

Determined Sentencing Proposal

Coordinating Council of Prisoner Organizations

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FOREWORD

For more than sixty years the indeterminate sentencing philosophy has dominated correctional policy and practice. Based on the medical model which views the criminal as a sick person who requires treatment until cured, it allowed criminologists to ask for and obtain the widest possible discretion in sentence setting in order to be allowed sufficient time to effect a cure.

It was hailed as ushering in a new era in penology wherein the offender would be the recipient of treatment reflecting his or her individual characteristics rather than the crime committed. This it was thought would obviate the need for retribution since the offender would be returned to society a changed person and would offend no more.

The reality has fallen far short of this ideal. Some of the more obvious shortcomings of indeterminate sentencing in practice are:

- great disparity of time served by prisoners sentenced for the same crime.*
- sensitivity of sentencing authorities to the hue and cry of public passion, resulting in irrational median sentences when measured against the financial or physical harm resulting from the criminal act.*
- the destructive influence on prisoners lives resulting from prolonged uncertainty.*
- persistence of high recidivist rates.*

In response to this evident failure, the Coordinating Council of Prisoner Organizations established a committee in October of 1973, to study the problem and search for an alternative to indeterminate sentences. This Determined Sentencing Proposal is the result of that study.

It is widely recognized that criminal behavior results from many causes, many of them rooted in social, economic and political conditions. Sentencing cannot effect these root causes. Its principal function therefore is to satisfy demands for retribution which if left unsatisfied would create social unrest.

While recognizing this demand, the proponents believe that retribution should be exercised with restraint. This restrained use of state power legitimatizes demands for lawful behavior from individuals. Social expectations are elevated rather than degraded by moderation in sentence setting.

Since punishment is the object of sentencing it follows that it should be meted out with an eye to equal justice. All offenders convicted of the same act should receive the same sentence. This will require the redefinition of some crimes so that sentencing can reflect the degree of harm done.

In terms of standard setting this proposal abolishes the use of violence, cruelty or death as punishment for any crime. It limits sentences for all non-violent crimes on the basis that long incarceration has a damaging effect detrimental to both society and the offender. Only in cases of serious bodily harm do proposed sentences exceed 2 years.

Sentences are proposed for six categories of felonies in the belief that a simple sentencing structure will insure the greatest public understanding thus maximizing deterrent effect.

Coordinating Council of Prisoner Organizations

C.C.P.O. DETERMINED SENTENCING PROPOSAL

ARTICLE I. PURPOSE AND POLICY

Section 1. The purpose of penal codes is to establish the minimum standard of conduct which society deems necessary to enable its members to live together harmoniously and for society to prosper and endure.

Section 2. The purpose of this Act is to achieve equal justice for all offenders by establishing determined sentences of reasonable length.

Section 3. It is the policy of this Act that, in sentencing offenders, society shall, by its conduct, set the standard which is expected of individuals in resolving their differences.

Since societal good demands that individuals resolve their personal problems without resorting to violence or inflicting death, society in imposing sentences shall not resort to violence, cruelty or death.

Section 4. It is the policy of the Act that the state do no greater harm to the offender than the offending person has done to society or to other persons.

ARTICLE II. SENTENCING PHILOSOPHY

Section 1. Sentencing establishes the degree of opprobrium which society attaches to proscribed acts.

Section 2. Sentencing functions to mitigate and obviate the desire for personal vengeance by those suffering harm.

Section 3. Sentences should balance societal demand for punishment, the general deterrent effect of sanctions, and the desire to minimize any lasting damage to the offender by the experience of incarceration.

Section 4. The general deterrent effect of sentences exists in a widespread public understanding of the price to be exacted for the commission of a crime. Therefore, it is desirable to establish a limited number of categories of crime, readily understood by the citizenry, graduated by seriousness of offense type, for which sentences are prescribed.

ARTICLE III. SENTENCING

Section 1. Sentences shall reflect the circumstances and seriousness of the offense. The offender's personal characteristics, including his previous arrest record, shall not be considerations.

Section 2. In establishing sentences for proscribed acts the severity of the harm done and the offender's intent and motive shall be considered.

Section 3. Except as hereinafter provided for, sentences for offenses in which serious bodily harm does not occur shall be less than two years.

Section 4. Offenses committed by those in positions of public trust and responsibility, and by those in positions of great economic power, where such offenses are related to their position, shall be one degree more serious an offense than the same offense committed by those without such public trust or economic power.

Section 5. Attempted offenses shall be one degree less serious than the offense attempted.

Section 6. There shall be no parole.

ARTICLE IV. SENTENCING CATEGORIES

Section 1. All existing felony offenses shall be redefined as necessary and divided into the following categories.

Section 2. CATEGORY I

- A. Category I felonies shall include:
 - 1. Murder committed with deliberate premeditated malice aforethought and extreme atrocity or cruelty.
 - 2. Felony murder as presently applied in California committed with extreme atrocity or cruelty.
- B. The sentence for Category I felonies shall be ten (10) years.

Section 3. CATEGORY II

- A. Category II felonies shall include:
 - 1. Murder committed with deliberate premeditated malice aforethought.
 - 2. Felony murder as presently applied in California.
- B. The sentence for Category II felonies shall be six (6) years.

Section 4. CATEGORY III

- A. Category III felonies shall include the following types of crimes:
 - 1. Intentional homicide in which provocation is inadequate to reduce the crime to manslaughter.
 - 2. Extremely serious assaults with intent to kill or in which bodily harm occurs such as:
 - (a) Assault with intent to murder.
 - (b) Assault in which serious bodily harm occurs.
 - (c) Robbery or Burglary in which serious bodily harm occurs.
 - (d) Forcible rape in which serious bodily harm other than the rape, occurs.
 - 3. Acts committed for profit which place the victim in danger of death or serious bodily harm for an extended period of time, such as:
 - (a) Kidnapping for ransom or robbery.
- B. The sentence for Category III felonies shall be three (3) years.

Section 5. CATEGORY IV

- A. Category IV felonies shall include the following types of crimes:
 - 1. Non-premeditated homicides such as:
 - (a) Intentional homicide while under the influence of a sudden, intense and violent emotional reaction to serious provocation.
 - (b) Homicide by criminal negligence.
 - 2. Felony acts where the potential for serious bodily harm or death is high.
 - (a) Assault with a deadly weapon.
 - (b) Armed robbery.
 - (c) Forcible rape.
 - (d) Kidnapping other than for profit in which there is danger of death or bodily harm to the victim.

Section 5. continued

- B. The sentence for Category IV felonies shall be two (2) years.

Section 6. CATEGORY V

- A. Category V felonies shall include the following types of crimes:
 - 1. Acts committed for profit in which there is potential for bodily harm such as:
 - (a) Unarmed robbery.
 - (b) Burglary I.
 - 2. Sexual acts by an adult with a minor which have potential for serious harm to the minor, such as:
 - (a) Statutory rape.
 - (b) Lewd acts on a child under 14 years of age.
- B. The sentence for Category V felonies shall be fifteen (15) months.

Section 7. CATEGORY VI

- A. Category VI felonies shall include the following types of crimes:
 - 1. Property offenses in which the potential for bodily harm is minimal and in which the property loss is significant, such as:
 - (a) Burglary II.
 - (b) Grand theft.
 - (c) Grand theft auto.
 - 2. Property offenses involving fraud and forgery.
- B. The sentence for Category VI felonies shall be nine (9) months.

Section 8. CATEGORY VII

- A. Category VII offenses shall be reduced to misdemeanors and shall include the following types of offenses:
 - 1. Petty property crimes such as:
 - (a) Receiving stolen property.
 - (b) Petty theft.
 - (c) Credit card theft.
 - (d) Operating a motor vehicle without the owner's consent.
 - 2. Improper sale of controlled substances such as:
 - (a) Dangerous drugs, marijuana, and narcotics.

Section 9. CATEGORY VIII

- A. Category VIII offenses shall be decriminalized. They shall include, but not be confined to, the following:
 - 1. The use and possession of controlled substances.
 - 2. All private consenting sexual acts between adults.
 - 3. Acts which are offensive but not directly harmful to others, such as indecent exposure.

ARTICLE V. MULTIPLE SENTENCES

Section 1. There shall be only one sentence imposed for a single criminal episode unless there are multiple victims suffering bodily harm or death.

Section 2. Where an offender is convicted of multiple offenses not involving serious bodily harm which are separately punishable, or when an offender is convicted of an offense not involving serious bodily harm while under sentence on a previous conviction, the sentences shall run concurrently.

Section 3. Multiple offenses involving serious bodily harm or death arising out of a single or multiple episodes shall be separately punishable, and consecutive sentences may be imposed.

Consecutive sentences shall not be imposed if the result would be a maximum sentence more than:

- A. One and a half times the maximum sentence for the most serious offense involved when no more than one of the offenses involves intentional death.
- B. Two times the most serious offense involved when more than two of the offenses involves intentional death.

CHART I.

This chart compares the median time served to first release, by offense categories, for felons in the following jurisdictions:

- *A. California women for years 1970 through first half 1973;*
- B. California men for years 1968 through 1971 combined;*
- C. Illinois, Michigan, Ohio, New York and Pennsylvania combined men for years 1958 through 1971;*
- **D. National (all states reporting excluding California) men for years 1968 through 1971;*

with the estimated time that would be served under this proposal.

Time served by California men is considerably higher in all offense categories than in any of the other jurisdictions. For the total of all offenses, California men serve 1.42 times longer than those in the five industrial states and 1.92 times longer than for the nation (excluding California).

One illustration of the irrationality of the present system is shown by the comparison of time served by California women inasmuch as they serve a longer time for narcotic offenses than they do for willful homicide.

** Information for all categories not available.*

*** 17 states do not report.*

MONTHS

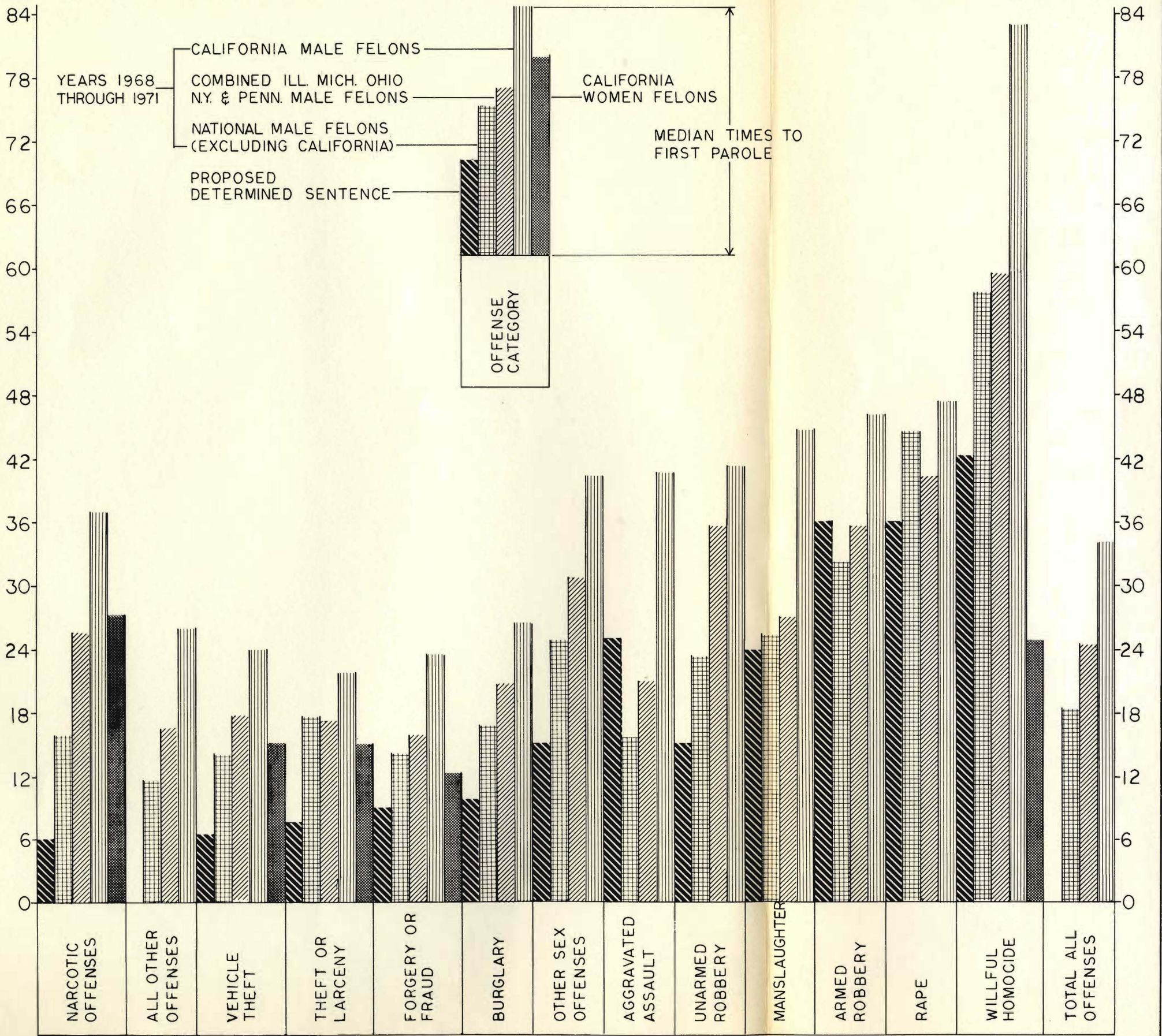


CHART II.

In this chart, bar graphs showing time to first release for California male felons for a number of, but not all, crimes is arranged into sentencing categories which reflect in a crude fashion the sentencing categories contained in this proposal. Each bar graph shows the median time to first release and the middle 80 percentile range for the combined years of 1970 through 1973, and the determinate sentences proposed herein. The categorization is only an approximation of what would be accomplished under this proposal. For example, Robbery I is shown in Category IV whereas under the proposal it would, dependent on the violence used, be under either Category III or IV.

As crude as the categorization in the chart is it demonstrates the rationality of this proposal as opposed to the present irrationality in sentencing structure. For example, the median time served to first release for narcotics possession with a prior is higher than any other crime, except first degree murder and kidnapping for ransom.

Across all the bar graphs is a band representing the threshold of adverse outcome. As used here adverse outcome includes the total effect on society and the offender. It includes the effect of long incarceration on:

- (a) Inability of the offender to readjust to outside society.*
- (b) Increase recidivist rates.*
- (c) Breakdown of family ties with resultant welfare loads.*
- (d) Institutionalization of the offender.*
- (e) Increased alienation, hostility and potential violence of the offender.*

The fact that the median time presently served for all offenses fall within or above this threshold of adverse outcome helps to explain why 38% of the prison population have served previous prison sentences.

YEARS

20
15
10
5
0

