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HUMAN RESOURCE CENTRE

LEGAL STUDIES DEPARTMENT

SEMINAR ON THE PROBLEMS OF PUNISHMENT

THURSDAY 10 NOVEMBER 1983, LINCOLN INSTITUTE, MELBOURNE

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The Hon Justice M D Kirby CMG
Chairman of the Australian Law Reform Commission

SENTENCING INQUIRY

In 1980 the Australian Law Reform Commission delivered a major report on Sentencing of Federal Offenders. It has been said that of all the tasks of judicial officers, sentencing is the 'most painful and unrewarding'.[1] The Law Reform Commission's report was a large tome and not exactly bedside reading. But it was the first national consideration of sentencing law and practice every carried out at a Federal level in Australia. It was led by Professor Duncan Chappell. Some of the recommendations made have already passed into law.[2] The most important of these is the provision that the use of imprisonment of convicted Federal offenders be a last resort and that State alternatives to imprisonment be available for the disposition of Federal cases. I understand that only the sordid matter of money is holding up the implementation of this proposed facility.

The new Federal Attorney-General, Senator Gareth Evans, was one of the foundation Commissioners of the Australian Law Reform Commission. He has a keen interest in law reform and the criminal justice system. He has already expressed a desire to me that the sentencing project should be revived and completed. It is my hope that he will secure the appointment of a Commissioner able to see the project to completion. Already, Senator Evans has indicated his intention to proceed with the establishment of a Sentencing Council. Such a Council would have a central function in the proposal offered by the Commission for the future of sentencing. The report deals with:

* a review of past moves for sentencing reform in Australia and overseas;
* a description of the Federal criminal justice system, with its mixed elements of decentralisation and centralisation;
* a consideration of the importance of prosecution decisions as they affect the punishment of Commonwealth offenders;
* a debate about the uniformity of treatment of Federal offenders, wherever they happen to be convicted in Australia;
* a consideration of the use of imprisonment and means for reducing that use;
* a discussion of prison conditions and grievence mechanisms;
* a consideration of the abolition or reform of parole in the case of Federal offenders;
* a discussion of non-custodial sentencing options;
* an outline of the Commission's proposals for improving the guidance available for the judicial discretion in sentencing; and
* finally, discussion of victim compensation and items for the future.

The inquiry was a major enterprise. It was facilitated by the National Judicial Survey which was distributed in the course of the reference. Although this procedure was criticised by one State Chief Justice, it was the only viable means by which the Law Reform Commission could reach out to the people actually engaged in the daily task of sentencing. Over 70% of judicial officers in each State and Territory, with the exception of Victoria, responded to the survey. Over 80% of magistrates and Federal Court judges responded. The lower overall response rate from State judges is explained by the low response from Victorian judges.[3] I pay tribute to the judges and magistrates who took part in the survey, snatching hours in the midst of busy lives, actively to assist the process of reform.

THE STATE CONNEXION

It soon became clear in tackling the sentencing project that a fundamental threshold issue existed to be resolved by the Law Reform Commission. Until now, the Commonwealth, in respect of its offenders, has adopted what might be called the 'authochthonous' expedient. Outside its Territories, offenders against Federal laws have tended to be bailed by State police, committed by State magistrates, tried in State courts before State judges, if convicted sentenced by State judges, taken by State police, where imprisoned, to State corrective services institutions and thereafter dealt with by State probation and parole officers. The system has the efficient feature of maximising the use made of State experts in the business of criminal justice, fully utilising scarce and specialised resources, avoiding disparities between Federal and State offenders in the one jurisdiction and, above all, it saves the Commonwealth a great deal of money which would have been required to provide a completely parallel stream of Federal personnel and institutions.

However, the institutional arrangement adopted and described above was never wholly followed through. Federal statutes, passed in increasing number, created special Federal crimes. A Federal police service was established with the fastest growth of any policing unit in the country and with an increasing workload of highly important and complex crimes to investigate and bring to justice. Furthermore, a Federal Court was created. And under successive Federal Governments, of different political persuasion, it was never agreed to integrate decisions as to parole and licensing of Federal offenders entirely within the varying State systems. On the contrary, successive Federal Attorneys-General insisted upon the retention of their superintendence of parole, licence and early release decisions in respect of Federal offenders. The Commonwealth consistently rejected State pressure to integrate the Commonwealth offender entirely within the State system by submitting to the discretion of State parole boards, with their differing constitutions, statutes and differing practices. In addition to these differences, as disclosed in the report of the Law Reform Commission, the Commonwealth Prisoners Act applies differently in a number of States because of its language as picking up differing State practices. Thus, in Queensland and Tasmania, statutory provisions govern the relationship between parole and non-parole periods, whereas elsewhere in Australia, a great deal is left to judicial discretion.

In the course of its inquiry, the Law Reform Commission was confronted with significant evidence of disparities in sentencing philosophies and practices in different parts of Australia. The differences are shown most vividly in a table (the relativities of which are still generally true) illustrating the differing uses in different parts of Australia of sentences of imprisonment, probation and other available punishments.[4] If Commonwealth offenders are integrated entirely into the State criminal justice system, this is surely economic from the point of view of the Commonwealth. It is also a contribution to justice or perceptions of justice in respect of prisoners housed side-by-side (as the Constitution provides) in State prisons. But given the demonstrably wide divergency in different parts of Australia in respect of judicial and other attitudes to punishment generally and forms of punishment in particular, might this integration of Federal offenders into the State criminal justice system not sometimes result in injustice?

One attribute of justice, normally accepted, is roughly like treatment for like offenders committing like offences. It is for this reason that legislation imposes statutory maxima and, occasionally, mandatory sentences. It is for this reason that courts of criminal appeal in this country review the exercise of sentencing discretions. It is for this reason that tariffs, formal and informal, develop.

The Law Reform Commission had to confront this basal question. If it is established that there are significant differences in the way like offenders against the law of one political entity (the Federal Parliament) are dealt with in different parts of Australia — simply because they are caught, prosecuted, convicted and sentenced in different parts of Australia — is this justifiable?

In favour runs the argument of economy and the entitlement of local communities to have particular attitudes towards punishment and crime. In favour is the overwhelming State dominance, in Australia, of the criminal law and procedure. In favour too is the roughly similar treatment of prisoners and other offenders who inevitably exchange experience and ruminate, in the world of judicial discretions, upon suggested inequality of punishment.

But against these arguments — and the present Federa/State criminal justice status quo — is a basic perception of justice. It may not worry you. But it did worry the Law Reform Commission. This is the notion that people convicted of offences against the laws of the one polity should be guaranteed, by legal and institutional means, roughly equal treatment wherever they happen to be tried in different parts of that polity. Punishment for so-called Medifraud should not vary significantly from Hobart to Darwin. Punishment for social security offences should not vary greatly, in like cases, from Perth to Sydney. Equal justice under the law seemed to require nothing less. But the institutional arrangements in Australia almost inevitably pointed to diversity, disparity and the institutionalisation of differences as reflected, from State to State, in different attitudes to imprisonment and other forms of punishment.

In short, economy favours integration of Federal offenders in the State criminal justice system. Justice, with few exceptions, favours far greater attention to national rules and institutions to assure roughly equal treatment throughout the Commonwealth.

The criminal justice statistics of Australia are in a shocking state. This point was made in the Law Reform Commission's report. But insofar as statistical and other material could be procured by the Commission, we were convinced that there were significant disparities in treatment of Federal offenders in different parts of the nation. The evidence is there in the report. Common sense and a moment's reflection upon the persisting and differing attitudes to imprisonment and other forms of punishment in different parts of Australia lead inevitably to a like conclusion. Furthermore, if there is roughly equal treatment at the moment, it comes about as a result of an institutional miracle rather than as a result of any stable arrangements or effective machinery.

A .EST : SENTENCING ALTERNATIVES

The Law Reform Commission confronted the problem of economy and justice in a most acute way and at the threshold of its inquiry. Many of the States of Australia have adopted a range of non-custodial sentences for State offenders. Until now these have not been available to be used in the case of Federal offenders. To allow State judges sentencing Federal offenders to use the diverse range of punishments made available under State laws would further the objective of the Law Reform Commission in favour of non-custodial punishment and diversity and more imagination in punishment. But it would undermine the principle of equality, for different States have adopted different punishments on different conditions and in different terms. Which principle was to dominate? Was it equality of treatment? Or was it deinstitutionalisation of punishment and the utilisation of as many alternatives as could be made available quickly?

The Law Reform Commission chose the latter as the dominant principle. Accordingly, it recommended that the Crimes Act of the Commonwealth should be amended to permit State judges and magistrates to utilise their armoury of sentencing alternatives in the case of convicted Federal offenders. This recommendation was accepted by the Fraser Administration. The relevant amendments were made to the Crimes Act. The Prime Minister has written to the Premiers concerning the availability of these facilities for Federal offenders. I understand that responses from all Premiers are still awaited. The sordid matter of cost (and negotiation as to a Commonwealth contribution) remain the only issues to be settled.

The Law Reform Commission came to the view it did because to provide, quickly, the range of sentencing alternatives in the case of Federal offenders in a way that was equal and absolutely impartial in all parts of the country, it would have had to envisage the provision of community service of Federal offenders convicted in outback Goondiwindi or far-away Broome. Such a range of facilities in all parts of the nation could clearly not be afforded, at least in the short run.

But to tackle the problem of disparity in sentencing, including of Federal offenders, the Commission proposed a number of institutional arrangements. The objective was to get greater equality in punishment of Federal offenders wherever convicted in any part of the country and not to rely on chance but, in the typical British way, upon institutions to do this. Amongst the suggestions made were:

. the provision of prosecutorial guidelines to get greater consistency in prosecution decisions. This proposal was accepted and prosecution guidelines have been published;

- the establishment of a Sentencing Council to develop sentencing guidelines. I understand that a Sentencing Council is to be proceeded with;
- provision of guidelines for the use of imprisonment. Such guidelines were included in the amendments to the Crimes Act last year;
- major reform of parole;
- provision of appeal against sentences in Federal cases to the Full Court of the Federal Court of Australia, with power to transfer appropriate cases to State courts where that would be more convenient.

There were many other proposals. The most important was undoubtedly establishment of the Sentencing Council and provision of 'persuasive' sentencing guidelines.

SENTENCING GUIDELINES

Some of those who had called for a return of punishment and 'just deserts' were clearly of a conservative disposition, with great faith in criminal punishment to redress crime. But others were of a liberal persuasion, seeking to rein in the amplitude of judicial discretion, to reduce the lottery element of criminal punishment and to remove features reflecting the idiosyncracies of particular judicial officers. Reports from the United States suggest that the former camp continue to steel themselves for more and higher punishments. The consequence is that the prisons are overflowing and major programs for prison building in a country, which already has the highest rate of imprisonment in the OECD, are well underway. Shocked, somewhat, with this historical movement, those liberals who proposed the 'deserts' or 'justice' model for sentencing, and disillusioned that it has not lived up to its promises, are looking for something better. In the words of Cullen and Gilbert:

> The message being conveyed that the liberals' call for a 'justice model' promises neither to mitigate the injustices burdening the politically excluded and economically disadvantaged nor to lessen the victimisation of society's captives.

In an attempt to 'have it both ways' we are now seeing a 'second wave' in sentencing reform. It is, I believe, the wave of the future. It seeks to roll back the 150-year-old trust in large judicial discretions. But it seeks to avoid doing so by embracing the mandatory or highly determinate sentences that preceded discretion and that have been introduced in California and other States of the United States. The new movement is one which envisages sentencing guidelines, fixed by an independent body in which the judiciary is heavily represented. The guidelines would introduce greater determinacy whilst at the same time permitting principled inequality.

What is involved is grafting onto judicial discretion, and to the informal tariffs that grow up under that system, a much more open and publicly accountable system. It is one that charts punishment by reference to factors relevant to the seriousness of the offence and identified factors relevant to the culpability of the offender. It is a system that preserves judicial discretion by permitting judicial officers to vary the result thus produced. But it requires them to state their reasons for doing so. It then submits any such variation to appellate review. The object is to infuse just a little more science in the painful and unrewarding task of sentencing. It is essentially the proposal put forward by the Australian Law Reform Commission. It is the approach to sentencing reform that has been adopted in a number of overseas jurisdictions, as I shall now describe. By announcing the new Federal Government's acceptance of the proposed national Sentencing Council, Senator Evans seems to be indicating that, in the Federal sphere at least, for the punishment of convicted Federal offenders, we may well move in this direction. It is therefore important that Australian judges and magistrates should become familiar with the proposal. United States judges, now subject to sentencing guidelines, are generally in favour. They admit to having had reservations at the outset. Who would welcome a new system, where the old one is 150-years-old? Who would welcome the reduction of the scope of unreviewable judicial discretion? Who would not be concerned that reduction of discretion might not lead to harsher punishment? These are legitimate fears about the system of guidelines. But against these fears must be weighed the concern of the community, of convicted offenders, of their families and of judicial officers themselves that indeterminacy has bred unacceptable variance. Because most people plead guilty in our criminal courts and because a large respect is paid by appellate courts to discretion in sentencing, the opportunity of correcting idiosyncracies and injustices are limited.

Rather than describing the system proposed by the Law Reform Commission in its report, I want to refer to a March 1983 speech by the Chairman and the Executive Director of the Pennsylvania Commission on Sentencing. They outlined Pennsylvania's embrace of sentencing guidelines. They evaluate its success and, whilst continuing to review the results, they pronounce themselves initially satisfied with the mix of determinacy and discretion.

In 1978, the Pennsylvania legislature created the Pennsylvania Commission on Sentencing. It was given the statutory duty to submit to the legislature a set of sentencing guidelines. These guidelines were to take into account the gravity of the current offence, prior felony convictions and a matter of special local concern, the use of deadly weapons. The Crimes Code of Pennsylvania already adopted the principle of parsimony, retribution and rehabilitation. The legislation establishing the Pennsylvania Commission instructed that the guidelines should also consider:

> The nature and circumstances of the offence and the history and characterists of the defendant; and the opportunity of the sentencing court to observe the defendent, including any pre-sentence investigation'.

The task before the Pennsylvania Commission was therefore to draft guidelines which did not reject individualised sentencing but which nonetheless introduced standards that would reduce unwarranted sentencing disparity, redistribute the use of penal sanctions 'such that its primary use is for serious, violent offenders'.[5]

The guidelines were adopted on mid-1982. As a result a numerically based system of assessing the gravity of the current offence and the prior convictions of the offender was introduced. The offence gravity score ranked offences from one (least serious) to ten (most serious). A number of principles were established to guide judicial officers in this statutory ranking. The prior record score varied from zero (no applicable prior conviction) to six (multiple serious felonies). A sentencing range chart was then developed. I attach copy of it as Table 1.For each combination of offence gravity score and prior record score the Commission provided three ranges of sentence. If a judicial officer sentenced in the aggravated or mitigated ranges or departed entirely from the guidelines, the reasons for such a decision have to be provided. These reasons can then form the basis of an appeal, either by the defence or the prosecution. The approach taken by the Pennsylvania Commission recognised two very important facts:

* First, crimes, as defined in legislation, inevitably cover a range of behaviour such that there is much scope for significant variation in the severity of the offence. Thus robbery with serious bodily injury can include cruel and deliberate injury to innocent people and injury occuring only in a spontaneous action to a threat to one's own life.
* Secondly, the Commission recognised that the ten categories represent an oversimplification and it planned to continue its work to evaluate better distinctions.

One function of the Pennsylvania Commission is to monitor the implementation of the guidelines and to revise them as necessary. The first batch of cases, nearly 1500, involving use of the guidelines have now been analysed. The results are encouraging:

* Conformity with the guidelines i.e. sentences within the range, is quite high, 94.3%. It is expected to settle down to about 80-85%.
* Conformity is higher in the less serious offences than for serious crime. Obviously this point has implications for a magistrates court.

* Departures from the guidelines overwhelmingly tend to go below, rather than above, the standard. The reasons given permit the Sentencing Commission to monitor the aggregate wisdom of the Bench.
* Measured against sentencing practices before the implementation of the guidelines, it is interesting to note that there were only 44.8% of sentences passed in 1980 which would have fallen within the guidelines. Above all, there was very great variation from one judicial officer to another. This is now significantly reduced. Furthermore, the offenders, their lawyers, prosecutors and the whole community have the tables available for discussion and for principled, opened argument about severity factors warranting higher or lower punishment.

THE GIST OF THE PROCEEDING

It is often remarked that the English system of criminal justice, which we have inherited in Australia, is most exquisite in the trial process but breaks down at the point of sentencing:

> An English criminal trial, properly conducted, is one of the best products of our law, provided you walk out of court before a sentence is given: if you stay to the end, you may find that it takes far less time and enquiry to settle a man's prospects in life than it has taken to find out whether he took a suitcase out of a parked motorcar.[6]

As was pointed out by Justice Stephen, who developed so many criminal codes for the British Empire:

> The sentence is the gist of the proceeding. It is to the trial what the bullet is to the powder. Unless it is what it ought to be, the counsel, the witnesses, the jury and the summing up, to say nothing of the Sheriff with his coach, javelin men and trumpeters, are a mere brutum fulmen — they might as well have stayed at home, but for the credit of the thing.[7]

If the sentence is the 'gist of the proceedings', we must pay more attention to the process and do more to introduce consistency. But we must achieve this end without turning the process over to the impersonal control of computers or to the harsh, unknowing, unrealism of mandatory punishments fixed by the legislature. The ways of reform are many. They include:

* Increasing the element of determinacy, such as is evidenced by the recent Victorian Bill on arsonists;

* Adjusting statutory maxima to be more in line with average sentences. But this proposal by the British Advisory Council caused a storm;[8]
* Creating separate tribunals of multi-disciplinary experts, if there is such as thing as 'expertise' in punishment;[9]
* Improving the procedures of appellate courts and perhaps by increasing the number of appellate levels for adequate review and improving the statistics and services available to such courts;[10]
* Providing better training for judges and magistrates, though here again such a proposal by Lord Justice Bridge in Britain led to a storm of outrage to judicial protests;[11] or
* Finding a better system of guidelines, not to destroy individualised punishment but to harness judicial discretion in the name of principled rather than idiosyncratic inequality of punishment.

I suggest to you that the last is the most hopeful solution for sentencing reform in Australia. It is not a peculiar idea. The Advisory Council in Britain suggested that it should be kept under close review.[12] In the Federal Republic of Germany, there has been a recent introduction of legally defined guidelines and a demand for the application of strict rule and the reduction of wide discretions as part of a move towards a process of more rational sentencing.[13] The moves in the United States in Pennsylvania are reflected in many other State jurisdictions. Furthermore, the May 1983 issue of the Third Branch, a bulletin of the Federal Court of the United States, indicates that similar developments are now happening at the Federal level. The Judicial Conference of the United States has adopted draft sentencing reform legislation for transmittal to Congress. The main provisions of the proposals include:

* introduction of determinate sentences;
* provision of sentencing pursuant to guidelines developed by a Judicial Conference Committee; and
* appellate review of a sentence at the request either of the defendant or the Government.

The mechanism proposed by the Judicial Conference for developing sentencing guidelines differs from provisions of a Senate Bill that passed on a previous session of Congress. The Conference envisages that the Committee selected to promolgate and later to monitor, the sentencing guidelines, will be composed of four judges in regular, active service and three members who neither are nor have been Federal or State judges (at least one of whom must be a non-lawyer). Ultimately, each Committee member would serve a once renewable four year

term ... The legislation requires that the guidelines take account of both the offender and offence characteristics and that they encompass parole eligibility dates as well as maximum term.[14]

CONCLUSIONS

I welcome the opportunity to participate in this seminar. I hope you will address the central problem of Federal interaction with the State system. This is the critical dilemma of the Australian Law Reform Commission's inquiry. Perhaps the solution, if this is not too ambitious, is the reform of each system — in harmony, in tandem — in at least those States willing to work closely with the Commonwealth on this most vexing and important topic.

FOOTNOTES

1. Lord Kilbrandon.

2. Crimes Amendment Act 1982 (Cwlth).

3. Australian Law Reform Commission, Sentencing of Federal Offenders, (ALRC 15), Interim, 1980, 494.

4. See Table 1 below.

5. J H Kramer and A J Scirica, 'Pennsylvania's Sentencing Guidelines: Just Desert Versus Individualised Sentences', paper presented to the 1983 Annual Meeting of the Academy of Criminal Justice Sciences, March 1983, mimeo, 3.

6. R M Jackson, The Machinery of Justice in England, (5th ed) 1967, 254.

7. Stephen, The Punishment of Convicts cited in L. Blom-Cooper, The Language of the Law, 1965, 64.

8. Great Britain, Advisory Council on the Penal System, Final Report, Sentences of Imprisonment: A Review of Maximum Penalties, HMSO 1978. See A.J. Ashworth, Judicial Independence and Sentencing Reform in Future 45.

9. R Tarling 'Sentencing Practice in Magistrates Courts' in D A Thomas (ed), University of Cambridge, Institute of Criminology, The Future of Sentencing, Occasional Paper No 8, 1982 4.

10. M. Tonry, More Sentencing Reform in America, [1982] Crim LR 157, 166-7 'American sentencing debates today resemble the sentencing reform ferment in 19-Century England. The problem of unfair and unwarranted disparity is widely recognised as are the needs for the development of standards for sentencing and for some institutional system to review judicial compliance with those standards'.

11. Ashworth, 46.

12. Ibid.

13. B. Huber, 'Structure and Changes in Sentencing in West Germany' in Future, 10, 24.

14. Federal Judicial Center, The Third Branch, (Bulletin of the Federal Courts), Vol 15. Mp 5. ,au 1983, 1, 4.

Table 1

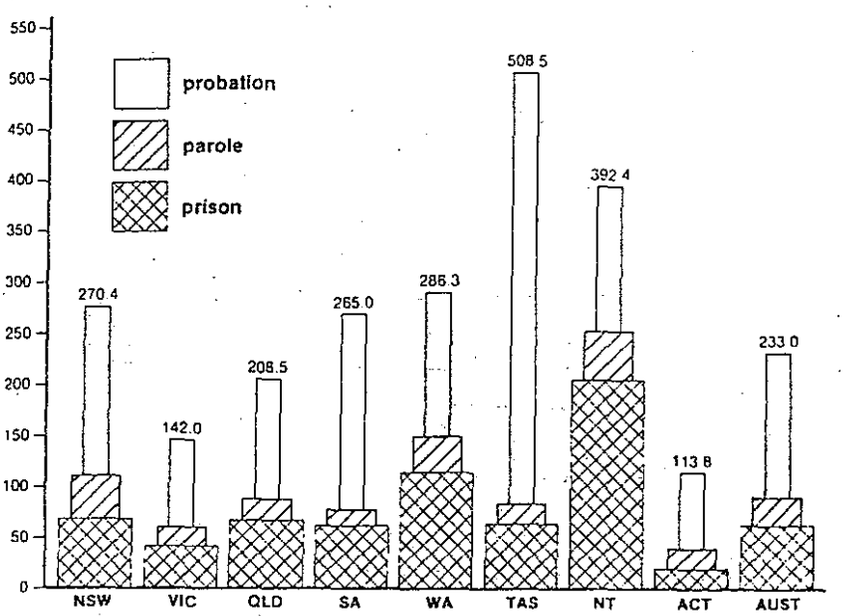
Adult Prisoners, Probationers and Parolees in Australian States and Territories, August 1979

	Prisoners(a)		*Probation*		*Parolees*	
	No.	*Rates*	*No.*	*Rates*	*No.*	*Rates*
N.S.W.	3 741	73.7	7 691	151.5	2 081	41.0
Vic.	1 728	44.8	3 102	80.4	640	16.6
Qld	1 625	74.3	2 469	113.0	380	17.4
S.A.	824	63.7	2 449	189.4	213	16.5
W.A.	1 483	119.2	1 661	133.5	476	38.3
Tas.	289	69.3	1 914(*b*)	459.0	62	14.9
N.T.	256	218.8	147	125.6	50	42.7
A.C.T.	47	21.1	149	66.8	30	13.5
Aust.	9 993	69.3	19 582	135.8	3 932	27.3

(*a*) Daily average (to nearest whole number).
(*b*) Includes 111 juveniles being supervised by the adult probation service.
Source: Australian Institute of Criminology, I. Potas and D. Biles.

Figure 6

PERSONS IN PRISON, ON PAROLE AND ON PROBATION PER 100 000 OF POPULATION, AUSTRALIAN STATES AND TERRITORIES, NOVEMBER 1979



Source: Australian Institute of Criminology, D. Biles.

Offense Gravity Score	Prior Record Score	Minimum Range*	Aggravated Minimum Range*	Mitigated Minimum Range*
10 Third Degree Murder**	0	48-120	Statutory Limit ***	36-48
	1	54-120	Statutory Limit ***	40-54
	2	60-120	Statutory Limit ***	45-60
	3	72-120	Statutory Limit ***	54-72
	4	84-120	Statutory Limit ***	63-84
	5	96-120	Statutory Limit ***	72-96
	6	102-120	Statutory Limit ***	76-102
9 For example: Rape; Robbery inflicting serious bodily injury**	0	36-60	60-75	27-36
	1	42-66	66-82	31-42
	2	48-72	72-90	36-48
	3	54-78	78-97	40-54
	4	66-84	84-105	49-66
	5	72-90	90-112	54-72
	6	78-102	102-120	58-78
8 For example: Kidnapping Arson (Felony I); Voluntary Manslaughter**	0	24-48	48-60	18-24
	1	30-54	54-68	22-30
	2	36-60	60-75	27-36
	3	42-66	66-82	32-42
	4	54-72	72-90	40-54
	5	60-78	78-98	45-60
	6	66-90	90-112	50-66
7 For example: Aggravated Assault causing serious bodily injury; Robbery threatening serious bodily injury**	0	8-12	12-18	4-8
	1	12-29	29-36	9-12
	2	17-34	34-42	12-17
	3	22-39	39-49	16-22
	4	33-49	49-61	25-33
	5	38-54	54-68	28-36
	6	43-64	64-80	32-43
6 For example: Robbery inflicting bodily injury; Theft by extortion (Felony III)**	0	4-12	12-18	2-4
	1	6-12	12-18	3-6
	2	8-12	12-18	4-8
	3	12-29	29-36	9-12
	4	23-34	34-42	17-23
	5	28-44	44-55	21-28
	6	33-49	49-61	25-33

*WEAPON ENHANCEMENT: At least 12 months and up to 24 months confinement must be added to the above lengths when a deadly weapon was used in the crime

**These offenses are listed here for illustrative purposes only. Offense scores are given in §303.7.

***Statutory limit is defined as the longest minimum sentence permitted by law.

Offense Gravity Score	Prior Record Score	Minimum Range*	Aggravated Minimum Range*	Mitigated Minimum Range*
5 For example: Criminal Mischief (Felony III); Theft by Unlawful Taking (Felony III); Theft by Receiving Stolen Property (Felony III); Bribery**	0	0-12	12-18	non-confinement
	1	3-12	12-18	1½-3
	2	5-12	12-18	2½-5
	3	8-12	12-18	4-8
	4	18-27	27-34	14-18
	5	21-30	30-38	16-21
	6	24-36	36-45	18-24
4 For example: Theft by receiving stolen property, less than $2000, by force or threat of force, or in breach of fiduciary obligation**	0	0-12	12-18	non-confinement
	1	0-12	12-18	non-confinement
	2	0-12	12-18	non-confinement
	3	5-12	12-18	2½-5
	4	8-12	12-18	4-8
	5	18-27	27-34	14-18
	6	21-30	30-38	16-21
3 Most Misdemeanor I's**	0	0-12	12-18	non-confinement
	1	0-12	12-18	non-confinement
	2	0-12	12-18	non-confinement
	3	0-12	12-18	non-confinement
	4	3-12	12-18	1½-3
	5	5-12	12-18	2½-5
	6	8-12	12-18	4-8
2 Most Misdemeanor II's**	0	0-12	Statutory Limit ***	non-confinement
	1	0-12	Statutory Limit ***	non-confinement
	2	0-12	Statutory Limit ***	non-confinement
	3	0-12	Statutory Limit ***	non-confinement
	4	0-12	Statutory Limit ***	non-confinement
	5	2-12	Statutory Limit ***	1-2
	6	5-12	Statutory Limit ***	2½-5
1 Most Misdemeanor III's**	0	0-6	Statutory Limit ***	non-confinement
	1	0-6	Statutory Limit ***	non-confinement
	2	0-6	Statutory Limit ***	non-confinement
	3	0-6	Statutory Limit ***	non-confinement
	4	0-6	Statutory Limit ***	non-confinement
	5	0-6	Statutory Limit ***	non-confinement
	6	0-6	Statutory Limit ***	non-confinement

*WEAPON ENHANCEMENT: At least 12 months and up to 24 months confinement must be added to the above lengths when a deadly weapon was used in the crime

**These offenses are listed here for illustrative purposes only. Offense scores are given in §303.7.

***Statutory limit is defined as the longest minimum sentence permitted by law.

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