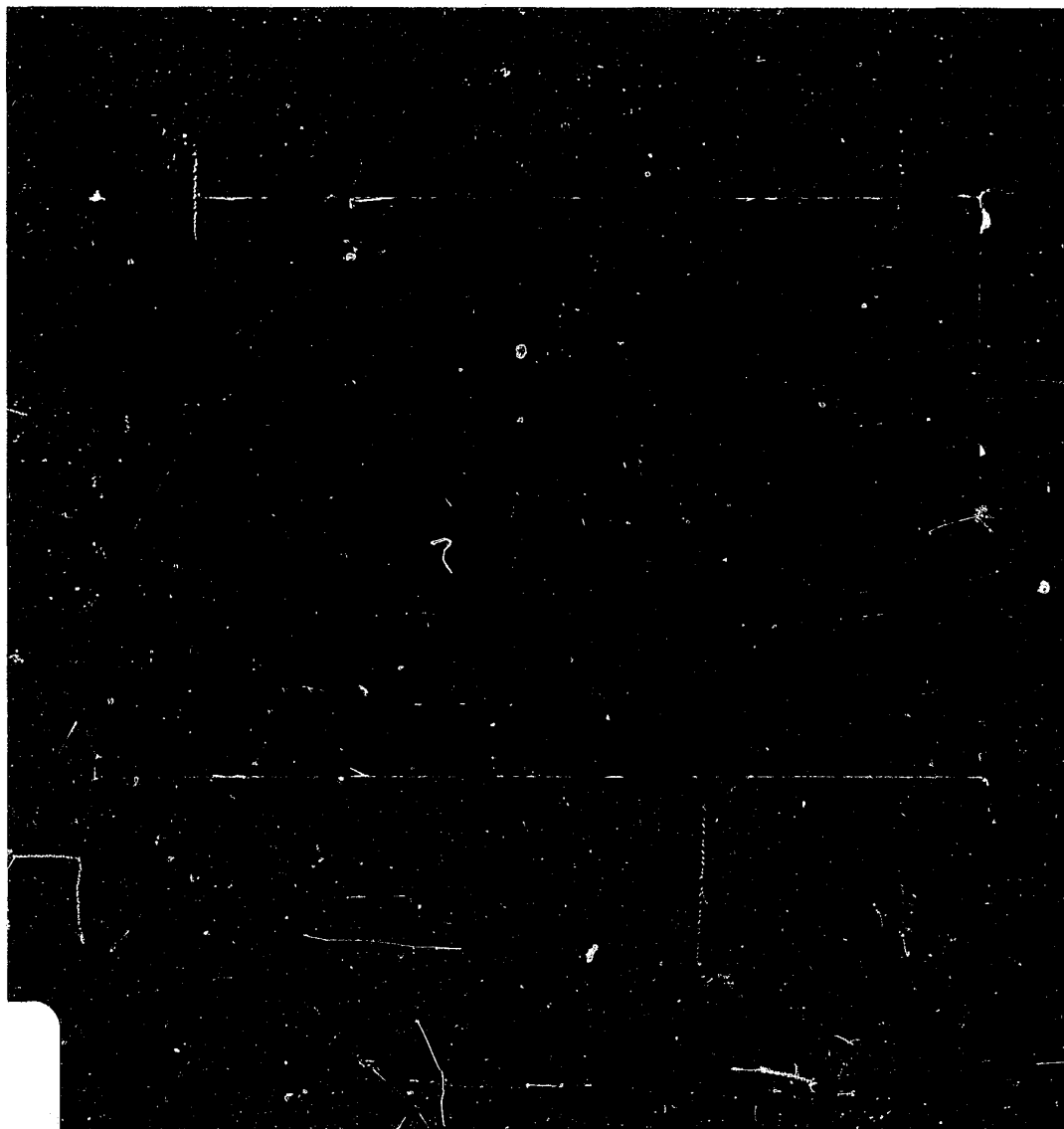


## Report



National Center for State Courts

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ACQUISITIONS

Sentencing Procedures and Practices:  
An Annotated Bibliography

Compiled and Annotated by

NATIONAL CENTER FOR STATE COURTS  
Research and Information Service

JoAnn Miller  
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September 1979  
1st Edition

"National Center for State Courts--Sentencing Procedures"

Although every effort has been made to keep the information in this bibliography as accurate and current as possible, some errors may have occurred. The reader is asked to advise the Research and Information Service of any corrections or additions to be made.

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Books

1. Administrative Office of the United States Courts, Division of Probation. The Presentence Investigation Report. Washington, D.C.: U.S. Government Printing Office, 1978. 54 pp.

The document is a guide for U.S. probation officers in the preparation of presentence reports. Reports must include: a) all objective information that is significant to the decision making process, b) an assessment of both the defendant's and the community's needs, and c) a sound recommendation with supporting rationale that follows logically from the evaluation.

2. American Bar Association Project on Minimum Standards for Criminal Justice. Standards Relating to Appellate Review of Sentences. Approved draft 1968. New York: Institute of Judicial Administration, 1968. 160 pp.

Commentaries address problems for both the court and the defendant in appealing a sentence. Appendices contain states' appellate review statutes, federal and state appeal proposals and the review process in England.

3. American Bar Association Project on Minimum Standards for Criminal Justice. Standards Relating to Sentencing Alternatives and Procedures. Approved draft. New York: Institute of Judicial Administration, 1968. 345 pp.

The Advisory Committee on Sentencing and Review formulates standards based on the Model Penal Code, the Model Sentencing Act and on state penal code revisions that consider the models. The proposed standards include policies and criteria for judges and lawyers to follow in the sentencing process.

4. American Bar Association Project to Update ABA Standards for Criminal Justice. Appellate Review of Sentences--Chapter 20, Second Edition, Tentative draft. Washington, D.C.: American Bar Association, 1978. 13 pp.

The chapter introduces a new edition of standards for governing appellate review of sentences.

5. American Bar Association Project to Update ABA Standards for Criminal Justice. Sentencing Alternatives and Procedures--Chapter 18, Second Edition, Approved Draft. New York: Institute of Judicial Administration, 1979. 193 pp.

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This edition contains a revision of the Standards Relating to Sentencing Alternatives and Procedures.

The revisions are based upon the following four principles: 1) the role of the legislature in sentencing must be a limited one, 2) a backward-looking evaluation of the offense and the offender is essential to fair punishment, 3) no single person or purpose can satisfactorily constitute a comprehensive theory of punishment, 4) the parole system performs important fail-safe functions in our system of criminal justice.

6. CONTACT, Inc. Let the Punishment Fit the Crime. Lincoln, 1977. 229 pp.

The volume includes information on sentencing standards and determinate sentencing, as well as a comparative analysis of definite sentencing programs in Minnesota, California, Illinois and Maine.

7. Eaglin, James. An Evaluation of the Probable Impact of Selected Proposals for Imposing Mandatory Minimum Sentences in the Federal Courts. Washington, D.C.: Federal Judicial Center, 1977. 83 pp.

The report's analysis of federal sentences imposed in 1976 conflicts with the provisions of six different congressional proposals for mandatory minimum sentencing.

8. Fogel, David. Flat-Time Prison Sentences--A Proposal for Swift, Certain, and Even-Handed Justice. Chicago: Illinois Law Enforcement Commission, 1975. 12 pp.

Provisions for flat-time sentencing procedures are outlined. The author concludes that everyone (offenders, victims, the criminal justice system and society) would benefit from the implementation of definite sentencing procedures.

9. Fogel, David. ". . . We are the Living Proof . . ."; The Justice Model for Corrections. Cincinnati: The W.H. Anderson Company, 1975. 328 pp.

Professor Fogel is the former commissioner of corrections in Minnesota and former head of the Illinois Law Enforcement Commission. He advocates the abolition of parole boards and the implementation of legislatively determined flat-time sentencing as necessary reforms for a humanized sentencing process.

10. Foster, Jack D., et al. Definite Sentencing: An Examination of Proposals in Four States. Lexington, Council of State Governments, 1976. 48 pp.

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The text examines and compares definite sentencing approaches in California, Illinois, Maine and Minnesota.

11. Frankel, Marvin E. Criminal Sentences: Law Without Order. New York: Hill and Wang, 1973. 124 pp.

A federal trial judge who insists "the law is too important to entrust to lawyers and judges" describes the problems associated with sentencing procedures. Judge Frankel suggests that the cruelty and injustice of indeterminate sentencing derive from a flawed theory of rehabilitation and from the vagueness and uncertainty of laws concerned with sentencing in the federal system. He proposes the adoption of legislatively determined guidelines and the institutionalization of a Commission on Sentencing that would enact change in sentencing processes and outcomes.

12. Galaway, Burt and Hudson, Joe, eds. Offender Restitution in Theory and Action. Lexington, Mass.: Lexington Books, 1978. 212 pp.

The volume contains papers presented at the Second National Symposium on Restitution. The authors discuss the role of restitution in relation to a) the purpose of the criminal justice system, b) the psychological aspects of restitution, c) the science of victimology, d) monetary and service restitution programs, and e) future research concerns.

13. Gaylin, Willard. Partial Justice; A Study of Bias in Sentencing. First Edition, New York: A.A. Knopf, 1974. 244 pp.

More than forty judges were interviewed, in a psychologically oriented study, to identify and examine determinants of judicial bias in sentencing.

14. Harvard University Law School. And Nobody Can Get You Out--The Impact of a Mandatory Prison Sentence for the Illegal Carrying of a Firearm on the Use of Firearms and on the Administration of Criminal Justice in Boston. Cambridge, 1976. 251 pp.

Research analyzing the effects of the Bartley-Fox amendment that specifies a mandatory minimum one-year prison sentence for carrying firearms demonstrates that lower-court judges uniformly apply the sentence. Analysis of crime statistics indicates a reduction in the use of firearms for specific offenses in the year following enactment of the law.

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15. Leiberg, Leon G. and William E. Lamb. Alternatives to Confinement. Washington, D.C.: Bar Association Support to Improve Correctional Services, 1976. 108 pp.

The authors examine community mediation, pretrial intervention, educational release and mutual agreement programming in probation. The manual was compiled in order to provide information on alternative programs, to specify necessary resources and to offer a procedural outline for the implementation of programs.

16. Levin, Martin A. The Impact of Criminal Court Sentencing: Decisions and Structural Characteristics. Waltham, Mass.: Brandeis University, 1973. 67 pp.

The author examines analytical evaluations of existing corrections programs and evaluations from experimental programs to determine relationships between judges' sentencing decisions, the court's structural characteristics and recidivism rates.

17. Levin, Martin A. Urban Politics and the Criminal Courts. Chicago: University of Chicago Press, 1977. 332 pp.

The study compares the impact of court delay and of various forms of judicial selection on deterrence, reduction and prevention of crime by examining sentencing decisions and the effect they have on the rate of recidivism and on the multiple goals of the courts.

18. Morris, Norval and Jacobs, J. Proposals for Prison Reform. New York: Public Affairs Committee, Inc., 1974. 28 pp.

The authors discuss unjust procedures associated with indeterminate sentencing that are rationalized by the rehabilitative goal of imprisonment.

19. Mueller, Gerhard O.W. Sentencing: Process and Purpose. Springfield, Ill.: Charles C Thomas, 1977. 214 pp.

Gerhard Mueller, who is a proponent of the rehabilitative ideal of sentencing, contends that contemporary prison is society's escape from complex social problems. The volume includes discussions on sentencing procedures, alternatives to incarceration, and correctional system reform. Appendices contain minimum standards for the treatment of prisoners and an evaluation of the demands of the Attica prisoners.



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20. National Center for State Courts. Research Priorities in Sentencing, by John C. Ruhnka. Denver, 1975. 80 pp.

The study attempts to set forth priorities for new research in sentencing geared toward the practical needs of those involved in the sentencing process, to encourage simultaneous research in functionally related areas and to suggest a balance between theoretical research and demonstration projects. Also includes a summary of proceedings of the 1973 conference on research priorities.

21. National Council on Crime and Delinquency, Council of Judges. Guides for Sentencing. Second edition, Hackensack, N.J., 1974. 101 pp.

The text discusses due process considerations, alternatives to incarceration, sentencing dangerous offenders and sentencing in racketeering cases.

22. National Council on Crime and Delinquency, Council of Judges. Model Sentencing Act. Second edition, Hackensack, N.J., 1972. 32 pp.

The material discusses aspects of the Model Sentencing Act that emphasize the rehabilitative goal of sentencing.

23. National College of the State Judiciary, Sentencing and Probation. George H. Revelle (ed.). Chicago: American Bar Association, 1973. 394 pp.

Contributors to the volume discuss the philosophy of sentencing and probation, methods of reducing disparity in sentencing, and procedures for sentencing alternatives. The book also contains sentencing guides, American Bar Association standards and the Model Sentencing Act.

24. Orland, Harold and Tyler, Judge Harold R., eds. Justice in Sentencing: Papers and Proceedings of the Sentencing Institute for the First and Second U.S. Judicial Circuits. Mineola, N.Y.: Foundation Press, 1974. 353 pp.

The volume contains transcripts from discussions among trial judge participants at a Sentencing Institute, papers on various aspects of sentencing procedures, and American Bar Association standards for appellate review and sentencing alternatives.

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25. Orland, Leonard. Prisons--Houses of Darkness. New York: Free Press, 1975. 239 pp.

The author calls for increased accountability by judges and criminal justice administrators in the area of sentencing and post-conviction. He presents two models for judicial reform; the more radical approach advocates abolition of indeterminate sentencing whereas the moderate approach suggests an increase in judicial accountability.

26. Partridge, Anthony and Eldridge, William B. The Second Circuit Sentencing Study: A Report to the Judges of the Second Circuit. Washington, D.C.: Federal Judicial Center, 1974. 151 pp.

The report attempts to assess sentencing disparity among judges of the second circuit by isolating case characteristics that affect sentencing decisions.

27. Petersilia, Joan and Greenwood, Peter W. Mandatory Prison Sentences: Their Projected Effects on Crime and Prison Populations. Santa Monica: The Rand Corporation, 1977. 31 pp.

Researchers analyze data from a sample of felonies from the Denver, Colorado district court to determine the potential impact of mandatory sentencing on both the crime rate and the prison population.

28. Resource Center on Correctional Law and Legal Services. Sentencing Computation Laws and Practices: A Preliminary Survey. Washington, D.C.: American Bar Association Commission on Correctional Facilities and Services, 1974. 167 pp.

A survey of sentence computation practices examines both the positive and negative aspects of indeterminate and determinate sentencing procedures. Researchers review statutes and case law decisions and supplement information with interviews of states' attorney generals.

29. Sentencing Alternatives: Criminal Justice Issues. Detroit: Citizens Research Council of Michigan, 1977. 40 pp.

The document provides an introduction to sentencing alternatives, mandatory minimum sentencing, presumptive sentencing and a proposal for cost-effective sentencing reform.

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30. Special Conference on Determinate Sentencing, Berkeley, 1977.  
Determinate Sentencing: Reform or Regression? Washington, D.C.: National Institute of Law Enforcement and Criminal Justice, 1978. 148 pp.

The text includes papers on the historical movement toward determinate sentencing, the possible intended and unintended effects of various sentencing procedures, and methods for monitoring new legislation.

31. Sutton, L. Paul. Federal Criminal Sentencing: Perspectives of Analysis and a Design for Research. Washington, D.C.: National Criminal Justice Information and Statistics Service, 1978. 33 pp.

The report offers a review and critique of previously employed methodological designs for sentencing research. The author proposes adoption of a research design that a) incorporates several different types of crime; b) introduces controls sufficient to examine correlations beyond the zero--and first-order level; and c) utilizes a database with a large number of cases.

32. Sutton, L. Paul. Federal Sentencing Patterns: A Study of Geographical Variations. Washington, D.C.: National Criminal Justice Information and Statistics Service, 1978. 39 pp.

Variability in sentencing patterns is examined among federal district courts and an attempt is made to isolate the variables that affect disparity in sentencing. The data analyses suggest that sentencing councils do not reduce variability in sentencing patterns.

33. Sutton, L. Paul. Predicting Sentences in Federal Courts: The Feasibility of a National Sentencing Policy. Washington, D.C.: National Criminal Justice Information and Statistics Service, 1978. 34 pp.

Multiple regression is used to explain federal sentencing patterns in 1964 and to determine predictability of sentences imposed in 1971. The results of the analysis "led to the conclusion that equitable sentencing by way of a concrete sentencing policy--that is, a policy that assigns specific weights to various offender, offense and process-related factors--is at least technologically feasible."

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34. Sutton, L. Paul. Variations in Federal Sentences: A Statistical Assessment at the National Level. Washington, D.C.: National Criminal Justice Information and Statistics Service, 1978. 59 pp.

Predictive attribute analysis and multiple regression are used to locate the determinants of sentencing variability for eight federal offenses. Major findings indicate prior criminal record, method of conviction and type of offense are the best predictors of sentence imposition. Predictability in sentencing outcomes varies significantly with the type of offense.

35. Toliver, Lawrence J. Sentencing and the Law and Order Syndrome in South Carolina. Columbia, S.C.: South Carolina Council for Human Rights, 1974. 88 pp.

A random sample of 383 sentences imposed in 1971 is examined to determine the nature and extent of sentencing disparity among sixteen South Carolina Circuit Court Judges. The author concludes that South Carolina judges adopt different sentencing patterns for females, blacks, whites and juveniles, and that the "law and order syndrome" manifested by the imposition of harsh, disparate and ineffective sentences promotes a disordered criminal justice system.

36. Twentieth Century Fund. Fair and Certain Punishment--Report of the Twentieth Century Fund Task Force on Criminal Sentencing. Background paper by Alan M. Dershowitz. New York, 1976. 142 pp.

The task force recommends the abolition of indeterminate sentencing and proposes a model for presumptive sentencing. The appendices include an illustrative presumptive sentencing statute for armed robbery and a list of crimes and suggested sentences.

37. United States Department of Justice. Law Enforcement Assistance Administration. National Institute of Law Enforcement and Criminal Justice. Guide to Improved Handling of Misdemeanant Offenders. Washington, D.C.: U.S. Government Printing Office, 1974. 133 pp.

The four-part guide discusses disposition of misdemeanor offenders and explores alternatives to imprisonment.

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38. United States Department of Justice. Law Enforcement Assistance Administration. National Institute of Law Enforcement and Criminal Justice. Guidebook for Planners and Practitioners. Washington, D.C.: American University Law School, 1975. 393 pp.

This provides a decision-making matrix for implementing alternatives to imprisonment. The matrix evolves from analyses of alternative programs throughout the country.

39. United States Department of Justice. Law Enforcement Assistance Administration. National Institute of Law Enforcement and Criminal Justice. Sentencing to Community Service. Washington, D.C.: U.S. Government Printing Office, 1977. 67 pp.

This examines the community service sentence for misdemeanor offenses. The final chapter discusses the need for and methods of evaluating and monitoring alternative sentencing programs.

40. United States Department of Justice. Law Enforcement Assistance Administration. National Institute of Law Enforcement and Criminal Justice. Instead of Jail--Pre- and Post-trial Alternatives to Jail Incarceration, Volume 1, Issues and Programs in Brief. Washington, D.C.: U.S. Government Printing Office, 1977. 63 pp.

The first in a series of five volumes on alternatives to trial and incarceration presents a general overview of topics covered extensively in later volumes. A cost-benefit analysis of alternative programs is included within a discussion on decision-making for policy planners and administrators. The final chapter lists several models for alternative procedures.

41. United States Department of Justice. Law Enforcement Assistance Administration. National Institute of Law Enforcement and Criminal Justice. Instead of Jail--Pre- and Post-Trial Alternatives to Jail Incarceration, Volume 4, Sentencing the Misdemeanant. Sacramento: American Justice Institute, 1976. 171 pp.

The volume centers on the large number of existing post-trial alternatives for misdemeanants. Chapter IV discusses alternatives for higher risk cases.

42. United States Department of Justice. Law Enforcement Assistance Administration. National Institute of Law Enforcement and Criminal Justice. Instead of Jail--Pre- and Post-Trial

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Alternatives to Jail Incarceration, Volume 5, Planning, Staffing, and Evaluating Alternative Programs.  
Sacramento: American Justice Institute, 1976. 118 pp.

Pretrial release, diversion programs and alternatives to incarceration are considered; policy and program planning guidelines are presented for criminal justice administrators.

43. United States Department of Justice. Law Enforcement Assistance Administration. National Institute of Law Enforcement and Criminal Justice. Presentence Report Handbook.  
Washington, D.C.: U.S. Government Printing Office, 1978. 80 pp.

The monograph contains an historical review of the presentence investigation and findings of a nationwide survey of probation practices. Includes 64 recommendations for a systematic and analytical approach to presentence reports.

44. Von Hirsch, Andrew. Doing Justice: The Choice of Punishments; Report of the Commission for the Study of Incarceration.  
New York: Hill and Wang, 1976. 179 pp.

Von Hirsch rejects the rehabilitative goal of imprisonment and advocates sentencing based on desert. The severity of the offense and the culpability of the offender are considered in a presumptive sentencing model that suggests greater utilization of alternatives to imprisonment and a maximum sentence of five years for all felonies except certain murder cases.

45. Wilkins, Leslie T. et al. Sentencing Guidelines: Structuring Judicial Discretion; Final Report of the Feasibility Study. Washington, D.C.: National Institute of Law Enforcement and Criminal Justice, 1978. 175 pp.

The purpose of the study is to develop, test and demonstrate the use of sentencing guidelines as a device to achieve equity in sentencing.

46. Williams, Jeremy S. The Law of Sentencing and Corrections.  
Buffalo: W.S. Hein, 1974. 180 pp.

The text provides an introduction to the procedures and goals of sentencing, the various forms of corrections and the current issues involving reform.

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Articles

47. Alper, Benedict S. and Weiss, Joseph W. "Mandatory Sentence: Recipe for Retribution." 41 Federal Probation 15-20 (December 1977).

The authors focus on the controversy surrounding mandatory sentencing and discuss the possible effects of mandatory sentencing on the prison population, deterrence and rehabilitation.

48. Alschuler, Albert W. "Sentencing Reform and Prosecutorial Power: A Critique of Recent Proposals for 'Fixed' and 'Presumptive' Sentencing." 126 University of Pennsylvania Law Review 550-577 (January 1978).

A law professor, who has studied the plea bargaining process for fifteen years, presents an analysis of the effects of fixed and presumptive sentencing procedures. Although he advocates a reduction in sentencing disparity, he concludes that determinate sentencing laws will simply shift discretionary power from the judge to the prosecutor.

49. Aspen, Marvin E. "Our Vanishing Species: The Judge Who Judges." 17 Judges Journal 20-24 and 51 (Spring 1978).

A trial judge reviews some aspects of the recently adopted Illinois plan for determinate sentencing and concludes that prosecutors will be able to exercise sentencing discretion by determining the criminal charge.

50. Austin, William and Williams, Thomas A., III. "A Survey of Judges' Responses to Simulated Legal Cases: Research Note on Sentencing Disparity." 68 Journal of Criminal Law and Criminology 306-310 (June 1977).

Forty-seven district court judges review five hypothetical cases and give recommendations on verdicts, mode of sentencing and magnitude of sentences. The results indicate that judges generally agree on the verdict, but disagree on the sentencing mode and on the magnitude of the sentence.

51. Bagley, James J. "Why Illinois Adopted Determinate Sentencing." 62 Judicature 390-397 (March 1979).

One of the attorneys responsible for drafting Illinois' new determinate sentencing law (H.B. 1500) discusses its major provisions and the reasons behind its adoption.

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52. Blake, Catherine C. "Appellate Review of Criminal Sentencing in the Federal Courts." 24 Kansas Law Review 279-305 (Winter 1976).

Attorney Blake insists that legislatively enacted procedures for appellate review of sentence are necessary to ensure uniform and equitable sentencing standards.

53. Board of Directors, National Council on Crime and Delinquency. "The Nondangerous Offender Should Not Be Imprisoned." 21 Crime and Delinquency 315-322 (October 1975).

The article assesses the proposed criteria for adult imprisonment in the Model Sentencing Act of 1972 and concludes that only the dangerous offender should be imprisoned.

54. Bogan, J.B. "Relationship of 'Time,' Management, and Treatment in the Prison." 2 New England Journal on Prison Law 139-154 (Spring 1976).

The author examines the relationship between indeterminate sentencing, inmate management, and rehabilitation. He concludes that the relationship between time served and treatment must be dissolved; effective programs should operate without regard to a prison release date.

55. Cargan, L. and Coates, M.A. "Indeterminate Sentence and Judicial Bias." 20 Crime and Delinquency 144-156 (April 1974).

Researchers test the hypothesis that judicial bias precludes indeterminate sentencing procedures from eliminating sentence disparity by analyzing felony cases handled in Montgomery County, Ohio. Findings indicate that the sentences imposed varied significantly among different judges, among offenses handled by the same judge and in the severity of sentence according to the race of the defendant. The authors thus conclude that unjustified sentencing disparity reflects judicial bias.

56. Carter, R. M. and Wilkins, L. T. "Some Factors in Sentencing Policy." in Criminal Justice Process--A Reader, Edited by William B. Saunders and Howard C. Daudistel. New York: Praeger, 1976. 21 pp.

1964 and 1965 cases from the United States district court for Northern California are examined. Findings indicate a high relationship between the probation officers' recommendation for and the judges' disposition of probation. Therefore the authors suggest sentencing



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disparity is partially determined by probation officers and differences in their recommendations are influenced by academic training and experience.

57. Casper, Jonathan D. "Having Their Day in Court: Defendant Evaluations of the Fairness of Their Treatment." 12 Law and Society Review 237-251 (Winter 1978).

Evaluations of convicted felons' perceptions of fairness in the criminal justice system are presented. The mode of sentencing and perceptions of sentencing disparity are related to defendants' attitudes toward sentencing equity.

58. Cei, L.B. "Indeterminate Sentence at the Crossroads." 3 New England Journal on Prison Law 85-96 (Fall 1976).

The author examines the effects of indeterminate sentencing on inmate rehabilitation and concludes strict control of the procedure is necessary for its effectiveness.

59. Chesney, Steve, Hudson, Joe, and McLagen, John. "A New Look at Restitution: Recent Legislation, Programs and Research." 61 Judicature 348-357 (March 1978).

A summary of existing restitution programs is presented. The authors conclude that further study is necessary in order to understand the effects of restitution.

60. Clear, Todd R. "Correctional Policy, Neo-Retributionism and the Determinate Sentence." 4 The Justice System Journal 26-48 (Fall 1978).

The author examines the major components of six suggested models for determinate sentencing to assess the humanitarian aims of neo-retributive procedures.

61. Clear, Todd R., Hewitt John D., and Regoli, Robert M. "Discretion and the Determinate Sentence: Its Distribution, Control, and Effect on Time Served." 24 Crime and Delinquency 428-445 (October 1978).

Analysts examine the revised Indiana penal code and conclude that determinate sentencing procedures do not reduce the potential for discretionary sentencing.

62. Cohen, Fred. "How and Why to Use Experts at Sentencing: A Comment." 15 Criminal Law Bulletin 151-156 (March-April 1979).

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The author advocates utilization of criminologists as impartial consultants in the sentencing process.

63. Cole, George F. "Will Definite Sentences Make a Difference?" 61 Judicature 58-65 (August 1977).

Professor Cole examines sentencing procedures in Illinois, Maine and California, and concludes that definite sentencing does not affect crime control, perception of certain punishment or amount of prison time served, although it might enhance the symbolic values of openness and fairness within the criminal justice process.

64. Connolly, Paul K. "The Possibility of a Prison Sentence is a Necessity." 21 Crime and Delinquency 356-359 (October 1975).

A Massachusetts superior court judge considers that the threat of a prison sentence is necessary for the protection of society and for ensuring the effectiveness of less punitive dispositions.

65. Davis, P. C. "Death Penalty and the Current State of the Law." 14 Criminal Law Bulletin 7-17 (January-February 1978).

A former staff attorney with the N.A.A.C.P. Legal Defense Fund, Inc., analyzes constitutional law relevant to the death penalty. Accepting the Supreme Court's judgment that the death penalty does not violate the Constitution, Professor Davis discusses sentencing criteria, sentencing procedures and appellate review as safeguards against imposing an unjustifiable death sentence.

66. Dershowitz, Alan M. "Indeterminate Confinement: Letting the Therapy Fit the Harm." 123 University of Pennsylvania Law Review 297-339 (December 1974).

The text contains an historical analysis of the goals and mechanisms for administering indeterminate sentences. It also reviews recent federal and state cases that have limited judicial discretion in indeterminate sentencing.

67. Diamond, Shari Seidman and Zeisel, Hans. "Sentencing Councils: A Study of Sentence Disparity and its Reduction." 43 University of Chicago Law Review 109-149 (Fall 1975).

Researchers outline methodological approaches and measurement devices for assessing the magnitude of

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sentencing disparity in a study of two federal district courts. The concept of a sentencing council and its ability to reduce disparity are discussed.

68. Dunskey, Gregory P. "Constitutionality of Increasing Sentences on Appellate Review." 69 Journal of Criminal Law 19-39 (Spring 1978).

Attorney Dunskey discusses double jeopardy and the due process clause in relation to increasing a sentence on appeal.

69. Evans, Walter and Gilbert, Frank. "The Case for Judicial Discretion in Sentencing." 61 Judicature 66-69 (August 1977).

Two probation officers discuss various factors of criminal disposition in Oregon, including presentence services, sentencing guidelines, average sentence tables, prediction devices and sentencing councils.

70. Fogel, David F. "Justice, Not Therapy: A New Mission for Corrections." 62 Judicature 372-380 (March 1979).

The author argues that the goal of criminal sentencing should be fairness, not rehabilitation.

71. Foster, J.D. and Ashley, D.H. "Social Contract Approach to Sentencing." 50 State Government 116-124 (Spring 1977).

The authors suggest that a "sentencing agreement," setting forth the conditions, constraints, demands and consequences of a sentence, should accompany the imposition of a sentence.

72. Gilman, David. "The Sanction of Imprisonment: For Whom, For What, and How." 21 Crime and Delinquency 337-347 (October 1975).

Disagreeing with the Model Sentencing Act's definition, the author suggests that "dangerousness" should be determined by the offense and by the specific behavior of the offender. Gilman also proposes a determinate sentencing plan that would eliminate parole and good-time credit for imprisoned "dangerous" offenders.

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73. Gilman, David. "Sentencing--Imprisonment Consequences." 11 Criminal Law Bulletin 318-326 (May-June 1975).

The author posits that major revisions of sentencing laws are necessary to accommodate recent proposals to abolish parole and suggests that prison terms should be restricted to dangerous offenders.

74. Gilmore, Horace W. "Presumptive Sentencing: The Roles of the Legislature and the Judge." 16 Judges Journal 39 and 46 (Spring 1977).

This is a discussion of presumptive sentencing that includes examples of aggravating and mitigating circumstances. Judge Gilmore suggests a presumptive sentencing procedure would return to the legislature and the judiciary the function of determining the actual sentence to be served.

75. Halperin, David J. "Determinate Felony Sentencing." 2 State Court Journal 8-12 (Winter 1978).

The article discusses determinate sentencing and the principle of desert. It also considers problems related to determinate sentencing and deficiencies in systems relying on parole board sentencing.

76. Harries, K.D. and Lura, R.P. "Geography of Justice: Sentencing Variations in U.S. Judicial Districts." 57 Judicature 392-401 (April 1974).

Researchers describe geographical variations in sentencing patterns and attempt to explain these variations by using regression analysis on data collected from thirty federal jurisdictions.

77. Hopkins, A. "Imprisonment and Recidivism--A Quasi-Experimental Study." 13 Journal of Research in Crime and Delinquency 13-32 (January 1976).

Major findings from a quasi-experimental design suggest imprisonment is less effective than alternative sanctions in reducing recidivistic behaviors.

78. Hopkins, J.D. "Reviewing Sentencing Discretion--A Method of Swift Appellate Action." 23 UCLA Law Review 491-500 (February 1976).

The author describes the use of a five-judge panel for appellate review of sentences in New York. One judge

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prepares a disposition report, and if the panel agrees on the recommendation, a decision is handed down within one week.

79. Hussey, Frederick A. "Parole: Villain or Victim in the Determinate Sentencing Debate." 24 Crime and Delinquency 81-88 (January 1978).

Professor Hussey argues that the failure of the parole system to rehabilitate offenders does not justify adoption of determinate sentencing procedures. He suggests that a thorough examination of all issues related to sentencing is necessary to solve current sentencing problems.

80. Kassensohn, Michael. "Sentencing Criminal Offenders." 50 State Government 7-11 (Winter 1977).

This article presents an overview of legislative efforts to develop definite sentencing proposals in response to widespread concerns with crime and the inequities of indeterminate sentencing. The author differentiates between mandatory and definite sentencing programs, and compares legislative, judicial and administrative approaches to narrowing sentencing discretion.

81. Kennedy, Edward M. "Criminal Sentencing: A Game of Chance." 60 Judicature 208-215 (December 1976).

Senator Kennedy discusses various dimensions of sentencing disparity and outlines the components and goals of his bill for sentencing guidelines.

82. Kennedy, Edward M. "Toward a New System of Criminal Sentencing: Law With Order." 16 The American Criminal Law Review 353-382 (Spring 1979).

The author discusses legislation currently before the Senate that would create a U.S. Sentencing Commission responsible for developing sentencing guidelines and policy statements for the federal courts. The Kennedy plan provides for determinate sentences in most cases thereby retaining judicial flexibility. However, sentences are subject to appellate review, and those imposed beyond recommended guidelines must be accompanied by a written statement of reasons.

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83. Korbakes, Chris A. "Criminal Sentencing: Is the Judge's Sound Discretion Subject to Review?" 59 Judicature 112-119 (October 1975).

A report is made on the findings from a survey of the fifty states' chief justices concerning judicial review of criminal sentences. It includes information on states allowing review and examines attitudes toward review.

84. Kress, Jack M. "Who Should Sentence: The Judge, The Legislature or...?" 17 Judges Journal 12, 14-15 and 44-45 (Winter 1978).

A researcher maintains that sentencing guidelines structure judicial discretion while eliminating the injustices of indeterminate sentencing.

85. Kress, Jack M. and Calpin, Joseph C. "Research Problems Encountered in Judicial Decision-Making." 4 The Justice System Journal 71-87 (Fall 1978).

A methodological discussion on feasibility studies for implementing sentencing guidelines details how "offender scores" and "offense scores" are obtained and incorporated within a decision-making matrix.

86. Kress, Jack M., Wilkins, Leslie T., and Gottfredson, Don M. "Is the End of Judicial Sentencing in Sight?" 60 Judicature 216-222 (December 1976).

This is an empirical study of sentencing that results in suggested sentencing guidelines for Denver, Colorado.

87. Labbe, Ronald M. "Appellate Review of Sentences: Penology on the Judicial Doorstep." 68 Journal of Criminal Law 122-134 (March 1977).

The author describes various features of sentencing review in 23 states and discusses the doctrine of non-reviewability.

88. Lagoy, Stephen P., Hussey, Frederick A. and Kramer, John A. "Comparative Assessment of Determinate Sentencing in the Four Pioneer States." 24 Crime and Delinquency 385-400 (October 1978).

Analysts compare provisions for determinate sentencing in the recently revised codes of Maine, California, Illinois and Indiana. Additionally, they explore the possibility of sentencing uniformity, equality and disparity within these states.

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89. Levin, Martin A. "A Good Sentence is More Than a Subject and a Passive Verb: What Judges Must Discover are the Virtues of an Aggressive Policy of Meting out Justice." 17 The Judges Journal 41-47 (Summer 1978).

The relationship between the type of sentence imposed and recidivism rates is discussed in a summary of Urban Politics and the Criminal Courts.

90. McGee, R.A. "California's New Determinate Sentencing Act." 42 Federal Probation 3-10 (March 1978).

The former head of California's correctional system outlines the provisions of California's determinate sentencing act.

91. Manson, J.R. "Determinate Sentencing." 23 Crime and Delinquency 204-214 (April 1977).

The Commissioner of the Connecticut Department of Correction, after noting the problems associated with parole and indeterminate sentencing, proposes the adoption of determinate sentencing procedures. The article also contains reactions of others in the field to this proposal.

92. Margolick, David M. "Penal Ties That Pay Dividends." 1 National Law Journal 16-17 (March 26, 1979).

The author recommends various alternatives to traditional sentencing including community service and other restitution programs for adult and juvenile offenders.

93. Merceret, Francis J. "Sentencing Alternatives to Fine and Imprisonment." 31 University of Miami Law Review 387-418 (Winter 1977).

The author maintains that the only sentencing alternative to fine, imprisonment or medical commitment is probation and examines the problems of probation systems generally using Florida's as an example. He also suggests improvements in sentencing procedures.

94. Morris, Norval. "Punishment, Desert, and Rehabilitation." in Equal Justice Under Law pp 136-167. Washington, D.C.; U.S. Government Printing Office, 1977.

Professor Morris argues against mandatory sentencing on the basis that the inequality of sanctions is necessary to achieve the socially defined purpose of punishment.

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He believes that flat-time sentences incorporating good-behavior credit are a fair sanctioning process.

95. Morris, Norval. "Towards Principled Sentencing." 37 Maryland Law Review 267-285 (1977).

The author criticizes mandatory-minimum sentencing and presumptive sentencing procedures as being "simplistic" and "politically attractive" avenues to criminal justice reform. He argues that the goals of equitable sentencing, crime-rate reduction and balancing legislative, administrative and judicial discretion in sentencing justify adoption of the Kennedy Bill.

96. Nagel, Stuart, Neef, Marian and Weiman, Thomas. "Rational Method for Determining Prison Sentences." 61 Judicature 371-375 (March 1978).

The authors include recidivism rates and incarceration expenses in a total cost-curve model for determining optimum flat-time sentences.

97. O'Leary, Vincent. "Issues and Trends in Parole Administration in the United States." 11 The American Criminal Law Review 97-140 (Fall 1972).

The author examines the interrelationship between standard parole systems and sentencing structures from an historical perspective.

98. O'Leary, Vincent, Gottfredson, Michael and Gelman, Arthur. "Contemporary Sentencing Proposals." 11 Criminal Law Bulletin 555-586 (September-October 1975).

Participants in a sentencing seminar discuss various issues including sentencing goals, sentencing alternatives, maximum periods of intervention and potential effects of sentencing reform.

99. Oppenheim, Maurice H. "Computing a Determinate Sentence ... New Math Hits the Courts." 51 California State Bar Journal 609, 612, 654-659 (November-December 1976).

The article discusses the administration of California's Uniform Determinate Sentencing Act. Elements of the 1976 act that affect the initial sentencing decision and the length of a prison sentence are described.



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100. Orland, Leonard. "Is Determinate Sentencing an Illusory Reform?" 62 Judicature 381-389 (March 1979).

A discussion of the current focus of penal law reform from an historical perspective leads to the conclusion that determinate sentencing will not eliminate sentencing disparity and may jeopardize efforts to rehabilitate offenders.

101. Orrick, David. "Legal Issues in Structuring Sentencing Discretion." 4 New England Journal of Prison Law 327-353 (Spring 1978).

The author examines the appellate courts' ability to reduce sentencing disparity and concludes that sentencing guidelines may be the best procedure for equitable sentencing.

102. Petersilia, Joan and Greenwood, Peter W. "Mandatory Prison Sentences: Their Projected Effects on Crime and Prison Populations." 69 Journal of Criminal Law 604-615 (Winter 1978).

Researchers analyze data from the Denver district court to determine the potential impact of mandatory sentencing on both the crime rate and the prison population.

103. Rector, Milton G. "The Extravagance of Imprisonment." 21 Crime and Delinquency 323-330 (October 1975).

The President of the National Council on Crime and Delinquency advocates "creative sentencing" alternatives for all nondangerous offenders.

104. Reiben, S.J. "Institutionalization of Inhumanity: A Critique of Various Flat Sentencing Proposals." 12 Trial Lawyers Quarterly 56-68 (Winter 1978).

Attorney Reiben criticizes determinate sentencing for its illogical and simplistic nature. He suggests that determinate sentencing will shift discretion from the judge to the prosecutor thereby making sentences "certain" but not "fair." Reiben argues that flat-time sentences are psychologically destructive because they inherently preclude the hope of a shorter sentence and thus constitute "inhumane treatment."

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105. Ringold, Solie M. "A Judge's Personal Perspective on Criminal Sentencing." 51 Washington Law Review 631-641 (1976).

A Washington superior court judge examines probation as an alternative to imprisonment in an article that addresses the conflicting goals of sentencing.

106. Rubin, Sol. "Probation or Prison: Applying the Principle of the Least Restrictive Alternative." 21 Crime and Delinquency 331-336 (October 1975).

The author asserts that the concept of the "least restrictive alternative" in sentencing is necessary to reduce sentencing disparity.

107. Scism, Jack. "A Parole Commission Survey of Sentencing Judges." 42 Popular Government 14-18 (Fall 1976).

Results of a survey of 49 North Carolina superior court judges indicate that, although only 35% of the prisoners are granted parole at the earliest eligibility date, the majority of the judges expect that inmates with indeterminate sentences will be released after completing their minimum sentences.

108. Singer, Richard. "In Favor of Presumptive Sentences Set by a Sentencing Commission." 24 Crime and Delinquency 401-427 (October 1978).

The author advocates the establishment of a sentencing commission that sets sanctioning guidelines to encourage the adoption of an equitable "just desert" principle for sentencing procedures. He concludes that, although his "presumptive sentencing" plan allows for a certain amount of judicial discretion that is reviewable, it does not discourage the rehabilitative goal of imprisonment.

109. Singer, Richard G. and Hand, Richard C. "Sentencing Computation: Laws and Practices." 10 Criminal Law Bulletin 318-347 (May 1974).

State statutes and case laws are reviewed in an examination of indeterminate and determinate sentencing, habitual offender laws, probation, parole and "good-time" credit for imprisoned offenders.

110. Uelmen, Gerald F. "Proof of Aggravation Under the California Uniform Determinate Sentencing Act: The Constitutional Issue." 10 Loyola University of Los Angeles Law Review 725-752 (September 1977).

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The article discusses constitutional issues related to the procedural changes accompanying California's Determinate Sentencing Act. Professor Uelmen concludes that the guarantee of due process, the difficulty of identifying "aggravating circumstances" and exclusionary rules restrict judicial discretion beyond the act's expectations.

111. Van Dine, Stephen, Dinitz, Simon, and Conrad, John. "The Incapacitation of the Dangerous Offender: A Statistical Experiment." 14 Journal of Research in Crime and Delinquency 22-34 (January 1977).

Researchers hypothetically impose various sentencing procedures on an aggregate of convicted felons to determine the impact of mandatory sentencing on the crime rate. An assessment of various sentencing procedures indicates a possible 4.0% reduction in violent crime from mandatory sentences.

112. Vorenberg, James. "Narrowing the Discretion of Criminal Justice Officials." 1976 Duke Law Journal 651-697 (September 1976).

Professor Vorenberg reviews sentencing reform efforts since the mid-1960s, presents possible direct and indirect gains as a result of narrowing sentencing discretion and suggests procedures to eliminate unjustifiable judicial discretion from criminal justice administration.

113. Zalman, Marvin. "Commission Model of Sentencing." 53 Notre Dame Lawyer 266-290 (December 1977).

Based on the premise that sentencing is a polycentric process with each decision affecting other components of the criminal justice system, the author presents a "commission" model for sentencing that he compares with a federal proposal for a sentencing commission.

114. Zeisel, Hans, and Diamond, Shari Seidman. "Search for Sentencing Equity: Sentence Review in Massachusetts and Connecticut." 1977 American Bar Foundation Research Journal 881-940 (Fall 1977).

A weighted sample of cases from Massachusetts and Connecticut is used to explore the frequency, circumstances and results of appealed sentences. The impact of review boards on the trial courts in the two jurisdictions is also measured.

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115. "Alternative Sentences Benefit Offender and Community." 16 Court 17-18 (January-February 1978).

This article discusses some of the "creative sentences" imposed by Indiana's city court judges including the donation of blood and gratuitous work in burn centers and other community programs.

116. "Appellate Review of Sentencing." 33 Louisiana Law Review 559-568 (Summer 1973).

Major objections to appellate review and elements of ABA standards for review are presented.

117. "As Definite Sentencing Begins, Illinois Still Debates its Value." 61 Judicature 384-385 (March 1978).

Features of the Illinois law, enacted in February 1978, are enumerated.

118. "Comment: Constitutional Law--Cruel and Unusual Punishment--Mandatory Minimum Sentences for Addict-offenders with Prior Narcotics Convictions." 20 New York Law Forum 655-668 (Winter 1975).

The California Supreme Court ruled that a mandatory ten-year minimum sentence for a recidivistic heroin offense constitutes cruel and unusual punishment under article I, section 6 of the California Constitution.

119. "Comment: Criminal Law: Constitutionality of the Mandatory Minimum Sentence." 18 Washburn Law Journal 166-173 (Fall 1978).

The appeal from a conviction for second-degree murder involving a firearm is used as a vehicle to examine the constitutionality of mandatory minimum sentences.

120. "Comment: Mandatory Minimum Sentencing--The Concept, And a Controversial New Michigan Statute." 1976 Detroit Law Review 575-591 (1976).

The author discusses the costliness of mandatory minimum sentencing and suggests that efficient utilization of probation and parole systems offers a socially beneficial means to reach the goals of law enforcement.

121. "Comment: New Federal Rule of Criminal Procedure 11(e): Dangers in Restricting the Judicial Role in Sentencing Agreements." 14 American Criminal Law Review 305-318 (Fall 1976).

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Rule 11(e) of the Federal Rules of Criminal Procedure, which prohibits a judge from participating in the plea bargaining process, is compared with pertinent state statutes and procedural rules. Its effect upon sentencing is analyzed.

122. "Comment: The Potential Adequacy of the California Uniform Determinate Sentence Law." 10 Southwestern University Law Review 149-171 (1978).

After identifying retribution as the goal of the California Uniform Determinate Sentence Act, the author concludes that determinate sentencing may not be beneficial for either inmates or society.

123. "Contemporary Sentencing Proposals (Condensation of the Proceedings of a Seminar Held at the School of Criminal Justice, Albany, New York, 1975)" 11 Criminal Law Bulletin 555-586 (September-October 1975).

The article includes thirteen proposals for sentencing reform. The principle of just desert and legislatively controlled sentencing discretion are the major issues explored.

124. "Legislation: California's Determinate Sentencing Law Tied to Sharp Rise in Prison Commitments." 10 Criminal Justice Newsletter 1-3 (March 12, 1979).

This text addresses the impact of determinate sentencing by examining the increase in imprisonment and the reduction of sentencing disparity since enactment of the new determinate sentencing law in California.

125. "Note: Appellate Review of Sentences and the Need for a Reviewable Record." 1973 Duke Law Journal 1357-1376 (January 1973).

Federal cases demonstrating how appellate courts have developed techniques to avoid the rule against sentence review are discussed. The writer concludes that disclosure of the presentence report and a written statement of reasons for a sentence are necessary to ensure more uniform application of exceptions to the rule of non-reviewability.

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126. "Note: Appellate Review of Sentencing: A New Dialogue?" 45 University of Colorado Law Review 209-228 (Winter 1973).

The author examines McGee v. United States and the trial judge's reconsideration of the sentence upon remand in this note on sentencing problems.

127. "Note: Constitutional Law--Eighth Amendment--Appellate Sentence Review." 1976 Wisconsin Law Review 655-669 (1976).

This note discusses the concept and utilization of "proportionality analysis" in appellate review of sentences.

128. "Note: Criminal Procedure--The Use of the Fine as a Criminal Sanction in New Jersey: Some Suggested Improvements." 28 Rutgers Law Review 1184-1202 (Summer 1975).

The author proposes adoption of a "day fine" system in New Jersey. The amount of the fine would be determined by the offenders' employment status, family dependents and other related factors. Additionally, offenders could be sentenced to gratuitous labor.

129. "Note: Constitutionality of Statutes Permitting Increased Sentences for Habitual or Dangerous Criminals." 89 Harvard Law Review 356-386 (December 1975).

The concept of "two-tiered sentencing," a procedure which would allow sanctions beyond the ordinary statutory maximum for habitual or dangerous offenders, is analyzed to determine what constitutional safeguards for the procedure are necessary.

130. "Note: Creative Punishment: A Study of Effective Sentencing Alternatives." 14 Washburn Law Journal 57-75 (Winter 1975).

This note considers the multiple goals of and the various modes of sentencing. It presents a proposal for the adoption of "creative sentencing techniques" that would maximize the utilization of probation for non-violent offenders.

131. "Sentencing Provisions in Criminal Code Bill Criticized by American Bar Association." 2 Court Systems Digest 5-6 (May 1978).

The ABA suggests that sentencing procedures should emphasize alternatives to imprisonment.

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**END**