

# The Unknown History of Sentencing in Oregon

by Kathleen Bogan

State criminal courts are probably the best example of a state government power snarl, where so many different government

players have so much control, and the public is so strongly affected but so poorly informed. Lack of ready information contributes a great deal to the snarl because so few citizens understand what is going on. That makes them susceptible to unwise appeals. In the 90's many Oregonians have been led to think that we need to get tougher on crime by ending Oregon's system of indeterminate sentencing, by increasing the length of time served by violent criminals, and by expanding prisons to make this possible.

Ironically, those changes had already been made, at the initiative of the Oregon

Legislature. If the press and our political leaders had done a better job of educating Oregonians about the original reforms, we would not have spent so much energy and money in the last few years. The purpose of this article is to help Oregonians catch up with their own history, by describing how the original reform came about.

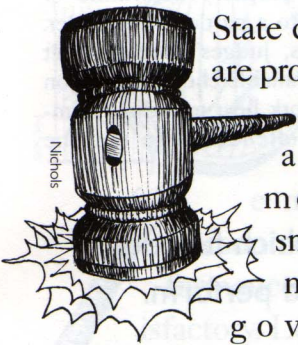
From the adoption of Oregon's Constitution in 1857 until the mid-1970s, Oregon's system for criminal sentencing was what is called an "indeterminate" one. Indeterminate sentencing systems remain in place in 22 states.<sup>1</sup> In an "indeterminate" system, the legislature defines each crime and sets the maximum penalties. (In Oregon, the legislature set the maximum sentences for felonies: five, ten or 20 years, depending upon the crime's classification. Offenders convicted of a misdemeanor could be sentenced up to a year and held in county jails.) Following an episode of criminal behavior, based on police reports and further investigation, the district attorney decides what crime(s) to charge. The ultimate conviction offense is a matter of available proof and/or plea agreements between district attorneys and defense attorneys.

In the indeterminate system, the

judge sentences an offender either to prison or probation. If a prison term is imposed, the judge determines the maximum length of the sentence, sometimes a minimum as well. The actual prison term served, however, would be determined by the Department of Corrections and the Parole Board, which decide when to release a prisoner, presumably based upon rehabilitation or behavior inside the prison. So indeterminate sentencing places a major part of the punishment decision in the hands of the Department of Corrections and the Parole Board.

By the 1970's indeterminate sentencing fell into disrepute for several reasons. There were doubts about the "rehabilitative" effect of indeterminate prison terms, and decisions about prison population control became tangled with legislative budget decisions as corrections took up more and more of the state budget.<sup>2</sup>

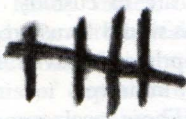
It also led to enormously crowded prisons all over the country, as judges imposed sentences without knowing what sentences their peers were imposing for the same type of offense or what effect their sentences were having on prison or jail conditions. In 1988, the American Correctional Association released a study



1857



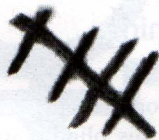
Oregon adopts "indeterminate" sentencing system



1980



Federal Court orders 750-bed reduction in Oregon prisons



1989



New CJC sentencing guidelines go into effect

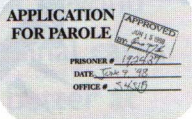


1996



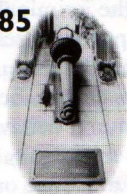
Oregonians vote to amend part of Constitution dealing with sentencing

1977



Objective parole release matrix developed

1985



State legislature creates Criminal Justice Council

1994

Oregon voters pass Measure 11 mandatory minimum sentences



Johnson

which showed 47 states reporting crowded prison systems.<sup>3</sup> Having no control over the numbers coming into the prison and without the funds to keep up with the

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growing number of prisoners, corrections departments could only respond by granting offenders "early release" when prisons became overcrowded.

In 1980, Oregon came within one sheet of paper of having the federal courts take over the state's prisons and jails. Eighteen of Oregon's county jails were already under federal court orders setting "population caps." A U.S. District Court had issued a decision ordering a 750-bed reduction at the state's 3 prisons, which had held 2000 inmates in 1975. But the U.S. District Court decision was vacated by the U.S. Court of Appeals and sent back for reconsideration in view of a new U.S. Supreme Court decision defining standards of cruel and unusual punishment. No change was required under the new federal standard.

In trying to stay ahead of the curve, Oregon had taken several large policy steps in the 1970s. It was one of the first states to enact a "community corrections" statute, which allowed offenders who met certain criteria to serve their sentences on probation in the community. Also in 1977, Oregon policymakers developed an objective parole release matrix. Based on the severity of the crime and the offender's criminal history, this matrix was used by the Parole Board to determine actual prison terms. These innovations also allowed offenders who met certain standards to serve a monitored prison term outside the prison, making room inside for more dangerous offenders.

Under Oregon's indeterminate sentencing system, offenders served, on the average, 25 percent of the sentence imposed by the judge, or 22 months.<sup>4</sup>

Following those changes, the Oregon prison population doubled from 2000 to 4000.<sup>5</sup> The changes in the parole matrix caused a 50 percent increase in the average length of stay for Class A felons (the most serious felons). Offenders failing on parole were 40 percent of "new admissions" to the prison each year, probably because the population under supervision in the community had nearly quadrupled and the level of supervision had dropped.<sup>6</sup>

In 1985, Oregon became the first state to begin developing mandatory sentencing guidelines in an already crowded prison situation. The Oregon Legislature

created the Criminal Justice Council, making it responsible for recommending criminal justice policies based on a comprehensive view of the system. The Council's members were a cross-section of

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officials working in the system, as well as legislators and private citizens. Public hearings were held at seven locations around the state, and more than 80 witnesses testified, including representatives of victims' groups. The guidelines passed the Oregon Legislature in 1989 with only one dissenting vote.

### **More important than severity, sentencing guidelines had set out to put truth and fairness into the system.**

When the Council began work, Oregon was ranked fifth in the nation in the rate of total "index" crime—crimes for which Federal statistics are maintained. About one in 40 adult male Oregon residents was under corrections control (on

probation or parole, in prison or jail). Clearly Oregon's crime rate had reached extreme proportions.

The new guidelines were based on two factors: the seriousness of the crime and the criminal history of the offender. Felony offenses are ranked into 11 categories of seriousness. The criminal history scale has nine categories, depending on the severity and type of prior criminal convictions. The most significant contribution of the guidelines is the control it provides over which offenders are sent to prison. Judges are allowed to depart from the guidelines if they cite substantial and compelling reasons to do so.

The guidelines were designed to meet four goals:

1. truth in sentencing, so the sentence imposed is the one served;
2. sentence uniformity, so that offenders who commit similar crimes and have similar criminal histories receive similar sentences;
3. just and proportional punishment, so that offenders with the most serious criminal histories who commit the most serious crimes receive the longest sentences;
4. maintenance of a sentencing policy consistent with correctional capacity, so prisoners would not have to be released ahead of schedule because of overcrowding.

To accommodate the new penalties set forth in the sentencing guidelines, the Council recommended construction of 2400 additional prison beds.<sup>7</sup>

The effects of the guidelines were notable from the first year, 1989. Prior to sentencing guidelines, only 34 percent of offenders convicted of a crime against a person were sentenced to prison. During the first year of sentencing guidelines, the number climbed to 48 percent. The imprisonment rate for sexual abuse more than tripled—from 13 percent to 42 percent. Rape and sodomy imprisonment rates rose from 40 percent to 60 percent. Imprisonment rates for homicide, assault and drug distribution rose as well. What

declined, in order to make room for these offenders, were imprisonment rates for certain burglaries, forgery/fraud, and theft, especially of a motor vehicle. Overall, under the indeterminate sentencing

*Continued on page 24*

