

Report of the

LEGISLATIVE SENTENCING COMMISSION

67190

February 1, 1980



STATE OF CONNECTICUT
CONNECTICUT JUSTICE COMMISSION

February 1, 1980

NCJRS

APR 9 1980

ACQUISITIONS

To: Interested Persons
From: William H. Carbone *WHC*
Executive Director, Connecticut Justice Commission
Chairman, Legislative Sentencing Commission

This report represents the culmination of the efforts of the Legislative Sentencing Commission which was established by Special Act 79-96 of the Connecticut General Assembly. The Sentencing Commission has been meeting extensively since mid-August, 1979 in an effort to evaluate the criminal sentencing process at the felony level in Connecticut, with an eye toward the potential for meaningful sentencing reform. Sentencing reform within the basic existing resources of the justice system presents a possible solution to the problem of just and certain punishment.

The Sentencing Commission has produced the enclosed recommendations for improvement in criminal sentencing in Connecticut. Your input is urged regarding the report and recommendations contained herein. A public hearing has been scheduled with members of the Commission:

Judiciary Committee Hearing Room,
State Capitol, Hartford
Monday, February 11, 1980
1:00 to 4:30 p.m.

For those interested parties unable to attend the public hearing concerning this report, telephone or mail input care of the Connecticut Justice Commission is encouraged. I look forward to your response.

WHC/tsj
Enclosure

Legislative Sentencing Commission

James F. Bingham, Esquire

William H. Carbone (Chairman)

Honorable John J. Daly

John F. Fallon, Esquire

Honorable John R. Manson

Austin J. McGuigan, Esquire

Mr. Stephen J. Michaels

Richard P. Nevins, Esquire

Professor Howard Sacks

C. Robert Satti, Esquire

Joseph M. Shortall, Esquire

Honorable Robert J. Testo

James A. Wade, Esquire

Staff

Allen Binstock, Esquire

David Fraser

Thomas Siconolfi

Gerald Stowell

Table of Contents

	<u>Page</u>
Introduction	
Mandate of the Sentencing Commission	iii
Overview of Sentencing Reform	v
Sources of Data	viii
Section I	
Policy Statement	1
Major Recommendations	1
Judicial Discretion	2
Determinate Sentencing	3
recommendations regarding parole	7
Judicial Specialization	9
Prosecutorial Guidelines	10
Sentence Review	10
A Permanent Sentencing Commission	13
Section II	
Introduction	16
The In/Out Decision	16
Probation and Conditional Discharge	17
A Sentencing Guideline Grid	18
derivation of guideline ranges	18

	<u>Page</u>
Use of the Grid	21
Class of Offense	21
Prior Conviction Score	22
Movement Within Guideline Ranges	23
Movement Outside Guideline Ranges	24
Multiple Offenses	27
Persistent Offenders	28
Maximum Penalties	29
A Summary of the Limits on Judicial Discretion in Sentencing	29
 Section III	
Summary	31
 Section IV	
Summary List of Sentencing Commission Recommendations	35
 Appendix A	
Special Act 79-96	39
 Appendix B	
Sentencing Reform	43
 Appendix C	
Current Sentencing Practices in Connecticut	51
 Footnotes	60

Introduction

Special Act No. 79-96, enacted by the General Assembly of the State of Connecticut in the 1979 session established a Sentencing Commission with the following mandate:

- A. Establish sentencing policies and practices for the state criminal justice system which assure that the sentencing goals of punishment, deterrence, incapacitation and rehabilitation will be accomplished.
- B. Develop means of measuring the degree to which sentencing and correctional practices are effective in meeting the sentencing purposes, taking into account the nature and capacity of the judicial correctional and other facilities and services available to accomplish such purposes.
- C. Promote greater public understanding of the way criminal sentences are determined.
- D. Establish sentencing guideline ranges with one or more offense lines for each statutory offense and offender columns representing prior criminal convictions.
- E. Consider the following in establishing sentencing guideline ranges:
 1. Available sentencing experience for felony crimes during the years immediately prior to establishing the ranges;

2. any policy guidelines formulated by the Chief State's Attorney governing the exercise of prosecutorial discretion by the state's attorneys and their assistants;
3. the nature and degree of harm caused by each offense covered by the guideline ranges;
4. the importance of prior criminal convictions in establishing a sentence;
5. the community view of the gravity of the offense;
6. the public concern generated by the offense;
7. the deterrent effect a particular sentence may have on the commission of the offense by others;
8. the incidence of the offense in the state as a whole;
9. the necessity to avoid overcrowding in correctional facilities.

The complete text of Special Act number 79-96 appears in Appendix A of this report.

The Sentencing Commission has been meeting since mid-August, 1979 in an effort to consider present Connecticut sentencing policy, and to evaluate and recommend where necessary, sentencing reform. As a part of this effort and preliminary to the drafting of recommendations the Sentencing Commission has studied sentencing reform efforts in other states, reviewed previous Connecticut attempts at sentencing reform, and examined available data concerning present Connecticut sentencing practice. A wealth of information regarding sentencing and sentencing reform in combination with broad representation of interests among the Sentencing Commission members fostered a climate in which meaningful consideration of the complex issues relating to sentencing could occur. Prior to presentation of the recommendations of the Sentencing Commission, it will be useful to present an overview of the information

available to the Commission. A more detailed description of that information is presented in Appendix B and C of the report.

In the past five years there has been a great amount of activity in the criminal justice literature and among government policy makers concerning the issue of criminal sentencing. Judicial sentencing practices have been variously described as being inequitable, unfair, ineffective, too harsh, or too lenient. All of these criticisms aim at the largely unbounded discretion of an indeterminate sentencing system.¹ It has been pointed out that with the possible exception of inequity, "Any determination of what is a 'correct' sentence must be tempered by the knowledge that it depends on one's point of view and not a fact."² Consequently, this issue will probably never be resolved to the mutual satisfaction of everyone.

Types of sentencing reform include:

- mandatory sentencing - a sentencing approach which calls for the mandatory incarceration of certain offenders committing certain crimes.
- presumptive sentencing - has several variations, but generally means that upon conviction for any offense, a particular legislatively specified sentence is imposed.
- sentencing guidelines - usually refer to a system of data which functions as a tool in assisting decision makers in arriving at individual and policy determinations.
- judicial sentencing councils - attempt to reduce disparity by a sharing of the sentencing decision among three judges or, more commonly, placing two of those judges in the position of advisors or consultants to the third judge who maintains individual responsibility for the sentencing decision.

- expanded appellate review - viewed as a means of reducing disparity through the evolution of a common law of sentencing.

Mandatory and presumptive sentencing proposals are in themselves determinate sentencing proposals, while guidelines, judicial sentencing councils, and appellate review may be used as a part of a determinate or indeterminate sentencing structure. For example, in an indeterminate system one could use sentencing guidelines to establish a minimum and maximum sentence for each offender and then use parole guidelines as an aid in determining the actual release date. In a typical determinate sentencing scheme sentencing guidelines would provide a narrow range of possible sentences, but only one term of imprisonment would be given. That is, instead of one-to-three years in prison, an offender would be sentenced to one, two, or three years. Mandatory and presumptive sentencing proposals, on the other hand, very clearly require that an offender receive a specific, not a variable penalty.

A great many states and localities have implemented or are considering implementing some type of sentencing reform. A detailed description of types of sentencing reform can be found in Appendix B.

Past attempts at sentence reform in Connecticut have drawn on all of the models discussed previously, but the primary impetus for change has come from the legislature. The sequence of events that eventually led to the most recent mandate of the legislature to the present sentencing commission began in 1974 when the legislature established the Commission on Parole Evaluation Techniques and Rehabilitation. The legislature was responding to criticisms of the parole release decision making process, which was seen as being largely hidden from public view, and prone to making inappropriately disparate release decisions. Based on a study by Professor George F.

Cole of the University of Connecticut, that commission recommended the repeal of the state's indeterminate sentencing system and the adoption of a determinate sentencing scheme. The legislature subsequently created a commission to study alternate methods of sentencing.

The Commission to Study Alternate Methods of Sentencing conducted the first significant research on sentencing practices in Connecticut. This commission was primarily responsible for the drafting of House Bill 5987 which was submitted to the legislature in 1978. The bill called for a transition to determinate sentencing using a sentencing grid and presumptive sentencing. The grid was designed to use prior criminal record on one axis and the severity of the current offense on the other. Presumptive sentences were recommended which could be increased or decreased 15 percent by the existence of statutorily defined aggravating or mitigating circumstances. The bill permitted judges to go outside the guideline range where compelling reasons were found and stated in writing. This bill passed the House and Senate in somewhat different forms. The differences were not resolved in the short time remaining and as a result, the legislation did not pass.

Two competing sentencing reform packages were submitted to the 1979 legislative session. The first package was simply a resurrection of the bill previously proposed by the Commission on Alternate Sentencing with little or no change. The second package was a compromise proposal put together by an ad hoc committee of former Commission members and others. This proposal called for the creation of a sentencing commission that would draft a sentencing grid. It also called for an enhanced system of appellate review of sentencing in Connecticut to be implemented with the ultimate goal of developing a common law of sentencing.

The legislature was not completely satisfied with the thoroughness of either bill proposed in the 1979 session. Consequently, the decision was made to give a more complete mandate to a new Sentencing Commission. This new Sentencing Commission was established by Special Act 79-96.

The development of sentencing guideline system based on sentencing experience in Connecticut first requires that we establish what sentencing practices have been in effect in Connecticut recent years. This meant an intensive data gathering and analysis effort on the part of the staff of the Connecticut Justice Commission.

A five month data collection effort was completed in March of 1979. The data consisted of a sample of 1,749 offenders convicted in the Connecticut Superior Court in the years 1976 and 1977. This represented approximately one third of all convictions recorded in the docket books of each Superior Court. Sources of data included Uniform Arrest Reports, court files from all nine Superior Court districts in Connecticut, criminal history data from the State Police Bureau of Identification, and Department of Correction time served information on those offenders who were actually incarcerated. The data set has provided useful information beyond what is currently available through Superior Court case load summaries. A further description of the data used by the Sentencing Commission is located in Appendix C.

This introduction has dealt briefly with the recent history of sentencing reform in Connecticut and the task of the Legislative Sentencing Commission. The remainder of the report reflects the actual work of the Sentencing Commission and presents a policy statement and recommendations for improving the criminal sentencing process in Connecticut.

Section I

Policy Statement

The Connecticut Sentencing Commission, after receiving a variety of input and examining available data concerning sentencing practices and the use of judicial discretion in the Connecticut courts, has reached consensus on the following policy statement. Despite its agreement with the goals of adding greater certainty and uniformity to sentencing practices in Connecticut, the Sentencing Commission believes that the degree of restriction on sentencing discretion implied in special Act No. 79-96, An Act Establishing a Criminal Sentencing Commission, is excessive and unworkable. However, the Sentencing Commission has considered the types of revisions suggested in this Act, and the Commission believes that reform encompassing the following areas would provide for the most constructive implementation of the goals embodied in the legislation.

1. The Sentencing Commission affirms the desirability of judges retaining the ability to sentence individuals on the merits of their respective cases, within reasonable limits.
2. Determinate sentencing is preferable to the present indeterminate sentencing. Therefore, the Commission recommends the substitution of determinate sentencing for indeterminate sentencing and the elimination of the discretionary release power of the parole board.
3. The Sentencing Commission endorses judicial efforts to assign a group of judges specializing in the administration of criminal justice.
4. The Sentencing Commission encourages the development by the Office of the Chief State's Attorney and the State's Attorneys of uniform guidelines regarding sentences to be recommended in criminal matters.

5. The Commission recommends the strengthening of the standards and authority of the Sentence Review Division as a means of promoting greater uniformity in sentencing.

The five general recommendations outlined above are discussed in greater detail in the following section of this report, along with the methods of implementing them.

An important aspect of the Special Act with which the Commission does not agree is the adoption of a grid system for sentencing. In general, members believe that a restrictive grid system would undermine the principle of just punishment based on all the characteristics of the offense and the offender, and would unduly burden the administration of criminal justice within the state. However, despite this disagreement in principle, and in order to fulfill its statutory mandate, the Sentencing Commission reluctantly submits a grid system. The grid system submitted by the Commission appears to be the least disruptive to the administration of criminal justice.

Major Recommendations

A. Judicial Discretion

The Sentencing Commission states unanimously that the exercise of judicial discretion in sentencing is both necessary and proper in the administration of criminal justice. The unique nature of each offense and offender, when considered in total, demand that judges retain the ability to weigh a wide range of penalties within the statutorily defined boundaries presently in effect for each felony class of offense. Most of the guideline options considered by the Sentencing Commission have, as either a goal or an inevitable by-product, a reduction or elimination of judicial discretion in sentencing. Through the use of narrow guideline ranges from which a sentencing judge selects a determinate period of incarceration or through the adoption of either of the more restrictive policies of presumptive or mandatory sentencing which are intended to

provide a sentencing judge with the prescribed penalty for a given offense and offender, the sentencing judge's options in imposing a sentence are limited. The Sentencing Commission is in agreement that these efforts are misguided and that broad judicial discretion in sentencing is essential if justice is to be served. The remainder of the recommendations within this report are consistent with the principle of broad judicial discretion.

B. Determinate Sentencing

The Sentencing Commission endorses the maintenance of discretion where appropriate and the reduction or elimination of discretion where that discretion is dysfunctional. Judicial discretion in sentencing is both appropriate and necessary whereas the discretionary release power of the parole board is not. A sentencing system which permits the non-judicial reduction of a sentence serves neither the goal of just punishment nor the goal of certainty of punishment which together form the public perception of the credibility and integrity of the court system. With this in mind, the Sentencing Commission recommends the substitution of determinate sentencing for indeterminate sentencing and the elimination of the discretionary release power of the parole board.

Under the present indeterminate sentencing system utilized in Connecticut for sentences in excess of one year, a convicted offender generally receives both a minimum and maximum term of incarceration. The two exceptions are those offenders sentenced to indefinite terms at the Cheshire and Niantic correctional facilities. Those individuals receive a maximum period of incarceration but no minimum period.

Offenders sentenced to indeterminate periods of incarceration, on the average, must serve two-thirds of the minimum sentence imposed prior to reaching eligibility for

parole release.⁽³⁾ Research has shown that approximately eighty-five percent of those offenders serving indeterminate sentences will gain parole release at their earliest opportunity. Ninety-nine percent of all incarcerated offenders will gain parole release prior to serving the maximum sentence received.⁽⁴⁾ The vast majority of incarcerated offenders, then, are released to parole supervision after serving two-thirds of their minimum incarcerative term, and all but a very few offenders are released to parole supervision at a point prior to completion of the maximum imposed sentence.

A determinate sentencing system, based upon present practice would clarify, for both the offenders and the public, the sentence imposed. In a determinate sentencing scheme, an offender is sentenced to a fixed term, reduced solely through the accrual of 'good time' in accordance with Department of Correction policy. The offender will know precisely how long a sentence will be served and the public will be privy to the same information. The public confusion which surrounds the early parole release of an offender sentenced to a seemingly long indeterminate term will not exist in a determinate sentencing structure. Discretion in sentencing will rest with the judiciary at the time a sentence is imposed and there will be no parole release.

As a result of the substitution of determinate sentencing for indeterminate sentencing which has just been described and also, the abolition of discretionary parole release, which follows, it is essential that the effect of these changes on prison population be closely monitored. Lacking prior knowledge of the impact of determinate sentencing and elimination of discretionary parole release, it is difficult to predict their effect, but experience in both California and Illinois has shown a dramatic increase in prison population following the implementation of similar changes. With Connecticut Department of Correction facilities presently filled to capacity, the Sentencing Commission urges that the State Legislature explore, without delay, solutions to the

problem of prison overcrowding. As a long term solution, the construction of new correctional facilities should be considered. The administration of just and certain punishment should not be contingent upon the number of available prison beds.

However, the Sentencing Commission does recognize the economic and practical realities which cannot be ignored in decision-making, particularly in the public sector. As an interim solution to prison overcrowding, the Sentencing Commission recommends that the Commissioner of Correction be given the power to petition the court for early release or discharge of selected inmates. Criteria will be developed by the Commissioner of Correction and his staff regarding the eligibility of inmates for early release, and will consider the following factors among others; length of sentence remaining, seriousness of the prisoner's most serious conviction offense, the presence of any misconduct reports pertaining to the offender's behavior within the correctional system, and prison status (pre-trial, including the amount of bond vs. convicted). Decision as to release would rest with the courts in any case, and the State's Attorneys would be notified prior to any petition for release in order to allow the state sufficient opportunity to challenge the release of any inmate.

The final report of the Sentencing Commission favors the abolition of discretionary parole release for the following reasons:

1. The major tenet underlying parole release is that the Parole Board can accurately assess changes in the circumstance or personality of an inmate and subsequently determine whether or not that inmate is ready to be released, under supervision, to the community. This implies a predictive ability ("How likely is an offender to resume criminal activity?") which is not supported by available research. Errors in the prediction of future behavior may be disastrous to both the individual and to society. The

inmate who is indeed ready to return to the community but who is incorrectly diagnosed to be a poor risk by the Parole Board suffers a continued and unnecessary loss of personal liberty. Conversely, the inmate who wins parole release but who, in reality, is a poor risk subjects society to unwarranted hazard.

2. The Sentencing Commission agrees that present policy regarding parole release hearings deprives an inmate of due process considerations. An inmate is not allowed to view his file or contest information contained therein, and the inmate also has no effective right to counsel.
3. The present Parole Board policy of selecting three person panels from the nine Board members to hear parole release cases is a major source of disparity. Varying panels can treat similar individuals differently. It is not unlikely that an inmate denied parole when presented to a particular Parole Board panel might have won release if presented before a different panel.
4. The belief that through parole release the Parole Board can reduce disparate sentences is fallacious. Under present indeterminate sentencing policy the parole board can reduce disparity in maximum sentences but does not alter minimum terms. Since eighty-five percent of those incarcerated are presently released at their earliest eligibility (after serving two-thirds the minimum term) it is obvious that minimum sentences are generally the true representation of actual sentence. Therefore, any actual reduction of disparity must be based on minimum sentences, not maximum terms.

Although the Sentencing Commission advocates the abolition of discretionary parole releases, the Commission does endorse the retention of parole supervision. The

outright discharge of an offender after serving an incarcerative term is deemed unwise. Parole supervision can benefit both the offenders and society. A variety of services are available to the released offender through a system of parole supervision and these services can be helpful in achieving the successful reintegration of the offender into the community. What the community appears to gain from parole supervision is a deterrent to additional criminal behavior or at least a delay in recidivism.

The following are the specific Sentencing Commission recommendations with respect to parole and supervised release.

1. The Parole Board shall be abolished. There will no longer be discretionary parole release.
2. All persons convicted of felonies who are sentenced to a term of confinement of more than one year, no part of which is suspended, shall receive a parole supervision term, to be served at the end of confinement.
3. If a felony offender is sentenced to a term of confinement and some portion or all of it is suspended, the offender may also receive a term of probation but not parole supervision.
4. The term of parole supervision and the maximum parole revocation term (to be served in confinement if the offender violates parole and it is revoked by the court) will be imposed at the time of sentencing, by the sentencing judge.

A typical sentence would thus be..."I sentence you to two years in confinement; one year (a third year) shall be on parole; and not more than one year (a fourth year) shall be in confinement following the revocation of parole, if you violate parole and parole is revoked. If you complete parole successfully you shall not serve the parole revocation term, but shall be discharged from the custody of the court at the end of your one-year parole term. The maximum effective sentence will be four years."

5. The sentencing judge shall determine the duration of the parole term and the parole revocation term. Both of these shall be based upon the most serious conviction offense. Neither the parole term nor the parole revocation term may, however, exceed the following maxima:

- Class D felony and any unclassified offense for which the maximum penalty is five years or less - 1 year.
- Class C felony and any unclassified offense for which the maximum penalty is greater than 5 years but less than, or equal to ten years - 3 years.
- Class B felony and any unclassified offense for which the maximum penalty is greater than 10 years but less than or equal to 20 years - 4 years.
- A felony - 5 years

In all cases the court may reduce the term of parole after the parolee has completed one-half of his parole supervision term, upon the recommendation of the Parole Division.

6. If parole is revoked, the parolee shall be returned to confinement and shall serve a parole revocation term. This term of incarceration will be imposed by a judge and may be as long as, but not longer than, the length of the parole revocation term imposed at the time of sentencing. A parolee who violates parole, has parole revoked, and subsequently serves in confinement a parole revocation term shall be discharged from custody upon completion of the revocation term. Thus, once parole is revoked, the offender shall not be re-released to parole supervision during the parole revocation term.

7. The Sentencing Commission recommends that the permissible conditions of parole be set forth statutorily, and that such conditions be similar to those used in probation (Connecticut Statutes 53a-30).

8. Revocation of parole for violation of parole conditions shall be done by the court. The parole revocation procedure will contain appropriate due process safeguards, such as the right to hearing and the right to counsel.
9. Parole officers will continue to have the power to arrest parolees for suspected parole violations in accordance with fourth amendment guarantees. Procedures following arrest, and prior to the parole revocation hearing conducted by the court, are still being considered by the Sentencing Commission, and it is expected that this matter will be dealt with more completely in the final report.

The recommendations regarding parole release and supervision are an effective method for increasing both certainty of punishment and the visibility of the sentencing process, while simultaneously reducing misplaced discretion and disparity among similar offenders.

C. Judicial Specialization

As stated above, it is the recommendation of the Sentencing Commission that Judicial discretion in sentencing remain broad. However, internal consistency within the judiciary is desirable and necessary if both just punishment and equity in sentencing are to be achieved. Consistency can be fostered through administrative means within the Judicial Department. The Sentencing Commission therefore endorses judicial efforts to assign a group of judges specializing in the administration of criminal justice.

In the past, superior court judges were assigned to both criminal and civil matters. During the past year, the position of Chief Administrator of the Criminal Division was created and subsequently a specialized judiciary hearing criminal matters has begun to emerge. The Sentencing Commission agrees that the formation of a specialized group of judges is likely to achieve consistency in sentencing.

D. Prosecutorial Guidelines

The assignment of a group of judges specializing in the administration of criminal justice will have a major positive impact on the development of a consistent and sound sentencing practice. An additional positive impact can occur as a result of efforts within the Office of the Chief State's Attorney. The Sentencing Commission encourages the development by the Office of the Chief State's Attorney and the State's Attorneys of uniform guidelines regarding sentences to be recommended in criminal matters. The State's Attorneys are in key positions to analyze current sentences for various offenses and offenders. A uniform policy concerning recommended sentences which is based upon present practice is a most sensible and efficient means for promoting sentencing consistency. Internally established guidelines with respect to charge negotiation and plea negotiation are a natural adjunct to guidelines concerning recommended sentences.

E. Sentence Review

A final area which the Sentencing Commission would like to address is Sentence Review. The Commission recommends the strengthening of the standards and the authority of the Sentence Review Division as a means of promoting greater uniformity in sentencing. There are five subjects within Sentence Review which if implemented as a package can strengthen substantially the Review Division.

1. Timely Review

In order to accomplish the expanded role which the Sentencing Commission proposes for the Sentence Review Division it will be necessary to assign more judges to the Review Division or be prepared to have the present three judge system administer a greatly expanded workload. In its expanded role, the Sentence Review Division would evaluate many more cases in accordance with the four areas that follow.

2. Statewide Uniformity

The Sentencing Commission foresees the Sentence Review Division as a key mechanism, in conjunction with a specialized judiciary and internally developed prosecutorial guidelines for promoting statewide uniformity in sentencing with due regard for local conditions. Normally, it will be expected that an offender convicted in New Haven and an offender convicted in Windham of the same offense and presenting similar prior records and like circumstance will receive like penalties. The Review Division can monitor sentencing across judicial districts while permitting justified variation in sentencing. In the above example, perhaps both offenders were convicted of the crime of Arson I but New Haven, having experienced a rash of similar offenses, perceives the crime more seriously than does Windham. A harsher penalty meted out to the offender in New Haven may, in this case, be justified.

3. Increased As Well As Decreased Sentences

Presently, the Sentence Review Division is empowered to increase sentences as well as decrease them. However, the power to increase sentences is rarely exercised. In order to fulfill a mandate for just and uniform sentencing, the Sentence Review Division should in the future, continue to review sentences and subsequently increase as well as decrease sentences, based upon the salient factors of each case. A review division which alters sentences in only one direction would do little or nothing to eliminate unjust or inconsistent sentencing on the lower end of the sentencing spectrum.

4. Prosecutorial Appeal

A mandate to the Sentence Review Division to evaluate cases with the possibility of increasing or decreasing a sentence opens the avenue of prosecutorial appeal of a sentence. If just punishment is a goal of any sentencing reform, then this goal can only be achieved if both the defense and the prosecution can appeal a sentence. Sentencing disparity exists in the form of overly lenient as well as overly harsh penalties.

5. A Body of Sentencing Principles

The expanded role for the Sentence Review Division which is recommended by the Sentencing Commission will lead to the development of more consistent sentencing in Connecticut. Through a series of judgements over time which are recorded and subsequently examined, the salient factors in a sentencing decision will be identified and reviewed for legitimacy. This information will be fed back to the other actors in the courts; sentencing judges, defense counsel, and prosecutors. With a knowledge of the kinds of principles which are important in the determination of a just sentence and a knowledge of their relative importance, sentencing consistency and uniformity should increase. While initially, the Sentence Review Division will face a greatly expanded workload, over time it is plausible that if consistent sentencing practice does develop, a significant drop in cases subject to review could occur.

As primary agent of sentencing review, the Review Division shall evaluate requests for modification of sentences over 1-year in length. The Division will be in the best posture to examine salient factors and possible significant changes in circumstance regarding an incarcerated offender.

With respect to Modification of Sentence:

- a. In order to minimize abuse of petition for modification of sentence, the Sentencing Commission recommends that any hearings for sentence modification must be granted by the reviewing authority.
- b. Modification of an effective sentence of one year or less shall be referred back to the court of adjudication or the original sentencing judge.
- c. A modification of sentence shall be considered only with a showing of extreme hardship resulting in a material change in circumstance.

The above major recommendations of the Sentencing Commission must be assessed as a package which, when implemented, will achieve the goals of just punishment and equity in sentencing. It is the consensus of the Sentencing Commission that the present court system is basically sound, and that any contemplated alterations in the Connecticut court system take the form of refinements within the present framework rather than wholesale, fad-oriented change. The recommendations presented in this report are in accord with this principle. Each recommendation addresses a component of the criminal justice system which is currently in place, and each recommendation also relies on the strengths found within each system component to implement the recommended changes. The above set of recommendations constitutes an evolutionary rather than a revolutionary approach to sentencing reform.

F. A Permanent Sentencing Commission

Implementation of the above recommendations or the sentencing guideline grid which appears in the next section of this report will require the coordination and the evaluation of the efforts undertaken in that direction. The Sentencing Commission finds it desirable and recommends that these responsibilities be shared among the public and representatives of those state agencies involved in the evolutionary change process.

It is recommended that a permanent sentencing commission be established by legislative action to have the following responsibilities:

1. Monitor and evaluate the effect of guidelines on sentencing practices.
2. Monitor the impact of guidelines on prison population.
3. Retain a professional staff for the purpose of developing and implementing training programs for criminal justice personnel in the case of guidelines and for continuing sentencing research.

4. Review and comment upon procedures for release of non-dangerous prisoners developed by the Commissioner of Correction.
5. Based on continuing research, a permanent sentencing commission should have the authority to recommend revisions in guidelines and grids to the legislature.

It is further recommended that the Permanent Sentencing Commission consist of thirteen members as follows: The Chief State's Attorney; a State's Attorney to be designated by the Chief State's Attorney; the Chief Public Defender; an experienced member of the criminal Bar of the State other than a public defender or public official to be designated by the Chief Public Defender; the Commissioner of Correction, six members who are not public officials, two to be appointed by the Governor, one to be appointed by the Speaker of the House of Representatives, one to be appointed by the Minority Leader of the House of Representatives, one to be appointed by the President Pro Tempore of the Senate and one to be appointed by the Minority Leader of the Senate, and two judges to be appointed by the Chief Justice of the Supreme Court, one of whom shall be a member of the Sentence Review Division. The public members shall be residents of Connecticut other than public officials. In appointing members, consideration shall be given to desirability of establishing a Commission with a diversity of backgrounds. A member of the Commission may be removed only for cause.

Members of the Commission who are not designated by the act shall serve for three-year terms, except that, of the members first appointed: (1) The Chief Justice shall appoint one member to serve for a term of two years and one member to serve for a term of three years; (2) the Speaker of the House of Representatives and the Minority Leader of the Senate shall appoint members to serve three-year terms; (3) the President Pro Tempore of the Senate and the Minority Leader of the House of Representatives shall appoint members to four-year terms; (4) The Governor shall appoint one member to a three-year term and one member to a four-year term. No member shall serve

more than two full terms. Any member designated to fill a vacancy that occurs before the expiration of the term for which his predecessor was appointed shall serve only for the remainder of such term. All members of the Commission shall serve without compensation but shall be reimbursed for travel, subsistence and other necessary expenses incurred in the performance of duties vested in the Commission.

The Commission shall elect by majority vote one of its members to serve as Chairman. The Chairman shall: (1) preside at meetings of the commission; (2) cast a deciding vote when such a vote is necessary to break a voting deadlock among the other members of the Commission; (3) direct the preparation of requests for appropriations for the Commission and the use of funds made available to the Commission; and (4) direct the Commission staff.

Section II

A Sentencing Guideline Grid

The Policy Statement found above in this report clearly states that the Sentencing Commission is not in favor of the adoption of a grid system for sentencing. By design, sentencing guideline grids are mechanical in nature, and cannot consider all the elements of the offense and the offender which must be evaluated if justice is to be served. At best, a sentencing grid system can take into account several variables concerning the offense and the offender. At worst, a grid system is two-dimensional, considering only the most serious conviction offense and the point score for an offender's prior conviction record.

A grid system based on either of these two models is not capable of evaluating the multitude of characteristics which comprise an offense and an offender. To accurately do so requires a judge well-trained in criminal law and both a prosecutor and defense counsel who competently administer their duties. However, despite disagreement in principle, what follows is a sentencing guidelines grid system which, after much deliberation, appears to be the least disruptive to the court system and attempts to provide for the greatest consideration of the offense and offender.

A. The In/Out Decision

The sentencing guideline grid encompasses incarcerative terms and its use must be prefaced by a judicial determination of the so-called in/out question. In/out refers to the decision as to whether or not a term of incarceration is appropriate as a sentence in an individual case. The Sentencing Commission considered incorporating the in/out decision into the guideline grid structure, but it is evident that a question as crucial as whether an individual's liberty should be revoked cannot justly be determined by such a structure. Rather, it is a decision best made by the presiding judge subsequent to

weighing appropriate arguments from both the State and defense counsel. Therefore, under this proposed guideline grid system, the initial and most crucial decision to be made in sentencing an offender is made prior to consulting the sentencing grid.

If the judge decides to impose a confinement term, he will secure guidance from the grid.

If on the other hand, the judge decides against confinement, he will consult the grid only if he imposes a term of probation. In that event, he would consult the grid to secure the appropriate term to be suspended. The suspended term, of course, will be the maximum that the offender will serve if probation is revoked.

If the judge decides to impose some confinement, and also give a term of probation, he will consult the grid to obtain a total term (unsuspended and suspended) appropriate under the grid.

B. Probation and Conditional Discharge

In order to provide a framework which will aid in the determination of an appropriate type of penalty for a given offender and to promote a greater degree of reliability and uniformity in sentencing, the Sentencing Commission has examined present statutes regarding probation and conditional discharge. The Sentencing Commission has found present policy regarding the appropriateness of probation and conditional discharge as a penalty to be sound and recommends that non-incarcerative penalties be considered for all but Class A felonies and those offenses for which a mandatory minimum period of incarceration which is neither suspendable nor reducible is specified. In those cases in which a mandatory minimum sentence is specified, it is recommended that those terms of incarceration be imposed without regard for the guideline range for the particular class of offense involved.

The sentencing guideline grid must be consulted following the resolution of the in/out question. It is obvious that if confinement is determined to be an appropriate penalty, use of the sentencing guideline grid will follow in order to select a determinate period of incarceration. However, even when probation is determined to be the penalty of choice, the guideline grid must be used in order to select a period of incarceration which will then be suspended. The Sentencing Commission is in full agreement that a suspended sentence is sometimes desirable. A period of incarceration which is suspended provides a useful deterrent to recidivism and also sets in place a sanction which may be imposed in the event of a violation of a condition of probation.

C. A Sentencing Guideline Grid (Opposite Page)

1. Derivation of Sentencing Guideline Ranges

The sentencing guideline ranges contained in this grid were derived from a study of sentencing in the Superior Court for the years 1976 and 1977. This study, undertaken by the Statistical Analysis Center of the Connecticut Justice Commission, traced 1,749 offenders from arrest through conviction and beyond and provided a comprehensive description of sentencing practices in the Superior Court system.

Offenses were grouped into the offense categories found in the grid and both mean and median sentences were calculated in order to insure an accurate representation of effective sentences. Presently, the overwhelming majority of offenders are released to parole supervision at their earliest opportunity, that is, after completing two-thirds of the minimum sentence imposed under Connecticut's indeterminate sentencing structure. It is obvious then, that the minimum sentence imposed is the most precise representation of the real sentence. Therefore, minimum

Sentencing Guideline Grid

(sentences in years unless otherwise stated)

prior conviction score

Class of Offense	<u>0 - 9.9</u>	<u>10 - 19.9</u>	<u>20 - 29.9</u>	<u>30+</u>
Capital Felony		Life or Death		
Murder	10 - Life*	15 - Life*	20 - Life*	25 - Life*
A Felony	5 - 9	6 - 10	7 - 11	8 - 12
<hr/>				
B person	3 - 7	4 - 8	5 - 9	6 - 10
property	6 mo. - 2	1 - 3	2 - 4	3 - 5
Drug**	6 mo. - 2	1 - 3	2 - 4	3 - 5
<hr/>				
C person	1 - 2 1/2	1 1/2 - 3 1/2	2 1/2 - 4 1/2	3 1/2 - 5 1/2
property	6 mo. - 18 mo.	1 - 2	1 1/2 - 2 1/2	2 - 3
drug	3 mo. - 18 mo.	6 mo. - 24 mo.	12 - 30 mo.	1 - 3
<hr/>				
D person	6 mo. - 24 mo.	9 mo. - 24 mo.	12 mo. - 30 mo.	1 1/2 - 3
property	3 mo. - 18 mo.	6 mo. - 24 mo.	12 mo. - 24 mo.	1 - 2 1/2
drug	1 mo. - 12 mo.	3 mo. - 12 mo.	3 mo. - 15 mo.	6 mo. - 18 mo.

*Life - 50 years incarceration with no more than 15 years good time, computed at the present rate.

**drug - see text, Section D Use of Grid

sentences were used to calculate the mean and median sentences from which the guideline grid was derived. This grid, in accordance with practical concerns regarding prison capacities, is based on present sentencing policy.

The sole guideline range which is not in accordance with current sentencing is the B person line. The Sentencing Commission determined that sentencing ranges for this class of offense, if based on present sentencing policy would be too narrow. The upper limits of the B person ranges were therefore increased by two years. Present practice would have dictated the following sentencing ranges for B person offenses; 5-7, 6-8, 7-9, 8-10 respectively. The broadened ranges are 5-9, 6-10, 7-11, 8-12.

It was essential that the Sentencing Commission consider the probable effects of any deviation from current sentencing practice. Calculations by the Commission staff indicate a likely ten percent increase in prison population from alteration in the width of the B person sentencing ranges. Should the sentencing guideline grid proposed in this section of the report be adopted, the Sentencing Commission strongly advises against any further alterations in the guideline ranges, unless those alterations are contemplated concurrent to consideration of the question of institutional capacity.

2. Retention of Present Good Time Allowance

The Department of Correction presently utilizes a policy of awarding good time credit to a confined offender, the purpose of which is to provide an incentive for adherence to institutional rules and regulations while incarcerated. Current practice awards one day's good time credit for every two days incarcerated for confinement up to five years and one day's credit for every day served over five years.

Because the Sentencing Commission has based the sentencing guideline grid on present sentencing practice in an effort to maintain current institutional population

levels, it is recommended that present good time reductions in sentences be retained. The Sentencing Commission is also in agreement that good time credit should be awarded on the basis of the total number of days incarcerated. This will avoid the inequitable situation where an offender is credited good time for overlapping period of incarceration.

D. Use of the Grid

The sentencing guideline grid consists of two axes, a vertical axis representing class of offense and a horizontal axis representing an offender's prior conviction score.

1. Class of Offense

Each class of felony offense is listed in this grid structure. Each offense line contains a progression of guideline ranges, increasing in length as the prior conviction score rises. The one exception to the format is in the case of Capital Felony, for which the penalty is Life or Death and therefore obviates the need for a progressive sentencing grid.

The sole progressive line within the guideline grid which carries a potential life sentence is Murder. The Sentencing Commission has defined Life as 50 years incarceration, with no more than 15 years good time, computed at the present rate. Although assigned a numeric value, the word "life" has been retained for purposes of consistency with the grandjury system.

Drug offenses are considered unclassified offenses under present statutes. However, in order to maintain clarity and consistency, the above sentencing guideline grid locates drug offenses under those offense lines which correspond to the statutorily defined maximum penalties for each offense.

2. Prior Conviction Score

The horizontal axis of the sentencing grid corresponds to a prior conviction score for the offender, based upon a cumulative total of points awarded for each relevant Connecticut conviction. The Sentencing Commission consensus is that all prior Connecticut felony convictions and all prior Connecticut A misdemeanors convictions shall be used in the compilation of the prior conviction score. The number of points to be awarded for each individual conviction are as follows, and are based upon the relative gravity of each class of offense.

Prior conviction points

A felony	35 pts.
B felony	15 pts.
C felony	10 pts.
D felony	5 pts.
A misdemeanors	3 pts.

The point system is intended to insure that those individuals previously convicted of more serious offenses will be located in a grid cell recommending harsher penalties than those individuals with minor or no previous convictions.

The recommended point system is not intended to be used with out-of-state or federal convictions due to the frequent non-comparability of offenses across state lines, including those offenses with like names. However, the Sentencing Commission has provided for the necessary consideration of out-of-state and federal convictions in sentencing. Both types of convictions can be considered as aggravating circumstances, which will justify a lengthier sentence than what would appear to be appropriate if only Connecticut convictions were tabulated. Aggravating circumstances, as well as other specific modes of movement within the sentencing guideline grid will be discussed in detail later in this report.

The following is an example of a basic use of the sentencing guideline grid:

An offender is convicted of the crime of Robbery I, a B person offense according to our classification scheme. The sentencing judge has determined that a term of incarceration is appropriate in this case. This particular offender has prior Connecticut convictions for a B felony and a D felony. In compiling the offender's prior conviction score, 15 points are assigned to the B felony conviction and 5 points are assigned to the D felony conviction, yielding an offender score of 20 points. The recommended guideline range for this offender is the cell which lies at the intersection of the B person row and the prior conviction column 20-29.9. The guideline range in that particular cell is 5-9 years. The sentencing judge may then select a determinate period of incarceration from within that range.

3. Movement Within the Guideline Ranges

With respect to the sentencing guideline ranges found within the grid, it is important to note that those sentencing ranges do not embody a presumptive sentence. That is, although in the above example the recommended sentence range is 5-9 years, it should not be assumed that the midpoint of that range, 7 years, is the sentence of choice in most cases. The guideline ranges are merely reference points which outline the length of time within which most sentence for a particular type of offense and offender should fall. If a presumptive sentence were included within each guideline range, judicial discretion would be severely reduced. The presumptive sentence would be the "normal sentence" and the selection of a shorter or a longer period of incarceration, even within a guideline range, would necessitate the presence of an unusual factor or factors. The Sentencing Commission agrees that a presumptive sentence would be too constraining upon the sentencing judge. Sentencing ranges, however, are more useful in the selection of a suitable sentence. It is expected, that the substantial majority, but not all, sentences meted out would fall within the appropriate guideline ranges.

The realization that some sentences would fall either above or below the sentencing guideline ranges should not be cause for alarm. This merely underscores the previously stated unique interplay of an offense and an offender and the desirability of instituting a sentencing guideline structure flexible enough to accommodate differing circumstance. If guideline ranges were designed to encompass 100 percent of imposed sentences, they would most certainly be much too broad to offer useful guidance in the selection of a sentence.

4. Movement Outside the Guideline Ranges

As one of its primary recommendations, the Sentencing Commission strongly supports the retention of judicial discretion in sentencing as a cornerstone of just and certain punishment. While the Sentencing Commission is, in principle, opposed to a sentencing guideline grid, intense effort has been made to construct a workable sentencing grid system. The Sentencing Commission believes that even if a sentencing guideline grid is adopted, judicial discretion should remain an integral part of it. Therefore, rather than proposing a guideline system written in stone which eliminates or drastically constrains judicial decision-making in sentencing, the Sentencing Commission has provided several mechanisms for movement either upward or downward within the range of potential sentences, while at the same time insuring a measure of accountability for sentences which fall outside the recommended sentencing guideline ranges.

a. Retention of Split Sentences

The concept of split sentences ought to be retained, allowing a sentencing judge to suspend, in part, an incarcerative term. When an incarcerative term is suspended in part and the resulting term of incarceration falls outside the recommended sentencing guideline range, the sentencing judge must state his reasons for imposing that sentence on the record.

The retention of split sentences permits the sentencing judge to reduce the term of incarceration in a case where a long period of confinement is deemed to be inappropriate or counterproductive. At the same time, a split sentence can be implemented in the case where a sentencing judge believes that a short period of incarceration would serve to discourage further criminal conduct on the part of the offender and that a totally suspended sentence would not accomplish the same objective. Perhaps the most useful function of the split sentence is that it sets in place an imposable sanction in the event of a violation of a condition of probation.

b. Aggravating and Mitigating Circumstance

The sentencing judge should have the authority to go outside the guideline ranges in the presence of statutorily defined aggravating or mitigating circumstance or where there has been a showing of "compelling reasons". When a sentencing judge selects a sentence from outside the recommended guideline range, in order to maintain judicial accountability his reasons need be stated on the record. Evidentiary hearings to prove aggravating and mitigating circumstances should be allowed at the leave of the court with good cause shown.

1.) Aggravating Circumstance

Aggravating circumstance may be defined as the presence of factors which indicate that a lengthier sentence than what is recommended by a crosstabulation of the class of offense and the offender's prior conviction score would be appropriate in that particular case. Aggravating circumstance is one mechanism which allows the sentencing judge to consider the unique nature of an offense and an offender.

Aggravating circumstances should include but not be limited to the following factors:

- The defendant was a leader of the criminal activity
- There were multiple victims
- The victim was particularly vulnerable
- The offense contained unusual brutality toward the victim
- There was a high degree of physical injury to the victim
- The offense involved an abuse of a public office or a fiduciary duty toward the victim
- The defendant has an extensive out-of-state or federal conviction record
- The offense was committed while the defendant was out on bond, on probation, or on parole.
- A weapon was used in the commission of the offense
- The amount of economic loss to the victim was significant
- The defendant was conviction free in the community for only a short time
- The defendant has an extensive B and C misdemeanor record

2.) Mitigating Circumstance

Mitigating circumstance may be defined as the presence of factors which indicate that a lesser sentence than what is designated by a crosstabulation of the class of offense and the offender's prior conviction score would be appropriate in a particular case. Mitigating circumstance is also a mechanism which allows a sentencing judge to consider the unique nature of an offense and an offender.

Mitigating Circumstances should include but not be limited to the following factors:

- Serious bodily harm was neither threatened nor caused
- There was no intent to cause or threaten serious bodily harm

- The defendant acted under strong provocation
- Substantial grounds existed to excuse the defendants behavior though not sufficient to establish a defense
- The defendant believed that he had a claim or right to the property
- The defendant played a minor role in the crime
- The defendant had sought to compensate the victim prior to arrest
- The defendant had a diminished capacity in judgement
- The defendant was motivated by a desire to provide the necessities of life to himself and his family
- Imprisonment would entail excessive hardship to the defendants dependants
- The defendant cooperated with the state in the apprehension and the prosecution of others.
- The defendant has been conviction free in the community for a substantial period of time.

5. Sentencing for Multiple Offenses

There are basically two types of multiple offenses; those which arise from the same incident and those which arise from different incidents. The Sentencing Commission agrees that in both cases, the potential incarcerative penalties should be more severe than in the case of a single charge which arises from a single incident. Lengthier penalties are necessary and desirable as both punishment befitting the crime and as a deterrent to the commission of multiple offenses. It would be unwise to sentence an offender solely on the most serious offense for which he is convicted and ignore additional offenses, thereby creating a court system which permits incidents of criminal behavior to go unpunished. However, in order to control disparity in sentencing once a sentencing judge has decided to go outside the sentencing guideline

ranges, a framework has been established which provides additional guidance in sentencing those offenders convicted of multiple offenses.

a. Multiple Offenses Arising from the Same Incident

The Sentencing Commission recommends that in sentencing on multiple offenses arising from the same incident, provision shall be made for sentencing an offender on the most serious offense (by statutory penalty) for which he is convicted and incorporating guideline enhancements for the second most serious conviction offense which could increase the grid sentence by as much as 50 percent of the sentence imposed on the most serious offense.

Additional conviction offenses may be treated as aggravating circumstance, thus creating the possibility of even harsher penalties.

b. Multiple Offenses Arising from Different Incidents

The Sentencing Commission recommends that in sentencing on multiple offenses arising from different incidents, provision shall be made for sentencing an offender on the most serious offense for which he is convicted and incorporating guideline enhancements for the second most serious conviction offense which could increase the guideline grid sentence by as much as 100 percent of the sentence imposed on the most serious offense.

Additional conviction offenses may be treated as aggravating circumstance, thus creating the possibility of even harsher penalties.

6. Persistent Felony Offender

The Sentencing Commission recommends that the persistent felony offender statute (53a-40) remain in effect if this sentencing guideline grid is adopted.

7. Statutory Maximum Penalties

The Sentencing Commission recommends that the present maximum sentences for felony classes be retained, as follows:

A felony	Life
B felony	20 years
C felony	10 years
D felony	5 years

However, the Sentencing Commission also recommends that a judge may only sentence up to 66 percent of this maximum in normal cases. To sentence an offender to more than this fixed percentage of the statutory maximum would require pleading and proof of extraordinary circumstance. An overwhelming aggravating circumstance or the presence of multiple aggravating circumstances may be considered extraordinary circumstance. Another extraordinary circumstance is a prior conviction score of 40+ points, a score which would locate the offender far off the right side of the prior conviction score axis.

E. A Summary of the Limits on Judicial Discretion in Sentencing

1. The Sentencing Guideline Ranges - progressive sentencing based upon the most serious conviction offense and an offender's prior conviction score.
2. Aggravating and Mitigating Circumstance - mechanisms for movement outside guideline ranges.
3. 66 percent of Statutory Maximum - a limitation upon the permissible length of sentence once a sentencing judge has decided to go outside guideline ranges.
4. Statutory Maximums - statutory limits upon the permissible length of sentence for a single conviction offense.

5. Multiple Offenses - guidelines regarding sentencing for multiple offenses arising from the same incident and multiple offenses arising from different incidents.

The Sentencing Commission believes that these restrictions will not unduly burden the exercise of judicial discretion, nor result in mechanically imposed sentences, but will, at the same time, bring more order and equity to the sentencing process.

Section III

Summary

The Sentencing Commission urges that if sentencing reform is to occur in Connecticut, the evolutionary process outlined in Section I of this report prevail over more revolutionary options. The successful functioning of the Connecticut Court System hinges upon the delicate interplay of several subsystems, the disruption of which will likely lead to system breakdown. The acceptance of the Sentencing Commission's major recommendations will permit sentencing reform to occur in an internally implemented, measured fashion, allowing sufficient opportunity to evaluate and reconsider any changes as required. This package represents a rational solution to a extremely complex problem.

As previously stated in the report, the Sentencing Commission is not in favor of the adoption of a guideline grid system for sentencing. If, however, the grid system submitted in response to it's legislative mandate is implemented, it is urged that the five major recommendations of the Sentencing Commission, described in Section I and restated below, are integrated as fully as possible into the sentencing guideline grid framework.

1. The Sentencing Commission affirms the desirability of judges retaining the ability to sentence individuals on the merits of their respective cases, within reasonable limits.
2. Determinate sentencing is preferable to the present indeterminate sentencing. Therefore, the Commission recommends the substitution of determinate sentencing for indeterminate sentencing and the elimination of the discretionary release power of the parole board.

3. The Sentencing Commission endorses judicial efforts to assign a group of judges specializing in the administration of criminal justice.
4. The Sentencing Commission encourages the development by the Office of the Chief State's Attorney and the State's Attorneys of uniform guidelines regarding sentences to be recommended in criminal matters.
5. The Commission recommends the strengthening of the standards and authority of the Sentence Review Division as a means of promoting greater uniformity in sentencing.

In the effort to set in place a basis for intergration, the sentencing guideline grid developed by the Sentencing Commission retains a substantial amount of judicial discretion. Several mechanisms have been described which permit a sentencing judge to move outside of, as well as within, the sentencing guideline ranges.

The Sentencing Commission is unanimous in its endorsement of determinate sentencing and also in the desire to end the discretionary release power of the parole board, while retaining parole supervision. The proposed sentencing guideline framework does provide for determinate sentencing for all felony offenses. The endorsed charges in the structure of parole should occur concurrent to any implementation of sentencing guidelines and determinate sentencing.

It is not the artificial imposition of a guideline structure but rather internal consistency within the judiciary which will have the greatest impact on sentencing uniformity. Therefore, in the event that sentencing guidelines are adopted, the Sentencing Commission still strongly supports the assignment of a group of judges specializing in the administration of criminal justice.

The development of prosecutorial guidelines regarding recommended sentences is also critical to the development of consistent and just statewide sentencing practice. The guideline grid system of sentences does provide sentencing ranges as a framework for the sentencing judge. By design, these ranges do not embody a presumptive sentence but rather allow the sentencing judge to select any incarcerative term within the guideline range and also go outside the specified range in the presence of aggravating and mitigating circumstance. Therefore, the development by the Chief State's Attorney and State's Attorneys of prosecutorial guidelines based upon the recommended sentences for various classes of offense and offenders is desirable for the purpose of recommending sentences within, or outside, guideline ranges.

The strengthening of the standards and the authority of the Sentence Review Division should also be concurrent with any adoption of a sentencing guideline grid. The timely review of sentences in concert with the power of the review division to increase or decrease a sentence and the institution of a precedent system of sentencing shall serve as an indispensable monitor of just and consistent punishment. The importance of a strong Sentence Review Division cannot be minimized, particularly following the adoption of a guideline sentencing system which is untried and substantially different from present Connecticut sentencing practice.

This report has presented an overview of efforts both outside and within Connecticut at sentencing reform. All of these efforts have addressed the problems of visibility, certainty, and predictability in sentencing through a variety of mechanisms. The Legislative Sentencing Commission has intensively studied all of these approaches as well as present Connecticut sentencing practice prior to formulating the recommendations contained within the report. These recommendations represent the culmination of seven months of continuous meeting and deliberation among the members of the Sentencing Commission.

Section IV

Summary List of Sentencing Commission Recommendations

The following list of recommendations is not intended as a substitute for the detailed descriptions located in the text of this report. Rather, this listing should be viewed as a brief outline of topics acted upon by the Sentencing Commission.

With respect to the major recommendations of the Sentencing Commission

1. The Sentencing Commission affirms the desirability of judges retaining the ability to sentence individuals on the merits of their respective cases, within reasonable limits.

2. The Sentencing Commission recommends the substitution of determinate sentencing for indeterminate sentencing.
 - a) Consideration of the problem of prison overcrowding
 - (i) construction of new or expanded facilities and/or
 - (ii) emergency release power for the Commissioner of Correction

3. The Sentencing Commission recommends the elimination of discretionary parole release.
 - a) abolition of the Parole Board
 - b) retention of parole supervision
 - c) mandatory parole supervision for felony offenders sentenced to more than one year with no portion of their sentence suspended.
 - (i) supervision terms to be imposed at the time of sentencing.
 - d) retention of power of arrest for parole officers

- e) retention of reconfinement subsequent to parole revocation but for a term no longer than specified at the time of sentencing
 - f) parole revocation to be done by the courts.
4. The Sentencing Commission endorses judicial efforts to assign a group of judges specializing in the administration of criminal justice.
5. The Sentencing Commission encourages the development by the Office of the Chief State's Attorney and the State's Attorneys uniform guidelines regarding sentences to be recommended in criminal matters.
6. The Commission recommends the strengthening of the standards and authority of the Sentence Review Division as a means of promoting greater uniformity in sentencing.
- a) An expansion of the Review Division and the cases heard
 - b) the promotion of statewide uniformity in sentencing with due regard for local conditions.
 - c) increased use of the power to increase as well as decrease sentences.
 - d) prosecutorial appeal of sentences
 - e) development of a body of sentencing principles through increased review of sentences
 - f) petition for modification of a sentence to be heard by the Sentence Review Division
 - (i) hearings on modification of sentencing to be granted by the reviewing authority
 - (ii) referral back to original sentencing judge of petitions for modification of sentences of one year or less

- (iii) modification of a sentence to be considered only with the showing of extreme hardship or material change in circumstance

- 7. The Sentencing Commission recommends the establishment of a permanent Sentencing Commission.

With respect to a Sentencing Guideline Grid

- 1. The in/out decision should be made prior to consulting the grid
- 2. Probation and Conditional Discharge should be retained as acceptable sentences with exceptions as noted in the text.
- 3. The Sentencing Commission recommends sentencing guideline ranges based upon present practice.
 - a) retention of present good time allowances
- 4. The Sentencing Commission recommends a grid which contains an axis for class of offense and an axis for prior conviction points with progressively lengthier periods of incarceration.
 - a) retention of split-sentences
 - b) aggravating and mitigating circumstances as mechanisms of movement outside guideline ranges
 - c) harsher penalties for multiple offenses
 - d) retention of persistent felony offender statute
 - e) retention of present statutory maximum penalties for felony classes.

Substitute House Bill No. 5278

SPECIAL ACT NO. 79-96

AN ACT ESTABLISHING A CRIMINAL SENTENCING COMMISSION.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (a) There is established the Connecticut sentencing commission, which shall consist of thirteen members as follows: The chief state's attorney; a state's attorney to be designated by the chief state's attorney; the chief public defender; a member of the Connecticut Bar Association who is experienced in criminal matters other than a public defender or public official, to be designated by the chief public defender; the commissioner of correction; five public members, one to be appointed by the governor, one to be appointed by the speaker of the house of representatives, one to be appointed by the minority leader of the house of representatives, one to be appointed by the president pro tempore of the senate and one to be appointed by the minority leader of the senate, two judges to be appointed by the chief justice of the supreme court, one of whom shall be a member of the sentence review division, and the executive director of the Connecticut justice commission. The public members shall be residents of Connecticut other than public officials. In appointing members, consideration shall be given to desirability of establishing a commission with a diversity of backgrounds.

(b) The executive director of the Connecticut justice commission shall be the chairman and shall: (1) Preside at meetings of the commission; (2) cast a deciding vote when such a vote is necessary to break a voting deadlock among the other members of the commission; (3) direct the preparation of requests for appropriations for the commission and the use of funds made available to the commission; and (4) direct the commission staff. On or before January 1, 1980, the commission shall establish the following guidelines, definitions and policies for each conviction for a felony or unclassified crime carrying a period of imprisonment of more than one year: (1) Guidelines to be used by Connecticut sentencing courts in determining (A) the type of penalty to be imposed; (B) the appropriate amount of a fine and the appropriate length of a term of probation or conditional discharge; and (C) the

Substitute House Bill No. 5278

appropriate sentence ranges from which judges will select a determinate period of imprisonment; (2) definitions of "aggravating circumstances" and "mitigating circumstances" to be used to increase or decrease sentence lengths. Such definitions may include specific actions which shall constitute such behavior or specific characteristics or conditions concerning the defendant relating to age, mental and emotional states, culpability for prior convictions, physical condition and family ties and responsibilities; (3) a policy for determining when the sentencing court shall sentence outside the guideline ranges; (4) a policy that establishes the sentenced and pre-trial inmate capacity of each correctional institution and correctional center in this state; and (5) general policy statements regarding application of the guidelines or any other aspect of sentencing that in the view of the commission would: (A) Establish sentencing policies and practices for the state criminal justice system that assure that the sentencing goals of punishment, deterrence, incapacitation and rehabilitation will be accomplished; (B) develop means of measuring the degree to which sentencing and correctional practices are effective in meeting the sentencing purposes, taking into account the nature and capacity of the judicial, correctional and other facilities and services available to accomplish such purposes; and (C) promote greater public understanding of the way criminal sentences are determined.

(c) The commission shall establish sentencing guideline ranges with (1) one or more offense lines for each statutory offense and (2) offender columns representing prior criminal convictions separated by degrees of seriousness and designated by numbers indicating the total minimum and maximum prior conviction points for each column. In determining the number of offense lines to establish for each statutory offense, the commission shall be guided by the objective of sentencing offenders for their criminal behavior. The commission shall consider establishing separate offense lines for each statutory offense to reflect violations which (1) inflict injury on the victim, (2) are accomplished with a dangerous weapon, (3) are committed by a group of two or more armed accomplices, or (4) are committed under

Substitute House Bill No. 5273

other circumstances justifying a separate offense line.

(d) In establishing sentencing guideline ranges the commission shall consider the following: (1) Available sentencing experience for felony crimes during the years immediately prior to establishing the ranges; (2) any policy guidelines formulated by the chief state's attorney governing the exercise of prosecutorial discretion by the state's attorneys and their assistants; (3) the nature and degree of the harm caused by each offense covered by the guideline ranges including whether it involved property, irreplaceable property, a person, a number of persons or a breach of public trust; (4) the importance of prior criminal convictions in establishing a sentence; (5) the community view of the gravity of the offense; (6) the public concern generated by the offense; (7) the deterrent effect a particular sentence may have on the commission of the offense by others; (8) the incidence of the offense in the state as a whole; (9) the necessity to avoid overcrowding in correctional facilities.

(e) Guidelines established pursuant to this act shall be reported by the commission to the general assembly and the joint standing committee on judiciary on or before February 15, 1980.

(f) The commission shall be under the joint standing committee on legislative management. The commission, by vote of a majority of the members present and voting, shall have the power to: (1) Establish general policies and promulgate such rules and regulations for the commission as are necessary to carry out the purposes of this act; (2) undertake activities as needed, to assist public officials in implementing the provisions of this act; (3) appoint and fix the salary and duties of the staff director of the sentencing commission, who shall serve at the discretion of the commission; (4) utilize, with their consent, the services, equipment, personnel, information and facilities of other federal, state, local and private agencies and instrumentalities with or without reimbursement therefor; (5) procure for the commission temporary and intermittent services to the extent necessary to carry out its responsibilities under this act; (6) enter into and perform such contracts, leases, cooperative agreements and other transactions as may be necessary in the conduct of the functions of the commission, with any public agency or with any

Substitute House Bill No. 5278

person, firm, association, corporation, educational institution or nonprofit organization; (7) accept voluntary and uncompensated services; (8) request and accept such information, data and reports from any state agency or judicial officer as the commission may from time to time require and as may be produced consistent with other law; and (9) upon request of the commission, each state agency is authorized and directed to make its services, equipment, personnel, facilities and information available to the greatest practicable extent to the commission in the execution of its functions. Regular meetings of the commission shall be held at the call of the chairman, acting at his own discretion or pursuant to the petition of any five members. A majority of the membership present and voting shall constitute a quorum for the conduct of business. Except as otherwise provided by law, the commission shall maintain and make available for public inspection a record of the final vote of each member of any action taken by it.

Sec. 2. This act shall take effect July 1, 1979.

Certified as correct by

Legislative Commissioner.

Clerk of the Senate.

Clerk of the House.

Approved _____, 1979

Governor.

Variations on Sentencing Reform

The main theme of most sentencing proposals is a narrowing of sentencing discretion with the intent of reducing disparity. The variety of proposals may be subsumed into the five areas of mandatory sentencing, presumptive sentencing, guidelines, judicial sentencing councils, and expanded appellate review.

Mandatory sentencing approaches call for a mandatory incarceration of certain offenders committing certain crimes.⁵ This approach represents the most severe limitation on the discretion of the judiciary for certain specified offenders and/or offenses, but leaves current sentencing practices toward the majority of convicted offenders virtually unchanged.

Presumptive sentencing has several variations, but generally means that upon conviction for any offense, a particular legislatively specified sentence is imposed. This sentence may vary somewhat however where aggravating and/or mitigating circumstances are present.⁶ The control of judicial discretion in this case is less stringent than with a mandatory sentencing system, but is more widespread in that the presumptive sentence approach generally includes at least, all felony offenses.

Sentencing guidelines are generally based on current practices, and retain somewhat more judicial discretion than presumptive sentencing. Guidelines usually refer to a system of data which functions as a tool in assisting decision makers in arriving at individual and policy determinations. Advocates of guidelines do not consider all sentencing variation unwarranted or disparate. Rather, dispositional

variation based on permissible, rationally relevant and understandably distinctive characteristics of the offender and/or the offense is considered to be justified, beneficial and proper, so long as the variable qualities are carefully monitored for consistency and desirability over time. "It is when variation takes the form of differing sentences for similar offenders committing similar offenses that it can be considered disparate".⁷ Examples of variable qualities or factors, in addition to the offense, that might be used to determine sentence in a guidelines system are prior criminal history, degree of injury to victim, amount of pecuniary loss, use of a deadly weapon, employment history, and family situation.

Judicial sentencing councils attempt to reduce disparity by a sharing of the sentencing decision among three judges or, more commonly, placing two of those judges in the position of advisors or consultants to the third judge who maintains individual responsibility for the sentencing decision. Judicial sentencing councils, if not incorporated within some determinate sentencing structure, leave judicial discretion essentially unchanged.

Expanded appellate review is seen as a means of reducing disparity through the evolution of a common law of sentencing. As in the case of judicial councils this approach would probably have little additional effect on the exercise of judicial discretion.

Mandatory and presumptive sentencing proposals are in themselves determinate sentencing proposals, while guidelines, judicial sentencing councils, and appellate review may be used as a part of a determinate or indeterminate sentencing structure. For example, in an indeterminate system one could use sentencing guidelines to establish a minimum and maximum sentence for each offender and then use parole

guidelines as an aid in determining the actual release date. In a typical determinate sentencing scheme sentencing guidelines would provide a narrow range of possible sentences, but only one term of imprisonment would be given. That is instead of one to three years in prison, an offender would be sentenced to one, two, or three years. Mandatory and presumptive sentencing proposals on the other hand very clearly require that an offender receive a specific, not a variable penalty.

The following section provides a brief summary of what has occurred recently in the area of sentence reform in several jurisdictions throughout the United States. It is by no means an exhaustive review but the reforms described seem to be fairly typical of the more recent trends in sentencing reform.

Implementation of Sentence Reform

In implementing sentencing reform, three primary models have emerged; the legislative model, the judicial model, and the "Albany" guidelines model, developed at the Criminal Justice Research Center of Albany, New York.

- The Legislative Model -

Examples of the legislative model may be found in California, Illinois, Indiana, Colorado and Arizona. California enacted the first and perhaps most thoroughgoing determinate sentencing law.

In California, the state code was revised to explicitly state that punishment is the sole purpose of sentencing and that the goals of sentencing are the elimination of disparity and the promotion of sentence uniformity. A presumptive sentencing scheme

was produced which severely limits the range of prison terms. Parole release discretion has been abolished and judicial discretion narrowly defined. Under the new code every felony offense falls into one of four categories, each of which provides three possible incarcerative terms. The judge selects one of the three incarcerative numbers, the middle number being the average case, with the lower or higher figure to be imposed in the event of mitigating or aggravating circumstances. In addition, the base term may be increased by legislatively defined enhancements such as in the cases where there has been serious bodily injury or a firearm has been used. Upon release, a community release board supervises all offenders for a period of not more than three years. Modification of a court imposed sentence can occur in only two ways:

1. Sentences can be revised within 120 days by the trial court on its own motion or at any time upon the recommendation of the community release board. The board reviews all sentences within the first year as a check against disparity.
2. Good time is accrued on a one day for two basis. Maximum earned good time, therefore, will reduce time served by one third.

It is difficult to assess the extent to which the new system in California, by itself, contributes to fluctuations in prison population. However, since determinate sentencing went into effect, an acute overcrowding problem has developed in the state's correctional system.

The Illinois model of sentence reform may be distinguished from California by the creation of the class X felony. This category was created to handle serious repeat offenders and those charged with exceptionally brutal behavior. The class X felon

receives a minimum sentence equal to the maximum he would normally get for a given offense. His maximum sentence would be twice the normal maximum. Illinois has also experienced a significant increase in prison population subsequent to the implementation of their sentence reform measures, and has made plans for the construction of a new prison facility.

The Indiana determinate sentencing law has left a good deal of discretion vested in the judges. A Class B felony, for example, has a fixed sentence of 10 years but can be varied as much as 10 years up or 4 years down where there are aggravating or mitigating circumstances.

- The Judicial Model -

The most important feature in this model is the centrality of the judiciary in the determination of sentence. Maine has adopted this model in a form that gives judges very wide discretion. Judges are empowered to impose fixed sentences limited only by statutory maximums, with no external review. Thus, in Maine's determinate sentencing structure sentences may still vary widely for similar offenders and offenses. Maine has taken a determinate sentencing approach only in the sense that once imposed by the court, the term of imprisonment is relatively free from further change. Under Maine's revised code parole has been eliminated and modification of prison terms is limited to two situations:

1. The Court may resentence an inmate upon petition by Maine's Department of Mental Health and Corrections based on its evaluation of the inmate's "progress toward a non-criminal way of life."⁸

2. For any sentence in excess of six months, good time can be earned at the rate of ten days per month, and an additional two days per month may be deducted on the basis of special work assignments.⁹

Other variations of the judicial model include several states that are engaged in the development of sentencing guidelines which would be advisory upon the judiciary. Large scale studies of sentencing practices have recently been completed on behalf of the judicial departments of Massachusetts and Minnesota, and Michigan and Alaska are in the midst of similar research projects. The Superior Court of Massachusetts has hired a full time staff to oversee the implementation of judicial guidelines.

- The Albany Model -

This approach is similar to the judicial model in that the judiciary is central in the determination of sentence. The model does use specific guidelines to assist judges in the determination of sentence but the guidelines are voluntarily adopted by the judiciary and are not mandatory in all cases. This approach to sentencing reform has been implemented in several jurisdictions including New Jersey, Philadelphia, Cook County, Illinois, State of Washington, Denver, and Phoenix - Maricopa County.

The Albany guidelines model is based on an extensive study of the factors currently used by judges in their sentencing decisions. Once the primary factors are identified, they are weighted and standardized. Typical salient factors used in this model include prior criminal history, degree of injury to the victim, amount of pecuniary loss, use of a deadly weapon, and employment history. Salient factors are then used to compute an offender score which is plotted against offense categories in order to locate a recommended sentence within a sentencing grid. Judges are expected

to use the recommended grid sentence in only 70-80 percent of the cases they hear. In those cases where a grid sentence is not given, the trial judge must give written reasons for the decision.

An important feature of this guidelines model is the provision for flexibility over time, furnished by the requirement of continuous review of those factors which make up the offender score. This review process allows for revisions in the guidelines where necessary to reflect changes in the law or public mores.

Current Sentencing Practices In Connecticut

The development of sentencing guideline system based on sentencing experience in Connecticut, first required that we establish what sentencing practices have been in effect in Connecticut in recent years. This meant an intensive data gathering and analysis effort on the part of the staff of the Connecticut Justice Commission.

A five month data collection effort was completed in March of 1979. The data consisted of a sample of 1,749 offenders convicted in the Connecticut Superior Court in the years 1976 and 1977. This represented approximately one third of all convictions recorded in the docket books of each Superior Court. Sources of data included Uniform Arrest Reports, court files from all nine Superior Court districts in Connecticut, criminal history data from the State Police Bureau of Identification, and Department of Correction time served information on those offenders who were actually incarcerated. Although the sample collected was rather large, the utility of the data is limited somewhat in that Justice Commission staff were unable to collect non-conviction information contained in court records because of Privacy Act restrictions in force at the time the data was collected.¹⁰ In spite of these limitations, the data set has provided useful information beyond what is currently available through Superior Court case load summaries.

Prior to reporting any results of the sample data analysis, it may be helpful to look at some summary statistics from the Connecticut Superior Court for recent years. This will provide a general framework from which to view the results presented. From

TABLE I

SUMMARY OF CRIMINAL CASES DISPOSED OF BY SUPERIOR COURT

JULY 1, 1974 - JUNE 30, 1978

Total

METHOD OF DISPOSITION

Year	Total Cases Disposed	Noted, Withdrawn, Transferred	Dismissed Quashed	Plea	Trial
FY 75	3,773	810 (21.5%)	32 (0.8%)	2,792 (74%)	139 (3.7%)
FY 76	4,100	719 (17.5%)	100 (2.4%)	3,148 (76.8%)	133 (3.2%)
FY 77	4,486	812 (18.1%)	142 (3.2%)	3,380 (75.3%)	152 (3.4%)
FY 78	3,750	661 (17.6%)	159 (4.2%)	2,781 (74.2%)	149 (4.0%)
Total	16,109	3,002 (18.6%)	433 (2.7%)	12,101 (75.1%)	573 (3.5%)
Average	4,027	751	108	3,025	143

OUTCOME

Year	Total Cases Disposed	Disposed	
		Without Conviction	With Conviction
FY 75	3,773	897 (23.7%)	2,876 (76.2%)
FY 76	4,100	874 (21.3%)	3,226 (78.7%)
FY 77	4,486	1,014 (22.6%)	3,472 (77.9%)
FY 78	3,750	896 (23.9%)	2,854 (76.1%)
Total	16,109	3,681 (22.8%)	12,428 (77.2%)
Average	4,027	921	3,107

SENTENCING

Year	Total Convicted	Confined Only	Confined/ Probation	Probation Only	Committed Mental Health	Sus. Sen. Cond. Discharge	Other
FY 75	2,876	1,403 (48.8%)	406 (14.1%)	872 (30.3%)	28 (1%)	121 (4.2%)	46 (1.6%)
FY 76	3,226	1,420 (44.0%)	433 (13.4%)	1,189 (36.9%)	5 (0.2%)	106 (3.3%)	73 (2.3%)
FY 77	3,472	1,839 (53.0%)	313 (9.0%)	1,053 (30.3%)	11 (0.3%)	158 (4.5%)	98 (2.8%)
FY 78	2,854	1,446 (50.6%)	301 (10.5%)	893 (31.5%)	9 (0.3%)	111 (3.8%)	69 (2.4%)
Total	12,428	6,128 (49.3%)	1,453 (11.7%)	4,012 (32.3%)	53 (.4%)	496 (4%)	286 (2.3%)
Average	3,107	1,532	363	1,003	13	124	72

July 1, 1974 to June 30, 1978, the Superior Court of the State of Connecticut disposed of 16,109 criminal cases, an average of 4,027 cases per year. Of those 16,109 case dispositions, 12,428 (77.2%) were convictions; 7,634 (61.4%) of those individuals convicted received a sentence involving some term of confinement in a correctional or mental health facility. The remaining proportion of those convicted received one or more community penalties such as suspended sentences, probation, or conditional discharges. Table I provides a more complete breakdown of methods of disposition and sentencing outcomes for the period discussed.

The sample data consisted entirely of the records of persons convicted in Connecticut Superior Court during the period of 1976 to 1977. Consequently, the sample can only reflect judicial sentencing activities, and not the entire judicial process that allows for a variety of dispositions that fall short of actual conviction for a felony offense. An initial examination of the sample data showed an incarceration rate for those sentenced remarkably similar to the overall incarceration rate found in the summary of Superior Court cases from 1974 to 1979. Sample data showed an incarceration rate of 60.37 for the years 1976 - 1977 while the court summary of criminal cases showed an incarceration rate of 60.03%.

The next stage of analysis of the sample data consisted of examining the minimum and maximum sentences given for each offense. In many cases it was not possible to make any meaningful interpretation of the data for certain specific offenses because so few convictions occurred. For example, out of 1,749 convictions, only eight were for first degree rape and there were only six convictions for felony murder. Where there were a sufficient number of cases however, there did seem to be some evidence of a very wide range of sentences being given for the same offense. In the case of first degree burglary for example, the average minimum sentence given by

Table II

Mean minimum sentence and ranges by selected offenses
Connecticut Superior Court (1976-77)

<u>Offense</u>	<u>Mean Minimum Sentence In Months*</u>	<u>Range of Minimum Sentences in Months</u>	<u># Of Cases</u>
Manslaughter I	83.3	36-84	17
Robbery I	54.8	1-120	81
Burglary I	63.7	12-168	12
Assault I	45.8	12-120	27
Larceny I	27.9	1-120	73
Sale of Drugs 19-480(A)	24.4	1-60	69
Robbery II	34.2	4-96	98
Burglary II	24.3	3-60	42
Possession of Drugs 19-481(A)	15.7	1-42	65
Escape I	16.5	1-84	28
Possession of Drugs 19-481(B)	7.3	0-12	11
Larceny II	14.1	2-48	22
Assault II	17.3	1-72	32
Assault III	11.3	0-40	10
Robbery III	12.7	3-36	25
Larceny III	6.4	2-18	13
Burglary III	16.2	0-60	60

*For persons incarcerated

superior court judges was 64 months, but 68 percent of the minimum sentences for first degree burglary varied from 9 months to 119 months. The remaining 32 percent of the sentences were even further from the average sentence given.

The average minimum sentence given to persons convicted of a second degree robbery by Superior Court judges for the period 1976-77 was 34 months but 68 percent of the minimum sentences varied from 17 to 51 months and as in the case of first degree burglary, the remaining sentences were even further from the average. Average minimum sentences and ranges for a number of other offenses are given in Table II.

Of course, the type of variation found within each offense classification could be due to important considerations other than the actual offense such as the degree of injury to a victim, the amount of pecuniary loss or the offenders prior criminal record. In order to test for this possibility a series of regression analyses were conducted using a number of different variables. Regression analysis is a method that uses correlations to assign weights to several variables according to how important each variable is in explaining some result such as a sentence for a criminal offense. For example, we might suspect that an offenders prior record, use of a weapon and injury to the victim are important considerations for the judge in making a sentencing decision. Regression analysis will show how much of the variation in sentencing decisions can be attributed to each of these variables.

Information on several variables which could be of importance in explaining sentencing decisions was not available because of court restrictions on the dissemination of such data. For example, Justice Commission staff were not able to collect information from pre sentence investigations such as relationships to the victim, injury to the victim and the defendant's family background. Several other seemingly

Table III

Summary Table of Regression Using the In/Out Decision
as the Dependent Variable

<u>Independent Variables</u>	<u>Multiple R</u>	<u>R Square</u>	<u>RSQ Change</u>	<u>Simple R</u>
Ser of Disposition on Count One	0.42080	0.17707	0.17707	0.42080
Total # of Dispositions	0.44477	0.19782	0.02075	0.27154
# of Prior Felony Incarcerations	0.46323	0.21458	0.01676	0.17259
Type of Counsel at Disposition	0.47369	0.22438	0.00980	0.13315
# of Prior Felony Convictions	0.47762	0.22812	0.00374	0.17267

Summary Table of Regression Using the Minimum
Sentence Given as the Dependent Variable

<u>Independent Variables</u>	<u>Multiple R</u>	<u>R Square</u>	<u>RSQ Change</u>	<u>Simple R</u>
Prior Felony Incarcerations	0.01436	0.00021	0.00021	0.01436
Prior Felony Convictions	0.01758	0.00031	0.00010	0.01614
Seriousness of Disposition On Count One	0.39213	0.15376	0.15345	0.39169
Total # of Dispositions	0.39293	0.15439	0.00063	0.05781

The R Square column provides a summary of the percentage of variation in the dependent variable caused by the independent variables listed. The figures are additive so that the bottom figure in the column represents the total explanatory power of the independent variables. e.g. In the lower table, the four independent variables account for a little over 15% of the variation that occurs in minimum sentences given.

important variables were available however, such as the number of prior felony convictions on an offenders record the number of charges brought against the defendant, and the number of prior felony incarcerations served by the offender.

Surprisingly, none of these variables seemed to have much relationship to the sentence given to offenders. In fact the only variable that seemed to have highly significant impact on sentencing was the most serious charge on which the defendant was convicted. This was the case in determining whether an offender was to be incarcerated or not and in determining the actual length of an incarcerative sentence. Summaries of the regression equations carried out using the in/out decision and length of minimum sentence as dependant variables appear in Table III. This does not necessarily mean that judges consider number of charges, prior record and prior imprisonment to be unimportant in making a sentencing decision. It may be that other unmeasured variables take presedence, or that some of the information is simply unavailable to judges at the time of sentencing. Another possibility is that specific variables carry different weights depending on the jurisdiction. Some recent research carried out by Marc G. Gertz of the University of Connecticut showed that sentencing decisions in different jurisdictions within the State of Connecticut may be made on the basis of slightly different criterion or emphases.¹¹ Thus, it may not be possible to use the same variables to explain variation in sentencing decisions statewide because of differing opinions from jurisdiction to jurisdiction as to the relative importance of specific variables that could be used to make a sentencing decision.

While the available data does not shed much light on what factors are most important to Connecticut judges in making sentencing decisions, it does show what those sentences were, and thus provides information regarding the length of time offenders spend in Connecticut's Correctional facilities. This information is extremely

important in calculating what effect any change in sentencing practices will have on the level of populations in Connecticut correctional facilities, which are already overcrowded.

A sentencing grid shown in a Section II of this report demonstrates the dramatic effect a seemingly small change in sentencing practices could have on correctional populations. The grid was constructed on the basis of available sample data and takes into account the seriousness of the conviction offense and the seriousness of the offenders prior record. Most of the recommended sentences are based on current sentencing practices and allow for the act that with time off for good behavior, an offender would normally serve about two thirds of a given sentence, although this may vary somewhat according to the length of sentence.¹² Also taken into account is the fact that the parole release decision would be eliminated and offenders would serve a flat sentence. The penalties for the offenses of murder, kidnapping and first degree arson were not based on sample data because of the small number of cases involving those offenses. Because of the small number of cases involved, any adjustment of the sentences given for these offenses would have little effect on the overall corrections populations.

Class B felony offenses against the person were much more numerous, making it possible to construct guidelines that would reflect current sentencing practices and thus maintain current correctional population levels. This of course assumes the same rate of crime commission, apprehension for those crimes and conviction. The fact that convictions for class B felonies against the person are more numerous also means that any change in sentencing practices for these offenses could have a significant effect on correctional populations. The sentencing grid gives guideline sentence ranges of 3-7, 4-8, 5-9, and 6-10 years for class B felonies against the person dependent on the number of

points accumulated based on prior convictions; the greater the number of points, the longer the recommended sentence. The numbers in the grid however, do not reflect current sentencing practices. Current practices would indicate ranges of 3-5, 4-6, 5-7 and 6-8 years respectively. Assuming that most sentences would fall in the middle of the ranges proposed, it is estimated that the wider ranges that appear in this grid would by themselves bring about a 10 percent increase in the Connecticut correctional population. This would certainly require expansion of the present correctional facilities or possibly the construction of an entirely new facility to accomodate the increased number of offenders incarcerated. Either course would be an expensive proposition.

Footnotes

1. Indeterminate sentencing requires that judges set both a minimum and maximum term of incarceration. An administrative board (the parole board) then determines the moment, within the limits set by the judge, when the offender should be released from prison to return to the community under parole supervision. In a determinate sentencing system the judge determines how much time the offender will serve at the time of sentencing by providing a single time figure such as 1, 3, or 5 years. Such a sentencing system would theoretically eliminate the need for a parole board because the offender would be required to serve the full sentence less good time. There would be no discretionary release procedure other than the possibility of pardon. Parole supervision may or may not be retained with determinate sentencing.

2. Wilkins, Leslie T. et al
Sentencing Guidelines: Structuring Judicial Discretion - Report of the Feasibility Study (Washington, D.C.: U.S. Govt. Printing Office, 1978) p.1

3. For a more detailed analysis of good time allowances for the State of Connecticut see Parker, Donald M. An Analysis of Good Time Allowances in Connecticut Correctional Facilities and the Effects on Misdemeanant and Felon Sentences Connecticut Department of Correction, June, 1978.

4. Sacks, Howard, "Promises Performance and Principles: An Empirical Study of Parole Decisionmaking in Connecticut," Connecticut Law Review, 9, No.3 (Hartford, 1977) p. 352

5. "Presidents Message to Congress on Crime," Criminal Law Reporter, 17:3089 (June 25, 1975)
6. Aggravating circumstances might be such things as use of a weapon, more than one victim, or severe injury to a victim. Mitigating circumstances such as extreme provocation, no threat of bodily harm or small pecuniary loss might be used as justification for a reduced sentence.
7. Supra note 2.
8. See, generally, Title 17-A, Maine Revised Statutes Annotated, section 1252
9. Ibid, section 1253
10. For a more complete description of the data collection effort see Siconolfi, Thomas OBTS: A Progress Report unpublished rep., Connecticut Justice Commission, 1979
11. Gertz, Marc G. "Comparative Justice: A Study of Five Connecticut Courts University of Connecticut," 1976.
12. Supra note 3

END