Report to the Colorado General Assembly:

COMMITTEE ON CRIMINAL JUSTICE

Part II

COLORADO LEGISLATIVE COUNCIL

RESEARCH PUBLICATION NO. 189

November, 1972

LEGISLATIVE COUNCIL

OF THE

COLORADO GENERAL ASSEMBLY

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The Legislative Council, which is composed of six Senators, six Representatives, plus the Speaker of the House and the Majority Leader of the Senate, serves as a continuing research agency for the legislature through the maintenance of a trained staff. Between sessions, research activities are concentrated on the study of relatively broad problems formally proposed by legislators, and the publication and distribution of factual reports to aid in their solution.

During the sessions, the emphasis is on supplying legislators, on individual request, with personal memoranda, providing them with information needed to handle their own legislative problems. Reports and memoranda both give pertinent data in the form of facts, figures, arguments, and alternatives.

COMMITTEE ON CRIMINAL JUSTICE

PART II

Legislative Council

Report To The

Colorado General Assembly

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COLORADO GENERAL ASSEMBLY

LEGISLATIVE COUNCIL

ROOM 46 STATE CAPITOL
DENVER, COLORADO 80203
892-2285
AREA CODE 303

November 27, 1972

To Members of the Forty-ninth General Assembly:

Under direction of House Joint Resolution No. 1033 of the 1971 Session and Senate Joint Resolotuion No. 15, of the 1972 Session, Forty-eighth General Assembly, the Legislative Council appointed the Committee on Criminal Justice to conduct a study of the Colorado correctional system and to draft proposed statutes specifying minimum standards for peace officers in this state. The report, recommendations, and drafts of proposed legislation developed pursuant to these resolutions are submitted herewith.

The report of the Committee on Criminal Justice was adopted by the Legislative Council for transmission with favorable recommendation to the members of the first regular session of the Forty-ninth Colorado General Assembly.

Respectfully submitted,

/s/ Representative C. P. (Doc) Lamb
Chairman

CPL/mp

COLORADO GENERAL ASSEMBLY

LEGISLATIVE COUNCIL

ROOM 46 STATE CAPITOL
DENVER, COLORADO 80203
892-2285
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November 27, 1972

Representative C. P. (Doc) Lamb
Chairman
Colorado Legislative Council
Room 46, State Capitol
Denver, Colorado 80203

Dear Mr. Chairman:

In accordance with House Joint Resolution No. 1033 (1971) and Senate Joint Resolution No. 15 (1972), your Committee on Criminal Justice, was appointed to study the problems of the Colorado correctional system and to draft proposed legislation establishing minimum standards for peace officers. The Committee submits the accompanying report and recommendations.

A total of eight bills concerning improvement of correctionsal system are submitted for the consideration of the General Assembly. Three bills concern correctional institutions and correctional administration: statutory establishment of the Division of Corrections; creation of a pilot program reception and diagnostic center; and rights of confined persons and minimum treatment standards.

Three additional bills have been prepared concerning the custody and control of persons after release. These bills include occupational licensing and employment opportunities for former inmates of correctional institutions, parole revocation procedures, and parole and probation revocation proceedings under the interstate compact.

Finally, two proposed bills have been drafted with the view toward modifying those sentencing procedures used

in Colorado. The first bill would create a form of indeterminate sentencing for class 4 and 5 felonies. The second bill attempts to amend Colorado statutes regarding capital punishment within the constitutional guidelines set forth by the United States Supreme Court in the decision of Furman vs. Georgia (1972).

As Chairman of this Committee, I would personally thank and recognize Senator John R. Bermingham for his able work as acting Committee Chairman for a substantial part of the 1972 interim period.

Respectfully submitted,

/s/ Representative Ralph Cole
Chairman
Committee on Criminal
Justice

RC/mp

FOREWORD

The Legislative Council's Committee on Criminal Justice was created pursuant to House Joint Resolution No. 1033 of the 1971 Session, and was given further specific directives under Senate Joint Resolution No. 15 of the 1972 legislative session. The directive for the 1972 study included the topics of sentencing, correction, rehabilitation, and custody of persons convicted of crime and the establishment of minimum standards for peace officers.

Members appointed to the Committee were:

Rep. Ralph Cole
Chairman
Sen. John Bermingham
Vice-Chairman
Sen. Fay DeBerard
Sen. Ben Klein
Sen. Ruth Stockton
Sen. Anthony Vollack
Rep. Betty Dittemore
Rep. Donald Horst
Rep. Gerald Kopel
Rep. Harold Koster
Rep. Charles Lindley
Rep. Hubert Safran
Rep. Ronald Strahle

Under a grant from the Law Enforcement Assistance Authority, the Committee obtained bill drafting and consultation services of the Honorable O. Otto Moore, former Chief Justice of the Colorado Supreme Court.

Legislative Council staff members assigned to the Committee were Stanley Elofson, Principal Analyst, Earl Thaxton, Research Associate, and Bart Bevins, Research Assistant. Vincent C. Hogan, Staff Attorney in the Legislative Drafting Office, assisted in the preparation of the Committee bills.

November, 1972

Lyle C. Kyle
Director

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COMMITTEE REPORT AND RECOMMENDATIONS

Senate Joint Resolution No. 15 of the 1972 Session contained a directive to the Legislative Council Committee on Criminal Justice that the Committee:

> ...continue its review of the Colorado statutes relating to criminal justice, and in particular, undertake the drafting of a revision of those statutes dealing with the sentencing, correction, rehabilitation, custody, and control of persons convicted of crime, and undertake the drafting of proposed statutes specifying minimum standards for law enforcement personnel in this state.

This report includes eight draft bills prepared by the Committee and recommended as significant steps toward improvement of Colorado correctional system. In addition, further Committee work is contemplated toward establishment of minimum standards for Colorado law enforcement personnel and some Committee attention was given to suggested revisions of the Children's Code. For reasons discussed later, however, specific legislation is not submitted from the Committee on either of these topics.

Overview of Recommendations

To briefly characterize the specific legislative proposals, the draft bills might be considered under three general headings:

Correctional Institutions and Administration

- Bill I - Statutory establishment of the Division of Corrections
- Bill II - Creation of a pilot program reception and diagnostic center
- Bill III - Rights of confined persons and minimum treatment standards 1/

Sentencing Procedures

- Bill IV - Capital punishment, creating a new class of felony -- "capital

1/ Bill recommended on the basis of decisions of various state and federal courts as noted in the comments to Bill III, page 41 of this report.

offense felony" -- and revisions of the code of criminal procedures (ch. 30) 2/

Bill V - Provides a form of indeterminate sentencing for class 4 and 5 felonies

Custody and Control of Persons After Release

Bill VI - Occupational licensing and employment opportunities for former inmates

Bill VII - Parole revocation proceedings 2/

Bill VIII - Parole and probation revocation proceedings under the interstate compact 2/

It might also be noted, in terms of an overview, that four of these bills have been prepared in consideration of recent decisions of the United States Supreme Court and other federal and state courts throughout the country. It is important to note that the decisions of the courts appear to signal increased attention by the courts in areas of correctional administration and related procedures such as probation and parole. The legislative branch, therefore, would be well advised to undertake an active role in the formulation of policies in the areas outlined above, rather than to simply wait for the imposition of further judicial directives.

Some of these bills, such as Bill IV concerning capital punishment, involve highly emotional issues. In this respect, the Committee, in the preparation of the draft bills, attempted to assure that the format of the draft legislation would be proper for legislative consideration, recognizing that the entire General Assembly has the responsibility of formulating its judgment to be expressed as state policy. However, the recommendations in this report are submitted by the Committee as its recommendations of what the state's policy should be in these areas of controversy.

2/ Legislation drafted to conform Colorado statutes with decisions of the United States Supreme Court.

The next portion of this report outlines the specific recommendations of the Committee.

Division of Corrections - Bill I

Legislation is recommended to establish the division of corrections on a statutory basis and to provide the division with direction from the General Assembly to achieve improvement in the Colorado correctional program.

The present division of corrections and all activities and programs relating to the rehabilitation of adults who have been convicted of a felony are the creations of executive order of the executive director of the department of institutions. The office of chief of corrections, and all the programs, duties, and responsibilities of the chief of corrections are created, implemented, abandoned, or modified upon order of the executive director. There is no legislative authority for the existence of a "division of corrections" except the general authority "...the head of a principal department, with the approval of the Governor, may establish, combine, or abolish divisions, sections, or units other than those specifically created by law, and may allocate and reallocate powers, duties, and functions to divisions, sections, and units under the principal department..." (Section 3-28-7, C.R.S. 1963 (1969 Supp.)).

There are three principal reasons for recommending legislation to create a division of corrections:

(1) Legislative direction to an executive agency is helpful to both branches of government in providing: (a) clarification of the executive functions to be performed; and (b) a legal and statutory basis for actions by the division and chief of corrections.

Lack of this statutory basis could result in a constitutional challenge of the source of authority by which the division of corrections operates, charging a violation of the doctrine of separation of powers because of unlawful delegation of legislative authority.

(2) Continuity of programs along the lines of the legislative directive may be assured at the division level by providing legislative direction to the division. To give just one example, the executive director of the department, of course, serves at the pleasure of the Governor and is subject to removal with a change in administration. At least some continuity in administration for the correctional system would be made possible through providing statutory status and direction to the division of corrections.

(3) Enumeration of the duties of the division should help in providing more assistance to the chief of corections as well as to the entire department of institutions. For example, greater staff capability might be highly desirable in areas of planning and research. Enactment of statutory directives could assist in the department's obtaining greater capabilities in these areas.

Opposition to Bill I was voiced by the executive director of the department of institutions and by the chief of corrections. It was their belief that the bill would remove the administrative flexibility which is now present in the administration of the department.

The Committee did not agree with this conclusion. This legislation was drafted to provide the division of corrections with a statement by the General Assembly concerning its duties and responsibilities. The Committee concluded that the bill would continue to provide flexibility in administration as the provisions of the bill would tend to expand, rather than to limit, the duties of the division. Further, it appears unlikely that the division would be able to carry out the duties listed in the bill without a directive from the General Assembly as to which responsibilities, such as planning, development, and coordination of programs, are of highest priority for that division.

It should be noted that Bill I also concerns the responsibility of the division of corrections in regard to local jails. The chief of corrections would have the responsibility of classifying these institutions in reference to their location, size, physical plant, staff, and average inmate population. Rules and regulations would then be promulgated for each classification so that a short-term (e.g., 24 or 48- hour) holding facility in a rural area would not be subject to the same requirements as the Denver County jail, as one example.

The chief of corrections could take action to order the closing of local facilities which, after a reasonable period of time, were found not in compliance with the rules and regulations. Other provisions include a directive to the chief of corrections to provide consultation services for the construction and administration of local jails and correctional facilities and to provide for the transfer of inmates between local facilities and to state institutions.

Reception and Diagnostic Center - Bill II

Establishment of a Colorado Reception and Diagnostic Center for the evaluation of convicted male felons is recom-

mended on a demonstration or "pilot" basis. The purpose of adopting a pilot approach for this center is to determine the usefulness of the center in providing thorough medical, psychiatric, and educational evaluations of the inmates sentenced to Colorado correctional institutions. After some experience with a pilot approach, the General Assembly may choose to expand the program to include all felony offenders, to use this approach only for selected inmates, or to concentrate on different approaches toward rehabilitation. The Committee recommends use of vacant facilities at Colorado State Hospital for the pilot program.

The Committee accepts the conclusion that punishment and confinement of an inmate, without rehabilitation, is counterproductive to society since practically all inmates will eventually be released from incarceration. Thus correctional programs need to be designed to insure the individual's successful intergration into society.

Testimony before the Committee indicated that the system of corrections must deal with a wide diversity of individual offenders. Mr. Vidal Raigoza, Division of Correctional Psychiatry, State Hospital, indicated that correctional personnel treat a wide variety of individuals, including sex offenders, drug users, and other physical, psychological, and psychiatric disorders.

The success of rehabilitation rests in large measure on the recognition by correctional officials of the needs of these various offenders. The use of a receiption and diagnostic center is viewed as one means of securing adequate information concerning the offender's physical and emotional condition and of insuring a proper recognition of an individual's needs.

Such examinations of offenders could provide correctional personnel and parole authorities with an understanding of the offender's needs, an essential ingredient in developing individualized correctional programs. Sentencing courts could also use the evaluation reports for possible modification of sentence.

The Committee considered two proposals concerning establishment of a reception and diagnostic center: a full-scale program that would examine all male felons convicted in Colorado; and a pilot program that would examine approximately one-fourth of the persons convicted of felonies. The Committee concluded that Colorado should obtain some experience regarding the effectiveness of the diagnostic approach. While experience from other states which operate reception and diagnostic centers is of assistance, the operation of a center,

with the evaluation of inmates and recommendations submitted to Colorado correctional institutions and to Colorado courts, might best be approached on a gradual basis. The proposed pilot program will allow correctional officials to determine the effectiveness of this approach and also provides further time for planning of a full-scale program, perhaps in conjunction with other correctional facilities.

For the present time the Committee recommends use of vacant facilities at the Colorado State Hospital for the pilot program. The program will examine approximately 24 inmates for a period of time, usually not to exceed 90 days and probably 30 to 60 days in most instances.

The use of existing facilities will eliminate the need for immediate capital construction and also minimizes the start-up time need to begin the program. While several sites were considered -- the Colorado Youth Center, the Lookout Mountain School for Boys, and the Colorado State Penitentiary -- facilities located at the State Hospital were considered the most desireable for the purposes of the pilot program. Three principal reasons are suggested favoring this location:

(1) No modification of the existing facilities is planned by the department of institutions. Adequare areas for testing, interviewing, inmate quarters, and offices are already available, and food service and medical facilities are readily provided by the State Hospital.

(2) Security requirements for the center, in part, can be provided through the State Hospital security force. The center will have 24 hour, in-house custodial personnel totaling 17, while the State Hospital can provide additional security personnel in the form of roving patrols. The center is planned for the sixth floor of building no. 120, a building which has limited, easily controled access.

(3) The location at the State Hospital should enhance the recruitment of clinical staff members for the center. The State Hospital already provides a team of psychiatrists, a psychologist, and a social worker who travel to the penitentiary and reformatory to conduct tests and to evaluate inmates. Severe limitations of time and caseload are inherent in the traveling team approach, but the experience of this group will be of assistance in establishing a reception and diagnostic center.

Appendix A provides a breakdown of the estimated cost for operation of the center, including professional personnel, administrative and custodial staff, operating expenses, capi-

tal outlay, and travel expenses. The total cost for the first year is estimated to be slightly over $300,000.

Rights of Confined Persons - Minimum Treatment Standards -- Bill III

The purpose of this bill is to provide the chief of corrections with authority to promulgate rules and regulations relating to rights of confined persons. These rules and regulations, applicable to the Colorado correctional institutions, would insure certain rights of inmates in a variety of areas of correctional life, including access to courts and legal counsel, correspondence, visitation, the exercise of religion, disciplinary methods, and medical treatment. All of these areas of concern have been the subject of court decisions in other states and in the federal judiciary.

Throughout much of correctional history, the courts have not been a major source of direction for correctional administratiors. Recently, however, courts, especially the federal courts, have provided major impetus for altering the treatment of confined offenders. The most significant change in the laws concerning corrections in the past few years is the discarding of the notion of a separate "law of coorections", which allowed the court to ignore inmate complaints. The courts have been "...involved in integrating the law applicable to corrections with the rules that have generally been applicable to other governmental agencies." 3/

The legal doctrine supporting the traditional nonintervention of the courts into the correctional field was the notion that a member of a particular class of persons may be deprived of his constitutional rights. In the area of corrections, this analysis gave rise to the concept that, since prisoners have no constitutional rights, except for relief from cruel and unusual punishment, their treatment in institutions was not dictated by constitutional considerations. This situation, coupled with undeveloped notions of what constituted cruel and unusual punishment, greatly restricted the areas in which an inmate might file a complaint for relief. The courts, therefore, could deny most inmate complaints on the basis that the inmate had no constitutional standing to press a claim. Any rights recognized as belonging to an inmate were those "extended" to him.

3/ The Emerging Rights of the Confined (South Carolina Department of Corrections, 1972), p. 28.

Such doctrine, however, is increasingly seen as conflicting with the concept of the inalienability of constitutional rights. The courts have recognized, more and more, that the rights provided by the constitution are available to all persons irrespective of their position in society. The distinction previously drawn between an inmate's right of access to court and his other rights has become difficult to defend. While most of the cases in the area of rights of the confined do not appear to be binding in Colorado, the precedents for litigation are of importance to the Colorado correctional system.

Capital Punishment - Bill IV

The United States Supreme Court, in the 1972 case of Furman v. Georgia, (40 U.S.L.W.4923 (US June 29, 1972)), held that discretionary imposition of capital punishment constitutes cruel and unusual punishment and is a denial of equal protection of the law in violation of the Eighth and Fourteenth Amendments. While interpretation of a "majority" opinion from that case is difficult, the concensus of informed opinion is that juries may no longer be given discretion in deciding between the death penalty or some lesser penalty. Present Colorado statutes state that murder in the first degree is a class 1 felony (section 40-3-102 (3)), the penalty for which is life imprisonment or death upon conviction (section 40-1-105). It is believed that Colorado statutes afford the jury a degree of discretion that is in violation of the Supreme Court decision.

Two alternatives appear to be available for amendment of Colorado statutes: (1) abolition of capital punishment in all forms; or (2) a mandatory death penalty for certain crimes. The Committee recommendation is a form of the second alternative.

Bill IV, as recommended, would create a new class of homicide, a "capital offense felony," for which the penalty of death is mandatory upon conviction. Creation of the new class of felony would enable all other felony classifications (classes 1 through 5 as enacted in the 1971 criminal code) to remain without change. This bill also contains necessary amendments to Chapters 39 and 40, the code of criminal procedures and the criminal code, if the concept of a "capital offense felony" is approved.

The Committee recommends that one type of homicide would carry the mandatory death penalty -- a homicide committed by an inmate of a correctional institution while serving a life sentence. Murder in the first degree, as now defined

in section 40-3-102 (3), would still be considered a class 1 felony, but the possibility of the death penalty would be removed. Both the maximum and minimum penalties would be life imprisonment but the maximum would have no opportunity or possibility of parole.

This bill would also amend those sections of Chapter 39, the code of criminal procedures, necessary if the concept of capital offense felony is approved. The amendments would remove the death penalty from class 1 felonies and revise procedures concerning imposition of sentence in capital offense felonies and class 1 felonies.

It was noted earlier that this topic is one of the most emotional subjects with which all of society is concerned. The Committee, in submitting this recommendation, would suggest that the mandatory imposition of the death penalty for certain crimes is a striking departure from the optional provisions in the present law. All of society, and particularly the General Assembly, should consider carefully the crimes for which the death penalty is to be imposed without any option for a lesser penalty.

Indeterminate Sentencing - Bill V

A modified form of indeterminate sentencing is recommended for those persons convicted of class 4 and class 5 felony violations. The 1971 criminal code provides for sentences of one to five years for class 5 felonies and one to ten years for class 4. As defined in Bill V, an indeterminate sentence would eliminate the minimum sentence and the court would impose only a maximum sentence, which would be no more than the maximum provided by statute, and no less than one-third the maximum sentence.

Past studies of the concept of indeterminate sentencing were reviewed by the Committee and testimony was received from correctional officials. This information indicated that, while correctional authorities endorse the use of an indeterminate sentence, certain disadvantages may exist to recommend that experience with a modified form of such sentencing could be useful as a means of evaluating the potential of the concept as a rehabilitative tool.

At present, sentences imposed in Colorado consist of some minimum and maximum sentence to be served at a penal institution designated by the court. Two major problems are found in this method of sentencing. First, there is disparity in sentencing; secondly, long-term, fixed sentences may be imposed.

Disparity of sentencing results when two offenders, convicted of committing the same crime under substantially the same circumstances, receive diverse sentences -- one lenient, the other severe. Disparity in sentencing causes bitterness on the part of the convict towards the system of law and authority; reduces his chances for successful completion of rehabilitation and parole; and creates disciplinary problems for institutional authorities.

The long-term fixed minimum sentence may result in sentences in which the minimum and maximum are close together. For example, a sentence for a class 4 felony may be set between a minimum of one year and a maximum of ten years. If a minimum sentence of nine and one-half years and a maximum of ten years is imposed, the result is a delay in starting an institutional rehabilitation program and in lack of supervision for an adequate period of time after the offender's release. The individual could reach the optimum period for his release long before becoming eligible for parole.

In its pure form, indeterminate sentencing would mean sentencing of offenders from one day to life imprisonment as is presently provided under the sex offender's act. While such sentencing would resolve those problems mentioned above, at least two disadvantages are frequently mentioned. One disadvantage cited is that indeterminate sentencing gives much power to the parole board, and the prejudices of correctional and parole officials may determine decisions on the release of certain offenders. In addition, uncertainty of release or repreated refusals of parole may create bitterness and fear in the inmate. These attitudes increase disciplinary and morale problems in the institution.

The form of indeterminate sentencing proposed in Bill V is thought to offer a means of dealing with the major problems of sentencing discussed above. By avoiding the use of a fixed minimum sentence to be served by an inmate, disparity of sentences will be reduced and fixed, long-term minimum sentences will be eliminated for class 4 and 5 felonies. Correctional officials will be able to release inmates at the time they reach their optimum point of rehabilitation and have their best chance for successful parole. In addition, there would be some judicial control in sentencing in all classes of felonies so the length of sentence is not left entirely to the discretion of the parole board. This bill is not expected to require any significant increase in state expenditures for the parole board or the parole division.

Appendix B of this report provides a list of the felonies under each of the present five classes. The length of the lists of class 4 and 5 felonies illustrates that these two felony classifications contain over three times the number

of crimes listed as class 1, 2, and 3 felonies. The percentage of persons convicted of class 4 and 5 felonies, which classes would be eligible for sentencing under Bill V, is estimated to be well over 70 percent of all felony convictions. Sentencing of misdemeanors and petty offenses, of course, would not be affected by this proposal.

Occupational Licensing -- Employment Opportunities for Former Inmates -- Bill VI

The purpose of this bill is to provide a statement of policy to the effect that former inmates of correctional institutions shall not have the fact of their conviction of an offense used as the sole or automatic reason for denial of an occupational license or certificate issued by the state. The intent, stated in this act, is to expand employment opportunities for former inmates who have been rehabilitated and are ready to accept the responsibilities of society.

The Committee finds that an element of an inmate's successful rehabilitation and integration into society is the development of those skills which are demanded by the labor market. Since many inmates receive occupational training through vocational education programs at Colorado correctional institutions, it would follow that these inmates should be given the opportunity to be licensed to follow that occupation. Denial of occupational licensing deprives ex-offenders of the opportunity to gain employment, creates bitterness within the individual, and tends to lower morale and to discourage the vocational training programs at the institutions.

At present, there are 57 occupations which require licensure, certification, or registration. Of these, 38 require that the applicant be of "good moral character", 27 list conviction of a felony as cause for denial, revocation, or suspension of a license, and 17 list conviction of a crime involving moral turpitude as a cause for denial, revocation, or suspension of a license, certificate, or registration. (A number of these statutes contain both the moral character and the conviction of a felony tests.)

The Committee, at its last meeting, directed that these 57 licensing statutes be reviewed to provide a necessary cross-reference to this bill, a new article in the code of criminal procedures. This drafting work is underway and a bill to amend necessary provisions in the specific licensing statutes will be introduced in the 1972 Session, although not as a formal part of the Committee's recommendations.

In addition to the state licensing agencies, the policy statement in this bill would apply to public employment, within the restrictions of the Colorado Constitution, and to local agencies required to make a finding of good character on applicants for a license, certificate, permit, or registration.

Parole Revocation Proceedings - Bill VII

Colorado statutes dealing with the revocation of parole have been found to be in need of amendment as a result of the United States Supreme Court decision in the June, 1972 case of Morrissey v. Brewer. (40 U.S. L.W. 5016 (U.S. June 29, 1972)).

In its decision, the Supreme Court held that, although proceedings resulting in revocation of parole do "not call for the full panoply of rights due a defendant" in a criminal proceeding, a parolee's liberty involves significant values within the protection of the due process clause of the Fourteenth Amendment.

In other words, the parolee is entitled to remain at liberty so long as he abides by the conditions of his parole. Elimination of that liberty requires an informal hearing to give assurance that the finding of a parole violation is based on verified facts to support the revocation.

The first step of parole revocation thus involves a factual question, i.e., whether the parolee has in fact acted in violation of one or more of his conditions of parole. If it is determined that the parolee did violate these conditions, the second question arises: Should the parolee be reincarcerated or his parole be modified in some fashion to facilitate the protection of society? The second question involves the application of discretion and expertise, but still must be based on certain facts relevant to this decision.

Two principal stages are seen in the process of parole revocation: (1) arrest of the parolee and a preliminary hearing; and (2) the revocation hearing. The first stage occurs when the parolee is arrested and detained either with or without a warrant. In those cases of arrest without a warrant:

> Due process requires a reasonably prompt informal inquiry conducted by an impartial hearing officer near the place of the alleged parole violation or arrest to determine if there is reasonable ground to believe that the arrested parolee has violated a parole condition.

> The parolee should receive prior notice of the inquiry, its purpose, and the alleged violations. The parolee may present relevant information and (absent security considerations) question adverse informants. The hearing officer shall digest the evidence on probable cause and state the reasons for holding the parolee for the parole board's decision.

In those cases of arrest with a warrant, probable cause has already been shown and no preliminary hearing is required.

The second stage, the revocation hearing, leads to a final evaluation of any contested facts and whether, based on the facts, revocation of parole is warranted. The court decision states:

> At the revocation hearing, which must be conducted reasonably soon after the parolee's arrest, minimum due process requirements are: (a) written notice of the claimed violations of parole; (b) disclosure to the parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a "neutral and detached" hearing body such as a traditional parole board, members of which need not be judicial officers or lawyers; and (f) a written statement by the factfinders as to the evidence relied on and reasons for revoking parole.

While the specific form of legislation may vary, the Court clearly stated that legislative changes concerning revocation proceedings must include those elements mentioned above. Bill VII has been drafted to meet these requirements.

Parole officials expressed a desire that they be permitted to hold the revocation hearings, but the Committee concluded that the better practice would be to have these hearings held by a judge.

Parolees and Probationers Under Interstate Compact -- Bill VIII

As a corollary bill to Bill VII, this legislation is submitted to provide the same procedural due process and equal

protection guarantees for parolees and probationers who are subject to "The Uniform Act for Out-of-State Parolee Supervision" (Section 74-5-1 C.R.S. 1963). Four states in this region, Colorado, Kansas, New Mexico, and Wyoming, have joined in this compact which provides a mechanism and procedure for supervision of a parolee and probationer while that individual is in another jurisdiction.

The draft bill, prepared by the Council of State Governments, would provide for a hearing in the receiving state to determine probable cause to believe that an individual has violated a condition of his parole which may require that the sending state consider retaking or reincarcerating him. This act makes it possible for officials in the receiving state to hold the hearing for the sending state.

Bill VII includes detailed proceedings for the revocation of parole or probation, steps which follow the preliminary hearing. However, Bill VIII does not include these specific requirements at the revocation stage since these requirements concern interstate proceedings which would be held in the sending state. In other words, after a finding of probable cause in the preliminary hearing in Wyoming, for example, an individual would be returned to the "sending" state (Colorado) and would be subject to the procedures set forth in Bill VII.

The Council of State Governments suggests the adoptipn of Bill VIII by all compact states as a means of conforming the interstate compact procedures with Morrissey v. Brewer. Amendment of the compact does not appear to be necessary if all states enact legislation similar to this bill.

Minimum Standards for Law Enforcement Personnel

One of the directives to the Committee in S.J.R. 15 of the 1972 Session was that Committee "undertake the drafting of proposed statutes specifying minimum standards for law enforcement personnel in this state". Three meetings were held with a Committee of the Colorado Sheriffs and Peace Officers Association, the organization primarily interested in the enactment of this legislation. At the direction of the Criminal Justice Committee, staff from the Legislative Council and Legislative Drafting Office assisted the Committee of Peace Officers in preparing the draft bill.

The draft bill presented at the final Committee meeting was not accepted by the Committee and recommended legislation is not submitted in this report. Primary issues not resolved relate to the "grandfather" provisions exempting certain peace officers from training requirements; the methods of funding the

training of local peace officers; the membership of the proposed peace officer standards and training commission; and the role of the commission in setting standards for employment of peace officers, which standards would be binding on local units of government. Further meetings are planned in December to resolve these issues.

None of the Committee members are opposed to legislation to provide minimum standards and training for peace officers. In view of the important issues not resolved with the principal sponsors of this legislation, it was considered inadvisable for the Committee on Criminal Justice to recommend a bill on this subject to the Legislative Council.

Amendments to the Children's Code

At two of the Committee's meetings testimony was received concerning suggested changes in the children's code. A group of citizens from the Westwood area of Denver brought to the Committee suggested amendments prepared in cooperation with the delinquency control division of the Denver Police Department. A subsequent meeting was held with two district judges working with juvenile cases, Judge Marvin Foote and Judge Robert Willison.

No recommendations for change in the children's code are submitted by the Committee, but further meetings with Committee members and interested individuals and groups will be held to further review the suggested amendments to this code.

BILL I

A BILL FOR AN ACT

ESTABLISHING THE DIVISION OF CORRECTIONS WITHIN THE DEPARTMENT OF INSTITUTIONS.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Article 11 of chapter 3, Colorado Revised Statutes 1963, as amended, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

3-11-17. Legislative declaration. (1) (a) The general assembly finds and declares that:

(b) The state has a basic obligation to protect the public by providing institutional confinement and care of criminal offenders and, where appropriate, treatment in the community;

(c) Meaningful efforts to rehabilitate and restore criminal offenders as law-abiding and productive members of society are

EXPLANATION

There are three principal reasons for recommending legislation to create a division of corrections:

(1) Legislative direction to an executive agency is helpful to both branches of government in providing: (a) clarification of the executive functions to be performed; and (b) a legal and statutory basis for actions by the division and the chief of corrections.

(2) Continuity of programs along the lines of the legislative directive may be assured at the division level by providing legislative direction to the division. To give just one example, the executive director of the department, of course, serves at the pleasure of the governor and is subject to removal with a change in administration. At least some continuity in administration for the correctional system would be made possible through providing statutory status and direction to the division of corrections.

(3) Enumeration of the duties of the division should help in providing more assistance to the chief of corrections as well as to the entire department of institutions. Greater staff capability might be highly desirable in areas of planning and research and enactment of statutory directives in these areas could assist in the department's obtaining greater capabilities in these areas.

essential to the reduction of crime;

(d) Upgrading of correctional institutions and rehabilitative services deserves prior consideration as a means of lowering crime rates and of preventing offenders, particularly first offenders and misdemeanants, from becoming trapped in careers of crime; and

(e) Correctional institutions and services should be so diversified in program and personnel as to facilitate individualized treatment.

(2) The purposes of sections 3-11-17 to 3-11-21 are to establish a division within the department of institutions to provide for the custody, care, discipline, training, treatment, and study of persons committed to penal or correctional institutions for criminal offenses and to supervise and assist in the treatment, training, and integration into society of offenders who have been released on parole, or who are being held in local correctional and detention facilities, so that such persons may be prepared for release, aftercare, and supervision in the community.

TEXT

3-11-18. Definitions. (1) As used in sections 3-11-17 to 3-11-21, unless the context otherwise requires:

(2) "Adult" means a person eighteen years of age or older.

(3) "Correctional facility" or "correctional institution" means a prison, penitentiary, correctional or penal facility, jail, workhouse, training school, halfway house, or other facility operated by the state or by a unit of local government for the confinement or correction of offenders.

(4) "Detention" means the temporary care of juveniles and adults who require secure custody for their own or the community's protection in a physically restricting facility.

(5) "Halfway house" means a community-based or oriented facility which may provide live-in accommodations for offenders who are given aid to obtain and hold regular employment; to enroll in and maintain academic courses; to participate in vocational training programs; to utilize the resources of the community in meeting their personal and family needs; and to participate in whatever specialized programs exist within the halfway house.

EXPLANATION

In general, the division of youth services in the department of institutions would continue to have responsibility for youth under 18 years.

TEXT

EXPLANATION

(6) "Local facility" means a holding facility, jail, police lockup, or other place operated by a unit of local government for the temporary detention of persons under suspicion for, or accused of a crime.

(7) "Offender" means any person convicted of a felony under the laws of this state.

(8) "Unit of local government" means a county, city and county, city, town, or service authority.

3-11-19. Division of corrections created. (1) A division of corrections is hereby established within the department of institutions. The division shall perform its duties and exercise its powers the same as if it were transferred to the department of institutions by a type 2 transfer under the "Administrative Organization Act of 1968", being article 28 of chapter 3, C.R.S. 1963.

Section 3-11-19 creates the division of corrections within the department of institutions.

(2) A chief of corrections who shall be the administrative officer of the division of corrections shall be appointed by the executive director of the department of institutions in compliance with section 13 of article XII of the state

Provides for the office of chief of corrections as the administrative officer of the division of corrections. Qualifications for the office include not less than five years experience in the field of corrections. The appointee need not be a resident of the state when appointed.

TEXT

EXPLANATION

constitution. He shall receive an annual salary as provided by law and, in addition thereto, an allowance for expenses actually and necessarily incurred by him in the performance of his duties. The chief of corrections shall be qualified for his position by character, personality, ability, education, training, and successful administrative experience of not less than five years in the field of corrections. He need not be a resident of this state when appointed.

3-11-20. Administration of division - personnel. (1) The chief of corrections, in compliance with section 13 of article XII of the state constitution, shall appoint such professional employees and other personnel as are required to administer the provisions of sections 3-11-19 to 3-11-23.

The chief of corrections would appoint "such professional employees and other personnel" required to administer the act.

(2) Within the general policies established by the executive director of the department of institutions and the general assembly of the state of Colorado, the chief of

Provides that the chief of corrections shall administer the division of corrections; establish rules and regulations for the operation of the division; supervise the administration of correctional institutions, programs and services under the jurisdiction of the division; and develop the budget for the operation of the division.

corrections shall administer the division of corrections, prescribe rules and regulations for the operation of the division, and supervise the administration of the correctional institutions, facilities, and services under the jurisdiction of the division of corrections pursuant to section 3-11-21. The chief of corrections shall prescribe the duties of all employees of the division and the regulations governing transfer of employees or inmates from one institution or facility of the division to another. He shall submit to the executive director of the department of institutions a comprehensive budget covering expenses for the operation of the division for each fiscal year, for the approval of the executive director and consideration by the general assembly.

(3) The chief of corrections shall submit to the state personnel director recommended minimum qualification standards for correctional personnel; may develop new personnel classification positions to enable paraprofessionals, volunteers, and exoffenders to perform appropriate correctional services; and may arrange with appropriate agencies to provide preemployment

The chief of corrections shall prescribe minimum qualification standards for correctional personnel; develop additional classification positions; and provide expanded training and educational opportunities for personnel in the division and at the correctional institutions.

TEXT

training and educational opportunities to such individuals to enable them to meet minimum qualification standards, and to make available in-service training to divisional personnel.

3-11-21. Duties related to rehabilitation. (1) (a) The chief of corrections, subject only to powers vested in the judiciary or by statute specifically delegated to another department or officer of this state, shall be responsible for the creation and implementation of plans and programs designed to bring about the rehabilitation of offenders, either within or without the confines of any correctional institution. Upon approval of such plans and programs by the executive director of the department of institutions, the chief of corrections shall have full administrative authority to place such plans and programs into effect, including but not limited to the following:

(b) To develop and implement a comprehensive plan for coordination of programs and services integrating under the administration of the division of corrections all state correctional programs and services involving persons subject to restraint, treatment, or supervision in or by the division of

EXPLANATION

Section 3-11-21 lists the responsibilities of the chief of corrections in creating and implementing correctional programs designed to aid the rehabilitation of inmates. Paragraphs (b) through (s) list those programs that the chief of corrections would work toward implementing. These programs are illustrative of the duties to be performed. The General Assembly may consider additions or deletions to this list.

parole, the state penitentiary, the Colorado state reformatory, the state board of parole, or other correctional facilities under the jurisdiction of the department of institutions;

(c) To educate and inform the public about the work of the division of corrections;

(d) To establish policies which allow maximum latitude in interdepartmental transfer of persons needing specialized treatment;

(e) To expand the diagnostic services and individualized treatment programs;

(f) To establish training, educational, and rehabilitation programs for offenders exhibiting criminal and antisocial behavior;

(g) To utilize the facilities and services of other state agencies in local communities;

(h) To solicit and obtain volunteer personnel for community-centered programs;

(i) To involve persons who are former inmates and have exhibited successful community living for counseling services;

(j) To provide extensive programs of in-service staff

training and development;

(k) To develop and implement programs and facilities for the treatment of correctional problems related to drug abuse and alcoholism;

(l) To reevaluate rules and regulations relating to parole of offenders to promote individual development, and to make recommendations with regard thereto to the state board of parole;

(m) To develop programs to provide increased involvement for the families of committed persons;

(n) To develop, staff, and place in operation halfway houses, work-release centers, and small, comprehensive correctional facilities near centers of population and business and industrial activity;

(o) To attempt to involve private industry and local communities in the planning and funding of treatment and rehabilitation programs;

(p) To develop and establish aftercare services for persons released from correctional institutions and facilities;

(q) To promulgate and encourage adoption of contracts and

joint service agreements between units of local government to establish and operate regional detention and correctional facilities for adults;

(r) To transfer offenders to correctional institutions operated by any unit of local government if in his judgment the correctional need of such offender will be better served by such transfer; and, on behalf of the state, to enter into contracts with units of local government, under which an offender may be transferred to a correctional facility operated by such unit of local government for treatment, examination, work assignment, or participation in any correctional program authorized by law; and

(s) To establish programs of research, statistics, and planning, including evaluations of the performance of the various functions of the division of corrections and the effectiveness of the treatment of offenders in accomplishing rehabilitation.

3-11-22. Duties relating to local detention and correctional institutions - classification of facilities. (1) (a) It shall be the duty of the chief of corrections, as a matter of statewide concern, with respect to the administration

Section 3-11-22 (1) would enable the chief of corrections to give units of local government direction and assistance in the operation of their institutions and correctional programs.

TEXT

of detention and correctional facilities operated by units of local government, to:

(b) Consult with local authorities regarding the design, construction, programs, and administration of facilities for adults. Authorized personnel of the division of corrections may make studies and surveys of the programs and administration of these facilities. Such personnel shall be admitted to these facilities as required for those purposes.

(c) Promulgate rules and regulations for the operation of such local facilities as authorized by article 10 of chapter 105, C.R.S. 1963;

(d) Order the closing of any facility that does not comply with the rules and regulations authorized by subsection (2) of this section, subject to the approval of the executive director of the department of institutions, after providing reasonable notice and opportunity to make necessary improvements.

(2) The chief of corrections, with the approval of the executive director of the department of institutions, shall classify all lockups, jails, and penal and correctional institutions of all kinds operated by a unit of local government

EXPLANATION

Reference is to Bill III concerning rights of confined persons and minimum treatment standards for inmates at correctional institutions.

by reference to location, physical plant, staff, size, maximum capacity, average inmate population, and other characteristics tending to distinguish it from other facilities. Separate rules and regulations for the management, operation, and control of the facilities comprising each class shall be promulgated by the chief of corrections and enforced by the warden or administrative officer in charge of such facility.

3-11-23. Examination and transfer of felony offenders. (1) When final judgment has been entered committing any person to an institution for the commission of a felony, and execution has issued on such judgment, the person thus convicted shall be delivered by the sheriff, or other authorized officer, to the institution to which he was committed by the sentencing court. At such institution the person committed shall be examined by the classification unit as provided in section 105-9-4, C.R.S. 1963. In the event that such person is found to be eligible for examination in the Colorado reception and diagnostic center, he shall be transferred to said center and the authorities at the center shall conduct such examination. They shall make a written

Subsection (1) provides that an inmate convicted of a felony will be examined by the classification unit established in Bill II concerning the establishment of a reception and diagnostic center. If eligible, the inmate shall be sent to the reception and diagnostic center for further examination. This subsection and subsection (2) are structured on the assumption that Bill II will be approved.

While no definition of "eligible" is given, Section 105-9-4 (2) of Bill II states that the classification unit shall "conduct an examination of each newly committed offender in those areas considered pertinent to determine whether a transfer to a reception and diagnostic center would be beneficial in efforts to effect rehabilitation".

report to the chief of corrections concerning the conclusions reached as a result of their studies. Such report shall contain recommendations as to the institutional facility to which the person examined should be assigned, the type of work assignment best suited for him, or other treatment recommended as best calculated to be of maximum benefit in effecting rehabilitation. A copy of this report shall forthwith be forwarded to the judge of the sentencing court, and a copy of any recommendations made therein shall be forwarded to the district attorney of the district in which the conviction was had, and to the attorney for the person convicted.

(2) Upon receipt of the report made pursuant to subsection (1) of this section, the chief of corrections, with the approval of the executive director of the department of institutions, shall assign such newly committed offender to the most appropriate correctional institution or facility and designate the work project to which he shall be assigned, or treatment program to which he shall be committed.

Subsection (2) concerns the assignment of inmates to an institution or facility with an assigned work project or treatment program.

(3) The chief of corrections may transfer an inmate from

Transfer of inmates to other institutions is provided in subsection (3).

one institution to another, as he deems advisable, to more adequately fulfill the treatment, training, and security needs of the individual.

3-11-24. Transfer from local institution. Upon the request of the warden, sheriff, or other officer in charge of any local facility operated by a unit of local government, or in the event of the closure of such facility, the chief of corrections may transfer a person detained in such local facility to a state or another local correctional institution or facility. The chief of corrections shall determine the cost of care for that person which shall be borne by the unit of local government making the request for transfer or which had operated the closed facility.

Section 3-11-24 provides that the chief of corrections would transfer any person detained in a local facility to a state institution, upon the request of an officer in charge of any institution operated by a unit of local government, or upon closure of such facility as authorized in 3-11-22 (1) (d) on page 26.

SECTION 2. Effective date. This act shall take effect July 1, 1973.

SECTION 3. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

BILL II

A BILL FOR AN ACT

ESTABLISHING THE COLORADO RECEPTION AND DIAGNOSTIC CENTER.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Chapter 105, Colorado Revised Statutes 1963, as amended, is amended BY THE ADDITION OF A NEW ARTICLE to read:

ARTICLE 9

Colorado Reception and Diagnostic Center

105-9-1. Legislative declaration - records for evaluation of effectiveness of the center. The general assembly by this article intends to create a reception and diagnostic center, of limited capacity, at which experience may establish whether the services supplied at the center are effective in reducing recidivism and rehabilitating those who are found to be eligible for admittance to the center. To accomplish this purpose it is essential that a record be kept concerning each offender admitted

EXPLANATION

Bill II would create a Colorado Reception and Diagnostic Center on a demonstration or "pilot" basis. One of the advantages of the pilot program approach would be to determine the usefulness of the center in providing thorough evaluations (medical, psychiatric, educational) of inmates sentenced to Colorado correctional institutions and to the sentencing courts for possible modification of sentence. After some experience with a pilot approach the General Assembly may want to expand the program to include all felony offenders, to maintain a center on a selective basis for certain inmates, or to concentrate on different approaches toward rehabilitation.

to the center. The superintendent of the center shall keep a permanent record of each offender admitted to the center, and shall be informed by the warden of the institution to which each offender is committed concerning the offender's response to the treatment and classification recommended by the center, and appropriate records of each offender previously admitted to the center after release or parole. The record to be kept by the superintendent of the center shall contain such information as necessary for an appropriate evaluation of the effectiveness of the services and treatment supplied at the center in accomplishing its intended purposes.

105-9-2. Definitions. (1) As used in this article, unless the context otherwise requires:

(2) "Center" means the Colorado reception and diagnostic center established pursuant to the provisions of this article.

(3) "Chief of corrections" means the administrative officer in charge of the division of corrections established by section 3-11-19, C.R.S. 1963.

(4) "Correctional institution" or "correctional facility"

Reference is to a section in Bill I creating the division of corrections as a statutory entity within the department of institutions.

TEXT

means a prison, penitentiary, jail, workhouse, training school, halfway house, or other facility operated by the state or by a unit of local government for the confinement or rehabilitation of persons convicted of a crime under the statutes of the state of Colorado.

(5) "Executive director" means the executive director of the department of institutions.

105-9-3. Center established - executive director to have control. (1) There is hereby established a state institution which shall be known as the Colorado reception and diagnostic center, which shall be under the control of the department of institutions and shall be administered by the chief of corrections in a manner consistent with the general policy applicable to such institution as established by law or by authorized rule or regulation promulgated by the executive director.

(2) The primary function and purpose of the center shall be to provide a thorough and scientific examination of those male felony offenders sentenced by the courts of this state to state

EXPLANATION

Section 105-9-3 (1) establishes the Colorado Reception and Diagnostic Center to be under the control of the Department of Institutions, and administered by the chief of corrections.

penal or correctional institutions, who upon examination by the classification unit of such institution are found to be eligible for such scientific examination at the center, so that each such offender may be assigned to a state penal or correctional institution having the type of security and programs of education, employment, or treatment designed to accomplish a maximum of rehabilitation for such offender. Additionally, the center shall supply the sentencing court with information developed by such examinations in order that it may be available for court use in determining whether a modification of the sentence or reconsideration of probation would be proper under the provisions of rule 35 (a), Colorado rules of criminal procedure.

105-9-4. Appointment of classification unit - classification procedures. (1) The executive director shall establish at the state penitentiary and at the state reformatory classification units to consist of not less than five nor more than seven members, of which the associate warden for treatment, or other official performing services presently performed by him,

Probably fewer than a fourth of the males convicted of felonies in Colorado could be evaluated at a center established on a pilot basis. In order to avoid denial of equal protection of the law, it is necessary that all persons sentenced to imprisonment be examined first at a "classification unit" to determine the inmates to be transferred to the receiption and diagnostic center. Classification units at the reformatory and penitentary would be established under this sec-

TEXT	EXPLANATION
shall be the chairman. Other members of the classification unit at each institution shall include the parole supervisor, a qualified behavioral scientist, a probation officer of the judicial district in which the institution is located, a member of the clergy (minister, priest, or rabbi) and not more than two other persons to be selected by the executive director.	tion. One of the duties of this unit would be to determine "whether a transfer to the reception and diagnostic center would be beneficial in efforts to effect rehabilitation."
(2) Upon the delivery of any person to the state penitentiary or to the state reformatory following his conviction and sentence to confinement in either of these institutions, he shall undergo an orientation and evaluation program in a facility within the institution set apart for that purpose. It shall be the duty of the classification unit of the institution to conduct an examination of each newly committed offender in those areas considered pertinent to determine whether a transfer to the reception and diagnostic center would be beneficial in efforts to effect rehabilitation. If no transfer to the reception and diagnostic center is ordered, the classification unit shall recommend to the warden the classification of such offender at the institution, the work to which he might most effectively be	

assigned, the particular area under the jurisdiction of the institution in which the sentence would best be served, and such other matters relating to the offender as may be deemed proper in the application of correctional treatment of the offender.

(3) In the event that the classification unit concludes that any offender would be beneficially served by undergoing the study, analysis, scientific examination, and treatment conducted by the reception and diagnostic center, he shall be transferred to that center for such study, analysis, scientific examination, and treatment. Disposition of his case shall thereafter be as provided in section 105-9-6.

105-9-5. Transfers to reception center. The executive director shall notify the classification units at the state reformatory and the state penitentiary as to the date when the center is ready to receive felony offenders who have been found eligible to receive the services provided by the center. After said date all eligible offenders shall be delivered to the center for further examination prior to being assigned to a rehabilitation program, or classified for any other purpose.

TEXT

105-9-6. Examination of offenders. (1) Each offender received by the center from a correctional institution shall be scientifically examined, and a rehabilitation program planned and recommended for him. A prisoner shall be held at the center for a period not exceeding ninety days, except that a prisoner may be held for a longer period of time upon approval of the chief of corrections.

(2) (a) Upon the completion of the examination of an offender at the center, he shall be:

(b) Returned to the institution from which he was received with recommendations for the classification, work program, and correctional treatment to be applied to the offender which is best designed to effect maximum benefit toward his rehabilitation; or

(c) If so ordered by the court, returned to the court for the purpose of modification of sentence or reconsideration of probation pursuant to rule 35 (a), Colorado rules of criminal procedure.

105-9-7. Appointment of personnel at center. Subject to

EXPLANATION

Each offender transferred to the reception and diagnostic center would receive a thorough physical, mental, psychiatric, social, and educational evaluation. The clinical diagnostic study becomes the basis for prescribing a long-range program of control and treatment of the individual within the institution and subsequently on parole. A reception and diagnostic center is designed to provide more knowledge about the offenders received. The diagnostic report would not function as a presentence report, but would only examine convicted felons.

section 13 of article XII of the state constitution, the executive director shall appoint a superintendent of the center. The duties of the superintendent of the center shall be such as may be prescribed by the executive director. The chief of corrections, subject to section 13 of article XII of the state constitution, shall appoint such psychiatrists, psychologists, social workers, and other officers and employees as he shall deem necessary.

105-9-8. Transfer of prisoners for examination - assignment. The chief of corrections may make requisition upon the warden of the state penitentiary or the state reformatory for any prisoner at either institution to secure the transfer of such prisoner to the center for study and examination. Upon completion of such examination, such prisoner shall be assigned to a state penal or correctional institution or facility for confinement or treatment in like manner as other offenders who have passed through the center are assigned.

105-9-9. Rules and regulations. The chief of corrections shall have power to make all rules and regulations necessary and

The provisions of Section 105-9-8 would enable the chief of corrections to transfer any inmates to the reception and diagnostic center. This would be over and above the transfer provisions of Section 105-9-4 (3). The chief of corrections could transfer those inmates not originally recommended for examination, or could recommend that an inmate be reexamined as an update of the original evaluation.

proper for the management, control, regulation, and operation of the center and for the discipline and confinement of all prisoners in the center. Before any such rules and regulations are placed in effect they shall be approved by the executive director.

SECTION 2. Effective date. This act shall take effect July 1, 1973.

SECTION 3. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

BILL III

A BILL FOR AN ACT

CONCERNING THE TREATMENT OF INMATES OF CORRECTIONAL FACILITIES.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Chapter 105, Colorado Revised Statutes 1963, as amended, is amended BY THE ADDITION OF A NEW ARTICLE to read:

ARTICLE 10

Rules and Regulations Governing Treatment of Inmates of Correctional Facilities

105-10-1. Definitions. (1) As used in this article, unless the context otherwise requires:

(2) "Executive director" means the executive director of the department of institutions.

(3) "Chief of corrections" means the officer appointed as administrator of the division of corrections within the

EXPLANATION

This bill has been drafted as a result of that growing recognition on the part of courts of those civil rights to which inmates of penal institutions are entitled.

Throughout much of the history of corrections, courts have not been a major source of direction for correctional administrators. Recently, however, the courts have been involved in integrating the law applicable to corrections with the rules applicable to other governmental agencies. The legal doctrine supporting the traditional nonintervention of courts (that particular classes of persons might be deprived of their constitutional rights) is being destroyed and the court's intervention in this field is increasing.

TEXT

department of institutions.

105-10-2. Classification - treatment - discipline. Persons in custody for an alleged criminal offense and persons convicted of crimes who have been committed to any penal or correctional institution shall be dealt with humanely, with efforts directed to their rehabilitation and return to the community as safely and promptly as practicable. For these purposes the chief of corrections shall make a social evaluation of inmates who have not passed through the Colorado reception and diagnostic center created by section 105-9-3. Such evaluation shall contain the inmates medical, psychological, educational, and vocational condition and history, the circumstances of his offense, and such other information as the chief of corrections may require. The chief of corrections shall establish programs of education, casework, counseling and psychotherapy, vocational training and guidance, work, library, and other rehabilitation services to which inmates shall be assigned as deemed appropriate. The chief of corrections shall maintain a comprehensive record of the behavior of each inmate reflecting

EXPLANATION

Section 105-10-2 provides that efforts will be made to make a social evaluation of those inmates not passing through the pilot reception and diagnostic center in Bill III. Such evaluation will then be used to create those programs thought most helpful in rehabilitating the offender.

Wording of this section is dependent upon the passage of Bill II.

TEXT	EXPLANATION
accomplishments and progress toward rehabilitation as well as charges of infractions of rules and regulations, punishments imposed, and medical inspections made.	
105-10-3. Rules and regulations - classification of facilities. Within the standards contained in this article, which are designed to protect against a breach of constitutional rights and civil liberties applicable to inmates of all penal institutions, the chief of corrections, with the approval of the executive director, shall promulgate rules and regulations for the management and operation of lockups, jails, and penal and correctional institutions of all kinds whether operated by a unit of local government or by the state.	Section 10-5-103 provides that the chief of corrections shall promulgate those rules necessary to protect the constitutional rights of all inmates of correctional facilities, whether operated by state or local government.
105-10-4. Standards governing rules and regulations. (1) The chief of corrections with the approval of the executive director shall have the power to adopt, and cause to be enforced, reasonable rules and regulations including, but not limited to, those designed:	Section 10-5-104 establishes those basic areas of civil rights with which the chief of corrections must deal. Below are cited those federal and state court rulings which are used as the basis for rules required.
(a) To maintain the peace, order, and discipline in the institutions comprising the several classifications;	Cases cited are taken from the book The Emerging Rights of the Confined, issued by the South Carolina Department of Corrections.

TEXT	EXPLANATION
(b) To provide an inmate free and unobstructed access to the courts and to the attorney authorized to represent him;	Barbson v. Wilkins, 19 N.Y. 2d 433, 280 N.Y.S. 2d 561, 227 N.E. 2d 383 (1967). Bailleaux v. Holmes, 177 F.Supp. 361 (D. Ore. 1959). Johnson v. Avery, 393 U.S. 483 (1969).
(c) To provide indigent or illiterate inmates with the assistance of other inmates who are capable of giving advice or assistance, if such indigent or illiterate inmate requests such assistance;	
(d) To provide for reasonable visitation by members of the inmate's family, friends, and representatives of the news media, and to provide the unrestricted right to confer privately with his attorney;	Brown v. Peyton, 437 F. 2d 1228 (4th Cir. 1971). McClelland v. State, 4 Md. App. 18, 240 A.2d 769 (1968).
(e) To provide an inmate reasonable opportunity to practice and observe his religious beliefs;	Richey v. Wilkens, 335 F.2d 1 (2nd Cir. 1964). Sewell V. Pegelow, 291 F.2d 196 (4th Cir. 1961).
(f) To provide for correspondence by the inmate through the United States mail and to provide for reasonable censorship of outgoing and incoming mail to and from persons other than the courts or the attorney for the inmate. Postage for indigent inmates, not to exceed two letters per week, shall be paid by the institutions.	Barbson v. Wilkins, cited across from (1)(b). Burns v. Swenson, 430 F.2d 771 (8th Cir. 1970).
(g) To provide for the right of inmates to assemble to	Long v. Parker, 390 F.2d 816 (3rd Cir. 1968). Long v. Harris, 332 F. Supp. 262 (D.Kan. 1971).

petition for a redress of grievances, unless there is reason to believe that such assemblage would constitute danger to order and prison security. Rules and regulations shall provide administrative review boards within the department of institutions to review grievances. An inmate's right to file grievances shall not be restricted. Filing of a grievance shall not be grounds for disciplinary action or imposition of punishment.

(h) To provide for maximum feasible participation by representatives of inmates in the making of rules governing conduct of inmates, and to prescribe rules by which inmate representation shall be selected;

(i) To provide reasonable methods to be employed in disciplinary proceedings essential to the maintenance of security, and to provide safeguards against the exercise of arbitrary and capricious discretion by prison officials in the imposition of punishment for infraction of rules;

Landman v. Peyton, 370 F.2d 135 (4th Cir. 1966).

(j) To provide for reasonable punishment for violations by an inmate of rules and regulations governing his conduct,

Dabney v. Cunningham, 317 F. Supp. 57 (E.D. Va. 1970).
Sostre v. McGinnis, 442 F.2d 178 (2d Cir. 1971).

TEXT

following a hearing upon notice to the inmate concerning the nature of his asserted offense. Corporal punishment shall not be permitted.

(k) To provide for the protection of inmates who are in danger of physical violence from another prisoner and for the protection of the person and property of employees and inmates;

(l) To provide for reasonably adequate medical and dental care, including the right to be taken to a medical facility outside the institution when necessary;

(m) To provide for investigations and interrogations by prison officials with adequate safeguards to protect the constitutional rights against self-incrimination, and the right of the inmate to remain silent without fear of reprisal in the form of punishment;

(n) To provide reasonable standards for sanitation and maintenance of buildings and facilities, including ventilation of air and heat adequate to the climate and season, consistent with standards established by the state board of health;

(o) To provide facilities and reasonable opportunity for

EXPLANATION

Cohen v. U.S., 252 F. Supp. 679 (N.D.Ga. 1966).
Jackson v. Bishop, 268 F. Supp. 804 (E.D. Ark. 1967).

Tolbert v. Eymon, 434 F.2d 625 (9th Cir. 1970).
Sawyer v. Sigler, 320 F. Supp. 690 (D. Neb. 1970).

People v. Vasgues, 275 N.Y.S. 2d 14, 9 N.E. 2d 758 (1966).
Hunt v. State, 2 Md. App. 443, 234 A. 2d 785 (1967)

Jones v. Wittenberg, 323 F. Supp. 93 (N.D. Ohio 1971).

every inmate to engage in physical exercise, unless a clear and present danger to the security or safety of the institution or facility would thereby be created;

(p) To provide for segregation of inmates suffering from communicable diseases; for segregation of first offenders and youthful offenders from recidivists and older more hardened inmates; and for the isolation and control of problem prisoners.

105-10-5. Rules and regulations to be distributed to inmates. A copy of all rules and regulations adopted by the chief of corrections pursuant to section 105-10-4, which are applicable to the state penitentiary and the state reformatory, shall be delivered, in printed or typewritten form, to each inmate of said institutions. The warden or chief administrative officer of any holding, penal, or correctional institution operated by a unit of local government shall be supplied with at least three copies of the rules and regulations applicable to the facility under his control.

SECTION 2. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for

Section 10-5-105 provides that all rules and regulations adopted pursuant to 10-5-104 shall be delivered to all inmates of the state penitentiary and reformatory.

the immediate preservation of the public peace, health, and safety.

BILL IV

A BILL FOR AN ACT

CONCERNING CRIMES AND PUNISHMENTS, CLASSIFYING FELONIES AND FIXING PENALTIES TO BE IMPOSED UPON CONVICTION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 40-1-105 (1), Colorado Revised Statutes 1963, as amended by section 4 of chapter 44, Session Laws of Colorado 1972, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

40-1-105. Felonies other than capital offense felonies classified - penalties. (1) Felonies, other than capital offense felonies defined in section 40-3-102, are divided into five classes which are distinguished from one another by the following penalties which are authorized upon conviction:

EXPLANATION

The United States Supreme court decision in the case of Furman v. Georgia held that capital punishment shall not be imposed if the jury which rendered that penalty had been given discretion in deciding between the death penalty or some lesser sentence. In light of this decision, it is believed that Colorado's statute is unconstitutional on the basis that a court or a jury may not have discretion in the imposition of capital punishment. In other words the choice appears to be to make the death penalty mandatory for certain crimes or to abolish capital punishment.

Proposed Bill IV has been drafted to meet the conditions of the Furman case by creating a new class of homicide, a "capital offense felony", for which the mandatory penalty is death upon conviction. This bill contains the necessary amendments to Chapters 39 and 40 if the classification of "capital offense felony" is approved.

TEXT

Class	Minimum Sentence	Maximum Sentence
1	Life imprisonment, eligible for parole	Life imprisonment, no parole
2	Ten years imprisonment	Fifty years imprisonment
3	Five years imprisonment	Forty years imprisonment
4	No minimum imprisonment authorized. Optional minimum fine of two thousand dollars may be assessed.	Ten years imprisonment, or thirty thousand dollars fine, or both
5	No minimum imprisonment authorized. Optional minimum fine of one thousand dollars may be assessed.	Five years imprisonment, or fifteen thousand dollars fine, or both.

Except as otherwise provided by statute, felonies are punishable by imprisonment in the state penitentiary. Nothing in this section shall limit the authority granted in sections 39-13-101 to 39-13-103, C.R.S. 1963, to increase sentences for habitual criminals.

SECTION 2. 40-3-102, Colorado Revised Statutes 1963 (1971 Supp.), is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

40-3-102. Homicide - when a capital offense felony - when first degree murder. (1) A person commits a capital offense

EXPLANATION

Section 40-1-105 (1) would provide that felonies, other than capital offense felonies, would continue in five classes. Murder in the first degree, as established in Section 40-3-102 (3), would be considered a class 1 felony, but the possibility of the death penalty would be removed with the substitution of life imprisonment with no parole.

In addition, this section corresponds with 39-11-101 (1) (b) of Bill V, in which minimum sentences in cases of class 4 and 5 felonies would be abandoned.

If the provisions in this bill establishing a capital offense felony are determined unacceptable, the abolishment of capital punishment appears to be the other alternative available under the Furman decision.

Section 40-3-102 (1) would establish a mandatory death penalty for those persons convicted of a capital offense felony. The recommendation of the Committee on Criminal Justice is that capital punishment be retained only for persons who cause the premeditated death of another while serving a mandatory life sentence.

TEXT

felony for which the mandatory penalty is death if, with premeditated intent to cause the death of another person, he causes the death of that person or another, at any place within or without the confines of a penal or correctional institution, and such death is caused by him at a time subsequent to the imposition upon him of a sentence to mandatory imprisonment in the state penitentiary for life.

(2) Under circumstances other than those described in subsection (1) of this section, a person commits the crime of murder in the first degree if:

(a) With premeditated intent to cause the death of a person other than himself, he causes the death of that person or of another person, or

(b) Acting either alone or with one or more persons, he commits, or attempts to commit, arson, robbery, assault in the first degree as defined in section 40-3-202 (1) (e), burglary, kidnapping, rape, or any sexual offense prohibited by sections 40-3-402, 40-3-403, or 40-3-404, and in the course of or in furtherance of the crime that he is committing or attempting to

EXPLANATION

Subsection (2) defines the offense of first degree murder and is taken from the present statutes (Section 40-3-102 (1), C.R.S. 1963 (1971 Supp.)). The renumbering of the subsection number is necessary.

commit, or of immediate flight therefrom, the death of a person, other than one of the participants, is caused; or

(c) By perjury or subornation of perjury he procures the conviction and execution of any innocent person; or

(d) Under circumstances manifesting extreme indifference to the value of human life, he intentionally engages in conduct which creates a grave risk of death to a person other than himself, and thereby causes the death of another.

(3) Murder in the first degree is a class 1 felony.

(4) It is an affirmative defense to a charge of violating the provisions of paragraph (b) of subsection (2) of this section that the defendant:

(a) Was not the only participant in the underlying crime; and

(b) Did not commit the homicidal act or in any way solicit, request, command, importune, cause, or aid the commission thereof; and

(c) Was not armed with a deadly weapon; and

(d) Had no reasonable ground to believe that any other

Subsection (3) contains no change from present law.
Subsection (4) is similar to present Colorado law (Section 40-3-102 (2), C.R.S. 1963 (1971 Supp.)) and is simply renumbered for purposes of this section.

participant was armed with such a weapon, instrument, article, or substance; and

(e) Did not engage himself in or intend to engage in and had no reasonable ground to believe that any other participant intended to engage in conduct likely to result in death or serious bodily injury; and

(f) Endeavored to disengage himself from the commission of the underlying crime or flight therefrom immediately upon having reasonable grounds to believe that another participant is armed with a deadly weapon, instrument, article, or substance, or intended to engage in conduct likely to result in death or serious bodily injury.

SECTION 3. 40-3-301 (2), Colorado Revised Statutes 1963 (1971 Supp.), is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

40-3-301. First degree kidnapping. (2) Whoever commits first degree kidnapping is guilty of a class 1 felony if the person kidnapped shall have suffered bodily injury.

SECTION 4. 39-11-102 (1), Colorado Revised Statutes 1963,

Section 40-3-301 (2) eliminates language in the existing statute that makes reference to the death penalty. The language deleted by this amendment reads as follows: "but no person convicted of first degree kidnapping shall suffer the death penalty if the person kidnapped was liberated alive prior to the conviction of the kidnapper". Such an amendment would be necessary if the "capital offense felony" is established.

as amended by section 1 of chapter 44, Session Laws of Colorado 1972, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

39-11-102. Presentence or probation investigation. (1) Following the return of a verdict of guilty of a felony, other than a capital offense felony, or a finding of guilt on such charge where the issues were tried to the court, or on a plea of guilty or nolo contendere to such a charge or upon order of the court in any misdemeanor conviction, the probation officer shall make an investigation and written report to the court before the imposition of sentence. Copies of the presentence report including any recommendations as to probation shall be furnished to the prosecuting attorney and defense counsel.

This section is amended to eliminate the requirement for presentence or probation investigations in cases of capital offense felonies.

Section 39-11-102 (1) now reads: "Following the return of a verdict of guilty of a felony other than a class 1 felony." The words "capital offense felony" would be substituted for "class 1 felony". All other language remains the same.

SECTION 5. 39-11-103, Colorado Revised Statutes 1963, as amended by section 1 of chapter 44, Session Laws of Colorado 1972, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

39-11-103. Imposition of sentence in capital offense felonies and class 1 felonies. (1) If a person accused of a capital offense felony, as defined in section 40-3-102, C.R.S. 1963, is found guilty of that offense by verdict of a jury

This section (39-11-103) concerns the imposition of sentence in class 1 felonies. This section provides options for the imposition of capital punishment for class 1 felonies. The proposed amendments would: (a) remove the death penalty from class 1 felonies; and (b) revise procedures necessary if the con-

TEXT	EXPLANATION
followed by entry of judgment on the verdict, or by judgment of guilty entered by the court if the case is tried to the court without a jury, or by entry of a plea of guilty by the person accused, the court shall sentence the offender thus convicted to death.	cept of capital offense felony, under which the death penalty may be imposed, is approved.
(2) If a person is found guilty of a class 1 felony, the court shall sentence the offender to life imprisonment in the state penitentiary. The court shall determine at the time such judgment is entered whether such offender shall at any time thereafter be eligible for parole, or whether he shall at all times thereafter be ineligible for release from confinement on parole. If the judgment is that the offender shall at all times remain ineligible for release on parole, such offender shall in fact be imprisoned until his death.	Subsection (2) provides that the court must determine whether to impose the minimum or the maximum sentence as set forth in Section 40-1-105 for a class 1 felony. The minimum is life imprisonment with eligibility for parole; the maximum is life with no parole.
(3) If by oversight or for any reason the judgment of the court upon conviction of a class 1 felony does not include a determination of eligibility for release on parole as provided in subsection (2) of this section, the judgment shall not be void because of such omission. In that event it shall be presumed	If the determination of sentence required by subsection (2) of this section is not made by the court, the judgment shall not be void and there is a presumption that the minimum sentence was intended by the court.

TEXT

that the court did not intend to deprive the offender of the right to make application for release on parole, and he shall be eligible for such release if the parole board sees fit to grant parole to such offender.

SECTION 6. 39-11-201 (1), Colorado Revised Statutes 1963, as amended by section 1 of chapter 44, Session Laws of Colorado 1972, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

39-11-201. Application for probation. (1) A person who has been convicted of an offense other than a capital offense felony, as defined by section 40-3-102 (1), C.R.S. 1963, a class 1 felony, or a class 2 petty offense is eligible to apply to the court for probation.

SECTION 7. Repeal. 39-11-101 (1) (c) and (d), Colorado Revised Statutes 1963, as amended by section 1 of chapter 44, Session Laws of Colorado 1972, are repealed.

SECTION 8. Effective date - applicability. This act shall take effect July 1, 1973, and shall apply to offenses committed on or after such date.

SECTION 9. Safety clause. The general assembly hereby

EXPLANATION

This section is necessary if the concept of the capital offense felony is approved. The present law would be amended to provide that a person convicted of a capital offense felony is ineligible to apply for probation.

Section 39-11-101 (1) (c) presently reads: "the defendant shall be sentenced to death in those cases in which a death sentence has been imposed by a jury".

Section 39-11-101 (1) (d) presently reads: "the defendant may be sentenced to death by the court following the entry of a plea of guilty to a class 1 felony".

TEXT

finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

EXPLANATION

BILL V

A BILL FOR AN ACT

CONCERNING SENTENCING OF PERSONS CONVICTED OF CRIMINAL OFFENSES.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 39-11-101 (1) (b), Colorado Revised Statutes 1963, as amended by section 1 of chapter 44, Session Laws of Colorado 1972, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

39-11-101. Alternative in sentencing. (1) (b) In class 1, class 2, and class 3 felonies the defendant may be sentenced to imprisonment for a period of time within the minimum and maximum sentence authorized for the class of offense of which the defendant was convicted. In class 4 and class 5 felonies no minimum sentence to imprisonment shall be entered, but the court shall impose only a maximum sentence to imprisonment which shall

EXPLANATION

The proposed amendments to Section 39-11-101 (1) (b) would alter existing statutes by using a form of "indeterminate sentencing" in class 4 and 5 felonies. An inmate convicted of a class 4 or 5 felony could be required to serve a term that would be shorter than the present fixed minimum sentence, if the correctional officials determine that no useful purpose would be served by requiring a longer service. Specifically, this proposal would eliminate the minimum sentence and the court would impose a maximum sentence.not more than the maximum provided by statute but not less than one-third the maximum provided by law.

TEXT

be no more than the maximum sentence provided by law for violation of the statute involved, and which shall be no less than one-third of the maximum sentence provided by law for violation of the statute involved. In addition to a maximum period of imprisonment, the court may sentence a defendant to pay a fine within the limitations contained in section 40-1-105 (1), C.R.S. 1963.

SECTION 2. 39-11-304, Colorado Revised Statutes 1963, as amended by section 1 of chapter 44, Session Laws of Colorado 1972, is REPEALED AND REENACTED, WITH AMENDMENTS, to read

39-11-304. Maximum and minimum sentences - when necessary - indeterminate sentences - when mandatory. (1) When a person has been convicted of a class 2 or class 3 felony, the court imposing the sentence shall not fix a definite term of imprisonment but shall establish a maximum and a minimum term for which said convict may be imprisoned. The maximum term shall not be longer than the longest term fixed by law for the punishment of the offense of which he was convicted, and the minimum term shall not be less than the shortest term fixed by law for the punishment of

EXPLANATION

The proposed amendment to Section 39-11-304 would distinguish between those classes of felonies (2 and 3) which impose both a maximum and minimum sentence and those classes (4 and 5) that impose only a maximum sentence. This section would only be necessary if indeterminate sentencing in class 4 and 5 felonies is approved.

TEXT

the offense of which he was convicted.

(2) When a person has been convicted of a class 4 or a class 5 felony, the court shall not fix a minimum time of confinement to be served by the convict, but shall fix a maximum period of time beyond which he shall not be imprisoned, which maximum sentence shall be no more than the maximum penalty provided by law for the offense of which he was convicted, nor no less than one-third of the maximum penalty provided by law for the offense of which he was convicted.

(3) In any case involving a person sentenced or committed to either the state penitentiary or the state reformatory under an indefinite sentence, the warden of the respective institution shall, in cooperation with the proper parole officer, bring to the consideration of the state board of parole the matter of parole of every such person within nine months after the arrival of such person at the institution, together with all relevant information available thereon, and shall do likewise within each six months thereafter until the person sentenced or committed is paroled or has served the maximum term for which he was

EXPLANATION

(3) This language requiring periodic review of inmates serving indeterminate sentences is included to avoid the situation of an inmate being "lost" and his sentence not being reviewed by the parole board. Similar language is presently contained in 105-3-3, C.R.S. 1963.

TEXT

imprisoned under this section.

SECTION 3. 39-11-305, Colorado Revised Statutes 1963, as amended by section 1 of chapter 44, Session Laws of Colorado 1972, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

39-11-305. Sentence not void if for definite period. If through oversight or otherwise, any person convicted of a class 2 or class 3 felony shall be sentenced to imprisonment for a definite period of time said sentence shall not for that reason be void, but the prisoner so sentenced shall be deemed to have been sentenced to the minimum prison term provided by the statute for violation of which the defendant was convicted, and the definite period of time contained in the erroneous sentence shall be considered the maximum term of imprisonment for which the defendant may be held in prison.

SECTION 4. Effective date. This act shall take effect July 1, 1973.

SECTION 5. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

EXPLANATION

The change in this section is necessitated by the above amendment to Section 39-11-304, creating an indeterminate sentence with respect to class 4 and 5 felonies.

Section 39-11-305 provides that the imposition of a sentence for a definite period of time of imprisonment shall not void the sentence. Under the proposed language this section would apply only to class 2 and 3 felonies, i.e., the felonies for which a minimum and maximum sentence may be imposed under the indeterminate sentencing concept of this bill.

BILL VI

A BILL FOR AN ACT

CONCERNING THE EFFECT OF CRIMINAL CONVICTION ON ELIGIBILITY FOR PUBLIC EMPLOYMENT OR RIGHT TO OBTAIN BUSINESS OR PROFESSIONAL CERTIFICATION, LICENSE, PERMIT, OR REGISTRATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Chapter 39, Colorado Revised Statutes 1963, as amended, is amended BY THE ADDITION OF THE FOLLOWING NEW ARTICLE to read:

ARTICLE 25

Public Employment - Eligibility For License,

Certification, Permit, Or Registration

39-25-101. Effect of criminal conviction on employment rights. Except as otherwise provided by section 4 of article XII

EXPLANATION

Since many inmates receive occupational training through vocational education programs at Colorado correctional institutions, it would follow that these inmates should be given the opportunity to be licensed to follow that occupation.

This bill would represent a statement of policy to the effect that former inmates of correctional institutions shall not have the fact of their conviction of an offense used as the sole reason for denial of an occupational license or certificate issued by the state or by a local agency. The stated intent of the bill is to expand employment opportunities for former inmates who have been rehabilitated and are ready to accept responsibilities in society.

The recommendation for this bill is not intended to imply that state or local agencies are systematically and deliberately barring ex-offenders from obtaining a license. The General Assembly, however, might want to enact a clear statement of policy as guidance for the licensing agencies.

At present, of 57 occupations which require licensure, certification, or registration, 38 require that the applicant be of "good moral character"; 27 list conviction of a felony as cause for denial, revocation, or suspension;

TEXT

of the state constitution, the fact that a person has been convicted of a felony or other offense involving moral turpitude shall not, in and of itself, prevent him from applying for and obtaining public employment, or from applying for and receiving a license, certification, permit, or registration required by the laws of this state to follow any business, occupation, or profession. Whenever any state or local agency is required to make a finding that an applicant for a license, certification, permit, or registration is a person of good moral character as a condition to the issuance thereof, the fact that such applicant has, at some time prior thereto, been convicted of a felony or other offense involving moral turpitude, and all pertinent circumstances connected therewith, shall be given consideration in determining whether, in fact, the applicant is a person of good moral character at the time of the application. The intent of this section is to expand employment opportunities for persons who, notwithstanding that fact of conviction of an offense, have been rehabilitated and are ready to accept the responsibilities of a law-abiding and productive member of society.

EXPLANATION

and 17 list conviction of a crime involving moral turpitude as cause for denial, revocation, or suspension of a license, certificate, or registration. (A number of these statutes contain both the moral character and the conviction of a felony tests).

The bill also states that previous conviction of a felony shall not prevent a person from applying for or obtaining public employment, except as precluded by the constitution. Article XII, section 4 states: "No person hereafter convicted of embezzlement of public moneys, bribery, perjury, solicitation of bribery, or subordination of perjury, shall be eligible to the General Assembly, or capable of holding any office of trust or profit in this state."

TEXT

SECTION 2. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

EXPLANATION

BILL VII

A BILL FOR AN ACT

CONCERNING CRIMINAL PROCEEDINGS RELATING TO PAROLE REVOCATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 39-17-4, Colorado Revised Statutes 1963 (1969 Supp.), is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

EXPLANATION

In the 1972 case of Morrissey v. Brewer, the United States Supreme Court held that in proceedings resulting in revocation of parole, minimum requirements of due process of law must be observed. This bill attempts to meet the required procedures of that decision.

The bill envisions two stages in the process of parole revocation: (1) arrest of the parole; and (2) the revocation hearing. The first stage occurs when the parolee is arrested and detained either with or without a warrant. In those cases of arrest without a warrant:

> Due process requires a reasonably prompt informal inquiry conducted by an impartial hearing officer near the place of the alleged parole violation or arrest to determine if there is reasonable ground to believe that the arrested parolee has violated a parole condition.
>
> The parolee should receive prior notice of the inquiry, its purpose, and the alleged violations. The parolee may present relevant information and (absent security considerations) question adverse informants. The hearing officer shall digest the evidence on probable cause and state the reasons for holding the parolee for the parole board's decision.

In those cases of arrest with a warrant, probable cause has already been shown and no preliminary hearing is required.

The second stage, the revocation hearing, leads to a final evaluation of any contested facts and whether, based on the facts, revocation of parole is warranted:

> At the revocation hearing, which must be conducted reasonably soon after the parolee's arrest, minimum due process requirements are: (a) written notice of the claimed violations of parole; (b) disclosure to the parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a "neutral and detached" hearing body such as a traditional parole board members of which need not be judicial officers or lawyers; and (f) a written statement by the factfinders as to the evidence relied on and reasons for revoking parole.

TEXT

39-17-4. Arrest of parolee - revocation proceedings. (1) (a) The director, his assistant, or any parole officer may arrest any parolee when:

(b) He has a warrant commanding that such parolee be arrested; or

(c) He has probable cause to believe that a warrant for the parolee's arrest has been issued in this state or another state for any criminal offense or for violation of a condition of parole; or

(d) Any offense under the laws of this state has been or is being committed by the parolee in his presence; or

(e) He has probable cause to believe that a crime has been committed and that the parolee has committed such crime; or

(f) He has probable cause to believe that a condition of his parole has been violated by the parolee and probable cause to believe that the parolee is leaving or about to leave the state, or that the parolee will fail or refuse to appear before the board to answer charges of violations of one or more conditions

EXPLANATION

Section 39-17-4 (1) sets forth the circumstances under which a parole officer could arrest a parolee. Note that paragraph (1) (c) through (f) enables the parole officer to arrest the parolee without a warrant. In such cases, a preliminary hearing is required to determine whether probable cause exists to detain the parolee and to subject him to a parole revocation hearing. This preliminary hearing is provided for in subsection (3) and is required by the court decision.

of parole, or that the arrest of the parolee is necessary to prevent physical harm to the parolee or another person or to prevent the commission of a crime.

(2) Whenever a parole officer has reasonable ground to believe that a condition of parole has been violated by any parolee, he may issue a summons requiring the parolee to appear before the board at a specified time and place to answer charges of violation of one or more conditions of parole. Such summons, unless accompanied by a copy of a complaint filed before the board seeking revocation of parole, shall contain a brief statement of the alleged parole violations and the date and place thereof. Failure of the parolee to appear before the board as required by such summons shall be deemed a violation of a condition of parole.

Subsection (2) permits the parole official to issue a summons to the parolee to appear before the board if the official has reasonable ground to believe that a condition of parole has been violated. In these cases, a preliminary hearing in court, as described below, is apparently not needed.

(3) If, rather than issuing a summons, a parole officer makes an arrest of a parolee without a warrant, the parole officer shall take the parolee without unnecessary delay before the nearest available judge of a trial court of record. Such

Subsection (3) provides for a preliminary hearing in court to determine whether there is probable cause to believe that the arrested parolee has commited acts which would constitute a violation of parole. The parolee shall be advised of the charges against him, and unless he voluntarily pleads guilty, a hearing shall be set.

TEXT	EXPLANATION
judge shall make inquiry from such parole officer, or other persons who may be available, concerning the nature of the charges which are claimed to warrant revocation of parole. The judge shall make certain that the parolee understands the charges, and the parolee shall be informed that upon his request the charges will be reduced to writing and a copy thereof delivered to him. Unless the parolee voluntarily admits that he has violated conditions of parole, or voluntarily waives a hearing before the judge to determine whether there is probable cause to believe that the parolee has violated a condition of parole, the judge shall fix a time for a hearing to determine probable cause. If probable cause is not shown, the judge shall order the release of the parolee. If such probable cause is shown, the parolee shall be held in custody by the parole officer and returned without unnecessary delay to the institution from which he was paroled pending a hearing before the parole board on the complaint for revocation of parole. The parolee shall be admitted to bail pending the hearing, and the board shall fix the	**The Supreme Court decision did not address questions of requirements that attorneys be present during the revocation proceedings.** **Note, however, that section 39-17-4 (7) does permit a defendant to retain a lawyer at the revocation hearing.**

amount thereof. If the parolee is unable to secure a bail bond and remains in custody, he shall be held at the institution from which he was paroled until final disposition of the parole revocation proceedings.

(4) (a) Within fifteen working days after the arrest of any parolee as provided in this section, or after the issuance of a summons under this section, prior to the return date thereof, the parole officer shall complete his investigation, and either:

Subsection (4) provides that the parole officer, within 15 days after arrest or issuance of a summons, for the parolee, must either: file a complaint before the board; or order the release of parolee and notify the board of this action.

(b) File a complaint before the board in which the facts are alleged upon which a revocation of parole is sought; or

(c) Order the release of the parolee, if imprisoned, and notify the parolee that he is relieved of obligation to appear before the board. In such event, the parole officer shall give written notification to the board of his action.

(5) A complaint filed by a parole officer in which revocation of parole is sought shall contain the name of the parolee, shall identify the violation charged and the condition or conditions of parole alleged to have been violated, including

Subsection (5) sets forth the information which must be contained in the complaint filed by the parole officer before the board.

TEXT

EXPLANATION

the date and approximate location thereof, and shall be signed by the parole officer. A copy thereof shall be given to the parolee a reasonable length of time before a hearing on the complaint is held before the board.

(6) A warrant for the arrest of any parolee for violation of the conditions of his parole may be issued by the board upon the filing of a complaint by a parole officer showing probable cause to believe that a condition of parole has been violated by the parolee. A warrant may also issue upon the verified complaint of any person filed before the board which alleges facts establishing probable cause to believe that a condition of parole has been violated and that the arrest of the parolee is reasonably necessary. Such warrant may be executed by any peace officer, as defined in section 40-1-1001 (3) (1), C.R.S. 1963.

Subsection (6) permits the parole board to issue a warrant for the arrest of any parolee for violation of the conditions of his parole upon: (1) the filing of a complaint by a parole officer; or (2) the filing of a verified complaint by any person.

(7) At the first appearance of a parolee before the board, he shall be advised of the nature of the charges which are alleged to justify revocation of his parole and the substance of the evidence sustaining the charges; he shall be given a copy of

Subsection (7) contains important provisions setting forth the rights of the parolee before the board in a revocation proceeding. Note that subsection (7) specifically permits an attorney for the parolee to be present at the hearing. The Supreme Court decision does not require, however, that the

the complaint unless he has already received one; he shall be informed of the consequences which may follow in the event his parole is revoked; and he shall be advised that, if the charges are denied by him, a hearing will be held before the board, without a jury, at which he may be represented by an attorney if he sees fit to employ one, and that at such hearing he may testify and present witnesses and documentary evidence in defense of the charges or in mitigation or explanation thereof.

(8) After being advised, as provided in subsection (7) of this section, the parolee shall be required to plead guilty or not guilty to the charges contained in the complaint. If the plea is not guilty, the board shall fix a date for hearing on the issues of fact. If the plea is guilty, the board shall hear any evidence offered in mitigation or explanation of the conduct of the parolee.

(9) At the hearing before the board, in the event of a plea of not guilty, the prosecution shall have the burden of establishing by a preponderance of the evidence the violation of a condition or conditions of parole, except that the commission

state provide a lawyer and the responsibility to secure an attorney rests with the defendant.

This subsection meets the requirement of the court that the evidence against the parolee be disclosed to him. Note that the revocation hearing need not be held before a court, but only before a neutral and detached hearing body, which may include a parole board.

Subsection (8) permits the parolee to enter a plea of guilty or not guilty to the charges in the complaint. If the plea is not guilty, the board is required to fix a date for hearing on the issues of fact. If the plea is guilty, the board shall hear evidence of mitigation or explanation of the parolee's conduct.

Under subsection (9), the prosecution has the burden of establishing violation of parole by a preponderance of the evidence. If the commission of a crime is the ground for revocation, it must be established beyond a reasonable doubt, unless the parolee has already been convicted for the criminal

TEXT	EXPLANATION
of a criminal offense must be established beyond a reasonable doubt unless the parolee has been convicted thereof in a criminal proceeding. The board may, when it appears that the alleged violation of conditions of parole consists of an offense with which the parolee is charged in a criminal case then pending, continue the parole revocation hearing until the termination of such criminal proceeding. Any evidence having probative value shall be admissable regardless of its admissability under exclusionary rules of evidence if the parolee is accorded a fair opportunity to rebut hearsay evidence. The parolee shall have the right to confront and to cross-examine adverse witnesses unless the hearing officer specifically finds good cause for not allowing confrontation.	offense. If prosecution for a criminal offense is then pending, the board may stay the proceedings until the termination of the criminal case. Strict evidentiary rules are not required, provided the parolee is accorded a fair opportunity to rebut heresay evidence. The last sentence of subsection (9) relates to the right of the parolee to confront and cross-examination adverse witnesses.
(10) If the parolee is in custody, the hearing on revocation shall be held within a reasonable time, not to exceed sixty days, after the filing of the complaint with the board, unless delay is granted by the board upon the request of the parolee or for other good cause found by the board to exist justifying further delay.	A revocation hearing must be held by the board within 60 days after the filing of the complaint if the parolee is then in custody. The board may grant delay upon request of the parolee.

TEXT	EXPLANATION
(11) If the board determines that a violation of a condition or conditions of parole has been committed, it shall within five days after the completion of the hearing either revoke the parole or continue it in effect, or modify the conditions of parole if circumstances then shown to exist require such modifications. In the event the parole is revoked, the board shall cause the parolee to be returned to the institution from which he was paroled.	On determination that there was a violation of parole, the board may revoke, continue, or modify parole under subsection (11).
SECTION 2. 39-18-1 (6) and (8), Colorado Revised Statutes 1963 (1969 Supp.), are REPEALED AND REENACTED, WITH AMENDMENTS, to read:	
39-18-1. State board of parole - clemency advisory board. (6) Except for the power of a court of record to determine the existence of probable cause as provided in section 39-17-4 (3), the parole board shall have exclusive power to conduct all proceedings involving an application for revocation or suspension of parole.	

TEXT

(8) (a) Whenever a recommendation is made concerning parole, the board shall conduct an interview with the inmate or parolee. At such interview at least two members of the board shall be present. Any final action on a recommendation shall not be required to be made in the presence of the inmate or parolee, and any such action shall require the concurrence of at least two members of the board.

(b) When application has been made before the parole board for revocation, suspension, or modification of a parole, the final disposition of such application shall be reduced to writing and shall be concurred in by at least two members of the board. A copy of the final order of the board shall be delivered to the parolee forthwith upon entry of the order.

SECTION 3. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

EXPLANATION

Paragraph (8) (a) is similar to present law.

Under paragraph (8) (b) a written statement concerning the actions of the parole board is required when applications are made for revocation, suspension, or modification of parole. A copy of the final order must be furnished to the parolee.

BILL VIII

A BILL FOR AN ACT

CONCERNING THE INTERSTATE SUPERVISION OF PAROLEES AND PROBATIONERS UNDER AN INTERSTATE COMPACT, AND PROVIDING PROCEDURES GOVERNING THE TAKING INTO CUSTODY OF SUCH PAROLEES OR PERSONS ON PROBATION PRIOR TO REVOCATION OF PAROLE OR PROBATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Article 5 of chapter 74, Colorado Revised Statutes 1963, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

74-5-3. Legislative declaration. The supreme court of the United States has determined that persons at liberty on probation or parole, following conviction of a crime, have certain constitutional rights with reference to procedures designed to

EXPLANATION

This bill, except for Section 74-5-3, is recommended for adoption by all states participating in interstate compacts concerning supervision of parolees and probationers. It was prepared and circulated by the Council of State Governments. The purpose of the bill is explained in Section 74-5-3.

The Supreme court case referred to is the case of Morrissey vs. Brewer, (1972), which outlined those minimum observance of due process necessary in the revocation of parole. Legislation has been prepared (Bill VII) to revise those Colorado statutes concerning revocation to meet the court requirements

revoke such parole or probation. The general assembly declares that the purpose of sections 74-5-3 to 74-5-7 is to provide procedures concerning revocation of parole or probation under an interstate compact which are consistent with the opinions of the court.

74-5-4. Parole or probation violation - hearing - notice. Where supervision of a parolee or probationer is being administered pursuant to an interstate compact for the supervision of parolees and probationers, the appropriate judicial or administrative authorities in this state shall notify the compact administrator of the sending state whenever, in their view, consideration should be given to retaking or reincarceration for a parole or probation violation. Prior to the giving of any such notification, a hearing shall be held in accordance with sections 74-5-3 to 74-5-7 within a reasonable time, unless such hearing is waived by the parolee or probationer. The appropriate officer or officers of this state shall as soon as practicable, following termination of any such hearing, report to the sending state, furnish a copy of the

Section 74-5-4 provides that the receiving state shall, when a parolee or probationer is detained for a violation of his agreement, hold a hearing in accordance with this act. If violation of the parole or probation agreement has taken place, the receiving state shall notify the sending state of its findings and recommendations.

In addition, the parolee may be incarcerated 15 days prior to the hearing and, if reimprisonment by the sending state "is likely to follow", for such a "reasonable time" as may be necessary to arrange for his transfer.

TEXT	EXPLANATION
hearing record, and make recommendations regarding the disposition to be made of the parolee or probationer by the sending state. Pending any proceeding pursuant to this section, the appropriate officers of this state may take custody of and detain the parolee or probationer involved for a period not to exceed fifteen days prior to the hearing and, if it appears to the hearing officer or officers that retaking or reincarceration is likely to follow, for such reasonable period after the hearing or waiver as may be necessary to arrange for the retaking or reincarceration.	
74-5-5. Hearing officer. Any hearing pursuant to sections 74-5-3 to 74-5-7 may be before the administrator of any interstate compact for the supervision of parolees and probationers, a deputy of such administrator, or any other person authorized pursuant to the laws of this state to hear cases of alleged parole or probation violation, except that no hearing officer shall be the person making the allegation of violation.	**Section 74-5-5 complies with the Supreme Court decision that the hearing officer be only a "neutral and detached" body and not, of necessity, a court.**
74-5-6. Rights of parolee or probationer. (1) (a) With respect to any hearing pursuant to sections 74-5-3 to 74-5-7, the	**Section 74-5-6 (1) (b) through (c) provides those rights granted the prolee as a result of Morrissey vs. Brewer. These include: 1) no-**

parolee or probationer:

(b) Shall have reasonable notice in writing of the nature and content of the allegations to be made, including notice that its purpose is to determine whether there is probable cause to believe that he has committed a violation that may lead to a revocation of parole or probation;

(c) Shall be permitted to advise with any persons whose assistance he reasonably desires, prior to the hearing;

(d) Shall have the right to confront and examine any persons who have made allegations against him, unless the hearing officer determines that such confrontation would present a substantial present or subsequent danger of harm to such person or persons;

(e) May admit, deny, or explain the violation alleged and may present proof, including affidavits and other evidence, in support of his contentions. A record of the proceedings shall be made and preserved.

74-5-7. Hearing in another state - effect in this state. In any case of alleged parole or probation violation by a person

tice; 2) advise of any person the parolee wishes (this may include an attorney); 3) right to confront witnesses; 4) right to present any evidence in his support.

TEXT

being supervised in another state pursuant to an interstate compact for the supervision of parolees and probationers, any appropriate judicial or administrative officer or agency in another state is authorized to hold a hearing on the alleged violation. Upon receipt of the record of a parole or probation violation hearing held in another state pursuant to a statute substantially similar to sections 74-5-3 to 74-5-7, such record shall have the same standing and effect as though the proceeding of which it is a record was had before the appropriate officer or officers in this state, and any recommendations contained in or accompanying the record shall be fully considered by the appropriate officer or officers of this state in making disposition of the matter.

SECTION 2. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

EXPLANATION

Section 74-5-7 provides that any appropriate officer or agency of another state may hold hearings on the alleged violation of those paroled to that state by this state. Any such proceedings will, if similar to the provisions of this bill, have the same affect as if those proceedings had been held in this state.

APPENDIX A

Preliminary Cost Estimates
Reception and Diagnostic Center
Pilot Program

Location: Colorado State Hospital

	Grade and Step	F.T.E.	Annual Cost
Personal Services:			
Psychiatrists	67.3	2.0	$ 44,088
Psychologist	49.1	1.0	12,900
Social Worker II	39.1	4.0	40,416
Correctional Counselor	33.3	1.0	9,624
Subtotal Professional Staff		8.0	$107,028
Correctional Captain	39.3	1.0	$ 11,136
Correctional Sergeant	27.3	1.0	8,316
Correctional Officers	23.1	15.0	102,600
Senior Clerk Steno	15.1	2.0	11.256
Subtotal Admin. & Custodial Staff		19.0	$133,308
Total Salary		27.0	$240,336
Retirement			20,300
Health Insurance			3,240
Total Personal Services			$263.876
Operating Expenses:			
Postage			$ 200
Office Supplies			500
Telephone and Telegraph			250
Maintenance			400
Board & Care of Persons			22,500
Educational Supplies			150
Miscellaneous Supplies			1,000
Total Operating Expenses			$ 25,000
Travel:			
Professional and Administrative Staff Only			$ 2,000

Capital Outlay:

Office Equipment		$ 6,000
Auto 2 @ $2,600		5,200
Total Capital Outlay		$ 11,200
Total Annual Cost of Center	(1)	$302,076

Note: (1) The total annual cost for the operation of the Center is estimated and is based on the combination of the total personnel costs and other necessary annual costs described above. No capital construction cost was needed and only these facilities would need little modification.

Prepared: November, 1972
Division of Corrections
Department of Institutions

APPENDIX B

LIST OF FELONIES UNDER THE COLORADO CRIMINAL CODE

(Chapter 40, C.R.S. 1963 (1971 Supp.) and 1972 Session Laws)

Class 1
- Attempt to commit, a class 3 felony,
- Conspiracy to commit, a class 2 felony,
- Escape, assault during, when,
- Jury tampering in, a separate felony,
- Kidnapping, bodily injury during,
- Murder, first degree,
- Procedure, penalty hearing, sentences,
- Treason,

Class 2
- Abortion
  - Criminal, when,
  - Pretended criminal, when,
- Conspiracy, criminal, to commit class 1 felony, constitutes,
- Escape
  - Aiding, when,
  - Assault during, when,
  - From custody or confinement, after conviction, when,
- Kidnapping, liberated unharmed after,
- Murder, second degree,

Class 3
- Arson, first degree,
- Assault, first degree,
- Attempt, criminal, to commit class 1 or 2 felony is,
- Bribery,
- Burglary, first degree, second degree in dwelling,
- Escape
  - Aiding, when,
  - Assault during, when,
  - From custody or confinement after conviction, when,
- Hostages, holding,
- Rape, exception,
- Robbery, aggravated,
- Sexual intercourse, deviate, by force or equivalent,
- Transportation, public, endangering,

Class 4
- Abortion, criminal, when,
- Accessory to crimes, applicability,
- Anarchistic or seditious associations, membership,
- Arming rioters,
- Arson
  - Second and fourth degree, when,
  - Third degree,
- Assault, second degree,
- Attempt to influence a public servant,
- Bad checks, issuing, when,
- Burglary, second degree, not in dwelling,
- Credit cards and devices, fraudulent use of, when,
- Dueling,
- Embezzlement
  - By public servant,
  - Of public property,
- Escape, from custody, or confinement, before conviction, when,
- Forgery
  - First degree, when,
  - Second degree,