

Legislative History for Connecticut Act

HB 276

PA 436

1957

Senate: P. 2797-2803

House: P. 2377-2379

Judiciary: P. 374-407

Committee
report
O'Sullivan

See also D/P931/re Conn. Prison

LAW/LEGISLATIVE REFERENCE

Final, interim etc

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Report 1957

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GEN. ASSEMBLY
SENATE

PROCEEDINGS
1957

VOL. 7
PART 5
MAY 20-MAY 24
2546-3223

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in the Chair and can't do it.

THE CHAIR:

The question is on the acceptance of the committee's favorable report and the passage of the bill.

SENATOR WATSON:

Mr. President, I understand this bill will allow the University of Connecticut to purchase less than an acre of property in the town of Mansfield that is now residential property.

THE CHAIR:

Any further discussion? If not, all those in favor of accepting the committee's favorable report and passing the bill, signify by saying AYE, opposed? The bill is passed.

THE CLERK:.

Cal. No. 1327, File No. 954, House Bill 1855. An Act authorizing the selectmen of the town of Watertown to abate the real estate tax on property of the Methodist Church of Watertown, Connecticut, Incorporated. Favorable report, Education.

THE CHAIR:

This bill will be passed temporarily, retaining its place.

THE CLERK:

Cal. No. 1328, File 950, Substitute for House Bill 276.
An Act establishing procedures for the review of sentences

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imposed by the Superior Court. As amended by House Amendment Schedule "A". Favorable report, Judiciary and Governmental Functions.

THE CHAIR:

Does the Senator from the 21st wish to....

SENATOR SHANNON:

Would the Clerk read that again, Mr. President?

THE CHAIR:

Would you read the title again, please.

THE CLERK:

Cal. No. 1328, File 950, Substitute for House Bill 276. An Act establishing procedures for reviews of sentences imposed by the Superior Court. As amended by House Amendment Schedule "A". Favorable report, Judiciary and Governmental Functions.

THE CHAIR:

The Senator from the 21st.

SENATOR SHANNON:

Mr. President, I move for acceptance of House Amendment Schedule "A". Will the Clerk read the amendment?

THE CHAIR:

Question is on the acceptance of House Amendment Schedule "A".

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THE CLERK:

Amendment Schedule "A" offered by Mr. Dreyfus of the town of New London. In Section 2, line 2, strike out the first five words and insert in lieu thereof the following: "one year of more in the State Prison or State's Prison for Women by any court of competent jurisdiction."

THE CHAIR:

Question is on acceptance of the House Amendment Schedule "A". The Senator from the 21st.

SENATOR SHANNON:

Mr. President, I move for acceptance of the House Amendment.

THE CHAIR:

Motion is on acceptance of the House Amendment Schedule "A". Will you remark?

SENATOR SHANNON:

I'd rather remark after the amendment has been adopted, if it does. It's a technical amendment.

THE CHAIR:

All those in favor of adopting the amendment signify by saying AYE, opposed? The amendment is adopted.

SENATOR SHANNON:

Mr. President, I now move for acceptance of the committee's favorable report and passage of the bill as amended by House Amendment Schedule "A".

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THE CHAIR:

The question is upon acceptance of the committee's favorable report and passage of the bill as amended by House Amendment.

SENATOR SHANNON:

Mr. President, this bill provides for the appointment by the Chief Justice of three Superior Court Judges to constitute a Review Division which shall, upon application of one sentenced to prison by the Superior Court, review such sentence with power to suspend it, decrease it, place the individual on probation. Its decision shall be final. The sentencing judge shall be disqualified from sitting in review. After imposition of sentence in the Superior Court, the defendant shall be informed of his review rights and furnished forms for application. This is a recommendation which comes out of the O'Sullivan report, that Commission which was appointed by the Governor to review our criminal procedure. It's a good bill and I hope it passes.

THE CHAIR:

Senator, the Clerk advises that we need suspension of the rules and I will order suspension, unless there is objection. If there is no objection, we will have suspension of the rules. And now we have the question of accepting the committee's favorable report and adopting the bill as amended by House Amendment Schedule "A". The Senator from the 32nd.

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SENATOR BARRINGER:

Mr. President, I, too, would like to speak for this bill. Chief Judge O'Sullivan, I think, did a superb job in his over-all investigation of our penal system. I rather regret that more of it was not adopted, but this, at least, is an excellent step forward. I think that as the years go on, more and more of his findings are going to be justified. I ran into a situation a couple of weeks ago, it happened to occur the day before the final O'Sullivan report came in, whereby I was defending a boy who was out on parole from Cheshire and had committed some more minor crimes and the problem was whether he should go back or whether he shouldn't go back. And possibly I'm speaking out of turn, here, but I am at least going to say it. I investigated into this boy's background and I found a strain of insanity running back four generations. In my opinion, and in the judge's opinion, the boy was a borderline insanity case. Well, then the question came up about what to do. He was not sufficiently deranged to justify a commitment to Newtown or one of the really insane groups. Then we had the problem of, where do you send them, and we finally decided that we had to send him back to Cheshire. I don't know whether the judge asked me or I asked the judge first, in view of this boy's background and history, will he get psychiatric treatment at Cheshire? And the judge informed me as a result of

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a recent visit to that institution, that there was no provision for psychiatric training at Cheshire.

Now, maybe it's a good idea to keep sending that type of case to an institutional place purely to restrain them, but I believe that that boy who has gotten at this stage of the game that he might make a useful, though low-grade, citizen for the rest of his life earning wages and free and open. I think, actually, what we did with him was a crime against society and I think that he will now go back and learn more bad tricks, and eventually he will be institutionalized for the rest of his life. Therefore, the bird's eye view of the O'Sullivan report, I believe, will stand up beyond this legislature and into the years to come. I understand that the sexual deviate thing is to be started which is a very real step in the right direction. Once in a while, we cannot persuade people that there are certain things to be done when your conscience bothers you, and that boy sitting over there rotting in Cheshire with no psychiatric or medical help bothers my conscience, and therefore, even though it is not germane to the point, I urge the adoption at least of this part of the O'Sullivan Commission.

THE CHAIR:

Any further discussion? If not, all those in favor of accepting the committee's favorable report and passing the bill as

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amended by House Amendment Schedule "A", signify by saying AYE, opposed? The bill is passed.

THE CLERK:

Cal. No. 1329, File 949, Substitute for House Bill 148.

An Act concerning raising the minimum fair wage to One Dollar.

Favorable report, Committee on Labor.

The president, presiding

THE CHAIR:

The Senator from the 29th.

SENATOR DESROSIERS:

Mr. President, I move for the acceptance of the committee's favorable report and the passage of the bill.

THE CHAIR:

The question is upon the acceptance of the committee's favorable report and the passage of the bill.

SENATOR DESROSIERS:

Mr. President, in my remarks, I will not make a long speech. This bill has been in the newspapers for the last fourteen weeks. Everyone in the Circle knows the contents of the bill. The only reason why we're holding the hotels and restaurants to seventy-five cents is because they are some source that they provide employment for some workers, otherwise would have difficulties in obtaining jobs rather than be ruled out

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HOUSE

PROCEEDINGS
1957

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PART 4
1826-2426

Friday, May 17, 1957

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THE CLERK:

Calendar No. 1405, file 950. Substitute for House Bill 276.

An Act establishing Procedures for Review of Sentences Imposed by the Superior Court. Favorable report of Judiciary.

MR. DUDLEY (GUILFORD):

The Clerk has an amendment.

THE CLERK:

Amendment offered by Mr. Dreyfus of New London to Substitute House Bill 276, file 950.

"In section 2, line 2, strike out the first five words and insert in lieu thereof the following: one year or more in the State Prison or State Prison for Women by any court of competent jurisdiction."

MR. DUDLEY (GUILFORD):

I move the adoption of the amendment.

THE SPEAKER:

Question is on the adoption of the amendment. Will you remark?

MR. DUDLEY (GUILFORD):

This is a technical amendment clarifying those persons who would have a right to gain advantage under the review of this section. It clarifies the matter more than the mere words "The Superior Court" and I move its adoption.

THE SPEAKER:

Will you remark further? If not, question is on acceptance and adoption of the amendment. Those in favor say "Aye" opposed "No." The "Ayes" have it, the amendment is adopted.

MR. DUDLEY (GUILFORD):

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I move for acceptance and passage of the bill as amended.

THE SPEAKER:

Question is on acceptance and passage of the bill as amended.

Will you remark?

MR. DUDLEY (GUILFORD):

This bill provides for the appointment by the Chief Justice of three Superior Court judges to constitute a review division who shall upon application one sentence to imprisonment for one year or more in a court of competitive jurisdiction to review that sentence with the power to suspend it, increase it, or place the person so sentenced on probation.

Mr. Speaker, this bill has a two-fold purpose. We indulge ourselves sometimes that although we have great faith in our judges this bill has no intent to criticize the action of any of our judges either presently or in the past. However, it has been pointed out by the Prison Study Committee that was appointed by Governor Ribicoff in August, 1956, that there were certain disparities of sentence that existed in our state prison. The report on page 3 reads as follows, and I'll be brief: "Upon an investigation of 200 active files selected at random from more than 800 of Wethersfield's reviews, there was a marked variation in the sentences of prisoners who have substantially similar backgrounds and convicted of the same offense. This is illustrated by variations which appeared in sentences for robbery with violence, which carries a statutory maximum of 25 years. Among prisoners with a record of more than one major offense sentence ranged from a low of 8 to 12 to a high of 15 to 22 years. Among prisoners

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with a record of only minor offenses, sentences ranged from a low of 1 to 3 years to a high of 10 to 12 and 8 to 15 years. Among prisoners with no record/^{of}prior convictions, sentences ranged from a low up to 3 to a high of 8 to 12 years.

Mr. Speaker, this is an initial attempt to correct some of the variations in the sentencing procedure. The other affect that this bill will have is to provide the very real affect of more or less easing some of the tension and unrest that has been exhibited at the state prison and the O'Sullivan committee also pointed out that one of the very real causes for unrest was the feeling on the part of the inmates, especially those first offenders, that they have been harshly sentenced, and they would go around and ask other people what their sentences was and then compare them and it hindered their rehabilitation.

Mr. Speaker, I believe it's a good bill and the committee reported on it favorably and I move its passage.

THE SPEAKER:

Will you remark further? If not, question is on acceptance of the committee's report and passage of the bill as amended. Those in favor say "Aye" opposed "No." the "Ayes" have it, bill is passed.

THE CLERK:

Go back to page 4, calendar No. 1342, Senate Bill 834, file 715. The Amendment has already been adopted and now has the approval of the Legislative Commissioner.

MR. KRAWIECKI (BRISTOL)*

Inasmuch as the Legislative Commissioner has approved the

JOINT
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JUDICIARY AND GOVERNMENTAL FUNCTIONS

Thursday, 10:00 A. M. February 28, 1957

Chairman Erving Pruyn, presiding

Present: Sen. Barringer & Sibal
Rep. Cady, Bouteiller, Pinney, Kennedy, Tomasino,
Marsters, Gersten, Kucharski, Dreyfus, Eddy,
McCartin, Smyth, Dudley & Schlossbach

Chrmn. Pruyn: The hearing will come to order. We will
take up H. B. 276. Is there anyone in favor?

H. B. No. 276 - Koskoff - AN ACT ESTABLISHING PROCEDURE FOR
REVIEW OF SENTENCES IMPOSED BY THE
SUPERIOR COURT

Rep. Koskoff, Plainville: I will leave with your committee
a substitute bill which adds Section 5 which
is a retroactive section to January 1, 1954.
This bill provides for a board of sentence re-
view consisting of 3 judges appointed by the
chief justice and will not be an added expense
to the state or to offenders seeking review of
their cases. This board will review sentences
of persons who feel that they have been unfair-
ly sentenced. The board upon review may decide
that sentences should remain as they are, should
be reduced or should be increased. The right
to increase sentences is to discourage frivolous
appeals. This bill was drawn by the O'Sullivan
Committee. This committee headed by Judge P.
B. O'Sullivan, was appointed by the governor
last summer after the disturbance at the state
prison to study the causes of unrest at the
prison and make recommendations to the legis-
lature for needed remedies in the prison setup.
The commission found that one of the chief
causes of unrest at the prison is the feeling
among many of the men that they have been un-
fairly sentenced. I have a statement by the
O'Sullivan committee which tells of disparity
of sentencing for the same crimes which I will
leave with you. The report states that when
prisoners compare their sentences and learn of
the differences, inevitably resentment sets in,
which breaks down morale, lessens incentive for
rehabilitation and causes much unrest. When I
mentioned unrest at the prison when I spoke be-
fore this committee last week, one of your mem-
bers asked me how I expected anything but unrest
from men in confinement. It is true that a cer-
tain amount of unrest cannot be avoided, but we
should do what we can within reason to keep un-

rest at a minimum because when there is too much unrest it results in a riot. The O'Sullivan committee felt that disparity in sentencing was such a serious cause of unrest that they drafted the bill you now have before you. At the time of drafting this bill, it was felt that it would not be made retroactive because of the difficulty of obtaining records and information about the older cases. However, it now seems feasible to make the bill retroactive to January 1, 1954. After examining the files at the prison only approximately 16 cases would be involved and that does not seem too much of a burden. The other cases requiring review at the prison can be handled by the board of pardons and the board of parole. In all there will be about 53 cases to be reviewed. Preventing riots involves a great deal that needs doing and this is one of the things. According to surveys by National experts after the rash of prison riots a few years ago, the chief cause of riots was injustices or the feeling of injustices festering in men. At any rate it is impossible to accomplish rehabilitation without establishing methods that are fair and just. Judge O'Sullivan is here and he can tell you of the needs and details of the bill.

Mr. Tomasino: I cannot understand the term "disparity of sentences". There should be a difference for it is measured according to circumstances.

Mrs. Koskoff: I agree with you. This will not rule out a judge's judgment, but his reactions to certain crimes, which are not always just. I am not interested in every man getting the same sentence for the same crime. Each case should be considered on its own merits. I am also aware that in the sentences goes the judge's personal idiosyncrasies.

Sen. Barringer: You must make a basic assumption that the judge's verdict is right and you must trust him.

Mrs. Koskoff: May I ask that that question be directed to Judge O'Sullivan.

Mr. Kucharski: You mean you want everyone sentenced the same for the same crime?

Mrs. Koskoff: I mean that there should be a board of appeals where they can go.

Mr. Kucharski: Would this bill make it possible?

Mrs. Koskoff: They would have the right to leave the sentence as it is or raise it or lower it. This is a law in operation in Massachusetts since 1939 and it is working out pretty well. Judge O'Sullivan is appearing here as chairman of the committee that he heads and at our request.

Judge P. B. O'Sullivan, Orange: It is a little embarrassing to appear. I belong to that school of thought that there should be a difference between the departments of government. Last August the governor asked five people of the State to serve as a committee and in the language of the governor the substance is this. It was regarding the sit down strike at the prison, and he wanted this committee to review and ascertain what caused the unrest and try to remove the unrest. With that in mind, we approached the problem. We found many causes of unrest, some of which were justifiable and others were not justifiable. The real cause, of course, is that they do not want to be in prison, but that is where they belong. We have found several causes, however. One of you asked about the disparity of sentences. There is a man in prison now and his sentence is far out of line. He is there for more time than any man in the prison. I was submerged as I looked back at it. For I did this. I sentenced him from 20 to 94 years. This fellow, Gonsky, happened to be a leader of a group and was charged with a variety of things, all very bad things, and it ended up with my desiring that that fellow never again get out of prison. Another judge would not have sentenced him as severely as I did. When you sit on the bench and find a man guilty you apply as best you can what you think is the best sentence. You might say it was my religious training, my educational training, my ethical training and a variety of things, so that certain crimes struck me as being more heinous than others. I know of one of our judges, since deceased, who would throw the book at a man who would steal a loaf of bread but it would not make much difference why he stole it. He would end up in prison for this crime and another man would be on probation for a sex crime. I take the opposite view. When I ran

- State of Connecticut -

19 November 1956

A PROCEDURE FOR REVIEWING SENTENCES

I. The Problem

The morale of many prisoners, and consequently their incentive for rehabilitation, is adversely affected by the belief that there is wide inequality in the sentences imposed by different judges for the same crime. Wardens and penologists appear to be in complete agreement that this is a real problem.¹ Governor Ribicoff, at his first meeting with the Committee, said that he believed the problem exists at Wethersfield. This was confirmed by a state parole officer who reported that "All prisoners bear a certain grudge against the sentencing judge, but the hardest ones to work with are those who, after asking around and comparing, decide that their sentences represent a particular judge's harsh treatment."²

Although one of the purposes of this Report is to present evidence on the absence of uniformity in sentencing in this and other jurisdictions, the ultimate reliability of this evidence, even if uniformity could be measured, is not the key issue. As long as a prisoner feels that he has been denied review of a sentence which he deems unfair or unduly harsh he remains a source of trouble in the prison system and efforts toward rehabilitation are seriously impeded. The Report next examines current Connecticut procedures for reviewing "excessive" sentences. Finally it surveys the procedures of other jurisdictions and proposes that the Massachusetts procedure, providing review of sentences by a panel of three trial court judges, be adopted. Draft legislation to implement the proposal accompanies the Report.

II. Variations in Sentences for the Same Crime

Studies comparing the sentencing records of judges to determine the

extent of uniformity of sentencing for the same crime must be used with caution. This is because "uniformity" in sentencing is neither uniformly defined nor subject to a simple enough definition to be readily measurable. If each judge in a given jurisdiction prescribed the same sentence for every individual convicted of larceny, a straight tabulation might lead one to conclude that sentencing is "uniform". But if one could and were to take into account the extent of complicity in the crime, criminal record, degree of co-operation with the prosecution, and demeanor before the sentencing judge, a comparison of the same set of sentences would reveal wide "inequality". In a straight tabulation it is assumed that such variables will average out in a large sample of sentences. In the more selective studies which compare sentences by crime and prior record it is assumed that the judge actually bases his decision on these variables. Both assumptions are questionable.

But, however doubtful the statistical reliability of these studies, it cannot be overemphasized that they reveal a picture of sentencing that many prisoners share and act upon. It is for this reason that the results of these studies are described.

A. Other Jurisdictions

A straight tabulation of 7,442 sentences imposed by 6 New Jersey county judges over a 9 year period disclosed a wide gap between Judge A and Judge F in the length of sentences imposed and the percentage of fines, suspended sentences and probations granted. The judges maintained their relative positions on the scale of severity for most types of crimes. Judge B, for example, imposed penal sentences in 93% of the crimes against property accompanied by violence, while Judge F imposed sentences in only 37% of such cases.³

An analysis of case histories of the 1,661 persons committed to Massachusetts State Prison during a 5 year period found that at least 20%

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had received sentences based upon "considerations not pertinent to the facts of the complete social history".⁴ It was found, for example, "that no fewer than thirty-four different sentences were imposed upon similar criminals for similar crimes; while seventeen similar sentences were imposed upon different criminals for similar crimes".⁵

The American Bar Association Committee on Sentencing, Probation, Prisons, and Parole, in its 1939 Report, discussed the findings of a U. S. Department of Justice study of the views of 270 federal and state criminal court judges. It concluded that "the sentencing records of many judges, as well as the judges' own statements concerning their sentencing practices, show the presence of arbitrary variance and numerous highly subjective factors and personal biases in the imposing of sentences".⁶

B. Connecticut - Wethersfield

Our pilot investigation of 200 active files, selected at random from more than 800 at Wethersfield, reveals a marked variation in the sentences of prisoners who have substantially similar backgrounds and have been convicted of the same offense.⁷ This is illustrated by the variations which appeared in sentences for robbery with violence which carries a statutory maximum of 25 years. Among prisoners with a record of more than 1 major offense, sentences range from a low of 8 to 12 to a high of 15 to 22 years. Among prisoners with a record of only minor offenses, sentences range from a low of 1 to 3 years to highs of 10 to 12 and 8 to 15 years. Among prisoners with no record of prior convictions, sentences range from a low of 1 to 3 to a high of 8 to 12 years. It should be noted that the high sentences for both minor offenders and offenders with no criminal record are as great or greater than the low sentence for major offenders. While these figures may suggest a logical basis for discontent among minor offenders and those with no record, there is no reason to assume that the major offender logically restricts

his comparisons to other major offenders. The prisoner with 15-22 years for robbery with violence may not draw statistical refinements in sketching his picture of justice.⁸

These figures suggest a related problem which will be dealt with in another report. Indeterminate sentence provisions contain no limitations on the minimum sentence accompanying a given maximum sentence selected by the judge. A prisoner becomes eligible for parole only after he has served the minimum sentence. Thus not only is the Parole Board's discretion greatly reduced when the gap between minimum and maximum is as little as two years, for example in a sentence of 8 to 10 years, but the prisoner's incentive to rehabilitation is less than it might well be were the sentence 1-10 years. Furthermore, from the prisoner's viewpoint a 5-15 year sentence may prove to be far less severe than an 8-10 year sentence.⁹ No matter how this problem may be resolved, the desirability of providing review for "excessive" sentences remains.

III. Connecticut Procedures for Review of "Excessive" Sentences

What legal recourse is available to the prisoner in Connecticut for review of his sentence? There are, theoretically, only two avenues of appeal -- one to the Board of Pardons, the other to the Supreme Court of Errors.

A. Board of Pardons

Section 3020 of the General Statutes provides the Board of Pardons with jurisdiction to grant commutations of punishment to any person confined in the State Prison. The Board has the authority to grant a pardon "at any time after the imposition and before or after the service of any sentence". However, such power is primarily exercised in commutation of death penalties. In the rare instances when the power is used to reduce a sentence, action is taken only after the prisoner has served a major

portion of his minimum term.¹⁰ In the 200 active files examined at Wethersfield there was only one commutation of a term sentence to a lower minimum.¹¹ Because this procedure is so sparingly used and seldom becomes available before a substantial period of a sentence has been served, it reinforces a prisoner's feeling that he has no immediate or adequate opportunity to have his "excessive" sentence reviewed.

B. Supreme Court of Errors

Appeal from an "excessive" sentence to the Supreme Court of Errors has proved even more unavailing. That court has consistently held that it cannot disturb a sentence unless the trial court has abused its discretion.¹² This has meant that as long as a sentence falls within the maximum term allowed by statute, it must stand.¹³

IV. Possible Solutions

A comparative study of legislation suggests consideration of the following three tribunals as possible forums for reviewing and modifying sentences: (A) Adult Authority Board composed of law and social science trained personnel (B) The Supreme Court of Errors (C) A Review Division of Trial Court Judges.

A. Adult Authority Board

In 1944 the California legislature established an Adult Authority Board to fix sentences. It is composed of persons experienced in the fields of corrections, sociology, law, law enforcement and education. The trial judge has no sentencing discretion; he sentences a defendant to the term prescribed by law. The Board determines, and may redetermine, "what length of time, if any, such person shall be imprisoned" and to what institution he will be sent. In making its determination, the Board examines material concerning the prisoner, gathered during his first six months of

of imprisonment (or 90 days in less serious crimes). The Board also has discretion to release prisoners to parole camps or to the community under parole.¹⁴

Thus the Board has continuous supervision over the disposition and treatment of an offender from conviction through parole. This continuing relationship is aimed at producing, among other things, sounder and more uniform sentencing practices. Under such a system, "uniformity" means as complete individualization of treatment as possible for each prisoner and not necessarily equal time for equal crimes and prison records.

Though the Adult Authority has much to recommend its adoption, there is little reason for suggesting that it would resolve the problem of a prisoner feeling that he has no way of having an "excessive" sentence reviewed. The only review, if any, is a redetermination by the same Board. Furthermore the diversity of interests represented by various disciplines on the Board may well result in arbitrary or excessive action. Thus, even if such a Board were to be established, the desirability for a reviewing agency would remain.¹⁵

There is a more fundamental reason for not recommending an Adult Authority with powers as broad as those granted the California Board. We do not accept the simplistic view that the only purpose of sentencing is rehabilitation of the individual offender. Deterrence of others through punishment and prevention through restraint are also important goals of the criminal law. This complex of objectives, including rehabilitation, seems best suited to an initial adjustment by judicial action in the sentencing process. We are not prepared therefore to propose that the discretion of the trial judge in the imposition of sentences be abolished.

There is, however, a place for an Adult Authority Board in a modern correctional scheme. In fact, since the primary emphasis of such a Board

is on classification and treatment of the criminal in a proper institution rather than on the number of years he is to serve, it presupposes an adequate statewide department of correction with a classification center and various outlets for the treatment of different types of offenders. Connecticut is without such a department. In a report devoted to a department of correction the function and limits of power of an Adult Authority will be discussed.¹⁶

B. Supreme Court of Errors

In some jurisdictions sentences have been reduced on appeal in the absence of express statutory power. The reasoning in these cases generally proceeds on the theory that an abuse of discretion by the trial court in judging the term necessary to vindicate the law is an error of law reviewable on appeal. Since that interpretation has been rejected by the Connecticut Supreme Court,¹⁷ only an express statutory grant to modify sentences or remand for modification could provide a defendant with such a review. This has been done in Iowa and has been adopted by the American Law Institute in its Code of Criminal Procedure.¹⁸

In theory, this procedure allows the defendant to use traditional channels of review to press his claim of undue severity and enables a single reviewing body to develop a statewide sentencing policy to guide the lower courts. In practice these advantages have not been realized. Resort to appeal is apparently greatly limited by the costly and cumbersome nature of the process. The number of modifications noted in the few cases recorded seems to suggest that the appellate court, in most jurisdictions, continues to extend judicial courtesy to the discretion of the trial judge. Moreover, with few exceptions, the high courts have not used this review as a means of establishing criteria for sentencing. Decisions often con-

tain a statement such as "the sentence is being reduced under all the circumstances" or "on the entire record". Whatever factors were considered material to the decision are not articulated.¹⁹ Since traditional appellate review, has not in practice, resolved the problem solved in theory, it is not recommended that the Supreme Court of Errors become Connecticut's forum for review of sentences.

C. Review Division of Trial Court Judges

In 1943, Massachusetts established an appellate division consisting of a rotating panel of three trial court judges, to review cases in which a defendant is "aggrieved" by his sentence.²⁰ The legislature acted in response to Judicial Council criticism of an appellate procedure very similar to that in Connecticut. The Council reported that appellate power had been restricted to a literal interpretation of error and that there was no check on abuse of discretion if the trial judge sentenced within the legal maximum. The Council recommended, as do we, a statutory opportunity for summary review of sentences which would not burden the Supreme Judicial Court (in Connecticut, the Supreme Court of Errors) and which would not place upon a defendant the expensive and cumbersome procedure of appealing to that court.²¹

The Massachusetts statute provides in pertinent part:

There shall be an appellate division of the superior court for the review of sentences to the state prison imposed by final judgments in criminal cases, except in any case in which a different sentence could not have been imposed, ... Said appellate division shall consist of three trial justices of the superior court...designated...by the chief justice of said court, and shall sit...at such...place(s) as may be designated by the chief justice, and at such times as he shall determine. No justice shall sit or act on an appeal from a sentence imposed by him. Two justices shall constitute a quorum to decide all matters before the appellate division.

A person aggrieved by a sentence which may be reviewed may within three days after the date of the imposition...file...a request for leave of the justice who imposed the sentence to appeal to the appellate division

for the review of such sentence....the clerk of the court shall notify the person sentenced of his right to request such leave. If such leave to appeal is not granted within ten days after such request, the person sentenced shall forthwith be notified by the clerk of his right to request said appellate division within ten days for leave to appeal for the review of such sentence. The justice imposing the sentence may grant such leave at any time before the request to the appellate division is considered. Whenever leave to appeal is granted the defendant shall be notified by the clerk,...Said division may for cause shown consider any late request for leave to appeal filed within one month from the imposition of sentence and may grant such leave. A request for leave to appeal or an appeal shall not stay the execution of a sentence....The justice may transmit to the appellate division a statement of his reasons for imposing the sentence and shall make such a statement within seven days if requested to do so by the appellate division.

If leave to appeal is granted...the appellate division shall have jurisdiction to consider the appeal with or without a hearing, review the judgment so far as it relates to the sentence imposed, and also any other sentence imposed when the sentence appealed from was imposed,...and shall have jurisdiction to amend the judgment by ordering substituted therefor a different appropriate sentence or sentences or any other disposition of the case which could have been made at the time of the imposition of the sentence or sentences under review, but no sentence shall be increased without giving the defendant an opportunity to be heard. /Note: Providing the division with power to increase sentences was intended to discourage frivolous appeals.⁷ If the appellate division decides that the original sentence or sentences should stand, it shall dismiss the appeal. Its decision shall be final....

Statistics indicate that this procedure affords a real opportunity for review and modification without placing an unduly heavy burden on the court. In 1943-44, 37 defendants filed appeals, 8 sentences were reduced, none increased and 19 appeals were dismissed. The division of three judges disposed of the appeals in 6 days. By 1951-52, 217 appeals were filed, 42 sentences were reduced, 5 increased and 166 appeals dismissed. The division sat 18 days during that year. In the last report for 1954-55, 290 appeals were filed, 66 sentences were reduced, 1 increased and 165 appeals dismissed in 19 days' sitting.²²

This procedure, in theory and in practice, provides the offender with immediate and effective opportunity to seek review of his sentence. He may enter the crucial first stage of prison life with at least one less grievance and with a feeling that his sentence does not represent the bias

and prejudice of a single judge. The relatively high percentage of modifications indicates more than a cursory review. It also reflects a spirit of self-criticism which, together with the appellate division's power to require an explanation for the sentence, must force all trial judges to weigh carefully available data on a prisoner before imposing sentence. Such a procedure in Connecticut would promote the use of the new adult probation pre-sentence reports;²³ and thereby tend to reduce inequalities in sentencing.

The Committee, in proposing the adoption of the Massachusetts procedure, recommends that the Connecticut statute contain provisions for:

1. A 30 day period during which an application for review may be made. The purposes of this increase from 3 to 30 days is to provide the convicted person with sufficient time to decide whether to seek review following the shock of conviction and beyond the 14 day period, during which a regular appeal may be taken.²⁴ This change eliminates the 30 day period during which a review application late "for cause" may be had.
2. Clear written notice to each convicted person of the right to apply for review and of the risk of an increase of sentence on review. The Committee considered and decided that an increase in sentence by the review division would not give rise to a valid claim of double jeopardy. This problem is discussed in the Appendix.
3. Publication of the decisions of the review division in the Connecticut Supplement.²⁵ Without such a provision it is difficult, if not impossible, to determine the basis for modification of sentence or dismissal of an application for

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review, and the opportunity to provide a guide to sentencing is lost. To be fully effective, the procedure should enable the trial judge to examine review decisions to determine, for example, what factors his brothers weigh most heavily in sentencing.

The Committee considered and decided against making hearings mandatory in all applications for review, not only when sentences are increased. It was felt that summary review would be less costly and cumbersome for the convicted person and that a hearing requirement might so increase the burden of the review division that grants for leave to review might be too greatly restricted.

V. Conclusion

Any consideration of sentencing reform should take into account the present limitations of Connecticut's correctional organization and facilities. Even if some form of disposition tribunal integrated in a department of correction is ultimately deemed necessary, the review division solution which is here proposed would still be necessary though it might require amending. In any event it would answer the immediate problem of prisoner attitudes toward the sentencing tendencies of individual judges and encourage the use of present institutional facilities, such as the adult probation report program, in the sentencing process. At the same time it should serve as a step toward educating the public to accept more modern treatment methods. Thus in order to reduce the inequalities and lack of consistency in sentencing policy, the Committee recommends that this Report and the following draft legislation establishing a review division of superior court judges be submitted to the General Assembly of Connecticut.

AN ACT ESTABLISHING PROCEDURE FOR REVIEW OF
SENTENCES IMPOSED BY THE SUPERIOR COURT

Section 1. The chief justice shall appoint three judges of the superior court to act as a review division of said court, and shall designate one of such judges as chairman thereof. The clerk of the superior court for Hartford county shall record such appointments and shall give notice thereof to the clerk of said court for each other county. The review division shall meet at such times and places as its business requires, as determined by the chairman. No judge shall sit or act on a review of a sentence imposed by him. The decision of any two of such judges shall be sufficient to determine any matter before the review division. In any case in which review of a sentence imposed by any of the judges serving as the review division is to be acted on by the division, the chief justice may designate another judge to act in place of such judge.

Section 2. Any person claiming to be aggrieved by a sentence to a term of imprisonment by the superior court may, within thirty days from the date such sentence was imposed, except in any case in which a different sentence could not have been imposed, file with the clerk of the superior court for the county in which the judgment was rendered an application for review of the sentence by the review division. Upon imposition of the sentence, the clerk shall give written notice to the person sentenced of his right to make such a request. The notice shall include statements that review of the sentence may result in suspension of sentence, probation, decrease of minimum and/or maximum terms or an increase of the minimum and/or maximum terms within the limits fixed by law and that no such increase in sentence will be imposed without a hearing. A form for making such application shall accompany the notice. The clerk shall forthwith

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transmit such application to the review division and shall notify the chief justice and the judge who imposed the sentence. Such judge may transmit to the review division a statement of his reasons for imposing the sentence, and shall transmit such a statement within seven days if requested to do so by the review division. The filing of an application for review shall not stay the execution of the sentence.

Section 3. The review division shall, in each case in which an application for review is filed in accordance with section 2 of this act, review the judgment so far as it relates to the sentence imposed, and any other sentence imposed on the person at the same time, and may order a different sentence or sentences to be imposed, which could have been imposed at the time of the imposition of the sentence under review, or may decide that the sentence under review should stand. No sentence shall be increased unless the person sentenced has been given an opportunity to be heard by the review division. If the review division orders a different sentence or disposition of the case, the court sitting in any convenient county shall resentence the defendant or make any other disposition of the case ordered by the review division. Time served on the sentence reviewed shall be deemed to have been served on any substituted sentence. The decision of the review division in each case shall be final. The reasons for each decision shall be stated therein. The clerk of the superior court for the county in which the review division is meeting shall act as the clerk of the division and shall send the original of each decision and a copy to the clerk of the court for the county where the judgment was rendered to the chief justice, the judge who imposed the sentence reviewed, the person sentenced, the principal officer of the penal institution in which he is imprisoned and the reporter of judicial decisions, who shall cause it to be published

in the Connecticut Supplement. The review division may require the production of pre-sentence reports and any other records, documents, exhibits or other thing connected with review proceedings.

Section 4. The superior court shall prescribe forms to be used in accordance with section 2 of this act and make rules for procedure under sections 2 and 3.

FOOTNOTES

1. See, e.g., Warner, S. B. and Cabot, H. B., "Judges and Law Reform" (Cambridge - Harv. Univ. Press, 1936); Dession, G. H., "Justice After Conviction" 25 Conn. Bar Journal 215 (1951); Barnes, H. E. and Teeters, N. K., "New Horizons in Criminology" p. 333 (1943); Ashe, S. P., "A Warden's View on Inequality in Sentences", 5 Federal Probation no. 1, p. 26 (1941); and McGuire, M. F. and Holtzoff, A., "The Problem of Sentence in the Criminal Law", 4 Federal Probation no. 4., p. 20 (1940).
2. For a Wethersfield prisoner's view, see letter of LeRoy Nash, #15725, dated Aug. 23, 1956 in which he states "Make it required that either the Board of Pardons or some other Board adjust inmate's minimum sentences so that inequities or inequalities of time actually to be served before meeting the Parole Board can be eliminated...instead of one man having to wait for 10 or 15 years or more before he can apply for a parole consideration, while another man confined for a very similar crime, under the same law, will go up for parole in a year or two."
3. Gaudet, F. J., "Individual Differences in the Sentencing Tendencies of Judges", Archives of Psychology, no. 230, pp. 21-30 (1938).
4. Lane, H. E., "Illogical Variations in Sentences of Felons Committed to Massachusetts State Prison", 32 Journal of Criminal Law and Criminology, p. 171 (1941).
5. id at 184.
6. American Bar Association - Section of Criminal Law. Program and Committee Reports, July 1939. Report of the Committee on Sentencing, Probation, Prisons and Parole; Wayne Morse, chairman. See also

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statement by Warren Olney III (Assistant Attorney General, Criminal Division, Department of Justice): "With all the protestations by federal judges for the need of fairness in dealing with those accused or convicted of crime it seems strange to find that what is probably the greatest weakness in the administration of criminal justice in the courts of the United States lies in an area which is at present within the exclusive control and power of the federal judges. I refer to the sentencing procedures in the federal courts and to the unfairness and injustice arising from the wide disparity in the sentences meted out by the federal judges themselves to those convicted of violating the laws of the United States." (p. 10, mimeo release of address, "Some Long Term Projects in the Federal Department of Justice", delivered on Sept. 20, 1956 before the University of California Law School Association).

7. It is difficult to make more than a rough approximation of criminal backgrounds for comparative purposes. These elements were taken into account: number of prior convictions, type of prior offense by similarity with present crime and degree of criminality, that is, felony or misdemeanor, and lapse in time since last conviction. Data was obtained from active file summaries at the prison.
8. Although the incidence of sentences for other crimes in the sample was limited, there is no reason to believe that similar variance is not present in all categories of crime. Among six prisoners convicted of manslaughter with no prior record, sentences range from a low of 1-3 to a high of 12-15 years.
9. Some jurisdictions have resolved this problem by legislation specifying that the court shall sentence to the minimum and maximum pro-

vided by law for the particular crime. While this eliminates any possibility of a court-imposed narrow gap between minimum and maximum terms, it deprives the sentencing judge of all discretion in determining the sentence. The desirability of this latter result should be considered in any study of revising the Connecticut indeterminate sentence provisions.

10. Information on the practices of the Board of Pardons was obtained in a discussion with a member of the Board.
11. The absence of commuted term sentences in the records does not necessarily imply that the Pardons Board never exercises this power. Not included are prisoners paroled directly upon the recommendation of the Pardons Board.
12. See State v. Horton, 132 Conn. 276, and cases cited therein, 278 (1945); State v. LaPorta, 140 Conn. 610, 612 (1954).
13. Connecticut's position is that of a majority of jurisdictions including the federal courts.
14. See Cal. Penal Code Sections 1168, 2792 (Deering, 1949); Section 3020 et seq., Section 5075 et seq. (Deering, 1955 Supp.).
15. California has no statutory provision for judicial review of the sentences fixed by the Adult Authority Board.
16. See Report to the Judicial Conference of the Committee on Punishment for Crime, p. 1 (1942); "...The Committee recommends that in the first instance the court shall sentence the offender to imprisonment generally, which shall be for the maximum term prescribed by law, the effect being the imposition of a sentence exceeding 1 year but not more than the maximum term prescribed by law; that the offender shall thereupon begin service of his sentence; that in the first

months of his term, a board of corrections, upon the basis of a thorough study of the offender in the institution, shall report to the trial court the sentence which it would regard as most suitable for the offender; that thereupon the trial court giving to the report such weight as it may deem proper shall determine the definite sentence within the maximum prescribed by statute." See also Report, *supra*, pp. 23-30.

17. See cases cited in note 12 *supra* and Note, 42 Yale L. J. 453 (1933).
18. See Iowa Code Section 14010 (1931); A. L. I. Code of Criminal Procedure Section 459(2) (1930).
19. For excellent analysis of appellate review and reduction of sentences, see Hall, L., "Reduction of Criminal Sentences on Appeal: I, II", 37 Col. L. Rev. 521, 762 (1937).
20. Ann. Laws of Mass., C. 278, Sec. 28A-Sec. 28D (1943).
21. See 28 Mass. L. Q. no. 1, p. 28 (1943).
22. The totals for each year are completed by the number of appeals withdrawn and those still pending at the end of each year. See Reports of the Massachusetts Judicial Council in the December issue of the Massachusetts Law Quarterly for these years.
23. See Conn. Gen. Stats. Section 3337d (1955 Supp.). An Adult Probation Officer in discussing this new legislation reported that some judges gave considerably more weight than others to the pre-sentence report as a factor in sentencing.
24. See Section 378 Conn. Practice Book (1951).
25. Conn. Gen. Stats. Sections 1643-1645 (1949 Rev.); Sections 1008d-1011d (1955 Supp.).

APPENDIX

Re: the problem of double jeopardy and the Massachusetts procedure for reviewing sentences described and proposed in the First Interim Report of the Prison Study Committee.

I

Introduction

Chairman O'Sullivan, commenting on the proposal that Connecticut adopt the Massachusetts system of reviewing sentences, wrote: "I am somewhat concerned...with the possible claim of double jeopardy, as that claim might be raised upon the increase of sentence by the reviewing board." The Committee considered the problem and, for the reasons set forth below, concluded that such a claim would not be valid.¹

Though Connecticut is one of five states which has no double jeopardy guarantee in its constitution and though the double jeopardy clause of the Fifth Amendment of the Constitution of the United States has been held not to apply to state proceedings,² the rule is well established in the case law of the State.³ The possibility of increased sentences under the proposed review procedure will therefore be considered in the light of the objectives of the double jeopardy rule and of the legal precedent which has developed.

II

Double Jeopardy Rule -- Its Objectives and Underlying Policy

The Fifth Amendment to the Constitution of the United States provides, in part, that no person shall "be subject for the same offense to be twice put in jeopardy of life or limb...."

It is generally agreed that this prohibition means that no person will be harassed by successive prosecutions or punished more than once for a

single criminal activity.⁴ This is frequently restated in terms of protecting the accused against state action which might result in conviction and sentence for more than one violation of the substantive law when only one exists; the expense and time of trying, in a new and independent case, previously adjudicated issues; and the stigma of repeated criminal prosecutions.⁵ The policy underlying these objectives seems to be that an accused in a democratic society, once acquitted or convicted, should be able to regain that feeling of security about the future essential to planning one's life. He must know that the state can no longer reopen the matter.⁶

Since review can only be had upon application by the convicted person within a specified period and since the state cannot initiate ~~the~~ hearings to consider an increase in sentence, the proposed procedure does not conflict with either the objectives or underlying policy of the double jeopardy rule. Repeated prosecutions and penalties for the same offense cannot result from any action by the state prosecutor or, for that matter, by the prisoner. Uncertainty about the future, so far as it may affect the plans of the prisoner, is far less and for a shorter period than the uncertainty which accompanies most review proceedings. Despite the absence of policy conflict, the question remains whether the courts have established precedent which might treat an increase of sentence under the proposed procedure as a second punishment for the same offense and thus as a violation of the double jeopardy doctrine.

III

Double Jeopardy Doctrine -- Judicial Interpretation

The outcome of a double jeopardy plea is, as a recent Comment in the Yale Law Journal demonstrates, "highly unpredictable. Not only are the precedents confused, but it is difficult to foresee whether in a given case

a court will apply the old rules mechanically or will attempt to improvise."⁷ With this warning, the "old rules" will be examined in relation to the contention that an increase in sentence inflicts a second punishment on top of the one imposed at trial and as a result two penalties are levied for the same offense.

The United States Supreme Court confronted, but did not decide, a parallel issue in Roberts v. U. S.⁸ The trial court, after sentencing the accused to two years in a federal penitentiary, suspended sentence under the authority of the Federal Probation Act. Four years later, following a hearing, the court revoked probation, set aside the original two year sentence and imposed a new sentence of three years. A majority of the Court found that an increase in sentence was not authorized by the statute and expressly found it unnecessary to answer the double jeopardy question. But in a dissent which found authority in the Act for increasing sentences, Justice Frankfurter declared that it "does not offend the safeguard of the Fifth Amendment against double punishment....That Amendment guarded against...trying a man twice in a new and independent case...or punishing him for an offense when he had already suffered the punishment for it." He said of probation, as one might of the review proposal, "It would be strange if the Constitution stood in the way of a system so designed for the humane treatment of offenders."⁹

Dictum from a prior decision of the Court might be read to cast doubt upon the dissenters' view that the Fifth Amendment would not invalidate a statutory procedure just because it authorized an increase in sentence. In U. S. v. Benz¹⁰ the Court, applying the general rule that orders of a court remain within the control of the court during the term at which they are made and are thus subject to modification, held that a Federal District Court has power to amend a sentence by reducing it during the term in which

it was imposed, even after a part of the sentence has been served. Citing Ex parte Lange,¹¹ the Court added, without formally deciding, that the rule applies "provided the punishment be not augmented."¹²

An examination of Lange does not support the dictum. There the offender was sentenced to one year imprisonment and to a fine of \$200 under a statute which authorized imprisonment for not more than one year or a fine of not more than \$200. Five days after imprisonment had begun and the fine had been paid, Lange was brought before the same court, an order was entered vacating the former judgment as exceeding statutory authority, and he was again sentenced to one year imprisonment, from the date of the new order. This meant that Lange would have served one year and five days when only one year was authorized by statute. The Court said: "...can the [trial] court vacate that judgment entirely, and without reference to what has been done under it [serving five days], impose another punishment on the prisoner on that same verdict? To do so is to punish him twice for the same offense."¹³ Thus even if the double jeopardy clause of the Fifth Amendment, as construed in Lange, were controlling in Connecticut, and it is not,¹⁴ a claim of jeopardy would fail on a sentence increase so long as the reviewing panel credited the offender with whatever part of the sentence he had served. Of course no sentence would be valid if it were increased beyond that authorized by statute for the particular offense.¹⁵

Moreover, even if the unqualified statement in Benz were correct and controlling, the review procedure proposed would not be subject to attack, because of the rule that "where the accused successfully seeks review of a conviction, there is no double jeopardy upon a new trial."¹⁶ This has meant, for example, that if an accused succeeds in obtaining review of a conviction for second degree murder and a life sentence, he

may on retrial be convicted of first degree murder and be sentenced to death.¹⁷ The increase in sentence which results cannot be the basis of a claim of double jeopardy, for the defendant's action in seeking review is said to constitute a waiver.¹⁸ Such a claim following increase of sentence under the proposed procedure would be even weaker. Not only is the convicted person the only party authorized to initiate review, but also any increase in sentence could never be as great as that possible upon a new trial for a greater offense.

Finally, if the proposed procedure authorized the State to initiate review of a sentence, it is doubtful if a claim of double jeopardy would succeed. Since 1886, Connecticut has been among a still small minority of states which expressly grants the prosecution an equal privilege of appeal with defendants in criminal cases.¹⁹ Prior to that time the common law rule prevailed "that in all cases for matters criminal, in which the accused has been acquitted...he shall not again be put in jeopardy by a new trial granted upon the motion of the state or the public prosecutor."²⁰ Despite such precedent the Connecticut statute has frequently been held not to conflict with the double jeopardy doctrine.²¹ The Connecticut court reasoned that criminal trial procedure can be altered to secure just punishment as well as to protect the accused from unjust punishment; a person accused of crime has no "natural right of exemption from these regulations of a judicial proceeding which the State deems necessary...;" jeopardy rests at whatever point "the State, influenced by considerations of public policy, has decided to make such verdict, whether just or unjust, the end of that controversy...;" and that consequently so long as the time for appeal and subsequent proceedings has not lapsed "one jeopardy has not been exhausted."²² Without reliance

upon the waiver doctrine, application of this rationale to the proposed procedure would provide sufficient basis for dismissing a double jeopardy claim. The State influenced by a public policy of reducing inequalities and lack of consistency in sentencing would thus be granting to convicted persons a right to seek review of excessive sentences within a period and by a procedure expressly authorized by statute. The State, deeming it necessary to prevent abuse of the procedure and to insure more just punishment, authorizes the review panel to increase a sentence following a hearing at which the accused is present.²³ A sentence would not become final until the appeal period passed without application by the prisoner. Thus any increase in sentence resulting from a valid application for review would occur before one jeopardy had been exhausted.

IV

Conclusion

Accepting the unpredictability of the courts in this area of the law, it seems safe to predict, so far as Connecticut is concerned, that an increase of sentence under the proposed review procedure would not be subject to a valid claim of double jeopardy. Whether tested by the objectives of the double jeopardy doctrine or by legal precedent, the primary reason -- one common to both tests -- is that since only the convicted person may seek review the procedure cannot be made a tool of harassment by the State. In initiating a review, which only Massachusetts has thus far made available, the prisoner accepts the very slight risk of increase of sentence imposed by the legislature. Possibly this explains the absence of any Massachusetts cases in which an increase of sentence has been challenged with a claim of double jeopardy.

Joseph Goldstein
October 17, 1956

Footnotes to Appendix

1. Letter of September 24, 1956 from Chairman Patrick B. O'Sullivan to Executive Secretary Joseph Goldstein and Minutes of the Prison Study Committee, October 19, 1956.
2. Palko v. Conn., 302 U. S. 319 (1937); Francis v. Resweber, 329 U. S. 459, 463, (1947).
3. State v. Brown, 16 Conn. 54, 58 (1843); State v. Fox, 83 Conn. 286 (1910); State v. Carabetta, 106 Conn. 114 (1927).
4. Ex parte Lange, 85 U. S. (18 Wall.) 163 (1873).
5. Comment, 65 Yale L. J. 339, 340-341 (1956); Slovenko, The Law on Double Jeopardy, 30 Tulane L. R. 409 (1956).
6. State v. Carabetta, 106 Conn. 114, 117-118 (1927).
7. 65 Yale L. J. 339, 345 (1956).
8. 320 U. S. 264 (1943).
9. Id. at p. 276.
10. 282 U. S. 304, 311 (1931).
11. 85 U. S. (18 Wall.) 163, 167-174 (1873).
12. 282 U. S. 304, 307 (1931).
13. 85 U. S. (18 Wall.) 163, 175 (1873).
14. Palko v. Conn., 302 U. S. 319 (1937).
15. Indeed Lange may be read to hold just that and no more.
16. Francis v. Resweber, 329 U. S. 459, 462 (1946).
17. Green v. U. S., F2d (D. C. Cir. June 28, 1956).
18. Trono v. U. S., 199 U. S. 521, 533 (1905).
19. Conn. Gen. Stats., Sec. 8812 (1949 Rev.).
20. State v. Brown, 16 Conn. 54, 58 (1843).
21. State v. Lee, 65 Conn. 265, 271 (1894) (state appeals following acquittal of defendant on indictment of 2nd degree murder); State v. Muolo, 118 Conn. 373, 380 (1934) (state brings writ of error following dismissal of information charging defendant with unlawfully using taxi stand).
22. State v. Palko, 122 Conn. 529, 538 (1937); affirmed, Palko v. Conn., 302 U. S. 319 (1937).
23. State v. Lee, 65 Conn. 265, 272-274 (1894).
24. Though it is desirable that a hearing be required before imposition of an increased sentence, the absence of such a requirement would probably not invalidate the statute. Legislative dominance in the determination of sentence is well established and the constitutionality of an indeterminate sentence has been upheld, State v. Miglin, 101 Conn. 8 (1924), State v. Reilly, 94 Conn. 698 (1920). Sentences imposed by the trial judge are, within limits prescribed by the legislature, generally based on a pre-sentencing report, in formulation of which the prisoner ordinarily does not participate. Under the proposed procedure it is essentially this pre-sentencing report and its execution by the "very large discretion" of the trial judge, State v. Mele, 125 Conn. 210, (1939) which is being reviewed.

into sex crimes I was very harsh. But if a loaf of bread were stolen, the man might have stolen it because he was hungry. There are these sentences which do cause unrest. John Smith meets Henry Jones in prison and says "What are you in for?". Jones replies "For robbing a gas station". "What did you get?" "From one to three years", replies Jones. "You did, I got eight to ten years". If this was Smith's third or fourth time you will find the man say that there is a reason for it. It is the man who gets the eight to ten year sentence that is out of proportion that makes trouble. We maintain that there is disparity of sentences which does cause unrest. We tried to find out how to handle it. There have been many times where the judge of the supreme court was unfair in sentencing a man and you know once you get the sentence, the supreme court is out. The board of pardons is the only other method and that board is at least reluctant to handle disparity of sentences. We therefore turned around and discovered that they have in Massachusetts a system that we introduce to you. The system amounts to this. The chief justice of the state appoints a review division of three trial justices of the superior court and he would select one of them who would, say, be a middle of the road type. That would be one on the committee. When any person who thinks he has been treated unfair he may ask for a review by this committee and without any expense these three judges meet and consider the matter. They have power to reduce the sentence and power to increase it. I would like to go further. I would in a way like to see the states attorney have the right to ask to have a review, especially where probation has been granted. The only thing in this case which has been of concern to me legally is the question of double jeopardy. I am the criminal and you are the trier and you sentence me to prison for no more than 2 to 5 years. That is the judgment. If that judgment, once having been made, requires and permits another group to change the sentence, I was afraid of double jeopardy.

Sen. Borden: Take that case in Bridgeport, where the jury could not agree. . . .

Judge O'Sullivan: That was the Palco case, a vicious mur-

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der. The State took an appeal. Then the U. S. supreme court

Sen. Borden: They finally hung him.

Judge O'Sullivan: That is not double jeopardy, but where you sentence me to 5 to 25 years there is a final judgment, which I can take an appeal to the supreme court but on the question of law upon which the judgment was based. I do hope that this bill appeals to you and we submit that it is a good bill basically. It has had experience in Massachusetts and if it is something that should be passed, we should like to have you incorporate that the board can increase it even though it may be double jeopardy.

Sen. Borden: Was it your idea to have the states attorney review?

Judge O'Sullivan: That was my opinion.

Sen. Borden: That is where it would come up more.

Judge O'Sullivan: That is one of the reasons why it was kept out. There is the possibility that double jeopardy will not arise because the prisoner has waived out.

Mr. Pinney: Can you eliminate the policy to keeping all sentences an interlocutory judgment, then take a mandatory review?

Judge O'Sullivan: We do not want the mandatory review.

Mr. Gersten: When you speak of double jeopardy, do you have reference to double jeopardy as it relates to the 14th Amendment?

Judge O'Sullivan: My recollection is that you are right in that. He would be protected by the 14th amendment and it is so ingrained in our law that we must be very cautious.

Mr. Gersten: Has this subject been discussed at the judges' conference from time to time?

Judge O'Sullivan: I have never heard it discussed and do not recall where anyone has expressed an opinion one way or the other.

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Mr. Dreyfus: Your suggestion about the states attorney. Would it not be feasible that the states attorney may ask for a review but in such event a sentence would not be increased? You would eliminate your double jeopardy.

Judge O'Sullivan: I do not think it would be practical. This bill is to remove the unrest. At least, we can soften the hatred to have the sentences reviewed.

Mr. Dreyfus: I did not mean only the states attorney.

Judge O'Sullivan: I think it would be better to leave the states attorney out for fear that we would risk double jeopardy.

Mr. Dreyfus: In Section 3 it states, "No sentence shall be increased unless the person sentenced has been given an opportunity to be heard by the review division. There is no provision in this bill for an appearance by the defendant's attorney or an attorney for the defendant.

Judge O'Sullivan: At the tail end of Section 4, "the superior court shall prescribe forms". That may be an oversight and have no objection.

Mr. Dreyfus: Have you considered the possibility that every prisoner will automatically ask for a review. Has the committee considered restricting this where the sentence would be one year or greater?

Judge O'Sullivan: No objection to that. The person who gets one to three years would not gamble with having the sentence increased. We would like to have this not go to the jail sentence.

Mr. Dreyfus: Your bill uses the word imprisonment and I thought it referred to a state prison.

Judge O'Sullivan: That is what we think.

Sen. Barringer: What would it do to your work load?

Judge O'Sullivan: I would assume that it would take a considerable amount of time. I would like to give you a little of the Massachusetts experience. In 1943 there were 37 review asked. Of this 8 were reduced, none increased. It

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took 6 days to handle. In 1951 there were 217 reviews asked, of which 42 were reduced and 5 increased and that took 18 days. In 1954-55, there were 290 requested, 66 reduced, 1 increased and took 19 days. As you know Massachusetts is a much larger state and I suppose if you reduced this in half, you would have 10 days average.

Sen. Barringer: Roughly 30 days. It is one of our problems and it takes a bit more time.

Judge O'Sullivan: That is true. Probably at the start there would not be so many. It might be 3 or 4 days.

Sen. Barringer: Generally, you do not feel that this is a burden on the court?

Judge O'Sullivan: You will find some of the judges will scream. But I do not think there will be any solid objection to it.

Mrs. Kennedy: There is probably a good reason to limit the time to 30 days, but ask if you would discuss it. It would seem that a first offender would probably not know the ropes and if so would he not be given a chance later on?

Judge O'Sullivan: Not under the bill. As I recall it Massachusetts allowed for 10 days. We thought it was too short and allowed 30 days for this man to get over his numbness of the sentence imposed. We had to put a finality to it.

Mr. Kucharski: Is there any provision in the Massachusetts law whereby say, the public defender does not say anything, he has no attorney and he may not be aware as to what the situation is. I wonder if there should not be some place a man or representative can go and get an idea of the matter.

Judge O'Sullivan: Are you seeing a case where a man is not represented by counsel? I do not think a lawyer will take that point of view. If he can get his client out on probation he thinks he is doing very well.

Mr. Schlossbach: A man in there for 8 to 10 years, what would he be in for?

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Judge O'Sullivan: Father Bonn of our committee prepared a report. Groups for robbery with violence 10 to 29 years, 15 to 25 years, 5 to 22 years, 7 to 20 years, 10 to 20 years, 10 to 18 years 10 to 15 years. Armed robbery 20 to 94 years - that is the man I sentenced and very unfair - 5 to 35 years, 12 to 19 years, etc. There are reasons for all of these but many may be unfair sentences. Not necessarily unfair but unfair in comparison to the average sentence which is given for a comparable crime. This would not affect those in prison now and could not possibly eliminate any unrest at the present time and some thought should be given to making this retroactive.

Mr. Gersten: Does the opportunity to be heard mean that you would be permitted to produce evidence which was excluded in the original trial?

Judge O'Sullivan: I suppose it would be an incomer sort of thing. But if you go through statistics and read the records you will be impressed at the many instances where a man has received a sentence out of proportion to comparable sentences.

Mr. Kucharski: Would you favor the change from 30 days to 60 or 90 days. I am wondering if that is enough time.

Judge O'Sullivan: It will remove any doubt as to time.

Mr. Tomasino: In this review - the mechanics of it. Would they have a transcript of the evidence before them?

Judge O'Sullivan: I would not suppose so.

Mr. Tomasino: What would you say they would have?

Judge O'Sullivan: I suppose the states attorney would appear before the board and say this man has been found guilty of such and such an act, or by turn the counsel desires to say something. I might point to the fact that it is his first offense. There are a thousand things. Three or four years ago I tried to sell to our judges the thought that no sentence should be imposed until after two judges have been called in to discuss it. That would level this off. I could not get a soul to agree with the idea.

Mr. Schlossbach: At this review, would there be any in-

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dication as to the reason for the severity or lightness of his sentence?

Judge O'Sullivan: No, there should not be. Each case would have its own peculiar facts. Usually the sentence is based on that.

Mr. Dreyfus: Section 2 provides for that.

Judge O'Sullivan: That is true.

Chrmn. Pruyn: Thank you Judge. The hearing is closed. We will take up H. B. No. 967. Is there anyone in favor of this bill?

H. B. No. 967 - Cipriano - AN ACT CONCERNING ENLARGING THE POWERS OF COURTS TO REFER PERSONS BETWEEN THE AGES OF 16 AND 18 TO THE JUVENILE COURT

Chrmn. Pruyn: Is there anyone opposed to this bill? The hearing is closed. We will take up H. B. No. 1361. Is there anyone in favor of this bill?

H. B. No. 1361 - Winnick - AN ACT CONCERNING ELIMINATING WITHDRAWAL FEES

Milton Koskoff: I am in favor of this bill. I think withdrawal fees cause arguments and it strikes me that this is a good bill for the benefit of the whole bar and the people.

Chrmn. Pruyn: Is there any opposed? The hearing is closed. We will take up H. B. 1783. Anyone in favor of this bill?

H. B. No. 1783 - Terrell - AN ACT CONCERNING A TWELVE MAN JURY IN CONSOLIDATED ACTION

Chrmn. Pruyn: Is there anyone opposed? The hearing is closed. We will take up H. B. 1805. Is there anyone in favor?

H. B. No. 1805 - Gersten - AN ACT CREATING LAW SECRETARIES FOR THE JUSTICES OF THE SUPREME COURT OF ERRORS

Rep. Gersten: May that be passed for a little while. I have talked to Mr. Fisher about it and would like to have it passed.

Chrmn. Pruyn: We shall do that. Take up H. B. 1841. Is