

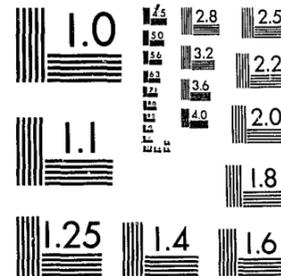
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COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA BOARD OF PROBATION AND PAROLE
A SPECIAL REPORT ON PAROLE PRACTICES AND REFORMS AND
RECOMMENDED POLICY CONSIDERATIONS

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Honorable Richard L. Thornburgh
Governor
Commonwealth of Pennsylvania
Harrisburg, Pennsylvania 17120

Dear Governor Thornburgh:

During our audit of the Pennsylvania Board of Probation and Parole, we became aware of various proposals to restructure Pennsylvania's probation and parole system. After reviewing these proposals and information on other states' criminal justice systems, we have prepared the following report on parole practices and reforms. The report concludes with numerous questions which must be considered before major parole reforms are enacted.

We hope that this report will aid in establishing an improved probation and parole system in the Commonwealth of Pennsylvania.



U.S. Department of Justice 78833
National Institute of Justice

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INTRODUCTION

In recent years prison sentencing policies and practices in Pennsylvania and other states have been challenged for a variety of reasons. The major challenges concern the inequities and disparities which occur in the sentencing of convicted offenders. As a result, a number of states have adopted regulations reducing or limiting judges' discretion in choosing the type and length of punishment for convicted offenders. Other recent reforms are the restriction or elimination of the indeterminate sentence and the restriction of the parole board's powers and duties.

The following presentation was initiated following the Governor's recent proposal to abolish parole, and the introduction of house bill 1820, which proposes to transfer the parole board from the Department of Justice to a new agency, the Department of Corrections.

The presentation points out proposed and actual changes in the following areas:

- Guidelines concerning judicial discretion in sentencing;
- Alternative approaches concerning specific, mandated punishments for particular offenses and types of offenders;
- The functions, powers, and duties of the parole board.

The scope of the presentation was limited by the availability of information concerning both Pennsylvania's criminal justice system and the reforms of other states.

HISTORY OF PAROLE

DEFINITION OF PAROLE

Although parole and probation are often considered as meaning the same, there are significant distinguishing features between the two, in both origin and current methods of practice. According to "Black's Law Dictionary," parole is defined as:

A conditional release; condition being that, if prisoner makes good, he will receive an absolute discharge from balance of sentence, but, if he does not, he will be returned to serve unexpired time.¹

Probation is defined as:

An act of grace and clemency which may be granted by the trial court to a seemingly deserving defendant whereby such defendant may escape the extreme rigors of the penalty imposed by law for the offense of which he stands convicted.²

Parole and probation also differ as to who makes the decision. Parole is almost always an administrative decision made by state or county parole boards, whereas probation is a decision of the court. The major similarity between parole and probation is that in both instances, information about an offender is gathered and presented to a decision-making authority which has the power to release the offender to the community under certain conditions.

Parole is based on three fundamentals:

- Remission of part of the sentence imposed by the court, based on certain conditions;
- An agreement between the paroling authority and the offender, infringement of which results in the offender's return to prison;
- Provisions for the supervision of offenders released on parole.

Probation is based on the judge's belief that the offender is not a risk to the community and can be released under supervision of the probation and parole board.

HISTORY OF PAROLE

The idea of conditional release was first recognized legally in the United States when the first "good time" law was passed in New York State in 1817. The parole system was established as an integral part of the institutional program with the 1876 opening of the Elmira Reformatory in New York. In the Elmira system, sentences were indeterminate; the length of the sentences was dependent on marks earned by the inmates for good behavior.

In Pennsylvania, the first "good time" law was passed in 1861. Under this law the wardens of the penitentiaries were required to keep records of infractions committed by the prisoners. The number of marks against a prisoner determined if a reduction in sentence was appropriate. In 1911, an act was passed extending parole powers to the Court of Quarter Sessions throughout the state. This act gave the criminal courts the power to parole and recommit for parole violations offenders sentenced to the county prisons.

The indeterminate sentence idea received new impetus in 1913 when the State Industrial Home for Women at Muncy was established. The act governing this institution called for the imposition of a general sentence on all offenders incarcerated there. In 1923, the Ludlow Act was passed governing the sentencing of offenders. This act required the courts to set a minimum and maximum time for sentences. The minimum could not exceed half the maximum, and the maximum could not exceed that imposed by the statutes for the crime.

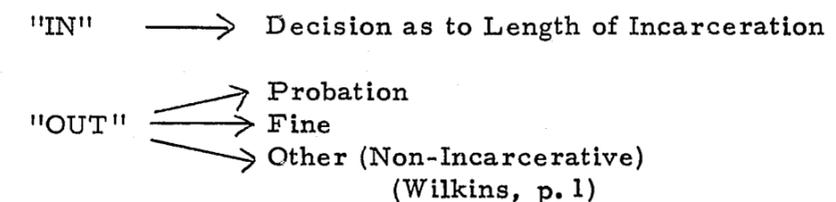
Although the acts cited above provided for the release of prisoners prior to the expiration of their sentence, no provisions were made for the supervision of prisoners so released. In 1925, the legislature determined that releasing prisoners on parole would serve no purpose unless those released were given supervision and guidance toward an intelligent readjustment to society. Based on a recommendation of the Parole Commission, which was established to study the problems of parole, an act was passed in 1929 creating the State Bureau of Parole Supervision under the authority of the Board of Pardons. This act transferred parole powers from the Court of Quarter Sessions to the Bureau of Parole Supervision, brought under one system the supervision of parolees, and standardized the procedures of release. This act was followed by the Parole Act of 1941, which created an independent Board of Parole and established a system of unified parole services.

In recent years there has been a growing concern in the United States over the sentencing of convicted offenders. As pointed out in "Sentencing Guidelines : Structuring Judicial Discretion" by Leslie T. Wilkins, the judicial system has been criticized for disparities in sentencing and a lack of effectiveness of the goals and philosophy of punishment.³ Judges have had almost unlimited discretion in determining the type of punishment to be imposed on offenders. The use of indeterminate sentencing has given correctional officials broad discretion in setting the length of incarceration for convicted offenders. Although indeterminate sentencing was instituted to maximize the offender's potential rehabilitation, a number of states have enacted legislation which drastically limits the discretion of judges and correctional officials in determining the punishment of convicted offenders. In some states, indeterminate sentencing has been eliminated.

Sentencing reforms have arisen from several objectives of the correctional system:

- "Just deserts" strategy - a desire to insure that the severity of the punishment is commensurate with the seriousness of the crime;
- Incapacitation strategy - a desire to insure that serious or dangerous offenders are prevented from committing future crimes;
- Deterrent strategy - a desire to discourage both offenders and nonoffenders from committing future crimes.

After an offender has been convicted, the first decision to be made is whether or not to incarcerate the offender. If incarceration is elected, the next decision concerns the length of the offender's sentence. The sentencing decision may be diagrammed as follows:



ALTERNATIVE APPROACHES TO PAROLE REFORM (Continued)

Since no two offenses or offenders are the same, what may be an appropriate sentence for one offender may be a lenient or an extreme sentence for another. However, when similar offenders convicted of similar offenses receive different sentences, there is disparity (Wilkins, p. 1).

APPROACHES TO LIMITING JUDICIAL DISCRETION

Several approaches to limiting judicial discretion in deciding the incarceration of offenders and the length of sentences are described below:

Appellate Review

This approach reduces disparity in sentences through the development of a common law of sentencing. Lower courts would follow an explicit statement of court policy to determine an appropriate sentence for each case. For the process to be effective, it must be available to both the defense and the prosecution, and sentences must be subject to increase as well as decrease by the higher court (Wilkins, p. 2).

Councils

The council approach involves a sharing of the sentencing decision among three judges, or appointing two judges as advisors to a third judge, who would maintain individual responsibility for sentencing decisions. This concept attempts to make use of the accumulation of judicial experience. The greatest value of the council may be in deciding unusual cases. The drawback to this approach is the cost of having three judges performing the work that one judge currently performs (Wilkins, p. 2).

Flat-Time

The flat-time concept allows the judge to choose between probation and imprisonment, but curtails judicial discretion in setting the length of sentences. Once a judge elects to incarcerate the offender, the judge is then bound to follow either of two penalty scales - one for the typical offender and the other for the especially dangerous or repeat offender. For example, if a person is convicted of armed robbery, the sentence could vary from three to seven years for the typical offender to nine to 11 years for the dangerous or repeat offender. The question on this approach is whether aggravating or mitigating circumstances will be considered to make the sentencing process more equitable (Wilkins, p. 3).

ALTERNATIVE APPROACHES TO PAROLE REFORM (Continued)

APPROACHES TO LIMITING JUDICIAL DISCRETION (Continued)

Mandatory Sentencing

The mandatory minimum imprisonment concept, which has been advocated by many correctional specialists and public officials, deals with a limited number of offenders and a limited range of offenses. Under such a system, a sentence can be set anywhere within a broad range established by mandatory minimum terms and statutory maximums. However, because the system is limited, the majority of convicted offenders would be unaffected (Wilkins, p. 4).

Presumptive Sentencing

This proposal has several variants. The most frequently mentioned form provides for the legislature to specify certain sentences for each crime. However, if a judge finds that extraordinary circumstances exist, a harsher or more lenient sentence may be imposed upon the judge's submission of written justification for the deviation.

There are three arguments against legislatively imposed sentences:

- Once legislatively fixed sentences have been established, they remain fixed for many years. When changes do occur, they may take the form of overreactions. An effective criminal justice system requires a sentencing agency to be flexible enough to change with the times.
- Because the legislature is far removed from the actual crimes and offenders, it is difficult for the legislature to determine appropriate sentences.
- Judicial officials would have little input in the formulation of the sentencing policies (Wilkins, p. 4).

For presumptive sentencing to be effective, strict guidelines for the sentencing and early release of offenders must be established.

"ABOLISH PAROLE?"

In September 1978, a report entitled "Abolish Parole?" by Andrew von Hirsch and Kathleen J. Hanrahan⁴ was submitted to the National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Administration, U.S. Department of Justice. The report concludes that parole should not be continued in its present form. The authors of the report made the following recommendations:

- . Instead of basing release decisions on rehabilitation or incapacitation considerations, decisions should be based on explicit standards governing the duration of confinement. Those standards should be based on the just deserts concept.
- . The offender's release date should be decided shortly after sentencing instead of deferring the release decision until well into the offender's term.
- . Parolees suspected of committing a new crime should be prosecuted as any other suspect. Instead, the parolee is often charged with parole violation in which the maximum duration of reimprisonment depends not on the character of the new offense, but on the amount of the parolee's unexpired sentence. This may result in a disproportionately harsh penalty in the case of a minor violation or in an insufficient period of reconfinement for a major crime.
- . Supervision of parolees should be eliminated, or if it is retained, it should be reduced substantially. Sanctions for noncompliance with parole conditions should be decreased, and the program should be carefully examined for effectiveness and cost.
- . Any effort to phase out parole should be undertaken gradually and with specific safeguards. Caution should be exercised when considering abolishing the parole board, since the board could assist in carrying out the reforms in the system.

"ABOLISH PAROLE?" (Continued)

The authors of the report stressed that their recommendations are based on two major assumptions:

- . There are to be explicit standards governing the duration of confinement.
- . These standards do not prescribe lengthy confinements, except for grave offenses (Von Hirsch, p. 38).

Four Concepts of Sentencing

There are four concepts that underlie sentencing. Rehabilitation, incapacitation, and deterrence have been the traditional objectives for reducing crime. The fourth, advocated in "Abolish Parole?", is the "commensurate just desert" concept, which takes into account the blameworthiness of the offender. The severity of the punishment is commensurate with the seriousness of the offender's criminal conduct (Von Hirsch, p. 3).

Features of Just Deserts

The authors of "Abolish Parole?" favor the just deserts concept because it satisfies the requirement of justice that offenders be punished in relationship to their crimes. Such a system includes the following features:

- . Penalties would be graded, by a sentencing commission, according to the gravity of the offender's criminal conduct. Deviations from prescribed penalties would be permitted by the courts only in instances in which the degree of the offender's capability and the degree of harmfulness of his conduct are greater than or less than what is characteristic of that kind of criminal conduct.
- . The severe penalty of imprisonment would be prescribed only for serious crimes; for example, crimes of actual or threatened violence and major white collar crimes. Penalties less severe than imprisonment would be prescribed for all other crimes (Von Hirsch, p. 5).

In order to limit discretion in sentencing, the just deserts concept would use presumptive sentences. The authors of the report believe that setting standards for sentencing is the first step towards bringing order into the sentencing system (Von Hirsch, p. 7).

"ABOLISH PAROLE?" (Continued)

Early Release Decision

The authors of the report advocate notifying the offender of his release date at the time he is sentenced (Von Hirsch, p. 13). However, they believe that the actual release date could be adjusted upward or downward during the offender's imprisonment based on the following prison conditions:

- Overcrowding - The most serious problem facing prisons is overcrowding (Von Hirsch, p. 14). As the number of offenders convicted of serious crimes increases, the prison population increases. Prisons will therefore have to be expanded. The costs of construction and operation for these prisons will have to be considered. The authors of "Abolish Parole?" believe it is proper to adjust prison terms to alleviate overcrowding (Von Hirsch, p. 14).

However, such actions should be governed by explicit guidelines. Although it is commonly believed that parole boards respond to overcrowding by releasing more prisoners as the prison population grows, the authors of the report state that evidence on this issue is scarce. It appears that the parole board's responsiveness to overcrowding varies by jurisdiction (Von Hirsch, p. 14).

- Discipline - To maintain order in prisons, sanctions must be imposed on prisoners who violate the rules. Although denying parole to prisoners who do not abide by the rules of the prison is one way of providing sanctions (Von Hirsch, p. 15), the authors of "Abolish Parole?" recommend two alternatives:

- Offenders who commit acts of violence in prison could be tried and sentenced to additional terms of imprisonment.

- The duration of confinement could be adjusted through a hearing conducted by an administrative fact finder - either the parole board or a special disciplinary board (Von Hirsch, p. 15).

"ABOLISH PAROLE?" (Continued)

Parole Supervision

The authors of the report believe that if the just deserts concept is strictly adhered to, supervision of parolees would not be required. However, the authors point out that even if parole supervision is abolished or restricted, there remains the question of providing services to offenders after their release. Many of the prisoners' links to the outside world have been severed through imprisonment. Furlough and work-release programs may re-establish those links and ease the transition from prison to society (Von Hirsch, pp. 25-26).

Implementing the Reforms

The authors of "Abolish Parole?" make the following suggestions for implementing parole reforms:

- The legislature as standard setter - This approach suggests that the legislature delegate its authority to a variety of specialized agencies. However, the legislature would retain the power to overrule the agencies' regulations or revoke the agencies' rule-making authority, thus assuring the legislature's supremacy (Von Hirsch, p. 30).

- Sentencing commission - This approach calls for the creation of a specialized rule-making commission that would set the standards for the length of incarceration (Von Hirsch, p. 31). Such an approach has several advantages:

- Since the commission's sole function would be to set standards, it could devote its full care and attention to the task.

- The commission could modify the standards based on experience.

- A nonelective commission may be better insulated from political pressure (Von Hirsch, p. 31).

"ABOLISH PAROLE?" (Continued)

Implementing the Reforms (Continued)

Under this system, the trial judge would impose sentences pursuant to the commission's standards (Von Hirsch, p. 32). All judges' decisions would be subject to review by the commission. If parole were abolished, the sentence imposed by the judge would represent the time to be actually served.

The parole board as standard setter of "dual time" - In this system, judges would continue to set a sentence and the parole board would continue to release prisoners after a portion of their sentence has been served. However, the parole board would be required to set standards for release without supervision, based on the seriousness of the crime, and to set release dates early (Von Hirsch, p. 32).

The parole board as standard setter of "single time" - This system would give the parole board the power to specify the length of imprisonment. The judge would decide only if the offender would go to prison or receive some other sentence. If a judge decides to incarcerate an offender, it would then be the board's responsibility to determine the length of the sentence. The board would be required to set two dates: 1) the date of expiration of the maximum sentence, and 2) the date of actual release from imprisonment (Von Hirsch, p. 36).

The authors of "Abolish Parole?" believe that the decision-making process could best be achieved by utilizing the parole board as standard setter of dual time or single time (Von Hirsch, pp. 32-33).

PAROLE REFORM LEGISLATION

Although the creation of definite sentencing structures is the most dramatic change in parole systems, legislation restricting parole authority is the most common reform.

Seventeen states require mandatory periods of incarceration for certain offenses. In these states, offenders are eligible for parole only after the legislatively set term of imprisonment has been served. The major criterion for imposition of the mandatory minimum sentence is the use of a firearm during the commission of an offense.

Seven states passed legislation increasing the amount of time by which a sentence can be reduced for good conduct. Lowering the maximum term will result in an earlier release date.

Four states have attempted to structure release discretion by specifying guidelines under which the parole authority must operate in making release determinations.

The following information on states that have enacted legislation eliminating or reducing parole or judicial discretion and sentencing was obtained from "Changes in Sentencing and Parole Decision Making: 1976-78," a publication of the National Parole Institutes and Parole Policy Seminars.⁵

Alaska

In 1978, Alaska established a presumptive sentencing system which sets specific penalties for four categories of felonies. As determined by the sentencing judge, mitigating and aggravating circumstances can provide a basis for limited variations from the penalties. Although a system of mandatory community supervision has been retained for offenders after they have completed their prison sentence, discretionary parole release has been abolished for offenders who were convicted of a felony in the previous five years. Also retained in the legislation is parole release and supervision for persons serving very long sentences and those not convicted of a felony in the previous five years.

Arizona

In 1977, Arizona adopted a new code classification providing for presumptive sentencing based on a system of felony classification. Offenders who did not use a weapon or cause serious harm and had been convicted of their first felony offense were not included in the new code. Under the new system the presumptive

PAROLE REFORM LEGISLATION (Continued)

Arizona (Continued)

terms can be increased or decreased by the sentencing judge based on aggravating or mitigating circumstances. Although parole release was not eliminated, an offender sentenced to prison must serve one-half of his sentence before he is eligible for parole.

California

California abolished discretionary parole release in 1976 for all offenders except those sentenced to life imprisonment. The sentencing judge imposes a legislatively prescribed term, which can be raised or lowered by one year because of aggravating or mitigating circumstances. In conjunction with the presumptive terms, offenders may earn good-time credits for early release. Upon release, offenders are supervised for three years. Offenders released from life sentences are supervised for five years. However, if parole is revoked, offenders may be reincarcerated for up to an additional six months. Community release boards were created to decide on matters such as revocation of mandatory release, to be responsible for reviewing all terms set by the court, and to make recommendations to the court as to modifying a length of term. After sentencing, the court has independent power to revise a sentence downward up to 120 days after sentencing.

Colorado

Colorado changed its penal code in 1977 to abolish parole. A presumptive sentence structure was created in which the sentencing judge may deviate from the legislatively fixed sentence for each class of offense by up to 20 percent for aggravating or mitigating circumstances. Sentences are reduced by 10 days a month, with the possibility of up to two additional months a year for outstanding progress in work, group living, attitude changes, and the goals established by the state's diagnostic program. One year of parole supervision was provided as a necessary part of the presumptive sentence structure. The parole board is also authorized to revoke parole for violations of parole conditions.

Illinois

In 1977, Illinois ended parole for all offenders except those convicted and sentenced prior to the new law. Under the new system, legislatively determined guidelines have been established. Judges are required to set sentences within the limits, but may deviate from the limits for more serious offenses. Supervised release depends on the offense and length of sentence imposed.

PAROLE REFORM LEGISLATION (Continued)

Indiana

In Indiana, a 1976 statute abolished parole for all offenders except those sentenced to life imprisonment. Under this system, the sentencing judge imposes a legislatively prescribed term for the category of offense committed. However, the prescribed term may be raised or lowered by an amount prescribed by law for aggravating or mitigating circumstances. The courts may reduce or suspend a sentence at any time up to 180 days. The system allows good-time credit to be earned according to the offender's classification:

- . Class 1 - one day of good time for each day served
- . Class 2 - one day of good time for every two days served
- . Class 3 - no good time

At the expiration of the offender's sentence, minus time credited for good behavior, the offender is released to one year of parole supervision. However, if parole is revoked during the year of supervision, the offender is returned to custody to serve the remainder of his term, minus good time, but may be reparaoled at any time before he reaches the new mandatory release date.

Maine

In 1976, Maine abolished both parole release and supervision. The sentencing judge now imposes a definite term up to the statutory maximum provided for the class of offense committed. Sentences of imprisonment for one year or longer are only tentative; under the new law the correctional department may file a petition for resentencing after the offender has served one year. The court may resentence the offender to any term not exceeding the original sentence. The correctional department's evaluation of the prisoner's progress toward a noncriminal lifestyle is the basis for any petition. Therefore, an early release may be granted, but the release power does not rest with the parole board.

Minnesota

The Minnesota legislature passed a bill in 1978 providing for a sentencing guidelines commission, whose function is to develop a set of guidelines to structure judicial sentencing discretion. The state's correctional agency was retained, but its power over release was terminated except for the authority to release offenders to a liberally defined work release status. Under the new law, the correctional agency will administer a postinstitutional community supervision program and grant work release status to offenders who have completed one-half of their term, minus time for good behavior. However, the agency will continue to exercise release authority over offenders sentenced prior to May 1980, the new law's effective date.

PAROLE REFORM LEGISLATION (Continued)

New Mexico

Under a 1978 law, parole for all offenders except those serving life sentences was abolished. The sentencing judge sets the legislatively prescribed minimum term for the offense committed. However, the sentence may be increased by specific amounts for use of a deadly weapon, prior felony convictions, and classification as a habitual offender. Offenders released after serving their sentence must be supervised for two years; offenders paroled from life terms must be supervised for five years.

Oregon

Oregon passed a law in 1977 requiring the parole board to consult with a joint advisory commission of judges and parole officials to set standards establishing the amount of time offenders must serve in prison before being released on parole. The law requires the board's standards to be designed to achieve the following objectives:

- The punishment should be commensurate with the seriousness of the crime.
- The goals of deterrence and incapacitation should be pursued only when they are consistent with the goal of commensurate deserts.
- Primary weight should be given to the seriousness of offender's present offense and his record of prior offenses.

Oregon's law also requires the parole board to inform the offender of his release date shortly after he enters prison. This date can be changed only for serious misconduct in prison. Under the new law, parole supervision is retained. The parole board has adopted guidelines which regulate the duration of supervision and the severity of revocation sanctions. The board currently discharges parolees after they have served a period of supervision equal to their term of imprisonment. Depending on the seriousness of the original offense, technical violators of parole may be reimprisoned for four to six months or six to 10 months.

PENNSYLVANIA'S BOARD OF PROBATION AND PAROLE

POWERS, DUTIES, AND RESPONSIBILITIES OF THE BOARD

The Pennsylvania Board of Probation and Parole is an independent correctional agency responsible directly to the governor. The board is charged with protecting the public by supervising and imposing sanctions on the public offenders under its jurisdiction in order to help the offenders modify their behavior into socially acceptable lifestyles. The board restricts the offenders' liberty in a manner which is fair, individualized, and in accordance with due process requirements. The board believes that past offenders who are sufficiently motivated can change their patterns of behavior and become law-abiding citizens of the commonwealth if they are given the opportunity and goal-oriented direction. However, if the board's goals are not being met and a conflict arises between the needs of the offenders and the protection of the community, parole revocation proceedings can be initiated in accordance with constitutional and court-mandated due process rights.

The Board of Probation and Parole is empowered with the following statutory functions:

- Authority to grant parole and reparole, commit and recommit for violation of parole, and to discharge from parole, offenders who have received a maximum sentence of two years or more;
- Supervision of such paroled offenders;
- The securing of an effective application of the adult probation system in all of the courts of the commonwealth, and the enforcement of the Probation and Parole Act as it relates to adult probation in the commonwealth;
- The conduct of presentence investigations and the supervision of special probationers and parolees at the direction of the county courts;
- The establishment and implementation of statewide standards for county adult probation departments, and the administration of a financial assistance program in the form of the grant-in-aid allocation to the counties for improvement of their adult probation services;

PENNSYLVANIA'S BOARD OF PROBATION AND PAROLE (Continued)

POWERS, DUTIES, AND RESPONSIBILITIES OF THE BOARD (Continued)

- . Completion of investigations for the Board of Pardons, upon its request; and,
- . Supervision of interstate compact cases, which involve parolees and probationers from other states who are granted permission by the board to live and work in Pennsylvania, provided they abide by the board's conditions.

Section 331.21 of Purdon's Pennsylvania Statutes states that the board can parole any prisoner after the expiration of the minimum term of imprisonment. Two exceptions to parole are offenders sentenced to the death penalty and offenders sentenced to life imprisonment. The sentences of these offenders must be commuted to a definite term before parole can be granted.

As provided for in the Parole Act, the board consists of five members appointed by the governor for six-year staggered terms. The governor designates one member to serve as chairman. As of June 30, 1979 the board's personnel complement totaled 537 employes. The board's operations are administered in the central office in Harrisburg, 10 district offices, and 16 suboffices.

A majority vote of the board is needed to grant or deny parole. Following are some of the most important factors the board considers when making parole decisions:

- . The risk to the community from the offenders' release;
- . The nature of the offense and the offenders' past criminal history;
- . The potential for the offender to obtain employment;
- . The offenders' emotional and family stability;
- . The offenders' adjustment to prison.

In addition to the above criteria, the board takes into consideration the recommendations of the court, prosecuting attorneys, local police officials, institutional and parole staff, as well as personal interviews with the offenders.

PENNSYLVANIA'S BOARD OF PROBATION AND PAROLE (Continued)

POWERS, DUTIES, AND RESPONSIBILITIES OF THE BOARD (Continued)

When granting parole, the board has to decide if the prisoner would benefit by being returned to society under parole supervision and if the interests of the commonwealth would be injured. If the board decides that the release of the prisoner would be incompatible with the welfare of society, parole is denied.

In addition to granting parole and releasing from parole individuals who have fulfilled their sentences in compliance with the conditions of their parole, the board may also revoke the parole of individuals who commit new crimes and those who violate conditions of parole.

Parolees must comply with the following conditions or their parole is subject to revocation:

- . Report regularly to their parole agent.
- . Comply with all municipal, county, state, and federal laws, as well as the Vehicle and Liquor codes.
- . Notify their parole agent within 72 hours of any arrest.
- . Make every effort to obtain and maintain employment and support any dependents.
- . Remain in the district of the commonwealth to which they have been paroled, unless granted written permission by their parole agent to travel.
- . Abstain from unlawful possession or sale of narcotics and dangerous drugs; abstain from the use of controlled substances without a prescription.
- . Refrain from owning or possessing any firearm or other weapon.
- . Refrain from overt behavior which threatens themselves or others.
- . Comply with any special conditions imposed by the board.

PENNSYLVANIA'S BOARD OF PROBATION AND PAROLE (Continued)

POWERS, DUTIES, AND RESPONSIBILITIES OF THE BOARD (Continued)

The Pennsylvania Board of Probation and Parole supervised approximately 14,800 cases in the 1977-78 fiscal year and approximately 15,000 cases in the 1978-79 fiscal year. The board received 2,744 arrest reports in the 1977-78 fiscal year and 2,275 in the 1978-79 fiscal year. Arrest reports can be for summary, misdemeanor, or felony offenses. Arrest reports for technical violators can be for violation of parole conditions. It should be noted that arrest reports are for both probationers and parolees, while the program failures in Table A are for parolees only.

TABLE A⁶

Cumulative Outcome and Recidivism Rate for Pennsylvania Male Parolees Released Between 1970 and 1976

Follow-Up Period Release Years	1-Year Outcome		2-Year Outcome		3-Year Outcome	
	1970 -	1976	1970 -	1975	1970 -	1974
<u>Program Survivors -</u>						
Continued on Parole or Discharged	6,323	77%	3,669	66%	1,733	61%
<u>Program Failures -</u>						
Absconders	481	6%	349	6%	211	7%
<u>Returned to Prison:</u>						
Technical Violators	679	8%	746	14%	525	18%
Convicted Violators	780	9%	779	14%	387	14%
Total Returned	1,459	17%	1,525	28%	912	32%
Total Failures	1,940	23%	1,874	34%	1,123	39%
Total Parolees Sampled by the Board	8,263	100%	5,543	100%	2,856	100%

PENNSYLVANIA'S BOARD OF PROBATION AND PAROLE (Continued)

POWERS, DUTIES, AND RESPONSIBILITIES OF THE BOARD (Continued)

The data for the one-year outcome illustrates that 77% of the total parolees followed over the seven-year period were continued on or discharged from parole without violating the conditions of parole or being arrested for any new criminal acts.

Absconders represent 6% of the total parolees followed. An absconder is an individual who has either changed his address without notifying his parole officer and cannot be located, or is on the run or hiding in or out of the state. Arrest warrants are issued for absconders. When found, absconders are returned to prison as either technical or criminal violators.

The offenders returned to prison, which represent 17% of the one-year study, are broken down into two recidivism classifications:

- Technical violations (8%) - These offenses include the violation of parole rules, regulations, and special conditions imposed by the parole board, and convictions in minor courts. Technical violators may or may not be returned to prison. If they are, they are given credit for the time they have served on parole in good standing.
- Convictions of new offenses (9%) - These offenses include commission of new crimes, for which the offenders have been tried and convicted. For those offenders who are reimprisoned, the parole board is authorized to determine the amount of time, in addition to the court sentence, the parolees must serve before they are eligible again for parole consideration.

In compliance with the U.S. Supreme Court decision in *Morrisey vs. Brewer*, June 29, 1972, granting hearings with full procedural safeguards to parolees prior to an action to revoke parole, the parole board has established a series of hearings to be held when a parolee has committed a new offense or when an agent recommends revocation of parole for a technical violation. The hearings are conducted by hearing officers designated by the board in the state, county, or local correctional institution nearest to the area of the alleged violation. At the hearing, the parolees are permitted to have an attorney, call witnesses, and cross-examine witnesses against them.

PENNSYLVANIA'S PAROLE SYSTEM

Pennsylvania's correctional system employs two forms of sentencing: rehabilitation-oriented and indeterminate. Rehabilitation-oriented sentencing attempts to change an offender's character, habits, or behavioral patterns so as to diminish his criminal tendencies. Rehabilitation includes psychiatric therapy, counseling, vocational training, and behavior modification. Indeterminate sentencing gives the judge considerable discretion in deciding the length of an offender's imprisonment. Under this system, the offender's release date is not decided until some time during the period of confinement.

Judges in Pennsylvania have several options in sentencing offenders:

- . No penalty
- . Fine
- . Probation
- . Partial confinement
- . Total confinement

Sentences for imprisonment are served either in the state prison system, which is operated by the Pennsylvania Bureau of Corrections, or in county jails.

When a judge sentences an offender to prison, he sets a minimum sentence and a maximum sentence. Although the offender must serve no less than the minimum and no more than the maximum, the actual length of confinement is determined by the Board of Probation and Parole. The board has jurisdiction over all offenders sentenced to two or more years. When an offender is granted parole, he is supervised until his sentence is completed. If an offender serves his entire sentence in prison, the parole board does not have supervisory responsibility after the offender's release.

In order to assure greater equity in sentencing, the Pennsylvania General Assembly passed act 319 in November 1978, creating a sentencing commission to issue sentencing guidelines. The commission is composed of 11 members: two appointed by the speaker of the house, two appointed by the president of the senate, four appointed by the chief justice of the state Supreme Court, and three appointed by the governor. The governor's appointments are to be a district attorney, a defense attorney or public defender, and a professor of law or a criminologist.

PENNSYLVANIA'S PAROLE SYSTEM (Continued)

The sentencing commission has the powers and duties to:

- . Establish a research and development program within the commission to serve as an information center on commonwealth sentencing practices and to assist commonwealth courts and agencies in the development of sound sentencing practices.
- . Compile and publish data from studies and empirical evidence from agencies regarding sentencing.
- . Make recommendations to the General Assembly concerning modification to or enactment of sentencing statutes.
- . Adopt guidelines for sentencing within the limits established by law.
- . Report annually on its activities.

Act 319 also provides for review of sentences by the Superior Court, and requires judges to state in writing their reasons for sentences imposed on offenders convicted of misdemeanors and felonies.

In March 1979, the parole board issued a policy that allows a psychiatric or psychological evaluation to be requested prior to parole consideration for offenders incarcerated at state prisons. The following offenders are included in the above policy:

- . Offenders convicted of murder;
- . Offenders convicted of forcible rape or child molestation;
- . Repeat offenders;
- . Offenders with serious personality disorders;
- . Offenders returned to state prisons from mental hospitals;
- . Offenders receiving psychotropic medication.

PENNSYLVANIA PAROLE SYSTEM (Continued)

In August 1979, the parole board established presumptive ranges for the amount of time to be served by a parolee who has been convicted of a new offense. These ranges were adopted to structure the board's discretion while allowing for mitigating and aggravating circumstances to be considered in the final decision.

It is important to note that the parole board has no control over the demand for supervision services by county courts. The Parole Act provides that sentencing judges may assign special probation and parole cases to the parole board for supervision; the board has no authority to limit or refuse the referral of such cases. County referral cases under the board's supervision has increased from 1,241 in 1970 to 4,351 as of January 1979. These cases represent approximately 30% of the board's total caseload.

CARNEGIE-MELLON UNIVERSITY STUDY ON PENNSYLVANIA SENTENCING LAWS

Senate bill 995, a mandatory sentencing legislation based on the premise that repeat offenders should receive a determinate sentence, was introduced in 1976. The bill also proposed that sentences could be increased if a weapon or violence was used in the commission of a crime. Researchers from the Urban Studies Institute of Carnegie-Mellon University, Pittsburgh, Pennsylvania, studied the possible effects of the senate bill, and in 1979 released a report entitled "The Impact of New Sentencing Laws on State Prison Populations in Pennsylvania, Final Report."⁷

The researchers found that complete implementation of the bill would ultimately result in a 50% increase in prison populations (C-MU, p. ii). Most of this increase would consist of the least serious offenders. Such an increase in prison populations would necessitate a near doubling of prison capacity, with associated construction costs of over \$300 million (C-MU, p. 95). The researchers also suggest that judges who find the mandatory minimum sentences too stiff might respond by acquitting many offenders, which would defeat the intent of the legislation (C-MU, p. iii).

CONCLUSION

The criminal justice system is composed of law enforcement agencies, courts, and correctional agencies. Correctional agencies involve incarceration, probation, parole, and community-based programs for offenders. In the United States, there is a growing concern over the practices and goals that shape the sentencing function of the system. The effectiveness of the criminal justice system in reducing crime and limiting disparities in sentencing structure has also been questioned. In recent years, several states, including Pennsylvania, have attempted to improve the quality and effectiveness of the criminal justice system.

Recently the Governor and the legislature introduced proposals whereby the Bureau of Corrections and the Board of Probation and Parole would be combined and transferred to a cabinet-level position. The proposals attempt to instill greater cooperation and coordination in the system of corrections and parole decision making. It should be noted, however, that this concept is not new. Senate bill 132 of 1975 proposed the creation of a Department of Correction, which would have combined the Bureau of Corrections and the Board of Probation and Parole under a cabinet-level position.

SENTENCING GUIDELINES

To provide more equity in the system, guidelines and goals have been adopted by or are pending in various states to eliminate or modify disparity and discretion. In establishing guidelines, the goals are being shifted from rehabilitation to punishment, in which the severity of the crime and the offender's past criminal record are the determining factors. The use of guidelines to eliminate sentencing disparity and discretion has gained increased acceptance not only in Pennsylvania but also in other states. The enactment of guidelines to limit or eliminate judicial discretion and sentencing disparity has taken two major forms:

- The establishment of a sentencing commission composed of experts who are responsible for developing and recommending a system of guidelines for the legislature to use as a basis for future legislative changes.
- The establishment of sentencing guidelines by the judiciary according to jurisdiction and subject to appellate review.

CONCLUSION (Continued)

SENTENCING GUIDELINES (Continued)

Sentencing guidelines would provide certain advantages and disadvantages. Some advantages are:

- Guidelines may provide more equity and less variation, speed up the decision making process, and alleviate court delays and backlogs.
- Judges will be able to rely on guidelines instead of getting on-the-job experience.
- With the institution of guidelines, attorneys will no longer waste time trying to find a judge who may be more lenient than another.

Some disadvantages are:

- Legislative change is usually a slow process which can lead to over- or underreaction.
- Judicial disparity could be controlled on a regional level and not on a statewide basis since each appellate review group would be restricted to its jurisdictional boundaries.

Before extensive sentencing reform legislation is enacted, we believe that the legislature should consider the following questions:

- Should Pennsylvania's Commission on Sentencing have independent powers in establishing sentencing policies, or should the legislature have the ultimate authority to institute proposed changes?
- Would less disparity in sentencing exist if judges were appointed on a merit system rather than being elected to the bench?
- Does an individual who pleads guilty receive a lesser sentence than an individual who commits the same type of offense but elects to go through the court process?
- If mandatory minimum sentences by classification of offender are established, is the commonwealth able to meet the financial responsibilities of prison renovation and new construction due to overcrowding?

CONCLUSION (Continued)

PENNSYLVANIA BOARD OF PROBATION AND PAROLE

The exercise of discretionary power by judges and the parole board is the major questionable issue in the administration of the criminal justice system. In an effort to provide more consistency without removing individual case consideration, criminal justice officials are currently modifying the use of parole discretion. Parole authorities are adopting guidelines that provide controls on discretion but also provide enough flexibility to allow deviation because of aggravating or mitigating circumstances in particular cases.

The Pennsylvania Board of Probation and Parole has limited its discretionary powers with two policies:

- Offenders must undergo a psychiatric or psychological evaluation before being considered for parole.
- Presumptive ranges of reimprisonment have been established for offenders convicted of new crimes while on parole.

Based on our review we recommend that the legislature consider the following questions before enacting major parole reform legislation:

- Since the offenders who serve their maximum sentence in prison are usually those who have been convicted of such grave offenses as murder, rape, and other violent crimes, should a certain period of supervision be mandatory after these offenders are released from prison?
- Should the parole board be granted the power to limit or refuse county probation and parole supervision cases assigned by county judges? If so, should the counties receive additional aid in the form of increased grant-in-aid funds to operate effectively?
- Should a unanimous vote of all board members be required to grant parole, instead of a majority vote?

CONCLUSION (Continued)

PENNSYLVANIA BOARD OF PROBATION AND PAROLE (Continued)

- If parole is abolished, would the Bureau of Corrections determine early release based on good-time credits? If so, would discretion merely be shifted from the parole board to prison authorities?
- If parole is abolished, would the supervision of offenders released from prison just be shifted to the Bureau of Corrections in the form of additional furloughs and prerelease programs?
- Should the Bureau of Corrections have control of all county jails and prisons?
- Although the Bureau of Corrections' objective is to modify criminal behavior with socially acceptable behavior, does the bureau have adequate correctional facilities to train and educate offenders?
- What will happen to individuals currently on parole if parole supervision in its present form is abolished?
- What will happen to offenders currently in prison if parole in its present form is abolished?
- Will putting an offender in prison for a mandatory sentence, then releasing him after the term without supervision reduce recidivism?
- Although there is a need for more equity in sentencing, does the problem of recidivism rest only with the parole board? Would greater equity in the sentencing system better enable the parole board to release offenders more consistently?

It is our hope that the above presentation on parole and sentencing practices will aid the Pennsylvania Board of Probation and Parole, the Pennsylvania Legislature, and the Governor's Office when considering future legislation or changes in the sentencing structure and the overall parole system in Pennsylvania.

APPENDIX

The following tables illustrate the various responsibilities and activities of the commonwealth concerning the jurisdiction, incarceration, granting of parole, recidivism rates, and employment rates of parolees and probationers in Pennsylvania. They are presented solely for the purpose of supplemental information.

TABLE A-1⁸

Adult Offenders Currently Under Probation and Parole Supervision in Pennsylvania

Calendar Year	State Jurisdiction	County Jurisdiction	Total
1978	14,500	58,500	73,000
1976	13,400	40,600	54,000

TABLE A-2⁹

Adult Offenders Incarcerated in State and Local Jails and Prisons

Calendar Year	Approximate Population	Average County Jail Stay	Average State Prison Stay
1978	14,000	82 days	2.2 years
1976	12,200	69 days	1.7 years

TABLE B¹⁰

The following table illustrates the number of cases of parole and reparole granted or refused:

Fiscal Year	Parole				Reparole			
	Granted	%	Refused	%	Granted	%	Refused	%
1977-1978	3,115	81.8	695	18.2	755	84.9	94	15.1
1976-1977	3,099	77.7	891	22.3	751	79.7	191	20.3
1975-1976	2,649	71.2	1,069	28.8	(Data Not Available)			
1974-1975	2,562	73.9	905	26.1	577	81.8	128	18.2

Of the inmates paroled, 75% are paroled after serving their minimum sentence.

APPENDIX (Continued)

TABLE C¹¹

The following chart illustrates the board's supervision of cases from July 1, 1974 to June 30, 1979.

Fiscal Year	Pennsylvania Parole Cases	Special Probation/ Parole Cases (County)	Other States Cases	Total Cases
1978-79	8,503	4,168	1,765	14,436
1977-78	8,417	4,554	1,779	14,750
1976-77	7,788	4,407	1,675	13,870
1975-76	7,120	4,421	1,521	13,062
1974-75	6,652	4,260	1,400	12,312

TABLE D¹²

The following chart illustrates the number of parolees returned to prison either as technical violators or convicted violators, and special probation revocations:

Fiscal Year	Convicted Parole Violators	Technical Violators	Special Probation Revocations
1976-77	469	260	180
1977-78	506	265	177
1978-79	572	346	163

TABLE E¹³
Arrest Reports

Fiscal Year	Parole			Probation			Total Both Categories
	Convicted Violators	Technical Violators	Total	Convicted Violators	Technical Violators	Total	
1977-78	2,193	551	2,744	1,264	237	1,501	4,245
1978-79	1,785	490	2,275	1,331	230	1,561	3,836
Total	3,978	1,041	5,019	2,595	467	3,062	8,081

APPENDIX (Continued)

TABLE F-1¹⁴

Employment of Offenders

Year Ended	Full-Time	Part-Time	Public Assistance	Other Support Sources
June 30, 1976	5,976	887	2,161	1,080 (Approx.)
June 30, 1975	5,366	622	1,782	710 (Approx.)

TABLE F-2¹⁵

Offenders Employed and Unemployed by District Office (Able to Work)
April 1978

District Office	Employed	Unemployed	Total
Allentown	1,034	181	1,215
Harrisburg	672	191	863
Williamsport	223	65	288
Erie	460	143	603
Chester	351	122	473
Scranton	355	126	481
Butler	353	145	498
Altoona	268	150	418
Philadelphia	1,361	1,246	2,607
Pittsburgh	939	902	1,841
Not Specified by District Office	7	1	8
Total	6,023	3,272	9,295

TABLE F-3¹⁶
Offenders Able and Unable to Work - Statewide

	April 1978	December 1976
Total Unable to Work	2,373	2,861
Total Able to Work	9,295	10,111
Total Dependent on Public Assistance (Able to Work)	2,114	2,594
Total Dependent on Public Assistance (Unable to Work)	456	265
Total Drawing Unemployment Compensation	399	552
Total Receiving Vocational Training	250	362
Total in General Education Program	280	215
Total in Board-Staffed Employment Program	923	-

APPENDIX (Continued)

Upon release from prison an ex-offender faces a variety of problems in making a successful readjustment to community life. An immediate concern to the board toward its rehabilitation-oriented goal is to help the ex-offenders obtain legitimate employment. For the period March to April 1978, approximately 65% of the clients able to work maintained full -or part-time employment. Those offenders who are unable to work include individuals who are absconders, hospitalized, retired, disabled, imprisoned, or are otherwise prevented from securing employment.

Based on the above data the board estimated the gross annual income of probationers and parolees for the 1978 year to be approximately \$65,000,000. In 1976, gross annual income was estimated at \$39,000,000, based on W-2 forms of employed clients.

FOOTNOTES

¹Henry Campbell Black, Black's Law Dictionary, 4th ed. (St. Paul: West Publishing Co., 1957), p. 1, 273.

²Ibid., p. 1, 367

³Leslie T. Wilkins and others, Sentencing Guidelines: Structuring Judicial Discretion (Albany: Criminal Justice Center, 1976), p. 1. Hereafter cited within the text.

⁴Andrew von Hirsch and Kathleen J. Hanrahan, Abolish Parole? (New York: Center for Policy Research, Inc., 1977). Hereafter cited within the text.

⁵Lawrence F. Travis, III and Vincent O'Leary, Changes in Sentencing and Parole Decision Making: 1976-78 (National Parole Institutes and Parole Policy Seminars), pp. 16-19.

⁶Chart reproduced from Pennsylvania Board of Probation and Parole, "1979-80 Budget Hearing Presentation for the House Appropriations Committee," p. 14.

⁷Wendy Bell and others, "The Impact of New Sentencing Laws on State Prison Populations in Pennsylvania, Final Report" (Pittsburgh: Carnegie-Mellon University, 1979). Hereafter cited within the text.

⁸Information obtained from Pennsylvania Board of Probation and Parole, "Report 1977-78," p. 6, and "Bi-Annual Report 75-76," p. 8.

⁹Ibid.

¹⁰Ibid., (1977-78, p. 7; 1975-76, p. 22).

¹¹Information obtained in part from Pennsylvania Board of Probation and Parole, "Report 1977-78," p. 20.

¹²Information obtained upon request from the Pennsylvania Board of Probation and Parole.

¹³Ibid.

FOOTNOTES (Continued)

¹⁴Chart reproduced from Pennsylvania Board of Probation and Parole, "Bi-Annual Report 1975-76," p. 22.

¹⁵Information obtained from Research and Statistical Division, Pennsylvania Board of Probation and Parole, "Employment, Occupation, and Earnings Survey for March and April of 1978," p. 6.

¹⁶Ibid., p. 3.

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