Report to the Colorado General Assembly:

INDEFINITE SENTENCING AND THE COLORADO CORRECTIONAL SYSTEM

COLORADO LEGISLATIVE COUNCIL

RESEARCH PUBLICATION NO. 139

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The Legislative Council, which is composed of five Senators, six Representatives, and the presiding officers of the two houses, serves as a continuing research agency for the legislature through the maintenance of a trained staff. Between sessions, research activities are concentrated on the study of relatively broad problems formally proposed by legislators, and the publication and distribution of factual reports to aid in their solution.

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INDEFINITE SENTENCING AND THE COLORADO CORRECTIONAL SYSTEM

Legislative Council

Report To The

Colorado General Assembly

Research Publication No. 139
December, 1968

COLORADO GENERAL ASSEMBLY

LEGISLATIVE COUNCIL
ROOM 341, STATE CAPITOL
DENVER, COLORADO 80203
222-9911 — EXTENSION 2285
AREA CODE 303

December 9, 1968

To Members of the Forty-seventh Colorado General Assembly:

In accordance with provisions of Senate Joint Resolution No. 42, 1967 regular session, the Legislative Council submits the accompanying report and recommendations relating to the subject of sentencing of offenders in Colorado.

The report and recommendations of the committee appointed to carry out this study was adopted by the Legislative Council for transmission with recommendation to the members of the first regular session of the Forty-seventh Colorado General Assembly.

Respectively Submitted,

Representative C. P. Lamb
Chairman

CPL/mp

COLORADO GENERAL ASSEMBLY

LEGISLATIVE COUNCIL
ROOM 341, STATE CAPITOL
DENVER, COLORADO 80203
222-9911 — EXTENSION 2285
AREA CODE 303

December 2, 1968

Representative C. P. Lamb, Chairman
Colorado Legislative Council
Room 341, State Capitol
Denver, Colorado

Dear Mr. Chairman:

In accordance with the provisions of Senate Joint Resolution No. 42, your Committee on the Criminal Code was appointed to continue the work on revision of Colorado criminal laws, to review recommendations of the President's Commission on Crime, to study the need for legislation controlling dangerous drugs and drug abuse in Colorado, and to study all aspects of sentencing of offenders. The committee has completed its work for 1967-68 and submits the accompanying report and recommendations.

The committee has agreed to submit two bills. Bill A on indefinite sentencing includes modifications in the sentencing procedure and creates a full time parole board, creates a reception and diagnostic center, and establishes a procedure for the disposition of detainers. Bill B is submitted to modify the procedure for pleas of guilty to certain criminal offenses which was felt to be necessary in light of the recent U. S. Supreme Court decision of U.S. v. Jackson, 88 S. Ct. 1209, (1968).

Respectfully submitted,

Raymond E. Wilder

Representative Raymond E. Wilder
Chairman
Criminal Code Committee

REW/mp

FOREWORD

The Legislative Council Criminal Code Committee was created pursuant to the provisions of Senate Joint Resolution No. 42, 1967 regular session, to study revision of Colorado's criminal laws; to review recommendations made by the President's Commission on Crime; to make recommendations concerning the need for legislation controlling dangerous drugs; and to consider all aspects of sentencing of offenders. The members appointed to the committee were:

Rep. Raymond E. Wilder, Chairman	Rep. Thomas Bastien
Rep. Ben Klein, Vice Chairman	Rep. Ted Bryant
Sen. David Hahn	Rep. John Fuhr
Sen. Ruth Stockton	Rep. J. D. MacFarlane
Sen. Anthony Vollack	Rep. Phillip Massari
	Rep. Harold McCormick
	Rep. Hubert Safran

Representative C. P. Lamb, Chairman of the Legislative Council, also served as an ex officio member of the committee.

Early in the committee's deliberations, the members agreed that the assignment in Senate Joint Resolution No. 42 was greater than could be undertaken at one time. Therefore, the committee concentrated its efforts on drugs and drug abuse during the 1967 interim, and sentencing of offenders during the 1968 interim.

The committee wishes to express its appreciation to Mr. David Hamil, executive director of the Colorado Department of Institutions; Mr. Harry Tinsley, Chief of Corrections; Mr. Edward Grout, director of the Division of Parole; Mr. Wayne K. Patterson, warden of the Colorado State Penitentiary; Mr. C. Winston Tanksley, warden of the Colorado State Reformatory, and their staffs. The committee also wishes to express its appreciation to the judges, district attorneys, and probation officials who conferred with the committee on problems relating to sentencing of offenders.

Stanley Elofson, senior research analyst, and Ed Isern senior research assistant on the Legislative Council staff, had the primary responsibility for the staff work on the study. Robert Holt, staff attorney of the Legislative Drafting Office, had the primary responsibility for bill drafting services provided the committee.

December 10, 1968

Lyle C. Kyle
Director

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COMMITTEE FINDINGS AND RECOMMENDATIONS

Senate Joint Resolution No. 42, 1967 Regular Session, directed the Legislative Council to appoint a committee to study: (1) whether efforts to revise and codify Colorado criminal law should be continued; (2) to study all aspects of sentencing of offenders; (3) to study state responsibilities in regard to drugs and drug abuse; and (4) to recommend action to implement findings of the President's Crime Commission Report. To complete this directive, the Legislative Council appointed the criminal code committee to study these subjects.

Because of the importance of these subjects to the state, the committee felt that it would be better to study each point of the directive thoroughly before moving to the next point. The committee began its work with the problem of drugs and drug abuse, and submitted its report on this subject to the second regular session of the 46th General Assembly.* The General Assembly enacted legislation based closely on the format of the recommended bill (Ch. 56, Laws of 1968).

During the 1968-1969 interim, the committee placed its primary emphasis on sentencing of offenders and to topics related to this subject. The committee felt that any recommended changes in the sentencing procedure would lay a solid foundation for the complete revision of all of Colorado's criminal laws.

Inequities and Inadequacies of the Present Correctional Programs

Because of the reported growth in crime nationally and in Colorado, and an apparant high degree of recidivism (old offenders committing new crimes), the committee began its work by looking at the programs and policies of the present correctional system. As a further reason for interest in the sentencing process, the committee found that 95 percent of all inmates will eventually be released to society either by parole or by serving their complete sentence.

Well developed programs of educational opportunity and vocational training within the institutions, coupled with facilities and personnel to correctly evaluate the inmate to make recommendations relative to his best chances of success, appear to be the best method of keeping an inmate from returning to crime. While the Colorado correctional system is modern and progressive

*Dangerous Drugs and Drug Abuse Control, Research Publication No. 127.

creates problems of transfers of inmates between the two institutions. While the reformatory can easily transfer an offender to the penitentiary without problems, transferring offenders from the penitentiary to the reformatory results in a situation at the state reformatory similar to disparate sentences.

The state's correctional institutions receive approximately 100 offenders from the courts each month. Correctional officials agree that each offender should be screened and evaluated for placement in adequate custodial facilities, and proper rehabilitation or treatment programs. However, because of the number of offenders received monthly, the institutions are not able to make a complete evaluation which may result in improper placement of offenders in the various rehabilitation programs.

Under the present system, the department of institutions is limited in placing of offenders in correctional institutions since the courts have the authority to sentence offenders to the correctional institution of their choice. The department of institutions does have the power to transfer offenders between correctional institutions, but as previously noted, this power is somewhat restricted.

Some offenders received at the state's correctional institutions have detainers, "hold orders" for pending trials in other jurisdictions, filed against them. These detainers may stiffle rehabilitation programs at the institutions since neither correctional authorities nor offenders know the total length of time of incarceration before the inmate will be released on parole. In addition, questions concerning the constitutional right to a speedy trial are raised if a person must serve a complete sentence before he is brought to trial in another jurisdiction.

Parole. Under the current system, the Colorado parole board is composed of seven part time members, including the governor, meeting once a month at the reformatory and penitentiary. The case load of offenders becoming eligible for parole has grown rapidly in recent years, and now averages about 120 cases per month. Because of the case load, board members must rely on information supplied to them by the institutions. This information is compiled from several sources. Since most offenders have had anti-social characteristics, the file usually does not provide a board member with a picture of a potentially good parolee. The files are quite extensive and are complete in regard to the inmate's criminal record. Less information is available in regard to the inmates social background and psychological and psychiatric evaluation.

The case load is too large for a part time board to interview inmates in banc and the board has had to resort to the "shortcut" of having each parole applicant be interviewed by one board member. The files of parole candidates are divided among the board members for study, which still would require approximately 30 to 40 hours of careful study by each board member to

governor. The governor is assisted by the executive clemency advisory board, more commonly known as the commute board, which advises the governor on inmates who should be granted, or not granted, executive clemency. This board consists of one member of the parole board, a member of the attorney general's staff, the warden of the state penitentiary, the chief of corrections, the executive director of the department of parole, and the executive director of the department of institutions. The board has no legal status, and serves only at the pleasure of the governor. The commute board has as one of its primary functions making sure that inmates serving long sentences do not get "lost" in the institution without their having a chance for review of a long, possibly unfair, sentence.

Major difficulties of correcting sentences by this procedure involve the cumbersome procedures making it difficult for this board to handle any except the most severe cases during a period of a year. There may be some reluctance for a governor to use this procedure in any more than a minimum of cases because some misunderstanding of the public as to the reasons why executive clemency is granted in certain instances.

Reception and Diagnostic Center. The committee recommends that a reception and diagnostic center be established as a separate institution. The purpose of the facility is to make a complete evaluation of all offenders sentenced to the state's correctional institutions. The information gathered at the new facility would be sent to the jurisdiction where the offenders were convicted, and judges would be given an opportunity to modify the original sentence to grant probation in light of the complete evaluation, if they so choose. The information about the offender would be utilized in placement of the offender in the most suitable correctional institution, and the development of a proper rehabilitation program based on the inmate's abilities.

The committee believes that the legislation which it proposes should not be delayed until a new facility is completed. Receiving and diagnostic services are now available at the reformatory and penitentiary in units separated from the major portions of each institution. The initial testing and interviewing of inmates is conducted at these units and a psychiatric team from the state hospital in Pueblo has been assigned, on a part time basis, to these institutions. Thus, the existing facilities are suitable for the present and to meet the requirements for the next few years. However, the committee believes that the functions of the reception and diagnostic facility sufficient to handle all adult felony offenders will soon require a separate facility. The information and recommendations supplied by the center to courts, to correctional officials, and to the parole board will be of such value that a separate institution, staffed psychiatrists and psychologists on a full time basis, will become necessary. A great deal of additional planning and study,

hand personal knowledge could be gained by board members thus allowing better decisions based upon a more composite picture of the inmate, instead of the factual information contained in the inmate's file. The committee believes that the full time parole board would be better equipped than the present board to make a determination as to the most appropriate time when an inmate should be placed on parole.

The parole board could meet at any time to consider the cases of offenders eligible for parole, but the board is required to meet at least once a month. At least two members of the board must sit together during the parole interview. Decisions must be made by a majority of the parole board and, if parole is denied, the reasons for denial must be made in writing to the inmate by the board.

Other Committee Recommendations

Pleas of Guilty to Capital Offences. In April, 1968, the United States Supreme Court handed down a decision (U.S. v. Jackson, 88 S.Ct. 1209, (1968)), relative to the Federal Kidnapping Act known as the "Lindberg law." The death penalty, under this act, would be imposed if the kidnapped person were not liberated unharmed and if the verdict of the jury would so recommend. The court held that this provision is unconstitutional in that it tends to discourage the assertion of the Fifth Amendment right not to plead guilty and to deter exercise of the Sixth Amendment right to demand a jury trial.

Prior to this decision, courts acted on the assumption that they had the inherent power to empanel a jury to determine the penalty upon a guilty plea. However, the Supreme Court said that, in the case of the Lindberg law, only the jury had the power to impose the death penalty. One effect of this decision was to hold that the only penalty that courts can impose is life imprisonment, unless the statutes specifically provide that the court may impose the death penalty. The court held that the inequality of punishment encouraged a defendant to abandon his constitutional rights not to plead guilty and to demand a jury trial. The court concluded that a statute which "needlessly chill(s) the exercise of basic constitutional rights" is prohibited.

The committee requested an Attorney General's opinion relative to any similar Colorado laws in which the death penalty can be imposed by a jury but not by a judge. The Attorney General, in his opinion, said that Colorado does have provisions similar to the federal Lindberg law. Thus, the issue before the committee was whether to grant the court power, equal to that of a jury, to impose the death penalty in cases where the defendant plead guilty to the crime.

rectional institutions will be accepted by the 1969 General Assembly.

The Crime Commission report, however, provides excellent background information on several additional subjects worthy of detailed consideration by the General Assembly. Further specific topics covered in that report -- such as drunkenness and alcoholism, the police, organized crime, science and technology, and further review of the correctional system -- are subjects of major importance to the state. The committee, therefore, recommends continued review by the Legislative Council of the report of the President's Crime Commission, again taking up specific problem areas which are covered in that report.

TEXT

BILL A

A BILL FOR AN ACT

CONCERNING THE PROCEDURES FOR THE SENTENCING, DETENTION, AND RELEASE OF CRIMINALS: PROVIDING FOR A FULL TIME PAROLE BOARD; ENACTING THE UNIFORM MANDATORY DISPOSITION OF DETAINERS ACT AND AN AGREEMENT CONCERNING DETAINERS; AND ESTABLISHING A COLORADO RECEPTION AND DIAGNOSTIC CENTER.

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

SECTION 1. 39-10-1, Colorado Revised Statutes 1963, as amended, is REPEALED AND RE-ENACTED, WITH AMENDMENTS, to read:

39-10-1. Sentences - modification - misdemeanor - limitations. (1) Upon conviction of a felony, other than one for which the punishment has been fixed at death, or when probation has not been granted, the court shall sentence the person so convicted to the custody of the executive director of the department of institutions. The term of sentence shall be the maximum sentence provided by law for the felony violation, with no minimum sentence.

COMMENTS

The court will sentence offenders to the custody of the department of institutions, not to specific correctional institutions, for a period of from no minimum up to the statutory maximum sentence, or the court may grant probation. This is currently being followed for inmates sentenced to the state reformatory. At present, judges sentencing offenders to the state penitentiary impose minimum and maximum sentences within the statutory limitations.

TEXT	COMMENTS
(2) The court, within ninety days after imposing sentence, shall have the power to return the prisoner to court to grant probation as provided in article 16 of this chapter. The court shall have such power whether or not the term of court in which the original sentence was imposed has expired.	Courts will be empowered to alter the original sentence and grant probation within 90 days after imposing sentence. During the 90 day period, the courts will receive additional information, such as a report from the reception and diagnostic facility, which may result in the altering of the original sentence. At present, the court cannot alter the original sentence unless there was an error in imposing the sentence.
(3) Upon conviction of a misdemeanor, except for convictions for violations of municipal ordinances, the court may sentence the person so convicted to the Colorado state reformatory, if at the time of sentencing he is eighteen years of age or older but under the age of twenty-one years, if, in the opinion of the court, after presentence investigation pursuant to section 39-16-2, C.R.S. 1963, rehabilitation of the person convicted can best be obtained by such a sentence and if it appears to the court that the best interests of said person and of the public, and the ends of justice would thereby be served.	The only change from existing law is that the minimum age of misdemeanants was raised from 16 years of age to 18 years of age in order to be consistant with the "Children's Code".

(4) (a) The provisions of this section shall not be construed as affecting:

(b) The provisions of article 16 of this chapter, as amended, regarding probation;

(c) The provisions of article 19 of this chapter, as amended, regarding the sentencing of sex offenders;

(d) The provisions of article 13 of this chapter, regarding the sentencing of habitual criminals; or

(e) The power of any court or jury in a proper case to impose the death penalty.

Changes in this section do not affect the probation procedure of the courts, the Colorado Sex Offenders Act, statutes concerning habitual criminals, or the power of courts or juries of imposing the death penalty.

(5) Any person upon whom the death penalty has been imposed, shall be remanded directly to the custody of the warden of the state penitentiary.

SECTION 2. 39-10-2, Colorado Revised Statutes 1963, is REPEALED AND RE-ENACTED, WITH AMENDMENTS, to read:

39-10-2. Sentence to custody of department of institu-

Every person sentenced to

TEXT	COMMENTS
tutions - procedure. (1) Any person sentenced to the custody of the executive director of the department of institutions pursuant to the provisions of section 39-10-1 shall initially be confined in such institution as the executive director of the department of institutions may designate to undergo evaluation and diagnosis to determine whether he should be confined in the state penitentiary or any other institution under the jurisdiction of the department.	the custody of the department of institutions shall first be placed in an institution to undergo evaluation and diagnosis to determine the proper institution for confinement and best rehabilitation programs for the inmate.
(2) When such evaluation and diagnosis is completed, a recommendation shall be made to the executive director of the department of institutions as to the place of confinement.	After evaluation and diagnosis is completed, a recommendation is made for the place of confinement.
(3) Within sixty days of imposing sentence, a copy of the the recommendation as to the place of confinement and the reasons therefor shall be sent to the court that imposed the sentence upon such person in order to permit the court to determine if probation shall be granted pursuant to section 39-10-1 (2).	The institution which makes the diagnosis of the offender shall submit, within 60 days, a copy of the recommendations on the offender and the reasons for the recommendations to the court which imposed the sentence. Courts may alter the original sentence and grant probation within 90 days under 39-10-1 (2).
(4) The person in charge of the institution where the	

convict is initially confined shall make the recommendations to the executive director and send such recommendations and the reasons therefor to the court, as required under subsections (2) and (3) of this section.

SECTION 3. 39-16-2, Colorado Revised Statutes 1963, is REPEALED AND RE-ENACTED, WITH AMENDMENTS, to read:

39-16-2. Presentence and probation investigation. (1) Upon conviction of a felony, other than one for which the punishment has been fixed at death, the court shall cause a probation officer to conduct an initial investigation to determine if such person is eligible for probation. If it is determined that such person is eligible for probation, a probation officer shall conduct a further investigation, as provided in subsection (2) of this section, to determine if probation should be granted.

(2) Such investigation shall consider the background of the person convicted including any prior criminal record and such information about his characteristics, his financial condition and circumstancas affecting his behavior and such other

Sections 3 and 4

These changes are necessary in order to maintain the present duties of the various probation departments throughout the state. Since the sentencing structure is altered, the changes in sections 39-16-2 and 39-16-3, C.R.S. 1963, were necessary. Under the new sentencing procedure, application for probation is automatic.

information as may be required by the court, in order that the court may be fully informed concerning said person.

(3) The probation officer, after completing said investigation, shall make a written report to the court.

(4) Upon conviction of a misdemeanor, the court may order a presentence and probation investigation pursuant to this section.

SECTION 4. 30-16-3, Colorado Revised Statutes 1963, is REPEALED AND RE-ENACTED, WITH AMENDMENTS, to read:

39-16-3. Eligibility for probation. (1) Any person convicted of a felony or misdemeanor shall be eligible for probation except the following:

(2) A person whose punishment has been fixed at death;

(3) Any person convicted of murder of the first or second degree; and

(4) Any person who has been twice convicted of a felony in this state or elsewhere prior to the case upon which sentencing is pending.

TEXT

COMMENTS

SECTION 5. 39-17-2 (1), (2), (3), (4), (5), and (6), Colorado Revised Statutes 1963, as amended, are amended to read:

39-17-2. Powers - duties - organization. (1) (a) The administrative and executive head of the division of ~~administration~~ PAROLE shall be the ~~executive~~ director of the ~~state department~~ DIVISION of parole. He shall maintain his office in the city and county of Denver and shall keep there a complete record in respect to all domestic as well as interstate parolees. Such ~~executive~~ director shall be an experienced executive, of known devotion to parole and rehabilitation work, with practical experience in criminology and kindred subjects, and shall be inactive in party politics while serving as such ~~executive~~ director. He shall exercise the power of suspension of paroles in the interim of the meetings of the board and, in connection therewith, may arrest such suspended parolee without warrant and return him to the institution from whence he was paroled, there to await the further action of the board. In case of such suspension of parole, the director shall send

Sections 5 through 10.

These sections amend portions of article 17 of chapter 39 concerning the division of parole, making the division of parole consistent in name with its assigned functions. In addition, the proper title of the director of the division of parole has been corrected in these statutes, based on the 1968 administrative reorganization act. No changes are recommended in the duties assigned to the division; however, the division was made a division within the department of institutions, no longer supervised by the parole board -- SECTION 3, 39-17-2.

to the board, at its first session thereafter, a transcript of all proceedings taken in connection with such suspension, and the reasons for his action.

(b) The director shall perform such other duties as may be prescribed by the ~~board~~ EXECUTIVE DIRECTOR OF THE DEPARTMENT OF INSTITUTIONS or imposed by statute.

(2) The ~~executive~~ director of the ~~state-department~~ DIVISION of parole shall have as his assistants four assistant directors of parole, one of whom shall be located within each congressional district of the state and shall maintain his office at such place within said congressional district as the ~~board~~ EXECUTIVE DIRECTOR OF THE DEPARTMENT OF INSTITUTIONS shall from time to time deem most advantageous in order to best effectuate the purposes of this article. Said assistant directors shall be subordinate to and under the direction and control of the ~~executive~~ director, pursuant to such rules and regulations as the ~~board~~ EXECUTIVE DIRECTOR OF THE DEPARTMENT OF INSTITUTIONS shall from time to time adopt and promulgate.

(3) The ~~board~~ EXECUTIVE DIRECTOR OF THE DEPARTMENT OF IN-

STITUTIONS shall appoint, pursuant to article XII, section 13 of the STATE constitution, the ~~executive~~ director, who in turn, pursuant to article XII, section 13 of the STATE constitution, shall appoint the assistant directors, and, within the amounts appropriated ~~therefore~~ THEREFOR, such other officers as may be required to properly administer this article and shall prescribe their powers and duties, ~~This will include~~ INCLUDING such parole officers as may be required to properly supervise all ADULT parolees released from ~~the state penitentiary and the state reformatories as well as these persons released on parole from the Colorado state hospital, pursuant to law, after confinement upon verdicts of not guilty by reason of insanity,~~ ANY STATE PENAL OR CORRECTIONAL INSTITUTION together with such other persons as are accepted for supervision under the interstate compact.

(4) ~~All such officers and employees shall be within the classified civil service of the state of Colorado and shall receive such compensation as shall be fixed for the grade and class within which they fall. In addition thereto,~~ All offi-

TEXT

COMMENTS

cers and employees of the ~~department~~ DIVISION shall be entitled ~~to all expenditures and~~ REIMBURSED FOR ALL necessary expenses incurred by them in the performance of their duties at such rates and in such amounts as shall be allowed state employees under the rules and regulations promulgated by the controller.

(5) A person to be eligible for the position of assistant director shall be at least twenty-five years of age, and a person to be eligible for the position of parole officer shall be at least twenty-one years of age. Such persons shall be selected because of definite qualifications as to character, ability, experience, and training; they shall be of known devotion to parole and criminal rehabilitation; and shall have capacity and ability for influencing adult human behavior. They shall be persons likely to exercise a strong and helpful influence upon persons placed under their supervision. The enumeration of the above qualifications is not exclusive, but the ~~board~~ EXECUTIVE DIRECTOR OF THE DEPARTMENT OF INSTITUTIONS or the civil service commission, by rule or regulation, may add to such qualifications from time to time as experience may justify.

xxx

(6) In addition to the parole offices hereinabove provided under subsection (2) of this section, a parole office, properly equipped and staffed with a parole officer and such assistants as he may need, shall be maintained at the state penitentiary and the state reformatory. Such parole offices shall be located within said penal institutions, but shall be free and independent of such penal institution, and shall be under exclusive direction and control of the ~~executive~~ director, subject to the rules and regulations of the ~~board~~. EXECUTIVE DIRECTOR OF THE DEPARTMENT OF INSTITUTIONS.

SECTION 6. 39-17-3, Colorado Revised Statutes 1963, as amended, is amended to read:

39-17-3. Records - reports - publications. (1) The office of ~~executive~~ director shall be maintained as a clearing house for all information on domestic as well as interstate parolees, and the ~~executive~~ director shall prescribe, prepare, and furnish such forms, records, and reports as the ~~board~~ EXECUTIVE DIRECTOR OF THE DEPARTMENT OF INSTITUTIONS may require from time to time. Such data and information so compiled

shall not be considered to be public records, but shall be held to be confidential in character.

(2) The ~~executive~~ director shall report to the EXECUTIVE director of the department of institutions at such times and on such matters as the EXECUTIVE director of the department may require, except that confidential information shall not be made public. Publications of the ~~executive~~ director circulated in quantity outside the division shall be subject to the approval and control of the EXECUTIVE director of the department of institutions.

SECTION 7. 39-17-4, Colorado Revised Statutes 1963, as amended, is amended to read:

39-17-4. Procedure for revocation. (1) (a) The ~~executive~~ director, his assistants, or the parole officers, or any of them, whenever they have reason to believe that the conditions of parole have been violated by any parolee, shall have the right to arrest such suspected violator with or without warrant and to hold him in the nearest county jail for a period not to exceed twelve days while an investigation is made of the suspected violation. If it is determined that no violation has

occurred, then the suspected violator shall be immediately released; but, if such investigation discloses that a violation has occurred, the investigation officer shall file his written report and recommendations with the ~~executive~~ director for action by the board as to suspension, revocation, or continuance of parole.

(b) If the parolee is within this state then within three days after such report and recommendations are filed, or if the parolee is without this state then within eighteen days after such report and recommendations are filed, the ~~executive~~ director shall temporarily suspend the parole of such parolee and return the parolee to the institution from which he was paroled, there to await the final action of the board, as to whether his parole shall be continued, suspended, or revoked, which action shall be taken by the board at its next meeting at the institution to which the parolee has been returned. No parolee shall be kept in jail in this state by the ~~state department~~ DIVISION of parole for a period of more than fifteen days, ~~at any one period of time,~~ or kept in jail outside of this state for parole violation for a period of more than thirty days on any

one occasion. In case the parole is revoked, the time spent in jail awaiting the action of the board shall be credited upon the sentence of the parolee.

(2) Whenever there is reason to believe that a condition of parole has been violated and the alleged violator is without the state of Colorado in violation of his parole agreement, or, having been paroled to a locality in the state of Colorado, cannot be apprehended in this state, the ~~executive~~ director shall forthwith suspend the parole of such alleged violator, and shall thereafter report such facts to the board and the latter may forthwith revoke such parole.

SECTION 8. 39-17-5, Colorado Revised Statutes 1963, is amended to read:

39-17-5. Appropriation. The general assembly shall appropriate, out of any moneys in the state treasury not otherwise appropriated, an amount sufficient to set up and equip the several offices established in this article, and to pay for personal service, maintenance and operation, capital outlays and other necessary expenses of said ~~department~~ DIVISION, in-

cluding such moneys as may be necessarily expended in returning parole violators, both domestic and under the interstate compact to the Colorado institutions from which they were paroled.

SECTION 9. 39-17-7, Colorado Revised Statutes 1963, is amended to read:

39-17-7. Director - powers. The ~~executive~~ director of the ~~state department~~ DIVISION of parole, is hereby authorized and empowered to deputize any person regularly employed by the state of Colorado, or any person regularly employed by another state, to act as an officer and agent of this state in affecting the return of any person who has violated the terms and conditions of parole or probation as granted by this state. In any matter relating to the return of such a person, any agent so deputized shall have all the powers of a police official of this state.

SECTION 10. 39-17-9, Colorado Revised Statutes 1963, is amended to read:

39-17-9. Interstate agreements. The ~~executive~~ director

of the ~~state-department~~ DIVISION of parole is hereby authorized to enter into contracts with similar officials of any other state or states, subject to the approval of the governor and state controller, for the purpose of sharing an equitable portion of the cost of effecting return of any person who has violated the terms and conditions of parole or probation as granted by this state.

SECTION 11. 39-18-1, Colorado Revised Statutes 1963, is REPEALED AND RE-ENACTED, WITH AMENDMENTS, to read:

39-18-1. State board of parole. (1) There is hereby created a state board of parole, hereinafter referred to as the "board", which shall consist of three members with knowledge of parole, rehabilitation work, and kindred subjects, and such qualifications as may be specified by the civil service commission after full consultation with the executive director of the department of institutions. Members of the board shall be appointed by the executive director of the department of institutions pursuant to the provisions of article XII, section 13, of the state constitution. In the performance

Subsection 39-18-1 (1) creates a three member full time parole board, appointed under the civil service system. The full time parole board will replace the current seven member part time board. The principal office of the parole board would be located either at the state penitentiary or state reformatory.

of their duties. A majority of the board shall constitute a quorum for the transaction of business. The principal office or offices of the board shall be maintained at the state penitentiary or the state reformatory.

(2) Whenever a recommendation is made concerning parole, the board shall, whenever possible, conduct an interview with the inmate or parolee. At such interview, at least two members of the board shall be present. Any final action on a recommendation shall not be required to be made in the presence of the inmate or parolee, and any such action shall require the concurrence of a majority of the board.

The parole board will be required to interview inmates within the presence of at least two board members. Any action taken by the board must be made with a majority of the board present.

(3) (a) The board shall have the following duties:

(b) To review the case of each inmate eligible for parole, and if parole is denied to give the reasons therefor, in writing to the inmate;

(c) To review each recommendation for the suspension, revocation, or modification of the terms of parole;

The board will review cases of each inmate eligible for parole to determine whether parole should be granted, deferred, or denied. If parole is denied, the reasons for denial must be given in writing to the inmate. The board may suspend, revoke, or modi-

TEXT	COMMENTS
(d) To set the period of time that an inmate shall be placed on parole, if parole is granted;	fy the terms of parole of parolees, and will set the time an inmate is to be on parole. The board is required to preform any duties assigned to it by the executive director of the department of institutions. The board would be required to meet at least once a month.
(e) To meet as often as necessary, but not less than once a month, at the state penitentiary and at the state reformatory to review recommendations for parole; and	
(f) To perform such other duties as may be assigned to it by the director of the department of institutions.	
(4) (a) The board shall have the following powers:	The parole board will adopt its own rules and regulations, such as procedures of the board, with the approval of the executive director of the department of institutions. However, the executive director cannot have any determination as to whether parole of an inmate will be granted, modified, or revoked.
(b) With the approval of the executive director of the department of institutions, to adopt rules and regulations regarding the procedures to be used in the conduct of the board with respect to passing upon recommendations for parole and for the suspension, revocation, or modification of parole that has been granted by the board; and	
(c) To grant parole to an applicant therefor, to set the period of time thereof, and to suspend, revoke, or modify the period of time of any parole granted by it when requested to do so by the director of the division of parole or upon its own motion.	

TEXT

COMMENTS

(5) Nothing in subsection (4) of this section shall be construed as permitting the executive director of the department of institutions to determine whether parole should be granted, modified, or revoked, or to set the term of parole.

(6) The attorney general shall be the legal advisor to the division of parole and to the board.

SECTION 12. 39-18-4, Colorado Revised Statutes 1963, is REPEALED AND RE-ENACTED, WITH AMENDMENTS, to read:

39-18-4. Parole may issue - when. (1) The board may, under such rules and regulations as it may prescribe, grant parole to any inmate in a state penal or correctional institution when it is the opinion of the board that it would be in the best interest of both the public and the convict that he be placed on parole.

The parole board would be able to grant parole to any inmate at such time as it is felt to be in the best interests of society as a whole and the inmate. Subsection (1) follows the philosophy of sentencing from no minimum with retention of the statutory maximum.

(2) No convict serving a life sentence imposed under the provisions of sections 39-13-1 (2), 40-2-3 (1), 40-2-45 (2), 40-23-14, or 48-5-20 (1) (d), (e), (f), (g), or (h), shall be eligible for parole for a period of at least ten calendar years. At the end of such period any

Any convict who has been sentenced to life imprisonment under the current sentences of life imprisonment -- as an habitual criminal, murder in the first degree, kidnapping with bodily harm, death caused in violation

such convict shall be eligible for parole and the board shall review the case of any such convict, and, if the board deems that he is not ready for parole, his case shall be reviewed by the board at least every two years thereafter until he is paroled, or his sentence is otherwise terminated.

of the anarchy and sedition laws, and second offense of narcotics laws under certain circumstances--shall be considered for parole after ten calendar years of imprisonment. If parole is denied, the case shall be reviewed at least every two years until the inmate is paroled or his sentence is terminated. This provision is now in the statutes but the parole board cannot use the law since the attorney general has ruled that the law was incorrectly drafted.

SECTION 13. Chapter 39, Colorado Revised Statutes 1963, as amended, is amended BY THE ADDITION OF A NEW ARTICLE 23 to read:

ARTICLE 23

UNIFORM MANDATORY DISPOSITION OF DETAINERS ACT

39-23-1. Request for disposition of untried complaint of

A new article 23 is added to chapter 39. This article is a uniform act which requires mandatory disposition of intrastate detainers facing inmates of the state's penal institutions. This uniform act was promulgated by the Commissioners on Uniform State Laws in 1958.

information. (1) Any person who is in the custody of the department of institutions pursuant to section 39-10-1 or articles 13 and 19 of this chapter may request final disposition of any untried indictment, information, or criminal complaint pending against him in this state. The request shall be in writing addressed to the court in which the indictment, information, or criminal complaint is pending and to the prosecuting official charged with the duty of prosecuting it, and shall set forth the place of confinement.

(2) It shall be the duty of the executive director of the department of institutions to promptly inform each prisoner, in writing, of the source and nature of any untried indictment, information, or criminal complaint against him of which the executive director has knowledge, and of the prisoner's right to make a request for final disposition thereof.

(3) Failure of the executive director to inform a prisoner, as required by subsection (2) of this section, within one year after a detainer from this state has been filed with the department of institutions shall entitle the prisoner to

To date five states have adopted the act -- Kansas, Massachusetts, Minnesota, Missouri, and South Carolina.

Basically, the uniform act makes it possible for inmates confined in penal institutions to request a final disposition of any detainer filed against him. Once the request is made, the prosecuting jurisdiction has 90 days to bring the case to trial or request an extension in open court with the inmate or his counsel present. If the case is not brought to trial within the specified time, the case will be dismissed with prejudice.

Enactment of the uniform act will be of benefit both to the inmate and the institution since it allows all concerned to know how long an inmate will be confined, thereby permitting the development of rehabilitation and other institutional programs.

a dismissal with prejudice of the indictment, information, or criminal complaint.

39-23-2. Duties of executive director upon delivery of request. (1) (a) Any request made pursuant to 39-23-1 shall be delivered to the executive director of the department of institutions who shall forthwith:

(b) Certify the term of commitment under which the prisoner is being held, the time already served on the sentence, the time remaining to be served, the good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole board relating to the prisoner; and

(c) Send by registered mail, a copy of the request made by the prisoner and a copy of the information certified under paragraph (a) of this subsection to both the court having jurisdiction of the untried offense and to the prosecuting official charged with the duty of prosecuting such offense.

39-23-3. Trial or dismissal. Within ninety days after the receipt of the request by the court and the prosecuting official, or within such additional time as the court for good

cause shown in open court may grant, the prisoner or his counsel being present, the indictment, information, or criminal complaint shall be brought to trial; but the parties may stipulate for a continuance or a continuance may be granted on notice to the prisoner's attorney and opportunity to be heard. If, after such a request, the indictment, information, or criminal complaint is not brought to trial within that period, no court of this state shall any longer have jurisdiction thereof, nor shall the untried indictment, information, or criminal complaint be of any further force or effect, and the court shall dismiss it with prejudice.

39-23-4. Escape voids request. Escape from custody by any prisoner subsequent to his execution of a request for final disposition of an untried indictment, information, or criminal complaint shall void such request.

39-23-5. Act does not apply. The provisions of this act do not apply to any person adjudged to be mentally ill or mentally deficient.

39-23-6. Prisoners to be informed of provisions of act.

The executive director of the department of institutions shall arrange for all prisoners under his care and control to be informed in writing of the provisions of this act, and for a record thereof to be placed in each prisoner's file.

39-23-7. Construction of act. This act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

39-23-8. Short title. This article shall be known and may be cited as "The Uniform Mandatory Disposition of Detainers Act".

SECTION 14. Chapter 74, Colorado Revised Statutes 1963, as amended, is amended BY THE ADDITION OF A NEW ARTICLE 14 to read:

ARTICLE 14

AGREEMENT ON DETAINERS

74-14-1. Disposal of detainers against prisoner based on untried charges. The agreement on detainers is hereby enacted into law and entered into by this state with all other jurisdictions legally joining therein in the form substantially as follows:

Section 14 adds a new article 14 to chapter 74. Article 14 is an agreement on detainers between states or a state and the federal government. The agreement was promulgated by the Council of State Governments, and has been adopted by 19 states. These states include: California; Connecticut; Hawaii; Iowa; Maryland; Massachusetts; Michigan; Minnesota; Montana; Nebraska; New Hampshire; New Jersey; New York;

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The Agreement on Detainers

The contracting states solemnly agree that:

Article I

The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations or complaints, and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints. The party states also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

North Carolina; Pennsylvania; South Carolina; Utah; Vermont; and Washington. To date the federal government has not agreed to participate in the agreement.

Article II

As used in this agreement:

(a) "State" shall mean a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.

(b) "Sending state" shall mean a state in which a prisoner is incarcerated at the time that he initiates a request for final disposition pursuant to Article III hereof or at the time that a request for custody or availability is initiated pursuant to Article IV hereof.

(c) "Receiving state" shall mean the state in which trial is to be had on an indictment, information or complaint pursuant to Article III or Article IV hereof.

Article III

(a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried in-

Under the agreement the inmate may request the final disposition of a pending detainer. The request shall be delivered to the prosecuting jurisdiction which will have 180 days to bring the case to trial unless good cause

dictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within one hundred eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint: provided that for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner.

(b) The written notice and request for final disposition referred to in paragraph (a) hereof shall be given or sent by

for extension of time is shown in open court with the inmate or his counsel present. If trial is not begun within the specified time, the case will be dismissed with prejudice. The sending state retains custody of the inmate and only grants temporary custody to the receiving state.

the prisoner to the warden, commissioner of corrections or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

(c) The warden, commissioner of corrections or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information or complaint on which the detainer is based.

(d) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged against the prisoner from the state to whose prosecuting official the request for final disposition is specifically directed. The warden, commissioner of corrections or other official having custody of the prisoner shall forthwith notify all

appropriate prosecuting officers and courts in the several jurisdictions within the state to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this paragraph shall be accompanied by copies of the prisoner's written notice, request, and the certificate. If trial is not had on any indictment, information or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

(e) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of paragraph (d) hereof, and a waiver of extradition to the receiving state to serve any sentence there imposed upon him, after completion of his term of imprisonment in the sending state. The request for final disposition shall also constitute a consent by the

prisoner to the production of his body in any court where his presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

(f) Escape from custody by the prisoner subsequent to his execution of the request for final disposition referred to in paragraph (a) hereof shall void the request.

Article IV

(a) The appropriate officer of the jurisdiction in which an untried indictment, information or complaint is pending shall be entitled to have a prisoner against whom he had lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with Article V (a) hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated: provided that the

The prosecuting jurisdiction may also request final disposition of a case. If this request is made, the governor of the sending state retains his right to refuse custody of an inmate. The governor must act within 30 days or custody will be granted. All of the constitutional rights to extradition proceedings for the inmate are protected. If temporary custody is granted, the prosecuting jurisdiction has 120 days

TEXT	COMMENTS
court having jurisdiction of such indictment, information or complaint shall have duly approved, recorded and transmitted the request: and provided further that there shall be a period of thirty days after receipt by the appropriate authorities before the request be honored, within which period the governor of the sending state may disapprove the request for temporary custody or availability, either upon his own motion or upon motion of the prisoner.	to commence trial or seek a continuance in open court with the defendant or his counsel present; otherwise the case will be dismissed with prejudice. This article permits prosecuting jurisdictions an opportunity to bring an incarcerated offender to trial while witnesses are more readily available.
(b) Upon receipt of the officer's written request as provided in paragraph (a) hereof, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner. Said authorities simultaneously shall furnish all other officers and appropriate courts in the receiving state who have lodged detainers against the prisoner with similar certi-	

ficates and with notices informing them of the request for custody or availability and of the reasons therefor.

(c) In respect of any proceeding made possible by this Article, trial shall be commenced within one hundred twenty days of the arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

(d) Nothing contained in this Article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in paragraph (a) hereof, but such delivery may not be opposed or denied on the ground that the executive authority of the sending state has not affirmatively consented to or ordered such delivery.

(e) If trial is not had on any indictment, information or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to Article V (e) hereof, such indictment, information or complaint shall not be of any further force or effect, and the court

shall enter an order dismissing the same with prejudice.

Article V

(a) In response to a request made under Article III or Article IV hereof, the appropriate authority in a sending state shall offer to deliver temporary custody of such prisoner to the appropriate authority in the state where such indictment, information or complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in Article III of this agreement. In the case of a federal prisoner, the appropriate authority in the receiving state shall be entitled to temporary custody as provided by this agreement or to the prisoner's presence in federal custody at the place for trial, whichever custodial arrangement may be approved by the custodian.

(b) The officer or other representative of a state accepting an offer of temporary custody shall present the following upon demand:

During periods of temporary confinement, the prosecuting authority shall be responsible for the care and custody of the inmate. Unless a supplementary agreement is entered between states, all costs are paid by the prosecuting state.

The inmate shall be considered in custody of the sending state. If an escape occurs while the inmate is in temporary custody of the sending state, the inmate can be prosecuted for the offense in the sending state.

If Colorado should decide at a later date to withdraw from the agreement, it can be done by simple legislative repeal. Any cases which were started prior to the repeal shall be continued to final disposition.

(1) Proper identification and evidence of his authority to act for the state into whose temporary custody the prisoner is to be given.

(2) A duly certified copy of the indictment, information or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made.

(c) If the appropriate authority shall refuse or fail to accept temporary custody of said person, or in the event that an action on the indictment, information or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in Article III or Article IV hereof, the appropriate court of the jurisdiction where the indictment, information or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

(d) The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments,

informations or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

(e) At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending state.

(f) During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this agreement, time being served on the sentence shall continue to run but good time shall be earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.

(g) For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject

to the jurisdiction of the sending state and any escape from temporary custody may be delt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.

(h) From the time that a party state receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending state, the state in which the one or more untried indictments, informations or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping and returning the prisoner. The provisions of this paragraph shall govern unless the states concerned shall have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing herein contained shall be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

A state party to this agreement may withdraw herefrom by enacting a statute repealing the same. However, the withdrawal of any state shall not affect the status of any proceedings already initiated by inmates or by state officers at the time such withdrawal takes effect, nor shall it affect their rights in respect thereof.

Article IX

This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable and if any phrase, clause, sentence or provisions of this agreement is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any state party hereto, the agreement shall remain in full force and effect as to the remaining states and in full force

74-14-5. Escapes. Every person who has been imprisoned in a prison or institution in this state and who escapes in another state while in the custody of an officer of this or another state pursuant to the agreement on detainers, is deemed to have violated section 40-7-53, C.R.S. 1963, and is punishable as provided therein.

74-14-6. Surrender of inmates. It shall be lawful and mandatory upon the warden or other official in charge of a penal or correctional institution in this state to give over the person of any inmate thereof whenever so required by the operation of the agreement on detainers. Such official shall inform such inmate of his rights provided in paragraph (a) of article IV of the agreement on detainers.

74-14-7. Administration. The executive director of the department of institutions shall administer this article.

SECTION 15. Chapter 105, Colorado Revised Statutes 1963, as amended, is amended BY THE ADDITION OF A NEW ARTICLE 9 to read:

A new article 9 is added to chapter 105 creating a reception and diagnostic center. The provisions of this article are largely taken from the Kansas law on this subject. It

felony offenders sentenced by the courts of this state to state penal or correctional institutions so that each such offender may be assigned to a state penal or correctional institution having the type of security and programs of education, employment, or treatment designed to accomplish a maximum of rehabilitation for such offender.

(3) The executive director shall notify all the sheriffs in the state as to the date when the center is ready to receive felony offenders who have been sentenced to the custody of the department of institutions. After said date all such offenders shall be delivered to the center in lieu of delivering them to a state penal or correctional institution.

105-9-3. Examination of offenders. (1) (a) Each offender delivered to the center shall be examined and studied, and a rehabilitation program planned and recommended for him. A prisoner shall be held at the center for a period not exceeding sixty days, except that a prisoner may be held for a longer period of time upon approval of the executive director. Upon the completion of the recommended rehabilitation program

fer the prisoner to the center for study and examination. Upon completion of such study and examination, such prisoner shall be assigned to a state penal or correctional institution for confinement in like manner as new offenders are assigned.

105-9-6. Rules and regulations. The executive director shall have power to make all rules and regulations necessary and proper for the management, control, regulation, and operation of the center and for the discipline and confinement of all prisoners in the center.

SECTION 16. Repeal. All minimum sentences for violations of felonies or other provisions of the law inconsistent herewith are hereby repealed. (This section is included for illustrative purposes only. The Legislative Drafting Office is preparing draft language to remove the statutory minimum sentences applicable to felonies allegedly committed on or after the effective date of this act. Enactment of a general statute eliminating statutory minimum sentences would eliminate the necessity of amending each of the statutes containing minimum sentences for felony convictions.)

shall not be construed to alter or amend the provisions of 40-2-3 (2), C.R.S. 1963, as amended, relating to entries of pleas of guilty to charges of murder.

SECTION 2. Applicability. 39-7-8 (2), C.R.S. 1963, as enacted by section 1 of this act, shall apply only to pleas of guilty entered relating to offenses alleged to have occurred on or after the effective date of this act.

SECTION 3. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

which must be served before an offender would become eligible for parole, which term may be less than, but could not be more than, one-third of the maximum sentence imposed;

(B) The court could set the maximum sentence as prescribed by statute, specifying that the offender would become eligible for parole at such time as may be determined by the parole board; or

(C) The court could commit the offender to the department of institutions for extensive study and evaluation. Under this approach, it would be assumed that the maximum statutory sentence had been imposed, pending the results of the department's study and evaluation, which would be furnished the committing court within three months unless the court granted additional time for this study and evaluation.

After the court receives the department's report and recommendations, it may do one of the following: place an offender on probation; affirm the sentence already set and let the parole board determine the date of parole eligibility; affirm the maximum sentence and set a minimum sentence not exceeding one-third of the maximum; or reduce the sentence already imposed and set a date for parole eligibility not exceeding one-third of the maximum sentence.

(Under either alternatives 1 or 2 the court could also place an offender on probation or commit him to the state reformatory.)

3. Adopt the Model Penal Code provisions. Under the Model Penal Code, all crimes would be classified into several grades: felonies of the first degree, second degree, and third degree; misdemeanors; and petty misdemeanors. The court would establish the minimum and maximum terms within the limits specified for the grade of crime within which the offense falls. These limits would be greater for persistent offenders, professional criminals, and dangerous mentally-abnormal persons. The court would be prevented from imposing what, in effect, would be a fixed sentence by the requirement that the minimum sentence could not be more than one-half of the maximum. The parole board would determine the date of parole release after the minimum sentence had been served, less any good time allowance.

1963-64 State Institutions Committee

During the course of the committee's study, it was suggested that perhaps the state should establish a full time parole board to handle both juvenile and adult parolees in place of the two part time boards used by the state at the present time. The committee pursued this matter with representatives of both the adult and juvenile parole boards, including a review of practices

(3) The construction and staffing of a diagnostic and treatment center.

In regard to the sentencing provisions in Colorado's criminal laws, the 1966 Criminal Code Committee agreed that a great deal of additional study and consideration would be needed before details of these proposals could be worked out. For this reason, the 1966 committee recommended that the subject of sentencing of offenders be continued.

The 1967-68 Legislative Council Criminal Code Committee has taken findings and recommendations expressed by previous committees and has studied the correctional problems in light of the previous reports.

II. Sentencing Procedures in Colorado

Today, in Colorado, the judges in the state are vested with the responsibility for the sentencing of offenders. The only limitation placed upon judges in sentencing is the statutory limits of the minimum sentence and maximum sentence. For example, the penalty for the crime of burglary at the present time is from a one year minimum sentence to a ten year maximum sentence. The judge can sentence the defendant to a term in the state penitentiary for any time between one and ten years. If the judge concludes, based upon information contained in the pre-sentence investigation report, that a defendant should not be incarcerated in one of the state's penal institutions, he may grant probation.

The judges also have the power of determining the penal institution in which an offender is to be incarcerated -- the state penitentiary or the state reformatory. Usually, judges use the criterion of the seriousness of the crime and the age of the offender in making a choice of the institution. The state penitentiary is usually considered an institution for hardened, older criminal offenders and the state reformatory is an institution for younger, first time offenders who are over 18 years of age.

If the judge sentences an offender to the state reformatory, no minimum sentence is imposed on the offender; a sentence to the state penitentiary permits the judge to set both a minimum and maximum sentence. Again using the example of the crime of burglary, the statutory sentence to the state reformatory would run from no minimum sentence to a maximum of up to ten years. The judge has the discretion to set the maximum sentence at a time of less than ten years. A sentence to the state penitentiary would have both a minimum and maximum sentence, such as one to three or five to ten years.

reported that when inmates complete one of these programs, they will have the training equal to, or a little above, that of an apprentice, and the inmates are capable of being employed as apprentice workers upon release.

At the honor farm, the institution maintains a dairy where trustee inmates can learn the dairy business and are also taught general farming skills. Mobile conservation camps provide trustee inmates working for the Game, Fish, and Parks Department at many of the state's recreation sites planting trees, building recreational facilities, such as boat docks and boat unloading platforms, and in maintaining the grounds. Inmates also work at roadside park rest areas building and maintaining shelters, tables and benches, and other facilities.

The work-release program in the Denver area is presently in the beginning phase. Under this program, inmates are employed in the city during the day, and return to the Denver County jail at night. Part of their earnings pay for their room and board at the institution, and if the inmate is married, part of his salary goes to his family. The remainder of the inmate's salary, except for his personal expenses, is saved for him.

Finally, it must be remembered that the reformatory's primary function is to protect society from the offender. Even though the atmosphere at the reformatory appears to be relaxed and informal and similar to that of other state institutions, discipline is strictly maintained. Any inmate seen in a hallway or walking across the yard is going directly from some duty or function to another duty or function. As was pointed out by Warden Tanksley, an inmate will spend approximately 12 hours a day alone in his cell.

Colorado State Penitentiary. The state penitentiary, located near Canon City, is an institution for "sophisticated adult felons." The total inmate population at the penitentiary is approximately 1,900 inmates at the present time. The penitentiary consists of a maximum and a medium security prison, an honor farm, a pre-parole release center, and the women's correctional facility.

The largest of the penitentiary facilities is the maximum security prison which has an inmate population of about 1,600 inmates. Life at the maximum security institution is closely regulated and supervised. There are some vocational programs for inmates, including a tailor shop, auto repair, welding, and carpentry, plus prison industries for the production of automobile license plates and the manufacture of soap for state institutions. In the tailor shop, inmates make uniforms for several state agencies and the carpentry shop is used primarily for maintenance of the institution. There is also a school which inmates are encouraged to attend and which is compulsory for any inmate

While at the center, the inmate participates in discussions on every-day matters such as the law, spending and borrowing money, and finding employment.

The newest correctional facility in Colorado is the state women's correctional facility also located near Canon City. This facility currently houses about 60 inmates. This institution is considered to be part of the state penitentiary as it is under the administrative supervision of the warden of the penitentiary. However, unlike the other facilities, women sentenced both to the state penitentiary and to the state reformatory are placed in this institution.

Education and vocational education are considered of prime importance at the women's correctional facility. New inmates go through the same testing procedure and orientation as do men at the reformatory and penitentiary. Education classes are held regularly. Vocational programs include washing and ironing, cooking, waiting tables, and industrial sewing.

Taking an over-all view of the state's penal institution, an observer is impressed with the ability of these institutions to innovate and improvise with construction material in improving the physical plants of the institutions. Inmate labor has been utilized to construct many facilities at a much reduced cost to the state and has taught inmates construction techniques. Recent examples of this approach include the new receiving center at the penitentiary and the school and auditorium building at the reformatory.

IV. Problems of the Correctional Process

A major goal of a correctional system is the objective of deterring offenders from repeating crimes (recidivism) after their discharge from the correctional process. If viewed in the light that offenders should be incarcerated simply as a means of punishment, there are probably few problems in the existing process, with the possible exception that penalties are too lenient. However, if it is assumed that as many offenders as possible should be rehabilitated in order for them to become productive members of society, it is apparent that certain problems do exist, and that certain basic changes could be made to correct some of these problems.

Problems in Sentencing Procedures

Beginning with sentencing procedures, the first steps to incarcerating offenders, there are several problems which should be noted.

Disparity of Sentences. One of the greatest problems considered by the committee is that of disparity of sentences. The definition of disparity of sentences is unequal sentences for the same offense or for offenses of comparable seriousness, when all other factors are equal. Disparity of sentences probably has always existed, since judges, being human, must make value judgments. Former United States Attorney General and U.S. Supreme Court Justice Robert H. Jackson stated:

> It is obviously repungnant to one's sense of justice that the judgment meted out to an offender should be dependent in large part on a purely fortuitous circumstance; namely, the personality of the particular judge before whom the case happens to come for disposition.1/

It has been argued that even though disparity of sentences exists, this situation actually does not occur too frequently. Further, this position states that the primary reason disparity of sentences is considered to be an important issue is that disparate sentences are overplayed by the news media when they occur. However, evidence nationally and in Colorado indicates otherwise. The following quotation from a background report to the President's Crime Commission Report illustrates the problem of disparity of sentences:

> In the Federal system, for example, the average length of prison sentences for narcotics violations in 1965 was 83 months in the 10th Circuit, but only 44 months in the 3rd Circuit.
>
> Other illustrations of disparity may be found in the results of the workshop sessions at the Federal Institute on Disparity of Sentences. The judges were given sets of facts for several offenses and offenders and were asked what sentences they would have imposed. One case involved a 51-year-old man with no criminal record who pleaded guilty to evading $4,945 in taxes. At the time of his conviction he had a net worth in

1/ The Challenge of Crime in a Free Society, a Report by the President's Commission on Law Enforcement and the Administration of Justice: Washington, D. C., U.S. Government Printing Office, 1967, p. 145. (Cited The President's Crime Commission Report).

excess of $200,000 and had paid the full principal and interest on the taxes owed to the Government. Of the 54 judges who responded, 3 judges voted for a fine only; 23 judges voted for probation (some with a fine); 28 judges voted for prison terms ranging from less than 1 year to 5 years (some with a fine). In a bank robbery case the sentences ranged from probation to prison terms of from 5 to 20 years.2/

The committee also heard arguments that disparity of sentences is not a serious problem in Colorado. In cases where the judge has imposed an unfair sentence, the governor has the right to grant executive clemency which can solve the problem. This argument also is not completely valid when considering the somewhat limited role of this procedure. In the past nine years (1959-1967) governors of Colorado have granted executive clemency on 183 occasions, an average of just over 20 commutations per year. As a general rule, before an inmate is considered for executive clemency, the inmate must have a minimum sentence of five years. Hence, an inmate with a disparate sentence having a minimum of less than five years will not be eligible for executive clemency. For example, an offender convicted for the first time on the charge of assault with a deadly weapon could receive a sentence of from one to five years imprisonment. If the judge imposes a sentence of from four and one-half years to five years imprisonment on a first offense, the offender probably would not be considered for executive clemency. Other instances in which executive clemency is not usually considered involves cases where the parole board has denied or deferred parole. Another limitation on the use of clemency for any large number of cases involves possible criticism of the governor stemming from public misunderstanding of the purposes of this device.

Disparity of sentences is not only unfair to an offender, but often creates problems in his institutional adjustment. Warden Wayne K. Patterson of the Colorado State Penitentiary pointed out to the committee that inmates compare their sentences and inmates who believe that they are victims of a disparate sentence often become hostile and imbittered toward authority and resist correctional treatment and institutional discipline.

Definite Fixed Sentences. Closely related to the problem of disparity of sentences are the problems created by the long-term definite fixed sentence. The statutory limitations on judges

2/ Task Force Report: The Courts. The President's Commission on Law Enforcement and Administration of Justice: Washington D. C., U.S. Government Printing Office, 1967, p. 23.

sentencing authority is limited to a minimum sentence and a maximum sentence; judges are permitted to set minimum and maximum sentences anywhere within the statutory limitations. When a judge imposes a sentence of nine years, six months to ten years, the sentence is, in effect, a fixed sentence. Little can be done to change this sentence.

A report to the Council's Criminal Code Committee in 1961 stated that slightly more than one-third of penitentiary inmates as of June 30, 1961, were serving sentences in which the minimum was more than one-half the maximum sentence, e.g., a minimum sentence of over five years and a maximum of ten years. A new court based on statistics as of June 30, 1967, revealed that nearly 60 percent of the penitentiary inmates had received sentences in which the minimum equalled at least one-half of the maximum sentence. It appears from this data that as great a percentage of penitentiary inmates in 1967 were serving, in effect, determinate sentences as was the case in 1961.

Two problems are created for penal institutions by long-term fixed sentences. First, Mr. Harry Tinsley, Chief of Corrections, Colorado Department of Institutions, said that a time arrives when an inmate becomes "fed up" with institutional life. At that time an inmate will do almost anything to obtain release. If he still has several years remaining on his minimum sentence, the inmate will not be eligible for parole and probably will not be eligible for executive clemency. After the best release time passes, an inmate may become despondent and may cease to try. In short, the person has become "institutionalized" and his adjustment after release will be more difficult than if he had been released earlier.

A second problem for correctional authorities which stems from long fixed sentences is in the planning of programs which will keep the inmate occupied for a long period of time. Mr. C. Winston Tanksley, Warden of the Colorado State Reformatory, explained that most rehabilitation programs are geared for a relatively short period of incarceration. As an example, the barbers college requires only six months for completion of the course work. If the inmate has a minimum sentence of nine years, the institution will have to provide some kind of employment for the inmate for about four and one-half years, since the inmate receives good time credits, before the inmate is first eligible for parole. By the time he starts a vocational training program, he may be beyond rehabilitation. Another program adversly affected by long minimum sentences is the work release program.

Sentencing and Institutional Facilities. The state reformatory has geared facilities and programs for youthful offenders and the state penitentiary is established for older offenders. However, cases occur in which young offenders are sentenced to the state penitentiary and older, experienced offenders are sen-

tenced to the reformatory. Transfer of inmates between institutions can be made by the director of the department of institutions. No serious problem exists for offenders transferred from the reformatory to the penitentiary. However, a problem similar to disparate sentencing occurs for the youthful inmate being transferred from the penitentiary to the reformatory, because this inmate will have a fixed minimum sentence while reformatory inmates have no minimum sentence. In this situation the transferee will see reformatory inmates arriving after his arrival and departing before he becomes eligible for parole. As in the case of the disparate sentence, such transferees frequently become despondent and hostile. They may resist rehabilitation efforts and become disciplinary problems. Eventually, it may be necessary to transfer an inmate back to the state penitentiary where they will associate with older, hardened criminals, and where the programs and facilities are not geared to the youthful offender.

Sentence Sets Time of Parole. When a judge imposes a sentence, e.g., from one year to ten years, he has automatically set a definite period of time for which the inmate will be on parole. If the offender is released at the end of his one year minimum sentence he must remain on parole and under supervision of the parole department for nine years. Mr. Edward Grout, Executive Director of the Division of Parole, commented that it is useless to supervise most parolees beyond three years, because once a parolee has completed three successful years on parole, he will no longer be a great parole risk. Mr. Grout's statement is supported by a study on recidivism by the F.B.I. In the study it was stated that:

> There is a definite tendency toward early recidivism. The group of individuals released in 1963 were followed over a four-year period, and the percentage of offenders rearrested tabulated by year. It would appear that the longer a releasee refrains from criminal involvement the greater his chances are for successful rehabilitation. The first two years appear to be critical and the figures suggest a greater degree of supervision is necessary during this period of time.3/

3/ Crime in the United States. Uniform Crime Reports -- 1967: Washington, D. C., U.S. Department of Justice, 1967, p. 41. (Cited Uniform Crime Reports -- 1967).

Supervision of parolees beyond three years takes a parole officer's time which means that some other parolee may not get adequate supervision in the early period of parole.

Judge's Decision is Final. Once a judge has imposed sentence, there is no way the sentence can be altered by the judge, unless an error is made in the sentence. It was reported by the wardens of the penal institutions that sentences have been delivered at times of high emotion due to the nature of a crime or because of the public sentiment about a crime. Admittedly this situation occurs only on rare occasions but, when it does occur, procedures for altering the sentence should be made available to judges. A second example where judges should have an opportunity to modify a sentence is in cases where the pre-sentence investigation is not complete, and information is found later which would have a bearing upon a sentence.

Alternative Changes Concerning Sentencing

Several alternatives for changes in the sentencing procedures were suggested to the committee by judges, district attorneys, and by correctional authorities. These alternatives are summarized below.

Retention of the Status Quo. As described above, the present method of sentencing vests full authority with the judges, within the limits of minimum and maximum sentences set by statute. One exception to complete judicial authority is the sentencing to the state reformatory where inmates do not receive a minimum sentence. Judges choose the institution of an offender's incarceration.

The principal argument for retraining the present system is that judges are probably the best qualified persons to determine the offender's sentence at the time sentence is passed. Along with information from a pre-sentence investigation, judges are close to their communities and can take facts about each case into consideration when imposing sentences. District Judge Francis Shallenberger told the committee that if the judge's sentencing authority is altered, sentencing will become a clerical duty which will not take important personal factors about the offender into consideration. It was suggested that if judges lose their sentencing authority, the public may not receive adequate protection from offenders because offenders may be released from institutions before they should be released.

Indefinite Sentence. The concept of indefinite sentencing is recommended by the Criminal Code Committee. As the committee uses the term, an indefinite sentence would have no minimum sentence with a maximum sentence of up to the statutory maximum sentence. Judges would be able to impose a maximum sentence of less

than the statutory maximum. Colorado has had a program of indefinite sentencing at the state reformatory since the inception of that institution in 1889. In general, Colorado experience has been successful with this type of sentencing system and there have been few disciplinary problems within the institution.

It has been argued that indefinite sentencing could create severe disciplinary problems at the state penitentiary because good time credits, which is one of the chief forms of rewarding good behavior, would no longer apply. However, Warden Tanksley of the reformatory noted that indefinite sentencing actually improves institutional discipline, at least at that institution, because inmates are aware that they can be paroled at any time. One of the conditions for parole eligibility is a good institutional behavior and most inmates at the reformatory behave in a manner by which they may achieve early release.

Evidence, in recent years, has indicated that there is little relationship between an offender's length of incarceration and his chances for successful parole and accepted social behavior and that long periods of incarceration would tend to reduce chances for successful parole. The President's Crime Commission Report stated that, in the latter part of the 19th century, authorities in most jurisdictions began to realize that mere restraint could not accomplish the purpose of corrections, and that many of the features of prison life actually intensified the problems of offenders.4/

A 1963 study of parolees from 25 state and federal reformatories completed by the University of Indiana concluded that there is no correlation between the length of incarceration and the chance of parole success. Percentages of successful parole rate ranged from 95 percent success -- a parole success rate probably explained by short periods of parole -- to a 50 percent rate of success. Nine of the reformatories were reported to have parole success rates of between sixty-five and eighty percent. The average length of incarceration and the percent of parole success for the nine reformatories having this range is provided at the top of the next page.

4/ President's Crime Commission Report, p. 163.

Reformatory	Parole Success	Average Length of Incarceration
A	80 %	28 mos.
B	78 %	13 mos.
C*	75 %	10 mos.
D	75 %	18 mos.
E	70 %	44 mos.
F	67 %	18 mos.
G	67 %	18 mos.
H	65 %	26 mos.
I	65 %	8 mos.

* Colorado State Reformatory.

There are two new experimental programs -- work release and prescription parole -- which lend themselves to a system of indefinite sentencing. The work release program permits inmates to work in the community and return to the institution at night. Work release programs were authorized by the General Assembly in 1967 (Art. 22, Ch. 39, C.R.S. 1963, 1967 Supp.). The goals of the program have been described as:

> ...the bridging of the area between controlled institutional confinement and complete release. We [Colorado state reformatory personnel] also intend to reinforce the inmate's decision-making ability and promote his ability to assume personal responsibility under actual working conditions. Since job placement will be made in the area in which the inmate is skilled or trained, additional on-the-job training will also take place. Parole readiness can be tested under simulated release conditions, and the inmate should meet the Parole Board much more ready to assume the responsibilities of parole.[5]

If Colorado were to implement a program of indefinite sentencing, the work release program could be utilized to its full

[5] "Work Release - A Pilot Program" Buena Vista, Colorado: Colorado State Reformatory, 1968, p. 1.

potential since inmates could be paroled at any time. A work release program could be established immediately for some inmates who might otherwise have to serve minimum sentences of one or two years before becoming eligible for the program.

Prescription parole is the second newly developed experimental program which originated in California shortly before Colorado implemented its program. The Colorado program was formulated by the state reformatory and the division of adult parole. The essential elements of the program are: (1) testing of inmates when they are received at the reformatory; (2) based on test results, institutional programs are assigned with agreement between the inmate and the institutional staff; and (3) a type of contract is entered which states that if the inmate completes the assigned program the institution will recommend parole for the inmate, provided the inmate has established a reasonably good conduct record during incarceration. An inmate in the program could elect to do nothing to improve himself during his confinement but, in such a case, the institutional staff would not recommend parole. If this program were to be implemented at the state penitentiary, some type of indeterminate sentencing would be necessary in order for the penitentiary to recommend release of inmates at any time during their incarceration.

Opponents of indefinite sentencing have based their arguments on four points: (1) the institutions and the parole board would have complete power of determining an offender's sentence; (2) discipline of inmates may become a serious problem; (3) the institutions need time to experiment with modified indefinite sentencing before implementing a complete program; and (4) the truly dangerous offenders will eventually have to be released because they will have served their maximum sentences.

As was stated earlier in the report, some judges believe that they are the best qualified to determine sentences of offenders since they can judge on factors which may not be known to correctional personnel. Further, the administrative process presents a danger of offenders having their sentences determined by an automatic process, without consideration of personal factors. Personal prejudices of guards, administrative personnel, or parole board members may influence the granting, deferring, or denying of parole.

The criminal code committee reasoned that the parole board, which in effect would become the sentencing authority, would have access to all pre-sentence investigations. The full time parole board would be working in the institutions and would develop personal knowledge of the inmate and could obtain more information concerning inmates than is available from pre-sentence investigations. Finally, the parole board would consist of three members, with a statutory requirement that not less than two members of the board would hear cases before the board. At the pres-

ent time one member of the parole board will hear a case and make a recommendation, the acceptance of which is routinely accepted by the remainder of the board.

The penitentiary utilizes good time credits as a means of controlling discipline. Because of the differences in inmate populations, discipline at the state reformatory has not been considered as severe a problem as discipline at the state penitentiary. If an inmate at the reformatory is considered to be incorrigible, he can be transferred to the penitentiary. However, the staff at the state penitentiary cannot transfer the incorrigible inmates; they must deal directly with the problem. Good time credits is one means of discipline. The American Correctional Association has listed seven essential elements of correctional discipline which can be applied to an indefinite sentencing program. These elements are:

1. Good morale. The only sound basis for good discipline is good morale. Conversely, proper discipline builds morale.

2. Custody and control. Custodial care is the supervision of inmates designed to prevent escapes or incidents. It does not mean that it is necessary that all prisoners be under close supervision at all times.

3. Contributing disciplines. The staff and all phases of the institutional program in their special ways contribute to the general discipline and morale of the institution.

4. Individualized discipline. Not only should discipline be consistent, reasonable, objective, firm, and prompt, but it must be appropriately varied in terms of an understanding of the personalities of the inmates.

5. Preventive discipline. It is desirable to forestall punitive disciplinary practices with a workable program of preventive discipline.

6. Good communication. A good system of communication will replace mutual suspicion and other disturbed feelings between inmates and staff by greater mutual acceptance. It is particularly imparative to have good communication when

instituting any change of program which affects masses of the inmate body.

7. Program and procedures for maintaining proper standards of institutional control. Since discipline in its broadest sense is one of the most important factors in institutional life, primary responsibility must rest with the senior officials who will develop good disciplinary practices and prevent undesirable disciplinary practices which are now considered archaic.

Discipline, with the immediate aim of good order and good conduct, looks beyond the limits of the inmate's term of confinement. It must seek to insure carry-over value by inculcating standards which the inmate will maintain after release. It must always be objective and must develop in the inmate personal responsibility to that social community to which he will return.6/

The same source, in the discussion of the essential elements of correctional discipline noted that "meritorious good time and meritorious pay" are effective methods of "preventive discipline". 7/ Colorado has a system of meritorious good time credits. Correctional officials recognize, however, that the majority of good time credits are awarded automatically and do little in the area of preventive discipline. If Colorado adopted indefinite sentencing, good time credits could not apply, but the present limited system of meritorious pay could be extended.

Another question considered by the committee was whether additional time would be needed for the penitentiary to implement a program based on the concept of indefinite sentencing. While a changeover to the new sentencing system would take some time, the committee concluded that there would be an adequate period of time for the penitentiary to make any necessary changes in programs and procedures before offenders receiving indefinite sentences would be considered for parole.

Indeterminate Sentencing. Simply defined, indeterminate sentencing means sentencing an offender from one day to life in-

6/ Manual of Correctional Standards (3rd ed.) New York: The American Correctional Association, 1966, pp. 402-403.

7/ Ibid., p. 406.

prisonment. Colorado has had experience with the indeterminate sentence under the sex offenders act. Ideally, indeterminate sentencing is probably the best form of sentencing if it is assumed that human prejudices can be removed. Principle XV of the "Declaration of Principles" of the American Correctional Association states:

> A punitive sentence should properly be commensurate with the seriousness of the offense and the guilt of the offender. Inequality of such sentences for the same or similar crimes is always experienced as an injustice both by the offender and the society. On the other hand, the length of the correctional treatment given the offender for purposes of rehabilitation depends on the circumstances and characteristics of the particular offender and may have no relationship to the seriousness of the crime committed. In a correctionally oriented system of crime control, the indeterminate sentence administered by qualified personnel offers the best solution.[8]

Indeterminate sentencing offers all of the advantages of indefinite sentencing in the sense of being able to release inmates at the point when they are best suited for release. In addition, the problem of holding the truly dangerous offender is solved since, in theory, all sentences could be life sentences. The major disadvantage to an indeterminate sentence is that prejudice of correctional authorities and parole officials may be involved in determining the release or continued custody of certain offenders. Complete power of releasing offenders would be vested in the parole board. It was noted in the Manual of Correctional Standards that:

> The only form of sentencing which would place full discretion with the parole board to select and to release prisoners on parole at any time would be an indeterminate sentence of one day to life for every offense for which a prison sentence could be given. However, to place the power of life sentence over all prisoners with parole board members would be unthinkable.[9]

8/ Ibid., p. xxi.
9/ Ibid., p. 116.

Other Sentencing Modifications. In addition to the three major changes in sentencing discussed above, the committee studied two minor modifications which could be integrated into the recommended over-all indefinite sentencing program. These modifications were: (1) giving judges authority to place a minimum sentence on certain offenders; and (2) granting judges power to alter the original sentence up to 90 days after the sentence had been pronounced. The committee recommended the latter and rejected the former.

It was suggested that the committee adopt a form of an indefinite sentence, but retain the judges power to impose a minimum sentence on certain offenders. The minimum sentence considered under this approach was "one-third the maximum sentence or ten years, whichever is less." Reasons for this approach were stated in the Manual of Correctional Standards:

> If the parole system is made up of competent members and staff and receives suitable reports from the institution, it is feasible to give the parole board complete discretion to release at any time within the maximum sentence fixed by legislation or the court. In such jurisdictions there is no need for the law to require a fixed minimum sentence or a fraction of the maximum sentence to be served. Where the parole system can be relied upon to make uniformly realistic and wise decisions, the fixing of minimum sentences on a mechanical basis negates the principle of parole release on an individualized basis and is a barrier to competent parole board action. Where less than a model parole system exists, however, the court should retain the power, if it chooses in a particular case, to fix a minimum and maximum sentence. This assures that the community's attitude toward the crime will be expressed and that too lenient action by the parole authorities will not occur. No legislation, however, should permit the court to fix both a minimum and a maximum sentence so close together as to prevent wide latitude on the part of the parole board to determine the time of release.[10]

[10] Ibid., p. 117.

Colorado probably cannot have a model parole board system because of certain civil service requirements which must be met. Parole board members, once they are appointed, would have job security if they performed the duties prescribed by the civil service commission. Consequently, nothing can be done, at the present time, to remove board members after their appointment, if they start paroling every offender or denying parole to every inmate.

The criminal code committee rejected this proposal for two reasons. First, if this proposal were adopted it would apply to both the state penitentiary and state reformatory. As has been mentioned, the state reformatory presently has indefinite sentencing and all programs at the reformatory are geared to short terms of incarceration. Under this approach, many of the reformatory programs, which are working well, would be changed because some inmates would have fixed sentences to serve.

Secondly, some judges may elect to consistently impose minimum sentences of one-third the maximum or ten years, whichever is less, on all offenders. If this situation were to occur, it would negate many of the principles of indefinite sentencing, and would perpetuate the problems of the present system, since offenders with minimum sentences would feel their sentences were disparate.

Granting the judges authority to alter the sentence by granting probation up to 90 days after the sentence is imposed was considered by the committee to be a good modification. The major advantage of a sentencing modification provision in Colorado is that judges would have additional time before the sentence becomes final to consider further information on offenders, collected by the court probation department or received from the reception and diagnostic facility. Under a system of minimum sentences, unnecessarily severe sentences may be imposed because of emotional ferver involved in particular cases. It is entirely possible that in such a situation a judge may wish to alter his original sentence but, at the present time, he would be unable to do so unless an error had been made in the original sentence.

District Judge Francis Shallenberger argued against this procedure. He reasoned that judges are in an uncomfortable situation when imposing a sentence on an offender. At present, sentencing is completed in one step, but under a 90 day period for modification, the sentencing judges would be in an uncomfortable position for 90 days. Judge Shallenberger said that a 90 day period could be used by the offender to "marshal his forces" to bring pressure upon judges to alter the sentence. However, it was reported to the committee that many judges favor this form of sentencing because of the advantages enumerated.

Problems of Penal Institutions

Most of the problems relating to penal institutions have been discussed under the topic of sentencing since many of the institutional problems are directly related to sentencing problems. It was stated that disparity of sentences causes hostility in inmates which eventually leads to institutional problems. The present procedures for transferring inmates handicap rehabilitation efforts.

A third problem, which is primarily an institutional problem, is the planning of rehabilitative programs for inmates. As was noted earlier, all inmates received at the state's penal institutions are placed in a receiving unit for orientation, testing, and evaluation. Because present receiving units have limited staffs and the staff members have several duties to perform, relatively few evaluative tests are administered. Insufficient information may result in placing inmates in unsuitable rehabilitative programs. Also, certain mental disorders may not be detected since only limited psychiatric evaluation is available. The penal institutions need to have adequate information to assure the best possible placement of individuals in institutional facilities and rehabilitative programs.

Recommendations Concerning Penal Institutions

The recommended changes in the sentencing procedure will alleviate some of the problems facing the state's penal institutions. Institutional morale problems stemming from disparate sentences will be alleviated for offenders sentenced to indefinate sentences. The problem of equal transfers will also cease to exist since both the penitentiary and reformatory will receive inmates with indefinite sentences.

An integral part of the criminal code committee recommendations involves the placement of inmates in proper institutions and situating them in suitable rehabilitation programs. The criminal code committee has recommended the establishment of a reception and diagnostic center to evaluate all adult offenders sentenced to the state's penal institutions. This center will be beneficial to the judiciary as well as to the institutions since recommendations based on the evaluation of inmates will be available to the judges within 60 days after sentencing to the department of institutions. The committee concluded that the existing receiving units at the penitentiary and reformatory can handle the evaluation of inmates until a separate facility is constructed. However, the committee is hopeful that funds for planning the center will be made available during the 1969 session, and funds will be made available in the near future for construction of a separate facility.

As proposed by the committee, adult felony offenders will no longer be sentenced to a specific penal institution; they will be sentenced to the care and custody of the Colorado Department of Institutions. After the department receives a new offender, he will be placed in the reception and diagnostic facility for a complete physical, mental, psychiatric, social, and educational evaluation. Reports of the evaluation are sent to the court which sentenced the offender and to the department of institutions. At this point a judge may alter his original sentence by granting probation, based upon the pre-sentence investigation by the court probation department, and on the evaluation report from the reception and diagnostic center. If the judge does not alter his original sentence, the department of institutions can utilize the reports in choosing an institution for incarceration, and educational or vocational programs to be followed by the inmate. As one example of this approach, the evaluation would enhance maximum utilization of prescription parole programs by the institutions.

The concept of reception and diagnostic centers is not new. Several states have established centers, including the neighboring state of Kansas. Correctional officials feel that centers are a benefit to the entire correctional process, as can be noted by the following statement:

> Many state correctional systems now operate reception diagnostic centers for initial study and classification of the prisoner. The clinical diagnostic study becomes the basis for prescribing a long-range program of control and treatment of the individual within the institution and subsequently on parole.[11]

To further attest to the need for a reception and diagnostic center in the decision-making process of corrections, the President's Crime Commission recommended:

> Screening and diagnostic resources should be strengthened, with Federal support, at every point of significant decision. Jurisdictions should classify and assign offenders according to their needs and problems, giving separate treatment to all special offender groups when this is desirable. They should join together to operate joint regional facilities or make

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[11] Ibid., pp. 32-33.

> use of neighboring facilities on a contract basis where necessary to achieve these ends.12/

A reception and diagnostic center will provide more knowledge about the offender. A report relating to the Kansas state reception and diagnostic center indicated that many mental, physical, and personality disorders of prisoners would be undetected were it not for the center. According to a report by the clinical director of the Kansas center, many offenders are classified in abnormal phychiatric and physical categories:

> Psychotic disorders -- approximately 15%
> Retarded or borderline intelligency -- 20% - 25%
> Neurotic problems -- 5% - 8%
> "Organic brain syndrome" -- 3% - 5% 13/

In addition to the mental and physical disorders, the same report of the Kansas institution noted that:

> The majority of our population examined in this Center falls into the category of the disorganized personalities with different subdivisions. The textbook of psychiatry has described these people in different terms attributing to them different characteristics like lying, dishonesty, lack of conscience, low tolerance for frustration and anxiety and an inborn lack of capacity for empathy and sympathy; some of them describe them as parasitic personalities whose only goal in life is to exploit others and to have a comfortable life using short cuts to achieve these goals. On the above-mentioned roads they do not hesitate to victimize people using charm, persuasion, and if necessary violence.14/

Of major interest to the entire proposal is the placement of offenders after their evaluation. Presently, the majority of

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12/ President's Crime Commission Report, p. 180.
13/ Targownik, Dr. Karl K. "The Kansas State Reception and Diagnostic Center -- Procedurally and Clinically," Washburn Law Journal. Vol. 6, Topeka: Washburn University School of Law, 1966-67, pp. 288-289.
14/ Ibid., p. 291.

the offenders sentenced to Colorado correctional institutions are incarcerated at the state penitentiary. The inmate population of the state penitentiary is approximately 1,900 as compared to the inmate population at the state reformatory of about 600. These figures do not reflect the actual number of offenders sentenced to each institution since reformatory inmates, in general, are released in a much shorter period of time as compared with penitentiary inmates. The disposition of over 1,200 offenders in Kansas after their evaluation at the reception and diagnostic center was reported as follows:

423 - Kansas State Penitentiary
480 - Kansas State Industrial Reformatory
34 - Larned State Hospital (Ward for criminally insane)
15 - Probation to State Hospitals*
242 - Returned to Courts and Granted Probation*
39 - Trusty Status at Center[15/]

*Kansas judges have the power to return offenders to court within 90 days to modify the original sentence.

Whether a similar pattern of recommendations would be found in Colorado is not known but it is highly possible that some institutional changes might be required with the extension of clinical diagnosis and evaluation of inmates.

Capital Construction. Cost estimates of a new facility for receiving and diagnosis of felony offenders in Colorado were prepared for the criminal code committee. Most of the capital cost estimates were obtained from an architect who has been consulting with the department of institutions on the construction of several new correctional facilities which will be needed in the development of the department of institutions' long-range plan.

It was estimated that the minimum amount of land necessary to construct a reception and diagnostic center is 82 acres. The price of land in the Denver metropolitan area has reached a cost in excess of $1,350 per acre. Based on estimates and inquiries made by the department of institutions' consulting architect, the cost for acquiring 82 acres of land for a center would be approximately $112,500. However, Mr. Tinsley informed the staff that the state owns a section of land in the Denver area which may be acquired by the department of institutions at no cost.

15/ Ibid., pp. 294-295.

The department of institutions' consulting architect stated that it is difficult to estimate the cost of constructing any type building without the actual designs for the building. However, a rough estimate was made, assuming the following conditions:

(1) The center would be a maximum security type of institution, although as an aid to the testing and evaluating programs, the facility would not have the appearance of a maximum security institution;

(2) The center would be a self contained unit; that is, it would have its own heating plant, bakery, kitchen, laundry, etc.;

(3) A certain amount of recreational and exercise facilities are necessary at the institution;

(4) The unit would be capable of holding 150 offenders for evaluation.

The capacity of the institution was based on the average number of inmates received monthly by the state penitentiary and state reformatory for the past six months. The average received by these institutions during the past six months, excluding parole violators, was 92 offenders. On the assumption that each offender received by the center would stay an average of six weeks, which was reported to be adequate time for a complete evaluation, the total capacity of the center was increased to 138. The additional space for offenders (to make the total of 150) was provided for growth, and for some extreme cases where longer evaluation is necessary.

Taking all factors into consideration, the consulting architect felt the cost of constructing the center would be about $15,000 per offender confined at the center, or a total construction cost of $2,250,000.

Total Capital Construction Costs. The total capital construction costs should be figured with purchase of land and use of land already owned by the state:

$2,250,000	Construction of the Center
112,500	Land Acquisition
$2,362,500	Total (Approximate)

$2,250,000	Construction of the Center
0	Land Acquisition
$2,250,000	Total (Approximate)

Annual Operating Costs of a Reception and a Diagnostic Center. The annual operating costs estimated below are computed for the personnel needs only. Personnel needs have been placed

in two categories -- administrative and custodial personnel, and professional personnel.

Mr. Tinsley provided an estimate of the number of administrative and custodial personnel necessary to operate the center. A minimum number of custodial officers was suggested in order to achieve the maximum benefit from the evaluation. It was felt that the more an offender feels he is incarcerated, the less chance the professional staff has of accumulating accurate evaluation information about the inmate.

A minimum of 30 custodial officers would be necessary for the center. This would provide for three posts, composed of five men each or a total of 15 men, for maintaining the housing of inmates. This staffing would provide around-the-clock supervision seven days a week. An additional three posts composed of five men each, or a total of 15 men, would be necessary for dining hall, recreation, exercise, or other duties which may require supervision. Again, these three posts would provide round-the-clock supervision, seven days a week.

Tabulated below is a cost estimate of the necessary administrative and custodial staff:

Administrative and Custodial Personnel		Total Annual Salary
1 Superintendent		$ 17,280
1 Deputy Superintendent		14,928
10 Clerical Employees	($4,860)	48,600
1 Captain		9,168
3 Lieutenants	($7,920)	23,760
26 Officers	($6,840)	117,840
Total Annual Cost for Administrative and Custodial Personnel (based on 1968 Civil Service Salary Schedules)		$291,576

Information on the professional personnel at the center was developed by Dr. Harl H. Young, psychological consultant for the department of institutions.

Briefly listed below are the required professional personnel needed at the center:

Professional Personnel		Total Annual Salary
3 part time Psychiatrists	($10,000)	$ 30,000
1 Psychologist (Grade 33-3)		13,536
2 Psychologists (Grade 26-3)	($ 9,624)	19,248
1 Social Worker (Grade 29)		10,104

1 Social Worker (Grade 27)		$ 9,168
1 Social Worker (Grade 25)		8,316
2 Social Workers (Grade 23-3)	($8,316)	16,632
2 Case Aides	($6,516)	13,032
1 General Practitioner		16,464
1 Dentist		14,220
1 Male Nurse or Medical Technician		8,316
Total Annual Cost of Professional Personnel (based on 1968 Civil Service Salary Schedules)		$159,036

Total Personnel Cost. The total annual personnel cost for operating the center is computed as follows:

$291,576	Cost of Administrative and Custodial Personnel
159,036	Cost of Professional Personnel
$450,612	Total Annual Personnel Cost for Operating the Center (based on 1968 Civil Service Salary Schedules)

Other Operating Costs. Costs of utilities, office supplies, clothing and food for inmates, and other operating expenses have not been figured. It would be expected that these costs would run between $50,000 and $100,000 annually.

Total Annual Cost. The total annual cost for the operation of the center is estimated to range between $500,000 and $550,000. This estimate is based on the combination of the total personnel costs and the other necessary annual costs described above.

Problems Concerning the Colorado Parole Board

When an inmate at the state penitentiary becomes eligible for parole, the staff at the penitentiary prepares the inmate's file for use by the parole board. The inmate also submits a "parole program" based on plans upon release. In addition, the field parole officer, who will be assigned the perspective parolee should his parole be granted, will make a pre-parole investigation based upon the inmates parole program. This information is placed into a file to be studied by the parole board, and from the information in the file, the parole board will make its decision whether to grant, defer, or deny parole.

Information Supplied to the Parole Board. Looking at the over-all view of the information supplied to the parole board, by which the parole board members must decide whether to grant, defer, or deny parole, it is difficult to believe that the parole board could make a decision to grant parole to any inmate since

the information is almost completely negative in every respect. The one possible exception is the report made by the parole officer at the institution relative to the parole program.

In addition to the negative aspects of the inmate's file, very little information, if any, is provided about the attempts of an inmate to alter his criminal life. For example, what has an inmate done during his confinement to improve his education, to increase his work skills, or to achieve basic work habits? There is a question as to an inmate's attitude or sincerity in these endeavors. Has the inmate undertaken endeavors just to obtain parole? Whether information of this nature can be supplied without intensive personal interviews between parole board members and inmates is questionable. Results of psychological and psychiatric testing and interviewing are generally not available or are available to only a limited extent in the file materials.

Caseload of the Parole Board. Looking at the problem of granting parole from the point of view of a parole board member a new problem arises -- the element of time. The average parole caseload at the state penitentiary is approximately 80 cases per month. Divided among the six board members, meeting one day a month, each board member would be responsible for about 13 cases per month. A parole board member receives his case files at the monthly agenda meeting which is held about four days prior to the parole board meeting at the institution. Reading through each inmate file takes at least 20 minutes, or a total of four hours and 40 minutes to read 13 cases. More time, possibly an hour per case, would be necessary to study each file and note questions to ask each inmate up for parole.

In addition to the time needed to review files of penitentiary inmates, parole board members also receive files on reformatory inmates. The average caseload of the reformatory is approximately 11 cases for each board member. Since the files are generally smaller, and also contain a staff recommendation regarding parole, a parole board member could become familiar with each case in a shorter period of time.

Combining both the reformatory and penitentiary caseloads, a parole board member would need to spend from 25 to 30 hours with the records of his monthly caseload. Whether all of the part time board members can spend this amount of time in reviewing the files may be questionable.

Another problem is that a parole board member usually does not have an opportunity to interview the inmates prior to the day of the board meeting. The duration of inmate interviews with members of the parole board appeared to average between ten and fifteen minutes.

Table I

ACTIONS BY PAROLE BOARD

New Applicants, Reparoles, and Escapees, and Reconsiderations for Parole*

(1) Action Taken by Parole Board	(2) New		(3) Reparole and Escapees		(4) Reconsiderations	
	No. of Inmates	Percentage	No. of Inmates	Percentage	No. of Inmates	Percentage
Parole Granted	205	75.65%	26	53.06%	41	56.16%
Parole Deferred	32	11.81%	15	30.62%	13	17.81%
Parole Denied	31	11.44%	6	12.24%	14	19.19%
Discharged from Custody**	2	0.73%	1	2.04%	5	6.84%
Recommended Transfer to Colorado State Hospital	1	0.37%	1	2.04%	0	0.00%
Totals	271	100%	49	100%	73	100%

*Five selected months totalled.

**The only occasions where inmates were granted discharges were when an inmate had a consecutive sentence to serve or in cases involving women sentenced to the Colorado State Reformatory for Women.

Decisions of the Parole Board. As was mentioned earlier, it is difficult to understand how anyone can be paroled from the state penitentiary based on a reading of inmate files. However, the current parole board can be considered fairly lenient. Table I (p. 30) shows a five month average of parole decisions listed according to the time an inmate went before the parole board. Column one indicates the action taken by the parole board. Column two, under the heading "New," lists inmates going before the parole board for the first time. Column three, "Reparole and Escapees," shows inmates who have returned to the institution as parole violators and are being considered for parole again, and escapees from the institution who are being considered for parole. Column four, labeled "Reconsiderations," consists of inmates who have had their parole deferred and are being considered for parole again.

As may be noted from Table I, an inmate going before the parole board for the first time stands the best chance of receiving parole, while those offenders who violated parole have poorer chances of receiving parole.

The percentages in Columns three and four are not as significant as those for Column two since a change in a few numbers of inmates results in significant percentage changes. However, checking with selected months the figures listed appeared to be representative of parole board decisions.

Table II is the total of all parole action taken in Table I, with an additional month added to bring a six month average of parole board's action. Column one indicates parole board action; Column two is the number of inmates; and Column three expresses the percentage of inmates.

Table II

Summary of Parole Board Action*
(Colorado State Penitentiary)

(1) Action Taken	(2) No. of Inmates	(3) Percentage of Total Inmates
Parole Granted	319	67.02 %
Parole Deferred	82	17.23 %
Parole Denied	62	13.03 %
Other**	13	2.72 %
Totals	476	100.00 %

*Six selected months totalled.
**Includes transfers and discharges.

Projections on annual caseloads may be made from data in Table II. The parole board will see approximately 950 inmates at the penitentiary annually, with 600 to 650 inmates granted parole during the year. Approximately 800 inmates at the state reformatory meet with the parole board annually.

Even though the parole board will grant parole to about two-thirds of the inmates who come before it, it would be expected that differences will occur in the recommendations between members of the board. One reason for some differences is that some board members will take certain types of cases, such as all of the reformatory transfers. Shown in Table III (page 33) is the action taken by the individual parole board members hearing the cases.

Tabulations were made of the recommendations of five parole board members for six selected months at the penitentiary for the purpose of determining whether the recommendations of the board tended to be consistent. In granting paroles, the board tended to be consistent. The board members' recommendations ranged between 67 percent of a members cases to 79.5 percent (excluding cases in which an inmate had been transferred to the penitentiary from the reformatory and other special transfers and discharges).

Members of the parole board appeared to take somewhat different approaches in regard to deferrals and denials of parole, however. The range of deferrals for reconsideration to a later board meeting was from 6.5 percent of a member's cases to 17.5 percent. The percentage of parole denials ranged from 5,5 percent to over 19 percent of board members' cases.

Recidivism. Central to issues of the sentencing procedures and rehabilitative efforts of the state is the extent of recidivism by former inmates of the penal system. As evidence of national concern is the article published in the Uniform Crime Reports -- 1967. It was reported that in a four year study of offenders, beginning in 1963, 59 percent of the offenders paroled had committed new crimes within four years.16/ Thus, the nagnitude of the problem of recidivism is obvious, even if a state were to achieve an average well below the national average. It was noted in the conclusion of the Uniform Crime Reports study that:

> The high degree of recidivism in all types of crime particularly predatory crime is evident. These individuals /recidivists/ place an ever increasing burden upon law enforcement and raise serious questions with

16/ Uniform Crime Reports -- 1967, p. 37.

Table III

RECOMMENDATIONS FOR PAROLE BY MEMBERS OF PAROLE BOARD *

Action Taken	Member (1)		Member (2)		Member (3)		Member (4)		Member (5)	
	No. of Inmates	Per-centage	No. of Inmates	Per-centage	No. of Inmates	Per-centage	No. of Inmates	Per-centage	No. of Inmates	Per-centage
Parole Granted	69	76.67%	74	79.57%	49	72.06%	59	67.05%	47	71.21%
Parole Deferred	16	17.77%	6	6.45%	7	10.29%	12	13.63%	11	16.67%
Parole Denied	5	5.56%	13	13.98%	12	17.65%	17	19.32%	8	12.12%
Total	90	100%	93	100%	68	100%	88	100%	66	100%

*Recommendations from two board members were not included since the number of cases assigned was not sufficient for analysis.

respect to the effectiveness of rehabilitation.17/

Recommendations Concerning Parole

The committee had the choice of three alternatives when deciding on its recommendations for the parole board system -- retaining the status quo; continuation of a part time parole board but adding full time hearing officers; or establishment of a full time parole board. The committee felt that the proper solution to the problems in the existing parole system was a full time parole board. Before reaching its conclusion, the committee studied the advantages and disadvantages of each alternative program.

In regard to the status quo, the greatest advantage of the present system is that the parole board is completely independent in making its decisions. The protection of the public is the board's primary interest. The board remains part time, which avoids any problem with the civil service requirements.

There are at least two disadvantages to maintaining the status quo. As was noted, the parole board has almost no opportunity to become personally acquainted with the inmates being considered for parole. The board must rely on information contained in inmate files in order to make its decision. In addition, the inmate has no opportunity to adjust to parole board members, and an inmate may have his parole deferred or denied for such reasons as the inability to express himself well to a parole board member during the interview period. With more time, parole board members could interview inmates and gain greater insight into their personal views and background. A second disadvantage is that time is a limiting factor in the making of decisions. It is now impossible for more than one member of the board to be present at parole hearings. It is not possible for board members to make their decisions based upon careful study of each inmate. This situation will continue as the caseloads become larger in the next few years.

A second alternative is to retain a part time parole board and employ full time hearing officers. Under this system, a parole board would remain part time and full time hearing officers could be utilized to conduct interviews. The major advantages are the same as those with the status quo; namely, board independence and retention of a part time board. Also parole board members would have better information on which to base their decisions since hearing officers could interview inmates and make

17/ Ibid., p. 41.

reports. The hearing officer could also condense the files, and parole board members would not be burdened with unnecessary items in the inmate's file.

The disadvantages of this type of a system are that parole board members still will not have personal contact with inmates, except during the parole board interview. This situation could create a system whereby the parole board would become a "rubber stamp" for hearing officers of the board, almost necessarily having to follow hearing officers' recommendations completely. The only knowledge the parole board would have about inmates being considered for parole would be supplied by the hearing officers. The hearing officers would be under civil service and would have job security. The question might arise on how to remove an officer because he made poor recommendations.

The third alternative, which the committee recommends, is the establishment of a full time parole board. Under this system, the board members would work at the institutions, conducting personal interviews, and would meet together, sitting as a board, to make parole decisions. The President's Crime Commission recognized the need for a full time parole board in its report: "Parole boards should be appointed solely on the basis of competence and should receive training and orientation in their task. They should be required to serve full time and should be compensated accordingly."18/

The advantages of this system are that the parole board could make decisions by being familiar with each case handled. The inmates of institutions could build a personal rapport with parole board members which would lend to better expression of ideas by the inmate when he is before the parole board. The present time limitations of the board would be alleviated since the parole board members would spend full time in working on parole matters. If the caseload grows to a critical problem in future years more parole board members could be added, but the committee recommends a three member board at this time.

The full time parole board would be under the civil service system. This provision will assure that the parole system will be separated from political influence, an essential element in a good parole system.

> The parole system should be entirely free, not only from political control, manipulation, or influence, but also from improper influences brought by pressure groups of any type. Under any system, parole will suffer unless appointments are

18/ President's Crime Commission Report, p. 181.

> made strictly on the basis of merit, notwithstanding party affiliation...
>
> There is need also of establishing safeguards against the undue influence of racial and religious groups, and pressure groups in general. In short, all appointments to a parole board and its staff, and all decisions with regard to parole, should be made on the basis of the readiness of the prisoner for release, and solely on the merits of the case...19/

Under the proposed system, parole board members would have a certain responsiveness to the executive director of the department of institutions, such as by the executive director approving the board's rules and regulations. The district attorneys who spoke to the committee expressed that they favored the committee's approach because the parole system would be centralized and problems which may arise can be discussed directly with the executive director of the department of institutions.

Under the proposal submitted by the committee, the parole board would be empowered to grant, defer, deny, and terminate parole. Giving the parole board the additional power to terminate parole was considered to be in the best interest of society as a whole and of the offender. Recidivism is most critical during the first three years an offender is on parole. If parole could be terminated after three years of successful parole, officers would have a greater opportunity to supervise those offenders on parole who may be a greater threat to society.

The major disadvantage to a full time parole board might be the placement of parole board members under the civil service system. With job security a parole board member could not be removed from office either because of poor recommendations, which may be a threat to the public, or by not realistically releasing inmates on parole. It is also possible that parole board members working in institutions could build certain prejudices against certain inmates which would interfere with the impartial operation of the system.

Cost of a Full Time Parole Board. The operational cost of a three member full time parole board is based upon a 1967 budget request which was updated by Mr. Edward Grout, director of the division of adult parole. In the table, both capital costs and annual costs are combined. In the first year of operation the total cost of a full time parole board was estimated at $69,700. In successive years of operation, the annual cost is $59,700.

19/ Manual of Correctional Standards, p. 123.

Item of Expenditure	Salary or Cost
1 Chairman of the Parole Board	$15,000
2 Parole Board Members ($13,500)	27,000
1 Secretary for the Board	5,000
Capital Outlay -- (office equipment and automobiles for the board)	10,000
Travel Expenses and Car Maintenance	11,500
Office Supplies	1,200
Total for First Year of Operation of the Full Time Parole Board	$69,700

Qualifications of Parole Board Members. In dealing with the qualifications of parole board members, the committee was advised that it was unnecessary to be too specific when establishing qualifications. It was noted that psychiatrists, psycologists, social workers, and people from related fields may not make the best candidates for board membership. The majority of the conferees before the committee suggested that persons who have experience with criminals would be better qualified members, even if the board member did not have a college degree. In short, the speakers before the committee felt that training is as important as education. Their contention appears to be upheld by the President's Crime Commission.

> The nature of the decisions to be made in parole requires persons who have broad academic backgrounds, especially in the behavioral sciences, and who are aware of how parole operates within the context of a total correctional process. It is vital that board members know the kinds of individuals with whom they are dealing and the many institutional and community variables relating to their decisions. The rise of statistical aids to decision-making and increased responsibilities to meet due process requirements make it even more essential that board members be sufficiently well trained to make discriminating judgments about such matters.20/

However, the American Correctional Association seems to emphasize education more than training. They feel that qualifications for parole board membership should be:

20/ Task Force Report: Corrections, p. 67.

1. Personality: He must be of such integrity, intelligence, and good judgment as to command respect and public confidence. Because of the importance of his quasi-judicial functions, he must possess the equivalent personal qualifications of a high judicial officer. He must be forthright, courageous, and independent. He should be appointed without reference to creed, color, or political affiliation.

2. Education: A board member should have an educational background broad enough to provide him with a knowledge of those professions most closely related to parole administration. Specifically, academic training, which has qualified the board member for professional practice in a field such as criminology, education, psychiatry, psychology, law, social work and sociology, is desirable. It is essential that he have the capacity and desire to round out his knowledge, as effective performance is dependent upon an understanding of legal processes, the dynamics of human behavior, and cultural conditions contributing to crime.

3. Experience: He must have an intimate knowledge of common situations and problems confronting offenders. This might be obtained from a variety of fields, such as probation, parole, the judiciary, law, social work, a correctional institution, a delinquency prevention agency.

4. Other: He should not be an officer of a political party or seek or hold elective office while a member of the board.21/

The committee in its recommendation decided to give broad legislative guidelines, with specific qualifications determined by the director of the department of institutions and the civil service commission.

Problems Relating to Detainers

Closely related to other problems mentioned in regard to penal institutions and to the parole system is the problem of

21/ Manual of Correctional Standards, p. 119.

detainers. A detainer is a "hold order" on an inmate by a jurisdiction, either in this state or from another state, for the purpose of bringing the inmate to trial for an offense in that jurisdiction.

Two problems are involved with prisoners who have detainers placed against them. First, there is uncertainty during the inmate's present sentence concerning another trial and possible further incarceration. This situation presents a custodial problem because the attitude of the inmate. The inmate is generally unwilling to become involved in institutional programs of rehabilitation since he may be released only to face incarceration for another offense. Warden Patterson stated that, from the institutional staff point of view, the planning of rehabilitation programs is almost impossible for inmates with detainers since there is no way of knowing how long these inmates will be incarcerated.

The second problem with detainers is the conflict with the constitutional right of a speedy trial. Formerly, states ruled that the right to a speedy trial is not violated by a detainer since a detainer is filed on a criminal complaint only. Therefore, the individual did not have any of his rights violated. However, the U.S. Supreme Court held in Klopfer v. North Carolina, 386 U.S. 213 (1967), that the right to a speedy trial is as fundamental as any of the Sixth Amendment rights and is made obligatory on the states by the Fourteenth Amendment.22/ For this reason, it is necessary that means be established in order to provide for a trial as early as feasible.

Recommendations Concerning Detainers

To resolve problems involving the disposition of detainers, the committee recommends the enactment of the "Uniform Mandatory Disposition of Detainers Act," and the "Agreement on Detainers." The "Uniform Mandatory Disposition of Detainers Act" is a uniform act designated to dispose of intrastate detainers. This act was promulgated by the Commissioners on Uniform State Laws in 1958 and it has been enacted by five states -- Kansas, Massachusetts, Minnesota, Missouri, and South Carolina.

The "Agreement on Detainers" pertains to interstate detainers by permitting either the offender or the prosecuting authority to commence proceedings for their final disposition. The "Agreement" was promulgated by the Council of State Governments

22/ Shelton, Donald E. "Unconstitutional Uncertainty, A Study of the Use of Detainers" Prospectus A Journal of Law Reform. Vol. 1, Ann Arbor, Michigan: University of Michigan Law School, April 1968, p. 124.

and to date 19 states have enacted its provisions -- California, Connecticut, Hawaii, Iowa, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, South Carolina, Utah, Vermont, and Washington.

Both of these recommended acts make it possible for the clearing of detainers at the insistance of the inmate in order to permit inmates and correctional officials to secure a greater degree of knowledge of the inmate's future and to make it possible for institutional authorities to provide a realistic rehabilitation program. The "Agreement" for interstate detainers also provides a method whereby prosecuting authorities may secure inmates from other states for trial before the expiration of their sentences in the other state. At the same time, a governor's right to refuse to make the inmate available by extradition is retained. The governor may refuse the request of the prosecuting jurisdiction within 30 days of the request, either by request of the inmate or upon his own motion. If temporary custody is granted, the prosecuting jurisdiction has 120 days to commence the trial.

Under the proposed legislation, the executive director of the department of institutions, through the wardens, would be required to inform inmates of all indictments, informations, or criminal complaints which may have been lodged against them. The inmate may request the disposition of the detainer, and the executive director of the department of institutions would forward the request to the proper jurisdiction. The prosecuting jurisdiction then has 180 days, in the case of an interstate detainer, and 90 days, in the case of an intrastate detainer, to commence the trial. The time limit may be extended if good cause is shown in court with the inmate or his counsel present. If the trial does not commence within the specified time limit and an extension is not sought, the detainer will be dismissed with prejudice. In the agreement, the expense of transportation and temporary custody of the inmate is placed upon the prosecuting jurisdiction unless supplemental agreement is reached between contracting states. In addition, any party state may withdraw from the agreement simply by enacting legislation repealing the provisions of the agreement. However, any proceedings started prior to the repeal would need to be completed under the agreement.

Letters were sent to the 19 states which have enacted the Agreement asking about their experience with interstate detainers under the Agreement. Of the states which replied, all reported favorable experiences with the Agreement. The two primary features mentioned as greatest assistance were: (1) correctional authorities and inmates at penal institutions were now able to plan rehabilitation programs based on knowing the total length of an inmate's incarceration; and (2) prosecuting authorities in states could obtain offenders confined in another state's penal institution at a time when witnesses are easily available, instead of having to wait until the offender is released, possibly years later, when witnesses may be difficult to locate.