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THE CROSSROADS OF JUSTICE: PROBLEMS WITH DETERMINATE SENTENCING IN MAINE

FINAL REPORT

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TABLE OF CONTENTS

PART I: INTRODUCTION

Chapter 1

An Overview of Determinate Sentencing Reform

Criminal Justice in the 1970's was marked by serious questioning of the ethics and effectiveness of the indeterminate model of sentencing. The previous one hundred years was generally a time of faith in the ability of society to reform those who went astray of the law. In 1870, the first prison congress adopted a "Declaration of Principles" establishing the treatment model as the direction of reform. The principles proposed the development of treatment programs, probation type services, incentive systems for inmates, and professionalization of staff.[1]

These principles reflected a growing concern in the mid-1800's with the rehabilitation and management of inmates. To put such principles into effective force, it was believed that prison officials needed to be provided extensive latitude over the conditions of confinement, and, most importantly, over the length of confinement. To provide this latitude the Congress advocated the indeterminate sentence.[2]

Before this time the judiciary was sentencing offenders to fixed periods of confinement. Correctional administrators were arguing that what was needed was an indefinite sentence. The purpose of the indefinite sentence was to permit correctional personnel to devise methods to encourage rehabilitation and to evaluate the inmate's progress towards rehabilitation.

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[1] National Congress on Penitentiary and Reformatory Discipline, Statement of Principles. 1871. (Albany: Weed, Parsons), pp. 541-543.

[2] Ibid. p. 541.

Based on the continuous opportunity that correctional staff would have to evaluate inmates the staff could select the optimal point for release. What was needed was for the judiciary to decide whether an individual should be incarcerated, but the decision as to length of confinement should rest with experts.

The mechanism established to determine the actual length of incarceration was vested in the parole board. It was the parole board's responsibility to evaluate an individual's progress towards rehabilitation and decide whether the individual was ready for release. By 1944, every American jurisdiction had some form of indeterminate sentencing and parole release.

Forms of Indeterminacy

The indeterminate sentence structures that evolved in the United States varied considerably. None adopted the ultimate indeterminate sentence in which the judge decided whether the individual should be incarcerated or not, and, if incarcerated, the sentence would be from the point of entrance into prison to life. California came the closest to this model; however, even in California some restrictions were placed on the maximum term of incarceration that an individual could serve. For example, California law, pre- 1978 revision, permitted incarceraton up to life for forcible rape, first degree burglary, and robbery, but limited incarceration to 10 years for theft and aggravated assault.

More commonly, indeterminacy was legislated through providing a maximum for each offense or class of offense above which the judge could not sentence. Within this constraint the judge could select a minimum and maximum. A common limitation was that the minimum not exceed one-half of the maximum. Another model allowed the judge to select a maximum

length of incarceration, but not prescribe a minimum. In this latter model, the individual was eligible for release after having served some proportion of the maximum sentence. Often this proportion before eligibility was one-third of the sentence. In those jurisdictions in which a minimum and maximum was specified by the judge, parole eligibility was sometimes some proportion of the minimum (e.g., Ohio) or the minimum itself (e.g., Pennsylvania).

Thus, the actual implementation of indeterminacy generally provided a range of time that an offender might serve. The determinate of the exact amount of time served was in the hands of the paroling authority. The paroling authority, or parole board, was generally an administrative body which was sometimes located organizationally within the correctional bureaucracy or sometimes in a separate agency. The members of the paroling authority were generally appointed by the governor and served at his discretion.

The discretion created by the indeterminate sentence and the authority thereby vested in the parole authority rests on two basic assumptions. First, the assumption that treatment works.[3] Second, the assumption that there are factors identifiable by a parole authority which permit prediction of future behavior.[4] It is these assumptions and other latent functions of parole which have come under serious attack during the 1970's.

Attack on Parole

Efficacy of Treatment. Institutional based treatment and the indeterminate

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[3]Lawrence F. Travis, III and Vincent O'Leary. Changes in Sentencing and Parole Decision Making: 1976--78. (Albany: National Parole Institutes.) p. 7.

[4]Ibid. p. 7.

sentence and parole discretion on which it operates has been unable to support itself by demonstrating an ability to reduce recidivism. Bailey[5] and Martinson[6] carefully reviewed research evaluating the impact of correctional programs. Their conclusions were not encouraging. Bailey concludes:

> Therefore, it seems quite clear that, on the basis of this sample of outcome reports with all of its limitations, evidence supporting the efficacy of correctional treatment is slight, inconsistent, and of questionable reliability.[7]

It was the work of Robert Martinson, however, that most critically evaluated correctional programming. A thorough review of the research led to the conclusion that:

> "with few and isolated exception, the rehabilitative efforts that have been reported so far have had no appreciable effect on recidivism.[8]

Although there have been attempts to refute the conclusion of Martinson as pre-mature or as inaccurate, the refutations have received much less play than Martinson's conclusion.[9] The reason for the receptivity to the conclusion of Martinson may lie not in the findings of the research as much as in the building of a constituency that believed that the process of indeterminacy was unethical. This issue will be discussed later.

Predictive Ability of Parole Authorities: At the heart of the indeterminate

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[5]Walter C. Bailey. "An Evaluation of 100 Studies of Correctional Outcome." in Norman Johnston, Leonard Savitz, and Marvin E. Wolfgang (eds), 1970. The Sociology of Punishment and Correction (2nd edition). New York: John Wiley and Sons, Inc. pp. 733-742.

[6]Robert Martinson. "What Works?--Questions and Answers about Prison Reform." The Public Interest. 35, (Spring 1974): pp. 22-54.

[7]Bailey. "An Evaluation" p. 738.

[8]Martinson. "What Works?" p. 25.

[9] Ted Palmer. 1978. Correctional Intervention and Research. (Lexington, Mass.: Lexington Books).

sentence lies that faith that human behavior--criminal behavior inparticular--is predictable. Particularly crucial to the predictive assumption is the ability to identify the time during the indeterminate term when the offender is optimally release ready and thereby presents the "least threat to society".[10]

The ability to predict criminal behavior has been seriously challenged because it is fraught with error and necessarily risks incarcerating some longer than necessary and others not long enough. These two types of errors are referred to as false positives and false negatives respectively. Andrew von Hirsch and the Committee for the Study of Incarceration strongly attacked the ethics of false positives in reaching their conclusion that a sentence scheme principled on "just desert" is needed to replace indeterminacy.[11] Although the false positive issue seemed to be of more concern to academic proponents of change,[12] the false negative issue seemed more attractive to the popular press and, subsequently, the political process.[13]

Serious questioning of the parole boards ability to predict future criminality in the early 1970's and the interesting, albeit strange, union of conservatives and liberals on this issue set the stage for serious questioning of parole boards and the indeterminate system within which they operated.

Latent Functions of Indeterminacy

Encouraging participation in prison programming,--ostensibly for

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[10] Travis and O'Leary, Changes in Sentencing. p. 7-8.

[11] Andrew von Hirsch, 1976. Doing Justice. New York: Hill and Wang.

[12] See, for example, Andrew von Hirsch, 1972. "Prediction of Criminal Conduct and Preventive Confinement of Convicted Persons," Buffalo Law Review, Vol. 21, (1974). pp. 717-758.

[13] See, for example, James L. Simmons, "Public Stereotypes of Deviants," Social Problems, Fall 1965: pp. 223-52; and Drew Humphries, "Serious Crime, News Coverage, and Ideology," Crime and Delinquency. April 1981; pp. 191-212.

treatment and predictive purposes, may have served as the basis for the indeterminate sentence and parole discretion; however, there were other purposes served as well.

Prisons must manage large numbers of individuals who have demonstrated an inability to live within the law. To manage a large number of such individuals a structure of sanctions are thought to be needed. The indeterminate sentence provides institutional management with a strong sanction system. Appropriate behavior may result in early release, and inappropriate conduct in extension of the duration of confinement. Thus, one function of the indeterminate system is establishment of a sanctioning system which can reward participation in programs, and abiding by the rules of the institution. On the other hand, failure to participate in programming may be interpretated as anti-social and therefore as not a good risk for release.

From the management perspective the indeterminate sentencing model provides a built-in motivator to participation in prison programs and the encouragement of conformity to prison rules. The tenuous control of prison guards over large numbers of inmates is enhanced (psychologically at least) by the threat of extending an offender's term of confinement if he/she misbehaves.

The questions raised regarding this issue relate both to the ineffectiveness of the programs to which they are being "encouraged" to participate and to the involuntary nature of the participation. It can be argued that the indeterminate system has in fact resulted in the ineffectiveness of treatment by coercing participation from those not desiring, and therefore not really motivated, to participate. "Gaming" as this is frequently called, refers to involuntary treatment participation by those who realize the criteria by which they will be evaluated for release and therefore participate in order to fulfill the expectations. Although the motivation of the inmate

may be lacking, it is believed by many prison administrators that the participation, even if it is ritualistic, may have positive effects on the individual's life. The most positive effect might be the avoidance of recidivism or a better quality of life, such as the ability to read--regardless of future criminality.

1970's: Time of Critical Attack on Indeterminacy

The 1970's were a time of serious review of the basic foundations of the indeterminate sentence and, consequently, the indeterminate sentence itself. Perhaps the most significant attack on rehabilitation came from the American Friends Service Committee's Struggle for Justice.[14] The Committee's concern is best stated by their own words:

> This concern arises from compelling evidence that the individualized treatment model, the ideal toward which reformers have been urging us for at least a century, is theoretically faulty, systematically discriminatory in administration, and inconsistent with some of our most basic concepts of justice.[15]

The Committee concluded that the impact of such a system for those caught in it was:

> Instead of encouraging initiative, it compels submissiveness. Instead of strengthening belief in the legitimacy of authority, it generates cynicism and bitterness. Instead of stimulating a creative means of changing the intolerable realities of their existence, it encourages "adjustment" to those realities. This is the keystone of the "rehabilitative" process. Instead of building pride and self-confidence, it tries to pursuade it subjects (all too successfully) that they are sick. Criminal justice, which should strengthen cohesion through a reaffirmation of shared basic values, is serving instead as a conduit for increasingly dangerous polarization of conflict.[16]

These were strong indictments of the rehabilitative model and

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[14] American Friends Service Committee. Struggle for Justice. (New York: Hill and Wang, 1971).

[15] Ibid., p. 12.

[16] Ibid., p. 9-10.

the indeterminate sentence that it spawned. Based on these perspectives, the Committee concluded that discretion in criminal justice, and in sentencing in particular, was contradictory to "justice." Therefore, the Committee called for the abolition of the indeterminate sentence. In its place, the Committee suggested that sentences be fixed by law with no judicial discretion in setting sentences, and that parole release and supervision be abolished. Many of the changes suggested by the Committee can be seen in the recent legislative enactments that have occurred across the country.

However, most of the reforms have borrowed only part of the package. For example, the abolition of the parole board has occurred in many jurisdiction such as California, Maine, Illinois, and Indiana, but street supervision has been abandoned only in Maine. The suggestion that sentences be short and definite has been to a large degree only partially adopted and never in favor of short sentences. In most cases, the type of sentence has not been constrained for the judiciary with the exception of a few mandatory bills that are focused on a very limited number of offenses. In addition, once the judge does elect to incarcerate the offender, the range within which he can select the appropriate length is often so wide as to seriously question whether judicial discretion has been constrained. Finally, even though the terms set are often of a single length, good time provisions often result in almost as much indefiniteness as that previously controlled by the parole board.

Struggle for Justice set the tone for concern with sentencing, but perhaps the most significant indictment came from Judge Marvin Frankel. In Frankel's own words the purpose of his work was:

> ...to seek the attention of literate citizens--not primarily lawyers and judges, but not excluding them--for gross evils and results in what is probably the most critical point in our system of administering criminal justice, the imposition

of sentence.[17]

Frankel adds:

> It is to be hoped at a minimum that most of us will recognize how we are all demeaned when we proceed in the name of the law to be arbitrary, cruel, and lawless.[18]

Commenting on individualized justice, Judge Frankel noted:

> ...we ought to recall that individualized justice is prima facie at war with such concepts, at least as fundamental, as equality, objectivity, and consistency in the law.[19]

Judge Frankel raises serious questions about a system of sentencing that individualizes sentences by providing individuals not trained for sentencing nor selected for any particular ability to sentence with "unfettered discretion."[20]

Judge Frankel proposes numerous changes in the sentencing process but cautions that:

> While any change in sentencing practices is likely to be an improvement, I doubt that wholly removing the responsibility and the power from the jurisdiction of the legal profession would be either feasible or desirable.[21]

He adds further that:

> The profound defects in the handling of sentencing are by no means the inevitable consequences of legal management. Quite the contrary, the main evils assailed by me (among others) reflect largely the absence of decent legal ordering.[22]

The problem has been too little law, not too much.[23] Another basic premise

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[17]Marvin E. Frankel. Criminal Sentences. (New York: Hill and Wang, 1974).

[18]Ibid., p. x.

[19]Ibid., p. 19.

[20]Ibid., p. 9.

[21]Ibid., p. 55.

[22]Ibid., p. 57-58.

[23]Ibid., p. 23.

of Judge Frankel is that "we in this country send far too many people to prison for terms that are far too long."[24]

> One way to begin to temper the capricious unruliness of sentencing is to institute the right of appeal, so that appellate courts may proceed in their accustomed fashion to make law for this grave subject.[25]

The report of the Committee for the Study of Incarceration, which was authored by Andrew von Hirsch, proposed that judicial and parole discretion be constrained and in great part replaced by a sentencing system founded on the principles of just desert.[26] Specifically they suggested that the factors which should be considered by the court in sentencing should be limited to the severity of the offense and to a lesser degree, the offenders prior record.[27] Based on the offenders standing on all possible combinations of offense seriousness and prior record, commensurate punishments should be assigned so that offenders with a similar conviction and similar prior record receive similar punishment. The sentence given would be definite rather than indeterminate, but the judge would be able to adjust the sentence if certain aggravating or mitigating factors were present. It is important that these aggravating and mitigating factors bear on the severity of the current conviction offense or prior record because otherwise they would undermine the just desert concept. Basically, what the Committee proposed was a presumptive sentencing model with flat sentences and with as little discretion as possible in the hands of correctional officials.

Similarly, the Twentieth Century Fund Task Force on Criminal Sentencing located the major problem in criminal justice in the:

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[24] Ibid., p. 58.

[25] Ibid., p. 84.

[26] von Hirsch, Doing Justice.

[27] Ibid.

> ...capricious and arbitrary nature of criminal sentencing. By failing to administer either equitable or sure punishment, the sentencing system--if anything permitting such wide latitude for the individual discretion of various authorities can be so dignified--undermines the entire criminal justice structure.[28]

The task force proposed reducing disparity in ways similar to the proposals of the von Hirsch report. It proposed a presumptive sentencing structure with limited increases or decreases for aggravating or mitigating circumstances. However, the task force proposed the maintenance of the parole board, but with much more limited discretion. The report also went beyond the von Hirsch report in that it recommended that more offenders should be incarcerated rather than being given a non-confinement alternative. However, the report imposed the constraint that the length of incarceration should not exceed the current average time served. The rationale to support certain, yet short sentences, was the increased fairness and deterrence of such a system.

Context of Reform

Thus, there were multiple pressures for the elimination or structuring of judicial and parole board discretion during the 1970's. The coming together of critiques and proposals, such as those of the Twentieth Century Fund Report, American Friends Service Committee, Andrew von Hirsch, and Judge Frankel, at a time when the rehabilitative model was being attacked both for its ineffectiveness, and unfairness and when more conservative forces were chastising the liberal parole board for its leniency, established a prime time to seriously challenge discretion in the sentencing system. It is not the purpose of this chapter to analyze the forces that are contributing to sentencing reform. However, it must be observed that a large number of states have rejected indeterminacy within a

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[28] Twentieth Century Fund, Fair and Certain Punishment. (New York: McGraw-Hill, 1976) p. 3.

relatively short legislative time frame. This reflects a major reversal of orientation which appears to be continuing unabated into the 1980's.

Recent Reforms

It would do no particular purpose here to review each and every reform that has occurred in the United States since 1976; however, it might be helpful to provide a general classification of the types of reform that have occurred and to give some examples of each. As a consequence, the reader should be better able to evaluate the importance of the change that has occurred in Maine, and be better able to assess the general trends that are occurring.

In order to structure this for the reader, a typology has been constructed which classifies each reform into the following categories: (1) flat sentencing; (2) presumptive sentences with a parole board; (3) presumptive sentences without a parole board; and (4) mandatory sentences. Obviously, the above typology is oversimplied; however, for purposes of reviewing the basic changes, it seems sufficient.

Flat Sentencing

By "flat sentences" we are referring to the abolishment of the indeterminate sentence and the replacement of it with a sentencing scheme that calls for the court to decide who should be incarcerated, and, if incarceration is called for, then to set a "flat" term of confinement. Thus far, two states, Maine and Connecticut, have enacted and put into force such legislation. Both have abolished the parole board and parole supervision (they are the only states to have abolished supervision) and have vested in the judiciary the authority to set sentence lengths which may only be reduced by good time provisions. In Maine, an offender may earn 10 days a month good time with the potential of an additional two days for work assignments outside the institution or to a work assignment within the institution "which is deemed to be of sufficient

importance and responsibility to warrant such deduction."[29]

Both of these states have opted for what may be referred to as a judicial model of sentencing because neither the legislature nor any other body has prescribed presumptive incarceration lengths. The legislatures establish very general offense severity rankings and for each such ranking set a maximum above which the judge may not sentence. Neither Maine nor Connecticut generally set a minimum below which the court may go and, therefore, leave to the judge the discretion whether to incarcerate. Thus, in terms of discretion, both codes can be characterized as eliminating the parole board discretion while at the same time increasing the discretion of the judiciary and the correctional authorities.

Consequently, "flat sentencing" as thus far established in these two jurisdictions does not meet the criteria of determinate sentencing suggested by von Hirsch and Hanrahan because neither of the states provides either "explicit and detailed standards specifying how much convicted offenders should be punished"[30] or procedures to early in the confinement term inform the prisoner of the expected release date.[31]

Presumptive Sentences With a Parole Board

Arizona and Colorado have recently enacted into law legislatively set presumptive sentences. In both these states, however, the parole authority maintains its discretion to release an offender, although this contradicts the general trend to abolish the parole board's authority for releasing offenders.

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[29] 17-A, M.R.S.A., sec. 1253.

[30] Andrew von Hirsch, and Kathleen Hanrahan. "Determinate Penalty Systems in America: An Overview," Crime and Delinquency. June 1981. p. 294.

[31] Ibid., p. 294.

The Arizona legislature established six classes of felonies for which they specified presumptive terms of imprisonment ranging from 1 1/2 years for a class six felony to seven years for a class two felony.[32] Table one presents the classifications with the presumptive length of incarceration for each as well as the ranges for aggravation and mitigation. As can be readily observed, the code provides extensive authority to the court to increase or decrease, especially increase, the sentence length based on aggravating or mitigating reasons. Although the code provides a list of aggravating and mitigating reasons, it also provides a general provision which states that "any other factors which the court may deem appropriate to the ends of justice."[33]

The Arizona code does not limit itself to presumptive sentences and the ranges for aggravating and mitigating circumstances, but also provides for enhancements for repeat offenders, offenses involving serious physical injury or use of deadly weapon.[34] For example, an individual whose current conviction is for a class four, five, or six offense, who has had a prior conviction within 10 years, may be sentenced for a term up to two times the normal presumptive term. Such offenders are not eligible for probation. If the current conviction is a class two or three felony and the offender has had a prior felony conviction at any time in the past, then the court may impose a sentence up to three times the normal presumptive term. Two-thirds of this term must be served before the offender is eligible for parole. Thus, the Arizona code permits considerable adjustment in the sentence depending on the prior record of the offender.

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[32] Arizona Revised Statutes, section 13-601.

[33] Ibid., section 13-702 (D) and (E).

[34] Stephen P. Lagoy and John H. Kramer. "The Second Generation of Sentencing Reform: A Comparative Assessment of Recent Sentencing Legislation," presented to American Society of Criminology Meeting in San Francisco. November 1980.

Two other enhancements, serious bodily injury and use of a deadly weapon, provide for considerable adjustments as well in the length of confinement.[35] For example, offenders falling under the provisions of these enhancements who have a current conviction for a class six felony conviction may receive a prison sentence up to twice the normal sentence and are ineligible for parole until at least one-half of the sentence has been served. In addition, if the offender falls under one of these enhancements and also has a prior record, then the possible sentence is much longer.

Arizona law creates two categories of incarcerated offenders. One category is composed of those who both abide by the rules of the institution and participate in work, educational, treatment, or training programs. The second category includes those who adhere to the rules and regulations of the institution.[36] Only those inmates included in the first category are awarded good time. Credit is awarded at the rate of one day for every two days served except for those dangerous or repetitive offenders for whom release is prohibited prior to having served two-thirds of their term. Good time is awarded at the rate of one day for every three days served in this latter category.

Arizona's parole release is a two-step process. As a first step, the Department of Corrections classifies the inmate in one of the two parole eligible classifications, and then, after a parole eligible inmate has served one-half of the sentence imposed,[37] the parole board may grant early release if it determines, in its discretion, that the inmate is likely to remain at liberty without violating the law.[38] Inmates not paroled, and those whose

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[35] Ibid., p. 4.

[36] A.R.S., section 41-1604.06 (D).

[37] Arizona does require two-thirds of the sentence to be completed under some of the mandatory minimum sentences.

[38] Ibid., section 41-1604.07 (B).

parole is revoked, will be released upon completion of the sentence imposed less any earned release credits.[39]

Thus, sentence ranges are extremely wide under Arizona law and they still allow for early parole as well as good time. The implications are that there is not much determinacy under Arizona's sentencing code. There is no certainty as to sentence if convicted, and there is not even the certainty as to time served such as that in Maine's code.

Colorado. On April 1, 1979, Colorado adopted a sentencing code similar to Arizona's. Colorado's reform replaced the traditional indeterminate sentence with minimums and maximum terms with a single presumptive sentence for each of these offense classes. The Colorado code permits the sentencing court to deviate from the presumptive term by as much as 20 percent below the presumptive term for mitigation and 20 percent above the presumptive term for aggravation.[40] The code does not limit the court in the factors it may consider for either aggravation or mitigation, but it requires the court to specify the circumstances upon which it raises or lowers the sentence. For offenders with a prior felony conviction, the code allows the sentencing court to increase the presumptive term by as much as 50 percent of the presumptive sentence.[41]

Colorado law imposes few restrictions on a judge's power to impose a sentence of probation for a felony offense in lieu of the presumptive sentence of incarceration. In fact, only persons convicted of a class 1 felony or with two prior felony convictions are ineligible for probation.[42]

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[39] Ibid., section 41-1604.07 (B).

[40] Colorado Revised Statutes, 18-1-105 (6).

[41] Ibid., 18-1-105 (6) (7).

[42] Ibid., 16-11-201.

The actual length of incarceration is dependent on the awarding of good time. The 1979 code revisions provide that incarcerated offenders are to be unconditionally released upon the expiration of sentence less good time.[43] In addition to the above good time, inmates may earn one month for each six months served for "special activities" such as participation in counseling and training programs, attitudinal changes, and special work assignments.[44] This latter good time is administered by the parole board while the regular good time is managed by the institution. Colorado also provides for a one year period of parole supervision for felony offenders upon release.[45] If parole is revoked during the period of supervision, the parolee will be returned to the institution for a period of six months. The offender cannot serve in excess of one year total on parole and reincarceration combined.

The Colorado law has a habitual offender provision requiring that a judge impose a sentence of three times the presumptive term for a felony offender with two prior felony convictions and must impose a sentence of life imprisonment on a felony offender with three prior felony convictions.

The Colorado code mandates definite prison terms for felony offenders and prescribes presumptive terms for each felony class; however, both the judiciary and the parole board retain a measure of sentencing discretion. Judges have the authority to deviate from the presumptive terms within established bounds and, in general, retain the authority to determine whether an offender is incarcerated. The role of the parole board is changed under the new statute, but the power to reduce a sentence by one month for each six months served maintains considerable authority in the board.

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[43] Ibid., 16-11-310 (3) (a).

[44] Ibid., 16-11-310 (3) (b) (I).

[45] Ibid., 16-11-310 (5).

Table 1

Offense Categories and Sentencing Ranges in Arizona

Offense Class	Example Offenses	Presumptive Sentence	Ranges in Aggravation	Ranges In Mitigation	Sentence Range For 1 Prior Felony
1	Murder I	Death/Life	---	---	---
2	Kidnapping; armed residential burglary; arson (occupied structure)	7 yrs.	7-14 yrs.	5.25-7 yrs.	7-21 yrs.
3	Residential burglary; agg. robbery.	5 yrs.	5-10 yrs.	3.75-5 yrs.	5-15 yrs.
4	Robbery	4 yrs.	4-5 yrs.	2-4 yrs.	4-8 yrs.
5	Nonresidential burglary.	2 yrs.	2-2.5 yrs.	1-2 yrs.	2-4 yrs.
6	Criminal trespass; possession of burglary tools.	1.5 yrs.	18-22.5 mos.	9-18 mos.	1.5-3 yrs.

Table 2

Offense Categories and Sentencing Ranges in Colorado

Offense Class	Example Offenses	Presumptive Sentence Range	Extraordinary Ranges in Aggravation	Extraordinary Ranges in Mitigation	Total Range
1	Murder I; Kidnapping; Assault during escape	Life/Death	———	———	
2	Murder II; Sexual assault; Burglary I	8 to 12 yrs.	12-24 yrs.	4-8	4-24 yrs.
3	Aggravated Robbery; Arson I	4 to 8 yrs.	8-16 yrs.	2-4	2-16 yrs.
4	Robbery; Bribing a witness Manslaughter Vehicular homicide	2 to 4 yrs.	4-8 yrs.	1-2	1-8 yrs.
5	Assault; Burglary 3rd	1 to 2 yrs.	2-4 yrs.	6 mos.-1 yr.	6 mos.-4 yrs.

Presumptive Sentences Without Parole Release

The parole release function has been the focus of much debate. Supporters of the abolishment of the parole release mechanism have included Jessica Mifford[46] and David Fogel.[47] Andrew von Hirsch and Kate Hanrahan[48] have been the most prolific contributors to the debate and, although they reject the traditional use of the parole release mechanism, they concede that with "desert" centered constraints they can see situations under which it can be consistent with a "just desert" model of sentencing.

States adopting a determinate model of sentencing have generally reduced or abolished the parole release function and maintained the supervision component of parole. Included among the states abolishing parole are California, Illinois, and Indiana. Although each of these states have enacted quite different sentencing codes, there are certain parallels that are worth noting. It is not necessary to review each of these states in detail as that has been done elsewhere,[49] but a brief overview of each will provide some perspective on the variety of the forms that sentencing without parole have taken.

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[46]Jessica Mifford. 1973. Kind and Usual Punishment. New York: Knopf.

[47]David Fogel. 1975. We Are the Living Proof. . . : The Justice Model for Corrections.

[48]Andrew von Hirsch and Kathleen Hanrahan. 1979. The Question of Parole. Cambridge, MASS: Ballinger Publishing Co.

[49]Stephen P. Lagoy, Frederick A. Hussey, and John H. Kramer. "A Comparative Assessment of Determinate Sentencing in the Four Pioneer States." Crime and Delinquency. 24 4 (October, 1978): pp. 385-400.

Illinois was the first state after Maine to pass comprehensive sentencing reform.[50] The Illinois reform established very wide presumptive ranges from within which the judge selects a flat-determinate sentence. Illinois does not establish a presumptive sentence either in terms of whether to incarcerate or as to lengths within the ranges. Thus, Illinois established presumptive ranges from which the court could select any length of incarceration it felt appropriate. Once the decision to incarcerate and the length is established then the time served is the sentence length minus good time earned. In Illinois good time may be earned at the rate of one day for each day served.

Indiana followed Illinois in the adoption of sentencing reform.[51] Like Illinois, Indiana abolished parole release and maintained parole supervision. Indiana established ten classes of crimes and set a presumptive length for mitigation. For example, a Class A felony carries a presumptive sentence length of thirty years, but the court may increase the sentence by up to twenty years for aggravating circumstances and decrease the sentence by ten years for mitigating circumstances. Thus, the total range provided the court for such offenses is from twenty to fifty years.

Considerable discretion is also allowed in determining the actual incarceration time. Indiana provides the correctional authorities with considerable good time with which to influence the length of time served. Depending upon the classification of the inmate, good time may be earned at the rate of one day good time for each day served, one day for each two days served, or one day for each three days served.

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[50] Illinois Revised Statutes, 1977, Ch. 38, Sec. 1005-8-1.

[51] Indiana Penal Code, Title 35, Criminal Law and Prodecure, secs. 35-2-1 to 35-50-2-7.

California abolished parole release, however, the differences between California and Indiana, and Illinois are considerable.[52] For example, like Indiana, California provides a specific presumptive sentence for each of four offense classes. However, California provides much more limited ranges for aggravating or mitigating circumstances than Indiana. For example, although subsequently changed, the offense of rape was given a presumptive sentence length of four years, but could only be increased by one year for reasons of aggravation and reduced by one year for reasons of mitigation.

All three of these states have retained significant discretionary power. First, each leaves the judiciary with the authority to decide who will be incarcerated. Second, while the parole release function is eliminated, if the offender violates parole after release the parole board (Indiana), Prisoner Review Board (Illinois) and the Community Release Board (California) retain some authority to decide whether the parole shall be revoked and, if revoked, when the offender will be released. Thus, the actual time served can still be effected by a parole type agency. Finally, the correctional authority has extensive control over the time served and how time is served through its control over the administration of good time.

Although it can be argued that California provides relatively explicit standards as to the extent of punishment, and all three states provide the offender with an awareness of time served once the length is set, there is considerable indeterminateness in each. Maine compares favorably with either Indiana or Illinois in terms of determinateness and, if one considers the

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[52]The Penal Code of California, section 1170.

potential impact of parole revocations, Maine may provide a more predictable system than either of them. With its narrower ranges, California provides considerably more explicit standards as to length of incarceration then Maine's standardless system, but with that one exception California is no more determinate than Maine.

Mandatory Sentences

The most common form of legislative intrusion into sentencing has been in the form of establishing mandatory minimums. One recent survey reports that thirty-two of the thirty-five states responding have adopted mandatory sentencing provisions.[53] These are much less complex than the reforms in Maine, Connecticut, Colorado, Arizona, Illinois, Indiana and California in that they deal with only a small number of offenses and offenders. As examples we shall discuss those recently adopted in Pennsylvania and the Bartley-Fox ammendment adopted in Massachusetts. By using these two examples we can show how one state chose to establish mandatory minimums for a range of very serious, violent crimes and how another state adopted mandatory minimums for much less serious, but more frequent offenses.

Pennsylvania debated various models of reform including sentencing guidelines developed by a sentencing commission[54] prior to enacting legislation which included:

- a mandatory minimum sentence of five years for persons convicted of a violent crime if a firearm was used;

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[53] Richard Morelli, Craig Edelman, and Roy Willoughby. 1981. A Survey of Mandatory Sentencing in the U.S. Harrisburg, PA PA Commission on Crime and Deliquency.

[54] Pennsylvania Crimes Code, Title 188C.S. 1381-1386.

- a mandatory minimum sentence of five years for persons convicted of a violent crime if they had a previous conviction for a violent crime;
- a mandatory minimum sentence of five years for persons convicted of committing a violent crime on public transportation; and
- a mandatory life sentence for persons convicted of a second third degree murder.[55]

Under Pennsylvania statute an offender sentenced to these sentences would not be eligible for release until the expiration of the minimum and could be held until the maximum which must be at least double the minimum.[56]

Mandatory sentences, as opposed to the presumptive sentences established by California, Arizona and Illinois, do not allow the judiciary the flexibility to determine whether an offender should be incarcerated or the latitude to mitigate the length of incarceration.

Massachusetts adopted an ammendment in July 1974 to a law prohibiting the carrying of firearms without a permit such that violation of the law would require a minimum sentence of one year in prison without suspension, parole or furlough.[57] The focus of this particular law is considerably different than Pennsylvania's mandatory sentences in terms of the types of offenses to which it applies and the lengths imposed.

Referencing back to the two criteria for determinate sentencing proposed by von Hirsch and Hanrahan, it is clear that neither the mandatory provisions in Pennsylvania or Massachusetts are "determinate."
For example, piecemeal legislation such as Pennsylvania's and Massachusetts' provide no comprehensive, consistent policy. In fact, narrowly focused mandatory provision mandate that a few offenders receive certain and harsh

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[55]Pennsylvania Judicial Code, Title 42 C.S. 9712-9715.

[56]Pennsylvania Judicial Code, Title 42C.S. 9755(b) and 9756(b).

[57]Massachusetts General Laws Ann. Ch. 269, 10(c) (supp. 1976).

sanctions while others, perhaps with more serious crimes, are treated more leniently. Thus, such laws exacerbate the difficulties of disparity and unfairness.

Conclusion

It is obvious that determinacy is not a uniformly developed concept, nor are the operalizations all that determinate. Arizona and Colorado theoretically enacted determinate sentencing, however, they maintained considerable judicial discretion as well as parole board discretion. Indiana and Illinois abolished the parole board and replaced indeterminate sentences with flat, judicially determined sentences containing only relatively broad parameters set by the legislature. California, and particularly Minnesota, have both abolished the parole board and replaced it with legislatively set ranges in California and commission set ranges in Minnesota. Both ranges are relatively narrow, however, Minnesota's ranges are much narrower than even California's.

The focus of this research is on the state of Maine and its sentencing reform of 1976. As was pointed out earlier, according to the criteria established by Andrew von Hirsch and Kathleen Hanrahan,[58] Maine's reform is not classified as a determinate one. However, according to their criteria, to be determinate, a state must establish "explicit and detailed standards" for determining the amount of punishment and procedure to inform the offender early in the confinement term the expected release date. Using these criteria not only Maine, but Arizona, and Colorado also would not be labeled determinate. In fact, with the amount of good time controlled by the correctional authorities, even certainty as to time served is difficult to ascertain.

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[58] von Hirsch and Hanrahan. "Determinate Penalty Systems" p. 294.

Maine has not established "clear and explicit standards" for determining the appropriate punishment, however, it has established early warning of the release date. Thus Maine may not be determinate, but Maine may have accomplished as much as almost any other state. For example, California set a range of presumptive lengths for each offense; however, they do not normally provide guidance for the crucial issue of whether or not the offender should be incarcerated. Secondly, there has been a tendency for states to classify crimes into a relatively small number of seriousness categories. Illinois created five such categories; Colorado five; Arizona six; and Indiana ten. Establishing a restricted range of sentencing choices, or merely a choice between whether to incarcerate, and, if incarceration then a presumptive range may be placing a strong burden on severity ranks. Although the ranking is designed to assess the severity of the crime, in reality it is an over-simplification in its own right. No state has yet heeded Allen Derschowitz's advise that if we intend to establish presumptive sentences and to use severity rank as the crucial determinant of the sentence then we must carefully and clearly delineate crime definitions so as to specify various levels of crime seriousness.[59]

The moral may be that, although Maine has failed to develop "determinte" sentences, it has developed certainty and has not oversimplified crime seriousness while restricting judicial discretion. To over-simplify and to restrict risks injustices worse than those the reforms are designed to correct. The remainder of this report will detail the results of a study that has carefully reviewed the result of Maine's sentencing reform.

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[59]Twentieth Century Fund. Fair and Certain Punishment pp. 42-43.

PART II. CRIMINAL JUSTICE REFORM IN MAINE

In 1971, Maine's 104th Legislature created an "Act to Create a Commission to Prepare a Revision of the Criminal Laws." The first meeting of that Commission was on April 7, 1972. The Commission was chaired by Jon Lund, an attorney and former member of a commission to study the possibility of codifying Maine's criminal laws. It was largely comprised of practicing attorneys, and employed Sanford Fox, a nationally recognized expert on the criminal law and experienced legislative draftsperson, as a consultant. The Commission met regularly with over 45 working sessions to prepare a new criminal code.

In 1975, the 107th Legislature enacted the Commission's recommendations. The new criminal code, Title 17-A M.R.S.A, included a major reform in sentencing. When fully implemented May 1, 1976, the new code had *inter alia* the following effects:

- Codification of the Criminal Law

  The Criminal law was simplified by codification. Substantive offenses defined in different titles and statutes enacted at different times were redefined, consolidated, and incorporated into one criminal code.

- Introduction of Graded Classes of Offenses

  Offenses were graded into one of five classes of offense seriousness with legislatively set maximum penalties attached to each grade or class.

- Abolition of the Indeterminate Sentence

  The indeterminate sentence was abolished. Now the sentencing judge selects the precise period of incarceration for a particular offender which is the actual period of confinement -- less good time.

- Abolition of Parole

  The apportionment of sentencing authority between the court and executive agencies was changed by the abolition of parole. Judicial authority to determine actual sentence lengths was thus enhanced. The court's sentence can only be reduced by a petition from the Bureau of Corrections to the sentencing judge or through a pardon or commutation of sentence by the governor.

- The Split Sentence was Expanded

  The judge may impose a custodial penalty not to exceed the legislatively set maximum and suspend a portion of that penalty with the option of placing the offender on probation. There is no equivalent to parole release.

Maine's sentencing reform was part and parcel of a revision of its criminal code and occurred in the context of other major changes in the administration of justice unrelated to that reform.

Although this study assesses the impact of the reform in sentencing and the abolition of parole on changes in the sentencing choices of the court and on the time offenders serve in imprisonment, it is imperative that it examine both the sentencing reform and other changes which accompanied that reform and in which that reform was implemented and operates. This section of the report assesses three areas of change in the administration of justice in the State of Maine. The first chapter assesses the statutory change in sentencing. This is followed by an assessment of the

codification of substantive criminal offenses. In the final chapter, changes in the organizational context of the administration of justice having a bearing on Maine's sentencing reform are examined.

Chapter 2

Maine's Sentencing Reform

The state of Maine was the first jurisdiction in the United States to implement what is generally referred to as determinate sentencing. The new sentencing structure abolished indeterminate sentences by introducing 'flat-sentences' of imprisonment selected by the trial court at the time of sentencing. In so doing, the new statute also reduced the diffusion of sentencing power by abolishing the Parole Board who had final authority as to when an offender would be released.

Prior to the reform the court had the responsibility to establish an indeterminate sentence consisting of a minimum that could not exceed one-half of the maximum and a maximum that could not exceed the limits established by the legislature. The minimum and maximum set by the judge could be reduced by up to seven days a month good time. The minimum less good time determined the parole eligibility date of the offender. At any point between the parole eligibility date and the maximum sentence the parole board could release the offender. Thus, under Maine's indeterminate sentencing scheme the judge established the baseline, the correctional institution could lower this baseline by seven days a month (7 days a month represents the potential for a 23 percent decrease in both minimum and maximum sentence), and the parole board then determined the actual release date.

However, for the Maine Correctional Center the rules were quite different. The Maine Correctional Center was established for the younger, male offender (under 27 years of age). All sentences to Maine Correctional Center were either zero to thirty-six months or one to thirty-six months. Although good time could be earned, for all practical purposes good time only reduced the maximum.

The new statute established a judicial model of sentencing.[1] The change did not establish guidelines or presumptive sentences that might aid in the decision-making process. Thus, in comparison with reforms in other states, Maine's new sentencing statute is relatively indeterminate in that the statute does not provide the judiciary with guidance in deciding which offenders are to be incarcerated or for how long. In fact, the changes provided the court with more flexible sentencing options, greater power to determine the length of incarceration, and, at the same time, increasing certainty for both the offender and the public as to the actual length of incarceration to be served. The flat-sentences can only by reduced by a petition from the Bureau of Corrections to the sentencing judge or through a pardon or commutation of sentence by the Governor.

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[1]Stephen P. Lagoy, Frederick A. Hussey and John H. Kramer, 1978. "A Comparative Assessment of Determinate Sentencing in the Four Pioneer States." Crime and Delinquency, 24, October, p. 385.

Maine changed its sentencing structure prior to the adoption in other jurisdictions such as California, Illinois, and Indiana of new sentencing statutes often referred to as determinate sentencing. Maine's sentencing statutes were enacted in 1975 and implemented in 1976. Thus, drafters of the legislation did not have the benefit of seminal works that informed sentencing legislation subsequently enacted in other states -- such as the Committee for the Study of Incarceration's Report, Doing Justice: The Choice of Punishments, published in 1976. Nor, did the Commission who recommended the new sentencing legislation have the benefit of later research showing the extent of unwarranted disparity created by an independent, unguided judiciary.

Although the Commission did not have the benefit of such works, it is clear that their final recommendations were intended to reduce the diffusion of sentencing authority that was shared among judges, corrections officials and the Parole Board. For the new code centralized sentencing authority into the courts by replacing the low visibility and highly discretionary release practices of the Parole Board with flat-time sentences set by the court.

One of the Commission's major products, however, was to classify offenses into five degrees of offense seriousness. This system both rationalized the penalties available to the court at the time of sentencing and permitted future legislatures to address the problem of seriousness in the

enactment of new criminal statutes. The sentencing structure ultimately enacted into Title 17-A is summarized in Figure 1. As can be seen, maximum incarceration lengths, probation lengths and fines are attached to each class or grade of offense seriousness. Minimum terms of imprisonment were set only for crimes against the person committed with the use of a firearm,[2] and, for burglary offenders with prior burglary convictions.[3]

Figure 1.

Class of Offense	Maximum Authorized Imprisonment	Maximum Authorized Period of Probation	Maximum Authorized Fine	
			Natural Persons	Organization
A	240 Months	3 years	none	$50,000
B	120 Months	3 years	$10,000	20,000
C	60 Months	2 years	2,500	10,000
D	12 Months	1 year	1,000	5,000
E	6 Months	1 year	500	5,000

Source: Adopted and Revised from M. Zarr, "Sentencing," Maine Law Review, 1976, Vol. 28, p. 120.

The new sentencing structure brought to an end the prior practice of ad hoc enactment of new offenses with penalties attached to each offense determined by the mood

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[2] 17 M.R.S.A. §1252(5)

[3] 17-A M.R.S.A. §401

of the legislature at the time. Under prior law, statutes authorized maximum periods of incarceration ranging from ten days to any term of years, to life. There were over 24 different maximum terms on the statute books and the bulk of them provided for both minimum and maximum terms.

Other than its commitment to a graded sentencing structure, the Commission's position on equally critical dimensions of sentencing underwent change. Two entirely different models of sentencing were developed at two different times having quite different ideological underpinnings. The first model was largely rehabilitative and located authority to determine actual sentence lengths with Corrections administrators and the Parole Board. The second sentencing structure abandoned the rehabilitative underpinnings of the first model and shifted authority to determine sentence lengths <u>from</u> Corrections and the Parole Board <u>to</u> the judiciary. It was this second model that was ultimately enacted into law.

The early sentencing structure established grades or classes of offense seriousness with a maximum length of incarceration attached to each grade or class. But, it restricted the court's discretion as to the length of incarceration. When the court chose incarceration, it was only authorized to place the offender under legal custody of the Department of Mental Health and Corrections for an indefinite term not to <u>exceed</u> the period of incarceration determined by the court at the time of sentencing. Under this early scheme, the Department of Mental Health and

Corrections and the Parole Board were to determine actual incarceration lengths. And, there were provisions for mandatory parole release and parole supervision.[4] Thus, the intent of the first model was to locate the release decision with Corrections officials and the Parole Board. It was seen as good-sense management and embraced the treatment ethic which had dominated correctional decision-making for over sixty years.

In 1974, the Commission revised these dimensions of their sentencing proposal. Those revisions were subsequently enacted into law. While retaining the graded classification of offense seriousness, the authority to determine actual sentence lengths and the location of imprisonment was transferred <u>from</u> Corrections officials and the Parole Board <u>to</u> the courts. It was the Commission's view that decisions about sentence lengths should be controlled by the court. Moreover, the Commission abolished the Parole Board, thus eliminating its function of releasing offenders. The new sentencing provisions were based on the belief that decisions about offenders should be more visible. As one member of the Commission put it:

> No one saw the Parole Board and Corrections administration in operation. They were out of the public eye and review. The aim was having it out and laying it on the line -- the most visible branch of the criminal justice system is the court.[5]

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[4]Memorandum from consultant Fox dated August 21, 1972.

[5]Interview with former Commission member, May, 1980.

The second set of sentencing provisions were intended to firmly place authority over incarceration lengths in the court by abolishing parole release. It was believed that since judges were more visible to the public they could be held accountable for decisions about punishment. In the second and final sentencing proposal, should the court elect incarceration, it is authorized to select a precise period of confinement -- less good time, with the maximum prescribed by the graded classes of offense seriousness. This form of sentencing is referred to as flat-sentences to distinguish it from different forms of sentencing adopted in other states.

Three basic reasons account for the shift in the Commission's initial proposal authorizing Corrections officials to determine incarceration lengths to their final recommendation that firmly located discretion about sentence lengths in the judiciary.[6] First, testimony presented by Corrections officials indicated that the Department lacked resources required for the new role envisaged by the Commission. Second, there was pervasive and widespread criticism of the Parole Board and the probation and parole service. Finally, there was legislative pressure to enact mandatory terms of imprisonment.

Although the new code transferred discretion from the Parole Board to the court, it recognized that the court's

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[6]Donald F. Anspach, "Myths and Realities of Maine's Criminal Code Reform: A Case Study." Interim Report Number 1 submitted to U. S. Department of Justice, April 1, 1981, pp. 11-14.

selection of incarceration lengths may have been based upon a misapprehension as to the history, character or time necessary to protect the public from the offender. Thus, the new code provides a mechanism through which the trial court may reconsider its original sentence -- especially given the constraints they had placed upon Corrections through the abolition of parole. To maintain judicial discretion but allow flexibility in sentencing, the code authorizes the Bureau of Corrections to petition the sentencing judge to resentence the offender.[7] The effect was to render all sentences of imprisonment in excess of 12 months tentative.

In sum, the policy of the indeterminate sentence that dominated penal policy in Maine since 1913 was abolished. Moreover, the diffusion of sentencing power amongst judges, prosecutors, Corrections officials, and the Parole Board was centralized by abolishing both parole release and parole supervision. The authority of Corrections officials to affect the release of offenders was further curtailed by reallocating that decision to the trial court by petitions for resentencing from the Bureau of Corrections to the sentencing judge. It was a sentencing reform that vested virtually all official decision making authority over whether to incarcerate and incarceration lengths in the judiciary.

To provide the judiciary with more flexibility in their sentencing choices, the new code added to the traditional

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[7] 17-A M.R.S.A. §1154.

sentencing options of fines, restitution, probation, and incarceration the additional options of unconditional discharge and split sentences. The split sentence in Maine is the court imposing a period of incarceration, suspending a part of that period of incarceration, and then placing the offender on probation. Although courts in Maine were giving split sentences prior to the enactment of the new code, it was the new code that legitimated such sentences.

These more flexible sentencing options were accompanied by the Commission's introduction of eight justifications or purposes for punishment. Those justifications are as follows:

1. To prevent crime through the deterrent effect of sentences, the rehabilitation of convicted persons, and the restraint of convicted persons when required in the interest of public safety;

2. To encourage restitution in all cases in which the victim can be compensated and other purposes of sentencing can be appropriately served;

3. To minimize correctional experiences which serve to promote further criminality;

4. To give fair warning of the nature of the sentences that may be imposed on the conviction of a crime;

5. To eliminate inequalities in sentences that are unrelated to legitimate criminological goals;

6. To encourage differentiation among offenders with a view to a just individualization of sentences;

7. To promote the development of correctional programs which elicit the cooperation of convicted persons;

8. To permit sentences which do not diminish the gravity of offenses.

A close examination of these purposes reveals that they enshrine *individualized* sentencing and justify tailoring the sentence to

fit the individual offender on a number of diverse and inconsistent penological grounds: deterrence, retribution, incapacitation, and rehabilitation.

The Criticism of Maine's Reform

Maine's model of sentencing reform drew international attention and immediate and ongoing criticism. Initially, the criticism centered on the extent that indeterminacy remained in the system.[8] Subsequent criticism centered on the judicial sentencing model adopted in Maine.[9] These criticisms were later joined by a disclaimer that Maine was part of the movement that rejected indeterminacy.[10]

One of the earliest critics of Maine's reform was Melvyn Zarr, Professor of Law at the University of Maine. In discussing the new sentencing statutes, Zarr objected to the indeterminacy of the new sentences -- in particular to the transfer provisions allowing Corrections officials to place inmates in community programs and petitions for resentencing authorizing the Bureau of Corrections to request the sentencing judge to reduce sentence lengths. Concerned with the indeterminacy allowed by these provisions, he states:

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[8]Melvyn Zarr, 1976. "Sentencing." Maine Law Review, 28 Special Issue.

[9]Andrew von Hirsch and Kathleen Hanrahan, 1981. "Determinate Penalty Systems in America: An Overview." Crime and Delinquency, 27, July.

[10]Edgar May, 1977. "Prison Officials Fear Flat-Time is More Time." Corrections Magazine, September.

> . . . one thing is reasonably clear: the indeterminate sentence having been banished by the front door, has returned through the rear.[11]

Professor Zarr's objection was subsequently joined by Sol Rubin who saw Maine's reform principally directed at abolishing parole. He saw little change in the reform.

> Thus, the former authority to discharge on parole is now in the hands of the prison administration and the judge, with parole supervision being eliminated. . . . Thus here, as in California, the legislation does not improve the lot of prisoners, but is an accomodation to administrative factors.[12]

Caleb Foote, Professor of Law at Berkeley claimed:

> Some of the legislation, like that of Maine, under no stretch of the imagination can be called determinate sentencing. All of it ignores or glosses over critical problems which must be faced before determinate sentencing can be fair or even feasible.[13]

Specifically, Professor Foote objected to the fact that Maine's sentencing structure did not place constraints on the discretion of the judiciary.

Andrew von Hirsch and Kathleen Hanrahan objected to the fact that Maine's sentencing structure lacked standards or guidelines for the imposition of sentences. For this reason they claim Maine's reform falls outside the meaning of determinate sentencing.

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[11]Zarr, "Sentencing," p. 144.

[12]Sol Rubin, 1979. "New Sentencing Proposals and Laws in 1970's," Federal Probation, 43. June. pp. 3-8.

[13]Caleb Foote, 1978. "Deceptive Determinate Sentencing," Determinate Sentencing: Reform or Regression? Proceedings of the Special Conference on Determinate Sentencing. June, 1977. U. S. Department of Justice: National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Administration, p. 133.

> Maine's system is sometimes spoken of as a determinate sentencing system, but it is clearly not because it lacks the essential element of determinacy: explicit standards.[14]

The lack of concern in Maine law for standards to guide the trial court's decision-making process which led to the claim that Maine's reform stood outside the movement to determinate sentencing was reiterated by Edgar May. May claimed:

> The Maine statute is fundamentally a conservative political reaction against what was perceived as a lenient parole board, and had nothing to do with discussions in other parts of the country of determinate sentencing.[15]

These criticisms led to pessimism about the impact of sentencing reform in Maine. They were cautioned by two characteristics of that change. First, it was not believed that statutory changes in the sentencing structure that merely reduced the diffusion of sentencing power and abolished indeterminate sentences could result in a fairer system without simultaneously changing the underlying bases of the decision-making process. But the basic objection was that Maine's reform vested unrestrained discretion in the judiciary.

On a theoretical plane, a judicial model of sentencing as implemented in Maine can function according to fair and intelligible and evenly applied rules. It is a legalistic model wherein questions of relative seriousness of the offense and culpability of the offender can be used to allocate fair and certain levels of punishment for each

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[14]Andrew von Hirsch and Kathleen Hanrahan, "Determinate Penalty Systems," p. 295.

[15]May, "Prison Officials Fear Flat-Time is More Time," p. 49.

offender. However, the judicial model of sentencing has been criticized. It is believed it cannot produce a fair system of sentencing as too much discretion is placed in a diverse judiciary,[16] who apply quite different sentencing standards to quite similar offenders!

In sum, three basic criticisms were leveled at Maine's reform. First, it was argued that in the absence of a clear direction from the legislature on sentencing, the processing of offenders on a case-by-case basis would necessarily lead to unwarranted variations in sentences. That is, the elimination of parole and introduction of graded classes of offenses from which a judge selected a penalty was not believed to be capable of producing a fairer system. Second, the less diffused system of sentencing brought about by the abolition of parole was not seen as reducing the amount of discretion in the system but rather as concentrating that discretion between judges and prosecutors.[17] Third, questions were raised as to how much discretion was retained by Corrections officials. This criticism largely focused on the petitions for resentencing, but also the increase in good time under their authority in the new code.

What is absent from the critique of Maine's judicial model of sentencing is any clear picture of what would be critical to the success of that reform. More importantly, though, the criticism provided few concrete criteria against

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[16] Marvin E. Frankel, 1973. Criminal Sentences: Law Without Order. New York: Hill and Wang.

[17] Albert W. Alschuler, "Sentencing Reform and Prosecutorial Power: A Critique of Recent Proposals for 'Fixed' and 'Presumptive' Sentencing," Determinate Sentencing: Reform or Regression? See footnote 13.

which it can be evaluated or assessed. For the controversy about Maine was not a realistic assessment of changes which found themselves politically feasible at a particular time. Rather, it was judged against what was seen as desirable or necessary for other states -- and against very specific agendas of reform in those states. In short, the controversy about Maine largely reflects serious ideological disagreements among various sectors of society as to what should constitute an appropriate sentencing policy. Moreover, it was a focused debate on the issue of policy formation specifically concerned with statutory law and not with its operation.

Maine's sentencing reform demonstrated that the capacity for fundamental changes in the area of sentencing could be implemented. In retrospect, the national attention brought about by that change had both symbolic and substantive significance. The national attention it received provided a catalyst for changes in sentencing in other jurisdictions. The criteria of Maine's sentencing reform is important for the impact it had on those jurisdictions. Those criticisms served as a basis for identifying issues requiring important policy choices.

The substantive significance of the reform lies in the fact that the traditional two-tiered system of indeterminate sentences and parole release and supervision was abolished. This diffuse system of unfettered and invisible decision-making was brought to an end. As a result, the reform significantly changed the basis of decision-making about

offenders. The reform demonstrated that legal changes could occur which addressed significant policy issues having social and political importance. In 1981, Maine's legislature reaffirmed the intent of that reform by rejecting an attempt to reintroduce parole and thereby demonstrating that the 1976 reform would not be undermined.

Chapter 3

The Redefinition of Offenses

National attention focused on Maine's new sentencing provisions. However, it is crucial to understand that the reform in sentencing was only part of an overall effort to create a new criminal code. In fact, the changes introduced by the consolidation and redefination of offenses had an equal if not greater impact on criminal justice in Maine. The object of this chapter of the report is to assess whether the redefinition of offenses significantly altered the scope of proscribed behavior thereby changing the basis of the court's decision-making, and possibly posing major methodological problems in comparing sentences for pre-code and post-code offenses.

Maine's Criminal Code Revision Commission redrafted the criminal laws. For the first time in the history of the State, the criminal laws were rewritten in a systematic fashion in their entirety. The effect of codification was a basic transformation of those laws. Prior law partially relied on court elaborated doctrines of crime at common law; judicial interpretations of statutory offenses that were still defined in common law; the court's use of *canons of construction*; and, through these, the accumulation of precedents -- the effect of which was to create offenses.[13]

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[13] Lawrence M. Friedman. 1973. A History of American Law. New York: Simon and Schuster. p. 255.

The basic task of the Commission in creating the criminal code was to simplify the law into an understandable and comprehensible form with a logical and systematic body of rules and definitions. Substantive offenses previously found in different statute books are, for example, now grouped logically into offenses against the person, property, family, and so on.

The criminal law was simplified in four basic ways. First, the Commission provided definitions of key terms to allow for a straight-forward description of the elements of particular offenses. For example, they provided clear and uniform definitions of the 'culpable states of mind' that are an element of the crime so that whether or not a person was convicted no longer depended on a judge or jury's deciphering the meaning of terms such as maliciously, fraudulently, corruptly, and so on.[14] As will be seen, this resulted in a more efficient and effective mechanism to charge, prosecute and convict.

Secondly, the Commission identified those offenses that were undesirable but not a sufficient threat to the public order to require the criminal law to prevent. Those offenses were either decriminalized or depenalized. Thus, it was left to the Commission's judgment to justify those crimes reflecting widely held community judgment whose enforcement was to be encouraged. It is in this context that certain sexual acts between consenting adults and social gambling were decriminalized while certain victimless crimes such as the possession of small

[14] Introduction to Title 17-A M.R.S.A., Maine's Revised Criminal Code, p.5.

amounts of cannabis and prostitution were depenalized.

The third way that offenses were simplified was to differentiate similar offenses from one another in terms of seriousness so that they could be placed in different sentencing classes or grades. One major effect of this effort was the classification of property offenses -- such as theft -- according to the value of property destroyed or taken, for sentencing purposes.

Finally, and most importantly, the Commission consolidated what previously were separate offenses enacted into different statutes at different times into one offense. For example, the new offense of forgery incorporated over sixteen different but related statutes. The major effect of offense consolidation was to change the elements of offenses that define criminality and thus the requirements of proof necessary for a conviction.

The effect of the Commission's work on the consolidation and redefinition of offenses was to change the criminal law. The major effect of offense redefinition was the elimination of certain problematic elements of offenses defining criminality which in some cases reduced the State's burden of proof for a conviction. The major effect of the consolidation of offenses was to close loopholes and anomalies in prior law by developing abstract legal principles providing the court with a more rational basis for determining guilt.

To illustrate the magnitude of the changes introduced by the consolidation and redefinition of offenses, the effect

of the Commission's work on property offenses defining criminal action frequently encountered by the courts in this jurisdiction will be examined. Those offenses are burglary and theft.

The Commission clarified and expanded the common law definition of property that had been limited to personalty. Personalty, simplistically defined, includes all tangible, moveable property, e.g., cars, jewelry, lumber, machinery, produce, etc. That is, the Commission introduced a more comprehensive definition of private property by defining it as 'anything of value' and specified their intent by using as examples -- telecommunications, gas, electricity, real estate, fixtures and some forms of property in which both the defendant and any other person may have an interest.[15] Prior to this, specialized statutes had been enacted to protect some forms of such property but not others. The effect of this legal shift was to include commodities which were not the object of the larceny -- or only doubtfully the object of the larceny -- to be clearly included within the ambit of one of the four forms of property which under the new code are the object of theft: personal and real property, services, and trade secrets.

Through two main devices, the drafters of the new criminal code incorporated all former larceny and embezzlement offenses into one of the eight new modes of theft. The first was the redefinition of 'property' discussed above. The second was changing the language of forbidden conduct from 'take' to

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[15] Peter Ballou. 1976. "Property Offenses," Maine Law Review 28, p. 21. Previously a defendant could not be guilty of theft of property in which he had ownership rights.

'obtain.' 'Obtain' as defined also includes embezzlement and cheating by false pretenses. Let us examine these changes.

The fine distinctions between common law property offenses had frequently resulted in prosecution under the wrong offense. The intent of the Commission was to consolidate these disparate property offenses in order to ensure that similar criminal actions would be treated similarly in terms of sentencing. The consolidation and redefinition of property offenses primarily focused on burglary and theft. For example, the eight modes of theft enumerated in the new code replaced over 20 statutes pertaining to general and specific larcenies. The consolidation of theft offenses is shown in Table 1.

Table 1. A Comparison of Old and New Law Relating to Theft

Old Criminal Code 17 M.R.S.A.		New Criminal Code 17-A M.R.S.A	
Section		Section	
2101	Larceny of Property (grand or simple)	353	Theft by Unauthorized Taking or Transfer
2102	Laceny of Person (grand or simple)		
2109	Larceny by One Trusted With Property		
2110 2111	Larceny By Trustee or Officer		
2104	Larceny at Fire		
2106	Taking Beasts		
2495	Taking Saddled Horse		
2498	Taking Watercraft, Aircraft		
2101	Larceny by Trick	354	Theft by Deception
1611	Disguising Horses in Premium Shows		
1612	Gross Fraud		
3702	Extortion	355	Theft by Extortion
2101	Larceny if Owner Known	356	Theft by Control Over Lost, Mislaid or Mistakenly Delivered Property
2107	Embezzlement (segregated property only)	358	Theft by Misapplication of Property
3551	Receiving	359	Theft by Receiving
2498	Use of Vehicles	369	Theft by Unauthorized Use
3501	Willful Concealment of Merchandise (shoplifting)	361	Presumption of Theft by Concealment of Goods on Premises

The redefinition of the broadly based offense of theft expanded criminality. Under the old code, 17 M.R.S.A. §2101, the essential element of forbidden conduct specified as larceny was that the actor both 'takes and carries away' the property of another. This definition of forbidden conduct was changed by the Commission in the new code, Title 17-A M.R.S.A. §353, to 'obtain or exercises control over the property of another' so as to include such activities as embezzlement and cheating under false pretenses. To illustrate this difference Table 2 compares offense elements of one of the old code larceny statutes with one of the newly consolidated theft statutes. It shows how the language regarding the element of forbidden conduct (row 1) changed and how custodial penalties available to the court were increased.

The criteria used to grade sentences for theft were determined by three factors: the amount of property involved; prior theft or forgery convictions; and, whether the property was taken with a dangerous weapon. A comparison of sentences of incarceration available to the court for old and new code theft convictions, shows that the sentence for old code grand and simple larceny is under the new code equivalent to the sentence available for Class E thefts -- six months. However, should the value of the property exceed $500.00 or if the offender possessed a dangerous weapon or had prior theft or forgery convictions, the penalty under the new code is considerably enhanced. For example, the available sentence for the theft of property valued in excess of $5,000. is 120 months. No such snetence was abailable for a larceny conviction under the

TABLE 2. Comparison of Old Code Larceny With New Code Theft

ELEMENTS	Column A Old Code 17 M.R.S.A. §2101 LARCENY		Column B New Code 17-A M.R.S.A. §353 THEFT by Unauthorized Taking				
Forbidden Conduct	Steals or Takes and Carries Away		Obtains Control or Exercises Control				
Attendant Circumstances	Such property is the property of another, actors possession is unauthorized		Such property is the property of another, actor's control over property is unauthorized				
Culpable State of Mind	Intent to deprive the owner permanently of his property and all compensation thereof		Intent to deprive the owner of his property				
Required Result	Actor's possession of property of another		Actor's control over property of another				
Factors Affecting Sentencing	Value of Property		Value of Property				OR
	less than $100.	greater than $100.	less than $500.	more than $500. and not less than $1000.	more than $1000. and less than $5000.	over $5000.	actor is armed with a dangerous weapon
Penalty	not more than 6 months	not more than 60 months	not more than 6 months	not more than 12 months	not more than 60 months	not more than 120 months	not more than 120 months

old code.

The Commission's attempt to rationalize the burglary offenses was similar but more far reaching than the theft statutes. The effect was to consolidate two offenses with five subsections[16] and to differentiate the offense of burglary

[16] 17-A M.R.S.A. §401

from theft contained in the old breaking, entering, and larceny statute[17] thereby creating two separate offense charges from one. A comparison of the elements of the new burglary statute with the old burglary statutes reveals that it is far more general than its predecessor and substantially expands criminality. That comparison[18] is shown in Table 3 -- exclusive of §2103 -- breaking, entering and larceny. As can be seen in Column C, the new code contains one burglary offense with two subsections classified for sentencing purposes depending on the presence or absence of certain aggravating circumstances. Column A and B present elements of the old code burglary statutes.

TABLE 3. Comparison of Old and New Code Burglary Offense

ELEMENTS	Column A — OLD CODE 17 M.R.S.A. §751 Burglary Subsection 1	Column A — OLD CODE Subsection 2	Column B — OLD CODE 17 M.R.S.A. §756 Breaking and Entering With Intent to Commit a Felony or Larceny Subsection 1	Column B — OLD CODE Subsection 2	Column B — OLD CODE Subsection 3	Column C — NEW CODE 17-A M.R.S.A. §401 Burglary Subsection 1	Column C — NEW CODE Subsection 2
Forbidden Conduct	Breaking and Entering	Breaking and Entering	Breaking and Entering	Breaking and Entering	Breaking and Entering	Enter	Surreptitiously remaining in a structure
Attendant Circumstances	Nighttime lawfully occupied dwelling	Nighttime --------	----- structure containing valuable property	Daytime dwelling	Nighttime dwelling	------- structure	---------- structure
Culpable State of Mind	Intent to Commit a Felony or Larceny		Intent to Commit a Felony or Larceny			Intent to Commit Crime therein actor knows not licensed or privileged to do so	
Required Result	none	none	none	none	none	none	none
Factors Affecting Sentencing	none no aggravating circumstances	assault with a dangerous weapon	use of explosives or attempt to open secure place	no aggravating circumstances	victim injured or put in fear	armed or knows accomplice armed with firearm	no aggravating circumstances Aggravating Circumstances 1. Intentionally or recklessly inflicts or attempts to inflict injury. 2. Armed or knows accomplice armed with a deadly weapon not a firearm. 3. Violation against a dwelling place.
Penalty	any term of years	any term not less than 12 months	any term of years not less than 240 months	not more than 60 or less than 6 months	not more than 60 months	not more than 240 but mandatory 48 months (Class A)	definite term of years not more than 60 months (Class C) not more than 120 months (Class B)

[17] 17 M.R.S.A. §2103

[18] The comparison of 17 M.R.S.A. §2103 with the new code is presented in Table 4.

The new burglary statute is a significant departure from prior law. It consolidated the two old burglary statutes §751 and §754. The new offense is far more inclusive than its predecessor. By defining forbidden conduct as 'entering or remaining in a structure,' it eliminates the necessity of proving intent to commit a felony or larceny by simplifying intent to cover any crime but the meaning of intent is more specific. Thus, the person may be convicted of both the burglary and any crime committed or attempted at the time.

A further examination of Table 3 reveals that the sentences available to the court under the new burglary statute were expanded. For example, now the typical burglary of a dwelling house carries a maximum custodial sentence of 120 months. If prosecuted under the old code §754, the available sentence was 60 months unless explosives were used in the commission of the crime which increased the available sentence.

The new burglary offense is a *prima facie* example of expanding criminality by both reducing the factual circumstances defining a person's conduct as criminal and by reducing the defenses to such charges. Three devices were used, the effect of which was to expand criminality in this area. First, some elements of the old offenses were eliminated. For example, one element in the old burglary statute related forbidden conduct to the time of day. And, if the proscribed behavior occurred at night, the available sentence was increased. The day/night distinction was abolished. Second, the Commission changed the substantive meaning of burglary. The common law had deemed a person who left his building open or

unlocked not worthy of protection under the criminal law. The old code reflected this tradition. However, the drafters of the new code abandoned it and in so doing further broadened the scope of the new statute. They eliminated any reference to the 'breaking' element which appeared previously in §751 and in some of the subcategories in §§754 of the old code. The third device was the introduction of a more general element to the burglary offense. While retaining the 'entering' element and abolishing the 'breaking' element, the new code introduces as a new type of forbidden conduct 'surreptitiously remaining in a structure when not licensed or privileged to do so.' This element introduces a new form of burglary. The common law 'breaking' element may be construed as similar but the new forbidden conduct is surely an expansion on prior law without the requirement to prove a 'break.' The 'surreptitiously remaining' language also extended the reach of the law to individuals who lawfully enter a premise but unlawfully remain with the intent to commit a crime. "Intent to commit a crime" also is broader than prior law's requirement of "intent to commit a felony or larceny." The only element that arguably did increase the State's burden of proof was the introduction of the language regarding the actor's "knowledge that he is not licensed or privileged to remain." However, this is an issue in only an insignificant number of prosecutions. The new burglary statute not only expanded criminality by consolidating and redefining pre-code burglary offenses, but also created two offenses -- hence the possibility of multiple charges and convictions --

out of the old breaking, entering and larceny statute -- 17 M.R.S.A. §2103. The old breaking, entering and larceny statute was repealed with enactment of the new code. Unlike the old code burglary statutes, no intent was necessary for a conviction under §2103. However, the forbidden conduct and attendant circumstances were the same -- entering a dwelling house or breaking and entering any building in which valuable things are kept.

Table 4 compares the elements of the four subsections of the old breaking, entering and larceny statutes with the new burglary and theft offenses. Unlike old code burglary statutes, no intent was necessary for a conviction under old code §2103. However, as revealed in Table 4, the forbidden conduct and attendant circumstances -- entering a dwelling house or breaking and entering any building in which valuable things are kept -- are covered by the new burglary statute. In order to convict under old code §2103, the required result was a larceny. This is not covered by the new burglary statute but by the new theft statutes. And, under the new burglary statute the person may be convicted of both the burglary and any crime committed or attempted at the time -- e.g., theft. It will be recalled that both the new burglary and theft offenses were expanded and the new burglary statute abolished the day/night distinction. The new burglary/theft statutes do require proof of intent that is <u>not</u> required under the old breaking, entering and larceny statute. But it is certain any actions which were prohibited under the old §2103 are now prohibited under the

TABLE 4 Comparison of Old Code Breaking, Entering and Larceny With New Code Burglary and Theft

ELEMENT	OLD CODE: 17 M.R.S.A. §2103 Larceny of a Dwelling House by Night or Breaking, Entering and Larceny				NEW CODE: 17-A M.R.S.A. §353	17-A M.R.S.A. §401
	Subsection 1	Subsection 2	Subsection 3	Subsection 4	Theft	Burglary
Forbidden Conduct	Entering	Entering	Breaking and Entering	Breaking and Entering	Obtains control	Entering
Attendant Circumstances	Nighttime A dwelling house	Daytime A dwelling house	Nighttime Any building in which valuable things are kept	Daytime Any building in which valuable things are kept	Such property is the property of another--actor's control over the property is unauthorized	Structure
Culpable State of Mind	none	none	none	none	Intent to deprive the owner of his property	Intent to commit a crime therein actor knows he is not licensed or privileged to do so
Required Result	larceny	larceny	larceny	larceny	none	none
Penalty	not more than 180 months	not more than 72 months	not more than 180 months	not more than 72 months		

new burglary and theft statutes. It was the differentiation of two new offenses out of one old offense that is one of the most important unanticipated changes resulting from the Commission's redefinition of offenses.

The effect of the Commission's effort to redefine and consolidate other offenses was similar and as far reaching.[19] However, the Commission did not expand criminality for all offenses, nor did it increase the penalties for all of those offenses. For example, the effect of grading forgery offenses was to reduce the penalties available to the court -- especially for the most common forgery offenses -- bad checks.[20]

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[19] For an extended discussion of other changes see Donald F. Anspach, "Myths and Realities of Maine's Criminal Code Reform: A Case Study," 1981. Interim Report #1.

[20] See 17-A M.R.S.A. §§702-708.

The effect of the Commission's work on drug offenses was to depenalize the most common forms of criminal activity related to drug abuse -- possession -- and decriminalize the possession of less than one ounce of cannabis.

The Commission's effort in the area of offense redefinition and consolidation can best be described as an attempt to change the form of legal norms which produced more certainty for prosecutors, a more formal structure within which the court can impose its sentences and a less arbitrary one for enforcing.

The changes in the definition of substantive offenses introduced by Maine's new criminal code sufficiently altered the scope of proscribed behavior to pose methodological problems for an analysis of changes brought about by the sentencing reform. This was illustrated by comparing elements of pre- and post code property offenses.

As discussed in Part III of the report, the study addressed these problems. However, it is the case that the changes in substantive offenses means this study will analyze and compare sentencing in one jurisdiction under two different criminal codes. The redefinition and consolidation of offenses and the change in the sentencing structure have provided the court a different basis for making its sentencing choices. However, the changes in offenses must be seen as rendering primary impacts on the State's ability to secure a conviction -- and only secondarily affecting sentencing. The changes in offenses do, however, provide the legal context in which Maine's sentencing reform occurred, and sensitizes the reader to how changes in the definition of

of offenses create problems when comparing sentences for specific offenses.

Chapter 4

The Organizational Context of Criminal Justice in Maine

A major defect in evaluative studies is the tendency to conceptualize the impact of change without sufficient regard for the context in which that change was implemented and operates. [1] Nevertheless, contextural features in the administration of justice in Maine exerted a profound effect on the new sentencing policy. Thus, it is imperative that the current study examine some historical events affecting organizational structures within which the new criminal code operates.[2] It is anticipated that such a review will be invaluable for others contemplating similar reforms in sentencing as it provides some understanding of how factors other than the change in sentencing may have affected the change as it was translated into action and how other features resulted in problems that may have been avoided.

This chapter examines major changes in the administration of justice in Maine having a direct bearing on changes in sentencing and confounds those contextural changes posed for the study. It is limited to describing changes that would have affected sentencing and correctional facilities had the reform in sentencing not occurred. These changes affected the prosecution of crimes, the court's processing of cases,

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[1] Robert B. Coates and Alden D. Miller, 1980. "Evaluating Large Scale Social Service Systems in Changing Environments" in Susette M. Talarico (ed.) Criminal Justice Research: Approaches, Problems, and Policy. New York: Andersen Publishing Co.

[2] Barry Krisberg, 1980. "Utility of Process Evaluation: Crime and Delinquency Programs" in Malcolm W. Klein and Katherine S. Teilman (eds.) Handbook of Criminal Justice Evaluation. California: Sage Publications. pp.188-203.

and changes in corrections that occurred during the time-frame of the study. Some were a direct result of the new criminal code while others were totally unrelated to it.

On a conceptual plane, the process of implementing any new public policy is always one of adaption -- wherein objectives and goals are reshaped into and fit into a context of resources and conditions of the various agencies affected by the change.[3] However, when other changes occur affecting these agencies, it can render confounding effects on adaptation to the new policy. Such is the case for the jurisdiction under study. Each agency involved in the administration of justice was not only affected by the sentencing reform but by other policy changes as well. As discussed in the preceding chapter, the sentencing reform was part of a new criminal code that consolidated and redefined offenses. Moreover, when the code was implemented in 1976, the only adult correctional facility for women -- the Women's Correctional Center -- was closed. By creating space for twenty women at another correctional facility, overall available inmate space was reduced. During the time-frame of the study, several county jails were closed and subsequently reopened creating variations in county jail space available -- thereby limiting the choices of the court in designating legal places of confinement for those offenders given sentences of incarceration. Important as such changes

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[3] Malcolm Feeley, Austin Sarat and Susan O. White, 1977. "The Role of State Planning in the Development of Criminal Justice Federalism" in John A. Gardiner (ed.) Public Law and Public Policy. New York: Prager. P. 216.

were, they appear insignificant when compared to changes in the administration of justice unrelated to the new criminal code but implemented during the same time-frame (1975 - 1976) and by changes brought about by provisions in the new criminal code and subsequent revisions to the criminal code following its implementation in 1976.

Those changes were:

- the reorganization of the courts in 1975
- the implementation of a new full-time district attorney system in 1975
- the introduction of changes in elegibility requirements of state correctional facilities and county jails, the effects of which were to increase judicial discretion in designating legal places of confinement
- inmate class action suits against the state regarding conditions at its maximum security facility beginning in 1975 and a 120-day lock-down at this institution in 1979
- changes in the good-time crediting system

The first set of changes affected the prosecution of crimes and the operation of the courts in processing these cases. Those changes were the reorganization of the courts and the introduction of a full-time District Attorney system in 1975.

The court system was unified and reorganized in 1975 following three years of study. Currently, there are three statewide courts in Maine with forty-one judges: the Maine

Judicial Supreme Court, consisting of seven members; the Superior Court, consisting of 14 members; and, the District Court consisting of 20 members.[4] All members of Maine's judiciary must be lawyers and are appointed by the governor with confirmation by the Legislature for seven year terms.

The Supreme Judicial Court has administrative authoriry over the judicial department. The Chief Justice as head of the judicial department is responsible for the operation of the judiciary. When sitting as the Law Court, the Supreme Judicial Court has jurisdiction to determine questions of law arising in civil actions and in criminal trials and proceedings from lower courts or from decisions of a single Justice of the Supreme Judicial Court.

The Superior Court is the court of general trial jurisdiction for the state. It is the only court in which jury trials are held. The fourteen justices hold sessions of court in each of the sixteen counties. It is the court where the majority of serious criminal cases are heard and virtually all felony cases are decided.

The District Court is the state's court of limited jurisdiction. It has original and exclusive jurisdiction over traffic prosecutions, sits as the state's Juvenile Court, can entertain small claims actions, and concurrently with the Superior Court may receive guilty pleas in a limited number of criminal proceedings. The district courts are organized

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[4]This discussion contains information obtained from interviews and information obtained from the State of Maine Annual Reports published by the Administrative Office of the Courts.

into thirteen districts.

The entire Judicial Department was reorganized in 1975[5] in order to centrally coordinate and administer Maine's judicial system. Our concern lies with the impact of reorganization on the Superior Courts -- the court where the more serious criminal proceedings are held and the source of the sentencing data for this research.

Prior to the reorganization, there were eleven Superior Court justices. The Superior Court system operated under a sixteen-county delineation. In most counties, there was no resident judge. Rather, the eleven Superior Court justices were assigned to one county for a term of thirty to sixty days, then to another county and so on. This system was known as the "term system" and circuit riding was widespread and dispersed throughout the state. The major relevant characteristics of the pre-unification system were:

- public election of Clerks of Court
- circuit riding and the extensive use of judge shopping
- inefficiency in administering the court's calendar and lack of administrative control over that calendar

In discussing the court system prior to reorganization one judge noted, "The court system was not maladjusted; it was just not administered at all."[6]

Reorganization brought an end to the term system that

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[5] See generally, 4 M.R.S.A. §19.

[6] Interview with judge, August, 1981.

had resulted in statewide circuit riding. The state was divided into three judicial regions with a regional presiding justice and a regional court administrator appointed to administer each of the three areas. This three-district breakdown was designed to establish a sound administrative structure based on judicial units of manageable sizes.

The number of Superior Court justices was increased from eleven to fourteen members. This allowed each region a minimum of two justices to work within it. One court location in each region serves as the base of operation with satelite courts in other counties. This resulted in less circuit riding and more efficient use of judicial time, as most judges have a region in which to operate. With a Regional Court Administrator supervising newly appointed Clerks of Courts, there is greater administrative control over judicial calendars perceived as resulting in less backlog and more efficient processing of cases. Regional court administrators produced a more efficient method of calendaring and assigning cases. Each regional presiding justice is empowered to administer the activities of the Superior Court and all other judicial agencies in the region.

Within each region, the judiciary operates on a "modified circuit riding" basis, holding sessions of court in each of the counties comprising the region. Although the abolition of the "term system" may have reduced judge shopping, limited judge shopping continues via statewide venue and the fact that at least two judges are sitting in a region at all times.

The potential impacts of reorganizing the courts on processing criminal cases are as follows:

- Abolition of the "term system" increased time for trial preparation as judges are less hurried to complete the disposition of cases. Thus, there may be less pressure to enter guilty pleas.

- With each judge's stay in a region longer than two months, more adequate time exists between trial and sentencing to prepare pre-sentence reports.

- By greater efficienty in caseflow management and greater judicial control over their calendar, judges can more readily consider defendants incarcerated at county jails awaiting hearing or trial. Thus, less need exists to unreasonably detain defendants in county jails.

The second major system change occurred with the introduction of a full-time prosecutorial system in 1975. Prior to 1975, Maine's prosecutors were organized on a county-wide basis. It was known locally as the "County Attorney System." Each of the sixteen counties elected a County Attorney. In the three most populated counties, the County Attorney was employed on a full-time basis. But, in the majority of counties, the County Attorney performed the duties of the elected office on a part-time basis. Since renumeration was low, many County Attorneys performed the duties attached to their office while attempting to maintain private practice.[7] Assistant County Attorneys were

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[7]Interview with prosecutor, August, 1981.

appointed from local members of the Bar. County Attorneys were frequently required to balance their duties against the more lucrative business of their private practice. In short, the County Attorney System was neither viewed as professional nor desirable. And, it did not allow for an equitable distribution of caseloads across the state, and it did not lend itself to efficiency in the prosecution of cases.

Legislation was enacted in 1974 to introduce a full-time regionalized District Attorney System.[8] When implemented in January, 1975, it abolished the Office of the County Attorney. The county attorneys in each of the sixteen counties were replaced with eight prosecutorial districts with eight full-time District Attorneys elected for four year terms by the electorate in the counties comprising the district. In addition, funds were allocated by the legislature for thirty-five assistant district attorney positions. Caseloads largely determined how the funds were to be allocated to each region.

Under the new system, the full-time District Attorney appoints assistants -- one or more of whom also serve on a full-time basis. On a system level, the major impact of the regionalized District Attorney System was a more equitable allocation of resouces for caseloads amongst the eight districts. However, one may also anticipate the quality

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[8] See generally 30 M.R.S.A. §§451, 454 and 554.

and efficiency of prosecution of criminal cases was also affected. For example, one district attorney reviewed the changes occurring in the region under his jurisdiction in one of the interviews.[9] Under the County Attorney System, each of his two counties had one part-time County Attorney with two part-time assistants in one county and one part-time County Attorney in the second. Under the regionalized system, one District Attorney serves the two counties. Three full-time Assistant District Attorneys serve in one county along with two part-time assistants while one full-time Assistant District Attorney serves in the second.

Not only did the increase in manpower affect the prosecutorial role, but the Office of the District Attorney was injected with a degree of professionalism and accompanied, perhaps, by a somewhat clearer career ladder than was available under the former County Attorney System.

Although it may be debated whether the new District Attorney System enhanced the prosecutorial power, two facts must be noted of relevance to the present study. First, it is the case that the new system allows District Attorneys to devote all of their energies to their elected office with a larger support staff to do the job required of them. Secondly, any assessment of the independent effects of the new prosecutorial system and the sentencing reform on plea bargaining pose a number of problems. Such an analysis would

9 Interview with prosecutor, July, 1981.

require more detailed court data than was collected, a different set of data related to the frequency of case dismissals for lack of evidence, and so on.

Interviews with judges and prosecutors confirm that both reorganization of the courts and the introduction of the District Attorney System enhanced the efficiency in processing cases. Both changes increased the number of personnel and enhanced administrative control. The more important goal of reorganization was to increase coordination and lend greater administrative control over what was believed to be an administrative vacuum in each of the widely dispersed courthouses in the state. The transition to a full-time District Attorney System appears to have greater significance to the present study. Interviews suggest that prosecutors have a greater investment in their office than was possible under the County Attorney System. One result of this change may affect charging and conviction patterns.

These two changes affecting the prosecution and processing of cases through the courts were accompanied by a third set of changes directly affecting the counties' and the State's correctional facilities. These changes were introduced by the new criminal code, and by revisions to the code in 1977. First, distinctions between imprisonment for felonies and misdemeanors were eliminated with the repeal in 1976 of Title 15 M.R.S.A. §1703. Second, the new code authorized the judge to designate either of the two state correctional facilities as the legally designated place of confinement for any conviction regardless of its class unless the sentence exceeds sixty months

or designate a county jail as the place of confinement unless the sentence exceeds twelve months. Third, the system of good-time crediting was changed in 1977. To more fully comprehend the impact of these changes, we will briefly examine the state's correctional facilities.[10]

The State of Maine has a total capacity for 1379 inmates at the state and county level. The fifteen operating county jails have space for 600 inmates. They are administered by county sheriffs and funded by each county.

The two adult state correctional facilities and the satelite facilities under the jurisdiction of each have space for 779 inmates.

During the period of the study, the state agency responsible for the direction and administration of these facilities was the Department of Mental Health and Corrections -- so named in 1957. The Bureau of Corrections -- a subagency of the Department -- was directly responsible for the three state correctional facilities -- the Maine Youth Center, the State Prison, and the Maine Correctional Center -- and their statelites. In the nine year time-frame of the study three people served as Commissioner of the Department of Mental Health and Corrections and two served as Director of the Bureau of Corrections. All five were appointed by

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[10]The new criminal code and the specific changes we identified occurred at a time when the correctional facilities were high in manpower and budgets were low. It is widely acknowledged that a viable correctional system does not exist as adequate resources have not been forthcoming from the legislature. See for example, Adult Correctional Master Plan, 1977, or the Governor's Task Force on Corrections: In the Public Interest, 1976.

the governor and were recruited from within the ranks of the Department. Legislation in 1981 created a separate Department of Corrections. The then Director of the Bureau of Corrections -- Donald Allen -- was appointed as the first Commissioner of the new Department.

Prior to 1976, there were three adult correctional facilities -- one for women and two age-graded and security rated institutions for men. There are now two adult correctional institutions with an official capacity for 591 inmates within institutional walls and additional space for 188 inmates in various pre-release centers both on and off-grounds.

The two correctional facilities are the Correctional Center, located in an urban area of the state at South Windham, and the State Prison located in a rural area of the state at Thomaston. Prior to 1977, the Correctional Center was the state's medium security unit for male offenders under the age of 27. It became co-educational in 1976 with the closure of the Women's Correctional Center. It has space for 191 inmates inclusive of 20 spaces for women. The State Prison serves as the state's maximum security penitentiary for adult male felons. In-house capacity at this institution exists for 400 inmates.

The Maine Correctional Center was opened in 1919 and known as the Men's Reformatory. Currently, it has in-house space for 191 inmates, and three satelite facilities: the pre-release center located on the grounds of the institution

with space for 30 inmates; the Central Maine Pre-Release Center, with space for 33 inmates; and a new facility -- Charleston -- in the process of being converted to a minimum security unit with temporary space for 28 inmates.

Prior to 1977, individuals incarcerated at the Correctional Center were required to be under 27 years of age. Other than county jails, it was the state's legally designated place of confinement for misdemeanor convictions and for felony convictions with indeterminate sentences of one to thirty-six months. The majority of pre-code inmates at the Correctional Center were released or paroled within a year of their confinement. Thus, it was a medium security prison for young male offenders serving relatively short periods of incarceration. The Parole Board actually determined sentence lengths for offenders assigned here.

Programs at this institution and its system of progressive housing were predicated upon the fact that inmates would be under supervision for less than a year. With the introduction of Title 17-A in 1976, any individual under 27 could be incarcerated in this institution for five years or less. And, in 1977, the age requirement was abolished with an amendment to the criminal code.

It is crucial to note that officials at the Correctional Center, while having been consulted about the new code, could not anticipate its impact. In particular, the newly defined role of the Correctional Center was not fully appreciated. A more heterogenous inmate population occurred at this institution -- in the type of offense for which they were convicted,

their sentences, and in characteristics of the offender. For example, changes in the institution's age composition affected medical expenditures. Those expenditures were about $23,000 for the pre-code fiscal year 1975-1976. They increased to about $208,000 for the post-code fiscal year 1980-1981. Moreover, the new code affected both prison programs and the progressive housing system. Unable to anticipate the role change, inmates sentenced to this institution for longer than a year found themselves repeating programs.[11] And, the situation largely undermined the progressive housing system. Although inmates in the same housing situation see themselves as relative equals, those sentenced for longer terms move more slowly through the system.

Conditions of overcrowding currently exist at this facility. This has led to the practice of renting space at county jails and transferring inmates to the State Prison at Thomaston. As of this writing, for example, over 400 inmates have been assigned by the courts to this facility. With space for 282 inmates on and off grounds, many of those sentenced to this institution never appear here, but remain in county jails or are transferred to the State Prison.

The State Prison at Thomaston was built in 1824. Partially destroyed by fire in 1923, it was reopened with its present structure in 1924. In addition to inmate space for 400 male inmates, the State Prison has two satelite facilities

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[11] Interview with Corrections official, August, 1981.

under its jurisdiction: the Ronald P. Bolduc Unit, known as the prison farm, located fifteen miles from the penitentiary with space for seventy-three inmates; and, the Bangor Pre-Release Center, located on the grounds of the Bangor Mental Health Institution with space for thirty-five inmates. Contractural arrangements with half-way houses and county jails enable about sixty additional inmates to participate in work-release programs.

The State Prison has been the object of several class action suits and experienced a lockdown in 1980.[12] It is estimated that the costs for making this institution fully comply with C.A.C. standards will run in excess of twelve million dollars.[13] The Federal Court has not to date ruled on the class-action suit which was heard in July of 1981.[13]

The final set of changes occurred in 1977 and increased the amount of time inmates would serve. Revisions to the new criminal code changed the good-time crediting system. Under Title 17-A M.R.S.A. Section 1253(3) and its predecessor, Title 34 M.R.S.A. Section 705, an inmate received good-time credit from his entire sentence at the time he commenced serving the sentence. For example, under Section 1253(3) an inmate received good-time deductions of approximately one-

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[12] See Edgar May. 1981. "Was Inmate Capitalism Out of Control at Maine State Prison?" February. Corrections Magazine.

[13] Robert C. Grieser. (ed) 1980. Correctional Policy and Standards: Implementation Costs in Five States. U.S. Department of Justice; L.E.A.A., P. 58.

third of the total sentence (30 days credit for 20 days served plus two days gain time). However, Section 1253(3) was repealed in 1977 and replaced with Title 17-A M.R.S.A. Section 1253(3-A) which provides that an inmate is entitled to good-time deductions after each month of his sentence which he serves. Under the new provision, inmates earn deductions of approximately one-fourth of the total sentence (40 days credit for 30 days served plus two days gain time).

In short, until 1977, inmates could be eligible for release after serving about two-thirds of their sentences. Under current law, inmates can only be released after having served three-fourths of their sentences. The effect was to increase the amount of time served.

This brief discussion has touched the surface of changes on the organizational context of criminal justice in Maine. They indicate that each agency concerned with processing offenders was not only affected by the sentencing reform but other equally significant changes as well. Overall, however, it appears that each change that has been discussed in this chapter has the potential for rendering critical impact on the resources of Maine's correctional system. The changes in good-time crediting necessarily reduced overall available space. The reorganization of the courts and introduction of a full-time district attorney system has the potential of increasing the number of criminal cases processed, the number of convictions, and, perhaps,

more serious charging patterns. These changes would have affected Maine's correctional system had there been no reform in sentencing. Coupled as these changes were with a basic change in sentencing, it would be impossible for a casual observer to validly claim that flat-time sentencing and the abolition of parole in Maine are the sole causes or reasons for problems faced by the Maine correctional system.

PART III: THE IMPACT OF REFORM

Chapter Five
Research Issues, Data and Methodology

The basic problem addressed by this research is, "What are the changes in sentencing practices which resulted from the 1976 criminal code reform in Maine?" As discussed in the previous chapters, Maine's reform revised the structure and content of the criminal code, abolished parole, and instituted flat-time sentencing by the courts. The previous three chapters have thoroughly explored the content of these changes and their general effects on the structures and processes of various components of the criminal justice system. We now turn to a direct empirical examination of the impact of these reforms on sentencing decisions and outcomes.

Using data collected from courts, correctional institutions and probation offices on individual criminal sentencing events from 1971 through 1979, we examine what changes, if any, in sentencing have taken place as a result of the 1976 reform. These potential changes include changes in the types of sentences given, changes in the lengths of incarceration sentences, and changes in the basis of sentencing decisions. Consequently, the essential operational questions to be addressed are:

- What are the changes in the court's choice of type of sentence?
- What are the changes in the court's choice of length of sentence for those incarcerated?
- What are the changes in the basis of the court's sentencing decisions?

The focus of all three of these questions is court decision making, in terms of both basis and outcome. Court decisions

about criminal case dispostions can be understood as involving several discrete and identifiable choices including choice of type of disposition and choice of extent within the type.[1] Put another way, judges first choose among various sentencing options--such as incarceration, probation, fines, and restitution--or combinations of these options--such as split sentences. Given the choice of type, judges also choose the length of incarceration or probation or the amount of fine or restitution. The present research is concerned with the decision about type for all offenders, and with the decision about length for offenders given incarceration sentences.[2]

The first research question focuses on changes in type of sentence. The 1976 reform was intended to provide the court with more flexibility in sentencing and nationalized the "split sentence"--a combination of incarceration and probation--as a more specific, direct, and court controlled option. A closely related change was increased court control of the institution in which the offender is incarcerated. Consequently, one of the first questions to be addressed in assessing the impact of the sentencing reform is the extent to which these options have actually been used--the extent to which the types of

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[1] Following Wilkins and others' formulation, researchers such as Sutton (1978. Federal Criminal Sentencing. Analytic Report 16. U.S. Department of Justice. Pp. 21-22) have conceived of sentencing as a "bifurcated or two-fold decision" encompassing "both type and length of sentence." This simple formulation is useful and the present analysis is organized around these two "stages." However, the reality of sentencing is more complex. Even within the two stages, the present research examines further choices such as institution of incarceration

[2] "Most [sentencing studies] have been concerned exclusively with sentence length, disregarding the equally important determination of whether a defendant will be imprisoned at all." (Sutton, Federal Criminal Sentencing, p. 13.)

sentences given by judges have actually changed.

Of course, as we have already discussed, these changes in sentencing options took place along with extensive legal code changes and the introduction of a full-time district attorney system in 1975. Both of these changes in the context of the court decision might result in changes in the charges and recommendation brought to the court. Because of this context, it is necessary to examine changes in the definition and distribution of cases brought to the court in order to distinguish those changes in type of sentence resulting from the changes in sentencing options from those changes which are a result of other reforms.

The second question, focusing on change in incarceration length, directly addresses the impact of the change from an indeterminate to a flat-time sentencing structure for those incarcerated. In this case it is clear that the sentences given by the courts under the new code are "different"--at least in form--since under the old code the court decided on a range of lengths and under the new code the court decides on a specific length. The critical question in assessing the impact of the sentencing reform, however, is whether this change in form has resulted in a change in outcome--the actual time served by offenders.[3] Consequently, our examination of changes in the length

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[3] See A. Keith Bottomley (1979. Criminolgoy In Focus. P. 150) for a discussion of outcome impact and also Stephen Wasby (1976. Small Town Police and the Supreme Court) for an excellent discussion of assessment of the impact of legal change.

of sentences will be primarily concerned with changes in the actual length of incarceration.

Once again, it is necessary to isolate the changes in length due to the sentencing reform from changes due to the reforms in the code and the prosecutorial structure. Moreover, actual incarceration lengths are a consequence not only of the court's decision but also of decisions by corrections officials, and under the old code, by parole boards. As a consequence, we must examine the relationship between the actual release date (actual time served) and the date of eligibility for release (minimum expected time served) in order to clearly distinguish changes in the court's decisions.

Finally, the third question focuses on changes in the basis of court decision making or changes in "who gets what?" before and after the sentencing reform. Specifically, this analysis examines changes in the impact of personal and legal characteristics first on the court's type of sentence decision and, second, on the court's sentence length decision for incarcerated offenders. As we have already discussed, although the new criminal code structured offenses into sentencing categories and identified a rather ambiguous set of "sentencing objectives," it did not directly attempt to increase consistency in sentencing or establish sentencing guidelines. Our concern is to examine the effect of the sentencing reform on changes in how judicial decisions are made and changes in the consistency of those decisions.

It is necessary, once again, to isolate the effects of the sentencing reform on judicial decision making. In our analysis

of changes in the basis of sentencing, "minimum expected time served" is utilized as the measure of sentence length to directly compare the basis of sentencing before and after the sentencing reform for specific types of offenses.

Chapter Six examines the first research question--changes in types of sentence--and Chapter Seven examines change in incarceration length. Chapter Eight examines the impact of both changes in types of sentence and changes in incarceration length on correctional institutions in Maine. Changes in the basis of sentencing decisions are examined in Chapter Nine. The conceptual and methodological issues involved in each of the research questions, and briefly discussed above, are more fully examined in these chapters.

The remainder of this chapter first identifies the types of data necessary to address the research questions and then describes the process of collecting and the content of these data. In addition, this chapter examines the methodological issues involved in defining a unit of analysis--the sentencing event--and definitions of offense. Finally, it further discusses some of the basic methodological problems involved in the analysis and particularly the difficulties in isolating changes in court decision making and the effects of sentencing reform from other decision making changes and the effects of other reforms and changes in Maine.

Overview of Data

To address the issues outlined above, data was collected from court docket records, correctional institution records and probation office records. Court data was collected on all criminal cases docketed in seven Superior Courts from January, 1971, through December, 1979. Corrections data was collected, when available, on all offenders in the court data who received sentences to the state correctional institutions. Probation data was collected, when available, on all offenders in the court sample who received probation sentences, or incarceration followed by probation sentences, and who were supervised in six of the seven Superior Court districts (counties) contained in the court data. Court data were available on 10,454 sentencing events and corrections or probation data were available and successfully linked with the court data for 5,541 cases. All data utilized in this analysis were collected by the present project.

Table One graphically presents an outline of the data elements necessary to examine each of the three research questions and the location of collection of those elements. Investigation of changes in type of sentence draws on data elements available in court records. These records include basic information about both preliminary and final charges, disposition of the case, and whether the case was handled under the old or new code. These same elements also allow us to examine changes

Table 1. Summary of Data Elements and Data Collection Location by Research Question

Research Question	Data Element	Location of Data Collection
I. Changes in Type of Sentence	Charges, sentence, date of sentence, code type	Court Docket Files
II. Changes in Length of Sentence	Charges, sentence, date of sentence, code type, jail time credited	Court Docket Files
	Admission date, release date, type of release, institution of custody	Corrections Files
III. Changes in Basis of Sentencing Decision	Charges, sentence, date of sentence, code type, plea and processing characteristics (e.g. type of trial)	Court Docket Files
	Admission date, release date, type of release, institution of custody	Corrections Files
	Criminal record, personal background characteristics, (e.g. employment, marital status, education, etc.)	Probation Files and Corrections Files

in the types of charges brought to the court, and other contextual changes such as increases in multiple charges.

Examination of changes in length of sentence requires the same basic information from the court data linked with corrections information about the institution of actual custody, the date of entry into the institution, date of release from the institution, and type of release. This corrections information is essential since, as we have already discussed, analysis of length of sentence requires knowing actual time served and minimum expected time served--which are not available from court records.

Analysis of changes in the basis of sentencing decisions requires all three types of data--court, corrections, and probation. In addition to the court record information already discussed, this analysis requires court record information on processing characteristics including plea, type of counsel, type of trial, etc. In addition, information on the legal background of the offender, including number and type of previous convictions and previous dispositions, and information on the personal characteristics of the offenders, including employment status, education, and marital situation, are necessary but available only in corrections or probation files.

The following sections detail data collection, the conceptualization of sentencing events and primary offenses, and the process of linking court records to both probation and corrections data.

Collection of Court Data

Information about criminal convictions is contained in the court's docket case files. The process of data collection involved examining these docket case files, in the sequence that they were originally docketed, in each of seven Superior Court districts (counties). For each of these seven counties, information was collected from each non-traffic criminal docket from January, 1971 through December, 1979.

A sample of seven counties was selected from the sixteen counties in Maine. This sample represents a demographic cross-section of the state. The counties selected include the two most densely populated counties, the two counties containing metropolitan areas, two counties with medium sized cities, and two predominantly rural counties.

The bulk of counties not included are those comprising the coastal region known to vacationers as "Downeast Maine" and the sparsely populated counties in the Northwestern part of the state. In most of these counties the Superior Courts handle very few criminal cases. The small number of cases and the long travel distances involved would have made extensive on-site data collection prohibitively difficult and expensive for relatively little gain. Thus, within the constraints of limited resources, the seven counties were selected to maximize the number of cases available for analysis while providing a representative picture of different demographic areas of the state.

It is estimated that the present court data includes between eighty-five and ninety percent of all Superior Court criminal cases in Maine during the period of study.

The period of study includes cases docketed over nine years--five years prior to the implementation of the code in May, 1976, and approximately four years after that implementation. Since there is often a substantial time lag between the docketing of a case and sentencing, these data include sentencing events from 1971 through 1980--or five years before and five years after the sentencing reform. This time span provides a sufficient baseline for meaningful pre to post reform comparisons as well as valid time-series analysis. Moreover, since the time span extends beyond the period of imminent reform and immediate implementation, it allows us to assess the more long term impacts of the reforms.

The court data collection instrument contained sixty questions grouped in the following categories: information about each offense such as legal section number and offense description for both the original and final charges; the number of original and final charges; the sentencing class of new code offenses; data concerning the processing of cases such as whether or not there was a court appointed counsel, sentencing judge and type of case; sentencing information including both imposed and actual sentences, the length of incarceration or probation, the amount of fines or restitution, and the location of incar-

ceration. A copy of the court data collection instrument is in Appendix A.

Court docket case files are full of ambiguities. A single case file may involve charges against more than one defendant. Some defendants are charged in more than one case file but the different cases are all sentenced, and often adjudicated, on the same date. To avoid confusion and this ambiguity, separate information was collected, and a case created, for each individual for each docket in which the individual appeared. As a consequence, each case in the resulting data set represents one "individual docket record."[4]

In order to locate offenders who appeared in more than one individual docket record, each offender was assigned a unique offender code. A master offender file, across counties, was created to ensure that the same offender code was recorded even though the offender appeared in more than one individual docket record. In order to ensure confidentiality this master file was maintained separately and linked to the individual docket information only through case record codes.

The court data, in the form of these individual docket records, was collected from May, 1971 through December, 1980. A total of 11,991 individual docket records were collected and coded to be used in the analysis of sentencing events.

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[4]When more than one person was named in a single docket, full information was collected on each individual. When the same person was named in more than one docket file, information was collected, and a case created, for each of the docket entries.

Sentencing Event as the Unit of Analysis

The unit of analysis employed in the present study is the "sentencing event." A sentencing event is the imposition of a sentence on a single offender on one date by one judge. This sentence may be imposed for a single offense conviction arising from a single criminal episode, or it may be imposed for multiple offense convictions, arising either from multiple criminal episodes or from a single episode in which multiple crimes were committed.

For single offense events, the sentencing event record is the same as the individual docket record. For multiple offense events, however, different offenses often appear within different dockets--and hence different individual docket records--even though the dockets were combined insofar as sentence was imposed for all of the charges at the same time. In these cases, the individual docket records were "collapsed" into a single sentencing event record which reflected the legal processing of the offender. This was accomplished through the use of the unique offender identification codes previously discussed.

Conceptually, the use of the sentencing event as the unit of analysis reflects an understanding of the sentencing process as one in which the judge looks at a "package" of offense convictions, along with a variety of factors about the offender and the offender's background, and arrives at an overall sentence for the person. This conception is in contrast to the

view found in most sentencing research--research which generally suggests that one can look at specific sentences for each of the specific offenses.[5] An empirical examination of our docket records suggests that, at least in Maine, sentences are arrived at for the offenses together, as a package. Our examination found that, generally, sentences are made concurrent, or suspended, in such a way as to make identification of specific sentences for specific offenses within the sentencing event impossible.

Through the "collapsing" process the 11,991 individual docket cases were reduced to 10,661 sentencing events. Cases in which offenders were sentenced for new code and old code offenses within the same sentencing event, and cases with clearly erroneous or internally inconsistent data were excluded. This process resulted in 10,421 sentencing events which are available for analysis. Of these, 79% are sentencing events with a single offense conviction and the remaining 21% are sentencing events with multiple offense convictions.

Primary Offense

Analysis of sentencing events is complicated by the difficulty in identifying and comparing the offenses for which offenders are sentenced. Offense, and seriousness of offense, are clearly critical variables in any analysis of sentencing. First, the

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[5] For example see the recent study, Felony Sentencing in Wisconsin (S. Shane-Dubow, W. Smith and K. Burns-Haralson. Madison: Public Policy Press. 1979. Page 7.), which treats each charge conviction as a separate case for analysis.

extensive revision of the criminal code and the redefinition of criminal offenses in 1976 makes it difficult to compare offenses before and after the reform. Second, multiple offense sentencing events, each with a unique combination of offenses, make analysis extremely complex. These two methodological problems are addressed by the development of an "inter-code," based on the structure and sentencing classes of the revised criminal code, to make offenses comparable, and by the identification of the "primary offense" within each sentencing event.

As discussed in Chapter Two, the new criminal code consolidated, refined and incorporated offenses into a single criminal code. Elements of the offense changed, and offenses were graded according to five classes of offense seriousness. These redefinitions pose a severe methodological problem in comparing pre- and post-reform offenses--in identifying which old code offenses are comparable to which new code offenses.

Following an extensive legal analysis, detailed in Chapter Three and the Interim Report (Myths and Realities of Maine's Criminal Code Reform: A Case Study, 1981) an offense "inter-code" was created. The categories of the inter-code reflect the offense and class definitions in the new code. For old code cases, sufficient information was collected to identify the appropriate inter-code or, in other words, the offense and class which would have been assigned had the offender been processed under the revised code. A detailed breakdown of

the inter-coding assignments, grouped within broad legal categories, is presented in Appendix A.

For the purpose of inter-coding, extensive and detailed information was collected on all cases. Both statutory titles and section numbers of offenses were collected. In addition, other relevant information, such as the value of property involved in old code larceny offenses, was recorded. This kind of information is necessary since, for example, the new criminal code replaced the more general distinction between grand and simple larceny with four discrete grades of theft offenses classed according to the value of the property involved. This detailed information was then used to assign an inter-code to each offense.

The effect of the inter-coding process is to make new and old code offenses comparable for analysis. Throughout this analysis discussion of offense and class of offense, for both old and new code cases, refer to classifications made on the basis of the inter-code assigned.

For single offense sentencing events the use of the inter-code to characterize the event in terms of offense and class of offense is straight-forward. However, for multiple offense events this characterization is much more difficult. The difficulty is compounded because, to some extent, the presence of multiple offense events are related to the structure and definitions of the new code itself. In other words, some old code single offenses, most notably breaking, entering and lar-

ceny, are inherently multiple offenses within the new code. In the new code burglary and theft are charged separately.

In order to meaningfully characterize and analyze sentencing events, a "primary offense" is identified for each event. This "primary offense" is defined as the conviction offense with the highest, most serious, sentencing class. For those events in which there are multiple offenses of the same highest class, the primary offense is the one first encountered--the offense appearing first on the earliest docket. The exception is events in which a burglary offense, or burglary-theft combination, appear within a group of offenses of the same highest class. In these cases, the burglary offense was defined as the "primary offense."

This special handling of burglary cases is necessitated by the somewhat unique code changes in this area. As we have already discussed, the single breaking, entering, and larceny (BE&L) was redefined into a burglary category and a theft category. Both of these offenses are graded into a number of sentencing classes. In the inter-coding process, a single inter-code was assigned to BE&L cases so that its quality as a single offense charge was retained while the class assigned to the offense was the highest class which could have been assigned for <u>either</u> the burglary or theft component if processed under the new code. To ensure comparability, new code cases with a <u>combination</u> of a burglary and theft charge were assigned to a comparable inter-code and, when appropriate, this combina-

tion is defined as the primary offense. However, the character of these cases as multiple offense sentencing events is retained.

In summary, as a result of the use of inter-coding and the identification of primary offense on the basis of the inter-coding, each sentencing event is characterized by offense, sentencing class, and number of offense charges. All three of these characteristics are directly comparable between pre-reform and post-reform sentencing events.

Collection of Corrections and Probation Data

Information about the social history and criminal background of offenders and information about sentence outcome are contained in correctional institution files and in probation office files. The process of data collection involved examining individual records in each of the state's two correctional institutions and individual case files in each of six county probation offices. In each of these locations, the collection process involved searching for specific records on those offenders in the court sample whose sentencing event had resulted in an incarceration in a state facility, a split, or a probation sentence. Data were collected on 5,830 of these cases.

Time Served Information

As already discussed, examination of changes in time served requires corrections' information about the institution of actual custody, the date of entry into the institution, date

of release from the institution, and type of release. These data were available only in the individual offender records located at the correctional institutions--the Maine Correctional Center and the Maine State Prison.

Once again utilizing the unique offender codes, identifying information was generated for each sentencing event which resulted in an incarceration only or a split sentence to either of these state facilities. This identifying information was then used to determine the appropriate inmate number, which in turn, was used to locate the specific institutional file. Data were then collected, coded, and, through a process discussed below, linked to the appropriate sentencing event record. A total of 3,157 sentencing events resulted in dispositions to state facilities. Of these, 2,821 (89%) were successfully located and linked.

Criminal and Social History Information

In order to examine changes in the basis of sentencing decisions, data on the personal and criminal background of offenders is necessary. For those incarcerated in state facilities, these data are available in corrections' files and were collected along with sentence outcome information. For those sentenced to probation or to county jail terms followed by probation supervision, these data are available in county probation office files. For the 3,220 sentencing events which

resulted in fines, restitution orders, unconditional discharges or county jail sentences, social and criminal history information is not available.

Tracing and collecting information from the files at the two state correctional facilities was more successful than tracing and collecting information from files at local probation offices. First, prison records are more systematically maintained and organized. Second, probation staff routinely forward files of offenders transferred to other counties and to out-of-state jurisdictions. Third, old records from cases sentenced between 1971 and 1973 were frequently missing from the probation files. And, finally, funding constraints prohibited tracing and collecting offender information from the files of the probation office in Aroostook county. This county is the northern-most county in the state and its probation office is located over 250 miles from the project office.

Information on the social and criminal history of offenders was thus collected, when it could be located, for all offenders who were supervised in the county of sentencing for six of the seven counties represented in the court data. The collection process involved generating identifying information, locating the appropriate probation file--generally arranged in alphabetical order--collecting information, coding, and linking the data with the sentencing event record. Of the 4,044 sentencing events resulting in probationary supervision or county jail incarceration followed by probationary supervision,

social and criminal history data were successfully obtained and linked for 77% of the sentencing events resulting in incarceration, split, or probation sentences.

Collection Instrument and Outcome

The same data collection instrument was used to record information from corrections and probation files. This instrument contained 68 elements grouped into the following categories: court record linkage information; offender personal history information; prior criminal history information; and, sentence completion and transfer information. A copy of the data collection instrument and further detailed discussion of the collection process appears in Appendix A.

Corrections and probation data were collected for each sentencing event so that each record contains event specific outcome information as well as social and criminal history information on the offender at the time of the particular event. These records were then linked and merged with the appropriate sentencing event record developed from court data. A total of 5,830 corrections and probations records were created. Of these, approximately 95% (5,541 records) were successfully linked and merged.

Table Two summarizes the results of probation and corrections data collection broken down by sentencing categories. Careful examination and analysis by project staff gives assurance that neither the difficulty in locating corrections or probation information on 23% of the eligible events nor the difficulty in linking and merging 5% of the collected information has re-

sulted in significant bias in type of event, year of sentencing, or, with the obvious exception of data not collected from one probation office, in county of sentencing.

Table 2. Summary of Corrections/Probation Record Linkage

Sentence Category	Number of Sentencing Events	Events Linked to Corrections/ Probation Data	
		Number	Percent
Incarceration at State Facility	3157	2821	89%
Probation	3102	2120	68%
Incarceration at County Jail Followed by Probation	942	600	67%
	7201	5541	77%

Problems of Analysis

In May, 1976, a new and completely revised criminal code went into effect in Maine, flat-time sentencing was instituted, and parole was abolished. The new criminal code consolidated, redefined, and incorporated offenses into one criminal code, substantially changing the nature and elements of offenses processed through the criminal justice system. Changes in the structure of sentencing shifted many decisions, such as the institution of incarceration, firmly into the courts. Both the changes in sentencing structure and the abolition of parole

substantially altered the context within which the corrections systems operated and the nature of decisions made by corrections officials. Moreover, shortly before these other changes, a regionalized full-time district attorney system was introduced in 1975. Potentially, at least, this new system could significantly change both the quantity and the substantive nature of cases processed by courts and corrections.

The present study is primarily concerned with the impact of sentencing reform, and particularly with the impact of that reform on judicial decision making. The most serious and pervasive methodological problem confronted by the research is to clearly distinguish between the impact of sentencing reforms and the impact of other reforms, and, similarly, to distinguish changes in judicial decision making from changes in the decision making of other actors in the criminal justice system. Given the scope of the reforms effected in 1975-76, attention to this methodological problem pervades the analysis presented in Chapters Six through Nine.

It is difficult to isolate the courts from pre-court processing. Courts act on the cases, and the charges, which are brought to them. Changes in the district attorney system can be expected to change choices about cases and charges and to change plea bargaining outcomes. In this case, court decisions could <u>appear</u> to have changed simply because the cases about

which judges are deciding have changed.

In the present case, the confounding effects of changes in the cases and charges brought to the court is compounded by the changes in the substantive definition of offenses and the structure of the criminal code. As we have already noted, changes in the code appear to create some changes in how offenders are charged, and particularly in the increased incidence of multiple charges. The substantive redefinition of offenses may result in changes in charges brought and legally supportable for similar criminal episodes. And, finally, the introduction of sentencing classes might be expected to result in bargaining for class reduction, rather than charge reduction, thus changing the overall pattern of offense charges brought to the court.

All of these pre-court processing factors can create an <u>appearance</u> of change in judicial decisions. For instance, if a higher proportion of offenders are charged and convicted for more serious offenses, then both the proportion of offenders sentenced to incarceration and the average length of incarceration might increase even if judicial decision making has not changed. In the present research, it is likely that <u>both</u> the pattern of cases and charges brought to the court <u>and</u> judges' decisions about those cases have changed. The difficulty lies in distinguishing the two.

In order to deal with this difficulty--the confounding effects of changes in legal definitions and pre-court processing--the analyses in the following chapters extensively examine

the distribution of cases and charges brought to the courts. This examination allows us to identify some major pre-court processing changes, and, ultimately, to control for those changes. Some of the major components of this examination are changes in the legal category and seriousness of conviction charges and changes in the incidence of multiple offense charges. Although changes in these components are of substantive interest in their own right, our primary concern lies in utilizing these components to isolate and analyze changes in judicial decision making.

It is also difficult to isolate the courts from post-court corrections and parole board processing when offenders are sentenced to incarceration. The actual time which offenders serve is determined not only by the court's sentencing decision but also by corrections' decisions about, for instance, good time. In addition, prior to the 1976 reforms, parole board decisions had a substantial effect on actual time served. As a consequence, changes in incarceration lengths could appear to be a result of changes in sentencing but actually reflect changes in post-court processing and decision making.[6]

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[6] These "post-court" decisions are complex and their investigation is beyond the scope of the present research. For example, corrections officials also may grant "early release," such as "home release," or full or partial release for work. They also essentially controlled when an inmate's parole board hearing was scheduled at the Maine Correctional Center and their recommendation was clearly important in obtaining parole. Moreover, the criminal code reforms in 1976 increased the options available to corrections officials, including the option of petitioning the sentencing judge for early release. To minimize these effects, actual time served is computed to "discharge of sentence" rather than, for instance, home release.

As we have already noted, the critical question in assessing the impact of the sentencing reform is whether the change in the form of sentencing has resulted in change of outcome--a change in the actual time served by offenders. Since post-court decision making by corrections and the parole board influenced the actual time served, it is difficult to isolate the outcome of the court's decision and the impact of changes in judicial decisions.[7]

In order to deal with these difficulties--the confounding effects of post-court decision making--the analyses in the following chapters include examination of "minimum expected time served." This variable is utilized as an uncontaminated surrogate for sentence length--a version of sentence length not affected by post-court decision making about particular cases. Minimum expected time served reflects the length of incarceration which would be served on the court sentence given maximum good time crediting allowable at the time of sentencing and, under the old code, given favorable action by the parole board. In other words, minimum expected time served is the shortest actual incarceration which should result from a particular sentence.[8]

Minimum expected time served is utilized in our analyses of changes in sentence length as a supplement to actual time

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[7] If one takes increased certainty as one of the goals or expected outcomes of the combination of sentencing reforms and the abolition of parole, the situation becomes even more complex.

[8] Minimum expected time served is further discussed in Chapter Seven where the relationship between minimum expected and actual time served is also examined.

served. It allows us to examine and analyze changes in post-court decision making, and changes in sentence certainty, in order to isolate and assess changes in court decision making abut sentence lengths.

Finally, it is difficult to isolate the courts, and indeed the impact of all the reforms in Maine, from the general social climate in the United States through the 1970's. During this period there was a general national increase both in incarceration rates and in incarceration lengths. It would be unreasonable to assume that sentencing in Maine was unaffected by this general social climate, particularly since much of the 1976 reform can be understood as at least reflective of many general national concerns. It does, however, make it difficult to isolate the specific effects of sentencing reform in Maine.

In order to deal with this difficulty, the analyses in the following chapters heavily utilize trend, or time series, analysis. This type of analysis allows us to examine patterns of sentencing, both in terms of type and length, through the period of study, rather than simply examining aggregates before and after reform. As a result, we are able to distinguish between trends which span the reform and changes which are precipitated by the reforms.[9]

In addition to our use of trend analysis, the final chapter directly examines the relationship between sentencing trends

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[9] In both these cases a simple before-after design would show significant change--spuriously in the case of a trend spanning the reform. For an excellent discussion of the problems of inference from before-after designs, see Donald Campbell and H.L. Ross. 1968. "The Connecticut Speed Crack-down: Time Series Data in Quasi-Experimental Analysis." Law and Society Review.

in Maine and those in other jurisdictions during the same time period. This examination serves to further isolate and highlight, as well as summarize, the effects of sentencing reform in Maine.

Outline of the Analysis

The first research question, concerning changes in types of sentence, is addressed in Chapter Six. The analysis first examines overall trends in types of sentence from 1971 through 1979. Changes in charge patterns are then identified and trends in types of sentences are examined within relevant categories of offense, seriousness, and multiple charges, in order to isolate changes in judicial decisions from changes in pre-court processing.

Chapter Seven examines changes in length of incarceration. Using actual time served, trends in overall incarceration length are examined, followed by an examination of these trends within relevant offense, seriousness, and multiple charge categories. Tentative conclusions concerning changes in sentence lengths are then tested through an analysis of minimum expected time served. This analysis includes a comparison of actual and minimum expected time served in a rudimentary examination of changes in certainty.

Combining the changes in type of sentence and the changes in length of sentence, Chapter Eight briefly addresses the consequences of these changes for correctional institutions in

Maine. Each of the two state correctional institutions in Maine are examined separately to assess the impact of sentencing reform, and changes in sentencing decisions, on institutional load.

Chapter Nine examines changes in the basis of sentencing decisions, primarily within specific offense categories. The basis of the type of sentence decision, before and after reform, is identified using discriminate analysis. Minimum expected time served is then employed in a regression analysis of the basis of the sentence length decision, before and after reform.

The concluding chapter summarizes the findings and analysis and extends the analysis through examination of sentencing trends in other comparable jurisdictions.

Chapter Six

Assessing the Impact of Maine's Sentencing Reform on the Court's Choice of Sentence Types

This chapter analyzes the impact of Maine's sentencing reform on changes in the court's choice of sentence types. Although primarily concerned with analyzing changes in the types of sentences chosen by the court, it also examines how factors extraneous to the sentencing reform affected those choices. Of particular concern is how changes occurring in patterns of charging and convictions for different clusters of offenses are related to changes in the court's choice of sentence types.

The chapter addresses three issues:

- Changes in the court's choice of sentence types;
- Changes in the court's choice of places of confinement;
- Changes in the relationships between charging and conviction patterns and the types of sentences selected by the court and its choice of places of confinement;

Maine's sentencing reform did not address the problem of when alternatives to incarceration were appropriate, nor did it introduce standards to guide the court in its sentencing decisions. Consequently, one would not anticipate any changes to occur in the court's choice of whether or not to incarcerate as a result of that reform. Rather, Maine's sentencing

reform was intended to provide the trial court with greater flexibility in its sentencing options. To achieve that end, two basic statutory changes accompanied the abolition of parole and introduction of flat-time sentencing. Those changes allowed the court to decide if a sentence of incarceration would be followed by community supervision and allowed the court to determine the type of incarceration an offender would experience. Both of these changes could affect the nature of sentences offenders experienced and have profound impacts on correctional facilities. Such outcomes could occur without substantial overall changes in the court's choice of some form of incarceration as a sentencing option.

The first change expanded the court's authority to impose split-sentences. That is, the new code expanded the court's authority to determine whether offenders it imprisoned would experience probationary community supervision upon their release from the flat-sentence of imprisonment.

Essentially, this change created the potential for an equivalent to parole supervision as it made it possible for the court to replace parole supervision with probationary supervision when the court deemed it appropriate. This new split-sentence option authorizes the court to impose a sentence of incarceration, suspend a portion of that sentence, and place the offenders of probation.[1]

[1] Provisions relating to the split-sentence are contained in 17-A M.R.S.A. §1203. During the time-frame of the study, split-sentences were authorized under 17-A M.R.S.A. §1203(3) and §1203-A. In 1979, §1203-A which authorized the court to suspend any portion of a sentence was repealed. It was replaced by §1203-B which greatly restricted the court's authority to use split-sentences. Under §1203-B, split-sentences can be used only for Class A and B crimes where the initial sentence of incarceration was forty-eight months of less. However, the court is still authorized to impose split-sentences when the period of incarceration is 120 days or less.

This new split-sentence option greatly expanded the court's previous authority to impose a more restricted form of the split-sentence in the pre-code period. In the pre-code period the court was authorized to impose split sentences known as shock-sentences of 60 days at the state prison and split-sentences of less than twelve months in duration at county jails.[2] Split-sentences authorized under the reform expanded the length of confinement preceding the probationary period to ninety days at the State Prison and placed no restriction on the confinement period for Correctional Center split sentences.

The second change expanded the court's options in designating the places of confinement for ALL offenders it chose to imprison. The court is now authorized to designate any county jail or either of the two state correctional facilities as the place of confinement for any offense - except when the sentence is twelve months or less or the offense is homicide or murder.[3] This change expanded the court's more restricted option of designating county jails for misdemeanor convictions and one of the correctional facilities as the place of confinement for most felony convictions. More importantly, the court is now authorized to designate either correctional facility as the place of confinement for sentences of sixty

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[2] See 34 M.R.S.A. §1631(3),(4)

[3] See 17-A M.R.S.A. §1252(6)

months or less.[4] This change expanded the court's more restricted option of selecting the Correctional Center for younger offenders given wholly indeterminate sentences of 0-36 months and the State Prison for other felony convictions carrying indeterminate sentences with both minimum and maximum terms.

The basic research problem is to assess the impact of these changes on the court's choice of sentence types and location of confinement. In addressing this problem, a major component of the analysis will focus on the impact of how factors extraneous to that reform affected those choices. The unit of analysis is a sentencing event consisting of the sample of 6028 pre-reform and 4393 post-reform cases.

The chapter is organized into three sections. The first section analyzes overall changes in the court's choice of sentence types resulting from the sentencing reform. The second section analyzes overall changes in the court's designation of places of confinement. In the third section of the chapter factors extraneous to the sentencing reform, such as the implementation of full time prosecutors, but having an impact on changes in the sentence types, are examined. One primary focus is on changes in the relationship between offense charging and the court's choice of sentence types.

Changes in the Court's Choice of Different Types of Sentences

The court has a variety of available options from which to choose at the time of sentencing. The study examined changes in

[4] Sentences in excess of sixty months are served at the State Prison. See, 17 M.R.S.A. §1252.

four basic sentence types ranging from what can be considered most severe to most lenient. These options are: incarceration only; split-sentences; probation; and, fines, victim restitution or an unconditional discharge.[5] The research issue is to assess the impact of the sentencing reform on changes in the court's choice of these different options.

Overall changes in the court's choice among these four sentence types are shown in Table 1. It compares differences between the percent of sentence types chosen by the court for the sample of 6028 pre-code cases and 4393 post-code cases.

The finding of the research is that the sentencing reform implemented in 1976 had little overall impact on the frequency of the court's choice of sentences of incarceration only. As shown in Table 1, a sentence of incarceration only was the

Table 1. Pre-Code and Post-Code Comparisons of the Court's Choice of Sentence Types (In Percentages)

	PRE-CODE	POST-CODE	PERCENT CHANGE
Incarceration Only	36.7	34.4	- 2.3
Split-Sentences	10.6	17.8	+ 7.2
Probation	31.6	27.2	- 4.4
Fines, etc.	21.1	20.6	- .5
TOTALS	100%	100%	0
	(6028)	(4393)	

[5] Other options available to the court can be combined with these four basic categories. They are important but not addressed by the research. For example, the court can combine victim restitution with a sentence of probation or incarceration.

most frequently chosen sentencing option prior to the implementation of Maine's Revised Criminal Code and the most frequently chosen sentencing option subsequent to that reform. This suggests that indeterminate sentences with parole release were largely replaced by flat-sentences with no parole release.

Table 1 also reveals three basic changes which have occurred in the court's choice of sentence types. There has been a major post-code increase in the use of split-sentences (+7.2%) and concomitant decrease in probationary sentences (-4.4%) and sentences of incarceration only (-2.2%). Pre- and post-code comparisons of the court's choice of fines, etc. show there has been little post-reform change in the use of this sentencing option.

A major innovation of Maine's sentencing reform was the expansion of the court's authority to impose split-sentences for any offense regardless of its class. The overall finding shown in Table 1 is the frequency of the court's choice of split-sentences increased following the implementation of the new code. Of the sample 6028 pre-reform cases, the court chose split-sentences in 10.6 percent of the cases (N=639). The corresponding figure for the 4393 post-reform sample is 17.8 percent. This change represents an overall 7.3 percent post-reform increase in the court's choice of the split-sentences. In terms of absolute numbers, this seven percent post-code increase represents an additional one hundred forty-one (141) offenders whom the court chose to impose a sentence of incarceration upon followed by a period of probationary supervision in the community.

The post-reform increase in the court's choice of split-sentences is accompanied by concomitant decreases in probation only and incarceration only sentences. With only minimal pre- and post-reform differences in fines only sentences, the findings presented in Table 1 indicate that the reform increase in split-sentences results from a decrease in both probationary sentences and sentences of incarceration only.

The major source of this post-reform increase in split-sentences comes from a decrease in sentences of probation. There was a 4.4 percent post-reform decrease in the court's use of probation-only option versus a decrease of 2.3 percent for incarceration-only sentences.

The net effect of the post-reform increase in the court's choice of split-sentences is an overall increase in sentences involving some form of incarceration. When incarceration-only and split sentences are combined we find that 47.3 percent pre-reform receive such sentences while the same figure post-reform is 52.2 percent. This change represents a five percent (4.9%) post code increase in the court's choice of some form of incarceration as a sentencing option. In terms of sheer numbers, this increase in the use of some form of incarceration represents an additional post-code average annual increase of ninety-six offenders each year who received a sentence of incarceration over the pre-code period.

Despite the importance of these changes in the court's choice of sentence types in the post-reform period, it does not follow that it was necessarily a result of Maine's sentencing reform. The findings are limited to before/after comparisons

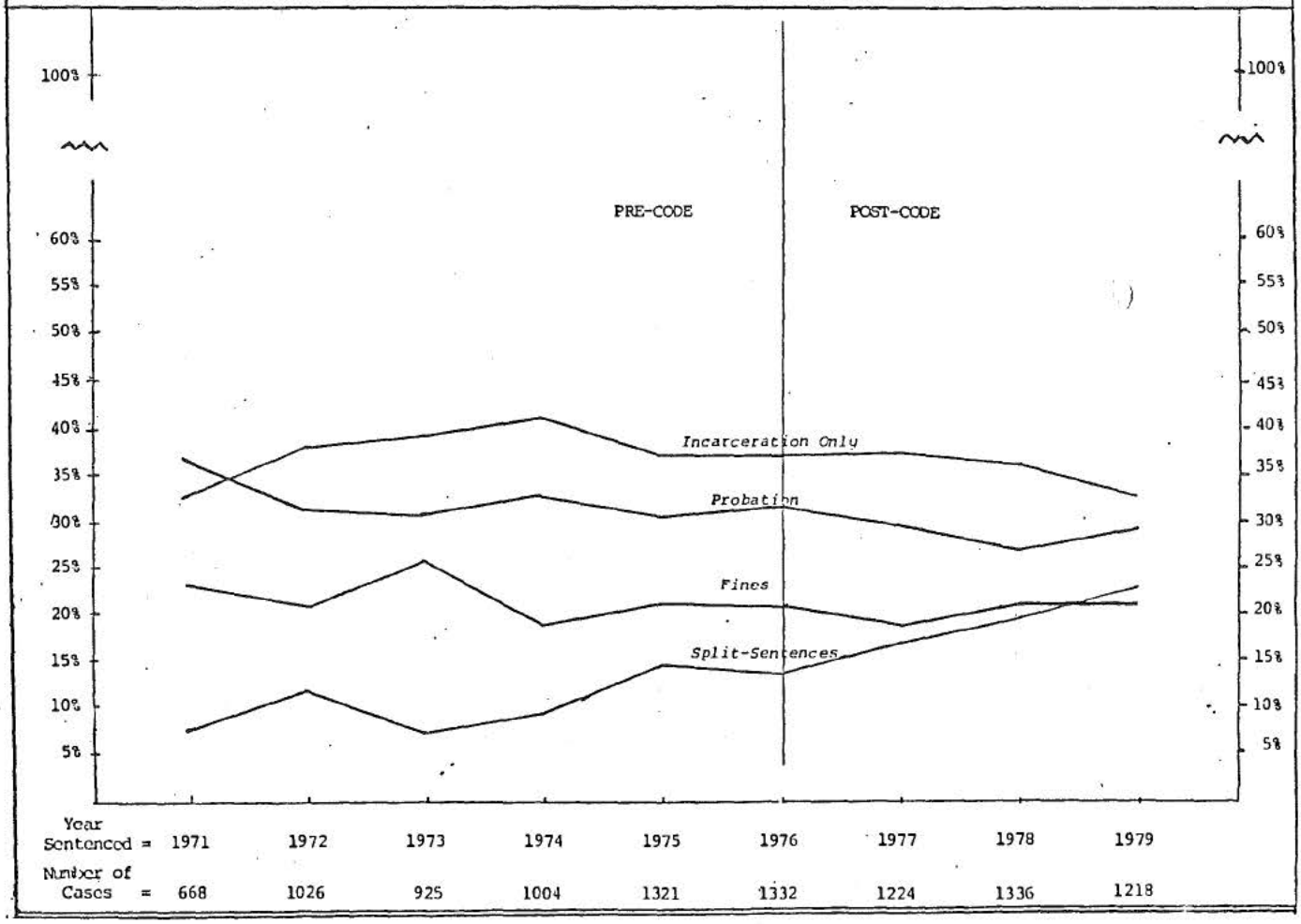
thereby concealing possible historical and developmental trends occurring in the court's choice of sentencing options over time. The court's more frequent post-reform choice of split-sentences and concomitant decrease in its choices of sentences of incarceration only and probation may have occurred prior to the 1976 sentencing reform.

To permit a more detailed examination of these issues, the court's choice of sentence types are shown in Figure 1 for the nine year time-frame of the study. This permits an overall system view of changes occurring in the court's choice of sentencing options over time.

Figure 1 presents four trend lines. The trend lines represent the four types of sentences chosen by the courts each year. A trend point for each year indicates the percent of sentencing events given this sentence type and is computed on the total number of sentencing events for that year shown at the bottom of Figure 1. Each of the four trend lines represents changes in the percent of cases receiving each sentencing option for the time-frame of the study. The three hundred thirty-five (335) cases docketed in 1979 but sentenced in 1980 are not shown. The percent of pre-code and post-code sentencing events receiving one of the four sentence types in 1976 are grouped together.

Pre- and post-reform comparisons showing a post-reform increase in the court's choice of split-sentences and concomitant decreases in incarceration only and probation-only sentences is confirmed by Figure 1 showing these as trends over the entire

Figure 1. Changes in Sentence Types Over Time (In Percentages)



time-frame of the study. Figure 1 graphically demonstrates these changes in the court's choice of sentence types.

The most striking trend revealed by Figure 1 is the court's reliance on sentences of incarceration only. With the exception of 1971, sentences of incarceration only were the court's most frequently chosen sentencing option for the time-frame of the study -- both pre- and post-code. The new sentencing options introduced by the criminal code in 1976 had little impact on that basic pattern. This confirms the fact that indeterminate

sentences with parole release were largely replaced by flat-sentences with no parole release.

Figure 1 also demonstrates the court's choice of sentences of incarceration-only decreased in 1975 -- prior to the implementation of the sentencing reform. From 1975 through 1978 sentences of incarceration-only remained fairly stable except for a slight increase in 1977. In 1979, the court's choice of this type of sentence declined.

The slight decrease in the court's choice of sentences of incarceration-only beginning in 1975 was more than compensated for, however, by the increase in the court's choice of split-sentences. The court's more frequent use of split-sentences also began prior to the sentencing reform. Figure 1 graphically demonstrates the trend in the court's choice of split-sentences. It is the most consistent trend and the option experiencing the greatest change. Beginning in 1974, the court's choice of the split-sentence option increased and has steadily increased since that time. Split-sentences account for less than fifteen percent (15%) of all sentencing options until 1975; by 1979, they accounted for over twenty-five percent (25%) of all sentences.

An examination of the trends in probationary sentences confirms the findings presented in Table 1 indicating a post-reform decrease in such sentences. However, the downward trend in probationary sentences also began prior to the sentencing reform in 1975. This trend was reversed in 1979 when there was an increase in probation sentences. However, that increase did not exceed the more frequent reliance of the courts on probationary sentencing in the pre-reform period.

A close comparison of the trend lines of probationary sentences with the trend lines in split-sentences and with sentences of incarceration-only suggests that the less frequent use of probationary sentences may have resulted from an increase in split-sentences. For example, sentences of incarceration-only were the same (37%) in 1972 and in 1977. However, in 1977 split-sentences increased by six percent (6%) over the 1972 figure and probationary sentences decreased by four percent (4%).

Moreover, the trend in the court's choice of probationary sentences for the period 1976 through 1978 steadily decreased with a concomitant increase in split-sentences. During this same period, sentences of incarceration-only remained relatively stable. The only exception to this basic overall pattern occurred in 1979. In that year, the court's increased choice of both split-sentences and probationary sentences was accompanied by a decrease in sentences of incarceration only.

Overall, Figure 1 demonstrates three fundamental points. First, Maine's sentencing reform had little impact on changes in the types of sentences. The changes that did occur began as trends in 1974 and 1975 and continued after the reform. There is no doubt, however, that the sentencing reform facilitated and reinforced those trends. However, the data clearly indicate that the sentencing reform can not be said to have "caused" the changes in the court's choice of sentence types.

The second point demonstrated by Figure 1 is that the new sentencing options implemented in 1976 while providing the court with greater flexibility in its sentencing choices did

not reduce the court's reliance on some form of incarceration. As indicated at the onset of this discussion, there has been an overall post-reform increase in sentences involving some form of incarceration. The decrease in sentences of incarceration-only is accompanied by a concomitant increase in the trend in the court's choice of split-sentences.

Finally, the increased use of split-sentences must be understood in the context of a sentencing reform that abolished both parole release and parole supervision. It may well be that a functional equivalent to parole supervision has emerged. It may be termed "judicial parole." It differs from the former parole system in three basic ways. First, the judiciary rather than an executive agency controls the actual length of incarceration. That is, Maine's split-sentences retain the concept of community supervision upon release but no parole board exists to discretionarily release offenders prior to the expiration of the court's sentence. Second, the judiciary rather than the Parole Board determines the conditions and lengths of the post-incarceration period of community supervision. Finally, the judiciary has the revocation authority and under this authority determines whether the conditions of community supervision have been violated, and, if violated, whether the offender is to be re-incarcerated.

Changes over time in the court's choice of sentence types does not address important changes introduced by the sentencing reform intended to provide the court more flexibility in designating the place of confinement. This issue has important

implications for correctional facilities and is examined in the next section of the chapter.

Changes in the Court's Choice of Places of Confinement

The second issue addressed in this chapter relates to provisions in Maine's new criminal code which expanded the court's choice in selecting the place of confinement, and thereby extended the court's discretion to determine the type of incarceration a person would experience. The analysis of data in the previous section indicated that Maine's sentencing reform had little overall impact on the court's use of incarceration as a sentencing option despite the increased use of split-sentences. However, the new code also provided the court with greater flexibility in choosing places of confinement.[7] Consequently, the sentencing reform could render critical impacts on correctional facilities without substantial changes in the frequency of incarceration. This section of the chapter examines the impact of provisions allowing the court greater flexibility in selecting a place of confinement and examines how the increased use of split-sentences changed the court's choice of places of confinement. The impact of these provisions are assessed by

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[7] As indicated in Chapter 3, Maine's code revision enhanced judicial discretion as the location of confinement. Pre-reform Maine had three adult correctional facilities. They were the Women's Correctional Center, The Men's Correctional Center, and the Maine State Prison. In 1975 the Women's Correctional Center was closed and the women were transferred to a section of the Men's Correctional Center. The most significant impact of the code was to change the Correctional Center from an institution limited to offenders under age 27 and to indeterminate sentences of one to thirty-six months to an institution to which offenders of any age could be sentenced to up to sixty months confinement. The only limitation at the Maine State Prison was that sentences must be at least twelve months duration.

examining changes occurring in the court's choice of where offenders are imprisoned.[8]

Pre-reform and post-reform comparisons of the court's choices of places of confinement for the 5145 cases in the sample receiving a sentence of incarceration only or split-sentences is presented in Table 2. It shows that changes have occurred in the court's designation of legal places of confinement for offenders who were incarcerated since the implementation of the sentencing reform. The findings in Table 2 reveal important post-reform shifts have occurred in the court's choice of places of confinement

Table 2. Pre-Code and Post-Code Comparisons of Legal Places of Confinement

	PRE-CODE	POST-CODE	PERCENT CHANGED
State Prison	44.3%	22.6%	-21.7%
Correctional Center	20.5%	34.4%	+13.9%
County Jails	35.2%	43.0%	+ 7.8
TOTALS	100.0% (2852)	100.0% (2293)	0.0%

During the pre-reform period, the court relied on the State Prison -- this jurisdiction's maximum security facility --

[8] It is important to note that provisions expanding the court's choice of selecting places of confinement were accompanied by legislation giving corrections officials greater authority to transfer inmates amongst various facilities. Thus, the court's choice can be overridden by a decision by corrections officials to transfer the inmate. See, 34 M.R.S.A. § 529. This apparent doublethink has created expressed concern from a number of judges in the interviews that their intent is not being followed. On several occasions this has resulted in a sentencing change by judges. (Interview with judges in August and September, 1981.).

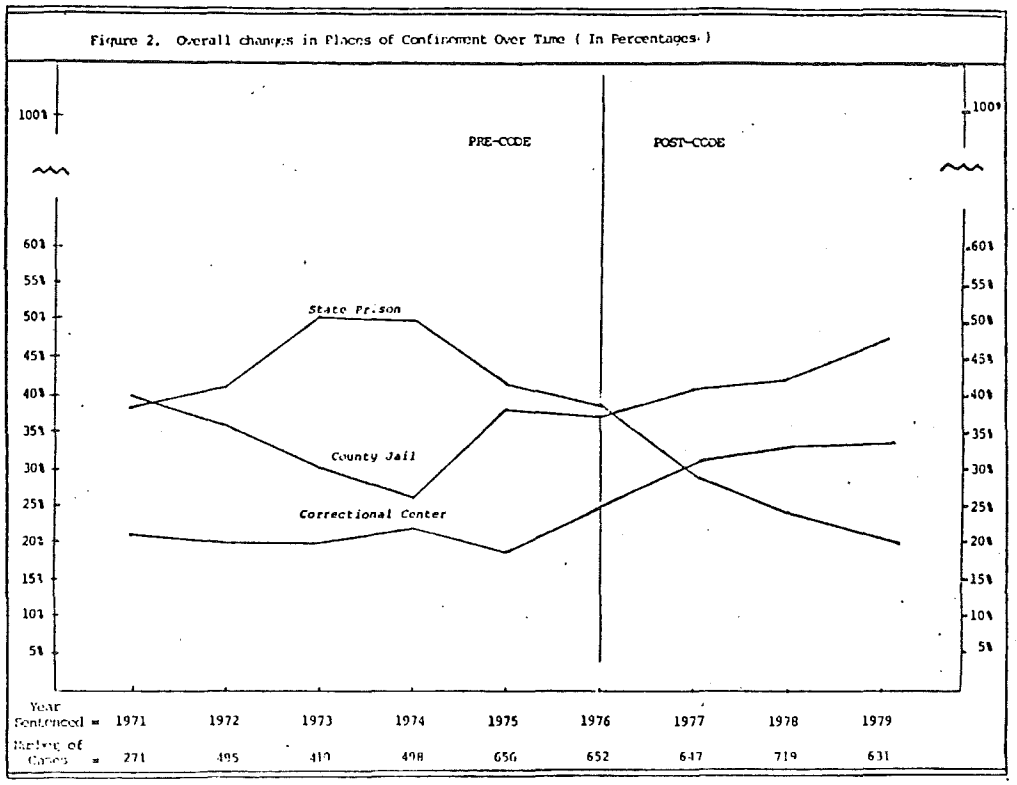
as the place of confinement for most (44%) offenders. The Correctional Center-- this jurisdiction's medium security facility -- was the less frequently used facility accounting for only twenty percent (20%) of all confinements.

Subsequent to the sentencing reform, the State Prison was the least frequently chosen place of confinement by the court. There was a twenty-two percent (22%) decrease in the court's choice of the State Prison after the reform. The post-reform decrease in court assignments to the State Prison finds its counterpart in post-reform increases in the use of county jails and the Correctional Center. In the post-reform period, assignments to the Correctional Center increased by fourteen percent (14%). However, the most frequent post-reform location of confinements were the county jails. During the post-reform period, county jails were the place of confinement for forty-three percent (43%) of the sample. This represents a post-reform increase of almost eight percent (7.8%) in the use of county jails after the reform.

These findings indicate important shifts occurred in the court's designation of places of confinement following the sentencing reform. Such shifts have major implications for correctional facilities as they affect available inmate space in these institutions, and the type of inmates housed in each facility. However, the findings are limited to before/after comparisons and may, therefore, conceal important historical and developmental trends occurring over time unrelated to the reform in sentencing. Thus, it is imperative to examine these

before/after comparisons as trends over time. To permit a more detailed examination of the court's choice of places of confinement, Figure 2 presents the data arrayed as trends over the nine year time-frame of the study.

Figure 2 shows the nine-year trend in the court's designation of the three places of confinement for all sentences of incarceration: the State Prison, the Correctional Center, and county-jails. The numbers at the bottom of Figure 2 represent the number of people incarcerated each year and is the basis on which the percentages were computed to graph the annual trends.



Overall, Figure 2 graphically demonstrates that the changes in the court's choice of location of confinement was an historical one beginning in 1974 and 1975 -- prior to the sentencing reform but was greatly enhanced and reinforced by

that reform. Figure 2 shows the pre-reform reliance on the State Prison sentences as the place of confinement for most offenders and the declining preference by the court for that facility from 1975 onward. With the exception of 1971, over forty percent (40%) of all sentences of incarceration were sent to the State Prison in the pre-reform period. In 1973 and 1974 over fifty percent (50%) of the offenders who were incarcerated were sent to the State Prison. The court's use of the State Prison began to decline in 1975. This trend was accentuated and reinforced in the post-reform period. By 1979, less than twenty percent (20%) of all incarcerated offenders were sentenced to this institution.[9]

The declining preference by the court in the use of the State Prison has its counterpart in an increased use of county jails and the Correctional Center. As shown in Figure 2 the increased use of county jails was a trend that began in 1975 and steadily increased from 1976 through 1979. By 1977, the county jails became the preferred places of confinement receiving more offenders than either the State Prison or Correctional Center.

The most striking trend, however, has occurred in a marked post-reform increase in sentences to the Correctional Center. It will be recalled that provisions in the new criminal code abolished offender and offense eligibility requirements that restricted

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[9] This research did not address the question of prison overcrowding. However, data on available inmate space was collected to verify data used in the present study. As can be seen by the totals in Figure 2, there were significant increases in the numbers of incarcerations from 1975 onward and overcrowded conditions at the State Prison resulted. However, this does not explain the declining use of the State Prison. Interviews with corrections officials confirm the fact that the State Prison was not overcrowded in the post-code years of 1977-1979. Thus, despite the availability of space at this institution, it has not been used by the courts.

the court's use of this facility. The pre-reform reliance on the State Prison and county jails must partially be understood in light of these pre-reform restrictions on the use of the Correctional Center. For example, in 1975 the decreased use of the State Prison was absorbed by an increased use of county jail assignments by the courts. This pattern was reversed after the new code was implemented in 1976. The court's use of county jails decreased between 1975 and 1976 but the court's choice of the Correctional Center increased. Since 1976, the court's less frequent use of the State Prison has been absorbed by an increase in commitments to both county jails and the Correctional Center.

A number of factors may be attributed to the court's declining preference for assigning offenders to the State Prison other than changes in the eligibility requirements accompanying the sentencing reform. First, the increased number of court assignments to the State Prison in 1974 and 1975 had created an overcrowding problem. Second, complaints by inmates over conditions at this facility culminating in a class-action suit against the State Prison in 1978 may have contributed to a reluctance of judges to use the prison.[10] Third, Maine's sentencing reform expanded the court's authority in choosing the split-sentence option. As previously discussed and analyzed, the court has utilized this option more frequently.

In order to assess the impact of split-sentences on pre-and post-reform differences in the court's choice of place of confinement,

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[10] See, Inmates of Maine State Prison, et. al v. George Zitnay, et.al, Civil Docket No. 78-90P (D. Me. 1978).

Table 3 presents comparisons of place of confinement for sentences of incarceration-only and split-sentences.

Table 3. Pre-Code and Post-Code Comparisons of Places of Confinement for Split-Sentences and Sentences of Incarceration Only

	PRE-CODE	POST-CODE	PERCENT CHANGE
State Prison			
Incarceration Only	38.3%	21.1%	-17.2%
Split-Sentences	6.0	1.5	- 4.5
Correctional Center			
Incarceration Only	19.8	23.5	+ 3.7
Split-Sentences	.7	10.9	+10.2
County Jails			
Incarceration Only	19.5	21.4	+ 1.9
Split-Sentences	15.7	21.6	+ 5.9
TOTALS	100.0% (2852)	100.0% (2293)	0.0

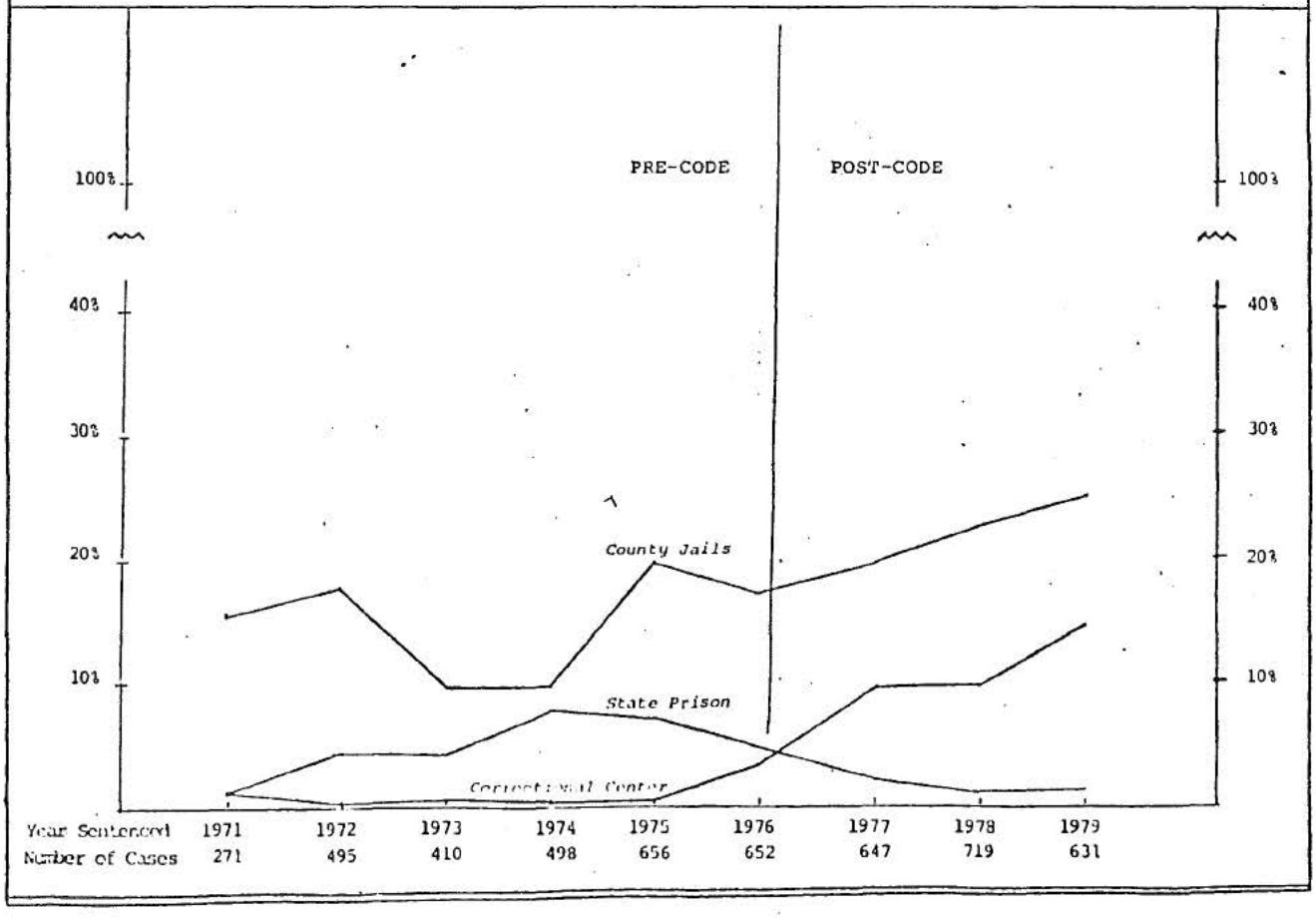
Overall, the data presented in Table 3 shows that the more frequent use of split-sentences in the post-reform period fails to explain the decreased post-reform use of the State Prison as the place of confinement. In both pre- and post-reform periods, the majority of offenders given split-sentences served their confinement period in county jails. (In the pre-reform period forty-five percent of all split-sentences were assigned to county jails. The corresponding figure for the post-reform period was fifty-percent). As Table 3 indicates, court assignments to the State Prison for both split sentences and sentences of incarceration-only have decreased while they increased at other facilities.

Table 3 suggests that the increased post-reform use of split-sentences is related to the increase in assignments to

the Correctional Center. This is confirmed by the fact that split-sentences account for thirty-two percent (32%) of all post-reform assignments to the Correctional Center (not shown).

The pre- and post-reform comparisons of places of confinement for split-sentences are presented as trends for the time-frame of the study in Figure 3. It graphically demonstrates the court's preference of county jails for split-sentences for the entire time-frame of the study. More importantly, Figure 3 shows the impact of the sentencing reform on the use of the Correctional Center for split sentences. Statutory changes

Figure 3. Changes in Places of Confinement for Split-Sentences Over Time (In Percentages)



accompanying the sentencing reform expanding the court's authority to use this facility for split-sentences dramatically affected the court's choice of the Correctional Center. That trend began in 1976 and continued throughout the post-reform period. This shift was accompanied by a decline in use of the State Prison as the place of confinement for split-sentences.

Summary

The findings presented thus far clearly indicate that major changes have occurred in both the type of sentences chosen by the courts and in the court's designation of places of confinement. The major shift has been the increased use of split sentences. However, split sentences have not replaced sentences of incarceration-only. In both pre- and post-reform periods sentences of incarceration-only are the most prevalent sentence type. Thus, indeterminate sentences with parole release have largely been replaced by flat-sentences with no parole release.

The data indicates that the changes occurring in the court's choice of sentence types predates the sentencing reform. The sentencing reform facilitated and reinforced the court's choice of split-sentences in three fundamental ways. First, it expanded the court's authority to use this type of sentence for any offense. Second, the sentencing reform authorized the court to impose longer periods of confinement and longer periods of probationary supervision for split-sentences. Third, it expanded the court's choice of place of confinement for split-sentences.

The court's increased use of split-sentences in turn affected changes in place of confinement. As a direct consequence of abolishing eligibility requirements for assignments to the Correctional Center and county jails, these facilities were used more frequently for both sentences of incarceration and--in particular--split-sentences. The most significant change was the increased use of the Correctional Center as the place of confinement for split-sentences. The shift to greater use of the Correctional Center pre-dated the sentencing reform but increased after the reform.

The increased use of county jails also predates the sentencing reform, but with the implementation of the reform this trend increased in importance. It is crucial to note these changes in the use of different sentence types and different correctional facilities occurred without a significant overall change in the rate of incarceration. Factors extraneous to the sentencing reform explaining how these changes occurred are addressed in subsequent sections of the chapter.

Changes in the Relationship Between Charging Patterns and the Court's Choice of Sentence Types

Introduction

The previous examination of all conviction charges processed in the sample of Superior Courts revealed Maine's sentencing reform had little impact on the court's use of some form of incarceration. Basic changes occurring in the court's more frequent use of split-sentences and in the court's designation of places

of confinement predate the sentencing reform. An examination of the court's choice of sentence types over time does indicate that those changes increased in importance after the reform.

These findings raise a number of questions. Two issues of particular relevance to the present study are examined here. They require a more extensive examination of the findings thus far presented. The first issue raised by these findings but not addressed by them is whether any changes have occurred in the configuration or pattern of criminal charging and whether changes that have occurred in charging patterns are related to the court's choice of sentencing options and in designation of places of confinement.

Obviously, the court is faced with a different sentencing decision in a murder conviction than in a conviction for joyriding. Any difference in the overall pattern of such charges would affect the court's choice of sentence types. Despite the importance of such differences, their relevance to the present study is limited to how changes in charging patterns disguise or mask impacts of the sentencing reform on changes that have occurred in the court's sentencing choices.

The second issue raised by findings thus far presented require a more detailed examination of changes in the court's use of split-sentences. Of particular concern is the relationship between offense charging and the use of split-sentences and how the more frequent use of split-sentences has affected the court's choice of <u>other</u> sentencing options. The implications of the data

presented on split-sentences are equivocal because they lead to different interpretations. The findings that have been presented show the increased use of split-sentences was accompanied by a decrease in both probationary sentences and incarceration-only sentences, with the largest decrease coming in probation sentences. If the increased use of split-sentences has largely replaced probationary sentences, the court's sentencing choices may have become more severe. On the other hand, if split-sentences have replaced sentences of incarceration only, a basis exists to infer that the court's sentences have become less severe.[11]

The goal in this section of the chapter is to distinguish between changes in the court's sentencing decisions introduced by or reinforced by the sentencing reform from other factors affecting those choices and to more clearly explicate the relationship between the use of split-sentences and other sentencing choices of the court.

To address these issues, the study examines changes occurring in the pattern of conviction charges and the relationship between these charging patterns and the court's choice of sentencing options. In order to do this we will examine the data controlling on the severity of the conviction offense and whether the conviction was for a single offense of multiple offense. Within these breakdowns data on the court's selection of sentence type and place of confinement will be examined.

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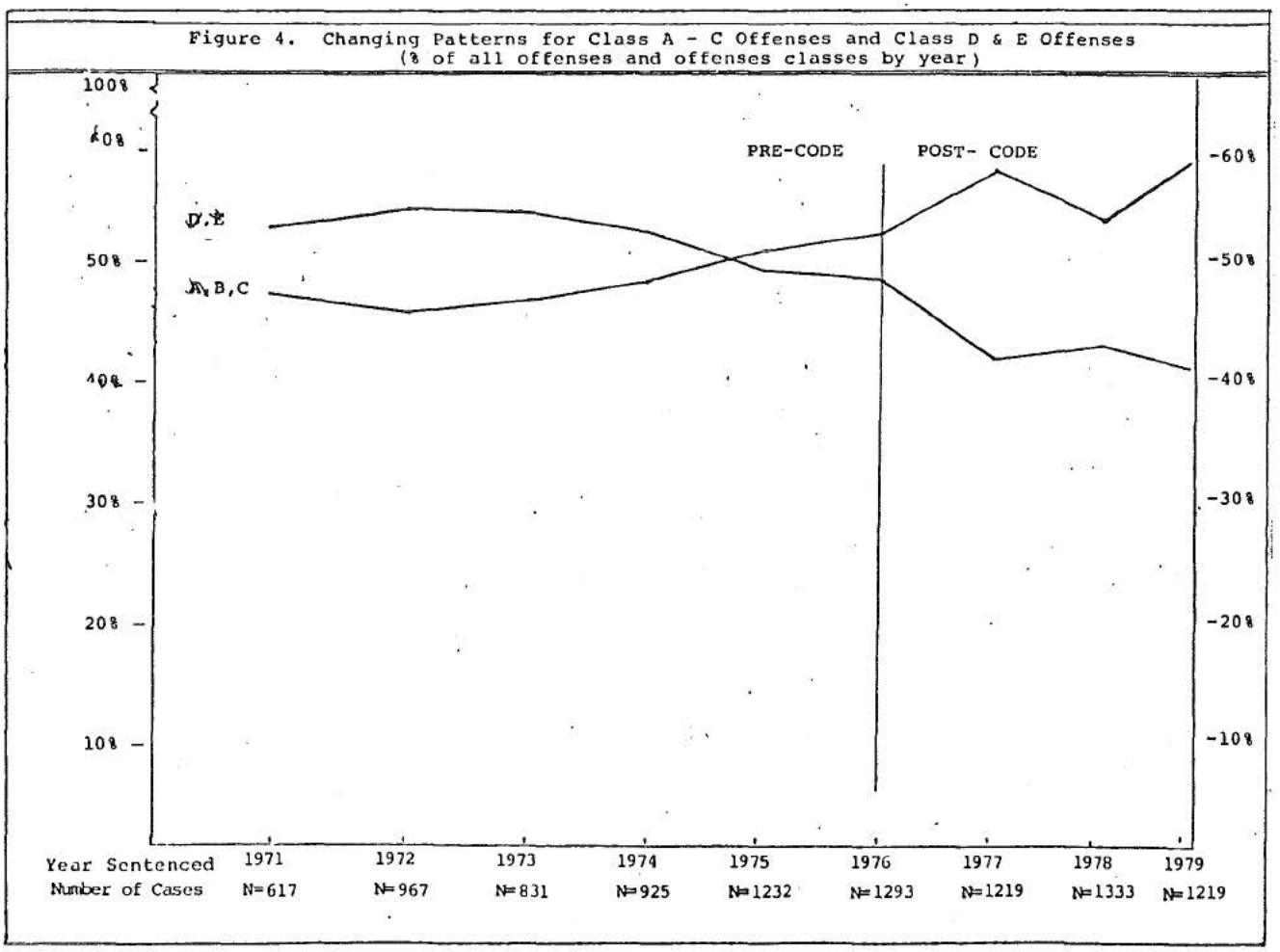
[11] This assumes, of course, the length of split-sentences are shorter than lengths of sentences for incarceration only which is an empirical question.

Changes in Offense Class Convictions

To address the possible impact of changes in severity of convictions, comparisons are made of differences occurring in the frequency of convictions for the five graded classes of offense seriousness. To provide a conservative measure of changes that did occur and ensure those comparisons were accurate, pre-reform offenses not assigned an offense class were deleted. Of the 428 cases deleted from the sample, three hundred fifty-one (351) were convictions for the possession of marijuana prosecuted under pre-code statutes -- 22 M.R.S.A. §2383. As this offense was de-criminalized, there are no comparable post-reform offenses. These offenses and a small number of other noncomparable offenses were deleted from the following analysis. Consequently, the analysis which follows is based on 10,093 comparable sentencing events -- 5609 pre-reform and 4384 post-reform.

A comparison of criminal charging patterns between the pre-reform and post-reform periods indicates a post-reform increase occurred in convictions for more serious Class A through C offenses. Of the 4384 cases in the post-reform sample, fifty-eight percent (58%, N=2584) were convicted of Class A-C offenses. This represents an overall nine percent (9%) post-reform increase in more serious offense charges over the pre-reform period. This means the courts were processing over one hundred more Class A-C offenses each year in the post-reform period than the pre-reform period. Of the 5609 cases in the pre-reform sample assigned an offense class, a total of forty-nine percent (49%, N=2750) were Class A-C conviction offenses. Changes in the pattern of conviction charges for more serious Class A-C offenses and less serious Class D and E offenses

processed by the Superior Court are shown as trends for the time-frame of the study in Figure 4.



Overall, Figure 4 demonstrates that increases in processing more serious Class A-C conviction charges by the Superior Court predate the sentencing reform. Prior to 1975 more Class D and E conviction charges were processed than Class A-C conviction charges. This trend was reversed in 1975 with the courts processing

a larger percentage of Class A-C conviction charges than Class D and E conviction charges. This trend continued from 1975 through 1979. By 1977 this trend resulted in a seventeen percent (17%) difference between more frequent Class A-C convictions and Class D and E convictions. Furthermore, an examination of the totals at the bottom of Figure 4 indicate that not only was there an increase in the proportion of more serious offense charges processed between 1976 and 1979, but also an increase in the absolute number of more serious Class A-C offense charges as well.

The changes in the definition of substantive offenses and the introduction of graded classes of offense seriousness appear to be related to the change in conviction offenses. Regardless of the actual source of the change, its effects on sentencing bear close scrutiny.

The increase in more serious convictions may account for the previously discussed shifts in the court's choice of sentencing options that also occurred prior to the sentencing reform. Since one can expect differences between the court's choice of sentence types for more serious and less serious offense charges, important impacts of the sentencing reform may be concealed by the change in more serious convictions. An examination of the relationship between the seriousness of conviction and the court's choice of sentence types is required. It may more clearly explain the impact of the sentencing reform on the court's choice of sentence types: the changing application of split-sentences; and further explicate how changes in the court's use of split-sentences had affected its choice of other sentencing options.

Pre-reform and post-reform comparisons of the relationships between offense class of conviction offense and the court's choice of sentence types are shown in Table 4. It shows the sentence types for Class A-C offense convictions and for Class D and E offense convictions in the pre-reform period and post-reform period. The third column of Table 4 shows the changes occurring in those choices.

Table 4. Pre-Code and Post-Code Comparisons of the Relationship Between Seriousness of Offense Charges and the Court's Choice of Sentence Types (In Percentages)

	PRE-CODE	POST-CODE	PERCENT CHANGE
Class A - C Offense Charges			
Incarceration Only	52.7	43.4	- 8.3
Split-Sentence	12.6	24.8	+12.2
Probation	30.1	28.2	- 1.9
Fines	4.6	3.6	- 1.0
TOTALS	100% (2751)	100% (2524)	
Class D and E Offense Charges			
Incarceration Only	24.7	22.3	- 2.4
Split-Sentence	9.8	8.2	- 1.6
Probation	34.9	25.9	- 9.0
Fines	30.6	43.6	+13.0
TOTALS	100% (2859)	100% (1860)	

The findings in Table 4 are important and bear close scrutiny. They indicate changes occurring in the court's choice of sentence types since the sentencing reform are related to the offense class and thus may be related to changes occurring in conviction patterns that predate the reform.

Changes occurring in the choice of sentence types since the

sentencing reform are different for more serious Class A-C offenses than less serious Class D and E offenses. The increase in split-sentences has only occurred for the more serious class A-C offense charges. For Class A-C offenses, there has been an overall twelve percent (12%) increase in the split-sentences. Although there has been an overall decrease in all other sentencing types for Class A-C offenses, this decrease has primarily occurred for sentences of incarceration only. There has been an eight percent (8%) decrease in sentences of incarceration only but little change in sentences of probation (-2%) and fines (-1%).

Changes occurring in types of sentences given are different for less serious Class D and E offense charges. Unlike Class A-C offense charges where little change occurred in the use of probation and fines, these sentencing choices experienced the greatest change for Class D and E offense convictions. There has been a thirteen percent (13%) increase in the use of fines, and a nine percent (9%) decrease in the use of probationary sentences. Relatively little change has occurred in the courts use of either incarceration-only or split-sentences, but both decreased. Thus, Table 4 suggests the previously reported overall post-reform increase in the court's use of some form of incarceration -- split-sentences or sentences of incarceration-only -- has occurred for more serious offense charges and may be related to the increase in the convictions for Class A-C offenses.

The findings in Table 4 suggest that split-sentences have not replaced probationary sentences but sentences of incarceration-only, and it shows this change has only occurred for more serious Class A-C offenses. The post-reform decrease in the

use of probationary sentences has primarily occurred for Class D and E offenses. This decrease is not related to the increase in the use of split-sentences but to the increase in the use of fines for Class D and E convictions.

The findings presented in Table 4 and before/after comparisons suggesting changes in the court's choice of sentence types indicate that offense rank makes an important difference in type of sentence given. As previously reported, however, the major shift in the court's processing of more serious offense charges occurred prior to the sentencing reform. The court sentenced more Class A-C offense charges than Class D and E offense charges from 1974-1979. Thus, it is crucial to determine whether the change in the court's choice of sentence types accompanied the pre-reform increase in more serious offense charging or occurred after the sentencing reform.

The court's choice of sentence types for Class A - C offense charges and Class D and E offense charges are shown as trends for the time-frame of the study in Figures 5 and 6. Figure 5 shows the trend in the court's choice of sentence types for Class A - C offenses. Figure 6 shows these trends for Class D and E offenses.

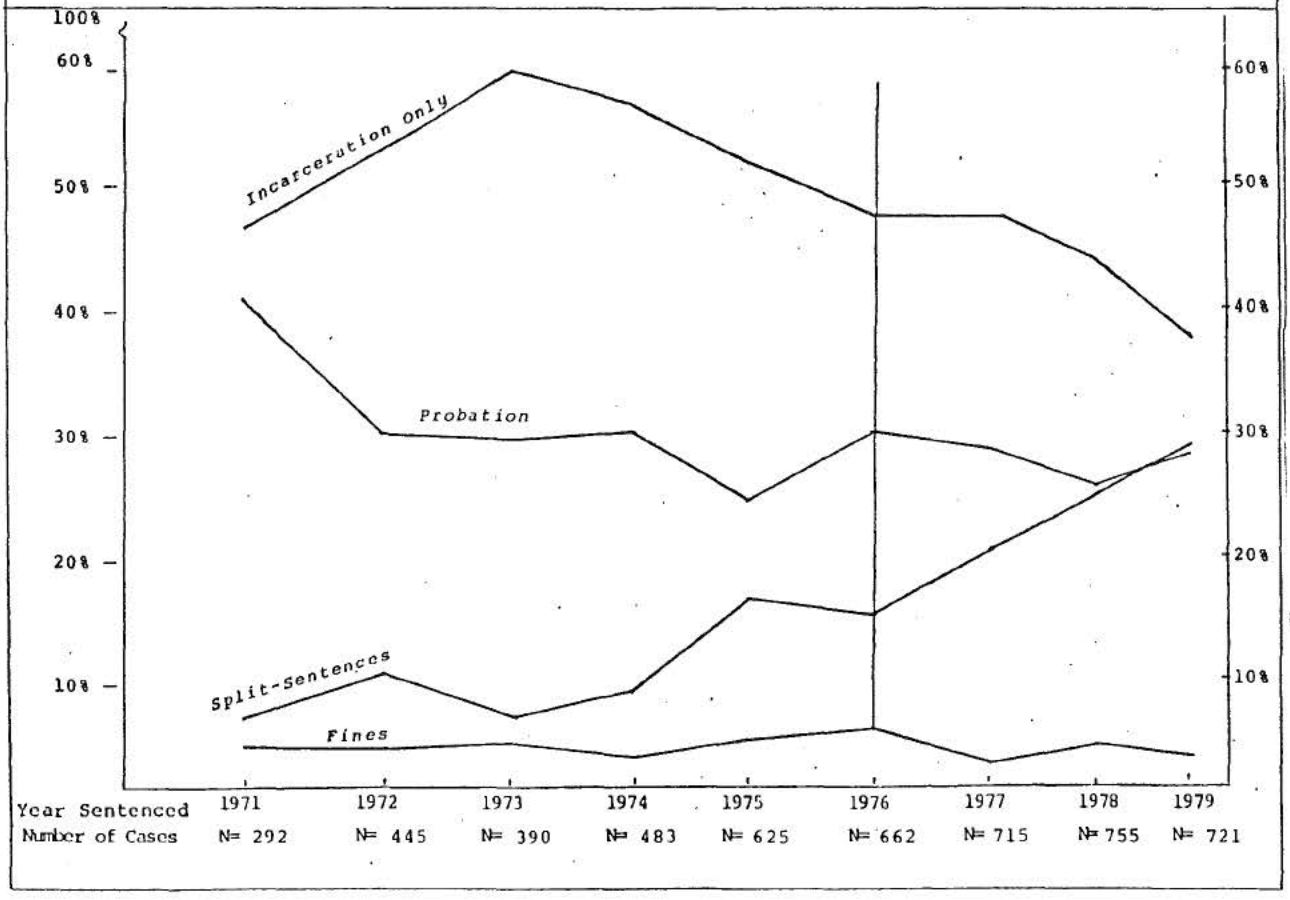
A comparison of the trends in split sentences for Class A - C offenses (Figure 5) and for Class D and E offenses (Figure 6) support the interpretation of findings presented in Table 5. Those findings demonstrate that the change in the court's use of split-sentences has only occurred for more serious Class A - C charges. Split-sentences are infrequently used for Class D and E offense charges and have decreased over time. Conversely, split sentences are frequently used for Class A - C convictions and

there has been an increase in split-sentences for these more serious offense charges over time.

A comparison of the trends in Figures 5 and 6 also confirm the interpretation of findings presented in Table 5 regarding probationary sentences. The decrease in the use of probationary sentences has primarily occurred for Class D and # convictions and is a more consistent trend for these less serious convictions. The decrease in probationary sentences for Class D and E offenses has been replaced by a greater use of fines, etc.

An examination of the trends in the court's choice of incarceration-only and split-sentences for Class A - C offense

Figure 5. Trend in Sentence Types for All Class A - C Charges



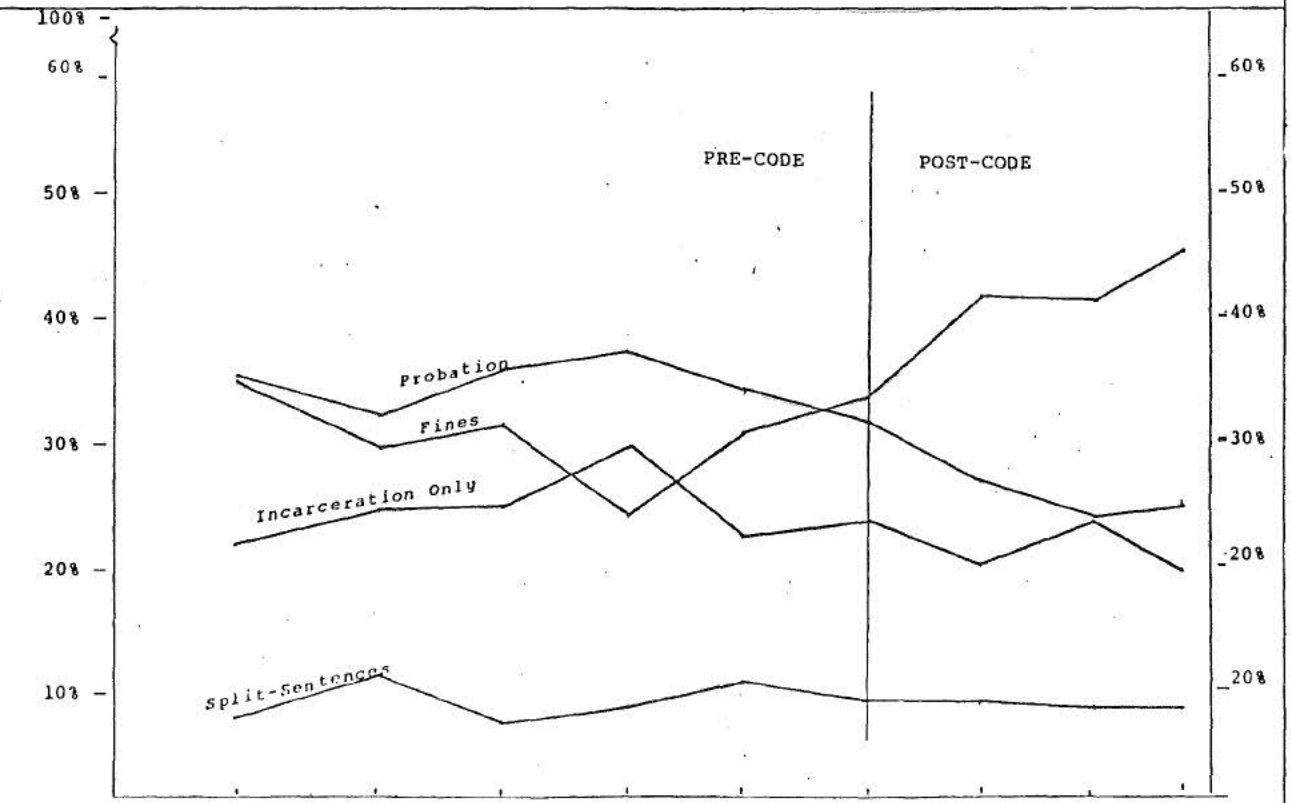
convictions (Figure 5) indicates the increase in split-sentences has been accompanied by a decrease in sentences of incarceration-only. For more serious offense charges, then, split-sentences are primarily replacing sentences of incarceration-only.

It will be recalled from the previous discussion of changes in the distribution of conviction offenses that the court began processing more serious Class A - C offenses than Class D and E offense charges in 1975. Figure 5 shows that the greatest shift in the court's use of split-sentences did not accompany this shift in charging patterns but occurred subsequent to the sentencing reform in 1976. For example, in 1975 split-sentences accounted for 18 percent and sentences of incarceration-only accounted for 52 percent of all sentencing choices for Class A - C offenses. In 1979, split-sentences accounted for 30 percent and sentences of incarceration-only accounted for 38 percent of all sentencing choices for Class A - C offenses. Although the use of split sentences also increased when more Class A - C offenses were processed, the basic shift occurred after the sentencing reform. It appears that both the reform and increased frequency in Class A - C offense convictions processed by the courts are the major factors explaining the less frequent use of sentences of incarceration-only and more frequent use of split-sentences.

The previous discussion of offense convictions indicated the courts convicted fewer Class D and E offenses and more Class A - C offenses from 1975 - 1979 than between 1971 - 1974. Figure 6 indicates that during the period when Class D and E offense charges comprised the bulk of the court's docket (1971 - 1974), the most frequent sentencing choice of the court was probation. The court's

choice of probationary sentences for Class D and E offenses decreased beginning in 1975, prior to the sentencing reform, and continued decreasing through 1979. This decrease in probationary sentences was accompanied by an increase in the court's use of fines, victim restitution, and unconditional discharges. For example, in 1973 32 percent of the court's sentences for Class D and E convictions were fines, etc. and 36 percent were probationary sentences. In 1979, the trend was not only reversed, but the magnitude of the difference also increased. Fines accounted for 46 percent and probationary sentences accounted for 26 percent of the court's sentencing choices for Class D and E offenses in 1979.

Figure 6. Trend in Sentence Types for all Class D & E Charges



At the beginning of the chapter, overall trends in the court's choice of sentence types were examined. The only consistent change was the increase in split sentences. It was not possible to determine whether split-sentences were replacing sentences of incarceration-only, probationary sentences, or both. Figures 4 and 5 somewhat clarify that issue. The increase in split-sentences is related to both offense conviction patterns, and to a decrease in sentences of incarceration-only. The decrease in probationary sentences has primarily occurred for less serious Class D and E offense charges and has been accompanied by an increase in the use of fines, etc. These overall changes largely occurred prior to the sentencing reform during a period when the court was processing more Class A - C offenses than Class D and E offenses.

The findings presented thus far have shown the overall shift in conviction patterns occurred concomitantly with the type of sentence. They raise basic questions about previously reported findings on changes in the court's designation of places of confinement. Those findings indicated a decrease in the court's choice of this jurisdiction's maximum security facility -- the State Prison -- and an increase in the use of both county jails and the Correctional Center. Such changes could be anticipated to be accompanied by an overall increase in less serious offense charging. That is, one might expect a decrease in the use of the State Prison would be accompanied by a decrease in processing Class A - C offenses. However, this is not the case as more Class A - C offenses were processed at a time when the court was assigning

offenders less frequently to the State Prison. It may well be that important impacts of the sentencing reform on the court's choice of places of confinement are disguised by the increase in more serious offense convictions. Moreover, these findings raise the question of how changes that have occurred in the court's designation of places of confinement are related to changes in more serious offense charging and whether there are differences in the court's choice of places of confinement for those convicted of serious and less serious offense charges.

Pre- and post-reform comparisons of the relationship between seriousness of offense charges and the court's choice of places of confinement are presented in Table 5. It shows the court's designation of place of confinement for offenders convicted of Class A - C convictions and for offenders convicted of Class D and E offense charges in the pre-reform period and post-reform period. The third column in Table 5 shows the changes occurring in those choices.

Table 5. Pre-Code and Post-Code Comparisons of the Relationship Between Seriousness of Offense Charges and the Court's Designation of Places of Confinement (In Percentages)

	PRE-CODE	POST-CODE	PERCENT CHANGE
Class A - C Offense Charges			
State Prison	55.1	27.6	-27.5
Correctional Center	22.7	40.5	+17.8
County Jails	22.2	31.9	+ 9.7
TOTALS	100% (1797)	100% (1722)	--- 0
Class D and E Offense Charges			
State Prison	26.7	7.4	-19.3
Correctional Center	17.2	16.4	- .8
County Jails	56.1	76.2	+20.1
TOTALS	100% (986)	100% (566)	--- 0

Overall, the findings presented in Table 5 indicate that the court's designation of places of confinement is related to the seriousness of conviction. In both pre- and post-reform periods, the court placed the majority of offenders convicted of less serious offenses in county jails and the majority of offenders convicted of more serious offenses were placed in one of the two state correctional facilities. In addition, pre- and post-reform changes occurring in the court's designation of places of confinement are related to the seriousness of offense charges. In the post-reform period, a larger proportion (+20%) of offenders convicted of Class D and E offenses have been assigned to county jails than were assigned to county jails in the pre-reform period. However, the basic change that has occurred is the court's designation of places of confinement for offenders convicted of Class A - C offense charges. During the pre-reform period, the majority of offenders (55%) convicted of Class A - C offenses were assigned to the State Prison. The remaining offenders convicted of Class A - C offenses were equally likely to have been assigned to county jails (22%) or the Correctional Center (22%). During the post-reform period, this pattern was totally reversed. The largest proportion (40%) convicted of Class A - C offenses were assigned to the Correctional Center. And, during the post-reform period, the court assigned more offenders convicted of Class A - C offenses to county jails (31%) than the State Prison (27%).

The change in use of the State Prison, however, has occurred for both offenders convicted of Class A - C offenses and those

convicted of Class D and E offenses. For both categories, there is a post-reform decrease in the use of this facility.

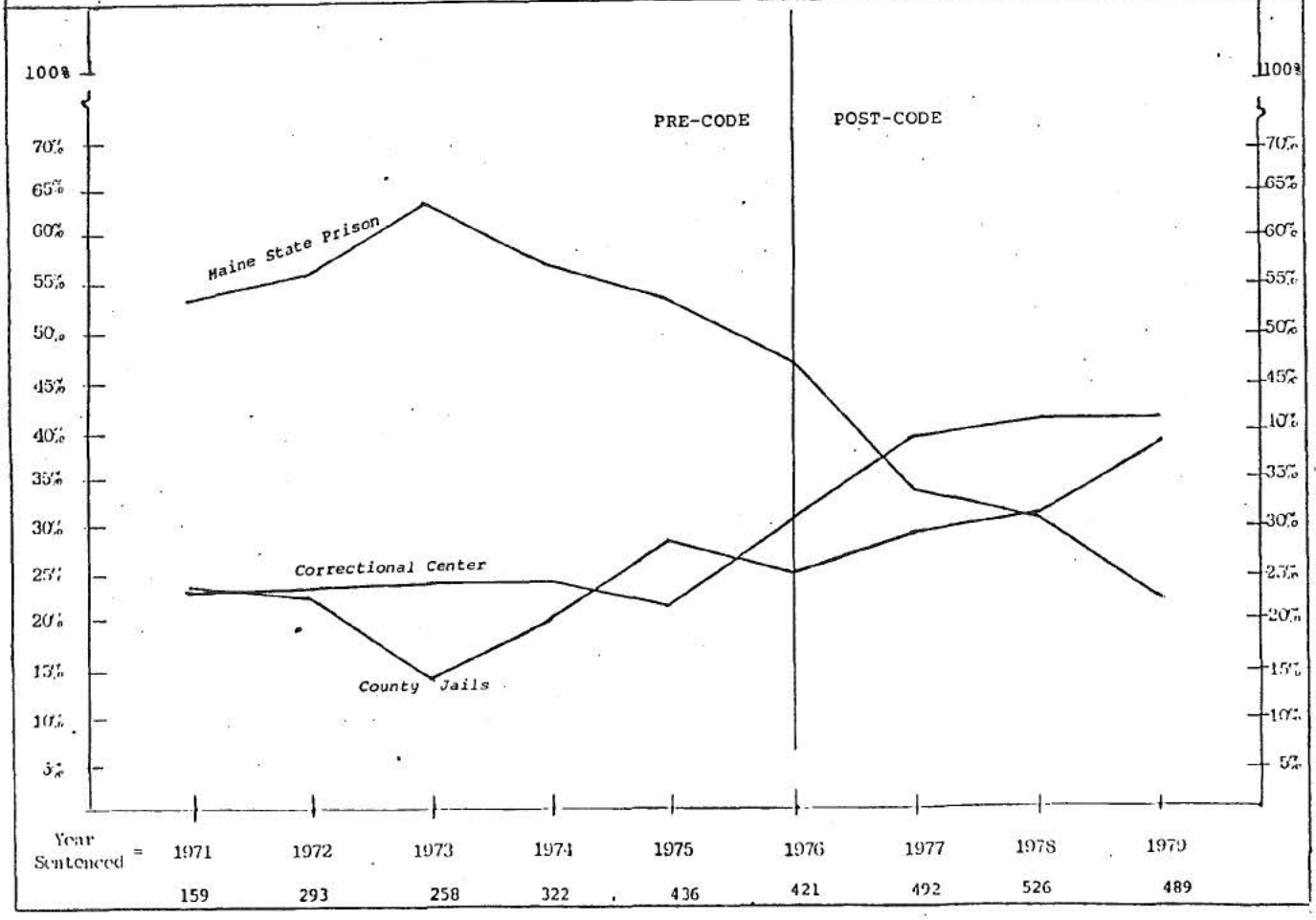
Changes in the court's designation of places of confinement require further explication. The findings in Table 5 indicate that the previously discussed overall changes in places of confinement have primarily occurred for offenders convicted of Class A - C offenses. There has been less change in places of confinement of offenders convicted of Class D and E offenses as county jails were most frequently chosen by the courts during both pre- and post-reform periods. And, as shown in Table 5, the increase in the court's choice of the Correctional Center and county jails for offenders convicted of Class A - C offenses may be more directly connected with the sentencing reform than the previous discussion on overall trends in the place of confinement indicated.

In order to more fully address this issue, the place of confinement for offenders convicted of the more serious Class A - C offenses are shown as trends in Figure 7 for the time-frame of the study.

The findings presented in Figure 7 confirm the interpretation of findings previous reported in Figure 2 on overall trends in place of confinement; but, greatly clarifies those findings. As previously reported, changes in place of confinement began in 1974 and, therefore, predates the sentencing reform. Figure 7 clearly indicates the decrease in assignments to the State Prison occurred for offenders convicted of Class A - C offense charges. It also shows the sentencing reform had a major impact on the selection of the places of confinement for offenders convicted of the more

serious offense charges. Prior to the sentencing reform, the decrease in use of the State Prison was accompanied by an increase in the court's use of county jails. For example, between 1973 and 1974 court assignments to the State Prison decreased by seven percent and assignments to county jails increased by six percent. During this same period, there was a one percent increase in assignments to the Correctional Center. Statutory changes accompanying the sentencing reform in 1976 expanded the court's authority to utilize the Correctional Center. The trend in the court's designation of

Figure 7. Trend in Court Assignments to Places of Confinement for Offenders Convicted of Class A - C Offenses



the State Prison continued to decrease subsequent to the sentencing reform. From 1977 through 1979 this decrease was accompanied by a substantial increase in court assignments to the Correctional Center. By 1977, more offenders convicted of Class A - C offense charges were assigned to the Correctional Center (38%) than either the State Prison (33%) or county jails (21%). And, in 1979 court assignments to the Correctional Center (40%) and to county jails (37%) surpassed its use of the State Prison (23%) for these offenders.

The basic explanation for changes in the court assignments to different correctional facilities is related to the court's increased use of split-sentences for offenders convicted of more serious Class A - C offenses. Pre- and post-reform comparisons of places of confinement for offenders convicted of Class A - C offenses and given split-sentences or sentences of incarceration-only are shown in Table 6.

These findings indicate the largest changes in the court's use of both county jails and the Correctional Center is accounted for by the increased use of split-sentences for offenders convicted of more serious Class A - C offenses. For example, sentences of incarceration only assigned to the Correctional Center account for a post-reform 5 percent increase over the pre-reform period. However, court assignments for split-sentences account for a 14 percent increase in the use of this facility for all offenders convicted of Class A - C offenses and given a sentence of incarceration. These findings indicate that changes in the place of confinement occurred prior to the sentencing reform. However,

Table 6. Pre-Code and Post-Code Comparisons of Places of Confinement for Offenders Convicted of Class A - C Offenses Given Split-Sentences and Sentences of Incarceration Only

	PRE-CODE	POST-CODE	PERCENT CHANGE
State Prison			
Incarceration Only	49.3	25.7	-23.6
Split-Sentence	5.9	1.9	- 4.0
Correctional Center			
Incarceration Only	21.9	26.7	+ 4.8
Split-Sentence	.7	13.7	+13.0
County Jails			
Incarceration Only	9.5	11.2	+ 1.7
Split-Sentence	12.7	20.8	+ 8.1
TOTALS	100% (1797)	100% (1722)	

the sentencing reform greatly encouraged those trends not only by eliminating eligibility requirements for the use of these facilities, but also by changing the sentencing options available to the court by introducing a new form of split-sentence.

The findings analyzed and discussed thus far indicate that basic changes have occurred in the pattern of more serious conviction offenses. This change predates the sentencing reform and is related to the court's choice of sentence types. The sentencing reform was particularly important in facilitating the court's use of split-sentences to accommodate this change in conviction patterns and was important in accounting for the court's greater use of the Correctional Center.

Multiple Convictions

A major finding of the study is that a substantial post-reform increase occurred in the patterns of multiple conviction offenses. That is, more post-reform than pre-reform offenders were convicted for multiple offenses arising from different criminal episodes or single criminal episodes where multiple crimes had been committed. In fact, the percent of post-reform multiple offense conviction charges has doubled. Of the sample of 4384 post-reform sentencing events, 1303 or 30 percent involved convictions for multiple offenses. The corresponding figure for the sample of 5610 pre-reform sentencing events is 850 cases or 15 percent.

It is imperative to examine how the change in multiple convictions is related to changes in more serious offense convictions, how it has affected the sentencing choices of the court, and whether the source of this change is related to the sentencing reform or the substantial changes in the redefinition of offenses accompanying the sentencing reform.

The first issue addressed is whether the increase in multiple convictions has occurred equally for both serious and less serious conviction charges. Pre-reform and post-reform comparisons of single and multiple convictions for Class A - C and Class D and E offenses are shown in Table 7.

The findings presented in Table 7 clearly indicate that the post-reform increase in multiple convictions has only occurred for more serious Class A - C offenses. Multiple convictions for Class A - C offenses in the post-reform period account for 42 percent

Table 7. Pre-Code and Post-Code Comparisons of Single and Multiple Offense Charges by Class of Offense Seriousness (In Percentages)

	PRE-CODE	POST-CODE	PERCENT CHANGE
Class A - C Offenses			
Single Charge	82.9%	57.8%	-25.1%
Multiple Charges	17.1%	42.2%	+25.1%
TOTALS	100%	100%	---
	(2751)	(2524)	0
Class D and E Offenses			
Single Charge	86.7%	87.3%	+ .6%
Multiple Charges	13.3%	12.7%	- .6%
TOTALS	100%	100%	---
	(2859)	(1860)	0

of all Class A - C convictions. This represents a 25 percent increase in the pattern of multiple offense charging for Class A - C offenses over the pre-reform period.

The fact that multiple offense charging has increased for more serious Class A - C offenses requires further examination. Of particular concern is how this change is related to the previously reported increase in convictions for Class A - C offenses that occurred in 1975. The basic issue is if and how the increase in multiple convictions is related to that change.

The pattern in multiple convictions for Class A - C convictions and Class D and E convictions are shown as trends for the time-frame of the study in Figure 8. The two trend lines represent the percent of multiple convictions for Class A - C and for Class D and E offenses respectively.[12]

[12] Figure 8 shows the percentage of Class A - C offenses that are multiple charges and the percentage of Class D and E offenses that are multiple charges. Since the trends are computed on a different base, they do not sum to 100%.

Figure 8. Multiple Offense Charging Patterns for Class A - C Convictions and Class D and E Convictions

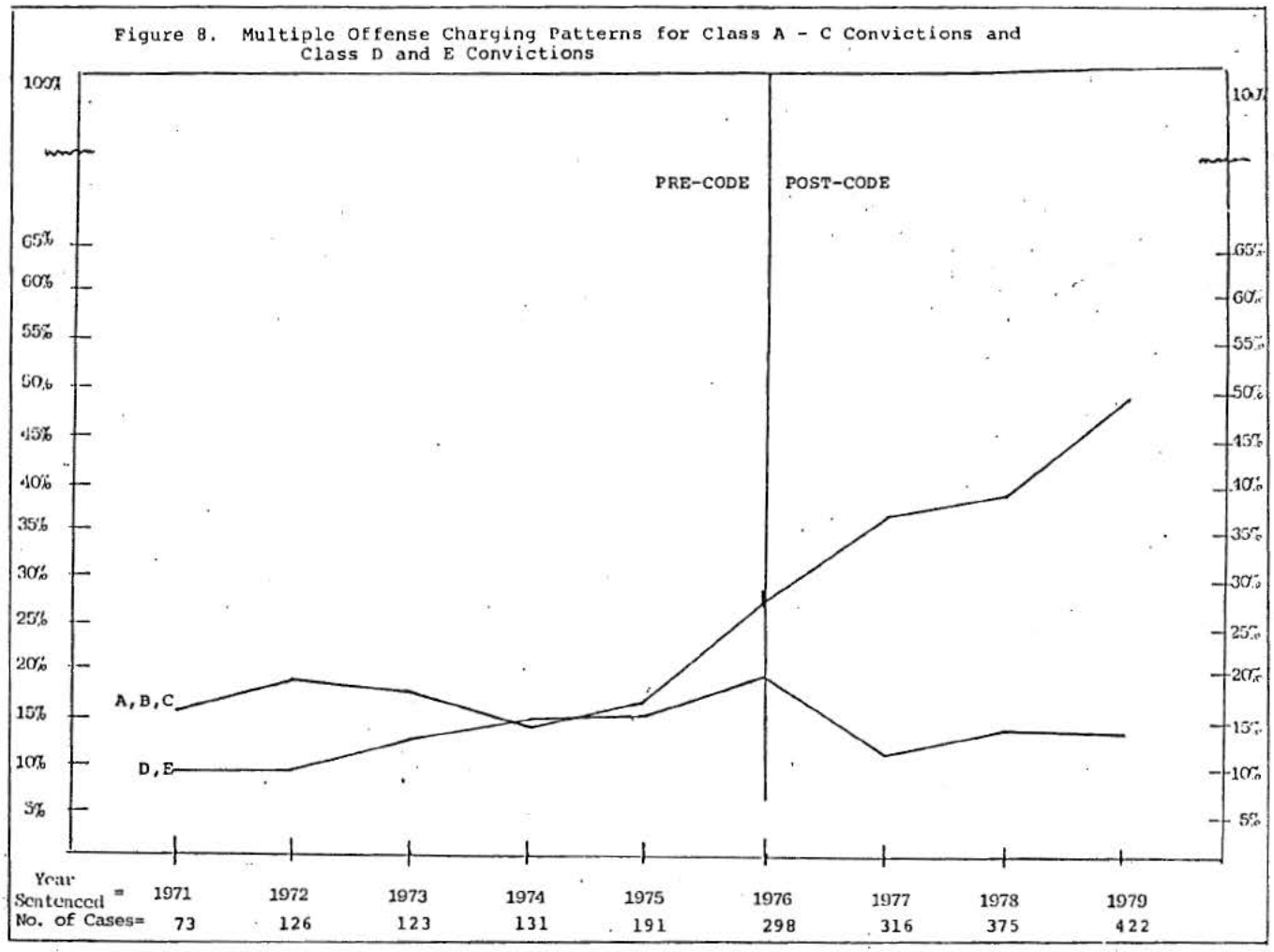


Figure 8 demonstrates three basic points. An examination of the trends in multiple convictions for Class A - C convictions and Class D and E convictions confirm the change has primarily occurred for Class A - C convictions. Second, the change in multiple offense convictions did not occur when the trend towards more serious Class A - C convictions increased. That trend began in 1974. In 1974 and 1975, less than 17 percent of all Class A - C offense convictions involved multiple charges. Rather, the change

in multiple convictions occurred when the sentencing reform was implemented in 1976 and has increased since that time. For example, in 1976 27 percent of all Class A - C convictions involved multiple charges. By 1979, multiple convictions accounted for 49 percent of all Class A - C convictions. These findings mean that the increase in processing Class A - C convictions predating the sentencing reform was followed by an increase in multiple offense charges for these more serious convictions once the sentencing reform was implemented. This change requires a further examination of the court's choice of sentence types for Class A - C offenses. The increase in multiple convictions may further explain previously discussed changes occurring in the court's choice of sentence types.

Pre- and post-reform comparisons of the court's choice of sentence types for single and multiple Class A - C offense charges are presented in Table 8. These findings indicate that the court chose sentences involving incarceration -- split-sentences or incarceration-only -- more frequently than any other sentence type for both single and multiple offense charges during both pre- and post-reform periods. It also indicates that sentences involving some form of incarceration are used more frequently for multiple offense charges than for single offense charges during both pre- and post-reform periods. And, there has been an overall post-reform decrease (-6%) in the use of some form of incarceration for multiple convictions but little change in the use of incarceration (-1%) for single offense convictions. Moreover, the previously reported post-reform shift in the more frequent use of

Table 8. Pre-Code and Post-Code Comparisons of the Court's Choice of Sentence Types for Class A - C Single and Multiple Offense Convictions (In Percentages)

	SINGLE OFFENSES			MULTIPLE OFFENSES		
	PRE-CODE	POST-CODE	PERCENT CHANGE	PRE-CODE	POST-CODE	PERCENT CHANGE
Incarceration Only	49.7%	41.6%	- 8.1%	67.4%	45.8	-21.6
Split-Sentence	12.2	21.3	+ 9.1	14.4	29.6	+15.2
Probation	33.3	32.3	- 1.0	14.6	22.9	+ 8.3
Fines, etc.	4.8	4.8	0	3.6	1.7	- 1.9
TOTALS	100% (2280)	100% (1458)	0	100% (471)	100% (1066)	0

split-sentences has occurred for both single and multiple offense charges. However, the magnitude of this post-reform change in the use of split-sentences is greater for multiple offense charges (15%) than for single offense charges (9%).

To further explore these relationships between sentence types for Class A - C convictions controlling for single and multiple convictions Figures 9 and 10 are presented. Figure 9 shows the trend in the sentence types for single Class A - C charges. Figure 10 shows that trend for multiple Class A - C charges.

An examination of the trends in sentence types for single offense in Figure 9 clearly indicate the changes predate the sentencing reform.

Figure 9 shows that the court's most frequent sentencing choice for single convictions is incarceration-only. But, with the exception of 1979, there has been a decrease in the use of this sentencing option over time. This decrease in sentences of incarceration-only occurred prior to the sentencing reform and was accompanied

Figure 9. Trends in Sentence Types for Single Class A - C Charges

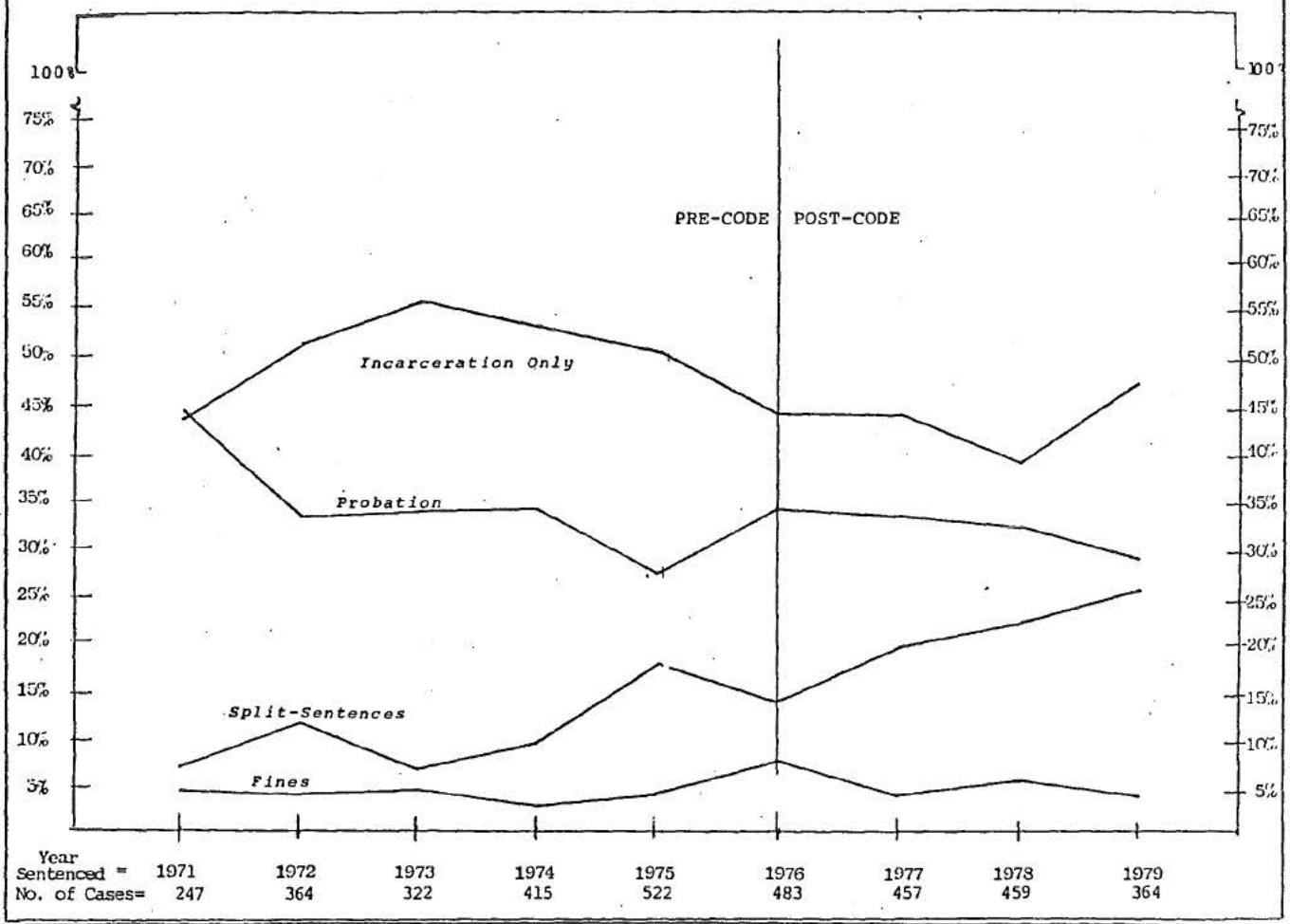
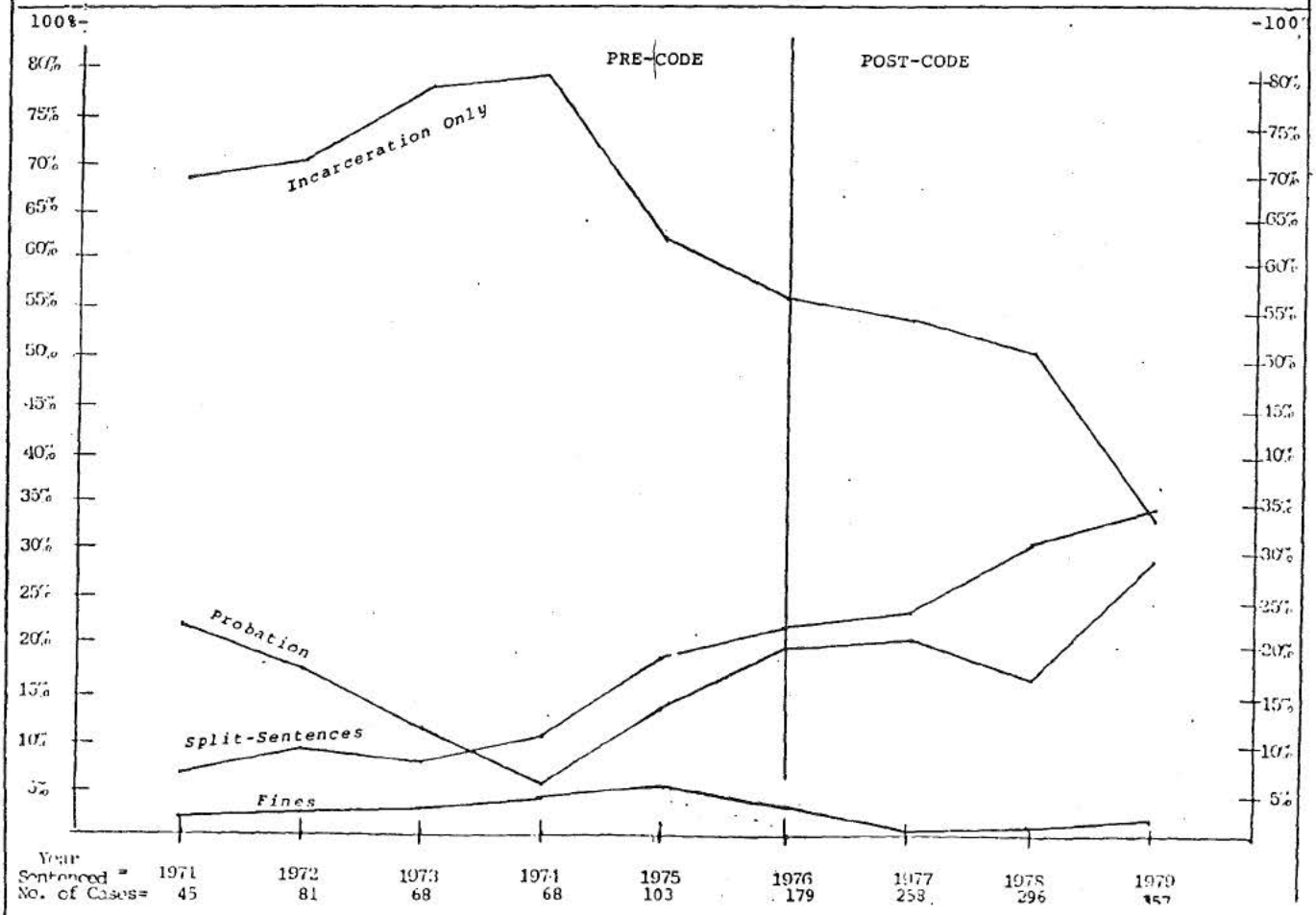


Figure 10. Trends in Sentence Types for Multiple Class A - C Charges



by an increase in split-sentences. A decrease also occurred in the court's use of probationary sentences but it began after the sentencing reform.

An examination of the trends in sentence types used for multiple Class A - C convictions in Figure 10 also reflect the findings presented in Table 8. However, Figure 10 graphically demonstrates more fundamental changes occurring in the sentencing choices of the court for multiple convictions than occurred for single Class A - C convictions. It indicates that these changes basically occurred in 1975 prior to the sentencing reform and prior to the substantial increase in multiple offense convictions accompanying that reform. Figure 10 indicates that the court relied primarily on sentences of incarceration-only for multiple convictions from 1971 to 1974. From 1975 through 1978 the decrease in sentences of incarceration-only was accompanied by an increase in both probationary and split-sentences; however, the court used split-sentences more frequently than probationary sentences from 1974 - 1979.

A comparison of trends in the court's choice of split-sentences for multiple Class A - C offense convictions (Figure 10) and single class A - C convictions (Figure 9) indicates that split-sentences were more frequently used for multiple convictions from 1975 - 1979. This suggests the dramatic change in multiple convictions that occurred with the sentencing reform reinforced the use of split-sentences as an alternative to sentences of incarceration-only. By 1979, split-sentences were used as frequently (34%) as sentences of incarceration-only (33%) for multiple Class A - C offense charges.

Overall, the trends shown in Figures 9 and 10 lend further support for the argument that split-sentences are replacing sentences of incarceration-only for more serious Class A - C offenses and, in particular, for multiple Class A - C convictions.

It is crucial to understand that the more frequent use of split-sentences occurred in the context of a sentencing reform that abolished parole supervision. The findings presented in this section of the chapter lend further support to the previous discussion that a functional equivalent to parole supervision for some offenders may have emerged in Maine. Support for that hypothesis resides in the fact that the increase in the use of split-sentences for the more serious Class A - C convictions and, in particular, for multiple Class A - C convictions.

Although the more frequent use of split-sentences and concomitant decrease in sentences of incarceration-only for these more serious Class A - C offenses might suggest that sentencing has become less severe in Maine; this is not necessarily the case. It will be recalled from Chapter 3 that the expansion of the court's authority to utilize the split-sentence option was accompanied by provisions authorizing the court to greatly increase the length of the incarceration portion of those sentences. Consequently, it would be erroneous and premature to infer that Maine's split-sentences are similar to what is referred to in other jurisdictions as "split probationary sentences." The question of whether the length of the incarceration portion of split-sentences has increased is addressed in the next chapter.

The source of this increase in multiple offense charging and convictions requires further examination. Thus far, the analysis suggests that the increase in multiple convictions accompanying the sentencing reform has only occurred for Class A - C convictions and is related to the more frequent use of some form of incarceration.

In Chapter 3, changes in the definition of substantive offenses that accompanied the sentencing reform were examined. It was suggested that multiple charging and convictions could be anticipated from changes in offense definition. This expectation was confirmed by the data which indicated that the increase in multiple convictions accompanied the sentencing reform. A close examination of the cluster of offenses comprising Class A - C charges indicates that multiple convictions increased in all offense categories, but particularly in the cluster of crimes prosecuted under the burglary statutes. For example, in the pre-reform period 17 percent of all robbery convictions (N=196) involved multiple charges. In the post-reform period, 24 percent of all robbery convictions (N=187) involved multiple convictions. This change represents a post-reform increase of 7 percent (+7%). The change in multiple offense convictions for burglary is far greater. In the pre-reform period, 15 percent of all burglary convictions (N=1373) involved multiple convictions. In the post-reform period 60 percent of all burglary convictions (N=1162) involved multiple charges. This represents a 45 percent (+45%) increase in multiple convictions for burglary. In fact, post-reform multiple charging

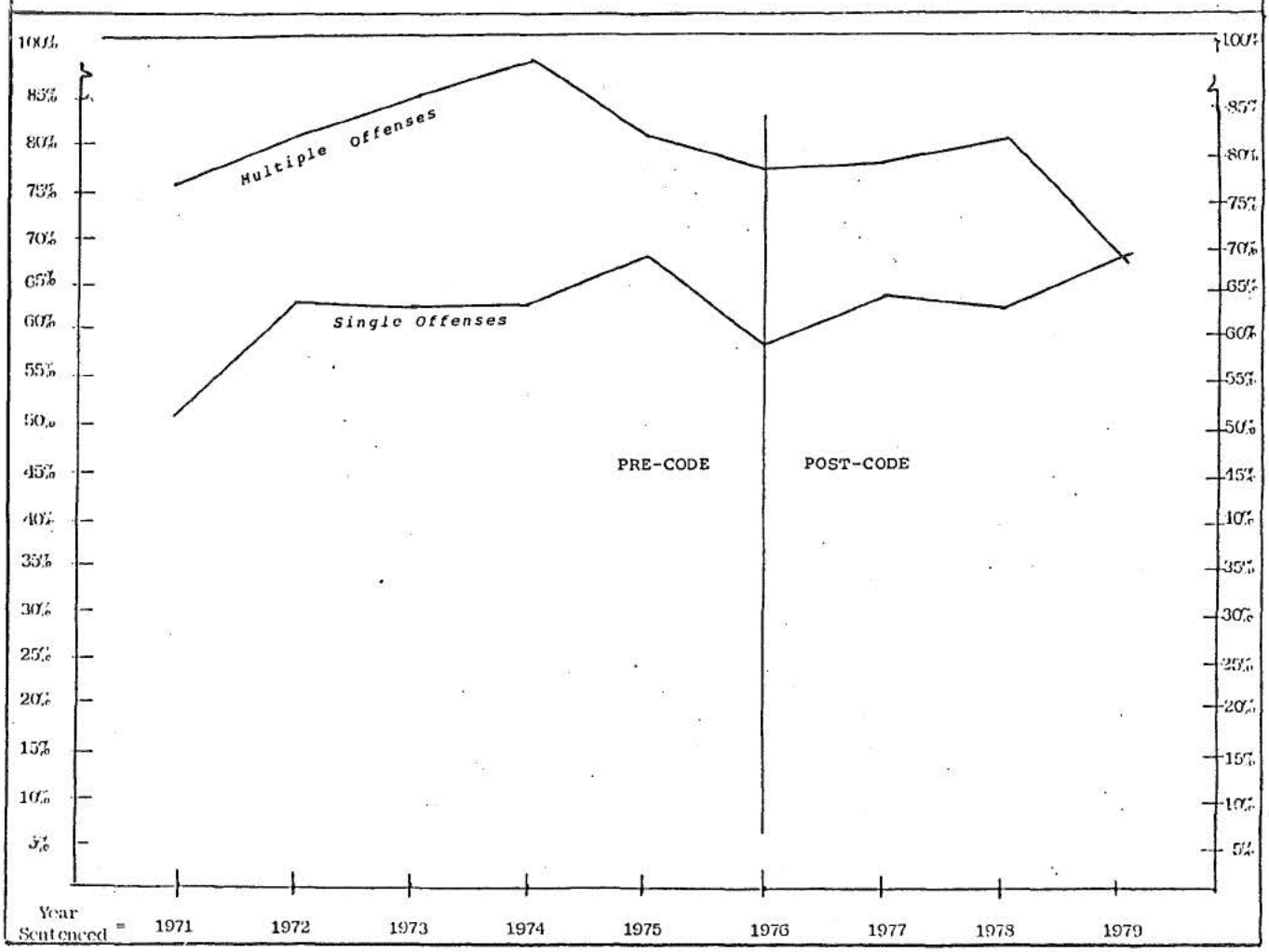
for burglaries account for 50 percent of all post-reform multiple offense convictions.

It will be recalled that the burglary statutes underwent a basic redefinition. Essentially, the breaking, entering, and larceny statutes were abolished. The new burglary statute allows for the prosecution of both the crime or burglary and the crime committed or attempted at the time. Consequently, it appears that the increase in multiple offense charging is largely a result of such changes in the definition of substantive offenses rather than changes in sentencing.

Regardless of the source of the post-reform increase in multiple offense charging patterns, the fact remains that the court's use of some form of incarceration -- split-sentence of incarceration-only -- is far more frequent for multiple than for single Class A - C offense convictions. This is graphically shown in Figure 11. It shows that the overall combined trend in the court's use of split-sentences and sentences of incarceration-only for Class A - C single offense convictions and Class A - C multiple offense convictions.

With the exception of 1979, for which there is no difference, the court used sentences of incarceration more frequently for multiple than single Class A - C offense convictions. However, the magnitude of the difference has decreased over time. For example in 1974 the court selected some form of incarceration for 90 percent of the offenders convicted of multiple Class A - C offenses and for 60 percent of the offenders convicted of single Class A - C offenses. Although there were relatively few offenders (N=68) with multiple convictions in 1974, there was a 30 percent difference between the court's use of incarceration for these offenders and the more frequent

Figure 11. Overall Trend in the Use of Incarceration for Single and Multiple Class A - C Convictions



number of offenders (N=415) convicted of single offenses. In 1977, 79 percent of the 258 offenders convicted of multiple Class A - C offenses received a sentence of incarceration. Of the 457 offenders convicted of single Class A - C charges, 63 percent received a sentence of incarceration. This represents a 16 percent difference between the court's use of incarceration for multiple and single offense convictions in 1977.

Although this difference was maintained in 1978, 1979 data on sentences of incarceration indicates that such sentences converge and, in fact, in 1979 sentences for single convictions are slightly more likely to be incarcerated than multiple convictions. Whether

this 1979 data reflects a beginning of a long term change or merely a one year occurrence is impossible to tell at this time.

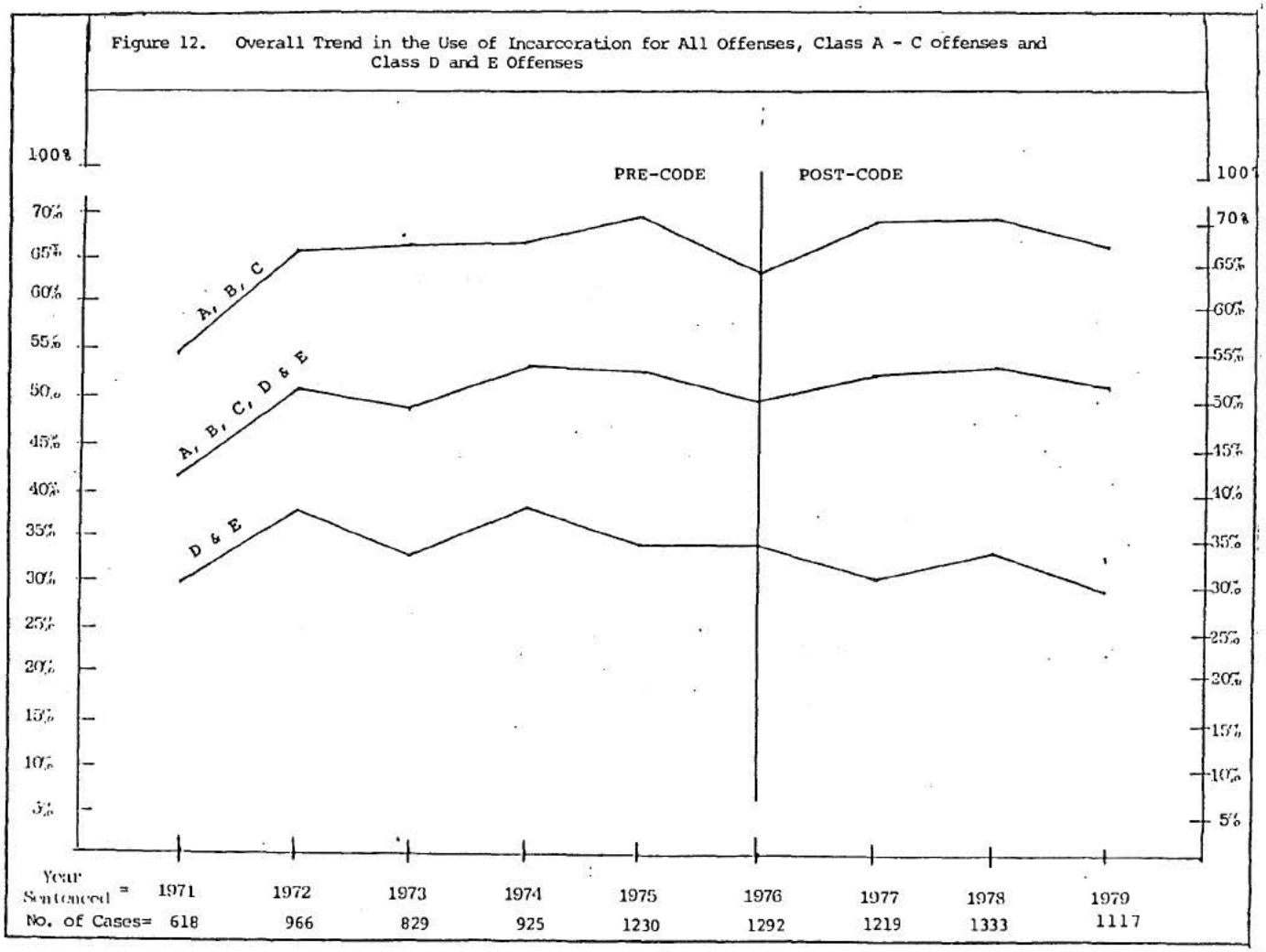
Despite the reduction in the magnitude of the differences in the use of incarceration, Figure 11 indicates that whatever effects the redefinition of offenses may have had on increases in multiple charging, they had no overall effect on significantly changing the court's more frequent use of incarceration for multiple convictions. The one exception to this is the 1979 data.

Thus far, this section of the chapter has examined how offense charging patterns are related to the court's choice of sentence types, its designation of places of confinement, and how the sentencing reform affected any relationships that were found. What has not been examined is the relationship between sentencing severity -- as indicated by the use of some form of incarceration -- and charging patterns, and the impact of the sentencing reform on that relationship. That is, we have not examined the frequency with which incarceration is used, its relationship to charging patterns or whether the sentencing reform affected any changes that did occur. Thus, the findings presented thus far must be synthesized into an overall system wide view of changes occurring over time in the court's combined use of split-sentences and sentences of incarceration-only.

The trends in the use of incarceration for more serious and less serious offense charges and the overall trend in the use of incarceration are shown as three separate trends for the time frame of the study in Figure 12.[15]

[15]Each trend line is computed as percentages on a different N base and thus will not sum to 100%.

Figure 12. Overall Trend in the Use of Incarceration for All Offenses, Class A - C offenses and Class D and E Offenses



For each year of the time-frame of the study, incarceration is more frequently used for Class A - C offense convictions than Class D and E offense convictions. The magnitude of the difference in the use of incarceration for serious and less serious offenses ranges from a minimum of a 25 percent difference in 1971 and 1974 to over a 35 percent difference in 1975. From 1977 to 1979, the percentage differences increased to near 40 percent.

An examination of the trend for Class D and E offenses indicates that incarceration has decreased in the post-reform period of 1977-1979. The slight increase in the use of incarceration for Class A - C

offense charges that did occur from 1977 through 1979 must be understood in the context of the increase in multiple offense charging for these offenses occurring during this period.

The trend in the use of incarceration for all sentencing events for the time-frame of the study requires close examination. It is a very significant trend. The importance of this overall trend lies in the fact that it demonstrates little change occurring in the court's use of incarceration over time. This means that the changes occurring from less serious to more serious offense charging, changes from single to multiple offense charging, changes in the number of cases processed by the courts, and the sentencing reform itself had little overall impact on the court's use of some form of incarceration. Thus, when the caseload of the court was relatively low and the court's docket consisted of less serious Class D and E offenses (eg. 1972-1974), incarceration was used as frequently as it was when the court's caseload was light and its docket largely consisted of more serious multiple Class A - C offense charges (eg. 1977-1979). However, this does not necessarily imply that sentencing has become less severe in Maine as shown by the separate trends in the use of incarceration for serious and less serious offenses.

Conclusion

The purpose of this chapter is to assess what outcomes in the court's choice of sentence types resulted from Maine's 1976 sentencing reform, whether changes in charging patterns occurred, and how changes that were found in charging patterns affected those outcomes.

Since the sentencing reform did not address the issue of when incarceration was appropriate, little change was anticipated in the court's use of some form of incarceration. The basic finding of the chapter confirms that expectation. There has been little overall change in the court's use of incarceration over time. There is no reason to believe that the small five percent (5%) increase in incarceration resulted from any particular change in the code. Numerous factors other than the reform account for the increase. For example, the decriminalization of the possession of small amounts of canabis and decriminalization of certain sexual acts between consenting adults reduced the court's caseload in the post-reform period. Since the court infrequently (less than 13% in the pre-reform period) chose incarceration for these convictions in the pre-reform period, the five percent post-reform increase in overall incarceration is partially a result of the absence of prosecuting these offenses. In fact, when the court's overall use of incarceration for comparable offenses were examined, there was little change in the frequency of incarceration.

More general factors also affected the increase in the use of incarceration. Of particular importance was an overall increase in the prosecution and conviction of more serious offenses that predated the reform, and an increase in multiple offense charging accompanying the reform.

An assessment of shifts in the court's choice of different types of sentences indicated that changes did occur. However, the before/after comparisons of sentence types that led to the appearance of change were found to be changes predating the sentencing reform when examined as trends over time. Such is the case for the shift to split-sentences and changes occurring in the court's selection of legal places of confinement.

An objective of the sentencing reform was to provide the court with greater flexibility in its sentencing options. This change did not provide the court with alternatives to incarceration but, expanded the court's authority to impose split-sentences and its authority to designate places of confinement.

A basic finding of the chapter is that split-sentences are being utilized for an increasingly larger proportion of offenders. This trend began prior to the sentencing reform. There is no question that the sentencing reform facilitated and reinforced this trend. The fact that after the reform split-sentences are increasingly being used for offenders convicted of more serious offense charges indicates that a functional equivalent to parole supervision is emerging in Maine. It differs from the former indeterminate sentencing and parole system in that the length of incarceration and conditions of post-release community supervision are controlled by the court rather than the parole board. This innovation combines certainty as to incarceration lengths -- a basic characteristic of determinate sentencing -- with community supervision upon release for those offenders the court believes such supervision is appropriate.

The increased use of split-sentences also related to changes identified in this chapter in the court's designation of places of confinement. There has been a shift from assigning offenders to the state's maximum security facility to more frequent assignments to county jails and the medium security facility. This trend predates the sentencing reform but was greatly enhanced by the abolition of eligibility requirements for assignments to various institutions that accompanied the reform. Thus, the increase in designating the Correctional Center as the place of confinement is a logical outcome of the removal of eligibility requirements on the court's use of this facility.

The change in court assignment of offenders to different facilities has major implications for Corrections officials in Maine. Prior to the reform, offenders confined in county jails were convicted of less serious offenses. Offenders assigned to the Correctional Center had to meet its eligibility requirements. Offenders confined at the State Prison were convicted of more serious offenses. This has changed. The increased use of split-sentences for offenders convicted of more serious offenses has resulted in more serious offenders being restrained in county jails and the Correctional Center.

Although the overall finding of this chapter is Maine's sentencing reform had little direct impact on the court's choice of sentence types, what emerges as the most significant finding is that despite all the changes having occurred in charging patterns, the use of split-sentences, and changes in where offenders are incarcerated, there has been little change in the frequency of overall incarceration or in the relationship between offense seriousness and the use of incarceration. However, as previously discussed, this does not mean that the sentencing reform had no impact. Maine's sentencing reform may have had an impact on sentence length and the actual amount of time offenders are incarcerated. These areas are addressed in the next chapter.

Chapter Seven

The Impact of Abolishing Parole and Introducing Flat-Sentences on Sentence Lengths

The basic public policy issue posed by Maine's sentencing reform is to assess what changes have occurred in the amount of time served by offenders. This reform had fundamental and far-reaching implications for decision-making about offenders. The abolition of parole and the introduction of flat-time sentencing changed the locus of decision-making authority over the amount of time inmates are imprisoned. Decision-making about sentence lengths was changed from a system shared amongst prison authorities, the parole baord and the sentencing judge to a system in which sentence lengths are almost wholly determined by the court at the time of sentencing. As a result of this change, the amount of time an offender serves is not primarily predicated on his or her behavior in prison, but rather, on what in the eyes of the court is an appropriate incarceration length at the time the sentence is imposed.

This chapter analyzes the impact of abolishing parole and introducing flat-time sentencing on changes in the court's choice of sentence legnths. The basic policy question addressed is whether the abolition of parole and the introduction of flat-time sentencing had any impact on incarceration lengths. Specifically, this chapter addresses three issues:

- Changes in the severity of sentence lengths, and time served;
- Changes in the relationships between the seriousness of criminal charges and severity of sentence lengths; and

- Changes in the certainty of the court's sentence on the amount of time served in imprisonment.

Sentence Length and Code Reform: Background

The basic goal of the drafters of Maine's sentencing reform was to change the locus of decision-making over the determination of the amount of time offenders are incarcerated. As discussed in the preceding chapter, the reform did not address--nor did it have a significant direct impact upon--decision-making over who will be incarcerated and who will remain in the community. Rather, the objective of the reform was to increase the visibility, certainty, and accountability for decision-making about the amount of time offenders would be confined in prison. To achieve this end, the three-tiered indeterminate sentencing structure--having minimum and maximum terms of confinement, parole release, and the possibility of parole violations, and hence reincarceration--was abolished and replaced with a flat-time sentencing structure.

Prior to the 1976 sentencing reform, authorized sentences to state correctional facilities were indeterminate. The legislature established statutory maximum sentence lengths for each offense. The court was authorized to impose both minimum and maximum terms of imprisonment. The court's maximum sentence was not to exceed the penalty established by statute for the offense and the court's minimum was not to exceed half of its imposed maximum. In addition, the legislature authorized the court to sentence adult offenders under the age of 27 to the

state's medium security facility for wholly indeterminate sentences of one day to thirty-six months duration. Thus, the sentencing judge decided where offenders would be incarcerated and decided minimum and maximum sentence lengths.

Coupled with this indeterminate sentencing structure was a second decision-making body: the Parole Board. The legislature authorized the Parole Board to determine the actual amount of time offenders would be incarcerated within the parameters established by the trial court. All offenders confined at state correctional facilities were eligible for parole release at the expiration of the minimum term imposed by the court--less good-time deductions of seven days for each month of confinement. The duration of an offender's actual period of confinement was indeterminant in that the initial release was left to the discretion of the parole board and that the period of supervision could be revoked and the parolee re-incarcerated.

The Parole Board was perceived as lacking accountability and visibility[1] and was thus abolished. Although this agency actually determined the amount of time an offender served, there were no legislatively prescribed policies or standards. The Parole Board developed their own policies, but were believed

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[1] Interview with Commission members, July and August, 1980.

to be releasing most offenders at the expiration of their minimum terms.[2] As no minimum sentence length existed for offenders sentenced to the medium security facility for indeterminate sentences of one day to thirty-six months, it was the Parole Board and prison authorities who made actual sentencing decisions for those offenders. Prison administrators set minimum sentence lengths at this facility at twelve months. Prison authorities and the Parole Board established the policy that inmates convicted of felonies were parole eligible within nine months and those convicted of misdemeanors within four and one-half months.[3]

As reported in Chapter Two, both the Parole Board and the Division of Probation and Parole--charged with supervising parolees--were openly criticized during the Commission's deliberations. The probation service was believed to be ineffective. The Parole Board was seen as too liberal and invisible a decision-making body to determine actual time served. Consequently, the Parole Board was abolished and parole supervision eliminated. Under current law, the court's flat-sentence is intended to be the period of confinement less good-time deductions.

Maine's Criminal Code Commission believed that by situating

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[2] Interview with Prison authorities and members of the Parole Board, August and December, 1981; January, 1982.

[3] Interviews with former Parole Board member and Prison authorities, August, 1981; January, 1982.

virtually all discretion over sentence lengths in the judiciary and by abolishing parole, the sentencing system would become more visible and accountable to the public and result in more certainty to the offender as to the amount of time he/she would be imprisoned. It was a reform that aimed at changing the structure of sentencing but not the underlying decision-making process. That is, while drafters of the reform abolished Maine's three-tiered indeterminate sentencing structure, they did not address the question of the discretion of judges and, hence, the underlying decision-making process in establishing sentence lengths. The absence of standards or guidelines within which the judiciary could make equitable sentencing decisions was the basis of the national criticism of Maine's reform discussed in Chapter Two. It will be recalled that the basic question was whether a reform that changed the structure of sentencing without simultaneously addressing the underlying basis of the decision-making process over sentences could result in any meaningful change.[4]

Although much of the initial criticism leveled at Maine's reform did not materialize, important policy questions remain unanswered. The problem posed for research is to assess what

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[4] This issue is addressed in Chapter Nine in terms of variation in sentencing practices in Maine

outcomes resulted from the statutory change in sentencing and abolition of parole.

Research Issues

The basic issue addressed in this chapter is whether sentence length has changed under the reform. To examine this issue we will first examine the relationship between the statutory change in sentencing and overall changes in sentence lengths. The major question is whether sentences have become more severe, less severe, or not changed since the abolition of the indeterminate sentence and parole.

In order to examine this question, however, we must examine any findings in terms of alternative explanations. For example, any of our findings could be argued to be the result of changes in single versus multiple convictions, changes in the distribution of offenses among offense classes, or types of offenses, changes in proportion of split sentences, or changes in prior record of defendants. Each of these rival hypotheses will be examined so as to increase our confidence that our findings reflect changes brought about by reform of sentencing and release procedures not by other aspects of the reform such as new definitions of crimes or by other factors such as prosecutorial processing.

The chapter will conclude with a section on the impact of the new code on certainty of time served. The research

issue is whether the reform has actually increased the public's and defendant's awareness of when he/she will be released.

Methodology and Sample

The research issues detailed above require comparisons of the court's choice of sentence lengths and actual time served in imprisonment for a sample of offenders sentenced under Maine's former indeterminate sentencing system with a sample of offenders sentenced under the present system of flat-time sentencing and no parole release. To ensure such comparisons render valid assessments of impact necessitates an examination of sentencing and parole/corrections release decisions over time. That is, to address what changes occurred in the severity and certainty of sentences and time-served requires comparisons of the outcomes of individuals convicted and sentenced for criminal offenses prior to Maine's reform with outcomes for those convicted after the reform. Thus, in the subsequent analysis, pre- and post-reform comparisons are made of individuals convicted and sentenced under the two different sentencing structures. A series of before and a series of after comparisons are made of these outcomes to ensure that the changes identified are not short term changes or the artifact of other events.

Two methodological problems are encountered in making comparisons of sentence lengths and time-served. The first problem centers on obtaining a valid measure of sentence lengths.

This problem was created because there were two penalty systems from which comparisons of sentence lengths and time-served were to be made. The second problem results from unanticipated changes in sentencing practices over time affecting the selection of a subsample of sentencing events to compare outcome data on time-served.

The first methodological problem is a direct result of the substance of the two sentencing structures from which measures of sentences to compare outcomes were to be made. This measurement problem centers on the fact that under prior law, the courts were authorized to impose both minimum and maximum sentence lengths for confinement at the State Prison and indeterminate sentences of one day to thirty-six months of incarceration for offenders confined at the Correctional Center. These entirely different types of indeterminate sentences need to be compared with flat-sentence lengths. As a result, any pre-reform measure of sentence length is specific to the legally designated place of confinement and can have a minimum sentence of one day. Under the present sentencing structure, the court is only authorized to impose flat-terms of incarceration at all facilities. Consequently, whatever pre-reform measure of the court's sentencing decision utilized--minimum or maximum--would introduce a bias when compared with the measure of the flat-sentencing decisions of the court. This measurement problem was further complicated by the fact that offenders processed under the old sentencing system who were given wholly

indeterminate sentences of one day to thirty-six months at the Correctional Center would have one day minimum term. Prison authorities set an administrative minimum sentence of twelve months for these sentences.

Three strategies were considered in developing a procedure to measure and compare sentence lengths.[5] The first strategy considered was comparing minimum sentences before reform with flat-sentences after reform. This would result in a very conservative measure of pre-reform sentences as all assignments to the Correctional Center would be treated as a one-month sentence. The effect would artificially inflate post-reform sentence lengths or result in unwieldy and unnecessary comparisons of sentence lengths at each institution--the Correctional Center and the State Prison. The second strategy was to utilize minimum sentences to the State Prison and compute all sentences of one day to thirty-six months to the Correctional Center as a twelve month sentence of incarceration. This would result in a liberal, but artificially inflated measure of pre-reform sentences and not reflect the court's decisions for Correctional Center confinements. The third strategy was to compare pre-

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[5] No consideration was given to comparing pre-reform maximum sentences with post-reform flat-sentences as the pre-reform maximum was wholly artificial in nature. Most offenders were released prior to the expiration of their minimum sentence.

and post-reform incarceration lengths by employing actual time served in imprisonment as a measure of sentence length. Actual time served permits accurate comparisons but also measures all post-conviction decisions including those made by other agencies than the courts--such as good time crediting by prison officials, pre-reform decisions by the parole board, and post-reform decisions by prison authorities as to various forms of early release. It was the third strategy that was finally adopted for most of the data analysis in this chapter. That is, actual time-served in confinement is employed as the measure of sentence lengths.

The major policy issue addressed in this chapter centers on changes that occurred in the amount of time served in imprisonment resulting from Maine's historic abolition of parole release and abolition of indeterminate sentencing. Actual time-served is the most realistic measure of sentence lengths from which valid comparisons can be made. It also resolves serious problems for any reader attempting to estimate what sentence length means in terms of time-served given previously described changes in good-time crediting. However, actual time-served is an inadequate measure to address some of the issues raised in this chapter. Such is the case for analyzing changes in the certainty of sentencing decisions. To address the question of whether there have been changes in the certainty of sentence lengths and identify what those changes are requires <u>both</u> a measure of the court's sentence and of time served.

That is, to determine when the offender could expect to be released from imprisonment necessitated calculations on sentence lengths less good-time. This earliest date at which the offender is eligible for release is compared with actual time-served to address the impact of abolishing parole and the indeterminate sentence on the certainty of sentence lengths.

The bulk of the analysis in this chapter, however, employs the measure of actual time-served in the system of indeterminate sentencing and parole release with actual time-served in the system of flat-time sentencing and no parole release. Actual time-served includes post-conviction decisions in processing offenders; it does not just reflect the decisions of the court. Nevertheless, this measure enables the research to make conceptually accurate comparisons of real--as opposed to artificially constructed--changes in the dependent variable. Actual time served was measured by the following algorithm:

Date Released - Date Admitted + County Jail Time Credited = Time-Served

Thus, actual time-served is a measure of the number of months in confinement. For offenders processed under the indeterminate system, actual time served measures the period of confinement until the first parole release. The 260 pre-reform re-incarcerations for parole violations and post-reform re-incarcerations for probation revocations on split-sentences are not included. Under the flat-time system, time-served is computed on the basis of the number of months of confine-

ment prior to release to the community. Arguably, the pre-reform measure of time-served is conservative but preferable to the inclusion of incarcerations on parole violations because it measures the first date released from a sentence of the court.

The second methodological problem posed for the analysis of data in this chapter resulted from unanticipated changes in sentencing practices over time. It will be recalled from Chapter Five that the technique of record linkage was employed to obtain the longitudinal data necessary to address questions about changes in time-served in imprisonment. However, it was only possible to obtain a subsample of all cases collected in the courts. Specifically, data on time-served by offenders sentenced to county jails was not obtained.

It was not expected that the absence of time-served in county jails would pose a problem. The length of county jail sentences was collected in the courts and could be employed if needed. More importantly, however, the focus of the present research is on the impact of abolishing parole and abolishing indeterminate sentencing on actual time-served. Since offenders sentenced to county jails were given fixed sentences under both the old indeterminate and the new flat-sentencing structure, county jail sentences have no theoretical importance for the present analysis.

The data analyzed in Chapter Six reveal changes occurring in sentencing practices over time. Specifically, there was

a nine percent (9%) post-reform increase in the court's choice of county jails as the place of confinement: Of the 2,852 pre-reform sentences of incarceration 34% (N=1003) were confined in county jails. The figure is higher after the reform--of the 2,293 sentences of incarceration, 43% were assigned to county jails.

The increased use of county jails was accompanied by a second change in sentencing practices--an increase in the court's use of split-sentences. Overall, split-sentences increased from 22% (N=639) of all pre-reform sentences of incarceration to 34% (N=780) of all post-reform sentences of incarceration. This overall increase in split-sentences was accompanied by an increase in the court's use of state facilities as the place of confinement for the incarceration portion of split-sentences. Of the 1,849 pre-reform confinements to state facilities, 10% (N=192) were split-sentences. Of the 1,308 post-reform confinements at state facilities, 22% (N=285) were split-sentences.

The implications of the increased use of county jails and the increased use of split-sentences for the present study are obvious--using a subsample of confinements (those to state facilities) biases an overall system assessment of impact. That is, any analysis focusing on actual time-served in state correctional facilities introduces some degree of distortion in assessing changes in the severity of incarceration lengths brought about by Maine's sentencing reform.

Two strategies were considered to resolve the methodological problem posed by the change in sentencing practices

in Maine. Since data on sentence lengths at county jails was collected, they could be used in the analysis. County jail sentence lengths are subject to less variation in time-served than are sentences to state facilities. Thus, the court's decision as to the length of county jail sentences could be used as the measure of time-served. This strategy would permit the research to address overall system changes in the severity of sentence lengths and incorporate changes in sentencing practices that had occurred. At the same time, it has a major disadvantage: The inclusion of the 1,429 county jail sentences diverts the focus away from the major policy questions posed by Maine's sentencing reform. The inclusion of pre- and post-reform county jail sentences conflates questions of system changes with the major focus of the research--assessing the impact of the statutory changes in sentencing.

The present research was designed to address the impact of abolishing parole and the indeterminate sentence on changes in time-served and changes in certainty of sentences of incarceration. By excluding sentences to county jail from the analysis, the analytic focus of the research is retained. Consequently, the second strategy--the use of the subsample of offenders sentenced to state correctional facilities--was adopted. It limits the analysis that follows to measuring the outcomes of sentences to state correctional facilities but in so doing retains the focus on the basic policy question the research was designed to address.

The analysis of data in this chapter is based on 2,520 cases for which court and corrections records were linked and

actual release dates or estimated release dates were obtained. Of these 2,520 cases, 1,543 were processed under the old indeterminate system and 977 were processed under the new flat-time sentencing system.

Of the 3,138 court assignments to state correctional facilities, 2,821 inmate files (or 90% of the court sample) were collected from files of state correctional facilities and linked with court data. Outcome data on time-served was obtained for 2,520 of these cases (or 89% of all records linked and 80% of the court sample of sentences of incarceration to state facilities).

Time-served is not analyzed for 301 cases because: 22 inmates died prior to the expiration of the sentence; 51 were transferred to out-of-state facilities prior to the expiration of their sentences, 9 cases were new code cases sentenced to life imprisonment.[6]

Of the remaining 219 cases excluded, 110 were incomplete at the institution. These were primarily early pre-reform cases where no release date could be obtained. A total of 119 cases were excluded because a close examination of the data suggested the time-served variable was invalid--for instance

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6 Under the new criminal code, a life sentence cannot be reduced unless the individual is pardoned, the sentence is commuted, the sentencing judge reduces it, or the sentence is reduced on appeal.

where data elements comprising this variable were inconsistent or time-served exceeded the new code flat-sentence. The deletion of these cases is regretable. An analysis of these cases indicates that no systematic bias is introduced as a result.

Thus, the analysis of data in the present chapter is based on the sentencing events for which valid time-served data was collected. Of these cases, 195 inmates had not completed their sentences. Release dates were projected for these 195 inmates--43 sentenced under the old code and 152 sentenced under the new criminal code. Projected release dates were obtained by using the Department of Correction's minimum release eligibility date for these cases. Time-served was projected for an additional 52 cases. The minimum release eligibility dates are the court's sentence less all possible good-time credits.

This chapter analyzes and discusses changes in incarceration lengths for 1,543 pre-reform and 977 post-reform sentencing events. Incarceration lengths are based on actual time-served. It only represents time-served for the court's sentence for conviction charges in one sentencing event. Thus, it is calculated on when the offender was paroled or released from the court's sentence for conviction charges comprising the sentencing event. It represents time-served for one sentencing event and excludes time-served by the offender for other charges arising from different sentencing events.

Overall Changes in Incarceration Lengths

There has been an overall substantively and statistically significant post-reform increase in the amount of time served by offenders and, hence, sentence lengths. A comparison of all 1,534 pre-reform sentences of incarceration with all 973 post-reform sentences of incarceration reveals both the mean and median amount of actual time-served increased in the post-reform period. The mean time-served for the 1,534 pre-reform sentencing events is 13.8 months with a standard deviation of 13.0. Not only has the mean time-served increased since the change, but there is greater variation in incarceration lengths as well. This is reflected in the larger post-reform standard deviation of 21.9 compared with 12.9 pre-reform.

A comparison of the median time-served reveals similar findings of a post-reform increase and, hence, sentence lengths. Time-served increased from a pre-reform median of 9 months to a post-reform median of 13 months. Thus, prior to reform fifty percent (50%) of offenders served sentences of 9 months or more while after reform fifty percent (50%) of offenders served sentences of 13 months or more. Put another way, a comparison of median time-served shows that one-half of the post-reform offenders are serving at least forty-four percent (44%) more time in state correctional facilities than offenders processed under the indeterminate sentencing system with parole release.

The overall increase in incarceration lengths is further confirmed by examining the percentage of sentences occurring

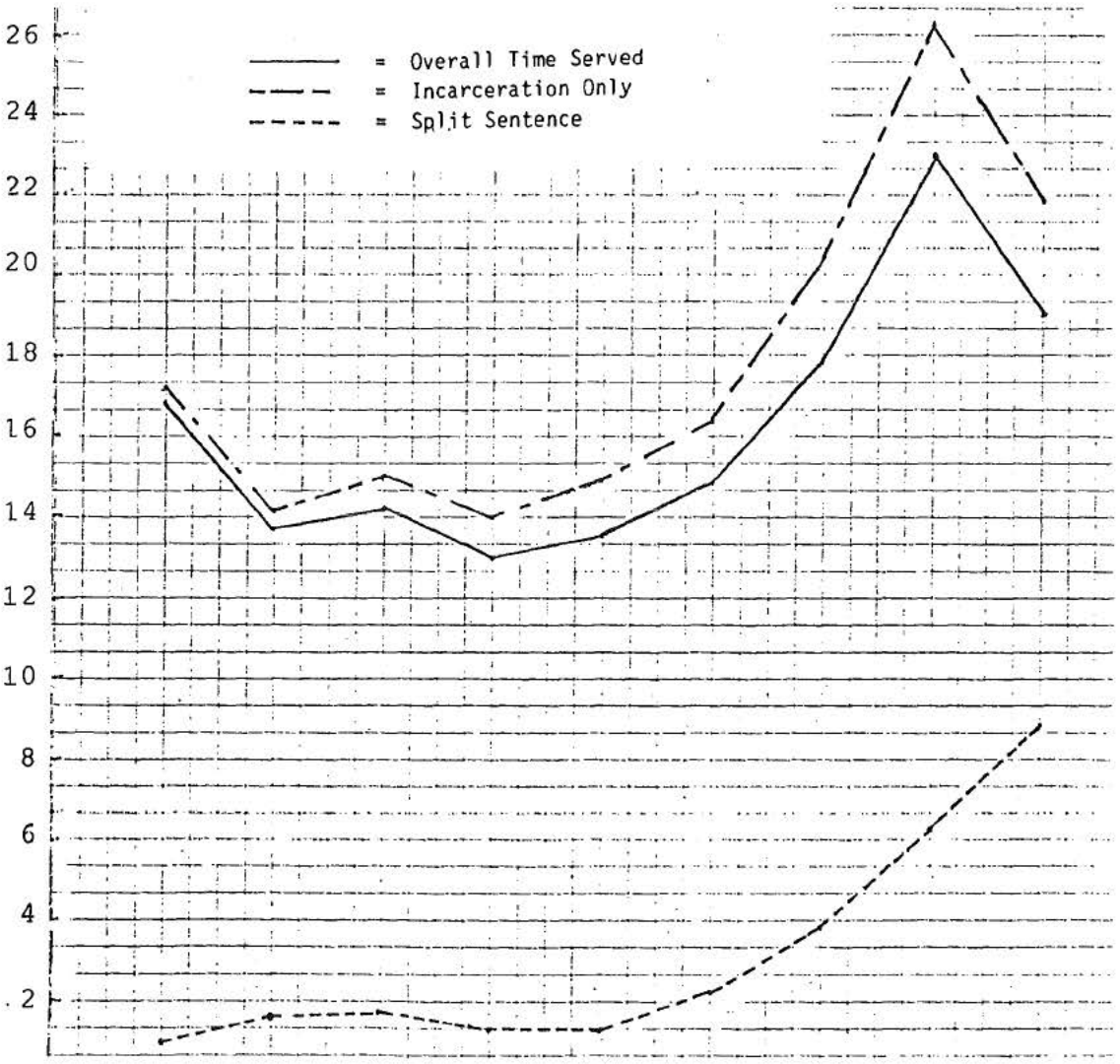
for relatively lengthy periods of incarceration. For example, seventy-five percent (75%) of all pre-reform incarceration lengths are 17 months or less. After reform, incarceration lengths for seventy-five percent (75%) of all offenders are twenty-four (24) months or less. This represents a seven month increase in time-served for offenders given lengthier sentences as it shows more time being served for the third quartile or seventy-five (75%) of the sample.

The overall finding of a post-reform increase in incarceration lengths is based upon all sentences of imprisonment to state correctional facilities--exclusive of convictions for murder and homicide. This change may be affected by a number of factors other than the sentencing reform. Those factors are: historical changes in sentencing practices and changes in charging patterns unrelated to the 1976 statutory change in sentencing. To begin investigating how historical changes may have influenced these data, we will look at the data in terms of yearly time frames.

Sentence Length Changes By Year

Figure 1 presents three trend lines. Each line shows mean incarceration lengths over time: 1) overall time-served by year sentenced; 2) time-served for sentences of incarceration only by year sentenced; and 3) time-served for split-sentences by year sentenced. A trend point for each year repre-

Figure 1. Mean Incarceration Lengths (in months) By Year Sentenced and Type of Sentence



	1971	1972	1973	1974	1975	1976	1977	1978	1979
Statistics on Overall Time Served									
X	16.7	13.6	14.2	13.0	13.5	14.8	17.9	23.0	19.0
S.D.	15.04	12.95	12.69	12.0	13.71	15.11	21.38	25.73	18.03
M	11	9	9	9	9	10	12	17	14
R	113	83	102	80	92	144	194	194	138
N	130	252	256	311	338	319	293	312	236
Statistics on Time Served for Sentences Of Incarceration Only									
X	17.1	14.1	15.0	14.0	14.9	16.4	20.5	26.2	21.9
S.D.	15.01	12.97	12.68	11.96	13.80	15.3	22.26	26.82	19.19
M	11	9	9	9	9	12	15	18.5	17
R	111	82	102	78	92	144	194	194	135
N	127	241	243	286	303	284	248	262	183
Statistics on Time Served for Split-Sentences									
X	1	1.5	1.6	1.2	1.2	2.1	3.9	6.1	8.8
S.D.	0	.52	1.39	.41	.41	1.11	3.99	4.56	6.51
M	1	2	1.2	1	1	2	2.7	5.5	7
R	0	1	5	1	1	5	23	18	23
N	3	11	13	25	35	35	45	50	53

sents the mean time-served. Three trend points are shown for each year: overall mean time-served; mean time-served for sentences of incarceration only; and mean time-served for split-sentences. Individuals sentenced in 1976 under the old and new sentencing structures are grouped together. And, cases docketed in 1979 but sentenced in 1980 are not shown. Three sets of statistics appear at the bottom of Figure 1 for each year. They include: the mean ($\bar{X}$) on which the trend points are computed, the median (M), measures of dispersion, standard deviations (S.D.) and ranges (R)--and the number of cases (N) on which these statistics are based.

The solid trend line represents overall time-served. It includes both sentences of incarceration only and split-sentences. That is, it aggregates time-served for both types of sentences of incarceration and addresses changes in the mean amount of time-served over time for all offenders sentenced to state facilities. The trend line on overall time-served shows that for the first two years of the new code time-served increased, but dropped during the third year, 1979. It graphically demonstrates that an increase in sentence lengths and in the amount of time-served has occurred since the 1976 sentencing reform. In order to avoid the possibility that the means in Figure 1 could be artificially inflated by a few lengthy sentences, the median, which is less affected by extreme sentences, is also reported in Figure 1. An examination

of the median time-served by year confirms the findings that time-served increased when the sentencing reform was implemented and is higher for each subsequent post-reform year than any year prior to the sentencing reform. The overall trend in time-served shows variations within both the pre-reform and post-reform periods. It neither addresses whether changes occurred in the amount of time-served by offenders with split sentences or the amount of time-served by offenders with sentences of incarceration only. The overall trend line does show the combined impact of these sentences. Despite the increased use of split-sentences, overall time-served has increased since the 1976 sentencing reform.

Incarceration Only

The second trend line represents the mean amount of time-served by offenders given sentences of incarceration only. This line shows the time-served by offenders processed under Maine's old indeterminate sentencing system whose release was determined by the Parole Board and time-served by offenders processed under Maine's new flat-time sentencing system whose release was determined by the court's decision as to sentence lengths and corrections decisions as to good-time crediting and transfer.

Offenders processed under Maine's new flat-time sentencing system are shown to be serving more time in imprisonment than offenders processed under the old indeterminate system who

were released by the Parole Board. The trend line shows that the amount of time-served by offenders given sentences of incarceration only increased when the reform was implemented and is higher for each subsequent post-reform year than the pre-reform period of 1971-1975. An examination of the median number of months incarcerated by year shown at the bottom of Figure 1 yields similar results. The median number of months served is, of course, lower than the mean as the median is unaffected by the more extreme sentence lengths. Although a more conservative measure of average time-served, the median number of months served for sentences of incarceration only is also greater for each year since 1976 than any pre-reform year.

The finding of increases in both the mean and median amount of time-served for each year since 1976 for offenders given sentences of incarceration only further supports the original findings that incarceration lengths have increased as a consequence of the introduction of flat-time sentencing and the abolition of parole. Although other historical changes may affect time-served, they are shown to be relatively negligible.

The findings presented in Chapter Six indicated that proportionately fewer post-reform offenders are receiving sentences of incarceration only. But, the N's appearing at the bottom of Figure 1 for sentences of incarceration only indicate the

absolute number of sentences of incarceration only to state facilities have not dramatically changed.

Thus, while proportionately fewer post-reform offenders are confined in state facilities with sentences of incarceration only, the absolute number of confinements for this sentence type has remained relatively unchanged. What has changed is the length of these confinements as measured by time-served.

Split-Sentences

The post-reform decrease in the percent of sentences of incarceration only does not mean that proportionately fewer offenders are receiving sentences involving some form of incarceration. The decrease in sentences of incarceration only is accompanied by a substantial increase in the court's use of the split-sentencing option. The findings in Table One indicate a post-reform increase in the length of confinement for individuals given split-sentences. It is essential to determine whether this before/after comparison actually reflects from statutory changes in 1976. The findings in Chapter Six indicated the court's increasing choice of the split-sentencing option began in 1974--before the new code was implemented.

This question is addressed by the third trend line in Figure 1. It answers the question of whether the incarceration portion of split-sentences increased when this sentencing option became more popular among the judiciary or was a consequence

of statutory changes in 1976 that substantially increased the lengths of the incarceration portion available to the court when it chose to impose this type of sentence. This trend line shows the amount of time-served in confinement for split-sentences by year. The statistics are based on those split-sentences served at state correctional facilities.[7] Thus, the trend line shows the amount of time-served by offenders given split-sentences who served the incarceration portion of that sentence in state correctional facilities.

The trend line on split-sentences shows a basic change in time-served in confinement. This change began in 1976. The change consists of a substantial increase in the length of confinement. The mean increase in incarceration lengths of split-sentences began in 1976 and has steadily increased since that time. An examination of the median time-served for split-sentences appearing at the bottom of Figure 1 confirms this change. This data indicates that the length of split-sentences has increased following the 1976 reform. Thus,

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[7] The overall question of whether the length of split-sentences changed is not addressed. As indicated in the previous section of the chapter, all county jail sentences are excluded from the present analysis. However, it was possible to address whether the length of split-sentences changed for the entire sample of court dispositions. Unlike pre-reform sentences of incarceration only which were indeterminate and parolable, split-sentences were not. Thus, it was possible to examine the court's selection of the lengths of 639 pre-reform and 780 post-reform split-sentences. That analysis revealed a significant post-reform increase in the lengths of all split-sentences--inclusive of county jails. The mean pre-reform split-sentence length is 2.4 months with a standard deviation of 2.7. The mean post-reform split-sentence length is 5.1 months with a standard deviation of 16.1.

while split-sentencing became more popular in the pre-reform period, the increase in the length of these sentences is related to the 1976 statutory change. Not only are the courts imposing split-sentences on more and a larger proportion of offenders, but the courts have significantly increased the lengths of the confinement terms as well.

The two trend lines showing time-served for split-sentences and sentences of incarceration only do not show overall impacts of changes in sentence lengths. Overall time-served for both of these sentence types are summarized by the first trend discussed. As previously discussed and analyzed, overall time-served also increased following the 1976 reform. This increase might appear paradoxical. The court's use of split-sentencing has increased. As shown in Table One, average split-sentences are shorter in duration than sentences of incarceration only. Since the courts have more frequently imposed split-sentences in the post-reform period, one would anticipate the overall length of time-served would decrease. Both Table One and Figure 1 show that this has not occurred. Rather, overall time-served increased. The increase in time-served for all sentence types attests to the increased severity of sentences following parole abolition and the introduction of flat-time sentencing in Maine.

This section of the chapter has not addressed changes in the length of sentences as measured by time served. After

Table 1. Incarceration Length, Before and After Reform ...By Type of Sentence

	Before	After	Change
Incarceration Only			
Mean	14.9	22.4	+7.5 months
S.D.	13.0	23.0	
Median	9.0	16.0	+ 7 months
Range	113	194	
N	1417	809	
Split-Sentences			
Mean	1.5	6.2	+4.7 months
S.D.	.8	5.3	
Median	1.0	4.0	+3 months
Range	5	23	
N	117	164	
Total			
Mean	13.88	19.64	+5.8 months
S.D.	12.99	21.92	
Median	9.0	13.0	+4.0 months
Range	113	194	
N	1534	973	

carefully comparing time-served on a year-by-year basis and for different sentence types, the basic, irrefutable conclusion is that the introduction of flat-time sentencing and the abolition of parole has been accompanied by an increase in sentence lengths. This does not mean that the statutory changes in sentencing "caused" incarceration lengths to increase or are

the "reason" explaining the changes. Subsequent sections of this chapter address these issues at some length.

Split-Sentences

Split-sentences are important to distinguish from other incarceration sentences because of a historical change in sentencing practices resulting in the more frequent use of split-sentences in the post-reform period. As described in Chapter Six, the increased use of the split-sentencing option predated the sentencing reform but was reinforced by the reform because the new sentencing statutes explicitly legitimated the use of split-sentences. In addition, with the abolition of parole supervision in the 1976 reform, split sentences allowed for street supervision after incarceration. To what extent each of these accounts for the increased use of split-sentences is unknown, however, both of these would contribute to an increase in the use of split-sentences.

Pre- and post-reform differences in time-served for split-sentences and sentences of incarceration only are shown in Table One. These findings indicate the overall post-reform increase in incarceration lengths discussed above have occurred for <u>both</u> sentences of incarceration only and split-sentences. This indicates that offenders processed under Maine's flat-time sentencing structure without parole release are serving more

time in confinement than offenders processed through Maine's previous indeterminate structure. Offenders serving flat-time sentences are confined longer than their pre-reform counterparts who were subject to parole release. Fifty percent (50%) of the post-reform offenders are serving at least seventy-two percent (72%) more time on flat-sentences. And, offenders given split-sentences after the reform are serving more time than their counterparts before the reform.

The increased frequency in the courts' use of split-sentences actually masks the magnitude of the post-reform change. Under Maine's new sentencing structure, the courts are imposing longer periods of confinement for all sentences to state correctional facilities--both split-sentences and sentences of incarceration only.

Data analyzed and discussed in the preceding chapter indicated the change in sentencing practices with more frequent use of split-sentences could not be attributed to the 1976 reform. Thus, it is crucial to determine how the change in sentence lengths is affected--if at all--by the abolition of parole and introduction of flat-time sentencing. This requires an examination of incarceration lengths over time.

The findings of a significant post-reform increase in time-served are important. The overall amount of actual time-served has increased. And, there has been an increase in incarceration lengths for both split-sentences and sentences

of incarceration only. However, caution must be exercised in attributing these changes to the statutory reform in sentencing or to a lasting effect of the reform. The findings are before/after comparisons and consequently may disguise important historical trends affecting incarceration lengths but unrelated to the 1976 reform. Consequently, it is imperative to examine these changes as trends over time. This will allow the research to more confidently address the extent the change in incarceration length occurred systematically in each of the years after the reform and that the "averages" do not mislead us to concluding a difference when the differences may have been very short-termed. In other words, it is possible that sentence lengths escalated during the first year of the reform, but returned to levels comparable to pre-reform sentences thereafter.

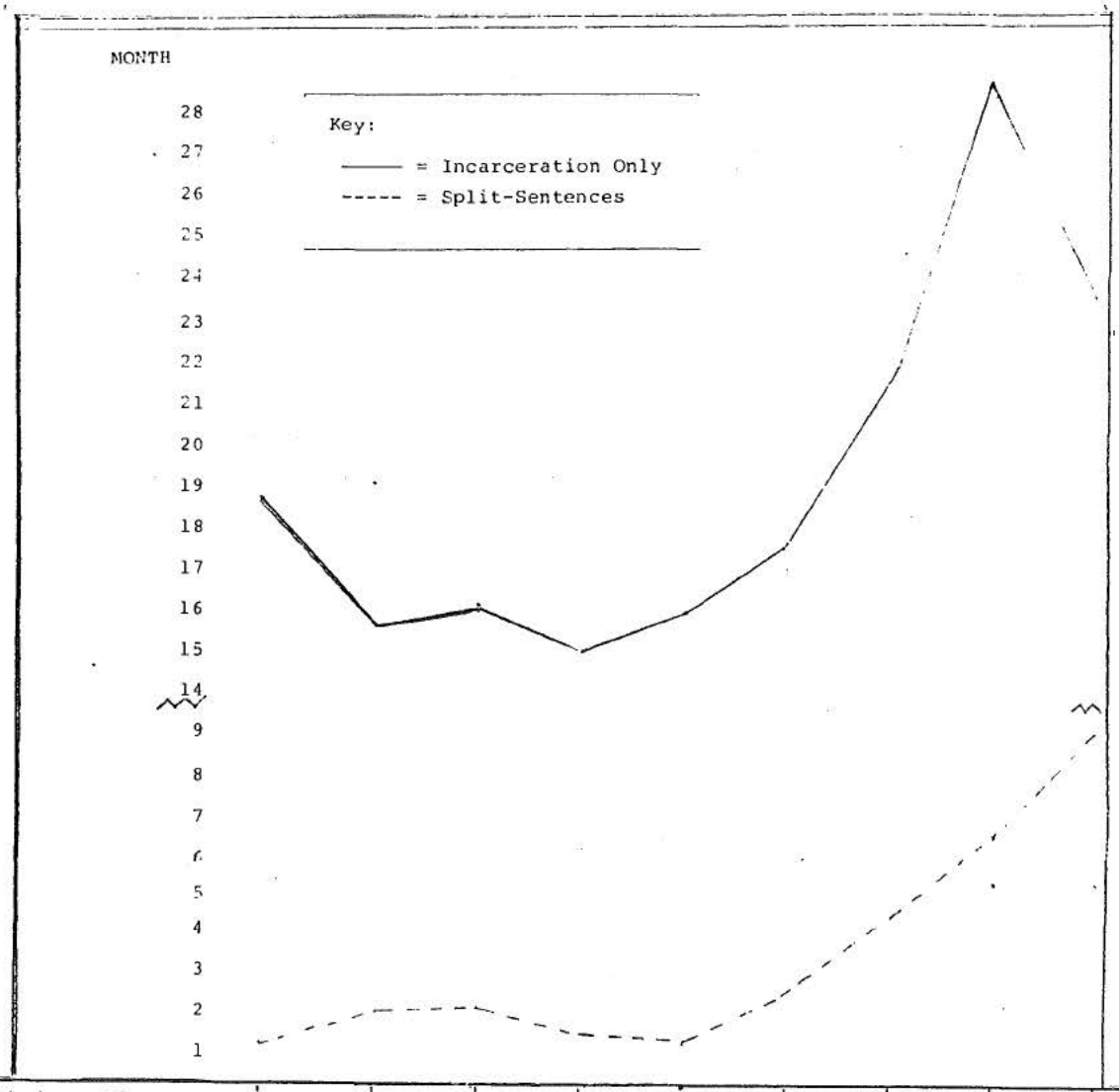
Yearly Trends in Split-Sentences

In order to address this issue, Figure 2 presents two trend lines on incarceration lengths for Class A-C charges only: mean time-served by year for sentences of incarceration only and mean time-served by year for split-sentences.

The trend line in Figure 2 on mean incarceration lengths for split-sentences is important. It indicates time-served increased when the criminal code was implemented and has increased each subsequent year.

The trend line on mean Class A-C lengths for sentences of incarceration only is substantially higher than the trend

Figure 2. Mean Incarceration Length (In Months) for Class A-C Offenses By Year Sentenced and Type of Sentence



Statistics on Time Served for Sentences Of Incarceration Only	1971	1972	1973	1974	1975	1976	1977	1978	1979
$\bar{X}$	18.6	15.4	15.7	14.9	15.9	18.1	21.6	28.1	23.3
S.D.	16.47	14.399	13.77	12.703	14.746	16.642	23.017	27.444	19.453
M	13	9	9	9	10	13	15.5	19	18
R	111	82	102	76	92	144	194	194	135
N	99	179	188	214	244	222	224	238	168
Statistics on Time Served for Split-Sentences									
$\bar{X}$	1	1.7	1.8	1.2	1.1	2.2	4.1	6.2	8.9
S.D.	0	.488	1.641	.405	.366	1.234	4.263	4.591	6.519
M	1	2	1	1	1	2	3	6	7
R	0	1	5	1	1	5	23	18	23
N	2	7	9	11	20	26	38	48	52

on split-sentences. This trend line permits comparisons of pre-reform sentences where the Parole Board determined time-served with post-reform flat-sentences where time-served is virtually controlled by the sentencing judge. Like the trend line for split-sentences, the trend on mean time-served for sentences of incarceration only substantially increased in the post-reform period. It indicates that shorter incarceration lengths for Class A-C offenses occurred when the Parole Board made release decisions than when sentences were controlled by the judiciary.

Overall, the findings in Figure 2 indicate the post-reform increase in sentencing severity for more serious offenses has occurred for both sentence types--split-sentences and sentences of incarceration only. Moreover, it shows the major increase in lengths of incarceration has occurred for sentences of incarceration only. Most offenders received this type of sentence in both pre- and post-reform periods. Offenders processed under the flat-time system and given flat-sentences are serving more time than their pre-reform counterparts whose release was determined by the Parole Board.

Impact of Offense Class, Offense Type, Number of Criminal Convictions and Prison Record on Sentence Length

Identifying increases in the length of confinement leads us to the second question of concern in this chapter: whether this increase holds after controlling on important variables which may provide an alternative explanation.[8] The first concern is to test whether this increase in severity of conviction offenses accounts for the increase in lengths found thus far. In order to test for this possibility, analysis of the data pre- and post-reform will be performed by sentence length controlling on the statutory offense classification and by particular types of offense. These analyses will be presented by year as well as by pre- and post-reform.

Historically, a second trend that may have created the increase in severity that has been found thus far is the increase in multiple convictions. Although the literature is scant on whether offenders convicted of multiple convictions receive harsher sentences it seems logical that, while judges rarely sentence consecutively, they may very well sentence offenders with multiple convictions more severely than the single conviction defendants. With the substantial increase

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[8] It will be recalled from Chapter Six that there were historical changes in patterns of offenses charged. Specifically there was an increase in more serious Class A-C convictions beginning in 1975.

in multiple convictions after the reform it is important to test for this explanation of our findings by controlling on number of convictions.

In addition to the above controls which have been suggested by our previous analysis, the role of prior record is important. Research has consistently found prior record to be an important factor in the sentencing decision and sentencing policy developed both by commissions and legislatures have increased its importance by specifying increases in sentencing severity when the defendant has a prior record (see Chapter One for a discussion of state reforms). This section of the chapter will conclude with an analysis of the sentence length data controlling on whether the defendant has a prior record.

Offense Class

This section of the chapter focuses on the important question of the relationship between the offense class and sentencing severity. That is, it examines the extent time-served by offenders is related to the conviction charges. The basic concern is to identify changes occurring in the relationship between offense class (legislative seriousness ranking) and sentencing severity as a result of Maine's reform. It examines whether the overall post-reform increase in time-served reflects a change in overall severity of conviction offenses or whether the increase reflects an increase in severity even when controlling for offense.

The first issue addressed is whether the increase in sentencing severity following the implementation of the new

criminal code equally affected all offenders confined in state facilities regardless of the conviction offenses. This issue can be most readily addressed by examining the relationship between offense class and incarceration lengths. Is the relationship between code-reform and sentence length specified or explained when we control on whether the conviction offense was a Class A-C or a Class D or F offense? To ensure that the previously reported post-reform increase in sentencing severity is not explained by an increase in more serious conviction offenses and to identify preliminarily if any changes occurred in the relationship between offense seriousness and sentencing severity we will examine these relationships over time.

Table Two compares pre- and post-reform incarceration lengths for the five graded offense classes. It shows that a direct positive relationship between offense class (offense seriousness) and sentencing severity exists in both pre- and post-reform periods but indicates major changes occurring in that relationship following the abolition of parole and introduction of flat-time sentencing. Those changes are: a post-reform increase in mean incarceration lengths for Class B and C convictions and a post-reform decrease in mean incarceration lengths for both Class D and E convictions. An examination of median incarceration lengths shows similar differences.

The findings in Table Two indicate a post-reform change in the relationship between the seriousness of conviction

Table 2. Incarceration Length, Before and After Reform By Offense Class

Offense Class		Before	After	Change
A	Mean	33.8	38.8	(N.S.)
	S.D.	24.34	38.32	
	Median	27.5	26	
	N	122	174	
B	Mean	15.6	20.1	+4.5 months
	S.D.	13.3	16.79	
	Median	10	16	+6 months
	N	357	304	
C	Mean	11.6	13.7	+2.1 months
	S.D.	8.06	9.09	
	Median	9	11	+2 months
	N	682	404	
D	Mean	9.6	6.9	-2.7 months
	S.D.	7.04	2.57	
	Median	9	7	-2 months
	N	278	64	
E	Mean	9.5	3.8	-5.7 months
	S.D.	7.24	1.81	
	Median	8	4	-4 months
	N	63	10	

offense--as measured by offense class, and sentencing severity--as measured by time-served in imprisonment. It shows the increase in sentencing severity is related to the seriousness

of the offense(s) charged.[9] This increase has only occurred for more serious Class A-C charges. It shows the magnitude of the change in the severity of incarceration lengths is related to the seriousness of the changes. The major increase in incarceration lengths has occurred for the more serious Class B and C offense charges. There is no significant difference in means for Class A offenses, although the difference is an increase of five months since the reform.

The decrease in sentencing severity for less serious Class D and E offenses is important. The data in Chapter Six indicate the courts are using incarceration less frequently for these offenses. The data in Table Two indicate that when the courts elect to incarcerate these offenders, they serve less time than their pre-reform counterparts.

What is at issue in this chapter is how Maine's sentencing reform affected time-served. The analysis of data thus far

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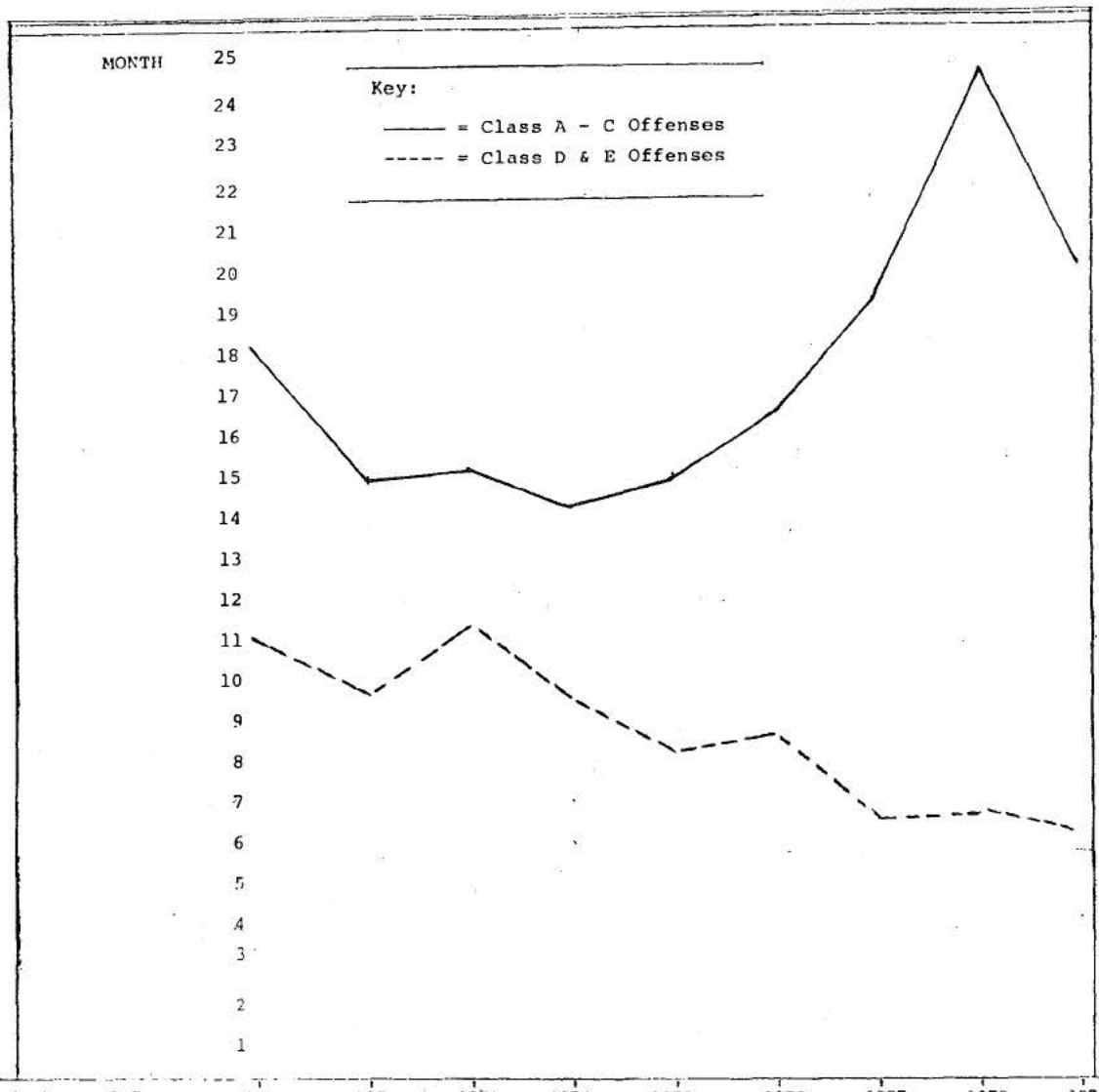
[9] A major issue in the penological literature centers on the relationship between offense seriousness and sentencing severity. A close examination of the relationship between pre-reform incarceration lengths and pre-reform offense classes indicates the only major effect occurred for Class A offenses--those convicted of these offenses served more time than those convicted of less serious charges. But, relatively minor differences exist among pre-reform incarceration lengths for those convicted of less serious Class B, C, D, and E offenses. In fact, the median differences are negligible. One-half of the offenders convicted of Class B, C, D, and E offenses served 8 to 10 months imprisonment. This changed with the new sentencing system. As shown in Table Two, there are major post-reform differences in incarceration lengths among the five post-reform offense classes. These post-reform differences in incarceration lengths between offense classes are greater than those occurring among the pre-reform offense classes. This suggests post-reform average sentence lengths are more proportionate to the seriousness of post-reform offenses. This possibility of an increase in the proportionality between offense seriousness and sentencing severity is important. This issue will be discussed in depth in Chapter Nine.

indicates a clear pattern of increased incarceration lengths after the reform for each of the Class A-C offenses and decreases for Class D and E.

Figure 3 shows incarceration lengths for Class A-C offenses and Class D and E offenses for the nine year time-frame of the study. Figure 3 presents two trend lines. Each trend line shows average incarceration lengths by year sentenced: mean time-served for Class A-C convictions and mean time-served for Class D and E convictions. A trend point for each year represents the mean time-served for offenders given a sentence of incarceration that year. Two trend points are shown for each year: 1) mean time-served for Class A-C offenses, and 2) mean time-served for Class D and E offenses. Two sets of statistics appear at the bottom of Figure 3. The first set relates to Class A-C offenses. The second provides statistical information on Class D and E offenses.

Overall, the findings in Figure 3 indicate that time-served is clearly specified by offense class. After the code change, time served increased dramatically for Class A-C conviction offenses and declines for D and E conviction offenses. Also, and not unexpected, time served for Class A-C is greater than for D and E and the magnitude of this difference increased after the reform because of the sizeable increase in time-served for Class A-C convictions and concomitant decrease in Class D and E sentence lengths post-reform. An examination

Figure 3. Mean Incarceration Lengths (In Months)
By Year Sentenced and Class of Offense



Statistics on A-C Class Offenses	1971	1972	1973	1974	1975	1976	1977	1978	1979
$\bar{X}$	18.3	14.9	15.1	14.2	14.9	16.4	19.1	24.4	19.89
S.D.	16.49	14.36	13.76	12.74	14.71	16.49	22.2	26.39	18.33
M	12	9	9	9	9	12	12.5	18	15
R	113	83	102	80	92	144	194	194	138
N	101	186	197	225	264	248	262	286	220
Statistics on D-E Class Offenses									
$\bar{X}$	11.0	9.7	11.2	9.5	8.3	8.6	6.5	6.7	6.5
S.D.	5.92	5.51	7.10	8.97	6.74	5.83	3.12	2.46	2.09
M	9	9	9	8	7	8	6	7	6
R	26	25	31	60	28	26	14	10	7
N	23	63	53	82	69	56	24	24	16

of the median incarceration lengths at the bottom of Figure 3 confirms the interpretation of changes in average time-served.

Two basic findings are revealed by the data presented in Figure 3. First, the change in sentencing severity is not explained by a greater proportion of Class A-C convictions after the reform. Second, this post-reform increase in time-served is specified by our dichotomy of Class A-C convictions versus Class D and E convictions such that time-served increased for Class A-C convictions but decreased for D and E convictions.

Offense Type

The post-reform increase in sentencing severity for Class A, B, and C convictions requires further clarification. The change in mean time-served is accompanied by an increase in variations in time-served as measured by standard deviations.

Important shifts in the nature and type of offenses being prosecuted may have occurred that are not shown. Pre-reform and post-reform changes in the prosecution of different crimes among the three most serious offense classes could explain the post-reform increase in incarceration lengths. An examination of incarceration lengths for different types of offenses would be helpful.

Maine's five graded offense classes incorporate heterogeneous offenses. Each offense class incorporates different offenses. For example, a Class B conviction could result from a charge under the theft, rape, or robbery statutes. Similarly,

Class C offenses range from various forms of theft to burglary and criminal mischief. Consequently, changes in the prosecution of different, but nevertheless serious crimes, would affect the court's choice of sentence lengths--and, hence, time-served in confinement and the variations in sentence lengths within offense classes.

To address this issue in a meaningful way requires pre- and post-reform comparisons of time-served for different crimes. Although data collected for the study yielded over 265 different primary offense convictions, here concern lies with a number of broad offense categories frequently encountered by the courts that result in incarceration.

Separate comparisons of incarceration lengths for the cluster of different crimes prosecuted under seven different statutes frequently encountered by the courts are shown in Table Three. These crimes were prosecuted under the criminal statutes for murder and homicide, robbery, burglary, offenses against the person, sex offenses, theft and drug offenses. A sufficient pre- and post-reform case base exists to compare murder and homicide, robbery, rape and gross sexual misconduct, burglary, aggravated assault, theft, and trafficking in scheduled drugs. Within each of these seven statutory offense categories there are broad variations in criminal behavior. Nevertheless, they do permit aggregate comparisons to address the basic changes in sentencing having occurred among Class A-C offenses.

Table 3. Incarceration Length, Before and After Reform
By Offense Category

		Before	After	Change
Robbery	$\bar{X}$	21.5	28.6	+7.1 months*
	S.D.	16.3	23.49	
	M	16	23.5	+7.5 months
	R	94	172	
	N	150	120	
Rape	$\bar{X}$	28.7	26.6	(N.S.)
	S.D.	24.05	20.02	
	M	22	22.5	
	R	92	90	
	N	43	52	
Burglary	$\bar{X}$	11.8	17.6	+5.8 months*
	S.D.	8.45	16.83	
	M	9	13	+4.0 months
	R	74	144	
	N	491	390	
Aggravated Assault	$\bar{X}$	14.1	17.3	(N.S.)
	S.D.	9.47	14.73	
	M	10	14	
	R	41	57	
		137	44	
Theft	$\bar{X}$	8.9	16.5	+7.6 months*
	S.D.	5.70	11.03	
	M	8.5	15	+6.5 months
	R	21	48	
	N	38	65	
Trafficking	$\bar{X}$	10.5	10.7	(N.S.)
	S.D.	7.93	8.04	
	M	9	8	
	R	71	36	
	N	115	38	
Murder and Homocide	$\bar{X}$ (Life Sentence)	134.9		
	S.D.	70.71		
	M	121.0	LIFE	LIFE
	R	227		
	N	7	2	
	$\bar{X}$ (Other Sentence)	20.5	156.0	+135.5 months*
	S.D.	4.95	92.82	
	M	20.5	142.0	+121.5 months
	R	7	2.17	
	N	2	8	

*T-test for difference of means significant at .05 level.

The first column in Table Three shows mean and median time-served for the seven offense categories in the pre-reform

period. The second column arrays this data for the post-reform period. Column three shows the change in months of time-served. The cluster of crimes prosecuted under the different statutes are shown in each of the seven rows.

The summary comparisons shown in column three indicate significant changes occurring in time-served for four of the seven comparisons. Time-served has significantly increased for robbery, burglary, theft, and murder. There have been minor changes in time-served for trafficking or furnishing drugs, rape convictions and aggravated assault. With the exception of rape, the direction of the changes are all increases in time-served post-reform.

A difference of means test (t-test) computed on each of the seven offense categories indicates statistically significant differences in time-served ($p \leq .05$) for robbery, burglary, theft, and murder. There was no statistically significant difference in means for rape, trafficking, or aggravated assault.

There are substantial differences among the seven offense categories in terms of the magnitude of the post-reform increase in time-served. The post-reform change for murder and homicide represents both a significant substantive change in the law as well as a tremendous increase in time-served. Caution must be exercised when interpreting this data because of the small numbers, however, the increases are so substantial as to represent a major impact on the correctional system if they are

to continue over time. The first row for murder and homicide shows time-served for life sentences. The second row shows time-served for court imposed sentences of non-life sentences.

Pre-reform life sentences served an average of eleven years and two months before parole (seven cases). Post-reform, the offender is not eligible for parole unless the governor commutes the sentence; the sentence is reduced on appeal by the Appellate Court; or the sentence is reduced by the sentencing judge based on a petition by the Bureau of Corrections. Based on the considerable change that this represents, it is difficult to tell what the time-served will actually be. States which require a pardon or commutation, such as Pennsylvania, have a much longer time served than Maine's pre-reform lengths for life sentences. In addition, life sentences requiring commutation are highly susceptible to variation depending on the political context of the governor's decisions.

Murder and homicide non-life sentences, although few in number, represent tremendous change in time-served. Again the case base prohibits drawing any conclusions from the data, but the increase post-reform for flat sentences exceeds the time-served for life sentences pre-reform. Thus, as a total group, it is clear that sentences for murder and homicide are considerably longer post-reform than pre-reform. If this

continues over a long period than sentences for homicide and murder will come to represent a larger and larger proportion of the inmate population. The net result of these very long sentences may seem minimal because of the small number of cases, however, because of the very long time served they become very significant to the correctional system.

Time-served for offenses other than homicide and murder also experienced a post-reform increase. Of particular importance to the correctional system are changes in incarceration lengths for burglary and robbery.

The post-reform increase in time-served for the cluster of crimes prosecuted under the burglary and theft statutes are particularly important. These two offense categories are most frequently encountered by the courts in Maine for the time frame of the study. These property offenses account for forty percent (40%) of all sentencing events studied. With the courts choosing incarceration for approximately sixty percent (60%) of all burglary convictions and approximately forty percent (40%) of all theft convictions, an increase in incarceration lengths of the magnitude shown in Table Three clearly demonstrates the impact of increasing sentence lengths has had on the system.[10]

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[10] Of the 1,327 pre-reform sentencing events for burglary, the court chose incarceration for 60%. The post-reform rate of incarceration is 68% for 1,162 convictions for burglary. This represents an 8% increase in the use of incarceration for burglary. An increase in the use of incarceration has also occurred for thefts. 36% of the 897 pre-reform theft convictions resulted in incarceration. The corresponding post-reform

The mean amount of time served for post-reform burglary convictions increased by 5.8 months. The median amount of time-served has increased by 4 months. Thus, fifty percent of the post-reform offenders whose primary conviction offense is burglary are serving forty-four percent (44%) more time than their pre-reform counterparts.

It will be recalled the burglary statutes were significantly redefined by the Criminal Code Commission. The analysis of legal changes in the burglary statutes in Chapter Three suggest the direction of the changes was both to increase the likelihood of a conviction and increase the maximum allowable sentence available to the court. The analysis of data on time-served for burglary offenses is indicative of those changes on the court's choices. Not only are more offenders convicted of burglary but more are incarcerated for longer terms of imprisonment.

The post-reform increase in time-served for the cluster of crimes prosecuted under the theft statutes is of the same magnitude as burglary. The mean amount of time-served for

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figure for 767 theft convictions is forty-six percent. Thus both time-served and incarceration increased for these offense categories. The small number of thefts shown in Table Five merely reflects the fact that most theft convictions are Class D and E offenses. Mean differences in time-served for all thefts are not shown. Post-reform mean time-served for all thefts (N=91) is larger than pre-reform mean incarceration lengths (9.2 months) for all thefts (N=119).

post-reform Class A-C theft convictions is 16.5 months--a 7.6 month increase. The median amount of time-served for theft has increased by 6.5 months. This means that fifty percent of the offenders convicted for theft offenses after reform are serving a minimum of seventy-seven percent (77%) more time than their counterparts before reform.

Convictions for robbery are less frequent (less than 4% of the entire sample, N=383) than burglary or theft. Since over ninety percent (90%) of all robbery convictions result in incarceration, changes in the court's decision as to the lengths of incarceration for this offense bears close examination. There were 196 pre-reform and 187 post-reform robbery sentencing events. Table Three compares time-served for 150 pre-reform and 120 post-reform incarcerations resulting from a robbery conviction. It shows a post-reform increase in both the mean (7.1 months) and median (7.5 months) time-served.

Table Four also examines changes in incarceration lengths for sex offenses and drug offenses. Maine's Criminal Code Commission redefined these crime statutes. Like other offenses, these were rationalized and codified. However, there was a difference. Some sex offenses applicable to acts between consenting adults were decriminalized.[11] And, the possession of less than one ounce of marijuana for personal use was depenalized.[12] Despite the changes in the definitions of these

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[11] See, 17-A M.R.S.A., §§252, 253.

[12] See, 17-A M.R.S.A., §§1101-1107.

offenses, of course, more serious Class A-C offenses were retained and codified.

Table Three compares incarceration lengths for convictions of rape and trafficking and/or furnishing scheduled drugs. No change occurred in incarceration lengths for drug convictions and there has been little change in incarceration lengths for rape convictions. The changes that have occurred are not statistically significant.

The abolition of parole and introduction of flat-time sentencing has not only been accompanied by an increase in incarceration lengths for most offenses of a serious nature encountered by the courts, but also by greater variations in these lengths as well. That is, the increase in the sentence lengths has been accompanied by larger standard deviations (S.D.) and a larger range (R) in time-served. The issue of changes in variations in sentencing for like offenders and like offenses is addressed in Chapter Nine. Here, the relevant issue is, what those variations are and how they have affected changes in the distribution of time-served by offenders? That is, a change in incarceration lengths of the magnitude shown in Table Three suggests that a basic change is occurring in case-decision-making practices. Incarceration lengths in the pre-reform period are largely the result of the case decision making practices of the Parole Board. This authority shifted after the code reform to the courts. Two consequences of this

post-reform change have been found--incarceration lengths increased and offense seriousness is more closely related to sentencing severity. These post-reform changes may be accompanied by a third change.

The distribution of incarceration lengths has changed as a result of quite different case decision-making practices between the Parole Board and the fourteen Superior Court Justices. Of particular concern is what changes have occurred in the distribution of incarceration lengths and whether these changes have similar effects on the amount of time offenders serve for different offense convictions. Changes in measures of central tendency--mean and median--are indicators of changes in sentencing severity. They must be supplemented. It is equally critical to identify changes in the distribution of incarceration lengths. Such changes affect the number of offenders given relatively light and lengthy sentences. An examination of changes in this distribution will also reveal whether the post-reform increase in incarceration lengths is a consequence of relatively few offenders given lengthy sentences or a consequence of an overall post-reform shift in sentencing severity for all offenders. Those post-reform offense categories showing an increase in average time-served are accompanied by an increase in the variation in time-served as well. The question at issue is whether these changes are

a result of an overall shift in sentencing severity or a consequence of a few offenders given lengthy sentences.

In order to address the question of how the distribution of incarceration lengths changes, the data on time-served must be examined differently. To more closely examine the change in both the amount of time-served and variation in time-served, the data shown in Table Three will be arrayed by intervals of months served.

Table Four shows the distribution of incarceration lengths in six-months intervals for each offense category.[13] The proportion of offenders whose time-served falls within each interval is shown. Within each offense category, the distribution of length is shown separately for the before and after periods, and the change in percent is also shown. Thus, for example, 13.3% of robbery offenders had lengths of 1-6 months before reform and 5.9% had this length after reform--a decrease of 8.3%.

Overall, Table Four shows how the distribution in incarceration lengths has changed. These changes in the distribution of sentence lengths served by offenders are <u>not</u> similar

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[13] Time-served for homicide and murder are of such magnitude that the distribution is not of much relevance.

Table 4. Distribution of Incarceration Lengths Before and After Reform By Offense Category

OFFENSE	CODE TYPE	1-6 months	7 - 12 months	13 - 18 months	19 - 24 months	25 - 30 months	31 - 36 months	37 - 42 months	43 - 48 months	49 - 54 months	55 - 60 months	61+ months	
ROBBERY	Before	13.3%	23.4%	18.6%	8.0%	8.7%	10.0%	6.7%	4.6%	2.7%	1.3%	2.7%	100%
	After	5.9	16.7	18.3	12.5	15.0	5.8	10.9	7.5	0.0	0.0	8.3	100
	Change	-8.3	-6.7	-0.3	+4.5	+6.3	-4.2	+4.2	+2.9	-2.7	-1.3	+5.6	
BURGLARY	Before	18.1	49.9	18.2	8.1	1.6	1.7	1.4	.4	0.0	0.0	.6	100%
	After	14.4	32.5	21.8	12.8	6.4	3.4	3.3	2.3	0.0	.3	2.8	100
	Change	-3.7	-17.4	+3.6	+4.7	+4.8	+1.7	+1.9	+1.9	0.0	+ .3	+2.2	
THEFTS CLASS A,B,C	Before	26.3	52.6	15.8	5.3	0.0	0.0	0.0	0.0	0.0	0.0	0.0	100%
	After	21.5	21.6	23.1	12.3	9.2	7.7	0.0	3.1	1.5	0.0	0.0	100
	Change	-4.8	-31.0	+7.3	+7.0	+9.2	+7.7	0.0	+3.1	+1.5	0.0	0.0	
RAPE	Before	4.7	25.5	14.0	11.6	4.7	11.6	9.3	4.6	0.0	2.4	11.6	100%
	After	7.7	13.5	19.2	21.1	11.6	1.9	7.7	7.7	0.0	1.9	7.7	100
	Change	+3.0	-12.0	+5.2	+9.5	+6.9	-9.7	-1.6	+3.1	0.0	- .5	-3.9	
TRAFFICKING	Before	16.5	58.3	18.2	4.4	.9	.8	0.0	0.0	0.0	0.0	.9	100%
	After	30.3	30.3	24.2	9.1	3.1	0.0	3.0	0.0	0.0	0.0	0.0	100
	Change	+13.8	-28.0	+6.0	+4.7	+2.2	- .8	+3.0	0.0	0.0	0.0	- .9	
AGGRAVATED ASSAULT	Before	16.1	38.6	16.1	15.3	6.6	3.7	3.6	0.0	0.0	0.0	0.0	100%
	After	25.0	22.7	15.9	13.7	4.5	2.3	4.5	9.1	0.0	2.3	0.0	100
	Change	+8.9	-15.9	- .2	-1.6	-2.1	-1.4	+ .9	+9.1	0.0	+2.3	0 .0	

for each offense category. Different patterns can be discerned.

Two basic patterns exist in the changes occurring in distribution of time-served for the six offense categories. The first pattern is illustrated with robbery and theft. The overall post-reform increase in time-served for robbery and theft is reflected by changes in the distributions. There is a decrease in the percent of offenders serving sentences of six months or less and the percent serving sentences of seven to twelve months. This change is accompanied by an increase in the percent of offenders serving lengthier terms of confinement. For theft convictions, the post-reform percent serving 13-18 months and the percent serving lengthier intervals has increased. For robbery convictions, the percent serving 19-24 months and successive intervals has increased. Comparison of the pre- and post-reform distributions provides some insight into the reasons for these changes. The distribution is flatter in the post-reform than pre-reform period. This flat distribution is reflected on the larger post-reform standard deviation. It indicates much greater post-reform differences in time-served among offenders convicted on the same charge. The increased post-reform sentencing severity has not equally affected all offenders convicted of robbery or theft. However, most offenders convicted of these two offenses experience an increase in sentencing severity.

The second pattern of <u>change</u> is the distribution of incarceration lengths occurring in the four remaining offense

categories. This change occurred for offenders where there is a post-reform increase in mean time-served (burglary) and offenses where there are no pre- and post-reform differences in time-served. For these offense categories, the distribution of incarceration lengths is bimodal. The percent of post-reform offenders serving short sentences of six months or less has increased. This small increase is accompanied by a larger decrease in the percent of offenders serving seven to twelve months of imprisonment. These two changes have been accompanied by a third change. There is an increase in the percent of offenders serving lengthier terms of confinement.

The bimodal change in the distribution of incarceration lengths for these offenses reflects the post-reform increased use of split-sentencing accompanying the post-reform increase in sentence lengths. It means a small increase in the percent of offenders serving short sentences is accompanied by a larger increase in the percentages serving lengthier terms of confinement. The reason explaining these three changes can be identified by comparing the pre-reform and post-reform distributions. The distributions are flatter in the post-reform period.

As previously indicated this bimodal change has not occurred for robbery or theft. The post-reform increase in incarceration lengths for robbery and theft results from both an increase in the percent of offenders serving lengthier terms and a

decrease in the percent serving shorter terms of confinement.

The robbery and theft pattern has not occurred for burglary where a post-reform increase in time-served has occurred or for the other offenses where no pre-reform and post-reform differences exist. Rather, the changes are bimodal. For burglary, both the percent of offenders serving short terms of imprisonment and the percent serving lengthier terms of imprisonment increases.

Table Four shows an overall decrease in the percent of offenders serving sentences of seven to twelve months of incarceration. With the exception of robbery and theft this post-reform change is accompanied by an increase in the percent of offenders serving sentences of six months or less. However, these two changes do not indicate overall time-served decreases in the post-reform period. It is a consequence of the increasing use of split-sentences in the post-reform period. The effect of these two changes is to substantially increase post-reform variations in incarceration lengths. The increase in post-reform incarceration lengths is accompanied by a small increase in the percent of offenders serving short periods of confinement and a larger increase in the percent serving lengthier periods of confinement. This post-reform change is most evident for the offense most frequently encountered by the courts--burglary.

In sum, this section of the chapter demonstrates that the introduction of flat-sentencing and abolition of parole

has led to an overall increase in the severity of incarceration lengths--as measured by time-served. The increase in sentencing severity is related to the degree of offense seriousness. Post-reform offenders incarcerated for Class D and E offenses are serving less time than their pre-reform counterparts. Post-reform offenders incarcerated for the more serious Class A, B and C offenses are serving more time than their pre-reform counterparts.

But, Maine's five graded classes of offense seriousness incorporate heterogeneous types of offense categories. A close examination of offense categories comprising the more serious offense classes reveals the increase in sentencing severity has not occurred equally or for all offenses. And, offenses where the severity of incarceration lengths increased show marked differences in the distribution of incarceration lengths. Two patterns in the distribution of time-served can be discerned. For a small number of offense categories (e.g. robbery and theft), post-reform time-served increased for all offenders. The basic post-reform pattern, however, is bimodal. For these offenses there is a post-reform decrease in time-served for a small proportion of offenders and an increase in time-served for a larger proportion of these offenders. This post-reform increase in the variation in time-served is related to split-sentencing. Unlike the pre-reform period, the distribution of sentence lengths for some of the more serious offenses is

marked by an increase in both shorter sentences and lengthier sentences. This bimodal change in the distribution of sentence lengths results in a flatter distribution in the proportion of offenders serving time in the post-reform period.

Multiple v. Single Convictions

The finding of a substantial increase in incarceration lengths over time for offenders convicted of Class A-C offenses requires explication. Since the change occurred after implementation of the new criminal code, it suggests increases in sentencing severity are attributable to the abolition of parole and introduction of flat-time sentencing. To ensure that this is a valid inference requires an examination of how other historical changes are related to and affect the increase in incarceration lengths. Of particular concern are shifts to more frequent charging of multiple offenses. This change could confound findings presented on the trends in incarceration lengths for Class A-C offenses. In fact, increases in the use of multiple charges could render a countervailing effect on time-served. Increased use of multiple charges could result in an increase in sentence lengths unrelated to changes in the sentencing structure. Offenders convicted of multiple offenses arising from different criminal episodes or from a single criminal episode where multiple crimes were committed may be given lengthier sentences than offenders convicted of

a single offense. This change in charging of multiple offenses could lead to lengthier post-reform sentences of incarceration unrelated to the sentencing reform.

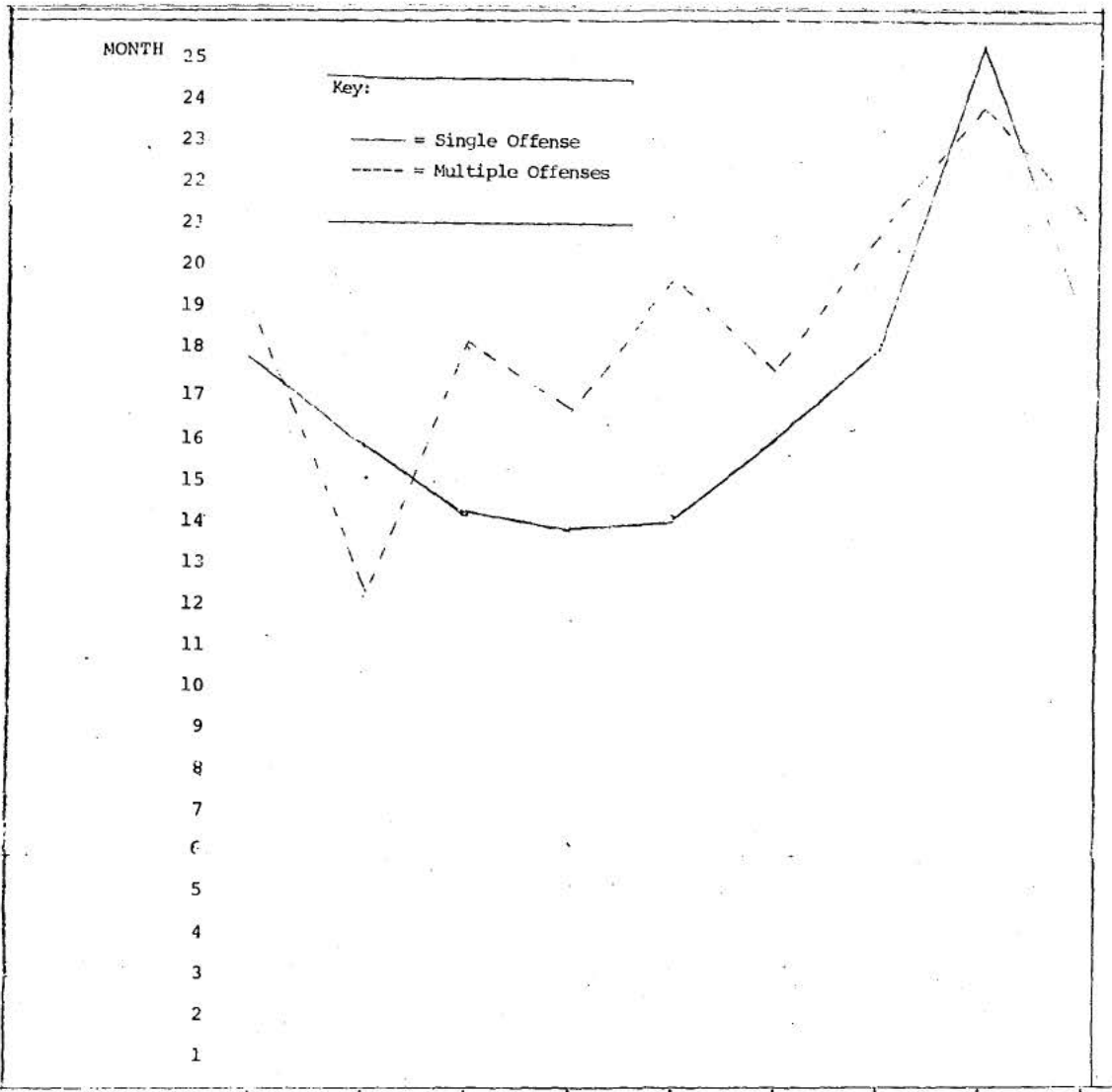
The impact of changes in the proportion of multiple convictions on incarceration lengths is shown in Figure 4. This figure compares the trends in mean incarceration lengths for single and multiple Class A-C sentencing events.

A basic conclusion from the preceding chapter is multiple charges--a second measure of offense seriousness--are positively associated with the likelihood of incarceration such that offenders with multiple convictions were more likely to be incarcerated. In addition, more Class A-C convictions involve multiple convictions than Class D and E. These findings relate to the court's decision as to whether or not to incarcerate. Here, the impact of changes in multiple charges is examined on incarceration lengths.

The increase in multiple offense convictions is not a consequence of the sentencing reform per se because the increase was limited to Class A-C convictions. It is possible that the increase in incarceration lengths for Class A-C offenses may be affected by the increase in multiple convictions. To examine this possibility, Figure 4 compares Class A-C mean incarceration lengths for single charges and multiple charges.

Examination of Figure 4 indicates that a shift to multiple convictions after the reform does not explain our earlier finding that mean sentence lengths increased after the reform. In

Figure 4. Mean Incarceration Length (In Months) for Class A-C Offenses By Year Sentenced and Number of Charges



Statistics on Time Served for Single Class A-C Offenses	1971	1972	1973	1974	1975	1976	1977	1978	1979
$\bar{X}$	17.9	15.8	14	13.6	13.8	15.9	17.9	25	18.7
S.D.	14.09	15.61	12.73	11.87	12.87	14.16	23.1	27.59	19.12
M	13	9	9	9	9	12	12	18	13.5
R	94	83	102	80	82	81	194	184	138
N	73	136	148	178	217	168	148	144	110
Statistics on Time Served for Multiple Class A-C Offenses									
$\bar{X}$	19.3	12.3	18.2	16.5	19.7	17.5	20.6	23.8	21.1
S.D.	21.81	9.84	16.24	15.5	20.76	20.59	21.02	25.19	17.5
M	10	9	13	10	12	12	15	18	17.5
R	106	70	82	74	92	144	143	194	91
N	28	50	49	47	47	80	114	142	110

fact, mean sentence length increased after the implementation of the sentence reform both for those convicted of multiple charges and for those convicted of a single Class A-C charge.

In addition, Figure 4 indicates that defendants convicted of multiple charges serve more time than those convicted of single charges. The two exceptions are in 1972 and 1978 when the trend lines intersect indicating that those sentenced for single convictions during those years serve more time than those sentenced for multiple convictions. A comparison of median incarceration lengths reveals similar results.

In general, the data indicate that multiple conviction defendants serve more time than single conviction defendants. The increase in proportion and number of offenders convicted of multiple charges combined with the longer lengths that multiple conviction defendants receive means that more offenders are serving lengthier periods of confinement.

Prior Record

The impact of Maine's sentencing reform on changes in incarceration lengths can be examined another way. How can we be assured that the increase in sentence severity identified above is not explained by post-reform increases in defendants' prior record? In order to examine this alternative hypothesis we controlled for prior record.

To further examine changes in sentencing severity, mean pre-reform and post-reform differences in incarceration lengths for the 517 offenders in the sample with no record of prior

convictions are shown in Table Five. This comparison provides a further test of Maine's reform. The data support the earlier findings. Mean incarceration lengths for offenders with no prior convictions are longer after the reform than before.

Table 5. Incarceration Length, Before and After Reform, for Offenders With No Prior Convictions

	Pre-Reform	Post-Reform	Change
Mean	13.1	20.9	7.8 months
S.D.	16.84	29.83	
N	355	188	

Summary

The data presented thus far examines the impact of severity of the conviction offense, number of conviction offenses, and split-sentences on time-served for the time frame of the study. This data addressed how factors other than the abolition of parole and introduction of flat-time sentencing affected incarceration lengths. The major conclusion emerging from that analysis is uncontestable: With the exception of Class D and E convictions, incarceration lengths have increased under the new structure of sentencing. That is, Class A-C offenders, multiple and single convictions offenders, and split-sentences and incarceration only offenders are all serving more time

since the change in sentencing structure than before it. In addition, when looking within particular types of offenses we found that sentence lengths were significantly longer for most of the offenses. The conclusion that must be drawn is that the changes in sentencing structure have increased length of state confinement.

Changes in Certainty

A number of penologists have advocated an early decision on the duration of confinement.[14] Maine was the first jurisdiction to adopt an early time-fix through the abolition of parole release. A major goal espoused by drafters of Maine's reform was to increase the "certainty" of incarceration lengths. This was to be accomplished by having the sentencing judge determine the length of imprisonment--less earned good-time credits. It was expected this increase in certainty would eliminate the suspense surrounding the release decision.

In Chapter One we discussed Andrew von Hirsch and Kate Hanrahan's definition of determinate sentencing. Their defini-

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[14] See, David Fogel, 1975. We Are the Living Proof: The Justice Model of Corrections. Cincinnati: Anderson. Andrew von Hirsch and Kathleen Hanrahan, 1979. The Question of Parole: Retention, Reform or Abolition, Mass.: Ballinger.

tion required, that for a system to be determinate, it must increase the predictability of sentencing and release decision-making practices.[15] Increased certainty is a logical outcome of predictability. As von Hirsch and Hanrahan point out in criticism of the early time-fix incorporated into Maine's reform:

> ....an early time fix is a useful reform only when durational standards are also adopted. To accelerate the time-fix without limiting the time fixer's discretion will perpetuate the disparaties and confusion that characterize so much of today's parole release decision-making. The recent Maine statute is a case in point. By law that took effect in 1976 Maine moved to an early fix by eliminating the parole board and requiring judges to specify the duration of confinement. Yet the statutes set virtually no standards to guide judges' decisions. [16]

It may seem paradoxical to examine whether the "certainty" of sentence lengths changed in Maine. The drafters of the reform did not intend to increase the predictability of sentences in advance of sentencing. On a conceptual plane, predictability and certainty are separate issues. Increased "certainty" in Maine occurs in so far as the offender and the public have better knowledge at the time of sentencing as to when he/she will be released.

The analysis of data in the preceding section suggests

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[15] Von Hirsch and Hanrahan, 1981.

[16] Andrew von Hirsch and Kathleen Hanrahan, 1979. op.cit.

sentence lengths are less predictable under the new sentencing structure. This issue is addressed at some length in Chapter Nine. The post-reform increase in sentencing severity is accompanied by broader variations in incarceration lengths as indicated by larger standard deviations and graphically demonstrated by the flatter distributions of post-reform incarceration lengths. This change occurs even when comparisons are made of specific offense categories.

The broader post-reform variations in incarceration lengths suggest Maine's former Parole Board's case decision making practices were more consistent and hence, more predictable than currently exists amongst Maine's fourteen Superior Court Justices. This is to be expected. Inherent in any centralized decision making body--represented by Maine's former Parole Board--is the potential to ensure a reasonable degree of consistency in decisions. Consistency, however, is not necessarily fairer or desirable. This potential for consistency does not currently exist for Maine's fourteen Superior Court Justices because there are no policies to ensure the collective impact of the sentencing decisions results in consistent outcomes. Hence, one would expect--as was found--greater post-reform variations in incarceration lengths.

It is possible Maine's reform successfully increased the "certainty" of sentences through an early time fix despite the fact that the predictability of those sentence lengths

decreased. The abolition of the indeterminate sentencing structure and parole release and the introduction of a flat-sentencing structure has the potential for increasing the "certainty" of sentence lengths. A major policy question centers on the extent that this goal has been achieved. To address this issue requires comparisons between the outcomes of flat-time sentencing structures and the outcomes of the old indeterminate structure this new system replaced.

The basic problem posed for research is to assess what changes occurred in the relationship between the court's sentence and actual time served. To address changes occurring in the "certainty" of sentences, requires a comparison between the release outcomes of the Parole Board with release outcomes of flat-sentences not subject to parole release. This necessitates separating the effects of changes in sentencing from effects of changes in release decision making practices. Only outcomes of pre-reform cases with court imposed indeterminate sentences and new code cases with court imposed flat-sentences are relevant to this question. Thus, cases involving split-sentences are excluded. The analysis which follows is based on those offenders who have been paroled from their pre-reform indeterminate sentences (N=1,403) and offenders released from their post-reform flat-sentences (N=636). Thus, all cases where minimum release time was projected are excluded.

To address whether the certainty of Maine's sentencing system changed necessitates pre- and post-reform comparisons

between the amount of time actually served with the minimal amount of time necessarily served to be eligible for release. A person is defined as eligible for release upon serving the entirety of the court's sentence less all possible good-time credits--earned and unearned. This period of time is a theoretical minimum--not a legal one. Many offenders are released at the expiration of this theoretical minimum. Others have their stay extended. Some offenders are released in less time than their theoretical minimum. Such offenders are not illegally released. Rather, decision making practices by the Parole Board and/or corrections officials or others result in an earlier than expected release. This can occur under both the indeterminate system when decisions of the Parole Board and corrections officials result in paroling the individual earlier than expected. It can occur under the new flat-time system when corrections officials use their transfer authority to place offenders in the community earlier than expected--through such mechanisms as home-work release or home-study release, and by corrections petitions for resentencing.

The amount of certainty in a sentencing system is, of course, related to statutory laws and articulated policies but cannot be wholly assessed or evaluated by them. What is decisive is how those policies and laws are articulated into concrete decision making practices.

The focus of this section of the chapter shifts from an analysis of incarceration lengths to the "certainty" of those

sentences. This analytic concern requires separating effects of the court's decision as to sentence lengths from release decisions. The analysis presented thus far is based on actual time-served. That analysis shows the collective impact of all post-conviction outcome decisions in processing offenders. The certainty issue requires separating court decision making from other post-conviction decision making practices. The concern is neither with changes in sentence lengths nor variations in those lengths.

To assess how much certainty exists in a sentencing system requires comparing how entities that can be or are known to the offender: the necessary minimum amount of time to be served before eligible for release; and, the actual amount of time-served in imprisonment. The relationship between the two is defined as expressing the extent of "certainty" of this offender's time--that which he/she could ideally expect to serve vs. what he/she actually served. How much "certainty" existing in any one sentencing system is, then, the aggregate of what can be expected and is served for each offender. Changes occurring in the relationship between the theoretical minimum length of confinement and actual time-served for all offenders indicates the "certainty" of the system has changed. There can be changes in certainty without changes in sentence lengths and vice versa. Certainty can only change when actual time-

served changes in relation to the minimum eligibility length of incarceration.

To measure these two variables requires data on: actual time-served, the court's decision as to sentence length; and the good-time crediting system(s). The minimum length of incarceration is computed by substracting all good-time credits available to an inmate during imprisonment from the court's decision as to sentence length. Under Maine's new flat-sentencing system, this minimum is obtained by deducting all possible good-time credits allowable by statute from the court's selection of a flat-sentence. As discussed in Chapter Four, the good-time crediting system changed in 1978. And, good-time crediting for offenders with flat-sentences of six months or less is different.[17] These differences are incorporated into the measure of minimum incarceration lengths.

A different computation of minimum incarceration lengths is required for indeterminate sentences imposed in the pre-

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[17] From May 1, 1976 to December 31, 1977, flat-sentences in excess of six months were credited with 10 days good-time and 2 days gain time. This figure was computed at the beginning of the sentence. Beginning in January 1978, this system changed. Good-time credits are computed at the end of each month. Flat-sentences of six months or less receive 3 days good-time for each month served. These differences are incorporated into the post-reform computations of minimum sentence length for flat-sentences. (Source: Interviews and discussions with corrections officials).

reform period.[18] Essentially, the minimum incarceration length was the first date the offender was eligible for parole release. The good-time crediting system was different. And, differences existed between the two correctional facilities in establishing a minimum release date. Offenders confined at the State Prison were eligible for parole release at the expiration of their minimum sentence--less good time. The Parole Board was required by statute to review the offender's case prior to that date. However, this was not the policy or practice at the Correctional Center for offenders serving wholly indeterminate sentences of one-day to thirty-six months. The Parole Board was only authorized to review a case under the request of the warden. The warden was authorized to request the Parole Board to review any case at any time prior to the expiration of the inmate's maximum thirty-six month sentence--less good-time. The institution's stated policy was to request parole review for offenders convicted of a felony upon expiration of twelve months of sentence--less good-time and for offenders convicted of a mis-

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[18] Prior to May 1, 1976, good-time was earned at the rate of seven days a month. This figure was computed on each inmate's minimum and maximum sentence. Maine's new code required the recomputation of minimum sentences for inmates who were still incarcerated. Offenders sentenced under the old code and incarcerated in state facilities when the new criminal code was implemented received the new good-time credits. These computations are incorporated into calculations of pre-reform minimum eligibility lengths.

demeanor upon expiration of six months of the sentence--less good-time.[19] According to this policy, felons could be eligible for parole release in 9 months and misdemeants in 4½ months. However the practice changed over time,[20] and was not applied to all offenders.

As noted above, the computation of the pre-reform minimum incarceration lengths for confinements at the State Prison is the court's minimum sentence--less good-time. This computation was not possible for confinements at the Correctional Center. A conservative minimum length was computed. Using the 9 month and 4½ month distinction as a base line, the computation of the minimum length incorporated an empirical measure of modal release practices. It is conservative because these modifications result in the allocation of more pre-reform "certainty" to sentences at the Correctional Center than actually exists.

Any measure of the amount of certainty existing in a sentencing system necessitates the imposition of standards and ranges defining certainty. On a conceptual plane, certainty

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[19] This material was obtained through interviews and extensive discussion with corrections authorities and former members of the Parole Board.

[20] An examination of actual release practices at this institution for the pre-reform period indicates this distinction actually was employed from 1971 to 1972. Subsequently, it was replaced by a different practice. Interviews and discussions with corrections authorities and former members of the Parole Board confirm these changes. From 1973 to 1976, the felony/misdemeanor distinction became less relevant as most inmates were released in about seven months.

exists only for the cluster of offenders released from prison on their minimum eligibility date. However, such a standard fails to account for situational exigencies and limitations of data. Under an absolute standard, any inmate released prior to the expiration of the minimum eligibility date so as to ensure he/she obtained a steady job or released later because of medical problems would be defined as "uncertain." Limitations of data and analysis also introduce artificiality into the measure of certainty. In the present study, this occurs as a result of rounding days into months--particularly for shorter sentences. Thus, it is necessary to establish a range defining the parameters of certainty. For the purpose of this analysis, actual time-served, which is ten percent (10%) above or below the absolute minimum, is defined as falling into the range of certainty. This range precludes situational factors and limitations of data from seriously affecting the measure of "certainty" of sentence lengths.

The cluster of release practices resulting in "certainty" consists of the aggregate of offenders actually released between 90% and 110% of their minimum eligibility date. Uncertainty is the cluster of release practices for the aggregate of offenders whose actual time served is <u>less</u> than 90% and <u>more</u> than 110% of their minimum eligibility date. As discussed, it is crucial to understand that under Maine's old indeterminate

system and its new flat-time system offenders can be released from imprisonment prior to the expiration of their sentence.

Table Six arrays the percentage of pre-reform and post-reform offenders whose sentence lengths are certain and uncertain using the standard enunciated above. Three figures are shown for pre-reform and post-reform offenders: 1) the percent released prior to the expiration of the theoretical minimum; 2) the percent released after serving over 110% of their minimum; and, 3) the percent whose actual time-served falls between 90% and 110% of their theoretical minimum. This latter figure represents the percent of offenders whose senteces are "certain." The first column presents these figures for pre-reform offenders. The second shows the post-reform distribution. The third column shows the change in percent.

Table 6. Relationship Between Minimum Expected and Actual Incarceration Length Before and After Reform

	BEFORE	AFTER	CHANGE
Time-Served Less Than 90% of Minimum Length	11.3%	4.1%	- 7.2%
Time-Served Between 90% - 110% of Minimum Length	65.4%	89.2%	23.8%
Time-Served Exceeds 110% of Minimum Length	23.3%	6.7%	-16.4%
TOTALS	100% (1403)	100% (636)	

A major goal of drafters of Maine's reform was to increase the amount of certainty in the sentencing system. The findings in Table Six indicate that "certainty" has changed. It has increased in the new flat-time system. More post-reform than pre-reform offenders are being released within 90%-110% of their theoretical minimum. There is a post-reform decrease in both the percent of offenders released prior to the expiration of 90% of their minimum and the percent released after serving over 110% of their minimum. However, as previously discussed this overall post-reform increase in the "certainty" of incarceration lengths may largely result from pre-reform indeterminate sentences of one-day to thirty-six months at one of the two state facilities. That is, pre-reform indeterminate sentences at the Correctional Center may account for the overall pre-reform "uncertainty" of sentence lengths.

To control for these differential pre-reform practices and more closely examine what changes have occurred requires an examination of pre- and post-reform differences in certainty at the two state facilities. This data is presented in Table Seven. The findings presented in Table Seven indicate an increase in post-reform certainty of time-served--as measured by the percent of offenders released between 90% and 110% of the theoretical minimums--has increased at both state facilities. However, there are differences between the two prisons in the extent of this change. As could be anticipated, the percent of post-reform offenders for whom sentences have become more certain has increased more dramatically at the Correctional

Center. Pre-reform offenders assigned to this facility served wholly indeterminate sentences. It will be recalled theoretical minimum incarceration lengths at this facility were established empirically by coupling stated pre-reform policies with observed changes in release practices over time. Nevertheless, the data in Table Seven indicates pre-reform actual time-served is highly scattered. This does not mean release practices at this facility were random. Rather, it suggests a more complex interplay between decision making practices of corrections authorities and the Parole Board occurred than can be discerned here. To examine this issue would require an intensive analysis of those decision making practices.

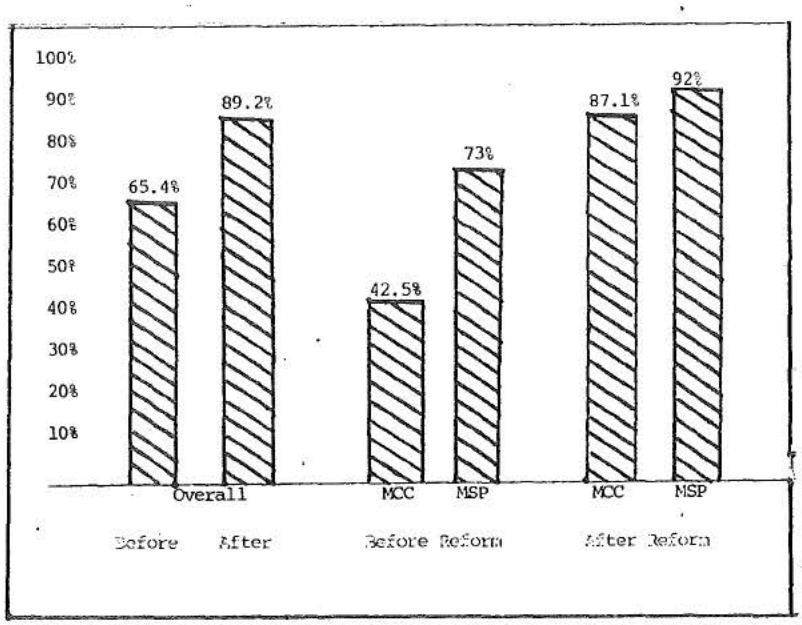
Table 7. Relationship Between Minimum Expected and Actual Incarceration Length Before and After Reform By Institution of Incarceration

	STATE PRISON			CORRECTIONAL CENTER		
	BEFORE	AFTER	CHANGE	BEFORE	AFTER	CHANGE
Time-Served Less Than 90% of Minimum Length	7.9%	5.3%	-2.6%	17.7%	3.2%	-14.5%
Time-Served Between 90% - 110% of Minimum Length	73.5%	92.0%	+20.5%	49.9%	87.1%	+37.2%
Time-Served Exceeds 110% of Minimum Length	18.5%	2.7%	-15.8%	32.4%	9.7%	-22.7%
TOTALS	99.9% (922)	100% (263)		100% (481)	100% (373)	

Figure 5 summarizes pre- and post-reform changes in the "certainty" of sentence lengths. This bar graph graphically demonstrates the findings presented in Tables Six and Seven. It shows the percent of pre- and post-reform offenders whose actual time-served in imprisonment are certain--as measured by the percent of offenders whose actual time-served fell within 90% and 110% of their minimum sentence lengths. It shows that post-reform certainty has increased at both state facilities and for the new flat-time system as a whole. It indicates the largest change in certainty has occurred at the Correctional Center. Those changes in the certainty of sentences indicate that this facility is a special case. The pre-reform absence of "certainty" at the Correctional Center reflects its rehabilitative mission and what such a mission meant to offenders confined at this facility. It seems highly unlikely that most offenders would be able to obtain the necessary knowledge to figure out when they would be paroled.

It will be recalled from Chapter Two that one factor accounting for the abolition of parole in Maine was the widespread belief that the Parole Board was too liberal. It was believed that offenders were released upon their first appearance before the Parole Board. The findings presented here neither support nor refute the validity of such criticisms. A more intensive analysis of the data would be required. Such an analysis would necessarily examine when offenders were first reviewed by the Parole Board and how many offenders were released by the Parole Board after their first appearance before the Board.

Figure 5. Relationship Between Minimum Expected and Actual Incarceration Length Before and After Reform By Institution of Incarceration



In fact, the data in this section suggests the opposite may be true. The data examined in Tables Six and Seven show a much larger percent of offenders released after serving 110% or more of their minimum than the percent of offenders serving 90% or less of their minimum sentences. That is, the overall effects of release practices in the pre-reform period was much less "liberal" than thought.

The introduction of flat-time sentencing in Maine has resulted in an increase in both the severity of sentence lengths and the certainty of those sentence lengths. This suggests rather important impacts occurring on correctional facilities resulting from that reform. It is to this issue we now turn.

Chapter Eight

The Impact of Reform on Corrections

History will portray corrections as the forgotten step-child in the nationwide movement towards sentencing reform. Jurisprudential debates about sentencing policy largely focus on the purposes of punishment whilst legislators have been concerned with what sentences should be imposed, with how sentencing decisons are made and with who should be making those decisions. Debates over sentencing policy largely ignored the effects of the new reforms on prison populations.

Of all the states having enacted basic changes in sentencing, only the Minnesota legislation providing sentencing guidelines directly addresses questions of prison population sizes.[1] Elsewhere, potential impacts of enacted legislative changes on correctional facilities and resources have been neglected or ignored.

Such is the case in Maine. Although corrections officials in Maine were consulted about the proposed changes in sentencing, the potential impacts of the reform were not assessed. And, when population problems did emerge, the claim by corrections officials that the problems were a direct consequence of the sentencing reform fell on deaf legislative ears.

This non-responsiveness by legislators can be readily understood. Sources of prison overcrowding are shrouded in

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[1] See, for instance, the discussion by von Hirsch and Hanrahan, "Determinate Penalty Systems in America," Crime and Delinquency, 1981, 27:290-316.

popular myths about crime. No exact 'science' of prison population projections exists. It is commonly assumed overcrowded prisons are the inevitable and direct consequence of increased crime rates and other related variables. This misconception, (and the obvious misdirected solution of increasing available bed space through capital construction) is no longer tenable. More recent research has shown that substantial changes in criminal behavior exert less influence in determining the number of offenders eventually imprisoned than commonly believed. This research indicates that localized decisions, and changes in the decisions made by judges, prosecutors, and corrections officials are the key ingredients in the recent upward movement of prison populations.[2]

In any event, any policy that changes decision-making practices will have a substantial impact on prison resources and space. This suggests that critical attention must be focused on policy changes in the area of sentencing as a potential source of prison population problems. The construction of new prisons represents a mistaken allocation of scarce fiscal resources as long as the true source of overcrowding problems are not identified and addressed.

None of the changes in Maine's criminal justice system

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[2]Joan Mullen, et al. 1980. American Prisons and Jails: Summary Findings and Policy Implications of a National Survey. U.S. Department of Justice. National Institute of Justice. p. 140.

were intended to affect the number of people incarcerated or the amount of time served in imprisonment. The shift to flat-time sentencing and abolition of parole, the change in the criminal offenses, the introduction of full-time district attorneys were all intended to enhance efficiency and increase the visibility and accountability of the system. But all the changes were potentially capable of affecting corrections resources.

Unlike other formal systems, the various agencies involved in the administration of justice in Maine--as elsewhere--lack common goals, an overall policy, or coordinated activities. This means that corrections is only one component in a very loosely coordinated system of decision-making. The pivotal decisions affecting corrections are made at the highly diffused "front-end" of the system. Actual control over the volume of intake rests with the courts and prosecutors. Corrections officials have no control over admissions and limited control over release.

Although lacking common goals, all agencies in the criminal justice system are involved in processing offenders. In this processing, policies and practices of one system component affect the operations and policies of others. To be effective, legislative reforms in the area of sentencing must address the organizational concerns, policies, and problems of all agencies affected--especially those of corrections.

It is in this area that Maine's sentencing reform was least sensitive. And this insensitivity compounded problems

of overcrowding already existing in Maine's prisons.

In the decade of the 1970's, the size of prison populations in virtually every state jurisdiction increased on a massive scale. Between 1972 and 1978 the number of inmates in state prisons, sentenced for more than a year, rose from 175,000 to 268,000--an increase of over fifty percent.[3] This increase required corrections officials to confront the fiscal and social problems of unprecedented overcrowding in their facilities.

Corrections facilities of the State of Maine are no exception to these national trends. There have been substantial population pressures on Maine's prisons and jails since 1974; corrections officials have been confronted with problems that have assumed crisis proportions.

Maine's new criminal code was implemented at a time when prison populations were high and resources low. Chapter Six identified the increasing numbers of incarcerations as a major source of pre-reform population problems in corrections. This resulted from an increase in the seriousness of offenses charged by prosecutors, an increase in serious offense convictions, and an increase in the sheer volume of case dispostions in the courts. These early pre-reform population problems were argued

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[3] Joan Mullen, et al. 1980. American Prisons and Jails: Summary Findings and Policy Implications of a National Survey. U.S. Department of Justice. National Institute of Justice. p. 12.

to be tied to the re-organization of the courts and introduction of a full-time regionalized district attorney system. The result was an absolute increase in the number of incarcerated offenders, given longer sentences.

It is crucial to reiterate that these pre-reform changes did not result in lengthier court sentences of incarceration for similar offenders. Essentially, the pre-code problem in corrections was a result of an increase in the number of serious offenses charged--not a result of increased sentence lengths for those serious offenses.

Overcrowding in the post-reform period is compounded by increased lengths of court imposed sentences following the sentence reform. These lengthier sentences, and other changes, were unanticipated consequences of implementing a new sentencing system in the context of unexamined practices and policies of the courts and prosecutors. The corrections system, already overcrowded, was ill-equipped and ill-prepared to deal with the result.

As shown in Chapter Seven, the effect of introducing flat-time sentencing and abolishing parole was to increase the length of court imposed sentences of imprisonment for the more serious Class A-C charges. Coupled with an increased number of convictions for these charges, the impact on the correctional system was profound. However, this impact went largely unrecognized in the midst of other policy changes occurring.

Finally, the changed pattern of court assignments to the two state facilities, largely resulting from the new criminal

code's redefinition of the role of the medium security facility--the Maine Correctional Center--had an additional impact on both facilities.

The two previous chapters have examined changes in type and lengths of sentences in Maine. This chapter examines the combination of the two trends previously discussed--changes in number of offenders sentenced to incarceration and changes in the lengths of sentences--and the impact of this combination on corrections. The separate impact on each of the two facilities--the Maine Correctional Center and the Maine State Prison--will be examined as well as the impact on the two facilities together, considered as a system.

Organizational Impact

Maine's former indeterminate sentencing structure and system of parole release provided the correctional system its operating rationale for over six decades. This system allowed corrections authorities to exercise control over prison population sizes at its two facilities. This control over prison population sizes was further enhanced by the fact that the medium security facility served as the place of confinement for individuals given wholly indeterminate sentences of one day to thirty-six months. This control occurred through the influence of corrections authorities on the parole board who made release decisions. The system had well adapted to this context. But the context changed.

The new criminal code changed the context in which the correctional system operated. It provided corrections a new

statutory environment in which it had to adapt. The new code redefined the role of one of its major facilities. And, there was no parole board.

On a system level, corrections authorities in Maine now have little control over consequences of the court's case decisions determining how many clients will be incarcerated and for how long. The reform shifted virtually all formal decision-making authority about incarceration lengths to the courts. It eliminated the potential to use the discretionary authority of the parole board as a mechanism to control the size of prison populations.

Corrections authorities operate within parameters of court decision-making and processing. At a system level, corrections authorities have no control over the external environment of other agencies involved in pre-incarceration phases of processing offenders and decision-making. Constrained by indemic organizational issues, any change adversely affecting the availability of space, resources or programs is necessarily problematic. Changes occurring in the processing of offenders have direct impacts on any correctional system by affecting population levels. Such changes can result from either an increase in the number of court assignments or changes in incarceration lengths or both. In this jurisdiction both occurred. The change in court assignments occurred prior to the implementation of the code. The change in sentence lengths occurred as a result of the new criminal code.

The organizational problems experienced by corrections in Maine have been compounded by inadequate fiscal resources,

public demands for more severe sentences, overcrowded and outdated facilities, and a legislature not responsive to problems of the correctional system.

Previous chapters have shown that all of the problems posed for corrections authorities cannot be wholly attributable to the implementation of flat-time sentencing and the abolition of parole. For example, the closure of the prison for women at Hallowell strained already overcrowded facilities elsewhere. Key provisions in the new criminal code related to split-sentencing, good time crediting, and changing the role of the states' only medium security facility--the Maine Correctional Center--and provisions relating to the length of maximum authorized sentences had as much--if not greater--impact than provisions authorizing flat-sentences and repealing the authority of the parole board. The abolition of parole and introduction of flat-sentences coupled with these key provisions in the new criminal code cannot be wholly claimed to have 'caused' all subsequent problems experienced by Maine's correctional system but they certainly did contribute to those problems. These changes, taken together, made existing problems assume crisis proportions.

The 1976 reform affected the two state facilities differently, although it had a profound effect on both. The most direct organizational effect was the redefinition of the role of the Maine Correctional Center.

Prior to the reform the Maine Correctional Center primarily housed inmates serving indeterminate sentences of one-day to

thirty-six months. In practice, this meant that almost all inmates stayed for less than one year--typically between six and nine months. Correctional officials controlled scheduling of parole hearings at the Correctional Center, and programs at the facility were designed for short-term inmates.

The reforms essentially changed the role of the Maine Correctional Center from a short-term rehabilitation oriented facility to a medium security facility for both long and short-term prisoners. The abolition of parole drastically reduced institutional control of the population. Judicial specification of institution led to a greater mix of inmates and sentence lengths. And the Correctional Center became the logical place to send the increasing numbers of offenders given split-sentences. As already noted in Chapters Six and Seven, the result was a dramatic increase in sentence length as well as a continued increase in the number of prisoners.

As also noted in Chapter Six, the absolute and proportionate number of court admissions to the Maine State Prison declined as the number of admissions to the Maine Correctional Center increased. However, this has not meant that space at the State Prison is under-utilized. The increase in court admissions to the Correctional Center has required the Commissioner to use "transfer" provisions to place more inmates in the State Prison than are assigned by the courts.[4] This solution has

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[4] It should be noted that institution of incarceration in the following analysis refers to the institution of sentence--not transfer--since we are assessing the problem posed to corrections rather than the partial solutions generated. For the same reason, incarceration length reflects time to "discharge of sentence" rather than, for instance, to "work release" or other "early release" category.

not been without its critics--including some members of the judiciary.

Because of the different impact of reform on the two institutions, the analysis in this chapter first focuses on the Maine State Prison and then the Maine Correctional Center. Following these analyses, the two institutions together, viewed as a system are discussed.

The data utilized in this chapter are the same as discussed in the previous chapter and actual time served is employed to measure sentence length.

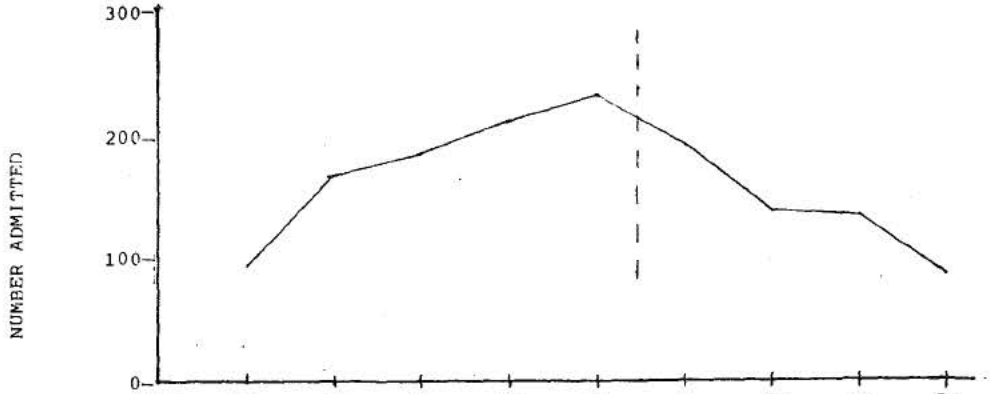
Maine State Prison

Changes in the load on a correctional facility are a result of either changes in number of offenders sent to the facility, or a change in the length of offender sentences, or both. Since new admissions are added to the population already incarcerated, changes in either incoming numbers or lengths have a compounded effect on the population of a facility. The "current intake load" on an institution, as opposed to current population, can thus be understood as the combination of current incoming numbers and current incoming sentence lengths.

Figures 1 and 2 summarize the components of current load for the Maine State Prison during the period of study. As shown in Figure 2, the number of offenders sent to the prison steadily increased in the years prior to the 1976 reforms. In the several years following the reforms the numbers declined to below 1972 levels. Excluding the transition year, 1976,

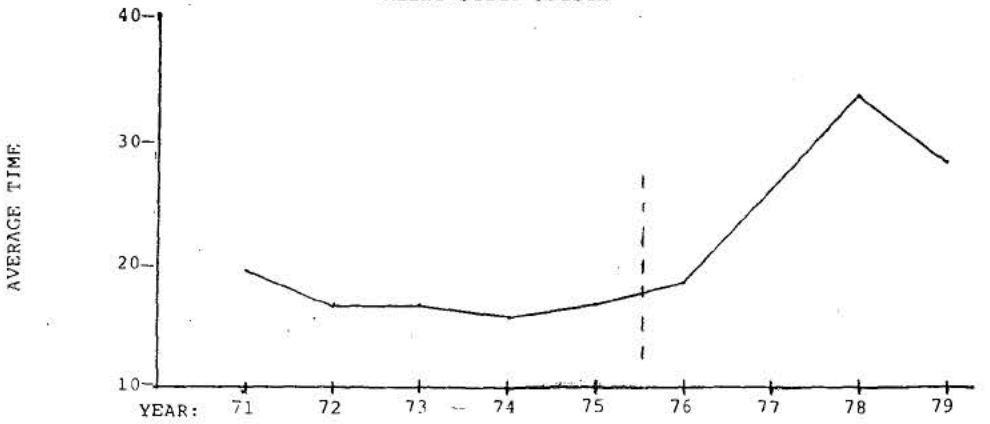
the average number of admissions per year changes from 176 before the reform to 119 after the reform--a reduction of nearly one-third. Per month, the change is from 14.7 to 9.9 admissions.

Figure 1. Number Admitted By Year of Sentencing
Maine State Prison



YEAR:	71	72	73	74	75	76	77	78	79
Number:	92	167	181	210	230	190	137	133	87

Figure 2. Average Time Incarcerated By Year of Sentencing
Maine State Prison



YEAR:	71	72	73	74	75	76	77	78	79
Average Time:	19.4	16.6	16.7	15.7	16.7	18.5	26.0	33.6	28.4
Median Time:	13	11	13	11	12	14	19	22	19

Incarceration lengths, reported in Figure 2, show the opposite tendency. While the number of offenders sent to the State Prison steadily increased before the reform, incarceration lengths declined. After the reform, incarceration lengths

dramatically increased, although the number of admissions declined significantly. Overall, average incarceration lengths increased by more than one-third.

Examination of Figure 2 leaves little doubt that the dramatic increase in incarceration lengths was a direct result of the implementation of the criminal code. It clearly indicates that other historical changes occurring prior to the implementation or following implementation fail to account for this change in lengths.

The impact of these changes can scarcely be minimized. A comparison of median incarceration lengths serves to concretely illustrate the problem of bed space created at the State Prison by the increase in incarceration lengths. The median is the mid-point length--fifty percent of offenders serve the median length or less, and fifty percent serve the median length or more. In each of the five years prior to reform, 1971 through 1975, fifty percent of offenders sent to the State Prison were paroled in thirteen months or less.

Following reform, median incarceration length increased substantially to 20 months. In 1977 through 1979, median lengths ranged from nineteen to twenty-two months. This means that, in order to release fifty percent of offenders, an <u>additional</u> six to ten months is required. The concrete result is that it requires fifty percent more time to bring about the same turn-over in bed space after the reform.

Table One summarizes the sharp changes presented in Figures 1 and 2. The transition year, 1976, is excluded. As shown,

the overall mean incarceration length increases by 12.5 months and the median incarceration length increases by 7 months after the reform. As measured by median incarceration length, fifty percent of the inmates at the State Prison sentenced under the new criminal code are serving fifty percent more time than their pre-reform counterparts.

Table 1. Summary of Changes in Incarceration Lengths and Numbers, Maine State Prison

	1971-1975	1977-1979	Change
Mean Incarceration Length (months)	16.7	29.2	+12.5
Median Incarceration Length (months)	13	20	+ 7
Average Number of Admissions per Year	177	123	-54

To further illustrate the magnitude of the post-reform change in incarceration length at the State Prison, Table Two shows the distribution of incarceration lengths before and after the reform, and the changes in the distribution of incarceration lengths which occurred. Incarceration lengths are shown within six month categories. Thus, before the reform, twelve percent of offenders received one to six month sentences. After reform, only ten percent of offenders received sentences in this range--a decrease of two percent.

Table 2. Distribution of Incarceration Lengths, Before and After Reform, Maine State Prison

Incarceration Length in Months	1-6	7-12	13-18	19-24	25-30	31-36	37-42	43-48	49-54	55-60	61-66	67-72	73-	TOTAL
Before Reform	12%	37%	23%	11%	5%	3%	4%	1%	1%	0%	1%	1%	1%	100%
After Reform	10%	18%	18%	13%	11%	5%	8%	5%	0%	1%	1%	1%	9%	100%
Change	-2%	-19%	-5%	+2%	+6%	+2%	+4%	+4%	-1%	+1%	+0%	+0%	+8%	

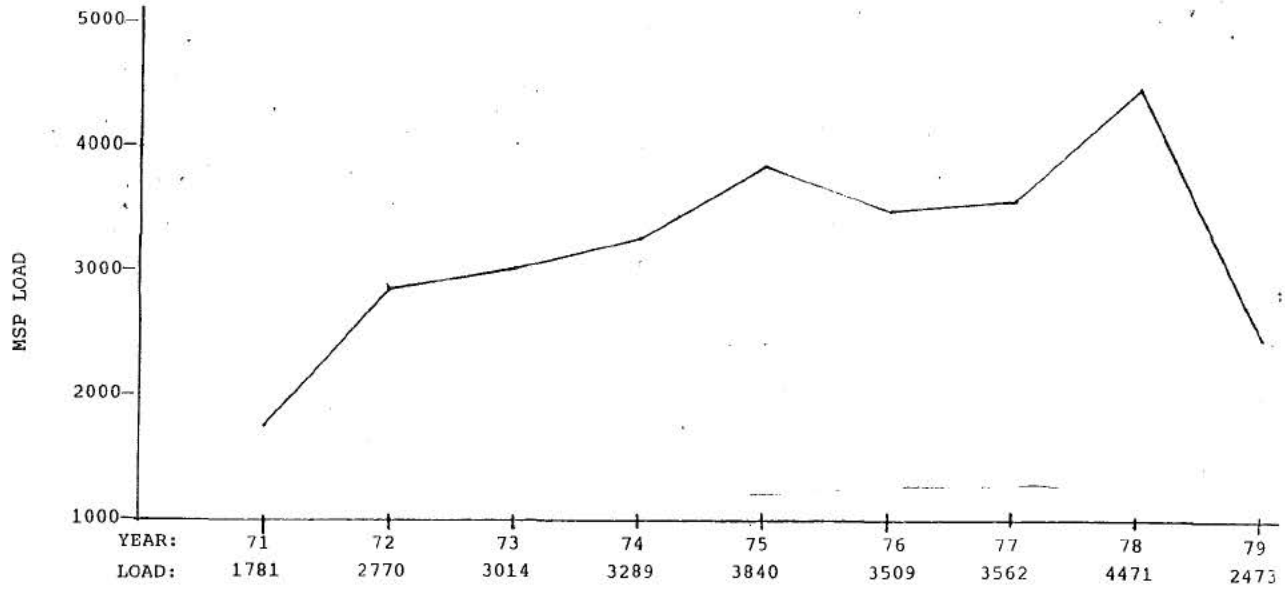
Incarceration length at the State Prison has increased in seven of the ten highest length categories with a corresponding decrease in all three of the shortest length categories. The largest decrease (19%) is in sentences of seven to twelve months. This decrease is complemented by a substantial increase in lengthier sentences. The largest increase (8%) is in the proportion of offenders serving sentences of more than seventy-two months.

The substantial post-reform increase in incarceration length for offenders confined at the State Prison affects overall bed space for some time to come. The skeptic may claim this is not the case since fewer offenders have been sent to prison after the reform. As shown in Table One, the average number of yearly admissions declined from 177 before the reform to 123 after the reform. Thus, although incarceration lengths increased, the number of offenders decreased.

This decrease in number of admissions can be very misleading. As we have already noted, the current load on a correctional facility is reflected in the combination of numbers and lengths. Figure 3 presents this combination.

As shown in Figure 3, load on the Maine State Prison increased, rather than decreased, after the reform. The steady increase from 1971 through 1975 continues after the reform.

Figure 3. Institutional Load (Person-Month) By Year of Sentencing
Maine State Prison



From 1971 through 1975 the average yearly load on the prison was 2,955 person-months. From 1977 through 1979 it was 3,592 person-months.

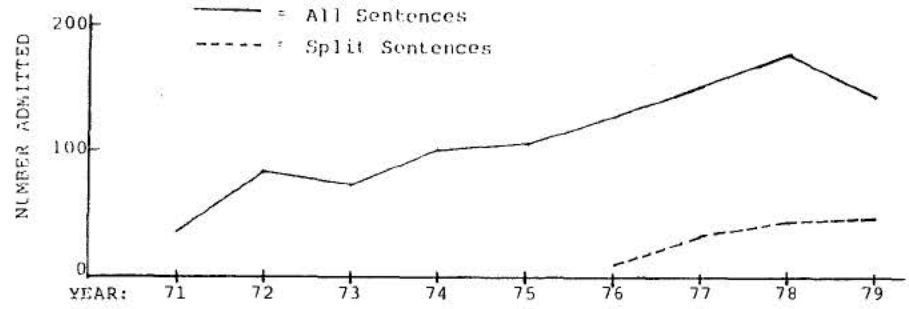
In short, the 1976 reform has clearly had a substantial impact on the Maine State Prison. The result is at least a continuation, and probably even an exacerbation, of the severe problem of overcrowding confronted by corrections in the early 1970's.

Maine Correctional Center

The impact of reform on the Maine Correctional Center is more direct and even more critical. The abolition of parole and the introduction of flat-sentences, and the increased use of this facility by the courts have had direct repercussions

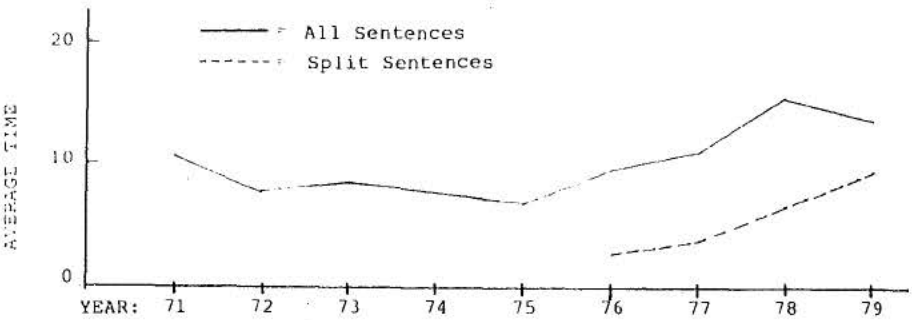
for both space and programming. As previously discussed, the operating rationale at the Maine Correctional Center before reform was predicated on the fact that most inmates served indeterminate sentences of one day to thirty-six months and were released within nine months. The 1976 reforms changed the role of this facility as well as increasing the load on it.

Figure 4. Number Admitted By Year of Sentencing
Maine Correctional Center



YEAR:	71	72	73	74	75	76	77	78	79
Number:	38	85	75	101	108	129	156	179	149
Number (Split Sentences):						12	34	45	49

Figure 5. Average Time Incarcerated By Year of Sentencing
Maine Correctional Center



YEAR:	71	72	73	74	75	76	77	78	79
Average Time:	10.4	7.6	8.4	7.4	6.6	9.4	10.8	15.1	13.5
Average Time (Split Sentences):						2.6	3.9	6.3	9.1
Median Time:	9	8	7	7	6	7	8	12	9

As shown in Figures 4 and 5, <u>both</u> admissions and lengths have increased at the Correctional Center. From 1971 through

1975, incarceration lengths at the Correctional Center substantially declined. After the reform, there is a dramatic increase in length so that the mean incarceration length in 1979 is more than double that of 1975. This increase in lengths has been accompanied by a steady increase in admissions, as shown in Figure 4.

A major component of changes at the Correctional Center is the development of split sentences--sentences of a fixed period of incarceration followed by probationary supervision. This type of sentence was one of the major policy innovations of Maine's reform and the Correctional Center houses most of the offenders receiving this type of sentence. Because of the importance of this innovation, Figures 4 and 5 separately report the lengths and numbers for split-sentences from 1976 through 1979.

As shown in Figure 5, incarceration lengths on split-sentences have steadily increased. By 1979, the average split-sentence incarceration length exceeds the overall average length for 1975. Through the same period, numbers have also steadily increased, as shown in Figure 4. This increase in split-sentence offenders accounts for some, but by no means all, of the increase in admissions to the Maine Correctional Center.

One of the major implications of these changes is that since the reform the Maine Correctional Center has been forced to deal with two relatively distinct prisoner populations. One population is prisoners with relatively short sentences (less than one year even in 1979) who are released into the

community under probationary supervision. The second population is prisoners serving average flat-time sentences of more than one year. Particularly since both of these populations have increased, this situation has posed profound problems for programs, planning, and space at the facility.

Table Three further illustrates the magnitude of post-reform change in incarceration length at the Correctional Center by reporting the distribution of lengths before and after the 1976 reform. As shown, there has been a dramatic decrease in the proportion of offenders with lengths of one to six months and seven to twelve months and an equally dramatic increase

Table 3. Distribution of Incarceration Lengths, Before and After Reform, Maine Correctional Center

Incarceration Length in Months	1-6	7-12	13-18	19-24	25-30	31-36	37 or more	TOTAL
Before Reform	39%	54%	3%	1%	1%	2%	0%	100%
After Reform	24%	37%	18%	10%	5%	2%	4%	100%
Change	-15%	-17%	+15%	+9%	+4%	+0%	+4%	

in the proportion with lengths of thirteen to eighteen months and nineteen to twenty-four months. In addition, there has been a substantial increase in the proportion of offenders with incarceration lengths of two years or more.

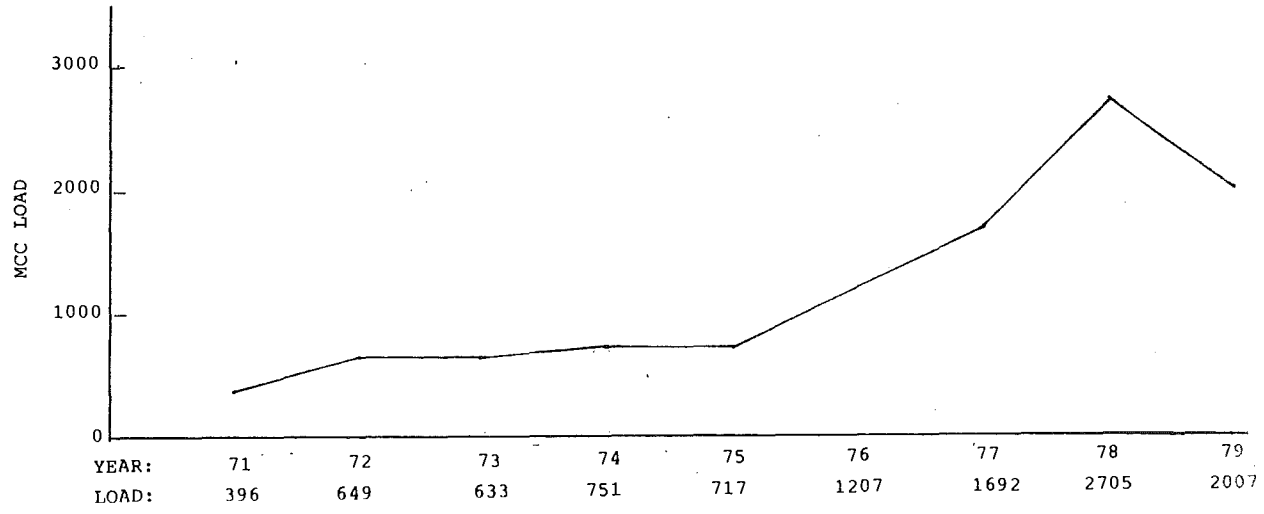
Table Four summarizes the overall changes at the Maine Correctional Center. Average incarceration length, median incarceration length, and the average number of yearly admissions

Table 4. Summary of Changes in Incarceration Lengths and Numbers, Maine Correctional Center

	1971-1975	1977-1979	Change
Mean Incarceration Length (months)	7.8	13.2	+5.4
Median Incarceration Length (months)	7	9	+ 2
Average Number of Admissions per Year	81	161	+80

have all substantially increased. As a result of this increase in both length and numbers, the load on the institution has a also increased, as reported in Figure 6.

Figure 6. Institutional Load (Person-Month) By Year of Sentencing Maine Correctional Center



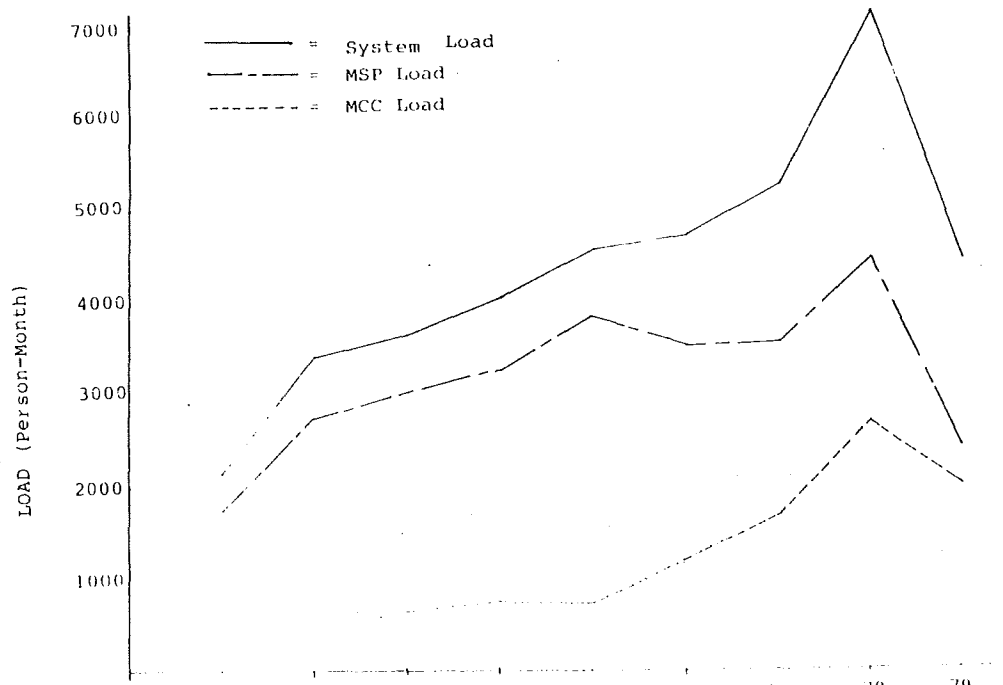
Once again, yearly load in Figure 6 is the total number of incarceration months received by offenders sentenced in a particular year and assigned to the Correctional Center.

This load has more than doubled through the period of study. As a result, even though the load decreased from 1978 to 1979 by a number of months almost equal to the total load in 1975, the 1979 load remains almost triple that of 1975.

Corrections as a System

The effect of increased loads at both the Maine State Prison and the Maine Correctional Center is, somewhat obviously, to increase the overall load on Maine's correctional system. Figure 7 reports the overall system load, along with the load

Figure 7. Current Load (Person-Month) for Corrections System
Maine State Prison and Maine Correctional Center by Year of Sentencing



YEAR:	71	72	73	74	75	76	77	78	79
System Load:	2177	3419	3647	4040	4557	4716	5254	7176	4480
MSP Load:	1781	2770	3014	3289	3840	3509	3562	4471	2473
MCC Load:	396	649	633	751	717	1207	1692	2705	2007

for each of the institutions, from 1971 through 1979. As shown, despite a reduction in the number of offenders, the overall load on the system increased steadily through 1978. Even the 1979 reduction represents a load substantially higher than 1974 and roughly comparable to 1975. The result has been, almost literally, prisoners with no place to go.

It will be recalled that even before the 1976 reforms there were substantial population pressures on Maine's prisons and jails. The analysis summarized in Figure 7 suggests that these problems have been compounded primarily as a result of increased sentence lengths following the reform.

The abolition of parole and the introduction of flat-time sentencing in Maine is closely related to a substantial increase in both the severity of sentence lengths and the certainty of those sentences. Both pose basic problems for corrections. More person-months are being served and corrections officials have less discretion about release.

This analysis has very significant implications for future policy decisions. Those decisions involve normative and political judgments affecting the use of resources. Those decisions must address how resources are to be allocated. The major options appear to be to dedicate state resources to corrections for building additional prison facilities--a process already begun--or to dedicate resources to the courts to address the problem of intake by implementing standards or guidelines

for court decision-making or to dedicate resources to reintroducing parole release as a means of alleviating overcrowded conditions.

Policy decisions of this nature should be empirically grounded. The critical question is the extent to which the source of the problem lies in the courts. Changes in judicial decisions about both type of sentence and length of incarceration, discussed in Chapters Six and Seven, have had a severe impact on corrections, as discussed in this chapter. We have also noted, however, that variations in sentencing appear to have increased. The next chapter directly addresses the issue of variation in sentencing and changes in the basis of sentencing following reform.

Chapter Nine
The Changing Basis of Sentencing Decisons

The previous chapters have examined changes in the type of sentences given to offenders and changes in the actual time served by incarcerated offenders over the period of study. This chapter examines changes in the basis of the sentencing decision--changes in who gets what sentences--both in terms of type of sentence and length of incarceration.

One major issue in our discussion of actual time served in Chapter 7 was the changing relationship between sentenced time and served time. Among other things, we were concerned with both consistency and expectations and, implicitly, with the questions "To what extent can offenders with similar sentences expect to serve similar actual time?" and "How has this changed?".

This chapter is concerned with similar issues at the point of sentencing. Examining both type of sentence (probation only, split sentence, or incarceration only) and length of incarceration sentence, for both splits and incarceration only cases, we will ascertain what offense characteristics (such as class of offense), offender "rap-sheet" characteristics (such as prior convictions), contextual characteristics (such as plea), and offender social characteristics (such as education) best predict the sentence decision and the extent to which these relevant characteristics change with the change in the criminal code. These characteristics are seen as the "basis" of the sentencing decision and operationally, as the definition of "who gets what."

To some extent, these issues have already been introduced in Chapter 6 where we discussed changes in the relationship between type of sentence and, for example, class of offense. The present analysis, however, is distinct both in scope and focus. First, this discussion will utilize multivariate techniques drawing on the more complete information contained in Probation and Correction files, linked with the court records used in Chapter 6. Second, this discussion is less concerned with changes in the types of sentences imposed and more concerned with changes in the characteristics of offenders who receive similar sentences.

Although the new criminal code addressed the basis of sentencing only in passing, we might expect it to have some significant impact. The new code contains explicit goals of sentencing. As discussed in Chapter 2, these are generally vague, somewhat contradictory, and offer little real guidance. There are no sentencing guidelines in the code nor have any been developed. Nonetheless, the very fact that goals are explicitly stated may have had some effect.

Perhaps more critically, however, is the structure created by offense classes. The class of offense is explicit and each class has a possible range of sentences. Even though these ranges are rather broad and the use of suspended sentences and other options creates even greater flexibility, we might expect that this new structure would alter and clarify sentencing decisions.

Although somewhat beyond the scope of the present research, changes in the basis of sentencing decisions and in the clarity and

structure of sentencing inevitably raise issues of consistency and disparity. The basic formulation of these issues has been "to what extent do like (similar) offenders receive like (similar) sentences?" The definitions of "like offenders" has generally been normative in the sense that certain factors, or characteristics of the offender in the case, are seen as "proper" or "legitimate" bases for sentencing. Variation remaining after controlling for these factors, or variations explained by other factors, is seen as disparity.[1] And illegitimate or "unfair."

Most discussions of disparity do not really adequately reflect the complexity of sentencing decisions.[2] These decisions involve a number of actors--such as prosecutors, judges, and defense counsels--and are fraught with uncertainty. They require that the decision-maker impute meaning to the defendant's past and future action and can hardly be understood as an automatic product of a particular combination of objective factors. As Sutton points out, differences among judges, differences in the contexts of the courts, and differences in case characteristics all effect which factors are selected from the range of facts available in any particular case.[3]

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[1]For an assessment of disparity see for example, Michael R. Gottfredson. 1979. "Parole Guidelines and the Reduction of Sentencing Disparity." Journal of Research in Crime and Delinquency 16 (2): pp. 218-231.

[2]Current research underway by Talarico and Meyers will provide an important basis for clarifying these issues.

[3]L. Sutton. 1978. Variations In Federal Criminal Sentences. Washington, D.C.: N.C.J.I.S.S., p. 30.

Consequently, the analysis in this chapter will identify and describe what factors are related to sentencing decisions and identify what patterns--if any--exist in them. Put another way, the task of this chapter is to empirically develop and describe the operational understandings of "like offenders" actually utilized in Maine courts.

The first section of the chapter is a more detailed and developed discussion of the issue of disparity, and some analysis of concern about disparity in Maine. Following that discussion, we will turn to a detailed examination of type of sentence, including an analysis of changes both overall and for specific offenses. Finally, for those offenders who receive incarceration sentences, we will examine changes in sentence length both for all offenses combined and for specific offenses.

Disparity

In Maine, as elsewhere, there has been concern with disparity. Unlike reforms in other states, Maine's new sentencing system was not intended to reduce disparity in sentences. Maine's Criminal Code Commission did not address the complex question of developing a system to ensure consistency. The broad discretion given to the judiciary and the absence of any direct policy statement providing guidance to the court assures that the new sentencing system maintains "individualized sentencing."

In the absence of clear guidance to ensure that offenders with similar backgrounds who are convicted of similar crimes receive similar

sentences, even judges believe that disparity exists. "We do not have a lot of guidance," noted one judge in an interview, "and interchange among judges is limited. I think disparity exists among judges."[4]

At the time of that interview there was, once again, great interest and concern about sentencing disparity in Maine. The major impetus for this concern was a proposed bill to re-enact parole. This bill, L.D. 1429, was designed to establish a board of prison terms and supervised release. Both opponents and supporters of this bill expressed direct concern about disparity. Both saw unwarranted variations as undesireable, although there was disagreement about whether such disparities existed in Maine.

The 'parole bill' was not enacted. However, in the 'statement of fact', L.D. 1429 required the proposed Board of Prison Terms to adopt guidelines aimed at ensuring that the new Parole Board release inmates according to officially recognized and publicly acknowledged standards. Those standards were to be premised on three mutually compatible objectives. They were:

i. Punishment which is commensurate with the seriousness of the prisoner's criminal conduct;

ii. The deterrence of criminal conduct and the protection of the public from further crimes by the defendant; and,

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[4]August, 1981.

iii. In achieving the above purposes, the board shall give primary weight to the seriousness of the prisoner's present offense and criminal history.[5]

These objectives might have formed the basis for the first set of clear and accepted guidelines in Maine, although they would have been focused at the parole release decision rather than the initial sentencing decision. Such guidelines would introduce standards for making decisions and perhaps move Maine towards determinacy in sentencing such as that already developed in Oregon.[6]

The absence of such guidelines underlines the fact that Maine does not have a determinate sentencing system. The criminal code vests virtually unlimited discretion in the hands of the judiciary and, with only the broadest of limitations, calls upon judges to make individualized judgments in each case.

In this situation, it would be extremely difficult to decipher what constitutes illegitimate variation--disparity--in sentencing. Who are similar offenders? Andrew Von Hirsch argues that age, educational level, or marital status are unfair, irrelevant, and that variation in sentencing based on these characteristics constitutes disparity.[7] Others, judges in particular, argue that these are critical factors

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[5]L.D. 1429 "An Act to Establish a Board of Prison Terms and Supervised Release," Maine, 1981 (proposed).

[6]For a discussion of the Oregon Model see Andrew Von Hirsch and Kathleen Hamahan. 1979. The Question of Parole. Mass: Ballinger. pp. 92-97.

[7]Andrew Von Hirsch. 1976. Doing Justice. New York: Hill and Wang.

which must be reflected in sentencing. The debate will continue, leaving researchers with the question "What characteristics are to be used in identifying similar offenses and similar offenders?".

That is a normative question. And without a clear policy indication of what factors ought to be used in sentencing decisions it is difficult to evaluate consistency in sentencing or to investigate disparity. Indeed, given the current situation in Maine, it would be difficult to argue that variations in sentencing among judges is inappropriate, illegitimate, or constitutes disparity. It is certainly not the role of the researcher to impose such a normative definition.

It is, however, the role of this research to examine the extent to which different models of sentencing reform increase or decrease variation in sentencing, including variation among judges. More specifically, the relevant policy question for this research is whether a judicial centered model of sentencing reform, which changes the mechanics of sentencing but not the underlying philosophy, has any impact on reducing or increasing variations in sentencing?

In Maine, sentencing decisions, like other complex activities, involves the exercise of discretion in a situation imbued with uncertainty. Variations in sentences are an expected consequence of Maine's lack of sentencing policy or standards. Consequently, the liklihood of inconsistency in sentencing practices is necessarily present under both the new and the old sentencing systems.

This inconsistency is neither necessarily "wrong" nor "unfair." As Gottfredson and Gottfredson remind us, variation in sentences

does not necessarily mean disparity exists, and the presence of consistency in sentences does not necessarily mean it is warranted. They note that,

> ". . . although most of the current discussions about sentencing focus on the problems associated with too much discretion, there is also the danger of overly rigid decision rules that do not permit the taking into consideration of legitimate individual differences. . . . rigid, discretionless systems may produce 'equity' only at the expense of treating unequal cases alike."[8]

The current research problem is to identify how much variation in the court's case decisions can be accounted for, and to identify what factors affect those decisions. The analysis which follows examines what variables are associated with the court's choice of type of sentence and length of incarceration. The specific goal of this discussion is to assess whether any changes occurred in the variables associated with each of these two decisions as a consequence of the 1976 reform.[9]

Specifically, the current analysis is limited to comparing factors associated with sentencing decisions under two criminal codes in one jurisdiction at two different times. The research goal is to identify the operant policies of the court's dispositional decisions prior to the reform and to determine whether these policies changed after the reform.

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[8]1981. Decision Making in Criminal Justice. Mass.: Ballinger, p. 181.

[9]These two dependent variables, type of sentence and length of incarceration, are often confused in the literature. This confusion, and its implications, as well as some of the analytic methods utilized in the current research are discussed in S. Talarico, 1977. "An Application of Discriminate Analysis in Criminal Justice Research," Jurimetrics, pp. 46-54.

Type of Sentence

Sentencing is often seen as a bifurcated decisionmaking process. The first stage determines the type of sentence. The second stage further specifies the basic decision by fixing an amount for fine or restitution or a length for probation or incarceration. This section of the analysis is concerned with the first decision--what type of sentence to impose. Following this section, we will turn to an examination of decisions regarding the length of incarceration.

Both of these analyses--of the type of sentence decision and the length of incarceration decision--will be primarily concerned with identifying and comparing the bases of these decisions before and after the change in the criminal code. Operationally, both of the analyses will be concerned with what factors, or characteristics of the case, best predict the sentence decision outcome.

The type of sentence decision analysis will examine three basic types of sentence--probation, split, and incarceration only sentences. Data on 4543 cases in which these types of sentences were chosen will be utilized in the analysis. These cases represent the total sample having these dispositions in which court records were successfully linked with corrections or probation information on offender background characteristics, and for which critical background characteristics and court context characteristics were not missing.

Table 1 presents the distribution of these cases by type of sentence for the pre- and post-change periods. As shown in Table 1, and previously discussed, the proportion of probation dispositions remains fairly constant while the proportion of split-sentences increases

Table 1: Type of Sentence
Pre and Post Code Change for All Cases

Type of Sentence	Pre-Change	Post-Change
Probation	38.1%	39.7%
Split	11.9	22.1
Incarceration	50.0	38.1
	100%	100%
	(N=2618)	(N=1925)

significantly and the proportion of incarcerations decreases significantly during the post-change period.

Our analysis of the basis of the type of sentence decision employs a variety of factors, or case characteristics, which may be predictive of decisions. These are the independent variables. They are listed, as they are coded for the analysis, in Table 2, broken down within four conceptual categories. These categories are: characteristics of the primary offense for which the offender is being sentenced; legal offender background characteristics, or "rap-sheet" characteristics of the offender; court contextual or processing characteristics of the case; and personal offender background characteristics.

In order to utilize multivariate techniques, nominal variables were either "dummy coded" or reduced to dichotomies. Although detailed information was available on many characteristics, such as employment and marital status, some of these were reduced to dichotomies on the basis of initial examinations of the data. For example, for employment status, a small proportion of offenders were employed part-time, employed part-time and in school, seasonally employed, etc. Both because of the small numbers of cases in these miscellaneous categories, and because preliminary analysis showed that the critical distinction was between those who were employed full-time and those who were not, the variable was reduced to a dichotomy.

Most of the variables in Table 2 are self-explanatory or have been discussed earlier. In addition to the variables in Table 2, a set of interaction terms showing class of offense within legal category, or, when appropriate, showing class of offense within the specific offense category, was included in the analysis. Further, the identity of the

Table 2: Independent Variables Used in Analysis of Basis of Sentencing Decision

Characteristic	Type of Variable/Coding	Coding
OFFENSE		
Class of Offense		
Class A	dummy	Ø=no 1=yes
Class B	"	" "
Class C	"	" "
Class D	"	" "
Class E	"	" "
Legal Category*		
Person	dummy	Ø=no 1=yes
Theft	"	" "
Burglary	"	" "
Robbery	"	" "
Public Admin.	"	" "
Arson/Prop. Destruct.	"	" "
Drugs	"	" "
Miscellaneous	"	" "
Specific Offense*		
Burglary	dummy	Ø=no 1=yes
Theft	"	" "
Aggravated Assault	"	" "
Robbery	"	" "
Rape	"	" "
Trafficking & Furn. Drugs	"	" "
Multiple Charges	dichotomous	Ø=no 1=yes
LEGAL OFFENDER BACKGROUND		
Prior convictions	interval	number of: 3=3 or more
Prior incarcerations	dichotomous	Ø=none 1=yes
Relation to CJ system at sentencing	dichotomous	Ø=none 1=under supervision (on parole, probation, etc.)
Present burglary with prior burglary	dichotomous	Ø=no 1=yes

Table 2: Continued

Characteristic	Type of Variable/Coding	Coding
COURT CONTEXT		
Plea	dichotomous	Ø=guilty 1=not guilty
Counsel court appointed	dichotomous	Ø=no 1=yes
Jury Trial	dichotomous	Ø=no 1=yes
Indictment case	dichotomous	Ø=yes 1=no
Reason for charge reduction	dichotomous	Ø=none or other 1=for guilty plea
PERSONAL OFFENDER BACKGROUND		
Dependants	dichotomous	Ø=none 1=yes
Income level	dichotomous	Ø=over $5000 1=under $5000
Employment status	dichotomous	Ø=not employed full-time 1=employed full-time
Sex	dichotomous	Ø=male 1=female
Marital status	dichotomous	Ø=single 1=not single (married, separated,etc.)
Education		
9 years or less	dummy	Ø=no 1=yes
10-11 years	dummy	Ø=no 1=yes
High school or more	dummy	Ø=no 1=yes
Age	interval	age at time of sentence

* Legal category utilized when analysis not limited to specific offenses. Therefore, legal category and specific offense never appear in the same analysis.

sentencing judge and the county of sentencing, as sets of dummy coded variables, were included in some of the analyses.

Our analysis of the type of sentence decision is concerned with identifying the set of factors or characteristics--independent variables--which best predict the type of sentence actually given in particular cases. In order to accomplish this we utilized step-wise discriminant analysis as a statistical technique. This multivariate technique is a method of selecting the characteristics, or set of characteristics, which most effectively distinguish among a set of groups, in this case the groups which receive different types of sentences. Essentially, in the step-wise mode discriminant analysis selects the characteristics which maximize the statistical "distance" among groups or best "distinguish" the groups. Put another way, discriminant analysis can be seen as a technique to identify the specific variables which best predict group membership.

This technique is particularly useful in the present analysis since it allows us to take advantage of a multivariate technique while retaining the nominal character of the dependent variable--type of sentence. This technique also provides us with a ready comparison of what factors best predict the sentencing decision before and after the change in code,

the relative importance of each of these factors, and the overall predictability of the sentencing decision given the characteristics at hand.[10]

Operationally, the set of variables identified as best predicting group membership are understood as the "basis" of sentencing. The basis of sentencing and the proportion of variation in type of sentence explained pre- and post-change can then be compared.

Table 3 presents the basic analysis of the type of sentence decision for all cases. The results of two discriminant analyses, one on pre-change cases and the other on post-change cases, are reported. Both before and after the code change the incarceration group is fairly strongly distinguishable from the probation and split groups, and the distinction between the probation and split groups is less clear. There is some mild increase (+ 5%) in the proportion of variance explained in the post-code period and a moderate change in the characteristics distinguishing the groups.

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[10] More technically, discriminant analysis is a linear, additive, least squares, multivariate technique which extracts clusters of variables--factors--which maximize the distance between or among categories of the dependent or criterion variable. Factors may be extracted up to the number of categories minus one, but the change in variance produced by successive factors may or may not be significant. Factors were not utilized if the significance of their added contribution, tested against a chi-square distribution was less than .05. The second factor was not significant in any of the analyses which follow.

The method used in the analysis was to maximize generalized distance as measured by Rao's V. The criteria for entry of variables into the equation was a partial f ratio of .05 and a minimum increase in Rao's V of .05. Proportion of variance explained by the overall equation, when reported, is calculated as the sum of the squared canonical correlations for the discriminant function used in the analysis.

Table 3: Comparison of Discriminate Analysis of Type of Sentence for All Cases Pre- and Post-Code Change

VARIABLES	Discriminate Function Coefficients	
	Pre-Change	Post-Change
Offense		
Class A	.44	.36
Class B	.47	.17
Class C	.37	
Class D	.14	-.24
Class E		-.21
Multiple Changes	.24	.09
Legal Offender Background		
Prior Convictions	.29	.32
Under Supervision	.31	.24
Prior Incarceration	.27	.41
Court Contextual		
Appointed Counsel	.11	
Jury Trial	.21	.25
Reduction for Plea	-.04	
Not Indictment Case		.09
Personal Offender Background		
Dependents	-.10	-.20
Income $5000+	.12	-.13
Employed	-.29	-.26
Female	-.19	-.17
Not Single		.09

GROUP	Canonical Discriminate Function Centoids	
	Pre-Change	Post-Change
Probation	-1.01	-1.03
Split Sentence	- .43	- .21
Incarceration	.87	1.19

SUMMARY STATISTICS	Pre-Change	Post-Change
Canonical Correlations	.665	.702
Squared Canonical Correlations	.442	.493
Percent of Cases Correctly Classified	65.3%	65.4%

In Table 3, the only variables included are those which significantly distinguish the group--in either group. For each of the variables a discriminant function coefficient is presented. These standardized coefficients represent the effect of the variable in distinguishing among the groups. Since they are standardized, they allow us to ascertain the relative importance of the variables in each of the equations using the absolute values of the coefficients. Thus, before the change, whether the primary offense was a Class A, Class B, or Class C offense, were the most important factors, followed by whether the offender was currently under supervision, whether there were prior convictions, and whether the offender was employed full-time. In the post-code period, whether the offender had a prior incarceration is the most important factor, followed by whether it was a Class A offense, the number of prior convictions, and whether the offender was employed full-time. The overall comparison of the rank order shown by the coefficients, therefore, suggests that the prior record of the offender increased in importance and the class of the offense decreased somewhat in importance after the change in code.

The discriminant function coefficients are used in conjunction with the "canonical discriminant function centroids" in characterizing, and predicting, who received what sentence type. By themselves, the function centroids show us the relative location of each group and the distances among them. In both the pre- and post-change analyses, the greatest distance is between the probation group and the incarceration group. This distance is 1.88 in the pre-change equation and 1.22 in the post-change

equation. In both equations the split-sentence group is much closer to the probation group than it is to the incarceration group. Essentially, this means that the offenders/cases which receive incarceration sentences are much more distinguishable from those who received either probation or split sentences than those who received probation or split sentences are distinguishable from each other. Because of this, for both analyses we are most able to identify, characterize, or distinguish the incarceration group.

In order to characterize the incarceration group we "solve" the discriminant equation by taking the coefficient for a particular variable and multiplying it by the function centroid of a particular group. For the pre-change equation, the function centroid for the incarceration group is positive (+.87) such that the presence of characteristics with positive coefficients can be seen as characterizing the incarcerated group as well as the absence of characteristics with negative coefficients. Specifically, pre-change, those incarcerated are most characterized by, or likely to be, those with a Class A, B, or C offense with prior convictions and incarcerations, currently under supervision, who have multiple charges and a jury trial and who are not employed full-time.

Post-change, those incarcerated can be characterized as having a Class A offense with prior convictions and incarcerations, currently under supervision, having a jury trial and having neither dependents nor employment. The presence of multiple charges is much less important in the post-code period and offenders with Class D and E offenses are apparently unlikely to be incarcerated--a change from the previous

situation. This tendency for Class C, D, and E offenses to be given split or probation sentences rather than incarceration has already been extensively discussed in Chapter 6.

Finally, the summary statistics presented at the bottom of Table 3 summarize the overall effectiveness of the analysis in distinguishing among the groups. The first statistic presented is the canonical correlation which is comparable to the multiple R in multiple regression. As with the multiple R, the squared canonical correlation is one way of directly assessing the proportion of variance in the dependent variable explained by the independent variables. The pre-change equation explains 44.2% of the variation in type of sentence and the post-change equation explains 49.3%. A second method of assessing the effectiveness of the equation is the percent of cases correctly classified. This statistic summarizes the result of "solving" the discriminant equation for each case and classifying each case on the basis of its score. The predicted group membership can then be compared with actual group membership, and the overall proportion of correctly classified cases can be ascertained. As shown, in both the pre- and post-change equations approximately 65% of the cases were correctly predicted. Since the prior probability with random assignment into three groups is 33.3%, a percent of cases correctly classified of 65% is almost twice as effective as random assignment and considered quite good for this type of research.

One of the major problems with the analysis presented in Table 3 is the absence of offense specific information. The broad legal categoties, previously discussed and presented in Table 2, are too broad

to effectively distinguish among the groups and enter the equation. However, based on previous research,[11] commonsense, and our interviews with judges we would expect that the sentencing decision would be somewhat offense specific. One dimension of this might be that particular types of sentences would be more likely to be imposed for some offenses than others, even when the offense is the same class. A second, and critical, dimension is that the basis of sentencing--the characteristics looked at by judges when making the sentencing decision--may be different for different offenses. Both of these dimensions have been found to be a significant source of variation in other research.

A related problem with the analysis thus far is the confounding effect of different charging patterns and enforcement patterns during the period of study. Using all offenses masks these changes and obscures the answer to very specific and useful policy questions such as "What are the changes in sentencing, and in the basis of sentencing, for offenders sentenced for burglary offenses?".

In order to investigate these issues we have selected six offenses, and offense clusters, for intensive analysis. These offenses are: aggravated assault, rape, burglary, theft, robbery, and trafficking and furnishing drugs. These offenses account for approximately 70% of the cases in our sample. The distribution of type of sentence within each of these offenses, in both the pre- and the post-change periods, is presented in Table 4.

These offenses represent most of the cases processed and a range of types of behavior and seriousness. Examining Table 4 we see that

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[11] For example, Sutton, op cit and Pope, 1975, "Sentencing of California Felony Offenders." Washington, D.C.: Department of Justice.

Table 4: Distribution of Type of Sentence, Pre and Post Code Change, for Specific Offenses

Pre-Change

Offense

Type of Sentence

	Aggravated Assault	Rape	Burglary	Theft	Robbery	Drug T & F	Overall
Probation	33.5%	7.0%	33.6%	59.1%	18.2%	34.8%	35.3%
Split	10.7	2.3	12.9	10.9	18.2	14.5	11.8
Incarceration	55.8	90.7	53.5	30.0	63.6	50.7	52.9
(N=)	(206)	(43)	(794)	(320)	(55)	(310)	(1828)

Post-Change

Offense

Type of Sentence

	Aggravated Assault	Rape	Burglary	Theft	Robbery	Drug T & F	Overall
Probation	31.9%	24.2%	34.1%	50.4%	8.1%	45.9%	35.1%
Split	29.2	16.7	24.3	26.2	10.6	33.0	24.0
Incarceration	38.9	59.0	41.6	23.4	81.3	21.1	40.9
(N=)	(72)	(66)	(721)	(252)	(123)	(109)	(1343)

these offenses also represent considerable variation in type of sentence. For instance, the proportion incarcerated ranges from 90.7% for rape in the pre-change period to 21.1% for trafficking and furnishing in the post-change period.

Moreover, the patterns of sentencing for these offenses appear to change with the implementation of the new code. Overall, the proportion incarcerated declines. The change from 90.7% to 59% for rape and from 50.7% to 21.1% for trafficking and furnishing are most dramatic. However, the proportion incarcerated for both robbery and theft increases, particularly substantially for robbery (from 63.6% to 81.3%). As a consequence, although rape cases had the highest incarceration rate (90.7%) before the change, robbery has the highest incarceration rate (81.3%) after the change. These patterns make the analysis presented in Table 3 particularly difficult to interpret.

It is clear that different offenses have different meanings for courts and that, to some extent, these meanings have changed over the period of study. Table 5 presents pre- and post-change discriminant analyses on type of sentence for the six specific offenses combined. The offenses themselves, as well as a set of interaction terms reflecting the intersection of specific offense and class, are included in the analysis. We find that the specific offense and the intersection of specific offense and class are important in distinguishing among types of sentence, and that this is more pronounced in the post-change period. However, we find that even with specific offenses included in the equation the prior record of the offender is critical.

Table 5: Comparison of Discriminate Analysis of Type of Sentence for Selected Offense Cases Pre- and Post-Code Change

VARIABLES	Discriminate Function Coefficients	
	Pre-Change	Post-Change
Offense		
Robbery	.18	.43
Rape	.19	
Class B		.16
Class of Rape		.30
Class of Burglary	-.15	
Class of Theft	-.28	
Multiple Change	.25	.16
Legal Offender Background		
Prior Incarcerations	.29	.43
Prior Convictions	.31	.31
Under Supervision	.31	.20
Prior Burglary Combination		.15
Court Contextual Variables		
Jury Trial	.23	.19
Appointed Counsel	.12	
Personal Offender Background		
Employed	-.29	-.26
Dependents	-.14	-.23
Female	-.18	-.15
Income over $5000	.13	-.14
Not Single		.11

GROUP	Canonical Discriminate Function Centoids	
	Pre-Change	Post-Change
Probation	-1.02	-1.07
Split Sentence	- .47	- .34
Incarceration	.78	1.12

SUMMARY STATISTICS	Pre-Change	Post-Change
Canonical Correlations	.647	.698
Squared Canonical Correlations	.419	.487
Percent of Cases Correctly Classified	64.8%	64.4%

In the pre-change period the incarcerated group can be most effectively characterized as those with prior convictions and incarcerations, who are not employed, who are charged with more serious thefts and who are sentenced on multiple charges after a jury trial. In the post-change period, robbery and prior incarcerations most distinguish the incarcerated group. Those with more serious burglaries, more prior convictions, not employed and without dependents are also more likely to be incarcerated.

Looking more directly at changes, we find that the most critical factors are somewhat different before and after implementation of the new code. Robbery and the intersection of class and rape are critical in the post-change equation. Post-change, the legal offender background characteristics gain considerable importance, court contextual variables decrease in overall importance and personal offender background characteristics also increase in general importance. Overall, although there appears to be some significant shift in the basis of sentencing, it does not present itself as a consistent and identifiable trend.

Both the analysis in Table 5, and the previous analysis presented in Table 3, indicate that decision making about sentence types is affected by a variety of factors under both the pre-change and post-change sentencing structures. No one single sentencing objective or goal appears to be operant. Different types of variables, including offense variables affect incarceration. Although some mile change is apparent, it is clear that the increased structure represented by the

offense classes in the new code, and their attendant sentencing ranges, have not had a strong impact on the type of sentence given.

It is also clear that a "commensurate desert" or "modified commensurate desert" model is not being employed. As previously discussed, advocates of the new code and opponents of the recent attempt to reintroduce parole have argued that the sentencing goals in the new code have led to such models being employed. However, if a "commensurate desert" model were being employed then those variables categorized as "offense variables" would be predictive of the type of sentence. In a "modified commensurate desert" model, "rap-sheet" variables, conceptualized as legal offender background variables, would also be employed but to a lesser degree than offense severity. Both the fact that other types of variables are significantly predictive and the fact that there has not been a consistent pattern of change with the implementation of the new code, suggests that the sentencing objectives have had relatively little impact on decision making.

In addition to the independent variables already discussed and included in the analysis in Table 5, examinations of disparity and of the basis of sentencing decisions suggests that there may be a considerable variation among judges in both the types of sentences given and in the basis of sentencing. In addition, there is some reason to suspect that there may be variations among the presecutorial districts, counties, in the state. Since, as we have previously noted, the new code appears to make both charging decisions, and charge bargaining decisions, even more critical variation among prosecutorial districts can be extremely

consequential and may also significantly affect changes pre- to post-change. In addition, it will be recalled from Chapter 4 that the State of Maine introduced full-time prosecutors to replace part-time county attorneys in 1974. This further suggests that variations in sentence types could reflect changes in prosecutorial charging patterns during the period of the study.

To explore these possibilities, we have examined the impact of both judge and county on the sentence type decision. Although a detailed and fully elaborated analysis is beyond the scope of the present research, Table 6 reports the effect of adding information on judge and county to the discriminant equations presented in Table 5. We find that although both judge and county significantly increase the proportion of variance explained, both pre- and post-change, this increase is substantively slight. Moreover, we find that the proportion of variance accounted for is almost identical before and after the implementation of the new code--approximately 3% increase in the proportion of variance explained.

Table 6 summarizes the effect of <u>adding</u> information to the discriminant analysis presented in Table 5. First, information on county was added to the equation. For example, with this information, the overall proportion of variance explained in the pre-change analysis increased from .419 to .440, for an increase of .021 as reported. This can be read as an increase of 2.1%. On the basis of this new discriminant equation, cases were classified and 66.43% were correctly classified, for an increase of 1.63%. The same procedure was followed

Table 6: Comparison of Effect of Information on County and Judge on Discriminant Equation for Selected Offense Cases Pre- and Post-Code Change*

Type of Information	Change in Squared Canonical Correlation		Change in Percent of Cases Correctly Classified	
	Pre-Change	Post-Change	Pre-Change	Post-Change
Judge	+.014	+.006	+ .65	+ .07
County	+.021	+.030	+1.63	+ .90
Both Judge and County	+.033	+.031	+1.63	+1.04

See text for discussion of procedure.

in adding information on judge to the equation, and adding information on judge and county simultaneously.

There is some indication that the introduction of full-time prosecutors has had an effect on post-change variations on sentence types, although this effect is mild. Pre-change, both judge and county information increases the proportion of variance explained by over one percent. Post-change, variation among judges explains a miniscule amount and variations among counties increases substantially. This kind of finding suggests a far more complex interplay among these variables than can be addressed in the current analysis. A more intensive analysis would, of course, also need to address the possibility of interaction between judge, county, and other variables, and examine, for example, the extent to which the factors which are predictive of the sentencing decision might vary among counties and/or judges.

Thus far, our analysis has essentially addressed pre- to post-changes in the basis of sentencing. As we have previously mentioned, however, there is some reason to believe that the basis of sentencing itself--the factors looked at in sentencing decisions--may vary among specific offenses. In this case, characteristics such as employment status might be extremely relevant when sentencing burglary, for example, but not at all relevant when sentencing for aggravated assault. In order to pursue this kind of variation, we will need to engage in a double comparison--a comparison of the basis of sentencing <u>among</u> the offenses as well as a pre- and post- comparison of changes in the basis of sentencing for specific offenses.

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Turning to the analysis of specific offenses we find that variation in the basis of sentencing is more striking among offenses than is variation between pre- and post-code change, although there is some increase in sentencing consistency following the change. Overall, it is clear that the specific offense is an extremely important factor not only in deciding on type of sentence but also in deciding what characteristics to use as the basis of the sentencing decision. In other words, judges appear to consider different things in sentencing for different offenses.

Table 7 presents the discriminant analysis on type of sentence pre- and post-code change for each of the six specific offenses. Although Table 7 may appear to be extremely complex, the organization and information in each of the columns is the same as in previous presentations, such as Table 5. Essentially, the analyses in Table 7 is the same as in Table 5 but controlling for offense. The variables listed are those which entered any of the equations. For each of the twelve analyses (columns) the coefficients are presented for each variable which entered the equation, function centroids are presented for each of the three sentence type groups, and summary statistics are reported.[12]

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[12]The exception is the pre-code change analysis for rape. Our sample includes only three probation cases and only one split sentence case. In this situation, for all practical purposes, the offense itself can be considered more than 90% determinant of type of sentence and any further analysis would be essentially meaningless.

Table 7: Comparison of Discriminant Analysis of Type of Sentence for Six Selected Offenses Pre and Post Code Change

	Agg. Assault		Rape		Burglary		Theft		Robbery		Drug T&F	
	pre	post	pre	post	pre	post	pre	post	pre	post	pre	post
VARIABLES												
Offense												
Class B					.16			.52	-.72			
Class D											-.52	-.43
Class E							-.28					
Legal Offender Background												
Prior Convictions					.49	.42	.32				.45	
Prior Incarcerations	.48			.76	.28	.47	.39	.72	.74	.65		.86
Multiple Charges					.29	.14	.20				.34	
Under Supervision	.38	1.05			.37	.24	.31	.19				.21
Court Contextual												
Jury Trial		.71				.15	.30	.24			.30	.34
Appointed Counsel					.11			.22		.50	.19	
Guilty Plea				-.66	-.17							
Personal Offender Background												
Employed	-.49				-.22	-.32	-.35	-.33			-.31	
Income over $5000	.30			-.54		-.21						
Dependents	-.27				-.16		-.51					-.41
Female		-.21					-.23			-.59	-.34	
Older							.11					
Not Single							.45					
Education under 9 years												.36
Education 10-11 years												-.30

Table 7: Continued

	Agg. Assault		Rape		Burglary		Theft		Robbery		Drug T&F	
	pre	post	pre	post	pre	post	pre	post	pre	post	pre	post
GROUP	Canonical Discriminate Function Centroids											
Probation	-1.03	-.58	--	-1.12	-1.00	-1.05	-.66	-.95	-1.02	-2.04	-.97	-.77
Split Sentence	-1.72	-.55	--	- .16	- .65	- .30	.12	.33	- .56	-1.03	-.28	-.31
Incarceration only	.76	.89	--	.51	.78	1.03	1.25	1.67	.12	.34	.74	2.17
SUMMARY STATISTICS												
Canonical Correlation	.652	.588	--	.572	.649	.676	.651	.731	.302	.598	.622	.757
Squared Canonical Corr.	.425	.346	--	.327	.421	.457	.424	.534	.091	.358	.387	.573
Proportion of Cases Correctly Classified	68.5%	54.1%	--	66.7%	66.4%	63.6%	67.7%	69.0%	73.1%	63.4%	61.2%	61.6%

The most striking thing about the analyses in Table 7 is the variation in the basis of the sentencing decision among the offenses, particularly before the change in the code. Comparing the pre-code analyses we find that the most important characteristic--the variable which is most effective in distinguishing among the groups--is different for each of the offenses. For aggravated assault, the most important characteristic is employment status. For burglary it is prior convictions; for theft, dependents; for robbery, prior incarcerations; and for drug trafficking and furnishing, class of offense. These are not even the same types of variables. Moreover, the second most important characteristics are also different for each offense.

After the code change there is more consistency. For all the offenses except aggravated assault, prior incarceration is the most important variable, and, even for aggravated assault, a closely related variable--under supervision--is the most important. This apparently reflects the general decline in the use of incarceration only sentences, noted in Chapter 6, applied consistently across offenses. For all the offenses, offenders who had previously been incarcerated, either under an incarceration only sentence or a split sentence, were most likely to be sentenced to incarceration.

This strong consistency, however, does not extend to the other variables in the post-change analyses. The second most important factor is different for each of the offenses. It is a contextual variable for aggravated assault (jury trial) and rape (guilty plea); a legal offender background variable for burglary (prior convictions); a personal

background variable for theft (employment status) and robbery (sex); and an offense variable for drug trafficking and furnishing (class). There is still a great deal of variation in the basis of the sentencing decision among offenses.

One of the most interesting dimensions of the analyses in Table 7 is the role of class of offense. We might have anticipated that the clear definition of class of offense in the new code would have a substantial impact on the sentencing decision. This does not appear to be the case. Within the specific offense categories, class of offense is a signigicant factor only for theft and drug trafficking and furnishing. Overall, the importance of class of offense seems to be greater before the change--when these classifications were neither formal nor explicit.

Comparing the pre- and post-change analyses we find that the proportion of overall variance explained by the discriminant analysis is higher post-change for every offense except aggravated assault. Except for robbery, where the increase is from 9.1% to 35.8%, the change is not substantial. This is reflected in the lack of increase, and even decline, in the proportion of cases correctly classified, even for robbery. It would be difficult to conclude that there is substantially more consistency in the basis of sentencing following the implementation of the new code.

Examination of the affect of county and judge on the type of sentence decision reveals no consistent impact of the change in code. As shown in Table 8 the additional proportion of variance explained by

Table 8: Comparison of Effect of Information on County and Judge On Discriminant Equation for Specific Offense Pre- and Post Code Change*

Change in Squared Canonical Correlation

	Agg. Assault		Rape		Burglary		Theft		Robbery		Drug T&F	
	pre	post	pre	post	pre	post	pre	post	pre	post	pre	post
Judge	(NS)	(NS)	--	(NS)	+.018	+.026	+.014	+.006	+.035	(NS)	+.042	+.024
County	+.022	+.156	--	+.010	+.013	+.044	+.061	+.040	+.057	(NS)	+.037	(NS)
Both Judge and County	+.022	+.156	--	+.010	+.033	+.053	+.073	+.046	+.094	(NS)	+.063	+.024

Change in Proportion of Cases Correctly Classified

	Agg. Assault		Rape		Burglary		Theft		Robbery		Drug T&F	
	pre	post	pre	post	pre	post	pre	post	pre	post	pre	post
Judge	0.0%	0.0%	--	0.0%	+ .8%	+2.6%	0.0%	+ .4%	-29.3%	0.0%	0.0%	-1.8%
County	-.9	+9.4	--	+1.4	+.4	+2.3	+2.1	+2.2	-13.8	0.0	+.9	0.0
Both Judge and County	-.9	+9.4	--	+1.4	+1.16	+2.9	+2.4	+3.0	-15.0	0.0	+2.9	-1.8

* See text for discussion of procedure.

judge and county is greater pre-change for some offenses, such as robbery, where the post-change effect of judge and county is not significant. However, the opposite trend exists for other offenses, such as aggravated assault, where the effect of judge and county is substantially greater post-change. Nor is there any indication that variation among judges is consistently more or less critical than variation among counties. Once again, we find that the differences among offenses are far greater than any differences between the pre- and post-code change periods.

Overall, there is very little indication that the change in code has had any substantial, systematic, or consistent effect on the basis of the type of sentencing decision. Although there is clearly a great deal of variation in the basis of sentencing, there is no indication that this variation is different either in magnitude or form before or after the change in the criminal code.

Sentence Length

For those offenders who are given a split-sentence or an incarceration only sentence a further decision is made--a decision about length of incarceration. This section examines the basis of this decision for those offenders sentenced to a state correctional facility. Once again, we are concerned with pre- post-comparisons in the basis and consistency of decisions.

Given our findings, in our analysis of the type of sentence decision, that the specific offense is a critical factor in sentencing decisions, this section of the analysis will continue to focus on the six selected

specific offenses. Of the 2055 cases in the sample that received split or incarceration only sentences, 1546 were sent to state correctional facilities and sufficient information was available for analysis of the length decision. As shown in Table 9, 981 old code and 555 new code cases are utilized in the present analysis. Table 9 also shows the distribution of these cases for the six specific offenses.[13]

A direct comparison of length of sentence before and after the code change is difficult since, of course, a change in the form of the sentence length decision was a critical part of the code change. Under the old code, a length range--a minimum and maximum length--was given rather than a specific length as under the new code. In order to compare, we have once again utilized our eligibility link estimate developed and discussed in the previous chapter.

This eligibility estimate, it will be recalled, is based on actual corrections and good time crediting policy such that it reflects the minimum actual sentence served--the length of time served before the offender is eligible for release. Our previous analysis has shown that this version of "sentence length" is highly effective in predicting the actual time served for most offenders.[14]

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[13]Most of the remaining 519 cases were sentenced to County Jail on split sentences. As discussed earlier in this report, complete background and release information was not collected on cases with an incarceration only sentence to County Jail. As a consequence, since the comparable incarceration only sentence cases would not be included in the analysis of the length decision, split sentences to County Jails were excluded to eliminate their potential confounding effects.

[14]An alternative strategy would be to use actual time served as a measure of sentence length. However, this would obscure rather than eliminate the judge's decision. Since any difference between the length to eligibility and the length to actual release reflects decision making by corrections authorities (and a parole board under the old code) rather than decisions by the court. Use of time to eligibility as the measure of sentence length focuses the analysis on the court's decision.

Table 9 presents the overall mean sentence lengths pre- and post-change, and the mean sentence lengths for each of the specific offenses. For all the offenses, the mean sentence length increases following the change in code. The increase ranges from 2.4 months for rape to 8 months for both burglary and robbery.

The rank order of offenses by mean sentence length changes somewhat. Before the change, rape had the highest mean sentence length and theft the lowest. After the change, robbery has the highest mean sentence length with rape moving into second place. This change is particularly interesting since in our discussion of type of sentence we have noted that a much lower proportion of rape offenders were incarcerated after the code change (75.7% versus 93%) and a higher proportion of robbery offenders (91.9% versus 81.8%) were incarcerated following the change.

In order to analyze the basis of the sentence length decision we utilized step-wise multiple regression techniques. These techniques allow us to examine the combined effects of multiple independent variables on a continuous variable--sentence length--in much the same way as discriminant analysis allowed us to examine those relationships for a categorical dependent variable--sentence type. The same independent variables previously discussed and presented in Table 2 are utilized in the analysis. Once again, a step-wise selection technique is used to add independent variables to the analysis as they make a significant contribution to explaining variance not already accounted for by the variables previously entered. As with our previous analysis,

Table 9: Mean Sentence Lengths for Specific Offenses, Pre and Post Code Change

	Agg. Assault		Rape		Burglary		Theft		Robbery		Drug T&F		Overall	
	pre	post	pre	post	pre	post	pre	post	pre	post	pre	post	pre	post
$\bar{X}$	13.9	21.0	26.9	29.3	11.5	19.5	9.8	15.4	22.7	30.7	10.9	13.4	13.78	21.78
SD	9.6	14.3	22.9	19.9	7.1	17.7	6.6	10.2	17.2	23.8	8.8	8.0	11.65	18.78
(N=)	(117)	(29)	(40)	(40)	(428)	(301)	(97)	(59)	(140)	(101)	(159)	(25)	(981)	(555)

the set of variables so selected can be understood as those characteristics most predictive of the decision and, hence, the basis of the length decision.[15]

Multiple regression analysis presumes a linear relationship between the dependent and independent variables. Put another way, regression analysis assumes that the dependent variable is truly interval in relation to the independent variables. This means that, in respect to the independent variables there is equal "distance" between values of the dependent variable. In the present situation, this would mean assuming that the "distance" between six months and twelve months is the same as the distance between thirty months and thirty-six months.

Conceptually, this is a difficult assumption to make in analyzing sentence length decisions. In this case, one might more readily expect that increments are proportionally meaningful. For example, we might suspect that the difference between a one month and two month sentence to be regarded as substantial while the difference between a thirty-five month and thirty-six month sentence would be seen as trivial. If this is true, the relationship would be curvilinear rather than linear.

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[15]A true step-wise technique was utilized allowing both forward inclusion and backward elimination. Forward inclusion criteria was a reduction in variance significant at the .05 level and backward elimination criteria was significant at the .01 level. In addition, variables which were not able to explain at least one percent of overall variance--i.e. change in multiple R squared of less than .01--were excluded from further analysis.

An empirical investigation of this possibility through an analysis of residuals revealed that our theoretical concern was well justified. This analysis showed that increments in lower sentence lengths were systematically under-predicted and that increments in higher sentence lengths were systematically over-predicted. In order to correct for this situation and re-establish a linear relationship, we have employed a logarithmic transformation of the dependent variable, sentence length. The essential effect of this transformation is to reduce the intervals for lower sentence lengths and to increase the intervals for longer sentence lengths.[16]

Table 10 shows the results of regression analysis on the sentence length decision before and after the change in code for the six specific offenses combined. These analyses show a much more systematic change in the basis of the sentence length decision than we found in our analysis of the sentence type decision. Under the new code, the sentence length decision is much more tied to the class of offense and apparently less offense-specific. This change in the basis of decisions does not mean an increase in consistency, since the overall proportion of variance explained actually decreases after the change.

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[16]The original plot of residuals was an almost text book example of an S curve with residuals for shorter sentence lengths following above the line and residuals for longer sentence lengths following below the line. For a discussion of analysis of residuals see Draper and Smith, 1980. Examination of the residuals following the log transformation shows a nearly straight line. The same patterns were found in examinations of various sub-sets of the data such as in the analysis of specific offenses pre- and post-code change. As a result, we are confident that the basic form of the cirvilinear relationship is a consistent factor in sentencing decisions.

Table 10 presents the standardized regression coefficient for each of the variables included in the regression equations. Because they are standardized, these coefficients allow us to compare the relative importance of each of the variables--the extent of contribution of each of the variables holding constant the effect of the other variables in the equation. Under the old code, whether the offense was a robbery and the class of the robbery offense are substantially more important than any other factors in explaining the sentence length decision. The next most important factor is income level, followed by whether the offense was a rape and whether there were prior incarcerations.

Under the new code, all of the most important factors are class of offense. No specific offense is significant. Apparently, particularly under the new code, the nature and "meaning" of the specific offense is much more critical in the type of sentence decision than it is in the length decision. Once the decision to incarcerate has been made, class of offense seems to be the most important factor in deciding on length after the change in code.

Before the code change, our analysis of type of sentence showed that class was a consistently important factor in the type of sentence decision. Since class was apparently not a critical factor in the length decision, it appears that with the change in code the importance of class of offense as a decision-making factor shifted from the type of sentence decision to the incarceration length decision. This shift may be a direct reflection of the code change, and, specifically, of the sentence ranges for each class of offense included in the new code as a general set of sentencing guidelines.

Table 10: Comparison of Regression on Log Sentence Length for Six Offenses Combined Pre and Post Code Change

VARIABLES	Standardized Regression Coefficient	
Offense	Pre Change	Post Change
Robbery	.706	
Rape	.167	
Class of Robbery	-.425	
Class B		-.332
Class C		-.423
Class D	-.152	-.348
Class E	-.118	-.294
Multiple Charges	.155	.125
Legal Offender Background		
Prior Incarceration	.112	
Prior Convictions		.082
Court Contextual		
Jury Trial	.180	
Personal Offender Background		
Income over $5000	.187	.143
Employed		-.127
Older	.229	
Multiple R	.645	.494
R Squared	.416	.353

For each of the analyses in Table 10, two summary statistics are reported: Multiple R and R squared. The R squared is an indication of the proportion of variance in sentence length which is explained by the regression equation--by the variables at hand. As we can see, there is not a substantial difference in the proportion of variance explained pre- and post-change. This indicates that overall consistency, at least as reflected in the present variables, has not changed appreciably. This suggests, among other things, that the very general sentencing ranges in the new code are not sufficient to create consistency in actual length, even though they apparently have some ordering effect. Put another way, the sentencing ranges appear to lead to longer sentence lengths for Class A offenses than for Class E offenses, but they neither eliminate overlap in sentences among classes (a Class C offense receiving a longer sentence than a Class B offense) nor eliminate wide variations in length within the classes.

Under both the old code and the new code, variation among judges has a significant effect on sentence length. As shown in Table 11, both before and after the code change information on judges increases the proportion of variance explained by approximately four percent. Despite the increased importance of charging decisions about class, information about county is not significant under the new code and improves the proportion of variance explained under the old code by less than one percent. Essentially, there is no change in the role of these factors.

Turning to the specific offenses, our analysis of Table 10 leads us to expect more variation in the basis of the sentence length decision

Table 11: Comparison of Effect of Information on Judge and County on Regression Equation for Selected Offense Cases Pre and Post Code Change

	Change in R Squared	
	Pre Change	Post Change
Judge	+.039	+.037
County	+.008	(N.S.)
Combined Judge and County	+.047	+.037

Table 12: Regression on Log Sentence Length for Six Selected Offenses Pre and Post Code Change

Standardized Regression Coefficients

	Agg. Assault		Rape		Burglary		Theft		Robbery		Drug T&F	
	pre	post	pre	post	pre	post	pre	post	pre	post	pre	post
VARIABLES												
Offense												
Class B						-.647[1]			-.252			
Class C						-.813[2]						
Class D								-.523[1]			-.289[1]	-.460[1]
Class E								-.689[2]				
Multiple Offenses	.275[1]				.144	.123			.162		.217	.413[2]
Legal Offender Background												
Prior Convictions			.271			.156		.229				
Under Supervision					.142				.178			
Prior Incarceration										.234		
Court Contextual												
Jury Trial			.372[2]		.153				.276	.372	.187	
Personal Offender Background												
Not Single			.381[1]		.146	.222	.367[2]		.312[1]		.238[2]	
Income Over $5000					.382[1]		.373[1]		.197		.191	
Older	.247[2]				-.111							
Employed					.100						-.190	
Multiple R	.322	.000	.600	.000	.588	.490	.629	.786	.664	.479	.596	.721
R Squared	.103	.000	.360	.000	.346	.240	.396	.617	.441	.229	.356	.520

among specific offenses before the code change than after the code change.[17] The regression analyses reported in Table 12 are generally consistent with this expectation. "Legal variables" are generally more critical after the code change, and there appears to be somewhat less variation in the basis of sentencing among the offenses under the new code.

Under the old code, personal offender characteristics--marital status or income--are the most critical variables for four of the six offenses. For the other two offenses, aggravated assault and drug trafficking and furnishing, offense variables are the most critical, although the second most important variables are personal offender characteristics for both of these offenses. For rape, burglary, and robbery, jury trial is the second most important predictor of sentence length. For theft, the only significant variables are personal offender characteristics. Generally, "legal variables"--offense and legal offender characteristics--are not critical as a basis of the sentence length decision under the old code.

Under the new code, no variables are significant for aggravated assault and rape. For three of the other four offenses, both of the two most important predictors of sentence length are offense variables.

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[17] Analysis of the sentence length decision for specific offenses is somewhat hampered by the absence of regression equations for aggravated assault and rape in the new code. For both these offenses, partially because of the small number of cases involved, no variables explained a significant proportion of variance. As a consequence, the Multiple R and R squared are reported as "zero". Although this can be interpreted as a substantive finding, the small number of cases makes us reluctant to attach undue importance to it.

For robbery,, the most important variable is jury trial and the second is prior incarceration. Personal offender characteristics are significant only for burglary. Generally, "legal variables" are more important in the new code sentencing decision and there appears to be significantly less variation in the basis of this decision among the offenses.

Once again, despite this increased consistency in the basis of decision, there has not been a general increase in the overall consistency of the length decision itself, as reflected in the proportion of variance accounted for by the variables at hand. The proportion of variance explained, R squared, increases post change for theft and for drug trafficking and furnishing. However, it decreases for burglary and robbery.

Nor is there a particular change in the effect of variation among judges and counties before and after the change in code. Table 13 focuses on three offenses--robbery, burglary, and theft--which have a sufficient number of cases both pre- and post-change to allow a meaningful analysis of the effect of judge and county. As shown, judge has a significant impact both before and after the change on the sentence length decision for burglary, and after the change only for the decision of robbery. For robbery before the change, and for theft both before and after the change, judge does not have a significant effect. Finally, despite the fact that offense variables, often reflecting charging decisions, appear to be more consistently important in the sentence length decision after the code change, variation among county prosecutorial districts is not significant for any of the offenses either before or after the implementation of the new code.

Table 13: Comparison of Effect of Information on Judge and County on Regression Equations for Three Specific Offenses Pre and Post Code Change

	Robbery		Burglary		Theft	
	Pre	Post	Pre	Post	Pre	Post
Judge	(N.S.)	+.037	+.024	+.028	(N.S.)	(N.S.)
County	(N.S.)	(N.S.)	(N.S.)	(N.S.)	(N.S.)	(N.S.)

Conclusion

Overall, our analyses of the bases of sentencing decisions, and of the consistency of sentencing decision, have shown little systematic change following the implementation of the new code. As discussed in previous chapters, there has been a change in the types of sentences and in the lengths of sentences over the period of study. These changes, however, have apparently not reflected a systematic change in the characteristics used as the basis of sentencing or in the importance of these characteristics. Moreover, there has not been a substantial change in the overall consistency of the decisions themselves relative to these characteristics. Neither the type of sentence decision nor the sentence length decision are more effectively predictable, given the variables at hand, before or after the change in code. Our overall conclusion is that the new code itself has had little or no effect on sentencing decisions in Maine.

This conclusion is not particularly surprising since, as we have discussed previously, Maine's sentencing reform does not provide a particular standard for sentencing, clear cut sentencing objectives, or sentencing guidelines. The analyses in this chapter have shown that there is also not an implicit set of guidelines, objectives, or understandings operating.

Interviews with Superior Court judges in Maine further confirm the lack of consistent or coherent objectives even under the new code. Table 14 presents the responses of seven judges ranking the importance of twenty-one items potentially affecting sentencing decisions. The

Table 14: Interview Responses
to Factors Affecting Sentencing

ITEMS	1	2	3	4	5	9
1) Education of Defendant				3*	1	
2) Public Opinion		1			3	
3) Severity of Offense Committed	2	2	2			
4) Number of Charges/Counts	1		1	1		
5) Liklihood to Commit another off.		2	2			
6) Defendants' Sex	1			1	2	
7) Degree of Blameworthiness	2		2			1
8) Ability of Prob. Officer to Work with Offender			1			
9) Number of Previous Cins.	2	2	1			
10) Prior Number of Arrests			2		2	
11) Prior Number of Probations	1	1	2			
12) Prior Number of Incarcerations	1	2	2			
13) Employment at Time of Arrest		1	1	2		
14) Family Situation			5			
15) Employment Opprutunities		2		1		
16) Age of Defendant	1	2		2		
17) Attitude of Defendant		2		1		
18) Discrepency between Criminal Behavior & Offense Convicted of						
19) Judges Philosophy						
20) Reccomendation of D.A.	1		2			
21) Recommendation of Police Officer	1		1			

SCALE:
1) Extremely Influentual
2) Very Influentual
3) Influentual
4) Not too Influentual
5) Uninfluentual
9) Don't Know

* Represents the number out of total of seven judges who chose this level.

responses reflect both a lack of agreement on the importance of individual items and on the relative importance of the items themselves.

Judges were asked:

> The decisions you make about offenders are very complex. They involve a number of factors that you must weigh to make the correct choice in selecting a penalty. We would like to know how you rate each of the following items when making a decision about whether or not to incarcerate.

Judges ranked each of the items on a scale from extremely influential. Even grouping the top two categories, no single item received the endorsement of more than four of the seven interviewed judges. Nor does any factor receive a consistent assessment as not very influential or uninfluential.

These interview responses reinforce our findings in this chapter and also serve to reinforce a general theme throughout this report: That changes in the structure of sentencing decision do not necessarily create consistent changes in the decisions which are being made about offenders.

Chapter Ten
Conclusion

In 1976, Maine abolished its Parole Board, introduced flat-time sentencing, graded most serious offenses into one of five classes or grades of seriousness, and re-defined substantive offenses. Prior to this reform, sentencing decisions about incarceration lengths were shared between the judiciary, which imposed minimum and maximum terms of confinement, and an executive agency--the Parole Board--which made actual release decisions. This diffused sentencing system embraced the rehabilitative ethic which dominated penal policy at the time

The abolition of the Parole Board and the introduction of flat-time sentences was a major change. Along with Connecticut, Maine's reform was one of the most radical forms of parole abolition in the nation. The effect of this change on imprisonment and its implications for corrections are of crucial importance to states which have already re-defined the role of parole and to states which are contemplating similar reforms.

Maine's reform did not create "determinacy" as it is usually understood. It did, however, focus sentencing in the courts, developed increasing certainty, and avoided over-simplification of crime seriousness. At the same time, the reform attempted to increase sentencing flexibility by expanding the options, and choices, available to courts. In addition, the reorganiza-

tion and re-definition of offenses, and the introduction of seriousness categories, attempted to increase structure and clarity.

Maine's revised criminal code was not intended to substantially change the use of incarceration, or the length of incarceration. By 1979, corrections officials reported overcrowded prison conditions which they attributed directly to the sentencing reform, and particularly the abolition of parole. These overcrowded conditions have been seen as a result of increased numbers of offenders incarcerated and longer sentence lengths--both attributed to the new code. In 1981, the perception of overcrowding led to a move, supported by corrections officials, to reinstate the parole board. This attempt failed in Maine's 110th Legislature.

The present research is primarily concerned with court decision making and the changes in sentencing practices which resulted from the 1976 reform. Changes in sentence type, in incarceration length, and in the basis of both type and length decisions are examined utilizing data on Superior Court criminal convictions from 1971 through 1979. Overall, the analysis examines the impact of sentencing reform, isolated from other reforms and historical changes, on court decision making, and, in turn, on Maine's correctional system.

Maine's sentencing reform has not substantially changed the extent of incarceration in Maine. The proportion of offenders receiving some form of incarceration sentence from the Superior

Courts has remained constant at approximately 38%. Following the reform, there has been a steady increase in a particular type of incarceration sentence---split incarceration/probation sentences--and a concomitant decrease in sentences of incarceration only. Although unrelated to the sentencing reform, and beginning before 1976, there has been a steady increase in the absolute number of offenders incarcerated. This is primarily due to an increased case-load in the courts.

There has been a substantial increase in sentence lengths for incarcerated offenders--although the proportion of offenders sentenced to incarceration has not increased, offenders sentenced after the reform are serving more time. Since parole was abolished, the average incarceration length has increased by more than five months. This increase is not a consequence of either changes in the court's case-load or in corrections decision making; the increase is a direct result of changes in judicial decision making. At the same time, however, there has been a substantial increase in the certainty of incarceration lengths, primarily at the Maine Correctional Center.

The combined effect of this increase in sentence lengths and the increase in the number of offenders incarcerated has been to substantially increase the load of the correctional system in Maine. The sentencing reform has had a profound impact on compounding already existing problems of overcrowding in state facilities. In addition, the sentencing reform has

substantially altered the composition of the inmate population, particularly at the Maine Correctional Center, creating further difficulties for corrections.

Neither the clarity nor the consistency of court decision making about either type or length of sentence has substantially increased following the reforms. Changes in the types of sentences given offenders and changes in the lengths of incarceration have apparently not reflected a systematic change in the characteristics used as the basis of sentencing or in the relative importance of these characteristics.

Overall, to summarize the research findings, the effect of the 1976 sentencing reforms has been to change the type of incarceration sentences but not the overall rate of incarceration; to substantially increase incarceration lengths; to increase sentence length certainty; and, to increase the load on corrections facilities. Despite other consistent effects, the 1976 sentencing reform has not had a substantial impact on the basis of sentencing decisions or on the consistency of those decisions.

Evaluating Maine's Reform

What do these findings mean? Has Maine's sentencing reform been a "success" or a "failure?" These are extremely difficult questions to answer since different commentators suggest different criteria--or goals or ideals--for evaluation. Participants in the reform, and the authors of the reform measures,

suggest that the only meaningful criteria are the goals of the reformers themselves. Others suggest that the goals of the national "move to determinacy" are critical, particularly insofar as such an evaluation would have implications for other jurisdictions. Finally, in a somewhat more mundane but equally important vein, others argue that any reform must utlimately be judged on its workability--whether the reform results in a coherent and manageable system.

Quite obviously, all of these three evaluation modes are important for an overall assessment of Maine's reform. Nor are these three strategies distinct. For instance, reform goals may be modified by workability concerns, and often are. Thus, any meaningful overall assessment must attend to all three of these concerns, and the inter-relationships among them.

Commission Goals

The basic objectives of Maine's Criminal Code Commission were three fold: 1) to increase the visibility of decision making about the release of prisoners by abolishing the parole board; 2) to increase 'certainty' of sentence lengths by firmly situating the regulation of incarceration lengths in the court at the time of sentencing--requiring judges to impose flat, non-parolable sentences of incarceration; and, 3) to legislatively control the severity of penalties through a graded structure of five classes of offense seriousness.

As judged by the objectives of the Commission, the reform was a qualified success. Relative to the indeterminate system

it replaced, the new legislation has resulted in more visible and certain sentences. As discussed in Chapter Seven, the 'certainty' of sentences has increased--especially at the Correctional Center. However, serious questions must be raised as to whether the third objective of the Commission has been met.

The Commission established five grades of offense seriousness. There were two objectives: the first aimed at the legislature, the second at the courts. The offense classes allow future legislatures to address the question of seriousness within limits of rational choice. This was to bring an end to the ad hoc enactment of different permissable sentences determined by the legislative mood at the time. However, since no standards were established by the Commission for the legislature to determine 'seriousness,' one must question whether the classes resulted in any meaningful change. They do not guide the legislative decision making--they merely provide a framework for legislative decisions about the severity of newly created crimes.

The second objective of the five graded offense classes was not clearly articulated by the Commission. It was believed by individual commission members that the five offense classes would provide judges with an additional basis for assessing offense seriousness when imposing sentences. Relative to the previous non-graded statutory system of offenses, this five-

fold distinction has clarified sentencing decisions. Data analyzed in preceding chapters indicates that whether or not a person is incarcerated, and for how long, is more closely associated with offense class after the reform. A higher proportion of offenders convicted of more serious Class A-C offenses are incarcerated, and for a longer time, after the reform. Those convicted of Class D and E, the proportion incarcerated, and the length of incarceration, has declined after the code.

However, this relationship between sentence and offense class, after the reform, should not be overstated. There are a variety of determinants of sentencing decisions by Maine's judiciary other than offense seriousness. As in other jurisdictions factors affecting the court's decision as to whether to incarcerate are different than those factors associated with the court's selection of sentence lengths. Offense seriousness as measured by offense class is neither the only, nor the most significant, basis for either one of these pivotal decisions. As indicated in Chapter Nine, a number of factors are associated with these decisions, especially offender 'personal' and 'criminal history' variables. Moreover, the factors related to the incarceration decision and the length decision are offense specific. Thus, while clarifying sentencing decisions, the introduction of five graded classes of offense did not result in a system where the sentencing decisions of the court are completely, or even primarily, determined by

the seriousness of what the offender did. Other factors are as important, or more important.

If the legislative goal were to require the courts to punish people for what they have done (offense and offense seriousness only) some changes would be required. For instance, the number of offense classes might be increased, with a narrower range of penalties for each class. Under the present system, some offenders convicted of Class A burglaries have been given probationary sentences while others have been given the maximum allowable sentence--240 months of imprisonment. This same range of choices is available, and has been imposed, for Class A rape convictions. A refinement of both the number of offense classes and available sentences would further increase the clarity and consistency of court decisions.

In sum, as measured by the intent of drafters of Maine's criminal code, the law as implemented into action has been a relative success as measured against the indeterminate system it replaced. Areas have been identified which could further clarify the legislative mandate to the judiciary.

National Goals

Evaluating the 'success' of Maine's reform necessarily involves value choices. The preceding discussion treated the need for more clarity and consistency in sentencing decisions as an important goal. This may not be the most important cri-

teria of success or a goal in this jurisdiction.

Maine and Connecticut are the only jurisdictions to date to have abolished the parole board and concomittantly vested virtually all sentencing power in the courts. This unique innovation was not accompanied by any attempt to regulate case-decisions of the court. In both states, the decision as to whether to incarcerate and for how long are matters left entirely to the discretion of the sentencing judge. With no standards or explicit policies to make either of these two sentencing decisions, one could not expect the new system adopted in Maine to result in more predictable sentencing outcomes than the system it replaced. It is this issue which is central to the criticism of Maine's new legislation by advocates of determinate sentencing.

Advocates of determinate sentencing opposed any system allowing unlimited discretion in making decisions about sentences. They argue that the absence of explicit policies for making case-decisions about sentences necessarily results in unwarranted variations in sentences and the lack of consistency from one case to another. In other words, disparity is socially structured. If an explicit policy were developed, the locus of discretion would shift from the individual judge to the larger policy making body of judicial peers--if such policies were self-developed and self-imposed--or to the legislature.[1]

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[1] See Don M. Gottfredson, Leslie T. Wilkins, and Peter B. Hoffman. 1978. Guidelines for Parole and Sentencing: A Policy Control Method. Lexington: D.C. Heath, pp. 119-130.

Advocates of determinate sentencing have roundly criticized Maine's reform because it fails to ensure that sentences are consistent and predictable. Initially, criticism centered on the extent indeterminacy remained in the system. Subsequent criticisms focused on the judicial model adopted in Maine. These criticisms reflect the fact that Maine's reform occurred at the initial phase of this movement rejecting indeterminacy, and, one might add, coincidentally so. Drafters of Maine's reform were not informed by subsequent works that argued the model they chose could not result in any meaningful change in how sentencing decisions are made. In all fairness to the Commission these were not important or ever articulated objectives or goals. Nevertheless, one can assess Maine's reform from such a perspective.

On a conceptual plane, determinate sentencing systems have two characteristics: an 'early time fix'--an early decision about the duration of confinement; and, the adoption of explicit standards or guidelines against which decisions can be assessed. Maine has the first but not the second characteristic. The absence of standards or guidelines to assist case-decisions about in/out, length, and 'transfer' decisions--seen as necessary to achieve fair, consistent, and equitable decisions--are entirely absent in Maine's sentencing system. In addition, Maine's system lacks a coherent sentencing ob-

jective or philosophy of punishment from which such standards could be developed.

Such an assessment of Maine's legislation provides some insight into the nature of the reform but it is not a substitute for an empirical assessment of outcomes. This assessment can be accomplished only by comparing sentencing practices under the two systems to assess the extent to which the reform has resulted in more predictable or consistent decisions. However, without a clear sentencing objective, this comparison can be deceptive. The analysis of data in Chapter Nine on variations in sentencing demonstrates this basic point. We found an increase in explained variation in the court's choice of sentence type and a reduction in explained variation in sentence length after reform. The increase in explained variation of sentence types was largely a result of more variables relating to personal characteristics of offenders entering the equation. The reduction in explained variations in sentence lengths, on the other hand, is a result of all variables except offense related ones dropping out of the equation. This means that an increase in the predictability of the court's choice of sentence types occurred because personal variables are <u>more</u> important than before reform. And, the <u>decrease</u> in consistency of the court's choice of sentence lengths occurred because personal variables are <u>less</u> important than before reform. In other words, the decrease is more compatible with national

goals than the increase.

Essentially, examination of changes in the basis of sentencing neither supports nor refutes the contention of advocates of determinate sentencing that Maine's new sentencing system has built-in disparity. However, it is clear that the operant policy of the court is not one that addresses disparity in any meaningful way. This is reflected by great variation in the factors which effect sentencing decisions.

Workability

The final basis for assessment of Maine's reform is the strategic question of whether the new system works. Has the reform resulted in an administratively workable system? As Ohlin and Remington point out the administration of criminal justice is a single process with a common objective of processing offenders.[2] Changing one aspect of the system has systematic impacts on others requiring reorganization of the entire system. Here, the basic question is whether Maine's new system accomodated those needs and avoided distortion and unanticipated outcomes.

The basic question is that the new system has not met with the success intended. The underlying reason for the

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[2] L. Ohlin and F. Remington. 1959. "Sentencing Structure and Its Effect on the System of the Administration of Justice," Law and Contemporary Problems, 23

lack of success is the increase in sentence lengths. Maine's reform as implemented has resulted in prison overcrowding because sentence lengths have sharply increased. The abolition of parole release resolved the basic conflict of function and authority between the parole board and the judiciary, but this change in sentencing power also impacted on the control and influence of the corrections system over population sizes in the two state correctional facilities. Corrections lacks any legitimate mechanism to control the size of its prison population.

The abolition of parole and the changes in good time crediting have made it increasingly difficult for corrections to deal with problems. Prison management requires some control over allocation of resources, size and composition of prison populations, and internal discipline. The release of inmates through the parole mechanism facilitates the maintenance of prison discipline, provides a lid for overcrowded conditions, and creates an opportunity for corrections' input into release decisions while diminishing their responsibility for those decisions. As a result, it is easy to understand why the Maine Department of Corrections vigorously campaigned, albeit unsuccessfully, for the reintroduction of parole.

The new corrections facility at Charleston is largely a testimony to the unintended consequences of the 1976 sentencing reform. This is not to say the reform is the cause of Maine's

overcrowded conditions. As indicated in previous chapters, those conditions would have emerged even if no change in sentencing had occurred. However, reform certainly contributed to and aggravated overcrowding, while limiting the solutions available to corrections.

Thus, it does not appear that Maine's reform has resulted in a more workable system. The focus of administrative problems is the correctional system which has apparently not been able to effectively deal with the consequences of the 1976 reforms.

Policy Implications

Maine's new Department of Corrections is at a crossroads. Policy decisions made in the near future will affect the overall justice of the system and will either succeed or fail in addressing the overall rationality and coherence of the sentencing system.

A recent analysis of American prisons and jails indicates the single most important issues to be faced by corrections in the decade of the 1980's are a result of overcrowding.[3] Maine is no exception; it has not escaped the problem. What is needed is clear and practical discussions of the policy

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[3] From Joan Mullen et. al. 1980. American Prisons and Jails-Volume 1: Summary Findings and Policy Implications of a National Survey, p. 115.

options available, and their practical consequences.

Mullen, et al, suggest that three broad alternatives are available to deal with current overcrowding problems in corrections:

1. Expand the supply of prison space
2. Reduce demand for prison space through diversion programs.
3. Regulate demand for prison space through regulatory action requiring explicit policies to control both intake and release.[4]

The first alternative is the only one which deals with supply of space. The others focus attention on the system arrangements and policies which affect demand such as use of alternatives to incarceration, sentencing guidelines and parole release.

In Maine, thus far, the alternative purused has been the first--increasing the supply of prison space. The Department of Corrections has opened a new facility--a converted Air Force base with virtually unlimited potential bed space. The creation of more space--a "bricks and mortar response"--essentially accomodates current judicial sentencing. It increases expenditures without reducing demand.

It would be difficult to argue that some expansion of facilities is not necessary. But it is equally difficult to

[4] Ibid, p. 115, esp.

suggest that expanded facilities "solve" the problems. In fact, they may compound the problems by increasing demand.

There is some indication that increased space creates increased demand--that prison populations expand to fill the space available. This means that a decision to expand facilities is, in effect, a decision to add more prisoners. William Nagel--a national expert on corrections--argues that the availability of addition prison space is responsible for increasing the number of persons confined despite the lack of clear evidence of any deterrant or rehabilitative effect.[5] This view is largely supported by Mullen et al.[6] Essentially, their argument is that judges feel constrained by lack of incarceration space, the anguished cries of corrections officials, and concern about the adverse effect of overcrowded prisons on offender recidivism. Increased space, and especially new "quality" space, removes these constraints--increases incarceration.

This circular dynamic--with increased supply increasing demand--would appear to be directly relevant to Maine. Corrections officials have repeatedly requested that the judiciary limit the use of incarceration--at least since 1975--and litigation

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[5] William Nagel. 1973. The New Red Barn: A Critical Look at the Modern American Prison. New York: Walker and Co.

[6] Mullen, et al, op cit.

by inmates in Federal Court has called into question the quality of available space at the prison. Court admissions to the Maine State Prison actually declined through 1979.[7] Recently, the trend has reversed--with increased admissions--possibly as a result of a judicial perception of an increase in overall space.

In any event, the creation of more prison space only addresses the "end" or "result" of increased demand--not the source. Effective measures to control demand are necessary either as an alternative or as a supplement to expanding incarceration facilities.

One obvious way to control demand is reintroduce parole. Parole is an effective device for population control and its reintroduction could help solve overcrowding. Moreover, if the parole function were subject to explicit guidelines defining eligibility and administered by a centralized agency, it could increase consistency and equity in incarceration sentencing. In essence, such an approach could create a sentencing review board. It is this aspect of parole reintroduction which has

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[7] Although, as we have seen, this has not "solved" the problem because sentence lengths have increased. See Chapter Eight.

gained the support of some advocates of the move to determinacy.

Even with a parole board acting as a "sentencing review panel," however, it would be incapable of addressing consistency and equity for all offenders. Its decisions only affect those incarcerated. In the process it would also shift sentencing power away from the courts and undercut the increased visibility of sentencing and the early time-fix[8] established by the 1976 reforms. Finally, parole has the disadvantage of often fixing incarceration length--sentencing--on the basis of institutional behavior rather than offense seriousness.[9] This would further undermine the goals of both the national move to determinacy and Maine's reform.

The same problems arise with increased use of transfer and "early release" options by corrections officials. As discussed in the second part of this report, the sentencing reform was accompanied by the introduction of two major innovations intended to increase the authority of corrections officials to release inmates prior to the expiration of their sentences.

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[8] Although a presumptive time-fix for parole release might be established relatively early, it would be neither as early nor as certain as under the present system.

[9] Currently good-time provisions already adequately reflect institutional behavior. Parole, in effect, tends to sentence on the basis of post-offense behavior--a return to indeterminacy.

Those innovations are contained in 17-A M.R.S.A. §1154 entitled 'Transfer.' These statutes authorize the Department of Corrections to petition the sentencing judge for a reduction in sentence lengths. They also authorize the Department to transfer any inmate to the community under supervision of the Probation service. In essence, this is early release.

For a variety of reasons, these provisions have been infrequently used.[10] If they were, however, the effect would be a reintroduction of elements of indeterminacy. As with parole reintroduction, the effect would be to decrease sentencing visibility, to undercut the early time-fix, and to sentence on the basis of institutional behavior. In addition, the modest increment in consistency which might be gained from parole reintroduction would be absent. In short, use of transfer, early release provisions would have all the disadvantages, but none of the advantages, of parole.

Both parole reintroduction and increased use of early release provisions might assist in dealing with prison overcrowding but with a serious system cost to the goals of the 1976 reforms. Their common disadvantage is that they deal

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10 Interviews with corrections officials suggest that one reason is respect for the legislative intent of the new criminal code. Another reason, related to resentencing provisions, is the Superior Court decision discussed in Chapter Two.

with the symptoms, rather than the source, of overcrowding. The source of overcrowding, and the source of inconsistencies and inequities, lies in sentencing decisions in the courts.

Pursuing policy options focused on sentencing has the advantage of extending the 1976 reforms rather than reversing them. Unlike reform in some other states, Maine's reform was not aimed at reducing variations in sentencing. Nor was much attention paid to limiting and focusing the use of incarceration. However, addressing these issues would be compatible with earlier reforms and would solve many current problems.

Structuring sentencing decisions so as to improve equity and fairness, as well as regulating intake into the correctional system, would require:

1. The development of a coherent philosophy of punishment to establish standards;

2. The development of sentencing guidelines either by judges themselves or by the legislature on the basis of those standards; and,

3. The effective implementation of these guidelines.

The development of sentencing guidelines would reduce (though not eliminate) the individual discretion of judges and would increase consistency among judges in sentencing all offenders. At the same time, guidelines would retain the visibility, early time-fix, and court focused sentencing power effected by the 1976 reforms.

Of course, sentencing guidelines would not necessarily alleviate, or even palliate, overcrowding. It is necessary

for standards and guidelines to treat imprisonment as the use of a scarce and valuable resource. One possible model is the Minnesota guideline system, which directly addresses, structures and limits the use of incarceration.

Maine's reform did not address these issues and did not develop a coherent philosophy of punishment or sentencing standards. As a result, sentencing decisions are no more predictable or consistent than before the reform. As extensively discussed in Chapter Nine, there are broad and unexplained variations in sentencing decisions and in the factors affecting these decisions. The next logical step in the process of Maine's reform would seem to be to directly confront these issues.

Maine's 1976 reform was an historical event, and clearly not a failure. Major change in criminal justice policy was effected through legislative action. The actual decision making practices of the system were effectively relocated and changed. Implementation increased certainty and avoided reinjecting indeterminacy into the system.

Maine's reform has been criticized for what it did not accomplish--and did not attempt to accomplish. These criticisms may be warranted but criticisms of what the reform did accomplish are not. Overall, the reform has been successful in meeting the goals of the legislature and the reform commission.

Developments in penology, lessons from other jurisdictions and the reality of overcrowding suggest both modifications

and extensions of the 1976 reforms. A major element in continued reform would be the introduction of standards and guidelines for judicial case decisions to establish a truly determinate sentencing system in Maine.

The future direction of Maine's criminal justice system depends on present policy decisions. In this sense, Maine is at the crossroads of justice, making decisions which will effect the future contours of justice in the state.