

PAROLE SELECTION AND ABOLISHMENT AND DETERMINATE SENTENCING CREATION:

ROLE AND INFLUENCE IN THE CHANGE PROCESS

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INTRODUCTION

Parole is an institutional release and community control and assistance method which has long been utilized in the United States. An outgrowth of the English ticket-of-leave system, it was first adopted by Massachusetts in 1884. Parole is supported by various arguments, chief among which have been (1) the desirability of selecting low-risk inmates for early release, (2) community surveillance and assistance for released inmates is preferable to no surveillance and assistance, and (3) high and rising institutional construction and operational costs are ameliorated by releasing low-risk inmates prior to completion of their maximum sentences. Until recent years, parole was used by all of the fifty states as well as the District of Columbia and the United States government. However, since 1976, beginning with Maine, twelve states have passed determinate sentencing legislation, thereby eliminating the major role of paroling authorities in those states. Determinate sentencing may be defined as a sentencing system which both (a) uses explicit standards to determine how much convicted offenders should be punished, and (b) ensures that the amount of prison time that the offender will serve, if any, is fixed at the time of conviction or very soon thereafter (von Hirsch and Hanrahan, 1981). Thus, under determinate sentencing offenders receive fixed sentences which must be served, less any "good time" off for good behavior. In such states the discretionary authority of a parole board to release offenders early has been eliminated or drastically curtailed. The twelve states studied here and their years of determinate sentencing effectiveness are Arizona, 1978; California, 1976; Colorado, 1979; Connecticut, 1981; Florida, 1983;

Illinois, 1978; Indiana, 1977; Maine, 1976; Minnesota, 1980; New York, 1983; North Carolina, 1981 and Washington, 1984. The legislative abolishment of post-release supervision of inmates has occurred in four of the twelve states: Connecticut, Florida, Maine and Washington. The legislatures of a number of other states and the U.S. Congress have also given consideration to bills which would substitute determinate sentences for the traditional, indeterminate ones. Thus, parole has come under severe and successful attack in numerous jurisdictions, the result of public and legislative demands for change.

This very significant criminal justice trend reflects a reduced public confidence in the "rehabilitation model" upon which parole selection is primarily based. At the same time, it indicates a growing support for the "justice model," in which offenders with similar committing offenses and criminal backgrounds receive the same or similar sentences. It is important to note that the same legislation which has eliminated or reduced parole discretion has usually had a like effect on judges' sentencing discretion. In more than half of the determinate sentencing states, courts are now permitted only narrow limits in sentence determination. This limitation typically is for both the "in or out" decision, as to whether or not the offender shall be committed to an institution, as well as the duration of institutional stay, if the sentence includes commitment.

Thus, nearly one-fourth of all the states have legislatively reduced sentencing and releasing discretion by the judicial and executive branches of government. At the same time, they have increased legislative control of the sanction process.

It is also to be noted that, from state to state, sometimes by legislation and sometimes by their own administrative determination, the judiciary, paroling and correctional authorities have moved to formalize and limit their

control over their part of the sentencing/releasing process. That control has been formalized and regulated through the development of sentencing guidelines, parole guidelines, the awarding of institutional "good time" and provisions for institutional emergency release because of institutional crowding.

Approximately three-fourths of the states continue to utilize the indeterminate sentence structure, with its parole release selection and supervision provisions. Presumably, most, if not all, of those states continue to value the merits of indeterminacy. Many supporters of this structure believe that determinacy provisions result in needlessly large confined populations, increased public costs, less public protection from released inmates and higher recidivism by such persons.

The work reported here has been an examination of only the first step of the change to determinate sentencing. It is an analysis of the political dynamics which led to the passage of such legislation in the twelve states. This work includes no attempt to examine a number of very important related issues, especially those having to do with the results of the determinate sentencing legislation. There is much which needs urgently to be done in examining those results, which has to do with such issues as sentence disparity and variation, sentence severity, institutional population impact, and extent and use of discretion by the other criminal justice segments including police, prosecutors and judges.

In carrying out this work, the writer has communicated with members of the key "publics" or "actors" who have contributed to and participated in the process which created determinate sentence law. Because of determinate sentencing legislation's very substantial impact on parole, this study is, in a real sense, an examination of the strength and vulnerability of paroling

authorities, as a key, traditional segment within the indeterminate sentence structure. The information reported here may be of value to those other jurisdictions, agencies and individuals who desire to participate in their own political struggle in relation to the abolition or retention of indeterminate sentencing, parole release and parole supervision.

OVERVIEW OF THE STUDY

As a National Institute of Corrections senior fellow, the writer conducted this study during several months of 1983 and 1984. The study plan included the following steps:

1. A review of the literature relative to the subject of the study

There was a considerable amount of available literature concerning the philosophy and practice of indeterminate and determinate sentence structures and parole release, permitting only a sampling of such materials. However, there existed very little information which addressed the political and legislative processes which have resulted in the passage of determinate sentencing legislation. Notable exceptions, however, are the works reported by Martin, Shane-DuBow, Brown and Olsen.

2. The tentative identification of the key issues relative to determinate sentencing legislation

3. The preparation of an interview schedule/questionnaire, based on the key issues, to guide the interviewer in his data-gathering communications

- 4. The identification of respondents within each determinate sentencing state from whom information was to be gathered**

Respondents included concerned members of three branches of government, correctional professionals, representatives of the media and others.

- 5. The interviewing of identified respondents by telephone, in-person, and by mailed questionnaire to gather information about the role of individuals and organizations involved in the passing of determinate sentencing legislation**

- 6. The analysis of the information which was provided by the respondents**

The data analysis phase included an examination to determine whether there were similarities among the states, with respect to the kinds of individuals and organizations involved and the position taken by them, with respect to the legislative change.

- 7. The writing of the study report, including its findings and related recommendations**

THE ISSUES

The indeterminate sentence and parole have long been central parts of the criminal justice system in the United States. During the seventies, however, they came under strong attack from various quarters. The result has been legislative change of sentencing structures and abolition of parole release in several states. Since 1976 twelve state legislatures have passed what are usually described as determinate sentencing laws, with accompanying abolition, of parole boards or, at least, the central functions of the parole board. This very significant national trend, which has continued into 1984, has resulted from extensive dissatisfaction with the practices carried out under indeterminate sentencing. Several kinds of criticisms have been set forth. First, judges and parole boards were regarded by an increasing number of persons as too lenient with offenders, permitting them to remain in, or be released to the community, rather than being confined. The rising rates of reported crime contributed especially readily to such accusations by the public, political candidates and others. Secondly, there was a growing disenchantment with rehabilitation as an ideal and as a basis for sentencing and parole determination. Research of the 1960's and 1970's indicated that offender rehabilitation programs lacked effectiveness and that, in any event, future dangerous behavior could not be accurately predicted. (Lipton, Matinson and Wilks; Sechrest, White and Brown; Wenk, Robinson and Smith) It was therefore charged that it could not be determined which offenders could be, or had been, rehabilitated, contrary to the claims of judges and parole

board members who based their decisions on this concept. Citing these findings and allegations conservative critics emphasized that punishment, alone, was the most reasonable and best response to crime (Van den Haag and Wilson). Thirdly, the seventies saw an increasing demand by the public and some public officials for accountability by those making decisions about convicted offenders. Within the legal system there were numerous requirements that decision-makers, such as courts and parole boards, explain and justify their case decisions. This was especially true when the decision was one which decided whether or not an offender should be confined or should remain confined.

On the other hand, other critics have based their demands for change on a belief that past practice has resulted in much discrimination and disparity among offenders. Professor Marvin Frankel, a former trial judge, was critical of the extensive discretion held by judges and argued for legislatively-established sentencing guidelines. Professor Norval Morris urged the reduction of discretion over length of sentence, which traditionally had been exercised by prison and parole authorities. He called for the fixing of sentence duration by the parole authority at a very early date following confinement of the offender. He emphasized that the time to be served should be based on a justice or "just deserts" concept and not on a determination of dangerousness or participation in institutional rehabilitation programs. Some critics charged that disparate decisions were often the result of perceived differential handling, based on social class and race. It was believed that such inequity occurred both within the same jurisdiction and among different jurisdictions. "Liberals" also voiced their criticism of what was seen as unbridled discretion at several points within the criminal justice process. The charges were directed to judges and parole boards whose decisions

generally were not reviewable or appealable. Some liberal critics of the system also regarded prison disturbances as at least partially the result of the flawed indeterminate sentencing system. It was thought that prisoner riots and other prison disturbances may have resulted from the indefinite nature of the period of confinement.

In summary, the criticisms of indeterminacy were several -- they were regarded as substantial, and they emanated from both the political right and left. As a result, there was widespread pressure for changes away from indeterminacy and toward determinacy. Perhaps the clearest expression of determinacy came to be that of Andrew von Hirsch. Von Hirsch argued that punishment should fit the crime exactly, although he later acknowledged that, the nature and extent of any prior criminal record should also have a bearing on the sentence given and institutional length of stay.

Beginning with Maine in 1976, state legislatures began enacting changes which reduced the discretion of the judges or the parole boards or, in some instance, both groups. The nature of the change varied from state to state, usually abolishing the parole board and often placing greater discretionary constraints on judges. In Maine, the parole board was abolished and judges were required to give a "flat" definite sentence. However, the range of time from which the definite sentence could be selected was greater than before the new law. In California, under a 1976 law, "presumptive" sentences are set by the legislature, with the judge permitted to add or subtract for aggravating or mitigating circumstances. Minnesota (1980) was the first state to develop and use sentencing guidelines to create greater determinacy. Washington (1981), New York (1983) and Florida (1983) have passed similar legislation. The remaining "determinate" states have adopted changes which are more or less patterned after Maine and California. They are Indiana (1977), Illinois

(1978), Arizona (1978), Colorado (1979), North Carolina (1981) and Connecticut (1981). The results of the changes, in terms of (1) general satisfaction with the process and (2) its impact on crime, rate, convicted offenders and the operation of the justice system are yet to be determined. Careful analysis of such questions is urgently needed. Other states have continued to consider and enact determinate sentencing legislation as we move into the mid-eighties.

METHODOLOGY FOR GATHERING THE DATA

This study was an examination of the political dynamics which have led to the passage of determinate sentencing legislation in twelve states. Through telephonic and in-person interviews and mailed questionnaires, the writer sought information about the identity and role of individuals and organizations involved in the political struggles which resulted in the state legislatures' passage of such laws.

A. Identification of Respondents for the Study

Because of time and funding limitations, not all individuals who were regarded as significant actors concerning determinate sentencing could be interviewed. Upon completion of a review of a sampling of the related literature, the writer began by selecting for interview some of the nationally recognized thinkers and writers on sentencing and parole. These contacts were followed by interviews with leaders of a number of national criminal justice organizations, including the American Correctional Association, the National Council on Crime and Delinquency, the Association of Paroling Authorities, the U.S. Bureau of Justice Statistics, the National Center for State Courts and others.

Because parole boards appeared to be affected most by the approval of determinate sentencing, the writer's first contact in each state was often the parole board chairperson, or the person who continued to direct the residual activities of the former parole board. In the initial contact and in most

subsequent contacts, the writer's questions of the person being interviewed included a request for the names of other persons and organizations who were key in the political change process, whether supportive of, or resistive to that change. Through this process, the writer continued his interviewing and requests for names of others until the same names, of persons already interviewed or scheduled to be interviewed, were being repeatedly provided. Thus, as a result of the referral of the same persons by several different other persons, there was a reasonable degree of assurance that key persons who had been involved in the change process, or were knowledgeable of that process, were being contacted for purposes of this study. As a result of this process persons were interviewed concerning all twelve of the states. Those interviewed included current or former governors' aides, state directors of corrections, parole board members and chairpersons, state legislators, judges, prosecuting attorneys, and others. In addition, the writer followed-up in all of the states using a mailed questionnaire (Appendix 1). In each of the states, a copy of the questionnaire was sent to the governor, the senate president, the director of corrections and the chairperson of the parole board, or of the board's successor body.

In the solicitation of perceptions about the determinate sentencing movement, the writer also interviewed representatives of several states which have not passed such legislation. These interviews focused on the extent to which such a change had been considered in those states, the individuals and organizations involved in any such efforts, and the dynamics which appeared to restrict or prevent determinate sentencing passage. The writer also interviewed representatives of the United States government and of a number of non-governmental organizations which have been involved in or are otherwise concerned with the political process associated with determinate sentencing.

B. Respondent Interviews and Mailed Questionnaire Content

Because the interview schedule and mailed questionnaire sought the same information, they were essentially the same instrument. Appendix 1 is that instrument. Containing four sections, the schedule/questionnaire requested (1) certain identifying information about the state and its legislation; (2) perceptions about the role and influence of office holders and organizations concerning the legislation's approval; (3) perceptions of any power shift in relation to control over offenders' length of confinement and (4) any other related information which the respondent chose to provide. There was a very great range of information which was of interest and related to determinate sentencing passage. Because of the respondents' varied interests some of the interview discussions tended to spread to a wide range of criminal justice topics, some not directly related to determinate sentencing. However, for purposes of the study, the writer's persistent central focus and questions, guided by the use of the interview schedule had to do with who was involved in the political debate which led to the passage of the law, what was their position with respect to the proposed change to determinate sentencing, and how influential was the person or organization during the course of the bill's debate and passage? Additionally, the writer attempted to determine whether the new legislation was perceived as resulting in a shifting of power among the criminal justice segments. Specifically, the interview schedule/questionnaire sought response about greater or lesser control over offenders' length of confinement on the parts of law enforcement officers, prosecutors, judges, prison staff and parole board members.

THE STUDY FINDINGS

A large quantity of perceptions information was gathered in the course of this study and is presented here. The schedule/questionnaire which was used encouraged each respondent to provide approximately twenty-five items of such information. Utilizing the schedule, the writer personally interviewed sixty-one persons, who were key actors and/or observers within one of the twelve determinate sentencing states. Thirty-seven other persons were interviewed, including criminal justice and legislative officials, academicians and others from non-'determinate sentencing states, federal agencies, universities and public and private organizations. Persons in the group of thirty-seven tended to share their perceptions about the sentencing movement nationally and generally, rather than concerning particular states.

There were thirty-one completed questionnaires returned from the twelve states. Six questionnaires were returned by the governor's offices, five by the senate presidents, nine by the directors of corrections, and eleven by the parole boards or their successor agency chairpersons.

The central focus of this study was information concerning twelve states which have passed determinate sentencing legislation. The writer attempted to identify those individuals and organizations that played significant roles in the political debate that preceded the passage of the legislation. In addition, an effort was made to determine whether the new laws had resulted in a power shift among the criminal justice system segments and, if so, who was

affected and how. The study data were obtained through both in-person and telephonic interviews, and through mailed questionnaires. The interview schedule and questionnaire used were essentially the same instrument.

Sections B and C of the schedule/questionnaire sought perceptions data. Respondents were asked to rate various individuals and organizations, in terms of their perception of the role and influence of that person or organization on determinate sentencing passage. The various ratings from which a selection could be made are indicated below. They offer a gradation of responses, from "the initiator" to "the strongest opponent" to the passage. To deal with the data, the writer converted each response option to a numerical value, ranging from 4 to -3. In this way, it was possible to compute an average of all responses regarding each individual and organization. This numerical average has been called "Determinate Sentencing Role Rating" (DSRR). The DSRR has been computed for each individual and organization listed in the schedule/questionnaire, for each state studied. The DSRR ratings may be seen in Table 4 and are used in the discussion concerning Table 4 data.

The responses, with the assigned numerical value preceding each response, are:

- 4 - Was the initiator of the movement which resulted in determinate sentencing
- 3 - Was the most important factor in the bill's passage
- 2 - Together with others, was a major factor in the passage
- 1 - Had little or no impact in the passage
- 0 - No position on the bill
- 1 - Took a minor role in opposing the bill
- 2 - Together with others, was a major opponent
- 3 - Was the strongest opponent in the bill's passage

In Table 1 responses to questions 1 and 2 indicate that the determinate sentencing movement began in Maine, California and Indiana in 1976. It continued through 1983 (when this study began), when Florida and New York approved their legislation.

Question 3 asked for the "key provisions" of the legislation. The parenthesized number which follows several of the responses indicates the number of respondents who reported that provision. Responses included:

Elimination of parole board release selection (10)

Establishing of sentencing guidelines (6)

Establishment of a sentencing guidelines commission (5)

Presumptive prison terms (5)

Life terms remain indefinite (4)

Provision for departure from established presumptive sentences (4)

"Good time" credits (3)

Mandatory parole supervision (3)

Elimination of parole supervision (3)

Sets new penalty classes (2)

Provides appellate review opportunity (2)

Residual parole board responsibilities provided for (2)

"Habitual offender" provision (2)

Judges restricted in giving suspended and consecutive sentences (2)

Provision for mandatory parole release

"Split sentencing" and "shock probation" provided for (2)

Wide range of sentencing alternatives for judges

Retention of same sentencing ranges

An increase in number of mandatory sentences

TABLE 1
DETERMNATE SENTENCING LEGISLATION
YEAR PASSED
BY STATE

STATE

	AR	CA	CO	CT	FL	IL	IN	ME	MN	NY	NC	WA	TOTALS
1983	I	I			XXXX					XXXX			2 -
1982													0
1981											XXXX	XXXX	2
1980													0
1979			XXXX										1
1978				XXXX		XXXX			XXXX				3
1977	XXXX												1
1976		XXXX					XXXX	XXXX					3

An increase in courts' discretion
Provides sentencing equity -- "just deserts"
Guidelines must consider correctional resources
Guidelines provided for plea bargaining
Guidelines are to be reviewed biannually
Prison crowding can lead to review sentencing guidelines

It is to be noted that the above is merely a listing of those responses elicited by a request for "key provisions" of the determinate sentencing legislation. They are what was selectively mentioned by those who responded to this question. Thus, these "key provisions" are doubtless factually accurate, as well as also subjective in that they reflect a perception as to what is "key."

Question 4 sought information as to the existence of parole board guidelines at the time that the legislation was passed. It has been suggested that the existence and use of such guidelines would do much to diffuse any determinate sentencing movement in a state. Yet, it appears that such guidelines would already have addressed disparity in the institutional length of stay. As indicated by Table 2, it was found that in five of the twelve states the parole board was using guidelines at the time that the legislation for determinacy passed. A number of respondents raised questions concerning the quality of parole board guidelines used in some of the states, both determinate and indeterminate, past and current. Similarly, criticism was raised about the consistency of the guidelines' use, as well as the timing of their implementation in some states where determinate sentencing was being considered. Negative perceptions, in these respects, may have offset any hoped for alleviation of the determinacy movement.

TABLE 2
USE OF PAROLE BOARD GUIDELINES
AT TIME OF DETERMINATE SENTENCING LEGISLATION PASSAGE
BY STATE

STATE

AR CA CO CT FL IL IN ME MN NY NC WA

	AR	CA	CO	CT	FL	IL	IN	ME	MN	NY	NC	WA
GUIDELINES USED		xxxx			xxxx				xxxx	xxxx		xxxx
GUIDELINES <u>NOT</u> USED	xxxx		xxxx	xxxx		xxxx	xxxx	xxxx			xxxx	

Question 5 inquired whether sentencing guidelines were included as a required part of the determinate sentencing legislation. Information provided, as set forth in Table 3, indicates that sentencing guidelines are, or will be used in only four of the twelve states. However, it is to be noted that such guidelines are, or will be, a part of all three of the most recent determinacy states of Florida, New York and Washington. Thus, the establishment of sentencing guidelines, as a part of determinate sentencing, appears to be both a recent and continuing trend.

Section B of the schedule/questionnaire requested respondents' perceptions of the role of certain office holders, other individuals and organizations in the passage of legislation. Respondents could indicate the extent of support, opposition, or neutrality toward determinacy shown by these persons and organizations.

Table 4 provides central information sought by the study. It presents both an average and a range of respondents' perceptions in the twelve states concerning who the key actors were in their sentencing law change process. The upper, single number in each box of the table is the Determinate Sentencing Role Rating (DSRR), an average of all respondents' perceptions. It may range from the "initiator" of the change (rating 4) to "strongest opponent" (rating -3). The lower numbers in each box indicate the range of perceptions reported by respondents. The range may be regarded as the amount of disparity in perception among the respondents.

Table 5 presents the thirteen categories of persons and organizations in the order of most supportive to most opposing of determinate sentencing legislation. It also provides the DSRR for each category. In those "open" categories where respondents specified individuals or organizations, the "Explanation" column contains those specifics. (They are otherwise provided in the footnotes to Table 4).

TABLE 3
PROVISIONS FOR SENTENCING GUIDELINES
UNDER DETERMINATE SENTENCING LEGISLATION
BY STATE

STATE

	AR	CA	CO	CT	FL	IL	IN	ME	MN	NY	NC	WA
GUIDELINES PROVIDED FOR)XXX				XXXX	XXXX		XXXX
GUIDELINES NOT PROVIDED FOR	XXXX	XXXX	XXXX	XXXX		XXX)	XXXX	XXXX			XXXX	

TABLE 4 FOOTNOTES:

- (1) The "4" provided here was the rating for "a legislator." Likewise, in "other" column for Arizona another respondent assigned a "4" to "a legislator." Thus, it appears that one or more legislators initiated the movement in Arizona.**
- (2) One respondent gave a "2" to "League of Cities" and another a "2" to Association of Police Chiefs.**
- (3) One or more state senators are being rated here.**
- (4) Ratings here are for the ACLU (average rating 1.5) and "Prisoner Groups" (average rating 1.6).**
- (5) Ratings here are for a police chief.**
- (6) Two respondents rated Professor David Fogel, University of Illinois.**
- (7) The late Richard McGee was given a 1.7 role rating. Other comments provided by respondents included (a) "Senatorial staff, both hard-line and liberals, found the issue," and "an ex-district attorney who became a senator, visited prisons and saw disparity started it," and "racial disparity by the parole board started it."**
- (8) One respondent rated "a state representative" as "4."**
- (9) This rating is for "the legislature."**
- (10) This rating is for the Florida Attorney General.**
- (11) This rating is for the Florida Superior Court.**
- (12) This rating is for the Minnesota Sentencing Guidelines Commission.**
- (13) Refers to the "print" media.**
- (14) This rating is for legislators.**
- (15) This rating is for a state legislator.**
- (16) This rating is for David Fogel and the "former governor."**
- (17) This rating is for legislators.**
- (18) This rating is for "a prison reform group."**
- (19) This rating is for "legal services."**
- (20) This rating is for David Fogel.**
- (21) This rating is for "a law school dean."**

- (22) This rating is for legislators.**
- (23) This rating is for "law enforcement."**
- (24) This rating is for legislators.**
- (25) This rating is for the Society of Friends.**
- (26) This rating is for the National Sentencing Reform Organization.**
- (27) This rating is for "the general public."**
- (28) This rating is for legislators.**
- (29) This rating is for the mayor of New York City.**
- (30) This rating is for "legislative commissions."**
- (31) This rating is for the bar association.**
- (32) This rating is for the public defenders and defense bar association.**
- (33) This rating is for "the crime commission." Other ratings are: lieutenant governor -- 2; Institute of Government staff -- 2; senators -- 1.5; and anti-prison group -- 1.**
- (34) This rating is for state legislators.**
- (35) This rating is for Washington Council on Crime and Delinquency -- 1.3; and "WEED, ACLU and Victims" -- 2.**
- (36) This rating is for the Legislative Select Committee.**
- (37) Three organizations are rated: the Probation and Parole Association -- -2; the Association of Chiefs of Police -- 1; the House Institutions Committee -- 4.**

TABLE 5

**DETERMINE SENTENCE ROLE RATING (DSRR) *
FOR ALL TWELVE STATES
BY OFFICE HOLDER/ORGANIZATION OR OTHER
IN ORDER OF MOST SUPPORTIVE TO MOST OPPOSING**

ORDER	OFFICE HOLDER/ORGANIZATION OR OTHER "ACTOR" IN THE DETERMINE SENTENCING PASSAGE POLITICAL PROCESS	DETERMINE SENTENCING ROLE RATING	EXPLANATION
1	Other impact of the bill's passage	2.6	The supportive ratings are for "a legislator," "legislators," or "legislative committee" in three of the states. Others cited are legislative staff, a retired correctional official, a law school dean, a professor, a former governor, law enforcement, the general public, a crime commission, the lieutenant governor, a police association. One opposing rating is ascribed to a probation and parole association.
2	Other public official (specify)	2.3	All but one of the respondents to this rating indicated that one or more state legislators were supportively influential. A state attorney general was indicated by one respondent as strongly supportive.
3	One or more prosecutors/ state's attorneys	2.0	
4	The Governor (or Governor's aide)	1.8	

ORDER	OFFICE HOLDER/ORGANIZATION OR OTHER "ACTOR" IN THE DETERMINE SENTENCING PASSAGE POLITICAL PROCESS	DETERMINE SENTENCING ROLE RATING	EXPLANATION
5	Individual or organization(s) from outside your State (specify)	1.5	"Outsiders" specified as supportively influential were a professor (noted by three respondents), another state's sentencing guidelines commission and a national sentencing reform organization.
6	The state association of prosecutors/state's attorneys	1.3	
7	Role of newspaper and/or television (specify)	1.3	
8	One or more private (non-public) persons or organizations (specify)	1.2	Respondents ascribed supportive roles to league of cities, a law enforcement organization, two civil liberties groups, a prison reform group, a religious association and a state correctional workers association.
9	The Director/Secretary of Corrections	1.0	
10	One or more state court judges	.8	
11	Other public official or organization	.8	Ratings ascribing support are for a state superior court, a legal services group, a major city mayor, and a legislative committee. The police chief of a major city opposed determinate sentencing.
12	The state association of judges	0.0	

13	The Parole Board Chairperson	-1.0	
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***DSRR CODE**

- 4 - Was the initiator of the Determinate Sentencing Movement.
- 3 - Was the most important factor in the bill's passage.
- 2 - Was a major factor in the passage.
- 1 - Had little or no impact, even though supportive of the passage.
- 0 - Took no position on the bill.
- 1 - Took a minor role in opposing the bill.
- 2 - Was a major opponent.
- 3 - Was the strongest opponent.

For all twelve states the most supportively influential persons and organizations, those with a DSRR of 2 or higher are: (1) "Other Impact . . .I" (the final, miscellaneous category), (2) "Other public official," and (3) "One or more prosecutors/state's attorneys." Respondent specifications in the first two of these categories indicate that legislators, their aides and legislative committees have, in general, been the political "muscle" behind determinacy approval. However, in these miscellaneous categories, legislators were joined by a variety of other individuals and organizations who also were politically powerful. These persons and groups are noted in the "Explanation" column. Within the justice system individual prosecutors/states' attorneys were clearly the most influential in support of the change. Their DSRR rating of 2, indicates that, overall, they were a major factor in the national movement. Additionally, their state associations gave significant support, with a DSRR of 1.3.

Overall, opposition to determinacy for all twelve states was expressed only in the parole board chairperson category, with a DSRR of -1. Thus, in general, it was perceived that the battle to retain indeterminacy essentially was fought only by the parole board leaders. The state associations of judges were the only other category which was not supportive of determinacy. However, they also did oppose, having an overall DSRR of 0.

Some of the other actors in the determinacy battle gave significant support. They include governors (or their aides) -- DSR 1.8, individuals or organizations from outside the state -- DSRR 1.5, the media -- DSRR 1.3, non-public persons and organizations -- 1.2. Directors of corrections averaged a DSRR of 1 for all the states studied, while state court judges and other public officials or organizations both averaged a .8 DSRR.

Thus, for all twelve states, the perceptions data indicated that legislators, a wide variety of individuals and groups included in the "other impact" category, and one or more prosecuting attorneys/state's attorneys have been the most influential in securing determinacy, while the parole board chairpersons have been the active opponents. Judges, other public officials and organizations, and directors of corrections have often supported the change but had little or no impact on the outcome. State associations of judges from state to state, have supported, opposed and taken no position concerning the change.

Table 6 indicates, by state, the most influential persons and organizations in the determinacy political process.

Table 6 data reflects that prosecuting attorneys and/or their associations have been highly influential in determinacy passage in Arizona, California, Colorado, Connecticut, Indiana, Maine, New York, and Washington. At the same time, legislators and/or legislative committees have been very influential in Arizona, Colorado, Connecticut, Florida, Minnesota, New York and Washington. Governors were strongly supportive in California, Illinois, New York and North Carolina. In opposing the change, parole board chairpersons were the major influence (and in most cases the only significant opposition) in Colorado, Connecticut, Florida, Indiana, Maine, Minnesota, New York, North Carolina and Washington.

Table 7 indicates substantial agreement within each state and among the states concerning the nature of power shifts resulting from determinate sentencing legislation. For all twelve states, the prosecution segment of the criminal justice system was seen as gaining power, in terms of control over offenders' length of confinement. On this point there was near unanimous

TABLE 6

**MDST INFLUENTIAL
OFFICE HOLDERS/ORGANIZATIONS AND OTHERS
IN THE DETERMINATE SENTENCING POLITICAL PROCESS
BY STATE**

STATE	MDST INFLUENTIAL IN SUPPORT	MDST INFLUENTIAL IN OPPOSITION
Arizona	Legislator(s), aided by prosecuting attorneys, their organization, an association of cities and an association of police	No strong opposition
California	Governor, aided by one or more prosecuting attorneys	A police chief
Colorado	A legislator, aided by the association of prosecuting attorneys	Governor, aided by the parole board chairperson
Connecticut	A legislator, aided by one or more prosecuting attorneys	The parole board chairperson
Florida	A court, aided by one or more prosecuting attorneys	The parole board chairperson
Illinois	Governor	No strong opposition
Indiana	One or more prosecuting attorneys aided by a law school dean	The parole board chairperson
Maine	The prosecuting attorneys association aided by one or more prosecuting attorneys	The parole board chairperson
Minnesota	Legislators, aided by a religious organization and "the general public"	The parole board chairperson
New York	One or more prosecuting attorneys legislative commission(s) and the governor	The parole board chairperson
North Carolina	Governor, aided by the media	The parole board chairperson
Washington	A prosecuting attorney, aided by legislative committee(s)	The parole board chairperson

TABLE 7

CONTROL OVER LENGTH OF CONFINEMENT

RESULTING FROM DETERMINATE SENTENCING LEGISLATION

BY CRIMINAL JUSTICE SYSTEM SEGMENT, BY STATE

CRIMINAL JUSTICE SYSTEM SEGMENT	STATE												ALL 12 STATES
	AR	CA	CO	CT	FL	IL	IN	ME	MN	NY	NC	WA	
LAW ENFORCEMENT	0 0 to 0	-.3 0 to -1	0 -1 to 1	0 0 to 0	0 0 to 0	0 0 to 0	0 0 to 0	-1 0 to -2	-2 -2 to -2	0 0 to 0	-.25 -2 to 0	-.5 -2 to 0	-.3 -2 to 1
PROSECUTION	1 1 to 1	1 1 to 1	1 1 to 1	1 1 to 1	1 1 to 1	1 1 to 1	1 1 to 1	1 1 to 1	1 1 to 1	1 1 to 1	.5 0 to 1	1 1 to 1	1 0 to 1
JUDICIARY	-1 -1 to -1	1 1 to 1	-.5 0 to -1	1 1 to 1	.3 -1 to 1	-1 -1 to -1	-1 -1 to -1	1 1 to 1	1 1 to 1	-1 -1 to -1	.25 -1 to 1	1 1 to 1	.1 -1 to 1
CORRECTIONAL (PRISON) STAFF	.3 0 to 1	-1.3 -1 to -2	-1 -1 to -1	0 -1 to 1	1 1 to 1	1 1 to 1	-2 -2 to -2	-1 -1 to -1	-1 -1 to -1	1 1 to 1	.25 -1 to 1	.25 -1 to 1	-.3 -2 to 1
PAROLE BOARD	0 0 to 0	-2 -2 to -2	-1.5 -1 to -2	-2 -2 to -2	-2 -2 to -2	-2 -2 to -2	-2 -2 to -2	-2 -2 to -2	-2 -2 to -2	-2 -2 to -2	-1.75 -2 to -2	-2 -2 to -2	-1.5 -2 to -2

* The upper number in each box is the average control rating ascribed to that criminal justice system segment. The lower numbers are the range of control perceptions reported by the respondents.

"Control" Rating:

agreement by all respondents in all the states. The average control rating was 1. Likewise, there was a very high level of agreement concerning the total removal of control from parole boards. For this segment, for the twelve states, the control average rating was -1.8. There were varying levels of perceived differences for the other segments: law enforcement, the judiciary and corrections. Concerning law enforcement, only in Maine and Minnesota was there perceived a significant reduction in control. No states thought that an increase in law enforcement's control resulted from determinacy. Concerning prosecution, the respondents in all twelve states reported an increase in confinement control power. Concerning the judiciary, respondents in five states perceived reduced control, while in seven states control was regarded as having increased. Concerning correctional (prison) staff, mixed changes were also reported. Respondents in six states believed that prison staff gained confinement control power as a result of the legislation. In five states control for correctional staff was regarded as having decreased. Concerning the parole board, respondents in nine states reported that no control over length of confinement remained with the board. In two states respondents agreed that there was less control than before, while in one state there remained "about the same amount" of control. Table 8 reflects the changes in amount of control among the criminal justice system segments, in order of most control to least control.

TABLE 8

**CONTROL OVER LENGTH OF CONFINEMENT
RESULTING FROM DETERMINATE SENTENCING LEGISLATION
BY CRIMINAL JUSTICE SYSTEM SEGMENT**

ORDER	CRIMINAL JUSTICE SYSTEM SEGMENT	CONTROL RATING*
1	Prosecutor	1
2	Judiciary	.1
3	Law Enforcement	- .3
4	Correctional (prison staff)	- .3
5	Parole Board	-1.8

*** Control Rating Code:**

- 1 - More control over length of confinement**
- 0 - About the same amount of control**
- 1 - Less control than before the bill passed**
- 2 - No control**

RECOMMENDATIONS

An analysis of the data provided by this study suggests a correlation between the determinacy battle role assumed by a criminal justice representative and the impact of the new law on their control over length of confinement. In general, acknowledging that there are many exceptions, it appears that those who supported the change experienced an increase in their control as a result of the change. On the other hand, it appears that those who opposed the change lost control as a result of the change. The determinate sentencing legislative process in the twelve states involved corrections and parole and substantially impacted them both. In general, directors of corrections and parole board chairpersons have either not strongly supported or have actively opposed such legislation. However, they have been adversely affected by it. The move to determinacy is regarded as having had major consequences for both institutional corrections and parole. "Good time" award options have often been reduced or terminated for prison staff. Increased construction and operational costs and heightened potential for institutional disturbances, both due to crowding, are among the perceived problems which have resulted for corrections directors. At the same time, parole boards have typically had their central function removed, leaving limited residual duties to a new, smaller body or single individual. Thus, while correctional and parole leaders have been very negatively affected by the move to determinacy, this study indicates that they had little or no impact in the process, took no role in it, or were ineffective in their opposing role. Therefore, assuming that corrections and

parole desire a greater and more effective voice in that which affects them the writer's recommendations focus on a heightened and more effective political role.

Recommendation 1:

CORRECTIONS AND PAROLE LEADERS NEED TO ESTABLISH AND COMMUNICATE REALISTIC PURPOSES AND GOALS TO BE ACHIEVED BY THEIR SERVICES. Public expectations of an organization are, in large part, those which are communicated by its leaders. There is much agreement, both within and outside of corrections and parole, that those services have claimed greater offender-change effectiveness than they possess. Leadership should set and not abandon realistic goals, no matter how appealing the possibility of higher funding or desire for personal and agency recognition which may occur from unrealistic goals. In short, corrections and parole should claim that they will do only that which they have clear reason to believe that they can do. Credibility and public support are at stake.

Recommendation 2:

CORRECTIONS AND PAROLE LEADERS MUST GIVE HIGH PRIORITY TO DOING THOSE THINGS WHICH WILL POSITIVELY ENHANCE THEIR AGENCY'S IMAGE WITH ALL BRANCHES OF STATE GOVERNMENT, WITH THE OTHER SEGMENTS OF THE CRIMINAL JUSTICE SYSTEM AND WITH THE GENERAL PUBLIC. Simply stated, this recommendation is for good practice and the effective communication of that good practice to others in government and to the state-wide community. "Good practice" especially includes the adoption of nationally recognized standards and a high priority and relentless pursuit of achievement of those standards. The recommendation emphasizes the necessity for on-going public communication of the adopted standards and the progress made in their achievement and maintenance. Public support and political improvement are to be gained.

Recommendation 3:

CORRECTIONS AND PAROLE LEADERS MUST GIVE HIGH PRIORITY TO THE DEVELOPMENT AND REGULAR USE OF STRONG PUBLIC INFORMATION AND PUBLIC RELATIONS PROGRAMS. The knowledge and skills of professionals in those fields need to be adopted, with a commitment to their constant use. Such a program includes the regular release of information to the media and additional communication to key officials and agencies within the state. The information communicated must speak simply and clearly to those resources possessed and those still needed, as well as to goal achievements and shortcomings.

Recommendation 4:

CORRECTIONS AND PAROLE LEADERS NEED TO LEARN AND UTILIZE THE PRINCIPLES, KNOWLEDGE AND SKILLS OF POLITICAL LIAISON AND POLITICAL CONSTITUENT BUILDING. As actors in the political arena, effective, professional leaders must continuously invest substantial portions of their talents, time and energies in the development of positive relationships with persons and organizations of political power. In so doing they will build a reserve of political alliance and strength which will enable them to be pro-active and, if necessary, able better to defend their own professional services and agency. Especially, should corrections and parole politically strengthen and support each other. Some differences between the two may be expected and will require attention. However, because they share similar goals and share the final segment in the justice system, policy and program problems should and can be resolved to the political strengthening and other mutual benefit of both agencies.

NATIONAL INSTITUTE OF CORRECTIONS**SURVEY****DETERMNATE SENTENCING LEGISLATION****SECTION A GENERAL INFORMATION**

1. Your State _____
2. The determinate sentencing legislation was passed in (year) _____
3. The key provision(s) of the determinate sentencing legislation are:

4. Was the parole board using parole guidelines in its decision-making at the time that the determinate sentencing legislation was passed? _____
5. Does the determinate sentencing legislation provide for sentencing guidelines? _____

SECTION R INFORMATION ABOUT THE ROLE OF OFFICE HOLDERS AND ORGANIZATIONS IN THE PASSAGE OF THE DETERMINATE SENTENCING LEGISLATION

From the following list ("A" through "H"), select the appropriate letter to describe the role of each of the individuals and organizations listed on the next page, placing a selected letter in each blank.

SUPPORTED DETERMINATE SENTENCING

- A - Was the initiator* of the movement which resulted in determinate sentencing
- B - Was the most important factor in the bill's passage
- C - Together with others, was a major factor in the passage
- D - Had little or no impact in the passage

OPPOSED DETERMINATE SENTENCING

- E - Was the strongest opponent in the bill's passage
- F - Together with others, was a major opponent
- G - Took a minor role in opposing the bill

TOOK NO POSITION ON DETERMINATE SENTENCING

- H - No position on the bill

1. _____ The Governor (or Governor's aide)
2. _____ One or more state court judges
3. _____ One or more prosecutors/State's attorneys
4. _____ The Director/Secretary of Corrections
5. _____ The Parole Board Chairperson
6. _____ Other public official (specify) _____
7. _____ One or more private (non-public) persons or organizations (specify) _____
8. _____ The state association of judges
9. _____ The state association of prosecutors/state's attorneys
10. _____ Other public official or organization (specify) _____
11. _____ Individual(s) or organization(s) from outside your State (specify) _____
12. _____ Role of a newspaper and/or television station (specify) _____
13. _____ Other impact on the bill's passage (specify) _____

SECTION C INFORMATION ABOUT THE CRIMINAL JUSTICE SYSTEM POWER SHIFT

As a result of your determinate sentencing legislation there may have been a shifting of power among the various criminal justice segments. Some segment(s) may now have more control over offenders' length of confinement, while others have less control. Using the following code, please indicate in each of the five blanks any power shift which resulted from the legislation.

Code: A - More control over length of confinement
B - About the same amount of control
C - Less control than before the bill passed
D - No control

1. _____ Law enforcement
2. _____ Prosecution
3. _____ Judiciary
4. _____ Correctional (prison) staff
5. _____ Parole Board

SECTION D ADDITIONAL RELATED INFORMATION

Please provide any other information about the persons, processes or situations involved in the passage of your determinate sentencing legislation. (Use other side of this page, if desired.)

Your name _____

Your title _____



U.S. Department of Justice

National Institute of Corrections

Washington D. C. 20534

March 15, 1984

The National Institute of Corrections (NIC) is concluding its study of the passage of determinate sentencing/parole abolition legislation in several states. The Institute seeks to determine the role of various individuals and groups in bringing about such change. The enclosed brief survey is in follow-up to my earlier discussion with you or with other individuals in your state concerning your determinate sentencing law.

Be assured that the information which you provide is confidential; the NIC report concerning this study will not identify you as a provider of information.

Thank you for your important assistance in this very significant matter.

Yours truly,

**Joseph R. Palmer, Ph. D.
Senior Fellow**

Enclosures



Washington D. C. 20534

April 6, 1984

A few weeks ago you were provided a copy of the enclosed brief survey. The survey is a part of the National Institute of Corrections' (NIC) study of the passage of indeterminate sentence legislation in your and several other states. The study is now nearing its conclusion.

If you have not yet completed and returned the survey please do so at your early convenience. The information which you will provide is very important. Be assured that the NIC report in this matter will not identify you as a provider of information.

Thank you for your help in this very significant matter.

Yours truly

Joseph R. Palmer, Ph.D.
Senior Fellow

Enclosure

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