CRIMINAL SANCTIONS IN CONNECTICUT

By Kate Stith and Laura Underkuffler*  

Each year the Connecticut Bar Foundation conducts two symposia on issues of concern to the Bar of the State of Connecticut. The goal of each symposium is to bring together 40-45 people who are knowledgeable about the issue at hand, for a discussion of the problem and possible solutions.

In this report, we summarize the proceedings and discuss some of the issues raised by the Connecticut Bar Foundation symposium held on May 6, 1989 at the Yale Law School. This symposium dealt with sanctions for the commission of crimes — an issue of concern both to members of the Bar and to citizens in general.

I. AN OVERVIEW OF SANCTIONING PROBLEMS

Criminal sanctioning is currently a matter of grave public concern, and there is general agreement that what has been done to date has not worked well.

Prior to 1981, Connecticut used a system of indeterminate sentencing and parole. Persons convicted of crimes were generally sentenced either to prison terms or to probation. There was no expectation that the entire length of prison sentences would be served; rather, the system was based on the assumption that the offender would serve a portion of the sentence imposed, with the date of actual release determined by the state parole board. One of the premises underlying the indeterminate sentencing system was that the parole board would release the offender at the point which held greatest rehabilitative potential.

During the 1970's, indeterminate sentencing, parole, and the medical model of rehabilitation came under increasing criticism

* Kate Stith is Associate Professor of Law and Laura Underkuffler is Tutor in Law at Yale Law School. They were Chief Reporters for the symposium. Other reporters for particular sessions, whose summaries provided the basis for this report, were Susan Fair, Helen Leskovac, Janis McDonald, and Judith Miller. Panelists were Daniel Freed, James Harris, Rep. Jay Levin, Larry Meachum, Judge John Ronan, Robert Satti, Deanne Scaringe, Jonathan Silbert, and Michael Smith. Hugh Keefe and Judge Raymond Norko were commentators. Particular sessions were chaired by Judge Anthony DeMayo, Steven Duke, Quintin Johnstone, Martin Margulies, George Schatzki, and Kate Stith. Other participants were John Bailey, Lisa Bennett, Vivien Blackford, Donald Browne, Terry Capshaw, Curtissa Coifield, Denise Derby, Jeremiah Donovan, Gerald Farrell, Marilyn Ford, Stephen Glass, Abraham Goldstein, Ira Grudberg, Sherry Haller, Joette Katz, Rep. Michael Lawlor, Austin McGuigan, Thomas Morawetz, Timothy Moynahan, Okechukwu Oko, Ann Marie Papandrea, Joseph Shortall, Bernard Sullivan, Sandra Sunderland, and Daniel Walker.
throughout the nation. In 1981 Connecticut adopted a
determinate sentencing system. Under this model, there was to
be “truth in sentencing”: the sentence given by the court would
be (after credit for good behavior in prison) the sentence actually
served.

In fact, however, the system that now operates in
Connecticut is characterized by neither “truth in sentencing” nor
determinate sentences. Rather, most offenders serve a
shockingly low portion of the prison terms to which they are
sentenced. Due to prison overcrowding, nearly all persons
incarcerated for non-violent crimes serve no more than 10% of
their terms in prison; the remainder of their prison sentences are
served under supervised home release.

Larry Meachum, who has been Commissioner of Correction
in Connecticut since 1987, explained to symposium participants
the reasons for this state of affairs. Lawsuits brought against the
State have set population limits for most of the State’s prisons
and jails, and a state law places a population limit on the entire
system. At the same time, the practices of judges in sentencing
under determinate sentencing laws and an increase in the number
of persons sentenced to incarceration have resulted in an
exploding prison population. From 1978 to 1989, the population
of confined persons more than doubled, and the number of
offenders under the jurisdiction of the Department of Correction
(including those offenders placed on home release) increased
four-fold. Before the determinate sentencing structure was
adopted, in 1981, the average prison sentence given to an
offender in Connecticut was approximately five years. Today,
the average sentence is nearly ten years, according to
Commissioner Meachum.

The strain on Connecticut’s prisons grows each year. In 1985,
there were approximately 6,630 persons under the jurisdiction
of the Department of Correction — in the State’s jails and prisons
or on home release or parole; this number had increased to
approximately 12,710 by the second quarter of 1989. During the
first quarter of 1989 alone, there was an increase of nearly 1,000
persons under the jurisdiction of the Department of Correction.
Because nearly all of the State’s jails and prisons are continually
at or above capacity, Correction Department officials must
constantly move prisoners from one location to another;
approximately 1,000 inmates are moved within the State system each week. Critically overcrowded conditions in the prisons have led to great stress and to an increased potential for violence.

It is estimated that at the present rate of growth, the Department of Correction will be responsible for 24,000 persons by the year 1992. The operating budget of the Department is approximately $200 million today; it is estimated that this will increase to close to $300 million by 1992. By that date, 6,200 new beds in incarcerative facilities will be available, under the State’s current plans for new prison construction. This will make the system twice as large as it was just a decade ago. The 20-year financing cost of new prison construction over the next three years is estimated to be between $1 - $1.5 billion. According to Commissioner Meachum, although lower-cost correctional facilities are now being built (with minimum security dormitories rather than maximum security cells), the major cost of prison is staff, which cannot be further reduced.

Because the capacity of the prison system has been grossly exceeded, over one-quarter of persons under the jurisdiction of the Correction Department at any given time are on supervised home release. The number of individuals currently under home release supervision is approximately 3,400. Today, if an offender serves 10% of his or her sentence, and there is no restrictive crime category that applies to that individual, the presumption is that the person is will be placed on home release. Restrictive crime categories include anyone who causes the death of another, and offenders convicted of assault, robbery, and sexual assault in the first degree. This leaves property and drug offenders and drunk drivers as the groups primarily eligible for home release. Institutional reasons for denying home release include absconding, a prohibitive criminal history, and institutional program failure.

The Department of Correction cannot place on home release any person serving a statutory mandatory minimum sentence; in recent years, the state legislature has enacted several new mandatory minimum sentencing laws. State Representative Jay Levin noted that, ironically, legislative attempts to mandate minimum time for some crimes have had the effect of reducing the time served for other crimes, since prison overcrowding requires the release of one inmate every time another is admitted.
A statement by a sentencing judge that a defendant is not eligible for supervised home release is not controlling, though the judge's opinion would be one factor in the Department's decision whether to grant home release. At the time the symposium was held, those in jail awaiting trial could not be placed on supervised home release, because the judicial bail decision is binding. As Commissioner Meachum explained, the result is often that "we must release those convicted in order to make room for those accused."

The home release program is supervised by Department of Correction officers, who normally have caseloads that vary from 100 - 140 each. Supervised home release has various levels of supervision. Some offenders are electronically monitored. Some are intensively supervised; this would involve two face-to-face visits and one urinalysis test per week. The lowest level of supervision involves urinalysis tests and one or two visits per month. Other conditions for supervised home release may include mandatory training, family counseling, or the use of other community services. If an offender on supervised home release is arrested for a new offense, participation in supervised home release must be terminated. Because of prison overcrowding, violations of conditions of supervised home release that fall short of new offenses rarely result in a return to prison. If a person absconds from supervised home release, and an arrest warrant is issued, that person ordinarily would be ineligible for home release in the future. However, when prison overcrowding is severe, this rule of ineligibility has been waived.

Conference participants generally agreed that knowledge among offenders that convicted persons generally serve only ten percent of the sentences imposed has undermined the integrity of the State's determinate sentencing system. The situation has also created a serious discipline problem in prisons, since an effective system of earned "good time" cannot be used. The operative concept in incarceration decisions is risk control; other generally recognized purposes of criminal sentencing (such as punishment, deterrence, and rehabilitation) cannot be met under existing conditions.

1Within a month of the symposium, the Connecticut Legislature amended the bail law to permit the Department of Correction to release certain pre-trial detainees arrested for non-violent crimes, with electronic monitoring to ensure such released persons are present in their homes as required. See section 1 of Public Act 89-383.
The increase in prison population has also had an impact on the courts, police, and other parts of the criminal justice system. Conference participants agreed that a tremendous human problem lies behind these prison population statistics. The necessity of placing vast numbers of convicts on home release has resulted in a loss of confidence among many who work in or are directly affected by the criminal justice system — though it should be stressed that even under today’s critically overcrowded conditions, those convicted of violent crimes remain incarcerated. Yet even the consistent incarceration of violent criminals has failed to deter others from violence. As noted by several participants in the symposium, the lack of “truth in sentencing” has not only shielded the gravity of the current situation from public view, but has also prevented the development of alternative remedial measures.

II. SENTENCING PRACTICES AND PROPOSALS

Any examination of criminal sentencing options and procedures must begin with a consideration of actual sentencing practices. Robert Satti, State’s Attorney for New London County, described the current sentencing policies followed by the prosecutors in his office. Prosecutors attempt to recommend sentences that fit the crimes and the defendants. Factors which are considered include the nature of the crime, the past history of the offender, and the effect of the crime on the victim. When the crime is claimed to be “victimless,” the effect on the community is also considered. There is an attempt to use uniform policies, and to make similar recommendations for defendants who have similar backgrounds and who commit similar offenses.

According to Mr. Satti, as a result of the crowded conditions in the State’s prison system, and the knowledge that offenders who fall into certain classifications will serve only ten percent of the time to which they are sentenced, many criminal defendants choose to plead guilty in order to get through the system as quickly as possible. Prison overcrowding has also undermined treatment objectives; defendants will often prefer imprisonment to non-custodial treatment, since the length of imprisonment (particularly in drug cases) may be minimal. Although the current situation fails to achieve the “truth in sentencing” that the determinate sentencing system was intended to accomplish, Mr. Satti maintained that prosecutors in his office
have resisted the pressure to increase sentencing recommendations in order to guarantee that a certain amount of time will be served.

Jonathan Silbert, an attorney from New Haven, discussed the role of defense counsel in the sentencing process. Although sentencing is a critical stage of criminal proceedings, it has received little attention from defense counsel. If sentencing decisions are to improve, there must be greater initiative by the defense bar in this phase of the process. The courts have neither the time nor the resources to make more in-depth investigations into individual circumstances or to develop sentencing alternatives. Probation offices are overworked, and Mr. Silbert maintained that, as a result of heavy caseloads, presentence investigation reports are primarily structured to bring out aggravating circumstances. Because of the role played by prosecutors in their preparation, pre-sentence reports are not likely to bring mitigating circumstances or alternative sentencing options to the court’s attention.

The defense attorney in a criminal case has a responsibility to represent his or her client zealously. Mr. Silbert argued that courts should expect and require defense counsel to present a well-prepared, researched and articulated plan for the least restrictive alternative that is appropriate for each person represented. Failure to discharge this duty should be considered ineffective assistance of counsel. Since most criminal defendants will be sentenced eventually, there should be early planning in each case. The client should be prepared for the presentence interview, and all conceivable references should be compiled. In serious cases, written memoranda should be submitted by defense counsel to the court. Defense attorneys should develop their own lists of resources in the community, and should use sentencing experts to help develop appropriate plans. Video presentence reports or interviews with clients may also help present information most effectively to the court.

Judge John Ronan, of the Superior Court, discussed sentencing from the judge’s point of view. Sentencing is one of the most difficult judicial tasks, equalled, in his opinion, only by the termination of parental rights. Because of the large number of cases, it is easy for judges to lose perspective. Often, recommendations made by the prosecution or defense are
appropriate; attorneys always have the right to argue for particular sentences, and judges will almost always listen with open minds. Counsel will often bring out facts of which the court is unaware, and many judges will consider innovative sentencing plans. The more information that is presented, the better the court's decision will be. Judge Ronan explained, however, that he does not feel it is proper to take into account the fact that many offenders will spend only ten percent of their sentences actually in prison. It was noted by another participant that, to the extent that other judges do take this into account, they impose nominally higher sentences than they otherwise would impose. Hence, although under present circumstances many non-violent offenders serve only ten percent of their prison sentences, this statistic may exaggerate the prison overcrowding problem in the State of Connecticut. If there were a true determinate sentencing structure in Connecticut — without early release due to prison overcrowding — defendants might be sentenced to shorter prison terms.

Judge Anthony DeMayo, also of the Superior Court, commented that the lack of meaningful supervision for offenders receiving sentences short of imprisonment has resulted in prison sentences being given in situations where a less severe sanction (had it been available) could have been used. One example cited by Judge Ronan is that of an individual who has a pattern of repeated misdemeanors. For such persons, something more than probation, but less than imprisonment, is required. One of the most popular sentences now used is the “split sentence.” Under a “split sentence,” an individual is placed on probation with a sentence of incarceration suspended — to be reactivated if there is a serious probation violation. Split sentences have been used effectively with some individuals, even repeat offenders.

Other judges noted that pre-trial detention is sometimes used as a punitive sanction. The amount of bail set often has little to do with the probability of the individual appearing for later court proceedings; rather, it is set with the knowledge that, in many cases, time in pre-trial detention is the only significant prison time that a defendant will serve. Participants indicated that plea bargains are often based on the service of pre-trial detention time.
Many of the judges present described the overwhelming number of drug offenses that they see, and the inability of the system to deal with the drug problem. Drug offenses, in their view, have toppled the system. Commissioner Meachum presented statistics which showed that the number of drug arrests increased from 11,154 in 1986 to 23,798 in 1988. Drugs are viewed by many individuals as essential, as a staple of their lives. Yet, simply imprisoning those who are caught distributing drugs has failed to stem the tide. Past policies have also sent inappropriate messages to the community; to give a lengthy prison sentence to a teenage drug dealer who sells drugs to an accountant, doctor, or lawyer, does not place societal responsibility where it belongs. Judge Raymond Norko of the Superior Court urged that a comprehensive approach to the drug problem was needed, and other symposium participants agreed. The solution, conference participants agreed, is not tougher laws; Connecticut already has tough laws. The State needs additional approaches, including drug treatment programs, to reduce the incidence of drug addiction.

III. ALTERNATIVES TO IMPRISONMENT

How should Connecticut respond to its severe prison overcrowding? One response is to build more prisons. Indeed, as previously noted, the State prison system plans to add over 6,000 beds by 1992, costing over $1 billion. Despite the relatively small impact that these additions will have on the overall prison overcrowding problem in the State, even these efforts have caused significant public outcry due to both the financial costs involved and the fear that location of prison facilities causes in targeted local communities.

An alternative to building more prisons is the present policy of home release, with little supervision, for offenders who have been sentenced to incarceration for non-violent crimes. As noted above, there are now approximately 3,400 offenders on home release in Connecticut. Another alternative is a sentence to traditional probation, rather than imprisonment. Presently, there are 46,000 offenders on probation in the State; they receive minimal supervision, with an offender/probation officer ratio ranging up to 200 to 1.

Most participants in the symposium expressed dissatisfaction with the present range of sentencing options, which boil
down to the choice between imprisonment, on the one hand, and minimally supervised release, on the other. Over a year ago, the Chief Justice’s Task Force on Criminal Sanctions recommended that Connecticut expand its sentencing alternatives. Yet, compared with other states, Connecticut still offers very few options for “intermediate sanctions” — those falling between full-time incarceration and minimally supervised probation or home release. In an effort to identify credible and cost-effective intermediate sanctions that might be used in Connecticut, the symposium explored a variety of experiences with pilot programs that are currently being used in other states as well as in the State of Connecticut.

A. Vera Institute Programs

The Vera Institute of Justice in New York City is a private, non-profit research and demonstration center which has been long involved in designing and testing reforms in the criminal justice system. The Institute presently is conducting two specially targeted pilot sentencing programs: one targeted to repeat petty offenders (e.g., petty thieves), and the other to young offenders convicted for the first-time of crimes against the person (e.g., muggers). Michael Smith, Director of the Vera Institute, explained the operation of the two programs to symposium participants. Mr. Smith, who is one of the nation’s leading experts on alternatives to imprisonment and who is noted for his skeptical and realistic approach to what can be accomplished both inside and outside of prisons, succinctly explained that the credibility of these programs hinges on two factors: (1) careful selection of eligible offenders who would be bound for jail or prison in the absence of an enforceable alternative, and (2) rigorous enforcement of program requirements, with clear and immediate consequences for non-cooperation. Unless judges are convinced that an alternative to imprisonment satisfies punitive and incapacitative purposes, as well as a rehabilitative purpose, they will not give the alternative serious consideration and will not use it for offenders who would otherwise draw jail or prison time.

The program targeted at those repeatedly convicted of crimes such as petty larceny consists of intensively-supervised

---

social restitution. Offenders selected for this program average over five prior petty theft convictions; all have served time in jail for previous offenses. Offenders are required to work full-time during a two-week period on public projects, such as rebuilding senior citizen centers or refurbishing neighborhood parks. Failure to appear or other failure to cooperate results in dismissal from the program and resentencing, usually to jail, by the judge. In the program targeted at offenders indicted for the first time on felony charges, there is intense supervision over a period of time (usually six months), with required participation in program modules that have incapacitating (as well as potentially rehabilitating) effects — e.g., vocational training, attendance at the project's own alternative school, curfews, unannounced enforcement visits at the home or job site, and frequent urinalysis testing for drugs where appropriate. Over a period of 10 years, over 10,000 offenders have been sentenced to these programs, and more than 75% have successfully completed them.

B. Connecticut Prison Association Programs

The oldest and largest private agency in Connecticut concerned with increasing the effectiveness of our criminal justice system is the Connecticut Prison Association. Deanne Scaringe, project coordinator for two of the Association's programs, explained to the symposium that her agency presently has eight different programs related to criminal justice. One of these is a pre-trial release program for those accused of non-violent crimes — individuals who are not good bail risks without some supervision.

The Connecticut Prison Association also administers two of the State's eight alternative incarceration centers (AIC), in Hartford and in the New Britain area. These programs supplement the usual minimal supervision provided for persons on pre-trial release, probation, or home release, and may provide drug or alcohol counselling or job placement. The offender/supervisor ratio for this program is approximately 20/1, allowing intensive supervision of offenders. The State contracts for this service at a cost of $3000 per year per participant, although a small portion of this cost may be covered by restitution paid by the offender to the State. The Association's alternative incarceration project has recently been expanded to include a
housing component for offenders eligible for early release from prison but who have no home to which to return. The Connecticut Department of Correction has contracted for similar alternative incarceration centers in Bridgeport, New Haven, and New London, Stamford, Norwalk, and Waterbury.

Like Mr. Smith of the Vera Institute, Ms. Scaringe stressed that the success of the AIC project in Hartford depends very much on enforcement. Scaringe explained that about 65% of the persons admitted into the AIC program successfully complete it; about 35% are returned to custody for various program violations.

In the wake of the symposium, the Connecticut Legislature has provided judges with authority to place certain convicted offenders directly in alternative incarceration programs.3

C. Sanction Alternatives in Georgia

Under the threat of federal court takeover of its prison system, the State of Georgia developed a variety of sentencing alternatives in addition to regular prison sentences and simple probation. The symposium viewed a 20-minute film on these alternatives which the State of Georgia prepared in 1988. Four of these alternative programs were especially noteworthy.

Intensive Probation. Some offenders are given the choice of a regular prison term or a probation program that includes nightly checks, electronic monitoring (where appropriate), and intense supervision (with a low offender-to-supervisor ratio). The individuals chosen for participation in this program are serious felony offenders who do not require 24-hour supervision. Participants spend a minimum of six months in the program, with the remainder of their probation term on basic, minimally-supervised probation. Full-time work or school attendance is required. The entire cost of the program is collected from participants. One of every ten offenders will choose prison instead of this program.

Diversion Centers. Participants in this program live in a residential center operated by the Georgia Corrections

---

3See section 3 of Conn. Pub. Acts 89-383. Under this legislation, a convicted offender may be placed in an alternative incarceration program only as a condition of probation, in lieu of any prison sentence; other states permit judges to provide that some or all of a prison term be served in an alternative incarceration program. The Connecticut legislation excludes from participation any person convicted of a serious crime of violence or a crime with a mandatory minimum sentence.
Department, and may check out to approved destinations only. All participants in this program would be in prison if not in this program. Each offender participating in this program must reside in a residential center for a minimum of four months. Offenders are discharged from this program to probation status. Discipline is strict; on weekends, offenders perform community service work. Work is the backbone of the program. All paychecks earned by participants are turned over to the center to cover a portion of its costs, with the participants receiving $15 per week in spending money. The annual cost of this program is approximately $2,900 per inmate slot.

Probation Detention Centers. The participants in this program are technically on probation, but live in minimum security centers for a maximum of four months. Participants generally receive some form of rehabilitative treatment (such as drug treatment or employment counseling). The work ethic is stressed. If an individual fails in this program, probation is revoked and the offender is transferred to prison.

"Shock Incarceration". The most dramatic of Georgia's sentencing alternatives is a ninety day program for young (ages 17-25), male felons who have never spent time in an adult prison. Run like a military boot camp, with severe discipline, the program's requirements are rigorously enforced; failures are sent immediately to regular prison. Other states, including Connecticut, have recently enacted legislation authorizing similar programs.

The film prepared by the State of Georgia asserts that only 20% of those who successfully complete its "shock incarceration" program are subsequently sent to prison, although experts at the symposium noted that more recent statistics indicate that the recidivism rate is actually comparable to those who are sent to regular incarceration in the first instance. Department of Correction Commissioner Meachum explained that, although he had been an early advocate of "shock incarceration" (indeed, was the originator of the idea while serving as Commission of Correction in Oklahoma), the experience in Georgia and in other

----

4Section 17 of Conn. Pub. Acts 89-390, enacted shortly after the present symposium, directs the Department of Correction to establish a special incarceration unit to which young male offenders may be sentenced as a condition of probation. The legislation provides that "[a]ctivities of the program shall be patterned after military basic training..."

HeinOnline -- 63 Conn. B.J. 371 1989
states has convinced him that it is not a viable sentencing option by itself. Michael Smith of the Vera Institute pointed out that the Georgia program fails to provide any follow-up for participants who complete the program. Upon discharge in Georgia, offenders return to the same circumstances in the outside world with which they were previously unable or unwilling to cope in a lawful manner. To make matters worse, groups of offenders who complete the program together may adopt a paramilitary mentality and social structure which they will then carry over to criminal activities in the outside world.

D. Other Alternatives and Conclusions

Professor Daniel Freed of the Yale Law School and others at the symposium offered additional examples of sentencing alternatives, including the Delaware SENTAC ("sentencing accountability") system, which establishes five levels of sanctions defined by statute. The new Federal Sentencing Guidelines were also discussed. These guidelines have increased the use of imprisonment, curtailed probation, and discouraged most alternatives to imprisonment. Recent statutory amendments by the United States Congress have led the Federal Sentencing Commission to allow restrictive home confinement in lieu of imprisonment in certain federal cases.

Most judges, prosecutors, defense attorneys, legislators and other participants in the symposium discussions agreed on several points. First, intermediate sanctions are not appropriate for many violent offenders who now receive long prison terms. Second, sentencing options and policies should be flexible so that the sentence can be tailored to the individual offender. Defense attorneys bear a particular responsibility for devising creative intermediate sanctions where appropriate — a responsibility that now is generally being shirked. Third, where the crime calls for a punitive response, such a response should be forthcoming — whether by traditional incarceration or otherwise. Fourth, alternatives to imprisonment will not be acceptable to judges, prosecutors, or state legislators unless they include credible and enforced restrictions on activity and behavior. There should be a realistic and enforceable spectrum of penalties for technical violations of alternative sentences, ranging from heavier supervision, to more hours of community service, to prison. Fifth, given the public's clear and understandable fear of crime
and the perception of a growing crime problem in the State, any impetus for expanding the range of alternatives to imprisonment must come from what Representative Jay Levin called the "law enforcement side of the spectrum — police and prosecutors." Increased use of alternative sanctions must also be accompanied by public education about their punitive nature, the reasons for their use, and their effectiveness.

IV. A Broader View of Connecticut's Prison Overcrowding Problem

If we take a broader view of Connecticut's prison overcrowding problem, the foregoing alternatives to imprisonment are at best a partial solution. They do not address one significant underlying question: Why are so many crimes being committed for which judges presently consider prison to be the proper response? Most participants in the symposium recognized that the present crisis in Connecticut's prison system is inexorably tied to the extraordinary demand for illegal drugs. Violent and non-violent crime alike are fed by drug use and drug dealing.

Some participants noted that, as pressure on the criminal justice system grows, decriminalization appears more and more attractive because it would transform some — although by no means all — of the present drug offenders into targets not of the law enforcement system but of the public health system. Yet, whether drugs are legal or illegal, drug treatment is very expensive. Terry Capshaw, Director of Connecticut's Department of Probation (which is separate from the Department of Correction), noted that of 46,000 people on probation in the State, 18,000 are supposed to receive drug or alcohol treatment; however, there are only 4,500 treatment slots in the State. Commissioner Capshaw emphasized that drug treatment is most successful if in-patient care is followed up with close after-care (or "in the street") supervision.

Although decriminalization of drugs was discussed, no one thought that this approach is politically viable in Connecticut. As one participant observed, providing a regulated legal market for drugs would most likely increase drug use without destroying the untaxed, unregulated, black market. The cost of manufacturing crack, for instance, is so low relative to the price people are willing to pay that it would be difficult if not impossible to
keep young entrepreneurs from entering the trade.

Other sources of increased burdens on our criminal justice system are changing societal perceptions of the seriousness of certain crimes — particularly sexual assaults, domestic violence, and drunk driving. Prosecutors and others are now more likely to believe a child who reports a sexual assault. A recently enacted state law requires police to arrest in response to a complaint of domestic violence, even without the specific consent of the victim.5 There is now a mandatory prison term upon conviction for drunk driving.

Discussion about crime inevitably returns to social and economic factors — the so-called “root causes” of crime. Several prosecutors lamented the breakdown of the family and of traditional family values. Additionally, poor housing and poor schools contribute to the attractiveness of committing crimes. Several participants suggested that there might be class or racial bias in the definition of crime (for instance, the proscription of cocaine but not of nicotine and alcohol). Particularly revealing was the observation that, although minorities comprise only 10% of Connecticut’s overall population, they comprise 70% of the State’s prison population. In any event, society’s principal means of constraining behavior are not the various forms of criminal sentencing, but family, school, and peer pressure. Unfortunately, these sources of education and acculturation into a law-abiding community are, like the State’s prison system, in crisis.

Given the nature of the present offender population, it may be that alternatives to imprisonment would be ineffective or inappropriate sanctions in many cases. Professor Abraham S. Goldstein of the Yale Law School suggested that the present prison population is more violent and unstable than the prison population in the 1960’s, when he was a member of Connecticut’s parole board. Still, Commissioner Meachum noted that the huge increase in incarcerated offenders since 1980 consists mostly of persons convicted of property crimes or of drug offenses not directly involving violence. It was asserted by one participant that 20% of misdemeanor offenders are incarcerated and that, for many of these people, a sentence of incarceration is a waste of a scarce resource. Several participants pointed out that alternatives to imprisonment can include a harsh and clearly

punitive component. Indeed, there are many offenders who prefer a definite prison sentence to a longer-term commitment to rigorously enforced community service (which, from the offender's perspective, may be "forced labor"), or other half-way alternatives such as residential drug treatment or nighttime incarceration.

V. CONCLUSION

Connecticut does not have "truth in sentencing." The determinate sentencing system that Connecticut adopted nearly a decade ago was intended to illuminate actual sentencing practices and to provide accountability to the public, but it has accomplished neither objective. The prisons in the State are critically overcrowded. For every inmate admitted to prison, another must be released. Nearly 3,400 offenders are currently on supervised home release, after serving only ten percent of the sentences imposed. Those who are on home release, like those placed directly on probation, often receive little or no meaningful supervision because of overwhelming caseloads given to supervising officers. The prevailing system has not worked honestly, has not punished sufficiently, and has not encouraged ex-offenders to lead productive lives.

In concluding remarks at the symposium, Professor Daniel Freed summarized the day's proceedings and placed them in larger perspective. Professor Freed noted that, over the past two centuries, our society has tried and discarded many different ways to punish those who commit crimes. We have abandoned exile, forms of public humiliation such as whipping posts and the stocks, and (for all felonies except murder) capital punishment. In this country, the sanction of imprisonment — as modified by parole and probation — has been the primary form of punishment for serious crimes since the 19th century. In the past, when the prevailing method of sanctioning criminal offenders has not worked, society has eventually had the courage to develop new methods. In the view of Professor Freed and most symposium participants, we are at such a crossroads again. We are at a point where corrections officials, judges, prosecutors, defense attorneys, and members of the public acknowledge that the current system is not working and are looking for more effective forms of punishment.
Crimes are committed by human beings whose inner social controls have failed. The primary forces encouraging individual social control are the labor market, school, family, and community. The reasons these controls may fail are as varied as individual offenders themselves. Despite the diversity of offenders and offenses — that is, despite the varying needs for punishment, incapacitation, and treatment in each case — the courts are generally given only two alternatives in sentencing: prison or minimally supervised release. As one participant observed, the present range of sentencing options is "either full-time confinement or various forms of nothing at all."

The symposium generated proposals for change which would affect critical aspects of the sentencing process. It was suggested that the role of defense lawyers be redefined and enlarged, with the defense attorney bearing increased responsibility for developing creative sentencing plans that might be used by the courts. The symposium also discussed the need for prosecutors to provide evenhanded sentencing recommendations — to assure similar sentences for similar offenders and offenses — and to support new sanctions that provide punishment and sufficient control. Most critically, the criminal justice system in Connecticut must develop a range of intermediate sanctions — punishments between prison and (effectively) nothing at all. Intermediate sanctions can be effective. They have been proven credible in many other states and communities. They can provide effective punishment and control. In many cases, they can accomplish as much, with the expenditure of less public money, as incarceration.

Although Connecticut has shown foresight and insight in addressing many social problems, it has been less innovative in recognizing and dealing with the present crisis in criminal justice. Soon after the symposium was held, the Connecticut legislature did enact two laws that represent an important first step in addressing some of the problems examined at the symposium. It is unlikely, however, that the new sentencing alternatives, which are quite limited in scope, will significantly ameliorate the present corrections crisis in Connecticut. The message of the symposium is that we must do more, and do it now.