. Thus it is not surprising that correctional administrators are extremely concerned about sentencing and other

reforms that might increase their prison population.

One interesting approach to prison overcrowding was suggested by John Manson, the former Commissioner of Corrections in Connecticut, now deceased. It was Manson's idea that the resources of the prison system could be projected each fiscal year and the judiciary could be allotted a corresponding number of bed days available for sentences that year. This would leave it up to the judges to manage their allocations.[45] Combining this type of system with sentencing guidelines and risk assessment might have positive effects on prison overcrowding.

Finally, Attorney General Roberts has suggested that decisions about how to operate a just and effective criminal justice system should not give undue emphasis to the costs of the system.[46] This is an important point. If policy makers conclude that determinate sentencing will significantly improve the operations of the criminal justice system, and if prison populations will increase and no good ways can be found to entirely counteract the increases, then perhaps we should be willing to pay the price of more prison space.

Of course we should first make a concerted effort to identify alternatives that are at least equally effective and less costly. In fact, pure implementation of the just deserts model, which provides part of the philosophical foundation for determinate sentencing, would probably result in more limited but uniformly imposed prison terms with greater emphasis on community based control and rehabilitation efforts after imprisonment.

There is also no reason why prison must be regarded as the only way to punish. There are other options that can be more actively

explored for certain types of offenders. Risk assessment techniques may be helpful in identifying those criminals who should be confined and those who need not be incarcerated in order to ensure public safety.

POTENTIAL IMPACT OF DETERMINATE SENTENCING ON PAROLE

As noted throughout this paper, one of the key features of determinate sentencing - perhaps its primary identifying characteristic - is the elimination of parole board authority to adjust sentences ordered by judges. However it is too simplistic, and not accurate, to conclude that an inevitable result of determinate sentencing is the total abolition of parole.

It must be remembered that parole has two components. There is the parole board, which develops criteria for determining whether offenders should be released prior to expiration of their prison sentences and reviews individual cases and makes release decisions. Then there is parole supervision: the provision of assistance and surveillance for persons who are released early.

The extent to which the powers of parole boards are restricted depends on the characteristics of the determinate sentencing plan being implemented.

As already described, Attorney General Robert's proposal for Rhode Island is limited to determinate sentencing for thirteen crimes and would only eliminate parole board sentence modifications for those thirteen crimes. It would not totally abolish the parole board since the board would continue to review parole applications for persons sentenced prior to enactment of the proposal, sentenced for crimes other than the thirteen, sentenced to one or more terms of life imprisonment, and sentenced under the state's habitual offender statute.[47]

Other states have done things differently. Maine, for example,

is one of ten states that have abolished their parole boards.[48] California has established a Community Release Board which conducts hearings and fixes parole release dates for inmates convicted in capital cases, reviews all prison sentences within the first year and recommends resentencing when it perceives disparity, and reviews all actions and procedures affecting the granting or revoking of good time.[49] Indiana has retained its parole board for the purposes of setting release dates for inmates sentenced before the determinate sentencing law was passed, and for establishing and overseeing parole supervision periods for released offenders.[50] Illinois has established a Prisoner Review Board which serves similar functions and also reviews good time credits granted to inmates.[51]

Determinate sentencing has no necessary implications for parole supervision: for attempting to help reintegrate ex-offenders back into the community while also keeping them under surveillance for some period of time after release. Such assistance and control is just as feasible for persons who serve the full term of a judicially ordered sentence - minus good time - as it has been for offenders released early by parole boards.

Of the states that have adopted determinate sentencing practices it appears that only Maine has abandoned parole supervision.[52] In California inmates must serve three years under parole supervision - five years for capital offenses - upon completion of their prison sentences, although there is a possibility of final release after the first year.[53] Indiana also mandates release to parole supervision for all felons.[54] It seems that replacing the medical

model of rehabilitation with the reintegration model is the trend in determinate sentencing states.

There is a clear logic to this approach. Although prisons may still offer rehabilitative programs, it is recognized that prisons' primary functions are to protect the public and to exact retribution commensurate with the crime. Then, when the punishment is completed, more intensive rehabilitation efforts can be pursued through supervision in the community. The supervision feature should not be overlooked because providing surveillance of ex-offenders will enhance public safety at the same time rehabilitation efforts are made.

Thus determinate sentencing could result in increased attention to parole supervision and other community based programs, not de-emphasis. These initiatives are badly underfunded in Rhode Island, as they are in most places, and greater emphasis would require significant increases in resources. During fiscal year 1983 a total of 35 adult correctional probation and parole counselors supervised 6,339 probationers (3,491 on "banked" or unsupervised status) and 361 parolees, in addition to other investigation/administrative duties. This is an average active caseload - not including "banked" cases - of 92 clients per counselor. What degree of assistance and service delivery can realistically be expected with ratios that high?

POTENTIAL IMPACT OF DETERMINATE SENTENCING ON PLEA BARGAINING

One interesting potential latent effect of determinate sentencing is to increase the power of the prosecutor through the plea bargaining process. As will be explained, this should not be a significant problem with Attorney General Roberts' proposal, but it merits attention since this paper is about sentencing practices in general, and since there might be future determinate sentencing proposals in Rhode Island for which this effect might be a more serious issue.

Professor Albert Alschuler maintains "that reforming sentencing laws without simultaneously tackling the problem of plea bargaining is little more than a shell game; giving the appearance of uniformity and precision at one stage (sentencing) only at the expense of fostering more discretion, arbitrariness and capriciousness at another, less visible stage of the process (pleading)."[55]

The logic of Alschuler's argument is as follows. In practice prosecutors probably have greater influence over sentencing decisions than legislatures, parole boards, or judges. This is because such a high percentage of criminal cases are resolved by plea bargaining, which results in a sentencing recommendation negotiated by the prosecutor and usually accepted by the judge.

Under indeterminate sentencing practices judges and parole boards have some capability to reject or modify sentences that come out of plea bargaining and are perceived as inappropriate, whether too harsh or too lenient. However under all determinate sentencing

plans the control of the parole board is eliminated, and under some plans the check and balance of judges is also essentially voided. The latter effect occurs when determinate sentencing severely restricts the flexibility of judges by dictating, usually through legislation, specific sentences for particular crimes.

Under this circumstance the plea bargaining process assumes even greater importance. Since the crime the offender is charged with will determine what sentence the judge must impose, and since the charge is usually determined by plea bargaining, the prosecutor assumes much greater power.

Alschuler, who would like to eliminate plea bargaining, asserts that any sentencing reform which would give the process increased significance should not be adopted. He contends that since offenders who refuse to bargain are typically charged with more serious crimes than those who do, there is extreme pressure on the accused to waive their constitutional right to trial. He believes that this sort of procedure - much less open than a court trial - should not be the basis for determining sentences.[56]

Alschuler also states that the California determinate sentencing system is a "bargainer's paradise", and this claim was examined by Casper, Brereton, and Neal in their review of the California experience. They indicate that many people believed the new law had increased the rate at which defendants were pleading guilty. The assumption was that more defendants would plead guilty to a lesser charge since they now knew that if they were found guilty of the more serious charge they would have to serve a longer sentence without hope of early release.[57]

However Casper and his colleagues found that, though guilty plea rates did increase in the year after the new statute was enacted, they were only returning to levels that occurred three years before. THe intervening two years had apparently been abnormally low.[58]

The authors also conclude that California's determinate sentencing does not appear to have resulted in increased influence for prosecutors in their relationship with judges. They suggest that there are variations depending on the individual prosecutors and judges. They also state that in some cases judges' influence may have increased, since, being aware of the importance of the charge for sentence determination, they sometimes become more actively involved in the bargaining process.[59]

As already mentioned, to the extent there is any risk of giving a prosecutor disproportionate power under determinate sentencing, there appears to be little if any such risk under the Attorney General's proposal for Rhode Island. The reason is that the Attorney General is not proposing that judges' sentencing flexibility be restricted by statute or any other means. In fact he makes a point of expressing his support for judicial discretion.[60]

It is true that sentencing guidelines do apply to some of the thirteen crimes for which the Attorney General is proposing determinate sentencing, and those guidelines do restrict judges flexibility. However implementing determinate sentencing as recommended by the Attorney General will not be further limiting. While judges and prosecutors will assume increased influence in relation to the parole board under the Attorney General's plan, it

does not appear that the balance of power between judges and prosecutors will be affected.

CONCLUDING OBSERVATIONS

. Distinctions Between Indeterminate, Determinate and Mandatory Sentencing: It is extremely important that choices from among alternative sentencing practices not be clouded by confusion about what the terms mean. In a nutshell, indeterminate sentencing signifies that judges impose prison sentences that can be reduced by parole boards at some point in the future. Under determinate sentencing judges order sentences for fixed lengths of time that may usually be reduced by accumulation of prison good time but not by parole boards. It is the elimination or restriction of review authority of parole boards that distinguishes indeterminate and determinate sentencing. Mandatory sentencing means that a judge must order imprisonment for the offense. There are two major distinctions between determinate and mandatory practices. Under mandatory sentencing the judge must impose a prison sentence, but under determinate sentencing the judge may choose other options such as probation. Under determinate sentencing the judge's sentence is not subject to significant adjustment by another authority, but under mandatory sentencing it may be.

. Philosophies and Objectives Underlying Sentencing Practices: It is also important that policy makers understand that different sentencing practices are based on different philosophies and have different primary objectives. The major objective of indeterminate sentencing is rehabilitation. The philosophy is that offenders' sentences should be flexible in order to allow corrections agents and parole boards time to determine what

rehabilitative efforts are necessary and how long they will take. The fundamental objective of determinate sentencing is retribution, though there is some emphasis on incapacitation and deterrence as well. The philosophy is that attempts at institutional rehabilitation have created more problems than they have solved and that, therefore, prison sentences ought to be based on commensurate retribution for the crime. Incapacitation and deterrence are the objectives of mandatory sentencing. The philosophy is that harsh penalties will deter some potential offenders, and those persons who still commit crimes will not be able to commit them while they are incarcerated. Evaluations of mandatory prison laws in New York and Massachusetts show no evidence that this approach works.

- Effectiveness of Rehabilitation: The movement away from indeterminate sentencing toward determinate practices is attributable, in part, to a perception that rehabilitation does not work. A number of criminal justice professionals believe that, as Mark Twain once said of his reported death, the failure of rehabilitation is greatly exaggerated. It appears that what probably has failed is the medical model approach to rehabilitation, which regards the criminal as a sick person in need of a cure, a cure that can be administered in a prison as easily as any other place. What may not have yet been given a fair chance to work is the reintegration model, which emphasizes helping the offender fit into his/her community environment, even if that means trying to make changes in the environment as well as in the individual.

- Effect of Determinate Sentencing on Prison Populations: There is nothing about determinate sentencing that requires judges to send more persons to prison for longer periods of time. In fact implementation of a pure just deserts model would probably result in shorter but more uniform sentences and increased attention to post-punishment community rehabilitative efforts. However many experts believe that the reality of determinate sentencing is that once the ability of parole boards to reduce prison terms is eliminated, sentences will inevitably increase and prison population expand. This is an important concern and the reality must be given careful consideration. On the other hand, the extent to which financial concerns should influence decisions about developing an effective and just criminal justice system is debatable.
- Effect of Determinate Sentencing on Parole Boards: By definition determinate sentencing will either abolish or restrict the powers of parole boards. The degree to which this will occur depends on the specific features of each individual determinate sentencing plan. Attorney General Roberts' proposal for Rhode Island would eliminate the parole board's review authority for thirteen crimes, but the board would retain its oversight in other areas.
- Effect of Determinate Sentencing or Parole Supervision: There is nothing about determinate sentencing that requires elimination of supervision of offenders after release from prison. In fact a number of states that have implemented determinate sentencing seem to also be placing greater emphasis

on post-punishment treatment and surveillance. California, for example, requires three to five years of parole supervision after completion of the prison sentence. This not only enhances the likelihood of successful rehabilitation, but also enhances public safety because of the surveillance that goes along with the treatment. In Rhode Island significant increases in resources will be necessary if post-imprisonment programs are to receive greater emphasis.

- Effect of Determinate Sentencing on Plea Bargaining: Some observers believe determinate sentencing can potentially increase the influence of the prosecutor and the plea bargaining process in sentencing decision making, and that this is undesirable since plea bargaining is a closed process that pressures the accused to forfeit his constitutional right to a trial. The argument is that if the determinate sentencing plan restricts the flexibility of judges by specifying sentences for crimes and also limits parole board reviews, then plea bargaining will determine the sentence since it determines the charge. However an evaluation of the California reform did not find any evidence of change in the balance of power between prosecutors and judges. This is not a significant issue in Attorney General Roberts' proposal, which does not seek to limit judges' sentencing flexibility.
- Future of Determinate Sentencing: Some observers contend that determinate sentencing is more a fad than a long-term trend. They predict that liberals will perceive sentences as generally too harsh and that conservatives will regard some sentences as

too light, and that both groups will call for more flexibility and rediscover indeterminate sentencing and parole boards. Others maintain that determinate sentencing is really not a reform of any significance. Since there is not adequate prison space to confine all offenders it is inevitable that the current practice of giving severe sentences to a few and lenient dispositions to most will continue, no matter what label is attached to it.

- Piecemeal Sentencing Reform Versus a Systems Approach: Much lip service is paid to the notion that criminal justice agencies and processes form a system, and that changes in one part of the system have consequences for the other components. However reforms tend to be made in more of a piecemeal fashion. The reason is that persons working in one part of the system perceive problems in need of attention and appropriately propose solutions. It is difficult to convince them that they should wait for the total system to mobilize for action. Nonetheless, system wide consequences of any proposed reform must be considered and, to the extent possible, the reform should be as comprehensive as possible. This paper has discussed the potential the Attorney General's proposal has for increasing prison populations. Should it be accompanied by statutory or sentencing guideline changes, perhaps incorporating risk assessment techniques, that will address that problem? Should it be accompanied by a plan to increase post-punishment rehabilitation and surveillance resources? If determinate sentencing is to be adopted, should it be adopted for all crimes

and not just thirteen? These questions and others should be considered by policy makers.

FOOTNOTES

1 U. S. Department of Justice, Bureau of Justice Statistics, Report to the Nation on Crime and Justice: The Data, 1983, p. 71

2 U.S. Department of Justice; Office of Justice Assistance, Research, and Statistics: Justice Assistance News, Vol. 4, No. 7, (September, 1983), p. 5.

3 J. L. Miller, Marilyn McCoy Roberts, and Charlotte A. Carter, Sentencing Reform: A Review and Annotated Bibliography (National Center for State Courts, 1981), pp. 12, 13.

4 Todd R. Clear, "Correctional Policy, Neo-Retributionism and the Determinate Sentence," The Justice System Journal, Volume 4/1 (Fall, 1978), pp. 31-33.

5 U. S. Department of Justice, National Institute of Justice, Policy Briefs: Mandatory Sentencing: The Experience of Two States, 1982, pp. 15, 16.

6 Bureau of Justice Statistics, Report to the Nation on Crime and Justice: The Data, 1983, p. 72.

7 U. S. Department of Justice, National Institute of Corrections and the Department of Criminal Justice, California State University, Long Beach, The Impact of Determinate Sentencing on Corrections: A Handbook for Decisionmakers, 1980, p. 5.

8 Ibid., 7-10

9 Caleb Foote, "Deceptive Determinate Sentencing," Determinate Sentencing: Reform or Regression (Proceedings of the Special Conference on Determinate Sentencing, June 2-3, 1977, Boalt Hall School of Law, University of California, Berkeley), (March, 1978, p. 140.

10 Jonathan D. Casper, David Brereton, and David Neal, The Implementation of the California Determinate Sentencing Law: Executive Summary, (U. S. Department of Justice, National Institute of Justice), 1982, p. 45.

11 Ibid., 46, 47.

12 Bureau of Justice Statistics, Report to the Nation on Crime and Justice: The Data, 1983, p. 72.

13 Ibid.

14 R. I. Department of Attorney General, The Attorney General's 1983 Criminal Legislative Program (Presented to the Honorable Members of the Rhode Island General Assembly by Dennis J. Roberts, II, Attorney General on January 6 1983) p. 7.

15 Ibid.

16 Criminal Courts Technical Assistance Project, Overview of State and Local Sentencing Guidelines and Sentencing Research Activity, (Washington, D. C.: American University Law Institute, 1980), pp. 7-13.

17 R. I. Supreme Court, Report of the Sentencing Committee (January, 1981), Appendix D.

18 Ibid., Appendix D, p. 1.

19 Ibid., Appendix C.

20 R. I. Attorney General's 1983 Criminal Legislative Program, p. 5.

21 Ibid., p. 6.

22 Ibid., p. 8.

23 Ibid.

24 Ibid., p. 9.

25 American Civil Liberties Union, Rhode Island Affiliate, American Civil Liberties Union Response to the Attorney General's 1982 Criminal Legislation Package, (March, 1982), p. 33.

26 Ibid., p. 34.

27 Ibid., p. 37.

28 Ibid., p. 30.

29 Ibid., p. 35.

30 R. I. Department of Attorney General, A Response by Attorney General Dennis J.. Roberts, II to Certain Statements Contained in a Report by the Rhode Island Affiliate of the American Civil Liberties Union Opposing Criminal Legislation Pending Before the 1982 Session of the Rhode Island General Assembly, (March, 1982), p. 7.

31 Ibid., p. 6.

32 Ibid.

33 Ibid.

34 R. I. Attorney General's 1983 Criminal Legislative Program, p. 10.

35 Malcolm M. Feeley and Lloyd E. Ohlin, Criminal Justice and Corrections, (Washington, D. C.: National Governor's Association Center for Policy Research, 1982), p. 15.

36 Keon S. Chi, "Offender Risk Assessment: The Iowa Model," Innovations (Lexington, Ky.: The Council of State Governments, 1983).

37 Clear, The Justice System Journal, Vol 4/1, 12.

38 David J. Rothman, "Sentencing Reforms in Historical Perspective," Crime & Delinquency, Vol. 29. No. 4 (October, 1983), p. 643.

39 Kevin Krajik and Steve Gettinger, Overcrowded Time: Why Prisons are So Crowded and What Can Be Done (New York: Edna McConnell Clark Foundation, 1982), p. 10.

40 National Institute of Corrections and California State University, Long Beach, The Impact of Determinate Sentencing on Corrections: A Handbook for Decisionmakers, 1980, p. 20.

41 Casper, Brereton, and Neal, The Implementation of the California Determinate Sentencing Law: Executive Summary, 1982, p. 28.

42 Ibid., 28, 29

43 Ibid., 45.

44 Ibid., 46.

45 Alfred Blumstein and Joseph B. Kadane, "An Approach to the Allocation of Scarce Imprisonment Resources," Crime & Delinquency, Vol 29, No. 4 (October, 1983), p. 549.

46 R. I. Attorney General's 1983 Criminal Legislative Program, pp. 10, 11.

47 Ibid., 6.

48 Bureau of Justice Statistics, Report to the Nation on Crime and Justice: The Data, 1983, p. 71.

49 National Institute of Corrections and California State University, Long Beach, The Impact of Determinate Sentencing on Corrections: A Handbook for Decision-makers, 1980, pp. 9, 10.

50 Ibid., 12.

51 Ibid., 14

52 F. A. Hussey and S. P. Lagoy, "Determinate Sentence and Its Impact on Parole," Criminal Law Bulletin, V. 19. N2 (March - April 1983), pp. 101-130.

53 National Institue of Corrections and California State University, Long Beach, The Impact of Determinate Sentencing on Corrections: A Handbook for Decision-makers, 1980, p. 9.

54 Ibid., 10.

55 Feeley and Ohlin, Criminal Justice and Corrections, 1982, p. 23.

56 Albert W. Alschuler, "Sentencing Reform and Prosecutorial Power: A Critique of Recent Proposals for "Fixed" and "Presumptive Sentencing, Determinate Sentencing: Reform or Regression (Proceedings of the Special Conference on Determinate Sentencing, June 2 - 3, 1977, Boalt Hall School of Law, University Of California, Berkeley), (March, 1978).

57 Casper, Brereton, and Neal, The Implementation of the California Determinate Sentencing Law: Executive Summary, 1982, p. 31.

58 Ibid., 32.

59 Ibid., 36-38.

60 R. I. Attorney General's 1983 Criminal Legislative Program, p. 6.

END