

SENTENCING AND CORRECTIONS IN COLORADO



A FUNCTIONAL OVERVIEW

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IN COLORADO

A Functional Overview

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THIS PAPER WAS PREPARED AT THE DIRECTION OF CONFERENCE STAFF TO PROVIDE PARTICIPANTS AT THE COLORADO CONFERENCE ON SENTENCING AND CORRECTIONS AN OVERVIEW OF THE PRESENT SENTENCING SYSTEM IN COLORADO AS DEFINED IN STATE STATUTES. THIS PAPER ALSO INCLUDES A NARRATIVE DISCUSSION, STUDIES REGARDING SENTENCING IN THE STATE AND PROPOSED LEGISLATION.

INCLUSION OF THE NARRATIVE, STUDIES AND PROPOSED LEGISLATION DO NOT NECESSARILY IMPLY AN ENDORSEMENT BY THE CONFERENCE SPONSORS OR ANY OF THEM AND ARE PRESENTED PURELY FOR INFORMATIONAL PURPOSES.

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C. Winston Tanksley, Superintendent of the Colorado State Reformatory, waxed allegorical in describing the complexity of Colorado's scheme of sentencing and corrections. "You recall, no doubt," he began, "the parable of the elephant and the blind men?" He continued, with the story, "Each of three blind men was instructed to describe an elephant after touching it. The first, seizing upon the elephant's leg, replied that, obviously, the creature was constructed along the lines of a tree. After examining the beast's trunk, the second blind man concluded that the elephant must be some species of snake. Blind man number three decided from stroking its leathery skin that the elephant must resemble a gargantuan valise."

The analogy is apt. Any attempt to understand the sentencing and corrections scheme from a single perspective will produce a conclusion that is myopic at best. To thoroughly examine the entire system, however, is beyond the scope of this discussion.

This paper excludes arrest, pre-trial diversion and detention and plea bargaining. Sentence to payment of fine or costs does not fall within consideration here; nor is the imposition of the death penalty discussed, despite its dramatic intrusion into the public conscience by the Wildermuth case. Likewise, discussion of the Colorado Women's Correctional Institute and juvenile justice, each worth of lengthy consideration, is not included. Focusing on the process which follows a plea or verdict of guilty, this paper attempts to examine alternatives available to sentencing judges, particularly probation and sentences which result in assumption of jurisdiction by the Department of Institutions.

Discussion of Colorado's institutions for confining felons--the Colorado State Reformatory and the Colorado State Penitentiary--will focus on the process by which a resident is placed in either institution, moved to greater or less security or put into the community rather than on program content. Consideration

of community programs also will be more from the perspective of number of participants, method of selection and measure of success.

In sum, this is a capsulized functional view of the sentencing and corrections process from imposition of sentence through parole. The day to day scrutiny and modification to which any process involving human behavior is necessarily subject makes this discussion an incomplete picture of sentencing and corrections.

A Philosophy of Sentencing and Corrections

Few would dispute that the correctional system serves multiple ends. In his 1961 "Comment on Indeterminate Sentencing of Criminals" (33 Rocky Mountain Law Review 536), Austin W. Scott, Jr. defines five distinct purposes underlying correctional systems: the revenge or retribution purpose is answered when the punishment fits the crime--this is the biblical eye for an eye theory; a deterrence oriented system seeks to discourage would-be criminals by making an example of the sufferings of convicted wrongdoers; closely related to deterrence, prevention posits that punishment will deter a criminal from committing future crimes; disablement depends on the notion that an incarcerated criminal cannot perpetrate further crimes; and rehabilitation or reform theories require treating and training offenders for their almost certain return to society. Scott points to the practical significance of the theoretical differences:

It is readily apparent that the various theories tend to conflict with each other at various points. The theories of revenge, deterrence and prevention all call for harsh treatment of prisoners, but such treatment often defeats the chances for rehabilitation. The disablement theory calls for imprisonment until the criminal is no longer a danger to society; the revenge and deterrence theories lead to sentences which vary with the crime but not with the character of the criminal; and the rehabilitation theory would let the criminal go whenever reformed regardless of the crime for which convicted. Thus the revenge and deterrence theories call for fixed sentences; the disablement and rehabilitation theories call for flexible (indeterminate) sentences.

Echoed and re-echoed in Colorado Legislative Council reports is the theme of balancing the legitimate ends of institutional confinement: the protection of society and the rehabilitation of offenders. Colorado's Criminal Sentencing Act of 1967,¹ The Community Corrections Act, Senate Bills 11 and 12,² the scheme of indeterminate sentencing and most recently the adoption by the State Council on Criminal Justice of a resolution that "Colorado shall adopt a philosophy of treatment of offenders;...that the treatment shall be undertaken at the community level; and...that those local resources shall be devised and used toward the reintegration of the offender into his or her community" bespeak state commitment to rehabilitation.

Retribution, deterrence and prevention, however, remain viable confinement goals. "Let the punishment fit the crime" determines, for example, that the life imprisonment to death sentence range for murder in the first degree, a class 1 felony, be harsher than the ten to fifty year imprisonment sentence range for manslaughter, a class 4 felony. Although these ends need not be entirely incompatible, sharp disagreement exists between many correctional officials, who feel that emphasis on punishment diminishes the possibility of productive rehabilitation, and law enforcement officials, joined understandably by many victims of crimes, who emphasize punishment and deterrence. Perhaps, as suggested by one corrections expert, this conflict is one more of opinion than of fact; given the imprecision

¹The Criminal Sentencing Act of 1967 (CRS 16-16-101 to 16-16-103) allows the chief correctional officer of either major institution to designate extra-institutional facilities for use as honor camps, training and rehabilitation centers, pre-parole centers, medical treatment or research centers or work-release residential centers; it further empowers the chief correctional officer to "extend the limits of confinement of any inmate" in prescribed situations.

²This statutory triad, more thoroughly discussed in connection with institutional confinement, grants post-sentence jurisdiction over offenders to the Department of Institutions, creates the Colorado Diagnostic Program under which diagnosis and classification of offenders take place and defines a scheme for community-based corrections.

of knowledge regarding human behavior, room for such differences will long remain, rendering concurrence a distant goal. The development of a coherent sentencing and corrections scheme based on a unified purpose--whether punishment and deterrence or protection of society and rehabilitation--makes imperative, however, a discussion aimed at greater unanimity of correctional goals.

Imposition of Sentence

A 1961 Legislative Council Report calls sentencing "the key to a successful corrections program....The possibilities [for successful rehabilitation] are minimized if the method of sentencing used does not make it possible for the parole authority to release an offender at the time that he is considered to be a good societal risk." Excessive confinement risks diminishing the effects of rehabilitative programs while premature release allows insufficient rehabilitation in the first place. (Progress Reports on...Criminal Code--Sentencing, Colorado Legislative Council, Research Publication No. 50, December 1961.)

A sentencing judge, vested by Colorado law with sole sentencing authority, thus faces an awesome task in deciding within the parameters of the offender's rehabilitative needs, the safety of society and the severity of the crime whether probation, fine, confinement or even the death penalty would be the best choice. The judge, hearing all testimony and having access to aid in the form of pre-sentence reports, is considered the person best able to pronounce a wise sentence. He is therefore granted under Colorado statute wide discretion in choosing the most appropriate sentencing alternative.

Thorough pre-sentence reports, part of a pre- and post-sentence investigation system which includes diagnostic evaluation and classification, are essential to rational sentencing. CRS 16-11-102 requires that such reports be prepared and presented in all but class 1 felony cases and where ordered by the court in misdemeanor cases, except where waived by the court with the concurrence of the

defendant and prosecuting attorney. Required by statute to indicate the amount of time the defendant was imprisoned while awaiting trial, the reports recommend or discourage the granting of probation.

CRS 16-11-101 authorizes seven basic sentencing alternatives:

1. Probation.
2. Imprisonment or imprisonment and a fine.
3. Death penalty.
4. Fine.
5. Compliance with any other court order authorized by law. (Deferred sentencing, which provides for a period of court supervision, successful completion of which results in dismissal of charges, has recently been statutorily authorized. It will not be discussed here.)
6. Payment of costs.
7. Colorado State Reformatory pursuant to CRS 16-11-301.

Table 1, appearing on page 26, shows sentences imposed during the 1972-73 fiscal year. Judicial Department figures indicate that during FY 1973-74 approximately 60 percent of all sentences were to community treatment--that is, probation, suspended or deferred sentence, deferred prosecution or payment of fine--while 40 percent were to incarceration.

CRS 18-1-101 to 18-15-108, the Criminal Code, further defines the sentencing alternatives among which sentencing judges may choose, in accordance with CRS 16-11-101(1)(b):

In class 1, class 2, and class 3 felonies the defendant may be sentenced to imprisonment for a period of time within the minimum and maximum sentence authorized for the class of offense of which the defendant was convicted. In class 4 and class 5 felonies no minimum sentence to imprisonment shall be entered, but the court shall impose only a maximum sentence provided by law for violation of the statute involved, and which shall be no less than one-third of the maximum sentence provided by law for violation of the statute involved.

Each felony defined in the Criminal Code is classified as a class 1, 2, 3, 4 or 5 felony offense; and the sentence range for each class appears in CRS 18-1-105(1):

Class	Minimum Sentence	Maximum Sentence
1	Life imprisonment	Death
2	Ten years imprisonment	Fifty years imprisonment
3	Five years imprisonment	Forty years imprisonment
4	One year imprisonment, or two thousand dollars fine	Ten years imprisonment, or thirty thousand dollars fine, or both
5	One year imprisonment, or one thousand dollars fine	Five years imprisonment, or fifteen thousand dollars fine, or both

Thus when sentencing an offender found guilty of, for example, a class 3 felony, (an offense for which the setting of minimum and maximum sentences is statutorily authorized) the judge may impose a penitentiary term of five to forty years or any term lying within those boundaries. He could impose a sentence of 49 years and eight months to 50 years, or five years to five years and one month.

The court may choose to sentence the offender to the State Reformatory as allowed in all cases other than class 1 felonies by CRS 16-11-301. Exercising this option, which judges do with increasing frequency (see Table 1), highlights a statutory conflict between provisions requiring imposition of a minimum term in class 2 and 3 felonies [CRS 16-11-101(1)(b) and statutes specifying that courts "sentencing any person to the Colorado state reformatory shall not fix a minimum term." (CRS 16-11-302)]. Of questionable practical significance, the conflict is cured by CRS 16-11-303, which renders definite sentences to the reformatory not void.

A jury finding that an offender found guilty of a felony has twice or three times previously been convicted of a felony invokes statutory provisions relating to the sentencing of habitual offenders (CRS 16-13-101 to 16-13-103), which impose restrictions on the court's sentencing options. The court may pronounce only a sentence to confinement in the penitentiary; furthermore, in defining minimum and

maximum limits, the court is bound by CRS 16-13-101, to sentence a person with two previous felony convictions to a term of not less than the longest term provided for his current offense nor more than three times that term. The court must sentence the three-time offender to a term of natural life imprisonment.

A determination in a post-conviction hearing under the Colorado Sex Offenders Act of 1968 (CRS 16-13-201 to 16-13-216) that a person convicted of a sex offense constitutes beyond a reasonable doubt "a threat of bodily harm to members of the public" allows the sentencing court discretion unique under Colorado law. In such cases CRS 16-13-203 permits the court to "commit a sex offender to the custody of the department [of institutions] for an indeterminate term having a minimum of one day and a maximum of his natural life." To offset this broad power, the Parole Board must review reports connected with the case within six months following commitment and yearly thereafter.

A widely used sentencing alternative, and the best known, is probation, which may be granted by the court "for such period and upon such terms and conditions as it deems best." (CRS 16-11-202) Throughout the period of probation, the basic purpose of which is not punitive but educational and reconstructive, [Logan v. People ex rel. Alamosa County, 138 Colo. 304, 332 P.2d 847(1958); People v. Ledford, 173 Colo. 194, 477 P.2d 374(1970)], the court retains jurisdiction to impose a sentence to confinement for the original offense. Statutory provisions (CRS 16-11-201 to 16-11-212) thoroughly detail the probation process. Felony offenders, other than those convicted of class 1 felonies, and those adjudged habitual criminals may apply for probation. The court, after considering statutorily prescribed criteria and weighing community safety, circumstances surrounding the crime and the needs of the offender, may grant or deny probation. Probation programs may range from short-term jail confinement, confinement combined with work release, to "such as the court in its discretion deems reasonably

necessary to insure that the defendant will lead a law-abiding life and to assist him to do so" (CRS 16-11-204). Under statutorily provided procedures, a probation officer may arrest a probationer who has violated the conditions of his probation. The court, upon a finding that the probationer has indeed violated these conditions, may revoke probation.

A recent study by the Denver Anti-Crime Council intended to provide information useful in planning and evaluating community-based crime reduction programs through an understanding of offender characteristics, including sentence type and case processing, demonstrates the success of probation as measured by recidivism, that is, rearrest and reconviction rates. The average study subject was male, single and less than 23 years old, lacking a high school diploma and having a history of unemployment. He was probably a member of a minority group (over half of the study subjects were) and the child of a broken home with previous adult and juvenile arrests spotting his record.

Two-thirds of the study subjects--half of them probationers and half parolees from either the reformatory or the penitentiary--were released and tracked for two years. The probationers, whose prior involvement with the criminal justice system was less extensive than the parolees', were typically also younger than the parolees. During the follow-up study, almost half (48 percent) of the study subjects were rearrested and 21 percent were reconvicted, with burglary offenders being most likely to recidivate. The following table illustrates a major study finding that, as measured by rearrest and reconviction rates, sentences of confinement or probation were equally likely to succeed or fail.

RECIDIVISM BY TYPE OF SENTENCE*

TYPE OF OFFENDER BASED ON SENTENCE	NO OF OFF.	REARREST RATES				RECONVICTION RATES			
		ONE YEAR		TWO YEAR		ONE YEAR		TWO YEAR	
		FOLLOW-UP		FOLLOW-UP		FOLLOW-UP		FOLLOW-UP	
		#	%	#	%	#	%	#	%
PROBATION	186	61	32.8	96	51.6	45	24.2	78	41.9
PAROLE	317	133	42.0	163	51.4	62	19.6	102	32.1
COUNTY JAIL	80	30	37.5	37	46.3	15	18.7	27	33.7

*This table includes only recidivism data for the 583 offenders who were sentenced to either probation, parole, or county jail and also had follow-up data available. An additional 27 offenders who received different sentences, primarily suspended sentences, are not included in this table.

President Gerald Ford's unprecedented pardon of Richard Nixon before legal determination of his guilt or innocence, although not specifically a sentencing disparity problem, shocked most Americans, raising in many minds a question with which professionals in criminal justice have long wrestled: to what extent are persons with similar backgrounds convicted of similar crimes treated similarly by the courts and the correctional system?

The effects of sentencing disparity are summarized by Harry Tinsley. In his opinion:

It is obvious that...there is a great disparity in the sentences of prisoners who have been sentenced for similar crimes committed under rather similar circumstances....The person who has received the light sentence generally feels fortunate, but also he may think that his sentence was not so long but what he can afford to have another try at his criminal activities. On the other hand, the individual who has received the longer sentence is understandably embittered toward society in general and toward authority in particularThis makes it extremely difficult to effect any positive change for the better in this prisoner's makeup during the time he is in the institution." [33 Rocky Mountain Law Review 536(1961)]

The extent to which "similar sentences [are] imposed on similar individuals following conviction for similar crimes in the Colorado State District Court System" was therefore explored in a 1975 study prepared by William G. Steele and Charles Scott Hromas for the Colorado Department of Institutions. Based on an evaluation of eleven variables--age of inmate at intake, ethnic background of inmate, number of prior arrests for inmate, the original charge, the charge for which the inmate was sentenced, minimum and maximum sentence, plea of guilty or not guilty, urban or rural court location, institution to which the inmate was sentenced (penitentiary or reformatory), and California Achievement Test scores--the researchers found valid their hypothesis that similar court sentences are given for similar crimes to similar offenders.

The practical validity of this conclusion is rendered questionable by a disclaimer contained in the report:

It is important to keep in mind the limited scope of this research. Only data about persons sentenced to the two adult Colorado correctional facilities, the Colorado State Reformatory and the Colorado State Penitentiary are included. No data about other types of sentences are included. Thus, the granting of probation, or deferred sentencing are not part of this study. Also, no presentence aspects of any case were analyzed."

We must await a more comprehensive study, as called for by the researchers themselves, to clearly delineate the disparity problem and point the direction to its cure.

Sentences to Incarceration

Under legislation enacted in 1974, which will be referred to in shorthand fashion as Senate Bill 12 (see page 32), a sentence to the state penitentiary or the state reformatory operates to transfer a convicted offender to the custody of the executive director of the Department of Institutions. Senate Bill 12 refers to evaluation and diagnosis, processes defined in companion legislation, Senate Bill 11 (see page 28) establishing the Colorado Diagnostic Program.

These seemingly explicit statutes have created a jurisdictional gray area, a conflict between judicial discretion and Department of Institutions custody soon to be the subject of an Attorney General's opinion. While a court may in pronouncing sentence designate in which institution an offender is to be confined during his evaluation and diagnosis, the executive director of the Department of Institutions is ultimately responsible for that offender's assignment or transfer. That such legislation must not interfere with the postconviction review powers of the court is axiomatic. Less than clear is the extent of the court's power to grant probation or otherwise modify a sentence under provisions in Senate Bill 11 describing the examination of offenders, the major question being whether the fifteen-day limit imposed on the executive director extends to the court order reasserting jurisdiction.

Closely related to the jurisdictional question is the frequency with which the diagnosis and classification process results in the transfer of an offender sentenced to incarceration in one of the state's major confinement institutions to the other institution or to a community program. Table 2 on page 27 indicates that inter-institution transfers represent only a small proportion of population shifts, only slightly larger than the number of sentences modified at the instance of the court.

However the jurisdictional question is decided ultimately, the cumulative intent of this legislation is rehabilitative, as expressed in Senate Bill 11, "to provide a diagnostic examination and evaluation of all offenders sentenced by the courts of this state so that each such offender may be assigned to a prescribed incentive program in a correctional institution." A third statute enacted by the 1974 General Assembly, Senate Bill 55 or the Community Corrections Act (see page 34), provides that the executive director of the Department of Institutions establish a classification system for offenders in its custody for diagnosis and assignment

to rehabilitation programs, and completes the statutory triad supporting the scheme of diagnosis and classification in Colorado. The actual components of this scheme--the Incentive and Review Boards at the state reformatory and the Diagnostic and Classification Boards at the state penitentiary--embody the authority granted by statute to the executive director and consequently are subject to administrative reorganization.

The diagnosis, classification and review process becomes more readily understandable through an explanation of its actual operation in an institutional setting. Since procedures followed in moving an offender to greater or less security or into a community-based correctional program are substantially alike at both the penitentiary and the reformatory, this discussion details only the procedure governing such moves within or from the reformatory. Upon his arrival in the receiving unit at the reformatory (this facility is statutorily required to be separate from other institutional facilities; at the penitentiary, the receiving unit is located within but is isolated from the maximum security facility), an offender begins a six-week period of observation by diagnostic staff. This includes preparation of a psychological profile; evaluation through testing of intelligence, aptitude, work skills and educational level; investigation of case history; personal interviews and observational data. An offender is classified, that is, assigned to a rehabilitative program on the basis of diagnostic unit findings, strongly persuasive although not legally binding, and within the structure of the reformatory incentive program.³ (At the penitentiary, the Classification Board performs the placement function.)

³The Incentive Program, launched on November 1, 1975, divides reformatory housing into four living units, East Wing, South Wing, North Wing and West Wing, which together form the incentive treatment program. As an individual moves through the four levels toward his eventual parole, he earns greater privileges and awards.

The living unit and its personnel next assume jurisdiction over the offender. In its responsibility of dealing with minor rule infractions and disciplinary problems, the living unit is not unlike the municipal court level of a state court system. Where the rule violation is of a degree requiring revocation of major privileges perhaps involving a move back to earlier stages of the incentive program, or where the offender feels that injustice has been done at the living unit level, the Incentive Board which is analogous to the county level of the state court system, assumes jurisdiction. In considering whether to authorize a regressive move, the Incentive Board is bound by case law⁴ mandating that five of the seven elements of due process be observed. Thus an offender must be served with written notice that a hearing is to be held before an uninterested body to deal with the charges against him. He may present evidence in his own behalf, call witnesses and confront and cross-examine any witnesses against him. He must be provided with the written decision of the hearing board. Although the law does not yet require the remaining elements of due process, the right to counsel and to appellate review, such may be granted where circumstances warrant; no doubt, this issue will soon be tested in the courts. No strict rules of evidence apply in institutional hearings but uncorroborated hearsay evidence adversely affecting the offender will be closely scrutinized and perhaps excluded.

The "Proposed Classification Process to be Assumed by Program Review Committee at the Colorado State Penitentiary" sets forth due process requirements which do not differ substantially from those governing Incentive and Review Board hearings at the reformatory, although it defines circumstances under which due process requirements may be waived. Although the Program Review Committee at the penitentiary has been administratively eliminated, its functions, now performed by the Classification Board, continue to be governed by these procedural rules.

⁴Wolff v. McDonnell, 418 U.S. 539 (1974).

The Incentive Board handles not only disciplinary actions but, as its name suggests, moves to lesser security as well. Offender requests and staff recommendations for such dispositions as furlough, extended furlough, early parole and placement at Camp George West Honor Unit or the Delta Honor Camp are considered by the Incentive Board. Performing the analogous function at the penitentiary since the administrative reorganization eliminating the Community Corrections Review Board is the Classification Board.

The Review Board, the tribunal of last resort within the institution, hears appeals by an offender who has been harmed or deprived of his legal rights and assumes original jurisdiction in cases so requiring, as, for example, where charges of misconduct would result in an offender's loss of major privileges through a setback in the incentive program or his transfer to the penitentiary. By-laws governing Review Board procedures dictate that board members consider closely an individual offender's needs and rights and the safety and wellbeing of all other individuals working or living at the reformatory in reaching a decision. Penitentiary review guidelines similarly require a balancing of rehabilitative need and security.

A critical difference between sentences served in the penitentiary and those carried out in the reformatory is the allowance of "good time," sentence length reductions [defined in CRS 27-20-104 and 27-20-107(1)] which an offender earns by violating no institution regulations and performing in a "faithful, diligent, industrious, orderly and peaceable manner." The comparatively short length--10 months and 28 days--of the average reformatory stay obviates the need for

such credits at that institution. The mode of computing credits, which are deducted from an offender's minimum sentence, is shown by a table in CRS 27-20-107(1):

Number of yrs. of sentence	Good time that may be earned	Total good time that may be earned		Time to be served if full credits are earned and allowed	
1st year	2 months	2 months			10 months
2nd year	2 months	4 months		1 year	8 months
3rd year	4 months	8 months		2 years	4 months
4th year	4 months	1 year		3 years	
5th year	5 months	1 year	5 months	3 years	7 months
6th year	5 months	1 year	10 months	4 years	2 months
7th year	5 months	2 years	3 months	4 years	9 months
8th year	5 months	2 years	8 months	5 years	4 months
9th year	5 months	3 years	1 month	5 years	11 months
10th year	5 months	3 years	6 months	6 years	6 months

CRS 27-20-105 and 27-20-107(2) allow credit of additional good time not to exceed ten days in one month for offenders who have been designated as trustees by the warden, are working either within or outside the penitentiary and who have received the approval of additional good time from the Classification Board (Proposed Classification Process). CRS 27-20-107(3) allows the warden, at the recommendation of the Classification Board, to grant a third distinct type of good time for specifically defined behavior, including meritorious conduct, blood donations and outstanding performance of assigned tasks by the offender.

Statistics indicating a rapidly spiraling rate of crime both nationwide and in Colorado invariably provoke doubts about the ability of the criminal justice system to do its job. "Are the prisons," we ask ourselves, "nothing more than breeding grounds for future crimes?" Do offenders serve their sentences only to be released to commit new crimes and be rearrested, reconvicted and reincarcerated, all at enormous public cost?

This "revolving door of crime" view of institutional corrections raises questions about the effectiveness of indeterminate sentencing in Colorado. Approximately 50 percent of penitentiary residents and 100 percent of reformatory residents

are serving indeterminate sentences, that is, terms in which no minimum but only a maximum term beyond which incarceration will not be allowed is set.

Data reliably showing the effectiveness of indeterminate sentencing in Colorado was unavailable for this report. An institutional follow-up study prepared by the Department of Institutions' Office of Research and Planning, which tracked 1,097 reformatory and penitentiary parolees to Denver for a period of from three to five years to measure their success in terms of non-reincarceration in a state institution, does not answer the question. (Nor was it intended specifically to address the indeterminate sentencing issue. It falls within discussion here because any measure of success of reformatory parolees necessarily although obliquely comments on indeterminate sentencing.) As summarized in the table below, the reincarcerated percentage of reformatory parolees, all of whom were serving indeterminate sentences, exceeded that of penitentiary parolees, an unknown number of whom were serving indeterminate sentences.

PERCENTAGE OF COLORADO STATE REFORMATORY AND COLORADO STATE PENITENTIARY MALE INMATES PAROLED TO METROPOLITAN DENVER WHO WERE RE-INCARCERATED IN A COLORADO STATE ADULT CORRECTIONAL INSTITUTION FOR CONVICTION FOR A NEW CRIME OR FOR PAROLE REVOCATION ONLY DURING FOLLOW-UP PERIOD OF ONE, TWO AND THREE YEARS SUBSEQUENT TO PAROLE

Follow-up Period	Institution	Reason for Re-Incarceration		Not Re-Incarcerated	Total
		New Crime	PR Only		
One year	CSR	7.8%	14.5%	77.7%	100.0%
	CSP	4.4	13.2	82.4	
Two years	CSR	13.3	21.1	65.6	100.0
	CSP	10.5	19.3	70.2	100.0
Three years	CSR	19.2	21.0	59.8	100.0
	CSP	13.8	20.0	66.2	100.0

This finding, although borne out by two other studies, must not be regarded as conclusive evidence of the greater effectiveness of penitentiary confinement.

Nor can it be interpreted with even marginal validity as a definitive statement about the effectiveness of indeterminate sentencing. It points, however, to the critical need for information on that issue.

Colorado decisionmakers must look to the experience of other states and information presented in professional literature for guidance in determining the future of indeterminate sentencing. Some states, Illinois and California among them, which have experimented with indeterminate sentencing and have found it insufficiently effective are currently contemplating adoption of flat sentencing schemes. Sentences of fixed duration, proponents argue, would lessen the likelihood of sentencing disparity and decrease the arbitrariness of the paroling process, which aggravate tensions within correctional institutions (Commentary on Determinate Sentencing--An Overview, unpublished manuscript, Illinois Law Enforcement Commission, 1975, p. 43). They argue that indeterminate sentencing does little more than teach offenders manipulative behavior, with small correlation between prerelease good behavior and postrelease activity. Echoing Illinois Law Enforcement Commission contentions, Jessica Mitford argues that capricious classification or parole procedures can impose inordinately lengthy sentences on offenders convicted of relatively minor crimes (Kind and Usual Punishment: The Prison Business, Jessica Mitford, Vintage Books Division of Random House, 1973, pp. 87-103).

The John Howard Association pointed out major flaws in the proposed flat sentencing scheme for Illinois. Longer sentences imposed under a determinate scheme would produce a significant increase in the prison population, in all probability requiring the construction of new facilities and increasing operating costs. The Association analysis further notes:

It is a well-documented and almost universally recognized [fact] that the sentences imposed in the United States are the highest in the Western world. In addition, researched and reported evidence shows that longer prison terms do not lead to better parole performance. (Governor Walker's Proposed Justice Model: An Analysis of Its Impact, John Howard Association, July, 1975, p. 4)

Community-Based Corrections

Acknowledging that the state has a dual obligation to protect the public by providing institutional confinement and, where appropriate, community-based rehabilitation programs for criminal offenders as well as to attempt to reintegrate and restore offenders "as law-abiding and productive members of society," the General Assembly enacted the Community Corrections Act, or, more familiarly, Senate Bill 55, in 1974. With an avowed purpose of encouraging "the establishment of community correctional facilities and programs to provide for the custody, care discipline, training, treatment, and study" of offenders committed to state or local correctional institutions, probationers, parolees, and those awaiting sentence after conviction, the act has several major effects:

1. The onus for appointing local community corrections boards is on the board of county commissioners in each county. This task remains undone. A vital link between state authority and community approval is therefore lacking. Amendments to cure this deficiency are currently under consideration by legislative interim committees, but no positive local action will occur until many questions, not the least of which is source of funding, are answered.
2. The Act confers broad powers upon the executive director of the Department of Institutions. He is vested with "full administrative authority, within the limits of available funds," to place plans and programs designed to bring about the rehabilitation and reintegration of offenders either in existing institutions or the community into effect.
3. The Act directs the Colorado Legislative Council to undertake a planning study for community corrections encompassing "the full range of offenders' needs and the overall goal of crime reduction."
4. Funds necessary for establishing three experimental community residential programs were provided through the Act.

The three experimental programs financed with Senate Bill 55 appropriations-- Adult Forensic Services of Pikes Peak Family Counseling and Mental Health Center (AFS), Walden Community Treatment Center of Southwest Denver Mental Health Services

(Walden) and Alcoholism Family Services of Weld Mental Health Center (Weld)--were the subject of an Office of Research and Planning (Department of Institutions) study.

Program participants took part in both residential and outpatient programs. Forty-five individuals--24 residents and 21 outpatients--took part in AFS programs. Twenty-nine individuals, all residents, participated in Walden programs. Two residents and 16 outpatients participated in Weld programs.

Program results through July, 1975--with only 50 percent of AFS and Weld residential participants and 43 percent of Walden residents successfully terminating, that is, neither escaping nor violating rules, which resulted in return to the transferring institution--are disappointing. The low success rate was traced primarily, however, to a lack of Division of Correctional Services policies, procedures and guidelines, a lack corrected during the first year of program operation by several developments. The Community Corrections Review Board, was created; though no longer in existence, its functions continue to be performed by the Classification and Incentive Boards at the major institutions. Procedures governing the movement and supervision of inmates in the community were developed. Rules for participants in community correctional programs were promulgated along with due process procedures to be followed by staff in the event of rule violations. And new file and reporting systems were organized.

The Office of Research and Planning offered additional recommendations for upgrading Division-administered community correctional programs including developing a master plan outlining future use of community programs, delineating exact parole officer function and drafting procedures to allow parolee participation in community residential programs.

A second Office of Research and Planning study compared the Senate Bill 55 programs with Division of Correctional Services work release programs and the

federally funded Grand Junction work release program. The major study comparison was of participants successfully completing the programs, with subsidiary comparisons of the two other ways of terminating program participation: rule violations resulting in return to the institution and escape. The following three tables depict the percentage of terminations in all three categories for all participants, for penitentiary participants only and for reformatory participants only.

Percentage of participants entering community residential programs who satisfactorily completed these programs

Termination Category	Program		
	Grand Junction work release n=34 ⁵	Division work release n=785	SB 55 contracts n=48
satisfactorily completed	77%	72%	52%
returned - rule violation	20%	17%	29%
escaped	3%	11%	18%
TOTAL	100%	100%	99%

Percentage of penitentiary participants entering three different types of community residential programs and terminating in each of three different categories

Termination Category	Program		
	Grand Junction work release n=5	Division work release n=335	SB 55 contracts n=24
satisfactorily completed	100%	75%	67%
returned - rule violation	0%	17%	33%
escaped	0%	8%	0%
TOTAL	100%	100%	100%

⁵The total number of participants is indicated by "n."

Percentage of reformatory participants entering three different types of community residential programs and terminating in each of three different categories

Termination Category	Program		
	Grand Junction work release n=29	Division work release n=452	SB 55 contracts n=24
satisfactorily completed	72%	69%	38%
returned - rule violation	24%	18%	25%
escaped	3%	13%	38%
TOTAL	99%	100%	98%

This study included a limited evaluation of new conviction rates for 397 Division-administered work release participants paroled to Denver:

Percentage of work release parolees to metropolitan Denver who were reincarcerated during a one-year follow-up period for new convictions and for technical parole revocations.

Institution	Reason for Reincarceration		
	new crime	PR only	Total
CSP (n=161)	3%	11%	14%
CSR (n=236)	9%	11%	20%
Total participants	7%	11%	18%

One-year follow-up data were available on only eight Grand Junction project participants. Within one year, only one participant had been reincarcerated for a new conviction and none for technical parole violation. Despite the less than one-year follow-up period on participants in Senate Bill 55 programs, three of ten participants satisfactorily terminating have been reincarcerated, two of them for new convictions. The Grand Junction program has thus enjoyed the greatest success rate in terms of reincarceration of participants during a one-year follow-up period. Senate Bill 55 contractual programs enjoyed the smallest success.

Parole

Parole is the last step through which an offender must go in the long process which began months, perhaps years before with his arrest. The power to release offenders from any institution or community correctional program to the community at large or to minimal supervision in the community is the function of the parole board alone, as is the discretion to shorten, lengthen or revoke parole. CRS 17-1-201 fully enumerates parole board duties and powers, important among which are:

1. To parole, at its discretion, any person sentenced or committed to the penitentiary after that offender has served his minimum sentence less time allowed for good behavior where "there is a strong and reasonable probability that the person will not thereafter violate the law and that his release from institutional custody is compatible with the welfare of society."⁶
2. To parole, at its discretion and applying the criteria stated above, any person committed to the reformatory.
3. To reconsider within one year any application for parole originally denied.
4. To set the duration of parole, not to exceed the maximum sentence imposed by the court, to lengthen or shorten the duration of parole and to revoke parole.

Consonant with CRS 27-20-118, providing that "no convict shall be discharged from the state penitentiary until he has remained the full term for which he was sentenced," CRS 17-2-6 defines parole not as a discharge but "simply a permit to go outside the enclosure of the penitentiary." If the parolee conducts himself well in the community, subject to limitations set in CRS 17-1-207 (primarily governing travel and place of residence), he is considered to be serving his sentence and earning good time credits toward his discharge.

⁶CRS 17-1-204 amplifies this provision by allowing parole, at the discretion of the parole board, to any offender who has served the minimum term of his sentence, less good time, or, when no minimum sentence was set by the sentencing court, to an offender who has served the minimum term provided in the statute defining the offense for which he was convicted.

Statistics showing that parole on a national scale is successful if its task is to retain people in the community, rather than return them to prison, appear in the Uniform Parole Report Program of the National Council on Crime and Delinquency. A nationwide study of parolees released in 1972 and tracked for one year found an 81 percent success rate, measured in terms of all problems leading to parole violations. The two- and three-year success rates, 69 and 66 percent respectively, both represent increases over previous two- and three-year rates. A recent Office of Research and Planning study, reviewed earlier in this paper (see pages 15 and 16), comments on parole board performance in Colorado.

APPENDIX

TABLE 1
DISTRICT COURT SENTENCES

CRIMINAL CASES BY TYPE OF SENTENCE FROM DISTRICT COURTS
INCARCERATION ONLY
Fiscal Year 1972-1973

Penitentiary	Reformatory	County Jail	Criminally Insane ¹	Sex Offender Act ²	Pen. Con. Sentence ³
758	696	441	152	8	42

CRIMINAL CASES BY TYPE OF SENTENCE FROM DISTRICT COURTS
COMMUNITY TREATMENT ONLY
Fiscal Year 1972-1973

Probation as a Sentence	Suspended or Deferred Sentence				Deferred Prosecution	Fine Only
	No Supervision	With Probation	With Special Program Only	With Fine Only		
1207	391	855	4	154	1972	139

Parallel data for FY 1973-1974 is as yet unavailable. It will be available in early 1976.

- 1) Individuals found not guilty by reason of insanity are neither convicted nor sentenced, but are included here because they are committed to the State Hospital.
- 2) Individuals convicted under the Sex Offenders Act, which carries with it indeterminate sentencing of from one day to life.
- 3) Committed to the Penitentiary on consecutive sentences.

SOURCE: Annual Statistical Report of the Colorado Judiciary, July 1, 1972 to June 30, 1973.



TABLE 2

COLORADO STATE REFORMATORY POPULATION
1974-1975

<u>Incoming:</u>	<u>June:</u>	<u>1974-75 Cumulative:</u>
A. Received from Courts	79	711
1. First Time CSR Offenders (77)	(652)	
2. Repeat CSR Offenders (2)	(59)	
B. Additional Offenders Received	5	98
1. Parole Revocations (2)	(71)	
2. Transfers from CSP (1)	(10)	
3. Transfers from CWCI (0)	(3)	
4. Juvenile Transfers (0)	(3)	
5. Returned from ATC (0)	(1)	
6. Returned from CSH (2)	(8)	
7. Returned from Pre-Parole (0)	(2)	
C. Total Received	<u>84</u>	<u>809</u>
CRS Residents Receiving Additional Sentences	13	96
 <u>Outgoing:</u>	 <u>June:</u>	 <u>1974-75 Cumulative:</u>
A. Paroled	83	559
B. Additional Offenders Released	11	160
1. Discharged (1)	(32)	
2. Transferred to CSP (4)	(64)	
3. Transferred to CSH (3)	(22)	
4. Released by Courts (3)	(39)	
5. Transferred to CWCI (0)	(1)	
6. Resentenced by Court to CSP (0)	(1)	
7. Deceased (0)	(1)	
C. Total Released	<u>94</u>	<u>719</u>
 Average Length of Stay: 10 months/28 days		
A. Transferred to CSP	1 month /16 days	
B. Transferred to CSH	4 months/22 days	
C. Released by Courts	8 months/17 days	
D. Paroled	11 months/12 days	

An Act

SENATE BILL NO. 11. BY SENATORS Cole, Cisneros, McCormick, Stockton, Allshouse, Anderson, Ball, G. Brown, Calabrese, Darby, DeBerard, Dines, Jackson, Kogovsek, Locke, MacManus, Parker, Plock, and Schieffelin; also REPRESENTATIVES Howe, Kramer, Safran, Tempest, Arnold, Baer, Benavidez, Bendelow, Boley, Burns, Cooper, DeMoulin, Edmonds, Farley, Gallagher, Gaon, Koster, Lamm, Lloyd, Lucero, Miller, Mullen, Munson, O'Brian, Pettie, Sack, Sears, Smith, Spano, Valdez, and Wells.

ESTABLISHING THE COLORADO DIAGNOSTIC PROGRAM, AND MAKING AN APPROPRIATION THEREFOR.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Chapter 105, Colorado Revised Statutes 1963, as amended, is amended BY THE ADDITION OF A NEW ARTICLE to read:

ARTICLE 9

Colorado Diagnostic Program

105-9-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Correctional institution" means the state penitentiary, the Colorado state reformatory, or any other institution established for the rehabilitation of male or female offenders.

(2) "Diagnostic services" means diagnostic examination and evaluation programs.

(3) "Director" means the director of the Colorado diagnostic program.

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(4) "Executive director" means the executive director of the department of institutions.

(5) "Warden" means the warden of the state penitentiary or the Colorado state reformatory.

105-9-102. Program established. (1) There is hereby established the Colorado diagnostic program, referred to in this article as the "program".

(2) The primary function and purpose of the program shall be to provide a diagnostic examination and evaluation of all offenders sentenced by the courts of this state so that each such offender may be assigned to a prescribed incentive program in a correctional institution which has the type of security and the appropriate programs of education, employment, and treatment designed to accomplish maximum rehabilitation of such offender and to prepare an offender for placement into as productive an employment as possible following imprisonment.

105-9-103. Examination of offenders - report. (1) As soon as possible after July 1, 1974, each offender entering the receiving unit of the state penitentiary or the Colorado state reformatory shall receive appropriate diagnostic services, and a rehabilitation program shall be planned and recommended for him. Information provided pursuant to section 105-9-104 shall be considered in structuring the rehabilitation program. An offender shall be assigned to the program for a period not to exceed sixty days; except that an offender may be held for an additional thirty days upon approval of the executive director. Upon completion of the recommended rehabilitation report, it shall be transmitted by the director to the executive director, who, within fifteen days, shall cause the offender to be:

(a) Assigned to a correctional institution, unless otherwise prohibited by law, based upon the examination and study of the offender; or

(b) Upon order of the court, returned to the court for the purpose of granting probation or other modification of sentence.

(2) A copy of the recommended rehabilitation report shall be shown and explained to the offender upon request; except that the executive director may withhold any information he deems to be detrimental to the rehabilitation of the offender.

(3) Nothing in this section shall be construed to restrict or deny the power of the court to grant an application for postconviction review pursuant to section 40-1-510, C.R.S. 1963.

105-9-104. Responsibility to the program of court imposing sentence. The sentencing court shall transmit to the director of the program any available presentence report, offense report, or

diagnostic or clinical information and any recommendation the court may deem appropriate.

105-9-105. Appointment of personnel to the program. Subject to the provisions of section 13 of article XII of the state constitution, the executive director shall appoint a director of the program. The director shall appoint a supervisor at each location and such psychiatrists, psychologists, social workers, correctional specialists, and other officers and employees as he deems necessary. No inmate of any correctional institution shall be appointed to any task involving the program.

105-9-106. Responsibilities of director - warden. (1) The director shall be responsible for the administration of diagnostic services and the supervision of the employees of the program.

(2) The warden shall be responsible for the management, control, regulation, and operation of the physical facilities and for the reception, discipline, and confinement of all offenders.

(3) The warden shall separate all offenders in the program from the offenders in the correctional institution.

105-9-107. Transfer of prisoners for examination - assignment. The executive director may transfer any offender to the program for study and examination and, upon completion thereof, shall cause the offender to be assigned pursuant to this article.

SECTION 2. Appropriation. There is hereby appropriated, out of available "Crime Control Act" allocations, for the fiscal year beginning July 1, 1974, to the department of institutions, the sum of one hundred seventy-two thousand two hundred fifty-three dollars (\$172,253) or so much thereof as may be necessary, to develop a diagnosis and evaluation team at the state penitentiary which is designed to prescribe and evaluate successful inmate rehabilitation programs, such total appropriation to be allocated as follows: For personal services, one hundred fifty-five thousand nine hundred twelve dollars (\$155,912) and (11.8 FTE); for operating expenses, seven thousand one hundred eighty dollars (\$7,180); for travel, three hundred dollars (\$300); and for capital outlay, eight thousand eight hundred sixty-one dollars (\$8,861).

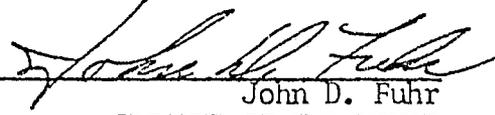
SECTION 3. Effective date. This act shall take effect July 1, 1974.

SECTION 4. Safety clause. The general assembly hereby

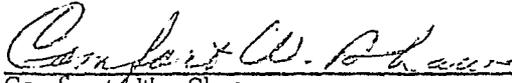
finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.



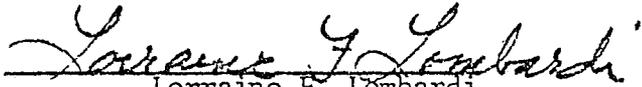
Ted L. Strickland
ACTING PRESIDENT
OF THE SENATE



John D. Fuhr
SPEAKER OF THE HOUSE
OF REPRESENTATIVES



Comfort W. Shaw
SECRETARY OF
THE SENATE

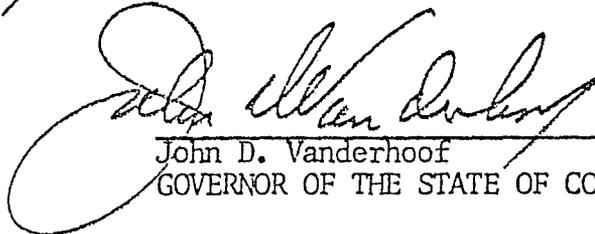


Lorraine F. Lombardi
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED

5/7/74

3:36 PM



John D. Vanderhoof
GOVERNOR OF THE STATE OF COLORADO

An Act

SENATE BILL NO. 12. BY SENATORS Cole, Cisneros, McCormick, Stockton, and Schieffelin; also REPRESENTATIVES Howe, Safran, Tempest, Arnold, Bendelow, Buechner, DeMoulin, Gaon, Hayes, Koster, Kramer, Lloyd, Lucero, Moore, Taylor, and Valdez.

CONCERNING PROCEDURES FOR SENTENCING TO THE DEPARTMENT OF INSTITUTIONS.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Article 11 of chapter 39, Colorado Revised Statutes 1963, as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

39-11-308. Custody of department of institutions - procedure. (1) When any person is sentenced to the state penitentiary or the Colorado state reformatory, that person shall be deemed to be in the custody of the executive director of the department of institutions.

(2) Any person sentenced pursuant to subsection (1) of this section shall initially be confined in such institutions as the court may designate to undergo evaluation and diagnosis to determine whether he should be confined in the state penitentiary, the Colorado state reformatory, any other state institution, or any other rehabilitation program as provided by law.

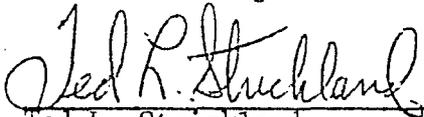
(3) When such evaluation and diagnosis is completed, a recommendation shall be made to the executive director of the department of institutions as to the place of confinement or other rehabilitation program as provided by law which may result in the maximum rehabilitation of the offender.

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

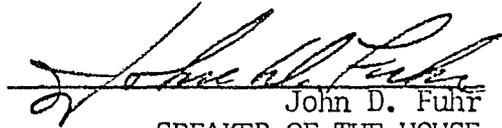
(4) Copies of the evaluation and diagnosis and the recommendation shall be shown and explained to the offender upon request; except that the executive director may withhold any information he deems to be detrimental to the rehabilitation of the offender.

(5) The executive director of the department of institutions is further authorized to transfer said person to any state institution or treatment facility under the jurisdiction of, or approved by, the department of institutions if he deems it to be in the best interests of said person and the public. Insofar as is practicable, said transfer shall be consistent with the evaluation and diagnosis and recommendation.

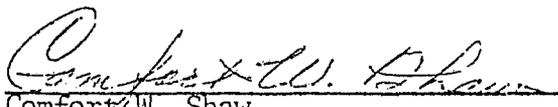
SECTION 2. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.



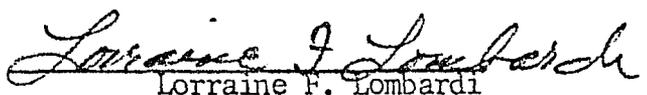
Ted L. Strickland
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SPEAKER OF THE HOUSE
OF REPRESENTATIVES

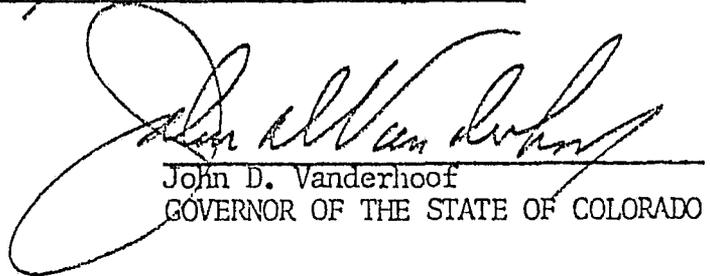


Comfort W. Shaw
SECRETARY OF
THE SENATE



Lorraine F. Lombardi
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED 5/7/74 5:49 PM



John D. Vanderhoof
GOVERNOR OF THE STATE OF COLORADO

An Act

SENATE BILL NO. 55. BY SENATORS Cole, Cisneros, McCormick, Stockton, Anderson, Ball, G. Brown, Calabrese, Darby, DeBerard, Dines, L. Fowler, Kinnie, Kogovsek, Locke, MacManus, Massari, Parker, Plock, and Schieffelin; also REPRESENTATIVES Howe, Kramer, Safran, Smith, Tempest, Arnold, Baer, Cooper, Fentress, Fuhr, Gallagher, Gustafson, Kopel, Koster, Lloyd, Lucero, Massari, Pettie, Showalter, Strang, Valdez, and Wells.

CONCERNING THE STATE CORRECTIONAL SYSTEM, AND PROVIDING FOR A STUDY THEREOF, AND MAKING AN APPROPRIATION THEREFOR.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Chapter 105, Colorado Revised Statutes 1963, as amended, is amended BY THE ADDITION OF A NEW ARTICLE to read:

ARTICLE 10

Community Correctional Facilities

105-10-101. Legislative declaration. (1) The general assembly finds and declares that:

(a) The state has a basic obligation to protect the public by providing institutional confinement and care of criminal offenders, and, where appropriate, treatment and rehabilitation in the community;

(b) Meaningful efforts to reintegrate and restore criminal offenders as law-abiding and productive members of society are essential to the reduction of crime;

(c) Upgrading of correctional institutions and rehabilitative services deserves priority consideration as a

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

means of lowering crime rates and of preventing offenders, particularly first offenders and misdemeanants, from becoming trapped in careers of crime;

(d) Correctional institutions and services should be so diversified in program and personnel as to facilitate individualized treatment and reintegration of the offender.

(2) The purpose of this article is to encourage the establishment of community correctional facilities and programs to provide for the custody, care, discipline, training, treatment, and study of persons committed to penal or correctional institutions for criminal offenses and to supervise and assist in the treatment, training, and integration into society of offenders who have been placed on probation, who are waiting sentence after trial, who are sentenced, and who have been released on parole or who are being held in local correctional and detention facilities, so that such persons may be prepared for release, aftercare, and supervision in the community. It is the intent of the general assembly to intensify the community approach to rehabilitation with respect to the locating of the offender within his community and in the utilization of community programs and resources, and to undertake a phased development plan of programs and facilities culminating with all adjudicated offenders not requiring maximum security being maintained and rehabilitated in their respective communities, with the designed purpose of protecting society against the hardened criminals while reintegrating the offender not needing maximum security into the community through rehabilitative, educational, treatment, and vocational programs.

105-10-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Adult" means a person eighteen years of age or older.

(2) "Community correctional facility" means a community-based or community-oriented facility which is operated either by a unit of local government or the department and which may provide live-in accommodations for offenders and give them aid in obtaining and holding regular employment; in enrolling in and maintaining academic courses; in participating in vocational training programs; in utilizing the resources of the community in meeting their personal and family needs and providing treatment; and in participating in whatever specialized programs exist within the community correctional facility.

(3) "Correctional institution" means the state penitentiary, Colorado state reformatory, community correctional facilities, or any other facility for the confinement or correction of offenders.

(4) "Department" means the department of institutions.

(5) "Detention" means the temporary care of offenders who require secure custody for their own or the community's protection in a physically restricting facility.

(6) "Executive director" means the executive director of the department of institutions.

(7) "Local community corrections board" means a group of local public officials and interested professionals and lay people involved in corrections and appointed by the board of county commissioners for the county in which the community corrections facility or program is located or, in the event the program is to be operated by several counties, the boards of county commissioners of those counties. The board or boards of county commissioners shall appoint a local community corrections board consisting of the following:

(a) A law enforcement representative consisting of a sheriff (selected by the sheriffs of the participating counties) and a chief of police (selected by the chiefs of police of the participating municipalities), or their respective designees;

(b) A prosecution representative who shall be either the district attorney or his designee;

(c) A public defender for that judicial district or his designee;

(d) A judiciary representative to be designated by the chief judge of the judicial district;

(e) One probation officer;

(f) One parole officer;

(g) A representative from a social service agency, public or private;

(h) One educator who is involved in adult education;

(i) At least one but not more than two exoffenders;

(j) At least two but not more than four lay citizens; these lay citizens should reflect the ethnic makeup of the local area.

(8) "Offender" means any person convicted of a crime under the laws of this state and over whom the department has custody.

(9) "Officer in charge" means a person in charge of the operation of a community correctional facility.

(10) "Unit of local government" means a county, city and county, city, town, service authority, or local community

corrections board as defined in this section.

105-10-103. Community correctional facilities - established - contract for services. (1) (a) The department may establish, maintain, and operate such community correctional facilities as may be from time to time purchased, constructed, or rented, for the custody, control, correctional care and treatment, and rehabilitation of offenders in the custody of the department who are deemed by the department to have potential for rehabilitation, which justifies their assignment to the community correctional facility.

(b) The department may acquire by lease or purchase, and may enter into contracts to construct or renovate and operate, any facility for use as a community correctional facility for the purpose of housing and rehabilitating offenders. Such authority is subject to the approval of the local governing authority following a public hearing held in the area in which the proposed facility is to be located.

(c) The department may contract with any unit of local government to provide pretrial detention services to those jurisdictions which do not have pretrial detention facilities subject to such compensation as may be established by the department.

(d) The department may contract for services with any unit of local government which has established and operates a community correctional facility under subsection (2) of this section or with any private nonprofit agency having approved facilities and offering an approved program when the department determines that the community correctional facility or the private nonprofit agency meets minimum standards adopted by the department. Such contracts for services to offenders assigned to a community correctional facility or private nonprofit agency may include services for treatment, examination, work assignment, education, training, employment, or participation in any correctional program authorized by law. In the contract for services with any unit of local government or with a private nonprofit agency, the department shall specify minimum levels and types of services to be provided and shall review expenditures in accord with the standards for programs of such agencies that are supported with funds pursuant to this article. Such standards shall be in writing and shall be submitted annually in the department's budget to the general assembly. In fulfilling its responsibility, the department may withhold state funds when the executive director determines that the programs or facilities of the local unit of government or private nonprofit agencies are not in compliance with such standards. Such contracts shall be subject to approval of the local governing authorities following a public hearing held in the area in which the community correctional facility is located.

(2) (a) Any unit of local government, as defined in section 105-10-102, may establish, maintain, and operate such community correctional facilities as may be from time to time purchased, constructed, or rented, for the custody, control, care and treatment, and rehabilitation of offenders in the custody of the department who are deemed by the department to have potential for rehabilitation and who are assigned by the department to the community correctional facility.

(b) Any unit of local government may acquire by lease or purchase, and may enter into contracts to construct or renovate and operate, any facility for use as a community correctional facility for the purpose of housing and rehabilitating offenders assigned to it by the department. Such authority is subject to the approval of the local governing authority following a public hearing held in the area in which the proposed facility is to be located.

(c) Any unit of local government which operates a community correctional facility may contract for services with any private nonprofit agency which meets minimum standards adopted by the department and which has approved programs and facilities. In case such approved facilities and programs are not available in the community, the unit of local government may develop and operate such services directly.

(3) The department and any unit of local government may accept, receive, and use money, goods, or services given for the general purposes of the department or the unit of local government by the federal government or from any other source, public or private, for the establishment, maintenance, and operation of community correctional facilities.

105-10-104. Education, training, and employment programs.

(1) The executive director shall establish and maintain education, training, treatment, and employment programs for persons in custody of the department. The officers in charge of community correctional facilities shall establish such programs, subject to approval by the executive director, for offenders committed to such facilities. Such programs shall include opportunities for academic education, vocational education, vocational training, and other related prevocational programs and employment, and they may be made available within correctional institutions or, subject to the restrictions set forth in section 105-10-103, at other places approved by the executive director or officer in charge. In determining which employment programs to establish and maintain under the authority of this section, the executive director or officer in charge shall consider the training value of the program, the job market and employment conditions in the community, and, in the case of programs to be carried out within the correctional institution, the types of goods and services required by the state.

(2) The executive director shall promulgate rules and regulations governing programs established under this section, which regulations shall include provisions for hours, conditions of employment, wage rates for employment program participants, and incentive payments for education and training program participants. The executive director shall also promulgate rules and regulations regarding programs outside correctional institutions which are established under this section. Such rules and regulations shall include provisions for reasonable periods of confinement of the offender in particular correctional institutions before he may be permitted to participate in such programs and shall also include provisions for feeding, housing, and supervising participants in such programs, in such manner as will be calculated to maintain morale and prevent the introduction of contraband to the facility.

(3) The executive director, subject to rules and regulations established pursuant to this section, may permit an offender to participate in education, training, or employment programs established under this section outside a correctional institution. An offender enrolled in any such program shall remain subject to the rules and regulations of the correctional institution to which he is assigned and shall be under the direction, control, and supervision of the officers thereof during the period of his participation in the program. In the case of an offender who participates in any program outside a correctional institution, the time spent in such participation shall be credited toward his sentence as if he had served such time within the institution.

(4) Judicial district probation departments may contract with the department, any unit of local government, or any private nonprofit agency, for the enrollment of probationers in community education, training, treatment, or employment programs and services under such conditions and circumstances as determined jointly by the executive director, the officer in charge, and the state court administrator, representing the judicial department.

105-10-105. Assignment and transfer of offenders. The executive director may transfer an offender to any detention center, jail, community correctional facility, halfway house, or work-release center operated by a unit of local government if in his judgment the correctional needs of such offender will be better served by such transfer and if the unit of local government consents.

105-10-106. Personnel - qualification. The executive director shall submit to the state personnel director recommended minimum qualification standards for correctional personnel; may develop new personnel classification positions to enable paraprofessionals, volunteers, and exoffenders to perform appropriate correctional services; and may arrange with appropriate agencies to provide preemployment training and

educational opportunities to such individuals to enable them to meet minimum qualification standards and to make available in-service training to department personnel.

105-10-107. Escape from custody. If an offender fails to remain within the extended limits of his confinement or to return within the time prescribed to an institution to which he was assigned or transferred or if any offender who participates in a program established under the provisions of this article leaves his place of employment or having been ordered by the executive director to return to the correctional institution neglects or fails to do so, he shall be deemed to have escaped from custody and shall, upon conviction thereof, be punished as provided in section 40-8-208, C.R.S. 1963. All deductions in sentence authorized by article 4 of this chapter shall be forfeited.

105-10-108. Duties of executive director related to the integrated state correctional system. (1) The executive director, subject only to powers vested in the judiciary or by statute specifically delegated to another department or officer of this state, shall be responsible for the creation and implementation of plans and programs designed to bring about the rehabilitation and reintegration of offenders, either within or without the confines of any correctional institution. Such plans and programs involving cooperation and coordination with probation services shall require the approval of the state court administrator. The executive director has full administrative authority, within the limits of available funds, to place such plans and programs into effect, including but not limited to the following:

(a) Developing and implementing a comprehensive plan for coordination of programs and services integrating under the department all state correctional programs and services involving persons in the custody of the department;

(b) Educating and informing the public about the work of the department and advising the general assembly concerning the needs and goals of the corrections process;

(c) Establishing policies which allow maximum latitude in intercorrectional institution transfers of offenders needing specialized treatment and determining at the time of commitment, and from time to time thereafter, the custody requirements and program needs of each offender in the custody of the department and assigning and transferring such persons to appropriate facilities and programs;

(d) Establishing a system of classification of offenders in the custody of the department for the purpose of developing a rehabilitation program for each such offender and expanding the diagnostic and individualized treatment programs;

(e) Establishing, maintaining, and administering programs of rehabilitation, including but not limited to education, training, treatment, and employment of persons in the custody of the department, designed as far as practicable to prepare and assist each such offender to assume the responsibilities and exercise the rights of a citizen of this state;

(f) Utilizing, as far as practicable, the services and resources of specialized community agencies and other local community groups in the rehabilitation of offenders; utilizing inmates who have exhibited successful community living for counseling services; developing and implementing, in cooperation with other state agencies, programs and facilities for the treatment of correctional problems related to drug abuse and alcoholism; and developing programs to provide increased involvement for the families of committed persons;

(g) Making and entering into contracts and agreements necessary or incidental to the performance of the duties of the department, including but not limited to contracts to render services to committed offenders, and providing training or education for correctional officers and staff;

(h) Establishing and providing programs of in-service staff training and development for employees of the department and, by agreement, other correctional personnel;

(i) Reevaluating rules and regulations relating to parole of offenders with a view toward promoting individual development and making recommendations with regard thereto to the state board of parole;

(j) Developing and establishing aftercare services for persons released from correctional facilities;

(k) Attempting to involve private industry and local communities in the planning and funding of treatment and rehabilitation programs;

(l) Developing, staffing, and placing in operation halfway houses, work-release centers, and community correctional facilities;

(m) Promulgating and encouraging adoption of contracts and joint service agreements between units of local government to establish and operate regional detention and correctional institutions for adults;

(n) Establishing, maintaining, and operating community correctional facilities;

(o) Entering into contracts with a unit of local government, under which an offender may be transferred to a

correctional institution operated by such unit of local government for treatment, examination, work assignment, or participation in any correctional program authorized by law;

(p) Investigating grievances and inquiring into alleged misconduct within correctional institutions supervising offenders in the custody of the department;

(q) Maintaining adequate records of persons in the custody of the department;

(r) Establishing programs of research, statistics, and planning, including evaluations of the performance of the various functions of the department and the effectiveness of the treatment of offenders in accomplishing rehabilitation and reintegration;

(s) Making and promulgating necessary rules and regulations incident to the exercise of his powers and the performance of his duties, including but not limited to rules and regulations regarding nutrition, sanitation, safety, discipline, recreation, religious services, communication and visiting privileges, classification, education, training, employment, and care and custody for all offenders committed to correctional institutions.

105-10-109. Duties relating to correctional institutions.

(1) In addition to exercising the powers and performing the duties which are otherwise provided by law, the executive director shall:

(a) Establish, maintain, and administer, subject to available funding, such state-operated community correctional facilities as he deems necessary;

(b) Establish and enforce standards for all state-operated correctional institutions;

(c) Designate and ensure that each correctional institution operated by a local unit of government with which the department contracts for services meets minimum standards adopted by the department.

(2) The executive director may provide consultation services for the design and construction of facilities, studies and surveys of programs and administration of facilities, and any other technical assistance he deems proper and necessary. In cooperation with units of local government, the executive director may develop and administer programs of grants-in-aid or subsidies for any community correctional facility.

(3) Subject to the supervisory authority of the executive director, the officer in charge of each state-operated community correctional facility shall be responsible for the efficient and

humane maintenance and operation of and the security for the facility. Each officer in charge is charged with the power and responsibility to:

(a) Receive, retain in confinement, and release, in accordance with law, offenders in the custody of the department and transferred to the facility or duly committed to the facility;

(b) Enforce the provisions of law and the regulations of the department for the administration of the facility, the government of its officers, and the treatment, training, employment, care, discipline, and custody of the offenders;

(c) Take proper measures to protect the safety of the offenders and to effect their recapture;

(d) Maintain and improve the buildings, grounds, and appurtenances of the facility;

(e) Make recommendations concerning the appointment of professional, technical, skilled, and other subordinate officers and employees for the facility;

(f) Establish and administer rules, including rules for the operation of the facility consistent with the general policies and regulations of the department;

(g) Give reasonable notice of promulgated rules and regulations to inmates confined at the facility;

(h) Maintain and preserve records on the management and operation of the facility, including records concerning any industries and wage funds of inmates and to report thereon to the executive director at such times as the executive director may require;

(i) Establish and maintain, in accordance with such rules and regulations as are established by the executive director, a central file at the facility containing an individual file for each offender. Except as otherwise may be indicated by the rules and regulations of the department, the content of the file of an inmate shall be confidential and shall not be subject to public inspection, except by court order for good cause shown, and shall not be accessible to offenders at the facility.

(4) The executive director shall maintain security, safety, and order at all state-operated community correctional facilities; utilize the resources of the department to prevent escapes from any such facility; and take all necessary precautions to prevent the occurrence or spread of any disorder, riot, or insurrection at any such facility, including but not limited to the development, planning, and coordination of

emergency riot procedures.

105-10-110. State correctional system study. (1) In order to give guidance and direction to the department of institutions in carrying out the purposes and intent of this article, the legislative council is directed to appoint a committee to undertake, on a cooperative basis with local units of government, other criminal justice agencies, and the state court administrator, a planning study for community corrections based on a total system concept that encompasses the full range of offenders' needs and the overall goal of crime reduction. The planning study for community corrections shall give highest priority to diversion from the traditional custody-oriented correctional facilities and programs and utilization of existing community resources, with emphasis on community involvement and responsibility. Individual program needs and the relevant aspects of social service systems such as health, education, mental health, public assistance, and vocational rehabilitation that have potential for sharing facilities, resources, and experience shall be considered in the overall correctional plan.

(2) (a) The legislative council shall appoint a correctional advisory commission to assist the legislative council study committee. The correctional advisory commission shall consist of nine members to be appointed as follows:

(I) One member from among the county sheriffs;

(II) One member from the judiciary;

(III) One member from the Colorado state public defender's office;

(IV) One member from the Colorado association of chiefs of police;

(V) One exoffender who shall have served a sentence in the state penitentiary or the state reformatory;

(VI) One member from the district attorneys' association;

(VII) Three citizens who have demonstrated an interest in correctional systems or techniques and who are representative of community groups concerned with corrections.

(b) The members of the commission shall receive no compensation for their services but shall be reimbursed for actual and necessary expenses incurred in the performance of their official duties.

(3) The state correctional system study shall include studies and recommendations on the following particular subjects:

(a) The role, function, and philosophy of the state's custodial programs and facilities;

(b) The legal framework for Colorado jails, their physical facilities, and their operations, personnel involved in operating jails, provisions for routine and specialized services at jails, and conditions of the existing system for holding accused persons pending trial and for dealing with convicted felons and misdemeanants;

(c) The relationship between the state's facilities and programs for adult offenders and the county and municipal jail system, including the concept of regional correctional facilities and an analysis of the appropriate fiscal relationship between the state and local units of government;

(d) The practicality and financial impact on local governments of regulations pertaining to jails promulgated by the department of health;

(e) The need for community-oriented facilities and programs for adult corrections and rehabilitation;

(f) Proposals embracing the concept of community and regional correction systems and the problems to be encountered in a transition from the current institution-oriented system to one that is community-based, with particular emphasis on the fiscal impact such a system would have on state and local governments and the cost of constructing or purchasing regional correction and rehabilitative facilities;

(g) Proposals for excluding sociomedical problem cases from corrections with emphasis on formalized programs and systems of diversion to effectively deal with the mentally ill, alcoholics, and drug addicts;

(h) The prison industries program;

(i) The relationship and organizational structure of probation, parole, and community-oriented corrections systems;

(j) The relationship between the judiciary and correctional administrators in terms of deciding both the location and the length of time of confinement for various offenders;

(k) Proposals to train and improve correctional manpower by implementing a coordinated recruitment and development program;

(l) Recommendations made by the national advisory commission on criminal justice standards and goals and other national and state study committees which have issued reports containing recommendations for change and improvements in the areas of correction and rehabilitation of offenders.

(4) The committee appointed by the legislative council may employ such consultants and experts in the field of corrections as may be necessary and within the limits of available funds, and contract for services from the national council on crime and delinquency, the association of state correctional administrators, and other organizations, as may be necessary. The committee appointed by the legislative council may also appoint such subcommittees, consisting of public officials and citizens interested in correctional reform, as it deems necessary to assist in the committee's study. In addition, the staff of the legislative drafting office and the joint budget committee shall assist the committee in research and drafting of proposed legislation.

(5) To cover the cost of said study during the fiscal year commencing July 1, 1974, the legislative council shall make application to the division of criminal justice for a grant of available federal funds to be expended in such study, in addition to funds allocated by the general assembly for legislative studies.

(6) The committee shall submit an initial report of its findings and recommendations to the general assembly no later than January 1, 1975, and shall submit a final report of its findings and recommendations to the general assembly no later than January 1, 1976.

(7) All expenditures incurred in the employment of consultants and experts in the conduct of the studies shall be approved by the chairman of the legislative council and shall be paid by vouchers and warrants as provided by law from grants received by and funds appropriated by the general assembly for this specific study.

(8) Until May 1, 1975, there shall be a moratorium on the construction of new jails by units of local government, except as approved by the division of criminal justice. This subsection (8) shall not apply to any project which, prior to July 1, 1974, has been advertised for bids or for which matching funds have been committed.

(9) Section 105-10-110 shall be repealed as of April 15, 1976.

SECTION 2. 3-11-5 (1), Colorado Revised Statutes 1963, as amended, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

3-11-5. Powers of executive director. (1) (e) The executive director is hereby authorized to contract for services or purchase or lease real or personal property to carry out the provisions of article 10 of chapter 105, C.R.S. 1963.

SECTION 3. Appropriation. There is hereby appropriated,

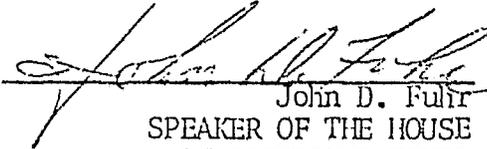
out of any moneys in the state treasury not otherwise appropriated, to the department of institutions, the sum of sixty-seven thousand five hundred sixty-two dollars (\$67,562), or so much thereof as may be necessary for the fiscal year commencing July 1, 1974, to establish three experimental community residential programs. (There is also available to the legislative council the sum of one hundred two thousand dollars (\$102,000) from federal LEAA funds transferred from the department of local affairs.)

SECTION 4. Effective date. This act shall take effect July 1, 1974.

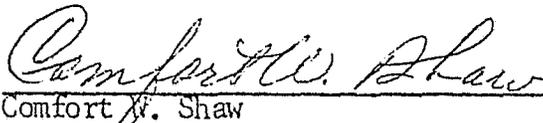
SECTION 5. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.



Ted L. Strickland
ACTING PRESIDENT
OF THE SENATE



John D. Fuhr
SPEAKER OF THE HOUSE
OF REPRESENTATIVES



Comfort W. Shaw
SECRETARY OF
THE SENATE

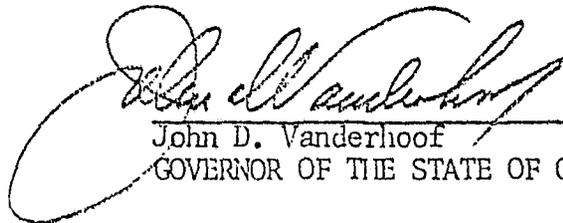


Lorraine F. Lombardi
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED

5/17/74

10:56 AM



John D. Vanderhoof
GOVERNOR OF THE STATE OF COLORADO

A BILL FOR AN ACT

1 CONCERNING CRIMINAL PROCEEDINGS RELATING TO THE IMPOSITION OF
2 SENTENCES.

 Bill Summary

(NOTE: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

3 Be it enacted by the General Assembly of the State of Colorado:

4 SECTION 1. 16-11-101 (1) (a), (1) (c), and (1) (e),
5 Colorado Revised Statutes 1973, are amended to read:

6 16-11-101. Alternatives in sentencing. (1) (a) The
7 defendant may be granted probation unless the offense of which he
8 is convicted makes him ineligible for probation OR UNLESS HE IS
9 INELIGIBLE UNDER SECTION 16-11-201. The granting or denial of
10 probation and the conditions of probation shall not be subject to
11 appellate review, UNLESS PROBATION IS GRANTED CONTRARY TO THE
12 PROVISIONS OF THIS ARTICLE.

13 (c) The defendant shall be sentenced to death in those
14 cases in which a death sentence ~~has been imposed by a jury~~ IS
15 REQUIRED UNDER SECTION 16-11-103.

1 (e) The defendant may be sentenced to the payment of a fine
2 OR TO A TERM OF IMPRISONMENT, or to BOTH a term of imprisonment
3 and the payment of a fine.

4 SECTION 2. 16-11-201, Colorado Revised Statutes 1973, is
5 REPEALED AND REENACTED, WITH AMENDMENTS, to read:

6 16-11-201. Application for probation. (1) (a) A person
7 who has been convicted of any offense, other than a crime of
8 violence as defined in this section, or a class 2 petty offense,
9 is eligible for probation.

10 (b) A crime of violence is a crime in which the defendant,
11 or a confederate, used or threatened the use of a deadly weapon
12 during the commission of the crime or immediate flight therefrom;
13 or the defendant, or a confederate, caused substantial injury to
14 any person other than the defendant or a confederate, during the
15 commission of any crime, or immediate flight therefrom.

16 (c) As used in this section, substantial injury means
17 injury which causes or has a substantial risk of causing death,
18 serious permanent disfigurement, or protracted loss or impairment
19 of the function of any part or organ of the body.

20 (2) A person is ineligible for probation who has been
21 previously convicted of a felony in this state or any other
22 jurisdiction, based upon an offense which occurred within ten
23 years prior to the date of the offense for which he is being
24 sentenced, and which felony would, at the time of the commission
25 of the new offense, be a felony under the laws of the state of
26 Colorado.

27 (3) Any person ineligible for probation under subsection

1 (1) or (2) of this section shall be sentenced to at least the
2 minimum term of incarceration provided by law, without
3 suspension.

4 (4) An application for probation shall be in writing upon
5 forms furnished by the court, but, when the defendant has been
6 convicted of a misdemeanor or a class 1 petty offense, the court,
7 in its discretion, may waive the written application for
8 probation.

9 SECTION 3. The introductory portion to 16-11-203 (1),
10 Colorado Revised Statutes 1973, is amended to read:

11 16-11-203. Criteria for granting probation. (1) The court
12 in its discretion may grant probation to a defendant WHEN
13 PERMITTED BY LAW unless, having regard to the nature and
14 circumstances of the offense and to the history and character of
15 the defendant, it is satisfied that imprisonment is the more
16 appropriate sentence for the protection of the public because:

17 SECTION 4. 16-11-304, Colorado Revised Statutes 1973, is
18 REPEALED AND REENACTED, WITH AMENDMENTS, to read:

19 16-11-304. Determinate sentencing. When a person has been
20 convicted of a felony, the court imposing the sentence shall fix
21 a definite term of imprisonment which shall be not longer than
22 the longest term fixed by law for the punishment of the offense
23 of which he was convicted, and it shall not be less than the
24 shortest term fixed by law for the punishment of the offense of
25 which he was convicted.

26 SECTION 5. 16-11-306 (3), Colorado Revised Statutes 1973,
27 is amended to read:

1 16-11-306. Sentencing - consideration of presentence
 2 confinement. (3) If the maximum sentence imposed is longer than
 3 the statutory maximum for the offense less the amount of
 4 allowable presentence confinement, it shall be presumed that the
 5 judge did not consider the presentence confinement.

6 SECTION 6. 16-11-307 (1), Colorado Revised Statutes 1973,
 7 is amended to read:

8 16-11-307. Credit for confinement pending appeal.

9 (1) ~~(a) A defendant whose sentence was stayed pending appeal~~
 10 ~~prior to July 1, 1972, but who was confined pending disposition~~
 11 ~~of the appeal, is entitled to credit against the maximum and~~
 12 ~~minimum terms of his sentence for the entire period of~~
 13 ~~confinement served while the stay of execution was in effect.~~

14 (a) A defendant whose sentence is stayed pending appeal
 15 after July 1, 1972, but who is confined pending disposition of
 16 the appeal, is entitled to credit against the ~~maximum and minimum~~
 17 ~~terms~~ TERM of his sentence for that part of such confinement
 18 which does not exceed sixty days, and this is so even though the
 19 defendant could have elected to commence serving his sentence
 20 before disposition of his appeal.

21 SECTION 7. 16-13-101 (1), Colorado Revised Statutes 1973,
 22 is amended to read:

23 16-13-101. Punishment for habitual criminals. (1) Every
 24 person convicted in this state of any felony who has been twice
 25 previously convicted upon charges separately brought and tried,
 26 either in this state or elsewhere, or a felony or, under the laws
 27 or any other state, the United States, or any territory subject

1 to the jurisdiction of the United States, or a crime which, if
2 committed within this state, would be a felony, shall be adjudged
3 an habitual criminal and shall be punished by confinement in the
4 state penitentiary for a DEFINITE term of WHICH SHALL BE not less
5 than the longest term, nor more than three times the longest term
6 prescribed upon a first conviction.

7 SECTION 8. Article 16 of title 16, Colorado Revised
8 Statutes 1973, is amended BY THE ADDITION OF A NEW SECTION to
9 read:

10 16-16-104. Release from imprisonment. (1) An imprisoned
11 person shall be unconditionally released and discharged upon the
12 expiration of his sentence, minus the good time deduction
13 authorized in this section.

14 (2) The sentence of any person committed to the custody of
15 the department or institutions shall commence to run on the date
16 on which such person is received in the custody of the
17 department.

18 (3) Each person committed to the custody of the department
19 or institutions for imprisonment whose conduct shows that he
20 observed all the rules and regulations of the institution in
21 which he has been imprisoned shall be entitled to a good time
22 deduction of ten days a month from his sentence commencing, in
23 the case of each convicted person, on the first day of his
24 delivery into the custody of the department.

25 (4) All persons in the custody of the department or
26 institutions serving a sentence for a crime committed prior to
27 July 1, 1976, shall be released and discharged according to the

1 law as it was in force on the date of such crime and such law
 2 shall continue in force for this purpose as if this section were
 3 not enacted. However, any such person may elect to be released
 4 and discharged according to this section, and upon such election
 5 he shall be released and discharged as if this section were in
 6 force on the date of the crime.

7 (c) No person sentenced for conviction of a crime committed
 8 on or after July 1, 1976, shall be granted parole.

9 SECTION 9. 17-1-101, Colorado Revised Statutes 1973, is
 10 amended to read:

11 17-1-101. Division of parole - termination of power to
 12 grant parole. (1) In order to promote the maximum efficiency,
 13 economy, and continuity of services in carrying out the purposes
 14 of this part 1, the division of administration created by the
 15 "State Parole Reorganization Act of 1951", is hereby transferred
 16 to the department of institutions and henceforth shall be
 17 identified as the division of parole, succeeding to all powers,
 18 duties, and functions previously exercised and performed by said
 19 division of administration.

20 (2) NO PERSON SENTENCED BY ANY COURT OF THIS STATE FOR A
 21 CRIME COMMITTED ON OR AFTER JULY 1, 1976, SHALL BE GRANTED PAROLE
 22 FROM SUCH SENTENCE. THE DIVISION SHALL CONTINUE IN EXISTENCE TO
 23 PERFORM ITS DUTIES UNDER THIS PART 1 ONLY WITH RESPECT TO PERSONS
 24 SENTENCED FOR CRIMES COMMITTED PRIOR TO THAT DATE.

25 SECTION 10. 17-1-204, Colorado Revised Statutes 1973, as
 26 amended, is amended by the addition of a new subsection to read:

27 17-1-204. Parole may issue - when - termination of power to

1 grant parole. (3) No person sentenced by any court of this
 2 state for a crime committed on or after July 1, 1976, shall be
 3 granted parole from such sentence. The board shall continue in
 4 existence to perform its duties under this part 2 only with
 5 respect to persons sentenced for crimes committed prior to that
 6 date.

7 SECTION 11. 17-1-301, Colorado Revised Statutes 1973, is
 8 REPEALED AND REENACTED, WITH AMENDMENTS, to read:

9 17-1-301. Termination of power to grant parole. (1) No
 10 person sentenced by any court of this state for a crime committed
 11 on or after July 1, 1976, shall be granted parole from such
 12 sentence. The division shall perform its duties relating to
 13 parole under this part 3 only with respect to persons sentenced
 14 for crimes committed prior to that date.

15 SECTION 12. 18-1-105 (1), Colorado Revised Statutes 1973,
 16 as amended, is amended to read:

17 18-1-105. Felonies classified, penalties. (1) Felonies
 18 are divided into five classes which are distinguished from one
 19 another by the following penalties which are authorized upon
 20 conviction:

21	<u>Class</u>	<u>Minimum Sentence</u>	<u>Maximum Sentence</u>
22	1	Life imprisonment	Death
23	2	ten EIGHT years,	Fifty THIRTY years, OR
24		OR FOUR THOUSAND	FIFTY THOUSAND DOLLARS
25		DOLLARS FINE	FINE, OR BOTH
26	3	Five FOUR years,	Forty TWENTY years, OR
27		OR THREE THOUSAND	FORTY THOUSAND DOLLARS

1		DOLLARS FINE	FINE, OR BOTH
2	4	One day (subject to the	Ten years or thirty
3		provisions of sections	thousand dollars fine,
4		16-11-101 (1) (b) and	or both
5		16-11-304 (2) (a) -	
6		1973) TWO YEARS, or	
7		two thousand dollars fine	
8	5	One day (subject to the	Five years, or fifteen
9		provisions of sections	thousand dollars fine,
10		16-11-101 (1) (b) and	or both.
11		16-11-304 (2) (a) -	
12		1973) ONE YEAR, or	
13		one thousand dollars fine	

14 Except as otherwise provided by statute, felonies are punishable
 15 by imprisonment in the state penitentiary. Nothing in this
 16 section shall limit the authority granted in part 1 of article 13
 17 of title 16, C.R.S. 1973, to increase sentences for habitual
 18 criminals.

19 SECTION 13. 18-1-409 (2), Colorado Revised Statutes 1973,
 20 is amended to read:

21 18-1-409. Appellate review of sentence for a felony.
 22 (2) No appellate court shall review any sentence which UNLESS IT
 23 was imposed within FUR MORE THAN TWICE the minimum ~~and~~ maximum
 24 punishment authorized for the offense ~~involved if the minimum~~
 25 ~~sentence imposed is not more than three years greater than the~~
 26 ~~minimum sentence provided for the offense~~ and unless within
 27 thirty days after sentence is imposed a written notice is filed

1 in the trial court to the effect that review of the sentence will
 2 be sought; and said notice must state the grounds upon which it
 3 is based.

4 SECTION 14. 27-20-104, Colorado Revised Statutes 1973, is
 5 amended to read:

6 27-20-104. Reduced time for good conduct - when applicable.

7 (1) Every convict who is imprisoned in the state penitentiary
 8 AFTER HAVING BEEN CONVICTED OF A FELONY COMMITTED BEFORE JULY 1,
 9 1976, and who performs faithfully the duties assigned to him
 10 during his imprisonment therein shall be entitled to a deduction
 11 from the time of his sentence for the respective years thereof,
 12 and proportionately for any part of a year, when there is a
 13 fractional part of a year in the sentence: For the first year,
 14 one month; for the second year, two months; for the third year,
 15 three months; for the fourth year, four months; for the fifth
 16 year, five months; and for the sixth and each succeeding year,
 17 six months.

18 (2) PERSONS COMMITTED TO THE CUSTODY OF THE DEPARTMENT OF
 19 INSTITUTIONS FOR IMPRISONMENT UPON CONVICTION OF A CRIME
 20 COMMITTED ON OR AFTER JULY 1, 1976, SHALL BE ENTITLED TO RELEASE
 21 FROM IMPRISONMENT BASED UPON GOOD TIME DEDUCTIONS AS PROVIDED IN
 22 SECTION 16-16-104, C.R.S. 1973, RATHER THAN UNDER THE PROVISIONS
 23 OF SUBSECTION (1) OF THIS SECTION, OR UNDER SECTIONS 27-20-105 TO
 24 27-20-110.

25 SECTION 15. 27-20-105, Colorado Revised Statutes 1973, is
 26 amended to read:

27 27-20-105. Trusty prisoners - allowance. Hereafter

1 Convicts of the state penitentiary undergoing sentence in
2 accordance with law FOR CRIMES COMMITTED BEFORE JULY 1, 1976, who
3 are engaged in work connected with said state penitentiary within
4 or outside the walls of said institution, and known as trusty
5 prisoners, and who are employed on the ranches or gardens, lime
6 kilns or quarries, stone yards or quarries, or upon public roads
7 and highways in this state in accordance with law, or at any
8 other class of work within or without the walls of said prison,
9 and who conduct themselves in accordance with the rules of the
10 prison and perform their work in a creditable manner, upon
11 approval of the warden, may be granted such good time in addition
12 to that allowed by law as the department of institutions may
13 order, not to exceed ten days in any one calendar month. Trusty
14 prisoners engaged in productive and constructive work, as defined
15 by the department of institutions in its rules, may be granted
16 additional good time not to exceed three days in any one calendar
17 month.

18 SECTION 16. 27-20-106, Colorado Revised Statutes 1973, is
19 amended to read:

20 27-20-106. Forfeiture of good time. If any convict
21 SENTENCED FOR A CRIME COMMITTED BEFORE JULY 1, 1976, escapes or
22 attempts to escape from the state penitentiary, he shall forfeit
23 all deductions from the time of his sentence which he has earned
24 under sections 27-20-104 and 27-20-105. Upon the return to
25 custody of a convict who has escaped or upon the apprehension of
26 a convict who has attempted to escape, he shall at once be
27 credited with the actual time which elapsed between the date when

1 he was received at the state penitentiary and the date when he
 2 escaped or attempted to escape. Said time so credited to the
 3 convict shall be deducted from the maximum time of his sentence,
 4 and the balance of time then remaining shall constitute the
 5 remainder of the sentence such convict is to serve. In serving
 6 the remainder of his sentence, said convict shall be entitled to
 7 earn deduction from the time thereof, or so-called good time, in
 8 accordance with the provisions of sections 27-20-104 and
 9 27-20-105. The date of the return to the state penitentiary or
 10 apprehension of said convict shall be a new starting point for
 11 the earning of all such good time, which shall thereafter be
 12 computed in the same manner as if said convict were then
 13 commencing to serve the first year of a new sentence. Successive
 14 attempts to escape shall be dealt with in the manner provided for
 15 in this section.

16 SECTION 17. 27-20-107 (1), Colorado Revised Statutes 1973,
 17 is amended to read:

18 27-20-107. Good time credit allowable - sentences for
 19 crimes committed before July 1, 1976. (1) ~~Unless otherwise~~
 20 ~~provided~~ Every prisoner confined in the state penitentiary FOR A
 21 CRIME COMMITTED BEFORE JULY 1, 1976, who has committed no
 22 infraction of the rules or regulations of the prison or the laws
 23 of the state and who performs in a faithful, diligent,
 24 industrious, orderly, and peaceable manner the work, duties, and
 25 tasks assigned to him to the satisfaction of the warden may be
 26 allowed time credit reductions as follows: A deduction of two
 27 months in each of the first two years, four months in each of the

1 next two years, and five months in each of the remaining years of
 2 said term, and correspondingly for any part of the year, where
 3 such term of confinement is for more or less than a year. The
 4 mode of computing credits shall be shown by the following table:

5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
	Number of	Good time	Total good											
	yrs. of	that may be	time that may											
	sentence	earned	be earned											
10	1st year	2 months	2 months											10 months
11	2nd year	2 months	4 months						1 year					6 months
12	3rd year	4 months	8 months						2 years					4 months
13	4th year	4 months	1 year						3 years					
14	5th year	5 months	1 year 5 months						3 years					7 months
15	6th year	5 months	1 year 10 months						4 years					2 months
16	7th year	5 months	2 years 3 months						4 years					9 months
17	8th year	5 months	2 years 8 months						5 years					4 months
18	9th year	5 months	3 years 1 month						5 years					11 months
19	10th year	5 months	3 years 6 months						6 years					6 months

20 And so continuing through as many years as may be the time
 21 of confinement.

22 SECTION 18. 27-20-103, Colorado Revised Statutes 1973, is
 23 amended to read:

24 27-20-103. Credits forfeited upon misbehavior. if any
 25 convict CONFINED FOR A CRIME COMMITTED BEFORE JULY 1, 1976,
 26 assaults any keeper, guard, foreman, officer, convict, or other
 27 person, or threatens or endangers the person or life of anyone,
 28 or violates or disregards any prison rule or regulation, or

1 neglects or refuses to do the work to which he is assigned, or is
2 guilty of any misconduct, or violates any of the rules or
3 regulations governing parole, he shall forfeit all time credits
4 theretofore earned by or allowed to him before the commission of
5 such offense under section 27-20-107.

6 SECTION 19. 27-20-110, Colorado Revised Statutes 1973, is
7 amended to read:

8 27-20-110. Forfeiture for violation of rules. In case any
9 convict CONFINED FOR A CRIME COMMITTED BEFORE JULY 1, 1976, is
10 guilty of willful violation of any of the rules or regulations of
11 the state penitentiary and is entitled to any deduction from the
12 time of his sentence by the provisions in sections 27-20-104 to
13 27-20-106, he shall forfeit, if entitled to so much, for the
14 first offense two days, for the second offense four days, and for
15 each subsequent offense four days, said forfeiture to be
16 determined by the warden or the state penitentiary.

17 SECTION 20. Repeal. 16-11-101 (1) (b) and (1) (d),
18 16-11-302, 16-11-303, 16-11-305, and 27-20-109, Colorado Revised
19 Statutes 1973, are repealed.

20 SECTION 21. Effective date - applicability. This act shall
21 take effect July 1, 1976, and shall apply to offenses committed
22 on and after that date.

SUMMARY OF PROPOSED SENTENCING REFORM LEGISLATION

Prepared by Dale Tooley

1. Violent and repeat offenders -- minimum sentences required.

Section 2 of the bill defines a violent offender as one who commits a crime with the use or threatened use of a deadly weapon, or a crime resulting in substantial injury to a victim. A repeat offender is defined as one who has previously been convicted of a felony, within the previous ten years, based upon an offense which would be a felony if committed today under the laws of the State of Colorado. The minimum mandatory sentence will be applicable to all violent and repeat felony offenders, those revised minimums being one year for a Class 5 felony; two years for a Class 4 felony; four years for a Class 3 felony; and eight years for a Class 2 felony.

2. Determinate flat-term sentencing.

Section 4 of the bill eliminates indeterminate sentencing in favor of flat-term sentencing set by the court, within the limits provided by law for the particular offense. This Section is quite comparable to the sentencing reform legislation adopted by the State of Maine. We believe it would help avoid present inequalities by which articulate and shrewd offenders are able to talk their way out by an earlier release on an indeterminate sentence, than other offenders.

3. Replacing the parole system with good-time credit.

The Colorado Parole Board and the parole agents have certainly tried. The problem is not their effort nor desire. The problem is that the system has outlived its usefulness. Revocations of parole are complicated by requirements of both probable cause and revocation proceedings, together with a full trial on the new offense. More than 750 people are on parole in Denver today, and more than 100 of them are regularly arrested each month. More than two-thirds of these parolees have two or more felony convictions on their records.

Section 8 would eliminate the system of parole as to sentences for offenses committed after the effective date of the act, and would substitute an across-the-board statutory good-time system of one day reduction for each two good days served. In Illinois, the proposed plan is for one day reduction for each day served, and some modification of the amount of good-time credit might be necessary in the law. We believe that such a plan would provide the necessary incentive for good behavior, without the expensive and unsuccessful post-release bureaucracy. It would not eliminate the need for and the involvement of pre-release activities and agencies, community-based facilities and work centers. It would be logical for the parole agents, as their case load would gradually be reduced, for them to be assigned probation officer functions, where there is a much greater opportunity for success in preventing recidivism.

4. Revising felony sentencing ranges and sentence equalization.

Section 12 would reduce the minimum sentences for Class 2 and 3 felonies and would likewise reduce the maximum ranges for those felonies. Currently, there is an unreasonable jump from the Class 4 maximum of 10 years to the

Class 3 maximum of 40 years. Likewise, the 50-year maximum for a Class 2 felony seems unreasonably long. This Section would change the Class 2 felony sentencing range from 10 to 50 years, down to 8 to 30 years. The range of sentencing for a Class 3 felony would be reduced from the present 5 to 40 years, down to 4 to 20 years. The maximums for the Class 4 and 5 felonies would remain 10 and 5 years, respectively, with a 2-year minimum for Class 4 and a 1-year minimum for Class 5, instead of the present indeterminate system as to those two categories.

Section 13 provides for appellate review for the purpose of sentence equalization, permitting an appeal of any sentence which is more than double the minimum, rather than the present provision which is geared to the number of years in excess of the statutory minimum. The effect of Section 12 would be to permit, for example, appeals from a Class 5 felony sentence if the sentence exceeds two years, and would permit appeals from a Class 4 felony sentence if a sentence exceeds four years, whereas no appeals are permitted under the present law as to Class 4 and Class 5 felony sentences. Most felony convictions are for Class 4 and Class 5 felonies.

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