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CRIMINAL LAW REVISION COMMISSION  
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ARTICLE 8. AUTHORIZED DISPOSITION OF OFFENDERS

Preliminary Draft No. 2; May 1970

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Subcommittee on  
Grading & Sentencing

ARTICLE 8. AUTHORIZED DISPOSITION OF OFFENDERS

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INDEX

	<u>Page</u>
Section 1. Adding sections to ORS 137.010 to 137.070. . . . .	1
Section 2. Amending ORS 137.010. . . . .	1
Section 3. Sentence of imprisonment for felonies; ordinary terms. . . . .	5
Section 4. Sentence of imprisonment for misdemeanors. . . . .	8
Section 5. Fines for felonies. . . . .	10
Section 6. Fines for misdemeanors and violations. . . . .	11
Section 7. Criteria for imposition of fines . . . . .	12
Section 8. Fines for corporations. . . . .	15
Section 9. Costs . . . . .	17
Section 10. Time and method of payment of fines and costs . . . . .	19
Section 11. Consequences of nonpayment of fines or costs. . . . .	20

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ARTICLE 8. AUTHORIZED DISPOSITION OF OFFENDERS

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Section 1. Sections 3 to 7 of this Article are added to and made a part of ORS 137.010 to 137.070.

Section 2. ORS 137.010 is amended to read:

137.010. (1) The statutes that ~~[declare]~~ define ~~[certain-crimes]~~ offenses ~~[punishable-as-therein-mentioned]~~ impose a duty upon the court to pass sentence ~~[, to-determine-and-impose-the-punishment-prescribed and, whenever-such-punishment-is-left-undetermined-between-certain-limits or-kinds, to-determine-the-punishment-to-be-inflicted]~~ in accordance with this section unless otherwise specifically provided by law.

(2) When a person is convicted of an offense, if the court is of the opinion that it is in the best interests of the public as well as of the defendant, the court may suspend the imposition or execution of sentence for any period of not more than five years.

(3) If the court suspends the imposition or execution of sentence, the court may also place the defendant on probation for a definite or indefinite period of not less than one nor more than five years.

(4) The power of the judge of any court to suspend execution of sentence or to grant probation to any person convicted of a crime shall continue until the person is delivered to the custody of the Corrections Division.

(5) When a person is convicted of an offense and the court does not suspend the imposition or execution of sentence or when a suspended sentence or probation is revoked, the court shall impose the following sentence:

- (a) A term of imprisonment; or
- (b) A fine; or
- (c) Both imprisonment and a fine; or
- (d) Discharge of the defendant.

(6) This section does not deprive the court of any authority conferred by law to decree a forfeiture of property, suspend or cancel a license, remove a person from office or impose any other civil penalty. An order exercising that authority may be included as part of the judgment of conviction.

#### COMMENTARY TO SECTIONS 1 AND 2

##### A. Summary

Section 1 incorporates sections 3 to 7 of this Article into ORS chapter 137, the existing body of statutes dealing with the subjects of judgments, sentencing, parole and probation in criminal cases. Certain existing statutes will be repealed or amended by the provisions of this Article or by the companion Article on authority of the court in sentencing.

Section 2 deletes language in ORS 137.010 that is inconsistent with the proposed grading and sentencing scheme and adds new provisions relating to the various options that are available as authorized dispositions that the court can employ for persons convicted of offenses.

Subsections (2), (3) and (4) authorize the court to suspend the imposition or execution of sentence and to grant probation.

Subsection (5) details four types of sentence, one of which the court must impose if it does not place the convicted person on probation or suspend the imposition or execution of sentence.

Subsection (6) makes it clear that civil, administrative and quasi-criminal sanctions provided elsewhere in ORS continue fully in effect. If the statute creating the penalty or sanction authorizes an adjudication ancillary to the criminal prosecution, an order exercising that authority may be included by the court as part of the judgment of conviction in the criminal case.

#### B. Derivation

Subsections (2), (3) and (4) are based on ORS 137.510. Subsections (5) and (6) are based on MPC s. 6.02 and Michigan Revised Criminal Code s. 1210.

#### C. Relationship to Existing Law

Subsection (1) of section 2 requires the court to pass sentence in accordance with the general provisions of this Article which are intended to be made part of ORS chapter 137. The statute defining the offense will no longer prescribe a specific penalty for the particular single offense (except for some offenses that will continue to lie outside the criminal code) but will be graded into one of the designated categories of offenses, each of which in turn will carry its own range of penalties.

Subsections (2), (3) and (4) would repeal ORS 137.510.

Subsection (5) itemizes the different sentencing options that will be available to the judge. All of these exist under present law, except for (d) which would allow the court to discharge the defendant. The criteria for use of this sentencing tool is set forth in the Article on Authority of the Court in Sentencing.

The draft does not provide for "conditional discharge" which appears in the New York and Michigan codes because it is, in effect, a suspended sentence without probation, which presently is authorized under existing law. The subcommittee believes that the new sentencing provisions should be incorporated into ORS chapter 137, which contains many desirable features that should be retained. Consequently, the Articles dealing with grading of offenses and disposition of offenders are intended to be integrated into the existing statutes wherever possible. The distinction between a "conditional discharge" as opposed to a "suspended sentence" appears to be mainly one of semantics although the former can be said to be a type of sentence in itself.

Subsection (6) of section 2 is new but does not change the authority that a sentencing court now has under certain statutes to decree a forfeiture of public office, cancellation of a license or other privilege or to impose other similar sanctions.

Section 3. Sentence of imprisonment for felonies; ordinary terms.

The maximum term of an indeterminate sentence of imprisonment for a felony is as follows:

- (1) For a Class A felony, 20 years;
- (2) For a Class B felony, 10 years;
- (3) For a Class C felony, 5 years;
- (4) For an unclassified felony as provided in the statute defining

the crime.

COMMENTARY - SENTENCE OF IMPRISONMENT FOR FELONIES; ORDINARY TERMS

A. Summary

This section establishes the maximum terms for the four categories of felonies. The length of the term is to be fixed by the court within the applicable limits set forth above. The section does not require the court to impose either a statutory minimum nor a statutory maximum sentence. This will permit the court to be flexible in tailoring its sentence to the individual factors involved in the case.

The authorized sentences for the respective categories reflect the substantial differences in gravity of the crimes that will be classified into each group. The only felony that will not be so classified is the crime of murder, which, if submitted, should carry its own penalty, life imprisonment, and be treated as a special case apart from the other felonies.

The Class A category would include those crimes, other than murder, which the Commission determines should be designated as the most serious felonies. They probably will be relatively few in number and limited to criminal acts that cause or threaten to cause serious physical injury to others, involve the use of deadly weapons or that have minor children as victims.

A considerably greater number of crimes will fall within the Class B category, but the majority of felonies undoubtedly will be classified as Class C felonies. Most of the nonviolent felonies will be within the third group.

B. Derivation

The section is patterned after Michigan Revised Criminal Code s. 1401 which uses an "A, B, C" categorization with maximum terms of 20, 10 and 5 years, respectively. The fourth category, "unclassified felony," is borrowed from the new Connecticut Penal Code s. 26 (1969).

Classifying crimes into separate sentencing categories is a technique that is being used in most new criminal codes. The American Bar Association strongly recommends this approach. (Sentencing Alternatives and Procedures, ABA Project on Minimum Standards for Criminal Justice s. 2.1 (Approved Draft, Sept 1968)). See, also MPC ss. 6.01, 6.06 and Model Sentencing Act ss. 7-9.

C. Relationship to Existing Law

The proposed section represents a marked departure from the traditional legislative technique employed in Oregon of providing a separate and distinct penalty for each individual offense. Naturally, this has created in the past a multiplicity of penalties and a resultant inconsistency among the criminal statutes. See, Beckett, Criminal Penalties in Oregon, 40 Or L Rev 1, 71 (1960).

The section is not intended to disturb the provisions of ORS 137.120 regarding indeterminate sentences, but rather to complement them. This state's legislative policy regarding the use of the indeterminate sentence has been on the books since 1939 when Oregon abolished mandatory minimum periods of imprisonment for felonies. The statute allows the court to fix a maximum term of imprisonment within the legislatively established limits. Compared to most other states, Oregon indeed has shown an enlightened approach to this particular aspect of sentencing.

The only exception to this policy is in the case of murder. A life sentence is, of course, mandatory for first degree murder under ORS 163.010 (3), and as a result of ORS 144.230 (1), a person convicted thereof is not eligible for parole until he has served at least 10 years of his sentence. Subsection (2) of the latter statute requires a person serving a sentence for second degree murder to serve at least seven years before he becomes eligible for parole. The maximum punishment for murder in the second degree is 25 years imprisonment; however, this is not mandatory under 163.020 (4).

OREGON CASES:

Mitchell v. Gladden, 229 Or 192, 195, 366 P2d 907 (1961), held that the imposition of a sentence for a fixed period is to be construed as fixing the maximum period which is to be served under an indeterminate sentence.

In State v. Montgomery, 237 Or 593, 392 P2d 642 (1964), the court, relying on ORS 137.120, held that the trial court's discretion in sentencing a defendant to confinement is limited to a determination of the maximum term under which a prisoner may be held.

The duty of determining the extent of the penalty to be imposed in a criminal case, with the exception of murder in the first degree, is by law imposed upon the trial judge. The extent of that punishment is legislative, limited only by the constitutional prohibition against cruel and inhuman punishment. State v. Hoffman, 236 Or 98, 385 P2d 741 (1963).

The court is strictly limited to the provisions of the applicable statute in imposing sentence. Any sentence that deviates from the mode of punishment, extent or place of confinement is void. State v. Cotton, 240 Or 252, 400 P2d 1022 (1965); State v. Nelson, 246 Or 321, 424 P2d 223 (1968).

Section 4. Sentence of imprisonment for misdemeanors. Sentences for misdemeanors shall be for a definite term. The court shall fix the term of imprisonment within the following maximum limitations:

- (1) For a Class A misdemeanor, 1 year;
- (2) For a Class B misdemeanor, 6 months;
- (3) For a Class C misdemeanor, 30 days;
- (4) For an unclassified misdemeanor, as provided in the statute defining the crime.

COMMENTARY - SENTENCE OF IMPRISONMENT FOR MISDEMEANORS

A. Summary

The purpose of section 4 is to establish the maximum terms for the four categories of misdemeanors. Sentences for misdemeanors will be for definite terms fixed by the court. Since the periods prescribed are maximums, they should provide ample flexibility in dealing with any category of misdemeanor.

B. Derivation

The section is based on Michigan Revised Criminal Code s. 1415 and Connecticut Penal Code s. 38.

C. Relationship to Existing Law

As with the proposed sections regarding felonies, this section represents a departure from the existing practice of providing a separate penalty for each individual misdemeanor. The classification system should result in more uniformity of maximum sentences among the different offenses with a greater likelihood of having similar sentences imposed for similar offenses.

The section does not require the imposition of a mandatory minimum as is the case now with many misdemeanors; however, it does not prevent mandatory minimums for statutes outside the criminal code. Under subsection (4) the court will sentence for

unclassified misdemeanors in accordance with the statute defining the crime. Statutes located in the motor vehicle code, for example, will not be affected, but should the legislature decide later to classify such statutes to conform to the basic criminal code, it will have guidelines for doing so.

Although misdemeanor sentences are not now indeterminate, the State Board of Parole and Probation presently has authority under ORS 144.050 to establish rules and regulations under which any prisoner who is confined in a county jail for six months or more may be paroled.

Section 5. Fines for felonies. (1) A sentence to pay a fine for a Class A, B or C felony shall be a sentence to pay an amount, fixed by the court, not exceeding \$2,500.

(2) A sentence to pay a fine for an unclassified felony shall be a sentence to pay an amount, fixed by the court, as provided in the statute defining the crime.

(3) If a person has gained money or property through the commission of a felony, then upon conviction thereof the court, in lieu of imposing the fine authorized for the crime under subsections (1) or (2) of this section, may sentence the defendant to pay an amount, fixed by the court, not exceeding double the amount of the defendant's gain from the commission of the crime.

(4) As used in this section, "gain" means the amount of money or the value of property derived from the commission of the felony, less the amount of money or the value of property returned to the victim of the crime or seized by or surrendered to lawful authority before the time sentence is imposed. "Value" shall be determined by the standards established in section \_\_\_\_.

(5) When the court imposes a fine for a felony the court shall make a finding as to the amount of the defendant's gain from the crime. If the record does not contain sufficient evidence to support a finding the court may conduct a hearing upon the issue.

(6) This section shall not apply to a corporation.

COMMENTARY - FINES FOR FELONIES

See Commentary under section 7 infra.

Section 6. Fines for misdemeanors and violations. (1) A sentence to pay a fine for a misdemeanor shall be a sentence to pay an amount, fixed by the court, not exceeding:

- (a) \$1,000 for a Class A misdemeanor;
- (b) \$500 for a Class B misdemeanor;
- (c) \$250 for a Class C misdemeanor.

(2) A sentence to pay a fine for an unclassified misdemeanor shall be a sentence to pay an amount, fixed by the court, as provided in the statute defining the crime.

(3) A sentence to pay a fine for a violation shall be a sentence to pay an amount, fixed by the court, not exceeding \$250.

(4) If a person has gained money or property through the commission of a misdemeanor or violation, then upon conviction thereof the court, in lieu of imposing the fine authorized for the offense under subsections (1), (2) or (3) of this section, may sentence the defendant to pay an amount fixed by the court, not exceeding double the amount of the defendant's gain from the commission of the offense. In that event, subsections (4) and (5) of section 5 of this Article apply.

(5) This section shall not apply to corporations.

COMMENTARY - FINES FOR MISDEMEANORS AND VIOLATIONS

See Commentary after section 7 *infra*.

Section 7. Criteria for imposition of fines. In determining whether to impose a fine and its amount, the court shall consider:

(1) The financial resources of the defendant and the burden that payment of a fine will impose, with due regard to the other obligations of the defendant; and

(2) The ability of the defendant to pay a fine on an instalment basis or on other conditions to be fixed by the court.

#### COMMENTARY

##### A. Summary

Sections 5 and 6 establish guidelines for the court to follow in imposing fines for felonies, misdemeanors and violations. If a person has gained money or property through the commission of an offense, the court may take that into account and impose a greater fine than would otherwise be authorized. A separate schedule of fines for corporate defendants is set up under section 8 infra.

Section 7 sets forth certain criteria for the court to follow in determining whether to impose a fine on a particular defendant.

##### B. Derivation

Sections 5 and 6 are based on Michigan Revised Criminal Code ss.1501, 1505. Section 7 is based on recommendations contained in the ABA Standards on Sentencing Alternatives and Procedures s. 2.7 (Tent. Draft 1968).

C. Relationship to Existing Law

An examination of existing statutory punishments shows that in the vast majority of instances the courts have been empowered to impose a fine not to exceed a specific amount in addition to or instead of imprisonment.

The following table prepared by Judge Beckett classifies the penalties and penalty types according to the alternative uses of fine and imprisonment.

<u>Alternatives</u>	<u>Penalty Types</u>	<u>Penalties</u>
Fine only. . . . .	60	332
Imprisonment only. . . . .	29	147
Fine or imprisonment in the alternative. . .	84	136
Fine or imprisonment, or both. . . . .	239	727
Fine "and" imprisonment (where both appear to be required) . . . . .	<u>12</u>	<u>21</u>
Total	424	1,363

See, Beckett, Criminal Penalties in Oregon, 40 Or L Rev 1, 21 (Footnotes omitted). The author examines these five alternative uses of fine and imprisonment in great detail in trying to determine how maximum imprisonment sentences compare with maximum fines, particularly in those instances in which one or the other, but not both, may be imposed and in those instances where the court may impose one or both of these two alternatives. He observes:

"Initially, one would expect imprisonment and fine to be roughly equivalent in these instances. However, the Legislature may have intended otherwise; for example, it may be the intention of the Legislature:

"(a) that imprisonment be the preferred penalty and that a fine may be prescribed as additional punishment;

"(b) that imprisonment be the preferred penalty but that, where the imprisonment sentence is suspended, a token fine may be exacted;

"(c) that a fine be the preferred penalty and that imprisonment may be prescribed as an additional penalty.

"Other possibilities may be suggested. Whatever the intent of the Legislature, however, the guiding principle or principles adopted should be clear and should be consistently followed by the Legislature. If the Legislature . . . has in mind an equivalency concept, then it is apparent that the imprisonment maximum should somehow be equated to the fine maximum." Id at 21, 22.

Sections 5 and 6 adopt an equivalency concept, making the maximum range of fines for each category of crimes correspond to the maximum range of imprisonment sentences available for each category. In other words, the seriousness of a particular crime, as determined by the Legislature, will be reflected not only by the authorized imprisonment sentence for that crime, but also by the authorized fine that may be imposed for it. A "guiding principle" can be adopted that can be consistently followed in the grading of the various offenses. Legislative intent should, consequently, be more clearly discernible, thereby enabling the trial judges to implement that intent through the imposition of more consistent sentences, whether they be fines, imprisonment or both.

Section 8. Fines for corporations. (1) A sentence to pay a fine, when imposed on a corporation for an offense defined in this code or for an offense defined outside this code for which no special corporate fine is specified, shall be a sentence to pay an amount, fixed by the court, not exceeding:

(a) \$50,000 when the conviction is of a felony;

(b) \$5,000 when the conviction is of a Class A misdemeanor or of an unclassified misdemeanor for which a term of imprisonment of more than six months is authorized;

(c) \$2,500 when the conviction is of a Class B misdemeanor or of an unclassified misdemeanor for which the authorized term of imprisonment is not more than six months;

(d) \$1,000 when the conviction is of a Class C misdemeanor or an unclassified misdemeanor for which the authorized term of imprisonment is not more than 30 days.

(e) \$500 when the conviction is of a violation.

(2) A sentence to pay a fine, when imposed on a corporation for an offense defined outside this code, if a special fine for a corporation is provided in the statute defining the offense, shall be a sentence to pay an amount, fixed by the court, as provided in the statute defining the offense.

(3) If a corporation has gained money or property through the commission of an offense, then upon conviction thereof the court, in lieu of imposing the fine authorized for the offense under subsections (1) or (2) of this section, may sentence the corporation to pay an amount, fixed by the court, not exceeding double the amount of the corporation's gain from the commission of the offense. In that event, subsections (4) and (5) of section 5 of this Article apply.

COMMENTARY - FINES FOR CORPORATIONS

When a corporation is convicted of an offense, the only penal sanction that can be used is a fine. Section 8 sets up a schedule of fines for corporations that authorizes larger fines than can be imposed upon natural persons.

The section is based on New York Revised Penal Law s. 80.10 and has no counterpart in existing Oregon law.

COMMENTARY - COSTS

A. Summary

Section 9 authorizes the court to impose costs in a criminal case, but does not require it. Subsections (2) and (3) establish criteria to be followed in assessing costs. Subsection (4) allows the defendant, if his situation deserves it, to apply to the court for remission of the payment of costs.

B. Derivation

The section is derived from Michigan Revised Criminal Code s. 1525.

C. Relationship to Existing Law

ORS 137.200 provides that costs and disbursements in a criminal action shall be taxed against a defendant upon conviction. ORS 137.205 provides for taxation against a defendant for the cost of legal assistance furnished to him. Both statutes would be repealed by the instant proposal.

Section 9. Costs. (1) The court may require a convicted defendant to pay costs.

(2) Costs shall be limited to expenses specially incurred by the state in prosecuting the defendant. They cannot include expenses inherent in providing a constitutionally guaranteed jury trial or expenditures in connection with the maintenance and operation of government agencies that must be made by the public irrespective of specific violations of law.

(3) The court shall not sentence a defendant to pay costs unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose.

(4) A defendant who has been sentenced to pay costs and who is not in contumacious default in the payment thereof may at any time petition the court which sentenced him for remission of the payment of costs or of any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or his immediate family, the court may remit all or part of the amount due in costs, or modify the method of payment under section 10 of this Article.

Section 10. Time and method of payment of fines and costs. (1)

When a defendant is sentenced to pay a fine or costs, the court may grant permission for payment to be made within a specified period of time or in specified instalments. If no such permission is included in the sentence the fine shall be payable forthwith.

(2) When a defendant sentenced to pay a fine or costs is also placed on probation or imposition or execution of sentence is suspended, the court may make payment of the fine or costs a condition of probation or suspension of sentence.

COMMENTARY - TIME AND METHOD OF PAYMENT OF FINES AND COSTS

This section is intended to permit the sentencing court to be flexible in the manner in which it requires payment of fines and costs to be made. Instalment payments would be authorized.

There is no comparable existing statute, but ORS 137.540 (8) provides that one of the conditions of probation that a court may impose is that a defendant "pay his fine, if any, in one or several sums."

The section is drawn from MPC s. 302.1 (1) and (2) and Michigan Revised Criminal Code s. 1530.

Section 11. Consequences of nonpayment of fines or costs. (1)

When a defendant sentenced to pay a fine or costs defaults in the payment thereof or of any instalment, the court on motion of the district attorney or upon its own motion may require him to show cause why his default should not be treated as contempt of court, and may issue a show cause citation or a warrant of arrest for his appearance.

(2) Unless the defendant shows that his default was not attributable to an intentional refusal to obey the order of the court or to a failure on his part to make a good faith effort to make the payment, the court may find that his default constitutes contempt and may order him committed until the fine or costs, or a specified part thereof, are paid.

(3) When a fine or costs are imposed on a corporation or unincorporated association, it is the duty of the person authorized to make disbursement from the assets of the corporation or association to pay them from those assets, and his failure to do so may be held to be contempt unless he makes the showing required in subsection (2) of this section.

(4) The term of imprisonment for contempt for nonpayment of fines or costs shall be set forth in the commitment order, and shall not exceed one day for each \$10 of the fine or costs, 30 days if the fine or costs were imposed upon conviction of a violation or misdemeanor, or one year in any other case, whichever is the shorter period. A person committed for nonpayment of a fine or costs shall be given credit toward

payment for each day of imprisonment at the rate specified in the commitment order.

(5) If it appears to the satisfaction of the court that the default in the payment of a fine or costs is not contempt, the court may enter an order allowing the defendant additional time for payment, reducing the amount thereof or of each instalment or revoking the fine or costs or the unpaid portion thereof in whole or in part.

(6) A default in the payment of a fine or costs or any instalment thereof may be collected by any means authorized by law for the enforcement of a judgment. The levy of execution for the collection of a fine or costs shall not discharge a defendant committed to imprisonment for contempt until the amount of the fine has actually been collected.

COMMENTARY - CONSEQUENCES OF NONPAYMENT OF FINES OR COSTS

Section 11 sets up procedures for dealing with convicted defendants who are in default in payment of fines or costs. The section follows MPC s. 203.2 and Michigan Revised Criminal Code s. 1535, and embodies the rationale that default in payment of fines or costs should be considered essentially a civil obligation owed to the state.

If the court finds the defendant in contempt for nonpayment it may order him committed to jail until payment is satisfied. Subsection (4) places a limit on the period of imprisonment.

ORS 137.150 provides that a judgment that a defendant pay a fine shall also direct that he be imprisoned until the fine is satisfied, not exceeding one day for every \$5 of the fine. This statute would be repealed.

ORS 169.160 permits an indigent who has been in jail 30 days solely for nonpayment of a fine or fine and costs to petition the court for release. This statute would no longer be needed if the procedures recommended by this Article were adopted.

ORS 137.180 states: "A judgment that the defendant pay money, either as a fine or as costs and disbursements of the action, or both, shall be docketed as a judgment in a civil action and with like effect, as provided in ORS 18.320, 18.350 and 18.400." This statute would be retained.

TEXT OF REVISIONS OF OTHER STATES

Text of Model Penal Code

**Section 6.06. Sentence of Imprisonment for Felony; Ordinary Terms.**

A person who has been convicted of a felony may be sentenced to imprisonment, as follows:

(1) in the case of a felony of the first degree, for a term the minimum of which shall be fixed by the Court at not less than one year nor more than ten years, and the maximum of which shall be life imprisonment;

(2) in the case of a felony of the second degree, for a term the minimum of which shall be fixed by the Court at not less than one year nor more than three years, and the maximum of which shall be ten years;

(3) in the case of a felony of the third degree, for a term the minimum of which shall be fixed by the Court at not less than one year nor more than two years, and the maximum of which shall be five years.

**Alternate Section 6.06. Sentence of Imprisonment for Felony; Ordinary Terms.**

A person who has been convicted of a felony may be sentenced to imprisonment, as follows:

(1) in the case of a felony of the first degree, for a term the minimum of which shall be fixed by the Court at not less than one year nor more than ten years, and the maximum at not more than twenty years or at life imprisonment;

(2) in the case of a felony of the second degree, for a term the minimum of which shall be fixed by the Court at not less than one year nor more than three years, and the maximum at not more than ten years;

(3) in the case of a felony of the third degree, for a term the minimum of which shall be fixed by the Court at not less than one year nor more than two years, and the maximum at not more than five years.

No sentence shall be imposed under this Section of which the minimum is longer than one-half the maximum, or, when the maximum is life imprisonment, longer than ten years.

Section 6.08. Sentence of Imprisonment for Misdemeanors  
and Petty Misdemeanors; Ordinary Terms.

A person who has been convicted of a misdemeanor or a petty misdemeanor may be sentenced to imprisonment for a definite term which shall be fixed by the Court and shall not exceed one year in the case of a misdemeanor or thirty days in the case of a petty misdemeanor.

Section 6.09. Sentence of Imprisonment for Misdemeanors  
and Petty Misdemeanors; Extended  
Terms.

(1) In the cases designated in Section 7.04, a person who has been convicted of a misdemeanor or a petty misdemeanor may be sentenced to an extended term of imprisonment, as follows:

(a) in the case of a misdemeanor, for a term the minimum of which shall be fixed by the Court at not more than one year and the maximum of which shall be three years;

(b) in the case of a petty misdemeanor, for a term the minimum of which shall be fixed by the Court at not more than six months and the maximum of which shall be two years.

(2) No such sentence for an extended term shall be imposed unless:

(a) the Director of Correction has certified that there is an institution in the Department of Correction, or in a county, city [or other appropriate political subdivision of the State], which is appropriate for the detention and correctional treatment of such misdemeanants or petty misdemeanants, and that such institution is available to receive such commitments; and

(b) the [Board of Parole] [Parole Administrator] has certified that the Board of Parole is able to visit such institution and to assume responsibility for the release of such prisoners on parole and for their parole supervision.

Text of Michigan Revised Criminal Code

**[Indeterminate Sentence of Imprisonment for Felony]**

Sec. 1401. (1) A sentence of imprisonment for a felony shall be an indeterminate sentence, the maximum of which shall be the term of imprisonment provided by subsection (2) for the felony classification applicable to the felony of which the defendant is convicted.

(2) The authorized maximum terms of imprisonment for felonies are:

- (a) For a Class A felony 20 years;
- (b) For a Class B felony 10 years; and
- (c) For a Class C felony 5 years.

(3) The actual time of release within the maximum established by subsection (2) shall be determined under procedures established elsewhere by law.

**[Sentences of Imprisonment for Misdemeanors and Violations]**

Sec. 1415. (1) Sentences for misdemeanors shall be for a definite term. The court shall fix the term of imprisonment within the following maximum limitations:

- (a) For a Class A misdemeanor, 1 year.
- (b) For a Class B misdemeanor, 90 days.
- (c) For a Class C misdemeanor, 30 days.

(2) Sentences for violations shall be for a definite term. The court shall fix the term of imprisonment at not more than 15 days.

**[Fines for Felonies]**

Sec. 1501. (1) A sentence to pay a fine for a felony shall be a sentence to pay an amount, fixed by the court, not exceeding 2,500 dollars.

(2) If a person has gained money or property through the commission of any felony, then upon conviction thereof the court in lieu of imposing the fine authorized for the felony under subsection (1), may sentence the defendant to pay an amount fixed by the court, not exceeding double the amount of the defendant's gain from the commission of the crime.

(3) As used in this section the term "gain" means the amount of money or the value of property derived from the commission of the crime, less the amount of money or the value of property returned to the victim of the crime or seized by or surrendered to lawful authority prior to the time sentence is imposed. "Value" shall be determined by the standards established in section 320(m).

(4) When the court imposes a fine for a felony the court shall make a finding as to the amount of the defendant's gain from the crime. If the record does not contain sufficient evidence to support a finding the court may conduct a hearing upon the issue, according to procedures established by rule of court.

(5) This section does not apply to a corporation.

**[Fines for Misdemeanors and Violations]**

Sec. 1505. (1) A sentence to pay a fine for a Class A misdemeanor shall be a sentence to pay an amount, fixed by the court, not exceeding 1,000 dollars.

(2) A sentence to pay a fine for a Class B misdemeanor shall be a sentence to pay an amount, fixed by the court, not exceeding 500 dollars.

(3) A sentence to pay a fine for a Class C misdemeanor shall be a sentence to pay an amount, fixed by the court, not exceeding 250 dollars.

(4) A sentence to pay a fine for a violation shall be a sentence to pay an amount, fixed by the court, not exceeding 100 dollars.

(5) If a person has gained money or property through the commission of any misdemeanor or violation, then upon conviction thereof the court, in lieu of imposing the fine authorized for the offense under one of the above subsections, may sentence the defendant to pay an

amount fixed by the court, not exceeding double the amount of the defendant's gain from the commission of the offense. In that event the provisions of section 1501(3) and (4) apply.

(6) This section does not apply to a corporation.

**[Fines Against Corporations]**

Sec. 1515. (1) A sentence to pay a fine, when imposed on a corporation for an offense defined in this code or for an offense defined outside this code for which no special corporate fine is specified, shall be a sentence to pay an amount, fixed by the court, not exceeding:

- (a) Ten thousand dollars when the conviction is of a felony.
- (b) Five thousand dollars when the conviction is of a Class A misdemeanor.
- (c) Two thousand dollars when the conviction is of a Class B or a Class C misdemeanor;
- (d) Five hundred dollars when the conviction is of a violation.
- (e) Any higher amount not exceeding double the amount of the corporation's gain from the commission of the offense.

(2) Section 1501(3) and (4) apply to the imposition of a fine under subsection (1) (e).

# # #

Proposed Connecticut Penal Code

**§ 36. Indeterminate sentence of imprisonment for felony**

**1. Indeterminate sentence.** A sentence of imprisonment for a felony shall be an indeterminate sentence. When such a sentence is imposed, the court shall impose a maximum term in accordance with the provisions of subsection 2 of this section and the minimum period of imprisonment shall be as provided in subsection 3 of this section.

**2. Maximum term of sentence.** The maximum term of an indeterminate sentence shall be fixed as follows:

(a) for a class A felony, the term shall be life imprisonment unless a sentence of death is imposed in accordance with section 48.

(b) for a class B felony, the term shall be fixed by the court, and shall not exceed fifteen years;

(c) for a class C felony, the term shall be fixed by the court, and shall not exceed ten years;

(d) for a class D felony, the term shall be fixed by the court and shall not exceed five years; and

(e) for an unclassified felony, the term shall be fixed by the court, and shall be in accordance with the sentence specified in the law that defines the crime.

**3. Minimum period of imprisonment.** The minimum period of imprisonment under an indeterminate sentence shall be at least one year and shall be fixed as follows:

(a) in the case of a class A felony, the minimum period shall be fixed by the court and specified in the sentence. Such minimum sentence shall not be less than one nor more than ten years;

(b) where the sentence is for a class B, C or D felony and the court, having regard to the nature and circumstances of the crime and to the history and character of the defendant, is of the opinion that the ends of justice and best interests of the public require that the court fix a minimum period of imprisonment, the court may fix the minimum. In such event, the minimum period shall be specified in the sentence and shall not be more than one-half of the maximum term imposed, except where the maximum is less than three years.

**§ 37. Alternative definite sentence for class C or D felony**

Notwithstanding the provisions of section 36, when a person is sentenced for a class C or D felony and the court, having regard to the nature and circumstances of the crime and to the history and character of the defendant, is of the opinion that a sentence of imprisonment is necessary but that it would be unduly harsh to impose an indeterminate sentence, the court may impose a definite sentence of imprisonment and fix a term of one year or less.

**§ 38. Sentence of imprisonment for misdemeanors**

1. **Class A misdemeanor.** A sentence of imprisonment for a class A misdemeanor shall be a definite sentence. When such a sentence is imposed the term shall be fixed by the court, and shall not exceed one year.

2. **Class B misdemeanor.** A sentence of imprisonment for a class B misdemeanor shall be a definite sentence. When such a sentence is imposed the term shall be fixed by the court, and shall not exceed six months.

3. **Class C misdemeanor.** A sentence of imprisonment for a class C misdemeanor shall be a definite sentence. When such a sentence is imposed the term shall be fixed by the court, and shall not exceed three months.

4. **Unclassified misdemeanor.** A sentence for an unclassified misdemeanor shall be a definite sentence. When such a sentence is imposed the term shall be fixed by the court, and shall be in accordance with the sentence specified in the law that defines the crime.

**§ 43. Fines for felonies**

1. **Class A or B felony.** A sentence to pay a fine for a class A or B felony shall be a sentence to pay an amount, fixed by the court, not exceeding ten thousand dollars.

2. **Class C or D felony.** A sentence to pay a fine for a class C or D felony shall be a sentence to pay an amount, fixed by the court, not exceeding five thousand dollars.

3. **Unclassified felony.** A sentence to pay a fine for an unclassified felony shall be a sentence to pay an amount, fixed by the court, in accordance with the fine specified in the law that defines the crime.

**§ 44. Fines for misdemeanors**

1. **Class A or B misdemeanor.** A sentence to pay a fine for a class A or B misdemeanor shall be a sentence to pay an amount, fixed by the court, not exceeding one thousand dollars.

2. **Class C misdemeanor.** A sentence to pay a fine for a class C misdemeanor shall be a sentence to pay an amount, fixed by the court, not exceeding five hundred dollars.

3. **Unclassified misdemeanor.** A sentence to pay a fine for an unclassified misdemeanor shall be a sentence to pay an amount, fixed by the court, in accordance with the fine specified in the law that defines the crime.

**§ 45. Fine for violation**

A sentence to pay a fine for a violation shall be a sentence to pay an amount, fixed by the court, not exceeding five hundred dollars. In the case of a violation defined outside this chapter, if the amount of the fine is expressly specified in the law that defines the offense, the amount of the fine shall be fixed in accordance with that law.